



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105

MEMORANDUM

DATE:

SUBJECT: Approval and Funding for a Time Critical Removal Action at the Supply Creek Asbestos Site, Hoopa, Humboldt County, California, Hoopa Valley Reservation

FROM: Olivia Trombadore, On-Scene Coordinator
 Emergency Response Section II

THRU: Peter Guria, Assistant Director
 Emergency Response, Planning & Preparedness Branch

**PETER
 GURIA**

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 PETER GURIA
 Date: 2022.05.10
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TO: Michael Montgomery, Director
 Superfund & Emergency Management Division

I. PURPOSE

The purpose of this memorandum is to request and document approval of \$1,560,000 in direct extramural costs for the selected removal action described herein for the Supply Creek Asbestos Site (Site) located in Hoopa, California on the Hoopa Valley Reservation.

The proposed time-critical removal action would mitigate threats to human health and the environment posed by exposed, asbestos debris piles. If Site conditions are not addressed, it may result in an imminent and substantial endangerment to public health or welfare through the continued public exposure to harmful concentrations of asbestos fibers.

The proposed response action at the Site is consistent with removal activities authorized pursuant to Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604(a); and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415.

II. SITE CONDITIONS AND BACKGROUND

Site Name: Supply Creek Asbestos Site
 CERCLIS ID: CAN000920218
 SSID: A9DT
 Site Location (Lat/Lon): 41.052059, -123.678743
 Removal Category: Time Critical
 NPL Status: Non-NPL

A. Site Description

1. Physical Location

The Supply Creek Asbestos Site is located in Hoopa, California on the Hoopa Valley Reservation (North latitude of 41.052059 and West longitude of -123.678743). The parcel, APN number 525-171-009-000, is approximately 15 acres, and is classified by Humboldt County as 'Tribal Lands'. The location of the proposed removal activities is approximately 2 acres of the southern portion of the parcel (Figure 1).

2. Site Characteristics

The parcel is currently owned by the Hoopa Valley Tribe (Tribe) and zoned as Tribal Lands. The site is generally vacant and vegetated with grasses and mature trees, and Supply Creek running through a portion of the parcel. There is abandoned wastewater infrastructure in the center of the parcel surrounded by a chain link fence and a soccer field in the eastern corner of the parcel. The uncovered asbestos debris piles are bordered to the East by a soccer field and an elementary and high school. To the west are Supply Creek and vacant, vegetated land. A public park with two baseball fields is located just south of Loop Rd, which borders the parcel (Figure 1).

According to officials from the Tribal EPA and fisheries programs, the lower reaches of Supply Creek were channelized in the mid-1900s as a means of protecting lands slated for development. In 2018 the Hoopa Valley Tribal Fisheries Program (HVFP) sought to reverse the negative impacts of channelization to Supply Creek to improve stream conditions and support salmonoid production. A primary component of this restoration project involved rerouting Bair Road, a dirt road which currently runs parallel to Supply Creek between the southwestern and northeastern edges of the property. When the HVFP began roadbed clearing, several debris piles were uncovered that appeared to contain old tiles and other building materials. This prompted HVFP to trigger a response from the Humboldt County Hazardous Waste Program, which sampled the building materials and received positive results for 10-30% chrysotile asbestos.

In October 2018, after confirming that the debris was asbestos containing material (ACM), the HVFP began to conduct a removal without first conducting a site assessment. As a result, they were unable to remove the bulk of the ACM onsite as the amount of material was more than anticipated. The exposed ACM debris was subsequently covered with tarps in an attempt to reduce the number of asbestos fibers traveling off site.

In April 2019, the Tribe submitted a technical assistance request to the Bureau of Indian Affairs (BIA) to conduct a Phase I Environmental Site Assessment (ESA) of the parcel. BIA conducted the review in conformance with ASTM Practice E 1527-13 and published the Phase I ESA in May 2019. The recommendation of the report was for the Tribe to conduct a Phase II ESA to determine the nature and extent of asbestos contamination. At the request of the Tribe, BIA provided limited funding to complete the Phase II ESA.

