

98-04966

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REGISTER OF DEEDS	98 004966
98 MAR -4 PM 12: 54	Counter <u>ag</u>
Glenn J. Downing	Verify <u>ag</u>
REGISTER OF DEEDS	D.E. <u>5</u>
	Proof: <u>a</u>
	Fee: <u>50.50</u>
	CK <input type="checkbox"/>
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	Charge <input checked="" type="checkbox"/> PNR

EASEMENT

WESTERN SARP COUNTY DRAINAGE DISTRICT

For and in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is acknowledged,

BEACON VIEW, INC., A Nebraska Non-profit Corporation,

hereinafter called "the GRANTOR," whether singular or plural, owner of the real property in Sarpy County, Nebraska, described in the written legal description attached hereto as Exhibit "A" and incorporated herein by reference (such property hereinafter being referred to as "the GRANTOR'S PROPERTY"), does hereby grant to the WESTERN SARP COUNTY DRAINAGE DISTRICT (hereinafter referred to as "the GRANTEE"), and to its successors and assigns (including the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the NRD") if the GRANTEE merges with the NRD) and its officers, agents, employees and contractors (but not the general public), the permanent easements described below, in, over and upon portions of the GRANTOR'S PROPERTY (such portions hereinafter being referred to as "the EASEMENT AREAS"), to-wit:

- a) The right to enter those portion(s) of the GRANTOR'S PROPERTY which are legally described in the document(s), prepared by Elliott & Associates, attached hereto as Exhibit "B" and incorporated herein by reference (such portion(s) therein being referred to as the "ACQUISITION TRACT(S)" and hereinafter being referred to collectively as "the LEVEE EASEMENT AREA"), and the exclusive right to construct, modify, operate, patrol, maintain, repair, and replace a flood protection levee within the LEVEE EASEMENT AREA, including underseepage berms, observation wells, relief wells, gravel drains, relief drains, outlet pipes, drainage structures and other appurtenances, and

98-04966A

including an improved service road along the top of such levee, and unimproved maintenance roads in 15 foot corridors adjacent to and paralleling the toes on both sides of such levee; and,

b) The non-exclusive right to enter the portion(s) of the GRANTOR'S PROPERTY which now are, or which hereafter become, within the physical channel of the Platte River or within the riverbank thereof, and therein construct, modify, operate, patrol, maintain, repair, and replace jetties and other riverbank stabilization and riverbank protection measures and appurtenances thereto

the easements described in this document to be subject to the following provisions:

1. The GRANTOR shall not construct structures nor excavate inside the LEVEE EASEMENT AREA; and, the GRANTOR shall not excavate within two hundred feet (200') on either side of the LEVEE EASEMENT AREA to any depth (measured below the natural ground plane) deeper than one-fourth (1/4) the horizontal distance from the point of excavation to the nearest boundary of the LEVEE EASEMENT AREA.

2. The easements granted herein include the right to clear trees and other vegetation from the LEVEE EASEMENT AREA., and the right to have the air space above the LEVEE EASEMENT AREA unobstructed to such height as will allow the passage and operation of the GRANTEE'S construction and maintenance machinery.

3. The consideration recited herein shall constitute payment in full for any and all damages sustained by the GRANTOR by reason of the exercise by the GRANTEE, or its successors and assigns, of any of the rights or privileges herein described or granted. The GRANTOR waives compliance by the GRANTEE with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

4. The easements provided herein include the GRANTEE'S right of ingress and egress at any time over other portions of the GRANTOR'S PROPERTY not occupied by buildings or other improvements, for the purpose of carrying out activities authorized herein, with written or verbal approval of the President of the GRANTOR, Beacon View, Inc., which approval shall not be withheld unreasonably.

5. The GRANTOR shall not have any responsibility for maintaining the GRANTEE'S improvements, including the service road on the top of the levee, unless the GRANTOR desires a level of maintenance higher than that provided by the GRANTEE.

6. This easement document shall not pass, nor be construed to pass, to the GRANTEE, or its successors or assigns, any fee simple interest or title to the GRANTOR'S PROPERTY.

98-04966B

7. The easements provided herein shall be deemed to run with the land and shall be binding upon the GRANTOR and upon the GRANTOR'S successors, and assigns.

