

RECORDING REQUESTED BY

CAL/EPA, Department of Toxic
Substances Control (DTSC)

WHEN RECORDED MAIL TO

NAME CAL/EPA, DTSC

MAILING ADDRESS 700 Heinz Ave., Suite 200

CITY, STATE Berkeley, California
ZIP CODE 94710

JUN 28 1996

96 121913

RECORDED AT REQUEST OF

CAL/EPA

JUN 28 1996

AT 10 O'CLOCK ⁰ M
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE:

64⁰⁰ *h*

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY, APPLICABLE TO PORTION OF THE
HERCULES PROPERTIES, LTD. SITE, HERCULES, CALIFORNIA

1 COVENANT AND AGREEMENT
2 TO RESTRICT USE OF PROPERTY
3 APPLICABLE TO PORTION OF THE HERCULES PROPERTIES, LTD. SITE
4 HERCULES, CALIFORNIA

5 Recording Requested By:

6 Hercules Properties, Inc.
7 560 Railroad Avenue
8 Hercules, California 94547

9 When Recorded, Mail To:

10 Barbara J. Cook, Chief
11 Site Mitigation Branch
12 Department of Toxic Substances Control
13 700 Heinz Avenue, Suite 200
14 Berkeley, California 94710

15
16 This Covenant and Agreement ("Covenant") is made this
17 H day of June, 1996, by Hercules
18 Properties, Inc. ("HPI" or "Covenantor") which is the owner of
19 record of certain property situated in the City of Hercules,
20 County of Contra Costa, State of California, described and shown
21 in Exhibit "A" attached hereto and incorporated herein by this
22 reference (the "Subject Property"), and by the California
23 Department of Toxic Substances Control (the "Department"). A
24 portion of the Subject Property consists of wetlands. This
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1 Covenant shall have no effect on the restrictions and
2 requirements to which wetlands are subject by law.

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5 1. DEFINITIONS

6 1.1 Department. "Department" means the California
7 Department of Toxic Substances Control and shall include its
8 successor agencies, if any.

9 1.2 Improvements. "Improvements" shall mean all buildings,
10 roads, driveways, regrading, and paved parking areas, constructed
11 or placed upon any portion of the Subject Property.

12
13 1.3 Occupants. "Occupants" shall mean those persons
14 entitled by ownership, leasehold, or other legal relationship to
15 the exclusive right to occupy any portion of the Subject
16 Property.

17
18 1.4 Owner. "Owner" shall mean the Covenantor or its
19 successors in interest, including heirs, and assigns, who hold
20 title to all or any portion of the Subject Property.

21 1.5 Site. "Site" means the entire 167-acre site which is
22 divided into several operable units, one of which is Operable
23 Unit 3, in which the Subject Property is located. Operable Unit
24 3 is separated from the rest of the Site by the Southern Pacific
25 Railroad tracks.
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1 1.6 RAP. "RAP" means the Remedial Action Plan for the
2 Site, including the Subject Property, dated June 1994, which has
3 been approved by the Department.
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6 2. DESCRIPTION OF FACTS

7 2.1 Background. The Site, which is a small portion of an
8 original 1300-acre facility, was used for the manufacture of
9 explosives, munitions and fertilizer chemicals from 1881 to 1978.
10 Other portions of the original 1300-acre facility have been
11 developed into commercial and residential developments.
12

13 The Subject Property is within the area addressed by the RAP. A
14 power house building, evaporation pond, and fuel storage tank
15 area used during the manufacturing activities were located on the
16 Subject Property. The soil beneath the Subject Property varies
17 from clay to gravelly, sandy fill with occasional concrete and
18 brick fragments. As a result of prior manufacturing activities,
19 soil at the Subject Property contains metals (arsenic, lead and
20 mercury) and total petroleum hydrocarbons (TPH).
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22

23 2.2 Protection of Public Health and the Environment. If
24 the Subject Property were to be used for residential or other
25 permanently occupied, non-commercial human habitation without
26 remediation to residential standards, and excavation took place
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1 at the Subject Property without proper supervision, occupants of
2 the Subject Property could be exposed to soils impacted with
3 arsenic, lead, mercury and TPH above standards which are
4 acceptable for residential occupancy, via inhalation, dermal
5 contact or ingestion. The Department's purpose in requiring this
6 Covenant and Agreement to Restrict Use is to eliminate any
7 significant risks to human health and the environment. A
8 description of potential human health and environmental effects
9 of hazardous substances at the Subject Property is attached as
10 Exhibit B.
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13 2.3 Intention of the Covenantor. Covenantor intends and
14 has entered into this Covenant so as to protect the present or
15 future public health and safety and the environment and assure
16 that the Subject Property will be used in such a manner as to
17 avoid potential harm to persons or property which may result from
18 exposure to impacted soils on the Subject Property.
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21 3. GENERAL PROVISIONS
22

