



1135 Atlantic Avenue
Alameda, CA 94501
415.521.5200
FAX 415.521.1547

March 27, 1990

Mr. Edward Howell
Manager Hazardous Materials Program
Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way, Room 200
Oakland, CA 94621

SUBJECT: WORKPLAN AND DEED RESTRICTION FOR THE EMERY BAY MARKETPLACE SITE

Dear Mr. Howell:

On behalf of the Martin Group, ChemRisk/McLaren submits two documents for your review. The first is a letter and deed restriction to leave asphaltic materials and other minor contaminants in place on the Emery Bay Marketplace site. The second is a workplan to further characterize groundwater quality at the site and to evaluate the need for groundwater remediation. The accompanying letter and workplan address the six issues set forth in the February 15, 1990, Site Mitigation Amendments for this site which were discussed in detail at that meeting.

We believe that execution of the deed restriction and implementation of the workplan will fulfill the requirements of Alameda County, the California Water Quality Control Board, San Francisco Bay Region, and the California Department of Health Services for a comprehensive plan for further action on this site. We understand that upon execution of the deed restriction, no soil remediation will be required and that your agency will provide the Martin Group with a letter to that effect. We also understand that your agency's approval of the workplan for additional groundwater characterization will be communicated in writing directly to the Martin Group.

In order to facilitate rapid implementation of the workplan as you have requested, we have scheduled one week for agency review of the plan. We hope this will be sufficient.

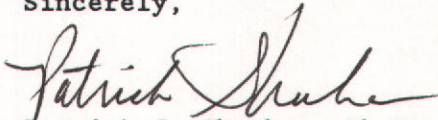
11

STRATHMORE WRITING

Mr. Edward Howell
March 27, 1990
Page 2

If you have any questions on the proposed work plan or deed restriction please contact Ms. Julie Menack or myself.

Sincerely,



Patrick J. Sheehan, Ph.D.
Supervising Toxicologist
ChemRisk Division
McLaren

Enclosure

0327SMF1





ChemRisk™

A McLaren Company

1135 Atlantic Avenue
Alameda, CA 94501
415.521.5200
FAX 415.521.1547

March 22, 1990

Mr. Walter Kaczmarek
The Martin Group
6475 Christie Avenue, Suite 500
Emeryville, California 94608

**SUBJECT: WORK PLAN FOR ADDITIONAL WORK TO BE PERFORMED AT EMERY BAY
MARKETPLACE, EMERYVILLE, CALIFORNIA**

Dear Mr. Kaczmarek:

This letter presents a work plan to address the items listed by the County of Alameda Department of Environmental Health (ACDEH) as "Site Mitigation Amendments" (attached). These items were discussed at a meeting held at the ACDEH offices on February 15, 1990, to address the status of the environmental investigation at the Emery Bay Marketplace property. This meeting was attended by representatives of the ACDEH, the Regional Water Quality Control Board, San Francisco Bay Region (RWQCB), the California Department of Health Services (DHS), the Alameda County District Attorney's office, the Martin Group, Brobeck, Phleger, and Harrison, and McLaren.

The Site Mitigation Amendments as listed on the attached form (Attachment A) were discussed at the February 15 meeting. The key issues discussed were:

1. Evaluate the need for additional monitoring wells to characterize groundwater quality.
2. Evaluate the need for groundwater treatment.
3. Develop a groundwater monitoring program for total oil and grease, PNAs, lead, zinc, copper, arsenic [added at meeting].
4. Develop a monitoring schedule and evaluation criteria.
5. Evaluate leaving asphaltic materials and other minor soil contaminants in place with an appropriate deed restriction.
6. Evaluate the need for a risk assessment.

Mr. Walter Kaczmarek
March 22, 1990
Page 2

The attached Work Plan (Attachment B) provides a scope of work to address the construction of additional monitoring wells to evaluate site hydrogeology and water quality (Item No. 1). Based on findings from the planned investigation, a work plan to address the need for removal and treatment of groundwater (Item No. 2), and a quarterly water sampling program will be developed (Items No. 3 and No. 4).

As agreed at the February 15 meeting, the asphaltic materials and other contaminants identified in previous soil investigation at the Emery Bay Marketplace will be left in place. No soil remediation will be performed. The attached deed restriction (Attachment C) consistent with the California Department of Health Services guidelines will be executed and recorded for the property (Item 5).

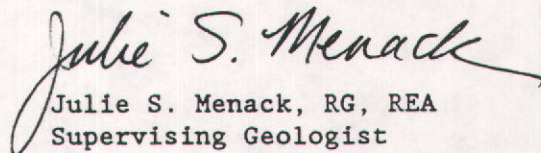
A preliminary evaluation of health and environmental risks associated with chemicals at the site indicated that the potential for human exposure and San Francisco Bay exposures was negligible. This analysis was reported by McLaren in "Results of the Hydrogeologic Investigation Conducted at the Marketplace/Nielsen Properties, September 11, 1989". The execution of a deed restriction for the site assures appropriate exposure protection for future on-site construction activities. The groundwater sampling has thus far indicated no off-site dowgradient migration of petroleum compound towards the Bay. Water quality data obtained during the planned investigation will provide further data to act as a check for potential off-site chemical migration (Item 6). At this time, no additional risk assessment is warranted. Should future data indicate other potential exposures, and a need for further risk assessment a risk assessment plan will be submitted for agency review.

A cost estimate for the proposed work is presented in Attachment D to the Technical Proposal. Please call if you have any questions regarding this proposal or require additional information.

