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 9 California Department of Toxic Substances Control  
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10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 STATE OF CALIFORNIA DEPARTMENT  
 14 OF TOXIC SUBSTANCES CONTROL, et  
 al.,

15 Plaintiffs,

16 v.

17 W. DANIEL ISAACSON, et al.,

18 Defendants.

19 AND RELATED CLAIMS.

Case No.: CV04-2145 DSF  
 (VBKx)

**[PROPOSED] CONSENT  
 DECREE BETWEEN  
 PLAINTIFFS AND  
 DEFENDANTS MALCOLM  
 FIELD AND ABBY FIELD**

## INTRODUCTION

1  
2           1.     Plaintiffs the State of California Department of Toxic Substances  
3 Control and the Hazardous Substances Account (“Plaintiffs”) have filed a  
4 complaint in this matter pursuant to section 107(a) of the Comprehensive  
5 Environmental Response, Compensation, and Liability Act, 42 U.S.C. section  
6 9601 et seq. (“CERCLA”), against several parties, including defendant Malcolm  
7 Field (“Mr. Field”). Plaintiffs’ complaint seeks the recovery of costs incurred or  
8 to be incurred by Plaintiffs in responding to releases and/or threatened releases of  
9 hazardous substances at or from the property located at 617 East 56th Street, Los  
10 Angeles, California 90011 (“Hard Chrome Property”). The complaint also seeks  
11 declaratory relief under CERCLA section 113(g)(2), alleging that the defendants  
12 are jointly and severally liable for future response costs to be incurred by Plaintiffs  
13 to address the extent of releases of hazardous substances at or from the Hard  
14 Chrome Property (“Site”).

15           2.     Mr. Field filed counterclaims against Plaintiffs asserting causes of  
16 action for cost recovery under CERCLA sections 107 and 113, contribution under  
17 Cal. Health and Safety Code section 25363, damages under common law theories  
18 of negligence, equitable contribution, equitable indemnity, and declaratory relief.

19           3.     Plaintiffs have concurrently filed a stipulation seeking leave to amend  
20 the complaint to add Abby Field (“Mrs. Field”) as a defendant in this action, and  
21 Plaintiffs have lodged an amended complaint. If the Court does not allow  
22 Plaintiffs to amend the complaint, then the obligations and benefits of this Consent  
23 Decree do not apply to Mrs. Field.

24           4.     Plaintiff State of California Department of Toxic Substances Control  
25 (“DTSC”) is the California state agency with primary jurisdiction over the actions  
26 taken in response to the release and threatened release of hazardous substances at  
27 the Site.

28

1 5. Plaintiffs' complaint alleges, in relevant part, that:

2 a. Mr. Field owned and/or operated a chrome plating business on the  
3 Hard Chrome Property from approximately 1973 to 1977.

4 b. Mr. Field was an owner and/or operator of the Hard Chrome  
5 Property at the time hazardous substances were released into the  
6 environment at or from the Hard Chrome Property, including into the soil  
7 and groundwater.

8 c. DTSC began to investigate the release and threatened release of  
9 hazardous substances at the Site in 1992. Investigation of the Site by DTSC  
10 as well as by consultants for various potentially responsible parties  
11 established that hazardous substances, including chromium, hexavalent  
12 chromium, trichloroethylene ("TCE"), perchloroethylene ("PCE") and lead,  
13 were present in the soil and/or groundwater at the Site.

14 d. On or about March 7, 1997, DTSC issued an Imminent and  
15 Substantial Endangerment Determination and Remedial Action Order ("ISE  
16 Order") relating to the Site, ordering several potentially responsible parties,  
17 including Mr. Field, to investigate and remediate the Site.

18 e. Mr. Field failed to complete the investigation and remediation  
19 of releases of hazardous substances at the Site as required by the ISE Order.

20 f. Removal and remedial action was and is necessary to remove  
21 and remedy the hazardous substances released and threatened to be released  
22 at and from the Hard Chrome Property.

23 g. DTSC has incurred, and will continue to incur, response costs  
24 conducting and overseeing activities in response to the release and/or  
25 threatened release of hazardous substances at the Site, including  
26 contamination of the soil and groundwater. Those activities have included  
27 and will include: soil and groundwater sampling at the Site; interim  
28 remedial measures; preparation of the Remedial Investigation Report, the

1 Feasibility Study Report and the draft and final Remedial Action Plan;  
2 remediation of the Site; and ongoing operation and maintenance of the Site.