8. The GRANTOR, for itself and for its successors and assigns, warrants to the GRANTEE, and its successors and assigns, that the GRANTOR is the owner of the LEVEE EASEMENT AREA and that the GRANTOR has good right to convey the aforesaid easements over the same; and, that the LEVEE EASEMENT AREA is free and clear of all leases, liens and other encumbrances, except those which may be subordinated at the foot hereof, and restrictive covenants of record.

9. The GRANTOR warrants that no verbal representations or inducements have been made or given by the GRANTEE, by the NRD, or by any of their officers, agents or employees, other than as may be recited in this document.

10. A multi-page diagram of the LEVEE EASEMENT AREA is attached hereto as Exhibit "C" and incorporated herein by reference. In case of any conflict between such diagram and the written legal description attached hereto as Exhibit "B," such written legal description shall be controlling.

11. The elevation of the top of any levee constructed by the GRANTEE in the LEVEE EASEMENT AREA shall not at any point be higher than the computed elevation of the 50-year flood at such point, as such computed elevation is depicted on the profile diagram attached hereto as Exhibit "D" and incorporated herein by reference.

12. By accepting and recording this Easement, the GRANTEE agrees that:

a) The GRANTEE will repair, or indemnify the GRANTOR or its lessees (as their interests may appear) for, physical damage to its/their improvements or personal property solely and proximately caused by the GRANTEE'S officers, agents, employees or contractors during construction of the aforesaid flood protection levee and not expressly or impliedly authorized by this Easement.

~~(b) The GRANTEE will repair washouts in Ridgeway Road (the present dike)~~ and repair washouts in and restore the rock cover on that portion of River Drive extending from the GRANTOR's present pole barn to the South entrance to Deer Park Road, all on the GRANTOR'S PROPERTY. This Easement may be terminated by the GRANTOR if (i) the GRANTEE shall fail to substantially complete such repairs by May 31, 1998 and (ii) the President of the GRANTOR shall record by July 15, 1998 a notice of the GRANTOR's election to terminate this Easement because of such failure. Such right of termination shall be GRANTOR'S sole remedy for such failure.

98-04966C

c) In the event the GRANTEE commences construction of a flood protection levee in the LEVEE EASEMENT AREA pursuant to authority granted by this Easement then during such construction the GRANTEE will:

1) Repair six (6) of the GRANTOR'S pre-1993 Platte River jetties on the GRANTOR'S PROPERTY, including extending their lengths to 30 feet from the present river bank, and maintain such six jetties in such manner as the GRANTEE determines reasonable in accordance with generally accepted engineering practices;

2) Fill riverbank washouts on the GRANTOR'S PROPERTY caused by the flood of 1993;

3) Make every reasonable effort to (i) preserve the grade of the road leading to the GRANTOR'S maintenance building within the LEVEE EASEMENT AREA, and (ii) preserve the present surface water drainage patterns around such building;

4) Avoid the deposit of earthen material in the lakes and canals on the GRANTOR'S PROPERTY, except as may be expressly or impliedly authorized by this Easement;

5) Fill the existing small lake immediately North of the Highway 6 entrance to the GRANTOR'S PROPERTY;

6) Obtain levee construction fill material by excavating or dredging earth from existing bodies of water on the GRANTOR'S PROPERTY, to-wit: (i) the lake at the north end of River Drive (East of River Drive and South of the GRANTOR'S maintenance building), and/or (ii) the lake or canal known as the "East Channel Lake," which parallels the LEVEE EASEMENT AREA, such excavations or dredging to be performed to a depth of approximately ten feet (10') below the normal water line; and,

7) Utilize an access corridor other than the GRANTOR'S Highway 6 entrance for ingress and egress of loaded earth-carrying vehicles used during levee construction.

13. Nothing contained herein shall be construed as authorizing the GRANTEE or its successors or assigns to make any recreational use of any part of the GRANTOR'S PROPERTY.

14. This easement shall become void if construction of a flood protection levee in the LEVEE EASEMENT AREA pursuant to authority granted by this Easement has not been substantially completed by the GRANTEE prior to January 1, 2003.

98-04966D

15. GRANTOR shall not be responsible for obtaining any necessary construction or development permits for the work to be performed by the GRANTEE pursuant to this Easement, but will cooperate with GRANTEE in obtaining such permits.

