



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 10, 2024

Elton Lee
Ninth and Lenora LLC
General Investment and Development
455 Market Street, Suite 1920
San Francisco, CA 94105
elee@gid.com

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

Site name: Lenora Building
Site address: 820 Lenora Street, Seattle, King County, WA 98121
Facility/Site ID: 91413494
Cleanup Site ID: 1802
VCP Site: XN0040
Parcel Nos.: 066000-0540 and 066000-0545

Dear Elton Lee:

The Washington State Department of Ecology (Ecology) received your request for an opinion regarding the sufficiency of your independent cleanup of the Lenora Building site (Site). The Site was enrolled in the expedited Voluntary Cleanup Program (VCP) on September 26, 2023.

This letter provides our opinion and analysis. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), chapter [70A.305](#) RCW.¹

Opinion

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

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

Ecology bases this opinion on an analysis of whether the remedial action meets the substantive requirements of MTCA and its implementing regulations, which are specified in chapter 70A.305 RCW and chapter [173-340 WAC](#)² (collectively called “MTCA”).

Ecology notes this Property-specific No Further Action (NFA) determination supersedes and replaces a Property-specific NFA that was issued by Ecology on November 14, 2017. The November 14, 2017, was based the boundary of the Property extending to the edge of the adjacent streets (9th Avenue and Lenora Street). This letter is based on the boundary of the Property extending to the midpoint of the adjacent streets.

Contamination remains in soil and groundwater beneath right-of-way adjacent to the Property. This includes contamination beneath 9th Avenue that appears to likely originate from a release on the north side of 9th Avenue. Cleanup of contamination outside of the Property would be needed prior to Ecology issuing a Site-wide NFA. Alternatively, if a contamination source is identified on the north side of 9th Avenue, then Ecology may elect to add a new Site to our list of Confirmed and Suspected Contaminated Site.

Background

Prior to enrollment in the expedited VCP process, this Site had been enrolled in the standard VCP under projects NW0987, NW2980, and NW3277. Cleanup work had been performed during construction excavation at the Property in 2015, and Ecology issued a Property-specific NFA determination for King County parcels 066000-0540 and 066000-0545 in a letter dated November 14, 2017. In 2018, it was discovered that the Property’s boundaries legally extend to the centerline of the adjacent roadways, which had implications for the Property-specific NFA that Ecology issued in 2017.

At Ecology’s request, a Cleanup Action Report for the Property dated March 26, 2020, was submitted to Ecology. Ecology issued an NFA Likely letter for the Property on August 9, 2021, indicating issue of an NFA determination was likely following recording of an Ecology-signed environmental covenant (EC). That letter also requested submittal of a revised Cleanup Action Report. A Cleanup Action Report Amendment was submitted to Ecology dated August 23, 2023. The Property was accepted into the expedited VCP as project XN0040 on September 26, 2023.

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

Property Description

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

- Tax parcel 066000-0540
- Tax parcel 066000-0545

Enclosure A includes diagrams that shows where the Property is located within the Site.

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, diesel- and heavy oil-range) into the soil and groundwater.
- Benzene, toluene, ethylbenzene, and xylenes (BTEX) compounds into the soil.
- Naphthalenes into the soil.
- Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) into the soil.
- Lead into the soil.
- Arsenic, chromium, lead, and mercury into the groundwater.

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.

According to the Cleanup Action Report dated March 26, 2020:

Sources of contamination included historical boiler and furnace/chimney systems of the former Subject Property buildings, underground storage tanks (UST1, removed in 2002, and UST2 that was closed-in-place), and historical property uses such as a wood yard, printing facility, metal shops, and former vehicle servicing/washing/restoration facility, and undocumented fill that was imported to the Subject Property.

Basis for the Opinion

Ecology bases this opinion on information in the documents listed in **Enclosure B**.

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

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

Analysis of the Cleanup

Ecology has concluded that no further remedial action is necessary to clean up contamination at the Property associated with 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 for the Site and selecting a cleanup action for the Property. This determination had previously been made by Ecology within our November 14, 2017, opinion letter, but has been updated herein, based on the boundaries of the Property discussed above. **Enclosure A** describes the Site.

Ecology's August 9, 2021, NFA Likely opinion letter stated:

The Site has not changed relative to the soil, perched water, and groundwater quality, geological and hydrogeological conditions, and location, nature, and extent of residual petroleum- and PAHs contaminated soil. The alteration is the clarification of the east and south boundaries of the Property (which extends to the centerline of 9th Avenue and the centerline of Lenora Street respectively).

Site Contaminants

Site contaminants include gasoline-, diesel-, and heavy oil-range petroleum, BTEX compounds, naphthalene, cPAHs, and lead-into the soil. The petroleum-related contamination is associated with a release from former underground storage tanks (USTs) that were removed from the Site.

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

⁴ <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=1802>

Metals (arsenic, cadmium, chromium, lead, and mercury) and gasoline-, diesel-, and heavy oil-range petroleum were found in perched groundwater at the Site. The metals appear to be associated with historical activities at the Property and/or fill materials historically placed at the Site.

Soil Characterization

As stated in Ecology’s 2017 NFA letter, the extent of soil contamination appears to be sufficiently defined for setting cleanup standards for the Site and selecting a cleanup action for the Property.

Cleanup via excavation and offsite disposal resulted in all soil contamination being cleaned up at the Site, except for some soil contamination remaining within the 9th Avenue and Lenora Street rights-of-way. Remaining soil contamination is summarized as follows:

Table 1. Remaining Cleanup Levels Exceedances in Soil

Area	Sample Location	Depth (ft bgs)	Contaminant	Soil Concentration (mg/kg)	Method A Soil Cleanup Level (mg/kg)
9th Ave	UTL9-E	15	Benzene	0.06	0.05
		18	GRO	50	30
	B-1	18	Benzene	0.23	0.05
Lenora Street	B-2	24	GRO	2,400	30
			ORO	18,000	2,000
			Toluene	11	7
South Alley	UST-EX-W1	24	cPAHs	0.1501	0.1
			ORO	19,000	2,000
	DP-2	8	cPAHs	0.125	0.1
			DRO	2,900	2,000
			ORO	15,000	2,000
DP-1	4	cPAHs	0.2941	0.1	

GRO = Gasoline range organics.

DRO = Diesel range organics.

ORO = Heavy oil range organics.

ft bgs = Feet below ground surface.

mg/kg = milligrams per kilogram.

The 2020 Cleanup Action Report and 2022 Amendment documents indicate that remaining soil contamination within the 9th Avenue right-of-way originates from a source to the north, presumably on the north side of 9th Avenue. The exact location of the source of gasoline in soil in this area has not yet been identified.

Further action is needed to characterize and clean up the gasoline soil contamination prior to Ecology issuing a Site-wide NFA. Alternatively, if a contamination source is identified on the north side of 9th Avenue, then Ecology may elect to add a new Site to our list of Confirmed and Suspected Contaminated Sites.

