

**SETTLEMENT AGREEMENT
AMONG
KITSAP COUNTY, WASTE MANAGEMENT OF WASHINGTON, INC., AND
THE PORT GAMBLE S'KLALLAM TRIBE**

THIS SETTLEMENT AGREEMENT (Agreement) is among Kitsap County (County), Waste Management of Washington, Inc., as successor by merger to Olympic View Sanitary Landfill, Inc. (OVSL), f/k/a Kitsap County Sanitary Landfill, Inc. (KCSL)(collectively, WMW) (collectively referred to as the Landfill Parties), and the Port Gamble S'Klallam Tribe (Tribe). The Landfill Parties and the Tribe will be referred to collectively herein as the "Parties".

I. RECITALS

- A. The Hansville Landfill is located at 31645 Hansville Road Northeast, Hansville, Kitsap County, Washington, Tax Account No. 092702-1-005-2007 (the Site).
- B. The Tribe is a federally recognized Indian Tribe with its headquarters located at 31912 Little Boston Road NE, Kingston, Washington 98346. The eastern boundary of the Tribe's Reservation is adjacent to the Hansville Landfill.
- C. On October 4, 1995, the Superior Court of Kitsap County entered Consent Decree No. 257-1995 (RI/FS Consent Decree) among KCSL, n/k/a Waste Management of Washington, Inc. and the County (the potentially liable parties or PLPs) and the State of Washington Department of Ecology (Ecology). The RI/FS Consent Decree requires the PLPs to undertake a remedial investigation (RI) and feasibility study (FS) of the Site.
- D. The Landfill Parties are in the process of completing the RI/FS for the Site and anticipate that Ecology will issue a Cleanup Action Plan for the Site within the next twelve to eighteen months.
- E. The Tribe believes that it has certain claims against the Landfill Parties for on-Reservation contamination originating from the Hansville Landfill. The Landfill Parties dispute such claims. Nevertheless, the Parties wish to resolve that dispute and address their respective concerns and obligations by means of this Agreement and without admitting any fact, responsibility, liability, or fault and (except as specifically set forth herein) without waiving any rights, privileges, claims, or defenses as to Ecology, or any other Party.

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- F. The Parties intend this Agreement to be a basis for Ecology's approval of the RI/FS and development of the Cleanup Action Plan and intend to use best efforts to work together and to cooperate with Ecology during that process.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

1. The above recitals are true and correct and made a part hereof.
2. Definitions.

2.1 "Cleanup Action Plan" shall mean the Cleanup Action Plan issued by the Washington Department of Ecology pursuant to RCW 70.105D.380, and any amendments thereto, for remediation of the Site.

2.2 "Ecology" shall mean the Washington State Department of Ecology.

2.3 "Effective Date" shall mean the date on which all of the following conditions of this Agreement have been satisfied.

2.3.1 This Agreement is approved by the Kitsap County Board of Commissioners, as evidenced by the signatures of authorized Board members; and

2.3.2 This Agreement is approved by the Tribal Council of the Port Gamble S'Klallam Tribe, as evidenced by the signatures of authorized Council members (a copy of the authorizing resolution is attached as Exhibit A); and

2.3.3 This Agreement is approved by Waste Management of Washington, Inc., as evidenced by the signature of its authorized officer or representative; and

2.3.4 This Agreement is approved in writing by the Department of Interior, Bureau of Indian Affairs, pursuant to 25 U.S.C. §81, a copy of such approval shall be attached hereto as Exhibit B.

2.4 "Final Consent Decree" shall mean the final and enforceable Consent Decree agreed to by the PLPs and the State of Washington (which provides for the implementation of the Final Remedy) and approved by the Superior Court of the State of Washington for Kitsap County. The Consent Decree will be deemed final and enforceable after the expiration of the appeal period if no appeal is filed, or after the resolution of any appeals, whichever is later.

2.5 "Final Remedy" shall mean the Cleanup Action Plan that PLPs are required to undertake by the terms and conditions of the Final Consent Decree.

2.6 "Five Year Review" shall refer to the review conducted by Ecology at least every five years after the effective date of the Final Consent Decree to review site conditions and monitoring data to assure that human health and the environment are being protected, as required under WAC 173-340-420.

2.7 "Institutional Controls" shall mean those measures selected by Ecology as described in the Final Remedy to be undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or a cleanup action or result in exposure to hazardous substances at the Site. (WAC 173-340-200)

2.8 "Material" or "Material Change". It shall be presumptively material if the estimated cost to implement the Final Remedy is \$350,000 or more than the average remediation cost as set out in the FS to implement the Preferred Remedy defined in the Cleanup Action Plan.

2.9 "MTCA" shall mean the Washington State Model Toxics Control Act, RCW Chapter 70.105D.

2.10 "Natural attenuation" means a variety of physical, chemical or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of hazardous substances in the environment. (WAC 173-340-200)

2.11 "Point of Compliance" shall mean the point or points as determined by Ecology as described in the Cleanup Action Plan and illustrated on the map attached hereto as Exhibit C and incorporated into the Final Consent Decree where cleanup levels established in accordance with WAC 173-340-720 through 173-340-760, as applicable, shall be attained. (WAC 173-340-200)

2.12 "Preferred Institutional Controls " shall mean those measures that the Parties shall propose to Ecology to be included in the Cleanup Action Plan to be undertaken to limit or prohibit activities within the Protection Area to protect Tribal resources and the health and welfare of the Reservation Population. The list of Preferred Institutional Controls is attached hereto as Exhibit D and incorporated herein.

2.13 "Preferred Remedy" shall mean a remedy for the Site that includes the following elements: (1) natural attenuation of the contamination at or migrating from the Site, and (2) institutional controls that do not materially differ from the institutional controls listed in the Preferred Institutional Controls attached hereto as Exhibit D and (3) a Point of Compliance on the Reservation.

2.14 "Reservation" shall mean all lands within the exterior boundaries of the Reservation of the Port Gamble S'Klallam Tribe.

2.15 "Reservation Population" shall mean each person residing, doing business or recreating on the Reservation.

2.16 "RI/FS" shall mean the Remedial Investigation ("RI") and Feasibility Study ("FS") developed by the PLPs and their consultants, and approved by Ecology, with regard to quantifying the nature and extent of contamination at the site and the feasibility of remedies at the Site.

