

**AMENDMENT TO THE  
AGREEMENT BETWEEN KENOSHA COUNTY AND  
WASTE MANAGEMENT OF WISCONSIN, INC.**

This Amendment is made and entered into by and between Kenosha County, a Wisconsin municipality ("County") and Waste Management of Wisconsin, Inc. a Wisconsin corporation ("Operator"), this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**RECITALS**

**WHEREAS**, the Operator has applied to the County for the necessary zoning and conditional use permit to allow the construction and operation of an expansion of its current landfilling activities to be known as the "Western Expansion" at the Pheasant Run Recycling and Disposal Facility (RDF); and

**WHEREAS**, said Western Expansion is to be located in the Town of Paris on a portion of the former Sabin farm and is preliminarily described in Exhibit A; and

**WHEREAS**, the Operator has commenced the siting process by sending a notice dated February 20, 2003 to the County pursuant to Sec. 289.22(1m) Wis. Stats.; and

**WHEREAS**, the County adopted a resolution dated March 18, 2003 pursuant to sec. 289.33(6), appointed members to the negotiating committee pursuant to sec. 289.33(7) and has participated in the negotiating process pursuant to sec. 289.33(9); and

**WHEREAS**, the parties previously entered into an Agreement ("Agreement") dated April 17, 2000; and

**WHEREAS**, the Operator and the County have discussed certain concerns of the County; and

**WHEREAS**, the parties desire to address these concerns utilizing the siting process provided by Section 289.33 and by amending the prior Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Amendment and other considerations, the parties agree that the Agreement shall be amended or revised as follows:

1. The first sentence of Article I "TERM" of the Agreement shall be deleted and replaced with the following:

"The Term of the Agreement shall extend until solid waste is no longer being disposed of in the existing Pheasant Run RDF, the Western Expansion or any future additional expansion(s) of the Pheasant Run RDF provided the County has approved such additional expansion(s) (hereinafter referred to collectively as the "Facilities")."

2. Article II “FREE DISPOSAL OF MUNICIPALLY GENERATED WASTE” of the Agreement shall be deleted and replaced with the following:

“Except as otherwise provided in this Article, the County shall have the right, during the Term of this Agreement, to transport highway litter and other related highway solid waste to Pheasant Run RDF at no charge except as hereinafter provided. ~~for disposal free of the Operator’s disposal fee.~~ In addition, the County shall have the right to similar free disposal of solid waste resulting from the demolition of houses located in the Fox River Valley and the demolition of County buildings or facilities provided: (1) the County has title to the houses, buildings and facilities; (2) the County has used reasonable efforts to recycle and/or reuse the waste resulting from the demolition; and (3) the County transports or has transported at its expense the remaining demolition waste.

Notwithstanding the foregoing, the County shall have no right to deliver to or have delivered to the Pheasant Run RDF any hazardous, toxic or radioactive waste or substance as defined by applicable Federal, State or local statutes, laws, regulations or ordinances, or asbestos waste. Further, the County shall have no right to deliver or have delivered to the Pheasant Run RDF any tires or other waste prohibited by Section 287.07 Wis. Stats. The County shall be responsible for all taxes, fees and surcharges, etc. imposed by Federal and State governments upon generators of solid waste.

Quarterly, the Operator shall provide the County with a written statement of the weight of the County’s waste transported to and disposed of at the Pheasant Run RDF during the quarter.”

3. The second paragraph of Article III “PAYMENTS” of the Agreement is deleted and replaced with the following:

The foregoing tipping fee shall be adjusted annually by a four percent (4%) increase. The base date for the adjustment is March 1, 2000. The first adjustment of the tipping fee shall be made as of March 1, 2001. Subsequent annual adjustments shall be made effective the first day of each March thereafter. However, whether or not the Operator is disposing of solid waste in the Western Expansion, on January 1, 2010 the then prevailing tipping shall be increased to .68 cents per ton and said rate shall be increased by four percent (4%) effective each subsequent January 1<sup>st</sup> during the Term of this Agreement or extensions thereof.