Sincerely,



Patrick Sheehan, Ph.D.
Supervising Toxicologist



Julie S. Menack, RG, REA
Supervising Geologist

cc: Robert Wyatt, Brobeck, Phleger, and Harrison

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A McLaren Company

MARKET PLACE - NIELSEN PROPERTIES
FEBRUARY 15, 1990
SITE MITIGATION AMENDMENTS

SITE	DESCRIPTION	APPROVE /	DISAPPROVE - WHY	DATE OF COMPLETION
1	Add Monitoring Wells @ SW Boundary as per Amended Plan - 8-9-89/Fig 10	<input type="checkbox"/>	<input type="checkbox"/>	
2	Removal and treatment of contaminants from ground water	<input type="checkbox"/>	<input type="checkbox"/>	
3	Quarterly water analysis of monitoring well. Total oil and grease, PNA, lead, zinc, copper, <i>arsenic.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
4	Monitoring schedules will be evaluated after 2 years or after two non-detectable quarterly samples are reported.	<input type="checkbox"/>	<input type="checkbox"/>	
5	Leave asphalt materials in site provided they receive an appropriate waste discharge permit issued by RWQCB.	<input type="checkbox"/>	<input type="checkbox"/>	
6	The Risk Assessment provided by the Developer should be submitted to the SDOHS Risk Assessment Unit for final approval.	<input type="checkbox"/>	<input type="checkbox"/>	

This agreement is reached amongst the undersigned participants representing the State Department of Health Services, Regional Water Quality Control Board, County of Alameda Environmental Health, the Martin Group Developers, and the McLaren Group Consultants).

WORK PLAN FOR ADDITIONAL HYDROGEOLOGIC INVESTIGATIONS
EMERY BAY MARKETPLACE PROPERTY, EMERYVILLE

MARCH 21, 1990

INTRODUCTION

The Emery Bay Marketplace property is a market and movie theatre complex located on Shellmound Avenue in Emeryville, California. The property has two buildings surrounded by asphalt paved parking lots. Six groundwater and/or soil investigations have been conducted on this property since 1982. The purpose of each investigation has been to evaluate specific environmental issues recognized during the development of the property. These investigations have focused primarily on two issues: 1) floating petroleum free product that has been locally found on the groundwater surface in well W5 (eastern side of the property); and 2) asphaltic material that occurs interbedded with fill soil materials in several areas.

The Marketplace property consists of four parcels and a right-of-way owned by the City of Emeryville (the Bay Street Parcel). The ownership of these parcels is as follows: Parcel 1 is owned by Another Tree Corporation; and Parcels 2, 3, and 4 are owned by Christie Avenue Partners-JS. The location, parcel subdivision boundaries, and monitoring well locations are shown on Figure 1.

During the February 15, 1990 meeting, it was pointed out that groundwater flow beneath the property is in a south-southwesterly direction as indicated by the groundwater elevation contour map presented in Figure 2.

In order to better formulate the Scope of Work for this investigation, all wells that had not been previously sampled for total petroleum hydrocarbons (TPH/D) were sampled during February 1990. This included wells W1, W4, W13, and W14. In addition, several wells that had been previously sampled (wells W7, W8, and W16) were resampled to confirm previous results. The sampling methods, analytical laboratory data sheets and chain-of-custody records for these samples are provided as Attachment E to this proposal. For reference, all EPA Method 625 and TPH/D analyses performed to date are summarized in Table 1 and Figure 3. All metal analytical results are summarized on Figure 4.

Analytical results from the recent sampling of selected monitoring wells are consistent with prior data and indicate that elevated TPH concentrations are present along the eastern property line. The highest TPH concentrations detected during this, and previous sampling rounds are in the monitoring wells located in the north-central portion of the property, and specifically those wells located within the Bay Street parcel right-of-way. Available data indicate that a petroleum hydrocarbon plume, consisting of both of floating free-product (diesel) and dissolved petroleum hydrocarbons is migrating onto the property. The source of these compounds is not known. Free-product has only been detected in two wells and is believed to be restricted to a limited area in the vicinity of well W5.

All drilling equipment will be steam-cleaned prior to the drilling of each boring. During drilling activities and immediately following sample collection, all soil sampling equipment will be thoroughly scrubbed and washed in a tsp solution, and rinsed with distilled water.

Soil samples will be continuously collected using a 5-foot long continuous sampler. Selected soil samples will be placed in a Ziploc bag and the headspace gas will be monitored with a photoionizing detector. The soil samples will be logged and classified using the Unified Soil Classification System.

After the screened interval has been determined, a well will be constructed inside the hollow stem augers. All wells will be constructed of 2-inch schedule 40 PVC casing and 0.02-inch slot size PVC well screen. The screened interval of these wells will be from approximately 3 to 13 feet below the ground surface. The suitability of the proposed well screen slot size will be confirmed by performing sieve analyses upon a representative number of soil samples from the interval to be screened. The proposed filter pack will consist of 8/20 mesh silica sand which will be placed using the augers as a tremie. The filter pack will extend one foot above the screened interval. A sanitary seal consisting of volclay grout or bentonite pellets will be placed from the filter pack to the ground surface. The wells will be equipped with water tight locking caps and at-grade, traffic-rated vault boxes.

All wells will be developed using a bailer and surge block to remove 10 casing volumes of water, if feasible. All soils and fluids generated during drilling and well development will be collected in 55-gallon drums. The liquids will be analyzed for TPH/D by the DHS LUFT Manual Method. If the liquids are found to contain no TPH/D, a permit will be obtained to discharge the liquids to a sanitary sewer. Any solids which have settled from the liquid will be combined with the cuttings. The cuttings will be analyzed for TPH/D by the LUFT Manual Method. If the cuttings are found to contain no TPH/D, the cuttings will be transported to a sanitary landfill. This scope of work does not include liquid or cuttings disposal if the cuttings are found to be contaminated.

