



PERIODIC REVIEW

**Mount Baker Court Building
Facility Site ID#: 37423938**

**3601 South McClellan Street,
Seattle, Washington**

Northwest Region Office

TOXICS CLEANUP PROGRAM

May 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 Mount Baker Court Building (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 Independent Remedial Action Program (IRAP). The cleanup actions resulted in concentrations of petroleum hydrocarbons 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 or 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 History

The Mount Baker Court Building is located in a primarily residential neighborhood of Mount Baker in Seattle, Washington. The subject site is bordered to the west by South Mount Baker Boulevard. Further west across South Mount Baker Boulevard are single-family residences. Bordering the subject site to the east is Mount Rainier Drive South with single-family residences beyond. Located north of the subject site is South McClellan Street, with park space beyond. Located immediately south of the subject site is the Mount Baker Community Center, and beyond are single-family residences.

Topographically, the subject property surface slopes gently from the northeast toward the southwest, and lies at approximately 110 feet above sea level. Based upon inference from topography and local drainage patterns, it appears that shallow-seated groundwater at the subject property (if present) may flow from the northeast toward the southwest. Lake Washington lies approximately 1,000 feet east of the subject property.

According to the Polk's Seattle City Directory, the Mount Baker Court Building has leased space to many commercial ventures (i.e., auto service garage, dry cleaners, painting contractors, pharmacy, beauty shop, dentist office, barber shop and grocery store). The Mount Baker Center Garage (auto repairs) was present on-site from 1941 to 1953. This was confirmed by Betty SeChrist, a previous tenant in 1949. She also claimed that one could purchase gasoline on-site, indicating underground storage tanks (USTs). A dry cleaners and painting contractor were also present on-site.

The Mt. Baker Building was built in 1930. The original configuration of the building had several rental units, a two level parking garage and a gasoline service station. The service station was in business from 1930 until the late 1940's. Two steel 550 gallon gasoline tanks were located beneath the sidewalk on city right of way property. The underground storage tanks were serviced by suction pumps. The tanks were placed out of service in the late 1940's but were not properly or permanently closed at that time. The 1 1/2 inch fill pipes for these tanks were still present in the sidewalk area and were temporarily capped with concrete.

An approximately 1,500 gallon diesel/heating oil tank is located adjacent to the buildings boiler room. This tank was used in conjunction with the boiler and was closed approximately 35 years ago. Soils surrounding the underground storage tanks consisted of coarse sand type fill materials to a depth of approximately 11 feet. A clay/marine sludge layer begins at the 11 foot depth and proceeded beyond the deepest sampling depth of 20 foot. Groundwater at this site was not present at the 20 foot depth, which is well below any of the contamination depths. A site assessment report was issued by Richard Alvord of SCS Engineers on November 22, 1994. The report discussed the possible presence and location of the two underground storage tanks and the possible existence of a third underground storage tank. The report recommended further on-site investigations and in-place closure of the underground storage tanks.

An underground service pit and sump are located on the northern end of the lower level garage. It appears this pit was set up to provide oil change and lubrication services.

A total of 550 gallons of petroleum contaminated water was pumped on December 12, 1994 from these two underground fuel tanks by Arcom Oil Co. of Tacoma, Washington and transported to American Refining Co. for proper disposal.

2.2 Site Investigations and Cleanup

The on-site investigation for petroleum contaminants in the soils around and directly adjacent to the two 550 gallon underground storage tanks took place on December 22, 1994, by Paul Stemen of Stemen Environmental, Inc. A total of six (6) undisturbed samples were taken from these soils at a depth below the underground storage tanks at six different locations. Samples I-F and 2-F were taken by probes which were pushed through the tank bottoms via the fill pipe opening. All discreet samples were taken by technicians from Transglobal Environmental Geosciences Northwest, Inc. using a Strataprobe Sampling System. Samples 1-F, 2-F, 4-S and 5-E were submitted for quantitative analysis using Method WTPH-I-ICID. All samples were then submitted for quantitative analysis using Methods WTPH-G and WTPH-D/D-Extended. Results of the laboratory analysis indicate above acceptable levels of gasoline range and/or diesel range TPH in samples 1-F, 4-S, and 5-E. The results for sample 4-S were just slightly above acceptable levels, while sample I-F had higher levels of gasoline range TPH, and sample 5-E showed a very high presence of diesel range TPH. The chemist noted that the diesel in sample 5-E was a very heavy diesel. Laboratory analysis results for samples 2-F, 3-S, and 6-S indicated no presence of gasoline or diesel range TPH. Based on the information gathered during this initial on-site investigation, it was decided by all involved principals that further investigations (soil sampling) was required. The purpose of this second investigation was to further characterize the vertical and horizontal extent of the petroleum contaminated plume at this site and to identify its source. A confirmed release of petroleum products was immediately reported to the Department of Ecology.

