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**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

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|---|----------------|
| STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, | NO. |
| Plaintiff, | CONSENT DECREE |
| v. | |
| KITSAP COUNTY, a political subdivision of the State of Washington, | |
| Defendant. | |

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1 **I. INTRODUCTION**

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology), and Kitsap County (Defendant) is to
4 provide for remedial action at a facility where there has been a release or threatened release of
5 hazardous substances. This Decree requires the Defendant to undertake the following remedial
6 action(s) at the facility known as Bainbridge Island Landfill:

7 (1) Execute the Cleanup Action Plan (Exhibit B) of this Consent Decree.
8 Ecology has determined that these actions are necessary to protect public health and the
9 environment.

10 B. The Complaint in this action is being filed simultaneously with this Decree. An
11 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
12 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
13 Parties agree that settlement of these matters without litigation is reasonable and in the public
14 interest and that entry of this Decree is the most appropriate means of resolving these matters.

15 C. In signing this Decree, Defendant agrees to its entry and agrees to be bound by
16 its terms.

17 D. By entering into this Decree, the Parties do not intend to discharge non-settling
18 parties from any liability they may have with respect to matters alleged in the complaint. The
19 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
20 sums expended under this Decree, or previous orders concerning the Site issued by Ecology.

21 E. This Decree shall not be construed as proof of liability or responsibility for any
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;
23 provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any
24 proceeding to enforce this Decree.

1 F. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
3 FOLLOWS:

4 II. JURISDICTION

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
6 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

7 B. Authority is conferred upon the Washington State Attorney General by RCW
8 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
9 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious
10 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be
11 entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous
13 substances has occurred at the Site, which is the subject of this Decree.

14 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15),
15 of Ecology's determination that the Defendant is a potentially liable person for the Site and that
16 there has been a release or threatened release of hazardous substances at the Site.

17 E. The actions to be taken pursuant to this Decree are necessary to protect public
18 health, welfare, and the environment.

19 F. Defendant has agreed to undertake the actions specified in this Decree and
20 consents to the entry of this Decree under the MTCA.

21 III. PARTIES BOUND

22 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),
23 their successors and assigns. The undersigned representative of each Party hereby certifies that
24 he or she is fully authorized to enter into this Decree and to execute and legally bind such Party
25 to comply with the Decree. Defendant agrees to undertake all actions required by the terms

1 and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No
2 change in status, with regard to political makeup or otherwise, shall alter the responsibility of
3 the Defendant under this Decree. Defendant shall provide a copy of this Decree to all agents,
4 contractors and subcontractors retained to perform work required by this Decree and shall
5 ensure that all work undertaken by such contractors and subcontractors will be in compliance
6 with this Decree.

7 **IV. DEFINITIONS**

8 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms
9 in this Decree.

10 A. Site: The Site, referred to as the Bainbridge Island Landfill, is located on
11 Vincent Road, Bainbridge Island, Washington 98110, Section 33, Township 25 North, Range 2
12 East. The Site is more particularly described in Exhibit A to this Decree which is a detailed
13 site diagram.

14 B. Parties: Refers to the Washington State Department of Ecology and Kitsap
15 County, a municipal corporation organized under the laws of the State of Washington

16 C. Defendant: Refers to Kitsap County.

17 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
18 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
19 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

20 **V. STATEMENT OF FACTS**

21 Ecology makes the following finding of facts without any express or implied
22 admissions by Defendant.

23 A. Kitsap County is an "owner" as defined in RCW 70.105D.020(6). Kitsap
24 County obtained ownership of the property in 1942 through a real property tax foreclosure .
25

1 B. The facility is known as the Bainbridge Island Landfill and is located on
2 Vincent Road, Bainbridge Island, Washington 98110, Section 33, Township 25 North, Range 2
3 East.

4 C. The Bainbridge Island Landfill Remedial Investigation Report by CH2M Hill,
5 dated June 4, 1999, has identified hazardous substances at concentrations that exceed State and
6 Federal cleanup levels.

7 D. The Bainbridge Island Landfill was primarily a municipal waste landfill serving
8 the residents of Bainbridge Island. While it was initially operated by Kitsap County, in 1952 it
9 was leased to a series of private operators. The landfill ceased accepting waste in 1975 and
10 was closed in 1977. There is currently a solid waste transfer and recycling station located on a
11 portion of the Site.

12 E. The Remedial Investigation/Feasibility Study report was finalized in November
13 2000, after receiving public review and comment (See Ecology file Bainbridge Island Landfill
14 SIT 3.8.

15 F. The Cleanup Action Plan is attached as Exhibit B to this Consent Decree.

16 VI. WORK TO BE PERFORMED

17 This Decree contains a program designed to protect public health, welfare and the
18 environment from the known release, or threatened release, of hazardous substances or
19 contaminants at, on, or from the Site.

20 A. Kitsap County shall perform all tasks set forth in the Cleanup Action Plan,
21 attached as Exhibit B.

22 B. Kitsap County shall implement the Cleanup Action Plan in accordance with the
23 Cleanup Action Schedule, attached as Exhibit C, subject to Section XVIII of this Decree
24 (Extension of Schedule).

25

1 C. The Engineering Design Report, Construction Plans and Specifications,
2 Compliance Monitoring Plan, and Operations and Maintenance Plan are subject to review and
3 approval by Ecology before Kitsap County performs work under those plans. Kitsap County
4 shall incorporate Ecology's comments into the final versions of these documents. Upon
5 approval, these documents shall become integral and enforceable parts of this Decree, and shall
6 be complied with by Kitsap County.

7 D. Within thirty (30) days of completion of the installation of the cover required
8 under the Cleanup Action Plan, Kitsap County shall record with the Kitsap County Auditor's
9 Office the Restrictive Covenant attached to this Decree as Exhibit D and provide Ecology
10 proof of such recording.

11 E. Defendant agrees not to perform any remedial actions outside the scope of this
12 decree unless the Parties agree to amend the scope of work to cover these actions. All work
13 conducted under this decree shall be done in accordance with chapter 173-340 WAC unless
14 otherwise provided herein.

15 F. Any proposed minor changes to the work to be performed will be documented
16 and approved by Ecology. Defendant, or its representative(s), will contact Ecology to propose
17 any minor changes to the work to be performed prior to undertaking such changes. Initial
18 contact and approval may be accomplished either verbally or in writing. Proposals for minor
19 changes to the work to be performed must include justification for the changes, and Ecology's
20 approval or disapproval must be documented in writing. Ecology will determine whether
21 Defendant's proposed changes are minor or substantial. Substantial changes will be addressed
22 pursuant to Section XVII of this Decree (Amendment of the Consent Decree).

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Brian S. Sato, P.E.
4 Toxics Cleanup Program
5 Department of Ecology
6 3190 160th Ave SE
7 Bellevue, WA 98008-5452

8 The project coordinator for Defendant is:

9 Michelle Miller, Ph.D.
10 Kitsap County Department of Public Works
11 Solid Waste Division
12 614 Division Street, MS-27
13 Port Orchard, WA 98366

14 Each project coordinator shall be responsible for overseeing the implementation of this
15 Decree. The Ecology project coordinator will be Ecology's designated representative at the
16 Site. To the maximum extent possible, communications between Ecology and the Defendant
17 and all documents, including reports, approvals, and other correspondence concerning the
18 activities performed pursuant to the terms and conditions of this Decree, shall be directed
19 through the project coordinators. The project coordinators may designate, in writing, working
20 level staff contacts for all or portions of the implementation of the remedial work required by
21 this Decree. The project coordinators may agree to minor modifications to the work to be
22 performed without formal amendments to this Decree. Minor modifications will be
23 documented in writing by Ecology.

24 Any Party may change its respective project coordinator. Written notification shall be
25 given to the other Parties at least ten (10) calendar days prior to the change.

26 **VIII. PERFORMANCE**

27 All work performed pursuant to this Decree shall be under the direction and
28 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with

1 experience and expertise in hazardous waste site investigation and cleanup. Any construction
2 work must be under the supervision of a professional engineer. Defendant shall notify Ecology
3 in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any
4 contractors and subcontractors to be used in carrying out the terms of this Decree, in advance
5 of their involvement at the Site.

6 **IX. ACCESS**

7 Ecology or any Ecology authorized representatives shall have the authority to enter and
8 freely move about all property at the Site at all reasonable times with reasonable notice for the
9 purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work
10 being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the
11 terms of this Decree; conducting such tests or collecting such samples as Ecology may deem
12 necessary; using a camera, sound recording, or other documentary type equipment to record
13 work done pursuant to this Decree; and verifying the data submitted to Ecology by the
14 Defendant. All parties with access to the Site pursuant to this paragraph shall comply with
15 approved health and safety plans.

16 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

17 With respect to the implementation of this Decree, Defendant shall make the results of
18 all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to
19 Ecology and shall submit these results in accordance with Section XI (Progress Reports) of this
20 Decree.

21 If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by
22 Ecology and/or its authorized representatives of any samples collected by Defendant pursuant
23 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in
24 advance of any sample collection or work activity at the Site. Ecology shall, upon request,
25 allow split or duplicate samples to be taken by Defendant or its authorized representatives of

1 any samples collected by Ecology pursuant to the implementation of this Decree provided it
2 does not interfere with the Department's sampling. Without limitation on Ecology's rights
3 under Section IX (Access), Ecology shall endeavor to notify Defendant prior to any sample
4 collection activity.

5 **XI. PROGRESS REPORTS**

6 During the construction phase of the Cleanup Action Plan, Defendant shall submit to
7 Ecology written monthly progress reports which describe the actions taken during the previous
8 month to implement the requirements of this Decree. The progress shall include the following:

9 A. A list of on-site activities that have taken place during the reporting period;

10 B. Detailed description of any deviations from required tasks not otherwise
11 documented in project plans or amendment requests;

12 C. Description of all deviations from the schedule (Exhibit C) during the current
13 month and any planned deviations in the upcoming month;

14 D. For any deviations in schedule, a plan for recovering lost time and maintaining
15 compliance with the schedule;

16 E. All validated raw data (including laboratory analysis) received by the Defendant
17 during the past month and an identification of the source of the sample;

18 F. A list of deliverables for the upcoming month if different from the schedule.

19 Following the construction phase, a letter report accompanied by the most recent copy
20 of the electronic database containing all monitoring data will be submitted to Ecology within
21 60 days of each monitoring event. The letter report shall include a discussion of any other
22 remediation-related activities which have occurred on the Site since the last report was
23 submitted.