The top of casing elevations for the newly constructed monitor wells will be surveyed to a common benchmark with a datum elevation referenced to mean sea level (msl).

Task 2 Conduct Water Elevation Monitoring and Sampling of all Newly Constructed and Existing Monitoring Wells

Each new well will be sampled twice and coincident with the second round of sampling of the newly constructed wells, all existing wells on the property will be sounded and sampled. Samples from the new wells will be analyzed for TPH/D by the LUFT Manual Method, BTXE by EPA Method 602 twice and for the metals lead, zinc, copper, and arsenic, by Atomic Absorption Spectrophotometry once, on the second sampling. Samples from the old wells will be analyzed for TPH/D, BTXE and the metals lead, zinc, copper,

by the appropriate methods. All samples will be submitted to McLaren Analytical Laboratory (MAL), Rancho Cordova, California for analysis.

All wells will be sampled using a bailer or peristaltic pump. A minimum of three casing volumes of water will be removed from each well prior to sampling. During each sampling round, equipment rinse and travel blanks will be collected and analyzed for EPA Method 602.

The containers will be filled using controlled, low flow while maintaining the fill tube submerged in the container. Sample containers will be filled until a meniscus forms at the rim; the meniscus will be sheared and the closure secured. Sample containers will be labelled with a sample number from a sampling log book. All samples will be placed in a cooler with ice immediately following collection, and will remain in the cooler until received by the laboratory. Samples will be accompanied with chain-of-custody forms at all times.

Water level measurements will be used to determine the water surface elevation in existing and new monitoring wells. Monitoring will be accomplished using an Olympic Well Probe Model 300 (Actac Corporation) electrical water level sounder. All measurements will be referenced to the top of the well casing and expressed in feet with an accuracy of 0.01 feet.

The results of all well construction, surveying, sampling, and groundwater level soundings will be provided in a hydrogeologic and groundwater quality data report described in Task 3.

Task 3 Prepare Hydrogeologic and Groundwater Quality Data Report with Investigation Findings

The results of Tasks 1 and 2 will be presented in a data report. This report will consist of necessary laboratory data, data tables, and drawings to evaluate soil and groundwater data. Drawings may include a site map, geologic cross-sections, chemical distribution, groundwater contour maps, drilling logs, and well construction details.

SCHEDULE

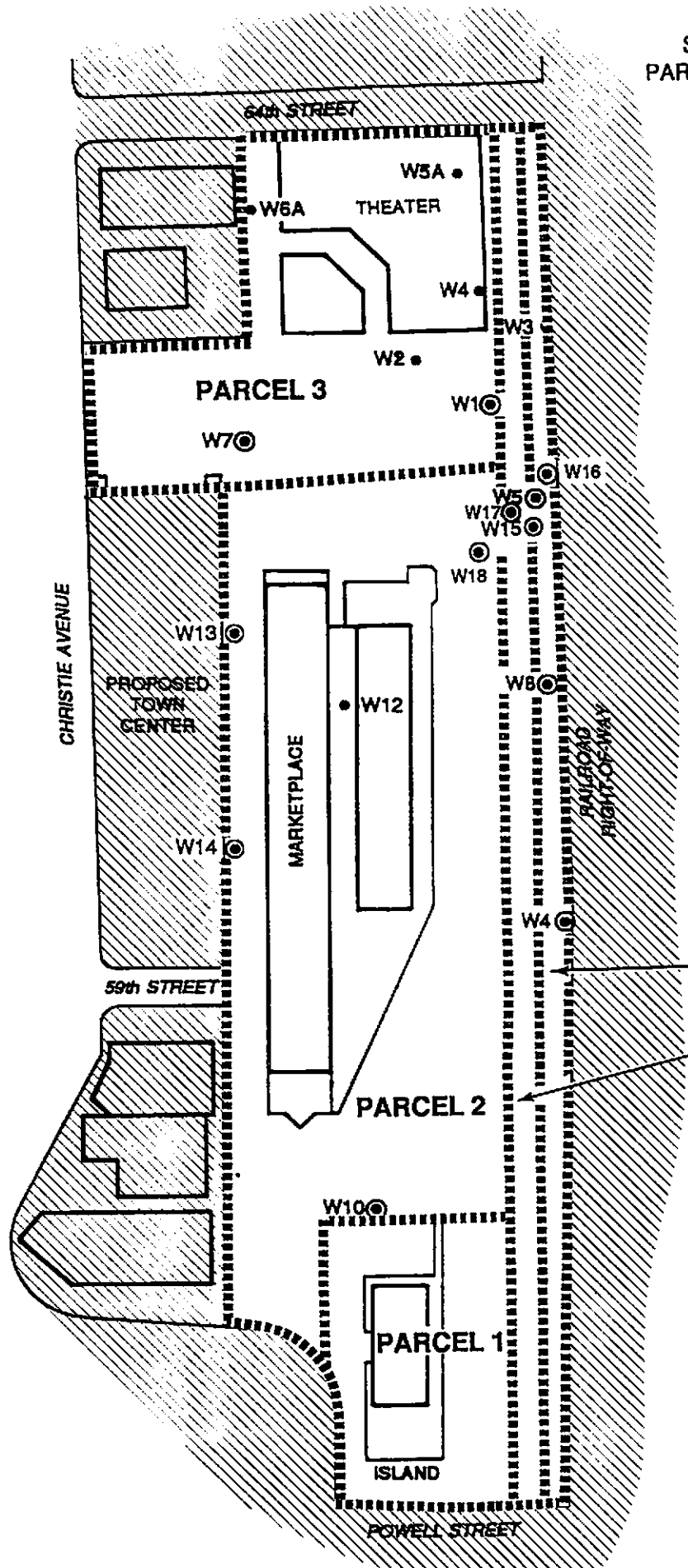
The proposed schedule for conduct of the additional hydrogeologic investigations at the Emery Bay Marketplace property is presented in Figure 6. The schedule shows completion of the investigation and submittal of a report to the ACDEH by the week of June 18, 1990.

