



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

**Central Region Office**

1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

January 19, 2024

Michael Ivancic  
Weidner Investment Service, Inc.  
9757 NE Juanita Drive, Suite 300  
Kirkland, WA 98034

**Re: Further Action Required for the Following Site:**

- **Site Name:** Weidner Sunnyslope West Residential Development
- **Site Address:** 3272 School Street, Wenatchee
- **Facility/Site ID:** 68413
- **Cleanup Site ID:** 15457
- **VCP Project No.:** CE0525

Dear Michael Ivancic:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Weidner Sunnyslope West Residential Development (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW.<sup>1</sup>

## **Opinion**

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

**YES. Ecology has determined that further action is necessary for a No Further Action determination for your Site.**

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70A.305 RCW, and its implementing regulations, Chapter 173-340 WAC<sup>2</sup> (collectively “substantive requirements of MTCA”). The analysis is provided below.

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

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

## Description of the Site

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This opinion applies only to the Site described below.

### Parcel Number

- 232020140050 (assigned street address of 2372 School Street, Wenatchee)

**Enclosure A** includes a diagram showing parcel 2320201450050.

### Contaminants

- The Site is defined by the nature and extent of contamination associated with lead and arsenic in the soil.

Note that many former orchard lands in Central Washington State contain concentrations of lead and arsenic in the soils exceeding Model Toxics Control Act cleanup levels due to legacy pesticide use. We encourage the use of Ecology's Dirt Alert mapping tool<sup>3</sup> to identify former orchards and sampling results.

## Analysis of the Cleanup

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Ecology has based its opinion on the documents listed in **Enclosure B** and has concluded **further action** is necessary to meet the requirements for a No Further Action determination.

You can request these documents by filing a records request.<sup>4</sup> For help making a request, contact the Public Records Officer at [recordsofficer@ecy.wa.gov](mailto:recordsofficer@ecy.wa.gov) or call (360) 407-6040. Before making a request, check if the documents are available on the Weidner Sunnyslope West Residential Development Site webpage.<sup>5</sup>

The hard and soft capping of soils and construction of buildings is sufficient to protect human health and the environment. A figure of areas that have been removed and/or capped with either structures, sidewalks, or at least 6 inches of clean imported soils is provided in **Enclosure B**.

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

More details are below:

### Site Characterization

The contamination at the parcel has been identified to be associated with the use of pesticides at former orchard lands. Lead and arsenic concentrations are present in the soil above state cleanup levels.

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<sup>3</sup> <https://apps.ecology.wa.gov/dirtalert/orchard?lat=47.125327&lon=-120.317961&zoom=7>

<sup>4</sup> <https://ecology.wa.gov/About-us/Accountability-transparency/Public-records-requests>

<sup>5</sup> <https://apps.ecology.wa.gov/cleanupsearch/site/15457>

## Cleanup Standards

Ecology used MTCA Method A Soil Cleanup Standards for Unrestricted Property Use, which are most appropriate for the Site. Specifically, those are 20mg/kg for arsenic and 250 mg/kg for lead.

## Partial Cleanup Conducted

Capping of soils and use of an environmental covenant was the selected remedy, and while the hard and soft capping has been conducted, the environmental covenant has not been prepared and filed at the Chelan County Auditor's office. Ecology will prepare the Environmental Covenant that details land use restrictions and requires you to follow the Cap Inspection as detailed in Appendix F of the Cleanup Completion Report for the Site. In order to complete the Environmental Covenant, please provide Ecology with a recent (less than 6 months old) Title Report for the property.

The cleanup action doesn't remove contamination from the entire parcel. According to the Model Remedy for Cleanup of Former Orchard Properties in Central and Eastern Washington (Ecology, 2021),<sup>6</sup> cleanup of a portion of a parcel is allowed under these circumstances: *If you wish to exclude a portion of your property from cleanup because it will remain in agricultural use or vacant, contact Ecology for approval. That portion of your property must be physically isolated from landscaped areas, and its restricted use must be documented in the institutional controls selected for your property.*

To meet cleanup levels, the remaining portion of Parcel 232020140050 must either achieve the MTCA cleanup levels for lead and arsenic in soils or be physically isolated from the development portion of your Site.

