



Legal Protections for your Sanitary Control Area

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Public water suppliers in Washington State must protect drinking water sources. The sanitary control area (SCA) is your first line of defense in keeping contaminants out of your drinking water system.

You must maintain legal and physical control of your SCA. If you don't own the land around your water source, you need to have an enduring legal agreement in place that limits land uses and activities in that area. Water systems cannot rely on state or local agencies to regulate potential sources of contamination in the SCA.

There are some options when deciding how to protect your SCA. Basic alternatives for obtaining direct control of your SCA, listed in order of most to least effective, include:

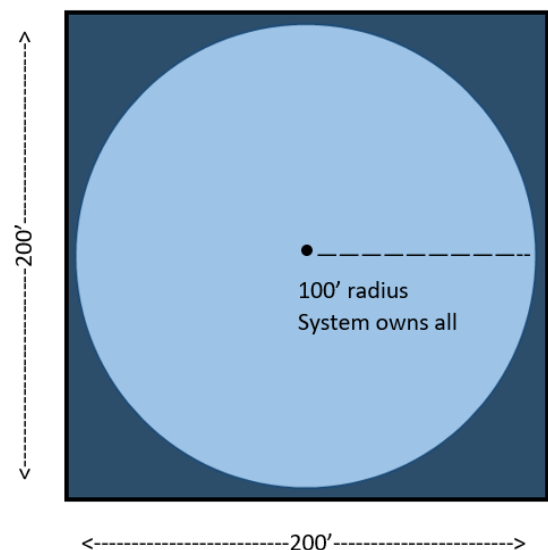
- ◆ Direct ownership plus declaration of covenant,
- ◆ Boundary line adjustment, then add to declaration of covenant,
- ◆ Restrictive covenant agreement plus easement, or
- ◆ Restrictive covenant agreement alone

Please consult with an attorney, preferably one experienced in real estate or land use, to find the best option for your system. This publication was not prepared by attorneys and is not intended to substitute for legal advice.

Direct ownership

Owning your entire SCA is the best way to directly control what happens there. In order to own the entire SCA around your source, your property must encompass the entire 100-foot (well) or 200-foot (spring) radius required (or other dimensions if a tailored SCA is necessary). This would require a site of at least 200 feet by 200 feet for a well, or 400 feet by 400 feet for a spring.

If the water system is, for example, being created as part of a new subdivision (short plat or plat), a dedicated lot should be created for the source and SCA as well as other water system equipment. This lot would then be owned and controlled by the water system (or, if part of a plat, could be under common ownership controlled by a homeowners' association that, in turn, owns the water system). If you're planning a new system or adding a new source to an existing system, it's best to locate the well at least 100 feet from your property line (if possible) so the SCA doesn't overlap onto neighboring property.



Minimum lot size for basic well and SCA.

Outside of the SCA issue but related: Don't forget the access! If the lot fronts onto a public street, a legal access point should be created. This usually involves approval by the local public works department and may require a driveway permit. Also check with your local government, or WSDOT for state highways, about right-of-way use for pipes and other conveyances. They may want you to sign a different type of legal document called a franchise agreement.

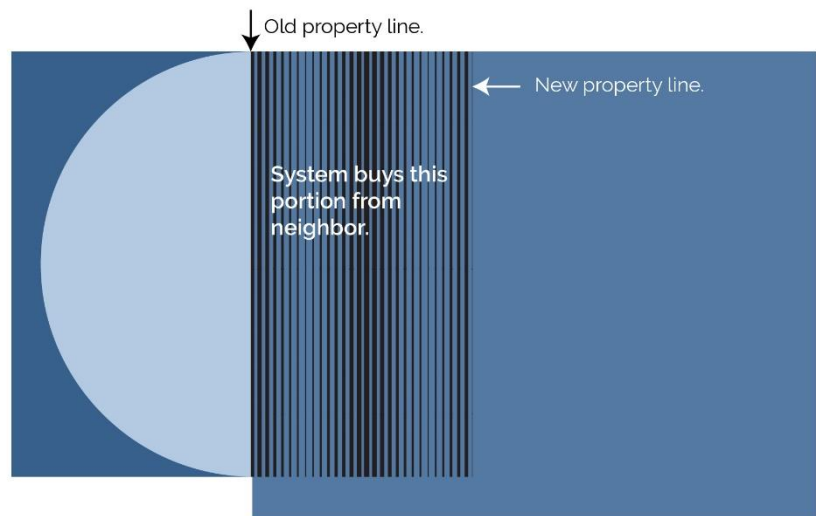
If the lot is surrounded by other properties and doesn't have road frontage, you should establish a legally described easement to serve as a driveway, which crosses over one or more properties owned by others. (More about easements below.) This is in addition to the SCA and is most easily accomplished at the time the land is originally subdivided.

