

# NOT AN OFFICIAL DOCUMENT

**FILED**

Mar 16 2022 LM  
JOHN E. PETALAS  
LAKE COUNTY AUDITOR

2022-511219  
03/16/2022 10:28 AM  
TOTAL FEES: 25.00  
BY: SP  
PG #: 31

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
GINA PIMENTEL  
RECORDER

DT-99

**Cross Reference: Instrument No. 2021-068117  
Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 9<sup>th</sup> 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 5936-5946 Melton Road 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 an Order and Judgement filed in Lake Circuit Court on October 19, 2021 as Cause No. 45C01-2101-00070 and recorded on November 19, 2021, as Instrument Number 2021-068117, in the Office of the Recorder of Lake County. The Real Estate consists of approximately 0.36 acre and is identified by the State by parcel identification numbers 45-09-06-476-011.000-004, 45-09-06-476-012.000-004 and 45-09-06-476-013.000-004. 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 petroleum and hazardous substances contamination relating to historical operations on the Real Estate, Program site number BFD #4201205.

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 2-methylnaphthalene and lead in groundwater.

WHEREAS: Groundwater on the Real Estate was sampled for volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), and metals (arsenic, barium, cadmium, total chromium, lead, selenium and silver). Investigations detected levels of 2-methylnaphthalene and lead above levels established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). Investigations detected levels 2-methylnaphthalene and lead above RCG 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 the sample location on the Real Estate at which the COCs were detected groundwater above applicable RCG screening levels.

# NOT AN OFFICIAL DOCUMENT

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 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 N. Senate Avenue, 12<sup>th</sup> 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

1. Restrictions. 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.

## II. GENERAL PROVISIONS

2. 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.
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 the restriction 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 restriction set forth in paragraph 1 above is being properly maintained (and operated, if applicable) in a

# NOT AN OFFICIAL DOCUMENT

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 (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.

### III. 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.

### IV. TERM, MODIFICATION AND TERMINATION

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

# NOT AN OFFICIAL DOCUMENT

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.

## V. 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.
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 East Highway 12  
Chesterton, Indiana 46304  
ATTN: Nicole Barker

To Department:

Indiana Brownfields Program  
100 N. Senate Avenue, Rm. 1275  
Indianapolis, Indiana 46204  
ATTN: Andrea Robertson Habeck



# NOT AN OFFICIAL DOCUMENT

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.

Property of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT

Owner hereby attests to the accuracy of the statements in this document and all attachments.

## ACKNOWLEDGMENT BY A NOTARY

IN WITNESS WHEREOF, Northern Indiana Commuter Transportation District, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 4th day of March, 2022

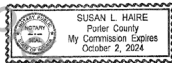
[Signature]  
Northern Indiana Commuter Transportation District  
Michael Nolan, Pres.  
Printed Name of Signatory

STATE OF INDIANA  
COUNTY OF PORTER ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael Nolan the President of the Owner, NICTD, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 4th day of March, 2022  
[Signature]  
Susan L. Haire, Notary Public  
Residing in Porter County, IN

~~My Commission Expires:~~



This instrument prepared by: **Harris Welsh & Lukmann**  
107 Broadway  
Chesterton, Indiana 46304

Connor H. Nolan, Attorney  
(219) 926-2114

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Connor H. Nolan (Printed Name of Declarant)  
Connor H. Nolan

# NOT AN OFFICIAL DOCUMENT

## EXHIBIT A

Legal Description of the Real Estate  
Order and Judgment (October 19, 2021)

