

DRAFT 8-20-2020

**To be recorded with County
Recorder – Utah Code Ann § 57-25-108**

When Recorded Return To:

Austin Lundskog
LOP Properties, LLC
P.O. Box 50
Hyde Park, Utah 84318

With Copy To:

Ty L. Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, *et seq.* (the Act). LOP Properties, LLC, as Owner and Grantor, makes and imposes this Environmental Covenant upon property defined herein and more particularly described in Exhibit A attached hereto and incorporated by reference herein.
2. Notice. Notice is hereby given that the Edison Building facility is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety and the environment.
3. Property. This Environmental Covenant concerns 0.18 acres of real property more particularly described in Exhibit A, consisting of two parcels numbered 16-07-180-017 and 16-07-180-003 owned by LOP Properties, LLC, located at 933 South Edison Street in Salt Lake County, Utah. The property is referred to herein as “Facility” and depicted on Exhibit B (Figures 1 through 4) attached hereto and hereby incorporated by reference herein.
4. Environmental Response Project. Under the regulatory oversight of the Utah Department of Environmental Quality (DEQ), Division of Waste Management and Radiation Control (DWMRC), an environmental response project, as defined at Section 57-25-102(5) of the Utah Code Annotated, and more fully described in a Site Management Plan (SMP) approved by the Utah DWMRC for the Facility, has been undertaken to investigate a release of chlorinated solvents, petroleum hydrocarbons, and semi-volatile organic compounds (SVOCs) into the soil, soil gas, and shallow groundwater. It was originally thought that the impacts likely originated from former occupants of the Facility which included a dry cleaner from prior to 1922 up to the 1980s. However, it appears that the majority of the chlorinated solvent impacts are migrating onto the Facility property from an unknown upgradient source located to the

northeast of the Facility. Below is a summary of the most recent investigation results that have been completed.

As more fully described in the SMP, the most recent analytical results indicate:

- All chlorinated solvents (including, but not limited to, tetrachloroethene [PCE], trichloroethene [TCE], *cis*-1,2-dichloroethene [*cis*-1,2-DCE], and vinyl chloride [VC]) and SVOCs were detected in soil at concentrations below the United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (RSLs) for Residential Soil, except for one detection of naphthalene (collected below the water table) at a concentration of 6,9000 micrograms per kilogram ($\mu\text{g}/\text{kg}$) which exceeds the U.S. EPA RSL for Residential Soil for naphthalene or 3,800 $\mu\text{g}/\text{kg}$, but is below the U.S. EPA RSL for Industrial Soil for naphthalene of 17,000 $\mu\text{g}/\text{kg}$.
- PCE in groundwater at concentrations below the U.S. EPA Maximum Contaminant Level (MCL) in all monitoring wells except monitoring well MW-3 at a concentration of 228 micrograms per liter ($\mu\text{g}/\text{L}$) exceeding the U.S. EPA MCL for PCE of 5 $\mu\text{g}/\text{L}$.
- TCE in groundwater at concentrations below the U.S. EPA MCL in all monitoring wells except monitoring wells MW-3 (54.9 $\mu\text{g}/\text{L}$) and MW-5 (22.6 $\mu\text{g}/\text{L}$). These concentrations exceed the U.S. EPA MCL for TCE of 5 $\mu\text{g}/\text{L}$.
- *Cis*-1,2-DCE in groundwater at concentrations below the U.S. EPA MCL in all monitoring wells except monitoring well MW-2 at a concentration of 72.7 $\mu\text{g}/\text{L}$ slightly exceeding the U.S. EPA MCL for *cis*-1,2-DCE of 70 $\mu\text{g}/\text{L}$.
- VC in groundwater at concentrations below the U.S. EPA MCL in all monitoring wells except monitoring wells MW-1 (2.84 $\mu\text{g}/\text{L}$) and MW-2 (22.3 $\mu\text{g}/\text{L}$). These concentrations exceed the U.S. EPA MCL for VC of 2 $\mu\text{g}/\text{L}$.
- Several sub-slab soil gas samples exhibited a PCE, TCE, or naphthalene concentration that exceeds the U.S. EPA Vapor Intrusion Screening Level (VISL) Commercial and/or Residential Target Sub-Slab and Near-Source Soil Gas Concentrations (TSSGCs) at the Facility.
- Measured indoor air concentrations are below the U.S. EPA RSLs for Industrial Indoor Air, and only benzene and PCE were detected at concentrations that exceed their applicable U.S. EPA RSLs for Residential Air.

