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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF: Legacy Partners 2335 LLC

Docket No. 99-10

UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601 et seq., as amended	)))))	AGREEMENT AND COVENANT NOT TO SUE LEGACY PARTNERS 2335 LLC SOUTH BAY ASBESTOS AREA SUPERFUND SITE, SAN JOSE, CA

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Legacy Partners 2335 LLC, a Delaware limited liability company ("Legacy"); (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

Legacy, a limited liability company with its headquarters at 101 Lincoln Centre Drive, Foster City, CA 94404-1167, has proposed to buy a portion of the Southbay Asbestos Superfund Site (Superfund Site 09-R1), located in San Jose, California. Alternatively, an affiliate of Legacy may buy such property.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained herein, the potential liability of the Settling Respondent for Existing Contamination, if any, at the Property which would otherwise arise under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants, present or existing on or under the Site as of the effective date of this Agreement.

3. "Parties" shall mean EPA and the Settling Respondent.

4. "Property" shall mean that portion of the Site described in Exhibit 1 to this Agreement.

5. The term "Settling Respondent" shall include each of the following: (a) Legacy, and (b) WCSJ LLC, a Delaware limited liability company.

6. "Site" shall mean the Southbay Asbestos Superfund Site (Superfund Site 09-R1) located in the district of Alviso, City of San Jose, County of Santa Clara, State of California, and depicted generally on the map attached as Exhibit 2 hereto.

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. REPRESENTATIONS

8. The Settling Respondent represents (and for the purposes of this Agreement EPA relies on those representations) as follows:

(a) It intends to acquire the Property for the purpose of developing it for office, retail, light industrial, service commercial and restaurant uses.

(b) Settling Respondent's involvement with the Property and the Site has been limited to soil and groundwater investigation at the Property, performed by Settling Respondent's consultant CET Environmental Services Inc. in 1998. Settling Respondent has provided EPA with all information obtained from such investigations. Settling Respondent has never been named a responsible party under CERCLA for any portion of the Site. Settling Respondent did not in any way cause or contribute to any release or threatened release of hazardous substances at the Site, nor has Settling Respondent disposed or arranged for disposal of hazardous substances at or on the Site. Settling Respondent is not presently liable for response costs under section

107(a) of CERCLA, 42 U.S.C. 9607(a). Settling Respondent does not now and never has owned or operated any portion of the Site.

(c) WCSJ LLC ("WCSJ"), a Delaware limited liability company, has been formed for the purpose of purchasing and developing the Property. Initially, Legacy shall be the only member of WCSJ. At the time of purchase of the Property, WCSJ will be reconstituted to admit persons who will invest funds needed to purchase and develop the Property, and Legacy will become a member of a member of WCSJ.

IV. PAYMENTS; ACQUISITION OF PROPERTY

9. (a) In consideration of and in exchange for the United States' Covenant Not to Sue herein, within 30 days of the date Settling Respondent takes title (as defined in paragraph 32 below) to all or any portion of the Property, Settling Respondent agrees to pay to EPA the sum of $75,000.

(b) If Settling Respondent has not, on or before the 120th day following the EPA Execution Date (as defined in Section XVI), notified EPA pursuant to paragraph 33 that it has taken title to the Property, then the following shall occur: (I) Settling Respondent shall (on or before the 150th day following the EPA Execution Date), pay EPA the sum of $10,000, (II) EPA shall have no obligations (but shall retain all of its rights) under this Agreement, and (III) Settling Respondent shall have no further obligations under this Agreement except that its obligations under the following paragraphs shall continue indefinitely: paragraph 16 and paragraph 22 (except that Settling Respondent's continuing obligation under paragraph 22 shall be limited, if this paragraph 9(b) applies, to claims or causes of action with respect to this Agreement).

10. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID#09-R1 and name and address of Settling Respondent. Payments shall be sent to USEPA Region 9, Attention: Superfund Accounting, P.O. Box. 360863M, Pittsburgh, PA 15251.

11. Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions) and to EPA Region 9 Financial Management Officer, 75 Hawthorne St., San Francisco, CA 94105. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. WORK TO BE PERFORMED/ACCESS/ NOTICE

12. Settling Respondent agrees to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA or

State oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at or related to the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing an overseeing response actions at or related to the Site under federal or state law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Any other provision of this Agreement (except for paragraph 17) notwithstanding, EPA retains all of its authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., and any other applicable statute or regulation, including any amendments thereto.

13. Within 30 days after it takes title to all or any portion of the Property, Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office, a Registry of Deeds, Santa Clara County, State of California. Thereafter, each deed, title, contract or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XV (Notices and Submissions).

14. The Settling Respondent shall take all reasonable measures to cause all assignees, transferees, successors in interest, lessees, and sublessees of all or any portion of the Property to provide the access and cooperation required by paragraph 12. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section and Section XI (Parties Bound/Transfer of Covenant). If Settling Respondent complies with all provisions of this Agreement, any failure of any assignee (excluding lessees and sublessees) to comply with the access provisions hereof, which failure is beyond the control of Settling Respondent, shall not deprive Settling Respondent of the benefits of this Agreement.

