



NORTHWEST RESOURCE
LAW PLLC

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February 26, 2019

Via Certified Mail and Email: Sandra.Matthews@ecy.wa.gov

Sandra Matthews, LG, LHG
Site Manager
Toxics Cleanup Program, NWRO
Washington State Department of Ecology
3190 160th Ave SE
Bellevue, WA 98008

Re: Preliminary Determination of Liability for Snopac Property, 5055 East Marginal Way South, Seattle

Dear Sandra:

This letter is in response to your correspondence dated February 5, 2019 making a preliminary determination of liability for releases of hazardous substances at the property located at 5055 East Marginal Way, Ecology Facility/Site ID 1523145, commonly known as the “Snopac Property” (the “Property”), and indicating that Ecology wishes to proceed with an Agreed Order for the remediation of the Property.

As you are aware, we represent 5055 Properties LLC (“5055 Properties”), which purchased the Property in 2012, as well as Manson Construction Co. (“Manson”), its parent. As we discussed on the telephone, since a meeting with Dan Cargill, Ron Timm, Rick Thomas in Ecology’s offices in Bellevue on May 26, 2016, 5055 Properties has informed Ecology that it intended to conduct a voluntary cleanup of the Property. To that end, it has completed a Remedial Investigation and Feasibility Study (“RI/FS”) for the Snopac Property Upland Source Control, a copy of which is enclosed.¹ The RI/FS for the shoreface and submerged lands is being finalized and will be provided to Ecology in the next few days.

The RI/FS contemplates the remediation occurring in two phases: Phase I will remove extensive areas of spent sandblast grit fill on the uplands of the Property and replace that with clean fill; Phase II will remove spent sandblast grit fill from the shoreface, and include a partial dredge

¹ At the May 26, 2016 meeting we shared our preliminary findings from investigation of the property and specifically discussed whether Ecology wanted us to proceed under an Agreed Order. Ecology’s response was that we should proceed as an independent action under MTCA because of its lack of staff resources, and because it appeared that the sources of contaminants to the Lower Duwamish Waterway were located in and near the shoreface of the Snopac Property, and not a larger, area-wide source that needed to be addressed as part of Ecology’s Lower Duwamish Waterway source control efforts. Based on that meeting, Manson and 5055 Properties have since proceeded in good faith to complete their RI/FS and prepare to conduct an independent action.

and cap within the submerged area, from the shoreface waterward to where the contamination levels are appropriate for enhanced natural recovery (“ENR”), and ENR thereafter until contamination is below the cleanup standards in EPA’s ROD for the Lower Duwamish Waterway.

5055 Properties intends to commence construction of a new office building, to be used as essential adjunct of Manson’s main Northwest construction yard next door, as soon as permits have been issued by the City of Seattle this summer. By far the most cost-efficient time to conduct the uplands remediation is immediately after the demolition of the warehouse currently standing on the Property and before site work for the new building. 5055 Properties is planning to conduct remediation of the uplands beginning in June. Delay in conducting the uplands remediation would be extremely expensive to 5055 Properties and Manson. Thus, if Ecology wants to negotiate an Agreed Order for remediation of the uplands portion, that order will need to be negotiated so that notice can be published by not later than April 15 of this year in order to keep the project on schedule. 5055 Properties is willing to work with Ecology to meet that schedule, or in the alternative, encourages Ecology to allow it to proceed with the uplands remediation as an independent action, and limit an Agreed Order to the shoreface and submerged land portion (Phase II), which can proceed at a slower pace.

1. Background on the Snopac Property, and Manson and 5055 Properties

5055 Properties is a subsidiary of Manson, and owns the Snopac Property, having acquired that property in 2012. The Snopac Property had been owned by Marine Leasing, a company owned by Peter F. Woeck Sr. (“Woeck, Sr.”), from 1973 until 1988. Woeck, Sr. also owned Marine Power & Equipment (“MP&E”), which owned several shipyards in the area, including a shipyard at Fox Avenue on the LDW. On more than one occasion during the Woeck ownership, Manson employees observed the Woeck companies dumping what they thought was spent sandblast grit at the Snopac Property.

As a result, when 5055 Properties was considering purchase of the Snopac Property, Manson retained Farallon Consulting to perform a Phase I and Phase II Environmental Site Assessment of the Property, specifically asking it to address the question of whether spent sandblast grit on the Property was the cause of the metals exceedances that had been found during the RI for the LDW. Despite a complete Phase I investigation and extensive subsurface and groundwater investigation, Farallon found some minor TPH contamination where USTs had been removed by the seller, Snopac Properties, but found no evidence of spent sandblast grit on the Property, and concluded that the source of the metals exceedances was likely off site and unknown. 5055 Properties purchased the Property in reliance on Farallon’s conclusions.

