CALIFORNIA REGIONAL WATER

SEP 24 2002

QUALITY CONTROL BOARD

First American Title Guaranty Company hereby certifies that the within instrument is a true and correct copy of the original instrument recorded in the office of the recorder of the County of Alameda, State of California, on 8/8/02

Recorder's Serial No. 344290

FIRST AMERICAN TITLE GUARANTY COMPANY

By

Recording Requested By:

Mer Soleil LLC

When Recorded, Mail To:
Lawrence P. Kolb, Acting Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY
(Lots 7 through 15, Tract 7004, Newark, California)
(File No. 01S0516; formerly 36565 Newark Boulevard)

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 22nd day of July, 2002, by MER SOLEIL LLC, a California limited liability company ("Covenantor"), who is the Owner of record of that certain property situated in the City of Newark, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion 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. Hazardous Materials. The Burdened Property and groundwater underlying the Burdened Property contain hazardous materials.

B. Contamination of the Burdened Property. The Burdened Property was contaminated by improper disposal of dry cleaning solutions by a tenant in the Newark Shopping Center, which in the past was located on a portion of the Burdened Property. These operations resulted in contamination of soil and groundwater with organic chemicals including tetrachloroethylene, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Impacted soil at the site was excavated and treated to cleanup standards approved by the Board. A risk assessment prepared for the property and approved by the Board in a letter dated February 14, 2002, concluded that the identified impacts do not pose a significant threat to human health and the environment provided that the mitigation measures described herein are adhered to. A summary of the site history, cleanup actions and residual risks is presented in a fact sheet included as Exhibit B.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater and possibly the deeper soils under the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, adverse exposure to these contaminants could take place via direct contact with contaminated groundwater or the emission

of volatile chemicals to indoor air. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is to be used for single-family residential development and is adjacent to property currently used for commercial and residential purposes. The water supply for the residences to be constructed on the Burdened Property will not be supplied by wells on the Burdened Property.

E. Disclosure to the Board and Sampling. 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. Intent. 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 or under 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 in the groundwater beneath the Burdened Property 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 or any interest therein shall be deemed by their purchase, leasing or possession of, or acquisition of an interest in, 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 by them during the period of their ownership, lease or possession 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 facilitate the remediation of past environmental contamination and 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 Owners 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 each person or entity, including Covenantor, that holds title to all or any portion of the Burdened Property, whether now or in the future, during the period such person or entity holds title.

2.5 RMP. "RMP" shall mean the Longterm Risk Management Plan For Residual, Subsurface VOC Contamination, Tract 7004, Lots 7-15, Newark, California (Former Villa Cleaners, 36565 Newark Blvd.), dated February, 2002, prepared by D&M Consulting Engineers, Inc. for the Burdened Property and approved by the Board, a copy of which is attached to this Covenant as Exhibit C and incorporated into this Covenant by this reference, as such plan may be amended from time to time with approval of the Board.

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Declarant hereby declares that the Burdened Property is and shall remain subject to the following Restrictions:

a. All Owners and Occupants shall comply with the RMP. Following redevelopment of the Burdened Property for residential homes, all future excavation and

development of the Burdened Property must be consistent with and in accordance with the RMP. The RMP provides in part as follows:

> "[N]o future excavating or augering activities extending beyond a depth of five (5) feet below ground surface are permitted on these nine lots *[i.e. Lots 7 through 15]*. This includes, but is not limited to, deep open excavations for an in-ground pool, spa or large tree and deep holes for posts or foundations. As previously mentioned, adherence with this conservative restriction will avoid inadvertent disturbance of, and contact with, the underlying VOC residuals."

In addition, the RMP provides that no ground water production wells are permitted on Lots 7 through 15.

b. All uses and development shall preserve the integrity of any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

c. 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 water for any use, including but not limited to domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

d. 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.

e. The Owner of any lot on the Burdened Property shall notify the Board of each of the following: (1) the type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed, if any, on the Owner's lot on the Burdened Property pursuant to the requirements of the Board, which could affect the ability of such remedial measures, remedial equipment, or monitoring system to perform their respective functions, and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions set forth in paragraph 3.1 shall entitle the Board, by reason of this Covenant, to require that the Owner modify or remove any Improvement constructed in violation of that paragraph. Violation of this Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law. Nothing contained in this paragraph limits any other remedies available to the Board for violation of the Restrictions, including but not limited to an action for specific performance.

