

APPENDIX G

To: Gregory Canyon, Ltd.

From: Jan S. Driscoll

Date: December 11, 2009

Telephone: 619.235.1559

E-mail: jdriscoll@allenmatkins.com

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Subject: Riparian Status of Land Owned by Gregory Canyon, Ltd.

I Introduction

Allen Matkins Leck Gamble Mallory & Natsis LLP (Allen Matkins) was asked to analyze the riparian status of certain real property owned by Gregory Canyon, Ltd. (GCL), and located in the Pala Valley along the Pala Basin of the San Luis Rey River in north San Diego County (GCL Property). GCL is developing certain parts of the property into a Class III landfill. The project will require water for construction and operation of the landfill, and for habitat restoration.

II Riparian Rights

Riparian rights are real property rights associated with land that is grounded or traversed by a natural watercourse and allows the owner the use of the stream or river. 62 Cal. Jur. 3d Waters § 65 at p. 101 (1981). The landowner has the right to the use of the watercourse only on the riparian property. The riparian right is a correlative, non-quantified right. All owners of land contiguous to a watercourse have a right to the reasonable and beneficial use of water on the contiguous land. People v. Shirokow, 26 Cal.2d 301, 307 (1980). In a time of shortage, all riparian right holders share equitably in any shortfall.

The owner of lands riparian to a watercourse cannot be divested of such rights merely because they have not yet been used. Porters Bar Dredging Co. v. Beaudry, 15 Cal.App. 751, 764 (1911). The accrual of the riparian right does not depend on use of the water. A riparian owner's rights are also not restricted to present uses of water, but extend to reasonably anticipated future uses. As between riparian owners and appropriators, the rights of the riparian owner have priority. See Trussell v. City of San Diego, 172 Cal.App.2d 593, 611-612 (1959). The only exception is the subordination of unexercised riparian rights to existing appropriative rights, if subordinated pursuant to a statutory adjudication of all water rights to the watercourse. In re Waters of Long Valley Creek Stream System, 25 Cal.3d 339 (1979). A landowner may divert or extract water at any point on the

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riparian land that is contiguous to a watercourse, and the water can be used on a different riparian parcel of land from the parcel from which it was diverted so long as there is common ownership of the two parcels and the riparian parcels are in the same watershed. Slater, California Water Law and Policy, § 3.13. Pabst v. Finmand, 190 Cal. 124, 138 (1922); Holmes v. Nay, 186 Cal. 231, 240 (1921). GCL owns all of the riparian parcels from the eastern to the western borders of the GCL Property and can therefore divert water from any of its riparian parcels for use on another of the GCL Property riparian parcels.

III Elements of Riparian Right

A. Watercourse, Bed and Banks.

As stated above, riparian rights are water rights associated with land that is bordered or crossed by a natural watercourse. The watercourse can be surface water, the underflow of a surface watercourse or a subterranean stream. A watercourse, whether surface or underground, must have a bed and banks which confine the flow of water. City of Los Angeles v. Pomeroy, 124 Cal. 597, 626 (1899). Case law has defined the boundaries of a subterranean stream or the underflow of a surface stream to mean the bedrock bottom and side boundaries that are relatively less permeable than the alluvium holding groundwater found within an alluvial valley across which flows a surface stream. See e.g., North Gualala Water Co. v. State Water Resources Control Board (SWRCB), 139 Cal.App.4th 1577 (2006); Hanson v. McCue, 42 Cal. 303, 308-309 (1871).

B. Subterranean Streams.

California case law holds that groundwater flowing in subterranean streams is subject to riparian and appropriative rights. North Gualala Water Co., *supra*, at 139 Cal.App.4th at 1592-1593. Thus the riparian doctrine confers upon the owner of land contiguous to a subterranean stream flowing through known and definite channels the right to the reasonable and beneficial use of the water on the riparian land.

A four-part test has been established by the State Water Resources Control Board for groundwater to be classified as a subterranean stream: "(1) A subsurface channel must be present; (2) The channel must have a relatively impermeable bed and banks; (3) The course of the channel must be known or capable of being determined by reasonable inference; and (4) Groundwater must be flowing in the channel." In re Garrapata Water Co., SWRCB Decision No. 1639 (1999). This test was upheld by the Gualala court. North Gualala Water Co., *supra*, at 1606.

C. The Pala Basin.

In 2002, the SWRCB considered whether the groundwater in the Pala Basin of the San Luis Rey River is a subterranean stream flowing through known and definite channels. SWRCB Decision

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1645. The SWRCB relied upon the four part test: (1) a subsurface channel must be present; (2) the channel must have relatively impermeable bed and banks; (3) the course of the channel must be known or capable of being determined by reasonable inference; and (4) groundwater must be flowing in the channel. Id. at p. 7. The Decision makes the following findings regarding the Pala Basin:

The Division's witness testified that groundwater in the alluvium of the Pala Basin is flowing in a subterranean stream. The geologic formation described as the basement complex forms the bed and banks of the subterranean stream channel. (T, I, 159:12-17; Division Exhibit 2, p. 3.) The basement complex is relatively impermeable compared to the unconsolidated deposits. (T, I, 161:13-15; Division Exhibit 2, p. 5.) Groundwater is flowing in the subterranean channel. The gradient generally parallels the net flow direction of the San Luis Rey River. The groundwater is flowing in the "downstream direction" of the San Luis Rey River. (T, I, 162:24-1635; Division Exhibit 2, pp. 5-6.) No evidence was introduced to show that the groundwater in the Pala Basin is percolating groundwater. The evidence is uncontroverted and it clearly establishes that a subsurface channel is present, the channel has relatively impermeable bed and banks, the course of the channel is known or is capable of being determined by reasonable influence, and groundwater is flowing in the channel. Therefore, the SWRCB finds that the groundwater in the Pala Basin of the San Luis Rey River is a subterranean stream flowing through known and definite channels. For the purpose of this decision, the upstream boundary of the Pala Basin is defined as the confluence of Frey Creek and the San Luis Rey River. Id. at pp. 24-25.

Current law supports the conclusion that all property that touches or overlies the Pala Basin alluvium has riparian rights to the use of the water on the riparian land. Specifically, consistent with the recent Gualala decision upholding the four-part test, the bedrock basement complex of the Pala Basin, which is relatively impermeable, forms the bottom and sides of a subsurface stream within the alluvial valley through which groundwater is flowing.

IV

Riparian Rights Are Real Property Rights

Riparian rights are recognized as private real property rights. City of San Bernardino v. City of Riverside, 186 Cal. 7, 13 (1921). The rights vest with title to the land and remain with the land unless the water right is lost by prescription, grant, condemnation, losing contact with the stream through avulsion, or by some other cause. See 62 Cal. Jur. 3d. Waters § 70, at p. 108 (1981). The riparian right is conveyed with the land by a grant of riparian land unless the conveyance document expressly reserves in the grantor the riparian right, or unless the property conveyed is severed from

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the watercourse by the conveyance and the granting document does not contain an express reservation of the riparian right. Murphy Slough Assn. v. Avila, 27 Cal.App.3d 649 (1972). The reserved water right must attach to owned land that supported a riparian right in its pre-severance or pre-conveyance status. The riparian right is generally not conveyable except as part and parcel of the appurtenant land, other than by reservation or grant in the conveyance document for the transfer of riparian property.

