



west virginia department of environmental protection

Division of Land Restoration
601 57th Street SE
Charleston, WV 25304
(304) 926-0455

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

September 27, 2010

Mr. William G. Morrison
Triad Engineering, Inc.
4980 Teays Valley Road
Scott Depot, WV 25560

Certified mail # 91 7108 2133 3936 2979 6076

RE: Land Use Covenant for "DOH Buckhannon Eq Div"
U.S. Route 33 & Brushy Fork Road, Buckhannon , Upshur County, VRP # 08520

Dear Mr. Morrison:

Enclosed please find the signed and notarized Land Use Covenant for the subject parcel.

Please make arrangements to have the land use covenant properly recorded with the Upshur County Clerk, and request the Clerk to return a copy of the recorded instrument to my attention:

Mr. Ken Ellison, Director
WVDEP, Division of Land Restoration
601 57th Street
Charleston, WV 25304

The Land Use Covenant will become a part of the Certificate of Completion to be issued for the subject site, once the Final Report is completed and approved..

Thank you for your attention to this matter, and please feel free to contact Assistant Director Don Martin (304-926-0499, ext. 1275) or me if you have any questions.

Sincerely,

Ken Ellison
Director

Enclosure

C: Pasupathy Ramanan, Project Manager
Don Martin
file

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

The legal description and survey plat for the property is available in **Attachment 1, Site Legal Description and Survey Plat (Plotted 04/30/2010, Total area 3.55 acres).**

Activities on and uses of the above describe property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- 1) Use of the Property for residential purposes as defined in W. Va. Code §22-22-2(bb).
- 2) Installation of groundwater wells or the collection of groundwater by any means for any purpose except monitoring.

The current owners of record of the property, and their contact information, are:

West Virginia Department of Transportation, Equipment Division
P.O. Box 610
Buckhannon, West Virginia 26201
ATTN: Mr. Robert G. Andrew, Director
(304) 472-1750
bob.g.andrew@wv.gov

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following are all of the holders of this covenant:

West Virginia Department of Transportation, Equipment Division
P.O. Box 610
Buckhannon, West Virginia 26201

The facts regarding the remediation response project at this property are:

During an initial site characterization in 2003, petroleum hydrocarbons were detected in soil and groundwater at concentrations greater than their respective industrial *de minimis* values. Also, light non-aqueous phase liquid (LNAPL) hydrocarbons were found on groundwater within the courtyard area. Four groundwater recovery wells were installed in 2004 to perform monthly multi-phase extraction events that continued through January 2005. Quarterly groundwater extraction events continued through the fourth quarter 2005, at which time LNAPL was no longer detected in the recovery wells. A site characterization was performed in June 2008. Laboratory analyses detected

VOC (benzene, naphthalene, total petroleum hydrocarbons – diesel and gasoline range organics) and metals (cadmium and lead) at concentrations greater than their respective groundwater risk based concentrations in ground water from monitoring wells MW-1, MW-2, and MW-6, located within the courtyard area. To ensure that natural attenuation is occurring, groundwater samples will be obtained from monitoring wells MW-1, 2, 3, and 5 on a semi-annual basis for two years and analyzed for BTEX, PAHs, Lead and Cadmium. Contaminants of potential concern (COPC) were not detected at concentrations greater than their respective industrial soil *de minimis* values in surface and subsurface soil samples. The conclusion of the risk assessment is that constituents associated with the DOH Equipment Division pose negligible potential for human health risk for indoor workers, construction workers, or for ecological risk.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

The *West Virginia Department of Transportation, Equipment Division* shall conduct inspections of the property to monitor compliance with this Land Use Covenant at least 2 times per year, and shall submit two (2) signed copies of the inspection monitoring report to the WVDEP, DLR headquarters in Charleston, within thirty (30) days of the inspection.

This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant was issued.

