

After Recording Return

Original Signed Covenant to:

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

Environmental Covenant

Grantor: South Park Property Development LLC

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

Brief Legal Description: Ptn. NW¼ S. 32, T. 24 N, R. 4 E.W.M.

Additional Legal Description on pages 8-10

Tax Parcel Nos.: 3224049005

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^[1]
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

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

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

- Final Cleanup Action Plan (March 2018), 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 in King County Cause No. 19-2-07304-7 (entered March 26, 2019)
- Remedial Investigation/Feasibility Study (July 2017)

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

South Park Property Development LLC ("SPPD"), 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 SPPD 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 adversely 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 pathway 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 and type of the cap on the Property. The primary purpose of this cap is to prevent direct contact with the contaminated soil and landfill wastes. The cap 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 their performance.

c. Stormwater facilities. To minimize the potential for mobilization of contaminants remaining in soil, landfill waste, 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 to manage stormwater 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. The following restrictions shall apply on the Property to minimize the potential for exposure to methane 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 described 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 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 must be 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.

South Park Property Development, LLC Attn: Rob Howie 165 NE Juniper Street Suite 100 Issaquah, WA 98027 425-837-9720 rhowie@seaconllc.com	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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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.

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

EXECUTED this 30 day of July, 2020.

SOUTH PARK PROPERTY DEVELOPMENT LLC



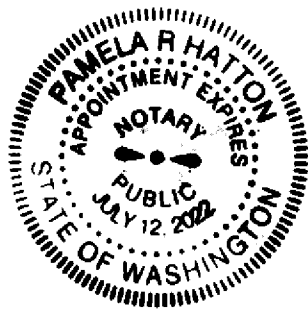
By: Robert Howie


Title: Managing Member

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF WASHINGTON
COUNTY OF KING

On this 30th day of JULY, 2020, I certify that Robert A. Howie personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Managing Member of South Park Property Development LLC to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.





Notary Public in and for the State of Washington
Residing at RENTON, WA 98059
My appointment expires 07-12-2022

Exhibit A

LEGAL DESCRIPTION

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

Parcel A:

That portion of Government Lots 2 through 4, inclusive, and of the Southwest Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the West line of George Holt's Donation Claim No. 51, as established by Superior Court Case No. 14450, which is 400 feet North of the Southwesterly corner thereof;

thence South along said West line 400 feet to the South line of said donation claim;

thence East along said South line to the West line of A. Hograve's Donation Claim No. 37;

thence South along the last described West line to the production West of the centerline of Sullivan Street;

thence West along said produced line to the East line of 1st Avenue South, as established by Ordinance No. 21498;

thence North along said East line 39.56 feet;

thence North $66^{\circ}52'24''$ East 562.14 feet;

thence North $16^{\circ}56'06''$ West 861.57 feet;

thence North $24^{\circ}43'54''$ East 35.17 feet;

thence North $64^{\circ}14'54''$ East 98 feet;

thence Easterly along a straight line to the Point of Beginning;

EXCEPT that portion thereof described as follows:

Beginning at the intersection of a line 794 feet West of and parallel with the West line of A. Hograve's Donation Claim No. 37 and the production West of the centerline of Sullivan Street;

thence West along said produced line to the East line of 1st Avenue South, as established by Ordinance No. 21498;

thence North along said East line 39.56 feet;

thence North $66^{\circ}52'24''$ East 562.14 feet;

thence Southeasterly along a straight line to the Point of Beginning; and

EXCEPT those portions conveyed to the City of Seattle by deeds recorded under recording numbers 5947050 and 6240807; and

EXCEPT that portion lying Southwesterly of the Northeasterly line of Occidental Avenue South (Road No. 51); and

EXCEPT that portion thereof described as follows:

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

Beginning at a point on the West line of Geo. Holt Donation Claim No. 51 which is 516.36 feet South of the North line of Section 32, Township 24 North, Range 4 East, Willamette Meridian, in King County, Washington;

thence South 02°03'26" West along said line 400 feet;

thence North 89°53'36" East along the South line of said donation claim 73.16 feet;

thence South 00°35'49" West along a line parallel to and 794 feet West of the West line of A. Hograve Donation Claim No. 37, a distance of 350 feet;

thence Westerly to a concrete monument on the East line of Chas. Prentice tract;

thence North 16°56'06" West 705.57 feet;

thence North 24°43'54" East 35.17 feet;

thence North 64°14'54" East 98 feet;

thence Easterly to the Point of Beginning.

