CONFORM AND RETURN

FILED
DEC 09 2011
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT, and AMERICAN CONSTRUCTION CO., Inc.,

Defendants.

NO. 11 2 10567 4

CONSENT DECREE

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Defendants Port of Everett (Port) and American Construction Co., Inc. (ACC) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendants (hereinafter collectively referred to as "the Potentially Liable Persons" or "the PLPs") to perform the remedial action(s) at the North Marina West End Site in Everett, Washington in accordance with the Cleanup Action Plan (CAP) attached as Exhibit B to this Decree.

Ecology has determined that these actions are necessary to protect human health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

C. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that the PLPs shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

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F. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

B. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

C. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

D. Ecology has given notice to the PLPs of Ecology's determination that the PLPs are potentially liable persons for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

E. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

F. This Decree has been subject to public notice and comment.

G. Ecology finds that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

H. The PLPs have agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

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III. PARTIES BOUND

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

IV. DEFINITIONS

Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 shall control the meanings of the terms in this Decree.

A. Site: The Site (or Facility) is referred to as the North Marina West End Site (the Site) and is generally located between 11th and 14th Streets off West Marine View Drive, Everett, Snohomish County, Washington (located within the western portion of the North Marina Area). The Site is owned by the Port and includes approximately 27 acres of upland and adjacent in-water areas (about 10 acres of in-water and 17 acres of upland). The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. The Site includes areas where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located. The Site is more particularly exhibited in Exhibit A to this Decree, which includes general site maps (Exhibit A, Figures 1–4), a site location description, and information from the Snohomish County Assessor's Office. The Site includes both upland and in-water areas (i.e., adjacent marine sediment) as defined below. The Site constitutes a Facility under RCW 70.105D.020(5).

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B. Parties: Refers to the State of Washington, Department of Ecology, and the Port and ACC.

C. Port: Refers to the Port of Everett.

D. ACC: Refers to American Construction Co, Inc.

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

F. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as generally depicted in Exhibit A.

G. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and subtidal (areas always covered by water) parts of the Site associated with adjacent marine waters, as generally depicted in Exhibit A, Figures 2 and 3.

H. North Marina Area: Refers to the Port-owned property being redeveloped for mixed residential/commercial use. The Site is located within the western end of the North Marina Area, as generally depicted in Exhibit A, Figure 2.

V. FINDINGS OF FACTS

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

A. The Site is generally located between 11th and 14th Streets off West Marine View Drive, Everett, Snohomish County, Washington (located within the western portion of the North Marina Area). The Site location is depicted in the diagrams attached to this Decree as Exhibit A. The facility is depicted in Exhibit A (Figures 2 and 3). Exhibit A also contains a legal description of the property (located after Figure 4 of Exhibit A). The Site is listed on the Department of Ecology's Hazardous Sites List as "North Marina West End" with the Facility Site ID No. 3306834.

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B. The Port is the owner, as defined in RCW 70D.105.020(17), and operator of the Site, and has owned the Site continuously since the 1930s. ACC is an "operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

C. The Site has been used for commercial and industrial purposes (shingle mills, marine support services, etc.) since at least the early 1900s. The Site was originally tidelands occupied by the 14th Street Pier, which was constructed in the early 1900s and on which a number of wood products manufacturing operations were located. The current upland configuration of the Site was created by a series of fill projects beginning in the late 1940s utilizing dredge spoils from the Snohomish River. The commercial and industrial operations began occupying the Site after completion of the fill projects.

D. By 2001 the Port leased approximately 30 parcels of land in the North Marina Area. The tenants utilized the parcels for a variety of business ventures primarily related to marine repair and other marine support services. The list of tenants that leased portions of the Site includes:

- American Boiler Works
- ACC
- Everett Engineering, Inc.
- Milltown Sailing Association
- Puget Sound Truck Lines

In addition to the parcels leased to tenants, the Port owned and operated the following facilities (located within the North Marina West End Site) at the time of the 2001 Phase I ESA:

- Former Coast Guard Station
- Port of Everett Marine View Reception and Conference Center
- Port of Everett Overflow Parking Lot
- Port of Everett Marina Maintenance Facility

Further description of past uses at the Site can be found in Exhibit B.

E. In the late 1990s the Port decided to redevelop the North Marina area and, consequently, between 2001 and 2007 the Port undertook several environmental investigations to determine the extent and magnitude of sediment, soil and groundwater contamination at the

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Site. These investigations are summarized in the interim action report prepared by Landau Associates for the Port and were integrated in the RI/FS that was subsequently conducted at the Site. Although the original redevelopment plan for the North Marina (called "Port Gardener Wharf") has been abandoned due to the failure of the Port's previous development partner, the Port still intends to redevelop the Site for mixed use. Almost all previously existing buildings at the Site have been demolished.

F. The Port conducted an interim action at the Site between June 2006 and March 2008 to address contaminated soil and groundwater at 50 interim action areas identified based on previous Site characterization activities. The interim action included excavation and offsite disposal of arsenic, copper, cPAH, lead, mercury, 1-methylnaphthalene and/or petroleum hydrocarbon-impacted soil; *in-situ* soil agitation; free product and contaminated water recovery; and the collection and analysis of compliance monitoring samples to verify that interim action cleanup levels were achieved. Interim action areas are described in Exhibit B.

G. A total of 43,600 tons (about 27,000 yd^3) of contaminated soil was removed from the Site during the interim action. The interim action and the investigations described in Sec. V(E) were conducted under Ecology's Voluntary Cleanup Program.

H. On June 30, 2008, the Port and Ecology entered into an Agreed Order that required the Port to perform a remedial investigation/feasibility study (RI/FS) and produce a draft Cleanup Action Plan (DCAP) for the Site.

I. As part of the RI/FS the Port conducted further sampling of groundwater at the Site, as well as sampling marine sediments and surface water.

