



eCopy

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, Washington 98504-7600 • 360-407-6300

May 12, 2023

Charles Lee
7200 Fun Center Way
Tukwila, WA 98188
hotelwak.lee@gmail.com

Re: No Further Action opinion for the following Property associated with a contaminated Site

Site name: Family Fun Center
Site address: 7100-7300 Fun Center Way, Tukwila, King County WA 98188
Facility/Site ID: 18434384
Cleanup Site ID: 385
VCP Project ID: XN0027
Property address: 7200 Fun Center Way, Tukwila WA 98188
Parcel No: 2423049013

Dear Charles Lee:

The Washington State Department of Ecology (Ecology) reviewed your Remedial Investigation/ Focused Feasibility Study (RI/FFS), RI/FFS Addendum, and Asphalt Cap Inspection Plan for the Family Fun Center site (Site). This letter provides our opinion regarding the sufficiency of your independent cleanup. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), chapter [70A.305](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305) RCW.¹

Opinion

Ecology has determined that no further remedial action is necessary at the Property to clean up contamination associated with the Site. However, further remedial action remains necessary elsewhere at the Site to clean up contamination.

¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

Ecology bases this opinion on an analysis of whether the remedial action meets the substantive requirements of MTCA and its implementing regulations, which are specified in chapter 70A.305 RCW and chapter [173-340](https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340) WAC² (collectively called “MTCA”).

This opinion depends on the continued performance and effectiveness of the post-cleanup controls and monitoring specified in this letter and in the environmental covenant (EC) in **Enclosure B**.

Property Description

This opinion applies only to the Property described in this section, which was affected by release(s) at the Site and addressed by your cleanup. The Property includes the following parcel of real property in King County:

- Tax Parcel 2423049013

This parcel is referred to hereinafter as “Parcel 2” or “the Property”. **Enclosure A** includes a diagram that shows where the Property is located within the Site. The Property is a 3.57-acre irregular shaped parcel currently occupied by the Comfort Suites Airport Tukwila.

Site Description

This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following release(s):

- Petroleum (gasoline, diesel, and heavy oil) in soil and groundwater.
- Nonhalogenated solvents (including benzene) in soil and groundwater.
- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soil.
- Metals (arsenic) in soil and groundwater.

On the Property, petroleum, non-halogenated solvents, cPAHs, and arsenic were found in soils at concentrations above cleanup levels; however, except for arsenic, no cleanup level exceedances occurred for these constituents in groundwater. Arsenic was found in groundwater at the Property at concentrations above regional background; however, as further discussed below, these arsenic concentrations have been determined by Ecology to be naturally occurring.

Enclosure A includes Site description, history, and diagrams.

² <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

The Site is located on the following three parcels:

Table 1. Parcels in the Site

Parcel	Address	Parcel No.	Area (acres)	Current Occupant
1	7100 Fun Center Way	2423049092	2.56	Shopping center ^a
2	7200 Fun Center Way	2423049013	3.57	Comfort Suites ^b
3	7300 Fun Center Way	2423049063	8.25	Family Fun Center

^a The shopping center at 7100 Fun Center Way includes five commercial businesses including dental and chiropractic clinics and two restaurants.

^b Parcel containing the Property (see Figure 2).

Please note that releases from multiple sites can affect a parcel of real property. At this time, Ecology has no information that other sites affect the parcel(s) associated with this Site.

Basis for the Opinion

Ecology bases this opinion on the information contained in the following documents:

1. Farallon Consulting, *Remedial Investigation/Focused Feasibility Study, Comfort Suites Property, 7200 Fun Center Way, Tukwila, Washington*, October 18, 2022.
2. Farallon Consulting, *Limited Subsurface Investigation Report, Family Fun Center Site – Parcel 2, 7200 Fun Center Way, Tukwila, Washington*, July 8, 2022.
3. Associated Environmental Group, *Phase II Environmental Site Assessment, Conducted on: Comfort Suites Airport, 7200 Fun Center Way, Tukwila, Washington*, March 15, 2021.
4. Ecology, *Site Hazard Assessment, Family Fun Center, 7300 Fun Center Way, Tukwila, Washington*, November 8, 2018.
5. GeoEngineers, *2004/2005 Compliance Groundwater Sampling, Family Fun Center Site, Tukwila, Washington*, July 6, 2005.
6. *Restrictive Covenant for parcel 2423049063, signed by Owner on November 1, 2000, Recorded at King County November 1, 2000.*
7. GeoEngineers, *Revised Cleanup Action Report, Family Fun Center Site, Tukwila, Washington*, February 19, 2002.
8. GeoEngineers, *Cleanup Action Plan and Engineering Report, Proposed Family Fun Center, Tukwila, Washington*, September 14, 1998.
9. GeoEngineers, *Phase II Environmental Site Assessment Report, Proposed Family Fun Center, Tukwila, Washington*, November 17, 1997.

You can request these documents by filing a [records request](#).³ For help making a request, contact the Public Records Officer at publicrecordsofficer@ecy.wa.gov or call 360-407-6040. Before making a request, check whether the documents are available on [Ecology's Cleanup Site Search web page](#).⁴

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. Ecology bases its conclusion on the following analysis:

Characterizing the Site

Ecology has determined your completed Site characterization is sufficient for setting cleanup standards and selecting a cleanup action. **Enclosure A** describes the Site. Contamination at the Property was characterized through soil and groundwater sampling and analysis activities.

Soil Data

Soil sampling conducted in the three parcels is summarized in Table 2.

Table 2. Summary of Site Soil Sampling and Analysis^{a, b}

Analyses	Number of Parcel 1 Soil Samples	Number of Parcel 2 Soil Samples	Number of Parcel 3 Soil Samples
NWTPH-Dx	1	16	43
NWTPH-Gx	0	1	2
BTEX	0	3	17
PAHs	0	5	9
PCBs	0	2	2
Pesticides	0	5	2
Metals	0	18	25

^a Parcels 1, 2, and 3 are 7100, 7200, and 7300 Fun Center Way, respectively.

^b Parcel 2 contains the Property.

BTEX = benzene, toluene, ethylbenzene, and xylenes.

CPAHs = carcinogenic polycyclic aromatic hydrocarbons.

PCBs = polychlorinated biphenyls.

³ <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

⁴ <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=385>

Parcel 2 included two soil cleanup level exceedances for diesel range organics (DRO) and heavy oil range organics (HRO), and one exceedance for cPAHs. Cleanup level exceedances in soil are listed in Table 3.

Table 3. Cleanup Level Exceedances in Soil Samples on Parcel 2

Contaminant	Number of Exceedances/ Samples ^a	Method A Cleanup Level (mg/kg ^b)	Maximum Concentration (mg/kg)
Diesel Range Organics (DRPH)	2/16	2,000	6,860
Heavy Oil Range Organics (HRPH)	2/16	2,000	31,700
DRPH + HRPH	2/16	2,000	38,560
CPAHs	1/5	0.1	0.37

^a Exceedance of the respective Method A cleanup level.

^b mg/kg = milligrams per kilogram

All soils with cleanup level exceedances were removed from the Site via excavation and offsite disposal except for the following:

Table 4. Remaining Cleanup Level Exceedances in Soil Samples on Parcel 2

Sample Location	Depth (ft bgs)	DRO (mg/kg)	HRO (mg/kg)	Arsenic (mg/kg)
B-5	6	NA	NA	31
HA-5	0.5	566	2,250	<10
Method A Cleanup Level		2,000	2,000	20

NA = not analyzed.

Locations B-5 and HA-5 are within the paved parking area that surround the Comfort Suites hotel.

