

Record Date: 4/21/2023 10:43 AM

Electronically Recorded King County, WA

After Filing Return
Original Signed Covenant To:
Lucy McInerney
Toxics Cleanup Program
Department of Ecology
3190 – 160th Avenue SE
Bellevue, Washington 980008

ENVIRONMENTAL COVENANT

Grantor(s):

Lake Washington East, LLC, a Washington limited liability company

☐ Additional names on page _____ of document

Grantee(s):

1. State of Washington, Department of Ecology ("Ecology")
2. Barbee Mill Co., Inc., a Washington corporation ("Barbee")

☐ Additional names on page _____ of document

Abbreviated Legal Description (lot, block and plat name, or section-township-range):

A portion of government lot 5 in section 29, township 24 north, range 5 east, W.M.
and shoreland adjoining lying westerly of the Northern Pacific Railroad right-of-way
and southerly of a line in King County, Washington.

☒ Additional legal description is on page 12 of document

Assessor's Property Tax Parcel Account Number(s): 2924059002

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 of a MTCA site commonly known as the Barbee Mill Site, Facility Site ID#76716221. The former Barbee Mill Property, which is also part of the Barbee Mill Site, is the subject of an Environmental Covenant (recording # 20080606001208) recorded in June 2008 pursuant to an Agreed Order with Barbee.
- c. Hazardous substances released on the Barbee Mill Property have migrated onto an adjacent property known as Quendall Terminals, which is part of a United States Environmental Protection Agency ("EPA") Superfund Site under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"). That portion of Quendall Terminals that is the subject of this Covenant is legally described in Exhibit A and illustrated in Exhibits B-1 and B-2, both of which are attached (hereafter "Covenant Area"). If there are differences between these Exhibits, the legal description in Exhibit A shall prevail.
- d. The Covenant Area is the subject of remedial action conducted under MTCA. At the time this Covenant is being filed, the final remedial action has not been selected by Ecology. This Covenant is required because of the potential for the following contaminants to have migrated from the Barbee Mill Property to the Covenant Area or to be present on the Covenant Area as the result of the activities on Quendall Terminals:

Potential Contaminants Migrating from the Barbee Mill Property:

Medium	Principal Contaminants Present
Soil	N/A
Groundwater	Arsenic

Potential Contaminants Resulting from Activity on Quendall Terminals:

Medium	Principal Contaminants Present
Soil	Arsenic, Chromium, Lead, PAHs, Ethylbenzene
Groundwater	Arsenic, PAHs, Dibenzofuran, Benzene, Ethylbenzene, Xylenes
Surface Water/Sediment	PAHs, Benzene, Toluene

e. It is the purpose of this Covenant to restrict certain activities and uses of the Covenant Area 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 at the Barbee Mill Site are available for public review through Ecology. A copy of the administrative record for the Quendall Terminals Superfund Site is on file with EPA Region 10 or its successor agency and is available for public review. In order to make arrangements for such review, a person may contact the EPA Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

f. Quendall Terminals is expected to be redeveloped as a mixed-use multi-family residential development (the "Redevelopment"). Barbee will design the remedial action to be in compliance with MTCA and consistent with the Redevelopment. The remedial design will be subject to Ecology review and approval.

g. 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, 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

Lake Washington East, LLC ("LWE") as Grantor and fee simple owner of the Covenant Area hereby grants to Ecology and Barbee, and their successors and assignees, 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 Covenant Area.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Covenant Area:

a. **CERCLA Remedial Actions.** The Covenant Area may be subject to additional remedial actions as directed by EPA and conducted under CERCLA. Upon advance written notice to Ecology, any EPA directed remedial action for the Quendall Terminals Superfund Site may occur and is not considered a violation of the terms of this Covenant.

b. **Interference with Remedial Action.** Barbee shall design the remedial action so that it complies with MTCA and is consistent with, and does not materially impact, the Redevelopment and the Grantor is agreeing to the restrictions in this Covenant in reliance on this representation by Barbee. The Barbee Mill Site remedial design will be subject to Ecology review and approval. Grantor agrees that once the remedial action is implemented, it will allow

operation, maintenance, inspection or monitoring of the remedial action. Barbee shall provide Grantor with a copy of any soil or water management plan for the Covenant Area that describes the requirements in the event soil or water that is impacted with arsenic is generated during future activities. Grantor agrees to comply with any soil or water management plan required by Ecology and Barbee shall be responsible for the incremental costs, if any, associated with compliance with the soil or water management plan.

