

## STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

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

January 25, 2024

Jieun Shon Cornerstone 35 LLC 401 North 36th St, Ste 201 Seattle, WA 98103 ji@evolutionprojects.com

## Re: No Further Action opinion for the following Site

Site name:	Evolution Stone Way
Property address:	3524 Stone Way N, Seattle, King County, WA 98103
Facility/Site ID:	41231
Cleanup Site ID:	15522
VCP Project ID:	XN0020

Dear Jieun Shon:

The Washington State Department of Ecology (Ecology) received your request for an opinion regarding the sufficiency of your independent cleanup of the Evolution Stone Way site (Site). The Site was enrolled in the expedited Voluntary Cleanup Program (VCP) on March 4, 2022. After enrolling, Ecology issued a No Further Action Likely opinion letter on April 5, 2022. Subsequently, Ecology received a Cleanup Action Report on July 19, 2023.

This letter provides our opinion and analysis. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), chapter <u>70A.305</u> RCW.<sup>1</sup>

## Opinion

## Ecology has determined that no further remedial action is necessary at the Site.

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 in **Enclosure B**.

<sup>&</sup>lt;sup>1</sup> 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 <u>173-340</u> WAC<sup>2</sup> (collectively called "MTCA").

## **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), regardless of parcel boundaries:

- Petroleum (gasoline-range [GRO], diesel-range [DRO], and heavy oil-range [ORO]) into the soil.
- Petroleum (GRO and ORO) into the groundwater.
- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) into the soil.
- Arsenic into the groundwater.

As further discussed below, the Site appears to be fully contained within King County parcel 182504-9074, hereinafter referred to as "the Property". Construction of a new multi-story commercial (office and retail) building on the Property began in November 2022 and is anticipated to be complete in 2024.

The cPAH contamination in soil may be associated with historical fill materials that are present in the area surrounding the Property. Hence it is possible that such cPAH contamination may be also present in soils beneath adjoining properties. Similarly, dissolved arsenic in groundwater may also be present beneath other properties in the area at concentrations above regional background due to fill materials containing organic matter resulting in mobilization of arsenic. The fill material was typically described as silt sand with gravel and wood and brick debris.

**Enclosure A** includes Site and Property description, history, and diagrams. Please note a parcel of real property can be affected by multiple sites. At this time, Ecology has no information that other sites affect the parcel(s) associated with this Site.

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

## **Basis for the Opinion**

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

- 1. Farallon Consulting. *Cleanup Action Report, 3524 Stone Way North, Seattle, Washington.* July 1, 2023.
- 2. Farallon Consulting. *Environmental Media Management Plan, 3524 Stone Way North, Seattle, Washington*. August 4, 2022.
- 3. Farallon Consulting. Remedial Investigation/Focused Feasibility Study, and Cleanup Action Plan 3524 Stone Way North, Seattle, Washington. February 22, 2022.

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

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.

## Site Contaminants

Site contaminants found above MTCA cleanup levels in soil are petroleum (GRO, DRO, and ORO) and cPAHs. Site contaminants found above MTCA cleanup levels in groundwater are petroleum (DRO and ORO) and arsenic.

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

<sup>&</sup>lt;sup>4</sup> https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=15522

## Soil Characterization

The extent of soil contamination appears to be sufficiently defined for the selection of cleanup levels and cleanup actions at the Site. Soil was characterized during investigations conducted between 2017 and 2021 and remedial excavation work conducted in late 2022 through early 2023.

A total of 129 soil samples were collected from 102 locations at depths between 2.0 and 18 feet below ground surface (ft bgs). These samples include 71 excavation confirmation soil samples collected from the excavation floor and sidewalls.

The soil characterization work identified the following cleanup level exceedances:

Contaminant	Number of Cleanup Level Exceedances/ Samples	Maximum Concentration <sup>a</sup> (mg/kg)	Method A Soil Cleanup Level <sup>a</sup> (mg/kg)
DRO	3/129	4,100	2,000
ORO	3/129	6,100	2,000
GRO	3/113	440	100 <sup>b</sup>
cPAHs	13/100	15.23	0.1

#### Table 1. Cleanup level Exceedances for Soil

<sup>a</sup> Measured in milligrams per kilogram (mg/kg)
<sup>b</sup> Cleanup level based on no benzene present

ORO = Heavy oil range petroleum hydrocarbons GRO = Gasoline range petroleum hydrocarbons

DRO = Diesel range petroleum hydrocarbons

The vertical extent of soil contamination was found to be limited, with soil cleanup level exceedances to a maximum depth of 5.0 ft bgs and all of these exceedances within fill materials. Remaining cleanup level exceedances following excavation cleanup work at the Site are discussed below.

