

Ecopy



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775 • Olympia, WA 98504-7775 • (360) 407-6300

January 17, 2024

Richard (Mick) Phillips
4644 Center Ln NE
Olympia, WA 98516
rgmickphillips@gmail.com

Re: Transmittal of Signed Environmental Covenant

- **Site name:** Olympia Dry Cleaners
- **Site address:** 606 E Union Ave SE, Olympia, Thurston County, WA 98501
- **Facility/Site ID:** 1446
- **Cleanup Site ID:** 4722
- **Consent Decree No.:** 14-2-02104-3 (Ecology Docket DE 10908)

Dear Mick Phillips:

The Washington State Department of Ecology (Ecology) has signed an environmental covenant (EC) on January 12, 2024, affecting Thurston County tax parcel number 78204000100. This letter transmits the hard copy of the signed EC and Exhibits (EC package in **Enclosure A**).

Next, record the EC package in **Enclosure A** with Thurston County. **Do not include this letter as part of the recorded document.** Please keep a high-quality copy of the recorded EC for your records, and submit the original (wet signature) recorded hard copy of the EC to Ecology at:

Steve Teel
Toxics Cleanup Program
Department of Ecology
PO Box 47775
Olympia, WA 98504-7775

Contact Information

If you have any questions about this transmittal, please contact Steve Teel at (360) 890-0059 or steve.teel@ecy.wa.gov.

Sincerely,



Steve Teel, LHG
Toxics Cleanup Program
Southwest Region Office

Enclosure: Environmental Covenant to Record

SST/kw

By certified mail: 9489 0090 0027 6383 2221 89

cc by email: Scott Rose, LHG, AEG Atlas, LLC, srose@aegwa.com
Steve Marshall, marshallsj@comcast.net
Greg Burleson, burlesix@comcast.net
Ivy Anderson, Office of the Attorney General, ivy.anderson@atg.wa.gov
Rebecca S Lawson, PE, LHG, Ecology, rebecca.lawson@ecy.wa.gov
Jerome Lambiotte, CPG, Ecology, jerome.lambiotte@ecy.wa.gov
Ecology Site File

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Enclosure A

Environmental Covenant Package to Record

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After Recording Return
 Original Signed Covenant to:
 Steve Teel, LHG
 Toxics Cleanup Program
 Department of Ecology
 PO Box 47775
 Olympia, WA 98504-7775

Environmental Covenant

Grantor: 1000 Cherry Street, LLC

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

Brief Legal Description: **Section 14 Township 18 Range 2W Quarter SW SE Plat SWANS ADDITION TO OLYMPIA BLK 40 LT 1 & 2 Document 1/37 TOGW S 1/2 VAC ST ON N; TOGW LT 7 & 8 BLK 37 AND 1/2 VAC ST ON S AND W, LESS**

Tax Parcel Nos.: 78204000100

Cross Reference: **Consent Decree No. 14-2-02104-3**

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D 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 **Olympia Dry Cleaners, Facility/Site ID No. 1446**. 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 conducted 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	Tetrachloroethylene (PCE) and daughter products
Groundwater	PCE and daughter products

- 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:

- Floyd|Snider. 2014. *Feasibility Study Addendum, Former Olympia Dry Cleaners, Olympia, Washington*. 3 January.
- SoundEarth Strategies. 2013. *Revised Draft Feasibility Study, Former Olympia Dry Cleaners, Olympia, Washington*. 26 February.
- Sound Environmental Strategies. 2009. *Revised Draft Remedial Investigation Report, Former Olympia Dry Cleaners, Olympia, Washington*. 9 October.

