

RECORDING REQUESTED BY:
Contra Costa County

WHEN RECORDED, MAIL TO:

State of California
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attn: Daniel E. Murphy, P. E.
Performance Manager
Brownfields and Environmental Restoration Program

Exempt from Recording Fees per
Government Code §§ 6103, 27383

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

*Clyde Pedestrian Path
County of Contra Costa,
Assessor Parcel Nos. 100-299-001, 100-305-001, and 100-315-001
Department site code 201904*

This Covenant to Restrict Use of Property and Environmental Restriction (this "Covenant"), dated as of _____, 2012, is made by and between Contra Costa County, a political subdivision of the State of California (together with its successors and assigns, hereinafter referred to as the "Covenantor"), the current owner of a portion of the former Sacramento Northern Railroad property located the unincorporated community of Clyde, County of Contra Costa County, State of California (as described in Exhibit "A" and depicted on Exhibit "B", each of which is attached hereto and made a part hereof, the "Property"), and the California Department of Toxic Substances Control, an agency of the State of California (herein after referred to as the "Department"), and is being entered into pursuant to that certain Voluntary Cleanup Agreement (HSA-VCA 10/11-80), dated November 30, 2011 (the "VCA"), between Covenantor and the Department. Pursuant to California Civil Code ("Civil Code") section 1471(a)(3), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the Property of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to herein as the "Parties", hereby agree that in accordance with Civil Code section 1471 and Health and Safety Code section 25355.5, that the use of the Property be restricted as set forth in this Covenant to protect human health, safety, and the environment; and the Parties further agree that this Covenant shall run with the land.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling approximately 3.75 acres, is bounded by Port Chicago Highway to the west, Sussex Street to the south, Norman Avenue to the west and Warrick Street to the north, and more particularly described in Exhibit "A" and depicted on Exhibit "B". Exhibit "A" contains the written legal description and Exhibit "B" is a plat map showing the boundaries of the Property.

1.02 The Property once supported a rail line owned/used by various railroads from

1911 to 1965. Sometime after 1965, the railroad tracks were removed from the Property, but not the ballast material or hazardous materials.

1.03 In December 2011, the Covenantor sent a Preliminary Endangerment Assessment for review by the Department to document the Covenantor's planned remediation of the Property. The reason for remediation of the Property is because the Covenantor found the soil to be contaminated with hazardous substances that included arsenic and polynuclear aromatic hydrocarbons ("PAHs") above approved acceptable levels of concentration.

1.04 The Property has been found to have Hazardous Substances, as such term is defined in Health and Safety Code section 25316, which also include Hazardous Materials, as such term is defined in Health and Safety Code section 25260. The Property has been found to have arsenic and PAH that remain in the soil above unrestricted cleanup goals at depths of approximately three feet or more below the surface of the Property. The VCA provides that it may be necessary to record a land use covenant as part of the Property's site remediation. The Department concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment, if limited to commercial, industrial, open space, parking or other appropriate use.

ARTICLE II DEFINITIONS

In addition to the other terms defined in this Covenant, the following defined terms have the following meanings in this Covenant.

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

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

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

2. 04. **Occupant.** "Occupant" means the Owner of the Property, and any person or entity entitled by leasehold, license, easement, servitude, agreement or other legal relationship granting the right to enter and possess, occupy or improve any portion of the Property after Covenantor has conveyed all of the Property or any portion of the Property.

2.05. **Owner.** "Owner" means the Covenantor, its grantees, its successors in interest, and their successors in interest including heirs and assigns, if any, during their ownership of all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. **Restrictions to Run 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. Each and every Environmental Restriction: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (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.

3.02. **Binding upon Owners/Occupants.** Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, this Covenant inures to the benefit of and passes with each and every portion of the Property, and is for the benefit of, and is enforceable by the Department.

3.03. **Incorporation into Deeds and Leases.** The Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, Leases or other agreements entered into that convey a right, title or interest in the Property for any portion of the Property to which they are in effect and applicable.

