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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,) No. 94TC-S167
)
) CONSENT DECREE
v.)
)
PORT OF TACOMA)

94 2 3590 3

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and The Port of Tacoma (Defendant) is to provide for
5 remedial action on the southern 10.73 acres of the property
6 located at the Cascade Timber No. 3 Log Yard in Tacoma, WA (the
7 "Site") where there has been a release or threatened release of
8 hazardous substances (Exhibits A and B). This Decree requires
9 the Defendant to undertake the following remedial action(s)
10 which are discussed in more detail in Section VI:

- 11 (1) The Defendant shall perform the remedial actions
12 specified in detail in the Cleanup Action Plan
13 (Exhibit C) and the Scope of Work (Exhibit D). These
14 exhibits are incorporated by reference and are
15 integral and enforceable parts of this Decree.
- 16 (2) Record with the property deed the attached Declaration
17 of Restrictive Covenant (Exhibit E) limiting the Site
18 to industrial uses and ensuring that future
19 development is consistent with strength and
20 permeability limitations or any other functional,
21 operational, or maintenance related limitations of the
22 Site remedial action.

23 Ecology has determined that these actions are necessary to
24 protect public health and the environment.

25 B. The Complaint in this action is being filed
26 simultaneously with this Decree. An answer has not been filed,

1 and there has not been a trial on any issue of fact or law in
2 this case. However, the parties wish to resolve the issues
3 raised by Ecology's complaint. By entering into this Decree,
4 the Defendant neither admits nor denies liability under federal
5 or state law. In addition, the parties agree that settlement of
6 these matters without litigation is reasonable and in the public
7 interest and that entry of this Decree is the most appropriate
8 means of resolving these matters.

9 C. In signing this Decree, the Defendant agrees to its
10 entry and agrees to be bound by its terms.

11 D. By entering into this Decree, the parties do not
12 intend to discharge nonsettling parties from any liability they
13 may have with respect to matters alleged in the complaint. The
14 parties retain the right to seek reimbursement, in whole or in
15 part, from any liable persons for sums expended under this
16 Decree.

17 E. This Decree shall not be construed as proof of
18 liability or responsibility for any releases of hazardous
19 substances or cost for remedial action nor an admission of any
20 facts; provided, however, that the Defendant shall not challenge
21 the jurisdiction of Ecology in any proceeding to enforce this
22 Decree.

23 F. The Court is fully advised of their reasons for entry
24 of this Decree, and good cause having been shown: IT IS HEREBY
25 ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:
26

1 F. Defendant has agreed to undertake the actions
2 specified in this Decree and consents to the entry of this
3 Decree under the MTCA.

4 III. PARTIES BOUND

5 This Decree shall apply to and be binding upon the
6 signatories to this Decree (parties), their successors and
7 assigns. The undersigned representative of each party hereby
8 certifies that he or she is fully authorized to enter into this
9 Decree and to execute and legally bind such party to comply with
10 the Decree. Defendant agrees to undertake all actions required
11 by the terms and conditions of this Decree and not to contest
12 state jurisdiction regarding this Decree. No change in
13 ownership or corporate status shall alter the responsibility of
14 the Defendant under this Decree. Defendant shall provide a copy
15 of this Decree to all agents, contractors and subcontractors
16 retained to perform work required by this Decree and shall
17 ensure that all work undertaken by such contractors and
18 subcontractors will be in compliance with this Decree.

19 IV. DEFINITIONS

20 Except for as specified herein, all definitions in WAC 173-340-
21 200 apply to the terms in this Decree.

22 A. Property: The Property, previously known as the
23 Cascade Timber No. 3 log yard, is located along Maxwell Way
24 between Port of Tacoma Road and Thorne Road, Tacoma, Washington.
25 The property is owned by the Port of Tacoma and consists of two
26

1 distinct sub-parcels; the northern 7.84 acres, and the southern
2 10.73 acres.

3 B. Site: Refers to the southern 10.73-acre portion of
4 the property which is subject to this Decree. The Site is
5 further described in Exhibit A, a detailed site diagram, and
6 Exhibit B, a legal description, attached and hereby incorporated
7 as part of this Decree.

8 C. Parties: Refers to the Washington State Department of
9 Ecology and the Port of Tacoma.

10 D. Defendant: Refers to the Port of Tacoma.

11 E. Consent Decree or Decree: Refers to this Consent
12 Decree and each of the exhibits to the Decree. All exhibits are
13 integral and enforceable parts of this Consent Decree. The
14 terms "Consent Decree" or "Decree" shall include all Exhibits to
15 the Consent Decree.

16 V. STATEMENT OF FACTS

17 Ecology makes the following finding of facts without any
18 express or implied admissions by Defendant.

19 1. The Port is the owner of an 18.57 acre parcel of
20 land known as the Cascade Timber No. 3 Log Sort Yard (or "the
21 property"). The property is located along Maxwell Way, Thorne
22 Road, and Port of Tacoma Road in Tacoma, Washington. The
23 property consists of two distinct sub-parcels; the northern
24 7.84 acres and the southern 10.73 acres (Exhibit A).

25

26

1 2. From 1967 through June 1978, Nichiman America, Inc.,
2 leased the southern 10.73 acres of the property for use as a log
3 sort yard.

4 3. From 1978 through 1984, Cascade Timber Company leased
5 the southern 10.73 acres of the property for use as a log sort
6 yard.

7 4. Between January and March of 1982, slag generated by
8 ASARCO, Incorporated (Inc.) was placed on the southern 10.73
9 acres of the property by Cascade Timber Company for use as
10 ballast material.

11 5. In 1984, the northern 7.84 acres of the property was
12 developed.

13 6. From 1984 through 1987, Cascade Timber Company leased
14 the property (or the entire 18.57 acres) for use as a log sort
15 yard.

16 7. The property has not been used since early 1987.

17 8. It appears that runoff water that leaves the property
18 is conveyed via City of Tacoma storm drains to the Sitcum
19 Waterway.

20 9. Ecology collected two surface water samples from the
21 southern 10.73 acres of the property between November 1983 and
22 June 1984 (Norton D. and Johnson A., 1985). The highest
23 concentrations of metals measured from this sampling program
24 were as follows: arsenic (As) 1,750 micrograms per liter
25 (ug/L), copper (Cu) 138 ug/L, lead (Pb) 69 ug/L, zinc (Zn) 293
26 ug/L, nickel (Ni) 18 ug/L, antimony (Sb) 8 ug/L, and cadmium

1 (Cd) 0.5 ug/L (see Exhibit C). The levels of arsenic, zinc, and
2 copper exceeded Environmental Protection Agency (EPA) marine
3 water quality acute and chronic criteria. The levels of nickel
4 and lead exceeded marine water quality acute criteria.
5 Additionally, the level of copper exceeded marine water acute
6 criteria and the level of zinc exceeded marine water acute and
7 chronic criteria for surface waters of the State of Washington
8 (WAC 173-201-047).

9 10. In the 1985 study, Norton and Johnson conclude that in
10 all probability the use of slag for ballast at log sort yards
11 was the major source of elevated metals concentrations seen in
12 log sort yard runoff, nearshore surface waters, and sediments.

13 11. On January 5, 1990, Ecology took samples of standing
14 water from the southern 10.73 acres of the property. One of the
15 samples showed elevated levels of arsenic (2,340 ug/L), copper
16 (445 ug/L), zinc (972 ug/L), and lead (120 ug/L). The levels of
17 arsenic, copper, zinc, and lead in this sample exceeded the EPA
18 marine water quality chronic criteria; and arsenic, copper, and
19 zinc exceeded EPA marine water quality acute criteria.

20 Additionally, copper exceeded EPA marine water quality acute
21 criteria, lead exceeded marine water chronic criteria, and zinc
22 exceeded marine water acute and chronic criteria for surface
23 waters of the State of Washington (WAC 173-201A).

