



**Weiss Associates**

*Environmental and Geologic Services*

5500 Shellmound Street, Emeryville, CA 94608-2411

Fax: 510-547-5043 Phone: 510-547-5420

50 JUN 10 11:30

June 3, 1993

Larry Olund  
6023 College Avenue  
Oakland, California 95613

Re: Right of Entry Agreement  
6074/6076 Claremont Avenue  
Oakland, California  
81-618-07

Dear Mr. Olund:

As your attorney Gerard J. Glass requested in an April 29, 1993 letter to David Elias of Weiss Associates (WA), Shell has agreed to modify the Right of Entry Agreement for the site referenced above. The revised Right of Entry Agreement is enclosed for your approval. We look forward to completing the investigation of your property.

Please call me or Scott Macleod at 510-450-6000 if you have any questions or comments.

Sincerely,  
Weiss Associates

David C. Elias  
Staff Geologist

DCE:jw

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Attachment: Agreement for Right of Entry

cc: Dan Kirk, Shell Oil Company, P.O. Box 5278, Concord, California, 95450-9998  
Lester Feldman, Regional Water Control Board-San Francisco Bay, 2101 Webster Street,  
Suite 500, Oakland, California 94612  
[REDACTED] CDEH, 80 Swan Way, Room 200, Oakland, CA 94621

**ATTACHMENT A**  
**AGREEMENT FOR RIGHT OF ENTRY**

**AGREEMENT FOR RIGHT OF ENTRY**

State of California    )  
                                  )  
County of Alameda    )

This Agreement is entered by and between SHELL OIL COMPANY, a Delaware Corporation, duly authorized to do business in the state of California, hereinafter referred to as "Shell," and Mr. Larry Olund, hereinafter referred to as "Owner."

**RECITALS**

WHEREAS, Owner is the owner of certain property located southwest of the Shell service station located at 6039 College Avenue, in Oakland, California (the "Shell Site"). This consists of a single-story building and parking area southwest of the Shell site at 6074 and 6076 Claremont Avenue, APN #014-1268-042, described in Exhibit "A" attached hereto and by reference made a part hereof (hereinafter referred to as "the Property"); and

WHEREAS, there may be present, on or under the Property, gasoline and other liquids, solids and/or vapors which Shell is desirous of investigating by undertaking to perform a site assessment of the Property, and possible recovery or cleanup of the Property ("Activities"). Such Activities may include the drilling of soil borings, installation of wells and/or other investigation or cleanup of the Property; and

WHEREAS, it will be necessary for Shell personnel, or persons performing under contract for Shell, to enter upon the Property for the purpose of conducting said Activities; and

WHEREAS, Shell in no way admits or acknowledges liability for the presence of such gasoline or other liquids, solids and/or vapors, nor does Owner waive any of Owner's legal rights; and

WHEREAS, it is the desire and intention of Shell and Owner to make this mutual agreement with respect to such Activities.

#### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein and for other good and adequate consideration, Shell and Owner agree as follows:

##### I. Site Access

1.1 Owner, and any lessees, licensees or agents of Owner, grant to Shell, its contractors, subcontractors and their employees and agents, a temporary license to enter upon the Property for the purposes necessary for the performance of the Activities described herein, and the right to perform all acts necessary in connection therewith.

1.2 The performance of the Activities will be at no cost or expense to Owner or Owner's lessees, licensees, assignees or agents, and it is recognized that all work will be performed by Shell or Shell's agents.

1.3 This temporary license to enter shall continue in force from the date of this Agreement until said Activities are completed to the satisfaction of Shell and any applicable government regulatory agencies.

1.4 Shell agrees that such entry on the Property shall be limited to the extent necessary for the performance of the Activities undertaken by Shell for the purposes expressed herein.

1.5 This agreement is intended and shall be construed only as a temporary license to enter and conduct the Activities upon the Property and not as a grant of easement or any other interest in the Property.

## II. Obligations of Shell

2.1 It is understood by the parties hereto that such Activities as may be conducted, including abandonment of wells, shall be under the sole jurisdiction of the applicable government regulatory agencies and that Shell and the agencies shall have the sole discretion to determine the completeness of any work performed, provided that the Owner shall have the right to determine the adequacy of the cleanup of any debris caused by Shell's Activities on the Property, and that the Property has been returned to or near original condition of the surrounding ground surface.

2.2 Shell shall be responsible for the proper removal and disposal of all soil cuttings and other materials generated in connection with the Activities including, but not limited to, the construction, monitoring, servicing or closure of the monitoring wells. All cuttings and other materials generated in connection with the work referenced above shall be placed at the Shell station.