Vapor Intrusion Pathway

Ecology's August 9, 2021, NFA Likely letter stated:

The soil vapor to inhalation pathway is considered incomplete under current conditions at the Site because:

- *The nature and extent, as well as the concentrations of residual petroleum- and PAH-contaminated soil impacts pose a low risk for VI. In addition, the construction of the Stratus building which includes underground parking with an HVAC ventilation system adequately mitigates any potential VI pathway.*
- *There are no volatile compounds in groundwater, and no groundwater impacts are in contact with the building foundation.*
- *The Site has not changed relative to the soil, perched water, and groundwater quality, geological and hydrogeological conditions, and location, nature, and extent of residual petroleum- and PAHs contaminated soil. The alteration is the clarification of the east and south boundaries of the Property (which extends to the centerline of 9th Avenue and the centerline of Lenora Street respectively).*

No further action appears to be warranted with respect to the vapor intrusion pathway at the Site at this time. Should the onsite structure be removed or modified, then the vapor intrusion pathway should be reassessed.

Groundwater Characterization

Groundwater appears to have been sufficiently characterized for setting cleanup standards for the Site and selecting a cleanup action for the Property. Ecology's August 9, 2021, opinion letter stated:

The investigation in 2016 explored for Site groundwater to a maximum depth of 55 feet below the ground surface (bgs) and confirmed that the soil to groundwater pathway was not complete. The data indicate that a contaminant migration pathway to groundwater is not present at this Site.

and:

Perched groundwater was encountered in localized, discontinuous locations during subsurface explorations, but was not encountered during excavation related to mass construction of the Property.

Perched groundwater in the vicinity of the Site is localized and discontinuous. Although under MTCA, perched groundwater is still considered to be a potential drinking water source (unless proven otherwise), drinking water use of such groundwater is highly unlikely. Hence, potential exposure concerns from this perched groundwater would primarily be from potential direct contact during utility work. Based on Site investigation data, the following perched groundwater contamination remains at the Site within the right-of-way adjacent to the Property:

Table 2. Remaining Cleanup Levels Exceedances in Perched Groundwater

Area	Sample Location	Water Level/ Total Depth (ft bgs)	Contaminant	Groundwater Concentration (µg/L)	Method A Groundwater Cleanup Level (µg/L)
Lenora Street	DP-5	24/30	Arsenic	43	5/8 ^a
			Chromium	310	50
			Lead	41	15
	B-2	22/33	Arsenic	10	5/8 ^a
			Chromium	70	50
			Lead	69	15
			GRO	28,000	1,000
			ORO	540,000	500
	DP-4	23/30	Arsenic	82	5/8 ^a
			Chromium	720	50
			Lead	84	15
	DP-3	22/30	Arsenic	25	5/8 ^a
Chromium			90	50	
South Alley	B-3	7/24	Arsenic	100	5/8 ^a
			Chromium	3,200	50
			Lead	8,100	15
			Mercury	3.7	2
			DRO	73,000	500
			ORO	470,000	500

^a Method A cleanup level/Puget Sound basin background concentrations listed.

µ/L = micrograms per liter

The perched groundwater samples were collected at B-2 and B-3 in 2002 and at DP-3 through DP-5 in 2014. The perched groundwater beneath the South Alley is shallower than the perched groundwater beneath Lenora Street (7.0 ft bgs versus 22-24 ft bgs, respectively). Hence, potential direct contact exposure concerns would be present in the South Alley, but not beneath Lenora Street, where perched groundwater contamination is below the direct contact limit of 15 ft bgs).⁵

⁵ WAC 173-340-740(6)(d).

The source of the metals in perched groundwater beneath Lenora Street and the South Alley is uncertain but could include the former metals shops on the Property and historical fill materials placed in the area. Ecology notes that the results for metals in groundwater may be biased high, based on the samples likely being turbid, and evidently were not filtered samples. Cleanup levels for metals are based on a drinking water pathway from a well-developed water supply well, where turbidity should be relatively low.

Concentrations of petroleum in groundwater beneath Lenora Street and South Alley were high in 2002 and potentially indicative of the presence of non-aqueous phase liquids (NAPL) in these areas.

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 have been selected for the Site:

Table 3. Cleanup Levels for Soil and Groundwater

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	30/100 ^a	800/1000 ^a
Benzene	0.03	5
Toluene	7	1,000
Ethylbenzene	6	700
Xylenes	9	1,000
Naphthalene	5.0 ^b	160 ^b
cPAHs	0.1	0.1
Arsenic ^c	20	5/8
Chromium	2,000	50
Lead	250	15
Mercury	2	2

^a Values with and without benzene present, respectively.

^b Value for total naphthalenes.

^c Method A cleanup level/Puget Sound basin background concentrations listed.

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, whereas cleanup levels for the soil-to-groundwater pathway apply without regard to depth. As discussed above, although the point of compliance for groundwater is without respect to depth, use of the localized perched groundwater for drinking water purposes is highly unlikely, and direct contact concerns from such perched groundwater would be above a depth of 15 ft bgs.

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 Denny Park located approximately 640 feet to the northwest of the Site). Based on completion of MTCA Table 749-1, the TEE process can be ended. This conclusion was also provided by Ecology within our August 9, 2021, NFA Likely opinion letter.

Selecting and implementing the cleanup action

Ecology provided its concurrence on selecting and implementing the cleanup action under previous correspondence, including in our August 9, 2021, NFA Likely opinion letter. Cleanup at the Property consisted of excavation and offsite disposal of contaminated soil. Approximately 14,550 tons of petroleum-contaminated soil was disposed of off-Site at a permitted facility in Arlington, Oregon. USTs found on the Property were reportedly properly closed as documented in the March 26, 2020, Cleanup Action Report.

As discussed above, following cleanup, contamination remains adjacent to the Property beneath right-of-way, both in soil and perched groundwater. However, only the perched groundwater beneath the South Alley is within the direct contact depth limit of 15 ft bgs. The remaining contamination includes petroleum, benzene, cPAHs, and the metals arsenic, chromium, lead, and mercury. Ecology has concluded that risks from this remaining contamination can be effectively managed via institutional controls memorialized within an environmental covenant.

Notification to City of Seattle

Ecology sent a notification to the City of Seattle in a letter dated September 29, 2023, regarding the remaining contamination within the City right-of-way. That letter included your contact information in case the City has any questions regarding the Property.

Post-Cleanup Controls

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

Compliance with institutional controls

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

- Requirement to notify Ecology prior to conducting any intrusive work in the areas of remaining contamination within the right-of-way bounding the Property.
- Requirement to notify Ecology in case of any new construction that could affect the vapor intrusion pathway at the Site.
- A prohibition of drinking water use at the Property.

Ecology received an Operations and Maintenance (O&M) Plan dated September 14, 2023. That O&M Plan indicated that regular inspections would take place on the Property, and Ecology will be notified should any concerns be identified.

To implement the controls, you recorded an environmental covenant on the following parcels of real property in King County:

- Tax parcel 066000-0540
- Tax parcel 066000-0545

Ecology approved the recorded environmental covenant (see Enclosure C). To amend or terminate the covenant, you must request additional review under the VCP.⁶

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 five (5) years from this letter (in 2029).

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

Listing of the Site

Based on this opinion, Ecology will update the Site status on its contaminated site database. However, because further remedial action is still necessary elsewhere at the Site, Ecology will not remove the Site from its lists of contaminated sites. Furthermore, the Property will remain listed as part of the Site because the Property cleanup does not change Site boundaries.

Limitations of the Opinion

Opinion does not settle liability with the state

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW [70A.305.040](#)(4).⁷

Opinion does not constitute a determination of substantial equivalence

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. See RCW [70A.305.080](#)⁸ and WAC [173-340-545](#).⁹

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).¹⁰

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

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

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

¹⁰ <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. XN0040. Ecology will deduct the applicable close out fee from the prepayment deposit and will refund the remaining balance to you in the near future.