24 12. On April 10, 1991, Ecology took samples of storm water
25 runoff from within a catch basin at the southern perimeter
26 (Thorne Road) of the property. Runoff from the property

1 travelled toward this particular catch basin. Sample results
2 showed the following: arsenic (As) 560 parts per billion (ppb),
3 copper (Cu) 160 ppb, lead (Pb) 320 ppb, and zinc (Zn) 868 ppb.
4 The levels of arsenic, copper, zinc, and lead in this sample
5 exceeded the EPA marine water quality chronic and acute
6 criteria. Additionally, arsenic and copper exceeded marine
7 water quality acute criteria, and lead and zinc exceeded marine
8 water quality acute and chronic criteria for surface waters of
9 the State of Washington (WAC 173-201-047).

10 13. On April 10, 1991, Ecology took samples of storm water
11 runoff flowing from the property towards a catch basin at the
12 southwest corner, near the intersection of Thorne Road and
13 Maxwell Way. Sample results showed the following: As 730 ppb,
14 Cu 160 ppb, Pb 88 ppb, Zn 350 ppb. Arsenic, copper, and zinc
15 exceeded EPA marine water quality chronic and acute criteria,
16 and lead exceeded EPA marine water quality chronic criteria.
17 Lead and zinc exceeded marine water quality acute and chronic
18 criteria and copper exceeded marine water quality acute criteria
19 for surface waters of the State of Washington (WAC 173-201-047).

20 14. On April 16, 1991, Ecology took a sediment sample from
21 a catch basin near the southwest corner of the property. The
22 catch basin that was sampled collects runoff from the Cascade
23 Timber No. 3 sort yard only. The sample obtained was tested for
24 As, Cu, Pb, and Zn. Test results indicate that the level of
25 arsenic in this sample (400 mg/kg) exceeded Puget Sound Marine
26

1 Sediment Cleanup Screening Levels (WAC 173-204-520), and Marine
2 Sediment Quality Standards Chemical Criteria (WAC 173-204-320).

3 15. Information in Ecology files indicates that elevated
4 levels of heavy metals at this property are linked to the use of
5 ASARCO slag as ballast.

6 16. Results of an Ecology study titled Assessment of Log
7 Sort Yards as Metals Sources to Commencement Bay Waterways,
8 November 1983 - June 1984 reported elevated levels of heavy
9 metals in surface water runoff from the property and in Sitcum
10 Waterway sediment. These metals included arsenic, copper, zinc,
11 and lead.

12 17. Results of a Tetra Tech study, conducted for Ecology
13 and EPA, titled Commencement Bay/Nearshore Tideflats Feasibilit
14 Study validated the earlier findings of Ecology. Tetra Tech
15 researchers found arsenic, copper, zinc, and lead in the waters
16 and sediment in the Sitcum waterway. The Tetra Tech study
17 defined arsenic, copper, lead, and zinc as problem chemicals in
18 the Sitcum Waterway.

19 18. The property is located within the boundaries of the
20 Commencement Bay/Nearshore Tideflats Superfund Site. The Site,
21 as well as other sites that drain to the Sitcum Waterway, are
22 suspected sources of elevated metals detected in bottom
23 sediments of the Sitcum Waterway.

24 19. Defendant has provided Ecology with the following
25 submittals per Agreed Order No. DE 91-S199:

26 A. "Draft Remedial Investigation Report," April 6, 1993.

1 B. "Draft Feasibility Study," June 2, 1993.

2 C. "Draft Characterization of Petroleum Hydrocarbons in
3 Soil," June 3, 1993.

4 These documents were finalized pursuant to Ecology review
5 on August 13, 1993 (Petroleum Hydrocarbons in soil), and
6 August 16, 1993 (RI/FS).

7 20. Results of the RI/FS concluded that elevated levels of
8 metals in soil and stormwater were found only on the southern
9 10.73 acres of the property. No metals above background
10 concentrations were measured on the northern 7.84 acres of the
11 property. Based on these facts, the "Site" requiring cleanup
12 was re-defined (from Agreed Order No. DE 91-S199) to consist of
13 the southern 10.73 acres of the property.

14 21. A draft Cleanup Action Plan (CAP) for the Site was
15 issued for thirty (30) day public review on August 13, 1993, and
16 finalized on September 28, 1993. The final CAP specifies the
17 Selected Cleanup Action and Remedial Action Objectives,
18 including Site cleanup levels. The CAP is based on Remedial
19 Investigation Report and Feasibility Study Report findings.

20 22. The Port of Tacoma has entered into a federal consent
21 decree (Federal Decree) for the Commencement Bay Nearshore/
22 Tidelands Superfund Site; Sitcum Waterway Problem Area. This
23 Federal Decree is also signed by the State of Washington in its
24 capacity as a natural resource trustee. The Federal Decree
25 settles the Natural Resource Damage (NRD) liability for all land
26

1 owned, operated, or managed by the Port, including the site
2 subject to this Decree.

3 VI. WORK TO BE PERFORMED

4 This Decree contains a program designed to protect public
5 health, welfare and the environment from the known release, or
6 threatened release, of hazardous substances or contaminants at,
7 on, or from the Site.

8 A. The Defendant shall perform the remedial actions
9 specified in detail in the Cleanup Action Plan (Exhibit C) and
10 the Scope of Work (Exhibit D). These exhibits are incorporated
11 by reference and are integral and enforceable parts of this
12 Decree. A summary of the work program to be performed is as
13 follows:

- 14 (1) Cap the Site in accordance with the plans specified in
15 the Ecology-approved Engineering Design Report.
- 16 (2) Inspect and maintain the cap in accordance with the
17 Ecology-approved Operation and Maintenance Plan.
- 18 (3) Monitor surface water and groundwater in accordance
19 with the Ecology-approved Monitoring Plan.
- 20 (4) Defendant agrees not to perform any remedial actions
21 outside the scope of this decree unless the parties
22 agree to amend the scope of work to cover these
23 actions. All work conducted under this decree shall
24 be done in accordance with ch. 173-340 WAC unless
25 otherwise provided herein.
26

1 (5) Within 20 days of completion of paving, the Defendant
2 shall record a restrictive covenant (Exhibit E) in the
3 title records to that portion of the property
4 underlying the Site over which Defendant holds fee
5 title. The restrictive covenant shall limit the Site
6 to industrial uses, and ensure that future development
7 is consistent with the strength and permeability
8 limitations or any other functional, operational, or
9 maintenance related limitations of the Site remedial
10 action. The Defendant shall forward a filed copy of
11 the restrictive covenant to Ecology within 10 days of
12 receiving a filed copy from the Pierce County Auditor.

13 VII. DESIGNATED PROJECT COORDINATORS

14 The project coordinator for Ecology is:

15 Dom Reale, Remedial Action Engineer
16 Department of Ecology
17 Southwest Regional Office
P. O. Box 47775
Olympia, Washington 98504-7775

18 The project coordinator for the Defendant is:

19 Suzanne Dudziak
20 Port of Tacoma
P. O. Box 1837
21 Tacoma, WA 98401-1837

22 Each project coordinator shall be responsible for
23 overseeing the implementation of this Decree. The Ecology
24 project coordinator will be Ecology's designated representative
25 at the Site. To the maximum extent possible, communications
26 between Ecology and the Defendant and all documents, including
reports, approvals, and other correspondence concerning the

1 activities performed pursuant to the terms and conditions of
2 this Decree, shall be directed through the project coordinators.
3 The project coordinators may designate, in writing, working
4 level staff contacts for all or portions of the implementation
5 of the remedial work required by this Decree. The project
6 coordinators may agree to minor modifications to the work to be
7 performed without formal amendments to this Decree. Minor
8 modifications will be documented in writing by Ecology.

