

ALAMEDA COUNTY  
HEALTH CARE SERVICES



AGENCY  
DAVID J. KEARS, Agency Director

September 27, 2001

Mr. Thomas Enger  
Aetna Real Estate Associates, L.P.  
455 Market Street, Suite 1540  
San Francisco, California 94105

Mr. Thomas Gram  
Former Eastshore Partners  
5801 Christie Avenue, # 608  
Emeryville, California 94608

ENVIRONMENTAL HEALTH SERVICES  
ENVIRONMENTAL PROTECTION  
1131 Harbor Bay Parkway, Suite 250  
Alameda, CA 94502-6577  
(510) 567-6700  
FAX (510) 337-9335

**RE: Fuel Leak Site Case Closure  
(STID # 1184 / RO #69)**

**Powell Street Plaza, Formerly Pacific Intermountain Express (PIE)  
5700-5795 Christie Ave., (Formerly 5500 Eastshore Highway)  
Emeryville, California 94608**

Dear Messrs. Enger and Gram:

This letter transmits the enclosed underground storage tank (UST) case closure letter in accordance with Chapter 6.75 ( Article 4, Section 25299.37 [h] ). The State Water Resources Control Board adopted this letter on February 20, 1997. As of March 1, 1997, the Alameda County Environmental Health Services, Local Oversight Program is required to use this case closure letter for all UST leak sites. We are also transmitting to you the enclosed case closure summary. These documents confirm the completion of the investigation and cleanup of the reported release at the subject site. The subject fuel leak case is closed.

**Site Investigation and Cleanup Summary:**

Please be advised that the following conditions exist at the site:

- One thousand two hundred parts per million (ppm) Total Petroleum Hydrocarbon (TPH) as gasoline; 17,000 ppm TPH as diesel; 47,000 ppm TPH motor oil; 24 ppm benzene; 20 ppm toluene; and 14 ppm xylene remain in soil at the site.
- Eighty parts per billion (ppb) TPH as gasoline; 7,400,000 ppb TPH diesel; 600 ppb TPH motor oil; and 1 ppb benzene remain in groundwater beneath the site.
- An approved long term risk management plan (RMP) should be implemented to address residual soil and groundwater contamination left at the site during any construction activities at the subject site.
- A deed restriction should be recorded for the subject site. Copies of the recorded deed restriction should be submitted to Alameda County Department of Environmental Health and Emeryville Building and Planning Department.

If you have any questions, please contact me at (510) 567-6780. Thank you.

Sincerely,

Susan L. Hugo  
Supervising Hazardous Materials Specialist

Enclosures

- 1 Case Closure Letter
- 2 Case Closure Summary

c George Warren, Emeryville Fire Department, 1333 Park Avenue, Emeryville, CA 94608  
Ignacio Dayrit, City of Emeryville, 1333 Park Avenue, Emeryville, CA 94608  
SH / files

ALAMEDA COUNTY  
HEALTH CARE SERVICES

AGENCY  
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES  
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1131 Harbor Bay Parkway, Suite 250  
Alameda, CA 94502-6577  
(510) 567-6700  
FAX (510) 337-9335

**REMEDIAL ACTION COMPLETION CERTIFICATION**

September 27, 2001

Mr. Thomas Enger  
Aetna Real Estate Associates, L.P.  
455 Market Street, Suite 1540  
San Francisco, California 94105

Mr. Thomas Gram  
Former Eastshore Partners  
5801 Christie Avenue, #608  
Emeryville, California 94608

**RE: RO# 69 / STID# 1184 Powell Street Plaza, Formerly Pacific Intermountain Express (PIE)  
5700 – 5795 Christie Avenue (Formerly 5500 Eastshore Highway)  
Emeryville, California 94608**

Dear Messrs. Enger and Gram:

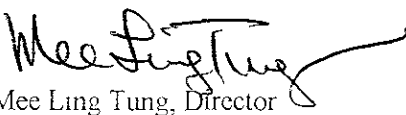
This letter confirms the completion of a site investigation and remedial action for the six underground storage tanks formerly located at the above-described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tanks are greatly appreciated.

Based on information in the above-referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) of Section 25299.37 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.77 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (h) of Section 25299.37 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

  
Mee Ling Tung, Director

c: Chuck Headlee, San Francisco Bay RWQCB  
Dave Deaner, SWRCB, UST Cleanup Fund Program (with enclosure)  
George Warren, Emeryville Fire Department, 1333 Park Avenue, Emeryville, CA 94608  
Ignacio Dayrit, City of Emeryville, 1333 Park Avenue, Emeryville, CA 94608  
SH / file



**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 2 of 5**

Treatment and Disposal of Affected Materials:

Materials	Amount (Include Units)	Action (Treatment /or Disposal w/ Destination)	Date
Tank	3 - 10,000 gallons	Reportedly removed – unknown disposal destination	1986
	1 - 8,000 gallons	Reportedly removed – unknown disposal destination	1986
	1 - 2,000 gallons	Reportedly removed – unknown disposal destination	1986
	1 – 1,000 gallons	Reportedly removed – unknown disposal destination	1986
Soil	unknown	TPH impacted soil bioremediated and reportedly disposed at W. Contra Costa Land fill	unknown
	77 cubic yards	Lead impacted soil disposed at Kettleman Hills	unknown

**Maximum Documented Contaminant Concentrations -- Before and After Cleanup**

Contaminant	Soil (ppm)		Water (ppb)	
	Before*	After	Before**	After***
TPH Gasoline	1,200	-	-	80
TPH Diesel	17,000	-	3,200,000	7,400,000
TPH Motor Oil	47,000	-	-	600
Benzene	24	-	77,000	1
Toluene	20	-	56	ND
Ethylbenzene	-	-	-	ND
Xylene	14	-	490	ND
MTBE	-	-	-	ND

\* Results of soil samples collected from borings drilled in 1986 and 1988.

\*\* Maximum concentration of groundwater samples collected from borings drilled in 1986 (see Table 1 and 3).

\*\*\*Most recent groundwater sample results collected from wells in 1997.

In June 2001, well MW-14 was sampled for MTBE. No MTBE was detected.

