

Honorable _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, ON BEHALF)
OF THE NATIONAL OCEANIC AND)
ATMOSPHERIC ADMINISTRATION AND THE)
UNITED STATES DEPARTMENT OF THE)
INTERIOR; STATE OF WASHINGTON)
THROUGH THE WASHINGTON DEPARTMENT)
OF ECOLOGY; PUYALLUP TRIBE OF INDIANS;)
MUCKLESHOOT INDIAN TRIBE,)

CIVIL NO.
CONSENT DECREE

Plaintiffs,

v.

AOL EXPRESS, INC., ARKEMA INC.,)
EDWARD and MOLLY BARRY, BUFFELEN)
WOODWORKING CO., CHS INC., CHARLES P)
and PATRICIA CURRAN, DUNLAP TOWING)
COMPANY, ESTATE OF NORMAN NORDLUND,)
ESTATE OF LESLIE P. SUSSMAN, F O F., INC.,)
HYLEBOS BOAT HAVEN, HYLEBOS MARINA)
INC., JUDY JOHNSON, JONES CHEMICALS,)
INC., JOSEPH SIMON & SONS/RAIL &)
LOCOMOTIVE EQUIPMENT CO.,)
LOUISIANA-PACIFIC CORPORATION, PHYLLIS)
NORDLUND, NORDLUND BOAT COMPANY,)
INC., NORDLUND PROPERTIES, INC., NOVEON)

1 KALAMA CHEMICAL, INC , DON and ALBA)
 OLINE, RONALD OLINE, DONALD S and)
 2 BARBARA L. OLSON, KAY E. OLSON, OLSON &)
 3 CURRAN BARNACLE STOPPING SALT WATER)
 FREE VERTICAL DRY DOCK CO dba OLE &)
 4 CHARLIE’S MARINAS, PORTAC, INC ,)
 RAYONIER PROPERTIES, LLC, PAULA ROSE,)
 5 SUSSMAN ROSE SUSSMAN, ALAN SUSSMAN,)
 SOPHIE SUSSMAN, USG INTERIORS, INC.,)
 6 WASSER & WINTERS CO., INC , WEST)
 7 WATERWAY ASSOCIATES, P.S., ZIDELL)
 MARINE CORPORATION,)
 8)
 9 Defendants)
)

10
 11 I. INTRODUCTION

12 The United States of America (“United States”), on behalf of the National Oceanic and
 13 Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State
 14 of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup
 15 Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint
 16 in this case against defendants AOL Express, Inc., Arkema Inc., Edward & Molly Barry, Buffelen
 17 Woodworking Co., CHS Inc , Charles P. and Patricia Curran, Dunlap Towing Company, Estate of
 18 Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina,
 19 Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co.,
 20 Louisiana-Pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund
 21 Properties, Inc., Noveon Kalama Chemical, Inc., Don and Alba Oline, Ronald Oline, Donald S. and

22 Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry
 23 Dock Co. dba Ole & Charlie’s Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman
 24 Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc.,
 25 West Waterway Associates, P.S., and Zidell Marine Corporation (“Defendants”) pursuant to Section
 26 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
 27 amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D
 28

1 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A)
2 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the
3 “Decree”) addresses the claims asserted in the Complaint against Defendants for Natural Resource
4 Damages (as defined below) in the Commencement Bay Environment (as defined below).

5 II. RECITALS

6 A. The United States Department of Commerce, acting through NOAA; the United
7 States Department of the Interior; the Washington Department of Ecology on behalf of the State of
8 Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively, “the
9 Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42
10 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart G,
11 serve as trustees for natural resources for the assessment and recovery of damages for injury to,
12 destruction of, or loss of natural resources under their trusteeship.

13 B. Investigations conducted by the United States Environmental Protection Agency
14 (“EPA”), the Trustees, and others have detected hazardous substances in the sediments, soils and
15 groundwater of the Commencement Bay Environment, including but not limited to arsenic,
16 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
17 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and
18 polychlorinated biphenyls (PCBs). Overall, the Trustees have documented the presence of over 30
19 hazardous substances in the marine sediments of Commencement Bay’s Hylebos Waterway.

20 C. The Trustees began assessing natural resource damages in the Commencement Bay
21 Environment in October 1991 by finding that hazardous substances had been released into the
22 Commencement Bay Environment; that public trust natural resources had likely been injured by the
23 releases; that data sufficient to pursue a natural resource damage assessment were available or could
24 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
25 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
26 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
27 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,
28

1 1991). The Trustees notified representatives of known potentially responsible parties (“PRPs”) of
2 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
3 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
4 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
5 report on the results of Phase 1 of the damage assessment process in June 1995. Those major PRPs
6 did not participate in subsequent stages of the damage assessment, and the Trustees continued the
7 process independently. The Trustees have now completed a series of studies during Phase 2 of the
8 damage assessment, focusing on impacts of contaminants on marine sediments, benthic organisms,
9 flatfish and salmonids. Results of those studies were published in a series of reports, consisting of
10 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
11 Report; Collier, I.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
12 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
13 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
14 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.
15 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
16 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon;
17 and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein,
18 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos
19 Waterway. Based on this research, the Plaintiffs and Defendants (collectively, the “Parties” and,
20 individually, a “Party”) agree that no further natural resource damage assessment is required to
21 effectuate the purposes of this Consent Decree, with respect to Defendants.

22 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to Section 107 of
23 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
24 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendants of damages for injury to,
25 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
26 Commencement Bay Environment, including the costs of assessing the damages.

27 E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned
28

1 and/or operated real property or facilities, identified by the Trustees as:

2	<u>Defendant</u>	<u>Site Name</u>
3	AOL Express, Inc.	AOL EXPRESS
4	Arkema Inc.	ELF ATOCHEM DUNLAP TOWING
5	Buffelen Woodworking Co.	BUFFELEN
6	CHS, Inc.	CENEX AG
7	Edward and Molly Barry, Charles P. 8 and Patricia Curran, Donald S. and 9 Barbara Olson, Kay E. Olson, Olson & 10 Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & 11 Charlie's Marinas and West Waterway Associates, P.S.	OLE & CHARLIE'S MARINA
12	Dunlap Towing Company	DUNLAP TOWING
13	Estate of Norman Nordlund, Hylebos 14 Boat Haven, Phyllis Nordlund, Nordlund Boat Company, Inc. and Nordlund Properties, Inc.	HYLEBOS MARINA MANKE LUMBER
15	F.O.F., Inc.	OCCIDENTAL U.S. NAVAL RESERVE
16	Hylebos Marina, Inc.	HYLEBOS MARINA 17 OLINE PROPERTIES (1800 MARINE VIEW DR.)
18	Judy Johnson	DON OLINE AUTOFLUFF SITE 19 HYLEBOS MARINA 20 OLINE PROPERTIES (1800 MARINE VIEW DR.)
21	Jones Chemicals, Inc.	JONES CHEMICALS
22	Joseph Simon & Sons/ Rail & Locomotive Equipment Co.	JOSEPH SIMON & SONS
23	Louisiana-Pacific Corporation	LOUISIANA-PACIFIC
24	Noveon Kalama Chemical, Inc.	SOUND REFINING
25	Don and Alba Oline	DON OLINE AUTOFLUFF SITE 26 HYLEBOS MARINA STONE INVESTMENTS
27	Ronald Oline	DON OLINE AUTOFLUFF SITE

28

1		HYLEBOS MARINA
2		OLINE PROPERTIES (1800 MARINE VIEW DR.)
3	Portac, Inc.	PORT OF TACOMA (3002 TAYLOR WAY)
4	Rayonier Properties, LLC	TAYLOR WAY PROPERTIES
5	Estate of Leslie P. Sussman, Paula	GENERAL METALS OF TACOMA
6	Rose, Sussman Rose Sussman, Alan	
	Sussman and Sophie Sussman,	
7	USG Interiors, Inc	US GYPSUM
8	Wasser & Winters Co., Inc.	WASSER WINTERS
9	Zidell Marine Corporation	AK-WA SHIPBUILDING

10 Plaintiffs further allege that from each of such sites storm water, surface water runoff, wastewater,
11 other process discharges, and/or groundwater have flowed to the Commencement Bay Environment.

12 Plaintiffs also allege that investigations by EPA and others have detected concentrations of
13 hazardous substances in soils, groundwater or sediments on or in those properties or facilities. Some
14 of these hazardous substances are found in the sediments of the Commencement Bay Environment.

15 F. Plaintiffs further allege that hazardous substances have been or are being released to
16 the Commencement Bay Environment from properties or facilities owned and/or operated by each
17 Defendant through direct discharge, surface water runoff, groundwater and seeps, and that those
18 hazardous substances have caused injury to, destruction of and loss of natural resources in the
19 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
20 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
21 allege that each of them and the public have suffered the loss of natural resource services (including
22 ecological services as well as direct and passive human use losses) as a consequence of those
23 injuries.

24 G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a vessel
25 or a facility; (b) a person who at the time of disposal or release of any hazardous substance owned
26 or operated any facility at which such hazardous substances were disposed of; (c) a person who by
27 contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter

28

1 for transport for disposal or treatment, of hazardous substances owned or possessed by such person,
2 by any other party or entity, or otherwise generated any hazardous substance disposed of or treated,
3 at any facility or incineration vessel owned or operated by another party or entity and containing such
4 hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for
5 transport to disposal or treatment facilities, incineration vessels or sites selected by such person from
6 which there is a release or a threatened release of a hazardous substance that causes the incurrence
7 of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

8 H. Defendants each deny all the allegations of the Complaint, and the allegations
9 contained in Paragraphs E, F, G, K, M and O of this Section.

10 I. Although the Trustees have initiated but not yet completed a natural resource damage
11 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
12 information sufficient to support a settlement that is fair, reasonable and in the public interest.

13 J. To facilitate resolving natural resource damage claims, the Trustees developed a
14 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
15 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage assessment
16 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
17 developed an estimate of the amount of injury to natural resources that had occurred as a result of
18 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
19 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
20 time, discounted to the current year. The Trustees used the term *discounted ecological service*
21 *acre-years* (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
22 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
23 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
24 restoration sufficient to compensate for the loss of 1526.77 DSAYs.

25 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
26 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
27 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
28

1 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
2 liable for all injuries to natural resources that have resulted from the contamination. As a
3 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
4 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
5 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
6 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
7 existing information from the files of EPA, the Washington State Department of Ecology, and local
8 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
9 to the contamination.

10 L. To ensure that all PRPs had an equal opportunity to be informed of and to offer their
11 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
12 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
13 revised the report based upon the comments received, and made it available to PRPs in final form.

14 M. After evaluating available information, the Trustees have determined, solely for
15 purposes of this settlement and without any bearing on or applicability in any other context, that
16 Defendants should be allocated liability for a total of 257,849 DSAY losses and \$1,793,888.46 in
17 damage assessment costs as a consequence of Defendants' respective industrial and commercial
18 processes and activities resulting in alleged hazardous substances releases in connection with the
19 above-named facilities.

20 N. In settlement of this action Defendants have agreed, in lieu of and as equivalent to
21 monetary damages, to contract with Pierce County to secure permanently the right to use real
22 property for the purpose of natural resource restoration, to construct thereon the habitat restoration
23 project described in Appendix A ("Old Soldier's Home Setback Levee Project" or "Project"),
24 attached hereto and by this reference incorporated herein and perform any additional activities
25 described in Appendix A. Defendants have also agreed to contribute funds to support project
26 oversight by the Trustees, and to reimburse natural resource damage assessment costs incurred by
27 the Trustees.

1 O The Trustees have determined that the timely actions and expenditures to be
2 undertaken by Defendants under this Consent Decree are appropriate and necessary to protect and
3 restore the natural resources allegedly injured as a result of alleged actions or omissions of
4 Defendants that are addressed herein, and that such timely actions and expenditures are adequate to
5 redress Defendants' responsibility for the Natural Resource Damages that are the subject of this
6 proceeding

7 P Defendants do not admit any liability to Plaintiffs arising out of the transactions or
8 occurrences alleged in the Complaint and the matters alleged in this Consent Decree.

9 Q Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this
10 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid
11 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable,
12 and in the public interest.

13 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

14 III. JURISDICTION AND VENUE

15 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
16 §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court
17 has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
18 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
19 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
20 Court's jurisdiction to enter and enforce this Decree.

21 IV. PARTIES BOUND

22 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
23 Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns. Any
24 change in ownership or corporate or other legal status, including but not limited to any transfer of
25 assets or real or personal property, will in no way alter the status or responsibilities of the Parties
26 under this Decree.

27 3. Defendants shall provide a copy of this Consent Decree to Pierce County as the party
28

1 that will be performing the work required by this Consent Decree, to each contractor hired by
2 Defendants to perform any of the work required by this Consent Decree, and to each person
3 representing Defendants with respect to any such work, and shall condition all future contracts
4 entered into by Defendants hereunder upon performance of the work in conformity with the terms
5 of this Consent Decree. Defendants or their contractors shall provide written notice of the Consent
6 Decree to all subcontractors hired by Defendants' contractors to perform any portion of the work.
7 Defendants shall be responsible for ensuring that all work performed by their contractors and
8 subcontractors and by Pierce County, including that performed by its contractors and subcontractors,
9 is performed in accordance with this Consent Decree.

10 V DEFINITIONS

11 4. Unless otherwise expressly provided, terms used in this Decree that are defined in
12 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
13 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
14 attached appendix, the following definitions will apply:

15 a. "CERCLA" means the Comprehensive Environmental Response
16 Compensation and Liability Act of 1980, as amended, 42 U S C. § 9601, *et seq.*

17 b. "Commencement Bay Environment" means the waters of Commencement
18 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,
19 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point.
20 These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St.
21 Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
22 Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is
23 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended
24 by the EPA, including the B&L Landfill, and areas affected by releases of hazardous substances
25 within the Commencement Bay Nearshore/Tideflats Superfund Site.

26 c. "Commencement Bay Restoration Account" means the Commencement Bay
27 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
28

1 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
2 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix B).

3 d "Consent Decree" or "Decree" means this Consent Decree and all attached
4 appendices. In the event of a conflict between this Consent Decree and any Appendix, the Consent
5 Decree will control.

6 e "Day" means a calendar day. In computing any period of time under this
7 Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time
8 will run until the close of business of the next working day.

9 f "DSAYs" means discounted ecological service acre-years, the metric
10 established by the Trustees to determine the scale of Natural Resource Damages liability associated
11 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
12 injury to, destruction or loss of natural resources giving rise to liability.

13 g "Defendant" means each one of, and "Defendants" means all of, AOL
14 Express, Inc., Arkema Inc., Edward and Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles
15 P. and Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P.
16 Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals,
17 Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-Pacific Corporation,
18 Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund Properties, Inc., Noveon Kalama
19 Chemical, Inc. (and its predecessor Kalama Chemical, Inc.), Don and Alba Oline, Ronald Oline,
20 Donald S. and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free
21 Vertical Dry Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula
22 Rose, Sussman Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser &
23 Winters Co., Inc., West Waterway Associates, P.S., and Zidell Marine Corporation.

24 h "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

25 i "Natural Resources" means that definition as provided in 42 U.S.C. §
26 9601(16)

27 j "Natural Resource Damages" means damages, including costs of damage

1 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
2 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
3 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
4 natural resources resulting from releases of hazardous substances or discharges of oil to the
5 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
6 Waterway.

7 k. "Parties" mean the United States, the State of Washington, the Puyallup Tribe
8 of Indians, the Muckleshoot Indian Tribe and Defendants.

9 l. "Plaintiffs" means the United States, the State, the Puyallup Tribe of Indians,
10 and the Muckleshoot Indian Tribe.

11 m. "Project" means the Old Soldier's Home Setback Levee Project described in
12 Appendix A.

13 n. "Project Site" means the approximately 92-acre site composed of all or a
14 portion of Pierce County tax parcels 051932-3-041, 051931-4-031, 051931-4-029, 051932-3-020,
15 051932-3-010, 051932-3-025, 051805-2-000 and 051805-2-001 near Orting, Washington, as
16 indicated in Appendix A, that is owned by Pierce County and on which the Project is to be developed
17 according to the terms of this Consent Decree.

18 o. "Trustees" mean the United States Department of Commerce, acting through
19 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
20 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

21 VI. GENERAL PROVISIONS

22 5 The Complaint states claims upon which relief may be granted.

23 6. Nothing in this Consent Decree shall be construed as an admission of liability by any
24 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

25 7. Except where otherwise expressly provided, each Defendant shall be jointly and
26 severally responsible for performing the obligations undertaken by Defendants under this Consent
27 Decree. Plaintiffs may take such actions as provided below to enforce the terms of this Consent
28

1 Decree against any one or more of Defendants as Plaintiffs may choose

2 8. This Consent Decree shall not be used as evidence against any Party in any action or
3 proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

4 9. All activities undertaken by Defendants pursuant to this Consent Decree shall be
5 performed in accordance with the requirements of all applicable laws and permits.

6 10 Defendants shall ensure that all work performed under this Consent Decree shall be
7 conducted pursuant to the design and schedule approved by the Trustees in Appendix A attached
8 hereto and shall be subject to review by the Trustees. If the Trustees determine that Defendants or
9 Pierce County are not complying with the design and schedule set forth in Appendix A, the Trustees
10 shall provide prompt written notice to Defendants specifying the basis for their determination of
11 noncompliance. Defendants may correct the noncompliance or invoke the dispute resolution
12 procedures set forth in Section XV below. Subject to the right of Defendants to invoke the dispute
13 resolution provisions, the Trustees may require Defendants to take actions, to alter, suspend or cease
14 ongoing activities, and to alter, postpone or refrain from taking proposed actions, as the Trustees
15 reasonably deem necessary to ensure compliance with the terms of this Consent Decree and any
16 plans or proposals adopted hereunder.

17 11. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant
18 to any law.

19 12. Where any portion of the activities undertaken pursuant to this Consent Decree
20 requires a federal, state or local permit or approval, Defendants or Pierce County shall submit timely
21 and complete applications and take all other actions necessary to obtain all such permits or
22 approvals. Defendants or Pierce County shall use best efforts to obtain any necessary permits.

23 13. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant
24 or aver in any manner that Defendants' compliance with this Consent Decree will result in
25 compliance with CERCLA or any other law. Compliance with this Consent Decree does not
26 diminish or affect Defendants' responsibility to comply with any applicable federal, state or local
27 law or regulation. The Parties agree that Defendants are responsible for achieving and maintaining
28

1 complete compliance with all applicable federal, state and local laws, regulations and permits

2 VII. PROJECT SITE

3 14. Pierce County, as the owner of the Project Site, has conveyed and granted to the State
4 of Washington the right to use the Project Site forever for salmon recovery and conservation
5 purposes. Pierce County has recorded deed restrictions for the Project Site, which are attached as
6 Appendix C hereto.

7 VIII. PROJECT DEVELOPMENT

8 15. Defendants shall provide the funds and services to ensure that all necessary steps are
9 taken to construct the Project and to perform any additional activities in accordance with the details,
10 specifications and project development schedule set out in Appendix A.

11 16. Defendants shall avoid taking any action on the Project Site property or adjacent
12 property owned or controlled by Defendants that is inconsistent with this Consent Decree and that
13 would interfere with the Project such that it would substantially decrease the likelihood of success
14 of the Project. Defendants shall notify the Trustees in writing at least 30 days prior to entering into
15 any contracts for or applying for any permits for the taking of any actions on the Project Site other
16 than those identified in Appendix A. Such notice shall include a narrative description of the proposed
17 actions plus a site diagram indicating the location of the proposed actions.

18 17. Within 60 days after completion of construction of the Project, Defendants shall
19 submit a written Notice of Completion to the Trustees. The Trustees shall review the course and
20 results of the development of the Project to determine whether the Project has been completed in
21 accordance with Appendix A. Within 60 days after receiving the Notice of Completion, the Trustees
22 shall submit to Defendants either (a) a written notice identifying specific deficiencies the Trustees
23 determine must be satisfied for the Project to be completed in accordance with Appendix A (Notice
24 of Deficiencies); or (b) a written notice of the Trustees' determination that the Project has been so
25 completed (Notice of Approval of Completion). Following receipt of a Notice of Deficiencies,
26 Defendants shall correct the identified deficiencies and complete the Project in accordance with
27 Appendix A, and submit to the Trustees an amended Notice of Completion for review and response
28

1 in accordance with this Paragraph Any delay in completing Project construction as a result of the
2 operation of this Paragraph shall not in and of itself constitute grounds for relief from the
3 requirement to pay stipulated penalties under Section XVI for compliance delays.

4 18. Within 180 days following receipt of the Trustees' Notice of Approval of Completion
5 for the Project, Defendants shall submit to the Trustees a Project Completion Accounting. The
6 Project Completion Accounting shall itemize the costs incurred by Defendants in developing the
7 Project.

8 IX. POST-CONSTRUCTION ALTERATIONS;
9 FURTHER RESTORATION ACTIONS

10 19. In addition to any measures undertaken in connection with the Project monitoring
11 plan identified in Appendix A, following construction of the Project the Trustees may at any time
12 make such post-construction alterations or implement such further restoration actions on the Project
13 site as they determine appropriate. Such post-construction alterations or further restoration actions
14 shall only be taken with the approval of Defendants and Pierce County, which approval may be
15 withheld only upon a showing that the proposed activity would be inconsistent with the purposes of
16 the Project as described in Appendix A (including the Project's flood control purposes), would be
17 inconsistent with other provisions of this Consent Decree or other applicable law, or would impose
18 costs upon Defendants.

19 X. ACCESS TO INFORMATION AND PROJECT SITE

20 20. To facilitate their oversight responsibilities, the Trustees shall have full access to all
21 work in progress required under this Consent Decree.

22 21. Commencing upon the date of lodging of this Consent Decree, Defendants agree to
23 provide the Trustees and their contractors access at all reasonable times to the Project Site and to any
24 property under the control of Defendants to which access is required for the oversight or
25 implementation of this Consent Decree. Where the property to which access is sought is not
26 otherwise open to public access, the Trustees shall give notice prior to access. Each Trustee shall
27 have the authority to enter freely and move about such property at all reasonable times for the
28

1 purposes of overseeing the requirements of this Consent Decree, including, but not limited to:

- 2 a. Monitoring and assessing progress on the planning, development,
3 maintenance and monitoring of the Projects;
- 4 b. Verifying any data or information submitted to the Trustees;
- 5 c. Inspecting and copying records, operation logs, contracts or other documents
6 maintained or generated by Defendants or their contractors hereafter retained
7 to perform work undertaken pursuant to this Consent Decree;
- 8 d. Conducting such tests, investigations or sample collections as deemed
9 necessary to monitor compliance with this Consent Decree or to assist in
10 further identifying and quantifying natural resource injuries requiring
11 restoration actions and in planning and carrying out further restoration
12 actions;
- 13 e. Using a camera, sound recording device or other type equipment to record the
14 work done under this Consent Decree or injury to natural resources;
- 15 f. Undertaking any maintenance action or post-construction alterations or
16 further restoration actions in accordance with Paragraph 19

17 22. Defendants shall have the right to accompany any Trustee or its representative on the
18 property. Anyone provided access through this Consent Decree shall comply with applicable health
19 and safety requirements and shall not interfere with ongoing operations

20 XI. SELECTION OF CONTRACTORS

21 23. The selection of any contractor hereafter retained by Defendants to perform any of
22 the work required under this Consent Decree shall be subject to Trustee approval. Defendants shall
23 notify the Trustees in writing of the name, title and qualifications of any contractor Defendants
24 propose to retain, and of any proposed changes in the selection of a contractor. The Trustees will
25 notify Defendants in writing of the approval or disapproval of a proposed contractor. The Trustees'
26 assent to the proposed selection or change of a contractor may be presume unless the Trustees notify
27 Defendants in writing of their objection to the proposed selection or change within 30 days of
28 Defendants' written selection notice. Defendants shall notify the Trustees in writing of the contractor
and of any subcontractors that have been retained by Pierce County to perform any of the work

1 required under this Consent Decree.

2 XII. REIMBURSEMENT OF RESTORATION OVERSIGHT COSTS

3 24. Defendants shall reimburse Trustee costs incurred in the oversight of the development
4 and maintenance of the Project and in monitoring Project performance in the total amount of
5 \$150,000. Sums paid under this Paragraph shall be deposited in the Commencement Bay Restoration
6 Account for use as the Trustees shall determine in accordance with the terms of this Consent Decree
7 and other applicable law. Payment shall be deposited within 30 days following the entry of this
8 Consent Decree with the Registry of the Court by certified check, bearing the notation "Hylebos
9 NRDA Mediation Group - Oversight and Monitoring Costs" and the civil action number assigned
10 to this Consent Decree, made payable and addressed as follows:

11 Payee: Clerk of the Court

12 Address: Clerk, U.S. District Court
13 U.S. Courthouse, Room 215
14 1010 Fifth Avenue
Seattle, WA 98104

15 Memo: For Deposit into the Commencement Bay Natural Resource Restoration Account
16 C93-5462 [INSERT THIS CASE DOCKET NUMBER]

17 Defendants shall send photocopies of each check and any transmittal letter to: Chief, Environmental
18 Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington,
19 D.C. 20044; and to Robert A. Taylor, NOAA GCNR/NW, 7600 Sand Point Way NE, Seattle, WA
20 98115-0070. Any funds paid pursuant to this Paragraph that are not utilized by the Trustees to cover
21 oversight costs or costs of maintenance, monitoring or adaptive management for the Project may be
22 applied by the Trustees toward one or more additional restoration projects in the Commencement
23 Bay Environment.

24 XIII. PAST COST REIMBURSEMENT

25 25. Within 30 days of entry of this Decree, Defendants will pay to the Trustees sums
26 totaling \$1,793,888.46 in damage assessment costs. These sums shall be paid in the following
27 amounts and particulars:
28

1 Trustee: National Oceanic and Atmospheric Administration
2 Amount: \$1,447,127.08

3 Trustee: U.S. Department of the Interior
4 Amount: \$241,939.29

5 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic
6 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT
7 procedures. Payment shall be made in accordance with instructions provided to Defendants by the
8 Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any
9 payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be
10 credited on the next business day. Defendants shall provide at least five days notice to the Financial
11 Litigation Unit before making the transfer.

12 Payments to the other Trustees shall be made by certified checks, bearing the notation
13 "Hylebos NRDA Mediation Group - Commencement Bay Assessment Costs," in the amounts
14 indicated and made payable and addressed as follows:

15 Trustee: State of Washington
16 Amount: \$29,853.49
17 Payee: State of Washington/Department of Ecology
18 Address: State of Washington
19 Department of Ecology
Attention: Cashiering Section
P.O. Box 5128
Lacey, WA 98503-0210

20 Trustee: Puyallup Tribe of Indians
21 Amount: \$68,299.79
22 Payee: Puyallup Tribe of Indians
23 Address: Mr. William Sullivan
Environmental Protection Department
24 Puyallup Tribe of Indians
2002 E. 28th Street
Tacoma, WA 98404

25 Trustee: Muckleshoot Indian Tribe
26 Amount: \$6,668.81
27 Payee: Muckleshoot Indian Tribe

1 Address: Mr. Rob Otsea
2 Office of the Tribal Attorney
3 Muckleshoot Indian Tribe
4 39015 172nd Avenue S E.
5 Auburn, WA 98002

6 26. At the time of each payment Defendants will send notice that payment has been made
7 to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions). Such notice
8 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action
9 number.

10 XIV. FAILURE TO MAKE TIMELY PAYMENTS

11 27. If Defendants fail to make any payment under Paragraphs 24 and 25 by the required
12 due date, interest shall be assessed at the rate specified for interest on investments of the EPA
13 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October
14 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest is the rate in
15 effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each
16 year. Interest will continue to accrue on the unpaid balance through the date of payment.

17 XV. DISPUTE RESOLUTION

18 28. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution
19 procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with
20 respect to this Consent Decree.

21 29. Any dispute which arises under or with respect to this Consent Decree shall in the
22 first instance be the subject of informal negotiations between the Trustees and Defendants. The
23 period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute
24 arises, unless the parties to the dispute agree otherwise in writing. The dispute shall be considered
25 to have arisen when the Trustees send Defendants a written notice specifying the nature of the
26 dispute and requested relief ("Notice of Dispute") or Defendants sends the Trustees a written Notice
27 of Dispute.

