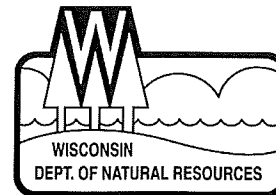


State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Waukesha Service Center
141 NW Barstow St.
Waukesha, WI 53188

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



October 18, 2018

Mr. Neil Borkan
302 Saunders Road
Suite 100
Riverwoods, IL 60015

Subject: Off-site Liability exemption for property located at Taco Bell, 3358 Douglas Ave., Racine, WI with soil and groundwater contamination from an off-site source
BRRTS: 07-52-582017 FID: 252186660

Dear Mr. Borkan:

Purpose

The Department of Natural Resources ("the Department") has recently reviewed your request for an off-site exemption letter for the property located at 3358 Douglas Ave., Racine, WI, which will be referred to in this letter as "the Property." Refer to the attached Figure 2, Soil VOC Contamination, for a site map of the Property. The Department received a \$700 fee for providing this letter pursuant to s. 292.13 (2) and (3), Stats, and ch. NR 749, Wis. Admin. Code,

Summary Determination

The Department, based on the information made available to it, is confirming that Neil Borkan qualifies for the off-site liability exemption, and Neil Borkan is not responsible for investigation or cleanup of the contamination that originated on a neighboring property. The Property owner would have limited responsibility under ss. 292.12 and 292.13, Stats, for the soil and groundwater contamination that has migrated or is migrating onto the Property.

Request

You have requested that the Department determine if Neil Borkan is exempt from ss. 292.11(3), (4) and (7)(b) and (c), Wis. Stats. (commonly known as the "Hazardous Substance Spill Law"), with respect to the existence of a hazardous substance in the soil and groundwater, that you believe is migrating onto the Property from an off-site source.

Section 292.13(2), Wis. Stats., requires the Department to issue upon request, a written determination regarding a liability exemption for a person who possesses or controls property that is contaminated by an off-site source, when certain conditions are met. In order to make this determination, the Department has reviewed information about the Property, including soil and groundwater sampling data for the Property and/or other sites contained in the following documents:

- The Off-Site Application form dated August 15, 2018.;
- Phase I Environmental Assessment, prepared by Environmental Protection Industries (EPI) dated June 13, 2017
- Site Investigation Report, prepared by EPI dated March 27, 2018

Background

The Department considered the documents listed above in making the determinations presented in this letter. Samples collected for soil and groundwater in the Northwest corner of the Property indicate that chlorinated solvents are present in this area. The property to the North, from information provided, appears to have been an operating dry cleaner from 1969 – 1982. The Phase I submitted does not indicate that chlorinated solvents had been used on the Property. The Property is currently the location of a Taco Bell building. 2 underground storage tanks were removed from the Property in 1994 and after excavation of contaminated soils was completed those locations received closure from the Department.

Determination

Based upon the available information and in accordance with s. 292.13, Stats., the Department makes the following determinations regarding the presence of cis-1,2-Dichloroethene, methylene chloride, tetrachloroethene and trichloroethene identified in the soil, tetrachloroethene, trichloroethene and vinyl chloride were identified above the Enforcement Standard in one groundwater sample collected from a temporary well on October 30, 2017. Figure 2, Soil VOC Contamination and Figure 3, Groundwater VOC Contamination, attached, provide the location for soil and groundwater contamination that has been identified.

The Department, based on the information available, has determined that the Property owner/lessee has met the conditions in s.292.13, Stats., to qualify for the liability exemption, including but not limited to the following provisions:

1. The hazardous substance discharge originated from a source on property that is not possessed or controlled by Neil Borkan.
2. Neil Borkan did not possess or control the hazardous substance on the property on which the discharge originated.
3. Neil Borkan did not cause the discharge.
4. Neil Borkan will not have liability under the Hazardous Substance Spill Law for investigation or remediation of the soil and groundwater contamination originating from off-site onto the Property, in the area identified on the attached Figures, provided that, Neil Borkan does not take possession or control of the property on which the discharge originated.

