

K&L GATES

June 16, 2021

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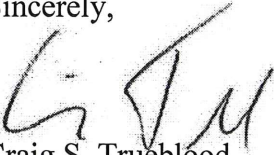
Mr. Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Department of Ecology
P.O. Box 330316
Shoreline, WA 98133-9716

Re: Memorandum of Agreement Regarding City of Bothell Streets and Rights-of-Way at
MTCA Sites

Dear Bob:

Enclosed please find two originals of the above Memorandum of Agreement between the Department of Ecology and the City of Bothell. Please have these executed and notarized and return one to my attention at the address below. Thank you.

Sincerely,



Craig S. Trueblood

cc: Kara Tebeau, Office of the Attorney General
Nduta Mbuthia, City of Bothell

MEMORANDUM OF AGREEMENT BETWEEN
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY (ECOLOGY)
AND
THE CITY OF BOTHELL (CITY)
REGARDING
CITY STREETS AND RIGHT-OF-WAYS AT MTCA SITES

I. INTRODUCTION

A. The Washington State Department of Ecology (“Ecology”) and the City of Bothell (“City”) have entered into a series of agreements pursuant to the Model Toxics Control Act, RCW 70A.305 (“MTCA”), governing the cleanup and long-term monitoring of the release of hazardous substances associated with historical activities on various properties within the City;

B. The Cleanup Agreements are listed in Exhibit D and require the City to undertake certain remedial actions (the “Remedial Action”). As part of the Remedial Action, certain public streets and rights of way contain residual hazardous substances to be managed in a manner that protects public health and the environment while accommodating continued use for a range of public purposes, including transportation and utilities, using institutional controls as required by MTCA. The City owns fee title to some street segments and has maintenance responsibilities in others;

C. Ecology may require institutional controls at cleanup sites or properties at any stage of the cleanup to assure the integrity of the cleanup and continued protection of human health and the environment. MTCA, the Uniform Environmental Covenant Act, RCW 64.70 (“UECA”) and the MTCA regulation, WAC 173-340-440, describe the provisions that need to be included in an environmental covenant and the procedures for establishing such covenants;

D. Ecology and the City have explored implementing restrictive (environmental) covenants that are recorded with the King County Recorder’s Office as an institutional control for streets and rights-of-way but have determined this approach to be infeasible and inefficient given the number of streets and cleanup actions involved and the manner in which the King County Assessor records instruments that affect public streets and rights of way;

E. Without a parcel number, a covenant cannot be recorded with the county recorder. WAC 173-340-440(8)(b) permits an alternative system to a restrictive covenant for properties owned by local governments if the entity can demonstrate: (1) that it does not routinely file with the county recording officer based on the type of interest in real listed segments that it has in the site; and (2) the alternative system meets the requirements of WAC 173-340-440(9). Use of an alternative system, as described here, makes sense because these restrictions become part of the City’s routine right-of-way management practices. As such, these restrictions are more likely to be recognized and complied with.

F. Ecology and the City have determined that this Memorandum of Agreement (“MOA”) will be an effective and efficient institutional control for public streets and rights of way that is also consistent with MTCA and the Cleanup Agreements.

NOW THEREFORE, ECOLOGY AND THE CITY MUTUALLY AGREE TO UNDERTAKE THE ACTIONS SET FORTH HEREIN.

Section 1. Listed segments

Streets and rights of way subject to this MOA are listed in Exhibit A-1. This MOA refers to the subject streets and rights of way as “listed segments.” Exhibit A-2 depicts the right of way segments and intersections (“listed segments”) which are subject to the provisions of this MOA.

Section 2. Contaminants

Soil or groundwater in specific areas under the listed segments may contain one or more of the hazardous substances listed in Exhibit B, at concentrations above MTCA cleanup levels.

Section 3. Ecology Responsibilities

Ecology will upload this document and its attachments to Ecology’s document repository for the sites listed in Exhibit D, and reference this instrument in the Environmental Covenants List.