COST ESTIMATE

The estimated costs for each task and the total cost for this investigation are provided in Attachment B.

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FIGURE 1
SITE PLAN WITH
PARCEL SUBDIVISIONS
EMERY BAY
MARKETPLACE



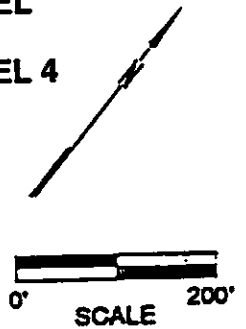
PARCEL OWNERS

- #1 - ANOTHER TREE DEVELOPMENT CORPORATION
- #2, #3, #4 - CHRISTIE AVENUE PARTNERS - JS BAY STREET PARCEL CITY OF EMERYVILLE

ADJACENT PROPERTIES NOT ASSOCIATED WITH EMERY BAY MARKETPLACE

BAY STREET PARCEL

PARCEL 4



LEGEND

- ⊙ EXISTING WELLS
- ABANDONED WELLS
- PARCEL BOUNDARY

FIGURE 2
GROUNDWATER
SURFACE ELEVATIONS
AND FLOW DIRECTION
OCTOBER 11, 1989

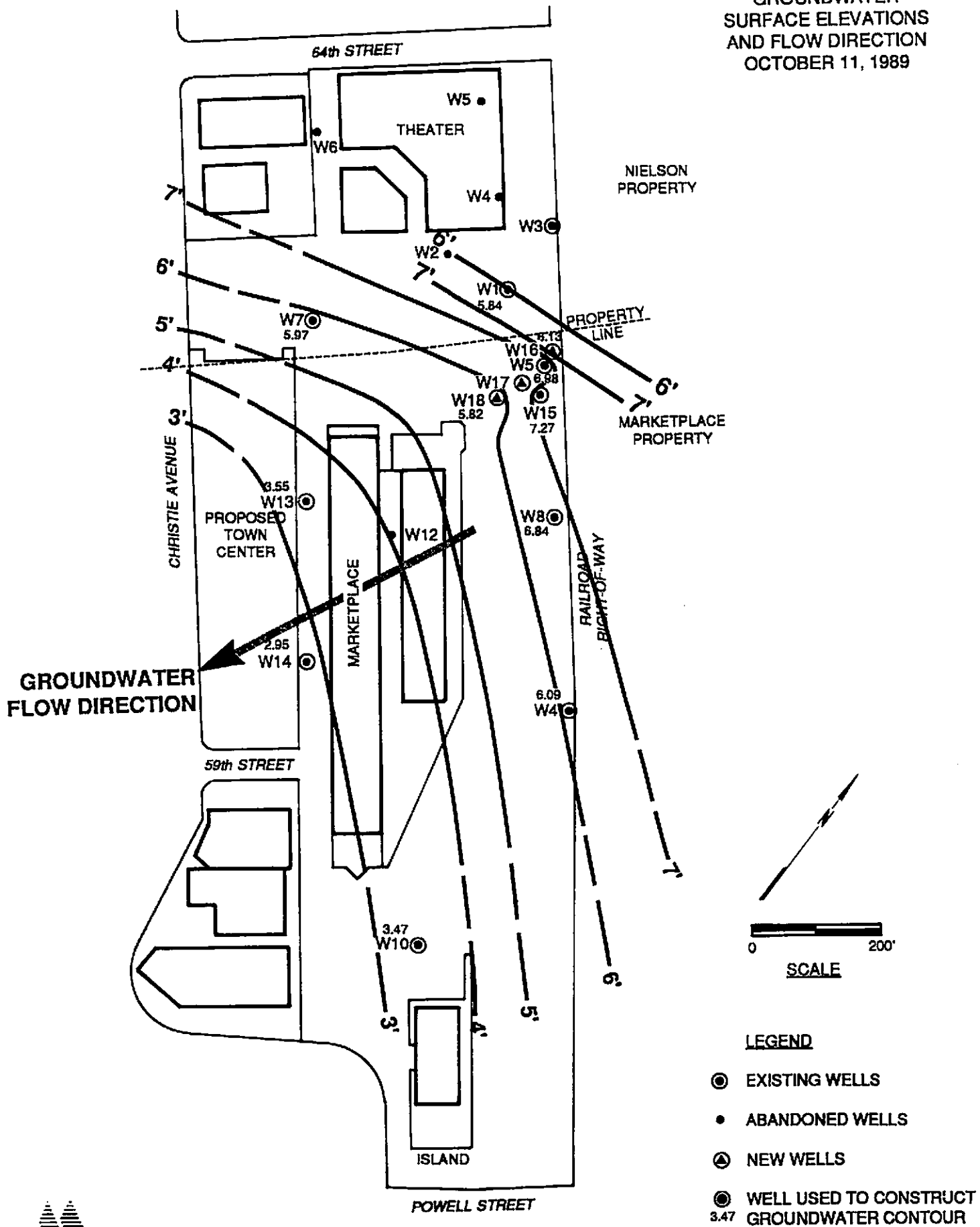
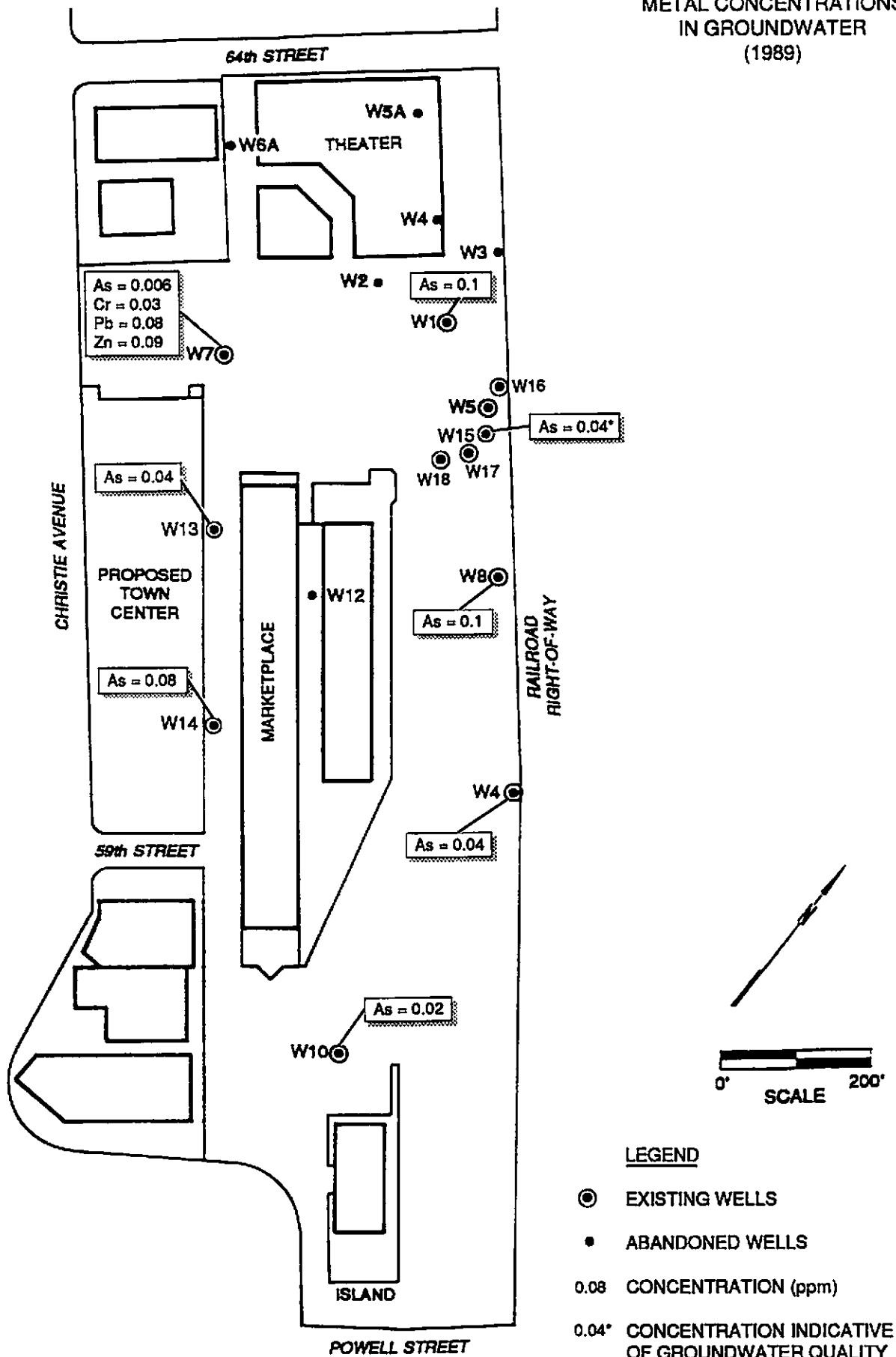


