

MAY 16 2002



Recording Requested By:  
QUALITY CONTROL BOARD

The Port of San Francisco  
Pier 1  
San Francisco, CA 94111

San Francisco Assessor-Recorder  
Doris M. Ward, Assessor-Recorder  
DOC- 2002-H157121-00  
Acct 47-Port of San Francisco  
Tuesday, APR 30, 2002 09:25:28  
Ttl Pd \$0.00 Nbr-0001847774  
REEL I127 IMAGE 0516  
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When Recorded, Mail To:

Loretta Barsamian, Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

The Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attention: Carol Bach

COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY

**(Re: Former Western Pacific Property, City and County of San Francisco)**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of this 20<sup>th</sup> day of March, 2002 by the City and County of San Francisco ("City" or "Covenantor"), a charter city and county in trust, who is the Owner of record of 16.654 acres, more or less, located at the corner of Illinois and 24<sup>th</sup> Streets in the City and County of San Francisco, State of California, which is more particularly described in Exhibits A & B attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "Burdened Property") for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. The Burdened Property and groundwater underlying the property contain hazardous materials.

B. Contamination of the Burdened Property. The Burdened Property lies in an area reclaimed from the San Francisco Bay ("Bay") in the Islais Creek Estuary. A former owner, Western Pacific Railroad, used the area as a switchyard for rail cars. The soil and groundwater of the Burdened Property are contaminated with inorganic and organic chemicals including lead, arsenic, polynuclear aromatic hydrocarbons (PAHs), and volatile organic compounds which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. The contamination may have been caused by previous operations and/or by the nature of artificial fill material below the ground surface.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Exposure pathways for human receptors could include incidental ingestion, dermal contact, inhalation of vapors and/or resuspended particulates, and ingestion of homegrown produce. Runoff of surface water to San Francisco Bay is not considered a complete pathway based on engineered controls along the shoreline.

It was determined in the Human Health and Ecological Risk Assessment ("HHERA") dated September 2000 and approved by the Board by letter dated June 13, 2001 that exposure to chemicals in soil and groundwater should not pose an unacceptable noncarcinogenic health risk or cancer risk to future high-density housing residents; future commercial workers, future industrial workers, future maintenance workers, future recreational users, future construction workers, future youth trespassers, or future offsite residents; however, exposure to chemicals in soil and groundwater might cause an unacceptable noncarcinogenic health risk and/or cancer risk to future single-family home residents. Additionally, exposure to lead in soil should not pose an unacceptable risk to future high-density housing residents; future commercial workers, future industrial workers, future maintenance workers, future recreational users, future construction workers, future youth trespassers, or future offsite residents; however, exposure to lead in soil might cause an unacceptable risk to future single-family home residents.

Therefore, the HHERA concluded that no remedial actions were warranted at the Burdened Property if the property is to be developed for high-density housing, commercial, light industrial, or recreational uses. Additionally, the HHERA concluded that chemicals detected at the Burdened Property are not expected to pose a significant risk to aquatic organisms in the San Francisco Bay.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is adjacent to industrial land uses on the north, south and west. Covenantor is also the owner of the adjacent 13 western acres. Such property is also subject to a Covenant and Environmental Restriction on Property filed with the San Francisco Recorder's Office on December 18, 2000. Land use for the adjacent 13 western acres is restricted to industrial and associated land uses, which may include some office uses associated with a planned light rail vehicle maintenance and operations facility.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I

## GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

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

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II  
DEFINITIONS

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

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

2.3 Occupants. "Occupants" shall mean Covenantor and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or

any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

### ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. The use of the Burdened Property shall be restricted as follows:

- a. Development of the Burdened Property shall be restricted to industrial, commercial, office space, or high-density housing (defined as condominium or apartment-type housing units) without backyard exposure scenarios or the possibility of home-grown produce;
- b. No single-family residences shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, unless expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions or local, state and federal law.
- g. No Owners or Occupants of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting groundwater for drinking water or for any other purpose, unless expressly permitted in writing by the Board;
- h. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- i. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner or Occupant undertake actions to comply therewith. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner or Occupant as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which, along with a Fact Sheet as described below, shall accompany all purchase agreements or leases relating to the property. The written instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of \_\_\_\_\_, 2002, and recorded on \_\_\_\_\_, 2002, in the Official Records of San Francisco County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists. **04/30/2002, 2002H157121**

