



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 8, 2012

Ms. Teri A. Floyd
Floyd / Snider Inc.
601 Union Street, Suite 600
Seattle, WA 98101

Re: Opinion pursuant to MTCA WAC 173-340-440

BCC RPI Kent II, LLC Request of Ecology: To Remove Robison Property (Kent Central Site Lot A) from Consent Decree Restrictive Covenant for the following Hazardous Waste Site:

- **Site Name:** Kent Central Site
- **Site Address:** 22011 – 84th Avenue South, Kent, WA
- **Consent Decree Order No.:** 426824

Dear Ms. Floyd:

The Washington State Department of Ecology (Ecology) has received a request from BCC RPI Kent II, LLC (BCC RPI) to modify an existing restrictive covenant associated with the cleanup of the Kent Central Site (Site). The covenant was placed on the Kent Central property (the Property) as part of a Consent Decree settlement in 1999 between Ecology and the Property owners at the time. BCC RPI is now asking that one of the parcels listed in the covenant – the Robison Property on Kent Central Site Lot A (Robison Property) – be removed from the covenant, on the basis that it has never been part of the Site.

As stipulated by WAC 173-340-520, the 1999 Kent Central Site Consent Decree satisfied public comment and hearing requirements, and was determined by Ecology to be in compliance with the findings required by RCW 70.105D.040(4). The decree was filed by Ecology's Attorney General Office with the King County Superior Court in April 1999. The required Site Restrictive Covenant was attached to the decree at the time of filing, and the parcel legal description is the subject of this correspondence.

Background Summary/Synopsis of Request:

In 1988, Northwest Steel Rolling Mill, located at 22011 84th Avenue South, in Kent, Washington, was placed on the State Hazardous Sites List by Ecology. In late 1994, after the completion of several independent cleanups and property transfers, the Kent Central Cleanup and Redevelopment Project was initiated under the direction of Ecology via MTCA Agreed Order, and later through Consent Decree, to clean up the historical Northwest Steel facility and to construct a warehouse complex. At that time, the Site was renamed Kent Central. The original Northwest Steel Mill consisted of one parcel (Kent Central Lot B). To facilitate the redevelopment project, and to provide access from the adjacent street, a smaller commercial parcel (Robison Property), which fronted 84th Avenue South, was included in the Kent Central Property.

The Consent Decree for the cleanup of the Kent Central Site (the historical Northwest Steel Facility) was signed between Ecology and the parties performing the cleanup and redevelopment of the property as a warehouse. The Site, under MTCA Agreed Order and Consent Decree, was cleaned up to industrial standards (MTCA Method C) and a Restrictive Covenant was placed on the property with the requirement that the property be limited to industrial land use. When the Restrictive Covenant was placed, the property description included both the Robison Property and Kent Central Site Lot B (the historical steel facility), located at 22011 84th Avenue South in Kent. The Robison Property has recently been re-parceled as Robison Lots A and B for prospective sale; and based on technical review, these parcels are not impacted. Since the Robison Property legal description has changed, and is no longer part of the Kent Central Site legal description, the Restrictive Covenant should not apply.

BCC RPI Kent II, LLC (BCC RPI), currently owns the Robison Property, while a Real Estate Management Company, known as Prologis, currently owns Kent Central Site Lot B, which is now a Best Buy warehouse. The Robison Property (Kent Central Site Lot A) is zoned for commercial use. An environmental assessment was conducted on the Robison Property by CDM Company in 2010. There was no evidence of contamination within the property. Also, there was no evidence of contaminant migration from potential off property sources. It was also determined that the adjacent Kent Central Site is actually down- or cross-gradient from the Robison Property in terms of ground water flow.

BCC RPI has made the formal request for Ecology to determine that the Robison Property was placed under the 1999 Kent Central Site Restrictive Covenant, and should be removed.

