

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY:

Department of Toxic Substances Control
and
Contra Costa County
255 Glacier Drive
Martinez, CA 94553

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94719
Attention: Marikka Hughes, Branch Chief

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

County of Contra Costa, Assessor's Parcels Numbers: 127-210-026, 127-253-005, and
a portion of 127-150-018
Monument Corridor Trail
DTSC Site No. 202031

This Covenant and Agreement ("Covenant") is made by and between Contra Costa County (the "Covenantor"), the current owner of the County of Contra Costa Assessor's Parcel Numbers 127-210-026, 127-253-005, and 127-150-018 (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, 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 section 25260. The Covenantor and the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 79055, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall

conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I

STATEMENT OF FACTS

1.1. Property Location. The Property that is subject to this Covenant, totaling approximately 12.04 acres, is more particularly described in the attached Exhibit A, "Legal Description of the Property", and depicted in Exhibit B, "Plat to Accompany Exhibit A". The Property is located in the area now generally bounded by Monument Boulevard to the south, Mayette Avenue to the north and runs parallel to California State Route (SR) 242. The Property is also identified as County of Contra Costa, Assessor Parcel Numbers 127-210-026, 127-253-005, and a portion of 127-150-018.

1.2. Remediation of Property. The Department approved a Preliminary Endangerment Assessment in accordance with Health and Safety Code, division 45, part 2. The remediation activities conducted at the Property include construction of an asphalt concrete trail, capping certain impacted soil with one foot of clean fill, and fencing certain impacted soils. Hazardous substances, including arsenic at 630 milligrams per kilogram (mg/kg), zinc at 1000 mg/kg, total petroleum hydrocarbons as motor oil at 520 mg/kg, benzo(a)anthracene at 0.96 mg/kg, benzo(a)pyrene at 2.0 mg/kg, benzo(b)fluoranthene at 1.9 mg/kg, dibenzo(a,h)anthracene at 0.47 mg/kg, and indeno(1,2,3-cd)pyrene at 1.5 mg/kg, remain at the Property above levels acceptable for unrestricted land use.

1.3. Basis for Environmental Restrictions. As a result of the presence of hazardous substances, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II
DEFINITIONS

2.1. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.3. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.4. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

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

2.6. Owner. "Owner" or "Owners" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Civil Code section 1471 and Health and Safety Code section 79055; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.2. Binding upon Owners/Occupants. This Covenant (a) binds all Owners of

the Property, their heirs, successors, and assignees, and (b) the agents, employees, and lessees of the Owners and the Owners' heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive Owners of the Property are expressly bound hereby for the benefit of the Department, this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with, the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and each new Owner shall provide written Notice to the Department not later than thirty (30) calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written Notice shall include the name and mailing address of the new Owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The Notice shall also include the Assessor's Parcel Number(s) (APN) noted on page one. If the new Owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.5. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering, implementing and enforcing this Covenant.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 18 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) Within the fenced off area of arsenic-impacted soils shown in the attached Exhibit C: No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- b) In all other areas of the Property not included in the area described in subsection (a): No activities that will disturb the soil at or below one (1) foot below grade (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.
- (c) Any soil brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.3. Prohibited Activities. The following activities shall not be conducted on the Property:

- (a) Drilling for any water, oil, or gas without prior written approval by the Department.
- (b) Extraction or removal of groundwater without a Groundwater Management Plan pre-approved by the Department in writing.

- (c) Activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of, or the access to, any investigative, remedial, monitoring, operation or maintenance system (e.g. cap, fence) or activity required for the Property without prior written approval of the Department.
- (d) Subdivision of the land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, unless the Department provides specific approval in writing. This paragraph does not prevent the division of a parcel of land so as to divide that portion of the parcel that contains hazardous materials, as defined in Health and Safety Code section 25260(d), from other portions of that parcel.

4.4. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities deemed necessary by the Department in order to protect human health or safety, or the environment.

4.5. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities, if any, shall have reasonable right of entry and access to the Property for the purpose of implementing such operation and maintenance activities until the Department determines that no further operation and maintenance activity is required.

