



2016146682

06/10/2016 01:38 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 0.00

RECORDING REQUESTED BY:
San Francisco Bay Area Rapid Transit
District
P.O. Box 12688 (LKS-22)
Oakland, California 94604-2688
Attn: Manager, Real Estate and Property
Development



19 PGS

COPY of document to be recorded
Has not been compared with Original

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94702
Attention: Karen M. Toth, Unit Chief
Brownfields and Environmental
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

RECORDING FEE WAIVED
PER GOVT CODE 27383

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of Alameda, Assessor Parcel Number: 42-4520-1-13
Site Name: Cannizzaro Property
Site Code: 201603

This Land Use Covenant and Agreement ("Covenant") is made by and between the San Francisco Bay Area Rapid Transit District (BART) (the "Covenantor"), the current owner of property located at the northern corner of the intersection of Doolittle Drive and the Airport Access Road, Oakland, in the County of Alameda, State of California (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 on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant and that the

Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling approximately 1.52 acres, is more particularly described in the attached Exhibit A, "Legal Description" and depicted in Exhibit B "Alameda County Assessor's Parcel Map," and Exhibit C, "Plot Plan with Cap." The Property is located in the area now generally bounded by Doolittle Drive to the south and Airport Access Road to the east and near 98th Avenue to the west. The Property is also generally described as Alameda County Assessor's Parcel Number 42-4520-1-13 as depicted on Exhibit B.

A cap consisting of asphalt or concrete ranging in thickness from 1.5 inches to 3 feet in thickness ("Cap") covers the entire Property except for constructed stormwater drainage sumps, which are referred to as "bioretention planters" as depicted in Exhibit C "Plot Plan with Cap."

1.2. Remediation of Property. This Property has been investigated and remediated under the Department's oversight. The Department approved a Removal Action Workplan (Toxichem Management Systems, Inc.) dated February 20, 2007 in accordance with Health and Safety Code, division 20, chapter 6.8. On April 11, 2014 and July 27, 2014, DTSC approved of minor changes to the design specifications in the Removal Action Workplan. The remediation activities conducted at the Property included soil excavation and installation of bioretention planters and construction of the Cap. The Cap prevents contact with hazardous substances at the site including: lead (up to 4,700 parts per million ("ppm")), cadmium (up to 7.9 ppm), copper (up to 1,000 ppm), zinc (up to 2,800 ppm), polychlorinated biphenyls (up to 0.62 ppm), and benzo(a)pyrene (up to 0.21 ppm), which remain at the Property above levels acceptable for unrestricted land use. In addition, there are soils which contain total petroleum

hydrocarbons as diesel (up to 3,800 ppm) and motor oil (up to 9,200 ppm), which exceed the San Francisco Regional Water Resources Control Board's (SFRWRCB) Environmental Screening Levels (ESLs). The Property is maintained according to an operations and maintenance plan entitled "Cap System Operation and Maintenance Plan – Maintenance and Inspections Manual" (ERM, February 2, 2016), which was approved by DTSC on February 25, 2016 or any successor operations and maintenance plan as later approved by DTSC.

1.3. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II DEFINITIONS

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

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in this Covenant.

2.3. Improvements. "Improvements" includes, but is not limited to buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.4. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.5. Occupant. "Occupant" or "Occupants" 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.

2.6. Owner. "Owner" or "Owners" means the Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5; (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.

3.2. Binding upon Owners/Occupants. This Covenant: (a) binds all Owners of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and 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; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with,

the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The Notice shall include the name and mailing address of the new Owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number that covers the Property must be provided. 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 or by administrative order.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering, implementing and enforcing this Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- (b) Any soil brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.3. Prohibited Activities. The following activity shall not be conducted at the Property: Activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of, or the access to, or operation and maintenance activity of the Cap required for the Property without prior written approval of the Department.

4.4. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

4.5. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities, if any, shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department

determines that no further operation and maintenance activity is required.

4.6. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by January 31st of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

ARTICLE V ENFORCEMENT

5.1. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, such as failure to submit (including submission of any false statement) record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2. Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3. Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.1. 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.

7.2. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. 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: (a) when

delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: San Francisco Bay Area Rapid Transit District
C/O Gary Jensen, Principal Engineer
Environmental Health and Safety Division
P.O. Box 12688 (LKS-18)
Oakland, California 94604-2688

And

To Department: Karen M. Toth, P.E., Unit Chief
Brownfields and Environmental Restoration Program
700 Heinz Avenue
Berkeley, California 94710

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

7.4. Partial Invalidity. If this Covenant or any of its terms are 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.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor: San Francisco Bay Area Rapid Transit District

By: Sean Brooks
Sean Brooks

Title: Department Manager, Real Estate and Property Development

Date: June 3, 2016

Department of Toxic Substances Control:

By: Karen M. Toth
Karen M. Toth, P.E.

