

Sacramento Office of Education County

MAILING: P.O. Box 269003, Sacramento, CA 95826-9003
PHYSICAL LOCATION: 10474 Mather Boulevard, Mather, CA
(916) 228-2500 • www.scoe.net

David W. Gordon
Superintendent

May 30, 2013

MAY 31 2013

BOARD OF EDUCATION

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Charlie Ridenour, P.E., Branch Chief
Department of Toxic Substances Control
Clean-Up Program, Sacramento Office
8800 Cal Center Drive
Sacramento, CA 95826

~~MAY 31 2013~~

Pamela C. Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
California Environmental Protection Agency
11020 Sun Center Dr., Ste. 200
Rancho Cordova, CA 95670-6114

Re: Covenant to Restrict Use of Property – Environmental Restriction
(Former Mather Air Force Base, Parcels P-1 and P-2)

Dear Mr. Ridenour and Ms. Creedon:

The Covenant to Restrict Use of Property – Environmental Restriction documents for the former Mather Air Force Base, Parcels P-1 and P-2 were recorded on May 29, 2013 at the Sacramento County Clerk-Recorder's Office. A copy of each document is enclosed for your records.

Sincerely,

Maryanna Rickner

Maryanna Rickner
Legal Executive Assistant

Enclosures



COPY
ORIGINAL
Accepted for Recording
COPY-NOT CERTIFIED

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

MAY 29 2013

RECORDING REQUESTED BY:

Sacramento County Office of Education
10474 Mather Boulevard
Mather, CA 95655

Sacramento County
Clerk-Recorder

By 20130529 Pg 0556

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Clean-up Program, Sacramento Office
8800 Cal Center Drive
Sacramento, California 95826
ATTN: Charlie Ridenour, Branch Chief

MAY 31 2013

MAY 31 2013

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Former Mather Air Force Base, Parcel P-1, County of Sacramento APN 067-0010-015 (Portion), and DTSC Site Code 102227 (11 WP))

This Covenant and Agreement (Covenant) is made by and between Sacramento County Office of Education (Covenantor), and the Department of Toxic Substances Control (Department) and the Central Valley Regional Water Quality Control Board (Central Valley Water Board). The Covenantor is the current owner of property situated in County of Sacramento, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached and incorporated herein by this reference, (the Property).

Pursuant to Civil Code section 1471, the Department and Central Valley Water Board have 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, Department and Central Valley Water Board, collectively referred to as

the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 and the Water Code section 13307.1 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, the United States Environmental Protection Agency (U.S. EPA), as a third party beneficiary pursuant to general contract law, including, but not limited to, Civil Code section 1559.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property is contiguous, totaling approximately 9.906 acres, commonly referred to as Parcel P-1, and is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located on the former Mather Air Force Base, in the County of Sacramento, State of California. The Property is located in the area generally bounded by Missile Way on the north and west, and Spaatz Way on the south. The eastern boundary is not defined by a roadway. Exhibit "C" depicts the approximate boundaries of the Property relative to the former Mather Air Force Base. The Property is also generally described Sacramento County Assessor's Parcel No. 067-0010-015 (Portion).

1.02 The Property was transferred in fee to the County of Sacramento (County) by the United States, acting by and through the United States Secretary of the Air Force (the Air Force), pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. § 9601 et seq.) and the Finding of Suitability to Transfer (FOST) for Parcel A-1, P-1, and P-2 (AFRPA, March 2012) on January 31, 2013. Contaminated groundwater exists under the Property from migration from sources outside of the Property. Clean-up obligations of those sources are retained by and remain the responsibility of the Air Force as more particularly set forth in the Federal Facility Agreement entered into by U.S. EPA, the

Department (formerly known as the California Department of Health Services, Toxic Substances Control Program), and the Air Force, effective July 1989, as amended (FFA). To assure that human health and the environment will be protected, environmental restrictions will be placed on the Property that are designed to prevent exposure to the residual contamination in groundwater and protect cleanup remedies. For these reasons, the parties have chosen to enter into this Covenant. The Department and the Central Valley Water Board have concluded that the Property, subject to the restrictions of this Covenant, does not pose a present or unacceptable threat to human safety and the environment.

1.03 Groundwater Contamination. Groundwater contamination is present below the Property from migration of the groundwater volatile organic compound (VOC) plume up gradient of the Property. Groundwater at the Property is found 85 to 90 feet below ground surface and some groundwater contaminants are at concentrations exceeding their Maximum Contaminant Levels (MCLs). The VOC contamination is primarily trichloroethylene (TCE), tetrachloroethene (PCE) and carbon tetrachloride (CCl₄). Contaminants in the groundwater in nearby monitoring wells include PCE (up to 6 parts per billion, or ppb), TCE (up to 23 ppb) and CCl₄ (up to 43 ppb). California drinking water standards (MCLs) are 5 ppb for PCE and TCE and 0.5 ppb for CCl₄. U.S. EPA, the Department, and Central Valley Water Board conclude that the groundwater presents an unacceptable threat to human health and safety. A land use restriction is needed to prevent human health risks from exposure to contaminated groundwater. Therefore, a groundwater use restriction to prohibit the use of groundwater for any purpose other than groundwater quality monitoring is included in this Covenant.