4.6. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by July 1st of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation, (b) send a letter advising the party of the violation of the Covenant, and (c)

demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

4.7 Five-Year Review. In addition to the annual inspection noted above, after a period of five (5) years from the execution of this Covenant and every five (5) years thereafter, Owner shall submit a Five-Year Review report in general accordance with the US EPA Comprehensive Five-Year Review Guidance to the Department documenting its review of the remedy implemented and its evaluation to determine if human health and the environment are being adequately protected by the remedy as implemented. The report shall describe the results of all inspections, sampling analyses, tests and other data generated or received by Owner and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed, DTSC may require Owner to perform additional review work or modify the review work previously performed by Owner.

ARTICLE V ENFORCEMENT

5.1. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, such as failure to submit (including submission of any false statement) a record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2 Removal of Restriction. Any person may apply to the Department to

remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3 Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.1. 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.

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

7.3. 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: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (b) five (5) calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Contra Costa County
255 Glacier Drive
Martinez, CA 94553
Attention: Carrie Ricci

And

To Department:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, CA 94719

Attention: Marikka Hughes, Branch Chief
Site Mitigation and Restoration Program

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

7.4. Partial Invalidity. If this Covenant or any of its terms are 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.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor: Contra Costa County

By: _____

Warren Lai

Public Works Director

Date: _____

Department of Toxic Substances Control:

By: _____

Marikka Hughes, Branch Chief

Site Mitigation and Restoration Program

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me,

(space above this line is for name and title of the officer/notary),

personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature of Notary Public (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me,

(space above this line is for name and title of the officer/notary),

personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature of Notary Public (seal)

EXHIBIT A

Legal Description of Property

[Attached]

Department of Toxic Substance Control
Environmental Deed Restriction
Portion of Iron Horse Corridor
From Mayette Ave. to Monument Blvd.
City of Concord
APNs 127-210-026, 127-253-005 and a portion of 127-150-018

EXHIBIT "A"

Environmental Deed Restriction

Encumbering land in the City of Concord, County of Contra Costa, State of California, described as the following three parcels: (1) the 100-foot wide parcel conveyed to Contra Costa County in the Grant Deed recorded as Instrument 87-77554 (Book 13569 at page 256) Official Records of Contra Costa County on April 10, 1987; (2) the 50-foot wide parcel conveyed to Contra Costa County as Parcel 5 in the Grant Deed recorded as Instrument 85-002168 (Book 122090 at page 180) Official Records of Contra Costa County on March 4, 1985; and (3) the portion north of the north line of Monument Boulevard of the 100-foot wide parcel conveyed to Contra Costa County as Parcel 6 in said Grant Deed (85-002168).

Containing an area of 12.04 acres of land, more or less.

Exhibit "B", a plat is attached hereto, and by this reference made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: 
Licensed Land Surveyor
Contra Costa County Public Works

Date: 4/14/2020



EXHIBIT B

Depiction of Property

[Attached]