**Comments (Depth of Remediation, etc.):** See "Additional Comments" section.

**IV. CLOSURE**

Does completed corrective action protect existing beneficial uses per the Regional Board Basin Plan ? **UNKNOWN**

Does completed corrective action protect potential beneficial uses per the Regional Board Basin Plan ? **UNKNOWN**

Does corrective action protect public health for current land use ? **YES**

Site management requirements: **The approved Long Term Risk Management Plan (LTRMP) should be implemented to address residual soil and groundwater contamination left at the site during any construction activities at the subject site. In addition, a deed restriction is required as part of the case closure.**

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 3 of 5**

Should corrective action be reviewed if land use changes ? **YES**

Monitoring wells Decommissioned : **Five wells (MW-4, MW-5, MW-7, MW-15, and MW-16 ) decommissioned, Remaining wells will be decommissioned upon receiving case closure.**

Number Decommissioned: **Five (5)**

Number Retained: **Remaining wells will be decommissioned upon receiving case closure.**

List enforcement actions taken: **NONE**

List enforcement actions rescinded: **NA**

**V. LOCAL AGENCY REPRESENTATIVE DATA**

Name: **Susan L. Hugo**

Title: **Supervisor, LOP Program**


Signature: 

Date: **9/21/01**

**Reviewed by:**

Name: **Ariu Levi**

Title: **Chief, Environmental Health Department**

Signature: 

Date: **9/24/01**

**VI. RWQCB NOTIFICATION**

Date Submitted to RB: **9/24/01**

RB Response: **Concur**

RWQCB Staff Name: **Chuck Headlee**  
**Roger D. Brewer FOR**

Title: **Associate Engineering Geologist**

Signature: 

Date: **9/24/01**

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 4 of 5**

**VII. ADDITIONAL COMMENTS, DATA, ETC.**

The subject site is located in an urban, former industrial area of Emeryville created by filling the bay margins to accommodate freeway construction in the 1950's. The site is bounded to the north by Powell Street, to the west by Interstate 80, to the east by Christy and Shellmound Streets. The site currently is a retail shopping center called Powell Street Plaza.

In 1986, eight underground storage tanks (USTs) were reportedly removed from the site. Pacific Intermountain Express (PIE) Truck Terminal was operating at the site. Significant contamination (free product) was discovered during the USTs removal. A subsurface investigation was conducted in August 1986. Seven borings were drilled (EB1- EB7) (see Figure 2). Soil and groundwater samples collected showed elevated concentration of petroleum hydrocarbons (see Table 1). Borings EB8 to EB12 were completed in December 1986. The borings were advanced to depths ranging from six to eight feet. In addition to petroleum hydrocarbons, lead was detected in soil (up to 380 parts per million). Lead contaminated soil was excavated and disposed off site in 1987. Subsurface soil underlying the site consisted of fill materials comprised of silty and sandy clays and sands with variable amounts of fines with few lenses of gravels. Debris (wood, brick and wire) was encountered within the fill materials. Eight additional borings were drilled near the former tank areas to characterize the extent of contamination (Figure 3). Elevated concentration of petroleum hydrocarbons was found in soil and groundwater (see Tables 2 and 3).

Between March 7 and March 11, 1988, eighteen borings B-5 (MW-1) to B-22 (MW-18) were drilled to depths ranging from 11.5 to 17.0 feet (see Figure 5). Strong diesel odor was detected in the samples and free product was present in MW-3, MW-4 MW-7 and MW-15. Soil samples showed up to 17,000 ppm TPH diesel (MW-3). Monitoring data indicate that the tidally influenced depth to groundwater ranges from approximately 3.2 to 9.5 feet.

In-situ soil and groundwater bioremediation was proposed in July 1987 which included installing an extraction trench along the western margin of the property to remove free product from the subsurface. In addition, a bioreactor at the southwestern corner of the site was proposed to treat water recovered from the trench. Bioremediation system was in operation from March 1989 and shut down in 6/90 when PIE declared bankruptcy. Passive free-phase product skimmers were installed in wells MW-13 and MW-7 in November 10, 1993. The skimmer in MW-7 was moved to MW-15 in November 23, 1993. Total volume of product recovered from November 1993 to March 1995 was 1.27 gallons.

Groundwater has been monitored at the site from 1988 up to 1997. A risk assessment and long-term management strategy for petroleum product found at the site was prepared and submitted in July 1997. Additional investigation work was conducted in 2001 to evaluate groundwater mounding which was previously observed at the site and the potential for free product to migrate into utility vaults when groundwater elevation fluctuates. Review of the utility drawings which include drainage features, utility vaults and sewer at the site showed that historical groundwater fluctuation do not appear to encroach on the invert of the actual vaults on-site. Therefore, free product at site does not appear to be migrating into utility vaults. RWQCB's staff toxicologist concurred that although free product is present at the site, this case appears to be a "Low Risk Soil and Groundwater Case" as described in the San Francisco Bay Regional Water Quality Control Board (RWQCB) memorandum dated January 5, 1996 based on the following rationale:

1. The leak has been stopped and ongoing sources have been removed. The subject tanks were removed in 1986. Aggressive source removal was conducted at the site. In-situ soil and groundwater bioremediation was installed and operated from March 1989 to June 1990.
2. The site has been adequately characterized. A total of twenty three groundwater monitoring wells were installed and groundwater has been monitored from 1988 to 1997. Residual contaminants do not appear to be migrating off-site.

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 5 of 5**

3. Groundwater at the site is not used as drinking water source. There are no known municipal or residential water wells or surface water bodies that are expected to be impacted from the release at the site.
4. The site presents no significant risk to human health. Residual soil and groundwater contamination do not pose a risk under the current land use scenario.
5. A long term risk management plan has been submitted to address residual contamination in soil and groundwater during any construction activities at the subject site. In addition, the site will be entered in City of Emeryville's One Stop Shop.
6. A deed restriction will be recorded for the site,

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 1 of 5**

**JUN 14 2001**

**I. AGENCY INFORMATION**

**Date:**

Agency Name: **Alameda County Health  
Care Services Agency**  
City/State/ Zip: **Alameda, CA 94502**  
Responsible Staff Person: **Susan L. Hugo**

Address: **1131 Harbor Bay Parkway**  
Phone: **(510) 567-6700**  
Title: **Hazardous Materials Specialist**

**II. CASE INFORMATION**

Site Facility Name: **Powell Street Plaza; formerly, Pacific Intermountain Express (PIE)**  
Site Facility Address: (Insert from Deed Restriction) **formerly 5500 Eastshore Highway**  
RB LUSTIS Case No.: **N/A** Local Case No./ LOP Case No. **319**  
URF Filing Date: **N/A** SWEEPS No.: **N/A**

Responsible Parties:

Addresses:

Phone Numbers:

**Former Eastshore Partners  
c/o Mr. Thomas J. Gram  
5801 Christie Ave, No. 608  
Emeryville, CA 94608.**

Tank No:	Size in gal.	Contents:	Closed in-place or removed?:	Date:	
<b>1</b>	<b>10,000</b>	<b>diesel</b>	<b>removed</b>	<b>Aug 1986</b>	<b>#1</b>
<b>2</b>	<b>10,000</b>	<b>diesel</b>	<b>removed</b>	<b>Aug 1986</b>	
<b>3</b>	<b>10,000</b>	<b>gasoline</b>	<b>removed</b>	<b>Aug 1986</b>	
<b>4</b>	<b>8,000</b>	<b>motor oil</b>	<b>removed</b>	<b>Aug 1986</b>	
<b>5</b>	<b>2,000</b>	<b>waste oil</b>	<b>removed</b>	<b>Aug 1986</b>	
<b>6</b>	<b>1,000</b>	<b>motor oil</b>	<b>removed</b>	<b>Aug 1986</b>	

**III. RELEASE AND SITE CHARACTERIZATION INFORMATION**

Cause and type of release: **Corrosion hole(s) were observed in tanks 1 & 5 after removal. A range of petroleum hydrocarbons including diesel, gasoline, and oil were suspected of being released.**

Site characterization complete: **Yes**

Date approved by oversight agency: **Unknown**

Monitoring wells installed?: **Yes**



**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 2 of 5**

JUN 14 2001

Proper screened interval ? **Yes, all with a 10' screened**  
Number: **23, with 8 remaining interval starting from 2-5bgs** #2  
Highest GW depth below ground surface **5.55'** #3  
Lowest depth: **15'bgs**  
Flow direction: **S toSWS; approximately 180-200 degrees**  
Are drinking water wells affected: **No**  
Most sensitive current use: **Suspected unused**  
Aquifer Name: **Unknown**  
Is surface water affected: **No**  
Nearest affected SW name: **Unknown**  
Off-site beneficial use impacts (address / location): **Unknown**  
Report (s) on file? **Yes**  
Where is report (s) filed? **Alameda County, 1131 Harbor Bay Parkway, Alameda, CA 94502**

Treatment and Disposal of Affected Materials:

Materials, Amount (Include Units), Action (Treatment /or Disposal w/ Destination), Date

**Tanks; total of eight UST removed from the site. Disposition of USTs is unknown. No reports in the County files contained tank disposal manifests or information.**

**Soil: HC impacted soils were excavated and bioremediated on-site and sent to W. Contra Costa County Landfill (#4). Additionally, approximately 77 cubic yards of Lead impacted soil was removed and disposed of at Kettleman Hills (#5)**

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 3 of 5**

**Maximum Documented Contaminant Concentrations - - Before and After Cleanup (#7)**

Contaminant	Soil (ppm)		Water (ppm)	
	Before*	After**	Before***	After****
TPH	47,000THC	<1000	2.0	0.30 -7.4 (TPH-d)
TPH gasoline	3.3vol HC			<0.05- 0.080 (TPH-g)
Benzene			77.0	<0.0005- 0.001
Toluene			0.56	<0.0005
Ethylbenzene				
Xylene			0.04	<0.0005

MTBE: Analyzed in MW-14 6/2001 result was ND (#10)

Lead 11,000 5.4 – 71.0 (#5)

\* Fm. TAL Appendix I, 7/30/86 soil samples. The maximum numbers reported represent single points in the bottom of the tank excavations. One was soil under the waste oil tank, the benzene sample was from GW south of the 10,000 gal gasoline tank. Note that the units for water samples are PPM. (#6)

\*\* Fm. Blymyer & Sons ltr of Feb. 25, 1987. (#7)

\*\*\* Fm Blymyer figures SC-2 & 3, Aug. 7,1986; Groundwater Technology lab reports dated Aug. 6, 1986 (#7)

\*\*\*\* Fm. PES Quarterly Monitoring Report, 2nd Qtr 1997. (#8)

**Comments (Depth of Remediation, etc.):** See "Additional Comments" section.

**The early sampling reported Total Hydrocarbons with no TPH-d or TPH-g, nor was Ethylbenzene reported.**

**IV. CLOSURE**

Does completed corrective action protect existing beneficial uses per the Regional Board Basin Plan ? **Yes**

Does completed corrective action protect potential beneficial uses per the Regional Board Basin Plan ? **Yes**

Does corrective action protect public health for current land use? **Yes**

Site management requirements: **Deed restriction and Long Term Management Plan are required and have been submitted.**

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 4 of 5**

Should corrective action be reviewed if land use changes? **Yes**

Monitoring wells Decommissioned: **Some**

Number Decommissioned: **15 Wells**

Number Retained: **8 Wells**

List enforcement actions taken: **Unknown**

List enforcement actions rescinded: **Unknown**

**V. LOCAL AGENCY REPRESENTATIVE DATA**

Name: **Susan L. Hugo** Title: **Hazardous Materials Specialist**

Signature: Date:

**Reviewed by:**

Name: **Don Hwang** Title: **Hazardous Materials Specialist**

Signature: Date:

Name: **Thomas Peacock** Title: **Manager, LOP Program**

Signature: Date:

**VI. RWQCB NOTIFICATION**

Date Submitted to RB:

RB Response:

RWQCB Staff Name: **Chuck Headlee**

Title: **Associate Engineering Geologist**

Signature:

Date:

**VII. ADDITIONAL COMMENTS, DATA, ETC.**

**CASE CLOSURE SUMMARY**  
**Leaking Underground Fuel Storage Tank Program**  
**Page 5 of 5**

The subject site is located in an urban, former industrial area of Emeryville created by filling the bay margins to accommodate freeway construction in the 1950's. The site is bounded to the north by Powell Street and to the west by the Interstate 80. To the east it is bounded by Christy and Shellmound Streets. The site was occupied by a maintenance facility of the former PIE trucking company. That facility had underground storage tanks for fuels-diesel, gasoline, and grease, oil, and waste oil.

In July of 1987, the 8 underground storage tanks were removed. Soil and groundwater samples were collected following the tank removal. From about September of 1986 to Feb. of 1987 soil excavated from the tank removals was biologically treated to a total hydrocarbon at or below 300 mg/kg and used as backfill or transported to West Contra Costa County Landfill for disposal. This was repeated in April of 1987 when more hydrocarbon impacted soil was discovered. The soil was remediated biologically and again sent to West Contra County in September 1987. An above ground water treatment system was run by Cyto Culture international during 1989. It was a batch biological process that treated 1,300,000 gallons of contaminated groundwater that was discharged under permit to the sanitary sewer.

An early site investigation discovered an area with elevated lead concentrations. The soil was removed and disposed of at a properly permitted facility. Monitoring of the groundwater stopped in mid 1997.