Section 4. City Responsibilities

- a. The City will incorporate the terms of this MOA by reference in the City’s Design and Construction Standards (<http://www.ci.bothell.wa.us/DocumentCenter/View/688/Design-and-Construction-Standards-and-Specifications-PDF?bidId=>).
- b. The City will provide a copy of this MOA to City contractors, third parties, or their contractors before authorizing work in the listed segments. The City will provide the entity performing the work access to current information known about contaminants in the listed segment, and advise the entity of any remedial equipment in the work area.
- c. All contaminated materials removed by the City or its contractors will be disposed in accordance with applicable laws and regulations, including but not limited to WAC 173-303 and WAC 173-304. Work performed by the City or its contractors must comply with worker safety regulations concerning potential exposure to hazardous substances in solid, liquid, or vapor form.
- d. The City will require in the Right-of-Way Invasion Permit that all contaminated materials removed be disposed in accordance with applicable laws and regulations, including but not limited to WAC 173-303 and WAC 173-304. As a condition of any Right-of-Way Invasion Permit granted for work in the listed segments, the City will require compliance with worker safety regulations

concerning potential exposure to hazardous substances in solid, liquid, or vapor form.

Section 5. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the listed segments:

- a. Interference with Remedial Action.** The City shall not permit or engage in any activity on the listed segments that may impact or interfere with the Remedial Action and any operation, maintenance, inspection or monitoring of that Remedial Action without prior written approval from Ecology.
- b. Protection of Human Health and the Environment.** The City shall not permit or engage in any activity in the listed segments that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the Remedial Action or that exacerbates or creates a new exposure to contamination remaining on the listed segments.
- c. Continued Compliance Required.** City shall not convey any interest in any portion of the listed segments without providing for the continued adequate and complete operation, maintenance and monitoring of Remedial Action and continued compliance with this MOA. The City agrees to require that, within 30 days after conveyance, the party accepting title must record an Ecology approved environmental covenant with the appropriate county auditor.
- d. Preservation of Reference Monuments.** City shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this MOA. Should a monument or marker be damaged or destroyed, City shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 6. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 5 of this MOA, the following additional specific restrictions and requirements shall apply to the listed segments.

- a. Land Use.** The listed segments may only be used for usual and accustomed public right of way uses such as transportation and utilities. The City will not vacate or convey any interest in any listed segment without at least 30 days prior notice to Ecology.
- b. Containment of Soil/Waste Materials.** Contaminated soil remains at least four (4) feet under caps consisting of asphalt road and concrete sidewalk located as illustrated in Exhibits B and C. The primary purpose of these caps is to minimize the potential for contact with contaminated soil and to minimize the leaching of contaminants to groundwater. As such, the following restrictions shall apply within the areas illustrated in Exhibits B and C.

Any activity in the illustrated areas that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device;

grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity is prohibited, except as follows:

i. If the activity occurs four (4) feet or less below ground surface, the City shall notify Ecology ten (10) working days ahead of the work and shall promptly repair any damage to the cap by replacing the damaged area with similar materials and submit written documentation of the repairs to Ecology within ninety (90) days of completing the repairs.

ii. If the activity occurs more than four (4) feet below ground surface, the City must obtain prior written approval from Ecology. Should the City propose to remove all or a portion of the cap so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil. Unless otherwise agreed to by Ecology, the City shall promptly repair any damage to the cap by replacing the damaged area with similar materials and submit written documentation of the repairs to Ecology within ninety (90) days of completing the repairs.

c. **Work in the Listed Segments.** The listed segments contain areas of contamination in soil and/or groundwater at concentrations above cleanup levels protective of human health. At least ten (10) working days prior to undertaking or permitting work to begin in a listed segment, the City shall notify Ecology's site manager in writing. If previously undocumented contamination is encountered in the course of the work, the City will notify Ecology.

d. **Groundwater Use.** Groundwater beneath the listed segments shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted within these segments for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

e. **Stormwater facilities.** New stormwater infiltration facilities may have an impact on groundwater plumes if constructed in the listed segments. Permit applications for stormwater infiltration facilities planned for the listed segments should note that the planned facility is in proximity to areas of contamination.

f. **Monitoring.**

Several groundwater monitoring wells are located in the listed segments to monitor the performance of Remedial Action. The City shall maintain clear access to these devices and protect them from damage. The City shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the City shall promptly repair damage to wells installed by the City and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Section 7. Access. The City shall maintain clear access to all Remedial Action components necessary to construct, operate, inspect, monitor and maintain the Remedial Action.

