

Phase I

File



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

August 16, 2006

Ms. Pat Chemnick
Rainier Court Associates 2002-I, LLC
c/o Southeast Effective Development
5117 Rainier Avenue South
Seattle, Washington 98118

**Re: Partial Sufficiency and Further Action Determination under
WAC 173-340-515(5) for the following Hazardous Waste Site:**

- Name: Rainier Court (Phase I)
- Address: 3700 Rainier Avenue South, Seattle, Washington
- Facility/Site No.: 8164181
- VCP No.: NW0716

Dear Ms. Chemnick:

Thank you for submitting your independent remedial action report for the Rainier Court Phase I facility (Site) for review by the State of Washington Department of Ecology (Ecology) under the Voluntary Cleanup Program (VCP). Ecology appreciates your initiative in pursuing this administrative option for cleaning up hazardous waste sites under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

This letter constitutes an advisory opinion regarding whether further remedial action is necessary at the Site to meet the substantive requirements of MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC. Ecology is providing this advisory opinion under the specific authority of RCW 70.105D.030(1)(i) and WAC 173-340-515(5).

This opinion does not resolve a person's liability to the state under MTCA or protect a person from contribution claims by third parties for matters addressed by the opinion. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4). The opinion is advisory only and not binding on Ecology.



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Ecology's Toxics Cleanup Program has reviewed the following information regarding the Site:

1. March 20, 2006, *Groundwater Monitoring, Supplemental Explorations and NFA Request, First Quarter 2006, Rainier Court Phase I Site, 3621-33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
2. March 17, 2006, *Report of New Release, 3700 Rainier Avenue South*, letter from Rainier Court Associates 2002 – I, LLC
3. March 17, 2006, *Opinion Letter Related to Vinyl Chloride in SMW-1, Rainier Court, Phase I, Senior Housing, Seattle, Washington*, GeoEngineers, Inc.
4. January 6, 2006, *Groundwater Monitoring Report, Fourth Quarter 2005, Rainier Court – Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
5. October 10, 2005, *Groundwater Monitoring Report, Third Quarter 2005, Rainier Court – Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
6. June 2, 2005, *Monitoring Well Installation and First Quarter 2005 Quarterly Groundwater Monitoring, Rainier Court – Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
7. May 11, 2005, *Cleanup Action Report, Rainier Court Family Housing (Phase II) Project, Seattle, Washington*, GeoEngineers, Inc.
8. January 14, 2005, *Cleanup Action Report, Rainier Court Senior Housing (Phase I) Project, Seattle, Washington*, GeoEngineers, Inc.
9. December 21, 2004, *Re: Request for Review of Cleanup Action Plan: Voluntary Cleanup Program #NW0716, Rainier Court Development – Phase I, Rainier Ave. South, Seattle, WA*, letter prepared by Ecology.

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The documents 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, Sally Perkins, at (425) 649-27190.

The Site is defined by the extent of contamination caused by the following release(s):

- Metals in soil and ground water;
- Tetrachloroethene (PCE) in soil and ground water;
- Polycyclic aromatic hydrocarbons (PAHs) in soil and possibly ground water;
- Polychlorinated biphenyls (PCBs) in soil and possibly ground water;
- Petroleum hydrocarbons in soil and possibly ground water.

The Site is more particularly described in Enclosure A to this letter, which includes a detailed Site diagram. The description of the Site is based solely on the information contained in the documents listed above.

Based on a review of the independent remedial action report and supporting documentation listed above, Ecology has determined that the independent remedial action(s) performed at the Site are sufficient to meet the substantive requirements contained in MTCA and its implementing regulations, Chapter 70.105D RCW and Chapter 173-340 WAC, for characterizing and addressing the following release(s):

- Metals, PAHs, PCE, PCBs and petroleum hydrocarbons in ground water.
- Metals, PAHs, PCBs and petroleum hydrocarbons in soil.

However, the independent remedial action(s) performed at the Site are not sufficient to meet MTCA's substantive requirements for characterizing and addressing the following release(s):

- PCE in soil.

Therefore, pursuant to WAC 173-340-515(5), Ecology is issuing this opinion that further remedial action is necessary at this Site under MTCA.