Riparian rights under California law may be lost to a parcel of real property if the contiguous land supporting the right is split and the riparian right is either not expressly granted to or reserved to the property severed from the watercourse. Thus, a deed which conveys a noncontiguous parcel must expressly convey the water rights in order to preserve the riparian right. This express language can be in the form of a grant of water to a parcel being severed from the remaining parcel which abuts the stream (Miller & Lux, Inc. v. J. G. James Co., 179 Cal. 689 (1919)) or in the form of a reservation or exception, where the grantor retains the non-abutting severed parcel. (Forest Lake Mutual Water Co. v. Santa Cruz Land Title Co. 98 Cal.App. 489, 492 (1929)). However, because California honors the "source of title" rule for riparian rights, once riparian rights are severed by a parcel of real property losing its contiguity without reservation, the property is forever without riparian rights, even if the parcel is later joined under common ownership with a parcel contiguous to the watercourse. Murphy Slough Assn., *supra*, 27 Cal.App.3d at 656-657.

There do not appear to be any "magic words" required to convey or reserve the riparian water right. In fact, there is authority that, absent express language in the deed preserving the riparian rights, these rights may be preserved by the conduct of the parties. Murphy Slough Assn., *supra*, 27 Cal.App.3d at 656-657; see also Anaheim Union Water Co. v. Fuller, 150 Cal. 327, 331 (1907).

While the right to the waters of a stream is a usufructuary right inuring to the benefit of riparian lands, such rights are inseparably annexed to the soil and pass with a grant of the land, not necessarily as an easement or appurtenance, but as part of the land itself. City and County of San Francisco v. County of Alameda, 5 Cal.2d 243, 246 (1936). The right to take water from a river and conduct it to a tract of land is realty. Waterford Irr. District v. Stanislaus County, 102 Cal.App.2d 839, 844 (1951). A covenant contained in a deed without any other express language or any facts indicating an estoppel, however, would not carry the riparian right into subsequent conveyances. Hudson v. Daily, 156 Cal. 617, 624 (1909). Thus, it may be important to distinguish whether the language in a conveyance instrument is a grant or reservation, or merely a covenant. The latter is only enforceable against the parties to the agreement and not against other adverse interests. *Id.*

In order to determine whether property owned by GCL has riparian status and would have the right to use groundwater from the Pala Basin alluvium, it is necessary to examine the conveyance documents from the original patent grants from the United States government down to the present to determine whether property that was riparian at the time of the original United States grants lost its riparian status by physical severance from the watercourse or by reservation of water rights by grantors in the chain of title.

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Many of the original patent grants contained the phrase "subject to any vested and accrued water rights." This general provision does not extinguish GCL's water rights, but rather means only that any prior vested or accrued water rights, if they exist, may be exercised by the grantor (in this case, the Federal Government). None of the post-Patent conveyance documents reviewed evidence any claim of a prior vested or accrued water right; accordingly, this reservation should not have any impact on GCL's ability to use the riparian water.

V

Legal Descriptions of GCL Property

All of the GCL Property was originally public domain land, which is land owned by the Federal Government for the benefit of U.S. citizens. The original public domain included land ceded to the Federal Government by the original thirteen states plus acquisitions from native Indians and foreign powers. The Public Land Survey System (PLSS) is a method of subdividing and describing land in the United States. All lands in the public domain are subject to subdivision by this rectangular system of surveys, which is regulated by the U.S. Department of the Interior, Bureau of Land Management (BLM).

The PLSS comprises a series of separate surveys. Most PLSS surveys begin at an initial point, and townships are surveyed north, south, east, and west from that point. The north-south line that runs through the initial point is a true meridian and is called the Principal Meridian. There are 37 Principal Meridians in the United States, each is named, and these names are used to distinguish the various surveys. The east-west line that runs through the initial point is called a base line. This line is perpendicular to the Principal Meridian. Each township is identified with a township and range designation. Township designations indicate the location north or south of the baseline, and range designations indicate the location east or west of the Principal Meridian. For example, a township might be identified as Township 7 North, Range 2 West, which would mean that it was in the 7th tier of townships north of a baseline, and in the 2nd column of townships west of a Principal Meridian. A legal land description of a section includes the State, Principal Meridian name, Township and Range designations with directions, and the section number: Nebraska, Sixth Principal Meridian T7N, R2W, Section 5.

Since the original PLSS surveys were completed, much of the land that was part of the public domain has been transferred to private ownership and in some areas the PLSS has been extended, following similar rules of division, into non-public domain areas. For areas that were once part of the public domain, legal land descriptions are usually written in terms of PLSS survey descriptions. The PLSS typically divides land into 6-mile-square townships. Townships are subdivided into 36 one-mile-square sections. Sections can be further subdivided into quarter sections, quarter-quarter sections, or irregular government lots.

An aliquot part is the standard subdivision of a section. A section contains 640 acres; a half section contains 320 acres; a quarter section contains 160 acres and a quarter-quarter section contains

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40 acres. Certain lands were excluded from the public domain, such as land underlying navigable water bodies. This created partial sections with irregular borders. The curvature of the earth also prevented the division of all land into squares. The PLSS designates irregularly shaped subparts of a section and/or subparts that contain less than the amount required for an aliquot part by lot number, e.g., Lot 1, Lot 2, etc.

All of the GCL Property was originally in the public domain and came into private ownership pursuant to the Homestead Act of 1862 and various other Congressional legislation designed to encourage settlement and development of the west. Conveyance of title was effected by means of a Certificate or patent issued by the General Land Office. All of the original legal descriptions were based upon the PLSS. The Principal Meridian for the GCL Property is the San Bernardino Meridian and the GCL Property is located within Townships 9 and 10 South, Range 2 West. Over the years, various grantors in the GCL chains of title have described portions of the property to be conveyed as a "parcel." In some instances, tract maps were recorded that designated pieces of the tract as "parcels." The introduction of title insurance further complicated the property descriptions because title companies typically designate portions of large properties as "parcels" to facilitate the title company's descriptions of which portions of property are subject to easements or other restrictions on fee title. Lastly, the property tax assessor typically assigns an Assessor's Parcel Number (APN) to tracts of property; APN boundaries do not always coincide with the legal descriptions.

The 1999 deed that conveyed the property from North San Diego County Development Co. to GCL designated the real property and easements by "parcel" number. Much of the previous research for GCL references a map prepared by Masson & Associates, Inc. dated March, 2009 (Figure 1) that used parcel numbers from a preliminary title report issued by Chicago Title Company dated April 9, 2004. (Report #43050450 – U52). The 1999 deed and the 2009 map do not use the same parcel numbers. Parcels 1 through 17 are the same in the 2009 Map and in the 1999 deed. Parcels 18 through 30 in the 1999 deed are numbered 23 through 35 in the 2009 Map. References to parcels in this memo will use the 2009 map parcel numbers. Exhibit 1 cross-references the APN and parcel numbers used on the 2009 map and in the 1999 deed.