28 30. a. If the Parties cannot resolve a dispute by informal negotiations under the

1 preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless,
2 within twenty-one (21) days after the conclusion of the informal negotiation period, Defendants
3 invoke the formal dispute resolution procedures of this Section by serving on the Trustees a written
4 Statement of Position on the matter in dispute, including, but not necessarily limited to, any factual
5 data, analysis or opinion supporting that position and any supporting documentation relied upon by
6 Defendants.

7 b. Within twenty-one (21) days after receipt of Defendants' Statement of
8 Position, the Trustees shall serve on Defendants their written Statement of Position, including, but
9 not necessarily limited to, any factual data, analysis or opinion supporting that position and all
10 supporting documentation relied upon by the Trustees.

11 c. An administrative record of the dispute shall be maintained by the Trustees
12 and shall contain all Statements of Position, including supporting documentation, submitted pursuant
13 to this Section.

14 d. The Formal Dispute Resolution Representatives for Defendants and the
15 Trustees shall meet to discuss the matter in dispute at the earliest available opportunity and will work
16 in good faith to resolve the matter in dispute. If the Parties fail to resolve the dispute within twenty-
17 one (21) days after the initial meeting of the Formal Dispute Resolution Representatives, then the
18 position advanced by the Trustees in their Statement of Position shall be considered binding upon
19 Defendants, subject to any agreements the Formal Dispute Resolution Representatives may have
20 reached on one or more issues and further subject to Defendants' right to seek judicial review
21 pursuant to the following Subparagraph. In such event the Trustees shall within five (5) days of the
22 conclusion of the formal dispute resolution process notify Defendants in writing that the formal
23 dispute resolution process has concluded.

24 e. Any matter in dispute shall be reviewable by this Court, provided that a
25 motion for judicial review of the decision is filed by Defendants with the Court and served on all
26 Parties within twenty-one (21) days of receipt of the Trustees' letter notifying Defendants of the
27 conclusion of the formal dispute resolution process. The motion shall include a description of the
28

1 matter in dispute, the relief requested and the schedule, if any, within which the dispute must be
2 resolved to ensure orderly implementation of this Consent Decree. The Plaintiffs may file a response
3 to Defendants' motion within twenty-one (21) days of receipt of the motion or within any different
4 time frame that the local rules of court may provide, and Defendants may file a reply brief within five
5 (5) days of receipt of the response or such different time that the local rules of court may provide.

6 f. The Court may rule based on the written record, with or without oral
7 argument. The burden of proving entitlement to the requested relief with respect to the matter in
8 dispute shall be on the Party requesting it.

9 g. The foregoing notwithstanding, the Parties acknowledge that disputes may
10 arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an
11 expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition the
12 Court for the imposition of an expedited schedule.

13 31. The invocation of formal dispute resolution procedures under this Section shall not
14 extend, postpone or affect in any way any obligation of any Party under this Consent Decree not
15 directly in dispute or contingent on issues in dispute, unless the Trustees or the Court agrees
16 otherwise. Defendants' obligations to pay stipulated penalties as provided in Section XVI with
17 respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution
18 of the dispute. Notwithstanding the stay of payment, the obligation to pay stipulated penalties shall
19 accrue from the first day of noncompliance with any applicable provision of this Consent Decree,
20 subject agreement of the Parties or to the decision of the Court on Defendants' motion. If Defendants
21 do not prevail on a disputed issue, stipulated penalties shall be assessed and paid as provided in
22 Section XVI.

23 XVI. STIPULATED PENALTIES

24 32 The Parties stipulate that time is of the essence in the implementation of the
25 requirements of this Consent Decree and that delays in carrying out the activities required herein may
26 diminish the compensatory value attributable to those activities. Consequently, in the event that
27 Defendants exceed the deadline provided for one of the activities described below (subject to any
28

1 modifications agreed to under Section XXVIII) and such delay is not excused through operation of
2 the dispute resolution provisions (Section XV) and/or the force majeure provisions (Section XVII),
3 Defendants shall, as a stipulated penalty, increase the financial contributions it makes under this
4 Consent Decree to fund habitat restoration actions, over and above any payments required elsewhere
5 under this Consent Decree, as follows:

6 a For each week Defendants fail to comply with a deadline under Paragraph 24
7 or 25 for making any payment; in the Project Development Schedule included in Appendix A; under
8 Paragraph 17 for submitting a Notice of Completion; under Paragraph 18 for submitting a Project
9 Completion Accounting; or under Paragraph 40, if applicable, for providing copies of certificates
10 of insurance and insurance policies, Defendants shall pay a stipulated penalty in the amount of
11 \$1,000. Where the delay extends beyond the second week, the stipulated penalty shall apply to each
12 additional day of delay for each such missed deadline. For purposes of this Subparagraph, a week
13 shall equal a continuous period of seven days.

14 b Stipulated penalties are due and payable within 30 days of the date of the
15 demand for payment of the penalties by the Trustees. All payments to the Trustees under this
16 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will
17 be deposited in the Commencement Bay Restoration Account.

18 c At the time of each payment, Defendants will send notice that payment has
19 been made to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions).
20 This notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the
21 civil action number

22 d Penalties need only be paid upon demand. Penalties for late payments will
23 begin to accrue on the day after payment is due. All other penalties will begin to accrue on the day
24 after the Trustees' notice of noncompliance pursuant to Paragraph 10 and will continue to accrue
25 through the date of payment. Nothing in this Decree prevents the simultaneous accrual of separate
26 penalties for separate violations of this Decree.

27 e Defendants may dispute the Trustees' right to the penalties identified under
28

1 Subparagraph a above by invoking the dispute resolution procedures of Section XV.

2 33. If Plaintiffs bring an action in court to enforce this Decree and prevail, Defendants
3 will reimburse Plaintiffs for all costs of such action, including but not limited to costs of attorney
4 time.

5 34. Payments made under this Section are in addition to any other remedies or sanctions
6 available to Plaintiffs by virtue of Defendants' failure to comply with the requirements of this
7 Decree.

8 35 Notwithstanding any other provision of this Section, Plaintiffs may, in their
9 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
10 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants from payment
11 as required by Sections VIII, XII or XIII or from performance of any other requirement of this
12 Consent Decree

13 36. The Trustees may use sums paid as stipulated penalties under Paragraph 32 to pay
14 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore
15 Commencement Bay natural resources.

16 XVII. FORCE MAJEURE

17 37 "Force majeure," for purposes of this Consent Decree, is defined as any event arising
18 from causes beyond the control of Defendants that delays or prevents the performance of any
19 obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The
20 requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts
21 to anticipate any potential force majeure event and use best efforts to address the effects of any
22 potential force majeure event (1) as it is occurring and (2) following the potential force majeure
23 event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not
24 include financial inability to fulfill the obligation. The requirement that Defendants exercise "best
25 efforts to fulfill the obligation" also includes, where necessary, the filing of legal actions to compel
26 contract performance in accordance with the design and schedule approved by the Trustees herein.

27 38. a. If any event occurs or has occurred that may delay the performance of any
28

1 obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants
2 shall notify the Trustees within 14 days of when Defendants first knew that the event might cause
3 a delay. Within 30 days thereafter, Defendants shall provide a written explanation and description
4 of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to
5 prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent
6 or mitigate the delay or the effect of the delay; and the rationale for attributing such delay to a force
7 majeure event (if Defendants intend to assert such a claim). Defendants shall include with any notice
8 all available documentation supporting their claim that the delay was attributable to a force majeure
9 event. Failure to comply with the above requirements will preclude Defendants from asserting any
10 claim of force majeure for that event.

11 b. If the Trustees agree that the delay or anticipated delay is attributable to a
12 force majeure event, the time for performance of the obligations under this Consent Decree that are
13 affected by the force majeure event will be extended by the Trustees for such time as is necessary.
14 An extension of the time for performance of the obligations affected by the force majeure event shall
15 not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree
16 that the delay or anticipated delay has been or will be caused by a force majeure event, the Trustees
17 will notify Defendants in writing of their decision

18 c. If Defendants elect to invoke the dispute resolution procedures set forth in
19 Section XV, above, regarding a claimed force majeure event it shall do so no later than 30 days after
20 receipt of the Trustees' notice of disagreement. In any such proceeding Defendants shall have the
21 burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has
22 been or will likely be caused by a force majeure event, that the duration of the delay or the extension
23 sought was or will be warranted under the circumstances, that Defendants exercised best efforts to
24 fulfill the obligation in question, and that Defendants complied with the requirements of this
25 Paragraph. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation
26 by Defendants of the affected obligation of this Consent Decree.

27 XVIII. INDEMNIFICATION; INSURANCE
28

1 39. a. Defendants shall ensure that any contractor hereafter retained who performs
2 work for them in carrying out the requirements of this Consent Decree shall indemnify for and hold
3 harmless each of the Plaintiffs and/or their agents, employees and representatives from any and all
4 damage claims or causes of action arising from acts or omissions of Defendants and/or their officers,
5 employees, agents, contractors, subcontractors, representatives and any persons acting on their behalf
6 or under their control, in carrying out the requirements of this Consent Decree. Further, Defendants
7 agree to pay the Plaintiffs all costs they incur, including but not limited to attorneys fees and other
8 expenses of litigation and settlement, arising from or on account of damage claims made against the
9 Plaintiffs based on acts or omissions of Defendants or their officers, employees, agents, contractors,
10 subcontractors, representatives and any persons acting on their behalf or under their control, in
11 carrying out the requirements of this Consent Decree. None of the Plaintiffs shall be held out as a
12 party to any contract entered into by or on behalf of Defendants or Pierce County in carrying out the
13 requirements of this Consent Decree. Neither Defendants, Pierce County, nor any such contractor
14 or representative of them shall be considered an agent of any Plaintiff, and Defendants shall require
15 any contractor hereafter retained by Defendants who performs work for Defendants in carrying out
16 the requirements of this Consent Decree to affirmatively acknowledge that it is not acting as an agent
17 of any Plaintiff.

18 b. Defendants shall ensure that any contractor hereafter retained who performs
19 work for them in carrying out the requirements of this Consent Decree waive, and shall indemnify
20 and hold harmless each of the Plaintiffs with respect to, any claims for damages or reimbursement
21 from the Plaintiffs or for set-off against any payments made or to be made to the Plaintiffs, arising
22 from or on account of any contract, agreement or arrangement between Defendants and any person
23 in carrying out the requirements of this Consent Decree, including claims on account of construction
24 delays

25 40. In the event that Defendants elect to perform any portion of the work required to
26 develop the Project, Defendants shall secure and maintain comprehensive general liability insurance
27 and automobile liability insurance with limits of \$10,000,000 (ten million dollars), combined single
28

1 limit. In addition, for the duration of this Consent Decree Defendants shall satisfy, or shall ensure
2 that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the
3 provision of worker's compensation insurance for all persons performing any work involved in
4 implementing this Consent Decree. No later than 15 days before commencing any work involved
5 in implementing this Consent Decree, Defendants shall provide to the Trustees certificates of such
6 insurance and a copy of each insurance policy. Defendants shall resubmit such certificates and
7 copies of policies each year on the anniversary of the effective date of this Consent Decree. If
8 Defendants demonstrates by evidence satisfactory to the Trustees that any contractor or subcontractor
9 maintains insurance equivalent to that described above, or insurance covering the same risks but in
10 a lesser amount, then, with respect to that contractor or subcontractor, Defendants need provide only
11 that portion of the insurance described above that is not maintained by the contractor or
12 subcontractor.

13 41. The Trustees agree to require that any contractor who performs work for them in the
14 Project area shall agree to indemnify and hold harmless Defendants and their agents, employees and
15 representatives, against all claims of any nature, including, but not limited to, claims by third parties
16 for death, personal injury, or property damage, and claims for environmental liability that arise as
17 the result of negligent acts or omissions of such contractor, its employees, representatives and agents
18 in carrying out the provisions of this Consent Decree. Such indemnity shall be limited to actual
19 damages only, and shall not extend to consequential damages or any other liability except as stated
20 herein.

21 XIX. COVENANT NOT TO SUE BY PLAINTIFFS

22 42. Except as specifically provided in Section XX (Reservations of Rights) below,
23 Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to Section
24 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water
25 Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.
26 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon
27 entry of this Consent Decree by the Court and continue in effect conditioned upon the satisfactory
28

1 performance by Defendants of their obligations under this Consent Decree. This covenant not to sue
2 extends only to each Defendant and its heirs, successors and assigns, and does not extend to any
3 other person.

4 XX RESERVATIONS OF RIGHTS

5 43. Plaintiffs reserve, and this Decree is without prejudice to, all rights against any
6 Defendant with respect to all matters not expressly included within the Covenant Not to Sue by
7 Plaintiffs in Paragraph 42. Notwithstanding any other provision of this Decree, Plaintiffs reserve,
8 and this Decree is without prejudice to, all rights against each Defendant with respect to:

9 a. liability for failure of the Defendant to meet a requirement of this Decree;

10 b. liability for costs of response incurred or to be incurred by Plaintiffs, provided,
11 however, that nothing in this Subparagraph b. shall be deemed to supersede or conflict with the
12 provisions of the consent decree entered in *United States v. Bay Chemical, et al.*, W.D. Wash. case
13 number C99-5521RJ;

14 c. liability for injunctive relief or administrative order enforcement under Section 106
15 of CERCLA, 42 U.S.C. § 9606;

16 d. criminal liability to the United States or State.

17 XXI REOPENERS

18 44. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve,
19 and this Consent Decree is without prejudice to, the right to institute proceedings against each
20 Defendant in this action or in a new action for:

21 a. Claims based on a failure of the Defendant to satisfy the requirements of this
22 Consent Decree; and

23 b. Additional claims for Natural Resource Damages if conditions, factors or
24 information in the Commencement Bay Environment, not known to the Trustees at the time of entry
25 of this Consent Decree, are discovered that, together with any other relevant information, indicates
26 that there is a threat to the environment, or injury to, destruction of, or loss of natural resources of
27 a type unknown, or of a magnitude significantly greater than was known, at the time of entry of this
28

1 Consent Decree, which is attributable to the Defendant. For purposes of this Paragraph, information
2 known to the Trustees shall consist of any information in the files of, or otherwise in the possession
3 of any one of the individual Trustees, or their contractors or consultants who worked on the Trustees'
4 natural resource damages assessment and liability allocation projects.

5 XXII. COVENANT NOT TO SUE BY DEFENDANTS

6 45. Each Defendant covenants not to sue and agrees not to assert any claims or causes
7 of action against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot
8 Indian Tribe or their contractors or employees, for any civil claims or causes of action relating to
9 Natural Resource Damages.

10 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

11 46. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
12 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
13 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
14 demands, and causes of action they each may have with respect to any matter, transaction, or
15 occurrence relating in any way to the Commencement Bay Environment against any person not a
16 Party hereto.

17 47. The Parties agree, and by entering this Consent Decree this Court finds, that each
18 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
19 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
20 70.105D 040(4)(d), for Natural Resource Damages.

21 48. Each Defendant agrees that it will notify the Trustees and the United States in writing
22 no later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.
23 Each Defendant also agrees that it will notify the Trustees and the United States in writing within
24 10 days of service of a complaint or claim upon them relating to a suit or claim for contribution for
25 Natural Resource Damages. In addition, each Defendant will notify the Trustees and the United
26 States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days
27 of receipt of any order from a court setting a case for trial for matters related to this Decree.

1 49. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for
2 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource
3 Damages, no Defendant shall assert, and nor may it maintain, any defense or claim based upon the
4 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
5 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent
6 proceeding were or should have been brought in the instant case; provided, however, that nothing
7 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 42 and
8 45.

9 XXIV NOTICES AND SUBMISSIONS

10 50. Whenever notice is required to be given or a document is required to be sent by one
11 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses
12 specified below, unless those individuals or their successors give notice of a change to the other
13 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice
14 requirement of the Decree for Plaintiffs and Defendants

15 As to the United States and as to DOJ:

16 Chief, Environmental Enforcement Section
17 Environment and Natural Resources Division
18 U.S. Department of Justice
19 P.O. Box 7611
20 Washington, D.C. 20044-7611
21 (DJ # 90-11-2-1049)

22 As to NOAA:

23 Robert A. Taylor
24 NOAA Office of General Counsel GCNR/NW
25 7600 Sand Point Way NE
26 Seattle, WA 98115-0070

27 As to the United States Department of the Interior:

28 Jeff Krausmann
U.S. Fish & Wildlife Service
510 Desmond Dr. SE, Suite 102

1 Lacey, WA 98503-1263

2 As to the State:

3 Craig Thompson
4 Toxics Cleanup Program
5 State of Washington
6 P.O. Box 47600
7 Olympia, WA 98504-7600

8 As to the Puyallup Tribe of Indians:

9 Bill Sullivan
10 Environmental Department
11 Puyallup Tribe of Indians
12 1850 Alexander Avenue
13 Tacoma, WA 98421

14 As to the Muckleshoot Indian Tribe:

15 Mr. Rob Otsea
16 Office of the Tribal Attorney
17 Muckleshoot Indian Tribe
18 39015 172nd Avenue S.E.
19 Auburn, WA 98002

20 As to AOL Express, Inc.:

21 Valerie Lewis
22 Asst. V.P. and Asst. Secretary
23 Safeway Inc.
24 5918 Stoneridge Mall Road
25 Pleasanton, CA 94619

26 As to Arkema Inc.:

27 Doug Loutzenhiser
28 Director, Envmt. & Sustainable Developmt.
Arkema Inc
900 First Avenue
King of Prussia, PA 19406

Steven I Parkinson
Groff Murphy Tractenberg & Everard
300 East Pine Street
Seattle, WA 98122

29 As to Buffelen Woodworking Company:

30

31

1 Loren Dunn
2 Riddell Williams P.S.
3 1001 Fourth Avenue Plaza, #4500
4 Seattle, WA 98154

5 As to CHS Inc.:

6 Tod Gold
7 Salter Joyce Ziker, PLLC
8 1601 Fifth Avenue, Suite 2040
9 Seattle, WA 98101

10 As to Edward and Molly Barry, Charles and Patricia Curran, Donald S. and Barbara Olson, Kay
11 E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole &
12 Charlie's Marinas and West Waterway Associates, P.S.:

13 Gregory A. Jacoby
14 McGavick Graves
15 Suite 500
16 1102 Broadway
17 Tacoma, WA 98402-3534

18 As to Dunlap Towing Company:

19 James L. Dunlap, President
20 P.O. Box 593
21 La Conner, Washington 98257

22 Guy J. Sternal
23 Eisenhower & Carlson
24 Wells Fargo Plaza, Suite 1200
25 1201 Pacific Avenue
26 Tacoma, WA 98402

27 As to Estate of Norman Nordlund, Hylebos Boat Haven, Phyllis Nordlund, Nordlund Boat
28 Company, Inc., and Nordlund Properties, Inc.:

29 Gregory A. Jacoby
30 McGavick Graves
31 Suite 500
32 1102 Broadway
33 Tacoma, WA 98402-3534

34 As to FOF, Inc.:

35 Patrick M. Paulich
36 Thorsrud Cane & Paulich
37 1325 Fourth Avenue, Suite 1300

1 Seattle, Washington 98101

2 As to Hylebos Marina Inc.:

3 James V. Handmacher
4 Morton McGoldrick, P.S.
5 P.O. Box 1533
6 820 A Street, Suite 600
7 Tacoma, WA 98401

8 As to Judy Johnson:

9 James V. Handmacher
10 Morton McGoldrick, P.S.
11 P.O. Box 1533
12 820 A Street, Suite 600
13 Tacoma, WA 98401

14 As to Jones Chemicals, Inc.:

15 Timothy J. Gaffney
16 Executive Vice President
17 JCI Jones Chemicals, Inc
18 100 Sunny Sol Boulevard
19 Caledonia, New York 14423

20 As to Joseph Simon & Sons and Rail & Locomotive Equipment Company (a Division of Joseph
21 Simon & Sons):

22 Philip Simon, President
23 2200 East River Street
24 Tacoma, Washington 98421

25 Guy J. Sternal
26 Eisenhower & Carlson
27 Wells Fargo Plaza, Suite 1200
28 1201 Pacific Avenue
Tacoma, WA 98402

29 As to Louisiana-Pacific Corporation:

30 Bert Krages
31 Attorney at Law
32 6665 SW Hampton St., Suite 200
33 Portland, OR 97223

34 As to Noveon Kalama Chemical, Inc.:

35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John W. Watson
Gardner Carton & Douglas LLP
191 N. Wacker Drive
Suite 3700
Chicago, IL 60606

As to Don and Alba Oline:

Clark J. Davis
Davis Roberts and Johns PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

As to Ronald Oline:

James V. Handmacher
Morton McGoldrick, P S
P.O. Box 1533
820 A Street, Suite 600
Tacoma, WA 98401

As to Portac, Inc.:

Tod Gold
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

As to Rayonier Properties, LLC:

R. Paul Beveridge	Donald L. Schwendiman
Heller Ehrman	Rayonier Properties, LLC
Suite 6100	3888 NW Randall Way, Suite 204
701 Fifth Avenue	Silverdale, WA 98383
Seattle, WA 98104	

As to Estate of Leslie P. Sussman, Paula Rose, Sussman Rose Sussman, Alan Sussman and
Sophie Sussman:

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue

1 Tacoma, WA 98402

2 As to USG Interiors, Inc.

3 Howard (Terry) Hall
4 Wolfstone, Panchot & Bloch, P.S., Inc.
5 801 Second Avenue, Suite 1500
6 Seattle, WA 98104

Christopher J. McElroy
Assistant General Counsel
USG Corp.
125 S. Franklin Street
Chicago, IL 60606

7 As to Wasser & Winters Co , Inc.:

8 James C. Hanken
9 Law Offices of James C. Hanken
10 999 Third Avenue, Suite 3210
11 Seattle, WA 98104

12 As to Zidell Marine Corporation:

13 Kathryn M. Silva
14 Zidell Marine Corporation
15 3121 SW Moody
16 Portland, OR 97239

Suzanne Lacampagne
Miller Nash LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204

17 XXV. EFFECTIVE DATE

18 51. The effective date of this Consent Decree shall be the date upon which this Consent
19 Decree is entered by the Court, except as otherwise provided herein

20 XXVI. RETENTION OF JURISDICTION

21 52. This Court will retain jurisdiction over this matter for the purpose of interpreting and
22 enforcing the terms of this Decree.

23 XXVII. INTEGRATION/APPENDICES

24 53. This Decree and its appendices constitute the final, complete, and exclusive
25 agreement and understanding with respect to the settlement embodied in this Decree. The Parties
26 acknowledge that there are no representations, agreements, or understandings relating to the
27 settlement other than those expressly contained in this Decree. The following appendices are
28 attached to and incorporated into this Consent Decree:

- 1 Appendix A Old Soldier's Home Setback Levee Setback Project Project Description
2 Appendix B Order Directing the Deposit of Natural Resource Damages into the
3 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B
4 (W.D. Wash. Oct 8, 1993)
5 Appendix C Project Site deed restrictions

6 XXVIII. MODIFICATION

7 54. No material modifications shall be made to any requirement under this Consent
8 Decree without written notification to and written approval of the United States Department of
9 Justice and the Trustees, Defendants and the Court. Modifications to this Consent Decree exclusive
10 of the appendices incorporated within that do not materially alter the terms of this Consent Decree
11 may be made by written agreement between the United States Department of Justice, the Trustees
12 and Defendants. Modifications to any of the appendices to this Consent Decree that do not materially
13 alter any of the terms of this Consent Decree may be made by written agreement between the
14 Trustees and Defendants. The following modifications shall be deemed not to materially alter the
15 terms of this Consent Decree or the appendices incorporated herein:

- 16 a. Extensions of deadlines contained in Appendix A, provided that the total
17 of such extensions shall equal one year or less;
18 b. Project design changes that increase the Project scale, or that decrease the
19 Project scale by no more than 10% (ten percent) of the Project's area; or
20 c. Extensions of deadlines for reports, accounts, plans or proposals of 45
21 days or less.

22 XXIX. ENFORCEMENT

23 55 The requirements of this Consent Decree, including but not limited to deadlines,
24 schedules and Project designs, are independently enforceable and the delay or failure of the Trustees
25 to enforce any requirement will not preclude or prejudice the subsequent enforcement of the same
26 or another requirement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XXX. TERMINATION

56. This Decree shall terminate upon written notice, made in accordance with Section XXIV, by Defendants to all Plaintiffs that all actions required under Section VIII have been taken, all payments required under Sections VIII, XII and XIII (and under Sections XIV and XVI, if applicable) have been made and all other applicable requirements of this Decree have been fulfilled, and subsequent written notice by the United States confirming the performance by Defendants of their obligations under this Decree. Such notice by the United States shall be sent within 45 calendar days of receipt by all Plaintiffs of the required payments and notice from Defendants. If the United States fails to send such notice, this Decree shall terminate automatically on the 46th day following receipt by all Plaintiffs of the required payments and notice from Defendant. The following provisions of this Decree shall survive termination: Section IX (“Post-Construction Alterations; Further Restoration Actions”); Section X (“Access to Information and Project Site”); Section XIX (“Covenant Not to Sue by Plaintiffs”); Section XX (“Reservations of Rights”); Section XXI (“Reopeners”); Section XII (“Covenant Not to Sue by Defendants”); and Section XXIII (“Effect of Settlement; Contribution Protection”).

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

57. This Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations that indicate this Decree is inappropriate, improper, or inadequate. Each Defendant consents to the entry of this Decree without further notice.

58. If for any reason this Court does not approve this Decree in the form presented, or does not approve this Decree by June 30, 2006 and Pierce County does not extend the applicable deadline for performance contained in the Project agreement with Defendants, this settlement agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

1 59. The Assistant Attorney General for the Environment and Natural Resources Division
2 of the United States Department of Justice and each undersigned representative of the State, the
3 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies that he or she
4 is authorized to enter into the terms and conditions of this Decree and to execute and bind legally
5 the Party that he or she represents to this document

6 60. Each Defendant agrees not to oppose entry of this Decree by this Court or to
7 challenge any provision of this Decree unless any Plaintiff has notified Defendant in writing that it
8 no longer supports entry of the Decree.

9 61. Each Defendant will identify on the attached signature page the name and address of
10 an agent who is authorized to accept service of process by mail on behalf of it with respect to all
11 matters relating to this Decree. Each Defendant agrees to accept service in that manner and to waive
12 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any
13 applicable local rules of this Court, including but not limited to service of a summons.

14 **XXXIII. FINAL JUDGMENT**

15 62. Upon approval and entry of this Decree by the Court, this Decree will constitute the
16 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the
17 Muckleshoot Indian Tribe, and each Defendant. The Court finds that there is no just reason for delay
18 and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

19
20 SO ORDERED THIS ____ DAY OF _____ 2006.

21
22
23 _____
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Appendix A
Old Soldiers Home Levee Setback Project Description

Old Soldiers Home Levee Setback Project

1. Project Description

The project will consist of a setback levee along the Puyallup River near Orting, WA at river miles 21.3 to 22.5, approximately 6376 feet in length, with a maximum toe width of 50 feet, along the inside of an existing meander bend. The top will be 12 feet wide, and the river face will have a buried toe of 9 feet width. Total width is expected to vary based on height of levee. The levee will be approximately 950 feet from the existing levee at the widest portion of the site. The back slope will be 5 to 1, and the fore slope will be 2 to 1. The levee will consist of approximately 55,107 Cubic Yards (CY) of gravel, 3506 CY of ¾ inch minus crushed rock, and will be faced with 5929 CY of 30 inch minus riprap. The alignment of the levee is shown in the figures in Section 6 below. The alignment follows property boundaries and roads as closely as possible until it turns back into the existing levee at 5500 feet. The alignment maximizes the floodplain area, forested wetland, and relict side-channel habitat that will be reconnected (67 acres).

Concurrent with this construction, rip-rap will be added to three existing areas at the project site and in the project vicinity: (1) 350 feet upstream of the upstream project end on the left bank; (2) between the downstream project end and a point 100 feet below the Calastoga bridge on the left bank; (3) 150 feet of work at and along the right bank, only as needed along the right bank to protect the existing levee from damage due to changes in river hydraulics. Specific construction features are described in Table 1.