This covenant shall not be amended, modified or terminated except by written instrument executed in accordance with W. Va. Code § 22-22B-10, by and between the Owner at the time of the proposed amendment, modification or termination, the Secretary of the West Virginia Department of Environmental Protection, and the holders of this covenant. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the Upshur County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the *West Virginia Department of Environmental Protection, Division of Land Restoration, Office of Environmental Remediation, 601, 57th Street SE, Charleston, WV 25304* and is entitled *West Virginia Department of Transportation, Equipment Division Voluntary Remediation Project, VRRP # 08520*.

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

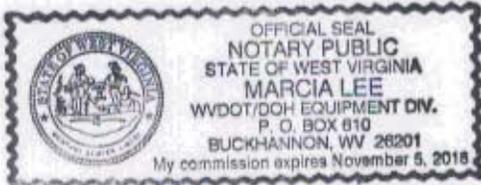
Robert H. Anderson
WVDOH Equipment Division

Date: 9-15-2010

I, Marcia Lee, a Notary Public in and for the County of Upshur, State of West Virginia, do hereby certify that the holder(s) whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder(s).

Given under my hand this the 15th day of Sept., 2010.

My commission expires: 11-5-18.



Marcia Lee
Notary Public

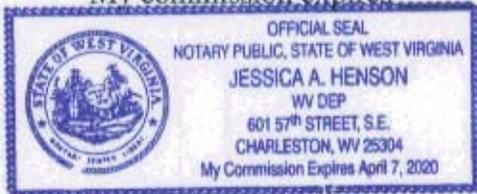
Ken Ellison, Director
Secretary, WV Department of Environmental Protection

9/27/10
Date

I, Jessica A. Henson, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, whose name is signed to the writing above as the representative of the agency, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 27th day of September, 2010.

My commission expires April 7, 2020.

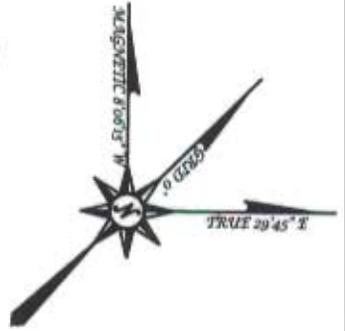


Jessica A. Henson
Notary Public

The Clerk will return the recorded document to:
Mr. Ken Ellison, Director
WVDEP, DLR
601 57th Street
Charleston, West Virginia 25304