## **Groundwater Characterization**

Groundwater appears to have been sufficiently characterized for the selection of cleanup levels and cleanup actions at the Site. Groundwater was characterized through the installation of six monitoring wells and sampling at six temporary groundwater sampling locations. The monitoring wells were generally sampled three to four times between 2017 and 2021. The depth to groundwater ranged from 1.0 to 6.5 ft bgs.

Two cleanup level exceedances each for DRO and ORO occurred in two temporary groundwater sampling locations. Cleanup level exceedances are summarized in Table 2:

Contaminant	Number of Cleanup Level Exceedances/ Samples	Maximum Concentration (µg/L)	Method A Groundwater Cleanup Level (µg/L)
DRO	2/24	2,000	500
ORO	2/24	5,600	500
GRO	0/24	200	<b>1,000</b> ª
Dissolved Arsenic	6/18	228	0.1

#### Table 2. Cleanup Level Exceedances for Groundwater

 $\mu$ g/L = micrograms per liter

<sup>a</sup> Cleanup level based on no benzene present

Maximum concentrations exceeding cleanup levels in **bold** font.

All groundwater cleanup level exceedances occurred in temporary direct push groundwater sampling locations (none were from the Site monitoring wells). In addition, saturated materials that had the groundwater exceedances were all entirely excavated and dewatering water was treated and discharged in compliance with a Construction Stormwater General Permit (CSWGP) and Administrative Order (AO). Excavation cleanup is discussed below.

#### Vapor Intrusion Characterization

Contaminated soil was removed during excavation of a two-story sub-grade parking garage. All contaminated soil was removed from the Property, except for along the southern side wall. A vapor liner was installed as part of the new construction at the Site as further discussed below. No further vapor intrusion characterization appears to be warranted at the Site.

## **Setting Cleanup Standards**

Ecology has determined the cleanup levels and points of compliance presented below meet the substantive requirements of MTCA. The following cleanup levels and screening levels have been selected for the Site:

Contaminant	Method A Soil Cleanup Level (mg/kg)	Method A Groundwater Cleanup Level (µg/L)
DRO	2,000	500
ORO	2,000	500
DRO + ORO	2,000	500
GRO	100 <sup>a</sup>	1,000ª
cPAHs	0.1	0.1
Arsenic	20	5.0, 8.0 <sup>b</sup>

#### Table 3. Cleanup Levels for Soil and Groundwater

<sup>a</sup> Cleanup level based on no benzene present.

<sup>b</sup> Method A cleanup level and Puget Sound regional background concentration.

## **Points of Compliance**

The points of compliance are throughout the Site. Cleanup levels based on the direct contact pathway apply to soils to a depth of 15 ft bgs. Cleanup levels for the soil-to-groundwater apply without respect to depth. A majority of Method A cleanup levels are based on the soil-to-groundwater pathway.

## **Terrestrial Ecological Evaluation (TEE)**

The Site is in a highly urbanized area of Seattle with no significant open space within 500 feet (the nearest open space is Gas Works Park located approximately 1,600 feet to the southeast of the Site). Based on completion of MTCA Table 749-1, the TEE process can be ended.

## Selecting and implementing the cleanup action

The petroleum and cPAHs in soil was excavated and disposed of off-Site. Since excavation and off-Site disposal is considered a permanent cleanup solution under MTCA, no disproportionate cost analysis (DCA) is needed for the cleanup.

The excavation work was conducted as part of construction excavation for a new multi-story structure that includes a two-story subgrade parking garage. The construction excavation extended well below the deepest contamination, for both soil and groundwater.

