STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	AGREED ORDER
KIMBERLY-CLARK WORLDWIDE, INC., a Delaware Corporation, PORT OF EVERETT, and WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES.	No. DE 11350

TO: KIMBERLY-CLARK WORLDWIDE, INC.
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PORT OF EVERETT
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EXHIBITS

I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology), Kimberly-Clark Worldwide, Inc. (K-C), the Port of Everett (Port), and Washington State Department of Natural Resources (DNR) 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. This Order requires K-C, the Port, and DNR (collectively the potentially liable persons [PLPs]) to conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and WAC 173-204-560, and to develop a draft Cleanup Action Plan (DCAP) per WAC 173-340-350 through 173-340-380 and WAC 173-204-560 through and 173-204-580, addressing potential in-water (e.g., marine sediment) contamination at the Site. Ecology believes the actions required by this Order are in the public interest.

B. This Order shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts.

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 PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 the East Waterway Site and is generally located in the Everett Harbor area (along the industrialized waterfront), directly west of downtown Everett. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally described in the Site location map and vicinity diagram provided in **Exhibit A**, Figures 1 and 2. The Site constitutes a Facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology, Kimberly-Clark Worldwide, Inc., the Port of Everett, and the Washington State Department of Natural Resources.

C. Potentially Liable Person (PLP): The PLPs for the Site include Kimberly-Clark Worldwide, Inc. (K-C), the Port of Everett (Port), the United States Department of the Navy (Navy), and the Washington State Department of Natural Resources (DNR). Although the Navy is a PLP for this Site, the reference to PLPs in this Order refers only to K-C, the Port, and DNR.

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.

V. FINDINGS OF FACT

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

A. The East Waterway is located in the Everett Harbor area (along the industrialized waterfront) at the mouth of the Snohomish River, directly west of downtown Everett, Snohomish County, Washington. The Site location is depicted in the diagram attached to this Agreed Order as **Exhibit A**. The Facility Site ID No. is 2733 and the Cleanup Site ID No. is 4297.

B. K-C is an owner and an operator at the Site. Predecessors in interest to K-C operated a pulp and paper mill at East Waterway from about 1931 until 1995, when K-C merged with Scott Paper Company. K-C operated the facility from 1995 until its shutdown in April 2012.

C. The Navy is an owner and an operator at the Site. The Navy owned and operated a Naval Industrial Reserve Shipyard at East Waterway, which included portions of East Waterway tidelands, from about 1942 to 1960. In 1986, the Navy re-purchased the land that was once used for its shipyard operations from the Port and developed its current Naval Station Everett.

D. The Port is an owner and an operator at the Site. The Port currently owns and operates several marine terminals (i.e., Hewitt, Pacific, and South Terminal) located at East Waterway. In addition, the Port is a former owner and operator of properties that are currently owned by the Navy at East Waterway. Those properties were also owned and/or operated, at various times, by Pacific Tow Boat Company (Pacific Tow Boat) and Foss Launch & Tug Co. (Foss), among others.

E. DNR is the manager of the State-owned aquatic lands under constitutional and statutory mandates. Title 79 RCW authorizes DNR to lease state-owned aquatic lands. On September 1, 2002, DNR entered into a Port Management Agreement (PMA) with the Port of Everett (Port) that is effective until August 31, 2032. Under the PMA, DNR delegated to the Port the management of "State-owned aquatic lands" within East Waterway as shown in **Exhibit A**, Figure 3. RCW 79.105.420 authorizes DNR and the Port district, upon request of a Port district, to enter into an agreement to manage "State-owned aquatic lands" that front property owned or controlled by the Port district.

F. Historical operations and current property status of the Site are summarized below.

1. Sanborn maps published in 1902 and 1914 show that the current K-C Site (between Everett Avenue and 21st Street) was occupied by the Clark-

Nickerson Lumber Company (planing and saw mill) and the Everett Flour Mill Company.

2. Puget Sound Pulp and Timber Company formed in 1927, and in 1936 the Soundview Pulp Company assumed ownership. The sulfite pulp mill began operation in 1931 with five digesters and two pulp drying machines.

3. Soundview Pulp Company merged with Scott Paper Company in 1951 and four Scott tissue machines were added to the facility from 1953 to 1955. The current distribution/warehouse facility located on the south end of the site was constructed in 1959.

4. K-C and Scott Paper Company merged in 1995 and K-C was later registered as owner of the pulp and paper mill.

5. K-C continued pulp and paper mill operations until all manufacturing at the K-C mill ceased on April 15, 2012. Prior to this (on March 30, 2012), K-C submitted permit applications and a State Environmental Protection Act (SEPA) checklist with the City of Everett for demolition activities proposed for its mill. The activities included demolition of the K-C mill facility upland from the shoreline, not including any structures or utilities wholly located more than 2 feet below existing grade. The purpose of the mill demolition was, following facility closure, to prepare the property for sale. The City of Everett issued a final determination of non-significance (DNS) related to these activities on May 25, 2012. Demolition of the K-C mill started in summer 2012 and was completed in July 2013.

6. On December 20, 2012, Ecology and K-C entered into Agreed Order DE 9476 for performing an RI/FS, conducting opportunistic interim actions (*i.e.*, removal of contamination in the uplands), and preparation of a DCAP for the K-C upland area. This work is currently being conducted by K-C per the Agreed Order.

7. **Mill Production** – The sulfite mill produced approximately 500 tons per day of bleached sulfite pulp as reported in 1942. After 2007, the sustainable production capacity of the mill was estimated at 440 tons per day, with a maximum capacity of 450 tons. The sulfite pulping process involves cutting logs into wood chips which are then digested in a limestone and sulfur solution. The limestone and sulfur are treated to produce sulphurous acid, which was used in the cooking process. According to Ecology's industrial section, the mill was converted to an ammonia-based sulfite process in 1974 and a recovery furnace was built.

8. **Wood Chipping and Log Rafting** – The facility contained a log pond that was used for temporary storage of logs that were rafted to the mill. **Exhibit A** Figures 4 to 7 show the log pond. The logs were chipped on-site. The log chipping equipment was removed and operations were discontinued at the mill in 1970. The log pond was filled in sometime between 1979 and 1981. In addition to the on-site chipping operations, K-C also barged wood chips to the mill for use in pulp and paper manufacturing during its operational history.

9. **Surface Water Discharges** – Until 1951, all wastewater from the mill was discharged untreated to the In-Water Area at outfalls located adjacent to the facility. It was reported in 1949 that the K-C mill discharged approximately 45 million gallons of wastewater daily into the In-Water Area. Wastewater from the K-C mill, which was discharged through up to seven on-site sewers (*see* **Exhibit A**, Figure 11), largely consisted of concentrated sulfite waste liquor (SWL), waste bleach water, and pulp fiber wash water. In 1951, concentrated SWL from the mill was re-routed to a deep-water outfall (Outfall SW001) located south of the facility in the vicinity of the former Weyerhaeuser Mill A pulp and paper mill (*see* **Exhibit A**, Figure 12). Concentrated SWL from the Weyerhaeuser Mill A mill operation was also discharged through Outfall SW001 at this time. Outfall SW001 extended about 3,000 feet offshore; the terminal one-third was a multiple-port diffuser that discharged at depths of about 300 to 340 feet.

   In 2004, K-C constructed for itself and the City of Everett a joint deepwater outfall replacement project (Outfall 100) to replace deep water Outfall SW001, which was dilapidated and demolished in the nearshore area. Outfall 100 is located in the same general vicinity as former Outfall SW001 (*see* **Exhibit A**, Figure 12). Outfall 100 became fully operational in 2005. Under its National Pollutant Discharge Elimination System (NPDES; Permit No. WA-000062-1) permit, K-C was authorized to discharge treated process wastewater, storm water, and non-contact cooling water from deep water Outfall 100. Regional municipal wastewater from the Cities of Everett and Marysville was and continues to be discharged through Outfall 100. K-C was also authorized to discharge treated process wastewater, storm water, and non-contact cooling water from Outfalls 003 and 008 in emergencies and shutdowns. Outfalls 003 and 008 are identified on **Exhibit A**, Figure 11. On September 5, 2012, K-C sent Ecology's Industrial Section a notice of their intent to surrender NPDES permit WA-000062-1. Ecology's Industrial Section sent K-C correspondence on September 19, 2012 that NPDES permit WA-000062-1 was terminated.

10. **Wastewater Treatment** – In July 1965, the mill put into operation waste sedimentation facilities (with two primary clarifiers) and an interceptor sewer system (*see* **Exhibit A**, Figure 6). Prior to implementation of this system in 1965, mill wastes were directly discharged untreated to the In-Water Area through seven sewers, or to deep-water Outfall SW001 as discussed in subparagraph 9 of paragraph F, section V. An industrial wastewater treatment plant was constructed at the K-C mill in 1979 and put on-line in January 1980 (**Exhibit A**, Figures 8 and 9). The plant included two secondary clarifiers and secondary aeration basins.

11. **Bulk Petroleum Operations** – In addition to the pulp and paper operations, bulk petroleum storage operations were conducted on the Site. These bulk petroleum storage operations included fuel storage facilities operated by Associated Oil Company (predecessor to Texaco) and Standard Oil (predecessor to Chevron). As early as 1930, Associated Oil Company and Standard Oil occupied the area underneath the K-C distribution/warehouse.

Bulk petroleum storage operations associated with Associated Oil and/or Standard Oil are identified on aerial photographs from 1947 to 1992 as presented in **Exhibit A**, Figures 4 through 9. In about 1994-1995, the mill switched from Bunker C oil to diesel as fuel for the facility's Number 14 boiler. At that time, the most eastern tank located just north of the distribution warehouse was replaced with a 250,000-gallon diesel above ground storage tank (AST; *see* **Exhibit A**, Figure 10). The original tank at this location stored sulfite liquor.

12. **Hazardous Waste** – During its operation, the K-C facility was a Resource Conservation and Recovery Act (RCRA) regulated waste generator. The facility generated more than 2,200 pounds/month of RCRA regulated wastes. As a result, the facility was a "Large Quantity Generator" of dangerous wastes and is subject to the accumulation standards of WAC 173-303-200. Ecology conducted a dangerous waste inspection at the facility on November 16, 2009 and identified the following waste streams to be present at that time: polychlorinated biphenyl (PCB) ballast, fluorescent lights, used oil, paint, thinner, desiccant, dye, mortar containing lead, grease, paint chips with lead, spray cans, and lab waste. As part of the decommissioning and demolition of the mill, K-C prepared a closure report that documented the RCRA clean closure of the former pulp and paper mill, including its Hazardous Waste Accumulation Unit (HWAU). Ecology's Industrial Section approved this report on November 12, 2013.

G. Navy historical operations are summarized below.

1. The Navy purchased a mole/dike (constructed by the Port in the early 1930s) and adjacent East Waterway tidelands (close to 85 acres) over a span of two years (1942 to 1943) for the development of their Naval Industrial Reserve Shipyard. The Naval Industrial Reserve Shipyard was used in part to accommodate ships undergoing repair and for the launching and final outfitting of new vessels. The approximate boundary of the Navy's Industrial Reserve Shipyard is presented on **Exhibit A**, Figures 4 to 10.

2. The Naval Industrial Reserve Shipyard, initially operated by the Everett Pacific Shipbuilding and Drydock Company, included a series of docking facilities (Piers A to E), drydock areas, ship building platforms (a.k.a., shipways), and associated storage, fabrication, and assembly structures. Ship building platforms and drydock areas were located on the inner harbor side of the central mole, with fabrication, assembly, and rigging shops located along the western edge of the central mole (**Exhibit A**, Figure 4). Facilities on the north mole included machine, electrical, metal, and pipe shops along with offices and storage areas (**Exhibit A**, Figure 4). Paint shops were associated with five docking piers: three piers (A, B, and C) were located on the central mole, and two piers (D and E) on the inner harbor side of the north mole (**Exhibit A**, Figure 4). It was reported that during World War II, Everett Pacific Shipbuilding and Drydock Company built net laying ships, non-self propelled barracks ships, self-propelled covered lighters, barges, little harbor tugs, and mobile drydocks at the Navy Industrial Reserve Shipyard in Everett.

Larger ships were repaired at the piers. The Naval Industrial Reserve Shipyard was operated from 1942 to 1944 by Everett Pacific Shipbuilding and Drydock, and then Pacific Car and Foundry bought the business in 1944. The shipyard operated until 1949, however the Navy maintained ownership until the early 1960s using it in part for their Military Sea Transportation Service (MSTS) Reserve Fleet.

3. In 1959, the Pacific Car and Foundry Company maintained and protected the shipyard at the expense of the Navy. In the early 1960s, the majority of the Navy property was sold to private parties which reportedly included the Scott Paper Company (now K-C), Western Gear, and Foss.

4. In around 1987, the Navy re-purchased the land that was once used for its shipyard operations and developed its current Naval Station Everett (**Exhibit A**, Figures 9 and 10). The Navy purchase included the Port's Pacific Terminal and the Western Gear Property (about 53 acres), and the Port's 80-acre Norton Terminal. *See* paragraph I, section V. *infra* for a summary of Western Gear operations. The Port's Pacific and Norton Terminals were formerly located at the head of East Waterway as shown on **Exhibit A**, Figure 8. As part of the development of Naval Station Everett, the Navy dredged portions of the East Waterway in the vicinity of its two carrier piers and associated breakwater which are shown on **Exhibit A**, Figure 10. The Navy's current property boundary is shown on **Exhibit A**, Figures 4 to 10.

