

TRANSMIT REPORT

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ALAMEDA COUNTY
 HEALTH CARE SERVICES

AGENCY
 DAVID J. KEARS, Agency Director



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

August 20, 2001

Ms. Elizabeth Costello
 Magnolia Street, LLC
 615 Front Street
 San Francisco, California 94111

**RE: CASE CLOSURE – PROPERTY Located at 1200 32nd Street
 Oakland, CA 94608 (STID 3652 / CO # 763)**

Dear Ms. Costello:

This agency has reviewed the case file concerning the lead found in subsurface soil at the above referenced site. A report, "Final Report of Environmental Remediation Activities" dated July 19, 2001, was prepared and submitted by Aqua Science Engineers, Inc. for the site. The property is in a mix residential / light industrial section of Oakland and formerly occupied by Clawson School. The subject site, currently a vacant parking lot, is proposed for development of 34-unit townhouses with backyards.

In 1996, a Phase II investigation was conducted at the site. Lead up to 500 parts per million (ppm) was detected in shallow soil in the western portion of the property. It appeared that lead found in soil was from lead-based paint used in the building for decades.

FOX POINT LTD.

FAX TRANSMITTAL

615 FRONT STREET
SAN FRANCISCO
CALIFORNIA 94111

DATE: 1/24/01 # PAGES (including cover): 11

TO: Susan Hugo FROM: Betsy Costello

TEL: 510-337-9335 FAX: 510-567-6700

REGARDING: Please review the attached document and advise me if this is acceptable. I have emailed it to you with changes marked. We appreciate your attention to this as our loan approval expires on 1/31/01.
Thank.

Elizabeth Costello
415-776-3077

Recording Requested By:

Magnolia Street, LLC
615 Front Street
San Francisco, California 94111

When Recorded, Mail To:

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

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

A 42 foot square located at the southwest corner of Parcel D as said parcel is shown on the approved lot line adjustment recorded October 6, 1998, series No. 98-345479 Alameda County Recorders Office

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the ____ day of _____, 20__ by Magnolia Street, LLC ("Covenantor") who is the Owner of record of that certain property situated at the north side of 32nd Street between Union Street and Magnolia Street, in the City of Oakland, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion 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. A limited area of soil beneath the Burdened Property contains hazardous materials. The affected area, as depicted in Exhibit A Page 2, consists of a 42 foot by 42 foot area of subsurface soil that contains total lead concentrations at or above the site-specific clean-up goal of 147 parts per million (ppm) total lead. Use of this area for residential development is approved provided a permanent cap is emplaced over the affected area. The purpose of the permanent cap is to remove the exposure route of coming in contact with the affected soil. The permanent cap shall be constructed of a material such as hardscape, concrete, asphalt, or slab-on-grade structure. (this addition is Dave Allen's description per Susan Hugo's request)

B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by lead believed to be the result of paint removal, possibly by sandblasting, of the former Clawson School conducted by unknown entities. These operations resulted in contamination of shallow subsurface soil with an inorganic chemical, lead, which constitutes a hazardous material as that term is defined in Health & Safety Code Section 25260. No

remediation of this limited area has been performed; however, an asphalt cap currently exists to limit the exposure to the lead-bearing soil. Controls of the affected area are to include a permanent cap of the area (hardscape, concrete, asphalt, or slab-on-grade structure).

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via in-place contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation, or ingestion of humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein including hardscape, concrete, asphalt or a slab-on-grade structure.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for residential and is adjacent to residential, industrial and commercial land uses.

E. Full and voluntary disclosure to the County of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property 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 hazardous materials 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 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 hazardous materials. 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 and all Owners and Occupants. 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, leasing, 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, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be

adhered to for the benefit of the County and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants 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 leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

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 Environmental Health Services and shall include its successor agencies, if any.

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

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

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

a. Development of the Burdened Property shall be restricted to industrial, commercial, residential or office space;

- b. No hospitals shall be permitted on the Burdened Property;
- c. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- d. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- e. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property, unless expressly permitted in writing by the County. Any contaminated soils of the Burdened Property brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;
- f. All uses and development of the Burdened Property shall be consistent with any applicable Risk Management Plan, which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, 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.
- g. No Owners or Occupants of the 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.
- h. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the County, which could affect the ability of such cap or 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;
- i. 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.
- j. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant 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 and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils under a limited area of the property, and is subject to a Covenant and Environmental Restriction dated as of _____, 200_, and recorded on _____, 200_, 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 or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the County for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the County for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

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"
Magnolia Street, LLC
615 Front Street
San Francisco, California 94111

If To: "County"
Alameda County Environmental Health Services
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.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.
Covenantor: Magnolia Street, LLC

By: _____
Title: _____
Date: _____

Agency:

Alameda County
Environmental Health Services

By: _____

Title: Director

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

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.