1.04 Remedial Action. The remedial action to remove contaminated groundwater at the former Mather Air Force Base is being performed by the Air Force as part of the Soil Operable Unit (OU) Sites and Groundwater OU Plumes Record of Decision (ROD) (AFBCA, April 1996) under the supervision and authority of the EPA, the Department, and the Central Valley Water Board. Groundwater remediation is being achieved through a groundwater extraction and treatment program underway as

part of the ROD. An Explanation of Significant Difference (ESD) was prepared to include more detailed discussions of what is needed to meet the Groundwater OU ROD land-use restrictions requirements (AFRPA, 2009a).

1.05 U.S. EPA, the Department, and the Central Valley Water Board has concluded that the Property, remediated to the goals presented in the ROD, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health and 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 Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

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

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

2.05 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.

2.06 Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to or an ownership interest in all

or any portion of the Property.

2.07 Central Valley Water Board. "Central Valley Water Board" means the Regional Water Quality Control Board, Central Valley Region, and includes any successor agencies

2.08 U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

ARTICLE III

GENERAL PROVISIONS

3.01 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 Health and Safety Code section 25355.5 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 Central Valley Water Board, 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 the Health and Safety Code, 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 and Central Valley Water Board.

3.03 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.

3.04 Conveyance of Property. The Owner shall provide written notice to the Department and Central Valley Water Board not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written 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 (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department and Central Valley Water Board 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.

3.05 Costs of Administering the Covenant to be paid by Owner. The Department and Central Valley Water Board have already incurred and will in the future incur costs associated with the administration of 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) and Water Code section 13365, the Owner agrees to pay the Department's costs and the Central Valley Water Board's costs in administering the Covenant as to the Owner's Property.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01 Groundwater Use Restrictions. The following uses are prohibited on the Property:

(1) Any use of the Property that includes construction of any well or use of an existing well to extract groundwater from the Property for purposes other than monitoring or treatment of groundwater, and any activities that would cause the surface application or injection of water or other fluids (e.g., construction or creation of any

groundwater recharge area, unlined surface impoundments or injection well);

(2) Any use of the Property that would cause the covering or disturbing of groundwater monitoring wells or restrict access to groundwater monitoring wells; and

(3) Any use of the Property that would cause disturbance of or limit access to any equipment or systems associated with groundwater monitoring systems.

4.02 Access. The Department and Central Valley Water Board 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. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law. Nothing in this instrument shall limit or otherwise affect the Department's or Central Valley Water Board's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.03 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with section 4.01 of this Covenant, and shall submit an annual inspection report to the Department and Central Valley Water Board for its approval by February 1st 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 were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the

Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten (10 days) of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department, Central Valley Water Board, and U.S. EPA within ten (10 days) of its original transmission.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department or Central Valley Water Board 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, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department and Central Valley Water Board, shall be grounds for the Department or Central Valley Water Board to pursue administrative, civil, or criminal actions, as provided by law.

5.02 Enforcement Rights of U.S. EPA as a Third Party Beneficiary. The provisions of this Covenant shall be for the benefit of, and shall be enforceable by, U.S. EPA as a third party beneficiary. U.S. EPA, as a third party beneficiary, has the right to enforce the Environmental Restrictions contained herein.

ARTICLE VI

VARIANCE, REMOVAL, AND TERM

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

application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. The Central Valley Water Board must concur with the variance, and no variance may be granted under this paragraph without prior notice to and an opportunity to comment by U.S. EPA.

6.02 Removal of Restriction. Any person may apply to the Department to remove a restriction imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25224 and a copy of the application shall be submitted to U.S. EPA simultaneously with the application submitted to the Department. The Central Valley Water Board must concur with the removal, and no removal may be granted under this paragraph without prior notice to and opportunity to comment by U.S. EPA.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department and the Central Valley Water Board in the exercise of its discretion, after providing notice to and an opportunity to comment by U.S. EPA, 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. Further, nothing in this Covenant shall be construed to affect a taking under state or federal law.

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

7.03 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 Covenantor: Deputy Superintendent
Sacramento County Office of Education
P.O. Box 269003
Sacramento, CA 95826-9003

To Department: Branch Chief
Clean-up Program, Sacramento Office
Department of Toxic Substances Control
Sacramento Office
8800 Cal Center Drive
Sacramento, California 95826

To Central Valley Water Board: Executive Officer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114

To U.S. EPA: Chief, Federal Facilities and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code SFD-8-3
San Francisco, California 94105-3901

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.