5. In addition to the Navy Shipyard discussed in subparagraphs 1–3 of paragraph G, section V., the Navy constructed a Naval Reserve Center (NRC) in 1947 on lands formerly occupied by the Clark-Nickerson Company planing and sawmill (**Exhibit A**, Figures 4 to 9). The former NRC served as the administrative and operations base for local naval reserve activities. From 1947 until about 1981, naval vessels regularly docked at the former NRC pier. The NRC is shown in **Exhibit A**, Figures 4 to 10). The NRC facility was on a 3.72-acre plot of land and included a main facility (Building No. 1) that consisted of 34 rooms including a garage/shop, boiler room, and diesel generator room. Building No. 2, located just east of Building No. 1, was a former indoor pistol and rifle range that had been renovated and contained classrooms, administrative areas, and a large machine, wood, and sewing shop. Buildings 1 and 2 are shown on **Exhibit A**, Figure 5. Other site features included a paved parking area, a storage shed for paints and associated chemicals, a shed housing a bilge water tank (removed), a valve house, and a pier. Two diesel underground storage tanks (USTs; 5,000 gallon Tank 1 and 3,000 gallon Tank 2) were located immediately south of the boiler room, and supplied fuel for the steam boiler and electrical generator. In the mid-1990s, as part of a Land Exchange Agreement with K-C, the Navy exchanged their NRC property for a K-C owned parcel located north of the current K-C northern boundary. As part of the Land Exchange Agreement, the Navy removed the two diesel USTs (in July 1996) and conducted remediation of environmental contamination resulting from these tanks and other Navy actions at the former NRC. Sampling conducted as part of the K-C upland area RI/FS (under Agreed Order DE 9476) in the area formerly

occupied by the NRC showed that there is still contamination in this area. Further investigation and an interim action cleanup of the NRC area were conducted by K-C under the K-C upland area Agreed Order (DE 9476).

H. Port of Everett (Port) historical operations are summarized below.

1. In 1930, the Port produced a proposal to construct a mole or dike extending from 21st Street into the Snohomish River channel to form the East Waterway. The proposal included improvements to the breakwater jetty and dredging of a deep-water loading basin adjacent to the Clark-Nickerson operation. The Port purchased Tract 0 in 1931, and the initial phase of construction was completed by 1932 (*see* mole configuration on **Exhibit A**, Figure 10). The improvements consisted of two bermed and filled extensions including the main mole and a loading facility for the Clark-Nickerson operation, the latter extending into the present East Waterway area south of 21st Street. As noted in subparagraph 1 of paragraph G, section V., the Navy purchased the mole/dike in the early 1940's along with East Waterway tidelands.

2. The Navy sold its properties (except for the NRC) to private parties in the early 1960s, including affiliates of Foss. The Port re-purchased a portion of the former Navy property (i.e., areas surrounding Piers B, D, and E along the East Waterway), including adjacent submerged and filled lands north of the former Navy property in the early to mid 1970s. The re-purchased Port properties included the Norton Terminal (upland area) and the Pacific Terminal (area surrounding Piers B, D, and E along the East Waterway) as shown on **Exhibit A**, Figures 7 and 8. After purchasing the properties, the Port expanded the upland portion of the Norton Terminal through a hydraulic fill operation between 1978 and 1979. The Port operated the Norton Terminal as a waterfront industrial and shipping site. At Pacific Terminal, the Port leased space to several industries including: Viking Wire Rope Company, Foss Launch and Tug Company, and Dunlap Towing (**Exhibit A**, Figure 8). Piers B, D, and E at the Pacific terminal were used for log loading along with handling of other commodities. The Port sold its Norton and Pacific Terminal properties to the Navy in around 1987.

3. The southeast margin of the East Waterway area currently contains the Port's Hewitt Terminal as shown on **Exhibit A**, Figure 10. Note that the Port's Pacific Terminal is now located just south and adjacent to Pier 1 as shown on **Exhibit A**, Figure 10. The Port's South Terminal, which is part of the Weyerhaeuser Mill A Former Site, can be seen on **Exhibit A**, Figures 2 and 10. The Port's terminals have handled cargo such as logs, lumber, pulp, steel, aerospace components, alumina ore, cement, ingots, breakbulk cargo (e.g., excavators, windmill blades), roll-on/roll-off cargo (e.g., cars and trucks), and agricultural products. The Port has historically operated wood-products (e.g., whole logs, pulp, lumber) export facilities in the East Waterway. Industries that occupied space within the Port's Hewitt Terminal in 1988 included Anaconda Aluminum, Everett Cold Storage (American Ice & Cold Storage), and Johnston Petroleum Products (Mobil Oil Co.). Some of the Port's current

tenants at the Hewitt Terminal include Vigor Shipyard, Dunlap Towing, and Lehigh Cement (**Exhibit A**, Figure 10).

I. Western Gear Company historical operations are summarized below

1. In 1961, the Western Gear Machinery Company replaced the shipyard on portions of the north and central moles as depicted in **Exhibit A**, Figures 6 to 8. The company purchased and occupied an upland portion of the mole and had no waterfront access to the East Waterway. Western Gear specialized in the manufacture of heavy equipment and machinery for the oil drilling industry. Other activities conducted by Western Gear included: heat treating, pickling, painting, and general operations such as fuel, oil, and chemical storage. Western Gear operated at the site until the sale of its property to the Navy in the mid-1980s.
2. Western Gear was a former permitted discharger of noncontact cooling water through historical Outfalls WG002 and WG003 as shown on **Exhibit A**, Figure 11. A 1985 inspection of the facility noted that PCB contamination was suspected adjacent to the sewers due to faulty joints, and at the outfalls. It was concluded that PCB contamination of the storm sewers was very probable. It was also noted in 1985 that the soil adjacent to the storm sewers were most likely heavily contaminated with oils.

J. **Stormwater Outfalls and Combined Sewer Overflows** – A number of municipal combined sewer overflows (CSOs) and stormwater outfalls have discharged, or continue to discharge, to the East Waterway as shown in **Exhibit A**, Figure 11. Stormwater outfalls that discharged to the East Waterway, as reported in 1988, are presented in **Exhibit A**, Figure 11. These stormwater outfalls were located on current or former properties owned by the Port, Scott Paper (now K-C), and Western Gear Company. Three storm drains are shown at the Port's Hewitt Avenue Terminal, and one is located on the Port's former Pacific Terminal near industrial outfall WG003. Surface runoff from the K-C property was discharged in four storm drain outfalls. In addition, the northern part of the K-C property was drained into the storm drain discharging near industrial outfall WG003. Another storm drain outfall was located at the northwest portion of the former Western Gear property. Historically, the Everett sewer system, which was constructed prior to the 1930s, discharged sewage directly to Port Gardner. In the 1960s, a system of gravity sewers, pump stations, regulators, and force mains were built to intercept most of these outfalls and convey the sewage to treatment lagoons. It is noted that the historical untreated sewage discharges in East Waterway occurred at the same general CSO

locations depicted in **Exhibit A**, Figure 11. CSOs from the City of Everett currently discharge to the East Waterway at three outfall locations: PS04 to PS06.

K. **Log rafting and handling** in East Waterway are summarized below.

1. The East Waterway has historically been a major log storage and handling area. Aerial photographs from 1947 to 1992 show log rafting in East Waterway (**Exhibit A**, Figures 4 to 9). Areas where log rafting occurred within the East Waterway, as presented in **Exhibit A**, Figure 13, were estimated based on the location of log rafts as they appear on the aforementioned aerial photographs.
2. Activities associated with log rafting, sorting, and handling in the East Waterway have been conducted primarily to support the following industries: sawmilling, pulp and paper milling, and log exporting.
3. Logs were historically rafted and handled in the East Waterway to supply lumber, pulp and paper mills in the vicinity of the waterway, including the Kimberly-Clark mill. As noted above, in 1970 the K-C mill ceased the use of rafted logs and switched over to using wood chips for the mill's fiber source. *See* subparagraph 8 of paragraph F, section V.
4. After the sale of the Naval Industrial Reserve Shipyard in the early 1960s, Pacific Tow Boat, Foss, and the Port, among others, conducted log exporting activities (i.e., rafting and handling of logs for export) at the former Navy Shipyard area. The Port's Hewitt, Pacific, and Norton terminals were used for log export starting in the early 1970s. *See* **Exhibit A**, Figure 7.
5. State-owned aquatic lands within East Waterway and managed by DNR have historically been leased for, or may have been occupied, with log rafts.

L. **East Waterway Conditions** – Based on studies going back to the 1930s, some of the environmental conditions documented within East Waterway have included low dissolved oxygen, low pH, sludge deposits, elevated sulfide concentrations, wood waste accumulations, volatile solids, and damage to fish life. These environmental conditions were the result of discharges and releases from multiple sources including log rafting operations.

M. **East Waterway Contamination** – Environmental investigations conducted in the late 1930s to present have documented the presence of chemical contamination including biological toxicity (i.e., bioassay failures) within the East Waterway. Sampling investigations between 1982 and 2013 have documented the following chemical contaminants in East

Waterway marine sediments above published Ecology Sediment Management Standards (SMS) (Chapter 173-204 WAC) for Puget Sound Marine sediments:

1. **Metals** – arsenic, copper, lead, mercury and zinc.
2. **Polycyclic Aromatic Hydrocarbons (PAHs)** – acenaphthene, anthracene, benzo(a)pyrene, benzo(g,h,i)perylene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, naphthalene, phenanthrene, pyrene, high molecular weight PAHs, and low molecular weight PAHs.
3. **Semivolatile Organic Compounds** – 1,4-Dichlorobenzene, 2,4-dimethylphenol, 2-methylnaphthalene, 2-methylphenol, 4-methylphenol, benzoic acid, benzyl alcohol, bis(2-ethylhexyl)phthalate, butylbenzylphthalate, dibenzofuran, di-n-octyl phthalate, hexachlorobenzene, N-Nitrosodiphenylamine, pentachlorophenol, and phenol.
4. **Total PCBs** have been detected above background concentrations**.**
5. **Dioxins/Furans** have been detected above background concentrations.

N. Releases of hazardous substances on upland areas adjacent to the East Waterway are potential sources of contamination to the waterway. Upland sources of contamination to the East Waterway from the K-C upland area are being addressed under Agreed Order DE 9476. Other potential upland source(s) of contamination to the East Waterway will be addressed under a separate agreed order(s). Some of the upland contamination associated with current Navy, K-C, and Port properties is generally described below. The current Navy, K-C, and Port properties are shown on **Exhibit A**, Figure 2.

1. **Navy Property** – Some of the operations that have occurred on the current Navy upland property (i.e., Naval Station Everett) include timber products manufacturing, ship building and repair, manufacturing of heavy equipment and machinery, and industrial activities associated with the former Norton and Pacific terminals operated by the Port. Upland contamination above MTCA cleanup levels identified during investigations conducted in the late 1980s and early 1990s as part of the development of Naval Station Everett is summarized below.
    a. **Soil** – Methylene chloride, trichloroethylene (TCE), naphthalene, PAHs, PCBs, and total petroleum hydrocarbons (TPH).
    b. **Groundwater** – Methylene chloride, 1,2-dichloroethane, TCE, bis(2-ethylhexyl)phthalate, dissolved cadmium, dissolved copper, dissolved nickel, dissolved zinc, and dissolved total cyanide.
2. **K-C Property** – Upland contamination above MTCA cleanup levels at the K-C property primarily include petroleum and metals in soil and groundwater.

The nature and extent of contamination in the upland portion of the K-C property is currently being investigated by K-C under Agreed Order DE 9476.

3. **Port Property (Hewitt Terminal)** – Petroleum contamination along with PAHs have been detected above MTCA soil cleanup levels on the Port's Hewitt Terminal. In addition, groundwater monitoring wells established on the Port's Hewitt Terminal as part of the ExxonMobil ADC investigation under Agreed Order DE 6184 have concentrations of dissolved petroleum in the diesel and oil ranges that exceed MTCA cleanup levels. Petroleum contamination in soil was documented at the Dunlap Towing facility located on the Port's Hewitt Terminal in the early 1990s during the decommissioning of two underground storage tanks (USTs).

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations by the PLPs:

A. DNR, K-C, and the Port are "owners or operators" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to DNR, and the Port dated April 18, 2013, and to K-C dated April 5, 2012, pursuant to RCW 70.105D.040, -.020(26) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that DNR, K-C, and Port are PLPs under RCW 70.105D.040. Ecology notified DNR and Port by letter on May 24, 2013, the Navy by letter on August 16, 2013, and K-C by letter on May 8, 2012 of this determination.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require 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.

E. 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, remedial investigation/feasibility study, or design of a cleanup action plan. Any party to this Order may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

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, as more fully described in the Scope of Work and Schedule attached to this Order as **Exhibit B**, and that these actions be conducted in accordance with Chapter 173-340 and 173-204 WAC unless otherwise specifically provided for herein:

A. The PLPs shall conduct the remedial actions fully described in **Exhibit B** to this Order. Generally, the PLPs shall perform the following:

- Develop a work plan for an RI/FS to fill any remaining data gaps identified based on a review of the previous site investigations. The RI/FS work plan shall address the in-water area of the Site. The work plan shall also identify upland sources of contamination that may result in potential releases of hazardous substances to the East Waterway Site in-water area. Any such upland sources identified under this Order will be addressed under separate actions, agreements, permits or orders. The results of past investigations should be described in the RI/FS work plan along with identifying data gaps that need filled.
- Perform an RI/FS study.
- Prepare an RI/FS report.
- Develop a draft cleanup action plan (DCAP) for the Site.

B. The PLPs shall perform the remedial actions required by this Order according to the work schedule set forth in **Exhibit B**.

C. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If the Parties agree on an interim action under Section VI.E, the PLPs shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

E. 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 under the Scope of Work and Schedule (**Exhibit B**), Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. 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). 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.

B. 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 its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (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.

C. Designated Project Coordinators

The project coordinator for Ecology is:

Andy Kallus
Toxics Cleanup Program
PO Box 47600, Olympia, WA 98504
Phone: 360-407-7259
E-Mail: akal461@ecy.wa.gov

The project coordinator for the PLPs is: **[to be determined]**

[Name]
[Address]
[Telephone]
[e-mail]

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 the 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 party at least ten (10) calendar days prior to the change.