VI. DUE CARE/COOPERATION

15. The Settling Respondent shall exercise due care at the Property with respect to any Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA, the State of California and all local agencies in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize, by such entry and response, any interference with the business operations being conducted on the Property. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public

health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and the State of such release or threatened release.

VII. CERTIFICATION

16. (a) By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief, as of the effective date of this Agreement, it has fully and accurately disclosed to EPA all information which (I) is known to Settling Respondent or in the possession or control of any of its officers, directors, employees, partners, contractors or agents, and (II) relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site, except for information recorded in documents that are, on the effective date of this Agreement, in the possession of Region 9 of the U.S. Environmental Protection Agency. Settling Respondent shall have the burden of proving that any document is in the possession of Region 9 of the U.S. Environmental Protection Agency. If the United States determines that Settling Respondent has not complied in any material respect with the first sentence of this paragraph, this Agreement, within the reasonable discretion of the United States, shall be null and void and the United States reserves all rights it may have.

(b) The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site.

(c) By entering into this Agreement, Settling Respondent acknowledges that all certifications and representations by Settling Respondent herein are made under penalty of perjury.

VIII. UNITED STATES' COVENANT NOT TO SUE

17. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the $75,000 specified in paragraph 9(a) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or for reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue).

The United States reserves, and the Agreement is without prejudice to, all rights against Settling Respondent with respect to all other matters, including but not limited to the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payments; Acquisition of Property), Section V (Work to Be Performed/Access/Notice), Section VI (Due Care/Cooperation) and Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent or its lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent or its lessees or sublessees of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

19. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to Existing Contamination.

20. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA or the State to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA or the State in exercising its authority. Settling Respondent acknowledges that it is purchasing property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

22. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement and subject to the following paragraph, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States or its authorized officers, employees, or representatives with respect to the Site or this Agreement (except as provided in paragraph 23), including but not limited to: (a) any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, brought under CERCLA Section 106(b) (2), 111, 112 or 113 or any other provision of law, (b) any claim against the United States (including its departments, agencies and instrumentalities) under CERCLA Sections 107 or 113 related to the Site, and (c) any claim arising out of response activities at the Site, including claims based on EPA's or the State's oversight of such activities or approval of plans for such activities.

23. The Settling Respondent reserves, and this Agreement is without prejudice to, Settling Respondent's right to bring actions against the United States (a) to seek specific performance of the terms of this Agreement; provided that Settling Respondent shall have no right to seek and shall not seek in any such action damages, punitive damages, penalties, reimbursement of costs, or interest, and (b) based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

24. This Agreement shall apply to and be binding upon the United States and each Settling Respondent. Settling Respondent shall ensure that its officers, directors, employees and agents do not act inconsistently with the terms of this Agreement. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

25. (a) Settling Respondent may assign or transfer the Property without prior approval of EPA. No transferee or assignee of all or any portion of the Property (collectively, "transferee") shall have any right hereunder (including any right under the Covenant Not To Sue in Section VIII) unless: (1) before such assignment or transfer, the transferee shall consent in writing to be bound by and perform, from the date of transfer, all of the obligations and terms set forth in paragraphs 12, 13, 14, 15, 18, 19, 20, 21, 22, 28, 29, 30 and 31 of this Agreement as though it were Settling Respondent; (2) the transferee shall be financially capable of performing all such obligations; (3) the transferee is not liable under CERCLA or any other law for the Existing Contamination; (4) the transferee's use of the Property will not result in a release or threat of release of any hazardous substance; (5) the transferee's use of the Property will not

cause or contribute to the migration or release of any Existing Contamination or to any threat to human health caused by any such release or threat of release; (6) at least 30 days before such assignment or transfer, the transferee shall have submitted to EPA (i) a written notice, as set forth in Exhibit 3 to this Agreement, describing the proposed assignment or transfer and identifying the property to be transferred and the transferee and (ii) an affidavit and supporting documentation demonstrating to EPA's reasonable satisfaction the truth of the preceding clauses (2) through (5) of this paragraph 25, (7) Settling Respondent shall have fully performed its obligations under paragraph 9 hereof and (8) EPA shall not have objected to Transferee's notice, affidavit and supporting documentation. In the event that EPA has not so objected within thirty (30) days of its receipt of written notice from the transferee, such assignment or transfer shall be deemed approved. Any objection by EPA to any assignment or transfer pursuant to clause (8) shall be reasonable.