Cumulative risk was calculated for residential and industrial exposures. The exposure pathways included ingestion of soil, ingestion of groundwater, and inhalation of vapors in indoor air. Based on the calculated risks, the ingestion of groundwater and the

inhalation of chemicals as a result of vapor intrusion would require controls at the Facility. See the SMP for details of the cumulative risk assessment.

Wasatch concluded the following, given the totality of the environmental investigation work that has been completed at the Facility, it appears that impacts to soil, soil gas, and groundwater are present at the Facility. It also appears, that the majority of the source of the chlorinated solvent impacts is likely originating from an unknown upgradient source. It is Wasatch's opinion that the potential exposure risks can be appropriately mitigated through institutional controls. Therefore, Wasatch requested that the Utah DWMRC allow the Facility to obtain site closure through the development of a Site Management Plan and Environmental Covenant to be.

Through this SMP and an Environmental Covenant, including necessary activity and use limitations, the risk posed by residual chlorinated solvent, petroleum hydrocarbon, and/or SVOC contamination in groundwater at the Facility will be mitigated. The management requirements of the SMP and activity and use limitations of the Environmental Covenant will be protective of human health and the environment.

5. Administrative Record. The SMP project administrative records are maintained and managed by the Utah DEQ DWMRC.

6. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 7.

7. Owner. The Owner of the Facility is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Facility at any given time. Because this Environmental Covenant runs with the land, the obligations of the Owner are transferred to the Transferee. Except as provided in this Environmental Covenant, upon transfer of an Owner's interest in the Facility, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve the Owner during the time it holds an interest in the Facility of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Facility.

8. Transferee. The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Facility, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Facility or any portion thereof.

9. Holder. LOP Properties, LLC is the grantee and Holder of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3)(b) of the Utah Code Annotated.

10. Rights and Obligations of Holder. Holder may enforce this Environmental Covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of the Facility.

11. Agency. The Utah DEQ is the Agency (as defined in the Act) under this Environmental Covenant. The Utah DEQ may enforce this Environmental Covenant. The Utah DEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the DWMRC is the Utah DEQ representative for this Environmental Covenant.

12. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations on the Facility:

A. **Land Use Limitations** The Facility is suitable for residential, commercial and industrial use consistent with applicable local zoning laws; provided that residential land use and land use involving sensitive populations is restricted to above the ground floor (with a parking structure, commercial, or industrial use on the ground floor). If future data demonstrate an acceptable level of exposure risk relative to the vapor intrusion pathway, future residential land use and land use involving sensitive populations on the ground floor may be permissible upon prior notification to, and approval by, the Director. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

B. **Groundwater Limitations** Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, or bathing purposes. Other uses of groundwater from the shallow unconfined aquifer on the Facility shall be subject to review and approval by the Director prior to implementation.

C. **Disturbance Limitations** Appropriate care shall be exercised during any construction, remodeling, and maintenance activities related the Facility so as to prevent damage to any vapor mitigation measures which have been installed, and to ensure appropriate repairs are promptly made in the event damage does occur. Appropriate care shall be exercised to protect groundwater monitoring wells on the Facility, and to ensure appropriate repairs are promptly made, or replacement monitoring wells are promptly installed, in the event damage does occur. Repairs shall be made within a reasonable period of time from the discovery of the damage.