Parcel B:

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

Beginning at a point on the West line of Geo. Holt Donation Claim No. 51 which is 516.36 feet South of the North line of Section 32, Township 24 North, Range 4 East, Willamette Meridian, in King County, Washington;

thence South 02°03'26" West along said line 400 feet;

thence North 89°53'36" East along the South line of said donation claim 73.16 feet;

thence South 00°35'49" West along a line parallel to and 794 feet West of the West line of A. Hograve Donation Claim No. 37, a distance of 350 feet;

thence Westerly to a concrete monument on the East line of Chas. Prentice tract;

thence North $16^{\circ}56'06''$ West 705.57 feet;

thence North $24^{\circ}43'54''$ East 35.17 feet;

thence North $64^{\circ}14'54''$ East 98 feet;

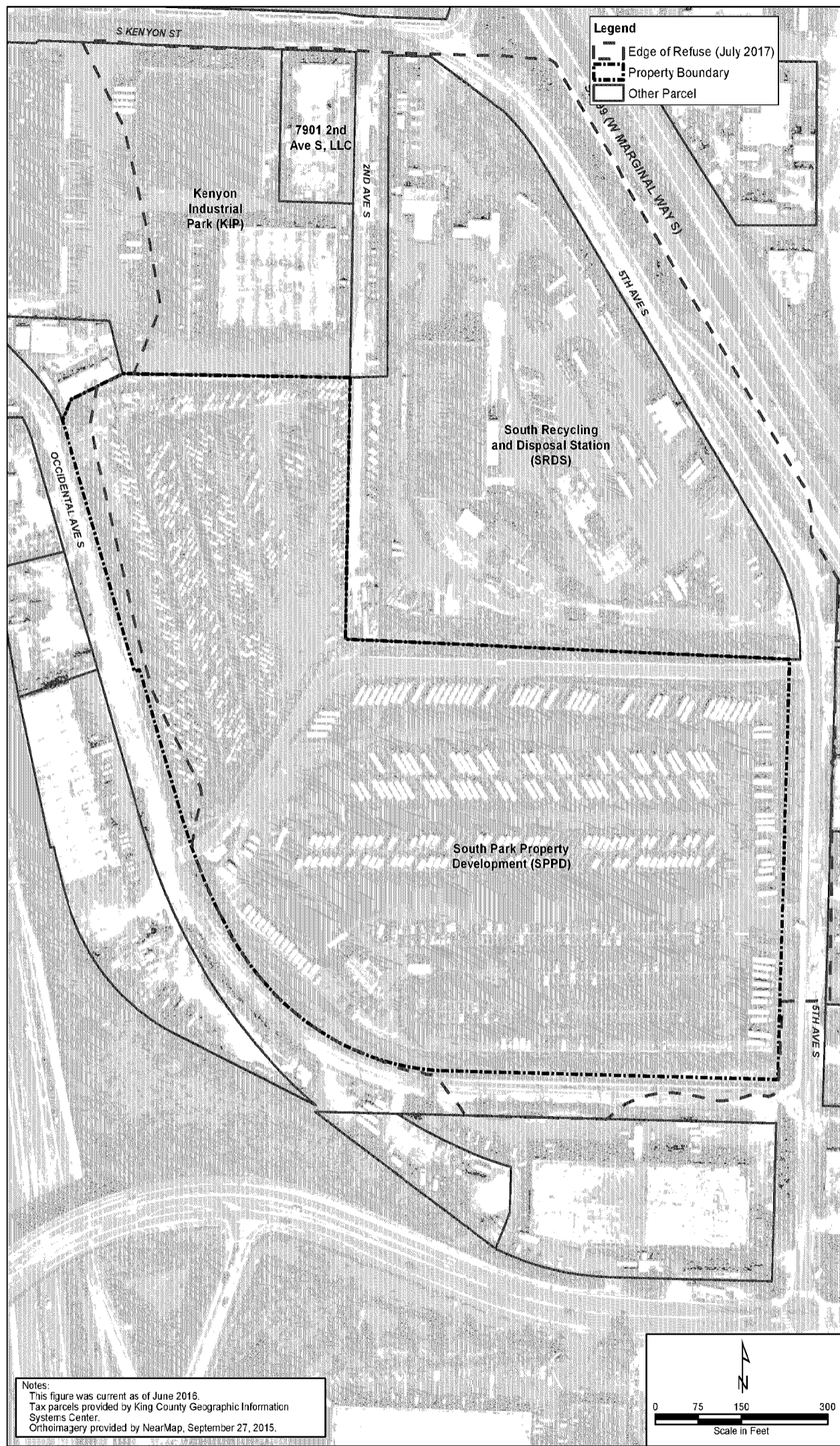
thence Easterly to the Point of Beginning;

EXCEPT any portion thereof lying within Occidental Avenue; and

EXCEPT that portion conveyed to the City of Seattle by deed recorded under recording number 5947050.

