

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
)	
UAE POWER OPERATIONS CORPORATION)	RTN 3-00352
)	

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (this "Agreement") is made and entered into by and between the Office of the Attorney General (the "OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and UAE Power Operations Corporation ("UAE Power") (hereinafter collectively referred to as the "Parties").

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of 121 Maple Street, Lowell, MA, into a nominal 96 megawatt ("MW") gas turbine electric generating facility (the "UAE Power Expansion Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the UAE Power Expansion Project can contribute to the physical and economic revitalization of an area of Lowell, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to UAE Power and is predicated upon UAE Power's compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage under common law, except for liability arising under a contract.

D. The Parties agree that UAE Power's ability to conduct the UAE Power Expansion Project, as proposed herein, is contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed project for such approval processes.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Lowell, MA.

II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenants Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3), which provides liability relief under G.L. c. 21E, as amended.

B. UAE Power is a corporation located at 50 Tice Boulevard, Woodcliff Lake, New Jersey, with operations also located at 2 Tanner Street, Lowell, MA. UAE Power is duly organized and exists pursuant to the laws of Delaware. In accordance with this Agreement, UAE Power shall undertake the UAE Power Expansion Project as discussed in Section IV, below.

III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3) and 940 CMR 23.00: Brownfields Covenants Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The UAE Power Expansion Project involves a 4.33-acre parcel on Maple Street in Lowell, triangular in shape (the "Expansion Property"). The Expansion Property is more particularly depicted in Exhibit 1, attached hereto and incorporated into this Agreement. UAE Power intends to redevelop the Expansion Property by conducting the UAE Power Expansion Project, which involves remediation of the Expansion Property and the construction of a nominal 96 MW gas turbine electric generating facility, using clean burning natural gas-fired aeroderivative combustion turbines designed with state-of-the-art emissions control technology.

D. A release of oil and/or hazardous material subject to G.L. c. 21E and the MCP has occurred at the Silresim Chemical Corporation Superfund Site, located at 86 Tanner Street, Lowell, MA. The Site has been assigned Department of Environmental Protection ("DEP") release tracking number 3-00352 ("DEP RTN 3-00352"). For purposes of this Agreement, the "Site" is the release of oil and/or hazardous material at the Silresim Superfund Site, as further defined in 310 CMR 40.0006, and as described and delineated in the EPA Record of Decision ("ROD") for the Silresim Superfund site dated September 19, 1991, or in an amended ROD with which DEP has concurred.

E. Pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9600, *et seq.* ("CERCLA") and the National Contingency Plan, 40

C.F.R. Part 300 *et seq.*, (“NCP”), the Environmental Protection Agency (“EPA”) is overseeing the United States Army Corps of Engineers (“the Corps”) in its performance of remedial measures at the Site pursuant to a Consent Decree entered in the United States District Court for the District of Massachusetts on October 12, 1993 regarding United States of America and the Commonwealth of Massachusetts v. General Chemical Corp., et al., Civil Action Nos. 93-10923T and 93-10925T. Pursuant to 310 CMR 40.0110, the response actions being conducted at the Site, with which DEP has concurred, are subject to CERCLA, and are adequately regulated for the purpose of compliance with 310 CMR 40.0000.

F. A portion of the Expansion Property is part of the Site. The groundwater at the Site is primarily contaminated with volatile organic compounds (“VOCs”). The Site groundwater plume flows under a portion of the Expansion Property, as delineated on the sketch attached hereto and incorporated herein as Exhibit 2.

G. The Site soil is contaminated with a mix of organics and inorganic compounds. A temporary cap to prevent direct contact with contaminated soils and to prevent the off-gasing of VOCs to the atmosphere covers the majority of the Site. Portions of the Site and adjacent properties are covered with crushed stone to prevent direct contact with contaminated soil. No action has been taken to address potentially contaminated soil on the Expansion Property. Soil sampling information gathered during the Remedial Investigation in the late 1980’s and more recent sampling, indicate soil contamination on the Expansion Property. However, it is not clear whether the contamination is Silresim-related or is the result of other activities. The portion of the Expansion Property potentially impacted by the Site soil contamination is delineated in the sketch attached hereto and incorporated herein as Exhibit 3.