4. Article V “ASSISTANCE BY COUNTY” of the Agreement is deleted and replaced with the following:

“By execution of this Amendment to the Agreement, the County acknowledges the Operator is in full compliance with all applicable existing County ordinances, regulation, permits, licenses and approvals that may be required to allow the Operator to construct, operate, maintain, repair, close and provide long-term care of the Pheasant Run RDF including the requirements imposed by the County Zoning

Ordinances for the Western Expansion. Further, by execution of this Agreement, the County covenants that the Operator owes no additional licensing or permitting fees, taxes or surcharges for the operation of the Western Expansion except the payments required by the law or by this Agreement and except real and personal property taxes.”

5. A new Article XII shall be added to the Agreement to provide as follows:

## ARTICLE XII ON-SITE SOIL RECONTOURING

“The Operator shall, at its sole expense, arrange to re-contour the existing soil stockpile located to the North of the existing Kenosha County Center, 19600 75<sup>th</sup> Street, Bristol, WI 53104 (“Stockpile”) depicted in half tones in Exhibit B € attached hereto. The re-contouring shall be undertaken pursuant to final plans to be provided by the County. Unless otherwise agreed to by the parties, the re-contouring shall be completed no later than December 31, 2012 or within nine (9) months after the County gives written notice of its intention to commence construction of a new facility adjacent to the existing County Center, whichever is earlier. The final plans shall include the following provisions and limitations:

### A. Scope of the Project

1. The maximum amount of soil to be re-contoured by the Operator shall not exceed 47,000 cubic yards.

~~2. Approximately 4,000 cubic yards shall be relocated by the Operator from the Stockpile to fill the wetland area located under the crescent shaped Berm to be located to the West of the County’s proposed new facility (Berm) as shown on Exhibit B, attached hereto.~~

~~3. After filling the wetland, the Stockpile shall be used by the Operator to construct the Berm depicted in Exhibit B.~~

~~4. Then, if there is any portion of the 47,000 cubic yard stockpile remaining, the Operator shall move it to the Northeast corner of the County’s property as designated by the County.~~

2. . Approximately 4,000 cubic yards shall be relocated by the Operator from the Stockpile to fill the “DNR Approved Wetland Fill Area” as shown in purple shading on Exhibit B, located along State Trunk Highway (STH) 45 and under part of the proposed Berm and within the area labeled “Berm Area” as shown on Exhibit B, attached hereto.

3. . After filling the wetland, the Stockpile shall be used by the Operator to construct the Berm within the “Berm Area” as shown in orange

cross-hatch on Exhibit B. The Berm area dimensions are 65 feet east/west and 800 feet north/south with the west line being the existing and anticipated east Right-of-Way of STH 45. The general Berm design will be one that is meandering with 3 foot of undulation having a maximum height of 10-13 feet with side slopes not to exceed 2.5 to 1. Design details will be determined by Kenosha County prior to commencing re-contouring.

4. After the Stockpile has been relocated the finished grade of the Stockpile area shall have a 1% slope in a general direction from west to east with the eastern most area being the 774 grade elevation allowing for sheet flow drainage to the wetland.

5. Then, if there is any portion of the 47,000 cubic yard stockpile remaining, (this is not anticipated) the Operator shall use the material to re-grade the swale at the Northwest corner of the Kenosha County Center according to design details..

6. ~~5.~~ It is the intention of the parties that none of the soil relocated from the Stockpile will be placed within those areas which the County anticipates will be the footprint of the new County facility and associated structures, parking lots and sidewalks.

#### B. Operational Requirements and Limitations

1. The Relocation Project will not require the use of trucks and will be only undertaken on contiguous property owned by the County.

2. The parties acknowledge and agree that the Relocation Project will be undertaken by one of the contractors retained by the Operator to construct caps on its existing landfills, to undertake mass excavation for the Western Expansion and/or to construct the first cell of the Western Expansion; and further acknowledge and agree that said relocation project shall be undertaken only at the time said contractor is undertaking such construction.