D. **Construction Dewatering Limitations** Dewatering conducted to facilitate construction on the Facility may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the stormwater system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge

Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving facility.

E. **Vapor Intrusion Limitations** Although the latest indoor air sampling results exhibited concentrations below applicable U.S. EPA VISL Commercial TSSGCs, the risk assessment justifies the use of controls and DWMRC requires that vapor mitigation controls be in place at the Facility. For non-residential enclosed structures intended for human occupancy on the ground floor, appropriate vapor intrusion mitigation measures are required (at the request of the Utah DWMRC) to mitigate exposure risks from the vapor intrusion pathway. Appropriate vapor mitigation measures may include, but are not limited to, installation of a suitable vapor barrier, installation of a passive or active sub-slab or submembrane depressurization system, or construction of occupied structures utilizing positive pressure ventilation systems. Vapor mitigation measures shall be subject to review and approval by the Director prior to implementation. If future data demonstrate an acceptable level of exposure risk relative to the vapor intrusion pathway, future residential land use and land use involving sensitive populations on the ground floor may be permissible subject to prior notification to, and approval by, the Director. Upon installation of the vapor intrusion mitigation measure, one round of indoor air sampling will be completed approximately one month after the installation of the vapor intrusion mitigation measure to verify the indoor air concentrations remain below the applicable U.S. EPA VISL Commercial TSSGCs. Future indoor air monitoring will not be conducted if the detected indoor air concentrations are below the U.S. EPA VISL Commercial TSSGCs and the vapor intrusion mitigation measure is maintained. Groundwater samples will only be collected from the on-site monitoring wells if the current Owner of the Facility desires to pursue the discontinuation of the vapor intrusion mitigation measure at the Facility. If the Owner desires to remove the vapor intrusion mitigation measure, a work plan for groundwater sampling of the on-site wells will be submitted to the Utah DWMRC for approval prior to sampling. Groundwater sampling shall be performed using low-flow sampling techniques to facilitate the collection of geochemical parameters including temperature, pH, specific conductivity, dissolved oxygen, oxidation reduction potential, and turbidity. Groundwater samples shall be analyzed for a full list of VOCs using U.S. EPA Method 8260D and SVOCs using U.S. EPA Method 8270E. The current owner would coordinate with DWMRC and petition for vapor mitigation termination based upon applicable standards. A groundwater monitoring report would be provided to the Director within a reasonable period following the completion of each groundwater monitoring event. The groundwater sampling results would be evaluated to determine if the current groundwater impacts have decreased sufficiently to warrant the discontinuation of the vapor intrusion mitigation measure. If future data demonstrate an acceptable level of exposure risk relative to the vapor intrusion pathway, soil impacts, and groundwater impacts, future commercial and residential land use and land use involving sensitive populations on the ground floor may be permissible with or without vapor mitigation measures subject to prior notification to, and approval by, the Director.

13. Notice of Breach. If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on the Facility constitutes a breach of the

activity and use limitations, Owner or Transferee shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 60 days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Director.

14. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

15. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce correction of any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.

16. Rights of Access. Grantor hereby grants to the Utah DEQ and all Holders, the right of access to the Facility for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.

17. Compliance Reporting. The Owner (or any Transferee) will verify annually that the activity and use limitations remain in place and are being complied with, and submit written documentation to the Director by March of each year. If activities and use limitations do not remain in place, are not being complied with, or both, the submittal will include an explanation of the circumstances.

18. Notice upon Conveyance. Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Facility. Owner's notice to the Agency and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Facility (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Facility is subject to this Environmental Covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this Environmental Covenant.

19. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- A. that the Grantor is the sole owner of the Facility;

B. that the Grantor holds fee simple title to the Facility which is free, clear, and unencumbered;

C. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;

D. that the Grantor has identified all other persons who own an interest in or hold an encumbrance on the Facility and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party or by which Grantor may be bound or affected.

