

2015-067765 CONF

10:44 am 06/29/15 DR AG Fee: NO FEE

Count of pages 16

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

Sequoia Union High School District
480 James Street
Redwood City, CA 94062

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Brownfields and Environmental
Restoration Program
Attention: Myrtle Street High School
Campus Phase 2 Site Project Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE
For the benefit of the People of California, no recording fee is required.
(Government Code Section 27383)

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of San Mateo, Assessor Parcel Number(s): Portion of APN 063-352-170
Myrtle Street High School Campus Phase 2 Site
Department Site Code 201984

This Land Use Covenant and Agreement ("Covenant") is made by and between Sequoia Union High School District (the "Covenantor"), the current owner of property located at 980 Myrtle Street, East Palo Alto, in the County of San Mateo, 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 0.9 acre, is more particularly described in the attached Exhibit A, "Legal Description", and depicted in Exhibit B. The Property is located in the area now generally bounded by residences and Eastside College Preparatory School to the north, residences to the west, and Sequoia Union High School District property to the south and east. The Property is also identified as a portion of County of San Mateo, Assessor Parcel Number 063-352-170.

1.2. Remediation of Property. This Property has been investigated and/or remediated under the Department's oversight. The Department approved a Removal Action Workplan in accordance with Health and Safety Code, division 20, chapter 6.8. The remediation activities conducted at the Property include soil excavation, consolidation, and capping with landscape and pavement. Excess contaminated soil that cannot be consolidated per the planned school construction at the Property was disposed to licensed landfills. The remediation includes construction and maintenance of a landscape and pavement cover ("Cap") over portions of the Property. The Cap consists of synthetic membrane and other associated layers, as more particularly described in the as-built drawing attached as Exhibit "C" hereto. The operation and maintenance of the Cap is pursuant to an Operation and Maintenance Plan incorporated in the Operation and Maintenance Agreement between Covenantor and the Department dated June 23, 2015.

Hazardous substances, including chlordane, dieldrin, DDT, arsenic and lead, remain at the Property above levels acceptable for unrestricted land use. The sources of these substances are associated with past agricultural uses of the Property, pest control activities around structures, and lead-based paint residue. Groundwater has not been impacted from these activities

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.

2.7. Cap. "Cap" means the landscape and pavement cover on portions of the Property where hazardous substances remain at levels above unrestricted land use.

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 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 below the synthetic membrane in landscaped areas and below the Cap materials in paved areas (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 contaminated 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 activities shall not be conducted at the Property:

- (a) Drilling for any water, oil, or gas without prior written approval by the

Department.

- (b) Extraction or removal of groundwater without a Groundwater Management Plan pre-approved by the Department in writing.
- (c) Activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of the Cap, or the access to, any investigative, remedial, monitoring, operation or maintenance system or activity 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 remediation of the Property was completed in September 2014. 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 September 15th 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 San Mateo 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:

Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062
Attention: Louise Pacheco

and

To Department: Unit Chief

Brownfields and Environmental Restoration Program
Berkeley Office
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: Myrtle Street High School Campus Phase 2 Project Manager

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: Sequoia Union High School District

By: 

Title: JAMES LIANIDES - SUPERINTENDENT

Print Name and Title of Signatory

Date: 4/11/15

Department of Toxic Substances Control:

By: 

Denise M. Tsuji

Title: Unit Chief

Brownfields and Environmental Restoration Program

Date: June 25, 2015



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 6/25/15 before me,

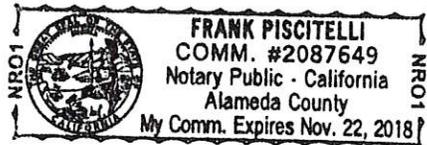
FRANK PISCITELLI, NOTARY PUBLIC
(space above this line is for name and title of the officer/notary),

personally appeared DEMISE MISAKO TSUJI, 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,

Frank Piscitelli (seal)
Signature of Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

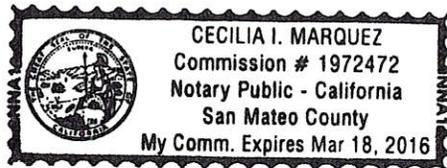
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Mateo)
On April 1, 2015 before me, Cecilia I. Marquez, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared James William Lianides
Name(s) of Signer(s)

