STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

PROSECUTORIAL STAFF SUMMARY REPORT
(Nathan King)
MEETING DATE: September 12, 2007

ITEM: 7

SUBJECT: **Mr. John Travis, 162 San Lazaro Avenue, Sunnyvale, Santa Clara County-** Hearing to Consider Imposition of Administrative Civil Liability or Referral to the Attorney General for Late Technical Report

CHRONOLOGY: The Water Board has not previously considered this item.

DISCUSSION: Mr. Travis has signed the hearing waiver for a $20,000 administrative civil liability complaint for failure to submit a required investigation workplan. This is one of two similar enforcement actions; the other item involves a late report at a nearby property on San Lazaro Avenue.

The site is located at 162 San Lazaro Avenue in Sunnyvale. The Water Board is conducting an investigation of trichloroethene (TCE) in groundwater in the San Lazaro Avenue area. TCE concentrations have been detected up to 820 ug/L in groundwater beneath the site, while the drinking water standard for TCE is 5 ug/L. These concentrations indicate a possible TCE source at the site. This site is within the Santa Clara Valley Groundwater Basin. Groundwater within this basin provides drinking water and is a critical resource supplying about half of the drinking water supply for the County's 1.7 million residents.

As part of our investigation, we required Mr. Travis to submit a site investigation workplan by June 30, 2005, and a completion report by August 15, 2005. Mr. Travis did not respond to the requirement. Therefore we issued a notice of violation letter to him in 2005, and subsequently issued him an administrative civil liability complaint (Complaint) on July 23, 2007, in the amount of $20,000 (Appendix A). As of the date of the Complaint, Mr. Travis was in violation for 753 days. Mr. Travis subsequently submitted an acceptable investigation workplan on August 14, 2007, or 22 days after the Complaint was issued, which staff has approved.

The Complaint was issued for $20,000 after taking into account the factors required to be considered in the Water Code. The Complaint contains a discussion of these factors as they apply to this case.

Mr. Travis has signed the waiver for this hearing (Appendix B) and has agreed to pay the $20,000. No further action is required by the Board.

RECOMMEN-
DATION: No action required.

File No.: 43S1051 (NMK)

APPENDICES:

A - Complaint
B - Signed Waiver
C - Location Map

APPENDIX A

COMPLAINT

California Regional Water Quality Control Board
San Francisco Bay Region

COMPLAINT NO. R2-2007-0052
FOR
ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF MR. JOHN TRAVIS
FOR VIOLATIONS OF CALIFORNIA WATER CODE
SECTION 13267
AT 162 SAN LAZARO AVENUE
SUNNYVALE, SANTA CLARA COUNTY

The Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), hereby gives notice that:

1. Mr. John Travis (Discharger) has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Sections 13268 (a)(1) and (b)(1) and 13323.

2. The Discharger violated CWC Section 13267 by failing to submit a required technical report.

3. Unless waived, a hearing on this complaint will be held before the Water Board as put forth below on September 12, 2007, at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. You or your representative will have an opportunity to be heard and contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date. The deadline to submit all evidence or comments concerning this complaint is August 23, 2007. The Water Board will not consider any evidence or comments not submitted by this deadline.

4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:

   a. The Discharger is the owner of 162 San Lazaro Avenue.

   b. Groundwater beneath 162 San Lazaro Avenue is contaminated by volatile organic solvents, primarily trichloroethene (TCE). Groundwater samples collected at 162 San Lazaro Avenue during February 2002 contained up to 820 micrograms per liter (ug/L) TCE. Investigation of soil and groundwater beneath the Discharger's property is necessary to determine the source(s) of this contamination.

c. The Discharger violated CWC Section 13267 by failing to submit a required technical report. The specific violation being enforced in this complaint is the failure to submit a technical report that the Water Board required in a CWC Section 13267 letter to the Discharger dated May 11, 2005. In that letter, the Water Board required a workplan for site investigation, which was due June 30, 2005, and a completion report of the investigation, which was due August 15, 2005. No technical report was submitted. Thus, the Discharger has been in violation for at least 753 days (the period between June 30, 2005, and July 23, 2007).

