

BCC



ATTORNEYS AT LAW

Jon A. Schmaltz
Valparaiso Office
schmaltz@bcelegal.com

May 5, 2017

Indiana Brownfields Program
ATTN: Doug Lam
100 N Senate Avenue, Room 1275
Indianapolis, IN 46204

VIA FIRST CLASS MAIL

Re: **Our Client: 347 Melton, LLC**
Bona Fide Prospective Purchaser: Deans Auto Sales & Service, Inc.
Brownfield #4161211
Our File No. 15374.0005

RECEIVED

MAY 8 2017

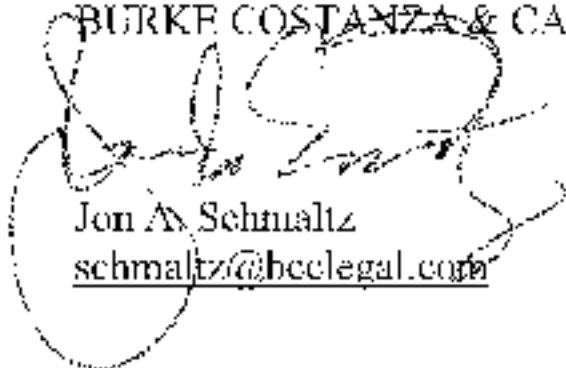
INDIANA FINANCIAL AUTHORITY
ENVIRONMENTAL PROGRAMS

Dear Mr. Lam:

Enclosed is a copy of the **Environmental Restrictive Covenant** which has been recorded in the Porter County Recorder's Office as record number 2017-010327 on May 2, 2017. Should you have any questions or concerns, please do not hesitate in contacting me.

Sincerely,

BURKE COSTANZA & CARBERRY LLP


Jon A. Schmaltz
schmaltz@bcelegal.com

JAS:arr

Enclosure: Environmental Restrictive Covenant

Advisors you want. Advocates you need.

24

2017-010327
STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD
05/07/2017 11:18 AM
JON MILLER, RECORDER
REC FEE: 63.00
PAGES: 26

1 X: 405213

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this 1 day of May, 2017, by 347 Melton, LLC ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Porter, Indiana, which is located at 347 West Melton Road in Chesterton, 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 deed on Jan. 24, 2017, and recorded on Feb. 7, 2017 as Deed Record 2017-003506 in the Office of the Recorder of Porter County, Indiana. The Real Estate, which is three parcels on the above-referenced deed, consists of approximately 4.0 acres and is identified by the State by parcel identification numbers 64-06-05-401-002.000-024, 64-06-05-401-003.000-024 and 64-06-05-401-004.000-024. 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 the Owner to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and petroleum relating to historical operations on the Real Estate, Program site number BFD #4161211.

WHEREAS: The Comfort Letter, as approved by the Department, provides that a certain contaminant of concern ("COC") was detected in soil on the Real Estate but will not pose an unacceptable risk to human health at the detected concentration 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 COC is arsenic.

WHEREAS: Soil and ground water on the Real Estate were sampled for volatile organic compounds ("VOCs"), polynuclear aromatic hydrocarbons ("PNAs"), and Resource Conservation and Recovery Act ("RCRA") metals. Investigations detected a level of arsenic in soil above its residential direct contact screening level ("RDCSL") established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions). The soil analytical result above the applicable RCG screening level is 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 COC was detected in soil above applicable RCG screening level.

WHEREAS: The Department has recommended additional soil sampling on the Real Estate and not approved closure of environmental conditions on the Real Estate under the Remediation Closure Guide. However, the Department has determined that the land use restriction contained in this Covenant will enable the Real Estate to be used safely for continued commercial/industrial use or potential residential redevelopment.

RECORDED
MAY 8 2017
INDIANA BROWNFIELD AUTHORITY
ENVIRONMENTAL PROGRAMS
3cc

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: <http://www.in.gov/idem/4101.htm>.

NOW THEREFORE, 347 Melton, LLC subjects the Real Estate to the following restrictions and provisions, which shall be binding on 347 Melton, LLC and all future owners:

I. RESTRICTION

1. Restriction. The Owner and all future owners shall:

(a) Neither engage in nor allow drilling or excavation of soil on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Real Estate during any residential construction without first submitting a work plan for approval by the Department at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Real Estate during any residential construction activities must be conducted in accordance with a Department-approved work plan, including all applicable requirements of IOSHA/OSHA.

i. Soil in any area on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Real Estate on which standalone single family or duplex residential housing will be constructed must be sampled down to 10 feet below ground surface. Any soil determined through such sampling to be contaminated above applicable RCG residential screening levels must be excavated, leaving only soil that meets RCG RDCSLs in place.

ii. Restore soil disturbed as a result of any excavation and construction activities on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Upon IDEM's request, the Owner shall provide the Department with documentation showing the excavated and restored area, and any other area affected by excavation or construction activities, does not represent such a threat.

iii. Soil that is removed, excavated or disturbed on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.
5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF PORTER 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 restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Porter 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:
347 Melton, LLC
800 Indiana Boundary Road
Chesterton, Indiana 46304
ATTN: Steven Slater

To Department:
Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Doug Lam

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.