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 Cecilia Marquez
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Land use covenant & agreement Document Date: n/a
Number of Pages: 11 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: James William Lianides
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Exhibit "A"
Legal Description For
Capped Soil Area

All that certain real property, situate in the City of East Palo Alto, County of San Mateo, State of California, being a portion of the lands of Sequoia Union High School District as described in that certain Grant Deed recorded August 9, 2013 as Document No. 2013-116284, San Mateo County Records, as shown on Exhibit "B" made a part hereof, more particularly described as follows:

Commencing at the Northeastern corner of said lands; thence along the Easterly line of said lands, South 01°29'00" East, 6.37 feet to the **Point of Beginning**; thence continuing along last said line, South 01°29'00" East, 144.79 feet; thence leaving last said line and along the following four (4) courses:

1. South 88°31'57" West, 155.50 feet
2. North 01°31'52" West, 38.14 feet
3. North 11°53'57" West, 15.01 feet
4. North 01°30'58" West, 98.03 feet to the Northerly line of said lands.

Thence along last said line, North 88°27'00" East, 32.41 feet; thence leaving last said line and along the following two (2) courses:

1. South 02°21'15" East, 6.37 feet
2. North 88°27'00" East, 125.80 feet to the **Point of Beginning**.

Excepting therefrom the following two (2) portions of land:

Commencing at the Northeastern corner of said lands; thence South 39°07'22" West, 139.87 feet to the **Point of Beginning**; thence North 88°10'26" East, 15.13 feet; thence South 01°49'34" East, 4.92 feet; thence South 88°10'26" West, 15.13 feet; thence North 01°49'34" West, 4.92 feet to the **Point of Beginning**.

Commencing at the Northeastern corner of said lands; thence South 17°59'02" West, 112.76 feet to the **Point of Beginning**; thence North 88°20'11" East, 15.13 feet; thence South 01°39'49" East, 4.92 feet; thence South 88°20'11" West, 15.13 feet; thence North 01°39'49" West, 4.92 feet to the **Point of Beginning**.

Containing 0.52 acres, more or less.





MYRTLE STREET (60')

