

## **AGREEMENT TO ENTER AND CONSTRUCT**

### **Alleghany Pipeline and Cummings Access Road**

**THIS AGREEMENT (the "Agreement") is made and entered into and shall be effective as of July 15, 2020 ("Effective Date") by THE NATOMAS BASIN CONSERVANCY, a California nonprofit public benefit corporation ("Owner" or "TNBC"), and the SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint powers authority established pursuant to the laws of the State of California ("Agency" or "SAFCA").**

### **RECITALS**

**WHEREAS, SAFCA, the U.S. Army Corps of Engineers ("USACE") and the Central Valley Flood Protection Board ("CVFPB") are constructing improvements to the Sacramento River East Levee and relocating the Natomas Central Mutual Water Company's Riverside Canal as part of the Natomas Basin Reach B and Riverside Canal Relocation Project, the "Reach B Project"; and**

**WHEREAS, the parties entered into an AGREEMENT GRANTING TO SACRAMENTO AREA FLOOD CONTROL AGENCY AN IRREVOCABLE RIGHT TO ENTER AND CONSTRUCT A PUBLIC IMPROVEMENT, dated February 26, 2019, which was recorded in the Office of the Recorder of Sacramento County, California as instrument 20190301-0504, to allow construction of various components of the Reach B Project on TNBC's Cummings Preserve, comprised of Sacramento County Assessor's Parcel Numbers (APNs) 225-0110-018 and 225-0110-051 (the "Cummings ROE Agreement"); and**

**WHEREAS, the parties entered into an AGREEMENT GRANTING TO SACRAMENTO AREA FLOOD CONTROL AGENCY AN IRREVOCABLE RIGHT TO ENTER AND CONSTRUCT A PUBLIC IMPROVEMENT, dated May 3, 2019, which was recorded in the Office of the Recorder of Sacramento County, California as instrument 20190514-0569, to allow construction of various components of the Reach B Project on TNBC's Alleghany Preserve, comprised of Sacramento County Assessor's Parcel Number 225-0190-011 (the "Alleghany ROE Agreement"); and**

**WHEREAS, the Reach B Project will construct certain site improvements and irrigation turnout facilities serving the TNBC preserves that are outside of the preserve areas covered by the Cummings ROE Agreement and the Alleghany ROE Agreement and temporary rights are needed from TNBC for SAFCA and its project partners to construct these improvements; and**

**WHEREAS, Owner and Agency desire to enter into an agreement that would allow construction of these improvements and irrigation facilities.**

## AGREEMENT

Now, therefore, Owner and Agency agree as follows:

1. Upon the terms and subject to the conditions set forth in this Agreement, Owner does hereby grant to the Agency and its representatives, contractors, and agents, including the USACE and CVFPB, a temporary license to enter upon portions of the Owner's properties located within Sacramento County and commonly known as: 1) APNs 225-0110-018 and 225-0110-051 (comprising Owner's Cummings Preserve), which portion is more particularly shown on **Exhibit A-1** to this Agreement; and 2) APN 225-0190-011 (comprising Owner's Alleghany Preserve), which portion is more particularly shown on **Exhibit A-2** to this Agreement, both attached hereto and incorporated herein by this reference (the "Subject Property"). These portions of the Subject Property are designated as the Reach B Construction Area (the "Reach B Construction Area").

The Reach B Construction Area shall be used for the purpose of: constructing access road improvements and irrigation pipeline facilities, collectively the "Construction Activities", as said Construction Activities are generally described in **Exhibit B**, attached hereto and incorporated herein by this reference.

2. Agency acknowledges that Owner purchased the Subject Property in furtherance of the Natomas Basin Habitat Conservation Plan (the "Plan"). The goal of the Plan is to preserve, restore and enhance habitat values found within the Natomas Basin. Agency acknowledges awareness and respect for the Owner's management of the Subject Property in ways which optimizes the value of giant garter snake and Swainson's hawk habitat. Agency further acknowledges that the Plan requires that substantial portions of the Subject Property be devoted to productive agricultural uses for purposes of providing both additional habitat values and additional farm rental revenues to support TNBC's activities. Agency shall use its best efforts to comply with the Plan on the designated portions of the Subject Property, and Owner agrees to assist Agency with compliance questions upon request. By execution of this Agreement, Owner acknowledges and agrees that the Reach B Construction Area will be used to construct improvement that support the marsh habitats and agricultural uses of the Subject Property and other Owner owned properties.

3. This temporary license shall be effective immediately upon the Effective Date. The license shall terminate on December 31, 2022, unless terminated earlier by Agency's written notice to Owner.

4. Agency shall notify Owner a minimum of 48 hours in advance of its entry upon the Subject Property. Owner reserves the right to request Agency to modify the Construction Activities on the Subject Property if the activities are determined to be in conflict with the Plan.

5. All work or activities authorized under this Agreement shall be performed in a prompt, proper and professional manner. The Agency at all times shall keep the Subject Property free from debris and rubbish that may result from the performance of its activities.

6. Agency shall protect, indemnify, defend (with counsel acceptable to Owner) and hold the Subject Property, Owner and Owner's officers, directors, employees, representatives, invitees, and agents free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, fines, penalties, costs and expenses, including reasonable attorneys' fees and court costs, resulting from Agency's acts or omissions, or that of its representatives, employees, contractors, subcontractors, and agents, in connection with the work performed by or on behalf of Agency on the Subject Property, including any of the same which may have been contributed to by the negligence, whether active or passive, of Owner or its employees or agents other than Agency. This indemnity shall not extend to claims arising from the sole negligence or willful misconduct of Owner or its employees or agents other than Agency. Agency shall repair any and all damages to any portion of the Subject Property, other than those modifications or alterations specifically authorized by this agreement, arising out of or related (directly or indirectly) to the work performed by or on behalf of Agency on the Subject Property. Agency shall keep the Subject Property free and clear of any mechanic's liens or materialmen's liens arising out of or related (directly or indirectly) to the work performed by or on behalf of Agency on the Subject Property. Agency's indemnification obligations set forth in this paragraph shall survive the termination of this Agreement or revocation or expiration of the license.