20. Amendment or Termination. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Facility to which Grantor or Holder has no fee simple interest at the time of amendment or termination. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

21. Effective Date, Severability, and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Facility with the Salt Lake County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

22. Recordation and Distribution of Environmental Covenant. Within 30 days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Facility, with the Salt Lake County Recorder's Office. The Owner shall distribute a file-and-date-stamped copy of the recorded Environmental Covenant to: the Director, any lessee, and any other person designated by the Director; see Utah Code Ann. §§ 57-25-107].

23. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the Director, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Director:

Ty L. Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

If to LOP Properties, LLC:

Austin Lundskog
LOP Properties, LLC
P.O. Box 50
Hyde Park, Utah 84318

24. Governmental Immunity. In approving this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, successors, departments, agents, and employees (State) from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to Sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101, *et seq.* or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

25. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the Utah DEQ for the Utah DEQ's costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

26. The undersigned representative of Grantor represents and certifies that he or she is authorized to execute this Environmental Covenant.

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

On behalf of the Utah Department of Environmental Quality, the Director approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Ty L. Howard, Director
Division of Waste Management and Radiation
Control

Date

State of Utah)
) ss:
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Ty L. Howard, Director of the Utah Division of Waste Management and Radiation Control, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 20__ .

Notary Public

This instrument prepared by:

Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, Utah 84104

Exhibit A

Legal Description

Exhibit A
Legal Description

West 4 Corner of SECTION 7, Township 1S, Range 1E, SLB&M.

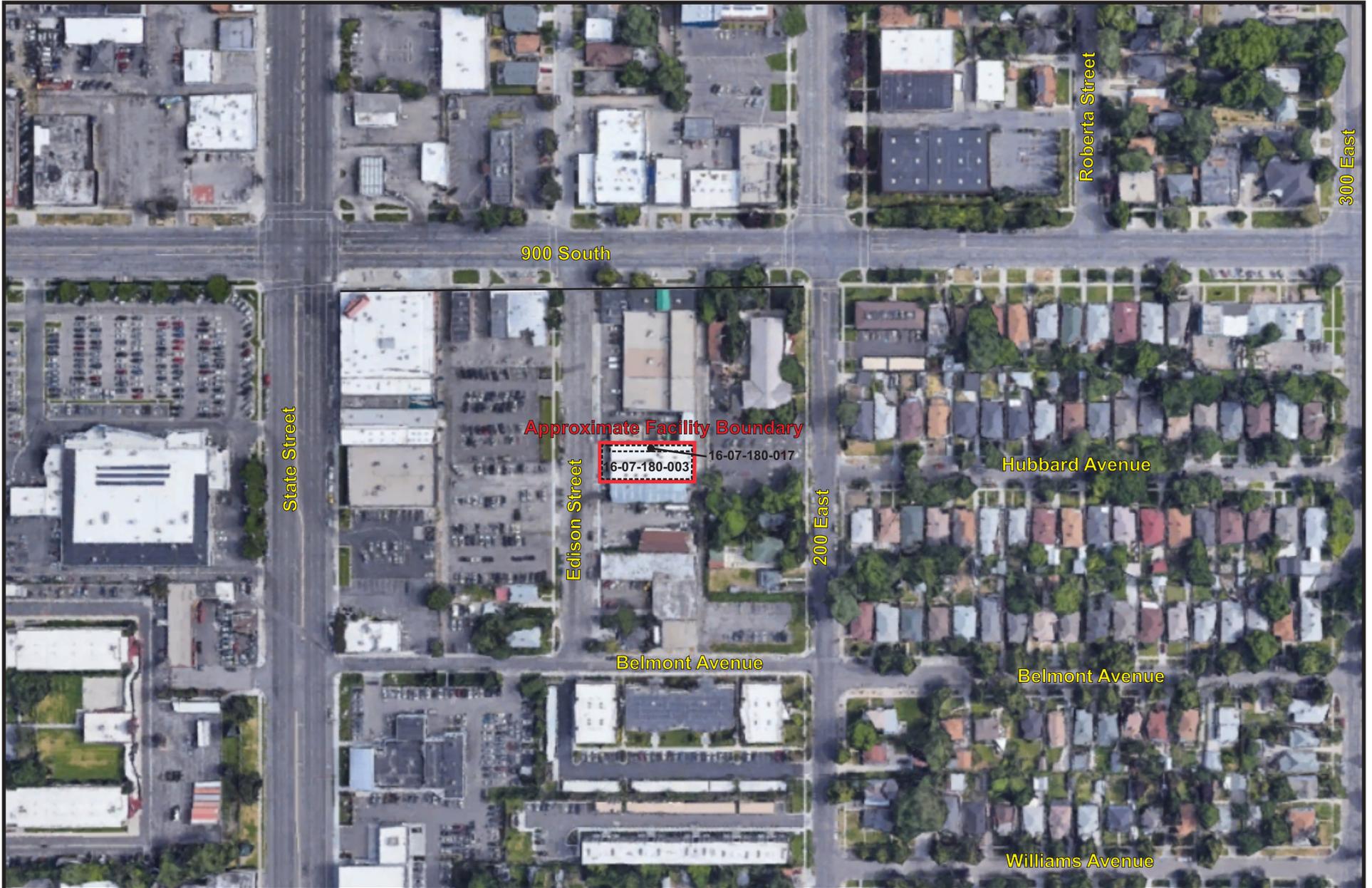
Parcel Number - 16-07-180-017: Beginning at south 89°59'00", east 14.66 feet from northwest corner of LOT 10, block 2, LINDEN PARK AMENDED PLAT; south 89°59'00", east 128.6 feet; north 00°12'04", west 3.15 feet; south 89°49'16", west 128.6 feet; south 00°13'28", east 2.71 feet to the beginning (9439-1565 9512-74 10284-310).

