

Record Date: 10/16/2024 9:07 AM

Electronically Recorded King County, WA

WHEN RECORDED RETURN TO:

Name: David Unruh, Site Manager

Address: P.O. Box 330316

Shoreline, WA 98133

Escrow Number: 722756RT

Filed for Record at Request of: Rainier Title LLC

DOCUMENT TITLE(S)

Termination and Release of Restrictive Covenant – Re-Record to record entire package

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

20241015001079

GRANTOR(S): State of Washington

GRANTEE(S): Military Road Investments, LLC and State of Washington

ABBREVIATED LEGAL DESCRIPTION:

Ptn of the NW1/4 and the SW1/4, STR 15-22-4

TAX PARCEL NUMBER(S):

152204-9027-03

Instrument Number: 20241015001079 Document: TERM Rec: \$306.50 Page-1 of 4
Record Date: 10/15/2024 4:31 PM
Electronically Recorded King County, WA

After Recording Return
Original Signed Release to:
David Unruh, Site Manager
P.O. Box 330316
Shoreline, WA 98133

TERMINATION AND RELEASE OF RESTRICTIVE COVENANT

Grantor: State of Washington, Department of Ecology
Grantee: Military Road Investments, LLC; State of Washington, Department of Transportation (WSDOT)
Brief Legal Description: 152204 27 Ptn. Parcel A, Ptn. Parcel B, Less Ptn conveyed to City of Kent for 36th Ave S under Rec No. 20050919002618
Cleanup Site ID: 6674
Facility/Site ID: 78643737
Tax Parcel Nos.: 1522049027 and south-adjacent WSDOT right of way
Cross-Reference: King County Recording No. 20061009000085 (Exhibit A); Property Legal Description and Site Map (Exhibit B); Site NFA Opinion (Exhibit C)

Pursuant to the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW, the Uniform Environmental Covenants Act, RCW 64.70.100, and WAC 173-340-440, the Washington State Department of Ecology (Ecology) has determined that the Restrictive Covenant (hereafter "Covenant"; Exhibit A) filed of record in King County under Auditor File Number 20061009000085 on October 9, 2006 between Military Road Investments, LLC as Grantor and Ecology as Grantee or Holder of the Covenant over the property legally described in Exhibit B is no longer necessary under MTCA and its implementing regulations, Chapter 173-340 WAC, to protect human health, the environment, and the integrity of the remedial action.

Specifically, on June 3, 2024, Ecology issued a No Further Action (NFA) opinion letter (Exhibit C), applicable to the Site. In the NFA opinion letter, Ecology concluded that, based on its analysis of the cleanup of the Site, the Covenant filed in 2006 is no longer necessary to protect human health, the environment, and the integrity of the remedial actions at the Site.

The 2006 Covenant contains an error in the tax parcel number. The Covenant references parcel number 1552049027, whereas the correct number is 1522049027. The legal description contained in the 2006 Covenant references the correct parcel.

**COURTESY RECORDING ONLY.
NO LIABILITY FOR VALIDITY
AND/OR ACCURACY ASSUMED BY
RAINIER TITLE COMPANY**

Instrument Number: 20241015001079 Document: TERM Rec: \$306.50 Page-2 of 4
Record Date: 10/15/2024 4:31 PM King County, WA

The 2006 Covenant also erroneously did not include parcel number 7260200060, which was part of the Site and was the location of remedial actions referenced in the 2024 NFA opinion letter (see Exhibit B). However, since this parcel was not included in the 2006 Covenant, a termination and release of Covenant for this parcel is not necessary.

Ecology hereby consents to termination and release of the Covenant and relinquishes and quitclaims to Military Road Investments, LLC and the State of Washington, Department of Transportation (WSDOT) any and all rights Ecology may have that were created by the Covenant. This document is not a settlement under MTCA. Ecology's signature below does not constitute a covenant not to sue or a compromise of Ecology's authority or rights other than those rights created by the Covenant itself.

The legal description of the property subject to the Covenant is described in Exhibit A.

Dated this 2nd day of October, 2024.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Kimberly Wooten, PhD

by: Dr. Kimberly Wooten

Title: Section Manager – Northwest Regional Office Toxics Cleanup Program

Instrument Number: 20241015001079 Document: TERM Rec: \$306.50 Page-3 of 4
Record Date: 10/15/2024 4:31 PM King County, WA

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

The undersigned, John White, hereby consents to the release and termination of the above-described Restrictive Covenant.



by: John White

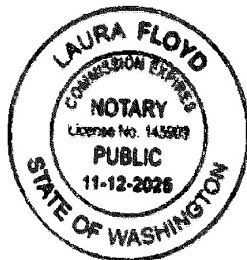
Title: Puget Sound Gateway Program Administrator, Authorized Agent

Dated: September 12, 2024

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF WASHINGTON
COUNTY OF KING

On this 12th day of September, 2024, I certify that John White personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Puget Sound Gateway Program Administrator, Authorized Agent of the State of Washington, Department of Transportation, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Laura Floyd
Notary Public in and for the State of Washington
Residing at Edmonds
My appointment expires 11-12-2025

Instrument Number: 20241015001079 Document: TERM Rec: \$306.50 Page-4 of 4
Record Date: 10/15/2024 4:31 PM King County, WA

MILITARY ROAD INVESTMENTS, LLC

The undersigned Rick Wakazuru hereby consents to the release and termination of the above-described Restrictive Covenant.

R. Wakazuru

by: Rick Wakazuru

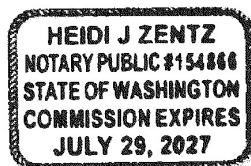
Title: General Manager

Dated: 10/1/24

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF WASHINGTON
COUNTY OF KING

On this 1st day of October, 2024, I certify that Rick Wakazuru personally appeared before me, acknowledged that he is the General Manager of Military Road Investments, LLC that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.



Heidi J Zentz
Notary Public in and for the State of Washington
Residing at Kent, WA
My appointment expires 7/29/27

Exhibit A
ORIGINAL RESTRICTIVE COVENANT

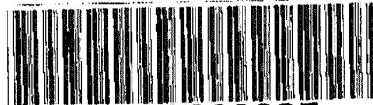
Unofficial Copy

3/26/2019

Landmark Web Official Records Search

Return Address:

Military Road Investments, LLC
23051 Military Road S
Kent, WA 98032



20061009000085

ALBERTSON COV 36.00
PAGE 001 OF 005
10/09/2006 08:58
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)**

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Restrictive Covenant 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) (Last name, first name, initials)

1. Military Road Investments, LLC
2. _____

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. Military Road Investments, LLC
2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

152204 27 Ptn Parcel A, Ptn. Parcel B, Less Ptn conveyed to City of Kent for 36th Ave S under Rec No.

20050919002618

Additional legal is on page 1 of document.

Assessor's Property Tax Parcel/Account Number

1552049027

☐ Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Nana M. Hunk

Signature of Requesting Party

3/26/2019

Landmark Web Official Records Search

WHEN RECORDED RETURN TO:

Military Road Investments, LLC
23051 Military Road S
Kent, WA 98032

RESTRICTIVE COVENANT

This declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f and g), and WAC 173-340-440, Military Road Investments, LLC, its successors and assigns, and the Washington State Department of Ecology, its successors and assigns.

