

Linda S. Jisbet

Dec 30 2 25 PM '91

RECORDS
SANTA CLARA COUNTY
CLERK
COURT HOUSE
JULY 1991

Recording Requested by:
RREEF USA FUND-III, a
California Group Trust
155-A Moffett Park Drive
Sunnyvale, California 95089

When Recorded, Mail to:

Mr. Steven R. Ritchie
ATTN: Mr. Gregory Bartow
California Regional Water
Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, California 94612

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CONTROL BOARD

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COVENANT
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the _____ day of November, 1991, by RREEF USA FUND-III, a California Group Trust ("Covenantor"), which is the owner of record of certain property situated in the City of Santa Clara, County of Santa Clara, State of California, commonly described as the building and parking lot located at 3050 Coronado Drive and identified by the cross-hatched portion of Exhibit "A" attached hereto and incorporated herein by this reference ("Property") for the benefit of the Property and the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"), with reference to the following facts:

- A. The Property is located at: 3050 Coronado Drive, Santa Clara, California.
- B. The Regional Board has determined that certain remedial action must be taken at the Property as specified in Regional Board Order 91-051 and Remedial Investigation for Synertek #1 dated September 28, 1990, prepared by Conestoga Rovers and Associates, and Honeywell Inc. is performing the remedial action as specified in that Order.

extra "original" sent to files

As background, one 200 gallon solvent tank and three neutralization tanks were installed at the Property between 1974 and 1982. The solvent tank and the neutralization tanks along with polluted soil were excavated from the Property in 1985. Trichloroethylene (TCE), 1,1,1 trichloroethane (TCA), Xylene, and Freon-113 were used by Synertek Inc. in its manufacturing processes.

In 1982, a completed Facility Questionnaire was submitted to the Regional Board staff describing the Property's underground neutralization systems, sumps, and tanks. Based on these submittals, staff required initiation of subsurface pollution characterization at the Property in 1982. This remedial investigation work has been ongoing for the last eight years. Interim remedial actions began at the Property in 1985 with the excavation and removal of the solvent tank and the neutralization tanks. Groundwater excavation and treatment as additional interim remedial action began at the Property in 1987. The feasibility study evaluated the interim remedial actions that have been ongoing for the last three years and alternatives for the final remedial action. The remedial investigation/feasibility study reports summarize the last eight years of the remedial investigation and the last five years of the interim remedial actions.

The remedial investigation has determined that the sources of the groundwater pollution at the Property were leaks from onsite solvent and neutralization tanks. These sources overlie the area of highest groundwater pollution. Soil samples collected from the walls and bottom of the excavations appear to indicate that soils containing volatile organic compounds at concentrations higher than 1 part-per-million were excavated.

- C. Regional Board Order 91-051 requires Covenantor to implement a deed restriction prohibiting the use of the A and B zone groundwater as a source of drinking water, and for controlling onsite activities that could endanger the public health or the environment due to exposure to volatile organic compounds. Constraints shall remain in effect until groundwater cleanup standards have been achieved and pollutant levels have stabilized in onsite aquifers.
- D. Described in Exhibit B attached hereto and incorporated herein by this reference is a map showing the extent of

groundwater pollution at the Property as of samples taken in June of 1991.

- E. Covenantor desires and intends that use of the Property shall be subject to observance of the requirements stated herein.

NOW, THEREFORE, Covenantor and the Regional Board declare and agree as follows:

ARTICLE I.

DEFINITIONS

1.01 "Covenantor" shall mean RREEF USA FUND-III, a California Group Trust, or its successors in interest, including heirs and assigns, who hold fee simple title to all or any portion of the Property.

1.02. "Honeywell Inc." shall mean the entity performing the remedial action as specified in Regional Board Order 91-051.

1.03. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon the Property.

1.04. "Occupants" shall mean those persons entitled by ownership, leasehold or other legal relationship to the exclusive right to occupy any portion of the Property.

1.05. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

1.06. "Property" shall mean the land described in Exhibit "A".

1.07. "Regional Board" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region, and shall include its successor agencies, if any.

1.08. "Restrictions" shall mean the restrictions described in Section 2.01 of Article II.

ARTICLE II.

GENERAL PROVISIONS

2.01. Provisions to Run With the Land. This Covenant sets forth certain protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and

subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed as an equitable servitude upon the Property and on any portion thereof, for the benefit of the Property and the Regional Board, and shall be enforceable solely by the Regional Board and any successor agency thereto. The Regional Board's authority arises from Sections 13304 and 13267 of the California Water Code.

