

After Recording Return
Original Signed Covenant to:

Steve Teel
Toxics Cleanup Program
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

Environmental Covenant

Grantor: State of Washington, Department of Natural Resources (hereafter "WA DNR")
Grantee: State of Washington, Department of Ecology (hereafter "Ecology")
Brief Legal Description: SE1/4 OF NE1/4 OF SECTION 20, TOWNSHIP 17 NORTH, RANGE 2 WEST
Tax Parcel Nos.: 12720130000
Cross Reference: Original Restrictive Covenant #3336349 (superseding), date: 02/15/2001, Thurston County; Agreed Order No. DE 13181, effective date: 08/09/2016

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 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 WA DNR WEBSTER NURSERY. 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	chlordan

- 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 following documents:

- Landau Associates, Sub-Slab Soil Investigation, Webster Nursery Site, October 8, 2024.
- Landau Associates, Compliance Monitoring Plan, Webster Nursery Site, April 14, 2023.



- Landau Associates, Cleanup Action Completion Report, Webster Nursery, May 29, 2020.

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

f. This Covenant supersedes and replaces the existing Environmental (Restrictive) Covenant, which is recorded with Thurston County as #3336349, dated February 15, 2001.

COVENANT

Washington State Department of Natural Resources, as Grantor and 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 remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70A.305 RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. **Containment of Soil/Waste Materials.** The remedial action for the Property was based on excavation and offsite disposal of contaminated soil to a depth of 10.5 feet below ground surface (bgs) and to a depth of 15 feet bgs in a smaller limited area. The excavation procedure involved the sequential excavation of "slots" to maintain structural support of the adjacent warehouse building. As described in the Cleanup Action Completion Report (Landau, 2020), Slots A through D were backfilled with controlled-density fill (CDF) and Slots E and F were backfilled with imported gravel fill and clean excavation soil.

A restriction on soil excavation is necessary because excavation soil performance sample B3-F-10.5 for chlordane (2,300 micrograms per kilogram, $\mu\text{g/kg}$) exceeded the chlordane terrestrial ecological evaluation (TEE) cleanup level for soil biota of 1,000 $\mu\text{g/kg}$ (Landau, 2020) at the standard point of compliance (from the ground surface to 15 feet below ground surface). As stated in WAC 173-340-7490(4), for sites with institutional controls to prevent excavation of deeper soil, a conditional point of compliance may be set at the biologically active soil zone. This zone is assumed to extend to a depth of six feet. All performance sample results were below human health soil direct contact cleanup levels.

Any activity on the Property that will disturb soil within the excavation area (Exhibit C), and above the standard point of compliance depth including: drilling; digging; piercing with a sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; 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 capping material (CDF or clean fill) within the excavation area. 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 cleanup levels for the soil remedial excavation were calculated to be protective of groundwater and Ecology has determined that an empirical demonstration successfully shows that residual soil concentrations are sufficiently protective of groundwater.

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 within the area of the Property described and illustrated in Exhibits A and B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE THURSTON 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.

Amy Sikora Washington State Department of Natural Resources Enterprise Services – Environmental Services 1111 Washington Street SE Olympia, WA 98504-7030 (360) 640-0660 Amy.Sikora@dnr.wa.gov	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

- a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:
 - i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
 - ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.
- b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.
- c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

[GRANTOR'S SIGNATURE BLOCK FOR AMENDED COVENANTS]

Each person who signs must have a separate signature block and applicable notary acknowledgment. Repeat as many times as necessary.

When amending a Covenant, each GRANTOR of the existing Covenant must sign the amended Covenant unless the GRANTOR waived its rights under Section 5(b) of the Covenant.

Holders of other property interests must either sign the amended Covenant as a GRANTOR or sign the subordination agreement in Exhibit D.

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

EXECUTED this 12th day of May, 2025.

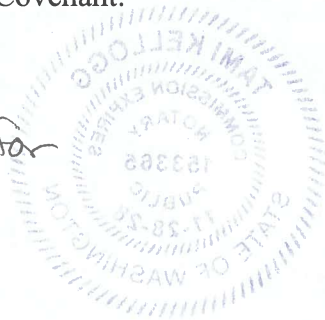
The undersigned further acknowledges Restrictive Covenant #3336349 filed in Thurston County, is hereby terminated and replaced with the above Environmental Covenant.