Legal Description: 152204 27 PARCEL A: PORTION OF SW QTR NW QTR STR 15-22-05 LYING WLY OF W MARGIN OF OLD MILITARY ROAD S & ELY OF E MARGIN OF PRIMARY STATE HWY NO 1 EXE N 460 FT THEREOF; EXC S 479.30 FT; EXC PORTION CONVEYED TO STATE OF WA FOR PRIMARY STATE HIGHWAY NO 1 BY DEED UNDER RECORDING NO 5094448; PARCEL B: PORTION OF SLY 300 FT OF SW QTR NW QTR STR 15-22-04 LYING WEST OF OLD MILITARY ROAD EXC PORTION CONVEYED TO STATE OF WA FOR HIGHWAY PURPOSES BY DEED UNDER RECORDING NO 5094447; (BEING A PORTION OF PROPOSED LOT "A" DESCRIBED & DELINEATED PER CITY OF KENT LOT LINE ADJUSTMENT NO LL-2001-8 RECORDING NO 20010712001789--PORTION BEING WITHIN LEVY CODE 1551) EXC PORTION CONVEYED TO CITY OF KENT FOR 36TH AVE S BY DEED UNDER RECORDING NO 20050919002618

King County Tax Parcel I.D. #: 1552049027

3/26/2019

Landmark Web Official Records Search

RESTRICTIVE COVENANT
Military Road Investments, LLC

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Military Road Investments, LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology"). An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following documents:

- *Tank Removal Observations and Limited Environmental Site Assessment, Valley I-5, 23005 Military Road South, Kent Washington* (completed by Enviros for Valley I-5, Enviros Report No. 910714.02, dated October 15, 1991)
- *Underground Storage Tank Closure Site Assessment, Valley I-5 Motor Home, 23051 Military Road South, Kent, Washington* (completed by Sound Environmental Consulting for Valley I-5, dated December 4, 1998, Sound Environmental Consulting Report No. 1798)
- *Phase I Environmental Site Assessment, Kent - Poulsbo RV, 23051 Military Road South, Kent, Washington* (completed by LSI Adapt, Inc. for U.S. Bank, dated June 14, 2004, LSI Adapt, Inc. Report No. WA04-11238-PH1)
- *Limited Phase II Environmental Site Assessment, Kent - Poulsbo RV, 23051 Military Road South, Kent, Washington* (completed by LSI Adapt, Inc. for U.S. Bank, dated August 6, 2004, LSI Adapt, Inc. Report No. WA04-11238-PH2)
- *Supplemental Limited Phase II Environmental Site Assessment, Kent - Poulsbo RV, 23051 Military Road South, Kent, Washington* (completed by LSI Adapt, Inc. for U.S. Bank, dated July 14, 2005, LSI Adapt, Inc. Report No. WA04-11238-PH2)

These documents are on file at Ecology's Northwest Regional Office in Bellevue, Washington.

3/26/2019

Landmark Web Official Records Search

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of gasoline-range total petroleum hydrocarbons (1,200 ppm), benzene (0.17 ppm) ethylbenzene (22.2 ppm) and xylenes (133 ppm) which exceed the Model Toxics Control Act Method A Residential Cleanup Levels for soil established under WAC 173-340-900.

The undersigned, Military Road Investments, LLC, is the fee owner of real property (hereafter "Property") in the County of King, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described as follows:

152204 27 PARCEL A: PORTION OF SW QTR NW QTR STR 15-22-05 LYING WLY OF W MARGIN OF OLD MILITARY ROAD S & ELY OF E MARGIN OF PRIMARY STATE HWY NO 1 EXE N 460 FT THEREOF; EXC S 479.30 FT; EXC PORTION CONVEYED TO STATE OF WA FOR PRIMARY STATE HIGHWAY NO 1 BY DEED UNDER RECORDING NO 5094448; PARCEL B: PORTION OF SLY 300 FT OF SW QTR NW QTR STR 15-22-04 LYING WEST OF OLD MILITARY ROAD EXC PORTION CONVEYED TO STATE OF WA FOR HIGHWAY PURPOSES BY DEED UNDER RECORDING NO 5094447; (BEING A PORTION OF PROPOSED LOT "A" DESCRIBED & DELINEATED PER CITY OF KENT LOT LINE ADJUSTMENT NO LL-2001-8 RECORDING NO 20010712001789--PORTION BEING WITHIN LEVY CODE 1551) EXC PORTION CONVEYED TO CITY OF KENT FOR 36TH AVE S BY DEED UNDER RECORDING NO 20050919002618

Military Road Investments, LLC makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. A portion of the Property contains gasoline-range TPH benzene, ethylbenzene, and xylenes contaminated soil located immediately adjacent to and under the southeast portion of the southern maintenance and sales building. The Owner shall not alter, modify, or remove the existing structure in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology."

"Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for

3/26/2019

Landmark Web Official Records Search

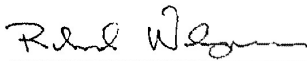
continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.



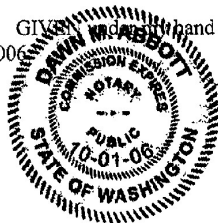
Richard Wakazuru, General Manager
Military Road Investments, LLC

9/18/06
Date

STATE OF WASHINGTON,)
) ss.
County of King)

On this day personally appeared before me Richard Wakazuru, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that it was signed as a free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 18th day of
September, 2006



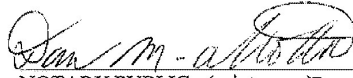

NOTARY PUBLIC: (print name) Dawn M. Abbott
State of Washington, residing in Polkville
My appointment expires 10/01/06

Exhibit B
PROPERTY DESCRIPTION AND SITE MAP

Unofficial Copy

Legal Description: 152204 27 PARCEL A: PORTION OF SW QTR NW QTR STR 15-22-05 LYING WLY OF W MARGIN OF OLD MILITARY ROAD S & ELY OF E MARGIN OF PRIMARY STATE HWY NO 1 EXE N 460 FT THEREOF; EXC S 479.30 FT; EXC PORTION CONVEYED TO STATE OF WA FOR PRIMARY STATE HIGHWAY NO 1 BY DEED UNDER RECORDING NO 5094448; PARCEL B: PORTION OF SLY 300 FEET OF SW QTR NW QTR STR 15-22-04 LYING WEST OF OLD MILITARY ROAD EXC PORTION CONVEYED TO STATE OF WA FOR HIGHWAY PURPOSES BY DEED UNDER RECORDING NO 5094447; (BEING A PORTION OF PROPOSED LOT 'A' DESCRIBED & DELINEATED PER CITY OF KENT FOR 36TH AVE S BY DEED UNDER RECORDING NO 20050919002618

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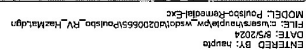


EXHIBIT C
SITE NFA OPINION LETTER

Unofficial Copy



Electronic Copy

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

June 3, 2024

Andrey Chepel
Washington State Department of Transportation
999 3rd Avenue, Suite 2200
Seattle, WA 98104
chepela@wsdot.wa.gov

Re: No Further Action opinion for the following contaminated Site

Site name: Valley I5 Poulsbo RV
Site address: 23051 Military Rd S, Kent, WA 98032
Facility/Site ID: 78643737
Cleanup Site ID: 6674
VCP Project No.: NW3335

Dear Andrey Chepel:

The Washington State Department of Ecology (Ecology) received your request on April 10, 2024 for an opinion regarding the sufficiency of your independent cleanup of the Valley I5 Poulsbo RV facility (Site) under the Voluntary Cleanup Program (VCP).¹ 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.²

Opinion

Ecology has determined that no further remedial action is necessary to clean up contamination at the Site.

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 WAC³ (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 releases:

¹ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Voluntary-Cleanup-Program>

² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305>

³ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340>

Andrey Chepel

June 3, 2024

Page 2

- Gasoline-range (TPH-G) total petroleum hydrocarbons, benzene, ethylbenzene, and total xylenes in soil.

Enclosure A includes Site description, history, and diagrams.

Please note the parcel of real property associated with this Site is also located within the projected boundaries of the Tacoma Smelter Plume King County facility (FSID no. 66948686). At this time, Ecology has no information indicating that contamination from the Tacoma Smelter Plume King County affects this parcel. This opinion does not apply to any contamination associated with the Tacoma Smelter King County facility.

Basis for the Opinion

Ecology bases this opinion on information in the documents listed in **Enclosure B**. A number of these documents are available in electronic form on the Site web page. You can request these documents by filing a [records request](#)⁴. For help making a request, contact the Public Records Officer at recordsofficer@ecy.wa.gov or call (360) 407-6040. Before making a request, check if the documents are available on the [Site webpage](#)⁵.

This opinion is void if information in any of the listed 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.

Soil.