(b) Settling Respondent may lease the Property or any portion thereof to tenants who, in turn, may lease to sub-tenants, (collectively "Tenants") without prior approval of EPA. No Tenant shall have any right hereunder (including any right under the Covenant Not To Sue in Section VIII and Contribution Protection in Section XVIII) unless Tenant has provided to EPA: (1) a written notice, as set forth in Exhibit 4 to this Agreement, providing an accurate description of Tenant, including the Tenant's name, date of and parties to the lease or sublease; description and address of the leased premises; and certifying that (i) that Tenant is not liable under CERCLA or any other law for Existing Contamination; (ii) that Tenant's use of the Property will not result in the release or threat of release of a hazardous substance; (iii) Tenant's use of the Property will not contribute to any threat to human health caused by any such release or threat of release; (iv) Tenant will provide access to the Property at reasonable times and upon reasonable notice to Settling Respondent and Tenant, as set forth in paragraph 12 of the Agreement; (v) Tenant has reviewed this Agreement and any modifications and notices hereto, and will not act inconsistently with its terms; and (vi) the person signing the notice on behalf of Tenant warrants that he or she is authorized to make the forgoing certifications on behalf of Tenant; (2) an affidavit and supporting documentation demonstrating to EPA's reasonable satisfaction the truth of the preceding clauses 1(i) through (vi) of this paragraph 25(b). Upon submitting such notice and supporting documentation to EPA, such Tenant shall have the benefit of the Covenant Not To Sue and Contribution Protection with respect to the leased property from the date of delivery of such notice, subject to EPA's subsequent objection. EPA's objection to Tenant's certification, affidavit and supporting documentation must be reasonable and must be made within thirty (30) days of its receipt of Tenant's notice. However, if at any time, EPA determines that the certifications provided pursuant to this paragraph, are materially inaccurate or incomplete, the Covenant Not To Sue and Contribution Protection shall be null and void with respect to the Tenant, and the United States reserves all rights it may have against the Tenant. Assignees of a Tenant's interest in the Property shall have the rights of the Tenant hereunder, provided that such Assignees comply with the provisions of clauses (1) and (2) of this paragraph 25(b).

(c) Additional members of WCSJ, and members of Legacy may become Settling Respondents (subject to the same reservations, qualifications, limitations and objections by EPA which apply to the other Settling Respondents) upon becoming members of WCSJ or of Legacy, as the case may be, and upon (1) agreeing to be bound by all of the obligations and terms of this Agreement, (2) submitting a written notice, as set forth in Exhibit 5 to this Agreement, and (3) submitting an affidavit and supporting documentation certifying to EPA's reasonable satisfaction the truthfulness of the matters set forth therein.

26. (a) If all conditions of paragraph 25(a) have been met and if EPA has not objected within 30 days as set forth in paragraph 25(a), upon the transfer or assignment of the Property, (a) Settling Respondent shall be released from the obligations set forth in paragraphs 12, 14 (except for the first sentence of paragraph 14 and 15 of this Agreement for that portion of the Property transferred or assigned to an approved transferee, (b) Settling Respondent shall continue to enjoy the benefits of paragraphs 17 (United States' Covenant Not to Sue), 23 (Settling Respondent's Reservation of Rights) and 35 (Contribution Protection) and (c) EPA shall be released from its obligations to Settling Respondent (but not to transferee) under paragraphs 12 and 15 for that portion of the Property transferred or assigned to an approved transferee. In no event shall Settling Respondent be released from any other obligations hereunder, including those in paragraphs 9, 22 and 30.

(b) With respect to transfers of the Covenant Not To Sue under paragraph 25(b), the Settling Respondent shall not be released from any obligations under this Agreement upon transferring the Covenant Not To Sue to Tenants.

27. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any requests for consent to assign or transfer the Property.

XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

29. For at least ten years following the effective date of this Agreement, Settling Respondent agrees to retain and make available to EPA and the State of California all business and operating records, documents, contracts, studies and investigations that (a) relate to operations at or hazardous substances on or under the Property and (b) on or after the effective date are within the possession or control of Settling Respondent or any of its officers, directors, employees, members, partners, subsidiaries, affiliates, contractors, subcontractors or agents, unless otherwise agreed to in writing by the Parties. At the end of such ten-year period, Settling

Respondent shall notify EPA of the location of such documents and shall provide EPA and the State of California with an opportunity to copy any documents at the expense of EPA or the State.

XIV. PAYMENT OF COSTS

30. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), or Section V (Work to be Performed/Access/Notice) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement against Settling Respondent or otherwise obtain compliance by Settling Respondent.

XV. NOTICES AND SUBMISSIONS

31. Notices and submissions to be given to EPA hereunder shall be sent to Eric Yunker, Superfund Division, SFD-7-1, 75 Hawthorne St., San Francisco, CA 94105. Notices and submissions to be given to the State shall be sent to Stephen Cimperman, Unit Chief, Northern California Coastal Clean-up Operations Branch, Department of Toxic Substances Control, 700 Heinz Ave., Berkeley CA 94710. Notices and submissions to be given to Settling Respondent shall be sent to Edgar M. Thrift, Jr., Senior Vice President, Legacy Partners Commercial Inc., 101 Lincoln Centre Drive, 4th Floor, Foster City, CA 94404-1167 (415-571-2200); and to the assignees, transferees, tenants and new general partners upon delivery to EPA of the notices attached Exhibits 3, 4 and 5 to this Agreement.

XVI. EFFECTIVE DATE; EPA EXECUTION DATE

32. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA and the Department of Justice have fully executed the Agreement (the "EPA Execution Date"), subject to EPA's right to withdraw such approval as set forth in paragraph 38 (Section XIX, Public Comment); provided, however, that the effective date of paragraphs 12, 14, 15 and 29 shall be the later of (a) the EPA Execution Date and (b) the date Settling Respondent takes title to all or any portion of the Property, and, further provided, that in the event Settling Respondent takes title before the EPA Execution Date, then Settling Respondent does so at its own risk; provided however, if the Regional Administrator or Assistant Attorney General executes the Agreement and does not modify or withdraw its consent to the Agreement after reviewing public comments, then the effective date of this Agreement shall be the date upon which Settling Respondent took title to the Property. For purposes of this Agreement, Settling Respondent shall be deemed to "take title" to all or any portion of the Property at such time as Settling Respondent first becomes the direct owner of all or any portion of the Property as shown in a recorded deed.

