

DOCUMENT: 17915493

Pages: 16



Fees....	52.00
Taxes...	
Copies..	
<b>AMT PAID</b>	<b>52 00</b>

RECORDING REQUESTED BY:  
 Intel Corporation  
 2200 Mission College Boulevard  
 Santa Clara, California 95052

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
 Region 2  
 700 Heinz Avenue, Suite 200  
 Berkeley, California 94710-2721  
 Attention: Barbara J. Cook, P.E., Chief  
 Northern California - Coastal Cleanup  
 Operations Branch

BRENDA DAVIS  
 SANTA CLARA COUNTY RECORDER  
 Recorded at the request of  
 Owner

RDE # 003  
 7/22/2004  
 1:53 PM

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Intel Freedom Circle Parcels 1, 2, and 3; Santa Clara County Assessor's Parcel Numbers 104-40-018, 104-40-021, and 104-40-023)

---

This Covenant and Agreement ("Covenant") is made by and between Intel Corporation (the "Covenantor"), the current owner of property situated in Santa Clara, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 17 acres is more particularly described and

depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Mission College Boulevard to the north, Highway 101 to the south, San Tomas Aquino Creek to the east, and Freedom Circle to the west in the County of Santa Clara, State of California. This property is more specifically described as Santa Clara County Assessor's Parcel Numbers 104-40-018, 104-40-021, and 104-40-023.

1.02. The Property is being remediated pursuant to a Removal Action Workplan pursuant to Chapter 6.8 of Division 20 of the H&SC, under the oversight of the Department. Department oversight is pursuant to an H&SC Section 25355.5 Voluntary Cleanup Agreement (VCA) entered into by the Covenantor and the Department for site remediation. Hazardous materials resulting from prior site use were discovered at the site shortly after the Covenantor purchased the property, and the Covenantor agreed to remediate the site under a VCA. The Removal Action Workplan provides that a deed restriction be required as part of the site remediation, because lead and arsenic, which are hazardous substances as defined in H&SC section 25316 and hazardous materials as defined in H&SC section 25260, remain in soil between depths of 1 to 7 feet below the surface of the Property. The Department circulated the Removal Action Workplan together with a Notice of Exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Removal Action Workplan and the Notice of Exemption were approved by the Department on September 30, 2003, pursuant to which the Property is required to maintain a clean soil / gravel cap with a minimum thickness of 1 foot or an asphalt cap (or other DTSC-approved barrier) over all of Parcels two and three and the southernmost portion of Parcel one [Exhibit "B"].

1.03. As detailed in the Final Health Risk Assessment as approved by the Department in December 2001, a portion of the subsurface soils between 1 and 7 feet below the existing surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following metal contaminants of concern in the ranges set forth below: arsenic (<0.3 to 89.1 parts per million ("ppm")) and lead (<0.2 to 401 ppm). In addition, organochlorine pesticides including Dieldrin (0.002 to 0.170 ppm), 4,4'-DDT (0.002 to 0.420 ppm), 4,4'-DDE (0.002 to 1.100 ppm), and/or 4,4'-DDD (0.002 to 0.150 ppm) were also detected. Due to the fact that elevated organochlorine pesticide concentrations were discovered in the same locations that arsenic and lead exceeded local background values, arsenic and lead were used to define the areas of concern. Based on the Final Risk Assessment the Department concluded that use of the Property as a residence,

hospital, school for persons under the age of 21 or day care center would entail an unacceptable risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment if limited to commercial and industrial uses, automobile parking, open space, temporary construction trailer storage and other similar uses.

Groundwater at the Property is first encountered at approximately 15 feet below ground surface and has not been impacted from the contaminants that exist in the soil at the Site. Arsenic and lead were not detected in groundwater above method detection limits (<0.005 ppn). The Department concludes that the groundwater does not present an unacceptable threat to human health and safety.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04. Cap. "Cap" means either a clean soil/ gravel cap with a minimum thickness of 1 foot or an asphalt or concrete cap (or other DTSC-approved barrier).

## ARTICLE III

### GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of

and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department. An ex-owner or ex-occupant is not, merely by virtue of its former status as an owner or occupant, liable for obligations accruing under the Covenant subsequent to its ownership or occupancy.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

#### ARTICLE IV

#### RESTRICTIONS

- 4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:
- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
  - (b) A hospital for humans.
  - (c) A public or private school for persons under 18 years of age.

