

# **APPENDIX E1**

## ***Phase I Environmental Site Assessment***

<b>TYPE OF SERVICES</b>	Phase I Environmental Site Assessment
<b>LOCATION</b>	95 South Almaden Avenue San Jose, California
<b>CLIENT</b>	JP DiNapoli Companies Inc.
<b>PROJECT NUMBER</b>	510-29-1
<b>DATE</b>	July 9, 2019

# Draft

ENVIRONMENTAL

<b>Type of Services</b>	<b>Phase I Environmental Site Assessment</b>
<b>Location</b>	<b>95 South Almaden Avenue San Jose, California</b>
<b>Client</b>	<b>JP DiNapoli Companies Inc.</b>
<b>Client Address</b>	<b>99 Almaden Boulevard, Suite 565 San Jose, California 95113</b>
<b>Project Number</b>	<b>510-29-1</b>
<b>Date</b>	<b>July 9, 2019</b>

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APPENDIX A – TERMS AND CONDITIONS

APPENDIX B – DATABASE SEARCH REPORT

APPENDIX C – HISTORICAL AERIAL PHOTOGRAPHS AND MAPS

APPENDIX D – LOCAL STREET DIRECTORY SEARCH RESULTS

Draft

**Type of Services**  
**Location**

**Phase I Environmental Site Assessment**  
**95 South Almaden Avenue**  
**San Jose, California**

## **SECTION 1: INTRODUCTION**

This report presents the results of the Phase I Environmental Site Assessment (ESA) performed at 95 South Almaden Avenue in San Jose, California (Site) as shown on Figures 1 and 2. This work was performed for JP DiNapoli Companies Inc. in accordance with our May 2, 2019 Agreement (Agreement).

### **1.1 PURPOSE**

The scope of work presented in the Agreement was prepared in general accordance with ASTM E 1527-13 titled, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM Standard). The ASTM Standard is in general compliance with the Environmental Protection Agency (EPA) rule titled, "Standards and Practices for All Appropriate Inquiries; Final Rule" (AAI Rule). The purpose of this Phase I ESA is to strive to identify, to the extent feasible pursuant to the scope of work presented in the Agreement, Recognized Environmental Conditions at the property.

As defined by ASTM E 1527-13, the term Recognized Environmental Condition means the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not Recognized Environmental Conditions.

Cornerstone Earth Group, Inc. (Cornerstone) understands that JP DiNapoli Companies Inc. intends to redevelop the Site with a 12-story office building with two to three floors of underground parking. We performed this Phase I ESA to support JP DiNapoli Companies Inc. in evaluation of Recognized Environmental Conditions at the Site. This Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for Recognized Environmental Conditions at the Site.

### **1.2 SCOPE OF WORK**

As presented in our Agreement, the scope of work performed for this Phase I ESA included the following:

- A reconnaissance of the Site to note readily observable indications of significant hazardous materials releases to structures, soil or groundwater.

- Drive-by observation of adjoining properties to note readily apparent hazardous materials activities that have or could significantly impact the Site.
- Acquisition and review of a regulatory agency database report of public records for the general area of the Site to evaluate potential impacts to the Site from reported contamination incidents at nearby facilities.
- Review of readily available information on file at selected governmental agencies to help evaluate past and current Site use and hazardous materials management practices.
- Review of readily available maps and aerial photographs to help evaluate past and current Site uses.
- Interviews with persons reportedly knowledgeable of existing and prior Site uses.
- Preparation of a written report summarizing our findings and recommendations.

The limitations for the Phase I ESA are presented in Section 10; the terms and conditions of our Agreement are presented in Appendix A.

### **1.3 ASSUMPTIONS**

In preparing this Phase I ESA, Cornerstone assumed that all information received from interviewed parties is true and accurate. In addition, we assumed that all records obtained by other parties, such as regulatory agency databases, maps, related documents and environmental reports prepared by others are accurate and complete. We also assumed that the boundaries of the Site, based on information provided by JP DiNapoli Companies Inc., are as shown on Figure 2. We have not independently verified the accuracy or completeness of any data received.

### **1.4 ENVIRONMENTAL PROFESSIONAL**

This Phase I ESA was performed by Stason I. Foster, P.E. and Ron L. Helm, C.E.G., Environmental Professionals who meet the qualification requirements described in ASTM E 1527-13 and 40 CFR 312 § 312.10 based on professional licensing, education, training and experience to assess a property of the nature, history and setting of the Site.

## **SECTION 2: SITE DESCRIPTION**

This section describes the Site as of the date of this Phase I ESA. The location of the Site is shown on Figures 1 and 2. Tables 1 through 3 summarize general characteristics of the Site and adjoining properties. The Site is described in more detail in Section 7, based on our on-Site observations.

### **2.1 LOCATION AND OWNERSHIP**

Table 1 describes the physical location, and ownership of the property, based on information provided by JP DiNapoli Companies Inc.

**Table 1. Location and Ownership**

<b>Assessor's Parcel No. (APN)</b>	259-39-121 and part of 259-39-120
<b>Reported Address/Location</b>	95 South Almaden Avenue, San Jose, California
<b>Owner</b>	Not reported
<b>Approximate Lot Size</b>	1.3 acres

In addition to the current address listed in Table 1, multiple historical addresses for the Site were identified during our review of historical Sanborn fire insurance maps. Historical addresses that appear to have been associated with commercial businesses include 77, 81 and 89 South Almaden Avenue; 56, 60, 62, 80 and 90 Vine Street (currently named South Almaden Boulevard); 214, 220 and 232 Post Street; 49, 57 and 67 Orchard Street (currently named South Almaden Avenue); and 220 and 240 Westminster Place (a vacated street that formerly bisected the Site). These historical addresses also were researched during this Phase I ESA.

**2.2 CURRENT/PROPOSED USE OF THE PROPERTY**

The current and proposed uses of the property are summarized in Table 2.

**Table 2. Current and Proposed Uses**

<b>Current Use</b>	Parking lot with a small single-story office building, Bloom Energy fuel cell installation, diesel storage USTs, and electrical transformers.
<b>Proposed Use</b>	Office building with below grade parking

**2.3 SITE SETTING AND ADJOINING PROPERTY USE**

Land use in the general Site vicinity appears to be primarily commercial. Based on our Site vicinity reconnaissance, adjoining Site uses are summarized below in Table 3.

**Table 3. Adjoining Property Uses**

<b>Northeast</b>	Unoccupied former bus terminal
<b>Northwest</b>	Multi-tenant commercial office buildings
<b>Southeast</b>	Commercial office building (AT&T)
<b>Southwest</b>	Multi-tenant commercial office buildings

**SECTION 3: USER PROVIDED INFORMATION**

The ASTM standard defines the User as the party seeking to use a Phase I ESA to evaluate the presence of Recognized Environmental Conditions associated with a property. For the purpose of this Phase I ESA, the User is JP DiNapoli Companies Inc. The "All Appropriate Inquiries" Final Rule (40 CFR Part 312) requires specific tasks be performed by or on behalf of the party seeking to qualify for Landowner Liability Protection under CERCLA (*i.e.*, the User).

Per the ASTM standard, if the User has information that is material to Recognized Environmental Conditions, such information should be provided to the Environmental Professional. This information includes: 1) specialized knowledge or experience of the User, 2) commonly known or reasonably ascertainable information within the local community, and 3) knowledge that the purchase price of the Site is lower than the fair market value due to



contamination. A search of title records for environmental liens and activity and use limitations also is required.

### **3.1 ENVIRONMENTAL LIENS OR ACTIVITY AND USE LIMITATIONS**

An environmental lien is a financial instrument that may be used to recover past environmental cleanup costs. Activity and use limitations (AULs) include other environmental encumbrances, such as institutional and engineering controls. Institutional controls (ICs) are legal or regulatory restrictions on a property's use, while engineering controls (ECs) are physical mechanisms that restrict property access or use.

The regulatory agency database report described in Section 4.1 did not identify the Site as being in 1) US EPA databases that list properties subject to land use restrictions (*i.e.*, engineering and institutional controls) or Federal Superfund Liens or 2) lists maintained by the California Department of Toxic Substances Control (DTSC) of properties that are subject to AULs or environmental liens where the DTSC is a lien holder.

ASTM E 1527-13 categorizes the requirement to conduct a search for Environmental Liens and AULs as a User responsibility. A search of land title records for environmental liens and AULs was not within the scope of the current Phase I ESA.

### **3.2 SPECIALIZED KNOWLEDGE AND/OR COMMONLY KNOWN OR REASONABLY ASCERTAINABLE INFORMATION**

Based on information provided by or discussions with JP DiNapoli Companies Inc., we understand that JP DiNapoli Companies Inc. does not have specialized knowledge or experience, commonly known or reasonably ascertainable information regarding the Site, or other information that is material to Recognized Environmental Conditions.

## **SECTION 4: RECORDS REVIEW**

### **4.1 STANDARD ENVIRONMENTAL RECORD SOURCES**

Cornerstone conducted a review of federal, state and local regulatory agency databases provided by Environmental Data Resources (EDR) to evaluate the likelihood of contamination incidents at and near the Site. The database sources and the search distances are in general accordance with the requirements of ASTM E 1527-13. A list of the database sources reviewed, a description of the sources, and a radius map showing the location of reported facilities relative to the project Site are attached in Appendix B.

The purpose of the records review was to obtain reasonably available information to help identify Recognized Environmental Conditions. Accuracy and completeness of record information varies among information sources, including government sources. Record information is often inaccurate or incomplete. The Environmental Professional is not obligated to identify mistakes or insufficiencies or review every possible record that might exist with the Site. The customary practice is to review information from standard sources that is reasonably available within reasonable time and cost constraints.

#### 4.1.1 On-Site Database Listings

Pacific Bell was identified as an open case on the leaking underground storage tank (LUST) database. Pacific Bell also was identified on 1) the Statewide Environmental Evaluation and Planning System (SWEEPS) UST database, which lists five 10,000 gallon diesel USTs<sup>1</sup>, 2) the Emissions Inventory (EMI) database that includes toxics and criteria pollutant emissions data collected by the California Air Resources Board (ARB) and local air pollution agencies, 3) and as a Resource Conservation and Recovery Act (RCRA) small quantity generator of hazardous waste.

AT&T<sup>2</sup> was identified at the Site address on several databases that indicate that the facility has permits for storage of hazardous materials and operates three 20,000 gallon, double-walled underground storage tanks (USTs) containing diesel fuel that were installed in 1992.

Diesel also is noted to be stored in a trailer mounted generator (103 gallons) and in day tanks within the adjacent (off-Site) AT&T building (240 gallons in a basement, and 100 and 200 gallon tanks on a 9<sup>th</sup> floor roof).

AT&T also was listed on the Emergency Response Notification System (ERNS) database. The listing indicates that, in 2010, 1,311 gallons of diesel fuel were released when fuel was pumped from a UST to a day tank located on the roof of the AT&T building. The day tank reportedly overflowed and the fuel entered gutters and the storm drain system that discharges to the Guadalupe River.

AT&T was listed as a RCRA small quantity generator of hazardous waste and on the HAZNET database, which contains data extracted from the copies of hazardous waste manifests received each year by the DTSC. Listed wastes disposed between 1993 and 2016 were categorized as unspecified organic liquid mixtures; organic and inorganic solids; waste oil and mixed oil; asbestos containing waste; polychlorinated biphenyls and material containing PCBs; off-specification, aged or surplus organics; unspecified organic liquid mixture; aqueous solutions with total organic residues; unspecified alkaline solution; paint sludge; liquids with pH ≤ 2 with metals; laboratory waste chemicals; and adhesives.