Table 1 Summary of the construction features

Feature Name	Length (ft)	Width (ft)	Riprap Qty (CY)	Comments
Set-back Levee	6376	50	5929	950ft max setback from river
Right Bank levee upgrade	6472	Varies	3054	Sized based on need to reach 3ft total thickness based on existing riprap
RT bank below Bridge	145	Varies	84	
LFT Bank Below Bridge	150	50	89	
DS LFT Bank Existing levee	1090	50	1327	Flap gate for existing opening
US Left Bank Existing Levee	350	50	168	Protects new toe and tie-in point
Above Project LFT bank existing Levee	150	50	86	2900 ft above US end of new levee

Construction is expected to begin in July 2006 with the setup of staging and construction management areas. Access will be obtained through Pierce County property, and through a construction access easement from the Washington State Old Soldiers Home. Construction of the levee will begin from the down stream end, and work up stream. Concurrently, the existing levee will be demolished including all armor or face rock to the toe of the levee, which is at or below the Ordinary High Water mark (OHW). Materials from the existing levee will be salvaged and included in the new setback levee. Construction will proceed in this parallel fashion, with additional materials brought to the site from a Pierce County gravel pit located approximately 1 mile away. Construction is expected to be completed no later than the end of 2007. Once the setback levee is complete, two channels will be excavated in a downstream – upstream fashion, creating two openings of 200 linear feet to facilitate reconnection to the river. The channels will be sited based on field conditions, and their final positions and sizes will be reported in the As-Built drawings. Existing levee vegetation larger than 8 inches DBH will be preserved, to comply with the policies of the Puyallup Tribe Vegetation Settlement agreement. No new vegetation will be planted on the existing levee once its demolition is completed. No vegetative plantings are anticipated within the already heavily vegetated site.

2. Required Permits and Approvals

- a) Hydraulic Project Approval, Washington Department of Fish and Wildlife
- Permit No. 102160-1, issued July 12, 2005
- b) Pierce County Determination of Nonsignificance and Adoption of Existing Environmental Document
- Application No. 402265, issued April 25, 2005
- c) Final Environmental Assessment, U.S. Army Corps of Engineers, Seattle District
- issued February 2005
- d) Finding of No Significant Impact (FONSI), U.S. Army Corps of Engineers, Seattle District
- issued March 31, 2005
- e) Consultation under the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.
- Letter of concurrence by NOAA, August 3, 2004
- Letter of concurrence by U.S. Fish and Wildlife Service, October 20, 2004
- f) Section 404 Permit, U.S. Army Corps of Engineers, Seattle District
- pending
- g) Shoreline Substantial Development Permit, City of Orting
- pending

- h) Shoreline Substantial Development Permit, Pierce County
- pending
- i) Section 401 Water Quality Certification, Washington Department of Ecology
- pending

3. Project Construction and Development Schedule

- | | |
|---|---|
| a. Permit Applications filed | Done |
| b. Ninety-percent design completed | July 1, 2006 |
| c. Construction completion | Two years after entry of this Consent Decree |
| d. Post-Construction Report (5 a below) | 180 days after Trustees' Notice of Approval of Completion for the Project |
| e. Project completion accounting | 180 days after Trustees' Notice of Approval of Completion for the Project |

4. Project Performance Evaluation Plan

a. Defendants will provide the Trustees with a post-construction report including a letter of completion from Pierce County's contractor and "as-built" drawings demonstrating that the existing river levee has been reduced in height to the Ordinary High Water mark within the Project area as described in section 1 above. If the post-construction "as-built" drawings do not demonstrate compliance with this height limit, the defendants will be required to perform additional work as necessary to bring the levee down to the specified level. Consent decree enforcement terms (stipulated penalties and liquidated damages) will be tied to this element.

b. The Trustees shall perform spawning surveys to be conducted every 10 days from September 1 through December 31. The surveys will begin the year after construction is complete and will run for two consecutive years. The defendants have reimbursed the Trustees for the cost of such surveys in the Restoration Oversight Costs provided in the Consent Decree. No performance objective (i.e., X% increase in spawning, etc.) or adaptive management will be tied to this monitoring element, and the information derived from the spawning surveys shall not provide a basis for any additional work by the Defendants. It is intended solely to provide information to the Trustees to assist them in determining whether levee setback projects achieved their intended purpose.

5. Project Adaptive Management Plan

None

6. Exhibits:

A. Project Map

B. Project Drawings

C. Project Photos

Exhibit A Project Map

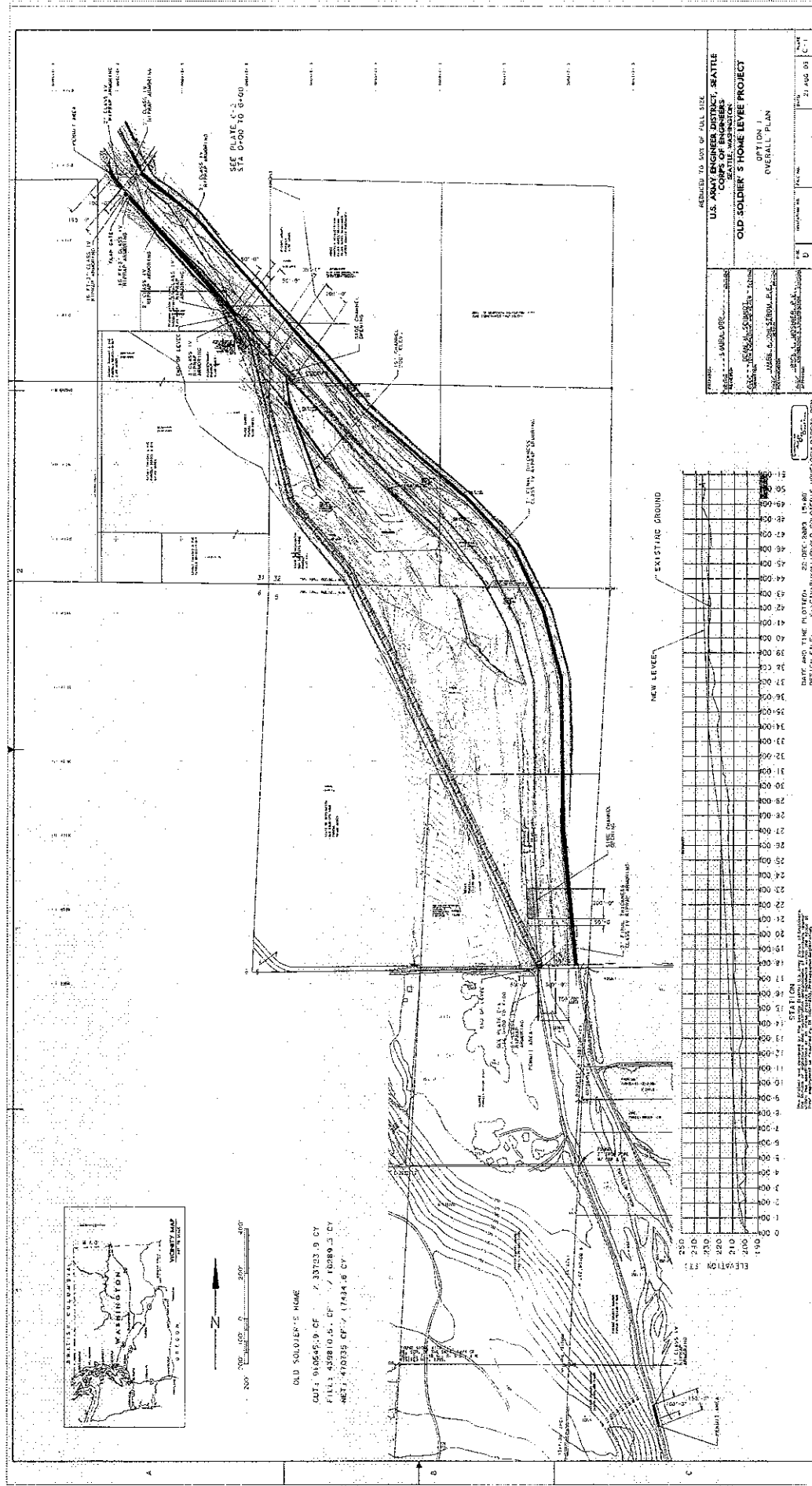
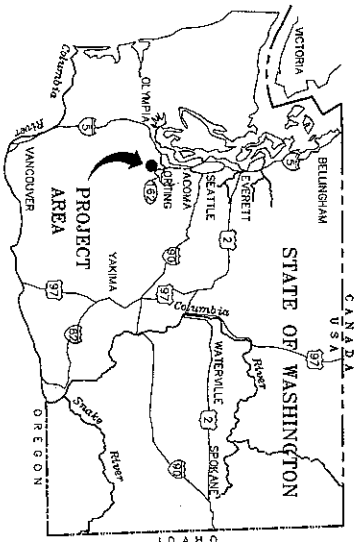


Exhibit B Project Drawings

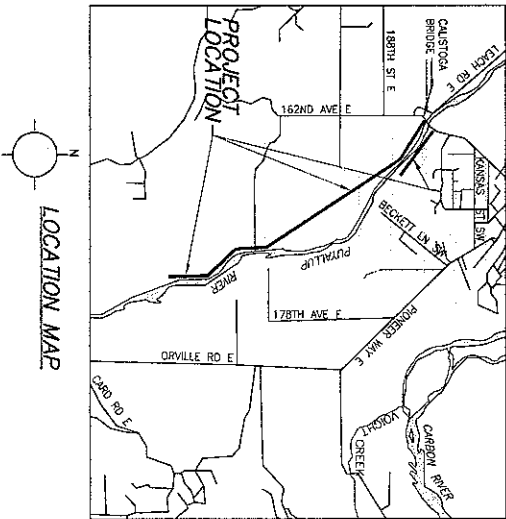


Pierce County

STORM DRAINAGE AND SURFACE WATER MANAGEMENT UTILITY
 OLD SOLDIER'S HOME LEVEE SETBACK
 CIP Project Number D010-3-6



AREA MAP



LOCATION MAP

DRAWING INDEX

GENERAL	1 OF 23	G01 LOCATION MAP AND DRAWING INDEX
	2 OF 23	G02 ABBREVIATIONS, LEGEND AND SUMMARY OF QUANTITIES
	3 OF 23	G03 STRUCTURAL NOTES AND CONSTRUCTION SEQUENCE
CIVIL	4 OF 23	C01 SITE CONTROL PLAN AND PROJECT LIMITS
	5 OF 23	C02 PROJECT CONTROL TABLES AND TYPICAL CROSS SECTIONS
	6 OF 23	C03 LEFT BANK LEVEE - PLAN AND PROFILE - STA 10+00 TO STA 110+36
	7 OF 23	C04 SETBACK LEVEE - PLAN AND PROFILE - STA 0+00 TO STA 13+50
	8 OF 23	C05 SETBACK LEVEE - PLAN AND PROFILE - STA 13+50 TO STA 27+00
	9 OF 23	C06 SETBACK LEVEE - PLAN AND PROFILE - STA 27+00 TO STA 41+00
	10 OF 23	C07 SETBACK LEVEE - PLAN AND PROFILE - STA 41+00 TO STA 51+75
	11 OF 23	C08 LEFT BANK LEVEE - PLAN AND PROFILE - STA 151+75 TO STA 182+00
	12 OF 23	C09 LEFT BANK LEVEE - PLAN AND PROFILE - STA 182+00 TO STA 187+50
	13 OF 23	C10 RIGHT BANK LEVEE - PLAN AND PROFILE - STA R0+00 TO STA R13+50
	14 OF 23	C11 RIGHT BANK LEVEE - PLAN AND PROFILE - STA R13+50 TO STA R31+00
	15 OF 23	C12 RIGHT BANK LEVEE - PLAN AND PROFILE - STA R31+00 TO STA R64+50
	16 OF 23	C13 RIGHT BANK LEVEE - PLAN AND PROFILE - STA R64+50 TO STA R67+50
	17 OF 23	C14 THE-BACK LEVEE AND TURN OUT - PLAN, PROFILE AND SECTION
	18 OF 23	C15 LEFT BANK REMOVAL - PLAN AND TYPICAL SECTION
	19 OF 23	C16 HABITAT CHANNEL IMPROVEMENT PLAN AND PROFILE
	20 OF 23	C17 HABITAT INLET AND OUTLET CHANNEL - PLAN, PROFILE AND CROSS-SECTIONS
	21 OF 23	C18 HABITAT CHANNEL IMPROVEMENTS - PLAN AND SECTION
	22 OF 23	C19 CIVIL DETAILS
	23 OF 23	C20 TEMPORARY EROSION SEDIMENTATION CONTROL PLAN

DESIGNED BY L. SHAWNS	DATE SUBMITTED NOV 01 2005	
CHECKED BY A. SHERMAN	DATE NOV 01 2005	
NO	DATE	
REVISION	BY	APPROVED



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1000 UNIVERSITY PLACE, WA 98407-1076

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 LOCATION MAP AND DRAWING INDEX
 C.I.P. D010-3-6
 SHEET 1 OF 23

STRUCTURAL NOTES

STRUCTURE EXCAVATION CLASS B INCLUDING HAUL

CODE STATION
 DESIGNATION SHEET 5

SHEET 6

SHEET 7

SHEET 8

SHEET 9

PROJECT CONSTRUCTION SEQUENCE

- NOTES:
 THE FOLLOWING IS THE RECOMMENDED CONSTRUCTION SEQUENCE:
1. INSTALL CONSTRUCTION LIMIT BOUNDARY AND TEMPORARY EROSION CONTROL FACILITIES.
 2. PREPARE ACCESS ROAD AND TEMPORARY STOCKPILE AREA.
 3. CLEAR OLD LEVEL BETWEEN STA 9+40 AND STA+60.
 4. REMOVE EXISTING TERRACE FROM SECTION AREA STA 1+50 TO 48+00 AND SLOPE FROM SECTION AREA STA 1+50 TO 48+00.
 5. REGRADE LEVEE REMOVAL AREA AND HYDROSEED TO MINIMIZE EROSION.
 6. PROCESS OLD LEVEE MATERIAL FOR USE AS EMBANKMENT MATERIAL FOR LEVEE SECTIONS.
 7. CLEAR AND GRUB RIGHT BANK LEVEE FROM STA 0+00 TO STA 8+40.
 8. RAISE AND STABILIZE EXISTING RIGHT BANK LEVEE FROM STA 0+00 TO STA 8+40.
 9. CLEAR AND GRUB LEFT BANK LEVEE FROM STA 10+00 TO 110+36.
 10. RAISE AND STABILIZE EXISTING LEVEE FROM 10+00 TO 110+36.
 11. CLEAR AND GRUB SETBACK LEVEE SITE FROM STA 0+00 TO 51+50.
 12. CONSTRUCT SETBACK LEVEE.
 13. CLEAR EXISTING LEFT BANK RETENMENT FROM STA 51+65 TO 78+15 AND FROM STA 80+50 TO 82+50.
 14. RAISE AND STABILIZE EXISTING LEFT BANK LEVEE FROM STA 51+65 TO 78+15 AND FROM STA 80+50 TO 82+50.
 15. CONSTRUCT HABITAT CHANNEL, OULET.
 16. CONSTRUCT HABITAT CHANNEL IMPROVEMENTS.
 17. CONSTRUCT HABITAT CHANNEL INLET.
 18. REMOVE UNUSED MATERIAL AND TEGC BMPs.
 19. RESTORE ACCESS ROADS AND HYDROSEED DISTURBED AREAS THAT NEED ADDITIONAL HYDROSEED OR HAVE NOT BEEN HYDROSEED.

DESIGNED BY L. GIBBONS	DATE	NO.	DATE	BY	APPROVED
CHECKED BY A. METZNER	DATE	NO.	DATE	BY	APPROVED
DRAWING NO.	DATE	NO.	DATE	BY	APPROVED
DATE	NO.	DATE	NO.	DATE	NO.



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 UNIVERSITY PLACE, WY BRADY-1076
 BRADY, SOUTH DAKOTA 57005

90%

**OLD SOLDIER'S HOME LEVEE SETBACK
 STRUCTURAL NOTES AND
 CONSTRUCTION SEQUENCE**
 C.A.P. D010-3-6

CALL 2 DAYS
 BEFORE YOU DIG
 1-800-424-5555

DRAWING NO. 3440052
 DESIGNER BY: L. GARDNER
 CHECKED BY: A. HELDORF
 DATE: 11/30/05

NO. DATE REGION BY APPROVED

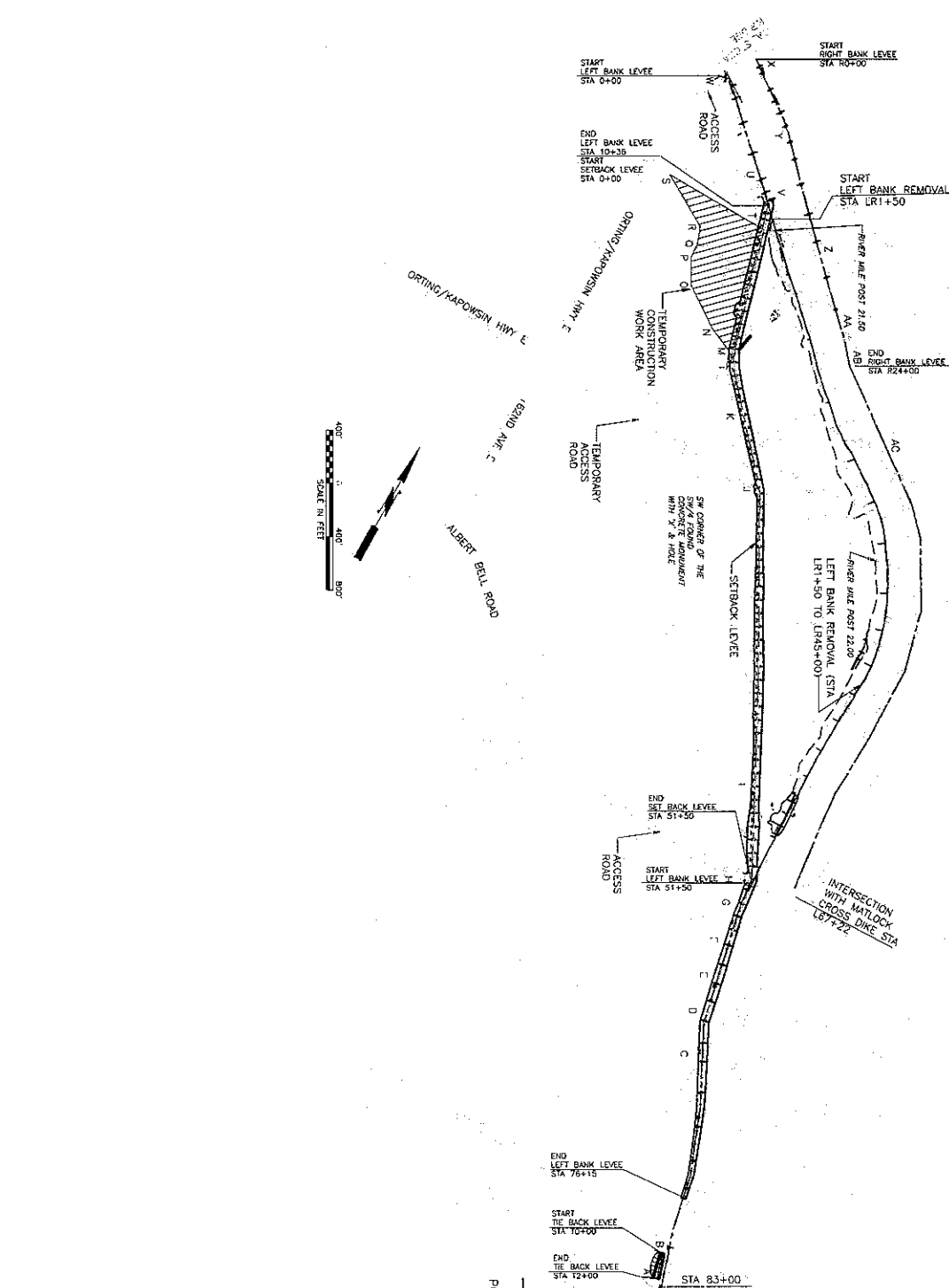
DATE SURVEYED BY: []
 DRAWN BY: []
 DESIGNED BY: []
 CHECKED BY: []
 DATE: []



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1500 1ST STREET, W. BRIDGEVIEW, WA 98407-1078
 PHONE: (360) 738-2300 FAX: (360) 738-2300

90%

**OLD SOLDIERS HOME LEVEE SETBACK
 SITE CONTROL PLAN
 AND PROJECT LIMITS**
 C.I.P. D010-3-6
 SHEET 1 OF 23



CONSTRUCTION LIMITS

POINTS	NORTHINGS	EASTINGS	DESCRIPTIONS
A	638661.60	1217698.26	END TIEBACK LEVEE CENTERLINE
B	638686.38	1217259.56	START TIEBACK LEVEE CENTERLINE
C	638279.76	1217004.74	60 FOOT EASEMENT CORNER
D	638582.45	1216932.19	60 FOOT EASEMENT CORNER
E	638862.29	1216873.30	60 FOOT EASEMENT CORNER
F	638747.47	1216829.51	60 FOOT EASEMENT CORNER
G	638396.22	1216742.11	60 FOOT EASEMENT CORNER
H	638589.43	1216557.78	60 FOOT EASEMENT CORNER
I	640211.58	1216396.45	60 FOOT EASEMENT CORNER
J	642823.38	1215282.63	60 FOOT EASEMENT CORNER
K	642978.71	1214825.86	60 FOOT EASEMENT CORNER
L	642823.38	1214431.66	60 FOOT EASEMENT CORNER
M	642823.38	1214391.68	60 FOOT EASEMENT CORNER
N	643062.22	1214431.66	60 FOOT EASEMENT CORNER
O	643555.21	1214025.61	60 FOOT EASEMENT CORNER
P	643676.76	1213976.43	60 FOOT EASEMENT CORNER
Q	643894.48	1213589.84	60 FOOT EASEMENT CORNER
R	643894.48	1213589.84	60 FOOT EASEMENT CORNER
S	643894.48	1213589.84	60 FOOT EASEMENT CORNER
T	643894.48	1213589.84	60 FOOT EASEMENT CORNER
U	644771.95	1213539.88	60 FOOT EASEMENT CORNER
V	644771.95	1213539.88	60 FOOT EASEMENT CORNER
W	644962.30	1213723.88	60 FOOT EASEMENT CORNER
X	644962.30	1213723.88	60 FOOT EASEMENT CORNER
Y	643946.22	1214698.17	60 FOOT EASEMENT CORNER
Z	643542.92	1215278.18	60 FOOT EASEMENT CORNER
AA	643329.46	1215474.09	60 FOOT EASEMENT CORNER
AB	643329.46	1215474.09	60 FOOT EASEMENT CORNER
AC	642942.99	1216011.73	60 FOOT EASEMENT CORNER

LEGEND

- FOUND MONUMENT AS NOTED
- FOUND CORNER AS NOTED
- SET 1/2" REBAR & CAP. DEA LS 16930
- (C) CALCULATED
- (D) DEED

NOTES

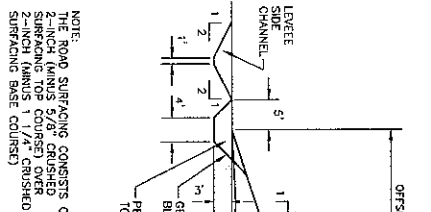
1. THERE ARE THREE ACCESS ROADS TO THE PROJECT. THE ACCESS POINTS ARE SHOWN ON THIS CONTROL PLAN.
2. THE ACCESS ROADS WILL BE SURFACED WITH 2 INCHES (MINIMUM) OF CRUSHED SURFACING BASE COURSE PRIOR TO CONSTRUCTION. ROAD SURFACING WILL BE MAINTAINED THROUGHOUT CONSTRUCTION.

COORDINATES

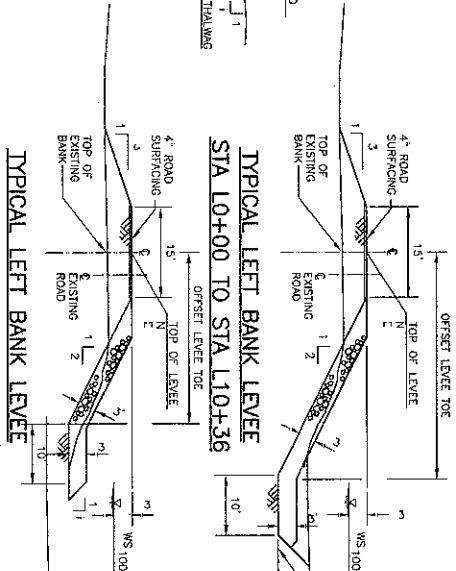
**BASIS OF BEARINGS: WASHINGTON SOUTH
 ZONE COORDINATES (NAD 83/91)**

P.C.R.I. MONUMENT NOTES

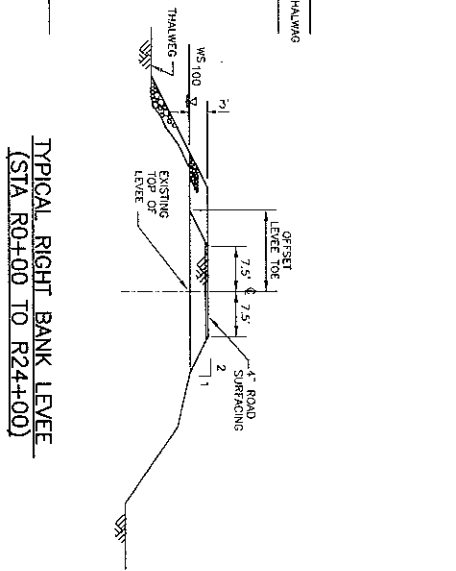
PIERCE COUNTY RIVER IMPROVEMENT MONUMENTS
 RIVER MILE POST 21.00 N CONCRETE MONUMENT
 FOUND 5" BRASS DISK IN CONCRETE MONUMENT
 WITH PUNCHMARK AND STAMPED RMP 21.00.
 N 643916.8728
 E 1214463.5894
 ELEV. 205.00
 RIVER MILE POST 22.00
 FOUND 3" BRASS DISK IN CONCRETE MONUMENT
 WITH PUNCHMARK AND STAMPED RMP 22.00
 N 642917.8778
 E 1214463.5894
 ELEV. 221.07



TYPICAL SETBACK LEVEE
 STA 0+00 TO STA 51+50



TYPICAL LEFT BANK LEVEE
 STA 10+00 TO STA 36+00



TYPICAL RIGHT BANK LEVEE
 (STA 0+00 TO STA 24+00)

PROJECT CONTROL						
SETBACK LEVEE CONTROL						
STATION	CENTERLINE COORDINATES	100 YEAR WS TOP OF LEVEE ELEVATION	EXISTING GROUND THALWAG AT TOE	OFF-SET TOE ELEVATION	PERMEABLE TOE EXIST	OFF-SET PERMEABLE TOE 3H-1V
0+4.3	644561.9	1214343.8	206.3	204.0	191.5	42.1
1+50	643959.9	1214373.8	206.8	205.0	191.9	42.1
2+65	643849.8	1214408.4	208.6	198.0	192.5	33.3
3+80	643729.3	1214441.8	210.3	193.0	193.0	32.1
4+95	643611.8	1214594.6	211.0	203.5	199.0	40.6
6+10	642754.3	1214842.9	213.1	203.5	199.0	38.9
7+25	642199.8	1215181.2	213.1	208.3	202.6	28.7
8+40	641711.2	1215521.4	213.1	210.0	202.6	19.0
9+55	641222.6	1215862.4	213.1	210.0	202.6	19.0
10+70	640734.0	1216202.4	213.1	210.0	202.6	19.0
11+85	640245.4	1216542.4	213.1	210.0	202.6	19.0
13+00	639756.8	1216882.4	213.1	210.0	202.6	19.0
14+15	639268.2	1217222.4	213.1	210.0	202.6	19.0
15+30	638779.6	1217562.4	213.1	210.0	202.6	19.0
16+45	638291.0	1217902.4	213.1	210.0	202.6	19.0
17+60	637802.4	1218242.4	213.1	210.0	202.6	19.0
18+75	637313.8	1218582.4	213.1	210.0	202.6	19.0
19+90	636825.2	1218922.4	213.1	210.0	202.6	19.0
21+05	636336.6	1219262.4	213.1	210.0	202.6	19.0
22+20	635848.0	1219602.4	213.1	210.0	202.6	19.0
23+35	635359.4	1219942.4	213.1	210.0	202.6	19.0
24+50	634870.8	1220282.4	213.1	210.0	202.6	19.0
25+65	634382.2	1220622.4	213.1	210.0	202.6	19.0
26+80	633893.6	1220962.4	213.1	210.0	202.6	19.0
27+95	633405.0	1221302.4	213.1	210.0	202.6	19.0
29+10	632916.4	1221642.4	213.1	210.0	202.6	19.0
30+25	632427.8	1221982.4	213.1	210.0	202.6	19.0
31+40	631939.2	1222322.4	213.1	210.0	202.6	19.0
32+55	631450.6	1222662.4	213.1	210.0	202.6	19.0
33+70	630962.0	1223002.4	213.1	210.0	202.6	19.0
34+85	630473.4	1223342.4	213.1	210.0	202.6	19.0
36+00	629984.8	1223682.4	213.1	210.0	202.6	19.0
37+15	629496.2	1224022.4	213.1	210.0	202.6	19.0
38+30	629007.6	1224362.4	213.1	210.0	202.6	19.0
39+45	628519.0	1224702.4	213.1	210.0	202.6	19.0
40+60	628030.4	1225042.4	213.1	210.0	202.6	19.0
41+75	627541.8	1225382.4	213.1	210.0	202.6	19.0
42+90	627053.2	1225722.4	213.1	210.0	202.6	19.0
44+05	626564.6	1226062.4	213.1	210.0	202.6	19.0
45+20	626076.0	1226402.4	213.1	210.0	202.6	19.0
46+35	625587.4	1226742.4	213.1	210.0	202.6	19.0
47+50	625098.8	1227082.4	213.1	210.0	202.6	19.0
48+65	624610.2	1227422.4	213.1	210.0	202.6	19.0
49+80	624121.6	1227762.4	213.1	210.0	202.6	19.0
51+50	623633.0	1228102.4	213.1	210.0	202.6	19.0

