State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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Milwaukee WI 53212-3128

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July 18, 2016

File Ref BRRTS: 07-41-577479
09-41-577237

Ms. Catherine Kroll
Developers Diversified Realty Corp.
300 Enterprise Parkway
Beachwood, OH 44122

Subject: Liability Clarification and "No Action Required" Determination at
West Allis Center, identified as 2645 S. 108th Street, West Allis, Wisconsin
Currently includes portions of 2563 and 2677 S. 108th Street, West Allis
Parcel #s: 4849986012 and 4849986005
DNR FID #: 241310300

Dear Ms. Kroll:

Purpose

The purpose of this letter is to provide you with clarifications as to environmental liabilities and current environmental conditions at 2645 S. 108th Street, West Allis, Wisconsin ("the Property"). The Property consists of approximately 0.8 acres of land located in Milwaukee County. While referred to as 2645 S. 108th Street, the Property actually includes a portion of a larger commercial property with the address of 2563 S. 108th Street (tax parcel number 4849986012) and the northern portion of what is now 2677 S. 108th Street (tax parcel number 4849986005). Refer to the attached **Figure 2: Boring Location Plan** for a site map of the Property.

Summary Determination

Hazardous substance discharges have occurred on the Property. However, the Wisconsin Department of Natural Resources ("the Department") has determined that no response actions are required. The Department has made this determination based on the data made available to the Department and the criteria in s. NR 716.05, Wis. Admin. Code.

Request

On July 1, 2016, Steve Newlin of Apex Companies, LLC requested on your behalf that the Department issue a liability clarification letter under s. 292.55, Wis. Stats. The letter contains a determination as to whether response actions are needed under the ch. NR 700 Wisconsin Administrative code rule series based on the discharge of one or more hazardous substances at the Property. The Department received the fee for providing assistance, in accordance with s. NR 749.04(1), Wis. Adm. Code.

In order for the Department to make this determination, you have requested a review of the following documents:

- "No Action Required Request", April 27, 2016, Apex Companies, LLC, which contained:
  - Phase I Environmental Site Assessment (ESA), The Orin Group, LLC, June 29, 2009
  - Limited Phase II ESA, Giles Engineering Associates, February 2, 2016
  - Groundwater Sampling Report, Giles Engineering Associates, March 30, 2016
  - Release notification form submitted to the Department on May 24, 2016
- Documents listed above included within Department files for West Allis Center, DNR BRRTS # 09-41-577237.

The Department has examined the reports listed above and provides the following summary of the case and opinions concerning environmental conditions at the Property.

Background and Summary of Environmental Conditions

The Property has been used for agriculture as early as 1937. By 1967 it was used as a paved parking lot for commercial businesses. No potential sources of contamination were identified within the Property boundaries. However, contamination originating from Leaking Underground Storage Tanks (LUSTs) located at parcels adjacent to the south and southeast could have impacted the Property.

In December, 2015, a Phase II ESA was conducted to determine if contaminants released from nearby LUSTs had impacted the Property. Seven soil borings were advanced for the collection of environmental samples along the southern and eastern Property boundaries and within the footprint of the proposed restaurant as depicted on the attached **Figure 2: Boring Location Plan**. One soil sample was collected from each boring and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and RCRA metals. VOCs were not detected in these samples; SVOCs were detected in two samples at concentrations considerably below s. NR 720 Residual Contaminant Levels (RCLs). Metals were detected in these samples at concentrations below DNR accepted background threshold values. Temporary groundwater monitoring wells (designated as TW-1 through TW-3 on the attached Figure) were installed in three of the soil borings located at the northeast, southeast, and southwest corners of the Property. A groundwater sample collected from each of these locations was analyzed for VOCs, SVOCs, and RCRA metals. Chrysene was detected at TW-1 at a concentration (0.18 ug/L) which exceeds the s. NR 140 Preventive Action Limit (PAL) of (0.02 ug/L). Elevated chrysene concentrations were attributed to suspended solids. Arsenic and lead were detected at TW-2 at concentrations above the respective PALs. Soil gas monitoring points were installed in the other four borings locations designated VP-1 through VP-4 on the attached Figure. VP-1 and VP-2 were installed within the proposed building footprint, VP-3 at the southern Property boundary, and VP-4 on the eastern Property boundary. Soil vapor samples were collected from each location and analyzed for VOCs. Various VOC compounds were detected in each of the soil vapor samples at concentrations below applicable vapor risk screening levels.

