

21
free
DW



2009-0012581

RECORDING REQUESTED BY:
United States of America
Department of the Navy
C/o BRAC Program Management Office
West
1455 Frazee Road, Suite 900
San Diego, California 92108

Recorded REC FEE 0.00
Official Records
County of
Marin
JOAN C. THAYER
Assessor-Recorder
09:46AM 13-Mar-2009 Page 1 of 21

WHEN RECORDED, MAIL TO:

~~Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3200
Attention: Theresa McGarry
Hazardous Substances Scientist, Project
Manager
Brownfields and Environmental
Restoration Program~~

~~San Francisco Bay Regional
Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
Attention: Bruce H. Wolfe, Executive
Officer~~

United States of America
Department of the Navy
C/o BRAC Program Management Office
West
1455 Frazee Road, Suite 900
San Diego, California 92108

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY
AND ENVIRONMENTAL RESTRICTION
FOR PARCEL 26, and PORTIONS OF PARCELS 17, 20, AND 30
(aka "EXCHANGE TRIANGLE PARCEL 1B")
AT DEPARTMENT OF DEFENSE HOUSING FACILITY, NOVATO**

This Covenant and Agreement ("Covenant") is made by and between the United States of America, acting by and through the Department of the Navy (the "Covenantor")

or "DON"), the current owner of certain property situated in the City of Novato, County of Marin, State of California, described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein by this reference (the "Property"), the State of California acting by and through the Department of Toxic Substances Control (the "Department"), and the San Francisco Bay Regional Water Quality Control Board (the "Water Board").

Pursuant to Civil Code Section 1471 and California Health and Safety Code ("H&SC") Section 25355.5, the Department and the 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 H&SC Section 25260, in the groundwater and the soil, and to protect waters of the State in accordance with California Water Code Division 7.

The Covenantor, the Department, and the Water Board, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety, and the environment.

The Covenantor retains sufficient legal title and interest in subject Property to insure continuing enforcement of the protective covenants and agreements contained within this Covenant to Restrict Use of the Property. As part of the Covenantor's retained legal interest, only the Covenantor can remove any or all of the underlying restrictions on the Property as set forth in the deed conveying the Property from the Covenantor to its successor in interest. The removal of the restrictions from the deed is at the sole discretion and authority of the Covenantor and subject to satisfaction of the requirements set forth in Article VI of this agreement. The Covenantor intends to assign the Property to the United States Department of Education, which intends to convey Covenantor's interest in the Property to the Novato Unified School District (NUSD).

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 2.95 acres, is located south of State Access Road beginning at the point of intersection of State Access Road and C Street on a portion of the former Department of Defense Housing Facility ("DODHF"), City of Novato, County of Marin, State of California.

The Property has been identified for proposed school use which may involve State funding for acquisition or construction of the school site. Therefore, an Owner or Occupant intending to use the Property for school purposes will be required to obtain final approval from the Department's School Property and Evaluation Program Division, in accordance with the environmental review process in the California Education Code section 17210 et seq.

1.02 In August 2000, the Water Board issued Order No. 00-064 ("Order"), which identified requirements for investigation and remediation of a portion of DODHF

Novato, including the Property. The Order addresses the contaminated Groundwater Plumes originating from the former locations of DON leaking underground storage tanks. One of these leaking underground storage tanks was located west of the Property, and three of the tanks were southwest of the Property, as shown in Exhibit "C" attached hereto and incorporated herein by this reference. The Groundwater Plume underlies the Property. Pursuant to the Order, DON conducted a Remedial Investigation ("RI", dated January 31, 2001), a Final Revised Risk Assessment (dated June 21, 2001 and amended September 4 and 11, 2003), and a Final Human Health Risk Assessment Update (dated August 31, 2006). DON issued a Corrective Action Plan ("CAP") in March 2002. The CAP selected a remedy of biosparging and monitored natural attenuation, with a cleanup level for MTBE of 13 micrograms/liter (" $\mu\text{g/L}$ "), the maximum contaminant level.

1.03 The DON prepared the Phase IV-D Exchange Triangle Parcel 2 West Finding of Suitability to Transfer ("FOST"), executed on August 30, 2004, and a First Amendment to the FOST, dated October 29, 2004. Additional environmental documents and relevant regulatory correspondence related to the Property can be obtained by contacting BRAC PMO West, 1455 Frazee Road, Suite 900, San Diego, California, 92108, Attention: Base Closure Manager (BCM) Novato.

