Olympic Water and Sewer, Inc.
70 Breaker Lane
Port Ludlow, WA 98365

May 16, 2014

VIA ELECTRONIC FILING

Steven King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Olympic Water and Sewer, Inc. – Surcharge Filing for Deferred Costs
Consolidated Response to Public Comments
UTC Docket No. UW-110436

Dear Mr. King:

Olympic Water and Sewer, Inc. (OWSI or the Company herein) has examined each of the public comments submitted to the Washington Utilities and Transportation Commission (UTC) with respect to the above docket and provides this consolidated response and explanation, where appropriate. OWSI serves approximately 1,608 mixed-use, primarily residential, customers near Port Ludlow in Jefferson County. Many of the comments cover substantially similar topics. This letter provides a comprehensive response to clarify the facts related to the claims presented in the public comments. As noted herein, OWSI's response is based on the personal knowledge and professional opinions of OWSI officials involved in the decision-making with respect to the drilling of Well #17 and subsequent environmental investigation, as supplemented by the various professional consultants' reports on file and related emails and other communications.

This filing arises out of first, OWSI's efforts to secure a reliable water source for its customers within the North Bay portion of its system (which includes approximately 601 residential customers) in light of known loss of efficiency with its principal major production well, and second, OWSI's investigation into environmental contamination at the property following discovery. The property where OWSI drilled was and is the same property that includes this separate major production well, which has supplied up to 44% of all water for the North Bay area. Once groundwater contamination at the site was identified, it was incumbent upon the Company to investigate the source and extent of the groundwater contamination to, among other things, ensure the Company's existing groundwater supply was not compromised.

This letter outlines, in general format, the most common and relevant comments, and provides the Company's response to the same.[1] The main comments can be summarized and categorized into the following five general comments:

1. Pope Resources caused the contamination and should be responsible for all costs related to the same;
2. OWSI drilled in an area known to be contaminated;
3. OWSI did not follow the Jefferson County recommendation to move away from the contamination;
4. OWSI did not follow the Jefferson County recommendation to drill a test well; and
5. OWSI customers should not bear the costs.

The Company addresses each of the above comments below.

1. Comment: Pope Resources caused the contamination and should be responsible for all costs related to the same.
   Response: Not Accurate

Discussion: The underground storage tanks (USTs) that site investigation deemed to be the source area of the discovered groundwater contamination were always under the control of OWSI, formerly doing business as Ludlow Utilities Company and Ludlow Water Company. Refer to Exhibit A (Olympic Water and Sewer, Inc. Corporate and Site History Timeline).

By way of background, OWSI was incorporated in 1968, originally under the name of Ludlow Utilities Company. In 1988 it changed its name to Ludlow Water Company, and in 1998 to OWSI.[2] The site was placed into use as part of utility operations in or around 1968 and Well #2 was drilled and placed into production at that time. Since that time, OWSI, and not Pope Resources, was the corporate entity in control of and responsible for the day-to-day functional control of the USTs at the site, and the corporate entity that used the fuel from the USTs in support of its utility operations.

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[1] OWSI carefully reviewed and considered the comments received by the UTC. One of the comments came in on behalf of the Port Ludlow Village Council (PLVC), claiming to represent the approximate 1,700 home and condo owners, which, in a split decision, authorized the comment letter to be submitted (a minority position letter was also submitted supporting the surcharge). For purposes of clarification, while membership is available to all property owners within the OWSI service area, membership is obtained and voting membership is granted, by virtue of particiaption and voting in the last annual election of the Council, *see* Articles of Incorporation at art. V, indicating that the PLVC represents only those individuals classified as Voting Members. Of the stated approximate 1,700 property owners, only approximately 289 votes were cast in the most recent annual election of the Council and is therefore deemed to be their membership.

[2] Hence, OWSI is the successor by name change to both Ludlow Utilities Company and Ludlow Water Company (collectively referred to here as OWSI or the Company).