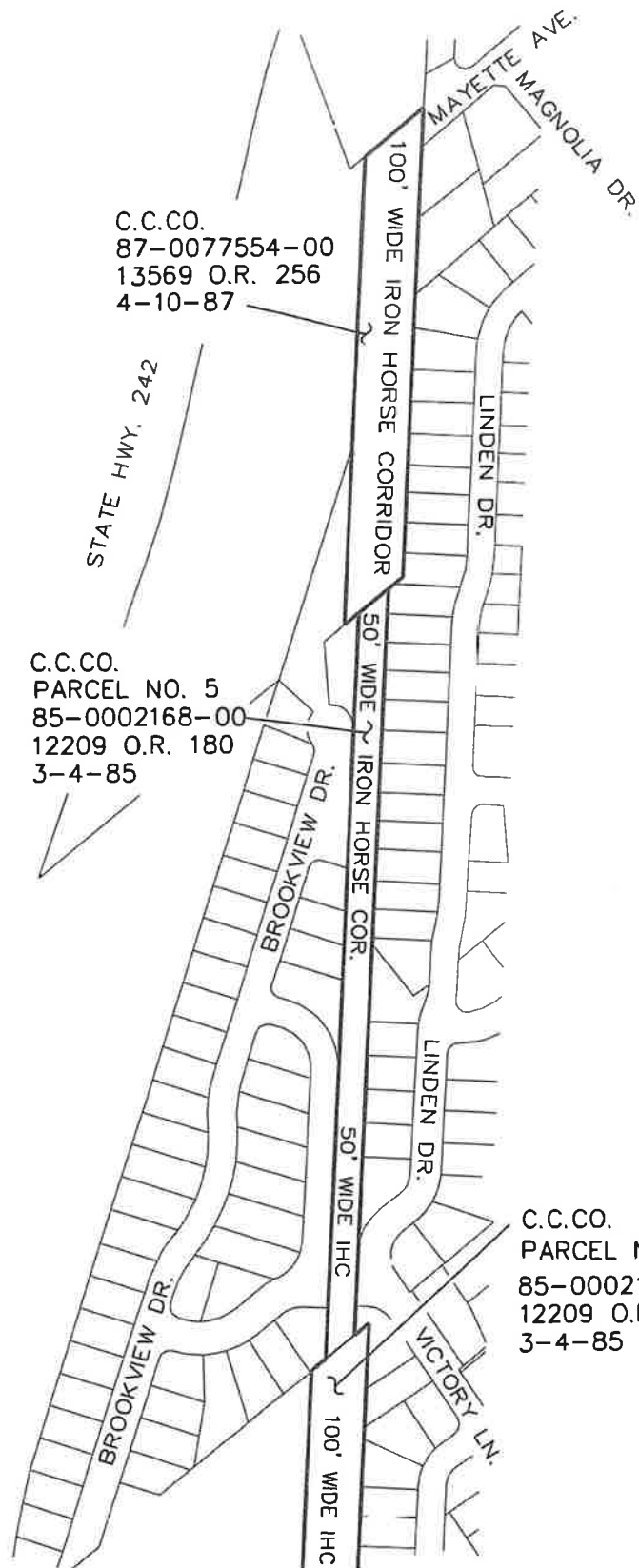


EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"



Enviromental Deed
Restriction
Iron Horse Corridor
Mayette Ave.
to Monument Blvd.
City of Concord