FIGURE 3
METAL CONCENTRATIONS
IN GROUNDWATER
(1989)



LEGEND

- ⊙ EXISTING WELLS
- ABANDONED WELLS
- 0.08 CONCENTRATION (ppm)
- 0.04* CONCENTRATION INDICATIVE OF GROUNDWATER QUALITY BENEATH WELL W5

FROM: McLAREN, 1989b



wells and is believed to be restricted to a limited area in the vicinity of well W5.

SCOPE OF WORK

This evaluation of site hydrogeology and groundwater quality will include construction and sampling of five new wells (Task 1), survey and sample all newly constructed and existing monitoring wells (Task 2) and prepare hydrogeologic and groundwater quality data report with investigation findings (Task 3).

Task 1 Construct 2 Upgradient and 3 Downgradient Wells

The purpose of the proposed wells is to evaluate water quality upgradient of the property and to define the lateral extent of chemicals in the shallow water-bearing zone beneath the Emery Bay Marketplace property. The recommended wells will further provide hydrogeologic information for evaluating the groundwater flow direction. The locations of the proposed monitoring wells are shown on Figure 5. The rationale for locating the proposed monitoring wells are discussed below:

1. One monitoring well (well W19) is recommended directly south of the Theater on the north side of the property. The purpose of this well is to obtain additional hydrologic control and to evaluate water quality upgradient of well W7, which has exhibited between 300 and 1,100 ppb TPH/D.
2. One off-site monitoring well (well W20) is recommended along Christie Avenue to evaluate the extent of TPH/D in groundwater downgradient of well W7.
3. One monitoring well (well W21) is recommended between wells W5 and W7, to evaluate the relationship between the product plumes in the two areas.
4. One off-site monitoring well (Well W22) is recommended east of the railroad tracks to evaluate water quality upgradient of the property.
5. One monitoring well (well W23) is recommended downgradient of well W8 to evaluate the extent of TPH/D in groundwater downgradient of well W8, which has exhibited between 4,500 and 7,100 ppb TPH/D.