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

12 VIII. PERFORMANCE

13 All work performed pursuant to this Decree shall be under
14 the direction and supervision, as necessary, of a professional
15 engineer or hydrogeologist, or equivalent, with experience and
16 expertise in hazardous waste site investigation and cleanup.
17 Any construction work must be under the supervision of a
18 professional engineer. Defendant shall notify Ecology in
19 writing as to the identity of such engineer(s) or
20 hydrogeologist(s), or others and of any contractors and
21 subcontractors to be used in carrying out the terms of this
22 Decree, in advance of their involvement at the Site.

23 IX. ACCESS

24 Ecology or any Ecology authorized representatives shall
25 have the authority to enter and freely move about all property
26 at the Site at all reasonable times for the purposes of, inter

1 alia: inspecting records, operation logs, and contracts related
2 to the work being performed pursuant to this Decree; reviewing
3 Defendant's progress in carrying out the terms of this Decree;
4 conducting such tests or collecting such samples as Ecology may
5 deem necessary; using a camera, sound recording, or other
6 documentary type equipment to record work done pursuant to this
7 Decree; and verifying the data submitted to Ecology by the
8 Defendant. Upon request, Ecology shall split any samples taken
9 during an inspection unless the Defendant fails to make
10 available a representative for the purpose of splitting samples.
11 All parties with access to the Site pursuant to this paragraph
12 shall comply with approved health and safety plans.

13 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

14 With respect to the implementation of this Decree,
15 Defendant shall make the results of all sampling, laboratory
16 reports, and/or test results generated by it, or on its behalf
17 available to Ecology and shall submit these results in
18 accordance with Section XI of this Decree.

19 If requested by Ecology, Defendant shall allow split or
20 duplicate samples to be taken by Ecology and/or its authorized
21 representatives of any samples collected by Defendant pursuant
22 to the implementation of this Decree. Unless otherwise agreed
23 to by the parties, Defendant shall notify Ecology seven (7)
24 calendar days in advance of any sample collection or work
25 activity at the Site. Ecology shall, upon request, allow split
26 or duplicate samples to be taken by Defendant or authorized

1 representatives of any samples collected by Ecology pursuant to
2 the implementation of this Decree provided it does not interfere
3 with the Department's sampling. Without limitation on Ecology's
4 rights under Section IX, Ecology shall endeavor to notify
5 Defendant prior to any sample collection activity.

6 XI. PROGRESS REPORTS

7 Defendant shall submit to Ecology written monthly progress
8 reports until construction is complete. The progress reports
9 shall describe the actions taken during the previous month to
10 implement the requirements of this Decree. The progress report
11 shall include the following:

12 A. A list of on-site activities related to this order
13 that have taken place during the month;

14 B. Detailed description of any deviations from required
15 tasks not otherwise documented in project plans or amendment
16 requests;

17 C. Description of all deviations from the schedule
18 (Exhibit D) during the current month and any planned deviations
19 in the upcoming months;

20 D. For any deviations in schedule, a plan for recovering
21 lost time and maintaining compliance with the schedule;

22 E. All raw data (including laboratory analyses) received
23 by the Defendant during the past month and an identification of
24 the source of the sample; and

25 F. A list of deliverables for the upcoming month if
26 different from the schedule.

1 All progress reports shall be submitted by the tenth day of
2 the month in which they are due after the effective date of this
3 Decree. Unless otherwise specified, progress reports and any
4 other documents submitted pursuant to this Decree shall be sent
5 by certified mail, return receipt requested, to Ecology's
6 project coordinator.

7 XII. RETENTION OF RECORDS

8 Defendant shall preserve, during the pendency of this
9 Decree and for ten (10) years from the date this Decree is no
10 longer in effect as provided in Section XXV, all records,
11 reports, documents, and underlying data in its possession
12 relevant to the implementation of this Decree and shall insert
13 in contracts with project contractors and subcontractors a
14 similar record retention requirement. Upon request of Ecology,
15 Defendant shall make all non-archived records available to
16 Ecology and allow access for review. All archived records shall
17 be made available to Ecology within a reasonable period of time.

18 XIII. TRANSFER OF INTEREST IN PROPERTY

19 No voluntary or involuntary conveyance or relinquishment of
20 title, easement, leasehold, or other interest in any portion of
21 the Site not previously described in this Consent Decree shall
22 be consummated without provision for continued operation and
23 maintenance of any containment system, stormwater collection
24 system, and monitoring system installed or implemented pursuant
25 to this Decree.
26

1 Prior to transfer of any legal or equitable interest in all
2 or any portion of the property not previously described in this
3 Consent Decree, and during the effective period of this Decree,
4 Defendant shall serve a copy of this Decree upon any prospective
5 purchaser, lessee, transferee, assignee, or other successor in
6 interest of the property; and, at least twenty (20) days prior
7 to any transfer, Defendant shall notify Ecology of said
8 contemplated transfer.

9 XIV. RESOLUTION OF DISPUTES

10 A. In the event a dispute arises as to an approval,
11 disapproval, proposed modification or other decision or action
12 by Ecology's project coordinator, the parties shall utilize the
13 dispute resolution procedure set forth below.

14 (1) Upon receipt of the Ecology project coordinator's
15 decision, the Defendant shall have fourteen (14) calendar days
16 within which to notify Ecology's project coordinator of its
17 objection to the decision.

18 (2) The parties' project coordinators shall then confer in
19 an effort to resolve the dispute. If the project coordinators
20 cannot resolve the dispute within fourteen (14) calendar days,
21 Ecology's project coordinator shall issue a written decision.

22 (3) Defendant may then request Ecology management review
23 of the decision. This request shall be submitted in writing to
24 the Toxics Cleanup Program Manager within seven (7) calendar
25 days of receipt of Ecology's project coordinator's decision.
26

1 (4) Ecology's Toxics Cleanup Program Manager shall conduct
2 a review of the dispute and shall issue a written decision
3 regarding the dispute within thirty (30) calendar days of the
4 Defendant's request for review. The Program Manager's decision
5 shall be Ecology's final decision on the disputed matter.

6 B. If Ecology's final written decision is unacceptable to
7 Defendant, Defendant has the right to submit the dispute to the
8 Court for resolution within thirty (30) calendar days of receipt
9 of Ecology's decision. The parties agree that one judge should
10 retain jurisdiction over this case and shall, as necessary,
11 resolve any dispute arising under this Decree. In the event
12 Defendant presents an issue to the Court for review, the Court
13 shall review the action or decision of Ecology on the basis of
14 whether such action or decision was arbitrary and capricious and
15 render a decision based on such standard of review.

16 C. The parties agree to only utilize the dispute
17 resolution process in good faith and agree to expedite, to the
18 extent possible, the dispute resolution process whenever it is
19 used. Where either party utilizes the dispute resolution
20 process in bad faith or for purposes of delay, the other party
21 may seek sanctions.

22 Implementation of these dispute resolution procedures shall
23 not provide a basis for delay of any activities required in this
24 Decree, unless Ecology agrees in writing to a schedule extension
25 or the Court so orders.
26

1 XV. AMENDMENT OF CONSENT DECREE

2 This Decree may only be amended by a written stipulation
3 among the parties to this Decree that is entered by the Court or
4 by order of the Court. Such amendment shall become effective
5 upon entry by the Court. Agreement to amend shall not be
6 unreasonably withheld by any party to the Decree.

7 Defendant shall submit any request for an amendment to
8 Ecology for approval. Ecology shall indicate its approval or
9 disapproval in a timely manner after the request for amendment
10 is received. If the amendment to the Decree is substantial,
11 Ecology will provide public notice and opportunity for comment.
12 Reasons for the disapproval shall be stated in writing. If
13 Ecology does not agree to any proposed amendment, the
14 disagreement may be addressed through the dispute resolution
15 procedures described in Section XIV of this Decree.