#### 4.1.2 Nearby Spill Incidents

Reported nearby spill incidents are listed in Table 4. Based on the information presented in the agency database report, no other off-Site spill incidents were reported that appear likely to significantly impact soil, soil vapor or groundwater beneath the Site. The potential for impact was based on our interpretation of the types of incidents, the locations of the reported incidents in relation to the Site and the assumed groundwater flow direction.

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<sup>1</sup> Also listed on the HIST UST database, a historical listing of UST sites, which identifies ten 10,000 gallon diesel USTs that were installed in 1966. However, based on other information reviewed during this study, it appears likely that this database lists the same five USTs twice.

<sup>2</sup> Pacific Bell Telephone Company dba AT&T California

**Table 4. Nearby Spill Incidents**

Facility Name and Address	Approximate Distance and Direction from Site	Database Listings/Comments
Adobe Systems 151 Almaden Blvd. and 345 Park Avenue	400 feet south	The Adobe property is listed on the Waste Discharge System (WDS) database that includes properties that have been issued waste discharge requirements, and on the California Integrated Water Quality System (CIWQS) database, among others.
City View Plaza 150 Almaden Boulevard	300 feet southeast	Listed on the WDS database.
River Park Development, Lincoln Properties 333 San Carlos Street	1,200 feet southwest	Listed on the DTSC's Envirostor database and on the Water Board's Spills, Leaks, Investigation, and Cleanup (SLIC) database.

## 4.2 FURTHER REVIEW OF DATABASE LISTINGS

To obtain additional information regarding the on-Site LUST case and the database listings presented in Table 4, a cursory review of readily available documents obtained from the state Geotracker (<http://geotracker.waterboards.ca.gov>) and Envirostor (<http://www.envirostor.dtsc.ca.gov>) databases was performed. Geotracker is a database and geographic information system (GIS) that provides online access to environmental data. It tracks regulatory data about leaking underground storage tank (LUST), Department of Defense, Site Cleanup Program and Landfill sites. The Envirostor database is maintained by the Department of Toxic Substances Control (DTSC) and contains information on investigation, cleanup, permitting, and/or corrective actions that are planned, being conducted or have been completed under DTSC's oversight. The Envirostor database includes the following site types: Federal Superfund sites; State Response sites; Voluntary Cleanup sites; and School sites. Brief summaries of the on-Site LUST case and nearby properties are presented below.

### 4.2.1 Pacific Bell, 95 South Almaden Avenue

#### 4.2.1.1 On-Site LUST Case

In 1992, five 10,000-gallon USTs were replaced as part of Pacific Bell's regularly scheduled maintenance program. In November 1991, petroleum hydrocarbon odors were noted in soil during a geotechnical investigation performed prior to the UST removals. On October 29 and 30, 1992, the USTs were removed from the Site under the observation of the San Jose Fire Department; no holes or areas of high corrosion were observed on the tanks, but heavy staining and petroleum odors were observed within the excavation area. Soil samples were collected from native soil below the USTs and from backfill material. Laboratory analysis detected diesel concentrations in all but one of the eighteen samples analyzed, at concentrations up to 8,100 milligrams per kilogram (mg/kg) in the backfill material and up to 2,850 mg/kg within native soil. Approximately 475 cubic yards of soil excavated from the tank pit was transported to Reed and Graham Incorporated for thermal treatment. Three 20,000-gallon USTs were subsequently installed approximately 90 feet to the north of the former tank excavation.

Twenty-two soil borings were drilled between 1992 and 1995 to characterize the extent of petroleum hydrocarbon impacts to soil and groundwater. Petroleum hydrocarbons were

detected at depths up to 5 feet below grade at the northwest corner of the Site, and 10 to 15 feet below grade at the southern and western areas of the Site.

In July 1995, six borings were drilled to install groundwater monitoring wells. During the first quarterly monitoring event in October 1996, 3 inches of free product were observed in monitoring well MW-1, and 0.25 inches were reported in MW-6. Active and passive removal of free product was initiated in October 1996 using Soak-Ease absorbent socks and weekly bailing.

Historical data and results of fingerprint sample analyses reportedly indicated that the free product and petroleum detected at the northwestern portion of the Site pre-dated Pacific Bell's acquisition of the property. Note that in the 1950s a Greyhound Bus Line service garage was located on the west portion of the Site, which is the approximate location of the wells impacted with free product.

Prior investigations reportedly revealed petroleum hydrocarbons in borings up-gradient and cross-gradient of the former and current location of the Pacific Bell USTs. Samples of the separate phase petroleum hydrocarbons (SPH) were collected for fingerprint analyses and age dating. The laboratory analyses reported that the product was highly weathered and likely more than 20 years old (IT, 1997), possibly predating Pacific Bell's acquisition and use of the property. Activities performed at the former bus maintenance garage formerly located on the western portion of the Site were identified as a potential source of the petroleum hydrocarbons.

In April 2001, IT prepared a Corrective Action Plan (CAP) for remediation of petroleum impacted groundwater at the Site in response to a request from the Santa Clara Valley Water District. The CAP was approved for implementation in May 2001. Corrective actions consisted of the advancement of soil borings to depths below the water table and application of an oxygen-releasing compound slurry. The oxygen-releasing compound was used to promote biodegradation of the remaining product in the Site groundwater. In July 2001, the corrective actions were implemented and approximately 980 pounds of an oxygen releasing compound (ORC) were injected into the upper 5 feet of the shallow groundwater through 28 soil borings.

In 2002, Hydrologue (HI) assumed sampling responsibilities of the wells. In July 2002, HI replaced the absorbent socks in MW-1 and MW-6 with 0.2 gallon per hour passive skimmers. Product was removed on a quarterly basis as part of the quarterly monitoring activities. Following several quarters with no product detection in the wells, the skimmers were removed during the March 2018 sampling event.

In March 2015, an oxygen injection system (Submerged Oxygen Curtain [iSOC®] technology) was installed at 11 injection wells; injection activities continued through November 2018, when injections were terminated at the request of the Santa Clara County Department of Environmental Health (DEH).

In May 2015, remediation efforts were initiated using Oil Spill Eater II (OSE II), a biological enzyme that breaks down petroleum hydrocarbons and makes it an available food source for the microbial population. Approximately 110 gallons were injected at 17 locations to remediate the residual diesel fuel residing in the vadose and phreatic zones. The OSE II reportedly would breakdown the residual free-phase diesel fuel and make it bioavailable for the indigenous microbial population.

DEH (2017) reviewed the March 2017 Groundwater Monitoring and Remedial Progress Report (dated April 26, 2017). The report indicated that concentrations of total petroleum hydrocarbons as gasoline (TPHg) are in up-gradient wells MW-10 and MW-12. DEH concluded that a possible off-Site up-gradient source may exist. The potential up-gradient source and the historical presence of free product in wells MW-10 through MW-13 concerned the DEH. The DEH required a workplan to address the nature and extent of contamination in the area of wells MW-10 through MW-13. APTIM issued an Off-Site Assessment Work Plan (dated August 14, 2017) to evaluate soil and groundwater conditions from locations hydrogeologically up-gradient of the Pacific Bell Site to determine if TPHg detected in groundwater potentially originates from an off-Site upgradient source.

APTIM (February 9, 2018) submitted the results of the off-Site up-gradient assessment, which indicated the presence of TPHg<sup>3</sup> and total petroleum hydrocarbons as diesel (TPHd) up-gradient of the Site. The limited investigation did not, however, define the extent of the plume upgradient of the Site.

In their letter dated March 15, 2018, DEH requested an Additional Data Gap Work Plan to address remaining Low-Threat UST Case Closure Policy. The DEH specified that two criteria were not satisfied, specifically the conceptual Site model (CSM – the dissolved plume must be defined) and free product removal. APTM issued the work plan on May 18, 2018. This work plan was approved by DEH on June 1, 2018.

APTIM (September 2018) implemented the Additional Data Gap Work Plan. During August 2018, additional soil and groundwater samples were collected up-gradient of the February 2018 sample locations to assess conditions further up-gradient of the Site. Nine direct-push borings were advanced. Soil samples were collected during boring advancement and temporary wells were installed in each boring for groundwater sample collection. TPHg, benzene/toluene/ethyl benzene/xylenes (BTEX), methyl tert-butyl ether (MTBE), and naphthalene were not detected in the groundwater samples collected during the additional off-Site investigation, which reportedly defined the lateral extent of these compounds south of the Pacific Bell Site. Although these compounds are less defined directly up-gradient (southwest) of the Pacific Bell Site, APTIM stated that the investigation results indicated an off-Site source in the vicinity of 99 Almaden Boulevard (western corner of the Almaden Boulevard and West San Fernando Street intersection) as the most probable source for the TPHg concentrations detected beneath the Pacific Bell Site. TPHd was detected in only one of the up-gradient groundwater samples collected during the additional off-Site investigation (DP-9 at 289 microgram per liter [ $\mu\text{g/L}$ ]). When mapped/contoured with previous TPHd concentration data, APTIM concluded that TPHd is significantly reduced in concentration and restricted to a narrow band in the lateral direction to the south, and somewhat less defined directly up-gradient (southwest) of the Pacific Bell Site. APTIM also concluded that an off-Site source of TPHd has co-mingled with TPHd concentrations beneath the Pacific Bell Site.

In November 2018, DEH issued a letter responding to the Additional Off-Site Assessment Report (September 7, 2018) and the August 2018 Semi-Annual Groundwater Monitoring and Remedial Progress Report (October 30, 2018). DEH stated that the Groundwater Report

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<sup>3</sup> Note that previous and current USTs located at the Site reportedly contained only diesel fuel – not gasoline. Since the Pacific Bell Site has no history of gasoline USTs, it was concluded that the TPHg detected in groundwater up-gradient and beneath the Pacific Bell Site is migrating onto the Site from an off-Site up-gradient source.

presents recent groundwater data that show historically high TPHd concentrations for the first time, or for the first time in over a decade, in wells MW-1, MW-4, MW-5, MW-10, MW-11, MW-12, MW-14, and MW-16. TPHd concentrations in these wells, along with wells MW-6, MW-13, and MW-15 increased one to two orders of magnitude compared to the February 2018 sampling event. Until this recent event, TPHd concentrations in most Site wells exhibited stable or decreasing trends. Field notes from the recent event also indicated visual observations of sheen in most these wells, some which did not historically contain free product or sheen. Well MW-7 continues to accumulate free product. Groundwater elevations observed during August 2018 were approximately 5 to 7 feet higher than when oxygen sparging began in March 2015. In addition, groundwater elevations were increasing in August 2018 at a time when Site groundwater elevations generally decrease due to the seasonally dry period. DEH concluded that groundwater mounding is a potential side-effect of sparging and can also lead to free product migration, which may account for the recent observations of increasing Site groundwater elevations, concentrations, and sheen. Therefore, DEH requested that the oxygen sparging system be shut down for further evaluation.

To further evaluate the recent changes in groundwater concentrations and the potential effects of the oxygen sparging activities on the TPHd plume, DEH requested a special Fourth Quarter 2018 groundwater monitoring and sampling event. DEH also requested that future groundwater reports include time-trend plots for all Site wells showing the overall TPHd concentration trends compared to groundwater elevations over time. DEH also stated that the potential migration of the TPHd plume may also warrant additional off-Site assessment to the west and north and will be further evaluated after receiving additional data.