Conclusion:

This letter constitutes Ecology's response to your request, and our determination is based on review of the following supporting documents and report:

Ecology's Toxics Cleanup Program reviewed the following information regarding your request:

1. Floyd/Snider Inc., *Memorandum to Ecology with Attachments: Request for Removal of Robison Property from Restrictive Covenant of Kent Central Site, 22011 84th Avenue South Kent, Washington*, November 17, 2011
2. Floyd/Snider Inc., *Legal Description of Robison Property (Kent Central Site Parcel Lot A) Parcel # 3830000-0006-04, Kent Central Site, Kent, Washington*, December 13, 2011
3. CDM, *Phase I Environmental Site Assessment, Robison Property, 21851 84th Avenue South, Kent, Washington*, May 13, 2010
4. CDM, *Phase II Environmental Site Assessment, Robison Property, 21851 84th Avenue South, Kent, Washington*, May 13, 2010
5. Washington State Department of Ecology, *Unsigned copy of Kent Central Site Consent Decree, Kent Central Site, 22011 84th Avenue South, Kent, Washington*, reviewed January 31, 2012

The reports listed above will be kept in the Central Files of the Northwest Regional Office of Ecology (NWRO) for review by appointment only. Appointments can be made by calling the NWRO resource contact at (425) 649-7239. The Kent Central Site project file currently is located at Ecology headquarters archives (Olympia, Washington).

Under MTCA WAC 173-340-440(4), institutional controls are required to assure both the continued protection of human health and the environment, and the integrity of the selected cleanup action, which are established using appropriate cleanup levels. MTCA Method C was determined appropriate for the Kent Central LLC Site.

As stipulated by MTCA WAC 173-340-440(12), "If the conditions at the Site requiring an institutional control under subsection (4) of this section no longer exist, then the owner may submit a request to Ecology that the restrictive covenant or other restrictions be eliminated." Ecology has received the request by BCC RPI that although the Restrictive Covenant for the Kent Central Site shall continue to be maintained, the legal description must be adjusted to clarify that the legal description of a parcel of the Site, referred to as Robison Parcel (Kent Central Lot A), was included and attached to the Site Restrictive Covenant at the time of signing and lodging of the Consent Decree in 1999, and should be removed.

Ecology has determined the request that the Robison Property be removed from the legal description attached to the Kent Central Site Restrictive Covenant is appropriate for consideration. The Kent Central Site Robison Property, acquired originally for access purposes,

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was never part of the Site as defined by the Model Toxics Control Act (Under MTCA Chapter 70.105D RCW, sites are defined by the nature and extent of contamination associated with one or more releases of hazardous substances, prior to any cleanup of that contamination).

Ecology hereby requests the submittal of the updated and signed Restrictive Covenant with attached new legal description (specific information on environmental covenants can be found in the Uniform Environmental Covenants Act (UECA), Chapter 64.70 RCW, and WAC 173-340-440 of the Model Toxics Cleanup Act (MTCA) Cleanup Regulation); with a Ecology Voluntary Cleanup Program (VCP) Application and Agreement to initiate review and approval of the request by Ecology management.

As stipulated by Chapter 65.04 RCW:

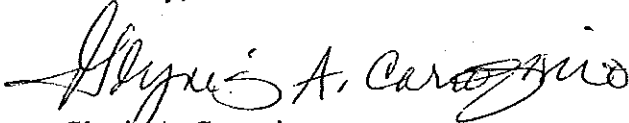
- Property owners are the first signatory to the Restrictive Covenant
- The Restrictive Covenant then is delivered to Ecology for management signature
- The Restrictive Covenant then goes back to King County to record (after adequate consultation with County)
- Upon recording, return the signed and recorded covenant to Ecology (original paperwork) and provide a copy of the recorded covenant to the following persons:
 - Each person that signed the covenant.
 - Each person holding a recorded interest in the real property subject to the covenant.
 - Each person in possession of the real property subject to the covenant at the time the covenant is executed.
 - Each municipality or other unit of local government in which real property subject to the covenant is located.
 - Any other persons Ecology requires.
- The copy must be legible and the recording number must be evident.