Prior to excavation, resource protection (monitoring) wells were reportedly decommissioned consistent with the requirements within WAC 173-160-460. During excavation, a 6,800-gallon diesel underground storage tank (UST) was encountered in the northeastern portion of the Property. The UST was reportedly decommissioned, as presented within the Cleanup Action Report.<sup>5</sup> Approximately 6,550 gallons of liquid was removed from the UST and properly disposed of. No evidence of a release from the UST was found and soil around and beneath the UST was removed as part of the construction excavation work.

During excavation, dewatering was conducted using two systems which consisted of 98 shallow dewatering wells installed around the perimeter of the excavation, and temporary sump pumps placed inside the excavation. The dewatering water was reportedly treated and discharged to the stormwater system under a construction stormwater general permit.

As of July 27, 2023, 890,000 gallons of water (stormwater and dewatering discharge) had been treated and discharged by the onsite construction stormwater treatment system under the CSWGP and AO. The treatment system consisted of settling tanks, sand filters, and granulated activated carbon vessels designed to treat stormwater and dewatering discharge to maintain compliance with the indicator levels identified in the AO.

<sup>&</sup>lt;sup>5</sup> Farallon Consulting. *Cleanup Action Report, 3524 Stone Way North, Seattle, Washington*. July 1, 2023.

A total of approximately 15,857 tons of contaminated soil was transported off the Property for disposal. Approximately 13,770 tons of contaminated soil was transported to the Cadman Delta Soil Remediation facility in Everett, Washington. Approximately 2,087 tons of contaminated soil containing quantities of wood and other debris exceeding Cadman's acceptance criteria were transported to the Roosevelt Regional Landfill in Roosevelt, Washington. Disposal documentation was provided within the July 2023 Cleanup Action Report.

Excavated uncontaminated native soils were reportedly transported to fill sites in Marysville, Covington, and Granite Falls, Washington, and used for reclamation of quarries/mines in accordance with applicable laws and regulations. These soils were reported to be in compliance with the criteria listed in Table 12.1 of Guidance for Remediation of Petroleum Contaminated Sites.

#### **Confirmation Soil Sampling**

A total of 71 excavation confirmation soil samples were collected from the excavation floor and sidewalls. All results from these samples were below selected cleanup levels except for the following:

Sample Location	Elevation	Contaminant	Concentration (mg/kg)	Method A Soil Cleanup Level (mg/kg)
	25 ft amel	DRO	4,100	2,000
D9-33W 55 It allist	GRO	380	100 <sup>a</sup>	
A9-SSW	42 ft amsl	cPAHs	0.53	0.1
E9-SSW01	34 ft amsl	cPAHs	0.17	0.1

<sup>a</sup> Cleanup level based on no benzene present.

ft amsl = feet above mean sea level. Note that elevation rather than depth was used for these samples due to the highly sloped topography at the Site.

These three locations were along the excavation's southern sidewall, near the southwest and southeast corners. In addition to these three samples, there were two characterization soil samples that had cleanup level exceedances in the same areas prior to excavation:

Table 5. Cleanup Level Exceedances in Chara	cterization Samples collected nea	ar the Southern Excavation Boundary
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Sample Location	Depth/ Elevation	Contaminant	Concentration (mg/kg)	Method A Soil Cleanup Level (mg/kg)
	2 F ft bac/	DRO	2,100	2,000
FB-09	3.5 IT Dgs/	GRO	440	100 <sup>a</sup>
55 IL a	55 IL dIIISI	cPAHs	2.3	0.1
FB-07	2.5 ft bgs/ 44 ft amsl	cPAHs	0.62	0.1
FB-08	2.5 ft bgs/ 35 ft amsl	cPAHs	0.20	0.1

<sup>a</sup> Cleanup level based on no benzene present.

Ecology notes that locations FB-08 and FB-09 are immediately adjacent to and north of confirmation soil samples that did not have cleanup level exceedances. However, these results illustrate the widespread and heterogeneous nature of the cPAHs in soil/fill material at the Site.

Based on the results of the characterization and confirmation sampling, both petroleum and cPAH contamination remains in soil beneath an easement (approximately 15 feet wide) on the Property's southern boundary. This contamination appears to be relatively shallow (about 2.5 to 3.5 ft bgs). The petroleum exceedances were found near the southeast Property boundary and the cPAH exceedances were found near the southwest and southeast Property corners. The remaining soil contamination in the easement (driveway) area reportedly has been and will be covered with an asphalt cap both before and after construction of the new building.

