

RECORDING REQUESTED BY

ANDREA CHRISTIAN

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME DEPARTMENT OF TOXIC SUBSTANCES CONTROL

STREET ADDRESS 9211 OAKDALE AVENUE

CITY, STATE & ZIP CODE CHATSWORTH, CA 91311

Recorded in Official Records, County of San Bernardino

9/29/2015

4:57 PM

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BOB DUTTON
ASSESSOR - RECORDER - CLERK

P Counter

Doc#: 2015-0424941

Titles: 1 Pages: 19



Fees	69.00
Taxes	0.00
Other	0.00
PAID	\$69.00

SPACE ABOVE FOR RECORDER'S USE ONLY

COVENANT AND AGREEMENT

Title of Document

THIS AREA FOR
RECORDER'S
USE ONLY

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

RECORDING REQUESTED BY:
Ashland Inc.
P.O. Box 2219
Dublin, Ohio 43216

Attention:
Mr. Michael Dever
or Current
Remediation Project Manager

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

Attention:
Juli Propes, Unit Chief
Brownfields and Environmental
Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

LAND USE COVENANT AND AGREEMENT

ENVIRONMENTAL RESTRICTIONS

County of San Bernardino Assessor Parcel Numbers: 0163-311-27-0000,
0163-301-19-0000, and 0163-302-03-0000
Ashland Inc.
291 West Adams Street, Colton, California
DTSC Site Code: 400207

This Land Use Covenant and Agreement ("Covenant") is made by and between Ashland Inc. (the "Covenantor"), the current owner of property located at 291 West Adams Street, Colton, in the County of San Bernardino, State of California, 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 section 25260. The Covenantor and the Department hereby agree that, pursuant to Civil Code section 1471 and Health and Safety Code section 25202.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.1. Property Location. The Former Aristech Chemical Corporation facility is found in an area that is east of La Cadena Drive, and south of the San Bernardino freeway, and north of the Santa Ana River. This property at 291 West Adams Street in Colton, California, is approximately 4.3 acres or 187,310 square feet in size, and is the property that is the subject of this Covenant (the "Property"). The Property is more particularly described as Parcels A, B, and C in the attached Exhibit A, "Legal Description", and is depicted in Exhibit B. The Property is located at 291 West Adams Street, in Colton, California in the area now generally bounded by South Lincoln Street to the East, residential and industrial parcels to the North, a property formerly identified as the BASF Corporation to the South, and an elevated railroad embankment to the West. The Property is also identified as County of San Bernardino, Assessor Parcel Numbers 0163311270000, 0163301190000, and 0163302030000.

1.2.1 Remediation of Property. This Property has been investigated at different times under the oversight of the Santa Ana Regional Water Quality Control Board (the Water Board) and also by the Department of Toxic Substances Control (the Department).

The Water Board provided regulatory oversight for Solid Waste Management Unit 7 (SWMU 7), the Old Ditch, and the unlined pit site. These units had two rounds of excavation, soil vapor extraction, and groundwater monitoring.

The following documents are associated with the environmental oversight and closure granted by the Santa Ana Regional Water Quality Control Board: Verification Soil Sampling Results (AECOM, December 2013), Human Health Risk Assessment SWMU-7 (AECOM, November 2012), Review of Human Health Risk Assessment for

SWMU-7 (Enviro-Tox, June 2012), Verification Sampling Workplan 2007 (AECOM, October 2007), 2006 Post-Corrective Action GWM and Sampling Plan (AECOM, August 2006), Progress Sampling Report SWMU-7 (AECOM, January 2009), GW Report Sept 2005-June 2006 (AECOM, September 2009). According to an April 23, 2015 letter from the Executive Officer of the Santa Ana Regional Water Quality Control Board; Kurt Berchtold, confirmed the completion of the site investigation and remedial action for the Solid Waste Management Unit 7 (SWMU-7). In addition to the inclusion of a Case Closure Summary, the letter denotes that: based on the information made available, given the current land use, and assuming that the information provided to the agency was accurate and representative of site conditions, then no further action related to SWMU-7 area release is required. Some, or all, of these documents may be found on the Water Board geotracker website at:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0607100083

There is another Water Board geotracker entry regarding a closed (no further action required) case from 1988 for a Leaking Underground Storage Tank cleanup at this site. That information is available at:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000000833

