

201008310746 6 PGS  
08/31/2010 01:39:20 PM \$67.00  
PIERCE COUNTY, WASHINGTON

RECEIVED

After Recording Return to:

'10 SEP -8 111:38

Marv Coleman, Site Manager/Inspector  
Department of Ecology  
Southwest Regional Office, Toxics Cleanup Program  
P.O. Box 47775  
Olympia, WA 98504-7775

WA STATE  
DEPARTMENT OF ECOLOGY  
SW REGIONAL OFFICE

### ENVIRONMENTAL COVENANT

**Grantor:** 1815 East D Street LLC  
3414 NE 55<sup>th</sup> Street  
Seattle, WA 98105-2310

**Grantee:** State of Washington, Department of Ecology  
PO Box 47775  
Olympia, WA 98504-7775

#### Abbreviated Legal Description:

PTN Section 04, Township 20N, Range 03 EWM, Quarter 43, being NORTHERN PAC EAST D  
INDUSTRY SITES L 1 THRU 5 BLK B TOG/W E 60 FT VAC E D ST ADJ

**Tax Parcel Number(s):** 6370000040

Grantor, **1815 East D Street LLC**, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 1<sup>st</sup> day of July, 2010 in favor of the State of Washington Department of Ecology ("Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, RCW 67.70.005 *et seq.*

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by **1815 East D Street LLC**, their successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Consent Decree entered in *State of Washington, Department of Ecology v. BNSF Railway Company, City of Tacoma, Home Electric Company, 1815 East D. Street LLC, Washington Department of Transportation*, Pierce County Superior Court Cause No.08-2-11105-4.
- "Final Remedial Investigation/Feasibility Study (RI/FS), BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2007).
- "Final Cleanup Action Plan (CAP), BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2008).
- "Remedial Action Report, BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2010).

These documents are on file at Ecology's Southwest Regional Office.

In accordance with the CAP, the Remedial Action focused on control and recovery of bunker-range petroleum hydrocarbons (BRPHs) believed to be associated with a former pipeline, underground storage tanks and other potential sources in the area. BRPH in soil is the primary contaminant at the site, but other contaminants associated with BRPH in soil, including carcinogenic polycyclic aromatic hydrocarbons (cPAHs), were also present and removed as part of the Remedial Action. Fill materials throughout the Thea Foss waterway area, including those on the property, are also known to have concentrations of cPAHs unrelated to BRPH. BRPH contaminated soils and wood waste were excavated to the maximum extent practicable on the property, pursuant to the CAP and Consent Decree. As provided in the CAP, complete removal was not possible due to accessibility.

This Covenant is required because the Remedial Action resulted in residual soil concentrations of BRPHs and associated cPAHs in certain limited areas, which exceed the Model Toxics Control Act Method A Cleanup Level(s) established under WAC 173-340-740. This covenant is also required because a conditional point of compliance has been established for groundwater.

The undersigned, **1815 East D Street LLC**, is the fee owner of real property (hereafter "Property") in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A of this covenant, which is made part hereof by reference.

**1815 East D Street LLC** makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

1. No groundwater may be taken for any use from the Property.
2. A portion of the Property contains residual bunker-range petroleum hydrocarbon (BRPH) contaminated soil. The locations of this soil are depicted in Attachment B, made part hereof by reference. Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) are also present in

fill materials on the property, in some areas largely unrelated to BRPH. The known locations of cPAH contaminated soil are also depicted in Attachment B. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load-bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

**Section 2.** Any activity on the Property that may interfere with the Integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

**Section 3.** Any activity on the Property that may result in the release or exposure of the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

**Section 4.** The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

**Section 5.** The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

**Section 6.** The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

**Section 7.** The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

**Section 8.** The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit the use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

RECEIVED

'10 SEP -8 A11:38

1815 D STREET/LLC

By: John Backus

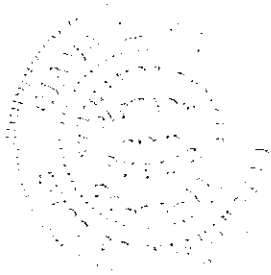
Dated: 6/23/10 WA STATE DEPARTMENT OF ECOLOGY SW REGIONAL OFFICE

Name: John T. Backus

Title: Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

On this 23 day of June, 2010, I certify that John Backus is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned therein.