The five proposed groundwater monitoring wells will be constructed in the following manner. All wells will be drilled with a hollow-stem auger rig using 8-inch augers and terminated at an approximate depth of 15 feet. A McLaren geologist under the direction of a Registered Geologist will be present throughout the drilling operation and will be responsible for preparing a detailed lithologic log of the borings.

FIGURE 5
PROPOSED WELL
LOCATIONS

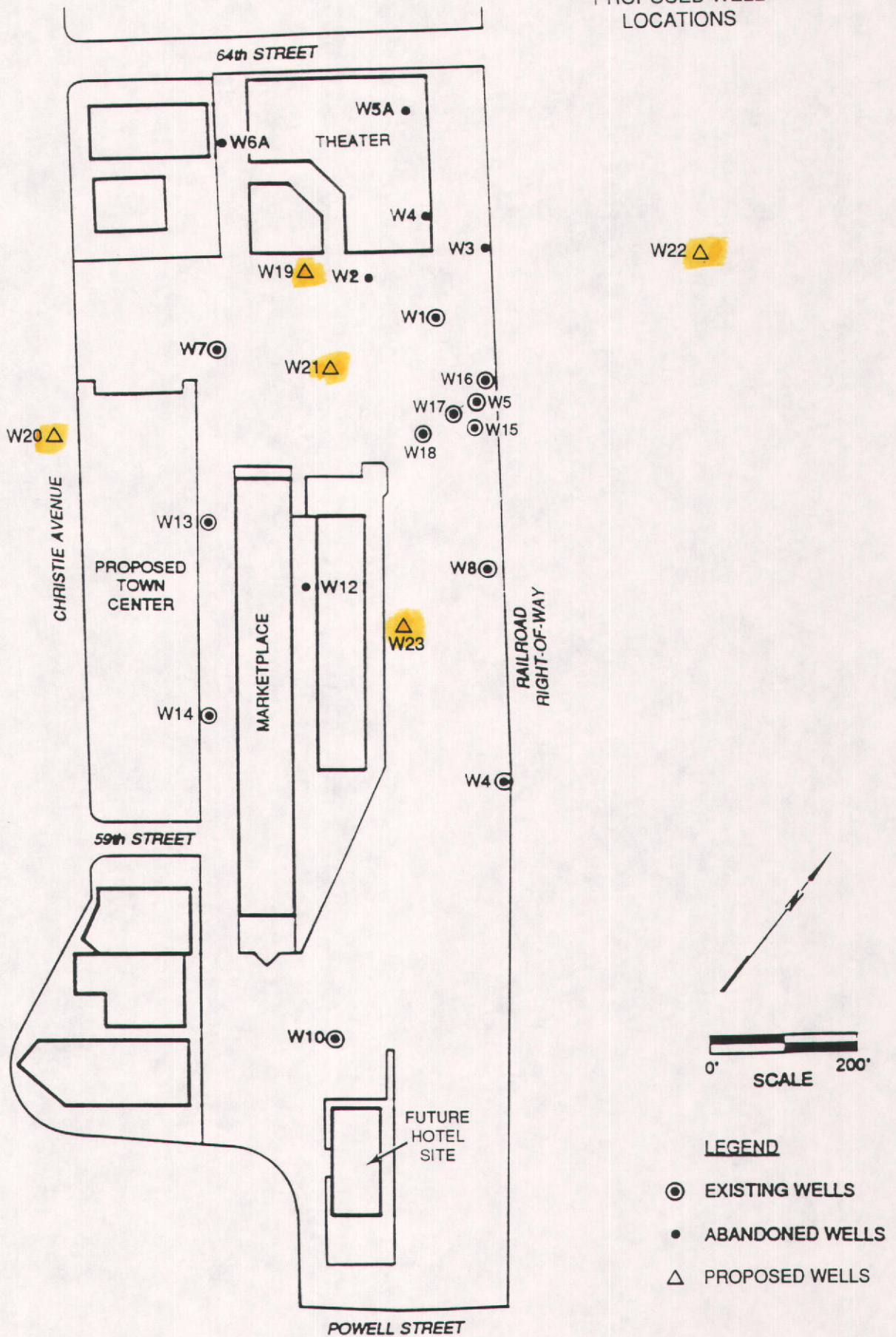


FIGURE 4
DISTRIBUTION OF ORGANIC
COMPOUNDS IN GROUNDWATER

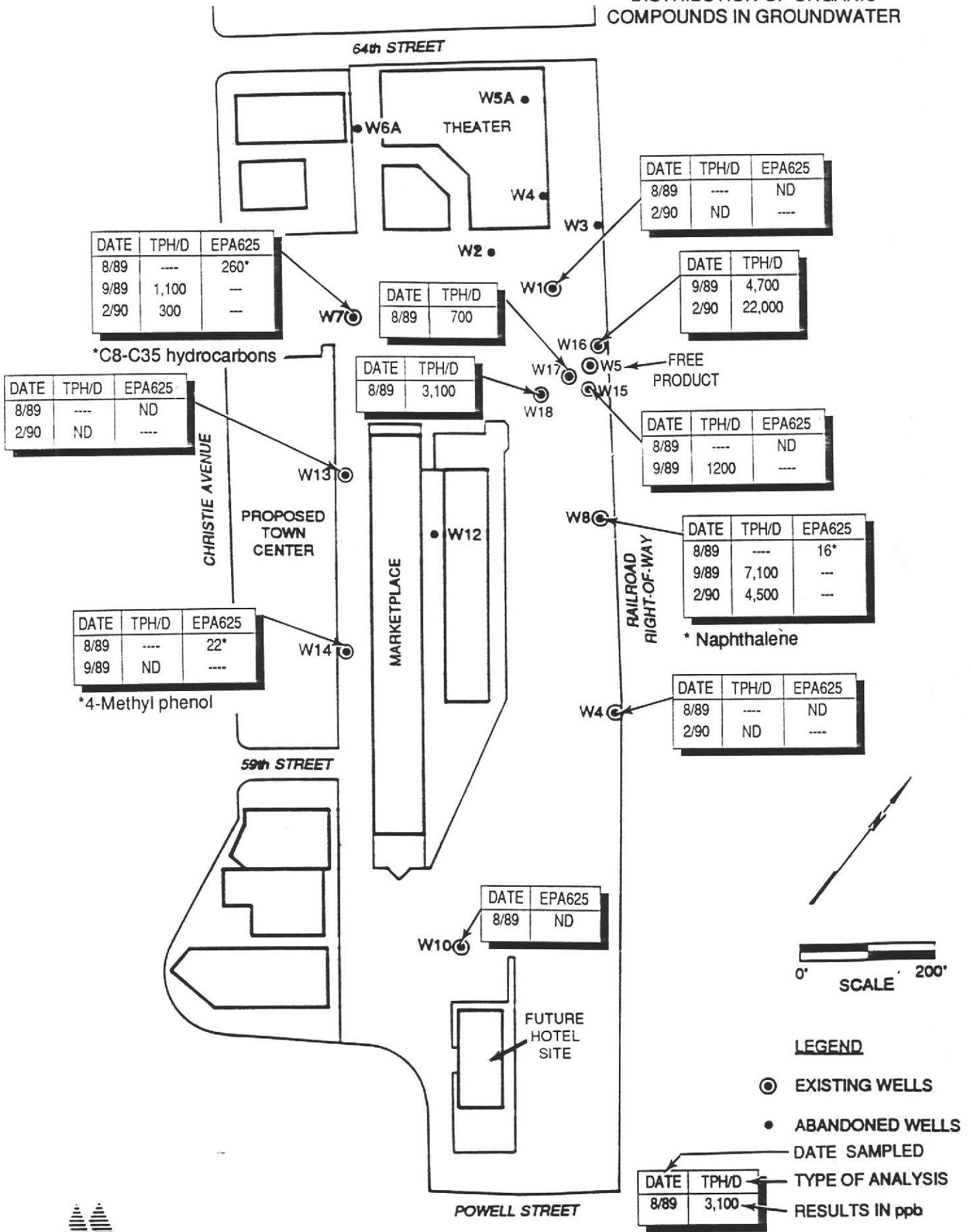


FIGURE 6: SCHEDULE OF MARKETPLACE HYDROGEOLOGIC INVESTIGATION

14-Mar-90		Mar				Apr					May				Jun		
Task	Description	5	12	19	26	2	9	16	23	30	7	14	21	28	4	11	18
1	Drill & Construct 5 Monitor Wells																
	1. Submit Work Plan to ACDEH			X													
	2. ACDEH Review				X												
	3. Set-up Drilling				X												
	4. Utility Clearance				X												
	5. Drill and Develop Wells					X											
2	Survey and Sample Wells																
	6. Sampling and Analysis--New Wells						X	X	X								
	7. Sampling and Analysis--Old and New Wells							X	X	X							
3	Prepare Hydrogeologic Report																
	8. Prepare Report										X	X	X				
	9. Submit Report to ACDEH													X			

TABLE 1

HYDROCARBONS AND SEMIVOLATILE ORGANICS IN GROUNDWATER
EMERY BAY MARKETPLACE PROPERTY

Well	Parcel ^a Number	Date	TPH/D ^b	EPA Method ^c 625	Benzene	Toluene	Xylenes	Ethyl Benzene
