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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

AGREED ORDER

Port of Olympia
City of Olympia
LOTT Clean Water Alliance

No. DE7830

TO: Port of Olympia
c/o Joanne Snarski, Environmental Program & Project Manager
Port of Olympia
915 Washington Street NE
Olympia, WA 98501

City of Olympia
c/o Jay Burney
Assistant City Manager – Special Projects
P.O. Box 1967
Olympia, WA 98507-1967

LOTT Clean Water Alliance
c/o Eric Hielema
Senior Wastewater Engineer
500 Adams Street NE
Olympia, WA 98501

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), the Port of Olympia, City of Olympia, and LOTT Clean Water Alliance under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Specifically, this Agreed Order will:

1. Require implementation of the Parcels 4 and 5 Interim Action Work Plan for the Site and drafting of an Interim Action Report.
2. Require submittal of a draft site boundary technical memorandum.
3. Require drafting of a remedial investigation/feasibility study (RI/FS) report.
4. Require a draft Cleanup Action Plan (DCAP).
5. This Agreed Order No. DE 7830 fully supersedes and replaces Agreed Order No. DE5471.

Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

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

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as East Bay Redevelopment and is generally located at 315 Jefferson Street NE in Olympia, Washington. As shown on Exhibit A, the East Bay Redevelopment Site includes, but is not limited to, part of Parcel 1 and all of Parcels 2, 3, 4, 5, 6, 7, and 9. The Site lies on the south end of the Port Peninsula adjacent to the East Bay of Budd Inlet. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site location is generally shown in Exhibit A (Location of the Site). The Site constitutes a Facility under RCW 70.105D.020(5).

Additionally, the East Bay Redevelopment Site is adjacent to the LOTT Clean Water Alliance Wastewater Treatment Plant Expansion (“LOTT Expansion”) Site. The LOTT Expansion Site includes portions of the area of the existing LOTT Clean Water Alliance Budd Inlet Wastewater Treatment Plant (500 Adams Street NE), the parking lot south of the plant, and Parcel 8, as set out in Exhibit B. The LOTT Expansion Site is currently enrolled in Ecology’s Voluntary Cleanup Program (VCP) because of residual soil and groundwater contamination from former lumber mills. The site is assigned VCP identification number SW0933. Former lumber mill operators on the LOTT Expansion site include the Olympia Door Company and the Springer Mill Company. It is not currently believed that contamination from the LOTT Expansion Site and the East Bay Redevelopment Site are commingled. Therefore, the LOTT Expansion Site is not included in the scope of this Order. However, if Ecology determines in writing that adequate evidence exists to support combining the two sites, the LOTT Expansion Site will become part of the East Bay Redevelopment Site.

B. Parties: Refers to the State of Washington Department of Ecology, the Port of Olympia (Port), the City of Olympia (City), and LOTT Clean Water Alliance (LOTT).

C. Potentially Liable Persons (PLPs): Refers to the Port, the City, and LOTT.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

E. Area of Concern (AOC): Potential sources of subsurface contamination identified in Phase I Environmental Site Assessment reports based on a search of historic documents and aerial photographs.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Parties:

A. Historic documents provided to Ecology show that the earliest documented activities on portions of the Site were related to several types of lumber milling operations (such as sawmill, planing mill, shingle mill, and veneer/plywood manufacture). Lumber milling operations were conducted under various owners/operators from at least 1888 until about 1968. Historic owners/operators included the St. Paul & Tacoma Lumber Company (1942 to 1968, Parcels 2 through 7); Olympia Veneer Company (1924 to mid-1940s, Parcels 2 through 6); Olympia Sawmill and Olympia Planing Mill (1888-1896, Parcel 3); Olympia Door and Lumber Company’s planing mill and the East Side Lumber Company’s saw mill (1896, Parcel 3); H.G. Richardson’s Shingle Mill (1908, Parcel 3); the Olympia Door Company Sash and Door Factory (1908-1924, Parcel 9); the Puget Sound Pipe Company (wooden pipes, 1888-1896, Parcel 1); and the National Wood Pipe Company (1908, Parcels 5 and 6). Exhibit C shows the locations of some of these former operations.

