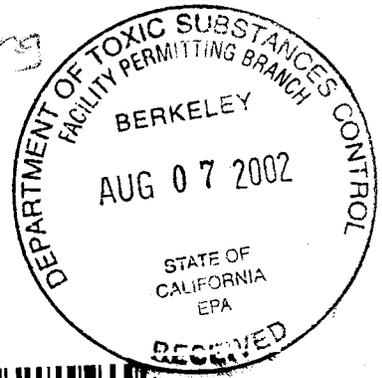


20020807-10-Wong



RECORDING REQUESTED BY:
The Port of San Francisco
Ferry Building
San Francisco, California 94111

WHEN RECORDED, MAIL TO

Department of Toxic Substances Control
700 Heinz Avenue, Suite 300
Berkeley, California 94710
Attention: Mohinder S. Sandhu, P.E., Chief
Standardized Permits and Corrective Action
Branch

San Francisco Assessor-Recorder
Doris M. Ward, Assessor-Recorder
DOC- 2002-H209674-00

Acct 25-NO CHARGE DOCUMENT
Thursday, JUL 25, 2002 12:45:40
Ttl Pd \$0.00 Nbr-0001906468
REEL I187 IMAGE 0545
0J1/JL/1-14

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: H&H Site located at China Basin Channel and Terry Francois Blvd, City and County of San Francisco)

This Covenant and Agreement ("Covenant") is made by and between the City and County of San Francisco, a charter city and county in trust (the "Covenantor"), the current owner of certain property situated in the City and County of San Francisco, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c) and the California Health and Safety Code, Section 25222.1, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC"), Section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health,

safety and the environment.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.6 acres, is more particularly described in Exhibit "A" and depicted in Exhibit "A-1", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Terry Francois Boulevard to the west, China Basin Channel to the north, and San Francisco Bay to the east, in the City and County of San Francisco, California.

1.02. The site was created by filling marshlands and shallow tidal flats bordering San Francisco Bay between 1877 and 1913. Sources of fill are unknown, but likely included construction/demolition debris and rubble, and rock and dirt cut from nearby hills. Historical uses of the Site include railroad tracks and related support structures and parking. From 1950 to 1996 H&H Ship Service occupied the area for wastewater treatment and transfer operations, including aboveground storage tanks for receiving, settling and treating wastewater containing petroleum.

In 1978 several of the wastes managed at the H&H Ship Service facility were determined to be hazardous wastes subject to federal and state hazardous waste management regulations. Since that time, the Department of Toxic Substances Control (or its predecessor in interest, the Department of Health Services) authorized H&H Ship Service's operations pursuant to an interim status document. Under this authorization the property was a hazardous waste facility (Facility), regulated by the Department, subject to the requirements of the California Hazardous Waste Control Law ("HWCL"), at Health and Safety Code ("H&S Code") section 25100 et seq., and the federal Resource Conservation and Recovery Act ("RCRA"), at 42 U.S.C. section 6901 et seq. Under Interim Status, the property was a portion of the Facility that was known as the Treatment/Transfer Area (TTA).

The Department is requiring this Covenant pursuant to the closure requirements of the HWCL, including H&S Code section 25246 and post-closure notices provisions of Title 22 California Code of Regulations [section 66265.119(b) for interim status hazardous waste facilities], as part of the facility closure. In 1994, the Department reviewed H&H's Closure Plan to ensure that the closure of the TTA met the requirements in Title 22, California Code of Regulations, Chapter 15, Article 7. The Department circulated the draft Closure Plan and Proposed Negative Declaration for public review and comment from August 11, 1994 to September 13, 1994. The Department approved the Closure Plan on January 13, 1995 and filed a Notice of Determination for the project with the

State Clearinghouse on February 15, 1995.