OWSI has also owned a portion of the property since 1985, and has been the owner of the entire property since 1998. Pope Resources, through itself or one of its affiliated entities (Pope and Talbot Development, Inc.) was a prior owner of the property. In 1985, Pope and Talbot Development, Inc. deeded, by quitclaim deed, a portion of the property, specifically a portion of the northeastern portion of the property containing the existing public water supply well (Well #2) to OWSI (f/k/a Ludlow Water Company). In 1998, Pope Resources deeded the remainder of the property to OWSI. For all material times since the site was placed into use in 1968, OWSI has operated the facility in support of its utility operations.

Comments received allege that Washington's Model Toxics Control Act (MTCA) and specifically RCW 70.105D.040(1)(a) and (1)(b) "clearly define the responsible party as the owner when the contamination occurred."[3] That comment misstates the law. MTCA imposes strict and joint liability on, among others, "(a) The owner or operator of the facility; [and] (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances." RCW 70.105D.040(1). It is well known and accepted that MTCA imposes strict liability on the present owner of a facility. Here, OWSI is the present owner of the facility, and is hence strictly liable under MTCA. Further, OWSI has operated the site in support of its utility functions, since in or around 1968, including use of the former USTs. Hence, OWSI would likely also be considered a "person" that owned or operated the facility at the time of release. MTCA places strict and joint liability on OWSI for all costs associated with the release of hazardous substances at the property.

2. Comment: OWSI drilled in an area known to be contaminated.
   Response: Not Accurate

Discussion: In 2009, OWSI did not know, and did not have reason to know, that groundwater in the vicinity of the proposed Well #17 would be contaminated. Refer to Exhibit B (Annotated Site Plan from AGI Report).

The geologist report on the tank removal, *Applied Geotechnology, Inc., Hydrocarbon Contamination Assessment and Underground Storage Tank Removal* (March 4, 1991) (AGI Report),[4] which OWSI reviewed, detailed the UST removal at the site and the removal of a relatively small area of contaminated soil (approximately 150 cubic yards, combined) to the practical limit of excavation. The AGI Report noted that residual soil contamination was identified at the base of excavation from one of the former UST locations at approximately 10 feet below ground surface (bgs). The AGI Report notes that confirming samples were taken to delineate the extent of the remaining

[3] *See, e.g.*, Web based comments from B. Loomis and Letter from David Mann, Gendler & Mann LLP to Washington Utilities and Transportation Commission dated March 24, 2014. Other commentors cite to or cut and paste this same argument.

[4] A copy of the AGI Report is on file with the UTC with respect to this matter, having been submitted by the Company in response to Data Requests from UTC staff.

contamination, which showed no detectable contamination at 13.6 feet bgs. Based on these facts, the AGI Report estimated approximately 8 cubic yards of potentially contaminated soil as remaining in place.

The AGI Report concluded that the remaining contamination did not include any groundwater contamination and was not likely to migrate or pose a risk to potable groundwater at the property. This conclusion was based on the confining geology underlying the contaminated soil, along with it being covered by a building. Supporting this conclusion were AGI's findings that:

- No groundwater was encountered in the drilling of the borings at the site.
- A total of approximately 150 cubic yards of gasoline-contaminated soil were excavated from the two northern UST locations.
- No detectable contamination was encountered around the southern 2,000-gallon tank.
- The low permeability sediments between the contaminated soil and the screened aquifer protect potable groundwater from contamination.
- The remaining soil contamination was surrounded by low permeability silty sand of sufficient thickness to protect the adjacent water well from migration of hydrocarbons into the public water supply.
- The thick sequence of clay, silt, and cemented sand located above the water-producing interval was determined should provide substantial protection of the water producing sand from any surface contamination.

See AGI Report at 7, 10. Further supporting these conclusions, the existing Well #2, which is approximately 85 feet from of the former UST site and the then-known remaining contamination, had never shown any indication of contamination and is tested routinely for this type of contaminant according to the required testing schedule established by the Washington Department of Health.