1.04 Groundwater Contamination. The RI identified the Groundwater Plume underlying the Property. The aerial extent of the Groundwater Plume is shown in the FOST. The predominant Contaminant of Concern ("COC") in the Groundwater Plume is methyl tertiary butyl ether ("MTBE"). The estimated minimum depth to groundwater beneath the Property is approximately 9 to 13 feet below ground surface. The maximum concentration of MTBE in the Groundwater Plume beneath the Property was 620 $\mu\text{g/L}$ as of May 2008. Locations of extraction and injection wells for the treatment systems and the locations of monitoring wells located on or adjacent to the Property are shown in Exhibit "D".

1.05 Maximum Contaminant Levels. Drinking water standards are regulations that the Environmental Protection Agency sets to control the level of contaminants in the nation's drinking water. These enforceable standards protect the drinking water by limiting the levels of specific contaminants that can adversely affect public health and are known or anticipated to occur in water. The maximum contaminant level ("MCL") is the highest level of a contaminant that is allowed in drinking water. The MCL for MTBE is 13 $\mu\text{g/L}$ and the maximum groundwater concentration as of May 2008 was 620 $\mu\text{g/L}$. Therefore, the use restrictions in Article IV are required to ensure the protection of public health and safety.

1.06 The Water Board and the Department concur that remedial action objectives for soil have been met at the Property and that no further corrective action for soils at Parcel 1B is required based on the results of the 2001 Final Remedial Investigation. The Parties have concluded that the Property will be suitable for residential use and will not present an unacceptable threat to human health, safety, and the environment when there is compliance with the restrictions of this Covenant.

ARTICLE II
DEFINITIONS

2.01 **Department.** "Department" shall mean the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 **Owner.** "Owner" shall mean the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

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

2.04 **Covenantor.** "Covenantor" shall mean the United States of America, acting by and through the Department of the Navy.

2.05 **Water Board.** "Water Board" shall mean the San Francisco Bay Regional Water Quality Control Board and its successor agencies, if any.

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. These Restrictions, described in Article IV, are consistent with the separate restrictions placed in the deed by and in favor of the Covenantor, conveying the Property from the Covenantor to its successor in interest described above. Each and every Restriction: (a) runs with the land in perpetuity pursuant to H&SC 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) shall apply to and bind all subsequent Owners and Occupants of the Property; (d) is for the benefit of, and is enforceable by the Department and the Water Board; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 **Binding upon Owners and Occupants.** Pursuant to H&SC Section 25355.5, 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, as well as any Occupants and their agents. Pursuant to Civil Code Section

1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department and the Water Board.

3.03 Written Notification of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice to the subsequent transferee, pursuant to H&SC Section 25359.7, that a release of hazardous substances has come to be located on or beneath the Property. Such written notice shall include a copy of this Covenant.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference into 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 and Water Board 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 and the Water Board shall not, by reason of this Covenant alone, have authority to approve, disapprove, or otherwise affect a conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant. The Department will in the future incur costs associated with the administration of this Covenant. These costs must be paid by the Owner pursuant to California Code of Regulations, title 22, section 67391.1(h).

ARTICLE IV

NOTIFICATIONS, RESTRICTIONS AND REQUIREMENTS

4.01 Groundwater Management.

(a) The Owner or Occupant shall not:

(i) Conduct dewatering activities, including dewatering excavations, unless conducted in accordance with a DON, Department, and Water Board approved work plan.

(ii) Disturb or use existing groundwater monitoring wells without the prior written approval of the DON, Department, and Water Board.

(iii) Install groundwater production wells for residential, municipal, agricultural, or industrial use without the prior written approval of the DON, Department, and Water Board.

(iv) Conduct actions which could affect the gasoline constituent groundwater plumes (e.g., construction or creation of groundwater recharge areas, surface impoundments, or disposal trenches), unless conducted in accordance with a DON, Department, and Water Board approved work plan.

(b) The Owner or Occupant shall remove and dispose of any extracted contaminated or polluted groundwater in accordance with all applicable Federal, State and local laws and regulations.