3.3 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 Burdened Property. Any such instrument shall contain the following statement:

> The land described herein contains hazardous materials in the ground water under the property, and is subject to a Covenant and Environmental Restriction dated as of July 22, 2002, and recorded on _____, 2002, in the Official Records of Alameda 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.

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 the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened 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 Burdened Property.

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 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 (or such other addresses as may be set forth any amendment to this Covenant):

If To "Covenantor":

Mer Soleil LLC
2185 The Alameda, Suite 150
San Jose, California 95126

If To The "Board":

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

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 Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Alameda 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.

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

COVENANTOR:

MER SOLEIL LLC, a California limited liability company

By Robson Properties, Inc., Its Manager

By: _____
Mark E. Robson
Title: President

Date: July 22, 2002

AGENCY:

State of California
Regional Water Quality Board,
San Francisco Bay Region

By: Loretta K. Barsamian

Title: Executive Officer

Date: August 5, 2002

STATE OF CALIFORNIA)
)
COUNTY OF Santa Clara)

On July 22, 2002, before me, the undersigned a Notary Public in and for said state, personally appeared Mark E. Robson, President of Robson Properties, Inc., which is the manager of Mer Soleil LLC, a California limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument for and on behalf of Mer Soleil LLC.

WITNESS my hand and official seal.

Jennifer King Lee
Notary Public in and for said
County and State

JENNIFER KING LEE
Comm. No. 1267982
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires
JUNE 19, 2004

STATE OF CALIFORNIA)
)
COUNTY OF Santa Clara

On August 5, 2002, before me, the undersigned a Notary Public in and for said state, personally appeared Loretta K. Barsamian, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

Jennifer King Lee
Notary Public in and for said
County and State

JENNIFER KING LEE
Comm. No. 1267982
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires
JUNE 19, 2004

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 7 through 15, of Tract 7004, filed April 9, 2002, at Map Book 263, Pages 71-72, Alameda County Records.

EXHIBIT B

Fact Sheet
36565 Newark Blvd
Lots 7 through 15 of Tract 7004

A. Introduction

The City of Newark has approved the redevelopment of 36565 Newark Boulevard, the former location of Newark Shopping Center, to 33 single family detached lots. The development includes new public roads and 33 attractive new homes with fences and front yard landscaping.

The property previously contained an aging retail commercial center that included a dry cleaning business. Due to the discovery of subsurface contamination containing tetrachlorothylene (a solvent used in dry cleaning operations) and related breakdown products, numerous investigative and remedial activities were undertaken on the property under the supervision of the California Regional Water Quality Control Board. After completion of the investigation and remediation, the Regional Board concluded that with the protections provided in the risk management plans adopted for the property, the site does not pose a threat to human health or the environment under any land use and is safe for redevelopment for single family homes.

B. Historical Background

Villa Cleaners, a dry cleaning business, operated in a single lease space of the former Newark Shopping Center from 1988 through 1998. Other dry cleaning businesses had operated at the same location since about 1970.

Subsurface contamination by tetrachlorothylene (PCE), a solvent used in dry cleaning, and related breakdown products was discovered in the vicinity of the former dry cleaners location (essentially, Lots 7 and 8) in September, 1996. The date PCE was first released at the site is unknown, as is whether or not there was more than one release. However, the evidence suggests that the impacts are a result of multiple low volume releases (i.e. leaks or spills) over an extended period of time.

The shopping center was demolished and the dry cleaning equipment removed from the property during winter in 1998/99 in preparation for residential development. During 1999, multiple stages of excavating and ground water pumping occurred to remove the accessible source-area contamination. Over 40 borings were made and over 200 samples of soil, soil gas, and ground water media were tested to determine the location and extent of the contamination. Many additional soil samples were field-screened for contaminants. Almost 1000 cubic yards of soil, primarily from the Lot 7 and Lot 8 areas, were excavated and treated to remove contamination. In addition, approximately 160,000 gallons of ground water from under the area of the original spill were pumped and treated to remove contamination. The final excavation area was over 50 by 50 feet, and extended to a depth of

about 12 feet. The areas of concern consisted primarily of Lots 7 and 8, which are in the immediate vicinity of the former dry cleaners location, and the current and future groundwater under Lots 9 through 15, which are downstream from the site of the original contamination.