The cPAH soil contamination appears to be associated with fill materials, which Ecology believes are likely present throughout the area. Hence, cPAHs may be present in soils at concentrations above cleanup levels beneath other properties in the area.

The diesel- and gasoline-range petroleum in soil at locations D9-SSW and FB-09 were in a paved area that is located approximately 15 feet north of the Property boundary, 20 feet east of the structure on the south-adjacent property, and 40 feet west of a structure located to the southeast. A considerable amount of soil and groundwater data were collected in this area that appear to demonstrate that this petroleum contamination is very localized. **Hence further characterization of this remaining soil contamination does not appear to be warranted.** 

#### **Groundwater Cleanup**

As previously discussed, groundwater cleanup level exceedances during Site characterization included two locations with DRO (to 2,000 micrograms per liter [ $\mu$ g/L]), two locations with ORO (to 5,600  $\mu$ g/L), and six locations with dissolved arsenic (to 228  $\mu$ g/L). All of these locations had the entirety of the screened interval depth excavated and none of these locations were on the southern (downgradient) Property boundary. Therefore, there does not appear to be a risk of contaminated groundwater that has migrated to the south.

The highest dissolved arsenic concentration in a monitoring well was 136  $\mu$ g/L in MW-04, located relatively near to the northern Property boundary. This result may be indicative of dissolved arsenic concentrations to the north of the Property being above the regional background concentration of 8.0  $\mu$ g/L. Arsenic mobilization commonly occurs in the region due to organic carbon-containing materials resulting in reducing geochemical conditions. Therefore, Ecology believes that the dissolved arsenic that was found in MW-04 is likely attributable to historical fill that is of regional extent.

Exceedances of the regional background concentration of 8.0 ug/L are expected to potentially be commonplace in the area. However, no drinking water wells, or wellhead protection zones are located in the area. **Therefore, Ecology has concluded that no further characterization or monitoring of groundwater appears to be warranted at the Site.** A prohibition on drinking water wells on the Property will be included within the Environmental Covenant for the Property, further discussed below.

#### Vapor controls

The new building at the Property reportedly consists of a "bathtub" construction that includes a waterproofing/vapor barrier membrane at the limits of the below-grade portions of the building. This liner is intended to prevent groundwater infiltration and vapor intrusion into the Property building. In addition, the structure being constructed on the Property has three levels of underground parking. The requirement for an air management system to address vehicular exhausts provides for additional levels of protection from vapor concerns.

Ecology has concluded that the vapor barrier appears to be appropriate and combined with the sub-grade parking are anticipated to provide sufficient protections from any vapor concerns from the limited remaining soil contamination found on the Property.

## **Post-Cleanup Controls**

Post-cleanup controls and monitoring are remedial actions performed to ensure compliance with cleanup standards. Ecology is issuing this No Further Action (NFA) 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:

- Prevention of exposure to remaining contaminated soil by protecting and maintaining the cap that covers the soil in this area.
- Prohibition on drinking water wells on the Property.

To implement the controls, you recorded an environmental covenant (see Enclosure B) on the following parcel of real property in King County:

• Tax Parcel 182504-9074

Ecology signed the environmental covenant, and it was recorded at King County on January 23, 2024. To amend or terminate the covenant, you must request additional review under the VCP.<sup>6</sup>

## 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. Based on a periodic review, if Ecology determines the Site needs further remedial action, Ecology will rescind this opinion. The first periodic review is anticipated to take place during the fourth quarter of 2028.

## Listing of the Site

Based on this opinion, Ecology will update the Site status on the Confirmed and Suspected Contaminated Sites List (CSCSL).

<sup>&</sup>lt;sup>6</sup> Toxics Cleanup Program Procedure 440C: https://apps.ecology.wa.gov/publications/SummaryPages/1509057.html

## 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 <u>70A.305.040</u>(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 whether the action you performed is substantially equivalent. Courts make that determination. See RCW <u>70A.305.080</u><sup>8</sup> and WAC <u>173-340-545</u>.<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>

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

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

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

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

## **Termination of the Agreement**

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. XN0020. Ecology will deduct the applicable close out fees from the prepayment deposit and will refund the remaining balance to you within 45 calendar days.