Property of Lake County Recorder



# NOT AN OFFICIAL DOCUMENT

6. Defendant, Lake County Treasurer, was served by certified mail on February 3, 2021.  
The Treasurer appeared by counsel, and was dismissed by Order of this Court on February 3, 2021.
7. The written objections to the Complaint under Ind. Code § 32-24-1-8, were withdrawn; no other written objections were filed and the timeframe to do so pursuant to Ind. Code § 32-24-1-8(b)(3) has lapsed.
8. Plaintiff is entitled by law to acquire the interests in the real estate described in the attached Exhibit 'A' and Exhibit 'B'.
9. The Court entered its Agreed Order of Appropriation and Appointing Appraisers on May 11, 2021, which ordered the appropriation of the real estate described in Plaintiff's complaint and appointed three (3) disinterested parties to assess the compensation due the Defendants for Plaintiff's appropriation. No appeal was taken of this Order.
10. On August 5, 2021, the Court-appointed appraisers filed their Report with the Court and found that Defendants were entitled to receive total just compensation of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as a result of Plaintiff's appropriation.
11. On August 19, 2021, Plaintiff NICTD paid the invoices of each of the Appraisers.
12. On August 24, 2021, Plaintiff NICTD deposited the amount of the Appraisers' Award with the Clerk.
13. If exceptions to the Report of Appraisers are to be filed, they shall be filed within forty-five (45) days after notice of the report is sent to all parties and attorneys of record. I.C. § 32-24-1-11(a).
14. No exceptions to the report of appraisers have been filed by any party under I.C. § 32-24-1-11(b).

# NOT AN OFFICIAL DOCUMENT

15. When, as here, no exceptions are filed within the prescribed statutory period, the court-appointed appraisers' report is conclusive as a matter of law, and there is no issue left for trial. *Southern Ind. Gas Elec. Co. v. Decker*, 307 N.E.2d 51 (Ind. 1974).
16. Accordingly, the period for filing exceptions has closed, no exceptions may now be filed, and the report of appraisers is the final judgment of just compensation due to the Defendant, Rodney D. Lubeznik, Trustee of the Living Trust Agreement Dated February 13, 1989, for the appropriation of the Property, and there is no need to a jury trial.
17. NICTD withdraws its prior request for a jury trial in this cause.
18. There being no trial, no party herein is entitled to pre-judgment or post-judgment interest, attorney's fees, or costs.
19. On August 24, 2021, Plaintiff deposited the sum of \$25,000.00 with the Clerk of the Court. This sum \$25,000.00 represents the total just compensation due the Defendants.
20. Plaintiff is entitled to judgment for appropriation, with total just compensation set in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff, the Northern Indiana Commuter Transportation District, now holds fee simple title to the real estate previously owned by Defendant Rodney D. Lubeznik, Trustee of the Living Trust Agreement Dated February 13, 1989, and described in the attached Exhibit 'A' and Exhibit 'B'.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Rodney D. Lubeznik, Trustee of the Living Trust Agreement Dated February 13, 1989 shall recover TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as total just compensation for Plaintiff's real estate condemnation. Plaintiff previously deposited said sum with the Clerk of the Court in full satisfaction of this Judgment.

# NOT AN OFFICIAL DOCUMENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of the Court shall issue a check in the name of Rodney D. Lubeznik, Trustee of the Living Trust Agreement Dated February 13, 1989, to counsel for Defendant (Jon A. Schmaltz, 156 S. Washington Street, Valparaiso, IN 46383) in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) previously deposited by Plaintiff, along with interest accrued since that amount was deposited by the Plaintiff on August 24, 2021 with the Lake County Clerk.

IT IS FURTHER ORDERED that the Clerk of the Court shall promptly send two (2) certified copies of this Order and Judgment to the counsel for Plaintiff who upon receipt will forward it to the Lake County Assessor to be reviewed and forwarded to the Auditor and Recorder of Lake County, Indiana (1) that said Auditor shall remove the above-described interest in real estate from the tax records and rolls of Lake County, Indiana and cancel all taxes due and owing in 2020 and subsequent years' taxes thereon; and (2) that said Recorder shall record the transfer of the above-described real estate to the Northern Indiana Commuter Transportation District; and that the Recorder shall return a copy of the recorded transfer by first class mail to counsel for Plaintiff, Harris Welsh & Lukmann, 107 Broadway, Chesterton, IN 46304.

**This matter shall be CLOSED.**

ALL OF WHICH IS ORDERED, ADJUDGED, AND DECREED,

this date: October 19, 2021



Marissa J. McDermott  
Lake Circuit Court Judge

Distribution:

Attorney Lukmann/Attorney Welsh/Attorney Nolan

Attorney Schmaltz

# NOT AN OFFICIAL DOCUMENT

EXHIBIT "A"

Sheet 1 of 3

Project: NICTD- Double Track NWI  
Parcel: 99,99A,99B  
Key #: 45-09-06-476-011.000-004  
Key #: 45-09-06-476-012.000-004  
Key #: 45-09-06-476-013.000-004

Lots 31, 32, 33 and 34, Block "E", Dunes Highway Realty Company's second subdivision, in the city of Gary, as shown in Plat book 20, page 11, in Lake County, Indiana.

