Appendix A

Phase I Assessment

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PARTNER
Engineering and Science, Inc.®

PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT

San Jose, CA
5550 Cottle Road
San Jose, California 95138

Report Date: December 5, 2016
Partner Project No. 16-154587.2
Inspection Date: December 1, 2016

Prepared for:

In-N-Out Burgers
13502 Hamburger Lane
Baldwin Park, California 91706

PARTNER
Engineering and Science, Inc.

December 5, 2016

Ms. Lori Brazzill
In-N-Out Burgers
13502 Hamburger Lane
Baldwin Park, California 91706

Subject: Phase I Environmental Site Assessment
San Jose, CA
5550 Cottle Road
San Jose, California 95138
Partner Project No. 16-154587.2

Dear Ms. Brazzill:

Partner Engineering and Science, Inc. (Partner) is pleased to provide the results of the *Phase I Environmental Site Assessment* (Phase I ESA) report of the abovementioned address (the "subject property"). This assessment was performed in general conformance with the scope and limitations as detailed in the ASTM Practice E1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

This assessment included a site reconnaissance as well as research and interviews with representatives of the public, property ownership, site manager, and regulatory agencies. An assessment was made, conclusions stated, and recommendations outlined.

We appreciate the opportunity to provide environmental services to you. If you have any questions concerning this report, or if we can assist you in any other matter, please contact me at (949) 481-9818.

Sincerely,

Robert Vaughn
National Client Manager

EXECUTIVE SUMMARY

Partner Engineering and Science, Inc. (Partner) has performed a Phase I Environmental Site Assessment (ESA) in general accordance with the scope of work and limitations of ASTM Standard Practice E1527-13, the Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (AAI) (40 CFR Part 312) and set forth by In-N-Out Burgers for the property located at 5550 Cottle Road in the City of San Jose, Santa Clara County, California (the "subject property"). The Phase I Environmental Site Assessment is designed to provide In-N-Out Burgers with an assessment concerning environmental conditions (limited to those issues identified in the report) as they exist at the subject property.

Property Description

The subject property is located on the northern side of Great Oaks Parkway and the eastern side of Cottle Road within a mixed commercial and residential area of Santa Clara County. Please refer to the table below for further description of the subject property:

Subject Property Data	
Address:	Historically a part of 5550 Cottle Road, San Jose, California
Historical Address:	5600 Cottle Road
Property Use:	Vacant
Land Acreage (Ac):	2.42 Ac
Number of Buildings:	None
Assessor's Parcel Number (APN):	Part of APN 706-06-019
Current Tenants:	None
Site Assessment Performed By:	Christopher Olsen of Partner
Site Assessment Conducted On:	December 1, 2016

The subject property consists of an approximate 2.42 acre parcel of land that contains grass, shrubs and trees. There are no structures on the subject property. One 55-gallon drum was located near the northwestern corner of the subject property, and is labeled B 1-6 and is dated August 19, 2016. The drum likely contains purge water associated with sampling of the adjacent monitoring well B-16. No apparent environmental concerns were identified in connection with this drum. An Easement Agreement between International Business Machines Corporation (IBM) and Lowe's HIW, Inc., dated June 19, 2008, indicated that the vacant land on the south and west portions of the subject property is used by IBM for the purposes of groundwater monitoring and remediation. Groundwater monitoring and extraction wells, groundwater remediation system (including a 5,000-gallon aboveground holding tank), piping, plumbing and electrical equipment (heretofore known as "Groundwater Wells Facilities") are located in the easement area. Partner observed two groundwater monitoring wells along the southern and western easement area (MW RA-05 and MW B-16, respectively), as well as a currently inactive groundwater remediation compound and electrical equipment compound. The areas adjacent to the north and northeast of the subject property consist of a concrete-paved sidewalk and asphalt-paved driveways.

According to available historical sources, the subject property was formerly agricultural land from at least 1939 to 1950; vacant, cleared land in 1956; vacant land and a parking lot associated with the adjacent IBM facility (5550 Cottle Road) from at least 1962 to 1968; vacant land and an asphalt-paved driveway from at

least 1974 to 1982; a paved parking lot with landscaped areas from at least 1993 to 2009; and vacant, cleared land since at least 2010. IBM utilized the subject property area for office and manufacturing purposes from at least 1956 until the 1990s.

The immediately surrounding properties consist of Lowe's (5550 Cottle Road) and a parking lot to the north across a driveway; Target (5630 Cottle Road) beyond Great Oaks Parkway; a driveway and intersection of Great Oaks Parkway and Charlotte Drive to the east, with a parking lot and Ramac Park farther east; and Southside Senior Center (5585 Cottle Road) beyond Cottle Road.

According to multiple groundwater monitoring reports for IBM (5550 Cottle Road), the depth and direction of groundwater adjacent to the subject property was observed to be approximately 26-42 feet below ground surface (bgs) and flow toward the west.

Findings

A *recognized environmental condition (REC)* refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: due to release to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment. The following was identified during the course of this assessment:

- Partner did not identify any recognized environmental conditions during the course of this assessment.

A *controlled recognized environmental condition (CREC)* refers to a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls. The following was identified during the course of this assessment:

- The subject property and surrounding properties to the north, south and east were historically part of an approximately 350-acre facility developed with an International Business Machines Corporation (IBM) manufacturing facility (5550/5600 Cottle Road) from 1956 until the 1990s. The subject property is part of a larger parcel (Parcel A) that was developed with three buildings (Buildings 24, 25 and 30). Building 30 was historically located along the northern perimeter of the subject property and was used as offices. Building 25 was located northeast of the subject property and was historically use for offices and laboratory. These buildings were demolished in 2009, and the existing Lowe's home improvement store, parking lots and driveways were constructed in 2010. The subject property parcel was historically utilized as a parking lot, driveway, and contained landscaped areas dating back to 1956.

  Investigations conducted in the late 1970s on the larger 350-acre parcel indicated that releases of volatile organic compounds (VOCs) had impacted soil and groundwater. Extensive soil and groundwater remediation was conducted throughout the 1980s and 1990s on the larger 350-acre parcel, which resulted in significant reductions of constituent concentrations in both soil and groundwater. According to information provided by the property owner (Lowe's), one 1,000-

gallon UST (W-1) was reportedly installed on Parcel A in 1977 and was used as a waste vault. This tank was removed in June 1989. Along with the waste vault removal, a six-inch diameter, double-contained underground pipeline and sump were removed. A 4,000-gallon ink tank was removed from Parcel A by IBM in August 1982. Soil sampling was performed after each removal, and low levels of volatile organic compounds (VOCs) were detected in the ink tank and over-excavation was performed. Approximately 190 cubic yards of soil was excavated and disposed off-site, and confirmation soil samples did not detect VOCs above the site cleanup level of 1 part per million (ppm). No additional investigation was performed. Based on site plans included in records (Remedial Action Implementation Report Building 025 Source Zone in Groundwater) obtained from the Regional Water Quality Control Board (RWQCB), the former ink tank was located on the southeast corner of the subject property and the waste vault (W-1) was located east of the subject property.

A Soil Vapor Investigation was completed at Parcel A in 2007 due to the planned sale of Parcel A to Lowe's for redevelopment with a Lowe's Home Improvement Center. A total of 28 soil vapor implants were installed at 14 locations on Parcel A in September 2006 and sampled in October 2006. At the time of the investigation, a VOC groundwater plume (primarily PCE and TCE) extended onto the southwestern portion of the parent parcel, covering the subject property. Soil vapor implants were installed in the vicinity of the locations of the extraction and groundwater monitoring wells on the parent parcel, both within and outside of the mapped groundwater VOC plume. At each location, one deep (20-feet) and one shallow boring (8-feet) were advanced. Of the twenty-eight soil vapor implants installed, eight were located on or in close vicinity to the subject property; SVO-25-23 (16-feet bgs) and SVO-25-24 (7-feet bgs) were located on the northwestern portion of the subject property; SVO25-21 (18-feet bgs) and SVO-25-22 (8-feet bgs) were located on the southwestern portion of the subject property, west of AO-7; SVO25-17 (20-feet bgs) and SVO-25-18 (8-feet bgs) were located on the southeastern portion of the subject property, east of RA-5; and SVO-25-19 (20-feet bgs) and SVO-25-20 (7-feet bgs) were located approximately 75-feet northeast of the subject property. A follow up soil vapor sampling event was conducted in November 2016 and included SVO25-17 and SVO-35-18, SVO25-21, SVO-25-22, SVO-25-23, and SVO-25-24 as well as two sampling points further to the north of the subject property SVO25-25, SVO-25-26, SVO-25-27, and SVO-25-28.

According to analytical results, TCE, the principal compound of concern which has been found at the highest concentration in groundwater, was not detected in soil vapor samples collected from the shallow implants. However, TCE was detected in two deep implants, including SVO-25-17 (on the southeastern portion of the subject property) and a point north of the subject property. Analytical results for the sampling points on the subject property in October 2006 indicated that TCA was detected as high as 2,200 µg/m³ (SVO-25-21), DCE was detected as high 1,400 µg/m³ (SVO-25-21), and Freon 113 was detected as high as 270 µg/m³ (SVO-25-23). Analytical results for the sampling points on the subject property in November 2006 indicated that TCA was detected as high as 2,800 µg/m³ (SVO-25-21), DCE was detected as high 1,300 µg/m³ (SVO-25-21), Freon 113 was detected as high as 270 µg/m³ (SVO-25-23), TCE was detected as high as 53 µg/m³

(SVO-25-17), and PCE was detected as high as 33 µg/m³ (SVO-25-17). These levels were below the Environmental Screening (ESLs) and California Human Health Screening Levels (CHHSLs). It was concluded that potential vapor intrusion would not constitute a concern for the proposed commercial development.

According to a Remedial Action Plan (RAP) for Parcel A, the following were the sources of contaminated soil were identified: 1) organochlorine pesticides used in the former orchards at the Site, 2) naturally occurring asbestos in the aggregate base rock, and 3) arsenic, chromium, and benzo(a)pyrene in the fill material used in the parking lots. In 2009, Lowe's excavated approximately 6,400 cubic yards of soil from various identified locations to a typical maximum depth of three feet below ground surface (bgs). The target of the removal actions were soils that contained at least one of the following constituents of concern (COCs): naturally occurring asbestos, dieldrin, arsenic, chromium, and benzo(a)pyrene. The excavated soil was relocated to a former basement area beneath the current Lowe's parking lot and covered with a geomarker (orange safety fence). COC containing soil that was not relocated remains in few locations; however, these locations are covered by sidewalks, a driveway, or a geomarker and a soil cap. According to a Soil Management Plan (SMP) was prepared by Golder Associates in 2009, an area of capped soil is located on the northeastern portion of the subject property, which is in the approximate location of In-N-Out Burger's future parking lot per In-N-Out Burger's Preliminary Site Plan. The proposed In-N-Out building is not located in an area identified as containing capped soils. The Regional Water Quality Control Board (RWQCB) approved the SMP on December 23, 2009.

The RWQCB and Lowe's HIW, Inc. signed a Covenant and Environmental Restriction (Covenant) on Property on May 27, 2010. The Covenant identified the areas of capped soil, and described procedures for inspection and maintenance of the caps for soil excavation, handling and disposal of soil contaminants of concern in the capped areas. The Covenant restricted the uses of the subject property, and prohibited residential uses, hospitals, schools, and day care centers. A previously prepared easement agreement between IBM and Lowe's prohibits Lowe's or future owners from disturbing the easement area (on the southern and western portion of the subject property) due to subsurface piping, monitoring wells, remediation systems and electrical equipment in these areas.

On June 14, 2010, RWQCB confirmed the completion of the site investigation and remedial actions for pollutant releases at 5550 Cottle Road. The case closure pertains to cleanup of soil solely under Regional Water Board Resolution No. R2-2009-0007 for Mutual Release and Covenant Not to Sue (Mutual Release). In addition, in a letter dated September 28, 2010, the RWQCB confirmed that Lowe's implementation of the Remedial Action Plan, as documented in the NFA letter dated June 14, 2010, also satisfied any outstanding corrective action requirements for soil under RCRA Permit No. CAD 990843989 or the Hazardous Waste Control Law for the former Parcel A under IB's former Hazardous waste Facility permits. DTSC reportedly concurred with RWQCB.

IBM retains responsibility for ongoing groundwater monitoring and cleanup under Regional Water Board Order No. R2-2002-0082, as amended by Order No. R2-2007-0004. Review of several client provided documents, RWQCB files and interviews with representatives of Lowe's, IBM and Golder Associates indicated that groundwater monitoring is ongoing, but groundwater remediation has ceased for a period of two years (as of January 2016) as a part of a pilot curtailment test to determine the extent of migration of TCE west of the subject property. Three groundwater monitoring wells are located on the southern (A-07 and RA-05) and western (B-16) portion of the subject property, in the IBM easement, and the inactive remediation system is located in the easement on the western portion of the subject property. The most recent sampling data for AO-7, (November 2013), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. A concentration of 4.5 part per billion (ppb) of 1,1,1-trichloroethane and 1.7 ppb of Freon 113 were identified in this well. The most recent sampling data for B-16 (November 2014), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. An estimated concentration of 0.32 part per billion (ppb) of 1,1,1-trichloroethane and 1.8 ppb of Freon 113 were identified in this well. Analytical results were not identified for RA-05 and this well has not been included on recent sampling schedules. Areas of elevated concentrations of volatile organic compounds (VOCs) are located farther to the north-northwest of the subject property.

On May 29, 2014, Giles Engineering Associates, Inc. prepared a Limited Phase II Environmental Site Assessment and Soil Gas Investigation for the proposed Chick-fil-A at the Property. The report identified soil gas concentrations of benzene, 1,1 didhloroethene, ethylbenzene, 1,1,1 trichloroethene, and xylenes exceeding USEPA Regional RSLs and/or CHHSL's for residential and/or industrial use, but below the USEPA cancer risk or the Hazard Quotient (HQ) for non-carcinogen compounds. According to the report, the risk of vapor intrusion for the proposed Chick-fil-A structure to be located at the Property is considered to be low. Vapor mitigation measures are not typical taken at sites with the levels of soil gas found at the property. However, the installation of a passive vapor mitigation system for the building would further reduce the potential to exposure to the soil gas beneath the site. Giles indicated that TPH oil range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1 through VP6 and GP1 through GP3. TPH diesel range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1, VP2, VP4, VP5, GP2 and GP3. There are no established EPA or CHHSLs for TPH and the RAP did not identify site specific thresholds for TPH. The RWQCB established an environmental screening level (ESL) of 100 mg/kg for commercial sites for TPH. TPH oil range organics were detected above the ESL in VP2 (320 mg/kg), VP4 (300 mg/kg), and GP3 (110 mg/k). TPH diesel range organics were not detected above the applicable ESL. Giles indicated that the ESLs are not considered a reporting requirement and a risk based analysis would be necessary to further evaluate the TPH levels detected. TPH gasoline range organics were not detected above the MDL in any of the soil

samples collected during the investigation. Metals and pesticide detections were below CHHSLs, RSLs, and/or site specific cleanup levels established in the RAP. Based on the levels of TPH detected, lack of other constituents of concern, soil vapor results, and required Soil Management Plan, the levels of TPH detected onsite during Giles 2014 assessment are not expected to represent a significant environmental concern.