What if you don't already own your SCA but want to acquire it? If a separate lot already exists, this is a real estate transaction; but if your well is on someone else's property, it will involve more work. **Please consult with your local planning department up front about what is needed to buy your SCA when it's part of another property.** Transferring ownership of one piece of a legally established lot without going through a short plat process usually creates a platting violation. The utility-related exemptions in state subdivision laws are narrow and do not include water systems. Besides paying for the land value, this will also involve costs for such things as application and recording fees, preparation of maps and legal descriptions and, if required, surveying. If the seller's property is mortgaged, they will likely need to get a partial fulfillment deed from their lender. This releases the lender's interest in the portion of the property being transferred to you. Otherwise, it can cause legal difficulties such as a "clouded title" later.

Once ownership is secured, the water system should record a legal document called a declaration of restrictive covenants that binds the system itself to making sure that certain uses and activities will not occur in the SCA. This applies only to the portion of the property where the source and SCA are located. If a system does not own its entire SCA, a declaration should still be filed for the portion that it does own. (More about covenants below.)

Boundary line adjustment (BLA)

If you own some property around an existing source but not enough for the required SCA, it might be possible to buy some additional land from a neighbor. A BLA is needed to accomplish this. It basically carves off a piece of the neighboring property and attaches it to yours. This is another example of something that will involve approval by your local planning department. Sometimes, a planning

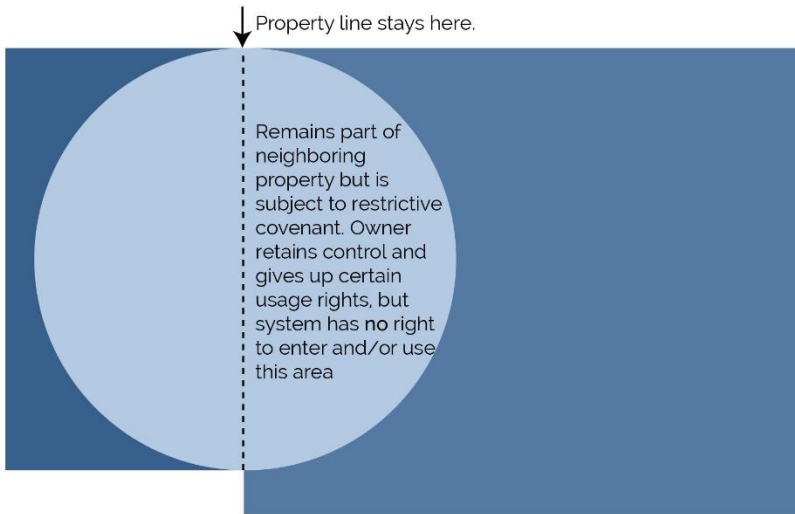


Boundary line adjustment example.

department may deny a BLA if it results in a property becoming nonconforming (for instance, if it makes a lot smaller than what the zoning would allow). It's best to inquire in advance and be clear about that the BLA is intended for resource protection and utility access. Similar to a short plat, a BLA will involve costs besides the land purchase price and a partial fulfillment deed.

If additional land containing the SCA is acquired, the declaration of restrictive covenants should be revised to include the adjusted SCA boundary.

What are covenants?



Covenant-restricted area example: no easement.

Covenants (sometimes called "covenants, conditions, and restrictions" or CC&Rs) are written promises, agreements and/or restrictions. CC&Rs are very common in subdivisions with homeowners associations to direct such things as appearance and upkeep. As applied to public water systems, a restrictive covenant is a legal document that sets out the activities and practices a property owner (system itself or neighbor) agrees to keep out of the SCA

associated with a particular water source. These are binding legal obligations associated with a particular piece of property that will pass from owner to owner. Establishment of a restrictive covenant alone does not give the water system the right to occupy or use land it does not own.



Covenant-restricted area example with easement.

The water system owner or operator is responsible for:

- ◆ Negotiating the covenant agreement with neighboring property owner(s).
- ◆ Paying the neighboring property owner(s) any agreed-upon fee.
- ◆ Preparing paperwork associated with the covenant.
- ◆ Recording the paperwork in the records office in the county where the property is located.
- ◆ Enforcing terms of the covenant agreement, should it become necessary.

There are two different forms used to set up covenants to protect the SCA associated with public water sources. Both of these are examples of “negative covenants” (promising **not** to do something) but are two different instruments because the purpose differs slightly.

1. A Declaration of Restrictive Covenant is used to establish restrictions on the portion of the SCA overlaying the water supplier’s own property. See Example 1 below.
2. A Restrictive Covenant Agreement is used to establish a legally binding agreement with one or more neighboring property owner(s) when the SCA extends beyond the water supplier’s own property. See Example 2 below.