Exemption Conditions

The Department's determination, as set forth in this letter, is subject to the following conditions being complied with, as specified in ss. 292.13(1) and (1m), Wis. Stats:

1. The facts upon which the Department based its determination are accurate and do not change.
2. Neil Borkan agrees to allow the following parties to enter the Property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
3. Neil Borkan agrees to avoid any interference with action undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. Neil Borkan agrees to any other condition that the Department determines is reasonable and necessary to ensure that the Department and any other authorized party can adequately respond to the discharge.
5. With respect to soil contamination only, Neil Borkan agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human

health, safety or welfare or to the environment. This would occur after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.

Responsibilities for Continuing Obligations

In addition to the conditions above, after the contamination at the source property is remediated, the Department's approval of the clean-up may include continuing obligations at the source property as well as your Property. Often residual contamination remains after an approved environmental cleanup is completed. This approval may include requirements to maintain engineering controls, such as a cap or soil cover, to reduce the impact of the contamination. In that event, you may also be required to obtain DNR approval to construct a water supply well on your Property. If the request for cleanup approval includes requirements for your Property, the party conducting the cleanup is required to notify you before the DNR reviews the proposal for final approval of the clean-up.

Conclusion

The Department has granted Neil Borkan an off-site exemption under s. 292.13, Stats. Please note that the Department may revoke the determinations made in this letter if it determines that any of the requirements under ss. 292.13, Stats., cease to be met.

Future Property owners are eligible for the exemption under s. 292.13, Stats., if they meet the requirements listed in that statute section. The determinations in this letter regarding a liability exemption, however, only apply to Neil Borkan, and may not be transferred or assigned to other parties. The Department will provide a written determination to future owners of this Property, if such a determination is requested in accordance with the requirements of s. 292.13, Wis. Stats.

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is shown at the top of this letter. The Department tracks information on all determinations such as this in a Department database that is available on the Internet at <http://dnr.wi.gov/topic/Brownfields/botw.html>

If you have any questions or concerns regarding this letter, please contact me at 262-574-2142, by email at shanna.laubeanderson@wisconsin.gov.