J. The RI/FS and previous investigations have documented the presence of hazardous substances in various media including soil, groundwater, and marine sediments. Compounds identified in these investigations as exceeding published MTCA cleanup levels and/or Sediment Management Standards (SMS) for Puget Sound Marine sediments (Chapter 173-204 WAC) include:

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- Soil – Metals, polycyclic aromatic hydrocarbons (PAHs), and petroleum hydrocarbons
- Groundwater – Metals, petroleum hydrocarbons, and vinyl chloride (a chlorinated solvent)
- Sediment – One PAH (acenaphthene) exceeded its respective Sediment Quality Standard (SQS) under the State of Washington Sediment Management Standards (WAC 173-204)

K. The RI/FS determined that residual concentrations of contaminants in Site soils remaining after the 2006-08 interim action are compliant with soil cleanup levels identified in the RI/FS. The RI/FS identified one area where Site sediments exceed the SQS for PAH (acenaphthene). Additionally, groundwater in the northern area of the Site continues to exceed cleanup levels for arsenic, copper, and/or vinyl chloride.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site.

A. Based on the information in the RI/FS reports, a DCAP was prepared (attached in Exhibit B). The PLPs shall perform all tasks set forth in the DCAP and implement the DCAP in accordance with the DCAP's schedule.

B. The PLPs agree not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the DCAP to cover these actions. All work conducted by the PLPs under this Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

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

The project coordinator for the Port of Everett is:

Lawrence Beard
Landau Associates
130 2nd South, Edmonds, WA 98020
Phone: 425-778-0907
E-mail: LBeard@landauinc.com

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

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

VIII. PERFORMANCE

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

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

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

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

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

IX. ACCESS

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that the PLPs either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing the PLPs' progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All Parties who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

With respect to the implementation of this Decree, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology

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in both printed and electronic formats in accordance with Section XI (Progress Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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

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

XI. PROGRESS REPORTS

The PLPs shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Decree. The Progress Reports shall include the following:

A. A list of on–site activities that have taken place during the quarter;

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

C. Description of all deviations from the Cleanup Action Plan and Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter;

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

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E. All raw data (including laboratory analyses) received by the Port during the past quarter and an identification of the source of the sample; and

F. A list of deliverables for the upcoming quarter if different from the schedule.

All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports and any other documents submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

XII. RETENTION OF RECORDS

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVIII (Duration of Decree), the PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

XIII. TRANSFER OF INTEREST IN PROPERTY

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs without provision for continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

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

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XIV. RESOLUTION OF DISPUTES

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

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

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

3. Any PLP may then request regional management review of the decision. This request shall be submitted in writing to the Headquarters Land and Aquatic Lands Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

4. Ecology's Regional Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review.

5. If the PLP finds Ecology's Land and Aquatic Lands Cleanup Section Manager's decision unacceptable, the PLP may then request final management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of the Section Manager's decision.

6. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review of the Land and Aquatic Lands Cleanup

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Section Manager's decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to the PLPs, the PLPs has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event a PLP presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

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

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

XV. AMENDMENT OF DECREE

The project coordinators may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any party.

The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the

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written request for amendment is received. If the amendment to the Decree is a substantial change, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XIV (Resolution of Disputes).

XVI. EXTENSION OF SCHEDULE

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

1. The deadline that is sought to be extended;

2. The length of the extension sought;

3. The reason(s) for the extension; and

4. Any related deadline or schedule that would be affected if the extension were granted.

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

1. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;

2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

3. Endangerment as described in Section XVII (Endangerment).

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

C. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is granted.

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

1. Delays in the issuance of a necessary permit which was applied for in a timely manner;

2. Other circumstances deemed exceptional or extraordinary by Ecology; or

3. Endangerment as described in Section XVII (Endangerment).

XVII. ENDANGERMENT

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

In the event the PLP determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLP may cease such activities. The PLP shall notify Ecology's project coordinator as soon as possible, but no later than twenty–four (24) hours after making such determination or ceasing such activities.

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Upon Ecology's direction, the PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

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

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

XVIII. COVENANT NOT TO SUE

A. Covenant Not to Sue: In consideration of each PLP's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against the complying PLP regarding the release or threatened release of hazardous substances covered by this Decree.

This Decree covers only the Site specifically identified in Exhibit A, Figures 2 through 4, and those hazardous substances that Ecology knows are located at the Site as of the date of entry of this Decree. This Decree does not cover any other hazardous substance or area. Ecology retains all of its authority relative to any substance or area not covered by this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

1. Criminal liability;
2. Liability for damages to natural resources; and
3. Any Ecology action, including cost recovery, against PLPs not a party to this Decree.

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If factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment, the Court shall amend this Covenant Not to Sue.

B. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against the PLPs to require it to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following circumstances:

1. Upon a PLP's failure to meet the requirements of this Decree, including, but not limited to, failure of the remedial action to meet the cleanup standards identified in the Cleanup Action Plan (CAP) (Exhibit B);

2. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment;

3. Upon the availability of new information regarding factors previously unknown to Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment; or

4. Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards within the reasonable restoration time frame set forth in the CAP.

C. Except in the case of an emergency, prior to instituting legal or administrative action against a PLP pursuant to this Section, Ecology shall provide that PLP with fifteen (15) calendar days notice of such action.

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XIX. CONTRIBUTION PROTECTION

With regard to claims for contribution against the PLPs, the Parties agree that the PLPs are entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

XX. LAND USE RESTRICTIONS

The Port shall record a Restrictive Covenant (Exhibit D) with the office of the Snohomish County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site (*see* Exhibit D). The Port shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

XXI. FINANCIAL ASSURANCES

Pursuant to WAC 173-340-440(11), the Port shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Decree, the Port shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Decree, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, the Port shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

The Port shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Decree; or if applicable, the modified anniversary date established in accordance with this

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Section, or if applicable, ninety (90) days after the close of the Port's fiscal year if the financial test or corporate guarantee is used; and

B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the CAP that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this Section to become the date of issuance of such revised or modified CAP.

XXII. INDEMNIFICATION

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

XXIII. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by the PLPs pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other federal, state or local requirements that Ecology has determined are applicable and that are known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

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

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requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).

Each PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree. In the event either Ecology or a PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or a PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

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XXIV. REMEDIAL ACTION COSTS

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Decree preparation, negotiation, oversight and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

XXV. IMPLEMENTATION OF REMEDIAL ACTION

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

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Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV (Amendment of Decree).

XXVI. PERIODIC REVIEW

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

XXVII. PUBLIC PARTICIPATION

Ecology shall maintain the responsibility for public participation at the Site. However, the PLPs shall cooperate with Ecology, and shall:

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

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the

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PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

D. When requested by Ecology, arrange and/or continue information repositories at the following locations:

1. Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201

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

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial actions plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

XXVIII. DURATION OF DECREE

The remedial program required pursuant to this Decree shall be maintained and continued until the PLPs have received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section XIX (Contribution Protection) shall survive.

