

2050502787
Page: 1 of 9
5/16/2005 2:45 PM
D/RC \$27.00
Whatcom County, WA

Request of: langabeer tull & lee p a

Upon recording, please return to:

Langabeer & Tull
P.O. Box 1678
Bellingham, Washington 98227

DOCUMENT TITLE:	RESTRICTIVE COVENANT
GRANTOR:	PARBERRY, INC.
GRANTEES:	STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
ABBREVIATED LEGAL DESCRIPTION:	PTNS BLKS 3, 4, 5 & 6, SUPPLEMENTAL MAP OF WHATCOM [see complete legal description on Attachment A attached hereto]
ASSESSOR'S TAX PARCEL NUMBERS:	380330 006336 0000, 380330 011348 0000, 380330 024354 0000, 380330 020326 0000, 380330 040337 0000, 380330 040351 0000, 380330 046343 0000, 380330 037339 0000, and 380330 034339 0000
REFERENCE NUMBERS OF RELATED DOCUMENTS:	N/A

RESTRICTIVE COVENANT

HOLLY STREET LANDFILL

Bellingham, WA

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-349-449 by Parberry Inc , and its successors and assigns, in favor of the State of Washington Department of Ecology and its successors and assigns ("Ecology").

The real property that is the subject of this Restrictive Covenant is part of the larger Holly Street Landfill Site ("the Site"). The Site is the subject of remedial action under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW, ("Remedial Action") pursuant to a Consent Decree in the matter State of Washington Department of Ecology v. City of Bellingham, et al., Cause No. 03-2-02164-1 which was entered by the Whatcom County Superior Court on September 25, 2003 ("Consent Decree"). The Site is defined in Exhibit B to the Consent Decree. The Remedial Action to be conducted pursuant to the Consent Decree at the Site is described in the *Holly Street Landfill Final Cleanup Action Plan*, dated April, 2003, ("Cleanup Action Plan"), which is Exhibit A to the Consent Decree and is located at Ecology's Northwest Regional Office (NWRO) in Bellevue, Washington

This Restrictive Covenant is required because the Remedial Action will result in the containment of municipal type waste with residual concentrations of hazardous substances at the Site which exceed the MTCA unrestricted land use (e.g., residential) cleanup level for soil

established under WAC 173-340-740. The extent of contamination and the Remedial Action to be conducted at the Site are contained in the following documents:

1. *Remedial Investigation/Feasibility Study, Holly Street Landfill Development Project Final Report - City of Bellingham*, by Anchor Environmental, LLC, April, 2003
2. *Holly Street Landfill Final Cleanup Action Plan* (Exhibit A to the Consent Decree). These documents are on file at Ecology's NWRO.

The undersigned, Parberry, Inc., is the fee owner of the real property (hereafter "Property") in the City of Bellingham, State of Washington, that is the subject of this Restrictive Covenant. The Property is part of the former Holly Street Landfill situated in the City of Bellingham, State of Washington, and is legally described in Attachment A, 'LEGAL DESCRIPTION' and identified in Attachment B, Site Diagram.

Parberry Inc , 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. Future use of the Property shall be limited to those uses defined in and allowed under the City of Bellingham zoning and Shoreline Management regulations codified in the City of Bellingham Municipal Code as of the date of this Restrictive Covenant and as they may be amended from time to time. No groundwater may be withdrawn from the property for any use that is inconsistent with the remedial action implementation. The Property shall not be used for ground floor residential or day care center uses.

Section 2. Pursuant to the Cleanup Action Plan, Owner must maintain the integrity of the Remedial Action, as follows:

a) Owner must maintain two feet of soil cap or equivalent structural cover (e.g., building or two inch paving layer overlying ballast) over the Property;

b. 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. These activities include those that may result in the release or exposure to the environment of the municipal type waste or contaminated soil that was contained as part of the Remedial Action, or that create an exposure pathway, unless such activities are authorized by the Cleanup Action Plan or this Restrictive Covenant; and

c. In the event utility or other work at the Property requires excavation, Owner must comply with state and City standards, and must provide one foot of overexcavation or use geofabric lining to provide a clean perimeter around the excavation. All refuse materials excavated from the Property must be disposed off-site at a permitted solid waste disposal facility or contained on-site below a cap meeting the specifications outlined in the Cleanup Action Plan or subsequent Remedial Design (RD) documents (i.e., two feet of soil cap or equivalent structural cover). Personnel performing excavation at the Property should be familiar with the applicable health and safety requirements, and should take the necessary precautions to minimize direct contact with municipal type waste and contaminated soils that are above state standards and are contained at the Site as part of the Remedial Action. Excavations conducted in accordance with the above conditions shall not constitute activities that interfere with the Remedial Action or continued protection of human health and the environment.