33. On or before the date Settling Respondent takes title to all or any portion of the Property, Settling Respondent shall notify EPA of its taking such title.

XVII. TERMINATION

34. If any Party believes that any or all of the obligations under Section V (Work to Be Performed/Access/Notices) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

35. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that, upon payment of $75,000 as provided in paragraph 9, Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

36. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

37. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XIX. PUBLIC COMMENT

38. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XX. ENFORCEMENT OF THIS AGREEMENT

39. This Agreement shall be enforced in accordance with applicable State and federal law.

IT IS SO AGREED:
U.S. Environmental Protection Agency
BY:

for Keith Takata, Superfund Division, Region 9 — 3/11/99 Date

IT IS SO AGREED:
U.S. Department of Justice
BY:

6/16/99
Date

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division

IT IS SO AGREED:

LEGACY 2335 LLC, a Delaware limited liability company

BY: 3/10/99

Name: Ed Knight/Pres Date

Title:

COLLISHAW PROSPECTIVE
PURCHASER AGREEMENT

EXHIBIT 1

EXHIBIT 1

LEGAL DESCRIPTION

REAL PROPERTY in the City of San Jose and partly within the Unincorporated Area of the County of Santa Clara, State of California, described as follows:

Being a portion of the lands described in the Deed from the State of California to the Santa Clara County Flood Control and Water Conservation District (Director's Deed No. 16419-DD), recorded in Book 5319 of Official Records, page 428 in the Office of the Recorder, County of Santa Clara, State of California to wit:

Beginning at the intersection of the Southerly prolongation of the Westerly line of that certain 1.51-acre parcel of land shown on that certain Record of Survey filed in Book 78 of Maps, at page 2, Santa Clara County Records, with the Westerly prolongation of the Southerly line of said 1.51-acre parcel, as shown on said Record of Survey; said point of beginning being S. 01° 07' 00" W., 482.31 feet from the most Northerly corner of said 1.51-acre Parcel, as shown on said Record of Survey; thence along said Westerly prolongation of the Southerly line of said Parcel, N. 89° 39' 00" E., 0.85 feet; thence leaving said line, along a curve to the left from a tangent which bears S. 26° 33' 34" E., having a radius of 1949.91 feet, through a central angle of 05° 49' 50" for an arc distance of 198.43 feet; thence S. 32° 23' 24" E., 107.09 feet; thence South 37° 07' 39" E., 436.32 feet to the Southeasterly line of said lands, as described in said Director's Deed; thence along said Southeasterly line S. 56° 19' 19" W., 273.54 feet to the Northeasterly line of the lands described in the Deed to Leslie Salt Company recorded in Book 6311 of Official Records, at page 16, Santa Clara County Records; thence along said Northeasterly line N. 33° 40' 41" W., 350 feet, more or less, to the general Easterly line of the lands of Leslie Salt Company, as described in the Decree Quiteing Title recorded in Book 569 of Official Records, page 126, Santa Clara County Records; thence along said Easterly line, North 470 feet, more or less, to the point of beginning.