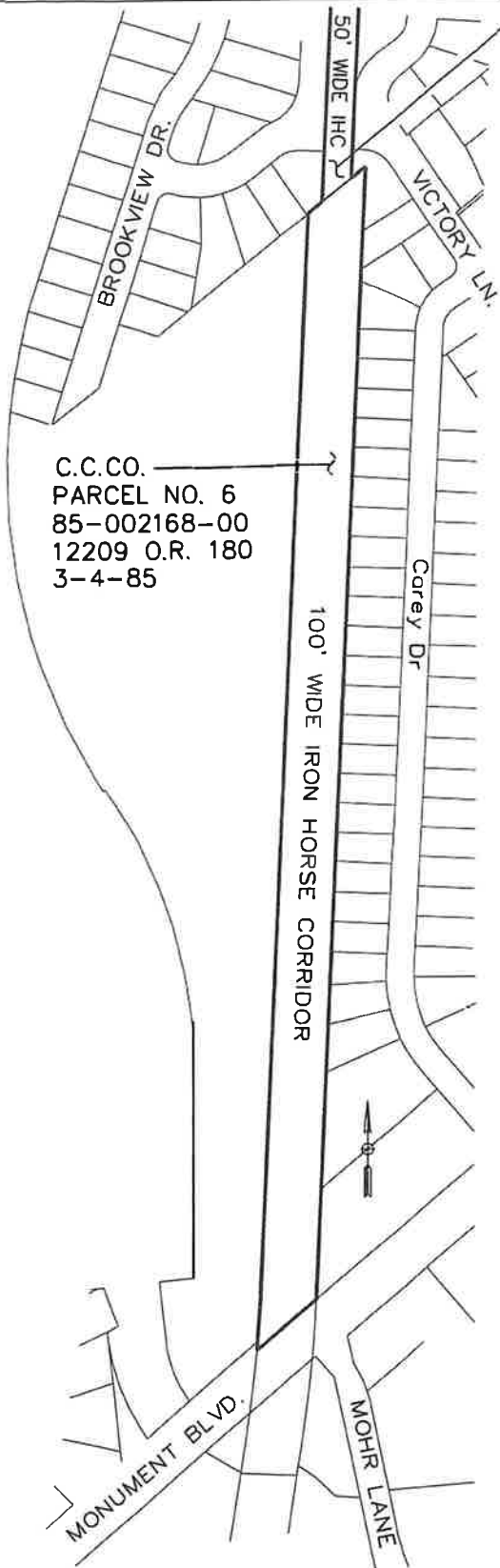


4/14/2020

SHEET 1 OF 2

IRON HORSE CORRIDOR ENVIROMENTAL RESTRICTION

Instrument :	Scale 1"=300'	Date NOV 15, 2017
Series No. Recorded	Drawn By JLH	File No.
	Checked By JS	Cad File IHC ER 2017.dgn



C.C.CO.
PARCEL NO. 5
85-0002168-00
12209 O.R. 180
3-4-85

EXHIBIT "B"

PLAT TO ACCOMPANY EXHIBIT "A"



Enviromental Deed
Restriction
Iron Horse Corridor
Mayette Ave.
to Monument Blvd.
City of Concord

SHEET 2 OF 2

IRON HORSE CORRIDOR ENVIROMENTAL RESTRICTION

Instrument :	Scale 1"=300'	Date NOV 15, 2017
Series No. Recorded	Drawn By JLH	File No.
	Checked By JS	Cad File IHC ER 2017.dgn

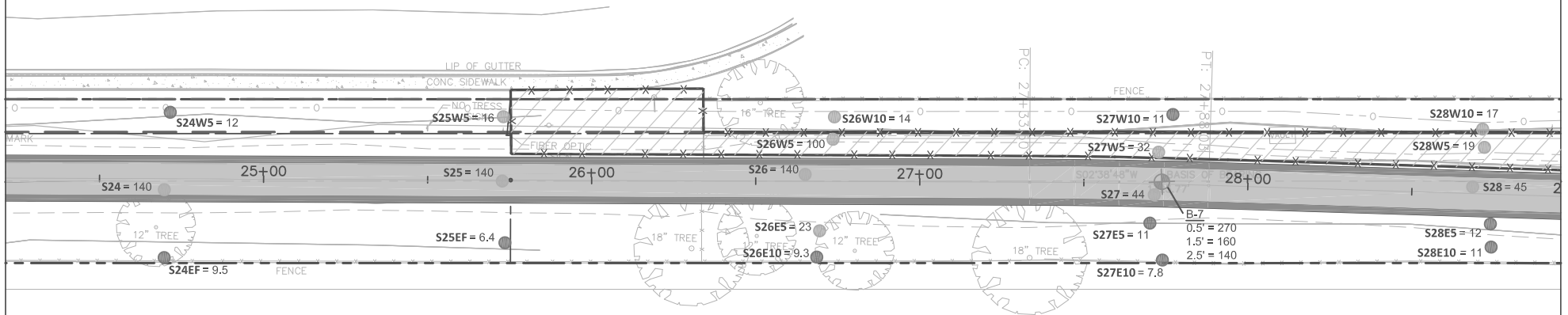
EXHIBIT C

Site Plan Indicating Areas of Contamination

[Attached]

Note:

Remedy components (fenced off areas, hardscaping and imported borrow cap) were constructed as shown and As-Built are available in Appendix B. All non-remedy details shown are from the 2013 original design drawings. Please refer to Appendix B for the final constructed details.