Based on these conclusions, and in response to your letter notifying 5055 Properties that it may be a liable party under MTCA, 5055 Properties must challenge that letter and disputes that determination. 5055 Properties performed its due diligence, and under MTCA is an innocent purchaser and is not liable to the State under MTCA. As such, 5055 Properties is not willing to and will not accept a final designation as a PLP. You requested this letter well ahead of the deadline to respond to that preliminary determination; if we cannot resolve this issue and have Ecology withdraw that determination, 5055 Properties will provide you with more information regarding this defense to liability.

More importantly, 5055 Properties wishes to work with Ecology to remediate this site. As mentioned above, 5055 Properties reached out to Ecology and had a meeting on this site in 2016. This was done in response to Ecology's Early Notice Letter sent in 2014, and after some preliminary investigation work had been performed by 5055 Properties to understand the possible basis for the Early Notice Letter.

When EPA issued the ROD for the LDW in 2014 the Selected Remedy estimated that almost 59,000 square feet at the head of Slip 1 would require partial dredge and capping, as well as extensive active remediation elsewhere in and around Slip 1. See, Ex. 1. As Manson reviewed the sampling data collected in the RI/FS for the LDW, it realized that sampling for the LDW RI/FS was so sparse that it did not have adequate information to defend itself in the LDW See, Ex. 2. As a result, in 2015 Manson retained Integral Consulting to conduct far more intensive sampling within and around Slip 1. See, Ex. 3. The results of Integral's 2015 sampling were dramatic. They showed both that the areas of metals contamination at the head of Slip 1 was far smaller than EPA's ROD had projected, and that there is a very clear gradient from the shoreface of the Snopac Property into the submerged lands. See, Ex. 4. Subsequent sampling of the shoreface and uplands by Aspect Consulting has confirmed that a significant area of the uplands was filled with spent sandblast grit by the Woeck companies, and that the entire shoreface of the Property has spent sandblast grit along it. See, Ex. 5.

In sum, the extensive work by Integral and Aspect completely characterizes the Snopac Property and adjacent sediments, demonstrates that the source of the metals contamination disclosed in the LDW RI/FS was dumping of spent sandblast grit by the Woeck companies, and puts both 5055 Properties and Ecology in a position to move forward to remediate this site.

Finally, in response to your inquiry regarding other parties, the site was contaminated during ownership by Marine Leasing, a subsidiary of Marine Power & Equipment ("MP&E") from 1973 to 1988. As you may know, both Marine Leasing and MP&E, and their parent company, went bankrupt in the late 1980s and are no longer available for suit. However, in May of 2017, Manson and 5055 Properties sued the Estate of Woeck, Sr. under MTCA and RCW 11.40.060, which allows a claim that can be satisfied by insurance to proceed after an estate has been closed. King County Cause No. 17-2-13637-9 SEA. Manson and 5055 Properties has been aggressively seeking to identify insurers of Woeck Sr. who may be responsible for the liability. Whether sufficient insurance will be identified to fully satisfy their claim is as yet unknown. On July 6, 2018 the Honorable Catherine Shaffer granted Manson and 5055 Properties' motion for partial summary judgment that Woeck Sr. is a PRP for the contamination at the Snopac Property. The trial of the matter is now set for December 2, 2019.

2. Path Forward

As stated above, 5055 Properties and Manson are happy to work with Ecology to meet its expectations and needs. We have been proceeding in good faith, based on earlier Ecology guidance, with an independent action to remediate the uplands beginning in June of this year, and to remediate the shoreface and submerged lands later. The schedule for the remediation of the uplands is now critical, because of the imminent start of construction of Manson's new adjunct office building. That building must be completed on schedule because Manson has

outgrown its current office and Manson will otherwise need to find alternate space for employees who really should be located adjacent to its construction yard.²

If Ecology now wishes the work on the uplands portion of the remediation to proceed under an Agreed Order rather than as an independent action, it would need to work with 5055 Properties to negotiate an Agreed Order that:

- Incorporates and approves the Aspect RI/FS and in-progress engineering and Cleanup Action Plan documents;
- Commits Ecology to an incredibly tight timeline (days, not weeks) to review and provide comments on any remaining documents associated with this first phase of remedial work; and
- Is negotiated and signed so that notice for public comment can be published not later than April 15, 2019 and the final order can be signed not later than June 1, 2019.

