

TOSCO MARKETING COMPANY

FAX



**ENVIRONMENTAL REMEDIATION
and COMPLIANCE**
2000 Crow Canyon Place, Suite 400
San Ramon, CA 94583
fax (925) 277-2361

TO : Ms Juliet Shinn
COMPANY : Alameda Co. Health Agency
FAX NO : 920-337-9385
DATE: 4-6-99 **PAGES SENT:** 9 (including cover)

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone and return the original message to the sender at the above address via the US Postal Service. Thank you.

FROM: Daniel DeWitt
PHONE: 925-277-2364
COMMENTS: As promised

2nd attempt



GETTLER-RYAN INC.

7100 Redwood Blvd., Suite 104,

Novato, CA 94945

Phone (415) 893-1515, Fax (415) 893-1517

TRANSMITTAL

TO: Mr. Dave DeWitt
Tosco Marketing Company
2000 Crow Canyon Place, Suite 400
San Ramon, CA 94583

DATE: March 22, 1999
PROJECT NO. 140165.01
SUBJECT: Former Tosco #1871
Minor Encroachment Permit
Oakland, CA

WE ARE SENDING YOU:

COPIES	DATED	DESCRIPTION
1	undated	Original documents for City of Oakland Minor Encroachment Permit and Agreement

THESE ARE TRANSMITTED as checked below:

- For review and comment Approved as submitted Resubmit __ copies for approval
 As requested Approved as noted Submit __ copies for distribution
 For approval Return for corrections Return __ corrected prints
 For your files For property owner signature and notarization

COMMENTS:

Dave,

Please have the property owner, Barbara Braund Jelenick, sign this document in the presence of a Notary Public per the Notice to All Applicants. **The original signed document should be returned to me** (not Roger Tam per the instructions) so that I can carry it to the City to obtain the required Street Excavation Permits for the wells.

If you have any questions please call.

Signed:



Donald J. Foster

NOTICE TO ALL APPLICANTS

OUR OFFICE WILL FORWARD YOUR DOCUMENT TO THE RECORDER'S OFFICE FOR RECORDATION. HOWEVER, THE RECORDER'S OFFICE WILL RETURN THE DOCUMENT UNRECORDED UNLESS YOU DO THE FOLLOWING:

PLEASE SIGN this instrument in the presence of a **NOTARY PUBLIC**.

Sign name(s) **EXACTLY** as you print or type your name(s) and title(s) in instrument (same spelling, match middle initial(s), etc.). Otherwise, it cannot be recorded.

If you are authorized by the legal owner(s) to sign the document, you must also enclose an authorization letter indicating that you are authorized to sign the document. The authorization letter must be signed by all legal owner(s), and all their signatures must be properly notarized.

If the benefiting property is owned by an individual, or individuals, all deeded owners must sign. If the benefiting property is owned by a corporation or a partnership, etc. the document must be signed by corporate officer(s) or authorized person(s) with the authority to execute such a document.

GETTLE - Ryan
Att: Donald Foster
 RETURN all originals to our office ~~(to the attention of ROGER TAM, Office of Planning & Building, City of Oakland, 1330 Broadway, 2nd Floor, Oakland, CA 94612)~~ for recordation. You may make copies for your files since the recorded document will **NOT** be mailed to you after it is recorded in the Office of Recorder, Alameda County, California.

NOTICE TO NOTARY PUBLIC

Please **DO NOT MAKE ANY** changes or any additions of any nature on this instrument. **PRINT** your name in notarization form and sign only in space provided.

Use an acknowledgement slip(s). Affix Notary Seal (do not place seal over any inked or colored portion; it will not be microfilmed and will be returned unrecorded, causing a delay in the transaction) onto an acknowledgement slip(s) only.

If document is signed in California:

You **MUST** attach a **FULL-PAGED** California All-Purpose Acknowledgement Slip(s), fill in all necessary information and check appropriate box(es).

For signers other than individuals (corporate officer, company representative, etc. you **MUST** check the appropriate box and fill in the name of entity signer(s) is (are) representing under "SIGNER IS REPRESENTING:" in the "CAPACITY CLAIMED BY SIGNER" Section.