Questions

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

Sincerely,



Frank P. Winslow, LHG
Cleanup Site Manager
Headquarters Section

FPW/tam

Enclosure: A – Site Description and Diagrams
 B – Basis for the Opinion – Documents List
 C – Environmental Covenant

cc by email: Dave Cook, Aspect Consulting, dcook@aspectconsulting.com
 Treasure Mitchell, Ecology, treasure.mitchell@ecy.wa.gov
 Fiscal, VCP Fiscal Analyst
 TCP, Operating Budget Analyst
 Ecology Site File

Enclosure A

Site Description and Diagrams

Site Description

The following Site Description discussion has been modified from Ecology's August 9, 2021, No Further Action (NFA) Likely letter.

Site

The Site is defined by the release of gasoline-range (TPH-G), diesel-range petroleum hydrocarbons (TPH-D), oil-range petroleum hydrocarbons (TPH-O), benzene, xylenes, lead, and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soil and petroleum and metals in perched groundwater.

The Site is associated with historical boiler and furnace/heating systems of the former property buildings, Underground Storage Tanks (USTs), and historic uses at the Property located at 820 Lenora Street in Seattle.

Area and Property Description

The Property consists of two King County tax parcels encompassing approximately 0.49 acres. The north parcel is King County Parcel # 0660000540, and the south parcel is King County Parcel #0660000545. The Property boundaries legally extends to the centerline of the 9th Avenue right-of-way (ROW) and to the centerline of the Lenora Street ROW. The Property does not include the adjacent alley ROW located south and west of the Lenora Building Property.

The Property is located in the Denny Triangle neighborhood, just north of downtown Seattle. It is bounded to the north by retail properties, 9th Avenue to the east, Lenora Street to the south, and a public alley to the west. The Property is currently developed with a 42-story residential tower (Stratus Apartments) with ground level retail and six levels of subgrade parking. Land use surrounding the Site includes commercial businesses, residential apartments and condominiums.

VCP Enrollment History

The Property was enrolled in Ecology's Voluntary Cleanup Program (VCP) in 2015 (Facility/Site No. 91413494, Cleanup Site ID: 1802, and VCP Project No. NW2980). A Remedial Investigation/Feasibility Study (RI/FS) and Cleanup Action Report (CAR) was prepared and submitted to Ecology in 2016. Subsequently, Ecology issued a Property-specific No Further Action (NFA) determination in November 2017 based on the information presented in the 2016 RI/FS and the 2016 CAR.

In 2018, it was discovered that the Property boundaries legally extended to the centerline of the adjacent roadways, which had implications for the Property-specific NFA that Ecology issued in 2017. The 2020 Cleanup Action Report (CAR) was prepared that superseded the 2016 CAR and presented updated information. The objective of the 2020 CAR was to obtain a Property- Specific NFA for the correctly defined Property through Ecology's Voluntary Cleanup Program (VCP).

Ecology issued a letter on August 9, 2021, which indicated that issue of a NFA letter by Ecology was likely following recording of an environmental covenant. Ecology also stated that the 2017 NFA would remain in effect until the environmental covenant has been finalized. After Ecology's August 9, 2021, NFA Likely letter, a CAR Amendment was submitted to Ecology dated August 23, 2022, and the Site entered expedited VCP on September 26, 2023.

Property History and Current Use

Early use of the Property was as a wood yard, printing facility, metal shop, and a vehicle servicing/auto restoration garage. Additional historic facilities were identified including: a former boiler room, chimney and furnace systems, former car wash area, printing facility, and metalwork shops. USTs located on the Property consisted of one former petroleum UST, (which was removed in 2002), one closed-in-place 1,000-gallon diesel UST with fill ports and piping, and a 1,750-gallon heating oil UST.

Based on the historic fire insurance (Sanborn) maps, the north parcel (Parcel #0660000540) was undeveloped in 1905. A small structure and parking were present on the parcel in 1936. Later, a single-story office building with a basement was constructed between 1946 and 1948 and was used by a vehicle company for car sales, storage and repair. A boiler house was also present on the parcel and the building was heated by hot water and an oil burner.

In 1980, an underground tunnel was constructed to provide access to the basement of the single-story building from the underground parking garage located on parcel #0660000485. Westlake Chevrolet Company owned the north parcel from 1946 until the mid-1980s (for car sales and possibly auto repair). The parcel was occupied by a used car sales office until 1990s, and the prior owner indicated that fill from an unknown source may have been brought to the parcels during the construction of the building.

Based on the historic fire insurance (Sanborn) maps and tax assessment records, the south Parcel (Parcel # 0660000545) was undeveloped from at least 1893 until approximately 1905 when a "wood yard" was located on the parcel. This parcel was owned by a lumber company from 1905 to 1924. A two-story office/retail building on the parcel was constructed in 1924 as a garage. The building was originally heated by an oil burner. The parcel was used as an auto

repair facility between the 1940s and the 1970s. Later, the parcel was used as a printing facility during the 1980s and 1990s, and included a camera area, dark room and bindery area. A metal shop is shown in the west corner of the basement in 1998 building plans. Cornish College of Arts then owned the parcel until 2003.

The north parcel was the former location of an Enterprise car rental company facility. The south parcel was the former location of a two-story office/warehouse building with a garage below. The current use of the Property is a 42-story residential apartment tower with six levels of underground parking.

Contaminant Source and Cleanup History

Sources of contamination include:

- Historical boiler and furnace/chimney systems of the former property buildings.
- USTs (UST#1 was removed in 2002; UST#2 with associated piping was closed in place; and UST#3 was a previously undocumented heating oil tank).
- Historic property uses such as a wood yard, printing facility, metal shops, and former vehicle servicing/washing/ restoration facility.
- Undocumented fill that was imported to the Property.

Because of the sloping nature of the Site from 9th Avenue down to the alley at the west side of the Property, the 2015 construction excavation extended from starting elevations of about 87 feet above mean sea level (ft amsl) (high side near 9th Avenue) to 69 ft amsl (low side near the alley) to a bottom construction excavation of about elevation 7 ft amsl. Soil contaminated with diesel and oil occurred within the upper 20 feet of fill soil at the Property.

Approximately 14,550 tons of contaminated soil (generally located in the upper 20 feet) was excavated from the Property and disposed of at the Subtitle D landfill in Arlington, Oregon. Shallow perched groundwater was removed during the remedial excavation on the Property. Low permeability glacially consolidated vadose zone soil (approximate thickness 39 feet) that is uncontaminated separates the residual petroleum- and PAHs-contaminated soil from the deeper regional groundwater beneath the Site.

Physiographic Setting

The Property is located within the Puget Lowland physiographic province, a broad, low-lying region situated between the Cascade Range to the east and the Olympic Mountains to the west. The Property grades drop about 10 feet from southeast to northwest. The alley along the

west side of the Property historically provided access to the lowest level of the former building and slopes down near Westlake Avenue to the entrance of the former 2101 9th Avenue building. The alley does not extend through to Lenora Street. A permanent slope currently exists between the end of the alley and Lenora Street.