This may be an impossible task. If it is, 5055 Properties is prepared to move forward on conducting the first phase of remedial activities in June as an independent action, and is willing to work with Ecology to negotiate an Agreed Order to perform the remaining shoreface and in-water remediation at a later date. As I mentioned on the phone, we are also able to meet with Ecology in the immediate future. I would request that Ron Timm and Rick Thomas attend that meeting with you, and I will be in attendance along with representatives from 5055 Properties, Aspect, and Integral.

Very truly yours,



Douglas J. Steding, Ph. D.

w/encl
cc: John Heckel

² Separately, we understand that Ecology has objected to permit issuance by the City of Seattle based on Ecology's review of the SEPA checklist. In that objection, Ecology also states it wants to proceed with formal oversight of remedial activities at the Snopac Property. Again, this is a reversal of Ecology's prior position regarding this site, and we are hopeful that the proposal in this correspondence addresses that concern.

Exhibit 1

N:\GIS\Projects\C1246_Slip1\All_GradDunn\Production_MXD\ExpertReport\Figure 1_7 ROD_Tech_Assignments.mxd 4/13/2017 2:22:04 PM

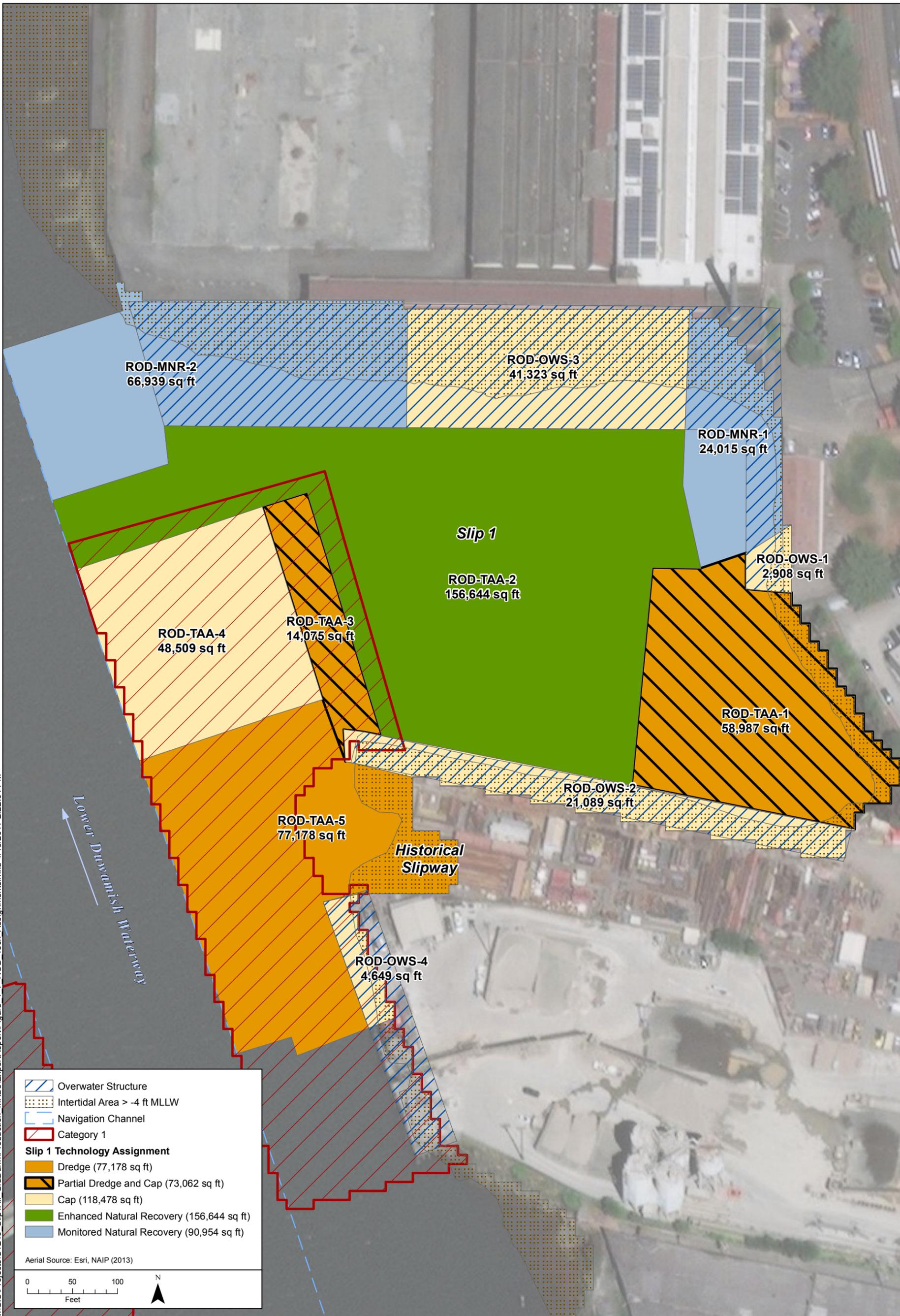


Exhibit 2

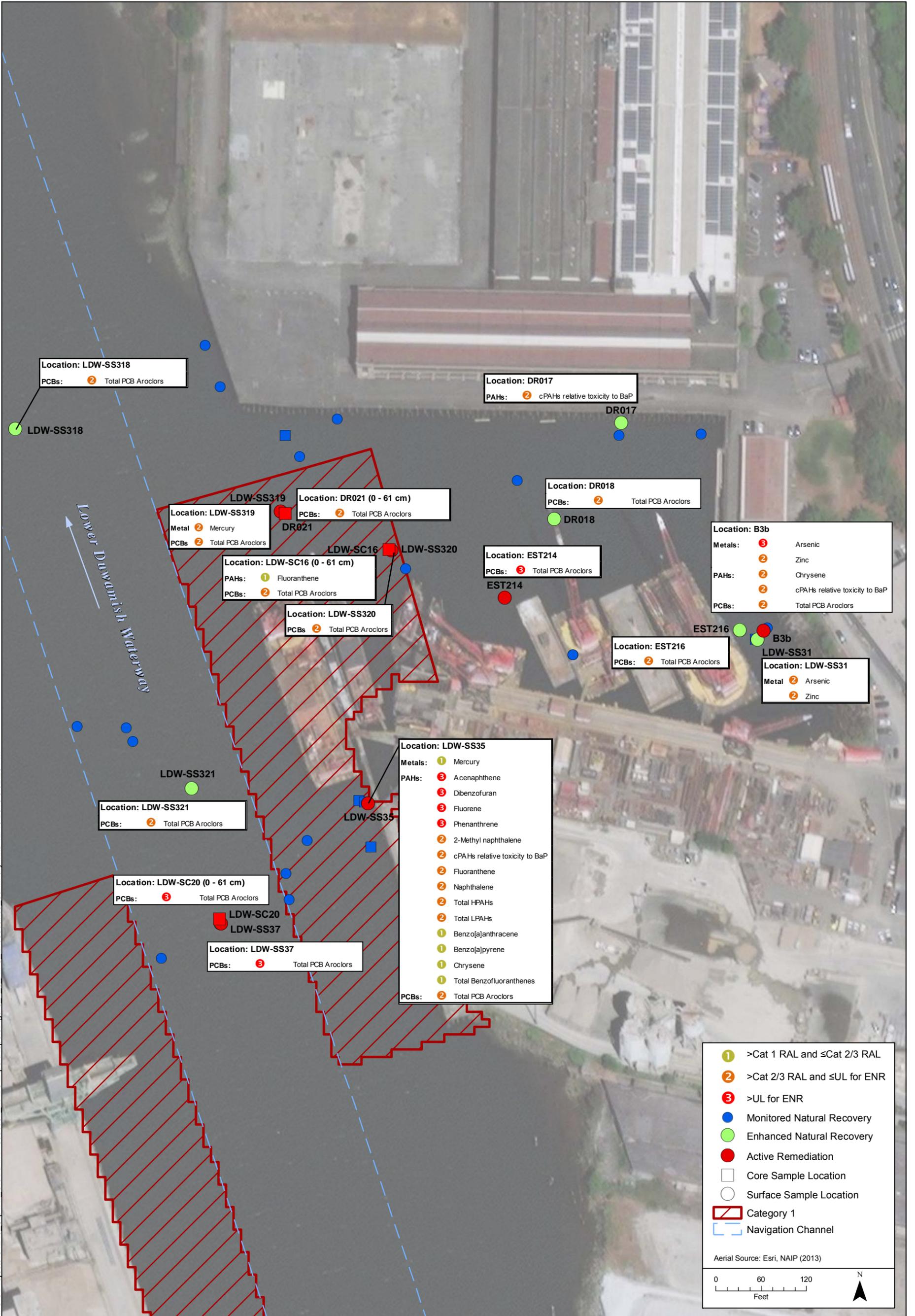


Exhibit 3

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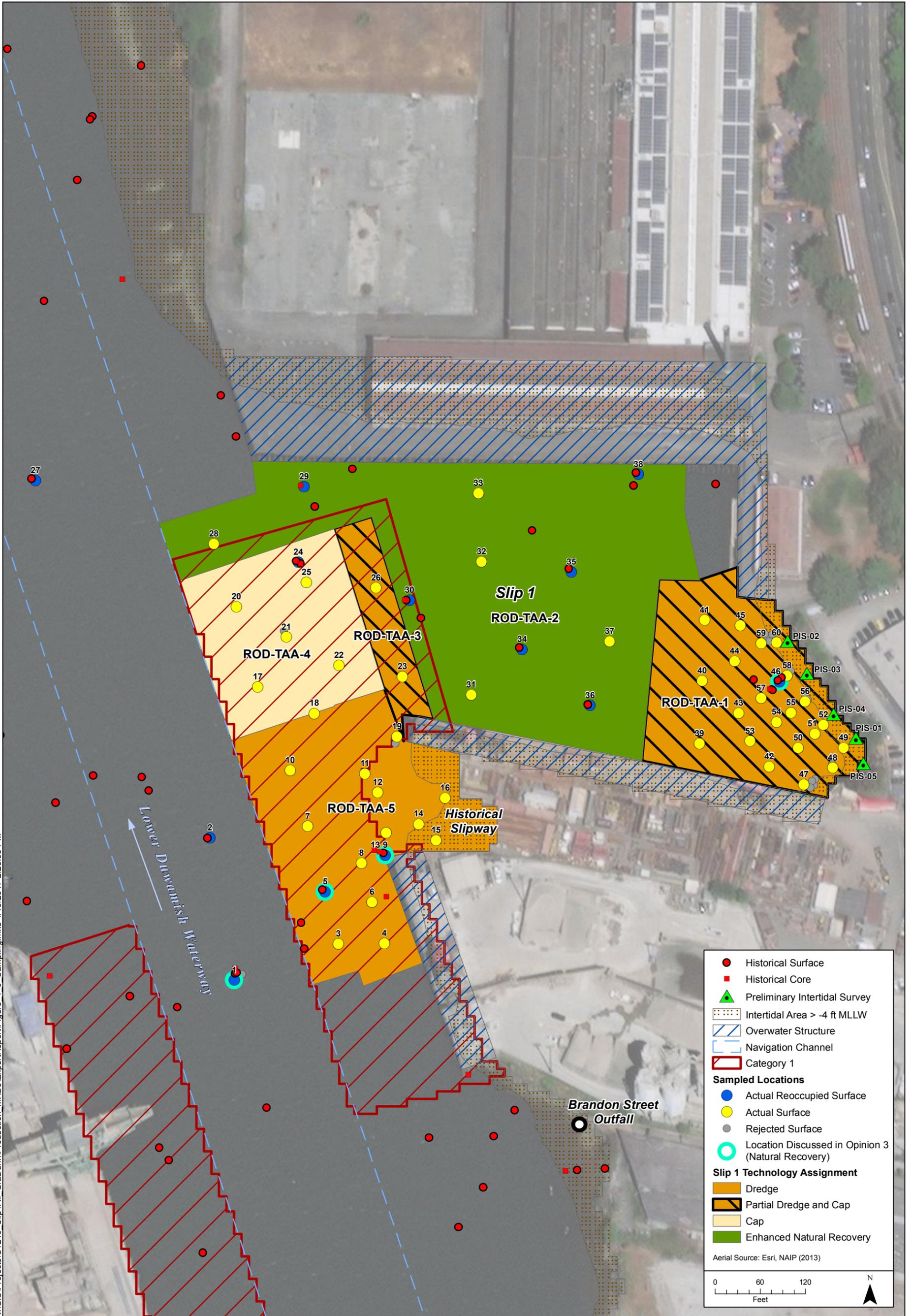


