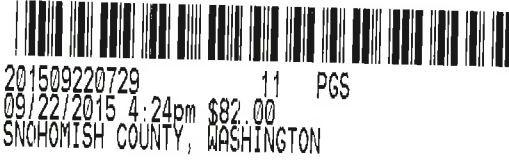


After Recording Return
Original Signed Covenant to:
Nicholas M. Acklam
Toxics Cleanup Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600



Environmental Covenant (5/7/14 version)

Grantor: Port of Everett

Grantee: State of Washington, Department of Ecology

Brief Legal Description: Section 18 Township 29 Range 05 Quarter SE - LOT 16 BSP FOR DIV 2 OF PORT OF EV N MARINA REC UND AFN 200708105298 BEING PTN NW1/4 SE1/4 SD SEC 18

Tax Parcel Nos.: [29051800401100]

Cross Reference:

This Environmental Covenant is submitted as an addition to a Request for No Further Action determination, dated April 27, 2015 titled "Environmental Investigation and Cleanup Documentation American Boiler Works/ Bayside Marine Site"

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as **North Marina Bayside ABW Site, Facility ID 9286485**. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principle contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	None
Groundwater	Arsenic
Surface Water/Sediment	None

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. This includes the following document:

- 2015 Environmental Investigation and Cleanup Documentation Report, Landau Associates

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) 42 USC Chapter 103.

COVENANT

Port of Everett, as Grantor and **fee simple** owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter “Ecology”) the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. **Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public

notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Groundwater use

The groundwater beneath **the Property** remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. No groundwater may be taken from the property for domestic use therefore drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted **from the Property** for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law. Please see Appendix I.

b. Monitoring

Several **groundwater monitoring wells** are currently located on the Property to monitor the performance of the remedial action. The number and locations of monitoring wells may change, subject to approval from Ecology, to facilitate redevelopment and ongoing operation at the Property. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs. Please see Appendix I.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest **in any part of the Property**, including but not limited to title, easement, leases, and security or other interests, must:

i. Notify Ecology at least thirty (30) days in advance of the conveyance.

- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE SNOHOMISH COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.
- c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
- d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Port of Everett c/o Elise Gronewald P.O. Box 538 Everett, WA 98206 (425) 388-0630	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 5. Modification or Termination.

- a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.

- b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

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

EXECUTED this 22 day of SEPTEMBER, 2015.

PORT OF EVERETT



Executive Director

Dated: 9/1/2015

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Dated: 9/9/15

GRANTOR INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 9th day of September, 2015, I certify that Barry Rogowski ^{Rogowski} ~~Rogowski~~ _{rao} 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.



Valerie L. Pearson
Notary Public in and for the State of
Washington, residing at Lacey, WA.
My appointment expires 03-28-2016

GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Snohomish

On this 1st day of September, 2015 I certify that Les Beardruz personally appeared before me, acknowledged that he/she is the CEO/Executive Director 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.



Susan Brokaw
Notary Public in and for the State of
Washington, residing at Everett.
My appointment expires 1/29/18