PROJECT CONTROL						
LEFT BANK LEVEE CONTROL						
STATION	CENTERLINE COORDINATES	100 YEAR WS TOP OF LEVEE ELEVATION	EXISTING GROUND THALWAG AT TOE	OFF-SET TOE ELEVATION	PERMEABLE TOE EXIST	OFF-SET PERMEABLE TOE 3H-1V
0+00		200.7	196	184.5	191.0	38.8
1+15		202.2	198	184.6	191.0	42.7
2+30		202.2	200	184.9	191	42.1
3+45		203.5	201	193.8	191.9	36.9
4+60		205.1	201	193.3	194.0	38.1
5+75		208.3	203	191.0	191.9	38.1

PROJECT CONTROL						
RIGHT BANK LEVEE CONTROL						
STATION	CENTERLINE COORDINATES	100 YEAR WS TOP OF LEVEE ELEVATION	EXISTING GROUND THALWAG AT TOE	OFF-SET TOE ELEVATION	PERMEABLE TOE EXIST	OFF-SET PERMEABLE TOE 3H-1V
60+00		200.7	197	184.5	191.0	38.8
61+15		202.2	197	184.6	191.0	42.7
62+30		202.2	198	184.7	191.0	42.1
63+45		203.5	198	193.8	191.9	36.9
64+60		205.1	201	193.3	194.0	38.1
65+75		208.3	203	191.0	191.9	38.1

DESIGNED BY	DATE
CHECKED BY	DATE
DRAWN BY	DATE
SCALE	

NO.	DATE	REVISION	BY	APPROVED



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 8550 BAIN STREET WEST
 UNIVERSITY PLACE, WA 98467-1078

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 PROJECT CONTROL TABLES
 AND TYPICAL CROSS SECTIONS
 C.I.P. D010-3-6
 SHEET 3 OF 21

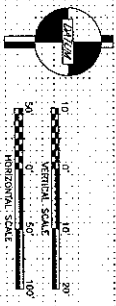
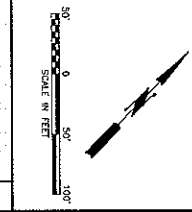
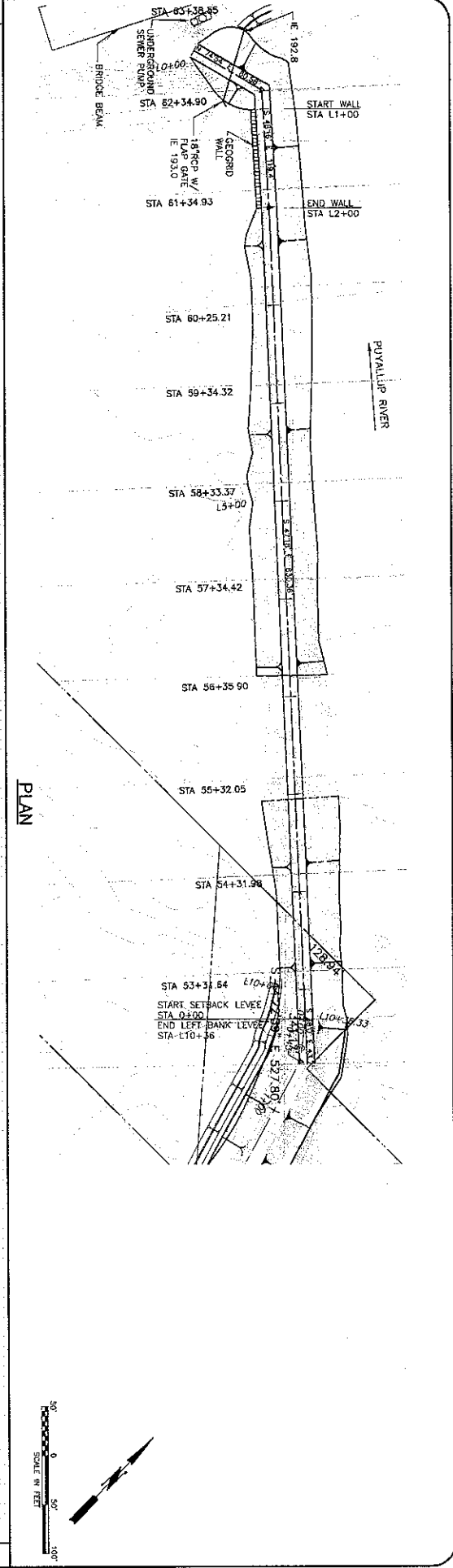
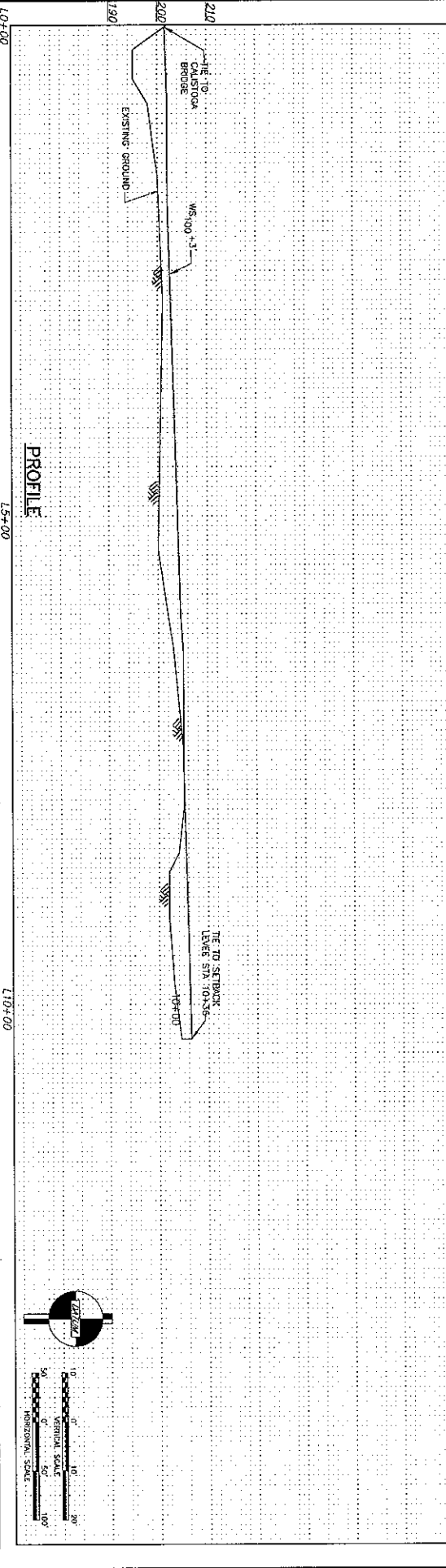
DRAWING NO.	DATE SURVEYED BY
DESIGNED BY	DATE SURVEYED:
CHECKED BY:	ROOM NO.
A. WECHE	DATE:
NO.	DATE
REVISION	BY
APPROVED	

TECHNICAL
 10100
 10100
 10100

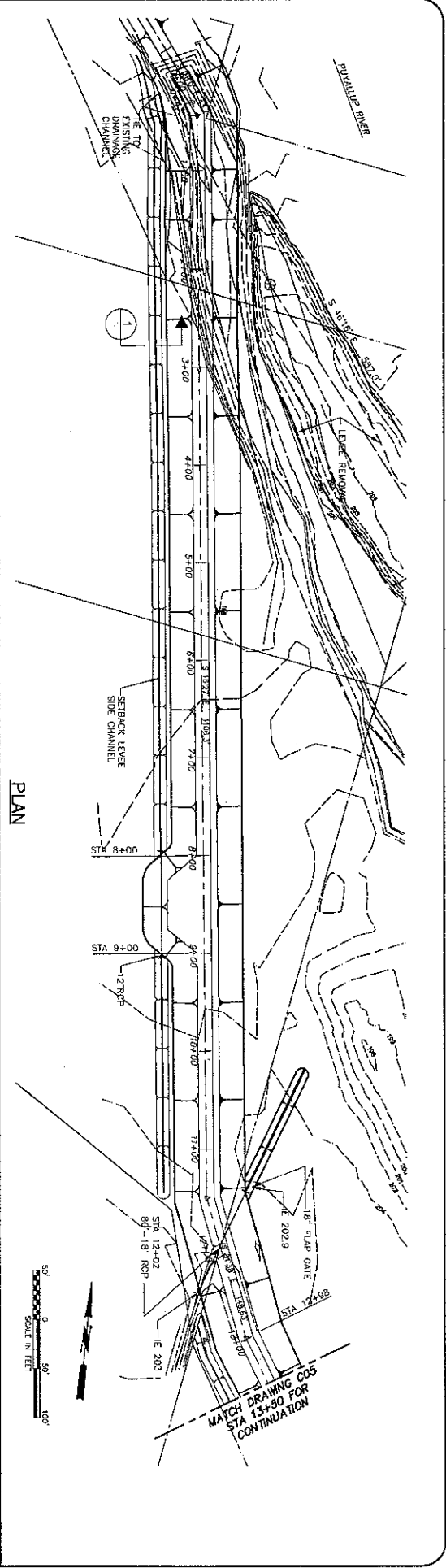
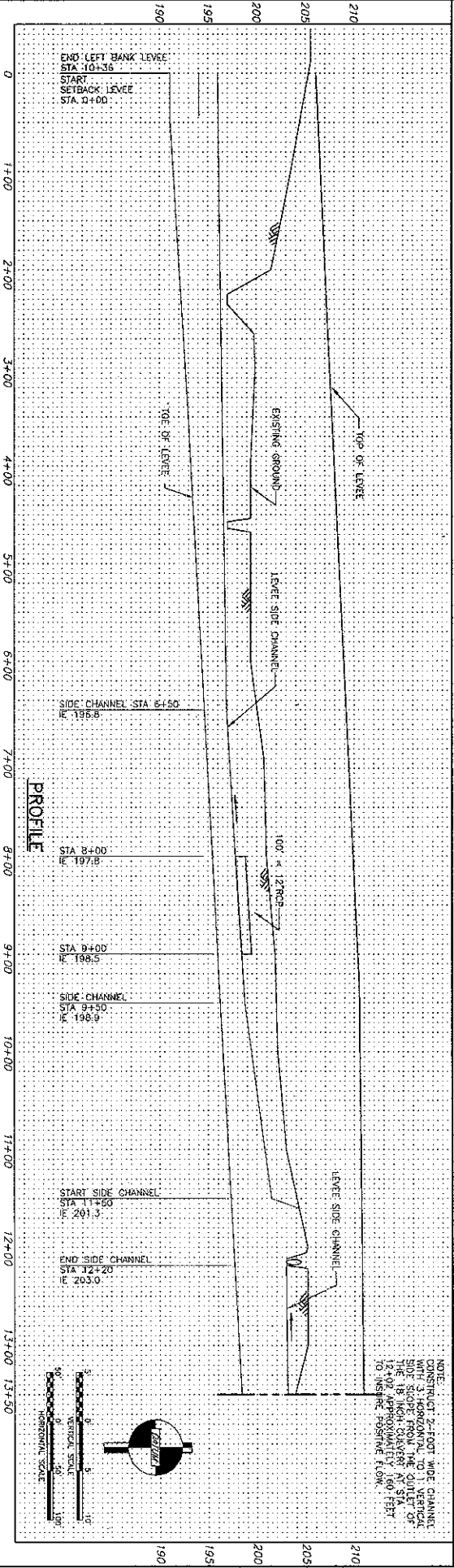
Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 UNIVERSITY PLACE, WA 98497-1028
 (206) 835-3000 EXT. 333 WATER PROGRAMS DIVISION

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 CUSTOMER AVENUE AND 192 RD STREET EAST
LEFT BANK PLAN AND PROFILE
 STA 10+00 TO STA 10+36
 C.I.P. D010-3-6



DRAWING NO.		SHEET NO.	
DESIGNED BY	DATE	DESIGNED BY	DATE
CHECKED BY	DATE	CHECKED BY	DATE
A. DICKER			
NO.	DATE	REVISION	BY
 TETRA TECH CONSULTING ENGINEERS 10101 Westheimer Road, Suite 200 Houston, Texas 77040		 Pierce County DEPARTMENT OF PUBLIC WORKS AND UTILITIES WATER PROGRAMS 5200 MAIN STREET, WEST TUMWAC, WA 98447-1078	
90%			
CLIP D010-3-6 OLD SOLDIERS HOME LEVEL SETBACK SETBACK LEVEL PLAN AND PROFILE STA 0+00 TO STA 13+50			
SHEET 7 OF 21			



MATCH DRAWING CDS
 STA 13+50 FOR
 CONTINUATION

DRAWING NO.	13+50
DATE STARTED	
DATE FINISHED	
DESIGNED BY	
CHECKED BY	
DATE	

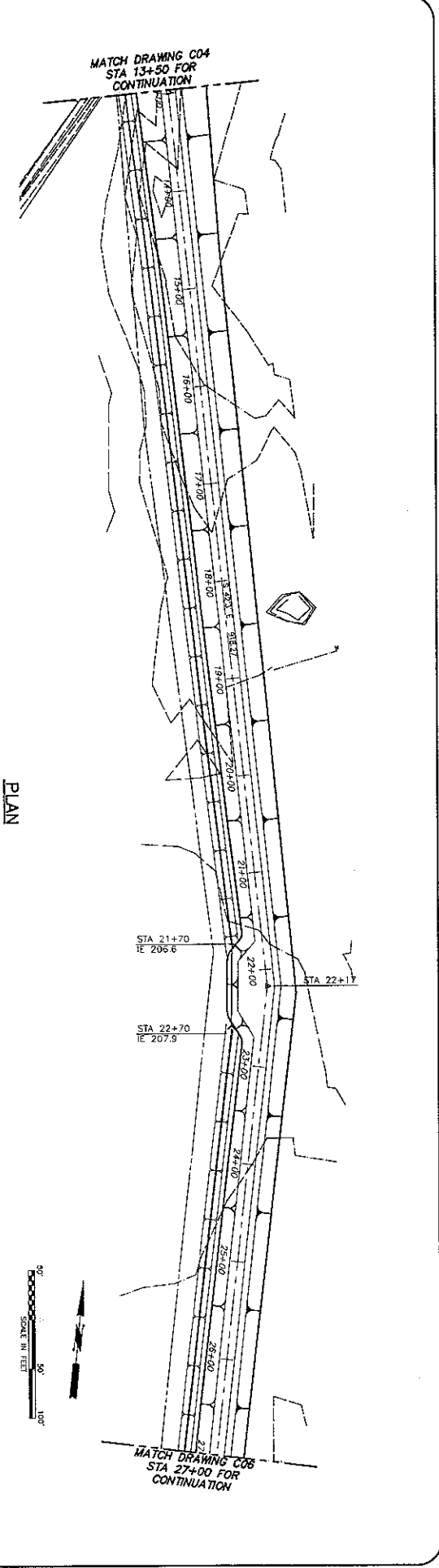
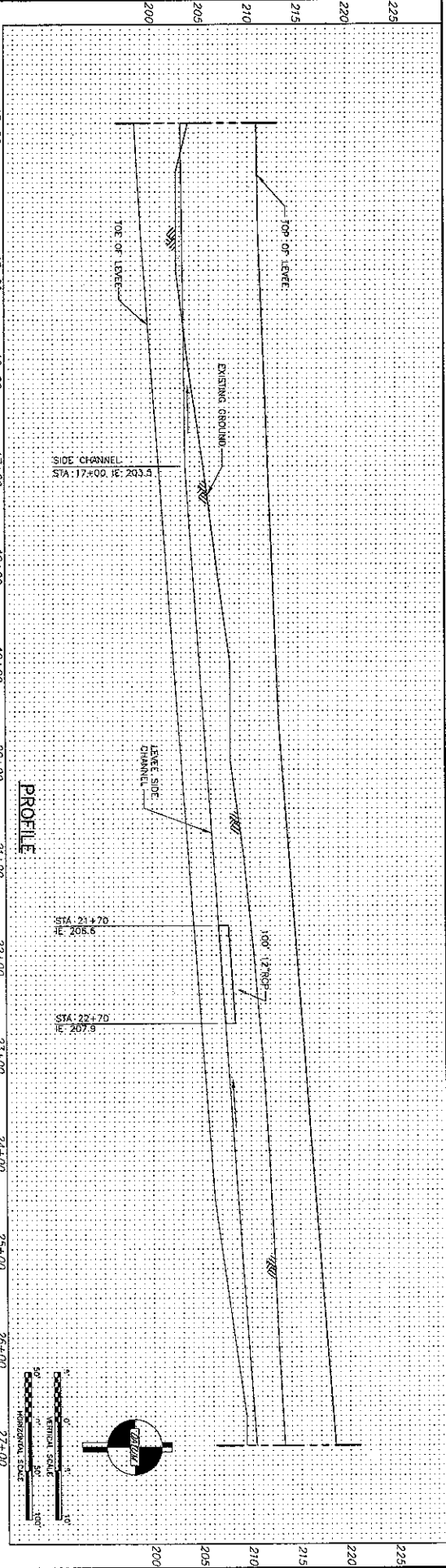
NO.	DATE	REVISION

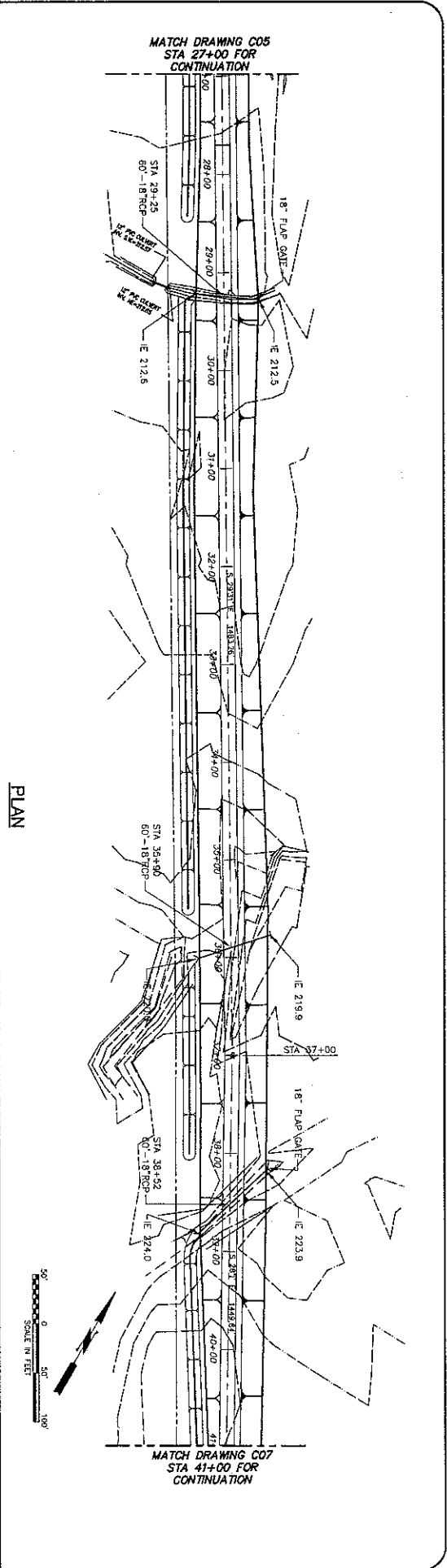
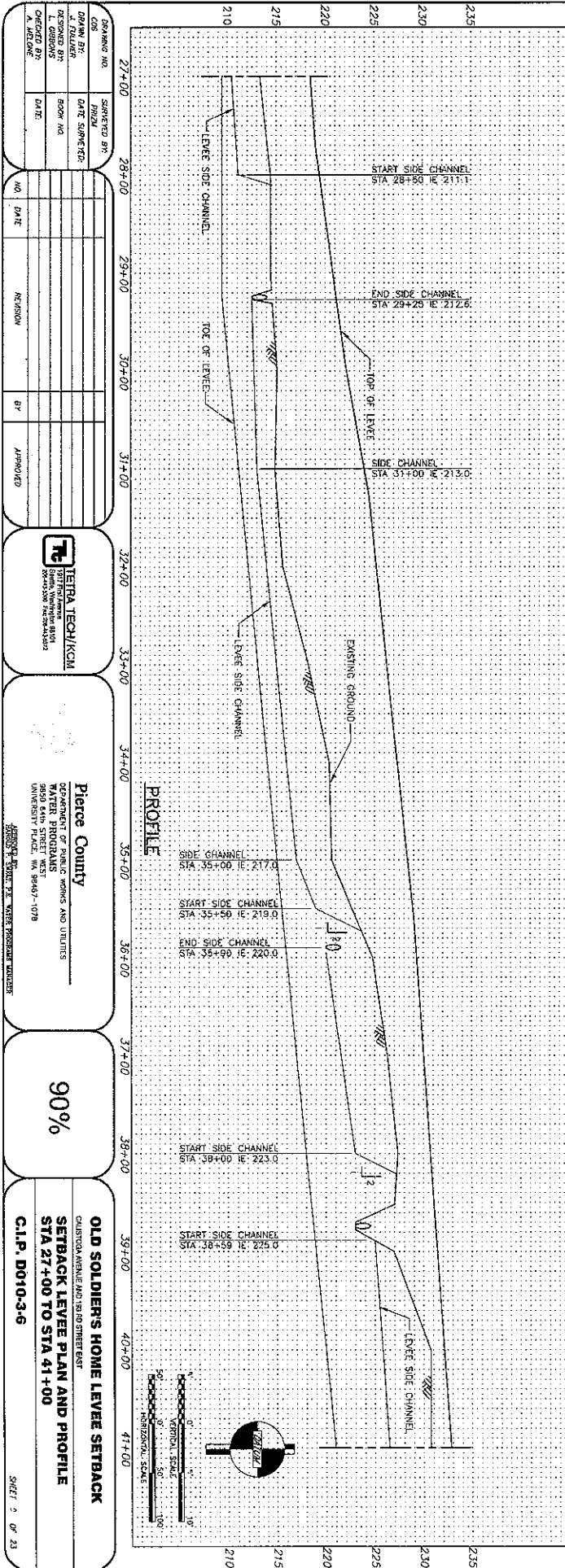


Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 3800 6TH STREET NW
 WASHINGTON STATE, WA 98407-1078
 PHONE: (206) 462-7400 FAX: (206) 462-7401
 WWW.PCWATER.PUBLIC.WA.GOV

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 QUINCY AVENUE AND WABO STREET EDEP
SETBACK LEVEE PLAN AND PROFILE
 STA 13+50 TO STA 27+00
 C.I.P. 0010-3-6
 SHEET 8 OF 23





DESIGNED BY L. GIBSON	DATE 11/30/05	DESIGNED BY A. METZKE	DATE 11/30/05
CHECKED BY A. METZKE	DATE 11/30/05	CHECKED BY A. METZKE	DATE 11/30/05
APPROVED	APPROVED	APPROVED	APPROVED



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1000 WEST 1ST AVE
 SUITE 200
 TACOMA, WA 98402-1078

90%

**OLD SOLDIER'S HOME LEVEE SETBACK
 SETBACK LEVEE PLAN AND PROFILE
 STA 27+00 TO STA 41+00
 C.I.P. D010-3-6**

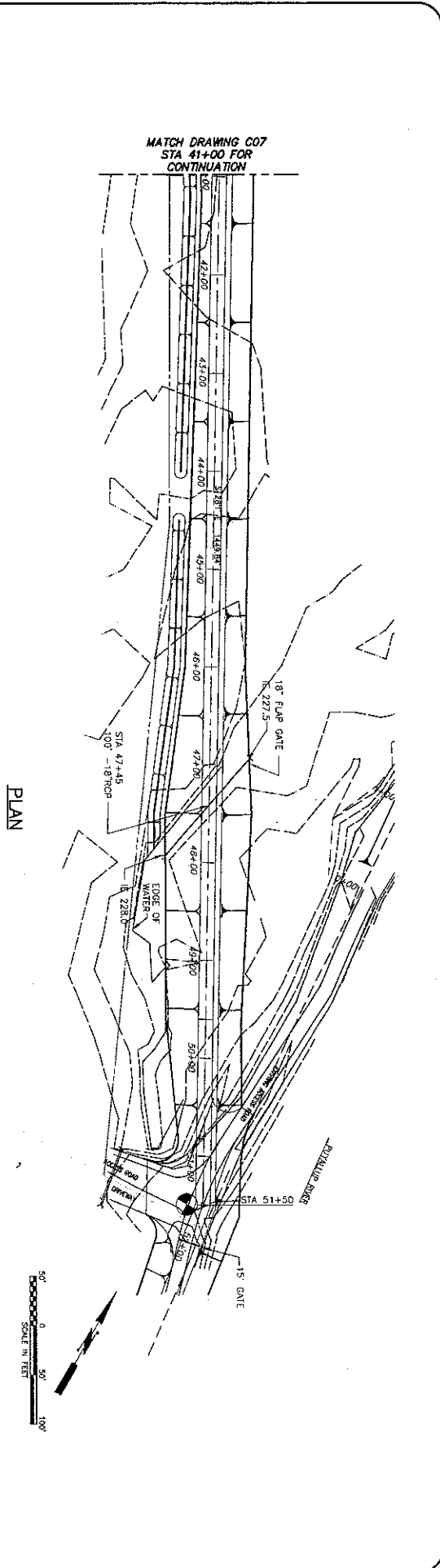
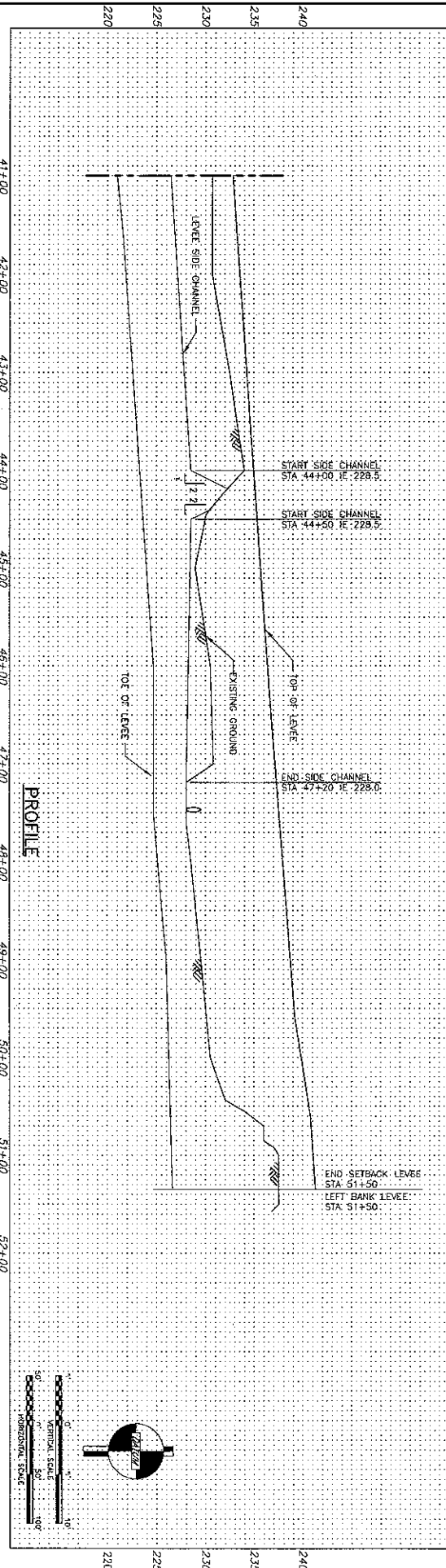
DRAWING NO. C07	STARTED BY PND/AL
DRAWN BY P.M.	DATE SCHEDULED
DESIGNED BY A.W.	8/20/04
CHECKED BY A.W.	DATE
IN CHARGE A.W.	DATE
NO.	DATE
REGION	BY
	APPROVED