7. Agency shall procure at its sole cost and expense and keep in effect at all times during the term of this Agreement, Commercial General Liability Insurance or Comprehensive General Liability Insurance applicable to Agency's activities on the Subject Property. Prior to any entry onto the Subject Property by the Agency or its agents, contractors, subcontractors, agents or employees, Agency shall deliver to Owner a certificate of insurance and appropriate endorsements to Agency's liability insurance policy with an original signature from an authorized agent of the insurer which evidences that Agency's liability insurance policy has been issued by an insurance company that is duly authorized to do business in California and is in good standing with the California Department of Insurance covering (i) the activities of Agency, and Agency's agents, contractors, subcontractors and employees on or upon the Subject Property, and (ii) Agency's indemnity obligations as set forth in this Agreement. Such certificate and endorsements shall evidence that such insurance policy shall have a per occurrence limit of at least \$1 million and an aggregate limit of at least \$2 million, shall name Owner, Owner's officers, directors, employees, and agents as additional insured, shall be primary and non-contributing with any other insurance available to Owner and shall contain a full waiver of subrogation clause. The insurance must be written on an occurrence basis. Owner acknowledges that SAFCA is a self-insured public entity. SAFCA shall provide a letter of self-insurance to Owner stating that SAFCA's self-insurance program adequately protects against liabilities and claims arising out of the performance of this Agreement.

8. This Agreement is an accommodation to Agency, which agrees to exercise the license and rights granted hereunder at its own risk.

9. In the event of any dispute between the parties arising out of or relating to this Agreement or a breach thereof, the prevailing party shall be entitled to recover reasonable expenses,

including attorneys' fees and costs.

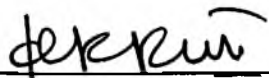
10. Owner is committed to establishing and maintaining a workplace that is free from unlawful harassment and discrimination. As required by law, Owner has developed an "Anti-Harassment and Anti-Discrimination Policy" applicable to all independent contractors that is attached hereto as **Exhibit C**. Agency shall be responsible for informing all of its employees, representatives, contractors, and/or agents who will be entering and performing work on the Subject Property about this policy. In the event Agency acquires information to suggest that this policy is being violated, Agency shall promptly notify Owner.

11. If permits, approvals or authorizations are required by any local, state or governmental authority with respect to Agency's activities on the Subject Property, Agency shall, at its sole expense, obtain such permits, approvals or authorizations and provide copies thereof to Owner.

12. This Agreement constitutes the entire understanding and sole agreement of the parties relating to Agency's right to enter onto the Subject Property and supersedes any prior written or oral agreements between them concerning such subject matter, and may be amended only by a writing executed by both of the parties hereto. This Agreement is, however, intended to supplement the ROE Amendment, which shall remain in effect during its term.

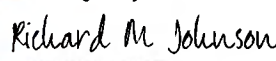
**IN WITNESS HEREOF**, the parties hereto have caused this Agreement to be effective as of the date first above-written.