The state, Ecology, and its officers and employees make no guarantees or assurances by providing this opinion, and no cause of action against the state, Ecology, its officers or employees may arise from any act or omission in providing this opinion.

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If you have any questions regarding this opinion, please contact me by phone at (425).649-4422,
or via email at gcar461@ecy.wa.gov.

Sincerely,



Glynis A. Carrosino
Project Manager
Toxics Cleanup Program

tn

Enclosures: Floyd / Snider Memorandum to Ecology
CDM Inc. Phase I and Phase II EA Cover Pages
Site Aerial Photo
Site Diagram from 1999 Kent Central CD/CAP

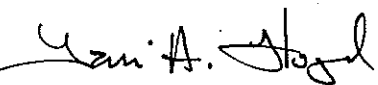
By certified mail: 7011 0470 0003 3682 1126

cc: Robert Warren, P.Hg., MBA, TCP Section Manager, Ecology
Russ Olsen, VCP Unit Supervisor, Ecology
Joe Alhadeff, Benaroya Company

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ATTACHMENTS

Memorandum

To: Glynis Carrosino, PM, Ecology-NWRO
Copies: Joe Alhadeff, Benaroya Company.
From: Teri A. Floyd, PhD and Toraj Ghofrani, PE 
Date: 17 November 2011
Project No: Ben-Kent Benaroya Property
Re: Removal of Robison Property from Restrictive Covenant of Kent Central Site, Kent, Washington

The northern half of the Robison Property (site), located at 21851 84th Avenue South in Kent, Washington (Figure 1), was inadvertently included in restrictive covenant when its neighboring property (the Kent Central Site, Figure 2) was placed under Restrictive Covenant (RC) during the MTCA Cleanup in the late 1990s. We are asking Ecology's assistance correcting this mistake. Since you were the Ecology Project Manager for the MTCA cleanup of the site, we felt that you would be the most appropriate person to assist us.

The RC was required at the former Kent Central Site as part of remedial alternative to address its elevated metals and TPH at the historical recycled steel facility (FSI/AGI Technologies, 1998). Specifically residual contamination, including steel slag, remains on the former Steel Site, but not on the Robinson Property, that is above MTCA B concentrations for unrestricted land use. At the time of the cleanup of the steel facility, the northern half of the Robinson property was owned by the same owners as the closed steel facility.

During post-cleanup redevelopment, a roadway was installed along the fence line directly north of the northern half of the Robinson Property to serve the large warehouse redevelopment of the steel site. Rest of the northern half of the Robinson property, a distinct parcel, was sold separately. The parcel is currently for sale again, and it was discovered that the RC that was intended for the former Steel Facility was also on the Robinson parcel.

However, based on both the original RI/FS on the former Steel Facility and on recent site-specific Phase I and II Environmental Site Assessments at Robison Property there is no evidence of contamination within the Robison Property line (CDM, 2010a). Furthermore, there is no evidence of contaminant migration from the potential offsite sources, Kent Central Site, Budget Rental, and Ernie's Fuel Stop located on northwest, south, and southeast corner of the Robison Property, respectively (CDM, 2010b).

This memorandum is prepared to summarize the environmental investigation at Robison Property and support the removal of the restrictive covenant, intended for the steel site, from the Robinson parcel.

Environmental Setting and Potential Sources of Contamination

Robison Property is 3.96 acres of chain-link fenced land, located in a balance mixed of residential, commercial, and industrial land use. The site is mostly paved and includes an asphalt-paved parking lot and a one-story office building. No threatened or endangered plant or species exist at the site (FSI/AGI Technologies, 1998).

