



# Seattle City Attorney

Peter S. Holmes

RECEIVED

MAY 10 2019

DEPT OF ECOLOGY  
TCP - NWRO

Tad H. Shimazu  
Assistant City Attorney  
(206) 233-2151  
[Tad.Shimazu@Seattle.gov](mailto:Tad.Shimazu@Seattle.gov)

May 8, 2019

Jerome Cruz  
Toxics Cleanup Program  
Department of Ecology  
Northwest Regional Office  
3190 – 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

Dear Mr. Cruz:

This letter confirms the attached Environmental Covenant was filed at the King County Recorder's Office. A copy is enclosed for your records.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Tad



**Tad H. Shimazu**  
Assistant City Attorney  
Environmental Protection  
Section

Seattle City Attorney's Office  
Civil Division  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
Phone: 206-233-2151  
FAX: 206-684-8284  
[Tad.Shimazu@Seattle.gov](mailto:Tad.Shimazu@Seattle.gov)

TS:lml

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DEPT OF ECOLOGY  
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Return Address:  
Jerome Cruz  
Toxics Cleanup Program  
Department of Ecology  
Northwest Regional Office  
3190 – 160<sup>th</sup> Ave. SE  
Bellevue, WA 98008-5452



20190508000014

COVENANT Rec: \$114.00  
5/8/2019 9:03 AM  
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04 )

**Document Title(s)** (or transactions contained therein): (all areas applicable to your document must be filled in)

1. ENVIRONMENTAL COVENANT

**Reference Number(s) of Documents assigned or released:**

None.

**Grantor(s)** (Last name, first name, initials)

1. City of Seattle;

**Grantee(s)** (Last name first, then first name and initials)

1. State of Washington, Department of Ecology

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

Those portions of Blocks 6, 7, 17 and 18, First Addition to River Park, according to the Plat thereof recorded in Volume 8 of Plats, page 65, in King County, Washington;

That portion of Government Lot 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington;

That portion of Government Lots 2 and 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington.

**Tax Parcel Nos.:**

7328400005 and 3224049110

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

\_\_\_\_\_  
Signature of Requesting Party

After Recording Return  
Original Signed Covenant to:

Jerome Cruz  
Toxics Cleanup Program  
Department of Ecology  
Northwest Regional Office  
3190 - 160th Ave. SE  
Bellevue, WA 98008-5452

### Environmental Covenant

**Grantor:** City of Seattle

**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")

**Brief Legal Description:** PTN OF GOV'T LOT 4 STR 32-24-04

**Tax Parcel Nos.:** 7328400005 and 3224049110

**Cross Reference:** NONE

#### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part of a site commonly known as South Park Landfill (Facility Site ID # 2180). The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present <sup>[1]</sup>
Waste within the closed landfill	Aged municipal solid waste with soil. Arsenic and lead have been detected in soil.
Soil (landscaping above the landfill cap)	Various common urban hazardous substances, such as PAHs and metals, are present at concentrations above unrestricted land use cleanup levels (Methods A and B) but below industrial land use cleanup levels (Methods A and C).
Soil vapor	Landfill gas (Methane)
Groundwater	Vinyl Chloride, Iron, Manganese, Arsenic

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are

<sup>[1]</sup> For a full description of the contaminants of concern at the South Park Landfill Site, see Exhibit A to the Consent Decree ( King Co. Cause No. 19-2-07304-7 ), Draft Cleanup Action Plan, in Table 4.2.



available through Ecology. This includes but is not limited to the following documents (hereafter the "Site Documents"), which are incorporated herein:

- Cleanup Action Plan <**citation to be completed**>, including the Operations, Maintenance, and Monitoring Plan (OMMP) for South Park Landfill, which includes the following:
  - Attachment A.1: Landfill Cap Inspection and Maintenance Plan
  - Attachment A.2: Landfill Gas Monitoring and Contingency Plan
  - Attachment A.3: Groundwater Monitoring and Contingency Plan
  - Attachment A.4: Annual Report Checklist
- Consent Decree <**citation to be completed once entered by court**>
- RI/FS <**citation to be completed**>

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its' right as a holder, are not an interest in real property.