Title: Unit Chief, Brownfields and Environmental Restoration Program

Date: 6/9/2016

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

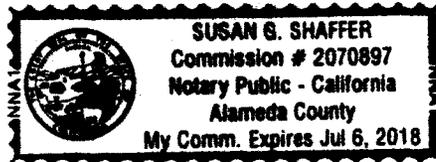
On June 3, 2016 before me,

Susan G. Shaffer, Notary Public
(space above this line is for name and title of the officer/notary),

personally appeared Sean Brooks, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,



Susan G. Shaffer (seal)
Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On June 9, 2016 before me,

Nicole Thuemmler, Notary Public

(space above this line is for name and title of the officer/notary)

personally appeared Karen M. Toth, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Nicole Thuemmler
(seal)

Signature of Notary Public

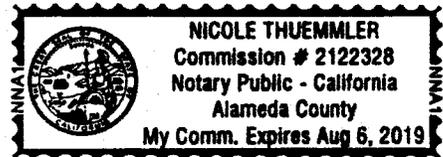


EXHIBIT 'A'

All that real property described as "REMAINDER" in that FINAL ORDER OF CONDEMNATION Superior Court of the State of California in and for the County of Alameda, City of Oakland plaintiff, recorded September 18, 2000, as Series No. 2000281636, Official Records, Alameda County, California, more particularly described as follows.

BEGINNING at the "True Point of Beginning" as described in said "REMAINDER", thence along the perimeter of said parcel the following seven (7) courses, (1) South 28°02'32" East 246.05 feet, (2) South 34°46'30" West 229.85 feet, (3) through a curve concave to the northwest, with a radius of 22.00 feet, through a central angle of 52°33'33", a distance of 20.18 feet, (4) North 60°18'03" West 144.26 feet, (5) North 25°51'00" East 54.62 feet, (6) North 24°11'33" West 72.43 feet, (7) through a non tangent curve concave to the southeast, a radial line to said curve bears North 62°13'13" West, with a radius of 1035 feet, through a central angle of 15°36'58", a distance of 282.09 feet to the POINT OF BEGINNING,

Containing approximately 66143 square feet. (Approximately 1.52 Acres)

Bearings and distances in this description are based on California Coordinate System Zone III, North American Datum of 1983. To obtain ground distances multiply distances given by 1.0000707.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act in April of 2005.



Joseph M. Brajkovich PLS 5254
Expires 12-31-05



DATE 04/04/05 Dwg Name B-1 H-3040-1BVG

REFERENCE:

1) RECORD OF SURVEY NO. 990 FILED BOOK 18 PAGE 50-58. ALAMEDA COUNTY RECORDS

2) RECORD OF SURVEY NO. 1721 FILED BOOK 28 PAGES 42-47 ALAMEDA COUNTY RECORDS

APN 042-4520-001-012 CITY OF OAKLAND, SERIES No. 2000281636, SEPTEMBER 18, 2000, ALAMEDA COUNTY

D = 15°36'58" L = 282.09
R = 1035.00

P.O.B.

N 62°13'13" W (R)

N 24°11'33" W
72.43 FT

N 25°51'00" E APN 042-4520-001-13
54.62 FT

BART Parcel No. H-3040-1
66143 sq. ft. (1.52 Acres)

CITY OF OAKLAND
STORM DRAIN EASEMENT
SERIES No. 2000281636
SEPTEMBER 18, 2000
ALAMEDA COUNTY

D = 52°33'33"
R = 22.00
L = 20.18

S 34°46'30" W 229.85 FT

AIRPORT ACCESS ROAD, CITY OF OAKLAND
SERIES No. 72-142795, RE 3257 IM 841
OCTOBER 19, 1972 ALAMEDA COUNTY

DOOLITTLE

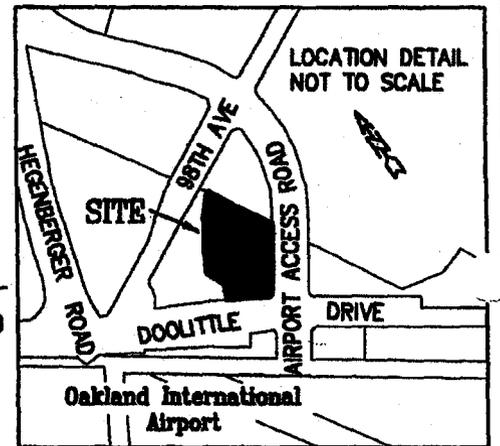
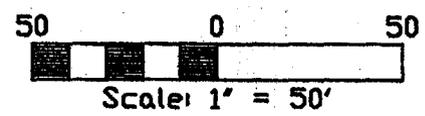
DRIVE

98TH AVE.

