

NET

MAR 23 1998

RECORDING REQUESTED BY:
Michael Demeter
160 Demeter Street
East Palo Alto, CA 94303

ORIGINAL DOCUMENT RECORDED
980392d
THIS COPY HAS NOT BEEN COMPARED
WITH THE ORIGINAL DOCUMENT
San Mateo County Recorder

WHEN RECORDED, MAIL TO.

California Regional Water
Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY

2017 Bay Road
City of East Palo Alto, San Mateo County

This Covenant and Agreement ("Covenant") is made as of this twenty-sixth day of January, 1998, by Michael Demeter ("Covenantor"), who is the fee owner of record of certain property situated at 2017 Bay Road, City of East Palo Alto, County of San Mateo, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION (the "Board"), with reference to the following facts:

A. Covenantor owns the Property which is currently undeveloped and vacant.

B. Portions of the Property, as set forth and more particularly described in Exhibit "B", attached hereto and incorporated herein by this reference, have contained and currently contain hazardous substances as that term is defined in the Water Code, including lead impacted soil. These hazardous substances constitute hazardous materials as that term is defined under section 25260 of the Health and Safety Code. Analytical results of soil have indicated the presence of lead in the soils in and under various portions of the Property.

C. Pursuant to section 13304 of the Water Code, the Board issued Site Cleanup Requirements Order No. 93-162, as amended by Order Nos. 94-041 and 95-113. The Board has overseen and is presently involved in overseeing the investigation and remediation of the Property.

D. This Agreement is an enforceable agreement pursuant to the Water Code and Civil Code section 1471.

E. The primary and potential exposure routes for lead impacted soil located at the Property is through the ingestion of and inhalation of fugitive dust and dermal contact.

F. Covenantor desires and intends that in order to protect the present or future public health, safety or the environment the Property shall be used in such a manner as to avoid potential harm to persons, property or the environment which may result from hazardous substances/materials which have been deposited on the portion of the Property described in Exhibit "B".

G. Clayton Environmental Consultants (formerly Mittlehauser Corporation), prepared a Soil Management Plan dated March 19, 1998, for Covenantor for the Property and is incorporated herein by reference.

ARTICLE 1

GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants restrictions and conditions (collectively referred to as the "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 all of the Restrictions are imposed upon the entire Property and are reasonably necessary to protect present and future human health and safety as a result of the presence on and under the land of hazardous materials. Each and all of the Restrictions are imposed pursuant to sections 13304 and 13267 of the Water Code and run with the land pursuant to section 1471 of the Civil code and shall be enforceable solely by the Board. This Covenant shall not create any private rights of action against Covenantor.

1.2 Concurrence of Owners Presumed. All purchasers, lessees, sublessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such 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 shall 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.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in each and all deeds and leases of any portion of the Property, provided however, that the right to enforce the Restrictions shall exist only in the Board. Recordation of this Covenant shall be deemed binding on all successors, assigns, lessees, and sublessees, regardless of whether a copy of this Covenant has been attached to any given deed or lease.

ARTICLE II
DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region, and shall include its successor agencies, if any.

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

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

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

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

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

(1) No Owner or Occupant of the Property shall willfully act in any manner that will aggravate or contribute to the existing environmental conditions at the Property or interfere with the implementation of any remedial action at the Property.

(2) Owner shall endeavor to minimize exposure of workers at or about the Property to impacted soil and shall comply with all workers safety regulations relating to exposure to hazardous substances material, including, without limitation, the Occupational Safety and Health Act.

3.2 Conveyance of Property.

(a) If Owner proposes to sell, ground lease or otherwise convey (other than pursuant to a space lease, as described in Paragraph 3.2 (b) below) the Property, or any portion thereof, Owner shall provide advance written notice to the Board at the address specified in Paragraph 5.2 below. Such notice shall be provided thirty (30) days prior to the proposed sale, ground lease, or other conveyance or upon owner's first knowledge of the proposed closing date or date of ground lease, whichever is shorter. The notice required in this Paragraph shall consist of the proposed date of ground lease or conveyance. Within thirty (30) days after the closing date or date of ground lease, Owner shall supply notice to the Board of the completion of the transaction,

containing a description of the property to be ground leased or conveyed, the name or names of the ground lessee(s) or buyer(s) and, if known to the Owner, the general purpose for which the property to be ground leased or conveyed will be used. Notice is required hereunder for the purposes of maintaining a current record of the Owners and ground leases of the Property and to enable the Board to ensure that the requirements of this covenant are being met.