If document is signed in other states:

You **MUST** attach an acknowledgement slip that is currently used in your state which has similar content as a California All-Purpose Acknowledgement Slip, fill in all necessary information and check appropriate box(es).

Recording requested by:
City of Oakland

When Recorded Mail to:
City of Oakland
Community & Econ. Develop. Agency
Building Services, Eng. info.
250 Frank H. Ogawa Plaza, 2/F
Oakland, CA 94612

TAX ROLL PARCEL NUMBER
(ASSESSOR'S REFERENCE NUMBER)

010	0813	004	01
MAP	BLOCK	PARCEL	SUB

SPACE ABOVE FOR RECORDER'S USE ONLY

Address: 96 MacArthur Boulevard, Oakland

MINOR ENCROACHMENT PERMIT AND AGREEMENT

Barbara Braund Jelinek, Trustee under the Barbara Braund Jelinek Revocable Living Trust dated January 15, 1989, owner of that certain property described in the Grant Deed recorded April 8, 1989, Series No. 89-091059, in the Office of the Recorder, Alameda County, California and commonly known as 96 MacArthur Boulevard, is hereby granted a Conditional Revocable Permit to encroach into the public right-of-way of MacArthur Boulevard with three monitoring wells. The location of said encroachments shall be as delineated in Exhibit 'A' attached hereto and made a part hereof.

The permittee agrees to comply with and be bound by the conditions for granting an Encroachment Permit attached hereto and made a part hereof.

This agreement shall be binding upon the undersigned, the present owner of the property described above, and its successors in interest thereof.

In witness whereof, I have set my signature this _____ day of _____, 1999.