24 All progress reports shall be submitted by the tenth day of the month in which they are
25 due after the effective date of this Decree. Unless otherwise specified, progress reports and

1 any other documents submitted pursuant to this Decree shall be sent by U.S. mail, to Ecology's
2 project coordinator.

3 **XII. RETENTION OF RECORDS**

4 Defendant shall preserve, during the pendency of this Decree and for ten (10) years
5 from the date this Decree is no longer in effect as provided in Section XXVII (Duration of
6 Decree), all records, reports, documents, and underlying data in its possession relevant to the
7 implementation of this Decree and shall insert in contracts with project contractors and
8 subcontractors a similar record retention requirement. Upon request of Ecology, Defendant
9 shall make all non-archived records available to Ecology and allow access for review. All
10 archived records shall be made available to Ecology within a reasonable period of time.
11 Nothing in this Section is intended to waive otherwise applicable legal privileges.

12 **XIII. TRANSFER OF INTEREST IN PROPERTY**

13 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
14 or other interest held by Kitsap County in any portion of the Site shall be consummated
15 without provision for continued operation and maintenance of any containment system,
16 treatment system, and monitoring system installed or implemented pursuant to this Decree.

17 Prior to transfer of any legal or equitable interest in all or any portion of the property,
18 and during the effective period of this Decree, Defendant shall serve a copy of this Decree
19 upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of
20 the property; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology
21 of said contemplated transfer.

22 **XIV. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed
24 modification or other decision or action by Ecology's project coordinator, the Parties shall
25 utilize the dispute resolution procedure set forth below.

1 (1) Upon receipt of the Ecology project coordinator's decision, the
2 Defendant has fourteen (14) days within which to notify Ecology's project coordinator of its
3 objection to the decision.

4 (2) The Parties' project coordinators shall then confer in an effort to resolve
5 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
6 Ecology's project coordinator shall issue a written decision.

7 (3) Defendant may then request Ecology management review of the
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
9 within ten (10) days of receipt of Ecology's project coordinator's decision.

10 (4) Ecology's Section Manager shall conduct a review of the dispute and
11 shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's
12 request for review. The Section Manager's decision shall be Ecology's final decision on the
13 disputed matter.

14 B. If Ecology's final written decision is unacceptable to Defendant, Defendant has
15 the right to submit the dispute to the Court for resolution. The Parties agree that one judge
16 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
17 under this Decree. In the event Defendant presents an issue to the Court for review, the Court
18 shall review the action or decision of Ecology on the basis of whether such action or decision
19 was arbitrary and capricious and render a decision based on such standard of review.

20 C. The Parties agree to only utilize the dispute resolution process in good faith and
21 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
22 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
23 the other Party may seek sanctions.

1 Implementation of these dispute resolution procedures shall not provide a basis for
2 delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
3 extension or the Court so orders.

4 **XV. CONTRIBUTION PROTECTION**

5 With regard to claims for contribution against Defendant, the Parties intend that
6 Defendant will obtain the protection against claims for contribution for matters addressed in
7 this Decree as is provided under MTCA, RCW 70.105.040(4)(d).

8 **XVI. COVENANT NOT TO SUE; REOPENERS**

9 A. In consideration of Defendant's compliance with the terms and conditions of
10 this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all
11 administrative, legal, and equitable remedies and enforcement actions available to the State
12 against Defendant regarding all matters within the scope of this Consent Decree.

13 B. Reopeners: In the following circumstances, Ecology may exercise its full legal
14 authority to address releases of hazardous substances at the Site, notwithstanding the Covenant
15 Not To Sue set forth above:

16 (1) In the event Defendant fails to comply with the terms and conditions of
17 this Decree, including all Exhibits, and after written notice of noncompliance, such failure is
18 not cured by Defendant within thirty (30) days of receipt of notice of noncompliance.

19 (2) In the event factors not known at the time of entry of this Decree and not
20 disclosed to Ecology are discovered and such factors present a previously unknown threat to
21 human health or the environment and are not addressed by the Cleanup Action Plan (Exhibit
22 B). If such factors are discovered, Ecology shall give written notice to Defendant.

23 (3) Upon Ecology's determination that actions beyond the terms of this
24 Decree are necessary to abate an emergency situation which threatens public health, welfare, or
25 the environment.

1 C. Applicability: The Covenant Not To Sue set forth above shall have no
2 applicability whatsoever to:

- 3 (1) Criminal liability;
- 4 (2) Actions against PLPs not party to this Decree;
- 5 (3) Liability for damages for injury to, destruction of, or loss of natural
6 resources.
- 7 (4) Determinations pursuant to groundwater monitoring that cleanup levels
8 are being exceeded.

9 D. Ecology retains all of its legal and equitable rights against all persons, except as
10 otherwise provided in this Decree.

11 **XVII. AMENDMENT OF CONSENT DECREE**

12 This Decree may only be amended by a written stipulation among the Parties to this
13 Decree that is entered by the Court or by order of the Court. Such amendment shall become
14 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
15 any Party to the Decree.

16 Defendant shall submit any request for an amendment to Ecology for approval.
17 Ecology shall indicate its approval or disapproval in a timely manner after the request for
18 amendment is received. If the amendment to the Decree is substantial, Ecology will provide
19 public notice and opportunity for comment. Reasons for the disapproval shall be stated in
20 writing. If Ecology does not agree to any proposed amendment, the disagreement may be
21 addressed through the dispute resolution procedures described in Section XIV (Resolution of
22 Disputes) of this Decree.

23 **XVIII. EXTENSION OF SCHEDULE**

24 A. An extension of schedule shall be granted only when a request for an extension
25 is submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline

1 for which the extension is requested, and good cause exists for granting the extension. All
2 extensions shall be requested in writing. The request shall specify the reason(s) the extension
3 is needed.

4 An extension shall only be granted for such period of time as Ecology determines is
5 reasonable under the circumstances. A requested extension shall not be effective until
6 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
7 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section
8 XVII (Amendment of Consent Decree) when a schedule extension is granted.

9 B. The burden shall be on the Defendant to demonstrate to the satisfaction of
10 Ecology that the request for such extension has been submitted in a timely fashion and that
11 good cause exists for granting the extension. Good cause includes, but is not limited to, the
12 following.

13 (1) Circumstances beyond the reasonable control and despite the due
14 diligence of Defendant including delays caused by unrelated third parties or Ecology, such as
15 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents
16 submitted by Defendant; or

17 (2) Acts of God, including fire, flood, blizzard, extreme temperatures,
18 storm, or other unavoidable casualty; or

19 (3) Endangerment as described in Section XIX.

20 However, neither increased costs of performance of the terms of the Decree nor
21 changed economic circumstances shall be considered circumstances beyond the reasonable
22 control of Defendant.

23 C. Ecology may extend the schedule for a period not to exceed ninety (90) days,
24 except where an extension is needed as a result of:

1 (1) Delays in the issuance of a necessary permit which was applied for in a
2 timely manner; or

3 (2) Other circumstances deemed exceptional or extraordinary by Ecology;
4 or

5 (3) Endangerment as described in Section XIX.

6 Ecology shall give Defendant written notification in a timely fashion of any extensions
7 granted pursuant to this Decree.

8 **XIX. ENDANGERMENT**

9 In the event Ecology determines that activities implementing or in noncompliance with
10 this Decree, or any other circumstances or activities, are creating or have the potential to create
11 a danger to the health or welfare of the people on the Site or in the surrounding area or to the
12 environment, Ecology may order Defendant to stop further implementation of this Decree for
13 such period of time as needed to abate the danger or may petition the Court for an order as
14 appropriate. During any stoppage of work under this section, the obligations of Defendant
15 with respect to the work under this Decree which is ordered to be stopped shall be suspended
16 and the time periods for performance of that work, as well as the time period for any other
17 work dependent upon the work which is stopped, shall be extended, pursuant to Section XVIII
18 (Extension of Schedule) of this Decree, for such period of time as Ecology determines is
19 reasonable under the circumstances.

20 In the event Defendant determines that activities undertaken in furtherance of this
21 Decree or any other circumstances or activities are creating an endangerment to the people on
22 the Site or in the surrounding area or to the environment, Defendant may stop implementation
23 of this Decree for such period of time necessary for Ecology to evaluate the situation and
24 determine whether Defendant should proceed with implementation of the Decree or whether
25 the work stoppage should be continued until the danger is abated. Defendant shall notify

1 Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after
2 such stoppage of work, and thereafter provide Ecology with documentation of the basis for the
3 work stoppage. If Ecology disagrees with the Defendant's determination, it may order
4 Defendant to resume implementation of this Decree. If Ecology concurs with the work
5 stoppage, the Defendant's obligations shall be suspended and the time period for performance
6 of that work, as well as the time period for any other work dependent upon the work which was
7 stopped, shall be extended, pursuant to Section XVIII (Extension of Schedule) of this Decree,
8 for such period of time as Ecology determines is reasonable under the circumstances. Any
9 disagreements pursuant to the clause shall be resolved through the dispute resolution
10 procedures in Section XIV.

11 **XX. OTHER ACTIONS**

12 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently
13 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take
14 any other enforcement action pursuant to available statutory authority under the following
15 circumstances:

16 A. Where Defendant fails, after notice, to comply with any requirement of this
17 Decree;

18 B. In the event or upon the discovery of a release or threatened release not
19 addressed by this Decree;

20 C. Upon Ecology's determination that action beyond the terms of this Decree is
21 necessary to abate an emergency situation which threatens public health or welfare or the
22 environment; or

23 D. Upon the occurrence or discovery of a situation beyond the scope of this Decree
24 as to which Ecology would be empowered to perform any remedial action or to issue an order
25 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the

1 geographic Site described in Exhibit A and to those contaminants which Ecology knows to be
2 at the Site when this Decree is entered.

3 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
4 resources resulting from the release or threatened release of hazardous substances from
5 Bainbridge Island Landfill.

6 Ecology reserves the right to take any enforcement action whatsoever, including a cost
7 recovery action, against potentially liable persons not party to this Decree.

8 **XXI. INDEMNIFICATION**

9 To the extent allowed by law, Defendant agrees to indemnify and save and hold the
10 State of Washington, its employees, and agents harmless from any and all claims or causes of
11 action for death or injuries to persons or for loss or damage to property arising from or on
12 account of acts or omissions of Defendant, its officers, employees, agents, or contractors in
13 entering into and implementing this Decree. However, the Defendant shall not indemnify the
14 State of Washington nor save nor hold its employees and agents harmless from any claims or
15 causes of action arising out of the negligent acts or omissions of the State of Washington, or
16 the employees or agents of the State, in implementing the activities pursuant to this Decree.

