



PERIODIC REVIEW

**Bristol-Myers Squibb
Aka Graphicolor
Facility Site ID#: 23682319**

**3018 Western Avenue
Seattle, Washington**

Northwest Region Office

TOXICS CLEANUP PROGRAM

December 2009

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1.0 INTRODUCTION

This document is a review by the Washington State Department of Ecology (Ecology) of post-cleanup site conditions and monitoring data to ensure that human health and the environment are being protected at the Bristol-Meyer Squibb Property (Site). Cleanup at this Site was implemented under the Model Toxics Control Act (MTCA) regulations, Chapter 173-340 Washington Administrative Code (WAC).

Cleanup activities at this Site were completed under the Voluntary Cleanup Program [or IRAP]. The cleanup actions resulted in concentrations of [contaminant, like: petroleum hydrocarbons, lead and cadmium] remaining at the Site which exceed MTCA cleanup levels. The MTCA cleanup levels for soil are established under WAC 173-340-740. The MTCA cleanup levels for groundwater are established under WAC 173-340-720. WAC 173-340-420 (2) requires that Ecology conduct a periodic review of a site every five years under the following conditions:

- (a) Whenever the department conducts a cleanup action
- (b) Whenever the department approves a cleanup action under an order, agreed order or consent decree
- (c) Or, as resources permit, whenever the department issues a no further action opinion;
- (d) and one of the following conditions exists:
 - 1. Institutional controls or financial assurance are required as part of the cleanup
 - 2. Where the cleanup level is based on a practical quantitation limit
 - 3. Where, in the department's judgment, modifications to the default equations or assumptions using site-specific information would significantly increase the concentration of hazardous substances remaining at the site after cleanup or the uncertainty in the ecological evaluation or the reliability of the cleanup action is such that additional review is necessary to assure long-term protection of human health and the environment.

When evaluating whether human health and the environment are being protected, the factors the department shall consider include [WAC 173-340-420(4)]:

- (a) The effectiveness of ongoing or completed cleanup actions, including the effectiveness of engineered controls and institutional controls in limiting exposure to hazardous substances remaining at the site;
- (b) New scientific information for individual hazardous substances of mixtures present at the site;
- (c) New applicable state and federal laws for hazardous substances present at the Site;
- (d) Current and projected site use;
- (e) Availability and practicability of higher preference technologies; and
- (f) The availability of improved analytical techniques to evaluate compliance with cleanup levels.

The Department shall publish a notice of all periodic reviews in the Site Register and provide an opportunity for public comment.

2.0 SUMMARY OF SITE CONDITIONS

2.1 Site Description and History

The 3018 Western Avenue property was purchased by Bristol-Myers Squibb Company (BMS) (d/b/a/ Oncogen) on July 13, 1990 from GraphiColor Corporation. The property was first developed in 1929 as a food warehouse and processing factory. By 1955, the site was occupied by “Mello-Cup” Coffee Company. According to the 1965 listings, the building was next occupied by Berg and Associates, manufacturers of display equipment. GraphiColor Corporation occupied the site from 1978 to 1990. This company was involved in printing a variety of paper products. They were the last owner of the property until BMS purchased it.

The subject property is comprised of a single building located at 3018 Western Avenue. The building was used by BMS as a vivarium (live animal facility) prior to acquisition of the property by Alexandria Real Estate Equities, Inc. in 1998. The property is currently being leased for office and medical research use. An apartment/condominium is located directly adjacent to the northwest of the subject property. A second building (3000 Western Avenue) formerly used by BMS for office and laboratory space is located adjacent and to the southeast of the subject property. Western Avenue is located to the west and a paved alley is located to the east of the subject property. Generally, the subject property is surrounded by concrete sidewalks and asphalt paved parking and streets. Land use in the vicinity includes mixed office, retail, and multi-unit residential.

Two inactive underground storage tanks (USTs) are known to have been removed from the site in 1990 and 1994. A gasoline UST was located beneath the loading dock area and was removed in 1990 (ERM Northwest, ERM-NW, 1990b). A heating oil UST located beneath the floor of the northwest portion of the building was removed in 1994 during building renovation (ERM-NW, 1994).

The subject property is located in the NW ¼ of the NW ¼ of Section 31, Township 25 North, Range 4 East, Seattle, King County, Washington. The latitude is approximately 47° 37' S” and the longitude is approximately 122° 21' 7”. The elevation at the subject property is between 65 to 80 feet above the National Geodetic Vertical Datum of 1929. The nearest surface water is Elliott Bay (Puget Sound) approximately 750 feet southwest of the site. The site slopes downward to the southwest.

