

DECLARATION OF RESTRICTIVE COVENANT

DEQ Reference No.: RC-OWMRP-115-14-002
Facility Number 399487
RAP DEQ Approval Date _____

Recorded to protect public health, safety, welfare and the environment under the provisions of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq (Part 201) and Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.11501 et seq (Part 115).

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded to prohibit or restrict activities that could result in unacceptable exposure to groundwater contamination which is present at the property legally described in Exhibit 1 and situated in the **City of Ann Arbor**, County of **Washtenaw** ("Property").

The Property referred to as **Southeast Area Park** is associated with a sanitary landfill known as **Ann Arbor Landfill (Landfill) and a Michigan Department of Transportation (MDOT) easement**, for which a Remedial Action Plan ("RAP"), approved by the Michigan Department of Environmental Quality ("DEQ"), has been implemented to address groundwater contamination. The plan that was implemented to address groundwater contamination is fully described in the RAP document entitled **City of Ann Arbor Offsite Remedial Action Plan**, submitted by **The City of Ann Arbor** ("the RAP Operator").

The RAP required the recording of this Restrictive Covenant to restrict unacceptable exposures to hazardous substances located in groundwater at the Property and to prevent damage of monitoring wells, liners, waste containment structures or other element of the RAP constructed on the Property. Portions of the Property licensed as a sanitary landfill and not suspected of causing groundwater contamination are restricted by a separate document(s).

The restrictions contained in this Restrictive Covenant are based upon information available to the DEQ at the time the RAP was approved by the DEQ. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the RAP, future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Part 201, the discovery of environmental conditions at the Property that were not accounted for in the RAP, or use of the Property in a manner inconsistent with the restrictions described herein may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment.

The "*Limits of Land or Resource Use Restrictions*" attached hereto as Exhibit 1 and 2 provides the legal description(s), a survey and a map that describes where the Southeast Area Park is located in relation to the MDOT easement and the Landfill where unconfined waste currently exists or that area otherwise suspected of causing groundwater contamination. The entire Property referred to as Southeast Area Park is subject to land or groundwater use restrictions.

Summary of Contamination and Response Activities

Hazardous substance(s) listed in Exhibit 3 have been found in groundwater at the **Landfill, Southeast Area Park and the MDOT easement** in concentrations exceeding drinking water criteria established under Part 201. Areas of the Property described in Exhibits 1 and 2 may contain hazardous substances in excess of these concentrations **due to groundwater migration from the Landfill**.

Prior to recording of this Restrictive Covenant, the following activities have been or will be undertaken to minimize the migration of hazardous substances, as described in the RAP (check all that apply):

- Solid waste suspected of causing the contamination has been or will be removed from the ground and transferred to secure disposal areas.
- A final cover has been placed over waste disposal areas identified in Exhibit 2 suspected of causing the groundwater contamination. The final cover prevents exposure to solid waste and minimizes infiltration through the disposal area.
- Barriers have been installed in the ground around the landfill to prevent the migration of contaminated groundwater off-site.
- Groundwater is being pumped via purge(extraction) wells and discharged to the sanitary.
- Groundwater monitoring wells, identified in Exhibit 2, have been installed to monitor the nature and extent of groundwater contamination.
- Gas controls have been installed to prevent the migration of landfill gas.

The City of Ann Arbor maintains a closed Type II sanitary landfill located on the south side of Ellsworth Road in Ann Arbor Michigan. Two groundwater plumes, 1,4-dioxane and vinyl chloride, extend north from the landfill, under Ellsworth Road and into Southeast Area Park and the MDOT easement. Both plumes have maintained relative stability. The 1,4-dioxane plume has not been above applicable criteria in any of the off-site sampling locations since April 2008. However, vinyl chloride is above applicable criteria off-site in Southeast Area Park and the MDOT easement along the north and south sides of Interstate 94. A figure included in Exhibit 2 illustrates the location of the Ann Arbor Landfill, Southeast Area Park and MDOT easement.

Purge wells were first installed in 1992 to control migration of the contaminants. The captured water is discharged to the sanitary in accordance with an Industrial User Permit issued by the City of Ann Arbor. Between 1995 and 1996, a slurry wall was installed on the east, south and west sides of the landfill to prevent mixing of unimpacted upgradient groundwater with groundwater in contact with the landfill. The slurry wall was installed on three sides, with the majority of the northern boundary remaining open. Two purge wells are located at the northern property boundary opening.