- Washington State Department of Ecology. 2014. *Cleanup Action Plan, Olympia Dry Cleaners Site, 606 Union Ave SE, Olympia, Washington*. 29 October.
- Floyd|Snider. 2015. *Remedial Action Completion Report, Former Olympia Dry Cleaners, Olympia, Washington*. November.
- Floyd|Snider. 2016. *Compliance Monitoring Plan, Former Olympia Dry Cleaners, Olympia, Washington*. January.
- Floyd|Snider. 2017. *2016 Annual Summary Report for Groundwater Compliance Monitoring, Former Olympia Dry Cleaners, Olympia, Washington*. 13 February.
- Floyd|Snider. 2018. *2017 Annual Summary Report for Groundwater Compliance Monitoring, Former Olympia Dry Cleaners, Olympia, Washington*. 30 April.
- Associated Environmental Group, LLC (AEG). 2020. *Annual Groundwater Compliance Monitoring Data Summary Report (2018 & 2019), Former Olympia Dry Cleaners*, 25 February.
- AEG. 2020-2022. Ongoing compliance monitoring reports.

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, 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

1000 Cherry Street, LLC, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its 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 Property.

Section 1. General Restrictions and Requirements.

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

- 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.
- 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.
- 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. **Preservation of Reference Monuments.** Grantor 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 a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

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 70.105D 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 contaminated soil under a cap consisting of an 8,060-square-foot building, associated landscaping, and asphalt and concrete pavement. The primary purpose of this cap is to minimize the potential for contact with contaminated soil, minimize leaching of contaminants to groundwater, and to prevent mobilization of impacts in soil to groundwater via stormwater infiltration. As such, the following restrictions shall apply within the entire portion of tax parcel number 78204000100 and as 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 approval by 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 shall not alter or remove the existing structures on the Property in any manner that would expose contaminated soil, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structures illustrated in Exhibit C so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil.

To minimize the potential for mobilization of contaminants remaining in the soil on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property.

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, in writing and in a form or format approved by Ecology, the condition of the cap and any changes to the cap that would impair its performance.

c. Groundwater Use.

The groundwater beneath the Property 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 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.

d. Monitoring.

Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. Two seep water treatment socks, filled with granular activated carbon, are also present in the street gutter. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring or treatment device. Unless Ecology approves of an alternative plan 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.

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 THURSTON 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.

1000 Cherry Street LLC HelenAnn Washburn, Manager 2534B 70 th Ave. NW Olympia, WA 98502 (360) 464-8584 hawashburn@msn.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
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Section 5. Modification or Termination.

a. 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. 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. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. 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. Within ten (10) days of execution of this Covenant, Grantor 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. 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 shall be responsible for all costs associated with implementation of this Covenant. Furthermore, 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 4 day of August, 2023

Signature: Helen Ann Washburn

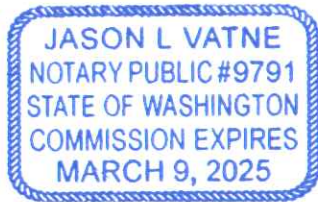
by: 1000 Cherry Street LLC
HelenAnn Washburn

Title: Manager

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 4th day of August, 2023, I certify that Helen Ann Washburn personally appeared before me, acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.



Jason L. Vatne
Notary Public in and for the State of Washington
Residing at Rochester, WA
My appointment expires 3/9/25

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Signature: Rebecca S. Lawson

by: Rebecca S. Lawson, PE, LHG

Title: Section Manager
Toxics Cleanup Program
Southwest Regional Office

Dated: 1/12/2024

STATE ACKNOWLEDGMENT

STATE OF WA

COUNTY OF Thurston

On this 12th day of January, 2024 I certify that Rebecca S. Lawson personally appeared before me, acknowledged that he/she is the Section Manager 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/she was authorized to execute said instrument for said state agency.