40 soil samples were taken on January 12, 1995, from six (6) probe-holes and 1 sample each from soils and water located in the under sump pit. Soil sample location #7 is located directly adjacent to sample location #5-E. Sampling at this location started at 17 feet and continued to a depth of 20 feet. Laboratory analysis results indicate no presence of gasoline or diesel or heavy range TPH at these sample locations. Laboratory analysis results for soil samples taken from various depths at sample locations #8-E, 9-S and 10-E show above acceptable levels of diesel and heavy oil range TPH in a thin layer located at a depth of 10 feet and 13 feet. Soils sampled at these locations at depths above and below this layer indicated no presence of above acceptable levels of diesel contaminants. Laboratory analysis results for soil samples taken at various depths at sample locations #11 and #12 (non-detect) indicate no product of above acceptable levels of petroleum contaminants in these areas. Soil (sample-sump) and water (sample water-1) samples were taken from the sump located in the lower level garage. Laboratory analysis results of these samples indicated the presence of above acceptable levels of gasoline and heavy oil

range TPH in the water and the soils. A total of 125 gallons of petroleum contaminated water was pumped from the sump and transported for proper disposal by Arcom Oil Company of Tacoma, Washington on January 19, 1995.

A set of original building plans was examined on approximately January 25, 1995 which documented the presence and possible location of an apparently 5 foot by 12 foot steel underground heating oil tank. According to the plans the tank was located adjacent to the basement level boiler room and directly below the current restaurant's (former service station's) concrete floor. The plans show the top of the underground storage tank at a depth of approximately 13 feet below the concrete first floor or 1 1/2 feet lower than the grade of the existing boiler room floor. During an on-site investigation on January 31, 1995 the location of the heating oil underground storage tank was confirmed by Paul Stemen of Stemen Environmental, Inc. The tank is located adjacent to the boiler on the east side. The tanks bottom appears to be approximately 1 foot above the boiler room floor depth or approximately 12 feet down from the sidewalks surface. The tank is surrounded on all four sides by concrete walls. Pea gravel backfill materials are present in the space immediately surrounding the tank. A sample of oil was obtained from one of the tank's inlet pipes and submitted for laboratory analysis (sample #1-OT). Results of this analysis indicate that this oil is very similar to the diesel/oil range TPH found in soil samples taken at a similar depth beneath the exterior sidewalk.

A Washington Department of Ecology (Ecology)/International Fire Code Institute certified Underground Storage Tank (UST) Site Assessor/Environmental Geologist from Environmental Associates, Inc. (EAI) observed the removal of two (2) approximately 600-gallon capacity gasoline USTs from the subject property on June 24 and 25, 1996.

AAA Tank Service Company, Inc., excavated and removed the two gasoline USTs located beneath the sidewalk along the west side of the Mount Baker Building on June 24 and 25, 1996. Prior to removal, contents of the USTs were pumped into a truck-mounted holding tank. Excavated soils were screened using a Gastech GT-201 portable volatile organic vapor detector in an effort to separate clean soils from contaminated soils. Following removal of overburden soils, Tank T-1 (northern-most tank) was removed from the ground and placed upon a plastic liner for inspection and further cleaning. Following removal of the slab, Tank T-2 was removed from the ground, and placed upon a plastic liner for inspection. Following inspection, the tanks were loaded onto a truck and transported to a metals recycling facility. Tank dimensions were approximately four (4) feet in diameter by eight (8) feet in length (approximately 600 gallon capacity) each, and the top of each tank was approximately five (5) feet below the ground surface. Close examination of the tanks following removal revealed that several rust holes were present on the underside of each tank. Petroleum odors (gasoline) were also noted emanating from soils below the two tanks.