4.02 Ongoing Corrective Actions. Construction and/or operations on the Property shall not interfere with ongoing corrective actions being conducted by or for the United States or any federal, state, or local regulatory agency.

4.03 Access for Department and the Water Board. The Department and the Water Board shall have reasonable right of entry and access to the Property for inspection, monitoring, testing, sampling, installation and monitoring of remedial systems and any other activities consistent with the purposes of this Covenant as deemed necessary by the Department and the Water Board in order to protect the public health or safety, or the environment and oversee any required activities.

4.04 Monitoring and Implementation. Monitoring and Implementation of this Covenant will be conducted by NUSD or its successor in interest. The Owner shall conduct an annual review of the Property and submit a letter report annually to both the Department and the Water Board summarizing compliance with all the terms of this Covenant. If violations are noted, the annual 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 cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission. The Department and Water Board shall have sole responsibility to enforce this requirement.

4.05 Owner Notification. The Owner shall notify the Department and the Water Board of each of the following: (1) The type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment or groundwater monitoring system installed on the Property pursuant to the requirements of the Water Board, which could affect the ability of such remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Water Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs. The Department and Water Board shall have sole responsibility to enforce this requirement.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with the Covenant shall be grounds for the Department or the Water Board to require that the Owner modify or remove any improvements ("Improvements" herein shall include but is not limited to all buildings, roads, driveways, utilities, wells and paved parking areas) constructed or placed upon any portion of the Property in violation of the Covenant. Violation of the Covenant by the Owner or Occupant may result in the imposition of civil and/or criminal remedies including nuisance or abatement against the Owner or Occupant as provided by law. The State of California shall have all remedies as provided for in California Civil Code Section 815.7 as that enactment may be from time to time amended.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, or any 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. The Department must receive the concurrence of the Water Board before any such variance may be effective.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant, or any 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. The Department must receive the concurrence of the Water Board before any such termination is effective.

6.03 Term. Unless ended in accordance with the termination section above, by law or by the Department and the Water Board in the exercise of their 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 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Marin 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: BRAC Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108
Attention: Base Closure Manager Novato
- To School District: Novato Unified School District
1015 Seventh Street
Novato, California 94945
Attention: Executive Director
Facilities, Maintenance & Operations
- To Department: Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3200
Attention: Supervising Hazardous Substances Engineer II
Brownfields and Environmental Restoration Program
- To Water Board: San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612
Attention: Executive Officer

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 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.

7.05 Statutory References. All statutory references include successor provisions.

7.06 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

7.07 Exhibits. All exhibits referenced in this Covenant and attached hereto are deemed incorporated into this Covenant by reference. Exhibits include:

Exhibit A – Legal Description.

Exhibit B – Property Plat

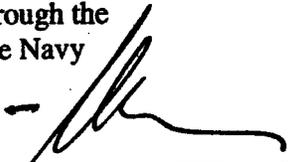
Exhibit C – Plume Location Map

Exhibit D – Monitoring Well Map

IN WITNESS WHEREOF, the Parties execute this Covenant.

UNITED STATES OF AMERICA,
Acting by and through the
Department of the Navy

By:


WILLIAM R. CARSILO
Real Estate Contracting Officer

Date:

9/24/08

STATE OF CALIFORNIA,
Acting by and through the
California Environmental Protection Agency,
Department of Toxic Substances Control

By:

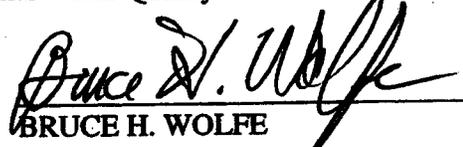

THERESA MCGARRY
Hazardous Substances Scientist, Project Manager
Brownfields and Environmental Restoration Program
Sacramento Office

Date:

9-5-2008

Acting by and through the
Regional Water Quality Control Board

By:


BRUCE H. WOLFE
Executive Officer
San Francisco Bay Region

Date:

9/11/08

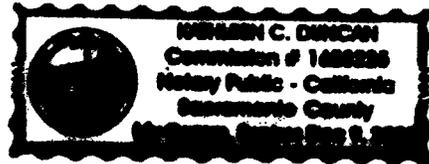
State of California
County of Sacramento

On September 5, 2008 before me, Kathleen C. Duncan, Notary Public, personally appeared Theresa McHarry, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within (attached) instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person 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 Kathleen C. Duncan