Kim Whitener

Notary Public in and for the State of Washington

Residing at Thurston County

My appointment expires 5-25-2024

Exhibit A

LEGAL DESCRIPTION

PARCEL A:

LOTS 7 AND 8, BLOCK 37 OF SWAN'S ADDITION TO OLYMPIA, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37. EXCEPT THAT PORTION CONVEYED TO THE TACOMA, OLYMPIA AND GRAY'S HARBOR RAILROAD COMPANY BY INSTRUMENT RECORDED SEPTEMBER 27, 1980 UNDER FILE NO. 8790. TOGETHER WITH THE EAST HALF OF VACATED CHERRY STREET ADJOINING SAID PREMISES ON THE WEST; AND TOGETHER WITH THE NORTH HALF OF VACATED 10TH AVENUE, LYING WESTERLY OF THE AFOREMENTIONED TACOMA, OLYMPIA AND GRAY'S HARBOR RAILROAD COMPANY'S PARCEL AND ADJOINING SAID PREMISES ON THE SOUTH.

PARCEL B:

LOTS 1 AND 2, BLOCK 40, SWAN'S ADDITION TO OLYMPIA, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, TOGETHER WITH THE SOUTH HALF OF VACATED STREET ADJOINING SAID LOTS ON THE NORTH; EXCEPT THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY.

IN THURSTON COUNTY, WASHINGTON.