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

IN WITNESS WHEREOF, 347 Melton, LLC, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 1st day of May, 2017.

347 Melton, LLC

By: Interlink Business Solutions, its Manager

By: Steven G. Slater
Steven G. Slater, its President

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steven G. Slater, President of Interlink Business Solutions, manager of 347 Melton, LLC, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 1 day of May, 2017.



Angela R. Reel
Angela R. Reel, Notary Public
Residing in Jasper County, Indiana

My Commission Expires: 7/11/18

This instrument prepared by: Jon A. Schmitz
156 S. Washinton Street
Valparaiso, IN 46383
(219) 769-1313

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. Jon A. Schmitz

EXHIBIT A

Deed for the Real Estate

COPY

2017-003506
STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD
02/07/2017 1:45 PM
JON MILLER, RECORDER
REC FEE: 18.00
PAGES: 2

THIS FORM HAS BEEN PREPARED FOR USE IN THE STATE OF INDIANA BY LAWYERS ONLY. THE SELECTION OF A FORM OR INSTRUCTIONS, FILING IN BLANK SPACES, STRIKING OUT PROVISIONS AND INSERTION OF SPECIAL CLAUSES, MAY CONSTITUTE THE PRACTICE OF LAW WHICH SHOULD ONLY BE DONE BY A LAWYER.

MAIL TAX BILLS TO:
347 Melton Road
Burns Harbor, IN 46304

WARRANTY DEED

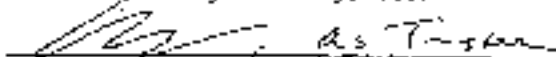
THIS INSTRUMENT WITNESSETH, 347 West Melton Road LLC, (GRANTOR) of Porter County in the State of INDIANA,

QUIT CLAIM(S) TO: 347 Melton LLC, (GRANTEE) of Porter County in the State of INDIANA

in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate in Porter County, in the State of Indiana: 347 Melton Road, Burns Harbor, Indiana 46304

See Attached Exhibit A.

Dated this 24th day of January, 2017.


Kenneth B. Elwood for
347 West Melton Road LLC

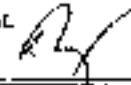
64-06-05-401-003.000-024
64-06-05-401-004.000-024
64-06-05-401.002.000-024

STATE OF INDIANA)
COUNTY OF PORTER)

Before me, the undersigned, a Notary Public in and for said County and State, this 24th day of January, 2017, personally appears: Kenneth B. Elwood for 347 West Melton Road LLC, and he acknowledged the execution of the foregoing deed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.


My commission expires _____
Resident of _____ County


Signature _____



This instrument prepared by John M. Rhoads III, Rhoads & Elwood, Attorney at Law, 3200 Willowcreek Rd, Portage, Indiana, 46368

I have taken all reasonable care to make sure that my social security number is not on this document.


Signature: Pamela K. Coughlin
Print

72016-1152 FIDELITY NATIONAL

FIDELITY NATIONAL
TITLE COMPANY
72016-1152

DULY ENTERED FOR TAXATION SUBJECT TO
FINAL ACCEPTANCE FOR TRANSFER
Feb 07 2017
Vicki Urbanik
AUDITOR PORTER COUNTY

MDP

ELIGIBLE FOR
FILING WITH THE
COUNTY AND TOG,
PORTER COUNTY
ASSESSOR'S

720161152

EXHIBIT A

PARCEL 1:

A parcel of land in the Northwest Quarter of the Southeast Quarter of Section 5, Township 35 North, Range 6 West of the Second Principal Meridian, in Porter County, Indiana, described as follows:

BEGINNING at a point on the North line of said Southeast Quarter, 90 feet East of the Northwest corner of said Southeast Quarter; thence East, along said North line, 278.7 feet to an iron pipe; thence South, parallel with the West line of said Southeast Quarter, 353.8 feet to the centerline of U.S. Highway No. 20; thence West, along the centerline of said road, 278.7 feet; thence North, parallel with said West line of said Southeast Quarter, 354.5 feet to the point of beginning.

