

**DECLARATION OF RESTRICTIONS**

**WHEREAS** the Village of Sister Bay holds title to real estate located in the Town of Liberty Grove, Door County, Wisconsin, which real estate is described in Exhibit “A” attached hereto and incorporated herein by reference, which real estate is further described as the “Subject Property”;

**AND WHEREAS** environmental evaluation of the Subject Property has indicated that the Subject Property is contaminated with lead, arsenic and other organic pesticides;

**AND WHEREAS** the Department of Agriculture, Trade and Consumer Protection of the State of Wisconsin has evaluated the results of the environmental investigation undertaken by the consultant for the Village of Sister Bay, and has approved of the investigation method and results;

**AND WHEREAS** the Department of Agriculture, Trade and Consumer Protection of the State of Wisconsin has authorized the closing of its environmental case relating to the Subject Property upon the application of a soil deed restriction and listing the site in the DNR’s registry of closed remediation cases;

**NOW, THEREFORE**, the Village of Sister Bay by its Board of Trustees, does hereby adopt these restrictive covenants and all persons entering upon such property and all persons or entities obtaining a legal interest in the Subject Property are notified of such restrictions as follows:

1. The Subject Property as described in Exhibit “A” hereto has been used as an orchard property which included the application of unknown pesticides in quantities and for a time period unknown to the Village of Sister Bay.
2. The soil in the Subject Property as described in Exhibit “A” is determined to have been contaminated with lead, arsenic, and persistent organic pesticides including DDE, DDT, and Dieldrin. The nature and level of contamination is documented in the records of the Department of Agriculture, Trade and Consumer Protection Investigation No. 03474060201.
3. Available scientific information indicates that the pesticides detected in the soils of the Subject Property may pose hazards to human health as a result of direct contact with such pesticides if the Subject Property is not properly managed.
4. As a result of the environmental investigation and identification of soil contamination on the Subject Property, the Department of Agriculture, Trade and Consumer Protection of the State of Wisconsin requires that a good vegetative cover be maintained as protection against the direct contact risk and has determined that the maintenance of such vegetative cover is an adequate protection against such risk. The

Recording Area

Name and Return Address

Atty. Randall J. Nesbitt  
Pinkert Law Firm LLP  
P. O. Box 89  
Sturgeon Bay, WI 54235

Parcel Identification Number (PIN)

maintenance of a vegetative cover will not, however, eliminate the risk of direct contact nor will it remove the soil contamination from the Subject Property.

5. While there are no restrictions applicable to the Subject Property to prevent its use as residential use, in the event the Subject Property is converted to residential use, all occupants of the Subject Property are directed to follow guidance issued by the Wisconsin Department of Agriculture, Trade and Consumer Protection and Department of Natural Resources regarding minimizing direct contact with contaminated soil.

6. No soil may be removed from the Subject Property unless it has been sampled, processed and disposed of in compliance with applicable waste rules and regulations of the Wisconsin Department of Natural Resources.

7. The Subject Property is to be posted on the site of the Wisconsin Department of Natural Resources registry of closed remediation cases.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

VILLAGE OF SISTER BAY:

By: \_\_\_\_\_  
Denise Bhirdo, President

Attest:

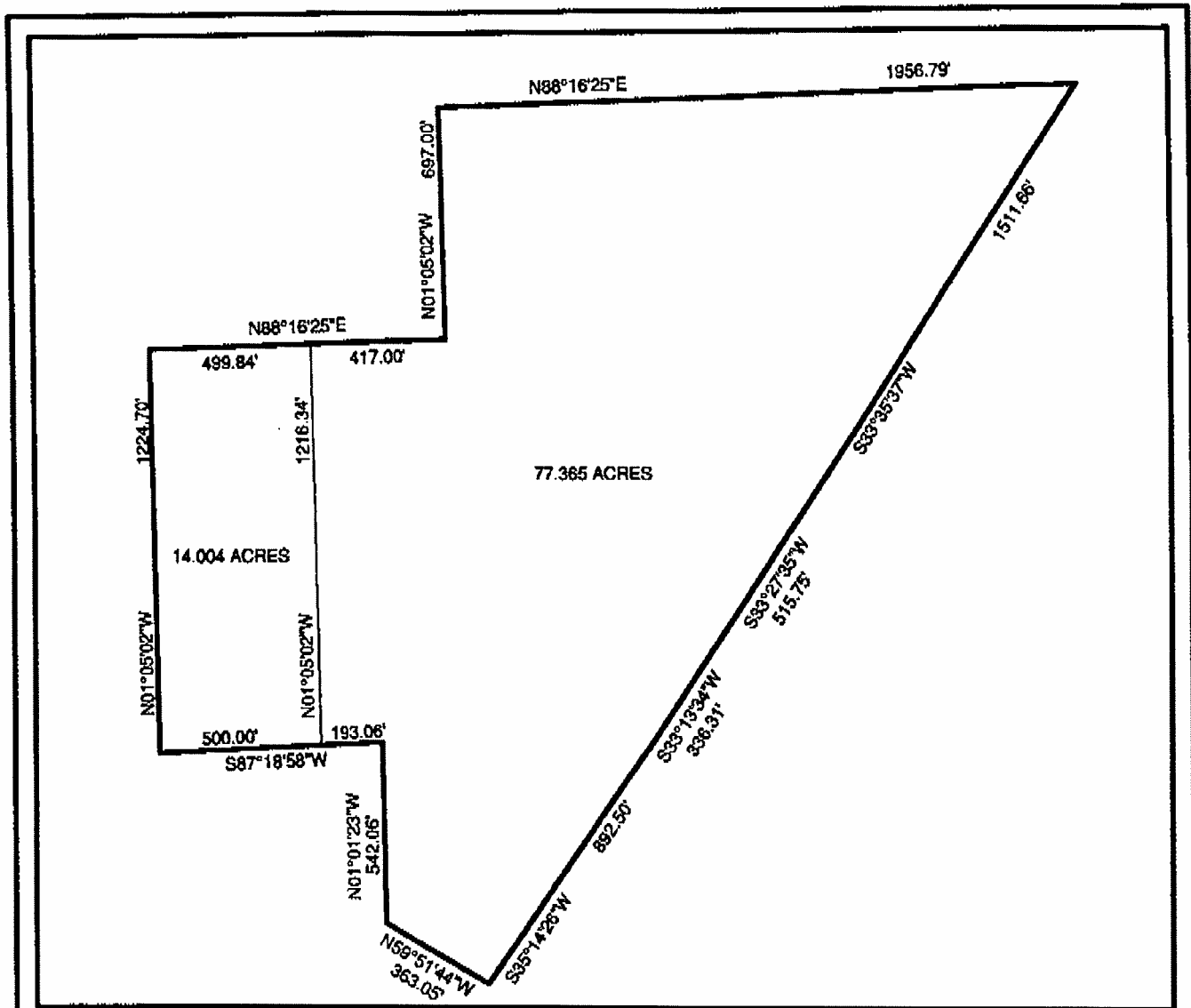
\_\_\_\_\_  
Christy Sully, Clerk

State of Wisconsin    )  
                                  ) ss  
County of Door        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2006, the above named Denise Bhirdo and Christy Sully, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

This document drafted by:  
Atty. Randall J. Nesbitt  
Pinkert Law Firm LLP  
454 Kentucky Street  
P. O. Box 89  
Sturgeon Bay, WI 54235  
F:\Clients\S\Sister Bay Village\Environmental\restrictions 03-15-06.doc



### PARCEL MAP

VILLAGE OF SISTER BAY  
TOWN OF LIBERTY GROVE FORMER ORCHARD SITE  
STATE HIGHWAY '42'

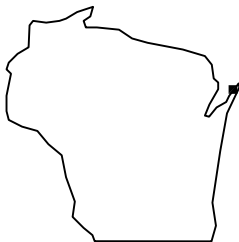


1" = 500'

FIGURE 2



BASE MAP SOURCE: USGS 7.5 MINUTE TOPOGRAPHIC QUADRANGLE, SISTER BAY, WISCONSIN, DATED 1982.