17 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

18 A. All actions carried out by Defendant pursuant to this Decree shall be done in
19 accordance with all applicable federal, state, and local requirements, including requirements to
20 obtain necessary permits, except as provided in paragraph B. of this section.

21 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
22 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
23 local government permits or approvals for the remedial action under this Decree that are
24 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the
25 Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

1 Defendant(s) has a continuing obligation to determine whether additional permits or
2 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
3 action under this Decree. In the event either Defendant or Ecology determines that additional
4 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
5 remedial action under this Decree, it shall promptly notify the other Party of this determination.
6 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
7 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly
8 consult with the appropriate state and/or local agencies and provide Ecology with written
9 documentation from those agencies of the substantive requirements those agencies believe are
10 applicable to the remedial action. Ecology shall make the final determination on the additional
11 substantive requirements that must be met by Defendant and on how Defendant must meet
12 those requirements. Ecology shall inform Defendant in writing of these requirements. Once
13 established by Ecology, the additional requirements shall be enforceable requirements of this
14 Decree. Defendant shall not begin or continue the remedial action potentially subject to the
15 additional requirements until Ecology makes its final determination.

16 Ecology shall ensure that notice and opportunity for comment is provided to the public
17 and appropriate agencies prior to establishing the substantive requirements under this section.

18 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
19 exemption from complying with the procedural requirements of the laws referenced in RCW
20 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
21 for the State to administer any federal law, the exemption shall not apply and the Defendant
22 shall comply with both the procedural and substantive requirements of the laws referenced in
23 RCW 70.105D.090(1), including any requirements to obtain permits.

1 accumulated as a result of site monitoring as often as is necessary and appropriate under the
2 circumstances. At least every five (5) years the Parties shall meet to discuss the status of the
3 Site and the need, if any, of further remedial action at the Site. Ecology reserves the right to
4 require further remedial action at the Site under appropriate circumstances. This provision
5 shall remain in effect for the duration of the Decree.

6 **XXVI. PUBLIC PARTICIPATION**

7 Ecology shall maintain the responsibility for public participation at the Site. However,
8 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

9 A. Prepare drafts of public notices and fact sheets at important stages of the
10 remedial action, such as the submission of the Cleanup Action Plan. Ecology will finalize
11 (including editing if necessary) and distribute such fact sheets and prepare and distribute public
12 notices of Ecology's presentations and meetings;

13 B. Notify Ecology's project coordinator prior to the preparation of all press releases
14 and fact sheets, and before major meetings with the interested public and local governments.
15 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact
16 sheets, and before major meetings with the interested public and local governments;

17 C. Participate in public presentations on the progress of the remedial action at the
18 Site. Participation may be through attendance at public meetings to assist in answering
19 questions, or as a presenter;

20 D. In cooperation with Ecology, arrange and/or continue information repositories
21 to be located at the Bainbridge Branch, Kitsap Regional Library at 1270 Madison Ave. North,
22 Bainbridge Island; Kitsap County Department of Public Works, Solid Waste Division at 614
23 Division Street, Port Orchard; and Ecology's Northwest Regional Office at 3190 160th Ave.
24 Southeast, Bellevue. At a minimum, copies of the Remedial Investigation, Feasibility Study
25

1 and Cleanup Action Plan, and all other similar documents relating to performance of the
2 remedial action required by this Decree shall be promptly placed in these repositories.

3 **XXVII. DURATION OF DECREE**

4 This Decree shall remain in effect and the remedial program described in the Decree
5 shall be maintained and continued until the Defendant has received written notification from
6 Ecology that the requirements of this Decree have been satisfactorily completed.

7 **XXVIII. CERTIFICATE OF COMPLETION AND DELISTING**

8 Upon Ecology's determination of completion of all remedial actions and achievement
9 of all cleanup standards specified in the Cleanup Action Plan (Exhibit B), except
10 confirmational monitoring, Ecology shall issue a Certificate of Completion. Unless Ecology
11 becomes aware of circumstances at the Site that present a previously unknown threat to human
12 health or the environment, Ecology shall propose to remove the Site from the Hazard Ranking
13 List, pursuant to WAC 173-340-330(4).

14 **XXIX. CLAIMS AGAINST THE STATE**

15 Defendant hereby agrees that it will not seek to recover any costs accrued in
16 implementing the remedial action required by this Decree from the State of Washington or any
17 of its agencies; and further, that the Defendant will make no claim against the State Toxics
18 Control Account or any Local Toxics Control Account, other than a request for grant funding,
19 for any costs incurred in implementing this Decree. Except as provided above, however,
20 Defendant expressly reserves its right to seek to recover any costs incurred in implementing
21 this Decree from any other potentially liable person.

22 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

23 This Decree has been the subject of public notice and comment under RCW
24 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to
25 a more expeditious cleanup of hazardous substances at the Site.

1 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
2 at the option of any Party and the accompanying Complaint shall be dismissed without costs
3 and without prejudice. In such an event, no Party shall be bound by the requirements of this
4 Decree.

5 **XXXI. EFFECTIVE DATE**

6 This Decree is effective upon the date it is entered by the Court.

7 For Kitsap County

ATTEST:

8
9 By: _____
Chair,
10 Kitsap County Board of Commissioners

By: _____
Clerk of the Board

11 Dated: _____

Dated: _____

12 RUSSELL D. HAUGE
13 Kitsap County Prosecuting Attorney

CHRISTINE O. GREGOIRE
Attorney General

14 _____
15 SHELLEY E. KNEIP, WSBA #22711
Deputy Prosecuting Attorney

STEVEN J. THIELE, WSBA #20275
Assistant Attorney General

16 Dated: _____

Dated: _____

17
18 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

19
20 _____
JAMES PENDOWSKI
21 Toxics Cleanup Program
Program Manager

22 Dated: _____

23 ///

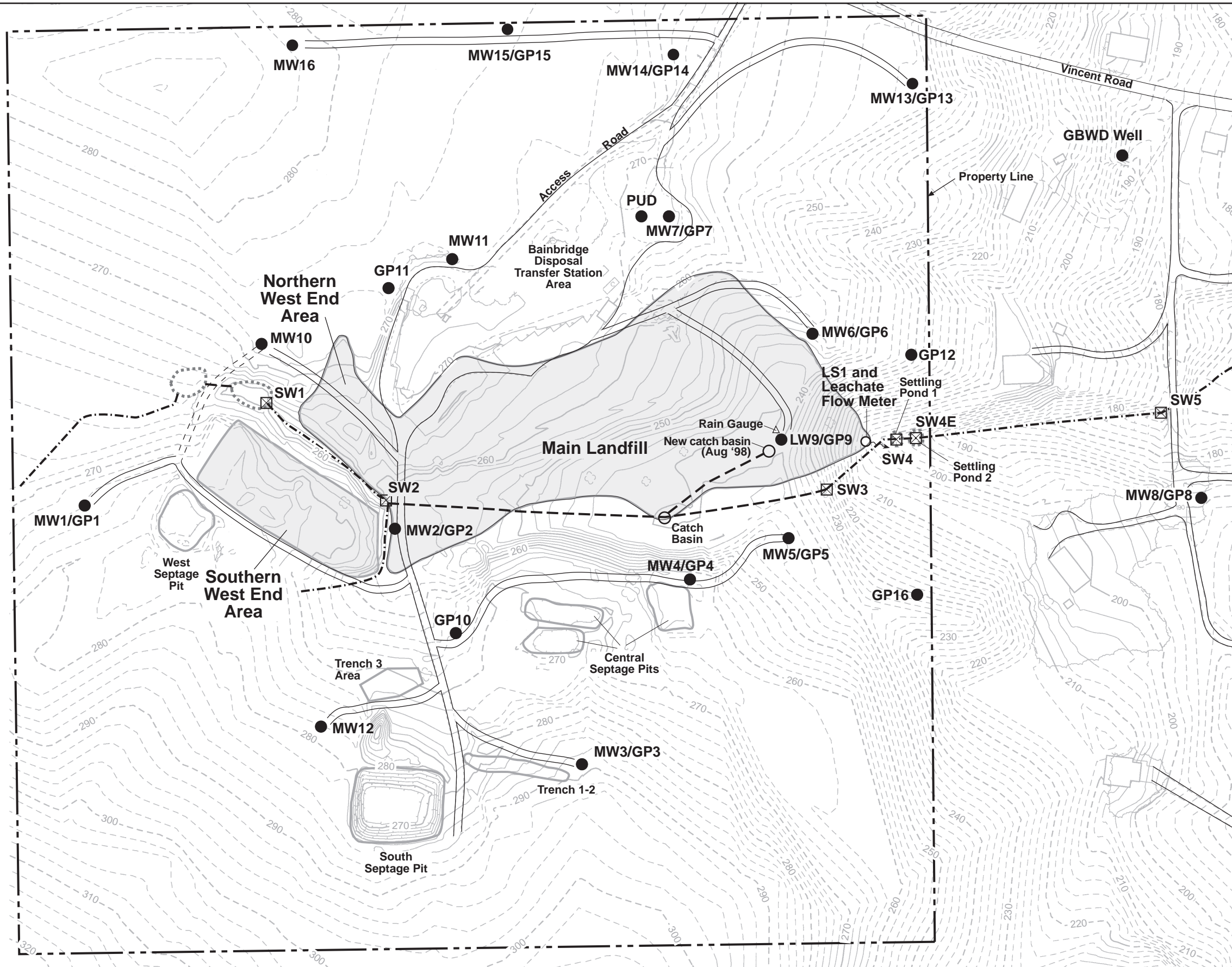
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DATED this _____ day of _____, 2001.

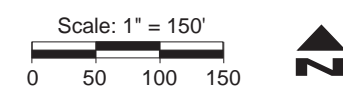
JUDGE
Kitsap County Superior Court

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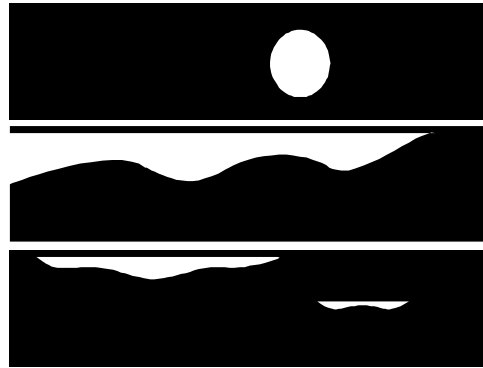
LEGEND

- **MW6/GP6** Combination monitoring well and gas probe
- **MW12** Monitoring well
- **LW9** Leachate well
- **GP10** Gas probe
- **LS1** RI leachate sampling location
- ⊠ **SW5** RI surface water sampling location
- Approximate extent of main landfill mass
- - - - - Surface water drainage channel
- - - - - Surface water diversion pipe (buried)
- Approximate outline of pond
- Approximate outline of waste source area
- Leachate seep
- Gravel or paved roads
- Revised (Supplement 2) Refuse Limit
- - - - - Elevation in feet (contour interval = 2 feet)



Note: Outlines of waste areas and transfer station are approximate.