Currently, the Site is monitored by 16 groundwater monitoring wells, with depths ranging from 27 to 35 feet. DEH reduced sampling frequency to semi-annually in their letter dated March 15, 2018. The reported distributions of TPHg and TPHd in groundwater (2018) are depicted on Figures 3 and 4, respectively.

#### *4.2.1.2 AT&T Diesel Fuel Release*

On October 2, 2010, AT&T (previously Pacific Bell) was alerted of a diesel fuel release at the adjacent AT&T building. A malfunction in the pump system used to supply diesel fuel to a day tank for roof-top standby generators caused approximately 1,300 gallons of fuel to be released to the roof of the adjacent AT&T building. The fuel overflowed through a vent pipe onto the roof of the facility then migrated down through a series of drains to West San Fernando Street, where it pooled along the curb. A portion of the spill migrated into the storm drain inlet at the intersection of West San Fernando Street and Almaden Boulevard and traveled through the main storm drain approximately 1,000 feet to the Guadalupe River. Spill response and fuel recovery efforts subsequently were completed under the oversight of several regulatory agencies. The roof-top release at the adjacent building appears unlikely to have significantly impacted the Site.

#### **4.2.2 Adobe - 151 Almaden Boulevard and 345 Park Avenue**

Previous investigations indicated that groundwater at the nearby Adobe property is contaminated with volatile organic compounds (VOCs) and petroleum hydrocarbons. Laboratory analytical results from a previous subsurface investigation conducted by Rust Environment and Infrastructure, Inc. (Rust, presently AECOM) in May 1994 at the property indicated that the maximum concentrations of *cis*-1,2-dichloroethene (cDCE), trichloroethene (TCE), and tetrachloroethene (PCE) in the "B" zone groundwater were at 6.0 micrograms per

liter ( $\mu\text{g/L}$ ), 18  $\mu\text{g/L}$ , and 2.9  $\mu\text{g/L}$ , respectively (Rust, 1994). A 1997 investigation by Rust indicated that the “A” zone groundwater contained TPHd at concentrations up to 1,440  $\mu\text{g/L}$ , and the “B” zone groundwater contained cDCE and PCE at 0.67  $\mu\text{g/L}$  and 0.86  $\mu\text{g/L}$ , respectively (Rust, 1997).

Groundwater analytical results from self-monitoring events since 1994 at the Adobe Tower I dewatering system indicated the presence of TCE, cDCE, and PCE in the influent groundwater. The concentration of PCE in the groundwater reportedly has repeatedly been greater than the permissible discharge limits of 1.6  $\mu\text{g/L}$  and requires treatment prior to discharge. In contrast, benzene, toluene, ethylbenzene, and xylenes (BTEX), methyl t-butyl ether (MTBE), TPHd and TPHg were not detected at the Tower I dewatering system during the last 12 to 13 years of the groundwater monitoring program (AECOM, 2018).

The Tower I dewatering system involves collecting groundwater via perforated drains in the mat slab of the building foundation at the basement Level II. After treatment using granulated activated carbon (GAC) filters, the groundwater previously was discharged under a National Pollutant Discharge Elimination System (NPDES) permit to the City of San Jose storm drain system. Adobe reportedly is currently discharging the extracted water under permit to the City’s sanitary sewer system.

In December 2001, Adobe started construction of a new building, Tower II. Before the start of dewatering at Tower II, analyses of a grab groundwater sample collected from the property detected a non-diesel pattern hydrocarbon, not matching the laboratory diesel standard, at a concentration of 150  $\mu\text{g/L}$ . Further monitoring of groundwater from the Tower II area during construction indicated the presence of low levels (less than 5.0  $\mu\text{g/L}$ ) of PCE (Earth Tech, 2002). A separate dewatering system, similar to the one at Tower I, was installed at Tower II.

Available reports within the Geotracker database do not describe the source of the detected VOCs in groundwater at the Adobe property. However, the Adobe property is located down-gradient of a VOC release that has been documented at the River Park Development property, discussed in Section 4.2.4, which appears likely to be the source of the detected VOCs.

#### **4.2.3 City View Plaza - 150 Almaden Boulevard**

The City View Plaza property was developed in 1985 with a 15 floor office building, 3 levels of below grade parking, and a dewatering system (East Sump) to keep the parking and foundation structures dry. In 1998, the Water Board required analytical testing of the discharged water as a requirement of the NPDES permit. PCE was detected in a sample collected from the discharged water in 1998, at a concentration of 3.8  $\mu\text{g/L}$ . A second dewatering system (West Sump) was added to the property in late 1998 and 11  $\mu\text{g/L}$  of PCE was detected in the discharged water in a sample collected in January 1999. Two treatment units were added to the dewatering systems in 2005. The two systems each have a maximum extraction flow rate of 500 gallons per minute but have a generally operated with combined average groundwater extraction rate of approximately 325 gallons per minute to prevent groundwater intrusion. The water is treated through 16 1,000-pound granular activated carbon (GAC) vessels at the West Sump and 8 GAC vessels at the East Sump and then discharged to the Guadalupe River via storm drains under Park Avenue and East San Fernando Street, respectively. The influent PCE concentrations from April 18, 2005, through February 1, 2017, ranged from <0.5  $\mu\text{g/L}$  to 6.5  $\mu\text{g/L}$  for the West Sump and from <0.5  $\mu\text{g/L}$  to 3.0  $\mu\text{g/L}$  for the East Sump.

Similar to the Adobe property, the City View Plaza property is located down-gradient of a VOC release that has been documented at the River Park Development property, discussed below, which appears likely to be the source of the detected VOCs.

#### **4.2.4 River Park Development, Lincoln Properties - 333 San Carlos Street**

From 1920 to the mid-1970s, the River Park Development property was used by a laundry and dry cleaning business. Subsequent uses, through 1984, included car rental, auto restoration, metal salvage, auto body repair, tire reclamation, and residences. River Park Development, Lincoln Properties, acquired the property in 1984. In 1985, two 17-story office buildings and an 8-story parking garage were constructed.

VOCs were encountered during soil and foundation investigations in 1985. Subsequent investigations detected levels of PCE as great as 321,221 microgram per kilogram ( $\mu\text{g}/\text{kg}$ ) in the soil and 6,245  $\mu\text{g}/\text{L}$  in the "A" Zone groundwater. In 1986, a reported 41,900 cubic feet of PCE contaminated soil were excavated from the area of the office tower, aerated, and returned to the property. VOCs were also found in the deeper "B" Zone groundwater at levels as high as 2,159  $\mu\text{g}/\text{L}$ . A northeasterly groundwater flow direction was reported.

Under San Francisco Bay Regional Water Quality Control Board (Water Board) oversight, a groundwater extraction and treatment system was installed. The system was shut down in May 1996 after cleanup levels were achieved. The Water Board's initial cleanup order, Order No. 86-67, was rescinded July 15, 1998. Remaining VOC concentrations in groundwater reportedly did not exceed drinking water maximum contaminant levels (Water Board, 1998). As noted above, the VOC release at the River Park Development property appears likely to be the source of VOCs detected at the Adobe and City View Plaza properties and associated residual VOCs may also be present in on-Site groundwater.

### **4.3 ADDITIONAL ENVIRONMENTAL RECORD SOURCES**

The following additional sources of readily ascertainable public information for the Site also were reviewed during this Phase I ESA.

#### **4.3.1 City and County Agency File Review**

Cornerstone requested available files pertaining to the current and historical Site addresses at the following public agencies: the San Jose Building Department, San Jose Fire Department, and the DEH.

Fire Department and DEH files contained permits, inspection reports and chemical inventories indicating that three 20,000 gallon USTs containing diesel fuel are located on-Site. Below ground piping leads from the USTs to emergency generators and associated day tanks within the adjacent AT&T building. Freon and lead-acid batteries also were noted to be stored within the adjacent building. Other reported on-Site features include three electrical transformers, two trailer mounted emergency generators with integral diesel fuel tanks, and a Bloom Energy Fuel Cell installation.

Building Department files contained mainly permits and inspection reports associated with the adjacent off-Site AT&T building dated between 1947 and 2019. A 1992 permit for the existing on-Site fuel tank pump building also was identified (this building/shed currently is used for storage and the fuel pumps were relocated adjacent to the AT&T building).



## SECTION 5: PHYSICAL SETTING

We reviewed readily available geologic and hydrogeologic information to evaluate the likelihood that chemicals of concern released on a nearby property could pose a significant threat to the Site and/or its intended use.

### 5.1 RECENT USGS TOPOGRAPHIC MAP

A 1980 USGS 7.5 minute topographic map was reviewed to evaluate the physical setting of the Site. The Site's elevation is approximately 85 to 90 feet above mean sea level; topography in the vicinity of the Site slopes downward gently to the northwest towards the Guadalupe River and San Francisco Bay.

### 5.2 HYDROGEOLOGY

Based on information reviewed pertaining to the Site and nearby properties discussed in Section 4.2, groundwater below the Site is anticipated to be present at depths between approximately 15 and 25 feet. A northeasterly groundwater flow direction was reported in the general Site vicinity.

## SECTION 6: HISTORICAL USE INFORMATION

The objective of the review of historical use information is to develop a history of the previous uses of the Site and surrounding area in order to help identify the likelihood of past uses having led to Recognized Environmental Conditions at the property. The ASTM standard requires the identification of all obvious uses of the property from the present back to the property's first developed use, or back to 1940, whichever is earlier, using reasonably ascertainable standard historical sources.

### 6.1 HISTORICAL SUMMARY OF SITE

The historical sources reviewed are summarized below. The results of our review of these sources are summarized in Table 5.

- **Historical Aerial Photographs:** We reviewed aerial photographs dated between 1939 and 2012 obtained from EDR of Shelton, Connecticut; copies of aerial photographs reviewed are presented in Appendix C.
- **Historical Topographic Maps:** We reviewed USGS 15-minute and 7.5-minute historical topographic maps dated 1889, 1897, 1899, 1953, 1961, 1968, 1973, 1980 and 2012; copies of historical topographic maps reviewed are presented in Appendix C.
- **Historical Fire Insurance Maps:** We reviewed Sanborn fire insurance maps dated 1884, 1891, 1915, 1950, 1969 and 1984 obtained from EDR; copies of Sanborn maps are presented in Appendix C.

**Table 5. Summary of Historical Source Information for Site**

Date	Source	Comment
1884	Sanborn map	The Site is shown to be occupied by multiple dwellings and associated outbuildings.
1889, 1897 and 1899	Topographic maps	The Site is shown to be occupied by multiple small structures, typical of residences.
1891	Sanborn map	The Site is shown to be occupied by Garden City Lumber, along with several dwellings and associated outbuildings.
1915	Sanborn map	The former lumber business is shown to have been removed and Westminster Place is shown to bisect the Site. Site occupants included several dwellings, a wagon maker, a printing business, an iron works facility and a horse shoeing business.
1939, 1948, 1950 and 1956	Aerial photographs	The Site appears to be developed with several dwellings and commercial structures, and Westminster Place is shown to bisect the Site.
1950	Sanborn map	Site occupants are shown to consist of several dwellings, a Pacific Greyhound Inc. storage garage, and used auto sales businesses. Additionally, what appears to be the existing single-story structure is depicted and shown to be occupied by a printing business.
1953 to 1980	Topographic maps	The Site is shown within the urban developed area of San Jose. No Site details are depicted.
1968 to 2012	Aerial photographs	Except for the existing small single-story office structure, all of the on-Site structures are shown to have been demolished, and the Site appears generally similar to the existing conditions.
1969 and 1985	Sanborn maps	The on-Site structures are shown to have been removed except for a small store fronting Westminster Avenue (which appears to be the existing single-story office structure).