Section 3. Any activity on the Property that may interfere with the integrity of the Remedial Action, operation and maintenance, or monitoring and continued protection of human health and the environment is prohibited without prior written approval from Ecology, which approval shall not be unreasonably withheld. Compliance monitoring is limited to those items contained in EXHIBIT E of the Consent Decree.

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 title or easement 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, as specified herein.

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

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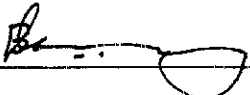
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Section 8. The Owner reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity to comment, concurs.

DATED this 5th day of May, 2005.

PARBERRY, INC.

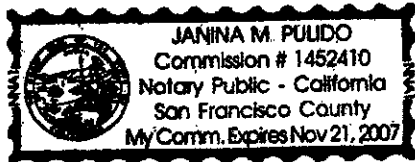
BY:


Brad L. Parberry
(Printed Name)
Its: President

STATE OF CALIFORNIA)
County of San Francisco)

This is to certify that on the 5th day of May, 2005, before me, the undersigned Notary Public in and for the State of California, personally appeared Brad L. Parberry, to me known to be the President of PARBERRY, INC., the corporation described in and who executed the foregoing instrument and acknowledged to me that he signed and sealed the same as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and was authorized to execute the same

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Janina M. Pulido
NOTARY PUBLIC in and for the State of
California, residing at San Francisco
My commission expires 11/21/07

RESTRICTIVE COVENANT
PARBERRY, INC.

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**ATTACHMENT A
'LEGAL DESCRIPTION'**

PARCEL 380330 006336 0000

LOTS 5 THROUGH 8 OF BLOCK 5, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED PORTION OF CENTER STREET ABUTTING; SUBJECT TO RIGHT OF WAY EASEMENT OVER THE NORTH 10 FEET OF LOT 5, AS DESCRIBED IN AUDITOR'S FILE NO. 947913.

PARCEL 380330 011348 0000

LOTS 1 THROUGH 4, AND LOTS 13 THROUGH 16, BLOCK 5, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); SUBJECT TO RIGHT OF WAY EASEMENT OVER THE SOUTH 10 FEET OF LOTS 4 THROUGH 13, AS DESCRIBED IN AUDITOR'S FILE NO. 947914; TOGETHER WITH VACATED CENTER STREET ABUTTING, AS VACATED BY ORDINANCE 7280; SUBJECT TO COVENANT TO BIND.

PARCEL 380330 024354 0000

THE SOUTHWEST HALF OF LOT 4, AND ALL OF LOTS 5 THROUGH 8, BLOCK 6, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED 12 FEET OF CENTER STREET ABUTTING.

PARCEL 380330 020326 0000

LOTS 3 THROUGH 16 OF BLOCK 4, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); SUBJECT TO EASEMENT TO THE CITY OF BELLINGHAM FOR SLOPE AND FILL OVER LOTS 8 THROUGH 13, AS DESCRIBED IN AUDITOR'S FILE NO. 733697.

PARCEL 380330 040337 0000

LOTS 7 THROUGH 10 OF BLOCK 3, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED 12 FEET OF DIVISION STREET ABUTTING.

ATTACHMENT A, CONTINUED

PARCEL 380330 040351 0000

LOTS 1, 2, 3, 5, AND 6; THE NORTHWEST TWO-THIRDS OF LOTS 11 AND 12; AND LOTS 13 THROUGH 20, BLOCK 3, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED 12 FEET OF DIVISION STREET ABUTTING.

PARCEL 380330 046343 0000

LOT 4 OF BLOCK 3, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED 12 FEET OF DIVISION STREET ABUTTING; TOGETHER WITH 8 FEET ABUTTING AS VACATED BY ORDINANCE 9083.

