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COUNTY CLERK-RECORDER

When recorded, mail certified copy to:
Department of Toxic Substances Control
Region 1
10151 Croydon Way, Suite 3
Sacramento, California 95827

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

(POND AND DITCH SITE AT THE SOUTHERN PACIFIC TRANSPORTATION
COMPANY, SACRAMENTO LOCOMOTIVE WORKS, SACRAMENTO,
SACRAMENTO COUNTY, CALIFORNIA)



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This Covenant and Agreement ("Covenant") is made on
this 6th day of May, 1994, by and between the
Southern Pacific Transportation Company, a Delaware
Corporation ("Covenantor"), who is the owner of record of
certain real property situated in the City of Sacramento,
County of Sacramento, State of California, described in
Exhibit "A" attached hereto and incorporated herein by this
reference ("the Property") and the California Department of
Toxic Substances Control ("Department"), with reference to
the following facts:

- A. The Property, known as the "Pond and Ditch Site" and as
described in Exhibit "A", is located within other real
property known as Southern Pacific Transportation
Company, Sacramento Locomotive Works, has historically
been used to manage hazardous waste and presently
contains hazardous waste. A Modified Remedial Action

Plan/Closure Plan for the Pond and Ditch Site was approved by the Department on September 17, 1990.

- B. Covenantor, in compliance with the Modified Pond and Ditch Remedial Action Plan/Closure Plan dated August 23, 1990, approved by the Department, has attempted to remove materials constituting hazardous waste from the Property, such materials including, but not limited to, soil and ground water containing 1,1 dichloroethane (DCA), 1,2 trans-dichloroethene (DCE), benzene, ethylbenzene, tetrachloroethene (PCE), toluene, 1,1,1 trichloroethane (TCA), trichloroethene (TCE), vinyl chloride, xylenes, polycyclic aromatic hydrocarbons (PAHs), petroleum hydrocarbons, cadmium, copper, arsenic, nickel, and lead, and has taken other actions and continues to take actions as of the date of this Covenant in compliance with the Remedial Action Plan/Closure Plan.

The class of chemicals known as volatile organic compounds include benzene, 1,1,1 TCA, DCE, TCE, and vinyl chloride. 1,1 DCE is classified by the United States Environmental Protection Agency (U. S. EPA) as a possible human carcinogen. 1,1,1 TCA and TCE are classified by the EPA as probable human carcinogens. Vinyl chloride is classified by U. S. EPA

as a known human carcinogen. Chronic exposure to benzene has been known to cause blood disorders such as aplastic anemia and leukemia. Benzene is classified by EPA as a known human carcinogen.

Chronic exposure to lead has been known to cause learning deficits in children. Exposure to cadmium has been known to cause heart, kidney, and lung disease. It is classified by U. S. EPA as a probable human carcinogen. Exposure to arsenic has been shown to cause hyperkeratosis, anemia, skin cancer, and leukemia. It is classified by U. S. EPA as a known human carcinogen. Nickel is classified by U. S. EPA as a known human carcinogen.

Some of the polycyclic aromatic hydrocarbons compounds identified at the Site are classified as probable human carcinogens.

- C. Covenantor and the Department desire and intend that, for future protection of public health, safety, and the environment, the Property shall be used in such a manner as to avoid any potential harm to persons or property which could potentially result from hazardous wastes which have been deposited historically on portions of the Property.

D. The Covenantor and the Department further desire and intend that the terms of the Covenant are for the mutual benefit of the Property, future owners and occupants of the Property, the Department and the public and, therefore, shall constitute an easement, covenant, restriction, and servitude held by the Department on behalf of the People of the State of California in the Property which shall run with the land, shall inure to the benefit of the Property, future owners and occupants of the Property, the Department, and the public and shall apply to and bind the respective successors in interest thereof.

ARTICLE I

GENERAL PROVISIONS

1.01 Statement Regarding Hazard. The purpose of this Covenant is to protect occupants of the property and the general public from hazardous wastes on the property by restricting use of the property appropriately. Accordingly, this Covenant is not, and shall not be construed as, a statement, admission, or declaration by the Covenantor or the Department that in entering into this Covenant, Covenantor or the Department intend to create or permit to exist on the property, health, safety, environmental, or other hazard or nuisance.

1.02 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon the Property and subject to which the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property as mutual equitable servitude in favor of the Property and every portion thereof. Each and all of the Restrictions are imposed pursuant to and by agreement by and between the Covenantor and the Department under Sections 25355.5 and 25356.1 of the California Health and Safety Code and run with the land pursuant to Section 25230(a)(1) of the California Health and Safety Code.