The conditions summarize above, including but not limited to the capped soil contamination and low levels of VOCs in groundwater and soil vapor at the subject property area, are controlled recognized environmental conditions (CRECs) that already have been addressed to the satisfaction of the applicable regulatory authorities, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

A *historical recognized environmental condition (HREC)* refers to a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls. The following was identified during the course of this assessment:

- Partner did not identify any historical recognized environmental conditions during the course of this assessment.

An *environmental issue* refers to environmental concerns identified by Partner, which do not qualify as RECs; however, warrant further discussion. The following was identified during the course of this assessment:

- Partner did not identify any environmental issues during the course of this assessment.

Conclusions, Opinions and Recommendations

Partner has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E1527-13 of 5550 Cottle Road in the City of San Jose, Santa Clara County, California (the "subject property"). Any exceptions to, or deletions from, this practice are described in Section 1.5 of this report.

This assessment has not revealed evidence of any recognized environmental conditions or environmental issues or historical recognized environmental conditions in connection with the subject property, but Partner's assessment has revealed evidence of controlled recognized environmental conditions as described above, which by definition and as a practical matter do not require any Phase II follow-up to this Phase I.

However, if the client desires a higher level of confidence of soil vapor conditions within the subject property boundaries or under the proposed building footprint, a soil vapor assessment could be conducted as an optional matter.

Partner further observes that in any event, in use and in any future development the subject property owner is required to comply with the requirements of the previously prepared and RWQCB-approved Soil

Management Plan as to those capped areas subject to the SMP, and owner also must comply with the May 27, 2010 Covenant and Environmental Restriction as to all areas subject to such Restriction. Furthermore, Partner observes that the owner of the subject property may not be not permitted to develop in the IBM easement area on the southern and western portion of the subject property, at least according to the currently recorded easement agreements between Lowe's and IBM. If future development at the subject property includes the disturbance of capped soils subject to the SMP, then the procedures outlined in the SMP should be followed.

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Appendices

1.0 INTRODUCTION

Partner Engineering and Science, Inc. (Partner) has performed a Phase I Environmental Site Assessment (ESA) in general conformance with the scope and limitations of ASTM Standard Practice E1527-13 and the Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (AAI) (40 CFR Part 312) for the property located at 5550 Cottle Road in the City of San Jose, Santa Clara County, California (the "subject property"). Any exceptions to, or deletions from, this scope of work are described in the report.

1.1 Purpose

The purpose of this ESA is to identify existing or potential Recognized Environmental Conditions (as defined by ASTM Standard E1527-13) affecting the subject property that: 1) constitute or result in a material violation or a potential material violation of any applicable environmental law; 2) impose any material constraints on the operation of the subject property or require a material change in the use thereof; 3) require clean-up, remedial action or other response with respect to Hazardous Substances or Petroleum Products on or affecting the subject property under any applicable environmental law; 4) may affect the value of the subject property; and 5) may require specific actions to be performed with regard to such conditions and circumstances. The information contained in the ESA Report will be used by Client to: 1) evaluate its legal and financial liabilities for transactions related to foreclosure, purchase, sale, loan origination, loan workout or seller financing; 2) evaluate the subject property's overall development potential, the associated market value and the impact of applicable laws that restrict financial and other types of assistance for the future development of the subject property; and/or 3) determine whether specific actions are required to be performed prior to the foreclosure, purchase, sale, loan origination, loan workout or seller financing of the subject property.

This ESA was performed to permit the *User* to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on scope of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601) liability (hereinafter, the "*landowner liability protections*," or "*LLPs*"). ASTM Standard E1527-13 constitutes "*all appropriate inquiry* into the previous ownership and uses of the *property* consistent with good commercial or customary practice" as defined at 42 U.S.C. §9601(35)(B).

1.2 Scope of Work

The scope of work for this ESA is in general accordance with the requirements of ASTM Standard E1527-13. This assessment included: 1) a property and adjacent site reconnaissance; 2) interviews with key personnel; 3) a review of historical sources; 4) a review of regulatory agency records; and 5) a review of a regulatory database report provided by a third-party vendor. Partner contacted local agencies, such as environmental health departments, fire departments and building departments in order to determine any current and/or former hazardous substances usage, storage and/or releases of hazardous substances on the subject property. Additionally, Partner researched information on the presence of activity and use limitations (AULs) at these agencies. As defined by ASTM E1527-13, AULs are the legal or physical restrictions or limitations on the use of, or access to, a site or facility: 1) to reduce or eliminate potential

exposure to hazardous substances or petroleum products in the soil or groundwater on the subject property; or 2) to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the environment. These legal or physical restrictions, which may include institutional and/or engineering controls (IC/ECs), are intended to prevent adverse impacts to individuals or populations that may be exposed to hazardous substances and petroleum products in the soil or groundwater on the property.

If requested by Client, this report may also include the identification, discussion of, and/or limited sampling of asbestos-containing materials (ACMs), lead-based paint (LBP), mold, and/or radon.

1.3 Limitations

Partner warrants that the findings and conclusions contained herein were accomplished in accordance with the methodologies set forth in the Scope of Work. These methodologies are described as representing good commercial and customary practice for conducting an ESA of a property for the purpose of identifying recognized environmental conditions. There is a possibility that even with the proper application of these methodologies there may exist on the subject property conditions that could not be identified within the scope of the assessment or which were not reasonably identifiable from the available information. Partner believes that the information obtained from the record review and the interviews concerning the subject property is reliable. However, Partner cannot and does not warrant or guarantee that the information provided by these other sources is accurate or complete. The conclusions and findings set forth in this report are strictly limited in time and scope to the date of the evaluations. The conclusions presented in the report are based solely on the services described therein, and not on scientific tasks or procedures beyond the scope of agreed-upon services or the time and budgeting restraints imposed by the Client. No other warranties are implied or expressed.

Some of the information provided in this report is based upon personal interviews, and research of available documents, records, and maps held by the appropriate government and private agencies. This report is subject to the limitations of historical documentation, availability, and accuracy of pertinent records, and the personal recollections of those persons contacted.

This practice does not address requirements of any state or local laws or of any federal laws other than the all appropriate inquiry provisions of the LLPs. Further, this report does not intend to address all of the safety concerns, if any, associated with the subject property.

Environmental concerns, which are beyond the scope of a Phase I ESA as defined by ASTM include the following: ACMs, LBP, radon, and lead in drinking water. These issues may affect environmental risk at the subject property and may warrant discussion and/or assessment; however, are considered non-scope issues. If specifically requested by the Client, these non-scope issues are discussed in Section 6.3.

1.4 User Reliance

In-N-Out Burgers engaged Partner to perform this assessment in accordance with an agreement governing the nature, scope and purpose of the work as well as other matters critical to the engagement. All reports, both verbal and written, are for the sole use and benefit of In-N-Out Burgers. Either verbally

or in writing, third parties may come into possession of this report or all or part of the information generated as a result of this work. In the absence of a written agreement with Partner granting such rights, no third parties shall have rights of recourse or recovery whatsoever under any course of action against Partner, its officers, employees, vendors, successors or assigns. Any such unauthorized user shall be responsible to protect, indemnify and hold Partner, Client and their respective officers, employees, vendors, successors and assigns harmless from any and all claims, damages, losses, liabilities, expenses (including reasonable attorneys' fees) and costs attributable to such Use. Unauthorized use of this report shall constitute acceptance of and commitment to these responsibilities, which shall be irrevocable and shall apply regardless of the cause of action or legal theory pled or asserted. Additional legal penalties may apply.

This report has been completed under specific Terms and Conditions relating to scope, relying parties, limitations of liability, indemnification, dispute resolution, and other factors relevant to any reliance on this report. Any parties relying on this report do so having accepted the Terms and Conditions for which this report was completed. A copy of Partner's standard Terms and Conditions can be found at http://www.partneresi.com/terms-and-conditions.php.

1.5 Limiting Conditions

The findings and conclusions contain all of the limitations inherent in these methodologies that are referred to in ASTM E1527-13.

Specific limitations and exceptions to this ESA are more specifically set forth below:

- Interviews with past or current owners, operators and occupants were not reasonably ascertainable and thus constitute a data gap. Based on information obtained from interviews conducted at the time of the prior assessment (in February 2016) and other historical sources (as discussed in Section 3.0), this data gap is not expected to alter the findings of this assessment.
- Partner was not able to document the historical use of the subject property prior to 1939. The following sources were reviewed during the course of this assessment and found to be limited: aerial photographs were not available prior to 1939; city directories were not available prior to 1970; topographic maps prior to 1955 were not reasonably ascertainable from local agencies; and other historical sources such as fire insurance maps did not provide coverage of the subject property. This data failure is not considered critical and does not change the conclusions of this report, as the 1939 aerial photograph revealed the subject property to be farmland. In addition, the adjacent and surrounding areas are also shown mostly as farmland with scattered residential development.
- Partner was unable to determine the property use at 5-year intervals, which constitutes a data gap. Information concerning historical use of the subject property was unavailable from 1939 to 1948. Except for property tax files and recorded land title records, which were not considered to be sufficiently useful, Partner reviewed all standard historical sources and conducted appropriate interviews.

2.0 SITE DESCRIPTION

2.1 Site Location and Legal Description

The subject property at 5550 Cottle Road in San Jose, California is located on the northern side of Great Oaks Parkway and the eastern side of Cottle Road. According to the Santa Clara County Assessor, the subject property is legally described as a part of Assessor Parcel Number 706-06-019, and ownership is currently vested in Lowe's HIW, Inc. since 2008.

Please refer to Figure 1: Site Location Map, Figure 2: Site Plan, Figure 3: Topographic Map, and Appendix A: Site Photographs for the location and site characteristics of the subject property.

2.2 Current Property Use

The subject property consists of an approximate 2.42 acre parcel of land that contains grass, shrubs and trees. There are no structures on the subject property. One 55-gallon drum was located near the northwestern corner of the subject property, and is labeled B 1-6 and is dated August 19, 2016. The drum likely contains purge water associated with sampling of the adjacent monitoring well B-16. No apparent environmental concerns were identified in connection with this drum. An Easement Agreement between International Business Machines Corporation (IBM) and Lowe's HIW, Inc., dated June 19, 2008, indicated that the vacant land on the south and west portions of the subject property is used by IBM for the purposes of groundwater monitoring and remediation. Groundwater monitoring and extraction wells, groundwater remediation system (including a 5,000-gallon aboveground holding tank), piping, plumbing and electrical equipment (heretofore known as "Groundwater Wells Facilities") are located in the easement area. Partner observed two groundwater monitoring wells along the southern and western easement area (MW RA-05 and MW B-16, respectively), as well as a currently inactive groundwater remediation compound and electrical equipment compound. The areas adjacent to the north and northeast of the subject property consist of a concrete-paved sidewalk and asphalt-paved driveways.

The subject property is designated for commercial development by the City of San Jose.

The subject property was identified on the Deed and Spills, Leaks, Investigations and Cleanups (SLIC) databases in the regulatory database report, as further discussed in Section 4.2.

2.3 Current Use of Adjacent Properties

The subject property is located within a mixed commercial and residential area of Santa Clara County. During the vicinity reconnaissance, Partner observed the following land use on properties in the immediate vicinity of the subject property:

Immediately Surrounding Properties

North: Lowe's (5550 Cottle Road) and a parking lot are located adjacent to the north across a driveway.

South: Target (5630 Cottle Road) beyond Great Oaks Parkway.

East: A driveway and intersection of Great Oaks Parkway and Charlotte Drive are located adjacent to the east, with a parking lot and Ramac Park farther east.

West: Southside Senior Center (5585 Cottle Road) beyond Cottle Road.

The adjacent properties to the north, west and southwest were identified on the Facility and Manifest (HAZNET), Deed, California Hazardous Materials Incident Reporting System (CHMIRS), SLIC, Certified Unified Program Agency (CUPA) Listings, San Jose Hazardous Materials Site List, Statewide Environmental Evaluation and Planning System Underground Storage Tank (SWEEPS UST), Leaking UST (LUST), Historic LUST, Environmental Data Resources, Inc. (EDR) Historical Auto Stations, and Historical Cortese databases in the regulatory database report of Section 4.2.

2.4 Physical Setting Sources

2.4.1 Topography

The United States Geological Survey (USGS) *San Jose East, California* Quadrangle 7.5-minute series topographic map was reviewed for this ESA. According to the contour lines on the topographic map, the subject property is located at approximately 190 feet above mean sea level (MSL). The contour lines in the area of the subject property indicate the area is sloping gently toward the west. Improvements, with the exception of roadways, are not depicted on the 2012 topographic map.

A copy of the most recent topographic map is included as Figure 3 of this report.

2.4.2 Hydrology

The nearest surface water in the vicinity of the subject property is the Coyote Creek located approximately 3,000 feet northeast of the subject property. No settling ponds, lagoons, surface impoundments, wetlands or natural catch basins were observed at the subject property during this assessment.

According to available information, a public water system operated by the City of San Jose serves the subject property vicinity. According to the 2014 Water Quality Report, shallow groundwater directly beneath the subject property is not utilized for domestic purposes. The sources of public water for the City of San Jose are imported water from Hetch Hetchy (located in the Sierra Nevada Mountains) and water that is purchased from the San Francisco Public Utilities Commission.

According to multiple groundwater monitoring reports for IBM (5550 Cottle Road), the depth and direction of groundwater adjacent to the subject property was observed to be approximately 26-42 feet bgs and flow toward the west.

2.4.3 Geology/Soils

Information concerning the geology of the subject property was obtained from the USGS Ground Water Atlas of the United States, California region (1995). The subject property is located within the Pacific Border physiographic province, which is characterized by steep rolling hills and mountains and consists of severely folded, faulted, and commonly metamorphosed marine and continental sediments.