Groundwater Data

Groundwater at the Parcel 2 property is at a depth between approximately 17 and 21 feet below ground surface (ft bgs), and flows to the north to northwest, toward the Green River. Groundwater sampling conducted in the three parcels is summarized in Table 5.

Table 5. Summary of Parcel 2 Groundwater Sampling and Analysis ^a

Analyses	Number of Parcel 2 Samples	Number of Parcel 2 Sampling Locations
NWTPH-Dx	11	5
NWTPH-Gx	6 ^b	1
BTEX	6 ^b	1
Metals	15	9

^a Parcel 2 is the 7200 Fun Center Way property (Property).

^b All six samples analyzed for NWTPH-Gx and BTEX from location MW-22.

Repeated groundwater sampling in Parcel 2 only occurred at MW-22. No cleanup level exceedances occurred in groundwater samples except for dissolved arsenic and total arsenic, chromium, lead, and nickel. No dissolved chromium, lead, or nickel were detected in any groundwater samples except for one detection of lead in MW-22 at 15 micrograms per liter ($\mu\text{g/L}$), below the Method A cleanup level. MW-22 was sampled six times and all other results for lead were below detection limits.

Ecology has concluded that the dissolved (filtered) metals concentrations are more representative at the Site than the total metals results for the following reasons:

- Cleanup levels for metals in groundwater are based on a drinking water pathway from a water supply well.
- Samples from monitoring wells and temporary sampling locations commonly are turbid, unlike a well-developed water supply well.

Therefore, dissolved metals results were compared with cleanup levels to assess compliance with cleanup levels. Only dissolved arsenic had concentrations exceeding Method A cleanup levels. Table 5 summarizes dissolved arsenic in groundwater above cleanup level in Parcel 2.

Table 6. Summary Statistics for Dissolved Arsenic in Groundwater in Parcel 2

Number of Samples	15
Number of Sampling Locations	9
Number of Exceedances ^a	7 ^b
Frequency of Exceedance ^a	78%
Maximum Concentration	150 $\mu\text{g/L}$ ^b
Mean Concentration	55.9 $\mu\text{g/L}$ ^b
Median Concentration	55 $\mu\text{g/L}$ ^b

^a Exceedance of the Puget Sound Basin regional background concentration of 8 $\mu\text{g/L}$.

^b Value calculated using most recent sampling result from MW-22.

Dissolved arsenic in groundwater in western Washington is generally the result of carbon materials in the aquifer resulting in geochemical reducing conditions, which result in the mobilization of naturally occurring arsenic in the soil matrix. Such mobilization can be either natural (from natural carbon sources such as peat), human caused (from carbon sources in fill materials or contaminant releases), or a combination of the two. Anthropogenic (human caused) mobilization is regulated under MTCA whereas natural mobilization is not.

Ecology has reviewed Site data to determine whether the observed mobilization of arsenic in groundwater is anthropogenic, natural, or a combination of the two. Based on this review, Ecology has concluded that the dissolved arsenic concentrations in groundwater above the

regional background concentration of 8 µg/L are likely primarily caused by natural mechanisms. The basis for this conclusion is as follows:

- Elevated dissolved arsenic concentrations in groundwater do not appear to be related to releases to soils. No petroleum was detected in groundwater samples collected on the Parcel 2 property.
- Monitoring well locations with elevated dissolved arsenic concentrations show evidence of natural carbon materials in sediment within the screened interval (typically 15-30 ft bgs), whereas monitoring wells without elevated arsenic concentrations do not show evidence of natural materials. Soil described as fill materials were all above the water table.

As discussed within the RI/FFS Report, elevated arsenic in groundwater was found at other properties in the area that may be attributable to natural carbon sources within the aquifer matrix. The Site is located adjacent to the Green River, and carbon materials were likely deposited in the area along with other fluvial materials. This results in potential for arsenic dissolution being greater than most of the Puget Sound Basin area (a localized higher background). Ecology notes that carbon enrichment within the aquifer matrix at the Site appears to be heterogeneous, hence not all locations have mobilized arsenic in groundwater.

Indications of carbon in aquifer matrix materials at Parcel 2 monitoring wells are summarized in Table 7.

Table 7. Indications of Carbon Materials in Aquifer Matrix

Monitoring Well	Dissolved Arsenic Concentration (µg/L)	Indications of carbon materials within screened interval
FMW-01	64	15.5-17' – trace organics 17'-20' – black sand
FMW-02	66	18.5-30' – black sand
FMW-03	6.8	None
FMW-03	16	15.5-20' – brown-black sand
MW-22	4.5	None

Naturally occurring arsenic in groundwater is not regulated under MTCA. However, since Ecology cannot conclude with certainty that there is no contribution of carbon from an anthropogenic source(s), Ecology has included a provision within the Parcel 2 environmental covenant prohibiting installation of drinking water wells.

Setting Cleanup Standards

Ecology has determined the cleanup levels and points of compliance you set for the Site meet the substantive requirements of MTCA. The Method A cleanup levels that have been selected for the Site are shown in Table 8.

Table 8. Method A Cleanup Levels for Soil and Groundwater

Contaminant	Method A Soil Cleanup Level (mg/kg)	Method A Groundwater Cleanup Level (µg/L)
DRPH	2,000	500
HRPH	2,000	500
DRPH + HRPH	2,000	500
Gasoline Range Petroleum	100 ^a	1,000 ^a
CPAHs	0.1	0.1
Arsenic	20	5,8 ^b
Lead	250	15
Chromium	2,000 ^c	50
Nickel	1,600 ^d	320 ^d , 100 ^e

^a Cleanup level based on no benzene present. No benzene was detected in Parcel 2.

^b Puget Sound Basin regional background concentration.

^c Cleanup level for Chromium-III.

^d Method B non-cancer based cleanup level.

^e WA State Maximum Contaminant Level (MCL) for drinking water.

Points of Compliance

The points of compliance for soil and groundwater are throughout the Site. Cleanup levels based on the direct contact pathway apply to soils to a depth of 15 ft bgs, whereas cleanup levels for the soil-to-groundwater pathway apply without regard to depth.

Terrestrial Ecological Evaluation (TEE)

Approximately 4.7 acres of forested open space are located within 500 feet of the Site. Hence, the TEE process cannot be ended. As discussed above, only two soil samples had concentrations of contaminants above Method A cleanup levels, with cleanup level exceedances of HRPH and arsenic. Remaining (post-excavation) exceedances of TEE-based concentrations for HRPH and Arsenic (from MTCA Table 749-3) in soil samples are summarized in Table 9 on the following page.

Table 9. Exceedances of TEE-based Concentrations in Remaining Soil Samples

Sample Location	Depth (ft bgs)	DRPH + HRP Concentration (mg/kg)	Arsenic Concentration (mg/kg)
B-1	21 ^a	NA	14
B-2	12 ^a	NA	12
B-5	6	NA	31
HA-5	0.5	2,816	<10
FMW-01	2.5	296	<13
FMW-02	2.5	315	<12
FMW-04	2.5	411	<14
EX-D3-1.5	1.5	330	NA
EX-D5-1.5	1.5	1,280	NA
EX-D7-1.5	1.5	231	NA
EX-D9-1.5	1.5	980	NA
TEE Based Concentration (mg/kg)		230	7

^a Depth greater than the TEE-based depth of 6 ft bgs.
NA = not analyzed.

Based on the exceedances in Table 9 and depths of sampling, potential TEE concerns are at B-5, HA-5, FMW-01, FMW-02, FMW-04, EX-D3-1.5, EX-D5-1.5, EX-D7-1.5, and EX-D9-1.5. As shown in Figure 4 in Enclosure A, all these locations are in areas of paved parking except for EX-D3-1.5.