The subject property is located in the Central Business District physiographic division of Seattle (Gaister and Laprade, 1991). The site area is underlain by glacial deposits interpreted to be Vashon Till. The till is typically comprised of dense, gravelly sandy silt to silty sand with varying amounts of clay, cobbles, and boulders. Locally, interbeds of sand and gravel may be present. The Vashon Till is underlain by the Esperance Sand, which is underlain by the Lawton Clay. Regional groundwater typically occurs in the lower portion of the Vashon Till and the underlying Esperance Sand. Locally, discontinuous zones of perched groundwater occur within the upper portion of the Vashon Till. Based on topographic relief of the area, and at other sites in

a similar hydrogeologic setting, the flow of uppermost regional, groundwater in the site area is to the west-southwest to Puget Sound, the nearest surface water at approximately 750 feet southwest of the site. Perched groundwater present in the site area would also likely flow southwest toward Puget Sound. Soils exposed beneath the western portion of the subject property during UST removals and soil excavation consisted of clayey silts and silty clayey sands with scattered fine to coarse gravels, which appeared to be fill soil to approximately 11 feet below ground surface (bgs) (ERM-NW, 1990). Below the fill material, the soils appeared to consist of native glacial till.

2.2 Site Investigations and Sample Results

Phase II Environmental Site Assessment (ESA), 3018 Western Avenue, Seattle, Washington, for Oncogen, by ERM-Northwest (ERM-NW), Inc., June 25, 1990: During a Phase I ESA ERM-NW performed at the former GraphiColor printing facility at 3018 Western Avenue, a UST of unknown size and origin was identified in the loading dock area between 3018 and 3000 Western Avenue. The UST was not currently in use. ERM-NW determined that the UST contained gasoline and water, and performed subsurface borings and sampling near the UST. Analyses showed low levels of chemical contaminants typically associated with gasoline, including total xylenes and ethylbenzene in the soil and ethylbenzene in the groundwater. The contaminant levels were below MTCA Method A cleanup levels with the exception of gasoline at one sample location. ERM-NW recommended that the gasoline UST be removed and that soils excavated during the removal be evaluated for contamination levels and disposed or treated offsite if appropriate.

Underground Storage Tank Removal, 3018 Western Avenue, Seattle, Washington, for Oncogen, by ERM-NW, Inc., October 17, 1990: ERM-NW monitored the removal of the gasoline UST, performed field screening, and obtained two confirmation soil samples from the excavation base, a composite sample of the excavation sidewalls, and a composite sample of the stockpiled excavated soil. Thin layer chromatography analyses showed that soil remaining in the excavation did not contain levels of total petroleum hydrocarbons above the detection limit of 50 parts per million (ppm). Based on field screening and analytical results, ERM-NW concluded that the storage and handling of gasoline at this UST had no residual effect on the environmental condition of the property.

Western Ave. Property, Site Visit and Soil Sampling Findings, for Seattle Water Department, by Kleinfelder, May 9, 1994: Kleinfelder field screened and collected soil samples from an excavation adjacent to the west side of the subject property. During a site expansion involving an excavation to install a water meter vault, the Seattle Water Department identified possible total petroleum hydrocarbons (gasoline, diesel, and heavier than diesel ranges) (TPH) contaminated soil. Kleinfelder collected four soil samples and analyzed them for TPH, volatile organic compounds, and lead. Results indicated that the soil contained TPH (gasoline, diesel, and heavier than diesel ranges) concentrations above MTCA Method A cleanup levels. Volatile organic compounds and lead were not detected or were detected at concentrations below MTCA soil cleanup levels.

Status Report 3018 Western Avenue, Seattle, Washington, by Bristol-Myers, July 12, 1995: The status report provides a brief history of the USTs at the 3018 Western Avenue location. The report chronicles the 1990 removal activities of a gasoline UST, the subsequent findings by Kleinfelder of additional TPH contaminated soil during excavation for installation of a water meter vault by the Seattle Water Department, and an additional investigation performed by Environmental Partners, Inc. (EPI) as follow-up to the Kleinfelder findings. The report indicates that soil near the former location of the gasoline UST contained TPH-G but that groundwater did not appear to be affected based on analytical results of soil and water samples collected by EPI in 1994. Bristol-Myers Squibb indicated that the affected soil would be remediated during the additional construction activities scheduled later in 1995.

Abandonment of Two Groundwater Monitoring Wells and Subsurface Soil and Groundwater Clearance Sampling, 3018 Western Avenue, Seattle, Washington for Bristol-Myers Squibb by EPI, February 2, 1996: The report summarizes the activity and data resulting from the sampling of two groundwater monitoring wells and subsurface soil sampling of a utility trench excavation in the area of the former gasoline UST removed in 1990. Groundwater samples were collected and analyzed in November 1995 for TPH-G and volatile aromatic compounds (benzene, ethylbenzene, toluene, and xylenes). TPH-G and volatile aromatic compounds were not detected in the groundwater samples. Additionally, soil samples were collected from the base and east side wall of the trench excavation and analyzed for TPH-G and volatile aromatic compounds. TPH and volatile aromatic compounds were not detected in the subsurface soil samples. The report also noted that during construction, a concrete block was located at the north end of the excavation. It was believed that this block was located in the excavation associated with a former UST reportedly abandoned in place. The EPI report also documented the collection of one soil sample at the base of the central elevator shaft inside the building. The sample was analyzed for TPH (diesel range and heavier) and PCBs. PCBs were not detected; however, TPH (diesel range) and TPH (heavy oil range) were detected at concentrations of 14,000 ppm and 24,000 ppm respectively.

