

ENVIRONMENTAL COVENANT

After Recording Return
Original Signed Covenant to:
Marni Solheim
Solid Waste Management Program
Department of Ecology
4601 N. Monroe St.
Spokane, WA 99205

RECEIVED
AUG 16 2019
Department of Ecology
Eastern Washington Office

Environmental Covenant

Grantor: City of Walla Walla
Grantee: State of Washington, Department of Ecology (hereafter "Ecology")
Brief Legal Description: Portions of the south half of the southwest quarter of Section 14, portions of the southeast quarter of the southeast quarter of Section 15, the northeast quarter of the northeast quarter of Section 22, and portions of the north half of the northwest quarter of Section 23; all in Township 7 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington.
Tax Parcel Nos.: All of 350722110001 and 350715440004, and portions of 350714310002, 350723110005, and 350714330003.

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW, and Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW.
- b. The property that is the subject of this Covenant consists of the site commonly known as the Sudbury Road Landfill Site, Cleanup Site No. 2485, Facility Site No. 4446540 (the "Property"). The Property is legally described in Exhibit A. Figures 1 and 2 attached as Exhibit B depict the general location and landfill boundary. If there are differences between the depictions and legal description, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA and the post-closure requirements under chapter 70.95 RCW. This Covenant is required because a conditional point of compliance has been established for groundwater and because municipal solid waste will remain on the Property after completion of the remedial action and closure of the landfill. Containment of municipal solid waste is part of the remedial action performed under MTCA. This covenant is also required because municipal solid waste is contained on the Property beneath a final cover system that is designed to minimize infiltration and erosion and to prevent exposing waste. In addition, during the post-closure care period conducted in accordance with Chapter 173-351 WAC and all other applicable laws, the owner or operator is required, under the terms of its Municipal Solid Waste permit from the jurisdictional health department, to maintain and operate leachate control systems, and gas and groundwater monitoring systems on the Property.

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 maintain the integrity of remedial actions conducted at the Property. Records describing the extent of residual contamination and remedial actions conducted, and landfill closure and post-closure activities are available through Ecology.

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. UECA defines the grantee of an environmental covenant as a Holder. As the 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 the Holder, are not an interest in real property.

COVENANT

The City of Walla Walla, as Grantor and owner of the Property, hereby grants to 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 and the Landfill Unit/s.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action or landfill unit/s and any operation, maintenance, inspection or monitoring of that remedial action or landfill unit/s without prior written approval from Ecology. Such activities shall include those that may:

- i. Threaten the integrity of any cover, waste containment, storm water or leachate control, gas collection and/or treatment system, public access control, or environmental monitoring system.
- ii. Interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the landfill unit/s and continued protection of human health and the environment.
- iii. Result in release of solid waste constituents or otherwise exacerbate exposures to solid waste constituents.

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 through any activity that results in the release of solid waste constituents or residual contamination 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 landfill closure, or that exacerbates or creates a new exposure to residual contamination or municipal solid waste 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 the landfill unit/s post-closure permit requirements, 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.

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. The Grantor shall maintain a suitable barrier that restricts unauthorized access to the Property.

b. Any activity on the Property that may disturb the integrity of landfill caps are prohibited without prior written approval from Ecology. Such activities include, but are not limited to, the following: drilling; digging; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity. Routine operation and maintenance tasks that do not disturb the integrity of the landfill cap are not within the scope of this requirement and prior written approval from Ecology is not required for those tasks.

c. To minimize the potential for mobilization of contaminants that may remain in the soil, municipal solid waste, and groundwater on the Property, no stormwater infiltration facilities shall be constructed on the Property. All stormwater catch basins, ponds, conveyance systems, and other appurtenances located within the Property shall receive written approval by Ecology and shall be constructed in a way that minimizes infiltration into soil or waste.

d. The residual contamination on the Property includes volatile organic constituents that may generate harmful vapors and biodegradable municipal solid wastes that may generate methane, a combustible gas. To minimize the potential for exposure to these vapors, no building or other enclosed structure shall be constructed above Areas 1, 2, 5, 6, and 7 without written approval by Ecology and suitable engineering controls.

e. Groundwater and landfill gas monitoring wells are located on the Property to monitor the performance of the remedial action and landfill unit/s. Grantor shall make reasonable efforts to protect these devices from damage.

f. Drilling of a well on the Property for any potable water supply purpose is strictly prohibited. Drilling of a well for any other non-potable purpose is prohibited without prior written approval from Ecology. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law. Notwithstanding the foregoing and when lawfully permitted, Grantor may continue to extract and use groundwater from an existing well located on the Property for its nonpotable purposes.