A capture zone analysis was completed in 2009 that determined the current configuration (slurry wall and two purge wells at the northern boundary of the landfill) are maintaining full capture at the landfill boundary as well as capturing the vinyl chloride plume and a large portion of the 1,4-dioxane plume that is below criteria. A third purge well is located in Southeast Area Park that was turned off in January 2009 after successfully demonstrating that it was not necessary to maintain capture. With the exception of monthly maintenance visits and quarterly sampling events, the third purge well remains off.

A letter from the City of Ann Arbor indicating that Ellsworth Road shall remain a road is included in Exhibit 2. The Consent of Owner document is not required as the City of Ann Arbor is the

owner. Additionally, consent of easement holders is not required because groundwater is encountered at approximately 14 feet below ground surface; well below the installation of infrastructure. Utility workers would not be in contact with the groundwater.

Despite the response activities named above, contaminants remain present in groundwater at levels that require controls to prevent unacceptable exposures.

Definitions

"DEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 or the Part 201 Administrative Rules ("Part 201 Rules"); and Part 115 or the Part 115 Administrative Rules, shall have the same meaning as in this document.

NOW THEREFORE,

Declaration of Use Restrictions

Pursuant to the RAP, **The City of Ann Arbor**, the current Owner, hereby declares and covenants that the Property outlined in Exhibit 1 and 2 shall be subject to the following restrictions and conditions **and the Owner will prohibit others from the following:**

1. Groundwater Use Prohibited. The Owner shall prohibit the consumptive or other use of the groundwater, except for groundwater monitoring activities, unless approved in writing by DEQ.

2. Wells Prohibited. The Owner shall prohibit the construction of wells or other devices to extract groundwater for consumption, irrigation, or any other use, except as provided in the RAP, an approved groundwater monitoring Plan under Part 115, or other written approval by DEQ.

3. Earthwork Prohibited. The Owner shall prohibit any excavation, filling, grading, drilling or other intrusive activity that could affect the integrity of any final cover, leachate removal system or gas collection system within the restricted area shown in Exhibit 2, except as authorized by a Landfill Construction Permit, Operating License or other DEQ written approval.

4. Other Prohibited Activities. The Owner shall prohibit activities on the Property that may interfere with any element of the RAP, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the RAP.

5. Waste and Leachate Management. The Owner shall manage all solid waste, leachate and other debris on the Property in accordance with the applicable requirements of Part 115 of the NREPA and other state and federal law.

6. Access. The Owner shall grant to the DEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of the response activities and, inspect any records relating thereto, and to perform any actions necessary to maintain compliance with, Part 201 and the RAP.

7. Permanent Markers. ***No permanent markers are located on the property.***

8. Notice. The Owner shall provide notice to the DEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. A

conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and the applicable provisions of Section 20116 of the NREPA. The notice required to be made to the DEQ under this Paragraph shall be made to: Director, DEQ, P.O. Box 30473, Lansing, Michigan 48909-7973; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, citing the DEQ Reference Number listed at the top of this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

9. Term and Enforcement of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant may only be modified or rescinded with the written approval of the DEQ.

The State of Michigan, through the DEQ, and **The City of Ann Arbor**, the current Owner, may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

10. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

11. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner, and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, _____ and _____ have executed this Restrictive Covenant on this _____ day of _____, 201__.

By: _____
Signature

Name: _____
Print or Type Name

Title: _____

By: _____
Signature

Name: _____
Print or Type Name

Title: _____

STATE OF MICHIGAN
COUNTY OF WASHTENAW

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ and _____ on behalf of the city.

_____, Notary Public
_____ County, State of Michigan
Acting in _____ County
My Commission Expires: _____

Prepared By and When Recorded Return To:

Abigail Elias (P34941)
Office of the City Attorney
City of Ann Arbor
301 E. Huron Street, POB 8647
Ann Arbor, MI, 48104-8647