c. Protection of Human Health and the Environment. The Grantor shall not engage in any activity on the Covenant Area that may threaten continued protection of human health or the environment associated with any residual arsenic groundwater contamination on the Covenant Area without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that is contained as a part of the remedial action or that exacerbates or creates a new exposure to any residual groundwater contamination remaining on the Covenant Area.

d. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Covenant Area without providing for continued compliance with this Covenant, as outlined in Section 4. In the event of a conveyance, Barbee agrees to continue adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant at Barbee's sole cost, except as provided herein.

e. Leases. It is anticipated that the Redevelopment may include buildings consisting of mixed use multi-family dwellings. If Grantor leases any buildings (as opposed to individual tenant spaces) or otherwise execute leases that permit lessees to disturb the soil or access groundwater underlying the building (e.g., a ground lease) in the Covenant Area, then such leases shall restrict uses and activities to uses and activities consistent with this Covenant and the Grantor shall notify all such lessees of the restrictions on the use of the Covenant Area, as outlined in Section 4.

f. Preservation of Reference Monuments. Grantor and Barbee shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should Grantor discover that a monument or marker has been damaged or destroyed, Grantor shall notify Barbee. Barbee shall have it replaced by a licensed professional surveyor within 30 days of notice from Grantor or from Barbee's discovery of the damage or destruction, whichever is earlier.

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 Covenant Area.

a. Remedial Action Components. Barbee shall design the remedial action so that it complies with MTCA and is consistent with, and does not materially impact, the

Redevelopment and the Grantor is agreeing to the restrictions in this Covenant in reliance on this representation by Barbee. The remedial design will be subject to Ecology review and approval. Subject to the foregoing, potential future remedial actions may include installation of physical components within the Covenant Area, such as a subsurface Passive Attenuation Zone (PAZ) similar to the PAZ located on the former Barbee Mill Property to the south. In addition, any activity on the Covenant Area that will compromise the integrity of such physical components of the remedy including but not limited to: drilling; digging; piercing the components with sampling device, post, stake or similar device; grading; excavation; or installation of underground utilities; is prohibited without prior written approval by Ecology. The Grantor shall report to Barbee within forty-eight (48) hours of the discovery of any damage to remedial action components. Barbee shall report to Ecology within forty-eight (48) hours of notice from Grantor or from Barbee's discovery of any damage to remedial action components, whichever is earlier. Unless an alternative plan has been approved by Ecology in writing, at its sole cost, Barbee shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

b. Groundwater Use. The groundwater within the Covenant Area illustrated in Exhibits B-1 and B-2 remains contaminated and 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 within this area for any purpose shall be considered potentially contaminated. The discharging party shall manage any discharge of this water in accordance with state and federal law at that party's sole cost.

c. Soil Disturbance. If Ecology requires a construction management plan for the Covenant Area, any activities that include disturbance of soil below the water table within the Covenant Area shall be conducted pursuant to the construction management plan.

d. Sediments. The restrictions in this Covenant do not apply to Lake Washington or the sediment.

e. Stormwater Facilities. To minimize the potential for mobilization of contaminants remaining in the groundwater on the Covenant Area, no stormwater infiltration facilities or ponds that allow stormwater to infiltrate to groundwater shall be constructed within the Covenant Area. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction.

f. Monitoring. Several groundwater monitoring wells and well points are located on the Covenant Area to monitor the performance of the remedial action. Barbee shall maintain clear access to these devices and protect them from damage and Grantor agrees to cooperate and coordinate with Barbee in these efforts. The Grantor shall report to Barbee within forty-eight (48) hours of the discovery of any damage to any monitoring device. Barbee shall report to Ecology within forty-eight (48) hours of notice from Grantor or from Barbee's discovery of any

damage to any monitoring device, whichever is earlier. Unless Ecology approves of an alternative plan in writing, Barbee shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs. If any groundwater monitoring wells and well points located on the Covenant Area must be relocated to accommodate the Redevelopment, Barbee shall relocate the groundwater monitoring wells and well points to locations approved by Ecology and Grantor agrees to cooperate and coordinate with Barbee in these efforts.

Section 3. Access.