Soil at the Site was contaminated with petroleum hydrocarbons released during historical operation of a recreational vehicle service center at the Site from approximately 1980 to the present. Historical soil sampling results from borings and excavations indicate that releases at the Site included TPH-G, benzene, ethylbenzene, and total xylenes. Based on the results of historical borings and soil samples collected from the extents of the most recent excavation at the Site, soil containing these contaminants above their respective Method A cleanup levels is no longer present at the Site.

The Site is located within the projected boundary of the [Tacoma Smelter Plume](#)⁶. Surface soil sampling was conducted from November 2022 to January 2024 to determine if shallow soils were impacted by arsenic and lead from this source. None of the soils collected from the disturbed areas of the Site contained arsenic or lead above the cleanup levels (see **Enclosure A, Figure 2**).

⁴ <https://ecology.wa.gov/footer-pages/public-records-requests>

⁵ <https://apps.ecology.wa.gov/cleanupsearch/site/6674>

⁶ <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanups/Cleanup-sites/Tacoma-smelter>

Andrey Chepel
June 3, 2024
Page 3

Groundwater.

Groundwater samples were collected from four monitoring wells at the Site from September 2021 to August 2022 (MW-1 to MW-4; see **Enclosure A, Figure 4**). Groundwater samples were analyzed for TPH-G, diesel- and oil-range petroleum hydrocarbons (TPH-D+O), benzene, toluene, ethylbenzene, and xylenes. None of the samples collected from these wells contained these contaminants above their respective Method A cleanup levels.

Vapor Intrusion.

Results of soil and groundwater confirmation samples discussed above indicate that contamination is no longer present in these media at the Site. Additionally, the building formerly located on the Site was demolished as of September 2022. Based on these conditions, the vapor intrusion pathway is considered incomplete at the Site.

Setting cleanup standards

Ecology has determined the cleanup levels and points of compliance you set for the Site meet the substantive requirements of MTCA.

Soil.

MTCA Method A soil cleanup levels for unrestricted use (WAC 173-340-740(2); Table 740-1) with the standard point of compliance are appropriate for the Site. The point of compliance for soils based on the protection of groundwater is defined as soils throughout the Site (WAC 173-340-740(6)(b)).

Based on the results of confirmation soil samples, contaminants do not exceed natural background concentrations, and the Site therefore qualifies for an exemption from the Terrestrial Ecological Evaluation (TEE) process (WAC 173-340-7491(1)(d); PBS 2024[1]). Method A cleanup levels as discussed above are appropriate at the Site.

Groundwater.

Groundwater is present at the Site at a depth of approximately 25 feet bgs. The highest beneficial use for groundwater is considered to be as a potable source, unless it can be demonstrated that groundwater is non-potable. MTCA Method A cleanup levels, which are protective of groundwater as a potable source, are appropriate for the Site (WAC 173-340-720(3); Table 720-1). The standard point of compliance for groundwater is throughout the Site from the uppermost level of the saturated zone extending vertically to the lowest depth which could potentially be affected (WAC 173-340-720(8)(b)).

Selecting the cleanup action

Ecology has determined the cleanup action you selected for the Site meets the substantive requirements of MTCA. The cleanup action consisted of excavation and off-Site disposal of contaminated soils, followed by confirmational groundwater monitoring. An additional excavation was completed in 2023 which removed the residual soil contamination at the Site.

Andrey Chepel
June 3, 2024
Page 4

Implementing the cleanup action

Ecology has determined your cleanup meets the standards set for the Site. Cleanup actions at the Site included the following:

Initial remedial excavation.

In 1998, two 2,000-gallon gasoline storage underground storage tanks (USTs) and one 1,000-gallon waste oil storage USTs were removed from the Site (See **Enclosure A, Figure 4**). The tanks were observed to be in good condition at the time of removal. Gasoline-like odors were observed in soils near the discharge line of an oil/water separator uncovered in the gasoline UST excavation. A total of approximately 30 cubic yards of contaminated soil were excavated and removed from the Site at this time.

Confirmation samples collected from the final extents of the excavations indicated that soil contamination remained above the Method A cleanup levels below the southern corner of the building. It was not possible to extend the excavation further without affecting the structural integrity of the building. Due to presence of residual contaminated soil following the initial excavation of soils in 1998, a restrictive covenant was recorded in 2006 to contain the remaining contamination.

Restrictive Covenant.

Following additional characterization at the Site completed in 2005, Ecology issued an NFA for the Site in 2006. One of the requirements of the NFA was recording of institutional controls in a Restrictive Covenant (RC). An RC was recorded on King County tax parcel no. 1552049027 (King Co. Recording no. 20061009000085). The complete RC is included as **Appendix C**. The RC included the following restrictions on the Property:

- The owner shall not alter, modify, or remove the existing structure in any manner that may result in the release or exposure to the environment of contaminated soils or create new exposure pathways without prior written approval from Ecology.
- Any activity on the Property that may interfere with the integrity of the remedial action and continued protection of human health and the environment is prohibited.
- Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the remedial action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.
- The owner of the Property must give thirty (30) day advance written notice to Ecology of the owner's intent to convey any interest in the Property. No conveyance of title, Easement, lease, or other interest in the Property is allowable without adequate and complete provision for the continued monitoring, operation, and maintenance of the remedial action.
- The owner must restrict leases to uses and activities consistent with the restrictive covenant and notify all lessees of the restrictions on use of the Property.
- The owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this restrictive covenant. Ecology may approve any inconsistent use only after public notice and comment.

Andrey Chepel
June 3, 2024
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Second remedial excavation

In September 2022, additional remedial actions were conducted at the Site to remove the remaining soil containing TPH-G, benzene, ethylbenzene, and xylenes above the Method A cleanup levels. The remedial actions consisted of demolition of the maintenance shop building and excavation and off-Site disposal of remaining contaminated soil. Following the demolition of the maintenance shop building in September 2022, the remedial excavation was advanced in 2023.

Approximately 10 feet of clean overburden soils were excavated from below the southern corner of the former building. The oil-water separator and approximately 275 tons of contaminated soil were then removed from the subsurface. Contaminated soils were temporarily stockpiled on Site before transportation to a permitted off-Site disposal facility.

A total of 16 confirmation soil samples were collected from the final extents of the excavation. None of the samples contained TPH-G, benzene, ethylbenzene, or xylenes above the laboratory reporting limits. Confirmation soil samples collected from the limits of excavations indicate that cleanup actions at the Site were successful in removing all soil containing TPH-G, benzene, ethylbenzene, and xylenes above their respective Method A cleanup levels. The cleanup actions meet the minimum requirements for cleanup actions defined in WAC 173-340-360(2).

Model Remedy

Based on the contaminants present and cleanup actions performed at the Site, Ecology concurs that the use of a model remedy at the Site is appropriate. As soil and groundwater data indicate that both media meet Method A cleanup levels for unrestricted use, Model Remedy 1 defined in Ecology's *Model Remedies for Sites with Petroleum Contaminated Soils*, revised December 2017⁷, is applicable at the Site. The requirements of Soil Model Remedy 1 are:

- A release of petroleum has been confirmed and Ecology has been notified of the release.
- The only contaminants at the Site are associated with petroleum hydrocarbons.
- An adequate Site characterization has confirmed that the groundwater, surface water and sediment pathway have been impacted by petroleum.
- The Site qualifies for an exclusion from further TEE in accordance with WAC 173-340-7491.
- The primary remedy consists of removal of contaminated soil to the greatest degree practicable.
- Sufficient soil sampling has been conducted to demonstrate that the Method A soil cleanup levels are met throughout the Site.

Since the Site qualifies for a Model Remedy, conducting a feasibility study or disproportionate cost analysis was not necessary.

⁷ <https://apps.ecology.wa.gov/publications/SummaryPages/1509043.html>

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Post-Cleanup Controls and Monitoring

Ecology concurs that contaminated soil and groundwater are no longer present on the Site above Method A cleanup levels for unrestricted use. Since media across the Site meet cleanup standards, institutional controls are no longer required to protect human health and the environment.

Ecology will work with you to remove the RC following the procedures described in *Toxics Cleanup Program Procedure 440C: Releasing Environmental Covenants Under the Model Toxics Control Act*⁸. Please note that MTCA rule revisions effective January 1, 2024 no longer require a public comment period for removal of RCs and Environmental Covenants for sites enrolled in the VCP.

