



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

May 10, 2021

John Hickman
VBC Hilltop Apartments Limited Partnership
100 23rd Avenue South
Seattle, WA, 98144

Peggy Williamson
Fulcrum Environmental Consulting
406 N. 2nd Street
Yakima, WA 98902

RE: No Further Action at the following Site:

- **Site Name:** Hilltop Apartments Development Site
- **Site Address:** 1509 South Mission Street, Wenatchee
- **Facility/Site No.:** 5823960
- **Cleanup Site No.:** 3946
- **VCP Project No.:** CE0244

To John Hickman:

The Washington State Department of Ecology (Ecology) has reviewed recent records for the Hilltop Apartments Development site (Site). This letter provides our updated opinion for the status of the Site. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. This opinion supersedes the property-specific no further action determination issued in 2008.

Issue Presented and Opinion

Is further remedial action necessary to clean up contamination at the Site?

NO. Ecology has determined that no further remedial action is necessary to clean up contamination at the Site.



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This opinion is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC (collectively “substantive requirements of MTCA”). The analysis is provided below.

Description of the Site

The original property-specific NFA determination included adjacent parcels that were not developed as part of this project. Area-Wide historical orchard sites are not identified by the extent of an original release, as is done with other cleanup sites in Washington State under MTCA. These former orchard sites were contaminated by legally-applied pesticides that were used over large areas. It may not be possible to identify the boundaries of individual former orchards. There is no way to identify an individual release. These historical orchard sites are cleaned up as they change land use resulting in an elevated risk of exposure to residual pesticides.

The Hilltop Apartments site (Site) consists of Chelan County Tax Parcel #: 222014230100. It was remediated in its entirety in 2008 during the development of the Hilltop Apartment complex. The portion of the property that was not remediated remains vacant. It has not changed to a land use that increases potential exposure to residual pesticides. The portion of the property that has not been developed will be remediated at the time that it is developed. It is not considered part of the Hilltop Apartments Site.

The boundaries of the Site shall consist of the area that was remediated during the development and construction of Hilltop Apartments.

Enclosure A includes a diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the parcel(s) associated with this Site are affected by other sites.

Basis for the Opinion

This opinion is based on the information contained in the following documents:

1. *“Fulcrum Environmental Inc. Hilltop Apartments Site Remedial Action Report”* dated September 17, 2007.
2. Environmental Covenant dated August 8, 2008.
3. Ecology. Property-specific no further action determination dated September 23, 2008.

A number of these documents are accessible in electronic form from the Site webpage¹. The complete records are stored at the Central Regional Office of Ecology (CRO) for review by appointment only. Visit our Public Records Request page², to submit a public records request or get more information about the process. If you require assistance with this process, you may contact the Public Records Officer at publicrecordsofficer@ecy.wa.gov or 360-407-6040.

This opinion is void if any of the information contained in those documents is materially false or misleading.

Analysis of the Cleanup

Ecology has concluded that no further remedial action is necessary to clean up contamination at the Site. That conclusion is based on the following analysis:

1. Characterization of the Site.

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards and select a cleanup action. The Site is described above and a site diagram is in **Enclosure A**.

2. Establishment of cleanup standards.

Ecology has determined the cleanup levels and points of compliance you established for the Site meet the substantive requirements of MTCA.

¹ <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=3946>

² <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

Soil Cleanup Levels

It has been determined that MTCA Method A cleanup levels are appropriate for the Site. The Site is zoned industrial, but it is surrounded by residential and mixed-use properties, and there is surface water passing through the Site. As a result, unrestricted land use cleanup levels are appropriate for the Site.

The following Method A Cleanup Levels for unrestricted land uses have been used at the Site:

Constituent	Soil Cleanup Level (mg/kg)
Arsenic	20
Lead	250

*Cleanup level at the time of the initial NFA determination

Point of Compliance (POC): Standard, throughout the Site extending from the surface to 15 feet below ground surface (ft bgs).

Terrestrial Ecological Evaluation (TEE): The Site is surrounded by residential and mixed use; however, the Site is zoned industrial with industrial surfaces and structures and the area in the vicinity of residual contamination is surrounded by concrete surfaces. Risk to ecological receptors due to the subsurface contamination at the Site is considered by Ecology to be low. Hence, Ecology has eliminated the TEE pathway for further consideration at this Site.

3. Selection of cleanup action.

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA. The cleanup included excavation and disposal of contaminated soil.

4. **Cleanup.**

Ecology has determined the cleanup meets the cleanup standards established for the Site. This determination is dependent on the continued performance and effectiveness of the post-cleanup controls and monitoring specified below.

Site cleanup consisted of onsite capping of contaminated soils. Institutional controls in the form of a restrictive covenant were implemented for the Site in 2008. These institutional controls prohibit activities that will disturb contaminated soils unless approval is granted by Ecology.