## COVENANT

**City of Seattle ("City")**, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the City has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property 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 Grantor shall not engage in any activity on the Property 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 residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of

coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

**Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

**a. Land use.** The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

**b. Containment of soil/solid wastes.** The remedial action for the Property is based on containing contaminated soil and landfill waste under a cap consisting of buildings, asphalt, concrete, soil layers with a visible barrier (non-paved areas), and soil with low permeability layer or an impermeable geomembrane at least 50 millimeters thick (stormwater conveyance and treatment facilities such as swales, ditches, or ponds). Exhibit C shows the extent of and type of the cap on the Property. The primary purpose of this cap is to prevent direct contact with the solid wastes and is an inherent element of the stormwater and landfill gas controls that are part of landfill closure. The following restrictions shall apply within the cap area illustrated in Exhibit C:

- i. Any activity on the Property 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 without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.
- ii. The Grantor shall not alter or remove the existing structures on the Property in any manner that would expose contaminated soil and landfill waste, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology.
- iii. The Grantor covenants and agrees that it shall annually, or at other time as approved in writing by Ecology, inspect the cap and building floor or foundation and report within thirty (30) days of the inspection the condition of the cap and building floor or foundation and any changes to the cap and building floor and foundation that would impair its performance.

**c. Stormwater facilities.** To minimize the potential for mobilization of contaminants remaining in soil, waste materials, and groundwater on the Property, no stormwater infiltration facilities or unlined ponds shall be constructed on the portion of the Property that overlies refuse as detailed in Exhibit D. All stormwater catch basins, conveyance systems, and other appurtenances installed on the Property shall be of water-tight construction.

**d. Landfill Gas Controls and Protections.** The residual contamination on the Property includes biodegradable wastes/chemicals that may generate methane, a combustible gas. As such,



the following restrictions shall apply on the Property to minimize the potential for exposure to these vapors:

- i. Grantor shall equip all buildings on the Property with methane alarms operating 24 hours, 7 days per week. Grantor shall maintain the alarms in good working order, and will replace any alarm that fails within 7 days after discovery of the failure.
  - ii. No building or other enclosed structure shall be constructed on the Property unless approved by Ecology.
  - iii. Grantor shall ensure that any new building or other enclosed structure constructed on the Property will comply with all City Code requirements related to methane mitigation, and will contain, at a minimum, a sealed foundation and a gas venting system unless otherwise approved in writing by Ecology.
- e. Landfill Gas Monitoring.** Grantor shall monitor landfill gas on the Property. The following monitoring is required:
- i. The Grantor will monitor indoor spaces using the methane alarms in 2(d) above to ensure that concentrations of methane gas in (a) buildings overlying refuse illustrated in Exhibit B do not exceed 1.25 percent by volume, or 25 percent of the lower explosive limit (LEL), and (b) buildings outside the area of the Property overlying refuse illustrated in Exhibit B do not exceed 100 parts per million by volume.
  - ii. The Grantor will monitor performance of the landfill gas controls installed on the Property as part of 2(d) above;
  - iii. The Grantor shall promptly report to Ecology any exceedance of methane gas allowable limits, and shall take immediate, appropriate action to respond to such exceedances.
- f. Groundwater use.** The groundwater beneath the Property remains contaminated and 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 from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.
- g. Groundwater Monitoring.** Groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within 14 calendar days of the discovery of any damage to any monitoring device located on the Property. Unless Ecology approves of an alternative plan in writing, the Grantor shall arrange for the prompt repair of the damage and submission of a report documenting this work to Ecology within thirty (30) days of completing the repairs.

### **Section 3. Access.**

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology, its authorized representatives, and the Site Coordinator, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

**a. Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the property, 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 Covenant:

**NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE KING COUNTY RECORDER'S OFFICE UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, 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.

**b. Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor 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 Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor 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 all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

City of Seattle Seattle Public Utilities Attn: Jeff Neuner P.O. Box 34018 Seattle, WA 98124-4018 206-684-7693 Jeff.Neuner@seattle.gov	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
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**Section 5. Modification or Termination.**

- a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
  - i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
  - ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

**Section 6. Enforcement and Construction.**

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant 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.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.
- h. This Covenant shall not be considered or interpreted to diminish the governmental or police powers of the State of Washington or the City of Seattle.



Washington State Department of Ecology

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 24 day of April, 2019.