Parcel Number - 16-07-180-003: Lots 10 & 11, block 2, LINDEN PARK, AMENDED (4586-338 5286-1300 6176-0037 8504-1686 8572-4189 9512-74 10284-3107).

Contains 0.18 acres.

Exhibit B

**Facility Vicinity and Parcel Map, Facility Feature and Boring and Monitoring Well
Location Map, TCE/PCE Concentration in Groundwater Map, and Soil Gas Sample
Location and PCE/TCE Concentration Map**



Scale: 1-inch equals approximately 207 feet

Groundwater Flow Direction



Environmental Science and Engineering

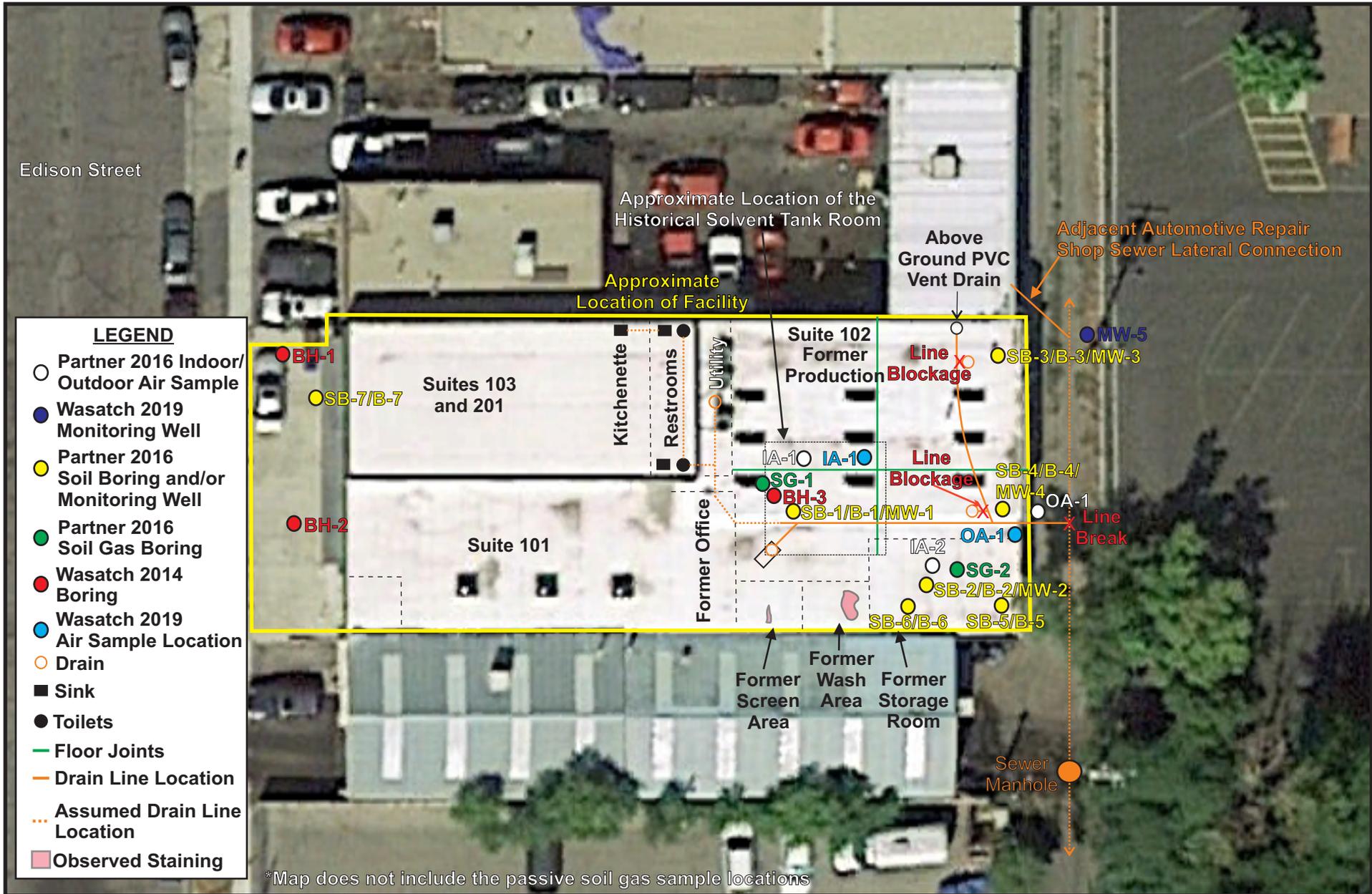
Facility Vicinity Map and Parcel Map

Edison Building Facility
 933 South Edison Street
 Salt Lake City, Utah

PROJECT NO.: 1023-042D

DATE: 4-22-2020

FIGURE 1



Scale: 1-inch equals approximately 25 feet

Groundwater Flow Direction



Environmental Science and Engineering

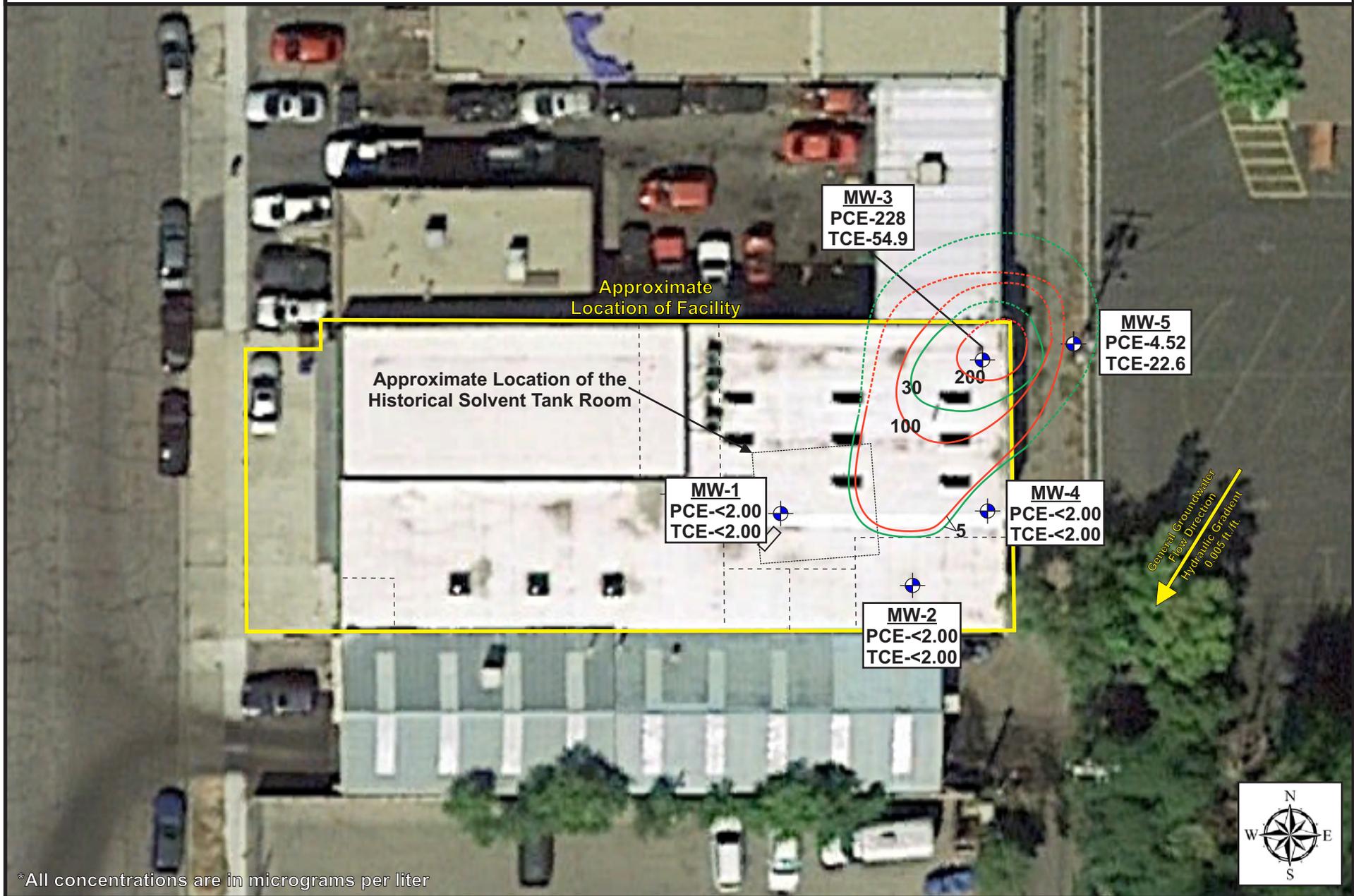
Facility Feature and Boring and Monitoring Well Location Map