Ecology has concluded that the existing paving constitutes a barrier to ecological receptors consistent with WAC-173-300-7491(1)(b). Therefore, the TEE process can be ended. An environmental covenant (EC) is needed to ensure that this paving continues to be present in the future.

Selecting and implementing the cleanup action

Ecology has determined the cleanup action you selected and implemented for the Site meets the substantive requirements of MTCA.

Hot Spot Cleanup

In 1998-1999, a total of nine "hot spots" and slag fill were excavated at the Site, as listed in Table 10 on the following page.

Table 10. "Hot Spot" Cleanup Areas

Hot Spot	Parcel(s)	Exceedance Location(s)	Hot Spot Contaminant Addressed	Excavation Depth (ft)	Excavated Volume (cubic yards)
A	2, 3	HA-2	Pesticides ^a	1.5	40 ^b
B	3	SP-23	Petroleum, As, Ni, & Cr	2	35 ^b
C	2	HA-4	Petroleum	1.5	10 ^b
D	2	B-1, HA-6	Petroleum	3	10 ^c
E	3	SP-7	Chromium	15.5	20 ^b
F	2, 3 ^d	multiple	Creosote, petroleum, CPAHs	1-10, max 18	50 ^b , 350 ^c
G	3	EX-G1-7	Gasoline	12	15 ^e
H	3	EX-H3-1	Petroleum	2	20 ^c
I	3	EX-I1-5	Wood timbers, creosote	5	20 ^b
Slag	2,3	multiple	Metals	2	150 ^c

Hot spot excavations entirely outside of Parcel 2 are shaded in green.

^a Hot spot A was reportedly a pesticide handling area, but no contamination above cleanup levels reported in this area within the RI Report.

^b Disposed of via recycling at TPS Technologies Inc. in Tacoma.

^c Placed and capped in Parcel 3.

^d Hot spot F is mostly in Parcel 3 but extends slightly onto Parcel 2.

^e Placed as construction fill on Parcel 3.

In addition to the nine hot spots, areas where slag fill was placed were also excavated. Removals in Parcel 2 included hot spots C and D, and parts of A and F. Sufficiency of the excavation cleanup was demonstrated through confirmation soil sampling in the hot spot removal areas. Ecology concurs that confirmation soil sampling was sufficient to demonstrate removal of all contaminated soil in the excavated areas in Parcel 2.

Remaining Contamination Following Hot Spot Cleanup

As discussed above, the only cleanup level exceedances in soil following hot spot cleanup were:

- Arsenic in one soil sample (B-5 at 6 ft bgs at 31 mg/kg, above the Method A cleanup level of 20 mg/kg).
- Petroleum (diesel plus heavy oil) in one soil sample (HA-5 at 0.5 ft bgs at 2,816 mg/kg, above the Method A cleanup level of 2,000 mg/kg).
- Exceedances of TEE concentrations for arsenic or petroleum in soil at 11 locations.

No exceedances of cleanup levels in groundwater samples have been identified that have not been attributed to natural causes. Hence, the remaining contamination is limited to soil, and is of relatively low magnitude and extent. All the soil cleanup level/TEE concentration exceedances were in areas of the motel parking lot and covered with pavement, except for one TEE concentration exceedance (EX-D3-1.5 with petroleum at 330 mg/kg).

The existing asphalt pavement provides for a cap to prevent access (direct contact) to the soil contamination. The remaining soil contamination does not appear to provide a risk to groundwater as demonstrated through Site groundwater data. In addition, the asphalt pavement will prevent recharge of stormwater and thus provides for further protection of groundwater on the Property.

Based on these considerations, **Ecology has concluded that the remaining soil contamination can be effectively managed with institutional controls memorialized within an environmental covenant.** The components of this final remedial action are:

1. Recording of an EC (see Enclosure B) that provides for maintenance of the asphalt cap and notification to Ecology of any subsurface work.
2. Periodic inspections of the asphalt cap and submittal of inspection reports for Ecology's 5-year periodic reviews.
3. Decommission of resource protection wells (monitoring wells on the Property).

You must decommission [resource protection wells](#)⁵ installed as part of the remedial action that are not needed for any other purpose at the Site. Wells must be decommissioned in accordance with WAC [173-160-460](#).⁶

Post-Cleanup Controls and Monitoring

Post-cleanup controls and monitoring are remedial actions performed to ensure compliance with cleanup standards. Ecology is issuing this No Further Action opinion based on the continued performance and effectiveness of the following post-cleanup remedial actions at the Site. Ecology may rescind this opinion if these remedial actions are not performed or do not effectively maintain the cleanup standards.

Compliance with institutional controls

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to contamination. The following Site-specific institutional controls are needed at the Site:

- Maintenance of a cap (paved surface) preventing access to the contaminated soils and preventing additional groundwater recharge on the Property.

⁵ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-410>

⁶ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-460>

To implement the controls, you recorded an EC on the following parcel of real property in King County:

- Parcel No. 2423049013

Ecology signed the EC on April 20, 2023, and it was recorded at King County on April 28, 2023, (see Enclosure B). To amend or terminate the EC, you must request additional review under the Voluntary Cleanup Program (VCP).⁷

The recorded EC includes but is not limited to the following provisions:

- Land use of the Property solely for commercial purposes in perpetuity.
- Ecology notification before any activities that could compromise the integrity of the cap (paved surfaces) that prevent access to contaminated soils on the Property.
- A statement that Ecology may require further cleanup if the Property is redeveloped, or improvements added.
- Prohibition on new stormwater features on the Property.
- Prohibition of drinking water wells on the Property.

Maintenance and monitoring of engineered controls

Engineered controls prevent or limit movement of, or exposure to, contamination. The following engineered controls are part of the Site cleanup:

- A cap (paved surface) preventing access to the contaminated subsurface soils.

Periodic inspections of the asphalt surface are needed at the Site to confirm the long-term effectiveness of this cap. Cap inspections should be done on a minimum annual basis. Ecology notes that inspections of the cap should be reported to Ecology prior to our 5-year periodic review. **However, if any cap failures are identified during inspections, Ecology should be immediately notified, and corrective measures implemented.**

Ecology will use the information within your cap inspections report during periodic reviews. Ecology has determined the cap inspection plan you submitted⁸ meets the substantive requirements of MTCA, as modified herein.

⁷ Toxics Cleanup Program Procedure 440C: <https://apps.ecology.wa.gov/publications/SummaryPages/1509057.html>

⁸ Asphalt Cap Inspection Plan, prepared by Farallon and dated April 7, 2023.

The asphalt cap shall be inspected in the vicinity of sampling locations and B-5 and HA-5 on an annual basis using the form presented in the Asphalt Cap Inspection Plan. A cap inspection report should be submitted to Ecology by March 15, 2028. The cap inspection report should summarize the condition of the asphalt cap, discuss any identified concerns, and attach the annual inspection forms. **If the cap inspection report is not submitted to Ecology by March 31, 2028, then this NFA opinion may be rescinded.**

Periodic review of post-cleanup conditions

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to evaluate whether they remain protective of human health and the environment. Periodic reviews are anticipated to occur on a five-year basis. Based on a periodic review, if Ecology determines the Site needs further remedial action, Ecology will rescind this opinion. **Ecology notes that the need for continued monitoring at the Site after the monitoring period stipulated above will be determined by Ecology's periodic reviewer.** The need for continued monitoring or not would be provided within the Periodic Review Report, the first of which is anticipated to be prepared in the second quarter of 2028.