CITY OF SEATTLE

by: Mami Haro

Title: GM, SUV

**Exhibit A**

**LEGAL DESCRIPTION**

The Land is located in King County, Washington, and is legally described as follows:

**Parcel A:**

Those portions of Blocks 6, 7, 17 and 18, First Addition to River Park, according to the Plat thereof recorded in Volume 8 of Plats, page 65, in King County, Washington, lying westerly and southwesterly of the westerly and southwesterly margin of that certain property conveyed by the State of Washington to the City of Seattle for road purposes by deed recorded under Recording No. 9012260159;

EXCEPT any portion thereof lying west of the west line of George Holt Donation Claim No. 51;

AND EXCEPT any portion thereof lying within 2nd Avenue South, conveyed to the City of Seattle by deed recorded under Recording No. 4192618;

AND EXCEPT any portion thereof lying within South Kenyon Street;

TOGETHER WITH vacated South Monroe, South Elmgrove and South Southern Streets adjoining, vacated pursuant to City of Seattle Ordinance No. 96804 and attaching thereto by operation of law.

**Parcel B:**

That portion of Government Lot 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

A strip of land, 60 feet in width, lying between lines, the west line being 60 feet west of, as measured at right angles to and parallel with the following described east line:

Beginning on the north line of said Section 32, 264 feet east from the northwest corner thereof;

thence south 15031'06" east, 547.61 feet;

thence easterly to intersect a point on a line drawn south 02°03'26" west from a point on the north line of said section, 73.81 feet west of the west line of George Holt Donation Claim No. 51, said point being 516.36 feet south of said north line;

thence continuing easterly on said line to the west line of said Donation Claim and the TRUE POINT OF BEGINNING of east line description;

thence south along the west line of said Donation Claim to an intersection with a line distant 30 feet south of and parallel with the south line of Block 6, First Addition to River Park, according to the plat thereof recorded in Volume 8 of Plats, page 65, in King County, Washington, and the terminus of east line description.



**Parcel C:**

That portion of Government Lots 2 and 4, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

A strip of land, 30 feet in width, lying between lines, the south line being 30 feet south of, as measured at right angles to and parallel with the following described north line:

Beginning at the intersection of the west line of George Holt Donation Claim No. 51, with the south line of Block 6, First Addition to River Park, according to the plat thereof recorded in Volume 8 of Plats, page 65, in King County, Washington;




thence easterly, along the south line of said Block 6, to the southeast corner of Lot 1, said Block 6, and the terminus of north line description;