In 2021, the Tribe was able to hire two contractors to conduct asbestos sampling to determine the extent of the contamination on the parcel and produce the Phase II ESA. The Phase II ESA report, published in August 2021, estimated that a volume of 3,100 cubic yards of potentially contaminated soil would need to be excavated prior to any redevelopment or restoration of the land.

It is unclear when or how the asbestos contamination ended up on the parcel. Due to the HVFP restoration project a large portion of the asbestos is currently exposed and in piles around the site. The exposed debris is partially covered by a tarp.

3. Removal Site Evaluation

After it was confirmed that the debris was ACM, the Tribal EPA turned to U.S. EPA Region 9 (EPA) to request assistance with remediating the Site. The Site was ultimately referred to the Emergency Response, Planning and Preparedness Branch (ERPPB) through the Brownfields program.

As a part of the 2021 Phase II ESA, a thorough site assessment was conducted to determine the extent of the asbestos contamination. Samples of soil and building debris were collected for analysis. Samples were obtained from the surface and at shallow depths from test pits spread over the Site. Building debris samples were collected by a certified asbestos consultant (CAC) and all samples were analyzed using EPA and California Air Resource Board methods. A total of 21 soil samples across 15 test pits, and 38 building debris samples, including subsurface, were taken. Additionally, the Tribe worked with On-Scene Coordinators (OSC) from the ERPPB to create the sampling plan for this assessment. Of the 38 building debris samples taken, both on the surface and in test pits, 17 samples had positive results for chrysotile asbestos ranging from 2-10%. Asbestos was not detected in any of the soil samples. Based on the findings of the site investigation, the Phase II ESA report estimates a volume of 3,100 cubic yards of potentially contaminated soil would need to be excavated for removal of ACM debris. (Figure 2)

On March 8, 2022, EPA with the support of the ERPPB cleanup and technical contractors, and in partnership with the Tribe and HVFP, conducted a site walk to observe conditions at the Site. The area where HVFP began grading the road remains in the same condition as it was left in 2018 when the asbestos debris was discovered. The uncovered asbestos debris is partially covered with tarps that are secured with rocks to prevent them from blowing away. The tarps are clearly weathered from being in the elements for several years. Several tears and perforations due to plant growth were observed. Not all the debris is covered by the tarps and fragmented tiles/debris can be observed strewn across the Site. There are also several mounds of soil containing debris which appear to be the material that was removed during the HVFP restoration project. These debris piles are also uncovered. The contaminated area immediately abuts the elementary school playground on one side, and the soccer field on another, separated only by a chain link fence. Additionally, there are two baseball fields across the street from the Site. Finally, Bair Road is a common throughfare for vehicles. Many cars were observed driving through the parcel on this road during the site walk.

The 2021 site assessment conducted by the Tribe has confirmed the presence of asbestos debris

in deteriorating condition spread across the Site both at the surface and subsurface levels and in piles around the Site. EPA believes the 2021 site assessment conducted by the Tribe along with the site walk conducted by EPA in March 2022 provide enough information to identify threats to human health and the environment and warrant a time critical removal action at the Site.

4. Release or Threatened Release into the Environment of a Hazardous Substances, or Pollutant or Contaminant

Asbestos is a hazardous substance as defined under CERCLA Section 101(14), 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4(a).

According to the Agency for Toxic Substance and Disease Registry (ATSDR), asbestos exposure can cause serious lung problems and cancer. As discussed in Section A.3 above, the Hoopa Valley Tribe has documented the presence of asbestos containing material (ACM) onsite in the form of building materials through sampling and laboratory analysis. Approximately 3,100 cubic yards of soil mixed with ACM are present at the Site. The Site abuts an elementary school yard, a regularly used soccer field, two baseball fields, and is frequently traversed by the public in order to cut from Loop Rd to HWY 96.

5. National Priorities List (NPL) Status

The Site is not currently listed on the NPL.