D. 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 Chapter 18.220 RCW or RCW 18.43.130.

The project coordinator(s) for the PLPs is identified in Section VIII.C above. The project coordinator shall direct work under this Order; the PLPs shall notify Ecology in writing of the

identity of any other engineer(s), geologist(s), contractor(s), or subcontractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Ecology has received the current list of contractors and consultants.

E. Access

Subject to the terms of this paragraph, 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 (at least 72 hours) by email and phone to both the project coordinator and Site access coordinator for the PLPs, before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice.

Ecology shall undertake reasonable efforts to avoid interference with the demolition activities of the PLPs and their contractors. All persons who access the Site pursuant to this Section shall comply with any applicable Site security, health and safety requirements. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

F. 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. Attached as **Exhibit C** is Ecology Policy 840, Data Submittal Requirements.

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.E (Access), Ecology shall notify the PLPs 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.

G. Public Participation

A required Public Participation Plan has been developed for this Site; this Plan is attached as **Exhibit D**. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment.

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 list, 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. With respect to activities included under this Order, notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before initiating major meetings with the interested public and local governments, except as provided below. 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. A "major meeting with the interested public" is a meeting where (a) public notice is provided in advance; and (b) the meeting addresses activities specified under Section VII (Work to be Performed) or **Exhibit B** (Scope of Work and Schedule). For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs with respect to activities included under this Order 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 and subject to reasonable notice, 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. Everett Public Library
2702 Hoyt Ave
Everett, WA 98201

b. Department of Ecology
Toxics Cleanup Program
Headquarters Office
300 Desmond Drive SE
Olympia, Washington 98504-7600

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this site shall be maintained in the repository at Ecology's Headquarters in Lacey, Washington.

H. 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 to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If a PLP withholds any requested records based on an assertion of privilege, that PLP shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

I. Resolution of Disputes

1. In the event that a PLP(s) elects to invoke dispute resolution, the PLP(s) must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), a PLP(s) has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to seven (7) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those seven (7) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; the PLP's position with regards to the

dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLP(s) may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Headquarters Land and Aquatic Lands Cleanup Section Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

J. 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 twenty (20) 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;

c. Endangerment as described in Section VIII.L (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 PLPs 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.K (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.L (Endangerment).

K. 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.M (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. If the PLPs propose an amendment, 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.I (Resolution of Disputes).

L. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order 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 under this Order 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 this section, 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.J (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.

M. 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 complies 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.

N. 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 assure that the transfer mechanism prohibits uses and activities inconsistent with this Order and notifies all transferees of the restrictions on the use of the property.

O. 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. At this time, other than stormwater permits under 90.48 RCW, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW 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 determines 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.

P. Indemnification

The PLPs, including DNR to the extent permitted by law, agree to indemnify and save and hold Ecology, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify Ecology 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 Ecology, or the employees or agents of Ecology, 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. A liable party, who refuses without sufficient cause to comply with any term of this Order, 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.

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Effective date of this Order: 2/16/16

KIMBERLY-CLARK WORLDWIDE, INC.

Lisa Morden
Sr. Director, Global Sustainability
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Roswell, Georgia 30076
(920) 380-6755

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Barry Rogowski, Manager
Land and Aquatic Lands Cleanup Section
Toxics Cleanup Program
300 Desmond Drive Southeast
Lacey, Washington 98503
(360) 407-7226

Reviewed 8/24/15

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Megan Duffy
Deputy Supervisor for Aquatics and
Environmental Protection
1111 Washington St SE
Olympia, WA 98504-7001

THE PORT OF EVERETT

Les Reardanz
Chief Administrative Officer
The Port of Everett
P.O. Box 538
Everett, Washington 98206
(425) 259-3164

Effective date of this Order: 2/16/16

KIMBERLY-CLARK WORLDWIDE, INC.

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EXHIBIT A

SITE LOCATION, VICINITY, PROPERTY, AND HISTORICAL FIGURES

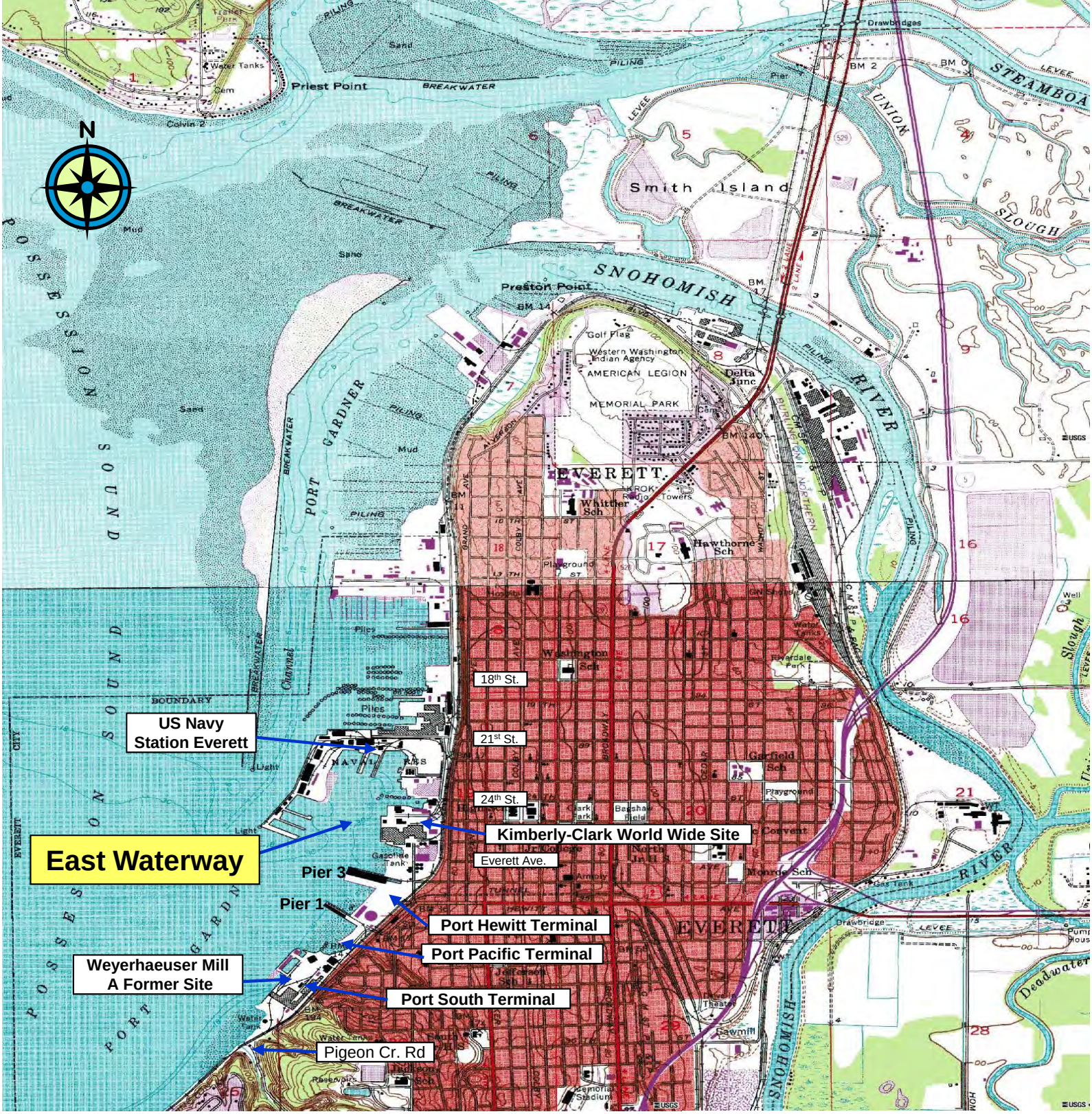


Exhibit A – Figure 1
Site Location Map

Source: USGS 7.5 Minute Quadrangle Maps (Everett and Marysville Quadrangle Maps; Photo Revised – 1968 and 1973)

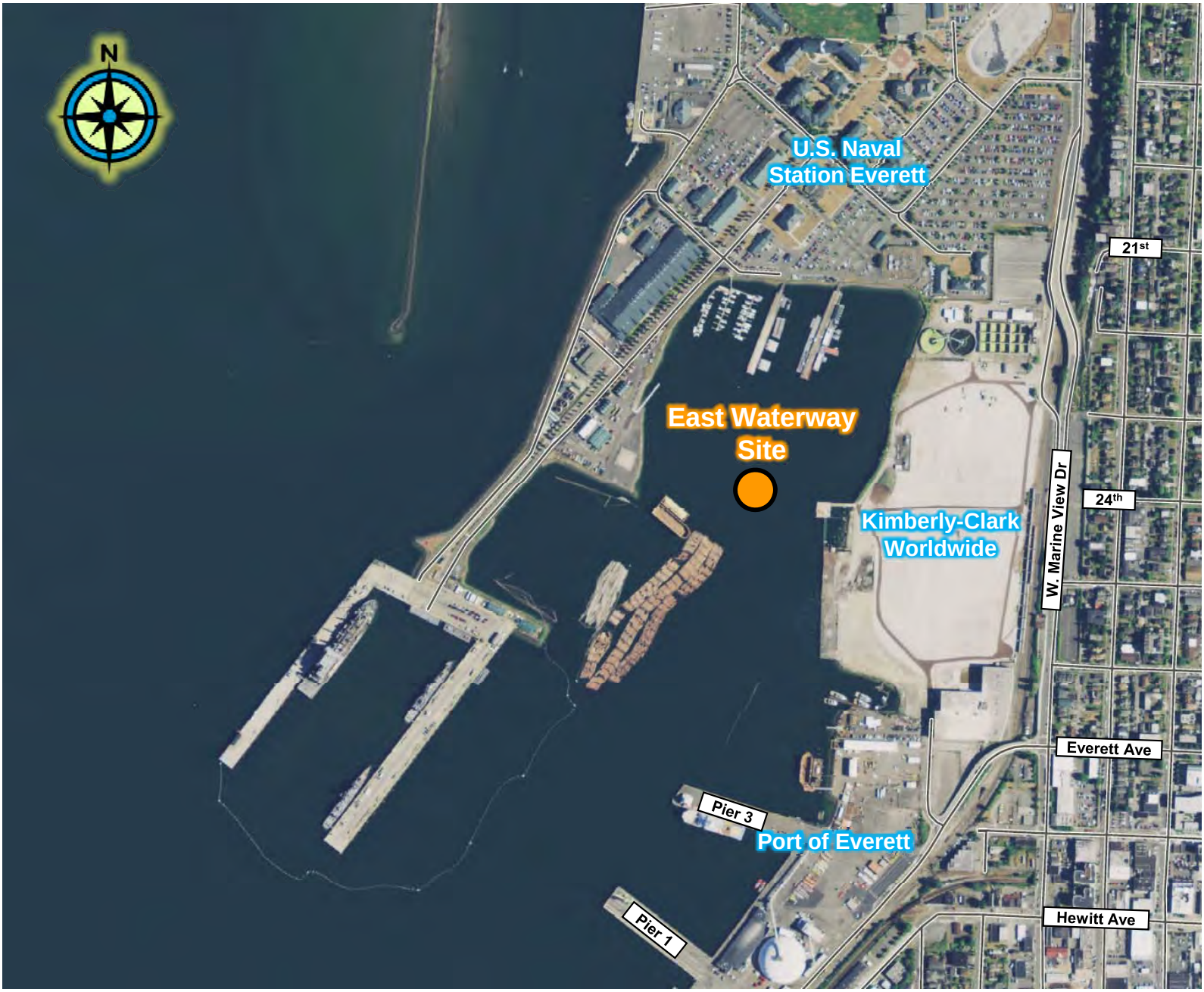


Exhibit A – Figure 2
East Waterway Site – General Site Vicinity

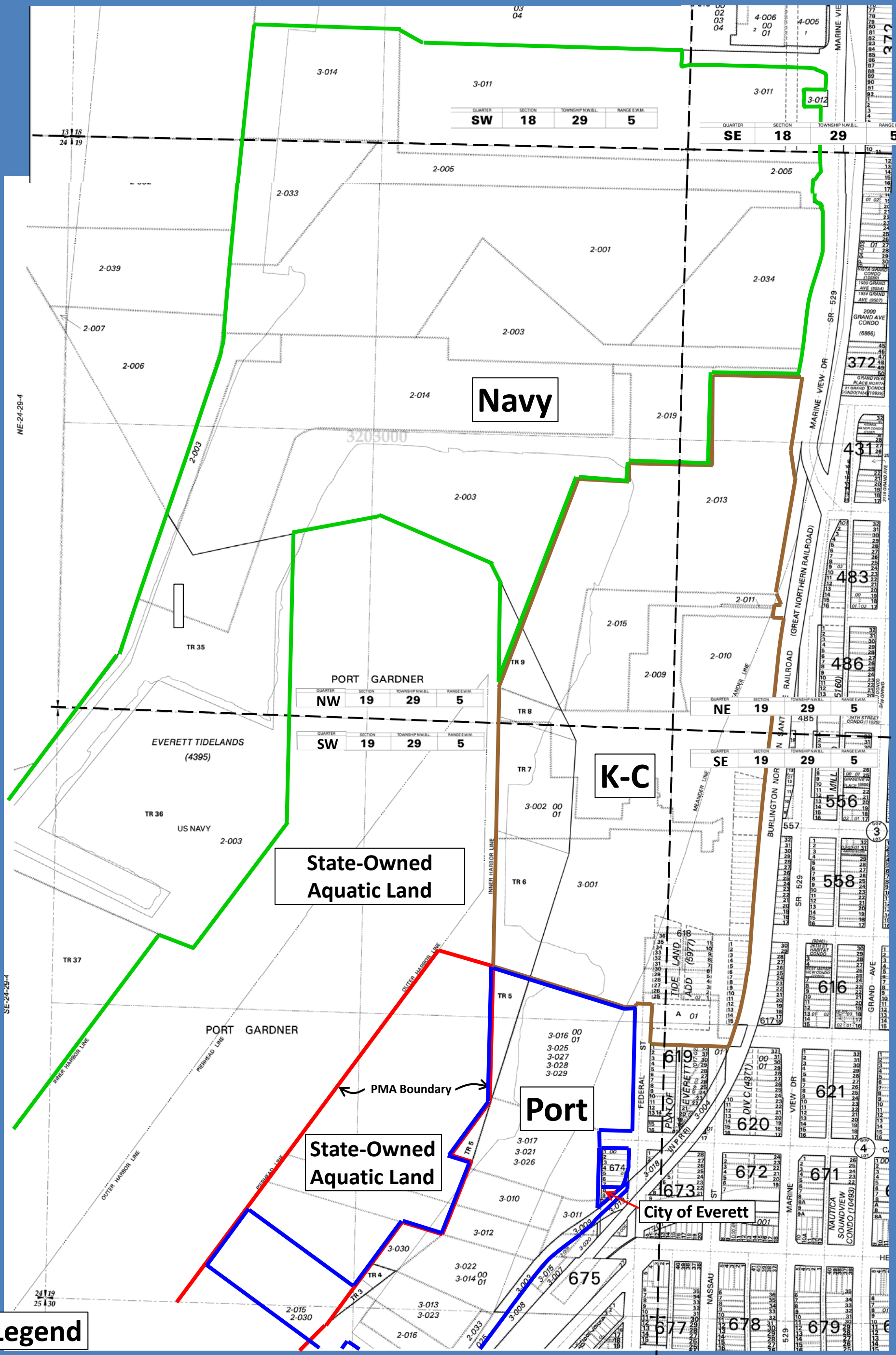


Exhibit A – Figure 3
Snohomish County Tax Parcel Map
Showing Township/Range/Section