16 XVI. EXTENSION OF SCHEDULE

17 A. An extension of schedule shall be granted only when a
18 request for an extension is submitted in a timely fashion,
19 generally at least 30 days prior to expiration of the deadline
20 for which the extension is requested, and good cause exists for
21 granting the extension. All extensions shall be requested in
22 writing. The request shall specify the reason(s) the extension
23 is needed.

24 An extension shall only be granted for such period of time
25 as Ecology determines is reasonable under the circumstances. A
26 requested extension shall not be effective until approved by

1 Ecology or the Court. Ecology shall act upon any written
2 request for extension in a timely fashion. It shall not be
3 necessary to formally amend this Decree pursuant to Section XV
4 when a schedule extension is granted.

5 B. The burden shall be on the Defendant to demonstrate to
6 the satisfaction of Ecology that the request for such extension
7 has been submitted in a timely fashion and that good cause
8 exists for granting the extension. Good cause includes, but is
9 not limited to, the following.

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

20 However, neither increased costs of performance of the
21 terms of the Decree nor changed economic circumstances shall be
22 considered circumstances beyond the reasonable control of
23 Defendant.

24 C. Ecology may extend the schedule for a period not to
25 exceed ninety (90) days, except where a longer extension is
26 needed as a result of:

- 1 (1) Delays in the issuance of a necessary permit which wa
2 applied for in a timely manner; or
3 (2) Other circumstances deemed exceptional or
4 extraordinary by Ecology; or
5 (3) Endangerment as described in Section XVI.

6 Ecology shall give Defendant written notification in a
7 timely fashion of any extensions granted pursuant to this
8 Decree.

9 XVII. ENDANGERMENT

10 In the event Ecology determines that activities
11 implementing or in noncompliance with this Decree, or any other
12 circumstances or activities, are creating or have the potential
13 to create a danger to the health or welfare of the people on th
14 Site or in the surrounding area or to the environment, Ecology
15 may order Defendant to stop further implementation of this
16 Decree for such period of time as needed to abate the danger or
17 may petition the Court for an order as appropriate. During any
18 stoppage of work under this section, the obligations of
19 Defendant with respect to the work under this Decree which is
20 ordered to be stopped shall be suspended and the time periods
21 for performance of that work, as well as the time period for any
22 other work dependent upon the work which is stopped, shall be
23 extended, pursuant to Section XVI of this Decree, for such
24 period of time as Ecology determines is reasonable under the
25 circumstances.

1 In the event Defendant determines that activities
2 undertaken in furtherance of this Decree or any other
3 circumstances or activities are creating an endangerment to the
4 people on the Site or in the surrounding area or to the
5 environment, Defendant may stop implementation of this Decree
6 for such period of time necessary for Ecology to evaluate the
7 situation and determine whether Defendant should proceed with
8 implementation of the Decree or whether the work stoppage should
9 be continued until the danger is abated. Defendant shall notify
10 Ecology's project coordinator as soon as possible, but no later
11 than twenty-four (24) hours after such stoppage of work, and
12 thereafter provide Ecology with documentation of the basis for
13 the work stoppage. If Ecology disagrees with the Defendant's
14 determination, it may order Defendant to resume implementation
15 of this Decree. If Ecology concurs with the work stoppage, the
16 Defendant's obligations shall be suspended and the time period
17 for performance of that work, as well as the time period for any
18 other work dependent upon the work which was stopped, shall be
19 extended, pursuant to Section XVI of this Decree, for such
20 period of time as Ecology determines is reasonable under the
21 circumstances. Any disagreements pursuant to the clause shall
22 be resolved through the dispute resolution procedures in Section
23 XIV.

24 XVIII. OTHER ACTIONS

25 Ecology reserves its rights to institute remedial action(s)
26 at the Site and subsequently pursue cost recovery, and Ecology

1 reserves its rights to issue orders and/or penalties or take any
2 other enforcement action pursuant to available statutory
3 authority under the following circumstances:

- 4 (1) Where Defendant fails, after notice, to comply with
5 any requirement of this Decree;
- 6 (2) In the event or upon the discovery of a release or
7 threatened release not addressed by this Decree;
- 8 (3) Upon Ecology's determination that action beyond the
9 terms of this Decree is necessary to abate an
10 emergency situation which threatens public health or
11 welfare or the environment; or
- 12 (4) Upon the occurrence or discovery of a situation beyond
13 the scope of this Decree as to which Ecology would be
14 empowered to perform any remedial action or to issue
15 an order and/or penalty, or to take any other
16 enforcement action. This Decree is limited in scope
17 to the geographic site described in Exhibit A and
18 Exhibit B and to those contaminants which Ecology
19 knows to be at the Site when this Decree is entered.

20 The Port of Tacoma has entered into a federal consent
21 decree (Federal Decree) for the Commencement Bay
22 Nearshore/Tideflats Superfund site, Sitcum Waterway Problem Area
23 (Decree No. C93-5462B). This Federal Decree is also signed by
24 the State of Washington in its capacity as a natural resource
25 trustee. The Federal Decree settles the Natural Resource Damage
26

1 (NRD) liability for all land owned, operated, or managed by the
2 Port, including the site subject to this Decree.

3 Ecology reserves the right to take any enforcement action
4 whatsoever, including a cost recovery action, against
5 potentially liable persons not party to this Decree.

6 XIX. INDEMNIFICATION

7 To the extent permitted by law, defendant agrees to
8 indemnify and save and hold the State of Washington, its
9 employees, and agents harmless from any and all claims or causes
10 of action for death or injuries to persons or for loss or damage
11 to property arising from or on account of acts or omissions of
12 Defendant, its officers, employees, agents, or contractors in
13 entering into and implementing this Decree. However, the
14 Defendant shall not indemnify the State of Washington nor save
15 nor hold its employees and agents harmless from any claims or
16 causes of action arising out of the negligent acts or omissions
17 of the State of Washington, or the employees or agents of the
18 State, in implementing the activities pursuant to this Decree.

19 XX. COMPLIANCE WITH APPLICABLE LAWS

20 All actions carried out by Defendant pursuant to this
21 Decree shall be done in accordance with all applicable federal,
22 state, and local requirements, including requirements to obtain
23 necessary permits.

24 XXI. REMEDIAL AND INVESTIGATIVE COSTS

25 The Defendant agrees to pay costs incurred by Ecology
26 pursuant to this Decree. These costs shall include work

1 performed by Ecology, the Department of Health, or Ecology's
2 contractors under Chapter 70.105D RCW both prior to and
3 subsequent to the issuance of this Decree for investigations,
4 remedial actions, and Decree preparation, negotiations,
5 oversight and administration. Ecology costs shall include costs
6 of direct activities; e.g., employee salary, travel costs,
7 laboratory costs, contractor fees, and employee benefit
8 packages; and indirect costs of direct activities. The
9 Defendant agrees to pay the required amount within ninety (90)
10 days of receiving from Ecology an itemized statement of costs
11 that includes a summary of costs incurred, an identification of
12 involved staff, and the amount of time spent by involved staff
13 members on the project. A general statement of work performed
14 and itemized statements will be provided by Ecology and shall be
15 prepared quarterly. Failure to pay Ecology's costs within
16 ninety (90) days of receipt of the itemized statement will
17 result in interest charges.

18 Nothing in this section shall preclude Ecology or other
19 federal, state or local governmental entities from seeking to
20 recover other costs incurred by such entities for which
21 Defendant is liable.

22 XXII. IMPLEMENTATION OF REMEDIAL ACTION

23 If Ecology determines that Defendant has failed without
24 good cause to implement the remedial action, Ecology may, after
25 notice to Defendant, perform any or all portions of the remedial
26 action that remain incomplete. If Ecology performs all or

1 portions of the remedial action because of the Defendant's
2 failure to comply with its obligations under this Decree,
3 Defendant shall reimburse Ecology for the costs of doing such
4 work in accordance with Section XXI, provided that Defendant is
5 not obligated under this section to reimburse Ecology for costs
6 incurred for work inconsistent with or beyond the scope of this
7 Decree.