## EXCEPTING

Part of Lot 31 in Block "E", Dunes Highway Realty Company's Second Subdivision in the city of Gary, the plat of which subdivision is recorded in Plat Book 20, page 11, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-way Parcel Plat, Marked Exhibit "B", described as follows: Beginning at the southwest corner of said Lot 31, said point being on the northern boundary of U.S. 20 (Melton Road)(8<sup>th</sup> Avenue) per said addition; thence North 04 degrees 29 minutes 32 seconds East 19.76 feet along the west line of said lot; thence South 85 degrees 41 minutes 17 seconds East 30.00 feet to the east line of said lot; thence South 04 degrees 29 minutes 32 seconds West 19.72 feet along said east line to the southeast corner of said lot, said point being on said northern boundary of U.S. 20; thence North 85 degrees 45 minutes 35 seconds West 30.00 feet along said northern boundary to the point of beginning and containing 592 square feet, more or less.

## ALSO EXCEPTING

Part of Lot 32 in Block "E", Dunes Highway Realty Company's Second Subdivision in the City of Gary, the plat of which subdivision is recorded in Plat book 20, page 11, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-way Parcel Plat, marked Exhibit "B", described as follows: Beginning at the southeast corner of said Lot 32, said point being on the northern boundary of U.S. 20 (Melton Road)(8<sup>th</sup> Avenue) per said addition; thence North 85 degrees 45 minutes 35 seconds West 30.00 feet along said northern boundary to the southwest corner of said Lot 32; thence North 04 degrees 29 minutes 32 seconds East 19.72 feet along the west line of said lot; thence South 85 degrees 41 minutes 17 seconds East 30.00 feet to the east line of said lot; thence South 04 degrees 29 minutes 32 seconds West



# NOT AN OFFICIAL DOCUMENT

EXHIBIT "A"

Sheet 2 of 3

Project: NICTD- Double Track NWI  
Parcel: 99,99A,99B  
Key #: 45-09-06-476-011.000-004  
Key #: 45-09-06-476-012.000-004  
Key #: 45-09-06-476-013.000-004

19.68 feet along said east line to the point of beginning and containing 591 square feet, more or less.

## ALSO EXCEPTING

Part of Lot 33 and 34 in Block "E", Dunes Highway Realty Company's Second Subdivision in the City of Gary, the plat of which subdivision is recorded in Plat book 20, page 11, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-way Parcel Plat, marked Exhibit "B", described as follows: Beginning at the southwest corner of said Lot 33, said point being on the northern boundary of U.S. 20 (Melton Road)(8<sup>th</sup> Avenue) per said addition; thence North 04 degrees 29 minutes 32 seconds East 19.68 feet along the west line of said Lot 33; thence South 85 degrees 41 minutes 17 seconds East 35.87 feet to point "309" designated on said parcel plat; thence Southeasterly 24.13 feet along an arc to the left having a radius of 1,720.00 feet and subtended by a long chord having a bearing of South 86 degrees 05 minutes 24 seconds East and a length of 24.13 feet to the east line of said Lot 34; thence South 04 degrees 29 minutes 30 seconds West 19.71 feet along said east line to the southeast corner of said Lot 34, said point being on said northern boundary of U.S. 20; thence along said northern boundary Northwesterly 14.65 feet along an arc to the right having a radius of 1,597.91 feet and subtended by a long chord having a bearing of North 86 degrees 01 minutes 20 seconds West and a length of 14.65 feet; thence North 85 degrees 45 minutes 35 seconds West 45.36 feet along said northern boundary to the point of beginning and containing 1,180 square feet, more or less.


