# FIRST AMERICAN TITLE COMPANY OF LA. "SUBDIVISION"

### RECORDING REQUESTED BY:

BKK Corporation 2210 So. Azusa Ave. West Covina, CA 91792

### WHEN RECORDED MAIL TO:

Department of Toxic Substances Control P.O. Box 806 Sacramento, CA 95814 Attn: Deputy Director, Hazardous Waste Management Division

City of West Covina 1444West Garvey Avenue West Covina, CA 91793

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# ENVIRONMENTAL RESTRICTION COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY (Parcel 2)

This Covenant and Agreement and Environmental Restriction ("Covenant") is made as of the 12 day of 12.1, 2001 by BKK Corporation ("Covenantor") (owner of record of certain property situated in Los Angeles County, State of California), by the City of West Covina (the "City"), and the Department of Toxic Substances Control ("DTSC"):

#### RECITALS

A. Covenantor is the owner of record of certain property situated in Los Angeles County, State of California which property, for the purposes of development, is being divided by Covenantor into three separate parcels, subject to approval by City and further subject to the separate covenants and agreements to restrict the use of each parcel executed by Covenantor, the City, and DTSC. This Covenant is applicable to that certain property of Covenantor described as "Parcel 2" in Ex. "A-1" attached hereto and incorporated herein by reference. Parcel 2 consists of 56.84 acres. Parcel 2 is adjacent to and generally to the north of Parcel 3, portions of which contain the former Class I hazardous waste disposal landfill ("Class I Landfill" as defined herein) and Class III solid waste disposal landfill ("Class III Landfills are subject to various statutory and regulatory requirements. The Site ("Site" as defined herein), of which Parcels 2 and 3 are a part, is subject to Corrective Action

("Corrective Action" as defined herein), post-closure requirements, and will be subject to the Post-Closure Permit ("Post-Closure Permit" as defined herein). Parcel 2 has not been used for the management or disposal of solid or hazardous waste. A more detailed factual background of the Site is set forth in Section IV of the Order ("Order" as defined herein), a copy of which is attached hereto as Exhibit "A-3".

- B. Covenantor intends to restrict the use of the Class I Landfill for long-term facility maintenance purposes and other uses that are not in conflict with this Covenant and that are in accordance with applicable closure and post-closure requirements, and to restrict the use of the rest of Parcel 3, including the Class III Landfill, to long-term facility maintenance purposes, including but not limited to Administration facilities, landfill gas management and energy generation and leachate control, recreational uses including but not limited to a golf course and related infrastructure in accordance with applicable closure and post-closure plans and requirements, and other uses as approved by the City and consistent with this Covenant.
- C. In order to ensure continued protection of present and future public health and safety with respect to the disposal of solid and hazardous waste in the Class I Landfill and any solid waste in the Class III Landfill, Covenantor desires and intends to restrict the use of Parcel 2 to commercial, industrial and recreational uses, including but not limited to a golf course or courses and ancillary facilities such as a clubhouse. However, nothing in this Covenant constitutes a finding or admission of harm or liability to persons or property located on or off Parcel 2, in the past, present or future.

#### THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

#### 1. **DEFINITIONS**

- 1.1 Applicable Regulatory Agency. "Applicable Regulatory Agency" shall mean the regulatory agency or agencies with jurisdiction over the activity and area in question, independent of the provisions of this Covenant, which regulatory agency or agencies may include, depending on the activity and area at issue, the City, the Local Enforcement Agency, DTSC, EPA, the Regional Water Quality Control Board, and the CIWMB. This provision is not intended to expand the jurisdiction of any regulatory agency beyond its statutory authority.
- 1.2 <u>City</u>. "City" shall mean the City of West Covina and its successor agencies, if any.
- 1.3 <u>CIWMB</u>. "CIWMB" shall mean the California Integrated Waste Management Board and its successor agencies, if any.

- 1.4 <u>Class I Landfill</u>. "Class I Landfill" shall mean that portion of Parcel 3 owned by Covenantor which was the site of the hazardous waste disposal units owned by Covenantor. A map of the Site showing the location of the Class I Landfill is attached hereto and incorporated herein as Exhibit "A-2".
- 1.5 <u>Class III Landfill</u>. "Class III Landfill" shall mean that portion of Parcel 3 owned by Covenantor which was the site of solid waste management units owned by Covenantor. The location of the Class III Landfill is shown on the map attached hereto as Exhibit "A-2."
- 1.6 <u>Corrective Action</u>. "Corrective Action" means the investigative and remedial activities required pursuant to RCRA and the HWCA, and further required by applicable regulations of EPA and DTSC.
- 1.7 <u>DTSC</u>. "DTSC" shall mean the California Environmental Protection Agency, Department of Toxic Substances Control and its successor agencies, if any.
- 1.8 <u>EPA</u>. "EPA" means the United States Environmental Protection Agency and its successor agencies, if any.
- 1.9 <u>HWCA</u>. "HWCA" means the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.
- 1.10 <u>Improvements</u>. "Improvements" shall include but not be limited to all buildings, roads, driveways, walkways, regradings, parking and paving of any kind or nature constructed or placed upon any portion of Parcel 2.
- 1.11 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of Parcel 2.
- 1.12 Order. "Order" shall mean the Administrative Order on Consent entered into by Covenantor and EPA on September 14, 2000 (Docket No. RCRA-9-2000-0003). Copies of Sections IV and VII(c)(2) of the Order are attached hereto and incorporated herein as Exhibit "A-3."
- 1.13 Owner. "Owner" shall mean any person or entity that holds title to all or any portion of Parcel 2, or any person or entity which has hereafter acquired any interest whatsoever, whether present or future, joint or individual, possessory or nonpossessory, legal or equitable and whether acquired by conveyance or by operation of law, except that a holder of a security interest shall not be deemed an "Owner" until such security interest has been fully perfected by foreclosure or by voluntary acceptance of the fee interest.

- 1.14 Parcel 1. "Parcel 1" consists of 101.198 acres to the west of and adjacent to Parcel 3, which Parcel 3 contains the Class I and Class III Landfills. A portion of Parcel 1 is adjacent to Azusa Avenue. A legal description of P2 cel 1 is contained in the parcel map that is attached as Ex. A-1 to this Covenant and is incorporated herein by reference.
- Parcel 2. "Parcel 2" consists of 56.84 acres to the north of Parcel 3, which Parcel 3 contains the Class I and Class III Landfills. A legal description of Parcel 2 is contained in the parcel map attached hereto as Ex. A-1.
- 1.16 Parcel 3" consists of 425.172 acres, and contains the Class I Landfill used for the disposal of hazardous and solid waste and the Class III Landfill used for the disposal of solid waste. A legal description of Parcel 3 is contained in the parcel map attached hereto as Ex. A.
- 1.17 <u>Post-Closure Permit</u>. "Post-Closure Permit" shall mean the pending Hazardous Waste Facility Post-Closure Permit that will be issued by DTSC and that will set forth post-closure requirements applicable to the Site. A draft of the Post-Closure Permit was made available for public comment by DTSC on November 15, 1999.
- 1.18 <u>Regional Administrator</u>. "Regional Administrator" shall mean the Regional Administrator for Region IX of the EPA and shall include its successor agencies, if any.
- 1.19 RCRA. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.
- 1.20 Site. "Site" means the former larger parcel, consisting of the sum of Parcels 1, 2, and 3.