The Department reviewed the closure certification report titled, *RCRA Closure Certification Report, Former H&H Ship Service Facility, San Francisco, California*, (February 4, 1999), and subsequent submittals titled *Response to Comments, RCRA Closure Certification Report, Former H&H Ship Service Facility*, (November 2, 1999); *Results of Article 20 Sampling Program. Proposed China Basin Park Area* (July 2000); *Site Investigation and Surface Soil Sampling Results, Former H&H Ship Service Company – Treatment Transfer Area Parcel* (February 28, 2002); and *Addendum to the Article 20 Health Risk Assessment* (July 18, 2002). Upon filing of this deed restriction, the Department will approve the closure certification report.

Hazardous wastes, which are also hazardous materials as defined in Health and Safety Code sections 25117 and 25260, including petroleum hydrocarbons, polynuclear aromatic hydrocarbons, metals and arsenic, remain in the soil and groundwater at the Site at concentrations below those which would pose a significant human health risk under proposed reuse scenarios. Therefore a deed restriction to limit use of the property to those exposure scenarios evaluated and found to be below acceptable risk limits is required as part of the facility closure.

1.03. As detailed in the above-referenced reports, portions of the surface and subsurface soils on the Site contain hazardous wastes and hazardous materials, as defined in H&S Code section 25117 and 25260, including the following contaminants of concern: arsenic (up to 96 mg/kg) and benzo(a)pyrene (up to 11 mg/kg). Groundwater beneath the Property is found within 10 to 20 feet below ground surface. Dissolved arsenic was found in groundwater at up to 180 ug/l. The California drinking water standard for arsenic is 50 ug/l.

A review of the analytical results and the chemical distribution suggests that there are "hot spots". Hot spots are areas of affected soil or groundwater having concentrations higher than an empirically determined percentile of the distribution of concentrations in a particular population. 65 soil samples from 20 locations at various depths were collected within the TTA. Elevated concentrations of benzo(a)pyrene equivalent B(a)P EQ were measured in samples collected from two borings locations (EB-1, 19.8 milligrams per kilogram [mg/kg]) and (EB-20, 7.9 mg/kg). One surface soil sample (GMX-08) contained B(a)P EQ concentration of 1.5 mg/kg. All other concentrations of B(a)P EQ were less than 1 mg/kg. Elevated concentrations of arsenic and lead were observed in samples collected from borings EB-1 (3,000 mg/kg lead), EB-5 (96 mg/kg arsenic and 1,300 mg/kg lead), and EB-18 (2,400 mg/kg lead). Borings EB-1 and EB-5 are located in the eastern section of the TTA; GMX-08 is located near the northern perimeter; and borings EB-18 and EB-20 are located in the southwest section.

Based on these observations, borings EB-1, EB-5, GMX-08, EB-18, and EB-20 can be considered hot spots. However, each of borings is located under a concrete/asphalt

foundation or a compacted aggregate/crushed rock/roadbase material. The concrete/asphalt foundation or compacted aggregate/crushed rock/roadbase material serves as a physical barrier preventing direct contact with chemicals in soil; thus, there are no potential direct exposure pathways to chemicals at these hot spots by future receptors. If in the unlikely event that the concrete/asphalt foundation is removed, the excess cancer risk to a receptor from the hot spots would range from 9×10^{-5} to 3×10^{-6} .

Imported topsoil at least 18 inches thick followed by a layer of sod will be placed over the existing asphalt-concrete foundation. The concrete is present at one foot thick to at least 3 feet thick across approximately two-third of the TTA. The remaining one-third of the TTA is currently overlain with an aggregate/crushed rock/roadbase material. The concrete/asphalt foundation and compacted aggregate/crushed rock/roadbase layer precludes a complete exposure pathway. Additional of the 18 inches of topsoil and sod layer will eliminate potential direct exposures to soil in fill material within the TTA.