Allen Matkins reviewed each conveyance document that was made available to it from various title company records to determine whether property that was riparian at the time of the original grant of public land from the U.S. to a private owner retained its riparian status through the years, or whether portions were severed from the alluvial boundary.¹ All of the GCL Property is within Sections 29, 30, 31, 32 and 33 of Township 9 South (T9S), Range 2 West (R2W), San Bernardino Meridian (SBM) and Sections 4, 5 and 6 of T10S, R2W, SBM.

¹ GCL has obtained title reports and title insurance for the GCL property that were reviewed by Allen Matkins. Allen Matkins' review of conveyance documents was not intended to in any way insure title or the possible impact of various easements that relate to the property. Allen Matkins' review of conveyance documents was solely for the purpose of determining whether any language relevant to water rights is contained in the conveyance document.

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The conclusions reached were based on a review of conveyance documents and/or grants of record by following the chain of title from the original Patent to the final conveyance to GCL. The chain of grantors to grantees were sufficiently complete to form the basis for the conclusions reached.

VI

Summary of Riparian Status of CGL Property

Due to the designation of pieces of land within the GCL Property by different parcel numbers over the years, this memorandum designates the original land grants as Grants No. 1 through 9 and sets forth the Original PLSS description of each below for reference. Figure 2 depicts the boundaries of the nine original grants. The original grants for the portions of the GCL Property that will contain landfill facilities or are within the habitat restoration area are:

- Grant No. 1 The NW 1/4 of the SW 1/4 of Section 32, T9S, R2W (40 acres)
- Grant No. 2 The NE 1/4 of the SW 1/4 of Section 32, T9S, R2W (40 acres)
- Grant No. 3 The S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4, Section 32, T9S, R2W (160 acres)
- Grant No. 4 The SE 1/4 of the SE 1/4, Section 31, T9S, R2W, the SW 1/4 of the SW 1/4, Section 32, T9S, R2W; Lot 1 of Section 5, T10S, R2W and Lot 1 of Section 6, T10S, R2W (165.32 acres)
- Grant No. 5 The SE 1/4 of the SW 1/4, Section 32, T9S, R2W, the SW 1/4 of the SE 1/4, Section 32, T9S, R2W, and the NE 1/4 of the NW 1/4, Section 5, T10S, R2W (120 acres)
- Grant No. 6 The SE 1/4 of the SE 1/4, Section 32, T9S, R2W and Lots 3 and 4 of Section 5, T10S, R2W (115.47 acres)
- Grant No. 7 The S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4, Section 5, T10S, R2W (160 acres)
- Grant No. 8 The S 1/2 of the NW 1/4, Section 5, T10S, R2W (80 acres)
- Grant No. 9 The N 1/2 of the SW 1/4, Section 5, T10S, R2W (80 acres)

We were provided with an analysis from Geo-Logic Associates (Geo-Logic) dated June 15, 2009 assessing which of the nine original grants would be considered riparian, because they are within the alluvial limits of the Pala alluvial basin or touch the alluvium forming the Pala Basin. Exhibit 2 lists the PLSS description of those portions of the GCL Property that, as verified by Geo-Logic, are within the alluvial boundary. Geo-Logic also prepared and provided Allen Matkins with a

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map that depicts the boundaries of the Pala Basin alluvium overlain by the original nine Grant boundaries (Figure 3).

The analysis by Geo-Logic and a comparison of these boundaries on the alluvial boundary map (Figure 3) shows that Grant Nos. 1, 2, 3, 4, 5, 6, and 8 are within the alluvial boundary (i.e. touch the alluvium) and are riparian. Grant No. 7, comprising the S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4, Section 5, T10S, R2W is not within the alluvial boundary. Grant No. 9, the N 1/2 of the SW 1/4, Section 5, T10S, R2W, is not within the alluvial boundary.

Allen Matkins then utilized this information to analyze the riparian status of the different title parcels of the GCL Property shown on Figure 1. We have examined each of the subsequent conveyances of all nine tracts represented by the original land grants to determine whether any portions of them were severed from riparian status, or may have lost riparian status through reservation.

Grant No. 1 (to Dallas Higgins): The NW 1/4 of the SW 1/4 of Section 32, T9S, R2W (40 acres; portion of Parcel 1 on Figure 1)

Certificate No. 50 issued to Dallas A. Higgins on April 27, 1894 pursuant to laws enacted to encourage timber growth in the West, recorded March 16, 1889, granted subject to any vested and accrued water rights. This tract is within the alluvial boundary.² Parcels 3, 4, 5 and 6 on Figure 1 were always conveyed together with the rest of the NW 1/4 of SW 1/4 of Section 32. However, these parcels may have been severed from Grant 1 and, if so, would only retain riparian status if they independently lie within the alluvial boundary. As discussed below, Parcels 5 and 6 do independently lie within the alluvial boundary and retain riparian status; however, Parcels 3 and 4 do not lie within the alluvial boundary and do not have riparian status.

Grant No. 2 (to John T. Rogers): The NE 1/4 of the SW 1/4 of Section 32, TNS, R2W (40 acres; a portion of Parcel 1 on Figure 1)

² In February, 1913, South Coast Land Company purchased property that included all or parts of Grants 1, 2, 3, 4, and 5. That same month, it sold the property to an individual, C. A. Canfield. In the grant deed, South Coast Land Company reserved the right to any water excess to the needs of use on the property and also the right to build facilities (farther up the San Luis Rey River) to export water from the watershed. This was an attempt to appropriate water for use outside the watershed. Prior to 1914, one had to take water and beneficially use it to create an enforceable right to appropriate. Once acquired, an appropriative right had to be maintained by continuous beneficial use of the water. Water Code Section 1202(b). Allen Matkins is aware of no evidence, physical or anecdotal, that water was ever appropriated by South Coast Land Company (or anyone else) and put to beneficial use on property outside the Pala Basin, nor is there any evidence that any facilities were built to transport water from the Pala watershed. None of the subsequent grantees of this property have put restrictive language regarding water rights in the conveyance documents. Even if there were some appropriative rights to take water from the GCL Property, they would be subordinate to riparian rights.

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The original grant for this tract is Certificate No. 482, subject to any vested and accrued water rights. This tract lies within the alluvial boundary. Portions of Parcels 5 and 6 on Figure 1 are within this grant. As confirmed by Geo-Logic, and as depicted on the maps provided to us, Parcels 5 and 6 are within the alluvial boundary.

Grant No. 3 (to Saritha Harbolt): The S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4, Section 32, T9S, R2W (160 acres; contains a portion of Parcel 1 on Figure 1)

Homestead Certificate No. 248 was issued to Saritha Harbolt in 1881. It includes the portion of Parcel 1 that is within the far western part of the S 1/2 of NE 1/4 and the N 1/2 of the SE 1/4 of Section 32. This tract lies within the alluvial boundary; the portions of the S 1/2 of NE 1/4 and the N 1/2 of the SE 1/4 of Section 32 that are within the GCL Property lie within the alluvial boundary and have riparian status.