16th st
17th st
18th st
19th st
21st st
Grand Ave
24th st
26th st
Everett Ave
Norton Ave
Former Clough-Hartley Mill
Gas Pumps
Door Factory
Robinson Manufacturing
Machine/Blacksmith Shops
Former Clark-Nickerson and North Star Lumber Mills
Fuel Vault
Boiler
Burner
Boiler
Standard Oil
Associated Oil
ExxonMobil ADC [2]
Soundview Pulp Co.
U.S. Naval Reserve Training Center
Pacific Tow Boat Co.
Log Pond
Current Port North/South Marina
NRC Dock
Veneer Factory
Boiler
Paint Shop
Everett Pacific Shipbuilding & Drydock Co.[1]
Pier E
NORTH MOLE
Dry Dock
Pier D
Soundview Outfall
Standard Oil Dock
General Petroleum Dock
Great Northern RR Warehouse
Bayside Iron Works
Machine Shop
Pipe/Copper Shop
East Waterway
Drydock Area
Ship Building Platforms
Pier 2 City Dock
American Tugboat Co.
Pier B
Pier A
Pier C
Acetylene
Oil Tank
Paint Shop
CENTRAL MOLE
SOUTH MOLE
N

Legend

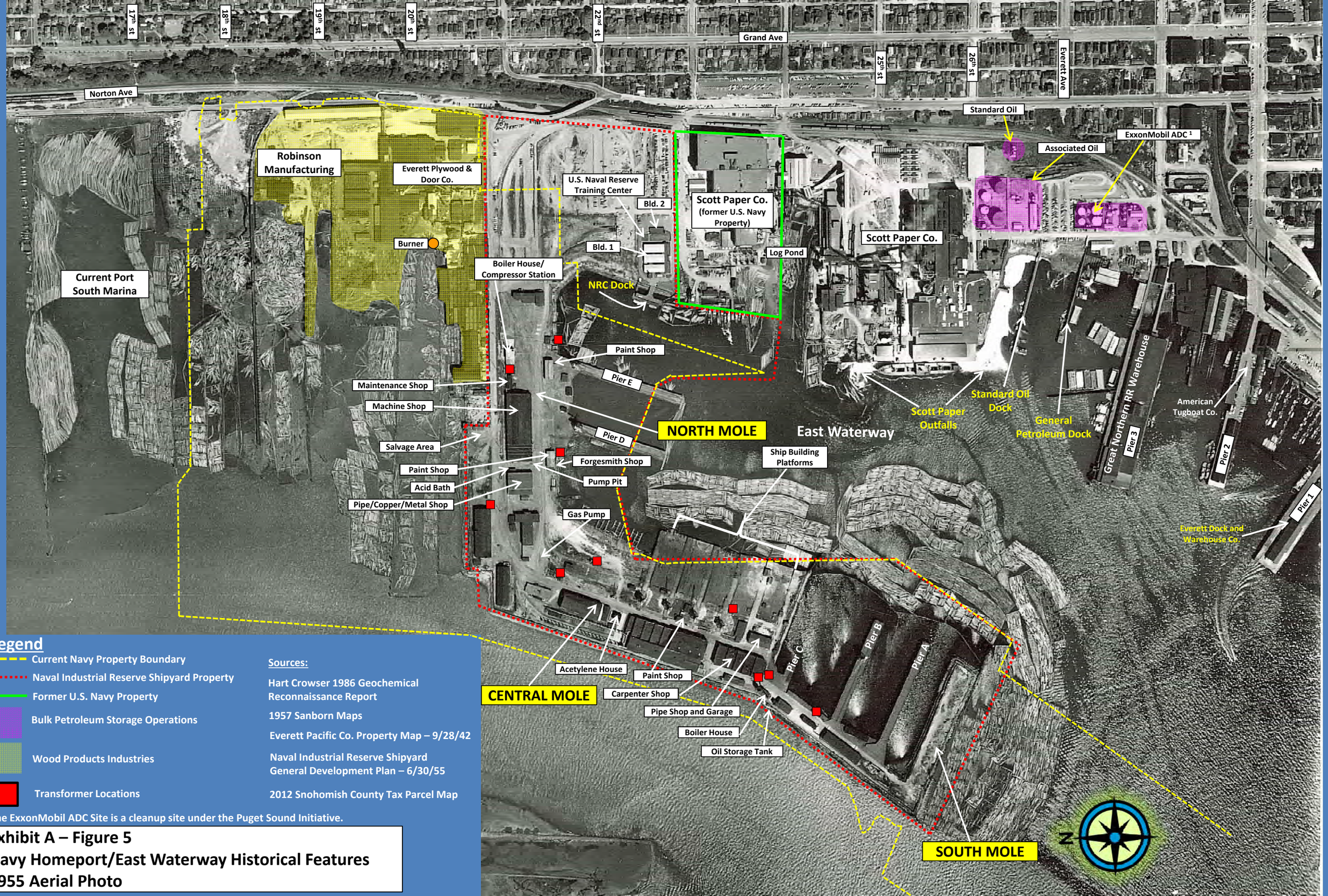
[1]Everett Pacific Shipbuilding & Drydock was purchased by Pacific Car and Foundry in 1944.
[2]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

- Current Navy Property Boundary
- Naval Industrial Reserve Shipyard Property
- Bulk Petroleum Storage Operations
- Wood Products Industries (Historical and Active)
- Transformer Locations

Sources:

- Hart Crowser 1986 Geochemical Reconnaissance Report
- 1950 Sanborn Maps
- Everett Pacific Co. Property Map – 9/28/42
- 2012 Snohomish County Tax Parcel Map
- 1947 Port of Everett Harbor Map
- 1939 Army Corp Harbor Line Map

Exhibit A – Figure 4
Navy Homeport/East Waterway Historical Features
1947 Aerial Photo



Legend

- Current Navy Property Boundary
- Naval Industrial Reserve Shipyard Property
- Former U.S. Navy Property
- Bulk Petroleum Storage Operations
- Wood Products Industries
- Transformer Locations

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report

1957 Sanborn Maps

Everett Pacific Co. Property Map – 9/28/42

Naval Industrial Reserve Shipyard General Development Plan – 6/30/55

2012 Snohomish County Tax Parcel Map

[1]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Exhibit A – Figure 5
Navy Homeport/East Waterway Historical Features
1955 Aerial Photo

17th st
18th st
19th st
21st st
Grand Ave
24th st
26th st
Everett Ave
Norton Ave
Marina Related Activities
Boat Storage/Repair
Tank Farm/Pumps
Fuel Pumps
Gas/Diesel
Everett Plywood & Door Co.
Burner
U.S. Naval Reserve Training Center
Waste Sedimentation Tanks (on-line in 1965)
Distribution Warehouse
ExxonMobil ADC [1]
Scott Paper Co.
Pacific Tug Co.
Log Pond
NRC Dock
American Packing Co.
Current Port South Marina
Pier E
Pier D
Scott Paper Outfalls
Standard Oil Dock
General Petroleum Dock
Pier 3
East Waterway
Pier 2
Pier 1
American Tugboat Co.
NORTH MOLE
Weyerhaeuser Mill A
Pier C
Pier B
Pier A
CENTRAL MOLE
Western Gear Machinery (blue highlighted area)
SOUTH MOLE
N

Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Bulk Petroleum Storage Operations
- Wood Products Industries

Exhibit A – Figure 6
Navy Homeport/East Waterway Historical Features
1966 Aerial Photo

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report

Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

1961 Everett Harbor Map. Corp of Engineers

[1]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

16th st
17th st
18th st
19th st
21st st
24th st
26th st
Everett Ave
Grand Ave
Norton Ave
Current Port South Marina
Port of Everett Property (purchased in 1975)
Hydraulic Dredge Filled 1978-1979
NORTH MOLE
CENTRAL MOLE
SOUTH MOLE
Bld. F
Port Pacific Terminal
U.S. Naval Reserve Training Center
NRC Dock
Scott Paper Co.
Log Pond
Distribution Warehouse
ExxonMobil ADC[1]
Port Hewitt Terminal (completed 1971 to 1973)
American Tug Boat Co.
Pier E
Pier D
East Waterway
Port Pier 3
Port Pier 1
Port Pacific Terminal
Pier C
Pier B
Pier A
Port of Everett
Western Gear Machinery (blue highlighted area)
Pacific Tow Boat
Weyerhaeuser Mill A
N

Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Bulk Petroleum Storage Operations
- Port of Everett Terminals

Exhibit A – Figure 7
Navy Homeport/East Waterway Historical Features
1976 Aerial Photo

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report

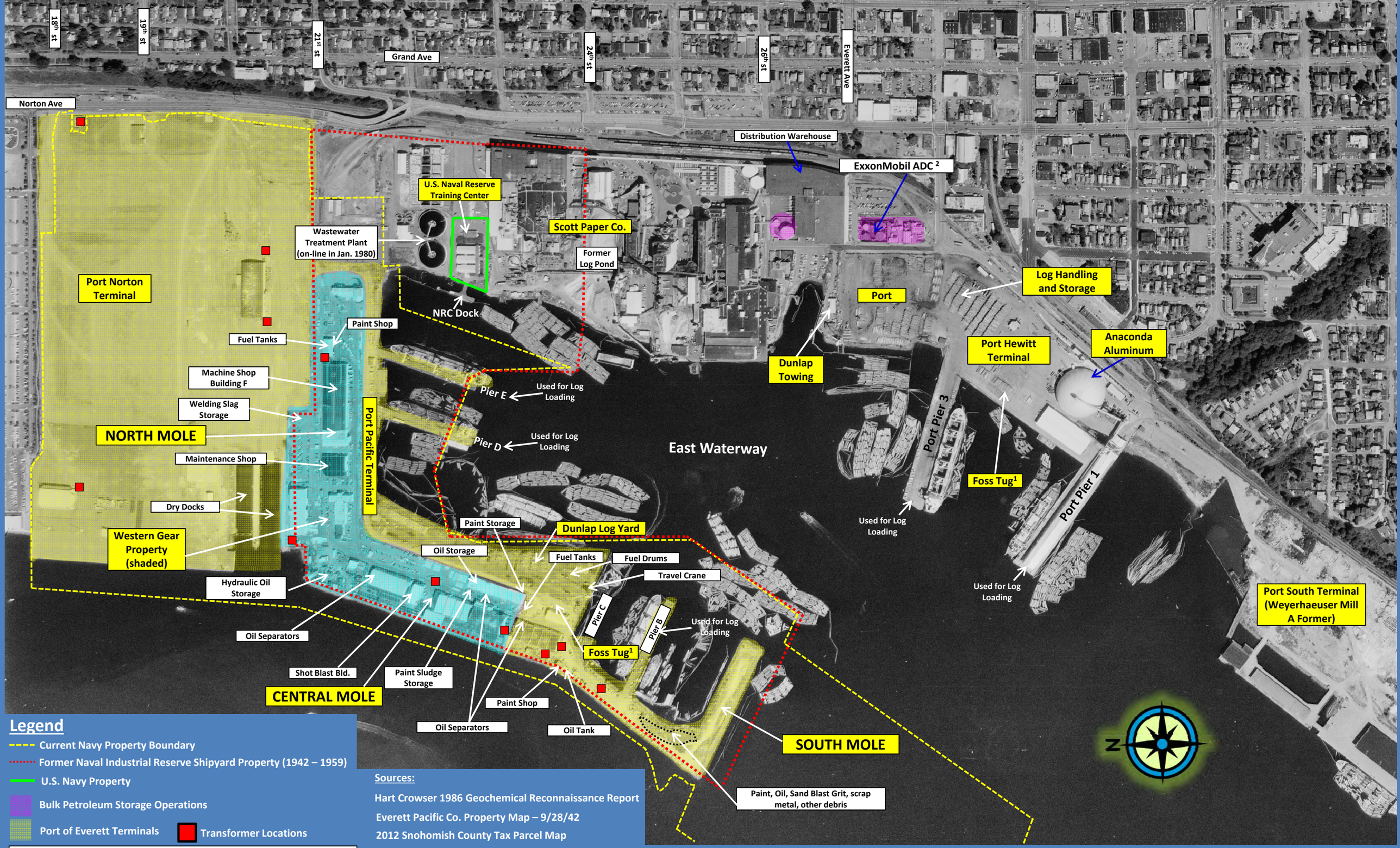
Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

1975 and 1979 Army Corp Everett Harbor and Snohomish River, Washington Condition

Pentec 1992. Port of Everett Landscape Analysis. Port Gardner and the Snohomish river Estuary. Dec. 30, 1992.