Todd Welker

by:

[Signature] Diane Emmons acting for

Title: Assistant Deputy Supervisor



REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF THURSTON

On this 12TH day of May, 2020, I certify that Duane Emmons ^{acting for} Todd Walker 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 Deputy Supervisor [TYPE OF AUTHORITY] of the Washington State Department of Natural Resources to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Tami Kellogg

Notary Public in and for the State of Washington ¹⁵

Residing at McLean

My appointment expires 11/28/2028



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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Marian L. Abbett

Marian L. Abbett, P.E.
Section Manager
Toxics Cleanup Program, Southwest Regional Office

Dated: 5/22/2025

STATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 22 day of May, 2025 I certify that Marian L. Abbett personally appeared before me, acknowledged that he/she is the Section Manager 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.



Kim Whitener

Notary Public in and for the State of Washington

Residing at Thurston County

My appointment expires 7/8/2028

For Clarity : Notary
Public

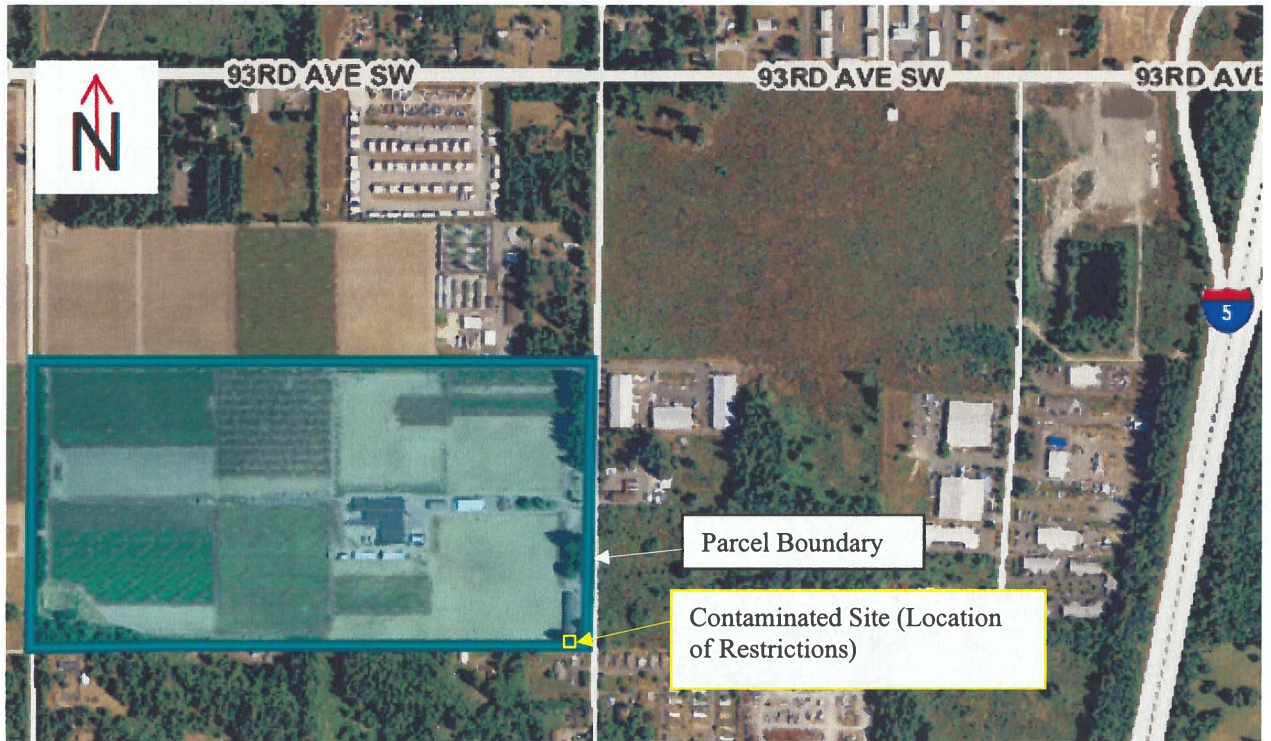
Exhibit A

LEGAL DESCRIPTION

That certain real property situated in the County of Thurston, State of Washington, as follows:
SE 1/4 of NE 1/4 of Section 20, Township 17 north, Range 2 west, W.M.
Tax Parcel No. 12720130000