### 2. GENERAL PROVISIONS

2.1 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions") upon and subject to which the Parcel 2 and every part thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, shall inure to the benefit of and pass with each and every portion of Parcel 2, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Parcel 2, except as otherwise stated. Each and all of the Restrictions are for the benefit of and enforceable by the City, upon a determination of a violation by an Applicable Regulatory Agency. Each and all of the Restrictions is also for the benefit of Parcels 1 and 3, which otherwise would not be created or developed. Each and all of the Restrictions run with the land pursuant to Section 1471 of the California Civil Code and any other applicable authority. Covenantor and DTSC enter into this Covenant pursuant

to Section 25202.5 of the California Health and Safety Code. The parties intend that EPA be a third party beneficial of this Covenar' of the spect to matters within EPA's jurisdiction, and that DTSC and EPA also have the ability to enforce the "Restrictions on Use" imposed under Sections 3.1 and 3.1.1 of this Covenant relating to human health or the environment, which are for their benefit.

- 2.2 <u>Binding Upon Owners/Occupants.</u> Pursuant to California Health and Safety Code Section 25202.5(b) and California Civil Code Section 1471(b), all purchasers, lessees, or Owners of any portion of the Parcel 2 shall be bound by this Covenant and agree for and among themselves, their heirs, successors, and assignees and the agents, employees, and lessees of such parties that their interest in Parcel 2 shall be subject to the Restrictions contained herein.
- 2.3 <u>Incorporation into Deeds and Leases</u>. The Restrictions set forth herein shall be incorporated by reference by Covenantor and Owner/Occupants in each and all deeds, leases, subleases, licenses, and rental agreements for any portion of Parcel 2 pursuant to Sections 1468, 1469, and 1470 of the California Civil Code, as applicable, including an express acknowledgment by each purchaser, lessee, or possessor that they bind themselves, their heirs, successors and assignees, and the agents, employees, and lessees of such parties to the Restrictions contained herein.
- 2.4. Notwithstanding any other provision of this Covenant, to the extent any future modification of or changes to the "Restrictions on Use" imposed under Section 3.1 and 3.1.1 of this Covenant would be inconsistent with the requirements set forth in Section VII(c)(2) of the Order, prior approval of such modifications/changes must be obtained from EPA.

# 3. DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

- 3.1 Restrictions on Use. The restrictions on use set forth in Section 3.1(a) are based on the statutory prohibitions contained in Section 25232 of the Health and Safety Code and the administrative record for EPA's groundwater remedy decision and are not based on any health risk assessment that indicates a specific risk on this Parcel to adults or children. It is the intent of the Owner, Covenantor, the City and DTSC that these specific deed restrictions may be amended in the future pursuant to the processes set forth in Section 25202.6 of the California Health and Safety Code. Owner and Covenantor promises to restrict the use of Parcel 1 as follows:
- (a) Owner shall not initiate any construction or placement of a building or structure on Parcel 2 which is intended for use as any of the following, or allow the new use of any existing structure for the purpose of serving as any of the following:
- (1) A residence, including any mobile home or factory built housing constructed or installed for use as permanently occupied human habitation;

- (2) A hospital for humans;
- (3) A school for persons under 21 years of age;
- (4) A day care center for children;
- (5) Any permanently occupied human habitation, or
- (6) A park or playground, provided that a golf course shall not be considered to be a park or playground.
- (b) Groundwater beneath Parcel 2 shall not be used as a source of drinking water unless it meets applicable regulatory standards.
- (c) The prohibition of uses in subdivision (a) of this section 3.1 shall not be construed to limit the authority of the City to require approval for any other land use on Parcel 2 not specified in subsection (a) above.
- (d) Pursuant to the HWCA, Title 22 of the California Code of Regulations ("CCR"), RCRA, and Title 40 of the Code of Federal Regulations ("CFR"), Owner promises that no use on the Parcel 2 shall be allowed to disturb the integrity or interfere with the operation of the closed Class I Landfill final cover, liner(s), or other components of any hazardous waste containment system, including but not limited to the landfill gas collection system, or the function of any hazardous waste monitoring system, or interfere with any other Corrective Action or post-closure requirement, including the Post-Closure Permit, to the extent such requirements remain in effect, unless the Applicable Regulatory Agency finds that the disturbance or interference:
- (1) Is necessary to the proposed use of Parcel 2 and will not increase the potential hazard to human health or the environment;
- (2) Is necessary to reduce a threat to human health or the environment; or
- (3) Is otherwise necessary to achieve compliance with environmental requirements of an Applicable Regulatory Agency. (If DTSC is the Applicable Regulatory Agency, pursuant to Title 22, CCR, Section 66264.117, DTSC may not approve disturbance or interference with the Class I Landfill unless DTSC makes Finding (1) or (2) above.)
- (e) Pursuant to Title 27 of the CCR, Owner promises that no use of Parcel 2 shall be allowed to disturb the integrity or interfere with the provisions of the Class III Landfill Closure Plan or Post-Closure Plan approved by the CIWMB or with the operation of measures contained therein, to the extent such documents remain in effect, unless the Applicable Regulatory Agency approves such an activity.