1.03 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors and assignees, and successors of such owner, heirs, successors, and assignees, that they are bound by the Restrictions as herein established, which must be adhered to for the benefit of future Owners and Occupants of the Property, the Department

and the public, and that their interests in the Property will be subject to the Restrictions contained herein.

1.04 Incorporation Into Deeds and Leases. Covenantor desires and covenants, and all purchasers, lessees or possessors shall be deemed to have covenanted, that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of the Property.

1.05 City of Sacramento Notification. The City of Sacramento shall be consulted by the Department prior to approval by the Department of any uses or modification of uses of the property as set forth in Article 3.01B, excavation of soil as set forth in Articles 3.01C and 3.01E, infrastructure improvements as set forth in Article 3.01D, or approval of remediation of additional contamination found as set forth in Article 3.01F. Approval of modification or uses pursuant to Article 3.01B shall not create any entitlement under local or state law. Copies of any such approval shall be provided to the City by the Department.

ARTICLE II

DEFINITIONS

2.01 City. "City" shall mean the City of Sacramento and shall include its successor agencies, if any.

2.02 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.03 Excavation. "Excavation" shall mean the digging out and/or the removal of soil from the Property, including landscaping.

2.04 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, regrading, landscaping, bodies of water, park and playground improvements, and paved parking areas, constructed or placed upon any portion of the Property.

2.05 Industrial and Commercial use.

"Industrial and Commercial" use shall mean structures and improvements relating to the manufacture, production, or exchange of goods or technology and the provision of services including, but not limited to, offices, cultural facilities, restaurants, entertainment facilities, conference facilities, retail shops, transient occupancy hotels, transportation facilities, warehouses, and manufacturing buildings.

2.06 Occupants. "Occupants" shall mean the Covenantor, its successors in interest, and their successors in interest,

including heirs, and assigns, who at any time hold title to all or any portion of the Property.

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

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Every Owner and Occupant promises to restrict the use of the Property described in Exhibit "A" as follows:

A. Permitted Uses. The Property may be used for the following, without restriction, except as otherwise provided under law or other provisions of this Covenant:

- (1) Industrial and commercial (as defined in Article II Section 2.05,
- (2) Landscaped and paved areas (such as parking lots and court yards) ancillary to industrial, commercial, and office structures that are covered with clean soil satisfying the requirements of paragraph 3.01.E, below, and are not used for play areas.

B. Restricted Uses. All other uses or modifications of uses are precluded unless the Owner or Occupant has demonstrated to the satisfaction of the Department that all remedial measures necessary for protection of human health and the environment have been taken. Other uses or modification can be implemented only after prior written approval from the Department. Said approval shall not be unreasonably withheld or delayed. Physical modifications to existing interior uses which do not disturb the soil, paving, or soil/structure interface shall not require the Department's approval. Such Restricted Uses include but are not limited to the following:

- (1) All uses not specified in paragraph 3.01.A(1) above. These include, but are not limited to, residential (e.g., single and multiple family, transient occupancy), day care, educational, and public or institutional uses (e.g., cultural facilities, health care facilities, and social service facilities).
- (2) All parks, playgrounds, water features, open space, yards, gardens, and landscaped areas, except those specified in paragraph 3.01.A(2), above.

C. No excavation at and/or removal of any soil from the Property shall be allowed, except as allowed pursuant to

Section 3.01.E, without the prior written approval of the Department. Excavated soil must be tested for those compounds noted in the preamble of this Covenant and properly used, treated, and/or disposed of as required by law and the Department.

D. Infrastructure improvements (e.g., streets, rail lines, utilities) must be developed consistent with paragraph 3.01.E.

E. Over those areas of the Property to be used for industrial or commercial uses where human exposure to soil is possible, such as landscaped areas or utility easements, the Owner or Occupant of the Property shall continually keep and maintain clean soil to such depth as the Owner or Occupant has demonstrated to the reasonable satisfaction of the Department to be protective of human health, and the environment. Except for routine landscape maintenance (e.g., replacement of portions of the irrigation system, or vegetation), no use, or modification of use, of the Property shall be allowed to disturb the integrity of the overlying clean soil, unless the Owner or Occupant demonstrates to the satisfaction of the Department: (1) that the disturbance is necessary to the present or proposed use of the Property and can be accomplished in a manner that will not materially increase any hazard or potential hazard to human health and

or the environment, or (2) that such disturbance is necessary to reduce an imminent threat or endangerment to human health and safety or the environment.

F. In the event that additional contamination is found during development or redevelopment of the site, adequate measures shall be taken to achieve permanent remediation and prevent unacceptable exposure to humans or the environment. Discovery of contamination requires notification of the Department and the City within twenty four (24) hours. Notification must be made to those individuals listed as contacts for the Department and City in Section 5.02 of this document. Any plans for remediation must have prior approval by the Department.