Phase I Environmental Site Assessment, Bristol-Myers Squibb Pharmaceutical Research Institute, 3005 First Ave., 3000 Western Ave. and 3018 Western Ave., Seattle, Washington, by EPI, Bellevue, WA, dated December 8, 1997: EPI reported that a gasoline UST and heating oil UST had been removed from the loading dock area at 3018 Western Avenue. EPI also reported that the registered UST database identified that a leaded gasoline UST had been installed at 3018 Western Avenue in 1964 and was reportedly “closed in place” under the name Graphicolor, Inc. The report noted that Ms. Donna Smith of Bristol-Myers Squibb reported a third UST had been found in the loading dock area. This UST was reportedly discovered and removed by Baugh Construction in 1996. According to Ms. Smith, there was no indication from Baugh Construction of adverse impacts from this UST. The UST and surrounding soil were removed. Based on review of all the reports summarized above, Dames & Moore believed that the previously noted UST “closed in place” is the UST associated with the concrete backfilled excavation discovered by Baugh Construction in 1996.

2.3 Cleanup Actions

The scope of remedial actions historically performed includes documented removal of two USTs and probable removal of a third UST that was not documented, and soil excavation and offsite disposal. Soil sample collection and analysis was performed subsequent to soil excavation.

Heating Oil UST: Underground Storage Tank Decommissioning/Environmental Assessment Services, Seattle Washington, for Bristol-Myers Squibb, by ERM-EnviroClean-NW, Inc. (ERM-EC), March 10, 1994: ERM-EC monitored the decommissioning of a 1,500-gallon heating oil UST found during building improvement construction activity. In February of 1994, contractors removed the tank and ERM-EC obtained three soil samples from the base of the UST excavation. Analytical results indicate that TPH-D was not detected or was detected at concentrations below MTCA Method A soil cleanup levels. Based on these findings, ERM-EC concluded that no further action regarding the heating oil UST appeared necessary.

Soil excavation performed as a voluntary cleanup action in the loading dock area: The excavated soils contained TPH-G suspected to be associated with a release from one or both former USTs in this area. The gasoline UST located in 1990 during a Phase I assessment performed by ERM-NW for Oncogen, a former property owner, was subsequently removed in September 1990. Analytical testing of soils collected by ERM-NW did not detect TPH-G in the soils. During the subsequent installation of a water meter vault for the subject property in April 1994 by the Seattle Water Department, soil containing TPH-G was detected near this former UST. Approximately 15 cubic yards of soil was excavated associated with construction. The excavation sidewalls and base were sampled by Kleinfelder in April 1994. The data indicated that a release from the UST had occurred. One or more types of TPH (as gasoline, diesel, and heavier than diesel) were detected at a concentration above the MTCA Method A soil cleanup levels in each sample. Volatile organic compounds and lead were not detected or were below MTCA Method A cleanup levels. Most of the affected soils were located beneath the public sidewalk and road (Western Avenue). During later construction activities conducted in 1996, the portions of the affected soil on the subject property were removed. The soil exposed in the sidewalls and base of this excavation were sampled by EPI. The excavation was to a depth of approximately 8 feet and approximately 95 cubic yards of soil were removed. The data indicate that TPH-G and associated volatile aromatic compounds were not detected or were below the MTCA Method A soil cleanup levels.

Groundwater monitoring wells MW-2 and MW-3 were installed in December 1994 within the area of the 1996 excavation. The wells were sampled by EPI in December 1994 and November 1995 and removed during the 1996 excavation. Groundwater samples were analyzed for TPH-G and volatile aromatic compounds. Analytical results indicate that TPH-G and volatile aromatic compounds were not detected in the groundwater samples collected from these wells. According to Ms. Donna Smith of Bristol-Myers Squibb, one UST was formerly located in the loading dock area. A concrete block inferred to be the backfill for this former UST was encountered in the northern end of the loading dock area by Baugh Construction during construction activities in January 1996. Ms. Smith reported to EPI (1997) that there was no evidence of contamination associated with this UST as noted from field observations by the

construction crew. Baugh Construction reportedly removed the concrete block and surrounding soil during construction (EPI, 1997).

Based on the data representative of final site conditions after remedial and construction activities, it appears that soil on the subject property containing TPH-G related to the former USTs in the loading dock area has been removed. Contaminated soils remain under the sidewalk and street. The groundwater data collected by EPI (1996) also indicates that the groundwater directly underneath the affected soil was not impacted.

Summarizing, a Voluntary Cleanup Action was conducted to remove subsurface soils in the loading dock of the subject property containing concentrations of TPH exceeding MTCA Method A soil cleanup levels. The probable source of the petroleum hydrocarbons was one or two former USTs located in this area. Based on analytical data for soils collected subsequent to soil excavation activities, the MTCA Method A cleanup levels were achieved in the area surrounding the former gasoline USTs removed in 1990 and prior and the heating oil UST removed in 1994. Soil containing TPH at concentrations greater than MTCA Method A soil cleanup levels remains in the area of the Seattle Water Department excavation underneath Western Avenue and the sidewalk adjacent to the west side of the subject property. The soil at the base of the central elevator shaft in the building contained TPH (diesel and heavier than diesel range) above the MTCA Method A cleanup levels based on data collected in January 1996. PCBs were not detected. It is believed this soil remains in place at this time. Based on the consultant's experience at other similar sites, the volume of affected soil is believed to be limited.

