



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
4601 N Monroe Street • Spokane, WA 99205-1295 • 509-329-3400

January 8, 2019

Mr. Louis Graf, PE  
Spokane County Environmental Services  
12107 E. Empire Way  
Spokane Valley, WA 99206

**Re: No Further Action at the following Site:**

- **Site Name:** Spokane County Sewer Operations Center
- **Site Address:** 12107 E. Empire Way, Spokane Valley
- **Facility/Site No.:** 11518
- **VCP Project No.:** EA0276

Dear Mr. Graf:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Spokane County Sewer Operations Center facility (Site). This letter provides our opinion. We are providing this opinion under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

**Issue Presented and Opinion**

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Is further remedial action necessary to clean up contamination at the Site?

**NO. Ecology has determined that no further remedial action is necessary to clean up contamination at the Site.**

This opinion is based on an analysis of whether the remedial action meets the substantive requirements of MTCA, Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC (collectively "substantive requirements of MTCA"). The analysis is provided below.

**Description of the Site**

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This opinion applies only to the Site described below. The Site is defined by the nature and extent of contamination associated with the following release:

- Arsenic into the Soil



**Enclosure A** includes a detailed description and diagram of the Site, as currently known to Ecology.

Please note a parcel of real property can be affected by multiple sites. At this time, we have no information that the parcel(s) associated with this Site are affected by other sites.

### **Basis for the Opinion**

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This opinion is based on the information contained in the following documents:

1. Voluntary Cleanup Action Report for Spokane County Sewer Operations Center, JUB and Schwyn Environmental Services, November 12, 2014.
2. Voluntary Cleanup Action Report for Spokane County Sewer Operations Center, JUB and Schwyn Environmental Services, April 17, 2015.
3. Final Cleanup Summary/ No Further Action Request, Spokane County Environmental Services Wastewater Operations Center Voluntary Arsenic Capping Project, Spokane County Environmental Services, June 26, 2017.

Those documents are kept in the Central Files of the Eastern Regional Office of Ecology (ERO) for review by appointment only. You can make an appointment by calling the ERO resource contact at (509) 329-3415.

This opinion is void if any of the information contained in those documents is materially false or misleading.

### **Analysis of the Cleanup**

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Ecology has concluded that **no further remedial action** is necessary to clean up contamination at the Site. That conclusion is based on the following analysis:

#### **1. Characterization of the Site.**

Ecology has determined your characterization of the Site is sufficient to establish cleanup standards and select a cleanup action. The Site is described above and in **Enclosure A**.

Sixty-four soil samples were collected and analyzed for total arsenic. Two samples were analyzed for total cadmium, chromium, lead, mercury, and zinc, and one composite sample was analyzed for polychlorinated biphenyls (PCBs) and leachable metals using the Toxicity Characteristic Leaching Procedure (TCLP). Results indicated that arsenic

concentrations ranged from 4.73 to 188 mg/kg in soils near the northern portion of the site, generally at depths less than four feet below ground surface (bgs). All other contaminants were non-detect or below the respective MTCA Method A soil cleanup level for industrial land use.

## **2. Cleanup.**

Ecology has determined the cleanup you performed meets the cleanup standards established for the Site.

- Installation of a three-inch asphalt cap overlaying six to twenty-four inches of gravel, covering the impacted soil area as illustrated in Enclosure A. The purpose of the cap is to minimize the potential for direct human contact with contaminated soil, minimize leaching of contaminants to groundwater, prevent stormwater infiltration through contaminated soil, and minimize the potential for airborne contaminants. The cap is graded to allow runoff flow to an infiltration swale to the south of the impacted area.
- Recording of an Environmental Covenant with Spokane County to restrict land use and protect the asphalt cap.

## **Post-Cleanup Controls and Monitoring**

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Post-cleanup controls and monitoring are remedial actions performed after the cleanup to maintain compliance with cleanup standards. This opinion is dependent on the continued performance and effectiveness of the following:

### **1. Compliance with institutional controls.**

Institutional controls prohibit or limit activities that may interfere with the integrity of engineered controls or result in exposure to hazardous substances. The following institutional controls are necessary at the Site:

- Containment of soil using an asphalt cap
- Restriction of land use to protect cap

To implement those controls, an Environmental Covenant has been recorded on the following parcel of real property in Spokane County:

- 45044.0117

Ecology approved the recorded Covenant. A copy of the Covenant is included in **Enclosure B**.