PROPOSED CIVIL LIABILITY

6. For violating CWC Section 13267, the Water Board may administratively impose civil liability pursuant to CWC Section 13268 (a)(1) and (b)(1) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

a. Nature, Circumstances, Extent and Gravity of the Violation:

The Discharger's failure to submit the required technical reports hinders the Water Board's ability to determine the source and extent of TCE contamination in the San Lazaro Avenue area. Concentrations of TCE in groundwater at 162 San Lazaro and at downgradient properties indicate a possible additional source in the 162 San Lazaro Avenue area. The delays incurred by not submitting a work plan and conducting the investigation have likely resulted in migration of TCE to downgradient properties where proactive landowners are currently performing groundwater remediation for TCE.

Several properties have conducted or are currently conducting groundwater remediation for VOCs in the immediate vicinity including: 158 San Lazaro Avenue (formerly Magnetics, Inc.), 895 Kifer Road (formerly Pilkington Barnes Hind) and 932 Kifer Road (Mohawk Laboratories). The former Magnetics, Inc., site has recently removed a source of TCE-contaminated soil and will soon begin groundwater remediation for TCE. Groundwater samples collected as part of this investigation indicate a possible additional downgradient source towards 162 San Lazaro Avenue. Mohawk Laboratories installed a permeable reactive barrier downgradient of San Lazaro Avenue across Central Expressway to treat VOC contaminated groundwater. The former Pilkington Barnes Hind site downgradient of 162 San Lazaro Avenue ceased remediation of VOC impacted groundwater in 1998 because of evidence that pumping was pulling contaminated groundwater onto its site from an offsite source.

Groundwater samples collected in 2002 at 162 San Lazaro Avenue contained up to 820 ug/L TCE at 11 feet and 180 ug/L TCE at 20 feet below ground surface. Further migration of pollutants from 162 San Lazaro Avenue is considered an on-going discharge.

162 San Lazaro Avenue is within the Santa Clara groundwater basin. Groundwater within this basin provides drinking water and is a critical resource supplying water to 14 cities and more than a million people.

b. Susceptibility of the Discharge to Cleanup:

TCE is amenable to soil and groundwater remediation, if the nature and extent of contamination is properly investigated. However, if a source of TCE contaminated soil is not remediated, this contaminated soil could continuously impact the groundwater below the site for decades.

c. Degree of Toxicity of the Discharge:

TCE is toxic and is a probable human carcinogen. The California maximum contaminant level for TCE in drinking water is 5 ug/L. Groundwater samples collected at 162 San Lazaro Avenue contained up to 820 ug/L of TCE.

d. Ability to Pay and Ability to Continue Business:

The Water Board has no evidence concerning the Discharger's ability to pay the proposed liability set forth in this complaint and its effect on his business.

e. Voluntary Cleanup Efforts Undertaken:

The Water Board is not aware of any voluntary soil or groundwater cleanup efforts by the Discharger.

f. Prior History of Violations:

Attachment A, incorporated herein by this reference, contains a chronology of Water Board requirements for the Discharger. The Water Board has required two technical reports from the Discharger in a letter dated May 26, 2005. The Discharger partially fulfilled only one of these requirements on June 3, 2005. In response, Water Board's staff issued one notice of violation (NOVs) to the Discharger dated July 19, 2005. There has been no response to the NOVs by the Discharger. No site investigation has been completed to date.

g. Degree of Culpability:

The Discharger has chosen not to comply with the Water Board's most recent requirement to complete a site investigation for 753 days. The Discharger is highly culpable based on his noncompliance with Water Board requirement letters.

h. Economic Savings:

By delaying and not complying with the requirements of the Water Board's letters, the Discharger has realized an economic benefit by not incurring the expense of conducting the investigation.

The required investigation could have been completed for approximately $20,000. Interest earned on these amounts, assuming an investment return of 5% per year over a period of 753 violation days, amounts to a cost savings of $2,119.

j. Other Matters as Justice May Require: The Water Board incurred $5,000 in staff costs in order to prepare this Complaint and supporting information. This amount is computed based on an hourly rate of $125 per hour for 40 hours.

8. The maximum civil liability that could be imposed for this matter is $753,000. Based on the above factors, the Executive Officer proposes that civil liability should be imposed on the Discharger in the amount of twenty thousand dollars ($20,000) for the violations cited above, which is due as provided below. The $20,000 includes $5,000 for the reimbursement of staff costs incurred by Water Board staff in preparing the complaint.

9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

10. You can waive your right to a hearing by signing and submitting the attached waiver by August 23, 2007 to the Water Board. If waived, this matter will be included on the agenda of a Water Board meeting, but there will be no hearing on the matter, unless 1) Water Board staff receives significant public comment during the comment period, or 2) the Water Board determines that it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of those circumstances, you will have the right to testify at the hearing notwithstanding the waiver. By waiving, you agree to pay the liability within 30 days after the Water Board meeting provided that the Water Board does not hold a hearing.