B. Based on historic maps, the lumber milling operations included various equipment and/or support facilities that may be AOCs including: shops (such as machine shops, blacksmith shops, repair shops, welding shops, and electronic shops), dry kilns, veneer driers, power houses, boiler houses, oil houses, glue houses, flammable liquids storage, transformers, engine rooms, fuel bins, and tar dipping tanks (Exhibit D). Also, historic aerial photographs

show that logs were rafted in the bay, presumably for transport along Budd Inlet to various sawmills.

C. Historic documents also revealed that dredged spoils from Budd Inlet have been placed on the peninsula since 1892. For example, a Sanborn Map dated 1888 indicated that several buildings were present. These buildings were likely constructed on piers that extended over the water and/or mudflats that existed prior to significant filling operations that occurred from 1896 to 1911. The newly reclaimed land is included within the property currently known as the Port Peninsula.

D. Since lumber milling operations ceased in 1968, the Port and its tenants have used portions of the Site for commercial and light industrial activities and/or storage.

E. The Port voluntarily initiated an assessment of soil and groundwater at the Site. On January 4, 2007, the Port submitted an application to Ecology to enter a portion of what is now defined as the Site into the VCP. The application was accepted by Ecology and the Site was enrolled into the VCP on January 5, 2007.

F. On February 21, 2008, Ecology notified the Port that the Site was being removed from the VCP to speed the cleanup and allow for more direct Ecology oversight, and because further action at the Site would occur under an agreed order, enforcement order, or decree under formal oversight from Ecology.

G. Based on reports prepared for the Port and submitted to Ecology, past operations on property that is part of the Site have resulted in the contamination of soil at levels that exceed the MTCA cleanup levels for Unrestricted Land Use for all of the following constituents: total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (dioxins/furans), and metals. Groundwater constituents that have exceeded MTCA cleanup levels or other screening levels within the Site include TPH and metals.

H. On October 3, 2008, Ecology and the Port entered into Agreed Order No. DE 5471 to conduct a Remedial Investigation (RI) and Interim Action at the Site. In accordance

with the Agreed Order's Schedule of Deliverables, the Port submitted for Ecology's approval a RI Work Plan and an Interim Action Work Plan. Ecology approved the RI Work Plan in writing on September 21, 2009. Ecology approved the Interim Action Work Plan in writing on May 4, 2009, and made a State Environmental Policy Act (SEPA) threshold Determination of Non-Significance (DNS). Public comment on the RI Work Plan, the Interim Action Work Plan, and the SEPA determination was open from March 16, 2009, through April 16, 2009. Before the comment period was completed, Ecology held a public open house meeting to provide the public with additional information on April 1, 2009. After review of the public comments, Ecology approved the RI Work Plan and the Interim Action Work Plan as final. No changes were made to the SEPA DNS. The Agreed Order No. DE 5471 RI Work Plan and Agreed Order No. DE 5471 Interim Action Work Plan are incorporated in this Order by reference and form an integral and enforceable part of this Order.

I. Ecology approved the Agreed Order No. DE 5471 Interim Action Report in writing on June 18, 2010. The Agreed Order No. DE 5471 Interim Action Report is incorporated by reference and forms an integral and enforceable part of this Order.

J. The City purchased property at the Site on June 3, 2010.

K. LOTT purchased property at the Site on June 3, 2010.

VI. ECOLOGY DETERMINATIONS

A. The Port is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). The Port currently owns property that is part of the Site.

B. The City is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). The City currently owns property that is part of the Site.

C. LOTT is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). LOTT currently owns property that is part of the Site.

D. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

E. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated February 14, 2008, pursuant to RCW 70.105D.040, 70.105D.020(21) and WAC 173-340-500. By letter dated February 21, 2008, the Port voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70.105D.040.

F. Based upon credible evidence, Ecology issued a PLP status letter to the City dated June 14, 2010, pursuant to RCW 70.105D.040, 70.105D.020(21) and WAC 173-340-500. By letter dated June 21, 2010, the City voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the City is a PLP under RCW 70.105D.040.

G. Based upon credible evidence, Ecology issued a PLP status letter to LOTT dated June 14, 2010, pursuant to RCW 70.105D.040, 70.105D.020(21) and WAC 173-340-500. By letter dated June 21, 2010, LOTT voluntarily waived its rights to notice and comment and accepted Ecology’s determination that LOTT is a PLP under RCW 70.105D.040.

H. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require the PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

I. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, RI/FS, or design of a cleanup action. The PLPs are currently in the design and permitting stages of cleanup and development at the Site for Parcels 4 and 5. Performing the

interim action will result in a faster and more cost effective cleanup of Parcels 4 and 5 because the interim action cleanup will be performed in conjunction with development. Therefore, performance of this interim action is consistent with WAC 173-340-430. The schedule for deliverables related to the Parcels 4 and 5 interim action is set forth below at VII.G (Schedule of Deliverables) and in the Parcels 4 and 5 Interim Action Work Plan.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. The PLPs shall conduct all actions set out in the schedule of deliverables in Section VII.G (Schedule of Deliverables), and do so within the timeframes set out in that schedule. To effectuate the work to be performed under this Order in the most efficient manner, certain parties have elected to take the lead in performing various aspects of the work required under this Order. Language in this Order and the exhibits attached hereto, may reflect this agreement among the PLPs. However, the PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Order. A summary of these actions appears below:

A. The City and LOTT shall implement and complete the interim action work (the Parcels 4 and 5 interim action) stated in the Parcels 4 and 5 Interim Action Work Plan. The Parcels 4 and 5 Interim Action Work Plan is attached as Exhibit E to this Order, is incorporated by reference, and forms an integral and enforceable part of this Order. The Parcels 4 and 5 interim action consists of implementing engineering controls, reusing suitable soil under pavement, and removal of contaminated soil as necessary during construction of the Hands On Children's Museum and Plaza.

Work will be completed in accordance with the schedule set out in the Parcels 4 and 5 Interim Action Work Plan. The City and LOTT shall submit a draft Parcels 4 and 5 Interim Action Report after all laboratory data collected during implementation of the fieldwork is received, but no later than sixty (60) days after completion of fieldwork. The City and LOTT

shall incorporate Ecology's comments on the draft Parcels 4 and 5 Interim Action Report and submit a final Parcels 4 and 5 Interim Action Report to Ecology within thirty (30) days of receiving comments.

B. The Port shall prepare a draft Site Boundary Technical Memorandum to propose a Site boundary. The technical memorandum shall be submitted to Ecology for review and comment within sixty (60) days from the effective date of this Order. If Ecology approves the draft Site Boundary Technical Memorandum, it will issue an Approval of the Technical Memorandum. The Port shall incorporate Ecology's comments on the draft Site Boundary Technical Memorandum in the Draft RI/FS Report.

If Ecology determines further work is necessary to address data gaps in the Site Boundary Technical Memorandum, to understand the extent and nature of contamination at the Site, then Ecology will issue a written request to the Port to develop a Data Gap Work Plan and Schedule. The Port will draft and submit for Ecology's review and comment a Data Gap Work Plan and Schedule within sixty (60) days of the written request. The Port shall incorporate Ecology's comments on the Data Gap Work Plan and implement the Plan according to the Schedule.

C. The Port shall prepare a Draft RI/FS Report in accordance with Chapter 173-340 WAC, including WAC 173-340-350, that provides information fully documenting the nature and extent of contamination at the Site within ninety (90) days after receiving Ecology's Approval of the Technical Memorandum (or if necessary within ninety (90) days from completion of Data Gap Work Plan field activities). The Draft RI/FS Report shall report the results of the remedial investigations, including the vertical and lateral distribution of contaminants in air, soil, surface water, groundwater, and sediments. The Draft RI/FS Report will also include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented. The Draft RI/FS Report shall be submitted to Ecology for review and comment.

If Ecology determines further RI work is necessary to address data gaps in the Draft RI/FS Report, to understand the extent and nature of contamination at the Site, and/or to

determine feasible cleanup alternatives, then Ecology will issue a written request to the Port to develop a Data Gap Work Plan and Schedule. The Port will draft and submit for Ecology's review and comment a Data Gap Work Plan and Schedule within sixty (60) days of the written request. The Port shall incorporate Ecology's comments on the Data Gap Work Plan and implement the Plan according to the Schedule. Information received from implementation of the Data Gap Work Plan will be incorporated into the Draft Final RI/FS Report.

D. The Port shall incorporate Ecology's comments on the Draft RI/FS Report and submit a revised Draft Final RI/FS Report to Ecology within thirty (30) days of receiving comments on the Draft RI/FS Report (or if necessary within thirty (30) days from completion of Data Gap Work Plan field activities). The Draft Final RI/FS Report will be available for public comment in conjunction with the public comment period for the DCAP. The draft Final RI/FS Report will become the Final RI/FS Report following public comment and upon Ecology's approval as follows:

- Following public comment on the Draft Final RI/FS Report, Ecology will notify the PLPs if any substantive changes are required as a result of public comment.
- Within thirty (30) days of receiving Ecology's non-substantive comments on the Draft Final RI/FS Report, the PLPs will submit the Final RI/FS Report to Ecology for review and approval.
- In the event substantive changes to the Draft Final RI/FS Report are necessary following public comment, the PLPs and Ecology will agree on a schedule to complete those changes.
- The revised Draft Final RI/FS Report will become final upon Ecology's approval.

E. Within sixty (60) days after Ecology approval of the Draft Final RI/FS Report, the Port shall prepare a DCAP in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. The DCAP shall include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation,

description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action. The DCAP will be available for public comment in conjunction with the public comment period for the Draft Final RI/FS Report.

F. Preparation of a Final Cleanup Action Plan (CAP) is not a part of this Order. Ecology intends to draft the Final CAP. The Final CAP will be implemented in a subsequent agreed order, enforcement order, or consent decree.

G. In accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements), data generated for contaminated site investigations and cleanups shall be submitted in both a written and electronic format. For additional information regarding electronic format requirements, see the website <http://www.ecy.wa.gov/eim>. All laboratory analyses shall be performed by a State of Washington certified laboratory for each analytical method used.

H. Schedule of Deliverables:
 Each deliverable, once approved by Ecology, becomes incorporated by reference and shall be an integral and enforceable part of the Order.

Remedial Investigation and Feasibility Study/Schedule of Deliverables

Deliverable	Schedule
Draft Site Boundary Technical Memorandum	Submitted to Ecology within sixty (60) days from the effective date of this Order.
(If necessary) Data Gap Work Plan and Schedule	Within sixty (60) days from written request.
Draft RI/FS Report	Within ninety (90) days after Ecology's Approval of the Technical Memorandum is received or (if necessary) within ninety (90) days after completion of the Data Gap Work Plan field activities.
(If necessary) Data Gap Work Plan and Schedule	Within sixty (60) days from written request.
Draft Final RI/FS Report	Within thirty (30) days after Ecology's written comments on the Draft RI/FS Report are received or (if necessary) within thirty(30) days after completion of

	the Data Gap Work Plan field activities.
Final RI/FS Report	Within 30 days after Ecology's written comments on the Draft Final RI/FS Report are received, subsequent to public comment.
Draft Cleanup Action Plan	Within 60 days after the Draft Final RI/FS Report is approved by Ecology.

Interim Action/Schedule of Deliverables

Deliverable	Schedule
Implement Parcels 4 and 5 Interim Action	According to schedule in the Parcels 4 and 5 Interim Action Work Plan.
Draft Parcels 4 and 5 Interim Action Report	Within 60 days after field work is completed.
Final Parcels 4 and 5 Interim Action Report	Within 30 days after receipt of Ecology's written comments on the Draft Parcels 4 and 5 Interim Action Report.

I. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work

performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$4,694.37 in remedial action costs related to this facility under SIC Code J1B7A as of April 30, 2010. Ecology has accumulated \$6,452.05 in remedial action costs related to this facility under SIC Code J1A3E as of April 30, 2010. Payment for these amounts shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to April 30, 2010, the PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

C. Implementation of Remedial Action

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

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Steve Teel
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6247

The project coordinators for the PLPs are:

Joanne Snarski
Environmental Program & Project Manager
Port of Olympia
915 Washington Street NE
Olympia, WA 98501
(360) 528-8020

Jay Burney
Assistant City Manager – Special Projects
City of Olympia
P.O. Box 1967
Olympia, WA 985-7-1967
(360) 753-8740

Eric Hielema
Senior Wastewater Engineer
LOTT Alliance
500 Adams Street NE
Olympia, WA 98501

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

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

E. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

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

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

The PLPs shall notify Ecology in writing of the identity of any engineer(s), geologist(s), contractor(s), subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to

Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work To Be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the PLP prior to any sample collection activity unless an emergency prevents such notice.

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

H. Public Participation

A Public Participation Plan has been prepared for the Site. Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs shall cooperate with Ecology, and shall:

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

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Olympia Timberland Library
313 8th Ave. SE
Olympia WA
(360) 352-0595
- b. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
(360) 407-6045

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in the central files of Ecology's Southwest Regional Office, Toxics Cleanup Program.

The Olympia Timberland Library shall only be used as a repository for the Agreed Order and Exhibits during the public comment period for this Agreed Order. Following the public comment period, the only repository used will be Ecology's Southwest Regional Office, Toxics Cleanup Program.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the PLPs to waive any right they may have under applicable law to limit disclosure of documents protected by the attorney work-product and/or attorney-client privilege. If any of the PLPs withholds any requested records based on an assertion of privilege, the PLP(s) shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on the Site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

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

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs have fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

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

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Regional Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;

- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

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

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or

- c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs comply with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local permit requirements that the agency has determined are applicable and that are known at the time of entry of this Order, and the PLPs have to obtain, have been identified in Exhibit F.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58, and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the

remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from (1) any and all claims or causes of action for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

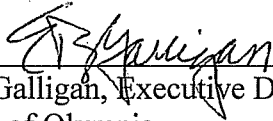
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 9/23/10

PORT OF OLYMPIA



Ed Galligan, Executive Director
Port of Olympia

LOTT CLEAN WATER ALLIANCE

Michael D. Strub, Executive Director
LOTT Clean Water Alliance

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Effective date of this Order: _____

PORT OF OLYMPIA

Ed Galligan, Executive Director
Port of Olympia

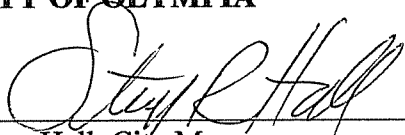
LOTT CLEAN WATER ALLIANCE



Michael D. Strub, Executive Director
LOTT Clean Water Alliance

Approval of form by Rick Hughes, General Counsel
LOTT Clean Water Alliance

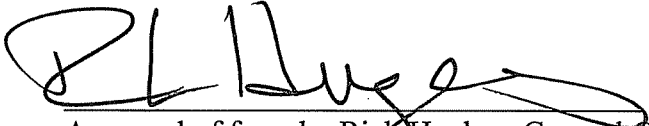
CITY OF OLYMPIA



Steve Hall, City Manager
City of Olympia

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Rebecca Lawson, P.E., LHG
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office

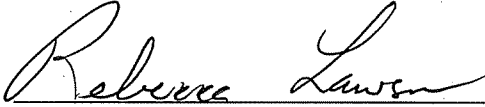


Approval of form by Rick Hughes, General Counsel
LOTT Clean Water Alliance

CITY OF OLYMPIA

Steve Hall, City Manager
City of Olympia

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Rebecca Lawson, P.E., LHG
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office

EXHIBIT A

LOCATION OF THE SITE



Legend

-  East Bay Redevelopment Boundary
-  Parcel Boundaries
-  LOTT Expansion Site
-  Paved Roads

Notes:
 The final East Bay Development site boundary has not been established.
 The locations of all features are approximate.

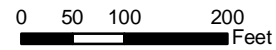


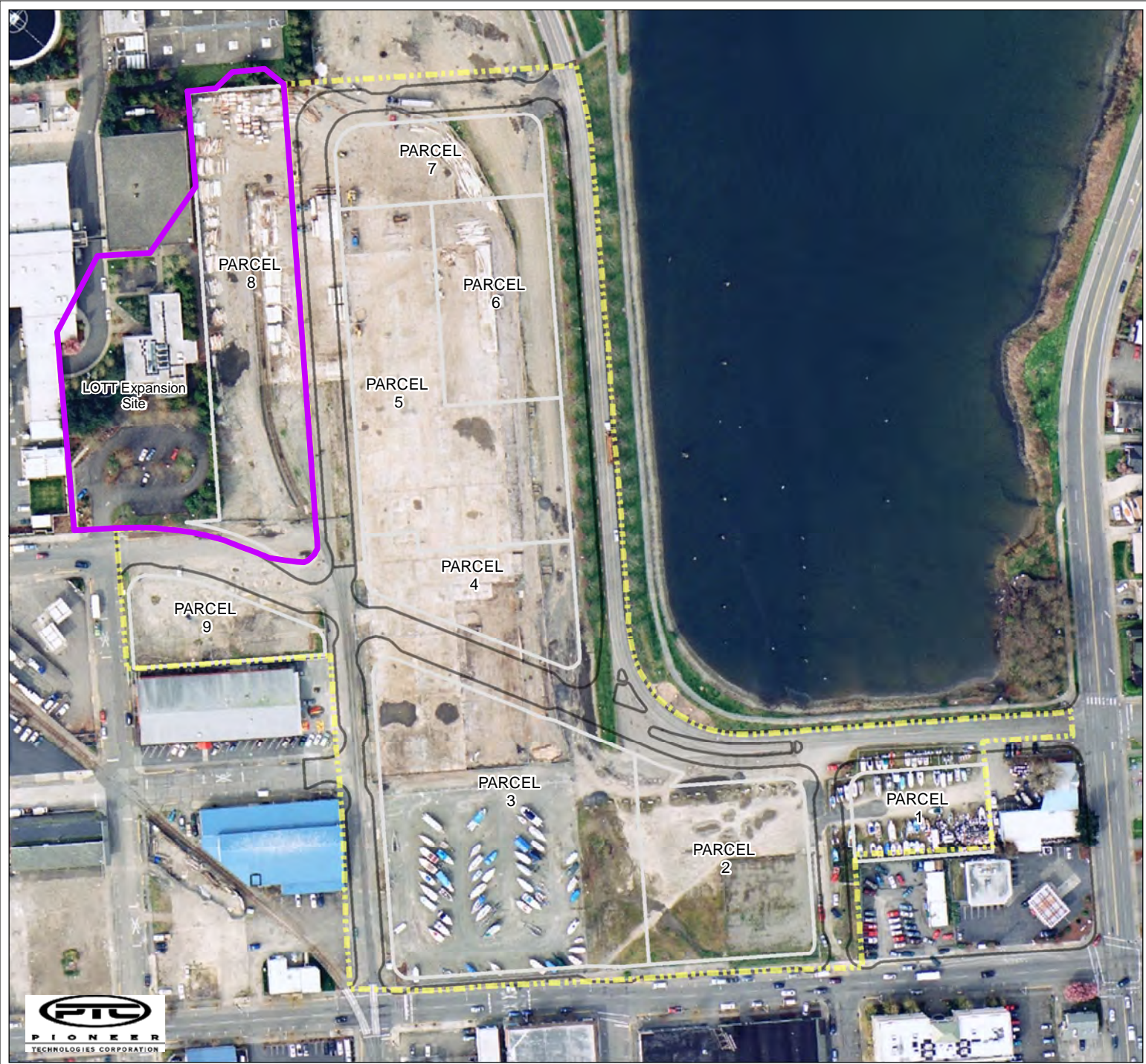
Exhibit A: Location of the Site

Port of Olympia
 May 2010



EXHIBIT B

LOTT EXPANSION SITE LOCATION



Legend

-  LOTT Expansion Site
-  East Bay Redevelopment Boundary
-  Parcel Boundaries
-  Paved Roads

Notes:
 The final East Bay Development site boundary has not been established.
 The locations of all features are approximate.



0 50 100 200 Feet

Exhibit B: LOTT Expansion Location

Port of Olympia
 May 2010



EXHIBIT C

EXTENT OF HISTORICAL OPERATIONS



Legend

- East Bay Redevelopment Boundary
- Parcel Boundaries
- LOTT Expansion Site
- Paved Roads
- On-Site Historic Operations**
- H.G. Richardson's Shingle Mill (1908)
- Olympia Door Co. Sash and Door Factory (1908-1924)
- Olympia Venerer Co. (1924)
- Olympia Planning Mill & Sawmill (1888-1896)
- St. Paul and Tacoma Lumber Co. (1942 - 1968)
- Off-Site Historic Operations**
- Hyak Lumber Co. (1946-1968)
- Olympia Door Co. Sawmill (1908)
- Springer Sawmill (1924-1947)

Notes:

The final East Bay Redevelopment site boundary has not been established.

The locations of all features are approximate.

Source: GeoEngineers and PIONEER Remedial Investigation Work Plan, East Bay Redevelopment, Port of Olympia, October 22, 2008 as amended with January 30, 2009 replacement pages.

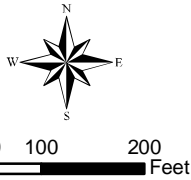


Exhibit C: Extent of Historic Operations

Port of Olympia
May 2010



EXHIBIT D

AREAS OF CONCERN (AOCs)



AOC ID	Description of Historic Features
AOC 02	Panel Oiling
AOC 03	Spray Prints
AOC 04	Propane Lift Truck Fueling Shed
AOC 09	Oil House
AOC 10	Engine Room
AOC 11	Unidentified Structure
AOC 12	Machine Shop
AOC 13	Blacksmith Shop
AOC 14	Tar Dipping Tank North
AOC 15	Tar Dipping Tank South
AOC 16	Oiled Cooled Transformer on concrete pad
AOC 17	Boiler House
AOC 18	Fuel Bin
AOC 19	Flammable Liquids
AOC 20	Hog Fuel Pile on Ground
AOC 21	Oil House
AOC 22	Power House
AOC 23	Power House
AOC 24	Steam and Power Plant
AOC 25	Shop (Use Unknown)
AOC 26	Shop (Use Unknown)
AOC 27	Fuel Bin
AOC 28	Transformer Vault
AOC 29	Oil House
AOC 30	Fenced Electrical Enclosure
AOC 31	Jitney Shop
AOC 32	Electronic Shop
AOC 33	Machine Shop
AOC 34	Welding Shop
AOC 35	Engine (Type Unknown)
AOC 36	Engine (Type Unknown)
AOC 37	Repair Shop
AOC 38	Blacksmith Shop
AOC 39	Logway
AOC 40	Glue House
AOC 41	Blacksmith Shop
AOC 41	Blacksmith Shop
AOC 42	Machine Shop
AOC 52	Diesel Fuel Release
AOC 53	Power House
NONE	Planing Mill & Sawmill
NONE	Planing Mill & Sawmill

Legend

- Areas of Concern (AOC)
- East Bay Redevelopment Boundary
- Parcel Boundaries
- LOTT Expansion Site
- Paved Roads

Notes:

The final East Bay Redevelopment site boundary has not been established.

The locations of all features are approximate.

Source: GeoEngineers, Draft Remedial Investigation/Feasibility Study and Conceptual Cleanup Action Plan, East Bay Redevelopment, Port of Olympia, December 20, 2007.

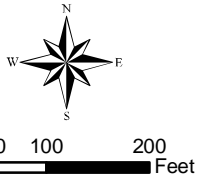


Exhibit D: Areas of Concern

EXHIBIT F

Required Permits/Approvals

Laws and regulations addressing permits or federal, state, or local requirements that Ecology believes may be applicable at the time of entry of this Order are listed below. Work performed shall be in accordance within the substantive requirements of any applicable law or regulation.

1. Chapter 90.48 RCW (State Water Pollution Control Act) and Chapter 173-220 WAC (National Pollutant Discharge Elimination System (NPDES) Permit Program Regulations).
2. Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations).
3. Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations).
4. Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells).
5. Chapter 43.21C RCW (State Environmental Policy Act), and Chapter 197-11 WAC (State Environmental Policy Act Rules).
6. Chapter 90.58 RCW (Shoreline Management Act) and Chapter 173-27 WAC (Shoreline Management Act Rules).
7. Washington Industrial Safety and Health Act (WISHA).
8. Applicable City of Olympia Municipal Codes.
9. Applicable Thurston County Codes.