23 3.1 Provisions to Run with the Land. This Covenant sets
24 forth protective provisions, covenants, restrictions, and
25 conditions, (collectively referred to as "Restrictions"), upon
26 and subject to which the Subject Property and every portion
27

1 thereof shall be improved, held, used, occupied, leased, sold,
2 hypothecated, encumbered, and/or conveyed. Each and all of the
3 Restrictions shall run with the land, and pass with each and
4 every portion of the Subject Property, and shall apply to and
5 bind the respective successors in interest thereof. Each and all
6 of the Restrictions are imposed on the Subject Property unless
7 expressly stated as applicable to a specific portion of the
8 Subject Property. Each and all of the Restrictions are imposed
9 pursuant to California Health and Safety Code (HSC) sections
10 25222.1, 25355.5 and 25356.1 and run with the land pursuant to
11 HSC sections 25230 and 25355.5. Each and all of the Restrictions
12 are enforceable by the Department of Toxic Substances Control.
13

14 3.2 Concurrence of Owners Presumed. All purchasers,
15 lessees, or possessors of any portion of the Subject Property
16 shall be deemed by their purchase, leasing, or possession of such
17 Subject Property, to be in accord with the foregoing and to agree
18 for and among themselves, their heirs, successors, and assignees,
19 and the agents, employees, and lessees of such owners, heirs,
20 successors, and assignees, that the Restrictions as herein
21 established must be adhered to for the benefit of future Owners
22 and Occupants and that their interest in the Subject Property
23 shall be subject to the Restrictions contained herein.
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1 3.3 Incorporation Into Deeds and Leases. Covenantor
2 desires and covenants that the Restrictions set out herein shall
3 be incorporated by reference in each and all deeds and leases of
4 any portion of the Subject Property.
5

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7 4. RESTRICTIONS

8 4.1 Restrictions on Development and Use. Covenantor
9 promises to restrict the use of the non-wetlands portion of the
10 Subject Property as follows:
11 ;
12 ;

- 13 a. The development of the Subject Property is restricted
14 to commercial or industrial use. No other use shall be
15 allowed without the prior approval of the Department.
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18 b. The Subject Property shall not be used in such a way
19 that will disturb or interfere with the integrity of
20 any containment or monitoring system, except as
21 authorized by the Department.
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24 c. No significant disturbance of the soils such as
25 excavation or drilling of water wells, shall be
26 performed on the Subject Property without required
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1 permits and notification to the Department. Any
2 impacted soil brought to the surface by excavation at
3 the Subject Property shall be managed as hazardous
4 waste unless sampling and analysis demonstrate that it
5 is not a hazardous waste.
6

7
8 d. The Department or its designated agents (including
9 successor agencies) shall have access to the Subject
10 Property for the purpose of inspection, surveillance,
11 or monitoring, or other purposes necessary to protect
12 public health or safety and the environment as provided
13 in Chapters 6.5 and 6.8 of the California Health and
14 Safety Code and Chapter 4 of Division 7 of the
15 California Water Code.
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19 4.2 Conveyance of Property. The Owner or Owners shall,
20 upon sale or other conveyance of the Subject Property or an
21 interest in the Subject Property to a third person, provide
22 notice of such sale or other conveyance to the Department. The
23 Department shall not, by reason of the Covenant, have the
24 authority to approve, disapprove, or otherwise affect any sale,
25 lease, or other conveyance of the Subject Property except as
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1 otherwise provided by law, by administrative order, or by reason
2 of this Covenant.