The U. S. Department of Agriculture's (USDA) Soil Conservation Service (SCS) National Cooperative Soil Survey soil maps were reviewed. According to the USDA, the soils underlying the subject property are currently mapped as Urban Land-Elpaloalto Complex. The Elpaloalto Complex is described as well drained, slightly decomposed plant material, clay loam, and silty clay loam with a depth of 94 inches. The parent material is described as disturbed and human transported material. The Urban Land Index

indicated that 70% of the area is classified as urban land, with the remaining 30% classified as Elpaloalto and minor components. The soils in Urban Land areas have been altered to the extent that they can no longer be separated into individual soil units.

2.4.4 Flood Zone Information

Partner performed a review of the Flood Insurance Rate Map, published by the Federal Emergency Management Agency. According to Community Panel Number 06085C0268H, dated May 18, 2009, the subject property appears to be located in Zone X, an area located outside of the 100-year and 500-year flood plains.

3.0 HISTORICAL INFORMATION

Partner obtained historical use information about the subject property from a variety of sources. A chronological listing of the historical data found is summarized in the table below:

Historical Use Information

Period/Date	Source	Description/Use
1939-1950	Aerial Photographs	Agricultural
1956	Aerial Photograph	Vacant, Cleared Land
1962-1968	Topographic Map and Aerial Photograph	Vacant Land and IBM parking lot
1974-1982	Aerial Photographs and Topographic Map	Vacant Land and IBM driveway
1993-2009	Aerial Photographs	IBM parking lot and landscaped areas
2010-Present	Aerial Photographs, Previous Reports and Onsite Observations	Vacant Land

IBM utilized the subject property area for office and manufacturing purposes from at least 1956 until the 1990s, as discussed below:

- The subject property and surrounding properties to the north, south and east were historically part of an approximately 350-acre facility developed with an International Business Machines Corporation (IBM) manufacturing facility (5550/5600 Cottle Road) from 1956 until the 1990s. The subject property is part of a larger parcel (Parcel A) that was developed with three buildings (Buildings 24, 25 and 30). Building 30 was historically located along the northern perimeter of the subject property and was used as offices. Building 25 was located northeast of the subject property and was historically use for offices and laboratory. These buildings were demolished in 2009, and the existing Lowe's home improvement store, parking lots and driveways were constructed in 2010. The subject property parcel was historically utilized as a parking lot, driveway, and contained landscaped areas dating back to 1956.

  Investigations conducted in the late 1970s on the larger 350-acre parcel indicated that releases of volatile organic compounds (VOCs) had impacted soil and groundwater. Extensive soil and groundwater remediation was conducted throughout the 1980s and 1990s on the larger 350-acre parcel, which resulted in significant reductions of constituent concentrations in both soil and groundwater. According to information provided by the property owner (Lowe's), one 1,000-gallon UST (W-1) was reportedly installed on Parcel A in 1977 and was used as a waste vault. This tank was removed in June 1989. Along with the waste vault removal, a six-inch diameter, double-contained underground pipeline and sump were removed. A 4,000-gallon ink tank was removed from Parcel A by IBM in August 1982. Soil sampling was performed after each removal, and low levels of volatile organic compounds (VOCs) were detected in the ink tank and over-excavation was performed. Approximately 190 cubic yards of soil was excavated and disposed off-site, and confirmation soil samples did not detect VOCs above the site cleanup level of 1 part per million (ppm). No additional investigation was performed. Based on site plans included in records (Remedial Action Implementation Report Building 025 Source Zone in Groundwater) obtained from the Regional Water Quality Control Board (RWQCB), the former ink tank was located on the

southeast corner of the subject property and the waste vault (W-1) was located east of the subject property.

A Soil Vapor Investigation was completed at Parcel A in 2007 due to the planned sale of Parcel A to Lowe's for redevelopment with a Lowe's Home Improvement Center. A total of 28 soil vapor implants were installed at 14 locations on Parcel A in September 2006 and sampled in October 2006. At the time of the investigation, a VOC groundwater plume (primarily PCE and TCE) extended onto the southwestern portion of the parent parcel, covering the subject property. Soil vapor implants were installed in the vicinity of the locations of the extraction and groundwater monitoring wells on the parent parcel, both within and outside of the mapped groundwater VOC plume. At each location, one deep (20-feet) and one shallow boring (8-feet) were advanced. Of the twenty-eight soil vapor implants installed, eight were located on or in close vicinity to the subject property; SVO-25-23 (16-feet bgs) and SVO-25-24 (7-feet bgs) were located on the northwestern portion of the subject property; SVO25-21 (18-feet bgs) and SVO-25-22 (8-feet bgs) were located on the southwestern portion of the subject property, west of AO-7; SVO25-17 (20-feet bgs) and SVO-25-18 (8-feet bgs) were located on the southeastern portion of the subject property, east of RA-5; and SVO-25-19 (20-feet bgs) and SVO-25-20 (7-feet bgs) were located approximately 75-feet northeast of the subject property. A follow up soil vapor sampling event was conducted in November 2016 and included SVO25-17 and SVO-35-18, SVO25-21, SVO-25-22, SVO-25-23, and SVO-25-24 as well as two sampling points further to the north of the subject property SVO25-25, SVO-25-26, SVO-25-27, and SVO-25-28.

According to analytical results, TCE, the principal compound of concern which has been found at the highest concentration in groundwater, was not detected in soil vapor samples collected from the shallow implants. However, TCE was detected in two deep implants, including SVO-25-17 (on the southeastern portion of the subject property) and a point north of the subject property. Analytical results for the sampling points on the subject property in October 2006 indicated that TCA was detected as high as 2,200 µg/m³ (SVO-25-21), DCE was detected as high 1,400 µg/m³ (SVO-25-21), and Freon 113 was detected as high as 270 µg/m³ (SVO-25-23). Analytical results for the sampling points on the subject property in November 2006 indicated that TCA was detected as high as 2,800 µg/m³ (SVO-25-21), DCE was detected as high 1,300 µg/m³ (SVO-25-21), Freon 113 was detected as high as 270 µg/m³ (SVO-25-23), TCE was detected as high as 53 µg/m³ (SVO-25-17), and PCE was detected as high as 33 µg/m³ (SVO-25-17). These levels were below the Environmental Screening (ESLs) and California Human Health Screening Levels (CHHSLs). It was concluded that potential vapor intrusion would not constitute a concern for the proposed commercial development.

According to a Remedial Action Plan (RAP) for Parcel A, the following were the sources of contaminated soil were identified: 1) organochlorine pesticides used in the former orchards at the Site, 2) naturally occurring asbestos in the aggregate base rock, and 3) arsenic, chromium, and benzo(a)pyrene in the fill material used in the parking lots. In 2009, Lowe's excavated approximately 6,400 cubic yards of soil from various identified locations to a typical maximum

depth of three feet below ground surface (bgs). The target of the removal actions were soils that contained at least one of the following constituents of concern (COCs): naturally occurring asbestos, dieldrin, arsenic, chromium, and benzo(a)pyrene. The excavated soil was relocated to a former basement area beneath the current Lowe's parking lot and covered with a geomarker (orange safety fence). COC containing soil that was not relocated remains in few locations; however, these locations are covered by sidewalks, a driveway, or a geomarker and a soil cap. According to a Soil Management Plan (SMP) was prepared by Golder Associates in 2009, an area of capped soil is located on the northeastern portion of the subject property, which is in the approximate location of In-N-Out Burger's future parking lot per In-N-Out Burger's Preliminary Site Plan. The proposed In-N-Out building is not located in an area identified as containing capped soils. The Regional Water Quality Control Board (RWQCB) approved the SMP on December 23, 2009.

The RWQCB and Lowe's HIW, Inc. signed a Covenant and Environmental Restriction (Covenant) on Property on May 27, 2010. The Covenant identified the areas of capped soil, and described procedures for inspection and maintenance of the caps for soil excavation, handling and disposal of soil contaminants of concern in the capped areas. The Covenant restricted the uses of the subject property, and prohibited residential uses, hospitals, schools, and day care centers. A previously prepared easement agreement between IBM and Lowe's prohibits Lowe's or future owners from disturbing the easement area (on the southern and western portion of the subject property) due to subsurface piping, monitoring wells, remediation systems and electrical equipment in these areas.

On June 14, 2010, RWQCB confirmed the completion of the site investigation and remedial actions for pollutant releases at 5550 Cottle Road. The case closure pertains to cleanup of soil solely under Regional Water Board Resolution No. R2-2009-0007 for Mutual Release and Covenant Not to Sue (Mutual Release). In addition, in a letter dated September 28, 2010, the RWQCB confirmed that Lowe's implementation of the Remedial Action Plan, as documented in the NFA letter dated June 14, 2010, also satisfied any outstanding corrective action requirements for soil under RCRA Permit No. CAD 990843989 or the Hazardous Waste Control Law for the former Parcel A under IB's former Hazardous waste Facility permits. DTSC reportedly concurred with RWQCB.

IBM retains responsibility for ongoing groundwater monitoring and cleanup under Regional Water Board Order No. R2-2002-0082, as amended by Order No. R2-2007-0004. Review of several client provided documents, RWQCB files and interviews with representatives of Lowe's, IBM and Golder Associates indicated that groundwater monitoring is ongoing, but groundwater remediation has ceased for a period of two years (as of January 2016) as a part of a pilot curtailment test to determine the extent of migration of TCE west of the subject property. Three groundwater monitoring wells are located on the southern (A-07 and RA-05) and western (B-16) portion of the subject property, in the IBM easement, and the inactive remediation system is located in the easement on the western portion of the subject property. The most recent

sampling data for AO-7, (November 2013), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. A concentration of 4.5 part per billion (ppb) of 1,1,1-trichloroethane and 1.7 ppb of Freon 113 were identified in this well. The most recent sampling data for B-16 (November 2014), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. An estimated concentration of 0.32 part per billion (ppb) of 1,1,1-trichloroethane and 1.8 ppb of Freon 113 were identified in this well. Analytical results were not identified for RA-05 and this well has not been included on recent sampling schedules. Areas of elevated concentrations of volatile organic compounds (VOCs) are located farther to the north-northwest of the subject property.

On May 29, 2014, Giles Engineering Associates, Inc. prepared a Limited Phase II Environmental Site Assessment and Soil Gas Investigation for the proposed Chick-fil-A at the Property. The report identified soil gas concentrations of benzene, 1,1 didhloroethene, ethylbenzene, 1,1,1 trichloroethene, and xylenes exceeding USEPA Regional RSLs and/or CHHSL's for residential and/or industrial use, but below the USEPA cancer risk or the Hazard Quotient (HQ) for non-carcinogen compounds. According to the report, the risk of vapor intrusion for the proposed Chick-fil-A structure to be located at the Property is considered to be low. Vapor mitigation measures are not typical taken at sites with the levels of soil gas found at the property. However, the installation of a passive vapor mitigation system for the building would further reduce the potential to exposure to the soil gas beneath the site. Giles indicated that TPH oil range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1 through VP6 and GP1 through GP3. TPH diesel range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1, VP2, VP4, VP5, GP2 and GP3. There are no established EPA or CHHSLs for TPH and the RAP did not identify site specific thresholds for TPH. The RWQCB established an environmental screening level (ESL) of 100 mg/kg for commercial sites for TPH. TPH oil range organics were detected above the ESL in VP2 (320 mg/kg), VP4 (300 mg/kg), and GP3 (110 mg/k). TPH diesel range organics were not detected above the applicable ESL. Giles indicated that the ESLs are not considered a reporting requirement and a risk based analysis would be necessary to further evaluate the TPH levels detected. TPH gasoline range organics were not detected above the MDL in any of the soil samples collected during the investigation. Metals and pesticide detections were below CHHSLs, RSLs, and/or site specific cleanup levels established in the RAP. Based on the levels of TPH detected, lack of other constituents of concern, soil vapor results, and required Soil Management Plan, the levels of TPH detected onsite during Giles 2014 assessment are not expected to represent a significant environmental concern.

The conditions summarize above, including but not limited to the capped soil contamination and low levels of VOCs in groundwater and soil vapor at the subject property area, are controlled recognized environmental conditions (CRECs) that already have been addressed to the

satisfaction of the applicable regulatory authorities, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

3.1 Aerial Photograph Review

Partner obtained available aerial photographs of the subject property and surrounding area from Environmental Data Resources (EDR) on January 15, 2016. The following observations were noted to be visible on the subject property and adjacent properties during the aerial photograph review:

Date: 1939, 1948, and 1950	***Scale: 1"=500'***
Subject Property:	The subject property appears to be used for agricultural purposes with scattered residential and/or agricultural-type buildings along the southern boundary.
North:	The area adjacent to the north appears to be agricultural land.
South:	The area adjacent to the south appears to be agricultural land with scattered residential and/or agricultural-type buildings.
East:	The area adjacent to the east appears to be agricultural land.
West:	The area adjacent to the west appears to be agricultural land and a road, with residential-type buildings and out buildings farther west.

Date: 1956	***Scale: 1"=500'***
Subject Property:	The subject property appears to be vacant land.
North:	The area adjacent to the north appears to be vacant, graded land.
South:	The area adjacent to the south appears to be vacant, graded land with several vehicles.
East:	The area adjacent to the east appears to be vacant land.
West:	No significant changes visible

Date: 1968	***Scale: 1"=500'***
Subject Property:	The subject property appears to be an asphalt-paved parking lot with vacant land or paved areas on the western side of the property.
North:	The area adjacent to the north appears to be developed with an industrial building and contains a paved parking lot.
South:	The area adjacent to the south appears to be a paved parking lot and a road, with a paved parking lot and multiple industrial buildings farther south.
East:	The area adjacent to the east appears to be a road and paved parking lot.
West:	The area adjacent to the west appears to be vacant land, with a road, gasoline service station and vacant land farther west.

Date: 1974 and 1982	***Scale: 1"=500'***
Subject Property:	The subject property appears to be an asphalt-paved driveway and vacant land. The southwest corner of the northwest industrial building is located on or along the northwestern subject property boundary.
North:	The area adjacent to the north appears to be developed with an industrial building and a driveway, and contains vacant land.
South:	The area adjacent to the south appears to be vacant land and a road, with a paved parking lot farther south.
East:	The area adjacent to the east appears to be vacant land, a driveway, parking lot and

Date: 1974 and 1982	*Scale: 1"=500'*

a road.

West: The area adjacent to the west appears to be vacant land, with a road, gasoline service station, commercial-type building and vacant land farther west.