G. No water from below the surface shall be extracted, utilized in any way, or consumed without prior approval by the Department. However, all ground water monitoring wells, extraction systems, and associated equipment used for monitoring or other activities required for remediation of ground water by SPTCo or its agents or successors, shall remain intact and access by the Department, SPTCo, or its agents or successors shall not be denied. No owner or occupant of the Property shall hinder, prevent, or permit the prevention of, required remediation efforts deemed necessary

by the Department to remove or remediate ground water contamination.

3.02 Conveyance of Property. The Owner or Owners and the Occupants shall provide a thirty (30) day advance notice to the Department and City of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. Such notice shall not be required in the case of leases for internal space only, unless such lease is for a school or day care facility, or a nursing or health care facility. The Department shall not by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any interest in it except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of an Owner or Occupant to comply with any of the requirements, as set forth in Section 3.01, shall be grounds for the Department, by reason of the Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Failure to maintain any mitigation requirements as set forth in Section 3.01 shall be grounds for the Department to file civil and criminal actions against the Owner as provided by law, including but not limited to

the provisions of Chapter 6.5 and 6.8, Division 20 of the Health and Safety Code.

3.04 Notice in Agreements. The Covenantor shall provide a notice to all Owners and Occupants that shall accompany all purchase, lease, sublease, or rental agreements relating to the Property by supplying a copy of this Agreement. In this way all Owners and Occupants shall be aware of the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, subject to the prior written consent of the owner, any Occupant of the Property may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.02 Termination. Any Owner or, subject to the prior written consent of the owner, any Occupant of the Property may apply to the Department for a termination of the Restrictions as they apply to the Property or any portion of it. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person shall desire to give or serve 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 to an officer of a corporate party being served, or (2) three business days after deposit in the

mail if mailed by United States mail, postage paid,
certified, return receipt requested to the record Owner or
(3) until record ownership changes:

To: Vice President-Real Estate
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

In every case, a copies shall be sent to:

Department of Toxic Substances Control
Region 1
Branch Chief
Site Mitigation
10151 Croydon Way, Suite 3
Sacramento, California 95827
(916) 255-3545
(916) 255-3734 FAX

and

Director of Planning Department
City of Sacramento
1231 I Street
Sacramento, California 95814
(916) 264-5571

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein are determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

5.04 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.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by Southern Pacific Transportation Company with the County recorder of the County of Sacramento within ten (10) days after the date of execution by both parties in accordance with the recording requirements of the California Health and Safety Code, Section 25230. The provisions of the Covenant will also be incorporated into, and become part of, the land use plan for the Property as instituted by the local planning agency.

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

5.07 Nothing in this Covenant confers any rights to the Owner or Occupant above and beyond those otherwise in existence under state law.

5.08 Compliance and Cure.

A. The Department shall respond in writing to a written request by the Covenantor for confirmation of Covenantor's compliance with this Agreement within thirty (30) days after receipt of Covenantor's written request.

B. The Department shall give Covenantor reasonable written notice of any alleged default by Covenantor under this Agreement and a reasonable opportunity to cure the alleged default prior to exercising its remedies under this Agreement. This provision shall not restrict the Department in any way from otherwise exercising its authority under laws or regulation.

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

Covenantor: SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: *[Signature]*

Title: Vice President

Date: March 17/94

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: *[Signature]*

Title: Acting Branch Chief, Dept. Toxic Substances Control

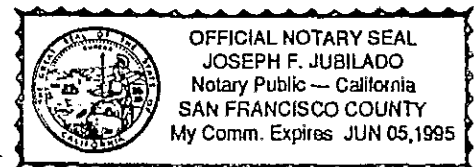
Date: 5/6/94

State of California)
County of SAN FRANCISCO)

On MARCH 24, 1994, before me personally appeared
S. D. STEEL,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is subscribed
to the within instrument and acknowledged to me that he executed
the same in his authorized capacity, and that by his signature on
the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

WITNESS my hand and official seal,

Joseph F. Jubilado
Notary Public in and for said
County and State



State of California)
)
County of Sacramento)

On May 6, 1994, before me personally appeared
James Trlosvold,
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is subscribed
to the within instrument and acknowledged to me that he executed
the same in his authorized capacity, and that by his signature on
the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