Section 8. Notice Requirements.

a. Conveyance of Any Interest. The City, when conveying any interest in any part of the listed segments including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this MOA:

NOTICE: THIS PROPERTY IS SUBJECT TO USE RESTRICTIONS DETAILED BY THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [Date] AND AVAILABLE AT THE ECOLOGY ENVIRONMENTAL COVENANTS LIST. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THE RESTRICTIONS, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

iv. In the case of conveyance of title, require that within 30 days after conveyance the party accepting title must file with the county auditor an environmental covenant approved by Ecology.

b. Reporting Violations. Should the City become aware of any violation of this MOA, City shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this MOA, the City is authorized to respond to such an event in accordance with state and federal law. The City must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to Ecology and the City.

Erin Leonhart Interim City Manager City of Bothell 18415 101st Avenue NE Bothell, WA 98011 (425) 806-6100 Erin.Leonhart@bothellwa.gov	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 9. Modification or Termination.

The parties will endeavor to meet and confer at least once every two (2) years to update, as appropriate, the exhibits to this agreement. In addition, if the conditions necessitating these restrictions have changed or no longer exist, then the City may submit a request to Ecology that these restrictions be amended or terminated.

Section 10. Enforcement and Construction.

- a. This MOA is enforceable according to the terms of the Cleanup Agreements and any disputes arising under this MOA should be resolved in accordance with the terms of the Cleanup Agreements.
- b. The City shall be responsible for all costs associated with implementation of this MOA, including but not limited to costs to process a request by the City for any modification or termination of this MOA and any approval or consultation conducted under this MOA. The City reserves the right to recover its costs from third parties through easement agreements, permit fees or similar regulatory mechanisms, and/or through claims arising under MTCA.
- c. This MOA shall be liberally construed to meet the intent of MTCA and UECA.
- d. The provisions of this MOA shall be severable. If any provision in this MOA or its application to any person or circumstance is held invalid, the remainder of this MOA or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- e. Nothing in this agreement shall be construed to restrict in any way Ecology's authority to fulfill its oversight and enforcement responsibilities under MTCA or other applicable State laws.

The undersigned individual warrants he/she has authority to execute this MOA on behalf of the City of Bothell.

EXECUTED this 8th day of June, 2021.

[Signature]

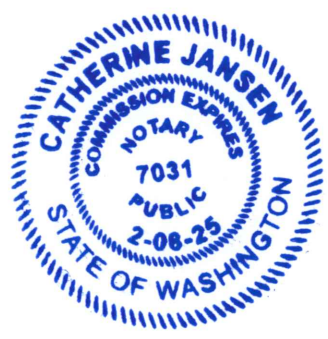
By: Erin Leonhart
Title: Interim City Manager

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington
COUNTY OF King

On this 8th day of June, 2021, I certify that Erin Leonhart personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it, as the Representative of the City of Bothell, to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Catherine E. Jansen
Notary Public in and for the State of Washington
Residing at Bothell, WA
My appointment expires 2-8-25



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]

By: ROBERT W. WARREN

Title: SECTION MANAGER

Dated: 7/9/21

STATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF King

On this 9th day of July, 2021, I certify that Robert W. Warren personally appeared before me, acknowledged that **he/she** is the Section Manager of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said state agency.

[Signature: Vivian M. Perez]
Notary Public in and for the State of Washington

Residing at 1527 N. 107th St. Seattle WA 98133

My appointment expires Mar 15, 2023 ^(P)

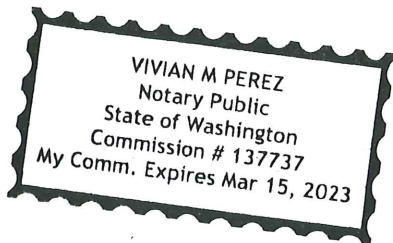


EXHIBIT A-1
Right of Way Segments and Intersections

Bothell Way NE

Bothell Way NE beginning 250 feet west of 98th Avenue NE to Main Street including intersections at Bothell Way NE and 98th Ave NE and Bothell Way NE and Woodinville Drive but excluding the intersection at Bothell Way NE and Main Street.