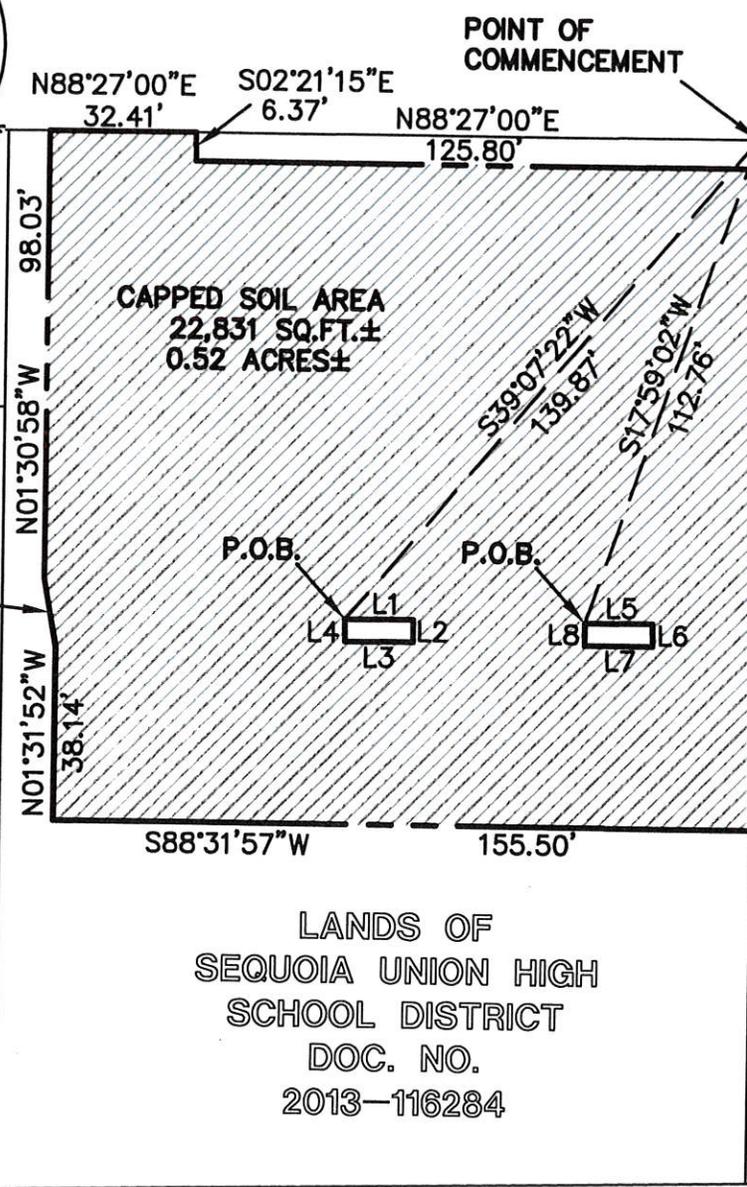
LOT 8
130 MAPS 60

LOT 74
130 MAPS 60

N11°53'57"W
15.01'

LOT 6
130 MAPS 60

LOT 5
130 MAPS 60



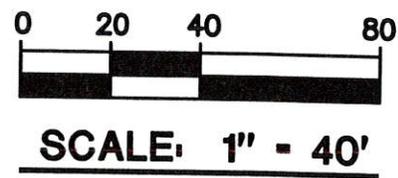
S01°29'00"E
6.37'

S01°29'00"E
144.79'

LANDS OF SEQUOIA UNION HIGH SCHOOL DISTRICT

LINE TABLE

L1	N88°10'26"E	15.13'	L5	N88°20'11"E	15.13'