3 h. Response Costs related to the Site continue to be incurred by  
4 Plaintiffs, and substantial Response Costs remain unpaid.

5 i. Mr. Field is jointly and severally liable under CERCLA for all of  
6 Plaintiffs' past and future Response Costs incurred at the Site.

7  
8 6. As of December 31, 2008, Plaintiffs' unreimbursed Response Costs  
9 incurred at the Site are in excess of \$ 3.4 million. Plaintiffs will continue to incur  
10 future Response Costs conducting or overseeing removal and/or remedial  
11 activities in response to the release and threatened release of hazardous substances  
12 at the Site.

13 7. Plaintiffs, Mr. Field, and Mrs. Field ("the Parties") agree to settle this  
14 action without further litigation and without the admission or adjudication of any  
15 issue of fact or law.

16 8. The Parties agree and this Court, by entering this Consent Decree finds,  
17 that this Consent Decree has been negotiated by the Parties in good faith, that  
18 settlement of this matter will avoid prolonged and complicated litigation, and that  
19 this Consent Decree is fair, reasonable, and in the public interest.

20 **THEREFORE**, the Court, with the consent of the Parties to this Consent  
21 Decree, hereby **ORDERS, ADJUDGES, and DECREES**, as follows:

22  
23 **I. JURISDICTION**

24 1. The Court has subject matter jurisdiction over the matters alleged in  
25 this action pursuant to 28 U.S.C. section 1331 and 42 U.S.C. section 9613(b) and  
26 personal jurisdiction over each of the Parties. Venue is appropriate in this district  
27 pursuant to 28 U.S.C. section 1391(b) and 42 U.S.C. section 9613(b). The Court  
28 has the authority to enter this Consent Decree as an order of the Court.

1 **II. PARTIES BOUND**

2 2. This Consent Decree shall apply to, be binding upon, and inure to the  
3 benefit of the Parties, and their representatives, successors, heirs, legatees, and  
4 assigns.

5  
6 **III. SETTLEMENT OF DISPUTED CLAIMS**

7 3. This Consent Decree resolves the alleged liability of Mr. Field and  
8 Mrs. Field (“the Fields”) under section 107 of CERCLA, 42 U.S.C. section 9607,  
9 in exchange for payments by the Fields to reimburse a portion of Plaintiffs’  
10 response costs incurred and to be incurred at or in connection with the Site.

11 4. By entering into this Consent Decree, the Parties resolve Plaintiffs’  
12 claims against the Fields with respect to the releases and/or threatened releases of  
13 hazardous substances at the Site, including the groundwater. The Parties also  
14 resolve Mr. Field’s counterclaims against the Plaintiffs.

15 5. This Consent Decree represents a fair, reasonable and equitable  
16 settlement of Plaintiffs’ claims against the Fields.

17 6. This Consent Decree was negotiated and executed by Plaintiffs and  
18 the Fields in good faith to avoid prolonged and expensive litigation, and without  
19 any admission or finding as to fault or liability for any purpose, and to further the  
20 public interest.

21 7. Except as otherwise provided in Mr. Field’s Answer to Plaintiffs’  
22 complaint, the Fields do not admit any of the allegations of the complaint.  
23 Nothing in this Consent Decree shall be construed as an admission of any issue of  
24 law or fact or of any violation of law.

25 8. Except as otherwise provided in Plaintiffs’ Reply to Mr. Field’s  
26 counterclaims, Plaintiffs do not admit any of the allegations of the counterclaims.  
27 Nothing in this Consent Decree shall be construed as an admission of any issue of  
28 law or fact or of any violation of law.

1 9. Except as otherwise expressly provided in this Consent Decree, this  
2 Consent Decree shall not prejudice, waive, or impair any right, remedy or defense  
3 that the Fields may have in any other or further legal proceeding.

4 10. Except as otherwise expressly provided in this Consent Decree, the  
5 Parties consent to, and shall not challenge, entry of this Consent Decree or this  
6 Court’s jurisdiction to enter and enforce this Consent Decree.

7 11. Upon approval and entry of this Consent Decree by the Court, this  
8 Consent Decree shall constitute a final judgment between and among Plaintiffs  
9 and the Fields.

10 12. Each of the Parties to this Consent Decree will bear his, her or its own  
11 attorneys' fees and litigation costs.

