18

RECORDING REQUESTED BY:
GBF Holdings, LLC
5052 Commercial Circle
Concord, California 94520

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
Attention: Barbara J. Cook, P.E., Chief
Northern California
Coastal Cleanup Operations Branch

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2003-0462064-00
Check Number
Tuesday, SEP 16, 2003 10:45:46
CPY $18.00 MIC $1.00 MOD $18.00
REC $22.00 TCF $17.00
Ttl Pd $76.00 Nbr-0001748488
lrc/R9/1-18

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Contra Costa Sanitary Landfill (a.k.a. GBF/Pittsburg Landfill), APN 076-021-016)

This Covenant and Agreement ("Covenant") is made by and between GBF Holdings, LLC (the "Covenantor"), the current owner of property situated in an unincorporated portion of the County of Contra Costa, surrounded by the City of Antioch, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California 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 on the land of hazardous materials as defined in Health and Safety Code ("H&SC") 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 84 acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by the former Antioch City Landfill and Somersville Road on the west and northwest, Markley Creek on the northwest, former Antioch City Landfill and undeveloped land on the north, the Contra Costa Canal on the northeast, uninhabited land containing a detention basin on the east, undeveloped land and James Donlon Boulevard to the south, County of Contra Costa, State of California. The Property is more specifically described as Contra Costa County Assessor's Parcel No.: 076-021-016.

1.02. Covenantor is remediating the Property under the supervision and authority of the Department. The Property is a portion of a site being remediated in accordance with a Remedial Action Plan pursuant to Chapter 6.8 of Division 20 of the H&SC, and pursuant to Addendum 1 to the Final Closure and Post-Closure Maintenance Plan, dated August 2001. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds and inorganic compounds, remain in the soil and groundwater in and under portions of the Property, the Remedial Action Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the Remedial Action Plan, which contained a summary of the Final Baseline Risk Assessment, together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Remedial Action Plan and the negative declaration were approved by the Department on June 16, 1997. Remediation includes the installation and maintenance of a geosynthetic clay liner and low permeability soil layer ("Cap") over the Property. The Cap consists of a low permeability geosynthetic or soil clay layer and other associated layers, as more particularly described in the engineering drawing attached as Exhibit "B" hereto. The

response action also includes the installation and operation of: (1) a landfill gas collection system on the Property which removes volatile organic compounds migrating upward from under the Cap, (2) a groundwater extraction and treatment system, which remediates volatile organic compound-impacted groundwater, and (3) groundwater monitoring wells ("Monitoring Wells"). The location, at the time of execution of this Covenant, of the landfill gas collection system, groundwater extraction and treatment system, and Monitoring Wells are shown on Exhibit "B". The aforementioned locations are subject to modification. The operation and maintenance of the Cap, and landfill gas collection system, is pursuant to Addendum 1 to the Final Closure and Post-Closure Maintenance Plan, dated August 2001., and incorporated into any applicable Waste Discharge Requirements Orders adopted by the California Regional Water Quality Control Board, Central Valley Region. The Covenantor and the Department will enter into an Operation and Maintenance Agreement, regarding the groundwater extraction and treatment system and Monitoring Wells, after construction of the system is completed.

1.03. As detailed in the final Remedial Action Plan as approved by the Department on June 16, 1997, all or a portion of the subsurface soils and groundwater beneath the surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following volatile organic compound and inorganic contaminants of concern detected in the landfill gas in the ranges set forth below: benzene; carbon tetrachloride; chloroform; 1,2-dichloroethane; ethylbenzene; ethylene dibromide; methane; methylene chloride; tetrachloroethylene; toluene; 1,1,1-trichloroethane; trichloroethylene; vinyl chloride; and xylenes. Based on the final Remedial Action Plan the Department concluded that use of the Property as a residence, hospice, hospital, school for persons under the age of 21 or day care center might pose an unacceptable risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to open space use and access is restricted.