W1	BS	8/89	--- ^d	ND ^e	---	---	---	---
		2/90	<500 ^f	---	---	---	---	---
W4	4	8/89	---	ND	---	---	---	---
		2/90	<500	---	---	---	---	---
W5 ^g	BS	9/89	20,000	---	<50	<50	<50	<50
W7	BS	8/89	---	260 ^h	---	---	---	---
		9/89	1,100	---	<3	<3	<3	<3
		2/90	<500 ⁱ	---	---	---	---	---
WB	BS	8/89	---	16 ^j	---	---	---	---
		9/89	7,100	---	<1	<1	<1	<1
		2/90	4,500	---	---	---	---	---
W10	2	8/89	---	ND	---	---	---	---
W13	2	8/89	---	ND	---	---	---	---
		2/90	<500	---	---	---	---	---
W14	2	8/89	---	22 ^k	---	---	---	---
		2/90	<500	---	---	---	---	---
W15	BS	8/89	---	ND	---	---	---	---
		9/89	1,200	---	<1	<1	<1	<1
W16 ^a	BS	9/89	4,700	---	5.5	<3	<3	<3
		2/90	22,000	---	---	---	---	---
W17	4	9/89	700	---	<0.5	<0.5	<.05	<0.5
W18	2	9/89	3,100	---	<0.5	<0.5	<0.5	<.05

- ^a Parcel Ownerships as follows:
Parcel 2 = Christie Avenue Partners-JS
Parcel 3 = Christie Avenue Partners-JS
Parcel 4 = Christie Avenue Partners-JS
Parcel BS - Bay Street-Property of City of Emeryville
- ^b TPH/D = Total Petroleum Hydrocarbons as Diesel
- ^c Results of analysis according to EPA Method 625 for semivolatle organic compounds.
- ^d --- indicates sample not analyzed for this constituent.

- ^e ND indicates constituent not detected.
- ^f < indicates constituent not detected above this level.
- ^g Free product in this well.
- ^h C9 to C35 hydrocarbons detected by EPA Methods 625.
- ⁱ Review of gas chromatograph indicates TPH/D present at 300.
- ^j Naphthalene detected by EPA method 625.
- ^k 4-Methyl phenol detected by EPA Method 625.