PARCEL 380330 037339 0000

THE NORTHWEST 8 FEET AND THE SOUTHEAST HALF OF DIVISION STREET, ABUTTING LOTS 7 THROUGH 10 OF BLOCK 3 (SUPPLEMENTAL MAP OF WHATCOM, AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42) VACATED BY CITY ORDINANCE 9083 (AUGUST 1982)

PARCEL 380330 034339 0000

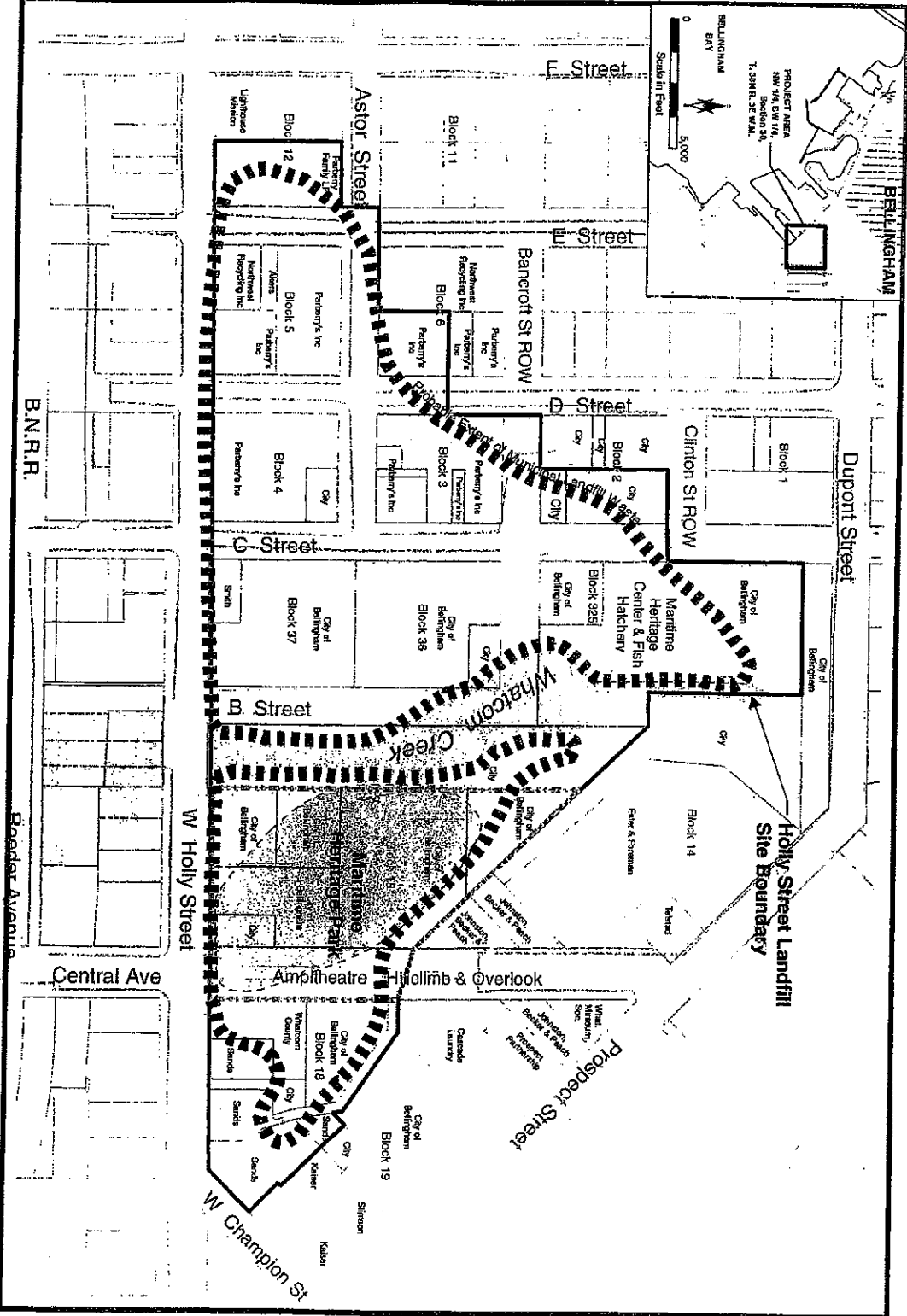
THE SOUTHEAST THIRD OF LOTS 11 AND 12 OF BLOCK 3, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED 12 FEET OF DIVISION STREET ABUTTING; TOGETHER WITH 8 FEET OF DIVISION STREET AS VACATED BY CITY ORDINANCE 9083.

