

## ACCESS AND STOCKPILING LICENSE AGREEMENT

### WALNUT CREEK DESILTING PROJECT

This Access and Stockpiling License Agreement is dated as of February 1, 2024, and is between **Tesoro Refining & Marketing LLC**, a Delaware limited liability company ("Landowner"), and **Contra Costa County Flood Control and Water Conservation District**, a flood control district, organized under the laws of the State of California ("Licensee").

#### RECITALS

- A. Landowner owns that certain real property located between Waterfront Road and the Lower Walnut Creek, in the Martinez, California, having Assessor's Parcel Numbers 159-120-031, 159-120-036, and 159-120-037 (the "Premises").
- B. Licensee desires to carry out a project known as the Walnut Creek Desilting Project, Project No. 7520-6B8334, which consists of desilting lower Walnut Creek to increase the hydraulic capacity of the channel (the "Project"). As part of the Project, approximately 115,350 cubic yards of sediment material (the "Spoils") will be desilted from the segment of the channel that begins at Meridian Boulevard and ends approximately 1,300 feet downstream of Concord Avenue.
- C. Landowner desires Licensee dispose of approximately 115,000 cubic yards of the Spoils in an approximately 9.2-acre portion of the Premises depicted in green on Exhibit A (the "Placement Site") for Landowner's use.
- D. Licensee desires Landowner grant this License to permit (i) access over, upon, and across that portion of the Premises depicted in red on Exhibit A (the "Licensed Premises"), and (ii) stockpiling and placing the Spoils across, over, and on the Placement Site (together, the "Activities").

#### AGREEMENT

- 1.0 **TERM.** The term of the License, as defined below, begins on the Effective Date and continues until the date that Licensee provides Landowner written notice of completion of the Activities, as determined by Licensee in its discretion, provided, however, the term of this License may not extend beyond December 31, 2026.
- 2.0 **GRANT OF LICENSE.** Landowner hereby grants to Licensee, for use by Licensee and its employees, agents, contractors, and representatives, a non-exclusive license over, upon and across the Licensed Premises with personnel and equipment and permission to place approximately 115,000 cubic yards of Spoils upon, over and across the Placement Site (the "License").

### 3.0 PLACEMENT OF SPOILS.

- 3.1 Once the Spoils are placed within the Placement Site, Landowner is responsible for the Spoils and their use. Licensee shall cause the Spoils to be placed on the Placement Site in a manner that is consistent with the grading plan attached as Exhibit B. Licensee has not reviewed or approved, and is not responsible for the accuracy of the grading plan. Licensee is not responsible for determining for if the placement of the Spoils in accordance with the grading plan is proper and consistent with Landowner's project or future use.
- 3.2 Licensee has determined that a Contra Costa County grading permit is required for Licensee's placement of the Spoils on the Placement Site ("Permit"). Landowner is responsible for obtaining the Permit.
- 3.3 The Spoils have been tested insitu by Landowner's representatives. Landowner represents and warrants that no concentrations were detected in excess of California Code of Regulations Title 22, Division 4.5 for hazardous waste. These tests results have been provided to Licensee.
- 3.4 Licensee shall provide erosion control measures, such as hydroseeding, temporary construction entrances, and dust control for the Placement Site consistent with the Grading Plan.
- 3.5 Licensee shall ensure that the Spoils include only natural earth material excavated from Licensee's Project. No natural or manmade debris, including but not limited to shopping carts, tires, and timbers, may be placed within the Placement Site by Licensee.
- 3.6 Licensee shall implement a security plan that requires Licensee or Licensee's contractors to display an appropriate identification document on vehicles entering the Licensed Premises, and shall provide a list of persons (construction personnel, truck drivers, inspectors, etc.) who will be entering the Licensed Premises. The list shall be kept current and on file with Landowner.
- 3.7 At Licensee's discretion, Licensee or its contractors may work during the hours from sunrise to sunset. Licensee shall cause all vehicles and trucks to enter the Licensed Premises through the gate along Bates Avenue, a public road, as shown on Exhibit A.
- 3.8 Licensee shall give at least two weeks' advance written notice to Landowner prior to first entering upon the Licensed Premises to place Spoils within the Placement Site. Thereafter, Licensee may continue the Activities, as and when Licensee determines to be necessary during the term of this License.
- 3.9 Licensee shall conduct the Activities in a manner that will not unreasonably interfere with Landowner's normal and usual business operations being conducted on the Premises. Licensee shall also conduct the Activities in a manner reasonably calculated to minimize disturbance to existing conditions on the Licensed Premises, except with respect to the conditions of the Placement Site.