A cleanup action has been completed at the Site. The cleanup comprised a partial removal of contaminated soil from beneath the Rainier Court Phase I property (Phase I property) and adjoining City of Seattle right-of-way. Metals contamination remains in soil beneath the Phase I property and PCE contamination remains in soil beneath the City of Seattle right-of-way. These contaminated soils are now capped with buildings, pavement, and sidewalks.

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An opinion letter issued by Ecology, dated December 21, 2004 concluded that the soil cleanup had been completed in accordance with an approved Cleanup Action Plan, and that a No Further Action (NFA) determination could be made, but only after certain additional actions were taken. These additional actions included:

1. Addressing soil contamination remaining on City of Seattle right-of-way or on other adjoining properties;
2. Implementing ground water monitoring to demonstrate compliance with MTCA;
3. Instituting confirmation air sampling to evaluate the effectiveness of the remedial action and vapor barrier; and
4. Instituting a deed restriction and other institutional controls to prevent access to contamination remaining on the parcels.

Additional action items 2 and 3 have now been completed, and a deed restriction (included as Enclosure B) has been filed on the Phase I property portion of the Site. A deed restriction and associated institutional controls remain to be instituted to satisfy additional action item 1. — *didn't fly*

Note that a second "Site" associated with a vinyl chloride detection in ground water is present within the Phase I property. This Site is described in the two March 17, 2006 letters listed above. The nature and extent of contamination associated with this Site is not known, but the source of the release is believed to be from off-property to the west. Note that the Phase I property will remain listed as part of the second Site.

Please note that this opinion is based solely on the information contained in the documents listed above. Therefore, if any of the information contained in those documents is materially false or misleading, then this opinion will automatically be rendered null and void.

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.

Again, Ecology appreciates your initiative in conducting independent remedial action and requesting technical consultation under the VCP. As the cleanup of the Site progresses, you may request additional consultative services under the VCP, including assistance in identifying applicable regulatory requirements and opinions regarding whether remedial actions proposed for or conducted at the Site meet those requirements.

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If you have any questions regarding this opinion, please contact me at (425) 649-7107.