The consultant concluded that:

1. the USTs that were potential TPH sources have been removed,
2. soils with TPH concentrations above MTCA Method A cleanup levels for soils were removed from the subject property with limited exceptions,
3. remaining areas of affected soils as well as remediated areas are covered by asphalt, pavement, concrete, or the building,
4. the quality of shallow groundwater was not affected by the TPH in the soil,
5. there are no known beneficial uses of groundwater downgradient of the site,
6. the nearest surface water is Puget Sound located 750 feet downgradient,
7. the property directly downgradient (former Unocal Bulk Terminal) has documented soil and groundwater contamination and remedial actions are ongoing at this site, and
8. the natural biodegradation process will likely reduce remaining TPH concentrations over time, and there is a low to remote potential for future migration of the limited residual TPH in soil from the subject property to downgradient property or ecological receptors.

Ecology issued a 'No Further Action' letter on October 25, 1999 after a restrictive covenant was recorded.

2.4 Cleanup Levels

MTCA Method A Standards were used to establish points of compliance and cleanup levels.

2.5 Restrictive Covenant

Based on the site use, surface cover and cleanup levels, it was determined that the Site was eligible for a 'No Further Action' determination if a Restrictive Covenant was recorded for the property. A Restrictive Covenant was recorded for the Site in 1999 which imposed the following limitations:

Section 1. "A portion of the Property contains gasoline and diesel range total petroleum hydrocarbons contaminated soil located beneath Western Avenue and the sidewalk on the western side of the building in the immediate vicinity of the loading dock (see Figure 2 of The Dames & Moore report). A portion of the Property contains diesel and heavy oil range total petroleum hydrocarbons contaminated soil located in the immediate vicinity of the elevator shaft (see Figure 2 of the Dames & Moore report). The Owner shall not alter modify or remove the existing structure[s] 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."

b "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 Owners' 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 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.

The Restrictive Covenant is available as Appendix 6.4.

3.0 PERIODIC REVIEW

3.1 Effectiveness of completed cleanup actions

The Restrictive Covenant for the property was recorded and is in place. This Restrictive Covenant prohibits activities that will result in the release of contaminants at the property without Ecology's approval, and prohibits any use of the property that is inconsistent with the Covenant. This Restrictive Covenant serves to ensure the long term integrity of the remedy.

Based upon the site visit conducted on December 9, 2009, the building and asphalt cover (remedy) at the property continue to eliminate exposure to contaminated soils by ingestion and contact. The asphalt appears in satisfactory condition and no repair, maintenance, or contingency actions have been required. The property is still operating as a commercial building. A photo log is available as Appendix 6.5.

Soils with TPH concentrations higher than MTCA cleanup levels are still present at the Site. However, the remedy prevents human exposure to this contamination by ingestion and direct contact with soils. The Restrictive Covenant for the property will ensure that the contamination remaining is isolated, contained, and controlled.

3.2 New scientific information for individual hazardous substances for mixtures present at the Site

There is no new scientific information for the contaminants related to the Site.

3.3 New applicable state and federal laws for hazardous substances present at the Site

The cleanup at the site was governed by Chapter 173-340 WAC (1996 ed.). WAC 173-340-702(12) (c) [2001 ed.] provides that,

“A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provision in this chapter on cleanup levels, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.”

Although cleanup levels changed for petroleum hydrocarbon compounds as a result of modifications to MTCA in 2001, contamination remains at the site above the new MTCA Method A and B cleanup levels. Even so, the cleanup action is still protective of human health and the environment. A table comparing MTCA cleanup levels from 1991 to 2001 is available below.

Analyte	1991 MTCA Method A Soil Cleanup Level (ppm)	2001 MTCA Method A Soil Cleanup Level (ppm)	1991 MTCA Method A Groundwater Cleanup level (ppb)	2001 MTCA Method A Groundwater Cleanup Level (ppb)
Cadmium	2	2	5	5
Lead	250	250	5	15
TPH	NL	NL	1000	NL
TPH-Gas	100	100/30	NL	1000/800
TPH- Diesel	200	2000	NL	500
TPH-Oil	200	2000	NL	500
NL = None listed				

3.4 Current and projected site use

The site is currently used for [insert use, like: commercial and industrial] purposes. There have been no changes in current or projected future site or resource uses.

3.5 Availability and practicability of higher preference technologies

The remedy implemented included containment of hazardous substances, and it continues to be protective of human health and the environment. While higher preference cleanup technologies may be available, they are still not practicable at this Site.

3.6 Availability of improved analytical techniques to evaluate compliance with cleanup levels

The analytical methods used at the time of the remedial action were capable of detection below selected site cleanup levels. The presence of improved analytical techniques would not affect decisions or recommendations made for the site.

4.0 CONCLUSIONS

The following conclusions have been made as a result of this periodic review:

- The cleanup actions completed at the property appear to be protective of human health and the environment.
- Soils cleanup levels have not been met at the standard point of compliance for the Site; however, the cleanup action has been determined to comply with cleanup standards for the property (not the Site) since the long-term integrity of the containment system is ensured, and the requirements for containment technologies are being met.
- The Restrictive Covenant for the property is in place and continues to be effective in protecting public health and the environment from exposure to hazardous substances and protecting the integrity of the cleanup action for the property.
- The 'No Further Action' (NFA) letter issued by Ecology on October 25, 1999 makes no distinction between the cleanup of the property and the cleanup of the Site. Since the covenant would have no effect on the public sidewalk and street (Western Avenue), and contamination remains in those locations, the NFA letter should be replaced with a 'property specific' NFA letter.