Tax Parcel I.D. No. 09-12-10-401-015 and 09-12-10-401-019

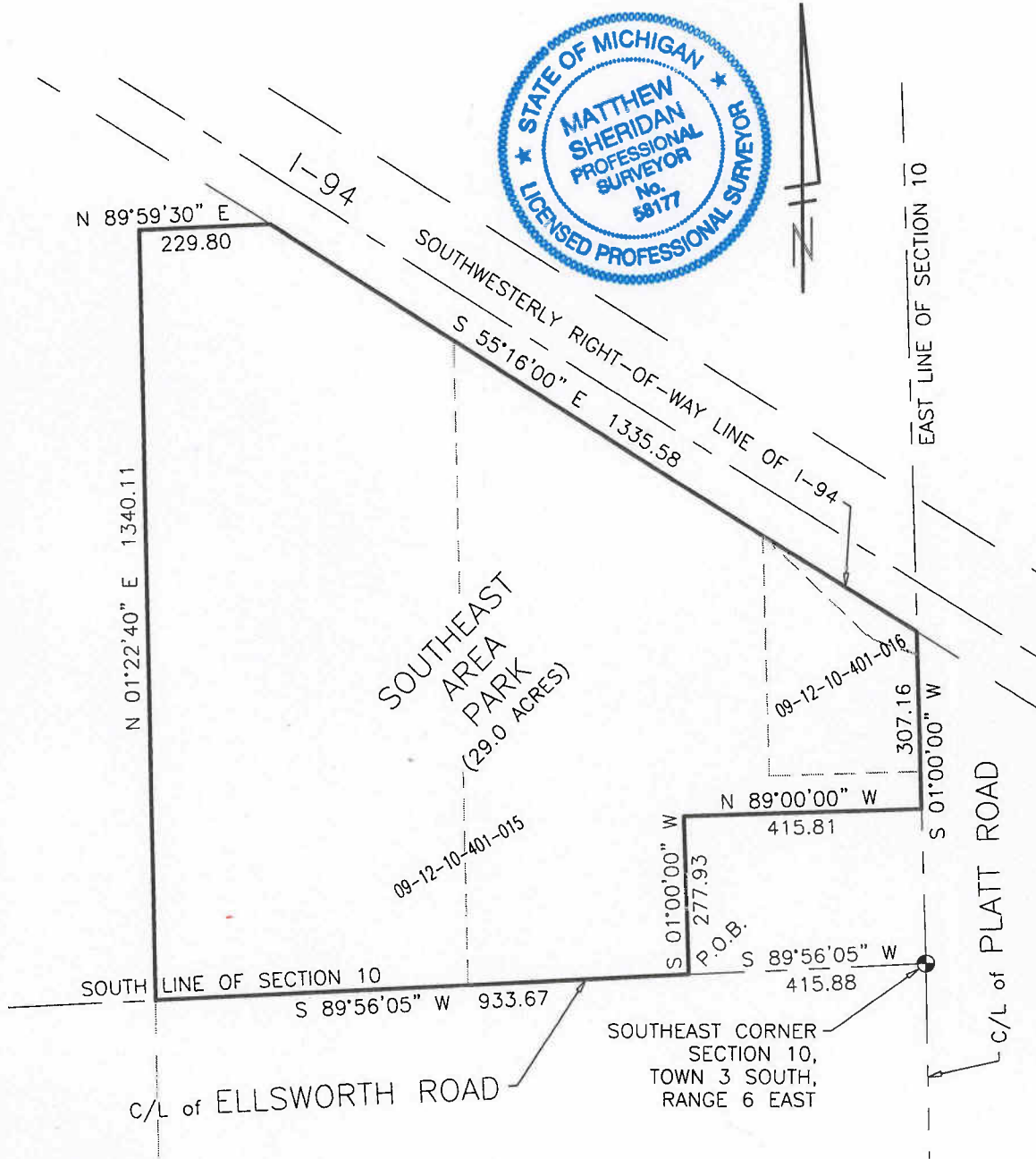
EXHIBIT 1

LEGAL DESCRIPTION AND SURVEY OF PROPERTY

A survey map of the property is included with the legal description and the parcel identification number.

SOUTHEAST AREA PARK

SOUTHEAST AREA PARK
 PART OF THE SOUTHEAST ¼ OF SECTION 10, TOWN 3 SOUTH, RANGE 6 EAST, PITTSFIELD TOWNSHIP (NOW CITY OF ANN ARBOR), WASHTENAW COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS:
 COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 10 AND PROCEEDING THENCE SOUTH 89°56'05" WEST 415.88 FEET ALONG THE SOUTH LINE OF SAID SECTION 10, ALSO BEING THE CENTERLINE OF ELLSWORTH ROAD, TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID LINE, SOUTH 89°56'05" WEST 933.67 FEET; THENCE NORTH 01°22'40" EAST 1340.11 FEET; THENCE NORTH 89°59'30" EAST 229.80 FEET, TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF I-94 (200 FEET WIDE); THENCE ALONG SAID RIGHT-OF-WAY LINE, SOUTH 55°16'00" EAST 1335.58 FEET TO THE EAST LINE OF SAID SECTION 10, ALSO BEING THE CENTERLINE OF PLATT ROAD; THENCE ALONG SAID LINE, SOUTH 01°00'00" WEST 307.16 FEET; THENCE NORTH 89°00'00" WEST 415.81 FEET; THENCE SOUTH 01°00'00" WEST 277.93 FEET, TO THE POINT OF BEGINNING. CONTAINING 29.0 ACRES. SUBJECT TO THE RIGHTS OF THE PUBLIC AND OF ANY GOVERNMENTAL UNIT IN ANY PART THEREOF, USED, TAKEN OR DEEDED FOR STREET, ROAD OR HIGHWAY PURPOSES. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.