Limitations of the Opinion

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 [70A.305.040](#)(4).⁹

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 [70A.305.080](#)¹⁰ and WAC [173-340-545](#).¹¹

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 [70A.305.170](#)(6).¹²

Termination of Agreement

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. XN0027.

⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

¹⁰ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

¹¹ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

¹² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

Questions

If you have any questions about this opinion, please contact me at frank.winslow@ecy.wa.gov or 509-424-0543.

Sincerely,



Frank P. Winslow, LHG
Cleanup Site Manager
Headquarters Section

FPW/TAM

Enclosures (1): A – Site Description, History, and Diagrams

cc by email: Mark Havighorst, Farallon Consulting, mhavighorst@farallonconsulting.com
TCP Operating Budget Analyst, Ecology, tra.thai@ecy.wa.gov
VCP Fiscal Analyst, Ecology, ecyrevcp@ecy.wa.gov
Ecology Site File

Enclosure A

Site Description, History, and Diagrams

Site Description

Site

The Site is defined by the nature and extent of contamination associated with the following release(s):

- Petroleum (gasoline-, diesel- and heavy oil-range) in soil and groundwater
- Nonhalogenated solvents (including benzene) in soil and groundwater
- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soil
- Metals (arsenic) in soil and groundwater

The Site is located on three parcels designated Parcel 1, Parcel 2, and Parcel 3. This letter focuses on Parcel 2, which had petroleum (diesel and heavy oil) and arsenic in soil at concentrations above MTCA cleanup levels. Groundwater contamination was found solely within the Parcel 3 property.

Area and Property Description

The parcels at the Site are summarized in the following table:

Parcel	Address	Parcel No.	Area (acres)	Current Occupant
1	7100 Fun Center Way	2423049092	2.56	Shopping center ^a
2	7200 Fun Center Way	2423049013	3.57	Comfort Suites
3	7300 Fun Center Way	2423049063	8.25	Family Fun Center

^a The shopping center at 7100 Fun Center Way includes five commercial businesses including dental and chiropractic clinics and two restaurants.

The Site is in a commercial-dominated area of Tukwila, and the parcels associated with the Site are bound by the Green River to the north, SW Grady Way and Interstate 405 to the south, Interurban Avenue S to the west, and a railroad corridor to the east. Additional commercial operations are located further to the north, east, and south. To the west, beyond Interurban Avenue S is a forested area and a freeway interchange. Beyond the interchange is a Tukwila Park—a forested recreation area. The Site is in a relatively flat area of the Green River valley.

Site Current Use and History

The following Site current use and history discussion is from the RI/FFS Report:

Parcel 1, the Comfort Suites Property, and the Fun Center Property were redeveloped for their current uses in 1998 and 1999. Parcel 1 currently is used for retail and commercial purposes. The Comfort Suites Property currently is used as a hotel, and the Fun Center Property currently is used as an amusement park. The parcels are entirely paved and covered with buildings except for landscaped areas. Groundwater at and proximate to the Family Fun Center Site is not used for domestic, industrial, or irrigation purposes.

Prior to redevelopment, Parcel 1 was mostly vegetated with a steel tower for high-voltage power lines located near the center of the northern portion of the parcel and a wooden building formerly operated as the J.G. Nursery located on the southern portion of the parcel; the Comfort Suites Property was mostly vegetated with a wooden barn and stable located in the southwestern corner of the parcel; and the Fun Center Property was developed with several wooden structures on the western half of the parcel (including residential buildings, an automotive repair shop, a barn, and a shed) and a milk bottling plant on the southern portion of the parcel. The eastern portion of the Fun Center Property was covered with an approximately 80,000-cubic-yard stockpile of soil from a former commercial topsoil manufacturing business. A detention pond was in the northern portion of the Fun Center Property. The approximate locations of the historical features at the Family Fun Center Site are shown on Figure 3.

Sources of Contamination

Contamination releases occurred at the Site from a variety of historical operations and from the placement of some slag fill materials that included some heavy metals. Historical operations of potential concern are shown on Figure 3. Discussion from the RI/FFS report regarding confirmed or suspected sources of contamination at the Site is provide as follows:

Historical operations at the Comfort Suites Property reportedly were limited to operation of a barn, and the Comfort Suites Property currently is used as a hotel. No confirmed or suspected sources of COPCs related to these historical or current operations have been confirmed. Slag fill from Renton Sand and Gravel reportedly was brought to the Comfort Suites Property by a former owner. This slag fill may be a source of COPCs at the Comfort Suites Property.

The adjoining Fun Center Property historically was developed with several wooden structures on the western half of the parcel (including residential buildings, an automotive repair shop, a barn, and a shed) and a milk bottling plant on the southern portion of Fun Center Property. Several USTs and ASTs historically were located at the Fun Center Property. The automotive repair shop was located at the Fun Center Property proximate to the eastern portion of the Comfort Suites Property. Drums and debris, an oil dump, and areas of oil-stained soil historically were present in the eastern portion of the Comfort Suites Property and likely were associated with the automobile shop. As part of the 1998–1999 Cleanup Action, “Hot Spots” A, C, and D (Figure 4) on the Comfort Suites Property were excavated to remove pesticide- (“Hot Spot A”) and petroleum-impacted (“Hot Spots” C and D) soil proximate to the drums and debris, oil dump, and areas of oil-stained soil. Therefore, the drums and debris, oil dump, and areas of oil-stained soil are historical but not current source areas.

The eastern portion of the Fun Center Property was covered with an approximately 80,000-cubic-yard stockpile reportedly containing petroleum-impacted soil. Soil from the stockpile was used to backfill excavation pits for “Hot Spots” A, C, and D and raise the grade of the Comfort Suites Property. However, COPCs were detected at concentrations less than MTCA Method A cleanup levels for unrestricted land use in samples collected from the soil stockpile; therefore, the approximately 80,000-cubic-yard stockpile is not a source of COPCs for the Comfort Suites Property.

Slag fill from Renton Sand and Gravel reportedly was brought to the Comfort Suites Property by a former owner. COPCs were detected at concentrations exceeding MTCA Method A cleanup levels for unrestricted land use in a sample collected from slag fill; therefore, the slag fill is not a source of COPCs for the Comfort Suites Property.

The Comfort Suites Property is within the area impacted by arsenic, lead, and other heavy metals resulting from historical operation of the Asarco smelter in Tacoma as defined by Ecology. Therefore, operation of the Asarco smelter is a suspected source of COPCs for the Comfort Suites Property.

Ecology notes that the vicinity of the Site is mapped with arsenic concentrations from the Tacoma Smelter Plume Site of 20–40 mg/kg (above Method A cleanup level for arsenic in soil of 20 mg/kg).

Physiographic Setting

The Site is located in Tukwila, Washington, adjacent to the Green River, approximately 10 miles south of where it flows into Elliot Bay of Puget Sound. The Green River valley is approximately two miles wide in the vicinity of the Site and the river meanders significantly within this relatively flat valley.

Surface/Storm Water

The Green River is adjacent to the Property boundary to the north. A roughly 100-foot-wide vegetated buffer is adjacent to the river. No impacts to the river from the Site contamination have been identified and no surface water bodies are located on the Property. Risks to surface water from the contamination on the Property are considered low.

Land on the Property slopes gently toward the river, with the elevations at the southwest and southeast property corners at approximately 30 and 32 feet above mean sea level (ft amsl) and at the northwest and northeast property corners at approximately 28 and 29 ft amsl. The river is at an elevation of roughly 13 ft amsl, with the bank of the river steeply sloping down near the northern Property boundary.