Legend

Approximate Soil Boring Location (Geocon Consultants, Inc. [Geocon], August 2011)

Approximate Sample Locations (Geocon, October 2011)

S1E10 = 7.4 Sample Location Identification and Reported Arsenic Concentration in Milligrams per Kilogram (mg/kg)

B-12 Sample Location Identification

0.5' = 140 Sample Depth In Feet and Reported Arsenic Concentration In mg/kg

Arsenic Concentrations Color Key

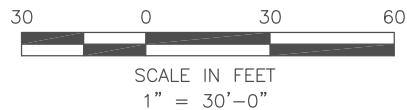
- <13 mg/kg
- 13 - 30 mg/kg
- >30 mg/kg

Hardscaping - Hot Mix Asphalt (HMA)/asphalt pavement, underlain by a minimum of one-foot of clean imported borrow material

Imported borrow was placed as a 12-inch minimum cap over Class A material.

Fenced off Area of Arsenic Impacted Soils.

Kinder Morgan Easement



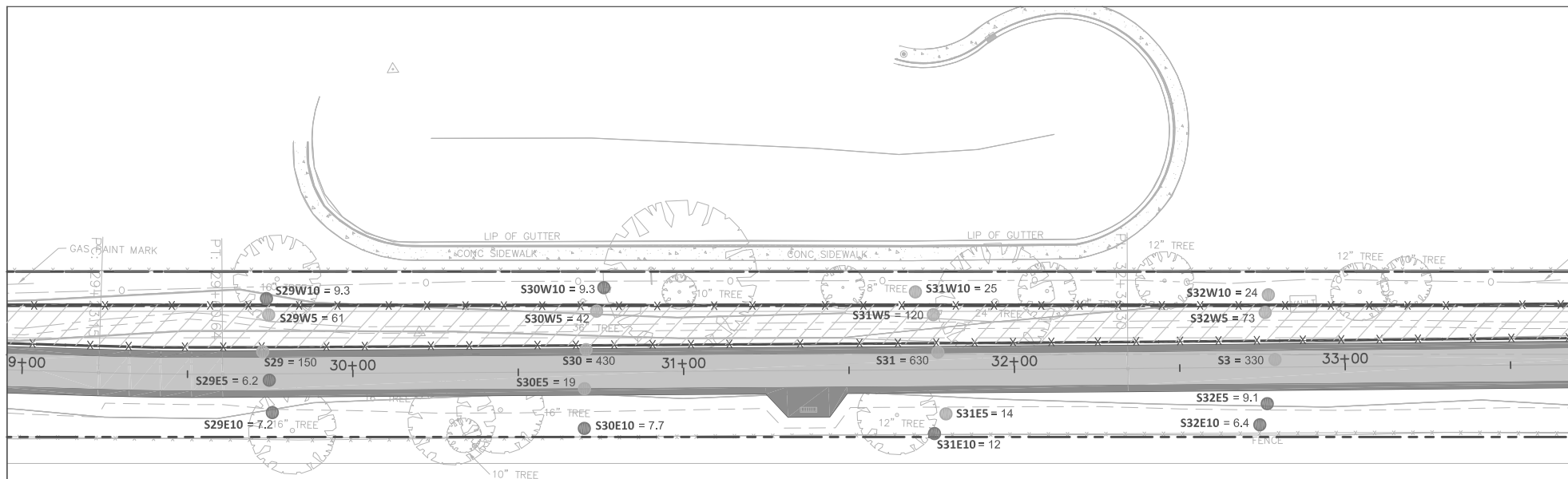
8795 Folsom Blvd., Suite 250
Sacramento, CA 95826
(916) 388 5655

Summary of Soil Sample Analytical Data - August and October 2011
Operation and Maintenance (O&M) Plan
Monument Corridor Trail Phase 2 (City Project No. 2169)
Concord, California

PLATE

3f

DRAWN	FILE NAME	PROJECT NUMBER	APPROVED	DATE	REVISED DATE
YG	monument-trail site v19.dwg	663.20.55		10/2018	



Note:

Remedy components (fenced off areas, hardscaping and imported borrow cap) were constructed as shown and As-Built are available in Appendix B. All non-remedy details shown are from the 2013 original design drawings. Please refer to Appendix B for the final constructed details.