July 23, 2007
Date

for Bruce H. Wolfe
Executive Officer

Attachments:

A. Chronology of Events
B. Waiver of Hearing Form

Attachment A
Chronology of Events
162 San Lazaro Avenue

May 6, 1985: A City of Sunnyvale, Industrial Pretreatment Program, inspection report documents a discussion with Mr. Marty Medlock of Quality Electronic Assembly (QEA) (tenant) at 162 San Lazaro Avenue. Mr. Medlock was informed that the discharge from the Hobart dishwasher through a hose and onto the dirt back lot is illegal and must be rerouted to discharge into the building sanitary sewer. QEA was using the dishwasher to remove chemicals from printed circuit boards.

March 17, 1987: The Water Board requires Ms. Julie Rode (previous owner) to submit a technical report containing a site assessment on the past and present chemical handling activities for the property by April 5, 1987. No technical report was submitted.

April 2, 1987: Ms. Rode submits a Facility Questionnaire form to the Water Board in response to the March 17, 1987, requirement for a technical report.

April 20, 1987: The Water Board sends a letter to Ms. Rode informing Ms. Rode that she has not supplied required information from the March 17, 1987, letter. The Water Board requires that the items of the previous letter be submitted by May 14, 1987. No technical report was submitted.

August 13, 1987: The Water Board requires a technical report from Messrs. Wu Mei and Y. Young (tenants) for a groundwater investigation at the property. This report was due September 30, 1987. No technical report was submitted.

September 28, 1987: A City of Sunnyvale, Industrial Pretreatment Program, letter to Mr. Medlock of QEA at 162 San Lazaro Avenue notes several inspection violations including the improper storage of flux, flux-thinner, waste, Freon, and the improper storage of six 55-gallon drums and twenty 5-gallon Freon containers at the rear of the building. Additionally, one of the violations is for the spillage around the machine that uses flux and flux thinner. The City orders that adequate secondary containment must be installed below the machine.

December 1, 1987: A City of Sunnyvale, Industrial Pretreatment Program, letter to Mr. Medlock of QEA at 162 San Lazaro Avenue discusses a phone conversation between Mr. Medlock and a HazMat Inspector, and reiterates that discharge of rinsate from used containers to the storm drain is a violation that must be corrected.

January 14, 1988: A City of Sunnyvale, Industrial Pretreatment Program, letter to Mr. Medlock of QEA at 162 San Lazaro Avenue discusses improper storage of hazardous materials containers, and improper storage of a waste drum without secondary containment.

February 10, 1988: A City of Sunnyvale, Industrial Pretreatment Program, letter to Mr. Medlock of QEA at 162 San Lazaro Avenue discusses re-occurring violations associated with improper storage of used 5-gallon cans, 55-gallon drums, and chemicals without proper secondary containment.

July 18, 1989: The Water Board requires a technical report from Messrs. Wu Mei and Y. Young and Ms. Rode for a groundwater investigation at the property. This report was due August 30, 1989. No technical report was submitted.

June 30, 1999: The Water Board requires a technical report from Ms. Rode to evaluate if VOCs have been released to groundwater at the property. The report of the results of this investigation was due November 17, 1999. No technical report was submitted.

February 22, 2000: The Water Board issues a notice of violation (NOV) to Ms. Rode for failure to submit a technical report required in the letter dated June 30, 1999.

February 23, 2001: The Water Board requires a technical report from Mr. Trabert, Mr. Travis, and Ms. Travis for a soil and groundwater investigation. A site history and investigation workplan was due March 15, 2001. The results of the investigation were due May 17, 2001. No technical report was submitted.

August 5, 2004: Mr. Travis purchases the property from Mr. Trabert.

May 26, 2005: The Water Board requires a technical report from Mr. Travis and Ms. Travis for a site investigation evaluating whether VOCs and heavy metals have been released at this property. No technical report was submitted.

June 3, 2005: Mr. Travis submits a Phase I Environmental Site Assessment Report dated March 7, 2005, to the Water Board.

June 6, 2005: The Water Board issues a letter to Mr. Travis stating that the incomplete Phase I report (missing appendices) sent to the Water Board by Mr. Travis supports the requirements for conducting a site investigation at the property, and that the technical report required by the Water Board in the letter dated May 26, 2005, is still necessary.