APN: 015-34-067 and 104-01-033
ARB: 15-34-10.04 (10), and 104-01-033

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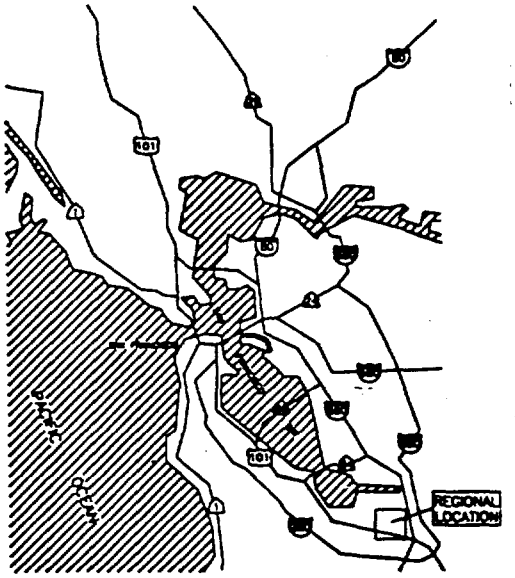
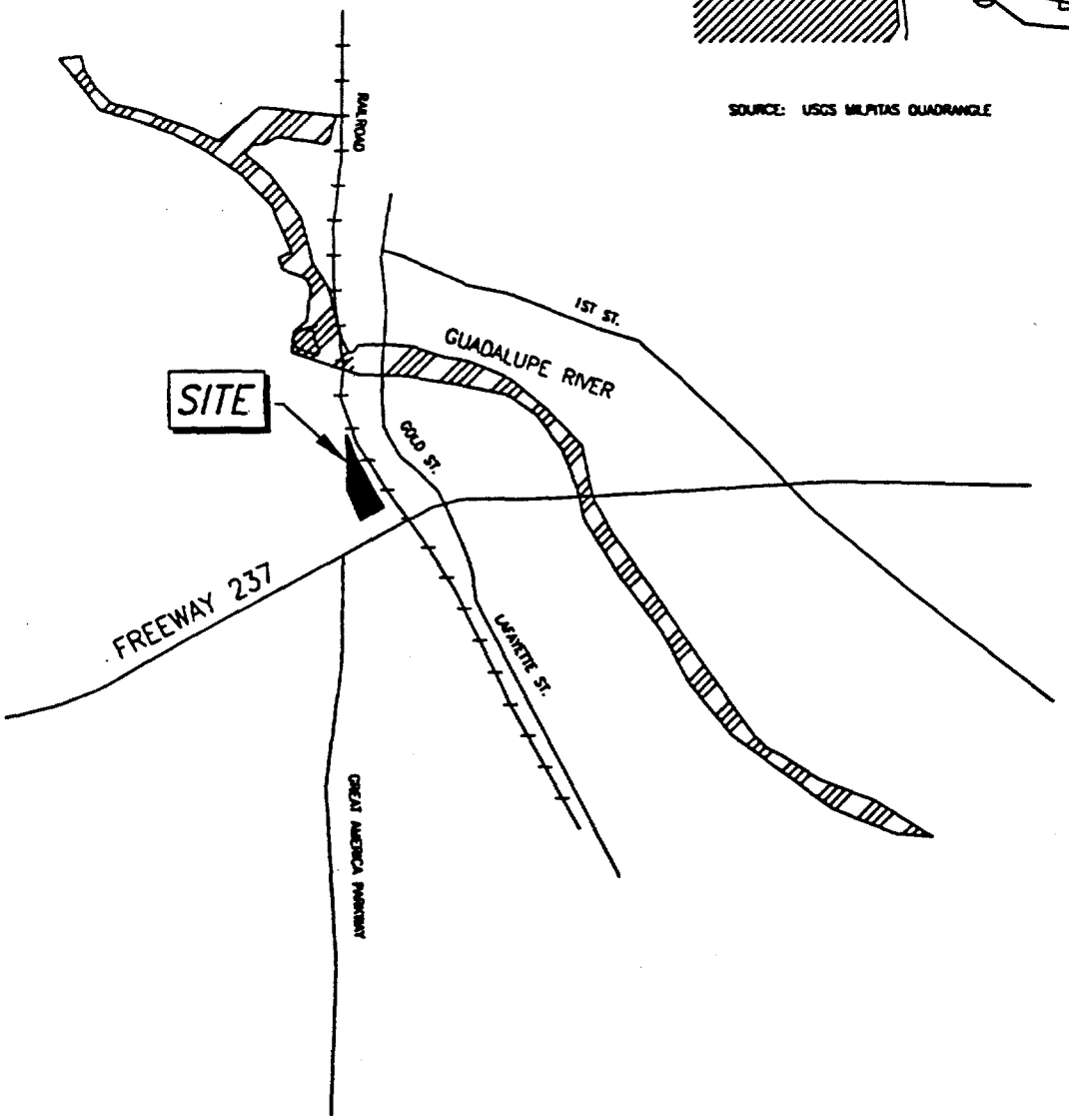
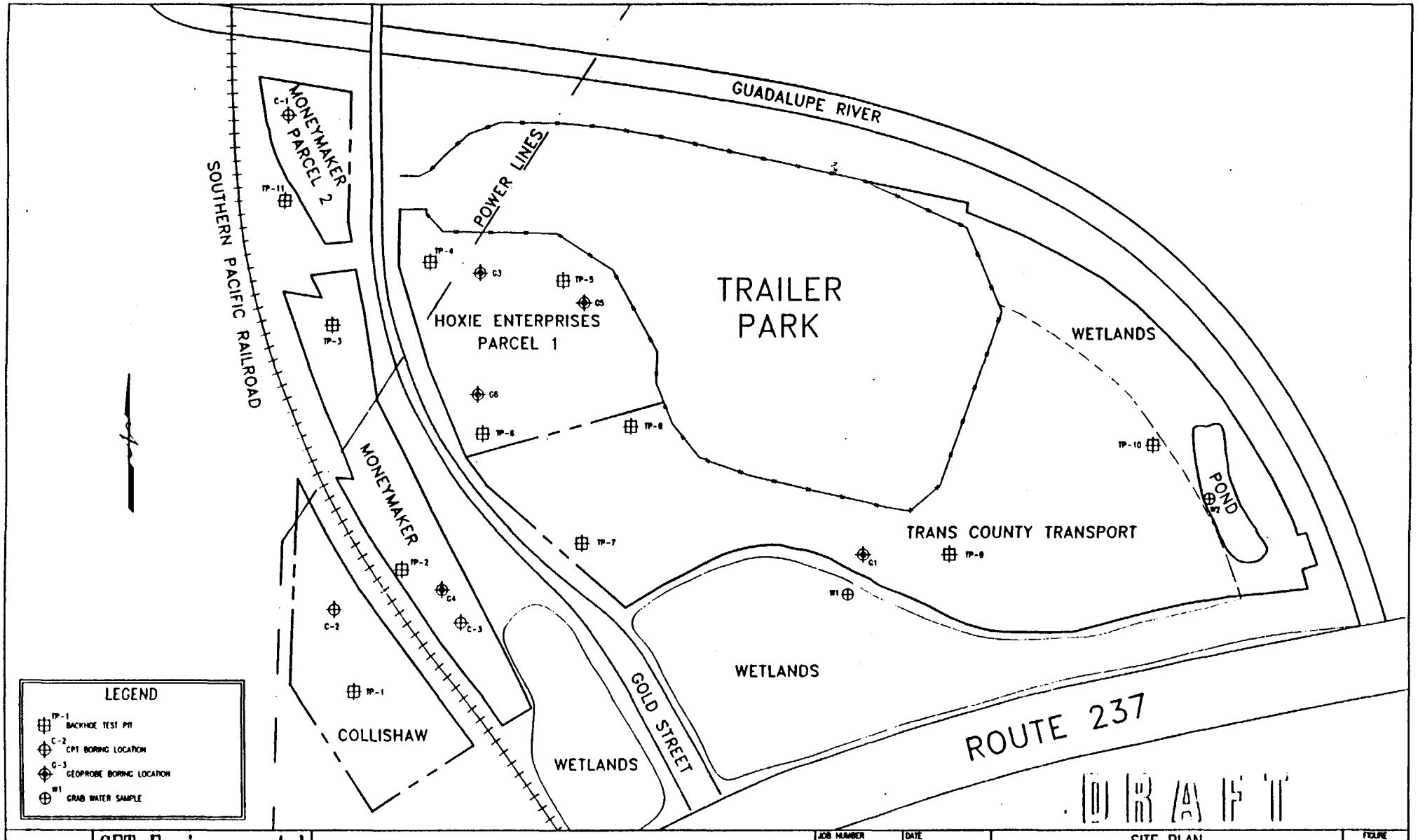