Surface/Storm Water System

Lake Union is located approximately 3,000 feet north of the Property. Elliott Bay is located approximately 3,000 feet southwest of the Property. Based on surface topography in the area, stormwater at the Property is expected to flow to the north and west.

Ecological Setting

The Property is covered with a building (exterior is completed). Land surrounding the Site is primarily covered with buildings, asphalt and concrete with small, landscaped areas. Ecological receptors on the Property are unlikely.

Geology

The Property is underlain by relatively shallow fill overlying recent deposits and competent glacially consolidated soils. Fill generally consists of loose to medium dense silty sand with variable gravel and cobble content and occasional brick, charcoal or wood debris.

Based on historical research, the block is located on the eastern edge of the 1928 to 1930 Denny Regrade, and portions of this area are reported to have up to 25 feet of fill added as part of the historical regrading process. The thickness of fill encountered in the explorations completed at the Site ranged from approximately 6 to 15 feet.

The recent deposits consist of soft to hard silt and clay with occasional sand interbeds and variable gravel content or medium dense to dense sand with variable silt and gravel content. The glacially consolidated soils encountered below the fill and recent deposits were till deposits, which consist of very dense silty sand.

Groundwater

Perched groundwater was encountered intermittently in some of the Site characterization explorations completed during remedial investigations. No perched water was encountered within the mass excavation limits at the Property. As discussed in the 2002 CAR, the static groundwater level associated with the regional aquifer was measured in former monitoring well G-1 in 2013 and 2014. The measured depths ranged from approximately 53.30 to 55.39 feet bgs (approximate elevations 16 and 14 ft amsl) respectively, at the MWG-1 location.

Water Supply

Seattle Public Utilities (SPU) provides drinking water to the building. The Cedar and the South Fork Tolt River Watersheds in eastern King County are the two sources for potable water supplied by SPU.

Release and Extent of Soil and Groundwater Contamination

Petroleum hydrocarbons (TPH-G, TPH-D, and TPH-O), BTEX compounds, Naphthalene, Lead, and cPAHs were present at concentrations exceeding the Method A cleanup level in soil at the Property. Confirmation soil samples demonstrated that all identified soil contaminated above MTCA Method A cleanup levels was removed from the Property, except for a limited volume of contaminated soil exceeding MTCA Method A cleanup levels in adjacent right-of-way (9th Avenue, Lenora Street, and the South Alley).

Based on confirmation soil sampling data, residual petroleum-and PAH-contaminated soil exceeding MTCA Method A cleanup levels remains capped in-place under hard pavements in three separate, localized areas:

- 1) 9th Avenue (within the Subject Property).
- 2) Lenora Street (within the Subject Property).
- 3) The South Alley (outside the Subject Property) owned by the City of Seattle.

The soil contamination beneath 9th Avenue is believed to originate from the north side of 9th Avenue from a yet unidentified source. The contaminated soil is located approximately 15 feet deep beneath the 9th Avenue surface and 24 feet deep beneath the Lenora Street surface. Shallower contamination remains in the South Alley area (below approximately 7 ft bgs). The contaminated soil in these areas is inaccessible and reportedly cannot be excavated due to the presence of structural impediments and utility conflicts.

During remedial excavation activities, shallow groundwater was encountered at depths of 18 to 18.5 feet bgs, was intermittent and did not yield significant quantities of recoverable water. This perched groundwater, which did not constitute a continuous water-bearing zone, was fully removed throughout the Property upon completion of the excavation during redevelopment. Based on soil borings, the depth of the regional groundwater on the Property is approximately 55 to 75 feet bgs. Contaminated perched groundwater was found beneath Lenora Street and the South Alley at depths of 22 ft bgs and 7 ft bgs respectively.

Site Diagrams

Figures from Cleanup Action Report Amendment dated August 23, 2022:

- Figure 22015 and 2018 Subject Property Boundary
- Figure 3 Pre-Cleanup Soil Conditions in Mass Excavation Limits
- Figure 4 Mass Excavation with Confirmation Soil Samples
- Figure 5 UST2 Remedial Excavation with Confirmation Soil Samples
- Figure 6 UST3 Remedial Excavation with Confirmation Soil Samples
- Figure 7Post-Cleanup Soil Conditions at the Subject Property and Alley
- Figure 8 Cross Section A-A'
- Figure 9 Cross Section B-B'
- Figure 10 Post-Cleanup Perched Water Conditions at the Subject Property and Vicinity
- Figure 11 Post-Cleanup Groundwater Conditions at the Subject Property and Vicinity
- Figure 12Subject Property-Environmental Covenant Areas

06 Part 1: Project: 820 Lenora Street Development - 170291 | User: [Name] | Date: 9/24/2019 | File Path: [Path] | Date: 9/24/2019 | User: [Name] | File Path: [Path] | Date: 9/24/2019



Note:

- The Subject Property boundary is based on the Plat Map of the Second Addition to the Town of Seattle. The Plat Map was filed for record on December 14, 1875 and can be obtained from King County Records Office or a title company.

Sample elevation in feet

MASSEX-9-61.0

Sample name

Characterization soil sample location. Diesel- and heavy oil-range hydrocarbons and/or cPAHs were detected at concentrations below MTCA Method A Cleanup Level. Soil represented by this sample was subsequently excavated and transported from the site to Waste Management's Landfill for permitted disposal.

Confirmation soil sample location. Diesel- and heavy oil-range hydrocarbons and cPAHs were not detected.

Mass Excavation for removing contaminated and/or impacted fill soil.

Soil Sample

Mass excavation limits

Subject Property

King County Parcel

066000545 Parcel Number

MTCA: Model Toxics Cleanup Control Act
cPAH: Carcinogenic polycyclic aromatic hydrocarbons