Parcel number 1552049027 no longer exists in King County's database. However, the RC is applicable to the area defined by the legal description in the 2006 RC. Ecology recommends retaining a licensed surveyor to draft a figure which shows the extent of the legal description in the RC relative to the current property and right-of-way boundaries.

Resource Protection Wells

You must decommission resource protection wells⁹ installed as part of the remedial action that are not needed for any other purpose at the Site. Wells must be decommissioned in accordance with WAC 173-160-460.¹⁰

Listing of the Site

Based on this opinion, Ecology will initiate the process of removing the Site from the Contaminated Sites List and the Leaking Underground Storage Tank (LUST) List. The Site will be added to the No Further Action sites list.

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).¹¹

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

⁸ <https://apps.ecology.wa.gov/publications/SummaryPages/1509057.html>

⁹ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-410>

¹⁰ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-160-460>

¹¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.040>

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opinion does not determine if the action you performed is substantially equivalent. Courts make that determination. See RCW 70A.305.080¹² and WAC 173-340-545.¹³

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).¹⁴

Termination of Agreement

Thank you for cleaning up the Site under the VCP. This opinion terminates the VCP Agreement governing VCP Project No. NW3335.

Questions

If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at 206-459-6287 or by email david.unruh@ecy.wa.gov.

Sincerely,



David Unruh
Toxics Cleanup Program, NWRO

Enclosures (3):

- A – Site Description, History, and Diagrams
- B – Basis for the Opinion: List of Documents
- C – Original 2006 Restrictive Covenant

cc: David Clarke, Washington State Department of Transportation (clarkdh@wsdot.wa.gov)
Drew Rankin, Washington State Department of Transportation (rankind@wsdot.wa.gov)
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Fiscal, VCP Fiscal Analyst (ecyrevcp@ECY.WA.GOV)

¹² <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.080>

¹³ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-545>

¹⁴ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.305.170>

Enclosure A

Site Description, History, and Diagrams

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Site Description

This section provides Ecology's understanding and interpretation of Site conditions and is the basis for the opinions expressed in the body of the letter.

Site

The Site is defined by releases of gasoline-range total petroleum hydrocarbons (TPH-G), benzene, ethylbenzene, and total xylenes into the soil at 23051 Military Road South, Kent, Washington (**Figure 1**, **Figure 2**).

Area and Property Description

The Property, which includes the Site contamination sources, corresponds to two King County tax parcel numbers as well as a portion of the Veterans Drive right-of-way (ROW). Parcel 1522049027 is 3.69 acres in size and includes a building with the addresses 22951 and formerly 23051 Military Road South. Parcel no. 7260200060 is 0.60 acre in size and includes a portion of the former 23051 building. The parcel boundaries were modified in 2023 to accommodate the construction of the new ROW (**Figure 2**). The Property is bounded to the north by undeveloped land, to the east by Military Drive South, to the south by exit ramps for Interstate Highway 5 (I-5), and to the west by I-5 (**Figure 1**).

Property History and Current Use

Records indicate the Property was undeveloped until the 1930s, when two residences and associated outbuildings were constructed on the southern half of the Property. A third residence was constructed on the southern portion of the Property in 1960 but appears to have burnt down the following year. In 1972, a bakery was constructed in the central portion of the Property. The current office and warehouse in the northern portion of the Property was built in 1973.

The houses on the southern portion of the property were replaced with the current shop building by approximately 1980. A portion of the Site currently lies within the Veterans Drive ROW (**Figure 2**). The building on the southern portion of the property (23051 Military Rd S; **Figure 2**) was demolished by November 2022 when work to begin roadway construction began.

Sources of Contamination

Assessor documents from the construction of the 1980 shop building indicate the presence of at least two 1,000 to 2,000-gallon underground storage tanks (USTs) and at least one dispenser island on the southeast side of the shop building (**Figure 3**). In 1998, one 1,000-gallon waste oil storage UST and two 2,000-gallon fuel storage USTs were removed from the southeast side of the shop. Observations from tank removal activities indicated the tanks were in good condition and leakage from an oil-water separator as a possible source of contamination. Confirmation samples taken from the excavation contained TPH-G, ethylbenzene, and total xylenes above Method A cleanup levels.

Further subsurface investigations conducted in 2004 and 2005 indicated soils contained TPH-G, benzene, and total xylenes above Method A cleanup levels near the USTs and dispenser island (HB-1; Figure 3).

The Property is located within the projected boundaries of the Tacoma Smelter Plume King County contaminated site (Facility Site ID 66948686). Due to the development history of the building on the Property, a potential for arsenic and lead contamination to have affected surface soils was identified in Ecology's *Re: Opinion Pursuant to WAC 173-340-515(5) on Remedial Action for the following Hazardous Waste Site: Valley I-5 a.k.a. Poulsbo RV, 23-51 Military Road South, Kent, WA*, dated May 25, 2022 (*May 2022 Opinion*).

Physiographic Setting

The Site is located in the Puget Sound Lowland physiographic province, a north-south trending structural and topographic depression that is bordered on its west side by the Olympic Mountains, and to the east by the Cascade Mountain foothills. The Puget Sound Lowland is underlain by Tertiary volcanic and sedimentary bedrock characteristic of a back-arc depositional environment setting and has been filled to the present-day land surface with Pleistocene-aged glacial and nonglacial sediments.

Repeated advances and retreats of the continental glaciers that flowed through the area out of Canada more than 10,000 years ago created the low, undulating plains that are characteristic of the Puget Sound Lowland. Current land surfaces reflect the changes that are directly related to the most recent glacial advance and retreat through the region, known as the Vashon Stade of the Fraser Glaciation.

The Site is located on the eastern margin of the Des Moines upland, a glaciated topographic high on the western margin of the Green River floodplain. Ground surface at the Site is approximately 370 feet above mean sea level and slopes gently to the southeast.

Surface/Storm Water System

Stormwater runoff on and in the vicinity of the Property disperses via sheet flow to catch basins connected to the City of Kent stormwater system.

Ecological Setting

The area surrounding the Site to the west and south is primarily covered with buildings and pavement. The Property is bordered to the north and east by undeveloped land. Surface water features in the vicinity of the Site include Massey Creek (located approximately 1,600 feet west and upgradient of the Site) and the Green River (located 3,800 feet downgradient of the Site).

Geology

The geologic map¹⁵ of the area indicates that the Site is underlain by Vashon Till. The Vashon Till is a dense diamict with varying amounts of sand, silt, and gravel deposited during the most recent period of glaciation. Borings and excavations completed on the Site indicate it is situated

¹⁵ https://ngmdb.usgs.gov/Prodesc/proddesc_106502.htm

on approximately 3 to 9 feet of fill material consisting of sand and silty sand with varying amounts of gravel. Fill material is underlain by very dense silty sand with varying amounts of gravel, interpreted to be Vashon Till, to a maximum exploration depth of 30.5 feet below ground surface (bgs).

Groundwater

Four monitoring wells were installed at the Site in February 2020 (MW-1 to MW-4; **Figure 4**). Depth to groundwater at the Site ranges from 22.81 to 31.00 feet bgs (341.32 to 330.10 feet NAVD88¹⁶). Groundwater generally flows to the south-southeast toward the Green River.

Water Supply

Potable water is supplied to the Property by the Highline Water District. Approximately one third of the district's water is supplied by wells screened in medium to deep aquifers in SeaTac and Des Moines. Seattle Public Utilities supplies the remainder of District water, which is sourced from the Cedar and Tolt River watersheds. The Site is located approximately 0.85 miles south of the nearest 10-year wellhead protection zone for District wells.

Release and Extent of Contamination

In October 1998, to comply with decommissioning rules for USTs, two 2,000-gallon gasoline storage USTs and one 1,000-gallon waste oil UST were decommissioned by removal from the Site. Two excavations were extended to remove the waste oil and gasoline storage USTs (Exc. 1 and Exc. 2 respectively; **Figure 3**). During excavation of the gasoline-storage USTs, soils contaminated with petroleum were encountered on the east side of the excavation near a damaged pipe connected to an oil-water separator. Confirmation samples collected from the east sidewall and bottom of Exc. 2 (Exc. 2-East and Exc. 2-South, respectively; **Figure 3**) contained TPH-G, ethylbenzene, and total xylenes above Method A cleanup levels.