Exhibit A

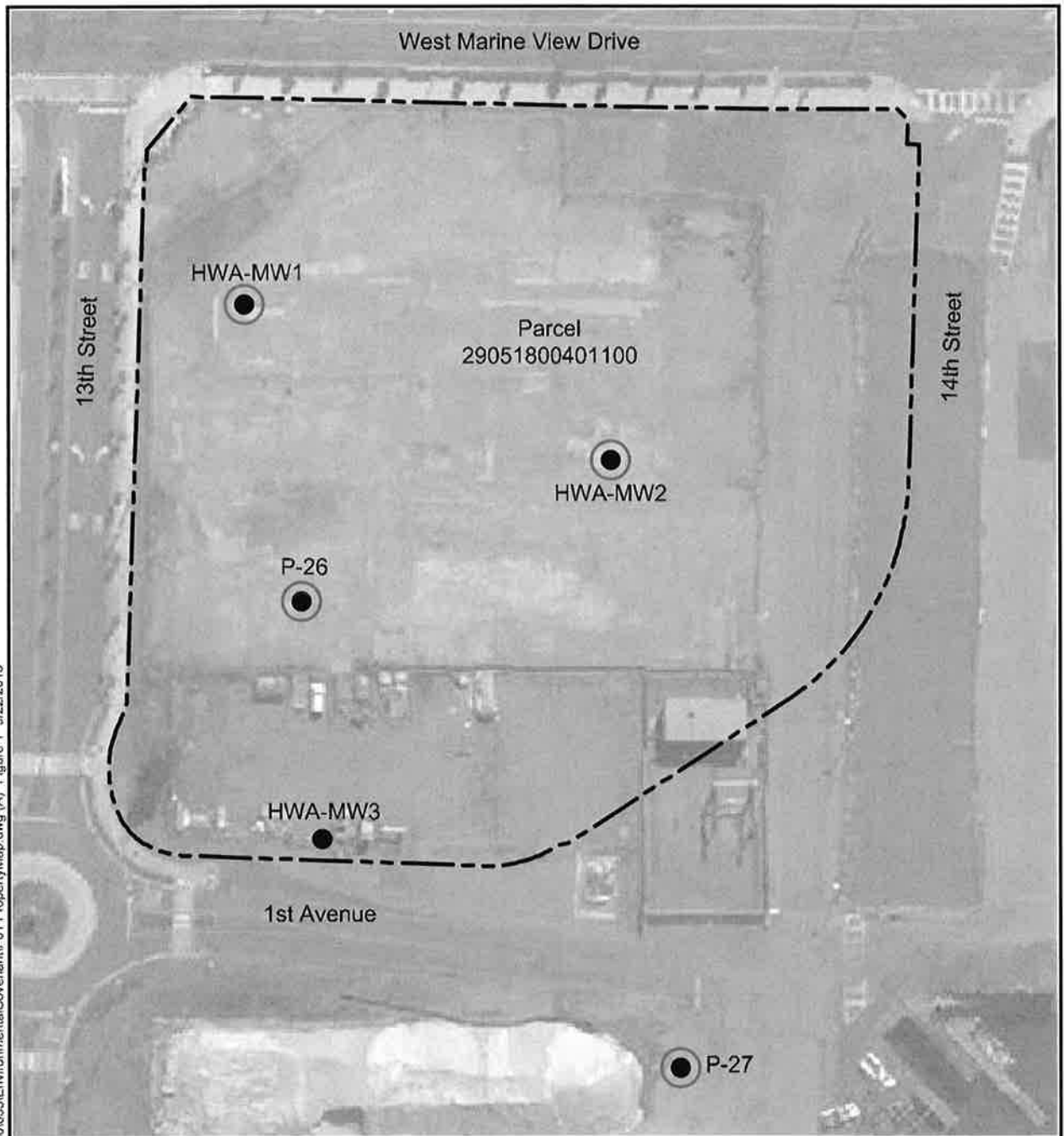
LEGAL DESCRIPTION

Section 18 Township 29 Range 05 Quarter SE - LOT 16 BSP FOR DIV 2 OF PORT OF EV N
MARINA REC UND AFN 200708105298 BEING PTN NW1/4 SE1/4 SD SEC 18

Exhibit B
PROPERTY MAP

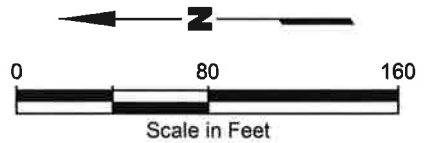
EXHIBIT B

LANDAU ASSOCIATES, INC. | G:\Projects\1471037\030\035\Environmental\Covenant\F01_PropertyMap.dwg (A) Figure 1 9/22/2015



Legend

- Monitoring Well Location
- Monitoring Well to be Included in Monitoring Network
- - - - - Snohomish County Parcel Line / Area of Groundwater Use Restriction



Source: ©Bing Imagery, 2015; Snohomish County GIS (parcel data);



North Marina
ABW/Bayside Marine VCP Site
Port of Everett, Washington

Property Map

Figure
1

Exhibit D

SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That _____, the owner and holder of that certain _____ (Instrument) bearing the date the _____ day of _____, 20____, executed by _____, _____, and recorded in the office of the County Auditor of _____ County, State of Washington, on the _____, 20____, under Auditor's File Number _____, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated _____, 20____, executed by _____, and recorded in _____ County, Washington under Auditor's File Number _____.

Dated _____, 20____.

NAME

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 _____.

APPENDIX 1

SITE-SPECIFIC COVENANT PROVISIONS

a. Groundwater Use.

The groundwater beneath **the Property** remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted **from the Property** for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

b. Monitoring.

Several **groundwater monitoring wells** are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

The property is planned for redevelopment. Once a final redevelopment plan is in place, the number and locations of monitoring wells may change, subject to approval from Ecology, to facilitate redevelopment and ongoing operation at the Property.

Compliance groundwater monitoring will be conducted quarterly for the first year followed by annual monitoring for four years at monitoring wells HWA-MW1, HWA-MW2, P-26, and P-27. Samples will be analyzed for dissolved arsenic, nitrate, sulfate, and methane. A technical memorandum will be prepared and submitted to Ecology following each quarterly monitoring event for the first year, and annual monitoring reports will be prepared and submitted for the following 4 years.

Following five years of monitoring, groundwater conditions will be evaluated to determine if additional monitoring is warranted. The Grantor may petition Ecology for reduced frequency or cessation of monitoring if groundwater concentrations are below cleanup levels, or are consistent with current conditions; i.e. concentrations of arsenic in groundwater are above the MTCA Method A cleanup level (5 µg/L) only where reducing conditions are occurring, and groundwater meets the arsenic MTCA Method A cleanup level at the conditional point of compliance, down-gradient monitoring well P-27. If groundwater concentrations exceed the arsenic MTCA Method A cleanup level at the conditional point of compliance, or if groundwater conditions change (indication that reducing conditions are no longer occurring, significant changes to groundwater concentrations observed, etc.) groundwater monitoring frequency will be re-evaluated and additional cleanup action may be required.