Post-Cleanup Controls and Monitoring

Post-cleanup controls and monitoring are remedial actions performed after the cleanup to maintain compliance with cleanup standards. This opinion is dependent on the continued performance and effectiveness of the following:

1. **Compliance with institutional controls.**

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to hazardous substances. The following institutional control is necessary at the Site:

- Environmental Covenant #2287632, recorded on August 8, 2008.

To implement that control, a Restrictive Covenant has been recorded on the following parcels of real property in Klickitat County:

- 222014230100

Ecology approved the recorded Covenant. A copy of the Covenant is included in **Enclosure B**.

Periodic Review of Post-Cleanup Conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to ensure that they remain protective of human health and the environment.

If Ecology determines, based on a periodic review, that further remedial action is necessary at the Site, then Ecology will withdraw this opinion.

Listing of the Site

Based on this opinion, Ecology will remove the Site from our Confirmed and Suspected Contaminated Sites List.

Limitations of the Opinion

1. Opinion does not settle liability with the state.

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70.105D.040(4).

2. Opinion does not constitute a determination of substantial equivalence.

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

3. State is immune from liability.

The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. *See* RCW 70.105D.180.

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Termination of Agreement

If you have any questions about this opinion, please contact me by phone at 509-388-5223 or e-mail at Jeff.Newschwander@ecy.wa.gov.