### **Periodic Review of Post-Cleanup Conditions**

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Ecology will conduct periodic reviews of post-cleanup conditions at the Site to ensure that they remain protective of human health and the environment. If Ecology determines, based on a periodic review, that further remedial action is necessary at the Site, then Ecology will withdraw this opinion.

### **Listing of the Site**

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Based on this opinion, Ecology will remove the Site from our Confirmed and Suspected Contaminated Sites List.

### **Limitations of the Opinion**

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#### **1. Opinion does not settle liability with the state.**

Liable persons are strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release or releases of hazardous substances at the Site. This opinion **does not**:

- Resolve or alter a person's liability to the state.
- Protect liable persons from contribution claims by third parties.

To settle liability with the state and obtain protection from contribution claims, a person must enter into a consent decree with Ecology under RCW 70.105D.040(4).

#### **2. Opinion does not constitute a determination of substantial equivalence.**

To recover remedial action costs from other liable persons under MTCA, one must demonstrate that the action is the substantial equivalent of an Ecology-conducted or Ecology-supervised action. This opinion does not determine whether the action you performed is substantially equivalent. Courts make that determination. *See* RCW 70.105D.080 and WAC 173-340-545.

#### **3. State is immune from liability.**

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The state, Ecology, and its officers and employees are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing this opinion. See RCW 70.105D.030(1)(i).

### **Termination of Agreement**

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Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#EA0276).

For more information about the VCP and the cleanup process, please visit our web site: [www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm](http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm). If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at (509) 329-3522 or e-mail at [ted.uecker@ecy.wa.gov](mailto:ted.uecker@ecy.wa.gov).

Sincerely,



Ted M. Uecker  
VCP Coordinator  
ERO Toxics Cleanup Program

tmu:mk

Enclosures (2):   A – Description and Diagrams of the Site  
                      B – Environmental Covenants for Institutional Controls

cc:     Beth McKee, VCP Financial Manager (without enclosures)

## **Enclosure A**

### **Description and Diagrams of the Site**

## Site Description

The Spokane County Sewer Operations Center (SOC) is located in an industrial area of Spokane Valley. Soils encountered at the Site consist of silty gravel with some cobbles. Depth to groundwater is approximately 76 feet below ground surface (bgs). The Spokane River is about 1,700 feet north-northwest of the Site.

Spokane County planned to install a sewer line across the Site in 2007. Since arsenic-impacted soil had been confirmed on the adjacent property to the north, soil samples were collected to evaluate Site soil conditions. Results indicated arsenic soil concentrations exceeded the cleanup level.

In 2014, Sixty-four additional soil samples were collected to determine the extent of contamination. Based on analytical results, arsenic exceeding cleanup levels are sporadically distributed in the soil on the northern of the Site, generally in the upper 4 feet.