BARBARA BRAUND JELINEK REVOCABLE LIVING TRUST

By: _____
Name: Barbara Braund Jelinek
Title: Trustee

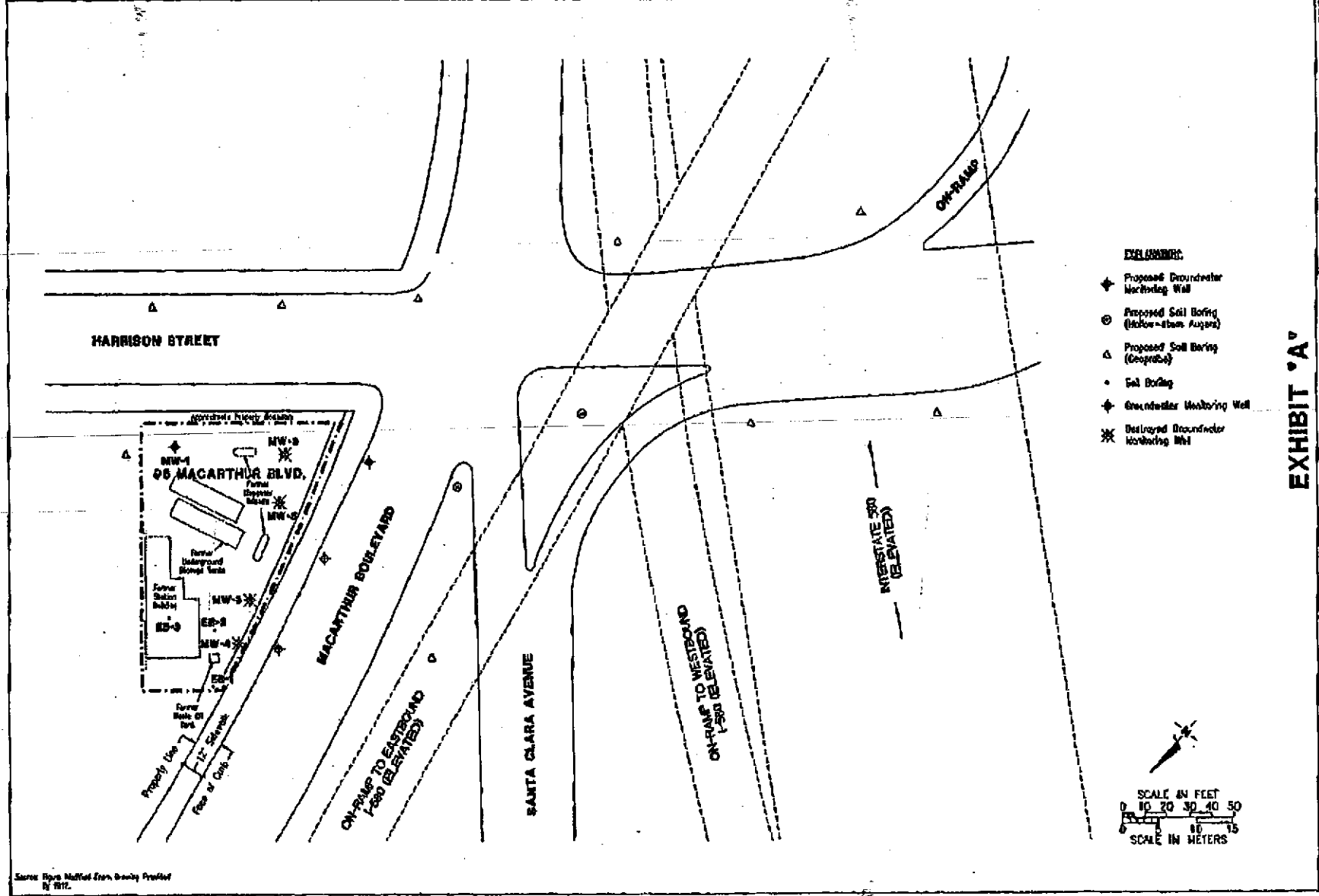
BELOW FOR OFFICIAL USE ONLY

CITY OF OAKLAND

Dated _____

By: _____
CALVIN N. WONG
Director of Building Services
For
WILLIAM E. CLAGGETT
Director
Community & Economic
Development Agency

:rt



Source: Plans Modified From Density Profile of 1997.

EXHIBIT 'A'

Gettler - Ryan Inc.
 817 Santa Clara Ave. Suite 1 (925) 651-7555
 P.O. Box 104044
 Oakland, CA 94614

SITE PLAN
 Former Tosco 76 Branded Facility No. 1871
 96 MacArthur Boulevard
 Oakland, California

PERMIT NO. 140165

REVISION BY

DATE 1/99

REVISED DATE

TO: Barbara Braund Jelinek, Trustee under the Barbara Braund Jelinek Revocable Living Trust Dated January 15, 1989 (APN: 010-0812-009)

Address: c/o Don Foster, Gettler-Ryan, Inc., 7100 Redwood Blvd., Suite 104, Novato, CA 94945

RE: Minor Encroachment Permit for Monitoring Wells in MacArthur Blvd.

CONDITIONS FOR GRANTING A MINOR ENCROACHMENT PERMIT

1. That this permit shall be revocable at the pleasure of the Director of Building Services.
2. That the permittee, by the acceptance, either expressed or implied, of the minor encroachment permit hereby disclaims any right, title, or interest in or to any portion of the public sidewalk or street area, and agrees that said temporary use of said area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise.
3. The permittee shall maintain in force and effect at all times that said encroachment occupies said public sidewalk or street area, good and sufficient public liability insurance in the amount of \$300,000 for each occurrence, and property damage insurance in the amount of \$50,000 for each occurrence, both including contractual liability insuring the City of Oakland against any and all claims arising out of the existence of said encroachment in said sidewalk area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the Chief of Building Services of the City of Oakland, and that such certificate shall state that said insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days written notice to said Chief of Building Services. The Permittee also agrees that the City may review the type and amount of insurance required of the Permittee every five (5) years and may require the permittee to increase the amount of and/or change the type of insurance coverage required.
4. That the permittee, by the acceptance, either expressed or implied, of this revocable permit shall be solely and fully responsible for the repair or replacement of any portion or all of said improvements in the event that said improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the permittee shall be liable for the expenses connected therewith.
5. That the permittee is aware that the proposed work is out of the ordinary and does not comply with City standard installations. Permittee is also aware that the City has to conduct work in the public right-of-way which may include, but may not be limited