(b) Within thirty (30) days after Covenantor enters into any space lease of a portion of the Property, Covenantor shall supply notice to the Board of the completion of such lease transaction, containing a description of the premises leased, the name of the tenant and, if known to the Covenantor, the general purpose for which such premises will be used. Additionally, within ten (10) days of request from the Board, Covenantor shall deliver to the Board a list setting forth the current tenants of the Property. Notice is required hereunder for the purposes of maintaining a current record of the tenants of the Property and to enable the Board to ensure that the requirements of this covenant are being met.

3.3 Enforcement. Failure of the Owner to comply with any of the requirements set forth in this Covenant shall be grounds for the Board to file civil and criminal actions against the Owner to the extent provided by law, as well as to compel closure or modification of any wells or similar structures used in violation of the Restrictions. The Board shall not by reason of the Covenant have the authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any portion of the Property, unless provided otherwise by statute. This Covenant shall not create any private right of action against Covenantor or any owner or occupant of the Property or any portion thereof.

3.4 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. Owner shall provide a copy of the written instrument to the Board within thirty (30) days after the closing date or date that Owner enters into a lease. Owner and current occupants shall execute a written instrument and submit a copy to the Board within thirty (30) days of recording of this covenant. Any Such instrument shall contain the following statement:

The land described herein contains hazardous substances/materials, including lead in the soils and is subject to a deed restriction that is dated as of 3-23, 98, and recorded on 3-23, 98, in the Official Records of San Mateo County, California, as Document No, 98-039201 which Covenant and Agreement imposes certain covenants, conditions, and restrictions on usage of the property described herein. Clayton Environmental Consultants, prepared a Soil Management Plan dated March 19, 1998, for the land described herein and incorporated therein by reference. The provisions of the Covenant and Agreement are incorporated herein and made a part hereof as if set forth in full. This statement is not a declaration that hazard exists .

3.5 Limitation of Covenantor's Obligations Upon Conveyance of Ownership. Upon conveyance of ownership of the Property, or any portion thereof, by deed, ground lease, or other appropriate conveyance instrument, which instrument contains the provisions of Paragraph 3.4 above, Covenantor shall be released from any and all obligations under this Covenant as to that portion of the Property which has been conveyed that arise or occur on or after the date of such conveyance.

ARTICLE IV

VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant. Such application shall contain (1) a statement of who is applying for the variance, (2) the proposed variance, (3) a statement of reasons in support of the granting of the variance, and (4) such other information as may be reasonably required by the Board. Any applicant seeking a variance of the Restrictions shall pay the Board all costs incurred by the Board in processing the application.

4.2 Termination. Any Owner or, with the Owners consent, any Occupant of the Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Property. Any applicant seeking termination of the Restrictions shall pay the Board all costs incurred by the Board in processing the application.

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

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 to all other parties, if personally delivered to the person being served or to an officer of a corporate party being served or an official of government agency being served or (2) three (3) business days after deposit in the mail to all other parties if sent by United States mail, postage paid certified, return receipt requested:

If To Covenantor: Michael Demeter
160 Demeter Street
East Palo Alto, CA 94303

With A Copy To:

Tom Clarke, esq.
Ropers, Majeski, Kohn & Bentley
1001 Marshall Street
Redwood City, CA 94063

If To the Board:

CA Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612
Attention: Executive Officer

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 Board. This instrument shall be recorded by the Owners in the County of San Mateo within ten (10) days of the date of execution.

5.6 References. All References to Code sections include successors provisions.

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

Michael Demeter

By: Michael J Demeter

Title: Owner

Date: 3/23/98

REGIONAL WATER QUALITY CONTROL BOARD

By: Lnette Kuhn Parsamian

Title: Executive Officer

Date: March 23, 1998

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

)
) ss.
)

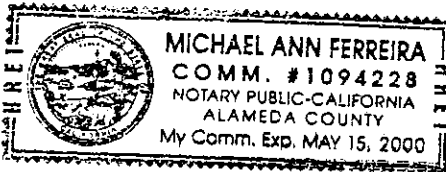
On March 23, 1998, before me, Michael Ann Ferreira
(Name And Title Of Officer)

personally appeared

Michael John Demeter

- personally known to me
- or-
- proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, executed the instrument.

WITNESS my hand and official seal.



Signature Of Notary

Michael Ann Ferreira

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

)
) ss.
)

On March 23, 1998, before me, Michael Ann Ferreira
(Name And Title Of Officer)

personally appeared

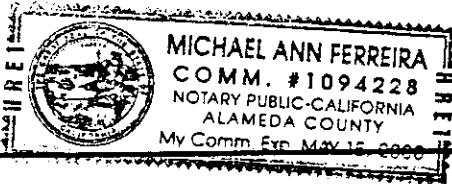
Loretta Barsaia

personally known to me

-or-

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

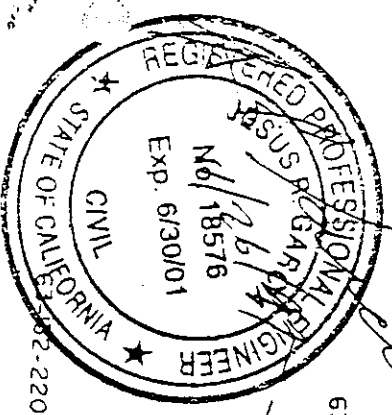
WITNESS my hand and official seal.