Geomatrix Consultants produced a Risk assessment and Long-Term Management Strategy for Petroleum Product for the Powell Street Plaza site in July 1997. In a combined effort by URS and Geomatrix to remove uncertainties presented in the Geomatrix Risk Assessment, additional investigation work was conducted to address the uncertainties associated with groundwater elevations and the base of vaults at the site. Documentation in URS files, previously unavailable to Geomatrix, addressed what had been assumptions regarding the possibility of free phase hydrocarbons getting into "vaults" when the groundwater elevation fluctuated. The Utility drawing that was in the URS files documented all drainage features, utility vaults and sewers on the site including the bottom elevations of each. This information coupled with the historical variations in GW elevations showed the earlier assumptions were not now valid. The GW elevation had never been high enough to encroach on the invert of the few actual vaults on the site. Surface water drainage features e.g. curb inlets do not present the potential problems the true closed vaults do. This information changed the recommendations of Section 7.4 of the Geomatrix Risk Assessment and Long-Term Management Strategy for Petroleum Product. All of this information was presented to Alameda County Health Care Services and the Regional Water Quality Control Board in a document dated March 22, 2001.

**Conclusion Statement and Recommendation for Site Closure (Susan Hugo)**

October 10, 2001

9/01  
CASE CLOSED  
RD # 69  
SA

Ms. Susan L. Hugo  
Supervising Hazardous Materials  
Specialist  
Alameda County Health Care  
Services Agency  
1131 Harbor Bay Parkway  
2nd Floor  
Alameda, CA 94502-6577

**Powell Street Plaza**

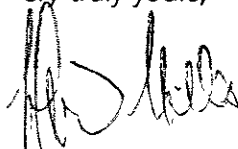
Dear Susan,

Enclosed for your files is a copy of the Covenant for Powell Street Plaza that was recorded on October 8, 2001.

I still need confirmation that the approved long term risk management plan ("RMP") that you referenced in your September 27 letter is the Risk Assessment and Long-Term Management Strategy for Petroleum Product, dated July 1997 and amended on March 22, 2001 prepared by Geomatrix.

Please forward to me at your earliest convenience a letter acknowledging your understanding that this the approved RMP. Thank you.

Very truly yours,

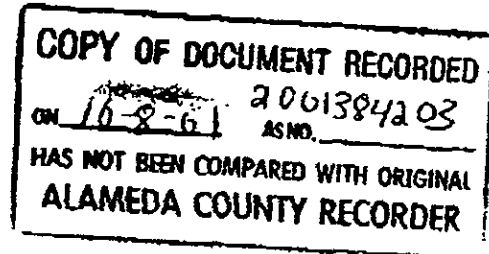


Jeffrey D. Mills  
Director  
Asset Management

Enclosure

**Recording Requested By:**  
Aetna Real Estate Associates, L.P.  
c/o UBS Realty Investors LLC  
242 Trumbull Street  
Hartford, Connecticut 06103-1212

**When Recorded, Mail To:**  
Mee Ling Tung, Director  
Alameda County Department of Environmental Health  
1131 Harbor Bay Parkway  
Alameda, California 94502



**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

**POWELL STREET PLAZA  
5700-5795 Christie Avenue, Emeryville, CA**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 27<sup>th</sup> day of SEPTEMBER 2001 by Aetna Real Estate Associates, L.P., a Delaware limited partnership ("Covenantor") who is the Owner of record of that certain property situated at 5700-5795 Christie Avenue, in the City of Emeryville, County of Alameda, State of California (Parcel Nos. 049-1515-011-07; 049-1515-011-14; 049-1515-001-06 (portions); 049-1515-010-11; 049-1515-012-05; 049-1515-007-07; 049-1515-008-01; 049-1515-009) a portion of all of which is more particularly described in Exhibit A hereto and incorporated herein by this reference (Exhibit A is hereinafter referred to as the "Burdened Property"), for the benefit of the Alameda County Environmental Health Services (the "County"), with reference to the following facts:

- A. The Burdened Property and groundwater underlying the property contains hazardous materials.
- B. Contamination of the Burdened Property. As detailed in the Case Closure Summary Report for this Site, soil and groundwater at the Burdened Property was contaminated by petroleum hydrocarbons, i.e., leaking (diesel, gasoline, lubricating oils) fuel storage tanks from a trucking operation conducted by Pacific Intermountain Express, the owner of the property until approximately 1986 (the "Petroleum Hydrocarbons"), which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.
- C. Exposure Pathways. Without the mitigation measures which have already been performed on the Burdened Property, exposure to the Petroleum Hydrocarbons could have occurred through in-place contact, inhalation of indoor air, dermal contact, and ingestion. However, the future risk of exposure to the Petroleum Hydrocarbons has been reduced to insignificant levels by the previous remediation measures and the measures in Article 3 if they

are followed. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is developed into a shopping center and is adjacent to other commercial use property.

E. Full and voluntary disclosure to the County of the presence of the Petroleum Hydrocarbons on the Burdened Property has been made and extensive sampling and remediation to remove the Petroleum Hydrocarbons has been conducted.

F. Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from Petroleum Hydrocarbons that may have been deposited on portions of the Burdened Property.

ARTICLE I  
GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Alameda County Department of Environmental Health has indicated that the restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of residual Petroleum Hydrocarbons. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the County, all Owners of the Burdened Property other than the Current Owner or Owners, and the Former Eastshore Partners. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the County.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, lease or possession of such Burdened Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents and employees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the County, all Owners of the Burdened Property other than the Current Owner or Owners, and the Former Eastshore Partners, and that the interest of the Owners of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and Ground

Leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and Ground Lessees regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or Ground Lease. In addition, Owner shall assure that all Retail Space Leases executed after the date of this Covenant for any portion of the Burdened Property prohibit the tenant from causing or permitting contact with native soil and groundwater.

1.4 Purpose. It is the purpose of this instrument to convey to the County real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II  
DEFINITIONS

2.1 County. "County" shall mean the Alameda County Department of Environmental Health and shall include its successor agencies, if any.

2.2 Former Eastshore Partners. "Former Eastshore Partners" shall mean East Bay Park Company, Emeryville Terranomics, Martin-Eastshore, J. David Martin, Thomas J. Gram, Walter Kaczmarek, Edmund B. Taylor, Jr., Barry Culbertson, and Merritt Sher.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the owner of all or any portion of the Burdened Property at any time after recordation hereof, either the Covenantor or a successor-in-interest in fee ownership of all or a portion of the Burdened Property.

2.5 Current Owner or Owners. The "Current Owner or Owners" shall mean an Owner or Owners of all or any portion of the Burdened Property that has/have not conveyed all of its/their interest in the Burdened Property to an unrelated third party.