Sincerely,



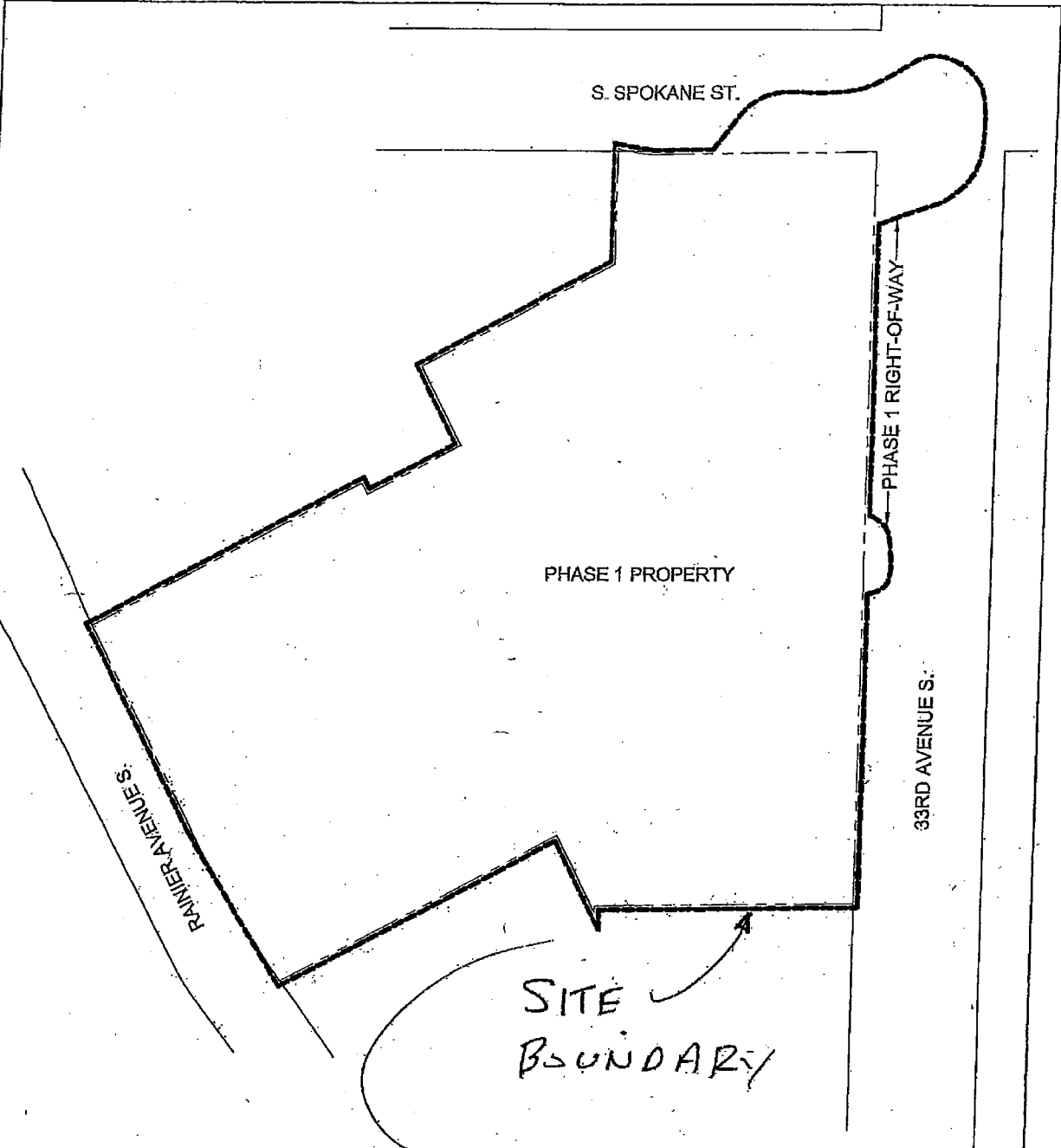
Mark Adams
NWRO Toxics Cleanup Program

MA:rr

Enclosures: Enclosure A Site Maps
Enclosure B Restrictive Covenant

cc: Dave Cook, GeoEngineers, Inc.
Howard Jensen, Hillis Clark Martin & Peterson, P.S.

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Legend

- PROPERTY BOUNDARY
- SITE BOUNDARY

Notes:

1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document.

Reference: CAD files provided by Barghausen Consulting Engineers, and Johnson Braund Design Group, Inc., July 2003.



Site Plan	
Rainier Court, Phase I Site Seattle, Washington	
GEOENGINEERS	

RAINIER COURT
PHASE 1 PROPERTY

UCLP0716

CONFORMED COPY

When Recorded, Return to:
Rainier Court Associates 2002 - I, LLC
5117 Rainier Avenue South
Seattle, Washington 98118
Attention: Earl Richardson

20060803001480

HCMP
PAGE 001 OF 010 COV 41.00
08/03/2006 13:57
KING COUNTY, WA

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g), and WAC 173-340-440, by Rainier Court Associates 2002 - I, LLC, a Washington limited liability company, and its successors and assigns, for the benefit of the Washington State Department of Ecology, and its successors and assigns.

Abbreviated Legal Description: Lots 1-9, Block 1, York 2nd Add, Vol. 16 of Plats, Page 77; Lots 6-8 and 12-14, Block 1, South Byron Add, Vol. 10 of Plats, Page 15; and Lots 9-11, Block 1, South Byron Add, Vol. 10 of Plats, Page 15, King County, Washington.

Complete Legal Description: See Exhibit A

Tax Parcel Nos.: 787940-0030, 983520-0005; and 787940-0046

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (hereafter, this "Restrictive Covenant") is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Rainier Court Associates 2002 -- I, LLC, a Washington limited liability company, and its successors and assigns (hereafter, the "Owner"), for the benefit of the Washington State Department of Ecology, and its successors and assigns (hereafter "Ecology").

RECITALS

A. The Owner is the fee owner of that certain real property located at 3700 Rainier Avenue South, Seattle, Washington (hereafter, the "Property"), that is subject to this Restrictive Covenant. The legal description of the Property is attached hereto as Exhibit A, and is hereby incorporated and made a part of this Restrictive Covenant.

