

Recording Requested By and
When Recorded Return to:

Polsinelli PC
150 N. Riverside, Suite 3000
Chicago, Illinois 6060
Attention: Eric G. Greenfield, Esq.

NO. _____
AT THE REQUEST OF:
ALTA SCIENCE ENG.
DATE & HOUR: **5-24-18 4:36 PM**
HENRIANNE K. WESTERBEC
LATAH COUNTY RECORDER
FEE \$ **55.00** BY: *[Signature]*

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, *et seq.*

ENVIRONMENTAL COVENANT

This instrument is an Environmental Covenant ("Environmental Covenant") executed by the **GRANTOR**, Campus Moscow Property Owner, LLC (CMPO) and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. CMPO, as the current property owner, grants this Environmental Covenant to all signatories of this instrument. This Environmental Covenant sets forth protective provisions, covenants, restrictions and, conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. CMPO is a "holder" as defined in Idaho Code § 55-3002(6). As provided in Idaho Code § 55-3008, CMPO, as the holder is also the **GRANTEE**.

Property. This Environmental Covenant concerns real property located at 1102 and 1104 South Main Street, City of Moscow, Parcel Number RPM00000173910, County of Latah, State of Idaho (hereafter referred to as "the Property". The Property is legally described and depicted in Exhibit A.

Property Ownership. CMPO hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the Property, holds fee simple title to the Property and CMPO has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property described above was formerly used as a gas station/garage. During that use petroleum was released into site soil and groundwater. Various site assessment and remedial activities were subsequent performed at the Property to define and remediate the spilled petroleum. On July 25, 2016, FH Vandals, LLC, a California limited liability company ("Vandals") being CMPO's predecessor in interest to the Property, entered into the Voluntary Cleanup Program (VCP) and signed a Voluntary Remediation Agreement (Agreement) with the Department. As part of the Agreement, CMPO, as successor in interest to Vandals, implemented additional characterization and risk assessment activities under Department oversight. This Environmental Covenant is required because the additional assessment activities identified residual concentrations of petroleum-related constituents

remaining in soil and groundwater at the Property. These concentrations are above allowable risk-based concentration as determined by the Department; therefore, future use of the Property shall be limited to protect human health and the environment based on projected future Property use.

Name and Location of Administrative Record. The administrative record for the Property can be found at the Idaho Department of Environmental Quality Lewiston Regional Office, 1118 "F" Street, Lewiston, Idaho.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, CMPO, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

1. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used for residential purposes, agricultural purposes, or any permanently occupied human habitation (including hotels or motels), school, day care or hospital use.
2. There shall be no extraction of groundwater from the Site for any purpose, including, without limitation, drinking by animals or human beings, irrigation, or for industrial or commercial use. Groundwater may be extracted as part of an environmental investigation or remediation project.
3. Excavation or any other disturbances of soil on the Property are prohibited, except that soil may be excavated in conjunction with the Department approved soil management plan provided in Exhibit B.
4. CMPO, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations.

Breach and Cure of Activity and Use Limitations. CMPO, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use limitations, the CMPO or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the CMPO or any successors in interest, and Department.

Amendment by Consent. The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. The CMPO, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

1. Contaminated soils and groundwater are at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. The Environmental Covenant or any amendment or termination shall be recorded by CMPO, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, CMPO, or its successors in interest, shall provide to the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by CMPO, or by its successors in interest, to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

Compliance Reporting. CMPO, or and any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the activity and use limitations remain in place and their compliance with the activity and use limitations.

Enforcement. The Department and any party of the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against CMPO or its successors-in-interest, including subsequent owners of the Property and any other person using the Property. Failure of CMPO, or its successor in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, and/or any party to this Environmental Covenant to require that the CMPO correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against the CMPO or its successors-in-interest, as provided by law or in equity,

including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the new Owner of the Property, shall provide written notice to the Department and each municipality or other local government in which the Property is located, the name and address of all the then Owners of the Property, or part thereof, conveyed. The Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, or by nationally recognized overnight courier to the appropriate address indicated below or at such other place or places as CMPO or its successors or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

OWNER:

Campus Moscow Property Owner, LLC
ATTN: John Kitson and Jim Reiland, Esq.
130 E. Randolph, Suite 2100
Chicago, Illinois 60601

THE DEPARTMENT:

Idaho Department of Environmental Quality
ATTN: State Response Program Manager
1410 N. Hilton
Boise, Idaho 83706

Costs and Expenses. All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any voluntary consent order or other agreement relating to remediation of the Property entered into between the Department and CMPO or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of CMPO or any other responsible party under such voluntary consent order or other agreement. The Department's acceptance hereunder is based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

[no further text on this page]

Signature and Acknowledgments

Accepted:

Idaho Department of Environmental Quality

Signature:

Printed Name: John H. Tippetts

Title: Director, Idaho Department of Environmental Quality

Date: May 1, 2018

State of Idaho)
) ss.
County of Ada)

On this 1 day of May, in the year 2018, before me, a Notary Public in and for said County and State, personally appeared John H. Tippets, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: Rosie M. Alonzo
Residing at: Nampa, Idaho
Commission Expires: 11/21/2020

Accepted:

Campus Moscow Property Owner, LLC,
a Delaware limited liability company

By: 

Name: Michael Hales

Title: Authorized Signatory

Date: April 17, 2018

ACKNOWLEDGMENTS

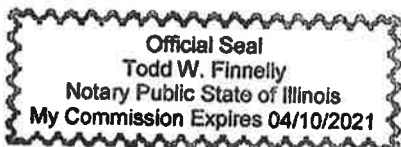
State of Illinois


) ss.

County of Cook

On this day personally appeared before me before me Michael Hales, in his official capacity of Authorized Signatory of CMPO, known to me to be the person described in the foregoing instrument and acknowledged that he executed the same on behalf of CMPO as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17th day of APRIL, 2018.



ILLINOIS 
Notary Public for ~~Illinois~~

Residing at: 130 E. RANDOLPH, STE 2109, CHICAGO, IL

Commission Expires: 4.10.21

EXHIBIT A
TO ENVIRONMENTAL COVENANT:
Legal Description of the Property

A PARCEL OF LAND LOCATED IN THE SW1/4NW1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 5 WEST, B.M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST PROPERTY LINE OF MAIN STREET IN THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, SAID POINT BEING 545.5 FEET NORTH (ON THE CENTER LINE OF THE MAIN STREET) AND N. 89°30' E. 40 FEET OF THE QUARTER CORNER BETWEEN SECTIONS 17 AND 18, IN TOWNSHIP 39 NORTH, RANGE 5 WEST, B.M., AT A GAS PIPE MONUMENT SET IN CONCRETE; RUNNING THENCE N. 89°30' E. 125 FEET TO A GAS PIPE MONUMENT SET IN CONCRETE; RUNNING THENCE NORTH 80 FEET TO A GAS PIPE MONUMENT SET IN CONCRETE; RUNNING THENCE N. 89°30' E. 20 FEET TO A GAS PIPE MONUMENT SET IN CONCRETE; RUNNING THENCE NORTH 100.35 FEET TO A GAS PIPE MONUMENT SET IN CONCRETE ON THE SOUTH LINE OF THE RIGHT OF WAY OF THE NORTHERN PACIFIC COMPANY; RUNNING THENCE N. 87°23' W. 145.15 FEET TO A GAS PIPE MONUMENT SET IN CONCRETE (WHICH POINT IS ON THE EAST PROPERTY LINE OF MAIN STREET AND IS 92 FEET AND 10 INCHES SOUTH OF A GAS PIPE MONUMENT SET AT THE POINT OF INTERSECTION OF THE EAST PROPERTY LINE OF MAIN STREET WITH THE SOUTH LINE OF THE RIGHT OF WAY OF THE MAIN TRACK OF THE NORTHERN PACIFIC RAILWAY COMPANY); RUNNING THENCE SOUTH 188.24 FEET ON THE EAST PROPERTY LINE OF MAIN STREET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE CERTAIN WARRANTY DEEDS TO THE STATE OF IDAHO, IDAHO TRANSPORTATION DEPARTMENT RECORDED UNDER RECORDER'S FEE NOS. 439555 AND 470627.