Additionally, a Fact Sheet shall be prepared as part of any development process for the Burdened Property that will explain in clear, simple, precise terms what contamination existed and continues to exist on the Burdened Property. The Fact Sheet shall also accompany any purchase agreements or leases relating to the property. The Fact Sheet shall be provided to the Board and subject to the Board's approval prior to providing such Fact Sheet to any potential buyer or lessee. Once approved, the Fact Sheet shall be filed in the Official Records of San Francisco County as an addendum to this Covenant.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof, may apply to the Board for a written variance from or termination of the provisions of this Covenant as they apply to all or any portion of the Burdened Property. Any amendment, termination or variance pursuant to this Section 4.1 must be in writing and signed by a representative of the Board, the Covenantor and any successors in interest to the Covenantor including any Owners affected thereby and recorded in the Official Records of the City and County of San Francisco. The entity which has sought and received Board approval of such an amendment, termination or variance shall ensure that it is accompanied by a legal description of the property subject to the amendment, termination or variance of this Covenant and such legal description shall be recorded with the amendment, termination or variance. The Board shall provide for advance public notice of any such amendment, variance or termination.

4.3 Term. Unless terminated in accordance with paragraph 4.1 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attention: Douglas F. Wong, Executive Director

With copies to:

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

Carol Bach  
Port of San Francisco  
Pier 1  
San Francisco, CA 94111

*If To: "Board"*

Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612  
Attention: Loretta Barsamian, Executive Officer

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. The Burdened Property is currently

owned by the Port of San Francisco ("Port"), a department of Covenantor. The Port will record an amendment to this Covenant changing or adding the name and address of the entity or individual to whom notice must be sent if the Port sells any portion of the Burdened Property to an outside party or to another department of Covenantor.

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 Port and the Board. This instrument shall be recorded by the Port in the City and County of San Francisco within ten (10) days of the date of execution.


5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

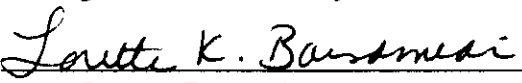
5.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

Covenantor: City and County of San Francisco

By:   
 Douglas F. Wong  
 Title: Executive Director, Port of San Francisco  
 Date: April 24, 2002

Board: Regional Water Quality Control Board

By:   
 Loretta Barsamian  
 Title: Executive Director  
 Date: April 23, 2002

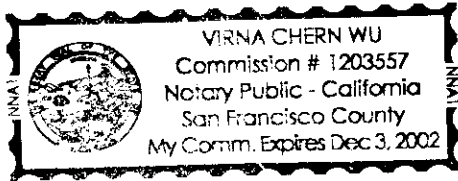
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of San Francisco } ss.

On April 26<sup>th</sup>, 2002, before me, VIRNA C. WU, "Notary Public"  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Douglas Farrell Wong  
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.



Place Notary Seal Above

WITNESS my hand and official seal.

Virna Wu  
Signature of Notary Public

**OPTIONAL**

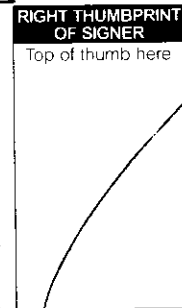
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Covenant & Environmental Restriction on Property (Re: Former Western Pacific Property, City & County of San Francisco)  
Document Date: April 24, 2002 Number of Pages: 7 pages + Exhibit A (map of map) & Exhibit B (legal description of property)  
Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer**

Signer's Name: Douglas Farrell Wong  
 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





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

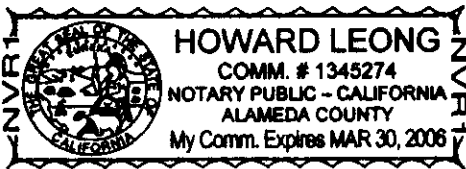
County of Alameda } ss.

On 4/23/2002, before me, Howard Leong, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared LORETTA K BARSAMIAN  
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.

*Howard Leong*  
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: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

