

Ecopsy



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

Southwest Region Office  
PO Box 47775 • Olympia, WA 98504-7775 • 360-407-6300

April 3, 2024

Mark Ziegler  
City Manager  
City of Shelton  
525 W Cota Street  
Shelton, WA 98584  
[mark.ziegler@sheltonwa.gov](mailto:mark.ziegler@sheltonwa.gov)

**Re: Proposed Activity and Use Restrictions at the following Cleanup Site:**

- **Site Name:** Shelton C Street Landfill
- **Site Address:** Intersection of West C Street and US Highway 101
- **Cleanup Site ID:** 2295
- **Facility/Site ID:** 1186
- **Tax Parcels:** 42024-21-60430

Dear Mark Ziegler:

The Department of Ecology (Ecology) has completed a review of your cleanup for the above-referenced site. Because residual contamination will remain on the above-referenced property at the completion of the cleanup, Ecology has determined that certain future activities and uses of the property need to be restricted under WAC 173-340-440 to protect the integrity of the cleanup and protect human health and the environment.

**Draft Covenant**

Accordingly, we have attached the DRAFT environmental covenant (hereafter “Covenant”) to implement the following restrictions on the property:

The property shall not be used for residential purposes. The property contains contaminated soils and solid waste under a low permeability soil cap. Any activity that will compromise the integrity of the cap is prohibited without prior approval by Ecology. Any future development of stormwater facilities is prohibited within the landfill boundary. Any future development of structures is prohibited within the landfill boundary. No new water wells may be installed on the property due to the set-back restriction in Chapter 173-160-171 Washington Administrative Code (WAC) of 1,000 feet from the boundary of a landfill. The grantor shall maintain clear access to monitoring wells on the property and protect them from damage.

We have also preliminarily consulted with City to seek their review of the restrictions in accordance with RCW 70.105D.030(1)(f). Their initial feedback is that the restrictions are compatible with their land use plan and development regulations for this property.

## **Next Steps**

Here are the next steps to complete this process:

1. Please compile the environmental covenant with attachments.
2. Obtain the signatures of each person holding a recorded interest in the property. Each of these persons will need to sign the Covenant as a grantor.
3. Submit the Covenant to Ecology for our signature as the grantee.
4. Record the Covenant in every county where the real property subject to the Covenant is located. For detailed recording instructions, please refer to [Chapter 65.04 RCW](#).
5. Return the original signed and recorded Covenant to Ecology and provide a copy of the recorded Covenant to the following persons:
  - Each person who signed the Covenant.
  - Each person holding a recorded interest in the real property subject to the Covenant. This includes persons who signed subordination agreements.
  - Each person in possession of the real property subject to the Covenant at the time the Covenant is executed (i.e., renters).
  - The local government planning authority in which real property subject to the Covenant is located.
  - Any other person to whom the Covenant expressly grants the power to enforce the Covenant.
  - Any other persons Ecology requires.

The copy must be legible, and the recording number must be evident.

## **More Information**

For more information on environmental covenants, see:

- Ecology's environmental covenant template:  
<http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.htm>
- Ecology's Toxics Cleanup Procedure 440A:  
<http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>.
- The Uniform Environmental Covenants Act (UECA), Chapter 64.70 RCW  
(<http://apps.leg.wa.gov/RCW/default.aspx?cite=64.70>).
- [WAC 173-340-440](http://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-440) of the Model Toxics Cleanup Act (MTCA) Cleanup Regulation  
(<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-440>)

If you have questions about how to complete the Covenant template or any of the directions provided above, please contact me at 360-485-3987 or [andrew.smith@ecy.wa.gov](mailto:andrew.smith@ecy.wa.gov).

Sincerely,



Andrew Smith, PE, LHG  
Toxics Cleanup Program  
Southwest Region Office

Enclosure: Proposed Environmental Covenant

cc by email: Andrew Smith, PE, LHG, [andrew.smith@ecy.wa.gov](mailto:andrew.smith@ecy.wa.gov)

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## Enclosure A

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Proposed Environmental Covenant

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After Recording Return  
Original Signed Covenant to: <sup>1</sup>  
**Andrew Smith, PE, LHG**  
Toxics Cleanup Program  
Department of Ecology  
**300 Desmond Drive**  
**Olympia, Washington 98504**

## Environmental Covenant

**Grantor: City of Shelton**

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

**Brief Legal Description: TR 43 OF NE NW S 45/68**

**Tax Parcel Nos.: 42024-21-60430**

**Cross Reference: Agreed Order DE 19541**

### RECITALS <sup>2</sup>

- 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 **Shelton C Street Landfill Site, Facility ID # 1186**. 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	Dioxins/furans, carcinogenic polycyclic aromatic hydrocarbons, metals (barium, copper, lead, mercury, selenium, silver, zinc)
Groundwater	Metals (iron, and manganese)
Surface Water/Sediment	Not applicable

- 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. This includes the Remedial Investigation and Feasibility Study Report (Aspect, 2021); Agreed Order No. DE 19541, including the Cleanup Action Plan; and the Construction Completion Report (Aspect, pending).