Legend

- Approximate Soil Boring Location (Geocon Consultants, Inc. [Geocon], August 2011)
- Approximate Sample Locations (Geocon, October 2011)
- S1E10 = 7.4** Sample Location Identification and Reported Arsenic Concentration in Milligrams per Kilogram (mg/kg)

B-12 Sample Location Identification

0.5' = 140 Sample Depth In Feet and Reported Arsenic Concentration In mg/kg

Arsenic Concentrations Color Key

- <13 mg/kg
- 13 - 30 mg/kg
- >30 mg/kg

30 0 30 60
SCALE IN FEET
1" = 30'-0"



- Hardscaping - Hot Mix Asphalt (HMA)/asphalt pavement, underlain by a minimum of one-foot of clean imported borrow material
- Imported borrow was placed as a 12-inch minimum cap over Class A material.
- Fenced off Area of Arsenic Impacted Soils.
- Kinder Morgan Easement



8795 Folsom Blvd., Suite 250
Sacramento, CA 95826
(916) 388 5655

Summary of Soil Sample Analytical Data - August and October 2011
Operation and Maintenance (O&M) Plan
Monument Corridor Trail Phase 2 (City Project No. 2169)
Concord, California

PLATE

3g

DRAWN	FILE NAME	PROJECT NUMBER	APPROVED	DATE	REVISED DATE
YG	monument-trail site v19.dwg	663.20.55		10/2018	

Remedy components (fenced off areas, hardscaping and imported borrow cap) were constructed as shown and As-Built are available in Appendix B. All non-remedy details shown are from the 2013 original design drawings. Please refer to Appendix B for the final constructed details.



EXHIBIT D

Annual Compliance Letter - Checklist

[Attached]

(Date)

Branch Chief

Site Mitigation and Restoration Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

**SUBJECT: ANNUAL COMPLIANCE LETTER — COVENANT TO RESTRICT USE
OF PROPERTY**

MONUMENT CORRIDOR TRAIL SITE, CONCORD, CA

Dear **DTSC Branch Chief**:

This letter provides the Department of Toxic Substances Control (DTSC) with the Annual Compliance Report required by the Covenant To Restrict Use Of Property

Environmental Restriction (Deed Restriction) recorded on _____,
(Date)
with respect to Monument Corridor Trail Concord, California (the Property).

Article IV of the Deed Restriction requires that the current owner of the Property provide a report on its compliance with the Restrictions set forth in Article IV of the Covenant for activities in the Restricted Areas.

The undersigned owner hereby certifies that, for the year commencing
_____, 20____, and ending _____,

20____ (check all that apply):

- ☐ The Property was not used for any of the following purposes: a) a residence, including any mobile home or factory built housing, constructed or installed for use as a residential human habitation; b) a hospital for humans; c) a public or private school for persons under 18 years; and d) a day care for children.
- ☐ Soils were not disturbed at the Property, imported to the Property, or transported off of the Property for reuse or disposal
- ☐ Soils were disturbed at the Property, imported to the Property, or transported off of the Property for reuse or disposal. Please attach completed forms and other documentation demonstrating that such activities were in compliance with the soil management, notification and reporting requirements of the *Covenant to Restrict Use of Property, Environmental Restriction, County of Contra Costa, Assessor's*

Parcel Numbers: 127-210-026, 127-253-005, and a portion of 127-150-018, Monument Corridor Trail or most recent version).

- ☐ The following activities were not conducted on the property: a) Drilling for any water, oil, or gas without prior written approval by the Department, b) Extraction or removal of groundwater without a Groundwater Management Plan pre-approved by the Department in writing, c) Activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of, or the access to, any investigative, remedial, monitoring, operation or maintenance system (e.g. cap, fence) or activity required for the Property without prior written approval of the Department, and d) Subdivision of the land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, unless the Department provides specific approval in writing. This paragraph does not prevent the division of a parcel of land so as to divide that portion of the parcel that contains hazardous materials, as defined in Health and Safety Code section 25260(d), from other portions of that parcel.
- ☐ Current Property conditions are documented in the photograph(s) on the attached pages(s). (The photographs should have captions that include site identification, photographer location, approximate view direction, and the date of each photograph.)

Sincerely,

[Printed Name]

[Title]

CONTRA COSTA COUNTY