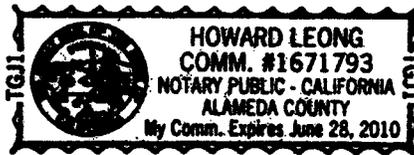
State of California
County of Alameda

On Sept 11, 2008, before me, HOWARD LEONG, Notary Public, personally appeared BRUCE H WOLFE, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within (attached) instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature HL



State of California

County of SAN MATEO

On 9/24/08, before me, STEVEN A. WAGNER, Notary Public, personally appeared WILLIAM R. CARSEW who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within (attached) instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person 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 

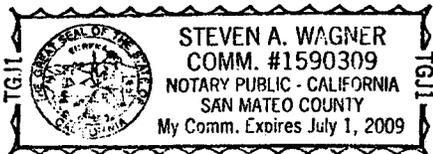


EXHIBIT A

Rev.: August 12, 2005
Date: March 17, 2005
File: 4.1043.02

**DESCRIPTION
NOVATO UNIFIED SCHOOL DISTRICT
PARCEL 1B AT HAMILTON**

A Parcel of land situate in the City of Novato, County of Marin, State of California, more particularly described as follows:

BEGINNING at the northwest corner of the Parcel granted to Novato Unified School District (N.U.S.D.) by Quit Claim Deed, recorded May 30, 2002, in Document No. 2002-046176, Marin County Records:

thence leaving said line of N.U.S.D., North 83°33'57" West, 25.00 feet;

thence North 06°26'03" East, 489.94 feet;

thence along a curve to the left, tangent to the proceeding course, having a radius of 182.50 feet, through a central angle of 48°23'37", an arc length of 154.14 feet;

thence along a compound curve having a radius of 1837.72 feet, through a central angle of 02°41'13", an arc length of 86.18 feet to the southerly line of State Access Road, as shown on the "Parcel Map of Hamilton Field Phase Two Stage One", filed August 20, 1997, in Book 26 of Parcel Maps, at Page 39, Marin County Records;

thence along said southerly line of State Access Road, South 84°51'44" East, 34.09 feet to the southwesterly line of the Parcel granted to the Golden Gate Bridge Highway and Transportation District (GGBH&TD) by Deed, recorded June 29, 1990, in Document No. 90-038197, Marin County Records;

thence along said southwesterly line of GGBH&TD, in a southerly direction, along a curve to the right, whose radius point bears South 46°09'20" West, 1,859.91 feet, through a central angle of 16°24'04", an arc length of 532.41 feet;

thence along a compound curve, having a radius of 2,241.88 feet, through a central angle of 00°45'00", an arc length of 29.35 feet;

thence along a compound curve, having a radius of 2,814.84 feet, through a central angle of 00°36'00", an arc length of 29.48 feet;

thence along a compound curve, having a radius of 3,769.74 feet, through a central angle of 00°27'00", an arc length of 29.61 feet;

thence along a compound curve, having a radius of 5,679.61 feet, through a central angle of 00°18'00", an arc length of 29.74 feet;

thence along a compound curve, having a radius of 11,409.17 feet, through a central angle of 00°09'00", an arc length of 29.87 feet;

thence South 25°11'36" East, 40.07 feet to the northeast corner of the afore mentioned N.U.S.D. Parcel (Doc. No. 2002-046176);

thence leaving said southwesterly line of GGBH&TD Parcel, and along the northerly line of said N.U.S.D. Parcel, North 83°33'57" West, 128.01 feet;

thence South 06°26'03" West, 130.00 feet;

thence North 83°33'57" West, 210.00 feet to the Point of Beginning.

Containing 2.95 acres more or less.