After bottom and sidewall sample results were received, Exc. 2 was extended to a total depth of 16 feet bgs (Exc. 3; **Figure 3**). Additional sidewall and bottom samples confirmed the absence of TPH-G, ethylbenzene, and total xylenes above Method A cleanup levels on the south sidewall of the excavation. A total of approximately 30 cubic yards of contaminated soil was removed from the Site for disposal at a permitted facility.

In August 2004, based on the results of a Phase I Environmental Site Assessment (ESA) conducted as part of due diligence activities for sale of the Property, a Phase II ESA was conducted at the Site. Soil samples were collected from nine explorations, eight advanced with direct-push drilling methods and one with a hand auger (GP-1 to GP-8, HB-1; **Figure 5**). Soil from HB-1 contained TPH-G, benzene, and total xylenes above Method A cleanup levels. No other explorations contained TPH-G, benzene, ethylbenzene, or total xylenes above Method A cleanup levels.

Three additional borings were advanced on the Site in July 2005 to further characterize the extent of contaminated soil (B-1 to B-3; **Figure 5**). Borings were advanced to approximately 30

¹⁶ North American Vertical Datum of 1988

feet bgs and did not contain recoverable groundwater after time was allowed for seepage. Site contaminants of concern (COCs) were not detected in soil from any of the borings.

Based on the results of soil sampling, the Site received a no further action (NFA) determination from Ecology on November 16, 2006 (VCP Site number NW1486). As a requirement of the NFA determination, a restrictive covenant was filed for the Property to limit disturbance of the ground surface at the Site, since soils with concentrations of TPH-G, benzene, ethylbenzene, and total xylenes exceeding Method A cleanup levels remained on the Site.

In February 2020, as part of due diligence activities for the SR509 project, an additional Phase II ESA was conducted at the Site. Four borings were advanced on the Site and completed as monitoring wells (MW-1 to MW-4; Figure 5). Soil samples did not contain any contaminants above Method A cleanup levels. Groundwater collected from MW-3 contained diesel-range TPH (TPH-D) below Method A cleanup levels. Groundwater in the other three monitoring wells did not contain contaminants above Method A cleanup levels.

Groundwater samples were collected on a quarterly basis from September 2021 to March 2022 and in August 2022 from half of the wells on the Site. The following table shows the groundwater sampling results for Site contaminants for monitoring wells MW-1 to MW-4 over this time period:

Sample Identification	Date	Results (µg/L)					
		TPH		VOCs			
		TPH-D+O	TPH-G	Benzene	Toluene	Ethylbenzene	Xylenes
MTCA Method A Cleanup Levels		500	1000	5	1,000	700	1,000
MW-1	9/8/2021	99 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	12/6/2021	116 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	3/16/2022	113 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	8/10/2022	92.9 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
MW-2	9/8/2021	--	--	--	--	--	--
	12/6/2021	117 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	3/16/2022	114 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	8/10/2022	--	--	--	--	--	--
MW-3	9/8/2021	132	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	12/6/2021	118 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	3/16/2022	257	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	8/10/2022	271	50 U	0.440 U	0.750 U	0.400 U	1.00 U
MW-4	9/8/2021	--	--	--	--	--	--
	12/6/2021	120 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	3/16/2022	115 U	50 U	0.440 U	0.750 U	0.400 U	1.00 U
	8/10/2022	183	50 U	0.440 U	0.750 U	0.400 U	1.00 U

Notes:

U – sample not detected above laboratory reporting limit

µg/L – micrograms per liter

Results from these samples indicate that groundwater has not exceeded the Method A cleanup levels at any location during this period.

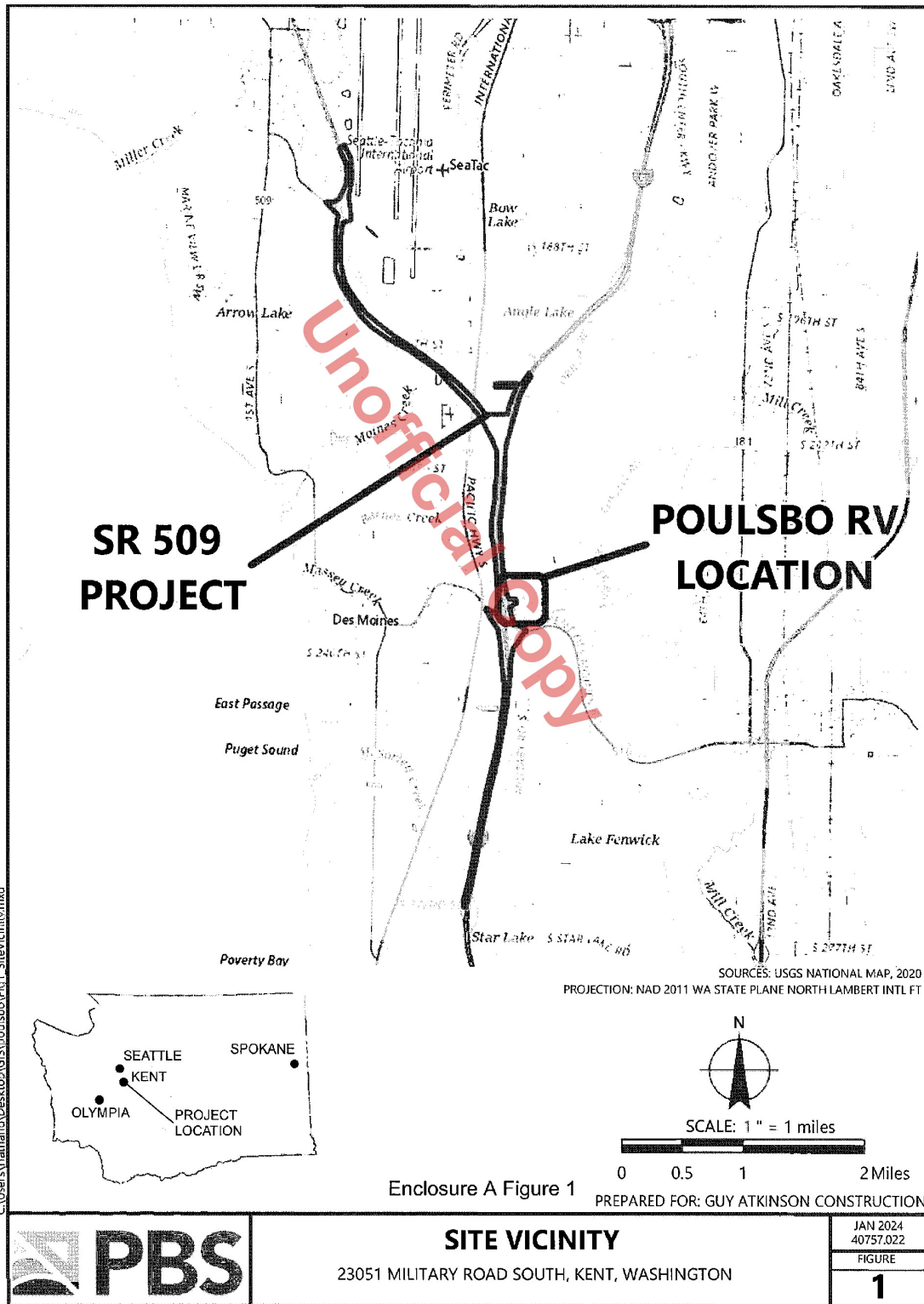
Following recommendations in Ecology's *May 2022 Opinion*, a total of 16 shallow soil samples were collected from 0 to 1 feet bgs from November 2022 to January 2024 to determine if shallow soil at the Site has been impacted by releases from the Tacoma Smelter Plume (SP-1 to SP-16; **Figure 2**). None of the samples contained arsenic or lead above the cleanup levels identified in the *Tacoma Smelter Plume Model Remedies Guidance*¹⁷, published July 2019.