Testing, monitoring and remediation were conducted under the oversight of several public agencies, including the California Regional Water Quality Control Board, as the lead agency, the City of Newark, and Alameda County Water District. The Regional Board issued a conditional closure letter for the property in February, 2002, which required the recordation of certain restrictions against the property.

Several reports have been issued for the site and are identified in the attached list of References.

C. Summary of Findings

Lots 7 through 15 are being developed in accordance with a construction risk management plan designed for this site. A long-term risk management plan for post-development activities also is in place for Lots 7 through 15. The requirements of the long-term risk management plan are discussed elsewhere in this Covenant and Environmental Restriction on Property.

Results from the testing, monitoring and investigation of the property indicated that the remaining contamination is of lower concentration, is likely to be confined to the ground water below the clay soil in the area of the former dry cleaners and/or Lots 9 through 15, and is not likely to migrate offsite at levels of significant concern.

The California Regional Water Quality Control Board has concluded that with the protections provided in the risk management plans adopted for the property, the site does not pose a threat to human health or the environment under any land use and is safe for redevelopment for single family homes.

Key Contacts

Mr. Roger Brewer
California Regional Water Quality Control Board
1515 Clay Street
Suite 1400
Oakland, Ca. 94612
(510) 622-2374

Mr. Selim Zeyrek
Alameda County Water District
43855 South Grimmer Ave
Fremont, Ca. 94538
(510) 659-1970

REFERENCES

Augeas Corporation, 2000, Report for Site Investigation and Remediation at Villa Cleaners, 36565 Newark Boulevard, Newark, CA: Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's report dated March 15, 2000).

California Regional Water Quality Control Board, San Francisco Bay Region, 2000a, Order No. 00-065, Adoption of Initial Site Cleanup Requirements, Former Villa Cleaners, 36565 Newark Boulevard, Newark, Alameda County: Prepared for Kaimayee Trust; Adopted July 19, 2000.

California Regional Water Quality Control Board, San Francisco Bay Region, 2000b, Application of Risk-Based Screening Levels and Decision Making to Sites With Impacted Soil and Groundwater, Two Volumes, Interim Final; October 2000.

California Regional Water Quality Control Board, San Francisco Bay Region, 2001a, Approval of January 2001 Technical Report on Remedial Investigation for Former Villa Cleaners, 36565 Newark Boulevard, Newark, Alameda County: Addressed to Kaimayee Trust c/o Mr. Phil Yee; March 30, 2001.

California Regional Water Quality Control Board, San Francisco Bay Region, 2001b, Conditional Approval of *Environmental Risk Assessment* and Request for Technical Report for Former Villa Cleaners, 36565 Newark Boulevard, Newark, Alameda County: Addressed to Mr. Phillips Yee of Kaimayee Trust; May 17, 2001.

California Regional Water Quality Control Board, San Francisco Bay Region, 2001c, Approval of *Work Plan for Soil Gas Survey and Risk Assessment Addendum* and Request for Technical Report for Former Villa Cleaners, 36565 Newark Boulevard, Newark, Alameda County: Addressed to Mr. Phillips Yee of Kaimayee Trust; June 13, 2001.

California Regional Water Quality Control Board, San Francisco Bay Region, 2001d, Conditional Approval of *Environmental Risk Assessment* for Villa Cleaners, 36565 Newark Boulevard, Newark, Alameda County: Addressed to Mr. Phillips Yee of Kaimayee Trust; October 2, 2001.

D&M Consulting Engineers, 2000, Report of Ground Water Monitoring Well Installations and Initial Testing, Former Villa Cleaners, 36565 Newark Boulevard, Newark, California; Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's report dated September 8, 2000).

D&M Consulting Engineers, 2001a, Report of Remedial Investigation (RI) Completion and 4th Quarter 2000 Ground Water Monitoring, Former Villa Cleaners, 36565 Newark Boulevard, Newark, California; Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's report dated January 12, 2001).

D&M Consulting Engineers, 2001b, Summer 2001 Ground Water Monitoring Report (including installation of wells MW-5 and MW-6), Former Villa Cleaners, 36565 Newark Boulevard, Newark, California; Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's report dated August 9, 2001).

D&M Consulting Engineers, 2001c, Final Confirmation Test Results on Excavated Source Area Soils, Board Order No. 00-065 Former Villa Cleaners, 36565 Newark Boulevard, Newark California; Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's letter dated November 16, 2001).