2.02. Concurrence of Owners Presumed. All purchasers or lessees of the Property or any portion thereof shall be deemed by their purchase or leasing of all or any portion of the Property to be in accord with the Restrictions and to agree that the Restrictions shall be adhered to for the benefit of the Regional Board and the future Owners and Occupants of the Property and that their interest in the Property shall be subject to the Restrictions contained herein.

2.03. Incorporation into Deeds and Leases. Covenantor covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property, provided, however, that the right to enforce the Restrictions shall exist only in the Regional Board.

2.04. Statement Regarding Hazard. Nothing in this Covenant shall be construed as a statement, admission or declaration that Covenantor or Honeywell Inc. has caused or created any existing or potential health, environmental or other hazards on the Property or on any portion of the Property.

ARTICLE III.

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01. Restrictions on Use. Covenantor promises to restrict the use of the Property as follows:

1. The Owner of the Property will not drill and will include in any leases or other agreements affecting the Property a prohibition on the drilling of any water wells on the Property without express prior written approval of the Regional Board and any other agency with jurisdiction.

3.02. Conveyance of Property. Owner shall provide a ten (10)

day advance notice to the Regional Board of any sale, lease, or other conveyance of the Property or an interest in the Property or any portion of the Property to a third person. The Regional Board shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease or other conveyance of the Property or of any portion of the Property, except as provided by law, by administrative order, or by reason of this Covenant. Notices required hereunder are only for the purpose of the Regional Board maintaining a current record of the sale, lease or other conveyance of the Property or any portion of the Property.

3.03. Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Regional Board, by reason of the Covenant, to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Regional Board to file civil and criminal actions against the Owner as provided by law. This Covenant shall not create any private right of action against Covenantor or any Owner or Occupant of the Property or any portion thereof.

3.04. Extent of Covenantor's Obligation. Upon conveyance of all or any portion of the Property by deed, Covenantor shall be released from any and all obligations under this Covenant to that portion of the Property which has been conveyed.

3.05. Notice in Agreement. All Owners and Occupants of the Property shall provide to subsequent Owners and Occupants of the Property a copy of this original, recorded Covenant to Restrict Use of Property in conjunction with any purchase, lease, sublease, or rental agreement relating to the Property.

ARTICLE IV.

VARIANCE AND TERMINATION

4.01. Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.02. Termination. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Property. This Covenant shall continue in effect until such time as the groundwater clean-up standards have been achieved in accordance with Regional Board Order 91-051, and/or subsequent orders.

4.03. Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V.

MISCELLANEOUS

5.01. No Dedication Intended. Nothing set forth herein 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 for any purposes whatsoever.

5.02. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demands, or other communication 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 official of a government agency being served, 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested, or 3) one (1) business day after deposit with Federal Express or similar overnight courier

To Covenantor: RREEF USA FUND-III, a
California Group Trust
115-A Moffett Park Drive
Sunnyvale, California 95089

With copy to: Honeywell Inc.
Honeywell Plaza
Minneapolis, Minnesota 55408
ATTN: Vice President,
Corporate Services

To Regional Board: California Regional Water Quality
Control Board
San Francisco Bay Region
2101 Webster Street
Suite 500
Oakland, California 94612

5.03. Partial Invalidity. If any portion of this Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not intended to aid in the meaning or interpretation of any part of the Covenant.

5.05. Recordation. This instrument shall be executed by the Covenantor and by the Regional Board. This instrument shall be recorded by Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.06. Statement of Compliance. Within a reasonable response time of receipt of a written request from any Owner or Occupant of the Property or any portion thereof, the Regional Board shall provide to such Owner or Occupant a written statement indicating whether, to the Regional Board's knowledge, such Owner or Occupant is operating in compliance with the provisions of this Covenant.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

RREEF USA FUND-III, a
California Group Trust
By: RREEF AMERICA PARTNERS,
Its Investment Advisor

By: Martin J. Cannon II
Title: Partner
Date: 12/12/91

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD

By: [Signature]
Title: [Signature]
Date: 12/12/91

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

On December 12, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared Martin L. Cannon II, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Partner of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

