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DT-6

FILED

Mar 15 2022 LM
JOHN E. PETALAS
LAKE COUNTY AUDITOR

2022-511124
03/16/2022 09:00 AM
TOTAL FEES: 25.00
BY: JAS
PG #: 29

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this ^{9th} day of ~~March~~ March, 2022, by the Northern Indiana Commuter Transportation District ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 5601-5609 and 5701 East Dunes Highway in Gary and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on April 30, 2021 and recorded on May 28, 2021, as Deed Record 2021-039866, in the Office of the Recorder of Lake County, Indiana. The Real Estate consists of approximately 2.41 acres and is identified by the State by parcel identification number 45-09-06-451-003.000-004. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of Owner to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and petroleum relating to historical operations on the Real Estate, Program site number BFD #4201107.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in groundwater on the Real Estate but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are dissolved lead, 1,1'-biphenyl, and naphthalene in groundwater.

WHEREAS: Soil and groundwater on the Real Estate were sampled for volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), and Resource Conservation and Recovery Act ("RCRA") metals (total and dissolved in groundwater). Investigations detected levels of constituents above applicable screening levels established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). Dissolved lead, 1,1'-biphenyl, and naphthalene were detected in groundwater samples above their respective Residential TAP Groundwater Screening Levels ("Res TAP GWSLs"). Groundwater analytical results above applicable RCG screening levels are summarized on Table 1, attached hereto as **Exhibit "D"**. A site map, attached hereto as **Exhibit "E"**, depicts sample locations on the Real Estate at which the COCs were detected groundwater above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on

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the Real Estate under the *Remediation Closure Guide*. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for conditional residential and/or commercial/industrial use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 North Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: <http://www.in.gov/idem/4101.htm>.

NOW THEREFORE, the Northern Indiana Commuter Transportation District subjects the Real Estate to the following restriction and provisions, which shall be binding on the Northern Indiana Commuter Transportation District and all future owners:

I. RESTRICTION

Restriction. The Owner and all future owners:

- (a) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities or temporary construction dewatering activities.

II. GENERAL PROVISIONS

1. Restriction to Run with the Land. The restriction and other requirements described in this Covenant shall run with the land and be binding upon and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restriction set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
2. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with the restriction set forth in paragraph 1 above and with all other terms of this Covenant.
3. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restriction set forth in paragraph 1 above is being properly maintained (and operated, if applicable) in a

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manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.

4. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____, 20___, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON _____, 20___, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

5. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.
6. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

7. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

8. Term. The restriction shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable

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risk to the public health, safety, or welfare, or to the environment.

9. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Lake County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

10. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
11. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.
12. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
13. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Northern Indiana Commuter Transportation District
33 East U.S. Highway 12
Chesterton, IN 46304
ATTN: Nicole Barker

To Department:

Indiana Brownfields Program
100 North Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Nancy Dollar

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Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

14. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
15. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Property of Lake County Recorder

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EXHIBIT A

Warranty Deed for the Real Estate

Property of Lake County Recorder

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5

After Recording Return To:

Northern Indiana Commuter
Transportation District
Attn: Michael Noland
33 East U.S. Highway 12
Chesterton, IN 46304

GINA PIMENTEL
RECORDER
STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2021-039866

8:32 AM 2021 May 28

Space Above This Line for Recorder's Use

DT-6,6A-B

WARRANTY DEED

Parcel ID: 45-09-06-451-001.000-004;
45-09-06-451-003.000-004;
45-09-06-451-002.000-004

Property Address: 5601-5609 E. Dunes Highway, Gary
5701 E. Dunes Highway, Gary

KNOW ALL MEN BY THESE PRESENTS that, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **DUNES MILLER, LLC**, an Indiana limited liability company (hereinafter known as "GRANTOR"), conveys and warrants to the **NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**, an Indiana municipal corporation (hereinafter known as "GRANTEE"), all right title, interest in and to the following described real estate located in Lake County, Indiana to-wit:

See attached Exhibit 'A' for legal descriptions

See attached Exhibit 'B' for plat survey

NON-TAXABLE

MAY 27 2021

JOHN E. PETALAS
LAKE COUNTY AUDITOR

TOGETHER WITH all the rights, privileges, tenements, appurtenances and improvements in anyway pertaining to or belonging to said Real Estate, and subject to all existing taxes, easements and restrictions of record associated therewith.

