

# Appendix H

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Land Use Covenant

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**20180259650**



Pages:  
0020

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

03/19/18 AT 08:00AM

FEES:	73.00
TAXES:	0.00
OTHER:	0.00
SB2:	75.00
PAID:	148.00



LEADSHEET



201803190110001

00015009744



008966156

SEQ:  
01

SECURE - 8:00AM



THIS FORM IS NOT TO BE DUPLICATED

775251

**RECORDING REQUESTED BY**

First American Title Insurance Company National  
Commercial Services

**AND WHEN RECORDED MAIL TO:**

Department of Toxic Substances Control  
9211 Oakdale Avenue  
Chatsworth, CA 91311

Space Above This Line for Recorder's Use Only

Land Use Covenant and Agreement  
Title of Document

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 Additional Recording Fee Applies)

**RECORDING REQUESTED BY:**

**Department of Toxic Substances Control  
and  
Loynes Beach Partners, LLC**

**2222 Martin, Suite 160**

**Irvine, California 92612**

**WHEN RECORDED, MAIL TO:**

**Department of Toxic Substances Control**

**9211 Oakdale Avenue**

**Chatsworth, California 91311**

**Attention: Allan Plaza, Unit Chief**

**Brownfields and Environmental  
Restoration Program**

**SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE**

**LAND USE COVENANT AND AGREEMENT**

**ENVIRONMENTAL RESTRICTIONS**

**County of Los Angeles, Assessor Parcel Number: 7237-019-006**

**Loynes Beach Partners, LLC**

**400 Studebaker Road, Long Beach, California 90803**

**DTSC Site Code 530078**

**This Land Use Covenant and Agreement ("Covenant") is made by and between Loynes Beach Partners, LLC (the "Covenantor"), the current owner of certain property located at the intersection of Studebaker Road and Loynes Drive, in the City of Long Beach, County of Los Angeles, State of California (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the**

**{028764 v3}**

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 25202.5, the use of the Property be restricted as set forth in this Covenant and that this 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 6.69 acres, is more particularly described in the attached Exhibit A, "Legal Description," and depicted as Lot 1 on Exhibit A-1, "Plat." The Property is located in the area now generally bounded by Studebaker Road on the west, and AES Alamitos on the north, south, and east.

1.2. Remediation of Property. The Property has been investigated under the Department's oversight. A RCRA Facility Investigation (RFI) was performed, titled "RCRA Facility Investigation and Closure Report, Former AES Tanks 1, 2, 3, 4, and CS 400 Studebaker Road, Long Beach, CA" and dated March 2015. Also, a Human Health Risk Assessment was performed, titled "Revised Human Health Risk Assessment, Former AES Tanks 1, 2, 3, 4, and CS 400 Studebaker Road, Long Beach, CA" and dated March 2015.

In the RFI, five (5) areas of concern (AOCs) were identified in the Property:

- AOC-1: Above ground storage tanks (ASTs) 1-2;
- AOC-2: The earthen berms surrounding ASTs 1-2;
- Above ground piping associated with and lying between AST 1 and AST 2;
- The western most area of the West Pipeline Corridor; and
- The Pig Launcher Area.

At these five (5) AOCs, samples were taken and analyzed for the following Chemicals of Concern (COCs):

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- Heavy Range Hydrocarbons;
- Diesel Range Hydrocarbons;
- Volatile Organic Compounds (VOCs);
- Semi-Volatile Organic Compounds (SVOCs); and
- Heavy Metals.

The Department approved the RFI and Health Risk Assessment, in accordance with Health and Safety Code, division 20, chapter 6.5. No remediation activities were necessary in order to meet the industrial/commercial use of the Property. Hazardous wastes, including TPHs, PAHs, VOCs, and metals, 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 wastes, 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 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.

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2.5. Occupant. "Occupant" or "Occupants" means Owner 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 any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

**ARTICLE III**  
**GENERAL PROVISIONS**

3.1. Covenant 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 25202.5; (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 new Owner shall provide Notice to the Department not later than thirty (30) calendar days after any conveyance or receipt

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of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The 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) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number 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 as permitted under that section in accordance with applicable law.

#### 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) 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) 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 at 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, vapor extraction system, monitoring system, groundwater extraction system) or activity required for the Property without prior written approval of the Department.

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 as 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 March 15<sup>th</sup> 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

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taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection 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.

**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) 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, REMOVAL 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 Environmental Restrictions.** 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 Los Angeles 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 calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor:     Loynes Beach Partners, LLC  
                          c/o Mr. Steven Blanchard  
                          2222 Martin, Suite 160  
                          Irvine, CA 92612

And

To Department:     Allan Plaza, P.E, Unit Chief  
                          Brownfields and Environmental Restoration Program  
                          Department of Toxic Substances Control  
                          9211 Oakdale Avenue  
                          Chatsworth, California 91311

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 exhibits and attachments to this Covenant  
{028764 v3}

are incorporated herein by reference.