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XXIX. CLAIMS AGAINST THE STATE

The PLPs hereby agree that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the PLPs will make no claim against the State Toxics Control Account or any local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, the PLPs expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other PLP. This Section does not limit or address funding that may be provided under Chapter 173-322 WAC.

XXX. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the Court.

XXXI. WITHDRAWAL OF CONSENT

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

Date: 11/29/11

ROBERT M. MCKENNA
Attorney General

JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
(360) 586-6753

Date: Dec. 8, 2011

THE PORT OF EVERETT

~~JOHN MOHR~~ LES REARDANZ

AMERICAN CONSTRUCTION CO, INC.

STEVEN P. BRANNON

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
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Olympia, WA 98504-0117
FAX (360) 586-6760

Chief Administrative Officer
~~Executive Director~~
Port of Everett
(425) 259-3164

Date: 11/18/11

President
(425) 259-0118

Date: 11/1/11

ENTERED this 9 day of December 2011.

LESTER H. STEWART
COURT COMMISSIONER

JUDGE
Snohomish County Superior Court

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EXHIBIT A

SITE LOCATION AND PROPERTY LOCATION INFORMATION

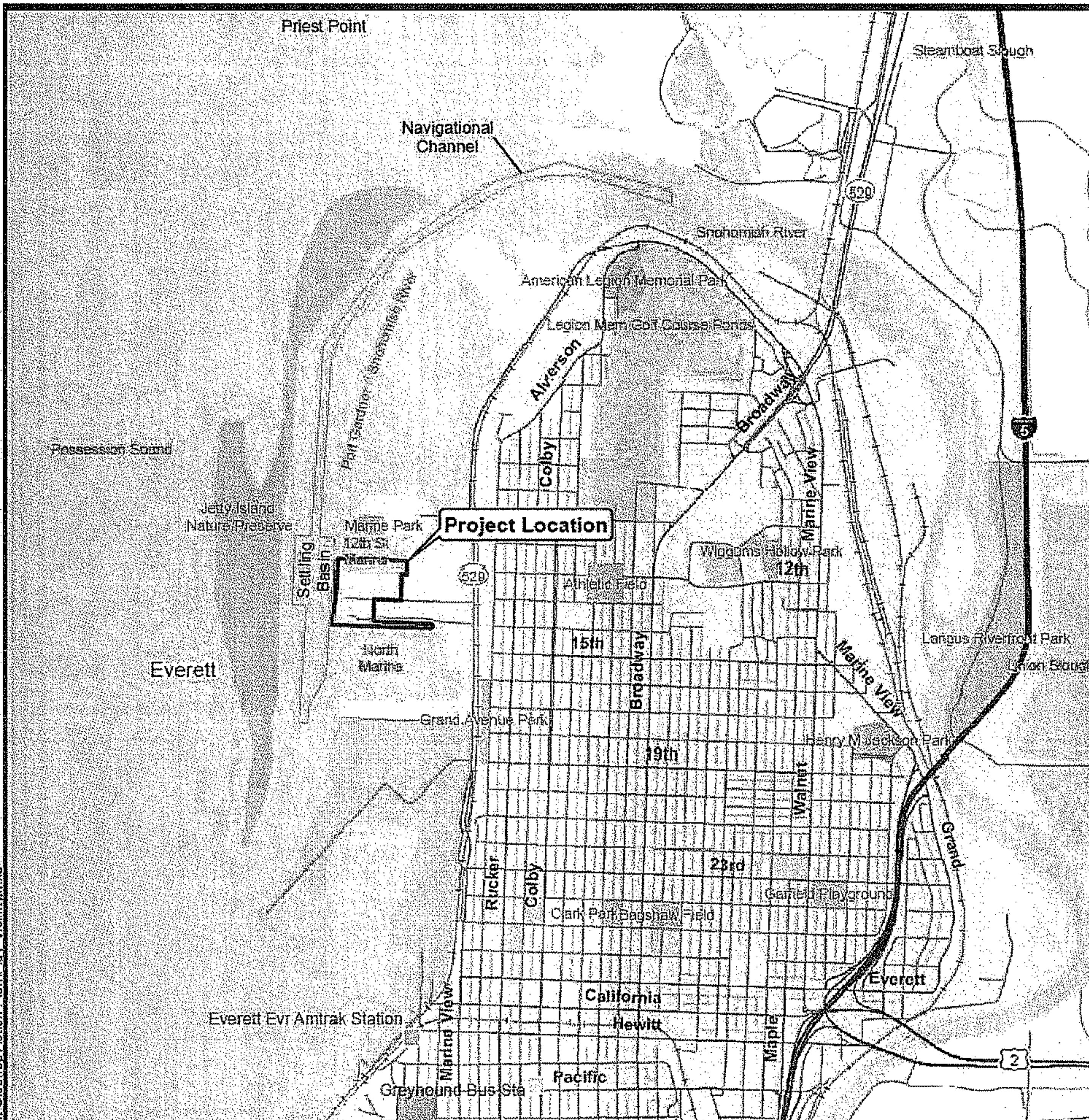
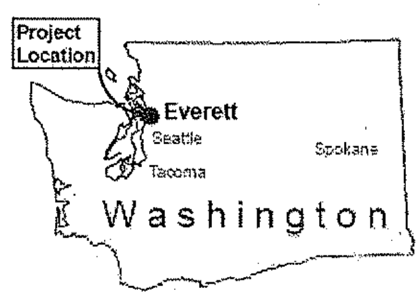


Exhibit A – Figure 1

0 0.5 1

Miles

N



Data Source: ESRI 2006

Y:\Projects\147029\Mapdocs\West End Site\Draft Cleanup Action Plan\Fig1-Vicinity.mxd

LANDAU ASSOCIATES

North Marina West End Site Draft Cleanup Action plan Everett, Washington	**Vicinity Map**	Figure 1

