



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

September 27, 2019

Andy Schmidt  
Ward Rugh, Inc.  
P.O. Box 68  
Ellensburg, WA 98926

**Re: No Further Action at the following Site – Groundwater Model Remedy No. 1:**

- **Site Name:** Ward Rugh Inc.
- **Site Address:** 710 W. University Way (aka 710 W. 8th Ave.)
- **Assessor's Parcel No.:** 397833
- **Facility/Site ID No.:** 47245321
- **Cleanup Site ID No.:** 7088
- **VCP No.:** CE0469

Dear Andy Schmidt:

The Washington State Department of Ecology (Ecology) received your request for an opinion on your independent cleanup of the Ward Rugh Inc. site (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**

---

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**

---

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:



Andy Schmidt  
Ward Rugh, Inc.  
September 27, 2019  
Page 2

- Petroleum (Gasoline, Diesel, and Heavy Oil) into Soil.
- Petroleum (Gasoline) into Groundwater.

The site is located at 710 W. University Way, Ellensburg. The property consists of an operating vehicle maintenance shop building.

### **Basis for the Opinion**

---

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

1. *"Lust Closure Interim Cleanup Report,"* prepared by White Shield, Inc., January 1994.
2. *"Ward Rugh Groundwater Quality Investigation Work Plan,"* prepared by Hart Crowser, November 8, 2017.
3. Letter from HartCrowser to Jeff Slothower, RE: Soil and Groundwater Quality Investigation, Ward Rugh, 710 W. University Way prepared by HartCrowser, dated July 11, 2018.
4. Memorandum from HartCrowser to Jeff Slothower, RE: Quarterly Groundwater Sampling and Analysis, dated March 22, 2019.

Those documents are kept at the Central Regional Office (CRO) for review by appointment only. You can make an appointment by calling Ecology's Public Records Officer at 360-407-6040 or emailing [PublicRecordsOfficer@ecy.wa.gov](mailto:PublicRecordsOfficer@ecy.wa.gov).

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

### **Analysis of the Cleanup**

---

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

That conclusion that no further remedial action is necessary 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 for the identified release. Site Plans are presented in **Enclosure A**.

Petroleum (gasoline and diesel) contamination was identified in soil and groundwater after decommission and removal of three underground storage tanks (USTs) in 1991, and one additional USTs in 1993. The UST removed in 1991 included two diesel USTs and one waste oil UST. Soil contaminated with diesel was excavated and treated onsite via land farming. In 1993, a fourth UST containing gasoline was placed out of service, and during removal of the UST, gasoline-contaminated soil and groundwater was encountered. The UST excavation was expanded to remove the most-impacted soils. However, not all gasoline-impacted soil could be removed. A separate heavy oil-like source with elevated concentrations of petroleum hydrocarbons was also encountered along the northwest corner of the excavation.

A soil and groundwater sampling program was conducted in 2018 to characterize remaining soil and groundwater contamination. No soil contamination was found except for at one location immediately adjacent to the shop structure on the Site where gasoline was found in soil at a depth of 7.5 to 9 feet below ground surface (ft bgs). The contamination is expected to likely extend beneath the structure, therefore no further cleanup of the contaminated soil is practicable until the structure is no longer present.

Groundwater was sampled for four consecutive quarters from 8 monitoring wells in 2018 and 2019. No contaminants were detected in any of the 8 monitoring wells. Both contaminated soil and groundwater could be present beneath the shop building structure; however no further action is warranted at this time.

## 2. Establishment of cleanup standards.

### Soil Cleanup Levels

The following Method A Cleanup Levels for unrestricted land uses have been used at the Site:

Constituent	Method A Soil Cleanup Level (mg/kg)	Method A Groundwater Cleanup Level (µg/L)
Gasoline Range Organics (benzene present)	30	800
Diesel Range Organics	2,000	500
Benzene	0.03	5
Toluene	7	1,000
Ethylbenzene	6	700
Xylenes	9	1,000

Point of Compliance (POC): Standard, throughout the Site extending from the surface to 15 feet below ground surface (ft bgs).

Terrestrial Ecological Evaluation (TEE): The Site is surrounded by commercial properties to the north, east, and west, and a residence to the south. Most of the surrounding area is covered with structures and pavement. No open space is located within 500 ft of any area of the Site that would trigger a TEE.