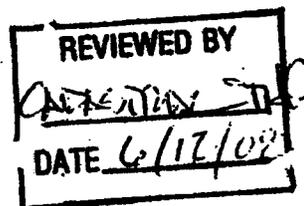
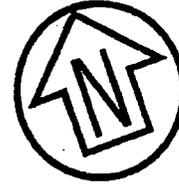


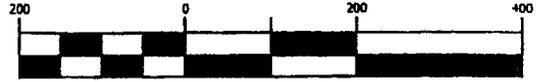
EXHIBIT B

LEGEND

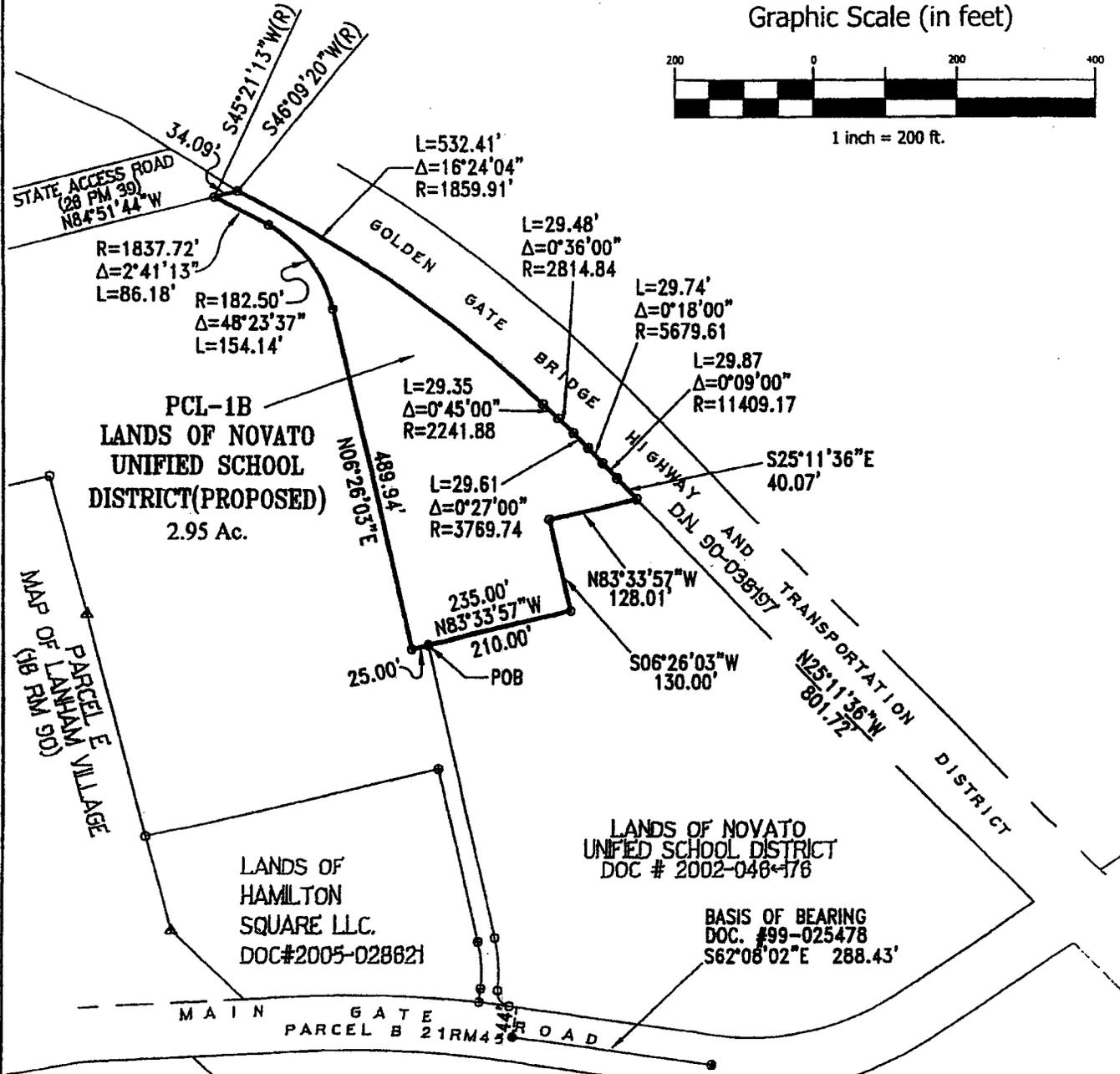
- ⊙ INDICATES FOUND STD. STREET MONUMENT (21RM45)
- POB POINT OF BEGINNING
- (R) RADIAL



Graphic Scale (in feet)



1 inch = 200 ft.