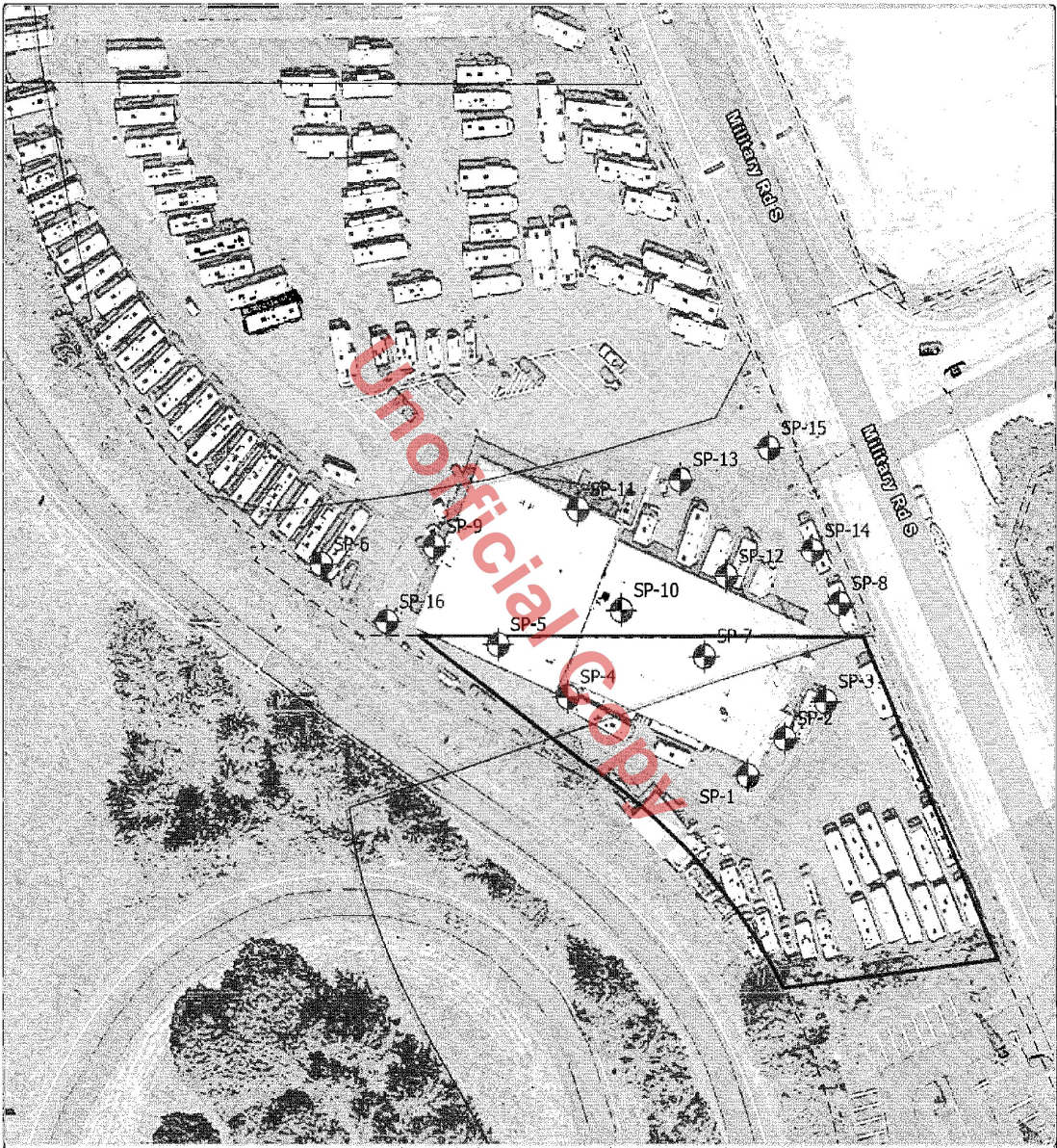
In September 2023, an excavation was advanced at the Site to remove remaining contaminated soil from below the former building. Soils from the surface to 10 feet bgs were field screened using visual-olfactory methods as well as a PID and were determined to be clean. In addition to field screening, a total of six discrete samples were collected from two lifts from 0-5 (OB-1 to OB-3) and 5-10 feet bgs (OB-7 to OB-9). Overburden soil samples were submitted for analysis of Site contaminants. None of the overburden soil samples contained contaminants above laboratory reporting limits.

Assumed clean overburden soils were placed in temporary stockpiles while awaiting results of soil samples. After results indicated that contamination was not present above laboratory reporting limits, clean overburden soils were used in the excavation as backfill.

The excavation was extended to a total depth of 15 feet bgs. A total of 16 confirmation soil samples were collected from the sidewalls and bottom of the excavation (**Figure 6**). None of the samples contained TPH-G, TPH-D+O, benzene, ethylbenzene, or xylenes above the laboratory reporting limits.

¹⁷ <https://apps.ecology.wa.gov/publications/SummaryPages/1909101.html>





PROPOSED As/Pb SOIL SAMPLING LOCATIONS - AUGUST 2022

23051 Military Road South, Kent, Washington
CLIENT: ATKINSON CONSTRUCTION | DATE: AUG 2022 | PROJECT: 40757.022
FIGURE: 1

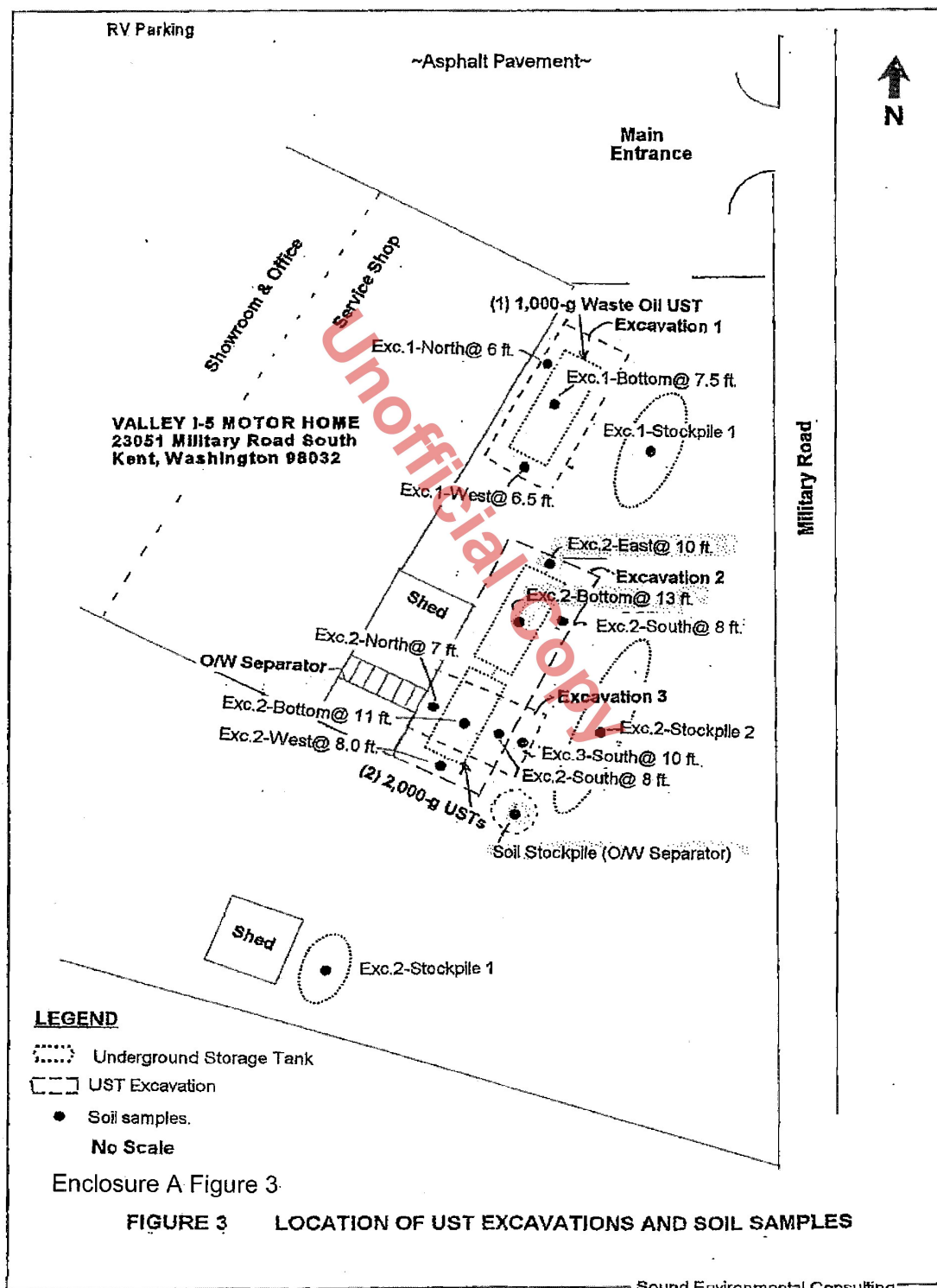
- Proposed As/Pb Sample Locations
- Site Boundary
- Existing Right-of-Way Boundary
- Proposed New Right-of-Way Boundary
- Proposed Remedial Excavation (approx. 0.08 acres)