IN WITNESS WHEREOF, this Easement is executed by the GRANTOR on this 3 day of MARCH, 1998.

BEACON VIEW, INC., A Nebraska Non-profit Corporation, GRANTOR

By Robert W. Schnaidt
President

Attest:

Dale L. Young
Secretary

STATE OF Nebraska)
COUNTY OF Sarpy) ss.

The foregoing instrument was acknowledged before me on this 3rd day of March, 1998, by Robert W. Schnaidt, President of BEACON VIEW, INC., on behalf of the corporation.



Martin P. Cleveland
Notary Public

98-04966E

THAT PART OF TAX LOT F AND TAX LOT D, ALL IN SECTION 29, TOWNSHIP 13 NORTH, RANGE 10 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING THE CENTER OF SAID SECTION 29; THENCE NORTH 33 DEGREES 18 MINUTES 30 SECONDS WEST, 3086.53 FEET TO A POINT 50.0 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 29; THENCE SOUTH 89 DEGREES 37 MINUTES WEST ON A LINE 50.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 29, 264.41 FEET; THENCE SOUTH 1199.6 FEET; THENCE WEST 416.7 FEET TO A POINT ON THE EASTERLY BANK OF THE PLATTE RIVER; THENCE SOUTHERLY ON THE EASTERLY BANK OF THE PLATTE RIVER TO A POINT WHERE IT INTERSECTS A LINE 100.0 FEET NORTHWESTERLY FROM THE CENTERLINE OF CB&Q RAILROAD TRACK; THENCE NORTH 51 DEGREES 56 MINUTES EAST ON A LINE 100.0 FEET NORTHERLY FROM AND PARALLEL WITH THE CENTERLINE OF SAID RAILROAD TRACKS, 1844.87 FEET; THENCE NORTH 14 DEGREES 34 MINUTES WEST 54.46 FEET; THENCE SOUTH 51 DEGREES 56 MINUTES WEST, 166.50 FEET; THENCE SOUTH 71 DEGREES 36 MINUTES WEST, 69.1 FEET; THENCE NORTH 85 DEGREES 19 MINUTES 55 SECONDS WEST, 52.4 FEET; THENCE NORTH 60 DEGREES 29 MINUTES 35 SECONDS WEST, 48.9 FEET; THENCE NORTH 33 DEGREES 04 MINUTES 05 SECONDS WEST, 61.6 FEET; THENCE NORTH 18 DEGREES 14 MINUTES 25 SECONDS WEST, 79.9 FEET; THENCE NORTH 14 DEGREES 27 MINUTES 10 SECONDS WEST, 58.4 FEET; THENCE NORTH 115.7 FEET TO THE POINT OF BEGINNING. (THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 29 ASSUMED NORTH-SOUTH IN DIRECTION.)

EXCEPT THE NORTH 50 FEET OF TAX LOT D IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 13 NORTH, RANGE 10 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF TAX LOT D; THENCE DUE EAST (ASSUMED BEARING) ALONG THE NORTH LINE OF TAX LOT D A DISTANCE OF 231.70 FEET; THENCE SOUTH 32 DEGREES 55 MINUTES 30 SECONDS EAST, A DISTANCE OF 59.57 FEET; THENCE DUE WEST A DISTANCE OF 264.41 FEET; THENCE NORTH 00 DEGREES 23 MINUTES EAST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING, A/K/A TAX LOT D2B.