2.17 "RI/FS Consent Decree" shall mean the October 4, 1995 Consent Decree No. 257-1995 in Dept. of Ecology v. Kitsap County, et al., Kitsap County Cause No. 95-2-03005-1.

2.18 "Site" shall mean the area located at 31645 Hansville Road Northeast, Hansville, Kitsap County, Washington, Tax Account No. 092702-1-005-2007, more particularly described as: the South 1/2 of the NW 1/4 of the NE 1/4 together with the North 1/2 of the SW 1/4 of the NE 1/4 all located in Section 9, Township 27 North, Range 2 East, W.M., Kitsap County, Washington.

2.19 The "Tribe" or "Tribal" shall refer to the Port Gamble S'Klallam Tribe, a sovereign governmental entity.

2.20 "Tribal Claims" means any and all claims, liabilities, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees and personal injury claims, whether asserted or unasserted, which the Tribe may have or may have suffered or incurred, which relate, or may in part relate to (i) contamination originating from the Site or adverse effects of such contamination on the environment, the Reservation, the Tribe's property, or the rights, reserved rights, treaty rights or other entitlements of the Tribe or (ii) the Landfill Parties' ownership, operation, or activities, including waste disposal, associated with or relating to the investigation or remediation of contamination originating from the Site. The term "Tribal Claims" also includes, but is not limited to, all past and future known and unknown statutory and/or common law claims the Tribe in its sovereign capacity possesses or may possess, and claims brought by the Tribe as *parens patriae* on behalf of a Tribal member or members, under state, federal or Tribal law for alleged injuries caused in whole or in part by contamination originating from the Site, including claims for trespass, nuisance, or natural resource damages, or present or future violations of state, Tribal or federal water quality standards, as they now exist or hereafter amended.

2.21 "Protection Area" shall mean that area within the Reservation that is or may be potentially impacted by contamination from the Site at which Ecology, as part of the Final Remedy, has required the implementation of certain institutional controls to

protect Tribal resources and the health and welfare of the Reservation Population as further described in Exhibit C.

2.22 The "Work" shall mean all activities undertaken to implement the RI/FS Consent Decree, the Cleanup Action Plan, the Final Consent Decree, or in furtherance of the objectives of this Agreement.

3. Tribe's Support of the Preferred Remedy

The Tribe agrees to actively support the Preferred Remedy during the process to finalize the RI and FS, the Cleanup Action Plan, and the Final Consent Decree. The Tribe's active support shall include, but is not limited to, written notice to Ecology that the Tribe will agree, as part of this settlement between the Landfill Parties and the Tribe, to allow the Point of Compliance to be located on its Reservation; to support for the monitored natural attenuation remedy; to adopt, at a minimum, the institutional controls as described in the Preferred Institutional Control Plan upon the Effective Date of this Agreement (subject to modification upon finalization of the Consent Decree); and to agree not to adversely comment on the RI/FS or the Final Consent Decree, or to appeal the Final Consent Decree.

The Tribe's support for the Preferred Remedy shall survive implementation of the Final Consent Decree, provided, however, and notwithstanding the releases given in Section 8, that in the event that either the Court or Ecology re-opens the Final Consent Decree on its own initiative, the Tribe shall consult with the Landfill Parties in an effort to address the Tribe's concerns, if any. If after consultation with the Landfill Parties the Tribe's concerns related to the re-opening of the Final Consent Decree remain, the Tribe shall thereafter be permitted to comment upon any proposed additional investigation or remediation developed as part of the re-opener proceedings. In the event that either the Court or Ecology re-opens the Final Consent Decree, the Tribe agrees that it shall not seek additional compensation from the Landfill Parties.

4. Support of Settlement

The Parties agree to act in good faith in the implementation of this settlement and the Parties further agree that they shall take no action, either directly or indirectly, that would be inconsistent with the purpose and goals of this Agreement, including, but not limited to encouraging third parties, including, but not limited to, the Reservation Population, the Bureau of Indian Affairs, the Department of Interior, or any other governmental agency, to act on a Party's behalf, where such action would be inconsistent with this Agreement or to bring claims or initiate litigation on such Party's behalf related to (i) contamination originating from the Site or adverse effects of such contamination on the environment, the Reservation, the Tribe's property, or the rights, reserved rights, treaty rights or other entitlements of the Tribe or (ii) the Landfill Parties' ownership,

operation, or activities, including waste disposal, associated with or relating to the investigation or remediation of contamination originating from the Site.

5. Compensation.

5.1 As consideration for the Tribe's participation in this Agreement and compliance herewith, the Landfill Parties agree to pay to the Tribe certain compensation as set out below:

5.1.1 Funding

The Landfill Parties shall place two million, seven hundred fifty thousand dollars (\$2,750,000.00) in an interest bearing trust account at a bank acceptable to the Parties for the benefit of the Tribe (Account) within forty-five (45) days of the Effective Date of this Agreement. It is understood that all payments to be made to the Tribe pursuant to Section 5.1 are subject to the limitations set out in Section 5.2 below.

5.1.2 First Payment

Within sixty (60) days of the Effective Date of this Agreement, the Landfill Parties shall authorize the payment of one million dollars (\$1,000,000.00) from the Account to the Tribe (First Payment).

5.1.3 Second Payment

If no appeal is filed after court entry and approval of the Final Consent Decree, within forty-five (45) days of the expiration of the appeal period, or within forty-five (45) days of the resolution of any appeals, whichever is later, the Landfill Parties shall authorize the payment of one million two hundred fifty thousand dollars (\$1,250,000) from the Account to the Tribe (Second Payment), including all interest then accrued on the \$1,250,000 payment.

5.1.4 Final Payment

Subject to any adjustments made pursuant to Section 5.2, five years after the Second Payment, the Landfill Parties shall authorize the payment of all remaining funds in the Account as of that date, including all interest accrued, to the Tribe (Final Payment). If an Ecology 5 year review of the effectiveness of the ongoing clean up actions, including engineered and institutional controls, has been initiated and is pending on the fifth anniversary of the Second Payment, the Landfill Parties may delay the Final Payment until after the five year review is complete and resulting adjustments, if any, under Section 5.2 have been made, provided that the Final Payment shall not be delayed more than 180 days beyond the fifth anniversary of the Second Payment.

5.2 Adjustment to Compensation

5.2.1 The Landfill Parties have in Section 5.1 above, agreed to pay to the Tribe certain amounts based, in part, upon the cost projected in the FS to implement the Preferred Remedy.