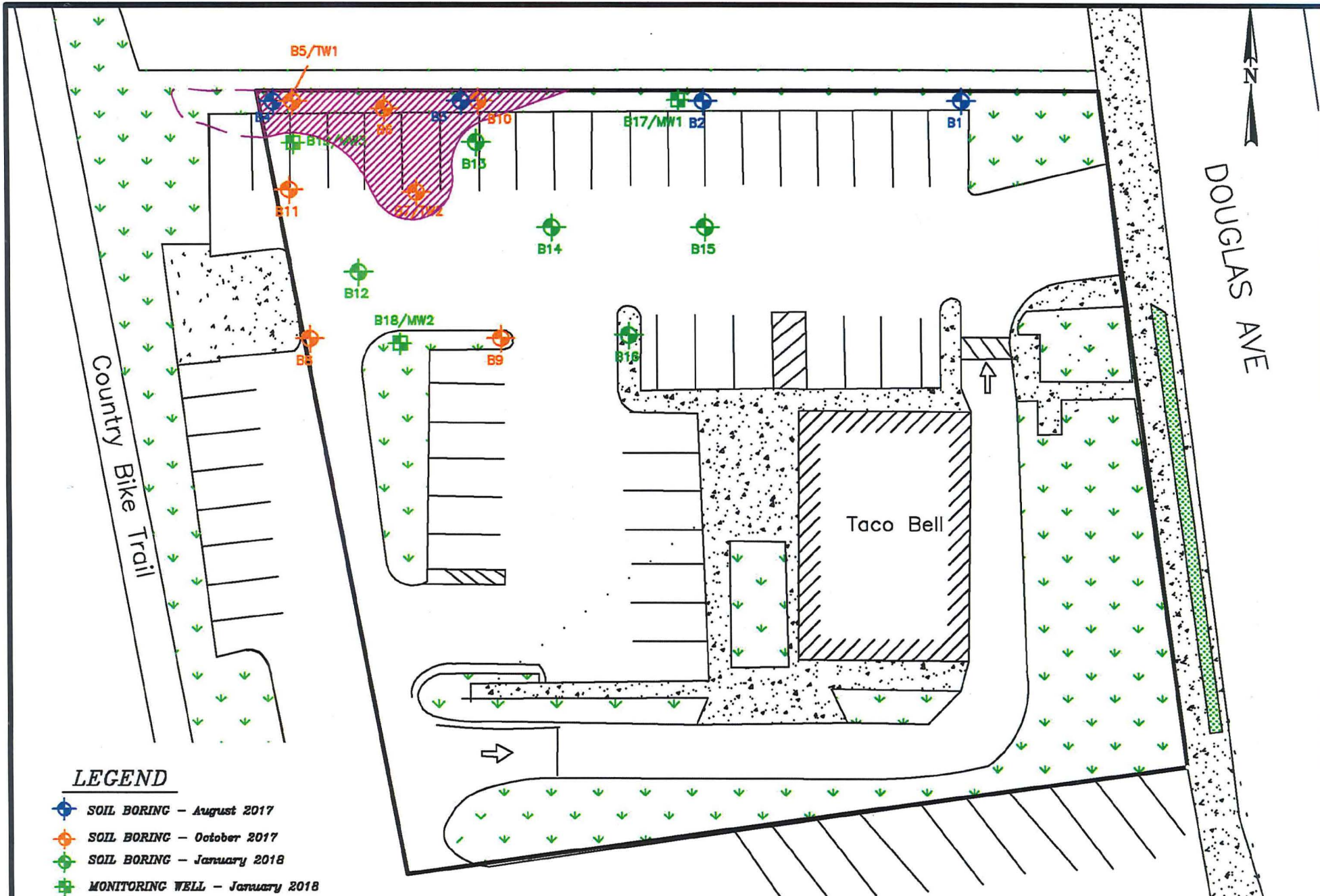
Sincerely,



Shanna L. Laube-Anderson
Project Manager
Waukesha Service Center

Attachments: Figure 2, Soil VOC Contamination and Figure 3, Groundwater VOC Contamination from Site Investigation Report, prepared by EPI, dated March 27, 2018

cc: Michael Prager RR/5 (electronic)
Margaret Brunette (electronic)
Robert Mankowski, EPI, 16650 S. Canal St., South Holland, IL 60473