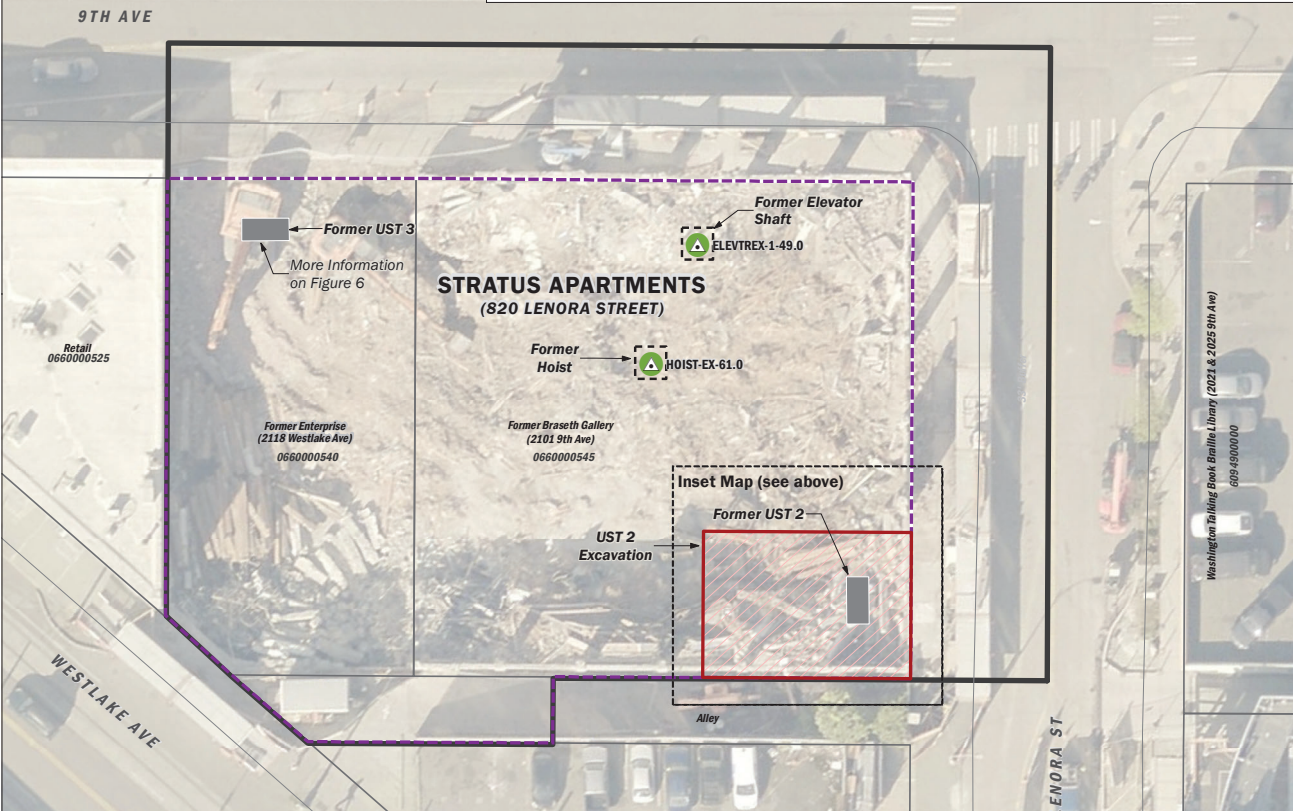
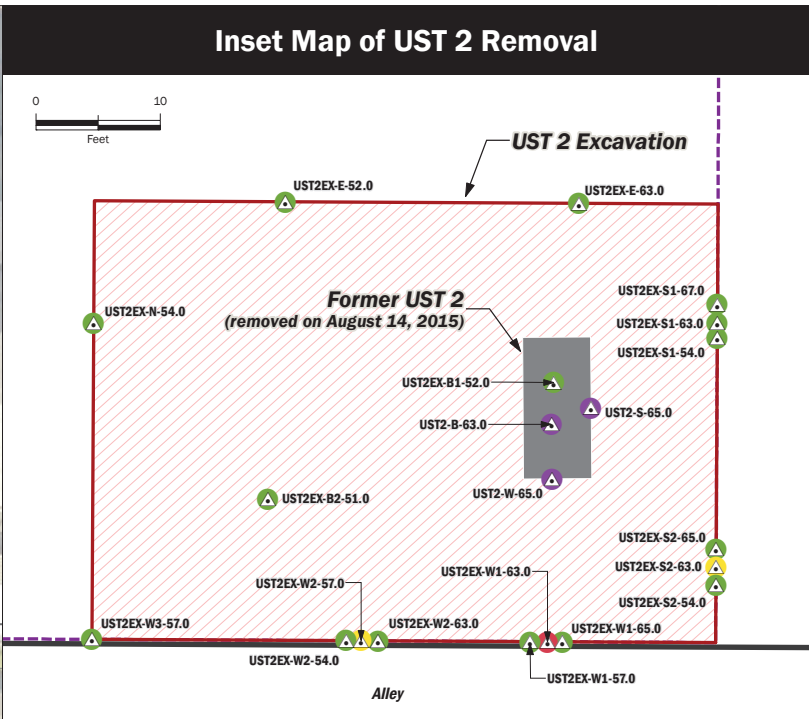
Mass Excavation with Confirmation Soil Samples

Cleanup Action Report
820 Lenora Street
Seattle, Washington

	SEP-2019 PROJECT NO. 170291	BY: FK / KES REVISED BY: TDR	FIGURE NO. 4
--	-----------------------------------	---------------------------------------	------------------------

08 Part 1: Project: 31744 Remedial Excavation - 170291 (University Community Action Report 2019) (05) UST Remedial Excavation with Confirmation Soil Sampling | Coordinates: 48° 49' 30" N, 122° 31' 00" W | Date: 9/26/2019 | Scale: 1" = 100' | From: 9/26/2019

Inset Map of UST 2 Removal



Note:

1. The Subject Property boundary is based on the Plat Map of the Second Addition to the Town of Seattle. The Plat Map was filed for record on December 14, 1875 and can be obtained from King County Records Office or a title company.

Sample elevation in feet

MASSEX-9-61.0

Sample name

Soil sample with MTCA exceedance for PAHs and/or diesel- and heavy oil- range hydrocarbons. Soil represented by this sample was subsequently excavated and transported to Waste Management's Landfill for permitted disposal.

Represents Soil Conditions at the Final Limits of Excavation

- Confirmation soil sample with MTCA exceedance for heavy oil- range hydrocarbons and PAHs.
- Confirmation soil sample in which diesel- and heavy oil-range hydrocarbons and PAHs were detected at concentrations below MTCA Method A Cleanup Levels.
- Confirmation soil sample with no detections of petroleum hydrocarbons and PAHs.

- ▲ Soil Sample
- Mass excavation limits
- Subject Property
- King County Parcel
- 0660000545 Parcel Number

MTCA: Model Toxics Cleanup Control Act
 PAH: Polycyclic aromatic hydrocarbons
 UST: Underground Storage Tank