WITNESS my hand and official seal,

Dennis O. Jacobsen
Notary Public in and for said
County and State

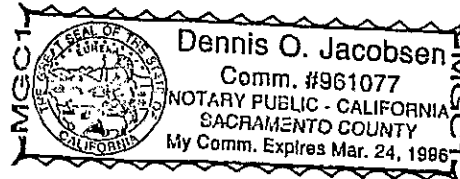
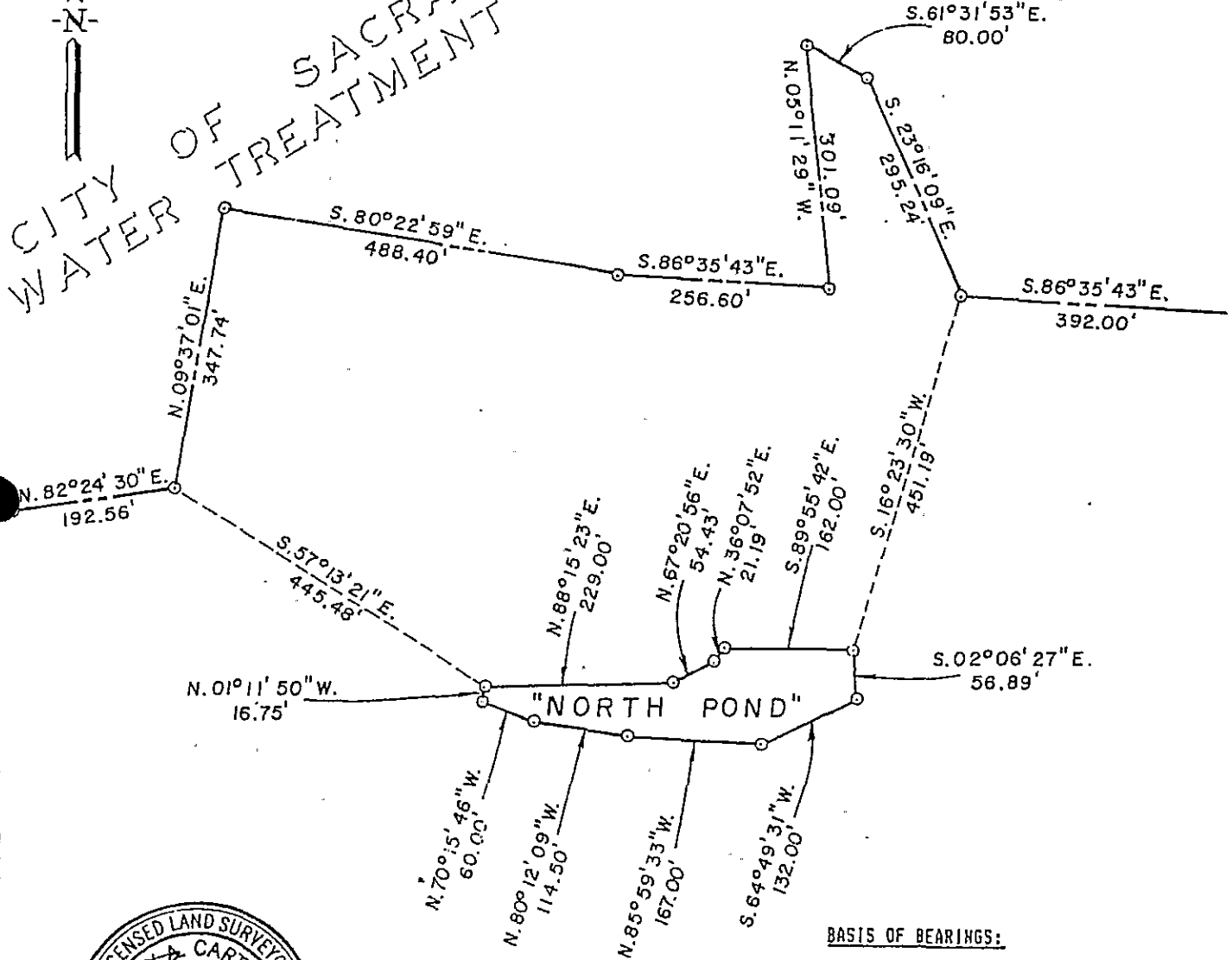


EXHIBIT A

SCALE: 1" = 200'

CITY OF SACRAMENTO
WATER TREATMENT PLANT



EX: 6-30-96

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE IDENTICAL TO THE SOUTHERN PACIFIC COMPANY PACIFIC LINES STATION PLAN OF THE SACRAMENTO YARD DATED JULY 1947.

SURVEY OF A PORTION OF
SOUTHERN PACIFIC TRANSPORTATION COMPANY
RAILROAD YARDS
CITY OF SACRAMENTO, CALIFORNIA
DATE: 6-15-93

ROY A. CARTER.....LAND SURVEYOR

8415 WINDING WAY, FAIR OAKS, CALIFORNIA 95628
LS 3427 (916) 967-9287