Diana L. Fisher  
Notary Public in and for the State of Washington,  
Print Name DIANA L. FISHER  
My commission expires 6/14/12

RECEIVED

'10 SEP -8 A11:39

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

WA STATE  
DEPARTMENT OF ECOLOGY  
SW REGIONAL OFFICE

By: Rebecca S. Lawson

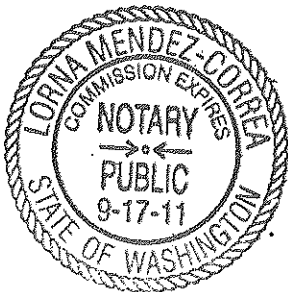
Dated: 7/1/2010

Name: REBECCA S. LAWSON

Title: SWRO TSP SECTION MANAGER

STATE OF WASHINGTON )  
COUNTY OF Thurston ) ss.

On this 1st day of July, 20 10, I certify that Rebecca Lawson is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned therein.



Lorna Mendez-Correa  
Notary Public in and for the State of Washington,  
Print Name Lorna Mendez-Correa  
My commission expires 9-17-11

EXHIBIT A  
1815 EAST D STREET

Description of the Property

LOTS 1, 2, 3, 4 AND 5, BLOCK B, CORRECTED PLAT OF NORTHERN PACIFIC EAST "D" STREET INDUSTRY SITES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 31, RECORDS OF PIERCE COUNTY AUDITOR.

TOGETHER WITH THAT PORTION OF EAST "D" STREET, AS VACATED BY ORDINANCE NO. 17999 AND RECORDED UNDER RECORDING NUMBER 2133997, ABUTTING LOT 1.

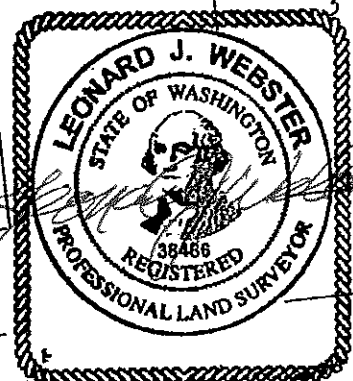
SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

EAST "D" STREET

NOT TO SCALE

EAST 18TH STREET

Area C



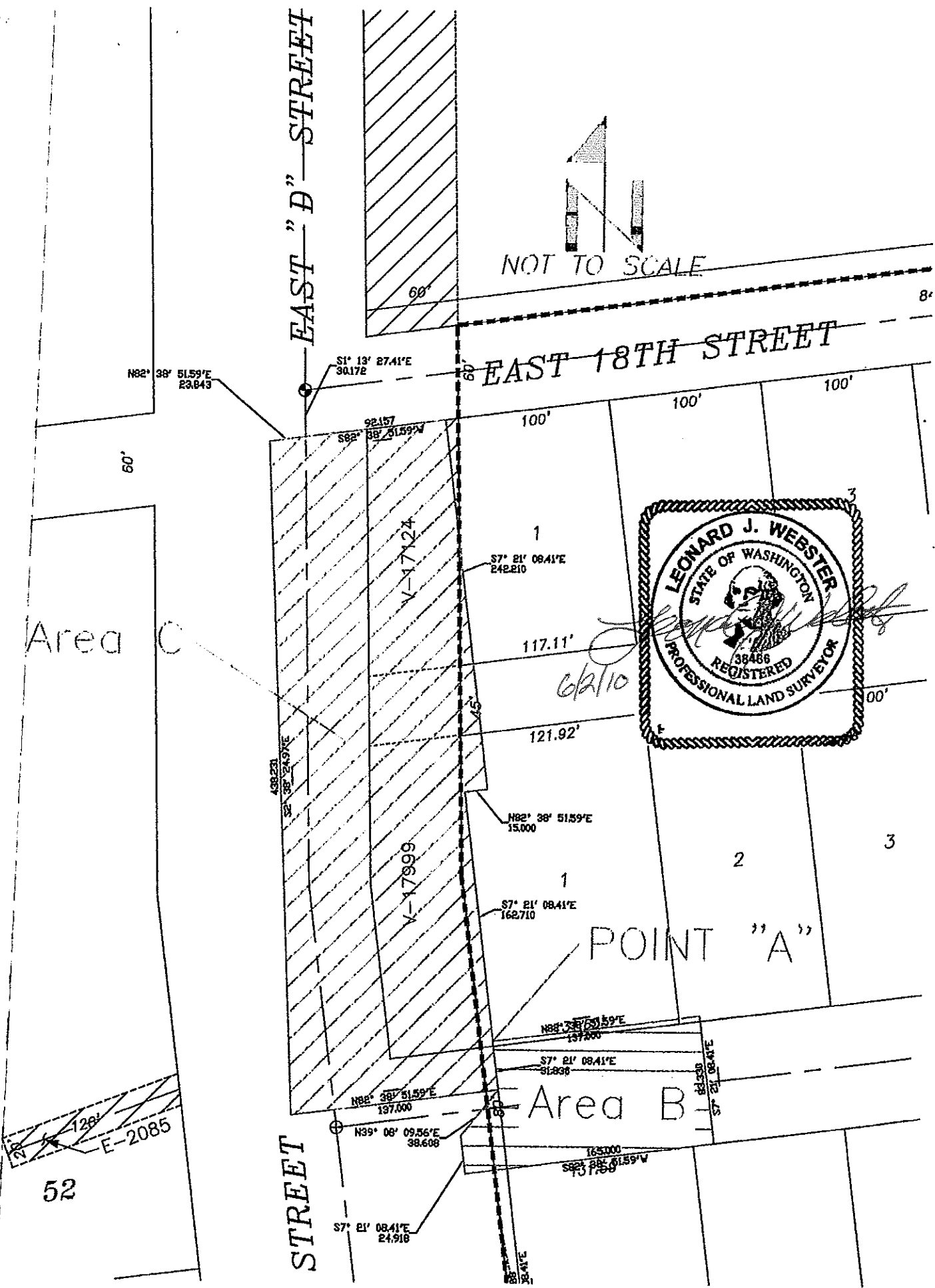
POINT "A"