Grant No. 4 (to David Wright): The SE 1/4 of the SE 1/4, Section 31, T9S, R2W, the SW 1/4 of the SW 1/4, Section 32, T9S, R2W; Lot 1 of Section 5, T10S, R2W and Lot 1 of Section 6, T10S, R2W (165.32 acres; contains portions of many parcels, including Parcels 1, 7, 8, 17, 37, 41, 40, 39, 42, 38 and 15 on Figure 1)

Homestead Certificate No. 247 was issued to David Wright on August 21, 1881 and recorded October 12, 1881, subject to any vested and accrued water rights. The original 165.32 acre tract was riparian as the San Luis Rey River passes through it. All of the land within Grant No. 4 was conveyed to various subsequent grantees intact until 1973. In 1973, Parcel Map No. 1743 was recorded to create four parcels within the SE 1/4 of SE 1/4, Section 31, SW 1/4 of SW 1/4, Section 32, Lot 1 of Section 6 and Lots 1 and 2 of Section 5. Parcel 2 of Parcel Map No. 1743 was conveyed with no reservation concerning water rights in the deed. Parcel 2 (Parcel 38 on Figure 1) was therefore severed from Grant No. 4 but can independently claim riparian status because it is within the alluvial boundary.

Grant No. 5 (to Samuel Wright): The SE 1/4 of the SW 1/4, Section 32, T9S, R2W, the SW 1/4 of the SE 1/4, Section 32, T9S, R2W, and the NE 1/4 of the NW 1/4, Section 5, T10S, R2W (120 acres; portions of Parcels 1, 7, 17 and 41 on Figure 1)

Homestead Certificate No. 246 was issued to Samuel Wright August 20, 1881, subject to vested and accrued water rights. All of Grant No. 5 was conveyed intact to grantees in the chain until Parcel Map 1743 created 4 parcels in 1973. The only parcel created by Parcel Map 1743 that is within Grant No. 5 is a portion of the SW 1/4 of the SW 1/4 of Section 32, which is now within portions of Parcels 1, 15 and 39 of Figure 1. Parcel Map No. 9676 was filed in February, 1980 to create 3 parcels in portions of the S 1/2 of Section 32 and Lot 2 of Section 5, all of which are within the alluvial boundary. Parcels 2 and 3 of Parcel Map 9676 (which are now parts of Parcels 7, 17 and 41 of Figure 1) were conveyed together with no mention of water rights through their conveyance to

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GCL. Parcel 1 (Parcel 17 on Figure 1) was separately conveyed without any reservation of water rights. Parcel 17 lies within the alluvial boundary and therefore continues to have riparian rights.

Grant No. 6 (to Maggie J. Lovell): SE 1/4 of SE 1/4, Section 32, T9S; R2W 9, 2; and Lots 3 and 4 of Section 5, T10S, R2W, (total of 118.72 Acres) (Parcels 9 and 10 on Figure 1)

The original Homestead Certificate No. 2061 for this property was issued to Maggie J. Lovell on September 7, 1894 and recorded May 31, 1899 in Volume 10/230. We have documents indicating 21 conveyances of the land within Grant No. 6, the last being the Deed from North San Diego Development Co. to GCL. In the various conveyance documents the Grant was sometimes described as including Lots 3 and 4 of Section 5, T10S, while at other times it was described as including the N 1/2 of the NE 1/4, Section 5. The correct designation is Lots 3 and 4, Section 5 because they do not contain the full 40 acres required to be an aliquot part of Section 5. According to the BLM map of this tract, Lot 3 contains 37.50 acres and Lot 4 contains 37.97 acres. All sections or fractional sections mentioned in one single certificate from the government constitute a single tract of land, and the whole may be riparian to the stream on which the tract abuts. California Jurisprudence 3d, Water, § 117. The original grant was to a single individual and the whole of the property remained intact through numerous conveyances. Other than the original Homestead Certificate that made the grant subject to any prior vested water rights, all conveyances are silent as to water rights. None of the conveyances constituted a severance of any of the property from its riparian status. Since portions of this single tract were determined by Geo-Logic to be within the alluvial boundary, the entire tract comprising Grant No. 6 retains riparian status.

Grant No. 7 (to Frank W. Bryant): N 1/2 of the SE 1/4 and S 1/2 of the NE 1/4, Section 5 (160 acres; part of Parcel 25 and all of Parcel 26 on Figure 1).

Certificate No. 4716 was issued to Frank W. Bryant on October 8, 1892 pursuant to Acts of Congress encouraging timber production in the west. The original grant was for a total of 160 acres. Based on the information provided by Geo-Logic, none of this tract touches the alluvial boundary. Subsequent changes in boundaries and subsequent common ownership with other tracts that do touch the alluvial boundary do not change that status.

Grant No. 8 (to James P. Higgins): The S 1/2 of the NW 1/4, Section 5, T10S, R2W (80 acres; includes Parcel 23 and the west 30 acres of Parcel 25 on Figure 1).

The original grant was Homestead Certificate No. 1811 dated January 13, 1894 to James P. Higgins, recorded April 3, 1907 for the S 1/2 of the NW 1/4, Section 5, T10S, R2W, subject to any vested and accrued water rights. We examined 19 conveyance documents related to this tract. At one point in time, two different parties each owned an undivided one-half interest in this tract, but joint ownership does not sever the tract. Other than the initial Homestead Certificate that indicated the grant was subject to any vested and accrued water rights, none of the ensuing conveyances made any reservation of water rights. Eventually, this tract and the N 1/2 of the SW 1/4, Section 5, the N

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1/2 of the SE 1/4, Section 5, and the S 1/2 of the NE 1/4, Section 5, all came into common ownership of a husband and wife, Thomas and Vila Lovell. At the request of their daughters (beneficiaries of their parents' wills) a court order allowed the property to be described as parcels that, in effect, removed the east 30 acres of the S 1/2 of the NW 1/4, Section 5 to add it to the adjoining tract to the east (Parcel 25). The court order did not sever water rights, but even if it had, both of such parcels independently lie within the alluvial boundary and have riparian status. However, the addition of the 30 acre portion of Grant No. 8 to a portion of Grant No. 7 does not confer riparian status on the property within Grant No. 7.

Grant No. 9 (to James P. Higgins): N 1/2 of the SW 1/4, Section 5 (80 acres; includes part of Parcel 24 on Figure 1).

Homestead Certificate No. 714741 was issued to James P. Higgins on October 22, 1919 and was recorded June 10, 1920. None of the property in the original grant lies within the alluvial boundary. The fact that it subsequently came into common ownership with the S 1/2 of the NW 1/4 of Section 5, which does touch the alluvial boundary, does not give it riparian status.

VII Conclusion

Following completion of research into the chain of title, Allen Matkins requested that Geo-Logic Associates prepare a map that depicts the title parcels shown on Figure 1 within the GCL Property that retain riparian status. This figure (Figure 4) is a map that superimposes the boundaries of the title parcels over a map that shows the alluvial boundaries of the Pala Basin alluvium.