[1]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.



Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Bulk Petroleum Storage Operations
- Port of Everett Terminals
- Transformer Locations

Exhibit A – Figure 8
Navy Homeport/East Waterway Historical Features
1985 Aerial Photo

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report

Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

Tetra Tech, 1988. Everett Harbor Action Program: Evaluation of Potential Contaminant Sources. Draft Report. TC-3338-26. July 1988

[1]The locations of Foss Tug are based information presented in Tetra Tech, 1988. The exact years of operation in these areas is unclear.

[2]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

18th st
19th st
21st st
Grand Ave
24th st
26th st
Everett Ave
Norton Ave
Distribution Warehouse
ExxonMobil ADC [1]
U.S. Naval Reserve Training Center
Wastewater Treatment Plant (on-line in Jan. 1980)
Scott Paper Co.
Former Log Pond
NRC Dock
Port Hewitt Terminal
Port
Naval Station Everett
Anaconda Aluminum
Port South Marina
Dunlap Towing
Pier E
Pier D
Port Pier 3
Log Handling and Storage
Chill Warehouse
East Waterway
Port Pier 1
Port South Terminal (Weyerhaeuser Mill A Former)
Log Handling and Storage
Pacific Lumber and Shipping Co.
Breakwater
Southern Extent of Jetty Island
Navy Carrier Pier

Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Bulk Petroleum Storage Operations

Exhibit A – Figure 9
Navy Homeport/East Waterway Historical Features
1992 Aerial Photo

Sources:

Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

Pentec, 1992. Port of Everett Landscape Analysis. Port Gardner and the Snohomish River Estuary. Project No. 21-032. December 30, 1992.

[1]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Legend

- Early 1900s Wood Products Industries
  - Seaside – Shingle Mill
  - Clough-Hartley – Lumber Mill
  - Clark-Nickerson – Lumber Mill
  - Robinson Manufacturing – Saw/Planing Mill & Sash and Door Factory
- Historic Burner
- Former Western Gear Property
- Approximate location of dredging sites related to the Navy Homeport Development
- Historic Naval Reserve Industrial Shipyard Boundary
- Current Navy Property Boundary (Naval Station Everett)
- 1932 Bermed and filled extensions (Mole Configuration in 1932).

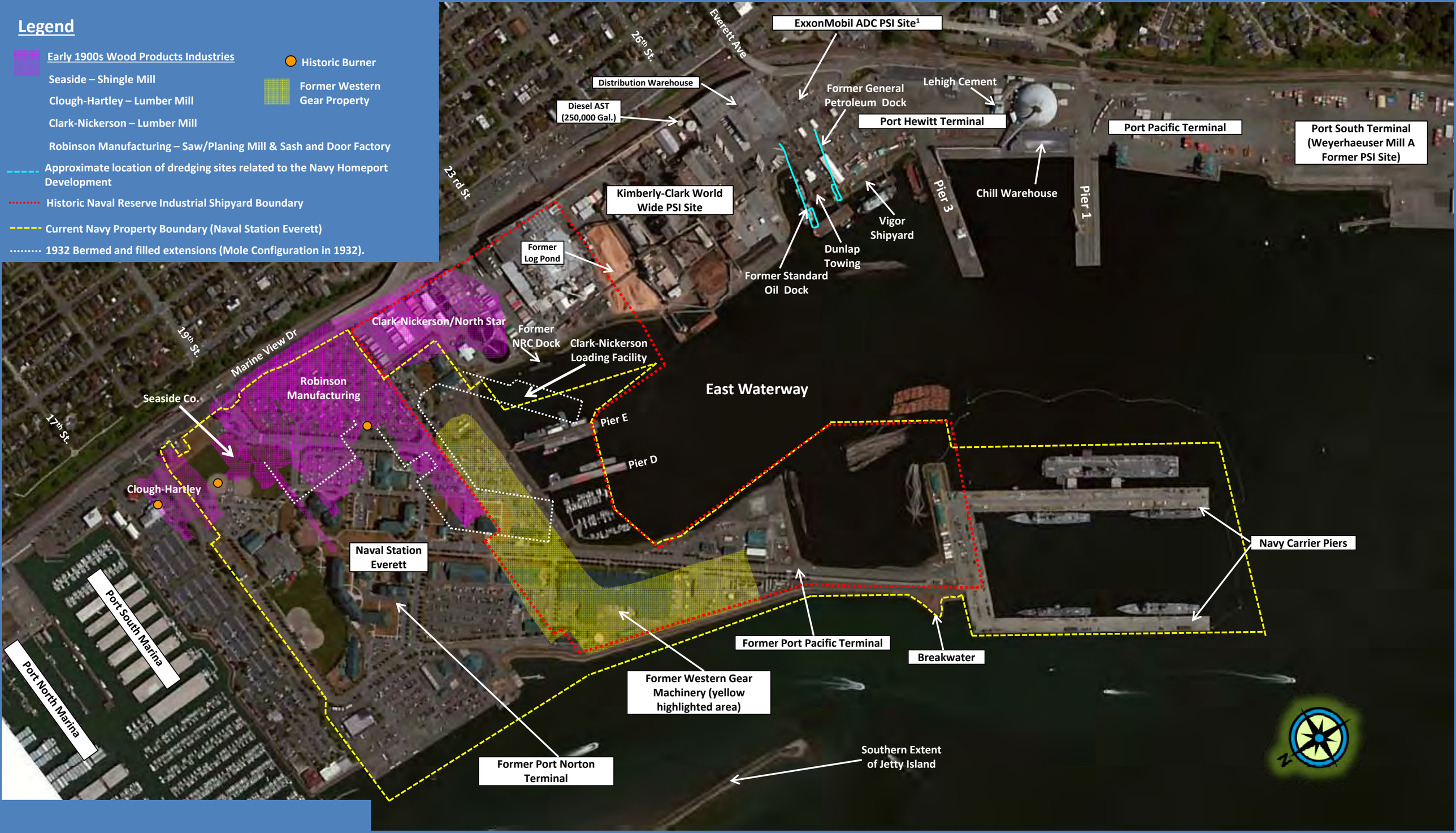


Exhibit A – Figure 10
East Waterway Area Features
2012 Aerial Photo

Sources:

HartCrowser 1986. *Geochemical Reconnaissance Report NAVSTA Puget Sound*. July 1986.

Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

[1]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

18th st
19th st
21st st
Grand Ave
24th st
26th st
Everett Ave
Norton Ave
ExxonMobil ADC[2]
U.S. Naval Reserve Training Center
Scott Paper Co.
Port Norton Terminal
WG003
S008
Port Pacific Terminal
Pier E
Pier D
S004
PSO4
S003
S002
PSO5
Port
Port Hewitt Terminal
PSO6
Port Pier 3
Port Pier 1
PS07
E006
Western Gear Property (shaded)
Port Pacific Terminal
Pier C
Pier B
WG002
N

Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Industrial Discharge – Terminated in 2012
- Industrial Discharge - Historical
- City of Everett CSO - Existing
- City of Everett CSO - Historical
- Surface Water Runoff Locations reported in 1988 (Tetra Tech, 1988)

Exhibit A – Figure 11
Historical and Current Industrial Outfall Locations in 1988 [1]

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report
Everett Pacific Co. Property Map – 9/28/42
2012 Snohomish County Tax Parcel Map
July 2006 Sewer Outfall Location Map. City of Everett

1985 Aerial Photo
Source: DOT

Washington State Pollution Control Commission, Olympia, Washington. Pollutional Effects Of Pulp And Paper Mill Wastes In Puget Sound. A Report On Studies Conducted By The Washington State Enforcement Project. March 1967.

[1]Tetra Tech, 1988. Everett Harbor Action Program: Evaluation of Potential Contaminant Sources. Final Report. September 1988.

[2]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

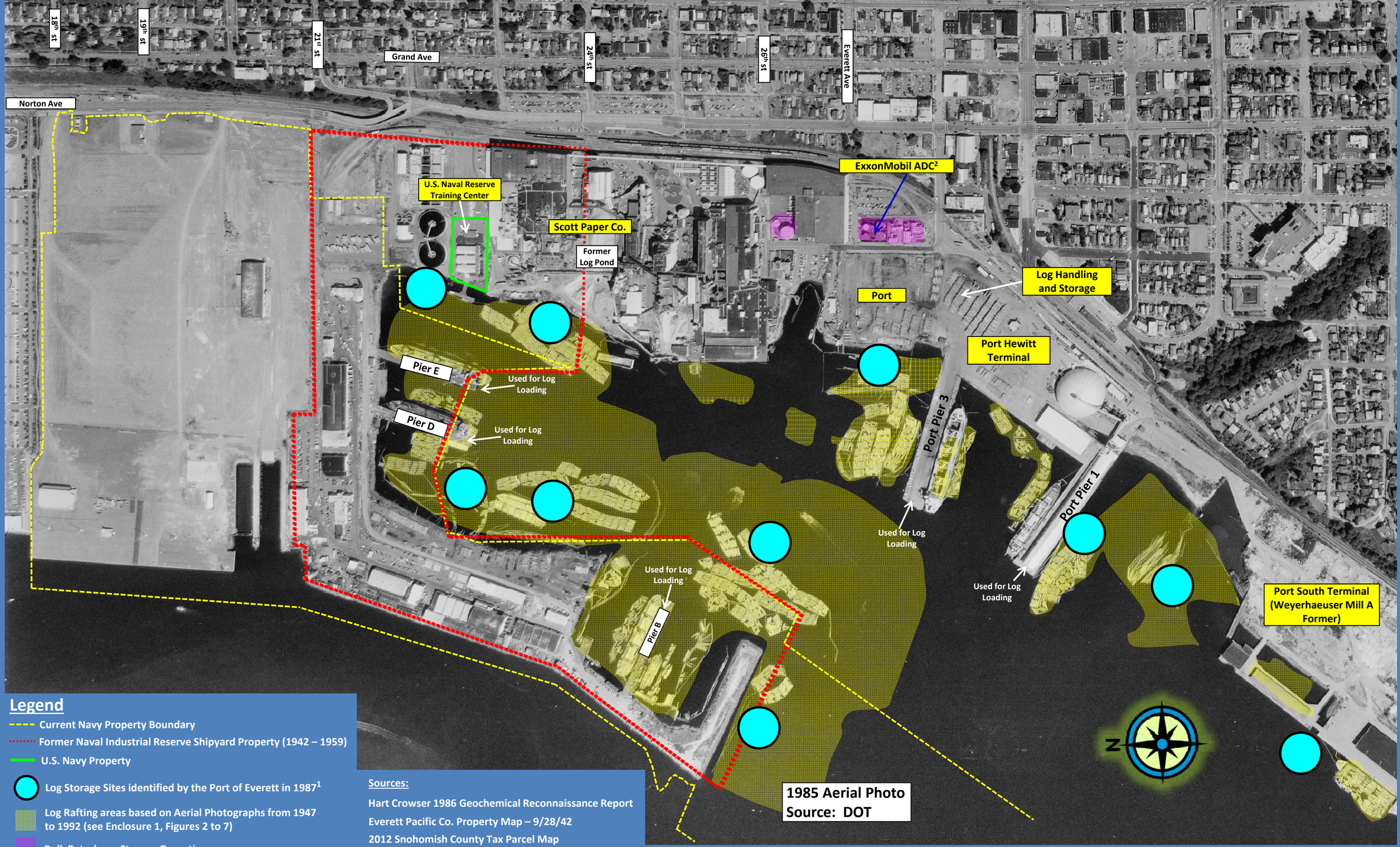
Current Deep Water Outfall 100
Source: Anchor, 2004. *Sampling and Analysis Report, Outfall 100 Baseline Sediment Sampling For NPDES Permit #WA00062-01 and Associated Permits*. June 2004.

Historic Deep Water Outfall SW001
Sources: 11/22/72 Weyerhaeuser Company Mill Site Drawing (Drawing No. 5041 D).
CH2MHILL, 1998. Technical Memorandum. *Kimberly Clark Everett Outfall Replacement Project: Analysis of Sediment Chemistry Database of Stations Located in Port Gardner*. April 28, 1998.

Former Weyerhaeuser Mill A Property Boundary
Source: 11/22/72 Weyerhaeuser Company Mill Site Drawing (Drawing No. 5041 D)

Exhibit A – Figure 12
Location of Deepwater Diffusers[1]

[1]The base map was obtained from Ecology's EIM Database.`



Legend

- Current Navy Property Boundary
- Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
- U.S. Navy Property
- Log Storage Sites identified by the Port of Everett in 1987[1]
- Log Rafting areas based on Aerial Photographs from 1947 to 1992 (see Enclosure 1, Figures 2 to 7)
- Bulk Petroleum Storage Operations

1985 Aerial Photo
Source: DOT

Sources:

Hart Crowser 1986 Geochemical Reconnaissance Report

Everett Pacific Co. Property Map – 9/28/42

2012 Snohomish County Tax Parcel Map

[1]Port of Everett, 1987. Record of communication from Ed Paskovskis, Director of Operations to the Port Working Group Membership & Commissioners. January 2, 1987.

[2]The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Exhibit A – Figure 13
Log Rafting Areas and General Log Storage Sites[1]

EXHIBIT B

SCOPE OF WORK AND SCHEDULE

EXHIBIT B
SCOPE OF WORK & SCHEDULE

Pursuant to the Agreed Order to which this Scope of Work & Schedule is attached, Kimberly-Clark Worldwide, Inc. (K-C), the Port of Everett (Port), and the Washington State Department of Natural Resources (DNR) (collectively the PLPs) shall take the following remedial actions at the East Waterway Site (Site) and these actions shall be conducted in accordance with WAC 173-204 unless otherwise specifically provided for herein.

A. Remedial Actions to be Performed

The PLPs shall conduct the remedial actions generally described below.