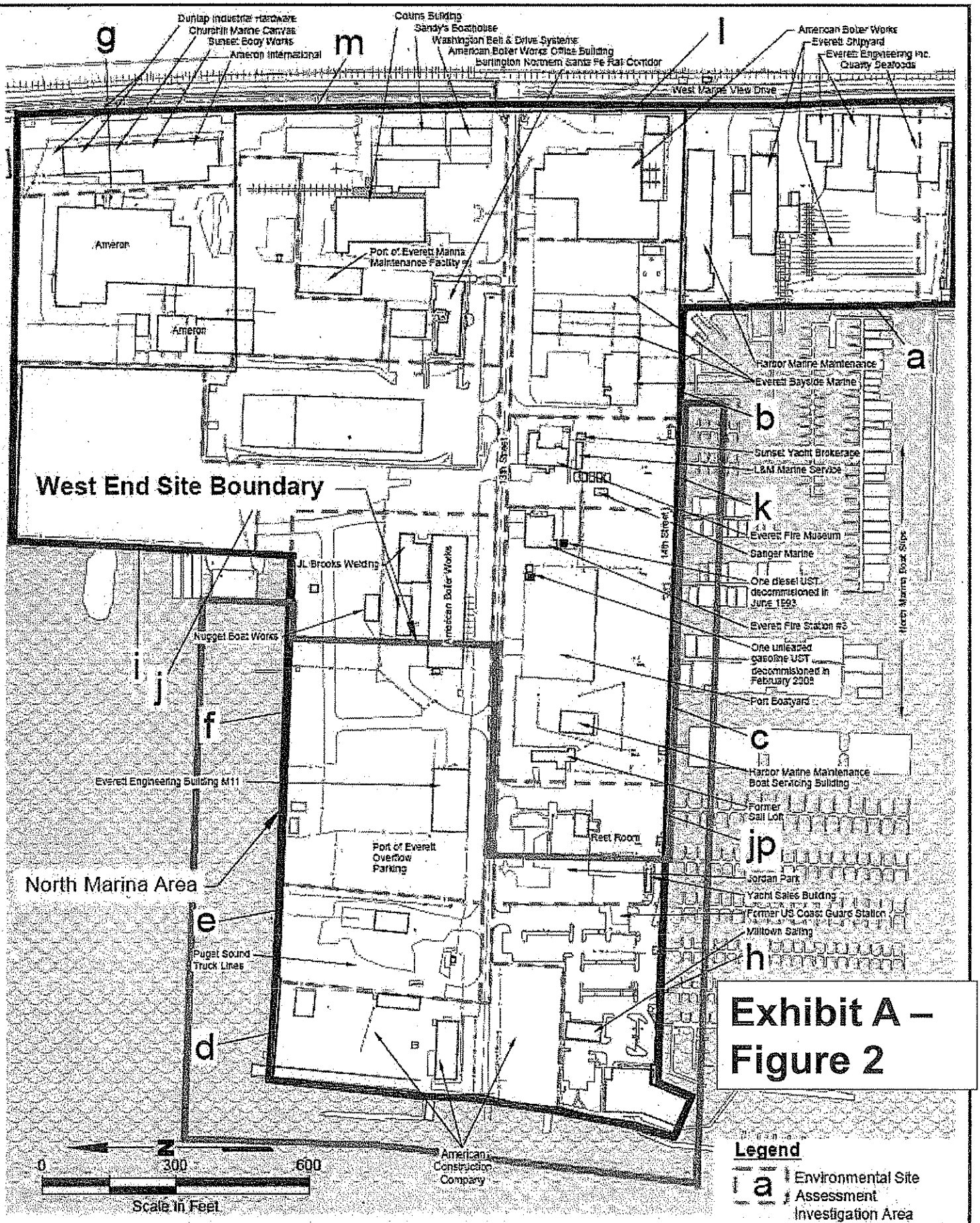


Exhibit A – Figure 2

Port of Everett\North Marina\Cleanup Action Plan\V1\1470290110.111\Final West End RIFS Report\Figure 2.dwg (A) "Figure 2" 3/15/2011