Based on Allen Matkins' review of the chain of title documents provided to it by Chain Tech Inc. and Chicago Title Company, the boundary mapping of the parcels over time provided by Masson & Associates, Inc., and the alluvial boundary mapped by Geo-Logic, the following title parcels depicted on Figure 1 have retained their original riparian status: Parcels 9, 10, 23, and the west 30 acres of Parcel 25. The following parcels depicted on Figure 1 were severed from their original grant but still have riparian status due to the fact that they independently lie within the alluvial boundary and no conveyance document in their chain of title has reserved or severed their riparian water rights: Parcels 8, 17, and 38. Based on the application of California law to the GCL Property and alluvial boundary determinations made by Geo-Logic, the following Parcels on Figure 1 have retained their original riparian status despite being named as separate parcels by virtue of having been conveyed by each grantor to each grantee in a single conveyance document and with no language reserving or severing riparian water rights: Parcels 1, 7, 39, 40, 41 and 42. Moreover, each of these parcels also independently touches the alluvial boundary. Parcels 3, 4, 5 and 6 on Figure 1 may have been severed from Grants 1 and 2; if so, Parcels 3 and 4 have no riparian status but because Parcels 5 and 6 independently lie within the alluvial boundary and have no reservation of riparian water rights in their conveyance documents they therefore have independent riparian status.

To: Gregory Canyon Ltd

From: Jan S. Driscoll

Date: December 11, 2009

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In summary, the following title parcels shown on Figure 1 retain riparian status: Parcel Nos. 1, 5, 6, 7, 8, 9, 10, 17, 23, the west 30 acres of 25, 38, 39, 40, 41, and 42.

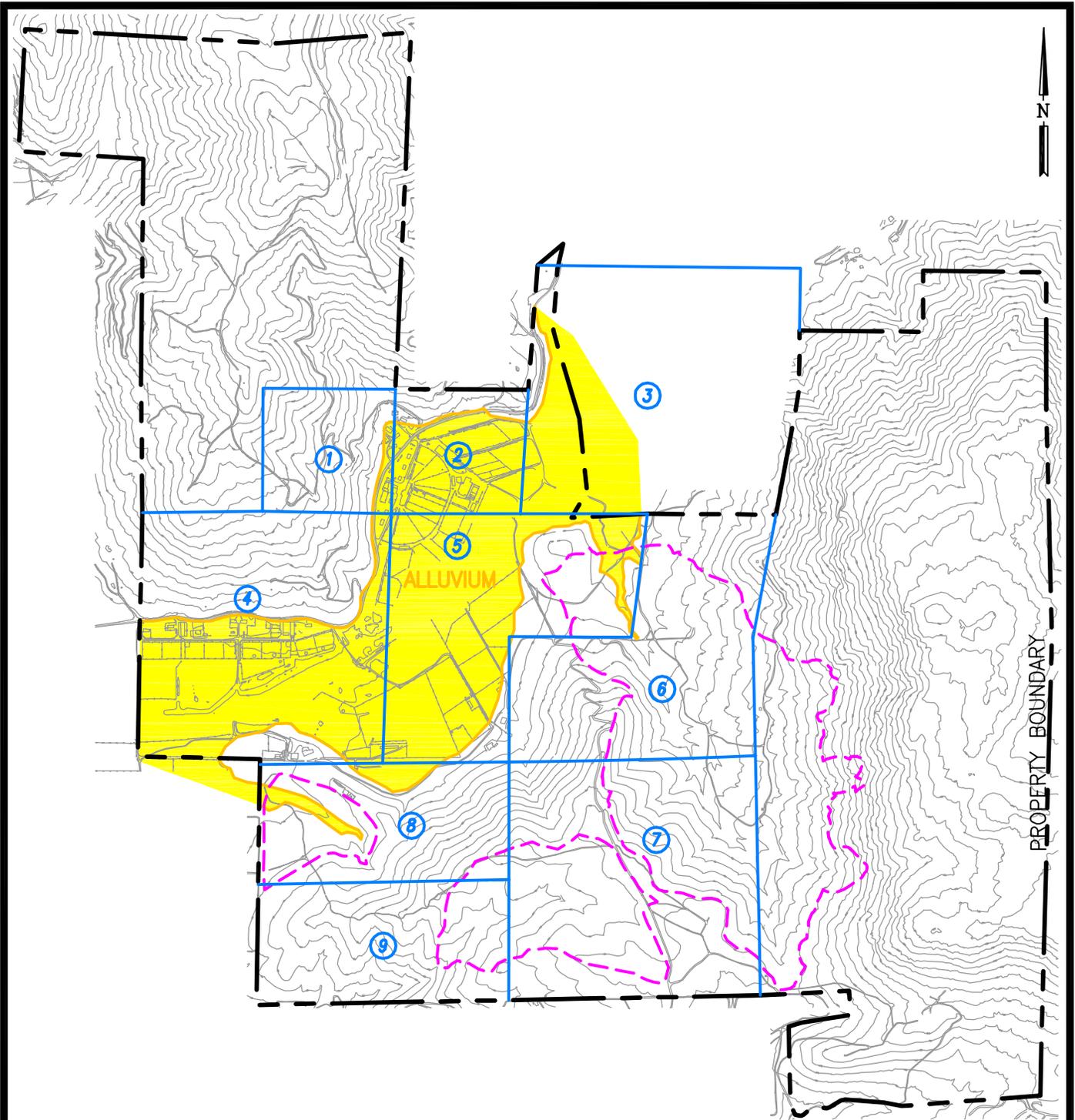
Once this mapping was completed, Allen Matkins next focused on the portions of the proposed landfill development and habitat restoration area that fall within the above riparian parcels to determine where riparian water from the Pala Basin alluvial aquifer could be utilized.

Exhibit 3 lists the landfill components and the PLSS description of the property in which the component is located. Exhibit 4 lists the PLSS description of the property in which the habitat restoration area is located, based upon mapping included in the Final Habitat Restoration and Resource Management Plan for Gregory Canyon Landfill (URS Corporation, 2008).

Allen Matkins requested Geo-Logic prepare mapping of these areas. To determine the portions of the landfill operation within the riparian parcels, the site facility plan created by Bryan A. Stirrat & Associates, a TetraTech company, was overlaid onto Figure 4. This figure (Figure 5) superimposes the location of landfill facilities shown on the site facility plan over the information on Figure 4.

Based on the information contained in Figure 5, portions of the landfill footprint and Borrow/Stockpile Area B lie within areas having riparian status, and all of the landfill facilities area, sedimentation basins, main landfill access road, Borrow/Stockpile Area A, and the Borrow/Stockpile Area A access road lie with areas having riparian status and groundwater from the Pala Basin alluvium may be used for construction, operation, closure and post-closure activities on the landfill or ancillary facilities in these areas.

To determine which portions of the habitat restoration area lie within riparian parcels, the configuration of the habitat restoration area included as Plate 1 of the Final Habitat Resource Restoration Management Plan (URS Corporation, 2008) was overlaid onto Figure 4 by Geo Logic. This figure (Figure 6) superimposes the location of proposed habitat restoration activities over the information on Figure 4. Based upon the information in Figure 6, all of the habitat restoration area lies within areas having riparian status and groundwater from the Pala Basin alluvium may be used for the preparation, establishment and maintenance of vegetation communities and habitat to be undertaken under the Final Habitat Restoration and Resource Management Plan.