Commonly known as:
1000 CHERRY ST SE
OLYMPIA, WA 98501

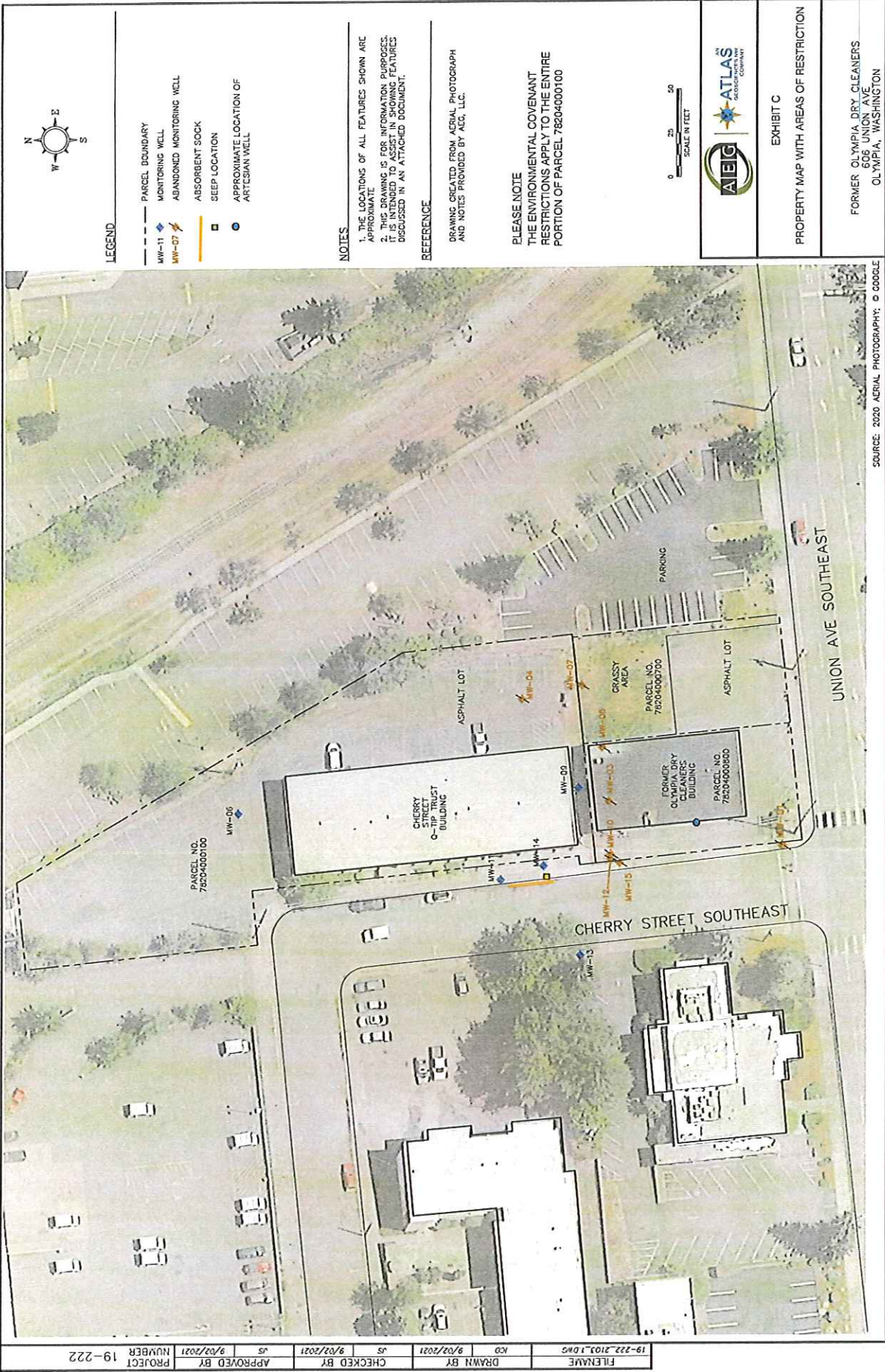