(d) A day care center for children.

4.02. Prohibited Activities. The following activities shall not be conducted at the Property:

(a) Raising of food (cattle, food crops).

4.03. Non-Interference with Cap. Covenantor agrees:

(a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall be conducted in accordance with procedures described in the Soil Management Plan and Health and Safety Plan approved on May 10, 2004 as well as any modifications approved by the Department.

(b) All uses and development of the Capped Property shall preserve the integrity of the Cap.

(c) The Cap shall not be altered without written notification to the Department. The Cap shall not be altered to something other than that defined in Section 2.04 without written approval by the Department.

(d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Soil Management

(a) Activities that will disturb the soil at or below 1.0 feet below grade (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) on the Property shall be conducted in accordance with procedures described in the Soil Management Plan and Health and Safety Plan approved on May 10, 2004 as well as any modifications approved by the Department. The Department shall be notified fourteen (14) days in advance of any trenching, excavation, grading, in-filling, and/or utility corridor work that will be conducted in accordance with the approved Soil Management Plan and Health and Safety Plan, and at the completion of which either a minimum one-foot clean fill or an asphalt or

concrete cover will be restored/installed. Sixty (60) days advance notice and Department approval will be required for any other activities that will disturb the Cap.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.05. Access for Department. The Department shall have the right to enter the Property at all reasonable times for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

## ARTICLE V

### ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

## ARTICLE VI

### VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII

### MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Intel Corporation  
Attention: Mr. Tom Cooper  
RN4-107  
2200 Mission College Boulevard  
Santa Clara, California 95052-8119

To Department:

Department of Toxic Substances Control  
Attention: Barbara J. Cook, P.E., Chief  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

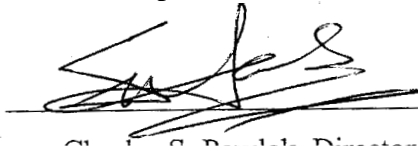
7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Intel Corporation

By:



LEGAL OK  
TWR 6-1-04  
By Lori Bail

Date:

6/2/04

Sunil K. Das

Worldwide Real Estate Manager

Department of Toxic Substances Control

By:



Title:

Barbara J. Cook, P.E., Chief  
Northern California - Coastal Cleanup Operations Branch

Date:

6/10/2004



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

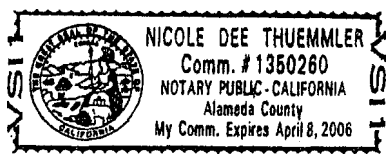
State of California

County of Alameda

On 6-10-2004 before me, Nicole Dee Thuemmler Notary Public,  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Barbara J. Cook  
Name(s) of Signer(s)

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Nicole Dee Thuemmler  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

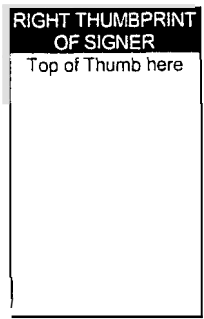
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

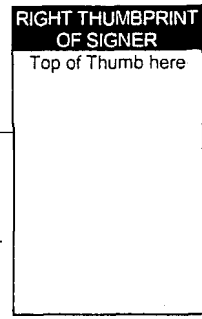
- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner-  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner-  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: /

STATE OF ARIZONA

)

COUNTY OF Maricopa

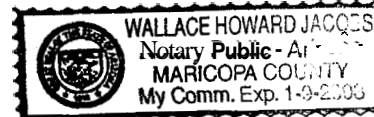
On this 2<sup>nd</sup> day of June in the year 2004,