Based on this periodic review, the Department of Ecology has determined that the requirements of the Restrictive Covenant continue to be met. No additional cleanup actions are required by the property owner. It is the property owner's responsibility to continue to inspect the site to assure that the integrity of the remedy is maintained.

4.1 Next Review

The next review for the site will be scheduled five years from the date of this periodic review. In the event that additional cleanup actions or institutional controls are required, the next periodic review will be scheduled five years from the completion of those activities.

5.0 REFERENCES

Bristol-Myers Squibb Pharmaceutical Research Institute, Status Report: 3018 Western Avenue, Seattle, Washington, for Washington Department of Ecology, July 12, 1995.

ERM-Northwest Inc., 1990a, Phase II Environmental Site Assessment 3018 Western Avenue, Seattle, Washington, for Oncogen, June 25, 1990.

ERM-Northwest Inc., 1990b, Underground Storage Tank Removal, 3018 Western Avenue, Seattle, Washington, for Oncogen, October 17, 1990.

ERM-EnviroClean-NW, Inc., Underground Storage Tank Decommissioning/Environmental Assessment Services, Seattle, Washington, for Bristol-Myers Squibb, March 10, 1994.

Environmental Partners, Inc., Abandonment of Two Groundwater Monitoring Wells and Subsurface Soil and Groundwater Clearance Sampling, 3018 Western Avenue, Seattle, Washington, for Bristol-Myers Squibb, February 2, 1996.

Environmental Partners, Inc., Phase I Environmental Site Assessment Bristol-Myers Squibb Pharmaceutical Research Institute, 3005 First Ave., 3000 Western Ave. and 3018 Western Ave., Seattle, Washington, December 8, 1997.

Kleinfelder, Western Avenue Property, Site Visit and Soil Sample Findings, for Seattle Water Department, May 9, 1994.

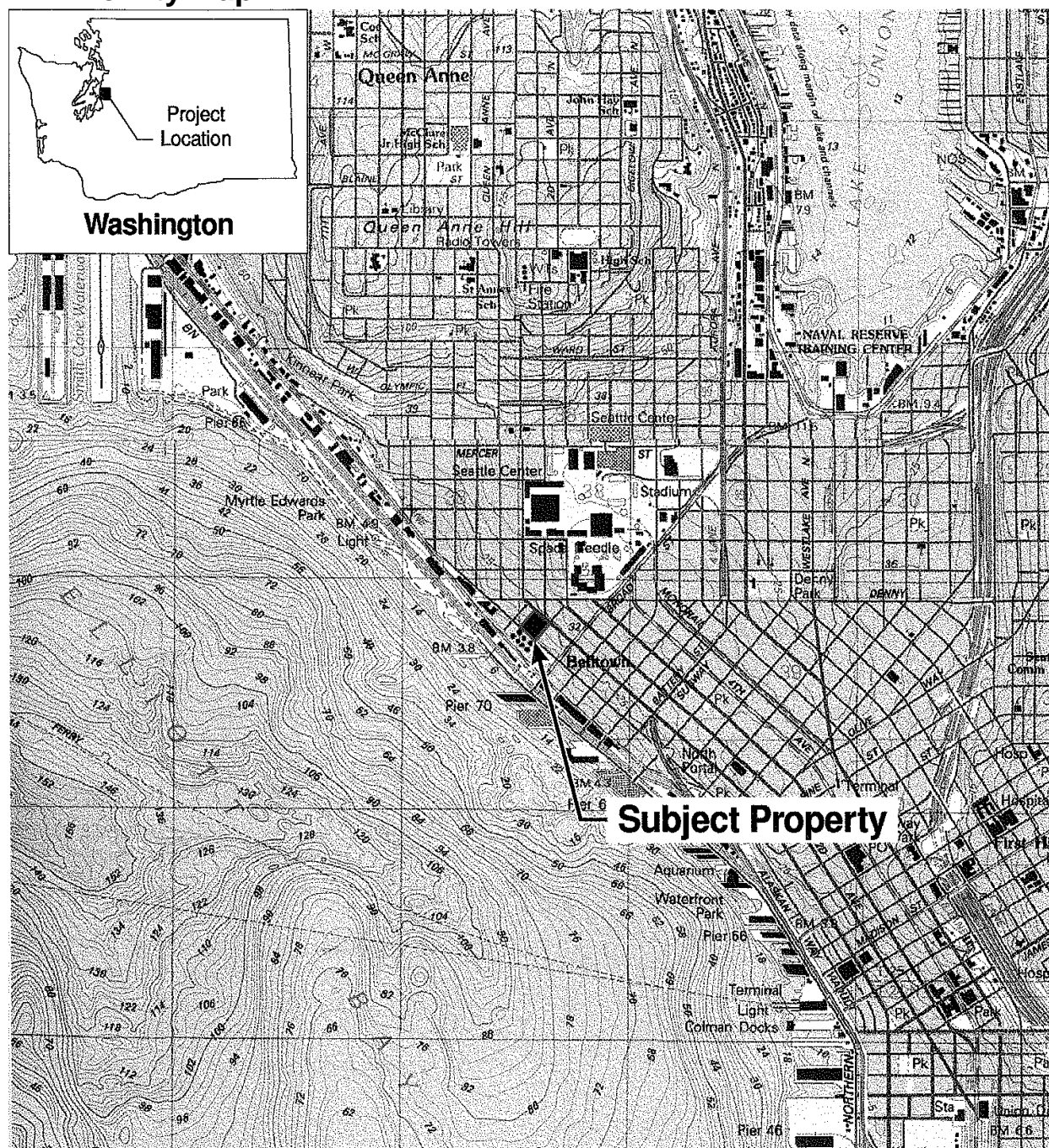
Ecology, 1999, Restrictive Covenant.