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 950 5th Street West
 UNIVERSITY PLACE, WA 98407-1078

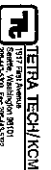

90%

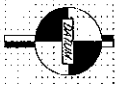
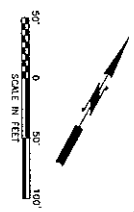
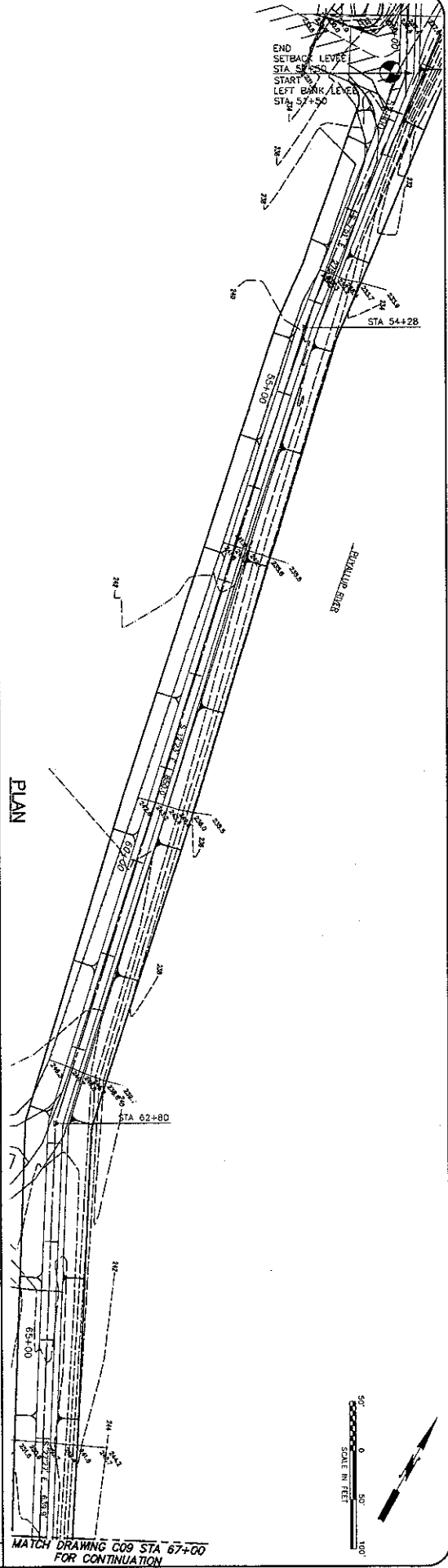
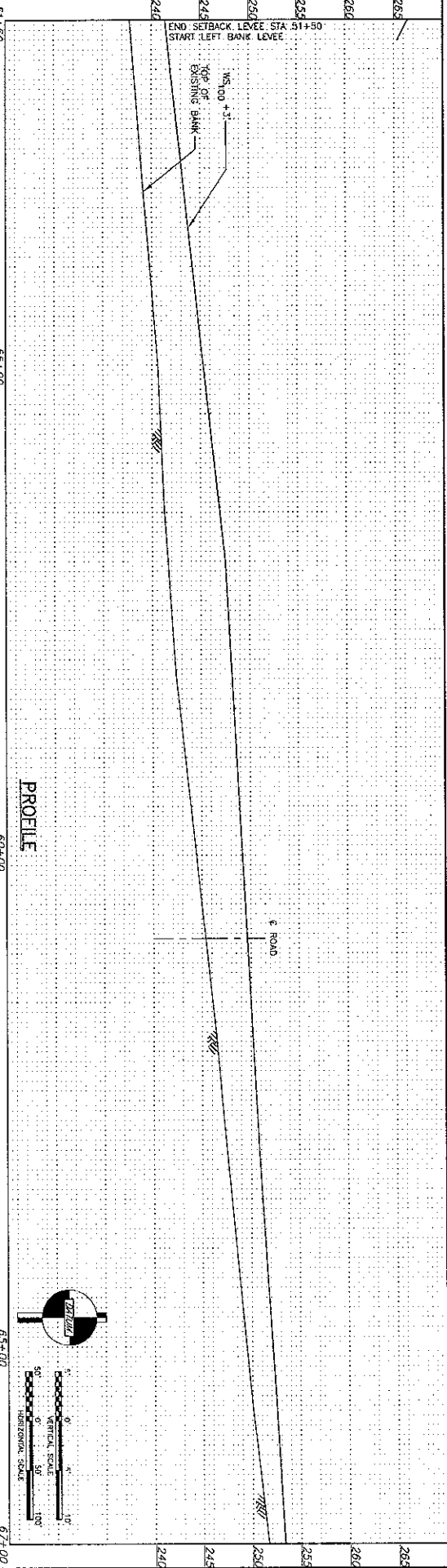
OLD SOLDIERS HOME LEVEE SETBACK
 CUSTOMER REFERENCE AND TOPO STREET EAST
SETBACK LEVEE PLAN AND PROFILE
 STA 41+00 TO STA 51+50
C.I.P. D010-3-6



PLAN

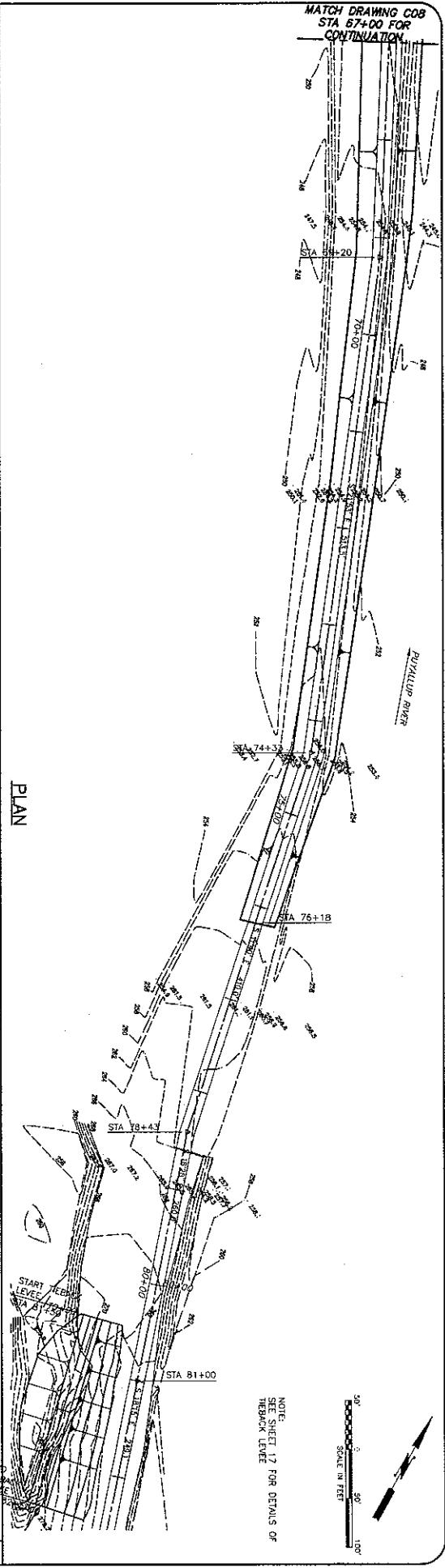
MATCH DRAWING C07
 STA 41+00 FOR
 CONTINUATION

51+50	53+00	60+00	65+00	67+00
DRAWING NO. CORR DRAWN BY DESIGNED BY CHECKED BY A. WELCH	DATE DATE DATE DATE	PROJECT NO. BOOK NO. DATE	NO. DATE REVISION	BY APPROVED
				
				
Piece County DEPARTMENT OF PUBLIC WORKS AND UTILITIES WATER PROGRAMS UNIVERSITY PLACE, WA 98407-1078				
90%				
OLD SOLDIER'S HOME LEVEE SETBACK CUSTER AVENUE AND 8810 STREET SW LEFT BANK LEVEE PLAN AND PROFILE STA 51+50 TO STA 67+00 C.I.P. 0010-3-6				
SHEET 11 OF 23				

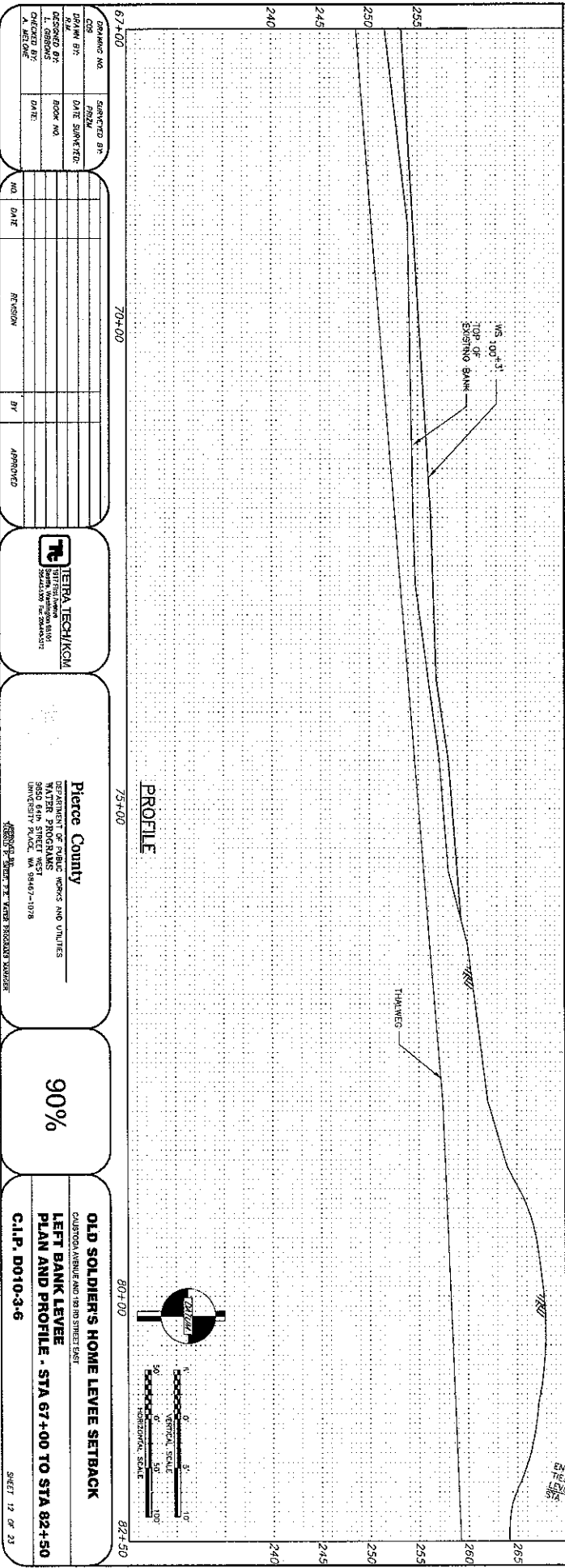


MATCH DRAWING 009 STA 67+00 FOR CONTINUATION

MATCH DRAWING C08
 STA 67+00 FOR
 CONTINUATION



PLAN



PROFILE

DESIGNED BY I. ORRONS	DATE 11/30/05	DATE SUBMITTED 11/30/05	NO.	DATE	REVISION	BY	APPROVED
CHECKED BY A. MELONE	DATE						



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1800 6TH STREET WEST, SEASIDE-1018
 SEASIDE, WA 98428-1018
 PROJECT: SECT. 17, WATER PROGRAM NUMBER

90%

OLD SOLDIER'S HOME LEVEL SETBACK
 CUSTODIA AVENUE AND 18TH STREET EAST
LEFT BANK LEVEL
PLAN AND PROFILE - STA 67+00 TO STA 82+50
 C.I.P. D010-3-6
 SHEET 12 OF 23

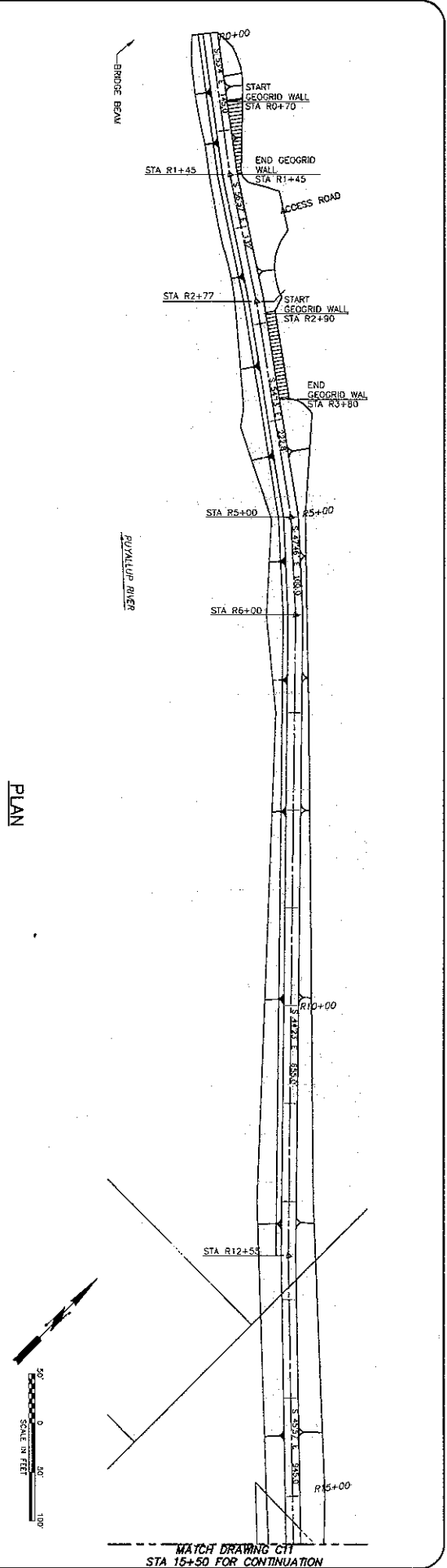
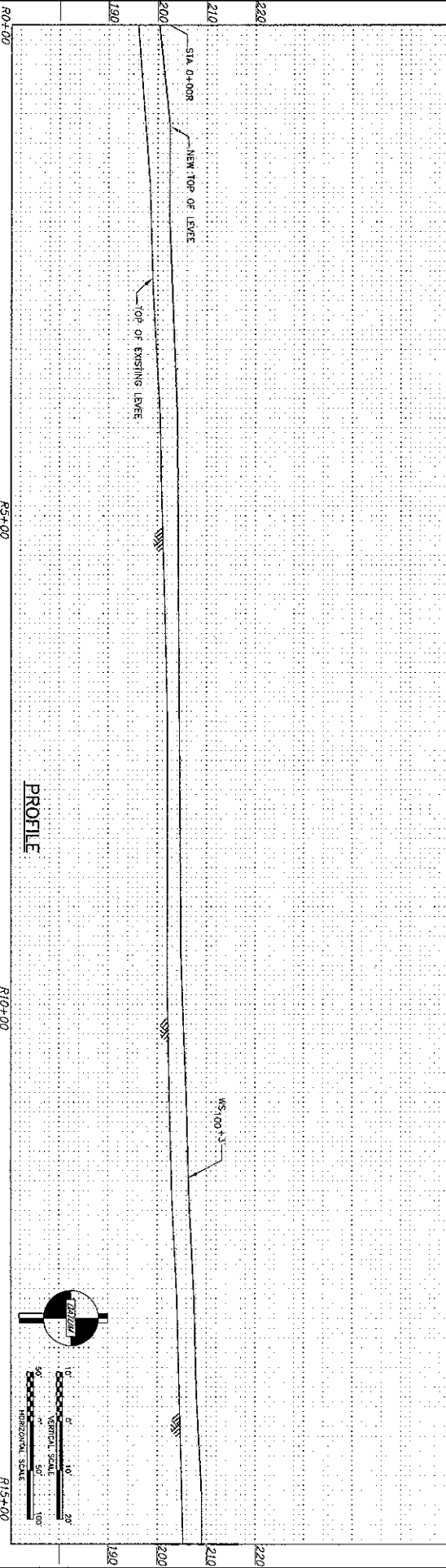
DRAWING NO.		SHEETED BY	
DRAWN BY		DATE SHEETED	
DESIGNED BY		CHECKED BY	
L. O'BRIEN		A. WELLS	
DATE		APPROVED	
NO.		DATE	
REVISION		BY	
APPROVED		DATE	

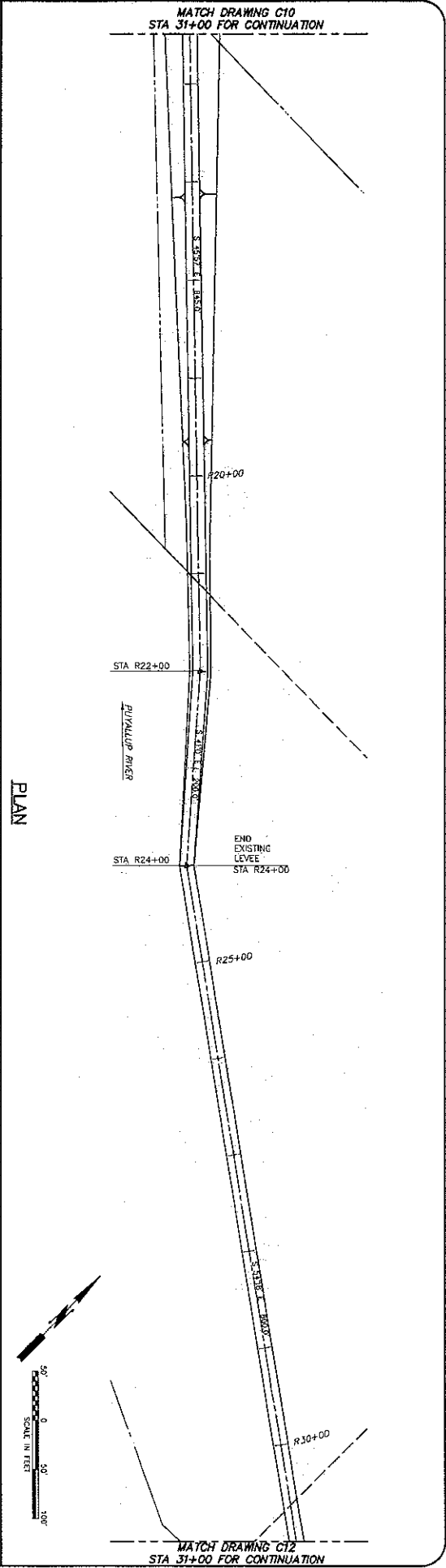
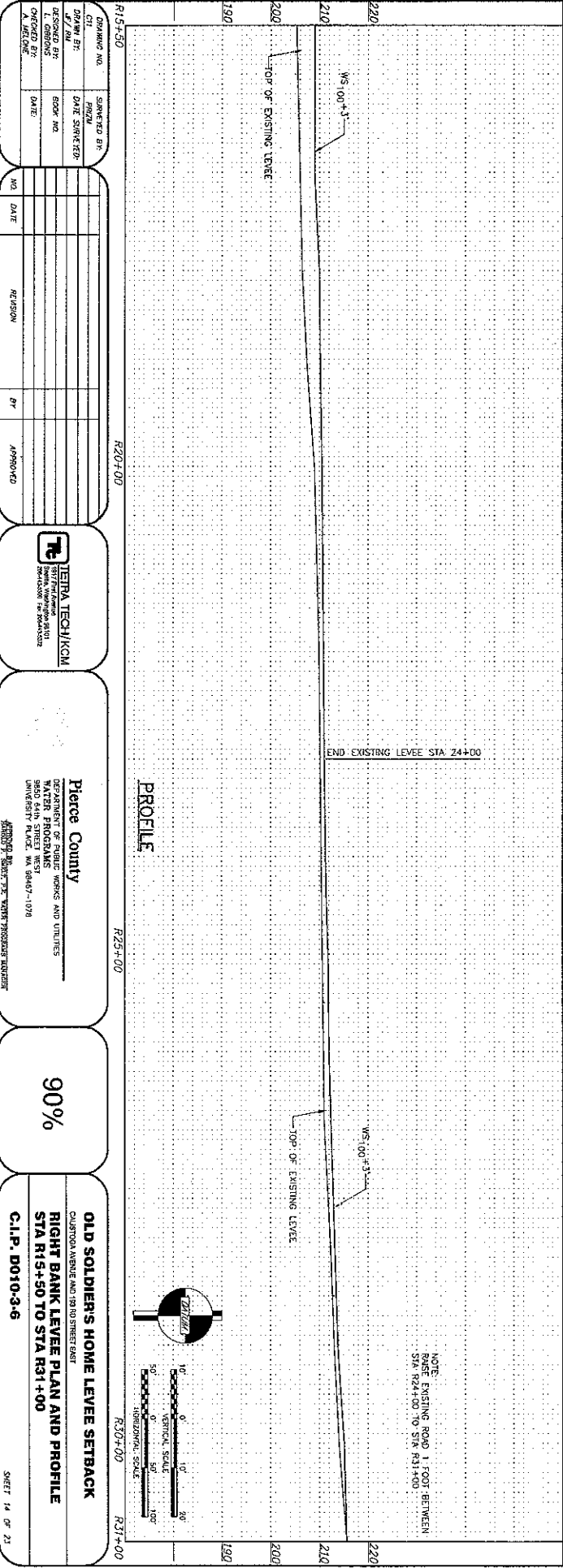


Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 3800 4th Street West
 University Place, WA 98407-1008
 (206) 465-1000

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 CALSTON AVENUE AND 1800 STREET EAST
RIGHT BANK LEVEE PLAN AND PROFILE
 STA R0+00 TO STA R15+50
 C.I.P. D010-3-6





DRAWING NO.	REVISED BY	DATE
DESIGNED BY	DATE	REVISED BY
CHECKED BY	DATE	DATE
DATE	DATE	DATE



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 UNIVERSITY PLACE, WA 98467-1098

90%

OLD SOLDIERS HOME LEVEE SETBACK
 CUSTOMER AVENUE AND 13105 STREET EAST
RIGHT BANK LEVEE PLAN AND PROFILE
 STA R15+50 TO STA R31+00
 C.I.P. D010-3-6

SHEET 14 OF 23

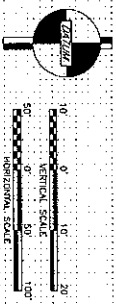
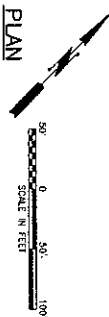
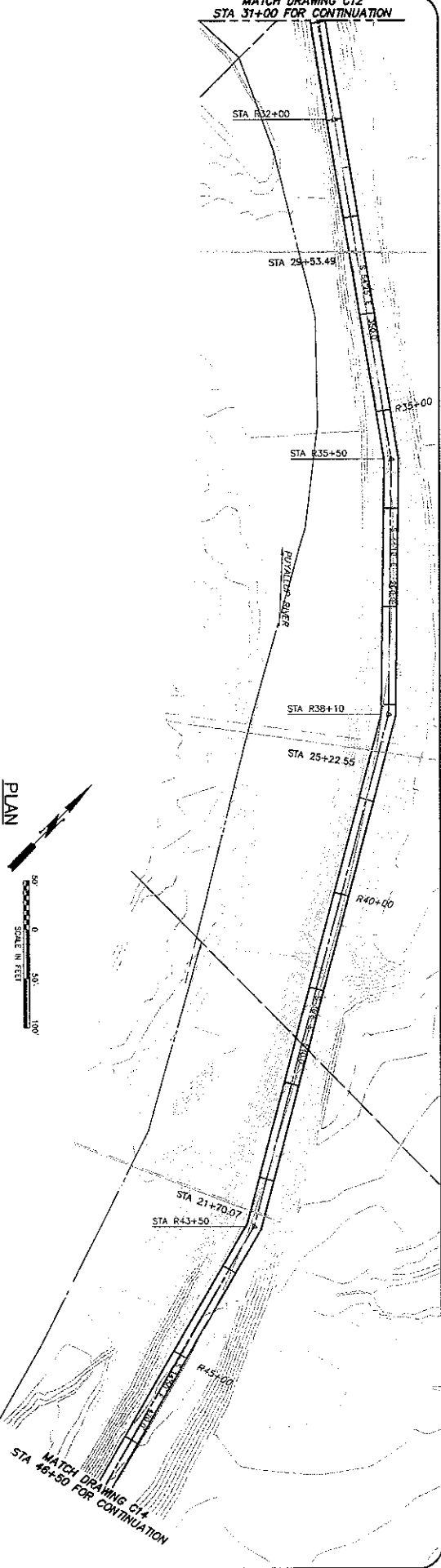
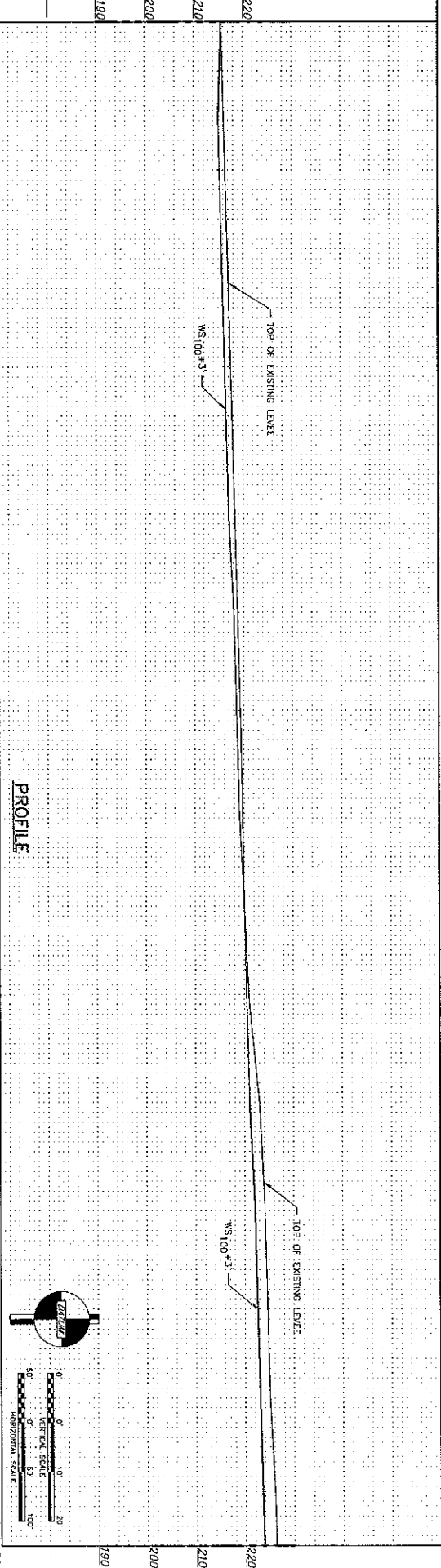
DRAWING NO. C12	DATE 05/15/05	SCALE AS SHOWN
DESIGNED BY L. O'BRIEN	DATE 05/15/05	SCALE AS SHOWN
CHECKED BY A. WELCH	DATE 05/15/05	SCALE AS SHOWN

TETRA TECH/CM
 Tetra Tech, Inc.
 10000 Westpark Drive
 Houston, Texas 77036

Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 5000 50th Avenue, NW
 Everett, WA 98203
 (425) 336-1000

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 CALISTOGA AVENUE AND 890 80 STREET EAST
 RIGHT BANK LEVEE PLAN AND PROFILE
 STA R31+00 TO STA R46+50
 C.I.P. D010-3-6