### **3. Cleanup.**

Ecology has determined the cleanup meets the cleanup standards established for the Site. Site cleanup consisted of excavation and onsite treatment of contaminated soil in 1991 and 1993. Some inaccessible contaminated soil remained after the cleanup work. The effectiveness of the excavation was confirmed through soil samples collected following excavation and via soil borings drilled in 2018, as well as groundwater samples collected from monitoring wells in 2018 and 2019. An Environmental Covenant is needed to address remaining contamination immediately adjacent to and underneath the structure.

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

---

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 control is necessary at the Site:

- The Site structure currently prevents access to and cleanup of remaining contaminated soil. Cleanup of remaining contamination is needed when the Site structure is no longer present.

To implement that control, an Environmental Covenant has been recorded on the following parcel of real property in Kittitas County:

- Kittitas County Tax Parcel 397833.

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

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

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.

The periodic review shall consist of periodically (i.e. every five years) checking to see if the Site structure that currently prevents access to and cleanup of the remaining contamination is still present at the Site.

### **Listing of the Site**

---

Based on this opinion, Ecology will initiate the process of removing the Site from the Hazardous Sites List and the Confirmed and Suspected Contaminated Sites List.

That process includes public notice and opportunity to comment. Based on the comments received, Ecology will either remove the Site from the applicable lists or withdraw this opinion.

### **Limitations of the Opinion**

---

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

Liabe 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.

Andy Schmidt  
Ward Rugh, Inc.  
September 27, 2019  
Page 6

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.**

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**

---

Thank you for cleaning up the Site under the Voluntary Cleanup Program (VCP). This opinion terminates the VCP Agreement governing this project (#CE0469).

For more information about the VCP and the cleanup process, please visit our web site: [www.https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program](https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program).

If you have any questions about this opinion or the termination of the Agreement, please contact me by phone at (509) 454-7835 or e-mail at [frank.winslow@ecy.wa.gov](mailto:frank.winslow@ecy.wa.gov).