2.3 The Activities of Shell on the property shall be conducted in a manner which will not obstruct or otherwise unreasonably interfere with the activities of Owner or its tenants or their customers on the Property. All inspections and drilling are to be conducted in the presence of Owner or his designated representative; the exact drilling sites shall be determined by Owner. Shell shall give Owner and all tenants of Owner prior written notice of its intention to enter upon the premises for inspection and/or drilling.

2.4 All soil borings not completed as wells shall be backfilled with cement grout and finished flush with grade. All monitoring wells shall be covered with a flush mounted utility box and the cover and perimeter seal will be the only part of the monitoring well visible at the ground surface.

2.5 Immediately upon completion of the Activities, Shell shall remove the ground water monitoring wells and any other equipment used during the Activities in accordance with all applicable government regulatory agency requirements and guidelines.

2.6 Shell shall conduct all its activities on the Property in conformance with all applicable laws, regulations and ordinances.

2.7 Shell shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics', materialmens', contractors' or subcontractors' lien arising from any work improvement or Shell's activities on the property, and Shell shall, at its own expense, contest the validity of any such asserted lien, claim or demand, and shall furnish the bond required in California Civil Code §3143 (or any comparable statute hereafter enacted for providing a bond freeing the property from the affect of such a lien claim). Owner and owner's property shall be identified as beneficiaries under the bond.

### III. Indemnification

3.1 Shell shall be responsible for and shall defend, indemnify and hold Owner harmless from and against any and all losses, damages, costs, claims, expenses or liabilities arising out of, connected with or attributable to the Activities of Shell, Shell's agents, contractors or subcontractors, and/or any third persons at any time occupying or present on the Property or adjacent properties, except to the extent such claims arise out of or from the negligence or intentional conduct of Owner.

### IV. Disclosure of Results

4.1 Shell shall keep Owner informed as to its Activities on the Property and shall provide Owner a copy of all reports and laboratory analyses pertaining to the monitoring wells installed and operating on the Property.

V. Obligations of Owner

5.1 Owner agrees not to prohibit, interfere with or obstruct such entry or Activities upon the Property, and not to cause or permit same to be done by others. Owner covenants that the temporary license to enter hereby granted Shell is binding upon both itself and any present or future lessees or occupants of the Property and that Owner will make any grant of rights to such lessees or occupants subject to Shell's license to enter.

VI. Miscellaneous

6.1 This Agreement shall be binding upon the parties hereto and their respective successors, representatives, heirs and assigns.

6.2 By virtue of entering into this Agreement, Owner does not assume control of or responsibility for federal, state or local public agency reporting requirements with respect to the Activities and findings of Shell. Shell agrees to notify the appropriate federal, state or public agencies as required by law or otherwise disclose, in a timely manner, any information that may be necessary to prevent any danger due to health, safety or the environment.

6.3 Nothing contained in this Agreement shall be construed or interpreted as requiring Owner to assume the status of a generator, storer, treater, transporter or disposal facility within the meaning of any similar federal, state or local law, regulation or ordinance.

6.4 The prevailing party shall pay all costs, including reasonable attorneys' fees incurred to enforce the terms and conditions of this Agreement.

6.5 This Agreement shall be governed by and construed in accordance with the laws of the state of California and shall be

binding on the parties hereto and their respective heirs, successors, assigns, and legal representatives.

6.6 The invalidity or unenforceability of any provision of this Agreement shall not affect or render invalid or unenforceable any other provision.

6.7 The Parties agree that this Agreement is intended by the parties as the final, complete and exclusive expression of the terms and conditions of their agreement. This Agreement shall supersede all prior written or oral agreements between the parties hereto.

6.8 Should any controversy arise among the parties relating to the formation, interpretation, enforcement, or any other issue regarding this agreement, the parties agree to promptly submit such controversy to binding arbitration before a single arbitrator to be appointed by the Superior Court of Alameda County, unless otherwise agreed. The parties further agree that with respect to any such arbitration, the parties shall have all rights of discovery permitted under California law, including, without limitation, the rights of discovery set forth in Section 1283.05 of the California Code of Civil Procedure.

6.9 Shell shall give written notice of its intent to conduct activities on the premises or any tenant's space on the premises no less than three (3) days prior to the commencement of such activities.



IN WITNESS WHEREOF, the parties to this Agreement have duly executed and deliver this Agreement on the day and year written below.