1.2.2 The Department approved a Resource Conservation and Recovery Act (RCRA) Facility Investigation Report (RFI) that was submitted to the Department on February 9, 2010 and approved in a June 30, 2014 letter in accordance with Health and Safety Code, division 20, chapter 6.5. Remediation activities were conducted at the Property under the oversight of the Water Board for those portions of the Property as noted above. Based on the investigation, hazardous substances including the metals cadmium (1.8 mg/kg), lead (770 mg/kg), and cobalt (140 mg/kg) found in soil, along with benzene (64 ppmv) found in soil gas, remain on and in the Property above the risk-based cleanup levels that would make the property acceptable for unrestricted land use.

The Aristech Chemical Corporation facility was a hazardous waste facility that was permitted for its incinerator and hazardous waste storage area. More information about the facility can be found at:

https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report.asp?global_id=CAD091933895

Historically, the facility manufactured unsaturated polyester and, occasionally, alkyd resins using three reactor trains located in the southern end of the manufacturing warehouses. The manufacturing facility operated from 1968 until its decommissioning in 1998. Investigation activities were carried out at these Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) that were identified by the Department.

- SWMU #9 Sump in the Chemical Storage Tank Area
- SWMU #10 Old Wastewater Holding Tank
- SWMU #11 Parts Cleaning Tank
- SWMU #14 Non-hazardous Solid Waste Drum Storage Area
- SWMU #15 Hazardous Waste Drum Storage Area
- SWMU #16 Scrap Metal Yard
- AOC #1 Raw Material and Product Drums Storage Areas
- AOC #3 Tank Farm

Investigation activities at the property included the following:

- Completion of 26 shallow soil borings and collection of soil samples;
- Installation of 50 soil vapor probes (two probes in 24 soil borings and one probe in two of the soil borings);
- Use of a surface leak check compound to verify that ambient air was not drawn into the soil gas samples;
- Completion of soil vapor purge tests to determine the optimum purge volume for the selected depths investigated during each sampling event;
- Collection of soil vapor samples from the new soil vapor probes;
- Abandonment of the new soil borings and soil vapor probe locations;
- Collection of soil and water samples from the investigative-derived waste contained in on-site 55-gallon drums for waste profiling and disposal of waste;
- Surveying the soil boring locations for position and ground surface elevations.

The RFI investigation activities were completed in accordance with the DTSC-approved RFI Workplan, the requests identified in the DTSC conditional approval letter, and the addendum RFI workplan.

1.3. Basis for Environmental Restrictions. As noted above, sampling has indicated that cadmium, lead, and cobalt (in soils in the area of EN-90); and benzene (in soil gas in the area of EN-82), were found on the property above screening levels. These substances are also hazardous materials as defined in Health and Safety Code section 25260. Because these substances were found at the Property at the levels noted above, (metals in soil and benzene in soil gas), the Department has concluded that it is reasonably necessary to restrict the use of the Property as noted in the restrictions below in order to protect present or future human health or safety or the environment. Further, this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as investigated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

ARTICLE II

DEFINITIONS

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

2.2. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, requirements, prohibitions, and terms and conditions as set forth in this Covenant.

2.3. Improvements. "Improvements" includes, but is not limited to buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.4. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

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

2.6. Owner. "Owner" or "Owners" means the Covenantor, and any successor in interest including any heir and assignee, who at any time holds title to all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.1. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Civil Code section 1471 and Health and Safety Code section 25202.5; (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.

3.2. Binding upon Owners/Occupants. This Covenant: (a) binds all Owners of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and 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; this Covenant, however, is binding on all Owners and Occupants, and their respective successors and assignees, only during their respective periods of ownership or occupancy except that such Owners or Occupants shall continue to be liable for any violations of, or non-compliance with, the Environmental Restrictions of this Covenant or any acts or omissions during their ownership or occupancy.

3.3. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.4. Conveyance of Property. The Owner and new Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance or receipt of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The Notice shall include the name and mailing address of the new Owner of the Property and shall reference the site name and site code as

listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number(s) noted on page one. If the new Owner's property has been assigned a different Assessor Parcel Number, each such Assessor Parcel Number that covers the Property must be provided. 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 or by administrative order.