Section 3. Access.

a. The Grantor shall maintain reasonable access to all components necessary to construct, operate, inspect, monitor, and maintain the remedial action and landfill unit/s.

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 landfill post-closure activities, and enforce

compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, inspect any structures or systems on the Property, and to inspect related records. Except during an emergency, Ecology shall be accompanied by an authorized representative of the Grantor while on the Property unless otherwise agreed to by Grantor.

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. Notify Ecology 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 WALLA WALLA 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 to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, 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 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, or 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.

Frank Nicholson City of Walla Walla 55 Moore Street Walla Walla, WA 99362 509-524-4510 fnicholson@wallawalla.gov	Marni Solheim Washington State Department of Ecology Solid Waste Management Program 4601 N. Monroe Spokane, WA 99205 509-329-3564 Marni.solheim@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 Chapter 64.70 RCW, Chapter 70.105D RCW, Chapter 70.95 RCW, 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, UECA, and Chapter 70.95 RCW. 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, Solid Waste Management – Reduction and Recycling, chapter 70.95 RCW, and UEAC.

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 the Property and has authority to execute this Covenant.

EXECUTED this 9th day of August, 2019.

CITY OF WALLA WALLA

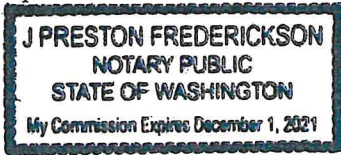


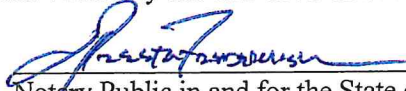
NABIEL SHAWA
CITY MANAGER, CITY OF WALLA WALLA

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF WASHINGTON
COUNTY OF WALLA WALLA

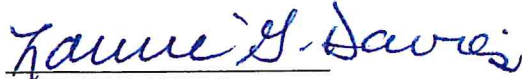
On this 9th day of AUGUST, 2019, I certify that NABIEL SHAWA personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the CITY MANAGER [TYPE OF AUTHORITY] of THE CITY OF WALLA WALLA [NAME OF PARTY BEING REPRESENTED] 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 WALLA WALLA, WA
My appointment expires DEC. 1, 2021

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


LAURIE DAVIES

PROGRAM MANAGER, SOLID WASTE MANAGEMENT PROGRAM

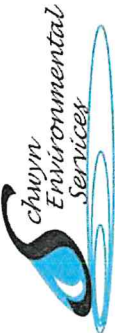
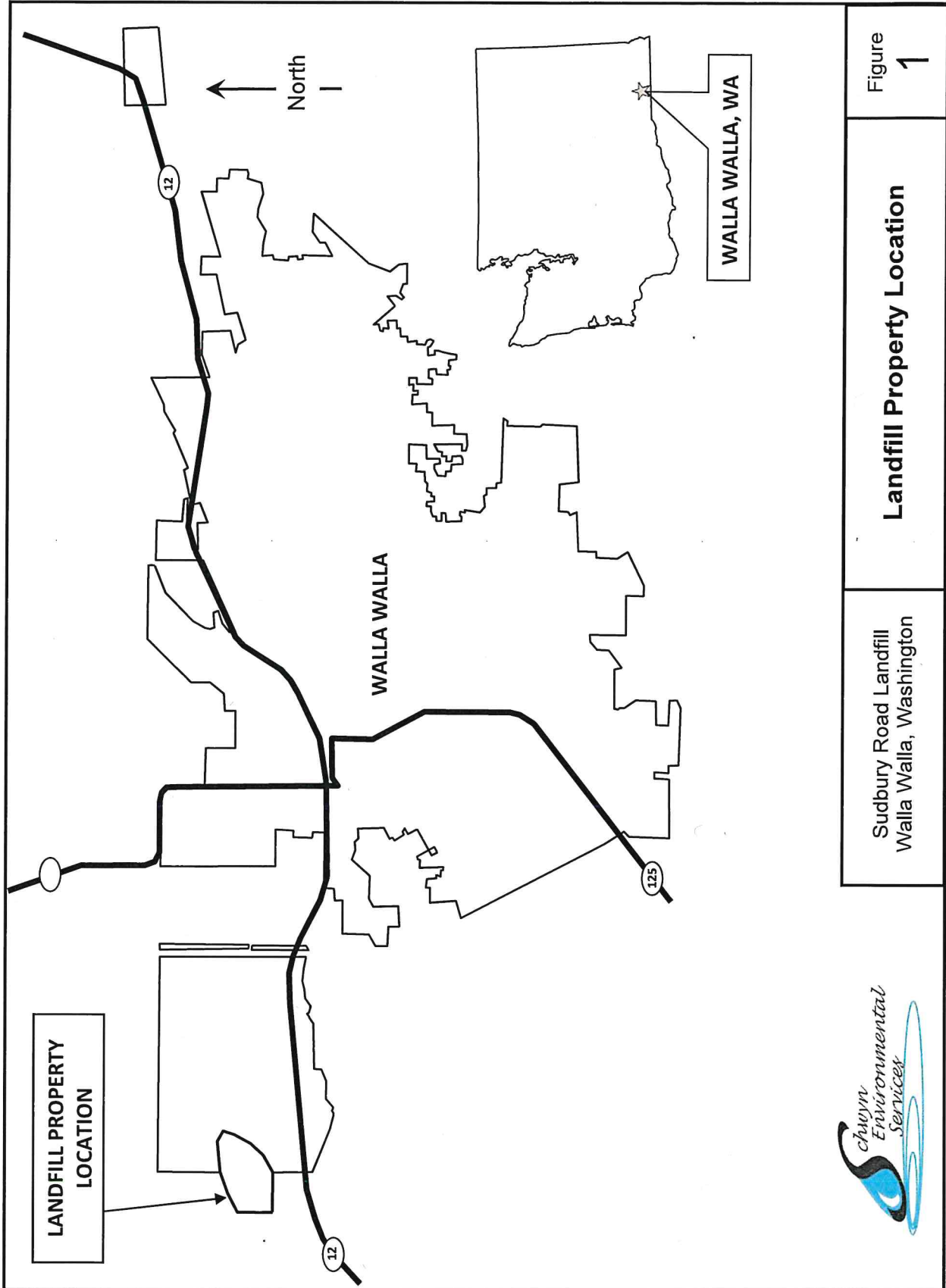
Dated: 8/27/19