98th Avenue NE

98th Ave NE from Bothell Way NE to Main Street including intersections at 98th Ave NE and Main Street and at 98th Ave NE and Bothell Way NE

Main Street

Main Street from 98th Ave NE to Bothell Way NE including the intersection at Main Street and 98th Ave NE but excluding the intersection at Main Street and Bothell Way NE

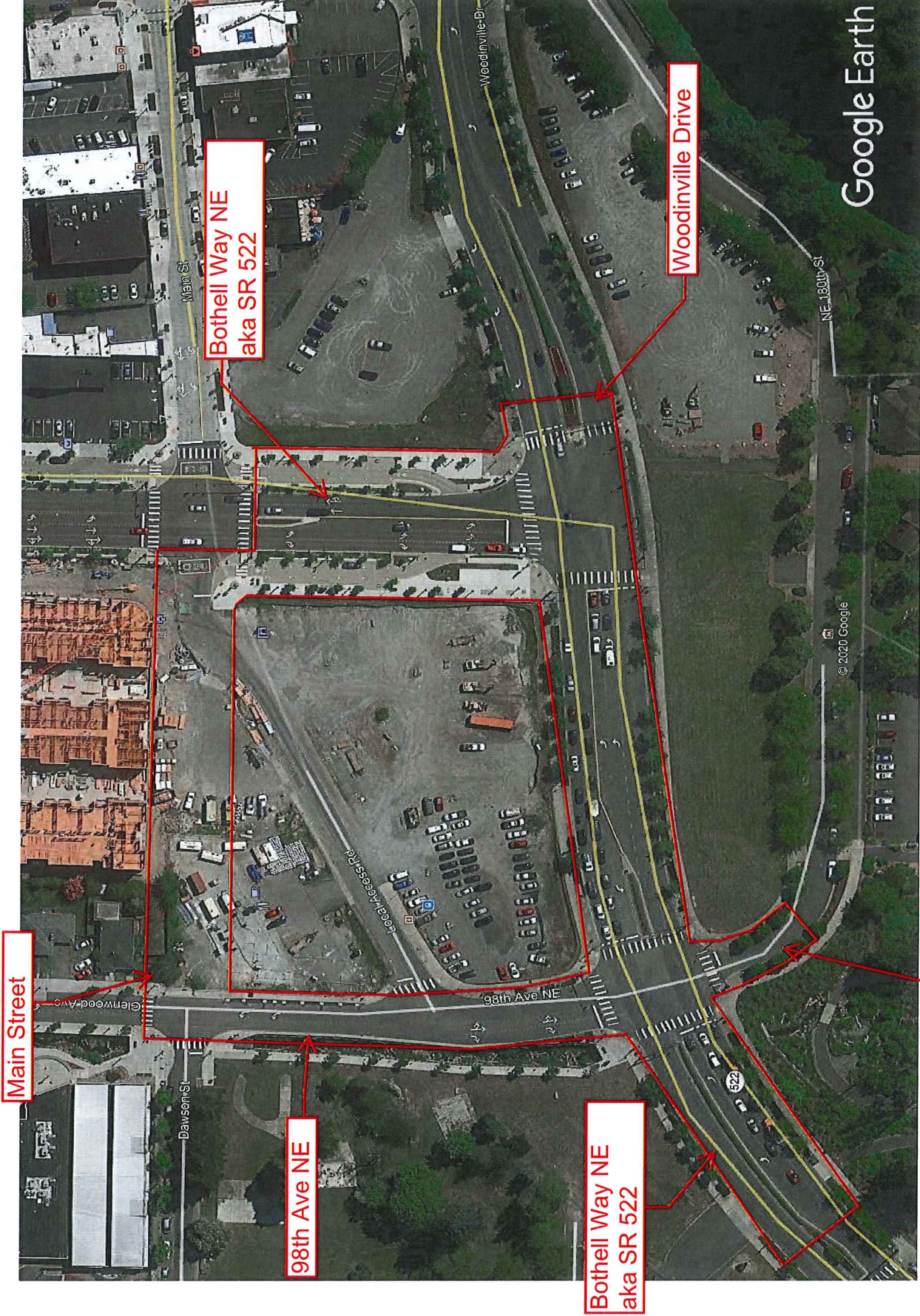
NE 180th Street

NE 180th Street 100 feet south from Bothell Way NE including the intersection at NE 180th Street and Bothell Way NE

