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Seattle, WA 98111-3926

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W2256

DOCUMENT TITLE:

Restrictive Covenant

GRANTOR:

Hawkins Development, LLC

GRANTEE:

State of Washington  
Department of Ecology

REFERENCE NUMBER(S) OF  
RELATED DOCUMENTS:

Auditor File No. F 81387  
Auditor File No. F 52832  
Auditor File No. G 405046  
Auditor File No. G 413233  
Auditor File No. G 338297  
Auditor File No. G 413233

LEGAL DESCRIPTION:

That portion of the John Bird Donation Land Claim No. 61 in Township 2 North, Range 2 East of the Willamette Meridian in Clark County, Washington, described as attached Exhibit A

ASSESSOR'S PROPERTY TAX/

ACCOUNT NUMBER: 158344-000

RESTRICTIVE COVENANT

HAWKINS DEVELOPMENT, LLC - FORMER TURNBULL LANDFILL SITE

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Hawkins Development, LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent 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 following document: Turnbull Property NFA Request, Former Turnbull Landfill, Orchards, Washington, prepared by PNG Environmental, dated April 19, 2000. This document is on file at Ecology's Southwest Regional Office (SWRO).

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of manganese which exceed the Model Toxics Control Act Method B Cleanup Level for groundwater established under WAC 173-340-720. In addition, certain portions of the property are underlain with solid waste which may contain hazardous substances in concentrations which exceed the Model Toxics Control Act Method A or B Cleanup Levels for soil established under WAC 173-340-740.

The undersigned, Hawkins Development, LLC, is the fee owner of real property (hereafter "Property") in the County of Clark, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and made a part hereof by reference.

Hawkins Development, LLC 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. a. No groundwater may be taken for any use from the Property.

- b. A portion of the Property contains solid waste beneath a soil cover. Solid Waste is located on ~~Lots~~ PARCEL 1 in the areas depicted on Exhibit B, attached hereto.

These areas have been capped with three to 12 feet of clean soil. The Owner shall not alter, modify, or remove the existing structure(s) or the soil cover in any manner that may result in the release or exposure to the environment of the contained refuse or create a new exposure pathway without prior written approval from Ecology.

- c. No new structures shall be constructed on areas of the Property where solid wastes have been deposited without the written approval of Ecology and approval by the local agency(s) of jurisdiction.

- d. Any activity on the Property that may result in the release or exposure to the environment of the solid waste that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited without first obtaining written approval from Ecology. Absent obtaining prior written approval from Ecology, some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which

deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. 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 3. 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 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 must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. 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.

Section 8. The Owner of the Property 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 for comment, concurs.

HAWKINS DEVELOPMENT, LLC

By 

EVAN HAWKINS-HERRERAS, PRESIDENT

July 28, 2000

[DATE SIGNED]

STATE OF ~~WASHINGTON~~ California

COUNTY OF ~~CLARK~~ Sonoma

I certify that I know or have satisfactory evidence that Eva Hawkins-Herreras is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated the he/she was authorized to execute the instrument and acknowledged it as the President of the Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 7-28, 2000

Notary Public: 

Print Name: Carolyn S Ray

My commission expires: April 9-2003

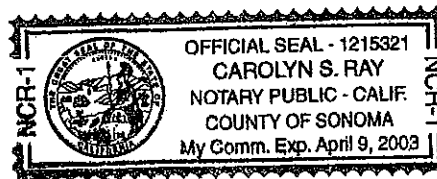


EXHIBIT A

PARCEL I

That portion of the John Bird Donation Land Claim No. 61 in Township 2 North, Range 2 East of the Willamette Meridian in Clark County, Washington, described as follows:

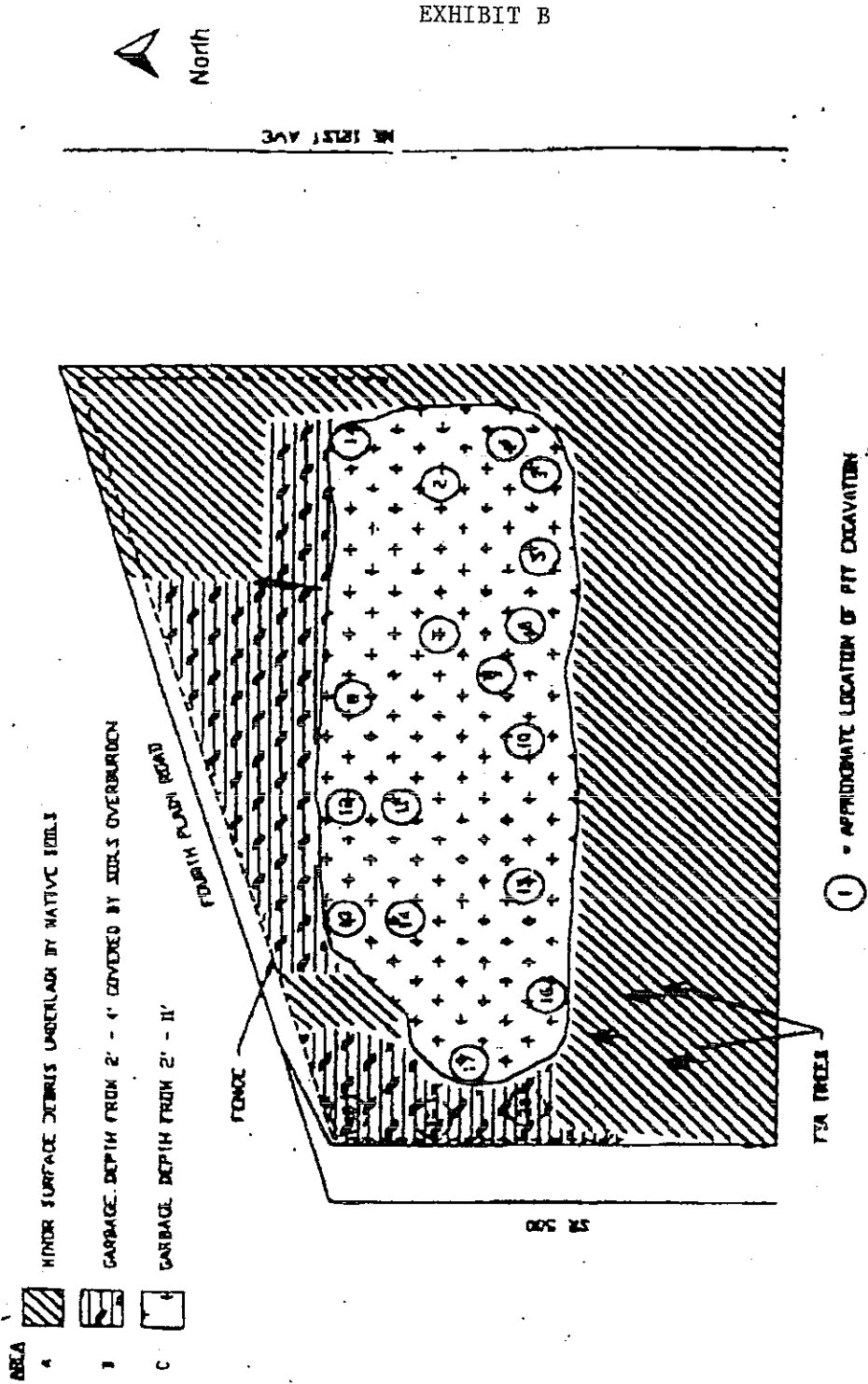
BEGINNING at the point of intersection of the centerline of Fourth Plain Road, with the West line of said John Bird Donation Land Claim; thence South  $0^{\circ}07'$  West, along said West line, a distance of 31.92 feet to the South line of said Fourth Plain Road; thence North  $69^{\circ}57'$  East, along the said South line, a distance of 61.69 feet to a corner of the tract conveyed to Andrew T. Griffith by Deed recorded under Auditor's File No. F81387, said point being the TRUE point of beginning of the tract herein to be described; thence along the Boundaries of said Griffith tract, South  $70^{\circ}01'$  East, 87.18 feet; thence South  $0^{\circ}07'$  West, 243.00 feet to the South line of the tract conveyed to Pearl B. Montgomery by Deed recorded under Auditor's File No. F 52832; thence East along the South line of said Montgomery tract, a distance of 636.5 feet, more or less, to the Southwest corner of the tract conveyed to Lester Ebling by Deed recorded under Auditor's File No. G 405046; thence North  $0^{\circ}07'$  East, along the West line of said Ebling tract and the West line of the tract conveyed to Lester M. Ebling by Deed recorded under Auditor's File No. G 413233, a distance of 300 feet to the Northwest corner of said Ebling tract; thence East along the North line of said Ebling tract, 150 feet to the West line of Northeast 121st Avenue, as established by Deed recorded under Auditor's File No. G 338297; thence North, along the West line of said Northeast 121st Avenue to the South line of Fourth Plain Road; thence South  $69^{\circ}57'$  West, along the South line of said Fourth Plain Road to the True Point of Beginning.

EXCEPT that portion taken by the State of Washington by condemnation proceedings in Superior Court Cause No. 56199.

ALSO EXCEPT that portion described as follows:

BEGINNING at the point of intersection of the centerline of Fourth Plain Road, with the West line of said John Bird Donation Land Claim; thence South  $0^{\circ}07'$  West along said West line a distance of 31.92 feet to the South line of said Fourth Plain Road; thence North  $69^{\circ}57'$  East along said South line to the West line of Northeast 121st Avenue and the TRUE point of beginning; thence South along the West line of said Avenue 280 feet, more or less, to the Northeast corner of the tract conveyed to Lester M. Ebling by deed recorded under Auditor's File No. G 413233; thence West along the North line of said Ebling tract 150 feet to the Northwest corner thereof; thence North parallel with the West line of Northeast 121st Avenue to the South line of Fourth Plain Road; thence North  $69^{\circ}57'$  East along said South line to the point of beginning.

ALSO EXCEPT any portion lying within NE 121st Avenue and Fourth Plain Road.



Source: Pacific Northwest Life, July 1, 1991.  
 Scale: 1 inch approximately equal to 100 feet.

Figure 4  
 Aerial Extent of Contamination  
 Turnbull Site, Ormonds, Washington  
 Seaborn & Associates, Inc.  
 Strategic Environmental Services