LANDAU ASSOCIATES

North Marina West End Site
Cleanup Action Plan
Port of Everett, Washington

Location Plan

Figure
2

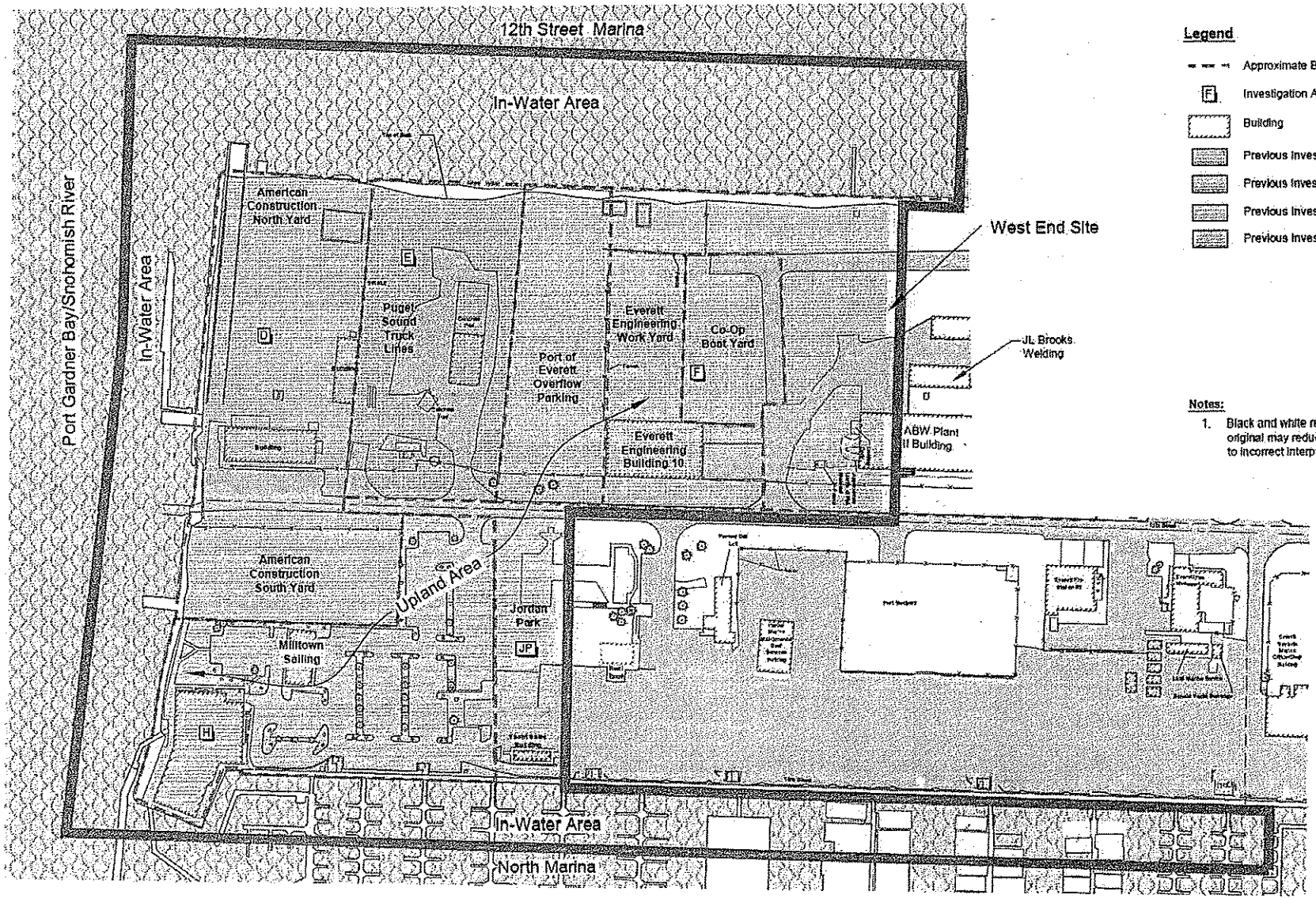


Exhibit A – Figure 3

0 150 300
Scale in Feet

North Marina West End Site
Cleanup Action Plan
Port of Everett, Washington

Site Plan

Figure
3

Snohomish County Assessor's Office
Tax Parcel Map
(Printed Dec. 2007)

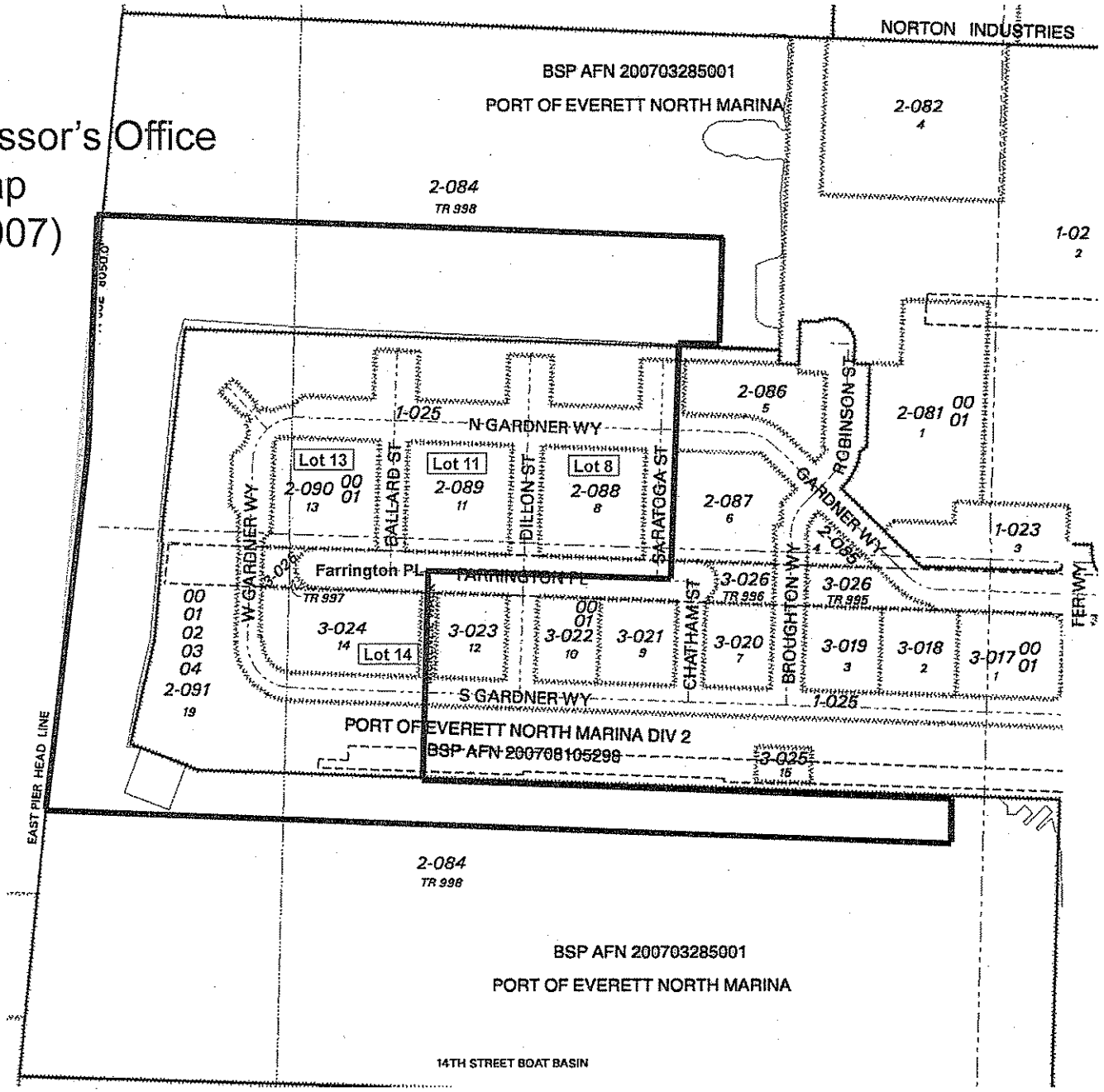


Exhibit A – Figure 4

North Marina West End Site Boundary

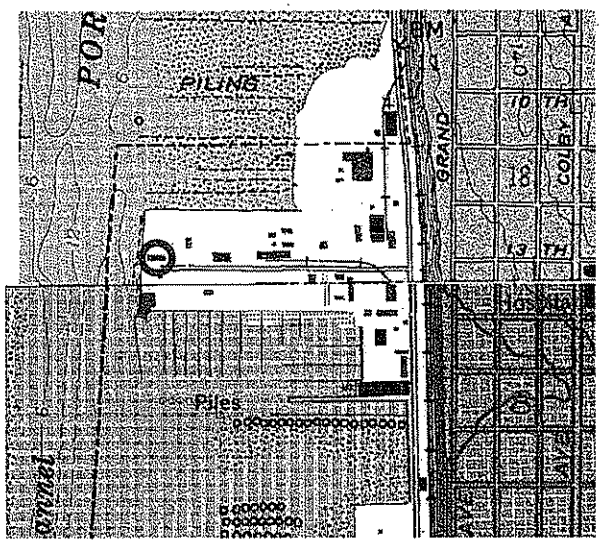
NORTH MARINA WEST END SITE

SITE/PROPERTY LOCATION INFORMATION

The North Marina Area is generally located between 11th and 14th Streets off West Marine View Drive, Everett, Snohomish County, Washington. The North Marina West End Site is located within the western portion of the North Marina Area. Site coordinates, a legal description, and county assessor's parcel numbers are provided below.