- 4.0 **MATERIALS STOCKPILED AT THE PLACEMENT SITE.** Licensee shall cause all Spoils to be handled, stored, and stockpiled by Licensee in accordance with any applicable local, state, and federal laws, regulations, and ordinances, and in accordance with the terms of the grading plan and this agreement. Upon receiving written notice of the completion of Spoils placement in the Placement Area, Landowner will own and be solely responsible for the Spoils and shall handle, use, reuse, transport, and

maintain the Spoils in accordance with all applicable federal, state, and local laws, regulations, and ordinances.

5.0 **TOOLS AND EQUIPMENT.** All tools, equipment, or other personal property placed upon the Licensed Premises by Licensee or its employees, agents, or contractors will remain the property of Licensee or its employees, agents, or contractors. Licensee shall cause such personal property to be removed by its owner prior to the expiration of the License, or within a reasonable time thereafter if they cannot reasonably be removed prior to the expiration of the License. Spoils placed on the Placement Site are not subject to this Section 5.

6.0 **INDEMNITY AND RELEASES.**

6.1 **INDEMNITY BY LICENSEE.** To the extent permissible by law, Licensee shall indemnify, defend, and hold harmless Landowner, its general and limited partners, and their employees, contractors, and agents ("Landowner Indemnitees") from and against any claims, liabilities, damages, losses, costs, expenses, fees (including, but not limited to, attorney's and expert fees), penalties, fines, and environmental damage and associated remediation costs (collectively, "Liabilities") to the extent that the Liabilities arise from (i) the negligence or willful misconduct of Licensee, its officers, employees, or contractors ("Licensee Parties") while performing any Activities on or within the Licensed Premises, (ii) the failure to comply with the terms of the Permit, the grading plan and/or the License, and (iii) any violation of or failure to comply with any applicable law, ordinance, regulation or rule. Notwithstanding anything to the contrary, Licensee shall not be required to indemnify, defend, or hold harmless Landowner Indemnitees from the proportion of any Liabilities that arises from the negligence or willful misconduct of any Landowner Indemnitees.

6.2 **LANDOWNER'S RELEASE FOR SPOILS USE.** Landowner (or successor interest, upon transfer) is solely responsible, at its sole cost, for managing, maintaining, transporting, and re-using the Spoils that Licensee places on the Placement Site in accordance with this License; and Landowner, on behalf of itself, the Landowner Indemnitees, and Landowner's successors and assigns, including any and all successor owners of the Premises, hereby waives and releases the Licensee Parties from any and all Liabilities that arise from or are connected with the managing, maintaining, transporting, or re-using of the Spoils placed on the Placement Site, provided the Spoils are placed in accordance with the Permit, the grading plan, and the License. Landowner, on behalf of itself, the Landowner Indemnitees, and Landowner's successors and assigns, including any and all successor owners of the Premises, hereby knowingly waives its and their right to make any claim against any Licensee Parties for any Liabilities discussed in this section, and, as to those Liabilities, Landowner expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

6.3 **LANDOWNER'S RELEASE FOR SPOILS QUALITY.** Notwithstanding anything to the contrary in Subsection 6.1, Landowner, on behalf of itself and all Landowner Indemnitees, hereby releases each of the Licensee Parties from any and all Liabilities that arise from, are related to, or are connected with the environmental condition, constituents, quality, contamination, suitability for use or reuse, or nature of the Spoils placed on the Placement Site

under the License. Landowner, on behalf of itself, its successors, and all Landowner Indemnitees, hereby knowingly waives its and their right to make any claim against any Licensee Parties for any Liabilities discussed in this section, and, as to those Liabilities, Landowner expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