In order to ensure that no complete pathways are established, the Department will require that the existing concrete/asphalt foundation remain undisturbed so long as the intended use of the Property is to be a recreational park. Additionally, the Department will require that the site be covered (capped) with at least eighteen (18) inches of imported topsoil on top of an indicator lining material to denote the separation of the topsoil from native fill. Because the health risk assessment also did not evaluate an unrestricted land use scenario or potential impacts from use of groundwater, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21, or day care center would entail an unacceptable use. The Department further concluded that the Property, subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II DEFINITIONS

2.01. Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02. Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04. Cap. "Cap" shall mean eighteen (18) inches of imported topsoil on top of

an indicator lining material which is used to denote the separation of the imported topsoil from native fill.

2.05 Concrete/Asphalt Foundation. "Concrete/Asphalt Foundation" shall mean the existing concrete/asphalt surface which is overlain approximately two-third of the Property.

2.03. ARTICLE III GENERAL PROVISIONS

3.01. Restrictions 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 the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every one of the Restrictions: (a) shall run with the land pursuant to H&SC sections 25202.5, and 25202.6 and Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Property, (c) shall apply to and bind the respective successors in interest to the Property, (d) are for the benefit of, and shall be enforceable by the Department, and (e) are imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding Upon Owners/Occupants. Pursuant to Health and Safety Code section 25202.5(b), this Covenant shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the covenantee(s) herein. "Owner" shall include "Covenantor".

3.03. Written Notice of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice that a release of hazardous substances has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, by administrative order, or specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation;
- (b) A public or private school for persons under 21 years of age; or
- (c) A hospital for humans; or
- (c) A day care center for children.

4.02 Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) No raising of food (e.g., cattle, food crops, cotton, etc.) shall be permitted on the property.
- (b) No groundwater shall be extracted on the Property for purposes other than site remediation or construction dewatering without prior written approval by the Department.

4.03 Non-Interference with the Cap. Covenantor agrees:

- (a) No activities which will disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity of the Cap.
- (c) Any proposed alteration of the Cap shall require written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain subsurface hazardous materials in the Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance(s) and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other

Owners and Occupants.

4.04. Management of Native Fill and Concrete/Asphalt Foundation Material

- (a) All uses and development of the Property shall preserve the integrity of the existing Concrete/Asphalt Foundation.
- (b) No activities (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) which will disturb the native fill and/or the Concrete/Asphalt Foundation material underlying the Cap as indicated in Exhibit B shall be permitted on the Property without a Department-approved Soil Management Plan and Health and Safety Plan.
- (c) Native fill and/or Concrete/Asphalt Foundation material shall not be managed or handled such that it may migrate into the bay.
- (d) Any native fill and/or Concrete/Asphalt Foundation material brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with the applicable state and federal laws and their implementing regulations.
- (e) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating at the Property.
- (f) If more than 50 cubic yards of any native fill will be disturbed, including excavation and grading, then the soil shall be evaluated for potential human health risks in compliance with Article 20 of the SF Municipal Code ("the Maher Ordinance"), and managed accordingly.
- (g) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the native fill and/or Concrete/Asphalt Foundation which could affect the ability of the Concrete/Asphalt Foundation to contain subsurface hazardous materials in the Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance(s) and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for Department. Covenantor agrees that the Department shall

have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor and/or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Covenantor and/or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property constructed in violation of the Restrictions.) Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Any Owner or, with the Owner's written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&S Code section 25202.6.

6.02. Termination. Any Owner, and/or, with the Owner's written consent, any Occupant of the Property, or any portion thereof, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&S Code section 25202.6.

6.03. Term. Unless ended in accordance with the Termination Paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant 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 anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Francisco within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice 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 (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Carol Bach
Assist. Deputy Director, Environmental Health and Safety
Port of San Francisco
Pier 1
San Francisco, CA 94111

With a copy to:

Noreen Ambrose
Port General Counsel
Port of San Francisco
Pier 1
San Francisco, CA 94111.

