



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6/27/2014
REGION 5 BA# s/b 2751430 B008 JW

IN THE MATTER OF: GRAND)
TRAVERSE OVERALL SUPPLY)
COMPANY SITE)
Greilickville, Michigan)

UNDER THE AUTHORITY OF THE)
COMPREHENSIVE RESPONSE,)
COMPENSATION AND LIABILITY)
ACT, U.S.C. §§ 9601, *et seq*)

) CERCLA Docket No CERCLA-05-2014-0008
) Agreement for Release and Waiver of Lien,
) CERCLA § 107(r)

) GTRAC, LLC, Settling Purchaser
)

~~271430B008~~ # BD# LW

I. INTRODUCTION

1. This Release and Waiver of Lien Agreement (“Agreement”) is made and entered into by and between the Environmental Protection Agency (“EPA”) and GTRAC, LLC (“GTRAC”) (collectively, the “Parties”).

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601, *et seq*.

3. The Property that is subject to this Agreement includes two adjoining and contiguous parcels that are located at or about 10749, 10753, and 10781 East Cherry Bend Road, Elmwood Township, Leelanau County, Michigan. One parcel, which is located at or about 10749 and 10753 East Cherry Bend Road, covers approximately 1.93 acres and is the site of a former dry-cleaning facility, known as the Grand Traverse Overall Supply Company, and a related small residence – both of which have now been demolished (“GTOS Parcel”). The second parcel, which is located at or about 10781 East Cherry Bend Road, covers approximately 5.3 acres and is the site

of a vacant building that previously served as the Norris Elementary School (“Norris School Parcel”).

4. The Settling Purchaser is GTRAC, LLC, as further described in paragraph 10 below, which intends to purchase the GTOS Parcel and the Norris School Parcel, for development of a community center.

5. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to Section VIII, Reservation of Rights, the lien against the Property under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r).

6. The release and waiver of this lien, in exchange for provision by the Settling Purchaser to EPA of consideration satisfactory to the Administrator, is in the public interest.

II. DEFINITIONS

7. “Bona Fide Prospective Purchaser” or “BFPP” shall mean a person as described in CERCLA § 101(40).

8. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

9. “GTOS Superfund Site” or “GTOS Site” shall mean the Grand Traverse Overall Supply Company Superfund Site in Greilickville, Elmwood Township, Leelanau County, Michigan,

10. “GTRAC, LLC” or “GTRAC,” P.O. Box 1609, Traverse City, Michigan, is a limited liability company organized in the State of Michigan, formed pursuant to Articles of Organization as of September 28, 2011. The address for GTRAC’s principal place of business will be 10781 E. Cherry Bend Road, Traverse City, MI 49684.

11. "Norris Elementary School" or "former Norris School Building" shall refer to the vacant building located on the Norris School Parcel.

12. "Parties" shall mean EPA and GTRAC, LLC.

13. "Property" shall mean the GTOS Parcel and the adjoining Norris School Parcel, which together encompass approximately 7.2 acres, and are located at or about 10749, 10753, and 10781 East Cherry Bend Road in Elmwood Township, Leelanau County, Michigan, as described in Exhibit 1, and shown on the map included as Exhibit 2 to this Agreement. The GTOS Parcel has been variously subdivided into two subparcels, including the commercial dry-cleaning parcel and a related residential parcel.

14. "Settling Purchaser" shall mean GTRAC, LLC.

15. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

16. The Property is located approximately 1-1/2 miles northwest of Traverse City Michigan, and 1,200 to 1,400 feet west of the west arm of Grand Traverse Bay, which is part of Lake Michigan. The neighborhood in which the Property is located includes a mix of commercial and residential properties.

17. The former Norris Elementary School is located on the Norris School Parcel immediately adjacent to and east of the GTOS Parcel.

18. Contaminants discharged from dry-cleaning operations at the GTOS Site leached into the soils and groundwater and migrated east with groundwater toward Grand Traverse Bay, forming a contaminant plume that extends east of the GTOS Parcel, under the former Norris Elementary School building.

19. Since 2002, EPA has performed CERCLA response actions at, and relating to, the Property as part of EPA's on-going cleanup of the GTOS Site. Such response actions include, among other things, the following: i) extensive soil and groundwater sampling to characterize the nature and extent of contamination; ii) soil vapor studies; iii) a time-critical removal action to construct a soil vapor extraction system at the Norris Elementary School; iv) a time-critical removal action to demolish the building that housed the former dry-cleaning operation and to excavate the most highly contaminated soils from the GTOS Parcel; and (v) the selection and implementation of a final remedy to address remaining contamination in soil and groundwater.