Such Property depicted below as "Parcel II":

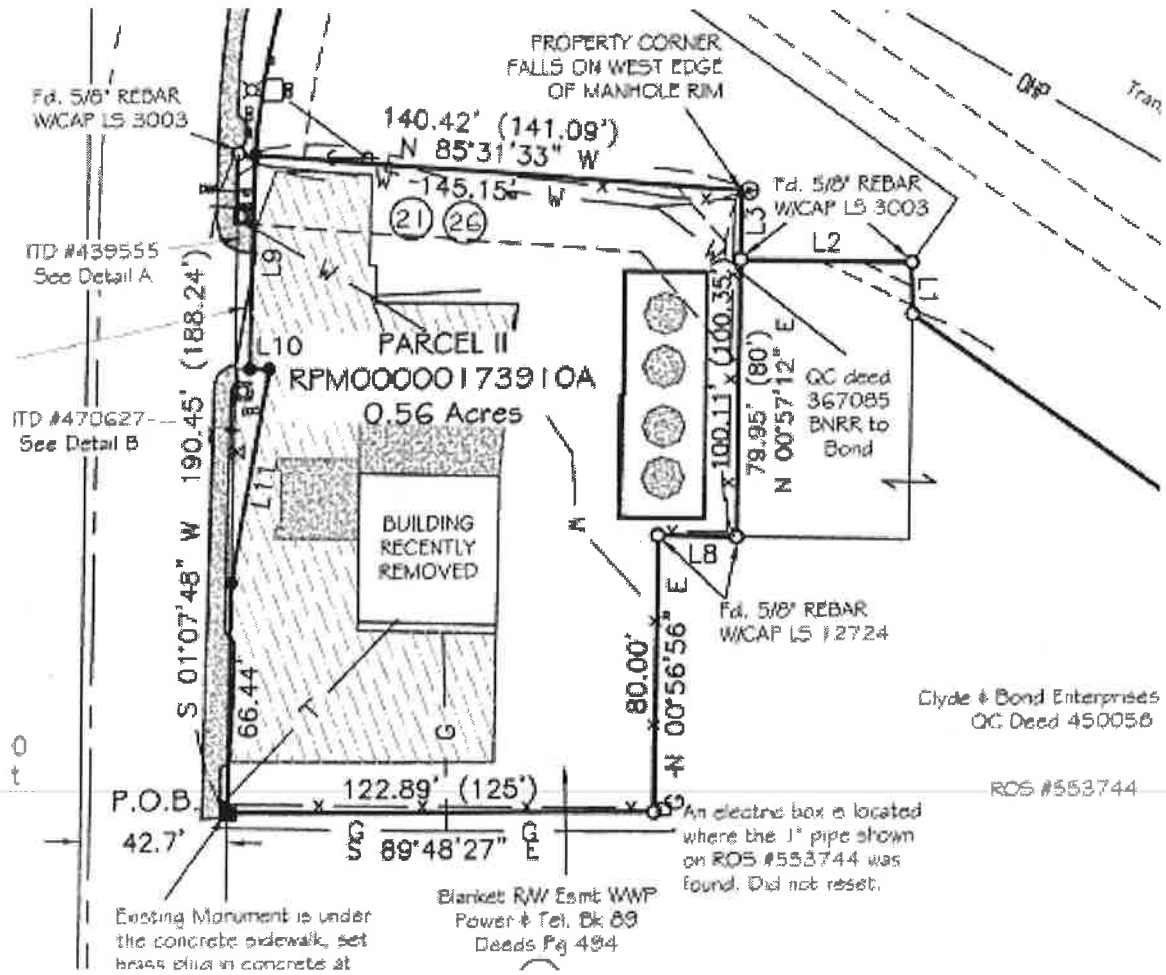


EXHIBIT B
TO ENVIRONMENTAL COVENANT:
Approved Soil Management Plan
(see attached)



www.terragraphics.com

Corporate Office:

121 S. Jackson St., Moscow, Idaho 83843
Ph: (208) 882-7858; Fax: (208) 883-3785

Other Office Locations:

Kellogg, Idaho

Boise, Idaho

Deer Lodge, Montana

Las Vegas, Nevada

Richland, Washington

Pasco, Washington

TECHNICAL MEMORANDUM

To: Roth Desko, CA Ventures

From: Mike Procsal, P.G., TerraGraphics, Boise
Jon Munkers, TerraGraphics, Boise

Date: July 25, 2017

Subject: Soil Management Plan for Sharpe Oil Site located in Moscow, Idaho

1 Introduction

CA Ventures contracted TerraGraphics Environmental Engineering, Inc. to fulfill the Idaho Department of Environmental Quality (IDEQ's) requirement of a Soil Management Plan (SMP) for the property located at 1102 S. Main Street in Moscow, Idaho. There is a potential for encountering petroleum-contaminated soil (PCS) during excavation activities at the property. An Environmental Covenant (EC) is being developed between IDEQ and the owner due to PCS at the property.

The SMP contains procedures on how the construction/excavation contractor (hereafter named "contractor") can identify, handle, store, and sample PCS if encountered. The SMP also includes specifics on Health and Safety, PCS stockpiling, and best management practices (BMPs) for preventing public entry.

1.1 Purpose

The purpose of this SMP is to have an established plan in place so that if PCS is encountered during excavation activities, then affected personnel can manage it accordingly. The SMP fulfills the requirement of the EC, which will likely state that excavation or any other disturbances of the soil onsite (Figure 1) are prohibited, except that soil may be excavated in conjunction with a SMP or other activities that are approved by the Department prior to conducting excavation activities.

1.2 PCS Worker Safety

Site worker preparation activities will be conducted to minimize down time and interruptions of onsite activities if unknown PCS is encountered. These preparation activities are intended to identify health and safety issues, and prepare and coordinate Site individuals with their respective responsibilities.

Petroleum constituents in soil present a potential hazard. Exposure prevention strategies, monitoring requirements, and other pertinent safety information must be prepared by the contractor in a Site-specific Health and Safety Plan (HASP). HASPs should include procedures as needed to protect workers and the public from soils impacted with petroleum constituents. The HASP must be in place before any work begins. The HASP must include a written plan identifies potential risks and addresses how the contractor responds to any identified potential contamination. All field work shall be conducted in accordance with the HASP. Contractor will identify training addressing site-specific hazards as determined by their Site Safety Officer. Contractor must fully comply with all applicable federal, state and local requirements. Contractor will be expected to provide their own Personal Protective Equipment as specified in the HASP.

2 PCS Identification

PCS can be identified most notably by a petroleum odor, but also may include the presence of free oil or staining. Free oil is liquid oil in its natural state, which could potentially be drained (leached) or otherwise extracted from the soil. The appearance of oil staining is not always consistent, but varies depending on the nature of the oil, the soil type, and the age of the release. Staining associated with old petroleum contamination often has a greenish hue, but may also be brown or black. The olfactory sense is the most sensitive instrument for identifying petroleum contamination in the field. Therefore, a petroleum odor may be noted although there is no visible sign of oil or staining. In some instances, decaying organic matter can produce an odor similar to petroleum. As an alternative to visual and olfactory identification methods, instruments such as a Photo-ionization detector (PID), may be used to distinguish PCS. Typical action levels for identifying PCS are approximately 5 to 10 parts per million. PIDs can be rented from many different environmental equipment vendors.

3 PCS Stockpiles and Excavation

The potential for exposure to impacted PCS at the surface and subsurface remains at the Site (Figure 2). PCS encountered during excavation must be contained so contamination is not spread to other soils or to water through infiltration, runoff, or runoff. If not directly loaded into haul trucks, the contractor should identify a suitable stockpile location onsite where the excavated PCS will not interfere with construction or other excavation activities. Stockpiling of the PCS will not be conducted near public or private water supply wells, away from public access, or in areas where leachate can readily discharge to surface waters (including storm drains). Stockpiles should be placed on visqueen for characterization until analytical results indicate where the PCS can be disposed. The stockpiles should not be removed until analytical results are received and approval from the appropriate disposal facility has been obtained.

