

Return Address:

Heather Vick
Department of Ecology
Northwest Regional Office
3190 - 160th Ave SE
Bellevue, WA 98008



20180305000370

COVENANT Rec: \$87.00
3/5/2018 2:08 PM
KING COUNTY, WA

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

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

- 1. Environmental Covenant 2. _____
- 3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

- 1. ASC Kirkland LLC, _____
- 2. _____, _____

Additional names on page 6 of document.

Grantee(s) Exactly as name(s) appear on document

- 1. State of Washington Department of Ecology, _____
- 2. _____, _____

Additional names on page 7 of document.

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

Ptn Sec 8 Twp 25N Rge 5E, NW Qtr SW Qtr

Additional legal is on page 1 of document.

Assessor's Property Tax Parcel/Account Number

assigned 0825059233

Assessor Tax # not yet

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

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return
Original Signed Covenant to:

Heather Vick, Site Manager
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008

Environmental Covenant

Grantor: ASC Kirkland LLC

Grantee: State of Washington, Department of Ecology

Brief Legal Description: Ptn Sec 8 Twp 25N Rge 5E, NW Qtr SW Qtr

Tax Parcel No.: 0825059233

RECITALS

a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

b. The property that is the subject of this Covenant is part or all of a site commonly known as Potala Village (Ecology Facility Site ID No. 4595; Cleanup Site ID No. 12329). The property, as designated by King County Assessor as Tax Parcel No. 0825059233, is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because engineered controls and monitoring devices remain on the Property after completion of remedial actions and residual soil contamination remains under Lake Street South (hereafter "Right of Way"), which abuts the western boundary of the Property.

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the remedial actions conducted are available through the Washington State Department of Ecology ("Ecology").

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its right as a holder, are not an interest in real property.

COVENANT

ASC Kirkland LLC, a Washington limited liability company, as Grantor and fee simple owner of the Property, hereby grants to Ecology and its successors and assignees, as Grantee, the following covenants. Furthermore, it is the intent of Grantor that such covenants shall supersede any prior interests Grantor has in the Property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. Interference with Remedial Action. Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. Protection of Human Health and the Environment. Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. Leases. Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. Preservation of Reference Monuments. Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within thirty (30) days after discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Containment of Soil. The remedial action for the Property is based on containing contaminated soil in the Right of Way, behind a barrier and vapor shield consisting of a 0.5-inch thick Volclay bentonite panel located as illustrated in Exhibit C. The barrier and vapor shield is equipped with a high-density polyethylene sheet drain for ventilation. An approximately 4-inch thick concrete sidewalk acts as a cap over the top of the barrier and vapor shield. The primary purpose of the barrier and vapor shield is to prevent contaminated soil that remains in the Right of Way from recontaminating the Property and to prevent harmful vapors associated with the contaminated soil from migrating onto the Property. As such, the following restrictions apply within the "Restricted Area" of the Property, as illustrated in Exhibit C:

i. Any activity that will compromise the integrity of the remedial action components at the Property (i.e., the barrier and vapor shield, soil gas probes (see Section 2(c) below), and portion of the sidewalk within the Restricted Area) is prohibited without prior written approval by Ecology. Such activities include: drilling; digging; piercing the remedial action

components with any sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the remedial action components; or, application of loads in excess of the bearing capacity of the remedial action components.

ii. Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the remedial action components at the Property. Unless an alternative plan has been approved by Ecology in writing, Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

b. Vapor Controls. The residual soil contamination in the Right of Way includes volatile chemicals that may generate harmful vapors. As such, the following restrictions shall apply within the Restricted Area of the Property to minimize the potential for exposure to these vapors:

i. No building or other enclosed structure shall be constructed within the Restricted Area unless approved by Ecology.