H. Pursuant to 310 CMR 40.0111, DEP deems the response actions conducted at the Site in accordance with the September 19, 1991 ROD to be adequately regulated for purposes of compliance with 410 CMR 40.0000. As such, it is not necessary for a Permanent Solution, Remedy Operation Status or Temporary Solution to be documented pursuant to the MCP. However, for purposes of this Agreement, the groundwater cleanup being conducted at the Site pursuant to the ROD is the equivalent of a Temporary Solution under G.L. c. 21E and the MCP.

IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, for purposes of this Agreement, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY UAE POWER

1. UAE Power represents that it is not, at the time of execution of this Agreement, a person with potential liability for the Site pursuant to G.L. c. 21E . UAE Power further represents that it is not now nor has it ever been previously affiliated with any person

having such potential liability at the Site, except as set forth below. Thus, UAE Power represents that it is an Eligible Person. UAE Power also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that UAE Power's involvement with the Site has been limited to the following:

- a. Evaluating the Expansion Property for purposes of acquiring the Expansion Property;
- b. Negotiating to acquire the Expansion Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects and various permitting issues with respect to the Expansion Property.

2. UAE Power represents that none of the activities listed in Section IV, Paragraph A, subparagraph 1, has caused or contributed to the release or threatened release of oil and/or hazardous material at the Site under G.L. c. 21E.

3. UAE Power agrees to the following terms and conditions:

a. Cleanup:

i. With respect to the soil contamination, UAE Power shall achieve and maintain a Permanent Solution at the Expansion Property in accordance with G.L. c. 21E and the MCP. If it is determined that the soil contamination is part of the Site, UAE Power shall perform, or cause to be performed, remedial actions pursuant to CERCLA, the NCP and any amended ROD or Explanation of Significant Difference with which DEP concurs. If it is determined that the soil contamination is not part of the Site, UAE Power shall comply with the release notification provisions, obtain a release tracking number ("MCP Site"), and shall achieve and maintain a Permanent Solution for the MCP Site in accordance with G.L. c. 21E and the MCP.

ii. With respect to the Site groundwater contamination, UAE Power shall cooperate fully with the Corps, EPA and DEP, with the Corps's, EPA's and DEP's achieving and maintaining the cap and assisting and cooperating in all long term monitoring activities related to the Expansion Property, including Five Year Reviews by EPA.

iii. UAE Power shall cooperate fully with DEP, including, without limitation, providing prompt and reasonable access to the Expansion Property to DEP, EPA and the Corps for any purpose consistent with CERCLA, the NCP and G.L. c. 21E and the MCP.

iv. UAE Power shall comply with the release notification provisions established by G.L. c. 21E and the MCP;

v. UAE Power shall respond in a reasonably timely manner to any request made by DEP or the OAG to produce information as required pursuant to G.L. c. 21E;

vi. Upon obtaining knowledge of a release or threat of release of oil and/or hazardous material, that requires notification pursuant to G.L. c. 21E and the MCP, UAE Power shall take reasonable steps: (A) to prevent the exposure of people to oil and/or hazardous material by fencing or otherwise preventing access to the affected portion of the Expansion Property; and (B) to contain any further release or threat of release of oil and/or hazardous material from a structure or container;

vii. UAE Power shall conduct response actions at the Expansion Property in accordance with G.L. c. 21E and the MCP and in accordance with the Standard of Care, as defined in G.L. c. 21E, §2; and

viii. UAE Power shall conduct such public involvement activities as required by 940 CMR 23.00.

b. Redevelopment: UAE Power shall construct a nominal 96 MW gas turbine electric generating facility on the Expansion Property. Sketches of UAE Power's proposed conceptual plans are attached as Exhibits 4a and 4b.

