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DT-111

FILED

Mar 16 2022 LM
JOHN E. PETALAS
LAKE COUNTY AUDITOR

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TOTAL FEES: 25.00
BY: SP
PG #: 23

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 04th day of March, 2022, by the Northern Indiana Commuter Transportation District ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Lake, Indiana, which is located at 6026-6048 U.S. Highway 20 in ("Real Estate"). The Real Estate was acquired by deed on March 15, 2021 and recorded on March 26, 2021, as Deed Record 2021-027378, in the Office of the Recorder of Lake County, Indiana. The portion of the Real Estate to which his Covenant applies consists of approximately 0.8 acre and is identified by the State by parcel identification numbers 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004. The legal descriptions for the two parcels of the Real Estate to which this Covenant applies are attached hereto as "Exhibit A" and the two parcels to which this Covenant applies are 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 the Northern Indiana Commuter Transportation District to address the redevelopment potential of parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate, which comprise a brownfield site resulting from a release of petroleum contamination relating to historical operations on parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate, Program site number BFD #4201204.

WHEREAS: The Comfort Letter, as approved by the Department, provides that a certain contaminant of concern ("COC") was detected in groundwater on parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate but will not pose an unacceptable risk to human health at the detected concentration provided that the land use restriction contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COC is naphthalene in groundwater.

WHEREAS: Soil and groundwater on parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate were sampled for volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs") and lead. Investigations detected a level of naphthalene in groundwater above screening levels established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). 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 parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate at which the COC was detected in groundwater above its applicable RCG screening level.

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WHEREAS: The Department has not approved closure of environmental conditions on parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate under the *Remediation Closure Guide*. However, the Department has determined that the land use restriction contained in this Covenant will enable parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate to be used safely for conditional residential and/or commercial/industrial use.

WHEREAS: Environmental reports and other documents related to parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of 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, the Northern Indiana Commuter Transportation District subjects parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of the Real Estate to the following restrictions and provisions, which shall be binding on the Northern Indiana Commuter Transportation District and all future owners:

I. RESTRICTION

1. Restriction. The Owner and all future owners:
 - (a) Shall not use or allow the use or extraction of groundwater on parcels 45-09-06-476-019.000-004 and 45-09-06-476-009.000-004 of 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

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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 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

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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 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 U.S. Highway 12
Chesterton, Indiana 46304
ATTN: Nicole Barker

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

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

Legal Descriptions for Parcels 45-09-06-476-019.000-004
and 45-09-06-476-009.000-004 of the Real Estate

Property of Lake County Recorder

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Parcel 8 (PARCEL 111E)

LOTS 41 TO 44 BOTH INCLUSIVE BLOCK "E" DUNES HIGHWAY REALTY SECOND SUBDIVISION, IN THE CITY OF GARY, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 20, PAGE 11, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, TOGETHER WITH THE EAST HALF OF THE VACATED ALLEY 60 EAST, BORDERING LOTS 41 TO 44, BOTH INCLUSIVE ON THE WEST, AND THE SOUTH HALF OF THE VACATED ALLEY 7-B SOUTH BORDERING LOT 41 ON THE NORTH, AS EVIDENCED BY CONFIRMATORY RESOLUTION NO. 20214 OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF GARY, ADOPTED JULY 20, 1963 & RECORDED AUGUST 6, 1963 IN MISCELLANEOUS RECORD 866, PAGE 412, AS DOCUMENT NO. 499490.

EXCEPT THAT PART OF LOT 44 AND THE EAST 1/2 OF THE VACATED ALLEY 60 EAST, BORDERING LOT 44 ON THE WEST IN BLOCK "E" DUNES HIGHWAY REALTY SECOND SUBDIVISION IN THE CITY OF GARY (PLAT BOOK 20, PAGE 11) CONVEYED TO THE STATE OF INDIANA BY THAT CERTAIN DEED RECORDED FEBRUARY 24, 2020 UNDER INSTRUMENT NUMBER 2020-013077 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY.

ADDRESS: 6026 - 6048 MELTON RD., GARY, IN 46403

PARCEL TAX ID: 45-09-06-476-019.000-004

Parcel 9 (PARCEL 111F)

LOTS 21 TO 25, BOTH INCLUSIVE BLOCK "E" DUNES HIGHWAY REALTY SECOND SUBDIVISION, IN THE CITY OF GARY, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 20, PAGE 11, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, TOGETHER WITH THE NORTH HALF OF THE VACATED ALLEY 7-B SOUTH BORDERING LOTS 22 TO 25 BOTH INCLUSIVE, AND LOT 21 (EXCEPT THE WEST 10 FEET THEREOF) ON THE SOUTH, AS EVIDENCED BY CONFIRMATORY RESOLUTION NO. 20214 OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF GARY, ADOPTED JULY 20, 1963 & RECORDED AUGUST 6, 1963 IN MISCELLANEOUS RECORD 866, PAGE 412, AS DOCUMENT NO. 499490.