Notary Public in and for said
County and State

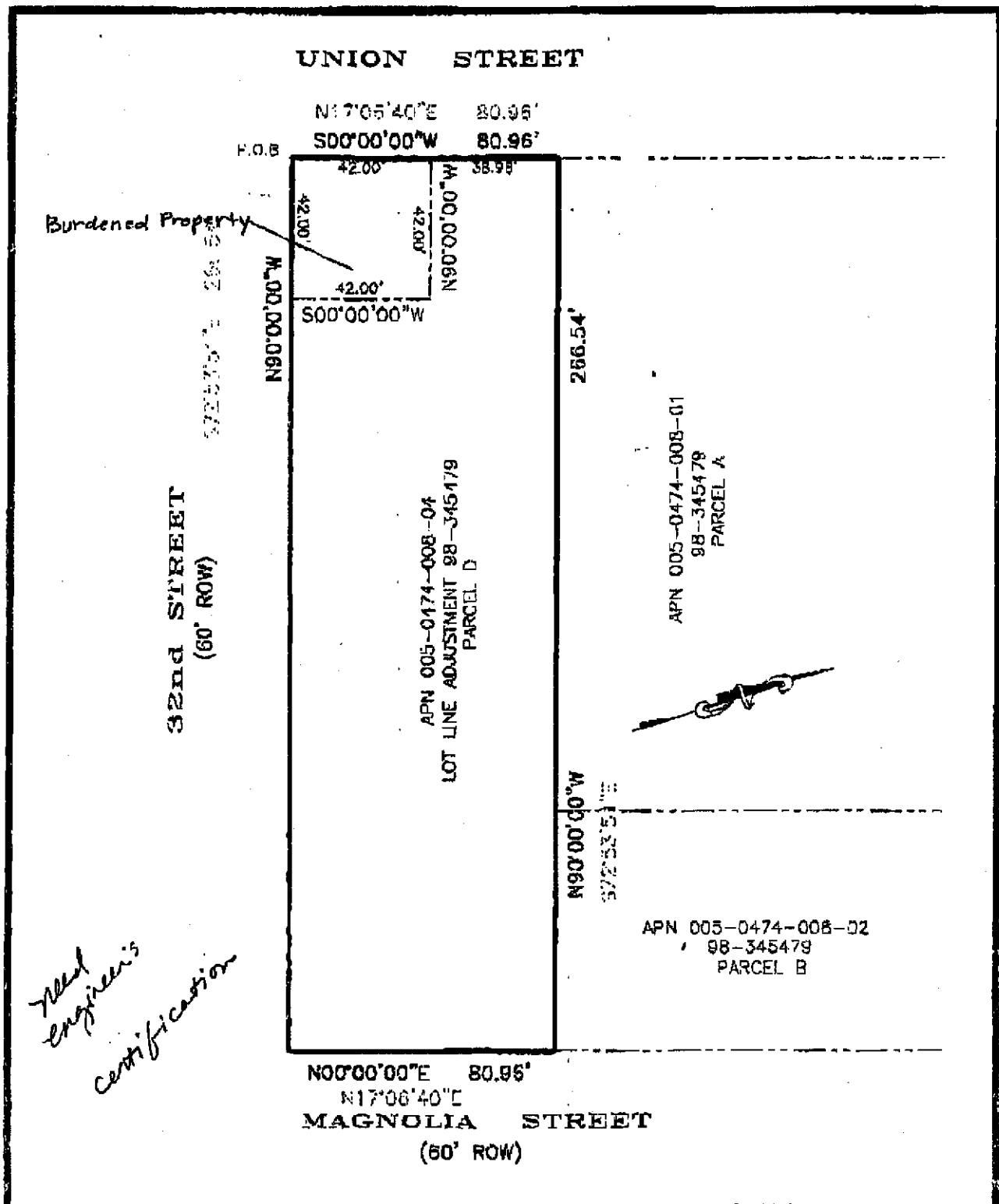
EXHIBIT A

LEGAL DESCRIPTION OF BURDENED PROPERTY

Portion of Parcel D as said parcel is shown on the approved lot line adjustment recorded October 6, 1998, series No. 98-345479 Alameda County Recorders office more particularly described as follows:

Beginning at the southwest corner of said Parcel D at the intersection of the east line of Union Street and the north line of 32nd Street as said streets are shown on said lot line adjustment, thence said east line of Union Street North 00° 00' 00 East 42.00 feet, thence parallel with said north line of said 32nd Street South 90° 00' 00 east 42.00 feet; thence parallel with said east line of said Union Street South 00° 00' 00 west 42.00 feet to the north line of said 32nd Street, thence along said line North 90° 00' 00" west 42.00 feet to the Point of Beginning.