**6.1.1 City Directory Review**

To obtain additional information regarding past occupants, business directories including city, cross reference and telephone directories were reviewed, if available, at approximately five year intervals for the years spanning 1922 through 2014. A summary of the city directory listings for commercial occupants is presented in Table 6; the acquired city directory report is presented in Appendix D.

**Table 6. City Directory Listings**

Date	Occupant
<b>81 Almaden Avenue</b>	
1945 to 1963	Al's Used Cars
1966	Al's Parking Lot
<b>89 Almaden Avenue</b>	
1940 to 1950	Mayer Used Cars
1957	Lyle Farrow Used Cars
<b>214 Post Street</b>	
1935	Frank Flurey wood
<b>232 Post Street</b>	
1935 to 1960	Pacific Greyhound Lines Garage

## SECTION 7: SITE RECONNAISSANCE

We performed a Site reconnaissance to evaluate current Site conditions and to attempt to identify Site Recognized Environmental Conditions. The results of the reconnaissance are discussed below. Additional Site observations are summarized in Table 7. Photographs of the Site are presented in Section 7.2.1.

### 7.1 METHODOLOGY AND LIMITING CONDITIONS

To observe current Site conditions (readily observable environmental conditions indicative of a significant release of hazardous materials), Cornerstone staff Stason I. Foster, P.E. visited the Site on July 1, 2019 and was accompanied by Mr. Paul Marthens, Building Engineer with AT&T. The Site reconnaissance was conducted by walking representative areas of the Site, including the interiors of the on-Site structure and sheds, the periphery of the structures and the Site periphery. Cornerstone staff only observed those areas that were reasonably accessible, safe, and did not require movement of equipment, materials or other objects. Physical obstructions that limited our ability to view the ground surface at the Site included an existing building and associated asphalt paved parking areas and vehicle drives (typical of developed properties).

### 7.2 OBSERVATIONS

At the time of our visit, the Site was observed to consist mainly of a paved parking lot associated with the southeasterly adjacent (off-Site) multi-story building occupied by AT&T. A small on-Site, single-story structure used as an office for facility maintenance staff was observed within the parking lot. A pre-manufactured storage shed adjacent to the office building was observed to be used for storage of hazardous wastes generated at the facility including electrical devices, dry cell batteries and aerosol cans. A trailer mounted emergency generator with an integral diesel fuel storage tank also was located adjacent to the on-Site office building.

A Bloom Energy fuel cell installation was present on the northeast portion of the Site. Mr. Marthens indicated that the Bloom Energy equipment is fueled by natural gas. Several electrical transformers were observed within an equipment enclosure on the southeast portion of the Site, and near the Bloom Energy equipment. No evidence of transformer oil leaks was observed.

Three USTs containing diesel fuel were observed on the southwest portion of the Site. Below ground piping extended from the USTs to fuel pumps within an enclosure attached to the exterior northwest wall of the AT&T building. Fuel from the USTs was observed to be pumped to emergency generators located on the roof of the AT&T building via piping attached to the northwest exterior wall of the building. A small storage shed (formerly used as a pump house) was observed near the USTs on the southwest side of the Site.

Electricity and/or natural gas fuel sources appeared to be used for building heating/cooling purposes. Potable water appeared to be supplied by the local water service provider. On-Site storm water catch basins appeared to discharge via below ground piping to the City's storm water drainage system.

**Table 7. Summary of Readily Observable Site Features**

General Observation	Comments
Aboveground Storage Tanks	A trailer mounted emergency generator with an integral fuel storage AST was observed.
Agricultural Wells	Not Observed
Air Emission Control Systems	Not Observed
Boilers	Not Observed
Burning Areas	Not Observed
Chemical Mixing Areas	Not Observed
Chemical Storage Areas	Hazardous waste storage shed observed, as described above.
Clean Rooms	Not Observed
Drainage Ditches	Not Observed
Elevators	Not Observed
Emergency Generators	Observed as described above
Equipment Maintenance Areas	Not Observed
Fill Placement	Not Observed
Groundwater Monitoring Wells	Several monitoring wells were observed on-Site.
High Power Transmission Lines	Not Observed
Hoods and Ducting	Not Observed
Hydraulic Lifts	Not Observed
Incinerator	Not Observed
Petroleum Pipelines	Not Observed except for fuel supply piping from on-Site USTs.
Petroleum Wells	Not Observed
Ponds or Streams	Not Observed
Railroad Lines	Not Observed
Row Crops or Orchards	Not Observed
Stockpiles of Soil or Debris	Not Observed
Sumps or Clarifiers	Not Observed
Transformers	Observed as described above
Underground Storage Tanks	Observed as described above
Vehicle Maintenance Areas	Not Observed
Vehicle Wash Areas	Not Observed
Wastewater Neutralization Systems	Not Observed

The comment "Not Observed" does not warrant that these features are not present on-Site; it only indicates that these features were not readily observed during the Site visit.

### 7.2.1 Site Photographs



Photograph 1. View of the Site looking southeast.



Photograph 2. View of the Site looking south.



Photograph 3. On-Site, singly-story office building.



Photograph 4. Hazardous waste storage shed (at right) and trailer mounted generator (at left).



Photograph 5. Bloom Energy fuel cell installation.



Photograph 6. Electrical transformers.



Photograph 7. Three diesel storage USTs.



Photograph 8. Storage shed and UST vent pipes (former fuel pump house).



Photograph 9. Current fuel pump enclosure and wall-mounted diesel fuel supply piping.



Photograph 10. Fuel pumps within enclosure.

## **SECTION 8: ENVIRONMENTAL QUESTIONNAIRE AND INTERVIEWS**

### **8.1 ENVIRONMENTAL QUESTIONNAIRE / OWNER INTERVIEW**

To help obtain information on current and historical Site use and use/storage of hazardous materials on-Site, we provided an environmental questionnaire for completion by the Site owner. The completed questionnaire was not returned to us as of the date of this report.

### **8.2 INTERVIEWS WITH PREVIOUS OWNERS AND OCCUPANTS**

Contact information for previous Site owners and occupants was not provided to us. Therefore, interviews with previous Site owners and occupants could not be performed.

## **SECTION 9: FINDINGS, OPINIONS AND CONCLUSIONS (WITH RECOMMENDATIONS)**

Cornerstone performed this Phase I ESA in general accordance with ASTM E1527-13 to support JP DiNapoli Companies Inc. in evaluation of Recognized Environmental Conditions. Our findings, opinions and conclusions are summarized below.

### **9.1 HISTORICAL SITE USAGE**

Based on the information obtained during this study, the Site was occupied by the late 1800s with several dwellings and associated outbuildings, along with Garden City Lumber. By 1915, the Garden City Lumber business was removed and a street (Westminster Place) was constructed, which bisected the Site. Site occupants in 1915 included several dwellings, a wagon maker, a printing business, an iron works facility and a horse shoeing business.

By 1935, a Pacific Greyhound Inc. garage was constructed on the western portion of the Site. During the 1940s and 1950s, used auto sales businesses occupied the northeastern portion of the Site.

Except for the existing single-story structure (currently used as an office by facility maintenance staff), all of the former on-Site structures were demolished by the late 1960s and Westminster Place was removed. The existing on-Site office structure was constructed by 1950 and historically was occupied by a printing business (1950) and then by a store (1969-1984). The Site currently is used mainly as a parking lot associated with the adjacent (off-Site) AT&T building.

### **9.2 CURRENT CHEMICAL STORAGE AND USE**

Diesel fuel is stored on-Site within three 20,000 gallon USTs that were installed in 1992. Below ground piping extends from the USTs to a fuel pump enclosure on the northwest exterior side of the AT&T building; the fuel subsequently is pumped to two emergency generators located on the roof of the AT&T building. To facilitate development of the Site, we understand that removal of the USTs is planned. This work should be coordinated with the DEH and San Jose Fire Department.

An on-Site storage shed is used for storage of hazardous wastes generated at the AT&T facility including electrical devices, dry cell batteries and aerosol cans. A portable trailer mounted emergency generator with an integral diesel fuel storage tank also is located on-Site. No hazardous materials spills within the shed were readily apparent and general housekeeping appeared orderly.

### **9.3 FORMER USTS, AND SOIL AND GROUNDWATER QUALITY**

The Site is an open case on the LUST database. As summarized in Section 4.2.1, five 10,000 gallon diesel USTs were removed from the Site in 1992, and subsequent studies have identified petroleum hydrocarbons in on-Site soil and groundwater. The source of the detected petroleum hydrocarbons at the Site has not been definitively established. Potential sources include the former on-Site USTs operated by AT&T and activities associated with the former on-Site Pacific Greyhound Inc. garage. Additionally, recently collected data from off-Site locations (APTIM, 2018) suggests that an off-Site source located southwest of the Site (across Almaden

Boulevard) may have contributed to the identified impacts. The reported distribution of TPHg and TPHd in groundwater (2018) is depicted on Figures 3 and 4, respectively.

Remedial measures at the Site have included passive and active free product removal activities, and injection of oxygen-releasing compound (ORC) into the subsurface to promote biodegradation. Remedial efforts and groundwater monitoring are ongoing and are being conducted under DEH oversight. To further evaluate the recent changes in groundwater concentrations and the potential effects of the oxygen sparging activities on the TPHd plume, DEH requested additional monitoring and also stated that the potential migration of the TPHd plume may also warrant additional off-Site assessment to the west and north.

We recommend that DEH's monitoring and investigation requirements be implemented. Potential impacts associated with vapor intrusion<sup>4</sup> also should be evaluated to establish if installation of vapor intrusion mitigation measures are warranted. We also understand that the planned development will include below grade parking and, presumably, necessitate the off-Site disposal of excess soil. This soil will need to be profiled per the requirements of the accepting facility; we recommend that this work be performed approximately one to three months prior to construction activities. Based on our experience, there is an increased potential for residual contaminants (such as metals, petroleum hydrocarbons and pesticides) to be present in soil on properties located in areas with a long history of industrial use, such as the Site. Consideration should be given to conducting a preliminary evaluation of soil/ground water quality in the area of planned excavation to help develop excavation and disposal cost alternatives prior to acquiring the Site.

#### **9.4 SITE MANAGEMENT PLAN**

We recommend preparing a Site Management Plan (SMP) and Health and Safety Plan (HSP) for the proposed development activities. The purpose of these documents will be to establish appropriate management practices for handling impacted soil, soil vapor and groundwater that likely will be encountered during construction activities. Impacted materials will require special monitoring, handling and disposal. We recommend forwarding the SMP to the DEH for their review and approval, and that planned development activities be coordinated with the DEH and with AT&T.

#### **9.5 WATER SUPPLY WELL, IRRIGATION SYSTEM, AND SEPTIC SYSTEM**

Multiple groundwater monitoring wells are present at the Site associated with the on-going LUST case. Prior to development of the Site, these wells should be protected or properly destroyed in accordance with Santa Clara Valley Water District (SCVWD) Ordinance 90-1. Relocation of the wells may be required and should be coordinated with the DEH and AT&T.