Clean soils were separated from contaminated soils and placed on two separate bermed plastic liners. Following excavation of clean and contaminated soil, samples were obtained from the stockpiled soils in general accordance with Ecology recommended procedures. Sanitized stainless steel hand tools were used to collect the soil samples, and a total of three (3) locations

were sampled from each stockpile based upon the highest concentrations detected from field screening using the Gastech GT-201 organic vapor monitor.

Results of laboratory testing revealed that soil located below the tanks contained concentrations of gasoline total petroleum hydrocarbons in excess of MTCA Method A cleanup levels, indicating a release of product from the tank systems at some time in the past. Contaminant concentrations appeared to be highest below the tanks, rather than in sidewalls.

A backhoe operated by AAA Tank Service Company, Inc. was used on June 25 and 26, 1996, under the supervision of an environmental geologist from EAI, to over-excavate petroleum contaminated soil in the vicinity of the former on-site gasoline USTs. Soils were field screened using visual and olfactory (odor) methods, as well as with a Gastech GT-201 organic vapor detector. Soils were over-excavated until field screening methods performed on remaining in situ soil revealed no indications of residual volatile organic substances within the excavation itself. Contaminated soils were stockpiled on a plastic liner while awaiting trucking to TPS Technologies Tacoma facility for treatment. Following laboratory analysis of "worst-case" samples taken from the stockpile, and subsequent approval by TPS Technologies, approximately 35 tons of gasoline-contaminated soil were trucked to Tacoma, Washington for treatment by thermal desorption. Soil samples, to be submitted for laboratory analysis to confirm successful cleanup, were then taken from various locations within the excavation.

The heating oil tank was cleaned and closed in place because removal would endanger the structure.

Soils encountered during cleanup excavation work consisted of approximately 6 feet of brown silty gravelly sand with some cobbles. Underlying this upper unit was a layer of gray to brown silt/clay to the maximum depth excavated (approximately 15 feet). No groundwater was observed within the excavation during cleanup work. During earlier sampling and testing by Stemen Environmental, Inc., February 25, 1995, no groundwater was encountered to a maximum exploration depth of 20 feet below the ground surface.

2.3 Sample Results

The following table summarizes results of laboratory testing of cleanup-confirmation samples. Sampling localities shown in reports correspond to the sample numbers offered in the table below:

Results of Laboratory Analyses of cleanup-confirmation Soil Samples All results and limits in Parts per million (ppm)

Sample Number	WTPH-as	Benzene	Toluene	Ethylbenzene	Xylenes	Total Lead
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T2-SE	14	ND ¹	ND	ND	ND	NA ²
T2-W	68	ND	ND	0.2	0.65	NA
T2-B	ND	ND	ND	ND	ND	NA
Ti-B	ND	ND	ND	ND	ND	NA
Ti-NE	ND	ND	ND	ND	ND	NA
T1-W	ND	ND	ND	ND	ND	NA
Reporting Limit ³	6.5	0.065	0.065	0.065	0.065	NA
Cleanup Level ⁴	100	0.5	40	20	20	250

NOTES: 1 - "ND" denotes analyte not detected at or above listed Reporting Limit.
 2 - "NA" denotes sample not analyzed for specific analyte.
 3 "Reporting Limit" represents the laboratory lower practical quantitation limit.
 4 - Method A soil cleanup levels as published in the Model Toxics Control Act (MTCA). Chapter 173-340-740 WAC.

Results of laboratory testing, as summarized in the table above, document that soil sampled from the excavation bottom and sidewalls following cleanup contains no detectable concentrations of gasoline-range total petroleum hydrocarbons or associated BTEX constituents in excess of current WDOE Method A cleanup levels.

Based upon results of sampling and laboratory testing, it appears that successful cleanup of gasoline-range petroleum-contaminated soils was accomplished, and that soil remaining within the UST excavation does not contain residual gasoline-range petroleum hydrocarbons or BTEX constituents in excess of MTCA Method A cleanup levels.

2.4 Cleanup Levels

MTCA Method A cleanup levels were used as a goal, even though the goal was not met. Contaminated soil above Method A levels remain at the site, notably from the heating oil tank.