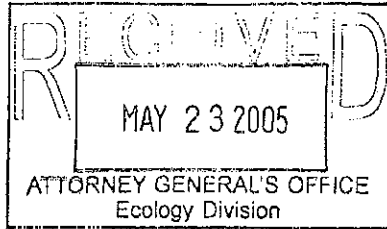


Approximate Extent of Soil Gas Methane Above Lower Explosive Limit (LEL)

Note: Basemap prepared from GIS data provided by City of Bellingham.

Attachment "B"
Project Area
Holly Street Landfill





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DOCUMENT TITLE:	RESTRICTIVE COVENANT
GRANTOR:	PARBERRY FAMILY LP
GRANTEES:	STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
ABBREVIATED LEGAL DESCRIPTION:	SUPPLEMENTAL MAP OF WHATCOM LOTS 1 THRU 8 BLK 12 SUBJ TO ESMT TO CITY OF BELLINGHAM FOR SLOPE FILL DECR AF 735978 ON LOTS 5 THRU 8 [see complete legal description on Attachment A attached hereto]
ASSESSOR'S TAX PARCEL NUMBER:	380225 553359 0000
REFERENCE NUMBERS OF RELATED DOCUMENTS:	N/A

RESTRICTIVE COVENANT

HOLLY STREET LANDFILL

Bellingham, WA

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-349-449 by Parberry Family LP, and its successors and assigns, in favor of the State of Washington Department of Ecology and its successors and assigns (“Ecology”)

The real property that is the subject of this Restrictive Covenant is part of the larger Holly Street Landfill Site (“the Site”). The Site is the subject of remedial action under the Washington State Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW, (“Remedial Action”) pursuant to a Consent Decree in the matter State of Washington Department of Ecology v. City of Bellingham, et al., Cause No. 03-2-02164-1 which was entered by the Whatcom County Superior Court on September 25, 2003 (“Consent Decree”). The Site is defined in Exhibit B to the Consent Decree. The Remedial Action to be conducted pursuant to the Consent Decree at the Site is described in the *Holly Street Landfill Final Cleanup Action Plan*, dated April, 2003, (“Cleanup Action Plan”), which is Exhibit A to the Consent Decree and is located at Ecology’s Northwest Regional Office (NWRO) in Bellevue, Washington.

This Restrictive Covenant is required because the Remedial Action will result in the containment of municipal type waste with residual concentrations of hazardous substances at the Site which exceed the MTCA unrestricted land use (e.g., residential) cleanup level for soil

established under WAC 173-340-740. The extent of contamination and the Remedial Action to be conducted at the Site are contained in the following documents:

1. *Remedial Investigation/Feasibility Study, Holly Street Landfill Development Project Final Report - City of Bellingham*, by Anchor Environmental, LLC, April, 2003
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The undersigned, Parberry Family LP, is the fee owner of the real property (hereafter "Property") in the City of Bellingham, State of Washington, that is the subject of this Restrictive Covenant. The Property is part of the former Holly Street Landfill situated in the City of Bellingham, State of Washington, and is legally described in Attachment A, 'LEGAL DESCRIPTION' and identified in Attachment B, Site Diagram.

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c. In the event utility or other work at the Property requires excavation, Owner must comply with state and City standards, and must provide one foot of overexcavation or use geofabric lining to provide a clean perimeter around the excavation. All refuse materials excavated from the Property must be disposed off-site at a permitted solid waste disposal facility or contained on-site below a cap meeting the specifications outlined in the Cleanup Action Plan or subsequent Remedial Design (RD) documents (i.e., two feet of soil cap or equivalent structural cover). Personnel performing excavation at the Property should be familiar with the applicable health and safety requirements, and should take the necessary precautions to minimize direct contact with municipal type waste and contaminated soils that are above state standards and are contained at the Site as part of the Remedial Action. Excavations conducted in accordance with the above conditions shall not constitute activities that interfere with the Remedial Action or continued protection of human health and the environment.