Date: 1993, 1998, 2005, 2006 and 2009	*Scale: 1"=500'*

Subject Property: The subject property appears to be a paved parking lot with landscaped areas. The southwest corner of the northwest industrial building is located on or along the northwestern subject property boundary.

North: No significant changes visible

South: The area adjacent to the south appears to be vacant land and a road, with vacant land farther south.

East: No significant changes visible

West: No significant changes visible

Date: 2010 and 2012	*Scale: 1"=500'*

Subject Property: The subject property appears to be vacant, cleared land.

North: The area adjacent to the north of a driveway appears to be a parking lot and developed with the existing Lowe's building.

South: The area adjacent to the south appears to be vacant land and a road, with vacant land farther south.

East: The area adjacent to the east of a driveway appears to be a parking lot and a road, with a park farther east.

West: No significant changes visible

Copies of the aerial photographs are included in Appendix B of this report.

3.2 Fire Insurance Maps

Partner reviewed the collection of Sanborn Fire insurance maps from Environmental Data Resources (EDR) on January 12, 2016. Sanborn map coverage was not available for the subject property.

3.3 City Directories

Partner reviewed historical city directories obtained from the City of San Jose Public Library on January 12, 2016 for past names and businesses that were listed for the subject property and adjacent properties. The findings are presented in the following table:

City Directory Search for 5550 and 5600 Cottle Road (Subject Property)	
Year(s)	**Occupant Listed**
1970	No Listings (5550 Cottle Road)
1976	No Listings (5550 Cottle Road); IBM (5600 Cottle Road)
1982	No Listings (5550 Cottle Road); Critchfield Mechanical, IBM, Lew Jones Construction, MMR Corporation, Pac Maintenance, HH Robertson, Satellite BSNS Systems, Steiny and Company, Swinerton and Walberg and Valley Sheet Metal (5600 Cottle Road)
1988	No Listings (5550 Cottle Road); IBM (5600 Cottle Road)
1993	No Listings (5550 Cottle Road); Coastal Iron, IBM, Master Builders, PAC Mechanical Corporation and Ray Burden Insulation (5600 Cottle Road)

City Directory Search for 5550 and 5600 Cottle Road (Subject Property)	
Year(s)	**Occupant Listed**
1998-99	No Listings (5550 Cottle Road); Coastal Iron, Eberhard Roofing, Ecology Control Industries, IBM and Swinerton and Walber (5600 Cottle Road)
2004	No Listings (5550 Cottle Road); Hitachi Global Storage Technology (5600 Cottle Road)
2009	No Listings (5550 Cottle Road); AW Trump Brothers Construction, BOC Gases, Hitachi Global Storage Technology, and Ingersoll Rand Electronics Tech (5600 Cottle Road)
2014	Lowe's Home Improvement (5550 Cottle Road); and BOC Gases, Hitachi Global Storage and Hitachi GST (5600 Cottle Road)

Refer to Section 3.0 for a discussion of the former IBM facility.

City Directory Search for Adjacent Properties	
Year(s)	**Occupant Listed**
1970	No Listings
1976	No Listings (5550 Cottle Road); Oak Grove Headstart, Retirement Jobs, Inc. San Jose City Parks and Recreation, and Southside Community Center (5585 Cottle Road); IBM (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
1982	No Listings (5550 Cottle Road); Oak Grove Headstart, Retirement Jobs, Inc. San Jose City Community Center, and Southside Community Center (5585 Cottle Road); Critchfield Mechanical, IBM, Lew Jones Construction, MMR Corporation, Pac Maintenance, HH Robertson, Satellite BSNS Systems, Steiny and Company, Swinerton and Walberg and Valley Sheet Metal (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
1988	No Listings (5550 Cottle Road); Oak Grove Headstart, San Jose City Parks Community Center Southside, and Southside Community Center (5585 Cottle Road); XXXX (5588 Cottle Road); IBM (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
1993	No Listings (5550 Cottle Road); Oak Grove Headstart, San Jose City Parks Community Center Southside, and Southside Community Center (5585 Cottle Road); Coastal Iron, IBM, Master Builders, PAC Mechanical Corporation and Ray Burden Insulation (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
1998-99	No Listings (5550 Cottle Road); Oak Grove Headstart, San Jose City Parks Community Center Southside, and Southside Community Center (5585 Cottle Road); Coastal Iron, Eberhard Roofing, Ecology Control Industries, IBM and Swinerton and Walber (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
2004	No Listings (5550 Cottle Road); San Jose Community Center and Southside Community Center (5585 Cottle Road); Hitachi Global Storage Technology (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
2009	No Listings (5550 Cottle Road); Southside Community Center (5585 Cottle Road); AW Trump Brothers Construction, BOC Gases, Hitachi Global Storage Technology, and Ingersoll Rand Electronics Tech (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)
2014	Lowe's Home Improvement (5550 Cottle Road); Southside Community Center (5585 Cottle Road); BOC Gases, Hitachi Global Storage and Hitachi GST (5600 Cottle Road); No Listings (5630 Cottle Road); No Listings (102 Poughkeepsie Road)

* XXXX= A phone number is present but is not registered to a tenant or is disconnected.

According to the city directory review, the adjacent properties have been occupied by industrial tenants since at least 1976.

Copies of reviewed city directories are not included in Appendix B of this report.

3.4 Historical Topographic Maps

Partner reviewed historical topographic maps obtained from the United States Geological Survey (USGS) on January 12, 2016. The following observations were noted to be depicted on the subject property and adjacent properties during the topographic map review:

Date: 1955	
Subject Property:	The subject property is depicted as agricultural land with two structures.
North:	The area adjacent to the north is depicted as agricultural land and developed with one structure.
South:	The area adjacent to the south is depicted as agricultural land and developed with one structure.
East:	The area adjacent to the east is depicted as agricultural land.
West:	The area adjacent to the west of a road is depicted as Oak Grove School.

Date: 1962	
Subject Property:	The subject property is depicted as vacant land.
North:	The area adjacent to the north is depicted as developed with an industrial-type building.
South:	The area adjacent to the south is depicted as vacant land and a road, with vacant land farther south.
East:	The area adjacent to the east is depicted as a road with vacant land and an industrial-type building farther east.
West:	The area adjacent to the west is depicted as vacant land and a road, with Oak Grove School farther west

Date: 1969	
Subject Property:	No significant changes depicted
North:	No significant changes depicted
South:	The area adjacent to the south is depicted as vacant land and a road, with multiple structures farther south.
East:	No significant changes depicted
West:	No significant changes depicted

Date: 1975	
Subject Property:	No significant changes depicted
North:	No significant changes depicted

Date: 1975	
South:	The area adjacent to the south is depicted as vacant land and a road, with two structures farther south.
East:	No significant changes depicted
West:	No significant changes depicted

Date: 1980	
Subject Property:	No significant changes depicted
North:	The area adjacent to the north is depicted as developed with industrial-type buildings.
South:	The area adjacent to the south is depicted as vacant land and a road, with vacant land farther south.
East:	No significant changes depicted
West:	No significant changes depicted

Copies of reviewed topographic maps are included in Appendix B of this report.

4.0 REGULATORY RECORDS REVIEW

4.1 Regulatory Agencies

4.1.1 Health Department

Regulatory Agency Data	
Name of Agency:	Santa Clara County Environmental Health Department (SCCEHD)
Point of Contact:	Melissa Belloso
Agency Address:	1555 Berger Drive, Building 2, Suite 300, San Jose, California 95112
Agency Phone Number:	(408) 918-3428
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Email
Summary of Communication:	No records regarding hazardous substance use, storage or releases, or the presence of USTs and AULs on the subject property were on file with the SCCEHD.

4.1.2 Fire Department

Regulatory Agency Data	
Name of Agency:	San Jose Fire Department (SJFD)
Point of Contact:	Michael Murtiff
Agency Address:	1661 Senter Road, San Jose, California 95112
Agency Phone Number:	(408) 535-7694
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Telephone and Internet
Summary of Communication:	Review of SJFD files indicated that Hitachi obtained a permit in 2006 for the closure of one 1,000-gallon aboveground diesel tank, one 2,500-gallon aboveground diesel tank and piping. A permit was issued in 2009 for the installation of a 1,500-gallon aboveground diesel fuel tank and generator at the adjacent Lowe's building.

A copy of pertinent documents is included in Appendix B of this report.

4.1.3 Air Pollution Control Agency

Regulatory Agency Data	
Name of Agency:	Bay Area Air Quality Management District (BAAQMD) and California Air Resources Control Board (CARB)
Point of Contact:	N/A
Agency Address:	939 Ellis Street, San Francisco, California 94109
Agency Phone Number:	(415) 771-6000
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Internet and Telephone
Summary of Communication:	No Permits to Operate (PTO), Notices of Violation (NOV), or Notices to Comply (NTC) or the presence of AULs, dry cleaning machines, or USTs were on file for the subject property with the BAAQMD or CARB.

4.1.4 Regional Water Quality Agency

Regulatory Agency Data	
Name of Agency:	Regional Water Quality Control Board (RWQCB)
Point of Contact:	N/A
Agency Address:	1515 Clay Street, Suite 1400, Oakland, California 94612
Agency Phone Number:	(510) 622-2300
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Internet
Summary of Communication:	Lowe's Parcel A (5550 Cottle Road) is listed as a closed LUST case involving a release of other solvent or non-petroleum hydrocarbon and trichloroethylene (TCE). The case was closed on April 26, 2010.

Based on available information, the subject property and surrounding properties to the north, south and east were historically developed with an International Business Machines Corporation (IBM) manufacturing facility (5550/5600 Cottle Road) from 1956 until the 1990s.

Extensive soil and groundwater remediation has been conducted, as detailed in Section 3.0.

The RWQCB and Lowe's HIW, Inc. signed a Covenant and Environmental Restriction (Covenant) on Property on May 27, 2010, which indicated the following:

- There are soil capped areas on the property – a Mutual Release and Covenant Not To Sue between Lowe's and RWQCB (effective February 11, 2009) indicated that Lowe's would conduct remediation of soil contamination by excavating and relocating contaminated soils to capped areas, capping in-place, preparing a soil management plan and recording a second environmental covenant and environmental restriction to address the areas of capped contaminated soil.
- IBM (former owner) is conducting ongoing groundwater monitoring and remediation pursuant to Order No. R2-2002-0082 (adopted on August 20, 2002 and amended on January 23, 2007)
- Lowe's purchased the property from IBM on June 19, 2008
- Soil was contaminated by agricultural chemicals, naturally occurring asbestos (underlying the paved areas at the IBM facility; Lowe's implemented a Remedial Action Plan (January 2009), by excavating soil contaminants of concern (COC) above the soil cleanup standard, relocating soil COCs in place in the capped areas, and covering the soil COCs with a geomarker, capping with clean soils, gravel, asphalt, sidewalks or buildings. On December 23, 2009, RWQCB approved the Lowe's Remedial Excavation Report, dated November 9, 2009, which documented the completion of remedial activities set forth in the RAP. A March 25, 2010 Soil Management Plan was prepared by Lowe's and has been approved by RWQCB, and identifies the capped areas and describes procedures for inspection and maintenance of the caps for soil excavation, handling and disposal of soil COCs in the capped areas.
- Exposure to soil COCs has been substantially lessened by the remediation and controls set forth in the Covenant.

- The property may be used for industrial, commercial or office space land uses
- Restrictions on the development of the property include no residential uses, no hospitals, no schools, no day care uses, and all excavation work in the capped areas should be conducted in compliance with the SMP.
- The Covenant was signed by Lowe's HIW, Inc. on April 15, 2010, and by IBM on May 27, 2010.

A copy of pertinent documents is included in Appendix B of this report.

4.1.5 Department of Toxic Substances Control

Regulatory Agency Data	
Name of Agency:	California Department of Toxic Substances Control (DTSC)
Point of Contact:	N/A
Agency Address:	1001 I Street, Sacramento, California 95814
Agency Phone Number:	(916) 255-3687
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Internet
Summary of Communication:	No records regarding hazardous substance use, storage or releases, or the presence of USTs and AULs on the subject property were on file with the DTSC.

4.1.6 Building Department

Regulatory Agency Data	
Name of Agency:	San Jose Building Department (SJBD)
Point of Contact:	N/A
Agency Address:	200 East Santa Clara Street, San Jose, California 95113
Agency Phone Number:	(408) 535-3555
Date of Contact:	January 12, 2016 and December 1, 2016
Method of Communication:	In Person
Summary of Communication:	Review of SJBD records identified multiple records for the construction of the adjacent Lowe's retail warehouse building and garden center in 2004, interior improvements (2004-2010), and foundation repair (2010). The file contained a permit for a new retail store in 2014, and a permit for a new 3,867 square-foot drive through restaurant in 2015. The permit application has been received as of 2015. No additional information was provided. The file also included a 2014 Operational Analysis for a proposed Chick-Fil-A restaurant at the corner of Cottle Road and Poughkeepsie Road (subject property). No additional information was provided. The file contained additional documents for planning department review of the proposed Chick-Fil-A restaurant between 2012 and 2014. However, the documents were not available for review. The file contained a permit for a wall-mounted sign for "Autozone." The permit is currently under inspection.

4.1.7 Planning Department

Regulatory Agency Data	
Name of Agency:	San Jose Planning Department (SJPD)
Point of Contact:	N/A
Agency Address:	200 East Santa Clara Street, San Jose, California 95113
Agency Phone Number:	(408) 535-3555
Date of Contact:	January 12, 2016 and December 1, 2016
Method of Communication:	In Person
Summary of Communication:	According to records reviewed, the subject property is zoned A(PD) – Agricultural Planned Development.

4.1.8 Oil & Gas Exploration

Regulatory Agency Data	
Name of Agency:	California Division of Oil, Gas and Geothermal Resources (DOGGR)
Point of Contact:	N/A
Agency Address:	801 K Street, MS 20-22, Sacramento, California 95814
Agency Phone Number:	(916) 322-1110
Date of Contact:	January 12, 2016 and November 23, 2016
Method of Communication:	Online DOGGR mapping system
Summary of Communication:	According to DOGGR's online mapping system, no oil or gas wells are located on or adjacent to the subject property.

4.1.9 Assessor's Office

Regulatory Agency Data	
Name of Agency:	Santa Clara Assessor (SCA)
Point of Contact:	N/A
Agency Address:	70 West Hedding Street, San Jose, California
Agency Phone Number:	(408) 299-5500
Date of Contact:	January 12, 2016 and December 1, 2016
Method of Communication:	In Person
Summary of Communication:	According to records reviewed, the subject property is identified as a part of Assessor Parcel Number (APN) 706-06-019. The subject property has been owned by Lowe's HIW, Inc. since 2008. No additional pertinent information was available for the subject property.