Exhibit A
 Site Plan
 Bainbridge Island Landfill Consent Decree



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Draft
Cleanup Action Plan
For
Bainbridge Island Landfill

March 2001

Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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EXECUTIVE SUMMARY

The Bainbridge Island Landfill is a closed municipal solid waste landfill located on Vincent Road in the City of Bainbridge Island, Washington. Kitsap County has owned the landfill site since 1942. During its 29 years of operation, the landfill accepted mostly domestic waste, but also accepted Wyckoff wood treatment waste, petroleum waste, and sewage waste. Refuse was burned at the site until 1968. The site stopped accepting waste in 1975 and was closed in 1977. A transfer station and recycling center was opened at the site and continues operations today.

A Remedial Investigation/Feasibility Study (RI/FS) has been completed for this site. The Remedial Investigation (RI) was performed in phases and a report with two supplements was produced. These documents focused on collecting data to evaluate the nature and extent of contamination. Soil, sediment, air, surface water, and groundwater, including nearby domestic wells were extensively sampled. The primary medium of concern at the site is groundwater, which is used offsite as a domestic drinking water source. Volatile Organic Compounds in groundwater exceed cleanup levels at the property boundary. Lower concentrations of these contaminants have also been detected in offsite domestic wells.

The Washington State Department of Health conducted six Health Consultation Reports to evaluate the water quality of nearby domestic wells. The Health Department concluded that no apparent public health hazard exists as a result of exposure to contaminants detected in any of the domestic wells sampled.

The Feasibility Study (FS) identified contaminants of concern and developed three feasible remedial alternatives for the site. The preferred remedial alternative has been identified as waste reclamation with a soil cover, monitoring, institutional controls, and monitored natural attenuation of groundwater. This Cleanup Action Plan provides the necessary documentation to support the cleanup effort and summarizes information describing the proposed cleanup for the site.

1 INTRODUCTION

1.1 Purpose

This document presents the Cleanup Action Plan (CAP) for the Bainbridge Island Landfill, Bainbridge Island, Washington. This documentation is required by the site cleanup process established by the Department of Ecology under Chapter 173-340 WAC, “The Model Toxics Control Act Cleanup Regulations” (MTCA), and meets the requirements specified in WAC 173-340-360(10), Draft Cleanup Action Plan.

The purpose of the CAP is to:

- Describe the proposed cleanup action including compliance monitoring
- Summarize the other alternative cleanup actions evaluated in the Feasibility Study
- Present the site cleanup levels and points of compliance for each hazardous substance and media of concern
- Present the schedule for implementing the cleanup action plan
- Discuss institutional controls and site use restrictions
- Provide justification for selecting the cleanup action
- Discuss applicable state and federal laws for the proposed cleanup action
- Provide a preliminary determination by Ecology that the proposed cleanup action will comply with WAC 173-340-360(2) and (3)
- Specify the type, level and amounts of hazardous substances remaining on site and the measures that will be utilized to prevent migration and contact with those substances
- Provide a document through which public comment may be solicited regarding the selected cleanup actions

1.2 The Cleanup Action Plan and Cleanup Process

The RI/FS document presents the results of investigations into the nature and extent of contamination at the Bainbridge Island Landfill site and evaluates the feasibility of alternative methods of cleanup up the site. The investigations and studies were performed in accordance with Enforcement Order No. 94TC – N399, effective date November 18, 1994. The CAP provides a general description of the proposed cleanup action and sets forth functional requirements that the cleanup must meet for cleanup

levels specified for the site. The CAP is one in a series of documents used by Ecology to monitor progress of site investigation and cleanup. Other documents to be developed for site cleanup include;

- Final Cleanup Action Plan
- Engineering Design Report
- Construction Plans and Specifications
- Operation and Maintenance Plan
- Compliance Monitoring Plan

The Final CAP is prepared from this Draft CAP after consideration of comments received during the Draft CAP public comment period. The contents of the Final CAP will be agreed to by Kitsap County and Ecology in a consent decree. The consent decree will serve as an agreement between Kitsap County and Ecology for implementing the remedial actions discussed in the Final CAP.

The Engineering Design Report and Construction Plans and Specifications provide the necessary technical drawings and specifications to allow a contractor to implement the methods described in the Final CAP for cleaning up the site. Construction documentation will be provided to include as-built drawings and documentation of construction and any changes or modifications that were necessary during the course of implementing the remedial actions.

The Operation and Maintenance Plan presents technical guidance and regulatory requirements to assure effective operations under normal and adverse conditions.

The Compliance Monitoring Plan will provide for: Protection Monitoring to confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of the cleanup action; Performance Monitoring to confirm that the cleanup action has attained cleanup goals; and Confirmational Monitoring to confirm the long-term effectiveness of the cleanup action once cleanup goal have been attained.

2 BACKGROUND

2.1 Site Description

The Bainbridge Island Landfill is located west of Eagle Harbor on Bainbridge Island, near Seattle, Washington (Figures 1 & 2). The site covers 40 acres, approximately 7 of

which were used for disposing various types of waste between 1948 and 1975. The main landfill is located on an east-facing slope at an elevation of approximately 200 to 260 feet above sea level (NAVD-88). The site was originally a steep, narrow, east-sloping ravine, which was reshaped and largely filled in by landfill activities. The only structures onsite are refuse transfer and recycling stations. A gate at the northern entrance off Vincent Road restricts access.

The Bainbridge Island Landfill site consists of the following waste disposal areas:

- Main landfill
- West end area (subdivided into northern and southern)
- Five septage pits (1- west/1-south/3-central)
- Trench 1-2
- Trench 3

The locations of these disposal areas are shown in Figure 3. The main landfill and west end area accepted and burned primarily domestic refuse and a small amount of commercial waste. The five septage pits received liquid-solid sludge from domestic septic system haulers. The largest pit is the south septage pit, located southwest of the main landfill. Trench 3, located just north of the south septage pit, was an excavation in native soil where liquid wood-preserving waste from the Wyckoff Company was disposed. Based on the results of the remedial investigation Trench 1-2 appears to never have received waste.

2.2 Site History

Kitsap County acquired the property that was later to become the Bainbridge Island Landfill as part of a tax foreclosure process in 1942. It was operated as a landfill by several parties over 29 years, during which time it accepted typical domestic waste, tank bottoms from the nearby Wyckoff wood treatment facility (in Trench 3), and petroleum products. Until 1968, refuse was burned at the site.

The landfill ceased accepting waste in 1975, when a lawsuit brought against the County by a neighboring resident expedited closure of the landfill. Closure activities were completed in 1977. Also in 1977, the Bainbridge Disposal Company opened a refuse transfer station at the site that continues to operate today.

In 1975 the first of several government agencies became involved with the site's investigation and cleanup. The Washington State Department of Ecology sampled surface water and leachate between 1975 and 1978. In 1986 the U.S. Environmental Protection Agency (EPA) conducted a Site Investigation, sampling several waste sources and environmental media, including domestic water wells, surface water, surface and subsurface soil, and sediment. The investigation identified organic contaminants in surface water and leachate, and organic and inorganic contaminants in the septage pits,

Trench 3, and the main Landfill. Domestic water samples showed no evidence of contamination (E&E 1987).

Between 1988 and 1994, the Bremerton-Kitsap County Health District collected samples from domestic wells near the landfill, and sampled surface water, leachate, and septage pit sludge from the site (Bremerton-Kitsap County Health District, 1988, and 1992). The samples from the drinking water wells, surface water, and leachate were in compliance with state primary drinking water standards. The metal content of the sludge was similar to typical septage, and viral assays were negative.

In 1990 Ecology became the lead regulatory agency for site management, and in 1992 ranked the site as a level one (highest) waste site under MTCA). Also in 1992, Kitsap County performed an independent remedial action on Trench 3 – approximately 475 tons of contaminated sludge from Trench 3 were removed, stabilized and disposed at a hazardous waste landfill, and an additional 930 tons of contaminated soil were removed and disposed (Golder Associates, 1993). Kitsap County began the RI/FS for cleanup of the landfill in 1996 under an enforcement order from Ecology. The RI was completed in August 1999. The data and interpretations of the RI are recorded in three documents: the RI Report and the RI Report Supplements 1 & 2. The FS was completed in May 2000.

3 DESCRIPTION OF PROPOSED CLEANUP ACTION

3.1 Waste Reclamation with Soil Cover

The selected cleanup action alternative for the Bainbridge Island Landfill will consist of waste reclamation with a soil cover, monitoring, institutional controls, and monitored natural attenuation. The waste will be excavated and sorted by size. All materials larger than about 1½ inches will be disposed of off site. Materials smaller than 1½ inches will remain on site and be covered with a soil cap.

The reclamation process will begin by removing the landfill cover soil (about 24,600 tons). The contaminated portion of the cover soil identified in the RI will be disposed of at a permitted landfill off site. The remaining cover will be used to re-grade the site after the landfill waste is excavated. The main landfill and west end area waste will be excavated then screened and sorted into three sizes. The septage pit wastes will be disposed of off site at a permitted facility without screening or sorting. Sediments will be excavated and placed with the inert fraction materials to be contained on site.

The bulky fraction (greater than 3 inches) contains large items such as furniture and appliances and comprises an estimated 26 percent of the waste material by weight (about 14,700 tons). This material will be disposed of off site at a permitted landfill or whenever possible, recycled. The garbage fraction (1½ to 3 inches) contains material similar to household garbage and has some decomposable organic material but not enough for composting to be a beneficial technology. The garbage fraction comprises an

estimated 7 percent of the waste material by weight (3,960 tons) and will also be disposed of off site at a permitted landfill. The removal of these materials will eliminate the generation of landfill gas and acid-producing leachate, both of which contribute to groundwater contamination.

The inert fraction (less than 1½ inch) contains mostly soil, gravel, and ash, with small fragments of metal, glass and plastic. This material makes up the majority of the landfill composition (67 percent by weight/37,910 tons) and will remain on site for re-grading after the excavation is complete. Chemical analysis of the inert fraction shows residual contamination of semi-volatile organic compounds (SVOC), metals, and polychlorinated biphenyls. These contaminants have low mobility and low solubility, and will not likely be transported very far from their source areas.