THIS PROPERTY DESCRIPTION IS A COMPILATION OF THE FOLLOWING DEEDS RECORDED IN LIBER 2527, PAGES 51-52; LIBER 3883, PAGE 674; LIBER 3883, PAGE 675, WASHTENAW COUNTY RECORDS, AND HAVE BEEN COMBINED TO REPRESENT ONE WHOLE PARCEL. NO GROUND SURVEY HAS BEEN PERFORMED.

PROJECT MANAGEMENT - PUBLIC SERVICES - CITY OF ANN ARBOR



**Ann Arbor Landfill
2004-020**

301 E. HURON STREET
ANN ARBOR, MI 48107-8647
734-794-6410
www.a2gov.org

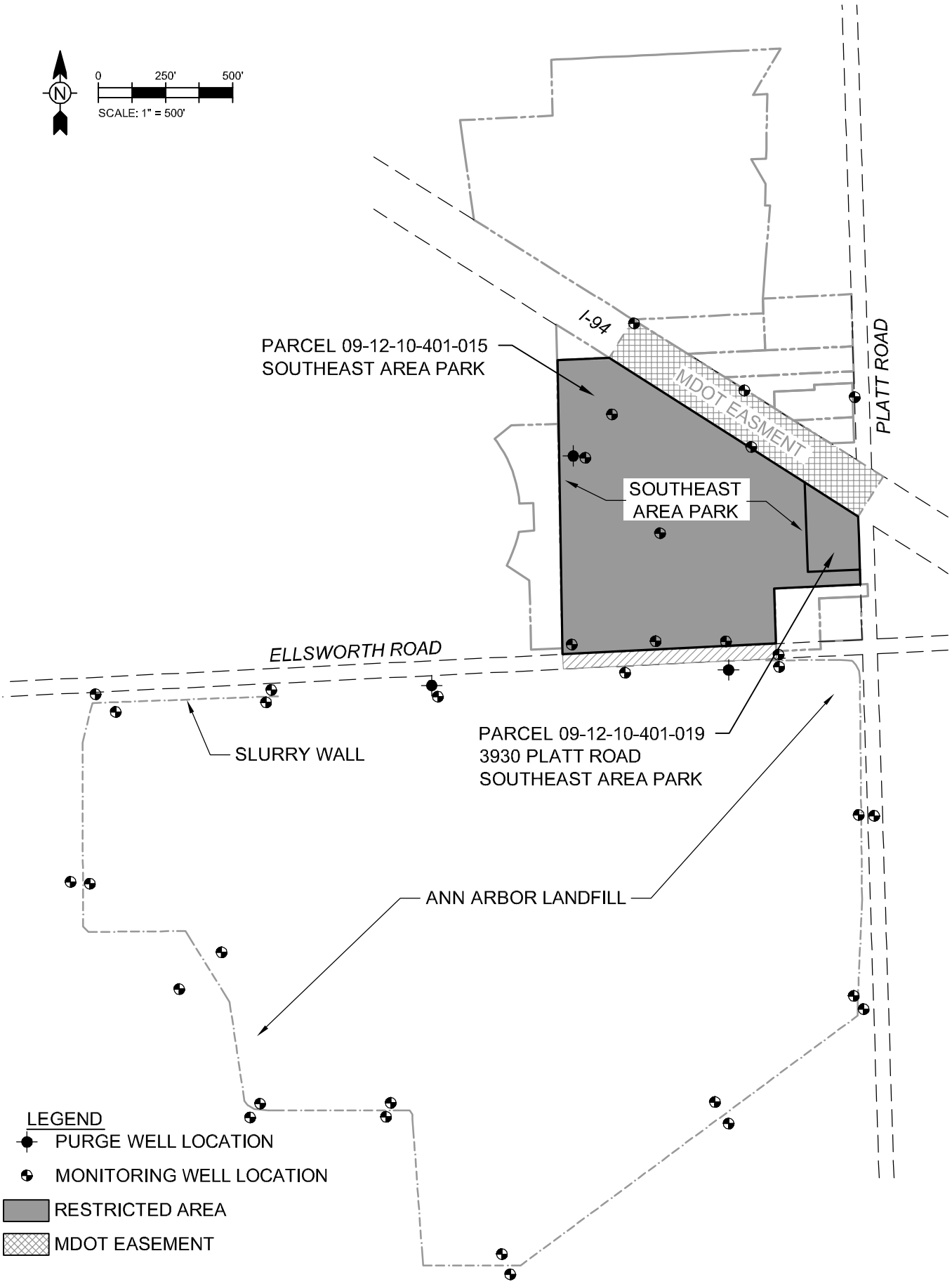
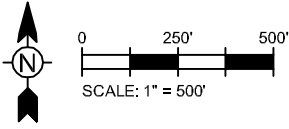
| | |
|-----------|---------------|
| DATE | 14 Mar., 2013 |
| REVISED | 24 Nov., 2014 |
| DRAWN | JAD |
| SCALE | 1" = 300' |
| SHEET No. | 1 of 1 |