- Remedial Investigation/Feasibility Study (RI/FS) Work Plan – Prepare a work plan for RI/FS Study in accordance with the specifications described in Section A.1 of this Exhibit. The PLPs shall submit the RI/FS Work Plan to the State of Washington Department of Ecology (Ecology) for review and approval.
- RI/FS Study – The PLPs shall conduct field data collection (as part of the RI) as described in the approved RI/FS Work Plan. The results of the field data collection will be presented to Ecology in a Data Report Technical Memorandum so that a determination can be made with regard to whether additional investigation is required to define the full nature and extent of contamination. On agreement that no substantial data gaps exist, the PLPs shall conduct a FS based on the results of the field RI.
- RI/FS Report – The PLPs shall prepare an RI/FS report. The PLPs shall submit the draft RI/FS Report to Ecology for review and approval. Ecology currently envisions this as a single document that combines the RI and FS; however, the documents may be separated if needed, to maintain timely progress on the site.
- Draft Cleanup Action Plan (CAP) – Upon Ecology approval of the draft final RI/FS report, the PLPs shall prepare a draft CAP. The PLPs shall submit the draft CAP to Ecology for review and approval.

Additional details regarding the remedial actions to be performed by the PLPs are provided below.

1. Preparation of an RI/FS Work Plan

The PLPs shall develop an RI/FS Work Plan (including draft, draft final, and final versions) that includes a scope of work to delineate and quantify (i.e., identify the levels of contamination) the potential contaminants in marine sediments and surface water, and other deleterious substances including wood waste, any toxic effects to aquatic receptors. The Work Plan shall also address the proper handling of all wastes generated from the Site during the RI/FS. Note that all draft documents for Ecology review may be submitted in redline strike-out format (preferably in Microsoft® WORD format) to facilitate the review. The RI/FS Work Plan shall be conducted meeting the requirements of WAC 173-204-550, and should include the elements listed below.

a. Investigation of Site Background and Setting

This section will include detailed descriptions of the following:

(i) The property and Site operational/industrial history (including current and previous ownership, site development, log rafting, dredging, and filling history).

(ii) Sources and releases of contamination to the in-water area (including historical and on-going drainage/discharges to East Waterway).

(iii) Physical characteristics of the Site including shoreline features, shoreline and aquatic bathymetry, surface water hydrology, sediment characteristics, and meteorology.

(iv) Current and future land and water use, including both human and ecological uses.

(v) The aquatic ecological setting including a description of on-site and surrounding habitat types and conditions, aquatic ecological receptors and natural resources, and potentially threatened/endangered species.

b. Previous Investigations and Data Gaps

A summary of environmental investigations performed to date including summaries of existing physical, chemical, biological, and risk assessment data shall be included in the RI/FS Work Plan. Also include descriptions of any past or on-going in-water cleanup work at the Site. Include maps of existing Site

conditions showing bathymetry, surface and subsurface structures, utility lines (if known), navigational lanes, lease areas, and the locations of historical and ongoing sources of contaminants to the in-water area. In addition, data gaps that need to be filled to fully define the nature and extent of contamination and toxic/bioaccumulative effects associated with all media of concern at the Site should be identified.

c. Development of Preliminary Conceptual Site Model (CSM)

The CSM should describe release mechanisms from sources of hazardous substances, the exposure media and routes, and potential receptors (both human and ecological) to the in-water portion of the Site. The CSM should reflect historical and current conditions as well as potential future development in assessing exposure pathways.

d. Establishment of Screening Levels

Identify appropriate screening levels[1] consistent with the exposure pathways and receptors (both human and ecological) identified in the CSM. Sediment screening levels shall include both the chemical and biological standards of WAC 173-204. Screening levels shall also consider contaminants of concern, such as dioxins/furans, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs), for human health and upper-trophic-level species. In addition, the presence of and potential effects from wood waste deposits shall be addressed.

e. Evaluation of Existing Data

The existing physical, chemical, and biological data should be plotted as accurately as possible on a base map to depict identified sources, areas where suspected releases (e.g., outfalls, spills, dumping, leaks, etc.) have occurred, wood waste accumulations, and the distribution of contaminants and

[1] Levels established under the Sediment Management Standards (*see* WAC 173-204 SMS for Puget Sound Marine sediments) and applicable state and federal laws.

toxic/bioaccumulative effects within the in-water area. All of the existing analytical data collected at the Site should be evaluated in terms of data usability (analytical methods used to evaluate the effectiveness of a cleanup action shall comply with the requirements in WAC 173-204) and be screened against the screening levels identified based on the conceptual site model (CSM) for the Site (*see* Sections A.1.c and A.1.d above). Both non-detect and detected data should be included in the screening. Identify sampling points containing screening level exceedances on a map, and also discuss the adequateness of the reporting limits (i.e., Method Detection and Practical Quantitation Limits) in terms of achieving the screening levels for the Site.

f. RI Study Approach

This section of the RI/FS Work Plan shall provide an overview of the methods that will be used in conducting the RI for the Site. Based on the background information gathered and the evaluation of existing data, discuss by medium the data required to complete an RI for the Site. The RI approach shall be consistent with WAC 173-204-550. Identify data gaps and the overall approach for conducting the RI. The SAP (*see* Section A.1.h below) will provide the details on numbers, types, and locations of samples for each medium and associated analytical or toxicity testing requirements.

The RI field investigation will be designed to identify the full nature and extent of contaminants and toxic/bioaccumulative effects in the in-water area.

The PLPs shall provide Ecology with the results of the field investigation in the form of a Data Report Technical Memorandum so that a determination can be made with regard to whether additional investigation is required to define the full nature and extent of contamination and toxic/bioaccumulative effects in the in-water area. The information provided to Ecology will describe the analytical results of the field activities, the affected media, sediment screening levels, the extent of contamination (plotted on maps), and any data gaps that need to be filled to define the nature and extent of contamination and toxic/bioaccumulative effects

as directed by Ecology. Additional field investigation (if necessary, based on initial results) will be conducted to further define the nature and extent of contamination and toxic/bioaccumulative effects based on findings during the initial investigation.

g. FS Approach

This section of the RI/FS Work Plan shall provide an overview of the methods that will be used in conducting the FS for the Site. The FS approach shall be consistent with WAC 173-204-550 and will consist, at a minimum, of the following sections:

(i) **Establishment of Cleanup Levels, Points of Compliance, and Remediation Levels**. The PLPs will work with Ecology to develop preliminary cleanup levels and points of compliance consistent with the SMS regulation. The PLPs will work with Ecology to identify the appropriate points of compliance and hazardous substances to complete this scope element. Cleanup levels and site boundaries will be established in accordance with WAC 173-204.

(ii) **Applicable or Relevant and Appropriate Requirements**. The FS will include additional information or analyses to comply with the State Environmental Policy Act (SEPA) or other applicable laws and make a threshold determination per WAC 197-11-335(1) or to integrate the RI/FS with an environmental impact statement per WAC 197-11-262.

(iii) **Delineation of Media Requiring Remedial Action**. Based on the results of the RI, determine areas and/or volumes of affected media to which remedial action objectives might be applied.

(iv) **Development of Remedial Action Objectives**. Remedial Action Objectives should provide general descriptions of what the Site cleanup is designed to accomplish, which is media-specific. Remedial action objectives are established on the basis of the nature and extent of the contamination, the resources that are currently and potentially threatened, and the potential for human and ecological exposures at the Site. Clearly define a basis and rationale for Remedial Action Objectives for each medium at the Site.

(v) **Screening and Evaluation of Cleanup Action Alternatives**. A reasonable number and type of cleanup action alternatives will be evaluated, taking into account the characteristics and complexity of the Site, including current site conditions and physical constraints.

Evaluation of cleanup action alternatives and the selection of a preferred cleanup alternative must meet the requirements of WAC 173-204-550. Opportunities to perform habitat restoration concurrent with remedial actions should be considered as part of the evaluation of cleanup alternatives.

h. Development of a Site-Specific Health and Safety Plan (HSP) and Sampling and Analysis Plan (SAP)

A site-specific HSP describing worker safety during the project will be developed in accordance with WAC 173-340-810 and included in the RI/FS Work Plan. A site-specific SAP, which includes quality assurance/quality control requirements, shall be included in the RI/FS Work Plan as required by the SMS (WAC 173-204). The SAP should be based on the type, quality, and quantity of data necessary to support selection of a cleanup action. The SAP should provide the details on the types, numbers and locations of samples for each media and the analytical requirements, and must be submitted to Ecology for review and approval before any sampling is conducted. In addition, any sampling of the marine sediments must be done in accordance with the SMS and the *Sediment Sampling and Analysis Plan Appendix,* Ecology Publication No. 03-03-043[2].

i. Public Involvement

This section of the RI/FS Work Plan shall present the general process for public involvement (in accordance with WAC 173-340-600) along with a reference to the Public Participation Plan presented in this Order as **Exhibit D**.

j. Project Management

This section of the RI/FS work plan will discuss project staffing and coordination associated with the RI/FS activities for the East Waterway Site. The organizational structure and responsibilities are designed to provide project control and quality assurance for the duration of the project.

[2] *See* URL: http://www.ecy.wa.gov/biblio/0309043.html.

k. Schedule & Reporting

This section should contain the schedule and reporting requirements for the RI/FS project as defined in this Order.

2. Data Report Technical Memorandum

The PLPs shall provide Ecology with the results of the field investigation in the form of a Data Report Technical Memorandum so that a determination can be made with regard to whether additional investigation is required to define the full nature and extent of contamination and toxic/bioaccumulative effects. The information provided to Ecology should describe the analytical results of the field activities, the affected media, the extent of contamination (plotted on maps and screened against sediment screening levels), and identification of data gaps that need to be filled to complete the RI/FS with respect to the nature and extent of contamination and toxic/bioaccumulative effects.

3. Prepare Draft RI/FS Report

A draft, draft final, and final RI/FS report that meets the requirements of WAC 173-204-550 shall be prepared. The RI/FS report shall contain the results of the RI and will provide information regarding the full nature and extent of marine sediment contamination including toxic and bioaccumulative effects. The FS portion of the report will present and evaluate cleanup action alternatives to address the identified contamination at the Site. Based on the evaluation of alternatives, the FS will identify a preferred cleanup action alternative for the Site in compliance with WAC 173-204-550.

4. Develop a Draft Cleanup Action Plan (CAP)

Upon Ecology approval of the draft final RI/FS report, the PLPs shall prepare a draft and draft final CAP in accordance with WAC 173-340-380 and WAC 173-204-575 that provides the cleanup action selected by Ecology that is designed to address sediment contamination in the in-water portion of the Site, based on the results of the RI/FS. The draft CAP shall include a general description of the cleanup actions along with the following sections:

- A general description of the proposed cleanup action and the rationale for selection, including results of any remedial technology pilot studies, if necessary.
- A summary of the other alternatives evaluated in the RI/FS.
- A summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.
- Cleanup standards and rationale regarding their selection for each hazardous substance in sediment at the Site based on the results of the RI/FS.
- Descriptions of any institutional/engineering controls, if proposed.
- A preliminary schedule for implementation of field construction work and subsequent maintenance and monitoring.

B. Schedule

The PLPs shall perform the actions required by this Order according to the schedule below. This schedule is based on a number of considerations including Port Gardner Bay cleanup program priorities and resource allocation, and assumes the successful implementation of a programmatic, collaborative process between PLPs and Ecology to facilitate efficient issue resolution. The PLPs shall address Ecology comments on all deliverables through written responses. Note, when Ecology provides comments in red-line strikeout format (i.e., comments made directly within the electronic version of the document), the PLPs may respond to those comments directly within the electronic document.

1. RI/FS Work Plan Submittal

- Work Plan Scoping Process – To facilitate development of the Work Plan, the PLPs and Ecology will meet to identify a list of key issues to be addressed in the Work Plan and develop a process to reach tentative agreement on each of these issues prior to drafting the Work Plan. These tentative agreements will be documented in a summary table, which will form the basis for the draft Work Plan.
- Draft Document – The draft RI/FS Work Plan shall be due 90 calendar days after Ecology receipt of the summary table. The draft Work Plan will then undergo a 30-day review period by Ecology.
- Draft Final Document – The draft final RI/FS Work Plan shall address any comments/suggestions submitted by Ecology. The draft final RI/FS Work Plan shall be due 90 days after Ecology provides its comments. The draft final version will undergo a 30-day review period by Ecology.

- Final Document – The final RI/FS Work Plan shall address comments/suggestions submitted by Ecology. The final RI/FS Work Plan shall be due 60 days after Ecology provides its comments.

2. Field RI

- Field RI – RI field activities shall be commenced within 30 days of submittal of the final RI/FS work plan to Ecology. Separate mobilizations and field schedules may be required to complete the marine area investigation as approved by Ecology.
- Data Report Technical Memorandum – The field RI results, as described in Section A.1.f, shall be provided to Ecology 90 calendar days after the validation of all RI/FS analytical data.
- Additional field RI activities (if needed) – Additional field RI activities may be required to adequately delineate the nature and extent of sediment contamination and toxic/bioaccumulative effects at the Site, and/or to conduct pilot testing of a remedial alternative. The scope, schedule, and submittal requirements for additional field RI activities shall be developed by the PLPs, and shall be submitted to Ecology for review and concurrence.

3. RI/FS Report Submittal

- RI/FS Scoping Process – To facilitate development of the RI/FS, the PLPs and Ecology will meet to identify a list of key issues to be addressed and develop a process to reach tentative agreement on each of these issues prior to drafting the RI/FS. These tentative agreements will be documented in a summary table, which will form the basis of the documents.
- Draft RI/FS Report – The draft RI/FS report shall be due to Ecology 180 calendar days after receipt of the summary table. This RI/FS draft will then undergo a 30-day review period by Ecology.
- Draft Final RI/FS Report – The draft final RI/FS report shall be due 90 days after receipt of Ecology comments on the draft RI/FS report. This draft final RI/FS report will then go to a 30-day public comment period.
- Final RI/FS Report – The final RI/FS report shall be submitted to Ecology 60 days after Ecology's completion of the responsiveness summary to public comment on the draft final RI/FS report.