PARCEL 2:

The East 2 acres of the West 5 acres of that part of the North Half of the Southeast Quarter of Section 5, Township 36 North, Range 6 West of the Second Principal Meridian, in Porter County, Indiana, lying North of the centerline of U.S. Highway No. 20.

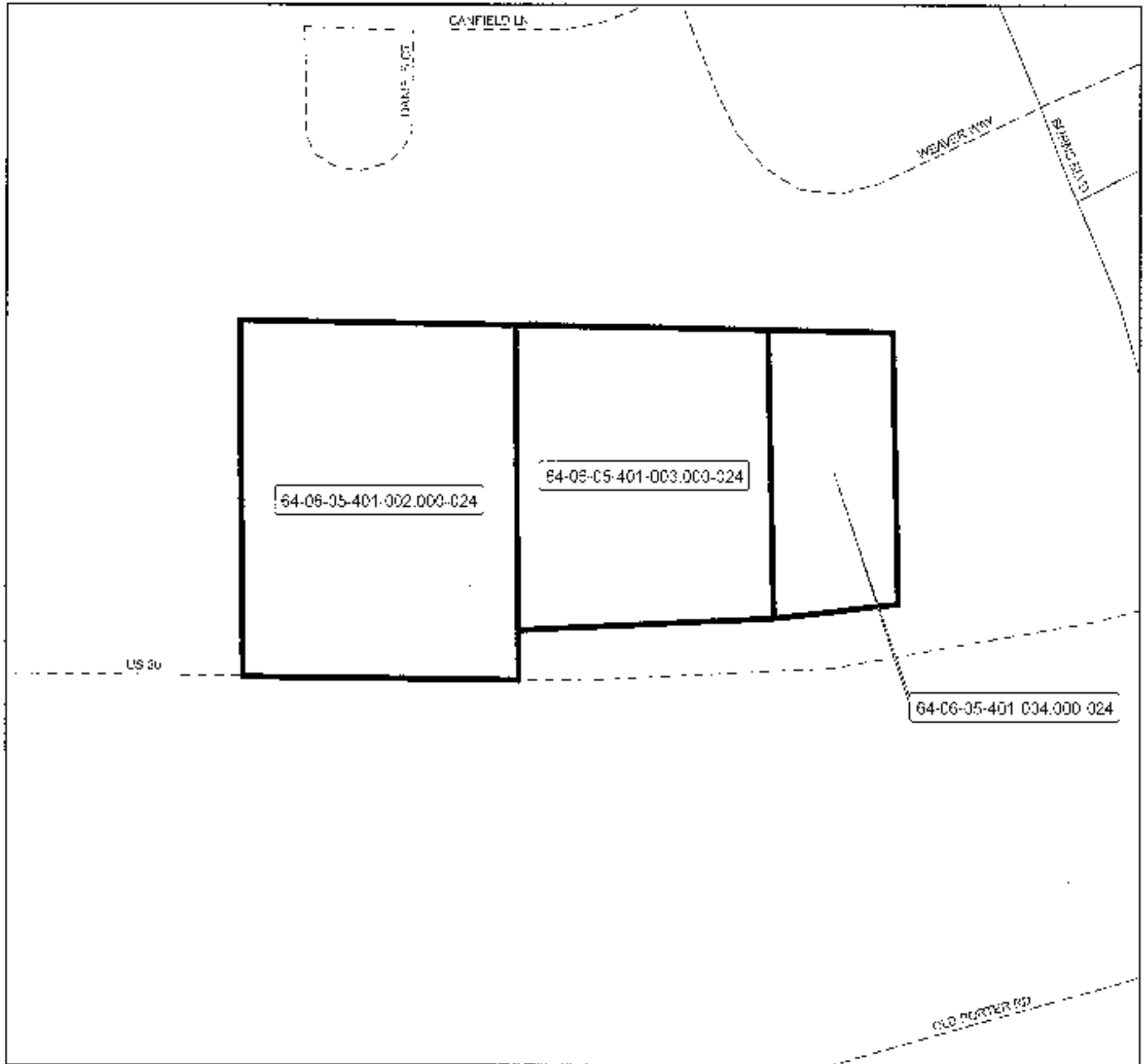
PARCEL 3:

The East 1 acre of the West 6 Acres of that part of the North Half of the Southeast Quarter of Section 5, Township 36 North, Range 6 West of the Second Principal Meridian, in Porter County, Indiana, lying North of the centerline of U.S. Highway #20.

EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program # 4161211



Mapped By: Mike H., IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, April 12, 2017
Parcel ID: 64-06-05-401-002.000-024
 64-06-05-401-003.000-024
 64-06-05-401-004.000-024
PLSS Info: Section 6, T38N, R8W, Westchester Township, Porter County, IN
Property Info: 347 Milton Road, Burns Harbor, IN
Disclaimer: This map is intended to serve as an aid in geographic representation only. This information is not warranted for accuracy or other purposes.

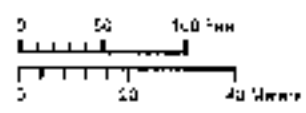


EXHIBIT C

Copy of Comfort Letter



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis IN 46204

(800) 451-5577 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

April 13, 2017

Steven Slater
347 Melton, LLC
800 Indiana Boundary Road
Chesterlon, Indiana 46304

Re: **Comfort Letter –
Bona Fide Prospective Purchaser**
Deans Auto Sales & Service Inc.
347 West Melton Road
Chesterlon, Porter County
Brownfield # 4161211

Dear Mr. Slater:

In response to the request by Ameresco Engineering, Inc. (AEI) on behalf of 347 Melton, LLC (Prospective Purchaser) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 347 West Melton Road, Chesterlon, Porter County (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this **Comfort Letter** to outline applicable limitations on liability with respect to hazardous substances and petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Prospective Purchaser must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Prospective Purchaser 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 three parcels that comprise the Site total 4.8 acres and share the address of 374 West Melton Road, as outlined on Table 1 below. The Site is currently a vacant automotive service and repair facility in a residential area. Historically, Parcel # 1 was used for agricultural purposes from prior to 1951 until at least 1973. In 1976, the Site began being utilized as an automotive repair and service facility. Parcel #1 consists of a



A State that Works

9,000 square foot (ft²) slab on grade office/shop building, asphalt parking, and a 27,500 ft² gated gravel storage yard with a small storage shed. Parcel #2 was used for agricultural purposes from prior to 1951 until at least 1973. Currently, approximately 20,000 ft² of asphalt parking covers the parcel, with the remaining area vacant. Parcel #3 has been agricultural or vacant land from at least 1951 to present day. The Prospective Purchaser states that the potential or intended reuse of the Site will be for commercial and/or residential purposes.

**TABLE 1
 Parcel Information**

Parcel #	State Parcel #	Former Use (Approximate Years)	Acreage
1	64-06-05-401-002.000-024	Agricultural (prior to 1951 to 1973) Auto Service Facility (from at least 1976 to present)	2.3
2	64-06-05-401-003.000-024	Agricultural (prior to 1951 to 1973) Asphalt Parking Lot (from at least 1976 to present)	1.7
3	64-06-05-401-004.000-024	Agricultural or Vacant (prior to 1951 to present)	0.8

The Site is situated within a mixed residential and commercial area. The Site is bordered on the north by subdivided residential housing; to the east by undeveloped land and entrance to the subdivision; to the southwest (across US Highway 20) is single family residential housing; to the southeast (across US Highway 20) by a commercial property; and to the west by a single family residence.

As part of this request, the Prospective Purchaser provided the Program with a *Phase I Environmental Site Assessment* dated November 28, 2016 (2016 Phase I ESA) prepared by AEI for the Prospective Purchaser. The 2016 Phase I ESA was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312. In an effort for the Prospective Purchaser to qualify as a BFPP, Steve Slater, Managing Member of 347 West Melton Road, LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The 2016 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

- Contaminants identified in subsurface soil and ground water

In addition to the REC identified above, IDEM has identified the following Site condition which it would also consider a REC:

- Floor drains that were identified as part of a REC in the 2013 Phase I ESA were observed to be clean and free of petroleum; however, unknown historical impacts related to operation of the oil/water separator and its connection to the mound septic/leach field are a REC.

Prior due diligence was performed by AEI and reported in a *Phase I Environmental Site Assessment* (2013 Phase I ESA), dated December 18, 2013. The 2013 Phase I ESA identified the following RECs associated with the Site:

- Poor management practices of on-Site petroleum and hazardous materials were observed on Parcel #1. Several areas of staining/spills were observed in the north gravel parking area. Approximately 15-20 steel 55-gallon drums of unknown contents along with an equal number of 5-gallon containers of hydraulic fluid were observed. Most hydraulic fluid containers were empty with de minimis quantity, with approximately 4 still containing significant amount of product.

Although not listed as a REC, the main service bay had numerous floor mounted lift stands that were powered by surface hydraulic pumps and reservoirs. While no staining was observed related to the lifts, hydraulic fluid containers were observed as having been discarded in the north gravel parking area, which was part of the poor management of materials.

