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DT-1

FILED
Mar 16 2022 LM
JOHN E. PETALAS
LAKE COUNTY AUDITOR

2022-511210
03/16/2022 10:12 AM
TOTAL FEES: 25.00
BY: SP
PG #: 26

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

CROSS REFERENCE Instrument No. 2021-538908 Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 9th day of March, 2022, by 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 E. Dunes Highway & Taylor Road NE in Gary and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Owner acquired the Real Estate through eminent domain proceedings including an Order of Appropriation and Appointment of Appraisers filed in Lake Circuit Court, Lake County, Indiana on May 20, 2021 as Cause Number 45C01- 2103-PL-000166, followed by payment of damages assessed for the taking of the property by the Owner to the Clerk of Lake County as attested in a Certificate to trigger transfer of title to the Real Estate executed on July 19, 2021 and recorded on August 13, 2021 as Instrument Number 2021-054884. (The Certificate was re-recorded on November 19, 2021 as Instrument Number 2021-538908 to correct the legal description for the Real Estate). The Real Estate consists of approximately 2.115 acres and is identified by the State by parcel identification number 45-08-02-478-001.000-004. The Real Estate to which this Covenant applies is depicted on a plat map attached hereto as part of **Exhibit "A"**.

WHEREAS: A Comfort Letter, a copy of which is attached hereto as **Exhibit "B"**, 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 or in the vicinity of the Real Estate, Program site number BFD #4210208.

WHEREAS: The Comfort Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") were detected in soil 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 benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and lead in soil.

WHEREAS: Soil and groundwater on the Real Estate were sampled for volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), and lead/dissolved lead. Investigations detected levels of benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and lead above their respective residential direct contact screening levels ("RDCSLs") established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions).

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Benzo(a)pyrene and lead were also detected at levels above their respective commercial/industrial direct contact screening levels ("IDCSLs"). Soil analytical results above applicable RCG screening levels are summarized on Table 1, attached hereto as **Exhibit "C"**. A site map, attached hereto as **"Exhibit D"**, depicts sample locations on the Real Estate at which the COCs were detected in soil above applicable RCG screening levels.

WHEREAS: The Department has not approved closure of environmental conditions on 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 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 N. 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, Northern Indiana Commuter Transportation District subjects the Real Estate to the following restrictions and provisions, which shall be binding on Northern Indiana Commuter Transportation District and all future owners:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners:
 - (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
 - (b) Shall not use the Real Estate for any agricultural use.
 - (c) Shall neither engage in nor allow drilling or excavation of soil on the Real Estate without first submitting a work plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the Real Estate must be conducted in accordance with the IDEM-approved June 2021 Soil Management Plan (VFC Document #83178002), including all applicable requirements of IOSHA/OSHA. Soil disturbed as a result of any excavation and construction activities on the Real Estate must be restored in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Any soil that is removed, excavated or disturbed on the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

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GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions 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 restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. 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 all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. 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 restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a 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.
5. 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.

6. 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

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(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.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

II. ENFORCEMENT

8. 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.

III. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. 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.

IV. MISCELLANEOUS

11. 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.
12. 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.

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13. 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.
14. 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 E. US Highway 12
Chesterton, IN 46304
ATTN: Nicole Barker

To Department:

Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Tracy Concannon

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.

15. 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.
16. 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.

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EXHIBIT A

**Certificate Certifying Damages Payment & Title Transfer
Legal Description for and Map of the Real Estate**

Property of Lake County Recorder

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LAKE COUNTY INDIANA, 2021-538908, P 1

2021-538908
11/19/2021 11:57AM
Total Fees: 25.00
By: KNK
Pg #: 5

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE CIRCUIT COURT
SITTING AT CROWN POINT, INDIANA

NORTHERN INDIANA COMMUTER)
)
TRANSPORTATION DISTRICT, an)
Indiana Municipal Corporation,)
Plaintiff,)

CAUSE NO.: 45C01-2103-PL-000166

vs.

UNITED STATES STEEL)
CORPORATION,)
Defendant.)