To Department:

California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Avenue, Suite 300
Berkeley, CA 94710-2737
Attention: Chief, Standardized Permits and Corrective Action
Branch

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

H209674

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

Date: 7/24/02

By: //original signed by//
DOUGLAS F. WONG
Its: Executive Director

"Department"

Date: 7/24/02

By: //original signed by//
Mohinder S. Sandhu, P.E.
Its: Chief, Standardized Permits and Corrective Action
Branch

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

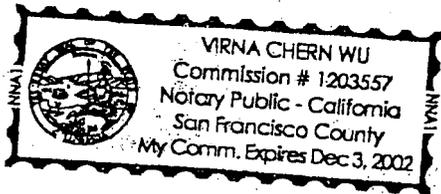
State of California }
County of San Francisco } ss.

On July 24, 2002, before me, Virna C. Wu "Notary Public"
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mohinder Singh Sandhu
Name(s) of Signer(s)

- personally known to me
- ~~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.



WITNESS my hand and official seal.

//original signed by//
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

Document Date: None Number of Pages: 10 Pages + Exhibits A & B

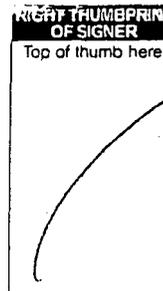
Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: Mohinder Singh Sandhu

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: Port Executive Director

Signer Is Representing: Port of San Francisco



H209674

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

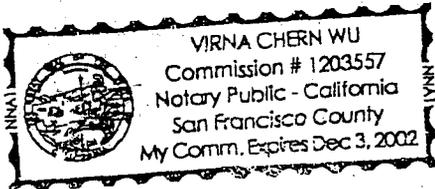
State of California }
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Name(s) of Signer(s)

- personally known to me
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WITNESS my hand and official seal.

Place Notary Seal Above

//original signed by//
Signature of Notary Public

OPTIONAL

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Title or Type of Document: Covenant to Restrict Use of Property

Document Date: None Environmental Restriction 10 Pages + Exhibits A & B
Number of Pages:

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: Mohinder Singh Sandhu

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: Chief, Standardized Permits & Corrective