#### **9.6 POTENTIAL ENVIRONMENTAL CONCERNS WITHIN THE SITE VICINITY**

From 1920 to the mid-1970s, the River Park Development property located up-gradient (in terms of reported groundwater flow) of the Site was used by a laundry and dry cleaning business. VOCs, predominantly PCE, were encountered during soil and foundation

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<sup>4</sup> Vapor intrusion is the movement of chemical vapors from contaminated groundwater or soil into a nearby building. Vapors primarily enter through openings in the building's foundation, such as cracks in the concrete slab and gaps around utility lines. It is also possible for vapors to pass through concrete, which is naturally porous. Once inside the workplace, vapors may be inhaled posing potential health risks.



investigations at the River Park Development property in 1985. Under the oversight of the Water Board, a groundwater extraction and treatment system was installed. The system was shut down in May 1996 after cleanup levels were achieved. Remaining VOCs concentrations in groundwater reportedly did not exceed drinking water MCLs (Water Board, 1998).

VOCs have been reported in groundwater at the nearby Adobe and City View Plaza properties that appear likely to have originated from the River Park Development property. Monitoring of groundwater from the Adobe Tower II area during construction indicated the presence of low levels (less than 5.0 µg/L) of PCE (Earth Tech, 2002). Similar low VOC concentrations have been reported in recent years within dewatering systems, which are present within the below grade levels of the Adobe Tower I and Tower II buildings and at the City View Plaza building.

Based on the location of the Site relative to the Adobe, City View Plaza and River Park Development properties, groundwater at the Site may contain low concentrations of VOCs, likely originating from the off-Site River Park Development property.

We recommend that the potential for vapor intrusion be evaluated; appropriate dewatering protocols also should be presented in the SMP as noted above.

### **9.7 ASBESTOS CONTAINING BUILDING MATERIALS (ACBMS)**

Due to the age of the on-Site office structure, building materials may contain asbestos. If demolition, renovation, or re-roofing of the building is planned, an asbestos survey is required by local authorities and/or National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines. NESHAP guidelines require the removal of potentially friable ACBMs prior to building demolition or renovation that may disturb the ACBM.

### **9.8 LEAD-BASED PAINT AND TERMITE CONTROL PESTICIDES**

The Consumer Product Safety Commission banned the use of lead as an additive in paint in 1978. Based on the age of the on-Site office structure, lead-based paint may be present. If demolition is planned, the removal of lead-based paint isn't required if it is bonded to the building materials. However, if the lead-based paint is flaking, peeling, or blistering, it should be removed prior to demolition. In either case, applicable OSHA regulations must be followed; these include requirements for worker training, air monitoring and dust control, among others. Any debris or soil containing lead must be disposed appropriately.

Additionally, soil adjacent to structures that are painted with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces. Soil near wood framed structures also can be impacted by pesticides historically used to control termites. Numerous structures were historically present on-Site, including residences and commercial buildings, which were demolished during the 1960s. No information was identified during this study regarding the use of lead based paint or termite control pesticides on-Site; however, if used, residual pesticide and lead concentrations may remain in on-Site soil.

### **9.9 ENVIRONMENTAL ATTORNEY**

Due to known Recognized Environmental Conditions at the Site, we recommend consulting with an environmental attorney regarding liabilities associated with acquiring the Site.

## 9.10 DATA GAPS

ASTM Standard Designation E 1527-13 requires the Environmental Professional to comment on significant data gaps that affect our ability to identify Recognized Environmental Conditions. A data gap is a lack of or inability to obtain information required by ASTM Standard Designation E 1527-13 despite good faith efforts by the Environmental Professional to gather such information. A data gap by itself is not inherently significant; it only becomes significant if it raises reasonable concerns. The following data gaps were identified:

- Contact information for the former occupants and owners of the Site was not provided to us. Thus, former occupants and owners were not interviewed during this study. Additionally, the environmental questionnaire provided for completion by the Site owner was not returned to us as of the date of this report. The general environmental setting of the Site appears to have been established based on the information reviewed from other data sources. We do not consider these data gaps to be significant.

## 9.11 DATA FAILURES

As described by ASTM Standard Designation E 1527-13, a data failure occurs when all of the standard historical sources that are reasonably ascertainable and likely to be useful have been reviewed and yet the historical research objectives have not been met. Data failures are not uncommon when attempting to identify the use of a Site at five year intervals back to the first use or to 1940 (whichever is earlier). ASTM Standard Designation E 1527-13 requires the Environmental Professional to comment on the significance of data failures and whether the data failure affects our ability to identify Recognized Environmental Conditions. A data failure by itself is not inherently significant; it only becomes significant if it raises reasonable concerns. No significant data failures were identified during this Phase I ESA.

## 9.12 RECOGNIZED ENVIRONMENTAL CONDITIONS

Cornerstone has performed a Phase I ESA in general conformance with the scope and limitations of ASTM E 1527-13 of 95 South Almaden Avenue, San Jose, California. This assessment identified the following Recognized Environmental Conditions<sup>5</sup>.

- The Site is an open LUST case resulting from petroleum hydrocarbons that have been identified in on-Site soil and groundwater. Remedial efforts are ongoing and are being conducted under DEH oversight.
- Low concentrations of VOCs may be present in groundwater at the Site as a result of documented up-gradient, off-Site releases.
- Based on the long developed history of the Site, there is an increased potential for residual contaminants (such as metals, petroleum hydrocarbons and pesticides) to be present in soil at the Site.

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<sup>5</sup> The presence or likely presence of hazardous substances or petroleum products on the Site: 1) due to any release to the environment; 2) under conditions indicative of a release to the environment; or 3) under conditions that pose a material threat of a future release to the environment.

## SECTION 10: LIMITATIONS

Cornerstone performed this Phase I ESA to support JP DiNapoli Companies Inc. in evaluation of Recognized Environmental Conditions associated with the Site. JP DiNapoli Companies Inc. understands that no Phase I ESA can wholly eliminate uncertainty regarding the potential for Recognized Environmental Conditions to be present at the Site. This Phase I ESA is intended to reduce, but not eliminate, uncertainty regarding the potential for Recognized Environmental Conditions. JP DiNapoli Companies Inc. understands that the extent of information obtained is based on the reasonable limits of time and budgetary constraints.

Findings, opinions, conclusions and recommendations presented in this report are based on readily available information, conditions readily observed at the time of the Site visit, and/or information readily identified by the interviews and/or the records review process. Phase I ESAs are inherently limited because findings are developed based on information obtained from a non-intrusive Site evaluation. Cornerstone does not accept liability for deficiencies, errors, or misstatements that have resulted from inaccuracies in the publicly available information or from interviews of persons knowledgeable of Site use. In addition, publicly available information and field observations often cannot affirm the presence of Recognized Environmental Conditions; there is a possibility that such conditions exist. If a greater degree of confidence is desired, soil, groundwater, soil vapor and/or air samples should be collected by Cornerstone and analyzed by a state-certified laboratory to establish a more reliable assessment of environmental conditions.

Cornerstone acquired an environmental database of selected publicly available information for the general area of the Site. Cornerstone cannot verify the accuracy or completeness of the database report, nor is Cornerstone obligated to identify mistakes or insufficiencies in the information provided (ASTM E 1527-13, Section 8.1.3). Due to inadequate address information, the environmental database may have mapped several facilities inaccurately or could not map the facilities. Releases from these facilities, if nearby, could impact the Site.

JP DiNapoli Companies Inc. may have provided Cornerstone environmental documents prepared by others. JP DiNapoli Companies Inc. understands that Cornerstone reviewed and relied on the information presented in these reports and cannot be responsible for their accuracy.

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Cornerstone makes no warranty, expressed or implied, except that our services have been performed in accordance with the environmental principles generally accepted at this time and location.



**Vicinity Map**

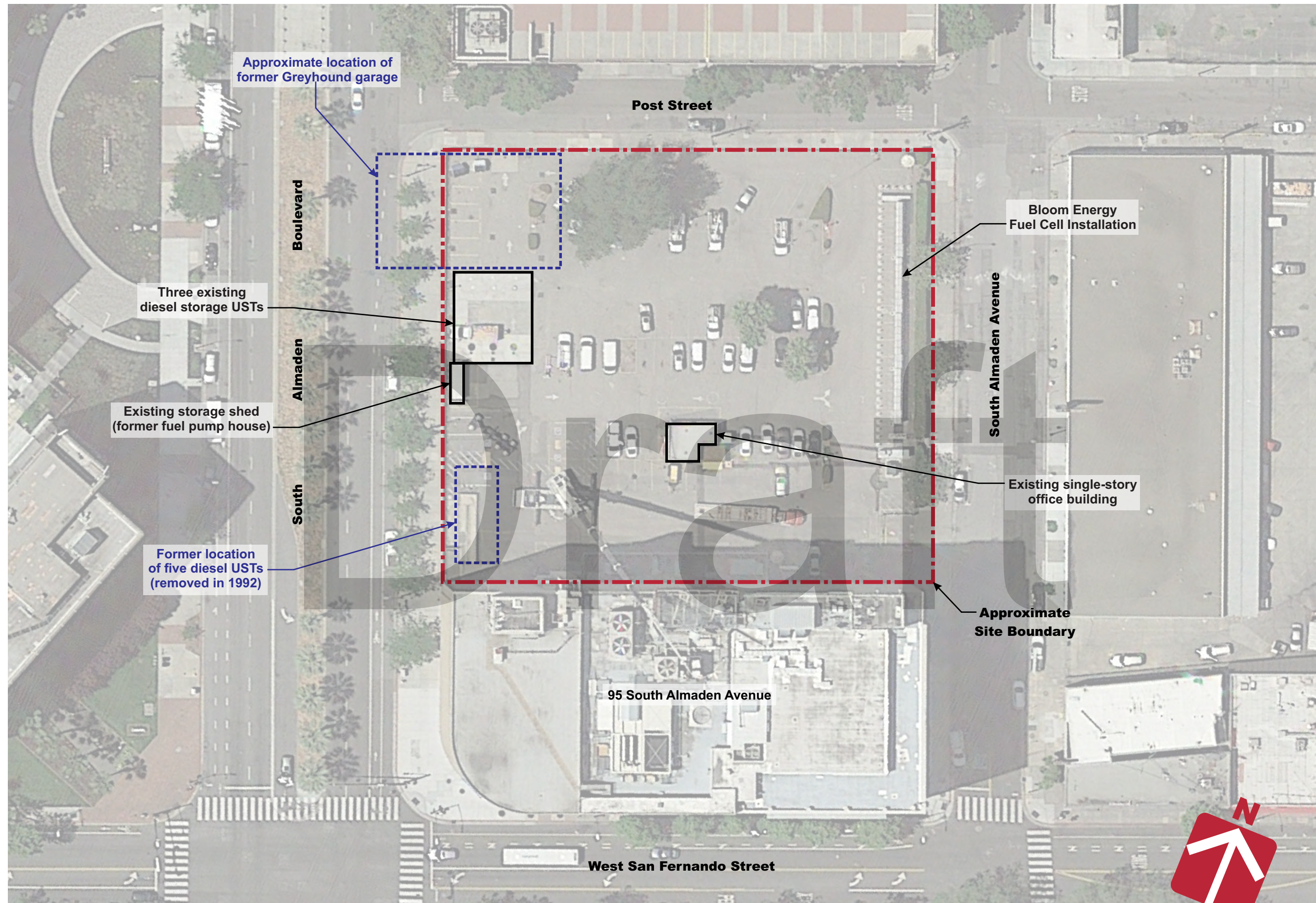
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San Jose, CA**