A copy of pertinent documents is included in Appendix B of this report.

4.2 Mapped Database Records Search

Information from standard federal, state, county, and city environmental record sources was provided by Environmental Data Resources, Inc. (EDR). Data from governmental agency lists are updated and integrated into one database, which is updated as these data are released. The information contained in

this report was compiled from publicly available sources and the locations of the sites are plotted utilizing a geographic information system, which geocodes the site addresses. The accuracy of the geocoded locations is approximately +/-300 feet.

Using the ASTM definition of migration, Partner considers the migration of hazardous substances or petroleum products in any form onto the subject property during the evaluation of each site listed on the radius report, which includes solid, liquid, and vapor.

4.2.1 Regulatory Database Summary

Radius Report Data

Database	Search Radius (mile)	Subject Property	Adjacent Properties	Sites of Concern
Federal NPL or Delisted NPL Site	1.00	N	N	N
Federal CERCLIS Site/SEMS	0.50	N	N	N
Federal CERCLIS-NFRAP Site	0.50	N	N	N
Federal RCRA CORRACTS Facility	1.00	N	**Y**	N
Federal RCRA TSDF Facility	0.50	N	N	N
Federal RCRA Generators Site (LQG, SQG, CESQG)	0.25	N	N	N
Federal IC/EC Registries	0.50	N	N	N
Federal ERNS Site	Subject Property	N	N	N
State/Tribal Equivalent NPL	1.00	N	N	N
State/Tribal Equivalent CERCLIS	1.00	N	**Y**	N
State/Tribal Landfill/Solid Waste Disposal Site	0.50	N	N	N
State/Tribal Leaking Storage Tank Site	0.50	N	**Y**	N
State/Tribal Registered Storage Tank Sites (UST/AST)	0.25	N	N	N
State/Tribal Voluntary Cleanup Sites (VCP)	0.50	N	N	N
State/Tribal Spills	0.50	**Y**	**Y**	N
Federal Brownfield Sites	0.50	N	N	N
State Brownfield Sites	0.50	N	N	N
EDR MGP	Varies	N	N	N
EDR US Hist Auto Station	Varies	N	**Y**	N
EDR US Hist Cleaners	Varies	N	N	N
Deed	Varies	**Y**	**Y**	N
HAZNET	Varies	N	**Y**	N
CHMIRS	Varies	N	**Y**	N
CUPA Listings	0.25	N	**Y**	N
San Jose HazMat	0.25	N	**Y**	N
SWEEPS UST	0.25	N	**Y**	N
Historic LUST	0.50	N	**Y**	N
Historical Cortese	0.50	N	**Y**	N

4.2.2 Subject Property Listings

The subject property was identified on the Deed and SLIC databases in the regulatory database report, as discussed below:

- The subject property, identified as IBM at 5550 Cottle Road, is listed on the SLIC database as a closed groundwater contamination case with a closure date of April 26, 2010. A recorded Deed Restriction, dated June 7, 2010, is in place at the subject property. No additional information was provided, except that the SLIC case is closed. Extensive soil and groundwater remediation has been conducted, as detailed in Section 3.0.

4.2.3 Adjacent Property Listings

The adjacent properties to the north, west and southwest were identified on the HAZNET, Deed, CHMIRS, SLIC, CUPA Listings, San Jose Hazardous Materials Site List, SWEEPS UST, LUST, Historic LUST, EDR Historical Auto Stations, and Historical Cortese databases in the regulatory database report, as discussed below:

- The property, identified as Lowe's at 5550 Cottle Road, is located adjacent to the north of the subject property. The HAZNET database indicated that various hazardous substances were transported to an offsite disposal facility under manifest between 2010 and 2014. The CHMIRS listing is associated with a release of hydraulic fluid from a Lowe's compactor on January 9, 2015. The release was reportedly contained to a concrete-paved area at the Lowe's property. The CUPA Listings database indicated that Lowe's is a registered hazardous waste generator, Hazardous Materials Business Plan (HMBP) and APSA Facility with Santa Clara County Environmental Health Department. The AST database indicated that Lowe's is a registered AST facility, but no specific information about ASTs was included in the database. The NPDES database indicated that a storm water discharge permit at this site was terminated as of March 4, 2010. The Lowe's property is also associated with the former IBM facility (5550/5600 Cottle Road), and is listed on the SLIC, Deed, CORRACTS and EnviroStor databases. Extensive soil and groundwater remediation has been conducted, as detailed in Section 3.0.
- The property, identified as South Side Community Center at 5585 Cottle Road, is located adjacent to the west of the subject property. The SWEEPS UST database indicated that one 1,000-gallon regular unleaded gasoline UST was located at this adjacent property. There are no listings pertaining to any spills or releases of hazardous substances at this adjacent property. Based on regulatory status, this listing is not expected to represent a significant environmental concern and it is unlikely that a regulatory file review for this site would alter the findings of this assessment.
- The property, identified as Unocal #5902 at 102 Poughkeepsie Road, is located adjacent to the west-southwest of the subject property. The LUST, Historic Cortese and HIST LUST databases indicated that the groundwater contamination case associated with this gasoline station was closed on October 31, 1996. The UST databases indicated that two gasoline USTs and one waste oil UST were located at this adjacent property. The EDR Historical Auto Stations database indicated that this adjacent property has been occupied by Blossom Valley Union 76 since at least

2000. The CUPA Listings database indicated that this site is a registered UST, HMBP and waste generator facility with Santa Clara County Environmental Health. The HAZNET listings pertain to the removal and offsite disposal of various hazardous wastes under manifest. The San Jose HazMat database indicated that this site is categorized as a gasoline station. Based on regulatory case closure, this site is not expected to represent a significant environmental concern and it is unlikely that a regulatory file review for this site would alter the findings of this assessment.

Based on the findings, vapor migration is not expected to represent a significant environmental concern at this time.

4.2.4 Sites of Concern Listings

The former IBM facility is discussed in detail in 3.0. No other sites of concern are identified in the regulatory database report.

Based on the findings, vapor migration is not expected to represent a significant environmental concern at this time.

4.2.5 Orphan Listings

No orphan listings of potential environmental concern are identified in the regulatory database report.

A copy of the regulatory database report is included in Appendix C of this report.

5.0 USER PROVIDED INFORMATION AND INTERVIEWS

In order to qualify for one of the *Landowner Liability Protections (LLPs)* offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (the *Brownfields Amendments*), the *User* must conduct the following inquiries required by 40 CFR 312.25, 312.28, 312.29, 312.30, and 312.31. The *User* should provide the following information to the *environmental professional*. Failure to provide this information could result in a determination that *all appropriate inquiries* is not complete. The *User* is asked to provide information or knowledge of the following:

- Review Title and Judicial Records for Environmental Liens and AULs
- Specialized Knowledge or Experience of the User
- Actual Knowledge of the User
- Reason for Significantly Lower Purchase Price
- Commonly Known or *Reasonably Ascertainable* information
- Degree of Obviousness
- Reason for Preparation of this Phase I ESA

Fulfillment of these user responsibilities is key to qualification for the identified defenses to CERCLA liability. Partner requested our Client to provide information to satisfy User Responsibilities as identified in Section 6 of the ASTM guidance.

Pursuant to ASTM E1527-13, Partner requested the following site information from In-N-Out Burgers (User of this report). In-N-Out Burgers provided Partner with specific responses as to all "User Responsibilities" items listed in the chart below, as discussed below, except those categories affirmatively checked as "Not Provided by User".

User Responsibilities				
Item	**Provided By User**	**Not Provided By User**	**Discussed Below**	**Does Not Apply**
Environmental Pre-Survey Questionnaire	**X**		**X**	
Title Records, Environmental Liens, and AULs	**X**		**X**	
Specialized Knowledge			**X**	
Actual Knowledge			**X**	
Valuation Reduction for Environmental Issues			**X**	
Identification of Key Site Manager	**X**		**X**	
Reason for Performing Phase I ESA	**Section 1.1**			
Prior Environmental Reports	**X**		**X**	
Other				**X**

5.1 Interviews

5.1.1 Interview with Owner

On February 5, 2016 Partner interviewed Mr. Mathew Minton, a representative of Lowe's (subject property owner). Mr. Minton stated that he is the Engineering and Construction Director for the Western Division of the United States. Mr. Minton's contact information was provided to Partner by Ms. Clair Griffith, Lowe's Home Improvement Property Manager. Mr. Minton provided several prior environmental reports, an Easement Agreement, No Further Action (NFA) letters, Soil Management Plan and Environmental Covenant. Pertinent information obtained from Mr. Minton is discussed in Section 5.2.6. Mr. Minton was unaware of any former underground storage tanks, contaminated soil or former structures on the subject property. Mr. Minton explained that there were soil and groundwater contamination issues at the Lowe's property at the time of purchase from IBM. As a part of the purchase agreement, IBM had monitoring and extraction wells installed, soil mitigation and capping was conducted, and an environmental covenant was put in place. Mr. Minton stated that IBM has an easement on the parcel (south and west of the proposed In-N-Out Burger development), which prohibits any borings or development in this area. Mr. Minton was not aware of any pending, threatened, or past litigation relevant to hazardous substances or petroleum products in, on, or from the subject property; any pending, threatened, or past administrative proceedings relevant to hazardous substances or petroleum products in, on, or from the subject property; or any notices from a governmental entity regarding any possible violation of environmental laws or possible liability relating to hazardous substances or petroleum products.

As of the issuance of this report, Partner has not been able to reach Mr. Minton to confirm that there have been no changes since the date of the February 5, 2016 interview.

5.1.2 Interview with Report User

Mr. Ron Volle, Real Estate Manager with In-N-Out Burgers, completed the User questionnaire. Refer to Section 5.2 for a discussion of the questionnaire responses.

5.1.3 Interview with Key Site Manager

Refer to Section 5.1.1.

5.1.4 Interviews with Past Owners, Operators and Occupants

Partner conducted an interview with Mr. Jim Dumanowski, Senior Environmental Engineer with IBM (former subject property owner) in February 2016. Mr. Dumanowski stated that he was associated with IBM from 1981 until 2007, and oversaw the groundwater remediation efforts during that time. Mr. Dumanowski stated that he retired from IBM in 2007, but works as a consultant with Golder Associates, which currently handles the ongoing groundwater monitoring and remediation of the former IBM property. Mr. Dumanowski stated that RWQCB authorized the temporary shutdown of the groundwater remediation system at the easement area on the western portion of the subject property as of January 5, 2016. Mr. Dumanowski explained that the shutdown is a part of a two year pilot program to determine the extent of the migration of TCE in groundwater to the west (across Cottle Road). Mr. Dumanowski explained that there are groundwater monitoring and extraction wells on an undeveloped parcel

northwest of the subject property, and wells on the south and west portions of the subject property (easement area). Mr. Dumanowski explained that the currently inactive remediation system functioned as a pump, which would extract groundwater, which was collected in a large aboveground tank in the compound. The extracted water was transported via underground piping in the easement area to an air stripper system at the HGST property.

Mr. Dumanowski stated that RWQCB and IBM/Golder Associates will evaluate whether or not the remediation system should be restarted. Mr. Dumanowski explained that the easement areas and equipment cannot be disturbed because the systems may be reactivated, and underground utilities are in this area. Mr. Dumanowski indicated that the developer of the subject property will likely need to construct a retaining wall around the perimeter of the easement since the area planned for development is at a higher elevation than the easement area. Mr. Dumanowski indicated that there is not a soil cap on the entire Lowe's property, but only in portions of the property that are currently covered with parking lots, sidewalks and a portion of the building. Mr. Dumanowski indicated that Lowe's elected to conduct soil remediation due to elevated concentrations of pesticides, PAHs and some naturally occurring asbestos in the area of the former IBM parking lot. Lowe's excavated much of this material and used it as fill in the basement areas of the former IBM building.

Mr. Dumanowski stated that there is no fill material or soil caps in the proposed In-Out-Burger development area. Mr. Dumanowski stated that there are no underground storage tanks or soil staining at the In-Out-Burger development area. Mr. Dumanowski stated that, to the best of his knowledge, that Chick-Fil-A had planned to develop a restaurant with a drive through at the subject property, but the drive through portion of the planned development was opposed by the City of San Jose. Mr. Dumanowski did not have any additional details regarding the reasons for the City of San Jose disapproval of the planned drive through portion of the restaurant.

As of the issuance of this report, Partner has not been able to reach Mr. Dumanowski to confirm that there have been no changes since the date of the February 2016 interview.

5.1.5 Interview with Others

Partner attempted to interview Mr. Jim Dillavou, Principal with Paragon Commercial Group. Mr. Dillavou stated via voice mail in December 2016 that there have not been any changes to the subject property since Partner's prior assessment.

5.2 User Provided Information

5.2.1 Title Records, Environmental Liens, and AULs

At the request of the User, Partner contracted AFX in November 2016 to perform an environmental lien search for the subject property. No environmental liens were identified. The following activity use limitations (AULs) were identified:

- Department of Toxic Substances Control, March 16, 2009, Stipulation for Entry and Final Judgement and Permanent Injunction – This is associated with the handling of hazardous waste an Lowe's and Old Orchard facilities throughout California. Lowe's is located on the parent

parcel/north adjoining property. Partner notes that no indicate of a release at this facility has been identified.

- Easement Agreement Recorded 06/19/2008, #19892068 – This agreement is between IMB and Lowe's creating the easement along the southern and western portion of the subject property for ongoing groundwater monitoring/remediation activities.
- First Amendment to Easement Agreement Recorded 09/12/2011, #21311052 – This is an amendment to the easement agreement discussed above. The bounds of the easement were slightly modified.

5.2.2 Specialized Knowledge

The User did not have specialized knowledge of environmental conditions associated with the subject property at the time of the assessment.

5.2.3 Actual Knowledge of the User

The User was not aware of environmental liens and/or AULs encumbering the subject property or in connection with the subject property at the time of the assessment.

5.2.4 Valuation Reduction for Environmental Issues

The User was not aware of any reductions in property value due to environmental issues.

5.2.5 Commonly Known or Reasonably Ascertainable Information

The User did not provide information that is commonly known or *reasonably ascertainable* within the local community about the subject property at the time of the assessment.