- An Applicable Regulatory Agency, or any person or entity (f) designated by an Applicable Regulatory Agency as requiring access to carry out the purposes of this Covenant or to comply with or enforce applicable statutory and regulatory requirements (including Covenantor), shall have reasonable right of e. . . and access to Parcel 2, at reasonable times and with reasonable notice (provided s. requirements shall not be interpreted to limit the statutory and regulatory author. fany Applicable Regulatory Agency), for inspection, monitoring, maintenance and any ther activities consistent with the purposes of this Covenant or otherwise necessary to comply with or enforce applicable statutory and regulatory requirements, provided that, in exercising its rights under this grant of easement, the Applicable Regulatory Agency (or designated entity or person) shall comply with any statutory or regulatory limitations or requirements relating to such entry and shall use its best efforts to minimize disturbance to the Occupants and Improvements on Parcel 2 in accordance with sound and customary environmental management practices. Consistent with that reasonable right of entry and access. Owner hereby grants, and use of Parcel 2 shall be subject to, an easement in favor of an Applicable Regulatory Agency, or any person or entity designated by an Applicable Regulatory Agency as requiring access to carry out the purpose of this Covenant or to comply with or enforce applicable statutory and regulatory requirements (including Covenantor), to enter the property at reasonable times and with reasonable notice (provided such requirements shall not be interpreted to limit the statutory and regulatory authority of any Applicable Regulatory Agency), for inspection, monitoring, and maintenance, and to perform any other activities consistent with the purposes of this Covenant or otherwise necessary to comply with or enforce applicable statutory and regulatory requirements, provided that, in exercising its rights under this grant of easement, the Applicable Regulatory Agency (or designated entity or person) shall comply with any statutory or regulatory limitations or requirements relating to such entry and shall use its best efforts to minimize disturbance to the Occupants and Improvements on Parcel 2, in accordance with sound and customary environmental management practices. This easement shall not limit the uses of Parcel 2 or Improvements thereon that are consistent with this Covenant.
- (g) Owner shall not grant, sell, transfer, or otherwise convey any land or interest in Parcel 2, or any part thereof, in such a manner as to cause or result in impairment of, or interference with, any requirement or obligation regarding the Class I Landfill or Class III Landfill, the Post-Closure Permit, or any other required Corrective Action, to the extent such requirements remain in effect.
- (h) Owner shall provide notice to the City and to DTSC within five (5) days after any conveyance or transfer of any ownership interest in the Parcel 2 (excluding mortgagees, liens, and non possessory encumbrances) to a third person. The provision of notice under this section shall not, by reason of this section, give the City or DTSC the authority to approve, disapprove, or otherwise affect any use, subdivision, lease, sale, or other conveyance of Parcel 2, or any part thereof, except as otherwise provided by applicable laws, regulations, permits, and orders or this Covenant. This section shall not

be construed to impair any authority over land use that the City may otherwise possess. Nothing in this section shall relie C wner of its obligation to comply with applicable laws, regulations, permits, and orders.

- 3.1.1 Notwithstanding the subdivision of Parcel 2 or the sale of any or all parcels created thereby, to the extent required by applicable laws, regulations, permits or orders, Covenantor, all be responsible for maintaining the caps on the Class I and Class III Landfills and for any and all Corrective Action on the Site, as well as compliance with any and all applicable statutory and regulatory requirements regarding the Class I and Class III Landfills that are located on Parcel 3. The obligations of Covenantor hereunder shall not affect or limit the liability that any future Owner may otherwise have under the law.
- 3.2 <u>Notice in Agreements</u>. Owner shall give notice of these Restrictions to all Occupants and subsequent Owners of Parcel 2 by inclusion or exhibit in grant deed restrictions, purchase agreements, "CC&Rs" (covenants, conditions and restrictions), leases, subleases, or rental agreements of the following statement:

"The property [or premises] described herein is adjacent to property that contains hazardous waste and is subject to an environmental restriction and covenant to restrict use which, among other things, prohibits the following uses:

- (1) A residence, including any mobile home or factory built housing constructed or installed for use as permanently occupied human habitation;
  - (2) A hospital for humans;
  - (3) A school for persons under 21 years of age;
  - (4) A day care center for children;
  - (5) Any permanently occupied human habitation; or
- (6) A park or playground, provided that a golf course shall not be considered to be a park or playground.

The environmental restriction and covenant to restrict use is in favor of the City of West Covina, the Department of Toxic Substances Control, and the U.S. Environmental Protection Agency, as a third party beneficiary. This statement is not a declaration that a hazard exists."

### 4. MODIFICATION OR REMOVAL

- 4.1 <u>Modification or Removal</u>. Owners and Occupants of Parcel 1, or any portion thereof, desiring to modify or remove the "Restrictions on Use" established by this Covenant shall comply with the following procedures:
- (a) Any Owner, or with the Owner's consent, any Occupant, of Parcel 2 or of any portion thereof, shall make a written request to the City.
- (b) In addition to Section 4.1(a), for modification or removal of the "Restrictions on Use" imposed under Sections 3.1 and 3.1.1 relating to human health or the environment, the Owner of Parcel 2 or any portion thereof shall apply to DTSC. Such application shall be made in accordance with Section 25202.6 of the California Health and Safety Code.
- (c) Nothing in this Section 4.1 shall relieve Owners and Occupants from compliance with Section 2.4 of this Covenant and any other applicable laws, regulations, orders, and permits.
- 4.2 <u>Term.</u> Unless removed in accordance with Section 4.1 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### 5. 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 Parcel 2 or any portion thereof to the general public or for any purposes whatsoever.
- 5.2 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 served when delivered (1) if personally delivered to the person being served or to an officer or a corporate party being served or official of a government agency being served, or (2) if mailed by United States mail postage-paid, certified, return receipt requested to each of the following:
  - (a) the current Owner(s) of Record; and
  - (b) Deputy Director Hazardous Waste Management Division Department of Toxic Substances Control
     P. 0. Box 806
     Sacramento, California 95812-0806

or, if the current address is no longer valid, the current address of DTSC's Hazardous Waste Management Division or the successor agency or state program which has authority over this Covenant.

- (c) City of West Covina
  1444 West Garvey Avenue
  West Covina, California 91793
- (d) LEA 1444 West Garvey Avenue West Covina, California 91793
- (e) Regional Administrator
  U.S. Environmental Protection Agency
  Region 9
  75 Hawthorne Street
  San Francisco, CA 94105
- 5.3 <u>Reservation of Rights</u>. The parties reserve all rights they may have in this matter unless expressly waived herein. Nothing in this Covenant shall limit the jurisdiction or authority that Applicable Regulatory Agencies otherwise have under applicable laws, regulations, permits, orders or other legal requirements.
- 5.4 <u>Partial Invalidity</u>. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion to the extent not materially affected by the invalidated portion, shall remain in full force and effect as if such portion had not been included herein.
- 5.5 <u>Article Headings</u>. 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.
- 5.6 <u>Recordation</u>. This instrument shall be recorded by Covenantor in the County of Los Angeles immediately after recordation of an approved parcel map creating Parcel 2.
- 5.7 <u>References</u>. All references to regulatory and statutory sections include successor provisions.
  - 5.8 <u>Counterparts</u>. This Covenant may be executed in counterparts.