Exhibit 4

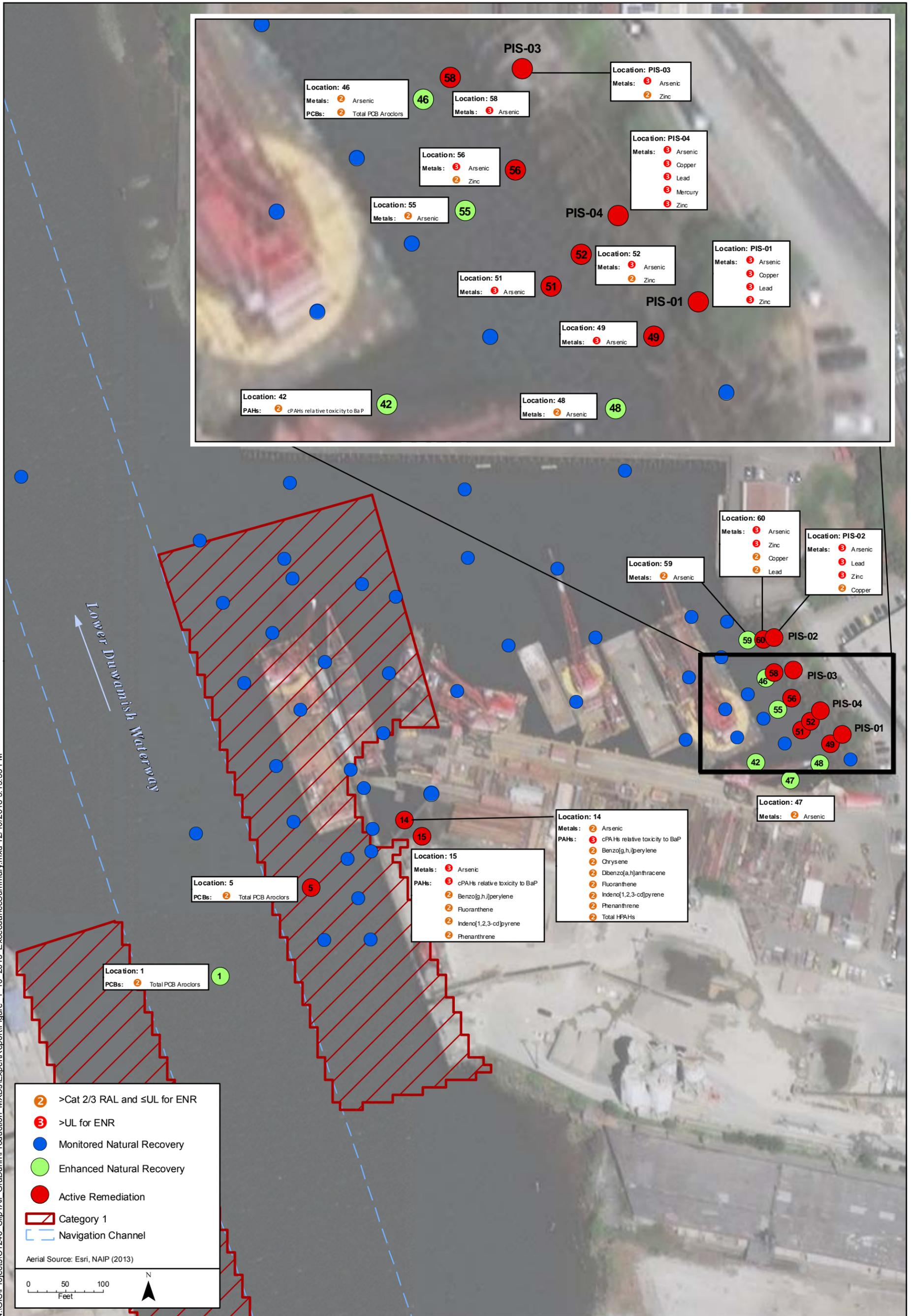