THE NATOMAS BASIN CONSERVANCY, a  
California nonprofit corporation

By 

Name: John R. Roberts  
Title: Executive Director

SACRAMENTO AREA FLOOD CONTROL  
AGENCY, a California joint powers authority

DocuSigned by:  
By 

Name: Richard M. Johnson  
Title: Executive Director

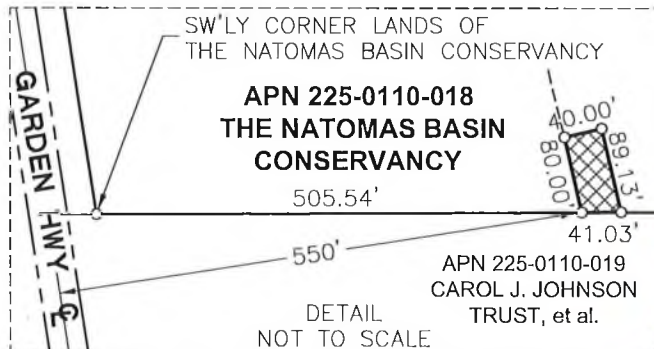
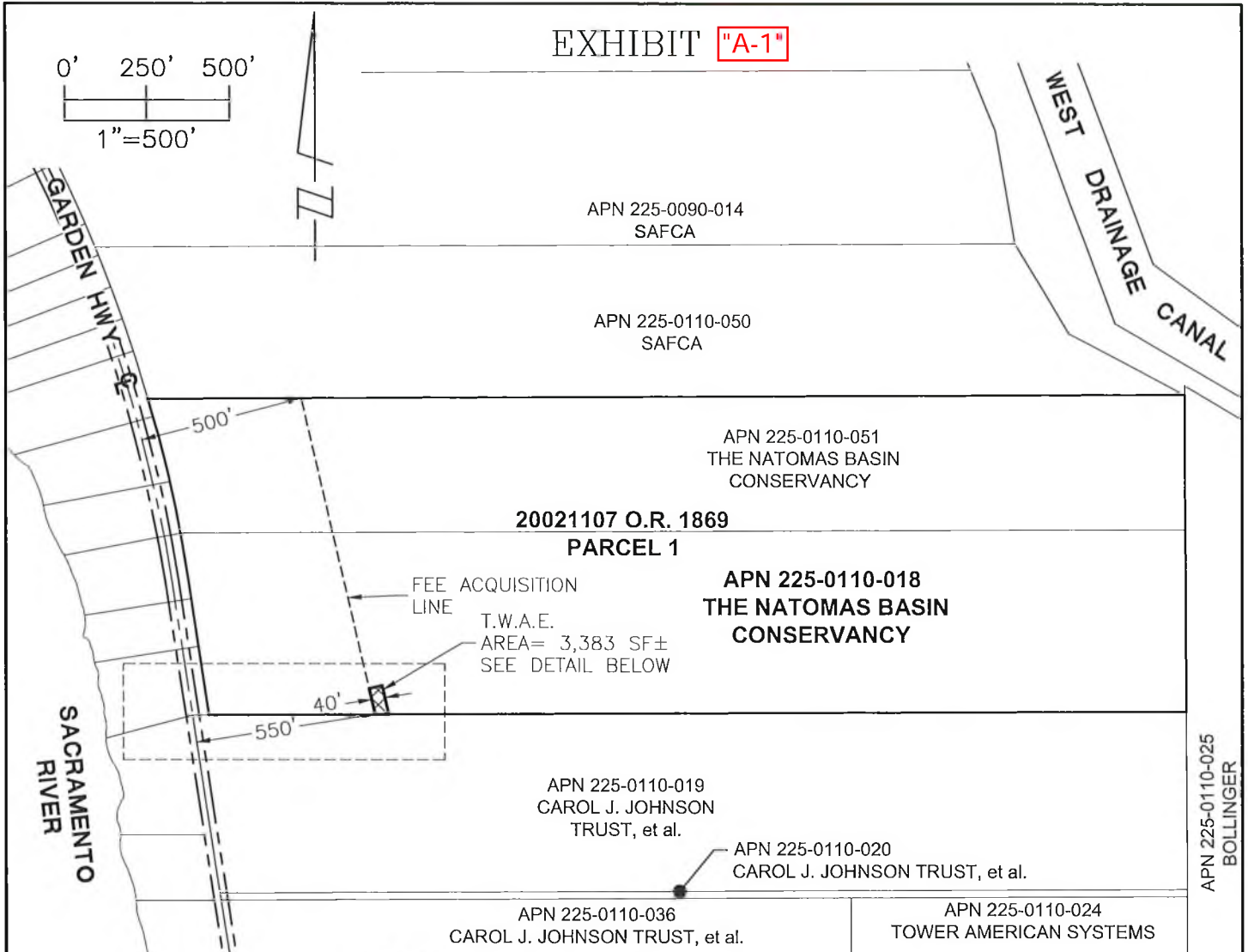
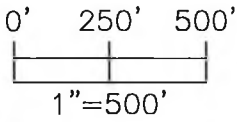
## **Exhibit A**

### **Plats of Construction Areas**

**Exhibit A-1 - Plat of Reach B Construction Area on Cummings Preserve**

**Exhibit A-2 - Plat of Reach B Construction Area on Alleghany Preserve**

EXHIBIT "A-1"



LEGEND

TEMPORARY WORK AREA EASEMENT (T.W.A.E.)

o Dimension Point  
SF: Square Feet

O.R.: Official Records

SAFCA: Sacramento Area Flood Control Agency

NOTES:

- 1) DISTANCES SHOWN ARE GRID, MULTIPLY BY 1.00005062 TO OBTAIN GROUND VALUES.
- 2) THE HORIZONTAL DATUM FOR THIS PLAT IS BASED ON THE CCS, NAD83, ZONE 2 DATUM.
- 3) TITLE REPORT USED: FIDELITY NATIONAL TITLE CO. REPORT NO. 08-5005594-C-CS DATED 01/30/2017.
- 4) ALL RECORD REFERENCES ARE SACRAMENTO COUNTY RECORDS.



**THE NATOMAS BASIN CONSERVANCY**  
**APN: 225-0110-018**

COUNTY OF SACRAMENTO

STATE OF CALIFORNIA

DATE: 6/30/2020

SCALE: 1" = 500'

DRWN. BY: AB

CHK. BY: BEB

SHEET 1 OF 1

**PSOMAS**

1075 Creekside Ridge Drive, Suite 200  
Roseville, CA 95678  
(916) 788-8122 (916) 788-0600 (FAX)

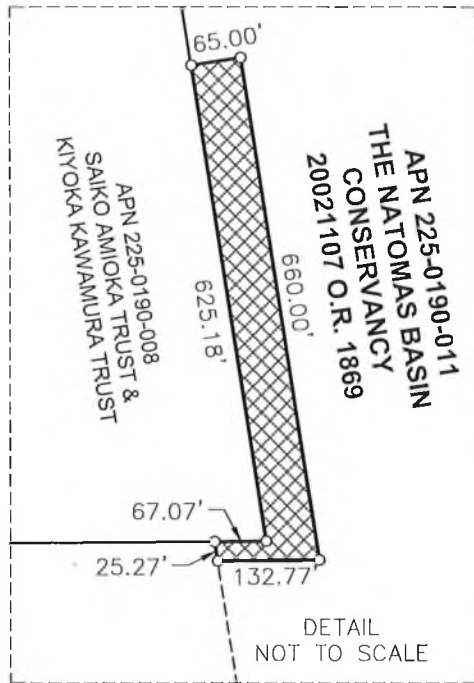
Plotted: Jun/30/2020 7:34 PM | By: Andriy.buchko