Ecological Setting

Open space in proximity to the Property is primarily the forested banks of the Green River. A forested area is also located to the west of the Property, beyond Interurban Avenue South. Ecological receptors on the Property itself are considered unlikely.

Geology

The following Site Geology discussion is from the RI/FFS Report:

The Comfort Suites Property is in the Puget Sound region, which is underlain by Quaternary sediments deposited by a number of glacial episodes (Mullineaux 1965). Deposition occurred prior to, during, and following glacial advances and retreats, creating the existing subsurface conditions. The sediments in the Puget Sound region consist primarily of interlayered and/or sequential deposits of alluvial clays, silts, and sands that typically are situated over deposits of glacial till that consist of silty sand to sandy silt with gravel. Outwash sediments consisting of sands, silts, clays, and gravels were deposited by rivers, streams, and post-glacial lakes during glacial advances and recessions. Advance outwash sediments have been largely over-consolidated by the overriding ice sheets. These advance outwash sediments are overlain by a till-like layer and recessional outwash sediments that are less consolidated.

The Comfort Suites Property is in the Green River Valley and is underlain by alluvium deposited by the Green River and its tributary streams. The Green River flows south-southeast to north-northwest through the Comfort Suites Property vicinity. The alluvium consists mostly of sand, silt, and clay, and contains curvilinear lenticular deposits of gravels and thin peat lenses. The uppermost deposits typically consist of clayey silt and fine sand with local peat deposits. These deposits are 10 to 20 feet thick near Kent and increase in thickness to the north to nearly 20 to

40 feet near Tukwila. The lower portions of the alluvium predominantly consist of medium and coarse sand deposits more than 75 feet thick.

Soil encountered during Farallon's limited subsurface investigation in May 2022 consisted primarily of silty sand to depths between approximately 8 and 17 feet bgs. Poorly graded sand was encountered below the sandy silt to the maximum depth explored of 30 feet bgs. The lithology is described in detail in the boring and monitoring well construction logs included in Appendix B. Geological cross sections of the Comfort Suites Property are shown in Figures 2A and 2B.

Groundwater

The following Groundwater discussion is from the RI/FFS Report:

Local groundwater occurs within the uppermost alluvial deposits at depths generally less than 20 feet bgs (Luzier 1969). Groundwater flow in the Green River Valley generally follows the same gradient as the land and surface water and flows toward the north or northwest (Luzier 1969). Localized and/or seasonal variations in groundwater flow direction are not uncommon.

Groundwater was encountered during the 2022 limited subsurface investigation at the Comfort Suites Property at depths ranging from approximately 17 to 18.5 feet bgs. Based on groundwater elevations calculated using depth-to-water measurements (Table 1) collected on May 16, 2022, the interpreted groundwater flow direction is north-northwest toward the Green River. Groundwater contours from May 16, 2022 are depicted on Figure 5. Based on groundwater elevations measured on May 16, 2022, groundwater on the Comfort Suites Property flows toward the Green River to the north-northwest with a gradient of 0.0016 feet per foot.

Groundwater at the Comfort Suites Property is not used for drinking water, and no drinking water supply wells are located within 0.25 mile of the site. The Green River is north-adjointing to the Property. No surface water bodies are present on the Comfort Suites Property.

Water Supply

Potable water is provided to the subject property by the City of Tukwila. Based on Ecology's online GIS mapping system, the nearest Group A/B water supply wells and wellhead protection zones are located over a mile to the north, northeast, and west of the Site. Risks to water supply wells from the Site contamination appear to be low.

Site Diagrams

Figure 2 Site Plan with Sample Locations and Cross Section Lines

Figure 2A Cross Section A-A'

Figure 2B Cross Section B-B'

Figure 3 Historical Site Features with Sample Locations

Figure 4 Excavation Extents

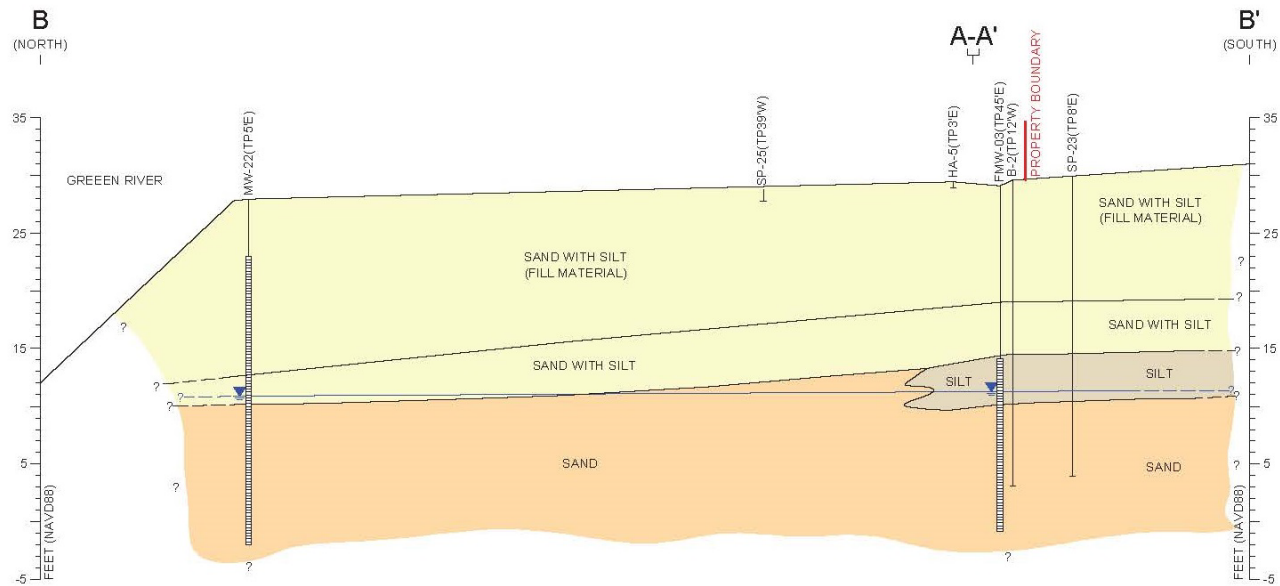
Figure 4A Excavation Detail – North

Figure 4BExcavation Detail – Southwest

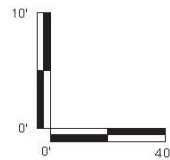
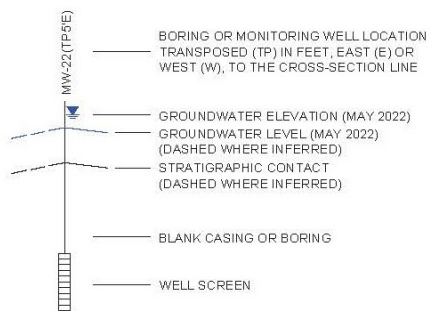