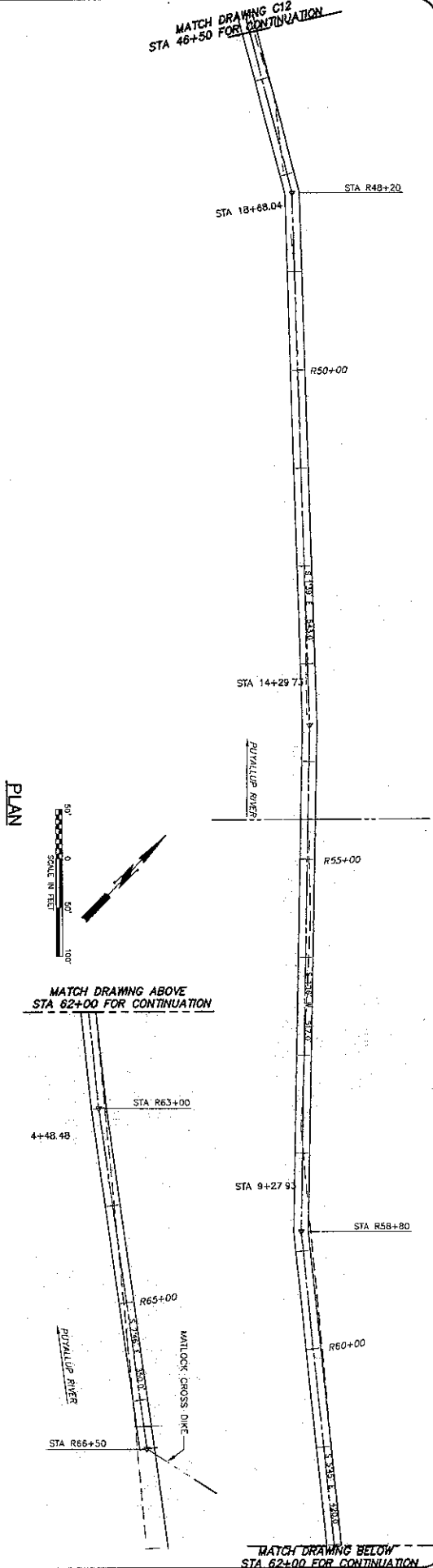
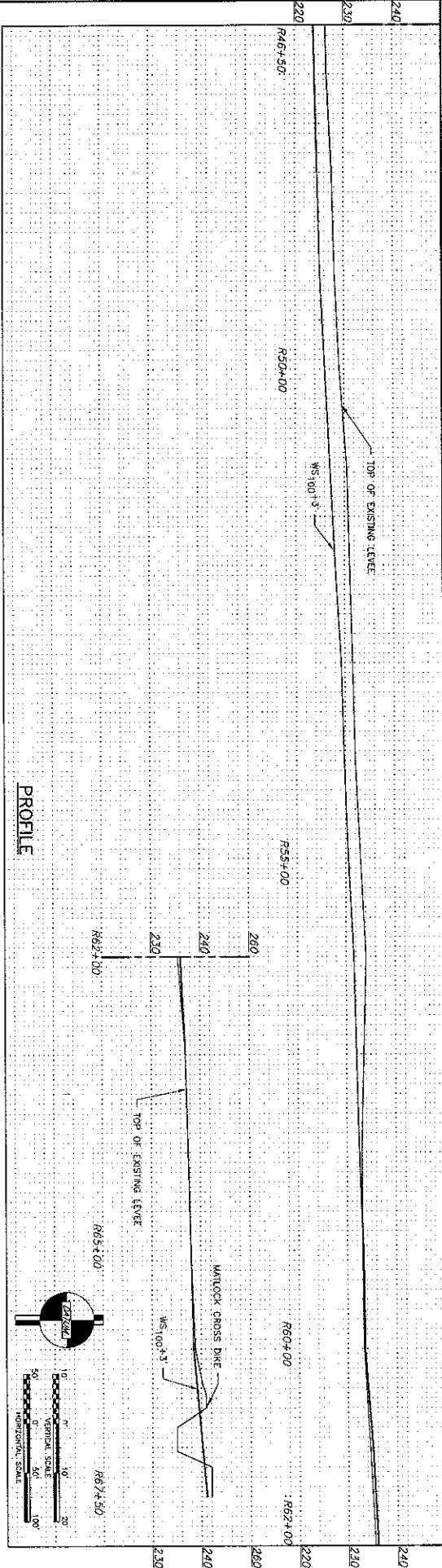
DESIGNED BY L. BRIDGES	CHECKED BY A. WELCH	DATE
APPROVED BY	DATE	APPROVED
NO.	DATE	REVISION

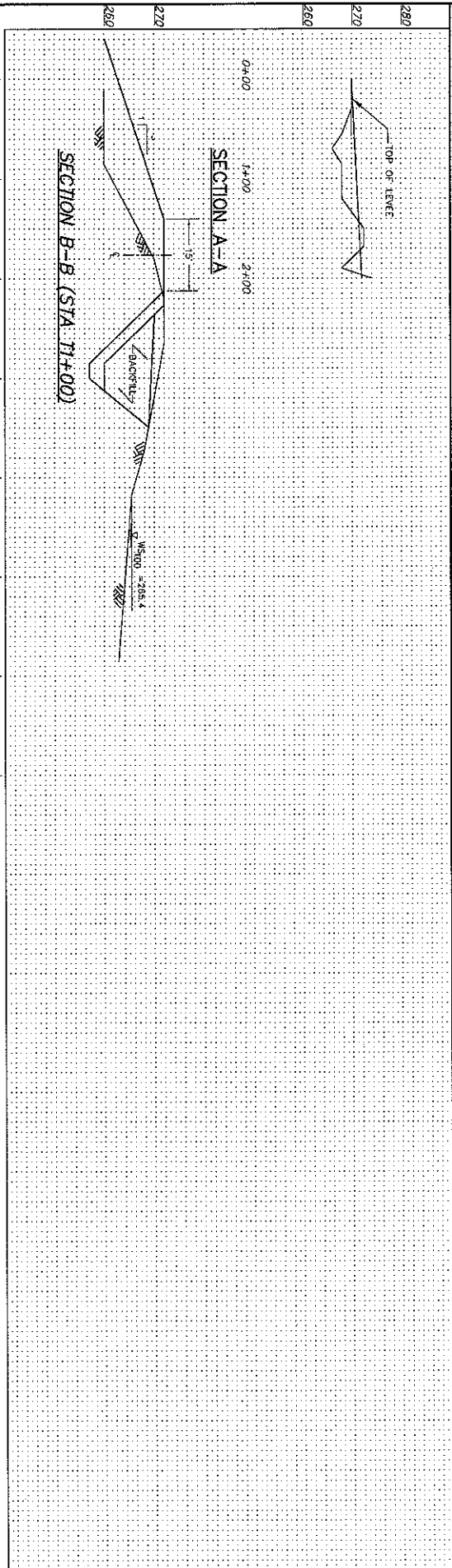
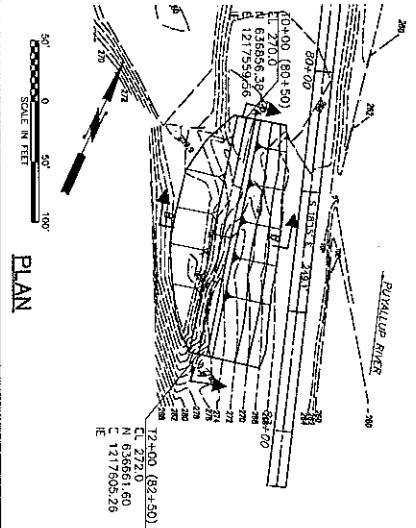


Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROTECTION DISTRICT
 1000 UNIVERSITY BLVD., VA 23047-1078
 ADDRESS: WATER DISTRICT WATER PROTECTION DISTRICT

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 CUSTOMER: ASHLENDEN, 192 BRIMMERTON ST
 RIGHT BANK LEVEE PLAN AND PROFILE
 STA R46+50 TO STA R67+50
 C.P. D010-3-6





DRAWING NO.	DATE SURVEYED	PROJECT	NO.	DATE	REVISION	BY	APPROVED
CITY	DATE SURVEYED	PROJECT	NO.	DATE	REVISION	BY	APPROVED
DESIGNED BY	DATE SURVEYED	PROJECT	NO.	DATE	REVISION	BY	APPROVED
CHECKED BY	DATE SURVEYED	PROJECT	NO.	DATE	REVISION	BY	APPROVED
A. M. E. O. R.	DATE SURVEYED	PROJECT	NO.	DATE	REVISION	BY	APPROVED



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1000 1st Street, NW
 Everett, WA 98201-1076
 PHONE: 425-353-1000 FAX: 425-353-1076

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 CAUSTODIUM AND REPAIRS
THE BACK LEVEE AND TURN OUT
PLAN AND SECTION
 C.I.P. D010-3-6

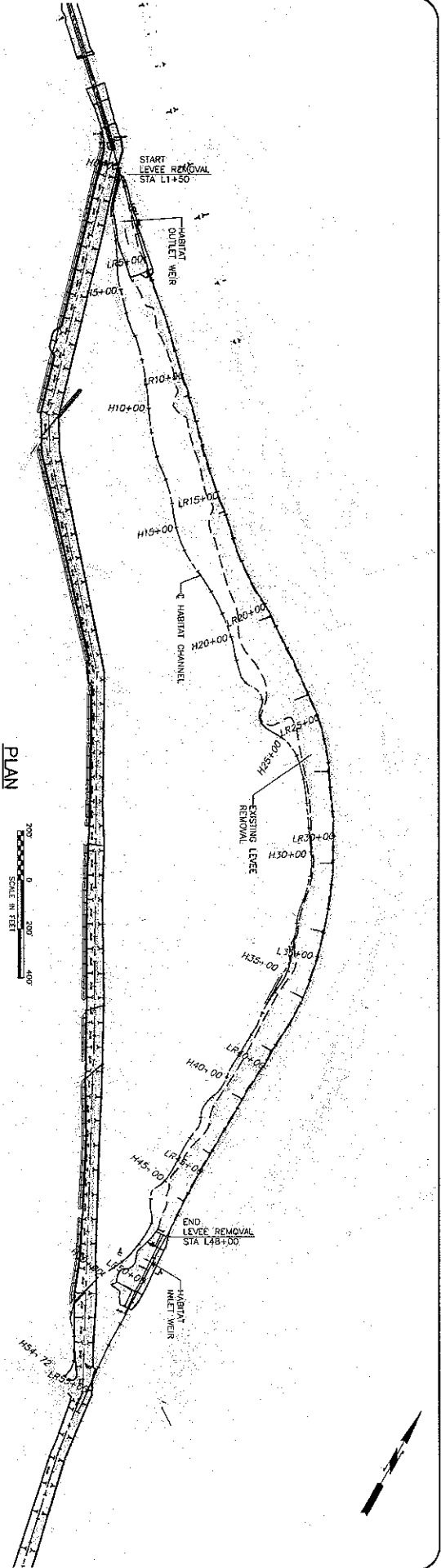
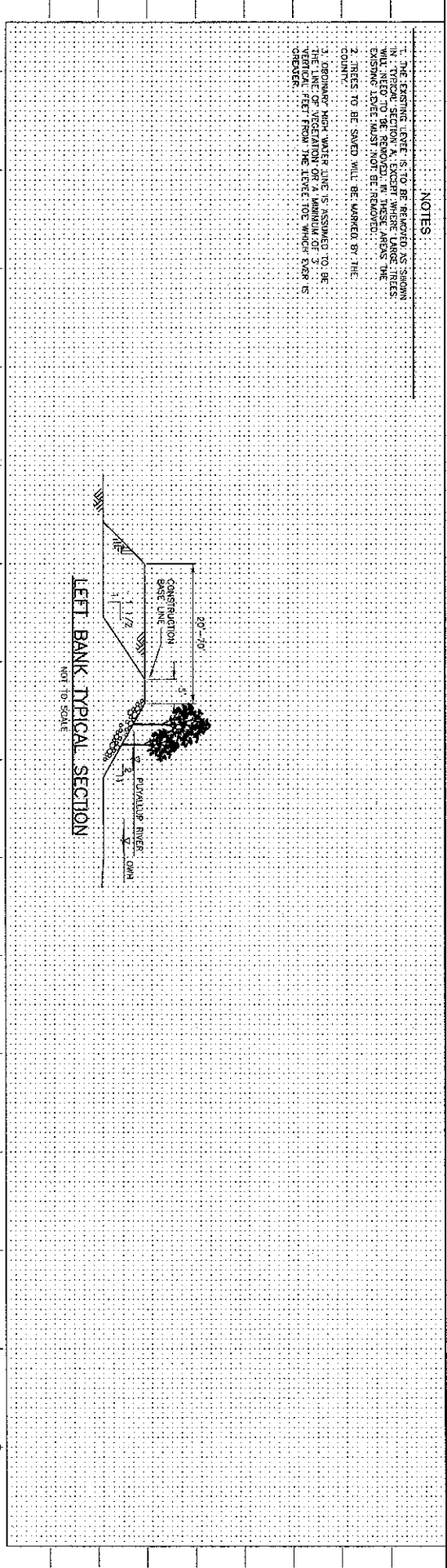
DRAWING NO.	DATE	BY	APPROVED
315	11/22/05	L. GORDON	
DESIGNED BY	DATE	BY	APPROVED
L. GORDON	11/22/05		
CHECKED BY	DATE	BY	APPROVED
A. MEDINA			



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 100 UNIVERSITY STREET, W.A. 98467-1178
 AGENCY PROJECT NO. 04467-1178

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 OLD SOLDIER'S HOME LEVEE SETBACK
 LEFT BANK LEVEE REMOVAL
 PLAN AND TYPICAL SECTION
 C.I.P. D010-3-6



- NOTES**
1. THE EXISTING LEVEE IS TO BE REMOVED AS SHOWN IN SECTION A, EXCEPT WHERE LARGE TREES WILL NEED TO BE REMOVED IN THESE AREAS THE EXISTING LEVEE MUST NOT BE INCREASED.
 2. TREES TO BE SAVED WILL BE MARKED BY THE COUNTY.
 3. ORIGINAL HIGH WATER LINE IS ASSUMED TO BE THE LINE OF VEGETATION OR A MINIMUM OF 3 VERTICAL FEET FROM THE LEVEE TOE WHICH EVER IS GREATER.

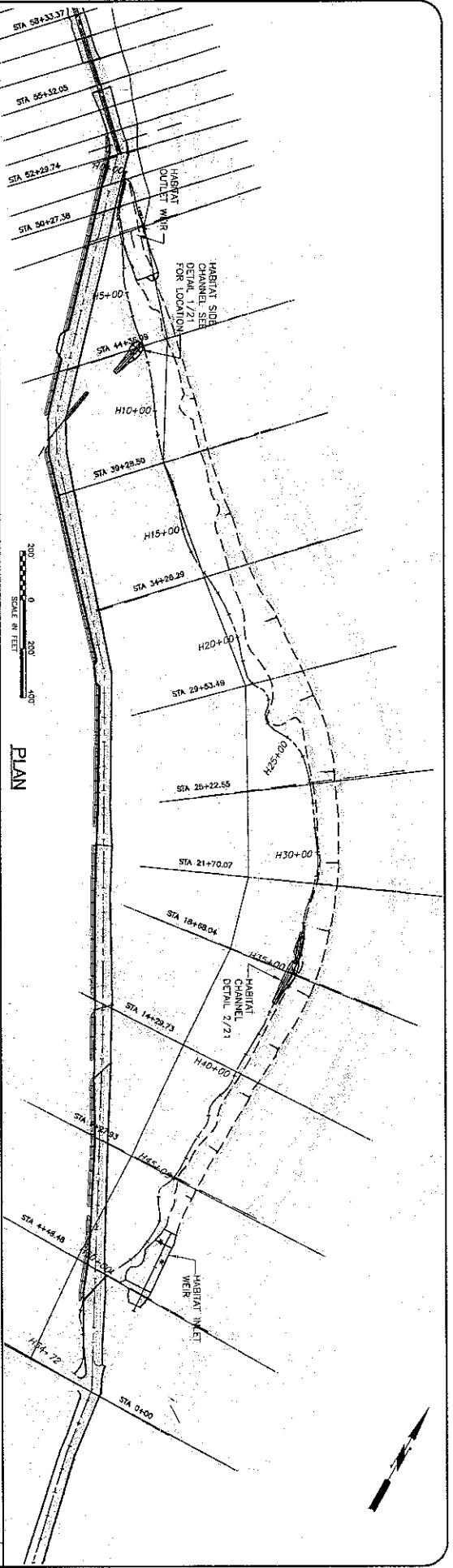
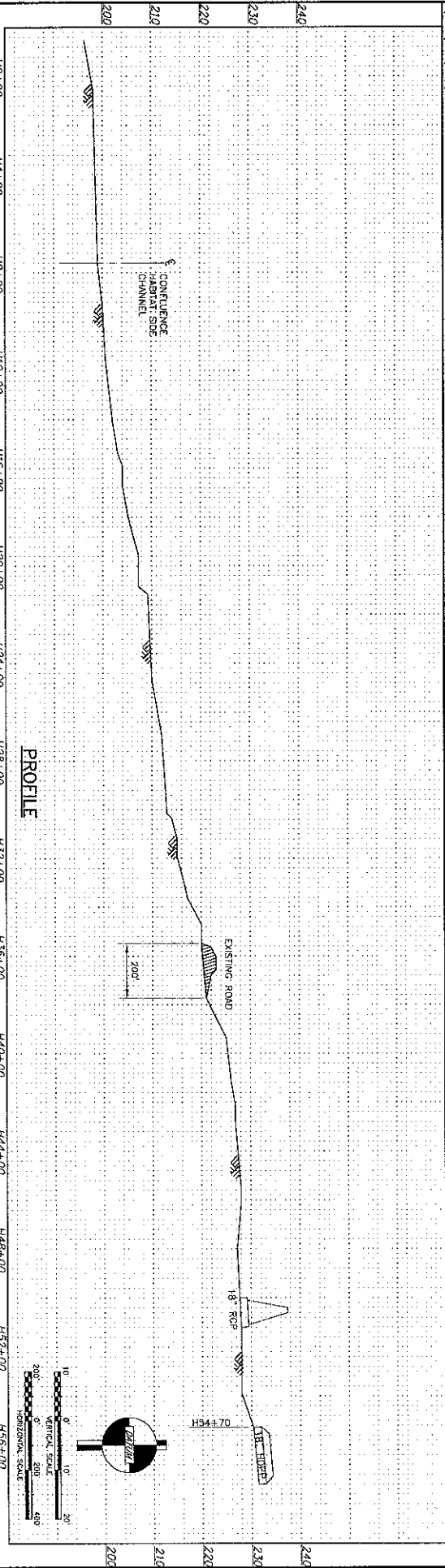
DESIGNED BY L. BOBROW	DATE SURVEYED	NO.	DATE
CHECKED BY A. WILSON	DATE	REVISION	BY
CAD DRAWN BY	DATE SURVEYED	APPROVED	
DESIGNED BY	BOOK NO.		
CHECKED BY	DATE		

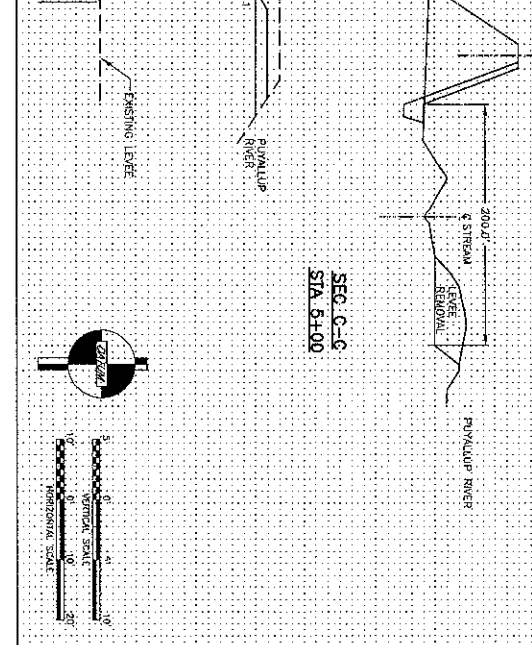
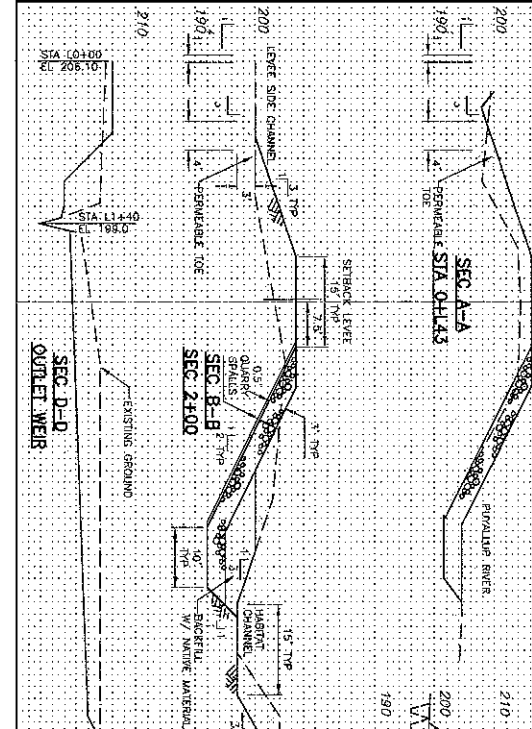
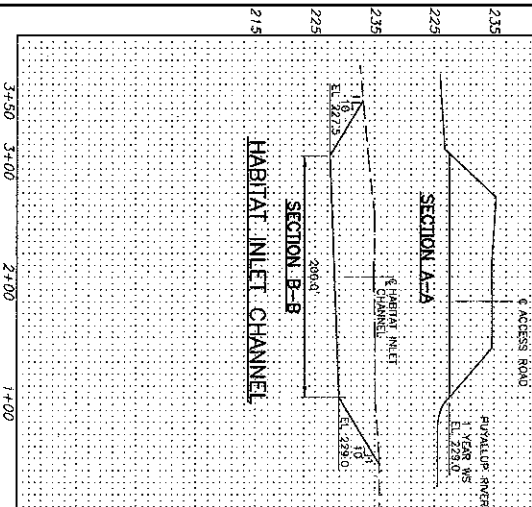
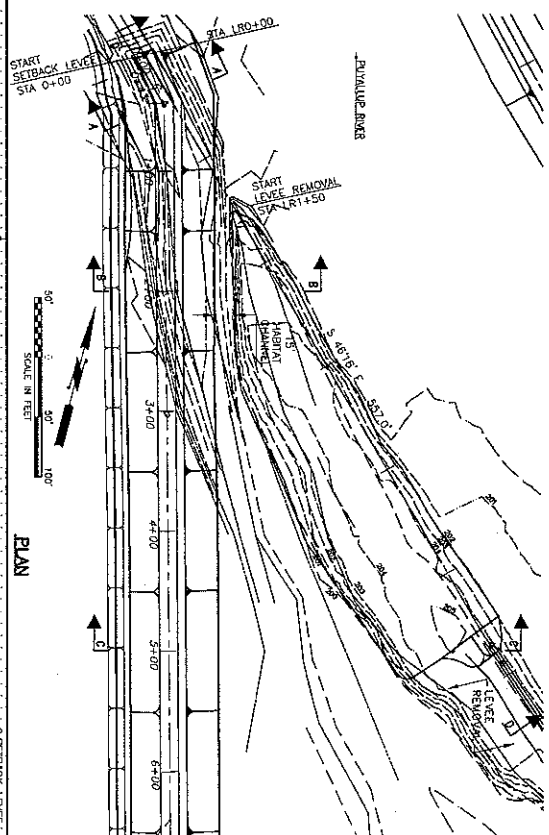
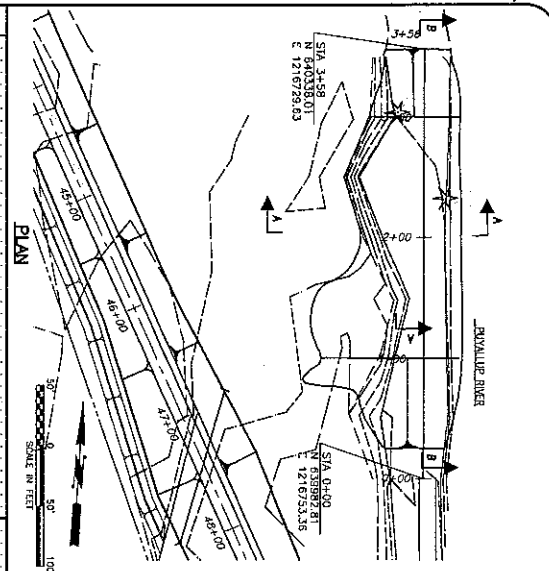
TERRA TECH/KCM
 Terra Tech/KCM
 1001 North Washington Blvd
 Suite 200
 St. Charles, MO 63301
 Phone: 636-337-9200
 Fax: 636-337-9201
 www.terra-tech.com

Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1000 WEST MAIN STREET
 SUITE 100
 WAHKIACUM, WA 98596-1078
 PHONE: 360-873-2300 FAX: 360-873-2301
 WWW.PIERCECOUNTY.WA.GOV

90%

**OLD SOLDIERS HOME LEVEE SETBACK
 HABITAT CHANNEL IMPROVEMENTS
 PLAN AND PROFILE**
 C.I.P. D010-3-6
 SHEET 19 OF 23





DESIGN NO.	DATE	BY	APPROVED
DESIGNED BY: J.P. M.	DATE SUBMITTED:		
CHECKED BY: L. GIBSON	DATE:		
APPROVED BY: A. BISHOP			



Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 UNIVERSITY PLACE, WA 98477-1878