5.2.2 If at any time prior to payment of the Final Payment, Ecology requires additional Work or issues an order expanding the RI/FS or issues a Final Remedy that constitutes a Material Change (as defined in Section 2.8) from the Preferred Remedy ("Increased Costs"), the Landfill Parties shall be entitled to withdraw from the Account an amount not to exceed the amount of the Final Payment on a dollar-for-dollar basis corresponding to the dollar amount of the Increased Costs exceeding the threshold of materiality (i.e., more than \$350,000) of the expanded RI/FS or the Final Remedy. The Landfill Parties shall notify the Tribe in writing of the amount of the proposed withdrawal from the Account. If the Tribe disputes the amount of the proposed withdrawal, the Landfill Parties and the Tribe agree to negotiate in good faith, without waiving any other legal rights. If direct negotiations prove unsuccessful, the Parties agree to employ alternative dispute resolution, as set forth in Section 13.

6. Access for Monitoring and Sampling

The Tribe has granted the PLPs under the Access Agreement, dated September 5, 1995 and attached hereto as Exhibit E, a nonexclusive license to enter the Reservation to perform on-site Work as set forth in the RI/FS Consent Decree. The Tribe hereby agrees to extend the term of the nonexclusive license granted by the Access Agreement for the period of time necessary to allow for the completion of the Work required under the Final Consent Decree or any subsequent Five Year Review. To the extent that approval(s) by the Bureau of Indian Affairs of the Access Agreement is required under law, the Parties shall cooperate to seek such approval, and any necessary subsequent approvals, until such time as Ecology makes a determination that a Point of Compliance on the Reservation is no longer necessary.

7. Institutional Controls

7.1 The Parties have identified the Protection Area depicted in Exhibit C as an area within which certain uses and access should or may be restricted to protect Tribal resources and the health and welfare of the Reservation Population.

7.2 The Tribe agrees to restrict use of and access to the Protection Area and otherwise implement the Institutional Controls attached as Exhibit D commencing upon the Effective Date of this Agreement.

7.3 Incorporation into Final Remedy

The Parties intend for the Preferred Institutional Controls Plan attached as Exhibit D to be incorporated in the Final Remedy.

7.4 Implementation, Amendment, and Codification of Institutional Controls.

7.4.1 Commencing upon the Effective Date of this Agreement, The Tribe shall permit the Landfill Parties to post signs within the Protection Area to notify the Reservation Population of the restricted uses as listed in the Institutional Controls. The Tribe agrees to maintain the signs posted by the Landfill Parties.

7.4.2 To the extent that the Preferred Institutional Controls are modified in the Final Consent Decree, the Tribe shall implement the modified Institutional Controls accordingly.

7.4.3 The Tribe shall codify the restrictions and Institutional Controls required in the Final Consent Decree in Tribal Code within 60 days of the Court entry and approval of the Final Consent Decree.

7.5 Enforcement

7.5.1 The Tribe shall be responsible for the enforcement of its ordinance and/or zoning regulations that implement the restrictions as listed in the Institutional Controls.

7.5.2 The Landfill Parties shall be responsible for posting the appropriate signs and the Tribe shall be responsible for maintaining such signs. Prior to posting any sign, the Landfill Parties shall seek approval of the sign and its intended location from the Tribe. Such approval shall not be unreasonably withheld.

7.6 As part of the Institutional Controls, the Tribe agrees to take reasonable efforts to prevent vandalism and damage to the Site and to the monitoring wells, signs and any other property placed in the Protection Area by the Landfill Parties to implement the RI/FS Consent Decree, the Cleanup Action Plan, the Final Consent Decree, or in furtherance of the objectives of this Agreement.

7.7 Annual Report

The Tribe agrees to provide the Landfill Parties with a report on the implementation of the Institutional Controls on an annual basis and to work together with the Landfill Parties to address any issues or concerns that may arise.

7.8 Modification

In the event that Ecology or the Court approves the reduction of the geographic extent of the Protection Area and/or modification of the Institutional Controls at any time after entry and approval of the Final Consent Decree, the Parties agree that the Tribe may modify the restrictions and Institutional Controls it has adopted accordingly.

7.9 Termination

This Institutional Controls Plan shall be implemented and enforced until such time as the Court or Ecology makes a determination that the concentrations of the contamination in the groundwater in the Protection Area meet the applicable cleanup levels under MTCA, and that the Institutional Controls within the Protection Area are no longer necessary. It is anticipated that Institutional Controls will be required for at least 20 years after the Effective Date of this Agreement.

8. Mutual Release

8.1 The Tribe hereby releases, discharges, covenants and agrees not to assert against the Landfill Parties, including parent companies, subsidiaries, or affiliates, and their owners, officers, directors, employees and agents, any and all Tribal Claims, which it may have, or hereafter have.

8.2 The Landfill Parties hereby release, discharge, covenant and agree not to assert against the Tribe any and all claims, which it may have, or hereafter have. This release includes, without limitation, all claims, debts, actions, damages and costs of any and all types relating to the Site.

8.3 The waivers and releases in Section 8.1 and 8.2 shall be absolute and come into full force and effect on the Effective Date of this Agreement.

9. Denial of Liability

The County and WMW expressly deny any fault or liability related to the Site under the Model Toxics Control Act, Chapter 70.105D, Revised Code of Washington or any other applicable state, Tribal or federal statute, regulation or common law, and likewise deny any responsibility for response costs, remedial costs or any other costs or damages thereunder.

10. Contact Persons.

Any notice required or made with respect to this Agreement shall be in writing and shall be effective upon receipt if hand delivered or electronically transmitted, or within three days after being placed in the U.S. mail.