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

c. Monitoring. A minimum of three (3) permanent soil gas probes shall be installed within the Restricted Area of the Property sited halfway between the western boundary of the Property and the foundation wall of any building constructed on the Property. The anticipated location of the soil gas probes is depicted on Exhibit C. The purpose of the soil gas probes is to monitor the effectiveness of the barrier and vapor shield in preventing harmful vapors from migrating to the Property. The soil gas probes should have 1-foot long screens set at approximately four to five feet below the ground surface (or above the water table, if encountered). Grantor shall maintain clear access to the soil gas probes and protect them from damage.

i. The soil gas probes shall be sampled once as a baseline event after installation. The samples should be analyzed for all constituents that could potentially volatilize from total petroleum hydrocarbons in the gasoline range. The results of the baseline sampling event should be sent to Ecology.

ii. After installation, the soil gas probes shall be sampled once every five years and the data provided to Ecology for periodic review. The analysis shall be the same as for the baseline sampling described above.

iii. Any building constructed on the Property will include information about the soil gas probes in the building maintenance guidelines.

Section 3. Access.

a. Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** Grantor, when conveying any interest within the Restricted Area of the Property, including but not limited to title, easement, leases, and security or other interests, must:

i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON *(INSERT DATE)* AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER *(INSERT RECORDING NUMBER)*. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days after the date of recording of such document.

b. **Reporting Violations.** Should Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to an unanticipated event or an acts of nature (for example, vehicular accident, flood or fire) resulting in a violation of this Covenant, Grantor is authorized to respond to such an event or act of nature in accordance with state and federal law. Grantor must notify Ecology in writing of the event or act of nature and response actions planned or taken as soon as practical but no later than within twenty four (24) hours of the discovery of the event or act of nature.

d. **Notification procedure.** Any written notice, approval, report, or other communication required by this Covenant shall be personally delivered or sent by electronic mail or first class mail to the following persons:

If to Grantor: ASC Kirkland LLC
415 – 118th Avenue SE
Bellevue, WA 98005

If to Grantee: Environmental Covenants Coordinator
Washington State Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504 – 7600
ToxicsCleanupProgramHQ@ecy.wa.gov

Any change in the contact information for Grantor or Grantee shall be submitted in writing to all parties to this Covenant.

Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the Property:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, this Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the Property requiring a Covenant have changed or no longer exist, then Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this Covenant, per RCW 64.70.100, the original Grantor to this Covenant, if no longer the fee simple owner of the Property, agrees to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by Grantor.

b. Within ten (10) days after execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of this Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

h. The undersigned warrants he/she has authority to execute this Covenant.

EXECUTED this 9 day of February, 2018.

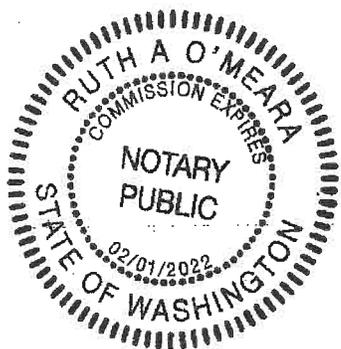
ASC KIRKLAND LLC

By: Aegis Senior Communities LLC
Title: Manager

By: _____
Printed Name: Dwayne Clark
Title: CFO/Manager

STATE OF Washington
COUNTY OF King

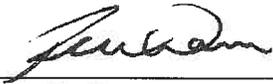
On this 9 day of February 2018, I certify that Dwayne Clark personally appeared before me, acknowledged that he/she is the Manager of Aegis Senior Communities LLC, the Washington limited liability company that executed the within and foregoing instrument on behalf of ASC Kirkland LLC, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for ASC Kirkland LLC.



Ruth A O'Meara
Notary Public in and for the State of Washington
Residing at Sammamish
My appointment expires 2/1/2022

Ecology hereby accepts its status as Grantee and holder of this Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Robert W. Warren

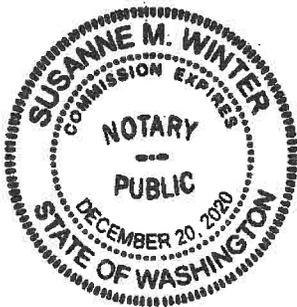
Title: Regional Manager, Toxics Cleanup Program, Northwest Regional Office

Date: 2-16-18

STATE OF WASHINGTON

COUNTY OF KING

On this 16 day of February, 2018, I certify that Robert W. Warren personally appeared before me, acknowledged that he is the Regional Manager, Toxics Cleanup Program, Northwest Regional Office of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said state agency.