## Questions

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

Sincerely,

Frude 1. Winnin

Frank P. Winslow, LHG Cleanup Site Manager Headquarters Section

FPW/tam

Enclosures: A – Site Description and Diagrams

- B Environmental Covenant
- cc by email: Lindsay Todaro, evolution Projects, <u>lindsay@evolutionprojects.com</u> Gus Goldman, evolution Projects, <u>gus@evolutionprojects.com</u> Yusuf Pehlivan, Farallon Consulting, <u>ypehlivan@farallonconsulting.com</u> Pete Kingston, Farallon Consulting, <u>pkingston@farallonconsulting.com</u> Treasure Mitchell, Ecology, <u>treasure.mitchell@ecy.wa.gov</u> TCP Operating Budget Analyst, Ecology, <u>tra.thai@ecy.wa.gov</u> VCP Fiscal Analyst, Ecology, <u>ecyrevcp@ecy.wa.gov</u> Ecology Site File

# **Enclosure A**

Site Description and Diagrams

## **Site Description**

#### Site

The Site is defined by petroleum (gasoline-range [GRO], diesel-range [DRO], and heavy oilrange [ORO]) and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soil and petroleum (DRO and ORO) and arsenic in groundwater. The contamination is associated with historical fill soils on the Property, and potentially, on surrounding properties.

#### **Area and Property Description**

The Property is King County parcel no. 182504-9074, a mostly rectangular 0.78-acre parcel. The Property is bound by Stone Way North to the west, North 36th Street to the north, and other commercial properties to the south and east. Surrounding properties in the area are all commercial land use.

The structure on the Property is approximately 19,300 square feet in area and is reportedly currently occupied by multiple tenants operating various retail businesses, including a marijuana dispensary, a used bookstore, and a café.

#### **Site History**

The following site history discussion is from the RI/FS/CAP report:

The Property was initially developed in 1919 with an office building used in connection with a wood and coal storage yard, and a railroad trestle. Between 1920 and 1929, two commercial buildings were constructed on the northern portion of the Property. An additional commercial building was constructed by 1936. Between 1941 and 1946, the on-Property buildings were connected into a single commercial building with numerous tenants. The railroad trestle was demolished between 1980 and 1990 (SoundEarth Strategies, Inc. [SES] 2016). The current building will be demolished as part of planned Property redevelopment.

Previous businesses operating on the Property included the following (SES 2016):

- Clark Fuel Company, which operated a wood and coal yard on the southern portion of the Property from the late 1910s until approximately the late 1930s;
- Star Cabinet and Millwork, which operated a cabinet fabrication shop on the northern portion of the Property beginning in the late 1920s;
- Eastern Fuel Company, which operated on the northern portion of the Property beginning in approximately the 1930s;

- Eastern Wood Treating and Preserving Co., which operated on the northern portion of the Property beginning in approximately the early 1940s;
- Eastern Electric Company, which operated on the northern portion of the Property beginning in approximately the early 1940s;
- Advanced Builders Supply, Associated Buyers Club, Anderson Plastering Co., Eastern Appliance, a furniture storage business, and an electrical contractor, which operated various construction service and supply businesses beginning in approximately the mid-1940s;
- A tin shop and woodworking business, which operated in the building basement beginning in approximately the mid-1960s;
- Roofing contractor, insurance agency, television distribution, and furniture upholstery businesses and a welfare distribution center, which operated beginning in approximately the mid-1960s; and
- Various businesses, which operated as retail stores, a restaurant supplier, and a sign printer beginning in approximately the 1980s.