LEGEND		EXCAVATION EXTENT AND HOT SPOT ID		SCALE IN FEET		FARALLON CONSULTING		FIGURE 2	
○	SURFACE SOIL SAMPLE (GEOENGINEERS, 1998)	■	PROPERTY BOUNDARY	0	100	 Your Challenges. Our Priority. farallonconsulting.com Drawn By: Insurack		Washington Issaquah Bellingham Seattle Oregon Portland Baker City California Oakland Irvine	
●	BORING (AEG, 2021)	■	FAMILY FUN CENTER SITE BOUNDARY						
■	DIRECT PUSH BORING (GEOENGINEERS, 1997)	■	KING COUNTY PARCEL BOUNDARY			Checked By: AM © Project 2812 Eastwind Investments Inc 001 Parcel 2 Comfort Suites Maples 004 Figure 02_Site Plan_Sample Locations		Date: 9/22/2022 Disc Reference:	
■	DIRECT PUSH BORING (GEOTECH CONSULTANTS, 1997)	■	CROSS-SECTION LINE						
○	BORING (GEOENGINEERS, 1997)	■							
○	HAND AUGER BORING (GEOENGINEERS, 1997)	■							
○	BORING (APPLIED GEOTECHNOLOGY, 1989)	■							
○	MONITORING WELL (FARALLON, 2022)	■							
○	MONITORING WELL (GEOENGINEERS, 2002)	■							
○	MONITORING WELL (GEOENGINEERS, 1998)	■							
○	MONITORING WELL (GEOTECH CONSULTANTS, 1997)	■							
○	TEST PIT (APPLIED GEOTECHNOLOGY, 1989)	■							
○	TEST PIT (GEOENGINEERS, 1997)	■							
○	TEST PIT (GEOTECH CONSULTANTS, 1997)	■							

p:\Projects\2812-001\CAD\2812-001 X-Section.dwg 12/1/2022 3:44 PM (Nick Miller)



LEGEND



- NOTES:
1. ALL LOCATIONS ARE APPROXIMATE
 2. FIGURES WERE PRODUCED IN COLOR. GRAYSCALE COPIES MAY NOT REPRODUCE ALL ORIGINAL INFORMATION.



FARALLON
CONSULTING

Your Challenges. Our Priority. | farallonconsulting.com

Washington
Issaquah | Bellingham | Seattle

Oregon
Portland | Baker City

California
Oakland | Irvine

Drawn By: NM Checked By: MH

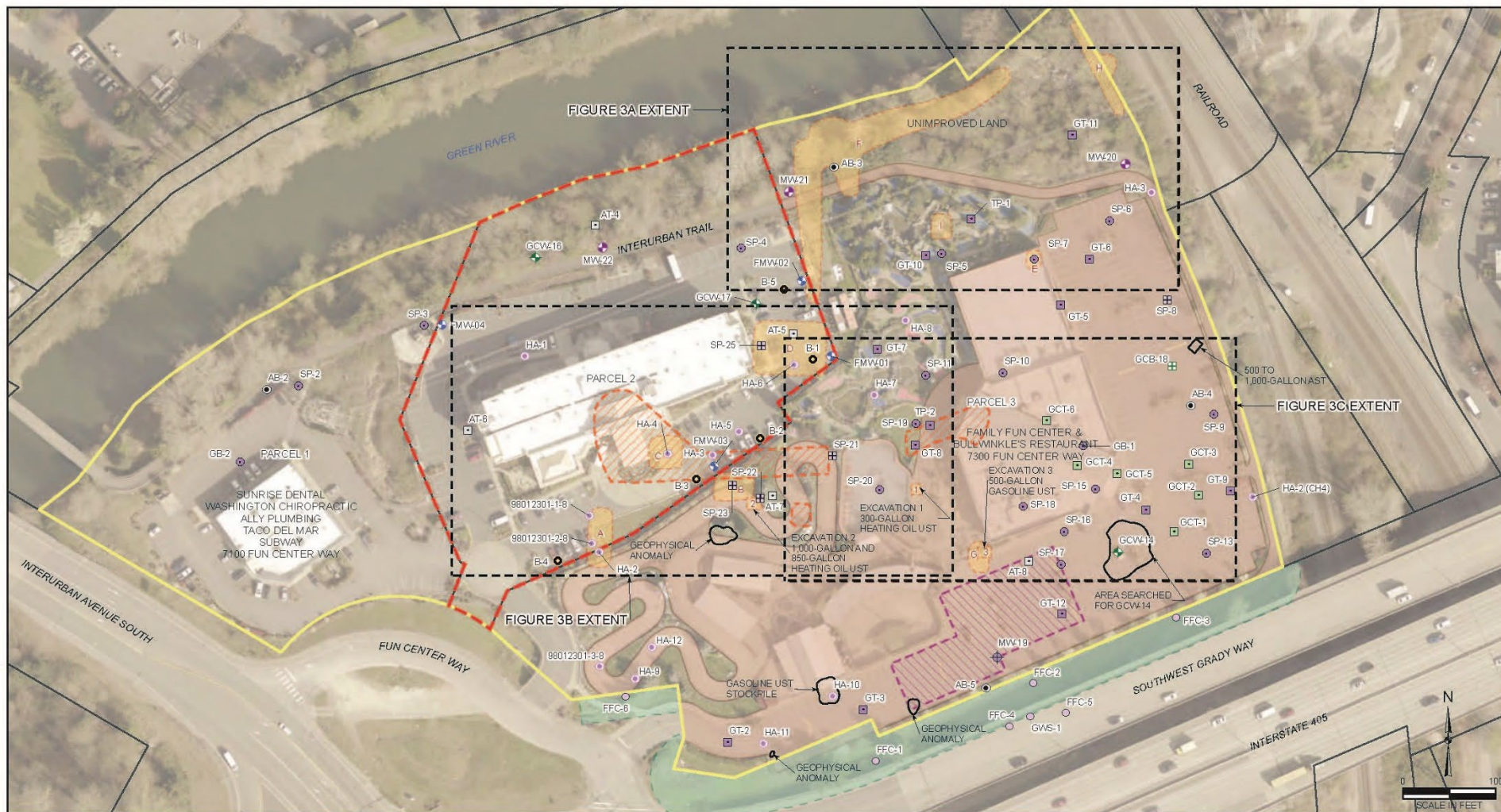
FIGURE 2B

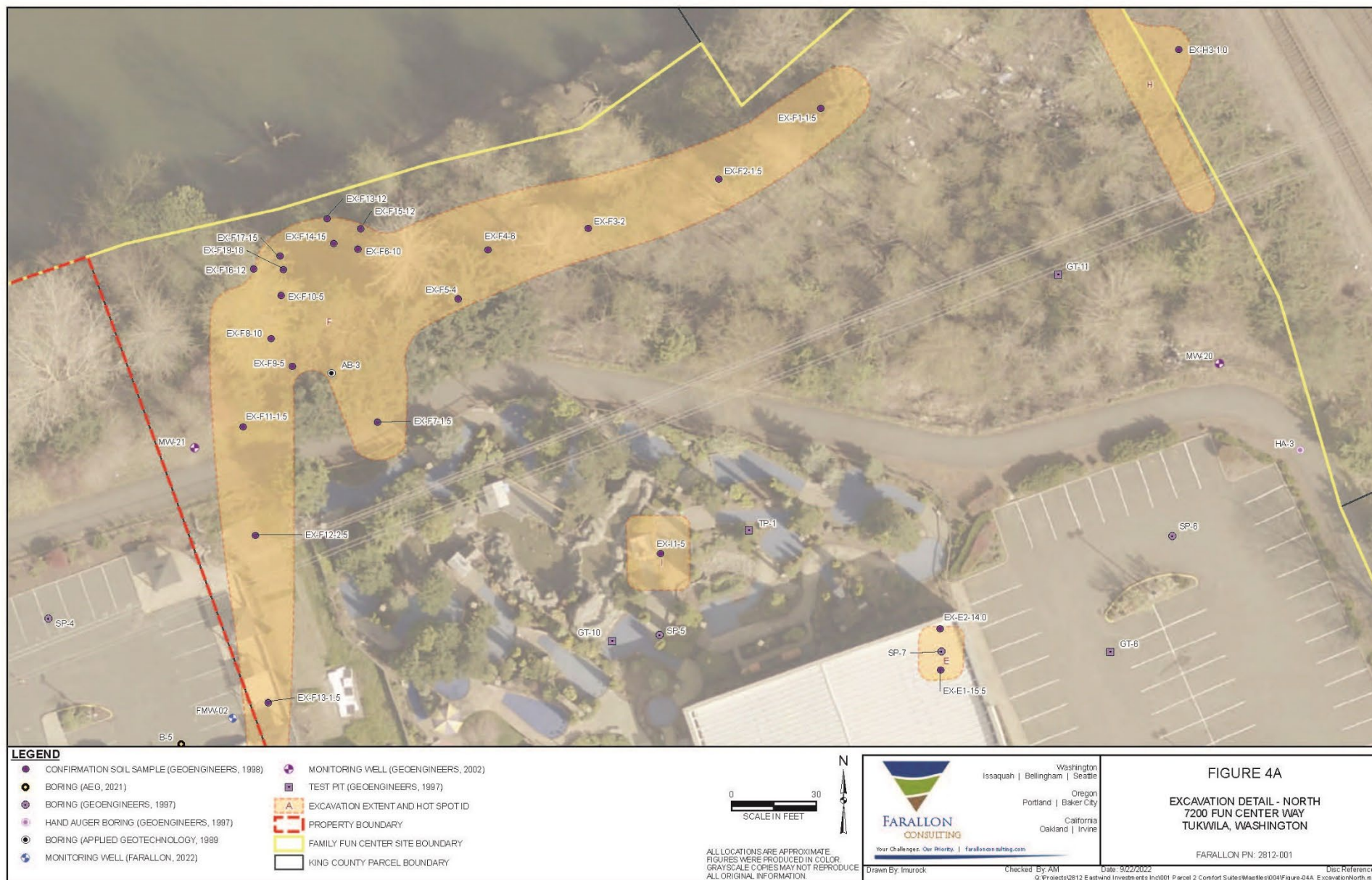
CROSS SECTION B-B'
2700 FUN CENTER WAY
TUKWILA, WASHINGTON