2.6 Ground Lease. "Ground Lease" means a long-term lease of both land and improvements on the land.

2.7 Ground Lessee. "Ground Lessee" means a tenant under a Ground Lease.

2.8 Retail Space Lease. "Retail Space Lease" means a lease of space within the improvements on land.



ARTICLE III  
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Owner promises to restrict the use of the Burdened Property as follows:

a. Development of the Burdened Property shall not include detached single family homes, schools, day-care centers, or hospitals.

b. No Owner of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property, unless the workplan conforms to the soil management procedures in the Long-Term Management Strategy approved by the Alameda County Health Agency on October 15, 1997, as it may from time to time hereafter be amended ("LTMP"), or unless expressly permitted in writing by the County. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Owner or his agent in accordance with the LTMP and with all applicable provisions of local, state and federal law;

c. All uses and development of the Burdened Property shall be consistent with the LTMP and any applicable County Cleanup Order or Risk Management Plan (except that Owner reserves the right to challenge any future Order or Risk Management Plan in accordance with law), each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, unless otherwise expressly permitted in writing by the County.

d. No Owner of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the County.

e. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment installed, and of any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, 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 County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

f. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

g. No Owner of the Burdened Property shall act in any manner that will materially aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the County, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the County to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners shall execute a written instrument which shall accompany or be included in all purchase agreements and Ground Leases relating to the property. Any such instrument shall contain the following statement:

The land described on Exhibit A contains residual levels of petroleum hydrocarbons in soil and groundwater that have been evaluated by the California Regional Water Quality Control Board, San Francisco Bay Region, which has concluded that adverse health effects will not be associated with activities at the site by current and future construction workers, maintenance workers, or building occupants, if the LTMP is followed. The property is subject to a Covenant dated as of \_\_\_\_\_, 2001, and recorded on \_\_\_\_\_, 2001, in the Official Records of Alameda \_\_\_\_\_ County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV  
VARIANCE AND TERMINATION

4.1 Variance. Any Owner may apply to the County for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner may apply to the County for a termination of the Restrictions as they apply to all or any portion of the Burdened Property. If the County grants the application, Owner and the County will cooperate in arranging for the withdrawal of this Covenant from record title to the Burdened Property by execution and recordation of an appropriate notice of termination of the effect of this Covenant.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity

ARTICLE V  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the

general public.

5.2 **Notices.** Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency 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:

*If To: "Covenantor"*  
c/o UBS Realty Investors LLC  
242 Trumbull Street  
Hartford, CT 06103-1212  
[or, if different, to the Owner(s) of the Burdened Property at the time of the notice]

*If To: "Former Eastshore Partners"*  
c/o Thomas J. Gram  
5801 Christie Avenue, No. 608  
Emeryville, CA 94608

*If To: County*  
Alameda County Department of Environmental Health  
Attention: Director  
1131 Harbor Bay Parkway  
Alameda, California 94502

5.3 **Partial Invalidity.** If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 **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.

5.5 **Recordation.** This instrument shall be executed by the Covenantor and by the Director of Environmental Health Services. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 **References** All references to Code sections include successor provisions.

5.7 **Construction.** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it

invalid.

5.8 Governing Law. The provisions of this instrument shall be interpreted according to California law.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor:

AETNA REAL ESTATE ASSOCIATES, L.P.,  
a Delaware limited partnership

By: Aetna/Area Corporation, a Connecticut  
corporation, general partner

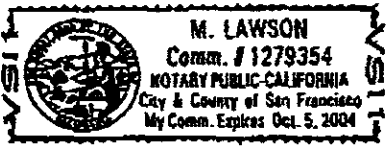
By: *Thomas Enger*  
 Name: Thomas Enger  
 Title: Vice President  
 Date: 9/27/01

**ALL-PURPOSE ACKNOWLEDGEMENT**

State of California }  
County of San Francisco } ss.

On 9/27/01 before me, M. Lawson  
(DATE) (NOTARY)  
personally appeared Thomas Enger  
(SIGNER(S))

personally known to me - OR -  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.



WITNESS my hand and official seal.  
M. Lawson  
(NOTARY'S SIGNATURE)

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

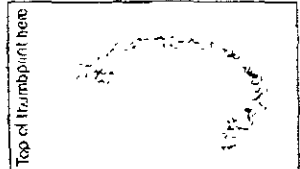
- INDIVIDUAL
- CORPORATE OFFICER  
vice president  
(TITLE(S))
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Covenant & Environmental Restriction  
TITLE OR TYPE OF DOCUMENT  
11  
NUMBER OF PAGES  
9/27/01  
DATE OF DOCUMENT  
On Property  
OTHER

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
AREA  
Helma Real Estate Associates

RIGHT THUMBPRINT  
OF  
SIGNER



ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of

Alameda

SS.

(M. Lawson)

On

9/27/01

before me,

Madeleine A. Lawson

personally appeared

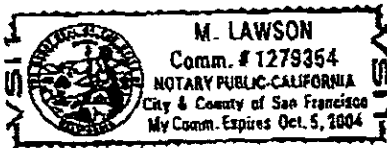
Mee Ling Tung

personally known to me

- OR -

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.



WITNESS my hand and official seal.

M. Lawson
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
CORPORATE OFFICER

Director (Environmental Health)