Based on the analytical results from previous assessment activities, the soils in the restricted area did not exhibit any of the characteristics defining it as “hazardous” including ignitability, corrosivity, reactivity, or toxicity. However, if petroleum fuel in its free product form (gasoline or diesel) is encountered during excavation, then soils should be considered and handled as hazardous. The material should be stored as such until analytical results confirm whether or not the material is characterized as hazardous. Any soils characterized as Hazardous Waste, upon generation, will be stored in containers, tanks or containment buildings as defined by Resource

Conservation and Recovery Act and the Toxic Substances Control Act. Stockpiled soils that are determined to be Hazardous Waste will be transferred to such storage areas within a reasonably short period of time.

If not directly loaded for transport, the excavated PCS will be stockpiled onsite prior to off-hauling. It will be placed on visqueen over a paved surface and covered with plastic. The plastic sheeting shall be held down sufficiently to properly contain the PCS. If water is present in the stockpiled soil, the contractor shall locate the stockpile so that the water drains back into the excavation site or use other site control measures to prevent discharge of the water to waterways including storm drain inlets during stockpiling, loading, and transport. In addition, as a BMP, the stockpile areas should be secured around the entire perimeter with fencing to prevent public entry and bermed to prevent leaching. Another BMP to prevent accidental leaching is placement of straw wattle around the perimeter of the stockpile

If PCS is located, petroleum hydrocarbon odors are expected, therefore, the Site Safety Officer will monitor operations for excessive odors and direct the general contractors to take measures such as a change in operations or equipment in order to minimize noticeable or nuisance odors from leaving the Site.

4 PCS Sampling and Disposal

If PCS is encountered in areas without prior analytical, it should be sampled at a rate of four (4) samples per one hundred (100) cubic yards so that each sample is representative of approximately 25 cubic yard- segregated stockpiles. The PCS will be characterized and will be analyzed for those parameters identified as the acceptance criteria for PCS in the selected disposal facility's operating plan. Typical parameters include total petroleum hydrocarbons (TPH) as gasoline and diesel, however acceptance criteria vary by facility. Samples will be collected using a 5 point composite approach. Each of the 5 points will be distributed spatially across each 25 cubic yard sampling area. Each of the 5 points shall be equal in soil volume to make up 1 sample.

Results from the laboratory should be requested for a quick turnaround (3-day maximum).

Should excavated material be in a transportable state (i.e. no free liquids and reasonably dry), the contaminated material will be loaded into dump trailers and transported to the appropriate facility. Soil will be transported in accordance with United States Department of Transportation, and other applicable regulations. If the material is a hazardous waste, then the hauler will be licensed in states affected by the transport, otherwise a common carrier will be used.

Upon discovery of PCS that will need to be removed, contractor will notify:

Derek Young

Voluntary Cleanup Program Manager / General Remediation Program Manager
Waste Management and Remediation Division
Idaho Department of Environmental Quality
1410 North Hilton
Boise, ID 83706
phone: 208-373-0525
fax: 208-373-0154
derek.young@deq.idaho.gov

Eric Traynor

Brownfields Response Program Manager
Idaho Department of Environmental Quality
(208) 373-0565
Eric.traynor@deq.idaho.gov

5 PCS Reporting

Records of all activities (including drawings, as applicable), with respect to work performed by the contractor must be compiled and maintained as part of the project documentation, and copies furnished to IDEQ as necessary. As built records of all work, analytical results, worker records and other plans must be submitted to IDEQ upon request.