2.5 Restrictive Covenant

Based on the site use, surface cover and calculated 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 1998 which imposed the following limitations:

1. Except as provided in Section 2. or 3. below, any contaminated soils in the Property or the sidewalk may remain in place until such time as Declarant (or its grantees, successors or assigns) redevelops the Property or substantial new improvements are otherwise made on the Property, at which time the soils remaining in the Property or Sidewalk with contaminates in excess of MTCA cleanup standard as caused by the Property shall be remediated. For purposes of this Section, demolition and surface grading of the Property or Sidewalk will not be considered to constitute a substantial improvement that requires remediation of subsurface contaminated soils.
2. If prior remediation of the contaminated soils pursuant to Section 1. above, any utility or other work is required to be performed in the Sidewalk (such as underground cable, wire, conduit, manholes, handholes, place utility poles) by the City of Seattle or other public entity or private utility company, Declarant (or its grantees, successor or assigns) shall remediate any contaminated soils caused by the Property that are disturbed by the work otherwise as necessary for the protection of the health or safety of the persons performing the work or for protection of human health or the environment.
3. If at any time Declarant (or its grantees, successors or assigns) learns of other contamination in the Property or the Sidewalk caused by the Property which presents an imminent risk to human health or the environment, Declarant (or its grantees, successors or assigns) shall take immediate action to remediate such contamination.
4. At least 30 days prior to conveyance of any real property interest in any portion of the Property, Declarant (or its grantees, successors or assigns) shall give written notice to the City and DOE of the contemplated conveyance identifying the prospective grantee and the anticipated date of the conveyance. As part of any such conveyance, the grantee shall provide the City with a letter accepting the terms and conditions of this Declaration of Restrictive Covenants.
5. The City and DOE, and their designated representatives, are hereby granted the right to enter upon and inspect the Property, at reasonable times, upon 48 hours prior notice to the owner and any occupant, and may take samples, inspect the operation of cleanup action measures, and inspect clean-up records.
6. This Declaration of Restrictive Covenants may be amended or terminated by the mutual written agreement of the City of Seattle Transportation and DOE and Declarant (or its grantees, successors or assigns).
7. Notices and other communications to the City and/or DOE pursuant to this Declaration of Restrictive Covenants shall be deemed effectively given if delivered by hand or mailed certified mail, return receipt requested, to:

Seattle Transportation
Attention: Street Use Section
600 Fourth Avenue
Seattle, WA 98104

Washington Department of Ecology
Northwest Regional Office
Attention: Section Head, Toxic Cleanup Program

3190 160th Avenue SE
Bellevue, WA 98008-5452

8. The foregoing Restrictive Covenants shall henceforth burden and run with the Property and bind Declarant, its grantees, successors and assigns, and shall inure to the benefit of, and be enforceable by the City and DOE, and their respective successors and assigns. Except only as limited by the express provisions of the foregoing Restrictive Covenants, Declarant expressly reserves all right of ownership, use and enjoyment of the Property.
9. The foregoing Restrictive Covenants shall no longer limit uses of the Property, or be of any further force or effect upon recordation by Declarant (or its grantees, successors or assigns) of an instrument terminating this Declaration pursuant to the provisions hereof.

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 Site was recorded and is in place. This Restrictive Covenant prohibits activities that will result in the release of contaminants at the Site 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 April 29, 2009, the building and sidewalk cover at the Site continue to eliminate exposure to contaminated soils by ingestion and contact. The cover appears in satisfactory condition and no repair, maintenance, or contingency actions have been required. The Site is still operating as a residential and commercial structure. A photo log is available as Appendix 6.5.

Soils with petroleum concentrations higher than MTCA cleanup levels are still present at the Site. However, the remedy, Site structures and sidewalk surface prevent 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 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 [insert appropriate edition, like: 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)
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 Site 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 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.

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 surface cover 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

ATEC Environmental Consultants, Phase I Environmental Site Assessment, August 31, 1992;

SCS Engineers, Assessment of Underground Tanks, November 22, 1994;

Stemen Environmental, Inc., Site Assessment and Soil Sampling Report, February 25, 1995;

Environmental Associates, Inc., Underground Storage Tank Removal/ Soil Cleanup Report, July 17, 1996;

Environmental Associates, Inc., UST In-Place Closure Summary, October 23, 1996;