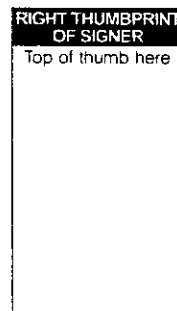
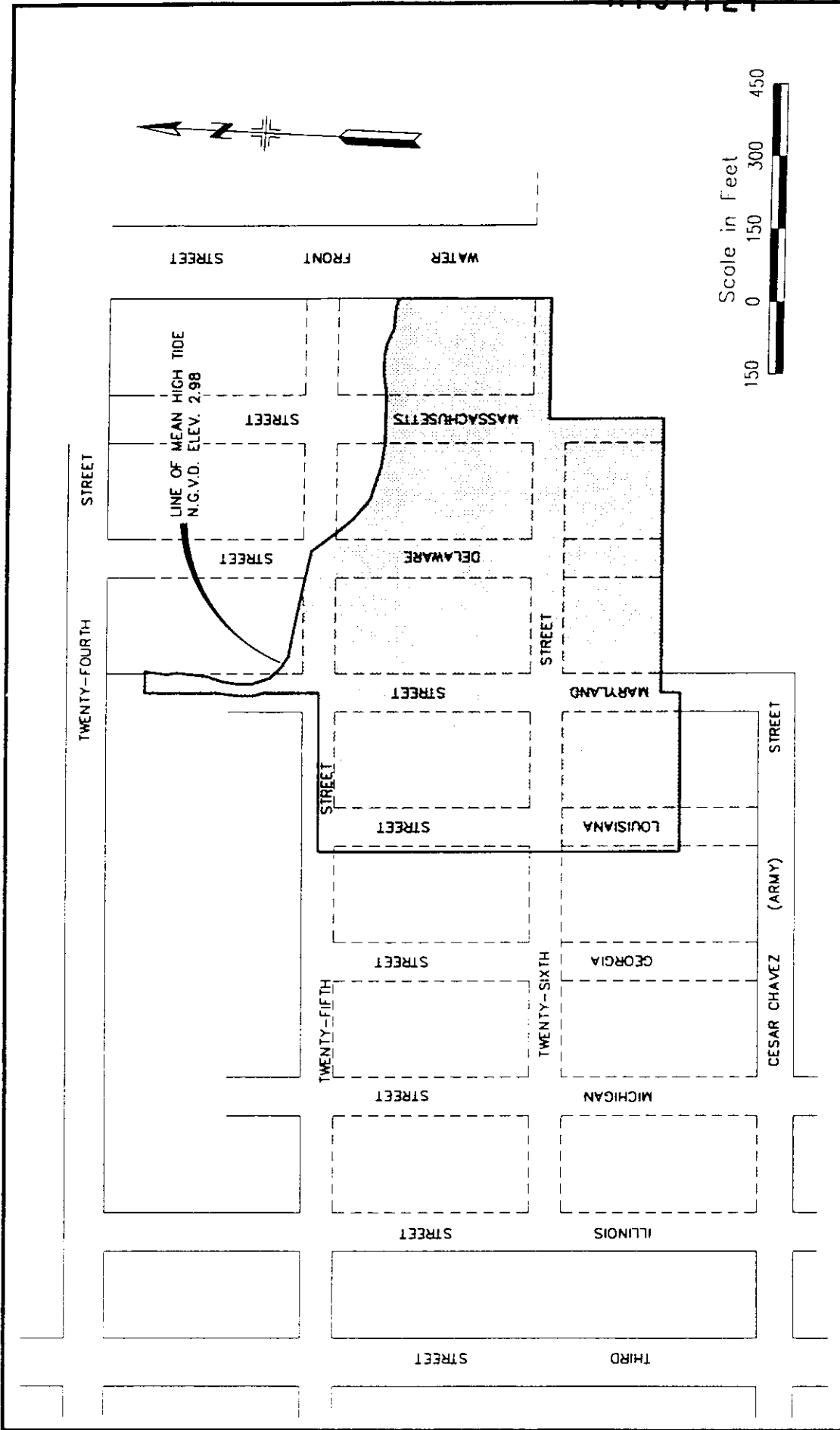


EXHIBIT A  
MAP OF PROPERTY



DESIGNED BY: C. BACH	CHECKED BY:
DRAWN BY: AMN	DATE: 05 JAN 01
DATA FILE:	SCALE: 1" = 300'
DRAWING NO.	SHEET NO. 1
UNRELEASED.DWG	

**WESTERN PACIFIC SITE  
UNRELEASED PORTION**

**PORT OF SAN FRANCISCO  
SAN FRANCISCO PORT COMMISSION  
DEPARTMENT OF ENGINEERING**

APPROVED BY: \_\_\_\_\_  
 SAN FRANCISCO PORT COMMISSION  
 DATE: \_\_\_\_\_  
 CHIEF HARBOR ENGINEER

EXHIBIT A

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

**WESTERN PACIFIC SITE - UNLEASED PORTION**  
**LEGAL DESCRIPTION**

All of that real property situate in the city and county of San Francisco, State of California, described as follows:

All streets and street lines hereinafter mentioned are in accordance with that certain map entitled "Record of Survey", recorded March 30, 1999 in Book "Z" of Maps at Page 71 (reel H352, image 641), in the office of the Recorder of the City and County of San Francisco, State of California.