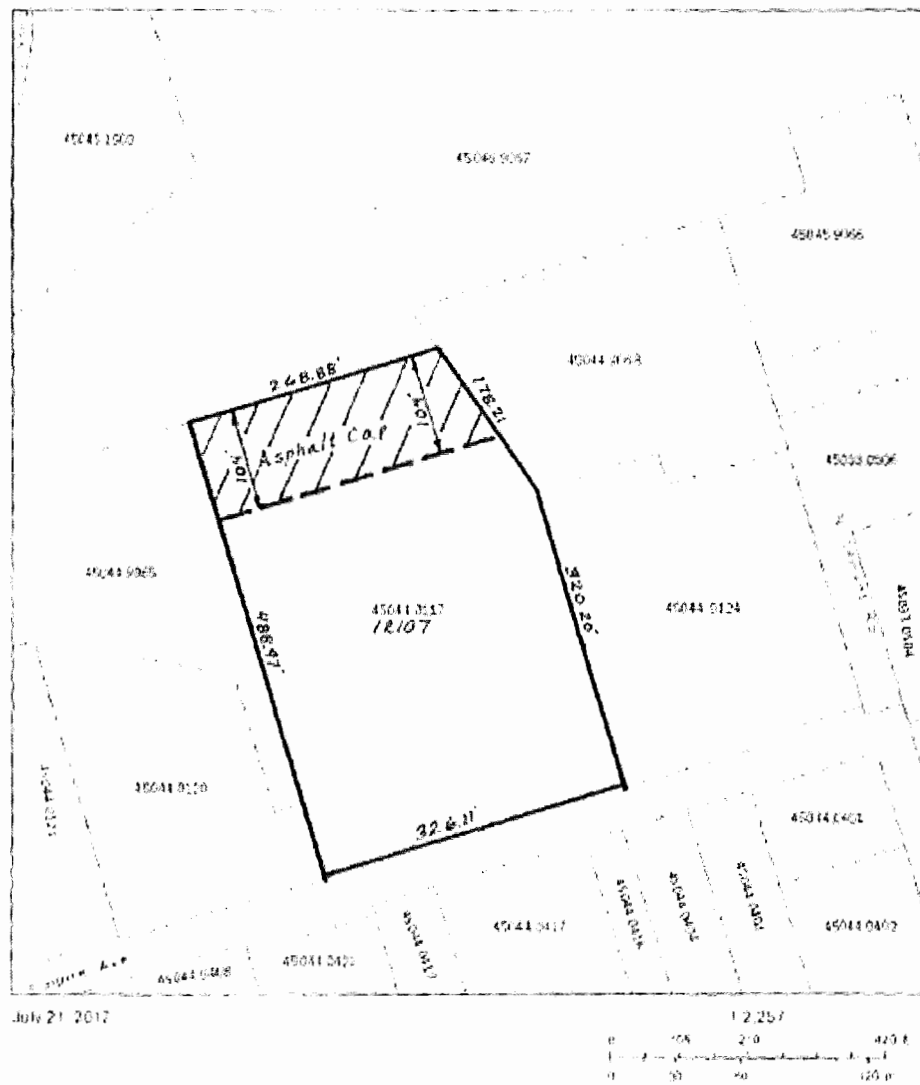
In 2015, the Irvin Water District No. 6 excavated a pipeline east of the Site and discovered two subsurface belt lines encased in concrete tunnels. The east-west trending tunnels extended to the SOC property, which limited the feasibility of complete excavation of contaminated soils. Based on an evaluation of cleanup alternatives, containment of impacted soil with institutional controls was the proposed cleanup action for the site.

Ecology approved the cleanup action plan on August 25, 2015, and the asphalt cap was completed on November 7, 2016. An Environmental Covenant was recorded on November 6, 2018 with Spokane County to restrict land use and protect the cap.

(Source: JUB and Schwyn Environmental Services, 2015; Spokane County Environmental Services, 2017)

## Site Diagrams

Parcel 45044.0117





## **Enclosure B**

### **Environmental Covenants for Institutional Controls**

After Recording Return  
Original Signed Covenant to:  
Ted Uecker  
Toxics Cleanup Program  
Department of Ecology  
4601 N. Monroe St.  
Spokane, WA 99205



RECEIVED

NOV 08 2018

Department of Ecology  
Eastern Washington Office

## Environmental Covenant

**Grantor:** Spokane County

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

**Brief Legal Description:** Parcel is approximately 3.52 acres, located in the north east quarter of the south east quarter of Section 4, Township 25, Range 44, W.M. Street address is 12107 E. Empire Avenue, Spokane Valley, WA 99206.

**Tax Parcel Nos.:** 45044.0117

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as **Spokane County Sewer Operations Center FSID# 12444**. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Arsenic

- 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.

1. Voluntary Cleanup Action Report for Spokane County Sewer Operations Center: JUB Consultants and Schwyn Environmental Services, April 17, 2015.

- 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,

*Washington State Department of Ecology*

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

COVENANT

Spokane County, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

**Section 1. General Restrictions and Requirements.**

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

**Section 2. Specific Prohibitions and Requirements.**

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

**a. Containment of Soil.**

The remedial action for the Property is based on containing contaminated soil under a cap consisting of three inches of hot mix asphalt, Class A (PG 64-28) over a layer of crushed surfacing top course, six inches minimum depth to 24 inches maximum depth and located as illustrated in Exhibit C. The primary purpose of this cap is to minimize the potential for human contact with contaminated soil; minimize leaching of contaminants to groundwater and surface water; prevent runoff from contacting contaminated soil; minimize airborne contaminants. As such, the following restrictions shall apply within the area illustrated in Exhibit C.

Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

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

**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, B and C, 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 \_\_\_\_\_ AND RECORDED WITH THE SPOKANE COUNTY AUDITOR UNDER 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.

<b>Spokane County Environmental Services – Wastewater Operations</b> <b>Attn: Louis R. Graf Jr., P.E.</b> <b>Wastewater Operations Manager</b> <b>12107 E. Empire Avenue</b> <b>Spokane Valley, WA 99206</b> <b>509-477-1984</b> <b><a href="mailto:lgraf@spokanecounty.org">lgraf@spokanecounty.org</a></b>	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
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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:

*Washington State Department of Ecology*

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.

Washington State Department of Ecology

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

EXECUTED this 25<sup>th</sup> day of October, 2018.



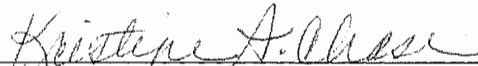
by: Kevin R. Cooke

Title: Environmental Services Director

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF Washington  
COUNTY OF Spokane

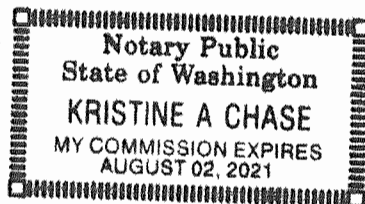
On this 25<sup>th</sup> day of October, 2018, I certify that Kevin Cooke personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the Director of Environmental Services of Spokane County to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Notary Public in and for the State of Washington

Residing at Spokane

My appointment expires 8/02/2021

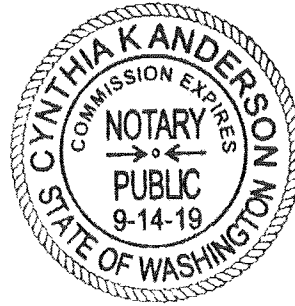


Washington State Department of Ecology

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

by: William J Fee  
Title: UNR SUPERVISOR  
Dated: October 29, 2018



STATE ACKNOWLEDGMENT

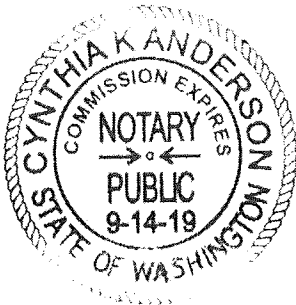
STATE OF Washington  
COUNTY OF Spokane

On this 29<sup>th</sup> day of October, 2018, I certify that William Fee's personally appeared before me, acknowledged that he/she is the UNR Supervisor/REP 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.

Cynthia K Anderson  
Notary Public in and for the State of Washington

Residing at Spokane, WA

My appointment expires Sept 14, 2019





**Exhibit A**

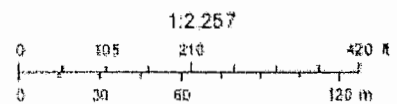
**LEGAL DESCRIPTION**

A parcel of land lying in the NE ¼ of the SE ¼ of Section 4, Township 25 N, Range 44 E, W.M., in a portion of Lots 2, 3, 4, and 5 of Block 2 of Grandview Acres First Addition, more particularly described as follows: Beginning at the southeasterly corner of said Lot 2, Block 2 Thence S73°37'50"W along southerly line of said Block 2 131.21 feet to the TRUE POINT OF BEGINNING: Thence continuing S73°37'50"W 326.11 feet, thence N16°22'10"W 488.97 feet, thence N73°37'50"E 268.88 feet, thence S35°06'04"E 178.21 feet, more or less, to the northerly line of said Lot 2, said point being S73°37'50"W 131.21 feet from the northeast corner of said Lot 2, thence S16°22'10"E 320.20 feet, more or less, to the TRUE POINT OF BEGINNING, except the south 4 feet thereof for road right of way.