Project Number  
510-29-1

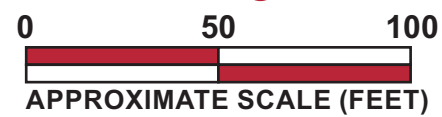
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Figure 1

Date  
July 2019

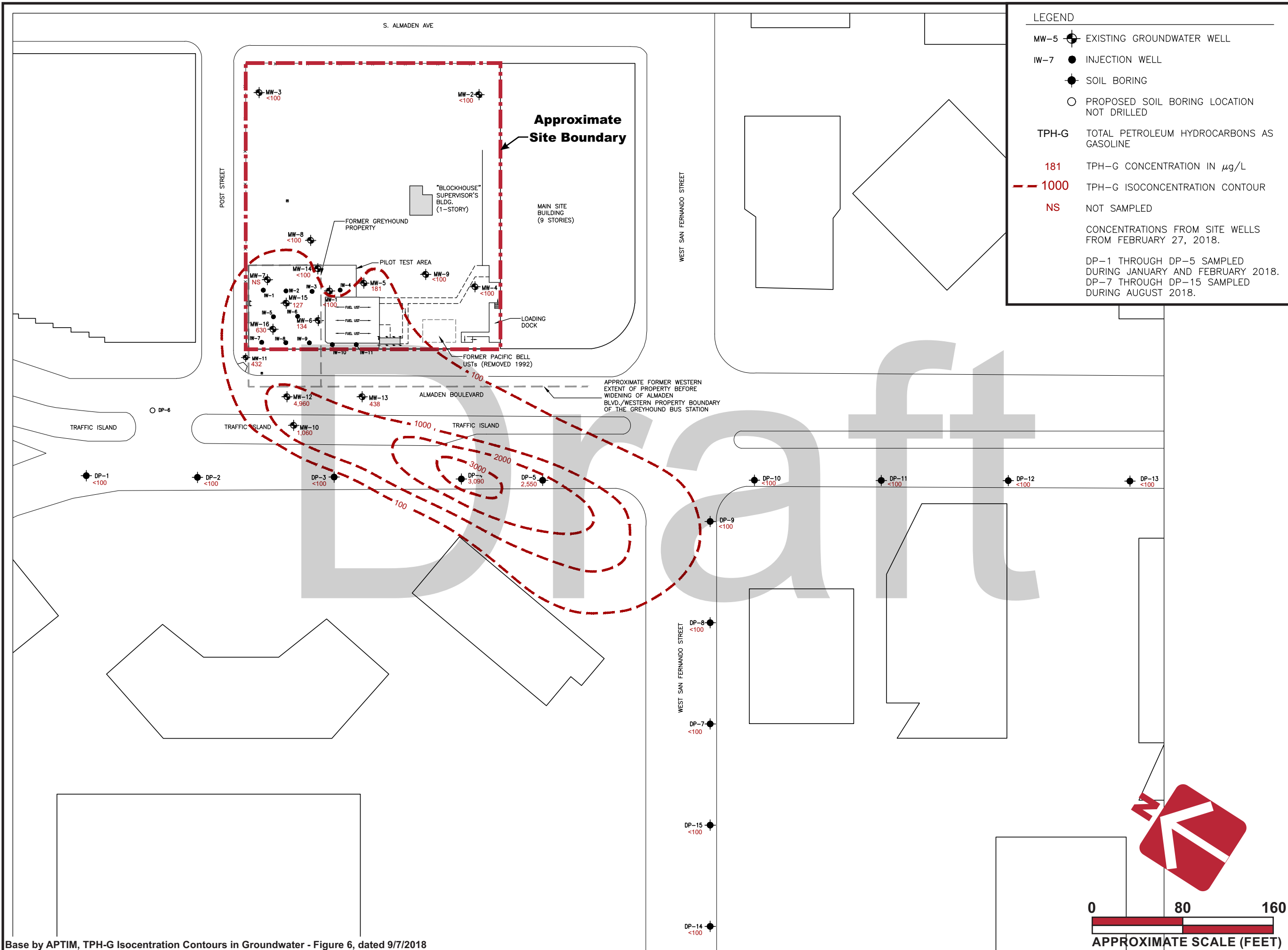
Drawn By  
RRN



Base by Google Earth, dated 5/9/2018



<b>Site Plan</b>  <b>95 South Almaden Avenue</b> <b>San Jose, CA</b>	Project Number <b>510-29-1</b>
	Figure Number <b>Figure 2</b>
Date July 2019      Drawn By RRN	



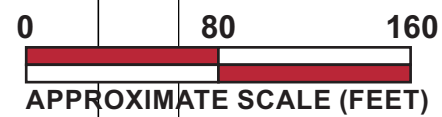
Base by APTIM, TPH-G Isoconcentration Contours in Groundwater - Figure 6, dated 9/7/2018

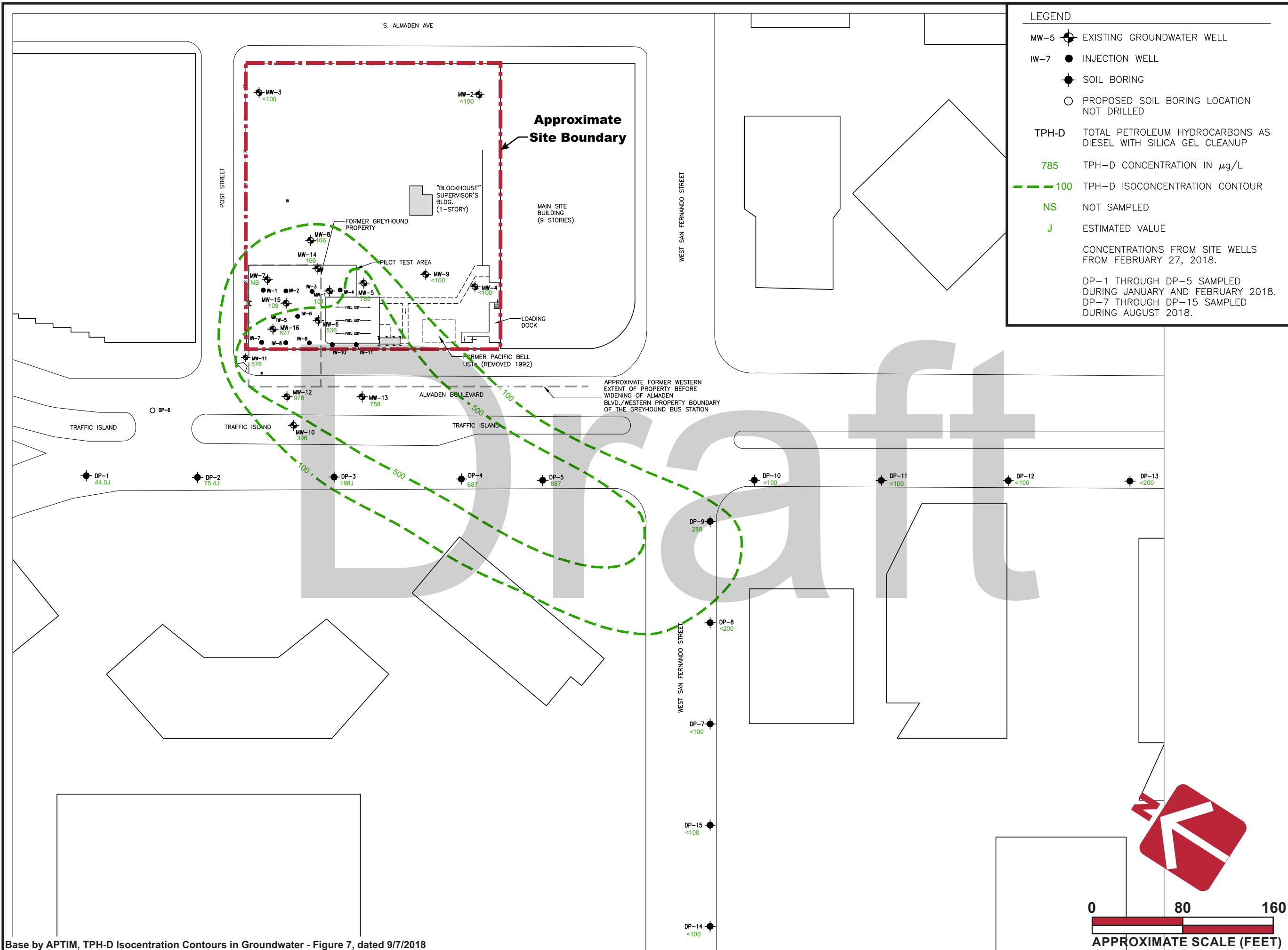
**LEGEND**

- MW-5 EXISTING GROUNDWATER WELL
- IW-7 INJECTION WELL
- SOIL BORING
- PROPOSED SOIL BORING LOCATION NOT DRILLED
- TPH-G TOTAL PETROLEUM HYDROCARBONS AS GASOLINE
- 181 TPH-G CONCENTRATION IN µg/L
- 1000 TPH-G ISOCONCENTRATION CONTOUR
- NS NOT SAMPLED

CONCENTRATIONS FROM SITE WELLS FROM FEBRUARY 27, 2018.  
 DP-1 THROUGH DP-5 SAMPLED DURING JANUARY AND FEBRUARY 2018.  
 DP-7 THROUGH DP-15 SAMPLED DURING AUGUST 2018.

Project Number <b>510-29-1</b>	Figure Number <b>Figure 3</b>	Date July 2019	Drawn By RRN
<b>TPHg Isoconcentration Contours in Groundwater</b>			
<b>95 South Almaden Avenue San Jose, CA</b>			
<b>CORNERSTONE EARTH GROUP</b>			





Project Number  
510-29-1

Figure Number  
Figure 4

Date  
July 2019

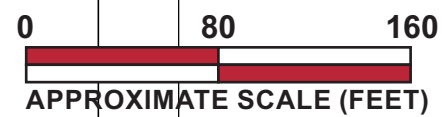
Drawn By  
RRN

TPHd Isoconcentration Contours in Groundwater

95 South Almaden Avenue  
San Jose, CA

**CORNERSTONE**  
**EARTH GROUP**

Base by APTIM, TPH-D Isoconcentration Contours in Groundwater - Figure 7, dated 9/7/2018



**APPENDIX A – TERMS AND CONDITIONS**

Draft



**CORNERSTONE EARTH GROUP, INC.  
TERMS AND CONDITIONS**

**1. Agreement**

- 1.1 Cornerstone Earth Group, Inc.'s ("Cornerstone") services are defined by and limited to (a) those services (the "Work") described in the attached proposal, which is incorporated herein by this reference, and (b) these Terms and Conditions of Agreement ("Terms and Conditions"). Together, the proposal and Terms and Conditions form the "Agreement." This Agreement represents the entire agreement between the Client and Cornerstone (collectively, the "Parties") and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement can only be amended by a written instrument signed by both the Client and Cornerstone. In the event that the Client authorizes the Work by means of a purchase order or other writing ("Confirmation"), it is expressly agreed that these Terms and Conditions shall apply, and any terms, conditions or provisions appearing in the Confirmation are void and inapplicable except to the extent the Confirmation authorizes the Work and binds the Client to this Agreement.
- 1.2. Failure to immediately enforce any provision in this Agreement shall not constitute a waiver of the right to enforce that provision or any other provision. No waiver by the Parties of a breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of a breach of any other term or covenant in this Agreement.