Kent Central Site (former Salmon Bay Steel, or Birmingham Steel) on the northwest corner of the site had been subject of numerous environmental investigations and cleanups, and as such is a potential offsite source of contamination for the Robison Property. Kent Central Site was used for metal scrap and steel slag processing from 1962 until 1994, when the facility was closed and sold to the Port of Seattle. The extent of more than 150,000 cubic yards of steel slag fill in subsurface soil (up to 6 feet below ground surface [bgs]) and groundwater (encountered at 4 to 6 feet bgs) at the facility is presented in Figure 2. The presence of steel slag at the former Kent Central Site has impacted the subsurface soil with elevated metal concentrations but has not impacted the groundwater beneath the site, except of its high pH. As part of remedy to address the elevated metal in soil and elevated pH in groundwater, a restrictive covenant limited the Kent Central Site for industrial land use protected by a perimeter chain-link fence and Class B Asphalt to cover the facility (FSI/AGI Technologies, 1998). The former Kent Central Site is presently used as Best Buy Warehouse.

Budget Rental and Ernie's Fuel Stop are also potential offsite sources of contamination for the Robison Property. Both facilities have underground storage tanks with potential for hydrocarbon release and migration to Robison Property.

Robison Property Site Specific Environmental Investigations

In 2010, CDM completed a Phase I Environmental Site Assessments at Robison Property and found open containers of motor oil in the parking lot of the site that could be a potential for contamination to stormwater runoff. This recognized environmental condition was a minor housekeeping issue that was immediately corrected. Nevertheless, CDM proposed a Phase II Environmental Site Assessment at the site to address the potential offsite sources of contamination, the former Kent Central Site, Budget Rental, and Ernie's Fuel Stop (CDM, 2010 a).

During Phase II Environmental Site Assessment, CDM drilled six boreholes to 8 feet bgs to investigate the migration of contamination from potential offsite sources. Borehole B1, B2, and B3 was drilled on the east and south of the site to investigate the potential hydrocarbon contamination from Ernie's Fuel Stop and Budget Rental; and B3, B4, B5, and B6 were drilled on west of the site to investigate the potential metal contamination from the former Kent Central Site (Figure 2).

CDM collected one soil sample from vadose zone of each boreholes B1, B2, B3, and B6 at depth ranging from 3 to 4 feet bgs and analyzed them for NWTPH-HCID (B6 was included due to presence of soil stain). A groundwater sample was also collected from each boreholes B1, B2, and B3 at depth ranging from 4 to 7 feet BGS and analyzed for NWTPH-Gx, NWTPH-Dx, and BTEX+MTBE. This was to investigate the potential TPH contamination from Ernie's Fuel Stop and Budget Rental.

Furthermore, CDM collected one soil sample from vadose zone of each boreholes B3, B4, B5, and B6 at depth ranging from 3 to 6 feet bgs and analyzed them for Total Metals plus pH and collected a groundwater sample from the same boreholes at depth ranging from 4 to 7 feet bgs and analyzed them for dissolved metals and pH. This was to investigate the potential metal and pH contamination from the former Kent Central Site.

As presented in Tables 1 and 2:

- No NWTPH-HCID was detected in any of the soil samples collected from B1, B2, and B3 and no NWTPH-Gx, NWTPH-Dx, and BTEX+MTBE were detected in any of the groundwater samples collected from the same boreholes.
- No metals were detected in any of the soil samples collected from B3, B4, B5, and B6 at concentration greater than Method A Cleanup Level and the pH range in all soil samples were within the normal range of 5.9 to 7.6.
- No evidence of steel slag material from the former steel facility was present in any of the six boreholes.
- No metals were detected in any of the groundwater samples collected from the same boreholes at concentrations greater than Method A Cleanup Level, with the exception of Arsenic. The pH range in all groundwater samples collected from B3, B4, B5, and B6 were within the normal range of 6.3 to 6.9.
- Arsenic was detected in groundwater sample collected from B3 at 27 µg/L, B4 at 28 µg/L, and B5 at 5.8 µg/L; for arsenic, a site-specific groundwater cleanup level of 26 µg/L was established. The groundwater samples were collected using grab samples with high turbidity, which artificially elevates metal concentrations as compared with groundwater samples collected from properly constructed and developed monitoring wells.
- Groundwater flow is toward northwest direction, placing the Ernie's Fuel Stop and Budget Rental upgradient from the Robison Property (Figure 2). Based on soil and groundwater sampling results from boreholes B1, B2, and B3, no TPH has migrated to the Robison site from the upgradient Ernie's Fuel Stop and Budget Rental sites.
- The former Kent Central Site steel slag source is actually down- or cross-gradient from the Robison Property. The Arsenic concentration is higher upgradient (B3 and B4) of the former Kent Central Site than the Arsenic concentrations nearest to the Robison property (B5 and B6), showing no conclusive migration path from the former Kent Central Site steel slag source to the Robison Property.