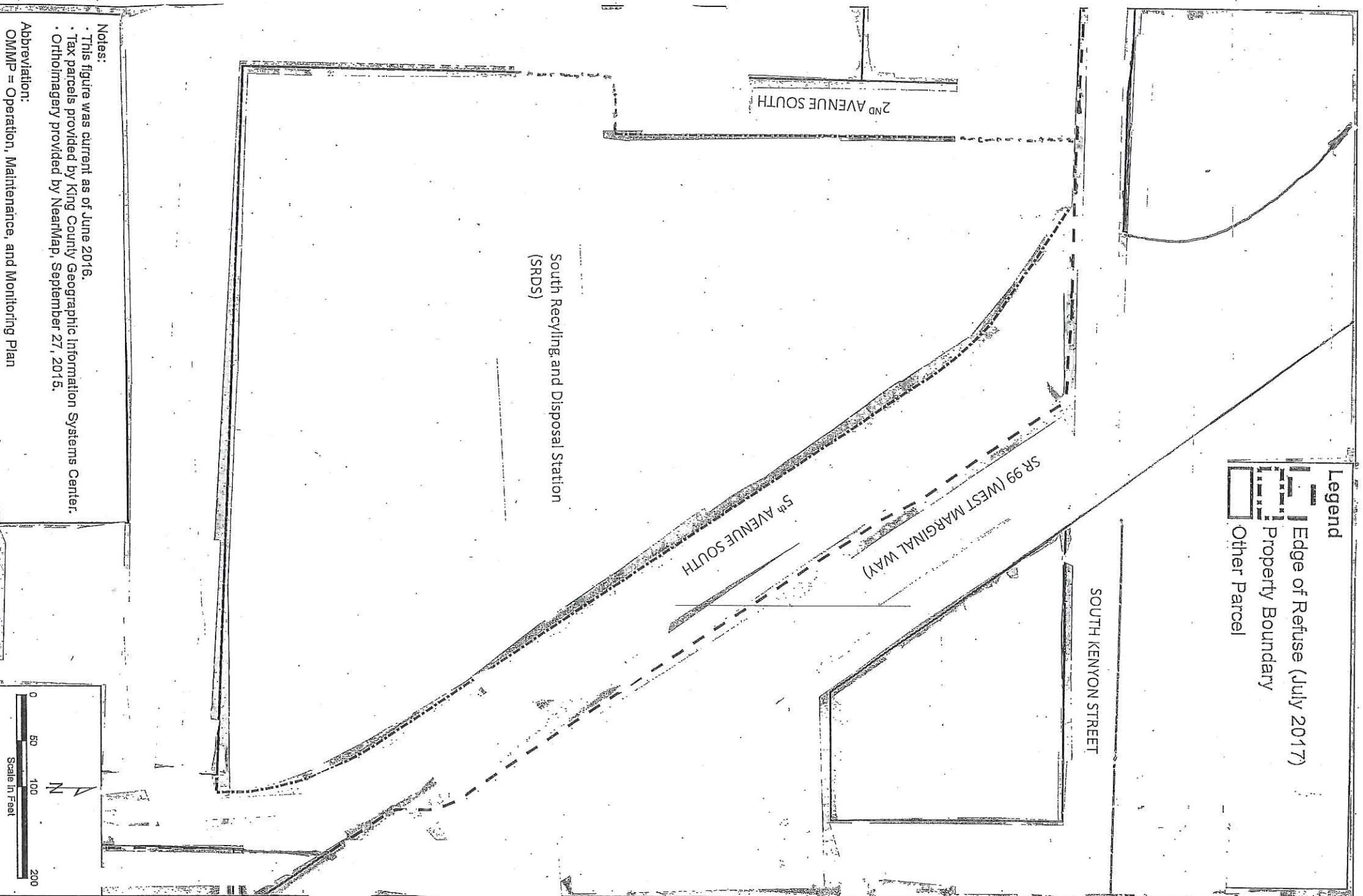
EXCEPT that portion thereof, if any, lying within 5th Avenue South.

**Exhibit B**

**PROPERTY MAP**

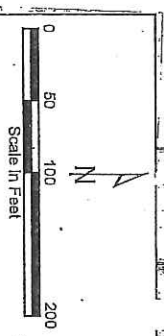




- Legend**
-  Edge of Refuse (July 2017)
  -  Property Boundary
  -  Other Parcel



- Notes:**
- This figure was current as of June 2016.
  - Tax parcels provided by King County Geographic Information Systems Center.
  - Orthoimagery provided by NearMap, September 27, 2015.

