

Government Code Section 27383. No fee shall be charged by the Recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record.

RECORDING REQUESTED BY:  
Hudson ICS  
Attention: Laurence R. Hood  
President  
455 Moraga Road, Suite D  
Moraga, CA 94556-2912

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Region 2  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710  
Attention: Barbara J. Cook, P.E.,  
Chief, Site Mitigation Branch



2006242232

06/23/2006 12:39 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 0.00



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COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION  
HUDSON I.C.S. PROPERTY  
400 HUDSON LANE  
SAN LEANDRO, CALIFORNIA

ALAMEDA COUNTY PARCEL NOS. 075-0087-001-02 AND 075-0087-008

This Covenant and Agreement ("Covenant") is made by and between Hudson I.C.S., a California corporation (the "Covenantor"), the current owner of the 400 Hudson Lane property situated in San Leandro, County of Alameda, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code Section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence in groundwater of hazardous materials as defined in Health and Safety Code Section 25260. The Covenantor and the Department,

collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

## **ARTICLE I**

### **STATEMENT OF FACTS**

1.01. The Property, totaling approximately 15 acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located at 400 Hudson Lane, San Leandro, County of Alameda, State of California. This Property is more specifically described as Alameda County Assessor's Parcel Nos. 075-0087-001-02 and 075-0087-008.

1.02. This Covenant applies to a limited portion of the Property with Bunker C oil contamination in the groundwater, as more particularly described in Exhibit "B" which is attached and incorporated by this reference (the "Restricted Property").

1.03. The Property is the subject of a response action under the Department's oversight pursuant to a Department-approved Removal Action Workplan for Groundwater. Because Bunker C oil, which is a hazardous material as defined in Health and Safety Code Section 25260, remains in the groundwater under the Property, the Removal Action Workplan provides that a permanent land use covenant on the Property will be required as part of the remediation. The Department circulated the Removal Action Workplan, which contains a Final Health Risk Assessment, together with a draft notice of exemption pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. for public review and comment. The Removal Action Workplan and the notice of exemption were approved by the Department on December 30, 2004. Previous response action included removal and disposal of several underground tanks and

associated piping and contaminated soil. It also included the installation of groundwater monitoring wells. The locations of the monitoring wells are shown on "Exhibit C". The groundwater monitoring will be conducted pursuant to a Department- approved Groundwater Monitoring Plan incorporated into the Operation and Maintenance Agreement between Covenantor and the Department.

1.04. Groundwater at the Restricted Property generally is found at about 20 feet below ground surface. Bunker C oil has been detected in the groundwater at concentrations of up to 600 parts per million (ppm). The Department has determined that the property, as remediated and subjected to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment.

## **ARTICLE II**

### **DEFINITIONS**

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

## ARTICLE III

### GENERAL PROVISIONS

3.01. Restrictions to Run with the Property. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the Property pursuant to Health and Safety Code Section 25355.5(a)(1)(C) and Civil Code Section 1471, (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property, unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code Section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. The Covenantor consents to the recording of this Covenant in the Official Records of the Clerk-Recorder of Alameda County, California. Owner, and any lessor or sublessor shall give to any buyer, lessee or sublessee notice that hazardous substances are located on or beneath the Property, as such time and in such manner as may be required by California law including Health and Safety Code Section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding, mortgages, liens, leases, easements, licenses, encumbrances, and non-possessory encumbrances). Such notice shall include the name and address of the new owner, insofar as may be known to the Owner, and shall be deemed sufficient by delivery of a copy of the recorded deed of conveyance executed by the Owner. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed transfer, encumbrance or conveyance; except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering this Covenant to be paid by Owner. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent owners that pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner shall pay the Department's cost in administering the Covenant. Failure of the Owner to pay such costs when billed is a breach of the Covenant and enforceable pursuant to section 5.01 of the Covenant. Notwithstanding California Civil Code Section 1466, in the event the property ownership changes between the time when the costs were incurred and the invoice for such costs is received by an Owner, each Owner of the property for the period covered by the invoice, as well as the then-current Owner, is responsible for such costs.

## ARTICLE IV

### RESTRICTIONS

4.01. Prohibited Activities. The following activities shall not be conducted at the Property without prior written approval from the Department:

- (a) Drilling for water, oil, or gas.
- (b) Use of shallow groundwater for domestic/municipal water supply in the area as shown on Exhibit B, where Bunker C has been observed.
- (c) Any activity that may disturb or adversely affect the integrity of the groundwater monitoring system identified in the Department-approved Groundwater Monitoring Plan (as it may be modified from time to time) until the Department determines that no further operation or maintenance of the groundwater monitoring system is required or the groundwater monitoring system has been decommissioned with the Department's approval.