25.00
CCH 34198
Lit-2

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IN WITNESS WHEREOF, said Grantor has executed and delivered this Corporate Deed under seal this 30 day of April, 2021.

DUNES MILLER, LLC

By: _____

Signature

Its: Managing Member

Printed Name

STATE OF INDIANA
COUNTY OF PORTER

SS: _____

Before me, a Notary Public in, and for said County and State, personally appeared John Girzadas as **Managing Member of DUNES MILLER, LLC**, and acknowledged the execution of the foregoing instrument to be his/her voluntary act.

Witness my hand and Notarial Seal this 30 day of April, 2021

Notary Signature: _____

Printed Name: _____

(seal)



I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number associated with this document, unless otherwise required by law.

/s/ L. Charles Lukmann, III - Attorney

This instrument prepared by:
L. Charles Lukmann, III
HARRIS WELSH & LUKMANN
107 Broadway
Chesterton, IN 46304
Telephone (219) 926-2114

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EXHIBIT "A"

Sheet 1 of 2

Project: NICTD- Double Track NW1
Parcel: 6, 6A & 6B
Key #: 45-09-06-451-001.000-004
Key #: 45-09-06-451-003.000-004
Key #: 45-09-06-451-002.000-004

Lots 3 to 15, both inclusive, and Lots 42 to 52, both inclusive, excepting therefrom the South 20 feet of said Lots 42 to 52, both inclusive, which has been taken for highway purposes for U.S. Highway No. 20 (Melton Road) all in Block "A", Dunes Highway Realty Company's first Subdivision in the City of Gary, as shown in Plat Book 20, Page 6, in Lake County, Indiana.

Also, all that vacated portion of alley 7-B South in the City of Gary, which vacated portion is described as follows: Commencing at the Southwest corner of Lot 1 and thence Easterly along the South line of Lots 1 to 15, both inclusive, to the Southeast corner of Lot 15, thence Southerly to the Northeast corner of Lot 52 and thence Westerly along the North line of Lots 42 to 52, both inclusive, to the Northwest corner of said Lot 42, thence Northerly to the Southwest corner of said Lot 1, which is the point of beginning, all of which lots are located in Block "A", in Dunes Highway Realty Company's First Subdivision, in the City of Gary, as shown in Plat Book 20, Page 6, in Lake County, Indiana, excepting therefrom, however, the Northern half of said vacated portion of said alley that lies immediately South of said Lots 1 and 2.

Also, all that vacated portion of Alley 56 East in the City of Gary, which vacated portion is described as follows: commencing at the Northeast corner of Lot 46, and thence Southerly along the East line of said Lot 46 to the North line of U.S. Highway 20, (Melton Road), thence Easterly along the North line of U.S. Highway No. 20 (Melton Road) to Lot 47, thence Northerly along the West line of Lot 47 to the Northwest corner of said Lot 47, thence Westerly to the Northeast corner of said Lot 46, which is the point of beginning, both of which lots are located in block "A", in Dunes Highway Realty Company's First Subdivision, in the City of Gary, as shown in Plat Book 20, page 6, in Lake County, Indiana.

Lots 1 and 2, Block "A", Dunes Highway Realty Company's First Subdivision to the City of Gary, Lake County, Indiana. And the North half of the vacated alley (7B) lying South of and adjacent thereto, as shown in Plat Book 20, page 6, in Lake County, Indiana.