12 **IV. DEFINITIONS**

13 13. Unless otherwise expressly provided herein, all terms used in this  
14 Consent Decree that are defined in CERCLA or in the regulations promulgated  
15 under CERCLA, shall have the meaning assigned to them in the statute or  
16 regulations.

17 14. “DTSC” shall mean the State of California Department of Toxic  
18 Substances Control, and its predecessors and successors.

19 15. “The Fields” shall mean Defendants Malcolm Field and Abby Field.

20 16. The “Hard Chrome Property” shall mean the property located at 617  
21 East 56th Street, Los Angeles, California 90011, including Lots 69 and 70  
22 (Assessor's Parcel Nos. 5103-012-020 and 5103-012-021), Tract No. 5144, in the  
23 City of Los Angeles, as per the tract map recorded in Book 54, Page 91 of the  
24 Maps in the office of the Los Angeles County Recorder. An assessor’s parcel map  
25 of the property is attached hereto as Exhibit 1.

26 17. The “Hard Chrome Site” or “Site,” shall refer to the extent of the  
27 releases of hazardous substances at or from the Hard Chrome Property, including  
28 those hazardous substances in the soil and groundwater.

1 18. "Parties" shall mean Plaintiffs, Malcolm Field and Abby Field.

2 19. "Plaintiffs" shall mean the State of California Department of Toxic  
3 Substances Control and the Hazardous Substance Account.

4 20. "Response Costs" shall mean all costs of "removal", "remedial action"  
5 or "response" (as those terms are defined by section 101 of CERCLA, 42 U.S.C.  
6 section 9601), incurred or to be incurred by Plaintiffs in response to the release or  
7 threatened release of hazardous substances at the Site, including in the soils and  
8 groundwater. Said term shall include, but not be limited to, direct labor costs;  
9 contractor, consultant and expert costs; travel and any other out-of-pocket  
10 expenses; the costs of identifying, developing evidence against, and pursuing  
11 claims against persons or entities liable for the release or threatened release of  
12 hazardous substances at the Site; indirect costs; oversight costs; applicable interest  
13 charges; and attorneys' fees.

14

15 **V. FIELDS' SETTLEMENT OBLIGATIONS**

16 21. The obligations of Malcolm Field and Abby Field under this Consent  
17 Decree are joint and several.

18 22. Payment. The Fields shall pay to Plaintiffs the sum of one hundred  
19 and fifty thousand dollars (\$150,000). The payment shall be due within thirty (30)  
20 days of the Effective Date of the Consent Decree.

21 23. The payment shall be made by certified or cashier's check made  
22 payable to Cashier, California Department of Toxic Substances Control, and shall  
23 bear on its face both the docket number of this proceeding and the phrase "Site  
24 Code 300457." That payment shall be sent to:

25 Department of Toxic Substances Control  
26 Accounting/Cashier  
27 1001 I Street  
28 P.O. Box 806  
Sacramento, CA 95812-0806

1 A copy of the check shall be mailed to:

2 Tedd Yargeau, Project Manager  
3 Site Mitigation Cleanup Operations Branch  
4 Southern California Region  
5 California Department of Toxic Substances Control  
6 9211 Oakdale Avenue  
7 Chatsworth, CA 91311-6505

8 24. Dismissal of Counterclaims. Within fifteen (15) days of the Effective  
9 Date of this Consent Decree, Mr. Field shall file with the Court a Request for  
10 Dismissal with prejudice of Mr. Field's Counterclaims against Plaintiffs in this  
11 action.

## 12 **VI. ACCESS TO INFORMATION**

13 25. Availability of Documents. The Fields shall provide to Plaintiffs,  
14 upon request, copies of all records, documents and information within his  
15 possession or control or that of his agents relating to: a) the ownership, operation  
16 or control of the Hard Chrome Property; b) the ownership, generation, treatment,  
17 transportation or disposal of hazardous substances in connection with the Hard  
18 Chrome Property; c) releases and/or threatened releases of hazardous substances at  
19 the Site, including the soils and groundwater; or d) removal, remedial or response  
20 actions at the Site.

21 26. The Fields agree that, unless they receive prior written consent from  
22 Plaintiffs to dispose of the records, documents or other information, neither they  
23 nor their agents will alter, mutilate, discard, destroy or otherwise dispose of  
24 records, documents or other information referred to in paragraph 25 of this  
25 Consent Decree. In the event that the Fields intend to dispose of documents or  
26 information referred to in paragraph 25 of this Consent Decree, the Fields will  
27 provide such documents or information to Plaintiffs.