Based on the above-reference results, we find no evidence that can justify placing the Robison Property under restrictive covenant for industrial land use. We believe that Robison Property was inadvertently placed under restrictive covenant and RC should be removed from the Robison Parcel, allowing for it's for future redevelopment as a commercial land use.

References

FSI (Floyd|Snider Inc.) and AGI Technologies, *Final Kent Central Site Supplemental Remedial Investigation and Focused Feasibility Study*, January 1998.

Phase I Environmental Site Assessment ←
Robison Property
21851 84th Avenue S.
Kent, Washington 98032

May 13, 2010

Prepared For:

Gull Industries, Inc.
P.O. Box 24687
Seattle, Washington 98124

Prepared By:

CDM

14432 SE Eastgate Way, Suite 100
Bellevue, Washington 98007

CDM Project No. 19932.76562



14432 S.E. Eastgate Way, Suite 100
Bellevue, Washington 98007
tel: +1 425 519-8300
fax: +1 425 746-0197

May 13, 2010

Mr. William Low
Gull Industries, Inc.
P.O. Box 24687
Seattle, Washington 98124

Subject: Phase II Environmental Site Assessment ←
Robison Property
21851 84th Avenue South
Kent, Washington 98032

Dear Mr. Low:

This letter documents a Phase II Environmental Site Assessment (ESA) performed by Camp Dresser and McKee, Inc. (CDM) at the above-referenced site on April 19, 2010. CDM's services were performed in accordance with a Task Checklist dated April 12, 2010. Gull Industries, Inc. (Gull) is currently considering acquiring the subject property (site).

Site Description

The subject property is located in an area of commercial and industrial land uses, with some residential properties. Figure 1 shows a vicinity map. The subject property consists of two adjacent parcels totaling approximately 3.96 acres. Parcel A is an approximately square 1.95-acre lot that includes an undeveloped area in the northern half and an asphalt-paved parking lot in the southern half. Parcel B is an approximately square 2.01-acre lot that includes a 13,400-square foot, one-story office building surrounded on two sides by an asphalt-paved parking lot. Portions of both lots are surrounded by chain-link fencing. Figure 2 shows general site features.