A 2-foot minimum soil cap will be placed on top of the inert material to prevent direct contact exposures and allow surface water to infiltrate through the inert material. This will provide oxygen and other trace nutrients that may enhance the natural biodegradation process to further reduce the organic contaminants. The inert material and soil cap will be graded and stormwater will be channeled and managed to control erosion. Erosion protection materials may include erosion mats and large gravel in the center of a constructed drainage channel. After the soil cap is installed, it will be re-vegetated.

The cleanup action will include the following:

- Excavate all waste, screen main landfill and west end area waste, and re-grade the site with the inert waste fraction (less than 1½ inches)
- Dispose of the bulky waste fraction (greater than 3 inches) off site
- Dispose of the garbage waste fraction (greater than 1½ inch, less than 3 inches) off site
- Dispose of the septage pit wastes and main landfill cover hotspot soils off site
- Construct a minimum 2-foot thick soil cover on top of the inert waste
- Restore site drainage and reestablish site vegetation
- Monitor natural attenuation in groundwater
- Monitor surface water for compliance with cleanup levels
- Establish institutional controls, that may include installation of fencing to control access, zoning, and deed restrictions to prevent access to groundwater and protect the final cover system

4 COMPLIANCE MONITORING

Compliance monitoring will be performed in accordance with WAC 173-340-410, Compliance Monitoring Requirements. Kitsap County shall prepare a Compliance Monitoring Plan that provides for protection, performance, and confirmational monitoring and submit them to Ecology for review and approval.

The compliance monitoring plan will include a contingency plan to install active groundwater remediation if cleanup levels are not met with monitored natural attenuation. The contingency plan will be implemented if vinyl chloride concentrations do not decrease over time. The contingency plan will be reviewed after 30 years of post-reclamation monitoring. Please refer to the compliance monitoring plan for a detailed description of the proposed contingency plan.

The selected remedial alternative provides for long-term monitoring to ensure that groundwater continues to meet cleanup standards after remedial actions have been completed. Protection monitoring will be used to ensure that human health and the environment are protected during the reclamation activities. Performance monitoring will be conducted to confirm that natural attenuation is occurring and cleanup levels and treatment goals have been attained. After remedial actions have been completed, confirmational monitoring will be conducted to confirm and ensure the long term effectiveness of the cleanup action.

5 Summary of Other Alternatives Considered

5.1 Waste Consolidation and Containment

Waste consolidation and containment with monitored natural attenuation of groundwater was one of two other technologies retained for further consideration in the FS. This alternative would excavate the septage pit waste, sediment, and outlying waste areas and consolidate them in the main landfill area. All wastes would then be covered with an impermeable cap with a passive gas collection system. This cleanup alternative would include the following:

- Excavate waste, sediment, septage pit residue, and soil, and consolidate them on the main landfill
- Fill excavated areas, re-grade and re-seed the site
- Install a five-layer cap with a 40-mil liner low density polyethylene barrier layer
- Install a passive landfill gas venting system

- Install a surface water diversion and detention system
- Monitor natural attenuation in groundwater
- Monitor surface water and landfill gas for compliance with cleanup levels
- Establish institutional controls including installation of fencing to control access to the site, zoning, and deed restrictions to protect the final cover system

Surface water control facilities would include ditches upstream from the landfill and around the final cover area; a lined ditch along the south side of the main landfill; a detention pond on the southeast side of the main landfill; a controlled outlet and discharge pipe from the detention pond; and a riprap/energy dissipater at the outlet of the discharge pipe. Monitoring of groundwater, surface water, subsurface landfill gas, and landfill gas vent emissions would include contingencies for conversion to active landfill gas extraction and active groundwater remediation if cleanup levels are not met.

5.2 Waste Reclamation with an Impermeable Cover

Waste reclamation with an impermeable cover, monitoring, institutional controls, and monitored natural attenuation of groundwater is similar to the proposed cleanup alternative in that the wastes would be removed and disposed of off site. However, in this alternative, the cover over the inert materials would consist of a combination soil and impermeable geomembrane layer to reduce water infiltration.

6 CLEANUP LEVELS AND POINTS OF COMPLIANCE

6.1 Soil and Sediment

The chemicals of concern and proposed cleanup levels for all media are shown in Table 1. The remedial action objective for soil and sediments is to protect human health and ecological receptors. All soil and sediments with contaminant concentrations exceeding direct contact criteria will require appropriate remedial measures. As part of the planned remediation of the site, these soils will be covered with a minimum of 2 feet of clean soil to prevent direct contact. Contaminated sediments will be excavated and placed with the inert fraction materials to be contained on site. In addition, institutional controls will be established to ensure that appropriate measures are taken to limit future exposure to affected soils. The points of compliance for soil are:

- From 0-15 feet below the ground surface for protection of human health
- Everywhere on the site for volatile organic constituents for protection of groundwater

6.2 Surface Water

The point of compliance for surface water is the property boundary or the point at which hazardous substances are released to waters of the state. Because the remedial action is expected to stop the flow of the leachate seep, a point at which hazardous substances from the site enter waters of the state may not be identifiable. Therefore, the point of compliance for surface water will be monitored at the east end of the site, east of the main landfill mass but west of the property boundary (in the vicinity of Surface Water (SW) sampling station 4). If an engineered surface water collection system is constructed for the remedial action, then surface water will be monitored at the point where the discharge enters the natural stormwater flow. Monitoring of an upstream surface water site may be needed to establish background water quality. This station will be upstream of any areas disturbed by original landfilling or remediation actions. It will be west of station SW1.

6.3 Groundwater

The point of compliance for groundwater will be specifically identified in the compliance monitoring plan. It will consist of upper aquifer monitoring wells located both upgradient and downgradient of the sources. Monitoring wells MW13, MW14, and MW15 are located on the northern property boundary, downgradient of the sources, and have shown impacts from sources during the RI. These wells would be a logical choice for downgradient groundwater compliance monitoring and would be good indicators of the effectiveness of the remedial action on the upper aquifer groundwater.

7 SCHEDULE FOR IMPLEMENTATION

The proposed schedule for the cleanup action is as follows;

- | | |
|--|-------------|
| • Finalize Cleanup Action Plan | March, 2001 |
| • Finalize Engineering Design Report | April, 2001 |
| • Finalize Construction Plans and Specifications | April, 2001 |
| • Finalize Operation and Maintenance Plan | April, 2001 |
| • Finalize Compliance Monitoring Plan | April, 2001 |
| • Begin Construction | June, 2001 |

8 Institutional Controls and Site Use Restrictions

Institutional controls will be implemented, and will include appropriate measures designed to protect the integrity of the cleanup action and remedial components, and prevent exposure to residual contaminants contained at the site. Access restrictions will be provided by installing temporary fencing around the active reclamation area during construction. Site uses would be constrained by restrictive covenants that are required by

MTCA (WAC 170-340-440(4)(a)). If, in the future, there is interest in developing the site, Kitsap County, with public input and Ecology approval, could develop a site use plan that conforms to the restrictive covenants. Elements of the restrictive covenants for the site include: 1) prohibition of the beneficial use or withdrawal of site groundwater, 2) prohibition on installing wells other than those required under this CAP, and 3) prohibition on activities that would damage the integrity of the soil cover placed over the inert waste material. The text of the restrictive covenants is attached as Appendix A.

9 Justification for Selected Cleanup Alternative

The goal of the feasibility study was to identify a preferred remedial action alternative that meets MTCA requirements and site-specific remedial action objectives. The preferred remedial action was chosen in two steps: first, all three alternatives were evaluated relative to criteria required by MTCA;

- Overall protectiveness of human health and the environment
- Attainment of cleanup levels and compliance with ARARs
- Short-term effectiveness
- Long-term effectiveness
- Reduction in toxicity/mobility/volume through treatment
- Implementability
- Cost
- Community concerns
- Degree to which recycling/reuse/waste minimization are used

The three alternatives scored similarly relative to these criteria, so a second evaluation step was added, decision analysis, which incorporated additional evaluation criteria. The decision analysis results were developed using a computer model, multiattribute utility analysis or MUA. All three alternatives were evaluated again relative to a new set of criteria;

- Net remediation cost to Kitsap County
- Land value
- Land use potential
- Liability
- Permanence of remedial action
- Reasonable time frame
- Additional public concerns

These criteria were weighed to reflect their relative importance. In assigning weights, input from stakeholders, including Kitsap County Public Works staff and managers, the Kitsap County Prosecuting Attorney's and Risk Management Offices, the Bremerton-Kitsap County Health District, Ecology, and public interest groups was incorporated.

Based on the results of the decision analysis, waste reclamation with a soil cover was selected as the preferred remedial alternative. Chapter 7 of the Feasibility Study provides a more detailed description of the decision analysis process.

10 Applicable Laws

The preferred remedial alternative will comply with federal, state, and local ARARs. Applicable requirements are promulgated federal and state laws or regulations that specifically apply to a hazardous substance, cleanup action, location, or a special circumstance at a site (e.g. presence of endangered species). Chemical-specific ARARs identify health- or risk-based cleanup limits for specific hazardous substances. Location-specific ARARs apply to the concentration of hazardous substances or the conduct of activities solely because they occur in a particular location. Action-specific ARARs define acceptable controls or restrictions on particular kinds of activities. In general, chemical- and location-specific ARARs help to determine the objectives and goals of remedial action, and action-specific ARARs help determine how the remedial action will be performed. These ARARs are presented in Tables 2-4. Please see Chapter 3 of the Feasibility Study for a more detailed description of the development of applicable laws.

Pursuant to RCW 70.105D.0900(1), Kitsap County must meet the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for implementing the remedial alternative. The only substantive requirements identified to date is for a grading permit issued by the City of Bainbridge Island , however, the Uniform Building Code (UBC) Appendix Chapter 33, Excavation and Grading provides for exempted work in section 3306.2. Specifically, refuse disposal sites controlled by other regulations are exempt from grading permit requirements.

11 Ecology Determination

Consistent with Chapter 70.105D RCW, "Model Toxics Control Act", as implemented by Chapter 173-340 WAC, "Model Toxics Control Act Cleanup Regulation", it is determined that the selected cleanup actions are protective of human health and the environment, attain federal and state requirements which are applicable or relevant and appropriate, comply with cleanup standards, and provide for compliance monitoring. The cleanup actions satisfy the preference expressed in WAC 173-340-360 for the use of permanent solutions to the maximum extent practicable, provide for a reasonable restoration time frame, and consider public concerns raised during public comment on the draft CAP.