Sincerely,



Frank P. Winslow, P.G.  
Toxics Cleanup Program  
Central Regional Office

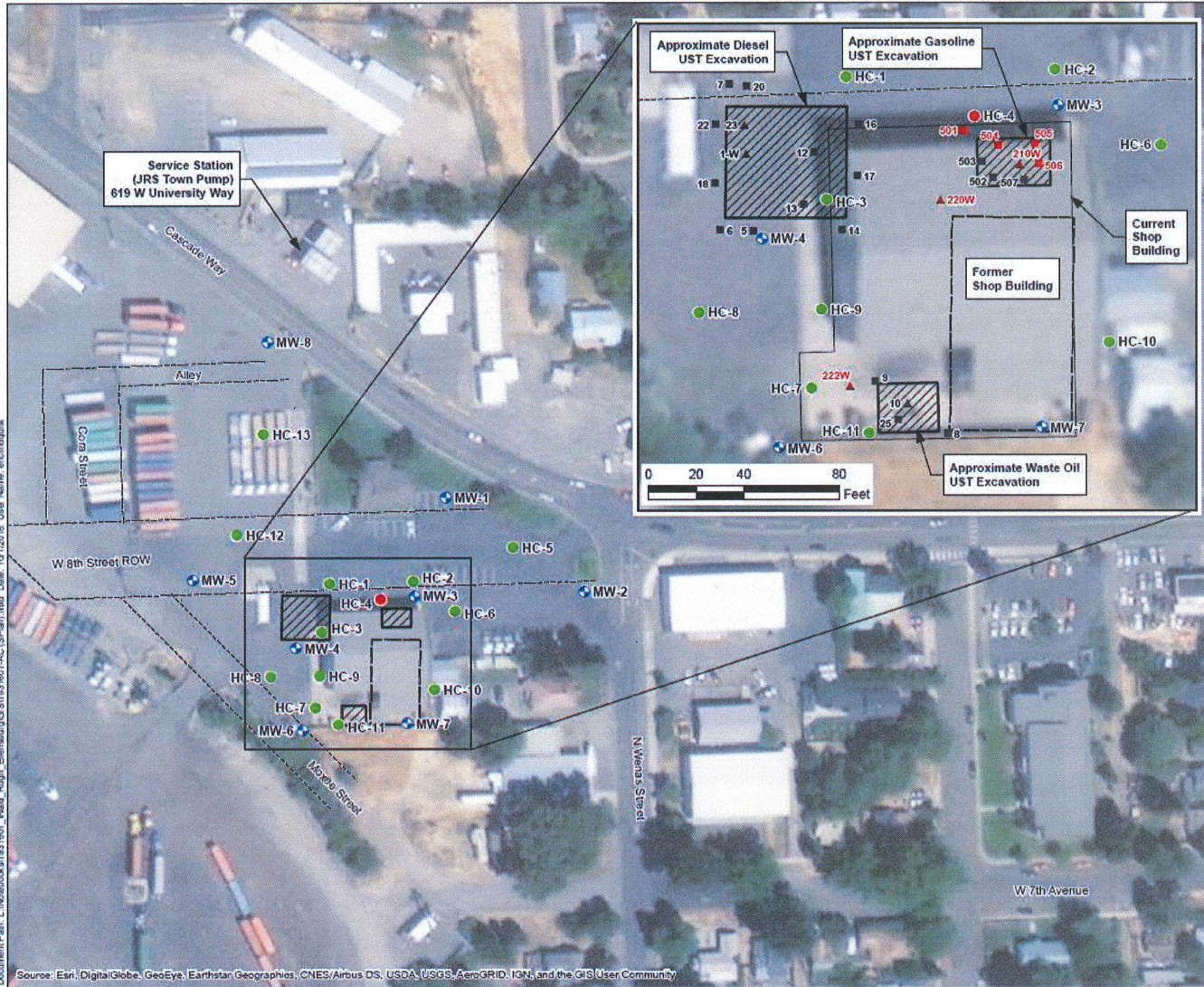
FPW:rl

Enclosures:       A – Site Plans  
                          B – Environmental Covenant

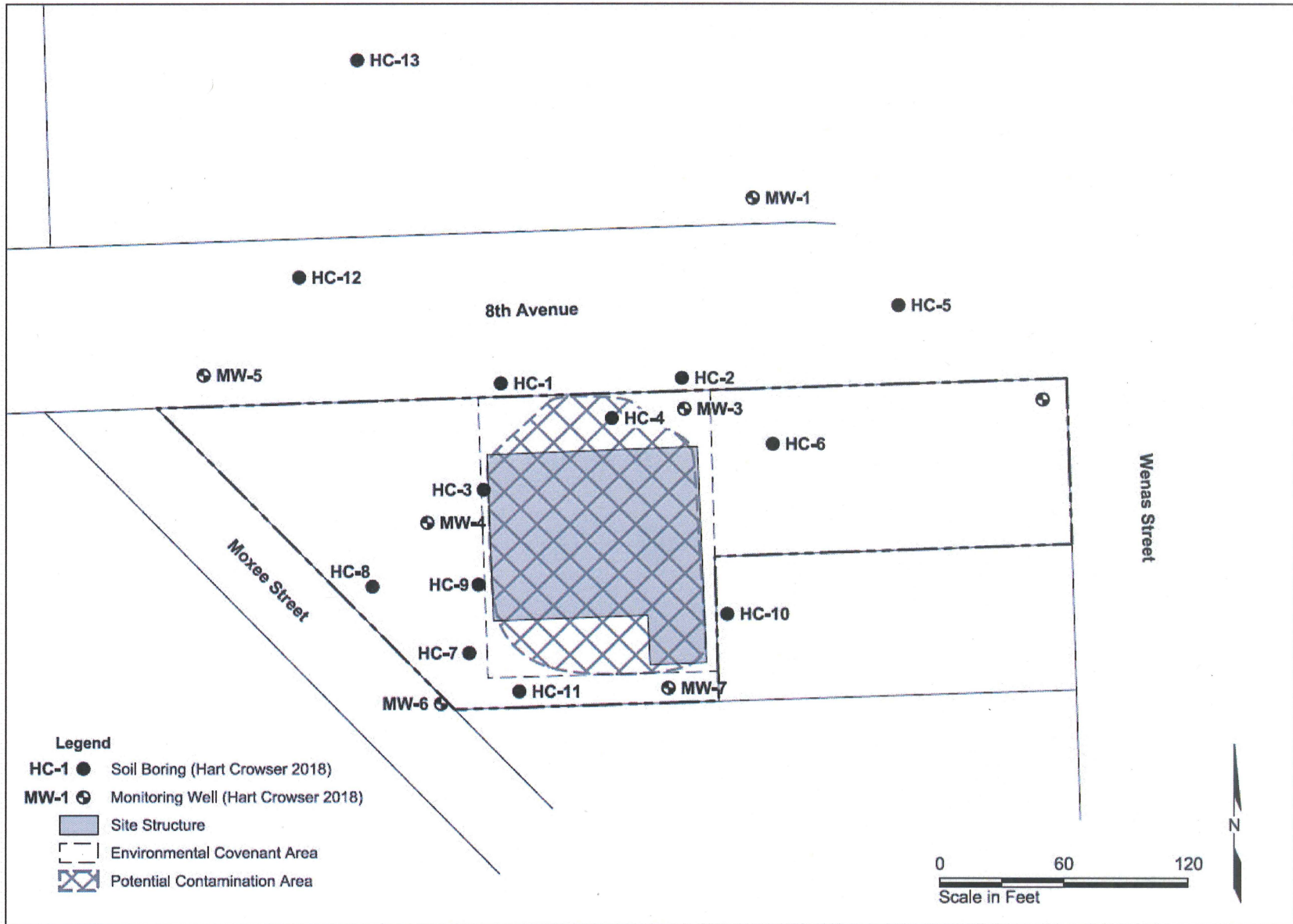
cc:     Marissa Goodman, HartCrowser  
       Lyndsay Gordon, VCP Financial Manager