QUADRANGLE LOCATION



NORTH  
SCALE: 1"=2000'  
APPROXIMATELY

FORMER ORCHARD PROPERTY  
SISTER BAY, WISCONSIN

FIGURE 1  
SITE LOCATION

DRN. BY DDZ  
DATE 5.JUNE.2006

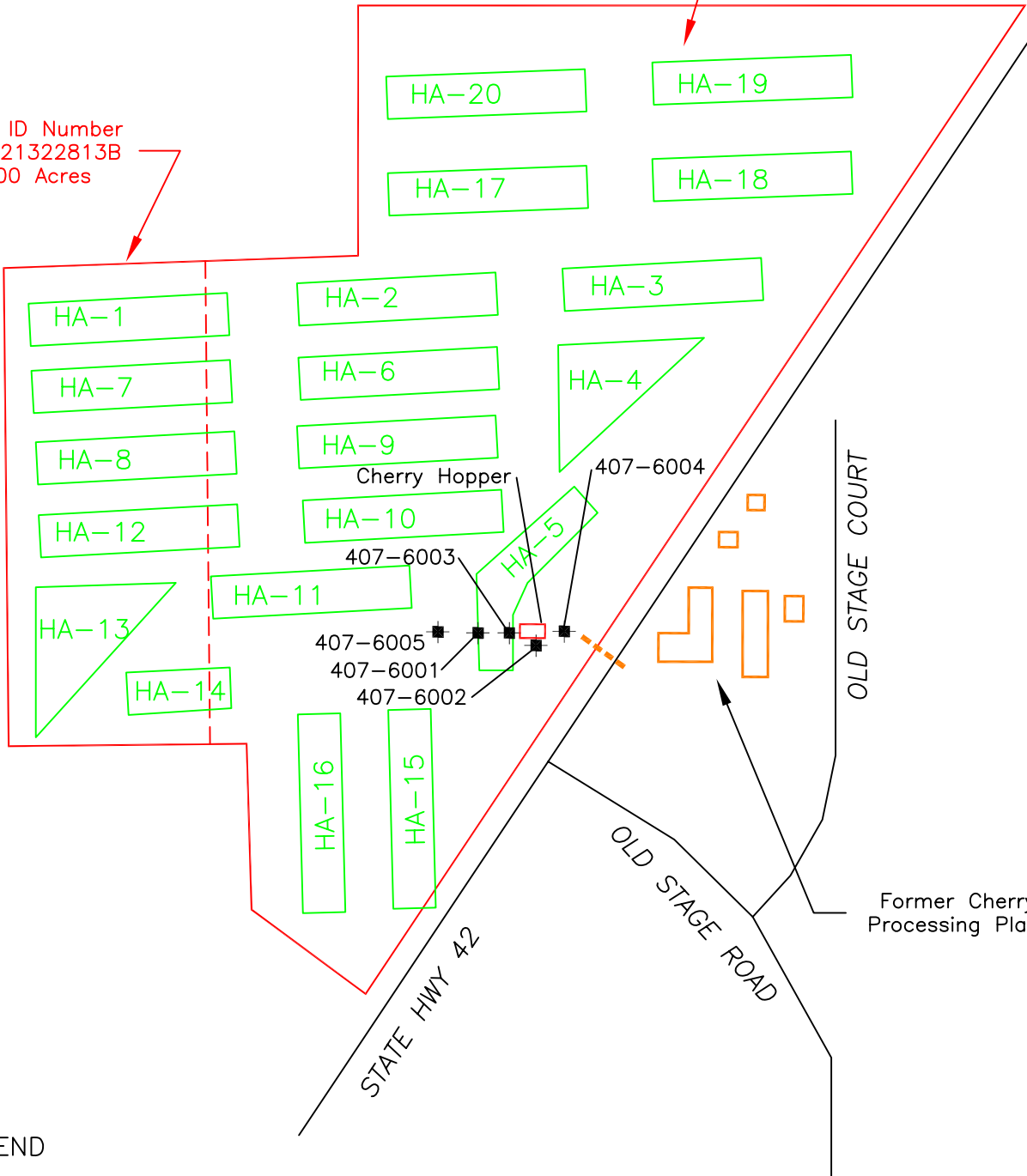
PRJ NO. 0544-001-800

**NEWFIELDS**



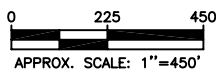
Parcel ID Number  
0180221322814C  
77.37 Acres

Parcel ID Number  
0180221322813B  
14.00 Acres



LEGEND

- January 2006 DATCP Soil Samples
- - - Culvert under Hwy 42
- HA-14 April 2003 Robert E. Lee Composite Soil Sample Locations



FORMER ORCHARD PROPERTY  
SISTER BAY, WISCONSIN

FIGURE 2  
SITE MAP

DRN. BY DDZ  
DATE 5.JUNE.2006

PRJ NO. 0544-001-800

NEWFIELDS



State of Wisconsin  
Jim Doyle, Governor

**Department of Agriculture, Trade and Consumer Protection**

Rod Nilsestuen, Secretary

March 3, 2005

Mr. Robert Kufrin  
Village of Sister Bay  
P.O. Box 769  
Sister Bay, WI 54234

**Re: Sample Results - Former Orchard Property Case – Sister Bay    DATCP #03474060201**

Dear Mr. Kufrin:

The sampling that John Peters and I did on January 31, 2006 showed orchard-level contamination in the soil around the suspected waste water discharge area (see table).

Location	Seven feet west of cherry hopper	South side of cherry hopper	Next to valve at west side of hopper	West end of discharge pipe nearer to road	Orchard "background" ~100' nw of hopper
Depth	0-4"	0-4"	3-5"	2-8"	0-4"
Arsenic	5.97	5.18	7.47	12.9	3.43
Lead	52.8	96.8	59.7	119	166
DDE	>0.10	>0.10	>0.10	0.166	>0.10
DDT	>0.10	>0.10	>0.10	0.188	>0.10
Dieldrin	>0.10	>0.10	>0.10	>0.10	0.155

We found no evidence that this area is any different from the orchard as a whole. Based on these findings, and the findings of the previous investigation by Newfields, you may close this case using a soil deed restriction and listing the site on the DNR's registry of closed remediation cases. These methods of case closure are consistent with my September 8, 2003 letter to Ron Kane.

The deed restriction should specify 1) that the site was previously an orchard, 2) that the site is contaminated with lead, arsenic, and persistent organic pesticides, 3) that these pesticides may pose a direct-contact risk if not managed properly, 4) that the DATCP requires maintaining a good vegetative cover as adequate protection against the direct contact risk, and 5) if the property is converted to residential use, the occupants must follow state agency guidance regarding minimizing direct contact with the contaminated soil, and 6) any soil removed from the site must be sampled and handled according to the appropriate DNR waste rules and regulations. Please send me a draft copy of the deed restriction for my review.

Once the deed restriction is finalized, Newfields should prepare a GIS registry package for posting the site on DNR's registry of closed remediation cases. Please call me at (608) 224-4516 if you have any questions about these requirements.