- Two above ground storage tanks (ASTs) were observed on the Site. One steel 1,200 gallon waste oil AST was located on the north side of the building, containing approximately one inch of product. No secondary containment existed, and although no signs of a past release were observed, the amount left in the tank was identified as a REC for a potential release. The second tank was a discarded empty heating oil AST in the northwest gravel parking area.
- Potential for petroleum release to enter the two floor drains observed inside the building. One floor drain within the main shop was full of dust and debris, and the other within the north paint booth area was observed with oil/sludge on top of the standing water. Both drains potentially drained to an oil/water separator on the east side of the building. The observed oil indicated a release, and with the unknown connections to the oil/water separator and discharge point, this system was identified as a REC.
- Although the Site was currently hooked into the City of Burns Harbor Sanitary Sewer, historically the drains potentially discharged into a mound leach/septic field observed east of the parking lot. It is estimated that the structure was built in 1976, prior to municipal sewer system construction. The floor drain system has the potential for a previous release into this mound.

The 2016 Phase I ESA noted that the floor mounted hydraulic lifts were removed and the associated floor drains were cleaned of all observable fluids. Although several small motorized vehicles (dirt bikes, snow blowers, etc.) were present, no staining was observed. The northern portion of the building is separated from the rest by a concrete block wall, with overhead entry doors on the east and west sides of the building and was identified as a paint booth in the 2013 Phase I ESA. Since that report, all tools, equipment, and paint were removed. The paint booth floor drain, previously observed with water and oil/sludge in the bottom, appeared clean. The shed in the northwest gravel storage yard identified by the 2016 and 2013 Phase I ESAs as part of the "poor management practices" REC contained numerous empty 1-gallon gasoline cans, various air filters, and general refuse, however, no leaks or spills were observed.

Pursuant to ASTM E1527-13, Standard Practice for Environmental Site Assessment and ASTM E2600-15 Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions, AEI evaluated the presence or likely presence of vapor-phase chemicals of concern in soil at the Site that might result from contaminated soil and/or ground water either on or near the Site. AEI did not identify sources within the ESA search radii and analytical results from on-Site ground water sampling conducted in November 2016 did not identify detectable levels of volatile organic compounds (VOCs). Therefore, AEI ruled out Vapor Encroachment Conditions as a REC.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff also reviewed the following reports, all prepared by AEI:

- *Phase II Environmental Site Assessment (2014 Phase II)*, dated November 24, 2014
- *Phase II Environmental Site Assessment (2016 Phase II)*, dated November 16, 2016

These reports may be viewed electronically by searching online by the Brownfield site ID # referenced in the subject line of this letter in IDEM's Virtual File Cabinet (VFC) on IDEM's website.

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 soil exposure 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. Ground water samples were compared to residential tap ground water screening levels (Res TAP GWSLs) and residential vapor exposure ground water screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure ground water screening levels (Indus VE GWSLs).

2014 Phase II – November 2014

In November 2014, a total of 11 soil borings (SB-1 to SB-11) were advanced to a maximum depth of 24 feet bgs on the Site. The borings were installed to evaluate the RECs identified in the December 2013 Phase I ESA. Borings SB-01 through SB-04 investigated the suspect mound leach/septic field; borings SB-05 through SB-07 investigated the potential petroleum release within the floor drain system and oil/water separator; borings SB-09 and SB-11 investigated the two ASTs; and, borings SB-08 and SB-10 investigated the poor handling practices of petroleum and hazardous materials within the north gravel area.

One soil and grab ground water sample was collected from each boring location and analyzed for volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PNAs), lead scavengers, and Resource Conservation and Recovery Act (RCRA) metals. Soil samples collected from borings SB-08, SB-09, and SB-11 were analyzed for VOCs and PAHs only, as the suspected contaminants in that area of the Site were related to heating or motor oil.

Analytical results detected arsenic in soil sample SB-10 (1-2 feet bgs) at 11 parts per million (ppm) above its RDCSL of 9.5 ppm but below its IDCSL of 30 ppm. No other constituents analyzed in soil were detected at levels above applicable RCG screening levels. Refer to Table 2, below, for a summary of soil analytical data above applicable RCG screening levels.