5.2.6 Previous Reports and Other Provided Documentation

Partner was provided with several documents during the course of this assessment. Several documents provided to Partner were also available from RWQCB. Additional pertinent information provided to Partner is discussed below:

Phase I Environmental Site Assessment of IBM Parcel A, Treadwell & Rollo (August 30, 2002)

Treadwell & Rollo (T&R) prepared this report on behalf of Lowe's Companies, Inc. The assessment was performed in general accordance with ASTM Standard E1527-00. The assessment consisted of a site reconnaissance, interviews with knowledgeable personnel, review of historical information, review technical documents performed by others, prepare a biological assessment of the property, and a review of federal, state and local regulatory databases. The assessment was performed on a 12.6 acre parcel that included the subject property. Pertinent information contained in this report is summarized below:

- At the time of the 2002 assessment, the property was occupied by three vacant buildings (Buildings 24, 25 and 30), which were previously occupied by IBM San Jose Campus. Lowe's indicated that these buildings will be removed prior to redevelopment. The buildings were used for office purposes, and Building 25 was used for office and laboratory purposes.

- Review of regulatory agency files identified several USTs at the 5600 Cottle Road property, but only two UST/AST listings were applicable for the property. One 1,000-gallon UST (W-1) was reportedly installed in 1977 and was used as a waste vault. This tank was removed in June 1989. Along with the waste vault removal, a six-inch diameter, double-contained underground pipeline and sump were removed. A second 1,000-gallon AST (FT-17) was reportedly installed in 1968 and is still present at the property. The FT-17 tank was used to fuel an emergency generator for Building 25, and is located on the western side of Building 25. A review of Lowe's provided documents identified 1 4,000-gallon ink tank (south of Building 25), which was removed by IBM in August 1982. Soil sampling was performed after each removal, and low levels of volatile organic compounds (VOCs) were detected in the ink tank and over-excavation was performed. Approximately 190 cubic yards of soil was excavated and disposed off-site, and confirmation soil samples did not detect VOCs above the site cleanup level of 1 part per million (ppm). Diesel was detected at 10 ppm in one of the two soil samples collected beneath the diesel tank. No additional investigation was performed.
- T&R indicated that prior subsurface investigations dating back to 1980 revealed that VOCs had impacted soil and groundwater at the property. Groundwater remediation is ongoing, and has resulted in significant reductions in chemical concentrations in oil and water, and a reduction of the area of offsite contaminated groundwater plumes. RWQCB Order R2-2002-0082 was adopted in August 2002, and recognized that groundwater contamination had been significantly reduced at the IBM facility. Groundwater cleanup standards have been set to reflect drinking water standards, or concentrations that are remediation-performance based. The new order requires issuance of status reports on the remediation program effectiveness on October 2003 and 2008, and development of deed restrictions that will impact onsite groundwater use.
- T&R indicated that the presence of contaminated groundwater at the property is an REC. Results from past monitoring well sampling and analysis at the site indicated the presence of chlorinated hydrocarbons at concentrations above drinking water standards. According to IBM and RWQCB, no source areas for the contaminants exist on site, and contamination is from an up-gradient off-site source. The current groundwater remediation system consists of two extraction wells and several monitoring wells. Quarterly monitoring is ongoing, and the most recent sampling event indicated that TCE was identified at between 13.9 and 21.5 ppb. RWQCB indicated that the anticipated deed restrictions at the property should not adversely impact site redevelopment. However, RWQCB will require that IBM maintain extraction and monitoring wells at the property.
- T&R concluded that additional studies are not recommended. However, T&R did recommend that Lowe's be aware of the requirement to allow access to extraction and monitoring wells at the property, and to be aware of the requirement to obtain RWQCB permission to move wells that may be impacted by site development. Lowe's should also confirm that the structures currently onsite are appropriately removed, including the fuel tank currently onsite.

Results of Soil Vapor Investigation, IBM Property APN 706-06-017 (Parcel A), Golder Associates, 5600 Cottle Road, San Jose, California (June 7, 2007)

Golder Associates prepared this report for IBM. The parcel was planned for sale to Lowe's for redevelopment with a Lowe's Home Improvement Center. A total of 28 soil vapor implants were installed at 14 locations on Parcel A (parent parcel) in September 2006 and sampled in October 2006. At the time of the investigation, a VOC groundwater plume (primarily PCE and TCE) extended onto the southwestern portion of the parent parcel, covering the subject property. Soil vapor implants were installed in the vicinity of the locations of the extraction and groundwater monitoring wells on the parent parcel. Soil vapor implants were installed both within and outside of the mapped groundwater VOC plume. At each location, one deep (20-feet) and one shallow boring (8-feet) were advanced. Of the twenty-eight soil vapor implants installed, eight were located on or in close vicinity to the subject property; SVO-25-23 (16-feet bgs) and SVO-25-24 (7-feet bgs) were located on the northwestern portion of the subject property; SVO25-21 (18-feet bgs) and SVO-25-22 (8-feet bgs) were located directly south of the central portion of the subject property, west of AO-7; SVO25-17 (20-feet bgs) and SVO-25-18 (8-feet bgs) were located directly south of the eastern portion of the subject property, east of RA-5; and SVO-25-19 (20-feet bgs) and SVO-25-20 (7-feet bgs) were located approximately 75-feet northeast of the subject property. A follow up soil vapor sampling event was conducted in November 2016 and included SVO25-17 and SVO-35-18, SVO25-21, SVO-25-22, SVO-25-23, and SVO-25-24 as well as two sampling points further to the north of the subject property SVO25-25, SVO-25-26, SVO-25-27, and SVO-25-28.

According to analytical results, TCE, the principal compound of concern which has been found at the highest concentration in groundwater, was not detected in soil vapor samples collected from the shallow implants. However, TCE was detected in two deep implants, including SVO-25-17 and a point north of the subject property. Analytical results for the sampling points on the subject property in October 2006 indicated that TCA was detected as high as 2,200 µg/m³ (SVO-25-21), DCE was detected as high 1,400 µg/m³ (SVO-25-21), and Freon 113 was detected as high as 270 µg/m³ (SVO-25-23). Analytical results for the sampling points on the subject property in November 2006 indicated that TCA was detected as high as 2,800 µg/m³ (SVO-25-21), DCE was detected as high 1,300 µg/m³ (SVO-25-21), Freon 113 was detected as high as 270 µg/m³ (SVO-25-23), TCE was detected as high as 53 µg/m³ (SVO-25-17), and PCE was detected as high as 33 µg/m³ (SVO-25-17). These levels were below the Environmental Screening (ESLs) and California Human Health Screening Levels (CHHSLs). It was concluded that potential vapor intrusion would not constitute a concern for the proposed commercial development.

Addendum to Phase I Environmental Site Assessment Dated July, 3, 2008, of Proposed Lowe's Warehouse, EEI (July 3, 2008)

This Addendum to the subject Phase I Environmental Site Assessment (ESA) dated May 23, 2008 was prepared to address newly acquired information pertaining to environmental conditions at the subject property. EEI has reviewed a report dated June 6, 2008, prepared by Golder Associates on behalf of IBM. (This report was not provided to Partner for review.) The report documents the results of an investigation

conducted by Golder to assess possible on-site sources of chlorinated solvents, apparently impacting groundwater beneath the property. The report identified a potential source area near a sanitary sewer manhole in the northwest portion of the property. Laboratory analysis of soil samples collected in this area reported concentrations of TCE at depths of 40 to 55 feet below ground surface (bgs). Groundwater in this area is present at approximately 30 feet bgs. The potential source area represents a *recognized environmental condition* per ASTM E 1527-05.

The June 6, 2008, investigation report was forwarded to the San Francisco Regional Water Quality Control Board (Board) for review and comment. The Board, in a Status Letter dated June 17, 2008 (attached), has identified IBM as the primarily responsible party for the remediation of impacted groundwater and related soil at the property. The Board further stated that they will expect IBM to implement a remedial action plan until closure is obtained, and they will not look to Lowe's, "where the primarily responsible party has the financial resources necessary to conduct the remediation, where that responsible party is satisfactorily engaged in active remediation, and where the prospective purchaser provides reasonable access for necessary remedial activities."

Geotechnical Investigation, Lowe's Home Centers, Treadwell & Rollo (September 18, 2008)

T&R prepared this report on behalf of Lowe's Companies, Inc. The geotechnical investigation was conducted on two adjacent parcels that contain a total of 18 acres. The previously identified buildings (as discussed above) have been demolished, with the exception of the basement in one of the buildings. The proposed Lowe's development area contains the remnants of the Building 25 basement, asphalt parking lots, concrete sidewalks, abandoned streets/driveways and landscaping. The report indicated that two structures were proposed on the subject property. No environmentally significant information was included in the report.

Limited Phase II Environmental Site Assessment Final, Proposed Chick-fil-A #3213, Cottle Road FSU, Giles Engineering Associates, Inc., 5600 Cottle Road, San Jose, California (May 29, 2014)

Giles Engineering Associates, Inc. prepared this report for Chick-fil-A. The Limited Phase II Environmental Site Assessment and Soil Gas Investigation (Limited Phase II ESA) were completed in general accordance with Giles Proposal Numbers 2EP-1305008-R6, dated January 16, 2014. The report referenced a prior Phase I ESA (Giles, May 9, 2013), which identified three RECs – groundwater wells and a groundwater extraction system in the site vicinity; groundwater beneath the site impacted by chlorinated solvents from an offsite plume based on historical data; and possible historic soil impacts from previous site usage The purpose of the Phase II was to evaluate the potential presence of soil impacts with respect to VOCs, SVOCs, RCRA metals, TPH, asbestos and soil gas impacts with respect to VOCs.

The report identified soil gas concentrations of benzene, 1,1 didhloroethene, ethylbenzene, 1,1,1 trichloroethene, and xylenes exceeding USEPA Regional RSLs and/or CHHSL's for residential and/or industrial use, but below the USEPA cancer risk or the Hazard Quotient (HQ) for non-carcinogen compounds. According to the report, the risk of vapor intrusion for the proposed Chick-fil-A structure to be located at the Property is considered to be low. Vapor mitigation measures are not typical taken at

sites with the levels of soil gas found at the property. However, the installation of a passive vapor mitigation system for the building would further reduce the potential to exposure to the soil gas beneath the site. Giles indicated that TPH oil range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1 through VP6 and GP1 through GP3. TPH diesel range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1, VP2, VP4, VP5, GP2 and GP3. There are no established EPA or CHHSLs for TPH and the RAP did not identify site specific thresholds for TPH. The RWQCB established an environmental screening level (ESL) of 100 mg/kg for commercial sites for TPH. TPH oil range organics were detected above the ESL in VP2 (320 mg/kg), VP4 (300 mg/kg), and GP3 (110 mg/k). TPH diesel range organics were not detected above the applicable ESL. Giles indicated that the ESLs are not considered a reporting requirement and a risk based analysis would be necessary to further evaluate the TPH levels detected. TPH gasoline range organics were not detected above the MDL in any of the soil samples collected during the investigation. Metals and pesticide detections were below CHHSLs, RSLs, and/or site specific cleanup levels established in the RAP.

Based on the levels of TPH detected, lack of other constituents of concern, soil vapor results, and required Soil Management Plan, the levels of TPH detected onsite during Giles 2014 assessment are not expected to represent a significant environmental concern.

2015 First Semi-Annual Groundwater Monitoring Report, January 1 through June 30, 2015, former IBM Facility, Golder Associates, 5600 Cottle Road, San Jose, California (August 2015)

Golder Associates prepared this report for IBM, and indicated a detailed discussion of the groundwater monitoring and IBM history. The report depicted two groundwater monitoring wells adjacent to the south (A-07) and west (B-16) of the property. It is important to note that the groundwater well observed by Partner on the southern portion of the subject property was labeled "RA-05," which is not identified in the Golder Associates report. Depth to groundwater at A-07 and B-16 was identified as being 37-63 feet below grade. No groundwater sampling results were identified for these two wells. In addition, there were no sampling results for MW A-07.

Approval of Proposal for Pilot Curtailment Test and Requirement for Report, Former IBM Facility, 5600 Cottle Road, San Jose, California (December 8, 2015)

RWQCB provided a response to a December 4, 2015 Proposal for Pilot Curtailment Test for the property, which was prepared by Golder Associates for IBM. Mr. Bruce Wolfe of RWQCB approved the proposal and required IBM to submit a completed report. The proposal included the shutdown of the groundwater remediation system and conducting two years of groundwater monitoring to determine if the curtailment criteria can be achieved and maintained. Partner was also provided with a copy of the December 4, 2015 Proposal for the shutdown, which is included in the Appendices. The proposal indicated that significant progress toward complete curtailment of active pump and treat is demonstrated currently by having met cleanup standards in most locations throughout the historic downgradient plume as well as most of the source areas where releases occurred. However, elevated concentrations do remain in a few localized areas despite many years of remediation activities, including soil removal, soil vapor extraction, pump and

treat, and *in-situ* source zone treatments. It is Golder's opinion that the remaining areas that exceed clean-up standards are stable and the potential for contaminant migration is minimal. The PCT will serve to evaluate and confirm that the remaining contaminant plumes are stable under non-pumping conditions and that the risk associated with plume re-growth, migration, and impact to drinking water is acceptable. The areas elevated TCE contamination in groundwater are located northwest and east of the subject property. The subject property is not depicted as having elevated levels of TCE in groundwater.

Copies of pertinent pages reviewed are included in Appendix B of this report.

6.0 SITE RECONNAISSANCE

The weather at the time of the site visit was overcast. Refer to Section 1.5 for limitations encountered during the field reconnaissance and Sections 2.1 and 2.2 for subject property operations. The table below provides the site assessment details:

Site Assessment Data	
Site Assessment Performed By:	Christopher Olsen
Site Assessment Conducted On:	December 1, 2016

The table below provides the subject property personnel interviewed during the field reconnaissance:

Site Visit Personnel for 5550 Cottle Road (Subject Property)			
Name	**Title/Role**	**Contact Number**	**Site Walk* Yes/No**
Patrick Gaughey	Representative with Paragon Commercial Group (Purchaser)	(925) 878-9110	No
Clair Griffith	Property Manager – Lowe's	(949) 891-9004	No
Matthew Minton	Engineering and Construction Division Director – West Region	(336) 658-4806	No
Jim Dumanowski	Senior Environmental Engineer with IBM and Golder Associates (former owner)	(408) 226-4123	No
Jim Dillavou	Paragon Commercial Group	(310) 807-3372	No

* Accompanied Partner during the field reconnaissance activities and provided information pertaining to the current operations and maintenance of the subject property

Environmental concerns were identified during the onsite reconnaissance related to two groundwater monitoring wells and out of service groundwater remediation equipment, as further discussed in Section 3.0.