Parcel No(s): 7820-40-00100

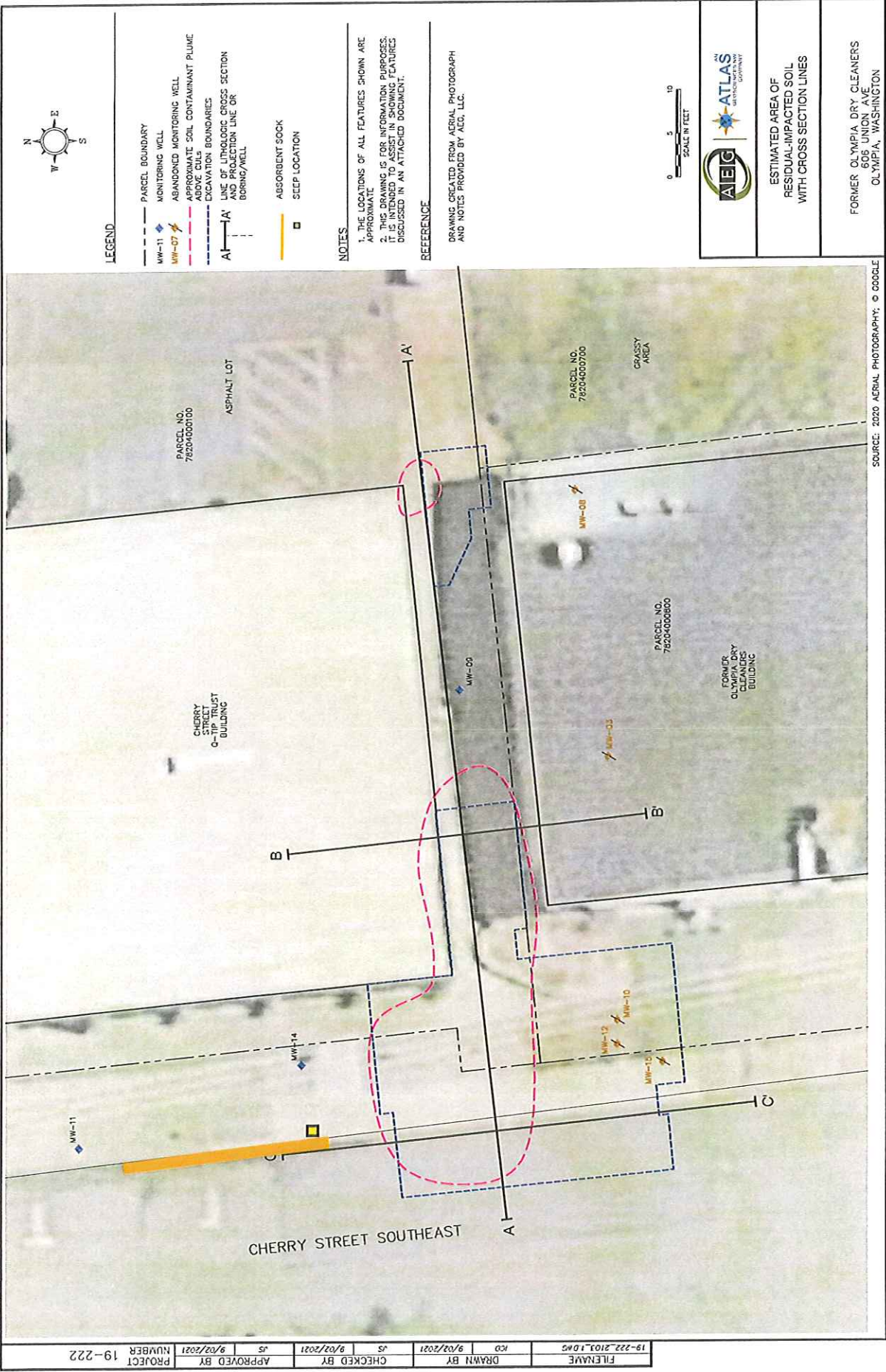
Exhibit B