20. EPA issued a Record of Decision for the Site on March 3, 2008 ("ROD"), and Record of Decision Amendment #1 on April 8, 2011 ("Amended ROD"). The remedy selected for the site in the ROD included as one element "groundwater extraction, treatment, and discharge with a contingency for groundwater in situ treatment if necessary." The ROD specified the following remedial action objectives for groundwater associated with the GTOS Site:

- (a) Prevent ingestion of groundwater that contains PCE; TCE; cis-1,2-DCE; vinyl chloride; and 1,1,2-TCA at concentrations that exceed MCLs, nonzero MCLGs, and Part 201 Residential and Commercial Drinking Water Protection criteria of 5 µg/L PCE; 5 µg/L TCE; 70 µg/L cis-1,2-DCE; 2 µg/L vinyl chloride; and 3 µg/L 1,1,2-TCA.
- (b) Protect surface water from PCE; TCE; cis-1,2-DCE; vinyl chloride; and 1,1,2-TCA transported by groundwater in accordance with Part 201 criteria of 45 µg/L PCE; 200 µg/L TCE; 620 µg/L cis-1,2-DCE; 15 µg/L vinyl chloride; and 330 µg/L 1,1,2-TCA.

(c) Restore the shallow aquifer to its highest level of beneficial use to the extent practicable within a timeframe that is reasonable. The PRGs (Preliminary Remediation Goals) for the cleanup of groundwater that are most stringent would need to be achieved. There, the PRGs for cleanup of groundwater are 5 µg/L PCE; 5 µg/L TCE; 70 µg/L cis-1,2,-DCE; 2 µg/L vinyl chloride; and 3 µg/L 1,1,2-TCA.

21. EPA has more than \$8 million in unreimbursed costs resulting from these response actions, and it will continue to incur response costs after the Effective Date of this agreement. Such future response actions will include, among other things, the construction, operation and maintenance of a groundwater treatment system, which is part of the final remedy selected by EPA in its Record of Decision issued in March of 2008,

22. Settling Purchaser is aware of, and has knowledge of, contamination on the Property, including a groundwater plume that extends under the former Norris Elementary School.

23. Settling Purchaser would like to acquire ownership of the Property. Specifically, the Settling Purchaser would like to (a) purchase the Norris School Parcel from the Traverse City Area Public Schools and (b) purchase the GTOS Parcel from Leelanau County, which acquired ownership in 2008 as a result of the former owner's non-payment of property taxes.

IV. PAYMENT

24. In consideration of and in exchange for EPA's release and waiver of any lien it has or may have under Section 107(r) of CERCLA with respect to the Property, Settling Purchaser agrees, within 30 days of the effective date of this Agreement, to pay to EPA the sum of \$ 15,000. Unless otherwise specified by EPA in writing, Settling Purchaser shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous

Substance Superfund," referencing EPA Region 5, the Site name, CERCLA Docket number, EPA billing document number, Site/Spill ID # 053G, and name and address of Settling Purchaser.

Payment shall be sent to: U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000. Notice of payment shall be sent to each of the following:

- a. EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268
- b. EPA Region 5 Financial Management Officer
U.S. EPA
77 W. Jackson Boulevard
Chicago, Illinois 60604
- c. Linda Martin, RPM
Mail Code SR-6J
U.S. EPA
77 W. Jackson Boulevard
Chicago, IL 60604

Such notice shall reference EPA Region 5, the Site name, CERCLA Docket number, EPA billing document number, Site/Spill ID # 053G, and name and address of Settling Purchaser. The total amount paid by Settling Purchaser pursuant to this Agreement shall be deposited into a Special Account that will be established for the GTOS Site within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the GTOS Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

25. Amounts due and owing pursuant to the terms of this Agreement, but not paid in accordance with the terms of this Agreement, shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. RELEASE AND WAIVER OF SECTION 107(r) LIEN

26. Subject to the Reservation of Rights in Section VIII of this Agreement, upon payment of the amount specified in Section IV, Payment, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the GTOS Site before Settling Purchaser acquired ownership of the Property.