E2C, Inc., 1997, Phase II Environmental Site Assessment - Summary, 36565 Newark Boulevard, Newark, CA: Prepared for Santa Clara Development, Inc. (unpublished consultant's report dated February 28, 1997).

Environ, 2001, Soil Gas Sampling Methodology and Results; Former Villa Cleaners Site, 36565 Newark Boulevard, Newark, California (Order No. 00-065); Prepared for Santa Clara Development, Inc. (unpublished consultant's letter report dated August 24, 2001).

Johnson, P.C. and Ettinger, R.A., 1991, Heuristic Model for Predicting The Intrusion Rate of Contaminant Vapors into Buildings; Environmental Science & Technology, Vol 25(8), pp 1445-1452.

URS Corporation, 2001a, Environmental Risk Assessment to Address Order No. 00-065, Task 3; Former Villa Cleaners Site, 36565 Newark Boulevard, Newark, California; Prepared for Mr. Philips Yee of Kaimayee Trust (unpublished consultant's letter report dated April 24, 2001).

URS Corporation, 2001b, Addendum to Environmental Risk Assessment to Address Order No. 00-065, Task 3; Former Villa Cleaner Site, 36565 Newark Boulevard, Newark, California; Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's letter report dated July 25, 2001).

URS Corporation, 2001c, Supplement to Environmental Risk Assessment Addendum; Former Villa Cleaners Site, 36565 Newark Boulevard, Newark, California (Order No. 00-065, Task 3); Prepared for Mr. Phillips Yee of Kaimayee Trust (unpublished consultant's letter report dated September 5, 2001).

EXHIBIT C

LONGTERM RISK MANAGEMENT PLAN

LONGTERM RISK MANAGEMENT PLAN FOR RESIDUAL, SUBSURFACE VOC CONTAMINATION

TRACT 7004, LOTS 7-15
NEWARK, CALIFORNIA
(Former Villa Cleaners, 36565 Newark Boulevard)

PROJECT 2262

Prepared for:

SANTA CLARA DEVELOPMENT
1978 The Alameda
San Jose, California 95126

Prepared by:

D&M CONSULTING ENGINEERS, INC.
A URS CORPORATION COMPANY
12 Thomas Owens Way
Monterey, California 93940

Eric R. Lautenbach, CE 42437
Environmental Engineering Consultant
D&M Consulting Engineers

Andrew Sheldon, Ph.D., REA II 20015
Senior Environmental Scientist
URS Corporation

February 2002

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY 1

COMPLIANCE AND ENFORCEMENT 2

HISTORICAL SUMMARY 2

PERTINENT SUBSURFACE CONDITIONS 2

RISK ASSESSMENT SUMMARY 3

PROHIBITIONS 3
- Excavations Deeper Than Five (5) Feet 3
- Installation of Production Wells 4
- Construction of Buildings over Deep Utility Trenches 4

LIMITATIONS 4

REFERENCES 5

LONGTERM RISK MANAGEMENT PLAN FOR RESIDUAL, SUBSURFACE VOC CONTAMINATION TRACT 7004, LOTS 7-15 NEWARK, CALIFORNIA (Former Villa Cleaners, 36565 Newark Blvd.)

1.0 INTRODUCTION AND SUMMARY

This Longterm Risk Management Plan (Longterm RMP) applies only to Lots 7-15 of Tract 7004 in Newark, California (see Figure A). This Longterm RMP prohibits three activities – (1) excavations (or penetrations) of any type deeper than five (5) feet below ground surface (bgs); (2) pumping shallow ground water; and (3) construction of future buildings over deep utility trenches.

This Longterm RMP documents the conservative measures recommended to restrict future contact with subsurface, residual volatile organic compounds (VOCs) in a manner that is consistent with the assumptions used in the *Site Risk Assessment* (URS, 2001a, 2001b and 2001c). The VOCs are left behind from a small dry cleaner business that was part of the shopping center that formerly occupied Tract 7004. As of 2002, detectable VOC residuals have only been found beneath Lots 7 through 11, but Lots 12 through 15 are situated downgradient and may become impacted over time. The remaining lots of Tract 7004 have been deemed by professional consultants and regulatory agencies to lie **outside** the area of concern (see California RWQCB reference 2001b cited in Section 7).