Exhibit B

PROPERTY MAP



Data source: Thurston County GeoData Center

Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

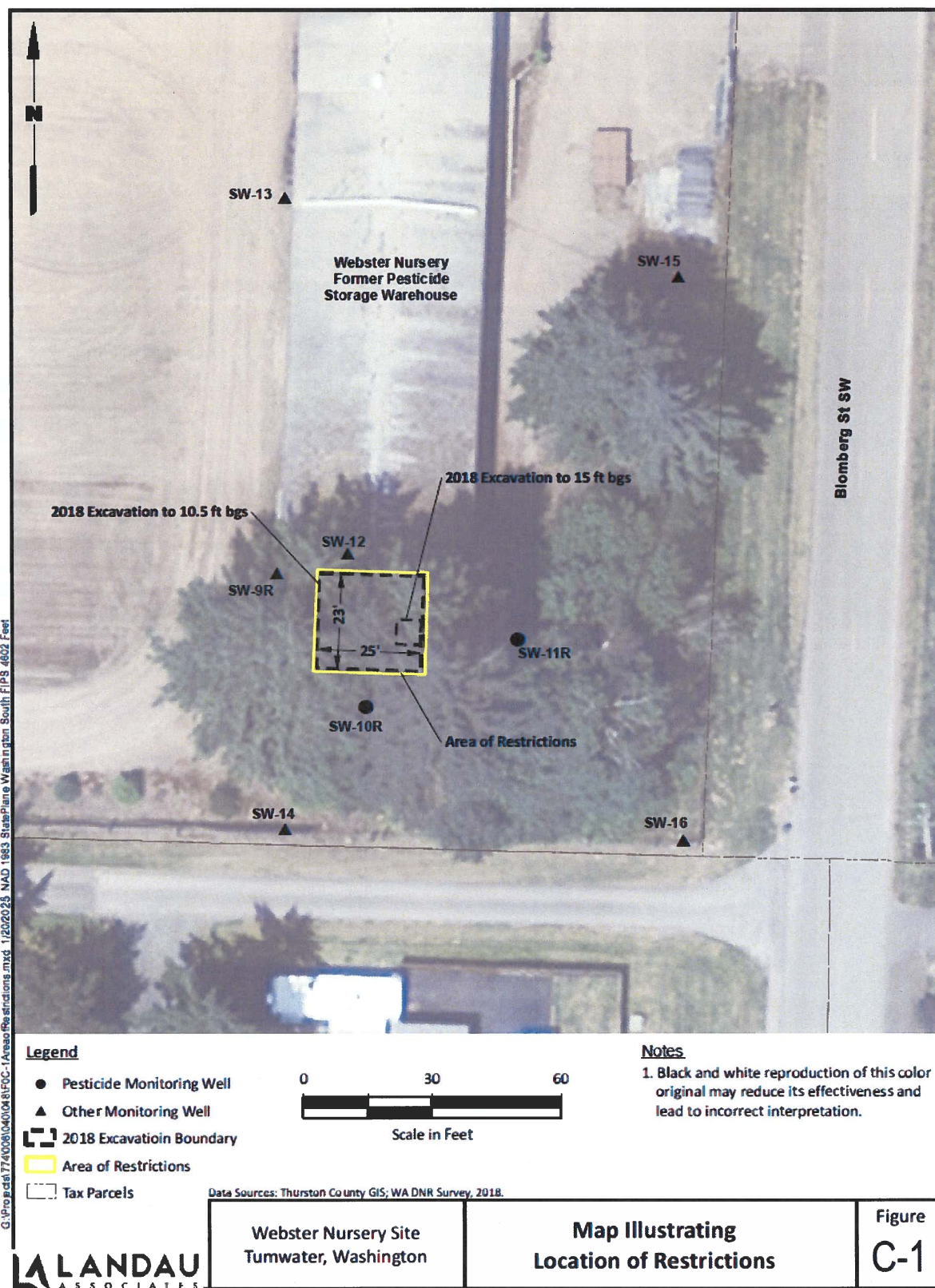


Exhibit C
Annotated for County Recording