Historical Land Use	Address	Years of Operation (Source)
Vacant	N/A	1905 (Sanborn)
Fuel Companies/Coal Yards	3514 and 3530 Stone Way N	1919 to 1955 (City Directory, Sanborn)
Cabinet Fabrication	1309 North 36 <sup>th</sup> Street	1930 to 1935 (City Directory)
Wood Treating and Preserving	3528 Stone Way North	1944 (City Directory)
Electrical Companies	3532 and 3536 Stone Way North	1944-1955 (City Directory)
Furniture and Appliance Store	3536 Stone Way North	1951 (City Directory)
Construction Contractors/ Contractor Supply Stores	3513, 3524, 3536, and 3540 Stone Way North	1955 to 1975 (City Directory)
Tin Shop and woodworking facility	3512 to 3524 Stone Way North	1968 (Sanborn)
Furniture Refinishing and Upholstery	3510 Stone Way North	1975 (City Directory)
Sign printer	3510 Stone Way North	1986 (City Directory)
Retail stores, café, commercial offices	3510 to 3540 Stone Way North	1966 to present (City Directory)

The following table summarizes historical land uses at the Property:

#### **Sources of Contamination**

The petroleum (GRO, DRO, and ORO) in shallow soils and the petroleum in groundwater (DRO and ORO) are relatively shallow in extent (less than 5.0 feet below ground surface [ft bgs]). The petroleum in soil and groundwater appears to likely be attributable to historical fueling operations at the Property.

The cPAHs in soil appear to likely be attributable to asphalt within the fill soil materials. The arsenic in groundwater appears to be attributable to the groundwater having reducing conditions due to carbon sources such as petroleum and wood materials in the fill soils. The fill materials found at the Property may be regionally extensive; hence similar contamination concerns may be present on other properties in the area.

## **Physiographic Setting**

The Site is located in the Northlake neighborhood of Seattle, Washington, approximately 700 feet north of Lake Union. The Site is in an area of undulating glacial terrain within the Puget Lowland Physiographic Province.

#### Surface/Storm Water

Stormwater at the Site is expected to flow to the south to southeast. The ground surface at the Property slopes from about 56 feet above mean sea level (ft amsl) at the northwest corner to about 36 ft amsl at the southeast corner. The closest surface water body to the Site is Lake Union, a 580-acre freshwater lake.

## **Ecological Setting**

The Site is located within a highly urbanized setting with little open space other than residential yards several blocks to the east. Based on completion of MTCA Table 749-1, no significant open space is located within 500 feet of the Site and the Terrestrial Ecological Evaluation (TEE) process can be ended.

## Geology

The following geological description is from the RI/FS/CAP report:

Based on the subsurface investigations performed by Farallon (2019) and others, the general Property stratigraphy includes a shallow fill layer consisting of silty sand with asphalt, concrete, and wood debris ranging in depth from approximately 3 to 10 feet bgs. The fill layer is underlain by native silty sand underlain by glacially consolidated till deposits interbedded with cohesionless sand and gravel layers to the total depth explored of approximately 55 feet bgs.

#### Groundwater

Groundwater at the Site is shallow, generally ranging from 0.5 ft bgs to the north to 5.0 ft bgs to the south. A site potentiometric surface map presented within the February 2022 Remedial Investigation/Feasibility Study/Cleanup Action Plan (RI/FS/CAP) indicated a southerly groundwater flow direction.

#### Water Supply

Potable water is provided to the Property by the City of Seattle. No Group A/B wells or wellhead protection zones are located in the area or in the Northlake neighborhood of Seattle, based on Ecology's online mapping system.

#### **Extent of Contamination**

The extent of soil contamination has been generally defined through investigations conducted at the Site between 2017 and 2021 and has been sufficiently defined to identify cleanup levels and proposed cleanup actions for the Property as discussed herein. The cleanup level exceedances were all in soils at the 0.0 to 5.0 ft bgs depth, and not at deeper depths.

As discussed above, cPAHs in soil and arsenic in groundwater contamination may be associated with the historical fill materials and these fill materials may be regionally extensive. Contamination that is potentially present on adjacent properties could include cPAHs in soil associated with asphalt in fill soils and potential arsenic in groundwater due to various carbon sources in fill materials.