# NOT AN OFFICIAL DOCUMENT

EXHIBIT "A"

Sheet 3 of 3

Project: NICTD- Double Track NW1  
Parcel: 99,99A,99B  
Key #: 45-09-06-476-011.000-004  
Key #: 45-09-06-476-012.000-004  
Key #: 45-09-06-476-013.000-004

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

  
\_\_\_\_\_  
Christopher H. Phillips  
Indiana Registered Land Surveyor  
License Number 8800096

12/28/2020

Date



of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT


Exhibit "B"

Page: 1 of 1

Parcel: 99, 99A, 99B  
Project: NICTD - Double Track NWI  
Tax ID: 99) 45-09-06-476-011.000-004  
99A) 45-09-06-476-012.000-004  
99B) 45-09-06-476-013.000-004

Owner: Rodney D. Lubeznik, as Trustee of  
Living Trust Agreement dated February 13, 1989  
Trustee's Deed: Instr. No. 96031685  
Recorded: May 7, 1996

Prepared by: JDR  
Checked by: GMC

 Hatched Area is the  
Approximate Acquisition

County: Lake  
Section: 6  
Township: 36 North  
Range: 7 West

Prepared for the  
Northern Indiana Commuter Transportation District  
by SJCA, Inc. (Job #195U083)



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.

*Chris Phillips*

Date: 12/28/2020



**SJCA**

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

SCALE: 1" = 60'  
0' 30' 60'

# NOT AN OFFICIAL DOCUMENT

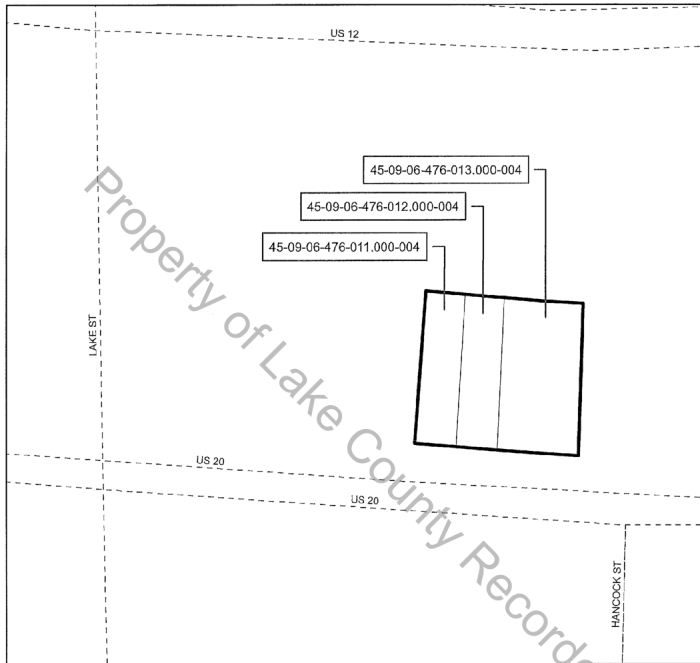
EXHIBIT B

Map of the Real Estate

Property of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT

## Indiana Brownfields Program Number 4201205 - Real Estate



Mapped By: Vickey Robinson, Office of Land Quality, Science Services Branch, Engineering and GIS Services, December 22, 2020

Real Estate Info: Deed Record 199831685, Recorded 5/13/1996

Parcel Info: The Real Estate consists of Parcel Identification Numbers:  
45-09-06-476-011.000-004  
45-09-06-476-012.000-004  
45-09-06-476-013.000-004

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

Property Info: 5900 Block Malton Rd, Gary, IN 46403

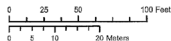
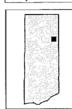
Disclaimer: This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.



Lake County



Project Area



# NOT AN OFFICIAL DOCUMENT

EXHIBIT C

Copy of Comfort Letter

Property of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 461-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

February 24, 2022

Nicole Barker  
Northern Indiana Commuter Transportation District  
33 East Highway 12  
Chesterton, Indiana 46304

Re: **Comfort Letter**  
**Political Subdivision**  
**(Eminent Domain)**  
**Double Track-Parcels 99, 99A, 99B**  
5936-5946 Melton Road  
Gary, Lake County  
IDEM Incident #96799  
Brownfield #4201205

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 5936-5946 Melton Road, 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 0.36-acre Site is comprised of 3 parcels that are further described in Table 1, below. The Site is vacant gravel-covered and overgrown by vegetation with a concrete pad observed on the southeastern portion of the property. NICTD acquired the Site following the issuance of an *Order of Appropriation and Appointment of Appraisers* (Cause No. 45C01-2101-PL-000070) filed in the Lake Circuit Court on May 11, 2021. Following NICTD's August 24, 2021 payment to the Clerk of Lake Circuit Court of damages assessed by court-appointed appraisers for the taking of the property, an Order and Judgment was issued by Lake Circuit Court on October 19, 2021 transferring title to the Site. The Order and Judgment was recorded in the Lake County Recorder's Office instrument number #2021-068117 dated November 19, 2021.