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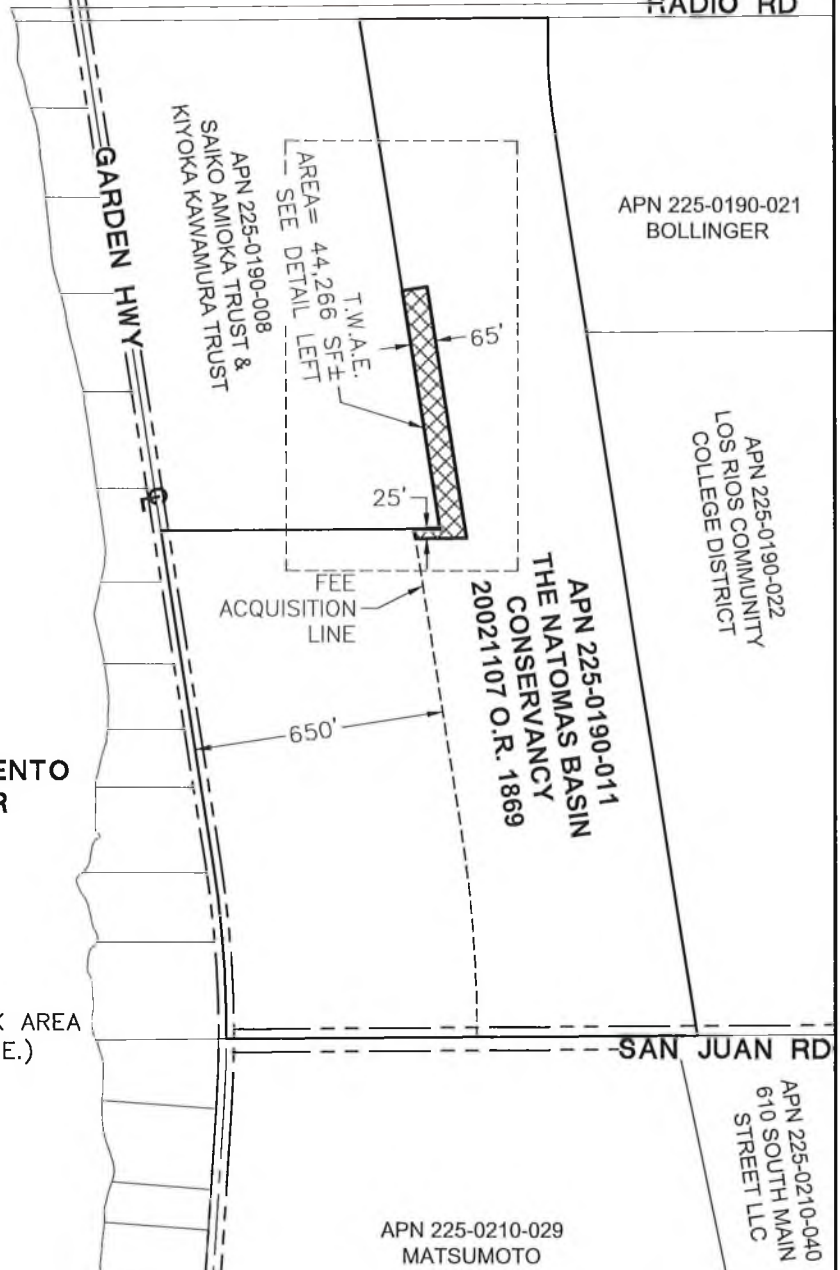
EXHIBIT "A-2"

APN 225-0110-036  
CAROL J. JOHNSON  
TRUST, et al.

RADIO RD

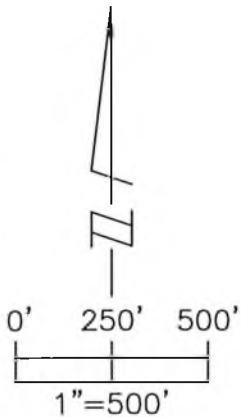


DETAIL  
NOT TO SCALE



SACRAMENTO RIVER

SAN JUAN RD



LEGEND

TEMPORARY WORK AREA EASEMENT (T.W.A.E.)

o Dimension Point  
SF: Square Feet  
O.R.: Official Records



NOTES:

- 1) DISTANCES SHOWN ARE GRID, MULTIPLY BY 1.00005062 TO OBTAIN GROUND VALUES.
- 2) THE HORIZONTAL DATUM FOR THIS PLAT IS BASED ON THE CCS, NAD83, ZONE 2 DATUM.
- 3) TITLE REPORT USED: FIDELITY NATIONAL TITLE CO. REPORT NO. 01001282-010-PA-CDT DATED 02/10/2017.
- 4) ALL RECORD REFERENCES ARE SACRAMENTO COUNTY RECORDS.

**THE NATOMAS BASIN CONSERVANCY**  
**APN 225-0190-011**

COUNTY OF SACRAMENTO

STATE OF CALIFORNIA

DATE: 7/1/2020

SCALE: 1" = 500'

DRWN. BY: AB CHK. BY: BEB

SHEET 1 OF 1

**PSOMAS**

1075 Creekside Ridge Drive, Suite 200  
Roseville, CA 95678  
(916) 788-8122 (916) 788-0600 (FAX)

## **Exhibit B**

### **Description of Agency's Construction Activities**

#### **1. General Description of Construction Activities**

The U.S. Army Corps of Engineers (Corps), in conjunction with the Central Valley Flood Protection Board (CVFPB), assisted by the State Department of Water Resources (DWR) and the Sacramento Area Flood Control Agency (SAFCA), is undertaking the American River Watershed Program, Natomas Basin Levee Improvements Reach B Project (Project). The purpose of the Project is to achieve a minimum 200-year level of flood protection for the Natomas Basin. To accomplish the goals of the Reach B Project, the Corps and its Project partners are proposing to construct an adjacent levee on the landside of the existing Sacramento River east levee, accompanied by seepage berms, stability berms or cutoff walls, or a combination thereof. The Project also requires the relocation of existing utility pole infrastructure, construction of an access road at the landside toe of the levee, planting of required mitigation habitat, and establishment of a flood control works protection zone.