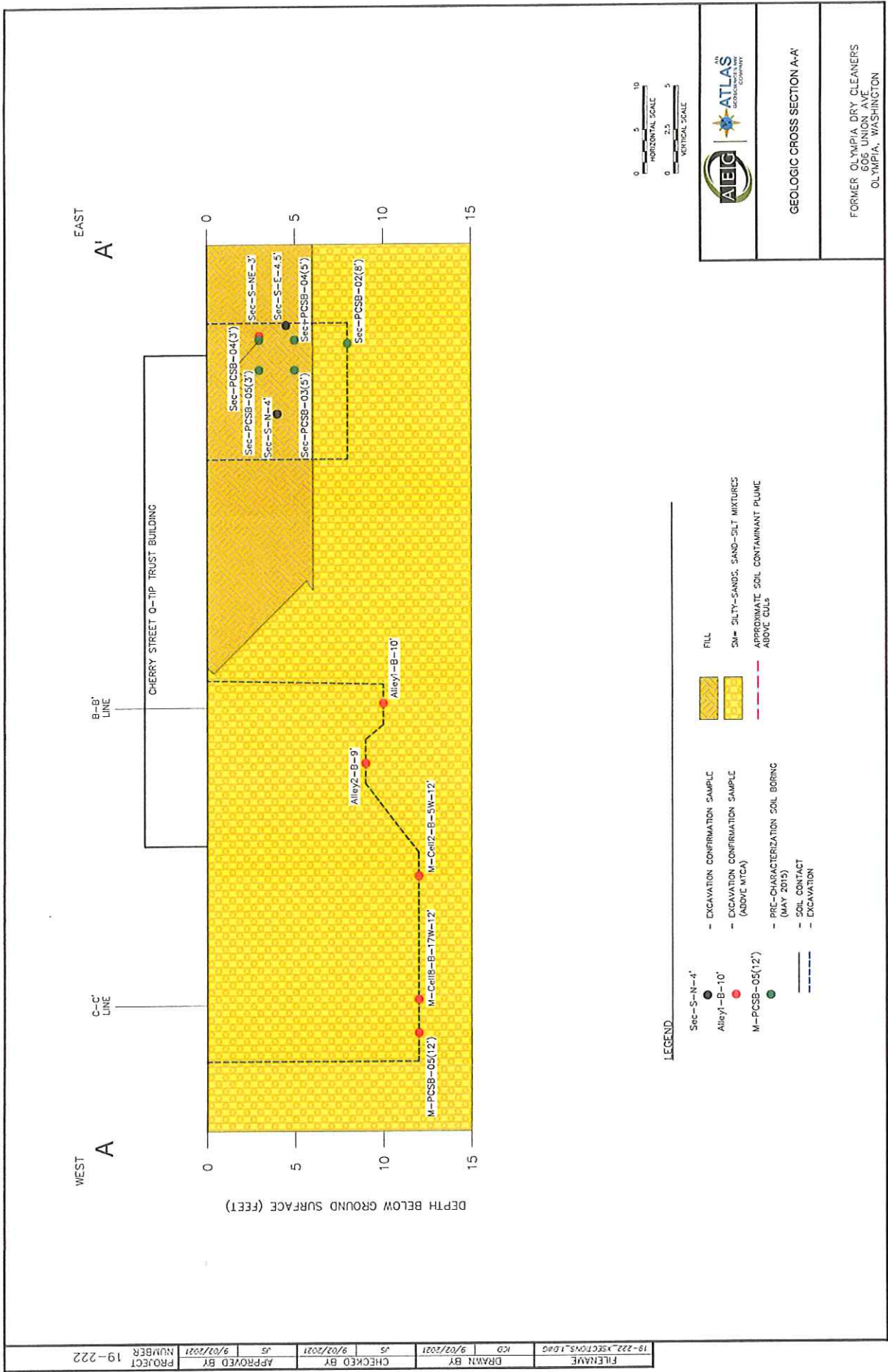
PROPERTY MAP

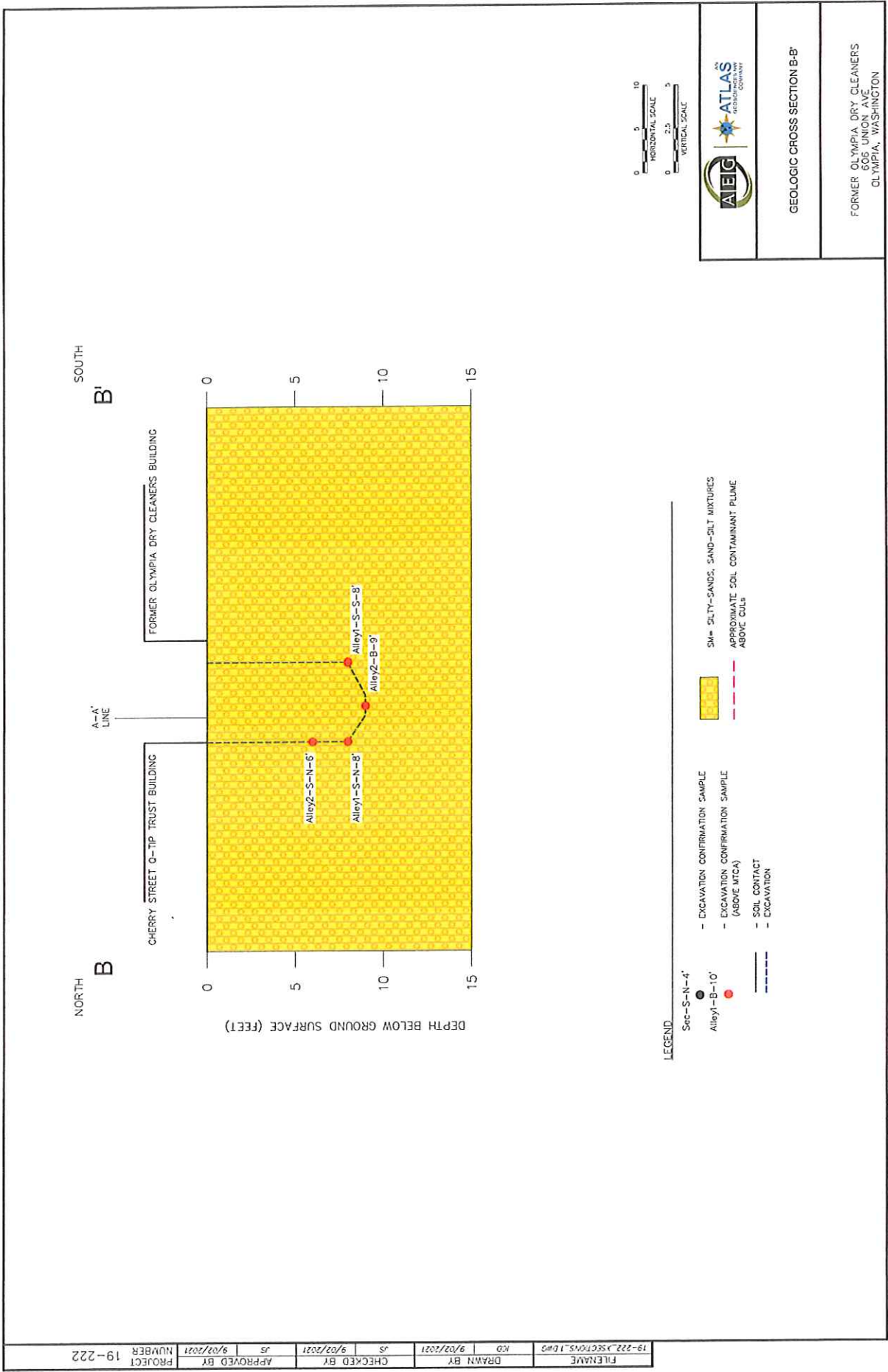
Exhibit C