Sincerely,

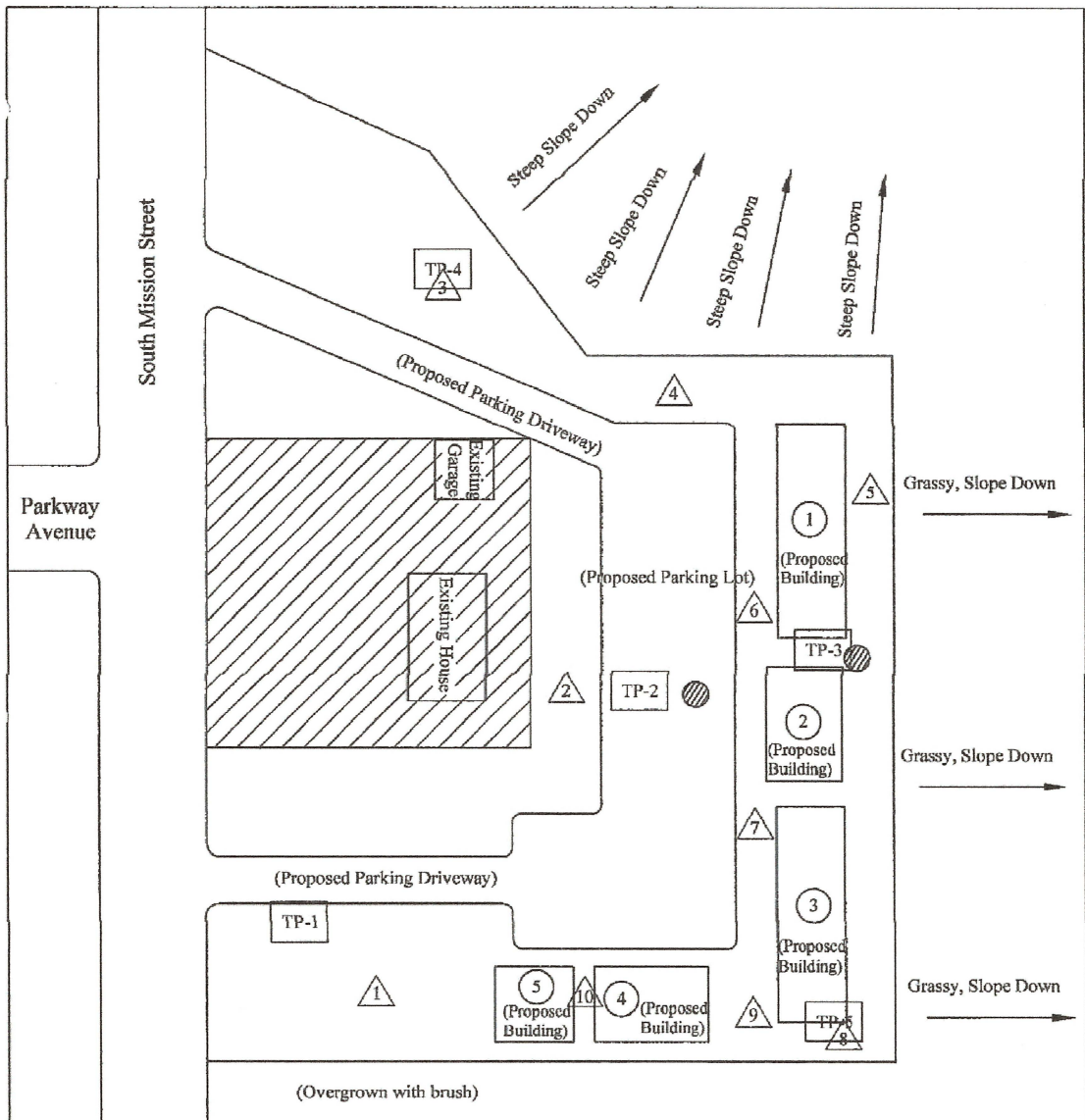


Jeff Newschwander
Toxics Cleanup Program

Enclosures (2): A – Site Diagram
 B – Environmental Covenant for Institutional Controls

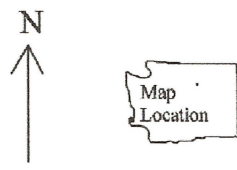
Enclosure A

Site Diagram



LEGEND

- Drywell
- Testpit, 04/12/06
- Post-Grading, 04/18/07
- Excluded Area



Scale: 1" = 65'

Figure 2: Post-Grading Sample Locations
VBC--Hilltop Apartments
 1509 South Mission Street
 Wenatchee, Washington 98801

FULCRUM ENVIRONMENTAL CONSULTING, INC.
 222 North Second Street, Suite A
 Yakima, Washington 98901
 (509) 574-0839

Map By: TPC	Project Number: 06-111
Date: April 25, 2007	Project Name: Hilltop Apts. VCP

Enclosure B

**Environmental Covenant
for Institutional Controls**

Evelyn L. Arnold, Auditor, Chelan County, WA.
AFN # 2287632 Recorded 08/08/2008 at 03:12 PM
COVEN Page: 1 of 6 Filing Instrument \$47.00
FIRST AMERICAN TITLE - WENATCHEE

After Recording Return to:

Jeff Newschwander

Department of Ecology, Central Region Office
15 West Yakima Avenue, Suite 200
Yakima, Washington, 98902

RECEIVED

AUG 22 2008

DEPARTMENT OF ECOLOGY - CENTRAL REGION OFFICE
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Restrictive (Environmental) Covenant

Grantor: VBC Hilltop Housing Limited Partnership

Grantee: State of Washington, Department of Ecology

Legal: Lot 1 of Hilltop Short Plat in Northwest Quarter of Section 14, Township 22 North,
Range 20 E. W.M., Wenatchee, Chelan County, Washington.

Tax Parcel No.: 222014230100

Cross Reference: N/A

Grantor, **VBC Hilltop Housing Limited Partnership** hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this **18th** day of **July, 2008** in favor of the State of Washington Department of Ecology (*Ecology*). *Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Washington Laws ch. 104, sec. 12.*

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by **VBC Hilltop Housing Limited Partnership**, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

Hilltop Apartment Site Remedial Actions Summary, dated September 17, 2007, prepared by Fulcrum Environmental Consulting, Inc.

These documents are on file at Department of Ecology's Central Region Office at **15 West Yakima Avenue, Suite 200, Yakima, Washington, 98902**

This Covenant is required because the Remedial Action resulted in residual concentrations of Lead and Arsenic which exceed the Model Toxics Control Act Method A cleanup level(s) for soils established under WAC 173-340-740.

The undersigned, **VBC Hilltop Housing Limited Partnership**, is the fee owner of real property (hereafter "Property") in the County of Chelan, State of Washington, which is subject to this Covenant. The Property is legally described as Lot 1 of Hilltop Short Plat in Northwest Quarter of Section 14, Township 22 North, Range 20 E. W.M., Wenatchee, Chelan County, Washington.

VBC Hilltop Housing Limited Partnership makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of, or interest in, the Property.

Section 1. The Property contains lead and arsenic contaminated soil located beneath impermeable surfaces; such as building foundations, parking and sidewalk areas, and permeable areas such as landscaped areas. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology.

Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging; placement of any objects, or use of any equipment, which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike or similar item; bulldozing or earthwork.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

VBC Hilltop Housing Limited Partnership

Stephen W. Page

VBC Hilltop Apartments, Inc.
Its General Partner
By: Stephen W. Page
President of General Partner

Dated: July 28, 2008


STATE OF Washington
COUNTY OF Pierce

On this 28 day of July, 2008, I certify that Stephen W. Page personally appeared before me, acknowledged that he/she is the Pres. of GP of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stating that he/she was authorized to execute said instrument for said corporation.



Patricia K. Kingsley
Notary Public in and for the State of WA
Washington, residing at Ouburn, Wa
My appointment expires 12-15-2011.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Don Abbott
Section Manager

Dated: Aug 4 2008