SURVEYOR'S STATEMENT:
THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYOR'S ACT IN APRIL 2005.

Joseph M. Brakovich
Joseph M. Brakovich PLS 5254
LICENSE EXPIRES: 12/31/05

S 28°02'32" E 246.05 FT
APY 044-5020-003-70
FERRARI'S, SERIES No. 2003668977
NOVEMBER 4, 2003 ALAMEDA COUNTY
ROS 1283 BK 18 PG 70



BEARINGS AND DISTANCES SHOWN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM ZONE III, NAD 83. MULTIPLY DISTANCES SHOWN BY 1.0000707 TO OBTAIN GROUND LEVEL DISTANCES. ALL DISTANCES ARE IN FEET AND/OR DECIMALS THEREOF, EXCEPT AS NOTED.



EXHIBIT "B"

CD. ALAMEDA RTE. DAK KSW/JPS

SCALE: 1"=30' DATE: 04APR.05 DR.NO. H-3040-1

Exhibit B

Exhibit B: APN Map

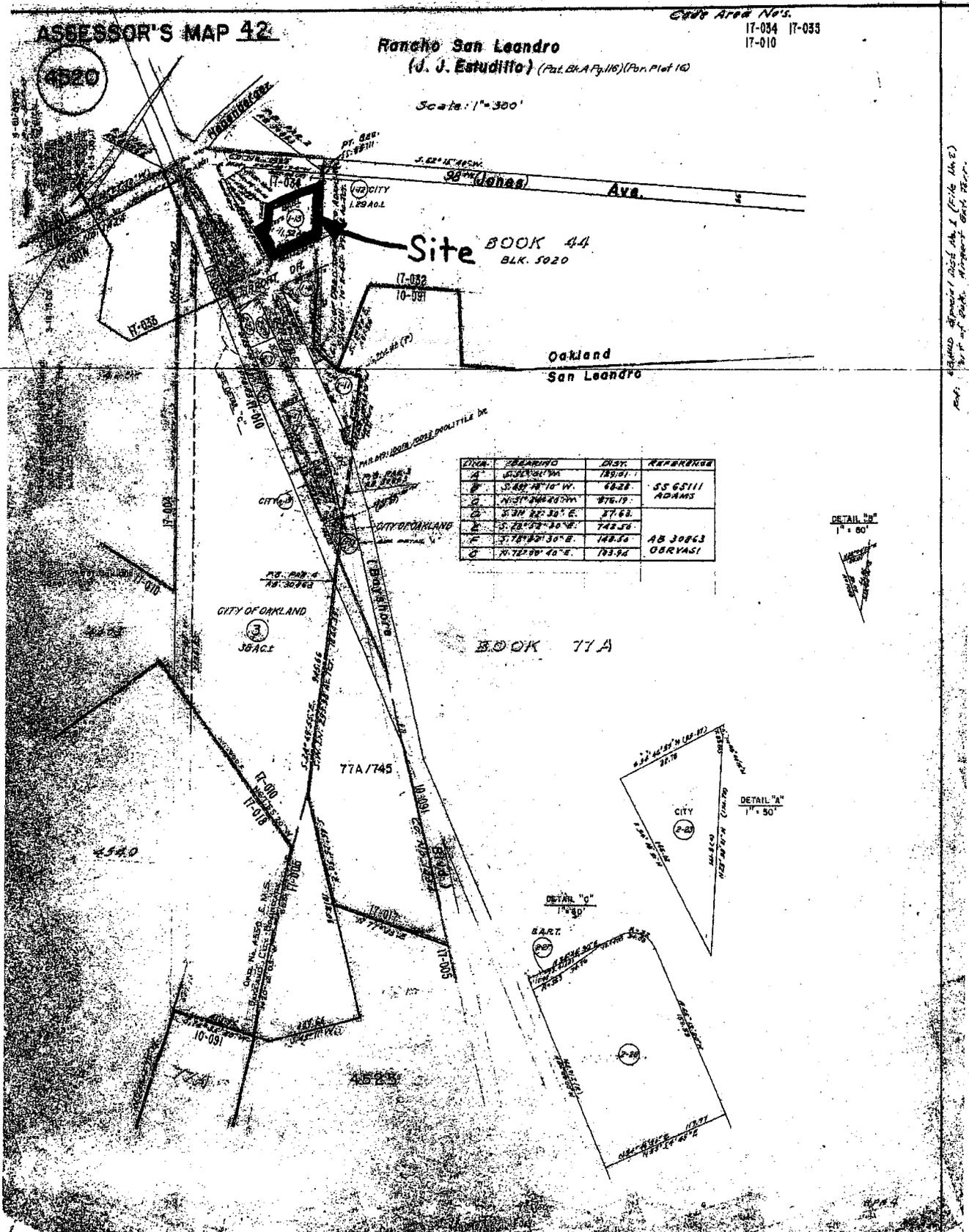
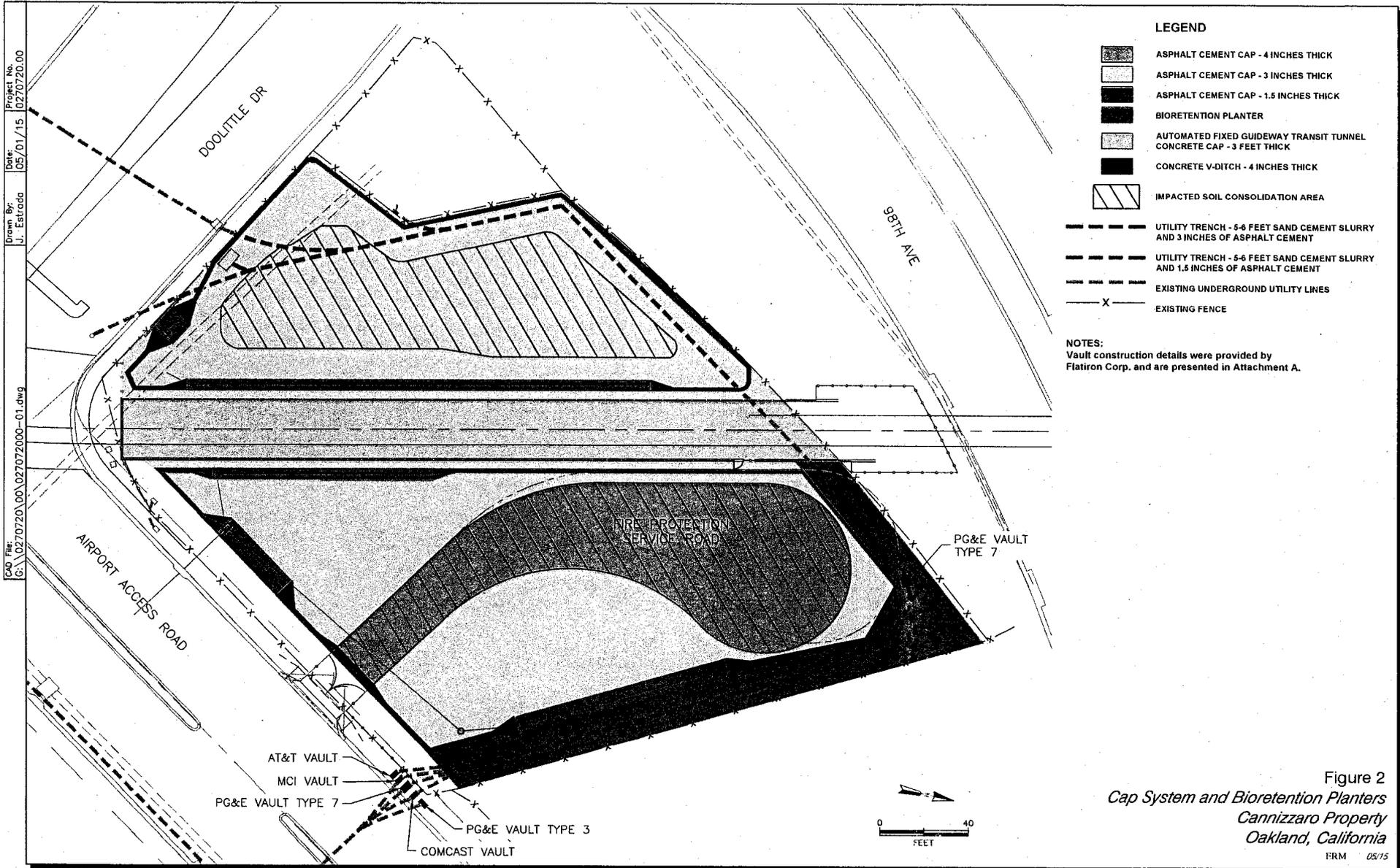


Exhibit C

Exhibit C: Site Diagram with Cap



Project No. 0270720.00
Date: 05/01/15
Drawn By: J. Estrada
CAD File: C:\0270720\00\027072000-01.dwg