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

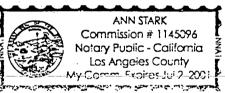
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Print Name	KRIS L. KAZARIAN
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ANNE SHELBY
Comm. # 1236143
NOTARY PUBLIC CALIFORNIA
Sacramento County
My Comm. Expires Oct. 29,2003

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES )

On April 16, 2001, before me, the undersigned, a Notary Public duly sworn in the State of California, personally appeared Kris L. Kazarian, personally known to me or proven to me on the basis of satisfactory evidence to be the person who executed the within instrument as Sulfras. of BKK Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES ,

On April 17, 2001, before me, the undersigned, a Notary Public duly sworn in the State of California, personally appeared April Pour personally known to me or proven to me on the basis of satisfactory evidence to be the Appearance for the Department of Toxic Substances Control, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

ANNE SHELBY
Comm. # 1236143
NOTARY PUBLIC CALIFORNIA
Sacramento County
My Comm. Expires Oct. 29, 2003

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

On MAY 8 2001, before me, the undersigned, a Notary Public duly sworn in the State of California, personally appeared Bentamin S. Wong personally known to me or proven to me on the basis of satisfactory evidence to be the person who executed the within instrument as MAYOR of the City of West Covina, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

SANCRA GALVEZ

Commission # 1179213

Notary Public - California

Los Angeles County

My Comm. Expires Apr 10, 2002

Sandra Galve

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State of <u>CALIFORNIA</u>	<del></del>
County of Las ANGELES	
On MAY 8 200/ before m	NAME, TITLE OF OFFICER - E.G. "JAME DOE, NOTARY PUBLIC"
OATE	NAME, TITLE OF OFFICER - E.G. JANE DOL, NOTARY PUBLIC
personally appeared BENJAMIN	NAME(S) OF SIGNER(S)
SANERA GALVEZ Commission # 1179213 Notary Public - Coffornia Los Angeles County My Comm. Expires Apr 10, 2002	to be the person whose name whis/ber is/ace subscribed to the within instrument and acknowledged to me that he/spe/they executed the same in his/ber/their authorized capacity(ies), and that by his/ber/their signatures on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.  WITNESS my hand and official seal.
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Though the data below is not required by law, it may fraudulent reattachment of this form.  CAPACITY CLAIMED BY SIGNER  INDIVIDUAL CORPORATE OFFICER  TITLE(S)  PARTNER(S)  ATTORNEY-IN-FACT TRUSTEE(S) GUARDIAN/CONSERVATOR OTHER: SIGNER IS REPRESENTING:	DESCRIPTION OF ATTACHED DOCUMENT  ENVIRONMENTAL RESTRICTION  COUENANT & AGREEMENT  TO RESTRICT ILSE OF PROPERT  NUMBER OF PAGES  PART   7, 20    DATE OF DOCUMENT

### EXHIBIT "A-1"

### (PARCEL MAP)

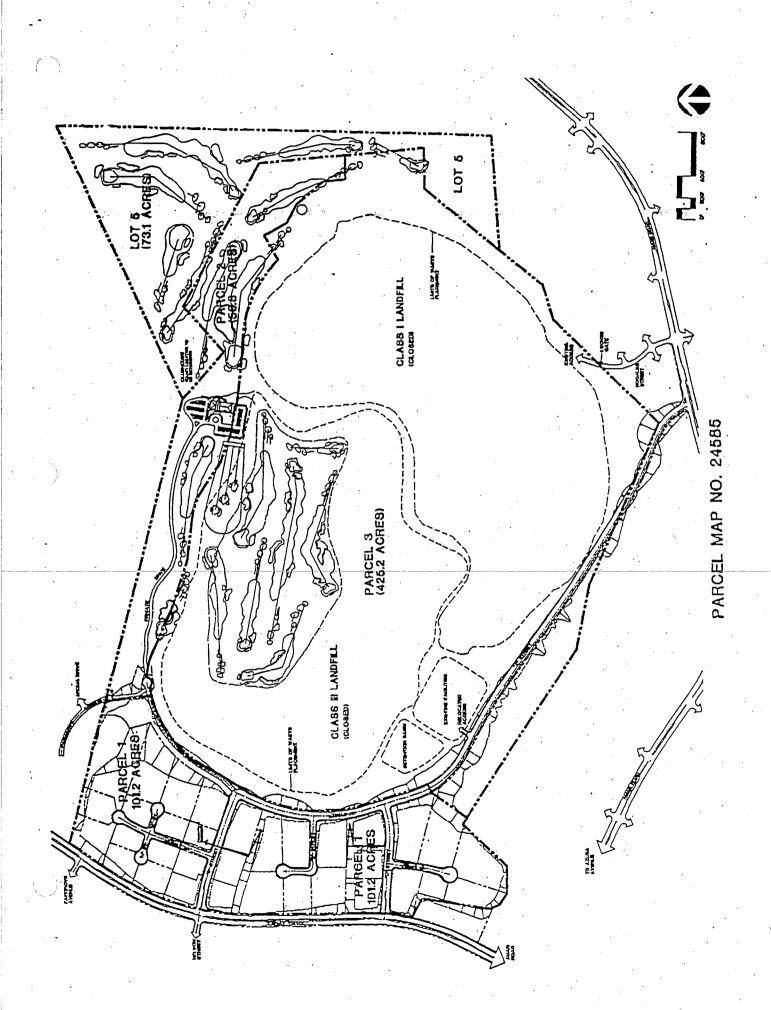
PARCEL 2 OF PARCEL MAP NO. 24585, IN THE CITY OF WEST COVINA, AS PER MAP FILED IN BOOK 301 PACE 3 61 THROUGH 68 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, GAS, AND OTHER HYDROCARBONS AND ALL MINERALS, TOGETHER WITH THE RIGHT TO DEVELOP, PRODUCE AND EXTRACT THE SAME, AS GRANTED TO NARCISSE S. GARNIER, ET AL., BY DEED RECORDED SEPTEMBER 29, 1944 IN BOOK 21288 PAGE 260, OFFICIAL RECORDS.

BY INSTRUMENTS OF RECORD, THE OWNERS OF SAID OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS, RELINQUISHED ALL OF THEIR RIGHTS TO ENTER UPON THE SURFACE OF SAID LAND OR THE SUBSURFACE THEREOF TO A DEPTH OF 500 FEET BELOW THE SURFACE THEREOF, (MEASURED VERTICALLY FROM THE SURFACE, FOR THE PURPOSE OF DEVELOPING, PRODUCING AND EXTRACTING THE SAME.

# EXHIBIT "A-2"

[Map of Class I and Class III Landfills]



# EXHIBIT "A-3"

# [Excerpt from EPA Consent Order]

## UNITED STATES

## ENVIRONMENTAL PROTECTION AGENCY

## REGION 9

IN THE MATTER OF:	
	) ADMINISTRATIVE ORDER
BKK CORPORATION	) ON CONSENT
2210 South Azusa Avenue	
West Covina, CA 91792	) U.S. EPA Docket No.
CAD067786749	) RCRA-9-2000-0003
RESPONDENT	
	) Proceeding under Section
	) 3008(h) of the Resource
	) Conservation and Recovery
	) Act, as amended, 42 U.S.C
	) Section 6928(h).

# III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and FKK are:

- 1. To implement the corrective measures (remedy) selected by EPA to remediate groundwater at the Facility;
- 2. To perform Interim Measures ("IM") at the Facility to relieve threats, if any, to human health and/or the environment resulting from actual or threatened groundwater contamination or the performance of any activities in accordance with this Consent Order; and
- 3. To perform any other activities necessary to correct actual or potential threats to human health and/or the environment resulting from the release or potential release to groundwater of hazardous waste or hazardous constituents from the Facility.