VI. ACCESS/NOTICE /INSTITUTIONAL CONTROLS

27. Settling Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by Settling Purchaser, for the purposes of performing and overseeing response actions at the Property under federal law. EPA agrees to provide reasonable notice to Settling Purchaser of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901("RCRA"), *et seq.*

28. Not later than 30 days following the date that this Agreement is effective, Settling Purchaser shall submit to EPA for review and approval a notice to be filed with the Registry of Deeds, Leelanau County, State of Michigan, which shall provide notice to all successors-in-title that (i) the Property is part of the GTOS Site, (ii) EPA is performing, and has performed, response actions at the Property, (iii) EPA selected a final remedy for the GTOS Site in March of 2008, (iv)

EPA amended the final remedy in April of 2011, and (v) EPA has released and waived its Section 107(r) lien on the Property in this Agreement. The Settling Purchaser shall record the notice within 15 days of EPA's approval of the notice. The Settling Purchaser shall provide EPA with a certified copy of the recorded notice within 15 days of recording such notice.

29. Settling Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action, including restrictions and controls for restricting or limiting groundwater use and land use.

30. For so long as the Settling Purchaser is an owner or operator of the Property, Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Purchaser shall ensure that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

31. Upon sale or other conveyance of the Property or any part thereof, Settling Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Settling Purchaser shall ensure that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action.

32. The Settling Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the effective date of this Agreement.

VII. BFPP STATUS

33. Settling Purchaser shall take and maintain all steps necessary to achieve and maintain status as a "Bona Fide Prospective Purchaser" as that term is defined in Section 101(40) of CERCLA 42 U.S.C. § 9601(40), for the Property which is the subject of this Agreement, by complying with all of the requirements for a Bona Fide Prospective Purchaser as set forth in Section 101(40), including, without limitation, the exercise of "appropriate care" by taking "reasonable steps" as set forth in Section 101(40)(D), 42 U.S.C. § 9601(40)(D), and the implementation of and compliance with any land use restrictions and institutional controls as set forth in Section 101(40)(F), 42 U.S.C. § 9601(40)(F) for so long as Settling Purchaser retains any ownership interest in the Property. Settling Purchaser has prepared a Phase I Environmental Site Assessment for the Property, attached to this Agreement as Exhibit 3, which is intended by Settling Purchaser to be compliant with the requirements for all appropriate inquiries in Section 101(40)(B), 42 U.S.C. § 9601(40)(D), and 40 C.F.R. Part 312, as part of satisfying the requirements to qualify as a Bona Fide Prospective Purchaser under 42 U.S.C. § 9601(40).

34. In the event that the Settling Purchaser, its agents, or contractors demolish the former Norris Elementary School or construct one or more buildings or other structures on the Property after the Effective Date of this Agreement, Settling Purchaser agrees to exercise appropriate care with respect to hazardous substances found at the facility by taking reasonable steps as set forth in Section 101(40)(D), 42 U.S.C. § 9601(40)(D), including but not limited to, in the case of new construction, reasonable steps when designing, constructing, building, operating

and maintaining such structures, including but not limited to implementing a method of soil vapor mitigation (including, e.g., a soil vapor extraction system) for each such structure for the purpose of protecting human health. Settling Purchaser also agrees that it will notify EPA not less than 30 days in advance of (i) commencing construction of any building or other structure at the property, or (ii) commencing the demolition, partial demolition, or any remodeling that disturbs the concrete slab or other foundation of the former Norris Elementary School building. Such advance notice shall include a description of the reasonable steps Settling Purchaser, its agents and its contractors shall take in carrying out the construction or demolition.

VIII. RESERVATION OF RIGHTS

35. This Agreement does not release and waive or compromise any right of EPA or the United States other than the release and waiver by EPA of its right to assert or perfect a windfall lien pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of hazardous substances that were disposed of at the GTOS Site before Settling Purchaser acquired ownership of the Property, subject to receipt of the payment from Settling Purchaser as provided in Section IV. EPA and the United States reserve, and this Agreement is without prejudice to, all rights against Settling Purchaser with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by Settling Purchaser, assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to meet a requirement of this Agreement, including but not limited to Section IV, Payment, and Section VI, Access/Notice/Institutional Controls;

- (b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;
- (c) liability under CERCLA, including Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Settling Purchaser or assignees, successors in interest or any lessees, sublessees, or other parties with rights to use the Property to comply with Section 101(40), 42 U.S.C. § 9601(40); and
- (d) liability under CERCLA resulting from the release or threat of release of hazardous substances that were disposed of after the Settling Purchaser acquired ownership of the Property. In contesting such liability, Settling Purchaser shall have the burden of proving that such costs were in response to hazardous substances disposed of before Settling Purchaser acquired ownership of the Property.