6.1 General Site Characteristics

6.1.1 Solid Waste Disposal

The subject property is currently vacant land, and no solid waste is currently generated at the property. No evidence of illegal dumping of solid waste was observed during the Partner site reconnaissance.

6.1.2 Sewage Discharge and Disposal

There are currently no sanitary discharges on the subject property. The City of San Jose services the subject property vicinity. No wastewater treatment facilities or septic systems are observed or reported on the subject property.

6.1.3 Surface Water Drainage

Storm water naturally infiltrates the ground surface or discharges to the easement, streets and driveways. Storm water on the adjacent streets and driveway discharges towards storm water drains. The subject property is not currently connected to a municipal owned and maintained sewer system.

The subject property does not appear to be a designated wetland area, based on information obtained from the United States Fish & Wildlife Service; however, a comprehensive wetlands survey would be required in order to formally determine actual wetlands on the subject property. No surface impoundments, wetlands, natural catch basins, settling ponds, or lagoons are located on the subject property. No drywells were identified on the subject property.

6.1.4 Source of Heating and Cooling

The subject property is currently vacant land, and there are no heating or cooling systems.

6.1.5 Wells and Cisterns

No aboveground evidence of cisterns was observed during the site reconnaissance. Two groundwater monitoring wells (RA-05 and B-16) were observed adjacent to the south and west of the subject property. While A-07 was not observed, Mr. Dumanowski, indicated that this well is present, at ground level and resembles a manhole.

6.1.6 Wastewater

Domestic wastewater is not currently generated at the subject property. No industrial process is currently performed at the subject property.

6.1.7 Septic Systems

No septic systems were observed or reported on the subject property.

6.1.8 Additional Site Observations

One 55-gallon drum was located near the northwestern corner of the subject property, and is labeled B 1-6 and is dated August 19, 2016. The drum likely contains purge water associated with sampling of the adjacent monitoring well B-16. No apparent environmental concerns were identified in connection with this drum.

No additional general site characteristics were observed during the site reconnaissance.

6.2 Potential Environmental Hazards

6.2.1 Hazardous Substances and Petroleum Products Used or Stored at the Site

No hazardous substances or petroleum products were observed on the subject property during the site reconnaissance.

6.2.2 Aboveground & Underground Hazardous Substance or Petroleum Product Storage Tanks (ASTs/USTs)

No evidence of current or former ASTs or USTs was observed during the site reconnaissance.

6.2.3 Evidence of Releases

No spills, stains or other indications that a surficial release has occurred at the subject property were observed.

6.2.4 Polychlorinated Biphenyls (PCBs)

No potential PCB-containing equipment (transformers, oil-filled switches, hoists, lifts, dock levelers, hydraulic elevators, etc) was observed on the subject property during Partner's reconnaissance.

6.2.5 Strong, Pungent or Noxious Odors

No strong, pungent or noxious odors were evident during the site reconnaissance.

6.2.6 Pools of Liquid

No pools of liquid were observed on the subject property during the site reconnaissance.

6.2.7 Drains, Sumps and Clarifiers

No drains, sumps, or clarifiers, other than those associated with storm water removal, were observed on the subject property during the site reconnaissance.

6.2.8 Pits, Ponds and Lagoons

No pits, ponds or lagoons were observed on the subject property.

6.2.9 Stressed Vegetation

No stressed vegetation was observed on the subject property.

6.2.10 Additional Potential Environmental Hazards

No additional environmental hazards, including landfill activities or radiological hazards, were observed.

6.3 Non-ASTM Services

6.3.1 Asbestos-Containing Materials (ACMs)

The subject property is currently undeveloped. As such, an asbestos evaluation was not required by the scope of services.

6.3.2 Lead-Based Paint (LBP)

Due to the undeveloped nature of the subject property, lead-based paint was not considered within the scope of this assessment.

6.3.3 Radon

Radon is a colorless, odorless, naturally occurring, radioactive, inert, gaseous element formed by radioactive decay of radium (Ra) atoms. The US EPA has prepared a map to assist National, State, and local organizations to target their resources and to implement radon-resistant building codes. The map divides the country into three Radon Zones, according to the table below:

EPA Radon Zones		
EPA Zones	**Average Predicted Radon Levels**	**Potential**
Zone 1	Exceed 4.0 pCi/L	Highest
Zone 2	Between 2.0 and 4.0 pCi/L	Moderate
Zone 3	Less than 2.0 pCi/L	Low

It is important to note that the EPA has found homes with elevated levels of radon in all three zones, and the US EPA recommends site-specific testing in order to determine radon levels at a specific location. However, the map does give a valuable indication of the propensity of radon gas accumulation in structures.

Radon sampling was not conducted as part of this assessment. Review of the US EPA Map of Radon Zones places the subject property in Zone 2. Based upon the radon zone classification, radon is not considered to be a significant environmental concern.

6.3.4 Lead in Drinking Water

According to available information, a public water system operated by the City of San Jose serves the subject property vicinity. According to the 2015 Water Quality Report, shallow groundwater directly beneath the subject property is not utilized for domestic purposes. The sources of public water for the City of San Jose are imported water from Hetch Hetchy (located in the Sierra Nevada Mountains) and water that is purchased from the San Francisco Public Utilities Commission. According to the City of San Jose and the 2015 Annual Water Quality Report, water supplied to the subject property is in compliance with all State and Federal regulations pertaining to drinking water standards, including lead and copper.

6.3.5 Mold

The subject property is currently undeveloped. As such, additional action with respect to mold is not warranted.

6.4 Adjacent Property Reconnaissance

The adjacent property reconnaissance consisted of observing the adjacent properties from the subject property premises. Refer to Sections 3.0 for a discussion of the ongoing groundwater monitoring associated with the former IBM facility. Refer to Section 4.2.3 for a discussion of the gasoline station adjacent to the west.

No items of environmental concern were identified on the remaining adjacent properties during the site assessment, including hazardous substances, petroleum products, ASTs, USTs, evidence of releases, PCBs, strong or noxious odors, pools of liquids, sumps or clarifiers, pits or lagoons, stressed vegetation, or any other potential environmental hazards.

7.0 FINDINGS AND CONCLUSIONS

Findings

A *recognized environmental condition (REC)* refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: due to release to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment. The following was identified during the course of this assessment:

- Partner did not identify any recognized environmental conditions during the course of this assessment.

A *controlled recognized environmental condition (CREC)* refers to a REC resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls. The following was identified during the course of this assessment:

- The subject property and surrounding properties to the north, south and east were historically part of an approximately 350-acre facility developed with an International Business Machines Corporation (IBM) manufacturing facility (5550/5600 Cottle Road) from 1956 until the 1990s. The subject property is part of a larger parcel (Parcel A) that was developed with three buildings (Buildings 24, 25 and 30). Building 30 was historically located along the northern perimeter of the subject property and was used as offices. Building 25 was located northeast of the subject property and was historically use for offices and laboratory. These buildings were demolished in 2009, and the existing Lowe's home improvement store, parking lots and driveways were constructed in 2010. The subject property parcel was historically utilized as a parking lot, driveway, and contained landscaped areas dating back to 1956.

  Investigations conducted in the late 1970s on the larger 350-acre parcel indicated that releases of volatile organic compounds (VOCs) had impacted soil and groundwater. Extensive soil and groundwater remediation was conducted throughout the 1980s and 1990s on the larger 350-acre parcel, which resulted in significant reductions of constituent concentrations in both soil and groundwater. According to information provided by the property owner (Lowe's), one 1,000-gallon UST (W-1) was reportedly installed on Parcel A in 1977 and was used as a waste vault. This tank was removed in June 1989. Along with the waste vault removal, a six-inch diameter, double-contained underground pipeline and sump were removed. A 4,000-gallon ink tank was removed from Parcel A by IBM in August 1982. Soil sampling was performed after each removal, and low levels of volatile organic compounds (VOCs) were detected in the ink tank and over-excavation was performed. Approximately 190 cubic yards of soil was excavated and disposed off-site, and confirmation soil samples did not detect VOCs above the site cleanup level of 1 part per million (ppm). No additional investigation was performed. Based on site plans included in records (Remedial Action Implementation Report Building 025 Source Zone in Groundwater) obtained from the Regional Water Quality Control Board (RWQCB), the former ink tank was located on the

southeast corner of the subject property and the waste vault (W-1) was located east of the subject property.

A Soil Vapor Investigation was completed at Parcel A in 2007 due to the planned sale of Parcel A to Lowe's for redevelopment with a Lowe's Home Improvement Center. A total of 28 soil vapor implants were installed at 14 locations on Parcel A in September 2006 and sampled in October 2006. At the time of the investigation, a VOC groundwater plume (primarily PCE and TCE) extended onto the southwestern portion of the parent parcel, covering the subject property. Soil vapor implants were installed in the vicinity of the locations of the extraction and groundwater monitoring wells on the parent parcel, both within and outside of the mapped groundwater VOC plume. At each location, one deep (20-feet) and one shallow boring (8-feet) were advanced. Of the twenty-eight soil vapor implants installed, eight were located on or in close vicinity to the subject property; SVO-25-23 (16-feet bgs) and SVO-25-24 (7-feet bgs) were located on the northwestern portion of the subject property; SVO25-21 (18-feet bgs) and SVO-25-22 (8-feet bgs) were located on the southwestern portion of the subject property, west of AO-7; SVO25-17 (20-feet bgs) and SVO-25-18 (8-feet bgs) were located on the southeastern portion of the subject property, east of RA-5; and SVO-25-19 (20-feet bgs) and SVO-25-20 (7-feet bgs) were located approximately 75-feet northeast of the subject property. A follow up soil vapor sampling event was conducted in November 2016 and included SVO25-17 and SVO-35-18, SVO25-21, SVO-25-22, SVO-25-23, and SVO-25-24 as well as two sampling points further to the north of the subject property SVO25-25, SVO-25-26, SVO-25-27, and SVO-25-28.

According to analytical results, TCE, the principal compound of concern which has been found at the highest concentration in groundwater, was not detected in soil vapor samples collected from the shallow implants. However, TCE was detected in two deep implants, including SVO-25-17 (on the southeastern portion of the subject property) and a point north of the subject property. Analytical results for the sampling points on the subject property in October 2006 indicated that TCA was detected as high as 2,200 µg/m³ (SVO-25-21), DCE was detected as high 1,400 µg/m³ (SVO-25-21), and Freon 113 was detected as high as 270 µg/m³ (SVO-25-23). Analytical results for the sampling points on the subject property in November 2006 indicated that TCA was detected as high as 2,800 µg/m³ (SVO-25-21), DCE was detected as high 1,300 µg/m³ (SVO-25-21), Freon 113 was detected as high as 270 µg/m³ (SVO-25-23), TCE was detected as high as 53 µg/m³ (SVO-25-17), and PCE was detected as high as 33 µg/m³ (SVO-25-17). These levels were below the Environmental Screening (ESLs) and California Human Health Screening Levels (CHHSLs). It was concluded that potential vapor intrusion would not constitute a concern for the proposed commercial development.

According to a Remedial Action Plan (RAP) for Parcel A, the following were the sources of contaminated soil were identified: 1) organochlorine pesticides used in the former orchards at the Site, 2) naturally occurring asbestos in the aggregate base rock, and 3) arsenic, chromium, and benzo(a)pyrene in the fill material used in the parking lots. In 2009, Lowe's excavated approximately 6,400 cubic yards of soil from various identified locations to a typical maximum

depth of three feet below ground surface (bgs). The target of the removal actions were soils that contained at least one of the following constituents of concern (COCs): naturally occurring asbestos, dieldrin, arsenic, chromium, and benzo(a)pyrene. The excavated soil was relocated to a former basement area beneath the current Lowe's parking lot and covered with a geomarker (orange safety fence). COC containing soil that was not relocated remains in few locations; however, these locations are covered by sidewalks, a driveway, or a geomarker and a soil cap. According to a Soil Management Plan (SMP) was prepared by Golder Associates in 2009, an area of capped soil is located on the northeastern portion of the subject property, which is in the approximate location of In-N-Out Burger's future parking lot per In-N-Out Burger's Preliminary Site Plan. The proposed In-N-Out building is not located in an area identified as containing capped soils. The Regional Water Quality Control Board (RWQCB) approved the SMP on December 23, 2009.

The RWQCB and Lowe's HIW, Inc. signed a Covenant and Environmental Restriction (Covenant) on Property on May 27, 2010. The Covenant identified the areas of capped soil, and described procedures for inspection and maintenance of the caps for soil excavation, handling and disposal of soil contaminants of concern in the capped areas. The Covenant restricted the uses of the subject property, and prohibited residential uses, hospitals, schools, and day care centers. A previously prepared easement agreement between IBM and Lowe's prohibits Lowe's or future owners from disturbing the easement area (on the southern and western portion of the subject property) due to subsurface piping, monitoring wells, remediation systems and electrical equipment in these areas.

On June 14, 2010, RWQCB confirmed the completion of the site investigation and remedial actions for pollutant releases at 5550 Cottle Road. The case closure pertains to cleanup of soil solely under Regional Water Board Resolution No. R2-2009-0007 for Mutual Release and Covenant Not to Sue (Mutual Release). In addition, in a letter dated September 28, 2010, the RWQCB confirmed that Lowe's implementation of the Remedial Action Plan, as documented in the NFA letter dated June 14, 2010, also satisfied any outstanding corrective action requirements for soil under RCRA Permit No. CAD 990843989 or the Hazardous Waste Control Law for the former Parcel A under IB's former Hazardous waste Facility permits. DTSC reportedly concurred with RWQCB.

IBM retains responsibility for ongoing groundwater monitoring and cleanup under Regional Water Board Order No. R2-2002-0082, as amended by Order No. R2-2007-0004. Review of several client provided documents, RWQCB files and interviews with representatives of Lowe's, IBM and Golder Associates indicated that groundwater monitoring is ongoing, but groundwater remediation has ceased for a period of two years (as of January 2016) as a part of a pilot curtailment test to determine the extent of migration of TCE west of the subject property. Three groundwater monitoring wells are located on the southern (A-07 and RA-05) and western (B-16) portion of the subject property, in the IBM easement, and the inactive remediation system is located in the easement on the western portion of the subject property. The most recent

sampling data for AO-7, (November 2013), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. A concentration of 4.5 part per billion (ppb) of 1,1,1-trichloroethane and 1.7 ppb of Freon 113 were identified in this well. The most recent sampling data for B-16 (November 2014), identified non-detectable concentrations of 1,1-dichloroethane, 1,1-dichloroethene, benzene, chloroform, cis-1,2-dichloroethene, methylene chloride, tetrachloroethene, trichloroethene and xylene. An estimated concentration of 0.32 part per billion (ppb) of 1,1,1-trichloroethane and 1.8 ppb of Freon 113 were identified in this well. Analytical results were not identified for RA-05 and this well has not been included on recent sampling schedules. Areas of elevated concentrations of volatile organic compounds (VOCs) are located farther to the north-northwest of the subject property.

