

After Recording Return  
Original Signed Covenant to:  
**Ted Uecker**  
Toxics Cleanup Program  
Department of Ecology  
4601 N Monroe St  
Spokane, WA 99205

## Environmental Covenant

**Grantor: Port of Pasco**

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

**Brief Legal Description: BINDING SITE PLAN 2015-05 PARCEL F**

**Tax Parcel Nos.: 112420031**

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is all of a site commonly known as **Port of Pasco Big Industrial Park Lagoons, FSID 88749, Cleanup Site ID 15433, and VCP Project ID EA0362**. 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	Dioxins, Furans, PDBE

- 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.

1. Blue Mountain Environmental and Consulting Co., Inc., Biosolids Sample Analysis Report, Big Pasco Industrial Center, February 2021.
2. Coho Environmental, Terrestrial Ecological Evaluation, Port of Pasco, Big Pasco Industrial Center Lagoons, June 2021.
3. Blue Mountain Environmental and Consulting Co., Inc., CSID No. 15433 Big Pasco Industrial Park Lagoons Operation and Maintenance Plan, March 15, 2022.

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

**The Port of Pasco**, 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.

**Industrial Land Use:** The remedial action for the Property is based on a cleanup designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70A.305 RCW. Prohibited uses on the

Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, growing of food crops, and non-industrial commercial uses.

**Containment of Soil:** The residual contamination on the Property includes contaminated soil located in the South Lagoon. The remedial action for the Property is based on containing contaminated soil under a cap consisting of a minimum 6-foot-thick layer of clean soil, and located as illustrated in Exhibit C. The primary purpose of this cap is to minimize the potential for contact with contaminated soil, and to minimize leaching of contaminants to groundwater and surface water. As such, the following restrictions shall apply within the area illustrated in Exhibit C:

The Property shall be inspected annually according to the Operations and Management (O & M) Plan, Titled CSID No. 15433, Big Pasco Industrial Park Lagoons Operations and Management Plan. 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; excavation; installation of buried 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.

### **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. This notice requirement does not apply to individual short-term leases of parking spaces on the Property. Waiver of this advance notice to Ecology for these transactions does not constitute waiver of this notice for the entire Property nor a waiver of the requirements in Section 4.a.ii. to include a notice in any document conveying interest in the Property.
  - 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 FRANKLIN 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 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.

Randy Hayden, Executive Director Port of Pasco PO Box 769 Pasco, WA 99301 509-547-3378 rhayden@portofpasco.org	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program Eastern Regional Office 4601 North Monroe Street Spokane, WA 99205
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## **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.

## GRANTOR'S SIGNATURE BLOCK FOR ORIGINAL COVENANTS

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

EXECUTED this 4 day of August, 2022.

Randy Hayden

by: RANDY HAYDEN

Title: EXEC. DIR.

## REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF WASHINGTON  
COUNTY OF FRANKLIN

On this 4 day of August, 2022 I certify that Randy Hayden 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 Executive Director of the Port of Pasco to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Lori French

Notary Public in and for the State of Washington <sup>15</sup>

Residing at Richland, WA

My appointment expires 2024-02-19



## ECOLOGY'S SIGNATURE BLOCK

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Toxics Cleanup Program  
by: Kathleen L. Falconer  
Title: Section Manager  
Dated: August 19, 2022

## STATE ACKNOWLEDGMENT

STATE OF WA

COUNTY OF Spokane

On this 19 day of September, 2022, I certify that Kathleen Falconer personally appeared before me, acknowledged that he/she is the section manager 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.

Amanda Hiebert  
Notary Public in and for the State of Washington

Residing at Spokane County

My appointment expires 01-31-2024



## Exhibit A

### LEGAL DESCRIPTION

REAL PROPERTY SITUATED IN THE CITY OF PASCO, FRANKLIN COUNTY WASHINGTON LYING IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 8 NORTH, RANGE 30 EAST, WILLAMETTE MERIDIAN, FRANKLIN COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