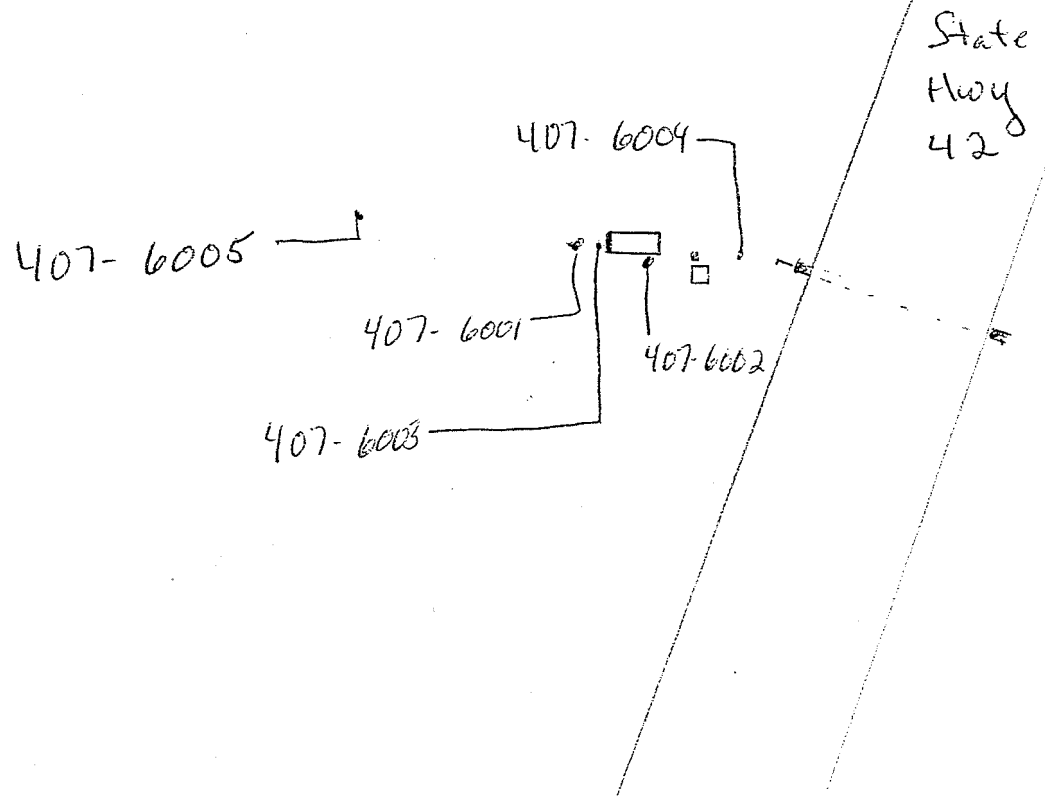
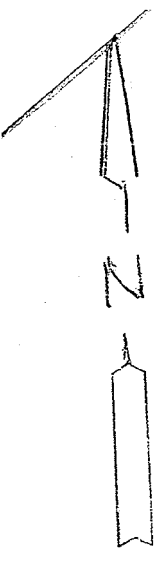
Jeff Ackerman  
Hydrogeologist

copy: John Peters, DATCP                      David Trainor, Newfields

*Agriculture generates \$51.5 billion for Wisconsin*

Case # 03-474-0602-01

Old orchard owned by:  
Village of Sister Bay



**Robert E. Lee & Associates, Inc.**

Engineering, Surveying, Environmental Services

June 2, 2003

Mr. Ron Kane  
VILLAGE OF SISTER BAY  
P. O. Box 769  
Sister Bay, WI 54234

**Green Bay Office**  
4664 Golden Pond Park Ct.  
Oneida, WI 54155  
920-662-9641  
FAX 920-662-9141  
E Mail rel@releeinc.com

RE: Phase II Environmental Assessment for Village of Sister Bay  
Approximately 91 Acres (Former Orchard), Town of Liberty Grove

Dear Mr. Kane:

In order to address possible soil contamination at the above-named site, Robert E. Lee & Associates, Inc. (REL) conducted a Phase II Environmental Site Assessment. To perform the assessment, soil samples were collected for laboratory analysis. Figure 1 shows the project location, and Figure 2 provides a parcel map of the site.

The Phase II Site Assessment was performed to determine the environmental impact, if any, of the orchard formerly located on the property. Orchards routinely used pesticides, which can accumulate in the soil. To evaluate the soil for potential contamination, samples were analyzed for substances commonly used in the past by growers for this purpose.

### **FIELD PROCEDURES**

On April 17 and 18, 2003, REL personnel advanced hand auger soil borings at the subject property to collect soil samples for laboratory analysis. Sixty borings were advanced using a 3-inch diameter bell auger. Composite samples were produced from groupings of three auger samples, for a total of 20 laboratory samples (HA-1 through HA-20). The sampling locations are shown on Figure 3. Samples were collected from the top two feet of soil or less, depending on the depth at which the auger met refusal. The three samples were combined in a mixing bowl from which a composite was then collected. Figure 3 shows the locations of the samples.

### **Subsurface Conditions**

According to "Water Resources of Wisconsin-Lake Michigan Basin" (Skinner and Borman), published by the Department of the Interior, United States Geological Survey, Silurian Dolomite is the upper bedrock unit in the area.

The soils in the vicinity, according to the "Soil Survey of Door County, Wisconsin," published by the United States Department of Agriculture, consists of the Summerville-Longrie-Omena Association. This is primarily shallow to deep, well-drained soil that has a sandy loam or loam subsoil over sandy loam or fine sandy loam till or dolomite bedrock. It is found where bedrock strongly influences topography. Loam is intermediate in texture between clay and sand, and consists of mixtures of clay, sand, gravel, and silt.

The soils consisted of 10 to 12 inches of topsoil, followed by approximately one foot of silty clay, generally followed by silt or silty sand to the point of auger refusal.