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DATED this 5th day of May, 2005.

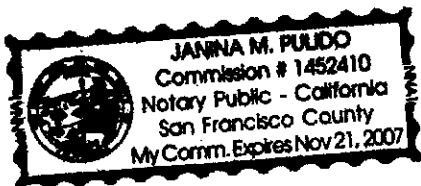
PARBERRY FAMILY LP

BY: Brad L. Parberry
Brad L. Parberry
(Printed Name)
Its: President

STATE OF CALIFORNIA)
County of San Francisco)

This is to certify that on the 5th day of May, 2005, before me, the undersigned Notary Public in and for the State of California, personally appeared Brad Parberry, to me known to be the President of PARBERRY FAMILY LP, the partnership described in and who executed the foregoing instrument and acknowledged to me that he signed and sealed the same as the free and voluntary act and deed of said partnership for the uses and purposes therein mentioned, and was authorized to execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Janna M. Pulido
NOTARY PUBLIC in and for the State of
California, residing at San Francisco
My commission expires 11/21/2007

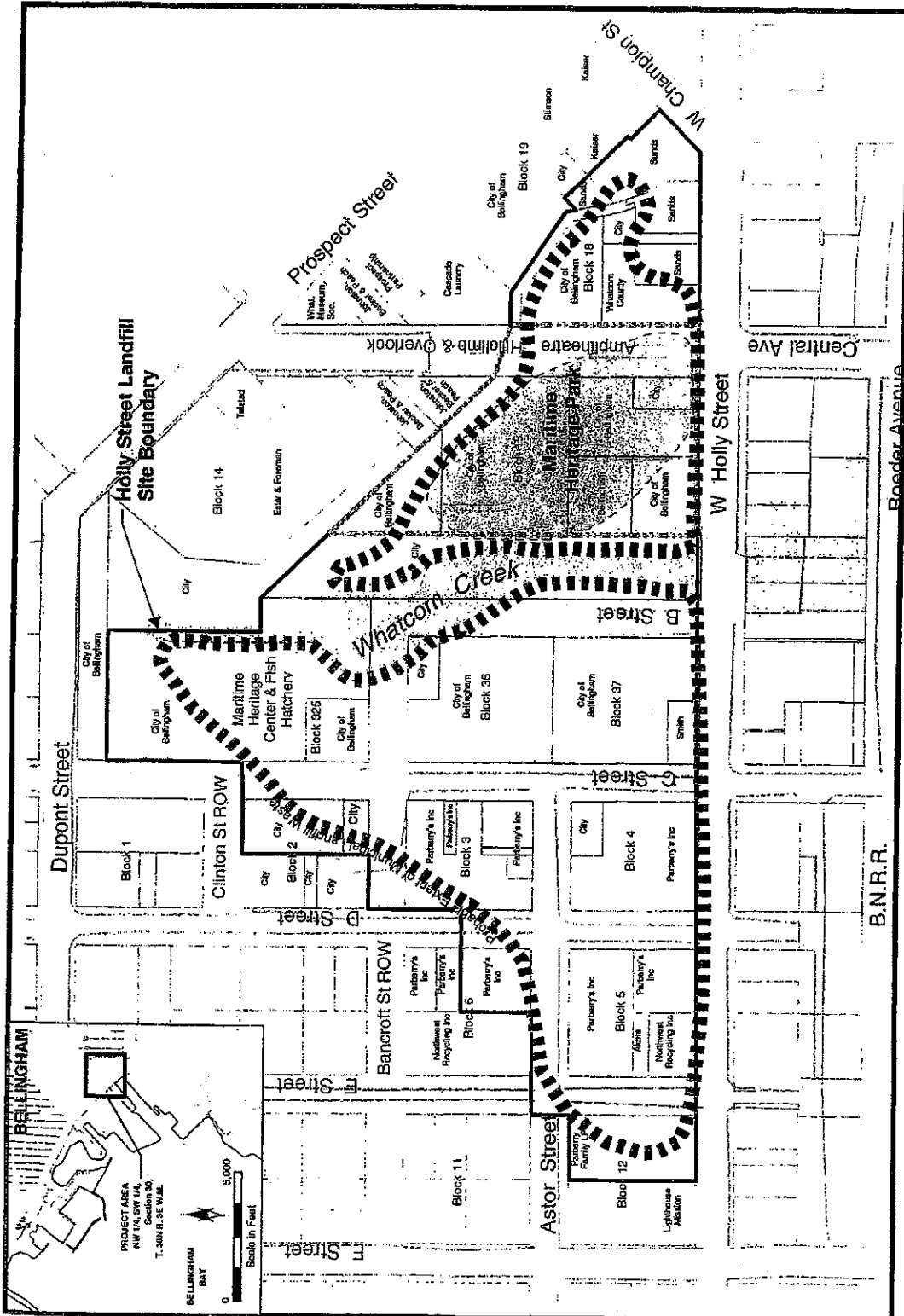
RESTRICTIVE COVENANT
PARBERRY FAMILY LP

Page 6

**ATTACHMENT A
'LEGAL DESCRIPTION'**

PARCEL 380225 553359 0000

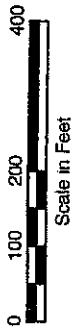
LOTS 1 THROUGH 8, BLOCK 12, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); SUBJECT TO EASEMENT TO THE CITY OF BELLINGHAM FOR SLOPE AND FILL (ON LOTS 5 THROUGH 8) AS DESCRIBED IN AUDITOR'S FILE NO 735978

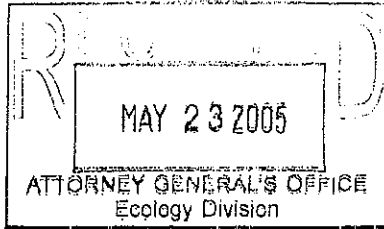


Attachment "B"
Project Area
Holly Street Landfill

Approximate Extent of Soil Gas Methane Above Lower Explosive Limit (LEL)

Note: Basemap prepared from GIS data provided by City of Bellingham.