3. The County shall be solely responsible for giving all required notices and for obtaining all necessary licenses, permits, and approvals and the Operator shall have no obligation to undertake the above stated Relocation Project until such notices are given and all licenses, permits and approvals are obtained. Specifically the County shall be solely responsible for obtaining all necessary license, permits and approvals including Chapter 30 permits for filling the wetland and shall indemnify and hold the Operator harmless from any failure to obtain the same.

4. The County shall be solely responsible for supplying, erecting and maintaining all silt fences and other measures required to control erosion and runoff from the Relocation Project.

5. The County will be solely responsible for the clearing and grubbing any trees that the Operator's contractor(s) request be removed to facilitate the Relocation Project. The parties acknowledge that a portion of the existing tree line as indicated by the air photo as shown in half tones on Exhibit B will clearly have to be removed.

6. The County will be solely responsible for reseeding or otherwise providing vegetative cover on all areas where soils are disturbed by the Relocation Project.

7. The Operator and its contractors shall have no obligation or responsibility for providing or assuring the load bearing capacity of any of the soils placed pursuant to the Relocation Project.

6. A new Article XIII shall be added to the Agreement to provide as follows:

#### ARTICLE XIII RIGHT OF FIRST REFUSAL

Upon execution of this Amendment and during the Term of this Agreement the County shall offer the Operator all ground asphalt, concrete or other pavement materials which result from the building, rebuilding or repair of any County Trunk Highway road project [exclusive of County work on roads, highways, streets, expressways etc not under its jurisdiction] located within five (5) miles of the Pheasant Run RDF undertaken by the County or on behalf of the County; provided that the County does not reuse this material on the project. The parties acknowledge that it is the Operator's intent to use such ground material for the construction of roads and other structures needed for the operation of the Pheasant Run RDF. The County shall provide reasonable advance notice to the Operator regarding what ground materials will become available and the Operator shall advise the County in a timely manner whether it can use the materials. If the Operator advises that it can use the materials, the County shall arrange to have the materials delivered to the Pheasant Run RDF at its expense. The parties agree to work together on scheduling so that their respective projects are not disrupted.

7. A new Article IX shall be added to the Agreement to provide as follows:

#### ARTICLE IX ZONING

It is further agreed that the Kenosha County Zoning Map will be amended per the attached Exhibits C-1 and C-2 to reflect the fact that the siting of the Pheasant Run Facility and its use as a landfill has been accomplished in accordance with the provisions of Wisconsin Statutes Chapter 289 exclusively and not pursuant to the provisions of Chapter 12 of the Municipal Code of Kenosha County entitled Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance,

8. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the day and year shown below.

**WASTE MANAGEMENT OF WISCONSIN, INC.**

By: \_\_\_\_\_  
Michael Fleming, Market Area General Manager

Date: \_\_\_\_\_

**KENOSHA COUNTY**

By: \_\_\_\_\_  
Jim Kreuser, County Executive

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Edna Highland, County Clerk

Date: \_\_\_\_\_

By: \_\_\_\_\_  
George E. Melcher, Director  
Department of Planning and Development

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Frank V. Volpintesta, Esq.  
Kenosha County Corporation Counsel

Date: \_\_\_\_\_

## ETHICS COMPLIANCE ADDENDUM

It is agreed and understood by all parties to this contract that:

- I. In addition to ethical standards set forth in Wisconsin Statutes section 19.59 for all county employees and officials [either elected or appointed] Kenosha county has adopted an ethics policy that is applicable to county employees in conducting county business. That policy may be reviewed at [http://www.co.kenosha.wi.us/corpc/documents/05\\_ch\\_et.pdf](http://www.co.kenosha.wi.us/corpc/documents/05_ch_et.pdf). it is further understood that all county employees and officials [either elected or appointed] are prohibited from engaging in any criminal conduct contrary to Wisconsin Statutes sections 946.12 involving misconduct in public office and 946.13 involving a private interest in a public contract.
- II. This ethics policy is intended to ensure that public trust in Kenosha county government is maintained and that decisions affecting the county and its citizens are made fairly and impartially for the benefit of all citizens and not for personal gain. This policy precludes the misuse or misappropriation of county property or funds for personal use or otherwise, use or disclosure of confidential information for personal gain or otherwise, elimination of conflicts of interests, receipt of gifts or favors or other considerations of value by county employees, the use of the employee's public position to influence or gain unlawful benefits or to influence or gain advantages or privileges for the employee, and the conducting of personal business or campaigning during working hours.
- III. This policy, furthermore, requires employees to disclose and report to the proper authorities any violation of this policy or State Statute by either other employees or by any non-employee or citizen seeking to or aiding or abetting in efforts to circumvent this policy. Any employee failing to make

such disclosure or report is subject to discipline. This contract also requires that any party contracting with Kenosha County also report any such violation to either the District Attorney or Corporation Counsel for Kenosha County.

- IV. By executing this contract, each party certifies that it knows of no conflicts of interest or appearance of a conflict or appearance of an impropriety on the part of any current or former county official or employee who may have had a role on deciding which proposal or bid will be accepted, and
- V. By executing this contract, each party certifies that no attempt has been made by anyone on behalf of the party submitting a proposal or bid to directly or indirectly illegally influence the awarding of a contract by promise of or delivery of any consideration or any thing of value to a current or former County official or employee or family or household member of a current or former County official or employee, or in any other manner contrary to law, and
- VI. The parties acknowledge that Kenosha County is a municipal corporation legally bound to comply with the Wisconsin Open Meetings and Public Records laws and that as such, unless otherwise allowed for by law, all aspects of this agreement are subject to open discussion and disclosure are a matter of public record. It is furthermore agreed to that no party will take any action to obstruct the operation of these laws. If records are created or maintained or in the custody of the provider, as an independent contractor, they, along with the raw data used to create the record, are, nevertheless, public records. Within legal constraints related to confidentiality and privacy protection, such records must be made immediately available to the public upon request and in the format in which they were created. Provider agrees to hold the County harmless and to indemnify the County for all costs, fees, including all attorney fees and judgments and damages of whatever kind for which the County may be held liable due to the provider's failure to comply with the Wisconsin Public Records and Open Meetings laws.
- VII. That any subsequent finding of a violation of either the County's ethics policy or Wisconsin Statutes sections, 19.59, 946.12 and 946.13 by any party or any agent of any party acting either alone or acting in concert with a current or former Kenosha County official or employee may result, at the sole option of Kenosha County, in this agreement being declared null and void and / or may result in the party violating this policy being debarred from submitting proposals, bids or contracting with Kenosha County for a specified period of time in the future.

Dated at Kenosha, Wisconsin this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