July 19, 2005: The Water Board issues a NOV to Mr. Travis for failure to submit a technical report required in the letter dated May 26, 2005.

February 22 to March 1, 2007: Mr. Siegel of ERAS Environmental, Inc. (consultant) informs the Water Board that subsequent to preparations of the Phase I report, he recently visited the site and noticed that Mr. Travis had filled sumps at the site with concrete. The Water Board receives a copy of the Phase I report that ERAS prepared for the property.

ATTACHMENT B
WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than August 23, 2007.

☐ Waiver of the right to a hearing and agreement to make payment in full. By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0052 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

Name (print)	Signature
Date	Organization

California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY FOR
THE MATTER OF MR. JOHN TRAVIS
162 SAN LAZARO AVENUE, SUNNYVALE
SANTA CLARA COUNTY

The San Francisco Bay Regional Water Quality Control Board (Water Board) Executive Officer has issued an administrative civil liability complaint (Complaint) proposing a civil liability of $20,000 against Mr. John Travis (Discharger) for violating California Water Code Section 13267 by failing to submit a required technical report. The Water Board will hold a hearing on the Complaint as follows:

Date and Time: September 12, 2007, 9:00 a.m.
Place: Auditorium, 1515 Clay Street, Oakland, CA

No hearing will be held if the Discharger waives his right to a hearing and agrees to pay the proposed civil liability as set forth in the Complaint, provided no significant public comments are received during the public comment period. At the hearing, the Water Board may affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for judicial enforcement.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq. Except as provided in these regulations, Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Water Board.

Any persons objecting to the hearing procedures set forth herein must do so in writing by August 23, 2007, to the contact listed below.

Hearing Participation

The Water Board staff who will be involved in this matter have been separated into two groups. One group consists of the Prosecution Team, who are Nathan King, John Wolfenden, Stephen Hill and Bruce Wolfe. They have had (and will have had) no communication with Water Board members on this matter outside of the public hearing.

A separate group of staff will advise the Water Board on this matter. That group (the "Advisory Staff") consists of Dorothy Dickey and Vic Pal, who have had no contact with the Prosecution Team on this matter.

Participants at the hearing are either designated as "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses. Designated parties are subject to cross-examination. Interested persons may present non-evidentiary policy statements, and are not subject to cross-examination. Interested persons may not cross-examine parties, but may be asked to respond to clarifying questions.

The following participants are hereby designated as parties at the hearing:

Prosecution Team
Mr. John Travis

To ensure that all participants have an opportunity to participate in the hearing, the Prosecution Team will recommend that the Chair of the Water Board establish the following time limits at the hearing:

-20 minutes each for the Prosecution Team and the Discharger to testify, present evidence, and cross examine witnesses,
-3 minutes for interested persons to make statements to the Water Board.

Written Comment and Evidence Deadline

The deadline to submit all comments and evidence to be offered at the hearing is **5 p.m. on August 23, 2007**. Persons shall submit **fourteen (14) copies** to Nathan King at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Questions

Questions concerning this matter may be addressed to prosecutorial staff Nathan King at 510-622-3966 or nking@waterboards.ca.gov.

Evidentiary Documents and File

The Complaint and related documents are on file, and may be inspected or copied at the Water Board's offices during weekdays between 8:00 a.m. and 5:00 p.m. The Complaint is also available on the Water Board's website at www.waterboards.ca.gov/sanfranciscobay.

July 23, 2007
DATED

Bruce H. Wolfe, Executive Officer

APPENDIX B

SIGNED WAIVER

HOGE, FENTON
JONES & APPEL, INC.
Attorneys at Law | San Jose | Pleasanton | East Palo Alto | Hollister

James R. Hawley
408.947.2452
jrh@hogefenton.com

August 28, 2007

By Email and Overnight Mail

Bruce H. Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Attn: Nathan King

Re: Administrative Civil Liability Complaint, 162 San Lazaro Avenue, Sunnyvale, Santa Clara County
Hearing Date: September 12, 2007
RWQCB File No.: 43S1051 (NMK)
Our File No.: 79283

Dear Mr. Wolfe:

I have consulted with John Travis, the owner of the above-referenced site, and he has agreed to waive his right to a hearing in this matter so he can get the current water board issues behind him and move forward. His signed Waiver of Hearing and promise to pay are attached. I have also enclosed a check in the amount of $7500, which constitutes his first payment. He understands that the balance of the $20,000 penalty will be due on or by October 23, 2007 under the terms of the Waiver. He plans to pay the balance in two additional installments before that date.