## LABORATORY ANALYSES

The soil samples were submitted to Northern Lake Service, Inc. in Crandon, WI. Each sample was analyzed for organochlorine pesticides, arsenic, and metals consisting of cadmium, copper, lead, mercury, and zinc.

## Laboratory Results

The results of the analyses are summarized in Table 1. Arsenic was found to exceed the NR 720 soil standard in every composite sample. The standard for lead was exceeded in samples HA-1, HA-8, HA-11, HA-12, HA-13, HA-18, and HA-20. Various pesticides were identified at low levels; however, 4,4-DDT, commonly known as DDT, was found at high concentrations at a number of locations, and is found in significant levels at nearly every sample point. Also present at significant levels are 4,4-DDE and 4,4-DDD, which are breakdown products of DDT. The reports are included in Appendix A.

## DISCUSSION

Arsenic and lead are listed in ch. NR 720 "Soil Cleanup Standards" Wis. Adm. Code as substances that are a human health risk based on carcinogenic or other health related qualities. If arsenic is present in the soil above 0.039 mg/kg, or if lead is above 50 mg/kg, they must be reported to the WDNR. It is likely that the WDNR will require further investigation, which would include additional soil and groundwater monitoring. The following discussion of these substances is taken primarily from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) website ([www.datcp.state.wi.us](http://www.datcp.state.wi.us)). We have included in Appendix B an overview on the subject of lead and arsenic in the soil published by DATCP.

Although arsenic and lead are naturally occurring, arsenic is only found in high concentrations in northeastern Wisconsin in drinking water that is produced from the sandstone aquifer. Background levels for lead are considered to be below 50 mg/kg. The arsenic and lead in the soil at this site must be assumed to have their source as an insecticide, most likely lead arsenate or other compounds using lead or arsenic, used by the orchard owner.

Although the primary risk of arsenic is from that found in groundwater, the NR 720 arsenic standard is based on protection of human health from direct contact through ingestion of soil or inhalation of particulate matter. Therefore, because the arsenic is near the surface, the WDNR may require remedial action. DATCP does not require remedial action at the levels identified at this site. DATCP has addressed the problem of arsenic in the soil at former orchards in Door County. According to the Department, "there is a risk to those who live on old orchard sites, but that risk is manageable and can be minimized by following some basic precautions." The precautions involve washing of hands, objects in the yard, and vegetative produce to remove soil particles to prevent ingestion, and keeping the house clean to prevent ingestion or inhalation.

There are no standards for soil or groundwater in WDNR regulations; however, when DDT is found in the environment, it must be reported to the WDNR. DDT and its breakdown products (DDD, DDE) can affect the nervous system if ingested in large doses. These effects cease when exposure to the substance ceases. Small daily doses appear to have no effect on humans. DDT may be taken up into plants grown in DDT laden soil. It appears unlikely that the concentrations in the soil at this site would be harmful; however, the Environmental Protection Agency considers DDT to be a concern for human health, and Wisconsin State agencies may want to address the site on a regulatory basis with regard to the DDT. Additionally, the Occupational Safety and Health Administration (OSHA) have established ingestion levels for soil.

## CONCLUSION

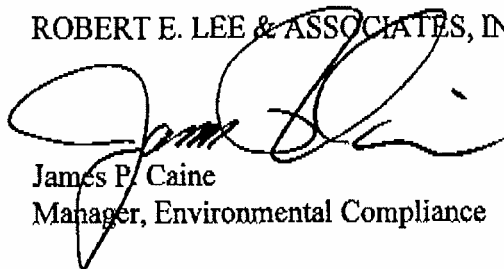
Significant levels of arsenic, lead, and DDT have been identified over most of the former orchard site. The arsenic and lead exceed the Table 2 residual contaminant levels in NR 720 Wis. Adm. Code. There are no soil standards for DDT. The hazardous substance spill law, S.292.11 (3) Wis. Stats., states: "A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall 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 the state." The results for all three substances must be reported to the WDNR. Although the health risk appears to be low for all three substances, the WDNR or other agencies may require further investigation.

## GENERAL QUALIFICATIONS

The conclusions presented in this assessment were based upon available records, discussions with local and state officials, and Robert E. Lee & Associates' professional interpretation of the data. Much of the information reviewed was prepared by others, and thus this assessment is limited to the accuracy of their data. This report has been developed from data obtained at a specific time and place. The scope of this report was limited to the specific project and location described herein, and is not intended to present a total or extensive investigation and evaluation. Our description of the project represents our understanding of the significant aspects of the project, as outlined within the scope of services. The results of the investigation and conclusions presented in this report are valid as of the date of the investigation. Due to the passage of time, and the activities conducted at the site, no warranty, expressed, or implied, has been made.

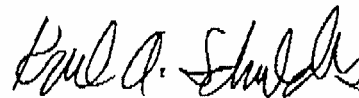
Sincerely,

ROBERT E. LEE & ASSOCIATES, INC.