Before me Wallace Howard Jacobs, personally appeared

Sunil K. Des

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,



Signature Wallace Jacobs

**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

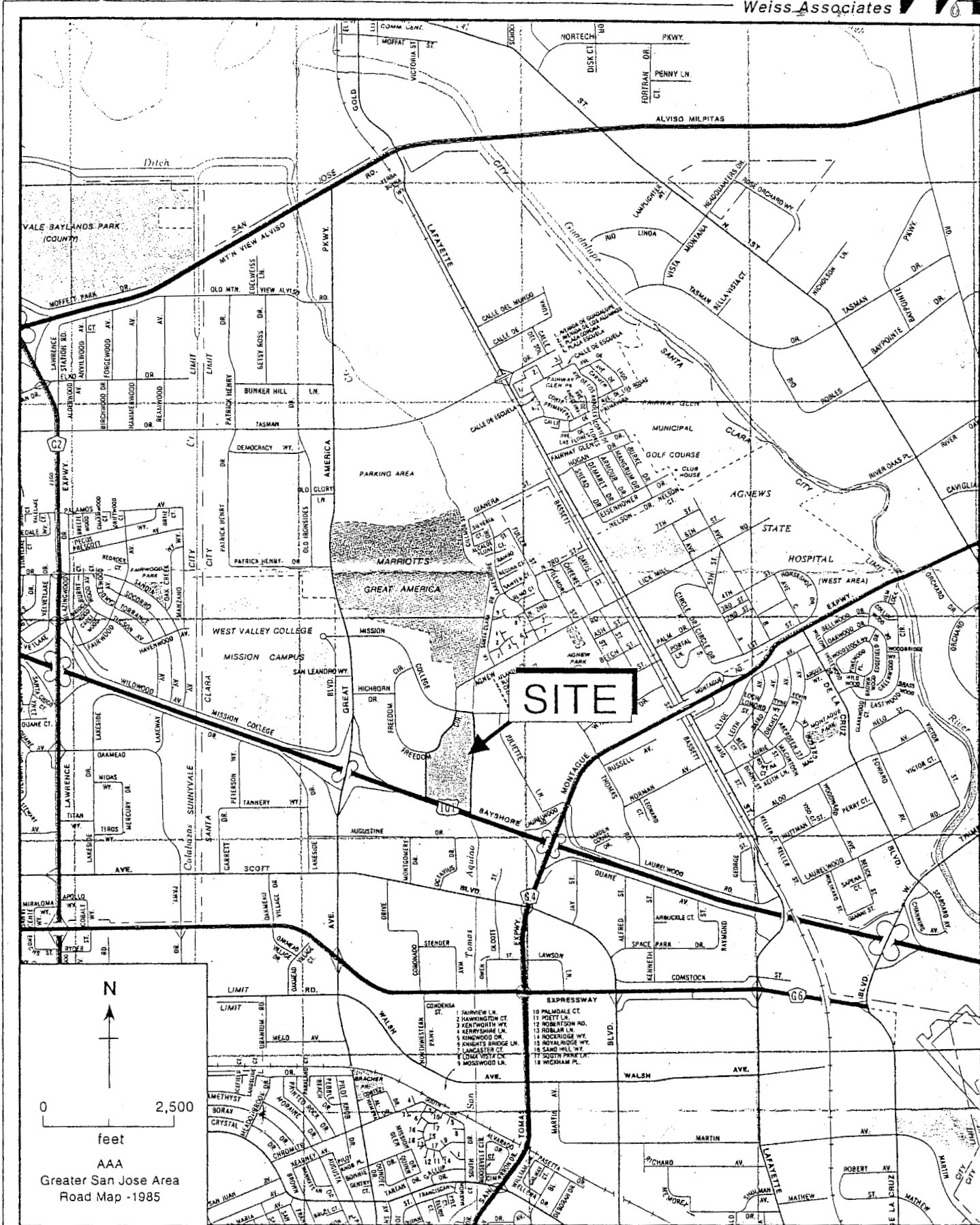
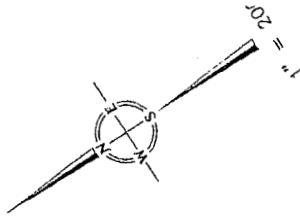
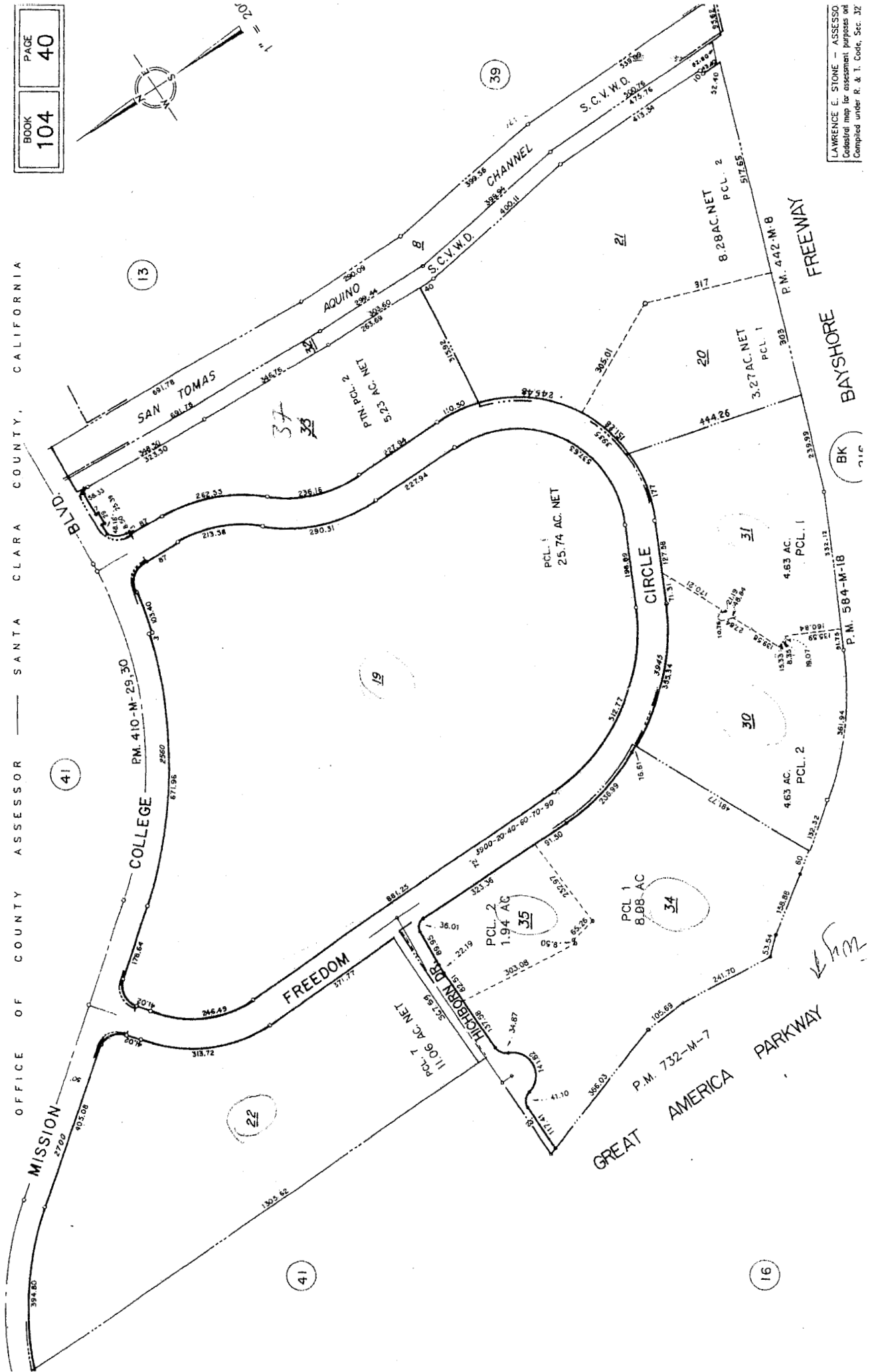