Notary Public in and for the State of Washington

Residing at King county

My appointment expires 12-20-20

Exhibit A

LEGAL DESCRIPTION

THE WEST 200 FEET OF THE FOLLOWING DESCRIBED PROPERTY:
THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING EAST OF THE
COUNTY ROAD;
BEGINNING AT A POINT 2,092 FEET NORTH OF THE SOUTHWEST CORNER OF
GOVERNMENT LOT 4 IN SECTION 8, TOWNSHIP 25 NORTH, RANGE 5 EAST,
WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
AND RUNNING THENCE DUE WEST TO AN INTERSECTION WITH THE MEANDER
LINE OF SAID SECTION 8;
THENCE RUNNING FROM SAID POINT OF INTERSECTION NORTH ALONG AND
FOLLOWING SAID MEANDER LINE 165 FEET;
THENCE RUNNING EAST 1,186 ½ FEET;
THENCE RUNNING SOUTH 165 FEET;
THENCE RUNNING WEST TO POINT OF BEGINNING;
EXCEPT ANY PORTION THEREOF LYING NORTH OF THE SOUTH LINE OF THE PLAT
OF HARRY WHITE & COMPANY'S COMMERCIAL ADDITION TO KIRKLAND
ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 8 OF PLATS, PAGE 16,
IN KING COUNTY, WASHINGTON;
EXCEPT ANY PORTION THEREOF LYING WITHIN LAKE STREET SOUTH (SR 908).

Exhibit B
DEPICTION OF PROPERTY

[ATTACHED]

- LEGEND**
- BOUNDARY OF PROPERTY
 - ▨ RESTRICTED AREA
 - SIDEWALK

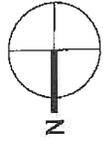
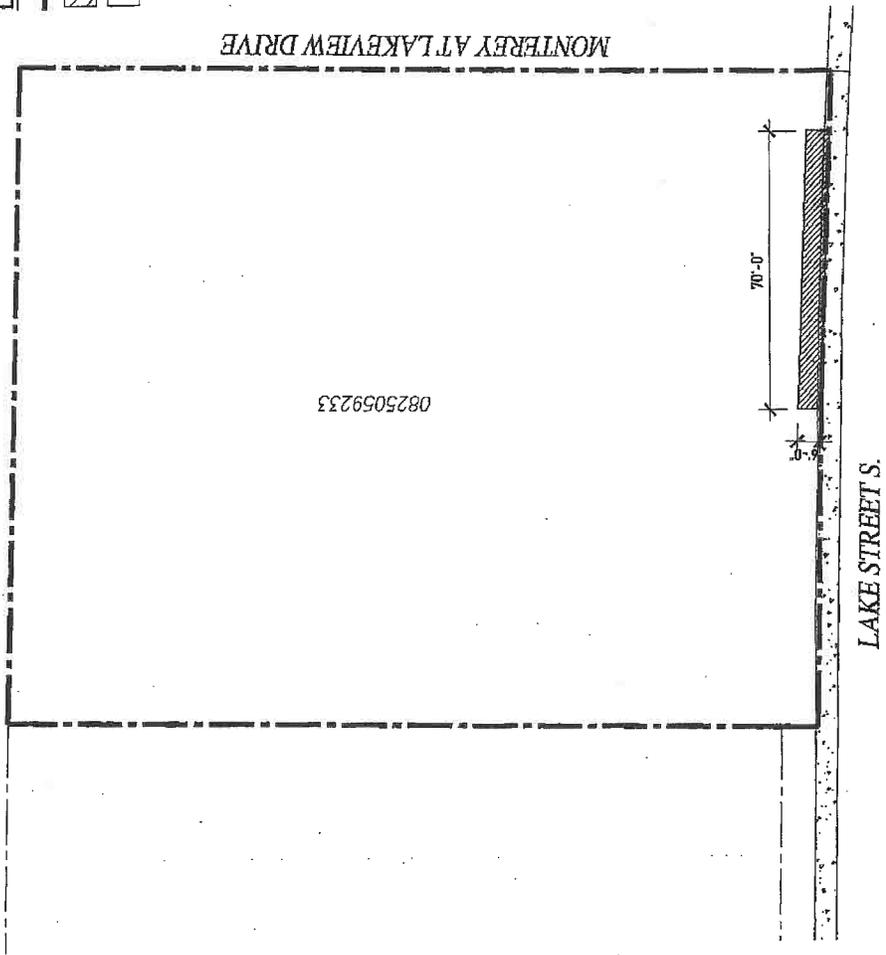


EXHIBIT B - DEPICTION OF PROPERTY

1" = 30'-0"

Exhibit C
DEPICTION OF RESTRICTED AREA AND REMEDIAL ACTION COMPONENTS

[ATTACHED]

4845-5342-6760, v. 9

MONTEREY AT LAKEVIEW DRIVE

15'-0"

0'-9"

70'-0"

A

A

SOIL GAS PROBES

LAKE STREET S.