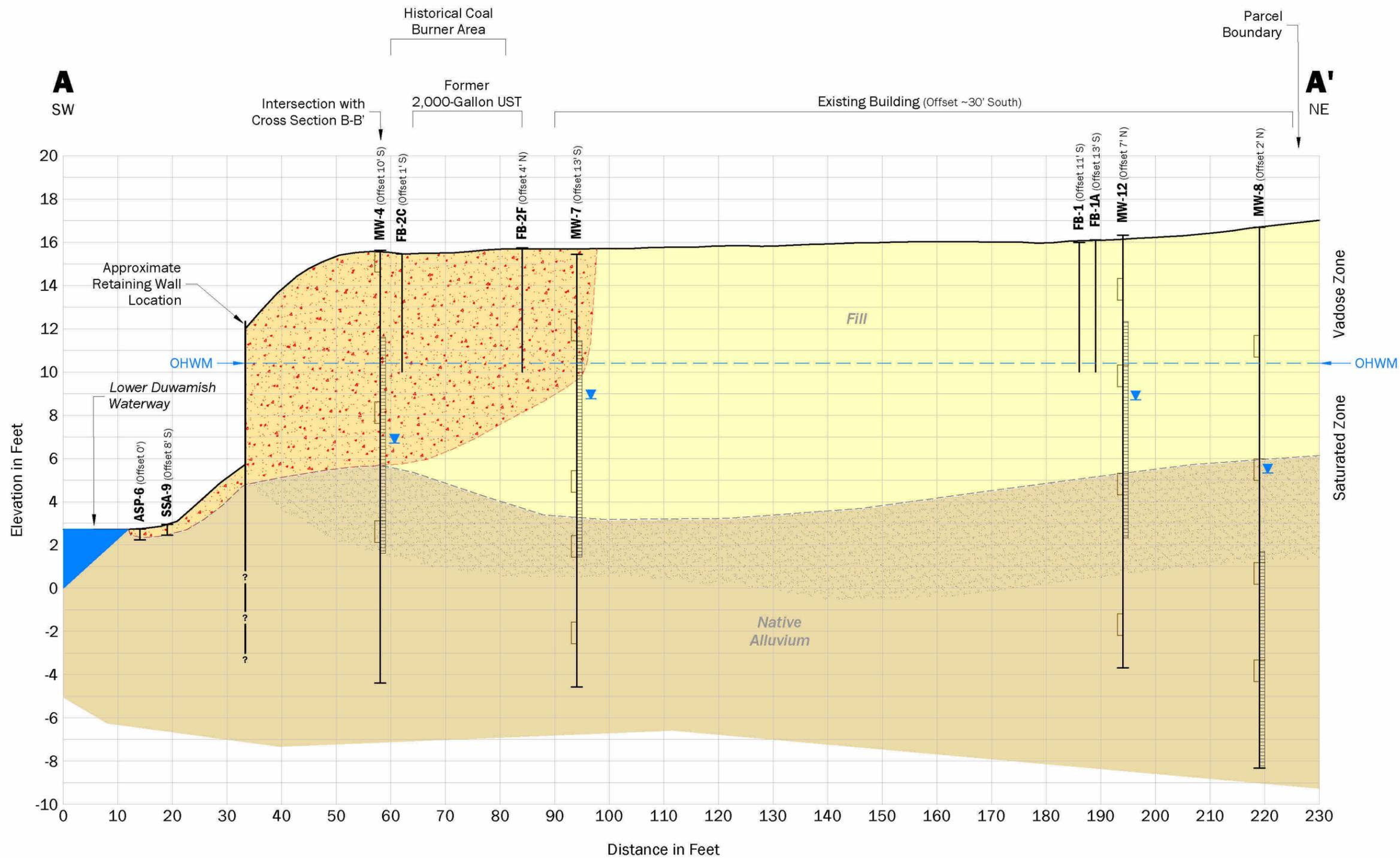