Aerial photographs show the Site was undeveloped until at least 1938. A fire insurance map indicates the Site had been developed with a gas station by 1946. In the 1950s, the structure was expanded and utilized as an auto sales and service facility.

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 2 of 9

The Site was later developed with a different gas station from 1960 to 1987. All Site buildings were demolished by 1990.

**TABLE 1**  
**Parcel Information**

Parcel Number	NICTD Parcel Designation	Street Address	Former Use	Acreage
45-09-06-476-011.000-004	99	5936-40 Melton Road/US Hwy 20	Gas station/auto sales/service	0.12
45-09-06-476-012.000-004	99A	5940-42 Melton Road/US Hwy 20	Gas station/auto sales/service	0.12
45-09-06-476-013.000-004	99B	5944-46 Melton Road/US Hwy 20	Gas station/auto sales/service	0.12

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 (Parcels 99, 99A and 99B) include the construction of a rail line parking area.

The Site is surrounded to the north and east<sup>1</sup> by vacant lots; to the south by US Highway 20 or Melton Road followed by a Dollar General store and a medical clinic; and to the west by a fast-food restaurant.

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 numbers in IDEM's VFC accessible through IDEM's website:

- *Corridor-Modified Phase I Environmental Site Assessment* (May 2020 Corridor Phase I ESA), dated May 14, 2020, prepared by DLZ Indiana, LLC (DLZ) (Document #83196112)

<sup>1</sup> The property located north of the Site is also identified as Double Track Parcel 95 (with assigned BFD #4201111) and the property east of the Site is Double Track Parcel 111, both of which are considered part of the South Shore Line Double Track Northwest Indiana project.



# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 3 of 9

- *Parcels 99A-C<sup>2</sup> Phase II Environmental Site Assessment (2020 Phase II ESA)*, dated October 1, 2020, prepared by WSP USA Inc. (WSP) (Document #83087925)
- *Phase I Environmental Site Assessment (January 2021 Phase I ESA)*, dated January 20, 2021 prepared by DLZ (Document #83183195)
- *Construction Contingency Plan for Known and Unanticipated Environmental Conditions*, dated March 3, 2021 prepared by WSP (Document #83134515)
- *Soil Management Plan Double Track-Northwest Indiana (June 2021 SMP)*, dated June 22, 2021, prepared by WSP (Document #83178131)
- *Phase I Environmental Site Assessment Update (July 2021 Phase I ESA Update)*, dated July 16, 2021, prepared by DLZ (Document #83187671)

*Phase I ESA – May 2020 Corridor Phase I ESA, January 2021 Phase I ESA, and July 2021 Phase I ESA Update*

The May 2020 Corridor Phase I ESA, January 2021 Phase I ESA, and July 2021 Phase I ESA Update identified the following REC:

- The historical use of the Site as a gasoline service station

In addition, the January 2021 Phase I ESA and the July 2021 Phase I ESA Update also identified the following RECs:

- The presence of elevated concentrations of contaminants in groundwater, and
- A potential vapor encroachment condition (VEC) based on elevated field organic vapor measurements and petroleum-like odors and sheen

A subsurface investigation, discussed in more detail below, was conducted after the May 2020 Corridor Phase I ESA, identified the historical operation of a gasoline service station as a REC to determine if any contamination was present on-Site.

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

<sup>2</sup> WSP USA Inc. subsequently changed the parcel designations from 99A-99C to 99, 99A, and 99B.

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 4 of 9

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).

## *2020 Phase II ESA – October 2020*

A Phase II investigation was conducted in July 2020 which included a geophysical survey, the advancement of six subsurface soil borings (14-SB-01 through 14-SB-06) to a maximum depth of 15 feet below ground surface (bgs), and the installation of three temporary wells (14-SB-01, 14-SB-03, 14-SB-06). The geophysical survey was conducted to determine if any underground storage tanks (USTs) remained from the historical operations at the Site. No USTs were discovered.