Edison Building Facility
933 South Edison Street
Salt Lake City, Utah

PROJECT NO.: 1023-042D

DATE: 1-21-2020

FIGURE 2



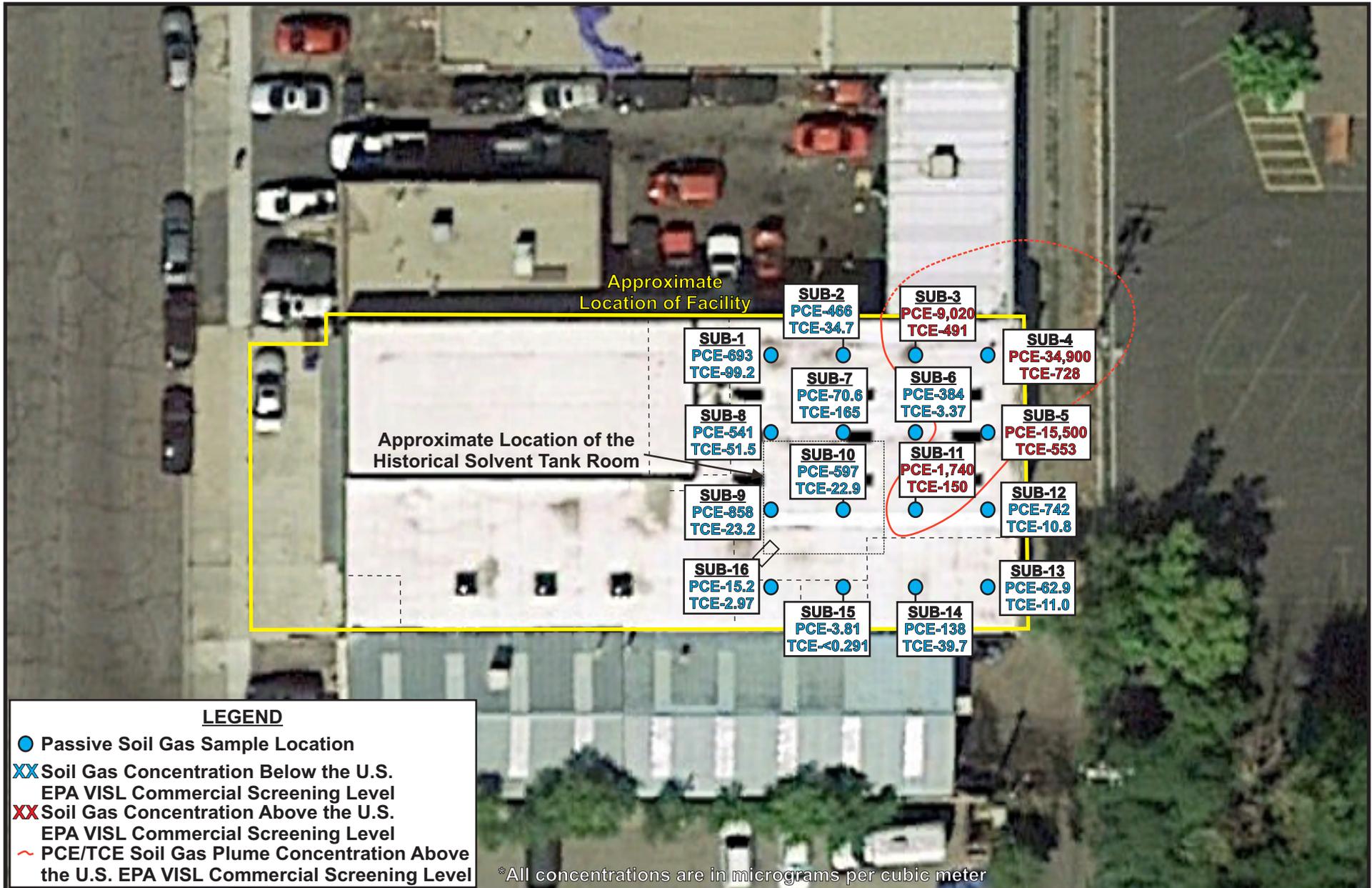
*All concentrations are in micrograms per liter

+
 Existing Monitoring Well Location
 TCE In Groundwater Contour
 PCE In Groundwater Contour

Scale: 1-inch equals approximately 26 feet

TCE/PCE Concentration in Groundwater Map

Figure 3



Scale: 1-inch equals approximately 25 feet

Groundwater Flow Direction



Environmental Science and Engineering

Soil Gas Sample Location and PCE/TCE Concentration Map

Edison Building Facility
933 South Edison Street
Salt Lake City, Utah

PROJECT NO.: 1023-042D

DATE: 1-21-2020

FIGURE 4