Area B

52

E-2085

STREET



N82° 38' 51.59"E  
23.845

S1° 13' 27.41"E  
30.178

S82° 38' 51.59"W  
92.157

S7° 21' 08.41"E  
242.210

117.11'

121.92'

N82° 38' 51.59"E  
15.000

S7° 21' 08.41"E  
162.710

N82° 38' 51.59"E  
137.000

S7° 21' 08.41"E  
31.838

N82° 38' 51.59"E  
137.000

N39° 08' 09.56"E  
38.608

S7° 21' 08.41"E  
24.918

S82° 38' 51.59"W  
131.859

60'

100'

100'

100'

100'

2

3

60°

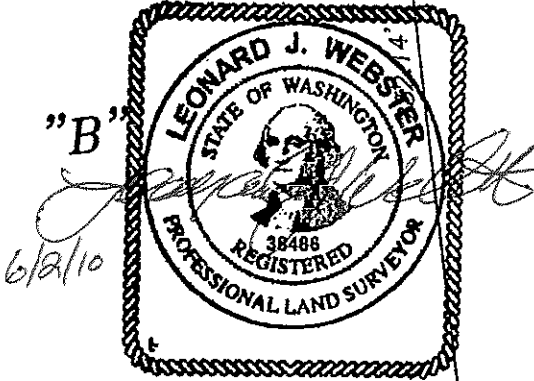
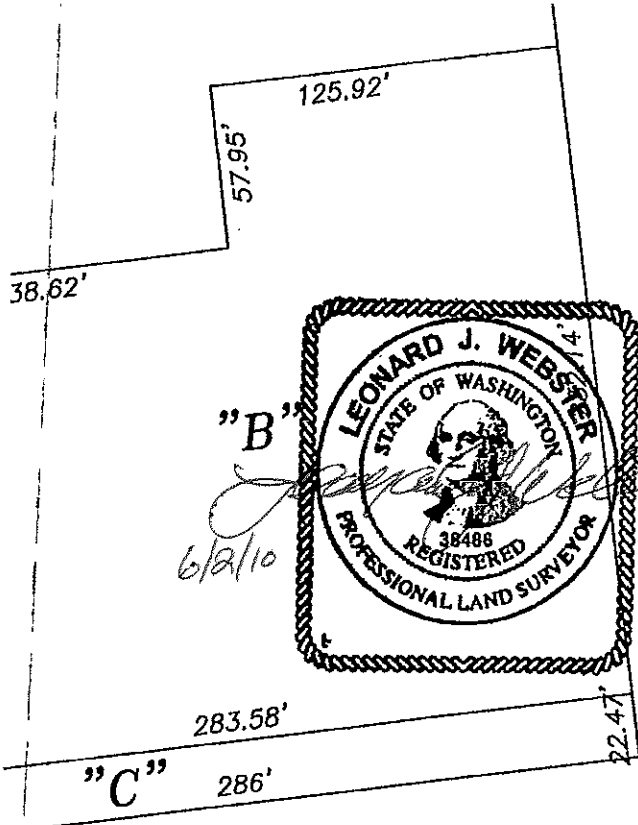
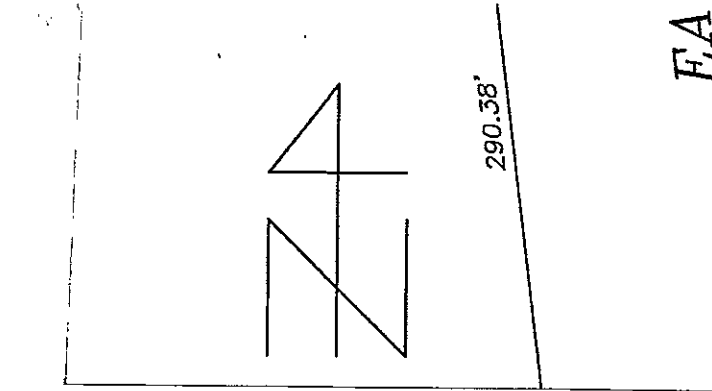
8°