Abbreviation:  
 OMMWP = Operation, Maintenance, and Monitoring Plan







<p><b>FLOYDISNIDER</b>          strategy • science • engineering   <b>ASPECT</b> CONSULTING   <b>HERRERA</b></p>	<p>South Park Landfill          Seattle, Washington</p>	<p>Exhibit B          Property Boundary—SRDS Parcel</p>
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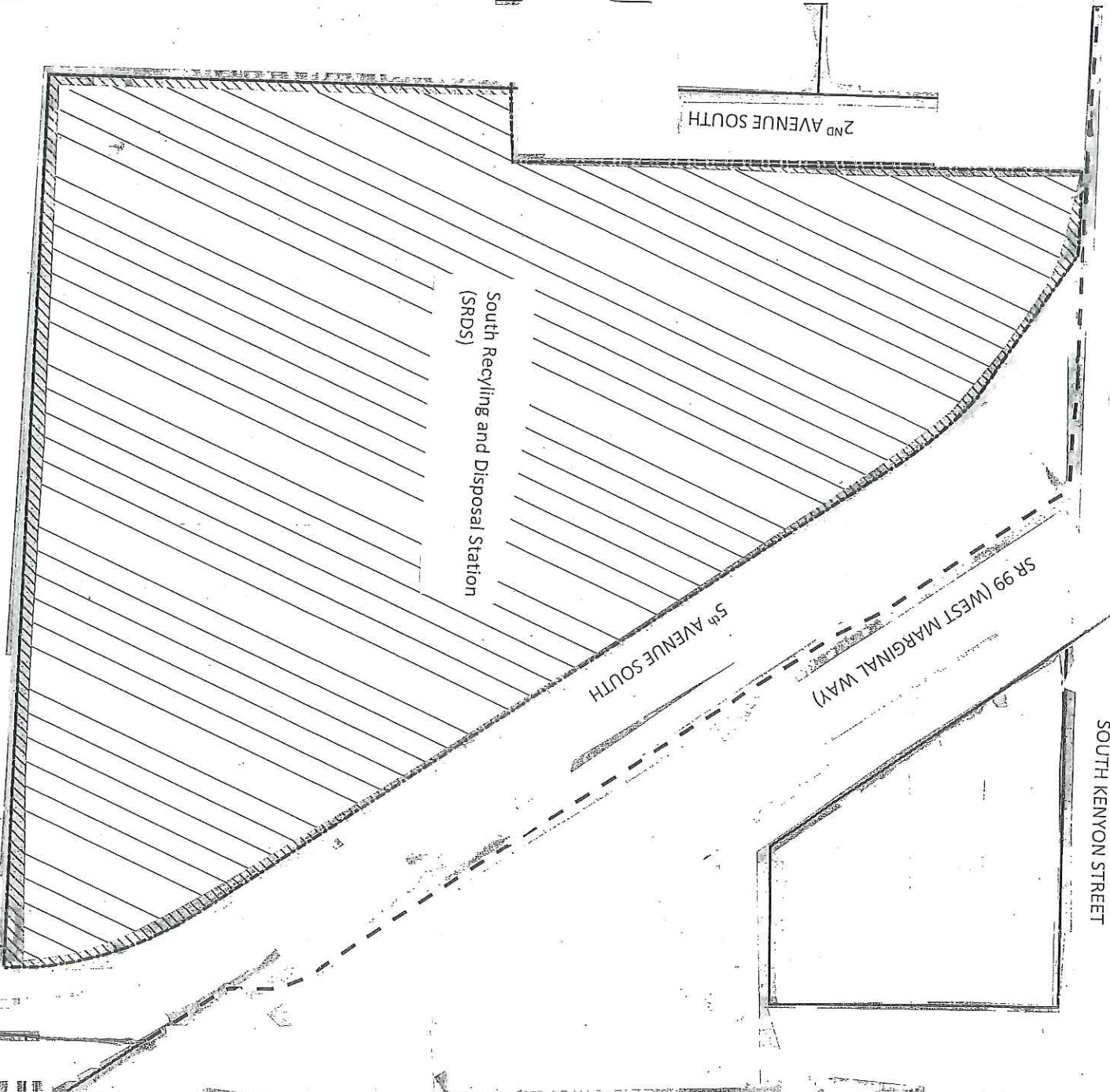
*Washington State Department of Ecology*

**Exhibit C**

**LANDFILL CAP BOUNDARY**



- Legend**
-  Edge of Refuse (July 2017)
  -  Property Boundary
  -  Other Parcel
  -  Portion of Property That Overlies Refuse

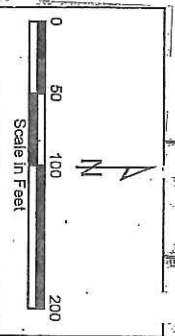


**Notes:**

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- Orthoimagery provided by NearMap, September 27, 2015.