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made as of the _____ day of _____, 1990 by _____, ("Covenantor") who is the owner of record of certain property situated in the City of Emeryville, Alameda County, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by [Alameda County], with reference to the following facts:

- A. During the course of development of the property Covenantor encountered the presence of certain contaminants (hereinafter "materials") in soil which were associated with prior industrial uses. These materials were investigated by reputable consultants on behalf of Covenantor under the review and supervision of government agencies with jurisdiction over such matters. In certain instances, certain of these materials have been left on the property based upon the conclusion that the type, concentration and locations of such materials do not pose a threat to public health or the environment because of the absence of exposure pathways.
- B. From an abundance of caution, Covenantor desires and intends that in order to protect the public health and safety there be a full disclosure of such materials left on the property,

the locations thereof, and appropriate steps taken to mitigate risk in the event that future activities on or uses of the property could lead to an exposure. A map of the property which identifies the known types and locations of such materials is attached hereto and incorporated by reference as Exhibit B.

- C. Covenantor further intends and desires that before any subsurface excavation is performed at any of the locations reflected on Exhibit B that an appropriate site health and safety plan be prepared to mitigate exposure, if any, to materials located in such areas. Such site health and safety plan shall be submitted to the Alameda County for review and approval at least five (5) days in advance of the subsurface work to be conducted on the property.

ARTICLE I

GENERAL PROVISIONS

1.01 Statement Regarding Hazard. This Covenant is not, and shall not be construed as, a statement or declaration that any existing or potential health, environmental, or other hazard exists or will exist on the Property.

1.02 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which certain locations on the Property (as set forth on Exhibit

"B") and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property identified in Exhibit B, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the specific portions of the Property marked on Exhibit B as mutual equitable servitudes in favor of the Property.

1.03 Concurrence of Owners Presumed. All purchasers shall be deemed by their purchase of such Property to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.04 Incorporation Into Deeds. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds of any portion of the Property, pursuant to Section 1468 of the California Civil Code.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" shall mean Alameda County and shall include its successor agencies, if any.

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

2.03 Owner. "Owner" shall mean the Covenantor or its successor in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of that portion of the Property as described in Exhibit "B" as follows:

Prior to conducting any subsurface excavation in the areas marked on Exhibit B, Covenantor shall prepare or cause to be prepared a site health and safety plan to assure that persons who could be exposed to the materials identified at such locations can undertake appropriate protective measures to mitigate or avoid any exposure which could result during such work. Such site health and safety plan shall be submitted to Alameda County

for review and approval at least five (5) working days prior to commencement of work.

3.02 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in Section 3.01, shall be grounds for the Department, by reason of the Covenant, to compel such site health and safety plan or to order such work to cease and desist until such plan has been approved and adopted.

3.03 Notice in Agreements. All Owners shall execute a written instrument which shall accompany all purchase agreements relating to the Property. The instrument shall contain the following statement: This property is subject to a deed restriction regarding the preparation of a site health and safety plan for the conduct of subsurface work on certain portions of the property. Compliance with this deed restriction is required of the "Owner" and any successor in interest and is a legal requirement.

ARTICLE IV

VARIANCE AND TERMINATION

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

4.02 Termination. Any Owner may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 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 Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person shall desire to give or serve 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 to an officer of a corporate party 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:

To: "Covenantor"

(Martin Group or Partnership Name and Address)

Copy To:

Alameda County

5.03 Partial Invalidity. If any portion of the Restriction set forth herein or terms are 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.

5.04 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.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by [Alameda County.] This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.06 References. All references to code sections include successor provisions.

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

By: _____

Title: _____

Date: _____

[DEPARTMENT OF HEALTH SERVICES]

By: _____

Title: _____

Date: _____

STATE OF CALIFORNIA)

)

COUNTY OF _____)

On _____, 1990, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____ of _____, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)

)

COUNTY OF _____)

On _____, 1990, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____ of Alameda County, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA)

)

COUNTY OF _____)

On _____, 1990, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____ of Alameda County, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

EXHIBIT A

The land referred to herein is situated in the State of California, County of Alameda, and is described as follows:

CITY OF EMERYVILLE

PARCELS 2, 3 AND 4, OF PARCEL MAP 5303, FILED FEBRUARY 26, 1988, MAP BOOK 174, PAGES 91 AND 92, ALAMEDA COUNTY RECORDS.

IL0105.022

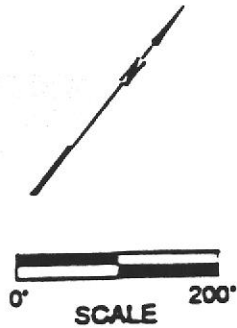
EXHIBIT B
LOCATION AND RELATIVE
CONCENTRATION OF ASPHALTIC
MATERIAL

O & G
1016 ppm

PNA's
66 ppm

O & G
8100

O & G
1233 ppm



PARCEL OWNERS

- #1 - ANOTHER TREE DEVELOPMENT CORPORATION
- #2, #3, #4 - CHRISTIE AVENUE PARTNERS - JS
- BAY STREET PARCEL CITY OF EMERYVILLE
- ADJACENT PROPERTIES NOT ASSOCIATED WITH EMERY BAY MARKETPLACE

BAY STREET PARCEL

PARCEL 4

LEGEND

- SOIL BORING
- PARCEL BOUNDARY
- O & G 1016 CONCENTRATION OF PETROLEUM HYDROCARBONS AS TOTAL OIL AND GREASE
- PNA's 66 ppm CONCENTRATION OF POLYNUCLEAR AROMATIC HYDROCARBONS