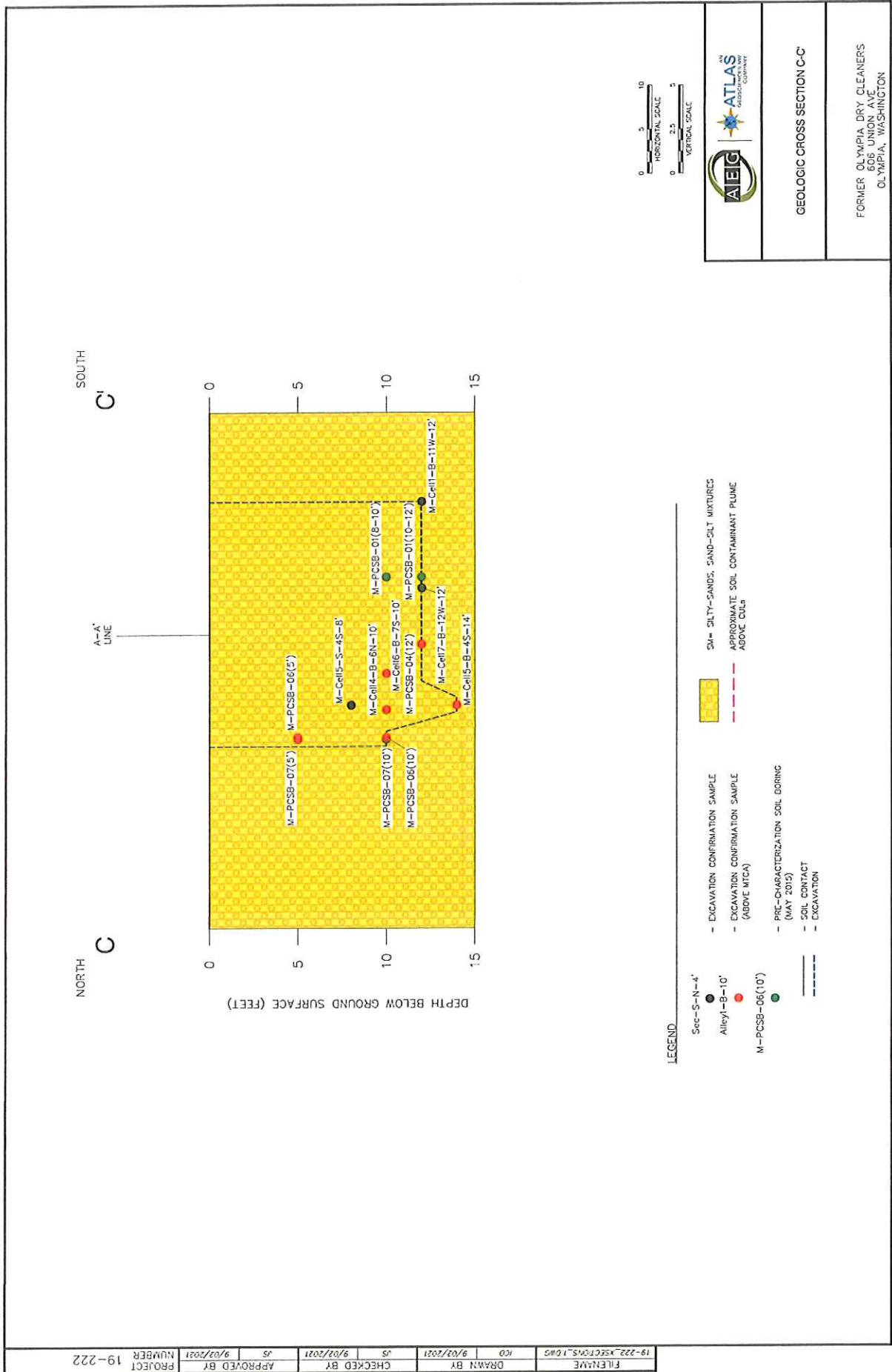
MAP ILLUSTRATING LOCATION OF RESTRICTIONS