The Riverside Canal relocation component of the improvement will include constructing a new canal between Reclamation District No. 1000 Pumping Plant 3 and Radio Road. A booster pumping station will be constructed at Radio Road. South of Radio Road, the water conveyance facility will consist of a buried pipeline. Turnouts from the pipeline will be constructed to serve adjacent agricultural properties.

The nature of the activities on each of the TNBC preserve properties are generally described below. Details of the grading and construction plans for the sites are included in the drawings that are attached to the Agreement as **Exhibit D**.

#### **2. Cummings Preserve**

Work activities on this property will include grading of a ramp over the relocated Riverside Canal to provide TNBC continued access to the remainder of the Cummings Preserve east of the canal.

#### **3. Alleghany Preserve**

Work activities on this property will include modification to the existing water supply turnout including the construction of new water irrigation pipe.

#### **4. Coordination with TNBC Tenant Farming Operations**

The Parties anticipate that the Agency's Construction Activities as described hereinabove, may



(a) interfere with operations of tenant farming on the Subject Property, (b) destroy or damage crops of such tenant farmers, and (c) result in soil compaction or other adverse impacts on agricultural soil values. Accordingly, the Agency agrees to (i) exercise best efforts to carry out its work under this Agreement with minimal damages to crops in the field, minimal interference with agricultural operations on the Subject Property and minimal soil compactions, (ii) restore soil conditions substantially to those which prevailed prior to commencement of work, and (iii) fully compensate TNBC for costs incurred in the current crop year related to crop damage or losses, interruption of agricultural operations and remediation of soil compaction, following receipt of adequate documentation of such damage or loss.

## **Exhibit C**

### **TNBC's Anti-Harassment and Anti-Discrimination Policy**

The Natomas Basin Conservancy (TNBC) maintains a workplace free of harassment and discrimination. Although you are not an employee of TNBC, you do work as an independent Agency or contractor on TNBC's Property, have access to TNBC workplace, and, at times, interact with employees and other workers. As a result, you are obligated to adhere to TNBC's Anti-Harassment and Anti-Discrimination Policy while in the TNBC workplace or on TNBC Property pursuant to the Agreement to which this Exhibit C is attached. It is your obligation to inform all of your employees, representatives, contractors, and/or agents who will be entering and performing work on the Owner's Property about this policy. Nothing in this memo or accompanying policy is intended to alter your independent contractor status, nor is it intended to create an "employer/employee" relationship.

#### **Anti-Harassment and Anti-Discrimination Policy**

All employee, applicants, and independent contractors ("workers") of the Natomas Basin Conservancy ("TNBC") are to be treated with respect and dignity. TNBC is committed to providing a work environment free of unlawful harassment and discrimination. TNBC policy prohibits all harassment and discrimination because of sex, gender, race, religious creed, color, national origin or ancestry, genetic condition, physical or mental disability, medical condition, including AIDS, marital status, age, sexual orientation or any other basis protected by federal, state or local law or ordinance or regulation. All such harassment or discrimination is unlawful. TNBC's anti-harassment and discrimination policy applies to all persons involved in the operation of TNBC and prohibits unlawful harassment or discrimination by any worker of TNBC.

Prohibited unlawful harassment includes, but is not limited to:

- a. Verbal conduct such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments;
- b. Visual conduct such as derogatory and/or sexually-oriented posters, photography, cartoons, drawings or gestures;
- c. Physical conduct such as assault, unwanted touching, blocking normal movement or interfering with work because of sex, race or any other protected basis;
- d. Threats and demands to submit to sexual requests as a condition of continued employment, or to avoid some other loss, and offers of employment benefits in return for sexual favors; and
- e. Retaliation for opposing, reporting or threatening to report unlawful harassment, or for participating in an investigation, proceeding or hearing conducted by the Fair Employment and Housing Commission.

You may have a claim of prohibited harassment even if you have not lost a job or some other economic benefit. Prohibited harassment that impairs your working ability or emotional well-being at work violates this policy and will not be tolerated.

**Complaint Procedure.** In adopting the above policy, TNBC assures its workers that every reasonable step will be taken to prevent harassment from occurring. However, if a worker believes that he or she has been harassed or discriminated against, the worker is urged to immediately do the following:

- When possible, confront the harasser, communicate that the conduct is unwelcome, and persuade him or her to stop.
- Provide a written or oral complaint to the Executive Director as soon as possible after any incident you feel violates this policy. Your complaint should include details of the incident or incidents, names of the individuals involved and names of any witnesses. If you do not feel comfortable submitting the complaint to the Executive Director, you can submit the complaint to the President.

After a worker reports unlawful harassment or discrimination, TNBC will undertake a prompt and thorough investigation of the harassment allegations.