OWSI's consultant, Robinson Noble, and Jefferson County Public Health reviewed the AGI Report in the course of the site selection. The County, in turn, consulted with the regional engineer at the Washington Department of Health (DOH). DOH considered the existing conditions, and offered opinions on site conditions and potential mitigations, which were then included as recommendations in the Jefferson County approval of "Application for Inspection of Well Construction, Reconstruction or Decommissioning." Jefferson County then approved the "Application for Inspection of Well Construction, Reconstruction or Decommissioning."

3. Comment: OWSI did not follow the Jefferson County recommendation to move away from the contamination.
   Response: Not Accurate

Discussion: OWSI did place Well #17 away from the then known soil contamination.

This recommendation from Jefferson County was taken directly from Frank Meriwether, Regional Engineer at DOH, from an email to the Company and to Jefferson County. The recommendation from DOH was that OWSI site Well #17 more than 100' from the former UST contamination sites. OWSI considered and complied with this recommendation. Well #17 is located approximately 110' away from the former UST sites. Groundwater flow direction and aquifer characteristics were undetermined in 2009 such that there was no practical way of determining which direction was up gradient or down gradient from the UST site without extensive hydogeologic review. As detailed in the Company's responses to Data Requests from UTC staff, there were no other sites, away and offsite from the property, that OWSI determined were feasible. OWSI does not own any other property within the legal description permitted by its Department of Ecology water right for this production well.

4. Comment: OWSI did not follow the Jefferson County recommendation to drill a test well.
   Response: A test well would not have discovered the contamination; and even if it had OWSI would still have been compelled to report and investigate the same.

Discussion: This comment misses the point. First, if OWSI had commissioned a test well at the site, it, more likely than not, would not have discovered the groundwater contamination, and would have still elected to proceed with drilling Well #17 with this added cost. Second, even if OWSI had drilled a test well, and *if* that test well was extended to a depth beyond what would have been deemed reasonable, and *if* OWSI had discovered the contamination, OWSI would still have been compelled to report and investigate the same and incurred the same costs sought in this filing.

First, a test well would likely not have discovered the groundwater contamination. OWSI did not bring in a separate drill rig to drill a 2" hole 20' deep, even though the Company discussed doing so. Instead, in consultation with the Company's consulting hydrogeologist, Robinson Noble, OWSI brought in the main drill rig and carefully monitored the first 20-30' of drilling, with the hydrogeologist on site. Robinson Noble had staff on site regularly for the first approximate 25' of well drilling, and spot-checked at depths thereafter. Even when not on site, the driller was in close communication with Robinson Noble. We were well aware of the concern regarding known shallow soil contamination in another portion of the property and proceeded with caution during the initial stages of drilling to look for signs. A test well at this site, given the reported site conditions, would likely have been proposed to extend to a maximum depth of 20- 25',

and would have been installed for the purpose of testing soil conditions only, not groundwater. The reports and logs all indicated that soil contamination was in this shallower zone and there was no groundwater to impact. No contamination was located until the drilling reached 50', in a small layer of perched groundwater between the till and the underlying clay. It is unlikely that a test well would have discovered this contamination.

Regardless, the approach taken by the Company and Robinson Noble, as described above, was consistent with drilling a test well. If a test well was commissioned it likely would have not discovered the contamination and OWSI would be in the same situation it is today, with the added expense of a non-detect test well.

Second, even if OWSI had drilled a test well, and *if* that test well was extended to a depth beyond what would have been deemed reasonable, and *if* OWSI had discovered the contamination, OWSI *would still* have been compelled to report and investigate the same and incurred the same costs sought in this filing. The drilling of Well #17 ceased immediately upon discovery of potential contamination, and the discovery of potential release was reported to Jefferson County and the Department of Ecology pursuant to WAC 173-340-300. It was this discovery and reporting that prompted the subsequent environmental investigation. That same investigation would have occurred if OWSI had discovered the contamination incident to discovery via a test well.