[Signatures on next page.]

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

Loynes Beach Partners, LLC

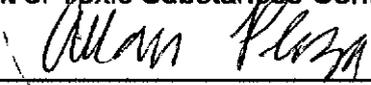
By: 

\_\_\_\_\_  
Randall Blanchard  
Manager

Its:

Date: Feb. 8, 2018

Department of Toxic Substances Control

By: 

\_\_\_\_\_  
Allan Plaza, P.E.  
Unit Chief

Its:

Date: March 1, 2018

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 Los Angeles

On 3/1/18 before me,

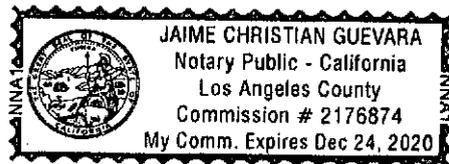
Jaime Christian Guevara, Notary Public  
(space above this line is for name and title of the officer/notary),

personally appeared Allan Gingo Plaza, 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.

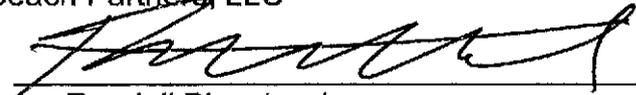
WITNESS my hand and official seal,

[Signature] (seal)  
Signature of Notary Public



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

Loynes Beach Partners, LLC

By: 

Randall Blanchard  
Manager

Date: 3/12/18

Department of Toxic Substances Control

By: \_\_\_\_\_

Allan Plaza, P.E.  
Unit Chief

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 ORANGE

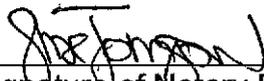
On 03/12/2018 before me,

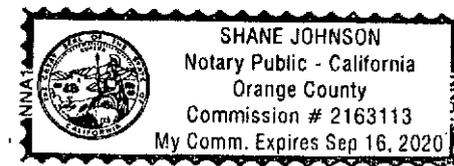
SHANE JOHNSON, A NOTARY PUBLIC  
*(space above this line is for name and title of the officer/notary),*

personally appeared RANDALL BLANCHARD, 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,

 (seal)  
Signature of Notary Public



**EXHIBIT "A-1"**  
**Legal Description**

THAT PORTION OF PARCEL 2 OF LOT LINE ADJUSTMENT LLA 9704-09, RECORDED DECEMBER 12, 1997 AS INSTRUMENT NO. 97-1958950, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID PARCEL 2, SAID POINT BEING DISTANT SOUTH 89°32'08" EAST 367.18 FEET, AS MEASURED ALONG SAID NORTHERLY LINE, FROM THE NORTHWEST CORNER THEREOF;**

**THENCE LEAVING SAID NORTHERLY LINE, SOUTH 00°09'12" WEST A DISTANCE OF 775.06 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 2, SAID POINT BEING DISTANT SOUTH 89°45'12" EAST 367.37 FEET, AS MEASURED ALONG SAID SOUTHERLY LINE, FROM THE WESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS " NORTH 89°45'12" WEST, 862.40' ", ON SAID LOT LINE ADJUSTMENT 9704-09;**

**THENCE ALONG SAID SOUTHERLY LINE, NORTH 89°45'12" WEST A DISTANCE OF 367.37 FEET;**

**THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 00°10'03" EAST, A DISTANCE OF 12.30 FEET TO THE MOST SOUTHERLY CORNER OF A PARCEL OF LAND DESCRIBED AS 'PARCEL 3' IN A GRANT DEED TO FRED H. BIXBY RANCH COMPANY, RECORDED MAY 22, 1963 AS INSTRUMENT NUMBER 4371, OFFICIAL RECORDS OF SAID LOS ANGELES COUNTY;**

**THENCE ALONG THE EASTERLY LINE OF SAID 'PARCEL 3', NORTH 49°00'29" WEST A DISTANCE OF 54.48 FEET, TO A POINT ON THE EASTERLY RIGHT OF WAY OF STUDEBAKER ROAD, 100 FEET WIDE, AS DESCRIBED IN A GRANT OF EASEMENT RECORDED MAY 19, 1965 AS INSTRUMENT NUMBER 3602, OFFICIAL RECORDS OF SAID LOS ANGELES COUNTY, SAID POINT ALSO BEING ON A NON-TANGANT CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 2050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 78°19'21" EAST;**

**THENCE NORTHERLY ALONG SAID EASTERLY RIGHT OF WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 11°30'36", AN ARC DISTANCE OF 411.82 FEET;**

**THENCE CONTINUING ALONG SAID EASTERLY RIGHT OF WAY, NORTH 00°10'03" EAST A DISTANCE OF 319.50 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2;**