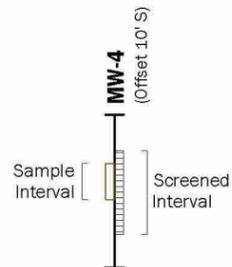
Exhibit 5



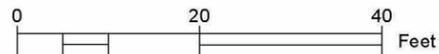
Legend

- Geologic Contact
- ▼ Low Tide Water Level Measurement (1/28/2018)
- OHWM → Ordinary High Water Mark (10.4 Feet NAVD88)

Note: The seaward face of the retaining wall structure on the west side of the property generally conforms to the location of the Ordinary High Water Mark.



Horizontal Scale: 1" = 20'
 Vertical Scale: 1" = 5'
 Vertical Exaggeration 4x



- Fill Unit**
Black to brown, gravelly, silty, sand with interspersed brick, wood chips, glass, and trace paint chips and coal
- Inferred zone of fill containing sandblast grit**
- Estuarine Unit**
Brown, silty sand with abundant woody debris and slight sulfur-like odor
- Native Alluvium Unit**
Brown to gray, poorly graded sand to silty sand with trace organics

Geologic Cross Section A-A'

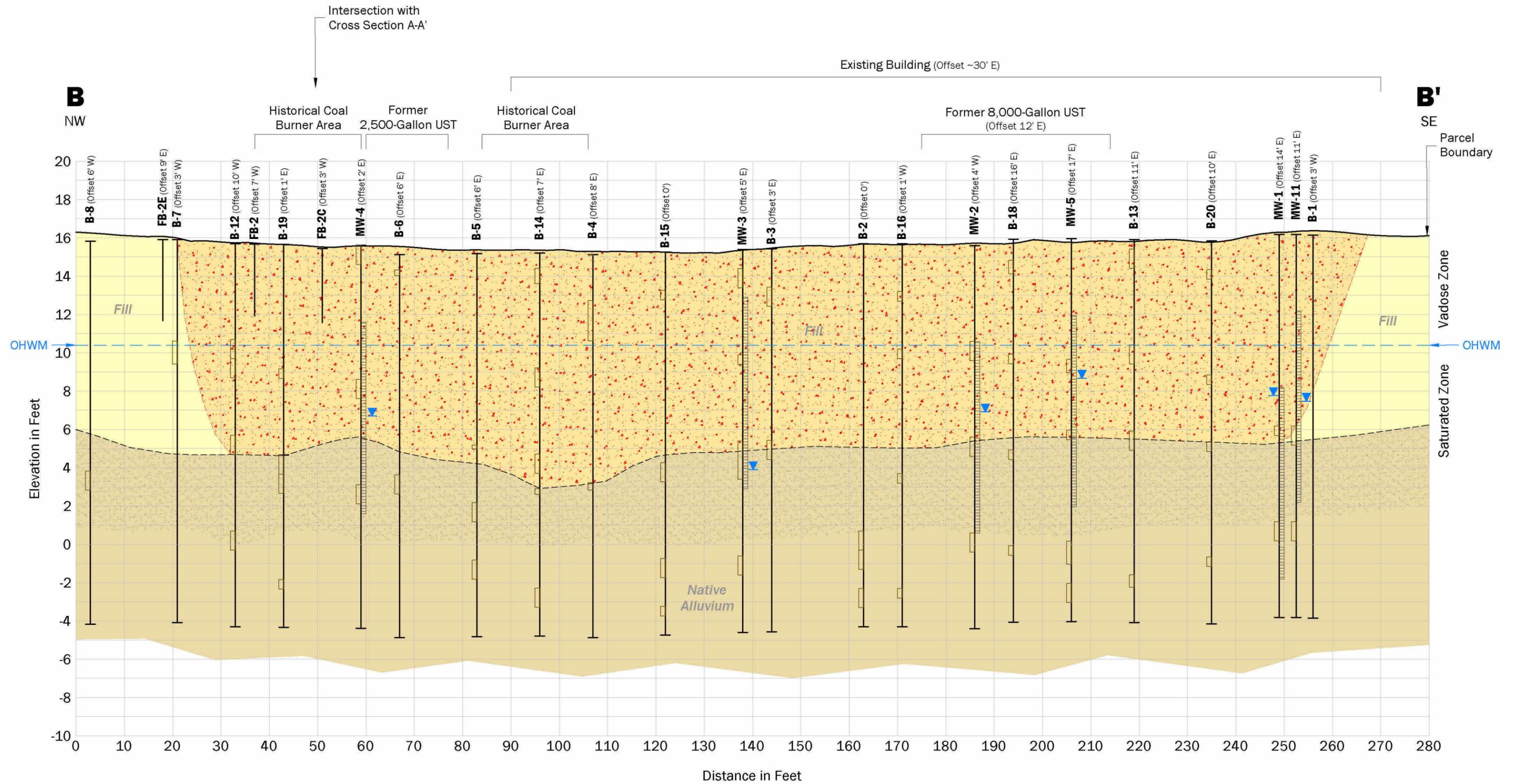
Snopac Property Upland Source Control RI/FS
 Slip 1 Source Control Area - Lower Duwamish Superfund Site
 5055 Properties, LLC
 Seattle, Washington



Aug-2018
 PROJECT NO.
 150054

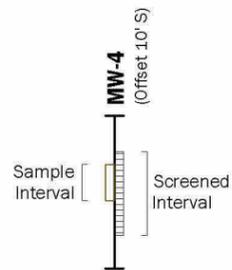
BY:
 MLK/SCC
 REVISED BY:
 -

FIGURE NO.
4

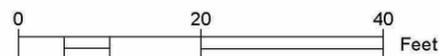


Legend

- Geologic Contact
- ▼ Low Tide Water Level Measurement (1/28/2018)
- OHWM → Ordinary High Water Mark (10.4 Feet NAVD88)



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Brown, silty sand with abundant woody debris and slight sulfur-like odor
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Brown to gray, poorly graded sand to silty sand with trace organics

Geologic Cross Section B-B'

Snopac Property Upland Source Control RI/FS
Slip 1 Source Control Area - Lower Duwamish Superfund Site
5055 Properties, LLC
Seattle, Washington



Aug-2018
PROJECT NO.
150054

BY:
MLK/SCC
REVISED BY:
-

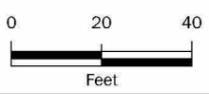
FIGURE NO.
5



Explorations ○ Boring □ Geotech Boring ⊕ Monitoring Well ▲ Seep Sample ☆ Soil Sample	● Confirmed Sandblast Grit in Soil ● Suspected Sandblast Grit in Soil Inferred Area of Upland Soil Containing Sandblast Grit Ordinary High Water Mark (ESA, 1/23/18)	— Cross Section □ Property Boundary □ King County Tax Parcel
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Note: The seaward face of the retaining wall structure on the west side of the Property generally conforms to the location of the Ordinary High Water Mark.

Basemap Layer Credits | Pictometry International Corp.



Sandblast Grit in Upland Soil

Snopac Property Upland Source Control RI/FS
 Slip 1 Source Control Area – Lower Duwamish Superfund Site
 5055 Properties, LLC
 Seattle, Washington

Aspect CONSULTING	JAN-2019 PROJECT NO. 150054	BY: MLK / TDR REVISED BY: ---
		FIGURE NO. 6