GINA PIMENTEL
RECORDER
2021-054884
STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
8:31 AM 2021 Aug 13

CERTIFICATE - Submitted for Re-Recording to correct

TO: Auditor of Lake County, Indiana
2293 N. Main Street
Crown Point, IN 46307

legal description at Revised Ex. A

CHN

THIS CERTIFICATE is filed by the Northern Indiana Commuter Transportation District (hereafter, "NICTD"), an Indiana municipal corporation, by and through its general counsel, L. Charles Lukmann III, and associate general counsel, Connor H. Nolan, of the law firm of Harris Welsh & Lukmann concerning the above-captioned matter as follows:

1. On May 20, 2021, the Honorable Marissa J. McDermott, Judge of the Lake Circuit Court approved and entered an Agreed Order of Appropriation and Appointment of Appraisers in the eminent domain proceeding entitled *Northern Indiana Commuter Transportation District vs. United States Steel Corporation*, in the Lake Circuit Court under Cause No. 45C01-2103-PL-000166, authorizing NICTD to acquire the following-described real estate through the process of eminent domain from the defendant, United States Steel Corporation:

CHN

See attached Revised Exhibit 'A' for legal description and attached Exhibit 'B' for plat drawing.

Property Address: East Taylor Rd., Gary, Indiana
Parcel Tax #: 45-08-02-478-001.000-004

Subject to all taxes, rights-of-way, ditches and drains

NON-TAXABLE
Nov 18 2021
JOHN E. PETALAS
LAKE COUNTY AUDITOR

ORIGINAL STAMP - AUD
NON-TAXABLE
AUG 12 2021
JOHN E. PETALAS
LAKE COUNTY AUDITOR

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LAKE COUNTY INDIANA, 2021-538908, P 2

2. On July 13, 2021, the Court-appointed appraisers, filed in the Clerk's office, their report assessing damages for this taking in the total amount of Fifty-Five Thousand Dollars (\$55,000.00).

3. On July 15, 2021, NICTD paid the Court-appointed appraisers' damages in the amount of \$55,000.00 to the Clerk of Lake County, Indiana, for the above-described real estate being acquired.

4. This Certificate is filed by NICTD so that the Auditor of Lake County, Indiana can immediately transfer title to the property being acquired by NICTD on the tax records of the county pursuant to Indiana Code §32-24-1-10, which is described as follows:

CTW
See attached Revised Exhibit 'A' for legal description and attached Exhibit 'B' for plat drawing.

Property Address: East Taylor Rd., Gary, Indiana

Parcel Tax #: 45-08-02-478-001.000-004

Subject to all taxes, rights-of-way, ditches and drains

Respectfully submitted,

**NORTHERN INDIANA COMMUTER
TRANSPORTATION DISTRICT**

By: 

L. Charles Lukmann III, Atty. No. 9903-64

Email: clukmann@hwllaw.com

Connor H. Nolan, Atty. No. 32707-64

Email: cnolan@hwllaw.com

HARRIS WELSH & LUKMANN

107 Broadway

Chesterton, Indiana 46304

Tel: (219) 926-2114

Fax: (219) 926-1503

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LAKE COUNTY INDIANA, 2021-538908, P 3

I certify on behalf of the Northern Indiana Commuter Transportation District that the foregoing representations are true and correct.

Date: 7/19/2021



Connor H. Nolan, Attorney for Plaintiff

Property of Lake County Recorder

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LAKE COUNTY INDIANA, 2021-538908, P 4

REVISED EXHIBIT "A"

CHN

Project: NICTD – Double Track
Parcel: 1 Fee Simple
Key #: 45-08-02-478-001.000-004

A part of the Southeast Quarter of Section 2, Township 36 North, Range 8 West, Lake County, Indiana more particularly described as follows: Beginning at the intersection of the East line of said section and the southerly line of the grantor's land North 0 degrees 05 minutes 37 seconds East 557.16 feet from the southeast corner of said section; thence North 73 degrees 18 minutes 54 seconds West 939.45 feet along the southerly line of said grantor's land to the southwest corner of the grantor's land, said corner also being on the east line of the property owned by the Northern Indiana Commuter Transportation District (NICTD); thence North 16 degrees 41 minutes 06 seconds East along the east line of said NICTD property 100.00 feet to the northwest corner of said grantor's land, said corner also being on the southerly line of the property owned by NICTD; thence South 73 degrees 18 minutes 54 seconds East 909.66 feet along the southerly line of said NICTD property to the East line of said section; thence South 0 degrees 05 minutes 37 seconds West 104.34 feet along said East line to the Point of Beginning, containing 2.115 acres, more or less.