L2	S01°49'34"E	4.92'	L6	S01°39'49"E	4.92'
L3	S88°10'26"W	15.13'	L7	S88°20'11"W	15.13'
L4	N01°49'34"W	4.92'	L8	N01°39'49"W	4.92'



LEA & BRAZE ENGINEERING, INC.
CIVIL ENGINEERS • LAND SURVEYORS

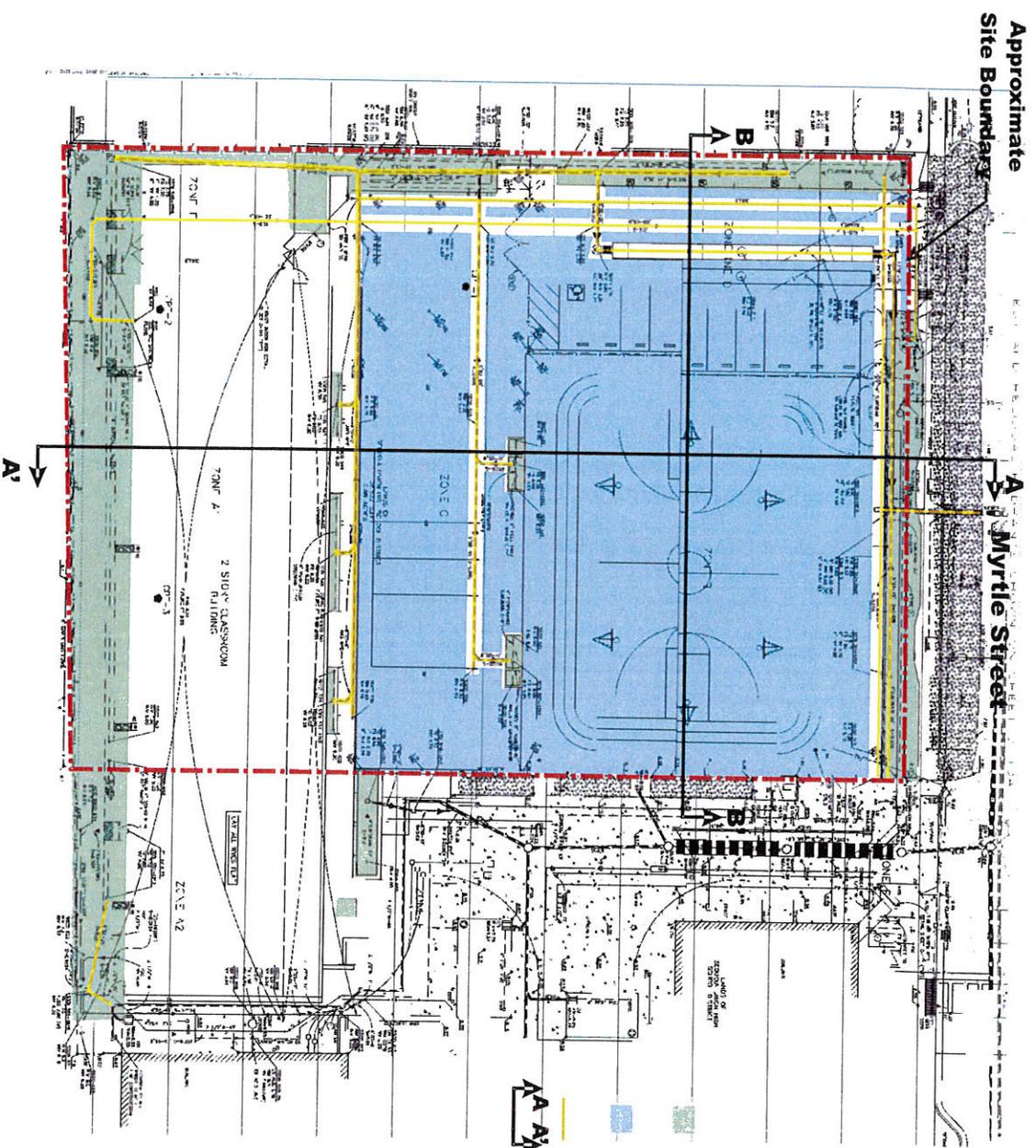
BAY AREA REGION
2495 INDUSTRIAL PKWY WEST
HAYWARD, CALIFORNIA 94545
(P) (510) 887-4086
(F) (510) 887-3019
WWW.LEABRAZE.COM