4. UAE Power is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

B. THE BROWNFIELDS COVENANT NOT TO SUE

1. UAE Power

In consideration of the Representations and Commitments by UAE Power set forth in Section IV, Paragraph A of this Agreement, and subject to UAE Power's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue or take administrative action against UAE Power, pursuant to G.L. c. 21E, for response action costs, contribution, or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Covenant shall vest on the effective date of this Agreement as defined in Section IV, Paragraph D, subparagraph 5. This Agreement shall not affect any liability established by contract. For purposes of this Agreement, the Property Addressed shall mean the Site as defined in Section III, Paragraph E, and the Matters Addressed shall be defined

as: (1) those releases of oil and/or hazardous material at the Site that have been adequately regulated and will be documented in the Certification of Completion of Remedial Action for the Site (“Certification of Completion”); and (2) with respect to soil contamination not part of the Site, defined as the MCP Site in Section IV, Paragraph A, Subsection 3(a)(I), those releases of oil and/or hazardous materials that will be fully described and delineated in a Response Action Outcome Statement (“RAO”) documenting a Permanent Solution submitted to the DEP for the MCP Site pursuant to Section IV, Paragraph A, Subsection 3(a)(I) of the Agreement.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue or take administrative action against Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of UAE Power, or who are lessees or licensees of its successors and assigns (hereinafter the “Subsequent Owners and/or Operators”) having rights in the Expansion Property for which UAE Power receives a covenant herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1, above. The liability relief available to such Subsequent Owner and/or Operator shall be subject to the same terms and conditions as those that apply to UAE Power.

3. Duration of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to UAE Power or Subsequent Owners and/or Operators pursuant to G.L. c.21E, §5, are otherwise in effect. For purposes of the remedy at the Site being conducted pursuant to CERCLA, such statutory protections will be effective upon the issuance of the Certification of Completion that is the equivalent to a Permanent Solution or Remedy Operation Status. For purposes of the MCP Site, such statutory protections will be effective when UAE Power or a Subsequent Owner and/or Operator shall achieve a Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP.

4. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

a. any new release of oil and/or hazardous material at, or from the Expansion Property that occurs after the date of execution of this Agreement. For purposes of this Agreement, the wholly passive leaching of Site-related oil and/or hazardous material shall not constitute a new release, provided UAE Power and any Subsequent Owner and/or Operator has not exacerbated such passive leaching;

b. any release of oil and/or hazardous material which UAE Power, or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than

it otherwise would have been had UAE Power or any Subsequent Owner and/or Operator not engaged in such activities;

c. in the case of the Site, any release of oil and/or hazardous material at the Site that has not been discovered as of the time of submittal of the Certification of Completion that could have been discovered had an assessment of the Site covered by or addressed in the Certification of Completion been performed consistent with the Standard of Care, in effect as of the time of submittal of the Certification of Completion;

d. in the case of a MCP Site on the Expansion Property, as defined in Section IV, Paragraph 3(I) of this Agreement, any release of oil and/or hazardous material at the MCP Site that has not been discovered as of the time of the submittal of the RAO to DEP that could have been discovered had an assessment of the MCP Site covered by or addressed in the RAO been performed consistent with the Standard of Care in effect as of the time of submittal of the RAO;

e. any release or threat of release of oil and/or hazardous material from which there is a new exposure that results from any action or failure to act pursuant to G.L. 21E during UAE Power's or Subsequent Owners' and/or Operators' ownership or operation of the Expansion Property;

f. any release of oil and/or hazardous material not expressly described in Section IV, Paragraph B, subparagraph 1, above; and

g. any claims for damages for injury to, destruction of, or loss of natural resources or for costs of natural resource damage assessments.

5. Termination for Cause

a. In the event that the OAG determines that UAE Power submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.d. of this Section IV, below. A statement made by UAE Power regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG determines that UAE Power or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a

Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide UAE Power or a Subsequent Owner and/or Operator, as appropriate, written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG may provide a reasonable period of time for UAE Power or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

d. Termination of liability relief pursuant to this section shall not affect any defense that UAE Power or Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY UAE POWER OR SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, UAE Power or a Subsequent Owner and/or Operator hereby covenant not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Expansion Property or this Agreement, including but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E;
2. any claims under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for “takings”;
3. any claims arising out of response actions at the Expansion Property, including claims based on DEP's selection of response actions, oversight of response actions, or approval of plans for such activities;
4. any claims or causes of action for interference with contracts, business relations or economic advantage; or
5. any claims for costs, attorneys fees, other fees or expenses incurred.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to claims for contribution, cost recovery or equitable share brought by third

parties pursuant to G.L. c. 21E, §§ 4 and 5, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, §5, against UAE Power or Subsequent Owner and/or Operator, based solely on UAE Power's or Subsequent Owner's and/or Operator's status as owner or operator of the Expansion Property, the Commonwealth and UAE Power agree that UAE Power or Subsequent Owner and/or Operator are entitled to such protection from such actions or claims as provided by G.L. c. 21E for the Matters Addressed at the Property Addressed; provided, however:

1. that UAE Power has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3) and 940 CMR 23.06(1);

2. the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.06(3); and

3. the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. Should any term or condition of this Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. The terms of this Agreement in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue, shall be effective as of the date the OAG executes this Agreement. The terms of this Agreement in Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, are subject to the OAG's determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The OAG may modify or withdraw the provisions in Section IV, Paragraph D regarding the Contribution Protection and Rights of Affected Third Parties if comments received

from Affected Third Parties disclose facts or considerations which indicate that such protection is inappropriate, improper or inadequate. The provisions of this Agreement in Section IV, Paragraph D with respect to the Contribution Protection and Rights of Affected Third Parties shall be effective as of the date the OAG issues written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties have had to join this Agreement. The OAG's written notice to the Parties with respect to the Contribution Protection and Rights of Affected Third Parties will be Exhibit 5, to be attached hereto and incorporated into this Agreement.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

UAE POWER OPERATIONS
CORPORATION

BY: James D.P. Farrell
James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
200 Portland Street
Boston, MA 02114

BY: Stephen P. Strait
Stephen P. Strait
President
UAE Power Corp.
50 Tice Boulevard
Woodcliff Lake, New Jersey

Date: 4/24/01

Date: 4/23/01

EXHIBIT 1

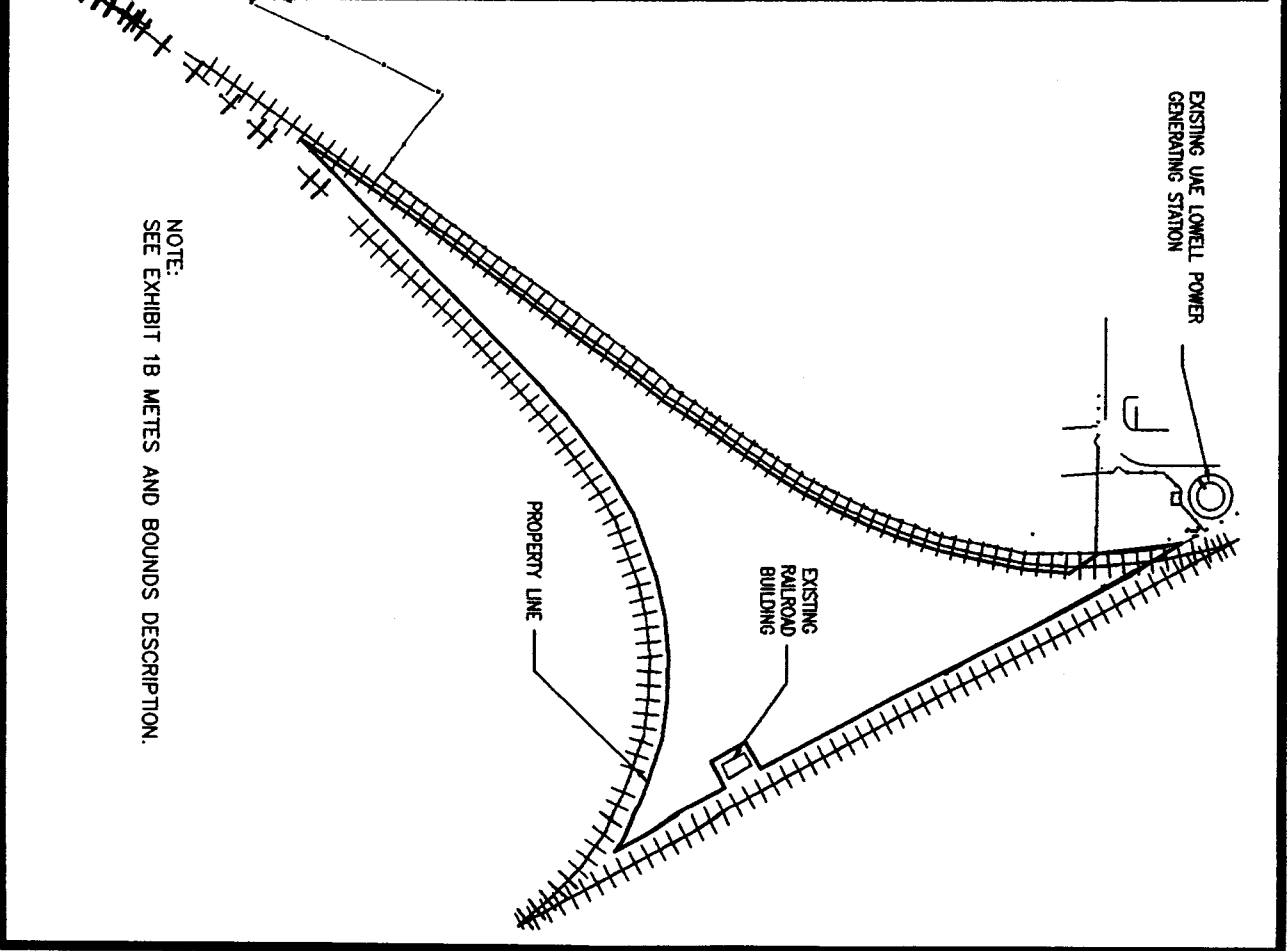


EXHIBIT 1
 LOCATION AND BOUNDS OF PROPERTY ADDRESSED
 121 MAPLE STREET, LOWELL, MASSACHUSETTS

EXHIBIT 1B