CHN

Property of Lake County Recorder

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LAKE COUNTY INDIANA, 2021-538908, P 5


Page: 1 of 1

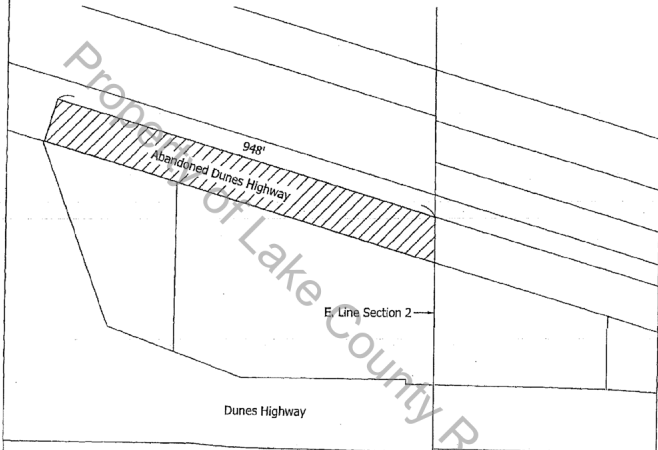
Parcel: 1
Project: NICTD - Double Track NWI
Tax ID: 45-08-02-478-001.000-004
County: Lake
Section: 2
Township: 36 North
Range: 8 West

Exhibit "B"

Owner: United States Steel Corporation
Vacation Ordinance: Instr. No. 731088
Recorded: October 25, 1983
Prepared for the
Northern Indiana Commuter Transportation District
by SJCA P.C. (Job #195U083)

Prepared by: JDR
Checked by: GMQ

 Hatched Area is the
Approximate Acquisition

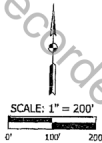


CHRISTOPHER H. PHILLIPS
LS #8800096



NOTE:
This Plat was prepared without benefit of a field check. Its sole purpose is for graphic representation and in no way is to be construed as a Boundary Survey. Dimensions shown are from the above listed Record Documents.

Date: 2/25/2020



SJCA P.C.
**ENGINEERS
& SURVEYORS**

9102 North Meridian Street, Suite 200, Indianapolis, IN 46260
Phone: (317) 566-0629

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EXHIBIT B

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 14, 2022

Nicole Barker
Northern Indiana Commuter Transportation District
33 E. US Highway 12
Chesterford, IN 46304

Re: **Comfort Letter**
Political Subdivision (Eminent Domain)
Double Track Parcel 1
E. Dunes Highway & Taylor Road NE
Gary, Lake County
Incident #96789¹
Brownfield #4210208

Dear Ms. Barker:

In response to the request by the Northern Indiana Commuter Transportation District (NICTD or Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at E. Dunes Highway & Taylor Road NE, 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 on the Site. This letter does not provide a release from liability. It will, however, establish whether environmental conditions on the Site might be a barrier to redevelopment or transfer.

Site Description and History

The 2.115-acre Site is one parcel identified by the State by parcel #45-08-02-478-001.000-004. The Site is currently a portion of a paved roadway once used by US Steel Corporation. The Site has historically been an access road for commercial and municipal buildings since at least 1938 and was part of East Dunes Highway prior to its rerouting in the 1950s when the I-90 interchange was constructed west of the Site. The Site is located approximately 400 feet north of E. Dunes Highway and ¼ mile east of I-90. The Lake Michigan shoreline is located approximately 1.5 miles north of the Site. The Site was acquired by NICTD following the issuance of an *Order of Appropriation and Appointment of Appraisers* (Cause Number 45C01-2103-PL-000166) filed May 20, 2021. Following NICTD's July 15, 2021 payment to the Clerk of Lake County of damages

¹ On June 16, 2021, NICTD reported soil contamination (polycyclic aromatic hydrocarbons and metals) on the Site to the IDEM Spill Line. Incident #96789 was assigned, referred to the Indiana Brownfields Program, and since closed.

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 2 of 9

assessed by court-appointed appraisers for the taking of the property, a Certificate to trigger transfer of title to the Site was executed on July 19, 2021 and recorded on August 13, 2021 in the Lake County Recorder's Office as Instrument Number 2021-054884. (The Certificate was re-recorded on November 19, 2021, to correct the legal description for the Site as Instrument Number 2021-538908.

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 the existing South Shore Line and to improve five existing stations. Redevelopment plans for the Site (Parcel 1) include temporary staging of construction equipment and installation of relocated adjacent utilities.

Surrounding properties include railroad tracks to the north; a continuation of the roadway to the east; a partially demolished hotel building to the southeast; a garage used for storage and storefront to the southwest (gasoline filling station in 1939 and trucking business from 1960 through 2000); and a continuation of the roadway and a warehouse with four service bays to the west.