**2. Scope of Services**

- 2.1 Cornerstone will serve the Client by providing professional counsel and technical advice based on information furnished by the Client. The Client will make available to Cornerstone all known information regarding existing and proposed conditions of the site, and will immediately transmit any new information that becomes available or any change in plans. The Client and Cornerstone agree that Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for any claims, damages, costs, or losses arising from or in any way related to conditions not actually encountered during the course of Cornerstone's Work and Cornerstone shall not have any liability or responsibility for losses resulting from inaccurate or incomplete information supplied by the Client, and the Client agrees to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against claims, damages, costs or losses arising therefrom. Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for failing to discover any condition the discovery of which would reasonably require the performance of services not authorized by the Client.

**3. Terms of Payment**

- 3.1 The Client's obligation to pay for the Work is in no way dependent upon the Client's ability to obtain financing. The Client's obligation to pay for the Work is in no way dependent upon the Client's successful completion of the Client's project. No provision of this Agreement shall be construed to constitute a "Pay-When-Paid" clause or a "Pay-If-Paid" clause.
- 3.2 Payment for the Work shall be due and payable upon receipt of Cornerstone's invoice. To be recognized, any dispute over charges must be claimed in writing within thirty (30) calendar days of the billing date. Any dispute over an invoice amount shall not affect the Client's obligation to pay invoice amounts not in dispute. Amounts unpaid thirty (30) calendar days after the issue date of Cornerstone's invoice shall be assessed a service charge of 1 percent per month on balances outstanding.
- 3.3 Timely payment is a substantial condition of the Client's performance under this Agreement. Cornerstone may at its option withhold delivery of reports or other work product or suspend performance of the Work pending receipt of payments for all past due invoices and Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no liability to the Client for delay or damage caused because of such withholding or suspension. In the event that Cornerstone must take legal action to enforce this Agreement for payment for the Work performed and Cornerstone prevails, Cornerstone will be reimbursed by the Client for all expenses, including but not limited to reasonable attorney's fees and litigation costs.

**4. Standard of Care**

- 4.1 While performing the Work under this Agreement, Cornerstone shall exercise the degree of care and skill ordinarily exercised under similar circumstances by members of the environmental and geotechnical engineering consulting professions, as applicable, performing the kind of services to be performed hereunder and practicing in the same or similar locality at the same period of time.
- 4.2 Except for the express promise set forth in Subsection 4.1 herein, Cornerstone neither makes, nor offers, nor shall Cornerstone be liable to the Client for any express or implied warranties with respect to the performance of the Work.

**5. Force Majeure**

- 5.1 Cornerstone will diligently proceed with its services and will complete the Work in a timely manner, but it is expressly agreed to and understood by the Client that Cornerstone shall not be held responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time of the execution of the Agreement between the parties.
- 5.2 Except for the obligation to pay for the Work performed and expenses incurred, neither Cornerstone nor the Client shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, included, but not limited to, strikes or other concerted acts of workmen not in Cornerstone's employ, whether direct or indirect, riots, war, acts of terrorism, fire, floods, storms, washouts, acts of God or the public enemy, explosions, accidents, epidemics, breakdowns, injunctions, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any governmental body or any instrumentality thereof, whether now existing or hereafter created.

**6. Effect of Delay or Impediment to Work**

- 6.1 If any event occurs which causes or may cause Cornerstone: (a) to be impeded in its performance of the Services; or (b) to be delayed in the completion of the Work within the time provided in the attached proposal and/or in an applicable Change Order due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5 herein, Cornerstone shall notify the Client in writing within ten (10) business days of the date on which Cornerstone becomes aware of such event.
- 6.2 The Client shall notify Cornerstone in writing of the Client's agreement or disagreement with Cornerstone's claim of an impediment or delay to performance within five (5) business days after receipt of Cornerstone's notice under Subsection 6.1. If the Client agrees with Cornerstone's claim, the time for performance of such requirement may be extended as mutually agreed in writing by the parties as provided in Subsection 1.1. If the Client disputes Cornerstone's assertion of an impediment or delay, such dispute shall be resolved pursuant to Section 17.
- 6.3 Impediments or delays to performance, addressed pursuant to this Section, shall not (a) constitute a breach hereunder; (b) give rise to any special right to terminate this Agreement; or (c) give rise to a claim by the Client for damages or other relief, if and to the extent that such impediment or delay is due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5.

**7. Right of Entry**

- 7.1 Unless otherwise agreed in writing, the Client shall furnish and/or secure right of entry to the Site described in the proposal for Cornerstone personnel and equipment in order for Cornerstone to perform the Work. The Client shall waive any claim against Cornerstone, its officers, directors, employees, agents and/or subcontractors and agree to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any claims arising from entry onto the Site which is the subject of the Work.

7.2 The Parties acknowledge and agree that although Cornerstone will take reasonable precautions to minimize damage to property, including landscapes, hardscapes, crops and underground utilities, any and all damages, losses or expenses which could result from damage to such property due to Cornerstone's performance of the Work under this Agreement shall be the sole and exclusive responsibility of the Client provided that such damages, losses or expenses are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein. The Client shall indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any damages, losses or expenses including, without limitation, attorney's fees, sustained or incurred by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claims arising out of any damage to subsurface utilities due to Cornerstone's performance of the Work under this Agreement, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

## **8. Monitoring of Construction**

8.1 The Client acknowledges and understands that unanticipated or changed conditions may be encountered during construction. There is a substantial risk to the Client and to Cornerstone if Cornerstone is not engaged to provide complete services, including but not limited to, construction observation services. Such risks include the increased likelihood of misinterpretation of Cornerstone's findings and conclusions and error in implementing recommendations by Cornerstone. If Client fails to retain Cornerstone to provide complete services, the Client agrees, notwithstanding any other provisions of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless Cornerstone, its officers, partners, employees and Cornerstones from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the Work or arising out of implementing or interpreting Cornerstone's work product except when the Claim arises from the sole negligence of Cornerstone or where the Claim arises from the willful, wanton or reckless conduct of Cornerstone.

8.2 Cornerstone shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents.

8.3 Cornerstone shall not be responsible for the acts or omissions of any contractor or subcontractor or any of the contractors' or subcontractors' agents or employees or other persons performing any work on the Project.

## **9. Changed Conditions**

9.1 If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to Cornerstone are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, Cornerstone may call for renegotiation of appropriate portions of this Agreement. Cornerstone shall notify the Client of the changed conditions necessitating renegotiation, and Cornerstone and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the termination provision hereof.

## **10. Jobsite Safety**

10.1 Neither the professional activities of Cornerstone nor the presence of Cornerstone or its employees, subconsultants and subcontractors shall relieve the Client or the Client's General Contractor of its obligations, duties and responsibilities, including, but not limited to, health and safety programs. Cornerstone and its personnel have no authority to exercise any control over the site or any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client acknowledges and agrees that Cornerstone shall not be responsible for jobsite safety.

## **11. Hazardous Materials and Environmental Contamination**

11.1 The Client hereby warrants that if it knows or has any reason to assume or suspect that hazardous or toxic substances, or any other type of environmental hazard, contamination or pollution may exist at the Site, the Client will immediately inform Cornerstone to the best of the Client's knowledge of such hazardous or toxic substances, environmental hazard, contamination or pollution's type, quantity and location.

11.2 Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no title to, ownership of, or legal responsibility and/or liability for any and all contamination at the Site, including, but not limited to, the groundwater thereunder. "Contamination at the Site" includes but is not limited to any hazardous or toxic substance, or any other type of environmental hazard, contamination or pollution present at or under the Site, including, but not limited to the ground water thereunder, which is not brought onto the Site by Cornerstone, its officers, directors, employees, agents and/or subcontractors.

11.3 Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may constitute a changed condition mandating renegotiation and/or termination of this Agreement. Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may make it necessary for Cornerstone to take immediate measures to protect the public health, safety and the environment. The Client agrees that Cornerstone may take any or all measures that in Cornerstone's professional opinion are justified to preserve and protect the health and safety of Cornerstone's personnel, the public and the environment, and the Client agrees to compensate Cornerstone for the cost of such services.

11.4 The Client agrees to indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all damages, losses or expenses, including, but not limited to, reasonable attorney's fees and legal costs connected therewith, liabilities, penalties and fines sustained by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claim with respect to and arising out of any and all Contamination at the Site, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

11.5 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring is advanced or drilled through a contaminated area into a clean soil or water-bearing zone. Because of the risks posed by such work, and because subsurface sampling is often a necessary part of Cornerstone's Work, the Client hereby agrees to waive all claims against Cornerstone, its officers, directors, employees, agents and/or subcontractors with respect to and arising out of any and all subsurface sampling, including but not limited to claims relating to cross-contamination occurring because of such subsurface sampling, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

## **12. Disposal of Samples and Drill Cuttings**

12.1 Unless mutually agreed in writing by the Parties as provided in Subsection 1.1 herein, Cornerstone shall hold samples collected during the performance of the Work no longer than thirty (30) calendar days after their date of collection. Drill cuttings will be left on-Site. In the event that soil, rock, water, drill cuttings and/or other samples or materials are contaminated or are suspected to contain hazardous materials or other toxic substances hazardous or detrimental to public health, safety or the environment as defined by federal, state or local law, Cornerstone will, after completion of testing, notify the Client of the same in order for the Client to arrange for the disposal of the samples and/or materials. The Client recognizes and agrees that Cornerstone at no time assumes title to said samples and/or materials, and that the Client is responsible for the disposal of such samples and/or materials. The Client agrees to pay all costs associated with any storage, transport and/or disposal of samples and/or materials, and to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all claims arising out of or in any way related to the storage, transport and/or disposal of asbestos, hazardous or toxic substances, and/or pollutants, including but not limited to any samples and/or materials.

## **13. Use and Ownership of Documents**

13.1 All reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and instruments prepared by Cornerstone as instruments of service shall remain the property of Cornerstone. Cornerstone shall retain all common law, statutory and other reserved rights, including copyright thereto. In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents prepared by Cornerstone without obtaining Cornerstone's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against Cornerstone and to release Cornerstone from any liability arising directly or indirectly from such changes. In addition, the Client agrees, to the

fullest extent permitted by law, to indemnify and hold harmless Cornerstone from any damages, liabilities or costs, including reasonable attorney's fees and costs of defense, arising from such changes.

The Client agrees that all reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and other services furnished to the Client or its agents and/or employees by Cornerstone, which are not paid for, shall be immediately returned upon demand and may not be used by the Client for any purpose. Any reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinions provided by Cornerstone to the Client as part of the Work are provided for the sole and exclusive use of the Client for specific application to the Site detailed in this Agreement. Any third party use of any drafts, reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinion of Cornerstone is the sole responsibility of the Client.

**14. Insurance**

14.1 Cornerstone, its officers, directors, employees and agents have and shall maintain during the term of this Agreement insurance in the following types: (a) Worker's Compensation Insurance; (b) Employer's Liability Insurance; (c) Commercial General Liability Insurance (GLI); and (d) Professional Liability Insurance.