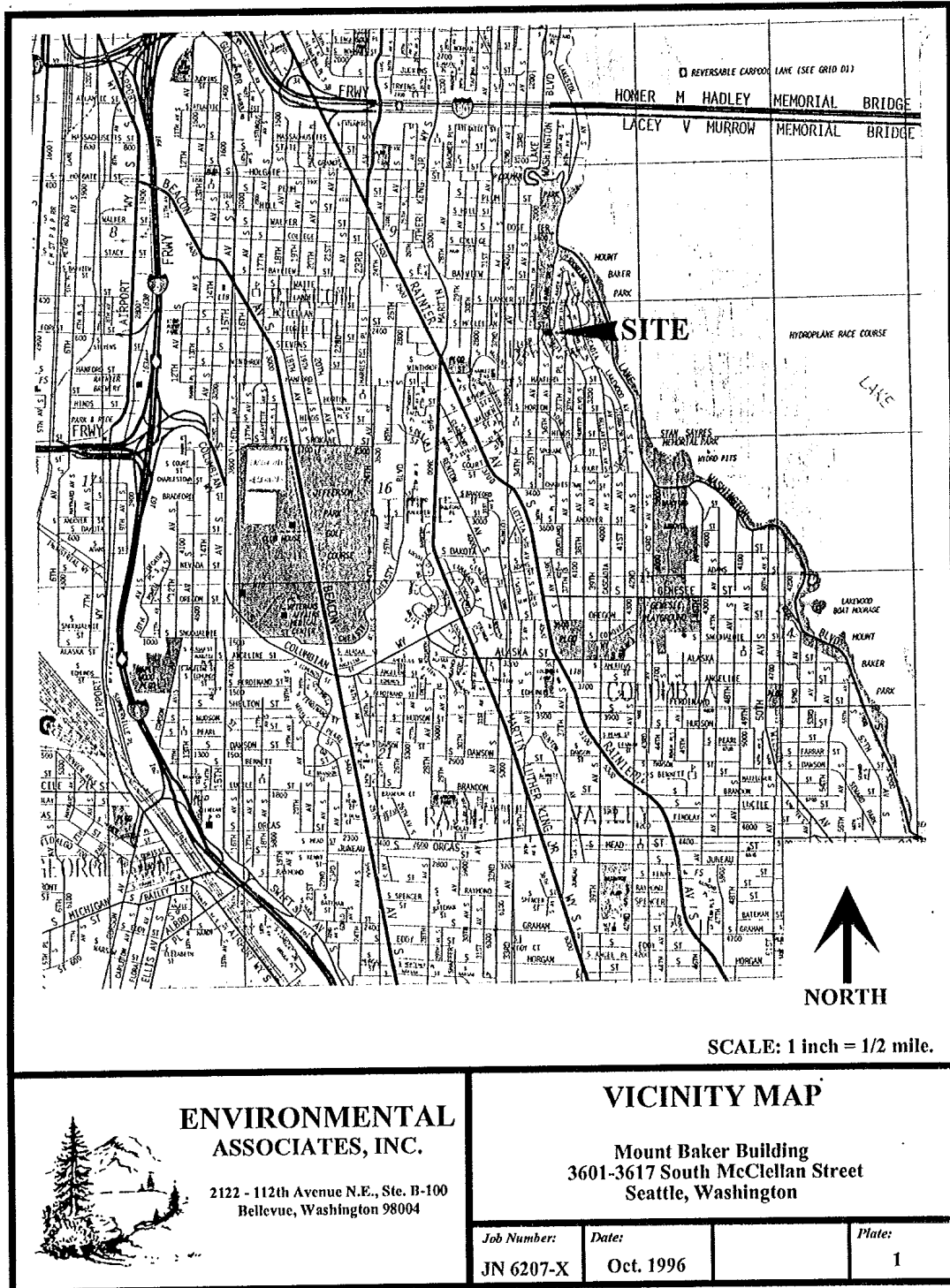
Environmental Associates, Inc., Independent Remedial Action Report, January 17, 1997;

Ecology, 1998, Restrictive Covenant;

Ecology, 2009, Site Visit.