- PROPERTY BOUNDARY
- 1 GRANT BOUNDARY AND NUMBER
- ALLUVIUM
- - - LANDFILL COMPONENTS

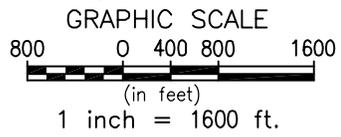
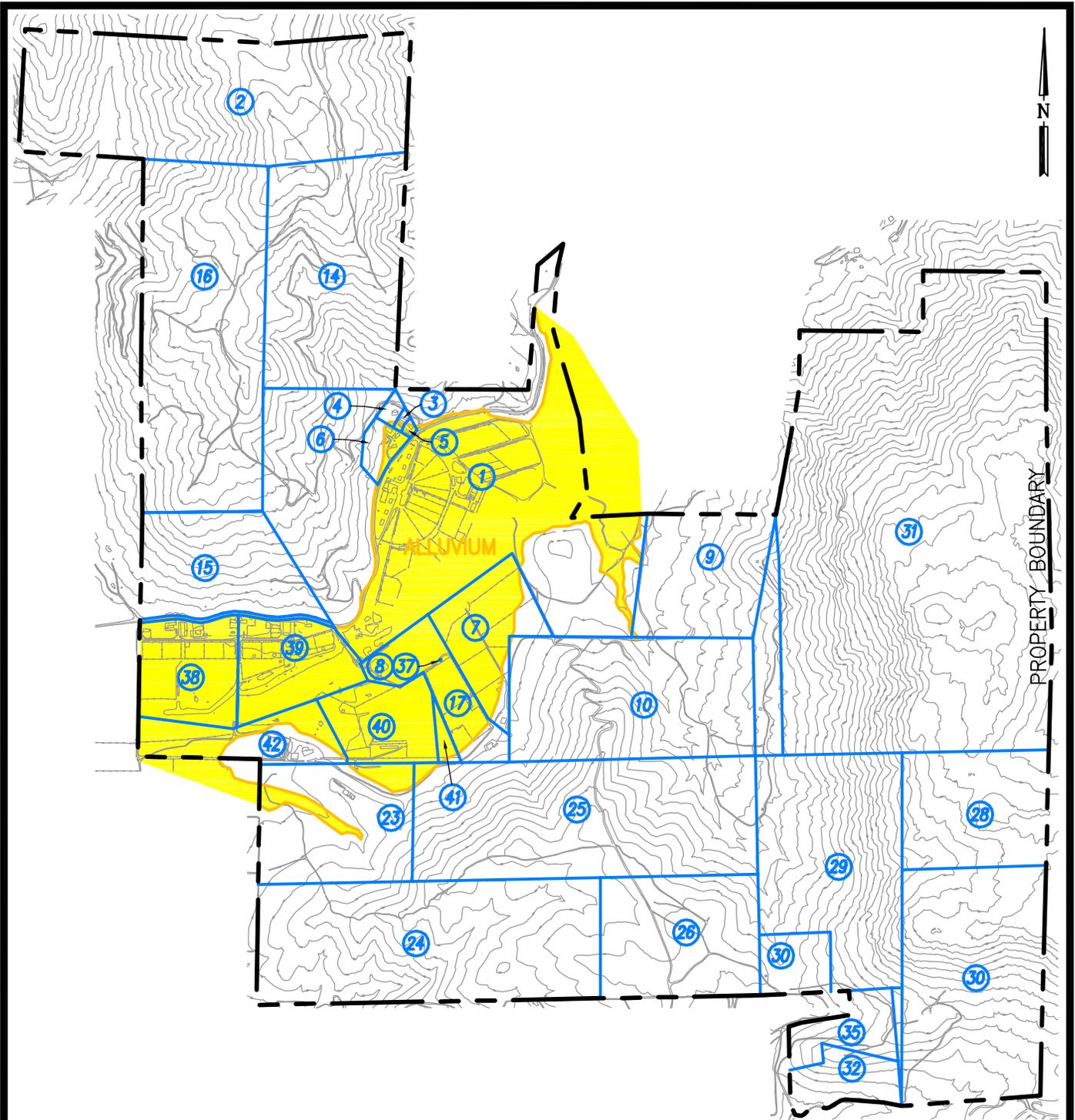


FIGURE 3

ALLUVIAL LIMITS OVERLAIN ON GRANT BOUNDARIES		
ALLUVIAL LIMITS EVALUATION		
GREGORY CANYON LANDFILL		
SAN DIEGO COUNTY, CA		
GeoLogic Associates Geologists, Hydrogeologists, and Engineers		
DRAWN BY: VL	DATE: OCTOBER 2009	JOB NO. 9539

NOTE: THE LIMITS OF THE ALLUVIUM EXTEND BEYOND THE PROPERTY BOUNDARY. HOWEVER, ITS EXTENT OUTSIDE THE PROPERTY HAS NOT BEEN DEFINED.



- PROPERTY BOUNDARY
- 1 PARCEL BOUNDARY AND NUMBER
- ALLUVIUM

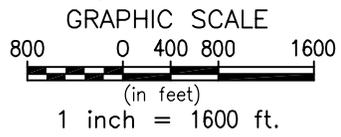
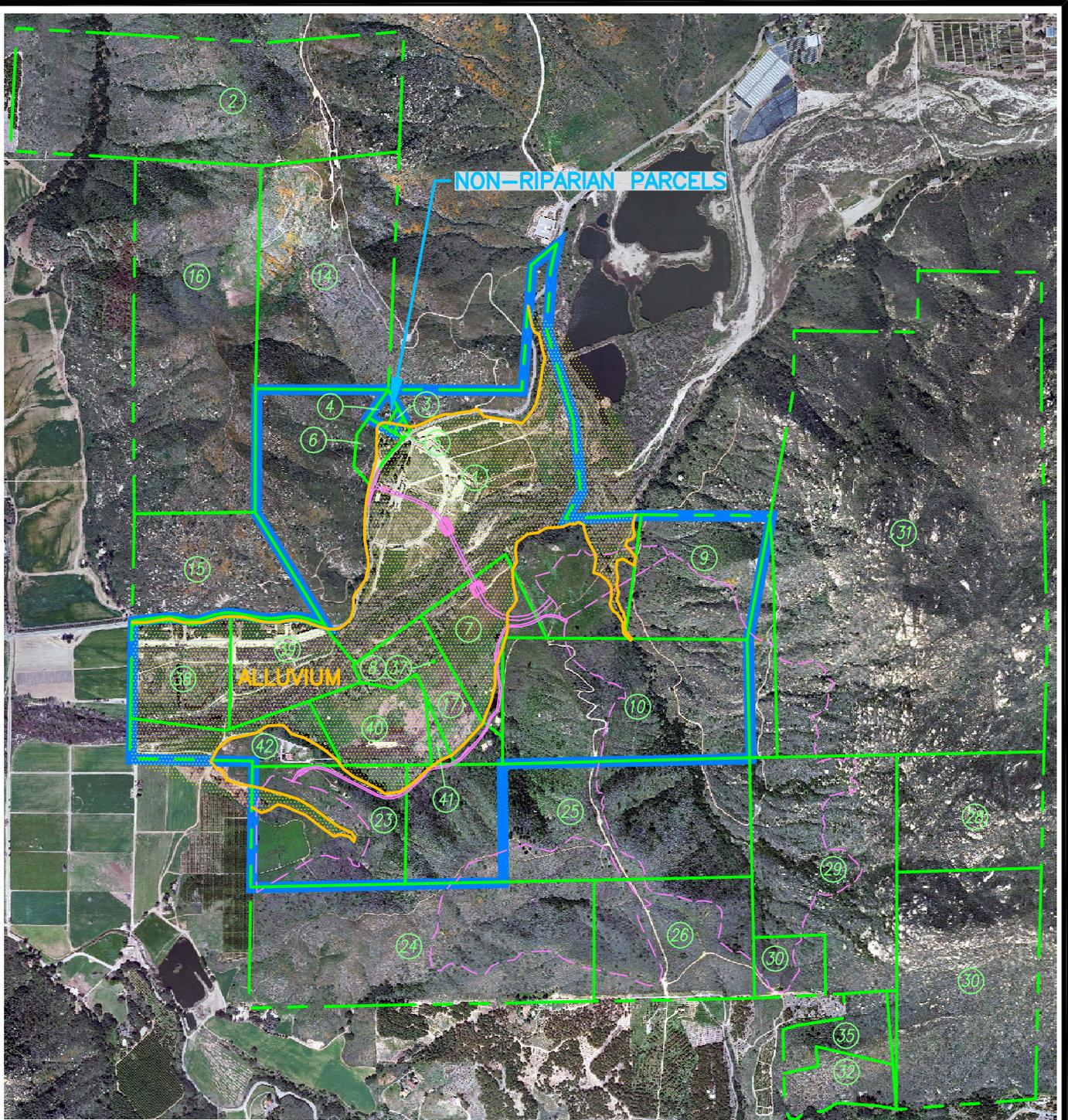