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

3.05. **Costs of Administering the Covenant to be paid by Owner.** The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself to pay the Department's documented costs in administering this Covenant while Covenantor owns the Property, and pursuant to Section 3.02 above, and Health and Safety Code section 25355.5(a)(1)(C), all subsequent Owners of the Property are bound to pay the Department's documented costs in administering this Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. **Prohibited Uses.** The Property shall not be used for any of the following purposes:

- (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 21 years of age; or
- (d) A day care center for children.

4.02. **Soil Management.**

(a) No activities that will disturb the soil at a depth greater than three (3) feet below the ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed on the Property without a soil management plan approved by the Department in advance of any such activity.

(b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling or similar soil movement activity shall be managed in accordance with all applicable provisions of state and federal law.

4.03. **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; or

(b) Extraction of groundwater except as approved by the Department in a groundwater management plan.

4.04. **Access for Department.** The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. **Access for Implementing Operation and Maintenance.** The Covenantor is responsible for implementing an operation and maintenance plan approved by the Department with respect to the remediation of the Property (the "Operation and Maintenance Plan"), and shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Plan until the Department determines that no further operation and maintenance at the Property is required.

4.06. **Inspection and Reporting Requirements.** The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by July 1st of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that are the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If violations of this Covenant are noted, the annual inspection report must detail the steps necessary for the Property to comply with this Covenant. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must, within ten (10) days of identifying the violation: (i) determine the identity of the party in violation; (ii) send a letter advising the party of the violation of the Covenant; and (iii) demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

ARTICLE V
ENFORCEMENT

5.01. **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, including but not limited to, failure to submit any report required by this Covenant, or the 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, TERMINATION, AND TERM

6.01. **Variance.** Owner, or any other person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223. The Department may also modify this Covenant in accordance with California Code of Regulations, title 22, section 67391.1

6.02 **Termination or Partial Termination.** Covenantor, or any other person, may apply to the Department for a termination or partial termination of one or more terms of the Environmental Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25224. The Department may also terminate this Covenant in accordance with California Code of Regulations, title 22, section 67391.1

6.03 **Term.** Unless terminated in accordance with paragraph 6.02 Termination or Partial Termination, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. **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.

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

7.03. **Notices.** Whenever any person gives or serves any demand or other communication with respect to this Covenant (each, a "Notice"), it shall be in writing to the respective address set forth below, 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 (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested, or by a nationally recognized overnight courier service:

CONVENTOR: Contra Costa County
Public Works Department
255 Glacier Drive
Martinez, California 94553
Attention: Transportation Engineering Division

and

Department: Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attention: Brownfields and Environmental Restoration Program Manager,
Clyde Pedestrian Path Site

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

7.04. **Partial Invalidity.** If this Covenant or any of its terms or portions set forth herein 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.

7.05. **Section Headings.** The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.06 **Statutory References.** All statutory references in this Covenant include successor provisions.

7.07. **Incorporation of Attachments.** All attachments and exhibits to this Covenant are incorporated herein by reference.

7.08 **Governing Law.** This Covenant shall be governed, performed and interpreted under the laws of the State of California.

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

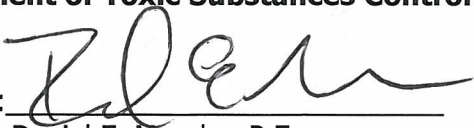
Covenantor

STATE OF CALIFORNIA

Contra Costa County

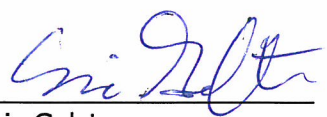
Department of Toxic Substances Control

By: _____
Julia R. Bueren
Public Works Director

By: _____
Daniel E. Murphy, P.E.,
Unit Chief
Brownfields and Environmental
Restoration Program

Approved as to Form:

Sharon L. Anderson, County Counsel

By: _____
Eric Gelston
Deputy County Counsel

CP:jc

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ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } SS.

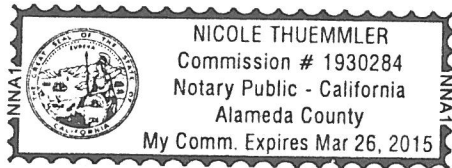
On November 15, 2012, before me, Nicole Thuemmler Notary Public,
DATE

personally appeared Daniel E. Murphy, 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.