4.02. Access for Department. The Department shall have reasonable right of entry and access to the Property, in accordance with applicable law, for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment

4.03. Access for Implementing Groundwater monitoring. The entity or person responsible for implementing the Groundwater Monitoring Plan shall have reasonable right of entry and access to the Property (upon reasonable advance notice) for the purpose of

implementing the Department-approved Groundwater Monitoring Plan until the Department determines that no further monitoring is required.

## **ARTICLE V**

### **ENFORCEMENT**

5.01. Enforcement. Failure of any Covenantor, Owner or Occupant to comply with any of the Restrictions, set forth in Section 4.01, specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements (“Improvements” herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to take such action as may be provided by law.

## **ARTICLE VI**

### **VARIANCE, TERMINATION, AND TERM**

6.01. Variance. Covenantor or any other aggrieved person may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII

### MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within ten (10) days of the Covenantor' receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Hudson I.C.S  
Attention: Laurence R. Hood, President  
455 Moraga Road, Suite D  
Moraga, 94556-2912

Or to: Owners as identified to the Department under paragraph 3.05 of this Covenant.

To Department: Department of Toxic Substance Control  
700 Heinz Avenue,  
Berkeley, CA 94710  
Attention: Barbara J. Cook, P.E., Chief  
Northern California Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:  
By: [Signature]  
Date: 5-30-06

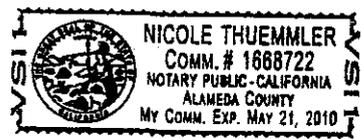
PRINT NAME LAURENCE R. HOAD

Department of Toxic Substances Control

By: [Signature]  
Title: BRANCH CHIEF  
Date: 6/22/2006

PRINT NAME BARBARA J. COOK

State of California, County of Alameda  
Subscribed and sworn to (or affirmed) before me this  
22 day of June, 2006, by Barbara J. Cook  
personally known to me or proved to me on the  
basis of satisfactory evidence to be the person(s)  
who appears before me. [Signature]  
(Signature of Notary)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California

County of Alameda

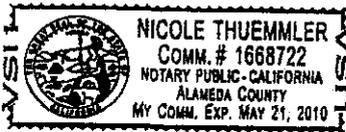
On June 22, 2006 before me, Nicole Thuemmler Notary Public

Name and Title of Officer (e.g. "Jane Doe Notary Public")

personally appeared Barbara J. Cook

Name(s) of Signer(s)

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument



WITNESS my hand and official seal

Nicole Thuemmler

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

**Description of Attached Document**

Title or Type of Document: Covenant to Restrict Use of Property

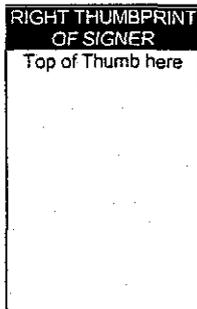
Document Date: 6/22/2006 Number of Pages: 16

Signer(s) Other Than Named Above: Laurence R. Hood

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

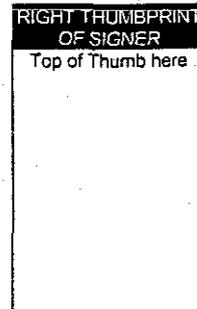
- Individual
- Corporate Officer
- Titles(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

STATE OF CALIFORNIA )

)

COUNTY OF Contra Costa )

On this 31<sup>st</sup> day of May, in the year 2006,

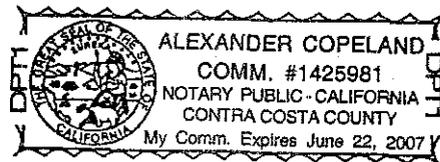
before me Alexander Copeland, notary public personally appeared

Lawrence R. Hood

personally known to me (or proved to me on this basis of satisfactory evidence) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