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 documents. These documents may be viewed electronically by searching online by the noted document number in IDEM's Virtual File Cabinet (VFC) accessible through IDEM's website.

- *Phase I Environmental Site Assessment* (Double Track Northwest Indiana (DT-NWI) Project BLN Parcel 001), dated August 2020, prepared by DLZ Indiana, LLC (DLZ) (Document #83131964)
- *Parcel 1 Phase II Environmental Site Assessment* (Parcel 1 Phase II ESA), dated December 14, 2020, prepared by WSP USA Inc.(WSP) (Document #83131965)
- *Construction Contingency Plan for Known and Unanticipated Environmental Conditions* (Double Track-Northwest Indiana), dated March 3, 2021, prepared by WSP (Document #83163032)
- *Soil Management Plan* (Double Track-Northwest Indiana), dated June 22, 2021, prepared by WSP (Document #83178002)

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

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 3 of 9

screening levels (RDCSLs and IDCSLs, respectively) and recreational soil direct contact screening levels (Rec DCSLs); 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 I Environmental Site Assessment – August 2020

An August 2020 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

- Historical use of the property which adjoins the western portion of the Site to the south (2901 Dunes Highway) as a gasoline filling station.

Pursuant to ASTM E2600-15 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, DLZ conducted a Tier 1 evaluation to assess the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or groundwater either on or near the Site. Based on the results of an April 2019 Underground Storage Tank (UST) Closure Report for the off-Site Indiana Toll Road (ITR) East Toll Plaza property to the west of the Site, DLZ did not identify a potential vapor encroachment condition (VEC) associated with the Site.

Parcel 1 Phase II Environmental Site Assessment – December 2020

In September 2020, five soil borings (18-SB-01 through 18-SB-05) were advanced to a maximum depth of 10 feet bgs and temporary monitoring wells were installed in each boring at the Site. The thickness of fill material varied across the Site and was typically encountered to a depth of approximately 3 to 5.7 feet bgs. The water table was measured in the temporary monitoring wells at depths ranging from 1.7 to 2.9 feet bgs.

Soil/fill samples were collected and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and lead. Groundwater samples were collected and analyzed for VOCs, SVOCs, and dissolved lead.

Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and lead were detected at concentrations in soil/fill sample 18-SB-04 (1-2 feet bgs) above their respective RDCSLs, with concentrations of benzo(a)pyrene and lead also detected above their respective IDCSLs. Refer to Table 1, below, for a summary of soil/fill analytical data above applicable RCG screening levels. No other constituents analyzed in soil/fill were detected at levels above their applicable RCG screening levels.

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 4 of 9

No constituents analyzed in groundwater were detected at levels above their applicable RCG screening levels.

TABLE 1
September 2020 Soil/Fill Concentrations Exceeding Applicable IDEM RCG Screening Levels

Contaminant Detected	Sample Location (Depth feet bgs) & Results (parts per million (ppm))	RDCSL	IDCSL	EX DCSL
	18-SB-04 (1-2)			
Benz(a)anthracene	120	15	210	12,000
Benzo(a)pyrene	99	1.5	21	500
Dibenzo(a,h)anthracene	16	1.5	21	1,200
Indeno(1,2,3-cd)pyrene	68	15	210	12,000
Lead	860	400	800	1,000

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
bgs = below ground surface

*Construction Contingency Plan for Known and Unanticipated Environmental Conditions
(Double Track-Northwest Indiana) - March 2021*

In accordance with the above-referenced plan, general preventative measures will be taken by NICTD contractors, subcontractors, and utility workers to mitigate risk of potential exposure and so as not worsen potential contamination during all general construction activities with the potential to disturb the ground surface, subsurface, or hazard-containing materials on the Site and across the greater Double Track project area. Those preventative measures include, but are not limited to, the following:

- Maintaining a copy of the Construction Contingency Plan (CCP) on the job site, and have it be readily available to all onsite personnel (contractors, subcontractors, utility workers, and other personnel) to provide information regarding known contamination;
- Providing notices to NICTD or its designee within timeframes in this CCP;
- Preventing potential human exposure and mitigating fire and explosion hazards in a manner that protects the health and safety of site workers and the public;
- Providing reasonable cooperation, assistance, and access to the persons that are authorized to conduct investigations, monitoring, response activities, or corrective action;
- Complying with any land use restrictions or terms of Environmental Restrictive Covenants.

