

Jurek, Anne, Env. Health

From: Jurek, Anne, Env. Health
Sent: Wednesday, April 20, 2016 12:22 PM
To: Clerk-Recorder, Web Customer Service
Subject: Elsie
Attachments: Covenant ACDEH.pdf

Dear Elsie,

Thank you so much for allowing me to send this information to you.

As I mentioned to you on the phone, Alameda County Department Environmental Health (ADCEH) needs to have this "Covenant and Environmental Restriction on Property" recorded with the County in order to close this case. I have attached the documents pertaining to this covenant.

To give you a little history, back in September 2015, one of the owners of the property, Sandra Hess, signed the document and had it notarized. (Note that she, along with her father, Joseph Hess, and her brother, Gregory Hess, the owners at the time of the property, are listed in the first page of the covenant in the upper left hand corner.) After Ms. Hess signed, Ronald Bowder, ACDEH's acting director, signed the document and had it notarized.

Jerry Wickham, the ACDEH caseworker at the time, informed Ms. Hess that she could go by herself to the Recorder's office to get the document recorded. According Ms. Hess, when she went to the Recorder's office, she was informed by the clerk that the document could not be recorded because there were three individuals listed in the left upper corner of the first page. She had Power of Attorney at the time over her father, who was incapacitated. I don't know whether or not she had Power of Attorney documents with her when she was at the Recorder's office. Since Ms. Hess's visits to the Recorder's office, Joseph Hess died. According to Ms. Hess, she and her brother Gregory are currently the owners of the property.

We and other interested parties would like to see this case closed. If the attached covenant is fine the way it is, then please verify whether or not Ms. Hess can come on her own to the recorder's office. If the documents are insufficient, please let us know what corrections we need to make, who needs to notarize, and who needs to be present at the Recorder's office.

I greatly appreciate your assistance in this matter. You can contact me at (510) 567-6721 or send me an electronic mail message at anne.jurek@acgov.org. Thank you.

Sincerely,

Anne Jurek, M.S.

Professional Technical Specialist II (Geology)

Alameda County Department of Environmental Health (ACDEH)

1131 Harbor Bay Pkwy

Alameda, CA 94502

(510) 567-6721; Ext. 36721

anne.jurek@acgov.org

Recording Requested By:

Joseph I. Hess
Sandra C. Hess
Gregory D. Hess
2709 Park Avenue
La Verne, California 91750

When Recorded, Mail To:

Jerry Wickham
Alameda County Environmental Health Services
1131 Harbor Bay Parkway
Alameda, California 94502

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

O'Reilly Auto Parts (Former Grand Auto #43)
4240 International Boulevard, Oakland, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 24th day of August, 2015 by Joseph I. Hess, Sandra C. Hess, and Gregory D. Hess ("Covenantor") who are the Owners of record of that certain property situated at 4240 International Boulevard, 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. The Burdened Property and groundwater underlying the property contains hazardous materials as defined in California Health & Safety Code Section 25260.

B. Contamination of the Burdened Property. The Burdened Property has been used in the past for retail grocery, auto parts and fuel sales. Historically, the Burdened Property had located on it gasoline fuel pumps and underground gasoline storage tanks as well as a carwash and car wash sump. Up-gradient parcels had located on them dry-cleaning operations. Constituents detected in soil, soil vapor or groundwater at the Burdened Property include PCE (and its breakdown products), which are hazardous materials. Possible sources for these constituents may be related to past use of the property as well as former up-gradient dry-cleaning operations.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil, ground water and soil vapor on the Burdened Property. Exposure to these contaminants could

take place if intrusive activities occur. Without the measures set forth in this Covenant, mitigation measures which have been performed on the Burdened Property as well as those measures to be performed pursuant to the Site Mitigation Plan ("SMP") approved for the Burdened Property by the Alameda County Environmental Health Services agency, exposure to these contaminants could take place via inhalation from vapors in indoor and outdoor air; ingestion, inhalation and dermal contact with impacted soil; and ingestion and dermal contact with impacted ground water. The risk of public exposure to the contaminants has been substantially lessened by the controls described herein.

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

E. Full and voluntary disclosure to, among others, 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 or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;

- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. Owners or Occupants of the Burdened Property or any portion thereof shall notify the County of any intrusive activity or excavation work on the Burdened Property. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, 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 Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;
- g. All uses and development of the Burdened Property shall be consistent with any applicable County Cleanup Order, SMP or Risk Management Plan, each of 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.
- h. 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.
- i. 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;
- j. 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.
- k. 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.
- l. No Owner or User of the Burdened Property shall grow fruits or vegetables for human

consumption using site soils.

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 property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of _____, 20__, and recorded on _____, 20__, in the Official Records of _____ 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"
Joseph I. Hess
Sandra C. Hess
Gregory D. Hess
2709 Park Avenue
La Verne, California 91750

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: Sandra C. Hess

By: SANDRA C. HESS

Title: OWNER

Date: Aug 24, 2015

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Marin)

On August 24th 2015 before me, Michael D. Forster, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Sandra Catharina Hess
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document MF
Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____
Capacity(ies) Claimed by Signer(s)
Signer's Name: _____ Signer's Name: _____
 Corporate Officer -- Title(s): _____ Corporate Officer -- Title(s): _____
 Partner -- Limited General Partner -- Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____

Agency: Alameda County Environmental Health Services

By: Ronald Browde

Title: Director

Date: 09-09-2015

ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA)

County of Alameda)

On September 9 2015 before me, Joyce Beck, Notary Public,
(Here insert name and title of the officer)

personally appeared, Ronald Browder,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Joyce Beck
Signature _____ (Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
Covenant & Environmental
(Title or description of attached document)
Restrictions of Property
(Title or description of attached document continued)
Number of Pages _____ Document Date 9/9/2015

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)
 Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public)
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ - is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document with a staple

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property situate in the City of Oakland, County of Alameda, State of California, described as follows:

Portion of Rancho San Antonio finally confirmed to Antonio M. Peralta, et. al, as shown on Book A of Patents at page 648, records of Alameda County, California, more particularly described as follows:

Beginning at a point on the Northwestern line of High Street, distant thereon North 45° 45' East 100 feet from the intersection thereof with the Northeastern line of East 14th Street; running thence North 44° 15' West 100 feet; thence South 45° 43' 30" West 127.39 feet to a point on the Northeastern line of East 14th Street; distant thereon North 59° 34' 30" West 103.63 feet from said Northwestern line of High Street; thence along said line of East 14th Street North 59° 34' 30" West 130 feet; thence North 45° 45' East 336.75 feet to a line drawn North 44° 15' West from a point on the said line of High Street, which is distant thereon North 45° 45' East .275 from said line of East 14th Street; thence South 44° 15' East 225.32 feet to the Northwestern line of High Street; thence South 45° 45' West along said line of High Street, 175 feet to the point of beginning.

SUBJECT TO covenants, conditions, restrictions, exceptions, easements, reservations, rights and rights-of-way of record, if any.

Parcel Number 35-2354-2