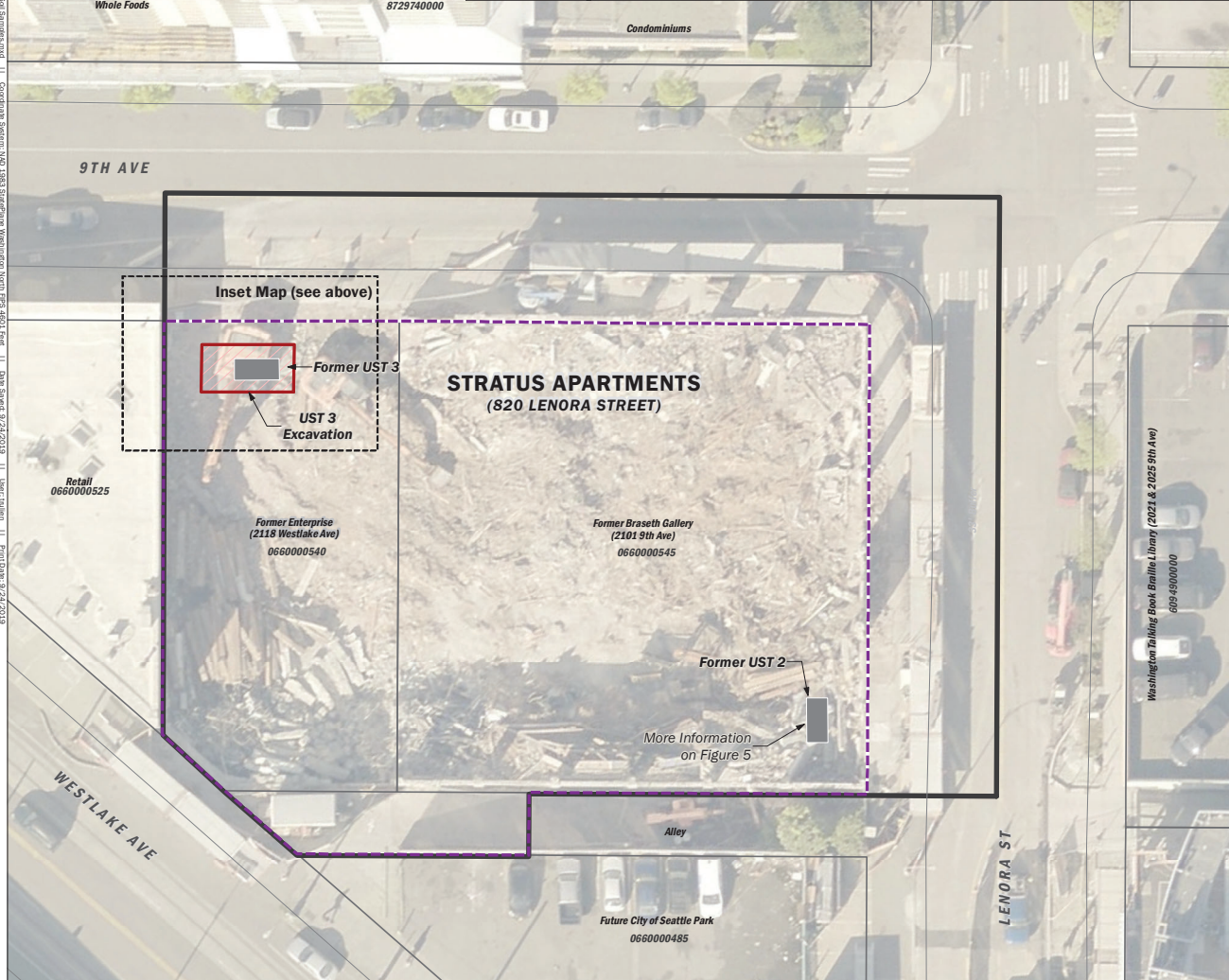
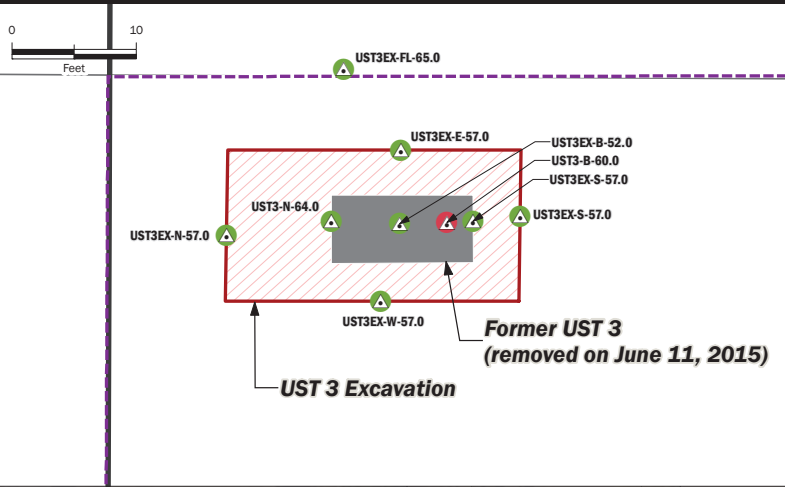
UST2 Remedial Excavation with Confirmation Soil Samples

Cleanup Action Report
 820 Lenora Street
 Seattle, Washington

	SEP-2019 PROJECT NO. 170291	BY: FK / KES REVISED BY: TDR	FIGURE NO. 5
--	-----------------------------------	---------------------------------------	---

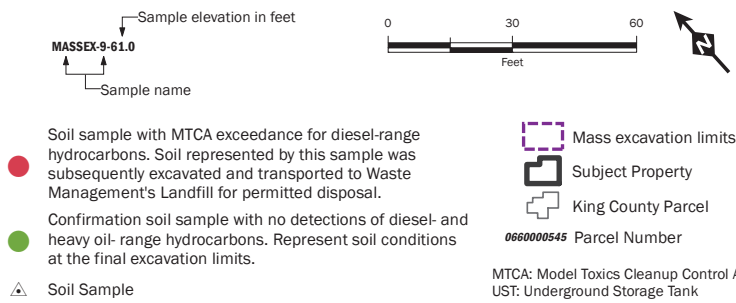
GIS Data: 1: Project: 353914 Remedial Investigation - 170291 170291 Unimproved Common Area Report 2019 06/15/19 Remedial Excavation with Confirmation Soil Sampling and
 Coordinates System: NAD 83 Seattle Urban Region NAD 83 Seattle Urban Region
 Date Saved: 9/26/2019
 User: tcl
 From Date: 9/26/2019

Inset Map of UST 3 Removal



Note:

1. The Subject Property boundary is based on the Plat Map of the Second Addition to the Town of Seattle. The Plat Map was filed for record on December 14, 1875 and can be obtained from King County Records Office or a title company.