EXHIBIT 2

MAP OF THE PROPERTY

A map is provided that illustrates the location of the Ann Arbor Landfill in proximity to Southeast Area Park. Monitoring and purge wells located on each property are included. Permanent markers are not on the property. A letter from the City of Ann Arbor indicating that Ellsworth Road shall remain a road is also included.

11/18/2014 11:03:29 AM - \\IERS008FS1\PROJECTS-GEO\PROJECTS\ANN ARBOR\LANDFILL\CAD\ANN ARBOR LAND FILL.DWG - HOLLENBECK, TODD



- LEGEND**
- PURGE WELL LOCATION
 - ⊕ MONITORING WELL LOCATION
 - RESTRICTED AREA
 - ▨ MDOT EASEMENT

Tt TETRA TECH

www.tetrattech.com

710 AVIS DRIVE
ANN ARBOR MI, 48108
(734) 665-6000

ANN ARBOR LANDFILL
ANN ARBOR MICHIGAN

**PARCELS 09-12-10-401-015
AND 09-12-10-401-019
SOUTHEAST AREA PARK**

| | |
|--------------|-------------|
| Project No.: | 117-1054010 |
| Date: | 11-18-14 |
| Designed By: | TAH |
| Exhibit | 2 |

Bar Measures 1 inch

Copyright: Tetra Tech



CITY OF ANN ARBOR, MICHIGAN

Public Services Area/Systems Planning
100 North Fifth Ave.

P.O. Box 8647, Ann Arbor, Michigan 48107

Phone: (734) 994-2744 Fax: (734) 794-6430

Web: www.a2gov.org Printed on recycled paper

March 11, 2013

Matthew Naud
Environmental Coordinator
City of Ann Arbor Systems Planning Unit
301 E. Huron
P.O. Box 8647
Ann Arbor, Michigan 48107

RE: Ellsworth Road north of Ann Arbor Landfill Zoning Designation

Ladies and Gentlemen:

Ellsworth Road located north of the Ann Arbor Landfill, west of Platt Road and east of Stone School Road is under the jurisdiction of, and is maintained by, the City of Ann Arbor. Utilities in this road right-of-way exist at depths of up to 9 feet below ground surface. The City of Ann Arbor Master Plan calls for this road to remain in place for public use and no additional uses for this space are currently planned. Please don't hesitate to contact me at 734-794-6430 ext. 43701 if you require further information.

Sincerely,
Systems Planning Unit

Cresson S. Slotten, P.E.
Manager

EXHIBIT 3

HAZARDOUS SUBSTANCES ABOVE CRITERIA IN GROUNDWATER

| <u>HAZARDOUS SUBSTANCE</u> | <u>CAS NUMBER</u> | <u>HIGHEST CONCENTRATION (ug/L)</u> | <u>RESIDENTIAL DRINKING WATER CRITERIA (ug/L)</u> |
|--------------------------------|-------------------|---|---|
| Vinyl Chloride | 75014 | 9.2 | 2.0 |
| Diethyl Ether | 60297 | 14 | 10 |

NOTE: Highest concentrations reported above were detected in Southeast Area Park during the October 2012 groundwater sampling event.