In some cases, the system may need both types of covenants to protect the water source. You can tailor the examples included here for your own use but again, they are not intended to substitute for professional legal advice. If you use these forms, you will need the following information:

You will need a legal description of the portion of the property that’s subject to the covenants. A surveyor or title company should be able to prepare that information for you. For the Declaration of Restrictive Covenants form, this will be your own property where the source is located. For the Restrictive Covenants Agreement form, this will be the legal description of the neighboring property or portion where the SCA is located. In some cases, the legal description will be much longer and complex than the example given on the form. Then it can be referred to as “Attachment ____” and included in full separately.

For either form, you will also need a description of the portion of the property where the water source is located. We recommend that for clarity’s sake you include, as another attachment, a map that shows the source and its relationship to the property boundaries. All attachments should also be recorded along with the legal documents.

What is an easement?

An easement is a written agreement between property owners that allows one property owner to use another’s property in some specific way. As mentioned above, a public water system may use an easement to establish a driveway that goes across other people’s property to reach a water source for construction and maintenance purposes, or it may have an underground easement for pipes crossing another property. Used in conjunction with a restrictive covenant, an easement may also enable the water system to enter or use property that is within its SCA but that it does not directly own. Similar to a restrictive covenant, an easement is a binding legal obligation associated with a particular piece of property that will pass from owner to owner. Without one, a neighboring property owner could potentially bar the system from crossing its property or doing any work (for instance, repairs to well house or other equipment) on that neighbor’s land.

There are [different kinds of easements](#), and this area of law can be complicated depending on individual circumstances. Again, we highly encourage systems to get legal advice on the best approach for their given situation.

Tips to protect your system's legal interests

When dealing with a neighboring property owner, **never rely on a “handshake agreement” instead of a properly recorded legal document.** Land ownership can change over time. Today's good-faith arrangement can be easily abandoned tomorrow, making it difficult to protect your source. Similarly, make certain that access to your well or intake is legally guaranteed. Any legal agreements need to be enduring so that even if the property changes hands, the SCA and source access continue to be protected. Recording of the legal agreement is a basic element a court would look at if questions arise about its applicability to subsequent property owners.

If your system is older, go back and make sure these things are in place. Some systems that still operate today were first created at a time when SCA regulations weren't in place, so they may not have these protections for land use or access. Sometimes, growth and redevelopment has happened around them that threatens the system's functionality. Taking care of this for older systems will help to protect their viability.

Also, never buy part of someone else's property without going through the appropriate land division procedures. Consult your local planning department.

Neighboring landowners don't have to give you access or protection. They may want payment in return for giving up the right to fully use their property as they see fit. If a lump-sum payment or yearly rent is negotiated, it should be memorialized in the recorded legal agreement. If you're uncomfortable with or unskilled at legal negotiation, we highly recommend using an attorney or other experienced agent to negotiate with a neighbor on land purchase or legal agreements. Department of Health cannot negotiate on your behalf. Do not situate a new water source in a place where you're not confident in your ability to protect the SCA.

Finally, even if you've taken steps to legally protect your SCA, sometimes a neighboring property owner or their tenants will violate the legal agreement. Unfortunately, public agencies, including Department of Health, cannot police this; it becomes a civil matter between the system and the neighbor. Reaching a mutually acceptable conclusion can also be a matter of legal negotiation or, occasionally, litigation. This is why it's best if you simply own the property.

For legal questions, please consult your attorney. For non-legal information or assistance, [contact your DOH/ODW regional office](#).

Disclaimer regarding use of the forms on the following pages: These forms are provided for informational purposes only and are not intended as complete or legally sufficient forms. Washington State Department of Health nor any of its officials and employees make any warranty of any kind, express or implied, in relation to any information on these forms or any use made of these forms by any person. No information on these forms, nor any use made of these forms shall create any liability on the part of Washington State Department of Health or any of its officials or employees. As with any document affecting the rights and responsibilities of real property ownership, we recommend that you

consult with your private legal counsel before filling out, signing, or making any other use of these forms.

For more information

Department of Health Office of Drinking Water

[Eastern Regional Office](#) 509-329-2100

[Northwest Regional Office](#) 253-395-6750

[Southwest Regional Office](#) 360-236-3030

Our publications are online at doh.wa.gov/drinkingwater.



To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email civil.rights@doh.wa.gov.

Example 1

DECLARATION OF RESTRICTIVE COVENANT

I (we) the undersigned, owner(s) in fee simple of the land described herein, hereby declare this covenant and place same on record.