Woodinville Drive

Woodinville Drive extending approximately 50 feet east from the east edge of Bothell Way NE at the intersection of NE Bothell Way and Woodinville Drive

Exhibit A-2



North

Scale: 50'

EXHIBIT B

THAT PORTION OF THE EXISTING BOTHELL WAY NE RIGHT-OF-WAY, SAID RIGHT-OF-WAY, LYING WITHIN THE EAST HALF OF SECTION 7, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY WASHINGTON, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

INSTITUTIONAL CONTROL AREA:

BEGINNING AT THE MOST WESTERLY CORNER OF PARCEL #3 OF CITY OF BOTHELL BOUNDARY LINE ADJUSTMENT NO. BLA2014-05666, RECORDED UNDER KING COUNTY RECORDING NUMBER 20150819900001, SAID CORNER LYING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF BOTHELL WAY NE;

THENCE LEAVING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, NORTH 71°04'06" WEST, A DISTANCE OF 79.09 FEET;

THENCE NORTH 21°34'43" EAST, A DISTANCE OF 110.01 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID BOTHELL WAY NE, AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 846.44 FEET, AND TO WHICH BEGINNING A LINE FROM THE RADIUS POINT BEARS NORTH 35°28'31" WEST;

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE AND SAID CURVE, AN ARC LENGTH OF 170.76 FEET THROUGH A CENTRAL ANGLE OF 11°33'33" TO ITS INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF 98TH AVENUE NE;

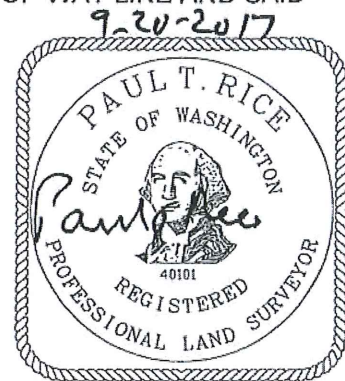
THENCE SOUTH 73°21'25" EAST, A DISTANCE OF 41.15 FEET;

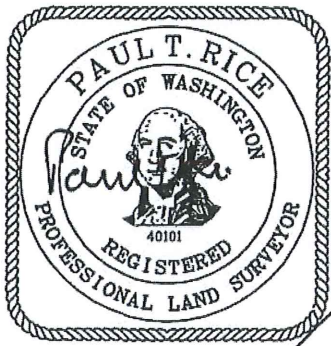
THENCE SOUTH 00°53'03" EAST, A DISTANCE OF 104.64 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID BOTHELL WAY NE, AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 723.44 FEET, AND TO WHICH BEGINNING A LINE FROM THE RADIUS POINT BEARS NORTH 24°40'56" WEST;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND SAID CURVE, AN ARC LENGTH OF 167.25 FEET THROUGH A CENTRAL ANGLE OF 13°14'45", TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 833.50 FEET, AND TO WHICH BEGINNING A LINE FROM THE RADIUS POINT BEARS NORTH 36°46'24" WEST;

THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND SAID CURVE, AN ARC LENGTH OF 15.33 FEET, THROUGH A CENTRAL ANGLE OF 1°03'14" TO THE POINT OF BEGINNING.

SAID PORTION CONTAINS 28,122 SQUARE FEET, 0.6456 ACRES, MORE OR LESS.