## Site Diagrams

Figures from Cleanup Action Report dated July 19, 2023:

Figure 2	Property Plan
Figure 3	Groundwater Contour Map for December 3, 2021
Figure 4	Soil Analytical Results and Final Limits of Contaminated Soil Excavation
Figure 5	Soil Analytical Results, UST Area
Figure 6	Final Limits of Construction Excavation
Figure 7	Groundwater Analytical Results – TPH and Arsenic













## **Enclosure B**

Recorded Environmental Covenant

RECEIVED Date

After Recording Return Original Signed Covenant to:

Erik Snyder Toxics Cleanup Program HQ Department of Ecology P.O. Box 47600 Olympia, Washington 98504 JAN 2 5 2024

Washington State Department of Ecology Toxics Cleanup Program



COVENANT Rec: \$317.50 1/23/2024 3:15 PM UING COUNTY, WA

## **Environmental Covenant**

Grantor:	Cornerstone 35 LLC
Grantee:	State of Washington, Department of Ecology (hereafter "Ecology")
Brief Legal Description:	PCL A SEATTLE BLA #2305729 REC #20040219900001 SD BLA BEING POR OF N 1/2 OF SW 1/4 OF SE 1/4 OF SD STR
Tax Parcel Nos.:	1825049074
<b>Cross Reference:</b>	VCP Project No. XN0020

#### 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 Evolution Stone Way (Cleanup Site ID No. 15522). 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	Carcinogenic polycyclic aromatic hydrocarbons, total petroleum hydrocarbons as diesel- and gasoline-range organics
Groundwater	Arsenic

**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. This Covenant includes the following Exhibits:

- Exhibit A Legal Description
- Exhibit B Property Map
- Exhibit C Location of Covenant Restrictions
- Exhibit D Post-Excavation Cross-Section A-A'
- Exhibit E Subordination Agreement

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/15522

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**

Cornerstone 35 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.

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#### 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. **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. Containment of Soil.** The remedial action for the Property is based on containing contaminated soil under a cap consisting of three-inch thick asphalt pavement and located as illustrated in Exhibit C. The primary purpose of this cap is to minimize the potential for contact with contaminated soil; minimize leaching of contaminants to groundwater; and prevent runoff from contacting contaminated soil. As such, the following restrictions shall apply within the area 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 or the asphalt cap over 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 or the cap on the Property so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil. Any intrusive subsurface soil work within or beneath the Property must be implemented by Hazardous Waste Operations and Emergency Response (HAZWOPER) trained workers in accordance with a health and safety plan.

**b. 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.

**c. Cap Monitoring Plan**. The Grantor shall comply with and implement the requirements of an Operations and Maintenance Plan to be approved by Ecology in writing, until such time that Ecology confirms in writing that the obligations of the Operations and Maintenance Plan are no longer necessary.

**d.** Stormwater Facilities. 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. All new stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction.

#### 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, to inspect any remedial actions conducted on the Property, and to inspect related records. The grant of access to Ecology under this Section is subject to:

i. Grantor's reasonable health and safety requirements.

ii. Grantor's option to accompany Ecology while Ecology is present on the Property.

**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 title, easements, and security or other instruments (other than leases & licensing agreements that do not provide the lessee or licensee thereof with express access rights to any area of the Property described and illustrated in Exhibits C or D) within the area of the Property described and illustrated in Exhibits A, must:

- i. Provide written notice to Ecology of the intended conveyance at least ten (10) 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 KING COUNTY RECORDER'S OFFICE 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 one business day 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 or delivered via e-mail (with copy to follow via first class mail) to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Ian Loveless	Washington State Department of Ecology	
401 N 36th St, Suite 201, Seattle, WA	Attn: Environmental Covenants Coordinator	
98103	Toxics Cleanup Program	
(425) 404-1811	P.O. Box 47600	
ian@evolutionprojects.com	Olympia, WA 98504 – 7600	
	(360) 407-6000	
	ToxicsCleanupProgramHQ@ecy.wa.gov	

#### 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 Property:

- i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal.
- 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 thirty (30) 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.

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

EXECUTED this 2nd day of January, 2024.			
	)		
(signature) by: AAAB Bry (, Phillips (printed name)			
Title: Marc 20			
STATE OF Washington	î -		
COUNTY OF King			
On this <u>2nd</u> day of <u>Sonvary</u> , 20 <u>24</u> , I certify that <u>Bryce</u> personally appeared before me, acknowledged that <b>he/she</b> is the individual de executed the within and foregoing instrument and signed the same at <b>his</b>	Phillips escribed herein /her free and v	and who oluntary	
act and deed for the uses and purposes therein mentiomed.			