James P. Caine  
Manager, Environmental Compliance

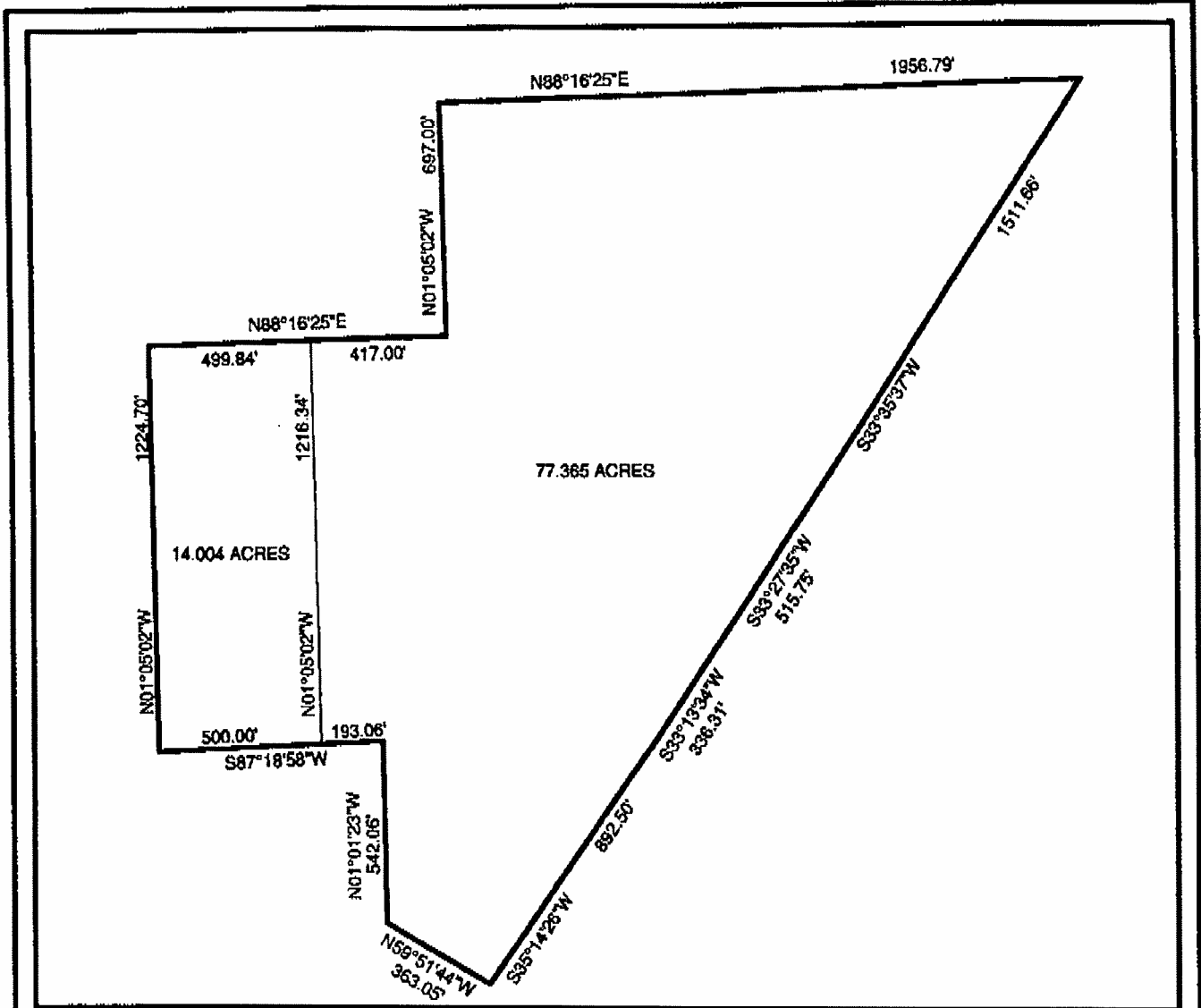
JPC/KAS/njm



Karl A. Schuldes  
Environmental Scientist II

ENC.