10.1 For all other matters, all documents and correspondence shall be sent to the following contact persons:

10.1.1 For the Landfill Parties:

Gretchen Olsen
Dept. of Public Works - Solid Waste Division
614 Division Street, MS - 27
Port Orchard, WA 98366
Phone: (360) 337-4626
Fax: (360) 337-4867
E-mail: golsen@co.kitsap.wa.us

With copies to:

Richard Du Bey
Short Cressman & Burgess
999 Third Avenue, Suite 3000
Seattle, WA 98104
Phone: (206) 682-3333
Fax: (206) 340-8856
Email: rdubey@scblaw.com

Lisa J. Nickel, Civil Deputy
Kitsap County Prosecuting Attorney's Office
614 Division St. MS 35A
Port Orchard, WA 98366
Phone: (360) 337-4974
Fax: (360) 337-7083
Email: lnickel@co.kitsap.wa.us

Robert Longo
Western Group General Counsel
Waste Management
Western Group Office
7025 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85253

Leslie Nellermoe
Heller Ehrman White & McAuliffe
701 Fifth Ave., Suite 6100
Seattle, WA 98104-7098
Phone: (206) 389-6130

Fax: (206) 447-0849
E-mail: leslie.nellermoe@hellerehrman.com

10.1.2 For The Tribe:

Mike Drysdale
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Phone: (612) 340-5652
Fax: (612) 340-0652
Email: drysdale.michael@dorsey.com

With copies to:

Office of the Chairman
Port Gamble S'Klallam Tribe
Immediate Attention Required – Landfill Notice
31912 Little Boston Road NE
Kingston, Washington 98346

Office of the Tribal Attorney
Port Gamble S'Klallam Tribe
Immediate Attention Required – Landfill Notice
31912 Little Boston Road NE
Kingston, Washington 98346

Eric Eberhard
Dorsey & Whitney LLP
U.S. Bank Centre
1420 5th Avenue
Suite 3400
Seattle, WA 98101-4010
Phone: (206) 903-8800
Fax: (206) 903-8820
Email: eberhard.eric@dorsey.com

11. Confidentiality.

11.1 The Parties agree that all information or documents provided to or produced by the Parties' consultants or contractors, or exchanged between or among the Parties, in performance of the Work or in connection with this Agreement (including

drafts of this Agreement itself), other than publicly available information, shall be considered joint confidential material. The execution version of this Agreement may be publicly disclosed at the time it is presented for approval by the County Board of Commissioners or the Tribal Council, and after execution.

11.2 The Parties agree not to disclose any such confidential information or documents to anyone except the Parties, their officers, directors, employees, representatives, consultants, agents, insurers, accountants, and attorneys, in the absence of an order by a court or government agency having jurisdiction or without the unanimous approval of the Landfill Parties; provided, that any Party may use or disclose such information or documents as may be necessary to support a claim against any person or entity not a Party or affiliated with a Party for cost recovery, contribution, or indemnity, or against any insurer for insurance coverage or damages, or as required by law.

11.3 The Parties may disclose any such information to Ecology as needed to complete the RI/FS process, to develop the Cleanup Action Plan or to implement the Final Remedy, the Final Consent Decree, the Ecology Five Year Review process, or this Agreement. This Section shall survive the termination or expiration of this Agreement.

12. Notice of Default and Right to Cure.

If any Party is in material breach of the obligations under this Agreement and has failed to cure such breach within thirty (30) days after receipt of written notice of such breach from any other Party, the non-breaching Party or Parties may invoke the dispute resolution requirements under Section 13 below.

13. Dispute Resolution.

Any dispute, controversy, difference, claim, or demand of any kind, under any theory, whether at law or equity, arising out of, with respect to, or relating to, the execution, breach, interpretation, performance, termination, enforcement, or nonperformance, of this Agreement including without limitation, the validity, scope, arbitrability, and enforceability of this Agreement or any term or provision thereof, whether express or implied, or relating thereto (the Dispute), shall be resolved as follows:

13.1 Negotiation. The Parties will attempt in good faith to resolve the Dispute through negotiation. Any Party may initiate negotiations by providing written notice to the other Parties, setting forth the subject of the Dispute and the relief requested (Initial Notice). The recipients of such notice will respond in writing within twenty (20) days with a statement of their positions on, and recommended solution to, the Dispute. If the Dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within forty (40) days of the date of the Initial Notice in order to exchange relevant

information and perspectives, and to attempt to resolve the Dispute. If the Dispute is not resolved by these negotiations within sixty (60) days of the Initial Notice, the matter will be submitted to Washington Arbitration and Mediation Service (WAMS) or its successor for mediation, if the Parties agree, or arbitration, if the Parties do not agree to mediation.

13.2 Mediation. If the Dispute is not resolved through negotiation initiated as provided in Section 13.1 above, the Parties agree to mediation. Any Party may commence mediation by providing to WAMS and the other Party, or Parties, a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Parties agree to cooperate with WAMS and with one another to select a mediator from WAMS's panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that the fees and costs for the WAMS panel of neutrals or its successor will be borne as follows: 50% by the Landfill Parties and 50% by the Tribe. The Parties shall each bear their own costs of mediation, and such costs shall not be defrayed from any balance remaining in the escrow fund. The mediation shall be conducted at Seattle, Washington, or in such locations as all the Parties may stipulate. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any WAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

13.3 Arbitration. If the Dispute is not resolved through negotiation or mediation, the Parties agree that the Dispute shall be submitted to final and binding arbitration before WAMS, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 *et seq.* Any Party may commence arbitration by filing a written demand for arbitration with WAMS, with a copy to the other Party or Parties. The arbitration will be conducted in accordance with the provisions of WAMS's Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The arbitration shall be conducted at Seattle, Washington, or in such locations as all the Parties may stipulate. The Parties will cooperate with WAMS and with one another in selecting an arbitrator from WAMS's panel of neutrals, and in scheduling the arbitration proceedings. The Parties covenant that they will participate in the arbitration in good faith, and that the costs will be borne as follows: 50% by the Landfill Parties and 50% by the Tribe. The Parties shall each bear their own costs of arbitration, and such costs shall not be defrayed from any balance remaining in the escrow fund. The provisions of this Paragraph may be enforced by the Superior Court of the State of Washington for King County.

14. Limited Waiver of Sovereign Immunity. The Tribe voluntarily enters a limited waiver of its sovereign immunity, and that of its officers and employees acting for the Tribe in their official capacities, and consents to binding and mandatory arbitration,

the enforcement of the obligation to arbitrate, and the enforcement of any award, order or judgment of the arbitrator(s) in any arbitration authorized by Section 13. The Tribe voluntarily enters a limited waiver of its sovereign immunity and consents to suit solely by a Landfill Party or Parties, or their successors and assigns, to judicially enforce this Agreement in a suit brought in the Superior Court of the State of Washington for King County. The Tribe agrees that it will not raise sovereign immunity as a defense in any judicial action brought the Landfill Parties to enforce this Agreement in accordance with this Section 14.