3 4.3 Enforcement. Failure of the Owner to comply with any
4 of the requirements, as set forth in this Covenant shall be
5 grounds for the Department to require that the Owner modify or
6 remove any Improvements constructed in violation of this
7 Covenant. Any violation of the Covenant shall be grounds for the
8 Department to take enforcement action, including the filing of
9 administrative, civil or criminal action, against the Owner as
10 provided by law.
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13 4.4 Notice in Agreements. All Owners and Occupants shall
14 execute a written instrument which shall accompany all purchase,
15 lease, sublease, rental agreements, and other conveyance
16 documents relating to the Subject Property. The instrument shall
17 contain the following statement:
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20 "The land described herein is subject to a Covenant and
21 Agreement to Restrict Use of Subject Property. The land or
22 the Subject Property, and the owner, lessee, or other
23 occupant of the land or Subject Property may be subject to
24 the requirements, restrictions, provisions, and liabilities
25 contained in Chapter 6.5 and Chapter 6.8 of Division 20 of
26
27

1 the California Health and Safety Code. This statement is
2 not a declaration that a hazard exists."
3

4
5 5. VARIANCE AND REMOVAL OF RESTRICTIONS

6 5.1 Variance. Any Owner or, with the Owner's consent, any
7 Occupant of the Subject Property or any portion thereof may apply
8 to the Department for a written modification from the provisions
9 of this Covenant. Such application shall be made in accordance
10 with California Health and Safety Code section 25233 or any
11 applicable provision then in effect.
12

13 5.2 Removal of Restrictions. Any Owner or, with the
14 Owner's consent, an Occupant of the Subject Property or a portion
15 thereof, may apply to the Department to remove any of the
16 Restrictions or requirements of this Covenant as they apply to
17 any portion of the Subject Property. Such application shall be
18 made in accordance with California Health and Safety Code section
19 25234 or any other applicable provision then in effect.
20

21 5.3 Term. Unless modified or removed in accordance with
22 section 5.1 or 5.2 above, this Covenant shall continue in effect
23 in perpetuity.
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1 6. MISCELLANEOUS

2 6.1 No Dedication Intended. Nothing set forth herein shall
3 be construed to be a gift or dedication, or offer of a gift or
4 dedication, of the Subject Property or any portion thereof to the
5 general public or for any purposes whatsoever.
6

7 6.2 Notices. Whenever any person gives or serves any
8 notice, demand, or other communication with respect to this
9 Covenant, such notice, demand, or communication shall be in
10 writing and shall be sent simultaneously to an authorized
11 representative of the Covenantor (or Owner) and to the
12 Department, in any certified mail, with return receipt requested.
13

14 6.3 Partial Invalidity. If any portion of the Restriction
15 set forth herein or terms is determined to be invalid or
16 unenforceable for any reason, the remaining portion shall remain
17 in full force and effect.
18

19 6.4 Recordation. This instrument shall be executed by the
20 Covenantor and by the Department. This instrument shall be
21 recorded by the Covenantor in the County of Contra Costa within
22 ten (10) days of the date of execution.
23

24 6.5 References. All references to Code sections include
25 successor provisions.
26
27

1 IN WITNESS WHEREOF, the parties execute this Covenant as of the
2 date set forth below.
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COVENANTOR

Hercules Properties Inc.

By: *P. J. Lacey*Title: *Pres*Date: *6/14/96*

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: *Barbara D. Cook*

Barbara D. Cook

Title: Site Mitigation Branch Chief
Region 2Date: *6/21/96*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

96 121913

No. 5907

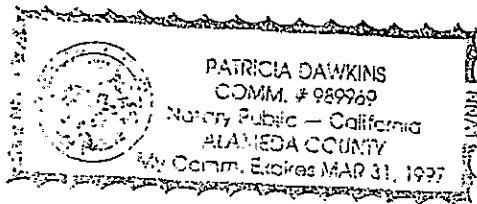
State of Calif.

County of Alameda

On 6/21/96 before me, PATRICIA Dawkins, notary public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Barbara J. Cook*
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ 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.

Patricia Dawkins
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☒ CORPORATE OFFICER
Site Mitigation Branch Chief Reg 2

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

36 121913

1 STATE OF CALIFORNIA)

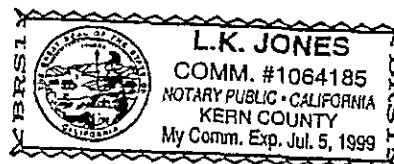
2 COUNTY OF Kern)

3
4
5 On 6/4/96, 1996 before me, the undersigned, a
6 Notary Public in and for said state, personally appeared
7 Peter S Pankey, personally
8 known to me or proved to me on the basis of satisfactory evidence
9 to be the person whose name is subscribed to the within
10 instrument and acknowledged to me that he/she executed the same
11 in his/her authorized capacity, and that by his/her signature on
12 the instrument, the person, or the entity upon behalf of which
13 the person acted, executed the instrument.
14
15
16

17 WITNESS my hand and official seal.
18
19
20

21 Signature L. Jones

(Seal)