Groundwater at the Property is found 40 to 90 feet below ground surface. Contaminants in the groundwater above California drinking water standards include: arsenic; benzene; cadmium; carbon tetrachloride; chromium; 1,1-dichloroethane; 1,2-

dichloroethane; 1,1-dichlorothylene; 1,2-dichloroethylene; 1,2-dichloropropane; lead; mercury; perchloroethylene; silver; trichloroethylene; and vinyl chloride. The Department concludes that the groundwater presents an unacceptable threat to human health and safety.

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 Owners 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 Land. 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 land pursuant to H&SC 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 H&SC 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. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC 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, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Deed Restriction to be paid by Owner. The Owner hereby covenants for himself and for all subsequent owners that, pursuant to Title 22 California Code of Regulations section 67391.1(h), the property owner agrees to pay DTSC's costs in administering of the deed restriction when billed.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

(a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.

(b) A hospital or hospice for humans.

(c) A public or private school for persons under 21 years of age.

(d) A day care center for children.

(e) A park or playground.

4.02. Operation and Maintenance

(a) Activities that will disturb the soil on the Property at or below 1.5 feet below grade or beneath the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be performed in accordance with an Operation and Maintenance Plan and Agreement approved by the Department.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

(c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property more than 1.5 feet below grade or beneath the Cap.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

(a) Raising of food (cattle, food crops);

(b) Drilling for water, oil, or gas without prior written approval by the Department.

(c) Extraction of groundwater for purposes other than site remediation or construction dewatering without the express prior approval of the Department.

4.04. Non-Interference with Cap, Landfill Gas System, Groundwater Extraction and Treatment System, and Monitoring Wells. Covenantor agrees:

(a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining), landfill gas system, groundwater extraction and treatment system, or monitoring wells shall not be permitted on the Property without prior review and approval by the Department.

(b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Cap, landfill gas system, groundwater extraction and treatment system, and monitoring wells.

(c) The Cap, landfill gas system, groundwater extraction and treatment system, and monitoring wells shall not be altered without written approval by the Department.

(d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap, landfill gas system, groundwater extraction and treatment system, or monitoring wells and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property 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.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Activities, until the Department determines that no further Operation and Maintenance is required.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions 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 file civil or criminal actions as 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 H&SC 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 H&SC 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 or departments.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's 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:
GBF Holdings, LLC
5052 Commercial Circle
Concord, California 94520
Attention: Deems C. Padgett
Vice-President

To Department:
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721
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 terms 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: GBF Holdings, LLC

By: Deems C. Padgett

Title: Deems C. Padgett, Vice-President

Date: 8/7/03

Department of Toxic Substances Control

By: Barbara J. Cook

Title: Barbara J. Cook, P.E., Chief

Northern California – Coastal Cleanup Operations Branch

Date: 9/2/03

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

462064

State of California

County of Alameda

On 9/2/03 before me, FRANK Piscitelli,
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.

ESI1 FRANK PISCITELLI COMM. #1385566 Notary Public-California ALAMEDA COUNTY My Comm. Exp. Nov 22, 2006 ESI1

WITNESS my hand and official seal.

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: GBF Holdings

Document Date: 9/2/03 Number of Pages: 16

Signer(s) Other Than Named Above:

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:

RIGHT THUMBPRINT OF SIGNER
Top of Thumb here

Signer's Name:

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

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of Thumb here

ESI1 NK PISCITELLI M. #1385566 Public-California EDA COUNTY Nov 22, 2006 ESI1

462064

STATE OF CALIFORNIA)

)

COUNTY OF Contra Costa)

On this 7th day of August, in the year 2003,

before me Harvey Jay Hochhauser, personally appeared

Dennis C. Padgett,

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.

Signature

Harvey Jay Hochhauser
COMM. # 1342426
NOTARY PUBLIC • CALIFORNIA
CONTRA COSTA COUNTY
Comm. Exp. MARCH 3, 2006

LEGAL DESCRIPTION

REAL PROPERTY in an unincorporated area, County of Contra Costa, State of California, described as follows:

Portion of the southeast 1/4 of Section 27, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, described as follows:

Beginning on the North line of said southeast 1/4 at the northeast corner of the parcel of land described in the Deed to Eugene Arata, recorded October 23, 1928, Book 126, Official Records, Page 467; thence from said point of beginning along the exterior line of said Arata Parcel, South 12° 06' West, 205.2 feet and South 48° 21' West, 36.7 feet to the most northerly corner of the parcel of land described in the Deed to Joseph G. Prewett, recorded August 12, 1929, Book 233, Official Records, Page 16; thence along the exterior line of said Prewett Parcel, South 48° 21' West, 161.9 feet and North 87° 43' West, 492 feet to the West line of said southeast 1/4; thence southerly, along said West line, to the North line of Paso Corto Road; as said Road existed in August, 1963; thence easterly and southeasterly, along said North line, to the East line of said southeast 1/4; thence northerly, along said East line, to the South line of the 8.83 acre parcel of land described in the Declaration of taking, recorded July 28, 1938, Book 474, Official Records, Page 1; thence along the exterior line of said 8.83 acre parcel, South 89° 32' West, 704.2 feet and North 45° 57' West, 599 feet, more or less, to the North line of said southeast 1/4; thence westerly along said North line, to the point of beginning.

EXCEPTING THEREFROM:

1. All minerals, including, but not limited to gas, oil, asphaltum and other hydrocarbons, below 500 feet in and under the lands hereinabove described which are expressly reserved to Grantors with the right of ingress and egress thereto and therefrom for the purpose of extraction thereof, with the right to install, maintain and operate pipe lines, and other improvements for the purpose of extracting said substances, or any of them, as reserved in the Deed from Italo Ferrando and Olga A. Ferrando, his wife, recorded December 30, 1977, Book 8652, Page 252, Official Records.

2. Those portions described in the Deed to Albert D. Seeno Construction Co., recorded June 8, 1982, Book 10805, Page 278, Official Records.

A.P.No.: 076-021-005

And annexed thereto that real property described as follows:

All that real property situate in the South One-half of Section 27, Township 2 North, Range 1 East, M.D.M., County of Contra Costa, State of California described as follows:

A portion of that certain parcel described in Book 3251 of Deeds at Page 441 and a portion of that certain parcel described in Book 161 of Deeds at Page 69, said parcels being also described and delineated on that certain Record of Survey filed in Book 107 of Surveys at Page 4 more particularly described as follows:

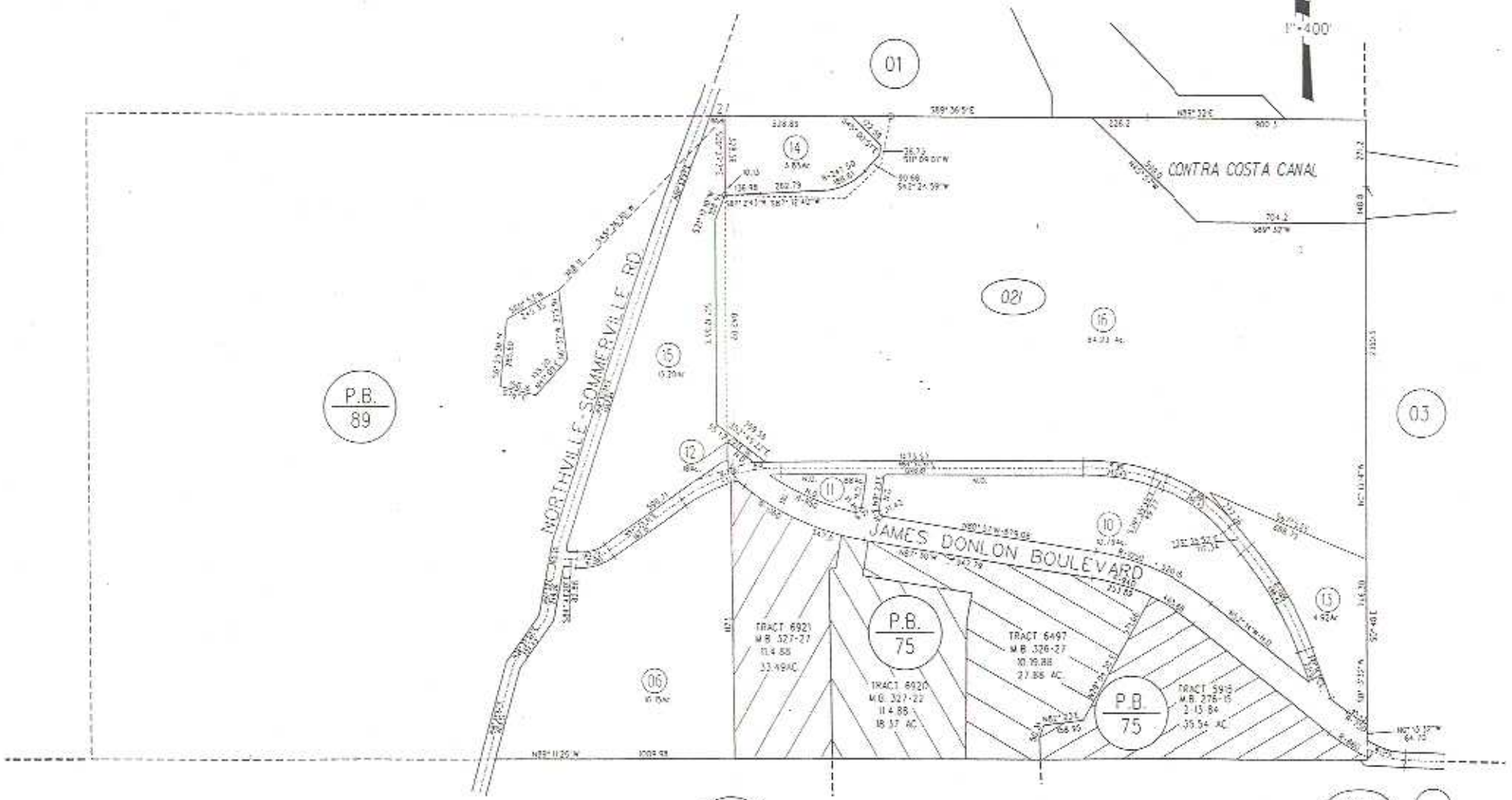
All that portion of said parcels lying Easterly and Southerly of the following described line:

Beginning at a point on the East-West centerline of said Section 27, from which point the center one-quarter corner of Section 27 bears North 89°36'05" West, 528.89 feet; thence from said point of beginning South 45°00'51" East, 172.59 feet; thence South 11°09'01" West, 36.73 feet; thence South 42°24'59" West, 90.68 feet; thence along a non-tangent curve to the right, having a radius of 247.50 feet, through a central angle of 44°47'41", being subtended by a chord of South 64°48'50" West, 188.61 feet; thence South 87°12'40" West, 262.79 feet; thence South 87°02'43" West, 136.98 feet to a 5/8" rebar with cap; thence North 88°39'43" West, 10.13 feet; thence South 21°17'10" West, 108.91 feet; thence South 00°12'35" East, 842.02 feet; thence South 52°49'22" East, 55.42 feet to the most northerly corner of that certain Parcel Three described in Book 10805 of Deeds at Page 278 in the County Recorder's office, County of Contra Costa, State of California, said point being the terminus of said described line.

Containing 1.542 acres

462064

S1/2 SEC.27 T2N R1E M.D.B.&M.