On May 29, 2014, Giles Engineering Associates, Inc. prepared a Limited Phase II Environmental Site Assessment and Soil Gas Investigation for the proposed Chick-fil-A at the Property. The report identified soil gas concentrations of benzene, 1,1 didhloroethene, ethylbenzene, 1,1,1 trichloroethene, and xylenes exceeding USEPA Regional RSLs and/or CHHSL's for residential and/or industrial use, but below the USEPA cancer risk or the Hazard Quotient (HQ) for non-carcinogen compounds. According to the report, the risk of vapor intrusion for the proposed Chick-fil-A structure to be located at the Property is considered to be low. Vapor mitigation measures are not typical taken at sites with the levels of soil gas found at the property. However, the installation of a passive vapor mitigation system for the building would further reduce the potential to exposure to the soil gas beneath the site. Giles indicated that TPH oil range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1 through VP6 and GP1 through GP3. TPH diesel range organics were detected above the laboratory detection limits (MDL) in soil samples collected from VP1, VP2, VP4, VP5, GP2 and GP3. There are no established EPA or CHHSLs for TPH and the RAP did not identify site specific thresholds for TPH. The RWQCB established an environmental screening level (ESL) of 100 mg/kg for commercial sites for TPH. TPH oil range organics were detected above the ESL in VP2 (320 mg/kg), VP4 (300 mg/kg), and GP3 (110 mg/k). TPH diesel range organics were not detected above the applicable ESL. Giles indicated that the ESLs are not considered a reporting requirement and a risk based analysis would be necessary to further evaluate the TPH levels detected. TPH gasoline range organics were not detected above the MDL in any of the soil samples collected during the investigation. Metals and pesticide detections were below CHHSLs, RSLs, and/or site specific cleanup levels established in the RAP. Based on the levels of TPH detected, lack of other constituents of concern, soil vapor results, and required Soil Management Plan, the levels of TPH detected onsite during Giles 2014 assessment are not expected to represent a significant environmental concern.

The conditions summarize above, including but not limited to the capped soil contamination and low levels of VOCs in groundwater and soil vapor at the subject property area, are controlled recognized environmental conditions (CRECs) that already have been addressed to the

satisfaction of the applicable regulatory authorities, with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.

A *historical recognized environmental condition (HREC)* refers to a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls. The following was identified during the course of this assessment:

- Partner did not identify any historical recognized environmental conditions during the course of this assessment.

An *environmental issue* refers to environmental concerns identified by Partner, which do not qualify as RECs; however, warrant further discussion. The following was identified during the course of this assessment:

- Partner did not identify any environmental issues during the course of this assessment.

Conclusions, Opinions and Recommendations

Partner has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E1527-13 of 5550 Cottle Road in the City of San Jose, Santa Clara County, California (the "subject property"). Any exceptions to, or deletions from, this practice are described in Section 1.5 of this report.

This assessment has not revealed evidence of any recognized environmental conditions or environmental issues or historical recognized environmental conditions in connection with the subject property, but Partner's assessment has revealed evidence of controlled recognized environmental conditions as described above, which by definition and as a practical matter do not require any Phase II follow-up to this Phase I.

However, if the client desires a higher level of confidence of soil vapor conditions within the subject property boundaries or under the proposed building footprint, a soil vapor assessment could be conducted as an optional matter.

Partner further observes that in any event, in use and in any future development the subject property owner is required to comply with the requirements of the previously prepared and RWQCB-approved Soil Management Plan as to those capped areas subject to the SMP, and owner also must comply with the May 27, 2010 Covenant and Environmental Restriction as to all areas subject to such Restriction. Furthermore, Partner observes that the owner of the subject property may not be not permitted to develop in the IBM easement area on the southern and western portion of the subject property, at least according to the currently recorded easement agreements between Lowe's and IBM. If future development at the subject property includes the disturbance of capped soils subject to the SMP, then the procedures outlined in the SMP should be followed.

8.0 SIGNATURES OF ENVIRONMENTAL PROFESSIONALS

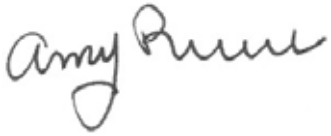
Partner has performed a Phase I Environmental Site Assessment of the property located at 5550 Cottle Road in the City of San Jose, Santa Clara County, California in general conformance with the scope and limitations of the protocol and the limitations stated earlier in this report. Exceptions to or deletions from this protocol are discussed earlier in this report.

By signing below, Partner declares that, to the best of our professional knowledge and belief, we meet the definition of *Environmental Professional* as defined in §312.10 of 40 CFR §312. Partner has the specific qualifications based on education, training, and experience to assess a *property* of the nature, history, and setting of the subject *property*. Partner has developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

Prepared By:

Christopher Olsen
Environmental Professional

Reviewed By:



Amy Rudegeair
Senior Author

Robert Vaughn
National Client Manager

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FIGURES

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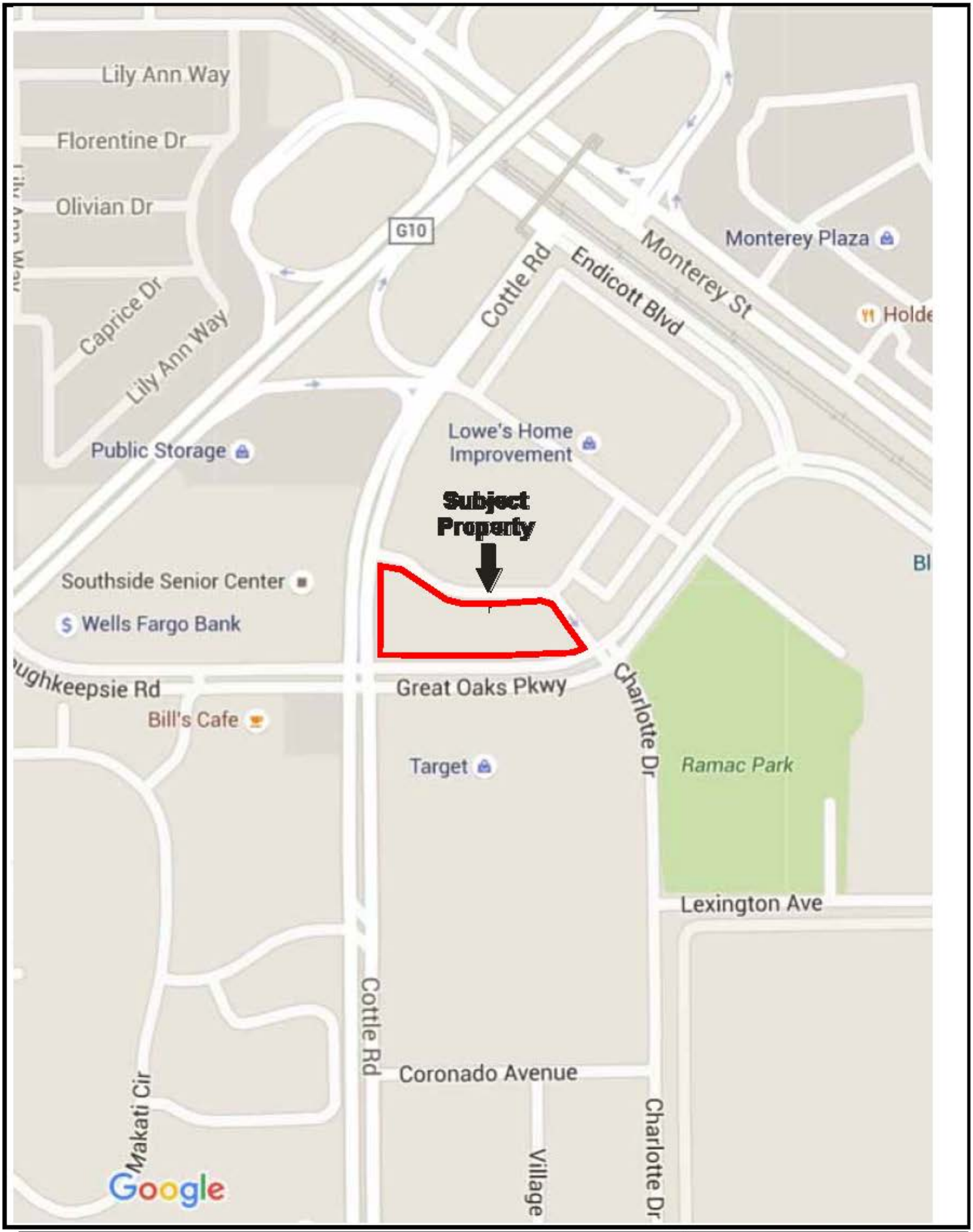

FIGURE 1: SITE LOCATION MAP
Project No. 16-154587.2

Drawing Not To Scale

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GROUNDWATER FLOW

KEY:

Subject Site

FIGURE 2: SITE PLAN
Project No. 16-154587.2

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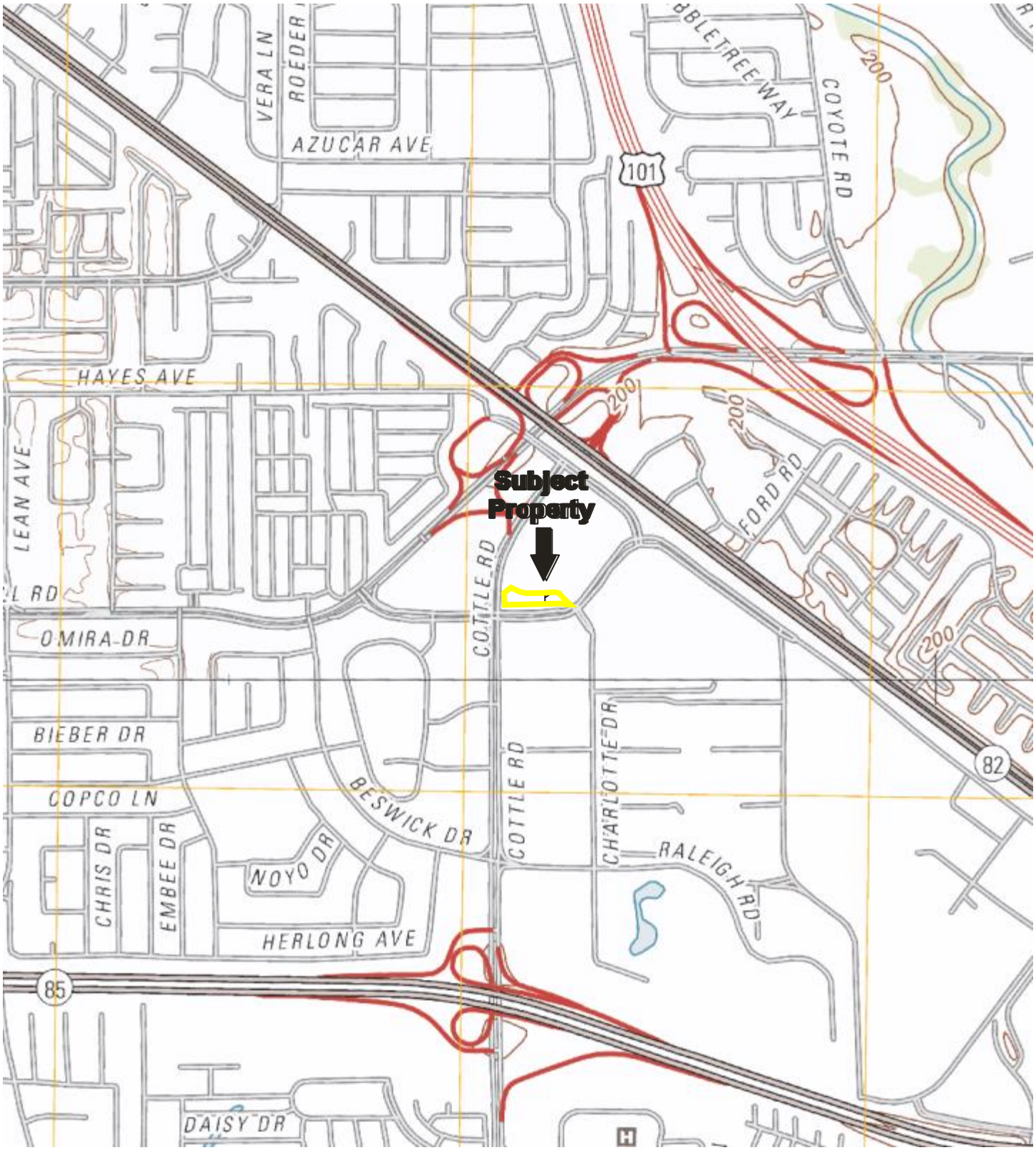

USGS 7.5 Minute *San Jose East, CA* Quadrangle Created: 2012

FIGURE 3: TOPOGRAPHIC MAP
Project No. 16-154587.2

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APPENDIX A: SITE PHOTOGRAPHS

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1. View of the southern side of the subject property

2. View west of the subject property

3. View of the eastern side of the subject property

4. View of the southern side of the subject property

5. View of a groundwater monitoring well RA-05 along the southern property line

6. View northeast of the subject property

7. View of the western end of the subject property

8. View east of the subject property

9. 55-gallon drum of purge water from Well B-16 – located on the northern side of the subject property

10. View of undeveloped land adjacent to the west of the subject property

11. View of monitoring well B-16 adjacent to the west of the subject property

12. View of groundwater remediation equipment in enclosure adjacent to the west

13. View of non-hazardous waste water tank in the enclosure adjacent to the west

14. View of groundwater remediation equipment in the enclosure

15. View of electrical equipment enclosure adjacent to the west

16. View of a pad-mounted transformer in the equipment enclosure adjacent to the west

17. View of Sunshine Community and Senior Center adjacent to the west of Cottle Road

18. View of Lowe's adjacent to the north

19. View of a parking lot adjacent to the northeast

20. View of the intersection of Great Oaks Parkway and Charlotte Drive adjacent to the southeast

21. View of Target adjacent to the south

22. View of sidewalk south of the subject property

APPENDIX B: HISTORICAL/REGULATORY DOCUMENTATION

PARTNER