9-20-17

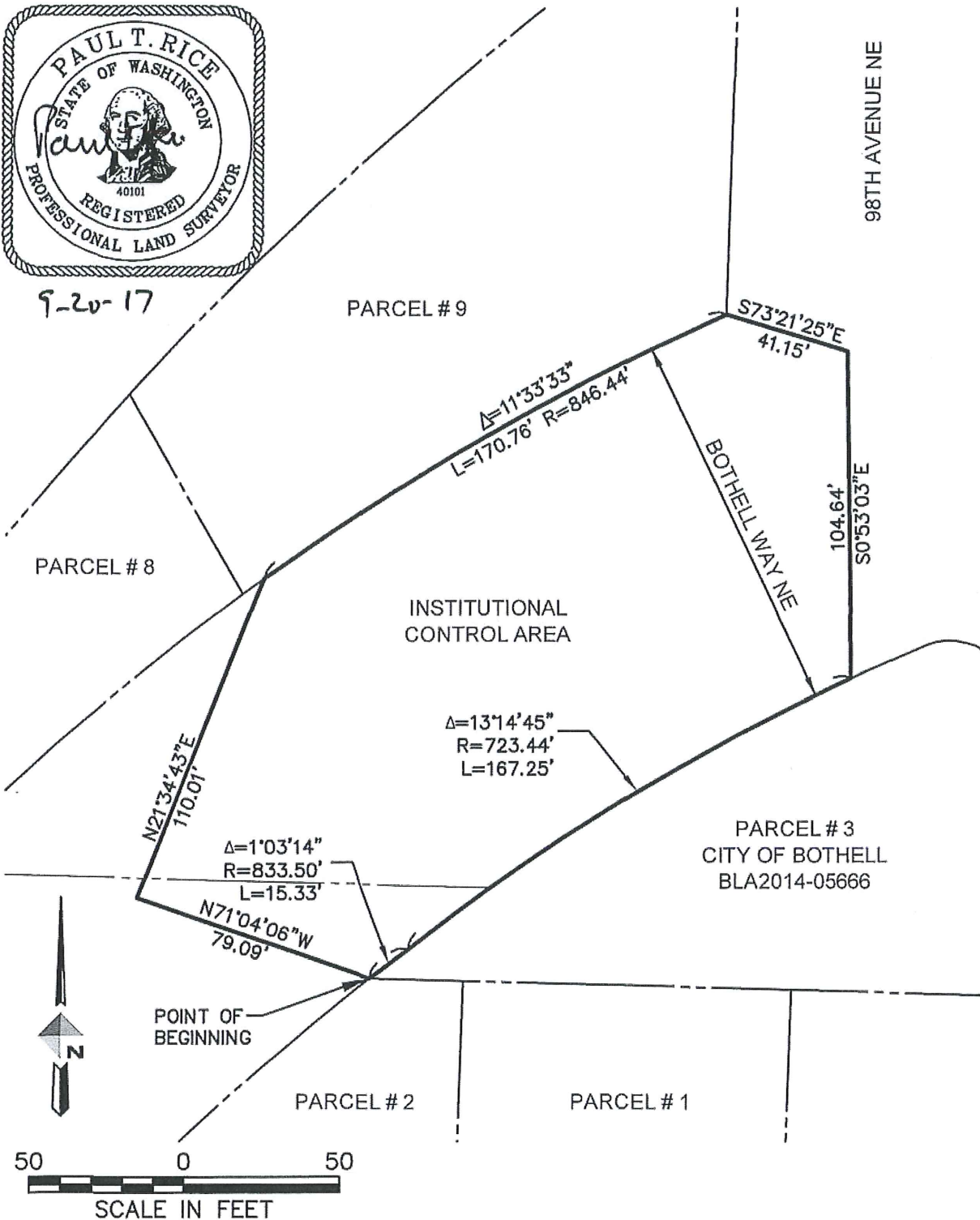
PARCEL #9

98TH AVENUE NE

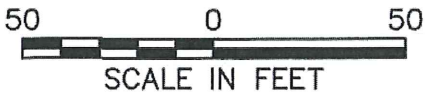
PARCEL #8

INSTITUTIONAL CONTROL AREA

PARCEL #3
CITY OF BOTHELL
BLA2014-05666



POINT OF BEGINNING



DOWL

www.dowl.com

8420 154th Avenue NE
Redmond, Washington 98052
425-869-2670

PROJECT	13691.06
DATE	9/20/2017
SCALE	1"=50'