If TNBC determines that unlawful harassment has occurred, appropriate remedial action will be taken in accordance with the circumstances involved. Any worker determined by TNBC to be responsible for unlawful harassment will be subject to disciplinary action, up to and including termination of the employment or contractor relationship. Whatever action is taken against the harassed will be made known to the worker lodging the complaint. TNBC will not retaliate against anyone for reporting, in good faith, any suspected violation of this policy or for participating in an investigation. TNBC will not knowingly tolerate or permit retaliation by management or co-workers.

TNBC encourages all workers to report any incidents of harassment forbidden by this policy immediately so that complaints can be quickly and fairly resolved. You should also be aware that the Federal Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing investigate and prosecute complaints of prohibited harassment in employment. These agencies may accept, investigate and prosecute complaints. Damages and other remedies (such as back pay, reinstatement, and/or fines) can be awarded in appropriate cases. If you think you have been harassed or that you have been retaliated against for resisting or complaining you may file a complaint. The nearest office of the Department of Fair Employment and Housing is: 2218 Kausen Drive, Elk Grove, CA 95758 (916) 478-7200.

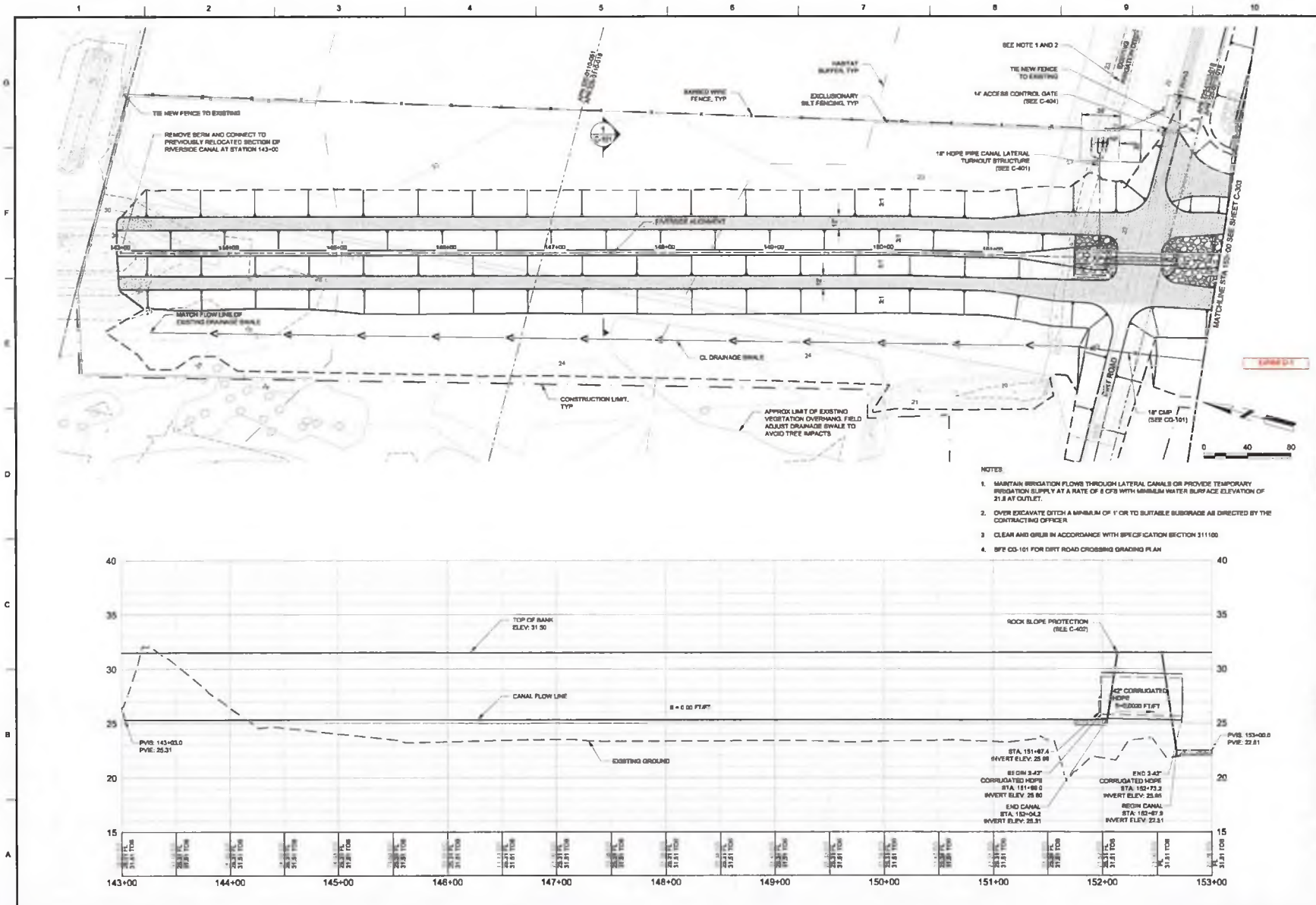
**Exhibit D**

**Construction Plans and Details**

**Exhibit D-1 - Riverside Canal Relocation, Sheet C-302 - Riverside Canal Baseline  
Plan and Profile Station 143+00 to 153+00**

**Exhibit D-2 - Riverside Canal Relocation, Sheet C-320 - Lateral 12 Baseline Plan  
and Profile Station 0+00 to 5+00**

**Exhibit D-3 - Riverside Canal Relocation, Sheet C-321 - Lateral 12 Baseline Plan  
and Profile Station 5+00 to 10+00**



- NOTES
1. MAINTAIN IRRIGATION FLOWS THROUGH LATERAL CANALS OR PROVIDE TEMPORARY IRRIGATION SUPPLY AT A RATE OF 8 CFS WITH MINIMUM WATER SURFACE ELEVATION OF 21.8 AT OUTLET.
  2. OVER EXCAVATE DITCH A MINIMUM OF 1' OR TO SUITABLE SUBGRADE AS DIRECTED BY THE CONTRACTING OFFICER.
  3. CLEAR AND GRUB IN ACCORDANCE WITH SPECIFICATION SECTION 311100.
  4. SEE CO-101 FOR DIRT ROAD CROSSING GRADING PLAN.