5. Comment: OWSI customers should not bear the costs.
Response: The drilling costs and investigation were reasonable and necessary business expenses in support of its customers.

Discussion: OWSI acted in good faith in the normal course of business in an attempt to provide an additional needed water source. As detailed in the Company's responses to Data Requests from UTC staff, the Company's annual groundwater monitoring had identified a need to identify and secure an additional productive water supply source in the North Aquifer for the long term water supply for its customers.

First, OWSI identified a need to secure a safe and reliable future water source in response to declining productivity in Well #2. Well #2 (located at the 781 Walker Way property) has historically been a major producer from the North Aquifer and source of water supply for OWSI's water customers in the North Bay portion of its water system.[5] Groundwater Monitoring reports commissioned by OWSI indicated that starting in or around 1994, the static pumping water level trends in Well #2 showed progressive divergence which is often indicative of decreasing well efficiency.[6] Still, over the past

[5] The North Bay area is sometimes referred to as OWSI's Service Zone A.
[6] *See Robinson Noble Saltbrush, Inc., 2008 Annual Report on the Port Ludlow Area Groundwater Monitoring Program for Port Ludlow Associaties, LLC* (February 2009) at 4. A copy of the 2008 Annual Report is on file with the UTC with respect to this matter, having been submitted by the Company in response to Data Requests from UTC staff.

seven years, Well #2 has supplied, on an annual basis, up to 44% of all water supply for the North Bay customers. There were no other sites, away from the property on which OWSI determined it could drill a productive well. OWSI performed its due diligence and consulted with the appropriate experts and reviewed pertinent documentation in selecting the site for Well #17. OWSI could not have predicted in 2009 that the then known limited soil contamination (estimated at approximately 8 cubic yards, at a depth of less than 13' bgs, and located under a garage structure) would have traveled to the area in which it was discovered. OWSI elected to pursue Well #17 in lieu of alternatives that would have presented more uncertainty (exploration outside of the property and pursuit of new water rights) or greatly increased costs (extending water from South Aquifer at estimated cost in excess of $1.5 million). OWSI decision-making was made with the best interests of the customers in mind and the efficient and economical operation of the water system. Comments that OWSI should not be able to recover these costs hamper the Company's ability to address its water supply needs, and infers that the Company should only choose options that present the least amount of risk, even if the known cost of such options to the Company and ultimately the consumer is much greater. Such a determination would seem to be counter to OWSI's goal of providing service in the most cost-effective manner. As ratepayers, the users share in the cost of decisions made by the purveyor, if those decisions are prudent and made with due consideration of the facts. OWSI acted prudently in selecting the site for Well #17.

Second, and just as importantly, once OWSI discovered the site groundwater contamination, it was imperative that the Company take prompt and diligent action to investigate that contamination. While some of the public comments would lead one to assume the commentators believe that OWSI should have never drilled at this site, or should have drilled a test well,[7] the fact remains that in 2009 previously unknown groundwater contamination was discovered at property that included, and continues to include, one of OWSI's major domestic water supply production wells (Well #2). When that discovery was made, OWSI took the reasonable and necessary actions to investigate the source of and extent of that contamination. These costs were necessary costs in response to Ecology regulations and state law, in support of OWSI's water system, and to ensure OWSI could continue to reliably and safely serve its customers. One of the objectives of regulation is to ensure water companies supply and are able to supply public water service that is "safe, adequate, and efficient." RCW 80.28.010(2) (emphasis added). Once discovered, costs incurred in the investigation of groundwater contamination at this property were prudent and necessary costs to ensure the safe, adequate, and efficient service of water by the Company to its customers. These costs were necessary costs to OWSI, and incurred to protect and ensure reliable supply to its ratepayers and customers.

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[7] *See, e.g.*, Web based comments from B. Loomis. Other commentors cite to or cut and paste this same argument.

The proposed temporary surcharge is just, fair, and reasonable, and results from OWSI's reasonable efforts to address the water supply needs of its customers, and to thoroughly investigate and address discovered contamination at a site holding a current major water supply source for the community in order to ensure that Well #2 continued to produce contaminant free drinking water.[8]

If you have any questions concerning this matter, please contact me at (360) 437-2101. Our email address is owsi@portludlowassociates.com.

Sincerely,

Larry Smith, President
Olympic Water and Sewer, Inc.

Enclosures

cc: Joseph Rehberger (via e-mail)
Jim Ward (via e-mail)

[8] *See also* Declaration of Max T. Wills, LHG, Declaration of Jeffrey Hansen, P.E., and Declaration of Michael Staton, L.G. filed herewith.

EXHIBIT A

EXHIBIT A

OLYMPIC WATER AND SEWER, INC. (OWSI) CORPORATE AND SITE HISTORY TIMELINE
UW-110436

	Pre-1985	1985-1990	1991-1995	1998-2000	2001 to Present		
Corporate Ownership							
Level 3	**Pope and Talbot Development, Inc.**	**Pope Resources 10/10/85**	**Pope Resources**	**Pope Resources**	**Port Ludlow Assoicates, LLC (HCV Partners is the Managing Member and 1% owner of PLA)**		
Level 2				**Olympic Property Group, LLC (1998)**			
Level 1	**Ludlow Utilities Company (n/k/a OWSI)** ** **5/10/68**	**Ludlow Water Company (n/k/a OWSI)****	**Ludlow Water Company**	**Olympic Water and Sewer ****	**Olympic Water and Sewer**		
Site Operator/Owner							
Site Operation, including Well 2	**Ludlow Utilities Company**	**Ludlow Water Company**	**Ludlow Water Company**	**Olympic Water and Sewer**	**Olympic Water and Sewer**		
Site Ownership	**Pope and Talbot Development, Inc.**	**Pope Resources**	**Pope Resources**	**Olympic Water and Sewer**	**Olympic Water and Sewer**		
Well No. 2 Ownership	**Pope and Talbot Development, Inc.**	**Ludlow Utilities Company*****	**Ludlow Water Company**	**Olympic Water and Sewer**	**Olympic Water and Sewer**		
USTs/Contamination	**USTs installed Pre-1985**	**USTs removed 9/1/90**			**Well 17 Drilling 4/21/09**	**Site Investigation**** **2009-2013**	**VCP Process 2013-Present**