4. Cleanup Action Plan (CAP) Submittal

- Draft CAP – The draft CAP shall be submitted to Ecology 120 days after the draft final RI/FS Report is finalized and ready for public comment. This draft CAP will then undergo a 30-day review period by Ecology.

- Draft Final CAP – The draft final CAP shall address comments/suggestions submitted by Ecology on the draft CAP. This draft final CAP shall be due 60 days after submittal of Ecology comments on the draft CAP.

5. Environmental Data Submittals

- All sampling data (including any historical data that is used in the RI for decision purposes) shall be submitted to Ecology in both written (e.g., summarized in report tables and submitted on a CD) and electronic formats in accordance with Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements) and/or any subsequent procedures specified by Ecology for data submittal. Policy 840 is presented in **Exhibit C** of this Agreed Order.
- Historical data that is used in the RI/FS Work Plan and/or RI/FS Report, to the extent available and determined to be suitable for cleanup action decision making, shall be supplied to Ecology in electronic format (i.e., EIM) as part of the first draft RI/FS Work Plan deliverable.
- New data collected as part of the initial or first phase of the RI/FS, shall be supplied to Ecology in electronic format (i.e., EIM) 60 days after the new data has been validated. Data collected as part of additional RI/FS activities shall also be supplied to Ecology in electronic format (i.e., EIM) 60 days after the data has been validated.

Based on the work schedule presented above, the PLPs shall develop an overall cleanup schedule for the Site starting from the RI/FS Work Plan to final cleanup construction and long-term compliance monitoring. The PLPs shall provide Ecology with an updated cleanup schedule on an as needed basis. The project schedule will be updated when events are identified that may result in significant project schedule changes, or at a minimum, once in the spring and once in the fall (i.e., March and October). It is important that Ecology maintains updated cleanup schedules for project planning, and for periodically updating the public, tribes, and resources/permitting agencies.

EXHIBIT C

ECOLOGY POLICY 840 – DATA SUBMITTAL REQUIREMENTS

Resource Contact: Policy and Technical Support Staff *Effective:* August 1, 2005
References: WAC 173-340-840(5) *Revised:* September 9, 2005
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

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. Reports on Independent Remedial Actions Submitted for Review After October 1, 2005, Under Ecology's Voluntary Cleanup Program Shall Not be Reviewed Until the Data Have Been Submitted in Compliance with this Policy.

Such reports shall be deemed incomplete, and a notice to this effect provided to the submitter.

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/. TCP's EIM Coordinator also is available for technical assistance to site managers and consultants using EIM.

6. Data Submitted Electronically Using EIM Shall be Checked by the Toxics Cleanup Program's 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.

7. Data Generated During Sediment Investigations and Cleanups shall be Submitted Electronically Using Ecology's Sediment Quality Information System (SEDQUAL).

SEDQUAL 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 shall be submitted to Ecology simultaneously with the accompanying printed report.

8. Sediment Sampling Data Shall be Submitted to Ecology Using the SEDQUAL Data Entry Templates.

At a minimum, the following SEDQUAL data entry templates must be completed:

1. **Reference & Bibliography:** Describes lab reports and publications that relate to the data being entered;
2. **Survey:** Sample number;
3. **Station:** Specifies geographic location of the sediment sample. Sample latitude/longitude coordinates must be entered using the North American Datum of 1983 in U.S. Survey feet (NAD 83, U.S. feet);
4. **Sample:** Describes sample characteristics such as depth; and
5. **Sediment Chemistry:** Reports chemical concentration data in dry weight units.

The following additional templates must also be completed where these measurements/observations have been made:

1. **Bioassay:** Bioassay test results;
2. **Bioassay Control:** Bioassay control test results;
3. **Benthic Infauna:** Species abundance & diversity;
4. **Tissue:** Describes the organism collected;
5. **Bioaccumulation:** Reports tissue chemical concentrations; and
6. **Histopathology:** Reports tissue pathology such as tumors or lesions.

9. Electronic Data Formats Shall be Verified to be Compatible with SEDQUAL Prior to Submittal.

Because SEDQUAL uses ASCII protocol and comma delimited text files, data format verification shall be conducted prior to submittal to Ecology. Data shall be verified by downloading the SEDQUAL database, importing the data into the database, correcting errors, and then exporting the corrected templates.

For additional information on sediment sampling and analysis plan requirements, see Ecology publication 03-09-043 "Sediment Sampling and Analysis Plan Appendix", April, 2003. 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
Additional information on SEDQUAL can be found at:
http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm. TCP's SEDQUAL Coordinator is also available for technical assistance to site managers and consultants using SEDQUAL.

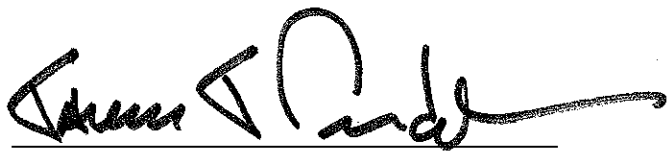
10. Sediment Sampling Data Shall Also be Submitted to Ecology in a Printed Report.

Printed reports shall present the data in both dry weight and total organic carbon normalized units in data tables that compare the results to applicable state regulatory criteria.

11. Data Submitted Electronically Using SEDQUAL Shall be Checked by the Toxics Cleanup Program's SEDQUAL Coordinator Prior to Loading the Data into SEDQUAL.

Normally, SEDQUAL data submittals will come to TCP's SEDQUAL Coordinator. Upon receipt of a submittal, the Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a SEDQUAL submittal, they should notify TCP's SEDQUAL Coordinator. Upon receipt of the data, TCP's SEDQUAL 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 D

PUBLIC PARTICIPATION PLAN

Site Cleanup:

EAST WATERWAY

Located in the Everett Harbor area, south of the United States Naval Station in
Snohomish County, Washington

PUBLIC PARTICIPATION PLAN

Prepared by:
Washington State Department of Ecology

DEPARTMENT OF
ECOLOGY
State of Washington

June 2015

This plan is for you!

This Public Participation Plan (Plan) is prepared for the East Waterway Site cleanup as part of the requirements of the Model Toxics Control Act (MTCA). The Plan provides information about MTCA cleanup actions and requirements for public involvement, and identifies how the Washington State Department of Ecology (Ecology) will support public involvement throughout the cleanup. The Plan is intended to encourage coordinated and effective public involvement tailored to the community's needs at the East Waterway Site.

For additional copies of this document, please contact:

Washington State Department of Ecology
Andy Kallus, Site Manager
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600
(360) 407-7259
Email: Andrew.Kallus@ecy.wa.gov

If you need this publication in an alternate format, please call the Toxics Cleanup Program at (360) 407-7170. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341 (TTY).

Table of Contents

1.0: Introduction and Overview of the Public Participation Plan

This Public Participation Plan (Plan) explains how you can become involved in improving the health of your community. It describes public participation opportunities that will be available during this review period for a site on the Port Gardner Bay waterfront – the East Waterway Site (Site). The Site is located in the Everett Harbor area (along the industrialized waterfront), south of the United States Naval Station and directly west of downtown Everett, in Everett, Washington. These opportunities are part of a collaborative effort by the Washington State Department of Ecology (Ecology) and the Potentially Liable Persons (PLPs) – Kimberly-Clark Worldwide, Inc. (K-C), the Port of Everett (Port) and the Washington Department of Natural Resources (DNR) – to decide on cleanup actions for the Site. Current documents for review include:

- Draft Agreed Order, a legal document between Ecology and the PLPs to agree to provide remedial action at the Site where there has been a release or threatened release of hazardous substances. The Order requires the PLPs to conduct a Remedial Investigation and Feasibility Study (RI/FS) and develop a draft Cleanup Action Plan (DCAP) addressing potential in-water (e.g., marine sediment) contamination at the Site.

Cleanup actions, and the public participation process that helps guide them, are established in Washington's Model Toxics Control Act (MTCA).[1] Under MTCA, Ecology is responsible for providing timely information and meaningful chances for the public to learn about and comment on important cleanup decisions before they are made. The goals of the public participation process are:

- To promote understanding of the cleanup process so that the public has the necessary information to participate.
- To encourage involvement through a variety of public participation opportunities.

This Plan provides a framework for open dialogue about the cleanup among community members, Ecology, and other interested parties. It outlines basic MTCA requirements for community involvement activities that will help ensure that this exchange of information takes place during the investigation and cleanup. These requirements include:

- Notifying the public about available reports and studies about the Site.

[1] The Model Toxics Control Act (MTCA) is the hazardous waste cleanup law for the State of Washington. The full text of the law can be found in Revised Code of Washington (RCW), Chapter 70.105D. The legal requirements and criteria for public notice and participation during MTCA cleanup investigations can be found in Washington Administrative Code (WAC), Section 173-340-600.

- Notifying the public about review and comment opportunities during specific phases of the cleanup investigation.
- Providing appropriate public participation opportunities to learn about cleanup documents, and if community interest exists, holding meetings to solicit input and identify community concerns.
- Considering public comments received during public comment periods.

In addition to these basic requirements, the Plan may include additional site-specific activities to meet the needs of your community. Based upon the type of proposed cleanup action, the level of public concern, and the risks posed by the Site, Ecology may decide that more public involvement opportunities are appropriate.

These opportunities form the basis for the public participation process. The intent of this Plan is to:

- Provide complete and current information to all interested parties.
- Let you know when there are opportunities to provide input.
- Provide opportunities to listen to and address community concerns.

Part of the Puget Sound Initiative

The Site is one of several Port Gardner Bay waterfront sites and is part of a larger cleanup effort called the Puget Sound Initiative (PSI). Washington State established the PSI to protect and restore Puget Sound. The PSI includes cleaning up 50-60 contaminated sites within one-half mile of the Sound. These sites are grouped in several bays around the Sound for "baywide" cleanup efforts. As other sites in the Port Gardner Bay baywide area move forward into investigation and cleanup, information about them will be provided to the community as well as people and groups who are interested.

Roles and Responsibilities

Ecology will lead public involvement activities. Ecology maintains overall responsibility and approval authority for the activities outlined in this Plan. Ecology and K-C, the Port and DNR are responsible for cleanup at the Site. Ecology will oversee all future cleanup activities and ensure that contamination on the Site is cleaned up to concentrations that are established in state regulations and that protect human health and the environment.

Organization of this Public Participation Plan

The sections that follow in this Plan provide:

- Section 2: Background information about the East Waterway Site.
- Section 3: An overview of the local community that this Plan is intended to engage.
- Section 4: Public involvement opportunities in this cleanup.

This Plan addresses current conditions at the Site, but it is intended to be a dynamic working document that will be reviewed at each phase of the cleanup and updated as needed. Ecology and K-C, the Port and DNR urge the public to become involved in the cleanup process.

2.0: Site Background

Site Description and Location

The Site is located in the Everett Harbor area (along the industrialized waterfront) near the mouth of the Snohomish River, south of the United States Naval Station and directly west of downtown Everett, Washington, on Port Gardner Bay (see Figure 1).

Figure 1: The East Waterway Site is shown in the above map, located in the Everett Harbor area directly west of downtown Everett, WA.

General Site History and Contaminants

The East Waterway Site was developed in the early 1900s. Pulp and paper manufacturing was conducted at the Site for just over 80 years. Bulk petroleum operations, manufacturing of heavy equipment and machinery for the oil drilling industry, naval

shipyard operations, and other waterfront industrial and shipping operations were also conducted on the Site beginning as early as 1930.

After merging with Scott Paper Company in 1995, K-C became the owner of the pulp and paper mill. K-C operated the mill until 2012, when it filed for permits to demolish the facility to ready the property for sale and redevelopment. Demolition began in summer 2012 and was completed by July 2013. In the 1970s, the Port developed a portion of the East Waterway into a cargo shipment facility. K-C, the Port and DNR have been identified as PLPs at the Site.

Various environmental investigations at the Site conducted from the 1980s to early 2015 found marine sediments contaminated with: metals (arsenic, mercury, zinc, copper, lead), polycyclic aromatic hydrocarbons (PAHs), semivolatile organic compounds, total polychlorinated biphenyls (PCBs) and dioxins/furans.

In December 2012, Ecology and K-C entered into an Agreed Order (AO) to clean up the upland area to the east of the Site. The East Waterway was not included in the upland area AO. To clean up remaining in-water contaminants, Ecology is entering into a separate AO with the PLPs to research and identify hazardous substances at this Site. This includes upland sources that could potentially release contaminants to the in-water area. Any such substances identified will be addressed under separate documents (see next section for examples).

The Cleanup Process

Washington State's cleanup process and key opportunities for you to provide input are outlined in Figure 2 on page 14. The general cleanup process includes the following steps:

- Remedial Investigation (RI) – investigates the site for types, locations, and amounts of contaminants.
- Feasibility Study (FS) – identifies cleanup options for those contaminants.
- Cleanup Action Plan (CAP) – selects the preferred cleanup option and explains how cleanup will be conducted.

Each of these steps is generally documented in reports and plans that will be available for public review. Public comment periods of at least 30 calendar days are usually conducted for the following documents:

- Draft RI report
- Draft FS report
- Draft CAP

These comment periods may be conducted separately or combined.

Steps in the cleanup process and related documents are described in greater detail in the following subsections.

Interim Actions

Interim actions may be completed during the cleanup if required by Ecology. An interim action partially addresses the cleanup of a site, and may be conducted if:

- It is technically necessary to reduce a significant threat to human health or the environment.
- It corrects a problem that may become substantially worse or cost substantially more to fix if delayed.
- It is needed to complete another cleanup activity, such as design of a cleanup plan.

Overview of draft Agreed Order

The proposed agreement, called an Agreed Order, is a legal document between Ecology and K-C, the Port and DNR which agrees to provide remedial action at the Site where there has been a release or threatened release of hazardous substances.