### IV. FINDINGS OF FACT

- 1. BKK is a company doing business in the State of California and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. 6903(15).
- 2. BKK owns 583 acres of real property located at 2210 South Azusa Avenue, West Covina, California 91792. A legal description of that property is attached hereto as Attachment 1 and incorporated herein by reference. BKK is the owner and operator of a hazardous waste landfill ("Class I landfill") on that property consisting of approximately 190 acres where hazardous wastes were disposed of up until December 1, 1984. However, for purposes of the investigation and any corrective measures that may be required under this Consent Order, the term "Facility" shall mean the contiguous 583 acres of real property owned by BKK including the approximately 190 acres where hazardous wastes were disposed.
  - 3. BKK owned and operated the Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under Sections 3004 and 3005 of RCRA, 42 U.S.C. Sections 6924 and 6925. BKK engaged in disposal of hazardous waste at the Facility subject to the interim status requirements (40 CFR Part 265).

- 4. Pursuant to Section 3010 of RCRA, 42 U.S.C. Section 6930, BKK notified EPA of its hazardous waste activity. In its notification dated on or about July 25, 1980, BKK identified itself as an owner and operator of a treatment, storage and/or disposal facility.
- 5. On or about November 19, 1980, BKK submitted to EPA a RCRA Part A permit application which included a list of the wastes disposed by BKK at the Facility designated by EPA hazardous waste numbers. On or about August 1, 1983, BKK submitted a revised RCRA Part A permit application to EPA with an expanded list of wastes disposed at the Facility. BKK handled at the Facility the hazardous wastes identified in Section IV, Paragraph 5, of the March 31, 1989 RCRA 3008(h) Administrative Order on Consent, U.S. EPA Docket No. RCRA-09-89-0019.

### 6. Facility Background

a. BKK has operated the Facility as both a municipal refuse and hazardous waste disposal landfill. The Facility accepted hazardous waste for disposal from 1972 to 1984. During that time, approximately 3.4 million tons of liquid and solid hazardous wastes were disposed, together with nonhazardous wastes in the approximately 190 acre unlined Class I landfill. A closure plan for the Class I landfill was approved by the EPA, the Los Angeles Regional Water Quality Control Board and the Department of Health Services Toxic Substances Control Division (now Department of Toxic Substances Control) on December 23, 1986. A RCRA operating permit was issued for the leachate treatment plant on June 24, 1987, and the plant began full operation in November of 1987. On May 15, 1989, BKK certified that the Class I landfill had been closed by BKK on March 15, 1989. Closure included installation of a clay and vegetative cover, a gas collection system, and construction of a leachate treatment plant. BKK also operated an adjacent lined, municipal solid waste ("Class III") landfill from 1987 to 1996. The Class III landfill stopped accepting waste in September 1996, and is currently undergoing final closure. (The areas where the Class I and Class III landfills are located are identified in figures 1 and 2 of the document titled, "Remedy Decision for Contaminated Groundwater at the BKK Landfill in West Covina, California", dated February 10, 2000 [Attachment 7 hereto]).

b. The Facility includes the following Solid Waste Management Units:

<u>Unit Name</u>	<u>Status</u>	Wastes Received/Generated
Class I Landfill	Closed	Listed Wastes D,F,K,P,U, Asbestos, Municipal Trash
Leachate Treatment Plant/Air Stripper	Active	Leachate/Sludge/Efit
Class III Landfill	Closing /Inactive	Municipal Trash, Asbestos
Area D	Inactive	Municipal Trash

- c. During the 1980s, a series of investigations found groundwater contamination both on and off-site at the Facility. On March 31, 1989, EPA and BKK entered into a RCRA 3008(h) Administrative Order on Consent, U.S. EPA Docket No. RCRA-09-89-0019, which, among other things, required BKK to investigate the nature and extent of groundwater contamination, and to evaluate corrective measure alternatives (remedial options). As of August 1998, over 200 monitoring wells have been installed at the Facility. Ground water samples collected from these monitoring wells over the past 10 years have been used to determine the extent of the groundwater contamination. The most commonly found contaminants in the groundwater are a group of chemicals called volatile organic compounds ("VOCs"). VOC contaminants in the groundwater at BKK include tetrachloroethene ("PCE"), trichloroethene ("TCE"), vinyl chloride and several others. groundwater monitoring confirmed that contaminated groundwater had migrated off-site and under residential areas. Pursuant to the EPA Order, BKK evaluated and suggested potential options for remediating the contaminated groundwater. The remedial options are contained in a Corrective Measures Study ("CMS") report, which was submitted by BKK to EPA in February 1998.
- d. On August 11, 1998, EPA published a proposed remedy to address groundwater contamination at the Facility and began a 60 day public comment period that ended on October 9, 1998. EPA proposed that BKK implement a "contain and control" remedy, designed to contain wastes on-site and to control further offsite movement of contaminated groundwater. The proposed remedy included the installation and operation of approximately 60 new leachate and groundwater extraction wells. The rationale for the proposed remedy is contained in an EPA document titled,

"Proposed Groundwater Statement of Basis for BKK Landfill", dated August 11, 1998.

e. EPA received 182 pur 1. comments on the proposed ground-water remedy for the Facility. EPA responded to the public comments and after further deliberation, selected a groundwater remedy for the Facility. EPA's rationale for selecting the groundwater remedy is contained in the document titled, "Remedy Decision for Contain ated Groundwater at the BKK Landfill in West Covina, California", dated February 10, 2000. The "Final Groundwater Statement of Basis for BKK Landfill", dated February 2000, provides information considered in selecting the remedy. EPA's response to all the comments received during the public comment period are included in the "Response to Comments BKK Landfill, West Covina California, CAD067786749 Groundwater Remedy", dated February 2000, which is available in EPA's administrative record for the Facility.

### V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the findings of fact, and after consideration of the Administrative Record, the Director has made the following conclusions of law and determinations:

- 1. BKK is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15).
- 2. BKK is the owner or operator of a facility that has operated and is operating under interim status subject to §3005(e) of RCRA, 42 U.S.C. §6925(e).
- 3. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to \$1004(5) of RCRA, 42 U.S.C. §6903(5), §3001 of RCRA, 42 U.S.C. §6921, 40 CFR Part 261 and Subpart S §264.501, 55 FR 30874 July 27, 1990.
- 4. There have been and may continue to be releases of hazardous wastes or hazardous constituents into the environment from the Facility.
- 5. The actions required by this Consent Order are necessary to protect human health and/or the environment.

- Construction Completion Report
- ▶ Corrective Measures Completion Report
- ▶ Draft and Final Performance Monitoring Plans

The containment area must be defined and the capture zone analysis must be conducted as part of developing the design of the pump and treat system.