B. An independent remedial action (hereafter, the "Remedial Action") was conducted at the Property between October 2003 and February 2006. The Remedial Action is described in the following documents, which are on file at the Northwest Regional Office of Ecology:

- March 20, 2006, *Groundwater Monitoring, Supplemental Explorations and NFA Request, First Quarter 2006, Rainier Court Phase I Site, 3621-33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
- March 17, 2006, *Opinion Letter Related to Vinyl Chloride in SMW-1, Rainier Court, Phase I, Senior Housing, Seattle, Washington*, GeoEngineers, Inc.
- March 17, 2006, *Report of New Release, 3700 Rainier Avenue South*, letter from Rainier Court Associates 2002 -- I, LLC
- January 6, 2006, *Groundwater Monitoring Report, Fourth Quarter 2005, Rainier Court - Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
- October 10, 2005, *Groundwater Monitoring Report, Third Quarter 2005, Rainier Court - Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.

- June 2, 2005, *Monitoring Well Installation and First Quarter 2005 Quarterly Groundwater Monitoring, Rainier Court – Phase I, Senior Housing, 3621 33rd Avenue South, Seattle, Washington*, GeoEngineers, Inc.
- May 11, 2005, *Cleanup Action Report, Rainier Court Family Housing (Phase II) Project, Seattle, Washington*, GeoEngineers, Inc.
- January 14, 2005, *Cleanup Action Report, Rainier Court Senior Housing (Phase I) Project, Seattle, Washington*, GeoEngineers, Inc.
- December 21, 2004, *Re: Request for Review of Cleanup Action Plan: Voluntary Cleanup Program #NW0716, Rainier Court Development – Phase I, Rainier Ave. South, Seattle, WA*, letter prepared by Ecology

C. This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of metals (arsenic, cadmium, chromium, iron, lead, and mercury) that exceed the Model Toxics Control Act Method A Residential Cleanup Levels for soil established under WAC 173-340-740 (hereafter, the "Metals-Contaminated Soils"). The Remedial Action also resulted in residual concentrations of tetrochloroethene (PCE) that exceed the Model Toxics Control Act Method A Residential Cleanup Levels for soil established under WAC 173-340-740 (hereafter, the "PCE-Contaminated Soils") being left in portions of the adjacent right-of-ways. The lateral and vertical extent of the Metals-Contaminated Soils is depicted on the drawings attached hereto as Figures 1 and 2, which are hereby incorporated and made a part of this Restrictive Covenant. As Figure 1 depicts, the PCE-Contaminated Soils extend into the right-of-ways, beyond the Property boundaries. The purpose of this Restrictive Covenant is to address the Metals-Contaminated Soils, not the PCE-Contaminated Soils.

TERMS AND CONDITIONS

The Owner makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property.

Section 1. The Metals-Contaminated Soils are located beneath the buildings, asphalt and concrete pavement, landscape strips, and walkways that currently cover the Property. These surface structures and features comprise an Ecology-approved remedial action cap (the "Remedial Action Cap"), which serves to control and minimize release of and exposure to the Metals-Contaminated Soils. The location and details of the Remedial Action Cap are depicted on the drawings attached hereto as Figures 1 and 2. The Owner shall not alter, modify, or remove the Remedial Action Cap in any manner that may result in the release or exposure to the environment of the Metals-Contaminated Soils or create a new exposure pathway without prior written approval from Ecology.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited. Some examples of activities that are prohibited include: drilling; digging; placement of any objects or use of any equipment that deforms or stresses the Remedial Action Cap beyond its load bearing capability; piercing the Remedial Action Cap with a rod, spike, or similar item; bulldozing or earthwork; and removal of any portion of the Remedial Action Cap for access to subsurface utilities or equipment.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner must restrict leases applicable to the Property to uses and activities consistent with this Restrictive Covenant and notify all lessees of the restrictions on the use of the Property. The Owner must also provide notice of this Restrictive Covenant to those persons involved in the maintenance, repair, or renovation of the Property, and those persons who would otherwise be expected to come in contact with subsurface soils as a result of their work activities.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action Cap, to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Remedial Action.

Section 7. The Owner must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property; provided however, that Owner shall have no obligation to notify Ecology of its intent to enter residential leases for dwelling units within the existing building on the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

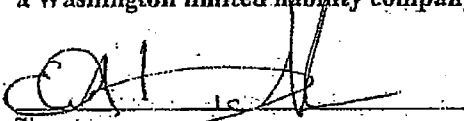
Section 8. The Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[Remainder of Page Left Blank Intentionally; Signatures Follow]

EXECUTED this 31 day of JULY 2006.