Metes and Bounds Description
Lot A-2
Property of UAE Expansion Project

A certain parcel of land containing 184,858 square feet situated in Lowell, Middlesex County, Massachusetts shown on a as Lot A-2 on a plan prepared by Robert M. Gill & Associates, Inc., dated December 11, 2000, beginning at the northwesterly corner of Lot A-2, at Lot 1A, and at land of Boston and Maine Corporation, described as follows:

Thence S38 45'17"E, 664.35 feet to a point;

Thence S51 15'14"W, 30.00 feet to a point;

Thence S38 45'17"E, 50.00 feet to a point;

Thence N51 15'14"E, 30.00 feet to a point;

Thence S38 45'17"E, 136.69 feet to a point;

Thence northerly and westerly a radius of 439.94 feet, a length of 520.80 feet to a point;

Thence westerly and southerly at a radius of 1,672.63 feet, length of 289.01 feet to a point;

Thence S33 15'19"W, 233.35 feet to a point;

Thence westerly and southerly at a radius of 4,450.99 feet a length of 105.45 feet to Lot A-1;

Thence northerly and easterly at a radius of 5,721.65 feet, a length of 106.53 feet to a point;

Thence N24 42'45"E, 635.00 feet to a point;

Thence northerly and westerly at a radius of 871.84 feet, a length of 368.77 feet to a point;

Thence northerly and westerly at a radius of 606.74 feet, a length of 92.03 feet to a point;

Thence N38 45'17"W, 51.48 feet to Lot 1A

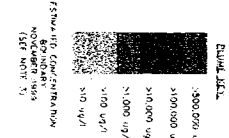
Thence northerly and westerly at a radius of 582.27 feet, a length of 128.38 feet to the point of beginning.

EXHIBIT 2



EXHIBIT 2

- NOTES:
1. BASE MAP WAS DERIVED FROM A PLAN ENTITLED "SITE PLAN FOR LOWELL POWER STATION, UNIT 1, COLE FACILITY - 2x ASSOCIATES, DRAFT FOR LAYOUT, DATED MARCH 4, 2000. ORIGINAL SCALE: 1" = 40'.
 2. CONTOUR LINES WERE DERIVED FROM A PLAN ENTITLED "SUPERFUND SITE - LOWELL, MASSACHUSETTS, POTENTIAL AND POLYBROMINATED BIPHENYL SURFACE LEVELS - WINTER 1987" PROVIDED BY TESTER MEDIA ENVIRONMENTAL, INC. ON 03/29/91. THE DATA WERE OBTAINED FROM ORIGINAL SCALE 1" = 31.4'.