TABLE 2
November 2014 Soil Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Sample Location	Depth bgs (feet)	Detected Constituent and Results (parts per million (ppm))	RDCSL	IDCSL	EX DC SL
		Arsenic			
SB-10	1-2	11	9.5	30	920

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

Arsenic, lead, cadmium, barium, mercury, selenium, and toluene were detected above their respective Res TAP GWSLs in multiple grab ground water samples collected from 10 locations. No other constituents analyzed in ground water were detected at levels above applicable RCG screening levels. Refer to Table 3, below, for a summary of ground water analytical data above applicable RCG screening levels. The detected contamination may be attributable to the method used to collect the ground water samples, which was directly from a soil boring and through use of a bailer. Samples collected from soil borings are typically used for screening purposes only, in part because they do not follow IDEM protocols for complete site characterization, including the installation of monitoring wells to facilitate ground water sample collection. Ground water samples collected from borings can be highly turbid without the safeguards provided by a monitoring well screen and surrounding filter pack, therefore increasing the potential for false positive and elevated laboratory results, particularly with constituents that bind tightly with soil particles.

TABLE 3
November 2014 Ground Water Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Sample Location	Detected Constituent and Result (parts per billion (ppb))						
	Arsenic	Lead	Cadmium	Barium	Mercury	Selenium	Toluene
GW-01	440	760	<12 [^]	660	0.46	<25	<5
GW-02	1,000	1,900	21	1,500	1.3	29	8.3
GW-03	730	2,200	31	2,600	1.7	27	8.4
GW-04	19	31	<2	57	<0.4	<4	<5
DUP	130	210	<5	260	<0.4	<10	<5
GW-05	240	400	6.8	670	0.58	<10	<5
GW-06	350	560	13	1,100	0.56	<25	6.4
GW-07	370	3,600	63	13,000	16	91	<5
GW-10	160	510	<12 [^]	880	0.74	<25	1,100
Res TAP GWSL	10	15	5	2,000	2	50	1,000
Res VE GWSL	NE	NE	NE	NE	NE	NE	NE
Indus VE GWSL	NE	NE	NE	NE	NE	NE	NE

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level

NE = not established

DUP = field duplicate

[^] = lab detection limits were higher than the Res TAP GWSL Screening Level, therefore, this data is inconclusive as an actual detected level

2016 Phase II -- November 2016

In October 2016, two soil borings (SB-12 and SB-13) were advanced to a maximum depth of 24 feet bgs and four ground water monitoring wells (MW-01 to MW-04) were installed on the Site. The borings and wells were installed in order to further evaluate and/or define the metals and toluene contamination identified in the November 2014 Phase II. Two wells (MW-02 and MW-04) were installed in the locations of the highest, previously detected ground water contamination (GW-03 and GW-07, respectively). Soil boring SB-13 was converted to a well (MW-03) along the west property line to evaluate if any COC was moving off Site towards Salt Creek. Soil boring SB-12 was converted to a well (MW-01) on the east side of the property to evaluate potential up-gradient sources.

Soil samples were collected from the two borings and analyzed for VOCs, PNAs, and RCRA metals. Ground water samples were collected from each of the four wells via low-flow method and analyzed for VOCs, PNAs, and RCRA metals.

Analytical results detected toluene, arsenic, barium, chromium, and lead in soil samples SB-12 and SB-13 above detection limits but below their respective RCG screening levels. No other constituents analyzed in soil were detected at levels above applicable detection limits.

Barium (in all wells) and lead (in MW-02 and MW-04) were detected in ground water above their respective detection limits, but below their respective Res TAP GWSLs. No other constituents analyzed in ground water were detected at levels above applicable detection limits.

IDEM staff have concluded that the analytical results from the sampling of the properly constructed ground water monitoring wells (MW-01 through MW-04) are most representative of the ground water conditions at the Site, as opposed to the ground water samples collected in 2014 using bailers in temporary boring locations which likely yielded biased analytical results indicating elevated metals and VOC constituent levels.

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 Prospective Purchaser, 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 Prospective Purchaser nor an agent or employee of the

Prospective Purchaser caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site, and;

- (5) the Prospective Purchaser is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and/or for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Prospective Purchaser has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and/or petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Prospective Purchaser qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Prospective Purchaser even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such a Prospective Purchaser for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Prospective Purchaser to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA or the Resource Conservation and Recovery Act, 42

U.S.C. § 6901.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Prospective Purchaser will acquire the Site after January 11, 2002 (and after June 30, 2009), and the disposal of hazardous substances and petroleum at the Site will have occurred prior to that date. See 42 U.S.C. § 9601(40)(A); IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Prospective Purchaser has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Prospective Purchaser has represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Prospective Purchaser meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Prospective Purchaser must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising "appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to -- (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to -- (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Prospective Purchaser recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Prospective Purchaser will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Prospective Purchaser must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

Recommendations

- Remove all items from the Site that could potentially contribute to surface contamination associated with the REC of poor management of petroleum and hazardous products.