- 3. EPA will review all required CMI documents (except Health and Safety Plan) and notify BKK in writing of EPA's approval or disapproval, including any comments and/or modifications, in accordance with Section VIII: Agency Approval/Submittals/Proposed Contractor/Additional Work.
- 4. BKK shall complete the construction (drilling, installation and development) and startup of the new perimeter leachate and groundwater extraction wells that are part of the pump and treat system and complete construction of the new groundwater monitoring wells for the Southwest Area within 24 months after approval of the CMIP by EPA. BKK shall complete construction and startup of the ground water extraction wells in the off-site Southeast Area and on-site groundwater and leachate extraction wells in the North Saddle Area within 30 months after CMIP approval by EPA. The Southwest Area, Southeast Area and North Saddle Area are depicted in figure 2 of the EPA Groundwater Remedy Decision Document (Attachment 7 hereto).

### C. INSTITUTIONAL CONTROLS

- 1. Commencing on the effective date of this Consent Order, BKK shall refrain from using the Facility in any manner that would interfere with implementation of remedial measures or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Order.
- 2. BKK shall, within 60 days of the effective date of this Consent Order, submit to EPA for review and approval a draft restrictive covenant that is enforceable under the laws of the State of California. This covenant shall include, but not be limited to, the land/water use prohibitions and requirements listed below.
  - ➤ A prohibition, pursuant to Article 11 of Chapter 6.5 of the California Health and Safety Code, that the 583 acre Facility shall not be used for residences, hospitals, schools, day-care centers, parks, playgrounds, or any permanently occupied human habitation. For the purposes of this prohibition, a

golf course is neither a park nor a playground.

- A prohibition that the groundwater directly beneath the BKK closed hazardous waste (Class I) landfill shall not be used as a source of drinking water.
- A requirement that BKK provide written notification to EPA at least 14 days before excavated soils can be removed from "Parcel 3," on which the Class F and Class III landfills are situated, ("Parcel 3" is identified on Attachment 9 hereto, incorporated herein by this reference as if fully set forth). This requirement does not apply to soils transported pursuant to a RCRA hazardous waste manifest to a permitted RCRA Subtitle C facility.
- ► A requirement that BKK maintain and monitor the integrity of the cap of the closed Class I landfill and inactive/closing Class III landfill.

BKK shall grant the access rights and the rights to enforce the land/water use restrictions to DTSC. EPA shall be identified in the language of the covenant itself as a third party beneficiary of the land/water use restrictions, with the ability to enforce such restrictions.

BKK shall execute and record in the Recorder's Office of Los Angeles County, State of California, a restrictive covenant, running with the land, acceptable to DTSC and EPA, that provides for the right to enforce the land/water use restrictions listed above, and/or other restrictions that EPA and DTSC determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Order.

Within 15 days of EPA's or DTSC's approval and acceptance of the restrictive covenant, whichever comes later, BKK shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the restrictive covenant with the Recorder's Office of Los Angeles County. Within 30 days of recording the restrictive covenant, BKK shall provide EPA and DTSC with acceptable evidence of the final title, and a certified copy of the original recorded restrictive covenant showing the clerk's recording stamps.

3. BKK shall attach a copy of this Consent Order and the EPA Groundwater Remedy Decision Document to any document related to selling, leasing, transferring and/or developing the Facility

property. BKK shall condition all transactions related to selling, leasing, transferring and/or developing the Facility property on compliance with the terms of this Consent Order. the City of West Covina grants land use entitlements for all or any part of the development of a business park or other commercial development on approximately 100 acres on the western side of the Facility ("Parcel 1") (Parcel 1 is identified on Attachment 8 hereto, incorporated herein by this reference as if fully set forth), BKK or its successor shall not be subject to this Paragraph 3 with respect to sub-lessees of that development. Simultaneously with the submittal of the CMIP, BKK shall submit to EPA for approval a fact sheet summarizing the nature of remedial activities to be carried out pursuant to this Consent Order, the conditions relating to prohibiting interference with BKK's compliance with the terms of this Consent Order and the land/water use restrictions required by this Consent Order (the "Fact Sheet"). Upon its approval by EPA, BKK shall attach a copy of the Fact Sheet to any document related to selling, leasing, transferring and/or developing the Facility property and shall require that the Fact Sheet be provided to any sub-lessees of Parcel 1. Upon its approval by EPA, the Fact Sheet may be provided to any lessee of all or any portion of Parcel 1 in lieu of this Consent Order and the Groundwater Remedy Decision Document.

- 4. BKK shall condition all transactions related to selling, leasing, transferring and/or developing the Facility property on not interfering with BKK's compliance with the terms of this Consent Order.
- 5. Nothing in this subsection C. shall be interpreted as: (1) limiting EPA's authority to require BKK to take any action with respect to soils at the Facility in accordance with the March 31, 1989 RCRA 3008(h) Administrative Order on Consent, U.S. EPA Docket No. RCRA -09-89-0019, or in accordance with any other applicable authorities; or (2) relieving BKK of its obligations to comply with RCRA or any other applicable environmental requirements.

#### D. FINANCIAL ASSURANCE

1. Financial Assurance for Operation, Monitoring and Maintenance

BKK shall establish a financial assurance mechanism for the entire amount needed for operation, monitoring and maintenance ("OMM") unless BKK can make a demonstration to EPA's satisfaction in accordance with the provisions of this Section VII.D. EPA has previously stated, in a March 30, 2000 letter to BKK, that "...BKK will have an opportunity to provide EPA with a cost

J PARCELS 583.21 ACRES

# PARCEL MAP NO. 24585

IN THE CITY OF WEST COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BEING A SUBDIVISION OF A PORTION OF RANCHO LA PUENTE, A PORTION OF SAID
RANCHO DESIGNATED AS "LOT NO. 1-1769.46AC." AS SHOWN ON MAP RECORDED IN
BOOK 1260 PAGE 163, OF DEEDS, IN THE OFFICE OF THE COUNTY, RECORDER OF
THE COUNTY OF LOS ANGELES.

HUITT-ZOLIARS

01-0825091

SHEET 1 OF 8 SHEETS

FILED PLOT SOME PAST OF OWNER PAST 3 P.M. PAST 3 P.M.

AT PAGE C1 - C8

Mrsr Recorder/County Clark 59.-

OR WILL SE IN PLACE WITHIN 24 MONTHS
FROM THE FILING DATE OF THIS MAP;

SUBDIMDER'S STATEMENT:
WE HEREBY STATE THAT WE ARE THE SUBDIMDER OF THE LANDS INCLUDED WITHIN THE SUBDIMSION SIGN STORM ON THIS MAP WITHIN THE DISTINCTIVE BORDER LINES, AND ECONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIMSION.