3.5. Costs of Administering the Covenant to Be Paid by Owner. The Department has already incurred and will in the future incur costs associated with this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering, implementing and enforcing this Covenant.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (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.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

- (a) No activities that will disturb the soil (e.g. excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing.

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

4.3. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, investigation, remediation, monitoring, and other activities as deemed necessary by the Department in order to protect human health or safety or the environment.

4.4. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations that were the basis for the statements and conclusions in the annual inspection report were performed (e.g., drive by, fly over, walk in, etc.). If any violation is noted, the annual inspection report must detail the steps taken to correct the violation and return to compliance. If the Owner identifies any violations of this Covenant during the annual inspection or at any other time, the Owner must within 10 calendar days of identifying the violation: (a) determine the identity of the party in violation; (b) send a letter advising the party of the violation of the Covenant; and (c) demand that the violation cease immediately. Additionally, a copy of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 calendar days of its original transmission.

ARTICLE V

ENFORCEMENT

5.1. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, such as failure to submit (including submission of

any false statement) record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI

VARIANCE, REMOVAL AND TERM

6.1. Variance from Environmental Restrictions. Any person may apply to the Department for a written variance from any of the Environmental Restrictions imposed by this Covenant. Such application shall be made in accordance with Health and Safety Code section 25223.

6.2. Removal of Environmental Restrictions. Any person may apply to the Department to remove any of the Environmental Restrictions imposed by this Covenant or terminate the Covenant in its entirety. Such application shall be made in accordance with Health and Safety Code section 25224.

6.3. Term. Unless ended in accordance with paragraph 6.2, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.1. 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.

7.2. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within 10 calendar days of the Covenantor's receipt of a fully executed original.

7.3. 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: (a) when

delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (b) five calendar days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:
Mr. Michael Dever
Remediation Project Manager
Ashland Inc.
P.O. Box 2219
Columbus, Ohio 43218

and

To Department:
Ms. Juli Propes, Unit Chief
Department of Toxic Substances Control
Brownfields and Environmental Restoration Program
9211 Oakdale Avenue
Chatsworth, CA 91311

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

7.4. Partial Invalidity. If this Covenant or any of its terms are 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.

7.5. Statutory References. All statutory or regulatory references include successor provisions.

7.6. Incorporation of Exhibits. All exhibits and attachments to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Covenantor and the Department hereby execute this Covenant.

Covenantor: Ashland Inc.

By: Mull/B. Lee *REL*

Title: Remediation Project Manager

Date: 9/25/2015

Department of Toxic Substances Control:

By: John P. [Signature]

Title: Unit Chief

Date: 9-28th-2015

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Ohio
County of Franklin

On Sept. 25, 2015 before me,

(space above this line is for name and title of the officer/notary),

personally appeared Michael Dever, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Wendi M. Hunter (seal)
Signature of Notary Public



Wendi M Hunter
Notary Public, State of Ohio
My Commission Expires 12-13-19

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of LOS ANGELES

On Sept 29, 2015 before me,

M. BOSE, PUBLIC NOTARY
(space above this line is for name and title of the officer/notary),

personally appeared JULIE PROFF, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

M. Bose (seal)
Signature of Notary Public

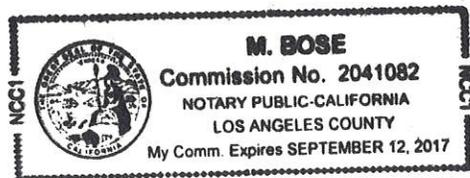


EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT A

COLTON, CALIFORNIA

PARCEL "A"

The east 1/2 of Lots 7 and 8, Block "B" of Home Garden Tract No. 2, Tract 2171, in the City of Colton, County of San Bernardino, State of California, as per map recorded in Book 31, Page 39, of Maps, in the Office of the County Recorder of said County.

Together with that portion of Adams Street adjoining said land on the south, as vacated and abandoned by Resolution No. R-110-89 of the City Council of the City of Colton which would pass by operation of law. A copy of said Resolution was recorded September 25, 1989, as Instrument No. 89-353767, Official Records of said County.

PARCEL "B"

Lot 3, Block C of Home Garden Tract No. 2, Tract 2171, in the City of Colton, County of San Bernardino, State of California, as per map recorded in Book 31, Page 39, of Maps, in the Office of the County Recorder of said County.