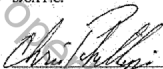
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EXHIBIT "A"

Sheet 2 of 2

Project: NICTD- Double Track NWJ
Parcel: 6, 6A & 6B
Key #: 45-09-06-451-001.000-004
Key #: 45-09-06-451-003.000-004
Key #: 45-09-06-451-002.000-004

This description was prepared for the Northern Indiana Commuter Transportation District by
SICA P.C.



4/20/2020

Date

Christopher H. Phillips
Indiana Registered Land Surveyor
License Number 8800096



Proprietor of Lake County Recorder

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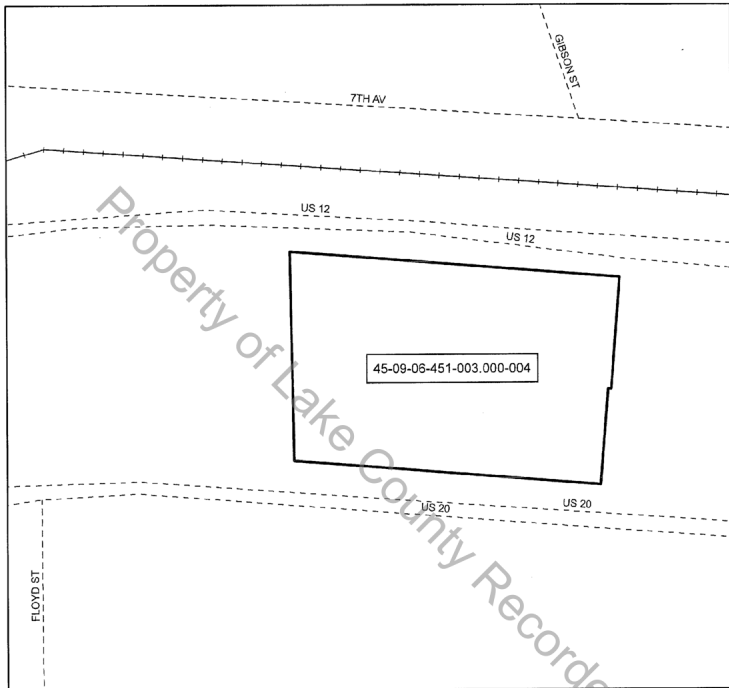
EXHIBIT B

Map of the Real Estate

Property of Lake County Recorder

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Indiana Brownfields Program Number 4201107 - Real Estate



Mapped By: Vickey Robinson, Office of Land Quality, Science Services Branch, Engineering and GIS Services, July 19, 2021

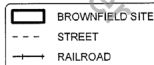
Real Estate Info: Corporate Special Warranty Deed – Instrument Number 2012-024504
Recorded 04/12/2012
Ordinance Vacating Right-of-Way – Instrument Number 2002-027483
Recorded 03/20/2002

Parcel Info: The Real Estate consists of Parcel Identification Number:
45-09-06-451-003.000-004

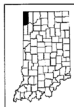
PLSS Info: Section 6, T36N, R7W, Calumet Township, Lake County, Indiana

Property Info: 5701 E Dunes Hwy, Gary, IN 46403

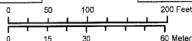
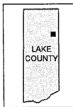
Disclaimer: This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.



Lake County



Project Area



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EXHIBIT C

Copy of Comfort Letter

Property of Lake County Recorder

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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.in.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

February 4, 2022

Nicole Barker
Northern Indiana Commuter Transportation District
33 East U.S. Highway 12
Chesterton, IN 46304

Re: **Comfort Letter**
Political Subdivision (Eminent Domain)
Double Track Parcel 6 6A 6B
5601-5609, 5701 East Dunes Highway
Gary, Lake County
Brownfield #4201107

Dear Ms. Barker:

In response to the request by Northern Indiana Commuter Transportation District (NICTD or Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 5601-5609 and 5701 East Dunes Highway, Gary (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability for environmental conditions found on the Site. This letter does not provide a release from liability. This letter will also address the due care obligations IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The 2.41-acre Site (formerly known as Parcels 6, 6A, and 6B) is one parcel identified by the State by the parcel number 45-09-06-451-003.000-004.¹ The Site is improved with an approximately 41,545 square foot, two-story vacant concrete-block structure on the eastern half of the Site.