28 27. Confidential and Privileged Documents. The Fields may assert  
confidentiality claims covering part or all of the documents or information



1 submitted to Plaintiffs under this Consent Decree to the extent permitted by and in  
2 accordance with California Health and Safety Code section 25358.2. Documents  
3 or information determined to be confidential by Plaintiffs will be afforded the  
4 protection specified in California Health and Safety Code section 25358.2. The  
5 Fields may also assert that certain documents, records and other information are  
6 privileged under the attorney-client privilege or any other privilege recognized by  
7 federal law. If the Fields asserts such a privilege in lieu of providing documents,  
8 the Fields shall provide Plaintiffs with description of the document withheld and  
9 basis for asserting such privilege.

## 10 11 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

12 28. In consideration of the actions that will be performed and the payment  
13 that will be made by the Fields under the terms of this Consent Decree, and except  
14 as expressly provided in Section VIII (Reservation of Rights) of this Consent  
15 Decree, Plaintiffs covenant not to sue the Fields pursuant to CERCLA, the  
16 California Hazardous Substances Account Act (“HSAA”), California Health and  
17 Safety Code section 25300 et seq., or any other statute, regulation, or common law  
18 theory to: (1) recover Plaintiffs' Response Costs; or (2) require response actions,  
19 including removal or remedial actions in response to the release or threatened  
20 release of hazardous substances at the Site, including the soils and groundwater.  
21 This covenant not to sue is conditioned upon the complete and satisfactory  
22 performance by the Fields of all of their obligations under this Consent Decree.

## 23 24 **VIII. RESERVATION OF RIGHTS**

25 29. The covenant not to sue set forth in Section VII of this Consent  
26 Decree does not pertain to any matters other than those expressly specified therein.  
27 Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights,  
28 claims, and causes of action Plaintiffs may have against the Fields with respect to

1 all other matters. This covenant not to sue extends only to the Fields and does not  
2 extend to any other person.

3 30. Except as expressly provided in this Consent Decree, nothing in the  
4 Consent Decree is intended or shall be construed to preclude Plaintiffs from  
5 exercising their authority under any law, statute or regulation. Furthermore,  
6 except as expressly provided in this Consent Decree, nothing in this Consent  
7 Decree is intended, nor shall be construed, to preclude any state agency,  
8 department, board or entity, other than Plaintiffs, or any federal or local agency,  
9 department, board or entity, from exercising its authority under any law, statute or  
10 regulation.

11 31. Notwithstanding any other provision in the Consent Decree, Plaintiffs  
12 reserve the right to institute proceedings in this action or in a new action, seeking  
13 to compel the Fields, or either of them, to perform additional response activities at  
14 the Site and/or to reimburse Plaintiffs for additional Response Costs, if:

- 15 (a) information previously unknown to DTSC is received after the  
16 entry of the Consent Decree, and this information indicates that  
17 the information provided by the Fields regarding their  
18 involvement in the Site is false or, in a material respect,  
19 inaccurate;
- 20 (b) conditions previously unknown to Plaintiffs, for which the  
21 Fields, or either of them, are liable under any statute or law, are  
22 discovered at the Site after the entry of the Consent Decree, and  
23 these previously unknown conditions indicate that a hazardous  
24 substance has been or is being released into the environment;
- 25 (c) the Fields, or either of them, or their agents, successors,  
26 representatives, heirs or assigns fail to comply with the Fields'  
27 obligations under the Consent Decree; or

28

1 (d) the Fields, or either of them, are subject to criminal liability as  
2 to matters relating to the Site.  
3

4 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

5 32. The Fields covenant not to sue, and agree not to assert any claims or  
6 causes of action against Plaintiffs, or their contractors or employees, that arise out  
7 of the transaction or occurrence that is the subject matter of Plaintiffs' complaint or  
8 Mr. Field's counterclaims, or for any injuries, losses, costs, or damages caused or  
9 incurred as a result of the performance of the requirements of this Consent Decree.  
10

11 **X. CONTRIBUTION PROTECTION**

12 33. As of the Effective Date of this Consent Decree, and provided that the  
13 Fields perform all of their obligations under this Consent Decree, the Fields shall  
14 be entitled to protection against all claims for contribution, pursuant to section  
15 113(f) of CERCLA, 42 U.S.C. section 9613(f), for "Matters Addressed" by this  
16 Consent Decree, to the fullest extent permitted by law. The "Matters Addressed"  
17 by this Consent Decree are the response actions taken or to be taken by Plaintiffs  
18 or any other person or entity, in response to the release or threatened release of  
19 hazardous substances at the Site, including the soil and groundwater, and all  
20 Response Costs incurred or to be incurred by Plaintiffs or any other person or  
21 entity, in response to the release or threatened release of hazardous substances at  
22 the Site, including hazardous substances in the soil and groundwater.

