



FILE# 8157628
 YAKIMA COUNTY, WA
 09/23/2022 10:37:52AM
 COVENANT
 PAGES: 12
 VALUED CUSTOMER
 FULCRUM ENVIRONMENTAL
 Recording Fee: 214.50

After Recording Return
 Original Signed Covenant to:
 Jeff Newschwander
 Toxics Cleanup Program
 Department of Ecology
 1250 West Alder Street
 Union Gap, Washington 98903-0009

Environmental Covenant

Grantor: West Valley School District #208

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

Brief Legal Description:

Beginning at an aluminum cap marking the Northwest corner of the SE1/4 of Section 19 from which an aluminum cap marking the Southeast corner of the SE1/4 of Section 19 bears South 00° 17' 43" West 2647.33 feet, thence South 00° 17' 43" West along the West line of the SE1/4 of said Section 19 for a distance of 661.83 feet to the Northwest corner of the SW1/4 of the NW1/4 of the SE1/4 of Section 19, thence leaving the West line of the SE1/4 of said Section 19, North 89° 57' 46" East, 30 feet Easterly of the centerline thereof, when measured at right angles, thence leaving the Easterly right of way line of said North 88th Avenue and continuing North 89° 57' 46" East along the North line of the SW1/4 of the NW1/4 of the SE1/4 of Section 19 for a distance of 463.95 feet to the Northwest corner of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of Section 19, thence leaving the North line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, South 00° 16' 50" West along the line of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19 for a distance of 660.98 feet to the Southwest corner of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, thence leaving the West line of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, South 89° 53' 38" West along the South line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19 for a distance of 494.12 feet to the Easterly right of way of said North 88th Avenue, said point being 30 feet Easterly of the centerline thereof, when measured at right angles, thence leaving the South line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, North 00° 17' 43" East along the Easterly right of way line of said North 88th Avenue for a distance of 661.54 feet to the True Point of Beginning and the end of this legal description, EXCEPT the North 30 feet thereof, reserved for road right of way.

And

E1/2 E1/2 SW1/4 NW1/4 SE1/4 & W 32.5FT OF SE1/4 NW1/4 SE1/4

Situate in Yakima County, State of Washington.

TAX PARCEL NOS.: 181319-42022 and 181319-42006

Tax Parcel Nos.: 181319-42022 and 181319-42006

Cross Reference: Ecology VCP CE0531

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 or all of a site commonly known as Apple Valley Elementary School Campus. 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
Soil	Arsenic and Lead

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 available through Ecology.

See the final remediation report: “*Lead Arsenic Soil Remediation Observations, and Testing Summary*” Fulcrum Environmental Consulting, Inc., November 19, 2020.

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

The West Valley School District #208, 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 GRANTOR 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. Containment of soil.

The Environmental Covenant's purpose is to contain, and prevent direct contact with contaminated soil on the Property. As such, the following restrictions shall apply to the Property:

The remedial action for the Property is based on containing contaminated soil under a cap consisting of 4-inches of compacted gravel beneath asphalt or concrete, landscape fabric and 4-inches of large landscaping rock, or 10-inches of clean soil and 2-inches of sod in grass areas and located as illustrated in Exhibit B. The primary purpose of this cap is to prevent unintended exposure to contaminated site soils. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Except for the agreed-upon maintenance activities set forth below, 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.

The Grantor shall not alter or remove the existing structures on the Property in any manner that would expose contaminated soil, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structures illustrated in Exhibit B so that access to the underlying contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil.

The Grantor covenants and agrees that it shall inspect the cap consistent with schedule identified in the remediation report Operations and Maintenance Plan and report within thirty (30) days of the inspection the condition of the protective cap and any changes to the protective cap that would impair its performance.

The Grantor is permitted to maintain the compacted gravel, rock and landscape fabric barrier, and clean soil cap, including; repair or replacement of overlying asphalt or concrete, adding/replacing landscaping rock, removing vegetation with a root structure less than 1-foot, without prior written approval by Ecology.

b. Stormwater facilities.

To minimize the potential for mobilization of contaminants remaining in the soil on the Property, no stormwater infiltration facilities or ponds shall be constructed on the Property within the upper 4-feet of site soils. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction.

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 and its authorized representatives, 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 [COUNTY] COUNTY AUDITOR 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.

West Valley School District #208 Dr. Peter Finch 8902 Zier Road Yakima, WA 98908 (509) 972-6000 finchp@wvvsd208.org	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.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

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.

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

EXECUTED this 10 day of December, 2021.

[Handwritten Signature]

[Signature]
by: [Printed Name] Peter D. Finch

Title: Superintendent

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington
COUNTY OF Yakima

On this 10th day of December, 2021, I certify that Peter D. Finch 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 Superintendent of West Valley School District #208 to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

[Handwritten Signature: Stephanie Hennessy-Smith]

Notary Public in and for the State of Washington

Residing at Yakima, WA

My appointment expires 10/01/2023



The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Signature]

by: Jeff Newschwander

Title: Acting Section Manager

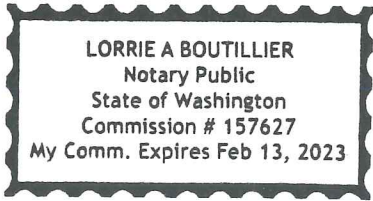
Dated: March 2, 2022

STATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF Yakima

On this 2 day of March, 2022, I certify that Jeff Newschwander personally appeared before me, acknowledged that he/she is the Representative 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.