- Remove the mound septic/leach infrastructure, including connections to the oil/water separator, to eliminate a potential historical contaminant source and/or preferential pathway for contaminant migration related to any future on-Site spills/releases.

Reasonable Steps

As of the date of issuance of this Comfort Letter, limited sampling of shallow soil has occurred on the Site to confirm the presence or absence of the soil and ground water contamination that may underlie the Site as a result of poor on-Site management practices of petroleum and hazardous materials which was identified as a REC. Therefore, at this time, IDEM has insufficient information to provide a comprehensive technical opinion regarding reasonable steps for the Site. According to the "Reasonable Steps Questions & Answers" within the U.S. Environmental Protection Agency's "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements)" (May 6, 2003), doing nothing to investigate a suspected environmental hazard would likely be insufficient to meet the reasonable steps requirement for protection as a BFPP (See Appendix B, p.4). Phase II investigation results would enable the Prospective Purchaser to make an informed determination of the reasonable steps necessary to prevent any exposure to hazardous and/or petroleum substances that may be contaminating the Site as is required to maintain BFPP status under the applicable statutes. If requested by the Prospective Purchaser, the Program will review a Phase II investigation report if one is completed and, as a follow-up to this letter, provide a technical opinion regarding any additional recommended reasonable steps for the Site.

At this time, IDEM believes the following are appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the hazardous substances and petroleum contamination found at the Site in order to qualify as a BFPP, as well as 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.
- Investigate, since limited surface soil samples were collected, surface soil conditions and determine, with IDEM concurrence and *prior to* residential use of the Site, that Site conditions pose no risk to human health or the environment.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance and/or petroleum contamination or any information about new (or previously unidentified) contamination.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. 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 arsenic detected in subsurface soil on Site was above the applicable RCG residential screening level and limited sampling has been performed within Site surface soils, IDEM is requiring an environmental restrictive covenant (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 Prospective Purchaser must abide by the land use restriction in the enclosed ERC, which is summarized below:

- Neither engage in nor allow drilling or excavation of soil on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Site during any residential construction without first submitting a work plan for approval by IDEM at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Site during any residential construction activities must be conducted in accordance with an IDEM-approved work plan, including all applicable requirements of IOSHA/OSHA.
 - i. Soil in any area on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Site on which standalone single family or duplex residential housing will be constructed must be sampled down to 10 feet below ground surface. Any soil determined through such sampling to be contaminated above applicable RCG residential screening levels must be excavated, leaving only soil that meets RCG RDCSLs in place.
 - ii. Restore soil disturbed as a result of any excavation and construction activities on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 on the Site in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Upon IDEM's request, the Owner shall provide the IDEM with documentation showing the excavated and restored area, and any other area affected by excavation or construction activities, does not represent such a threat.
 - iii. Any soil that is removed, excavated or disturbed on parcels # 64-06-05-401-002.000-024 and 64-06-05-401-003.000-024 must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

Conclusion

IDEM encourages the continued commercial/industrial use or potential residential 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 parcels comprising 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 reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Prospective Purchaser must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status.

This letter shall not be construed as limiting the Prospective Purchaser'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 Prospective Purchaser 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.

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 Prospective Purchaser, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Prospective Purchaser 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 Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Prospective Purchaser would not be considered a BFPP and 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.

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 Porter County Recorder's Office. 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: Doug Lam

IDEM is pleased to assist 347 Melton, LLC with this redevelopment project. Should you have any questions or comments, please contact Doug Lam at 317/234-8099. He can also be reached via email at: dlam@ifa.in.gov.

Sincerely,



Peggy Dorsey
Assistant Commissioner
Office of Land Quality

Enclosure (ERC)

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
Doug Lam, Indiana Brownfields Program (*electronic copy*)
Steven Travis, Amereco Engineering, Inc. (*electronic copy*)

EXHIBIT D

TABLE 1
Dean's Auto Sales & Service, Chesterton - BFD # 4161211
Soil Concentrations Exceeding
Applicable IDEM RCG Screening Levels

TABLE 1
Dean's Auto Sales & Service, Chesterton –BFD # 4161211
Soil Concentrations Exceeding
Applicable IDEM RCG Screening Levels

Sample Location	Depth bgs (feet)	Detected Constituent and Results (parts per million (ppm))	RDCSL	IDCSL	EXDCSL
		Arsenic			
SB-10	1-2	11	9.5	30	920