- PROPERTY BOUNDARY REQUIRED
- EXISTING AND ROAD THINGS SEE NOTE 1
- EXISTING WELL
- PROPOSED WELL
- EXISTING WELL
- WELL (UNKNOWN)
- WELL (UNKNOWN)
- SURFACE WATER SAMPLING LOCATION

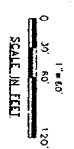


FIG 1

PROPOSED DEVELOPMENT
 SAMPLING LOCATIONS & SILERISM SUPERFUND SITE SHALLOW
 GROUNDWATER VOC CONTAMINATION PLUME
 121 MAPLE STREET, LOWELL, MA



EXHIBIT 3

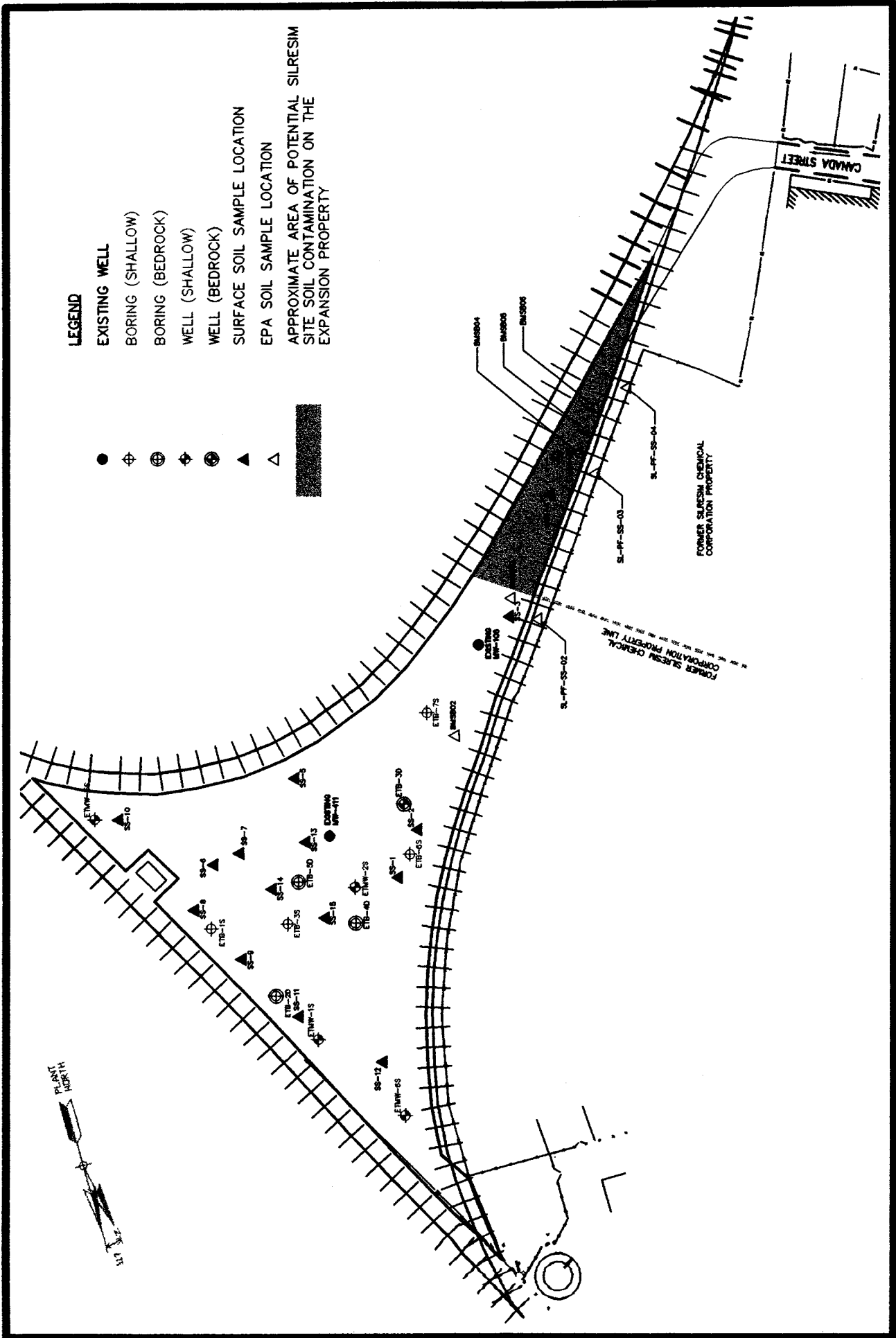
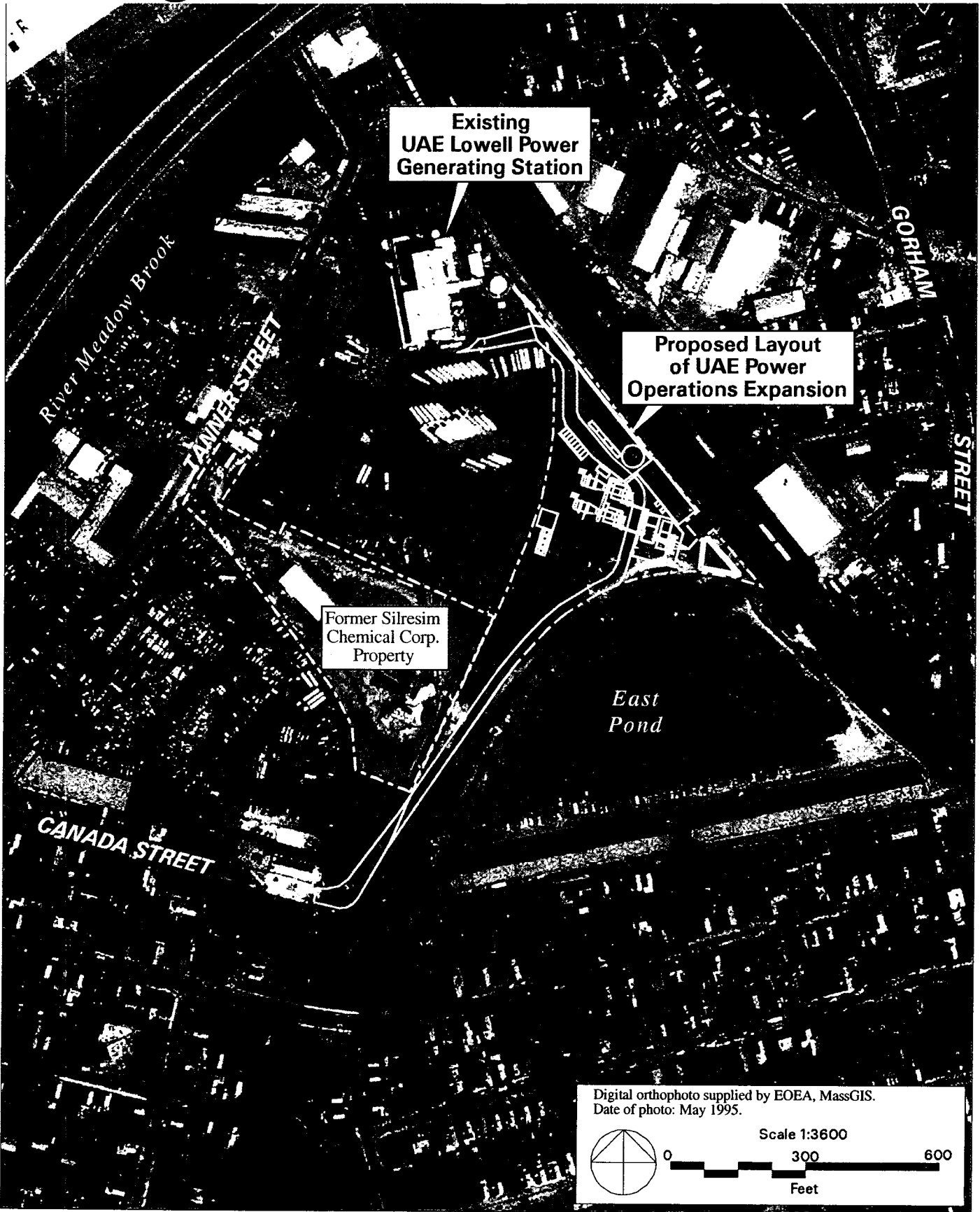


EXHIBIT 3
 APPROXIMATE AREA OF POTENTIAL SILRESIM SITE SOIL CONTAMINATION ON THE
 EXPANSION PROPERTY AT 121 MAPLE STREET, LOWELL, MA