23 34. This Consent Decree shall, to the fullest extent permitted by law,  
24 prevent the Fields from being held liable to any third person or entity not a party to  
25 this Consent Decree for any claims for contribution (without regard to how the  
26 claim for contribution is described or denominated), indemnity or the like, asserted  
27 under any federal, state, or common law, arising out of or related to any response,  
28 cleanup, removal, or remedial actions or costs, which such third persons or entities

1 have taken, incurred, or defrayed or may take, incur, or defray at any time in  
2 response to the release or threatened release of hazardous substances at the Site,  
3 including contamination in the soil and groundwater.

4 35. Except as otherwise specifically provided, nothing in this Consent  
5 Decree is intended, or shall be construed, to waive, release or otherwise affect any  
6 right, claim, or cause of action held by Plaintiffs or the Fields against, or to  
7 provide a covenant not to sue to, any third person or entity not a party to this  
8 Consent Decree, or to in any way limit, restrict, or impair the right of Plaintiffs or  
9 the Fields to assert rights, claims, causes of actions and defenses against any third  
10 person or entity not a party to this Consent Decree, including, without limitation,  
11 the right to seek payment, reimbursement, contribution, or indemnity from such  
12 persons or entities for obligations incurred or to be incurred under this Consent  
13 Decree. The Parties specifically reserve any rights, claims, or causes of action  
14 they might have against any third person or entity not a party to this Consent  
15 Decree.

## 16 **XI. NOTIFICATION**

17 36. Notification to or communication among the Parties as required or  
18 provided for in this Consent Decree, except as provided by Paragraph 23 of this  
19 Consent Decree, shall be addressed as follows:

20 For Plaintiffs:

21 Tedd Yargeau, Project Manager  
22 Site Mitigation Cleanup Operations Branch  
23 Southern California Region  
24 California Department of Toxic Substances Control  
25 9211 Oakdale Avenue  
26 Chatsworth, CA 91311-6505

27 For Defendants Malcolm and Abby Field:

28 Patrick L Rendon, Esq.  
Lamb & Kawamkami LLP  
333 South Grand Avenue, Ste. 4200  
Los Angeles, CA 90071  
Email: prendon@lamb-kawakami.com

1 **XII. GENERAL TERMS**

2 37. Modification of Consent Decree. This Consent Decree may be  
3 modified only upon the written approval of the Parties and the Court.

4 38. Integration. This Consent Decree, including the exhibits incorporated  
5 herein by reference, constitutes the entire agreement among the Parties and may  
6 not be amended or supplemented except as provided for in this Consent Decree.

7 39. Lodging/Public Comment. This Consent Decree shall be lodged with  
8 the Court for a period of not less than thirty (30) days for public notice and  
9 comment. Plaintiffs shall file with the Court any written comments received and  
10 Plaintiffs' responses thereto. Plaintiffs reserve the right to withdraw or withhold  
11 its consent if comments regarding the Consent Decree disclose facts or  
12 considerations that indicate that this Consent Decree is inappropriate, improper or  
13 inadequate. The Fields consent to entry of this Consent Decree without further  
14 notice.

15 40. Retention of Jurisdiction. The Court shall retain jurisdiction of this  
16 matter for the purpose of enforcing the terms of this Consent Decree until the  
17 requirements of this Consent Decree have been fully satisfied.

18 41. Effective Date. The effective date of this Consent Decree shall be the  
19 date of entry of this Consent Decree by this Court.

20 42. Counterparts. This Consent Decree may be executed in two or more  
21 counterparts, each of which shall be deemed an original, but all of which together  
22 shall constitute one and the same instrument.

23 43. Signatories. Each signatory to this Consent Decree certifies that he or  
24 she is fully authorized by the Party he or she represents to enter into this Consent  
25 Decree, to execute it on behalf of the Party represented and legally to bind that  
26 Party.