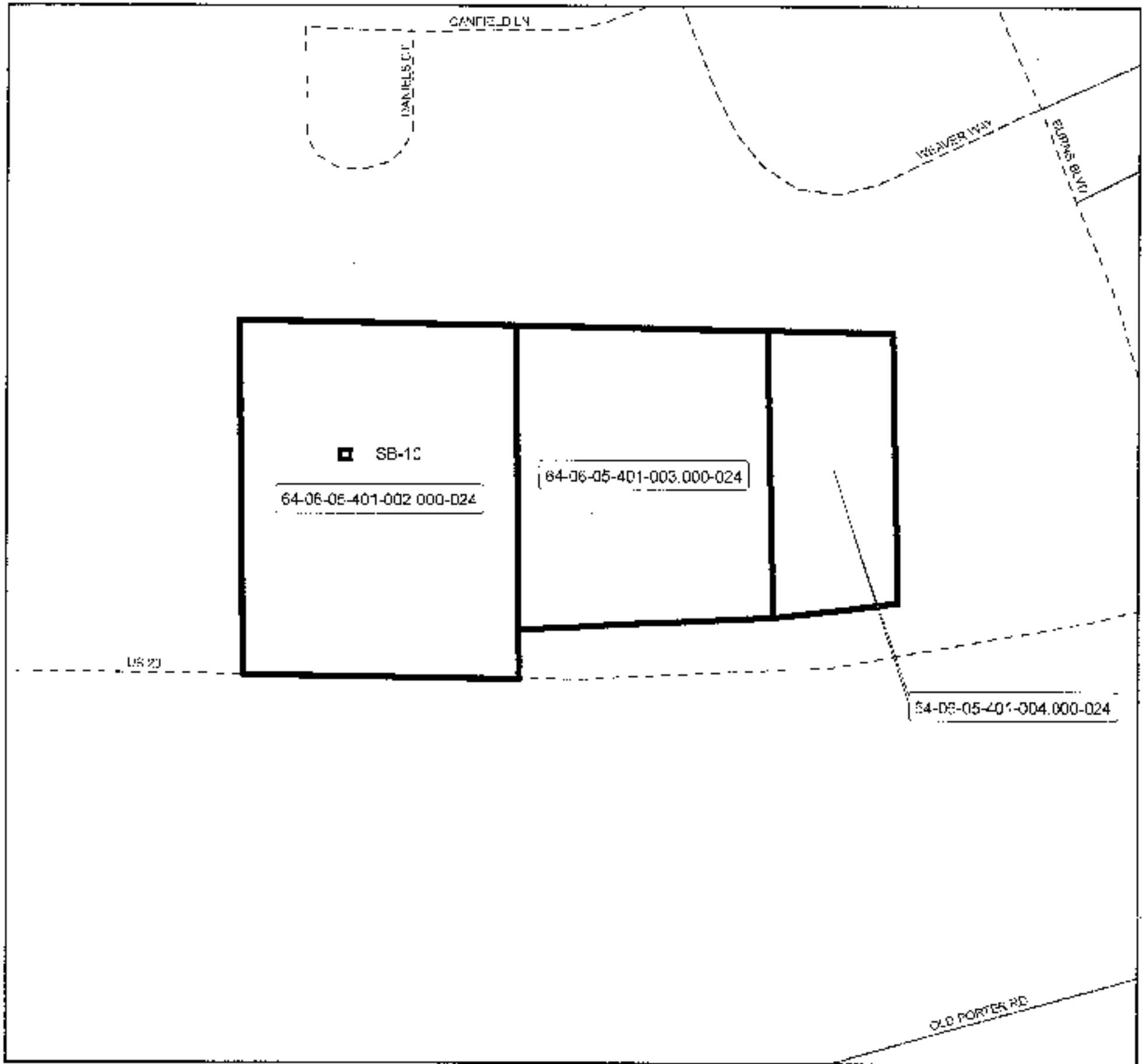
Notes: **bold** = above RCG Residential Direct Contact Screening Level
 bgs = below ground surface

EXHIBIT E

Dean's Auto Sales & Service, Chesterton – BFD # 4161211
Site Map Depicting Sampling Location at Which
COC Was Detected Above Applicable IDEM RCG Screening Level

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.

Indiana Brownfields Program # 4161211



Mapped By: Mike Hill, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, April 12, 2017

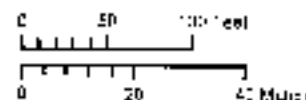
Parcel IDs:
 64-06-05-401-002.000-024
 64-06-05-401-003.000-024
 64-06-05-401-004.000-024

PLSS Info: Section 5, T36N, R5W, Westchester Township, Porter County, IN

Property Info: 347 Melton Road, Burns Harbor, IN

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

	Real Estate
	Street



Porter County



Project Area