8 XXIII. FIVE YEAR REVIEW

9 As remedial action continues at the Site, the parties agree
10 to review the progress of remedial action at the Site, and to
11 review the data accumulated as a result of Site monitoring as
12 often as is necessary and appropriate under the circumstances.
13 At least every five years the parties shall meet to discuss the
14 status of the Site and the need, if any, of further remedial
15 action at the Site. Ecology reserves the right to require
16 further remedial action at the Site under appropriate
17 circumstances. This provision shall remain in effect for the
18 duration of the Decree.

19 XXIV. PUBLIC PARTICIPATION

20 Ecology shall maintain the responsibility for public
21 participation at the Site. However, Defendant shall cooperate
22 with Ecology and, if agreed to by Ecology, shall:

23 A. Prepare drafts of public notices and fact sheets at
24 important stages of the remedial action, such as the submission
25 of work plans and the completion of engineering design reports.
26 Ecology will finalize (including editing if necessary) and

1 distribute such fact sheets and prepare and distribute public
2 notices of Ecology's public presentations and meetings;

3 B. Notify Ecology's project coordinator prior to the
4 preparation of all press releases and fact sheets, and before
5 major meetings with the interested public and local governments.
6 Likewise, Ecology shall notify Defendant prior to the issuance
7 of all press releases and fact sheets, and before major meetings
8 with the interested public and local governments;

9 C. Participate in public presentations on the progress of
10 the remedial action at the Site. Participation may be through
11 attendance at public meetings to assist in answering questions,
12 or as a presenter;

13 D. In cooperation with Ecology, arrange and/or continue
14 information repositories to be located at Citizens for a Healthy
15 Bay, 771 Broadway, Tacoma, and at Ecology's Southwest Regional
16 Office at 7272 Cleanwater Lane, Olympia, Washington. At a
17 minimum, copies of all public notices, fact sheets, and press
18 releases; all quality assured ground water, surface water, soil
19 sediment, and air monitoring data; remedial actions plans;
20 supplemental remedial planning documents; and all other similar
21 documents relating to performance of the remedial action
22 required by this Decree shall be promptly placed in these
23 repositories.

24

25

26

1 XXV. DURATION OF DECREE

2 This Decree shall remain in effect and the remedial program
3 described in the Decree shall be maintained and continued until
4 the Defendant has received written notification from Ecology
5 that the requirements of this Decree have been satisfactorily
6 completed. After the Defendant concludes that Tasks 1 through 5
7 of Exhibit D of the remedial action have been performed, the
8 Defendant may submit a written report to Ecology stating that
9 the remedial action associated with Tasks 1 through 5 of Exhibit
10 D have been completed in accordance with the requirements of
11 this Decree and request that Ecology issue a written
12 acknowledgment. If Ecology concurs that Tasks 1 through 5 of
13 Exhibit D have been adequately completed, Ecology shall issue a
14 written acknowledgment. Such letter may only be issued at the
15 point in time when the only remaining actions required under
16 this Decree are associated with operation and maintenance of the
17 cap, stormwater system, and completion of long-term monitoring.

18 XXVI. CLAIMS AGAINST THE STATE

19 Defendant hereby agrees that it will not seek to recover
20 any costs accrued in implementing the remedial action required
21 by this Decree from the State of Washington or any of its
22 agencies; and further, that the Defendant will make no claim
23 against the State Toxics Control Account or any Local Toxics
24 Control Account for any costs incurred in implementing this
25 Decree. Except as provided above, however, Defendant expressly
26 reserves the right to seek to recover any costs incurred in

1 implementing this Decree from any other potentially liable
2 person.

3 XXVII. COVENANT NOT TO SUE

4 In consideration of Defendants' compliance with the terms
5 and conditions of this Decree, the State covenants not to
6 institute legal or administrative actions against Defendants
7 regarding contamination covered by this Decree. Compliance with
8 this Decree shall stand in lieu of any and all administrative,
9 legal, and equitable remedies and enforcement actions available
10 to the State against Defendants for the release or threatened
11 release of hazardous substances covered by the terms of this
12 Decree.

13 This covenant is strictly limited in its application to the
14 Site specifically defined in Exhibit A and B and to those
15 hazardous substances which Ecology knows to be located at the
16 Site as of the entry of this Decree. This covenant is not
17 applicable to any other hazardous substance or area and the
18 State retains all of its authority relative to such substances
19 and areas.

20 A. Reopeners: Notwithstanding the covenant given above,
21 Ecology reserves the right to institute legal or administrative
22 actions against Defendants seeking to require them to perform
23 additional response actions at the site, and to pursue
24 appropriate cost recovery in accordance with provisions set out
25 in RCW 70.105D.050, under the following circumstances:
26

1 (1) If Defendants fail to meet the requirements of this
2 Decree, including, but not limited to, failure of the remedial
3 action to meet the cleanup standards identified in the Cleanup
4 Action Plan (Exhibit C).

5 (2) Upon Ecology's determination that action beyond the
6 terms of this Decree is necessary to abate an imminent and
7 substantial endangerment to public health or welfare or the
8 environment.

9 (3) In the event new information becomes available
10 regarding factors previously unknown to Ecology, including the
11 nature or quantity of hazardous substances at the Site, and
12 Ecology determines, in light of this information, that further
13 remedial action is necessary at the Site to protect human health
14 or the environment, and Defendants, after notice, fail to take
15 the necessary action with a reasonable time.

16 B. Applicability. The Covenant Not to Sue set forth
17 above shall have no applicability whatsoever to:

- 18 1. Criminal liability;
- 19 2. Liability for damages to natural resources;
- 20 3. Any Ecology action against potentially liable
21 persons not a party to this Decree, including cost
22 recovery.

23 XXVIII. CONTRIBUTION PROTECTION

24 Defendants shall not be liable for claims for contribution
25 regarding matters addressed in this Consent Decree, pursuant to
26 RCW 70.105D.040(4)(d).

1 XXIX. EFFECTIVE DATE

2 This Decree is effective upon the date it is entered by the
3 Court:

4 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

5 This Decree has been the subject of public notice and
6 comment under RCW 70.105D.040(4)(a). As a result of this
7 process, Ecology has found that this Decree will lead to a more
8 expeditious cleanup of hazardous substances at the Site.

9 If the Court withholds or withdraws its consent to this
10 Decree, it shall be null and void at the option of any party and
11 the accompanying Complaint shall be dismissed without costs and

12 ///

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1 without prejudice. In such an event, no party shall be bound by
2 the requirements of this Decree.