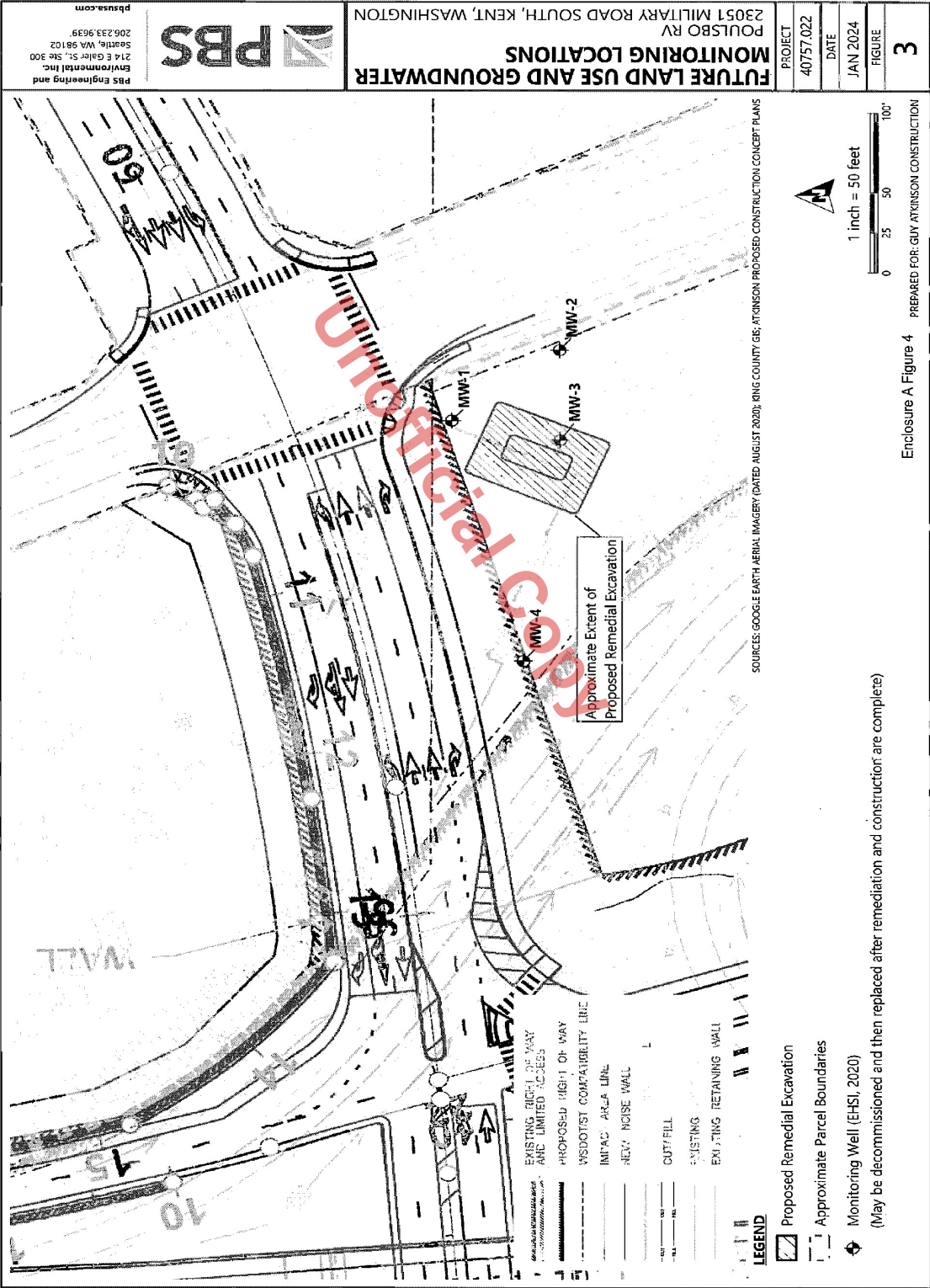
1 INCH = 75 FEET
0 15

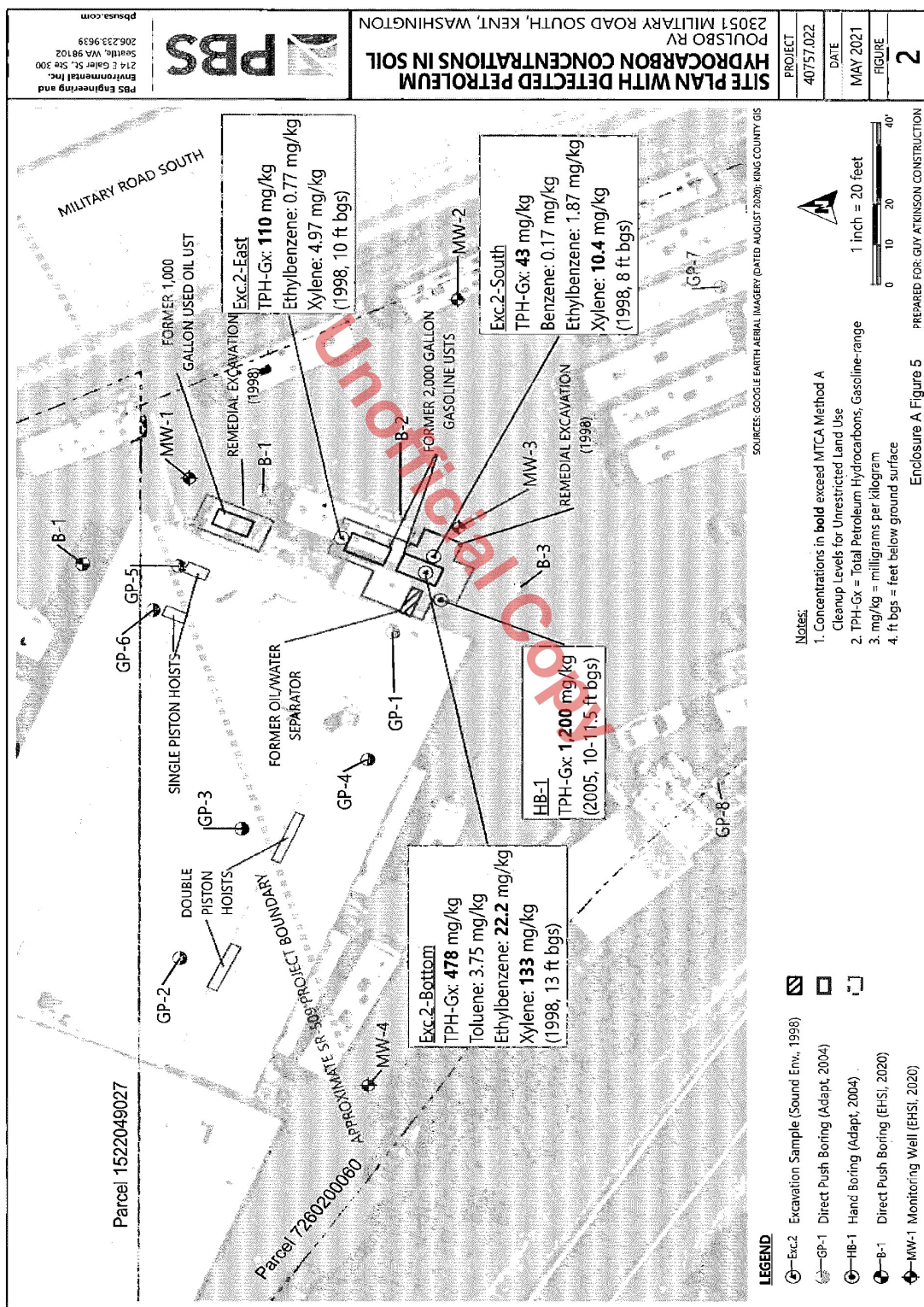


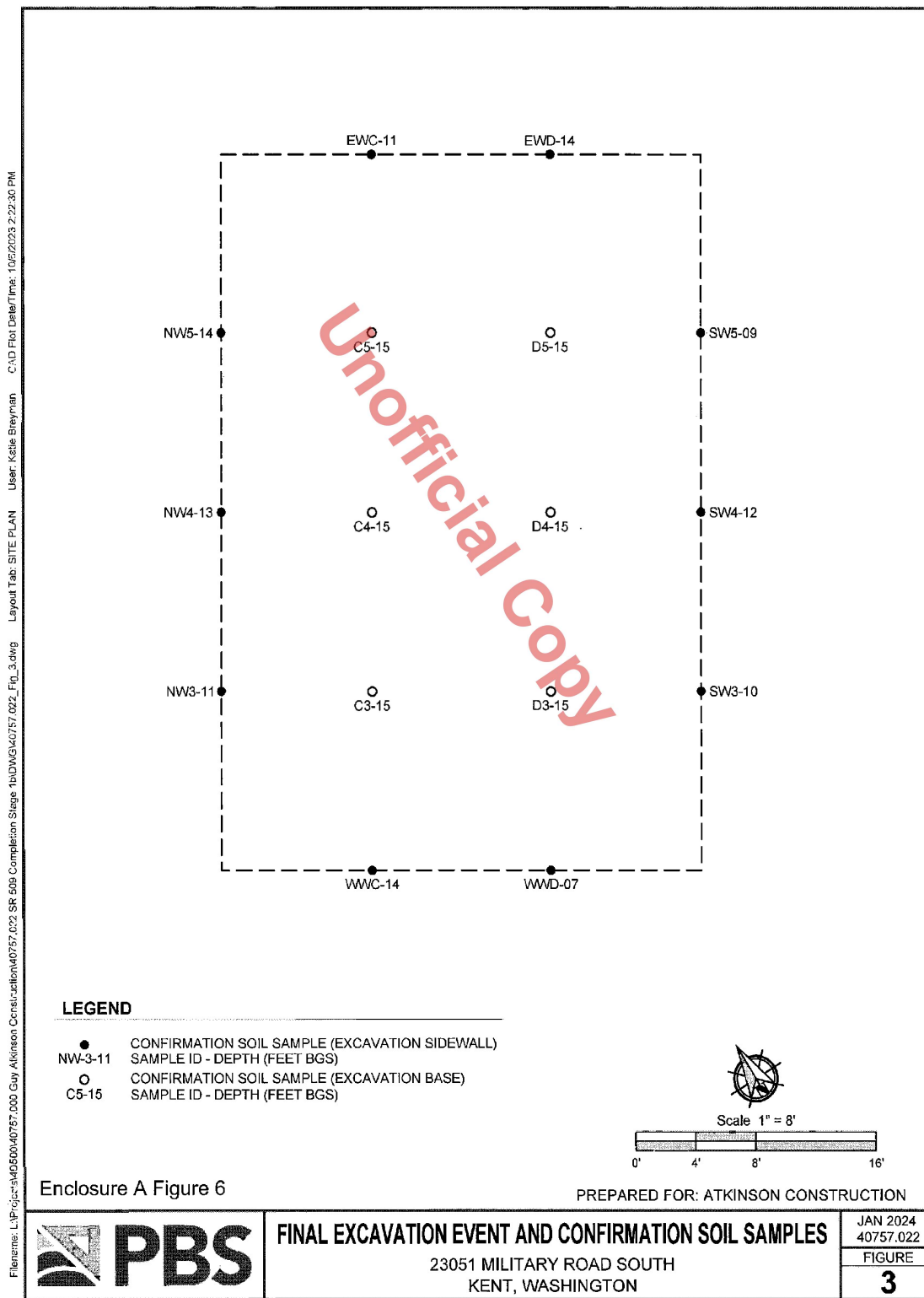
Enclosure A Figure 2

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.









Enclosure B

Basis for the Opinion: List of Documents

Unofficial Copy

Basis for the Opinion: List of Documents

1. PBS Environmental and Engineering, Inc. (PBS), *Terrestrial Ecological Evaluation Form, Valley I5 Poulsbo RV*, May 21, 2024.
2. PBS, *Remedial Action Completion Report, Valley I5 Poulsbo RV Site, Puget Sound Gateway Program, SR 509 Completion, Stage 1B*, April 10, 2024.
3. Washington State Department of Ecology (Ecology), *Technical Assistance on Excavation Backfilling*, September 28, 2023.
4. Ecology, *Technical Assistance for Shallow Soil Sampling Plan*, August 31, 2022.
5. Ecology, *Technical Assistance for Tacoma Smelter Plume Sampling Area*, July 21, 2022.
6. Ecology, *Opinion Pursuant to WAC 173-340-515(5) on Remedial Action for the following Hazardous Waste Site: Valley I-5 a.k.a Poulsbo RV, 23051 Military Road South, Kent, WA 98032*, June 8, 2022.
7. PBS, *Remedial Action Work Plan, Poulsbo RV, Puget Sound Gateway Program, SR509 Completion, Stage 1B, Contract no. 9424*, August 18, 2021.
8. Ecology, *Periodic Review, Valley I5 RV, Facility Site ID#: 78643737, 23051 Military Road South, Kent, Washington*, April 2019.