Together with that portion of Adams Street adjoining said land on the north, as vacated and abandoned by Resolution No. R-110-89 of the City Council of the City of Colton which would pass by operation of law. A copy of said Resolution was recorded September 25, 1989, as Instrument No. 89-353767, Official Records of said County.

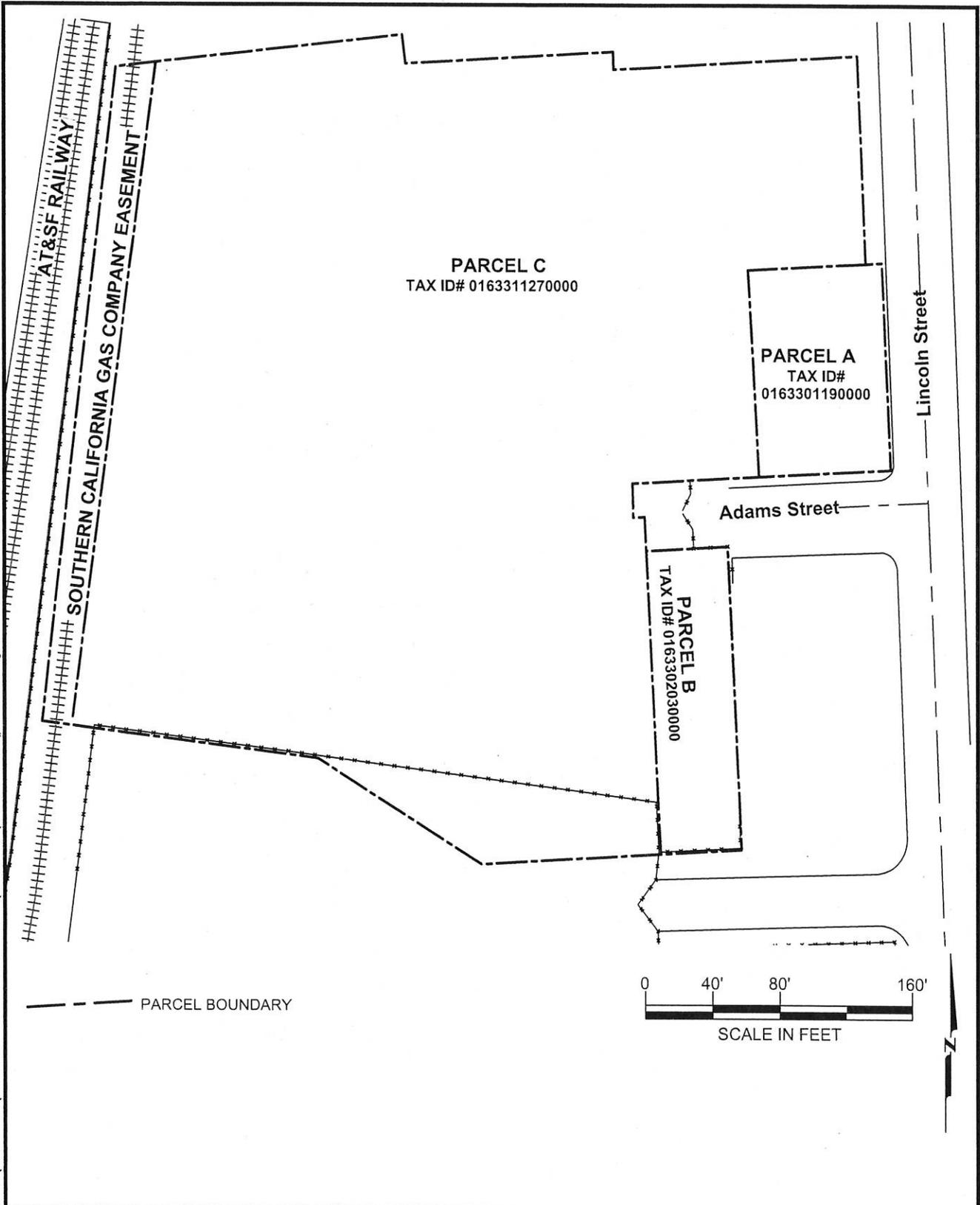
PARCEL "C"

Parcel No. 2 of Parcel Map No. 547 in the City of Colton, County of San Bernardino, State of California, as per map recorded in Book 5, Page 53 of Parcel Maps, in the Office of the County Recorder of said County.