A total of six soil samples and one duplicate (14-SB-01 through 14-SB-06 and 14-SB-01D) were collected from 6.5-8 feet bgs and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and metals (arsenic barium, cadmium, total chromium, lead, selenium and silver). Urban fill was present on the Site from typically 1 to 4 feet bgs in various thickness across the Site underlain with native sand.

Soil screening during drilling exhibited high organic vapor readings of 999 parts per million (ppm) in samples 14-SB-01 and 14-SB-05, and evidence of petroleum-type odors and sheen were observed in soil borings located within the former gas station footprint at 14-SB-01, 14-SB-02, 14-SB-05 and 14-SB-06. No constituents in soil were detected above the IDEM RCG RDCSLs. (Any soil disturbance during construction should follow the June 2021 SMP discussed in more detail below).

Groundwater samples were collected from the three temporary wells from 8.1 feet to 9.1 feet bgs and submitted for laboratory analysis of VOCs, SVOCs, and dissolved metals.<sup>3</sup> Lead and 2-methylnaphthalene were detected in groundwater at location 14-SB-01 at levels above their respective IDEM RCG Res TAP GWSLs.<sup>4</sup>

Because the chromium was not speciated between trivalent chromium (chromium III) and the more toxic hexavalent chromium (chromium VI), IDEM, in the most conservative approach, compared the analytical results to the hexavalent chromium Res TAP GWSL. Total chromium was detected in the groundwater samples 14-SB-01 (18 parts per billion (ppb)), 14-SB-01D ((duplicate) 8.5 ppb), and 14-SB-06 (32 ppb) at levels above the chromium VI Res TAP GWSL of 0.35 ppb, but below the

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

<sup>4</sup> A release of metals and SVOCs to groundwater was reported to the IDEM Spill Line on June 17, 2021 and assigned Incident #96799. The incident was referred to the Program and assigned a "Closed" status.

total chromium Res TAP GWSL of 100 ppb. 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 at this location. Refer to Table 2, below, for a summary of groundwater analytical data above applicable RCG screening levels.

**TABLE 2**  
**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
	14-SB-01/14-SB-01D			
2-Methylnaphthalene	64/48*	36		NE
Lead	400/100*	15		NE

Notes: **bold** = above RCG Residential Tap Groundwater Screening Level Screening Level  
NE = not established  
\* = field duplicate

### *Construction Contingency Plan for Unknown and Unanticipated Environmental Conditions - March 2020*

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 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

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 6 of 9

## Soil Management Plan – June 2021

The IDEM-approved June 2021 SMP was prepared for DT-NWI parcels with identified contamination and parcels with historical environmental risks such as USTs. 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;
- 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

Lead and 2-methylnaphthalene were detected in Site groundwater samples (14-SB-01/14-SB-01D) above applicable Res TAP groundwater screening levels. No other constituents were detected above applicable screening levels. The Site is on municipal drinking water and potential exposure to the lead and 2-methylnaphthalene in groundwater can be controlled by an institutional control.

## 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 petroleum at the Site; and,
- (5) the Owner is eligible for an applicable exemption to liability, specifically as a

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 7 of 9

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).<sup>5</sup>

As discussed below, the Owner has demonstrated to IDEM's satisfaction that it is eligible for the State political subdivision exemption from liability for hazardous substance and/or petroleum contamination, having provided the Program with a demonstration of its acquisition of the Site by exercise of eminent domain.

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 a level of naphthalene was detected in on-Site groundwater sample 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 detected on the Site. The land use restriction in the ERC is summarized below under *Institutional Control*.

## Recommendations

IDEM has the following recommendations during construction activities on the Site:

- Remove and dispose of any USTs and associated contamination, if any, encountered during construction activities according to the applicable environmental laws.
- Implement and follow the CCP and the IDEM-approved June 2021 SMP.

## 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 substance 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 petroleum contamination or any information about new (or previously unidentified) contamination.

<sup>5</sup> 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.

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary – Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 8 of 9

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 2-methylnaphthalene and lead detected in groundwater on-Site were above applicable RCG residential screening levels, IDEM is requiring an environmental restrictive covenant (ERC) to be recorded in the chain of title 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 restriction in the enclosed ERC which is summarized below:

- Do not use or allow the use or extraction of groundwater at the Site.