Sanborn® Fire Insurance Maps (Sanborn Maps) show that the former Parcel 6 was developed by 1938 with a small structure of unknown occupancy. Based on city directory information and Sanborn Maps, a filling station was present on this parcel circa 1938 through 1959. No documentation regarding the status of underground storage

¹ Former Parcels 6 (prior parcel number 45-09-06-451-003.004-004), 6A (prior parcel number 45-09-06-451-001.000-004), 6B (prior parcel number 45-09-06-451-002.000-004), along with a vacated right-of-way running north to south on the west side of the Site, were consolidated into one parcel (45-09-06-451-003.004-004) in April 2020.

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Double Track Parcel 6 6A 6B, Gary – Comfort Letter

BFD #4201107

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tanks (USTs) associated with the filling station was located. From approximately 1965 through 2016, the former Parcel 6 appears to have been used as a parking lot.

The former Parcel 6A was undeveloped prior to a bowling alley being constructed on the east side of the property in the 1950s. The remainder of the parcel was used as a parking lot. The bowling alley business continued to operate at the Site until approximately 2016. The former Parcel 6B was an approximately 0.011-acre portion of the west side of the Site with no development history.

The Site is part of the proposed NICTD South Shore Line Double Track Northwest Indiana (DT-NWI) project. NICTD intends to expand its commuter rail service along an approximately 26.6-mile stretch of existing South Shore Line and improve five existing stations. Redevelopment plans for the Site include the construction of a rail line, passenger platform, and parking area. The future surface cover will consist of a railroad, pavement, or fill materials.

The Site is bordered by commercial properties to the east (Parcel 7 of the DT-NWI project); by senior apartments to the south; by a vacant lot and an attorney's office to the west;² and by East Dunes Highway, rail lines, and commuter railroad parking to the north.

The Site is located in a designated Opportunity Zone which allows for preferential tax treatment of eligible investments designed to spur economic development and job creation in distressed communities.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents. These documents may be viewed electronically by searching online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Phase II Environmental Site Assessment-NICTD DT-NWI Milepost 58.8 to 32.2* (August 2017 Phase II ESA), dated August 18, 2017, prepared by HDR Engineering, Inc. (HDR) (Document #83132335)
- *Corridor-Modified Phase I Environmental Site Assessment* (May 2020 Phase I ESA), dated May 14, 2020, prepared by DLZ Indiana LLC (DLZ), (Document #83082851)
- *Phase II Environmental Site Assessment* (October 2020 Phase II ESA), dated October 1, 2020, prepared by WSP USA, Inc. (WSP), (Document #83082850)

² The Double Track Parcel 4 site (BF #4201104) is located approximately 200 feet to the west of the Site, beyond the vacant lot.

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Double Track Parcel 6 6A 6B, Gary – Comfort Letter

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- *Construction Contingency Plan for Known and Unanticipated Environmental Conditions*, dated March 3, 2021, prepared by WSP (Document 83133105)
- *Phase I Environmental Site Assessment* (March 2021 Phase I ESA), dated March 29, 2021, prepared by DLZ, (Document #83135609)
- *Soil Management Plan Double Track-Northwest Indiana* (June 2021 SMP), dated June 22, 2021, prepared by WSP, (Document #83184107)

For purposes of this letter, sample analytical results were compared to IDEM's *Remediation Closure Guide* (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to residential tap groundwater screening levels (Res TAP GWSLs) and residential vapor exposure groundwater screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure groundwater screening levels (Indus VE GWSLs).