9. Environmental Associates, Inc., *Phase I Environmental Site Assessment, Poulsbo RV Property, Parcels 1522049027, 7260200060, 23051 & 22951 Military Road South, Kent, Washington 98032*, October 14, 2015.
10. Ecology, *Periodic Review, Valley I5 RV, Facility/Site No. 78643737, 23051 Military Road South, Kent, WA*, November, 2012.
11. Ecology, *No Further Action Determination under WAC 173-340-515(5) for the following Hazardous Waste Site: Kent – Poulsbo RV, 23051 Military Road South, Kent, WA, 98032, Facility/Site No. 73643737, VCP No. NW1486*, November 16, 2006.
12. Military Road Investments, LLC, *Restrictive Covenant, King County Tax Parcel 1552049027*, Recorded in King County October 9, 2006.
13. LSI Adapt Inc., *Supplemental Limited Phase II Environmental Site Assessment, Kent – Poulsbo RV, 23051 Military Road South, Kent, Washington 98032*, July 14, 2005.
14. LSI Adapt Inc., *Limited Phase II Environmental Site Assessment, Kent – Poulsbo RV, 23051 Military Road South, Kent, Washington, 98032*, August 2004.

15. LSA Adapt Inc., *Phase I Environmental Site Assessment, Kent – Poulsbo RV, 23051 Military Road South, Kent, Washington, 98032*, June 14, 2004.
16. Sound Environmental Consulting, *Underground Storage Tank Closure Site Assessment, Valley I-5 Motor Home, Kent, Washington*, December 4, 1998.
17. Enviro, Inc., *Tank Removal Observation and Limited Environmental Site Assessment of Valley I-5 Located at: 23005 Military Road South, Kent, Washington*, October 15, 1991.

Unofficial Copy

Enclosure C

Original 2006 Restrictive Covenant

Unofficial Copy