36. Nothing in this Agreement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the Section 107(r) lien in Section V, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement. The United States reserves the right to compel potentially responsible parties to perform or pay for response actions at the Property and/or the GTOS Site.

37. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Purchaser acknowledges that it is purchasing Property where response actions may be required. The remedial action objectives for groundwater contained in paragraph 20 of this

Agreement are not enforceable by and do not create a claim or cause of action of any kind in favor of Settling Purchaser.

IX. PARTIES BOUND

38. This Agreement shall apply to and be binding upon EPA, and shall apply to and be binding upon the Settling Purchaser and Settling Purchaser's successors and assigns. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any change in ownership or business or corporate status or status as an LLC involving the Property addressed shall in no way alter the release and waiver of the lien under this Agreement.

X. WAIVER OF CLAIM FOR REIMBURSEMENT

39. Settling Purchaser waives and shall not assert any claim for reimbursement from the United States with respect to (1) the payment required by Section IV, Payment, of this Agreement or (2) the cost of exercising appropriate care or taking reasonable steps as set forth in Section VII (BFPP Status), including the designing constructing, building, operating and maintaining any method of soil vapor mitigation. This waiver includes, but is not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law, or from any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PAYMENT OF COSTS

40. If the Settling Purchaser fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV, Payment, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XII. DISCLAIMER

41. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XIII. EFFECTIVE DATE

42. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Purchaser that EPA has fully executed the Agreement.

XIV. ATTORNEY GENERAL APPROVAL

43. The Attorney General of the United States or his designee has issued prior written approval of the settlement embodied in this Agreement.

CERCLA-05-2014-0008

U.S. Environmental Protection Agency Region 5
In the Matter of: Grand Traverse Overall Supply Company Site
Agreement for Release and Waiver of Lien Pursuant to CERCLA § 107(r)



IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY:

6/23/2014

Date

Regional Administrator
Region 5

IT IS SO AGREED:

GTRAC, LLC BY:

June 12, 2014

Date

Signature

Ed Young

Name

LLC Manager

Title or Position

P.O. Box 1609, Traverse City, MI 49685-1609

Address

EXHIBIT 1

Description of GTOS Parcel and Norris School Parcel

The GTOS Parcel is described as follows:

A part of Government Lot 3, Section 28, Town 28 North, Range 11 West, Elmwood Township, Leelanau County, Michigan, more fully described as follows: Commencing at the Southwest corner of said Lot 3; thence North 33 feet to the North boundary line of the East and West highway, formerly known as Michigan State Highway No. 22, now known as County Highway No. 633; thence East along the North line of said Highway, 1271.14 feet to an iron pipe stake, as the Place of Beginning; thence North, parallel with the West line of said Government Lot 3, 585.4 feet to the high water mark of the outlet of Cedar Creek; thence North 66°39' East along said high water mark, 158.0 feet; thence South 4°31' East, 316.0 feet; thence South 16°47' West, 347.0 feet to the North boundary line of said Public Highway; thence West 70.0 feet to the Place of Beginning.

ALSO, That part of Government Lot 3, Section 28, Town 28 North, Range 11 West, Elmwood Township, Leelanau County, Michigan, described as follows: Commencing at a point which is East 1341.14 feet and North 33 feet from the Southwest corner of Government Lot 3; thence North 16°47' East, 347 feet; thence South 14°27' West, 342.98 feet to a point 33 feet North of the South line of Government Lot 3; thence West 14.66 feet to the Point of Beginning.

The Norris School Parcel is described as follows:

THAT PART OF GOVERNMENT LOT 3, SECTION 28, TOWN 28 NORTH, RANGE 11 WEST, ELMWOOD TOWNSHIP, LEELANAU COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS EAST 1619.8 FEET AND NORTH 33 FEET FROM THE SOUTHWEST CORNER OF GOVERNMENT LOT 3; THENCE WEST PARALLEL WITH AND 33 FEET NORTH OF THE SOUTH LINE OF SAID GOVERNMENT LOT 264 FEET; THENCE NORTH 14°27' EAST 342.98 FEET; THENCE NORTH 4°31' WEST 316 FEET, MORE OR LESS, TO THE HIGH WATER MARK OF THE OUTLET STREAM OF CEDAR LAKE; THENCE SOUTHERLY AND EASTERLY ALONG THE HIGH WATER MARK OF SAID STREAM TO THE WESTERLY RIGHT-OF-WAY LINE OF HIGHWAY M-22 AS DESCRIBED IN LIBER 321, PAGE 112; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF HIGHWAY M-22 TO A POINT 50 FEET NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 3; THENCE WEST PARALLEL AND 50 FEET NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 3 TO THE WEST LINE OF A PARCEL DESCRIBED IN LIBER 318, PAGE 826, SAID POINT BEING NORTH 18°00' EAST OF THE POINT OF BEGINNING; THENCE ALONG SAID WEST LINE SOUTH 18°00' WEST TO THE POINT OF BEGINNING. SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.