Together with that portion of Adams Street adjoining said land as vacated and abandoned by Resolution No. R-110-89 of the City Council of the City of Colton which would pass by operation of law. A copy of said Resolution was recorded September 25, 1989, as Instrument No. 89-353767, Official Records of said County.

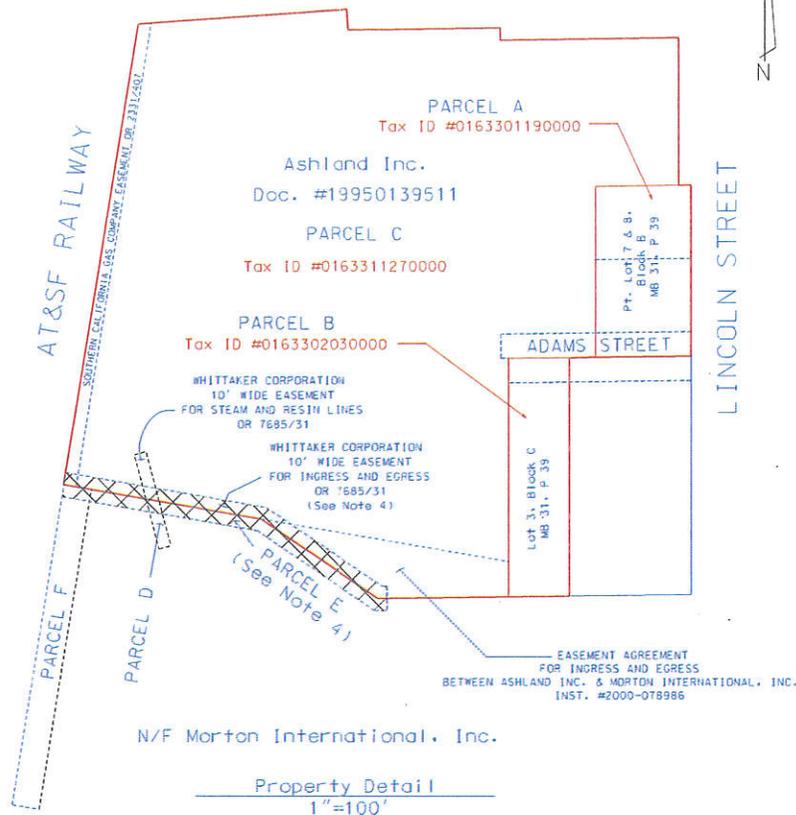
EXHIBIT B- SITE MAP

FILENAME: J:\Client-Projects\Mitsubishi\60242153 Aristech RFI DTSC\900-CAD\06-EXHIBITS\parcels2.dwg



<p>AECOM</p> <p>AECOM 1220 AVENIDA ACASO CAMARILLO, CALIFORNIA 93012 PHONE: (805) 388-3775 FAX: (805) 388-3577 WEB: HTTP://WWW.AECOM.COM</p>	<p>PARCEL MAP</p> <p>Former Aristech Chemical Facility 291 Adams Street Colton, California</p>		<p>FIGURE NUMBER:</p> <p style="font-size: 2em; text-align: center;">1</p>
	<p>DRAWN BY:</p> <p>M. Scop</p>	<p>DATE:</p> <p>6/30/2015</p>	<p>PROJECT NUMBER:</p> <p>60242153</p>

The image hereon was extracted from digital orthoimagery that was downloaded from <http://seamless/usgs.gov>. The source photography was taken 10/03/95.



NOTES

- 1) Parcel D is a 10 feet wide easement for steam and resin lines.
- 2) Parcel E is a 10 feet wide easement for ingress & egress. (See Note 4)
- 3) Parcel F is a 23 feet wide easement for a railroad spur track.
- 4) The 10 feet wide access easements along the common boundary with the adjoining property were terminated by the access easement that was granted to Morton International, Inc. by Inst. #2000-078986.

Environs of
Ashland Specialty Chemical
291 West Adams Street
Colton, San Bernardino Co., California



DRAWN:	9-18-06	BY:	L.R. Wells	REV.	1-02-07
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ASHLAND INC.
ASHLAND CORPORATE REAL ESTATE
LEXINGTON, KENTUCKY

DEED FILE NO.	004-071-0027	DRAWING NO.	R.E.- 20119
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