<sup>1</sup> Some counties keep the original Covenant, others don't. If the signed original is available, it must be sent to Ecology. If the signed original is not available, send a legible copy to Ecology.

<sup>2</sup> This section is primarily used to describe this document and its purpose. It should not be used for substantive binding provisions.

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 City of Shelton, 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. Land use.** The Property shall not be used for residential purposes.

**b. Containment of soil/waste materials.** The remedial action for the Property is based on containing contaminated soils and solid waste under a low permeability soil cap. This soil cap is located as illustrated in Exhibit B. The purpose of this soil cap is to prevent direct contact and minimize infiltration of precipitation through the contaminated soils and solid waste.



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 covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the soil cap and report within thirty (30) days of the inspection the condition of the soil cap and any changes to the soil cap that would impair its performance.

**c. Stormwater facilities.** There are no existing stormwater facilities on the Property. Any future development of stormwater facilities is prohibited within the landfill boundary. Any future development of stormwater facilities outside the landfill boundary but within the parcel boundary shall be performed in compliance with all applicable laws.

**d. Vapor/gas controls.** The residual contamination on the Property includes municipal solid waste that may generate methane, a combustible gas. No methane was observed during the RI/FS (Aspect, 2021). There are no existing structures and no existing vapor or gas controls on the Property.

Any future development of structures is prohibited within the landfill boundary. Any future development of structures outside the landfill boundary but within the parcel boundary shall be performed in compliance with all applicable laws.

**e. Groundwater use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than monitoring. No new water wells may be installed on the Property due to the set-back restriction in Chapter 173-160-171 Washington Administrative Code (WAC) of 1,000 feet from the boundary of a landfill.

**g. Monitoring.** Several 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 forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan 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.

### **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.<sup>3</sup>
- 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 MASON 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.

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<sup>3</sup> Ecology may waive this notice provision for some units at a property where the anticipated use is a multi-tenant/owner building where some owners or tenants are unlikely to be exposed to residual contamination. For example: upper story apartments or condominiums, or commercial tenants in a strip mall, with limited rights to use the grounds under and around the building (such as for parking).

If Ecology agrees to such a waiver, the circumstances of the waiver must be detailed in paragraph 4.a.i. In addition to the specific circumstances, this provision must include the following statement: "Waiver of this advance notice to Ecology for these transactions does not constitute waiver of this notice for the entire Property nor a waiver of the requirement in Section 4.a.ii. to include this notice in any document conveying interest in the Property."

<p><b>City Manager</b>  <b>City of Shelton</b>  <b>525 W. Cota Street</b>  <b>Shelton, WA 98584</b>  <b>(360) 426-4491</b>  <a href="mailto:cityofshelton@sheltonwa.gov">cityofshelton@sheltonwa.gov</a></p>	<p>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></p>
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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 within landfill boundary in a manner that is inconsistent with this Covenant. <sup>4</sup> For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site: <sup>5</sup>

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. <sup>6</sup>

**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

<sup>4</sup> Example of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

<sup>5</sup> An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

<sup>6</sup> As time passes, the original grantor and other signers of the Covenant may no longer exist as viable entities. This provision is intended to allow future amendments or termination of the Covenant without Ecology having to seek court authorization, as provided by RCW 64.70.100.

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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
by: Mark Ziegler

Title: City Manager, City of Shelton

**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that Mark Ziegler 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 City Manager of City of Shelton 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 <sup>15</sup>  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

by: \_\_\_\_\_ Jerome Lambiotte \_\_\_\_\_

Title: Section Manager, TCP-Southwest Region

Dated: \_\_\_\_\_

**STATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ 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.

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## **Exhibit A**

### **LEGAL DESCRIPTION**

**The North half of the Northeast quarter of Section 24, Township 20 North, Range 4 West, W.M., in Mason County, Washington.**

**EXCEPTING therefrom a 250 foot strip of land within said North half of the Northeast quarter of the Northwest quarter quitclaimed to Rayonier Incorporated by the City of Shelton and described with particularity in Quitclaim Deed from the City of Shelton to Rayonier Incorporated dated July 12, 1949, and recorded in the Office of the County Auditor of Mason County, Washington, in Deed Record No. 125 at page 549.**