Coordinates: Latitude: 48°00'01" North; Longitude: 122°13'22" West.

Latitude/Longitude Reference Point: Location of the former American Construction Co., Inc. Building (see red circle on the figure below).



Legal Description: SW ¼ and NW ¼ of Section 18, Township 29 North, Range 5 East.

County Assessor's Parcel Numbers (Port of Everett Property): Tax account numbers corresponding to the North Marina West End Site include 29051800208800 (Lot 8), 29051800208900 (Lot 11), 29051800209000/29051800209001 (Lot 13), and 29051800302400 (Lot 14) (see Figure 4 of this Exhibit). The above tax account numbers were identified based on the binding site plan (BSP) for the Port of Everett's North Marina Redevelopment Division 2 area. Division 2 of the Port's North Marina Redevelopment was recorded under auditor's file number (AFN) 200708105298.

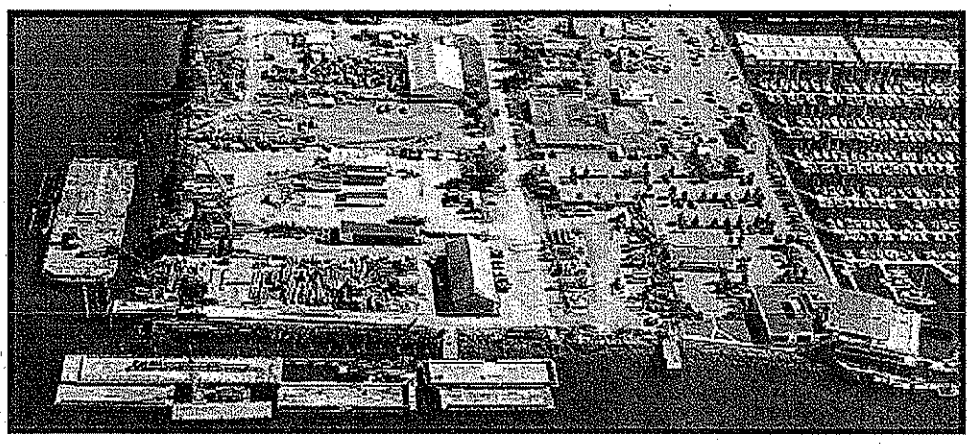
EXHIBIT B

CLEANUP ACTION PLAN

DEPARTMENT OF
ECOLOGY
State of Washington

Draft Cleanup Action Plan

North Marina West End Site
Everett, Washington



Washington State Department of Ecology
Toxics Cleanup Program
Olympia, Washington

June 16, 2011

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FIGURES

TABLES

LIST OF ABBREVIATIONS AND ACRONYMS

ABW	American Boiler Works
ACC	American Construction Company
AO	Agreed Order
As	Arsenic
AST	Above ground storage tank
bgs	below ground surface
CAP	Cleanup Action Plan
COC	Constituent of Concern
cPAH	Carcinogenic Polycyclic Aromatic Hydrocarbons
CSL	Cleanup Screening Level
DCAP	Draft Cleanup Action Plan
DGI	Data Gaps Investigation
Ecology	Washington State Department of Ecology
ESA	Environmental Site Assessment
ft	feet
HBU	Highest Beneficial Use
LLC	Limited Liability Company
mg/kg	milligram per kilogram
MNR	Monitored Natural Recovery
MTCA	Model Toxics Control Act
PCB	Polychlorinated Biphenyls
Port	Port of Everett
PQL	Practical Quantitation Limit
PRB	Permeable Reactive Barrier
PSTL	Puget Sound Truck Lines
RI/FS	Remedial Investigation/Feasibility Study
RME	Reasonable Maximum Exposure
SMS	Sediment Management Standards
SQS	Sediment Quality Standards
SVE	Soil Vapor Extraction
SVOC	Semivolatile Organic Compounds
TBT	Tributyl tin
TOC	Total Organic Carbon
TVS	Total Volatile Solids
µg/L	micrograms per liter
U.S.	United States
UST	Underground Storage Tank
VCP	Voluntary Cleanup Program
VOC	Volatile Organic Compounds
WAC	Washington Administrative Code

1.0 INTRODUCTION

This draft cleanup action plan (DCAP) describes the selected cleanup action for the North Marina West End Site (Site) in Everett, Washington. The Site cleanup action will be conducted under a consent decree between the Port of Everett (Port) and the Washington State Department of Ecology (Ecology). As specified in Washington Administrative Code (WAC) 173-340-380, this DCAP:

- Describes the selected cleanup action
- Summarizes the rationale for selecting the selected alternative
- Briefly summarizes other cleanup action alternatives evaluated in the remedial investigation/feasibility study (RI/FS)
- Identifies Site cleanup standards
- Provides the schedule for implementation of the DCAP
- Identifies institutional controls required as part of the cleanup action, if applicable
- Identifies applicable state and federal laws
- Specifies the types, levels, and amounts of hazardous substances remaining on-site, and the measures that will be used to prevent migration and contact with those substances.

Sections of this DCAP provide information on Site background (Section 2.0), cleanup standards for the Site (Section 3.0), the selected cleanup action (Section 4.0), other cleanup action alternatives evaluated for the Site (Section 5.0), a schedule for implementation of the DCAP (Section 6.0), and references (Section 7.0).

2.0 SITE BACKGROUND

This section provides a description of the Site and its historical uses, describes investigations conducted to characterize environmental conditions, and summarizes interim actions previously implemented for Site cleanup.