The Agreed Order describes the studies that the PLPs agree to perform on the Site. The Agreed Order provides guidance on the following studies and documents:

- **Draft Remedial Investigation/Feasibility Study (RI/FS)** – The RI determines which contaminants are on the Site, where they are located, and whether there is a significant threat to human health or the environment. The RI report provides baseline data about environmental conditions that will be used to develop cleanup options. The FS report then identifies and evaluates cleanup options in preparation for the next step in the process. The RI and FS reports are expected to be combined into a draft East Waterway Site RI/FS report. The draft report will be made available for public review and comment. Comments will be considered as the draft cleanup action plan (DCAP) is prepared.

- **Draft Final Cleanup Action Plan (DCAP)** – After public comment on the draft RI/FS report, a preferred cleanup alternative will be selected. The DCAP explains the cleanup standards that will be applied at the Site, selects the preferred cleanup alternative(s) and outlines the work to be performed during the actual site remediation. The DCAP may also evaluate the completeness and effectiveness of any interim actions that were performed on the Site. The DCAP will be available for public review and comment.

3.0: Community Profile

Community Profile

Everett is Snohomish County's largest city and the seventh largest city in the state of Washington. Everett's current population is approximately 105,370, situated within 33.45 square miles.[2] Located on Port Gardner Bay, Everett hosts the west coast's second largest marina, United States Navy Homeport Naval Station Everett and The Boeing Company's assembly plant. The city's current labor workforce is more than 80,000,[3] employed predominantly in technology, aerospace and service-based industries.

Key Community Concerns

An important part of this Plan is to identify key community concerns for cleanup of the Site. Many factors are likely to raise community questions, such as the amount of contamination, how much contamination has been cleaned up and what remains, and future use of the Site. Community concerns often change over time as new information is learned and questions are answered. Identifying site-specific community concerns at each stage of the cleanup process helps ensure that they are adequately addressed. On-going key community concerns will be identified for the East Waterway Site through public comments and other opportunities, as detailed in Section 4.

[2] United States Census Bureau. http://quickfacts.census.gov/qfd/states/53/5322640.html (Accessed May 29, 2015)

[3] American Fact Finder. http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_S2301&prodType=table (Accessed May 29, 2015)

4.0: Public Participation Opportunities

Ecology and K-C, the Port and DNR invite you to share your comments and participate in the cleanup in your community. As we work to meet our goals, we will evaluate whether this public participation process is successful. This section describes the public participation opportunities for the Site.

Measuring Success

We want this public participation process to succeed. Success can be measured, at least in part, in the following ways:

- Number of written comments submitted that reflect understanding of the cleanup process and the Site.
- Direct, in-person feedback about the site cleanup or public participation processes, if public meetings are held.
- Periodic updates to this Plan to reflect community concerns and responses.

If we are successful, this process will increase:

- Community awareness about plans for cleanup and opportunities for public involvement.
- Public participation throughout the cleanup.
- Community understanding regarding how their input will be considered in the decision-making process.

Activities and Information Sources

Ecology Contacts

Ecology is the lead contact for questions about the cleanup in your community. The Ecology staff person identified in this section is familiar with the cleanup process and activities at the Site. For more information about public involvement or the technical aspects of the cleanup, please visit our website at https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=4297, or contact:

Andy Kallus, Site Manager
Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

Phone: (360) 407-7259
Email: Andrew.Kallus@ecy.wa.gov

Ecology's Webpage

Ecology has created a webpage to provide convenient access to information. Documents such as the draft Agreed Order are posted as they are issued during the investigation and cleanup process. Visitors to the webpage can find out about public comment periods and possible meetings; download, print, and read information; and submit comments via email. The webpage also provides links to detailed information about the MTCA cleanup process. The East Waterway webpage is available at the following address:

https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=4297

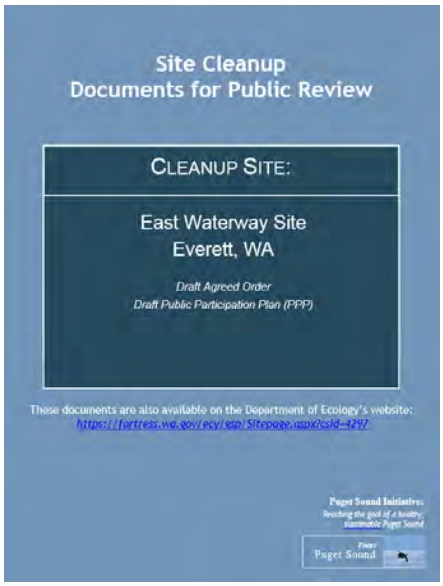
Information Centers/Document Repositories

The most comprehensive source of information about the Site is the information center, or document repository. Two repositories provide access to the complete list of site-related documents. All Site investigation and cleanup activity reports will be kept in print at those two locations and will be available for your review. They can also be requested on compact disk (CD). Document repositories are updated before public comment periods to include the relevant documents for review. Documents remain at the repositories throughout the investigation and cleanup. For the Site, the document repositories are:

- **Everett Public Library**
  2702 Hoyt Ave
  Everett, WA 98201
  Phone: (425) 257-8000
  Website: http://epls.org/

- **Department of Ecology Headquarters**
  300 Desmond Drive
  Lacey, WA 98503
  By appointment. Please contact Carol Dorn at (360) 407-7224 or Carol.Dorn@ecy.gov.

Look for document covers much like the illustration on the right.



Public Comment Periods

Public comment periods provide opportunities for you to review and comment on major documents, such as the draft Agreed Order, draft Consent Decree, draft RI, draft FS, draft CAP and draft Public Participation Plan. The typical public comment period is 30 calendar days.

Notice of Public Comment Periods

Notices for each public comment period will be provided by local newspaper and by mail. These notices indicate the timeframe and subject of the comment period, and explain how you can submit your comments.

For the East Waterway Site, newspaper notices will be posted in the Snohomish County Tribune and The Daily Herald.

Notices are also sent by regular mail to the local community and interested parties. The local community typically includes all residential and business addresses within one-quarter mile of the Site, as well as potentially interested parties such as public health entities, environmental groups, and business associations.

Fact Sheets

One common format for public comment notification is a fact sheet. Like the newspaper notice, fact sheets explain the timeframe and purpose of the comment period, but also provide background and a summary of the document(s) under review. Future fact sheets will be prepared at key milestones in the cleanup process.

MTCA Site Register

Ecology produces an electronic newsletter called the MTCA Site Register. This semi-monthly publication provides updates of the cleanup activities occurring throughout the state, including public meeting dates, public comment periods, and cleanup-related reports. Individuals who would like to receive the MTCA Site Register can sign up three ways:

- Call (360) 407-6848
- Send an email request to spre461@ecy.wa.gov
- Register online at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html

Mailing Lists

Ecology maintains both email and regular mail distribution lists throughout the cleanup process. The lists are created from carrier route delineations for addresses within one-quarter mile of the Site; potentially interested parties; public meeting sign-in sheets; and

requests made in person or by regular mail or email. You may request to be on a mailing list by contacting the Ecology staff person listed earlier in this section.

Optional Public Meetings

A public meeting will be held during a comment period if requested by ten or more people, or if Ecology decides it would be useful. Public meetings provide additional opportunity to learn about the investigation or cleanup, and to enhance informed comment. If you are interested in a public meeting about the Site, please contact the Ecology staff listed earlier in this section.

Submitting Comments

You may submit comments by regular mail or email during public comment periods to the Ecology Project Manager listed earlier in this section.

Response to Comments

Ecology will review all comments submitted during public comment periods, and will modify documents as necessary. You will receive notice by regular mail or email that Ecology has received your comments, along with a general explanation about how the comments were addressed and where the revised document can be found.

Other

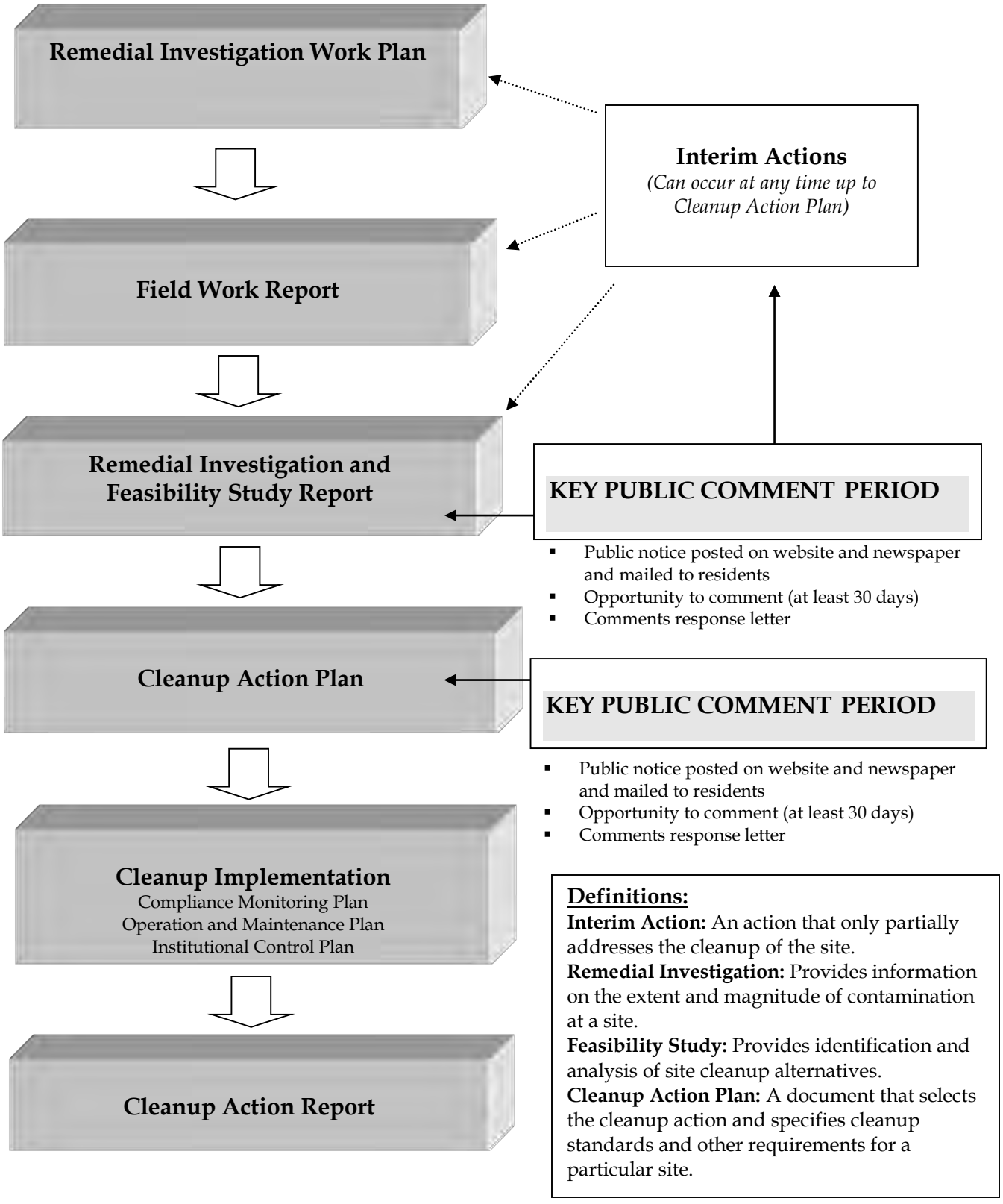
Ecology is committed to the public participation process and will consider additional means for delivering information and receiving comments, including combining public comment periods for other actions (such as those associated with the State Environmental Policy Act).

Public Participation Grants

You are eligible to apply for a Public Participation Grant from Ecology approximately every two years to provide funding for additional public participation activities. Those additional activities will not reduce the scope of the activities defined by this Plan. Activities conducted under this Plan would coordinate with the additional activities defined under the grant.

Visit www.ecy.wa.gov/programs/swfa/grants/ppg.html for more information about Ecology's Public Participation Grants.

Figure 2: Washington State Cleanup Process



Definitions:

Interim Action: An action that only partially addresses the cleanup of the site.

Remedial Investigation: Provides information on the extent and magnitude of contamination at a site.

Feasibility Study: Provides identification and analysis of site cleanup alternatives.

Cleanup Action Plan: A document that selects the cleanup action and specifies cleanup standards and other requirements for a particular site.

Glossary

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with MTCA cleanup requirements, including but not limited to: complying with cleanup standards, utilizing permanent solutions to the maximum extent practicable, and including adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document that selects the cleanup action and specifies cleanup standards and other requirements for a particular site. The cleanup action plan, which follows the remedial investigation/feasibility study report, is subject to a public comment period. After completion of a comment period on the cleanup action plan, Ecology finalizes the cleanup action plan.

Cleanup Level: The concentration (or amount) of a hazardous substance in soil, water, air, or sediment that protects human health and the environment under specified exposure conditions. Cleanup levels are part of a uniform standard established in state regulations, such as MTCA.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Feasibility Study: Provides identification and analysis of site cleanup alternatives and is usually completed within a year. The entire Remedial Investigation/Feasibility Study (RI/FS) process takes about two years and is followed by the cleanup action plan. Remedial action evaluating sufficient site information to enable the selection of a cleanup action plan.

Hazardous Site List: A list of ranked sites that require further remedial action. These sites are published in the Site Register.

Interim Action: Any remedial action that partially addresses the cleanup of a site. It is an 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 at a facility; an action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; an action needed to provide for completion of a site hazard assessment, state remedial investigation/feasibility study, or design of a cleanup action.

Model Toxics Control Act: Refers to RCW 70.105D. Voters approved it in November 1988. The implementing regulation is WAC 173-340 and was amended in 2001.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and the opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance, and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

Remedial Investigation: Any remedial action that provides information on the extent and magnitude of contamination at a site. This usually takes 12 to 18 months and is followed by the feasibility study. The purpose of the Remedial Investigation/Feasibility Study is to collect and develop sufficient site information to enable the selection of a cleanup action.