Based on the results of the regulatory-approved *Environmental Risk Assessment,* the impacted ground water and associated soils are not considered to pose a significant health concern to residents but, in accordance with regulatory requirements, the materials must be properly managed over the longterm. Proper implementation of this Longterm RMP, along with compliance with recorded deed restrictions, is necessary so that conditions will remain protective of human health and the environment. This Longterm RMP and the corresponding deed restrictions remain in effect until rescinded in writing by the California Regional Water Quality Control Board – San Francisco Bay Region.

As mentioned above, this Longterm RMP prohibits three activities – (1) excavations (or any ground penetrations) deeper than five (5) feet bgs; (2) pumping shallow ground water; and (3) constructing future buildings over utility trenches deeper than five (5) feet bgs. A depth of five (5) feet bgs should be recognized as conservative, as actual impacts have not been documented above about eight (8) feet bgs and it is extremely unlikely future ground water levels would rise to this depth. **Activities above five (5) feet bgs are not restricted or subject to this RMP.** Since private pumping of ground water for residences served by the Alameda County Water District (ACWD) is prohibited regardless of ground water quality considerations, this restriction is not actually special to the subject nine (9) lots.

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2.0 COMPLIANCE AND ENFORCEMENT

Until the deed restriction is removed, each homeowner within the Area of Concern (Lots 7 through 15) is responsible for compliance with this Longterm RMP and the associated recorded deed restrictions on their property.

The San Francisco Bay (Oakland) office of the California Regional Water Quality Control Board (RWQCB) has responsibility for determining whether Longterm RMP requirements have been violated and pursuing enforcement actions as deemed appropriate. Correspondingly, the RWQCB (along with other pertinent regulatory agencies and environmental consultants) have the authority to conduct inspections of the subject nine (9) lots, with reasonable lead notice provided to the homeowner, to assess compliance.

While this Longterm RMP and associated deed restrictions are intended to be clear and unambiguous, it is recognized that over the future time period of their use questions may arise regarding specific requirements. For any such questions, RWQCB staff in Oakland (650-622-2300) should be contacted for advice, and referrals as appropriate. The file number for the case is 01S0516 and the former dry cleaner's address was 36565 Newark Boulevard.

3.0 HISTORICAL SUMMARY AND PERTINENT SUBSURFACE CONDITIONS

Villa Cleaners, a dry cleaning business, operated in a single lease space of the former Newark Shopping Center (Lot 8 of the pending Tract 7004 subdivision) from 1988-1998. Other dry cleaning businesses had previously operated at the same location since about 1970. The subsurface contamination was first discovered in September 1996 (E2C, 1997). The actual date before this when the dry cleaning solvent (PCE) release first occurred is unknown, as is whether there were multiple release events. However, various items of evidence indicate that the impacts are a result of multiple low volume releases (leaks/spills) over an extended time period.

The shopping center was demolished and the dry cleaning equipment removed in winter 1998/99 in preparations for residential development. During 1999 multiple stages of excavating and ground water pumping occurred to remove the accessible source area contamination. The final excavation area was over 50 by 50 feet, and extended to a depth of about 12 feet. Almost 1000 cubic yards of impacted soil was removed and treated, along with approximately 160,000 gallons of ground water (Augeas, 2000). All of the local and state regulatory agencies involved with the process approved these source remediation actions as being satisfactory (see references RWQCB, 2000a, 2001a, 2001b, 2001c and 2001d cited in Section 7 for example).

Investigation results indicate that remaining contamination is of lower concentration and spread from the source area due to ground water movement (typically found below about 10 feet). Site investigations have involved over 40 exploratory holes, with an aggregate sampling and testing program that has encompassed over 200 samples of soil, soil gas and ground water media, plus many additional soil samples field-screened for VOCs (Augeas, 2000; DMCE, 2000, 2001a, 2001b & 2001c; E2C, 1997; and Environ, 2001).

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4.0 ENVIRONMENTAL RISK ASSESSMENT SUMMARY

As part of the response to RWQCB Order No. 00-065 Task 3 (RWQCB, 2000a) an *Environmental Risk Assessment* study was prepared to address potential health and environmental concerns (including residential occupation) for the Tract 7004 site.