Ecology, 2009, Site Visit.

6.0 APPENDICES

7.0

7.1 Vicinity Map



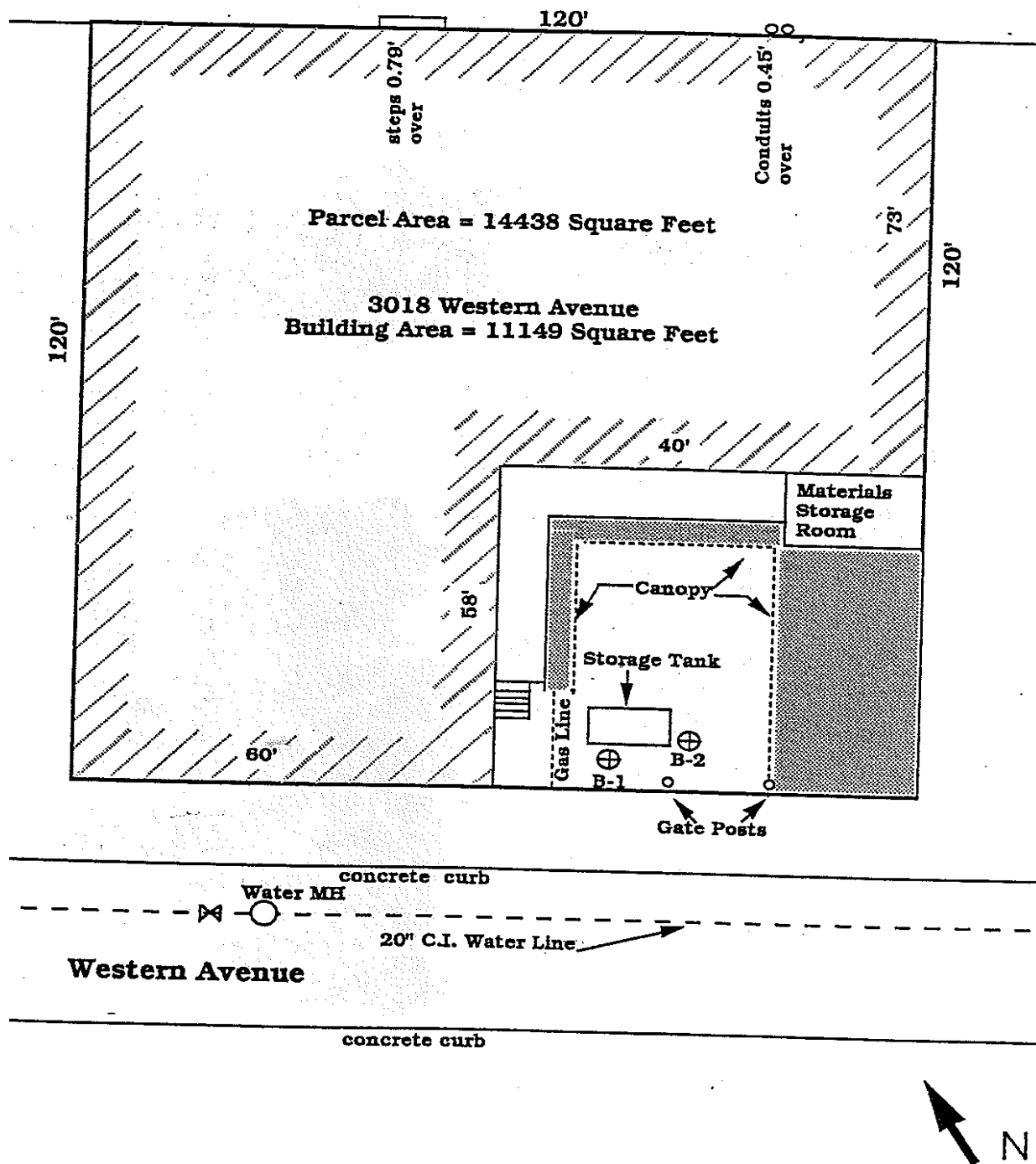
Map created with TOPO!™ © 1997 Wildflower Productions, www.topo.com,
based on USGS topographic quadrangles, Seattle North, Washington