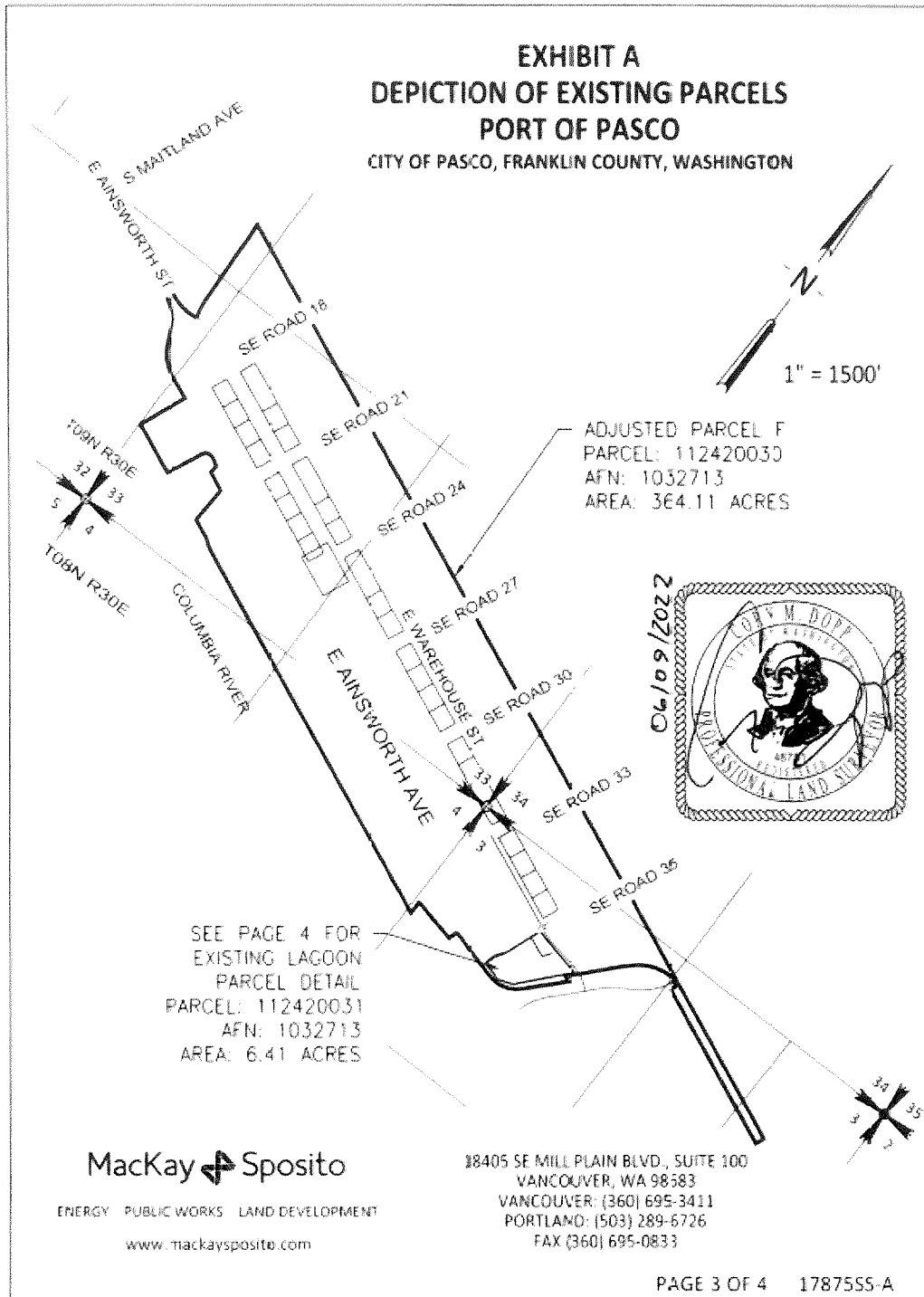
**COMMENCING** AT A 2-1/2 INCH BRASS CAP MARKING THE INTERSECTION OF E. AINSWORTH AVENUE AND SE. ROAD 36, FROM WHICH A 2-1/2 INCH BRASS CAP MARKING THE INTERSECTION OF E. AINSWORTH AVENUE AND SE. ROAD 33 AS SHOWN ON BINDING SITE PLAN, NO. 2015-05, RECORDED UNDER AF #1836314, RECORDS OF SAID COUNTY, BEARS NORTH 67°07'03" WEST 1,096.07 FEET; THENCE SOUTH 16°27'34" WEST 508.92 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 79°35'12" EAST 185.23 FEET, THENCE SOUTH 89°41'36" EAST 129.29 FEET, THENCE SOUTH 27°57'41" EAST 57.31 FEET, THENCE SOUTH 41°33'35" WEST 99.72 FEET; THENCE SOUTH 69°07'21", WEST 160.26 FEET; THENCE NORTH 76°56'26" WEST 109.48 FEET; THENCE NORTH 57°34'11" WEST 82.21 FEET; THENCE NORTH 16°49'43" EAST 106.72 FEET; THENCE NORTH 26°29'41" EAST 50.89 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1.31 ACRES, MORE OR LESS.



## Exhibit B

### PROPERTY MAP



## EXHIBIT C

### MAP ILLUSTRATING LOCATION OF RESTRICTIONS