Nicole Thuemmler

NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER _____ TITLE(S)
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of
TITLE OR TYPE OF DOCUMENT
Property - Environmental
6 / 3 added
NUMBER OF PAGES

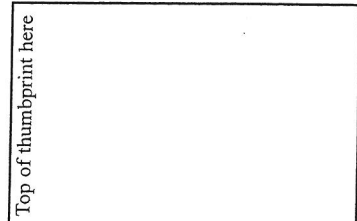
DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER



CONTRA COSTA COUNTY CALIFORNIA

PROJECT LOCATION

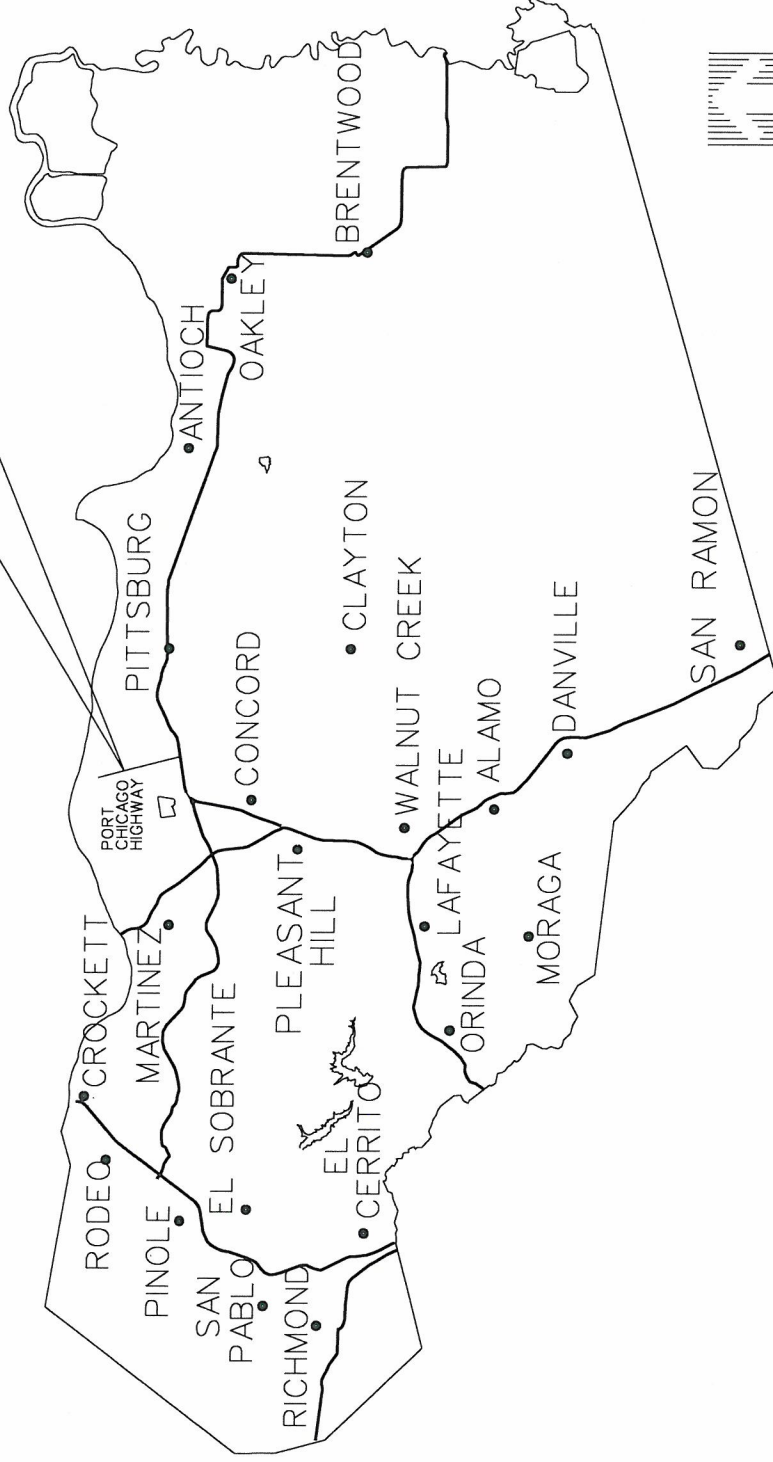


EXHIBIT A - SITE LOCATION MAP

CLYDE PEDESTRIAN PATH PROJECT

Exhibit B - Site Diagram
Clyde Pedestrian Path Project

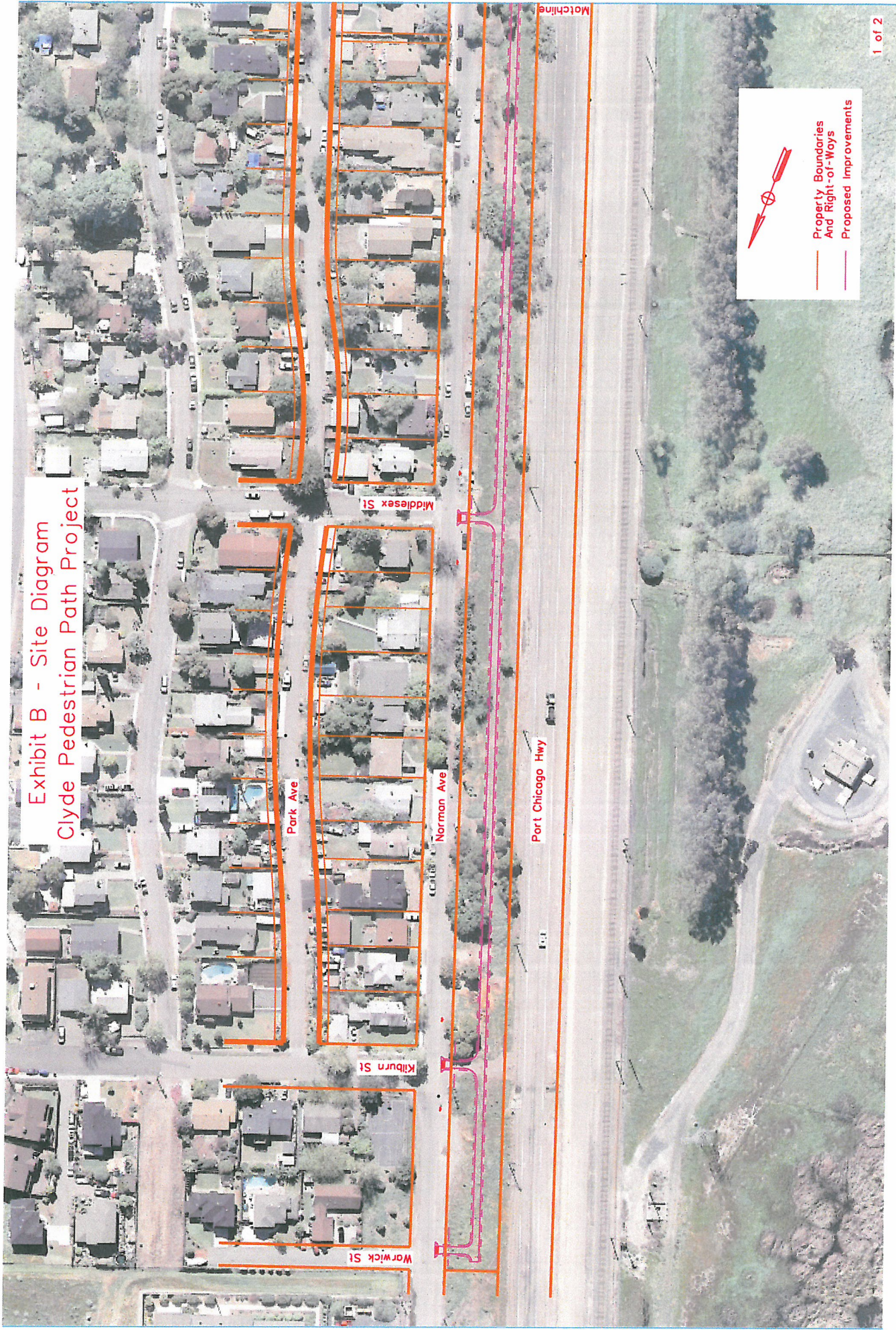


Exhibit B - Site Diagram
Clyde Pedestrian Path Project