Brian S. Sato, P.E.
Project Manager
Toxics Cleanup Program, NWRO
Washington State Department of Ecology

Date

Steven M. Alexander
Section Manager
Toxics Cleanup Program, NWRO
Washington State Department of Ecology

Date

Appendix A
Restrictive Covenants

RESTRICTIVE COVENANT

KITSAP COUNTY, BAINBRIDGE ISLAND LANDFILL

This Declaration of restrictive Covenant is made pursuant to RCW 70.105D030(1)(f) and (g) and WAC 173-340-440 by Kitsap County, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the Cleanup Action Plan, dated _____ located at Ecology's Northwest Regional Office (NWRO) in Bellevue, Washington.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of certain hazardous substances which exceed the Model Toxics Control Act cleanup level for Soil established under WAC 173-340-740, as described in the Remedial Investigation/Feasibility Study for the Bainbridge Island Landfill dated November 1, 2001.

The undersigned, Kitsap County, is the fee owner of real property (hereafter "Property") in the County of Kitsap, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described as: Northeast $\frac{1}{4}$ Northwest $\frac{1}{4}$ of Section 33 Township 25 Range 02 WM Kitsap County Washington. Situated in the County of Kitsap, State of Washington.

Kitsap County makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and

all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter “Owner”).

Section 1. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 2. Unless authorized by the Cleanup Action Plan or this Restrictive Covenant, any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 3. Unless authorized by the Cleanup Action Plan, the Owner will not withdraw groundwater from the Property.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner’s intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

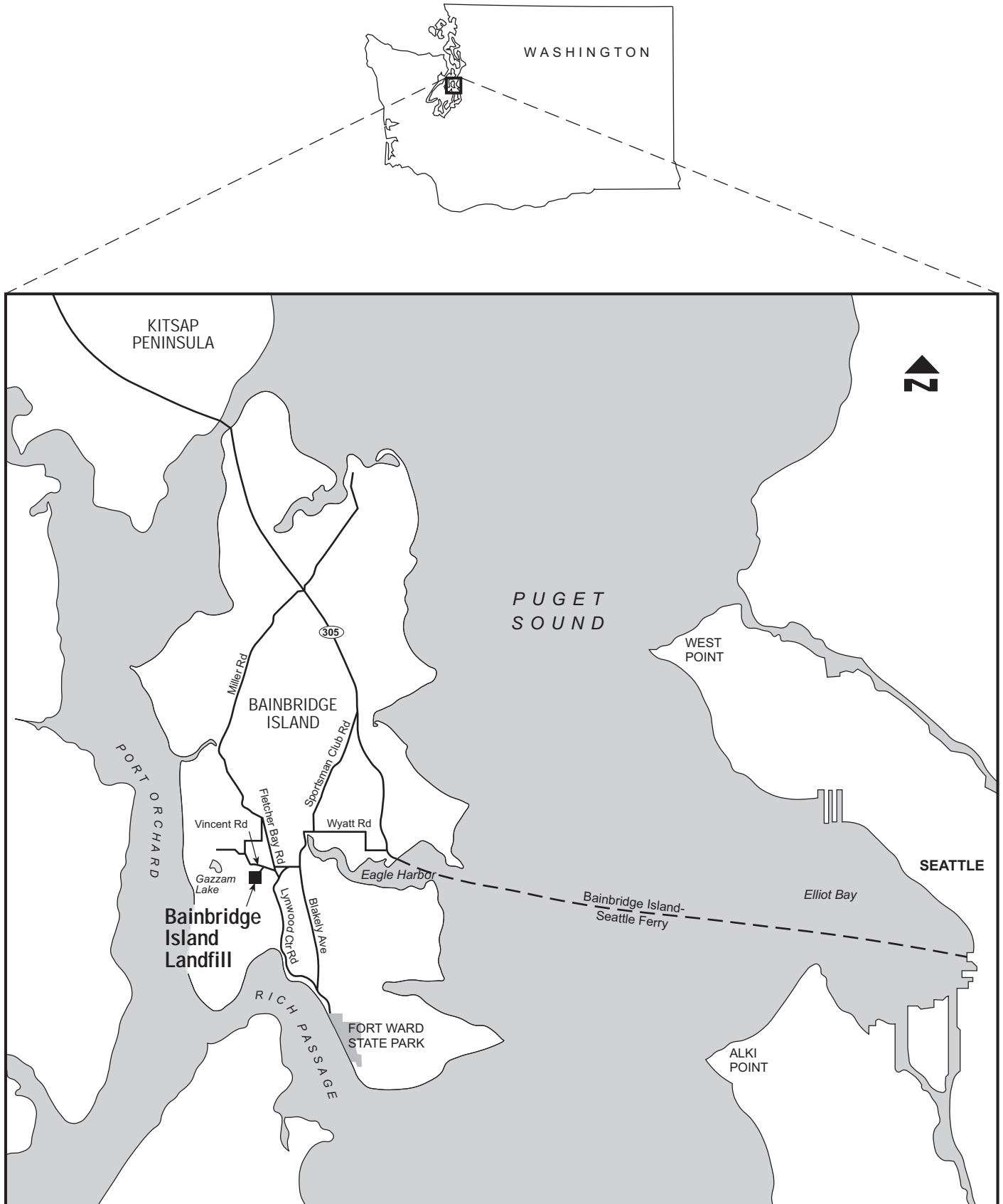


Figure 1
 Site Location Map
 Bainbridge Island Landfill CAP

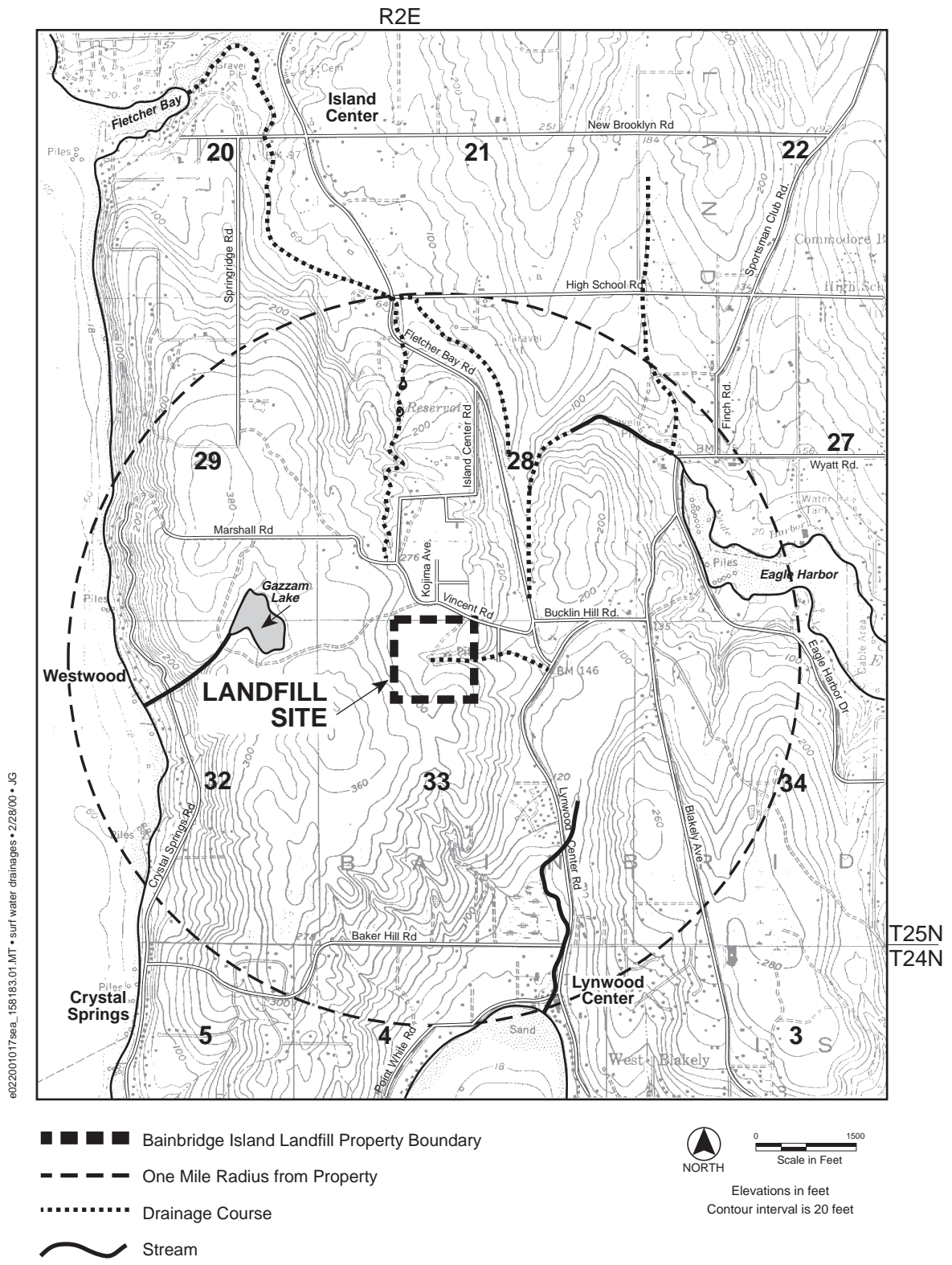
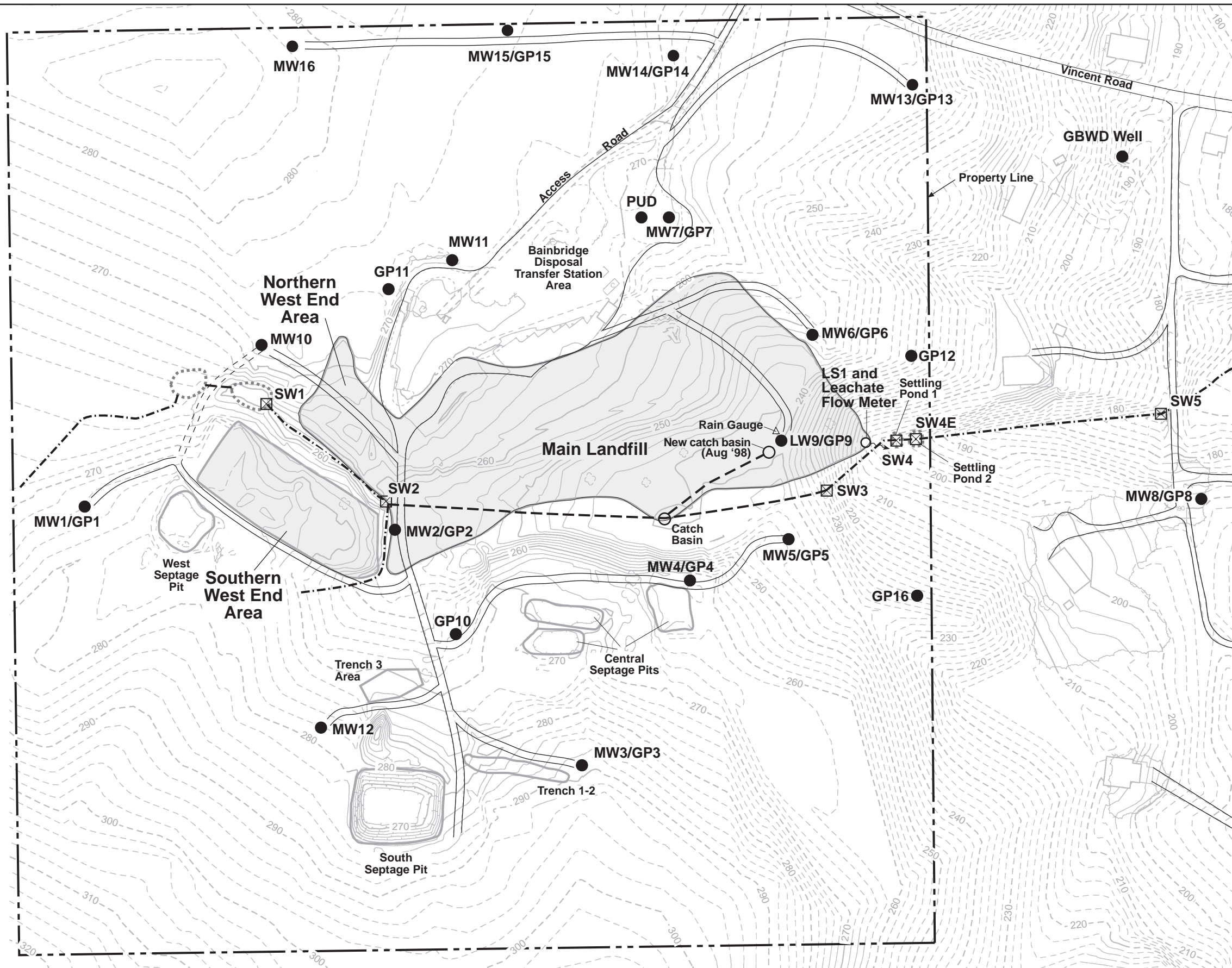
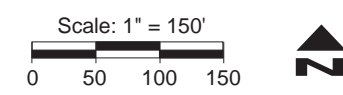