SOURCE: USGS MILPITAS QUADRANGLE



CET Environmental Services, Inc.	SITE LOCATION MAP COLLISHAW PROPERTY COLLISHAW PHASE I ESA NEAR GOLD STREET NORTH OF ROUTE 237 SAN JOSE, CALIFORNIA					FIGURE
	JOB NUMBER	DATE	DRAWING	BY	SCALE	1
	3928	4/6/98	3928LOC	ESS/VA	1" = 2000'	



CET Environmental Services, Inc.

SCALE
FEET 0 200 FEET

JOB NUMBER	DATE
3821	10/10/96
FILENAME 3821PLAN	SIZE B
SCALE 1" = 200'	DRAWN BY MAR

SITE PLAN
PHASE II ENVIRONMENTAL SITE ASSESSMENT

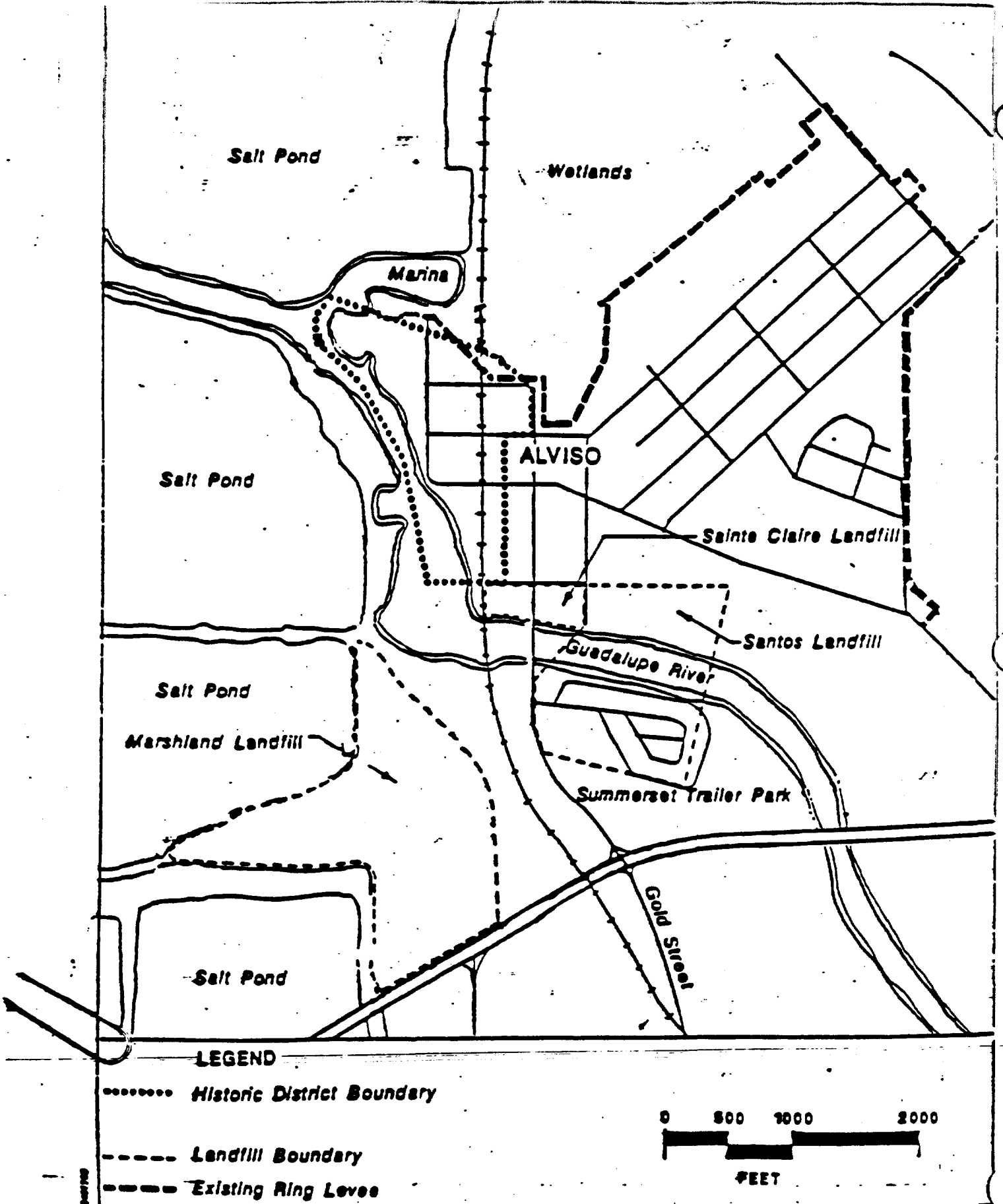
HOXIE PROPERTIES
GOLD STREET NORTH OF ROUTE 237
SAN JOSE, CALIFORNIA

FIGURE 2

COLLISHAW PROSPECTIVE
PURCHASER AGREEMENT

EXHIBIT 2

EXHIBIT 2



Project No.	South Bay Asbestos Site	SITE LOCATION MAP	Figure
288-FS1	Camp Dresser & McKee Inc.		2

COLLISHAW PROSPECTIVE
PURCHASER AGREEMENT

EXHIBIT 3

EXHIBIT 3

EXHIBIT 3

Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Re: Transfer of Covenant Not to Sue Pursuant to Agreement and Covenant Not to Sue, Docket No. _____, Southbay Asbestos Superfund Site

Dear Regional Counsel:

In accordance with Paragraph 25(a) of the Agreement and Covenant Not to Sue, Docket No. _____ ("Agreement"), the undersigned party, ("Proposed Assignee/Transferee") hereby notifies the U.S. Environmental Protection Agency ("U.S. EPA") that it plans to receive an assignment of the Agreement. The Agreement was originally entered into by and between the U.S. EPA and Legacy Partners 2335 LLC ("Legacy"), and concerns real property within the boundaries of the Southbay Asbestos Superfund Site ("Site"), located in San Jose, California. The Assignment will be made because the Proposed Assignee/Transferee intends to acquire title to the real property or a portion of or interest therein. A legal description of the property to be acquired is attached hereto. The Assignment will be applicable only as to the property acquired by the Assignee. The effective date of the Assignment will be _____.

Proposed Assignee/Transferee acknowledges that it has reviewed the Agreement and any modifications and notices thereto, if any. In accordance with Section XI (Parties Bound/Transfer of Covenant), Paragraphs 25(a)-27 of the Agreement, (a) Proposed date of transfer, all of the obligation sand terms set forth in the paragraphs 12, 13, 14, 15, 18, 19, 20, 21, 22, 28, 29, 30 and 31 of the Agreement in effect on the effective date of the Assignment, as though it were the Settling Respondent; (b) Proposed Assignee/Transferee is financially capable of performing all such obligations; (c) Proposed Assignee/Transferee is not liable under CERCLA or any other law for Existing contamination (as defined in the Agreement); (d) Proposed Assignee/Transferee's use of the Property (as defined in the Agreement), or any portion thereof, will not result in the release or threat of release of any hazardous substance; (e) Proposed Assignee/Transferee's use of the Property (as defined in the Agreement), or any portion thereof, will not cause or contribute to any threat to human health caused by such release or threat of release.

An affidavit and supporting documentation demonstrating the truthfulness of the preceding clauses (b) through (e) is attached. In accordance with Paragraph 25(a) of the Agreement, if all of the preceding conditions of Paragraph 25(a) of the Agreement have been met, and if EPA has not objected within thirty (30) days of its receipt of this notice, the Agreement and Covenant Not to Sue shall be assigned or transferred to the Proposed Assignee/Transferee. However, if, at any time, EPA determines that the certifications provided pursuant to Paragraph 25(a) of the Agreement are materially inaccurate or incomplete, the Assignment of the Agreement shall be null and void with respect to the Assignee, and the United

States reserves all rights it may have against the Assignee.

Proposed Assignee/Transferee agrees that nay assignments or transfers of the Agreement by Proposed Assignee/Transferee shall be in accordance with the provisions set forth in Section XI, Paragraphs 25-27 of the Agreement. Notices and Submissions required under the Agreement that affect the property acquired by the Assignee shall be sent to the following contact person for the Assignee: _____.