Page 1 of Exhibit A



HUMANN COMPANY INC.
ENGINEERING - SURVEYING
1021 BROWN AVE. LITTLETON, CO 80120
PH (303)800-3000 FAX (303)808-8078

EXHIBIT A

SCALE	1"=40'
DATE	12/2000
BY	RE
JOB NO.	97184

Magnolia Street, LLC
615 Front Street
San Francisco, California 94111
415-776-3077 tele
415-776-3033 fax

ENVIRONMENTAL
PROTECTION
00 DEC 18 PM 4:49

December 12, 2000

Ms. Susan Hugo
Hazardous Materials Specialist
Alameda County Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Oakland, CA 94502-6577

Re: Clawson Remainder Parcel 5-474-8-4

Dear Ms. Hugo:

Enclosed please find the items that you requested for your review of our project. I have enclosed a description of the project, a site plan with the location of the samples collected from the site, a utility survey of the site, and a more detailed utility survey. Please let me know if you have any questions on these submissions or if you need anything else from us.

We are working with Dave Allen to finalize the Covenant document and should be finished with it very soon. As you know, we are very anxious to get this process completed so that we can close our land loan, and will do everything we can to expedite. Thanks for your assistance, Susan.

Sincerely,



A. Elizabeth Costello
Manager

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



October 3, 2000

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

Ms. Betsy Costello
Fox Point Ltd.
9 Redfield Alley
San Francisco, California 94133

**RE: Former Clawson School Located at (STID # 3652)
3420 Peralta Street, Oakland, CA 94608**

Dear Ms. Costello:

Our records indicate that a deposit for regulatory oversight has not been submitted for the above subject site. Please submit a deposit of \$3,000.00 payable to Alameda County, Environmental Health Services.

We must receive this deposit so that future regulatory oversight on the subject site can proceed in a timely fashion. At the completion of this project, any unused monies will be refunded to you or your designee.

The deposit refund mechanism is authorized in Section 6.92.060L of the Alameda County Ordinance Code. Work on this project will be debited at the Ordinance specified rate, currently at \$ 105 per hour.

Please be sure to write the following on the check to identify your account:

- type of project (**Site Mitigation**)
- site address (see RE: line above)

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

Sincerely,

Susan L. Hugo
Hazardous Materials Specialist

c: Ariu Levi / Thomas Peacock, Environmental Health Services
/ Dave Allen, Aqua Science Engineers Inc., 208 W. El Pintado, Danville, CA 94526
√ SH / files

CITY OF OAKLAND



FIRE SERVICES AGENCY • 1605 MARTIN LUTHER KING JR. WAY • OAKLAND, CALIFORNIA 94612

Office of Emergency Services

(510) 238-3938
FAX (510) 238-7761
TDD (510) 839-6451

August 9, 2000

Mr. Tom Peacock
Alameda Health Care Services Agency
Department of Environmental Health
1131 Harbor Bay Parkway, 2nd Floor
Alameda, CA 94502

**Subject: Request for Regulatory Oversight of the Former Clawson School Site 3420
Peralta Street , Oakland, CA**

Dear Mr. Peacock:

Bases upon the previous remediation history regarding with the County at this above location. The City and the consultant for this project are in agreement that addition site assessment needs to be performed. As such, the City of Oakland requests that Alameda County Department of Environmental Health (County) add this site to the Local Oversight Program, and oversee remediation assessment, cleanup activities and the management of soils on site.

It is the understanding of the City that the Property owner will reimburse the County for all costs associated with the oversight of this property.

If you have any questions, please contact me at (510) 238-7759.