## **Conclusion**

IDEM encourages the commercial/industrial 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.

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 status of BFPP. 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.

# NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 99 99A 99B, Gary - Comfort Letter  
BFD #4201205  
February 24, 2022  
Page 9 of 9

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 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 in the chain of title 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: Andrea Robertson Habeck

IDEM is pleased to assist NICTD with this commercial/industrial redevelopment project. Should you have any questions or comments, please contact Andrea Robertson Habeck at 317-234-0968. She can also be reached via email at: [aroberts@ifa.in.gov](mailto:aroberts@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*)  
Andrea Robertson Habeck, Indiana Brownfields Program (*electronic copy*)  
Brian Shaw, Beam, Longest and Neff (*electronic copy*)  
Todd Relue, Plews Shadley Racher and Braun (*electronic copy*)  
Lake County Health Department (*electronic copy*)

# NOT AN OFFICIAL DOCUMENT

## EXHIBIT D

### TABLE #1

*Double Track-Parcels 99, 99A, 99B - BFD # 4201205*  
July 2020 Groundwater Concentrations Exceeding  
Applicable IDEM RCG Screening Levels

Property of Lake County Recorder



# NOT AN OFFICIAL DOCUMENT

TABLE #1  
Double Track-Parcels 99, 99A, 99B - BFD # 4201205  
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
	14-SB-01/14-SB-01D			
2-Methylnaphthalene	<b>64/48*</b>	36		NE
Lead	<b>400/100*</b>	15		NE

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

NE = not established

\* = field duplicate

Property of Lake County Recorder

# NOT AN OFFICIAL DOCUMENT

## EXHIBIT E

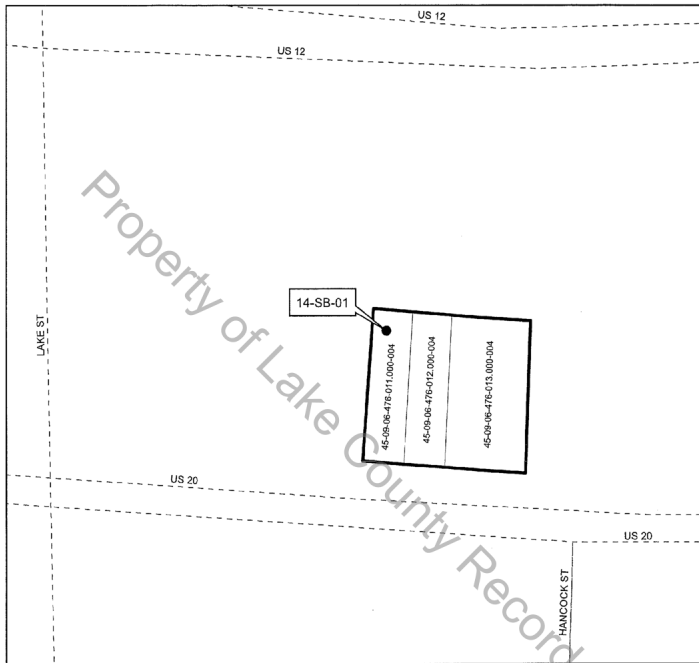
**Double Track-Parcels 99, 99A, 99B, Gary – BFD# 4201205**  
**Site Map Depicting Sampling Location At Which**  
**COCs Were Detected Above Applicable IDEM RCG Screening Levels**

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.*

# NOT AN OFFICIAL DOCUMENT

## BFD 4201205 - Site Map Depicting Sample Location Where COCs Were Detected Above Applicable IDEM RCG Screening Levels



Mapped By: Vickie Robinson, Office of Land Quality, Science Services Branch,  
Engineering and GIS Services, July 27, 2021

Real Estate Info: Deed Record 199631685, Recorded 5/13/1996

Parcel Info: The Real Estate consists of Parcel Identification Numbers:  
45-09-06-478-011.000-004  
45-09-06-478-012.000-004  
45-09-06-478-013.000-004

Sample Info: Sample location based on "Figure 5 - Parcels 99A-C 2-  
Methylnaphthalene and Lead in Groundwater" by WSP USA, Inc

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

Property Info: 5900 Block Melton Rd. 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.