EXHIBIT 2

Map

EXHIBIT 2

MAP

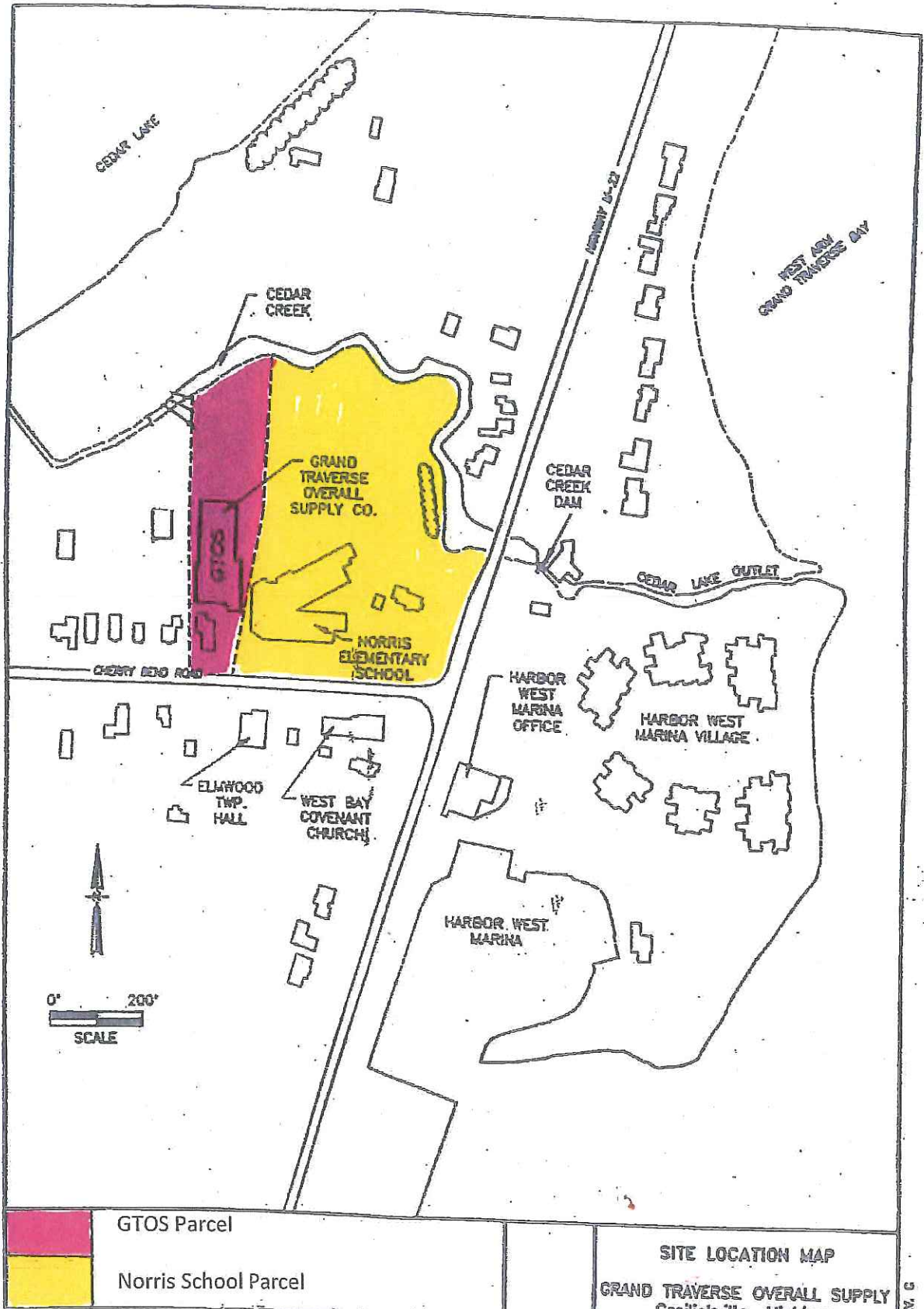


EXHIBIT 3

Settling Purchaser's Phase I Environmental Site Assessment

Exhibit 3 Not Included Due
To Large Volume of Materials