Figures 1 and 2

**Exhibit A
Legal Description of Property**





Landfill Property Location

Sudbury Road Landfill
Walla Walla, Washington

Figure
1

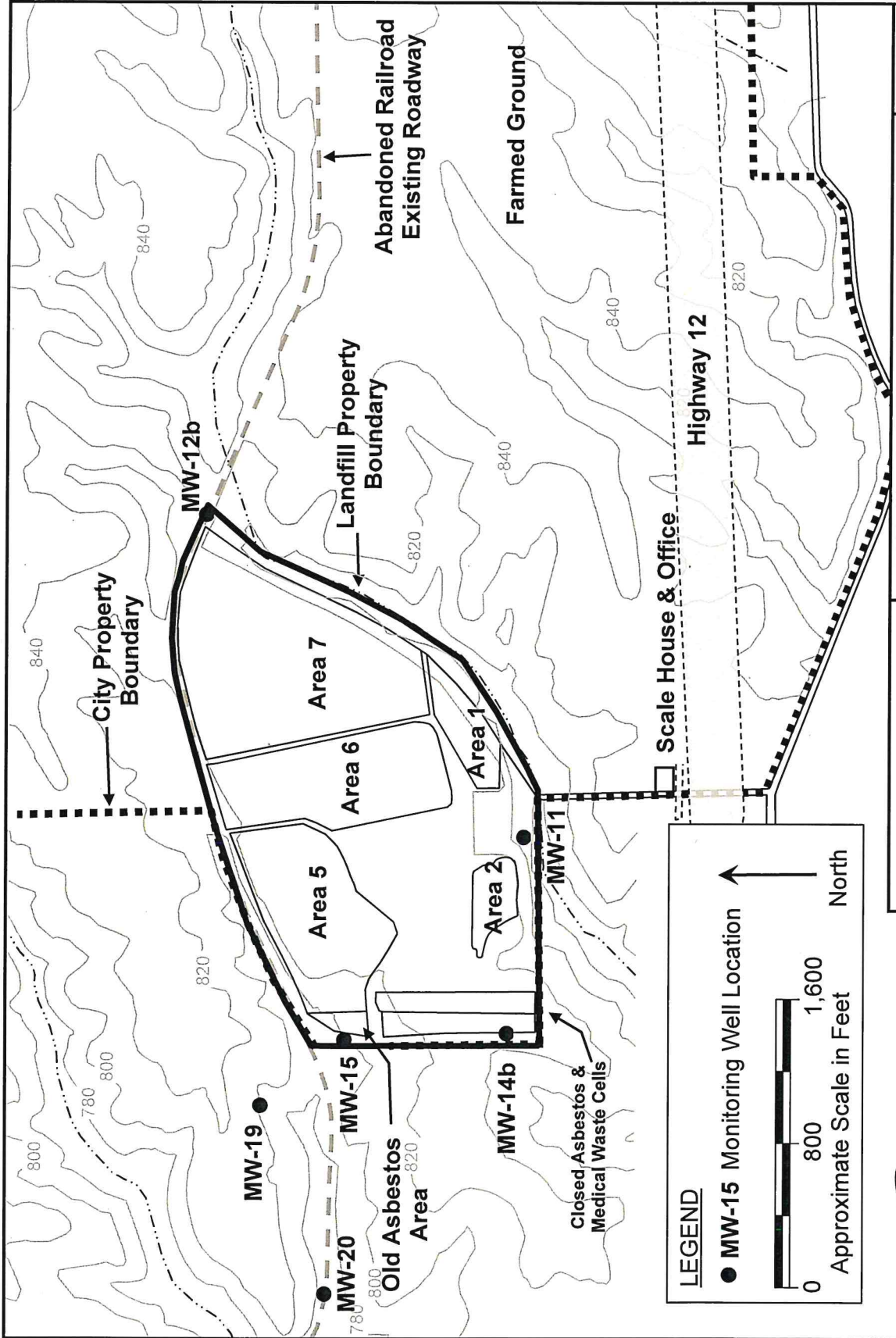


Figure
2

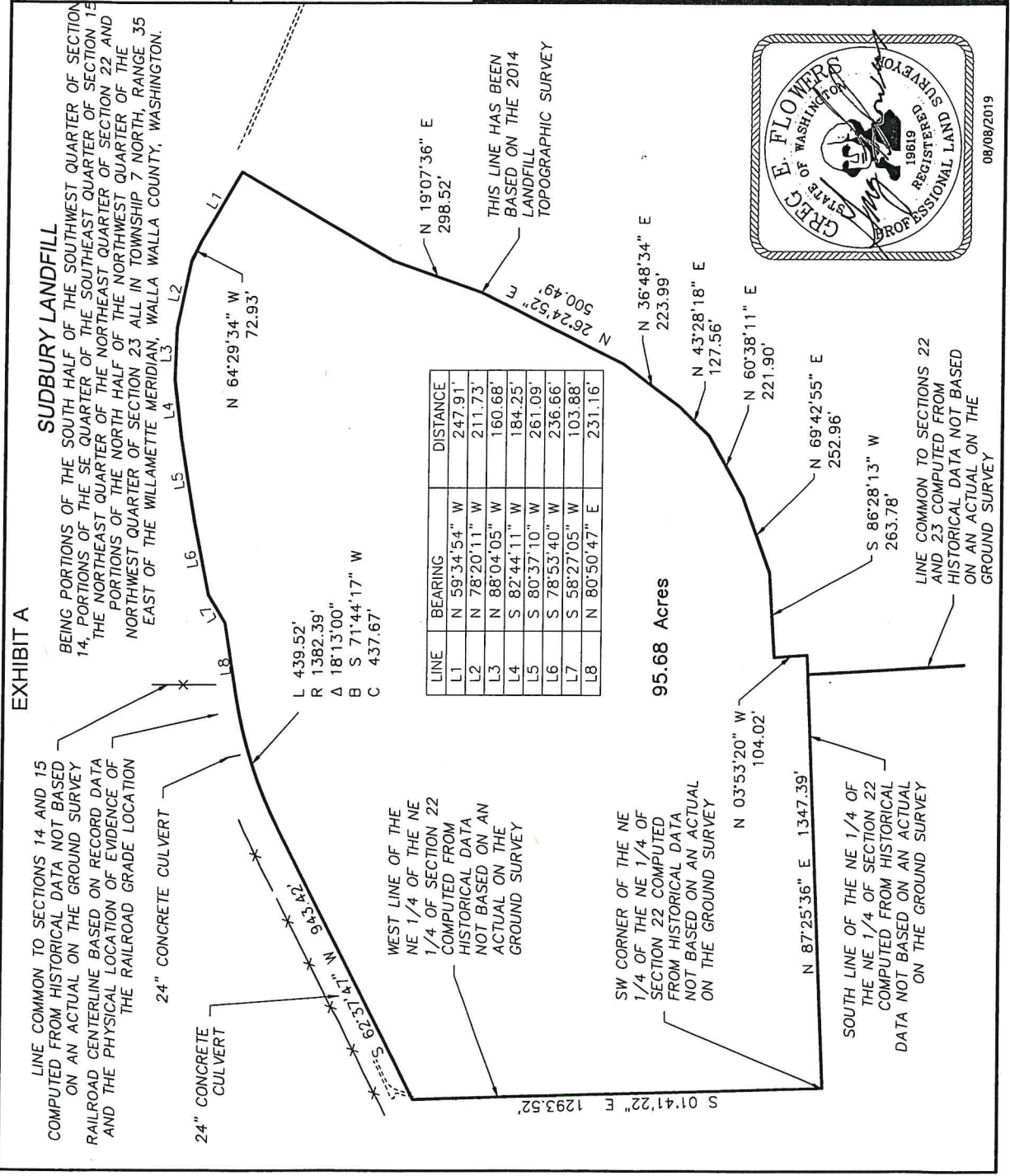
Landfill Property

Sudbury Road Landfill
Walla Walla, Washington

Chwyn
Environmental
Services

CLIENT: SCHWYNN ENVIRONMENTAL		PROJECT NO.: 3975
SURVEYOR: GREG E. FLOWERS		DATE: 08/08/2019
CALC BY: GEF	DRAWN BY: GEF	SCALE: 1" = 400'
SECTION: 23	TOWNSHIP: 7 NORTH	RANGE: 35 EAST
CITY: WALLA WALLA	COUNTY: WALLA WALLA	SHEET 1 OF 1

PBS Engineering and Environmental Inc.
 5 N Colville St, Ste 200
 Walla Walla, WA 99362
 509.956.3026
 pbsusa.com

LINE	BEARING	DISTANCE
L1	N 59°34'54" W	247.91'
L2	N 78°20'11" W	211.73'
L3	N 88°04'05" W	160.68'
L4	S 82°44'11" W	184.25'
L5	S 80°37'10" W	261.09'
L6	S 78°53'40" W	236.66'
L7	S 58°27'05" W	103.88'
L8	N 80°50'47" E	231.16'

95.68 Acres

LINE COMMON TO SECTIONS 22 AND 23 COMPUTED FROM HISTORICAL DATA NOT BASED ON AN ACTUAL ON THE GROUND SURVEY



Landfill Area Legal Description