Initially, a conservative preliminary risk evaluation was performed wherein the maximum detected chemical concentrations were compared with Tier 1 risk-based screening levels (RBSLs) that were developed by the RWQCB (2000b). Then, a set of Site-Specific Target Levels (SSTLs) was obtained from site-specific risk assessment. The SSTLs represent chemical concentration levels in soil and ground water that are intended to be protective of human health and the environment based on the planned residential use of the site and appropriate exposure parameters.

Representative (or conservative, maximum detected) concentrations of VOCs detected in the vicinity of the release area were compared with the SSTLs and were interpreted to be below levels of concern for protection of human health for potential residential receptors and the environment. Potential threats to ground water beneficial uses were addressed separately from the *Environmental Risk Assessment* study as part of a Remedial Action Plan.

At the request of the RWQCB in their letter of May 17, 2001 (RWQCB, 2001b), the ground water-to-indoor air (vapor intrusion to buildings) human exposure pathway was further evaluated through an evaluation of site soil gas measurements. Soil gas concentrations were measured by two separate experienced consulting firms using state-certified labs. These concentration values were used to evaluate potential health risks due to inhalation of vapors that may migrate into indoor air. None of the chemical concentrations detected in vapor samples were higher than soil gas RBSLs for fine-grained soil that were developed using the Johnson and Ettinger (1991) model, thus affirming the *Environmental Risk Assessment* conclusions and opinions. The RWQCB correspondingly approved the full residential construction project, with only requirements for deed restrictions (institutional controls) and a Risk Management Plan (RWQCB, 2001d).

5.0 PROHIBITIONS

5.1 Excavations Deeper Than Five (5) Feet

The construction of the Tract 7004 subdivision is not planned to involve any excavations greater than five (5) feet **within** the residential lots. Only within Dijon Drive are such excavations planned, and the work associated with those deep utility trenches must adhere to the conditions set forth in the *Construction Risk Management Plan*, a separate document prepared for the residential construction activities. As a safeguard against potential VOC vapor migration from the granular backfill of the sanitary sewer in Dijon Drive, the trenches for the home laterals are planned to be backfilled with native silt/clay soils.

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Through this Longterm Risk Management Plan and associated restrictions recorded for the deeds of Lots 7 through 15, no future excavating, augering, or any ground penetrating activities extending beyond a depth of five (5) feet below ground surface are permitted on these nine lots. This includes, but is not limited to, **deep** open excavations for an in-ground pool, spa or large tree and **deep** holes for posts or foundations. As previously mentioned, adherence with this conservative restriction is necessary to avoid inadvertent disturbance of, and direct contact with, the underlying VOC residuals.

5.2 Installation of Production Wells

In accordance with the RWQCB's letter of October 2, 2001 (RWQCB, 2001d), no ground water production wells are permitted on Lots 7 through 15 of Tract 7004. This includes, but is not limited to, wells used for "drinking water or for general domestic or industrial supply purposes." This prohibition technically remains in effect until rescinded in writing by the RWQCB, however as a practical matter, such wells on single-family residential lots served by the Alameda County Water District are not permitted anyway regardless of the underlying ground water conditions.

5.3 Construction of Buildings over Deep Utility Trenches

As mentioned in Section 5.1 above, the construction of the Tract 7004 subdivision is not planned to involve any excavations, including utility trenches, greater than five (5) feet **within** the residential lots. Further, as set forth in the *Construction Risk Management Plan*, the only lot with an old deep utility trench coinciding with a planned home (Lot 9) will be addressed by removing the pipe and backfill and placing compacted silt/clay soil in the resulting excavation. To assure that this restriction carries forth into the future, this *Longterm Risk Management Plan* expressly prohibits the construction of future buildings over deep utility trenches that may be installed during redevelopment of the property. This includes deep utility trenches to be placed within the Dijon Drive right-of-way adjoining Lots 7 through 15.

6.0 LIMITATIONS

This document has been prepared by URS Corporation for compliance with San Francisco Bay Regional Water Quality Control Board Order 00-065 issued against Kamaiyee Trust, owner of the Tract 7004 site when the subject VOC release occurred. The Longterm Risk Management Plan must be approved by the RWQCB prior to becoming a final document.

The recommendations, specifications, and professional opinions presented herein were prepared in accordance with generally accepted environmental consulting practice in the San Francisco Bay region of Northern California at the time this document was prepared. No other warranty is provided, either express or implied. All sampling and testing work is necessarily limited. Some statements provided in this plan are subject to modification as additional information becomes available.