ADDRESS: 6029 - 6047 US HWY 12, GARY, IN 46403

PARCEL TAX ID: 45-09-06-476-009.000-004

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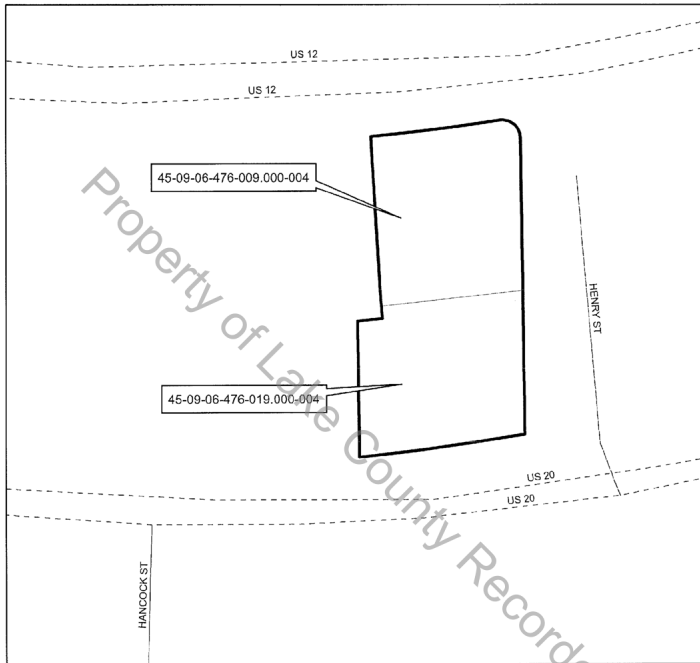
EXHIBIT B

Map of Parcels 45-09-06-476-019.000-004 and
45-09-06-476-009.000-004 of the Real Estate

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Indiana Brownfields Program Number 4201204 - Real Estate



Mapped By: Vickey Robinson, Office of Land Quality, Science Services Branch, Engineering and GIS Services, July 26, 2021

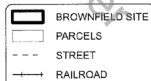
Real Estate Info: Warranty Deed - Instrument Number 2021-027378
Recorded 03/26/2021

Parcel Info: The Real Estate consists of Parcel Identification Numbers:
45-09-06-476-009.000-004
45-09-06-476-019.000-004

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

Property Info: 6029-47 US Hwy 12 & 6026-48 US Hwy 20, Gary, IN 48403

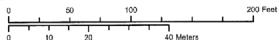
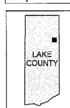
Disclaimer: This Map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purpose.



Lake County



Project Area



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EXHIBIT C

Copy of Comfort Letter

Property of Lake County Recorder

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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8803 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

July 27, 2021

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

Re: **Comfort Letter**
Political Subdivision
(Eminent Domain)
Double Track Parcel 111E 111F
6026-6048 U.S. Highway 20
Gary, Lake County
Incident #96800
Brownfield #4201204

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 6026-6048 U. S. Highway 20, 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, address the due care obligations IDEM recommends the Owner undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The 0.8-acre Site is comprised of two parcels further described on Table 1, below. The Site is bounded to the south by U.S. Highway 20 (also known as Melton Road); to the north by U.S. Highway 12; to the east by Henry Street and commercial parking lot; and to the west by a vacant property.¹

Aerial photographs and fire insurance maps depicted no development or structures at the Site from the early to mid-1900s. The Site was developed by 1965 as a gasoline filling station with two fuel islands located to the north and south of the structure. A 1992 aerial photograph depicted what appeared to be the same structure; however, the structure no longer appeared to be present in a 1998 aerial photograph. The Site addresses were not listed in city directories. The Site is currently a vacant lot

¹ The property located to the west of the Site is also identified as a Brownfields site (#4201206) and considered part of the South Shore Line Double Track Northwest Indiana project (Parcels 97, 97A-C).

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Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 2 of 8

with a building slab in the center portion of the Site and remnants of fuel islands on the southern and northern portions of the Site. The remainder of the Site is covered with vegetation.