CSW [St]² CSW/STUBER-STROEH ENGINEERING GROUP, INC. CONSULTING ENGINEERS
 790 DeLong Ave., Novato, CA. 94945-3246
 (415) 892-4763 FAX (415) 892-4502
 © 2004

REV. 08-11-05 03/18/05
 SCALE: 1" = 200'
PUBLIC BENEFIT CONVEYANCE TO NOVATO UNIFIED SCHOOL DISTRICT
 NOVATO MARIN CALIFORNIA

JOB# 4104302

ORIGINAL

SECRET

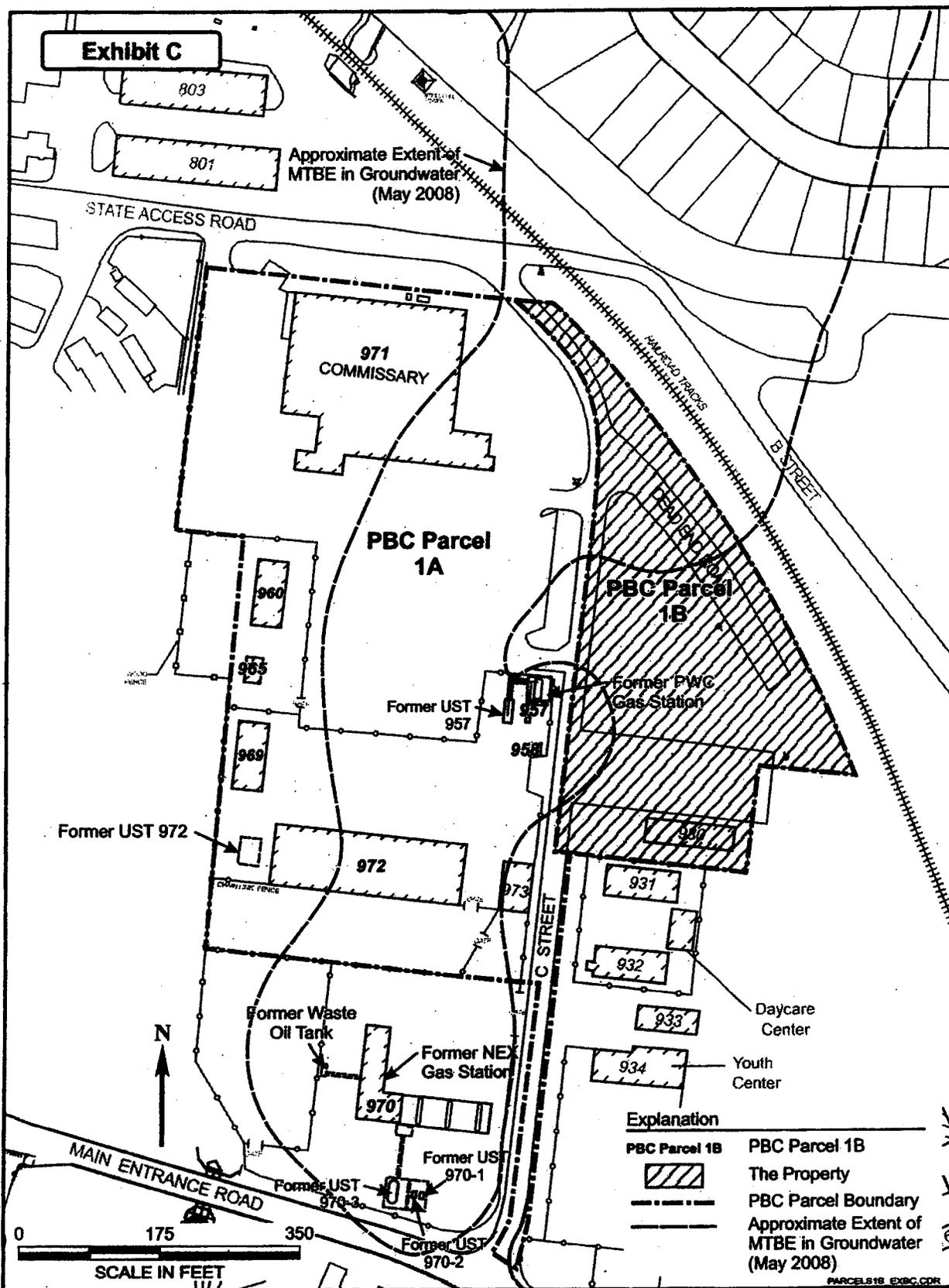


EXHIBIT D