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Page: 1 of 8
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Request of: Langabeer Tull & Lee P A

Upon recording, please return to:

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P.O. Box 1678
Bellingham, Washington 98227

DOCUMENT TITLE:	RESTRICTIVE COVENANT
GRANTOR:	NORTHWEST RECYCLING, INC.
GRANTEES:	STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
ABBREVIATED LEGAL DESCRIPTION:	SUPPLEMENTAL MAP OF WHATCOM LOTS 9-10-11 BLK 5-TOG WI VAC PTN CENTER ST ABTG-SUBJECT TO ESMT TO CITY OF BELLINGHAM FOR SLOPE FILL DESC AF 735976 [see complete legal description on Attachment A attached hereto]
ASSESSOR'S TAX PARCEL NUMBER:	380330 002339 0000
REFERENCE NUMBERS OF RELATED DOCUMENTS:	N/A

RESTRICTIVE COVENANT

HOLLY STREET LANDFILL

Bellingham, WA

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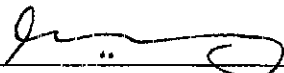
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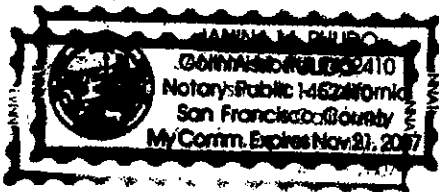
NORTHWEST RECYCLING, INC.

BY: 
Brad L. Parberry
(Printed Name)
Its: President

STATE OF CALIFORNIA)
County of San Francisco)

This is to certify that on the 5th day of May, 2005, before me, the undersigned Notary Public in and for the State of California, personally appeared Brad Parberry, to me known to be the President of NORTHWEST RECYCLING, INC., the corporation described in and who executed the foregoing instrument and acknowledged to me that he signed and sealed the same as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and was authorized to execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