15. Governing Law. The Institutional Controls contemplated by this Agreement will be implemented on the Reservation. The Parties agree that it is appropriate to designate Washington law to govern this Agreement. Accordingly, the Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to choice of law.

16. Waiver of Jurisdiction in Tribal Court. This Agreement and the actions taken pursuant to this Agreement shall not be interpreted under any circumstances as consent by the Landfill Parties to jurisdiction in a Court of the Tribe over any claims or disputes arising under this Agreement. The Tribe expressly waives any right it may have to require the Landfill Parties to exhaust their remedies in a Court of the Tribe before bringing an enforcement action pursuant to Section 13 of this Agreement. The Tribe agrees that it will not prosecute, maintain, or institute any action, suit, administrative action or proceeding of any kind or nature against the Landfill Parties in a Court of the Tribe for any matter within the scope of claims released in Section 8 or as may otherwise be provided under the terms of this Agreement.

17. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties.

18. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

19. Headings. The Headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

20. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. Venue. Venue for any action arising out of this Agreement shall be in the Superior Court of the State of Washington for King County.

23. Authorization. The signatures set out below warrant and guarantee that the signers have been authorized to represent the Party and are acting as the Party hereof.

IN WITNESS WHEREOF, the Parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.

WASTE MANAGEMENT OF
WASHINGTON, INC.

PORT GAMBLE S'KLALLAM TRIBE

By: [Signature]

By: [Signature]

Name: Robert E. Longo

Name: RONALD B. CHARLES

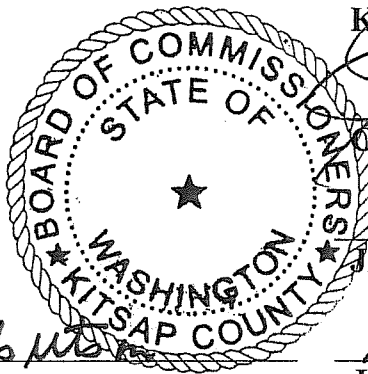
Title Vice Pres. & Asst. Secretary

Title: TRIBAL CHAIR

Date: 4/23/07

Date: 4/27/07

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON 3/26/07



[Signature]
CHRIS ENDRESEN, Chair

[Signature]
JAN ANGEL, Commissioner

[Signature]
JOSH BROWN, Commissioner

ATTEST:

[Signature]
Opal Robertson
Clerk of the Board

Exhibit A

Resolution of Port Gamble S'Klallam Tribe

OCT 23 2006

RESOLUTION NO. 06-A-075

THE
PORT GAMBLE S'KLALLAM
BUSINESS COMMITTEE
OF THE
PORT GAMBLE S'KLALLAM
COMMUNITY COUNCIL

I.

WHEREAS, the Port Gamble S'Klallam Indian Community is organized under the Indian Reorganization Act of June 18, 1934; and

II.

WHEREAS, under its Constitution and Bylaws adopted August 5, 1939, the Community Council was designated as the governing body of the Port Gamble S'Klallam Indian Community; and

III.

WHEREAS, by resolution dated April 22, 1956, the Port Gamble S'Klallam Community Council delegated the authority to conduct the business of the Port Gamble S'Klallam Indian Community to the Port Gamble S'Klallam Business Committee; and

IV.

WHEREAS, the Port Gamble S'Klallam Reservation was acquired by purchase, under the provisions of Section 5 of the Indian Reorganization Act, such purchase having ultimately been paid in full with tribal funds rather than federal aid, and proclaimed on June 16, 1938 to be an Indian reservation "...for the benefit and use of the Port Gamble Band of Clallam Indians.."; and

V.

WHEREAS, the closed Hansville Landfill is located adjacent to the Port Gamble S'Klallam Reservation, at 31645 Hansville Road Northeast, Hansville, Kitsap County, Washington; and

VI.

WHEREAS, contaminants from the Hansville Landfill have migrated under and contaminated the shallow aquifer beneath the Reservation; and

VII.

WHEREAS, the former owners and operators of the Hansville Landfill ("Landfill Parties") have engaged in a multi-year Remedial Investigation and Feasibility Study ("RI/FS") process under the Washington State Model Toxics Control Act, RCW 70.105D, to devise a cleanup plan for the Hansville Landfill; and

VIII.

WHEREAS, the Business Committee has retained environmental consultants to evaluate and comment upon the RI/FS process; and

IX.

WHEREAS, through the RI/FS process, the Landfill Parties have proposed a cleanup plan that the Business Committee has concluded will be reasonably protective of the health and welfare of the Port Gamble S'Klallam Indian Community, subject to ongoing supervision of the Washington State Department of Ecology; and

X.

WHEREAS, the cleanup plan will nonetheless leave residual contamination under the Reservation for many years, and limit the uses to which the affected property can be developed; and

XI.

WHEREAS, in compensation for this ongoing contamination, the Business Committee has negotiated a settlement with the Landfill Parties in which the Landfill Parties will pay a substantial sum of money, and

XII.

WHEREAS, the Business Committee anticipates using settlement funds to defray the costs of acquiring additional real property and/or other uses to compensate for the restrictions affecting the contaminated reservation lands; and

XIII.

WHEREAS, the Business Committee has concluded that the settlement is in the best interests of the Port Gamble S'Klallam Indian Community, considering all legal, administrative, and other options available to the Community to address the contamination and recover from the Landfill Parties;

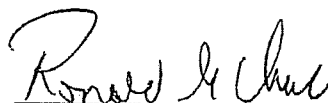
IX.

NOW THEREFORE BE IT RESOLVED, that the Port Gamble S'Klallam Business Committee does hereby accept and adopt the Settlement Agreement attached as Exhibit A hereto.

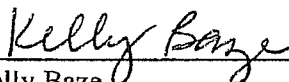
CERTIFICATION

WE HEREBY CERTIFY that on this date there was a special meeting held of the Port Gamble S'Klallam Business Committee on the Port Gamble S'Klallam Indian Reservation, at which time a quorum was present;

WE FURTHER CERTIFY, that the above numbered resolution, was at said meeting, introduced, evaluated, and was passed by a vote of 4 FOR, 0 AGAINST, 0 ABSTAIN, dated this 17 th day of October, 2006.