to, excavation, trenching, and relocation of its facilities, all of which may damage encroachments. Permittee is further aware that the City takes no responsibility for repair or replacement of encroachments which are damaged by the City or its contractors. That the permittee, by the acceptance, either expressed or implied, of the encroachment permit hereby agrees that upon receipt of notification from the City, permittee shall immediately repair or replace within 30 days all damages to permittee's encroachments within the public right-of-way which are damaged by the City or its contractors in carrying out the City's work. Permittee agrees to employ interim measures required and approved by the City until repair or replacement work is completed.

6. That upon the termination of the permission herein granted, permittee shall immediately remove said encroachment from the sidewalk and street area, and any damage resulting therefrom shall be repaired to the satisfaction of the Director of Building Services.
7. That the permittee shall file with the City of Oakland for recordation a Minor Encroachment Permit and Agreement, and shall be bound by and comply with all the terms and conditions of said permit.
8. That said permittee shall obtain an excavation permit prior to the construction and a separate excavation permit prior to the removal of the ground water monitoring wells.
9. That said permittee shall provide to the City of Oakland an AS BUILT plan showing the actual location of the ground water monitoring wells and the results of all data collected from the monitoring wells.
10. That said permittee shall remove the monitoring wells and repair any damage to the sidewalk or street area in accordance with City standards two (2) years after construction or as soon as monitoring is complete.
11. That said permittee shall notify Building Services, Community and Economic Development Agency after the monitoring well(s) is/are removed and the sidewalk or street area restored to initiate the procedure to rescind the minor encroachment permit.
12. That monitoring well covers installed within the sidewalk area shall have a skidproof surface. A precast concrete utility box may be used in conjunction with the bolted cast iron cover with City approval.
13. That the ground water monitoring well casting and cover shall be cast iron and shall meet H-20 load rating. The cover shall be secured with a minimum of two stainless steel bolts. Bolts and cover shall be mounted flush with the surrounding surface.

14. That the permittee acknowledges that the City makes no representations or warranties as to the conditions beneath said encroachment. By accepting this revocable permit, permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the safety of itself and any of its personnel in connection with its entry under this revocable permit.
15. That the permittee acknowledges that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.).
16. Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."
17. Permittee recognizes that by waiving the provisions of this section, permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his/her decision to execute this encroachment agreement, regardless of whether permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
18. (a) That the permittee, by the acceptance of this revocable permit, agrees and promises to indemnify, defend, and hold harmless the City of Oakland, its

officers, agents, and employees, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs; collectively referred to as "claims"), whether direct or indirect, known or unknown, foreseen or unforeseen, to the extent that such claims were caused by the permittee, its agents, employees, contractors or representatives.

- (b) That, if any contamination is discovered below or in the immediate vicinity of the encroachment, and the contaminants found are of the type used, housed, stored, processed or sold on or from the 96 MacArthur Boulevard, Oakland, California site, such shall amount to a rebuttable presumption that the contamination below, or in the immediate vicinity of, the encroachment was caused by the permittee, its agents, employees, contractors or representatives.
- (c) That the permittee shall comply with all applicable federal, state, county and local laws, rules, and regulations governing the installation, maintenance, operation and abatement of the encroachment.
- (d) That the permittee hereby does remise, release, and forever discharge, and agree to defend, indemnify and save harmless, the City, its officers, agents and employees and each of them, from any and all actions, claims, and demands of whatsoever kind or nature, and any damage, loss or injury which may be sustained directly or by the undersigned and any other person or persons, and arising out of, or by reason of, the occupation of said public property, and the future removal of the above-mentioned encroachment.
19. That the hereinabove conditions shall be binding upon the permittee and the successive owners and assigns thereof.
20. That said Minor Encroachment Permit and Agreement shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the Director of Building Services, and shall become null and void upon the failure of the permittee to comply with all conditions hereinabove set forth.