- a. Barbee shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action and Grantor agrees to cooperate and coordinate with Barbee in these efforts.
- b. The Grantor freely and voluntarily grant Ecology and its authorized representatives, upon reasonable notice, the right to enter the Covenant Area 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 Covenant Area, and to inspect related records. The Grantor has granted access to Barbee pursuant to a recorded easement.
- c. No right of access or use by a third party to any portion of the Covenant Area is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest within the Covenant Area described in Exhibit A and illustrated in Exhibits B-1 and B-2, including but not limited to title, easement, certain leases as specified in Section 1.e, and security or other interests, must:

- i. Provide written notice to Barbee of the intended conveyance at least twenty eight (28) days in advance of the conveyance and Barbee shall provide written notice to Ecology within forty-eight (48) hours of receiving notice from Grantor.
- 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 KING 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 Barbee with a complete copy of the executed document (i.e., the deed or lease conveying the interest) within twenty eight (28) days of the date of execution of such document and Barbee shall provide a copy of such executed document to Ecology within forty-eight (48) hours of receiving such executed document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Barbee and Barbee shall promptly report such violation to Ecology. If Barbee becomes aware of any violation of this Covenant, Barbee shall promptly report such violation 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 or Barbee are authorized to respond to such an event in accordance with state and federal law. The party discovering such an event must notify all other parties 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. Barbee shall be responsible, at its sole cost, for response action to address a violation of this Covenant due to Acts of Nature.
- 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.

<u>For LWE:</u> Robert Cugini Altino Properties, Inc. P.O. Box 359 Renton, WA 98057 (425) 226-3900 robertc@barbeemill.com	<u>For Ecology:</u> 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 <u>For Barbee:</u> Robert Cugini Barbee Mill Co., Inc. P.O. Box 359 Renton, WA 98057 (425) 226-3900 robertc@barbeemill.com
---	--

Section 5. Modification or Termination.

a. Grantor must provide Ecology and Barbee with written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Covenant Area in a manner that is inconsistent with this Covenant.¹ Barbee will cooperate with and assist the Grantor to obtain Ecology approval of the activity or use. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction on the Covenant Area:²

- 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. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor or Barbee may submit a request to Ecology that this Covenant be amended or

¹ Example of inconsistent uses is drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

² An example of an activity that is unlikely to be considered a permanent modification is a proposal to repair an existing underground utility that passes through the Covenant Area. However, installing a permeable stormwater infiltration pond that allows stormwater to migrate to groundwater would be a permanent change.

terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. If Ecology has not signed the Covenant when first recorded, Grantor agrees to re-record the covenant with Ecology's signature when it has been approved by Ecology incorporating any reasonable changes requested by Ecology.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Barbee shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Barbee and/or 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. Except as provided herein, Barbee shall be responsible for all costs associated with implementation of this Covenant, provided however that, and except as otherwise specified herein, nothing in this Covenant shall limit Barbee's ability to recover such costs from a third-party, including but not limited to Grantor, in the case of Grantor's negligent or intentional actions. If a Party wishes to modify or terminate this Covenant, upon request by Ecology, that Party 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 Lake Washington East, LLC holds the title to the Property and he has authority to execute this Covenant.

EXECUTED this 21 day of December, 2022

LAKE WASHINGTON EAST, LLC, a
Washington limited liability company

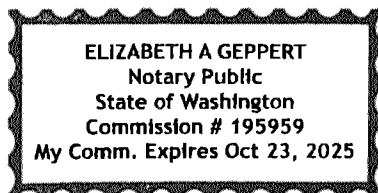
By: Altino Properties, Inc., Its Manager

By: Robert Cugini
Robert Cugini, President
Dated: 12/21/2022

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF KING

On this 21st day of December, 2022, I certify that Robert Cugini personally appeared before me, acknowledged that he is the President of Altino Properties, Inc., which is the Manager of Lake Washington East, LLC, the entity that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said limited liability company.



Elizabeth A. Geppert
Notary Public in and for the State of Washington
Residing at Auburn, WA
My appointment expires 10/23/2025

The Department of Ecology and Barbee Mill, hereby accept the status as GRANTEES and Holders of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: 

Print name: Robert W. Warren

Title: Section Manager, TCP-NWRO

Date: January 24, 2023

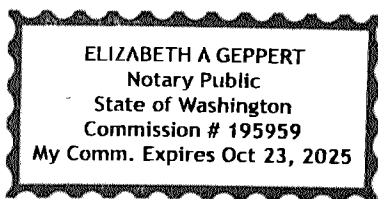
BARBEE MILL CO., INC., a Washington
corporation

By: Robert Cugini
Robert Cugini, President
Dated: 12/21/2022

CORPORATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF KING

On this 21st day of December, 2022 I certify that Robert Cugini personally appeared before me, acknowledged that he is the President 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 stated that he was authorized to execute said instrument for said corporation.



Elizabeth A. Geppert
Notary Public in and for the State of Washington
Residing at Auburn, WA
My appointment expires 10/23/2025

Exhibit A

LEGAL DESCRIPTION OF COVENANT AREA

THAT PORTION OF GOVERNMENT LOT 5 IN SECTION 29, TOWNSHIP 24 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 29;
THENCE NORTH 88°48'29" WEST ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 5 A DISTANCE OF 1372.78 FEET TO THE TRUE POINT OF BEGINNING;
THENCE NORTH 39°59'51" WEST, A DISTANCE OF 167.24 FEET;
THENCE NORTH 83°40'09" WEST, A DISTANCE OF 400.14 FEET;
THENCE NORTH 43°16'50" WEST, A DISTANCE OF 138.08 FEET MORE OR LESS TO THE ORDINARY HIGH WATER MARK OF LAKE WASHINGTON;
THENCE SOUTHWESTERLY ALONG SAID ORDINARY HIGH WATER MARK TO A POINT ON THE SOUTH LINE OF SAID GOVERNMENT LOT 5 BEARING NORTH 88°48'29" WEST FROM THE POINT OF BEGINNING;
THENCE ALONG SAID SOUTH LINE SOUTH 88°48'29" EAST A DISTANCE OF 765.74 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

CONTAINING 108,836 SQUARE FEET MORE OR LESS.