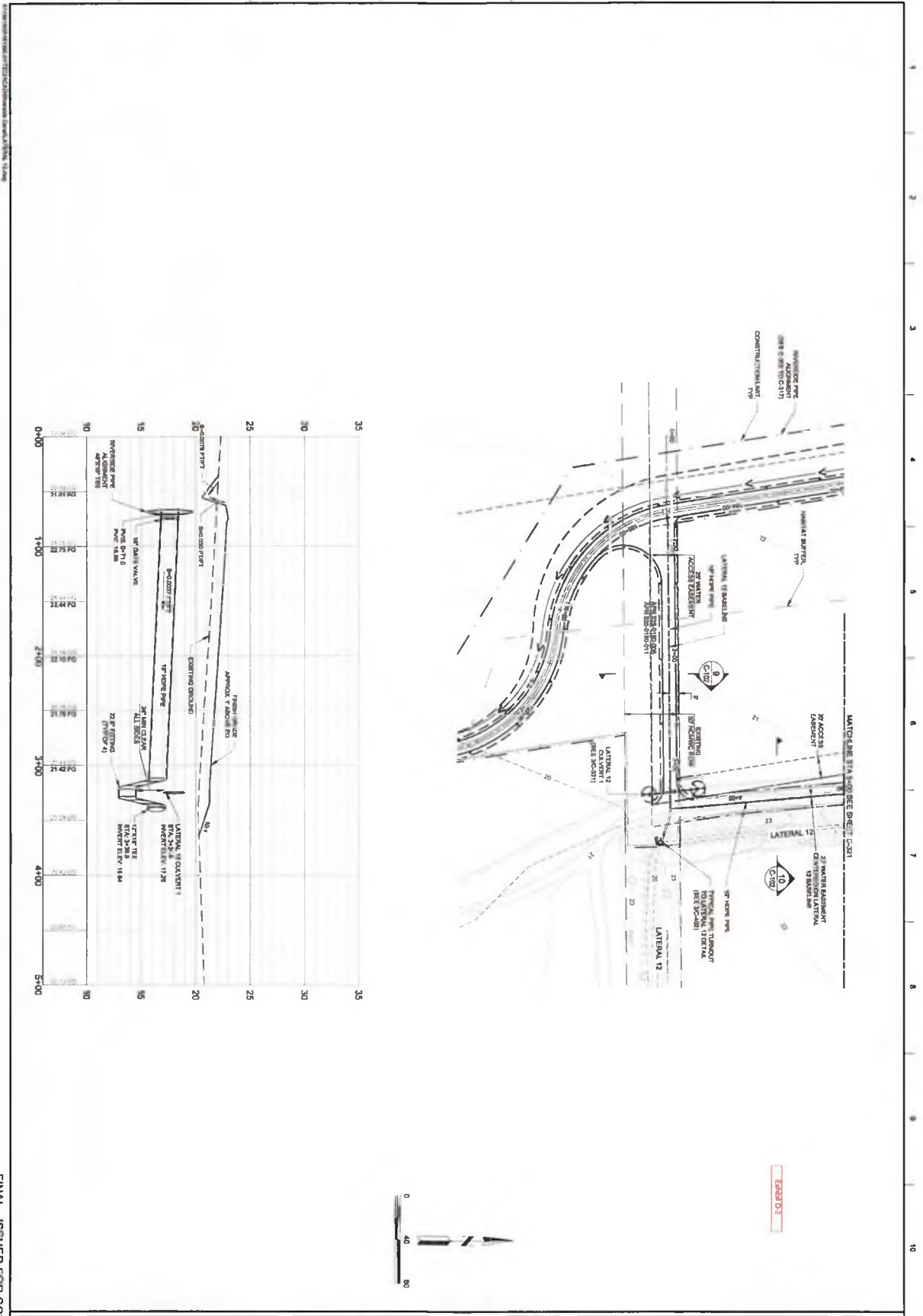
**US Army Corps of Engineers**

PROJECT NO. 15-000000000000  
 DRAWING NO. C-302  
 SHEET NO. 1 OF 1

U.S. ARMY CORPS OF ENGINEERS  
 WASHINGTON DISTRICT  
 WASH DC 20315  
 PROJECT NO. 15-000000000000  
 DRAWING NO. C-302  
 SHEET NO. 1 OF 1