SHEET DRAIN
BENTONITE CLAY PANELS
SIDEWALK

LEGEND

--- BOUNDARY OF PROPERTY

▨ BENTONITE PANEL

○ SOIL GAS PROBES

▩ RESIDUAL SOIL CONTAMINATION

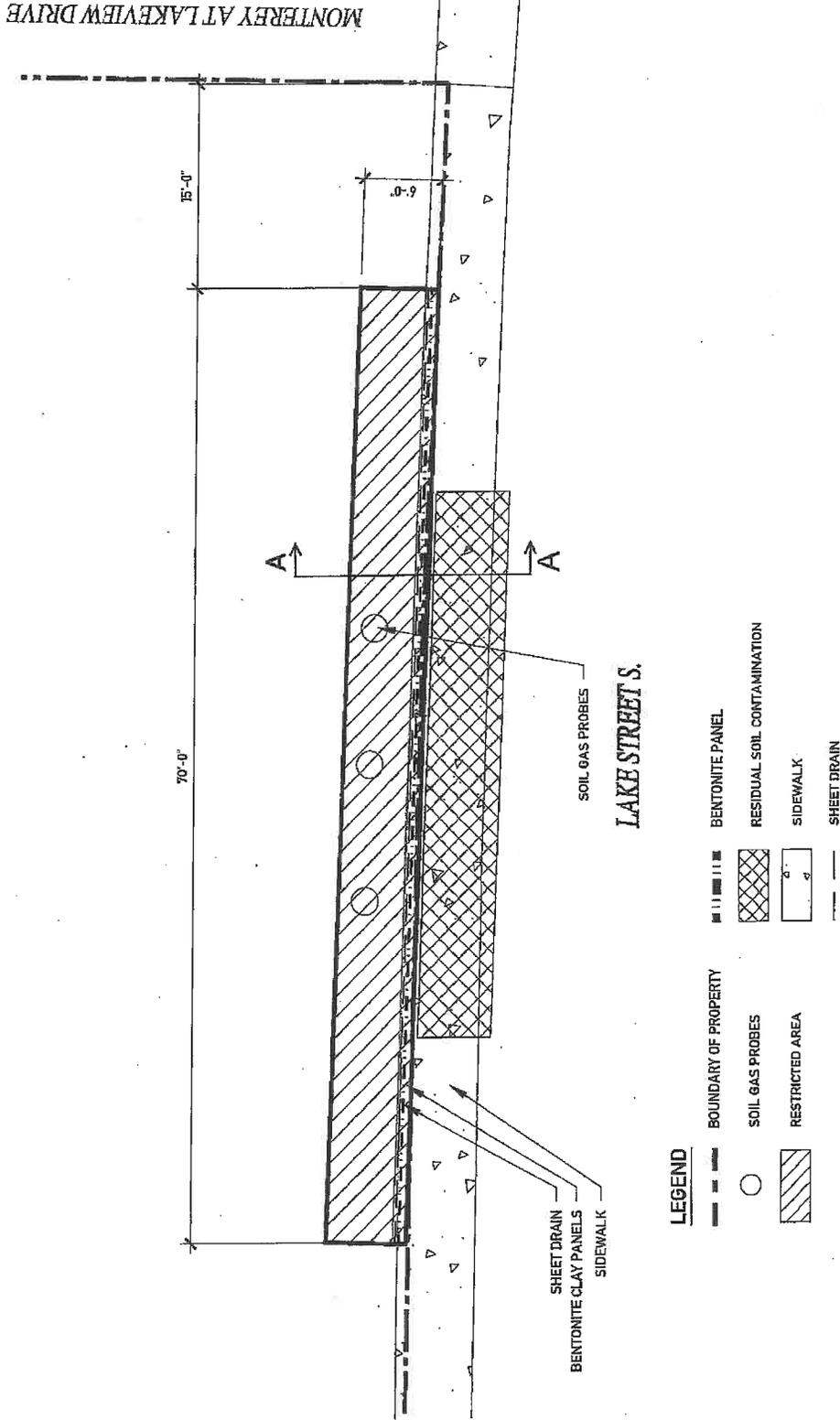
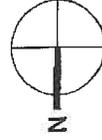
▨ RESTRICTED AREA