Signer Is Representing: Department of Toxic Substances Control
Action Branch

RIGHT THUMBPRINT OF SIGNER
Top of thumb here



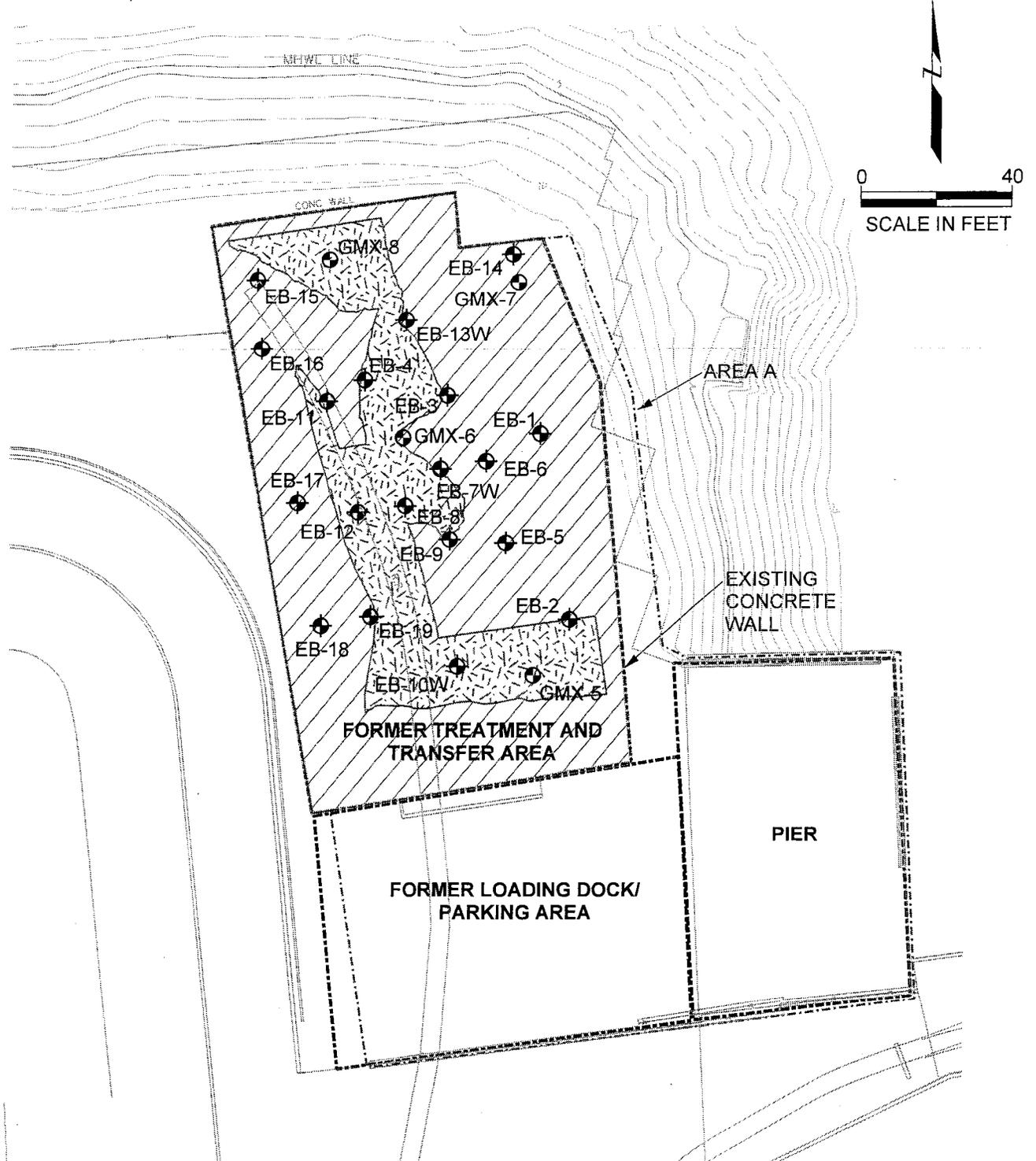
H 9674

EXHIBIT A

H&H Parcel – Tank Treatment Area

All that certain real property of the San Francisco Port Commission, City and County of San Francisco, State of California, situate at the northeast corner of Terry A. Francois Boulevard (formerly China Basin Street), more particularly described as follows:

Commencing at the point of intersection of the northwesterly line of Townsend Street with the southwesterly line of Delancey Street (formerly First Street), said point being Inner 14 of the Inner Waterfront Line as described in records on file in the office of Engineering of said San Francisco Port Commission; Thence along said Inner Waterfront Line, S 03°02'27" E a distance of 2132.11 feet; Thence N 86°51'14" E a distance of 65.28 feet, to the True Point Of Beginning; Thence S 10°21'36" E a distance of 127.93 feet; Thence N 80°50'39" E a distance of 4.70 feet; Thence S 09°13'14" E a distance of 68.59 feet; Thence N 81°09'11" E a distance of 146.17 feet; Thence N 03°21'24" W a distance of 85.74 feet; Thence S 88°44'14" W a distance of 54.91 feet; Thence N 66°55'27" W a distance of 9.19 feet; Thence N 07°12'31" W a distance of 68.86 feet; Thence N 21°58'29" W a distance of 44.82 feet; Thence S 83°22'07" W a distance of 28.09 feet; Thence N 05°44'30" W a distance of 14.69 feet; Thence S 81°59'17" W a distance of 65.99 feet; Thence S 10°21'36" E a distance of 30.22 feet to the True Point Of Beginning; Containing 26,592 square feet (0.61 acres), more or less.



EXPLANATION

- ⊕ Soil samples collected at multiple depths by J. Yang and Assoc. March 15, 1995
- ⊙ Surface soil samples collected by Geomatrix, November 16, 2001

-  Area of aggregate/crushed rock/road base material
-  Concrete/asphalt foundation

EXHIBIT B