3
4 CHRISTINE O. GREGOIRE
ATTORNEY GENERAL

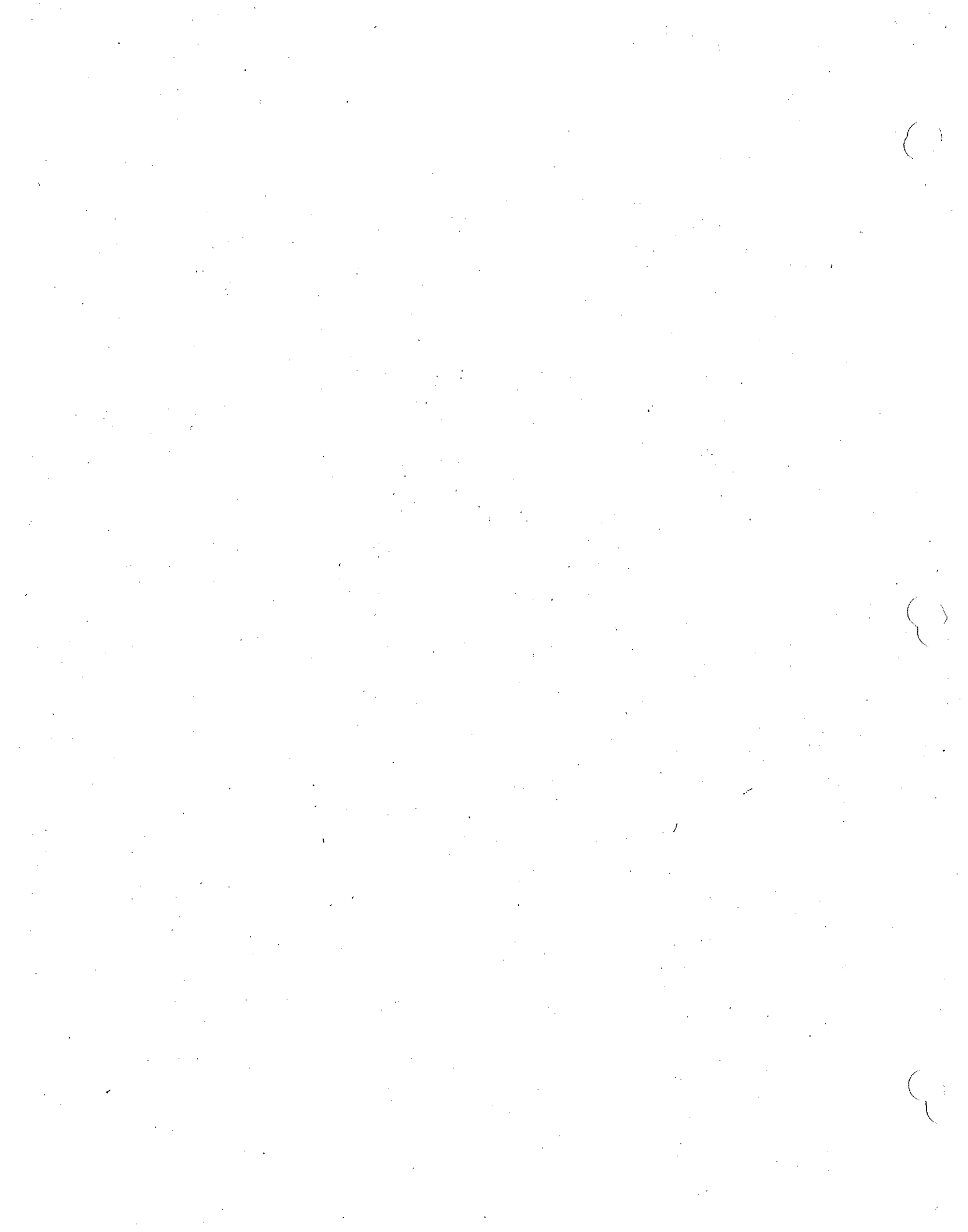
5
6 *Carol Kraege*
7 CAROL KRAEGE
8 Program Manager
9 Toxics Cleanup Program
State of Washington
Department of Ecology
Date 4-11-94

6 *Thomas Morrill*
7 THOMAS C. MORRILL
8 WSBA #18388
9 Assistant Attorney General
State of Washington
Department of Ecology
Date 4-11-94

10
11 *M. K. [Signature]*
12 For Port of Tacoma
13 Authorized Representative
14 Port of Tacoma
15 Dated 5-17-94

16 *Gerald [Signature]*
17 JUDGE
18 Pierce County Superior Court

19
20
21
22
23
24
25
26
DATED this 11 day of April, 1994.



Cascade Timber No.3
Log Sort Yard
FS 1206

PORT OF TACOMA

ENVIRONMENTAL DEPARTMENT

Transmittal

To: Dom Reale Date: 9/17/96

Department of Ecology

From: Suzanne Dudziak

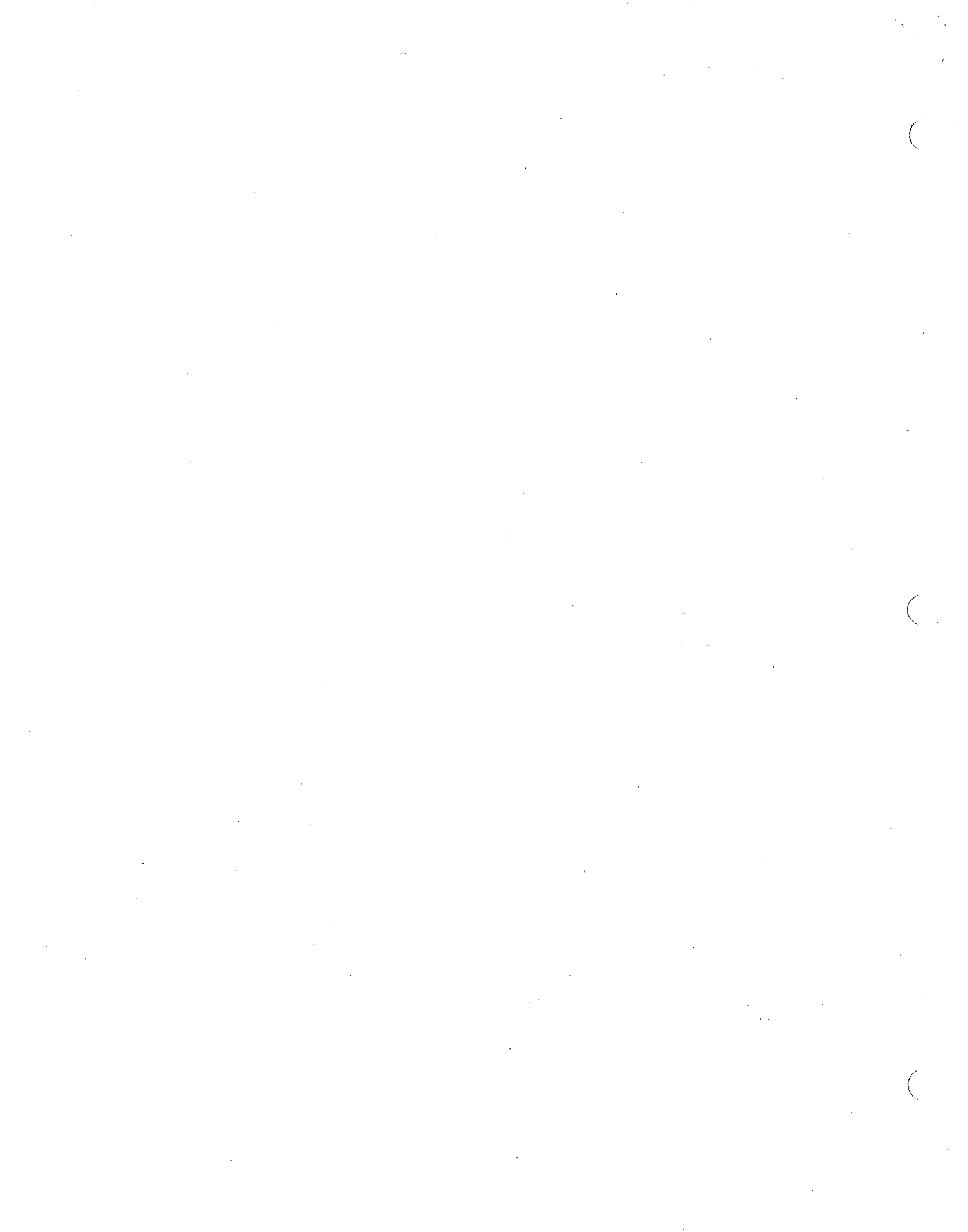
Subject: Restrictive Covenant/Cascade Logyard #3

The following document(s) are enclosed

- for your information
- per your request
- for your use
- for your review
- for your action

Quantity	Title
<u>1</u>	<u>copy of Restrictive Covenant</u>

Notes/Messages:



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Morrill

94 AUG -2 PM 3: 05

DECLARATION OF RESTRICTIVE COVENANT

RECORDED
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH

The property that is the subject of this Restrictive Covenant is the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property (hereafter the "Cleanup Action") is described in Washington State Department of Ecology Consent Decree No. 94TC-S167, and in attachments to the Decree. This Restrictive Covenant is required by WAC 173-340-440 because the Cleanup Action at the Site will result in residual concentrations of arsenic and lead which exceed Ecology's Method A cleanup levels for Industrial soil established under WAC 173-340-745.