So acknowledged and Agreed:

[Company Name]

_____
[Name, Title]

_____
[Address, Telephone #]

_____
Date

cc:

Superfund Division Director
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Superfund Records Center
U.S. EPA Region IX

COLLISHAW PROSPECTIVE
PURCHASER AGREEMENT

EXHIBIT 4

EXHIBIT 4

EXHIBIT 4

Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Re: Covenant Not to Sue Pursuant to Agreement and Covenant Not to Sue, Docket No. _____, Southbay Asbestos Superfund Site

Dear Regional Counsel:

In accordance with Paragraph 25(b) of the Agreement and Covenant Not to Sue, Docket No. _____ ("Agreement"), the undersigned tenant or subtenant (collectively "Tenant") hereby notifies the U.S. Environmental Protection Agency ("U.S. EPA") that it leased a portion of the Property (as defined in the Agreement). The Agreement was originally entered into by and between the U.S. EPA and Legacy Partners 2335 LLC ("Legacy"), and concerns real property within the boundaries of the Southbay Asbestos Superfund Site ("Site"), located in San Jose, California. A legal description of the leased property is attached hereto. The Covenant Not to Sue and Contribution Protection will be applicable only as to the property leased by the Tenant. The effective date of the lease is _____.

The Tenant acknowledges that it has reviewed the Agreement and any modifications and notices thereto, if any. In accordance with Section XI (Parties Bound/Transfer of Covenant), Paragraphs 25(b)-27 of the Agreement, Tenant certifies the following: (a) Tenant is [description of tenant, including name, date of and parties to lease or sublease, and description of premises, including address of leased premises]; (b) Tenant is not liable under CERCLA or any other law for Existing Contamination (as defined in the Agreement); (c) Tenant's use of the Property will not result in a release or threat of release of a hazardous substance; (d) Tenant will provide access at reasonable times and upon reasonable notice to Settling Respondent and Tenant, as set forth in paragraph 12 of the Agreement; (f) Tenant will not act inconsistently with the terms o the Agreement; and (g) the person signing this Notice on behalf of Tenant hereby certifies, represents and warrants that he or she is authorized to make these certifications on behalf of the Tenant. An affidavit and supporting documentation demonstrating the truthfulness of the preceding clauses (a) through (g) is attached.

In accordance with Paragraph 25(b) of the Agreement, if all of then preceding conditions of Paragraph 25(c) of the Agreement are materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to WCSJ, and the United States reserves all rights it may have against the WCSJ.

WCSJ agrees that any assignments or transfers of the Agreement by WCSJ shall be in accordance with the provisions set forth in Section XI, Paragraphs 25-27 of the Agreement. Notices and Submissions required under the Agreement that affect the property acquired by the WCSJ shall be sent to the following contact person for the WCSJ: _____.

So acknowledged and Agreed:

[Company Name]

_____
[Name, Title]

_____
[Address, Telephone #]

_____
Date

cc:

Superfund Division Director
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Superfund Records Center
U.S. EPA Region IX

COLLISHAW PROSPECTIVE PURCHASER AGREEMENT

EXHIBIT 5

EXHIBIT 5

EXHIBIT 5

Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

Re: Covenant Not to Sue Pursuant to Agreement and Covenant Not to Sue, Docket No. _____, Southbay Asbestos Superfund Site

Dear Regional Counsel:

In accordance with Paragraph 25(c) of the Agreement and Covenant Not to Sue, Docket No. _____ ("Agreement"), the undersigned party, WCSJ LLC ("WCSJ") hereby notifies the U.S. Environmental Protection Agency ("U.S. EPA") that it acquired title to the Property (as defined in the Agreement) on _____ [DATE]. The Agreement was originally entered into by and between the U.S. EPA and Legacy Partners 2335 LLC ("Legacy"), and concerns real property within the boundaries of the Southbay Asbestos Superfund Site ("Site"), located in San Jose, California. A legal description of the acquired property is attached hereto. The Agreement and Covenant Not to Sue will be applicable only as to the property acquired by the WCSJ.

WCSJ acknowledges that it has reviewed the Agreement and any modifications and notices thereto, if any. In accordance with Section XI (Parties Bound/Transfer of Covenant), Paragraphs 25(c)-27 of the Agreement, WCSJ (1) agrees that it is a Settling Respondent and will be bound by and perform, from the date of acquiring title to the Property, all of the obligations and terms in the Agreement in effect on the date it takes title to the Property; and (2) certifies that (a) it is financially capable of performing all such obligations; (b) it is not liable under CERCLA or any other law for Existing Contamination (as defined in the Agreement); (c) it's use of the Property (as defined in the Agreement), or any portion thereof, will not result in the release or threat of release of any hazardous substance; (d) it's use of the Property (as defined in the Agreement), or any portion thereof, will not cause or contribute to any threat to human health.

An affidavit and supporting documentation demonstrating the truthfulness of the preceding clauses 2(a) through (d) is attached. In accordance with Paragraph 25(c) of the Agreement, WCSJ shall have all of the rights and obligations under the Agreement and Covenant Not to Sue as of the date it takes title to the Property. However, if, at any time, EPA determines that the certifications provided pursuant to Paragraph 25(c) of the Agreement are materially inaccurate or incomplete, the Agreement and Covenant Not to Sue shall be null and void with respect to WCSJ, and the United States reserves all rights it may have against the WCSJ.

WCSJ agrees that any assignments or transfers of the Agreement by WCSJ shall be in accordance with the provisions set forth in Section XI, Paragraphs 25-27 of the Agreement. Notices and Submissions required under the Agreement that affect the property acquired by the WCSJ shall be sent to the following contact person for the WCSJ: _____.