Ronald G. Charles
Chairman



Kelly Baze
Secretary

Exhibit B

**Department of Interior, Bureau of Indian Affairs
Approval of Settlement Agreement**

MAY 07 2007



IN REPLY REFER TO:
Environmental Management

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



MAY 3 2007

The Honorable Ronald G. Charles
Chairman
Port Gamble Indian Community
31912 Little Boston Road NE
Kingston, Washington 98346

Dear Chairman Charles:

We are pleased to approve the Settlement Agreement Among Kitsap County, Waste Management of Washington, Inc., and The Port Gamble S'Klallam Tribe pursuant to 25 U.S.C. §81 and 25 C.F.R. part 84.

If we can be of assistance in the implementation of this Settlement Agreement please call Q Brown at (503) 231-6753.

cc: Michael Drysdale, Dorsey & Whitney, LLP **ACTING** Northwest Regional Director

Exhibit C

MAP OF THE PROTECTION AREA

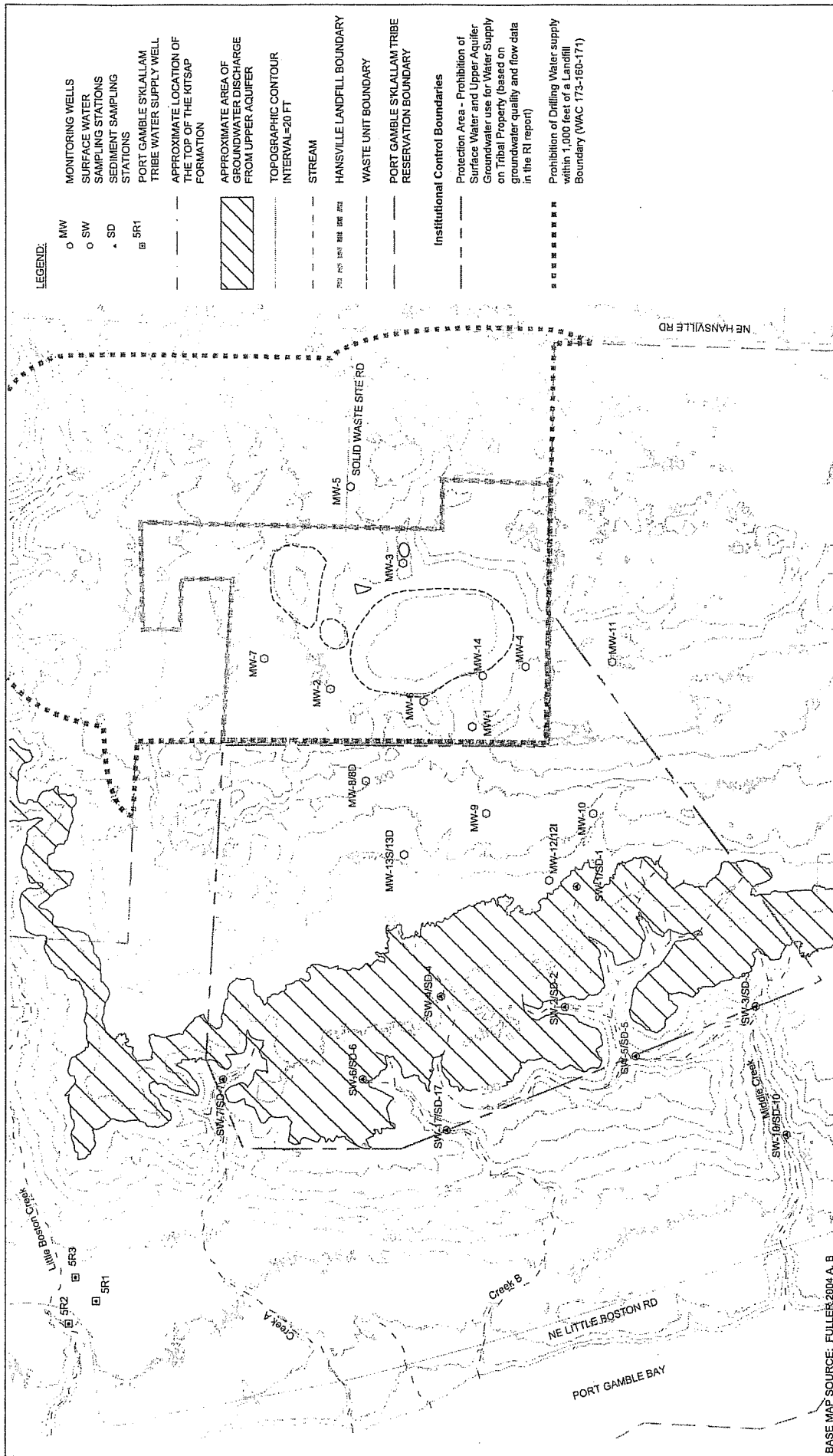


Exhibit C
Map of Protection Area

BASE MAP SOURCE: FULLER 2004 A, B
Parametrix 555-3966-0020/04 1106 (B)

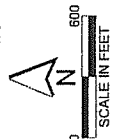


Exhibit D

PREFERRED INSTITUTIONAL CONTROLS

Institutional Controls

1. The surface water within the Protection Area as described in Exhibit A shall not be used for any drinking water or agricultural purposes. The groundwater underlying the Protection Area down to the depth of the Kitsap Formation (as shown in Figure 2) shall not be used for any drinking or agricultural purposes. Groundwater below the upper boundary of the Kitsap Formation may be used for any purpose, but such groundwater shall not be accessed by a well located in the Protection Area.
2. Within the Protection Area, no surface disturbances shall occur that would disturb any sampling locations used by the Landfill Parties or that would encounter groundwater and/or change the hydrology of the area.
3. Tribal members may access the Protection Area for recreational and other activities, such as the gathering of plants for traditional and medicinal uses, provided that such activities do not include the restricted uses listed in paragraphs 1 and 2 above, or as may be imposed by Ecology.

Exhibit E

TEMPORARY ACCESS AGREEMENT DATED SEPTEMBER 20, 1985.

ACCESS AGREEMENT

This Agreement is made as of Sept. 20, 1995, by and between the Port Gamble S'Klallam Tribe ("the Tribe"), Kitsap County and KCSL, Inc. ("KCSL"), collectively referred to herein as the Parties.