Exhibit B

PROPERTY MAP



FLOYD SNIDER
 strategy • science • engineering

Aspect HERRERA

South Park Landfill
 Seattle, Washington

Exhibit B
 Property Boundary—SPPD Parcel

Exhibit C

LANDFILL CAP BOUNDARY

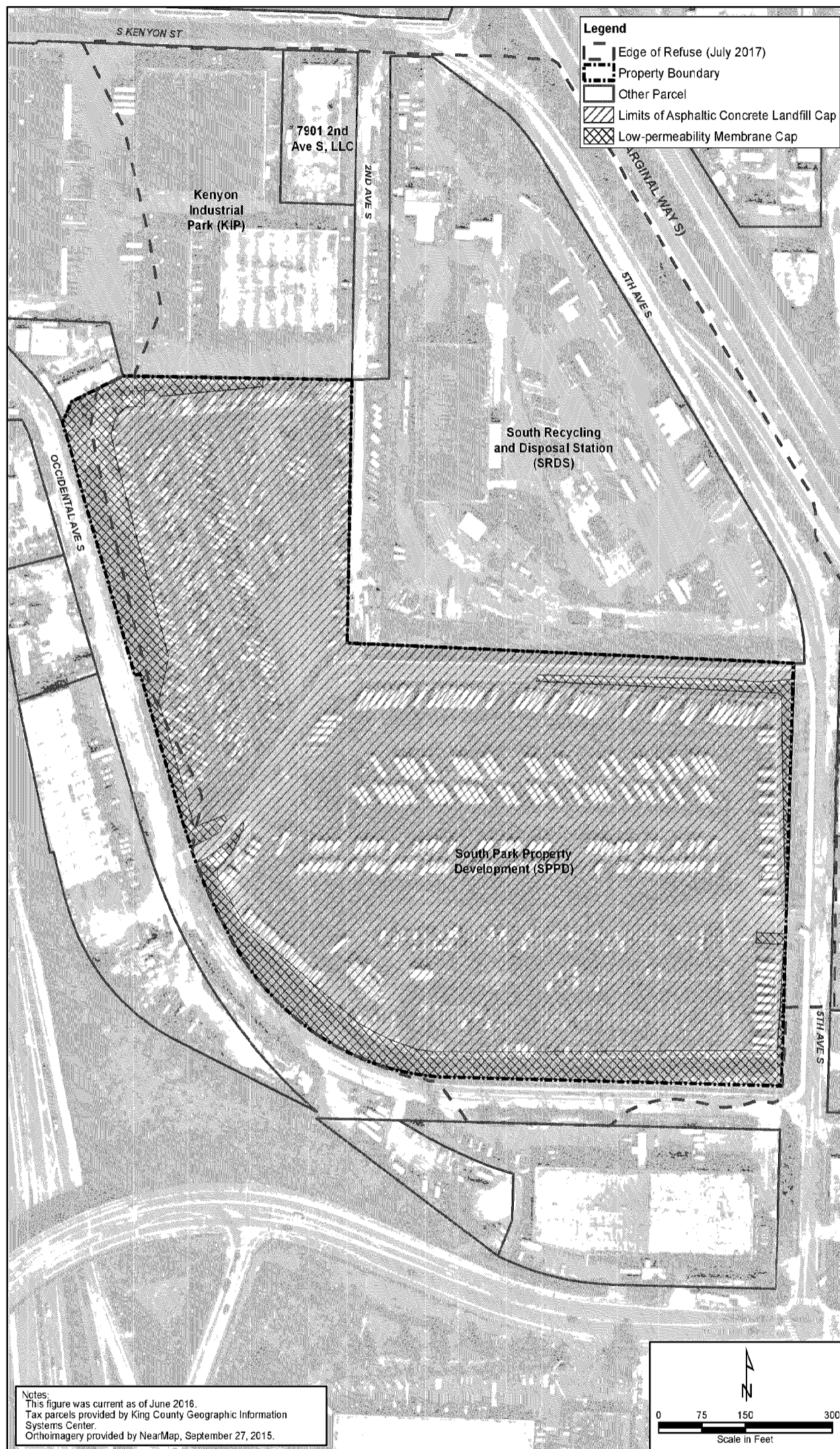


Exhibit D

PORTION OF THE PROPERTY THAT OVERLIES REFUSE