Beginning at the intersection of the center line of Twenty-Fifth Street (66.00 feet wide) with the center line of Maryland Street (80.00 feet wide);

Thence along said centerline of Maryland Street North  $3^{\circ}10'56''$ , West 113.73 feet to a line drawn parallel to and distant easterly 25.00 feet from the present line of mean high tide being the mean high water line as surveyed on 7-29-98 at an elevation of 2.98 feet NGVD of 1929 as it appears on the above mentioned Record of Survey;

Thence along said parallel line the following courses:

North  $22^{\circ}23'19''$  West, 19.51 feet;

North  $2^{\circ}41'46''$  West, 33.58 feet;

North  $5^{\circ}06'09''$  East, 34.19 feet;

North  $15^{\circ}26'32''$  East, 3.78 feet to the center line of Maryland Street:

Thence along said center line of Maryland Street, North  $3^{\circ}10'56''$  West, 152.05 feet to a line drawn parallel to and perpendicularly distant Southerly 43.77 feet from the southerly line of Twenty-Fourth street (100.00 feet wide):

Thence along said line so drawn North  $86^{\circ}49'04''$  East, 46.32 feet to said present line of mean high tide;

Thence along said present line of mean high tide the following courses:

South  $22^{\circ}19'28''$  West, 5.75 feet;

South  $4^{\circ}12'19''$  West, 40.67 feet;

South  $13^{\circ}12'09''$  East, 19.87 feet;

South  $3^{\circ}51'00''$  West, 43.56 feet;

South  $2^{\circ}50'27''$  West, 19.02 feet;

South  $15^{\circ}26'32''$  West, 36.13 feet;

South  $5^{\circ}06'09''$  West, 30.22 feet;

South  $2^{\circ}41'46''$  East, 27.54 feet;

South 22°23'19" East, 39.34 feet;

South 49°23'20" East, 31.73 feet;

South 59°00'21" East, 24.29 feet;

South 82°35'15" East, 58.24 feet;

South 81°18'41" East, 105.20 feet;

South 80°20'15" East, 62.29 feet;

South 40°31'14" East, 63.27 feet;

South 42°58'13" East, 44.43 feet;

South 53°46'01" East, 52.73 feet;

South 75°37'57" East, 72.99 feet;

South 84°42'30" East, 46.55 feet;

North 86°57'26" East, 41.79 feet;

North 88°29'13" East, 59.06 feet;

North 78°35'58" East, 44.86 feet;

North 88°04'03" East, 37.76 feet;

South 81°19'06" East, 24.10 feet;

South 70°35'14" East, 36.20 feet;

North 89°37'27" East, 15.04 feet;

South 87°21'35" East, 30.66 feet;

South 72°07'12" East, 16.98 feet to the westerly line of Water Front Street (150.00 feet wide);

Thence along said westerly line South 3°10'56" East, 311.63 feet to the center line of former Twenty-Sixth Street (66.00 feet wide);

Thence along last said center line South 86°49'04" West, 250.00 feet to the centerline of former Massachusetts Street (100.00 feet wide);

Thence along last said centerline South 3°10'56" East, 233.14 feet to a line drawn parallel to and distant Northerly 200.00 feet from the northerly line of Cesar Chavez (Army) Street (75.00 feet wide);

Thence along last said parallel line South 86°49'04" West, 570.00 feet to the centerline of Maryland Street;

Thence along last said centerline South 3°10'56" East, 39.00 feet;

Thence parallel with the northerly line of Cesar Chavez (Army) Street (75.00 feet wide) South 86°49'04" West, 331.87 feet;

Thence parallel to the westerly line of Louisiana Street, North  $3^{\circ}10'56''$  West, 738.28 feet to the aforementioned center line of Twenty-Fifth street;

Thence along last said centerline North  $86^{\circ}49'04''$  East, 331.85 feet, more or less, to the Point of Beginning.

Being entire blocks nos. 474 and 493, and portions of blocks nos. 467, 468, 473, 494, 499, and 500, and also portions of Louisiana Street, Maryland Street, Delaware Street, Massachusetts Street, Twenty-fifth Street and Twenty-Sixth Street, all as delineated on that certain map entitled "Map of Golden City Homestead Association", recorded on December 12, 1865 in Map Books "C" and "D", at Pages 20 and 21, in the Office of the Recorder of the City And County of San Francisco.

Also being portions of blocks nos. 492 and 509, of the Potrero Nuevo.

Containing 725,438 square feet (16.654 acres), more or less.