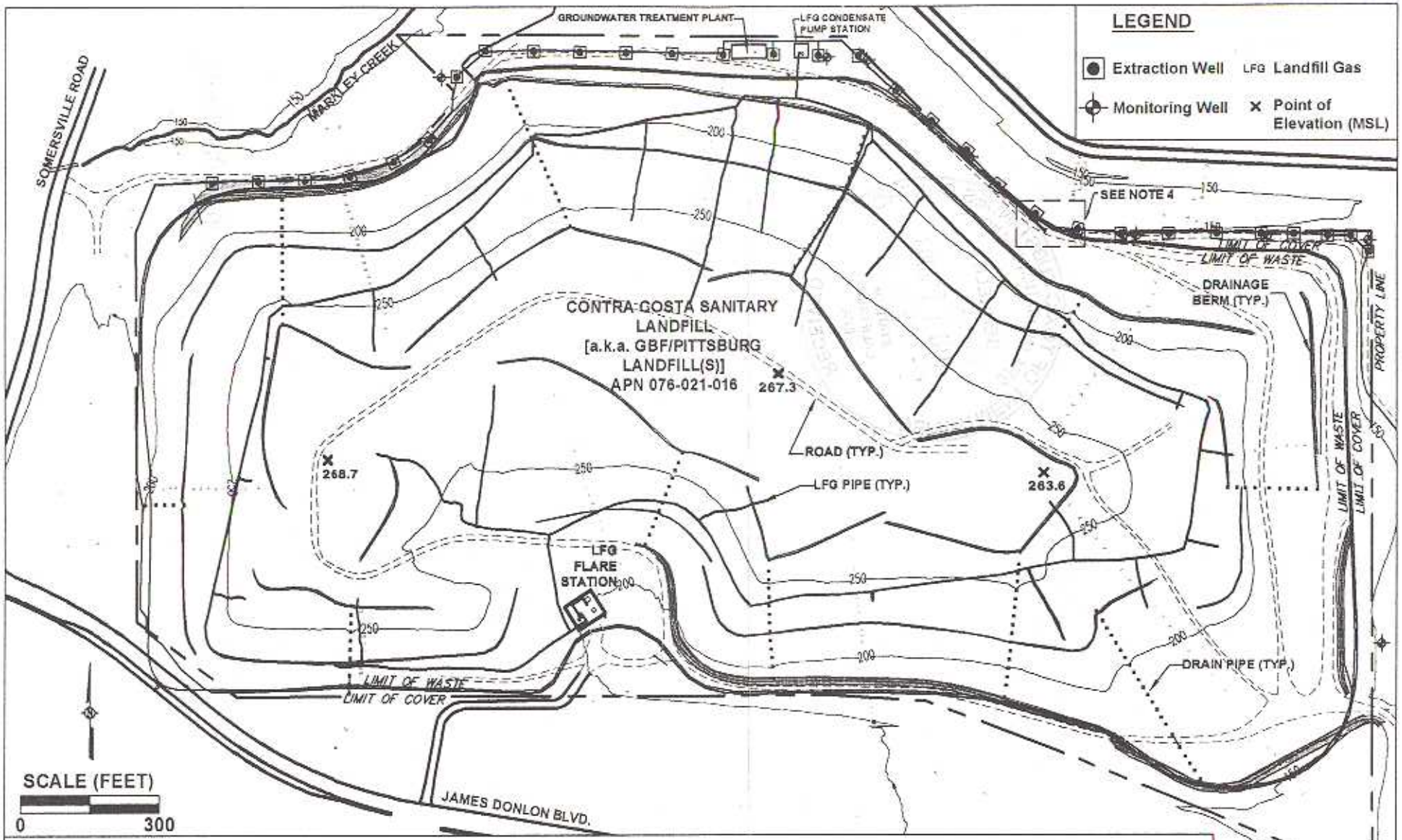


NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

SEE ATTACHED DISCLAIMER

ASSESSOR'S MAP
BOOK 76 PAGE 02
CONTRA COSTA COUNTY, CALIF.

EXHIBIT A (1 OF 3)



Map Notes

(1) Elevations are based on United States Coast & Geodetic Survey 1929 Mean Sea Level Datum. Benchmark #233 (NGS #S-376) is a standard brass disk located along Somersville Road, 0.2 mile north of Arata Ranch buildings, outside of curve along the east bank of a deep creek, 39.5 feet west of centerline of road. Set in top of concrete post 0.2 feet above ground. Elevation = 232.647 feet.

(2) As-built record topography is based on aerial photography conducted on February 25 and March 4, 2002. Maximum depths of fill vary generally from approximately 140 MSL to the east and approximately 150 MSL to the west.

(3) Closure was completed on July 9, 2002. Closure and Post-closure Plans, including As-Built Record Survey information, can be obtained at the offices of Contra Costa County, Department of Health, Environmental Health Division, located at 2120 Diamond Boulevard, Suite 200, Concord, California 94520.

(4) GCL cover was repaired by filling with cement-bentonite grout on October 23, 2002.

EXHIBIT B

462064