



DEC 08, 2010 2:21 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 0.00

PAGES: 13



FS
13P
NF
NS

RECORDING REQUESTED BY:
Rancho Santa Fe School District
5927 La Granada
Rancho Santa Fe, California 92067

WHEN RECORDED, MAIL TO:
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Christine Chiu
Schools Team

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of San Diego, Assessor Parcel Numbers (APNs) 266-182-21-00 and 266-182-22-00; DTSC Site Name: Rancho Santa Fe Expansion Properties, more specifically, the "Dacus" parcels; DTSC Site Code: 404833)

This Covenant and Agreement ("Covenant") is made by and between the Rancho Santa Fe School District (the "Covenantor"), the current owner of property situated in Rancho Santa Fe, County of San Diego, State of California, described in Exhibit "A" and depicted in Exhibit "B," attached, (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 Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code sections 25222.1 and 25355.5 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.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.28 acres, is more particularly described and depicted in the attached Exhibits "A" and "B". The Property is located in the area now generally bounded by La Granada to the north, Mimosa Place to the west, El Fuego to the east, and by a privately owned residential property to the south as depicted in Exhibit "C" (refer to "Dacus Parcels"). The Property is also generally described as San Diego County Assessor's Parcel Numbers (APNs): 266-182-21-00 and 266-182-22-00.

1.02. The Preliminary Endangerment Assessment (PEA), including a Human Health Screening Evaluation, was approved by the Department on October 20, 2009. The PEA recommended land use restrictions. The Supplemental Site Investigation (SSI) report, dated September 2010, included an updated Human Health Risk Evaluation and confirmed the requirement of land use restrictions on the Property as part of the site remediation because groundwater is not completely characterized and an up-gradient source of petroleum hydrocarbons continues to impact groundwater beneath the Property. Petroleum hydrocarbons, including benzene, are hazardous materials as defined in Health and Safety Code section 25260.

1.03. The SSI report, which includes an updated Human Health Risk Evaluation, was approved by the Department on October 21, 2010 conditioned upon recordation of a land use covenant. Groundwater beneath the Property contains hazardous materials, as defined in Health and Safety Code section 25260 which include the following contaminants of concern set forth as follows: total petroleum hydrocarbons (TPH) - gasoline at less than 50 ug/l; TPH - diesel at less than 510 ug/l; TPH - motor oil at less than 510 ug/l; benzene at 0.61 ug/l; ethylbenzene at less than 0.5 ug/l; methyl tert-butyl ether (MTBE) at 4.4 ug/l; and ethyl tert-butyl ether (ETBE) at 1.3 ug/l. Using these groundwater concentrations at a depth of 5 feet below ground surface of the Property, the modeled indoor air concentrations used in the Human Health Risk Evaluation were

benzene at 7.79E-05 mg/m³ and MTBE at 7.29E-05 mg/m³. Based on the updated Human Health Risk Evaluation and because groundwater is not completely characterized and an up-gradient source of petroleum hydrocarbons continues to impact groundwater beneath the Property, the Department concluded that the Property, subject to the restrictions of a land use covenant, does not present an unacceptable threat to human health or safety or the environment if limited to outdoor use.

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 all or any portion of the Property.

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 sections 25222.1 and 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 (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.

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 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 APNs 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 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 has 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), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. No buildings shall be constructed on the Property without prior approval by the Department.

4.02. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.03. 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 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 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 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 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, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02. Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Diego 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 Owner: Rancho Santa Fe School District
 c/o Ms. Lindy Delaney, Superintendent
 5927 La Granada
 P.O. Box 809
 Rancho Santa Fe, California 92067
 Telephone: (858) 756-1141
 Facsimile: (858)756-0712

and

To Department: Department of Toxic Substances Control
 c/o Ms. Christine Chiu, Project Manager
 5796 Corporate Avenue
 Cypress, California 90630
 Telephone: (714) 484-5340
 Facsimile: (714) 484-5326

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.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Rancho Santa Fe School District

By (signature): 
Name/Title: Lindy Delaney, Superintendent

Date: 11/11/2010

Department of Toxic Substances Control:

By (signature): 
Name/Title: Christine Chiu, Project Manager

Date: 15 NOV 10

State of California

County of San Diego

On November 11, 2010 before me, DARIA A. QUAY, Notary Public, personally appeared LINDY ANN DELANEY 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 Daria Quay (Seal)

State of California

County of Orange

On Nov. 15, 2010, before me, Lisa Twarog, Notary Public,
personally appeared Christine Lee Chin,

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 Lisa Twarog (Seal)

EXHIBIT I TO GRANT DEED

Real property in the unincorporated area of the County of San Diego, State of California,
described as follows:

LOT 24 IN THE RESUBDIVISION OF BLOCKS 25 AND 26 AND PORTIONS OF BLOCKS 19, 20, 32,
AND 33 OF RANCHO SANTA FE, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,
ACCORDING TO MAP THEREOF NO. 2129, FILED IN THE OFFICE OF THE COUNTY RECORDER
OF SAN DIEGO COUNTY, SEPTEMBER 12, 1928, TOGETHER WITH THOSE CERTAIN ADJOINING
PORTIONS OF PUBLIC ROADS ADJACENT TO THE HEREBINABOVE DESCRIBED PROPERTY TO
THE CENTER LINE OF SAID PUBLIC ROADS.