The Port of Tacoma is the fee owner of real property known as the Cascade Timber No. 3 log sort yard in the County of Pierce, State of Washington of which 10.7 acres are referred to as the "Site" (legal description attached in Exhibit B of Consent Decree No. 94TC-S167).

As a result of the Cleanup Action, the Site will include a woodwaste, soil, and slag mixture which will be covered with a cap system equipped with a surface water collection system. The Site will also include monitoring wells.

The Port of Tacoma makes the following declaration as to limitations, restrictions, and uses to which the Site may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them,

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13

including all current and future owners of any portion of or interest in the Site.

Section 1 The Site may be used only for Industrial uses as defined in and allowed under the City of Tacoma's Zoning Regulations codified in the Tacoma City Code as of the date of this Restrictive Covenant.

Section 2 Any activity on the Site that interferes with or reduces the effectiveness of the Cleanup Action or any operation, maintenance, monitoring, or other activity required by the Order (or any Ecology-approved modification or amendment to the Order) is prohibited. Any activity that would threaten the structural integrity of the cap is prohibited. Any activity on the Site that would result in the release of a hazardous substance that was contained as a part of the Cleanup Action is prohibited. It is understood that disturbance of the cap may be required in the future for installation of utilities or other activities associated with future industrial use of the site. The Port shall obtain approval from Ecology prior to initiating any disturbance of the cap stormwater drainage and/or monitoring system. Ecology shall not deny approval if the Port can show (1) that no releases of hazardous materials will occur; (2) integrity of the cap and stormwater drainage and monitoring systems will be restored to their original condition in a timely manner; and (3) that material will be handled and disposed of in accordance with State law.

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Section 3 The owner of the Site must give written notice to the Department of Ecology, or to a successor agency, of the owner's intent to convey any interest in the Site. No conveyance of title, easement, lease or other interest in the Site shall be consummated by the owner without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action.

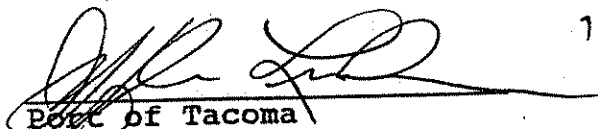
Restrictive
Covenant

Section 4 The owner shall allow authorized representatives of the Department of Ecology, or of a successor agency, the right to enter the Site at reasonable times for the purpose of evaluating compliance with the Cleanup Action Plan and the Order, to take samples, to inspect Cleanup Actions conducted at the Site, and to inspect records that are related to the Cleanup Action.

Section 5 The owner of the Site and owner's assigns and successors in interest reserve the right under WAC 173-340-730 and WAC 173-340-440 to record an instrument which provides that this Restrictive Covenant shall no longer limit the use of the Site or be of any further force or effect. However, such an instrument may be recorded only with the consent of the Department of Ecology or of a successor agency. The Department of Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment. The Port of Tacoma agrees to file this Restrictive Covenant in

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the Site property deed with the Pierce County Auditor and provide the Department of Ecology with a filed copy.


Port of Tacoma

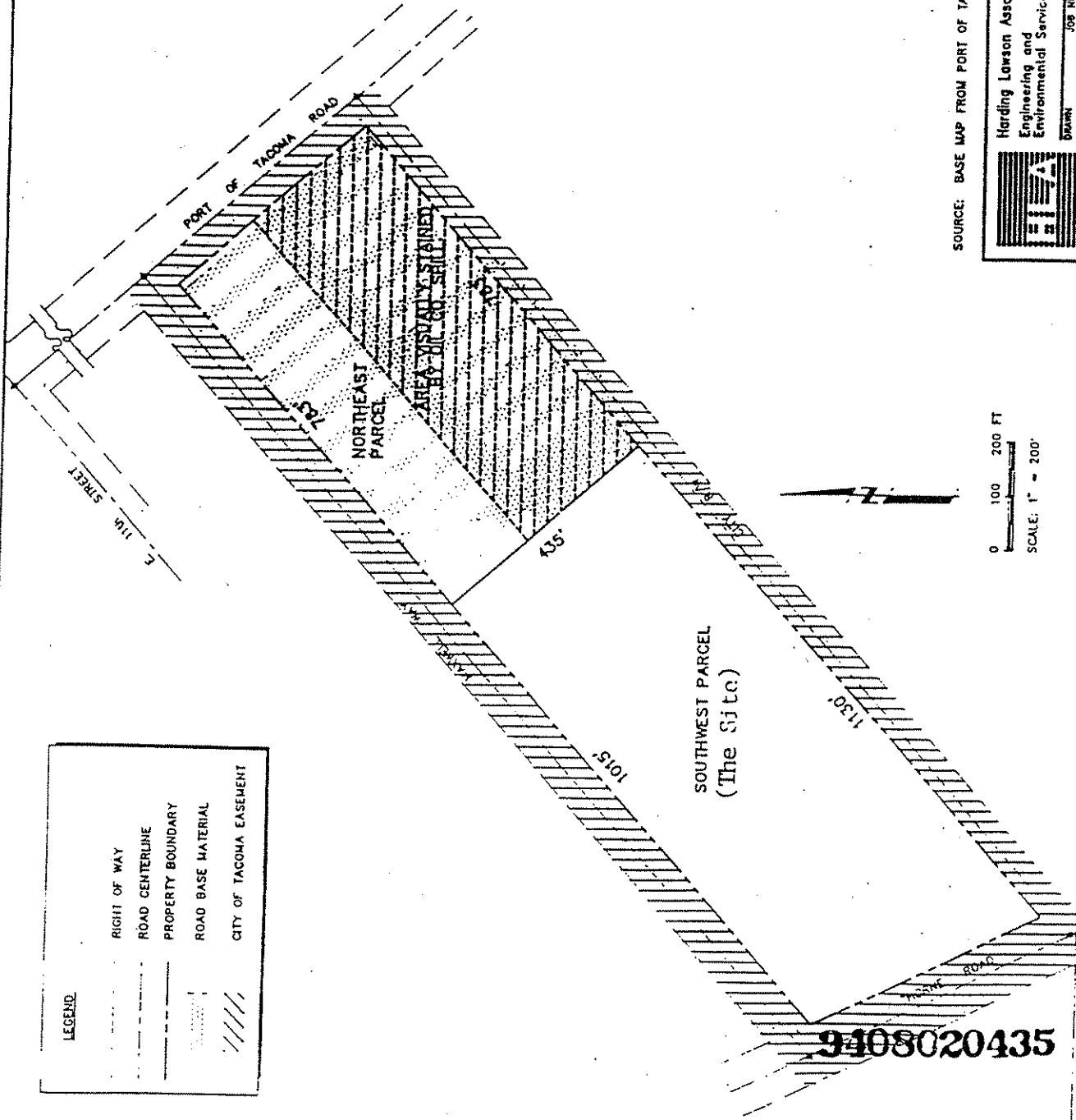
8/2/94
Date

210/cas-dec2.doc

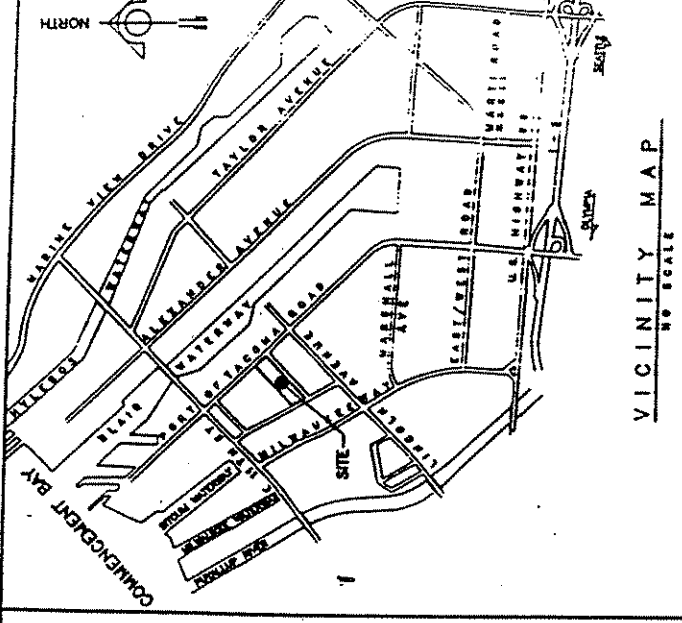
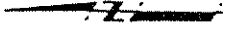
Jeffrey A. Lincoln
Sr. Dir. Facility Development