Portions of the south half of the Southwest Quarter of Section 14, portions of the Southeast Quarter of the Southeast Quarter of Section 15, the Northeast Quarter of the Northeast Quarter of Section 22 and portions of the north half of the Northwest Quarter of Section 23 all in Township 7 North, Range 35 East of the Willamette Meridian, Walla Walla County, Washington being more particularly described as follows:

Beginning at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 22, Township 7 North, Range 35 East of the Willamette Meridian, Walla Walla County, State of Washington and running thence N87°25'36"E, along the South line of the Northeast Quarter of the Northeast Quarter of said Section 22 and the easterly prolongation thereof, a distance of 1347.39 feet to a point on the easterly side of the primary access road to the City of Walla Walla Sudbury Landfill; thence N03°53'20"W a distance of 104.02 feet; thence N86°28'13"E a distance of 263.78 feet; thence N69°42'55"E a distance of 252.96 feet; thence N60°38'11"E a distance of 221.90 feet; thence N43°28'18"E a distance of 127.56 feet; thence N36°48'34"E a distance of 223.99 feet; thence N26°24'52"E a distance of 500.49 feet; thence N19°07'36"E a distance of 298.52 feet; thence N29°52'06"E a distance of 555.89; thence N59°34'54"W a distance of 247.91 feet; thence N64°29'34"W a distance of 72.93 feet; thence N78°20'11"W a distance of 211.73 feet; thence N88°04'05"W a distance of 160.68 feet; thence S82°44'11"W a distance of 184.25 feet; thence S80°37'10"W a distance of 261.09 feet; thence S78°53'40"W a distance of 236.66 feet; thence S58°27'05"W a distance of 103.88 feet; thence S80°50'47"W a distance of 231.16 feet; thence with a curve turning to the left with an arc length of 439.52 feet, with a radius of 1382.39 feet, with a chord bearing of S71°44'17"W, with a chord length of 437.67feet; thence S62°37'47"W a distance of 943.42 feet to a point on the west line of the Northeast Quarter of the Northeast Quarter of said Section 22; thence S01°41'22"E, along the west line of the Northeast Quarter of the Northeast Quarter of said Section 22, a distance of 1293.52 feet to the point of beginning,

Having an area of 95.68 acres, more or less.



landfill area legal description.doc, 8/8/2019

5 NORTH COLVILLE STREET, SUITE 200, WALLA WALLA, WA 99362 • 509.956.3026 MAIN • 866.727.0140 FAX • PBSUSA.COM