7.04 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.

7.05 Statutory References. All statutory references include successor provisions.

7.06 Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

7.07 California Law. This Covenant shall be governed, performed and interpreted under the laws of the State of California.

7.08 Nothing set forth in this Covenant shall be construed to be a delegation of any authorities of the Department or Central Valley Water Board under any statute or regulation.

{Signatures follow}

IN WITNESS WHEREOF, the Parties execute this Covenant.

Date: May 28, 2013

SACRAMENTO COUNTY OFFICE OF EDUCATION

Susan Ann Stickel

SUSAN ANN STICKEL
Deputy Superintendent

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF Sacramento)

On 5/28/13, before me,
Date

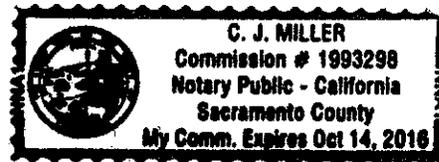
C. J. Miller, Notary Public
(space above this line is for name and title of the officer/notary),

personally appeared, Susan Ann Stickel, 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.

Signature C. J. Miller (Seal)
Notary Public



IN WITNESS WHEREOF, the Parties execute this Covenant.

Date: May 2, 2013

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Charlie Ridenour

CHARLIE RIDENOUR, P.E.

Branch Chief

Clean-up Program, Sacramento Office

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF Sacramento)

On May 2nd, 2013, before me,
Date

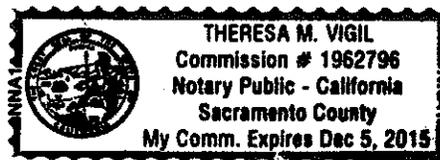
Theresa M. Vigil, Notary Public
(space above this line is for name and title of the officer/notary),

personally appeared, Charlie Ridenour, 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.

Signature Theresa M. Vigil (Seal)
Notary Public



IN WITNESS WHEREOF, the Parties executes this Covenant.

Date: 5/13/2013

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

Pamela Creedon

PAMELA C. CREEDON

Executive Officer

Central Valley Region, Regional Water Quality Control Board
California Environmental Protection Agency

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF SACRAMENTO)

On 5/13/2013, before me,
Date

KIRAN LANFRANCHI-RIZZARDI

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

personally appeared, PAMELA C. CREEDON, 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.

Signature *Kiran Lanfranchi-Rizzardi* (Seal)
Notary Public



EXHIBIT "A"

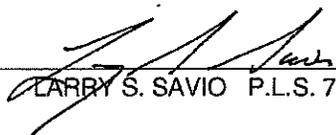
LEGAL DESCRIPTION

All that real property situated in the County of Sacramento, State of California, described as follows:

All that parcel of land being designated as, "U.S.A., NOT A PART OF THIS SURVEY 9.906± AC" being shown on that certain Record of Survey plat entitled "Mather Field Airport", filed in the Office of the Recorder, County of Sacramento, in Book 61 of Surveys, at Page 13, being more particularly described as follows:

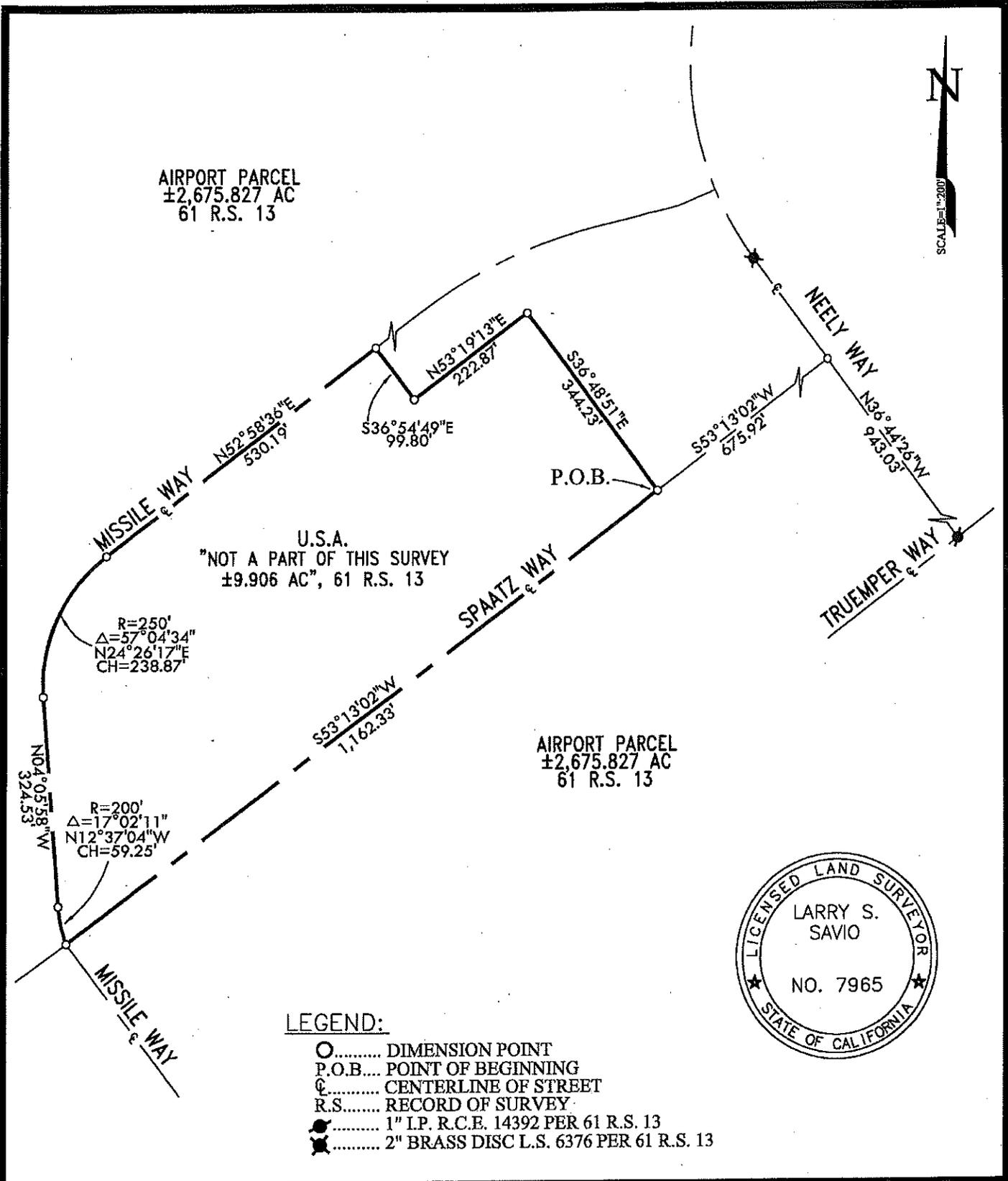
BEGINNING at a point on the centerline of Spaatz Way, said point being the most easterly corner of said 9.906± AC parcel of land, said point bearing the following two (2) courses and distances from a 1 inch iron pipe monument tagged R.C.E. 14392 marking the centerline intersection of Neely Way with Truemper Way, all of which being shown on said plat: 1) along the centerline of Neely Way, North 36°44'26" West, a distance of 943.03 feet to the centerline intersection of Neely Way with Spaatz Way; 2) leaving the centerline of Neely Way along the centerline of Spaatz Way, South 53°13'02" West, a distance of 675.92 feet; thence, from said **POINT OF BEGINNING** continuing along said Spaatz Way centerline, South 53°13'02" West, a distance of 1,162.33 feet to the centerline intersection of Spaatz Way with Missile Way; thence, leaving the centerline of Spaatz Way along the centerline of Missile Way, along an arc of non-tangent curvature to the right, having a radius of 200.00 feet, through a central angle of 17°02'11" and having a chord bearing of North 12°37'04" West, a distance of 59.25 feet; thence, continuing along said centerline, North 04°05'58" West, a distance of 324.53 feet to a point of curvature; thence, continuing along said centerline, along an arc of curve to the right having a radius of 250.00 feet, through a central angle of 57°04'34" and having a chord bearing of North 24°26'17" East, a distance of 238.87 feet; thence, continuing along said centerline, North 52°58'36" East, a distance of 530.19 feet; thence, leaving said centerline, South 36°54'49" East, a distance of 99.80 feet; thence, North 53°19'13" East, a distance of 222.87 feet; thence, South 36°48'51" East, a distance of 344.23 feet to the point of beginning containing an area of approximately 9.906 acres gross.

This description was prepared by me or under my direction pursuant to Section 8761.1 of the Professional Land Surveyor's Act.


 LARRY S. SAVIO P.L.S. 7965

Dated: 2/21/12





COUNTY OF SACRAMENTO

DEPARTMENT OF CO. ENGINEERING
DEVELOPMENT AND SURVEYOR
SERVICES, SURVEY SECTION

SCALE: 1"=200' FEBRUARY 2012

EXHIBIT "B"

ALL OF THE ±9.906 AC. PARCEL DESIGNATED
"U.S.A.- NOT A PART OF THIS SURVEY"
MATHER FIELD AIRPORT, 61 R.S. 13
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

EXHIBIT C



This figure depicts the approximate boundaries of the Property. Note features (e.g., roads, buildings, fences) may change over time.