Lorrie A. Boutillier
Notary Public in and for the State of Washington

Residing at Yakima County, Washington

My appointment expires 02-13-2023

Exhibit A

LEGAL DESCRIPTION

Records of Yakima County, Washington;

Section 19 Township 13 Range 18 Quarter SE: A parcel of land located in a portion of the SW1/4 of the NW1/4 of the SE1/4 of Section 19 described as follows: Beginning at an aluminum cap marking the Northwest corner of the SE1/4 of Section 19 from which an aluminum cap marking the Southeast corner of the SE1/4 of Section 19 bears South 00° 17' 43" West 2647.33 feet, thence South 00° 17' 43" West along the West line of the SE1/4 of said Section 19 for a distance of 661.83 feet to the Northwest corner of the SW1/4 of the NW1/4 of the SE1/4 of Section 19, thence leaving the West line of the SE1/4 of said Section 19, North 89° 57' 46" East, 30 feet Easterly of the centerline thereof, when measured at right angles, thence leaving the Easterly right of way line of said North 88th Avenue and continuing North 89° 57' 46" East along the North line of the SW1/4 of the NW1/4 of the SE1/4 of Section 19 for a distance of 463.95 feet to the Northwest corner of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of Section 19, thence leaving the North line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, South 00° 16' 50" West along the line of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19 for a distance of 660.98 feet to the Southwest corner of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, thence leaving the West line of the East Half of the East Half of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, South 89° 53' 38" West along the South line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19 for a distance of 494.12 feet to the Easterly right of way of said North 88th Avenue, said point being 30 feet Easterly of the centerline thereof, when measured at right angles, thence leaving the South line of the SW1/4 of the NW1/4 of the SE1/4 of said Section 19, North 00° 17' 43" East along the Easterly right of way line of said North 88th Avenue for a distance of 661.54 feet to the True Point of Beginning and the end of this legal description, EXCEPT the North 30 feet thereof, reserved for road right of way.

And

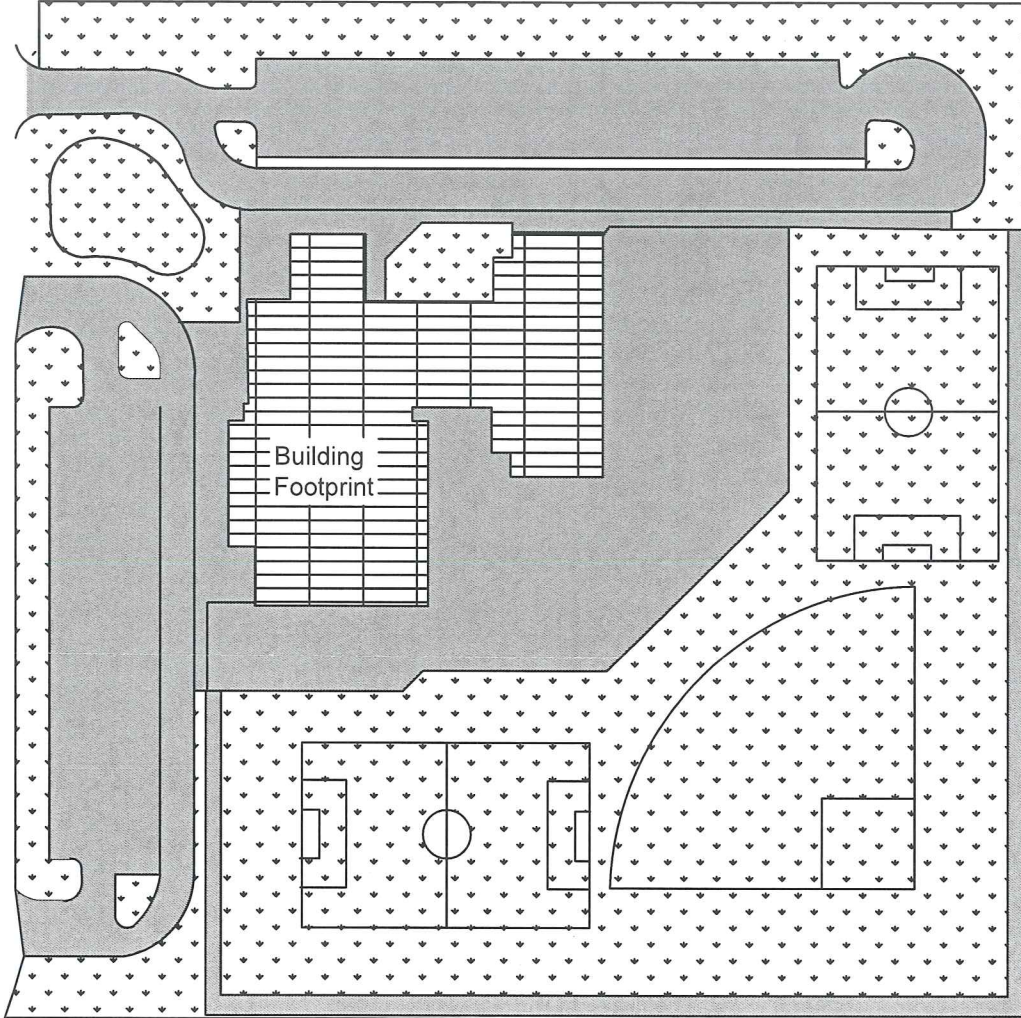
E1/2 E1/2 SW1/4 NW1/4 SE1/4 & W 32.5 FT OF SE1/4 NW1/4 SE1/4

Situate in Yakima County, State of Washington.

Exhibit B

PROPERTY MAP ILLUSTRATING LOCATION OF RESTRICTIONS

Apple Valley Elementary School - Post- Development Protective Barriers



LEGEND



8 TO 10 INCHES OF CLEAN SOIL
AND SOD OR LANDSCAPING



ASPHALT ROADWAYS, PARKING AREAS, AND SIDEWALKS



BUILDING FOOTPRINT