FIGURE 4

<p>ALLUVIUM ON TITLE PARCELS ALLUVIAL LIMITS EVALUATION GREGORY CANYON LANDFILL SAN DIEGO COUNTY, CA</p>		
<p>GeoLogic Associates Geologists, Hydrogeologists, and Engineers</p>		
<p>DRAWN BY: VL</p>	<p>DATE: OCTOBER 2009</p>	<p>JOB NO. 9539</p>

NOTE: THE LIMITS OF THE ALLUVIUM EXTEND BEYOND THE PROPERTY BOUNDARY. HOWEVER, ITS EXTENT OUTSIDE THE PROPERTY HAS NOT BEEN DEFINED.





- PROPERTY BOUNDARY
- # PARCELS
- ALLUVIUM
- RIPARIAN PARCELS
- LANDFILL COMPONENTS

GRAPHIC SCALE
 800 0 400 800 1600
 (in feet)
 1 inch = 1600 ft.

FIGURE 5

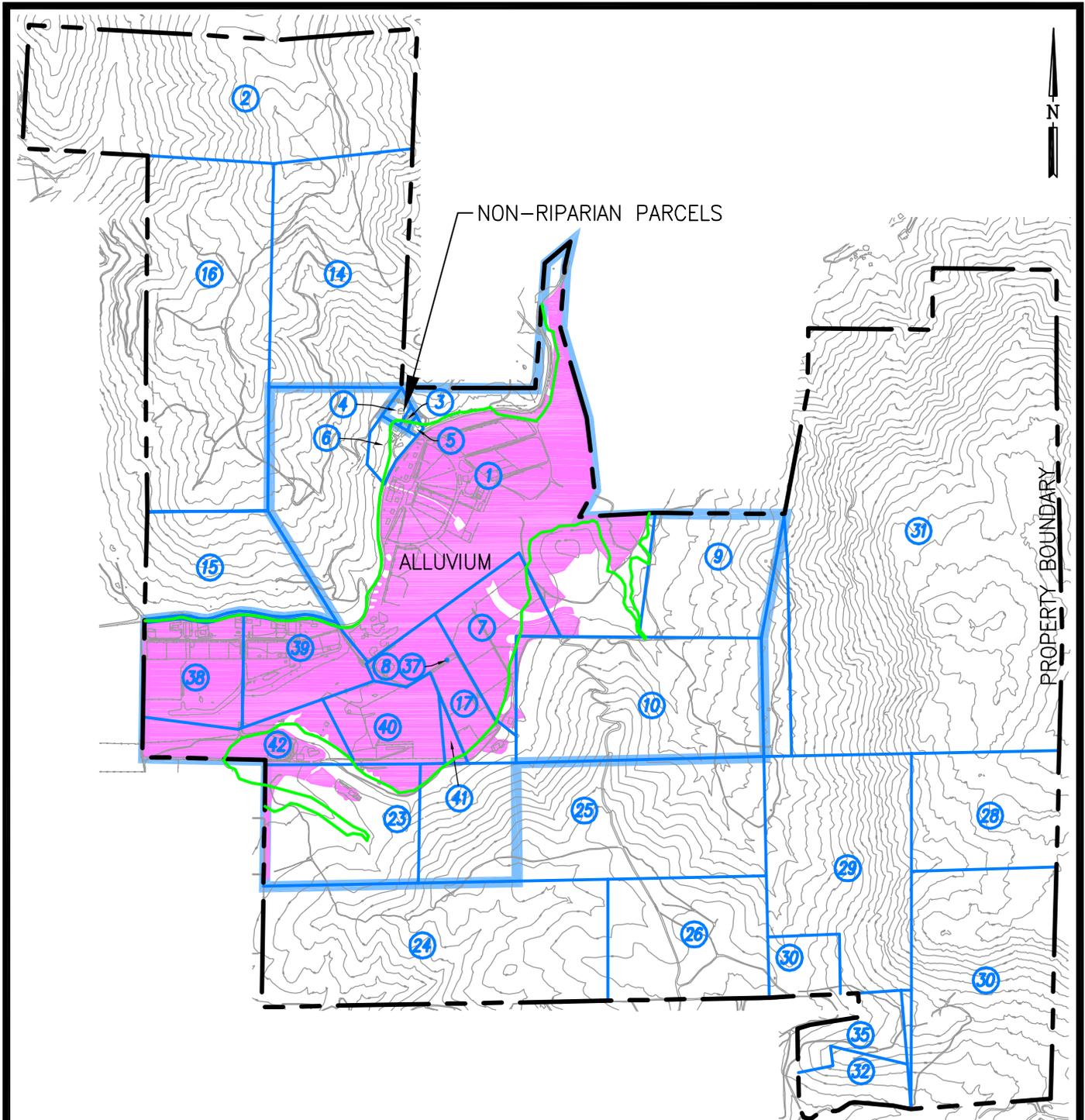
LANDFILL OPERATING AREA OVERLAIN ON RIPARIAN PARCELS
 ALLUVIAL LIMITS EVALUATION
 GREGORY CANYON LANDFILL
 SAN DIEGO COUNTY, CA



GeoLogic Associates
 Geologists, Hydrogeologists, and Engineers

DRAWN BY: VL	DATE: OCTOBER 2009	JOB NO. 9539
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NOTE: THE LIMITS OF THE ALLUVIUM EXTEND BEYOND THE PROPERTY BOUNDARY. HOWEVER, ITS EXTENT OUTSIDE THE PROPERTY HAS NOT BEEN DEFINED.