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7.0 REFERENCES

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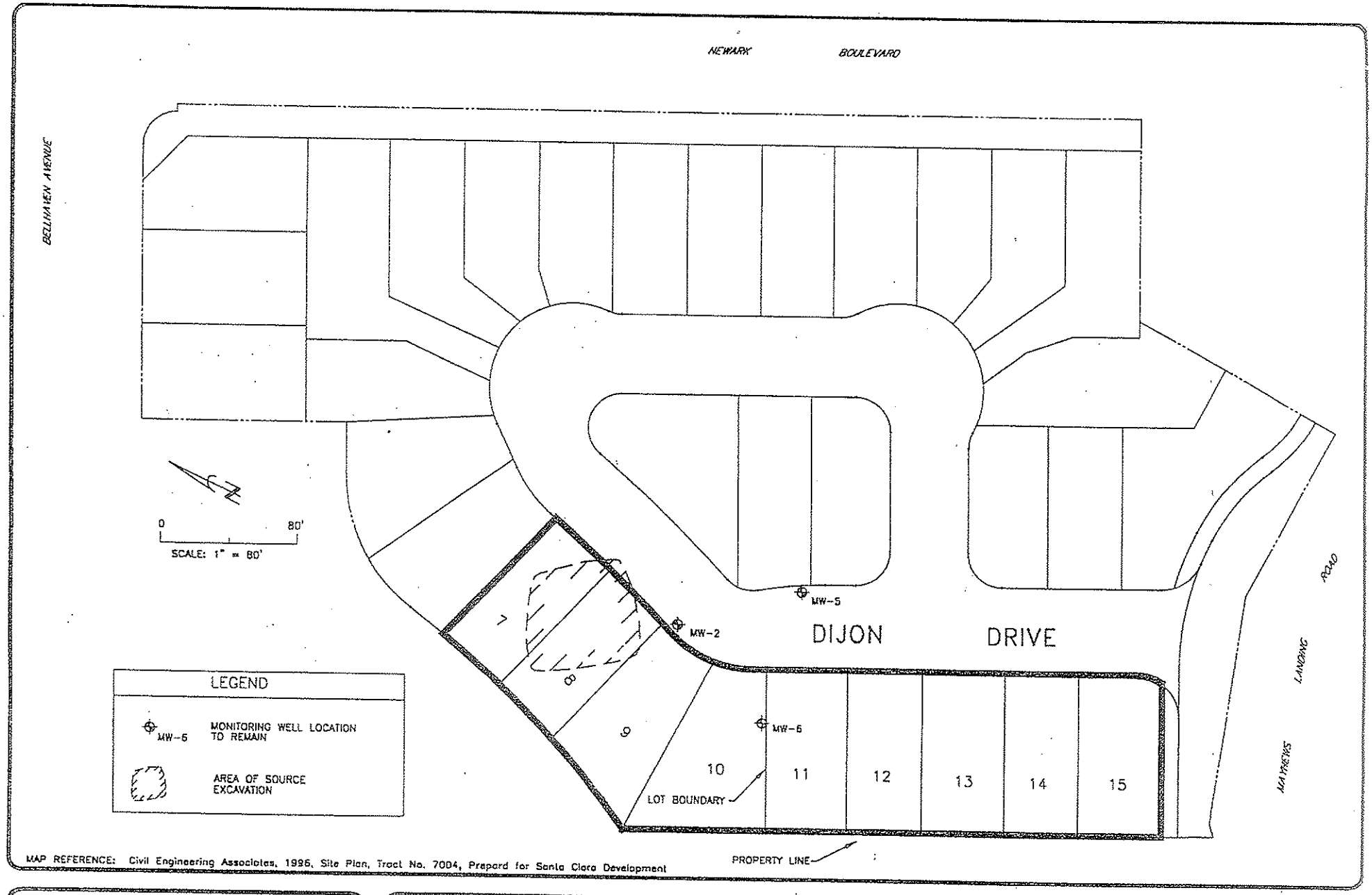

MAP REFERENCE: Civil Engineering Associates, 1996, Site Plan, Tract No. 7004, Prepard for Santa Clara Development