6.0 APPENDICES

6.1 Vicinity Map



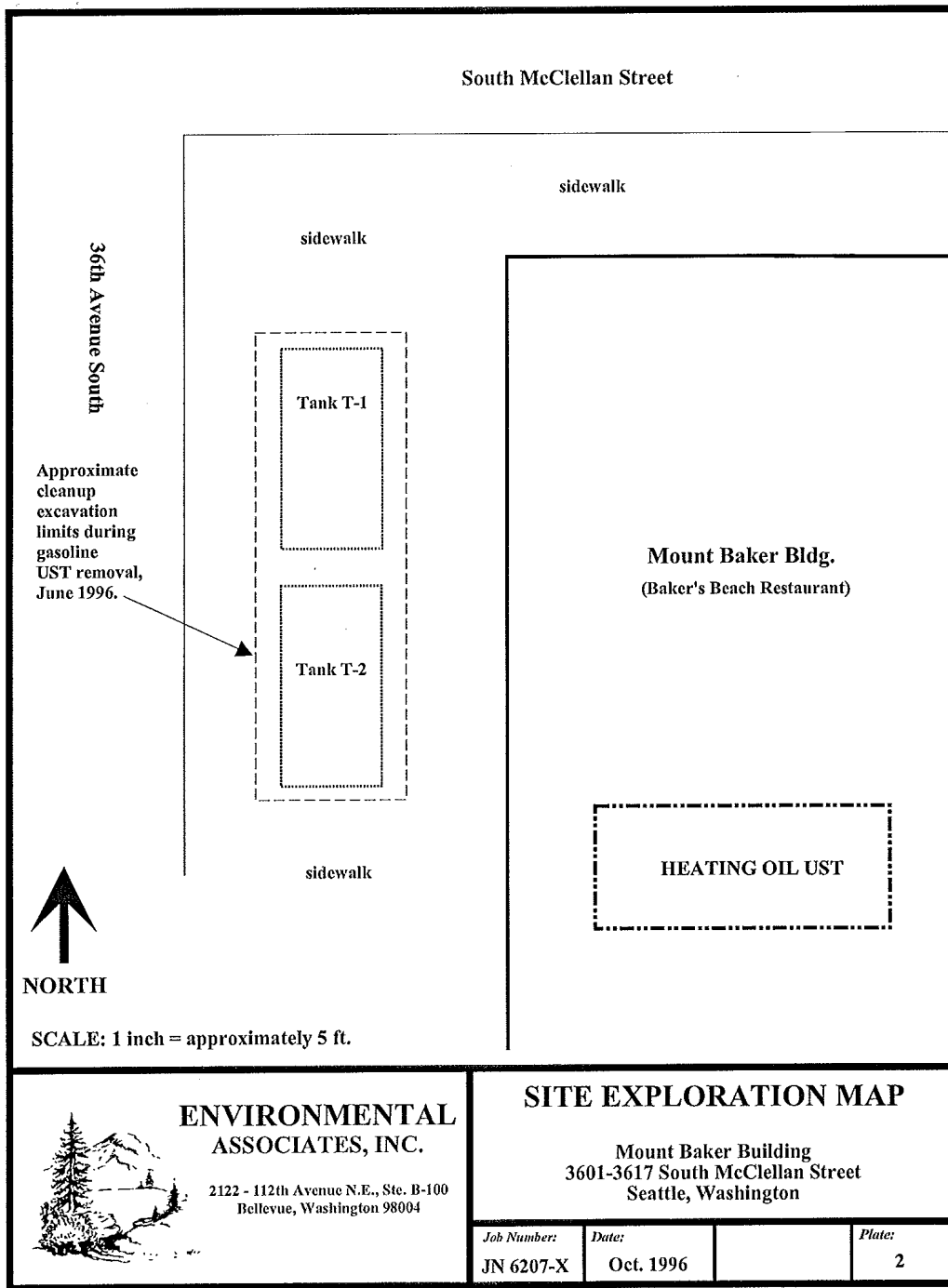
ENVIRONMENTAL ASSOCIATES, INC.
 2122 - 112th Avenue N.E., Ste. B-100
 Bellevue, Washington 98004

VICINITY MAP

Mount Baker Building
 3601-3617 South McClellan Street
 Seattle, Washington

Job Number:	Date:	Plate:
JN 6207-X	Oct. 1996	1

6.2 Site Plan



**ENVIRONMENTAL
 ASSOCIATES, INC.**

2122 - 112th Avenue N.E., Ste. B-100
 Bellevue, Washington 98004

SITE EXPLORATION MAP

Mount Baker Building
 3601-3617 South McClellan Street
 Seattle, Washington

Job Number:	Date:	Plate:
JN 6207-X	Oct. 1996	2

6.3 TPH-Dx Concentration Map

(not available, see detailed reports in Ecology cleanup files)

6.4 Environmental Covenant

Return Address

Brian Reynolds
Cornell & Associates, Inc.
2633 Eastlake Avenue East #307
Seattle, WA 98102

Declaration of Restrictive Covenants

Legal: Blk 31 Lot 1 Mount Baker Park Add
Full legal is on page (1) one of document

Assessor's Property Tax Account Number:
570000 2385 03

9802040370

580204-0370 09:33:00 AM KING COUNTY RECORDS 005 TMS 12.00

Declaration of Restrictive Covenants

This Declaration of Restrictive Covenant is made by Renbrad L.L.C. ("Declarant") as of February 3, 1998.