96 121913

EXHIBIT A

Legal Description and Assessor's Parcel Maps

LEGAL DESCRIPTION

ASSESSOR'S PARCEL NUMBER 404-010-005-1, BEING A PORTION OF PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP 477-81, RECORDED IN BOOK 99 OF PARCEL MAPS, AT PAGE 38, (99PM38), IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AS SHOWN ON ASSESSOR'S MAP, BOOK 404 PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIAL POINT THAT BEARS N 56°56'19" W, 1479.43 FEET THROUGH A CENTRAL ANGLE OF 08°58'08" WITH AN ARC LENGTH OF 231.58 FEET TO THE TRUE POINT OF BEGINNING;

THENCE, N 17°50' E, 92.2 FEET;

THENCE, N 10°18' W, 44.7 FEET;

THENCE, N 24°19' E, 182.2 FEET;

THENCE, N 01°37' W, 71.0 FEET;

THENCE, N 68°12' W, 70.0 FEET;

THENCE, S 82°30' W, 38.3 FEET;

THENCE, N 27°24' W, 30.4 FEET;

THENCE, N 85°36' W, 91.3 FEET;

THENCE, N 40°06' W, 24.8 FEET;

THENCE, N 03°29' W, 197.4 FEET;

THENCE, N 13°30' E, 51.4 FEET;

THENCE, N 12°14' W, 84.9 FEET;

THENCE, N 46°42' W, 53.6 FEET;

THENCE, N 36°55'15" E, 226.54 FEET;

THENCE, S 48°16' E, 49.6 FEET;

THENCE, S 85°11' E, 95.3 FEET;

THENCE, S 66°48' E, 38.1 FEET;

THENCE, N 82°37' E, 108.9 FEET;

THENCE, S 61°05' E, 76.5 FEET;

THENCE, S 26°34' E, 80.5 FEET;

THENCE, S 67°10' E, 103.1 FEET;

THENCE, S 43°31' E, 164.1 FEET;

THENCE, S 56°59' E, 47.7 FEET;

THENCE, S 49°11' E, 87.2 FEET;

THENCE, S 77°24' E, 87.1 FEET;

THENCE, N 81°00' E, 160.0 FEET;

THENCE, N 87°00' E, 114.2 FEET;

THENCE, S 76°06' E, 108.2 FEET;

THENCE, S 47°01' E, 10.32 FEET, TO THE NORTHERLY RIGHT-OF-WAY OF SOUTHERN PACIFIC RAILWAY;

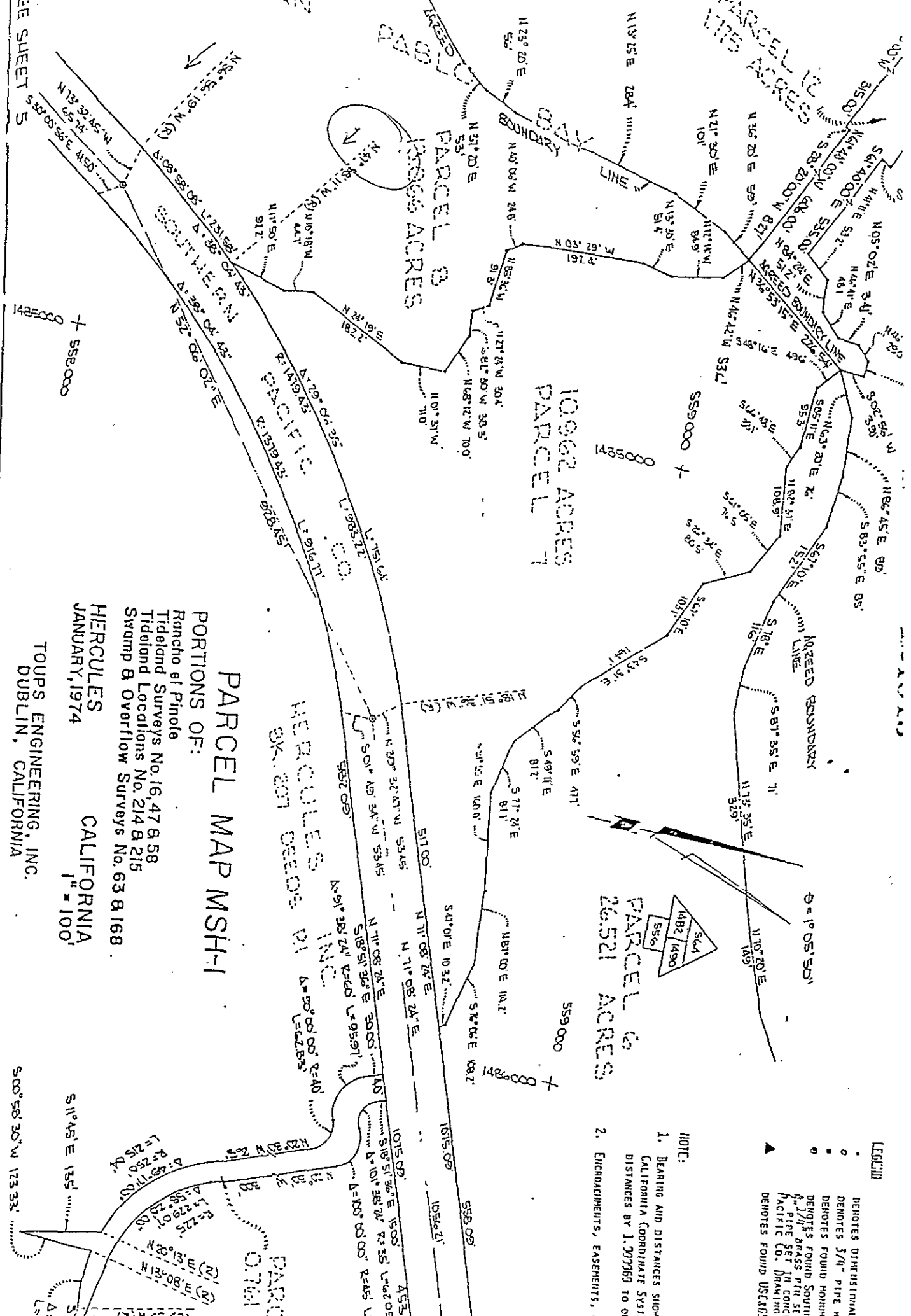
THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, S 71°08'24" W, 517.0 FEET;