Mr. Travis is aware that you requested his waiver last Thursday, August 23rd, but has now had time to reflect on the time and expense that would be involved in preparing for and attending the hearing. He wanted to make sure to get the Waiver to you promptly to ensure that the Board and staff are not prejudiced by his timely reconsideration of the issue.

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Thank you for your attention to this letter and the attached documents.

Sincerely,

HOGE, FENTON, JONES & APPEL, INC.

James R. Hawley

JRH: jrh
Attachments
cc: Nathan King, RWQCB (by email, with attachments)
John Travis (by regular mail, with attachments)

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☒ Waiver of the right to a hearing and agreement to make payment in full. By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0052 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

JOHN R. TRAVIS — Name (print)

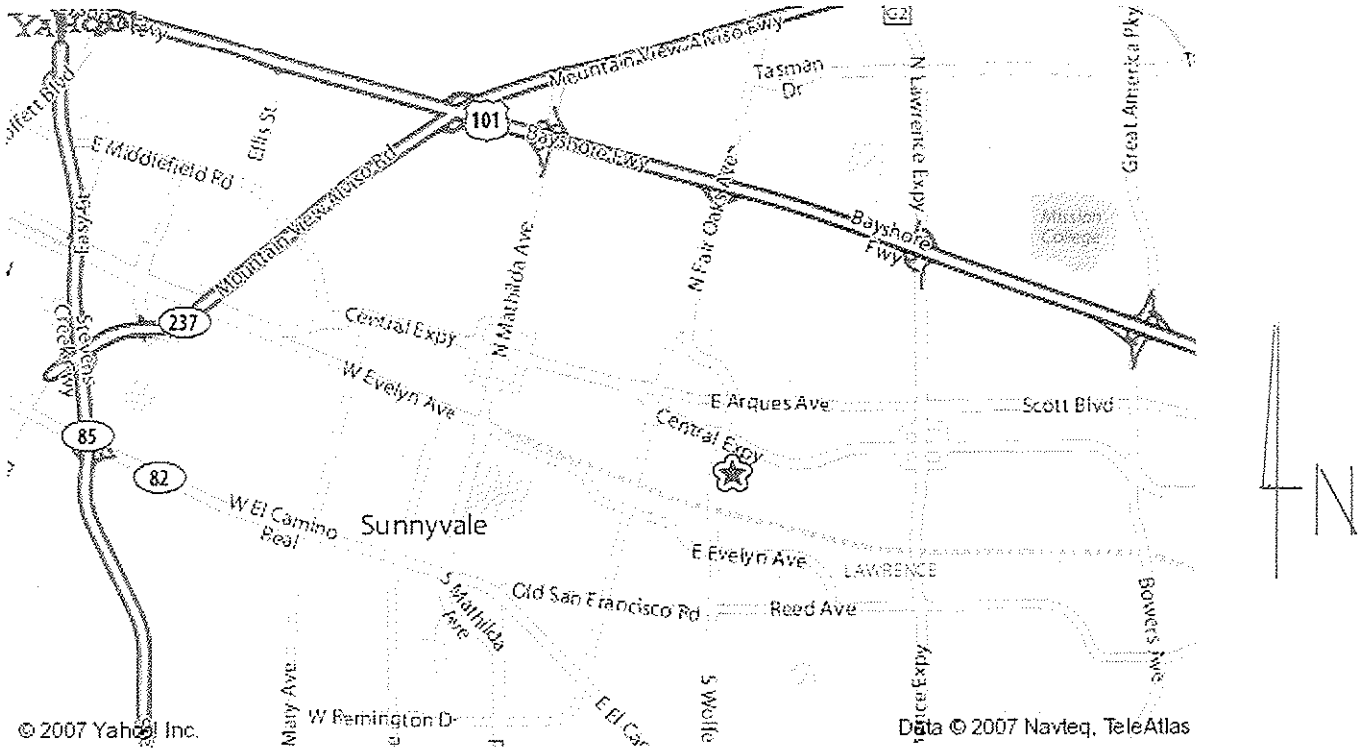
John R. Travis — Signature

8-28-07 — Date

Self — Organization

APPENDIX C

LOCATION MAP



Site Location Map
162 San Lazaro Avenue
Sunnyvale, Santa Clara County