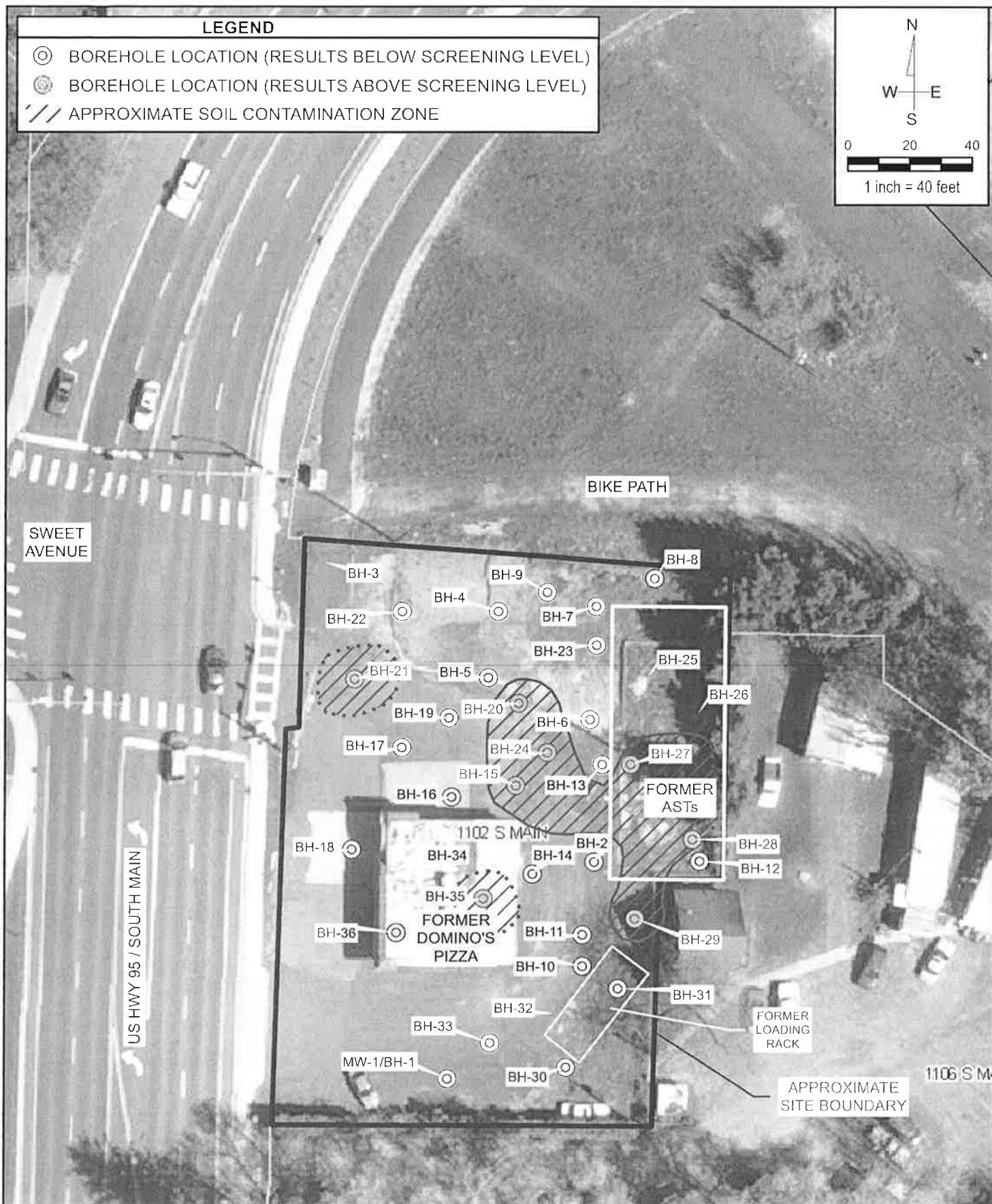
LEGEND

- ⊙ BOREHOLE LOCATION (RESULTS BELOW SCREENING LEVEL)
- ⊙ BOREHOLE LOCATION (RESULTS ABOVE SCREENING LEVEL)
- /// APPROXIMATE SOIL CONTAMINATION ZONE



0 20 40
1 inch = 40 feet

U:\Moscow\Clients\idaho\FH_Vandals\fhvandals_berlings_20170712.mxd



TerraGraphics
Environmental Engineering, Inc.
www.TerraGraphics.com

PRINT DATE

July 13, 2017

PROJECT NUMBER

16078

REQUESTOR

M. Procsal

PROJECT MANAGER

M. Procsal

CARTOGRAPHER

B. Bailey

PROJECT NAME

FH-VANDALS LLC
SITE ASSESSMENT
1104 SOUTH MAIN STREET
MOSCOW, ID 83843

FIGURE 2

**ZONE OF KNOWN SOIL
CONTAMINATION**