AND

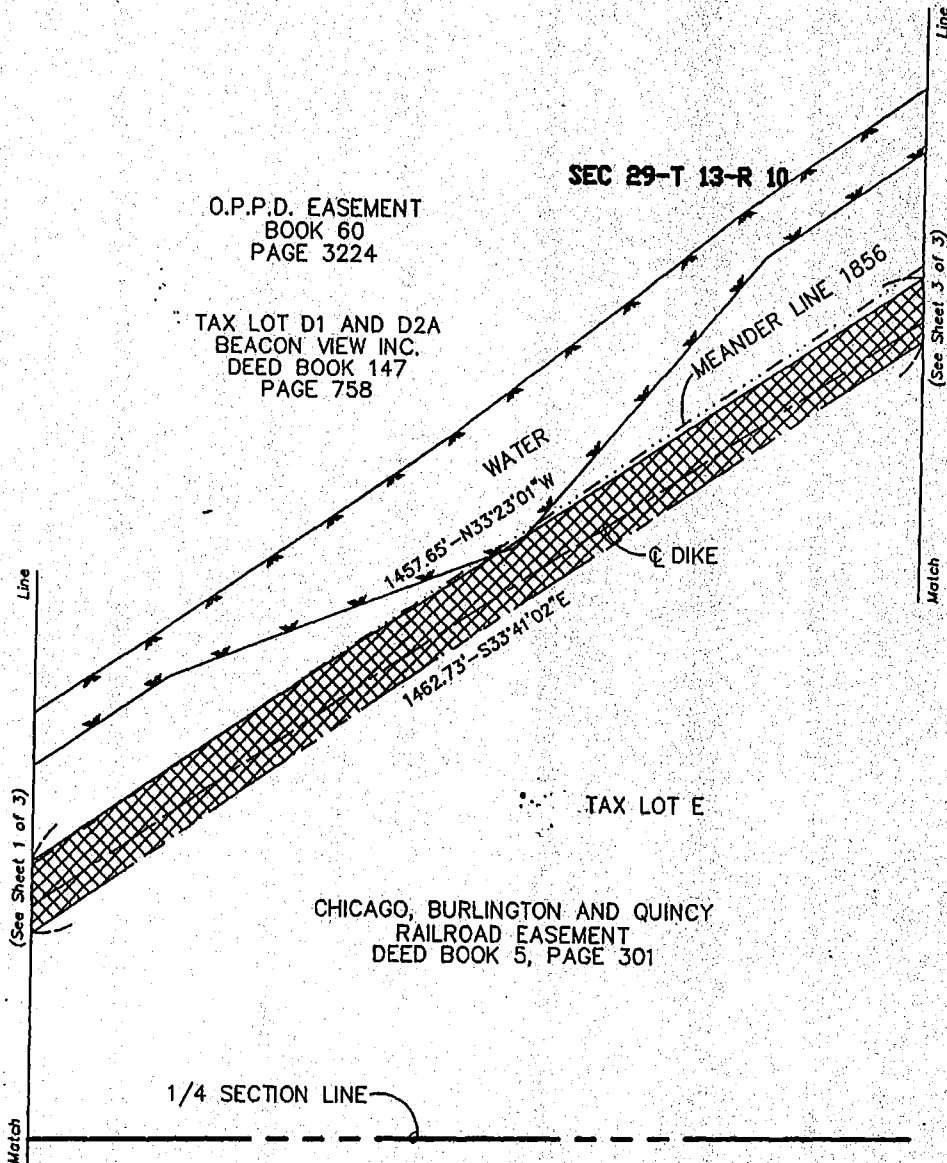
THAT PART OF TAX LOT F IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 13 NORTH, RANGE 10 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER; BEING 115.51 FEET

SOUTH OF THE CENTER OF SAID SECTION 29, THENCE SOUTH 14 DEGREES 27 MINUTES 10 SECONDS EAST, 58.4 FEET; THENCE SOUTH 18 DEGREES 14 MINUTES 25 SECONDS EAST, 79.9 FEET; THENCE SOUTH 33 DEGREES 04 MINUTES 05 SECONDS EAST, 61.6 FEET; THENCE SOUTH 60 DEGREES 29 MINUTES 35 SECONDS EAST, 48.9 FEET; THENCE SOUTH 85 DEGREES 19 MINUTES 55 SECONDS EAST, 52.4 FEET; THENCE NORTH 71 DEGREES 36 MINUTES EAST, 69.1 FEET; THENCE NORTH 51 DEGREES 56 MINUTES EAST, 166.50 FEET; THENCE SOUTH 14 DEGREES 34 MINUTES EAST, 54.46 FEET TO THE NORTH R.O.W. LINE OF C.B.&Q. RAILROAD; THENCE SOUTH 51 DEGREES 56 MINUTES WEST, 480.67 FEET ALONG THE NORTH R.O.W. LINE OF C.B.&Q. RAILROAD TO THE WEST LINE OF SAID SOUTHEAST QUARTER, THENCE NORTH 436.81 FEET ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER TO THE POINT OF BEGINNING.