Figure 2
Regional Topography and
Surface Water Drainages
Bainbridge Island Landfill CAP



LEGEND

- **MW6/GP6** Combination monitoring well and gas probe
- **MW12** Monitoring well
- **LW9** Leachate well
- **GP10** Gas probe
- **LS1** RI leachate sampling location
- ⊠ **SW5** RI surface water sampling location
- ▭ (shaded) Approximate extent of main landfill mass
- - - - - Surface water drainage channel
- - - - - Surface water diversion pipe (buried)
- (dashed) Approximate outline of pond
- ▭ (dashed) Approximate outline of waste source area
- (arrow) Leachate seep
- ▬ (thick) Gravel or paved roads
- ▬ (thin) Revised (Supplement 2) Refuse Limit
- - - - - Elevation in feet (contour interval = 2 feet)



Note: Outlines of waste areas and transfer station are approximate.

Figure 3
Site Plan
Bainbridge Island Landfill CAP

Table 1
BAINBRIDGE ISLAND LANDFILL CAP
Contaminants of Concern and Proposed Cleanup Levels

| Parameter Group | Contaminant | Soil | | | Sediment | Surface Water | Groundwater |
|------------------------|---------------------------------|--------------------|--------------------------------|---------------|---------------|--------------------|------------------------|
| | | Trench 3 Base Soil | MLF & WEA (Inert & Cover soil) | Septage Pits | | | |
| VOCs | | | | | | | |
| | 1,4-dichlorobenzene | | | 182 ug/kg | | | |
| | 1,1-dichloroethene | | | | | | 0.073 ug/L |
| | vinyl chloride | | | | | | 0.023 ug/L |
| SVOCs | | | | | | | |
| | benzo(a)anthracene | | 137 ug/kg | 137 ug/kg | 137 ug/kg | | |
| | benzo(a)pyrene | 137 ug/kg | 137 ug/kg | 137 ug/kg | 137 ug/kg | | |
| | benzo(b)fluoranthene | 137 ug/kg | 137 ug/kg | 137 ug/kg | 137 ug/kg | | |
| | benzo(k)fluoranthene | | 137 ug/kg | 137 ug/kg | | | |
| | carbazole | | 50,000 ug/kg | | | | |
| | chrysene | | 137 ug/kg | 137 ug/kg | 137 ug/kg | | |
| | dibenzo(a,h)anthracene | | 137 ug/kg | | 137 ug/kg | | |
| | indeno(1,2,3-cd)pyrene | 137 ug/kg | 137 ug/kg | | 137 ug/kg | | |
| | naphthalene | | 32,000 ug/kg | | | | |
| | pentachlorophenol | | 8,333 ug/kg | | | | |
| TPH | | | | | | | |
| | diesel-range | | | 200,000 ug/kg | | | |
| | heavy oil-range | | | 200,000 ug/kg | 200,000 ug/kg | | |
| Metals | | | | | | | |
| | arsenic | | 7,300 ug/kg | 7,300 ug/kg | 7,300 ug/kg | | |
| | beryllium | | | | 610 ug/kg | | |
| | cadmium | | | 40,000 ug/kg | | | |
| | chromium | | 100,000 ug/kg | | | | |
| | copper | | 2.96E+6 ug/kg | 2.96E+6 ug/kg | | 1.8 ug/L dissolved | |
| | iron | | 5.87E+7 ug/kg | | 5.87E+7 ug/kg | 1.0 mg/L total | |
| | lead | | 250,000 ug/kg | 250,000 ug/kg | | 1.0 ug/L dissolved | |
| | manganese | | | | | 0.3 ug/L dissolved | |
| | mercury | | 24,000 ug/kg | 24,000 ug/kg | | | 50 ug/L |
| | selenium | | 400,000 ug/kg | 400,000 ug/kg | | | |
| | zinc | | 2.40E+7 ug/kg | 2.40E+7 ug/kg | | 21 ug/L dissolved | |
| Pesticides/PCBs | | | | | | | |
| | 4,4'-DDD | | | 4,167 ug/kg | | | |
| | Aldrin | | 59 ug/kg | | | | |
| | Dieldrin | | | 63 ug/kg | | | |
| | Aroclor 1254 | | 1,600 ug/kg | 1,600 ug/kg | | | |
| | Total PCBs | | 130 ug/kg | 130 ug/kg | | | |
| Conventionals | | | | | | | |
| | alkalinity | | | | | 20 mg/L | |
| | conductivity (indicator) | | | | | | indicator ^a |
| | dissolved oxygen | | | | | > 9.5 mg/L | |
| | fecal coliform | | | | | < 50 CFU/100 mL | |
| | nitrate (and nitrite + nitrate) | | | | | | |
| | pH (indicator) | | | | | | indicator ^a |
| | total coliform | | | | | < 50 CFU/100 mL | |
| | turbidity | | | | | 5.0 NTU | |

a Secondary drinking water standard for conductivity is 700 umhos/cm; for pH, 6.5-8.5

MLF = main landfill

WEA = west end area

For source of cleanup level, see associated ARARs tables in Appendix B.

TABLE 2
BAINBRIDGE ISLAND LANDFILL CAP
 Chemical-Specific ARARs by Environmental Media

| ARARs | Source |
|---|-----------------------|
| Soil | |
| Washington MTCA Method A and B Cleanup Levels for Soil | WAC 173-340 |
| Washington MTCA Method B Cleanup Levels for Protection of Groundwater (Volatile organic compounds only) | WAC 173-340 |
| Natural Background Soil Metals in the Puget Sound | Ecology Pub. #94-115 |
| Sediment | |
| Washington MTCA Method B Cleanup Levels for Soil | WAC 173-340 |
| Washington MTCA Method B Cleanup Levels for Protection of Groundwater (Volatile organic compounds only) | WAC 173-340 |
| Natural Background Soil Metals in the Puget Sound | Ecology Pub. #94-115 |
| Washington MTCA Method B Cleanup Levels for Protection of Surface Water | WAC 173-340 |
| Air | |
| Washington MTCA Method B Cleanup Levels for Air | WAC 173-340 |
| Washington State Minimal Functional Standards for Landfills | WAC 173-304-460 |
| Puget Sound Clean Air Agency Regulations | Regulations I and III |
| Surface Water | |
| Washington Water Quality Standards for Fresh Water, Chronic (FWC ST) | WAC 173-201A |
| Washington Water Quality Standards for Fresh Water, Acute (FWA ST) | WAC 173-201A |
| Federal Water Quality Criteria for Surface Water, Fresh Water Chronic (FWC FED) | 40 CFR 131 |
| Federal Water Quality Criteria for Surface Water, Fresh Water Acute (FWA FED) | 40 CFR 131 |
| Groundwater | |
| Federal Maximum Contaminant Level (MCL) | 40 CFR 141 and 142 |
| Federal Secondary MCL | 40 CFR 141 and 142 |
| Washington State Primary MCL | WAC 246-290 |
| Washington State Secondary MCL | WAC 246-290 |
| Washington MTCA Method B Cleanup Levels for Groundwater | WAC 173-340 |