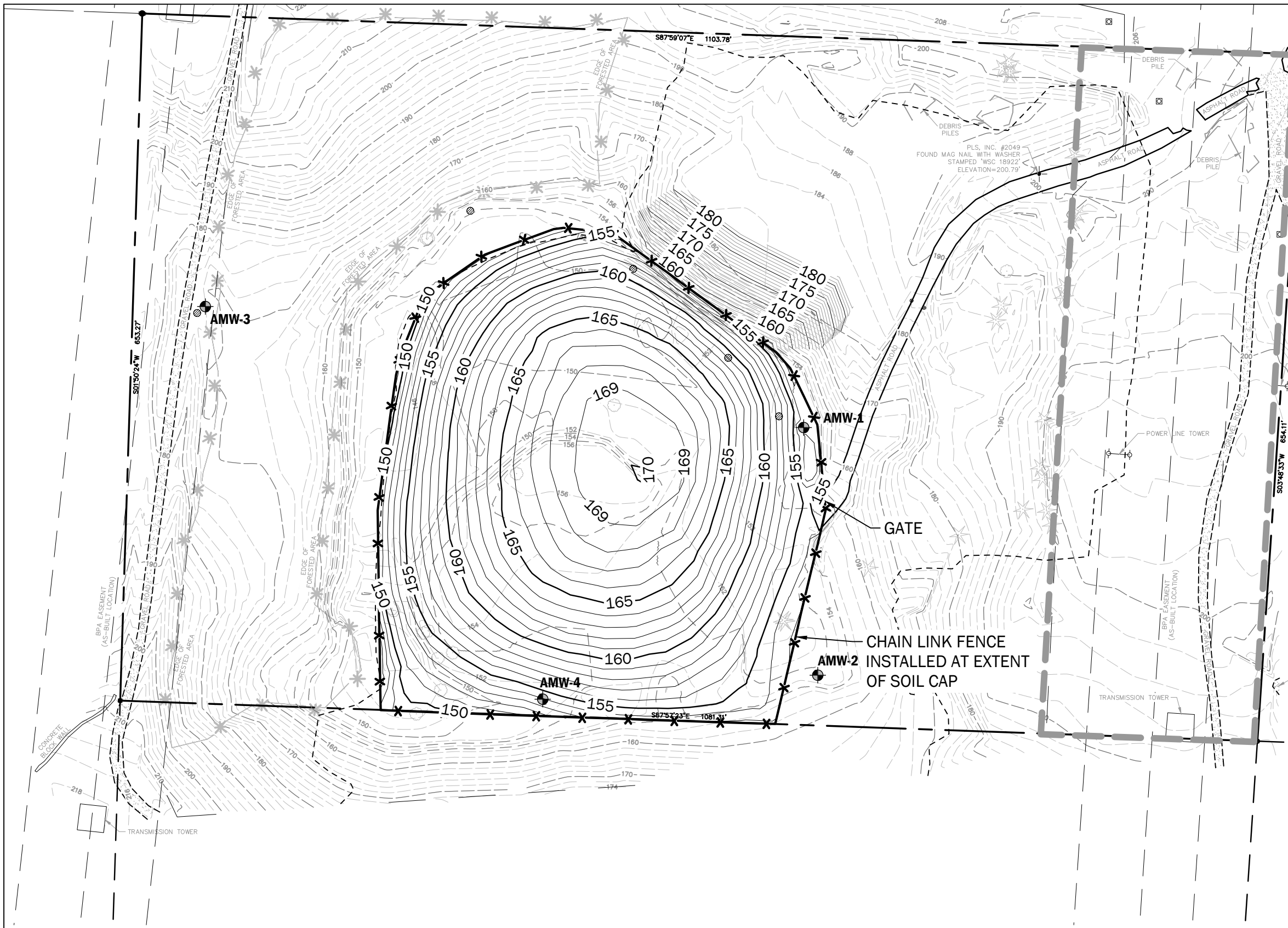
**ALSO EXCEPTING therefrom that part of the North half of the Northeast quarter of the Northwest quarter of Section 24, Township 20 North, Range 4 West, W.M., in Mason County, Washington, lying Easterly of the Easterly line of a 250 foot wide strip of land conveyed to Rayonier Incorporated by deed dated July 12, 1949, and recorded in Volume 125 of Deeds, page 549.**

**Exhibit B/C**

***PROPERTY MAP***  
**MAP ILLUSTRATING LOCATION OF RESTRICTIONS**





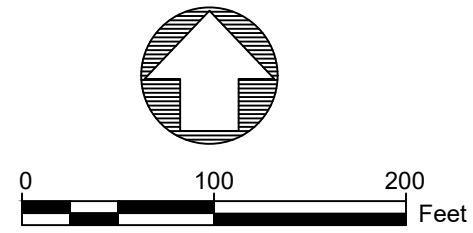


**SURVEY LEGEND:**

	TREE (CONIFEROUS) WITH TRUNK DIAMETER NOTED
	TREE (DECIDUOUS) WITH TRUNK DIAMETER NOTED
	BOLLARD
	GUY POLE
	UNDERGROUND GAS MARKER
	CONCRETE SURFACE
	GRAVEL SURFACE
	MONITORING WELL
	TAX PARCEL NUMBER

**LEGEND**

	POINT OF COMPLIANCE GROUNDWATER MONITORING WELL
	GRADE CONTOURS
	LANDFILL PARCEL
	CHAIN LINK FENCE LOCATION
	LIMIT OF CLEAR, GRUB & DISTURBANCE
	FORESTED AREA BOUNDARY
	ELEVATION CONTOUR (2FT INTERVAL)
	TRANSMISSION LINE EASEMENT BOUNDARY



**EXHIBIT B / C**  
**Containment Soil Cap Extent**  
 C Street Landfill  
 Shelton, Washington

	Nov-2023	BY: ALC/CMV	FIGURE NO. <b>1</b>
	PROJECT NO. 150074C	REVISED BY: -	