27 //

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**XIII. APPROVALS OF PARTIES**

Plaintiffs consent to this Consent Decree by their duly authorized representative as follows:

STATE OF CALIFORNIA DEPARTMENT  
OF TOXIC SUBSTANCES CONTROL and  
HAZARDOUS SUBSTANCE ACCOUNT

Dated: 1/29/09

By: *Rita Kamat*  
Rita Kamat, Unit Chief  
Site Mitigation Cleanup Operations Branch  
Southern California Region  
California Department of  
Toxic Substances Control

Malcolm Field consents to this Consent Decree as follows:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
MALCOLM FIELD

Abby Field consents to this Consent Decree as follows:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
ABBY FIELD

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: 8/7/09

*Dale S. Fischer*  
HON. DALE S. FISCHER  
UNITED STATES DISTRICT JUDGE

**XIII. APPROVALS OF PARTIES**

1  
2 Plaintiffs consent to this Consent Decree by their duly authorized  
3 representative as follows:

4  
5 STATE OF CALIFORNIA DEPARTMENT  
6 OF TOXIC SUBSTANCES CONTROL and  
7 HAZARDOUS SUBSTANCE ACCOUNT

8 Dated: \_\_\_\_\_

9 By: \_\_\_\_\_  
10 Rita Kamat, Unit Chief  
11 Site Mitigation Cleanup Operations Branch  
12 Southern California Region  
13 California Department of  
14 Toxic Substances Control

15 Malcolm Field consents to this Consent Decree as follows:

16 Dated: 1-21-09

17 By:   
18 MALCOLM FIELD

19 Abby Field consents to this Consent Decree as follows:

20 Dated: 1/21/09

21 By:   
22 ABBY FIELD

23 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

24 Dated: \_\_\_\_\_

25 \_\_\_\_\_  
26 HON. DALE S. FISCHER  
27 UNITED STATES DISTRICT JUDGE

# **Exhibit 1**



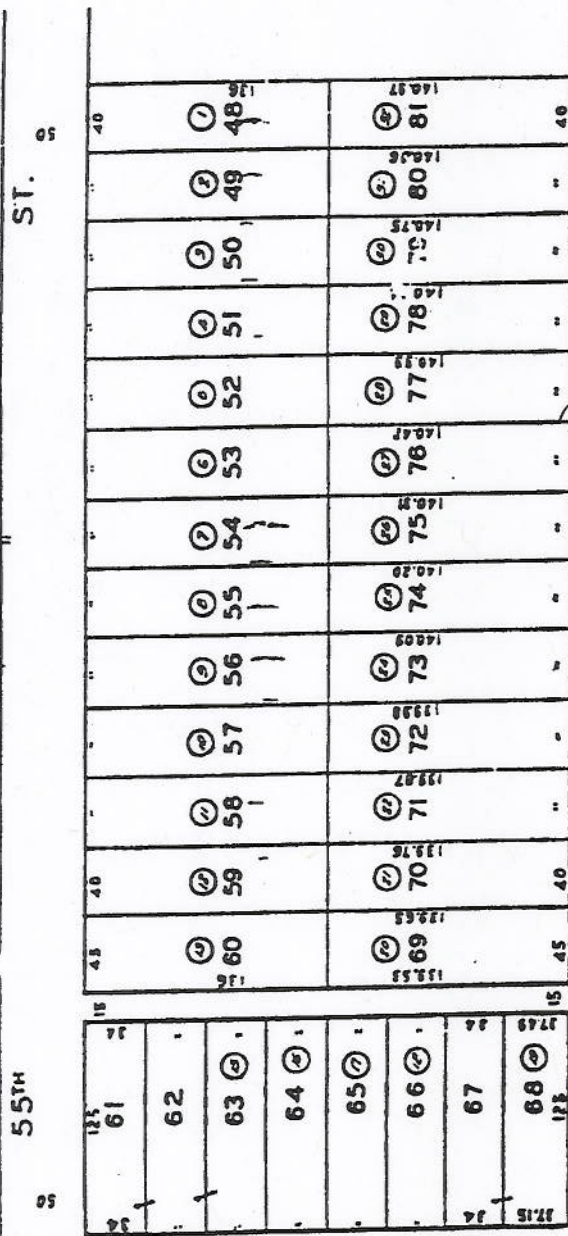
17-001-0047318

1.800.577.9663

Revised 9-10-00

Real Estate Information

5103 12  
SCALE 1" = 60'



55TH ST.

56TH ST.

TRACT NO. 5144  
M.B.54-91

ASTORIAN'S MAP  
COUNTY OF LOS ANGELES, CALIF.

30007

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