□ SIDEWALK

--- SHEET DRAIN

**EXHIBIT C - DEPICTION OF RESTRICTED AREA &
REMEDIAL ACTION COMPONENTS (PLAN VIEW)**

1/8" = 1' - 0"



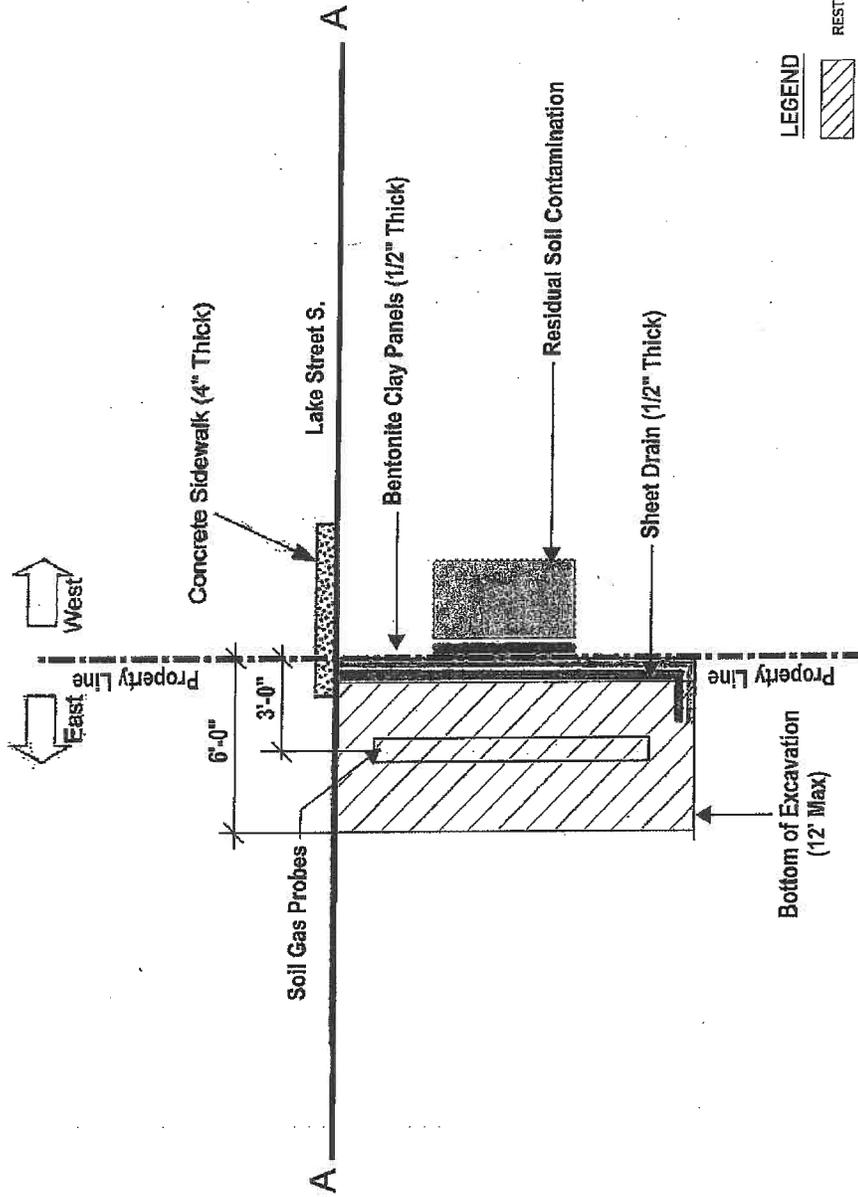


EXHIBIT C - DEPICTION OF RESTRICTED AREA & REMEDIAL ACTION COMPONENTS (CROSS SECTION VIEW)