# **Enclosure A**

## **Site Plans**







**Enclosure B**

**Environmental Covenant**

After Recording Return  
Original Signed Covenant to:  
Jeff Newschwander  
Toxics Cleanup Program  
Department of Ecology  
Central Regional Office  
1250 W. Alder St.  
Union Gap, WA 98903-0009

07/30/2019 04:17:00 PM

\$111.50  
Covenants G  
Kittitas County Auditor

Page: 1 of 9

201907300099



## Environmental Covenant

**Grantor:** Ward Rugh, Inc.

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

**Brief Legal Description:** CD. 1446; TWN EBURG; DEPOT ADD. TAX#1; BLOCK 1

**Tax Parcel No.:** 397833

**Cross Reference:** VCP NFA Opinion Pending

### 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 Ward Rugh Inc. 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	Gasoline

- 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.
- 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.

## COVENANT

Ward Rugh, Inc., a Washington for-profit corporation, who is the fee simple owner of the Property, 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. Containment of Soil/Waste Materials.

Gasoline-contaminated soil at the site was excavated and treated except for some contaminated soil immediately adjacent to and beneath the site structure. The remedial action for the Property

is based on containing remaining contaminated soil under a cap consisting of the site structure building foundation and adjacent pavement, located as illustrated in **Exhibit B**. The primary purpose of this cap is to prevent direct contact with contaminated soil. As such, the following restrictions shall apply within the area illustrated in **Exhibit B**:

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 shall not alter or remove the existing structure on the Property in any manner that would expose contaminated soil, result in a release to the environment of contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structure illustrated in **Exhibit B** so that access to the underlying contamination is feasible, Ecology will require treatment or removal of the underlying contaminated soil.

### **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 in any part of the property, 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 [COUNTY] 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.

Ward Rugh, Inc. Attn: Andy Schmidt 710 West University Way Ellensburg, WA 98926 509 925-2827	Jeff Newschwander Washington State Department of Ecology 1250 West Alder Street Union Gap, WA 98903 509 454-7842 Jeff.newschwander@ecy.wa.gov
--	--

**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.

**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.

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

EXECUTED this 16th day of July, 2019.

by: Andrew Schmidt

Title: Vice President

INDIVIDUAL ACKNOWLEDGMENT

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington  
COUNTY OF Kittitas

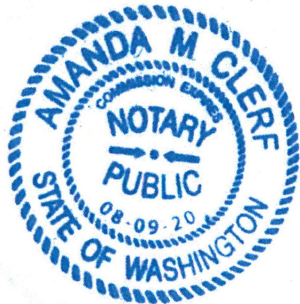
On this 16th day of July, 2019, I certify that Andrew J. Schmidt personally appeared before me, acknowledged that he is the individual described herein and who executed the within and foregoing instrument and signed the same at his free and voluntary act and deed for the uses and purposes therein mentioned.