After recording return to:

Legal Department
City of Olympia
P.O. Box 1967
Olympia, WA 98507-1967

Document Title:	Subordination Agreement
Grantor:	City of Olympia, a Washington municipal corporation
Grantee:	State of Washington, Department of Ecology
Abbreviated Legal Description:	Section 14 Township 18 Range 2W Quarter SW SE Plat SWANS ADDITION TO OLYMPIA BLK 40 LT 1 & 2 Document 1/37 TOGW S 1/2 VAC ST ON N; TOGW LT 7 & 8 BLK 37 AND 1/2 VAC ST ON S AND W, LESS 14 18 2W
Assessor's Tax Parcel Numbers:	78204000100

SUBORDINATION AGREEMENT

KNOW ALL PERSONS, that the **City of Olympia**, a Washington municipal corporation, the owner and holder of that certain right-of-way legally described as follows:

PARCEL B:

LOTS 1 AND 2, BLOCK 40, SWAN'S ADDITION TO OLYMPIA, AS RECORDED IN VOLUME 1 OF PLATS, PAGE 37, TOGETHER WITH THE SOUTH HALF OF VACATED STREET ADJOINING SAID LOTS ON THE NORTH; EXCEPT THE NORTHERN PACIFIC RAILROAD RIGHT-OF-WAY.

IN THURSTON COUNTY, WASHINGTON.

does hereby agree that said interest in right-of-way shall be subordinate to the interest of the State of Washington, Department of Ecology, under the Environmental (Restrictive) Covenant dated _____, 20____, executed by Helen Ann Washburn, Managing Member, 1000 Cherry Street, LLC, and recorded in Thurston County, Washington, under Auditor's File No. _____.

CITY OF OLYMPIA,
Grantor


Steven J. Burney, City Manager

9/26/23
Date

APPROVED AS TO FORM:

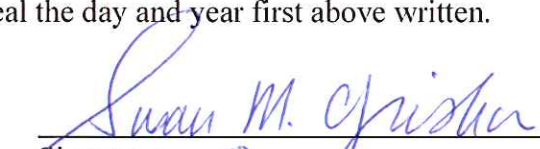
Mark Barber
Mark Barber, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On the 26th day of September 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.




Signature
Print Name Susan M. Grisham
NOTARY PUBLIC in and for the State of
Washington
Residing at Thurston County
My appointment expires: 11/18/2025