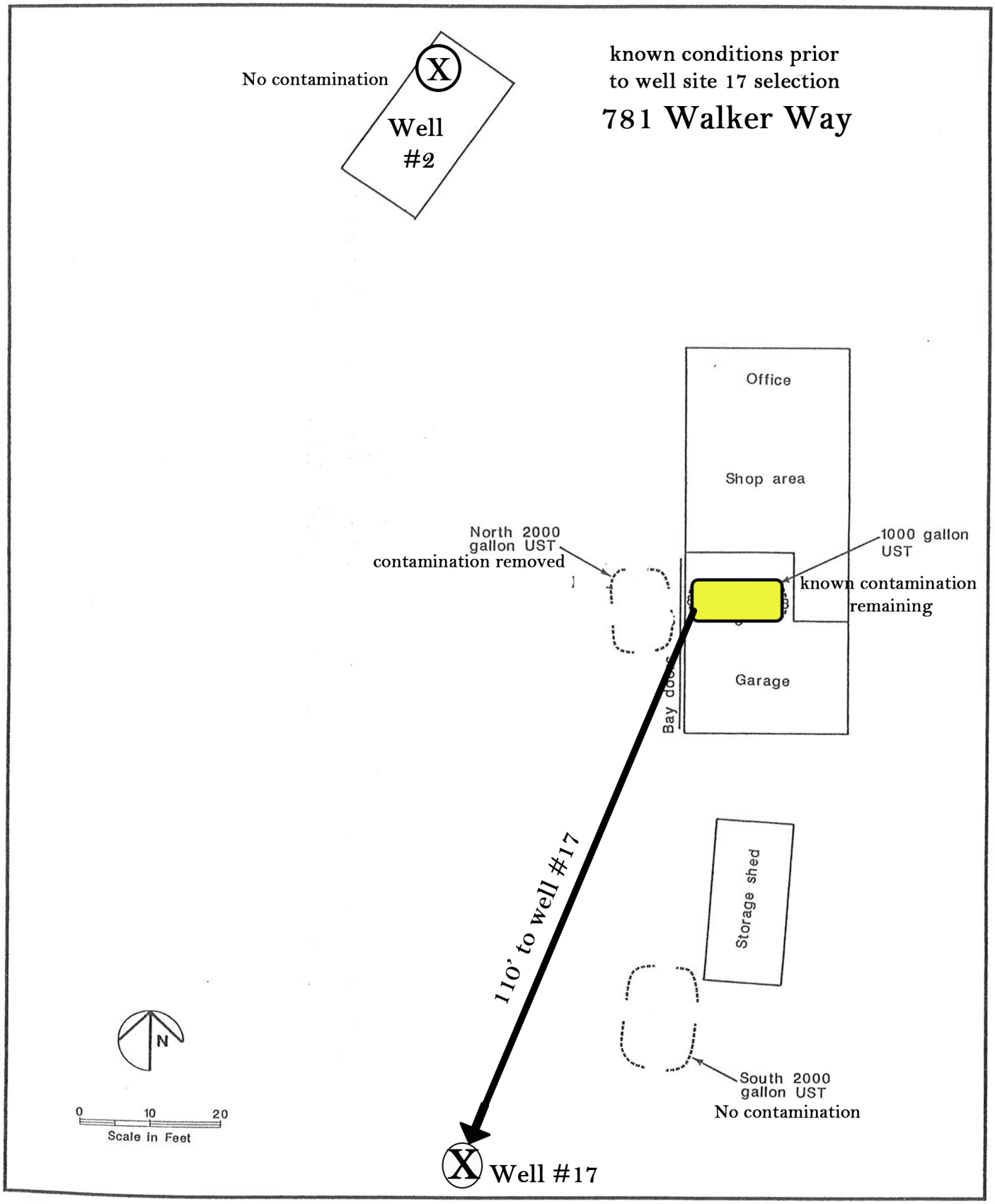
Notes

* Sale of OWSI	PLA acquires OWSI from Olympic Property Group, LLC August 2001
** OWSI Name Changes	Ludlow Utilities Company incorporated May 1968 Ludlow Utilities Company changes name to Ludlow Water Company December 1988 Ludlow Water Company changes names to Olympic Water and Sewer, Inc. April 1998
*** Site Ownership	Pope and Talbot Development, Inc. deed PTN of site (Well No. 2) to Ludlow Utilities Company December 1985 Pope Resources deeds remainder PTN of site (less Well No. 2) to Olympic Water and Sewer, Inc. September 1998
**** Site Investigation Timeline	Contamination discovered April 2009 Demand to Olympic Property Group, LLC (n/k/a OPG Properties, LLC) and Pope Resources June 2009 Tolling Agreement August 2009 Cost Sharing Agreement March 2010 Settlement Agreement May 2013

Except as noted, dates and events prior to 1985 uncertain

EXHIBIT B

Exhibit B



Applied Geotechnology Inc.
Geotechnical Engineering
Geology & Hydrogeology

Site Plan

Pope Resources/Water District UST
Port Ludlow, Washington

FIGURE 1

JOB NUMBER	DRAWN	APPROVED	DATE	REVISED	DATE
15,390.002	MCT		8 Feb. 91		