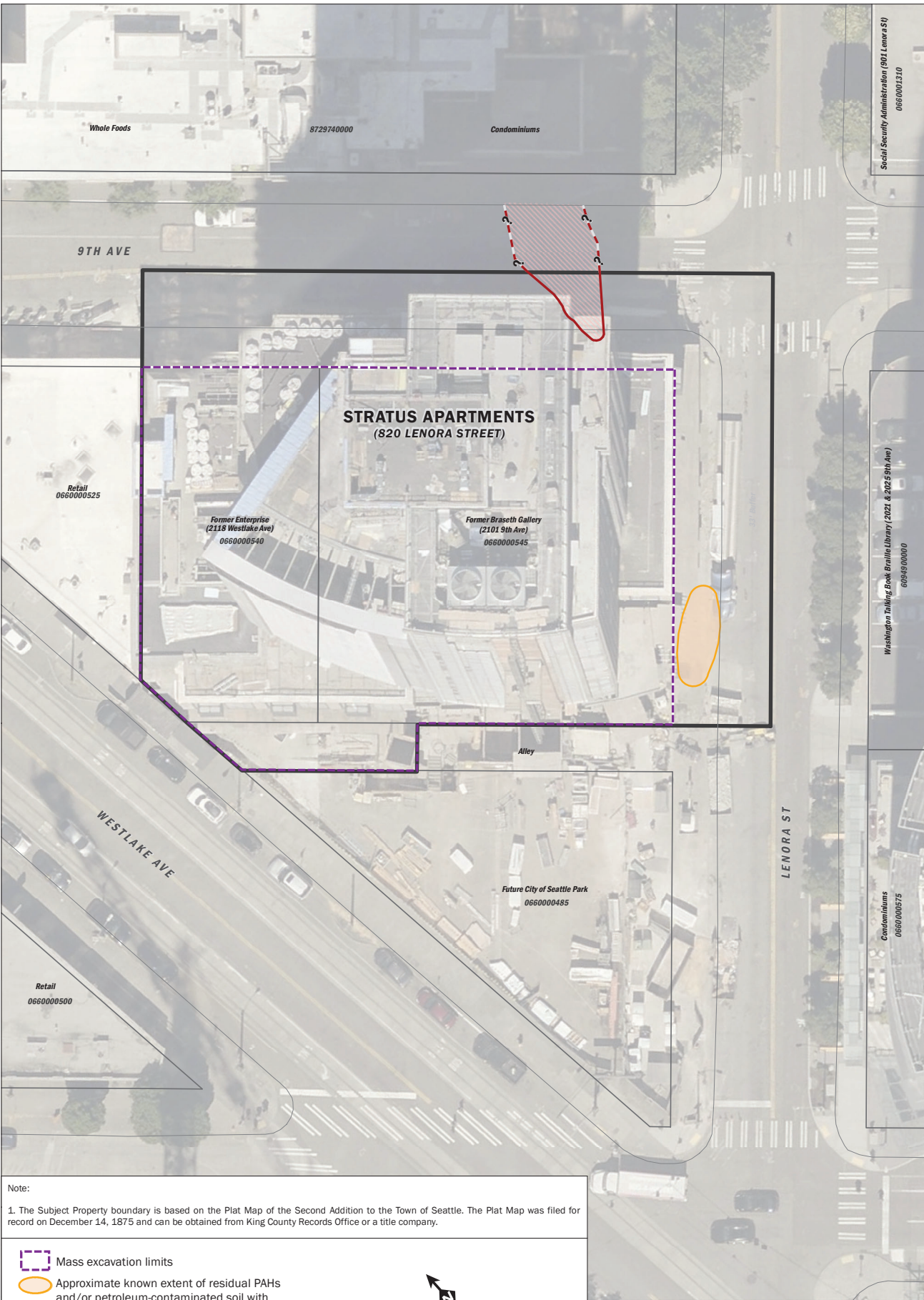


UST3 Remedial Excavation with Confirmation Soil Samples

Cleanup Action Report
820 Lenora Street
Seattle, Washington






	SEP-2019	BY: FK / KES	FIGURE NO.
	PROJECT NO. 170291	REVISED BY: TDR	6

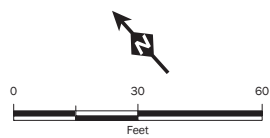
0660000545 Parcel Number | Social Security Administration (901 Lenora St) 0660001310 | Washington Tilling Book & Braille Library (2021 & 2025 9th Ave) 6949 00000 | Condominiums 0660000575 | Retail 0660000500 | Future City of Seattle Park 0660000485 | Alley | Former Braseth Gallery (2101 9th Ave) 0660000545 | Former Enterprise (2119 Westlake Ave) 0660000540 | Retail 0660000525 | Whole Foods 8729740000 Condominiums | 9TH AVE | WESTLAKE AVE | LENORA ST



Note:

1. The Subject Property boundary is based on the Plat Map of the Second Addition to the Town of Seattle. The Plat Map was filed for record on December 14, 1875 and can be obtained from King County Records Office or a title company.


-  Mass excavation limits
-  Approximate known extent of residual PAHs and/or petroleum-contaminated soil with MTCA exceedance
-  Interpreted extent of gasoline and benzene contaminated soil with MTCA exceedance at Subject Property from an off property source
-  Subject Property
-  King County Parcel



MTCA: Model Toxics Cleanup Control Act
PAH: Polycyclic aromatic hydrocarbons

**Subject Property-
Environmental Covenant Areas**

Cleanup Action Report
820 Lenora Street
Seattle, Washington

	SEP-2019	BY: FK / KES	FIGURE NO. 12
	PROJECT NO. 170291	REVISED BY: TDR	

Enclosure B

Basis for the Opinion – Documents List

1. Aspect Consulting. *Cleanup Action Report Amendment, Lenora Building Site*. August 23, 2022.
2. Ecology. *Opinion on Proposed Cleanup of a Property associated with a Site: Lenora Building*. August 9, 2021.
3. Aspect Consulting. *Cleanup Action Report, Lenora Building Site (aka Stratus Apartments), 820 Lenora Street, Seattle, Washington, VCP Project No. NW3277*. March 26, 2020.
4. Ecology. *No Further Action at a Property associated with a Site: Lenora Building*. November 14, 2017.
5. GeoEngineers, Inc. *Cleanup Action Report, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*. March 24, 2016.
6. GeoEngineers, Inc. *Remedial Investigation/Feasibility Study, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*. March 24, 2016.

Enclosure C

Environmental Covenant

After Recording Return
Original Signed Covenant to:

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

Environmental Covenant

Grantor: Ninth and Lenora LLC

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

Brief Legal Description:

Portions of THAT PORTION OF LOT 10, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), LYING EASTERLY OF WESTLAKE AVENUE AS ESTABLISHED BY ORDINANCE NO. 7733, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of LOTS 11 AND 12, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Tax Parcel Nos.: Portions of King County Parcel Nos. 0660000540 and 0660000545, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Cross Reference: No Further Action Likely opinion letter dated August 9, 2021.

RECITALS

- a.** This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b.** The Property that is the subject of this Covenant is part or all of a site commonly known as the Lenora Building Site, Facility/Site Identification No. 91413494. 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 in two defined areas at concentrations exceeding applicable MTCA cleanup levels following completion of remedial actions. Specifically, the following principal contaminants remain on the Property at concentrations exceeding MTCA cleanup levels:

Medium	Principal Contaminants Present
Soil	Gasoline-range petroleum hydrocarbons (TPH-G), heavy oil-range petroleum hydrocarbons (TPH-O), benzene, and toluene.
Groundwater	Gasoline-range petroleum hydrocarbons (TPH-G), heavy oil-range petroleum hydrocarbons (TPH-O), arsenic, chromium, lead, and mercury.
Surface Water/Sediment	None

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

- GeoEngineers, Inc., *Remedial Investigation/Feasibility Study, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*, dated March 24, 2016.
- GeoEngineers, Inc., *Cleanup Action Report, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*, dated March 24, 2016.
- Aspect Consulting, *Cleanup Action Report, Lenora Building Site (aka Stratus Apartments), 820 Lenora Street, Seattle, Washington, VCP Project No. NW3277*, dated March 26, 2020.
- Aspect Consulting, *Cleanup Action Report Amendment, Lenora Building Site – Final, Facility/Site #9143494 and Cleanup Site ID #1802, Project No.*, dated August 23, 2022.

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

Ninth and Lenora 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:

- 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 land lease for any portion of the Property to uses and activities consistent with this Covenant and notify all such lessees of the restrictions on the use of the Property. This notification requirement does not apply to individual apartment leases.
- 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 remaining contaminated soil under a cap consisting of asphalt pavement and/or concrete. Exhibit B shows the location of the capped areas on the Property. The primary purpose of this cap is to prevent direct contact with contaminated soil and/or leaching of contaminants. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Any activity in areas of the Property with remaining contamination that are shown on Exhibit B 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.

b. Vapor controls:

The residual contamination on the Property, illustrated in Exhibit B, includes volatile chemicals that may generate harmful vapors. As such, the following restrictions shall apply on the Property to minimize the potential for exposure to these vapors:

- i.** No new building or other enclosed structure shall be constructed within the areas illustrated on Exhibit B unless approved by Ecology.

ii. If a new building or other enclosed structure is approved, it shall be constructed with a sealed foundation and a vapor control system that is operated and maintained to prevent the migration of vapors into the building or structure, unless an alternative approach is approved by Ecology.

iii. If the existing building or the garage HVAC system is altered in any manner that could adversely change vapor intrusion conditions, the Grantor must conduct an updated vapor intrusion assessment.

c. Groundwater Use:

The groundwater beneath the area of the Property illustrated in Exhibit B 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 within this area for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

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 within the area of the Property described and illustrated in Exhibit B, including but not limited to title, easement, leases, and security or other interests but excluding individual apartment leases, 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 _____ AND RECORDED WITH THE KING COUNTY AUDITOR UNDER 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.