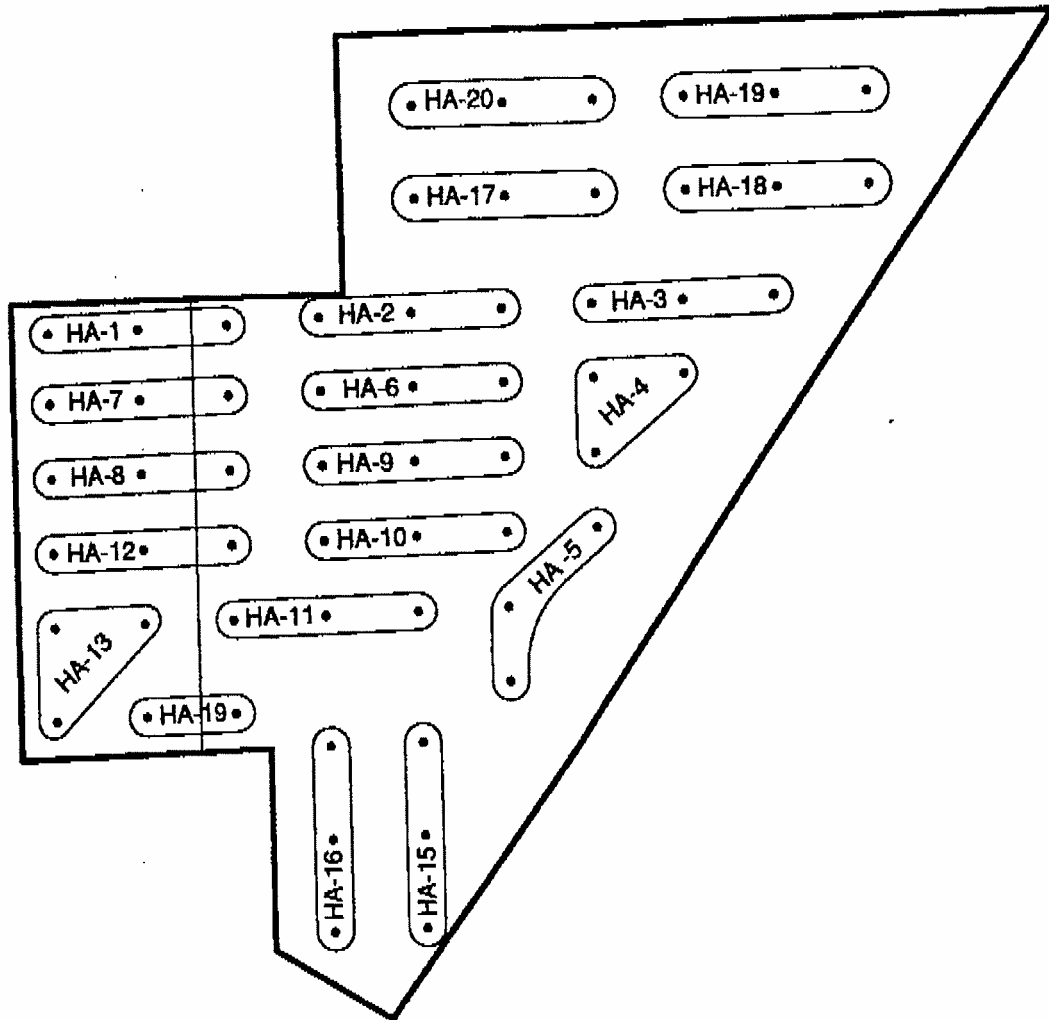
# PARCEL MAP

## VILLAGE OF SISTER BAY TOWN OF LIBERTY GROVE FORMER ORCHARD SITE STATE HIGHWAY '42'



1" = 500'

FIGURE 2



VILLAGE OF SISTER BAY  
FORMER ORCHARD SITE  
COMPOSITE SAMPLE LOCATIONS



1" = 500'

FIGURE 3


**TABLE 1  
SISTER BAY ORCHARD  
PESTICIDE AND METALS RESULTS**

Parameter	NR 720 Standard	HA-1	HA-2	HA-3	HA-4	HA-5	HA-6	HA-7	HA-8	HA-9	HA-10
		4/17/03	4/17/03	4/17/03	4/17/03	4/17/03	4/17/03	4/17/03	4/17/03	4/17/03	4/14/03
Arsenic (ppm)	0.039	21	26	5.1	5.9	3.4	3.1	4.4	8.2	4.5	2.4
Cadmium (ppb)	8.0	0.30	<0.26	<0.29	<0.32	<0.27	<0.31	0.35	<0.31	<0.27	<0.32
Copper (ppm)		6.5	40	18	33	18	26	5.2	4.3	24	21
Lead (ppm)	50	91	35	10	26	10	18	17	50	33	20
Mercury (ppm)		<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065
Zinc (ppm)		34	24	16	22	29	37	29	17	28	44
Pesticides (ppb)											
Aldrin		<4.9	<0.97	<0.97	2.1	<0.97	<0.97	<0.49	<4.9	<4.9	<0.97
Alpha-BHC		<2.6	<0.56	<0.56	<0.56	<0.56	<0.56	<0.28	<2.8	<2.8	<0.56
Beta-BHC		<5.3	<1.1	<1.1	<1.1	<1.1	<1.1	<0.53	<5.3	<5.3	<1.1
Delta-BHC		<2.6	<0.51	<0.51	<0.51	<0.51	<0.51	<0.26	<2.6	<2.6	<0.51
Gamma-BHC		<3.7	<0.75	<0.75	<0.75	<0.75	<0.75	<0.37	<3.7	<3.7	<0.75
Chlordane		<6.4	<1.3	<1.3	<1.3	<1.3	<1.3	<0.64	<6.4	<6.4	<1.3
4,4'-DDD		78	5.4	6.3	14	5.5	1.6	4.3	91	72	3.9
4,4'-DDE		3,400	350	250	430	340	95	170	1,900	1,200	150
4,4'-DDT		1,500	120	130	130	130	44	81	1,400	1,000	77
Dieldrin		<3.8	<0.75	24	63	22	9.1	<0.38	<3.8	37	19
Endosulfan I		<5.2	<1.0	<1.0	<1.0	<1.0	<1.0	<0.52	<5.2	<5.2	<1.0
Endosulfan II		<4.0	<0.80	<0.80	<0.80	<0.80	<0.80	<0.40	<4.0	<4.0	<0.80
Endosulfan Sulfate		<3.3	<0.66	<0.66	<0.66	<0.66	<0.66	<0.33	<3.3	<3.3	<0.66
Endrin		<3.3	<0.66	<0.66	<0.66	<0.66	<0.66	<0.33	<3.3	<3.3	<0.66
Endrin Aldehyde		<4.9	<0.97	<0.97	<0.97	<0.97	<0.97	<0.49	<4.9	<4.9	<0.97
Heptachlor		<4.4	<0.88	<0.88	<0.88	<0.88	<0.88	<0.44	<4.4	<4.4	<0.88
Heptachlor Epoxide		<4.2	<0.85	<0.85	<0.85	<0.85	<0.85	<0.42	<4.2	<4.2	<0.85
Methoxychlor		<7.8	9.3	7.1	12	7.8	<1.6	<0.78	<7.8	<7.8	7.9
Toxaphene		<190	<38	<38	<38	<38	<38	<19	<190	<190	<38