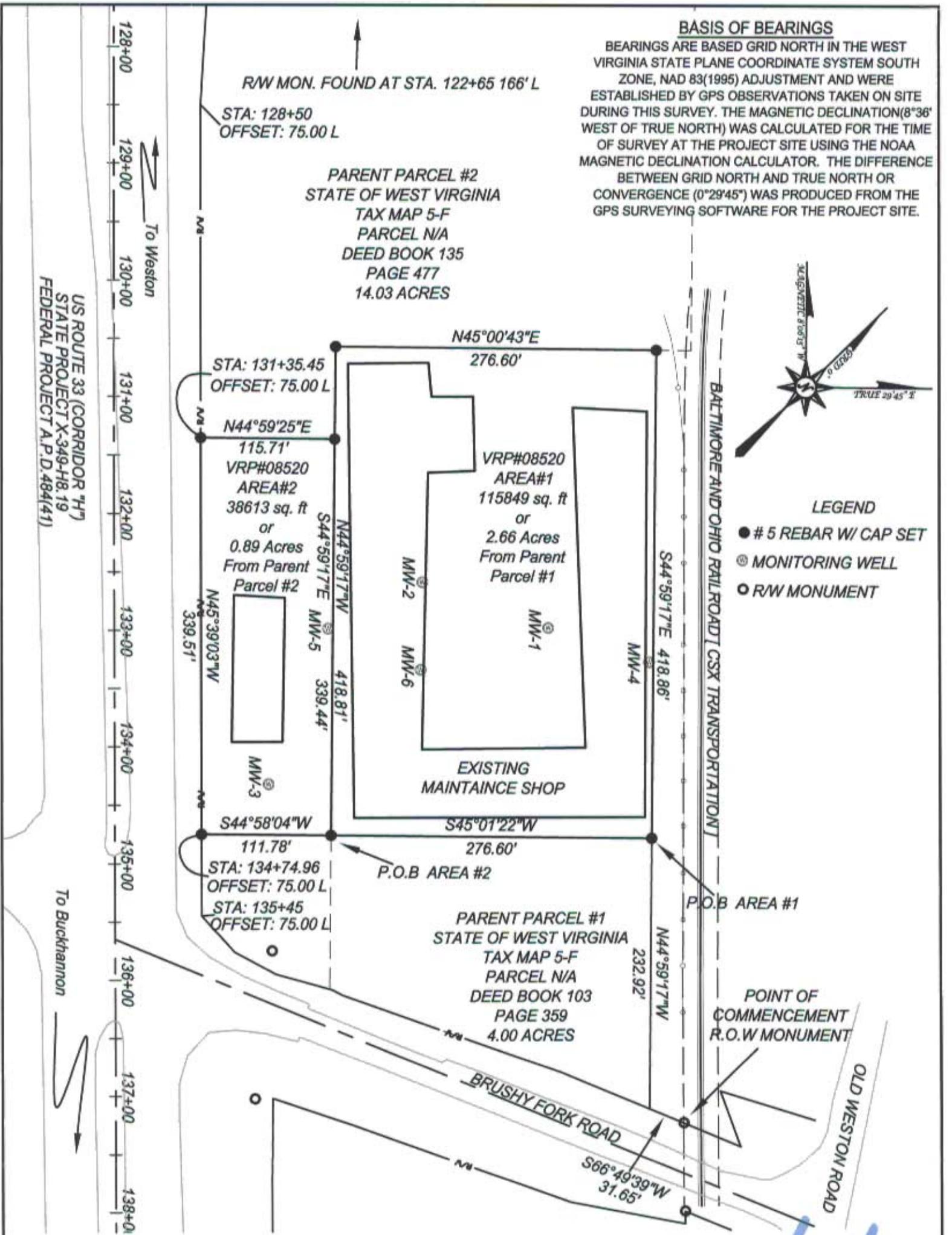
BASIS OF BEARINGS

BEARINGS ARE BASED GRID NORTH IN THE WEST VIRGINIA STATE PLANE COORDINATE SYSTEM SOUTH ZONE, NAD 83(1995) ADJUSTMENT AND WERE ESTABLISHED BY GPS OBSERVATIONS TAKEN ON SITE DURING THIS SURVEY. THE MAGNETIC DECLINATION(8°36' WEST OF TRUE NORTH) WAS CALCULATED FOR THE TIME OF SURVEY AT THE PROJECT SITE USING THE NOAA MAGNETIC DECLINATION CALCULATOR. THE DIFFERENCE BETWEEN GRID NORTH AND TRUE NORTH OR CONVERGENCE (0°29'45") WAS PRODUCED FROM THE GPS SURVEYING SOFTWARE FOR THE PROJECT SITE.



LEGEND

- # 5 REBAR W/ CAP SET
- ⊙ MONITORING WELL
- R/W MONUMENT



WE DO HEREBY CERTIFY THAT THE FOREGOING PLAT WAS PREPARED FROM AN ACTUAL FIELD SURVEY OF THE PREMISES AND THAT SAME SHOWS THE LOCATION OF THE BOUNDARIES AND ALL IMPROVEMENTS THEREON; THAT ALL VISIBLE ENCROACHMENTS ON SUBJECT PREMISES BY IMPROVEMENTS ON ADJOINING PREMISES OR ENCROACHMENTS ONTO ADJOINING PREMISES BY IMPROVEMENTS ON SUBJECT PREMISES ARE SHOWN; AND THAT EASEMENTS APPARENT FROM A VISUAL INSPECTION OR EASEMENTS KNOWN TO THE UNDERSIGNED ARE SHOWN HEREON; AND THAT SAID PREMISES ABUTS UPON A STREET IN APPARENT PUBLIC USE, UNLESS OTHERWISE SHOWN.