DECLARANT:

RAINIER COURT ASSOCIATES 2002 - I, LLC,
a Washington limited liability company


Signature

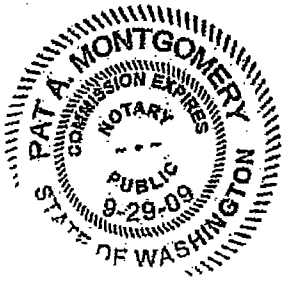
EARL RICHARDSON
Printed Name

MANAGING MEMBER
Title

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Earl Richardson,
to me known to be the Managing Member of Rainier Court Associates 2002 - I, LLC,
the limited liability company that executed the foregoing instrument, and acknowledged
said instrument to be the free and voluntary act and deed of said company for the uses
and purposes therein mentioned, and on oath stated that he/she was authorized to execute
said instrument.

Given under my hand and official seal this 31 day of JULY, 2006.



Pat A. Montgomery
Printed Name PAT A MONTGOMERY
NOTARY PUBLIC in and for the State of
Washington, residing at SEATTLE
My commission expires 9-29-09

Exhibit A

Legal Description

Tax Parcel: 983520-0005

Lots 1 - 9, Block 1, York 2nd Addition to the City of Seattle, according to the plat recorded in Volume 16 of Plats, page 77, in King County, Washington;

TOGETHER WITH that portion of vacated street and alley adjoining, which upon vacation, attached to said property by operation of law, as provided by Ordinance No. 94503 of the City of Seattle.

Tax Parcel: 787940-0030

Lots 6 - 8 and 12 - 14, Block 1, South Byron Addition to the City of Seattle, according to the plat recorded in Volume 10 of Plats, page 15, in King County, Washington;

EXCEPT THAT portion of Lots 6 and 7, conveyed to the City of Seattle, by Deed recorded under Recording No. 5992895 for alley purposes,

TOGETHER WITH that portion of vacated street and alley adjoining, which upon vacation, attached to said property by operation of law, as provided by Ordinance No. 94503 of the City of Seattle.

Tax Parcel: 787940-0046

That portion of Lot 9, Block 1, South Byron Addition to the City of Seattle, according to the plat thereof recorded in Volume 10 of Plats, page 15, in King County, Washington, and of the northeast quarter of the southeast quarter of the northeast quarter of Section 16, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