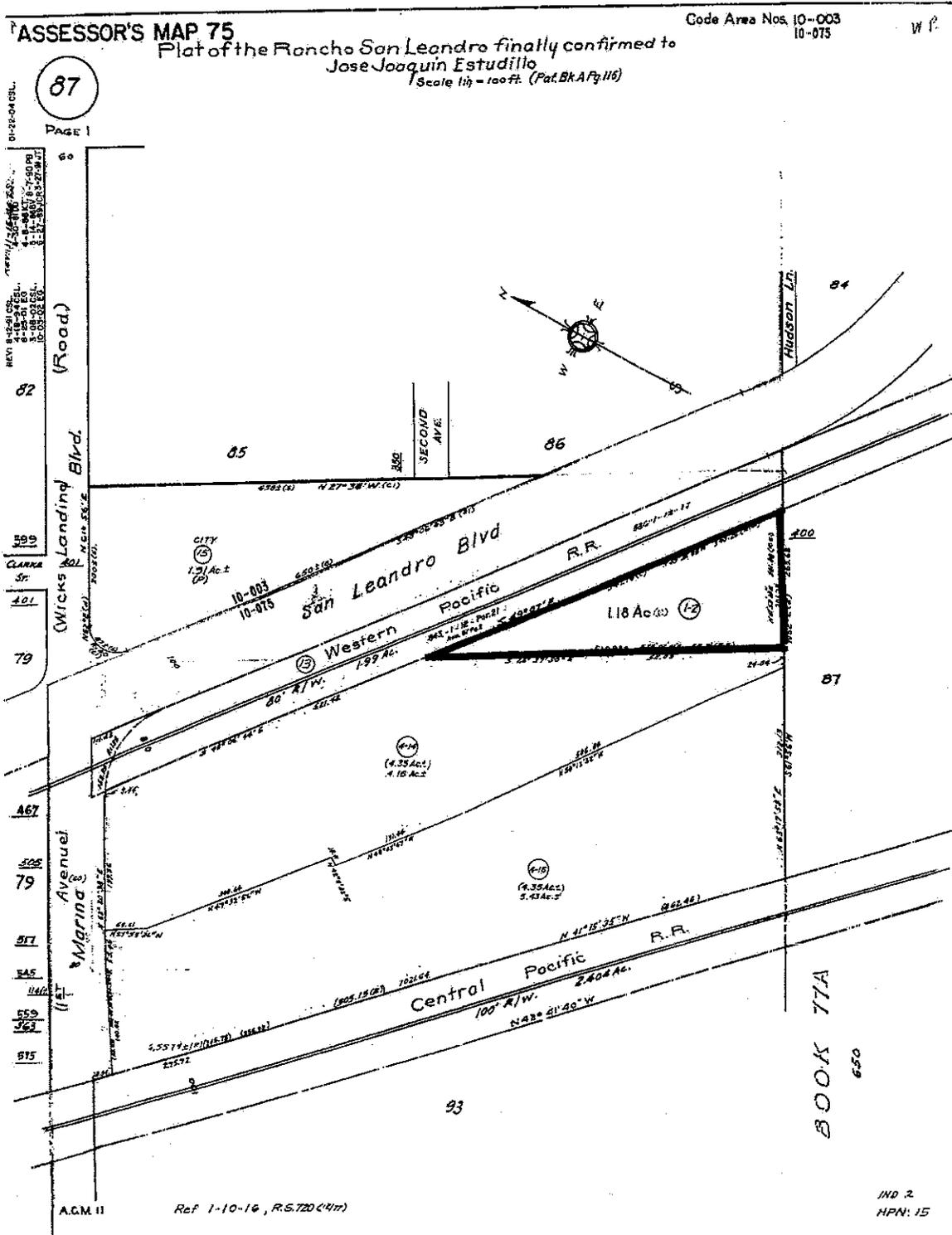
WITNESS my hand and official seal.

Signature Alexander Copeland



# Exhibit A

## PARCEL MAPS





## **Exhibit B**



**EXHIBIT "B"**  
**LEGAL DESCRIPTION FOR DEED RESTRICTION**  
**HUDSON I.C.S PROPERTY**  
**SAN LEANDRO, CALIFORNIA**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF "PLAT OF THE RANCHO SAN LEANDRO FINALLY CONFIRMED TO JOSE JOAQUIN ESTUDILLO", RECORDED IN AUGUST 1859, IN PATENT BOOK A, AT PAGE 116, ALAMEDA COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM A POINT AT THE INTERSECTION OF EASTERLY RIGHT OF WAY LINE MARINA BOULEVARD WITH SOUTHERLY LINE OF THE UNION PACIFIC RAILROAD RIGHT OF WAY; THENCE,

ALONG SAID SOUTHERLY LINE OF THE UNION PACIFIC RAILROAD RIGHT OF WAY SOUTH 48°06'44" EAST 522.78 FEET; THENCE,

LEAVING SAID SOUTHERLY LINE OF THE UNION PACIFIC RAILROAD RIGHT OF WAY SOUTH 26°39'12" EAST 480.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE,