TRIAD ENGINEERING, INC. 4/30/10
E. M. McCarty, Jr.
EARNEST M. MCCARTY, JR., PROFESSIONAL SURVEYOR #1001

PLOTTED-4/30/2010 11:37 AM

4980 Teays Valley Rd.
Scott Depot, WV 25560
Phone 304.755.0721
Fax 304.755.1880

PLAT OF SURVEY FOR WV DOH EQUIPMENT DIVISION VRP SITE #08520 BUCKHANNON TAX DISTRICT, UPSHUR COUNTY, WEST VIRGINIA

SURVEYOR C.J. HAVERLAND	SURVEY DATE 03-05-2010	STATE WV
SUPERVISED MCCARTY	DRAWING DATE 03-16-2010	COUNTY UPSHUR
DRAWN K.KENT	SCALE 1"=100'	DISTRICT BUCKHANNON
CHECKED E.M. MCCARTY	FILE NAME Boundary	WATERSHED FINK RUN

**LEGAL DESCRIPTION FOR
WV DOH EQUIPMENT DIVISION
VRP SITE #08250 AREA 1
UPSHUR CO. WEST VIRGINIA**

A Voluntary Remediation Program (VRP) Area being created from a parcel of land held by the West Virginia Department of Transportation, Division of Highways, of record in Deed Book 103 at Page 359 in the Upshur County Clerk's Office and graphically shown on Tax Map 5-F in the Upshur County Assessor's Office. The said VRP Area being described as follows:

COMMENCEING at a Right of Way monument located southwest of the intersection of the CSX Railway Right of Way line and Brushy Fork Rd (County Route 7).

Thence, South 66° 49' 39" West for a distance of 31.65 feet to a point,

Thence, North 44° 59' 17" West for a distance of 232.92 feet to a #5 rebar and cap set this survey stamped VRP #08520 being the **POINT OF BEGINING** of VRP #08520 Area #1.

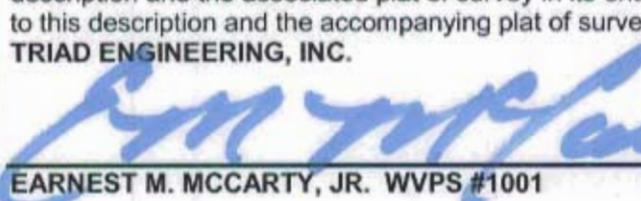
Thence, crossing the parent parcel with a new line, South 45° 01' 22" West for a distance of 276.60 feet to a #5 rebar and cap set this survey stamped VRP #08520, said point being on the line common to a second WVDOT parcel of record in Deed Book 135 at Page 477 and graphically shown on Tax Map 5-F

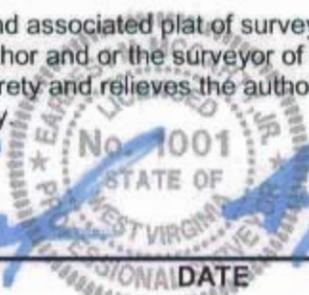
Thence, with the line common to the second WVDOT parcel, North 44° 59' 17" West for a distance of 418.81 feet to a #5 rebar and cap set this survey stamped VRP #08520, said point being corner common to the second WVDOT parcel.

Thence, continuing with the second WVDOT parcel, North 45° 00' 43" East for a distance of 276.60 feet to a #5 rebar and cap set this survey stamped VRP #08520.

Thence, South 44° 59' 17" East for a distance of 418.86 feet to the **POINT OF BEGINNING** containing 115849 sq. ft. more or less, as surveyed by Chris Haverland under the supervision of Earnest M. McCarty, Jr., P.S. #1001 of Triad Engineering, Inc. on March 5, 2010 and as shown as Area #1 on the plat of survey titled "PLAT OF SURVEY FOR WV DOH EQUIPMENT DIVISION VRP SITE #08250 UPSHUR CO. WEST VIRGINIA" said plat being of record in Deed Book _____ at Page _____ in the Upshur County Clerk's Office.

Any omissions, edits, or revisions to this description and associated plat of survey whether in part or in whole without the expressed written consent of the author and or the surveyor of record does void this description and the associated plat of survey in its entirety and relieves the author of any and all liability to this description and the accompanying plat of survey
TRIAD ENGINEERING, INC.


EARNEST M. MCCARTY, JR. WVPS #1001



DATE

3/30/10