EXHIBIT A

REVISER 10 2 05

98-049666



GRAPHIC SCALE

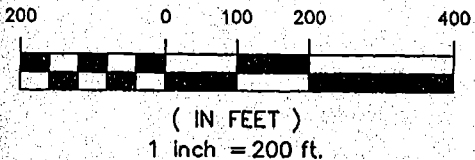


EXHIBIT "C"

PAGE 2 of 3

	EXISTING PROPERTY (See Sht 1 of 3) S.F.	PROJECT NO. 9402
	PROPERTY ACQUISITION (See Sht 1 of 3) S.F.	TRACT NO.
	PROPERTY TO VACATE (See Sht 1 of 3) S.F.	PAGE NO. 2 OF

98-04966H

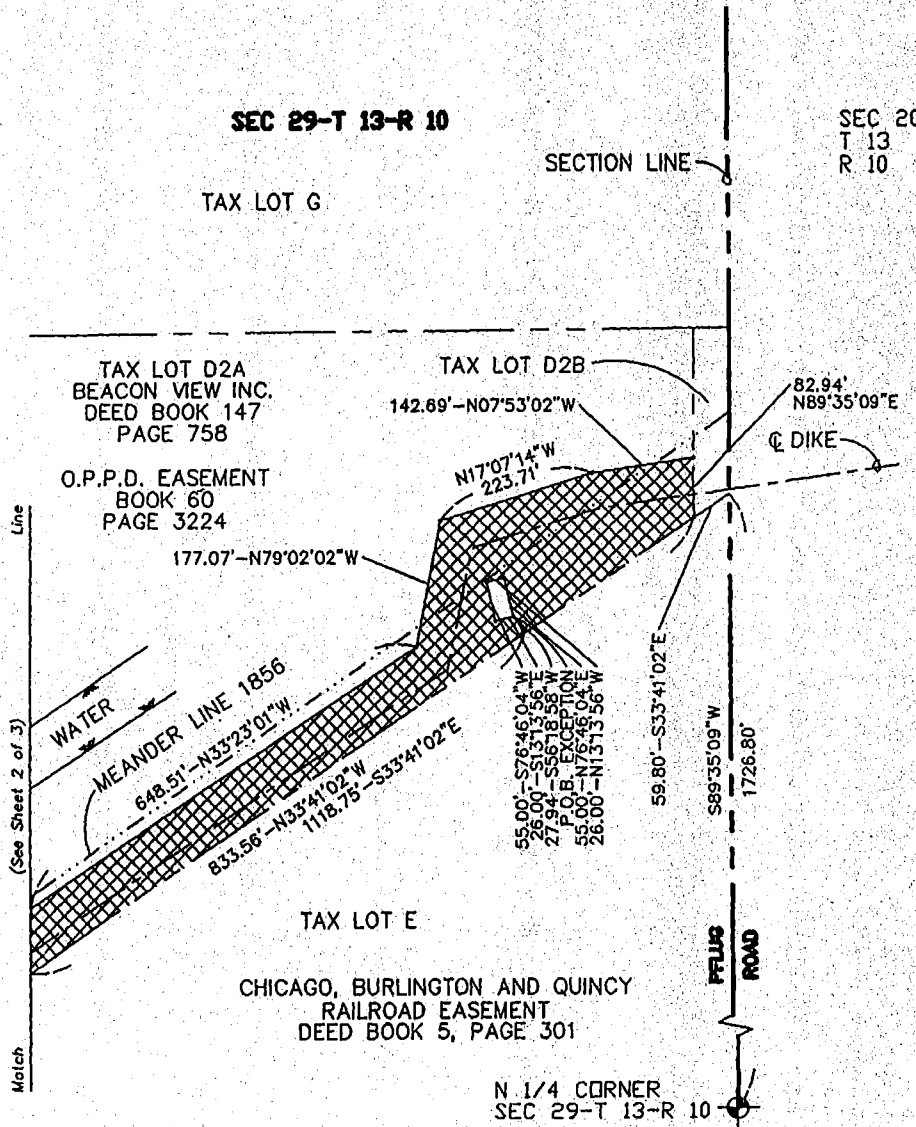


EXHIBIT "C"
PAGE 3 of 3

	EXISTING PROPERTY (See Sht 1 of 3) S.F.	PROJECT NO. 94026
	PROPERTY ACQUISITION (See Sht 1 of 3) S.F.	TRACT NO.
	PROPERTY TO VACATE (See Sht 1 of 3) S.F.	PAGE NO. 3 OF 3