THENCE, CONTINUING, ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH HAVING A RADIAL POINT THAT BEARS N 18°51'36" W, 1479.43 FEET, THROUGH A CENTRAL ANGLE OF 29°06'35" WITH AN ARC LENGTH OF 751.64 FEET TO THE POINT OF BEGINNING.

THE HEREIN DESCRIBED ASSESSOR'S PARCEL CONTAINS 10.962 ACRES.

TOUPS ENGINEERING, INC.
DUBLIN, CALIFORNIA

PARCEL MAP MSH-1
PORTIONS OF:
Rancho el Pinole
Tideland Surveys No. 16, 47 & 58
Tideland Locations No. 214 & 215
Swamp & Overflow Surveys No. 63 & 168
HERCULES
JANUARY, 1974
CALIFORNIA
1" = 100'



PARCEL 6
26,521 ACRES

NOTE:
1. BEARING AND DISTANCES SHOWN
CALIFORNIA COORDINATE SYSTEM
DISTANCES BY 1.000000 TO 08
2. ENCROACHMENTS, EASEMENTS, E

LEGEND
• DENOTES DISTINGUISHAL
• DENOTES 3/4" PIPE W/1
• DENOTES FOUND MONUMENT
• DENOTES FOUND SOURCE
• DENOTES BRASS PIN SET
• DENOTES PIPE SET IN CORNER
• DENOTES FOUND US&S&S

EXHIBIT B

POTENTIAL HEALTH EFFECTS OF PROPERTY CONTAMINANTS

Arsenic. Prolonged exposure to high concentrations of arsenic, whether through dermal contact, ingestion, or inhalation, can cause disturbances of the digestive system, liver damage, or skin abnormalities. Short-term exposure to high concentrations of arsenic (from ingestion) can cause irritation of the stomach and intestines (Sax, N.I., 1984, Dangerous Properties of Industrial Materials, 6th edition New York: Van Nostrand Reinhold Company).