B. Other Actions to Date

In October 2018, after uncovering the asbestos debris, the HVFP attempted to conduct a removal without first conducting a site assessment. As a result, they were unable to remove the bulk of the ACM onsite as the amount of material was more than anticipated. The exposed ACM debris was subsequently covered with tarps to reduce the number of asbestos fibers traveling off site.

As noted in Section A.2, the Bureau of Indian Affairs – Pacific Region Office conducted a Phase I ESA in 2019. BIA then provided partial funding to the Tribe to conduct a Phase II ESA in 2021, which included an in-depth sampling investigation to determine the extent of the asbestos contamination onsite. The Phase II report confirmed the presence of ACM onsite in the form of building materials. The report concluded that approximately 3,100 cubic yards of soils mixed with ACM are present at the Site.

C. State and Local Authorities' Roles

1. State and Local actions to date

Other than the above referenced work, no additional state or tribal actions have taken place at the Site to address the presence of ACM.

2. Potential for continued State/local response

There are no additional actions planned by the Tribe at this time to address the ACM. Members of the Tribal EPA have provided EPA with the documentation needed to support the removal action and have agreed to assist with any consultations that may be required.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Conditions at the Site represent a release, and potential threat of release, of CERCLA hazardous substances threatening the public health, welfare, or the environment based on the factors set forth in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.415(b)(2). EPA has determined that the following 40 C.F.R. § 300.415(b)(2) factors apply at the Site:

- (i) *Actual or potential exposure to nearby populations, animals or the food chain from hazardous substances or pollutants or contaminants.*

Asbestos is a hazardous substance as defined by CERCLA Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4(a). The Site consists of approximately 3,100 cubic yards of soils mixed with ACM and much of this ACM is exposed at the surface, in piles, and in the footprint of the unfinished road project. An elementary school yard and soccer field are located just meters from the debris piles and exposed ACM. This combination of factors creates an inhalation pathway for asbestos to reach sensitive receptors, children, and teenagers. The parcel is also a common throughfare between Loop Rd and HWY 96 for vehicles. Across Loop Rd from the property are two baseball fields.

Exposure to airborne, friable asbestos poses a potential health risk to the public resulting from the inhalation of asbestos fibers. According to ATSDR, breathing asbestos can cause tiny asbestos fibers to get stuck in the lungs and irritate lung tissues. Asbestos exposure increases the risk of developing certain cancers such as lung cancer and mesothelioma. Additionally, breathing asbestos can lead to chronic diseases such as asbestosis and pleural disease.

- (iv) *High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.*

Analytical results show that ACM is present within uncontained piles and on the surface of the Site. There are several pathways by which the asbestos fibers can become entrained in air, leading to inhalation exposures. For example, fibers can enter the air because of weathering of ACM found onsite. With time and exposure to damaging forces (i.e., weather, mechanical forces, etc.), the ACM may become further crumbled, pulverized, or reduced to powder, thereby releasing asbestos fibers into the air. ACM may also deteriorate to the extent that they release asbestos fibers if disturbed.

- (v) *Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.*

ACM is present within uncontained piles and at the surface of the Site. Asbestos fibers can enter

the air from wind, sun and temperature degradation of the ACM. Wind can lead to the migration of small asbestos fibers, and fiber-containing particles may remain suspended in the air for a long time and be carried long distances by wind before settling. The ACM at the Site may present a potential threat to public health or welfare or the environment through migration as windblown particles or suspended in rainwater runoff.

- (vii) *The availability of other appropriate federal or state response mechanisms to respond to the release.*

The Hoopa Valley Tribe has indicated that it lacks the resources to perform the removal actions necessary at this Site in a timely manner.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site may present and imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

The proposed removal action will mitigate the release or threat of release of hazardous substances that is causing a threat to public health or welfare or the environment by taking steps to prevent the release of asbestos fibers. Post removal site controls are not anticipated to be required upon completion of the removal action.