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 5 of 9

Soil Management Plan (Double Track-Northwest Indiana) - June 2021

The June 2021 Soil Management Plan (SMP) was prepared for multiple parcels comprising portions of the proposed NICTD South Shore Line DT-NWI project including the Site (Parcel 1) as a plan to mitigate potential risk of exposure by construction workers and the public to contaminants of concern (COCs) identified in soil during previous investigations.

The June 2021 SMP describes general provisions and procedures for removal, handling, segregation and staging of excavated soils that are common to all parcels including site access, fugitive dust control, concrete management, underground utility clearance, equipment decontamination, personal protective equipment, inspection and monitoring, and documentation. This plan pertains to construction activities with the potential to disturb the ground surface, subsurface, or hazard-containing materials, including, but not limited to:

- Geotechnical or investigative drilling
- Building slab and foundation removal
- Underground storage tank (UST) removal
- Utility removal, relocation, and installation
- Other general excavation and grading

Per the June 2021 SMP, the following specific procedures should be followed during drilling or soil excavation work on the Site (Parcel 1):

- Field monitoring of excavated soil for the presence of volatile organics using a photoionization detector (PID) should be conducted during excavation of any soil within the soil monitoring area. The area requiring field monitoring should be expanded if PID measurements greater than 10 parts per million (ppm) are detected in soil at the perimeter of the designated soil monitoring area and if staining or odor are observed at any location on the parcel.
- Soil removed from the soil monitoring area may not be re-used as fill and should be segregated, sampled for waste characterization as required by the receiving landfill, and properly disposed in accordance with local, state, and federal regulations.
- Soil samples should be collected for laboratory analysis from the base and sidewalls of the excavation to confirm concentrations of analytes remaining in place after excavation. Soil samples should be collected at approximate 20-foot square intervals from the location with the highest field evidence of contamination, with a minimum of one sample collected if the excavated area is less than 20 feet. Soil sampling procedures are described in Enclosure C. Soil samples should be analyzed for VOCs, SVOCs, and lead using applicable U.S. Environmental Protection Agency (EPA) Methods.
- If dewatering is required, groundwater should be inspected and sampled in accordance with the requirements of the discharge permit and the dewatering

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 6 of 9

fluids properly managed. Contractor should be prepared to containerize dewatering fluids for additional treatment, if required by the receiving water body.

Technical Summary

PAHs and lead were detected in on-Site soil at concentrations above their respective RDCSLs. Benzo(a)pyrene and lead were also detected in soil at concentrations above their respective IDCSSLs. A SMP was approved by the Program in order for construction activities to occur safely and existing soil contamination to not be exacerbated. No constituents analyzed in groundwater were detected at levels above applicable RCG screening levels.

The Site is part of a 26.6-mile transportation expansion project and although residential use could technically be possible subject to certain land use conditions, it is being prohibited, consistent with the redevelopment plan for the Site. An environmental restrictive covenant (ERC) is being issued to the Owner in conjunction with issuance of this Comfort Letter to ensure future use of the Site (commercial only) is protective of human health.

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) and IC 13-11-2-51(b)(5).²

The Owner has demonstrated to IDEM's satisfaction that it is eligible for the State political subdivision exemption from liability for hazardous substance and petroleum contamination, having provided the Program with documentation showing that the Site

² 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 corporation.

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 7 of 9

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 exercise of enforcement discretion, the Owner must take due care with respect to the contamination discovered on the Site.

Since levels of PAHs and lead detected in on-Site soil 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 soil contamination detected on the Site. The land use restrictions in the ERC are summarized below under *Institutional Control*.

Due Care

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate due care steps for the Owner to undertake with respect to the hazardous substances and 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.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and/or petroleum contamination or any information about new (or previously unidentified) contamination.

Please be advised that any work performed at the Site 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 contaminants detected in soil on the Site were above applicable RCG residential screening levels, IDEM is requiring an ERC to be recorded on the deed record for the Site to ensure no exposure to on-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 restrictions in the enclosed ERC, which are summarized below:

- Not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- Not use the Real Estate for any agricultural use.