Phase II Environmental Site Assessment – August 2017

The August 2017 Phase II ESA was performed on four properties located along U.S. 12 in Gary, Indiana, at which recognized environmental conditions (RECs) had previously been identified and were planned to be acquired by NICTD as part of the DT-NWI project. One of the four properties was the Site because of the historical filling station. The scope of the August 2017 Phase II ESA included advancing eight soil borings (B-1-1-1 through B-1-1-3, B-1-3-1, B-1-6-1, B-1-6-2, B-1-7-1 and B-1-7-2) to depths of 8 to 12 feet bgs, collecting two soil and one groundwater sample from each boring. One of the eight borings, B-1-3-1, was advanced on the Site (former Parcel 6) near the former gasoline station. Two soil samples (B-1-3-1 (1-2 feet bgs) and B-1-3-1 (4-5 feet bgs)) and one groundwater sample (G-1-3-1) were collected and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and total and dissolved Resource Conservation and Recovery Act (RCRA) metals.

Only total chromium was detected in one soil sample (B-1-3-1 (1-2 feet bgs)) at a level above the hexavalent chromium (chromium VI) RDCSL, but below the chromium VI IDCSL. Total chromium was also detected in the groundwater sample G-1-3-1 at a level above the chromium VI Res TAP GWSL. Although chromium was not speciated between trivalent chromium (chromium III) and the more toxic chromium VI, because there is no reason to suspect that chromium VI is present or was historically used at the Site. Therefore, IDEM concludes there is no risk related to total chromium levels detected in on-Site soil or groundwater at this location. No other constituents analyzed in soil or groundwater were detected at levels above applicable RCG screening levels.

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Double Track Parcel 6 6A 6B, Gary – Comfort Letter
BFD #4201107
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Corridor-Modified Phase I ESA – May 2020

The May 2020 Phase I ESA identified the following RECs associated with the Site:

- The historical use of the former Parcel 6 as a gasoline filling station; and
- The prior use of the east adjoining property as an auto repair facility (off-Site Double Track Parcel 7)

The March 2021 Phase I ESA also identified the inability to access the interior of the former bowling alley building as a data gap.

Phase II Environmental Site Assessment – October 2020

Field activities were conducted in July and August 2020 to investigate the May 2020 Phase I ESA REC which consisted of a ground penetrating radar (GPR) survey, advancement of six soil borings (07-SB-01 and 08-SB-01 through 08-SB-05) to a maximum depth of 10 feet bgs using direct-push drilling technology, advancement of two soil borings (07-SB-02 and 07-SB-03) with a hand auger, installation of five temporary groundwater wells, and collection of soil and groundwater samples.

The GPR survey was conducted on the northwestern part of the Site to determine the presence of UST(s) in the vicinity of the former gasoline filling station. Four USTs were identified to the east of the former gas station building footprint.

Fill material, consisting of silty sand, slag, and asphalt pieces, was encountered beneath the soil cover in all borings to a depth of approximately 1 to 3 feet bgs. Saturated soil conditions were encountered at a depth of approximately 5 feet bgs. Sheen and petroleum-type odors were observed in soil borings 07-SB-01, 08-SB-03, and 08-SB-04.

A total of 10 soil samples were collected from the eight soil borings and submitted for laboratory analysis of VOCs, SVOCs, and metals. A total of five groundwater samples were collected from the temporary monitoring wells and submitted for laboratory analysis of VOCs, SVOCs, and seven dissolved metals (arsenic, barium, cadmium total chromium, lead, selenium, silver).³

No constituents analyzed in soil were detected at levels above applicable RCG screening levels. Dissolved lead and naphthalene were detected in groundwater from SB-08-03 and SB-08-04 at levels above their respective Res TAP GWSLs. 1,1'-biphenyl exceeded its Res TAP GWSL in the sample from 08-SB-04 at an estimated concentration of 0.97 parts per billion (ppb).

³ The groundwater samples were field filtered with a 0.45-micron in-line filter prior to laboratory analysis of dissolved metals.

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Double Track Parcel 6 6A 6B, Gary – Comfort Letter
BFD #4201107
February 4, 2022
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Total chromium was also detected in three groundwater samples at a level above the chromium VI Res TAP GWSL. However, there is no reason to suspect that chromium VI is present or was historically used at the Site, therefore, IDEM concludes there is no risk related to total chromium levels detected in on-Site groundwater. No other constituents analyzed in groundwater were detected at levels above applicable RCG screening levels. Refer to Table 1, below, for a summary of groundwater analytical data above applicable RCG screening levels.

TABLE 1
July 2020 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Contaminant Detected	Sample Location & Results (parts per billion (ppb))		Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	08-SB-03	08-SB-04			
Dissolved Lead	17	77	15	NE	
1,1'-Biphenyl	<1.0 [^]	0.97J	0.83		
Naphthalene	9.6	21	1.7	110	460

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level

NE = not established

J = Analyte is present at an estimated concentration
[^] = laboratory detection limits were higher than the Res TAP GWSL and, therefore, this data is inconclusive as an actual detected level

Construction Contingency Plan for Known and Unanticipated Environmental Conditions – March 2021

The Construction Contingency Plan (CCP) covers all general construction activities with the potential to disturb the ground surface, subsurface, or hazard-containing materials across the DT-NWI project area. The CCP outlines general preventative measures to be taken by NICTD contractors, subcontractors, and utility workers to mitigate the risk of potential exposure to contamination and to not worsen contamination. These preventative measures include, but are not limited to, the following:

- Maintain a copy of the CCP on the job site and make it readily available to all onsite personnel (contractors, subcontractors, utility workers and other personnel) to provide information regarding known contamination;
- Provide notices to NICTD or its designee within timeframes in this CCP;
- Prevent potential human exposure and mitigate fire and explosion hazards in a manner that protects the health and safety of site workers and the public;
- Provide reasonable cooperation, assistance, and access to the persons that are

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authorized to conduct investigations, monitoring, response activities, or corrective action within the project area;

- Comply with any land use restrictions or terms of Environmental Restrictive Covenants (ERCs) within the project area.

Phase I ESA – March 2021

The March 2021 Phase I ESA identified the following RECs associated with the Site:

- The presence of four USTs on the northwestern portion of the Site identified through the completion of a GPR survey; and
- The presence of elevated concentrations of lead, 1,1'-biphenyl, and naphthalene in the groundwater above RCG Res TAP GWSLs.

The March 2021 Phase I ESA also identified the inability to access the interior of the former bowling alley building as a data gap.

Soil Management Plan – June 2021

The June 2021 SMP was prepared for DT-NWI parcels with identified contamination and pending, draft, or final ERCs, as well as parcels with historical environmental risks such as USTs (including this Site). The SMP covers future earthwork on these parcels and is meant to be used in conjunction with the CCP, site-specific health and safety plans (HASPs), and other related plans (emergency response, spill prevention, etc.). The SMP includes, but is not limited to, the following:

- General procedures for site access, fugitive dust control, concrete management, underground utility clearance, equipment decontamination, personal protective equipment, inspection and monitoring, and documentation;
- Site-specific procedures for specific DT-NWI parcels. For the Site, this includes field monitoring of excavated soil, contaminated soil handling, and soil and groundwater sampling requirements;
- Contractor responsibilities regarding health and safety, unexpected conditions, and documentation and reporting;
- Maps of soil excavation monitoring areas; and
- Field standing operation procedure for soil sampling.

Technical Summary

The GPR survey indicated the presence of four USTs, with groundwater sampling indicating a release has occurred. The USTs should be removed in accordance with all applicable federal, state, and local laws, confirmation sampling

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should be conducted, and exposure risks to any discovered contamination should be mitigated.

Lead, 1,1'-biphenyl, and naphthalene were detected in groundwater samples at concentrations above their respective Res TAP GWSLs. Potential exposure to groundwater contamination may be mitigated by an institutional control prohibiting the use or extraction of groundwater.

Because there is no reason to suspect that chromium VI is present or was historically used at the Site, IDEM concluded there is no risk related to total chromium levels detected in on-Site soil and groundwater at this location.

Liability Clarification

IDEM's "Brownfields Program Comfort and Site Status Letters" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Owner, that:

- (1) no state or federal enforcement action at the Site is pending;
- (2) no federal grant requires an enforcement action at the Site;
- (3) no condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) neither the Owner nor an agent or employee of the Owner caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site; and,
- (5) the Owner is eligible for an applicable exemption to liability, specifically as a political subdivision under the terms of IC 13-25-4-8(e)(5), IC 13-11-2-150(d)(5), and IC 13-11-2-151(b)(5).⁴

As discussed below, the Owner has demonstrated its eligibility for the State political subdivision exemption from liability for hazardous substance and petroleum contamination, having provided the Program with documentation showing that the Site was acquired through the eminent domain process.

Therefore, under the Comfort and Site Status Policy, IDEM will utilize its enforcement discretion to not hold the Owner responsible to investigate and remediate hazardous substances and/or petroleum contamination detected on the Site. However, pursuant to the Comfort and Site Status Letter Policy and as a condition of IDEM's

⁴ NICTD qualifies as a political subdivision under IC 36-1-2-13 because it is a municipal corporation. NICTD was formed pursuant to IC 8-5-15-1 *et seq.* IC 8-5-15-2 establishes that NICTD and similar commuter transportation districts are each distinct municipal corporations.

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exercise of enforcement discretion, the Owner must take due care with respect to the contamination discovered on the Site. Since levels of SVOCs and metals detected in on-Site groundwater were above applicable RCG screening levels, IDEM is requiring the implementation of land use restrictions through recordation of an ERC on the deed for the Site to ensure no exposure by Site occupants to the groundwater contamination detected on the Site. The land use restrictions in the ERC are summarized below under *Institutional Control*.

Recommendation

To address the data gap identified in the May 2020 Phase I ESA and the March 2021 Phase I ESA, inspect the former bowling alley building when it becomes accessible to determine whether any RECs exist or if asbestos containing materials (ACM) or lead based paint (LBP) is present. Any ACM and LBP discovered in the building on the Site should be properly managed and abated in accordance with applicable Federal, State, and local laws and regulations.

Due Care

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate due care measures for the Owner to undertake with respect to the hazardous substances and/or petroleum contamination found at the Site in order to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Implement and maintain the land use restrictions required by this letter.
- Properly dispose of the USTs in accordance with all applicable federal, state, and local laws and mitigate any exposure risks associated with the contamination that may be associated with the excavated USTs.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and petroleum contamination or any information about new (or previously unidentified) contamination.

Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws in order to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

Institutional Control

Since levels of dissolved lead, 1,1'-biphenyl, and naphthalene detected in groundwater on-Site were above applicable RCG residential screening levels, IDEM is requiring an ERC to be recorded on the deed for the Site to ensure no exposure to on-

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Site contamination. As a condition of the issuance and effectiveness of this letter under the Comfort and Site Status Letter Policy, the Owner must abide by the land use restriction in the enclosed ERC, which is summarized below:

- Do not allow the use or extraction of groundwater at the Site, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities or temporary construction dewatering activities.

Conclusion

IDEM encourages the redevelopment of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the due care requirements of this letter. In particular, if new areas of contamination or new contaminants are identified, the Owner must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to maintain the liability protection afforded by this letter.

This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the benefit of issuance of this letter. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue

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any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 or CERCLA. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use.

In order for IDEM to consider this letter effective, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the deed for the Site in the Lake County Recorder's Office. Instructions explaining the process of how to correctly record the ERC are enclosed. Please return a certified copy of the filed document to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
ATTN: Nancy Dollar

IDEM is pleased to assist NICTD with this redevelopment project. Should you have any questions or comments, please contact Nancy Dollar at (317) 234-9764. She can also be reached via email at: nadollar@ifa.in.gov.