- PARTNER(S)
ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER

DESCRIPTION OF ATTACHED DOCUMENT

Covenant and Environmental Restriction on Property
TITLE OR TYPE OF DOCUMENT

11
NUMBER OF PAGES

9/27/01
DATE OF DOCUMENT

OTHER

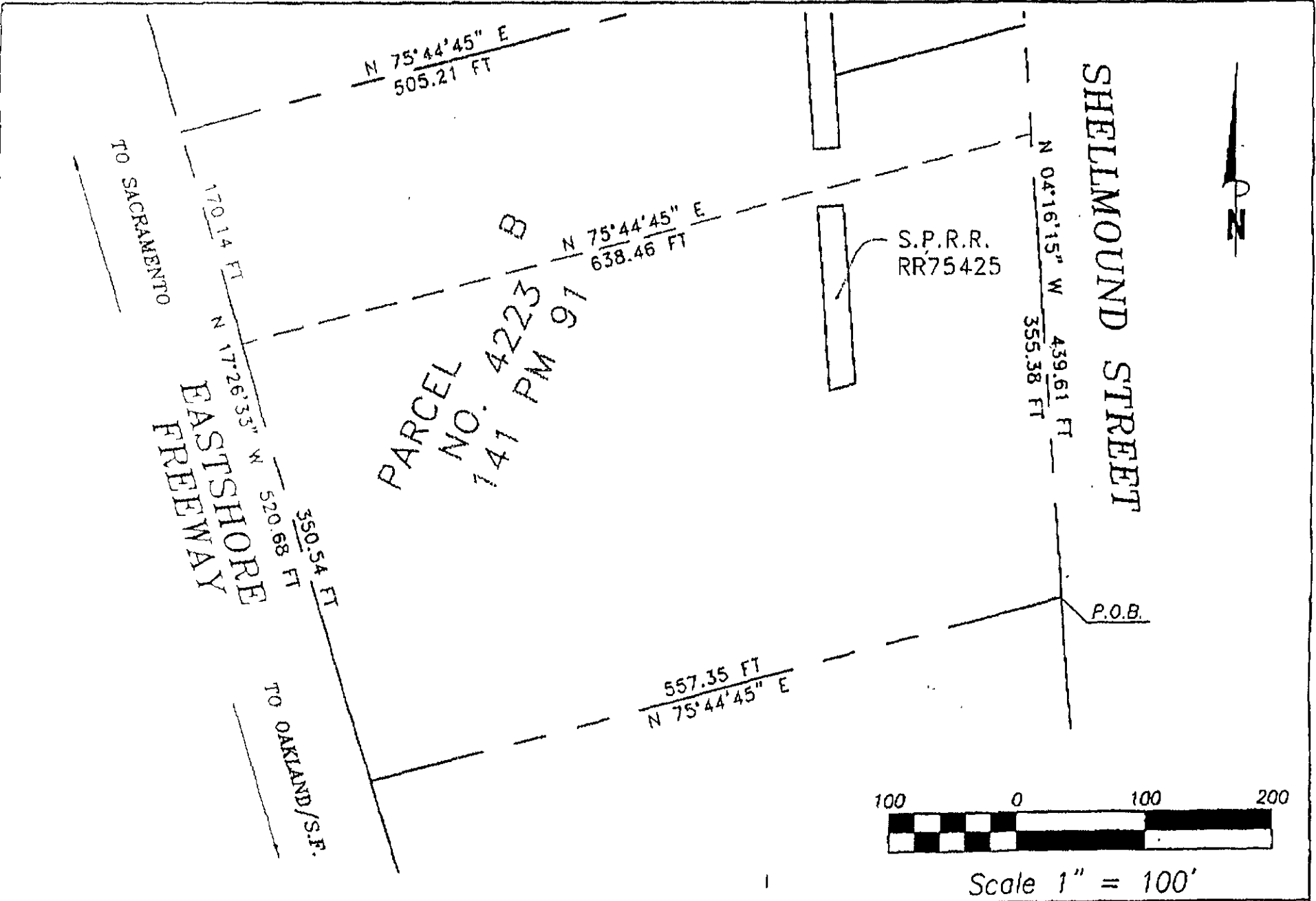
SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY (IES)

Dept. of Environmental Health

RIGHT THUMBPRINT
OF
SIGNER







**EXHIBIT 'A'**  
**SOUTHERLY 350 FEET**  
**OF PARCEL B**

APPROVED BY:

**CEA** Cullen Engineering Associates, Inc.  
 Civil Engineering - Surveying  
 1090 Adams Street, Suite A - P.O. Box 691  
 Benicia, California 94610  
 (707) 746-3219 FAX (707) 746-9436

Plot date: 9/1/01  
 Plot time: 8:55 am

PLI\_01122.dwg R:\2001\01122\  
 Kref: R:\2001\01122\ 01122b01

SCALE:	AS NOTED
DATE:	4-26-01
DRAWN BY:	L.A.B.
CHECKED BY:	DWC
PROJECT NO:	01122



KN

# MORRISON & FOERSTER LLP

LOS ANGELES  
PALO ALTO  
WALNUT CREEK  
SACRAMENTO  
ORANGE COUNTY  
SAN DIEGO  
DENVER  
WASHINGTON, D.C.

ATTORNEYS AT LAW

425 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105-2482  
TELEPHONE (415) 268-7000  
TELEFACSIMILE (415) 268-7522

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BUENOS AIRES  
LONDON  
BRUSSELS  
BEIJING  
HONG KONG  
SINGAPORE  
TOKYO

July 31, 2001

Writer's Direct Contact  
(415) 268-7117  
BSandals@mofocom

## By Messenger

Krisida Nishioka, Esq.  
Deputy County Counsel  
County of Alameda  
333 Hegenberger Road, 4th Floor  
Oakland, CA 94612

Re: *Powell Street Plaza*


Dear Krisida:

As we discussed on Friday, July 27, I am enclosing a signature original of the Powell Street Plaza covenant. Other than conforming the signature page, I have made two small changes to the July 11 draft, the last one I sent to you and Susan (these are shown for your convenience on the enclosed redline version): 1) in Recital B, I have eliminated the date of the Case Closure Report to make it one less thing to worry about and 2) as we discussed on Friday, I have added a phrase to Section 1.3 in recognition of the fact that Owner cannot unilaterally amend leases already in place. Once signed by the Director, please overnight the document to:

Thomas Enger  
UBS Realty Investors LLC  
455 Market Street, Suite 1540  
San Francisco, CA 94105

Thank you very much for your assistance, and I hope we will have a signed document in the near future.

*in*  
Very truly yours,



Barry S. Sandals

Enclosure

MORRISON & FOERSTER LLP

Krisida Nishioka, Esq.  
Deputy County Counsel  
County of Alameda  
July 31, 2001  
Page Two

cc w/encl. (via e-mail):

Paul Canning  
Garrett Delehanty  
Lee Dodge  
Thomas Enger  
Jeffrey Fraulino  
Anita Hochstein  
Jeff Mills

**Recording Requested By:**

Aetna Real Estate Associates, L.P.  
c/o UBS Realty Investors LLC  
242 Trumbull Street  
Hartford, Connecticut 06103-1212

**When Recorded, Mail To:**

Mee Ling Tung, Director  
Alameda County Department of Environmental Health  
1131 Harbor Bay Parkway  
Alameda, California 94502

COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY

POWELL STREET PLAZA  
5700-5795 Christie Avenue, Emeryville, CA

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 27<sup>th</sup> day of SEPTEMBER 2001 by Aetna Real Estate Associates, L.P., a Delaware limited partnership ("Covenantor") who is the Owner of record of that certain property situated at 5700-5795 Christie Avenue, in the City of Emeryville, County of Alameda, State of California (Parcel Nos. 049-1515-011-07; 049-1515-011-14; 049-1515-001-06 (portions); 049-1515-010-11; 049-1515-012-05; 049-1515-007-07; 049-1515-008-01; 049-1515-009) a portion of all of which is more particularly described in Exhibit A hereto and incorporated herein by this reference (Exhibit A is hereinafter referred to as the "Burdened Property"), for the benefit of the Alameda County Environmental Health Services (the "County"), with reference to the following facts:

- A. The Burdened Property and groundwater underlying the property contains hazardous materials.
- B. Contamination of the Burdened Property. As detailed in the Case Closure Summary Report for this Site, soil and groundwater at the Burdened Property was contaminated by petroleum hydrocarbons, i.e., leaking (diesel, gasoline, lubricating oils) fuel storage tanks from a trucking operation conducted by Pacific Intermountain Express, the owner of the property until approximately 1986 (the "Petroleum Hydrocarbons"), which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.
- C. Exposure Pathways. Without the mitigation measures which have already been performed on the Burdened Property, exposure to the Petroleum Hydrocarbons could have occurred through in-place contact, inhalation of indoor air, dermal contact, and ingestion. However, the future risk of exposure to the Petroleum Hydrocarbons has been reduced to insignificant levels by the previous remediation measures and the measures in Article 3 if they

are followed. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is developed into a shopping center and is adjacent to other commercial use property.

E. Full and voluntary disclosure to the County of the presence of the Petroleum Hydrocarbons on the Burdened Property has been made and extensive sampling and remediation to remove the Petroleum Hydrocarbons has been conducted.

F. Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from Petroleum Hydrocarbons that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Alameda County Department of Environmental Health has indicated that the restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of residual Petroleum Hydrocarbons. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the County, all Owners of the Burdened Property other than the Current Owner or Owners, and the Former Eastshore Partners. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the County.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, lease or possession of such Burdened Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents and employees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the County, all Owners of the Burdened Property other than the Current Owner or Owners, and the Former Eastshore Partners, and that the interest of the Owners of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and Ground

Leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and Ground Lessees regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or Ground Lease. In addition, Owner shall assure that all Retail Space Leases executed after the date of this Covenant for any portion of the Burdened Property prohibit the tenant from causing or permitting contact with native soil and groundwater.

1.4 Purpose. It is the purpose of this instrument to convey to the County real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 County. "County" shall mean the Alameda County Department of Environmental Health and shall include its successor agencies, if any.

2.2 Former Eastshore Partners. "Former Eastshore Partners" shall mean East Bay Park Company, Emeryville Terranomics, Martin-Eastshore, J. David Martin, Thomas J. Gram, Walter Kaczmarek, Edmund B. Taylor, Jr., Barry Culbertson, and Merritt Sher.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the owner of all or any portion of the Burdened Property at any time after recordation hereof, either the Covenantor or a successor-in-interest in fee ownership of all or a portion of the Burdened Property.

2.5 Current Owner or Owners. The "Current Owner or Owners" shall mean an Owner or Owners of all or any portion of the Burdened Property that has/have not conveyed all of its/their interest in the Burdened Property to an unrelated third party.

2.6 Ground Lease. "Ground Lease" means a long-term lease of both land and improvements on the land.

2.7 Ground Lessee. "Ground Lessee" means a tenant under a Ground Lease.

2.8 Retail Space Lease. "Retail Space Lease" means a lease of space within the improvements on land.

ARTICLE III  
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Owner promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall not include detached single family homes, schools, day-care centers, or hospitals.
- b. No Owner of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property, unless the workplan conforms to the soil management procedures in the Long-Term Management Strategy approved by the Alameda County Health Agency on October 15, 1997, as it may from time to time hereafter be amended ("LTMP"), or unless expressly permitted in writing by the County. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Owner or his agent in accordance with the LTMP and with all applicable provisions of local, state and federal law;
- c. All uses and development of the Burdened Property shall be consistent with the LTMP and any applicable County Cleanup Order or Risk Management Plan (except that Owner reserves the right to challenge any future Order or Risk Management Plan in accordance with law), each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, unless otherwise expressly permitted in writing by the County.
- d. No Owner of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the County.
- e. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment installed, and of any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, 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 County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.
- f. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- g. No Owner of the Burdened Property shall act in any manner that will materially aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the County, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the County to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners shall execute a written instrument which shall accompany or be included in all purchase agreements and Ground Leases relating to the property. Any such instrument shall contain the following statement:

The land described on Exhibit A contains residual levels of petroleum hydrocarbons in soil and groundwater that have been evaluated by the California Regional Water Quality Control Board, San Francisco Bay Region, which has concluded that adverse health effects will not be associated with activities at the site by current and future construction workers, maintenance workers, or building occupants, if the LTMP is followed. The property is subject to a Covenant dated as of \_\_\_\_\_, 2001, and recorded on \_\_\_\_\_, 2001, in the Official Records of Alameda \_\_\_\_\_ County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner may apply to the County for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner may apply to the County for a termination of the Restrictions as they apply to all or any portion of the Burdened Property. If the County grants the application, Owner and the County will cooperate in arranging for the withdrawal of this Covenant from record title to the Burdened Property by execution and recordation of an appropriate notice of termination of the effect of this Covenant.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the

general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency 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:

*If To: "Covenantor"*

c/o UBS Realty Investors LLC

242 Trumbull Street

Hartford, CT 06103-1212

[or, if different, to the Owner(s) of the Burdened Property at the time of the notice]

*If To: "Former Eastshore Partners"*

c/o Thomas J. Gram

5801 Christie Avenue, No. 608

Emeryville, CA 94608

*If To: County*

Alameda County Department of Environmental Health

Attention: Director

1131 Harbor Bay Parkway

Alameda, California 94502

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 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.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Director of Environmental Health Services. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it



invalid.

5.8 Governing Law. The provisions of this instrument shall be interpreted according to California law.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor:

AETNA REAL ESTATE ASSOCIATES, L.P.,  
a Delaware limited partnership

By: Aetna/Area Corporation, a Connecticut  
corporation, general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

By: AREA GP Corporation, a Delaware  
corporation, general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agency: ALAMEDA COUNTY  
DEPARTMENT OF ENVIRONMENTAL HEALTH

By: *Mee Ling Tung*  
Name: MEE LING TUNG  
Title: Director  
Date: 9/27/01

~~STATE OF CALIFORNIA )  
  )  
COUNTY OF \_\_\_\_\_)~~

~~On \_\_\_\_\_, 20\_\_ before me, the undersigned a Notary Public in and for said state,  
personally appeared [DIRECTOR], personally known to me or proved to me on the basis of  
satisfactory evidence to be the person who executed the within instrument.~~

~~WITNESS my hand and official seal.~~

*9/27/01 9:09a. @moe*

*See attached certificate*

\_\_\_\_\_  
Notary Public in and for said  
County and State

Approved as to Form  
RICHARD E. WINNIE, County Counsel  
By *Krisida Kishok*

**ALL-PURPOSE ACKNOWLEDGEMENT**

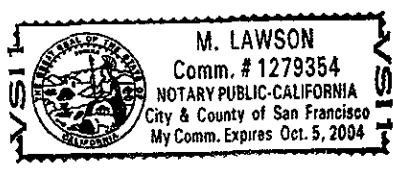
State of California

County of Alameda } ss.