Elton Lee Ninth and Lenora LLC 455 Market Street, Suite #1920 San Francisco, CA 94105 (415) 495-3003 elee@gid.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
--	--

Section 5. Modification or Termination.

a. 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 19th day of March, 2024.

by: 
Elton Lee
Title: Vice President

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2024, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ 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/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of _____

Residing at **See Attached Acknowledgement/Jurat**

My appointment expires _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)
On March 19, 2024 before me, April M. Johnson, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Elton Lee
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Environmental Covenant
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



By: Erik Snyder

Title: Toxics Cleanup Program, Headquarters Section Manager

Dated: 4/2/2024

STATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 2nd day of April, 2024, I certify that Erik G. Snyder personally appeared before me, acknowledged that he is the HQ Cleanup 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 was authorized to execute said instrument for said state agency.



Notary Public in and for the State of Washington

Residing at Rochester, WA

My appointment expires 5/31/2027



Exhibit A

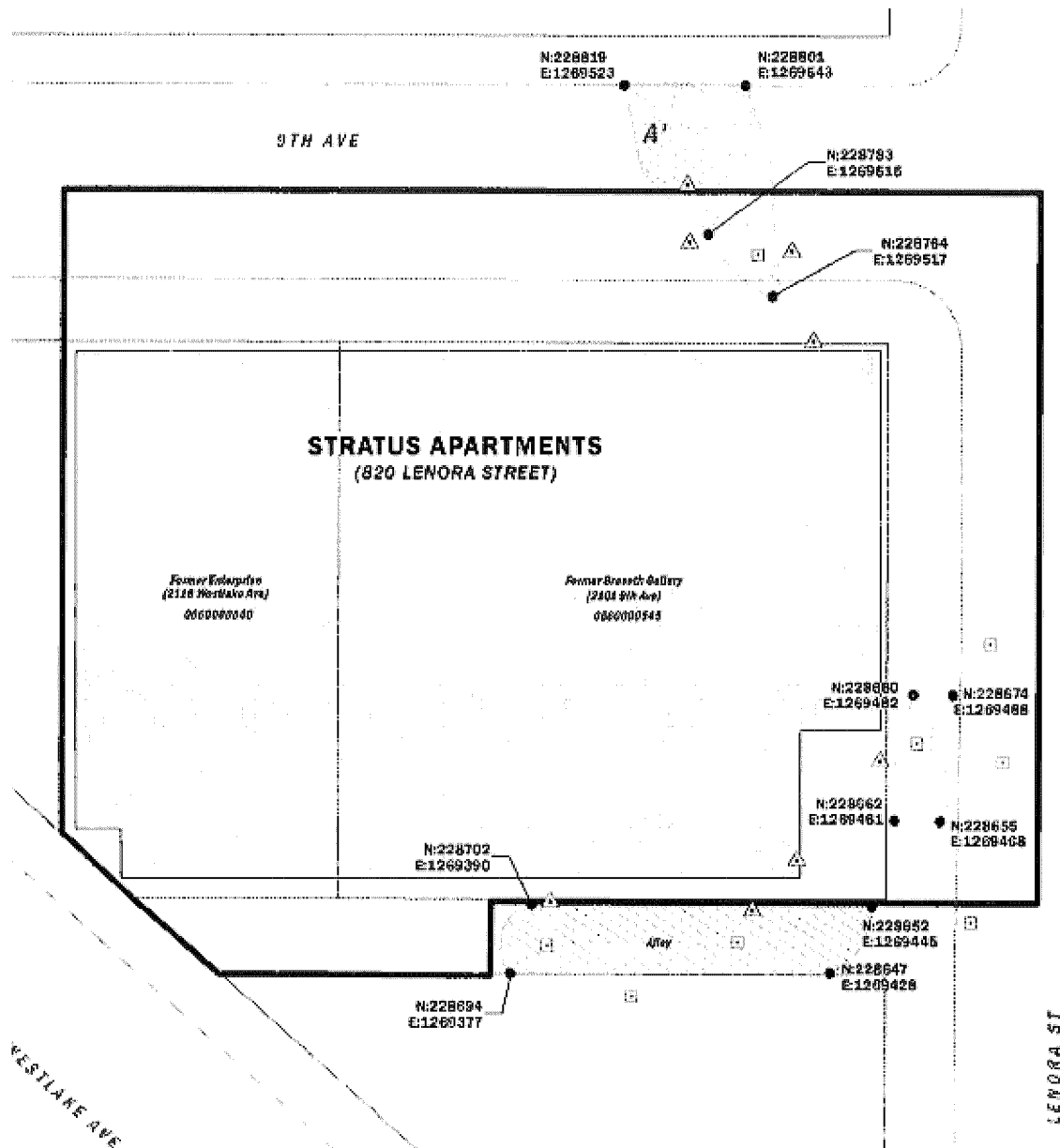
LEGAL DESCRIPTION

Portions of King County Parcel No 0660000540: THAT PORTION OF LOT 10, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), LYING EASTERLY OF WESTLAKE AVENUE AS ESTABLISHED BY ORDINANCE NO. 7733, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of King County Parcel No. 0660000545: LOTS 11 AND 12, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Exhibit B

COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL



Record Date: 4/5/2024 10:49 AM

Electronically Recorded King County, WA

When Recorded, Return to:

HILLIS CLARK MARTIN & PETERSON, P.S.
Attention: Allyson Bazan
999 Third Avenue, Suite 4600
Seattle, WA 98104

SUBORDINATION AGREEMENT

Grantor: <u>Wells Fargo Bank, N.A.</u>	
<input type="checkbox"/> Additional on page _____	
Grantee: 1) <u>Ninth and Lenora LLC</u>	2) <u>Fidelity National Title Company of Washington, Inc.</u>
<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated): <u>N/A</u>	
<input type="checkbox"/> Additional on : _____	
Assessor's Tax Parcel ID #: <u>N/A</u>	
Reference Nos. of Documents Released or Assigned: <u>20150814001077</u>	

SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That Wells Fargo Bank, N.A. ("Lender"), the owner and holder of that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Ninth and Lenora, a Delaware limited liability company, to Fidelity National Title Company of Washington, Inc, for the benefit of Lender, recorded in the office of the County Auditor of King County, State of Washington, on August 14, 2015, under Auditor's File Number 20150814001077, 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 March 19, 2024 and recorded in King County, Washington under Auditor's File Number 20240404000611.

WELLS FARGO BANK, N.A.

By: *Matthew Webb*

Name: MATTHEW WEBB

Title: VICE PRESIDENT

Dated: 2/7/2024

ACKNOWLEDGMENT

Commonwealth of
STATE OF
Massachusetts)

) SS

COUNTY OF Suffolk)

I, Rebecca J Shannon, a Notary Public in and for the County and State aforesaid, do hereby certify that [Lender Signatory] to me known, who declared and acknowledged that he/she is the [Lender Title] of WELLS FARGO BANK, N.A., subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said entities and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 7th day of February, 2023.

Rebecca J Shannon
Notary Public

Rebecca J Shannon
Printed Name:

(Seal)

Commission expires:

