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PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO.

SUMMONS

v.

BNSF RAILWAY COMPANY,
CITY OF TACOMA,
HOME ELECTRIC COMPANY,
1815 EAST D STREET LLC,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

Defendants.

IO: Sally Brick, attorney for BNSF Railway Company, Defendant; Douglas F. Mosich, Assistant City Attorney, attorney for City of Tacoma, Defendant; Clark J. Davis, attorney for Home Electric Company, Defendant and 1815 East D Street LLC, Defendant; Deborah Cade, Assistant Attorney General, attorney for Washington State Department of Transportation, Defendant;

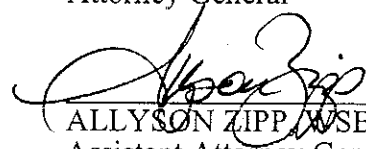
A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons

The parties have agreed to resolve this matter by entry of a Consent Decree, a copy of which is also attached. Accordingly, this Summons shall not require the filing of an Answer.

1 Further, all disputes arising under this cause shall be resolved under the terms of the
2 Consent Decree

3 DATED this 5th day of August, 2008.

4
5 ROBERT M. MCKENNA
6 Attorney General

7 
8 ALLYSON ZIPP, WSBA #38076
9 Assistant Attorney General

10 Attorneys for Plaintiff
11 State of Washington
12 Department of Ecology
13 (360) 586-2669

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KEVIN STOCK, County Clerk
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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
CITY OF TACOMA,
HOME ELECTRIC COMPANY,
1815 EAST D STREET LLC,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

Defendants

NO

COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology), alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of Ecology, pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, to enter a settlement agreement, known as a Consent Decree (Decree), for remedial actions at a facility where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or site, is referred to as the BNSF Oil Pipeline Site (Site). The Site is located in Tacoma, Washington.

1 **II. PARTIES**

2 3 Plaintiff, Ecology, is an agency of the state of Washington. Chapter 43.21A
3 RCW. Ecology is the state agency charged with administering and enforcing MTCA

4 4 Defendants are BNSF Railway Company, City of Tacoma, Home Electric
5 Company, 1815 East D Street LLC, and Washington State Department of Transportation.
6 Defendants have agreed to enter into the Decree with Ecology under MTCA for the final
7 cleanup of the Site

8 **III. JURISDICTION**

9 5. This Court has jurisdiction over the subject matter and over the parties pursuant
10 to MTCA. Venue is proper in Pierce County, the location of the Site, pursuant to the venue
11 provision of MTCA. RCW 70.105D.050(5)(b).

12 6. Authority is conferred upon the Washington State Attorney General by
13 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP), after
14 public notice and comment, if Ecology finds the proposed settlement would lead to a more
15 expeditious cleanup of hazardous substances in compliance with cleanup standards under
16 RCW 70.105D.030(2)(e). Ecology has made this finding. *See* Declaration of Marv Coleman.
17 Under RCW 70.105D.040(4)(b), such a settlement must be entered as a consent decree issued
18 by a court of competent jurisdiction.

19 **IV. FACTUAL ALLEGATIONS**

20 7. The Site is located along the east side of East D Street, from East 15th to East
21 21st Streets, and also extends eastward along East 19th Street, in Tacoma, Washington.

22 8. Ecology has determined that there have been releases or threatened releases of
23 hazardous substances at this Site. Ecology has further determined that these releases or
24 threatened releases require remedial action to protect human health, welfare, and the
25 environment.

1 9. Ecology has determined that each of the Defendants is a PLP for the Site under
2 MTCA. Ecology has given each Defendant notice of this determination, in compliance with
3 RCW 70.105D.020(21)

4 10. The Decree and the exhibits thereto, including the draft Cleanup Action Plan
5 (CAP) and the Schedule, have been the subject of public notice and comment pursuant to
6 RCW 70.105D.040(4)(a). Ecology is submitting the Decree, and the integral and enforceable
7 exhibits thereto, to the Court along with this Complaint.

8 11. Ecology has determined that entry of the Decree will lead to a more expeditious
9 cleanup of the Site.

10 **V. CAUSES OF ACTION**

11 12. Ecology realleges all preceding paragraphs.

12 13. Ecology alleges that all Defendants are responsible, jointly and severally, for
13 remedial action at the Site, pursuant to MTCA.

14 **VI. PRAYER FOR RELIEF**

15 14. Ecology requests that the Court approve and order entry of the proposed Decree.

16 15. Ecology further requests that the Court retain jurisdiction to enforce the terms of
17 the Decree

18 DATED this 5th day of August, 2008.

19 ROBERT M MCKENNA
20 Attorney General

21 
22 ALLYSON ZIPP, WSBA #38076
23 Assistant Attorney General

24 Attorneys for Plaintiff
25 State of Washington,
26 Department of Ecology
(360) 586-2669

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
CITY OF TACOMA,
HOME ELECTRIC COMPANY, 1815
EAST D STREET LLC, WASHINGTON
STATE DEPARTMENT OF
TRANSPORTATION,

Defendants.

NO.

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, BNSF Railway Company, City of Tacoma, Home Electric Company, 1815 East D. Street LLC, and Washington State Department of Transportation, bring this motion seeking entry of the attached Consent Decree (Decree). This motion is based upon the pleadings filed in this matter, including the Declaration of Marv Coleman, a Site Manager for Ecology's Toxics Cleanup Program

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Decree, which governs the cleanup of contamination at the BNSF Oil Pipeline Site (Site) in Tacoma,

1 Washington, pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. The
2 parties also request that the Court retain jurisdiction over this action until the work required by
3 the Decree is completed and the Parties request a dismissal of this action.

4 III. AUTHORITY

5 Authority is conferred upon the Washington State Attorney General by RCW
6 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after
7 public notice and any required hearing, Ecology finds the proposed settlement would lead to a
8 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
9 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

10 IV. AGENCY DETERMINATIONS SUPPORTING ENTRY OF DECREE

11 A. Ecology has determined that releases or threatened releases of hazardous
12 substances have occurred at the Site that is the subject of this Decree. Declaration of Marv
13 Coleman (Coleman Decl.) ¶ 4.

14 B. Ecology has determined that contamination at the Site presents a threat to
15 human health and the environment. Coleman Decl. ¶ 5.

16 C. Ecology has given notice separately to BNSF Railway Company, City of
17 Tacoma, Home Electric Company, 1815 East D Street LLC, and Washington State Department
18 of Transportation of Ecology's determination that each is a PLP for the Site, as required by
19 RCW 70.105D.020(21) and WAC 173-340-500. Coleman Decl. ¶ 6

20 D. The actions to be taken pursuant to this Decree are necessary to protect public
21 health and the environment. Coleman Decl. ¶ 8.

22 E. This Decree has been subject to public notice and comment. Coleman Decl. ¶ 9

23 F. Ecology has determined that this Decree will lead to a more expeditious cleanup of
24 hazardous substances at the Site in compliance with cleanup standards established under RCW
25 70.105D.030(2)(e) and Chapter 173-340 WAC. Coleman Decl. ¶ 8

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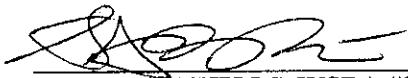
V. CONCLUSION

The Parties believe it is appropriate for the Court to exercise its discretion and approve the attached Decree, and hereby request that the Court enter the attached Order. The parties further request that the Court retain jurisdiction to enforce the terms of the Decree.

DATED this 16th day of July, 2008.

ROBERT M. MCKENNA
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DATED this ____ day of _____, 2008

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DATED this ____ day of _____, 2008.

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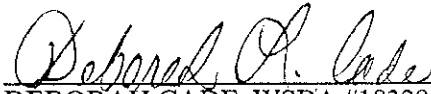
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Washington State
Department of Ecology

V. CONCLUSION

The Parties believe it is appropriate for the Court to exercise its discretion and approve the attached Decree, and hereby request that the Court enter the attached Order. The parties further request that the Court retain jurisdiction to enforce the terms of the Decree.

DATED this 4th day of August, 2008.

ROBERT M. MCKENNA
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ALLYSON ZIPPI, WSBA #38076
Assistant Attorney General

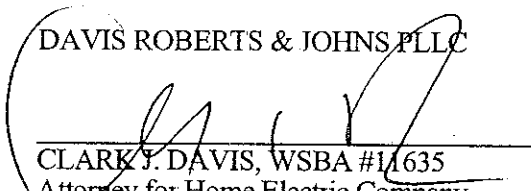
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PIERCE COUNTY, WASHINGTON
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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
CITY OF TACOMA,
HOME ELECTRIC COMPANY,
1815 EAST D STREET LLC,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

Defendants

NO.

DECLARATION OF
MARV COLEMAN

I, Marv Coleman, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed by the Washington State Department of Ecology as a Site Manager for Ecology's Toxics Cleanup Program. I am the designated Site Manager for, and am therefore knowledgeable about, matters relating to the BNSF Oil Pipeline Site (Site).

3. The Site is located along the east side of East D Street, from East 15th to East 21st Streets, and also extends eastward along East 19th Street, in Tacoma, Washington.

1 4. Ecology has determined that releases or threatened releases of hazardous
2 substances have occurred at the Site

3 5 Ecology has determined that contamination at the Site presents a threat to
4 human health, welfare, and the environment

5 6 Ecology has given notice to all Defendants of Ecology's determination that each
6 Defendant is a potentially liable party (PLP) for the Site, as required by
7 RCW 70 105D.020(21) and WAC 173-340-500

8 7 Ecology has reviewed and approved a draft Cleanup Action Plan (CAP) for the
9 Site and negotiated a draft Consent Decree (Decree) with Defendants

10 8. Ecology has determined that the actions to be taken pursuant to the Decree are
11 necessary to protect public health, welfare, and the environment, and will lead to a more
12 expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards
13 established under RCW 70 105D.030(2)(e) and Chapter 173-340 WAC.

14 9 The draft Decree and draft CAP were subject to public notice and comment as
15 required by RCW 70.105D.040(4)(a)


16 10. Ecology received comments during the public comment period, which Ecology
17 has reviewed and considered. Ecology determined that no additional public comment was
18 required under WAC 173-340-600

19 11. Ecology has now issued the final CAP for the Site, and the parties have entered
20 into the final Decree. The final CAP and Schedule are integral and enforceable exhibits to the Decree

21 I declare under penalty of perjury of the laws of the state of Washington that the
22 foregoing is true and correct.

23 RESPECTFULLY SUBMITTED this 16th day of July, 2008, in
24 Lacey, Washington.

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MARV COLEMAN

DECLARATION OF
MARV COLEMAN

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7 STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

10 Plaintiff,

11 v

12 BNSF RAILWAY COMPANY,
13 CITY OF TACOMA,
14 HOME ELECTRIC COMPANY,
15 1815 EAST D STREET LLC,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

16 Defendants

NO. 09-2-11105-4

ORDER ENTERING CONSENT
DECREE [Proposed]

17
18 Having reviewed the Joint Motion for Entry of Consent Decree, it is hereby
19 ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the
20 Court shall retain jurisdiction over the Consent Decree to enforce its terms.

21 DATED this 5 day of August, 2008.

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24 Superior Court Judge Commissioner
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A.M. AUG 05 2008 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
CITY OF TACOMA,
HOME ELECTRIC COMPANY,
1815 EAST D STREET LLC,
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION,

Defendants.

NO.

ORDER ENTERING CONSENT
DECREE [Proposed]

COPY

Having reviewed the Joint Motion for Entry of Consent Decree, it is hereby
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Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this _____ day of _____, 2008.

Superior Court Judge/Commissioner

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Presented by:

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17 DEBORAH CADE, WSBA #18329
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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v

BNSF RAILWAY COMPANY, CITY
OF TACOMA, HOME ELECTRIC
COMPANY, 1815 EAST D STREET
LLC, WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION,

Defendants.

NO.

CONSENT DECREE RE:
BNSF OIL PIPELINE SITE,
TACOMA, WASHINGTON

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1 I. INTRODUCTION

2 A The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), and the BNSF Railway Company, City of Tacoma, Home Electric Company, 1815
4 East D Street LLC, and the Washington State Department of Transportation (Defendants)
5 under this Decree is to provide for remedial action at a facility where there has been a release
6 or threatened release of hazardous substances. The Site is generally located along the East side
7 of East D Street from East 15th to East 21st Streets in Tacoma, Washington, as shown on
8 Exhibit A. This Decree requires the Defendants to conduct a final cleanup of the Site that is
9 the subject of this Decree, by implementing the Cleanup Action Plan (CAP), attached as
10 Exhibit B, according to the schedule and other requirements identified in this Decree and all
11 exhibits thereto. Ecology has determined that these actions are necessary to protect human
12 health and the environment.

13 B The Complaint in this action is being filed simultaneously with this Decree. An
14 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
15 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition,
16 the Parties agree that settlement of these matters without litigation is reasonable and in the
17 public interest, and that entry of this Decree is the most appropriate means of resolving these
18 matters.

19 C By signing this Decree, the Parties agree to its entry and agree to be bound by
20 its terms

21 D By entering into this Decree, the Parties do not intend to discharge non-settling
22 parties from any liability they may have with respect to matters alleged in the Complaint. The
23 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
24 sums expended under this Decree

25 E This Decree shall not be construed as proof of liability or responsibility for any
26 releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, that Defendants shall not challenge the authority of the Attorney General
2 and Ecology to enforce this Decree

3 F The Court is fully advised of the reasons for entry of this Decree, and good
4 cause having been shown:

5 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

6 II. JURISDICTION

7 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
8 to the Model Toxics Control Act (MICA), Chapter 70.105D RCW.

9 B. Authority is conferred upon the Washington State Attorney General by
10 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
11 after public notice and any required hearing, Ecology finds the proposed settlement would lead
12 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
13 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

14 C. Ecology has determined that a release or threatened release of hazardous
15 substances has occurred at the Site that is the subject of this Decree.

16 D Ecology has given notice to Defendants of Ecology's determination that
17 Defendants are PLPs for the Site, as required by RCW 70.105D.020(21) and
18 WAC 173-340-500

19 E The actions to be taken pursuant to this Decree are necessary to protect public
20 health and the environment.

21 F This Decree has been subject to public notice and comment.

22 G Ecology finds that this Decree will lead to a more expeditious cleanup of
23 hazardous substances at the Site in compliance with the cleanup standards established under
24 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC

25 H Defendants have agreed to undertake the actions specified in this Decree and
26 consent to the entry of this Decree under MICA

1 **III. PARTIES BOUND**

2 This Decree shall apply to and be binding upon the Parties to this Decree, their successors
3 and assigns. The undersigned representative of each party hereby certifies that he or she is fully
4 authorized to enter into this Decree and to execute and legally bind such party to comply with this
5 Decree. Defendants agree to undertake all actions required by the terms and conditions of this
6 Decree. No change in ownership or corporate status shall alter Defendants' responsibility under
7 this Decree. Defendants shall provide a copy of this Decree to all agents, contractors, and
8 subcontractors retained to perform work required by this Decree, and shall ensure that all work
9 undertaken by such agents, contractors, and subcontractors complies with this Decree.

10 **IV. DEFINITIONS**

11 Unless otherwise specified herein, all definitions in RCW 70 105D 020 and
12 WAC 173-340-200 shall control the meanings of the terms in this Decree.

13 A. Site: The Site is referred to as the BNSF Oil Pipeline Site and is generally
14 located along the East side of East D Street from East 15th to East 21st Streets in Tacoma,
15 Washington. The site consists of several properties, some of which are owned by Defendants.
16 The Site is more particularly described in the detailed site Diagram that is included as Exhibit
17 A to this Decree. The Site constitutes a Facility under RCW 70 105D 020(5).

18 B. Parties: Refers to the Washington State Department of Ecology, BNSF Railway
19 Company ("BNSF"), Home Electric Company, 1815 East D Street LLC, the City of Tacoma,
20 and the Washington State Department of Transportation.

21 C. Defendants: Refers to BNSF, Home Electric Company, 1815 East D Street
22 LLC, the City of Tacoma, and the Washington State Department of Transportation.

23 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
24 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
25 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.
26

1 | **V. FINDINGS OF FACTS**

2 | Ecology makes the following findings of fact without any express or implied
3 | admissions of such facts by Defendants

4 | A. The site, as shown in Exhibit A, is located along the East side of East D Street
5 | from East 15th to East 21st Streets in Tacoma, Washington, and also extends eastward along
6 | East 19th St. Real properties included in the site are owned by BNSF, Supervalu Holdings,
7 | Inc., 1815 East D Street LLC, John Nichols, Washington State Department of Transportation,
8 | and utility corridors operated by the City of Tacoma.

9 | B. From the early 1900s to approximately the 1960s, Northern Pacific Railway and
10 | its successor, Burlington Northern Railroad operated a six inch steel pipeline that conveyed
11 | heavy fuel oil from tanks located near East D Street and East 15th Street to the rail yard near
12 | East D Street and East 23rd Street. The tanks were subsequently removed and the pipeline
13 | abandoned in place.

14 | C. Between 2002 and 2004, Ecology determined that Defendants BNSF, Home
15 | Electric Company, the City of Tacoma, and the Washington State Department of
16 | Transportation are PLPs for the Site based on ownership of property within the Site, operation
17 | of facilities, or other activities contributing to the contamination. During that time and based
18 | on the same criteria, Ecology also determined that John Nichols and Supervalu Holdings, Inc.,
19 | are PLPs for the Site. In 2008, Home Electric Company notified Ecology that it had
20 | transferred its real property within the Site to 1815 East D Street LLC. Thereupon, Ecology
21 | determined that 1815 East D Street LLC is a PLP based on its ownership of said property.

22 | D. In June 2004, BNSF and Ecology signed Agreed Order DE 04TCPSR-6034,
23 | providing that BNSF would conduct a Remedial Investigation and Feasibility Study (RI/FS) to
24 | determine the extent and character of contamination related to the abandoned pipeline and
25 | other potential sources, and to determine the best method of performing an environmental
26 | cleanup of the affected areas. The Agreed Order also provided that BNSF would prepare a

1 Draft Final Cleanup Action Plan (dCAP). Finally, the Agreed Order provided that BNSF
2 would perform an Interim Action to stop migration of contamination into the storm sewer
3 system and potential migration to Thea Foss Waterway at outfall 245 or other confirmed
4 pathways

5 E In January 2005, Ecology issued Enforcement Order No. 1915 to the
6 Washington State Department of Transportation, Supervalu Holdings, Inc., City of Tacoma,
7 Home Electric Inc., and John Nichols Ecology's stated intent in issuing the Enforcement
8 Order was to create the same obligations on the part of the PLPs subject to it as those
9 obligations created for BNSF under Agreed Order DE 04TCPSR-6034

10 F Prior to and during the course of the Interim Action, an additional source of free
11 product at East D Street and East 19th Street was discovered; consisting of heavy fuel oil from
12 two underground storage tanks located at the Home Electric Company property (now owned
13 by 1815 East D Street LLC), and in the East 19th St. right-of-way.

14 G During 2004 and 2005, BNSF and other PLPs, including Home Electric
15 Company and City of Tacoma, conducted Interim Actions:

16 1 Removed source materials in soil and wood waste in the East 19th Street
17 area (BNSF)

18 2 Removed source material (fuel oil) from the underground tanks located
19 at the Home Electric property (Home Electric Company)

20 3 Closed in place the two large fuel oil tanks and removed a smaller third
21 diesel fuel tank at the Home Electric property (Home Electric Company).

22 4 Replaced and repaired a section of the storm sewer that was leaking and
23 allowing free product to enter the storm system. Placed CDF (Grout) around the whole outside
24 of the replaced line to further prevent infiltration (City of Tacoma).

25 H In accordance with the Agreed Order, BNSF submitted a *Draft Final Remedial*
26 *Investigation/Feasibility Study, BNSF Oil Pipeline Site, Tacoma, Washington*, dated January 9,

1 2007 Ecology provided comments on the draft in February 2007 and BNSF responded to the
2 comments in April 2007. Ecology accepted the RI/FS as final on July 24, 2007

3 I In accordance with the Agreed Order, BNSF submitted a *Draft Cleanup Action*
4 *Plan, BNSF Oil Pipeline Site, Tacoma, Washington*, for the Site on July 27, 2007 that lists the
5 contaminants of concern, lists the cleanup levels for the contaminants of concern, defines the
6 points-of-compliance at which the cleanup levels must be met, selects the cleanup alternative,
7 describes the areas where additional removal of free product and source materials, (soils and
8 wood waste) will occur, and provides a general description of the remedial actions that will be
9 taken. Ecology provided comments on the *Draft Cleanup Action Plan* in October 2007. BNSF
10 submitted the *Draft Final Cleanup Action Plan, BNSF Oil Pipeline Site, Tacoma, Washington*,
11 dated March 25, 2008 (dCAP) in response to Ecology's comments

12 J Pursuant to Section IX of Agreed Order No DE 04ICPSR-6034, Ecology finds
13 that BNSF has completed the interim remedial activity, RI/FS and dCAP required by the Agreed
14 Order, and that all of BNSF's obligations under that Agreed Order are hereby deemed satisfied.

15 VI. WORK TO BE PERFORMED

16 This Decree contains a program designed to protect human health and the environment
17 from the known release, or threatened release, of hazardous substances or contaminants at, on,
18 or from the Site.

19 A Defendants will perform a final cleanup action at the Site by implementing the
20 Cleanup Action Plan (CAP) (Exhibit B), which establishes the required remedial action at the
21 Site, in accordance with the Schedule (Exhibit C) and all other requirements of this Decree

22 B The cleanup action shall include:

23 1 Excavation and disposal of contaminated soils and fill materials to the
24 maximum extent practicable, including free product entrained therein, for Areas A, B, and C,
25 as described in the CAP.

26

1 2 Complete excavation and disposal of contaminated soils and fill
2 materials for Area D, as described in the CAP

3 3 Ongoing sampling of groundwater monitoring wells at the conditional
4 point of compliance to monitor contaminant concentrations and to confirm that natural
5 attenuation is further reducing concentrations of the residual contaminants of concern at the
6 conditional point of compliance, as described in the CAP

7 4 Implementation of Institutional Controls in accordance with WAC 173-
8 340-440.

9 C. Defendants shall perform compliance monitoring, as required in the CAP and in
10 accordance with WAC 173-340-410, including measuring parameters necessary to determine
11 the degree to which natural attenuation is occurring in the groundwater, to ensure that the
12 cleanup standards are met

13 D. In accordance with the Schedule (Exhibit C), the Defendants shall submit to
14 Ecology for approval the Engineering Design Report and Compliance Monitoring Plan
15 Defendants shall also submit to Ecology for review a Health and Safety Plan in accordance
16 with the Schedule (Exhibit C).

17 E Access to any properties necessary for cleanup that are not owned or controlled
18 by Defendants, their successors and assigns shall be obtained consistent with Section IX

19 F. The Defendants shall submit the Construction Plans and Specifications and an
20 Institutional Controls Plan in accordance with the approved schedule in the Engineering
21 Design Report. Completion of construction shall be in accordance with the approved
22 Engineering Design Report schedule.

23 G. Ecology will review the Engineering Design Report, Compliance Monitoring
24 Report, Construction Plans and Specifications, and Institutional Controls Plan (hereinafter
25 Plans). These plans shall not be implemented, nor shall any other remedial activity take place
26 at the Site, without Ecology's approval. Once these Plans, and any required revisions, are

1 approved by Ecology, the Plans and the Engineering Design Report schedule shall become
2 integral and enforceable elements of this Decree

3 H. Institutional controls will be recorded on property within the Site as provided
4 for in Section XX and in accordance with the requirements specified in the Institutional
5 Controls Plan

6 I. At the completion of the construction the engineer responsible for the oversight
7 of construction shall prepare as built drawings and a Final Remedial Action Report
8 documenting all aspects of facility construction. The report shall also contain an opinion from
9 the engineer, based on testing results and inspections, as to whether the cleanup has been
10 constructed in substantial compliance with plans and specifications and related documents. The
11 Defendants shall submit this report to Ecology not later than ninety (90) days after completion
12 of the construction.

13 J. Defendants agree not to perform any remedial actions outside the scope of this
14 Decree unless the Parties agree to modify the work plans prepared by Defendants and approved
15 by Ecology pursuant to this Decree to cover these actions. All work conducted by Defendants
16 under this Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise
17 provided herein.

18 VII. DESIGNATED PROJECT COORDINATORS

19 The project coordinator for Ecology is:

20 Marv Coleman, Site Manager/Inspector
21 Southwest Regional Office
22 Toxics Cleanup Program
23 P.O. Box 47775
24 Olympia, WA 98504-7775
25 Phone: 360 407 6259
26 Fax: 360 407 6305
Pager: 360 709 4139
Email: mcol461@ecy.wa.gov

1 The project coordinator for BNSF is:

2 Bruce Sheppard
3 Manager Environmental Remediation
4 BNSF Railway Company
5 2454 Occidental Avenue, Suite 1A
6 Seattle, WA 99134-1451
7 Voice: (206) 625-6035
8 Fax: (206) 625-6007
9 E-mail: bruce.sheppard@bnsf.com

7 The project coordinator for City of Tacoma is:

8 Calvin D Taylor L.H.G.
9 Environmental Services / Science & Engineering
10 3510 South Mullen Street
11 Tacoma, WA 98409-2299
12 Voice: (253) 593-7711
13 Voice: (253) 591-2017 (temporary until July)

12 The project coordinator for Home Electric Company is:

13 John Backus
14 2366 Eastlake Avenue East
15 Suite 312
16 Seattle, WA 98102
17 Voice: (206) 324-0964

16 The project coordinator for 1815 East D Street LLC is:

17 John Backus
18 2366 Eastlake Avenue East
19 Suite 312
20 Seattle, WA 98102
21 Voice: (206) 324-0964

21 The project coordinator for Washington State Department of Transportations is:

22 Jeff Sawyer
23 WSDOT Olympic Region
24 P.O. Box 47440
25 Olympia, WA 98504-7440
26 Voice: (360) 357-2713
27 Fax: (360) 570-6697
28 sawyerj@wsdot.wa.gov

1 Each project coordinator shall be responsible for overseeing the implementation of this
2 Decree Ecology's project coordinator will be Ecology's designated representative for the Site To
3 the maximum extent possible, communications between Ecology and Defendants and all
4 documents, including reports, approvals, and other correspondence concerning the activities
5 performed pursuant to the terms and conditions of this Decree shall be directed through the project
6 coordinators The project coordinators may designate, in writing, working level staff contacts for
7 all or portions of the implementation of the work to be performed required by this Decree

8 Any party may change its respective project coordinator. Written notification shall be
9 given to the other parties at least ten (10) calendar days prior to the change.

10 VIII. PERFORMANCE

11 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
12 the supervision and direction of a geologist licensed in the State of Washington or under the
13 direct supervision of a professional engineer registered in the State of Washington, except as
14 otherwise provided for by Chapters 18.220 and 18.43 RCW

15 All engineering work performed pursuant to this Decree shall be under the direct
16 supervision of an engineer registered in the State of Washington, except as otherwise provided
17 for by RCW 18.43.130.

18 All construction work performed pursuant to this Decree shall be under the direct
19 supervision of a professional engineer or a qualified technician under the direct supervision of
20 a professional engineer. The professional engineer must be registered in the State of
21 Washington, except as otherwise provided for by RCW 18.43.130.

22 Any documents submitted containing geologic, hydrologic or engineering work shall be
23 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or
24 RCW 18.43.130

1 Defendants shall notify Ecology in writing of the identity of any engineer(s) and
2 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
3 of this Decree, in advance of their involvement at the Site

4 IX. ACCESS

5 Ecology or any Ecology authorized representative shall have full authority to enter and
6 freely move about all property at the Site that Defendants either own, control, or have access
7 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation
8 logs, and contracts related to the work being performed pursuant to this Decree; reviewing
9 Defendants' progress in carrying out the terms of this Decree; conducting such tests or
10 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
11 other documentary type equipment to record work done pursuant to this Decree; and verifying
12 the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to
13 secure access rights for those properties within the Site not owned or controlled by Defendants
14 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
15 or any Ecology authorized representative shall give reasonable notice before entering any Site
16 property owned or controlled by Defendants unless an emergency prevents such notice. All
17 Parties who access the Site pursuant to this Section shall comply with any applicable Health
18 and Safety Plan(s). All Parties who access BNSF's railyard property will be required to
19 complete BNSF's Contractor Safety Training Program (www.contractororientation.com),
20 unless they are personally escorted by someone who has completed the Program. Ecology
21 employees and their representatives shall not be required to sign any liability release or waiver
22 as a condition of Site property access.

23 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

24 With respect to the implementation of this Decree, Defendants shall make the results of
25 all sampling, laboratory reports, and/or test results generated by them or on their behalf
26 available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted

1 to Ecology in both printed and electronic formats in accordance with Section XI (Progress
2 Reports) and Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements),
3 and/or any subsequent procedures specified by Ecology for data submittal

4 Data shall be submitted in hard copy to the Ecology project coordinator and
5 electronically to the Ecology Electronic Information Management (EIM) system in accordance
6 with the EIM data submittal protocols listed on the EIM web site:
7 <https://fortress.wa.gov/ecy/eimimport/submit.htm> Data Submittal Requirements (Policy 840,
8 Exhibit E) are incorporated into this Decree by reference as an integral and enforceable part of
9 the order. Data shall be submitted in hard copy and entered into Ecology's EIM within thirty
10 (30) days of receipt from the lab.

11 If requested by Ecology, Defendants shall allow Ecology and/or its authorized
12 representative to take split or duplicate samples of any samples collected by Defendants
13 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
14 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
15 allow Defendants and/or their authorized representatives to take split or duplicate samples of
16 any samples collected by Ecology pursuant to the implementation of this Decree, provided that
17 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights
18 under Section IX (Access), Ecology shall notify Defendants prior to any sample collection
19 activity unless an emergency prevents such notice.

20 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
21 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to
22 be conducted, unless otherwise approved by Ecology

23 XI. PROGRESS REPORTS

24 Defendants shall submit to Ecology written monthly Progress Reports that describe the
25 actions taken during the previous month to implement the requirements of this Decree. The
26 Progress Reports shall include the following:

1 have under applicable law to limit disclosure of documents protected by the attorney work-
2 product privilege and/or the attorney-client privilege If a Defendant withholds any requested
3 records based on an assertion of privilege, it shall provide Ecology with a privilege log
4 specifying the records withheld and the applicable privilege. No actual data collected on Site
5 pursuant to this Decree shall be considered privileged.

6 XIII. TRANSFER OF INTEREST IN PROPERTY

7 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
8 interest in any portion of the Site shall be consummated by Defendants without provision for
9 continued operation and maintenance of any containment system, treatment system, and/or
10 monitoring system installed or implemented pursuant to this Decree.

11 Prior to Defendants' transfer of any interest in all or any portion of the Site, and during
12 the effective period of this Decree, Defendants shall provide a copy of this Decree to any
13 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
14 least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said transfer.
15 Upon transfer of any interest, Defendants shall restrict uses and activities to those consistent
16 with institutional controls required by this Consent Decree and notify all transferees of the
17 restrictions on the use of the property

18 XIV. RESOLUTION OF DISPUTES

19 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
20 other decision or action by Ecology's project coordinator, or an itemized billing statement
21 under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
22 procedure set forth below

23 1. Upon receipt of Ecology's project coordinator's written decision, or the
24 itemized billing statement, a Defendant has fourteen (14) days within which to notify
25 Ecology's project coordinator in writing of its objection to the decision or itemized statement
26

1 2. The Parties' project coordinators shall then confer in an effort to resolve
2 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
3 Ecology's project coordinator shall issue a written decision.

4 3. The Defendant may then request regional management review of the
5 decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup
6 Program Section Manager within seven (7) days of receipt of Ecology's project coordinator's
7 written decision.

8 4. Ecology's Regional Section Manager shall conduct a review of the
9 dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30)
10 days of the Defendant's request for review.

11 5. If the Defendant finds Ecology's Regional Section Manager's decision
12 unacceptable, the Defendant may then request final management review of the decision. This
13 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
14 days of receipt of the Regional Section Manager's decision.

15 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
16 the dispute and shall endeavor to issue a written decision regarding the dispute within thirty
17 (30) days of the Defendant's request for review of the Regional Section Manager's decision.
18 The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
19 disputed matter.

20 B. If Ecology's final written decision is unacceptable to the Defendant, the
21 Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that
22 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
23 arising under this Decree. In the event the Defendant presents an issue to the Court for review,
24 the Court shall review the action or decision of Ecology on the basis of whether such action or
25 decision was arbitrary and capricious and render a decision based on such standard of review.

26

1 C The Parties agree to only utilize the dispute resolution process in good faith and
2 agree to expedite, to the extent possible, the dispute resolution process whenever it is used
3 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
4 the other party may seek sanctions.

5 D. Implementation of these dispute resolution procedures shall not provide a basis
6 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
7 schedule extension or the Court so orders.

8 XV. AMENDMENT OF DECREE

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing by
11 Ecology.

12 Substantial changes to the work to be performed shall require formal amendment of this
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties
14 that is entered by the Court, or by order of the Court. Such amendment shall become effective
15 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
16 by any party.

17 Defendants shall submit a written request for amendment to Ecology for approval
18 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
19 written request for amendment is received. If the amendment to the Decree is a substantial
20 change, Ecology will provide public notice and opportunity for comment. Reasons for the
21 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
22 not agree to a proposed amendment, the disagreement may be addressed through the dispute
23 resolution procedures described in Section XIV.

24 XVI. EXTENSION OF SCHEDULE

25 A An extension of schedule shall be granted only when a request for an extension
26 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the

1 | deadline for which the extension is requested, and good cause exists for granting the extension.

2 | All extensions shall be requested in writing. The request shall specify:

- 3 | 1 The deadline that is sought to be extended;
- 4 | 2 The length of the extension sought;
- 5 | 3 The reason(s) for the extension; and
- 6 | 4 Any related deadline or schedule that would be affected if the extension
- 7 | were granted.

8 | B The burden shall be on Defendants to demonstrate to the satisfaction of Ecology
9 | that the request for such extension has been submitted in a timely fashion and that good cause
10 | exists for granting the extension. Good cause may include, but may not be limited to:

- 11 | 1. Circumstances beyond the reasonable control and despite the due
12 | diligence of Defendants including delays caused by unrelated third parties or Ecology, such as
13 | (but not limited to) delays by Ecology in reviewing, approving, or modifying documents
14 | submitted by Defendants;
- 15 | 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
16 | storm, or other unavoidable casualty; or
- 17 | 3. Endangerment as described in Section XVII (Endangerment)

18 | However, neither increased costs of performance of the terms of this Decree nor
19 | changed economic circumstances shall be considered circumstances beyond the reasonable
20 | control of Defendants.

21 | C. Ecology shall act upon any written request for extension in a timely fashion.
22 | Ecology shall give Defendants written notification of any extensions granted pursuant to this
23 | Decree. A requested extension shall not be effective until approved by Ecology or, if required,
24 | by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
25 | this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
26 | granted.

1 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
2 reasonable under the circumstances.

3 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
4 contractors to take or require appropriate action in the event of an emergency

5 **XVIII. COVENANT NOT TO SUE**

6 A Covenant Not to Sue: In consideration of Defendants' compliance with the
7 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
8 actions against Defendants regarding the release or threatened release of hazardous substances
9 covered by this Decree.

10 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
11 and those hazardous substances that Ecology knows are located at the Site as of the date of
12 entry of this Decree. This Decree does not cover any other hazardous substance or area
13 Ecology retains all of its authority relative to any substance or area not covered by this Decree

14 This Covenant Not to Sue shall have no applicability whatsoever to:

- 15 1. Criminal liability;
16 2. Liability for damages to natural resources; and
17 3. Any Ecology action, including cost recovery, against PLPs not a party to
18 this Decree.

19 If factors not known at the time of entry of the settlement agreement are discovered and
20 present a previously unknown threat to human health or the environment, the Court shall
21 amend this Covenant Not to Sue.

22 B. Reopeners: Ecology specifically reserves the right to institute legal or
23 administrative action against Defendants to require them to perform additional remedial
24 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D 050
25 under the following circumstances:
26

1 1 Upon Defendants' failure to meet the requirements of this Decree,
2 including, but not limited to, failure of the remedial action to meet the cleanup standards
3 identified in the Cleanup Action Plan (CAP) (Exhibit B);

4 2 Upon Ecology's determination that remedial action beyond the terms of
5 this Decree is necessary to abate an imminent and substantial endangerment to human health or
6 the environment;

7 3 Upon the availability of new information regarding factors previously
8 unknown to Ecology, including the nature or quantity of hazardous substances at the Site, and
9 Ecology's determination, in light of this information, that further remedial action is necessary
10 at the Site to protect human health or the environment;

11 4 Upon Ecology's determination that additional remedial actions are
12 necessary to achieve cleanup standards within the reasonable restoration time frame set forth in
13 the CAP; or

14 5 In the event contamination attributable to the pipeline operations or
15 other sources is shown to be present beyond the currently established site boundaries, on
16 adjoining property, and such contamination is not adequately addressed by the cleanup
17 actions required by this Consent Decree

18 C Except in the case of an emergency, prior to instituting legal or administrative
19 action against Defendants pursuant to this Section, Ecology shall provide Defendants with
20 fifteen (15) calendar days notice of such action.

21 **XIX. CONTRIBUTION PROTECTION**

22 With regard to claims for contribution against Defendants, the Parties agree that
23 Defendants are entitled to protection against claims for contribution for matters addressed in
24 this Decree as provided by RCW 70.105D.040(4)(d)

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XX. LAND USE RESTRICTIONS

To the extent that contamination above cleanup levels remains on any property within the Site following implementation of the soil portion of the remedial action, an Environmental Covenant shall be recorded on the property in accordance with this Decree, the CAP, and the approved Institutional Controls Plan. Environmental Covenants shall be enforceable by Ecology, restrict future uses of the property, and otherwise meet regulatory requirements. Environmental Covenants must be approved by Ecology prior to being recorded. Defendant shall provide Ecology with copies of the recorded Environmental Covenants within thirty (30) days of the recording date(s).

Where such property is owned or controlled by a Defendant, Defendant shall record an Environmental Covenant on the property with the office of the Pierce County Auditor within thirty (30) days of the completion of the soil portion of the remedial action, as evidenced by Ecology's approval of the Final Remedial Action Report. Where such property is not owned or controlled by a Defendant, Defendants shall ensure that a Environmental Covenant is recorded for the property following completion of the soil portion of the remedial action, and shall provide Ecology with a copy of any such recorded environmental covenant within ten (10) days of obtaining the owner's (owners') signature(s).

A model environmental covenant is attached as Exhibit D. This model environmental covenant will be tailored appropriately for each property in question, subject to Ecology approval. To the extent that an environmental covenant is required for BNSF's railyard facility property, restrictions placed on the property in the environmental covenant will be tailored and may be amended after recording so as not to interfere with railroad operations.

XXI. FINANCIAL ASSURANCES

Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and

1 into and implementing this Decree. However, Defendants shall not indemnify the State of
2 Washington nor save nor hold its employees and agents harmless from any claims or causes of
3 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
4 the employees or agents of the State, in entering into or implementing this Decree.

5 XXIII. COMPLIANCE WITH APPLICABLE LAWS

6 A All actions carried out by Defendants pursuant to this Decree shall be done in
7 accordance with all applicable federal, state, and local requirements, including requirements to
8 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
9 federal, state or local requirements that the agency has determined are applicable and that are
10 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

11 B Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural
12 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
13 requiring or authorizing local government permits or approvals. However, Defendants shall
14 comply with the substantive requirements of such permits or approvals. The exempt permits or
15 approvals and the applicable substantive requirements of those permits or approvals, as they
16 are known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).

17 Defendants have a continuing obligation to determine whether additional permits or
18 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
19 action under this Decree. In the event either Ecology or Defendants determine that additional
20 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
21 remedial action under this Decree, they shall promptly notify the other parties of this
22 determination. Ecology shall determine whether Ecology or Defendants shall be responsible to
23 contact the appropriate state and/or local agencies. If Ecology so requires, Defendants shall
24 promptly consult with the appropriate state and/or local agencies and provide Ecology with
25 written documentation from those agencies of the substantive requirements those agencies
26 believe are applicable to the remedial action. Ecology shall make the final determination on

1 the additional substantive requirements that must be met by Defendants and on how
2 Defendants must meet those requirements Ecology shall inform Defendants in writing of
3 these requirements Once established by Ecology, the additional requirements shall be
4 enforceable requirements of this Decree Defendants shall not begin or continue the remedial
5 action potentially subject to the additional requirements until Ecology makes its final
6 determination.

7 C. Pursuant to RCW 70 105D 090(2), in the event Ecology determines that the
8 exemption from complying with the procedural requirements of the laws referenced in
9 RCW 70 105D 090(1) would result in the loss of approval from a federal agency that is
10 necessary for the State to administer any federal law, the exemption shall not apply and
11 Defendants shall comply with both the procedural and substantive requirements of the laws
12 referenced in RCW 70 105D 090(1), including any requirements to obtain permits

13 **XXIV. REMEDIAL ACTION COSTS**

14 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
15 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
16 or its contractors for, or on, the Site under Chapter 70 105D RCW, including remedial actions
17 and Decree preparation, negotiation, oversight and administration. These costs shall include
18 work performed both prior to and subsequent to the entry of this Decree Ecology's costs shall
19 include costs of direct activities and support costs of direct activities as defined in WAC
20 173-340-550(2). Defendants shall pay the required amount within ninety (90) days of
21 receiving from Ecology an itemized statement of costs that includes a summary of costs
22 incurred, an identification of involved staff, and the amount of time spent by involved staff
23 members on the project. A general statement of work performed will be provided upon
24 request. Itemized statements shall be prepared quarterly Pursuant to WAC 173-340-550(4),
25 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of
26

1 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
2 monthly

3 Pursuant to RCW 70 105D 055, Ecology has authority to recover unreimbursed
4 remedial action costs by filing a lien against real property subject to the remedial actions.

5 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

6 If Ecology determines that Defendants have failed without good cause to implement the
7 remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or
8 all portions of the remedial action that remain incomplete. If Ecology performs all or portions
9 of the remedial action because of Defendants' failure to comply with their obligations under
10 this Decree, Defendants shall reimburse Ecology for the costs of doing such work in
11 accordance with Section XXIV (Remedial Action Costs), provided that Defendants are not
12 obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with
13 or beyond the scope of this Decree.

14 Except where necessary to abate an emergency situation, Defendants shall not perform
15 any remedial actions at the Site outside those remedial actions required by this Decree, unless
16 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
17 (Amendment of Decree)

18 **XXVI. PERIODIC REVIEW**

19 As remedial action, including groundwater monitoring, continues at the Site, the Parties
20 agree to review the progress of remedial action at the Site, and to review the data accumulated
21 as a result of monitoring the Site as often as is necessary and appropriate under the
22 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
23 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
24 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall
25 submit a report to Ecology that documents the progress of remediation at the site and whether
26 human health and the environment are being protected based on the factors set forth in WAC

1 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under
2 appropriate circumstances. This provision shall remain in effect for the duration of this
3 Decree.

4 **XXVII. PUBLIC PARTICIPATION**

5 A Public Participation Plan (Exhibit F) is required for this Site. Ecology shall review
6 any existing Public Participation Plan to determine its continued appropriateness and whether it
7 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan
8 alone or in conjunction with Defendants.

9 Ecology shall maintain the responsibility for public participation at the Site. However,
10 Defendants shall cooperate with Ecology, and shall:

11 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of
12 public notices and fact sheets at important stages of the remedial action, such as the submission
13 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and
14 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact
15 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

16 B. Notify Ecology's project coordinator prior to the preparation of all press
17 releases and fact sheets, and before major meetings with the interested public and local
18 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press
19 releases and fact sheets, and before major meetings with the interested public and local
20 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
21 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to
22 their audience that the press release, fact sheet, meeting, or other outreach effort was not
23 sponsored or endorsed by Ecology.

24 C. When requested by Ecology, participate in public presentations on the progress
25 of the remedial action at the Site. Participation may be through attendance at public meetings
26 to assist in answering questions, or as a presenter.

1 D. When requested by Ecology, arrange and/or continue information repositories at
2 the following locations:

- 3 1 Tacoma Public Library
4 1102 Tacoma Ave.
5 Tacoma, WA
6 (253) 591-5666
- 7 2 Citizens for A Healthy Bay
8 917 Pacific Ave. Suite 100
9 Tacoma, WA 98402
10 (253) 383-2429
- 11 3 Department of Ecology
12 SWRO Toxics Cleanup Program
13 300 Desmond Drive
14 PO Box 47775
15 Olympia, WA 98504-7775
16 (360) 407-6365

17 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
18 monitoring data; remedial actions plans and reports, supplemental remedial planning
19 documents, and all other similar documents relating to performance of the remedial action
20 required by this Decree shall be promptly placed in these repositories.

21 **XXVIII. DURATION OF DECREE**

22 The remedial program required pursuant to this Decree shall be maintained and
23 continued until Defendants have received written notification from Ecology that the
24 requirements of this Decree have been satisfactorily completed This Decree shall remain in
25 effect until dismissed by the Court When dismissed, Section XVIII (Covenant Not to Sue)
26 and Section XIX (Contribution Protection) shall survive

XXIX. CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in
implementing the remedial action required by this Decree from the State of Washington or any
of its agencies; and further, that Defendants will make no claim against the State Toxics
Control Account or any local Toxics Control Account for any costs incurred in implementing

1 | this Decree Notwithstanding, each Defendant expressly reserves the right to seek to recover
2 | any costs incurred in implementing this Decree in the form of contribution from any other PLP,
3 | including Washington State Department of Transportation. This Section does not limit or
4 | address funding that may be provided under Chapter 173-322 WAC

5 | **XXX. EFFECTIVE DATE**

6 | This Decree is effective upon the date it is entered by the Court

7 | **XXXI. WITHDRAWAL OF CONSENT**

8 | If the Court withholds or withdraws its consent to this Decree, it shall be null and void
9 | at the option of any party and the accompanying Complaint shall be dismissed without costs
10 | and without prejudice In such an event, no party shall be bound by the requirements of this
11 | Decree.

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JUL 17 2008

Washington State
Department of Ecology

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

ROBERT M MCKENNA
Attorney General

3 

4 Jim Pendowski
5 Program Manager, Toxics Cleanup Program
(360) 407-7177


Allyson Zipp, WSBA # 38076
Assistant Attorney General
(360) 586-2669

6 Date: _____

Date: _____

7 BNSF RAILWAY COMPANY

CITY OF TACOMA

8 
9 Carl Ice
10 Executive Vice President and
11 Chief Operating Officer
(817) 352-1402

Eric Anderson
City Manager

(253) 591-5130

12 Date: _____

Date: _____

13 HOME ELECTRIC COMPANY

1815 EAST D STREET LLC

14
15 John Backus
16 President
(206) 324-0964

John Backus
President
(206) 324-0964

17 Date: _____

Date: _____

18
19 WASHINGTON STATE
20 DEPARTMENT OF TRANSPORTATION

Approved Only As To Form:
CITY OF TACOMA

21 Kevin J Dayton
22 Region Administrator
(360) 357-2605

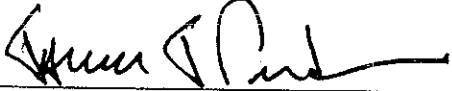
Doug Mosich
Assistant City Attorney
(253) 591-5626

23 Date: _____

24 ENTERED this _____ day of _____, 2008.

25
26 _____
JUDGE, Pierce County Superior Court

1 STATE OF WASHINGTON
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4 Jim Pendowski
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(360) 407-7177

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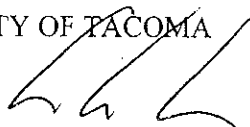
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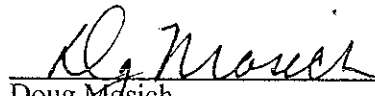
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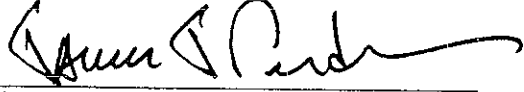
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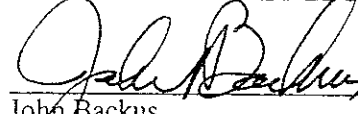
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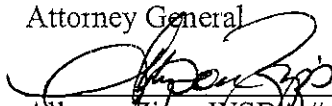
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1 STATE OF WASHINGTON
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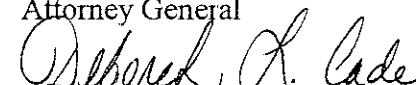
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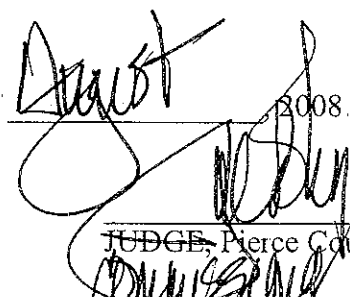
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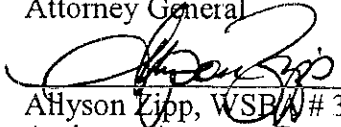
ENTERED this 5 day of August 2008.


JUDGE, Pierce County Superior Court

1 STATE OF WASHINGTON
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4 Toxics Cleanup Program
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5 Allyson Zipp, WSBA # 38076
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7 Date: _____

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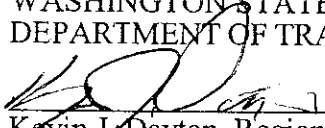
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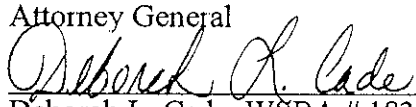
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24 Date: 7/30/08

Date: _____

25 Approved Only As To Form:
26 CITY OF TACOMA

Doug Mosich, Assistant City Attorney
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ENTERED this _____ day of _____, 2008

JUDGE, Pierce County Superior Court

EXHIBIT A

SITE DIAGRAM

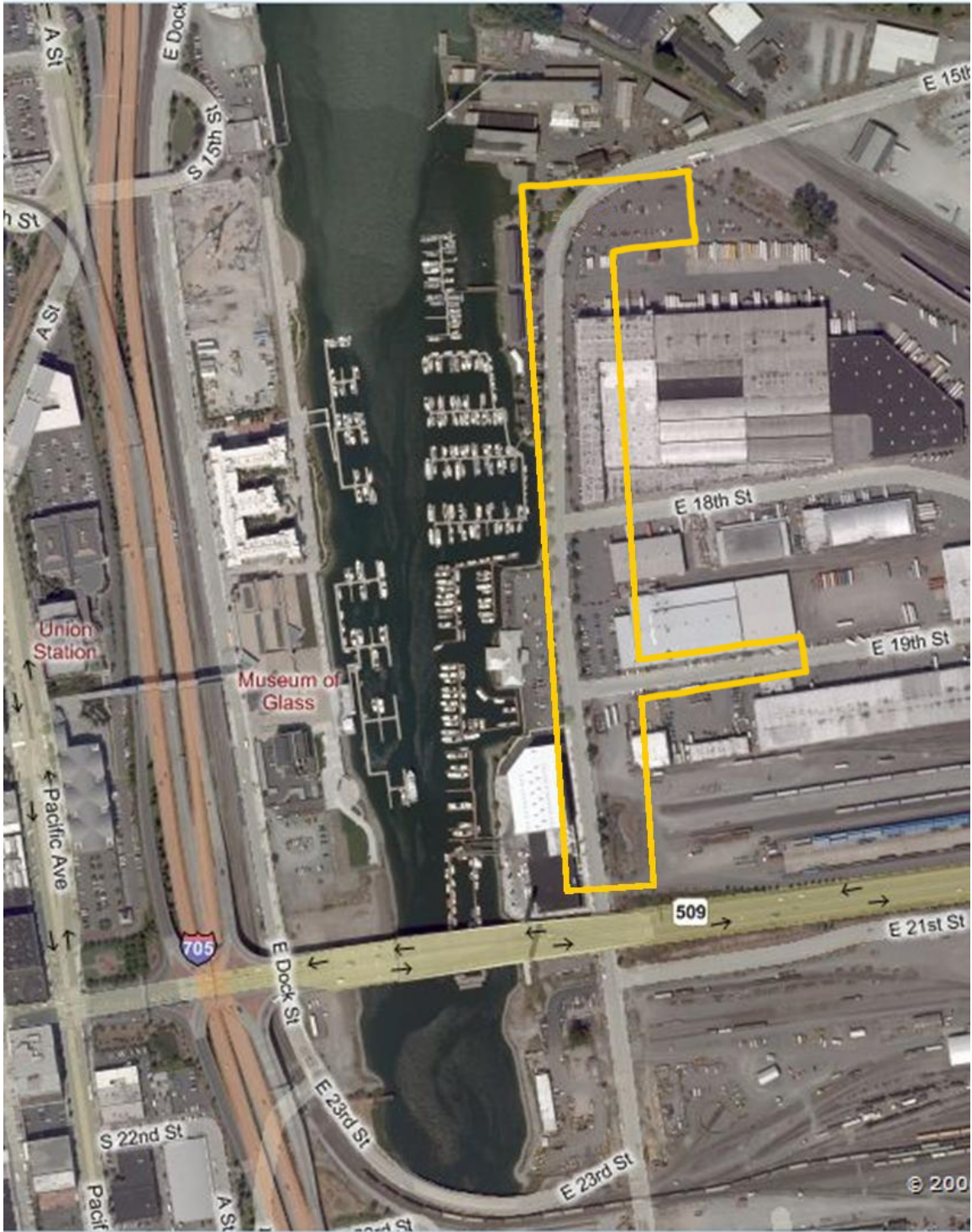


EXHIBIT B

CLEANUP ACTION PLAN

**REVISED DRAFT FINAL
CLEANUP ACTION PLAN
BNSF OIL PIPELINE SITE
TACOMA, WASHINGTON**

APRIL 18, 2008

**FOR
BNSF RAILWAY COMPANY**

**PREPARED PURSUANT TO AGREED ORDER
DE 04TCPSR-6034**

**Revised Draft Final Cleanup Action Plan
File No. 0506-141-02**

April 18, 2008

Prepared for:

**BNSF Railway Company
2454 Occidental Avenue South, Suite 1A
Seattle, Washington 98134**

Attention: Bruce Sheppard

Prepared by:

**GeoEngineers, Inc.
1101 South Fawcett Avenue, Suite 200
Tacoma, Washington 98402
(253) 383-4940**

GeoEngineers, Inc.

**Sally L. Fisher
Associate, Environmental Scientist**

**John H. Biggane, LG, LEG, LHG
Principal**

SLF:JHB:tt:gb
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cc: Marv Coleman, Department of Ecology
Matthew Wells, K&L|Gates
Rebecca Lawson, Department of Ecology
Clark Davis, Counsel for Home Electric
Greg Jacoby, Counsel for SuperValu
John Nichols/Bob Stack, Nichols Trucking
Dianne Conway, Counsel for Nichols Trucking
Jeff Sawyer, WSDOT
Jeffrey Erwin, Counsel for WSDOT
Leslie Ann Rose, Citizens for a Healthy Bay
John Hildenbrand, Robinson Noble
Doug Mosich, City of Tacoma
Calvin Taylor, City of Tacoma
Jim Oberlander, City of Tacoma
Josh Lipsky, Counsel for City of Tacoma

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**REVISED DRAFT FINAL CLEANUP ACTION PLAN
BNSF OIL PIPELINE SITE
TACOMA, WASHINGTON
FOR
BNSF RAILWAY COMPANY**

1.0 INTRODUCTION

This document presents the Revised Draft Final Cleanup Action Plan (CAP) for the BNSF Oil Pipeline Site (Site) in Tacoma, Washington. The Site and surrounding area are shown on the Vicinity Map, Figure 1.

A Remedial Investigation/Feasibility Study (RI/FS) was completed pursuant to the Washington State Department of Ecology (Ecology) approved Work Plan under Agreed Order No. DE 04TCPSR-6034. The Site consists of the area in the vicinity of a pipeline that was formerly used to transport bunker oil from bulk storage tanks located north of the intersection of East 15th Street and “D” Street, to what is now the BNSF Tacoma Rail Yard, located south and east of the intersection of East 21st Street and “D” Street. The Site includes the pipeline alignment and adjacent areas as shown on Figures 2A and 2B.

Bunker-range petroleum hydrocarbons (BRPH)¹ and carcinogenic polynuclear aromatic hydrocarbons (cPAHs) have been detected in soil and groundwater beneath portions of the Site during subsurface investigations and pipeline closure activities. The BNSF Oil Pipeline (pipeline), the Washington State Department of Transportation (WSDOT) pond, underground storage tanks (USTs) located beneath the Site and local utility features are potential sources of petroleum hydrocarbons in the Site area. Ecology has named BNSF, the City of Tacoma (City), WSDOT, Home Electric, Inc. (owner of the Tacoma Fixtures property), Nichols Trucking and SuperValu as potentially liable parties (PLPs) for investigation of the Site and associated remedial activities.

This CAP was prepared in conformance with Agreed Order (AO) Number DE 04TCPSR-6034 to comply with the requirements of Washington Administrative Code (WAC) 173-340-350. BNSF entered into the AO with the State of Washington to:

- develop an Interim Action Plan,
- implement an appropriate Interim Action (IA),
- complete a Remedial Investigation (RI)/Feasibility Study (FS) at the Site, and
- prepare a Draft Final Cleanup Action Plan (CAP) for the Site.

The Ecology-approved Work Plan for the Remedial Investigation includes both the “Final Remedial Investigation Work Plan” dated March 12, 2004, and the “Final Supplemental Groundwater Investigation Work Plan” dated January 9, 2006. The results of the RI/FS are presented in the report “Final Remedial Investigation/Feasibility Study (RI/FS) BNSF Oil Pipeline Site, Tacoma, Washington” dated April 4, 2007, which Ecology accepted as final on July 24, 2007.

¹ BRPH is a site-specific term indicating a Bunker C petroleum product with both diesel- and oil-range petroleum hydrocarbons. The concentration of BRPH as discussed in this report indicates either 1) the sum of the laboratory reported concentrations of diesel- and oil-range petroleum hydrocarbons; or 2) the concentration of petroleum hydrocarbons quantified during analysis relative to a Bunker C product laboratory standard.

1.1 SITE DESCRIPTION

1.1.1 General

The Site is located as shown on Figure 1. Topography in the Site area is generally flat. The Site area is used primarily for industrial and commercial purposes. Facilities in the “D” Street area include the BNSF Tacoma Rail Yard (transportation), WSDOT (stormwater ponds), Nichols Trucking (trucking), Tacoma Fixtures (fixture manufacturing on the Home Electric property), SuperValu (grocery distributor), Johnny’s Dock Restaurant and Marina, the former Pick’s Cove Marina and Martinac (boat building and repair). The Thea Foss Waterway (Waterway) is located approximately 175 to 370 feet west of the alignment of the former bunker oil pipeline and unrelated underground storage tanks (USTs) located within the Site area.

The Site is approximately 2,050 feet long and was divided into four areas (WSDOT Pond Area, Nichols Trucking Area, Home Electric Area and SuperValu Area) for remedial investigation (RI) purposes. The four Site areas are shown on Figures 2A and 2B.

Four “remediation areas” (A, B, C and D) were subsequently identified during the feasibility study (FS) process and various options for remedial actions in those areas were evaluated during the FS. Area B was divided into two subareas as shown on Figure 3. Remediation areas A, B, C and D are shown on Figure 3. The relationship between the Site areas identified in the RI and the remediation areas identified in the FS is as follows:

- The WSDOT Pond Area, including remediation Area A;
- The Nichols Trucking Area, including a portion of remediation Area B2;
- The Home Electric Area, including remediation Area B1, the remainder of remediation Area B2, the 19th Street Underground Storage Tank (UST) Area and a portion of remediation Area C; and
- The SuperValu Area, including the remainder of remediation Area C and remediation Area D.

Additional details regarding these areas are provided in the RI/FS.

Stormwater drain lines are located within each area. The stormwater drain lines discharge to the Waterway via stormwater Outfalls 243, 245, 248 and 249, located as shown on Figures 2A and 2B.

1.2 SITE HISTORY

Development of the area around the Site began in the early 1900s and was associated with construction and use of the Thea Foss Waterway (formerly City Waterway). The Site was initially a tidelflat area where the Puyallup River flowed into Commencement Bay. The Site was reportedly filled with sediments, wood debris, “refuse fill” and other materials as the area was developed.

The surrounding tidelflat area has been historically used for industrial and commercial purposes, including lumber milling, coal gas manufacturing, bulk oil storage, shipbuilding, rail and trucking facilities and other uses. The former bunker oil pipeline appears to have been installed in the early 1900s. The former pipeline appears to have connected oil storage tanks formerly located on property now owned by JM Martinac and Company at 1501 East “D” Street, with an oil storage tank formerly located on the current BNSF Tacoma Rail Yard property. The storage tank on the Tacoma Rail Yard appears to have been removed sometime between 1954 and 1969 based on a review of historic aerial photographs. The oil storage tanks formerly located on the current JM Martinac property were removed between 1963 and

1965 based on a review of historic aerial photographs and maps. It is likely that use of the former pipeline stopped sometime before 1965 (when tanks were removed from JM Martinac property), or, at the latest, sometime before 1969 (by which time the tank had been removed from the Tacoma Rail Yard).

Portions of the former pipeline located within the Tacoma Rail Yard were removed in the late 1990s during remedial activities associated with construction of the SR 509 overpass. Portions of the former pipeline may also have been removed at other locations along the alignment during installation and/or construction of buildings and underground utilities such as City storm drains, sanitary sewers and water lines.

Construction of the WSDOT ponds occurred in the late 1990s and involved excavation to approximately 10 feet below grade in the immediate vicinity of the contamination.

1.3 SUBSURFACE CONDITIONS

1.3.1 Soil Conditions

Subsurface conditions beneath the Site generally consist of 2 to 9 feet of loose to medium dense sand with varying silt content underlain by a zone of mixed soil and wood waste fill. Where present, the wood waste fill varies from 2 to 12 feet in thickness and extends to a maximum depth of 16 feet below ground surface (bgs) based on explorations completed at the Site. Native sand with varying amounts of silt exists below the wood waste fill. Wood waste fill was not observed in the subsurface explorations located within East 18th Street.

1.3.2 Groundwater Conditions

Depth to groundwater ranges from about 5 to 8.5 feet bgs and appears to be tidally influenced. The direction of groundwater flow is generally westward, towards the Waterway, based on the results of the RI groundwater studies.

2.0 INTERIM AND SOURCE CONTROL ACTIONS PERFORMED TO DATE

As described in the RI/FS, BNSF has performed interim actions at the Site and other parties have performed source control activities.

2.1 2004 INTERIM ACTIONS BY BNSF

Subsurface soil and groundwater sampling was completed between March and May 2004. The data from these studies were used to identify portions of the Site requiring interim action and to select and plan appropriate interim activities. The portion of the Site in the vicinity of the former bunker oil pipeline and the storm drain system in the Home Electric/Nichols Trucking Area on East 19th Street was identified as appropriate for an interim action (IA). Existing site conditions and proposed interim actions were described in the "Interim Action Plan, BNSF Oil Pipeline, Tacoma, Washington, dated June 15, 2004" (IAP). Ecology approved the IAP in June 2004.

The IA was completed in July 2004 in general accordance with the IAP. The objective of the IA was to eliminate or substantially reduce the potential for BRPHs in soil in the East 19th Street Area to migrate to the Waterway via the only known pathway, the City storm drain system on East 19th Street. The IA involved excavating approximately 3,000 tons of petroleum-contaminated soil and wood waste from the vicinity of the former bunker oil pipeline and storm drain system on East 19th Street and transporting the

material off-site for disposal. The IA eliminated or substantially reduced the potential for off-site migration of BRPH through the City storm drain system.

2.2 VOLUNTARY PATHWAY AND SOURCE CONTROL - ACTIONS BY OTHER PLPS

Isolation and repair of the City storm drain line in East 19th Street, east of Manhole (MH) 394, was completed by the City in August 2004. The work consisted of replacing MH 394 and MH 396, and removing the old storm drain main line from between MH 394 to a location approximately 300 feet east of MH 396. The old storm drain line was replaced with a new polyvinyl chloride (PVC) storm drain line. Non-functioning laterals to the main line were capped, and failed piping at the functioning laterals was replaced. A section (approximately 50 feet long) of the storm drain west of MH 394 was also replaced. Petroleum-contaminated soil and wood waste encountered during the work was excavated and transported off site for disposal.

Home Electric removed one known UST and closed another known UST on their property during May and June 2004. Home Electric also completed a geophysical survey to investigate the presence of two additional suspected USTs on the property (north and east of the East 19th Street Area, as shown on Figure 3) in September 2004. One subsurface “anomaly” was identified in the gravel shoulder of East 19th Street near the southwest corner of the Home Electric building. An exploratory excavation was completed to investigate the anomaly and an UST was discovered (the “East 19th Street UST”). Upon removal of the fill port cover on the UST, the tank was observed to contain petroleum product² and water. The East 19th Street UST was closed in place during July 2005 by Home Electric. The geophysical survey results did not indicate that additional anomalies or other USTs were present in the Home Electric Area.

3.0 NATURE AND EXTENT OF CHEMICALS OF CONCERN

The chemical analytical data for petroleum hydrocarbons and cPAHs in soil and groundwater samples collected during this RI and during previous investigations at the Site were evaluated relative to the selected cleanup criteria to evaluate the nature and extent of contamination at the Site. The primary chemicals of concern (COC) for both soil and groundwater are BRPH and cPAHs. MTCA Method A and Method B Cleanup Levels have been selected for soil and groundwater at the Site as described in Section 4.0 of this CAP.

3.1 SOIL

Area A: The WSDOT Pond Area is located along the east side of the ponds in the area extending from approximately boring HP-33 to about 40 feet north of HP-31 as shown on Figure 4. The western limits have not been fully determined due to the presence of the ponds; it is possible that petroleum-impacted soils extend beneath the ponds. The concentrations of BRPH in soil in the WSDOT Pond Area range from about 2,520 milligrams per kilograms (mg/kg) to 53,300 mg/kg. The petroleum-contaminated soil is generally located between 5 and 12 feet bgs. It should also be noted that a white powdery substance with a pH of 13 was observed in soil at one test pit excavation completed during a study by Ecology on the northeast side of the pond. The substance was not observed in any of the borings drilled in the area and does not appear to be widespread in Area A, however, the potential presence of the white material should be addressed in the site Health and Safety Plan used during remedial activities.

² The product in the tank was characterized by the analytical laboratory to be a “Bunker C-type fuel” consisting of approximately 75 percent diesel-range and 25 percent heavy oil-range petroleum hydrocarbons (Robinson Noble Saltbush, 2005).

Area B: East 19th Street UST. Two sub-areas have been identified in Area B for remedial purposes and are referred to as Areas “B1” and “B2”.

- Area B1 consists of the area adjacent to and east of the 2004 BNSF IA area and in the vicinity of the closed in place 19th Street UST as shown on Figure 5. Petroleum hydrocarbons have been detected at concentrations greater than the cleanup level (CUL) in soil in the vicinity of the UST, extending eastward to borings TF-5, TF-7, RI-19 and MW-6 as shown on Figure 6. The petroleum-contaminated soil is generally located between 5 and 12 feet bgs. The concentrations of BRPH in soil in the Area B1 range from about 2,214 mg/kg to 40,900 mg/kg. The highest concentrations of BRPH are located near the closed East 19th Street UST. The northern limits of the impacted area have not been fully determined due to the presence of the Tacoma Fixtures building, and it is possible that petroleum-impacted soil extends northward beneath the building. The eastern limit appears to extend to at least MW-6. The contaminated area previously extended westward on east 19th Street to about 20 to 30 feet west of the former pipeline alignment. Most of the petroleum-contaminated soil beneath East 19th Street in the vicinity of the pipeline was removed during the 2004 BNSF IA. The western limit of the impacted area is now assumed to be the 2004 BNSF IA excavation. The southern limit of Area B1 is the storm sewer line located in East 19th Street. The stormwater line was excavated and replaced by the City in 2004. The excavation was backfilled with clean imported soil.
- Area B2 appears to be a relatively localized area of petroleum-contaminated soil south of the replaced stormwater line in the vicinity of RI-16 and RI-17 on the south side of East 19th Street as shown on Figure 6. The concentrations of BRPH detected greater than the CUL in soil samples collected in this area range from 2,214 to 7,530 mg/kg.

Area C: The Home Electric/SuperValu Area is located in the parking areas east of the Tacoma Fixtures and the SuperValu Area buildings as shown on Figure 5. The area where concentrations of petroleum hydrocarbons in soil in are greater than the CUL generally extends from borings RI-31 and RI-43 at the southern limit to RI-35 at the northern limit and RI-40, RI-41 and RI-42 along the western limit. The eastern limit has not been fully determined due to the presence of the Tacoma Fixtures and SuperValu buildings, and it is possible that petroleum-contaminated soil is present beneath the buildings. The concentrations of BRPH in soil in the Home Electric/SuperValu Area range from about 3,210 mg/kg to 31,200 mg/kg. The petroleum-contaminated soil is generally located between 6 and 10 feet bgs.

Area D: The northern SuperValu Area is located near the northern boundary of the SuperValu property as shown on Figure 7. Petroleum-contaminated soil was encountered within access pit AP-5C (AP-5C) during previous closure activities in the soil immediately above and adjacent to the former pipeline between about 1.5 feet bgs to 4 feet bgs at concentrations ranging from 13,530 mg/kg to 26,000 mg/kg. Further investigation during the RI indicated that the contaminated soil is located in a very small area near AP-5C. Groundwater was not encountered within the contaminated zone.

3.2 GROUNDWATER

A summary of groundwater monitoring results to date is attached as Table 1.

Area A: MW-1, MW-12 and MW-15 are located in the vicinity of the petroleum-contaminated soil at the WSDOT Pond Area as shown on Figure 4. Petroleum hydrocarbons were detected at concentrations greater than the CUL in groundwater from MW-1 only during the January 2005 monitoring event and in groundwater from MW-12 and MW-15 only during the October 2004 and January 2005 monitoring events. The concentrations of BRPHs detected in groundwater from those wells ranged from 0.533 to

1.35 milligrams per liter (mg/l). cPAHs have not been detected in groundwater from these wells at concentrations greater than the CULs.

MW-2 and MW-3 are located in “D” Street downgradient of the contaminated soil area. BRPHs have not been detected in groundwater from MW-3 during any of the sampling events. BRPHs were only detected in groundwater from MW-2 during one of the ten sampling events (October 2004). The concentration was 0.563 mg/l (the MTCA Method A cleanup level is 0.05 mg/l). It appears that the detection at MW-2 is an anomaly, but additional monitoring and evaluation of MW-2 is appropriate to confirm that BRPHs are not present and to further evaluate potential seasonal variations. cPAHs have not been detected in groundwater samples collected from MW-3 during any of the sampling events where analyses for cPAHs were performed. cPAHs were only detected in groundwater from MW-2 during one of the 10 sampling events (May 2006) at a concentration less than the MTCA Method A Cleanup level of 0.1 µg/L.

The results of the RI indicate that groundwater quality at MW-2 and MW-3 generally meets Model Toxics Control Act (MTCA) Method A CUL for groundwater.

Area B: MW-6 is located upgradient of the majority of the petroleum-contaminated soil in the Nichols Trucking/Home Electric/19th Street UST Area and the 19th Street UST as shown on Figure 5. MW-13 is located within the backfill of the BNSF IA excavation area located downgradient of the 19th Street UST.

BRPHs were detected in groundwater samples collected from MW-6 and MW-13 at concentrations greater than the MTCA Method A CUL during the October 2004 and January 2005 monitoring events, but were not detected during the other sampling events. The concentrations of diesel-range petroleum hydrocarbons detected ranged from 0.515 to 1.02 mg/l. cPAHs were either not detected or were detected at concentrations less than the CUL in the groundwater samples collected from these wells during the events where analyses for cPAHs were performed.

MW-4 and MW-5 are located in “D” Street downgradient of the area of petroleum-contaminated soil. BRPHs and cPAHs were not detected in groundwater from either of these wells during any of the sampling events.

Area C: Monitoring wells MW-7 and MW-14 are located within the Home Electric/SuperValu petroleum-contaminated soil area as shown on Figure 5. BRPHs were detected in groundwater samples collected from MW-7 at concentrations greater than the CUL during the July 2004, October 2004 and January 2005 monitoring events and in samples collected from MW-14 during the October 2004, January 2005, April 2005, January 2006 and May 2006 events. The concentrations of BRPHs detected in groundwater during those events ranged from 0.695 mg/l to 2.87 mg/l.

cPAHs were detected at a concentration (0.291 µg/l [total]) greater than the CUL in the groundwater sample collected from MW-7 during the October 2004 monitoring event. cPAHs were detected at a concentration (0.856 µg/l [total]) greater than the CUL in the groundwater sample collected from monitoring well MW-14 during the May 2006 monitoring event.

Monitoring well MW-10 is located in East 18th Street, downgradient of the former pipeline. Petroleum hydrocarbons and cPAHs have not been detected in groundwater samples collected in MW-10 during any of the five monitoring events, indicating that the northern limit of impacted groundwater in this area does not extend beneath or beyond East 18th Street.

MW-8, MW-9 and MW-11 are located in “D” Street downgradient of the area of petroleum-contaminated soil. BRPHs have not been detected in any of these wells during any of the sampling events. cPAHs were either not detected or were detected at concentrations less than the CUL during all of the sampling events at these wells.

4.0 SITE CLEANUP STANDARDS

MTCA Method A CULs have been selected for soil and groundwater at the Site. Method B CULs have been selected where Method A CULs for groundwater have not been established. The applicable cleanup levels identified in the RI/FS are indicated below.

MTCA Cleanup Levels

Chemical of Concern	Applicable Criteria	Concentration
BRPH in soil	MTCA Method A	2,000 mg/kg
Total cPAHs ¹ in soil	MTCA Method A	0.1 mg/kg (total)
BRPH in groundwater	MTCA Method A	0.5 mg/l
Naphthalene in groundwater	MTCA Method B	160 µg/l
Total cPAHs ² in groundwater	MTCA Method A	0.1 µg/l (total)

Notes:

¹ Calculated using toxicity equivalency factor methodology per WAC 173-340-708(8) and WAC 173-340-900, Table 720-1.

² Calculated using toxicity equivalency factor methodology per WAC 173-340-708(8) and WAC 173-340-900, Table 740-1.

5.0 REMEDIAL ALTERNATIVE SELECTION

BRPH in soil is the primary contaminant at the Site. Other contaminants (i.e., cPAH in soil and BRPH and cPAH in groundwater) are also present at the Site and are associated with the BRPH in soil. Remedial actions at the Site are, therefore, focused on control and recovery of BRPH.

Remedial actions other than those described in the FS were dismissed from further screening because they were not considered technically possible to implement because of the relatively insoluble/immobile nature of BRPH and the complexity of Site surface and subsurface conditions.

The following remedial actions are considered potentially applicable to BRPH in soil and/or groundwater at the Site and were screened relative to MTCA requirements:

- No action;
- In-situ stabilization of BRPH-impacted soil;
- Isolation/containment of BRPH-impacted soil with in-situ treatment of BRPH-impacted groundwater;
- Excavation of contaminated soil to the maximum extent possible; and
- Complete excavation of BRPH-impacted soil.

The remedial alternatives are presented in detail in the RI/FS report.

6.0 PREFERRED REMEDIAL ALTERNATIVE

Excavation of contaminated soil to the maximum extent practicable was selected as the preferred remedial action. The Site is an active industrial and commercial area with complex subsurface conditions and multiple utilities. The data indicate that while the majority of source material appears to be located in relatively accessible areas, some soil contamination may extend beneath existing buildings, structures and utilities. Complete removal of all contaminated soil could therefore involve closure/relocation of active businesses, utility relocation and building demolition. Therefore, complete removal of all BRPH-contaminated soil at the Site is considered impracticable. The proposed removal activities will focus on removing readily accessible contaminated soil and wood waste where BRPH are present at concentrations greater than the cleanup levels.

Consistent with Chapter 70.105D RCW, “Model Toxics Control Act”, as implemented by Chapter 173-340 WAC, “Model Toxics Control Act Cleanup Regulation”, Ecology has determined that the selected cleanup actions are protective of human health and the environment, attain federal and state requirements which are applicable or relevant and appropriate, comply with cleanup standards, and provide for compliance monitoring. The cleanup actions satisfy the preference expressed in WAC 173-340-360 for the use of permanent solutions to the maximum extent practicable, provide for a reasonable restoration time frame, and consider public concerns raised during public comment on the draft CAP.

7.0 REMEDIAL ACTION DESIGN

Interlocking sheet piling will be used to some degree to maximize removal of BRPH-containing soil, help control groundwater flow into the remedial areas and protect existing structures or utilities adjacent to the excavation areas. The sheet piling will be installed to depths as great as approximately 47 feet bgs. The sheet piles will be left in place to reduce the potential for recontamination of the remedial areas from potential BRPH-containing soil remaining at the Site after the remedial action is completed.

Overburden soils with concentrations of COC less than cleanup levels will be removed and stockpiled for backfilling of the excavation. Additional imported soil will be needed to backfill the remedial area after contaminated soil is removed.

Excavated contaminated soil will require temporary on-site stockpiling and dewatering due to the presence of shallow groundwater at the Site. Water collected during dewatering processes will be treated and/or disposed off site. Restoration of each area will be required following completion of the remedial activities.

Soil high in total organic carbon (TOC) could be placed as backfill in excavation areas where some residual contamination will remain to enhance groundwater conditions after remedial activities, as shown in Figure 10 for illustrative purposes. The organic carbon in the soil will increase the sorptive capacity and decrease the permeability of the soil and thus reduce the potential for dissolved contaminants to migrate through the subsurface. Impermeable liners and/or backfill (such as CDF) will also be used as appropriate in the base and sidewalls of the excavations to further discourage migration of contaminated groundwater through clean backfill placed in the remedial excavations following removal of BRPH-contaminated soil and wood waste. Additional details regarding backfill materials and liners will be provided in an Engineering Design Report to be developed for the cleanup action.

7.1 AREA A

The removal of accessible BRPH-contaminated soil at Area A, using sloped excavation walls, will reduce the potential risk of future BRPH migration through the subsurface and/or migration through the storm drainage system. The BRPH-contaminated soil is located adjacent to the east side of the ponds. Although the ponds are lined with an impermeable membrane there is some potential that contaminants could potentially enter the storm drainage system. The western limit of the BRPH-containing soil has not been established, and it is possible that some BRPH is located beneath the ponds. Petroleum-contaminated soils are generally located between 5 and 12 feet bgs. The pond liners will be removed and the pond area excavated to the extent necessary to remove BRPH-containing soil as is generally shown in Figures 4 and 8. The ponds will be reconstructed after excavation of BRPH-containing soil has been completed. All sides of the excavation will be sloped. Approximately 12,200 cubic yards of contaminated soil will be excavated in Area A.

Precautions to avoid releases to the ponds (and potential subsequent releases to the discharge system) will be necessary. These precautions will include on-hand spill control and cleanup materials and placement of oil traps in the downgradient manholes.

This work would be best done during the dry season (July and August) so that the volume of water in the ponds and groundwater levels will be relatively low. A temporary stormwater handling system will be installed for use during excavation and reconstruction of the ponds.

7.2 AREA B

Removal of accessible BRPH-contaminated soil at Area B will further reduce the potential for migration of COC via groundwater or the storm drainage system. This work will be done during the dry season (July and August) so that groundwater levels will be relatively low.

Excavation and removal of all the BRPH-containing soil in Areas B1 and B2 is impractical due to existing utilities, the presence of the closed-in-place UST and the presence of the Tacoma Fixtures building, as shown on Figure 6. Excavation will be accomplished in Areas B1 and B2 as follows:

Area B1: Sheet pile shoring will be used along the north and south sides of the remedial area as shown on Figures 6 and 9 to allow excavation of BRPH-contaminated soil to the maximum extent practical adjacent to the Tacoma Fixtures building (on the north side of the excavation) and the existing storm drain line on the south side of the excavation. Approximately 3,000 cubic yards of contaminated soil will be excavated for disposal. Petroleum-contaminated soil is generally located between 5 and 12 feet bgs.

An existing power pole would need to be relocated. A sanitary sewer lateral, a gas main, a water main and an abandoned water line are all located within the excavation area, as shown on Figure 6. These utilities will be protected and/or temporarily rerouted.

Area B2: A trench box shoring system will be used to excavate approximately 900 cubic yards of BRPH-contaminated soil in the area shown on Figures 6 and 9. Excavation in this area will be difficult due to the presence of the existing storm drain line on the north side of the remedial area, the embankment for the adjacent property and the presence of a sanitary sewer line. The trench box will allow excavation of BRPH-contaminated soil to the maximum extent practical.

7.3 AREA C

Removal of accessible BRPH-contaminated soil at Area C will reduce the potential for migration of COC via groundwater. Excavation of BRPH-containing soil in Area C is expected to be complicated by proximity of the contaminated soil to the SuperValu and Tacoma Fixtures buildings. Sheet piles will be installed adjacent to the buildings on the east side of the excavation and a portion of the west side of the excavation along "D" Street, as shown on Figures 5 and 10. The remaining sides of the excavation will be sloped. Petroleum-contaminated soil is generally located between 6 and 10 feet bgs. Approximately 22,000 cubic yards of contaminated soil will be removed for disposal.

A sanitary sewer line is located within the excavation area and would need to be protected during excavation activities. This work should be done during the dry season (July and August) when groundwater levels will be relatively low.

7.4 AREA D

Excavation and disposal of BRPH-contaminated soil in Area D will be relatively easy to implement and would reduce the potential risk of future disruption or contact. The BRPH-contaminated soil is generally located between 1.5 and 4 feet bgs. Sheet pile shoring will be used in the northwest corner of the excavation, adjacent to "D" Street as shown of Figure 7. The remaining side of the excavation will be sloped. Approximately 1,100 cubic yards of contaminated soil will be removed for disposal.

8.0 REMEDIAL ACTION SCHEDULE

The remedial action at the Site is anticipated to be conducted after entry of an appropriate Consent Decree for the Site. The specific remediation schedule will be provided in the Decree. Work should be conducted during the dry season (from July through October) when groundwater levels are relatively low.

9.0 RESIDUAL CONTAMINATION

9.1 GENERAL

Excavation of contaminated soil to the maximum extent practicable was selected through the FS as the preferred remedial action. The results of the RI/FS indicate that a majority of the contaminated soil appears to be located in relatively accessible areas. However, some contamination may extend beneath and remain beneath existing buildings. Contaminated soil located in the proximity of active utilities will also be left in place. It is not possible to precisely estimate the location and amount of contaminated soil that will be left in place because the limits of contamination are not known. The areas where contaminated soil may remain after the remedial action are described below.

9.2 AREA A

The westward limit of the contaminated soil has not been fully determined and it is possible, although unlikely, that contamination may extend beneath "D" Street. Petroleum hydrocarbons and PAHs were not detected in soil samples collected from borings RI-45, RI-46, MW-2 and MW-3, located within the "D" Street right-of-way to the west of the ponds.

BRPH was detected in one groundwater sample collected from monitoring well MW-2 in October 2004. No other contaminants of concern were detected in groundwater samples collected during any other monitoring event from monitoring wells MW-2 and MW-3, located west of and downgradient from the ponds. Soil contamination likely does not extend into "D" Street downgradient of Area A based on these results.

9.3 AREA B1

Sheet pile shoring will be used along the north and south sides of the remedial area as shown on Figure 5. It is possible that contamination may extend under the Tacoma Fixtures building on the north side of the excavation. Any contaminated soil located on the north side the sheet pile shoring will not be practicable to excavate and will be left in place.

Multiple active utilities cross the remedial area as shown on Figure 6. In addition, the large closed in place 19th Street UST is located in the remedial area. Contaminated soil located in the proximity of these utilities and beneath the UST will be left in place because it is impractical to remove/reroute the utilities or remove the UST to excavate the contaminated soil.

9.4 AREA B2

A trench box shoring system will be used to excavate contaminated soil in the area shown on Figures 6 and 9. The trench box will protect an active storm drain line to the north and an embankment for the property on the south. Any contaminated soil located to the north and south of the trench box will be impracticable to excavate and will be left in place.

An active sewer line crosses the remedial area. Contaminated soil beneath and immediately adjacent to the sewer line will need to be left in place to protect the line during remedial excavation.

9.5 AREA C

Sheet pile shoring will be used along the east and west sides of the remedial area as shown on Figures 5 and 10. It is possible that contamination may extend under the Tacoma Fixtures and/or the SuperValu buildings on the east side of the excavation or beneath "D" Street on the west side of the excavation. Any contaminated soil located on the east side the sheet pile shoring or beneath "D" Street will not be practicable to excavate and will be left in place.

9.6 AREA D

The results of the RI/FS indicate that all of the contaminated soil at Area D is accessible, and that complete excavation and removal of the contaminated soil can be accomplished.

10.0 APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

Applicable or Relevant and Appropriate Requirements (ARARs) are federal, tribal, state and local laws and regulations that apply to environmental cleanup or remedial construction activities at the Site. Identified potentially applicable state and federal laws are described in the following sections. Actions at the Site must be evaluated to assess if they are in compliance with the ARARs governing Site activities.

10.1 KNOWN ARARs

A listing of the known ARARs potentially applicable to this Site includes the following.

10.1.1 Federal Laws and Regulations

- 33 USC 1251 et. Seq. (Clean Water Act) and 40 CFR 230
- 40 CFR 131 Subpart D (Federally Promulgated Water Quality Standards); Subtitles C and D-42 USC 6921-6949a and 40 CFR Part 268 (Resource Conservation and Recovery Act-RCRA)

- 20 CFR Subpart 1910.120 (Occupational Safety and Health Act); and Executive Order 11988 (40 CFR Part 6, Appendix A – Flood Plain Management)

10.1.2 State Laws and Regulations

- Chapter 70.105D RCW (Model Toxics Control Act – MTCA), and Chapter 1 73-340 WAC (MTCA Regulations)
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act) and Chapter 173-303 WAC (State Dangerous Waste Regulations); Chapter 90.48 RCW (State Water Pollution Control Act); Chapter 90.70 RCW (Puget Sound Water Quality Act)
- Chapter 1 73-14 WAC (Shoreline Management Act)
- Chapter 70.95 (Solid Waste Management – Reduction and Recycling), Chapter 70.94 RCW (Washington Clean Air Act)
- Chapter 1 73-160 WAC (Minimum Standards for Construction and Maintenance of Wells)
- Chapter 43.21C RCW (State Environmental Policy Act [SEPA]) and Chapter 197-11 WAC (State Environmental Policy Act Rules)
- Washington Industrial Safety and Health Act (WISHA)

10.1.3 Regional and Local

- Puget Sound Clean Air Agency (Regulations I and III)
- City of Tacoma Municipal Code – Chapter 13.10 (Shoreline Regulations)
- City of Tacoma Municipal Code – Chapter 70 (Uniform Building Code – Excavation and Grading)
- City of Tacoma Municipal Code – Chapter 12.08 City Code (Provisions for Acceptance for Discharges to Sewer System)
- Tacoma Pierce County Health Department (Waste Disposal Authorization)

The selected remedial alternatives for the Site comply with the ARARs listed above.

10.2 OTHER GUIDANCE TO BE CONSIDERED

Potentially applicable state and federal laws provide a framework for implementation of the remedial action for the Site. Other regulations that may affect remedial activities at the Site, but are not codified as law, are to be considered when selecting and developing the Cleanup Action Plan.

10.2.1 City of Tacoma, Stormwater Management Manual

Project activities will comply with provisions of the City of Tacoma *Stormwater Management Manual* and underlying regulations for stormwater management in accordance with the National Clean Water Act, the Puget Sound Water Quality Management Plan and the National Pollutant Discharge Elimination System Stormwater Permit. Environmental cleanup and redevelopment activities must comply with Best Management Practices (BMP) identified in Section A5 of the Manual “Construction and Demolition Activities” and Section A6 “Other Activities.”

10.2.2 Protection, Performance and Compliance Monitoring

Protection (worker health and safety) monitoring will be implemented during construction and will include monitoring for vapor, dust, stormwater runoff or other potential release mechanisms at the Site during implementation of the remedial action. Performance monitoring will include treatment or disposal of obvious waste material that is encountered, and confirmation sampling to evaluate the effectiveness of these treatment and disposal actions.

10.3 ARARs SUBSTANTIVE REQUIREMENTS

Substantive requirements, which are either legally applicable or relevant and appropriate to the project, are summarized below for selected laws and regulations. This discussion focuses on substantive requirements, which are pertinent to permitting and to the implementation of the remedial action. Because the cleanup action is being performed under MTCA, the actual permitting of the Site activities is not required (as described in RCW 70.105D.090), and only the substantive provisions of the permit terms must be complied with.

10.3.1 Ecology, Chapter 90.48 RCW, Water Pollution Control

Construction design and implementation shall include measures to prevent any discharge into waters of the state of any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of Ecology.

10.3.2 Ecology, Chapter 70.105 RCW, Hazardous Waste Management

Remedial action shall not allow for disposal of dangerous wastes in any manner not in compliance with regulations under Chapter 173-303 WAC.

10.3.3 State Environmental Policy Act (SEPA – Chapter 43.210 RCW) and SEPA Rules (Chapter 197-11 WAC)

Rules describing the integration of MTCA and SEPA provided in WAC 197-11-250 through -268 list applicable requirements for the project. Implementation of the Site remediation action triggers SEPA environmental review (e.g., SEPA Checklist), threshold determination and public notice. Pursuant to WAC 197-11-060(5) and WAC 197-11-630, a review will be done to ensure compliance of the remedial action with SEPA. This review will be completed concurrent with agency review of this CAP. If the responsible official issues a Determination of Nonsignificance (DNS) for the Site, the public comment period on the DNS will be the same as the public comment period for the CAP.

10.3.4 Puget Sound Clean Air Agency, Regulation I of the Puget Sound Clean Air Agency

Remedial action shall be performed so as to not allow the emission of any air contaminants in violation of the visual standard established by Section 9.03 of the regulation. Remedial actions shall be performed so as to not allow the emission of particulate matter in violation of Section 9.04 of the regulation.

Remedial action shall be performed so as not to allow the emission of air contaminants in violation of Section 9.11 of the regulation. Remedial action shall be performed so as not to allow the emission of fugitive dust in violation of Section 9.15 of the regulation. Equipment utilized on Site for the remedial action shall be maintained in such a manner as to not be in violation of Section 9.20(b) of the regulation.

10.3.5 Regulation III of the Puget Sound Clean Air Agency

The numerical standards for compliance with air emissions regulations that apply to remedial action on the Site are those listed in Appendix A, Acceptable Source Impact Levels, of the regulation. Remedial activities on the Site will be performed using construction techniques to minimize dust and particulate emissions from the Site, and maintain these emissions below standards promulgated by the Puget Sound Clean Air Agency.

10.3.6 City of Tacoma, Chapter 70, Uniform Building Code – Excavation and Grading

Grading and excavation requirements include the following.

- The non-shored slope cut surface shall be no steeper than inclinations safe for intended use, and shall be no steeper than 2H to 1V (horizontal to vertical). Detrimental amounts of organic material shall not be permitted in fills.
- No rock or similar irreducible material with a maximum dimension greater than 6 inches shall be buried or placed in fills.
- The top cut slopes shall not be made nearer to a Site boundary line than one fifth of the vertical height of the cut with a minimum of 2 feet and a maximum of 10 feet.
- Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of Section 7012 of Chapter 70, Uniform Building Code for cut or fill slopes steeper than three horizontal to one vertical.
- The faces of cut and fill slopes shall be prepared and maintained to control against erosion. The protection for slopes shall be installed as soon as practicable and prior to calling final approval.

10.3.7 City of Tacoma, Chapter 12.08, City Code

Remedial actions will comply with provisions for acceptance of any water generated by remedial action discharged into the city sewer system.

10.3.8 City of Tacoma, Chapter 8.30.030 Part D, City Code

Remedial actions will comply with provisions regarding loud or unnecessary noises.

10.3.9 Tacoma Pierce County Health Department, Waste Disposal Authorization

Remedial actions will comply with provisions for acceptance of any soils to be disposed of at the City of Tacoma Municipal Landfill according to criteria developed for the facility.

11.0 FINISHING TECHNOLOGIES

A combination of institutional controls, natural attenuation and groundwater monitoring are included as “finishing technologies” in the selected remedial action because some contaminated media may be left on Site after excavation is complete. Proposed institutional controls, natural attenuation and groundwater monitoring activities are described below. Specific institutional controls reflecting the location and extent of residual contamination after excavation will be developed as part of the Operation and Maintenance Plan.

11.1 INSTITUTIONAL CONTROLS

Institutional controls are administrative measures that are intended to limit the potential for exposure to contamination by limiting Site access and activities. Institutional controls are required where contamination at concentrations greater than cleanup levels will remain on Site. Institutional controls will be required for this Site in any areas where remediation to cleanup levels is impractical due to the presence of buildings, roads, utilities or other significant facilities (e.g., stormwater detention ponds). Common institutional controls include deed restrictions, compliance monitoring, Site use and access limitations; and zoning and ordinances regarding property usage.

Institutional controls at the Site would consist of:

- Deed restrictions that would mandate specific procedures for handling of excavation spoils or water from dewatering activities to prevent human exposure or harm to the environment during any future activities that disturb the subsurface and may potentially expose BRPH-contaminated soil and/or groundwater.
- Deed restrictions that would prohibit the installation of wells for use as a water supply. Although groundwater in the Site area is not potable due to its high salinity and TDS concentrations, the restriction would still be necessary to prevent uncontrolled withdrawals.
- Deed restrictions that would prohibit transfer of properties to another owner without notification to Ecology.
- Access to the BRPH-contaminated soil remaining on Site after completion of the remedial activities will be limited by the overlying pavement, storm pond liner and/or buildings in Areas A, B, C and D.
- Access to BRPH-contaminated soil remaining on Site after completion of the remedial activities will be limited by the overlying clean soil cover and stormwater ponds and by fencing.
- Groundwater monitoring to assess trends in the concentration of COC and natural attenuation parameters. Groundwater monitoring will be conducted annually for 5 years, at which time the monitoring scheme and data will be reviewed by Ecology.

11.2 NATURAL ATTENUATION

Natural attenuation consists of biodegradation; dispersion; dilution; sorption; volatilization; and chemical or biological stabilization, transformation, or destruction of COC. Natural attenuation is generally used where source control has been conducted to the maximum extent practicable (including the removal of “free product”); the remaining contaminants do not pose an unacceptable threat to human health or the environment; there is evidence that natural attenuation is occurring and will continue at a reasonable rate; and appropriate monitoring is conducted as described in WAC 173-340-370.

Natural attenuation processes appear to be active at the Site based on the results of the 2006 Supplemental Groundwater Investigation. Monitoring of natural attenuation parameters will be included in future groundwater monitoring at the Site.

11.3 GROUNDWATER MONITORING

Groundwater monitoring involves sampling and analysis to assess groundwater quality and the presence of chemicals of concern.

Groundwater monitoring at the Site would be conducted to assess trends in the concentrations of COC and monitor natural attenuation parameters. The concentrations of COC would be evaluated relative to specified compliance criteria to monitor Site conditions at the Conditional Point of Compliance (CPOC). The CPOC at the Site was identified as the existing wells within the "D" Street right-of-way in the RI/FS, (GeoEngineers 2007, Section 10.1.2). The CPOC was identified as protective of the Thea Foss Waterway.

Groundwater monitoring would be implemented at the CPOC by sampling and analyzing groundwater from MW-2, MW-3, MW-4, MW-5, MW-8, MW-9 and MW-11 (the "D" Street wells). The monitoring program would establish appropriate response actions that would be triggered at specific concentrations at the CPOC. Potential response actions would range from increased groundwater monitoring to additional Site investigations and evaluation of the need for more active remedial actions. A contingency action plan for the potential response actions is provided in Section 12 of this CAP.

Institutional controls, natural attenuation and groundwater monitoring will enhance the selected remedial action. The natural attenuation monitoring is scheduled to begin at the Site after the remedial action is completed in 2008. The natural attenuation and groundwater monitoring will occur annually at the Site for a period of 5 years. A summary of groundwater monitoring results to date is attached as Table 1.

12.0 CONTINGENCY PLAN

The following actions will be conducted if the groundwater monitoring results indicate that contaminants of concern are present at concentrations greater than the CUL at the CPOC "D" Street wells.

- Resampling to verify analytical results
- Resuming quarterly groundwater sampling

If contaminants of concern are detected at concentrations greater than the CUL for two consecutive quarters, the following actions will be considered.

- Installing additional monitoring wells between "D" Street and the Waterway,
- Investigating subsurface conditions in the area of concern,
- Discussing potential further actions with Ecology,
- Ecology will also conduct 5-year reviews of the monitoring scheme and data in accordance with WAC 173-340-420.

Additional details regarding the contingency plan will be provided in an Operations and Maintenance Plan to be developed and used at the Site after the remedial actions are completed.

TABLE 1
 SUMMARY OF CHEMICAL ANALYTICAL DATA FOR PETROLEUM
 HYDROCARBONS AND cPAHS IN GROUNDWATER¹
 BNSF OIL PIPELINE SITE
 TACOMA, WASHINGTON

Monitoring Well ID	Date Sampled	NWTPH- Dx ²			Total cPAHs (µg/l) ⁴
		Diesel (mg/l)	Heavy Oil (mg/l)	BRPHs ³ (mg/l)	
MW-1	4/20/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	<0.5	<0.100
	1/18/2005	--	--	0.533	--
	4/27/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
MW-2	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	0.563	<0.100
	1/17/2005	--	--	<0.5	<0.100
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	4/27/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
	5/4/2006	--	--	<0.5	0.0122
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	0.013
7/12/2007	<0.25	<0.5	<0.5	<0.100	
MW-3	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	<0.100
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	<0.100
	7/12/2007	<0.24	<0.5	<0.5	<0.100
MW-4	4/21/2004	<0.25	--	--	<0.100
	7/21/2004	<0.25	<0.5	--	<0.100
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	<0.100
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	<0.100
	7/11/2007	<0.25	<0.5	<0.5	<0.100
	MTCA ⁵ Method A Cleanup Level		0.5		

Notes appear on Page 4

Monitoring Well ID	Date Sampled	NWTPH- Dx ²			Total cPAHs (µg/l) ⁴
		Diesel (mg/l)	Heavy Oil (mg/l)	BRPHs ³ (mg/l)	
MW-4A	4/21/2004	<0.25	<0.5	--	--
	1/25/2006	--	--	<0.5	<0.100
MW-5	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	--	<0.100
	1/18/2005	--	--	<0.5	--
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/27/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	<0.100
7/11/2007	<0.24	<0.5	<0.5	<0.100	
MW-6	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	0.582	0.0928
	1/17/2005	--	--	0.515	--
	1/25/2006	--	--	<0.5	0.0604
MW-7	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	0.476	<0.5	0.726	--
	10/20/2004	--	--	1.69	0.291
	1/18/2005	--	--	1.12	<0.100
	5/4/2006	--	--	<0.5	0.0097
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	0.094
	1/30/2007	--	--	<0.5	<0.100
	4/24/2007	<0.24	<0.5	<0.5	<0.100
7/12/2007	<0.25	<0.5	<0.5	<0.100	
MW-7A	1/26/2006	--	--	<0.5	<0.100
MW-8	4/21/2004	<0.25	<0.5	--	<0.100
	7/21/2004	<0.25	<0.5	--	<0.100
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	<0.100
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	0.074
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/27/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	<0.100
	7/11/2007	<0.24	<0.5	<0.5	<0.100
MTCA ⁵ Method A Cleanup Level		0.5			0.1

Notes appear on Page 4

Monitoring Well ID	Date Sampled	NWTPH- Dx ²			Total cPAHs (µg/l) ⁴
		Diesel (mg/l)	Heavy Oil (mg/l)	BRPHs ³ (mg/l)	
MW-9	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	--
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	<0.100
	1/30/2007	--	--	<0.5	<0.100
	4/24/2007	<0.236	<0.5	<0.5	<0.100
7/11/2007	<0.24	<0.5	<0.5	0.016	
MW-9A	1/25/2006	--	--	<0.5	<0.100
MW-10	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
MW-11	4/21/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	<0.5	<0.100
	1/17/2005	--	--	<0.5	--
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	5/4/2006	--	--	<0.5	<0.100
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	1/27/2007	--	--	<0.5	<0.100
	5/8/2007	<0.24	<0.5	<0.5	<0.100
7/11/2007	<0.25	<0.5	<0.5	<0.100	
MW-11A	4/21/2004	<0.25	<0.5	--	--
	1/25/2006	--	--	<0.5	<0.100
MW-12	4/20/2004	<0.25	<0.5	--	--
	7/21/2004	<0.25	<0.5	--	--
	10/19/2004	--	--	0.714	<0.100
	1/18/2005	--	--	0.614	<0.100
	1/26/2006	--	--	<0.5	<0.100
MW-13	10/20/2004	--	--	1.02	<0.100
	1/18/2005	--	--	0.664	<0.100
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	1/26/2006	--	--	<0.5	0.0475
MW-13A	10/20/2004	0.341	<0.5	0.591	<0.100
MTCA ⁵ Method A Cleanup Level		0.5			0.1

Notes appear on Page 4

Monitoring Well ID	Date Sampled	NWTPH- Dx ²			Total cPAHs (µg/l) ⁴
		Diesel (mg/l)	Heavy Oil (mg/l)	BRPHs ³ (mg/l)	
MW-14	10/20/2004	--	--	2.87	<0.100
	1/18/2005	--	--	1.32	0.0141
	4/27/2005	--	--	0.567	--
	7/21/2005	--	--	<0.5	--
	1/26/2006	--	--	0.695	<0.100
	5/4/2006	--	--	1.76	0.856
	8/3/2006	<0.236	<0.5	<0.5	<0.100
	10/26/2006	<0.236	<0.5	<0.5	<0.100
	1/30/2007	--	--	<0.5	<0.100
	4/24/2007	<0.236	<0.5	<0.5	<0.100
	7/12/2007	<0.236	<0.5	<0.5	0.019
MW-14A	10/20/2004	1.01	<0.5	1.26	<0.100
MW-15	10/20/2004	--	--	1.35	<0.100
	1/18/2005	--	--	0.805	0.0108
	4/27/2005	--	--	<0.5	--
	7/21/2005	--	--	<0.5	--
	1/25/2006	--	--	<0.5	<0.100
MW-15A	10/20/2004	0.537	<0.5	0.787	<0.100
MTCA ⁵ Method A Cleanup Level			0.5		0.1

Notes:

¹ Samples were analyzed at North Creek Analytical of Bothell, Washington.

² Washington State Department of Ecology method for quantification of diesel- and heavy oil-range petroleum hydrocarbons.

³ Quantification of petroleum hydrocarbons relative to a Bunker C standard.

⁴ Total cPAHS concentrations are the sum of toxicity equivalency factor (TEF) - modified concentrations of the individual cPAHs in accordance with WAC 173-340-900, Table 720-1.

⁵ Model Toxics Control Act cleanup levels for groundwater.

BRPH = Bunker C-range petroleum hydrocarbons

mg/l = milligrams per liter µg/l = micrograms per liter

cPAHs = carcinogenic polycyclic aromatic hydrocarbons

"<" = Not detected at the indicated reporting limit.

"--" = Sample was not tested for the indicated analyte.

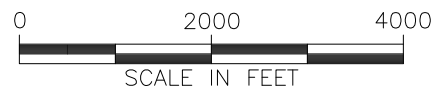
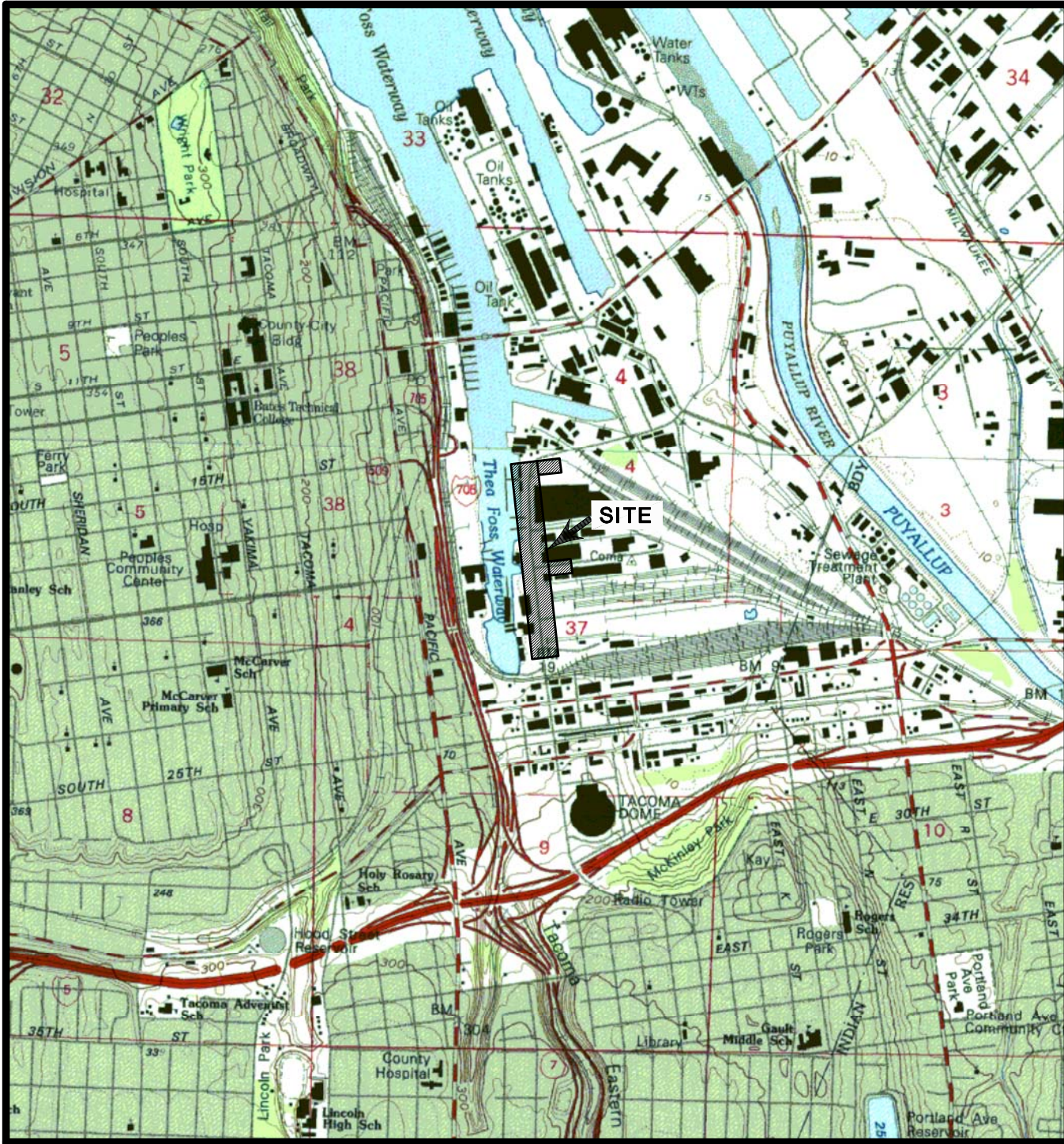
Bold indicates that the detected concentration is greater than the MTCA Method A cleanup levels.

TACO:\0\0506141\02\Finals\Draft EDR Feb 2008\050614102_CAP_Master Historical GW Data_041808.xls

03/26/08

JCD:SLF:SCY

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-1.dwg



DRAFT



- Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document.

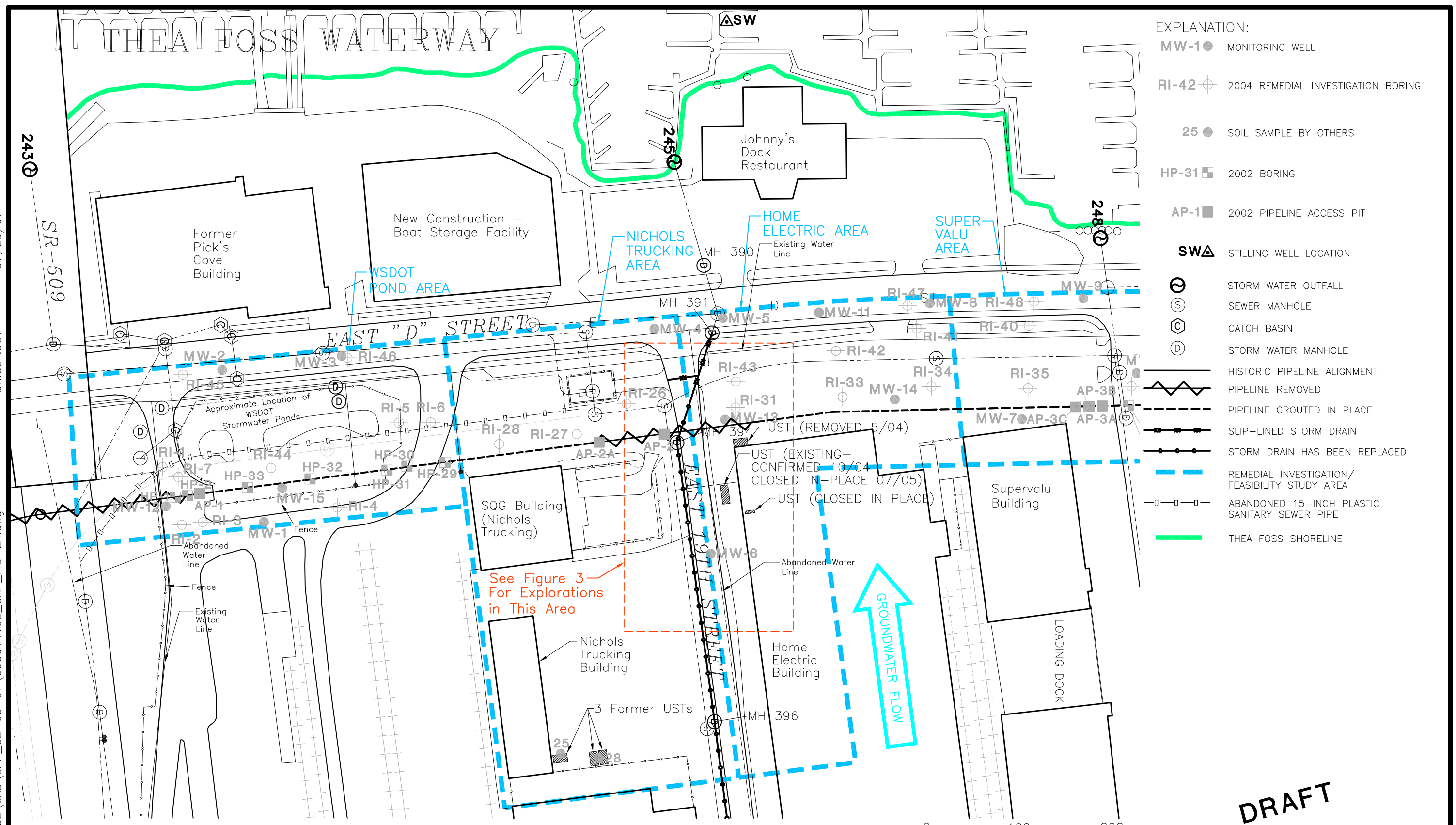
Reference: Sure Maps! Raster Maps- USGS based quadrangles.



VICINITY MAP

FIGURE 1

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-2A.dwg
 07/25/07
 AJR:SLF:SCY



Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

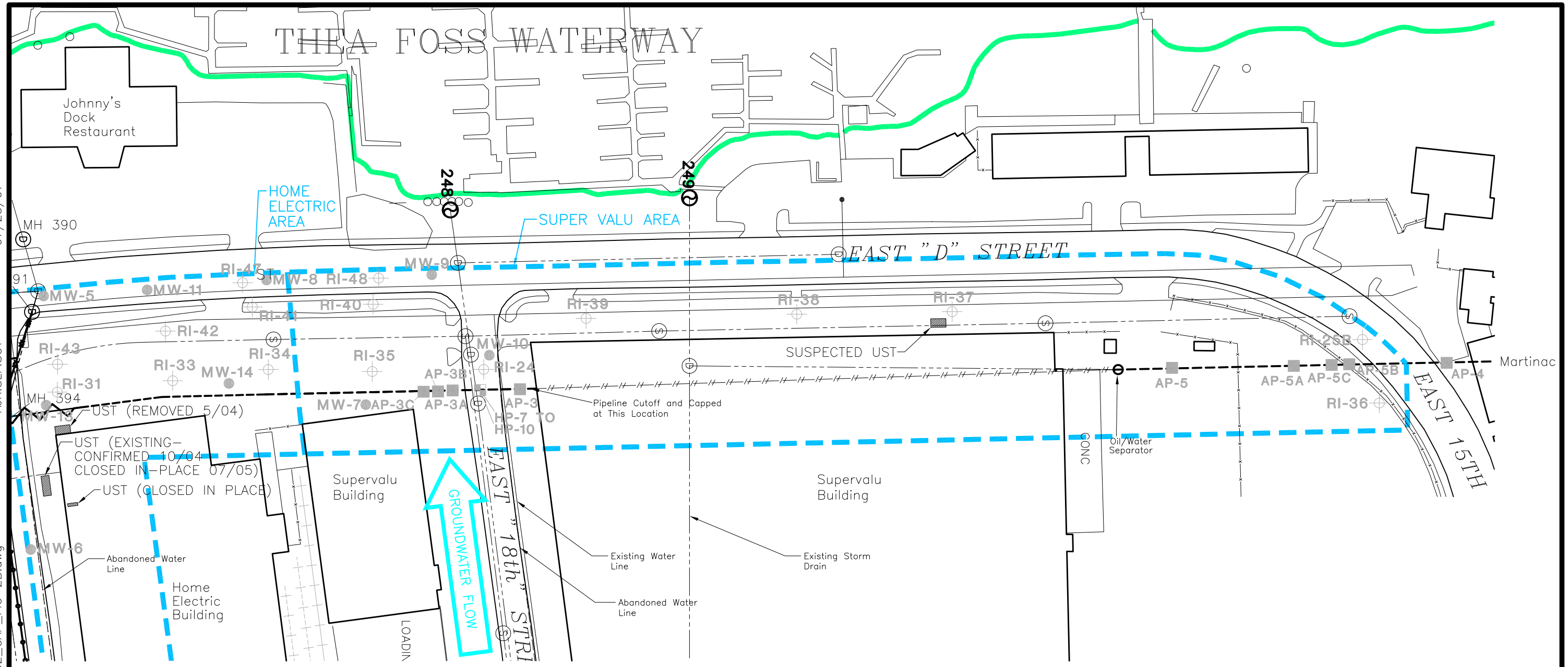
Reference: Drawing created from AutoCAD file, E.D st-oil line-b.DWG", provided by City of Tacoma.



SITE PLAN A

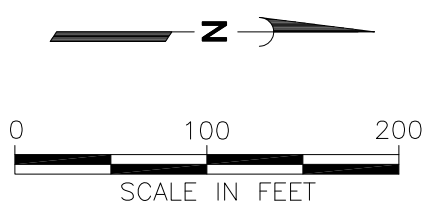
FIGURE 2A

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-2B.dwg
AJR:SLF:SCY
07/25/07



EXPLANATION:

- MW-7** ● MONITORING WELL
- HP-7** ■ 2002 BORING
- RI-41** ⊕ 2004 REMEDIAL INVESTIGATION BORING
- THEA FOSS SHORELINE
- AP-5C** ■ 2002 PIPELINE ACCESS PIT
- ⊙ STORM WATER OUTFALL
- ⊙ SEWER MANHOLE
- ⊙ STORM WATER MANHOLE
- SLIP-LINED STORM DRAIN
- STORM DRAIN HAS BEEN REPLACED
- PIPELINE GROUTED IN PLACE
- PIPELINE PRESENCE UNKNOWN



DRAFT

Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

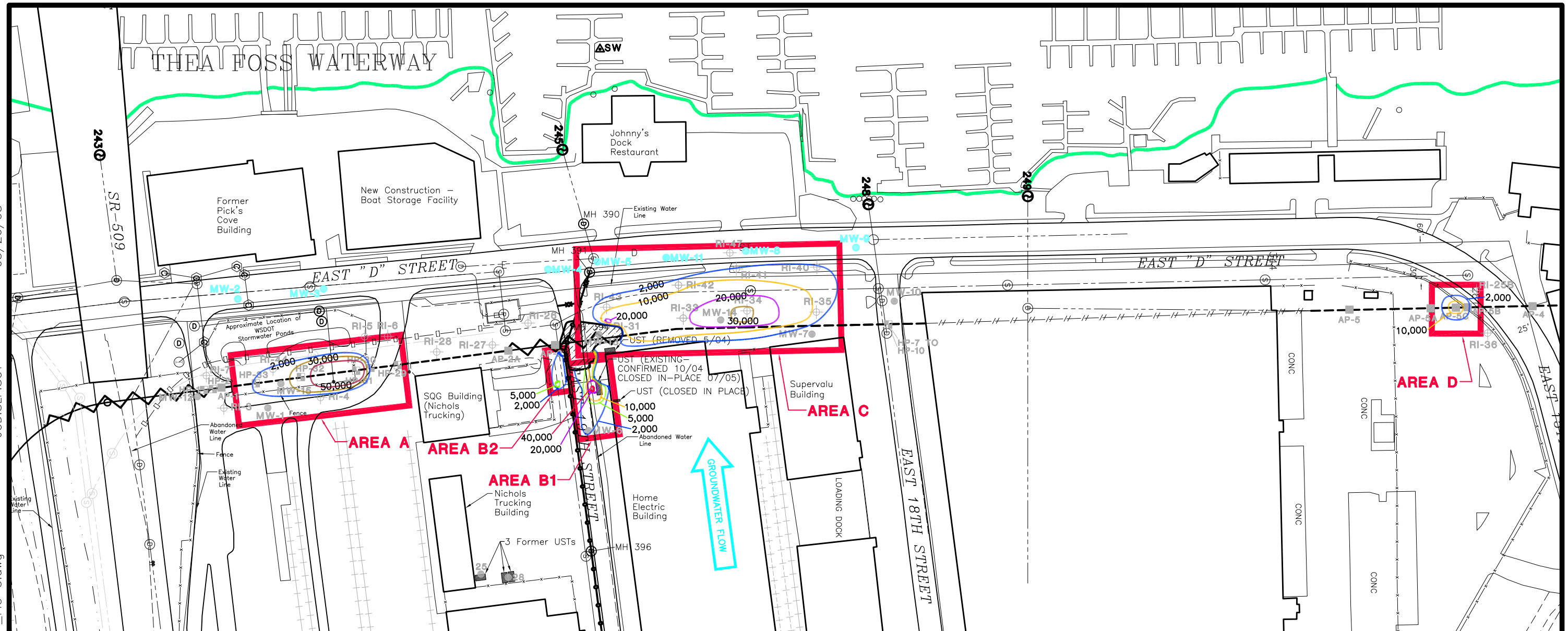
Reference: Drawing created from AutoCAD file, E.D st-oil line-b.DWG", provided by Port of Tacoma.

	SITE PLAN B
	FIGURE 2B

03/26/08

JCD:SLF:SCY

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-3.dwg



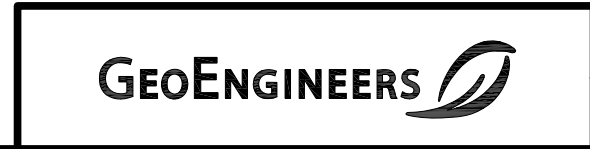
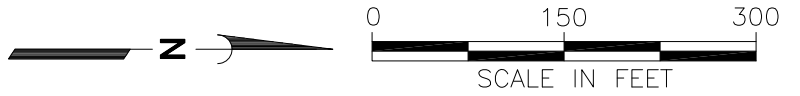
EXPLANATION:

MW-1 ●	MONITORING WELL	SWA ▲	STILLING WELL LOCATION		THEA FOSS SHORELINE	BRPH CONCENTRATIONS	
MW-5 ●	MONITORING WELL LOCATION AT THE CONDITIONAL POINTS OF COMPLIANCE		STORM WATER OUTFALL		LIMITS OF INTERIM REMEDIAL EXCAVATION		2,000 mg/kg
RI-42 ⊕	2004 REMEDIAL INVESTIGATION BORING		SEWER MANHOLE		APPROXIMATE LIMITS OF PROPOSED REMEDIAL AREAS		5,000 mg/kg
25 ●	SOIL SAMPLE BY OTHERS		CATCH BASIN				10,000 mg/kg
HP-31 ■	2002 BORING		STORM WATER MANHOLE				20,000 mg/kg
AP-1 ■	2002 PIPELINE ACCESS PIT		HISTORIC PIPELINE ALIGNMENT				30,000 mg/kg
			PIPELINE REMOVED				40,000 mg/kg
			PIPELINE GROUTED IN PLACE				50,000 mg/kg
			SLIP-LINED STORM DRAIN				mg/kg MILLIGRAMS PER KILOGRAM
			STORM DRAIN HAS BEEN REPLACED				
			ABANDONED 15-INCH PLASTIC SANITARY SEWER PIPE				

Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

Reference: Drawing created from AutoCAD file, E.D st-oil line-b.DWG", provided by City of Tacoma.

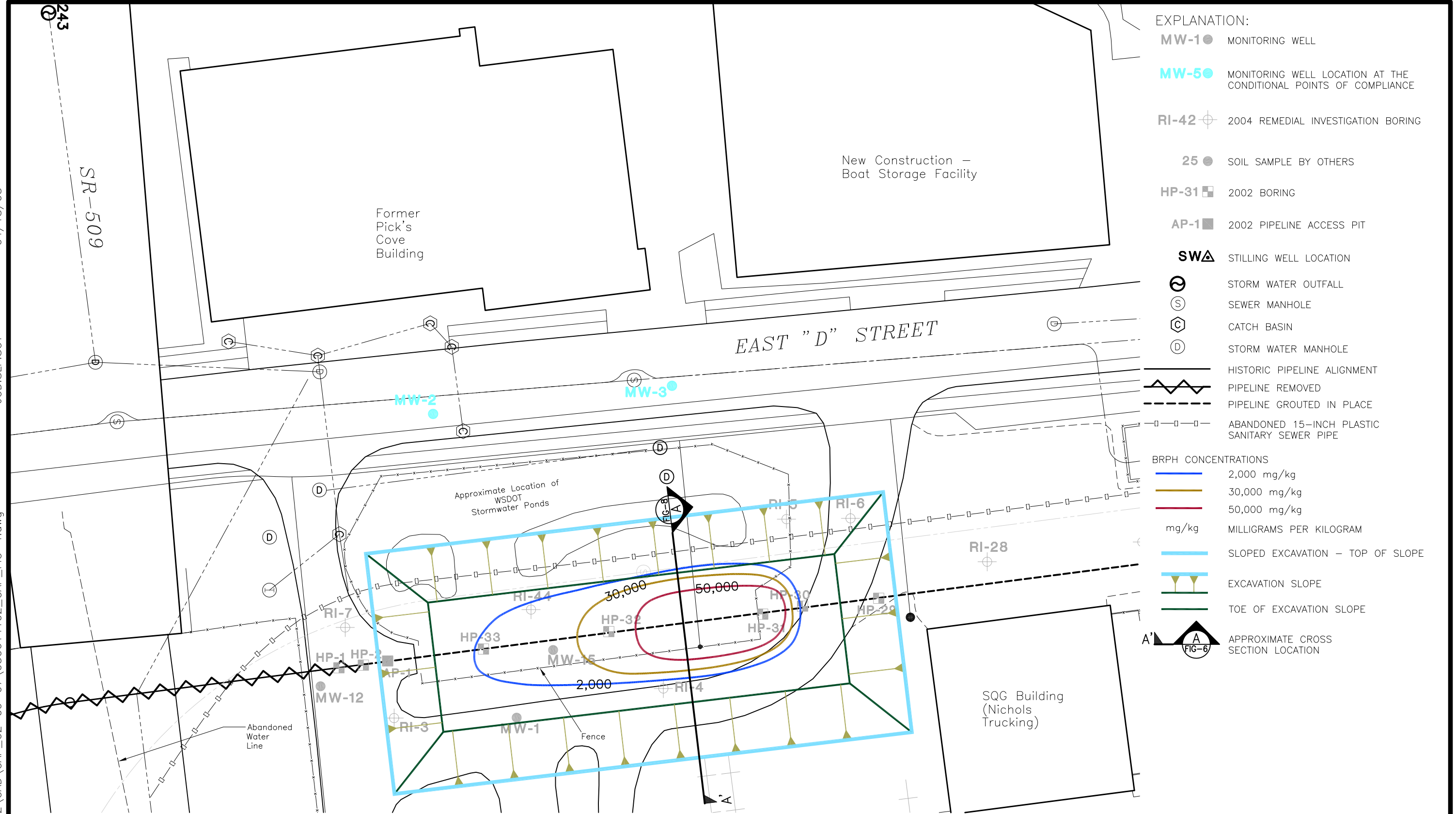
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REMEDIAL AREAS
 FIGURE 3

04/18/08

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-4.dwg

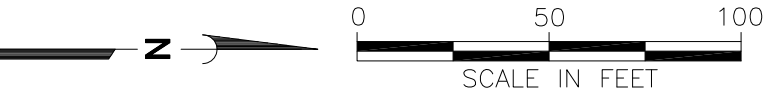


- EXPLANATION:**
- MW-1 ● MONITORING WELL
 - MW-5 ● MONITORING WELL LOCATION AT THE CONDITIONAL POINTS OF COMPLIANCE
 - RI-42 ⊕ 2004 REMEDIAL INVESTIGATION BORING
 - 25 ● SOIL SAMPLE BY OTHERS
 - HP-31 ■ 2002 BORING
 - AP-1 ■ 2002 PIPELINE ACCESS PIT
 - SW▲ STILLING WELL LOCATION
 - ⊕ STORM WATER OUTFALL
 - Ⓢ SEWER MANHOLE
 - ⓐ CATCH BASIN
 - ⓓ STORM WATER MANHOLE
 - HISTORIC PIPELINE ALIGNMENT
 - PIPELINE REMOVED
 - - - PIPELINE GROUTED IN PLACE
 - - - ABANDONED 15-INCH PLASTIC SANITARY SEWER PIPE
- BRPH CONCENTRATIONS**
- 2,000 mg/kg
 - 30,000 mg/kg
 - 50,000 mg/kg
 - mg/kg MILLIGRAMS PER KILOGRAM
 - SLOPED EXCAVATION - TOP OF SLOPE
 - EXCAVATION SLOPE
 - TOE OF EXCAVATION SLOPE
 - ▲ APPROXIMATE CROSS SECTION LOCATION

Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

Reference: Drawing created from AutoCAD file, "E.D st-oil line-b.DWG", provided by City of Tacoma.

DRAFT

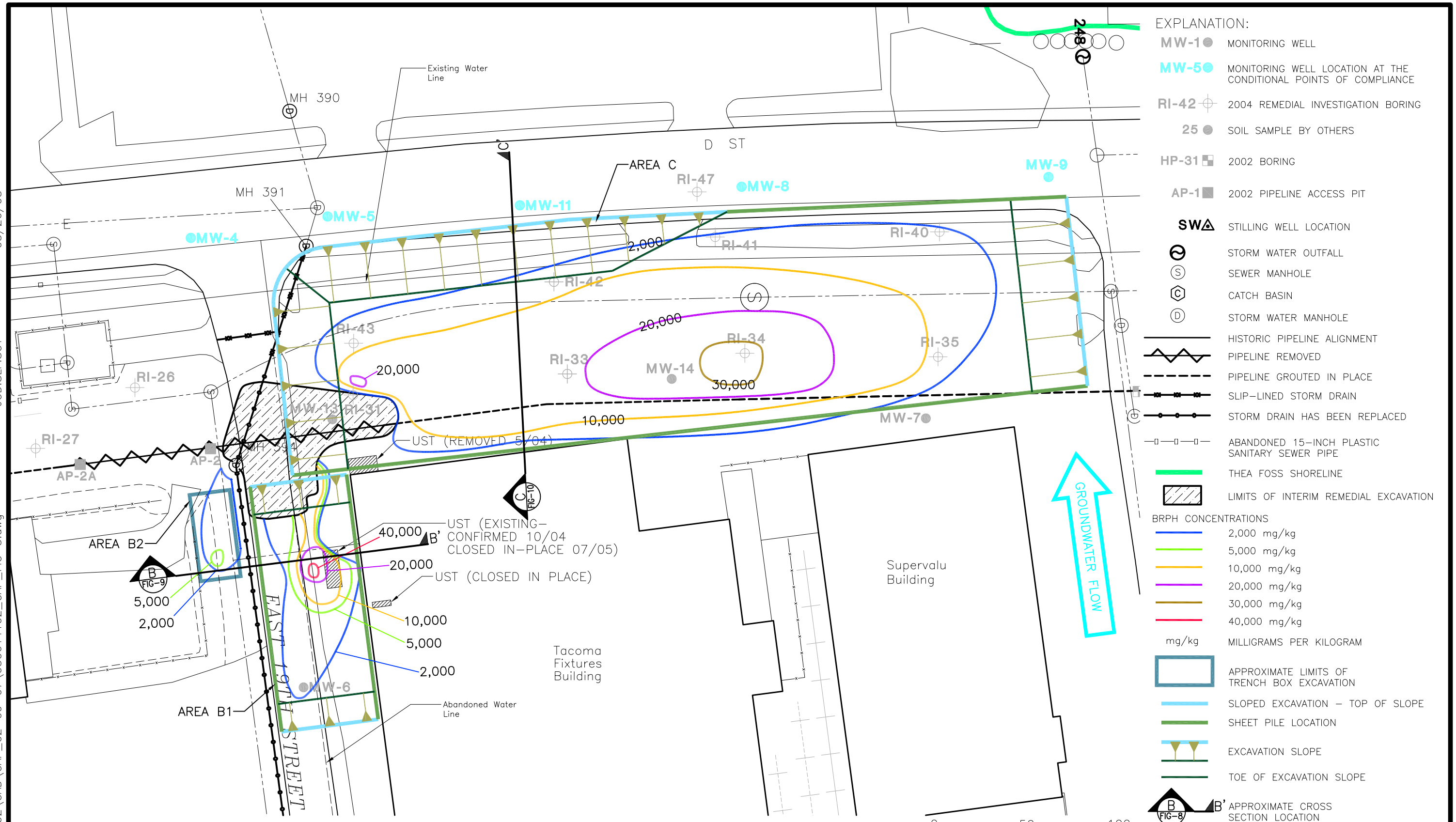


**AREA A
EXCAVATION/DISPOSAL**

FIGURE 4

JCD:SLF:SCY 03/26/08

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-5.dwg

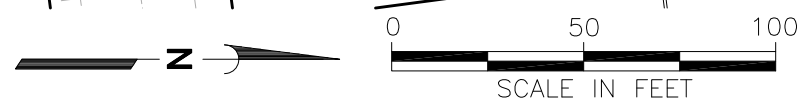


- EXPLANATION:**
- MW-1 ● MONITORING WELL
 - MW-5 ● MONITORING WELL LOCATION AT THE CONDITIONAL POINTS OF COMPLIANCE
 - RI-42 ⊕ 2004 REMEDIAL INVESTIGATION BORING
 - 25 ● SOIL SAMPLE BY OTHERS
 - HP-31 ⊠ 2002 BORING
 - AP-1 ⊠ 2002 PIPELINE ACCESS PIT
 - SWA ⊠ STILLING WELL LOCATION
 - ⊕ STORM WATER OUTFALL
 - ⊙ SEWER MANHOLE
 - ⊕ CATCH BASIN
 - ⊙ STORM WATER MANHOLE
 - HISTORIC PIPELINE ALIGNMENT
 - PIPELINE REMOVED
 - - - PIPELINE GROUTED IN PLACE
 - SLIP-LINED STORM DRAIN
 - STORM DRAIN HAS BEEN REPLACED
 - ABANDONED 15-INCH PLASTIC SANITARY SEWER PIPE
 - THEA FOSS SHORELINE
 - ▨ LIMITS OF INTERIM REMEDIAL EXCAVATION
- BRPH CONCENTRATIONS**
- 2,000 mg/kg
 - 5,000 mg/kg
 - 10,000 mg/kg
 - 20,000 mg/kg
 - 30,000 mg/kg
 - 40,000 mg/kg
- mg/kg MILLIGRAMS PER KILOGRAM
- ▭ APPROXIMATE LIMITS OF TRENCH BOX EXCAVATION
 - SLOPED EXCAVATION - TOP OF SLOPE
 - SHEET PILE LOCATION
 - EXCAVATION SLOPE
 - TOE OF EXCAVATION SLOPE
 - ⊕ APPROXIMATE CROSS SECTION LOCATION

Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

Reference: Drawing created from AutoCAD file, "E.D st-oil line-b.DWG", provided by City of Tacoma.

DRAFT



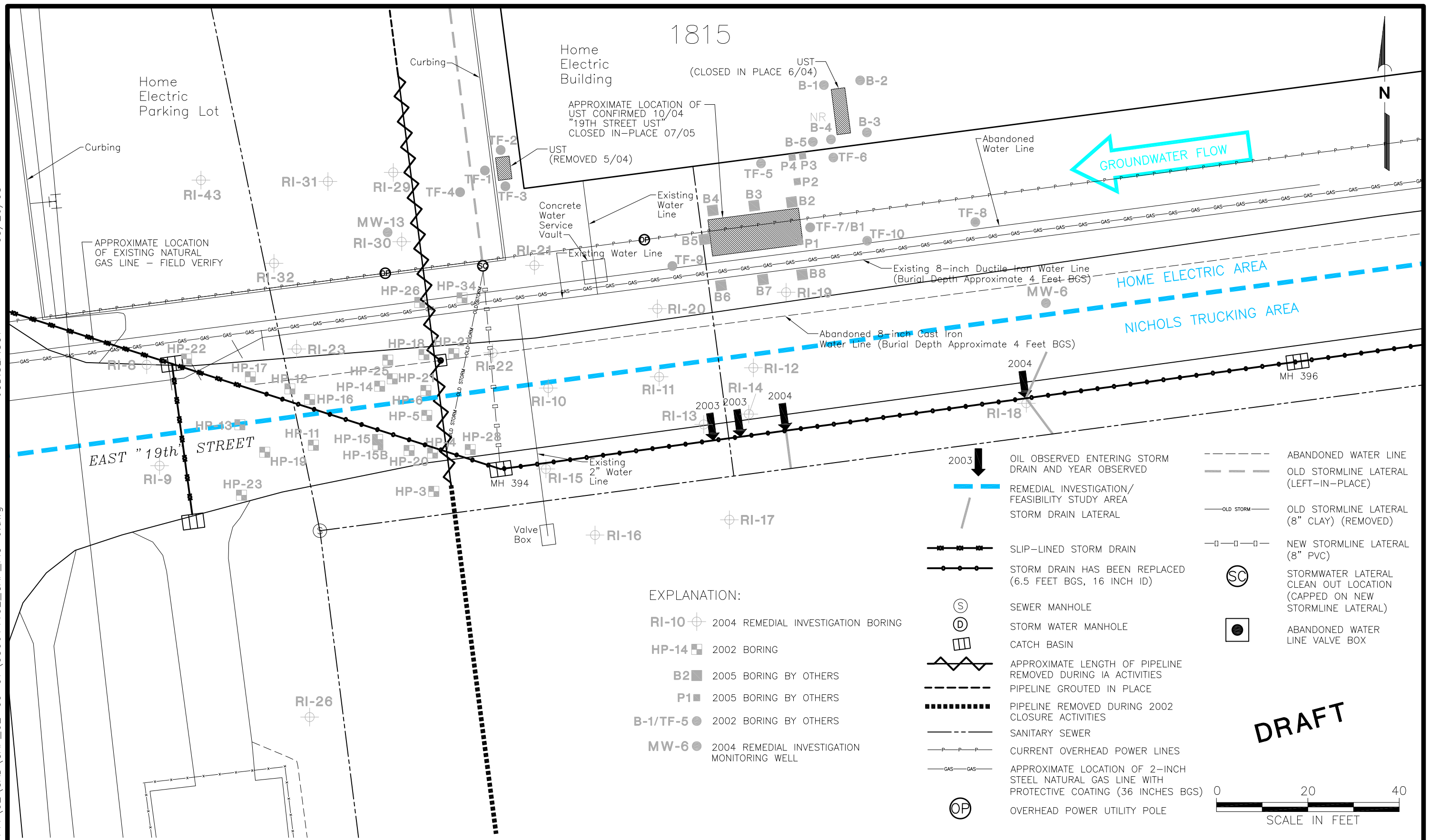
**AREAS B1, B2, AND C
EXCAVATION/DISPOSAL**

FIGURE 5

03/26/08

JCD:SLF:SCY

TACO\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-6.dwg



Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

Reference: Drawing created from AutoCAD file, E.D st-oil line-b.DWG", provided by City of Tacoma.



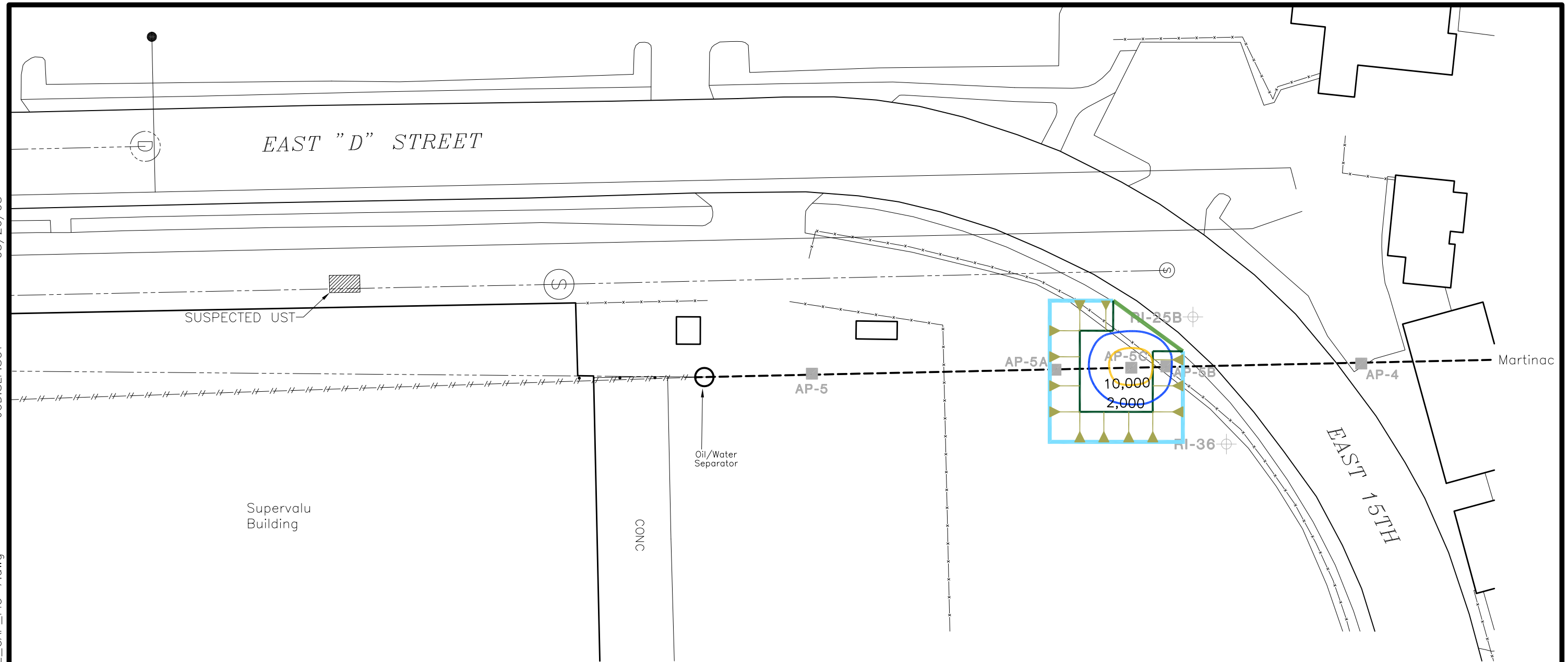
DETAIL OF A PORTION OF 19TH STREET

FIGURE 6

03/26/08

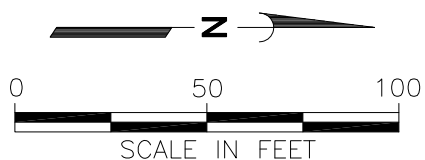
JCD:SLF:SCY

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-7.dwg



EXPLANATION:

- APPROXIMATE LIMITS OF SLOPED EXCAVATIONS
- SLOPED EXCAVATION - TOP OF SLOPE
- SHEET PILE LOCATION
- EXCAVATION SLOPE
- TOE OF EXCAVATION SLOPE
- BRPH CONCENTRATIONS 2,000 mg/kg
- 10,000 mg/kg
- mg/kg MILLIGRAMS PER KILOGRAM
- RI-41 2004 REMEDIAL INVESTIGATION BORING
- AP-5C 2002 PIPELINE ACCESS PIT
- STORM WATER OUTFALL
- SEWER MANHOLE
- STORM WATER MANHOLE
- PIPELINE GROUTED IN PLACE
- PIPELINE PRESENCE UNKNOWN



Notes: 1. The locations of all features shown are approximate.
 2. This drawing is for information purposes and is intended to assist in showing features discussed in an attached document.

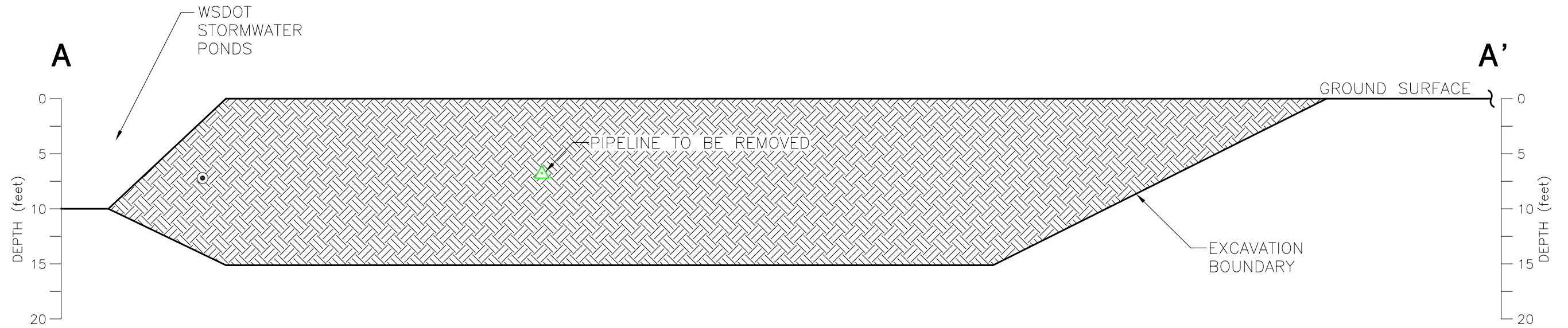
Reference: Drawing created from AutoCAD file, E.D st-oil line-b.DWG", provided by Port of Tacoma.







**AREA D
EXCAVATION/DISPOSAL**

FIGURE 7

DRAFT




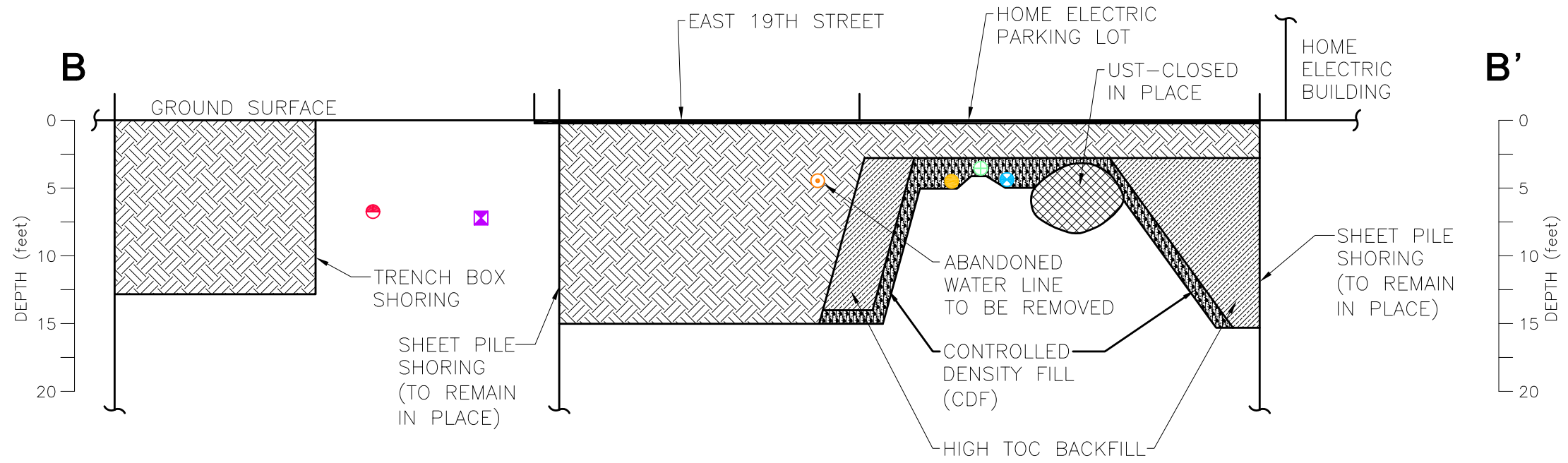
- EXPLANATION:
-  6" BNSF OIL PIPELINE (GROUTED IN PLACE)
 -  COMPACTED BACKFILL
 -  PAVEMENT
 -  SEWER LINE - UNKNOWN DEPTH



DRAFT

Notes: 1. The locations of all features shown are approximate.
 2. This figure is for informational purposes only. It is intended to assist in the identification of features discussed in a related document. Data were compiled from sources as listed in this figure. The data sources do not guarantee these data are accurate or complete. There may have been updates to the data since the publication of this figure. This figure is a copy of a master document. The master hard copy is stored by GeoEngineers, Inc. and will serve as the official document of record.
 Reference: Drawing created from sketch provided by GeoEngineers' personnel.

	AREA A CROSS SECTION A-A'
	FIGURE 8



EXPLANATION:

- 8" DUCTILE IRON WATER LINE
 - ⊙ 8" CAST IRON ABANDONED WATER LINE
 - ⊕ 2" GAS LINE
 - ⊠ 16" STORM LINE
 - 12" SEWER LINE
 - ⊕ ABANDONED WATER LINE
 - ▨ BACKFILL HIGH IN TOC
 - PAVEMENT
 - ▩ COMPACTED BACKFILL
- TOC TOTAL ORGANIC CARBON



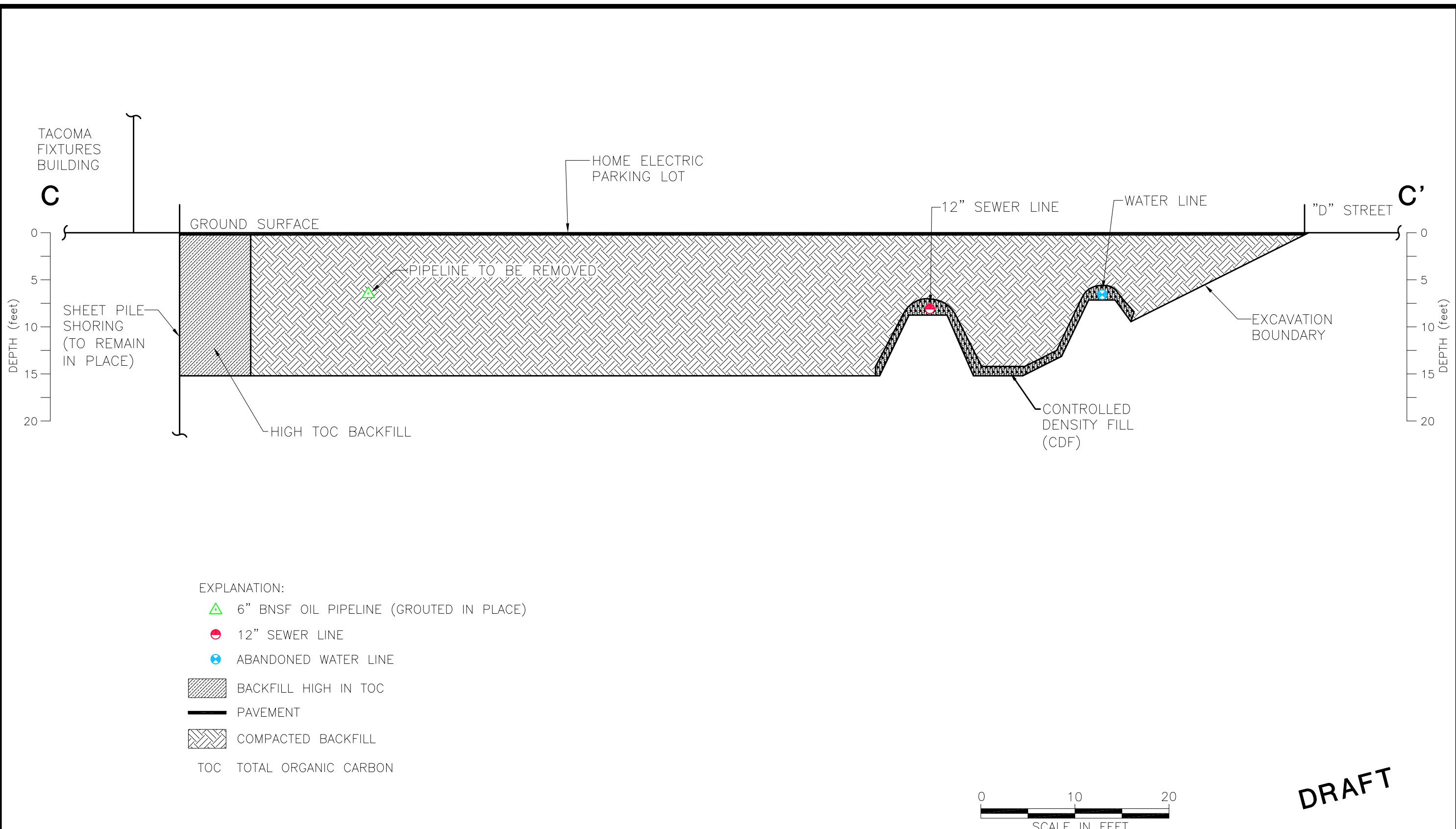
DRAFT

Notes: 1. The locations of all features shown are approximate.
 2. This figure is for informational purposes only. It is intended to assist in the identification of features discussed in a related document. Data were compiled from sources as listed in this figure. The data sources do not guarantee these data are accurate or complete. There may have been updates to the data since the publication of this figure. This figure is a copy of a master document. The master hard copy is stored by GeoEngineers, Inc. and will serve as the official document of record.
 Reference: Drawing created from sketch provided by GeoEngineers' personnel.

03/26/08

JCD:SLF:SCY

TACO\0\0506141\02\CAD\CAP_02-09-07\050614102_CAP_FIG-8_9_10.dwg



DRAFT

Notes: 1. The locations of all features shown are approximate.
 2. This figure is for informational purposes only. It is intended to assist in the identification of features discussed in a related document. Data were compiled from sources as listed in this figure. The data sources do not guarantee these data are accurate or complete. There may have been updates to the data since the publication of this figure. This figure is a copy of a master document. The master hard copy is stored by GeoEngineers, Inc. and will serve as the official document of record.

Reference: Drawing created from sketch provided by GeoEngineers' personnel.

	AREA C CROSS SECTION C-C'
FIGURE 10	

**Exhibit C
Schedule**

Action	Due Date	Comment
Submit Engineering Design Report (EDR), Construction Plans and Specifications (CPS), Compliance Monitoring Plan (CMP), Health and Safety Plan (HSP), and Institutional Controls Plan (ICP)	Within 30 days of Entry of Consent Decree	
Implement CAP	After Ecology approval of EDR and CPS, and according to schedule in Ecology-approved EDR	Timing of cleanup on properties owned by third parties contingent on obtaining access
Submit as built drawings and a Final Remedial Action Report	Not later than ninety (90) days after completion of the construction	
Submit proposed Environmental Covenants and implement Institutional Controls Plan	According to schedule in Ecology-approved EDR	

EXHIBIT D

MODEL ENVIRONMENTAL COVENANT

Model Restrictive (Environmental) Covenant

After Recording Return to:

Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
P.O Box 47775
Olympia, WA 98504-7775

Environmental Covenant

Grantor: [land owner]

Grantee: State of Washington, Department of Ecology

Legal: [fill in brief legal description]

Tax Parcel Nos.: [fill in]

Cross Reference: [if amendment, recording number of original covenant]

Grantor, [land owner], hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this ___ day of _____, 200__ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

[INSERT THE DATE AND TITLE FOR CLEANUP ACTION PLAN and other documents as applicable].

These documents are on file at Ecology's Southwest Regional Office Office.

This Covenant is required because the Remedial Action resulted in residual concentrations of petroleum hydrocarbons and polynuclear aromatic hydrocarbons which exceed the Model Toxics Control Act Method A Cleanup Level(s) for soil and groundwater established under WAC 173-340-720 and -740.

The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "Property") in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described [AS FOLLOWS: (insert legal description language)] -or- [IN ATTACHMENT A OF THIS COVENANT AND MADE A PART HEREOF BY REFERENCE (attach document containing legal description)].

[NAME OF PROPERTY OWNER] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1

1. If the groundwater contains hazardous substances above cleanup levels, then use the following sentence: "No groundwater may be taken for [LIST THE PROHIBITED USES, E.G., DOMESTIC, AGRICULTURAL, OR ANY USE] from the Property."

2. If the soil contains hazardous substances above cleanup levels, then describe prohibited activities as follows:

a. For contaminated soil under a structure use the following sentence: "A portion of the Property contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology."

b. Example language for contaminated soil under a cap: "Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was

contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[Insert the following section into any covenant for the railyard facility property: Section 9. By signing this Covenant, the Owner does not intend to affect the scope of existing federal preemption.]

[NAME OF GRANTOR]

[Name of Signatory]
[Title]

Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Name of Person Acknowledging Receipt]
[Title]

Dated: _____

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

[CORPORATE ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of
Washington, residing at _____.
My appointment
expires _____.

[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the

_____ [type of authority] of _____ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

Exhibit A
Legal Description

EXHIBIT E

POLICY 840, DATA SUBMITTAL REQUIREMENTS



Toxics Cleanup Program Policy

Policy 840

Resource Contact: Policy and Technical Support Staff *Effective:* August 1, 2005

References: WAC 173-340-840(5)

Revised: March 31, 2008

<http://www.ecy.wa.gov/eim/>

<http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>

<http://www.ecy.wa.gov/biblio/0309043.html>

Replaces: Procedure 840

Policy 840: Data Submittal Requirements

Purpose: Contaminated site investigations and cleanups generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions and access to this data by site owners, consultants, and the general public. The purpose of this policy is to describe the requirements for submitting environmental monitoring data generated/collected during the investigation and cleanup of contaminated sites under the Model Toxics Control Act (MTCA) and the Sediment Management Standards.

Application: This policy applies to Ecology staff, potentially liable parties, prospective purchasers, state and local agencies, and Ecology contractors that investigate or manage the cleanup of contaminated sites.

1. Unless Otherwise Specified by Ecology, All Environmental Monitoring Data Generated during Contaminated Site Investigations and Cleanups Shall Be Required to be Submitted to Ecology in both a Written and Electronic Format.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (WAC 173-340) and the Sediment Management Standards (WAC 173-204).

Data generated/collected during site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding or during an independent remedial action, are considered environmental monitoring data under this policy.

Data generated/collected for non site-specific studies, site hazard assessments that result in no further action and initial site investigations are not considered environmental monitoring data under this policy.

2. Orders, Agreed Orders, Consent Decrees, or Permits Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data Be Submitted in Compliance with this Policy.

Reports on such work that do not include documentation that the data have been submitted in compliance with this policy shall be deemed incomplete and a notice of such provided to the

Policy 840 Data Submittal Requirements

submitter. These reports generally should not be reviewed until that information is provided. The assistant attorney general assigned to the site should be consulted in these situations.

3. Opinions on Independent Remedial Actions Submitted for Review Under Ecology's Voluntary Cleanup Program Shall Not Be Issued Until Sampling Data Have Been Submitted in Compliance with this Policy.

Ecology will not issue No Further Action (NFA) opinions under the Voluntary Cleanup Program if environmental sampling data have not been submitted in the required Environmental Information Management System (EIM) format. To avoid unreasonable delays, sampling data should be submitted in the required EIM format along with the cleanup report.

4. Grants, Contracts, Interagency Agreements or Memoranda of Understanding Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data Be Submitted in Compliance with this Policy.

Reports on such work shall not be accepted as complete until the data have been submitted in compliance with this policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met.

Example language to include in these documents is attached in Appendix A.

5. Data Generated During Upland Investigations and Cleanups Shall Be Submitted Electronically Using Ecology's Environmental Information Management System (EIM).

EIM is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data shall be submitted to Ecology simultaneously with the accompanying printed report.

Additional information on EIM, including instructions for data submittal, can be found on Ecology's EIM web site at <http://www.ecy.wa.gov/eim/>. Toxic Cleanup Program's (ICP) EIM Coordinator also is available for technical assistance to site managers and consultants using EIM.

6. Data Generated During Sediment Investigations and Cleanups Shall Be Submitted Electronically Using Ecology's Environmental Information Management System (EIM).

Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data should be submitted to Ecology simultaneously with the accompanying printed report.

SEDQUAL was Ecology's data management system for sediment-related data. For a limited time, Ecology will accept electronic data in SEDQUAL format if the approved Sampling and Analysis Plan requires data submittal in that format. Beginning September 1, 2008, data submitters must contact the site manager to obtain approval to submit electronic data in SEDQUAL format.

Additional information on EIM, including instructions for data submittal, can be found on Ecology's EIM web site at <http://www.ecy.wa.gov/eim/>. Toxic Cleanup Program's (TCP) EIM Coordinator also is available for technical assistance to site managers and consultants using EIM.

For additional information on sediment sampling and analysis plan requirements, see Ecology publication 03-09-043 "Sediment Sampling and Analysis Plan Appendix", February, 2008. A copy of this document can be obtained from Ecology's publication office or downloaded from the following web site: <http://www.ecy.wa.gov/biblio/0309043.html>

TCP's EIM Aquatic Land Cleanup Unit (ALCU) Sediment Data Coordinator is also available for technical assistance.

7. Data Submitted Electronically Using EIM Shall be Checked by the Toxics Cleanup Program's (TCP) EIM Coordinator Prior to Loading the Data into EIM.

Normally, notice that data have been submitted through EIM will come to TCP's EIM Coordinator. Upon receipt of such a notice the EIM Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a notice of an EIM submittal, they should notify TCP's EIM Coordinator. Upon receipt of the data, TCP's EIM Coordinator reviews the submittal for quality control and officially loads the data into the system.

Approved:



James J. Pendowski, Program Manager
Toxics Cleanup Program

Policy Disclaimer: This policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this policy depending on site-specific circumstances, or modify or withdraw this policy at any time.

APPENDIX A: MODEL GRANT AND PERMIT CONDITION

The following condition is to be inserted in permits, grants, loans, contracts, interagency agreements, memorandum of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS & CONTRACTS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future grant funding.)

EXHIBIT F

PUBLIC PARTICIPATION PLAN



PUBLIC PARTICIPATION PLAN

BNSF D Street Pipeline

Tacoma, Washington

Prepared by
Washington State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
300 Desmond Drive
Olympia, Washington 98504-7775

May 2008

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INTRODUCTION

The Washington State Department of Ecology (Ecology) has developed this public participation plan pursuant to the Model Toxics Control Act (MTCA) to promote meaningful community involvement during the investigation and cleanup of BNSF D Street Pipeline site. This plan outlines and describes the tools that Ecology uses to inform the public about site activities and identifies opportunities for the community to become involved.

Site Location

BNSF D Street Pipeline site is 1/2 mile long and is located east and parallel to East D Street, running from East 21st (now Highway 509 right-of-way) north to East 15th (See Figure 2) in Tacoma. The pipeline runs along property that is owned (or operated) by Washington State Department of Transportation, Nichols Trucking, City of Tacoma, Home Electric, 1815 E. D St. and Supervalu Holdings and is zoned as industrial and commercial. Old oil storage tanks (since removed) which once connected to the pipeline were located on property now owned by JM Martinac company and the BNSF Tacoma Rail yard.

SITE BACKGROUND

Investigations of the D Street Pipeline site began after Ecology received information from the City of Tacoma about tar-like oily globules that were found in Thea Foss Waterway during low tide. The globules were noticed near a stormwater outfall south of Johnny's Restaurant.

Excavations at the site led to a discovery of damaged portions of the pipeline where petroleum products had been released into soil and groundwater. Petroleum contamination was also found at the following locations:

- Soil and groundwater in the DOT stormwater detention pond area.
- Soil in the Supevalu parking lot.
- Soil and groundwater in the intersection of East D Street and East 19th Street (near Tacoma Fixtures).
- Soil and groundwater in parking areas between East 18th and 19th Streets.

Investigations revealed multiple sources of petroleum contamination along the Thea Foss Waterway including, underground storage tanks on the Home Electric property (deeded to 1815 E. D Street LLC) and historic fill.

In June 2004, Ecology entered into a Consent Decree with Burlington Northern and Santa Fe Railway Company (BNSF) to conduct a Remedial Investigation and Feasibility Study of the site as well as to complete interim actions. Interim actions were taken immediately to prevent the spread of further contamination into the Thea Foss Waterway.

BNSF and other PLPs completed several interim actions during 2004 and 2005. These included:

- Removal of source materials in soil and wood waste in the East 19th Street area.
- Removal of fuel oil from underground tanks located at the Tacoma Fixtures (Home Electric) property.
- Closure of two large fuel oil tanks (Tacoma Fixtures property).
- Removal of a diesel fuel tank (Tacoma Fixtures property).
- Repair and replacement of a section of storm sewer that was leaking.

Current Activity

The RI/FS has been completed and, based on these findings, a cleanup remedy has been selected. Ecology is entering into a Consent Decree with BNSF to implement the Cleanup Action Plan (CAP). As part of this agreement, BNSF will complete the following cleanup activities:

- Excavate and dispose of contaminated soils at specified locations.
- Install and sample groundwater monitoring wells to monitor contaminant concentrations.
- Use institutional controls to keep future development or activities from interfering with the site cleanup.

The draft CAP will be available for public comment. At the end of the comment period, Ecology will review and respond to all comments. The CAP will be finalized after public comment has been considered and, if necessary, incorporated into the plan. Once the CAP is finalized, the cleanup remedy will be implemented.

MODEL TOXICS CONTROL ACT CLEANUP STAGES

The Model Toxics Control Act (MTCA, Chapter 70.105D RCW) defines each stage of the cleanup process to protect human health and the environment. Figure 1 on page 5 details these stages.

Some steps described in the chart include Agreed Orders or Consent Decrees. These are agreements between Ecology and the parties responsible for cleanup of the pollution. In addition, Interim Actions (partial cleanup actions) may be taken to reduce or eliminate pollution that poses an immediate threat to human health or the environment.

The cleanup process is complex. Issues often arise that require more attention or evaluation, and may lead to changes in the steps or schedule. Every effort will be made to keep the public well-informed of changes.

Figure 1. Washington State Model Toxic Cleanup Process



PUBLIC PARTICIPATION ACTIVITIES AND RESPONSIBILITIES

The purpose of this Public Participation Plan is to promote public understanding and participation in the cleanup process for this site. This section of the plan addresses how Ecology will keep the public informed about site activity and provide opportunity for comment and involvement.

Ecology will use a variety of tools to facilitate public participation in the planning and cleanup of this MTCA site. Ecology will consider and implement input provided by the community whenever possible. The following is a list of the public involvement activities that Ecology will use, their purpose and a description of when and how they will be used in this site cleanup.

Formal Public Comment Period

Comment periods are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. Comment periods usually last for 30 days and are required at key points during this cleanup process before final decisions are made. During a comment period, the public can comment in writing (email or letter) or in person (during a public meeting or hearing).

Public Meetings and Hearings

Public meetings may be held at key points during the investigation and cleanup process. Ecology may also offer public meetings for actions expected to be of particular interest to the community. Also, if ten or more people request a public hearing during the 30 day comment period, Ecology will hold a public hearing for the purpose of taking oral comments on draft documents.

Responsiveness Summaries

After every public comment period, Ecology reviews and may respond to all comments received, both oral and written. This is compiled into a responsiveness summary. Ecology considers changes or revisions based on the input from the public. If significant changes are recommended, then a second comment period is held. If significant changes are recommended, then the draft documents will be finalized. The responsiveness summary will be available upon request and included with the other pertinent site documents in the Information Repositories listed below.

Information Repositories

Information repositories are convenient places where the public can go to read and review site information. The information repositories are often at libraries or community sites where public has access. During the comment period, the site documents will be available for review at each repository. Each site will have at least two repository sites established. Site information will remain at repositories for the duration of the cleanup. Ecology's Central files can also make copies of the documents for a fee.

The information repositories for this site are:

Washington State Department of Ecology

Southwest Regional Office
Toxics Cleanup Program
300 Desmond Dr.
Lacey, WA 98503
(360) 407-6365

Citizens for a Healthy Bay

917 Pacific Avenue, Suite 406
Tacoma, WA 98402-4421
(253) 383-2429

Tacoma Public Library (Main Branch)

Northwest room
1102 Tacoma Avenue South
Tacoma, WA 98402-2006

Mailing list

Ecology has compiled a list of interested parties and organizations and residents living in proximity to the cleanup site. This list will be used to disseminate information via mail (fact sheets, site updates, public notices). If you are not on a mailing list for a site but wish to be added, please contact Hannah Aoyagi at 360-407-6790 or haoy461@ecy.wa.gov.

Site Register and Public Events Calendar

Ecology's Toxics Cleanup Program uses its bimonthly Site Register and web-based Public Involvement Calendar to announce all of its public meetings and comment periods as well as additional site activities. To receive the Site Register in electronic or hard copy format, contact Linda Thompson at 360-407-6069 or by email at ltho461@ecy.wa.gov. It is also available on Ecology's website at http://www.ecy.wa.gov/programs/tcp/sites/8801/8801_hp.html.

Fact Sheets / Updates

Ecology will mail out fact sheets to persons and organizations interested in the D Street Pipeline site to inform them of public meetings and comment periods as well as important site activities. Ecology may also mail an update about the progress of site activities.

Newspaper Display Ads

Ecology may place ads in the local paper to announce public comment periods and public meetings or hearings for this site. The *Tacoma News Tribune* will be used to publish information about this site.

Ecology Web Site

Information related to this site and materials available for public comment will be posted on Ecology's web site at http://www.ecy.wa.gov/programs/tcp/sites/BNSF_oil_pipeline/BNSF_oil_pipeline_hp.htm.

Public Participation Grants

Grants may be available to neighborhood committees, non-profits, and other groups near the site. These funds may be used to provide additional public involvement, to receive technical assistance, and/or enhance the public's understanding of the cleanup process. For more information, please contact Kathy Seel at (360) 407-6061 or Ksee461@ecy.wa.gov, or visit Ecology's Solid Waste and Financial Assistance Program website: www.ecy.wa.gov/programs/swfa/grants.html

Translation Service

Ecology will provide translation services to any resident who requests them. This service can include written material, live translation during public meetings or telephone inquiries. Please contact Hannah Aoyagi, Public Involvement Coordinator at 360-407-6790 or haoy461@ecy.wa.gov for a translated copy of this or any other documents related to this site.

Plan Updates

This Public Participation Plan is meant to be a dynamic guide for informing and involving the community in the decision-making process at the Site. This plan may be updated as the project proceeds.

Technical Contact

For project-related questions, contact Marv Coleman at the Washington State Department of Ecology at 360-407-6259 or by email at mcol461@ecy.wa.gov.

Figure 2. D Street (BNSF) Pipeline

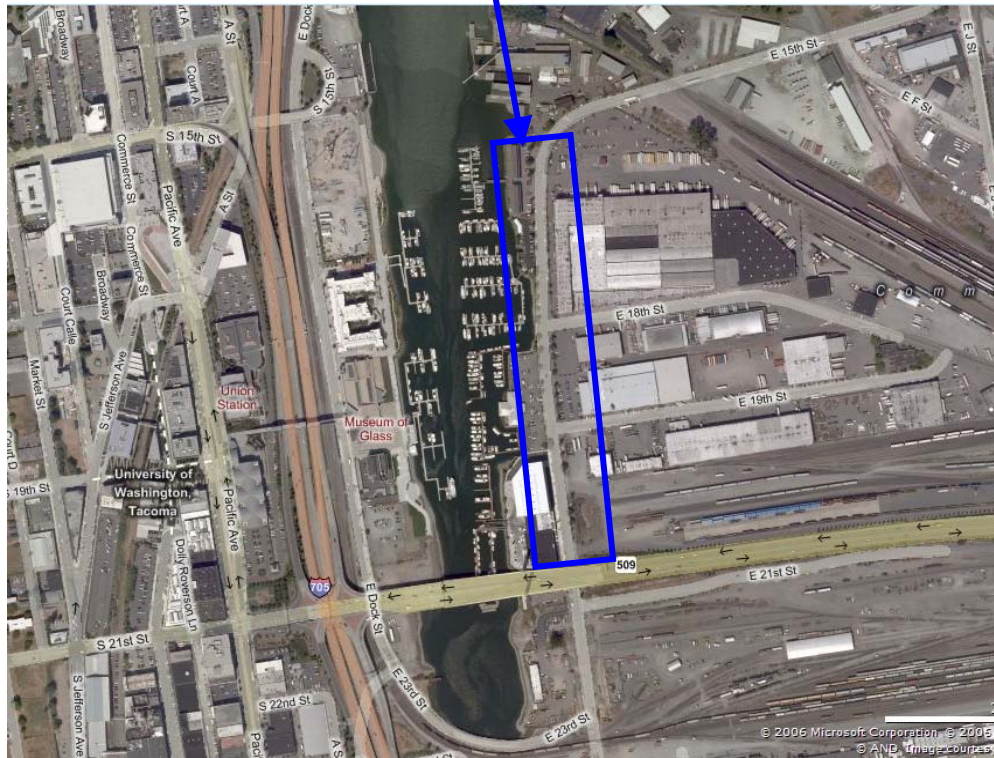
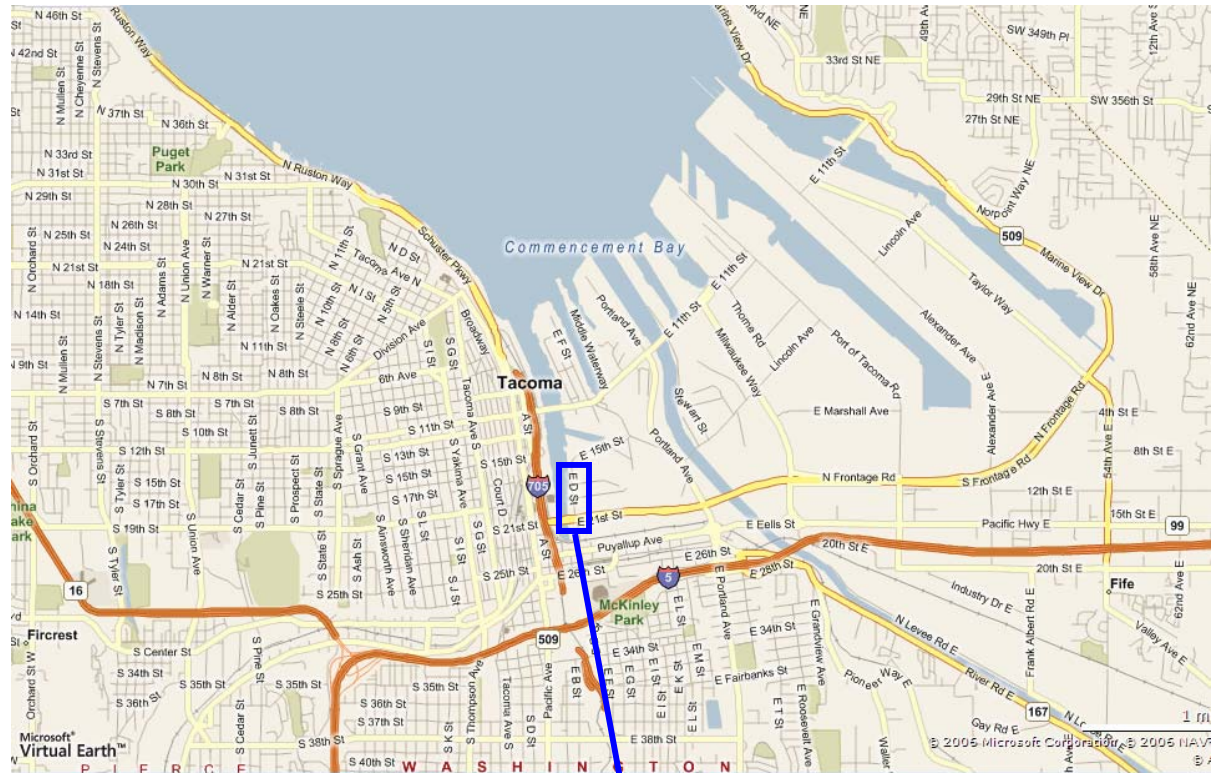


Figure 3. Additional photos taken along D Street (BNSF) Pipeline site



D Street and 19th Street Intersection

View of D Street facing North



Department of Transportation stormwater detention pond