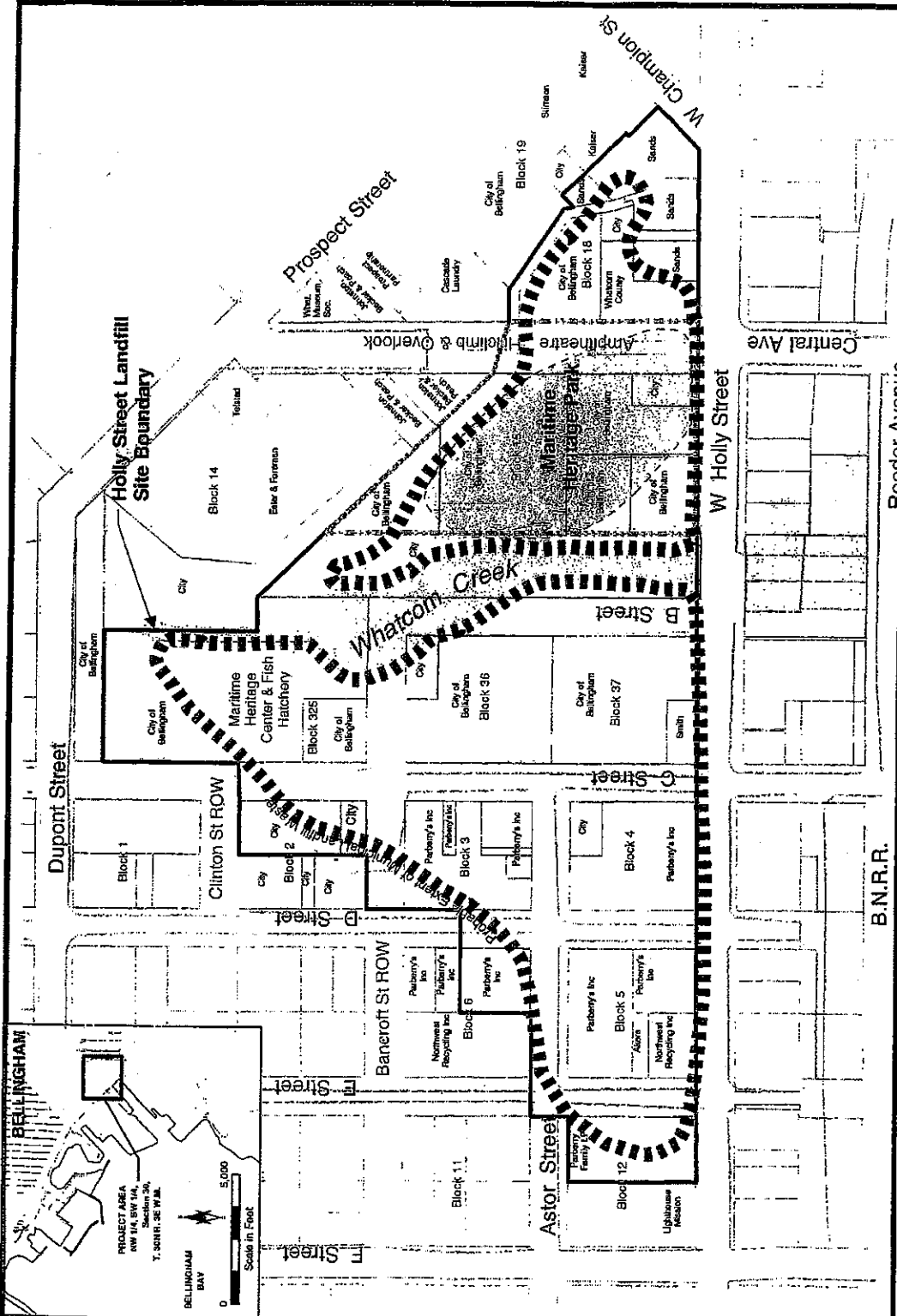


Janina M. Pulido
NOTARY PUBLIC in and for the State of
California, residing at San Francisco
My commission expires 11/21/2007

**ATTACHMENT A
'LEGAL DESCRIPTION'**

PARCEL 380330 002339 0000

LOTS 9, 10 AND 11 OF BLOCK 5, SUPPLEMENTAL MAP OF WHATCOM (AS RECORDED IN BOOK 1 OF PLATS, PAGES 41 AND 42); TOGETHER WITH VACATED PORTION OF CENTER STREET ABUTTING; SUBJECT TO EASEMENT TO THE CITY OF BELLINGHAM FOR SLOPE AND FILL AS DESCRIBED IN AUDITOR'S FILE NO. 735976.



Attachment "B"
Project Area
Holly Street Landfill

Approximate Extent of Soil Gas Methane Above Lower Explosive Limit (LEL)

Note: Basemap prepared from GIS data provided by City of Bellingham.