In February, 2016, a permanent, s. NR 141 compliant groundwater monitoring well was installed adjacent to TW-2 to confirm the presence of groundwater contamination. A groundwater sample was collected from that well for arsenic, lead, and chrysene analysis. Only arsenic was detected in the sample at a concentration (1.7 ug/L) greater than the PAL (1 ug/L). The arsenic was considered naturally occurring.

The detection of SVOCs in soil and groundwater samples and VOCs in the soil gas samples collected at the Property indicates that a release of one or more hazardous substances had occurred. However, as contamination appears to be insignificant, and is mainly below all applicable standards, the Department is requiring that no additional investigation be conducted to address this contamination.

Liability Determination

The Wisconsin Hazardous Substance Spill Law, s. 292.11, Wis. Stats., commonly called the Spills Law, requires those who cause, possess or control a hazardous substance discharge to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Section 292.55, Wis. Stats., authorizes the Department to issue clarification letters concerning liability for environmental pollution.

The data summarized above indicates that one or more hazardous substance discharges have occurred on the Property. However, based on the criteria in s. NR 716.05(2)(a), Wis. Adm. Code, and the criteria in ss. NR 708.09 (1) and (2), Wis. Adm. Code, the Department has determined that no response action, including further site investigation activities, is required under the NR 700, Wis. Adm. Code rule series to respond to these identified discharges.

The Department does not approve Phase I or Phase II ESAs because rules have not been established in Wisconsin to define what constitutes an adequate Phase I ESA or Phase II ESA. The Department does use as guidance the American Society for Testing and Materials ("ASTM") International Standard Guide for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E1527-13) and Phase II Environmental Site Assessment Process (E1903-11).

The number and location of monitoring points, the types of media sampled, the number of samples collected, and the laboratory analysis performed are a matter of professional opinion. All areas of the Property were not assessed, the numbers of samples collected were limited based on professional judgment and financial considerations, and samples were not analyzed for all parameters. Therefore, the Department can only respond to the information and data as presented in the reports and cannot predict what might be discovered in the future and the consequences of those discoveries.

This letter relates and refers only to those conditions described above and to information and data you submitted to the Department in your request for this letter. The Department makes no determination concerning the presence or absence of hazardous substances, other than those identified in the documents and reports listed above, which you submitted to us. In the future, if the Department becomes aware of new information concerning the contaminants referenced above, or the presence of other contaminants on the Property, the Department will evaluate that data at that time to determine if any response actions are required. Whenever possible, the Department requires the person who caused the discharge to take the appropriate response actions.

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 case determinations such as this letter in a Department database that is available on the Internet at: http://dnr.wi.gov/topic/Brownfields/botw.html. Since there is no action required for this case, the Department will identify this site activity as a "No Action Required" determination.