1. Proposed Action Description

The removal action will include the following objectives to prevent human exposure to asbestos fibers at the Supply Creek Asbestos Site:

- i. Remove the approximate 3,100 cubic yards of soil containing ACM debris.
- ii. Load, transport, and dispose of all ACM impacted waste at a U.S. EPA-approved disposal facility in accordance with U.S. EPA's Off-Site Rule (40 C.F.R. § 300.440).
- iii. Conduct soil sampling and analysis to confirm that the Site has been cleared of ACM.

2. Contribution to remedial performance

The removal action should remove any immediate threats posed by uncontained asbestos at the Site. At this time, post removal site controls are not anticipated to be required upon completion of the removal action. After the removal action is complete, the HVFP intends to complete their Supply Creek restoration project as was initially planned. Under this restoration project, the area of the Site that will be the focus of the removal action will be backfilled and ultimately become a dirt road. U.S. EPA is working closely with HVFP and the Tribal EPA to ensure a smooth transition to restoration actions.

3. Engineering Evaluation/Cost Analysis (EE/CA)

An EE/CA is not required for a removal action with a planning period of less than six months.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

Pursuant to Section 300.415(j) of the NCP, 40 C.F.R. § 300.415(j), a CERCLA removal action shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental or state/tribal environmental facility siting laws. Federal and state/tribal advisories, criteria or guidance may, as appropriate, be considered in formulating the removal action. 40 C.F.R. §§ 300.400(g)(3) and 300.415(j). EPA has consulted with the Hoopa Valley Tribal EPA and identified the following possible ARARs for the proposed response action:

ARARs:

- **Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)**, CERCLA Off-Site Disposal Rule, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440. CERCLA waste transferred off-site may only be placed in a facility that operates in compliance with the Resource Conservation and Recovery Act (RCRA). The facility to which excavated soil and any other hazardous wastes will be sent must be among the list of approved receiving facilities pursuant to RCRA.
- **U.S. Department of Transportation (DOT) Hazardous Materials Regulations**, 49 C.F.R. Parts 171, 172, and 173.
- **California Hazardous Waste Management Rules**, Title 22, Division 4.5, including 22 C.C.R. § 66261.24, §§ 66262.20-27 and §§ 66262.30-33. California in some circumstances requires ACM to be managed as a hazardous waste.
- **National Emission Standards for Hazardous Air Pollutants (NESHAP)**, 40 C.F.R. Part 61, Subparts A & M, in particular 40 C.F.R. § 61.145, apply in certain circumstances to the removal and disposal of asbestos and ACM.
- **Native American Graves Protection and Repatriation Act**, 25 U.S.C. § 3001 *et seq.* and its implementing regulations, 43 C.F.R. Part 10.
- **National Historic Preservation Act**, 16 U.S.C. § 470 *et seq.* and its implementing regulations, 36 C.F.R. Part 800.
- **Endangered Species Act**, 16 U.S.C. § 1531 *et seq.*
- **Archeological Resources Protection Act of 1979**, 16 U.S.C. §§ 470aa-mm and its implementing regulations, 43 C.F.R. Part 7.
- **Resource Conservation and Recovery Act (RCRA)**, 42 U.S.C. §§ 6901, *et seq.*, Subtitle D; 40 C.F.R. Part 257, applicable to onsite disposal of non-hazardous solid waste.

5. Project Schedule

It is estimated that it will take approximately 7-9 weeks to complete the excavation, transport, disposal, and confirmation sampling.

B. Estimated Costs

Extramural costs

Regional Removal Allowance Costs:

Total Cleanup Contractor Costs (ERRS)	\$1,000,000
Total START Contractor Costs	\$300,000

Subtotal Extramural Costs:	\$1,300,000
Extramural Contingency (20%)	\$260,000

TOTAL REMOVAL ACTION PROJECT CEILING: \$1,560,000

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Given the Site conditions, the nature of the hazardous substances documented on-site, and the potential exposure pathways to nearby populations, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this Action Memorandum, may continue to present a threat to public health or welfare of the environment.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

Please see the attached Confidential Enforcement Addendum for a discussion regarding potentially responsible parties and enforcement. If the removal action is conducted by the potentially responsible party(ies), an enforcement cost recovery action may recover oversight costs and currently incurred site assessment costs. If EPA conducts the removal action, an enforcement cost recovery action may recover the extramural response costs plus the intramural costs.