0 0.5 1.0
Scale in Miles



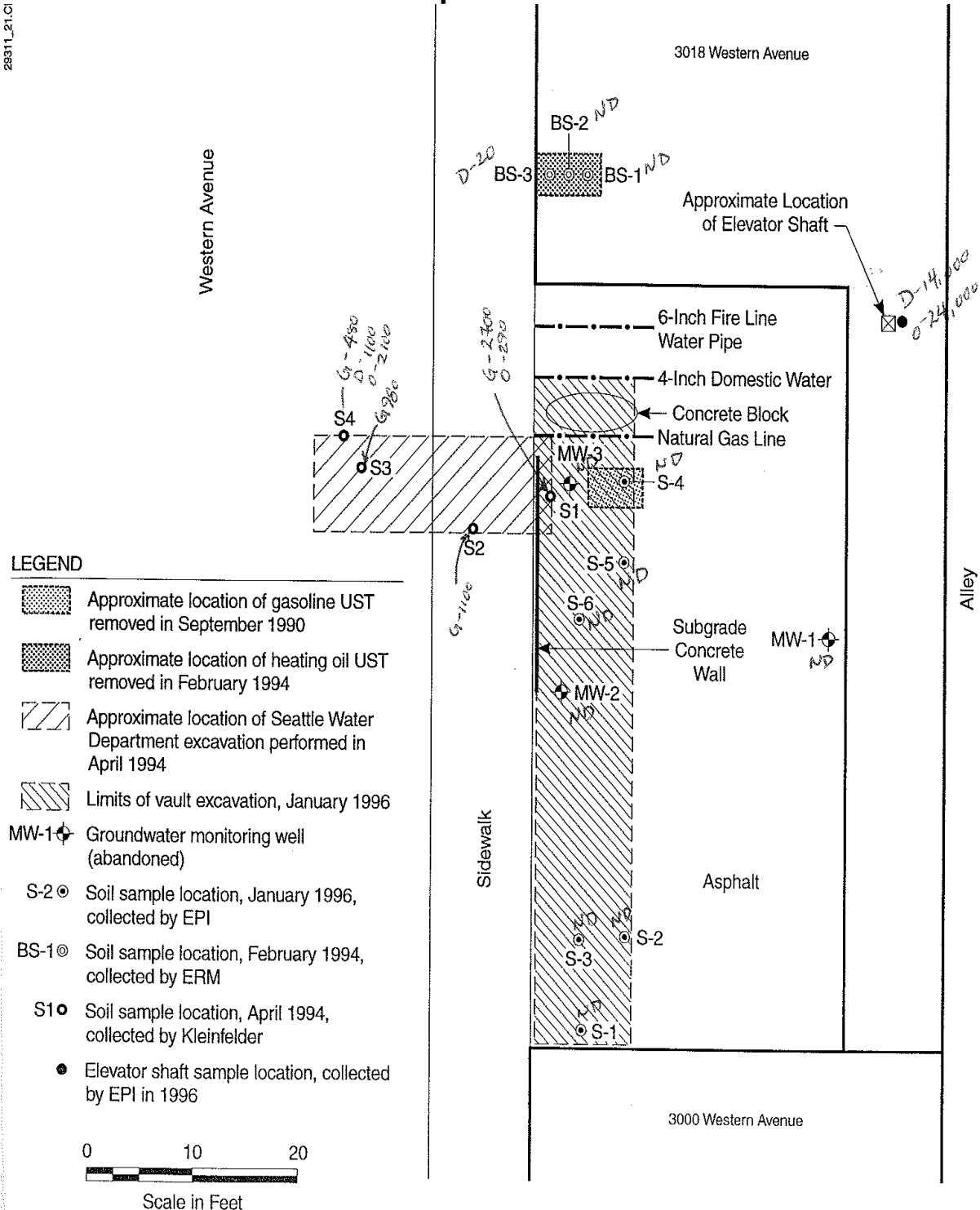
7.2 Site Plan

Tank Location 3018 Western Avenue Seattle, Washington



7.3 TPH-Dx Concentration Map

29311_21.C1



REFERENCE: Environmental Partners, Inc., report for
3018 Western Avenue, Seattle, Washington, dated 1996



7.4 Environmental Covenant

ARE-Western Newbrook, LLC
135 N Los Robles Avenue, Suite 250
Pasadena, California 91101

4th - June 2009

RESTRICTIVE COVENANT

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

Legal Description See Attached

Tax Parcel ID # 069500-0100-09

Grantor: ARE-Western Newbrook, LLC

Legal Description:

PARCEL B:

LOTS 3 AND 4 IN BLOCK E OF WILLIAM N. BELL'S 4TH ADDITION TO THE CITY OF SEATTLE;

TOGETHER WITH THE NORTHWESTERLY 2 INCHES OF LOT 2 IN BLOCK E OF WILLIAM N. BELL'S 4TH ADDITION TO THE CITY OF SEATTLE, AS LAID OUT BY WILLIAM N. BELL, AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 167, RECORDS OF KING COUNTY;

ALSO DESCRIBED AS FOLLOWS:

THAT PORTION OF LOTS 2, 3 AND 4 IN BLOCK E OF PLAT OF THE 4TH ADDITION TO THE CITY OF SEATTLE, AS LAID OFF BY WILLIAM N. BELL (COMMONLY KNOWN AS WILLIAM N. BELL'S 4TH ADDITION TO THE CITY OF SEATTLE), AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 167, RECORDS OF KING COUNTY.