## Operations & Maintenance (O&M) Plan

The selected remedy requires the use of an institutional control; periodic reviews of the remedy will be conducted every five years. Use of the capping remedy is contingent upon the adequate maintenance of the hard and soft caps. A Cap Maintenance Plan for the parcel was provided to Ecology in your report dated September 28, 2023. The Cap Inspection checklist details steps required for inspection and repair of the cap. Regular inspections and maintenance must be implemented for the remedy to successfully reduce exposure to contaminated soils.

## No Further Action Requirements

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For Ecology to provide a final No Further Action determination for this Site, the following activities must be completed:

1. An environmental covenant for the property must be recorded at the Chelan County Auditor's office, and Ecology must have received a date stamped copy of the environmental covenant.

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<sup>6</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2109006.html>

Please note that Ecology will prepare the draft environmental covenant and send it to you for your review before you sign and record it. Ecology will also conduct all necessary outreach with local planning authorities while preparing the environmental covenant.

2. Ecology will need evidence that the Site is physically separated from the portion of Parcel 232020140050 that has not been remediated.

## **Limitations of the Opinion**

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### **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:

- Change the boundaries of the Site.
- 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).<sup>7</sup>

### **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 if the action you performed is substantially equivalent. Courts make that determination. See RCW 70A.305.080<sup>8</sup> and WAC 173-340-545.<sup>9</sup>

### **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).<sup>10</sup>

## **Contact Information**

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Thank you for choosing to clean up your property under the Voluntary Cleanup Program (VCP). After you have addressed our concerns, you may request another review of your cleanup. Please do not hesitate to request additional services as your cleanup progresses. We look forward to working with you.

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<sup>7</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

<sup>8</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

<sup>9</sup> <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

<sup>10</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

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For more information about the VCP and the cleanup process, please visit your Voluntary Cleanup Program website.<sup>11</sup> If you have any questions about this opinion, please contact me by phone at 509-571-6661 or email at [Mary.Monahan@ecy.wa.gov](mailto:Mary.Monahan@ecy.wa.gov).

Sincerely,



Mary Monahan  
Toxics Cleanup Program  
Central Regional Office

Enclosures (2):           A – Diagrams of the Site (including the Property)  
                                  B – Basis for the Opinion: List of Documents

By certified mail:       9589 0710 5270 0589 5641 67

cc:       Breeyn Greer, Aspect Consulting, LLC

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<sup>11</sup> [www.Ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.Ecy.wa.gov/programs/tcp/vcp/vcpmain.htm)