Recitals

- A. Declarant is the owner of the real property and retail, office and apartment improvements commonly known as Mt. Baker Court, Seattle, Washington and legally described as follows ("Property"):

Lot 1, Block 31, Mt. Baker Park, According to the Plat thereof, recorded in Volume 16 of plats, page 3, in King County, Washington;

Except the following described portion:

Beginning at the southwest corner of Lot 1;
Thence North along the West side of said Lot, 8.75 Feet;
Thence East to a point on the Easterly line on said Lot, 9.00 Feet Northerly of the Southeast corner thereof;
Thence South along said Easterly line of said Lot to the Southeast corner thereof;
Thence West along the Southerly line of said Lot to the point of beginning.

- B. During June and July 1996, Declarant caused certain underground storage tanks to be removed from property and was successful in removing contaminated petroleum hydrocarbons in excess of the Model Toxic Control Act ("MTCA") cleanup levels. A voluntary Independent Remedial Action Program ("IRAP") was undertaken by Declarant, which resulted in successful remediation of the contaminants in the accessible soils of the Property around the underground storage tanks.
- C. Previous tests also revealed a portion of the Property contains diesel and heavy oil contaminated soil located under the western edge of the building and under the adjacent sidewalk at a depth of approximately 10 to 13 feet (See Exhibit A). However, remediation of the soil was not feasible at the time due to the existence of the potential undermining of the building and the contaminated soil possess no current threat to public health and safety.
- D. If Declarant sells the Property to a third party the property will continue to be used as a retail, office and apartment building.
- E. Based on the forgoing, Declarant desires to postpone remediation of soils at the west portion of the Property unless owner decides to redevelop the site. The City of Seattle Transportation Department ("City") and the State of Washington Department of Ecology ("DOE") have stated that they are willing to allow remediation of the soils under the western portion of building / sidewalk subject to the following terms, conditions and restrictions.

9802040370

Declaration

Declarant hereby subjects the Property to the following terms, conditions and restrictions ("Restrictive Covenant"):

9802040370

1. Except as provided in Section 2. or 3. below, any contaminated soils in the Property or the sidewalk may remain in place until such time as Declarant (or its grantees, successors or assigns) redevelops the Property or substantial new improvements are otherwise made on the Property, at which time the soils remaining in the Property or Sidewalk with contaminants in excess of MTCA clean-up standard as caused by the Property shall be remediated. For purposes of this Section, demolition and surface grading of the Property or Sidewalk will not be considered to constitute a substantial improvement that requires remediation of subsurface contaminated soils.
2. If prior remediation of the contaminated soils pursuant to Section 1. above, any utility or other work is required to be performed in the Sidewalk (such as underground cable, wire, conduit, manholes, handholes, place utility poles) by the City of Seattle or other public entity or private utility company, Declarant (or its grantees, successor or assigns) shall remediate any contaminated soils caused by the Property that are disturbed by the work otherwise as necessary for the protection of the health or safety of the persons performing the work or for protection of human health or the environment.
3. If at any time Declarant (or its grantees, successors or assigns) learns of other contamination in the Property or the Sidewalk caused by the Property which presents an imminent risk to human health or the environment, Declarant (or its grantees, successors or assigns) shall take immediate action to remediate such contamination.
4. At least 30 days prior to conveyance of any real property interest in any portion of the Property Declarant (or its grantees, successors or assigns) shall give written notice to the City and DOE of the contemplated conveyance identifying the prospective grantee and the anticipated date of the conveyance. As part of any such conveyance, the grantee shall provide the City with a letter accepting the terms and conditions of this Declaration of Restrictive Covenants.
5. The City and DOE, and their designated representatives, are hereby granted the right to enter upon and inspect the Property, at reasonable times, upon 48 hours prior notice to the owner and any occupant, and may take samples, inspect the operation of cleanup action measures, and inspect clean-up records.
6. This Declaration of Restrictive Covenants may be amended or terminated by the mutual written agreement of the City of Seattle Transportation and DOE and Declarant (or its grantees, successors or assigns).
7. Notices and other communications to the City and/or DOE pursuant to this Declaration of Restrictive Covenants shall be deemed effectively given if delivered by hand or mailed certified mail, return receipt requested, to:

Seattle Transportation
Attention: Street Use Section
600 Fourth Avenue
Seattle, WA 98104

Washington Department of Ecology
Northwest Regional Office
Attention: Section Head, Toxic Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008-5452

8. The foregoing Restrictive Covenants shall henceforth burden and run with the Property and bind Declarant, its grantees, successors and assigns, and shall inure to the benefit of, and be enforceable by, the City and DOE, and their respective successors and assigns. Except only as limited by the express provisions of the foregoing Restrictive Covenants, Declarant expressly reserves all right of ownership, use and enjoyment of the Property.
9. The foregoing Restrictive Covenants shall no longer limit uses of the Property, or be of any further force or effect upon recordation by Declarant (or its grantees, successors or assigns) of an instrument terminating this Declaration pursuant to the provisions hereof.

Executed as of this date first written above.

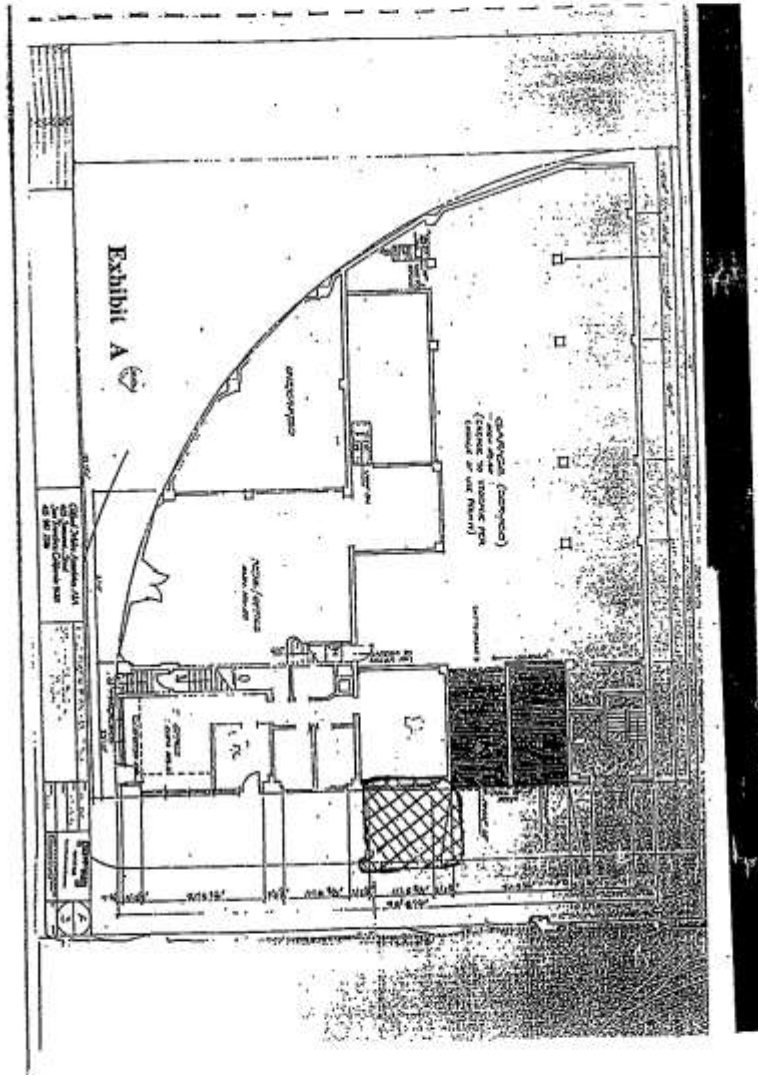
By: Brian P. Reynolds

Its: Manager

By: , Manager

9802040370

9802040370



6.5 Photo log

Photo 1: Former Tank Location west side - from the west



Photo 2: Sidewalk on west side of bldg. – former UST location



Photo 3: Mt. Baker Bldg Building - from the northeast



Photo 4: East Side of the Building – from the east