☐ = NR 720 Soil Standard Exceedance

**TABLE 1 (CONTINUED)  
SISTER BAY ORCHARD  
PESTICIDE & METALS RESULTS**

Parameter	NR 720 Standard	HA-11	HA-12	HA-13	HA-14	HA-15	HA-16	HA-17	HA-18	HA-19	HA-20
		4/18/03	4/18/03	4/18/03	4/18/03	4/18/03	4/18/03	4/18/03	4/18/03	4/18/03	4/18/03
Arsenic (ppm)	0.039	14	8.7	36	3.5	4.2	6.8	3.2	5.3	3.7	54
Cadmium (ppb)	8.0	<0.30	0.28	2.6	0.32	0.44	<0.30	<0.24	<0.35	<0.31	0.60
Copper (ppm)		54	5.3	18	31	44	50	39	62	33	33
Lead (ppm)	50	81	52	230	25	35	41	38	53	22	150
Mercury (ppm)		<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065	<0.065
Zinc (ppm)		33	22	33	26	27	50	27	33	29	35
Pesticides (ppb)											
Aldrin		2.0	<0.97	<4.9	<0.97	<0.97	<0.97	<0.97	<0.97	<0.97	<4.9
Alpha-BHC		<0.56	<0.56	<2.8	<0.56	<0.56	<0.56	<0.56	<0.56	<0.56	<2.8
Beta-BHC		4.3	<1.1	<5.3	<1.1	<1.1	<1.1	1.9	<1.1	<1.1	<5.3
Delta-BHC		<0.51	<0.51	<2.6	<0.51	<0.51	<0.51	<0.51	<0.51	<0.51	<2.6
Gamma-BHC		<0.75	<0.75	<3.7	1.9	<0.75	<0.75	<0.75	<0.75	<0.75	<3.7
Chlordane		<1.3	<1.3	<6.4	<1.3	<1.3	<1.3	<1.3	<1.3	<1.3	<6.4
4,4'-DDD		14	6.1	84	15	12	22	24	27	14	320
4,4'-DDE		480	150	4,500	320	340	400	790	450	280	4,000
4,4'-DDT		240	66	1,400	280	130	180	370	190	110	3,000
Dieldrin		73	11	21	15	12	51	38	19	16	35
Endosulfan I		<1.0	<1.0	<5.2	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.2
Endosulfan II		<0.80	<0.80	<4.0	<0.80	<0.80	<0.80	<0.80	<0.80	<0.80	<4.0
Endosulfan Sulfate		<0.66	<0.66	<3.3	<0.66	<0.66	<0.66	<0.66	<0.66	<0.66	<3.3
Endrin		<0.66	<0.66	<3.3	<0.66	<0.66	<0.66	<0.66	<0.66	<0.66	<3.3
Endrin Aldehyde		<0.97	<0.97	<4.9	<0.97	<0.97	<0.97	<0.97	<0.97	<0.97	<4.9
Heptachlor		<0.88	<0.88	<4.4	<0.88	<0.88	<0.88	<0.86	<0.88	<0.88	<4.4
Heptachlor Epoxide		<0.85	<0.85	<4.2	<0.85	<0.85	<0.85	<0.85	<0.85	<0.85	<4.2
Methoxychlor		9.2	4.3	19	13	8.3	9.7	15	14	7.6	<7.8
Toxaphene		<38	<38	<190	<38	<38	<38	<38	<38	<38	<190

 = NR 720 Soil Standard Exceedance

Soil Screening Values	Direct contact Industrial	Direct contact Residential	Groundwater Screening	minimum
Chemical	ppm	ppm	ppm	ppm
ARSENIC	1.9	0.43	0.03	0.03
CADMIUM-WATER	511	39	27	27
COPPER	40,880	3,129	10,518	3,129
MERCURY (INORGANIC)				
ZINC	306,600	23,464	13,622	13,662
	ppm	ppm	ppm	ppb
ALDRIN	0.17	0.038	0.0077	7.7
ALPHA-HCH	0.5	0.10	0.00089	0.89
BETA-HCH	1.6	0.35	0.0031	3.1
TECHNICAL HCH	1.6	0.35		
GAMMA-HCH (LINDANE)	2.2	0.49	0.0043	4.3
CHLORDANE	8.2	1.8	0.92	919
DDD	12	2.7	11	2,700
DDE	8.4	1.9	35	1,900
DDT	8.4	1.9	1.2	1,200
DIELDRIN	0.18	0.040	0.0022	2.2
ENDOSULFAN	6,132	469	20	20,000
ENDRIN	307	23	5.4	5,400
HEPTACHLOR	0.64	0.14	0.84	140
HEPTACHLOR EPOXIDE	0.31	0.070	0.025	25
METHOXYCHLOR	5,110	391	305	305,000
TOXAPHENE	2.6	0.58	0.63	630