SACRAMENTO REGION
3017 DOUGLAS BLVD, # 300
ROSEVILLE, CA 95661
(P) (916)966-1338
(F) (916)797-7363

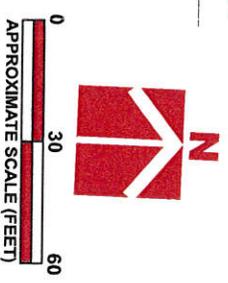
EXHIBIT "B"
PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR:
CAPPED SOIL AREA
980 MYRTLE STREET
EAST PALO ALTO, CALIFORNIA
SAN MATEO COUNTY

Exhibit C
As-Built Drawing

Based by CSDA Design Group, "Paving Plan - L306"



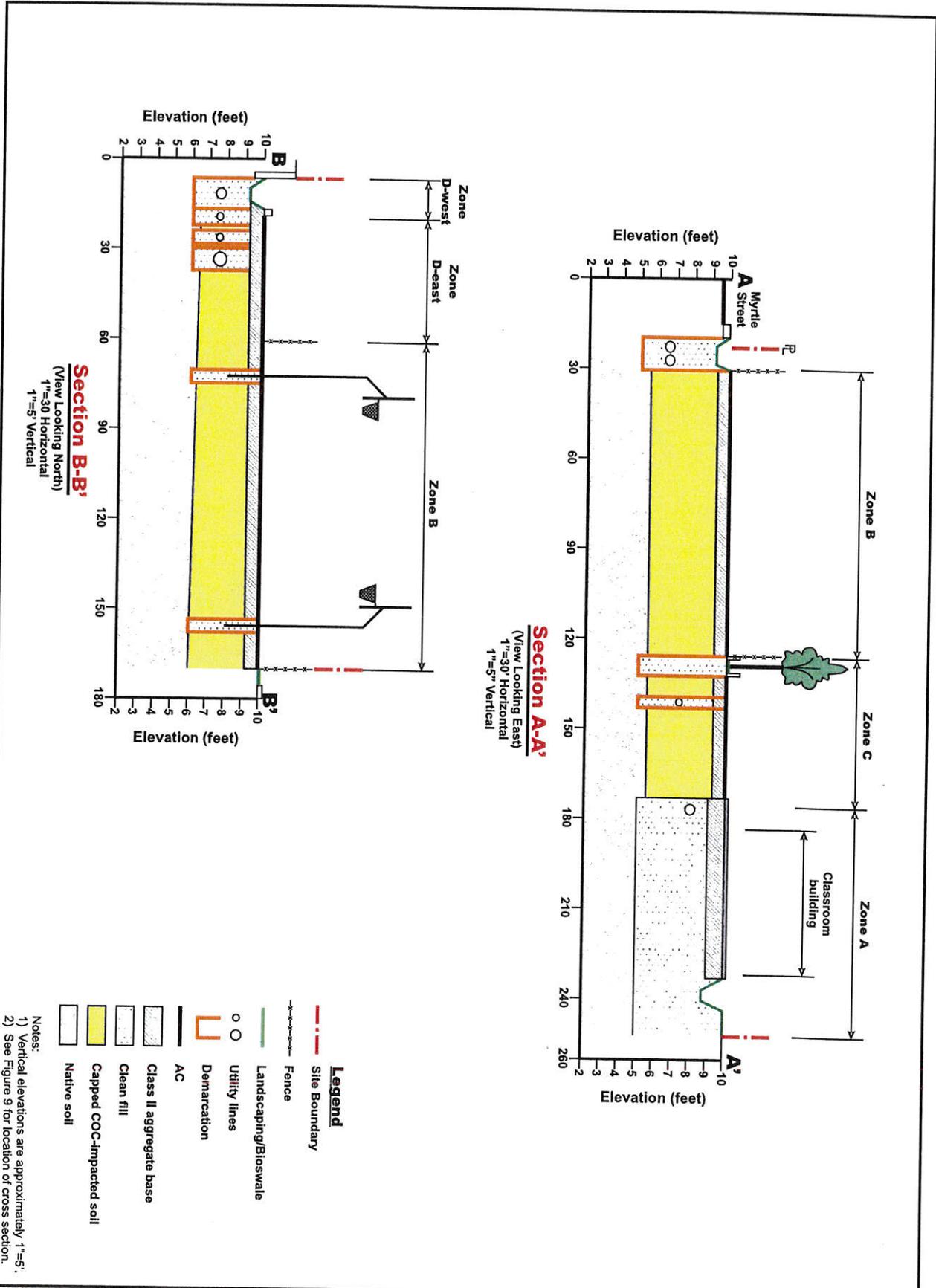
- Legend**
- Bioswale or landscaping
 - Approximate area of COC- Impacted soil capped by asphalt pavement and aggregate base rock
 - Utilities
 - Cross section



Capped Area with Utilities

980 Myrtle Street
East Palo Alto, CA

Project Number	166-13-5
Figure Number	Figure 5
Date	November 2014
Drawn By	FLL, RRN



Section A-A'
 (View Looking East)
 1"=30' Horizontal
 1"=5" Vertical

Section B-B'
 (View Looking North)
 1"=30' Horizontal
 1"=5" Vertical

- Legend**
- Site Boundary
 - - - - - Fence
 - Landscaping/Bioswale
 - ○ Utility lines
 - Demarcation
 - AC
 - ▨ Class II aggregate base
 - ▨ Clean fill
 - ▨ Capped COC-Impacted soil
 - ▨ Native soil

Notes:
 1) Vertical elevations are approximately 1"=5".
 2) See Figure 9 for location of cross section.



Conceptual Cross Sections of Capped Area

980 Myrtle Street
 East Palo Alto, CA

Project Number	166-13-5
Figure Number	Figure 6
Date	November 2014
Drawn By	RRN

County of San Mateo
Assessor-County Clerk-Recorder
Mark Church

555 County Center
Redwood City, CA, 94063

Finalization 2015044215
6/29/15 10:44 am
014 32

Item	Title	
1	DR	
Declaration Covn, Cond & Restr		
1	AG	
Agreement		
Document ID		Amount
DOC# 2015-067765		85.00
Time Recorded 10:44 am		

Total 0.00

Payment Type	Amount
NO FEE	85.00
Amount Due	0.00

THANK YOU
PLEASE RETAIN THIS RECEIPT
FOR YOUR RECORDS