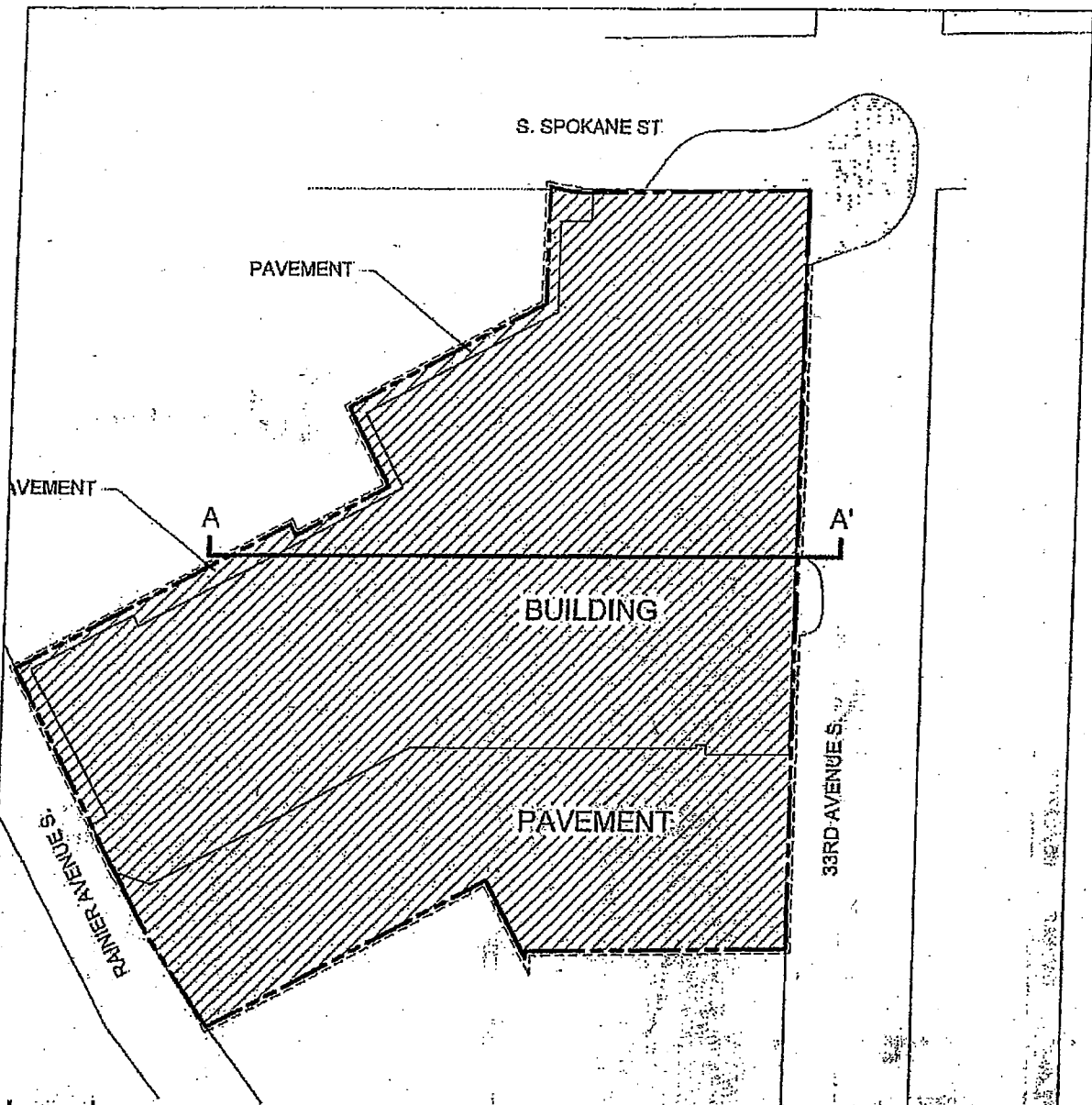
Beginning at the intersection of the northeasterly margin of Rainier Avenue with the southwesterly extension of the northwesterly line of said Lot 9, Block 1, South Byron Addition to the City of Seattle;
Thence northeasterly along said extension and along the northwesterly line of said Lot 9, 116.08 feet to the most northerly corner of said Lot 9;
Thence southeasterly along the northeasterly line of said Lot 9, 10 feet;
Thence southwesterly, parallel to said northeasterly line of said Lot 9, 115 feet, more or less, to said northeasterly margin of Rainier Avenue;
Thence northwesterly along said northeasterly margin 10 feet, more or less, to the place of beginning;

AND Lots 10 and 11, Block 1, South Byron Addition to the City of Seattle, according to the plat thereof recorded in Volume 10 of Plats, page 15, in King County, Washington;

EXCEPT those portions condemned in King County Superior Court Cause No. 87583, all that portion of the northeast quarter of the southeast quarter of the northeast quarter of Section 16, Township 24 North, Range 4 East, W.M., in King County, Washington, lying northeasterly of Rainier Avenue as established by King County Superior Court Cause No. 87583, and northwesterly of the southwesterly production of the southeasterly line of Lot 10, Block 1, South Byron Addition to the City of Seattle, according to the plat thereof recorded in Volume 10 of Plats, page 15, in King County, Washington;

TOGETHER WITH that portion of vacated alley adjoining as would attach by operation of law.