SEE ATTACHED PAGE FOR ADDITIONAL DETAILS.



NIXON MICHAEL COV

14.00

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PAGE 001 OF 007
07/09/1999 11:34
KING COUNTY, WA

3018 Western Avenue
Seattle, WA
Owner's Extended Policy

Policy No. 867004

PARCEL B:

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BEGINNING AT THE MONUMENT AT THE INTERSECTION OF EAGLE STREET AND WESTERN AVENUE;
THENCE NORTH 47°46'02" WEST ALONG THE MONUMENTED CENTER LINE OF WESTERN AVENUE 33.00 FEET;
THENCE NORTH 42°13'49" EAST PARALLEL WITH THE MONUMENTED CENTERLINE OF EAGLE STREET 33.00 FEET TO THE SOUTHERNMOST CORNER OF LOT 1 IN BLOCK E, PLAT OF THE 4TH ADDITION TO THE CITY OF SEATTLE, AS LAID OFF BY WILLIAM N. BELL (COMMONLY KNOWN AS WILLIAM N. BELL'S 4TH ADDITION TO THE CITY OF SEATTLE), AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 167, RECORDS OF KING COUNTY;
THENCE NORTH 47°46'02" WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOTS 1 AND 2 A DISTANCE OF 119.95 FEET TO THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 2 INCHES OF SAID LOT 2 AND THE TRUE POINT OF BEGINNING;
THENCE NORTH 42°13'49" EAST ALONG SAID SOUTHEASTERLY LINE OF THE NORTHWESTERLY 2 INCHES OF SAID LOT 2 A DISTANCE OF 120.05 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 2;
THENCE NORTH 47°46'25" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOTS 2, 3 AND 4 A DISTANCE OF 120.29 FEET TO THE NORTHERNMOST CORNER OF SAID LOT 4;
THENCE SOUTH 42°13'49" WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 4 A DISTANCE OF 120.04 FEET TO THE WESTERNMOST CORNER OF SAID LOT 4;
THENCE SOUTH 47°46'02" EAST ALONG THE SOUTHWESTERLY LINE OF SAID LOTS 2, 3 AND 4 A DISTANCE OF 120.29 FEET TO THE TRUE POINT OF BEGINNING;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.



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RESTRICTIVE COVENANT

ARE-Western Newbrook, LLC 3018 Western Avenue, Seattle, WA

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D 030(1)(f) and (g) and WAC 173-340-440 ARE-Western Newbrook, LLC a Delaware limited liability company, 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: Status Report 3018 Western Avenue Seattle, Washington, dated July 12, 1995, by Bristol-Myers Squibb Pharmaceutical Research Institute; Report Voluntary Cleanup Action, Regulatory Closure of Underground Storage Tanks, 3018 Western Avenue, Seattle, Washington, dated November 24, 1998, by Dames & Moore. These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations gasoline, diesel and heavy oil range total petroleum hydrocarbons which exceed the Model Toxics Control Act A Residential Cleanup Levels for soil established under WAC 173-340-700.

The undersigned, ARE-Western Newbrook, 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 in attachment A of this restrictive covenant and made a part hereof by reference.

ARE-Western Newbrook, 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 and diesel range total petroleum hydrocarbons contaminated soil located beneath Western Avenue and the sidewalk on the western side of the building in the immediate vicinity of the loading dock (see Figure 2 of the



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Dames&Moore report) A portion of the Property contains diesel and heavy oil range total petroleum hydrocarbons contaminated soil located in the immediate vicinity of the elevator shaft (see Figure 2 of the Dames&Moore report) The Owner shall not alter, modify, or remove the existing structure[s] 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."

b "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 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.

Date _____

ARE-WESTERN NEWBROOK, LLC, a Delaware limited liability company

By AREE-HOLDINGS II, L.P., a Delaware limited partnership, managing member

By ARE-GP/II Holdings QPRS CORP., a Delaware corporation, general partner

By _____

See Attached



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ARE-WESTERN NEWBROOK, LLC, a Delaware limited liability company

By: AREE-HOLDINGS II, L.P., a Delaware limited partnership, managing member

By: ARE-GP/II HOLDINGS QRS CORP., a Delaware corporation, general partner

By: *Patricia Nelson*



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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

ss.

On 6/29/99

before me, Shelly A. Kroll, Notary Public

personally appeared

Peter J. Nelson

Name(s) of Signer(s)

☒ personally known to me

☐ 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.



WITNESS my hand and official seal.

Shelly A. Kroll

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: Restrictive Covenant

Document Date: N/A

Number of Pages: 6

Signer(s) Other Than Named Above

Capacity(ies) Claimed by Signer

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer is Representing:

RIGHT THUMBPRINT
OF SIGNER
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6.5 Photo log

Photo 1: 3018 Western bldg.; loading dock area where release occurred visible - from west



Photo 2: 3018 Western bldg. (taller, blue) in left center of photo - from the southwest