SHELL OIL COMPANY

Executed on \_\_\_\_\_, 1993 By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

OWNER

Executed on \_\_\_\_\_, 1993 By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

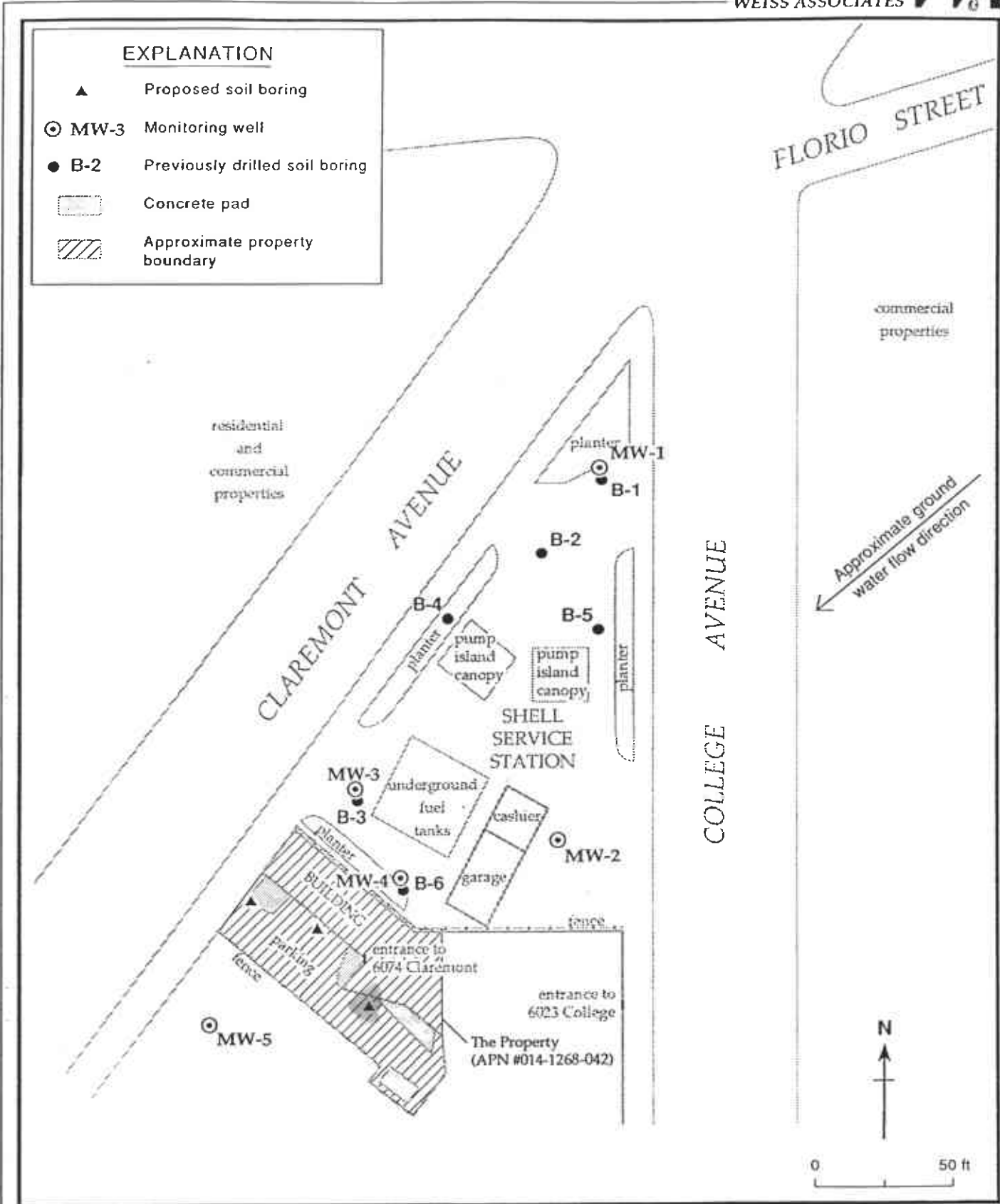


Exhibit A. Proposed Soil Boring Locations and Location of the Property (APN #014-1268-042) - 6074 and 6076 Claremont Avenue, Oakland, California



**Weiss Associates**

*Environmental and Geologic Services*

5500 Shellmound Street, Emeryville, CA 94608-2411

Fax: 510-547-5043 Phone: 510-547-5420

May 24, 1993

Albert Hall  
City of Oakland  
Planning and Building  
1330 Broadway  
Oakland, California 94612

Re: Encroachment and Excavation Permits  
Shell Service Station  
WIC #204-5508-3301  
6039 College Avenue  
Oakland, California  
WA Job #81-618-07

Dear Mr. Hall:

Please find attached a letter of authorization from the property owner of 6029 College Avenue, which is a parcel of the above referenced site. Shell is leasing land from both Montrose Investment Company and Russel J. Bruzzone. Since we already submitted signatory authorization from Mr. Bruzzone this should enable you to finalize the encroachment permit.

Please call me at 450-6108 if you have any questions or if I can be of assistance with the processing of the encroachment permit.

Sincerely,

David Elias  
Staff Geologist

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cc: Dan Kirk, Shell Oil Company, P.O. Box 5278, Concord, California, 95450-9998  
Scott Seery, Alameda County Department of Environmental Health, 80 Swan Way, Room 200, Oakland, California 94621