APN: 266-182-21

Real property in the unincorporated area of the County of San Diego, State of California,
described as follows:

LOT 138 IN THE RESUBDIVISION OF BLOCKS 25 AND 26 AND PORTIONS OF BLOCKS 19, 20,
32 AND 33 OF RANCHO SANTA FE, IN THE COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2129, FILED IN THE OFFICE OF THE
COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 12, 1928, TOGETHER WITH
THOSE CERTAIN ADJOINING PORTIONS OF PUBLIC ROADS ADJACENT TO THE
HEREINABOVE DESCRIBED PROPERTY TO THE CENTER LINE OF SAID PUBLIC ROADS.

APN: 266-182-22

64831R.J

3

Description: San Diego, CA Document-Year.DocID 2009.410189 Page: 3 of 4
Order: 266-182-21-00 Comment:

*Exhibit A Legal Description
Dacus Parcels
Rancho Santa Fe School District
Expansion Parcels, SSI
Rancho Santa Fe, California*

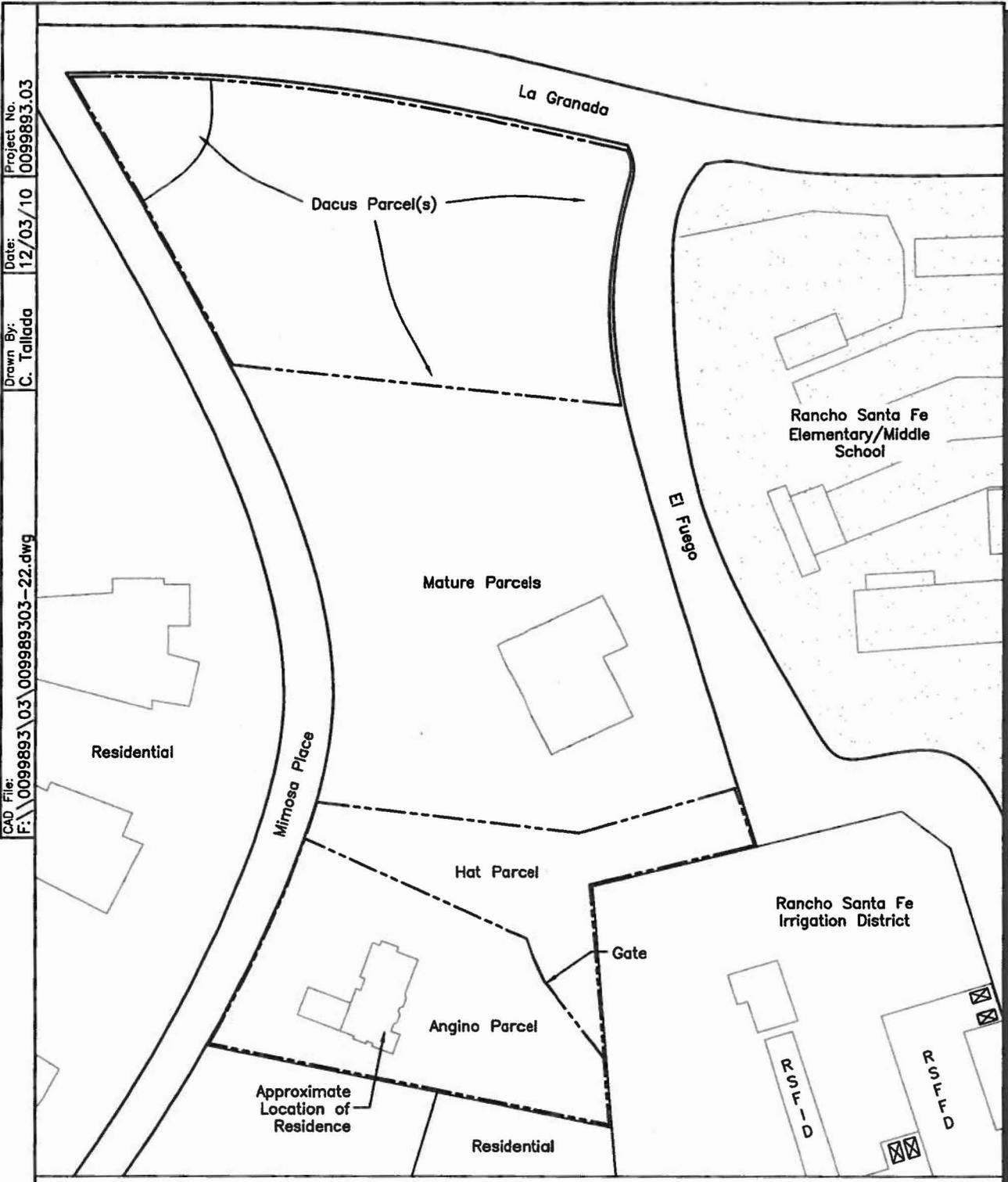
ERM 09/10

CAD File:
F:\\0099893\\03\\009989303-21.dwg

Drawn By:
C. Tallada

Date:
09/15/10

Project No.
0099893.03



CAD File: F:\0099893\03\009989303-22.dwg
 Drawn By: C. Tallada
 Date: 12/03/10
 Project No. 0099893.03

LEGEND
 - - - - - Approximate Expansion Parcel Boundaries

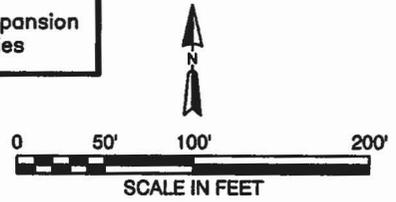


Exhibit C
Site Vicinity Map
Rancho Santa Fe School District
Expansion Parcels, SSI
Rancho Santa Fe, California