**Kenosha County, by:**

\_\_\_\_\_

\_\_\_\_\_, **by:**

\_\_\_\_\_

# Waste Management Property Expansion Area - Zoning Exhibit

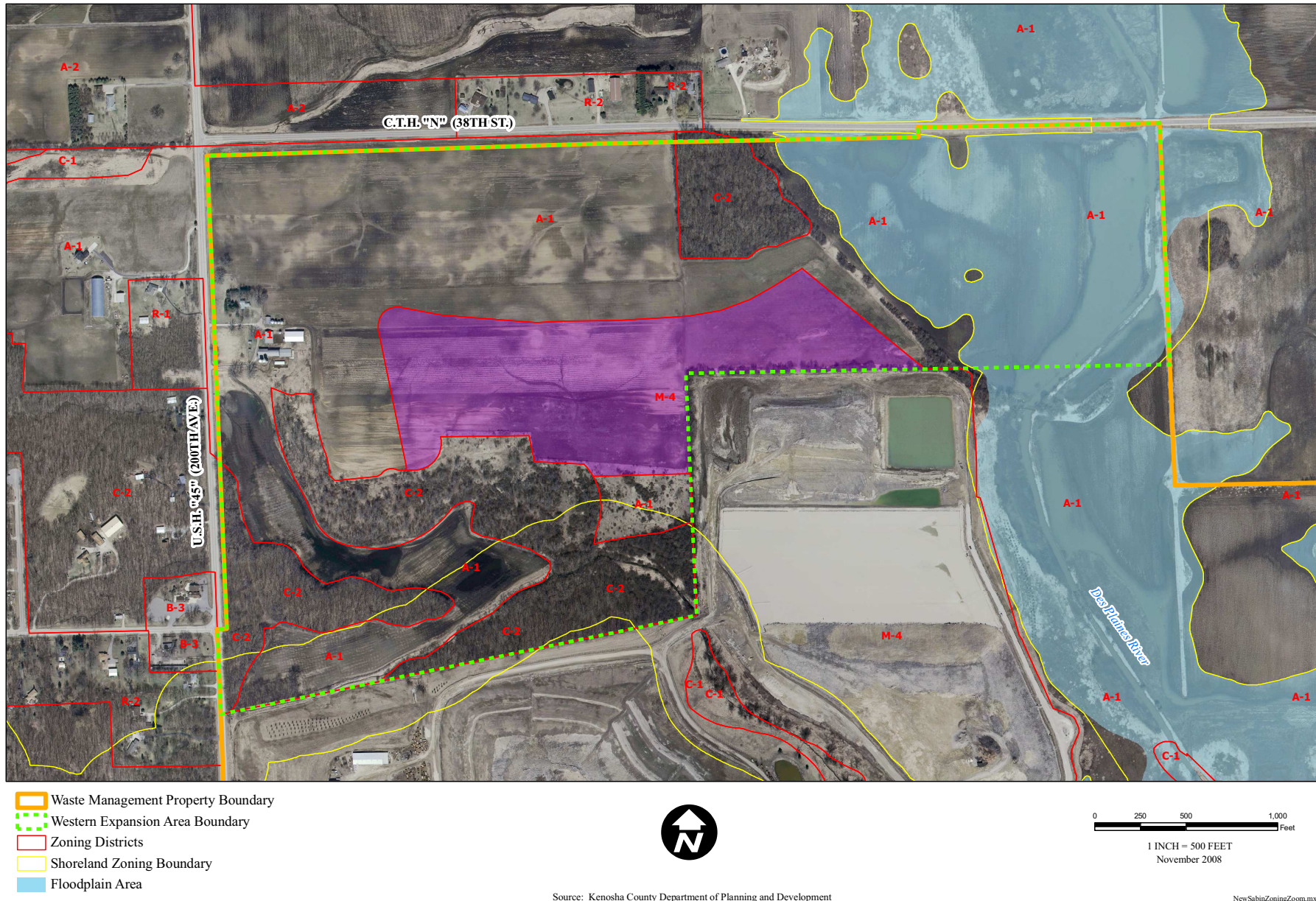
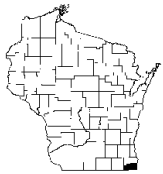


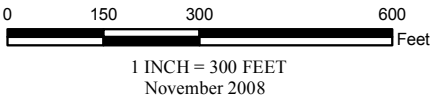


Exhibit "B"