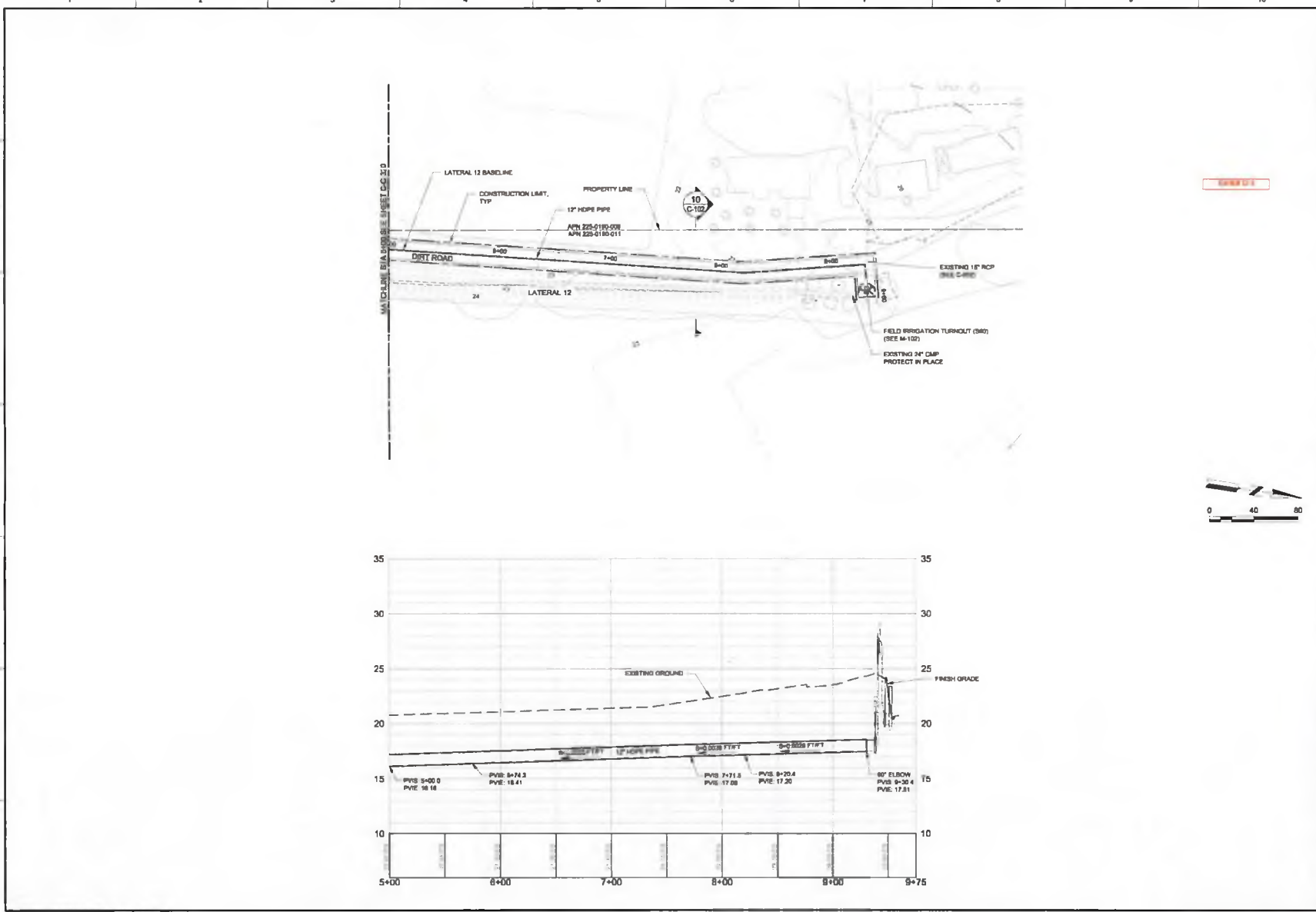
APPROVED FOR CONSTRUCTION  
 RIVERSIDE CANAL RELOCATION PROJECT  
 RIVERSIDE CANAL RELOCATION AND PROFILE  
 STA 143+00 TO 153+00

SHEET ID  
**C-302**



FINAL - ISSUED FOR CONSTRUCTION

<p><b>C-320</b></p> <p>SHEET ID</p>	<p>AMERICAN RIVER CORONADO FEATURES HATOMAS BASIN REACH B REVERSE CANAL PHASE 2 RELOCATION PROJECT</p> <p><b>LATERAL 12 BASELINE PLAN AND PROFILE</b> STA 8+00 TO 8+00</p>	<p>U.S. ARMY CORPS OF ENGINEERS SACRAMENTO DISTRICT</p> <p>MEAD &amp; HUNT, INC. 160 PROMENADE CIRCLE, SUITE 240 BALHARBOR 114, CA 90024</p>	<p>DESIGNED BY: C. STEPPER</p> <p>DRAWN BY: E. DICICION</p> <p>CHECKED BY: M. BULLMAN</p> <p>SUBMITTED BY: J. BARNHART</p> <p>DATE: 2/22</p>	<p>ISSUE DATE: 11/10/2018</p> <p>PROJECT NO.:</p> <p>CONTRACT NO.:</p> <p>DWG. NO.:</p> <p>FILE NAME: LATERAL 12.dwg</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	DATE	DESCRIPTION								
DATE	DESCRIPTION														



U.S. Army Corps of Engineers

NO.	DATE

DESIGNED BY	DEVELOPED BY	DATE
C. BENTON	J. W. DAVIS	11/25/03
APPROVED BY	PROJECT NO.	
S. J. JAY	104-029-010	
CHECKED BY	CONTRACT TAG	
J. W. DAVIS	104-029	
DATE	SCALE	
11/25/03	AS SHOWN	

AN ORIGINAL INSTRUMENT OR PLAN FOR THIS PROJECT IS FILED IN THE OFFICE OF THE DISTRICT ENGINEER, SACRAMENTO DISTRICT, U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO, CALIFORNIA. ALL REVISIONS TO THIS PLAN SHALL BE MADE BY CORRECTIVE ENGINEERING DRAWINGS AND SHALL BE FILED IN THE OFFICE OF THE DISTRICT ENGINEER, SACRAMENTO DISTRICT, U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO, CALIFORNIA.

LATERAL 12 BASELINE PLAN AND PROFILE  
STA 5+00 TO 10+00

SHEET ID  
C-321

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