TABLE #1
Parcel Information

State Parcel Number	Street Address	Former Use	Acreage
45-09-06-476-019.000-004 (Parcel 111E)	6026-48 U.S. Highway 20/ Melton Road	Vacant, Gas Station	0.4
45-09-06-476-009.000-004 (Parcel 111F)	6029-47 U.S. Highway 12/ East Dunes Highway		0.4

The Site is part of the proposed NICTD South Shore Line Double Track Northwest Indiana (DT-NWI) project. NICTD intends to expand its commuter rail service along an approximately 26.6-mile stretch of existing South Shore Line and to improve five existing stations. Redevelopment plans for the Site (Parcels 111E and 111F) include the construction of a rail line parking area. The future surface cover will consist of pavement or fill materials. NICTD acquired the two parcels comprising the Site, along with seven additional parcels on the same deed, on March 15, 2021.

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.

- *Construction Contingency Plan for Known and Unanticipated Environmental Conditions* dated March 3, 2021 prepared by WSP USA Inc. (WSP) (Document #83134515)
- *Phase I Environmental Site Assessment* dated February 17, 2021 (February 2021 Phase I ESA) prepared by DLZ Indiana, LLC (DLZ) (Document #83121052)
- *Parcels 111E and 111F Phase II Environmental Site Assessment* (2020 Phase II), dated October 1, 2020, prepared by WSP (Document #83087761)
- *Corridor-Modified Phase I Environmental Site Assessment* (Corridor Phase I), dated May 14, 2020, prepared by DLZ (Document #83087756)
- *Soil Management Plan Double Track-Northwest Indiana*, dated June 22, 2021, prepared by WSP (Document #83178131)

NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 3 of 8

Phase I ESA - February 2021 and Corridor Phase I – May 2020

Both the Phase I ESA and the Corridor Phase I identified the historical use of the Site as a gas station as a recognized environmental condition (REC). Since this REC was identified in the initial May 2020 Corridor Phase I, a subsurface investigation was completed to determine if there was any contamination associated with this operation.

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

2020 Phase II – October 2020

A Phase II investigation was conducted on July 31 and August 3, 2020 which included a ground penetrating radar (GPR) survey, advancement of seven soil borings, installation of temporary wells at each of the soil boring locations, and the collection of seven subsurface soil samples and seven groundwater samples. The GPR survey was conducted to determine if any underground storage tanks (USTs) were identified from the historical operations at the Site. No anomalies were detected during the GPR that would indicate the presence of USTs.

Fill material, consisting of silty sand, asphalt, and concrete was encountered beneath the surface cover in all borings to depths of approximately 1.5 feet bgs. Soil samples were collected from 7 to 8 feet bgs and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs) and lead. No constituents in soil were detected above applicable IDEM RCG RDCSLs.

Water was first encountered between 8.1 ft to 9.3 feet bgs beneath the Site. Groundwater samples were collected from the temporary wells and analyzed for VOCs, SVOCs and dissolved (filtered) lead. Naphthalene was detected in groundwater at location 16-SB-04 at a concentration above its IDEM RCG Res TAP GWSL.² Refer to Table 2, below, for a summary of groundwater analytical data above applicable RCG screening levels.

² The release of VOCs to groundwater was reported to the IDEM Spill Line on June 17, 2021 and assigned Incident #96800. The incident was referred to the Program and assigned a "Closed" status.

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Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 4 of 8

TABLE 2
July/August 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
	16-SB-04			
Naphthalene	25	1.2	110	460

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

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

General preventative measures will be taken by NICTD contractors, subcontractors, and utility workers to mitigate the risk of potential exposure to contamination and to not worsen any contamination encountered on the Site and across the greater West Lake Corridor project area. These preventative measures include, but are not limited to, the following:

- Maintain a copy of the Construction Contingency Plan (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.

Soil Management Plan – June 2021

The *Soil Management Plan – Double Track-Northwest Indiana* (June 22, 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,

NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 5 of 8

and documentation and reporting;

- Maps of soil excavation monitoring areas; and,
- Field standing operation procedure for soil sampling.

Technical Summary

Naphthalene was detected in one groundwater sample (16-SB-04) above its Res TAP groundwater screening level on the Site. No other constituents were detected above applicable screening levels. The Site is on municipal drinking water and potential exposure to the naphthalene in groundwater can be controlled by an ERC recorded on the Site deed.

Liability Clarification

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

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

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

³ NICTD qualifies as a political subdivision under IC 36-1-2-13 because it is a municipal corporation. NICTD was formed pursuant to IC 8-5-15-1 et seq. IC 8-5-15-2 establishes that NICTD and similar commuter transportation districts are each distinct municipal corporations.

NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 6 of 8

groundwater sample above applicable RCG screening levels, IDEM is requiring the implementation of a land use restriction through recordation of an environmental restrictive covenant (ERC) on the deed for the Site to ensure no exposure by Site occupants to Site groundwater. The land use restriction in the ERC is summarized below under *Institutional Control*.

Recommendations

IDEM recommends the following measures be taken during construction activities on the Site:

- Remove and dispose of any UST(s) encountered during construction activities according to the applicable environmental laws.

Due Care

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

- Implement and maintain the land use restriction 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.

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 a level of naphthalene detected in groundwater on-Site was above the applicable RCG residential screening level, IDEM is requiring an ERC to be recorded on the deed 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:

- Not use or allow the use or extraction of groundwater at the Site

NOT AN OFFICIAL DOCUMENT

Double Track-Parcel 111E & 111F, Gary – Comfort Letter
BFD #4201204
July 27, 2021
Page 7 of 8

Conclusion

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

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to maintain the effectiveness 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 any necessary due measures 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. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue 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. In addition, if any acts or omission by the Owner exacerbates the contamination at the Site, or if the Owner does not implement and maintain the due care measures required by this letter, then the Owner may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. 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, upon acquisition, the enclosed ERC, which includes a copy of the Comfort Letter, must be recorded on the new deed for the Site in the Lake County Recorder's Office. Instructions explaining the process of

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Double Track-Parcel 111E & 111F, Gary – Comfort Letter

BFD #4201204

July 27, 2021

Page 8 of 8

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 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.

Sincerely,



Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure ERC

cc: Patricia Polston, 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 & Braun (*electronic copy*)
Lake County Health Department (*electronic copy*)
Paula Berger, WSP (*electronic copy*)
Jon Grosshans, U.S. EPA Region 5 (*electronic copy*)

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EXHIBIT D

TABLE 1

Double Track Parcel 111E 111F, Gary – BFD # 4201204
August 2020 Groundwater Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Property of Lake County Recorder

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TABLE 1
August 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
	16-SB-04			
Naphthalene	25	1.2	110	460

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

Property of Lake County Recorder

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EXHIBIT E

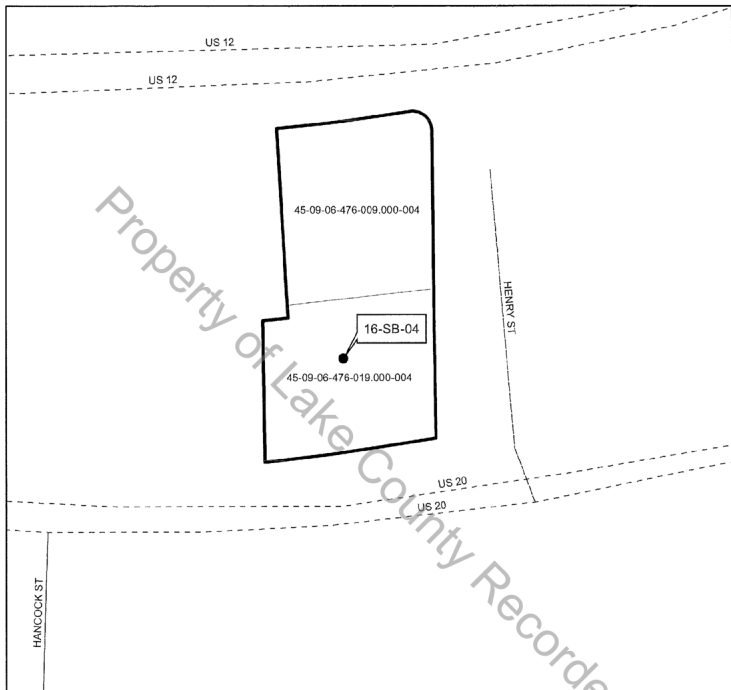
Double Track Parcel 111E 111F, Gary – BFD # 4201204
Site Map Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels

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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BFD 4201204 - 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 25, 2021

Real Estate Info: Warranty Deed - Instrument Number 2021-027378
Recorded 03/26/2021

Sample Info: Sample Location Based on "Figure 4 - Parcels 111E and 111F Sample Locations and Utilities" by WSP USA Inc.

Parcel Info: The Real Estate consists of Parcel Identification Numbers:
45-09-06-476-009.000-004
45-09-06-476-019.000-004

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

Property Info: 6029-47 US Hwy 12 & 6026-48 US Hwy 20, 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 ▭ PARCELS
▭ BROWNFIELD SITE - - - STREET

Lake County



Project Area