Sincerely,

A handwritten signature in black ink, appearing to read "Leroy Griffin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Leroy Griffin
Inspections Program Manager

Cc: Susan Hugo, Alameda County
Dave Allen, Aqua Science

00 AUG 10 PM 3:04
ENVIRONMENTAL
PROTECTION



FAX BEING SENT BY:

Aqua Science Engineers, Inc.
 208 W. El Pintado Road
 Danville, CA 94526
 Phone (925) 820-9391
 Fax (925) 837-4853

DATE: 8/8/00
 TO: Ms. Susan Hugo
 FROM: Dave Allen
 NUMBER OF PAGES TO FOLLOW: 2

*****Please Phone If This Fax Is Received Incomplete*****

MESSAGE:

F Y I. Copy will not follow by mail.
Dave



August 8, 2000

City of Oakland Fire Prevention Bureau
250 Frank Ogawa Plaza, Suite 3341
Oakland, CA 94612

ATTENTION: Mr. Leroy Griffin

SUBJECT: **REQUEST FOR REGULATORY OVERSIGHT**
Former Clawson School Site
3420 Peralta Street
Oakland, CA

Dear Mr. Griffin:

In the spring and summer of 1998, Aqua Science Engineers, Inc. (ASE) was retained by Clawson Project Associates (CPA) to act as the environmental consultant in charge of the assessment and remediation of lead-bearing soil identified at the subject site that resulted from the use of lead-based paint for decades on the subject site buildings. During our work in 1998, ASE defined the extent of lead-bearing soil west of the former school building, excavated the contaminated soil, collected confirmation soil samples, and hauled the contaminated soil to an out-of-state landfill. All of this work was directed and overseen, at that time, by Ms. Susan Hugo of the Alameda County Health Care Services Agency (ACHCSA). This case was subsequently closed by the ACHCSA and the RWQCB in late 1998.

At this point in time, ASE has been retained by a prospective purchaser of a different portion of the subject site to assess and possibly remediate a small area of lead-bearing soil previously identified by others. This area was not addressed by ASE in 1998 because it was not within the boundary of the portion of the property being redeveloped by CPA. Since this area is now proposed for residential development, ASE has recommended to the prospective purchaser, that a subsurface soil assessment and possible remediation be conducted in this immediate area. ASE and the prospective purchaser request regulatory agency involvement during this process.

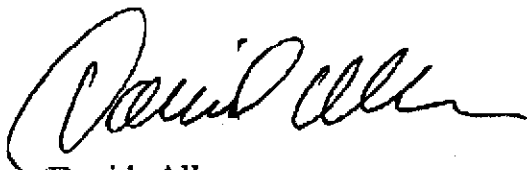
Several weeks ago, ASE was informed by Ms. Hugo that her agency no longer had an oversight role at this site. She informed us that you and

your agency would act as the lead agency. ASE therefore requests that this case be re-opened while this portion of the site is further assessed and possibly remediated by ASE. As we discussed during recent telephone conversations, ASE respectfully requests that the Oakland Fire Department return this project to Ms. Hugo at the ACHCSA since they already have prior oversight time spent on this project and co-authored the original case closure letter regarding the lead-contaminated soil.

Should you have any questions or comments, please feel free to call me at (925) 820-9391.

Sincerely,

AQUA SCIENCE ENGINEERS, INC.



David Allen
Senior Project Manager

cc: Ms. Betsy Costello, Fox Point, Ltd., prospective purchaser
Ms. Susan Hugo, ACHCSA



June 10, 1999

Alameda County Health Care Services Agency
1131 Harbor Bay Parkway
Alameda, CA 94502

99 JUN 14 PM 3:47
ENVIRONMENTAL
PROTECTION

ATTENTION: Ms. Susan Hugo

SUBJECT: FORMER CLAWSON SCHOOL PROPERTY (STID #3652)
3420 Peralta Street
Oakland, California, 94608

Dear Ms. Hugo:

Aqua Science Engineers, Inc. (ASE) is writing this letter, at the request of our client Clawson Project Associates (CPA), in response to your Closure Letter dated March 30, 1999 referring to the subject site.

CPA is currently developing the property as a residential community as previously proposed and approved by all the necessary regulatory agencies. Should the future use of the property change in a manner not consistent with the current development scenario, CPA will prepare and submit to your agency the documents identified in the third bullet of your March 30, 1999 Closure Letter.

Please feel free to call me at (925) 820-9391 if you have any questions or comments.

Respectfully submitted,

AQUA SCIENCE ENGINEERS, INC.

David Allen, R.E.A.
Senior Project Manager



cc: Mr. Paul Parkman, Clawson Project Associates
Mr. Steve Somsen, Oakland Unified Schools