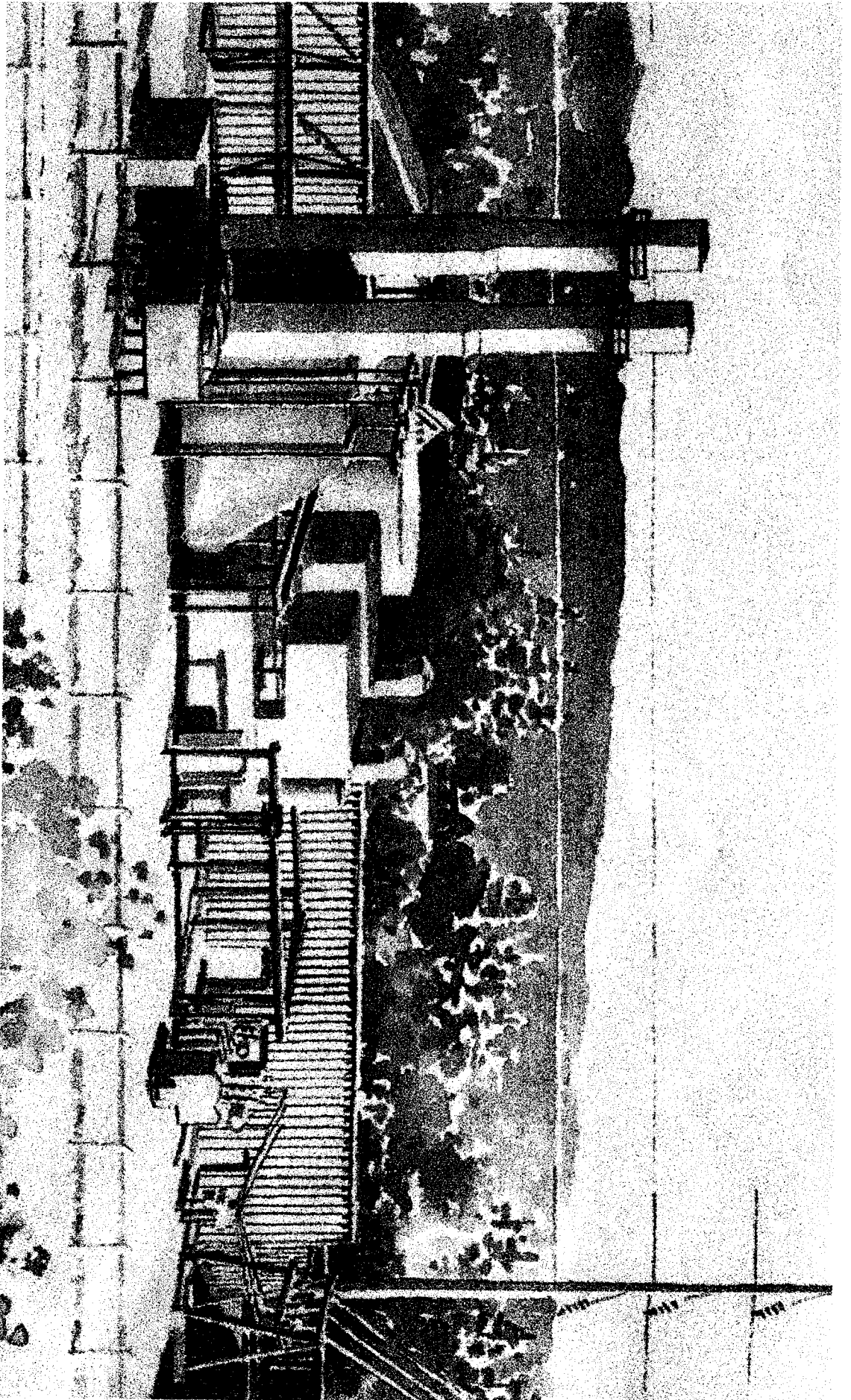
EXHIBIT 4



Date: 12 Mar 01 14:01:36 Monday
User: juelowell/gibbons.map

Aerial Photograph and Proposed Layout of UAE Power Operations Corp. Expansion

EXHIBIT 4a



View to the Northeast of the Proposed UAE Expansion Project

EXHIBIT 4b

EXHIBIT 5