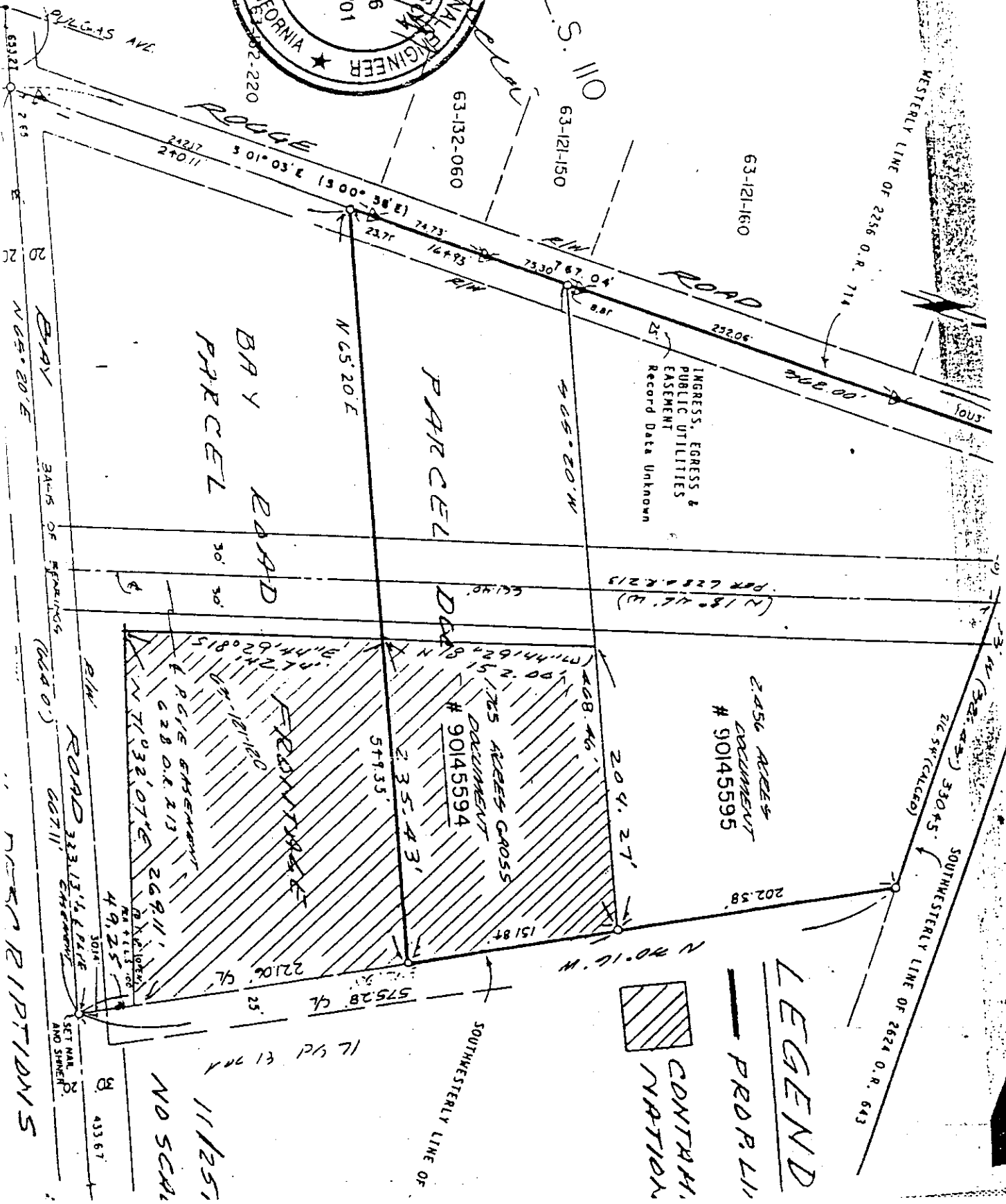
Michael Ann Ferreira
Signature Of Notary