I (we) the grantor(s) herein, am (are) the owner(s) in fee simple of (an interest to) the following described real estate situated in Thurston County, State of Washington; to wit:

EXAMPLE ONLY—USE YOUR OWN PROPERTY'S LEGAL DESCRIPTION

Lot 2 of Short Plat #1234 as recorded in Volume 15 of Short Plats, pages 12-14. Auditor's File No. 1234567. Records of Thurston County, Washington as shown on and described on Attachment "A".

on which the grantor(s) owns and operates a well and waterworks supplying water for public use located on said real estate, at:

EXAMPLE ONLY—USE ACTUAL DESCRIPTION

50 feet south and 100 feet east of the Northwest corner of Lot 2 of Short Plat 1234, as described and shown on Attachment "A".

and grantor(s) is (are) required to keep the water supplied from said well free from impurities which might be injurious to the public health.

It is the purpose of these grants and covenants to prevent certain practices hereinafter enumerated in the use of said grantor(s) water supply.

NOW, THEREFORE, the grantor(s) agree(s) and covenant(s) that said grantor(s), his (her) (their) heirs, successors and assigns will not construct, maintain, apply, or suffer to be constructed, maintained, or applied upon the said land of the grantor(s) and within 100 (one hundred) feet of the well herein described, so long as the same is operated to furnish water for public consumption, any potential source of contamination. such as septic tanks and drain fields, sewer lines, underground storage tanks, injection wells, roads, railroad tracks, vehicles, structures, barns, feed stations, keeping of animals, animal manure piles, liquid or dry chemical storage, pesticides (including herbicides, insecticides, rodenticides, bactericides, fungicides, and larvicides), fertilizers, hazardous waste, compost, or garbage of any kind or description.

These covenants shall run with the land and shall be binding to all parties having or acquiring any right, title, or interest in the land described herein or any part thereof, and shall inure to the benefit of each owner thereof.

WITNESS hand this day ____ of _____, 20 ____.

_____ (Seal)

_____ (Seal)

Grantor(s)

State of Washington)

County of)

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on this ____ day of _____, 20__ , personally appeared before me _____ to me known to be the individual described in and who executed the within instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of Washington, residing at _____

My Commission Expires: _____

SECTION

A

SECTION

B

Example 2

RESTRICTIVE COVENANT AGREEMENT

The grantor(s) herein is (are) the owner(s) of (an interest in) the following described real estate situated in _____ County, State of Washington.

EXAMPLE ONLY—USE LEGAL DESCRIPTION OF THE PROPERTY THE COVENANT WILL APPLY TO

Lot 1 of Short Plat #1234 as recorded in Volume 15 of Short Plats, pages 12-14. Auditor's File No. 1234567. Records of Thurston County, Washington as shown on and described on Attachment "A".

The grantee(s) herein, own(s) and operate(s) a well and waterworks supplying water for public use, located upon the following described real estate situated in _____ County State of Washington:

EXAMPLE ONLY—USE ACTUAL DESCRIPTION

50 feet south and 100 feet east of the Northwest corner of Lot 2 of Short Plat 1234, as described and shown on Attachment "A".

which well and waterworks are in close proximity to the land of the grantor(s), and said grantee(s) is (are) required to keep the water supplied from said well free from impurities which might be injurious to the public health. It is the purpose of these grants and covenants to prevent practices hereinafter enumerated in the use of the said grantor(s) land which might contaminate said water supply.

NOW, THEREFORE, OPTIONAL: Insert "in consideration of" language if payment is involved

the grantor(s) agree(s) and covenant(s) that said grantee(s), its successors and assigns, said covenants to run with the land for the benefit of the land of the grantee(s), that said grantor(s), his (her) (their) heirs, successors and assigns will not construct, maintain, apply, or suffer to be constructed, maintained, or applied upon the said land of the grantor(s) and within 100 (one hundred) feet of the well herein described, so long as the same is operated to furnish water for public consumption, any potential source of contamination, such as septic tanks and drain fields, sewer lines, underground storage tanks, injection wells, roads, railroad tracks, vehicles, structures, barns, feed stations, keeping of animals, animal manure piles, liquid or dry chemical storage, pesticides (including herbicides, insecticides, rodenticides, bactericides, fungicides, and larvicides), fertilizers, hazardous waste, compost, or garbage of any kind or description.

These covenants shall run with the land and shall be binding to all parties having or acquiring any right, title, or interest in the land described herein or any part thereof, and shall inure to the benefit of each owner thereof.

WITNESS hand this _____ day of _____, 20 ____.

_____ (Seal)

_____ (Seal)

Grantor(s)

State of Washington)

County of)

I, the undersigned, a Notary Public in and for the above named County and State, do hereby certify that on

This _____ day of _____, 20 , personally appeared before me

_____ to me known to be the individual described in and who executed the within instrument, and acknowledge that he (they) signed and sealed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of Washington, residing at _____

My Commission Expires: _____

Attachment A Map Example

JOHN DOE WATER SYSTEM

WELL LOCATION MAP

Legal Description

Lots 1 and 2 of Short Plat number 1234 as recorded in Volume 15 of Short Plat at pages 12 through 14, Auditors File No. 1234567, Records of ANY County, Washington.