128°

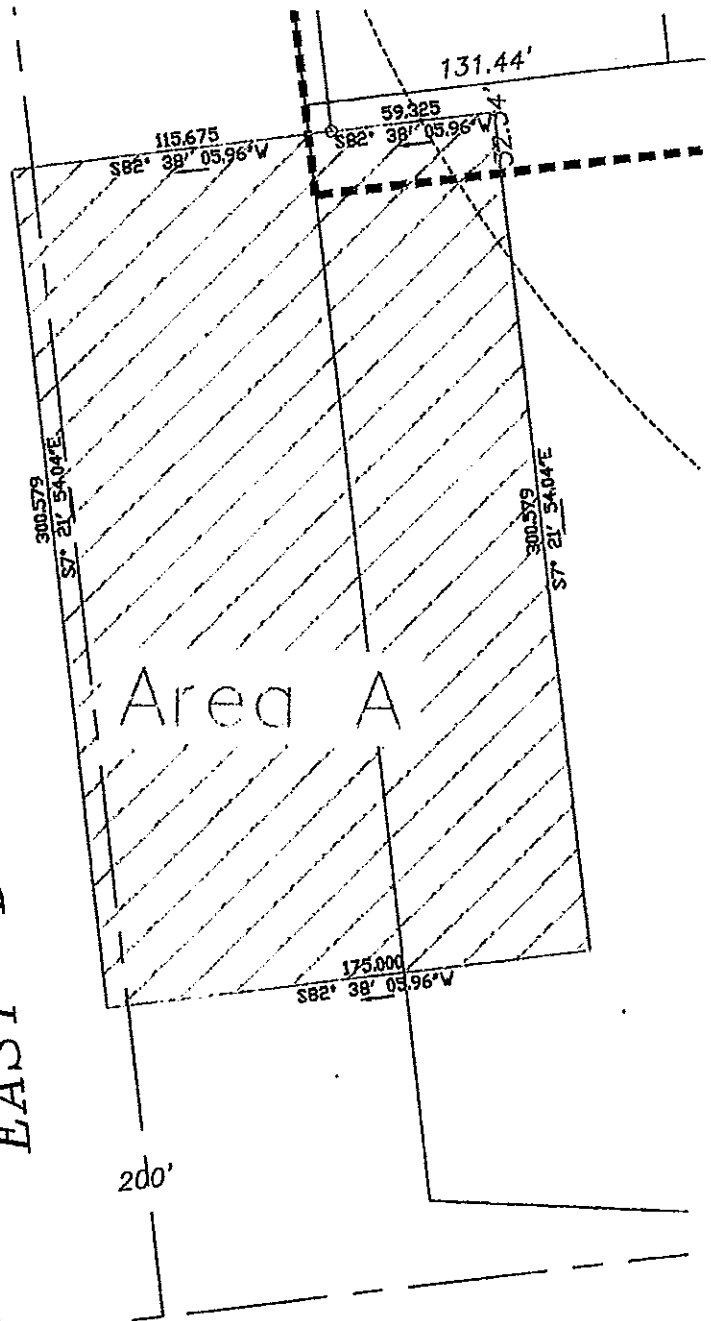
88° 30' 41"E  
38.418

NOT TO SCALE

EA



EAST "D" STREET



EAST 21ST STREET