NOT AN OFFICIAL DOCUMENT

Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 8 of 9

- Neither engage in nor allow drilling or excavation of soil on the Site without first submitting a work plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the Site must be conducted in accordance with the IDEM-approved June 2021 SMP, including all applicable requirements of IOSHA/OSHA. Soil disturbed as a result of any excavation and construction activities on the Site must be restored in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Any soil that is removed, excavated or disturbed on the Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

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 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 due care requirements 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 the 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

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Double Track Parcel 1, Gary – Comfort Letter
BFD #4210208
February 14, 2022
Page 9 of 9

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 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: Tracy Concannon

IDEM is pleased to assist NICTD with this redevelopment project. Should you have any questions or comments, please contact Tracy Concannon at (317) 233-2801. She can also be reached via email at: tconcann@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*)
Tracy Concannon, Indiana Brownfields Program (*electronic copy*)
Brian Shaw, Beam, Longest & Neff (*electronic copy*)
John Lewis, Beam, Longest & Neff (*electronic copy*)
Todd Relue, Plews Shadley Racher & Braun LLP (*electronic copy*)
Pete Julovich, City of Gary (pjulovich@gary.gov)
Brenda Scott-Henry, City of Gary (bhenry@gary.gov)
Lake County Health Department (*electronic copy*)

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EXHIBIT C

TABLE 1

Double Track Parcel 1, Gary – BFD #4210208
September 2020 Soil Concentrations Exceeding Applicable
IDEM RCG Screening Levels

Property of Lake County Recorder

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TABLE 1
Double Track Parcel 1, Gary – BFD #4210208
September 2020 Soil Concentrations Exceeding Applicable
IDEM RCG Screening Levels

Contaminant Detected	Sample Location (Depth feet bgs) & Results (parts per million (ppm))	RDCSL	IDCSL	EX DCSL
	18-SB-04 (1-2)			
Benz(a)anthracene	120	15	210	12,000
Benzo(a)pyrene	99	1.5	21	500
Dibenz(a,h)anthracene	16	1.5	21	1,200
Indeno(1,2,3-cd)pyrene	68	15	210	12,000
Lead	860	400	800	1,000

Notes: **bold** = above RCG Residential Direct Contact Screening Level
italics = above RCG Commercial/Industrial Direct Contact Screening Level
underline = above RCG Excavation Worker Direct Contact Screening Level
bgs = below ground surface

PROPERTY OF Lake County Recorder

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EXHIBIT D

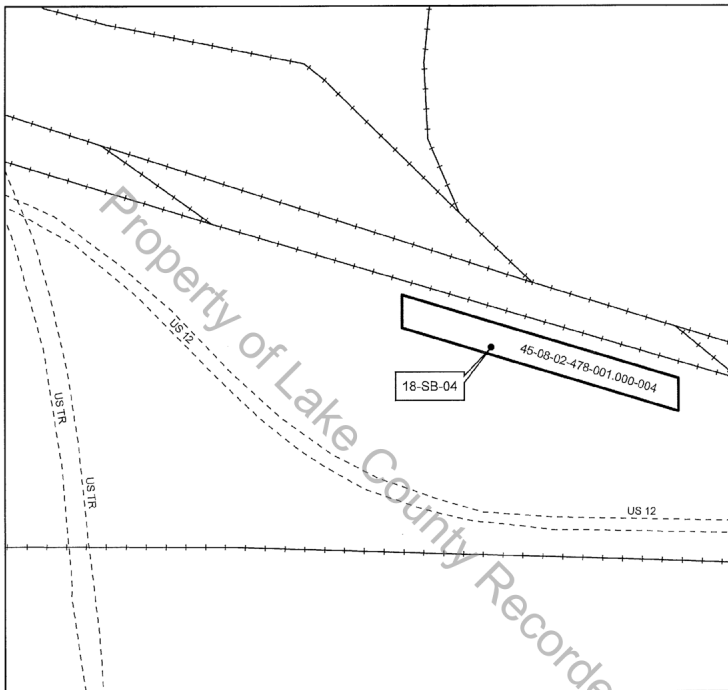
Double Track Parcel 1, Gary – BFD #4210208
Site Map Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels

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 restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions 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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BFL 42/02/08 - Double Track Parcel 1 - Site Map Depicting Sample Location 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, May 5, 2021

Real Estate Info: Double Track Parcel 1
Ordinance No. 5916 - 731088 - Recorded 10/25/1983

Parcel Info: The Real Estate consists of Parcel Identification Number:
45-08-02-478-001.000-004

Sample Info: Sample Location coordinates provided by WSP USA, Inc - "Table 2 -
Parcel 1 Boring Locations"

PLSS Info: Section 2, T38N, R8W, Calumet Township, Lake County, Indiana

Property Info: Vacated Abandoned 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