- 6.4 The obligations in this Section 6.0, inclusive of Subsections 6.1 through 6.3, shall survive the expiration or termination of this agreement.
- 7.0 **INSURANCE.** Without limiting in any way the scope of any obligations or liabilities assumed hereunder by Licensee, Licensee shall maintain, or shall require its agents and contractors performing the Activities to maintain, at its and their expense, for the term of this License and with insurance companies reasonably acceptable to Landowner, the insurance policies described below. Notwithstanding anything to the contrary herein, in lieu of providing a separate policy of insurance, Licensee, at its discretion, may satisfy its obligations under this section by providing Landowner written confirmation from Licensee's Risk Manager that Licensee self-insures in the amounts required by this Section 7.0, inclusive of Subsections 7.1 through 7.5.
- 7.1 **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE** covering the employees of Licensee for all compensation and other benefits required of Licensee by the Worker's Compensation or other statutory insurance laws in the state having jurisdiction over such employees, and over the location of Landowner's property described above. Employer's Liability Insurance shall have limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.
- 7.2 **GENERAL LIABILITY INSURANCE** including contractual liability, XCU hazards (explosion, collapse and underground) and completed operations to cover liability for bodily injury and property damage with a combined single limit of Two Million Dollars (\$2,000,000) per occurrence.
- 7.3 **BUSINESS AUTOMOBILE LIABILITY INSURANCE**, if owned, hired or non-owned automotive equipment is used, to cover liability for bodily injury and property damage with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.
- 7.4 **SPECIAL PROVISIONS CONCERNING POLICIES PLACED BY LICENSEE.**
- The General and Business Automobile Liability policies must include Landowner and its affiliates as additional insureds for liabilities arising out of Licensee's access to Landowner's premises and must be primary to any other insurance of Landowner. Such insurance must specifically provide that it applies separately to each insured against which claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Workers' Compensation and Employer's Liability policies must provide that all rights of subrogation against Landowner and its affiliates are waived when permitted by law.

The policy limits specified above are minimum requirements and not limits of liability and may not be construed in any way as Landowner's acceptance of responsibility for financial liabilities in excess of such limits. All deductibles and self-insured retentions, including defense costs, applicable to the insurance are to be paid by Licensee.

Licensee shall furnish Landowner with Certificates of Insurance or with a Memorandum of Insurance of its agents or contractors that document that all coverages and endorsements required by Sections 7.0, inclusive of Subsections 7.1 through 7.3, have been obtained. Renewal certificates shall be obtained by Licensee as and when necessary and copies thereof shall be forwarded to Landowner as soon as same are available and in any event prior to the expiration of the policy so renewed. These certificates shall provide that the insurer shall give 30 days' written notice to Landowner prior to change or cancellation of any policy. In no event shall Landowner's acceptance of an insurance certificate that does not comply with this paragraph constitute a waiver of any requirement of this Section 7.0, inclusive of its Subsections 7.1 through 7.4.

8.0 **LANDOWNER'S WARRANTY AND RESPONSIBILITIES.** Landowner represents and warrants that Landowner is the owner of the Premises and/or otherwise has full authority to enter into this License, and to make it binding on any person or entity having a valid claim of interest in the Licensed Premises, including any tenants. Landowner shall not to interfere with, disturb, move, prevent use of any equipment of Licensee or its employees, agents, contractors and other representatives, and Landowner shall not interfere with the completion of the Activities by Licensee, its employees, agents, contractors and other representatives, provided that such activities are conducted in accordance with this License.

9.0 **MISCELLANEOUS PROVISIONS.**

- 9.1 **Agreement.** This agreement includes the entire agreement between Landowner and Licensee relating to the subject matter hereof and supersedes all prior agreements, oral and written, express or implied, between the parties regarding the subject matter of this agreement. This agreement cannot be modified, discharged, or terminated orally and can only be modified by a writing signed by both parties.
- 9.2 **Assignability; Successors.** This agreement may not be assigned except in writing and executed by both parties, following the approval of both parties, which shall be within their individual discretion to provide. If the portion of the Premises that includes the Licensed Premises is sold or transferred by Landowner, Landowner's rights and obligations under this agreement shall be binding on and inure to the benefit of the new owner of that portion of the Premises.
- 9.3 **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- 9.4 **Governing Law.** The laws of the State of California shall apply to the interpretation of this License and to the resolution of any disputes arising out of this License. Any litigation filed to interpret or enforce this License must be filed in a state or federal court in California with jurisdiction over the parties and the subject matter of the litigation.
- 9.5 **Notices.** Unless amended by the either party by written notice to the other party, all notices, demands, and communications required to be given under this License shall be made in writing and delivered to the receiving party's address listed below. A notice, demand, or other communication shall be deemed given on the same day if personally delivered, on the next

business day if sent by overnight carrier with delivery charges prepaid for next day delivery, or on the third day after mailing by U.S. Mail with postage prepaid and directed to:

**For Landowner:**

Waste & Remediation Manger  
HESS&PQ Waste & Remediation  
Marathon Petroleum Company LP  
539 South Main Street  
Findlay, Ohio 45840; and

Kyle Waldron  
Senior Environmental Specialist  
Marathon Petroleum Company LP  
3450 S. 344<sup>th</sup> Way, Ste 135  
Federal Way, WA 98001-9540

Deputy General Counsel – Law HESS&PQ  
Marathon Petroleum Company LP  
539 South Main Street  
Findlay, OH 45840  
Telephone (419) 421-4616

**For Licensee:**

Randolf Sanders, PE  
Senior Civil Engineer  
CCC Public Works  
Attn: Design/Construction  
255 Glacier Drive  
Martinez, CA 94553  
Telephone: (925) 313-2111  
Email: [Randolf.Sanders@pw.cccounty.us](mailto:Randolf.Sanders@pw.cccounty.us)

Gus Amirzehni, PE  
Senior Civil Engineer  
CCC Flood Control & Water Conservation District  
255 Glacier Drive  
Martinez, CA 94553  
Telephone: (925) 313-2128  
Email: [Gus.Amirzehni@pw.cccounty.us](mailto:Gus.Amirzehni@pw.cccounty.us)

A party may change its address by giving notice to the other party in any manner authorized under this Section at least five days before the date the new address becomes effective.

- 9.6 **Severability.** If any term or provision of this License shall, to any extent, be held invalid or unenforceable, the remainder of this License shall not be affected.

9.7 **No Third-Party Beneficiaries.** This License is intended solely for the benefit of the parties and their respective successors and assigns. Except where this License expressly provides otherwise, this License shall not confer upon any person or entity other than the Parties, their successors, and their assigns any remedy, claim, liability, reimbursement, or other right.

WHEREFORE, the parties are executing this agreement s of the Effective Date.

**Tesoro Refining & Marketing Company  
LLC**

**Contra Costa County Flood Control and Water  
Conservation District**

\_\_\_\_\_  
Timothy J. Peterkoski  
Authorized Signatory - Environmental

\_\_\_\_\_  
Brian M. Balbas  
Chief Engineer/Designee

Recommended for approval:

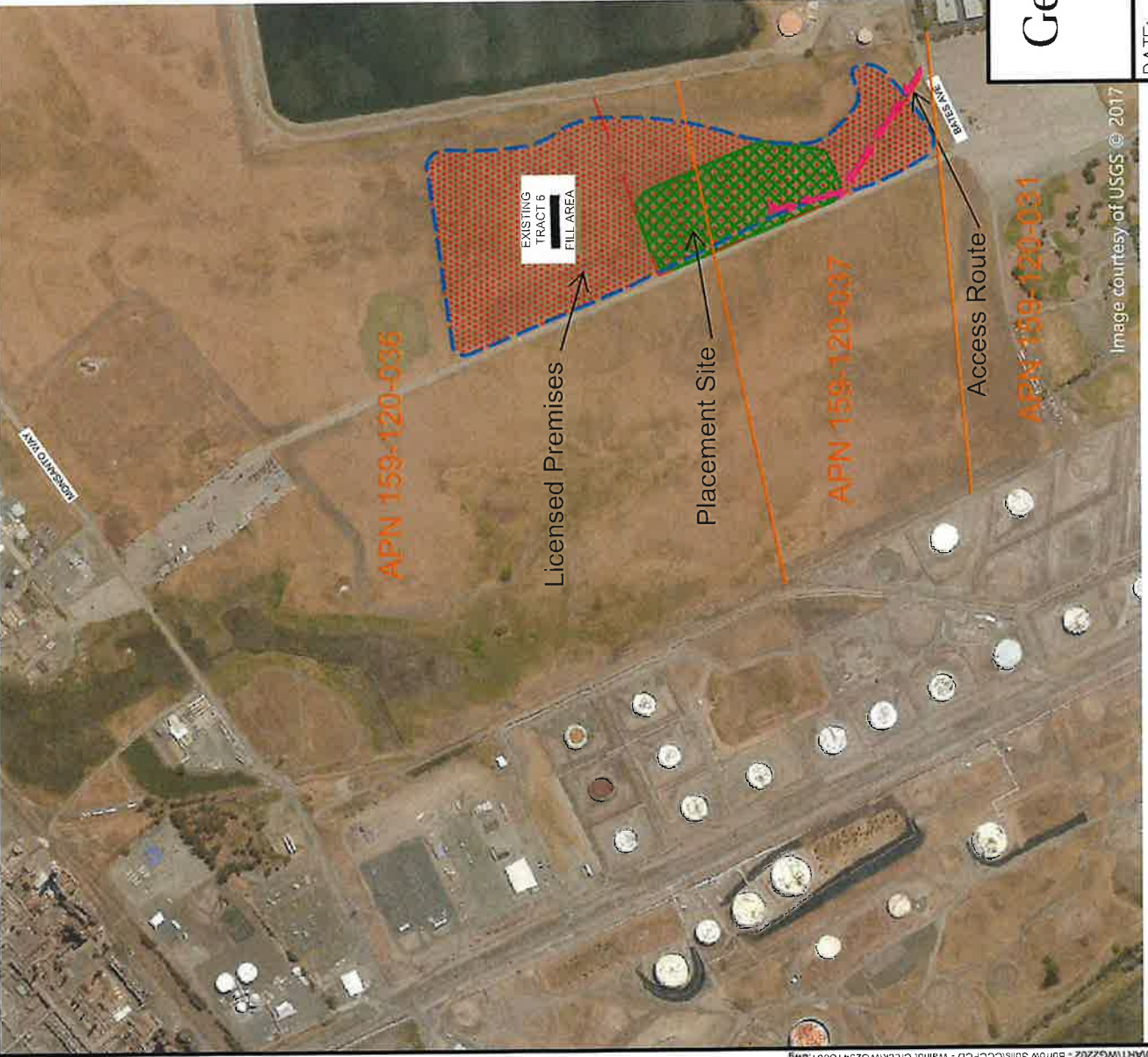
By: \_\_\_\_\_  
Angela Bell  
Supervising Real Property Agent

Approved as to form:

Thomas L. Geiger, County Counsel

By: \_\_\_\_\_  
Kathleen M. Andrus  
Deputy County Counsel

# EXHIBIT A







**NOTES:**

1. SEE SHEET C003 FOR PROJECT NOTES.



**LEGEND**

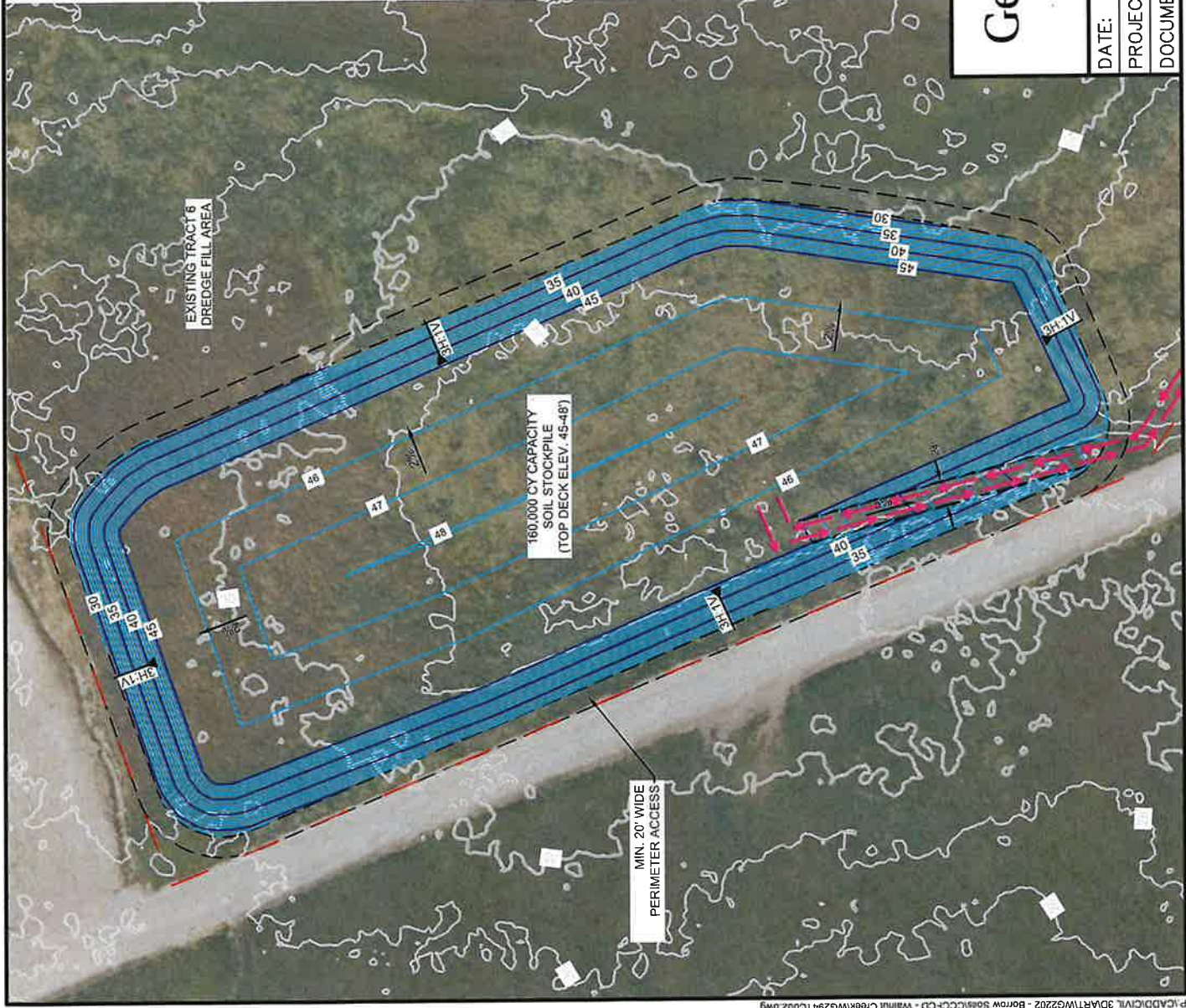
-  APPROXIMATE EXTENT OF SPECIFIED SOIL STOCKPILE (PLACEMENT SITE)
-  APPROXIMATE EXTENT OF EXISTING TRACT 6 FILL AREA (LICENSED PREMISES)
-  TWO-WAY ACCESS ROUTE FROM TEMPORARY ACCESS GATE ESTABLISHED ALONG BATES AVE (PUBLIC ROAD). SEE NOTE 4 ON SHEET C003.
-  7-FT TEMPORARY CONSTRUCTION FENCE

**Geosyntec**  **ART** *Avon Remediation Team*  
 consultants  
 AVON REMEDIATION TEAM  
 BORROW SOILS PROGRAM

DATE:	AUGUST 2023	SCALE:	AS SHOWN
PROJECT NO.	WG2941	FILE NO.	-
DOCUMENT NO.	-	FIGURE NO.	C001



# EXHIBIT B GRADING PLAN








**NOTES:**

1. SEE SHEET C003 FOR PROJECT NOTES.



**LEGEND**

-  EXISTING GROUND ELEVATION (10-FT AND 2-FT CONTOURS)
-  SOIL STOCKPILE GRADE (5-FT AND 1-FT CONTOURS)
-  TWO-WAY ACCESS ROUTE FROM TEMPORARY ACCESS GATE ESTABLISHED ALONG BATES AVE
-  7-FT HIGH CHAIN LINK TEMPORARY CONSTRUCTION FENCE



**Geosyntec**  
consultants



**ART**  
Avon Remediation Team

AVON REMEDIATION TEAM  
BORROW SOILS PROGRAM

DATE:	AUGUST 2023	SCALE:	AS SHOWN
PROJECT NO.	WG2941	FILE NO.	-
DOCUMENT NO.	-	FIGURE NO.	C002

NOTES:

1. SPECIFIED STOCKPILE TO BE CONSTRUCTED IS TO BE APPROXIMATELY 160,000 CUBIC YARDS IN VOLUME RESULTING FROM MATERIAL PLANNED FOR EXCAVATION DURING CONTRA COSTA COUNTY FLOOD CONTROL DISTRICTS (CCCFCD) PLANNED DESILTING OF AN APPROXIMATELY 4,200-FT LONG SECTION OF WALNUT CREEK BETWEEN MERIDIAN PARK BOULEVARD AND BUCHANAN FIELD AIRPORT IN CONCORD, CA.
2. CONTRACTOR IS RESPONSIBLE FOR FOLLOWING ALL TERMS AND CONDITIONS OF A CONTRA COSTA COUNTY GRADING PERMIT (TO BE PROCURED BY OTHERS).
3. CONTRACTOR SHALL PREPARE A HEALTH AND SAFETY PLAN AND ATTEND A KICKOFF MEETING WITH MARATHON MARTINEZ FACILITY (FACILITY) PERSONNEL PRIOR TO STARTING WORK.
4. ACCESS TO THE FACILITY SHALL BE VIA AN ALTERNATIVE ENTRANCE ESTABLISHED ALONG BATES AVENUE (SEPARATE FROM THE MAIN REFINERY ACCESS GATE). THE FACILITY WILL ESTABLISH TEMPORARY FENCING AROUND THE PERIMETER OF THE STOCKPILE PLACEMENT AREA PRIOR TO THE START OF WORK (REFER TO FIGURE C002).
5. THE CONTRACTOR SHALL IMPLEMENT A SECURITY PLAN WHICH REQUIRES THAT ALL VEHICLES ENTERING THE PROPERTY DISPLAY APPROPRIATE IDENTIFICATION DOCUMENTATION. THE CONTRACTOR SHALL PROVIDE A LIST OF PERSONS (CONSTRUCTION PERSONNEL, TRUCK DRIVERS, INSPECTORS, ETC.) THAT WILL BE ENTERING THE PREMISES AND WORKING WITHIN THE PROJECT AREA. THE LIST SHALL BE KEPT CURRENT AND ON FILE WITH MARATHON.
6. THE CONTRACTOR SHALL COORDINATE THE STOCKPILE PLACEMENT THROUGH ART'S PROJECT MANAGER, DAVID BEAN, P.G., WHO CAN BE REACHED AT (925) 381-2472.
7. FACILITY OPERATIONS MUST BE ALLOWED TO CONTINUE UNINTERRUPTED DURING CONSTRUCTION. CONTRACTOR TO PROTECT ALL EXISTING FACILITY INFRASTRUCTURE IN PLACE.
8. CONTRACTOR SHALL PREPARE A CONSTRUCTION SWPPP AND IMPLEMENT THE NECESSARY BEST MANAGEMENT PRACTICES (BMPs) TO PROTECT THE SURROUNDING AREAS AND MAINTAIN WATER QUALITY AS REQUIRED. AT A MINIMUM, CONTRACTOR SHALL INCLUDE INSTALLATION OF EROSION CONTROL BLANKET ON THE STOCKPILE SIDE SLOPES (BIODEGRADABLE STRAW BLANKET, OR APPROVED EQUAL), AND STRAW WATTLES AROUND THE PERIMETER. THE BMPs SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER RECOMMENDATIONS.
9. CONTRACTOR SHALL CLEAR AND GRUB EXISTING VEGETATION WITHIN STOCKPILE FOOTPRINT PRIOR TO MATERIAL PLACEMENT. CONTRACTOR SHALL PLACE A DEMARCATION LAYER OF GEOTEXTILE TO SEGREGATE NEWLY PLACED STOCKPILE MATERIALS FROM EXISTING SURFACES.
10. SITE TOPOGRAPHY IN THE SPECIFIED SOIL STOCKPILE AREA PROVIDED BY GEOWING MAPPING, INC. OF RICHMOND, CA, BASED ON FIELD CONDITIONS SURVEYED ON 25 SEPTEMBER 2016. HORIZONTAL COORDINATES BASED ON CALIFORNIA STATE PLANE COORDINATE SYSTEM, ZONE 3, NAD83 DATUM [CCS 83 (1991.35)]. VERTICAL DATUM BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD 29). ALL ELEVATIONS ARE IN FEET MEAN SEA LEVEL (MSL).
11. CONTRACTOR SHALL IMPLEMENT DUST CONTROL MEASURES AT THE STOCKPILE AND ALONG FACILITY HAUL ROUTES IN ACCORDANCE WITH ALL APPLICABLE FACILITY AND CONTRA COSTA COUNTY REQUIREMENTS.



DATE:	AUGUST 2023	SCALE:	-
PROJECT NO.	WG2941	FILE NO.	-
DOCUMENT NO.	-	FIGURE NO.	C003