2.1 SITE DESCRIPTION AND HISTORY

The Site is located in Everett, Washington within the western portion of the North Marina Area, and consists of approximately 17 acres of uplands and 10 acres of adjacent in-water area, as shown on Figure 1. The Site is owned by the Port and is part of a larger area referred to as the North Marina Area (Figure 2), which is being redeveloped into a mixed use development by the Port. The Site is bounded on the north by the 12th Street Marina, on the south by the North Marina, on the west by Port Gardner Bay/Snohomish River, and on the east by Port upland property, as shown on Figures 2 and 3. The legal description of the Site is SW ¼ and NW ¼ of Section 18, Township 29 North, Range 5 East, Snohomish County, Washington. The approximate center of the Site is located at North 48.00029° and West -122.22211°.

Between April 2004 and November 2007, the Site was formerly part of the North Marina Redevelopment site managed under Ecology's Voluntary Cleanup Program (VCP No. 1249). Numerous investigations were conducted at the Site prior to and while under the VCP, culminating in interim actions that were conducted for the Site (see Section 2.5 for more detail) between June 2006 and March 2008 while under the VCP.

An agreed order (Order) between the Port and Ecology was implemented in June 2008.. The Order required the Port to develop an Interim Action Cleanup Report, a remedial/investigation/feasibility study (RI/FS) work plan to evaluate the nature and extent of Site contamination, an RI/FS Report, and a DCAP.

The rest of this section describes the Site development history, historical operations and Site uses, current conditions, the Site's environmental setting, and Site interim actions. Historical and/or current Site features are shown on Figure 4.

2.2 SITE DEVELOPMENT HISTORY

The North Marina Area has been used for a variety of commercial, industrial, and marine-related activities since the late 1800s. From about 1890 until about 1950, timber-product operations dominated waterfront industrial activities. Over that period, the shoreline of Port Gardner Bay was near the current location of West Marine View Drive, with shingle and lumber mills either along the shoreline or located

on wharfs to the west of the shoreline. The North Marina Area was filled to its current configuration between about 1947 and 1955, using dredge fill from the Snohomish River to create the Site uplands from the tidelands to the west of the original shoreline. After the additional uplands were created, businesses transitioned from primarily the wood products industry to a broader range of industries and commercial enterprises, with a large percentage of marine services operations. Although turnover in businesses has occurred over the intervening years, the area is still dominated by businesses with a marine services orientation.

The Port initiated redevelopment of the North Marina Area in 2000, including entry into a development agreement with a private developer, Maritime Trust (doing business as Everett Maritime LLC). Extensive building demolition was conducted at the Site in preparation for the planned redevelopment, resulting in the removal of all Site buildings except for those buildings shown on Figure 4. However, the development agreement was terminated due to nonperformance on the part of Everett Maritime LLC, which went bankrupt in 2010 as a result of the downturn in the real estate market. The Port still plans on redeveloping the North Marina Area, including the Site, into a mixed use development, but is re-evaluating the master plan to determine how to proceed with redevelopment in the current economic environment. It is anticipated that the planning/permitting process for the redefined North Marina Area redevelopment will be completed by 2013, and future Site development is not likely to occur prior to that time.

2.3 HISTORICAL OPERATIONS AND SITE USES

This section identifies and describes the historical uses for properties and leaseholds located within the Site. The Site usage history is based on the Phase I Environmental Site Assessment (ESA; Landau Associates 2001), which should be reviewed for a more thorough description of Site historical uses and recognized environmental conditions. The Phase I ESA can be viewed on Ecology's web site using the following link:

http://www.ecy.wa.gov/programs/tcp/sites/nMarinaWestEnd/nMarinaWestEnd_hp.htm.

A number of leaseholds within the Site were leased by the Port to various tenants. At the time that this report was prepared, all tenants had vacated their leaseholds in anticipation of redevelopment activities. The tenants utilized the leaseholds for a variety of business ventures, primarily related to marine repair and other marine support services. Although a number of historical leaseholds occupied the Site, because some of them occurred in the distant past, the Port does not have any surviving documentation. The following list includes the names of the current and known former leaseholds within the Site:

- American Boiler Works, Plant II
- American Construction Company
- American Tugboat Company/Manson Osberg Construction
- Co-op Boatyard
- Everett Engineering
- Mill Town Sailing
- Port of Everett Marine View Reception/Conference Center
- Port of Everett Overflow Parking
- Puget Sound Truck Lines (PSTL)
- United States (U.S.) Coast Guard Station
- Jordan Park.

A number of activities were conducted at these leaseholds, and some of these activities resulted in releases of hazardous substances to the environment. Each former leasehold/parcel is organized below in alphabetical order of the name of the most recent tenant or facility name. The former leaseholds are labeled on Figures 3 and 4.

2.3.1 AMERICAN BOILER WORKS, PLANT II

The American Boiler Works Plant II (ABW Plant II) former leasehold was located at 801 13th Street, and consisted of one building and the associated work area. The building was demolished in 2006 as part of redevelopment activities. Only a small portion of the former building's western end is included in the Site. The former leasehold was historically used for boiler manufacturing and more recently was used for custom steel fabrication. General environmental concerns at this former leasehold included potential heavy metals soil contamination associated with sandblast grit waste, and potential petroleum hydrocarbon contamination related to the machinery operated inside and outside of the former building.

2.3.2 AMERICAN CONSTRUCTION COMPANY

The former American Construction Company (ACC) leasehold was located at 411 13th Street and consisted of two buildings and a north and south work yard. ACC specialized in pile driving, dredging, and marine construction activities, and operated at this location for approximately 50 years. Historical maritime construction activities on the former ACC leasehold included, among other things, sandblasting, painting, and storage of creosote-treated timbers. Additionally, two 5,000-gallon aboveground storage tanks (ASTs) used for storage of diesel and gasoline were located north of the former office/shop.

ACC operated two large industrial cranes in the north yard. One crane was situated on a crane rail that ran along the western shoreline of the north yard. The crane rail extended from just north of the office/shop building to the northwest corner of the former leasehold. The other crane was fixed in position in the northeast corner of the north yard. The cranes were typically used for loading and offloading water craft and barges that would dock along the west and north shorelines of the former leasehold, but were also used for moving industrial equipment and materials throughout the north yard.