JANUARY 2002

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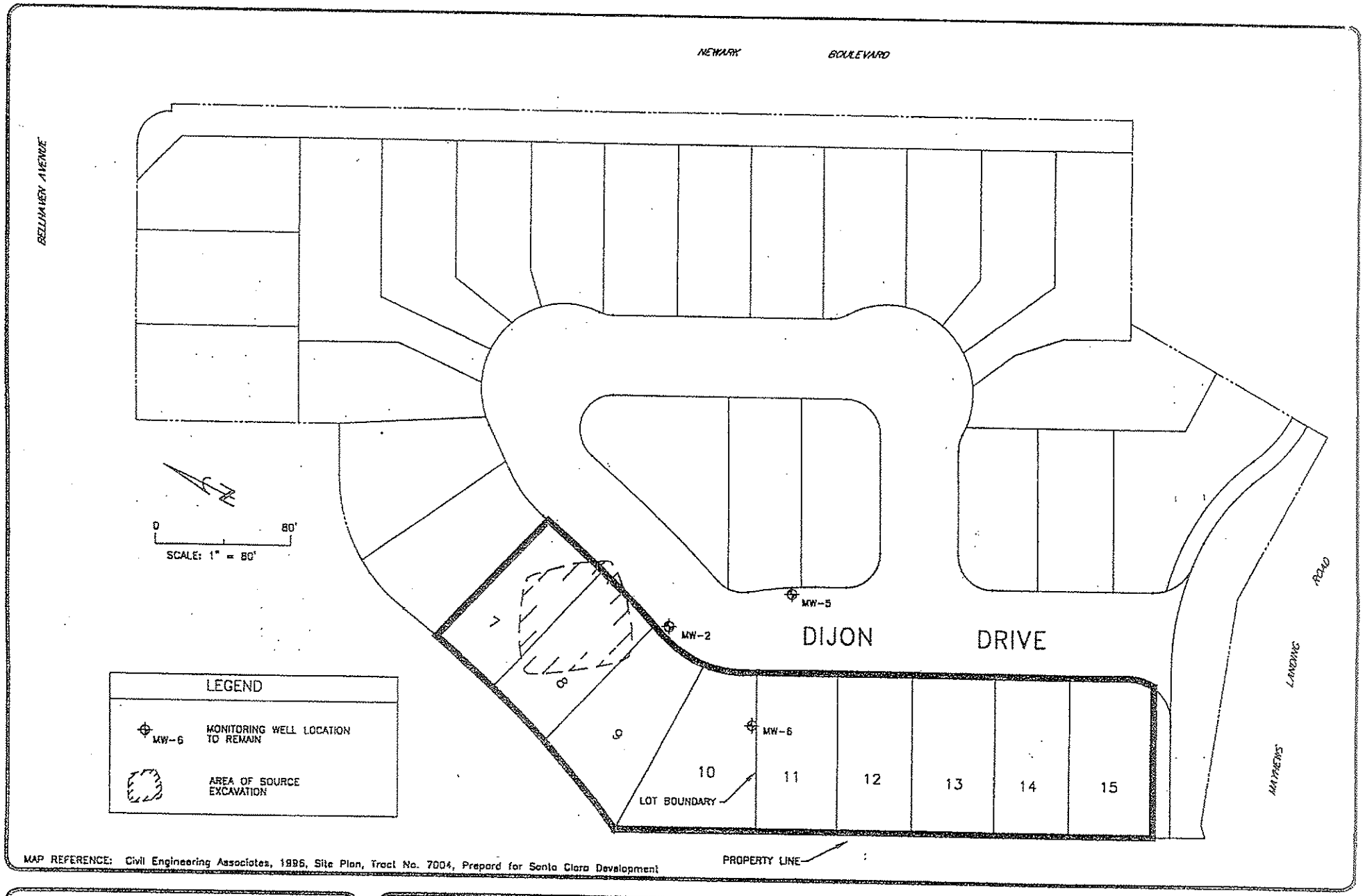
SUBDIVISION MAP – TRACT 7004

SHOWING LOTS SUBJECT TO INSTITUTIONAL CONTROLS & RISK MANAGEMENT PLAN
NEWARK, CALIFORNIA

FIGURE A
PROJECT 2262



JANUARY 2002

D&M CONSULTING ENGINEERS, INC.
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SUBDIVISION MAP – TRACT 7004

SHOWING LOTS SUBJECT TO INSTITUTIONAL CONTROLS & RISK MANAGEMENT PLAN
NEWARK, CALIFORNIA

FIGURE
A
PROJECT
2262