90%

OLD SOLDIER'S HOME LEVEE SETBACK
 HABITAT INLET AND OUTLET CHANNEL
 PLAN AND PROFILE.
 C.I.P. 0010-3-6
 SHEET 20 OF 23

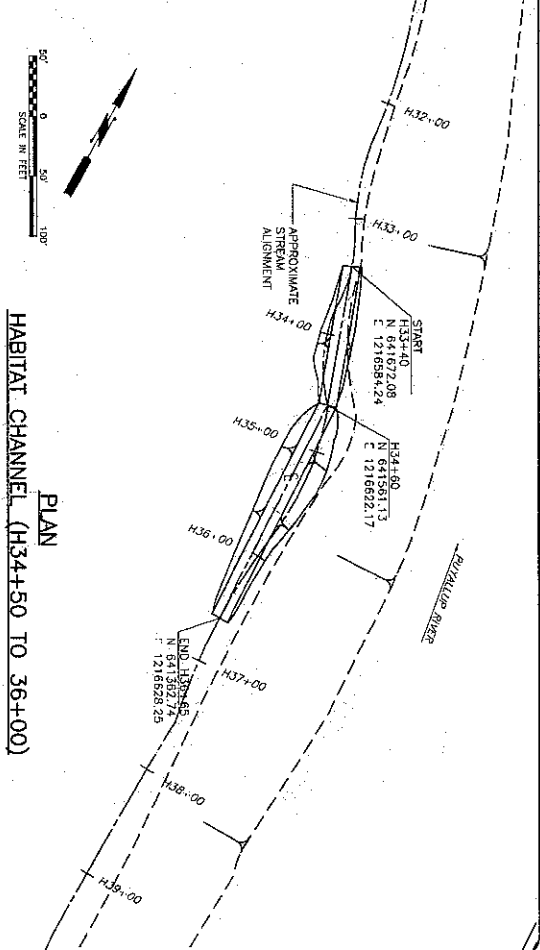
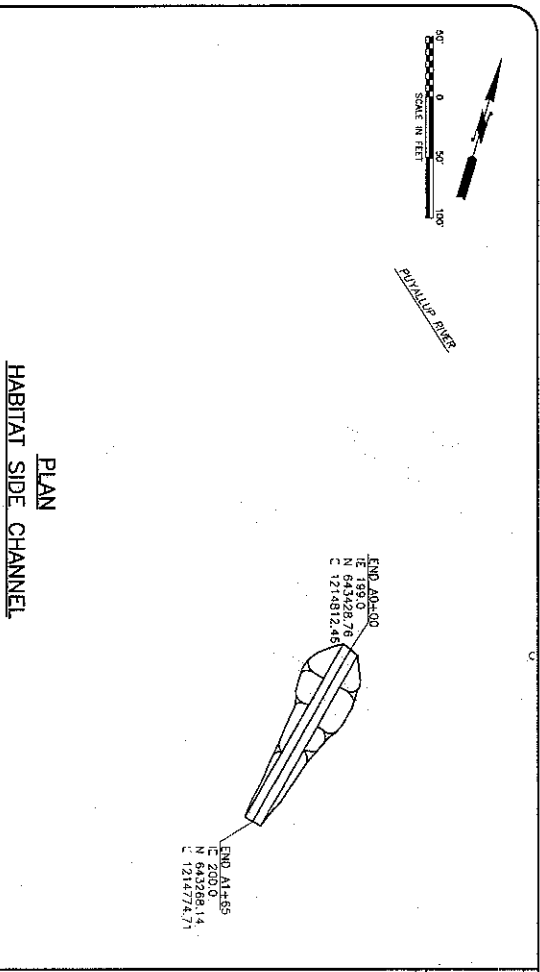
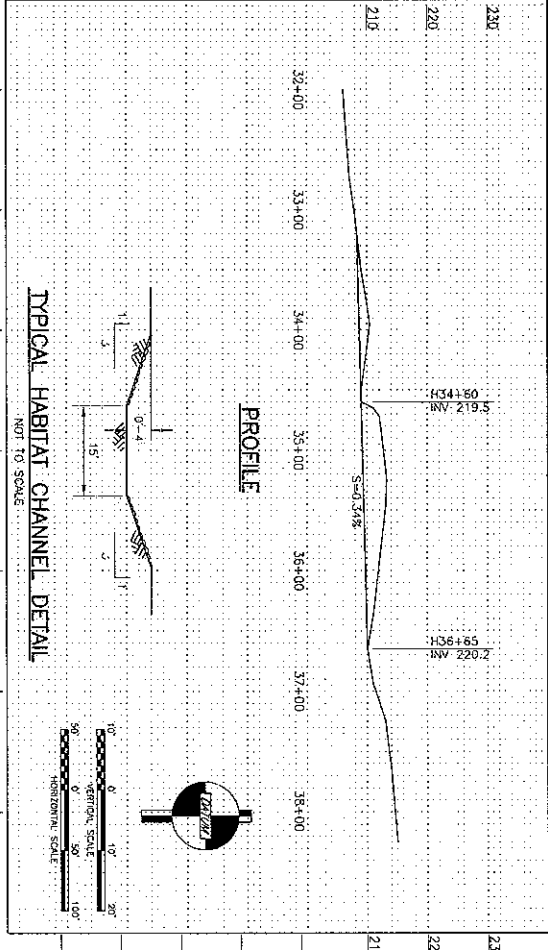
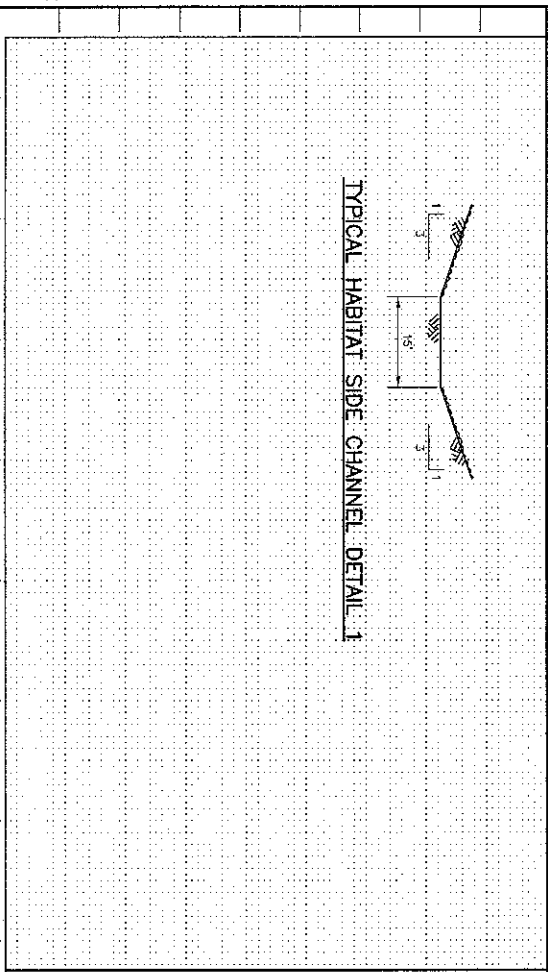
DRAWING NO. CIB	DATE 07/11/05	DESIGNED BY L. GIBBONS	CHECKED BY A. MEDOW
PROJECT NO. P020	DATE SUBMITTED 07/11/05	NO. 1	DATE 07/11/05
PROJECT DATE	APPROVED	BY	APPROVED

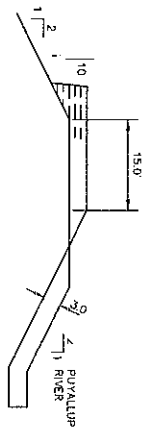
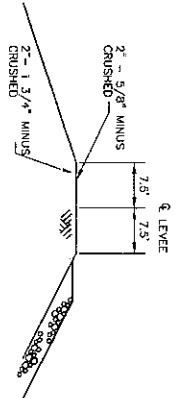


Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 600 GAIN STREET, SUITE 100
 OLYMPIA, WASHINGTON 98501-1018
 PHONE: 360.486.1018 FAX: 360.486.1018

90%

**OLD SOLDIER'S HOME LEVEE SETBACK
 HABITAT CHANNEL IMPROVEMENTS
 PLAN AND SECTION**
 C.I.P. D010-3-6





DRAWING NO.	DATE	BY	REVISION
OLD SOLDIER LEVEE SETBACK	11/30/05	JK	
DESIGNED BY:	DATE SUBMITTED:		
CHECKED BY:	DATE:		
APPROVED BY:			

TETRA TECH/KCM
 30711
 10000
 10000
 10000

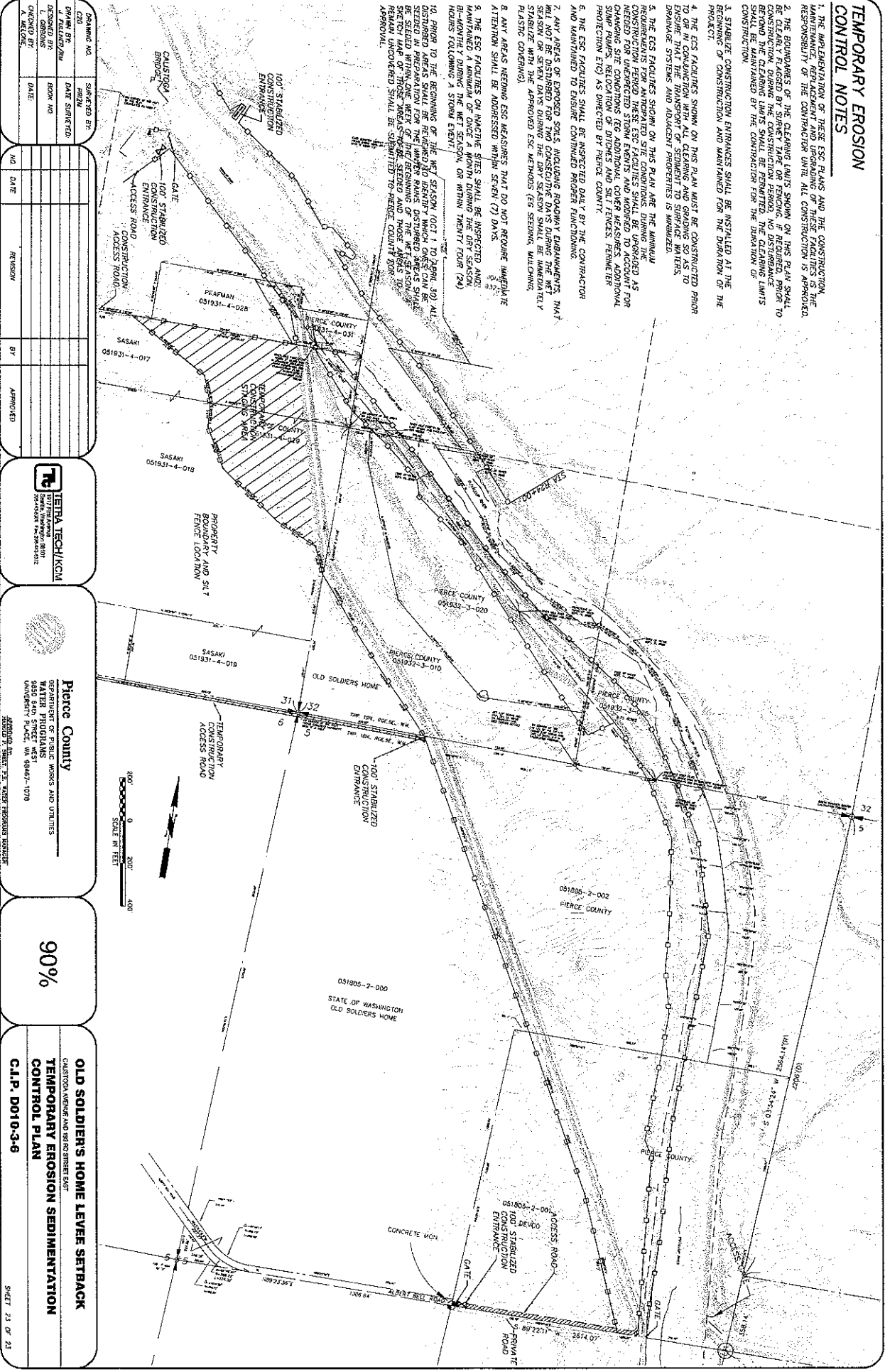
Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 UNIVERSITY PLACE, W 5000-1078
 206-896-1078

90%

OLD SOLDIERS HOME LEVEE SETBACK
 CIVIL DETAILS
 C.I.P. D010-3-6

TEMPORARY EROSION CONTROL NOTES

1. THE IMPLEMENTATION OF THESE ESC PLANS AND THE CONSTRUCTION, MAINTENANCE, REPLACEMENT AND UPGRADING OF THESE FACILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR UNTIL ALL CONSTRUCTION IS APPROVED.
2. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THIS PLAN SHALL BE CLEARLY FLAGGED BY SURVEY TAPE OR FENCING, IF REQUIRED, PRIOR TO CONSTRUCTION. FORMING THE CONSTRUCTION PERIOD, NO DISTURBANCE LIMITS SHALL BE MAINTAINED BY THE CONTRACTOR FOR THE DURATION OF CONSTRUCTION.
3. STABILIZE CONSTRUCTION ENTRANCES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED FOR THE DURATION OF THE PROJECT.
4. THE ESC FACILITIES SHOWN ON THIS PLAN MUST BE CONSTRUCTED PRIOR TO OR IN CONJUNCTION WITH ALL CLEARING AND GRADING SO AS TO ENSURE THAT THE TRANSPORT OF SEDIMENT TO SURFACE WATERS, DRAINAGE SYSTEMS AND ADJACENT PROPERTIES IS ABATED.
5. THE ESC FACILITIES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THE CONTRACTOR SHALL BE RESPONSIBLE FOR MONITORING AND MAINTAINING ESC FACILITIES AND SHALL BE RESPONSIBLE FOR CHANGING SITE CONDITIONS (EG. ADDITIONAL COVER MEASURES, ADDITIONAL SWAMP FENCES, RELOCATION OF DITCHES AND SILT FENCES, FENCEMENT PROTECTION ETC) AS DIRECTED BY PIERCE COUNTY.
6. THE ESC FACILITIES SHALL BE INSPECTED DAILY BY THE CONTRACTOR AND MAINTAINED TO ENSURE CONTINUED PROPER FUNCTIONING.
7. ANY AREAS OF EXPOSED SOILS INCLUDING ROADWAY EXHUMATIONS THAT WILL NOT BE DISTURBED FOR TWO CONSECUTIVE DAYS DURING THE WET SEASON OR SEVEN DAYS DURING THE DRY SEASON SHALL BE IMMEDIATELY STABILIZED WITH THE APPROVED ESC METHODS (EG. SEEDING, MULCHING, PLASTIC COVERING).
8. ANY AREAS NEEDING ESC MEASURES THAT DO NOT REQUIRE IMMEDIATE ATTENTION SHALL BE ADDRESSED WITHIN SEVEN (7) DAYS.
9. THE ESC FACILITIES ON MACHINE SITES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A MONTH DURING THE DRY SEASON, BI-MONTHLY DURING THE WET SEASON, OR WITHIN TWENTY FOUR (24) HOURS FOLLOWING A STORM EVENT.
10. PRIOR TO THE BEGINNING OF THE WET SEASON (OCT 1 TO APRIL 30), ALL DISTURBED AREAS SHALL BE REVEGETATED OR IDENTIFY WHICH AREAS CAN BE SEEDED IN PREPARATION FOR THE WET SEASON. THE WET SEASON SHALL BE SEEDING PERIOD. THE WET SEASON SHALL BE SEEDING PERIOD. AREAS THAT REMAIN UNCOVERED SHALL BE SUBMITTED TO PIERCE COUNTY FOR APPROVAL.



DESIGNED BY L. GIBBONS	DATE 11/30/05	APPROVED BY A. WELCH	DATE 11/30/05
DESIGNED BY L. GIBBONS	DATE 11/30/05	APPROVED BY A. WELCH	DATE 11/30/05

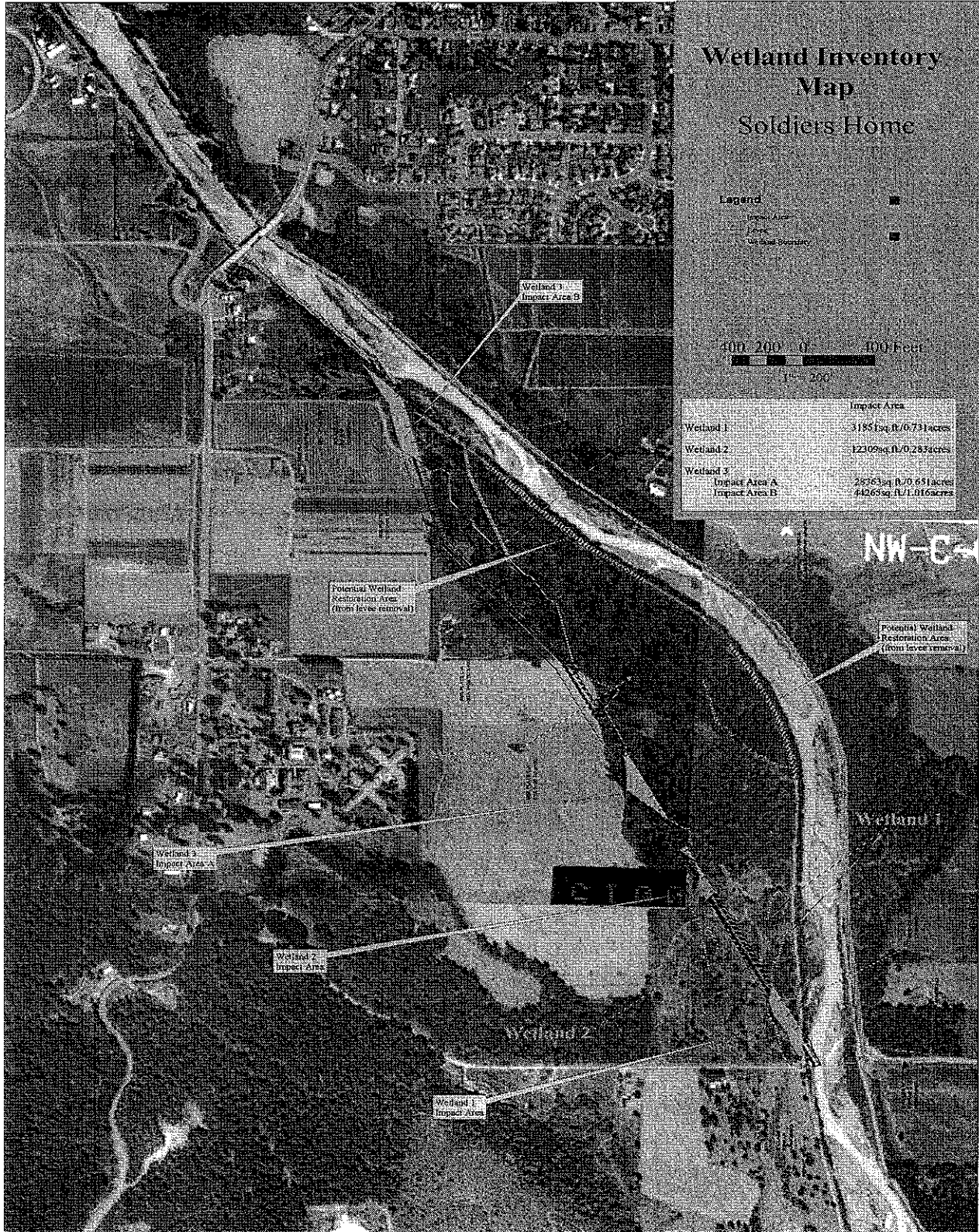


Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 6500 3RD STREET, NW 98447-1278
 PIERCE COUNTY, WASHINGTON

90%

**OLD SOLDIERS HOME LEVEL SETBACK
 TEMPORARY EROSION SEDIMENTATION
 CONTROL PLAN**
 C.I.P. D010-3-6
 SHEET 21 OF 21

Exhibit C Project Aerial Photo



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Appendix B

Order Directing the Deposit of Natural Resource Damages into
the Registry of the Court in

United States v. Port of Tacoma, No. C93-5462B (W D. Wash. Oct. 8, 1993)

Hon. Robert J. Bryan

FILED RECEIVED
OCT 07 1993
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

FILED RECEIVED LODGED
OCT - 8 1993
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
ENTERED
ON DOCKET

OCT 8 1993
By Deputy

Civil No. C93-5462B

ORDER DIRECTING THE
DEPOSIT OF NATURAL
RESOURCE DAMAGES INTO
THE REGISTRY OF THE
COURT

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
THE UNITED STATES DEPARTMENT OF
THE INTERIOR, AND THE NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION;
STATE OF WASHINGTON;
PUYALLUP TRIBE OF INDIANS;
MUCKLESHOOT INDIAN TRIBE;

Plaintiffs,

v.

PORT OF TACOMA

Defendant

This Order is entered in furtherance of a Consent Decree
in the above captioned matter between Plaintiffs the United
States of America, State of Washington, Puyallup Tribe of Indians
and Muckleshoot Indian Tribe and Defendant the Port of Tacoma
("Settling Defendant"). Under the Consent Decree, Settling
Defendant has agreed, among other matters, to pay \$12,000,000

ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 1

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

9

1 (twelve million dollars), in installments as identified in the
2 Consent Decree, to the Natural Resource Trustees (National
3 Oceanic and Atmospheric Administration of the U.S. Department of
4 Commerce, the U.S. Department of the Interior, the Washington
5 Department of Ecology (on behalf of the Washington Department of
6 Fisheries, the Washington Department of Natural Resources, and
7 the Washington Department of Wildlife), the Puyallup Tribe of
8 Indians, and the Muckleshoot Indian Tribe) in settlement of
9 Settling Defendant's liability for Natural Resource Damages
10 caused by releases of hazardous substances from property owned,
11 managed or operated by Settling Defendant within the Commencement
12 Bay Environment, as defined in the Consent Decree. This Order
13 addresses handling and investment of those funds by the Registry
14 of the Court.

15 Pursuant to Rule 67 of the Federal Rules of Civil
16 Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in
17 accordance with the terms of the Consent Decree, it is hereby

18 1. ORDERED that Settling Defendant, following entry of the
19 Consent Decree and in accordance with the payment schedules
20 established therein, pay to the Clerk of the Court all sums
21 specified in paragraph 51.b. of the Consent Decree, which sums
22 constitute recovery for Natural Resource Damages and Future
23 Trustee Assessment Costs, as defined in the Consent Decree; and
24 it is

25
26
27
28

ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 2

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 2. ORDERED that Settling Defendant shall make the
2 aforementioned payments by checks made payable to the Clerk of
3 the Court, bearing the notation Civil Action No. C93-5462B
4 (W.D. Wash.), which checks shall be sent to:

5 Office of the United States Attorney
6 3600 SeaFirst Fifth Avenue Plaza
7 800 Fifth Avenue
8 Seattle, Washington 98104

9 The U.S. Attorney shall immediately deposit such funds with the
10 Registry of the Court. The Settling Defendant shall cause
11 photocopies of each check and of any transmittal letter
12 accompanying the check to be sent to: Chief, Environmental
13 Enforcement Section, Department of Justice, P.O. Box 7611, Ben
14 Franklin Station, Washington, D.C. 20044; and to Robert A.
15 Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand
16 Point Way NE, BIN C15700, Seattle, WA 98115; and it is

17 3. ORDERED that an account shall be established in the
18 Registry for payments received in the above captioned matter and
19 for such other payments as may be received from time to time in
20 connection with restoration and protection of the ecosystem of
21 the Commencement Bay watershed, and that the account shall be
22 titled Commencement Bay Natural Resource Restoration Account
23 ("Commencement Bay Restoration Account"); and it is

24 4. ORDERED that the Clerk of the Court shall administer the
25 funds so received as follows:
26

27 ORDER DIRECTING DEPOSIT OF
28 NATURAL RESOURCE DAMAGES - 3

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 a) \$100,000 of the funds received shall be deposited in
2 such interest-bearing federally insured commercial bank account
3 or accounts as the Clerk deems appropriate;

4 b) the balance of the funds received shall be used to
5 purchase 91-day Treasury Securities, at the highest prevailing
6 interest rate available for such Treasury Securities;

7 c) upon maturity of the Treasury Securities referred to
8 in subparagraph b), the Clerk shall consult with counsel for the
9 United States regarding the allocation of the proceeds of such
10 Treasury Securities between the bank account or accounts
11 identified in subparagraph a) and the purchase of additional
12 short-term Treasury Securities. Counsel for the United States
13 shall consult with representatives of the Natural Resource
14 Trustees and, depending upon the Natural Resource Trustees'
15 anticipated funding needs, shall advise the Clerk regarding the
16 desired allocation of such proceeds between the bank account or
17 accounts and reinvestment in Treasury Securities. The Clerk may
18 make any such allocations of funds as directed by counsel for the
19 United States without further Order of the Court; and it is

20 5. ORDERED that all income earned as interest on funds so
21 invested or deposited shall be credited to the Commencement Bay
22 Restoration Account; and it is

23 6. ORDERED that the Natural Resource Trustees may apply to the
24 Court for an Order establishing an investment procedure or
25 vehicle alternative to that identified in paragraph 4 above that

26
27
28 ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 4

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 provides a comparable level of security and earnings potential,
2 which application may be acted upon by the Court without notice
3 to or consent by Settling Defendant; and it is

4 7. ORDERED that the Clerk shall prepare quarterly reports on
5 the status and activity of the Commencement Bay Restoration
6 Account showing payments received, disbursements made, income
7 earned, maturity dates of securities held, and principal balance,
8 and shall distribute the reports to counsel for the United
9 States; and it is

10 8. ORDERED that funds in the Commencement Bay Restoration
11 Account shall remain in the Registry until further order of this
12 Court; and it is

13 9. ORDERED that the Natural Resource Trustees shall establish
14 such decision making procedures regarding expenditures of funds
15 from the Commencement Bay Restoration Account as they deem
16 appropriate. Applications for orders for disbursements from the
17 Commencement Bay Restoration Account shall be made by the United
18 States on behalf of the Natural Resource Trustees. The
19 application shall be supported by a certification of the Natural
20 Resource Trustees that their determination to make such
21 disbursement was in compliance with said decision making
22 procedures and is consistent with the terms of the Consent Decree
23 and other applicable law. Such applications may be acted upon by
24 the Court without notice to or consent by Settling Defendant.
25 Any of the Natural Resource Trustees may petition the Court for

26
27
28

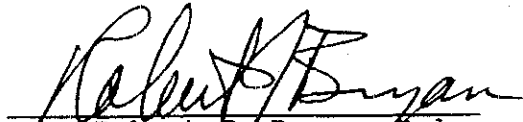
1 review of a decision by the United States to seek or not to seek
2 an application for an order for disbursement, provided that the
3 party or parties seeking review have complied with any dispute
4 resolution provisions adopted as part of the decision making
5 procedures referred to above; and it is

6 10. ORDERED that counsel for the United States shall serve as
7 the point of contact for the Clerk on behalf of the Natural
8 Resource Trustees, and shall distribute copies of the reports
9 referred to in paragraph 7 of this Order to the other Natural
10 Resource Trustees; and it is

11 11. ORDERED that the Clerk is authorized and directed by this
12 Order to deduct for maintaining funds in the Registry Account the
13 fee as authorized in the Federal Register Vol. 56, No. 213 at
14 page 56356 (November 4, 1991); and it is

15 12. ORDERED that a certified copy of this Order shall be
16 served upon the Clerk of this Court.

17
18 Dated 8 October 1993


Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington

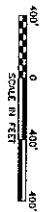
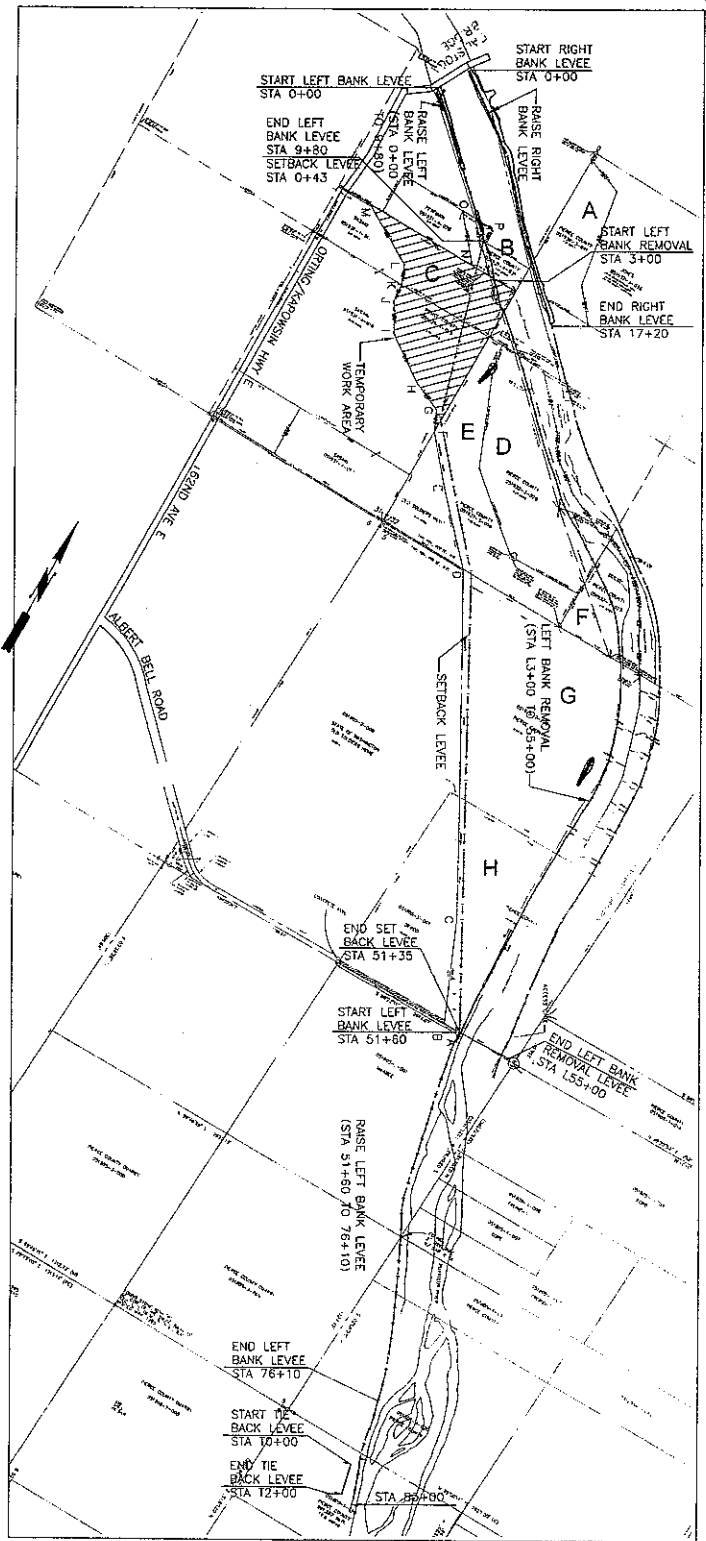
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Appendix C
Old Soldiers Home Levee Setback Project Site Deed Restrictions

U.S. et al. v. AOL Express, Inc., et al.
 Consent Decree - Appendix C

- A - 051932-3-041
(Part of 051932-3-035)
- B - 051931-4-031
(Part of 051931-4-028)
- C - 051931-4-029
(Part of 051931-4-017 and
051931-4-018)
- D - 051932-3-020
- E - 051932-3-010
- F - 051932-3-025
- G - 051805-2-002
(To be segregated from
051805-2-000)
- H - 051805-2-001



CONSTRUCTION LIMITS

POINTS	CORONATES	NORTHINGS	EASTINGS
A		639601.11	1216773.06
B		639699.43	1216657.78
C		640211.58	1216396.15
D		642109.38	1215284.74
E		642082.97	1214682.62
F		642978.71	1214828.87
G		643082.25	1214139.68
H		643261.22	1214025.23
I		643455.77	1213978.44
J		643676.77	1213599.84
K		643884.48	1214259.71
L		643892.29	1214291.22
M		644161.02	1214032.71
N		644380.54	
P		644380.54	

SURVEY CONTROL

P.C.R.L. MONUMENT NOTES
 PIERCE COUNTY RIVER IMPROVEMENT MONUMENTS
 RIVER MILE POST 21.50
 FOUND 3 BRASS DISK IN CONCRETE MONUMENT
 N 643916.9774
 E 1214463.3864
 ELEV 205.00

RIVER MILE POST 22.00
 FOUND 1 BRASS DISK IN CONCRETE MONUMENT
 WITH PUNCHMARK AND STAMPED RMP 22.00
 N 642171.5778
 E 1216392.0709
 ELEV 221.07

LEGEND

- FOUND MONUMENT AS NOTED
- FOUND CORNER AS NOTED
- SET 1/2" REBAR & CAP, DECA US 18930
- (c) CALCULATED
- (D) DEED

BASIS OF BEARINGS: WASHINGTON SOUTH
 ZONE COORDINATES (NAD 83/91)

60%

Pierce County
 DEPARTMENT OF PUBLIC WORKS AND UTILITIES
 WATER PROGRAMS
 1000 STATE STREET, NW, 98540-1078
 (360) 885-7100

OLD SOLDIERS HOME LEVEL SETBACK
 1000 STATE STREET, NW, 98540-1078
SITE CONTROL PLAN
AND PROJECT LIMITS
 C.I.P. D010-3-6

200102010011 3 pg
2-1-2001 08:59am \$10.00
PIERCE COUNTY, WASHINGTON

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Parcel No: 05-19-32-3-035

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County, for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled *Lower Carbon River Habitat Land Acquisition* Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted.