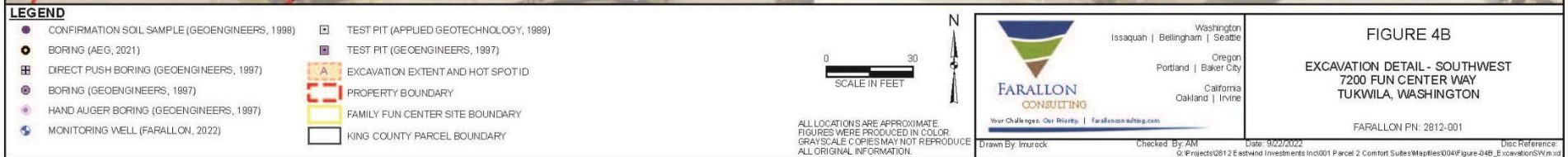
FARALLON PN: 2812-001



FIGURE 3
HISTORICAL SITE FEATURES
WITH SAMPLE LOCATIONS
7200 FUN CENTER WAY
TUKWILA, WASHINGTON







Enclosure B

Recorded Environmental Covenant



20230428000996

COVENANT Rec: \$214.50
4/28/2023 4:01 PM
KING COUNTY, WA

Return Address:

Erik Snyder, Section Manager
Toxics Cleanup Program HQ
Department of Ecology, P.O. Box
47600, Olympia, WA 98504-7600

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Environmental Covenant 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

1. Charles Musang Lee, Hyun S. Lee
2. _____

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. State of Washington, Department of Ecology
2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Lot 2 of City of Tukwila Boundary Line Adjustment No. L07-021, recorded June 25
2007, under recording No. 20070625900010 records of King Co. Auditor. Situated in the City of
Additional legal is on page _____ of document. Tukwila, County of King, State of Washington

Assessor's Property Tax Parcel/Account Number

☐ Assessor Tax # not yet

assigned

King County Parcel No. 2423049013

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

[Signature]

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return
Original Signed Covenant to:

Erik Snyder
Section Manager
Toxics Cleanup Program HQ
Department of Ecology
P.O. Box 47600, Olympia,
WA 98504-7600

Environmental Covenant

Grantor: Charles Musang Lee and Hyon S. Lee

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Brief Legal Description: Lot 2 of City of Tukwila Boundary Line Adjustment No. L07-021, recorded June 25, 2007 under recording No. 20070625900010 records of King County Auditor. Situated in the City of Tukwila, County of King, State of Washington

Tax Parcel Nos.: King County Parcel No. 2423049013

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as the Family Fun Center with Facility Site Identification No. 18434384, Cleanup Site Identification No. 385, and VCP Project ID No. XN0027. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Petroleum and Arsenic
Groundwater	None
Surface Water/Sediment	None

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents:

- *Phase II Environmental Site Assessment Report, Proposed Family Fun Center, Tukwila, Washington* dated November 17, 1997 prepared by GeoEngineers for Family Fun Centers;

- *Report of Environmental Services, Underground Storage Tank Removal Monitoring, Supplemental Subsurface Assessment, and Research Findings, Family Fun Centers, Tukwila, Washington* dated April 22, 1998 prepared by GeoEngineers for Family Fun Centers;
- *Cleanup Action Plan and Engineering Report, Proposed Family Fun Center, Tukwila, Washington* dated September 14, 1998 prepared by GeoEngineers for Family Fun Centers;
- *Off-Site Placement of On-Site Soils, Family Fun Center Site, 7300 Fun Center Way, Tukwila, Washington, File No. 5925-003-01, dated October 15, 1998, prepared by GeoEngineers;*
- *Placement of Soils on City of Tukwila Property, Family Fun Center Site, 7300 Fun Center Way, Tukwila, Washington, File No. 5925-003-01, dated January 15, 1999, prepared by GeoEngineers;*
- *Cleanup Action Report, Family Fun Center Site, Tukwila, Washington* dated May 1, 2000 prepared by GeoEngineers for Family Fun Centers;
- *Revised Cleanup Action Report, Family Fun Center Site, Tukwila, Washington* dated February 19, 2002 prepared by GeoEngineers for Family Fun Centers;
- *Report of Environmental Services, Compliance Monitoring Well Installation and 2002 Groundwater Sampling, Family Fun Center Site, Tukwila, Washington* dated November 15, 2002 prepared by GeoEngineers for XChange Solutions;
- *2004/2005 Compliance Groundwater Sampling, Family Fun Center Site, Tukwila, Washington* dated July 6, 2005 prepared by GeoEngineers for Family Fun Centers; and
- *Remedial Investigation/Focused Feasibility Study, Comfort Suites Property, 7200 Fun Center Way, Tukwila, Washington* dated October 18, 2022 prepared by Farallon Consulting.
- *Letter regarding Remedial Investigation/Focused Feasibility Study Addendum, Comfort Suites Property, 7200 Fun Center Way, Tukwila, Washington* dated December 12, 2022 from Mark Havighorst of Farallon to Frank Winslow of Ecology.

Records describing the extent of residual contamination and remedial actions conducted are available through Ecology and accessible at:

<https://apps.ecology.wa.gov/cleanupsearch/site/385#site-documents>

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property; however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its right as a holder, are not an interest in real property.

COVENANT

Charles Musang Lee and Hyon S. Lee, as Grantor and owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. Amendment to the Covenant.** Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

- a. Land use.** The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70A.305 RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.
- b. Containment of soil/waste materials.** The remedial action for the Property is based on containing petroleum and arsenic impacted soil under a portion of a cap consisting of asphalt pavement and located proximate to borings B-5 and HA-5 as illustrated in Exhibit C. The primary purpose of this cap is to prevent exposure of users of the Property to contaminated soils. As such, the following restrictions shall apply within the areas illustrated in Exhibit C:

Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written notification to Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the cap and report within thirty (30) days of the inspection any changes to the cap that would impair its performance.