Notary Public in and for the State of Washington

Residing at Seattle, Washington My appointment expires 03-04-26

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

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

(signature)

by: Erik Snyder

Title: Toxics Cleanup Program HQ Section Manager

Dated: 123

STATE OF Washington

COUNTY OF Thurston

On this <u>23</u><sup>24</sup> day of <u>0</u>, 20<u>24</u>, I certify that Erik Snyder 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 Rochester, WA My appointment expires 531 2027



#### **Exhibit** A

#### LEGAL DESCRIPTION

The land referred to is situated in the County of King, City of Seattle, State of Washington, and is described as follows:

That portion of Government Lot 2 in Section 18, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Commencing at the intersection of the Northerly margin of North 35th Street as now existing 60.00 feet in width, with the East margin of Stone Way North, as existing 90.00 feet in width;

THENCE North 01° 22' 19" East along the East margin of Stone Way North, 103.00 feet to the True Point of Beginning of this description;

THENCE at right angles South 88° 37' 41" East 144.82 feet to an intersection with a line 0.50 feet West of and parallel with the West line of Block 11 in the PLAT OF EDGEWATER ADDITION TO THE CITY OF SEATTLE, recorded in Volume 3 of Plats on page 141, records of said County; THENCE due North along said Parallel line 8.37 feet to an intersection with the Westerly extension. of the South line of Lot 7 in said Block 11;

THENCE North 78° 03' 40" west parallel with the Northerly margin of North 35th Street, 7.57 feet to an intersection with a line 8.00 feet West of and parallel with the West line of said Block 11 in the PLAT OF EDGEWATER ADDITION;

THENCE due North along said Westerly line 245.58 feet more or less to the South margin of North 36th Street, as now existing 60.00 feet in width;

THENCE North 89° 48' 48" West along said South margin of North 36th Street 131.23 feet to said East margin of Stone Way North;

THENCE South 01° 22' 19" West, 252.57 feet along said East margin to the True Point of Beginning.

(ALSO KNOWN AS Parcel A of Lot Boundary Line Adjustment No. 2305729, recorded under Recording No. 20040219900001, records of King County, Washington.)

SITUATE in the County of King, State of Washington.







#### **Exhibit** E

#### SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That WRCR JV LLC, the owner and holder of that certain easement bearing the date the 27<sup>th</sup> day of September, 2022, executed by Cornerstone 35 LLC, fee owner, and recorded in the office of the County Recorder of King County, State of Washington, on 10/25/2022 under Recorder's File Number 20221025000614, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated \_\_\_\_\_\_, executed by William R. Ray, and recorded in King County, Washington under Recorder's File Number

William R Kay (signature)

by: William R. Ray

Title: Manager

Dated: 1/3/24

STATE OF Washington COUNTY OF Jefferson

On this <u>3</u> day of <u>3 day of <u>3</u> day of <u>3</u> day of <u>3 day of <u>3 day of <u>3</u> day of <u>3 day of <u>3</u> day of <u>3 day of <u>3 day of <u>3</u> day of <u>3 day of <u>3 day of day o</u></u></u></u></u></u></u></u></u></u></u></u> within and foregoing instrument and signed the same at his free and voluntary act and deed for the uses and purposes therein mentioned.

May Wang Andersen Notary Public in and for the State of Washington

Residing at <u>Port</u> <u>Ludlow</u> My appointment expires  $\frac{10/20/2025}{2025}$ 

#### Exhibit E

#### SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That 3521 Interlake Ave N eP LLC, the owner and holder of that certain easement bearing the date the 27th day of September, 2022, executed by Cornerstone 35 LLC, fee owner, and recorded in the office of the County Recorder of King County, State of Washington, on 10/25/2022, under Recorder's File Number 20221025000614, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated \_\_\_\_\_\_, executed by Bryce Phillips and recorded in King County, Washington under Recorder's File Number \_\_\_\_\_\_.

(signature)

by: Bryce Phillips

Title: Manager

Dated: 01/02/2024

STATE OF Washington \_\_\_\_\_

On this 2nd day of 5and 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 Sentile, WA

My appointment expires \_\_\_\_\_\_3/04/26