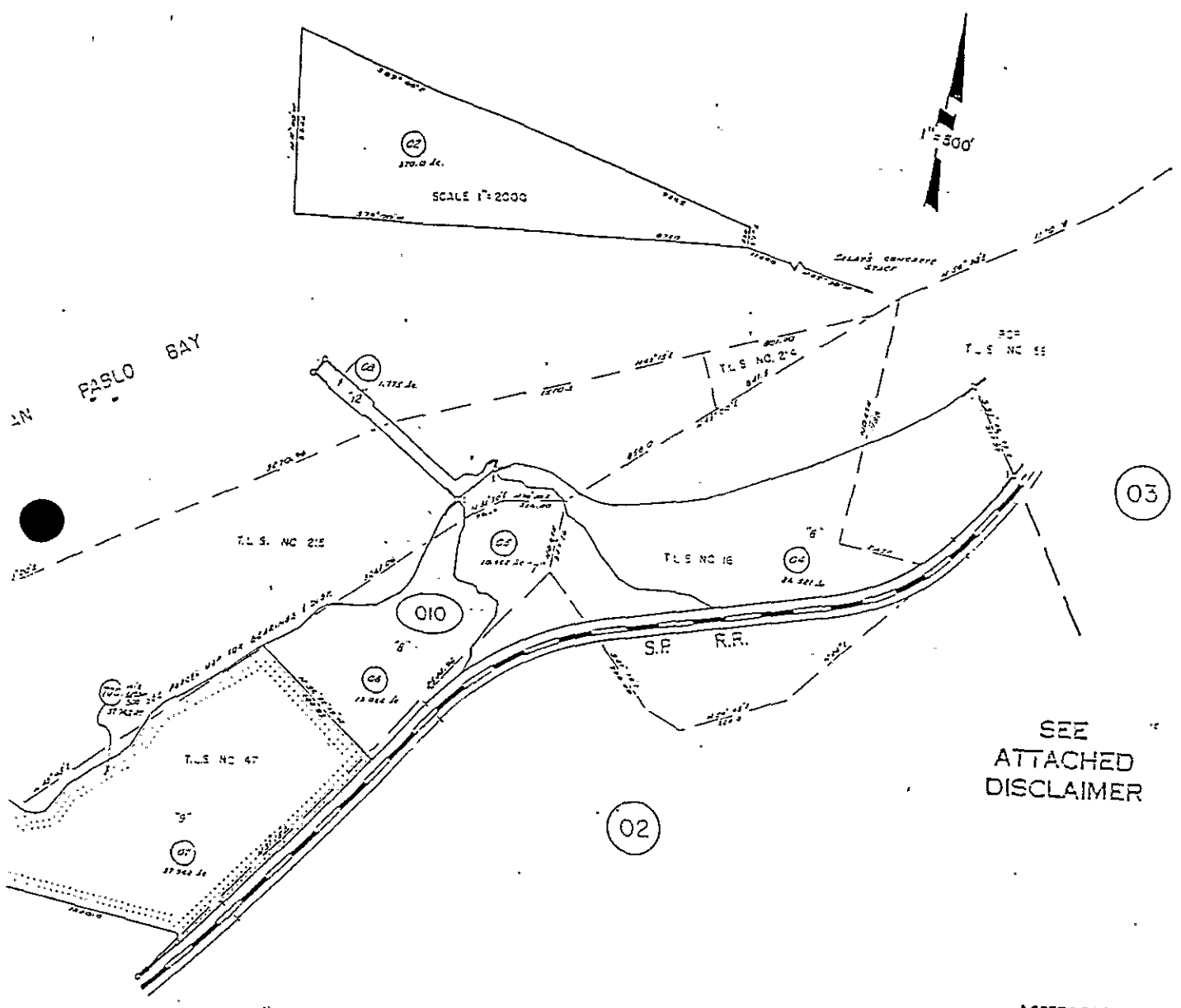
Lead. Prolonged exposure to high concentrations of lead can cause fatigue, headache, aching bones and muscles, abdominal pains, and constipation. Short-term exposure to high concentrations of lead can cause reversible kidney damage, but prolonged exposure at high concentrations can result in progressive kidney damage. Anemia is an early manifestation of lead poisoning (Sax, 1984).

Mercury. Mercury is a primary irritant of skin and mucous membranes. Short-term exposure to high concentrations of mercury vapors can cause respiratory problems. Prolonged exposure to high concentrations of mercury can cause gingivitis, increased irritability, and muscular tremors (Sittig, M., 1981, Handbook of Toxic and Hazardous Chemicals, Park Ridge, New Jersey; Noyes Publications).

Total Petroleum Hydrocarbons (TPH). Prolonged dermal contact or inhalation of petroleum hydrocarbons, in general, may cause systemic disorders.

96 121913

POR. SEC. 15 T2N R4W MDBM
1-33 PM. 16-21 4-22-74



SEE
ATTACHED
DISCLAIMER

ASSESSOR'S MAP
BOOK 404 PAGE 01
CONTRA COSTA COUNTY, CALIF.
5

END OF DOCUMENT