14.2 Cornerstone shall, at the Client's request, provide the Client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and are maintained in force through the term of this Agreement. Any additional insurance policy or increase in the coverage of existing insurance required by the Client shall constitute an additional expense under this Agreement, and the Client shall reimburse Cornerstone for any additional premiums and costs incurred by Cornerstone in connection with obtaining such additional insurance.

**15. Prevailing Wage Obligations**

15.1 The Client shall notify Cornerstone in writing if the Work contemplated by this Agreement constitutes a "public work" under any and all federal, state and/or local prevailing wage laws, and/or living wage laws, including but not limited to the Davis-Bacon Act and the provisions of California Labor Code §§ 1720 *et seq.* In addition, the Client shall notify Cornerstone if Cornerstone is obligated by statute, any public contracting authority and/or a developer to pay prevailing wages and benefits and/or any predetermined wages or benefits (collectively, "prevailing wage obligations"). In the event that Cornerstone must adhere to federal, state and/or local prevailing wage obligations for the Work performed, the Client shall provide Cornerstone with any and all prevailing wage determinations applicable to the Work to be performed under this Agreement. Any prevailing wage obligations might affect the payment terms contemplated by this Agreement and thus constitute a changed condition mandating renegotiation and/or termination of this Agreement. The Client understands and agrees that Cornerstone will rely on the representations made by the Client with regard to prevailing wage obligations and the Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from Cornerstone's reliance upon the Client's representations regarding prevailing wage obligations.

**16. Limitations—THIS CLAUSE LIMITS CORNERSTONE'S LIABILITY**

16.1 Cornerstone shall not be responsible for the validity or accuracy of data collected by others or for interpretations made by others.

16.2 Cornerstone's relationship with the Client under this Agreement shall be that of an independent contractor. Nothing in this Agreement shall be construed to designate Cornerstone, its officers, directors, employees, agents and/or subcontractors as employees, agents, joint ventures or partners of the Client. Cornerstone shall have no authority to bind, commit or obligate the Client in any manner and shall not hold itself out to third parties as being capable of doing so.

16.3 The Client and Cornerstone have discussed the risks and rewards associated with this project, as well as Cornerstone's fee for services. ~~After negotiation, the Client and Cornerstone have expressly agreed to allocate certain of the risks so that, to the fullest extent permitted by law, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third parties is limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include but are not limited to Cornerstone's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power.~~

16.4 ~~Notwithstanding any other provision of this Agreement, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third parties, including attorney's fees awarded pursuant to this Agreement, for claims, damages or losses arising out of the treatment, transport, storage, discharge, dispersal or release of hazardous materials, shall be limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater and regardless of the legal theory under which liability is imposed.~~

16.5 ~~For an additional 5% of Cornerstone's total fee or \$500, whichever is greater, Cornerstone will raise the limitation of liability up to the amount that actually would be paid by Cornerstone's insurance carriers if Client and Cornerstone initial below:~~

~~LIMITATION INCREASE: THE LIMITATION OF LIABILITY IS INCREASED TO THE ACTUAL AMOUNT PAID BY CORNERSTONE'S INSURANCE CARRIERS IN EXCHANGE FOR AN ADDITIONAL FEE OF 5% OF THE TOTAL SERVICE CHARGE OR \$500, WHICHEVER IS GREATER.~~

Client's Initial	Date	Cornerstone's Initial	Date
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16.6 ~~The Client shall indemnify, defend and hold harmless Cornerstone and its officers, directors, employees, agents and subcontractors from any and all damages, losses, or expenses, included but not limited to reasonable legal expenses and attorney's fees connected therewith, sustained by Cornerstone, its officers, directors, employees, agents and subcontractors as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities for property damage, statutory penalty and/or personal injury with respect to and arising out of the Client's negligent acts, omissions or material breach of this Agreement. In the event a claim is the result of joint negligent acts or omissions of the Client and Cornerstone, the Client's duty of indemnification shall be in proportion to its respective allocable share of the joint negligence.~~

16.7 Client acknowledges and agrees that in no event shall any action or proceeding be brought against Cornerstone or proceeding be brought against Cornerstone by Client or its assignees for any claim or cause of action arising from or in any way related to the Work or this Agreement unless such action or proceeding is commenced within three (3) years from the Date of Completion of Work provided by Cornerstone under this Agreement. The Date of Completion shall be the date of the final invoice for the Work performed under this Agreement.

16.8 If Client requests that Cornerstone's work product be relied upon by a third party, including, but not limited to a lender, Client agrees to provide the third party with a copy of these terms and conditions, and Client agrees to require said third party to agree to limit Cornerstone's total liability to Client and any third party as described in paragraph 16.4 and Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from third party claims, damages, costs and losses arising out of or in any way related to Work.

**17. Disputing Cornerstone's Performance**

17.1 Except as provided in Section 6 and Subsection 17.2 herein, if Cornerstone shall breach any provision herein, the Client shall notify Cornerstone within five (5) business days of the Client's knowledge of such breach. Except as provided in Subsections 17.3 herein, upon receipt of the Client's notice, Cornerstone shall have the option to take such corrective measures, if any, to remedy the breach, and shall notify the Client within five (5) business days after receipt of the

Client's notification of the corrective measures Cornerstone shall take and the estimated time period within which the corrective measures shall be taken. In no event shall Cornerstone be liable to the Client for any damages without being given a reasonable opportunity to remedy its breach as provided herein.

- 17.2 The Client shall make no claim for professional negligence unless the Client has first provided Cornerstone with a written certification executed by an independent Consultant currently practicing in the same discipline and locality as Cornerstone and licensed in the State of California. This certification shall (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard care for a Cornerstone performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to Cornerstone no less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation, arbitration or judicial proceeding.
- 17.3 Cornerstone agrees that upon receipt of written notice from the Client pursuant to Subsection 17.2 herein it will implement necessary corrections to the Work performed by Cornerstone that fails to conform to the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, as mutually agreed in writing by the Parties as provided in Subsection 1.1. herein, if such written notice is received within one (1) year of the performance of the Work failing to conform to Subsection 4.1. If Cornerstone has been paid by the Client for such Work, Cornerstone shall perform the corrections at its own expense. If Cornerstone has not been paid by the Client for such Work, and the Work is subsequently corrected to conform with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, the Client shall pay Cornerstone in accordance with Section 3 herein.
- 17.4 In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power, or any other incidental, special, indirect or consequential damages of any kind or nature whatsoever resulting from Cornerstone's performance or failure to perform the Work in accordance with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1.
- 18. Termination**
- 18.1 Cornerstone shall have the right to terminate this Agreement ten (10) business days after written notice is sent to the Client if (a) the Client fails to pay any of Cornerstone's undisputed invoices within sixty (60) days from the date of the invoice; or (b) Cornerstone's attached proposal and/or the Work was based upon misinformation, whether by the Client or a third party, or upon information not fully disclosed to Cornerstone, whether by the Client or a third party.
- 18.2 Except as provided for in Section 6, and after compliance with Section 17, the Client shall have the right to terminate this Agreement ten (10) business days after written notice is sent to Cornerstone if Cornerstone fails to comply in any material respect with any of the material provisions herein and subsequently fails to notify the Client pursuant to Subsections 17.1 and 17.3 of the corrective measures Cornerstone intends to take.
- 18.3 The termination of this Agreement by Cornerstone under Subsection 18.1 herein, or by the Client under Subsection 18.2 herein, shall not relieve the Client of its obligations to pay Cornerstone for any of the Work performed and expenses incurred as of the date of termination, and shall not constitute a waiver by Cornerstone or the Client of any cause of action for breach of this Agreement or any provision herein.
- 19. Miscellaneous Provisions.**
- 19.1 "Indemnity Defined. The term "indemnify" shall mean indemnify, defend and hold harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and all legal costs incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including death or economic losses, arising out of the item, matter, action or inaction specified in the specific provision.
- 19.2 "Choice of Counsel. In any circumstance whereby Cornerstone is entitled to indemnification by the Client, Cornerstone shall have the right to select counsel of its choosing.
- 19.3 "Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns as provided herein. The Client shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of Cornerstone. Cornerstone shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of the Client. The Client hereby consents to the subcontracting of those portions of the Work as the attached proposal herein indicates are or will be subcontracted. Notwithstanding the above, Cornerstone shall have the right to assign monies due hereunder for the Work performed and expenses incurred.
- 19.4 "Third Party Beneficiaries. The Parties agree that this Agreement is not intended by either Cornerstone or the Client to give any benefits, rights, privileges, actions or remedies to any person or entity, partnership, firm or corporation as a third party beneficiary or otherwise under any theory of law, that is not a signatory to this Agreement.
- 19.5 "Survival. In order that the Parties may fully exercise their rights and perform their obligations arising from the performance of this Agreement, any provisions of this Agreement that are necessary to ensure such exercise or performance shall survive the termination of this Agreement.
- 19.6 "Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any federal, state or local law having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby.
- 19.7 "Choice of Law and Venue. This Agreement shall be governed by California law. The venue for any legal action brought pursuant to this Agreement shall be located within the County of Santa Clara, State of California.
- 19.8 "Publicity. Unless otherwise mutually agreed in writing by the parties as provided in Subsection 1.1, Cornerstone may use and publish the Client's name and a general description of Cornerstone's services with respect to the Work in describing Cornerstone's experience and qualifications to other clients or prospective clients.
- 19.9 "Signatories. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.
- 19.10 "Corporate Protection. It is intended by the parties to this Agreement that Cornerstone's services in connection with the Work shall not subject Cornerstone's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Cornerstone, a California Corporation, and not against any of Cornerstone's individual employees, officers or directors.
- 19.11 "Code Compliance. Cornerstone shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations as of the date of this Agreement.
- 19.12 "Quotation. Unless stated in writing, this quotation shall not remain in effect after thirty (30) days of the Proposal date.
- 19.13 "Contractors State License. Cornerstone maintains a General Engineering A license (No. 905816) with a Hazardous Substances Removal and Remedial Actions Certification with the State of California, which are regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

## **Addendum to Consultant's Agreement**

### Limitation of Liability:

OWNER and CONSULTANT have discussed the risks and rewards associated with this project, as well as CONSULTANT'S fee for services. OWNER AND CONSULTANT agree to allocate certain of the risks so that, to the fullest extent permitted by law, CONSULTANT'S total aggregate liability to OWNER is limited to the damages and losses caused by the negligent acts, errors and omissions of the Consultant in the performance of professional services under this Agreement, but only to the extent of coverage provided under CONSULTANT'S Errors and Omissions Policy ("E&O") and any deductible there under. As used in this paragraph, CONSULTANT shall include Consultant, Consultant's sub-consultants, and their respective partners, officers, directors, shareholders and employees.

### Errors and Omissions Insurance:

CONSULTANT shall obtain E&O insurance coverage in with a single occurrence limit of \$1,000,000 and an aggregate annual limit of \$1,000,000 and provide a certificate of insurance evidencing coverage. CONSULTANT'S E&O will have a deductible of no greater than twenty-five thousand dollars (\$25,000). If CONSULTANT fails to renew E&O coverages, for any reason prior to the expiration of the seven year period, CONSULTANT shall immediately notify owner who at owner's option and expense may purchase "tail" coverage for the remaining balance of years.

**APPENDIX B – DATABASE SEARCH REPORT**

Draft

**APPENDIX C – HISTORICAL AERIAL PHOTOGRAPHS AND TOPOGRAPHIC MAPS**

Draft

**APPENDIX D – LOCAL STREET DIRECTORY SEARCH RESULTS**

Draft