Audrey M. Oehl

Notary Public in and for the State of Washington

Residing at Ellensburg

My appointment expires 08-09-20





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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

by: Valerie Broun  
Title: Section Manager  
Dated: 7/30/19

STATE ACKNOWLEDGMENT

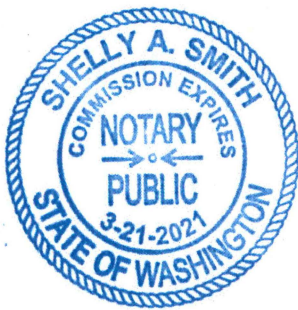
STATE OF Washington  
COUNTY OF YAKIMA

On this 30 day of July, 2019, I certify that Valerie Broun personally appeared before me, acknowledged that he/she is the Employee 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.

Shelly A. Smith (Shelly A. Smith)  
Notary Public in and for the State of Washington

Residing at Union Gap, WA

My appointment expires MARCH 21, 2021



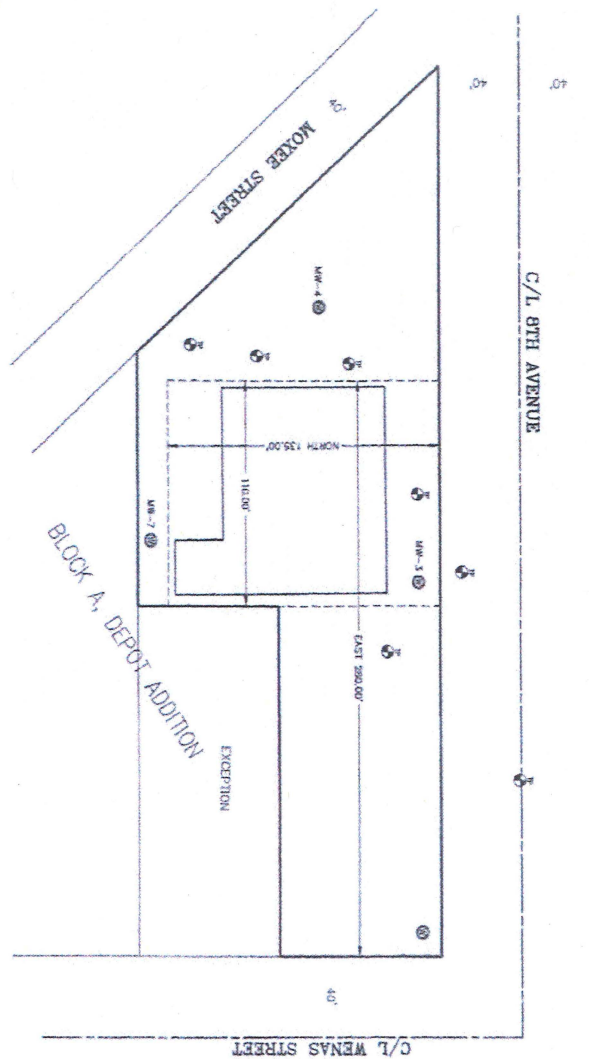
# Exhibit A

## LEGAL DESCRIPTION

Tax Parcel No. 397833:

The north 135 feet, perpendicular measure, of the West 110 feet of the East 280 feet, perpendicular measure, of Block A, DEPOT ADDITION TO THE CITY OF ELLENSBURG, in the County of Kittitas, State of Washington, as per plat thereof recorded in Book 1 of Plats, page 59. Records of said County.

All as per attached Exhibit.



WARD RUGH EXHIBIT  
SEC. 2, T. 17 N., R. 18 E., W.M.

# Exhibit B – Site Plan

File: L:\Notebooks\1931601\_Ward\_Rugh\_Ebensburg\CAD\1931601-002 (SPlan).dwg Layout: 8.5x11 - H Date: 05-29-2019 Author: evinfaichid