Basis for Phase II Investigation

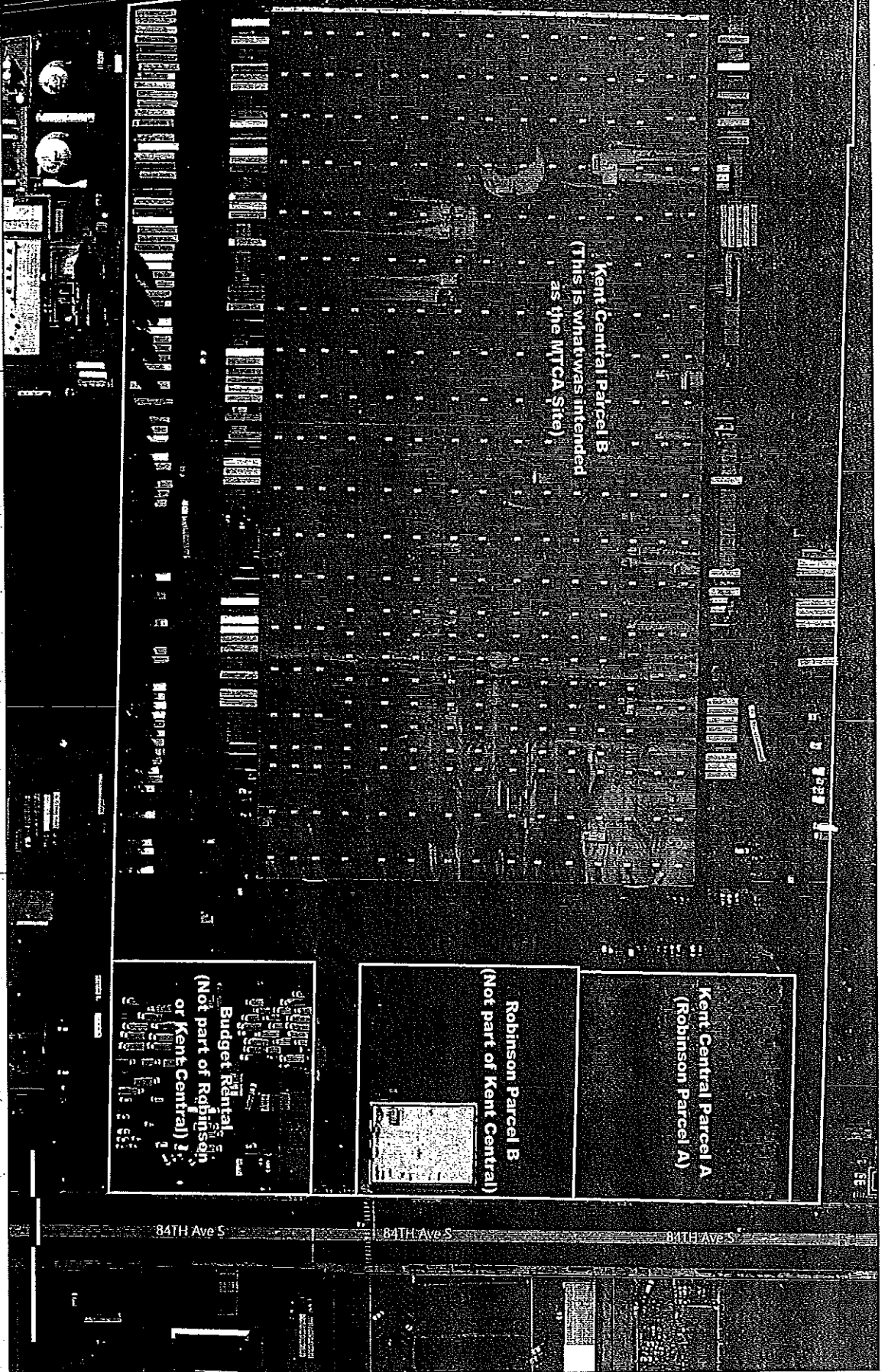
This Phase II ESA was performed concurrently with a Phase I ESA of the site conducted by CDM. CDM's knowledge of the site vicinity indicated several nearby potential contamination sources likely to have a high potential to be identified as recognized environmental conditions (RECs) or areas of concern in the Phase I. Preliminary Phase I research also identified an onsite area that could potentially rise to the level of a REC or area of concern. Potential contamination sources include the following:

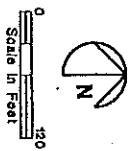
Legend
☐ Tax Parcels

FLOYD SNIDER
 Strategy • science • engineering

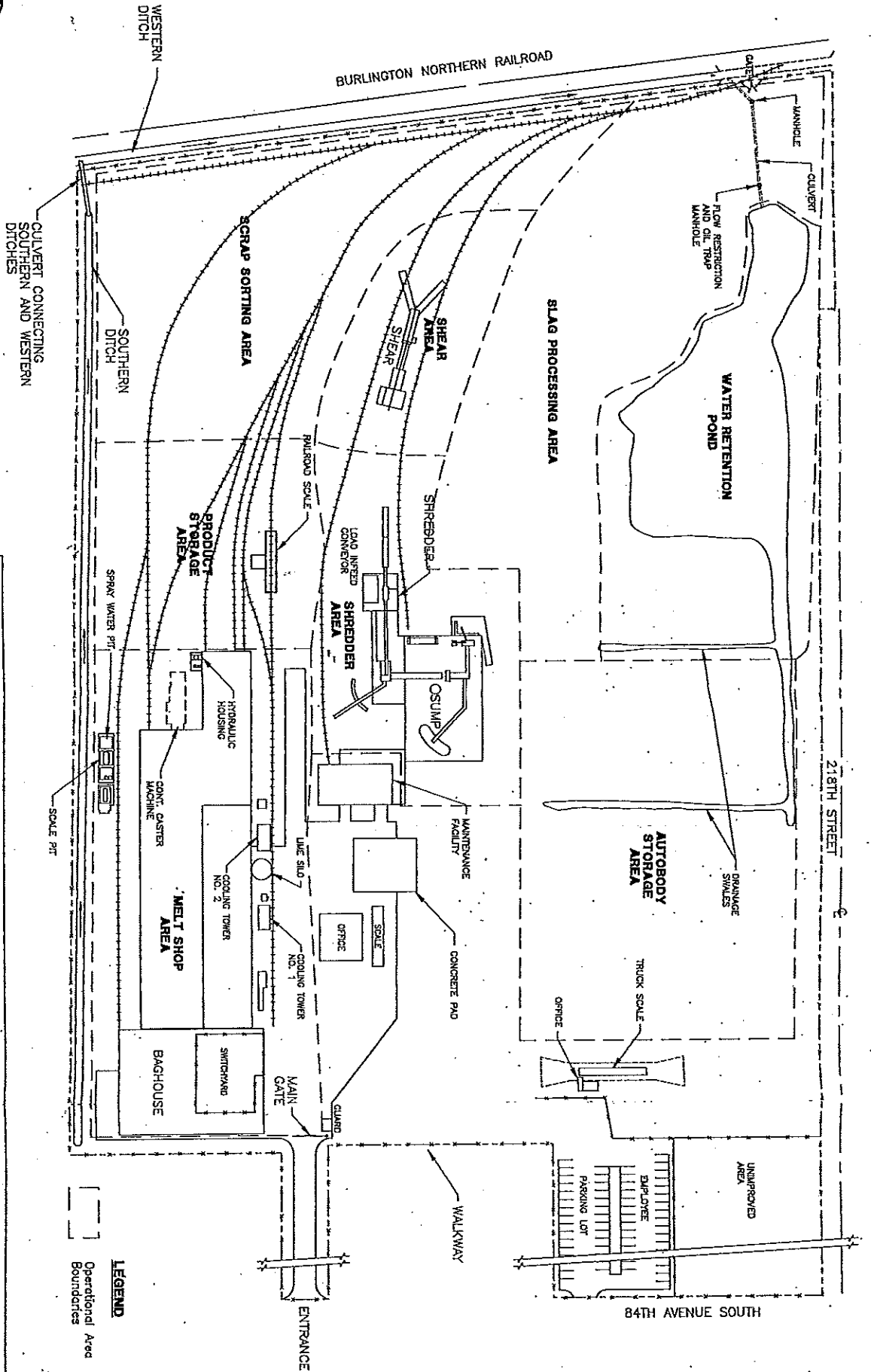
BIN Kent 01
 Kent, Washington

Figure X





Reference: Kent Cramer, Summary of Environmental Conditions and Estimated Cleanup Costs, November 1994.



Floyd & Snider Inc.

AGI TECHNOLOGIES

PROJECT NO. 15387/200

DRAWN GCB

DATE 9 May 97

APPROVED

REVISOR

DATE

Operational Areas

Kent Central/CAP
Kent, Washington

FIGURE 2.3