B.K.K. CO., A CALIFORNIA CORPOBATION, SUBDIVIDER or de Kranin KAZAR AN. CRIEF ENERGY OFFICE INT TITE

RECORD OWNER IS: B.K.K. CO., A CALIFORNIA CORPORATION

STATE OF California COUNTY OF Les Angeles)

ON THIS 15 DAY OF FEBRARY , 2001, BEFORE ME,

AND STARK AND ASSOCIATION OF OF SAID STATE,

PERSONALLY APPEARED BEN K. KAZACIAN JT.:

AND

KI'A L. KLTALIAN PERSONALLY KNOWN TO ME OR PROVED TO ME

ON THE BASIS OF SATISFACTORY EMBENCE TO BE THE PERSONS WHOSE MAMES

ARE SUBSCRIPED TO THE WITHIN INSTRUMENT AND ACKNOME BEOED TO ME THAT

THEY EXECUTED. THE SAME IN-THEIR AUTHORIZED CAPACITES—AND—THAT-BY-THEIR
SIGNATURES ON THE INSTRUMENT THE PERSONS, OR THE ENTITY UPON BEHALF

OF WHICH THE PERSONS ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND: MY COMMISSION EXPIRES 1/21/21 ... MY PRINCIPAL PLACE OF BUSINESS NOTARY PUBLIC IN AND FOR SAID STATE IS IN Leadingles County.

Ann Stark PRINT NAME

I MEREBY CERTIFY THAT ALL CERTIFICATES MA'E BEBA FILED AND DEPOSITS HAVE SEEN MADE THAT ARE REQUIRED UNDER THE PROVISIONS OF SECTIONS 80482 AND 80493 OF THE SURDIVISION MAP ACT.

SOTTER SUBSIVISION REP AST.

SOTTER SUBSIVISION REP AST.

OF SUPERVISORS OF THE SOARD

DEPUTY 5-14-0/

I MERREN CENTIFY THAT SECURITY IN THE ABOURT OF \$ \( -\frac{12.5.2.0}{2.0.0} \) MAS BEEN FILLS SITE THE CLICK OF THE SOAMLOF SPECIAL SERVISORS OF TAXECOUNTY OF OR THE PATRENT OF TAXES AND SPECIAL SETS SERVISORS COLLECTED AS TAXES OF TRACT NO. PARCEL MAP NO. \$ \( -\frac{2.5.5.5}{2.0.0} \) AND OF TRACT NO. PARCEL MAP NO.

EXECUTIVE OFFICER-CLERK OF THE BOARD OF SUPERVISORS OF THE COURTY OF LOS AMBELES, STATE OF CALIFORNIA BY DEPOTY



SURVEYOR'S STATEMENT:
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD
SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF CITE SUBDIVISION MAP ACT AND
LOCAL OPDINANCE AT THE REQUIREST OF ALAN TUNITANDJON ARRIL 3, 2004 I HEREBY
STATE THAT THIS PARCEL MAP SUBSTAINTALLY CONFORMS TO THE APPROVED OR
CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY, THAT (THE MONUMENTS OF THE
CHARACTER AND LOCATIONS SHOWN HEREON ARE IN PLACES, THAT SAID MONUMENTS
ARE SUFFICIENT TO EMBLE THE SURVEY TO BE RETRACED. SURVEYOR'S STATEMENT:



L CARVIN, LS. 6343 POSTRATION EXPIRES 12/31/02

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING BETWEEN C.O.R.S. STATIONS COMP "CLAR" BEING NB9:3716"W AS DERIVED FROM DATA AS SHOWN ON RECORD OF SURVEY 96-1054, R.S.B. 744/1-16, RECORDS OF ORANGE COUNTY, CAUFORNIA.

DATUM STATEMENT:

COORDINATES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, BASED ON NATIONAL GEODETIC SURVEY VALUES FOR NAD B3, EPOCH 1995.5 PER RECORD OF SURVEY 96—1054, R.S.B. 744/1—16, RECORDS OF DRANGE COUNTY, CALIFORNIA.

CITY ENGINEER'S CERTIFICATE:

I HEPERY CERTIFY THAT I HAVE EXAMINED THIS MAP AND THAT IT CONFORMS
SUBSTANTIALLY TO THE TENTATIVE MAP AND ALL APPROVED ALTERATIONS THEREOF;
THAT ALL PROVISIONS OF SUBDIMISION OF ORDINANCES OF THE CITY OF MEST COMMA
APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLED
WITH AND THIS LARGUESTAGE OF THE SECTIONS FOR MAP ACT \$6480
(A) (C) (C) AND C (S) MAYE SEEN COMPLIED WITH

BY: Money M. Mayer DATE: 5/02/01 6/30/02 51693 PROFESSIO

COUNTY ENGINEERS CERTIFICATE:

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP, THAT IT COMPUES WITH ALL PROVISIONS OF STATE LAW APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP, AND THAT I AM SATISFED THAT THIS MAP IS TECHNICALLY CORRECT IN ALL RESPECTS NOT CERTIFIED TO BY THE CITY ENGINEER.

BY Thomas W. House 5/14/01

9-30-01 RCE NO. \_\_\_\_\_\_\_ O20273 \_\_\_ EXP. \_

SPECIAL ASSESSMENT CERTIFICATE:

I HEREBY CERTIFY THAT ALL SPECIAL ASSESSMENTS LEVIED UNDER THE JURISDICTION OF THE CITY OF WEST COMMA. TO WHICH THE LAND INCLUDED IN THE WITHIN SUBDIVISION OR ANY PART THEREOF IS SUBJECT, AND WHICH MAY BE PAID IN FULL, HAVE BEEN PAID IN FULL

MELEGIAL STATE COUNTY OF WEST COUNTY

May 4, 2001

CNI OF CALIF

CITY COUNCIL CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF WEST COUNA AT A MEETING HELD ON MAY 1, 2001 APPROVED THE ATTACHED MAP, FOR RESOLUTION ...

CATOL BOLLY CITY CLERK OF THE CITY OF HEST COUNA

MAY 3, 2061 DATE

BOUNDARY LEGEND

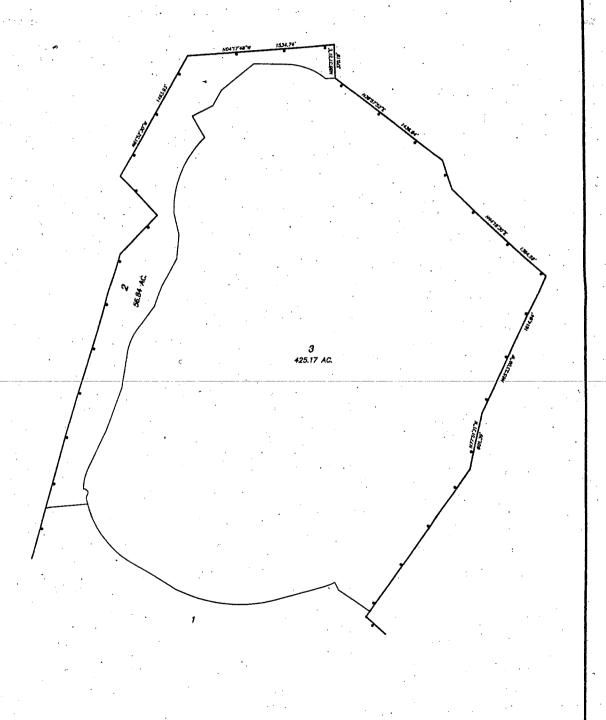
OF THE LAND BEING SUBDIVIDED BY THIS MAP.