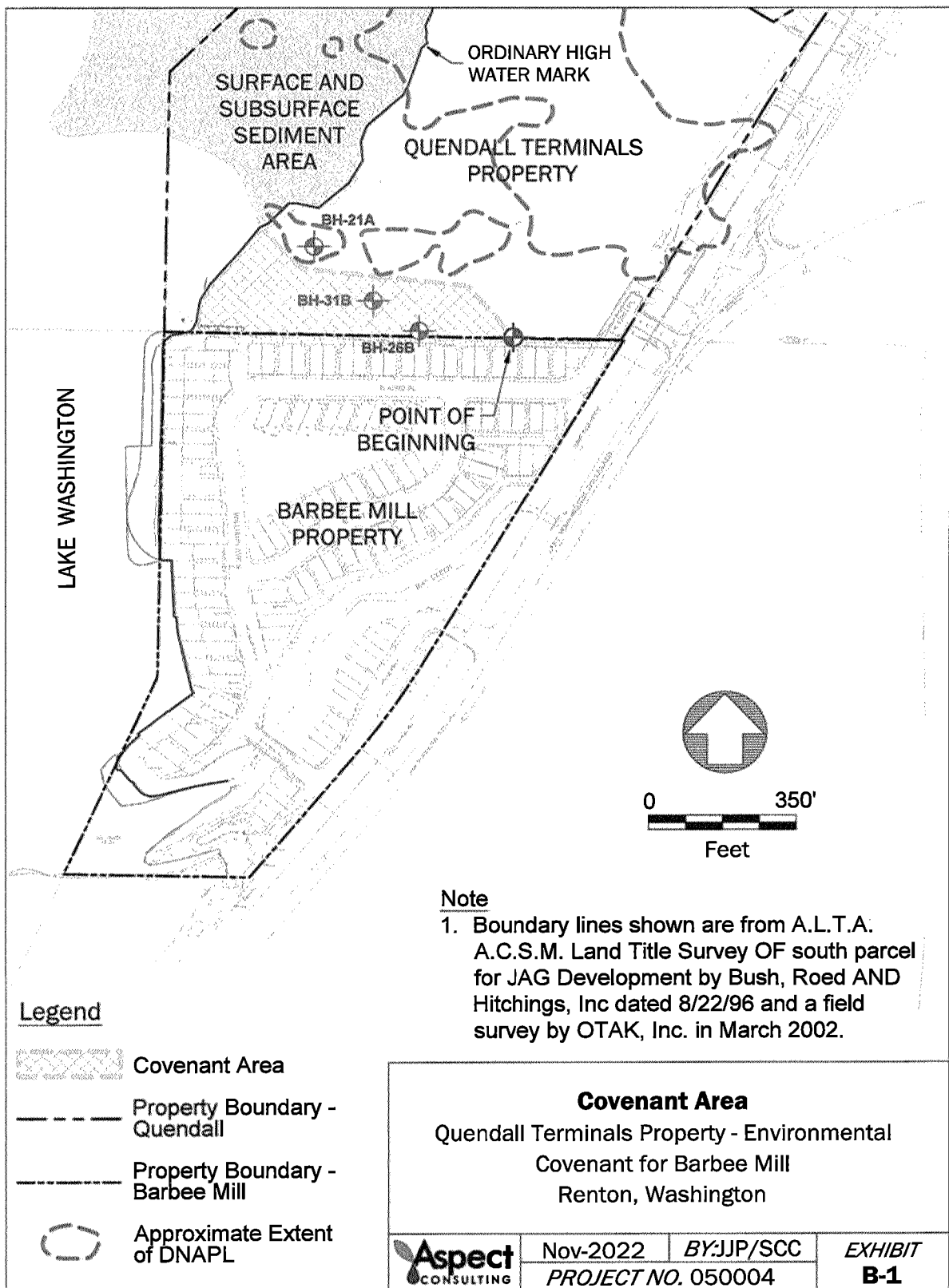
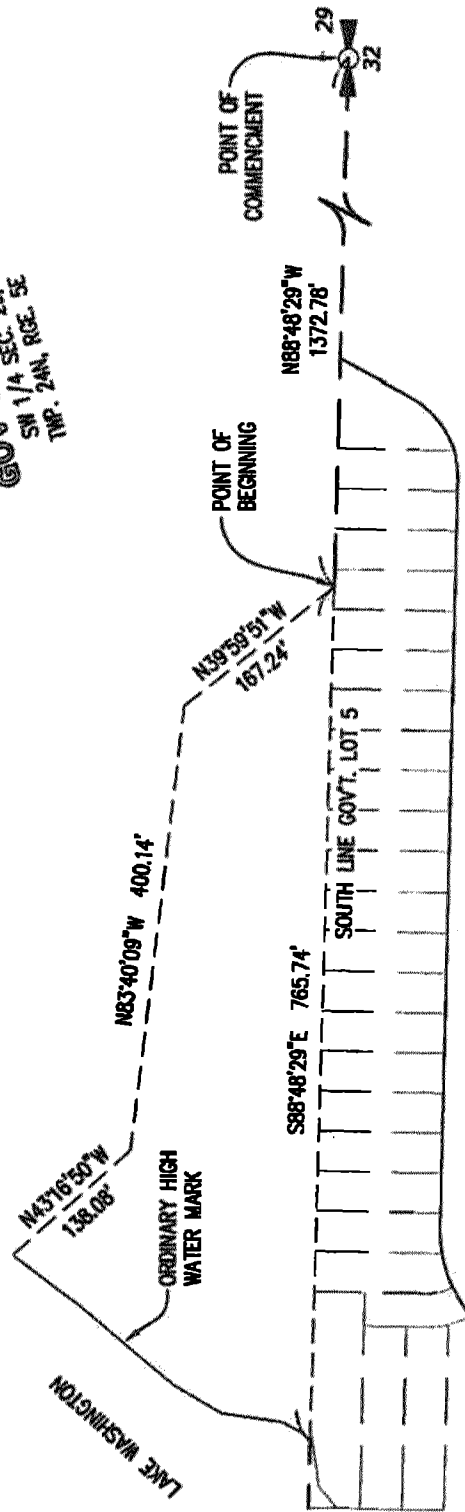


Exhibit B-2

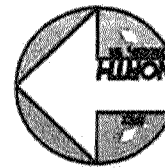
TPN 2924059002

GOV'T LOT 5
SW 1/4 SEC. 29,
T14N, R02E, SE

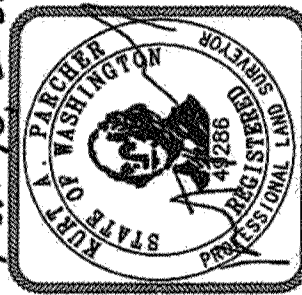


PLAT OF
BARBEE MILL
VOL. 246, PGS. 25-39
REC. NO. 20080208000182

COVENANT AREA DETAIL



SCALE
1" = 160'



Nov. 10, 2022

JOB #36438

Apex Engineering
2801 South 35th St., Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0599
© APEX ENGINEERING LLC 2022