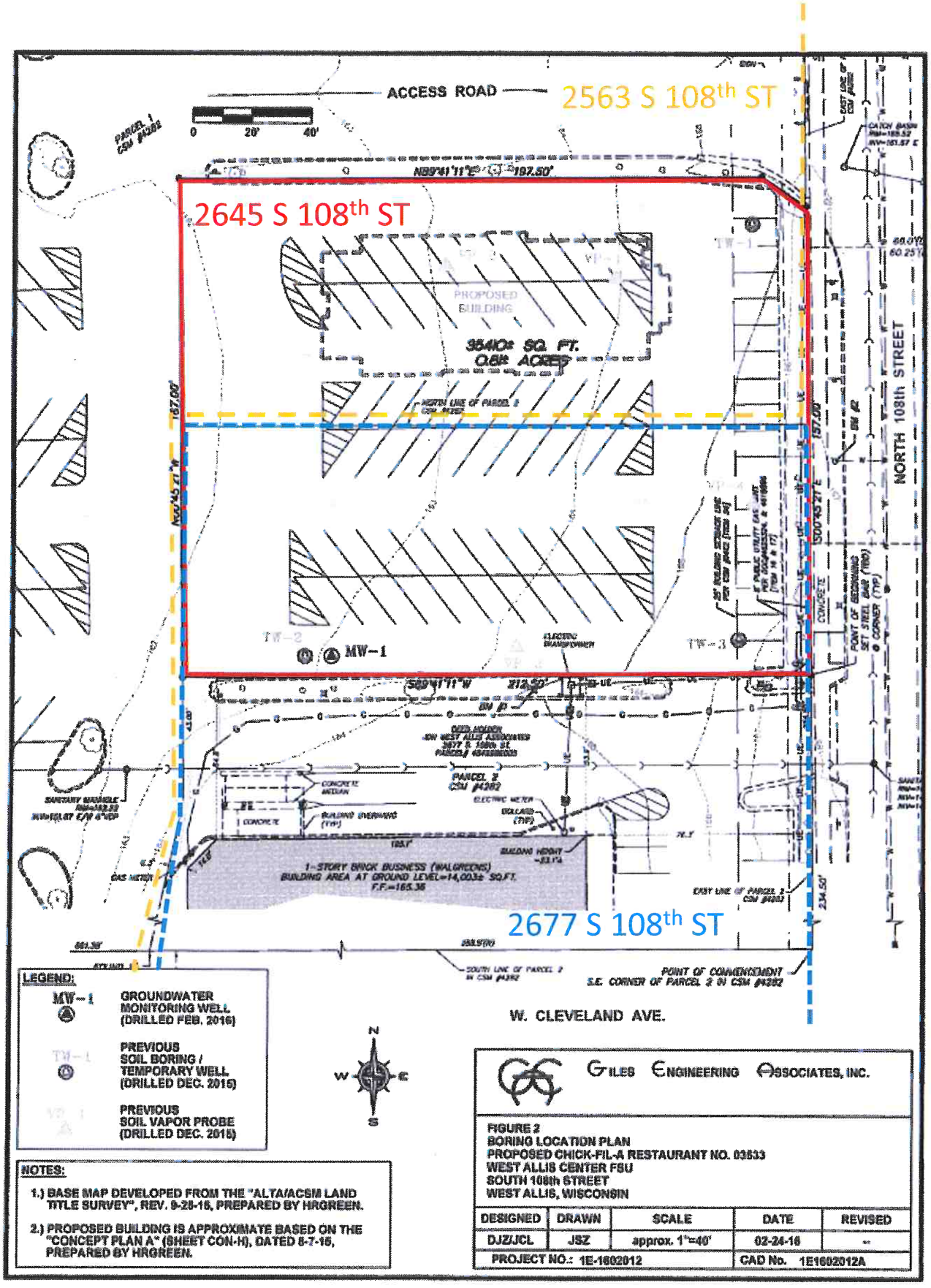
If you have any questions, please contact me at (414) 263-8541, by writing to the address at the top of this letter or by email to paul.grittner@wisconsin.gov.

Sincerely,

Paul Grittner
Hydrogeologist
Remediation and Redevelopment

Attachments: Figure 2: Boring Location Plan, 2/24/16, Giles Engineering Associates, Inc. (modified by DNR on 7/18/16)

cc: Steve Newlin, Apex Companies, LLC, 300 South Wacker Drive, Suite 630, Chicago, IL 60606
Margaret Brunette, DNR (electronic)
SER File



Property boundaries and labels added by DNR on 7/18/16