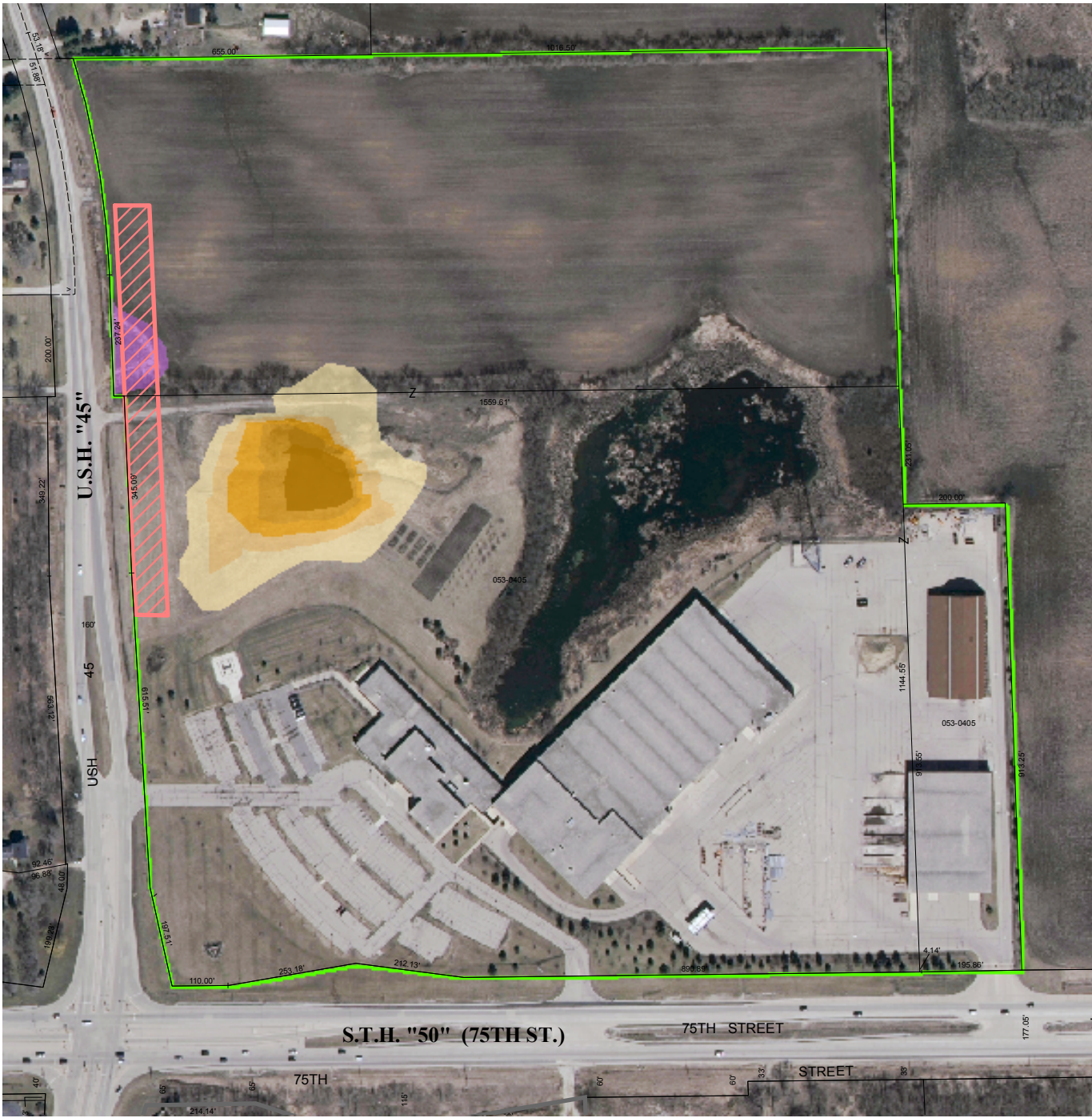


# STOCKPILE CUT, WETLAND FILL & BERM RECONSTRUCTION PLAN

Kenosha County Center Property

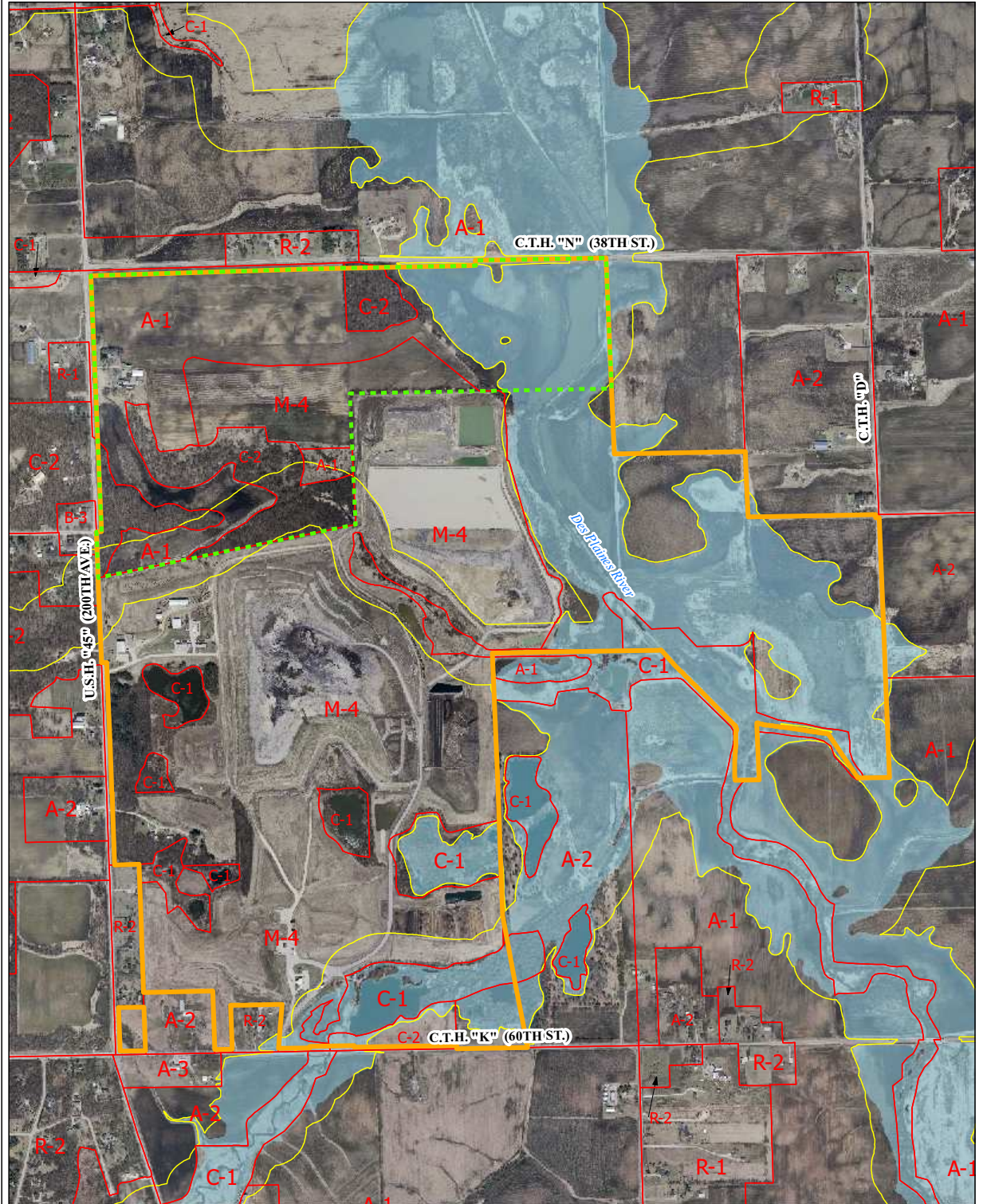


- Berm Construction Area
- DNR Approved Wetland Fill Area
- Property Boundary
- 0 - 5 foot cut
- 5 - 10 foot cut
- 10 - 15 foot cut
- 15 - 20 foot cut
- 20 - 25 foot cut

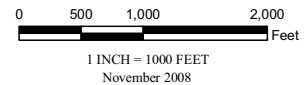




# Waste Management Property Expansion Area - Zoning Exhibit



- Waste Management Property Boundary
- Western Expansion Area Boundary
- Zoning Districts
- Shoreland Zoning Boundary
- Floodplain Area





# Waste Management Property Expansion Area - Zoning Exhibit