- PROPERTY BOUNDARY
- ④ PARCEL BOUNDARY AND NUMBER
- ALLUVIUM LIMITS
- HABITAT RESTORATION AREA
- RIPARIAN PARCELS

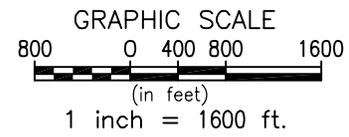


FIGURE 6

ALLUVIUM ON TITLE PARCELS WITH HABITAT RESTORATION AREA		
ALLUVIAL LIMITS EVALUATION GREGORY CANYON LANDFILL SAN DIEGO COUNTY, CA		
GeoLogic Associates Geologists, Hydrogeologists, and Engineers		
DRAWN BY: VL	DATE: OCTOBER 2009	JOB NO. 9539

NOTE: THE LIMITS OF THE ALLUVIUM EXTEND BEYOND THE PROPERTY BOUNDARY. HOWEVER, ITS EXTENT OUTSIDE THE PROPERTY HAS NOT BEEN DEFINED.

EXHIBIT "1"
Correlation of GCL Property Designations

APN Number	Designation in 09/15/1999 Grant Deed to GCL	Designation on Masson Map Dated March 2009
110-150-25	Parcel 1	Parcel 1
110-072-03 & 04	Parcel 2	Parcel 2
110-150-45	Parcel 3	Parcel 3
110-150-44	Parcel 4	Parcel 4
110-150-46	Parcel 5	Parcel 5
110-150-24 & 43	Parcel 6	Parcel 6
128-470-15 & 16	Parcel 7 (Parcels 2 & 3 of Parcel Map 9676)	Parcel 7 (Parcels 2 & 3 of Parcel Map 9676)
128-470-05	Parcel 8 (community well) (a portion of Parcel 1 of Parcel Map 9674)	Parcel 8 (community well) (a portion of Parcel 1 of Parcel Map 9674)
110-370-09	Parcel 9	Parcel 9
128-020-03	Parcel 10	Parcel 10
110-150-01	Parcel 14	Grant Deed to GCL Parcel 14
110-362-08	Parcel 15 (Parcel 1 of Parcel Map No. 1743)	Parcel 15 (Parcel 1 as shown at p. 1743 of Parcel Maps)
110-361-16 & 110-362-09	Parcel 16	Parcel 16
128-470-18	Parcel 17 (Parcel 1 of Parcel Map 9676)	Parcel 17 (Parcel 1 of Parcel Map 9676)
Portion of 128-020-02	Parcel 18 (West 50 acres of S 1/2 of NW 1/4, Section 5)	Parcel 23
128-020-06 & portion of 128-020-04	Parcel 19 (N 1/2 of SW 1/4 and West 30 acres of N 1/2 of SE 1/4, Section 5)	Parcel 24
Portion of 128-020-02 Portion 128-020-04	Parcel 20 (S 1/2 of NW 1/4 (except W 50 acres) and S 1/2 of NE 1/4 of Section 5)	Parcel 25

APN Number	Designation in 09/15/1999 Grant Deed to GCL	Designation on Masson Map Dated March 2009
Portion of 128-020-04	Parcel 21 (N 1/2 of SE 1/4 of Section 5, T10S; R2W) except West 30 acres	Parcel 26
128-020-24	Parcel 23 – SE 1/4 of NW 1/4, Section 4, T10S, R2W.	Parcel 28
128-020-40 & 21	Parcel 24 – SW 1/4 of NW 1/4 & NW 1/4 of SW 1/4 of Section 4, T10S, R2W, except SW 1/4 of NW 1/4 of SW 1/4.	Parcel 29
128-020-22 & 41	Parcel 25 – SW 1/4 of NW 1/4 of SW 1/4 and E 1/2 of SW 1/4, Section 4, T10S, R2W.	Parcel 30
128-020-30 110-160-09 & 05	Parcel 26 – S 1/s of NW 1/4 and SW 1/4 Section 33, T9S, R2W and Lots 3 & 4, Section 4, except NW 1/4 of S 1/2 of NW 1/4; excepting a portion described in metes and bounds.	Parcel 31
128-340-31	Parcel 27 – a portion of SW 1/4 of SW 1/4 of Section 4 & NW 1/4 of NW 1/4, Section 9, T10S, R2W. With metes and bounds description.	Parcel 32
128-340-32	Parcel 30 – Portion of SW 1/4 of SW 1/4, Section 4, T10S, R2W with metes and bounds description.	Parcel 35

EXHIBIT "2"

Following Sections Appear to Touch Alluvial Boundary of Pala Basin:

Lot 1, Section 6 (NE 1/4 of NE 1/4), T10S, R2W

NW 1/4, Section 5 (includes Lots 1 & 2, Section 5) (and S 1/2 of NW 1/4, Section 5), T10S, R2W

N 1/2 of NE 1/4, Section 5 (touches at NW corner and mid point of N boundary), T10S, R2W

SE 1/4 of SE 1/4, Section 32 (touches lower SW corner and along W border), T9S, R2W

SW 1/4 of SE 1/4, Section 32, T9S, R2W

W 1/2 of SE 1/4, Section 32, T9S, R2W

W 1/2 of NE 1/4, Section 32, T9S, R2W

E 1/2 of SW 1/4, Section 32, T9S, R2W

W 1/2 of SW 1/4, Section 32, T9S, R2W

SE 1/4 of SE 1/4, Section 31, T9S, R2W

EXHIBIT "3"

LOCATION OF LANDFILL FACILITIES WITHIN PLSS

Landfill Footprint

SE 1/4 of Section 32, T9S, R2W

NE 1/4 of Section 5, T10S, R2W

N 1/2 of SE 1/4, Section 5, T10S, R2W

NW 1/4 of NW 1/4, Section 4, T10S, R2W

SW 1/4 of NW 1/4, Section 4, T10S, R2W

NW 1/4 of SW 1/4, Section 4, T10S, R2W

Borrow/Stockpile Area A

SW 1/4 of NW 1/4, Section 5, T10S, R2W

Borrow/Stockpile Area B

SE 1/4 of NW 1/4, Section 5, T10S, R2W

NE 1/4 of SW 1/4, Section 5, T10S, R2W

SW 1/4 of NE 1/4, Section 5, T10S, R2W

NW 1/4 of SE 1/4, Section 5, T10S, R2W

NE 1/4 of SE 1/4 (small portion), Section 5, T10S, R2W

Desilting Basin

NW 1/4 of NE 1/4, Section 5, T10S, R2W

Facilities

SE 1/4 of SE 1/4, Section 32, T9S, R2W

SW 1/4 of SE 1/4, Section 32, T9S, R2W

Access and Internal Haul Roads

SW 1/4, Section 32, T9S, R2W

SW 1/4 of SE 1/4, Section 32, T9S, R2W

NW 1/4, Section 5, T10S, R2W

NE 1/4, Section 5, T10S, R2W

Well

NE 1/4 of NW 1/4, Section 5, T10S, R2W

EXHIBIT "4"

LOCATION OF HABITAT RESTORATION AREA WITHIN PLSS

The Habitat Restoration Area lies within the following areas:

W 1/2 of NE 1/4, Section 32, T9S, R2W

SW 1/4 of Section 32, T9S, R2W

SE 1/4 of Section 32, T9S, R2W

SE 1/4 of SE 1/4 of Section 31, T9S, R2W

NE 1/4 of NE 1/4 of Section 6, T10S, R2W

NW 1/4 of Section 5, T10S, R2W

NW 1/4 of NE 1/4 of Section 5, T10S, R2W