**Abbreviation:**

OMMP = Operation, Maintenance, and Monitoring Plan



**FLOYD SNIDER**  
 Strategy • science • engineering  
**Aspect CONSULTING**

**HERRERA**

South Park Landfill  
 Seattle, Washington





Exhibit C  
 Landfill Cap Boundary—SRDS Parcel

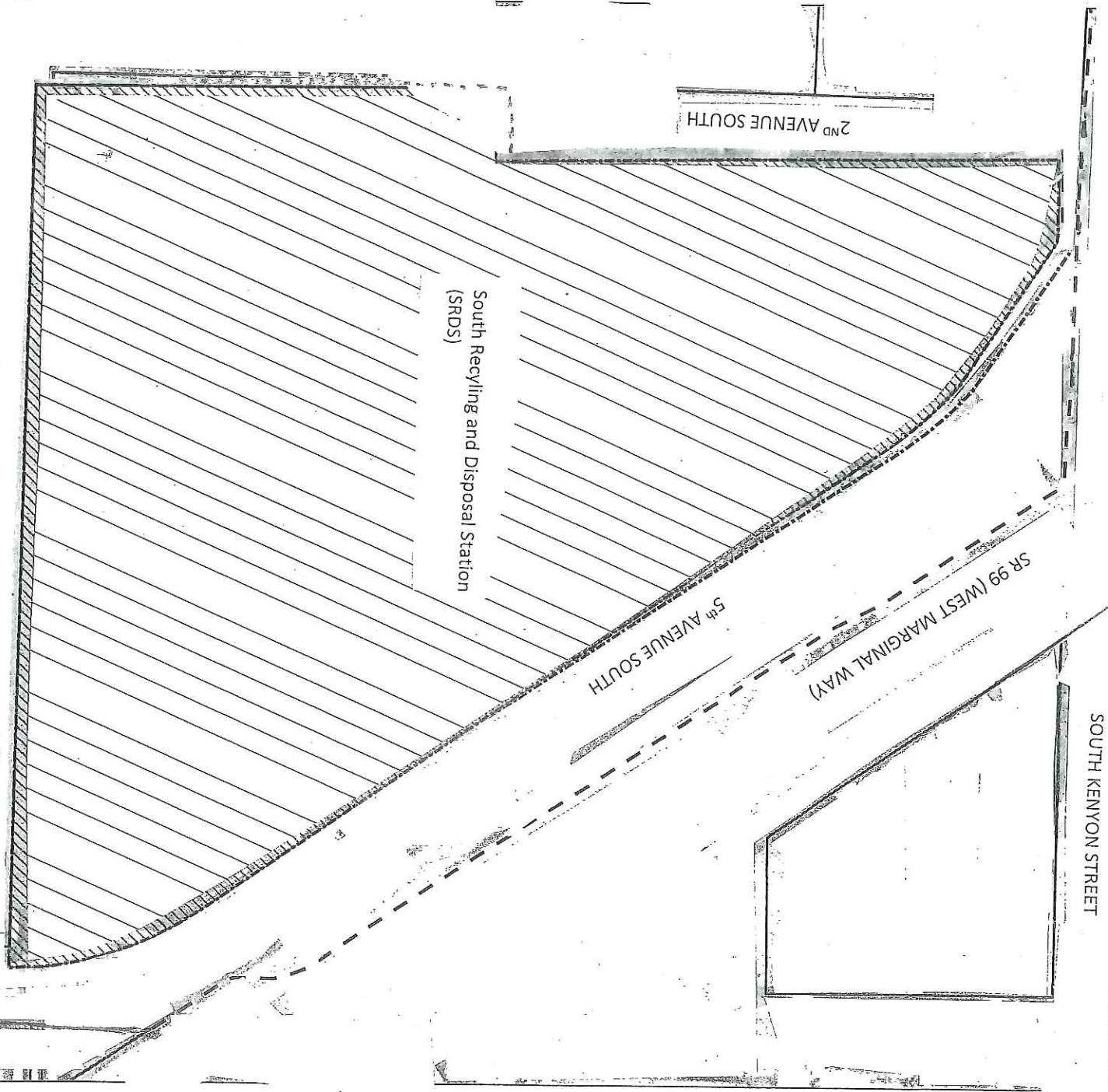
*Washington State Department of Ecology*

**Exhibit D**

**PORTION OF PROPERTY THAT OVERLIES REFUSE**

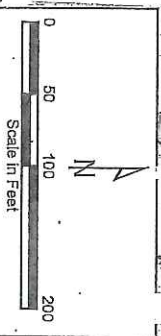


- Legend**
-  Edge of Refuse (July 2017)
  -  Property Boundary
  -  Other Parcel
  -  Portion of Property That Overlies Refuse



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**Abbreviation:**  
 OMMP = Operation, Maintenance, and Monitoring Plan



<p><b>FLOYD SNIDER</b>          strategy • science • engineering  <b>Aspect</b>  <small>CONSULTING</small></p>	<p><b>HERRERA</b>  <small>CONSULTING</small></p>	<p><b>South Park Landfill</b>          Seattle, Washington</p>
<p><b>Exhibit D</b>          Portion of Property That Overlies          Refuse—SRDS Parcel</p>		