EXHIBIT C

THAT PORTION OF THE EXISTING NE BOTHELL WAY RIGHT-OF-WAY, SAID RIGHT-OF-WAY LYING WITHIN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY WASHINGTON, SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

INSTITUTIONAL CONTROL AREA:

COMMENCING AT THE MOST NORTHERLY CORNER OF PARCEL # 6 OF CITY OF BOTHELL BOUNDARY LINE ADJUSTMENT NO. BLA2014-05666, RECORDED UNDER KING COUNTY RECORDING NUMBER 20150819900001, SAID CORNER LYING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE SOUTH 85°18'53" WEST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 68.82 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE, AN ARC LENGTH OF 21.85 FEET THROUGH A CENTRAL ANGLE OF 83°28'40" TO THE EASTERLY RIGHT-OF-WAY LINE OF NE BOTHELL WAY;

THENCE SOUTH 01°50'13" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 132.91 FEET;

THENCE NORTH 81°17'09" WEST, A DISTANCE OF 79.22 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 81°17'09" WEST, A DISTANCE OF 42.71 FEET;

THENCE NORTH 0°07'50" EAST, A DISTANCE OF 76.27 FEET;

THENCE NORTH 39°05'13" EAST, A DISTANCE OF 7.46 FEET;

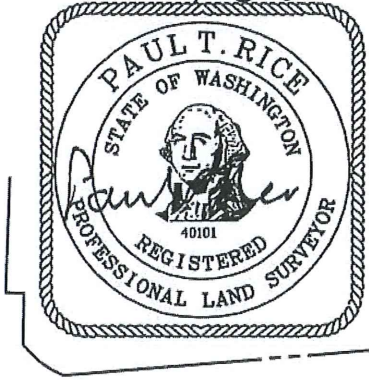
THENCE SOUTH 89°52'10" EAST, A DISTANCE OF 37.54 FEET;

THENCE SOUTH 0°07'50" WEST, A DISTANCE OF 88.45 FEET TO THE POINT OF BEGINNING;

SAID PORTION CONTAINS 3,587 SQUARE FEET, 0.0823 ACRES, MORE OR LESS.



June 8, 2018



MAIN STREET

$\Delta=83^{\circ}28'40''$
 $R=15.00'$
 $L=21.85'$

$S85^{\circ}18'53''W$
68.82'

POINT OF BEGINNING

$N39^{\circ}05'13''E$
7.46'

37.54'

INSTITUTIONAL CONTROL AREA

$N0^{\circ}07'50''E$
76.27'

$S89^{\circ}52'10''E$

$S0^{\circ}07'50''W$
88.45'

PARCEL # 6
CITY OF BOTHELL
BLA2014-05666

$S01^{\circ}50'13''W$
132.91'

$N81^{\circ}17'09''W$
42.71'

$N81^{\circ}17'09''W$
79.22'

NE BOTHELL WAY



8420 154th Avenue NE
Redmond, Washington 98052
425-869-2670

PROJECT	13691.06
DATE	6/08/2018
1"=50'	

Exhibit D
Cleanup Agreements and Hazardous Substances in Listed Segments

Bothell Paint & Decorating Site Agreed Order No. DE 15748 (May 31, 2018)

Petroleum hydrocarbons in groundwater
Arsenic in groundwater
Petroleum hydrocarbons in soil

Bothell Former Hertz Site Agreed Order No. DE 15747 (May 31, 2018)

Petroleum hydrocarbons in groundwater
Arsenic in groundwater
Halogenated volatile organic compounds in groundwater
Halogenated volatile organic compounds in soil

Bothell Landing Site Agreed Order No. DE 15746 (June 11, 2018)

Arsenic in groundwater
Petroleum hydrocarbons in soil

Bothell Service Center Simon and Sons Site First Amended Consent Decree No. 18-2-02852-3-SEA (October 31, 2019)

Halogenated volatile organic compounds in groundwater
Petroleum hydrocarbons in groundwater