SOUTH 73°25'23" EAST 76.76 FEET; THENCE

SOUTH 05°06'05" EAST 109.42 FEET; THENCE,

SOUTH 43°08'42" WEST 116.43 FEET; THENCE,

SOUTH 66°34'47 WEST 125.87 FEET; THENCE,

NORTH 73°40'28" WEST 83.25 FEET; THENCE,

NORTH 01°40'23" WEST 109.26'; THENCE,

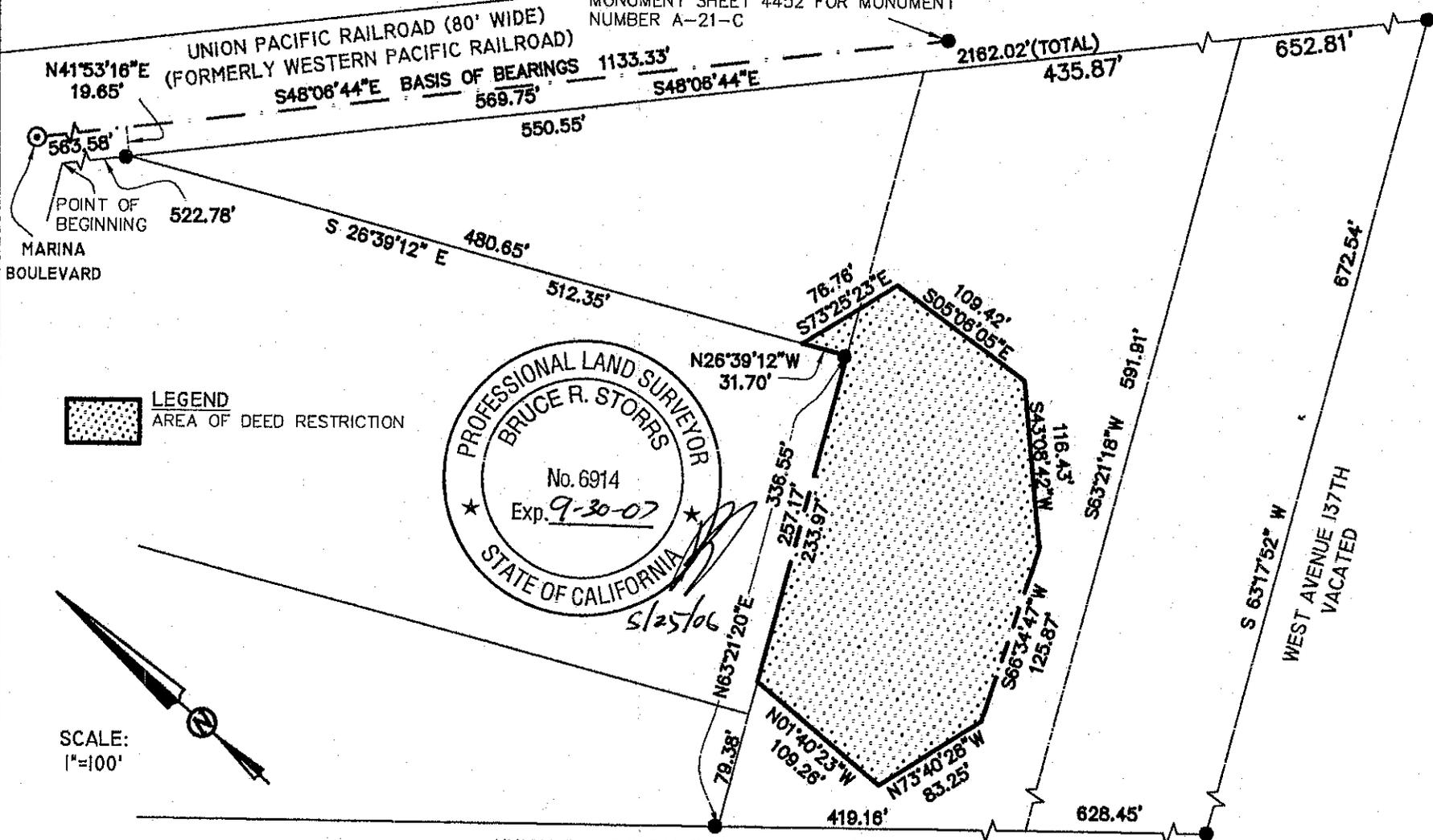
NORTH 63°21'20" EAST 233.97 FEET; THENCE,

NORTH 26°39'12" WEST 31.70 FEET TO THE POINT OF BEGINNING.

CONTAINING 44,283 SQUARE FEET/1.02 ACRES MORE OR LESS

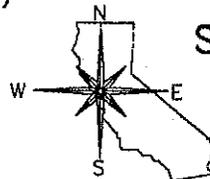
ABOVE DESCRIBED PROPERTY SHOWN ON ATTACHED EXHIBIT B AND BY REFERENCE MADE A PART HEREOF.

FOUND 3/4" STEEL ROD W/CROSS,  
FLUSH IN PAVEMENT. PER B.A.R.T.  
MONUMENT SHEET 4452 FOR MONUMENT  
NUMBER A-21-C



**PLAT SHOWING DEED RESTRICTION**  
**HUDSON I.C.S. PROPERTY**  
IN THE CITY OF SAN LEANDRO,  
COUNTY OF ALAMEDA,  
STATE OF CALIFORNIA

**UNION PACIFIC RAILROAD (100' WIDE)  
(FORMERLY SOUTHERN PACIFIC RAILROAD)**



**STORRS LAND SURVEYING**

2647 INTERNATIONAL BLVD, SUITE 853  
OAKLAND, CA 94601  
PHONE: (510) 532.3501  
06-419.DWG