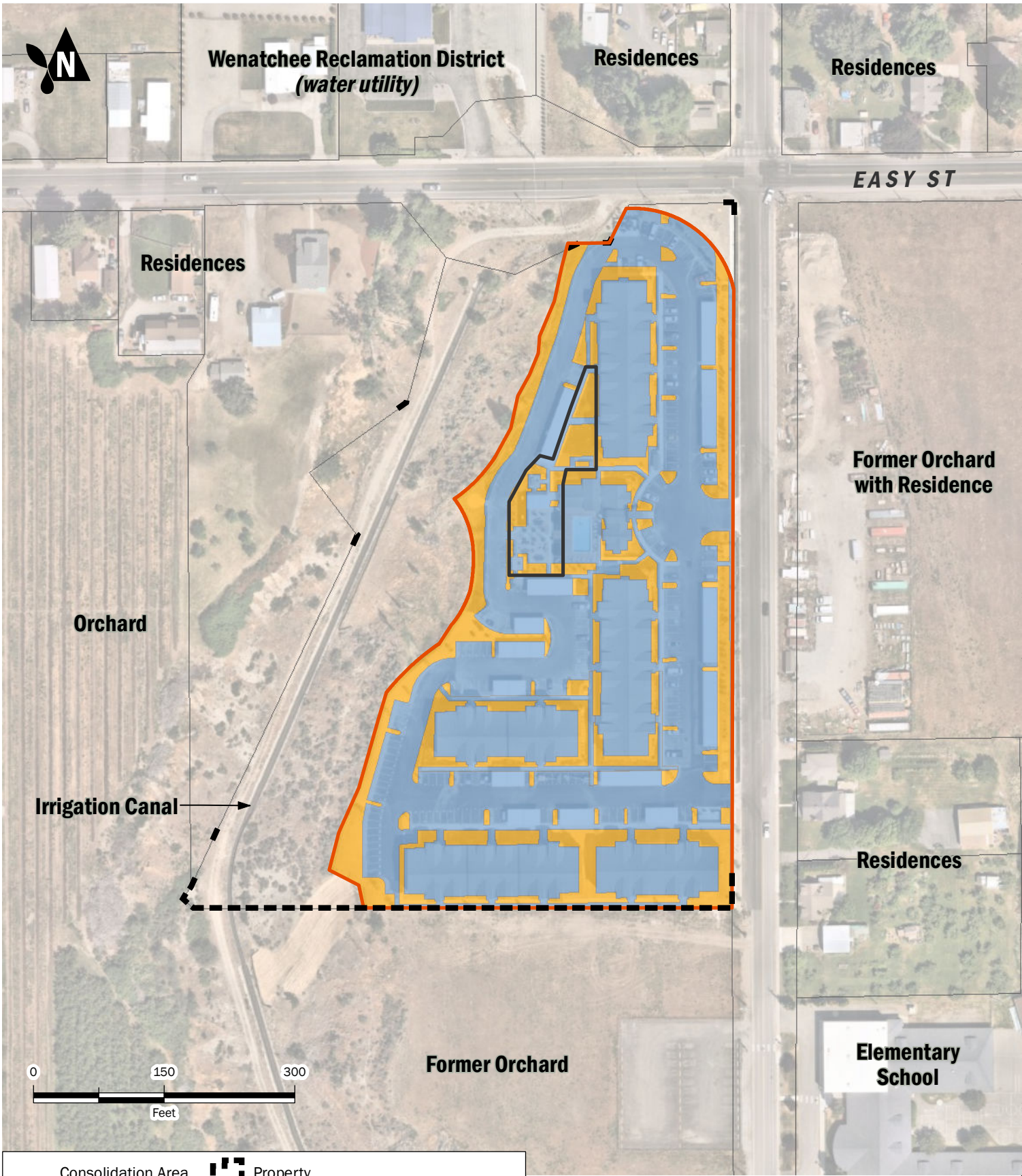
## Enclosure A

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Diagrams of the Site







Consolidation Area	Property
Hard Cap	Site Boundary
Soft Cap	Chelan County Tax Parcel

# Cleanup Action Summary Map

Cleanup Action Completion Report  
Weidner Sunnyslope West Residential Development  
Sunnyslope, Washington

	AUG-2023	BY: BMG / NLK	FIGURE NO. <b>6</b>
	PROJECT NO. 170670	REVISED BY: HMD	

G:\Path: G:\projects\Weidner\Apartment\170670\Weidner\Sunnyslope\Cleanup Action Completion Report\06 Contaminated Soil Consolidation.mxd | Coordinate System: NAD 1983 StatePlane Washington North FIPS 4601 Feet | Date Saved: 8/9/2023 | User: hauran | Print Date: 8/9/2023









## Enclosure B

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List of Documents for Basis of Opinion



## List of Documents for Basis of Opinion

1. Contaminated Soil Management Plan for Weidner – Sunnyslope West Property, Aspect Consulting, August 20, 2021<sup>1</sup>
2. Cleanup Action Completion Report-Weidner Sunnyslope West Residential Development, Aspect Consulting, Inc. September 28, 2023<sup>2</sup>
3. Model Remedies for Former Orchard Properties in Central and Eastern Washington, Ecology, 2021<sup>3</sup>
4. Ecology Opinion on Proposed Cleanup Action for Weidner Sunnyslope West Residential Development, September 10, 2021<sup>4</sup>

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<sup>1</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/104558>

<sup>2</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/131494>

<sup>3</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/2109006.html>

<sup>4</sup> <https://apps.ecology.wa.gov/cleanupsearch/document/105203>