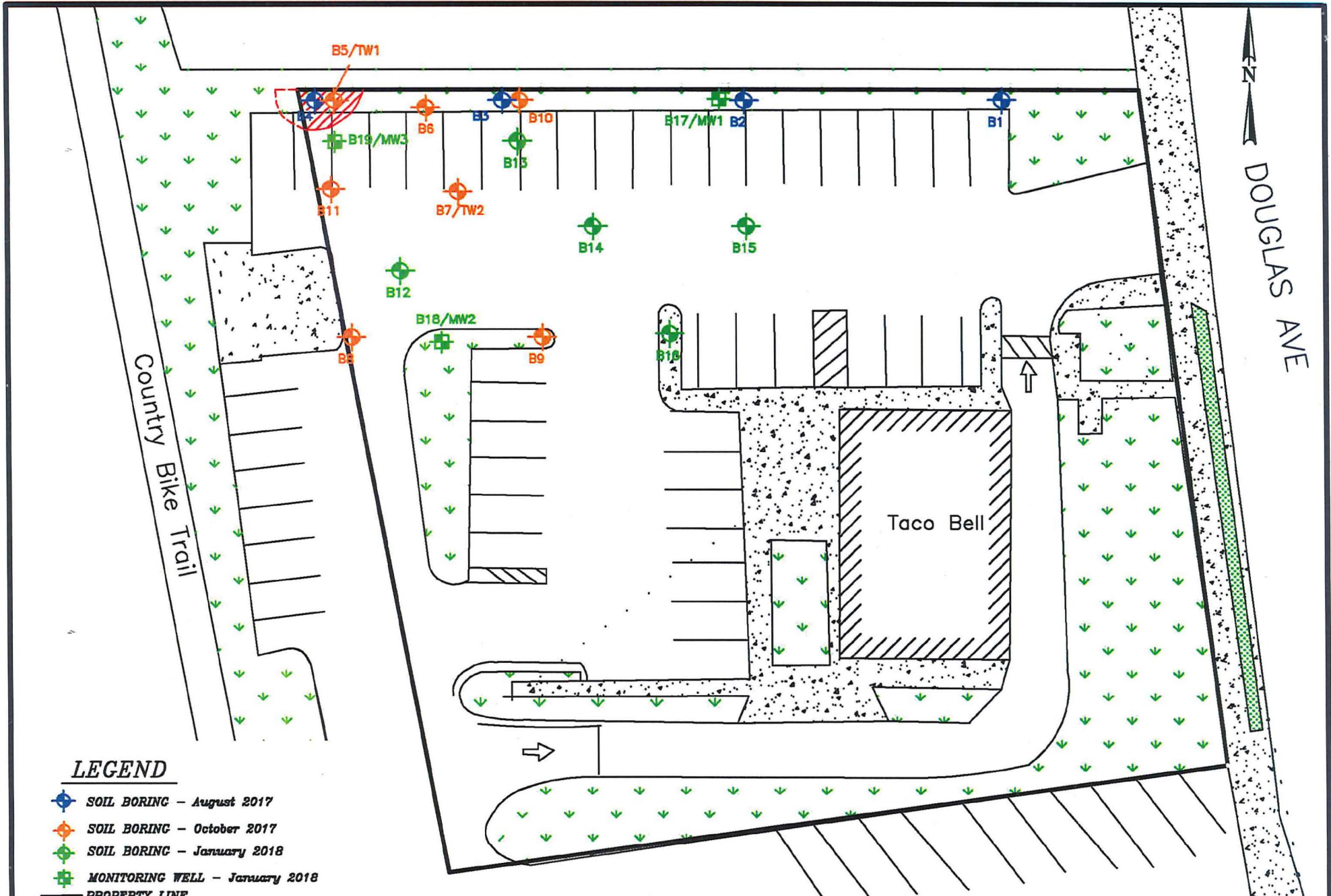


LEGEND






- SOIL BORING - August 2017
- SOIL BORING - October 2017
- SOIL BORING - January 2018
- MONITORING WELL - January 2018
- PROPERTY LINE


Estimated Extent of VOC contamination above the Soil Migration to Groundwater Wisconsin Residual Contamination Levels


ENVIRONMENTAL PROTECTION INDUSTRIES 16650 SOUTH CANAL, SOUTH HOLLAND, IL 60473					JOB LOC.	3358 Douglas Ave, Racine, WI		
					TITLE:	Soil VOC Contamination Migration to Groundwater		
DATE	DESIGNED	CAD	CHECKED	APP'D	DWG NO.	JOB NO.	SCALE:	Fig. 2
1-22-18	S.S.	D.P.	A.L.	R.M.	171114	171114	1"=30'	



LEGEND

-  SOIL BORING - August 2017
-  SOIL BORING - October 2017
-  SOIL BORING - January 2018
-  MONITORING WELL - January 2018
-  PROPERTY LINE

 Estimated Extent of VOC contamination above the Groundwater Wisconsin Residual Contamination Levels

 ENVIRONMENTAL PROTECTION INDUSTRIES 16650 SOUTH CANAL, SOUTH HOLLAND, IL 60473					JOB LOC.	3358 Douglas Ave, Racine, WI		
					TITLE:	Groundwater VOC Contamination		
DATE	DESIGNED	CAD	CHECKED	APP'D	DWG NO.	JOB NO.	SCALE:	Fig. 3
1-22-18	S.S.	D.P.	A.L.	R.M.	171114	171114	1"=30'	