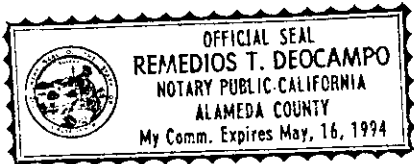


Susan Williamson
Notary Public in and for said
County and State

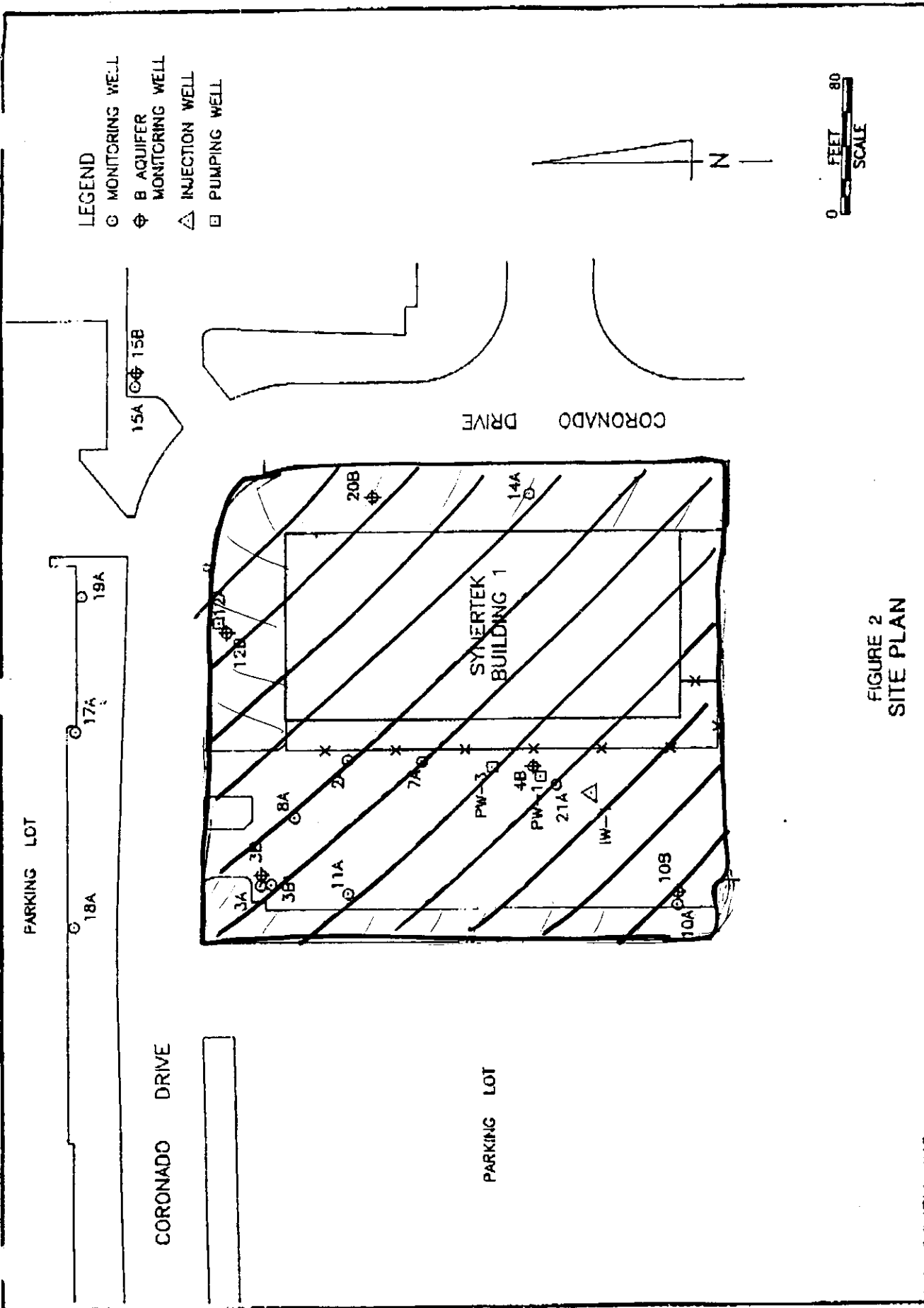
STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On December 20, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared STEVEN R. RITCHIE, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Executive Director, of the California Regional Water Quality Control Board, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.