Should the Grantor or its successors, grantees, or assigns, redevelop or make substantial new improvements to the Property, including removing all or a portion of the asphalt cap, Ecology may require treatment or removal of the contaminated soil.

c. Stormwater facilities. To minimize the potential for mobilization of contaminants remaining in soil on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property without prior written approval from Ecology.

d. Groundwater use. The groundwater beneath the Property has not been identified to be contaminated. However, the soil contamination on the Property presents a risk to groundwater. Therefore, the groundwater shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

e. Monitoring. The Grantor shall decommission groundwater monitoring wells at the Property in accordance with Washington Administrative Code 173-160-381.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE [COUNTY] COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d.

Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

East Winds Investments, Inc. 7200 Fun Center Way Tukwila, WA 98188 (425) 227-7200 hotelwak.lee@gmail.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
--	---

Section 5. Modification or Termination.

a. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

- i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
- ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

- a.** This Covenant is being freely and voluntarily granted by the Grantor.
- b.** Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

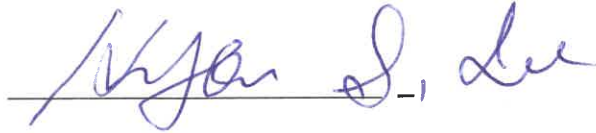
The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 7th day of APRIL, 2023.



by: Charles Musang Lee

Title: Owner



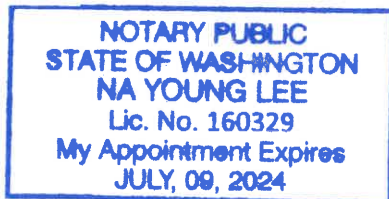
by: Hyon S. Lee

Title: Owner

STATE OF Washington

COUNTY OF King

On this 7th day of April, 2023, I certify that Charles Musang Lee personally appeared before me, acknowledged that he is the individual described herein and who executed the within and foregoing instrument and signed the same at his free and voluntary act and deed for the uses and purposes therein mentioned.



Notary Public in and for the State of Washington

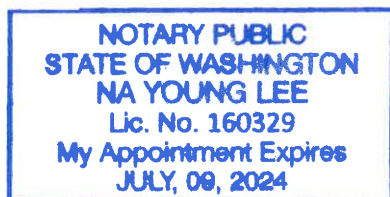
Residing at Bellevue

My appointment expires July 9th 2024

STATE OF Washington

COUNTY OF King

On this 7th day of April, 2023, I certify that Hyon S. Lee personally appeared before me, acknowledged that she is the individual described herein and who executed the within and foregoing instrument and signed the same at his free and voluntary act and deed for the uses and purposes therein mentioned.



Notary Public in and for the State of Washington

Residing at Bellevue

My appointment expires July 9th 2024

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



by: Erik Snyder

Title: Section Manager, Toxics Cleanup Program HQ Section

Dated: 4-20-23

STATE OF WASHINGTON

COUNTY OF KING

On this 20th day of April 20, 2023, I certify that Erik Snyder personally appeared before me, acknowledged that he is the Section Manager, Toxics Cleanup Program HQ Section of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said corporation.



Treasure A Mitchell
Notary Public in and for the State of Washington

Residing at McCleary, WA

My appointment expires 8-2-2023

Exhibit A

LEGAL DESCRIPTION

Lot 2 of City of Tukwila Boundary Line Adjustment No. L07-021, recorded June 25, 2007 under recording No. 20070625900010 records of King County Auditor. Situated in the City of Tukwila, County of King, State of Washington.

Exhibit B

PROPERTY MAP

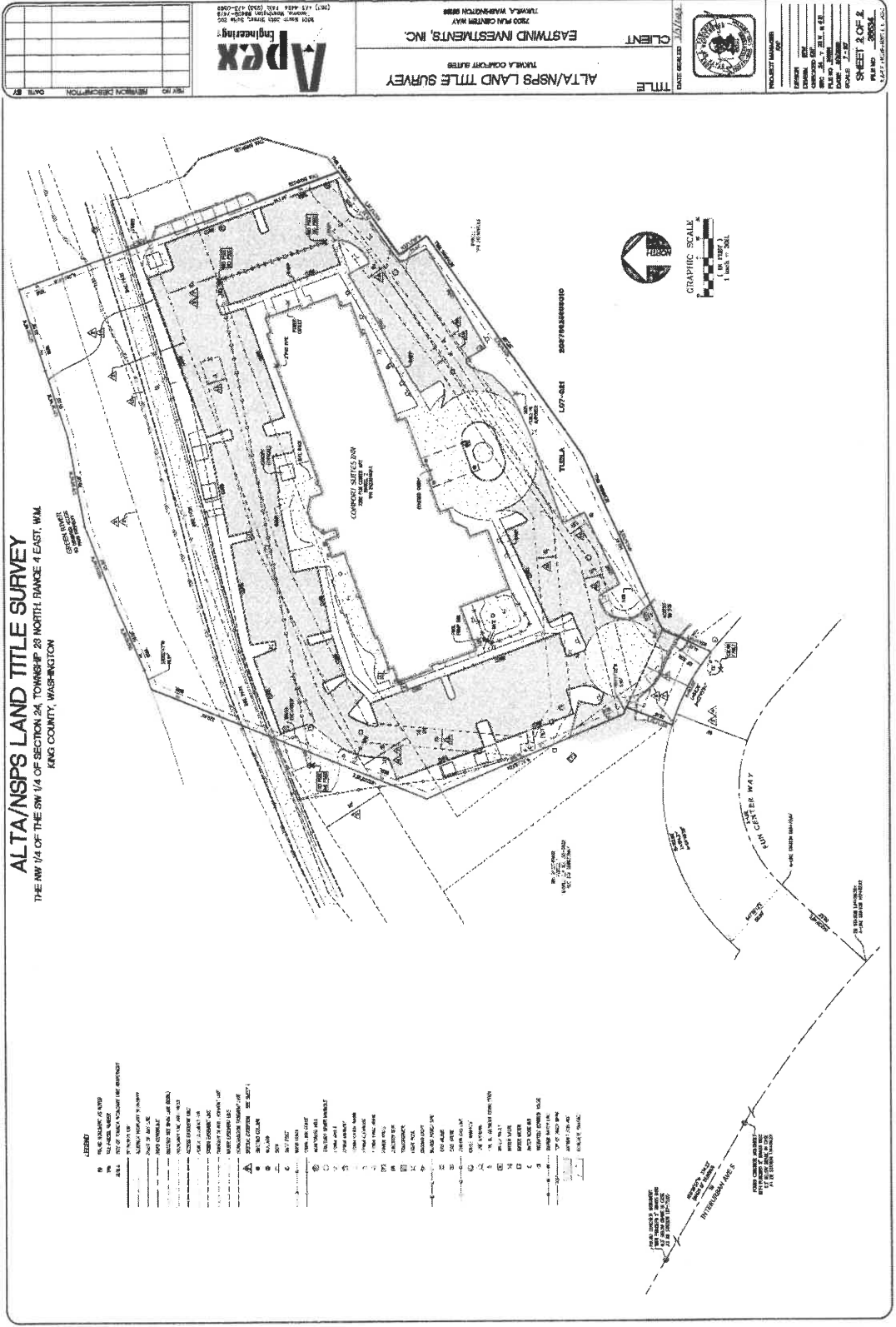


Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