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Legend

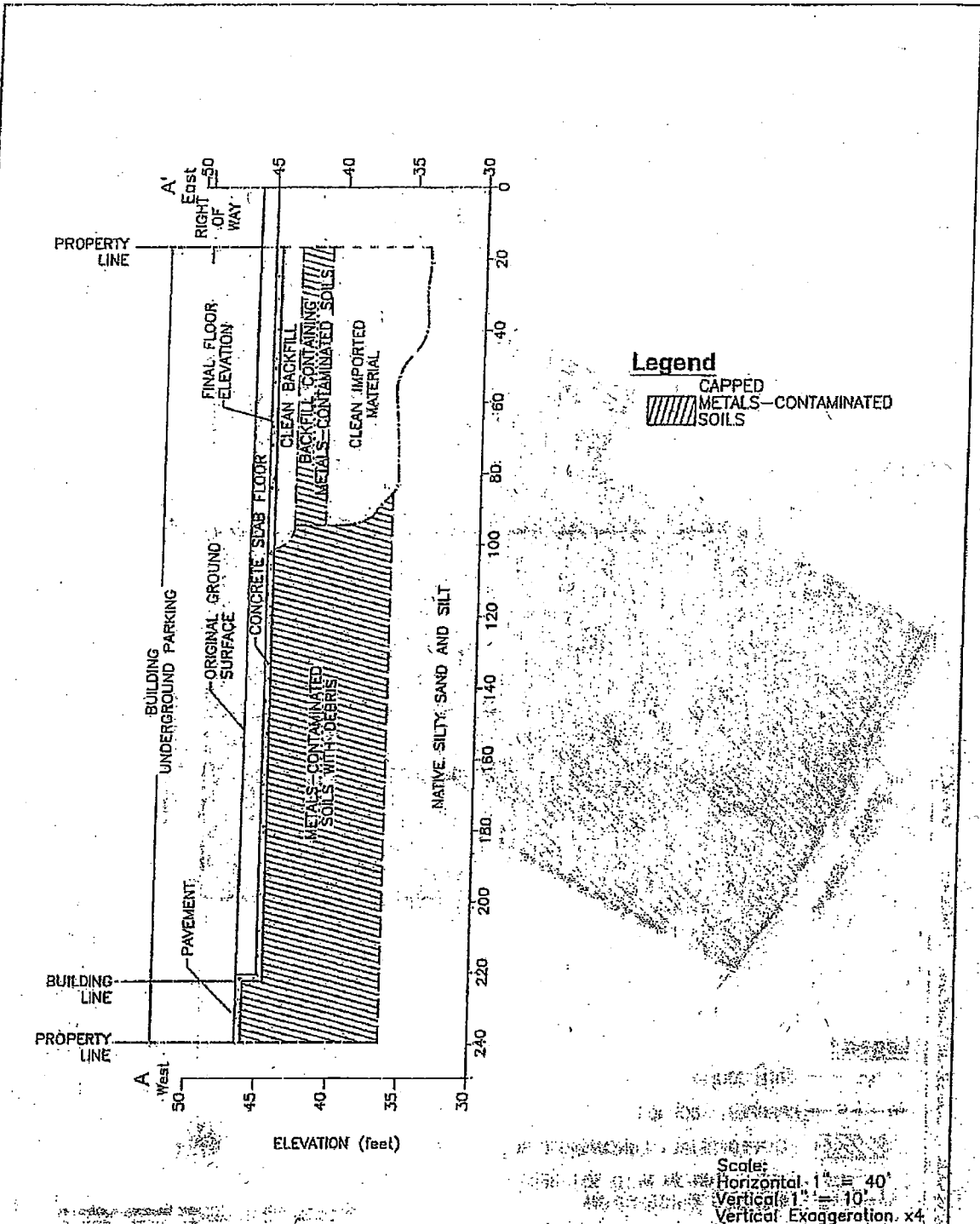
- SITE BOUNDARY
- PROPERTY BOUNDARY
- CAPPED METALS-CONTAMINATED SOIL
- PCE - CONTAMINATED SOIL BENEATH IMPROVED RIGHTS-OF-WAY
- CROSS SECTION (See Figure 2)

Notes:
 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document.

Reference: CAD files provided by Barghausen Consulting Engineers, and Johnson Braund Design Group, Inc., July 2003.

Location of Metals - Contaminated Soils and Components of Remedial Action CAP	
Rainier Court, Phase I Property Seattle, Washington	
GEOENGINEERS	Figure 1

SEATYP\B322003\02\CAD\19\B3220030219F2.dwg DAC:SES 05/17/06



- Notes:**
1. The locations of all features shown are approximate.
 2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document.
 3. Elevations based on topographic survey by Barghausen Consulting Engineers

Cross Section A-A Location of Metals-Contaminated Soils and Components of Remedial Action CAP	
Rainier Court, Phase I Property Seattle, Washington	
GEOENGINEERS 	Figure 2