Remedios T. Deocampo
Notary Public in and for said
County and State



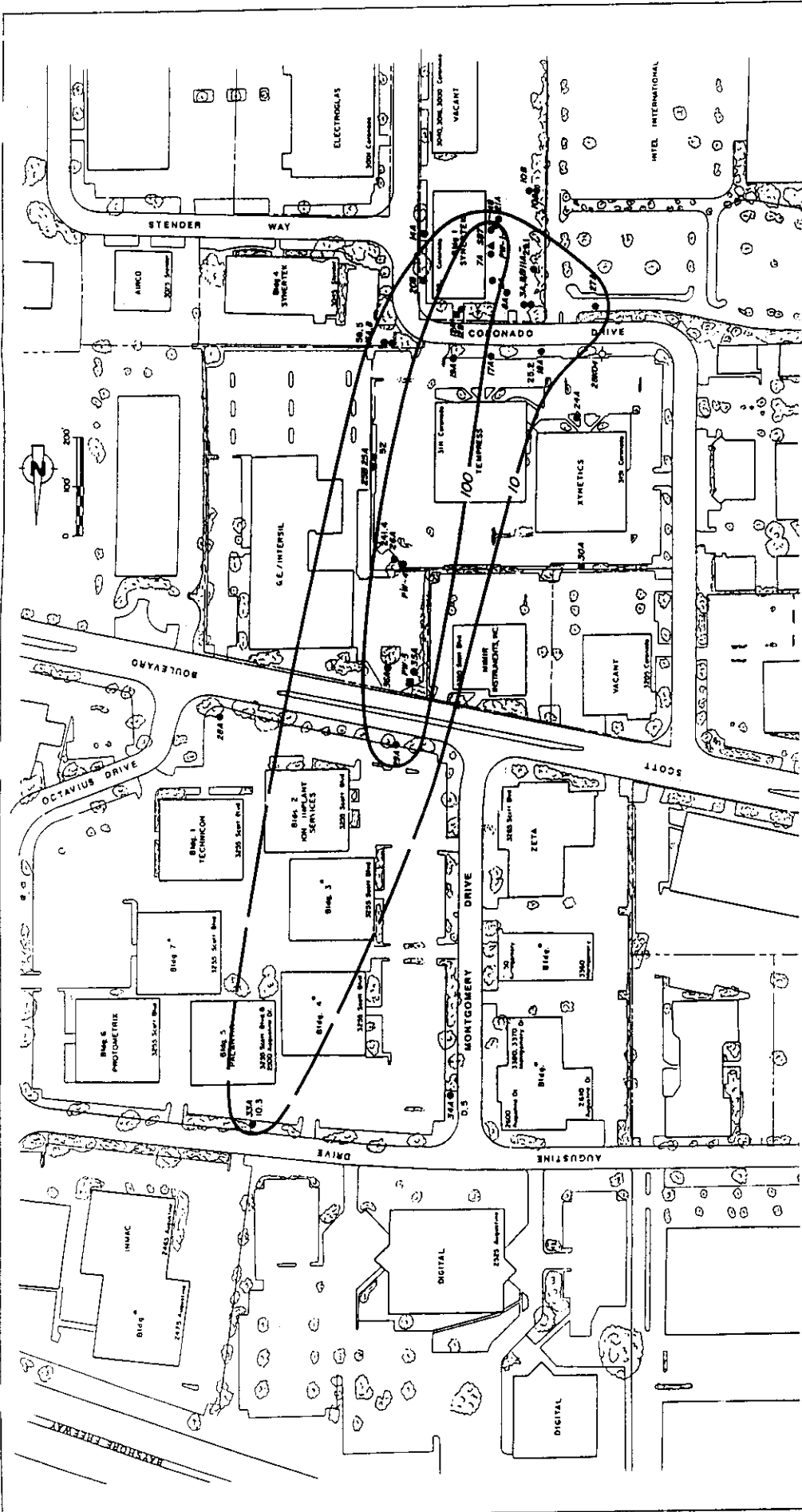
HONEYWELL INC.
 SYNERTEK BUILDING 1
 SANTA CLARA, CALIFORNIA

DRAWN BY: CSY 5/31/91



GROUNDWATER
 TECHNOLOGY, INC.

FIGURE 2
 SITE PLAN



Property address:
3050 Coronado Drive, Santa Clara, California

VOC = Volatile Organic Compounds
Aig/L = Microgram Per Liter

Samples taken in June, 1991

Map prepared by Conestoga-Rovers & Assoc.

Contour lines show approximate
equal VOC concentrations in the
groundwater.