*Washington State Department of Ecology*

**Exhibit B**

**PROPERTY MAP**



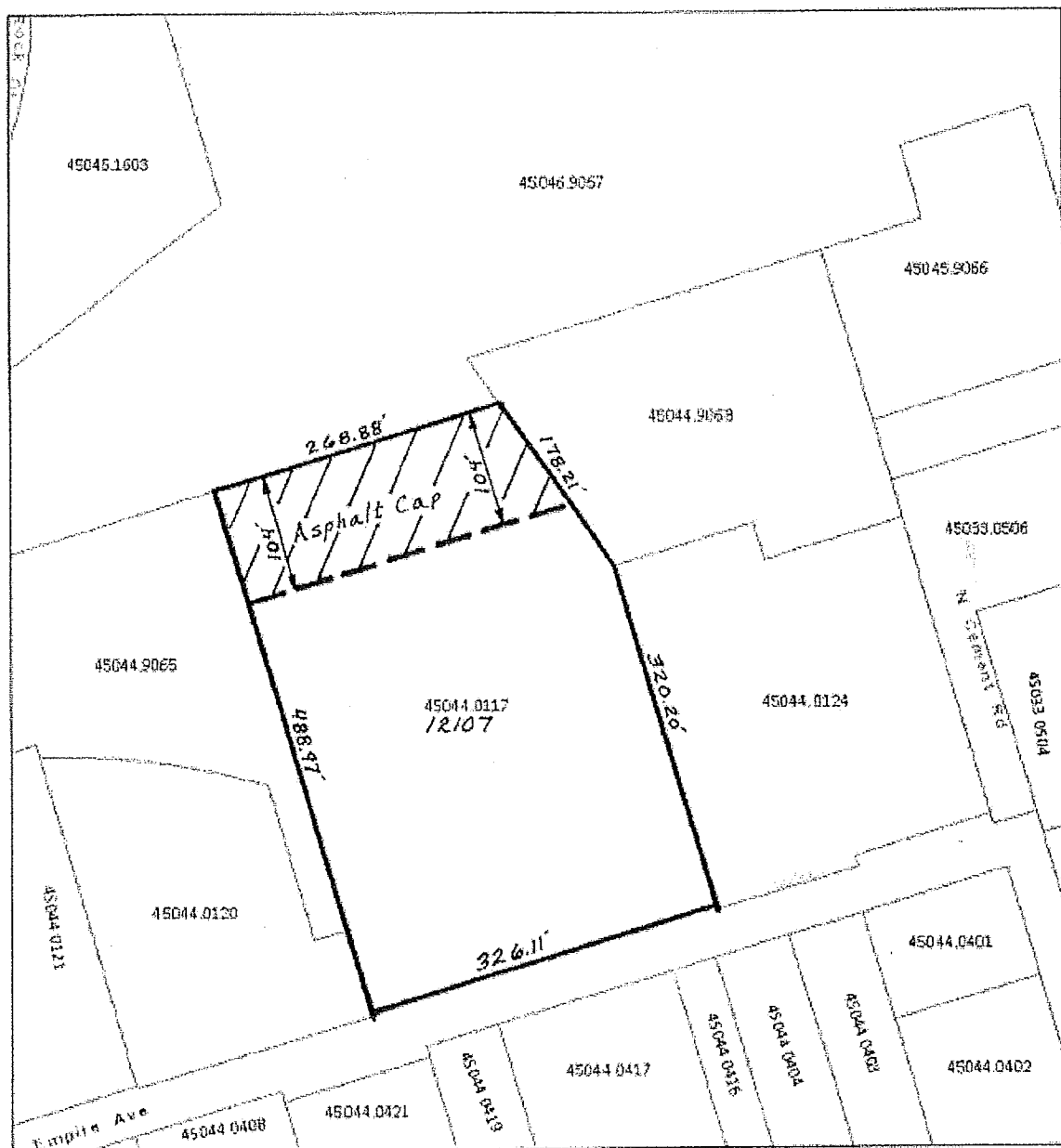
*Washington State Department of Ecology*

**Exhibit C**

**MAP ILLUSTRATING LOCATION OF RESTRICTIONS**

Restricted area is the northerly 104.00 feet of the property described in Exhibit A and illustrated in Exhibit B.

Parcel 45044.0117



July 21, 2017