98-04966I

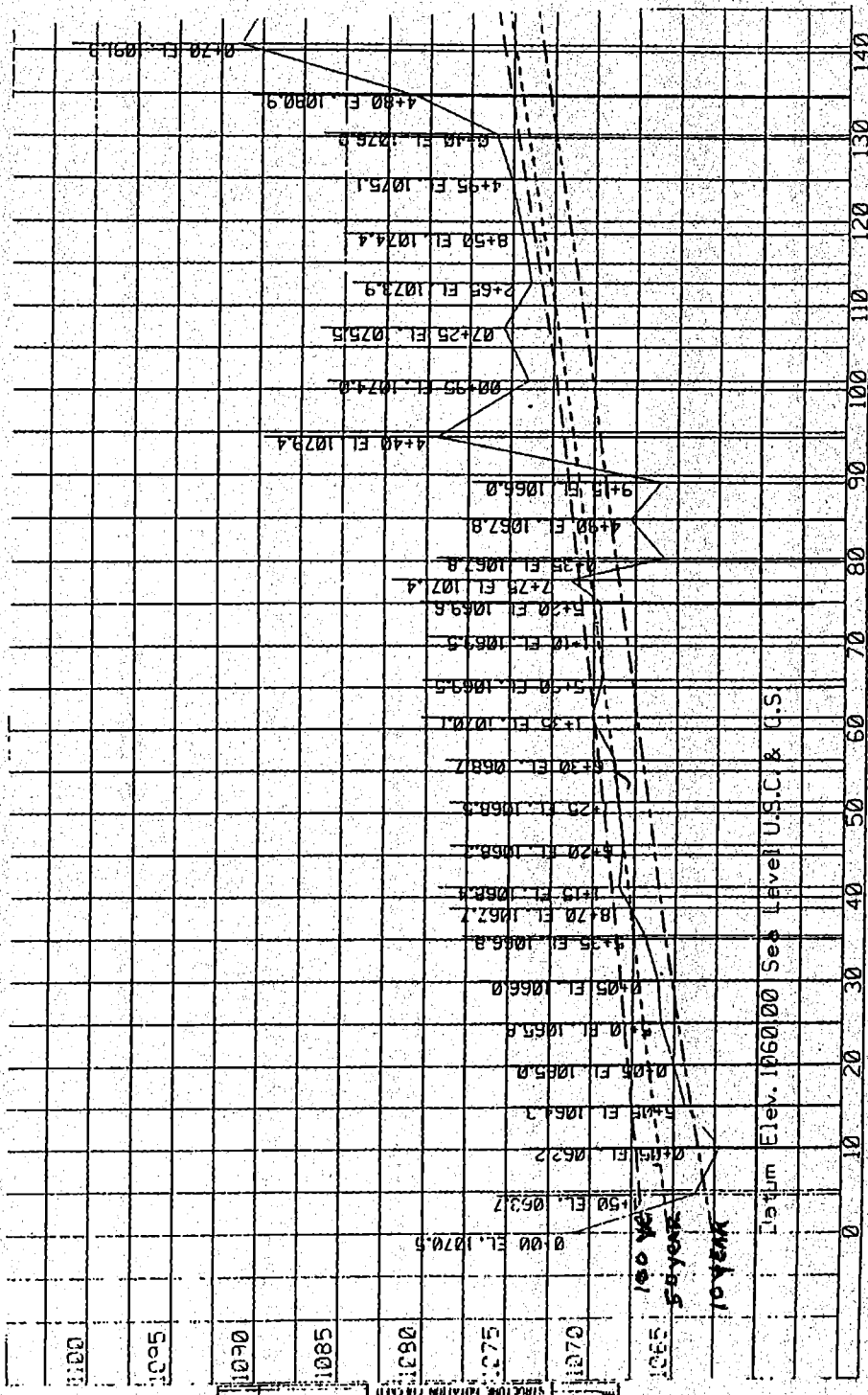


EXHIBIT "D"