On 9/27/01 before me, Madeleine A. Lawson (M. Lawson) <sup>NEW</sup>  
(DATE) (NOTARY)

personally appeared Mee Ling Tung SIGNER(S)

personally known to me - OR -  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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

M. Lawson  
NOTARY'S SIGNATURE

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- INDIVIDUAL
- CORPORATE OFFICER  
Director (Environmental Health)  
TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Covenant and Environmental Restriction on Property  
TITLE OR TYPE OF DOCUMENT

11  
NUMBER OF PAGES

9/27/01  
DATE OF DOCUMENT

OTHER \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
Dept. of Environmental Health

RIGHT THUMBPRINT  
OF  
SIGNER



EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

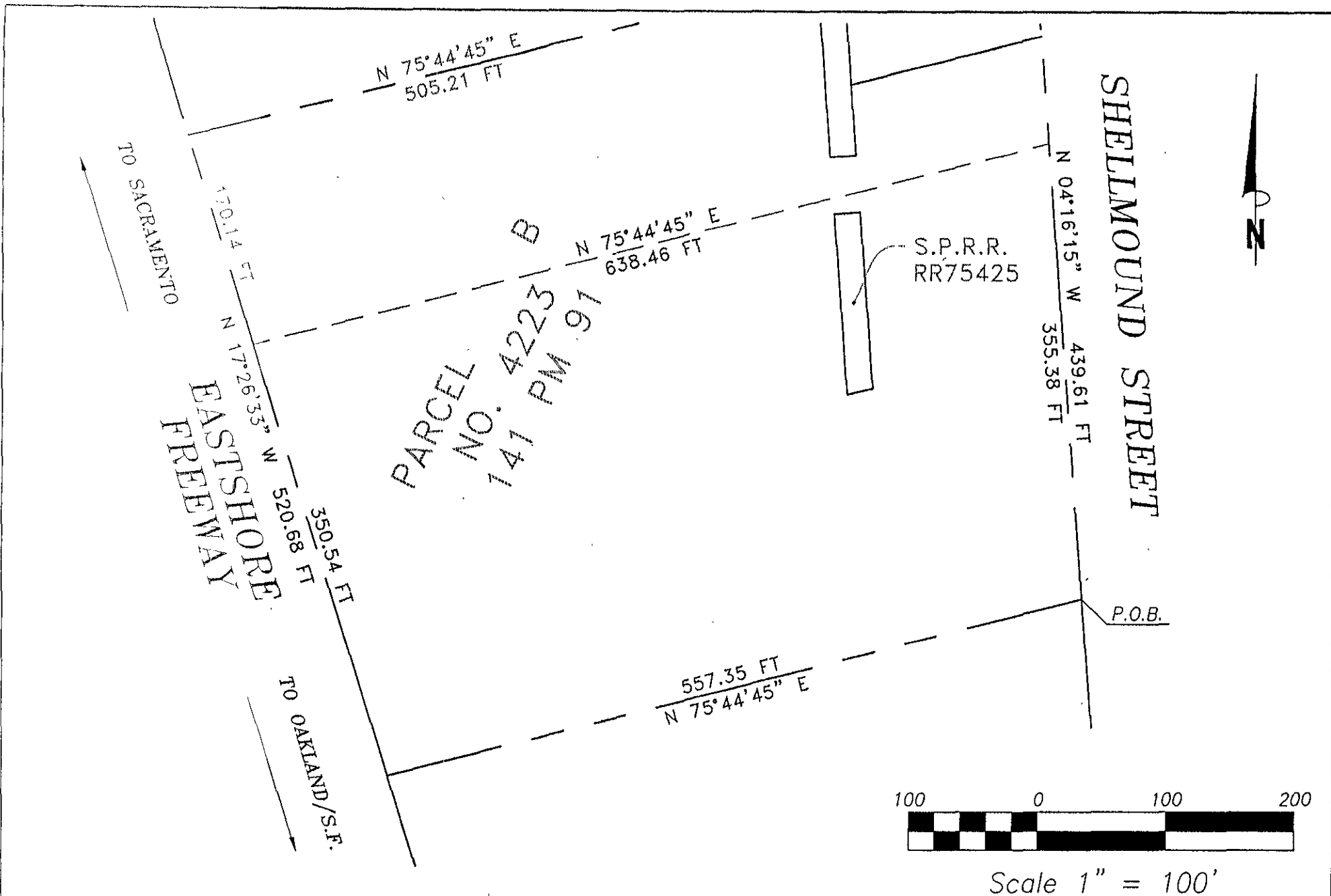
Portion of Parcel B as shown on Map No. 4223, Filed January 17, 1984, in Book 141 of Parcel Maps, at Pages 91 and 92, Alameda County Records.

Southerly 350 feet of said Parcel B, more particularly described as:

**Beginning** at the southeast corner of Parcel B as shown on said map; said point also lying on the westerly right-of-way line of Shellmound Street; **THENCE** along the southerly line of said Parcel B South  $75^{\circ}44'45''$  West 557.35 feet to the easterly right-of-way line of the Eastshore Freeway as shown on said map; **THENCE** along said right-of-way line North  $17^{\circ}26'33''$  West 350.54 feet; **THENCE** North  $75^{\circ}44'45''$  East 638.46 feet to the westerly right-of-way line of Shellmound Street; **THENCE** along said right-of-way line South  $04^{\circ}16'15''$  East 355.38 feet to the POINT OF BEGINNING.

See Exhibit 'A' attached hereto and made a part hereof.





Scale 1" = 100'

**EXHIBIT 'A'**  
**SOUTHERLY 350 FEET**  
**OF PARCEL B**

APPROVED BY \_\_\_\_\_

**CEA** Cullen Engineering Associates, Inc.  
 Civil Engineering - Surveying  
 1090 Adams Street, Suite A - P.O. Box 591  
 Benicia, California 94510  
 (707) 745-3819 Fax (707) 745-8436

Plot date: 5/1/01  
 Plot time: 9:55 am  
 PLI\_01122.dwg R:\2001\01122\  
 Xrefs: {R:\2001\01122\, 01122.tpc}

SCALE:	AS NOTED
DATE:	4-26-01
DRAWN BY:	L.A.B.
CHECKED BY:	DWC
PROJECT NO:	01122