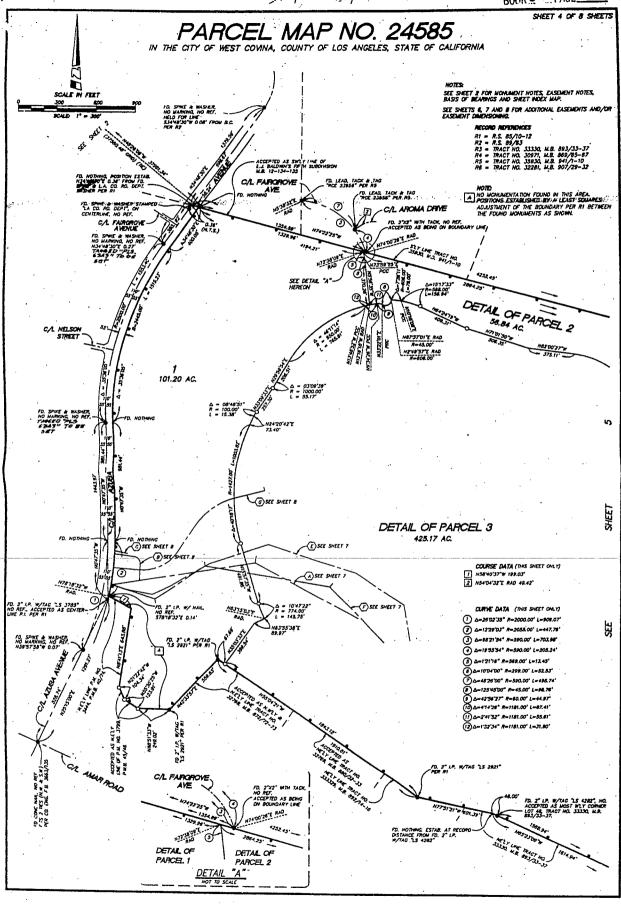
# PARCEL MAP NO. 24585 IN THE CITY OF WEST COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

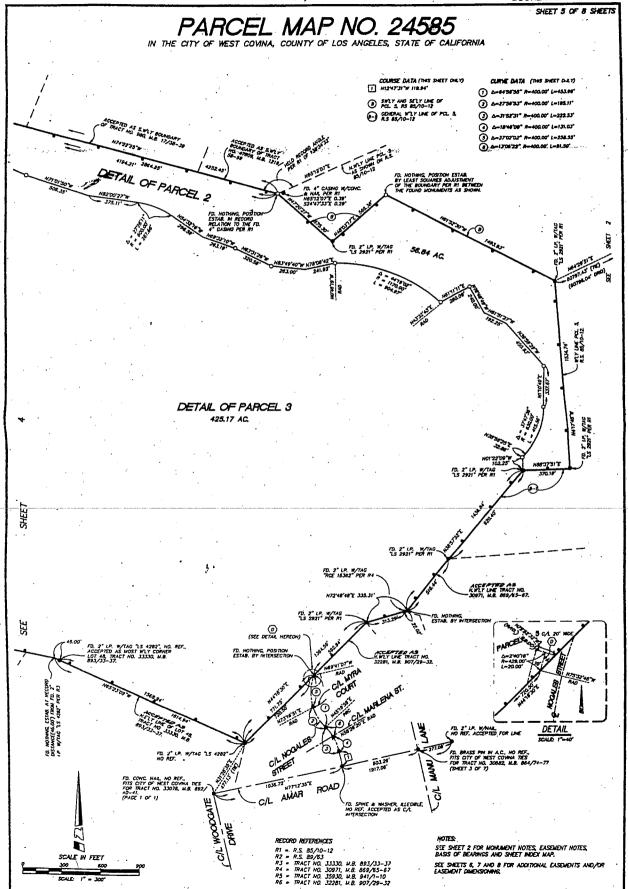


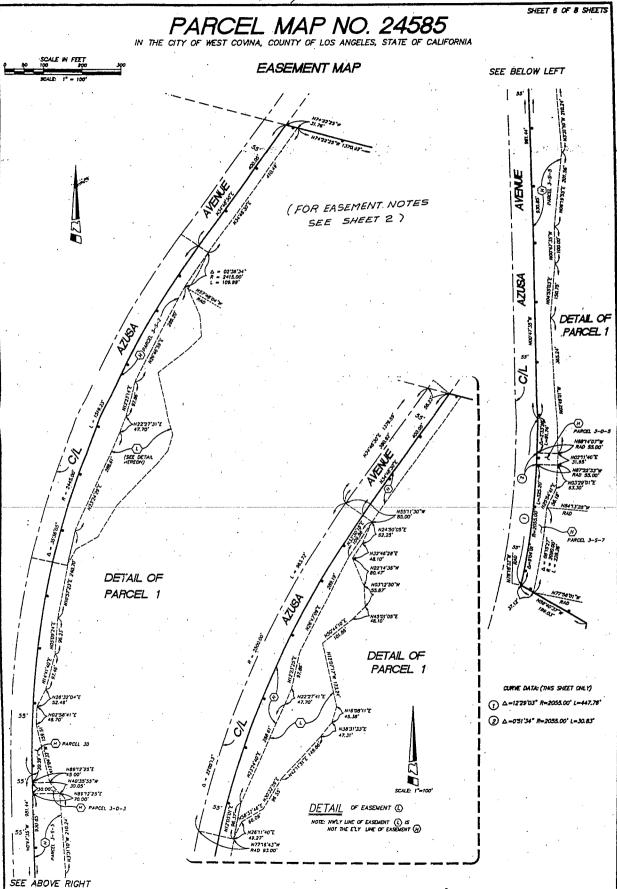
FOR DETAIL OF PARCELS 2 AND 3 SEE SHEETS 4 AND 5

NULLS SEE SHEET 2 FOR WOHLMENT HOTES, EASEMENT HOTES, BASIS OF BEARINGS AND SHEET HODE MAP, SEE SHEETS 4 AND 8 FOR DETAIL OF PARCELS 2 AND 3 SEE SHEETS B, 7 AND B FOR ADDITIONAL EASEMENTS AND/OR EASEMENT DIMENSIONING.









# PARCEL MAP NO. 24585 IN THE CITY OF WEST COMMA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

EASEMENT MAP