RECITALS

1. The Tribe is situated on the Port Gamble S'Klallam Indian Reservation, ("the Reservation") which is owned by the United States in trust for the Tribe, and is located in Kitsap County, Washington. The Reservation's boundaries are depicted in Figure 1, which is attached hereto.
2. KCSL and Kitsap County desire to enter the Reservation in connection with a Consent Decree with the Department of Ecology relating to the Hansville Landfill.
3. The Tribe and DOE have entered into a Memorandum of Agreement providing for Tribal cooperation and participation in the preparation of the Remedial Investigation / Feasibility Study (RI/FS) for the Hansville Landfill.

NOW, THEREFORE, the Parties agree as follows:

1. Grant of Access. The Tribe grants to KCSL and Kitsap County a nonexclusive license to enter upon the Reservation for the time necessary for KCSL and Kitsap County to perform their on-site work as set forth in the Consent Decree. This license extends to employees, authorized agents and contractors of KCSL and Kitsap County, who may enter the Reservation to perform all tests, inspections, borings, engineering studies, surveys, appraisals, environmental studies, operations and activities, in accordance with the Consent Decree and any scope of work or work plan developed and approved in connection therewith.
2. Notice. KCSL and Kitsap County shall provide at least three (3) business days notice of requests for Site access prior to entering the Reservation. Notice may be provided by telephone or facsimile. Notice under this paragraph shall be directed to:

Mr. Jay Watson
Port Gamble S'Klallam Tribe

31912 Little Boston Road, N.E.
Kingston, WA 98346

Phone - (360) 297-6242
FAX - (360) 297-7097

3. Opportunity to Observe and Split Samples. Upon entry by KCSL or Kitsap County onto the Reservation, the Tribe shall be provided the opportunity to have a representative accompany any person during all visits to the Reservation. KCSL and Kitsap County shall provide the Tribe the opportunity to split samples, upon request, or take duplicate samples if insufficient sample is available to split. The Tribe shall be responsible for providing containers for any split or duplicate sample. If the Tribe has such split or duplicate samples analyzed, the Tribe agrees to provide copies of the analytical data and related QA/QC package to KCSL and Kitsap County as soon as available.

4. Mutual Cooperation. KCSL and Kitsap County agree to coordinate its activities with the Tribe to minimize any inconvenience to or interruption of the conduct of the activities of the Tribe or its members, subject to the terms and conditions set forth in the Consent Decree. The Tribe agrees to cooperate with KCSL and Kitsap County to facilitate such investigative activities on the Reservation as may be necessary under the Consent Decree. Further, the Parties agree to cooperate and execute any additional documents or permit applications which may reasonably be required to effectuate the purpose of this Agreement.

5. Indemnification and Hold Harmless. KCSL and Kitsap County agree to indemnify and save and hold the Tribe, its agents, contractors and employees harmless from any and all liability, damages, expense, causes of action, suits, claims (including, but not limited to claims or causes of action for death or personal injury) or judgments, including reasonable attorney's fees, arising from or on account of acts or omissions of KCSL, Kitsap County, their officers, employees, agents, or contractors in entering into and implementing the Consent Decree and this Agreement. The Tribe shall promptly provide notice to KCSL and Kitsap County upon receipt of any claims which it contends are subject to this indemnification agreement. Notice which is provided within 20 days of receipt of claims shall be deemed prompt under this paragraph. In undertaking defense of any such claim, KCSL and the County shall have full and complete control of the defense, including the right to select counsel, determine the course of the defense, settle or try the case. The Tribe agrees to cooperate in the defense of such claims. This

indemnification obligation shall apply to any claims arising from the performance of the RI/FS pursuant to this Access Agreement.

6. Compliance with Laws. KCSL and Kitsap County agree that they will comply with all applicable Tribal laws, statutes, ordinances, regulations and rules in the course of its activities on the Reservation pursuant to this Agreement.

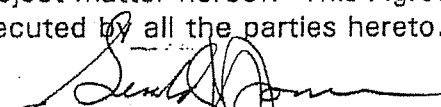
7. Execution of Agreement. Each of the Parties represents and warrants that it is authorized to execute this Agreement on behalf of the respective Parties to the Agreement and that this Agreement, when executed by those Parties, shall become valid and binding obligations enforceable in accordance with its terms.

8. Assignment, Successor and Assigns. The Agreement can not be assigned by any Party without the Prior written consent of the other parties. This Agreement shall be binding as to the Parties respective representatives, successors, and assigns.

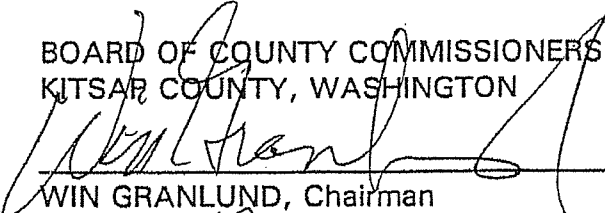
9. No Admission. Neither the execution of this Agreement nor the carrying out of activities under the Consent Decree and this Agreement shall be deemed to be an admission of any liability, fault or responsibility on the part of KCSL or the County.

10. Entire Agreement. This Agreement sets forth the entire agreement between the Parties relating to the subject matter hereof. This Agreement may not be amended except in writing, executed by all the parties hereto.

DATED: 9-22-95


GERALD J. JONES, Chair
Port Gamble S'Klallam Tribe

DATED: 8/28/95


BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

WIN GRANLUND, Chairman


MATT RYAN, Commissioner

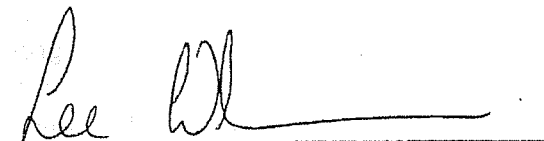

PHIL BEST, Commissioner

Approved by:



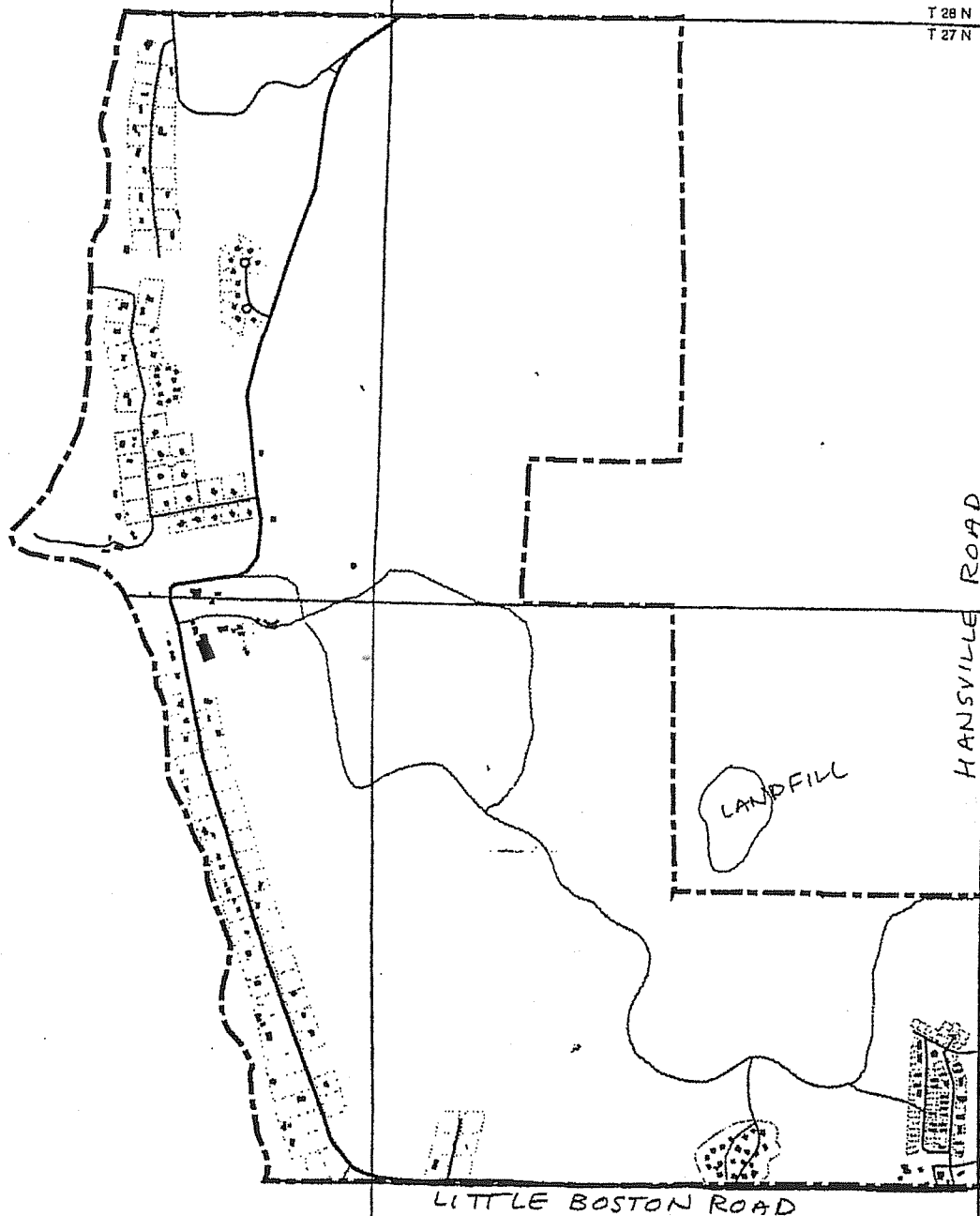
HOLLY ANDERSON
Clerk of the Board

DATED: 9/14/95


KCSL, INC.

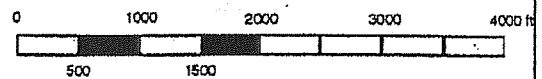
PORT GAMBLE S'KLALLAM RESERVATION

T 28 N
T 27 N



JURISDICTIONS

- Lots
- Residences
- Buildings

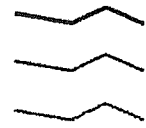


ROADS

COLLECTOR

LOCAL

UNIMPROVED
FORESTRY ROAD



Map prepared by TRISKELION • 7010 Dibble Ave. N.W., Seattle, WA, 98117 • 784-2473

FIGURE "1"

THE
PORT GAMBLE)
S'KLALLAM)
BUSINESS COMMITTEE)
OF THE)
PORT GAMBLE)
S'KLALLAM)
COMMUNITY COUNCIL)

I.

WHEREAS, the Port Gamble S'Klallam Indian Community is organized under the Indian Reorganization act of June 18, 1934; and

II.

WHEREAS, under its Constitution and Bylaws adopted August 5, 1939, the Community Council was designated as the governing body of the Port Gamble S'Klallam Indian Community; and

III.

WHEREAS, by resolution dated April 22, 1956, the Port Gamble S'Klallam Community Council delegated the authority to conduct the business of the Port Gamble S'Klallam Indian Community to the Port Gamble S'Klallam Business Committee; and

IV.

WHEREAS, the Port Gamble S'Klallam Tribe wishes to cooperate with efforts by the Washington State Department of Ecology under the Model Toxics Control Act and Kitsap County and KCSL, Inc., the potentially liable parties that are signatories to the Hansville Landfill Consent Decree; and

V.

WHEREAS, that cooperation must necessarily include access to reservation lands, that are impacted or potentially impacted by landfill contaminants, for testing, monitoring and remediation activities.

VI.

NOW THEREFORE BE IT RESOLVED, that the Port Gamble S'Klallam Business Committee hereby approves the Access Agreement with Kitsap County and KCSL, Inc.

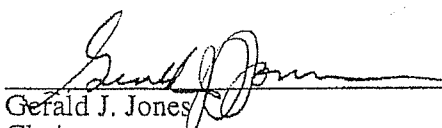
VII.

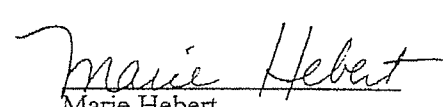
BE IT FURTHER RESOLVED, that Gerald J. Jones, Business Committee Chair, is hereby authorized to sign the Access Agreement document for and on behalf of the Port Gamble S'Klallam Tribe.

CERTIFICATION

WE HEREBY CERTIFY that on this date there was a regular meeting held of the Port Gamble S'Klallam Business Committee on the Port Gamble S'Klallam Indian Reservation, at which time a quorum was present;

WE FURTHER CERTIFY, that the above numbered resolution, was at said meeting, introduced, evaluated, and was passed by a vote of 4 FOR, 0 AGAINST, dated this 20th day of Sept., 1995.


Gerald J. Jones
Chair


Marie Hebert
Secretary