Intramural Costs¹

U.S. EPA Direct Costs	\$75,000
U.S. EPA Indirect Costs (85.17% of AM Ceiling + EPA Direct Costs)	\$1,328,652

TOTAL INTRAMURAL COSTS \$1,403,652

¹Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

The total EPA extramural and intramural costs for this removal action, based on full cost accounting practices that will be eligible for cost recovery, are estimated to be \$2,963,652. Of this, an estimated \$1,560,000 comes from the regional removal allowance.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Supply Creek Asbestos Site, in Hoopa, California, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the site.

Conditions at the site meet the NCP section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed removal action. The total project ceiling, if approved, will be \$1,560,000. If you approve of this action, please indicate your decision by signing this action memorandum.

Approve: **MICHAEL MONTGOMERY**  Digitally signed by MICHAEL MONTGOMERY
Date: 2022.05.16 16:24:19 -07'00'

Michael Montgomery, Director Date
Superfund & Emergency Management Division

Disapprove: _____
Michael Montgomery, Director Date
Superfund & Emergency Management Division

cc: Ken Norton, Hoopa Valley Tribal EPA

Attachments

- 1) Index to the Administrative Record
- 2) Figures
- 3) Enforcement Confidential Addendum

bcc: G. Krauss, ORC
C. Whitenack, SFD-7-5
O. Trombadore, SFD-9-2
M. Matthews, SFD-9-3
B. Lee, SFD-9-3
K. Castro, SFD-2
P. Guria, SFD-9
L. Keller, SFD-9-1
J. Musante, SFD-9-2

ATTACHEMNT 1
Index to the Administrative Record

- 1) Framework for Investigating Asbestos-contaminated comprehensive environmental response, Compensation, and Liability Act Sites, U.S. EPA, 2021.
- 2) Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs, Asbestos CAS#1332-21-4, September 2001.
- 3) Supply Creek Asbestos Phase II ESA Report: Site Investigation Report of Findings, August 2021.
- 4) Supply Creek Asbestos Phase I ESA Report: Phase 1 Environmental Site Assessment, Supply Creek Site, Using ASTM Practice E 1527-13, May 2019.
- 5) Hoopa Valley Tribal Council letter to U.S. EPA Region 9 requesting assistance with the Supply Creek Asbestos Site, March 2022.
- 6) Asbestos Tem Laboratories, Inc., Laboratory Report #360738, analytical results for 4 bulk samples, October 2018.
- 7) Supply Creek Sampling and Analysis Plan for the Phase II ESA, January 2021