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT A



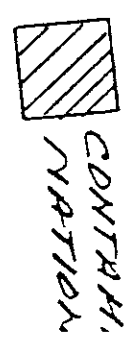
STATEMENT
RECORDED
BY SHANNON
14974



2.456 ACRES
DOCUMENT
90145595

765 ACRES GROSS
DOCUMENT
90145594

LEGEND



NO SCALE
11/25/11
433.67

ROAD 33.12' 1/4" BEIE
ROAD 66.71' CHD
SET NA. 20
AND SHANNON

63-121-150
63-132-060
63-121-160

2 L.L.S. 110
1

WESTERLY LINE OF 2256 O.R. 714

SOUTHWESTERLY LINE OF 2624 O.R. 643

SOUTHWESTERLY LINE OF 2624 O.R. 643

EXHIBIT A

PARCEL ON BAY ROAD

A parcel of land located in the City of East Palo Alto, County of San Mateo, State of California, and being the parcel of land shown fronting Bay Road and southerly of the parcel designated "Document #90145594" on a Record of Survey recorded in Volume 13 of Maps, Page 72, and more particularly described as follows:

Beginning at the southeasterly corner of said parcel fronting Bay Road as shown on said map at a nail and shiner in the centerline of Bay Road, thence along the easterly line of said parcel, N 30 16' W, 221.06 feet to the northeasterly corner of said parcel; thence along the northerly line, S 65 20' W, 549.35 feet to the westerly line of said parcel; thence along said westerly line, S 01 03' E, 240.11 feet to the southwesterly corner of said parcel on the centerline of Bay Road; thence along said centerline and the southerly line of said parcel, N 65 20' E, 667.11 feet to the point of beginning and containing 3.072 acres more or less.

11/25/97

Bay Road Frontage Parcel

sk

EXHIBIT A

PARCEL DOC #90145594

All of that certain parcel of land located the City of East Palo Alto, County of San Mateo, State of California, shown as "Recorder's Document No. 90145594" on a Record of Survey recorded in Volume 13 of Maps, Page 72, records of San Mateo County, and more particularly described as follows:

Beginning at the southeasterly corner of said parcel distant N 30 16' W, 221.06 feet from a nail and shiner in the centerline of Bay Road; thence along the southerly line of said parcel, S 65 20' W, 549.35 feet to the westerly line of said parcel; thence along the westerly line, N 01 03' W, 164.93 feet to the northwesterly corner of said parcel; thence along said northerly line, N 65 20' E, 468.46 feet to the northeasterly corner of said parcel; thence along said easterly line, S 30 16' E, 151.84 feet to the point of beginning and containing 1.765 acres more, or less.

11/25/97
902455594
sk

EXHIBIT B

**DESCRIPTION
OF PORTIONS OF REAL PROPERTY
THAT HAVE CONTAINED OR CURRENTLY CONTAIN
HAZARDOUS SUBSTANCES AS DEFINED IN THE
CALIFORNIA WATER CODE
INCLUDING LEAD IMPACTED SOIL**

EXHIBIT B

CONTAMINATED PORTION
OF DOC # 90245594

A parcel of land located in the City of East Palo Alto, County of San Mateo, State of California, being the easterly portion of the parcel designated as Recorder's Document No. 90145594 on a Record of Survey recorded in Volume 13 of Maps, Page 72, records of San Mateo County, and more particularly described as follows:

Beginning at the southeasterly corner of said parcel distant N 30 16' W, 221.06 feet from a nail and shiner in the centerline of Bay Road; thence along the southerly line of said parcel, S 65 20' W, 235.43 feet; thence N 18 29⁺ 44" W, 152.00 feet to a point on the northerly line of said parcel; thence along said northerly line, N 65 20' E 204.27 feet to the northeasterly corner of said parcel; thence along said easterly line, S 30 16' E, 151.84 feet to the point of beginning and containing 0.763 acres more or less.

11/25/97
Portion of 90145594

EXHIBIT B

CONTAMINATED PORTION
OF PARCEL FRONTING BAY ROAD

A parcel of land located in the City of East Palo Alto, County of San Mateo, State of California, and being a portion of the parcel of land shown fronting Bay Road and southerly of the parcel designated "Document #90145594" on a Record of Survey recorded in Volume 13 of Maps, Page 72, and more particularly described as follows:

Beginning at a point distant N 30 16' W, 49.25 feet from a nail and shiner in the centerline of Bay Road as shown on said Map, thence along the easterly line of said parcel, N 30 16' W, 171.81 feet to the northeasterly corner of said parcel; thence along the northerly line, S 65 20' W, 235.43 feet; thence S 18 29'44" E, 142.74 feet; thence N 71 32'07" E, 269.11 feet to the point of beginning and containing 0.903 acres more or less.

11/25/97 Contaminated Ptn
Bay Road Frontage Parcel
skJG