LEGEND

	RIGHT OF WAY
	ROAD CENTERLINE
	PROPERTY BOUNDARY
	ROAD BASE MATERIAL
	CITY OF TACOMA EASEMENT



0 100 200 FT
SCALE: 1" = 200'



VICINITY MAP
NO SCALE

SOURCE: BASE MAP FROM PORT OF TACOMA PARCEL 30 DRAWING



Harding Lawson Associates
Engineering and
Environmental Services
DRAWN BY: R.C.K. JOB NUMBER: 12183.006

SITE PLAN
Exhibit A
Site Diagram
Cascade Timber No. 3 Log Sort Yard
APPROVED DATE: 03-02-93 REVISED BY: 03-11-93

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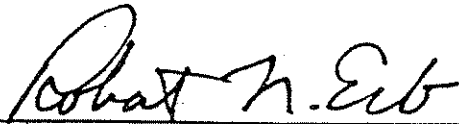
EXHIBIT B

Description - Consent Decree
Cascade Timber No. 3 Log Yard

A parcel of land situate in the Southeast Quarter of Section 34, Township 21 North, Range 3 East of the Willamette Meridian, County of Pierce, State of Washington and being more particularly described as follows:

Lots 8 through 18 inclusive of Block 12 of the Port of Tacoma Industrial District First Addition as recorded in Volume 18 of Plats at Page 18.

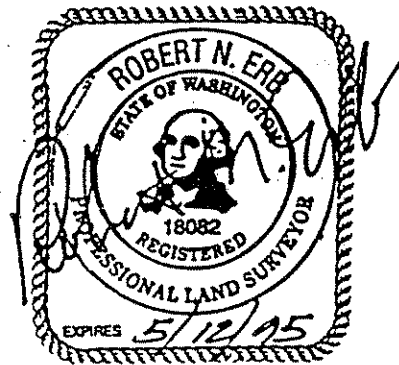
Containing 10.73 acres, more or less.



Robert N. Erb, P.L.S.
Washington State Registration No. 18082

December 27, 1993
Project No. 7763

Sitts & Hill Engineers, Inc.
2901 South 40th Street
Tacoma, Washington 98409
(206) 474-9449

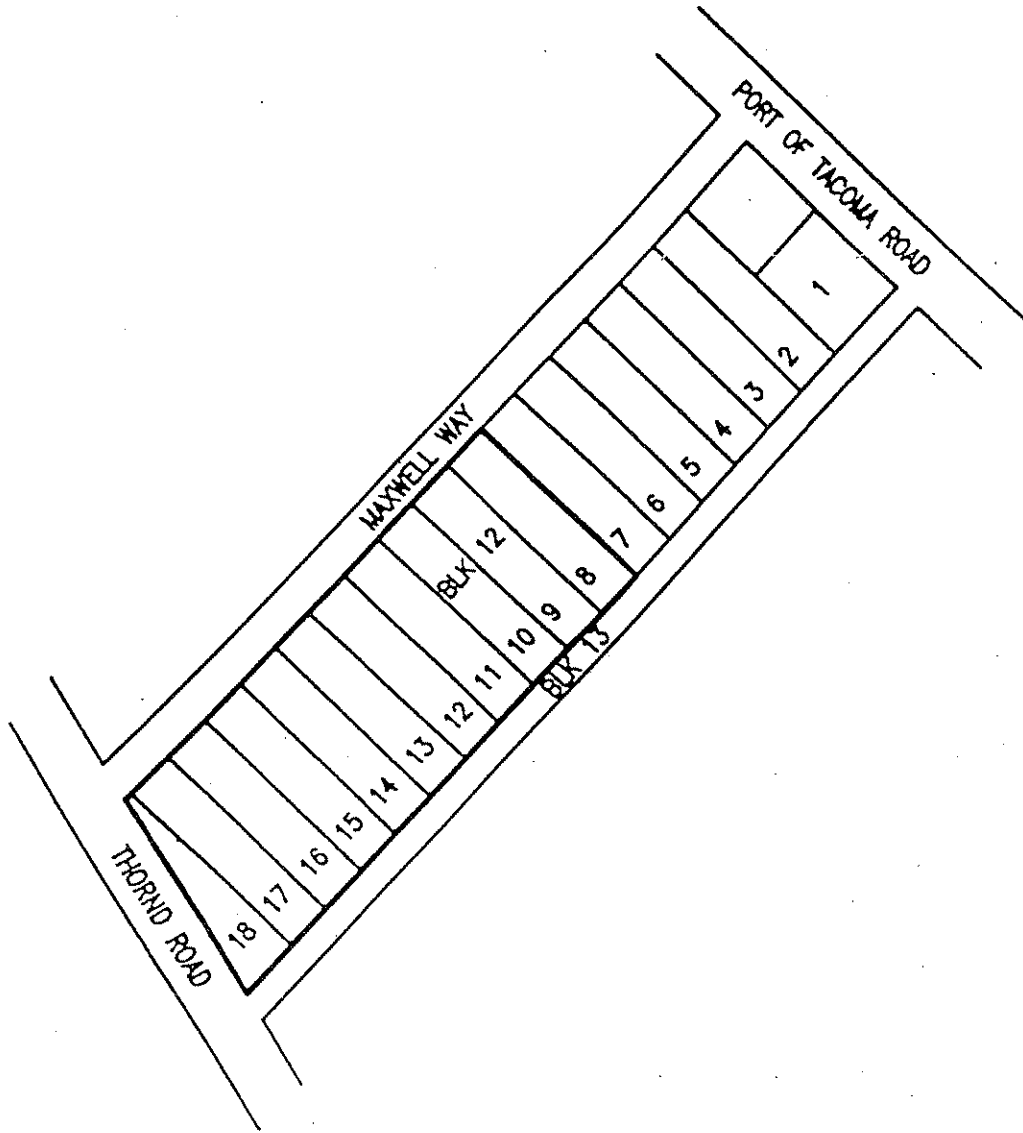


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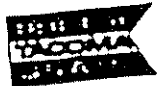
NORTH

SCALE: 1" = 400'



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7763-EXC



PORT OF TACOMA

P.O. BOX 1837 TACOMA, WASHINGTON 98401
(206) 383-8841

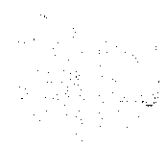
CONSULTANTS

BITTS & HILL ENGINEERS, INC.

CIVIL & STRUCTURAL & SURVEYING
2301 S. 40th ST., TACOMA, WA 98408
(206) 474-9448

**CASCADE TIMBER
#3 LOG YARD
CONSENT DECREE
EXHIBIT B**

001048P61911



CONFIDENTIAL - SECURITY INFORMATION

SECRET

CONFIDENTIAL - SECURITY INFORMATION

SECRET

CONFIDENTIAL - SECURITY INFORMATION

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CONFIDENTIAL - SECURITY INFORMATION

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