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LEGEND

-  Parcel Boundary
-  Site Boundary

Parcel Boundary
APN 525-171-009-000

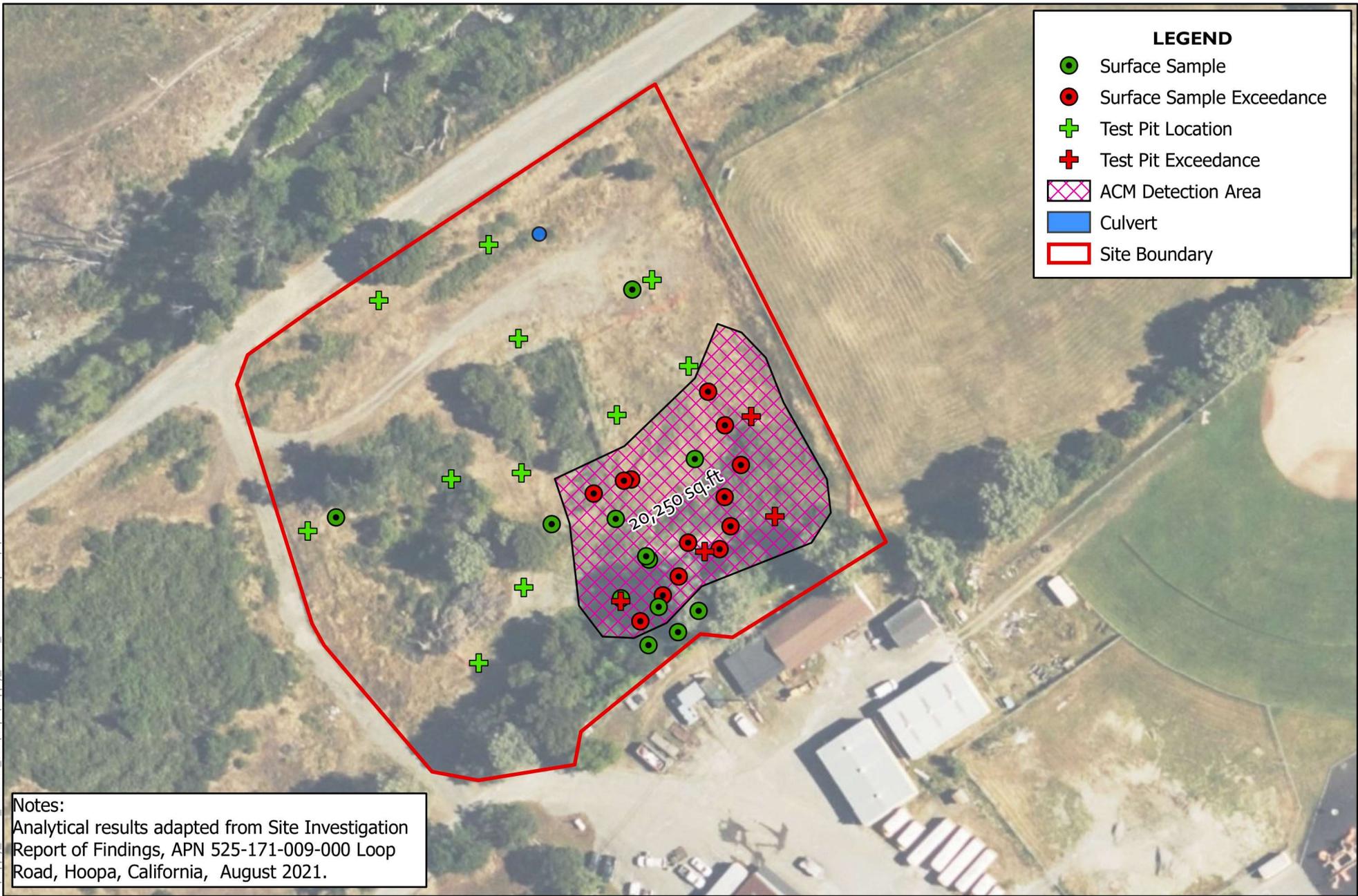
Contract:
68HE0919D0002
Task Order:
68HE0919F0081-17

PREPARED FOR
EPA Region 9
Pacific Southwest
PREPARED BY
Weston Solutions, Inc.
Concord, CA 94530
April 2022

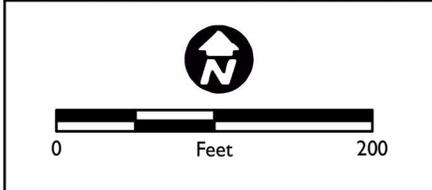


FIGURE 1
Site Layout
Supply Creek Asbestos Site
Hoopa, California

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Notes:
 Analytical results adapted from Site Investigation Report of Findings, APN 525-171-009-000 Loop Road, Hoopa, California, August 2021.



Contract:
68HE0919D0002
Task Order:
68HE0919F0081-17

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 April 2022



FIGURE 2
 Previous ACM Investigation
 Supply Creek Asbestos Site
 Hoopa, California