TABLE 3
BAINBRIDGE ISLAND LANDFILL CAP
 Potential Location-Specific ARARs

| Source/Citation | Requirement | Prerequisite(s) | Designation |
|---|---|--|--|
| Floodplain | | | |
| Federal Executive Order 11988 Protection of Floodplains (40 CFR 6, Appendix A) | Take action to avoid adverse effects, minimize potential harm, restore and preserve natural and beneficial values of the floodplain | Action that will occur in a floodplain (i.e., lowlands, and relatively flat areas adjoining inland and coastal waters and other flood-prone areas) | Not an ARAR |
| Federal and state, Criteria for MSWLFs 40 CFR 258.11 WAC 173-351-130(3) | Demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife, land or water resources OR close by 10/9/96. | MSWLFs located in 100-year floodplain | Not an ARAR |
| Wetlands | | | |
| Federal Executive Order 11990 Protection of Wetlands (40 CFR 6, Appendix A) | Take action to minimize the destruction, loss, or degradation of wetlands | Wetland as defined by Executive Order 11990, Section 7 | Not an ARAR |
| Federal, Clean Water Act (33 U.S.C. Section 404) | Take action to avoid or minimize the destruction, loss, or degradation of wetlands and surface water bodies | Disposal of dredge and fill material into waters of the United States | Not an ARAR |
| Shoreline Management Act of 1971 WAC 173-16 | Compliance with City of Bainbridge Shoreline Master Program | Action within 200 feet of a shoreline or affecting an associated wetland | Not an ARAR |
| Sensitive Habitat | | | |
| Migratory Bird Treaty Act of 1973 16 USC Section 1531 et.seq. | Take action to protect habitat for migratory birds against pollution, detrimental alteration, or other environmental degradation. | Determination of the presence of migratory birds | Not an ARAR unless U.S. Fish and Wildlife Service determines that the Landfill is a habitat for migratory birds. |
| Endangered Species Act of 1973 16 USC Section 1536 et.seq 50 CFR 200 60 CFR 402 | Take action to conserve endangered species, including consultation with DOI. | Determination of effect upon endangered or threatened species or its habitat. | Not an ARAR unless U.S. Fish and Wildlife Service determines that land is critical habitat for endangered species. |

TABLE 3
BAINBRIDGE ISLAND LANDFILL CAP
 Potential Location-Specific ARARs

| Source/Citation | Requirement | Prerequisite(s) | Designation |
|---|--|--|---|
| Washington State Department of Fish and Wildlife Priority Habitats and Species List | Priority habitats and species are priorities for conservation and management. | Listed as priority habitat and species. | To be considered. |
| Shorelines | | | |
| Fish and Wildlife Coordination Act (16 USC 661 et seq.) 40 CFR 6.302 (g) | Take action to protect fish or wildlife | Diversion, channeling, or other activity that modifies a stream or river and affects fish or wildlife | Applicable, but not likely to be triggered |
| Hydraulic Code WAC 220-110 | Demonstrate to the Department of Fisheries that the proposed action will not damage fish resources. Required information includes an overall project plan, complete plans and specifications for the proposed work within the ordinary high waterline and complete plans and specifications for protection of fish life. | Work within the ordinary high water limit of state waters that will use, direct, obstruct, or change the natural flow or bed of state waters | Not an ARAR |
| Shoreline Management Act of 1971 WAC 173-22 | Compliance with City of Bainbridge Island Master Program | Action within 200 feet of a shoreline or affecting an associated wetland within the City of Bainbridge | Not an ARAR |
| Miscellaneous | | | |
| WAC 173-303 | State Dangerous Waste Regulations | Minimize contamination | Applicable |
| WAC 173-304 | Minimal Functional Standards for Landfills | Minimize contamination | Applicable |
| Bainbridge Island Municipal Code Ordinance 98-20 | City of Bainbridge Island Critical Areas Ordinance | Identified as critical areas | Applicable, but not likely to be triggered. |

TABLE 4
BAINBRIDGE ISLAND LANDFILL CAP
 Potential Action-Specific ARARs

| Citation | Requirement | Prerequisite | Designation | Comments |
|---|---|---|--------------------|---|
| General Requirements for Cleanup Actions | | | | |
| WAC 197-11 SEPA | Determine whether there is a significant adverse environmental impact. | Coordination of SEPA and MTCA. | Applicable | Ecology Policy 130A addresses coordination of MTCA and SEPA. |
| Institutional Controls | | | | |
| WAC 173-340-440 MTCA | Institutional controls and financial assurances. | Residual concentrations of hazardous substances exceed MTCA Method A or B cleanup levels; containment as part of the cleanup actions. | Applicable | Will require institutional controls described in restrictive deed covenants and some form of financial assurance. |
| WAC 173-160-171(a)(iii) | Water-supply wells shall not be located within 1,000 feet of solid waste landfills. | Application for permit to install a water supply well within 1,000 feet of landfill. | Applicable | Will require enforcement by Ecology. |
| Monitoring | | | | |
| WAC 296-62 29 CFR 1910.120 | Occupational health standards for workers on hazardous waste sites. | Personnel working (e.g., sampling or conducting remedial actions) at the site. | Applicable | Washington's training requirements are more stringent than federal requirements. |
| WAC 173-160 | Must comply with well construction standards | New wells are installed at the site. | Applicable | |
| WAC 173-340-410 | Compliance monitoring plan must be prepared to meet MTCA requirements | Required for cleanup actions under MTCA | Applicable | Will require development of a compliance monitoring plan and approval by Ecology. |
| WAC 173-304-460(3)(g)(ii) | Groundwater monitoring plan must be prepared per WAC 173-304-490. | Required for landfill design and operation | Applicable | |
| Collection and Containment | | | | |
| Federal Executive Order 11988, Protection of Floodplains (40 CFR 6, Appendix A) | Must take action to avoid adverse effects, minimize potential harm, restore and preserve natural and beneficial values of the floodplain. | Construction of collection or containment facilities in the floodplain. | Not applicable | Not within 100-year flood plain. |

TABLE 4
BAINBRIDGE ISLAND LANDFILL CAP
 Potential Action-Specific ARARs

| Citation | Requirement | Prerequisite | Designation | Comments |
|--|--|--|--------------------|--|
| Federal Executive Order 11990, Protection of Wetlands (40 CFR 6, Appendix A) | Take action to minimize the destruction, loss, or degradation of wetlands. | Construction of collection or containment facilities impacts adjacent wetlands. | Not applicable | Not within 200 feet of a designated wetland |
| Federal Clean Water Act Section 404 | Take action to avoid or minimize the destruction, loss, or degradation of wetlands and surface water bodies. | Disposal of fill material excavated during construction of collection or containment facilities into adjacent wetlands. | Not applicable | Not within 200 feet of a designated wetland |
| Shoreline Management Act of 1971 | Compliance with City of Bainbridge Island Shoreline Master Program. | Construction of collection or containment facilities occurs within 200 feet of a shoreline or affects an associated wetland. | Not Applicable | Not within 200 feet of a shoreline or affect on associated wetland. |
| State Waste Discharge General Permit Program WAC 173-226 | Construction activities must have an erosion and sediment control plan, procedures for control of other pollutants, and compliance with other local requirements. | Construction activities disturb more than 5 acres. | Applicable | Remedial actions conducted under an agreed order or consent decree are exempt from procedural requirements (RCW 70.105D.90). |
| State Minimal Functional Standards for Landfill WAC 173-304-460 | Functional standards for design of cover systems, leachate collection systems, liners, closure, and gas control. | Construction of collection or containment facilities | Applicable | |
| Bainbridge-Kitsap County Health District Ordinance 1996-11 | | | Applicable | |
| Puget Sound Clean Air Agency Regulations | Submit a Notice of Construction prior to constructing or modifying an air contaminant source. Does not cause injury to human health, plant or animal life, property, or does not interfere with enjoyment of life and property. | Construction or modification of and air contaminant source. Emissions or odor and fugitive dust. | Applicable | |

TABLE 4
BAINBRIDGE ISLAND LANDFILL CAP
 Potential Action-Specific ARARs

| Citation | Requirement | Prerequisite | Designation | Comments |
|--|--|--|-------------|---|
| Treatment and Disposal | | | | |
| WAC 173-240 | Submittal of plans and reports for construction of wastewater treatment facilities. | Preparation of plans and specifications and engineering report for agency approval. | Applicable | Remedial actions conducted under an agreed order or consent decree are exempt from procedural requirements (RCW 70.105D.90). |
| WAC 173-220 (90.48 RCW; Section 402 FWPCA 40 CFR 122) | NPDES Permit. | Application for and compliance with NPDES program. | Applicable | Remedial actions conducted under and agreed order or consent decree are exempt from procedural requirements (RCW 70.105D.90). |
| State Dangerous Waste Regulations WAC 173-303 | Compliance required for the storage, transport, treatment, or disposal of federal hazardous or state dangerous wastes. | Treatment of contaminated groundwater generates residual solids that designate as federal hazardous or state dangerous wastes. | Applicable | May occur if treatment of groundwater concentrates contaminants. |
| City of Bainbridge Island Building Permit Requirements | Permits are required for construction of new structures or modifications to existing structures. | Treatment or disposal facilities require construction of new structures. | Applicable | Likely to be required for construction of treatment plant. |
| Bainbridge-Kitsap County Health District Ordinance 1996-11 | All structures within 1,000 feet of a landfill must be protected from landfill gas migration | Located within 1,000 feet of property line | Applicable | Engineer's report certifying that gas generated is below lower explosive limit |
| Puget Sound Clean Air Agency Regulations | Submit a Notice of Construction prior to constructing or modifying an air contaminant source. Does not cause injury to human health, plant or animal life, property, or does not interfere with enjoyment of life and property. | Construction or modification of and air contaminant source. Emissions or odor and fugitive dust. | Applicable | |

EXHIBIT C

CLEANUP ACTION SCHEDULE

SCHEDULE FOR IMPLEMENTATION

The proposed schedule for the cleanup action is as follows;

- Finalize Cleanup Action Plan April, 2001
- Finalize Engineering Design Report April, 2001
- Finalize Construction Plans and Specifications April, 2001
- Finalize Operation and Maintenance Plan April, 2001
- Finalize Compliance Monitoring Plan April, 2001
- Begin Construction June, 2001

EXHIBIT D

RESTRICTIVE COVENANTS

RESTRICTIVE COVENANT

KITSAP COUNTY, BAINBRIDGE ISLAND LANDFILL

This Declaration of restrictive Covenant is made pursuant to RCW 70.105D030(1)(f) and (g) and WAC 173-340-440 by Kitsap County, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the Cleanup Action Plan, dated _____ located at Ecology's Northwest Regional Office (NWRO) in Bellevue, Washington.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of certain hazardous substances which exceed the Model Toxics Control Act cleanup level for Soil established under WAC 173-340-740, as described in the Remedial Investigation/Feasibility Study for the Bainbridge Island Landfill dated November 1, 2000.

The undersigned, Kitsap County, is the fee owner of real property (hereafter "Property") in the County of Kitsap, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described as: Northeast ¼ Northwest ¼ of Section 33 Township 25 Range 02 WM

Situated in the County of Kitsap, State of Washington.

Kitsap County makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 2. Unless authorized by the Cleanup Action Plan or this Restrictive Covenant, any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 3. Unless authorized by the Cleanup Action Plan, the Owner will not withdraw groundwater from the Property.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the landfill footprint.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.