Figure 1. Site Location Map, Intel Corporation, Freedom Circle, Santa Clara, California.



OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



## SCHEDULE 1

### LEGAL DESCRIPTION OF PROPERTY

All that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

**Parcel One (104-40-37):**

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map being a resubdivision of lands of Marriott Corporation, Successor by Merger to Fespar Enterprises, Inc., and Marriott Hotels, Inc., and Stephen & Mary Dorcich as shown on Record of Survey recorded on January 12, 1977 in Book 386 of Maps, at Page 54, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 29, 1977 in Book 410 of Maps, at Pages 29 and 30.

**Parcel Two (104-40-21):**

All of Parcel 2, as shown upon that certain Map entitled, "Parcel Map being all of Parcel 3, as shown on that certain 'Parcel Map', recorded in Book 410 of Maps, at Pages 29 and 30, Santa Clara County Records", which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on May 18, 1979, in Book 442 of Maps, at Page 8.

**Parcel Three (104-40-20):**

All of Parcel 1, as shown upon that certain Map entitled, "Parcel Map being all of Parcel 3, as shown on that certain 'Parcel Map', recorded in Book 410 of Maps, at Pages 29 and 30, Santa Clara County Records", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 18, 1979 in Book 442 of Maps, at Page 8.

**EXHIBIT B**

**CAP MAINTENANCE AREA**

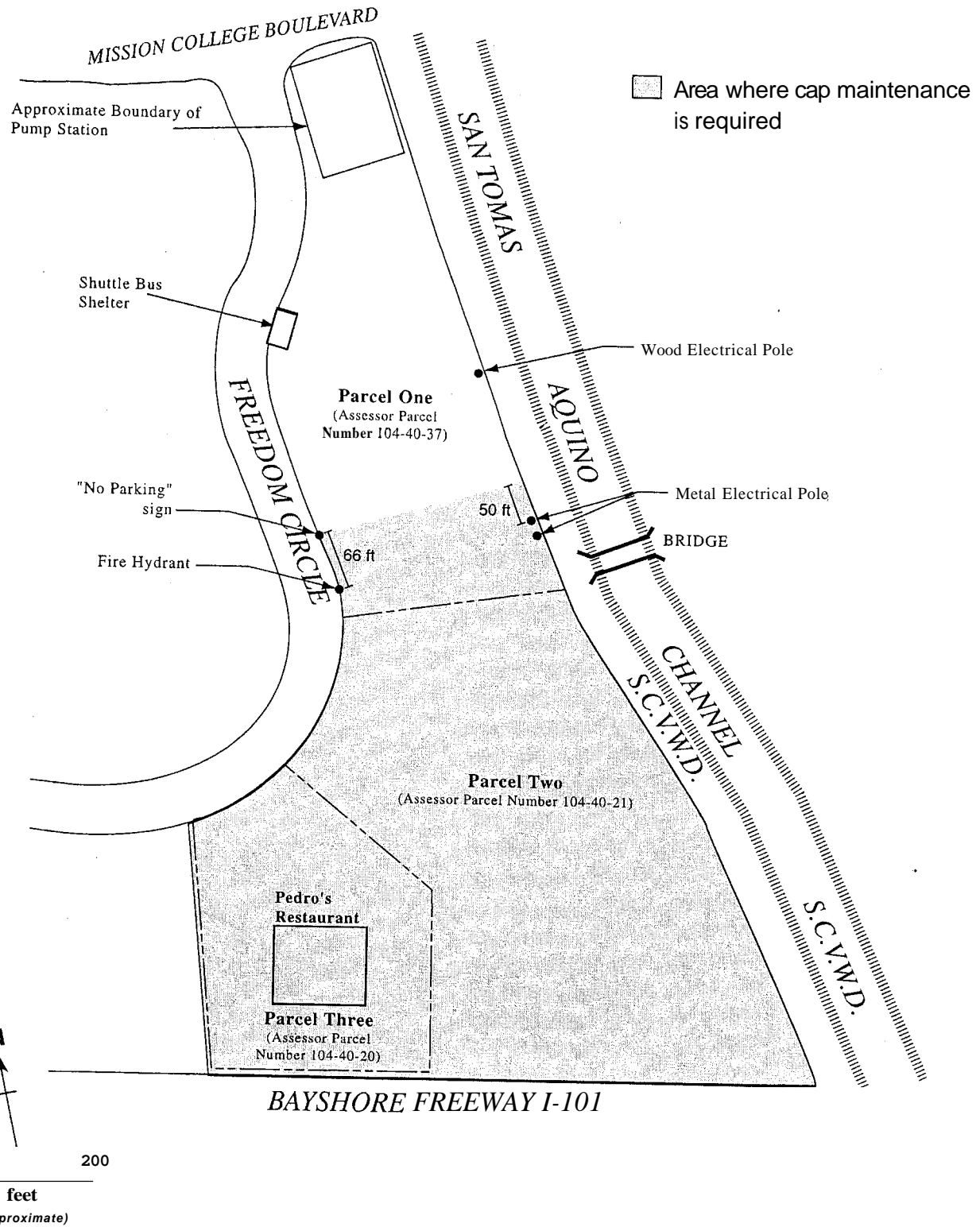


Figure 2. Parcel Location Map, Freedom Circle, Santa Clara, California