**EXHIBIT "A-1"**

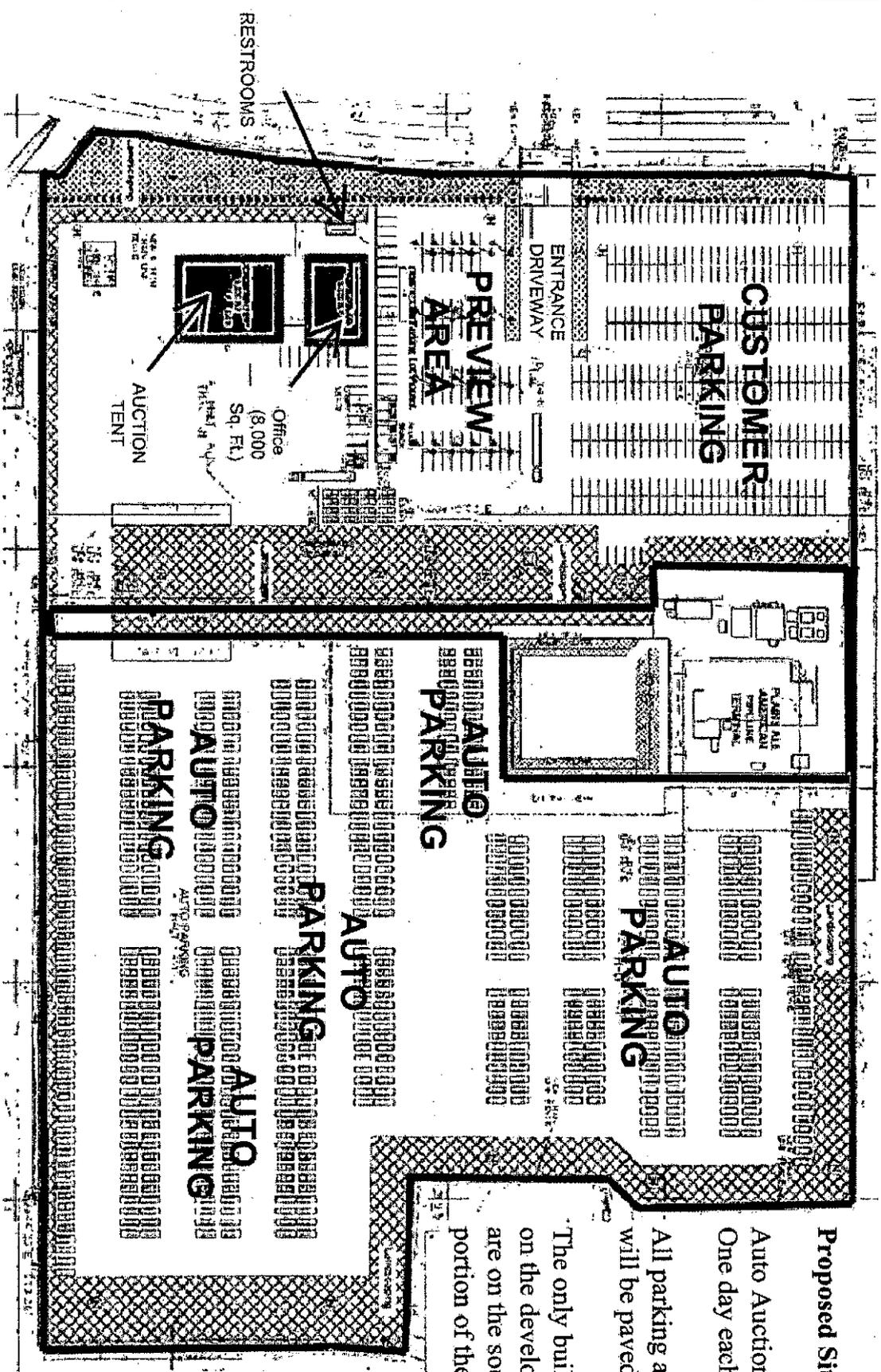
**THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2, SOUTH 89°32'08"  
EAST A DISTANCE OF 367.18 FEET TO THE POINT OF BEGINNING.**

**CONTAINING 6.686 ACRES, MORE OF LESS.**

**EXHIBIT "A-2"**  
**Plot**

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**Proposed Site Use:**  
 Auto Auctions-  
 One day each week.  
 All parking areas  
 will be paved.  
 The only buildings  
 on the development  
 are on the southwest  
 portion of the site.

**Figure 3A**  
**Proposed Development Plan**  
 400 Studebaker  
 Long Beach, CA

Development Plan Subject to Change



One inch = approx.  
 300 feet

Watershore Environmental, Inc.  
 2936 East Coronado Street  
 Anaheim, California 92806  
 Drafted By: NB  
 Approved By: NB  
 Project No.: 00-000  
 Date: 10-2012