Sincerely,



Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure (ERC)

cc: Brittney Nadler, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
Nancy Dollar, Indiana Brownfields Program (*electronic copy*)
Brian Shaw, Beam, Longest & Neff (*electronic copy*)
Todd Relue, Plews Shadley Racher & Braun LLP (*electronic copy*)
Lake County Health Department (*electronic copy*)

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EXHIBIT D

TABLE 1

Double Track Parcel 6 6A 6B, Gary – BFD #4201107
July 2020 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Property of Lake County Recorder

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TABLE 1
Double Track Parcel 6 6A 6B, Gary – BFD #4201107
July 2020 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Contaminant Detected	Sample Location & Results (parts per billion (ppb))		Res TAP GWSL	Res VE GWSL	Indus VE GWSL
	08-SB-03	08-SB-04			
Dissolved Lead	17	77	15	NE	
1,1'-Biphenyl	<1.0	0.97^J	0.83		
Naphthalene	9.6	21	1.7	110	460

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level
NE = not established J = Analyte is present at an estimated concentration
[^] = laboratory detection limits were higher than the Res TAP GWSL and, therefore, this data is inconclusive as an actual detected level

Public of Lake County Recorder

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EXHIBIT E

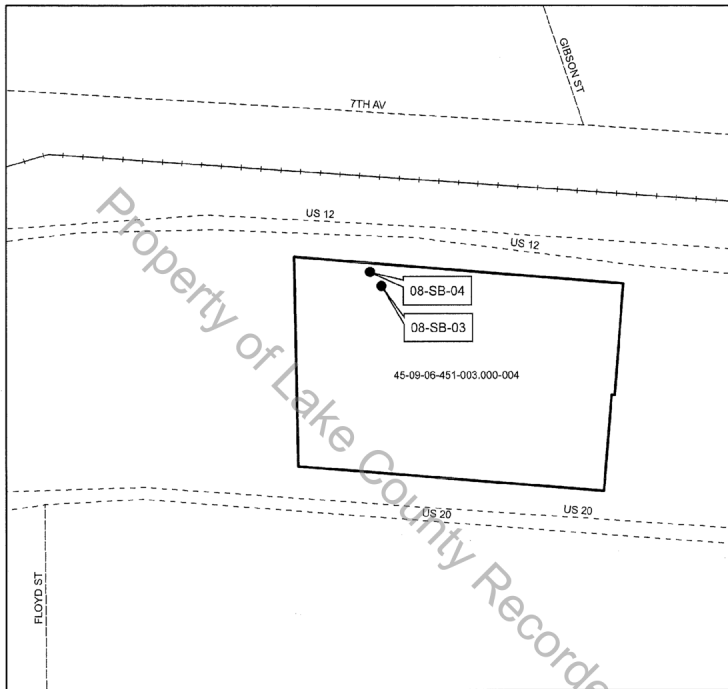
Double Track Parcel 6 6A 6B, Gary – BFD #4201107
Site Map Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels

Property of Lake County Recorder

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restriction contained in the Covenant to which this map is attached and incorporated. The land use restriction contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.

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BFD 41(1)07- Site Map Depicting Sample Locations Where COCs
Were Detected Above Applicable IDEM RCG Screening Levels



Mapped By: Vickey Robinson, Office of Land Quality, Science Services Branch,
Engineering and GIS Services, July 19, 2021

Real Estate Info: Corporate Special Warranty Deed – Instrument Number 2012-024504
Recorded 04/12/2012
Ordinance Vacating Right-of-Way – Instrument Number 2002-027483
Recorded 03/20/2002

Parcel Info: The Real Estate consists of Parcel Identification Number:
45-09-06-451-003.000-004

Sample Info: Sample Locations based on "Figure 4 – Parcel 6 and 6A Sample
Locations and Utilities" by WSP USA, Inc.

PLSS Info: Section 6, T36N, R7W, Calumet Township, Lake County, Indiana

Property Info: 5701 E Dunes Hwy, Gary, IN 46403

Disclaimer: This Map is intended to serve as an aid in graphic representation only.
This information is not warranted for accuracy or other purpose.

● SAMPLE LOCATION
--- STREET
□ BROWNFIELD SITE
+ RAILROAD

Lake County



Project Area