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted.

The real property covered by this deed is described as follows: That portion of the Northwest quarter of the Southwest quarter of SECTION 32, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington described as follows: Beginning at the Southwest corner of the Northwest quarter of the Southwest quarter of said Section 32; thence North 00°08'04" East 1355.74 to a point 51.30 feet South of the Northwest corner of said Southwest quarter; thence South 69°41'50" East 255.76 feet; thence South 09°28'04" East 636.04 feet; thence South 39°38'44" East 255.74 feet; thence North 89°04'27" West 393.25 feet; thence South 46°20'23" East 588.65 feet; thence North 89°04'57" West 543.46 feet to the point of beginning.

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this 26 day of January 2001

GRANTOR
[Signature]
Pierce County Executive

ORIGINAL

STATE OF WASHINGTON)
County of Pierce) ss.

On this 26 day of January 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN W. IADENBURG to me known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

[Signature]
Notary Public in and for the State of Washington
residing at TACOMA

Approved as to form only

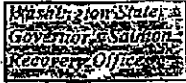
[Signature]
Pierce County Deputy Prosecuting Attorney

EXCISE TAX EXEMPT DATE 2-1-01
Pierce County

By [Signature] Auth. Sig

For reference only, not for re-sale.





Project Agreement
Fed Funds for Salmon Habitat

John Layton
ES - Ly Budget Re.
46-300 Proj. #

Project Sponsor: Pierce County
Project Title: Lower Carbon River Habitat Land Acq

Project Number: 99-1117A

RECEIVED
JUN 25 1999
WATER PROGRAMS

A. PARTIES TO THE AGREEMENT

This Project Grant Agreement (Agreement) is entered into between the Office of the Governor's Salmon Recovery Office (GSRO), P.O. Box 43135, Olympia, Washington, 98504-3135 and Pierce County, County City Bldg, 930 Tacoma Ave South, Tacoma, WA 98402 (Project Sponsor) and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is for GSRO to provide a grant award to the Project Sponsor for the project specified herein from funds received from the United States Department of the Interior, Fish and Wildlife Services as provided for in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Public Law 105-277, H.R. 4328, 112 Stat 2681, (1998) and the Matching Grant Agreement between the U.S. Fish and Wildlife Service and the State of Washington, Office of the Governor, Governor's Salmon Recovery Office, 1998, Agreement Number 1448-99210-98-G273, Catalog of Federal Domestic Assistance (CFDA) Number 15.608 (Fish and Wildlife Management Assistance).

C. PROJECT DESCRIPTION

The project for which a grant award is made is described in the attached Project Summary, Milestones of Project and Eligible Reimbursement Activities reports. The Project Sponsor agrees to complete the project as described, in its entirety, in the time as prescribed in the milestones. Failure to timely complete the project shall constitute a material breach of this Agreement.

D. PERIOD OF PERFORMANCE

The Project reimbursement period shall begin on April 15, 1999 and end on January 1, 2000. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement.

E. PROJECT FUNDING

The total grant award provided by GSRO for this project shall not exceed \$1,584,000.00. GSRO shall not pay any amount beyond that approved for funding of the project. The Project Sponsor shall be responsible for all total project costs that exceed this amount. The contribution of funds by the Project Sponsor towards work on this project shall be as indicated below:

Table with 3 columns: Category, Percentage, Dollar Amount. Rows include GSRO - FFSH (95%, \$1,584,000.00), Project Sponsor (5%, \$82,000.00), and Total Project Cost (100%, \$1,666,000.00).

F. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties regarding this grant award are subject to this Agreement, and the General Provisions (Attachment A) and any Special Provisions (Attachment B), which are incorporated herein by reference as if fully set forth. The Project Sponsor has read, fully understands and agrees to be bound by all terms and conditions as set forth in these documents.

G. AMENDMENTS

GSRO reserves the right to unilaterally amend the Project Grant Agreement and/or General Provisions, by written notification to the Project Sponsor, for the purpose of insuring compliance with federal and/or state laws. All other amendments to the Project Grant Agreement, General Provisions, or Special Provisions shall not be effective unless provided in writing and signed by all parties.

For reference only, not for re-sale.

For reference only, not for re-sale.

H. PROJECT GRANT AGREEMENT REPRESENTATIVES

The below named representatives for each of the parties shall be the contact person for all communications and billings regarding the performance of this Agreement. All written communications regarding this Agreement shall be sent to the designated representatives at the addresses listed below unless notified in writing of any change.

GSRO's Representative:

Rolie Geppert, Contract Administrator
Office of the Governor, Governor's Salmon Recovery Office
P.O. Box 43135
Olympia, WA 98504-3135

Project Sponsor Representatives:

Debby Hyde
ESA Coord
Pierce County
530 Tacoma Avenue
Tacoma WA 98499

I. CERTIFICATION OF ELIGIBILITY TO RECEIVE FEDERAL FUNDS

The Project Sponsor certifies that it has not been debarred, suspended, or otherwise excluded from or deemed ineligible for participation as a recipient of any Federal financial assistance and/or benefits under U.S. Presidential Executive Order 12549, "Debarment and Suspension," or any other applicable federal law.

J. CERTIFICATION OF AUTHORITY

The undersigned representative certifies that the Project Sponsor is a legally constituted local government with full authority and legal capability to perform the terms of this Agreement and he/she is authorized to sign this agreement on their behalf.

K. ENTIRE AGREEMENT

This Agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise regarding this Agreement shall exist or bind any of the parties.

L. EFFECTIVE DATE

This agreement shall be effective upon signing by all parties.

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
GOVERNOR'S SALMON RECOVERY OFFICE

BY: Curt Smith
Curt Smith
Special Asst to the Governor

DATE: 6/14/99

PROJECT SPONSOR
BY: Debby Hyde 6/9/99
Pierce County

DATE: _____

Pre-approved as to form by the state Assistant Attorney General

APPROVED AS TO FORM:

Keith M. Black
KEITH M. BLACK
Chief Civil Deputy
Date: June 8-99

Rafman

**RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190**

Portion of Parcel No: 05-19-31-4-028

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled *Lower Carbon River Habitat Land Acquisition* Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted

The real property covered by this deed is described as follows: Commencing at the concrete monument marking the Southeast corner of SECTION 31, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington; thence North 00° 08' 04" East 1694.68 feet along the Easterly line of said Section 31 to the TRUE POINT OF BEGINNING; thence North 89° 50' 12" West 326.38 feet; thence North 40° 37' 03" West 354.04 feet; thence South 89° 52' 35" East 224.48 feet; thence South 00° 04' 46" West 99.00 feet; thence South 89° 52' 35" East 332.92 feet to the Easterly line of said Section 31; thence South 00° 08' 04" West 169.47 feet to the Point of Beginning

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement

Dated this 14th day of November 2001

ORIGINAL

GRANTOR
[Signature]
Pierce County Executive

STATE OF WASHINGTON)
County of Pierce) ss.

On this 14th day of November 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN W. LADENBURG to me known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument

WITNESS my hand and official seal hereto affixed the day and year first written above.

[Signature]
Notary Public in and for the State of Washington
residing at TACOMA, WA

Approved as to form only
[Signature]
Pierce County Deputy Prosecuting Attorney

3

200202280750 1 pg
2-28-2002 11:44am \$9.00
PIERCE COUNTY, WASHINGTON

file 2792
PFAFFMAN

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Portion of Parcel # 05-19-31-4-028

Statutory Warranty Deed

The GRANTORS, JASON & LAURA PFAFFMAN, husband & wife, for and in consideration of THIRTY FIVE THOUSAND AND 00/100 dollars (\$35,000.00) and for other good and valuable consideration to them in hand paid, grants, conveys and warrants to the GRANTEE, Pierce County, A municipal corporation of the State of Washington, the following described real property situated in the County of Pierce, State of Washington, to the same extent and purpose as if the rights granted have been acquired under the Eminent Domain Statute of the State of Washington, together with any and all after acquired title therein, to wit:

ORIGINAL

Commencing at the concrete monument marking the Southeast corner of SECTION 31, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington; thence North 00° 08' 04" East 1694 68 feet along the Easterly line of said Section 31 to the TRUE POINT OF BEGINNING; thence North 89° 50' 12" West 326.38 feet; thence North 40° 37' 03" West 354.04 feet; thence South 89° 52' 35" East 224.48 feet; thence South 00° 04' 46" West 99.00 feet; thence South 89° 52' 35" East 332.92 feet to the Easterly line of said Section 31; thence South 00° 08' 04" West 169.47 feet to the Point of Beginning

Subject to:

- 1. Easements recorded under A F N' S 164735 & 777621
- 2. Easement recorded under A F N 49261.
- 3. Easement reserved in deed recorded under A F N. 2204254
- 4. Easement recorded under A F N 9408240163.

COMMONWEALTH
30195432
FEB 28 2002

Grantor shall not be charged Excise Tax as per WAC 458-61-420-1-C

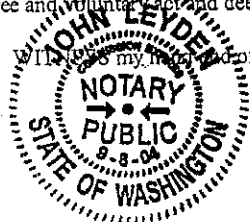
Dated this 28th day of September 2001

Jason Pfaffman
Grantor-Jason Pfaffman

Laura Pfaffman
Grantor-Laura Pfaffman

STATE OF WASHINGTON)
County of Pierce) ss

On this 28th day of September 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jason & Laura Pfaffman, the individuals described herein and who executed the within instrument and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned



Official seal hereto affixed the day and year first written above

John Leyden
Notary Public in and for the State of Washington
Residing in Pierce County

Approved as to form:
Phil Brettingham
Pierce County Deputy Prosecuting Attorney

Accepted by:
[Signature]
Pierce County Executive

ETN: 1085443 2-28-2002
Excise Tax Collected: \$0.00
Affidavit Processing Fee: \$2.00
Cathy Pearsall-Stipek CPO Pierce County Auditor
BY: ROBTN. CARROLL

COPY

200111290146 1 pg
11-29-2001 09:52am \$8.00
PIERCE COUNTY, WASHINGTON

SASAF-1

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Portion of Parcel No's: 05-19-31-4-017 & 4-018.

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled Lower Carbon River Habitat Land Acquisition Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted.

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted

The real property covered by this deed is described as follows: Commencing at the Southeast corner of SECTION 31, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington; thence North 00° 08' 04" East, 1694.67 feet along the Easterly line of said Section 31 to the TRUE POINT OF BEGINNING; thence North 89° 50' 12" West 1096.25 feet; thence South 60° 36' 48" East 443.68 feet; thence South 22° 01' 35" East 131.12 feet; thence South 04° 22' 56" East 112.77 feet; thence South 30° 09' 02" East 209.95 feet; thence South 55° 43' 38" East 353.33 feet; thence South 66° 43' 27" East 211.41 feet; thence South 24° 40' 57" East 138.38 feet to the East line of said Section; thence North 00° 08' 04" East along said East line to the TRUE POINT OF BEGINNING

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement

Dated this 14th day of November 2001

GRANTOR
[Signature] Chief of Staff
Pierce County Executive

ORIGINAL

STATE OF WASHINGTON)
County of Pierce) ss

On this 14th day of November 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ~~John W. LADENBURG~~ *[Signature]* ~~to me known to be the Executive,~~ *Chief of Staff* respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above

[Signature]
Notary Public in and for the State of Washington
residing at Tacoma, WA

Approved as to form only
[Signature]
Pierce County Deputy Prosecuting Attorney

EXCISE TAX EXEMPT DATE 11-29-01
Pierce County

By *[Signature]* Auth Sig

①

200109131051 1 pg
9-13-2001 03:55pm \$8.00
PIERCE COUNTY, WASHINGTON

SASAKI

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Portions of Parcels 05-19-31-4-017 & 4-018
Statutory Warranty Deed

The GRANTORS, TAKASHI & YAE SASAKI, husband & wife, for and in consideration of **THREE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED TWENTY AND 00/100 dollars (\$344,520.00)** and for other good and valuable consideration to them in hand paid, grants, conveys and warrants to the GRANTEE, Pierce County, A municipal corporation of the State of Washington, the following described real property situated in the County of Pierce, State of Washington together with any and all after acquired title therein, to wit:

Commencing at the Southeast corner of SECTION 31, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington; thence North 00° 08' 04" East along the East line of said Section 1694.67 feet to the TRUE POINT OF BEGINNING; thence North 89° 50' 12" West 1096.25 feet; thence South 60° 36' 48" East 443.68 feet; thence South 22° 01' 35" East 131.12 feet; thence South 04° 22' 56" East 112.77 feet; thence South 30° 09' 02" East 209.95 feet; thence South 55° 43' 38" East 353.33 feet; thence South 66° 43' 27" East 211.41 feet; thence South 24° 40' 57" East 138.38 feet to the East line of said section; thence North 00° 08' 04" East long said East line to the TRUE POINT OF BEGINNING.

RESERVING unto Grantor, their heirs and or assigns, an easement for the natural drainage course, And the existing certified water rights.

Containing 12.76 acres

ORIGINAL

- Subject to: 1. An easement in favor of the State of Washington recorded under Auditor's No. 49261
- 2. An agreement recorded under Auditor's No. 9304130416.
- 3. An agricultural lease in favor of Ron Sasaki which expires 12-31-2001.

This property is presently zoned code 7701 or open space agriculture land. No additional compensating tax, penalties or interest shall be imposed on the portion of the property purchased by Pierce County as per RCW 84.34.108

Grantor shall not be charged Excise Tax as per WAC 458-61-420-1-C.

COMMONWEALTH
1016935-2
SEP 12 2001

Dated this 26th day of June 2001.

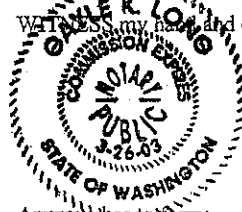
Takashi Sasaki
Grantor - Takashi Sasaki

Yae Sasaki
Grantor - Yae Sasaki

STATE OF WASHINGTON }
County of Pierce } ss.

On this 26th day of June, 2001 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Takashi & Yae Sasaki, to me known to be the individuals described herein and who executed the within instrument and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal here to affixed the day and year first written above.



Douglas K. Long
Notary Public in and for the State of Washington
Residing at Tacoma

Approved as to form:
Philip Prothman
Pierce County Deputy Prosecuting Attorney

Accepted by:
John Helmer
Pierce County Executive

Excise Tax Collected: \$0.00
Affidavit Processing Fee: \$2.00
Cathy Pearsall-Stipek CFO Pierce County Auditor
BY: LISA DRURY

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Parcel No. 05-19-32-3-020

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled Lower Carbon River Habitat Land Acquisition Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted.

The real property covered by this deed is described as follows: That portion of the Southwest quarter of the Southwest quarter of SECTION 32 TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington described as follows; Beginning 245 feet North of the Southeast corner of the Southwest quarter of the Southwest quarter of SECTION 32 TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian; thence South 88° 15' West 500 feet; thence North 50° 46' West 600 feet; thence North 22° 45' West 660 feet; thence North 06° 54' West 143.77 feet to a point on the North boundary of the Southwest corner of the Southwest quarter, 100 feet East of the Northwest corner thereof; thence East to the Northeast corner; thence South to the place of beginning. EXCEPT: any portion thereof lying Northerly of the South Fork of the Puyallup River.

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this 14th day of November 2001

GRANTOR
[Signature]
Pierce County Executive

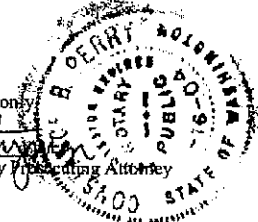
ORIGINAL

STATE OF WASHINGTON)
County of Pierce) ss.

On this 14th day of November 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared *[Signature]*, known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument

WITNESS my hand and official seal hereto affixed the day and year first written above

Approved as to form on
[Signature]
Pierce County Deputy Notary Public



[Signature]
Notary Public in and for the State of Washington
residing at Tacoma, WA

EXCISE TAX EXEMPT DATE 11/29/01
Pierce County

By *[Signature]* Auth. Sig.

For reference only, not for re-sale.

200111290145 1 pg
11-29-2001 09:52 am \$8.00
PIERCE COUNTY, WASHINGTON

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3180

Parcel No: 05-19-32-3-010

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled *Lower Carbon River Habitat Land Acquisition* Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted.

The real property covered by this deed is described as follows: Commencing at a stone monument in the Southwest corner of SECTION 32 TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington, running thence South 89° 44' 1/4" East along the South Boundary Line of said Section 32, a distance of 849.6 feet; thence North 04° 59' West 228.50 feet; thence North 50° 45' West 600 feet; thence North 22° 45' West 660 feet; thence North 06° 54' West 143.77 feet to the North line of the Southwest quarter of the Southwest quarter of said SECTION 32; thence North 89° 50' West 100 feet to a stone monument at the 1/16th section corner; thence along the West Boundary Line of Section 32, South 00° 19' 23" East 1355.50 feet to the place of beginning. ALSO a Tract commencing at a stone monument on the South Boundary Line of SECTION 32 TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington, 1320 feet West of the 1/4 section corner thereof; thence North 245 feet; thence South 88° 59' 15" West 500 feet; thence South 04° 59' East 228.50 feet to the South Boundary Line of Section 32; thence along the section line South 89° 44' 1/4" East 480 feet to the place of beginning.

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this 14th day of November 2001

GRANTOR

Steve Peterson
Pierce County Executive

ORIGINAL

STATE OF WASHINGTON)

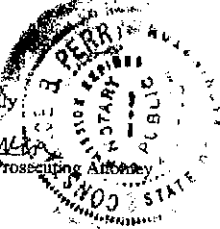
County of Pierce) ss

On this 14th day of November 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared JOHN W. LABENBERG to me known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Approved as to form only

Phil Smith
Pierce County Deputy Prosecuting Attorney



John W. Labenberg
Notary Public in and for the State of Washington
residing at *TACOMA, WA*

EXCISE TAX EXEMPT DATE 11-29-01
Pierce County

By *SL* Auth: Sig

For reference only, not for re-sale.

200102010010 3 pg
2-1-2001 08:59am \$10.00
PIERCE COUNTY, WASHINGTON

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

For reference only, not for re-sale.

Parcel No: 05-19-32-3-025

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled Lower Carbon River Habitat Land Acquisition Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted.

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted.

The real property covered by this deed is described as follows: That portion of the Southeast quarter of the Southwest quarter of SECTION 32, TOWNSHIP 19 NORTH, RANGE 05 EAST of the Willamette Meridian in Pierce County Washington lying Southwesterly of the South Fork of the Puyallup River.

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement

Dated this 26 day of January 2001

GRANTOR
John W. Ladenburg
Pierce County Executive

ORIGINAL

STATE OF WASHINGTON }
County of Pierce } ss

On this 26th day of January 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN W LADENBURG to me known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Constance B. Perry
Notary Public in and for the State of Washington
residing at TACOMA

Approved as to form only
Shirley M. Petty
Pierce County Deputy Prosecuting Attorney

EXCISE TAX EXEMPT DATE 2-1-01
Pierce Co

By *JK* _____





Project Agreement
Fed Funds for Salmon Habitat

48111 LAMUON
25-12 Budget Rev.
96-300 Proj. #

Project Sponsor: Pierce County
Project Title: Lower Carbon River Habitat Land Acq

Project Number: 99-1117A

RECEIVED
JUN 25 1999
WATER PROGRAMS

A. PARTIES TO THE AGREEMENT

This Project Grant Agreement (Agreement) is entered into between the Office of the Governor's Salmon Recovery Office (GSRO), P.O. Box 43135, Olympia, Washington, 98504-3135 and Pierce County, County City Bldg, 930 Tacoma Ave South, Tacoma, WA 98402 (Project Sponsor) and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is for GSRO to provide a grant award to the Project Sponsor for the project specified herein from funds received from the United States Department of the Interior, Fish and Wildlife Services as provided for in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Public Law 105-277, H.R. 4328, 112 Stat 2881 (1998) and the Matching Grant Agreement between the U.S. Fish and Wildlife Service and the State of Washington, Office of the Governor, Governor's Salmon Recovery Office, 1998, Agreement Number 1448-89210-99-5273, Catalog of Federal Domestic Assistance (CFDA) Number 15.608 (Fish and Wildlife Management Assistance).

C. PROJECT DESCRIPTION

The project for which a grant award is made is described in the attached Project Summary, Milestones of Project, and Eligible Reimbursement Activities reports. The Project Sponsor agrees to complete the project as described, in its entirety, in the time as prescribed in the milestones. Failure to timely complete the project shall constitute a material breach of this Agreement.

D. PERIOD OF PERFORMANCE

The Project reimbursement period shall begin on April 15, 1999 and end on January 1, 2000. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement.

E. PROJECT FUNDING

The total grant award provided by GSRO for this project shall not exceed \$1,584,000.00. GSRO shall not pay any amount beyond that approved for funding of the project. The Project Sponsor shall be responsible for all total project costs that exceed this amount. The contribution of funds by the Project Sponsor towards work on this project shall be as indicated below:

	Percentage	Dollar Amount
GSRO - FFSH	95%	\$1,584,000.00
Project Sponsor	5%	\$82,000.00
Total Project Cost	100%	\$1,666,000.00

F. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties regarding this grant award are subject to this Agreement, and the General Provisions (Attachment A) and any Special Provisions (Attachment B), which are incorporated herein by reference as if fully set forth. The Project Sponsor has read, fully understands and agrees to be bound by all terms and conditions as set forth in these documents.

G. AMENDMENTS

GSRO reserves the right to unilaterally amend the Project Grant Agreement and/or General Provisions, by written notification to the Project Sponsor, for the purpose of insuring compliance with federal and/or state laws. All other amendments to the Project Grant Agreement, General Provisions, or Special Provisions shall not be effective unless provided in writing and signed by all parties.

For reference only, not for re-sale.

For reference only, not for re-sale.

H. PROJECT GRANT AGREEMENT REPRESENTATIVES

The below named representatives for each of the parties shall be the contact person for all communications and billings regarding the performance of this Agreement. All written communications regarding this Agreement shall be sent to the designated representatives at the addresses listed below unless notified in writing of any change

GSRO's Representative:

Rölla Seppert, Contract Administrator
Office of the Governor, Governor's Salmon Recovery Office
P.O. Box 43135
Olympia, WA 98504-3135

Project Sponsor Representatives:

Debby Hyds.
ESA Coord
Pierce County
930 Tacoma Avenue
Tacoma, WA 98499

I. CERTIFICATION OF ELISIBILITY TO RECEIVE FEDERAL FUNDS

The Project Sponsor certifies that it has not been debarred, suspended, or otherwise excluded from or deemed ineligible for participation as a recipient of any Federal financial assistance and/or benefits under U.S. Presidential Executive Order 12549, "Debarment and Suspension," or any other applicable federal law.

J. CERTIFICATION OF AUTHORITY

The undersigned representative certifies that the Project Sponsor is a legally constituted local government with full authority and legal capability to perform the terms of this Agreement and he/she is authorized to sign this agreement on their behalf.

K. ENTIRE AGREEMENT

This Agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise regarding this Agreement shall exist or bind any of the parties.

L. EFFECTIVE DATE

This agreement shall be effective upon signing by all parties

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
GOVERNOR'S SALMON RECOVERY OFFICE

BY: Curt Smith
Curt Smith
Special Asst to the Governor

DATE: 6/24/99

PROJECT SPONSOR
BY: Debra Hyds 6/9/99
Pierce County

APPROVED AS TO FORM:

Keith M. Black
KEITH M. BLACK
Chief Civil Deputy
Date: June 8, 99

Pre-approved as to form by the state Assistant Attorney General

200102010009 3 pg
2-1-2001 08:59am \$10.00
PIERCE COUNTY, WASHINGTON

RETURN TO:
PUBLIC WORKS AND UTILITIES
9116 Gravelly Lake Dr. S.W.
Tacoma, WA 98499-3190

Parcel No: 05-18-05-2-001

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY AND CONSERVATION PURPOSES

The Grantor, Pierce County for and in consideration of monies coming in whole or in part from the Salmon Recovery Funding Board of the State of Washington and in fulfillment of terms of the attached Project Agreement herein incorporated by reference, conveys and grants to the State of Washington individually and as the representative of the people of the State, the right to use the real property described below forever for salmon recovery and conservation purposes.

Those purposes are described in the Project Agreement entered into between the Grantor and the State of Washington through the Salmon Recovery Funding Board, titled *Lower Carbon River Habitat Land Acquisition* Project Number 99-1643-A signed by the Grantor on the 14th day of June, 1999 and by the Salmon Recovery Funding Board on the 9th day of June, 1999 and the application and supporting materials which are on file with the Grantor and the State in connection with the Project Agreement.

The Grantor will not make or permit to be made any use of the real property described in this deed, or any part of it, which is inconsistent with the right to use for salmon recovery and conservation purposes herein granted, unless the State, through the Salmon Recovery Funding Board or its successors, consents to the inconsistent use. This consent shall be granted only upon the following conditions, which will ensure other land will be substituted.

The conditions are that the substituted salmon recovery and conservation land must be of at least equal fair market value at the time of change of use and of as nearly as feasible equivalent qualities, characteristics and location for salmon recovery and conservation purposes for which state assistance was originally granted.

The real property covered by this deed is described as follows: The Southeast quarter of the Northwest quarter of SECTION 5, TOWNSHIP 18 NORTH, RANGE 05 EAST of the Willamette Meridian in the City of Orting, Pierce County Washington.

This deed shall in no way modify or extinguish the functions of the Grantor under the Project Agreement, including the Grantor's functions to operate and maintain the land as set out in the Project Agreement.

Dated this 28th day of January 2001

GRANTOR

[Signature]
Pierce County Executive

ORIGINAL

STATE OF WASHINGTON)
) ss
County of Pierce)

On this 20th day of January 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JOHN W. LADENBURG to me known to be the Executive, respectively of PIERCE COUNTY, the corporation that executed the foregoing instrument, and acknowledge the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

[Signature]
Notary Public in and for the State of Washington
residing at TACOMA

Approved as to form only

[Signature]
Pierce County Deputy Prosecuting Attorney

EXCISE TAX EXEMPT DATE 1-1-01
Pierce County

By [Signature] Auth. Sig