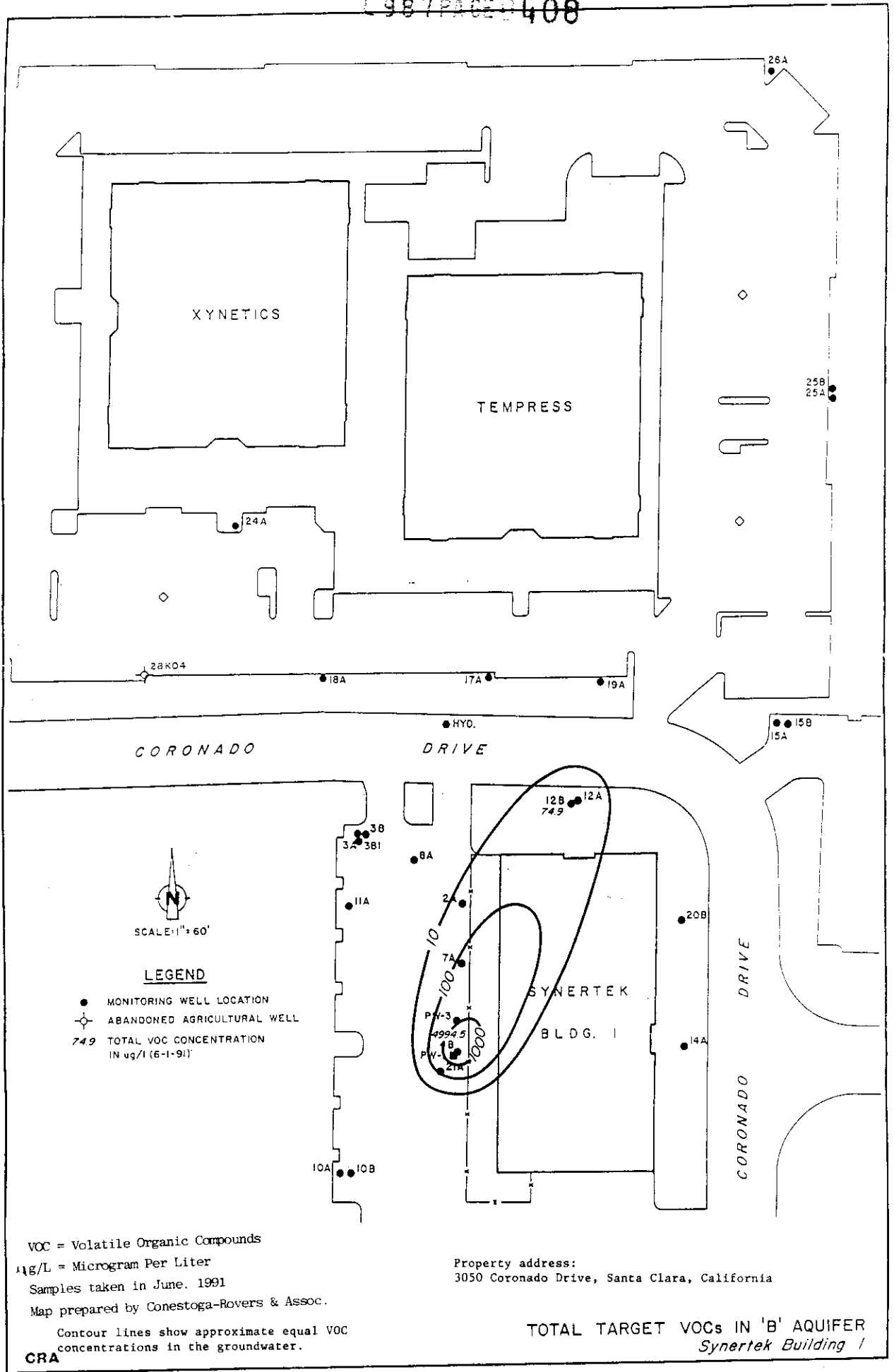
TVOC CONTOURS
A - AQUIFER
Synertek - Building 1

LEGEND

- EXISTING MONITORING WELL
- EXISTING EXTRACTION WELL
- ▲ DEEP SOIL BORING
- 351 TOTAL VOC CONCENTRATION (ug/L) 6-1-91
- ⊕ FORMER AGRICULTURAL WELL

CRA

1645-23/07/91-M



VOC = Volatile Organic Compounds
 ug/L = Microgram Per Liter
 Samples taken in June, 1991

Map prepared by Conestoga-Rovers & Assoc.

Contour lines show approximate equal VOC concentrations in the groundwater.

CRA

Property address:
 3050 Coronado Drive, Santa Clara, California

TOTAL TARGET VOCs IN 'B' AQUIFER
Synertek Building 1