ACC constructed and operated a graving dock in the northern portion of the former leasehold that included a concrete bottom located at approximately 12 to 14 ft below ground surface (BGS). The graving dock was used for construction of concrete bridge pontoons. Once the pontoons were constructed, the northern shoreline was breached and the pontoons were floated out of the graving dock. ACC decommissioned the graving dock by backfilling with soil previously excavated from the graving dock following its use in 1989 and 1991.

A number of potential sources of spills and/or releases of hazardous substances were noted during the Phase I ESA (Landau Associates 2001), with primary concerns being potential heavy metal contamination associated with sandblasting activities, contamination by carcinogenic polycyclic aromatic hydrocarbons (cPAHs) resulting from the presence of creosoted timbers and piling, and petroleum hydrocarbon releases from the ASTs and heavy equipment.

The ACC south yard was used by ACC for support of its maritime construction activities, including storage of materials and equipment from 1989 until 2004. Prior to ACC, the American Tugboat Company and Manson Osberg Construction leased the same leasehold, as described in Section 2.2.3.

ACC vacated its south yard leasehold in 2006 and its north yard leasehold in 2007, in advance of redevelopment activities. The cranes and other industrial equipment and materials were removed, the buildings were demolished, and the three ASTs were decommissioned and removed from the Site in conjunction with the departure of ACC.

2.3.3 American Tugboat Company/Manson Osberg Construction

The American Tugboat Company leased the ACC south yard as part of a larger leasehold from 1963 to 1965, and Manson Osberg Construction leased the same leasehold from 1975 to 1985. Specific activities that occurred in this area prior to ACC's tenancy are not known, but likely included activities similar to ACC since the previous tenants also used the leasehold for support of marine construction activities.

2.3.4 Co-Op Boatyard

The Co-op Boatyard former leasehold was located to the north of 13th Street behind the former Everett Engineering Building, which was located at 731 13th Street. The boatyard did not include any buildings, came into operation sometime after 1989, and operated until boat maintenance activities were terminated in 2007 in advance of redevelopment activities. Primary environmental concerns for the boatyard were related to boat maintenance activities, and included shallow soil heavy metals contamination and potential petroleum hydrocarbons associated with used oil or other fluids associated with vessel maintenance.

2.3.5 Everett Engineering

The former Everett Engineering leasehold was located at 731 13th Street and consisted of one building and an outdoor work/storage yard. The building was demolished in the summer of 2006, in advance of Site redevelopment activities. Everett Engineering reportedly fabricated and repaired equipment, primarily related to marine-based businesses. The work yard was located north of the building and was used for extensive storage of industrial machinery and materials. General environmental concerns at this former leasehold included potential heavy metals soil contamination associated with industrial sandblasting, and potential petroleum hydrocarbons contamination associated with used oil or other fluids.

2.3.6 Mill Town Sailing

The Milltown Sailing former leasehold building is located at 410 14th Street and consists of one current building and associated paved parking areas, and was constructed sometime prior to 1969. The building is about 80-feet (ft) long by 40-ft wide. The Milltown Sailing building is currently used by sailing or other hobby clubs. It is unknown what type of businesses operated on this leasehold prior to Milltown Sailing. No specific conditions of environmental concern were identified for this former leasehold.

2.3.7 Port of Everett Marine View Reception/Conference Center

The Port of Everett Marine View Reception/Conference Center and associated paved parking areas are located in the southwest corner of the Site at 404 14th Street. No specific conditions of environmental concern were noted for this parcel. However, the Port of Everett maintains a marina fueling system that includes underground storage tanks (USTs) used to store diesel and gasoline, including associated conveyance piping to the marina fuel dock. The original USTs were located within

the paved parking areas associated with this parcel. The USTs were relocated in the 1990's to the center of the parking area located west of Jordan Park as shown on Figure 4.

2.3.8 PORT OF EVERETT OVERFLOW PARKING

The Port of Everett Overflow Parking is located off of 13th Street, east of the PSTL. The entire lot is unpaved. A majority of the lot was accessible to the public for general parking uses, and the northern portion of the lot was fenced off and was used by the Port for storage of general equipment and marine supplies (e.g., crab pots, rope, cable, etc). Based on a review of aerial photographs of this area, it appears that some soil fill was placed within the fenced portion of the property sometime prior to 1993, but its placement could not be confirmed. With the exception of the potential filling activities, no conditions of environmental concern were noted in this area.

2.3.9 PUGET SOUND TRUCK LINES

The PSTL former leasehold was located at 615 13th Street and consisted of one building and a partially paved work yard. Available information indicates that two diesel USTs and a heating oil UST were located on the property, as shown on Figure 4. PSTL also operated a diesel AST on the property following removal of the diesel USTs, also shown on Figure 4, but removed the AST prior to vacating the property in 2002. Releases from the diesel UST locations were encountered during the tank removals performed in 1990, and contaminated soil [approximately 140 cubic yards (yd^3)] was landfarmed on-site prior to being used for surface fill on the property. PSTL removed its heating oil UST in 2002. However, it does not appear that PSTL filed a report on the heating oil UST removal with Ecology. Documented and potential releases from the USTs and AST were the only identified environmental concerns for the PSTL former leasehold prior to conducting environmental characterization in this area. Subsequent environmental characterization also indicated the presence of arsenic (As) in shallow soil.

2.3.10 U.S. COAST GUARD STATION

The U.S. Coast Guard Station was located in the southern portion of the Site on 14th Street (no known address). The Coast Guard Station, demolished sometime in 2002, was approximately 50-ft long by 30-ft wide and was built sometime prior to 1970. No conditions of environmental concern were identified for this former leasehold.

2.3.11 JORDAN PARK

Jordan Park was a small recreational park. A portion of the park was located within the Site boundary, as shown on Figure 3. The park consisted of several grass-covered embankments constructed

of fill material of unknown origin. The embankments were separated by concrete pathways. No specific areas of environmental concern were identified for this area, other than the unknown fill source for the park. The park, including the embankments, were removed from the Site in 2006 in preparation for redevelopment activities.

2.4 ENVIRONMENTAL INVESTIGATIONS

A number of environmental investigations were conducted at the Site, including the RI/FS and several earlier investigations conducted while the Site was under the VCP. The investigations conducted prior to the RI started with a Phase I ESA conducted in 2001 (Landau Associates 2001) and several subsequent investigations including a Phase II ESA conducted in late 2003 and early 2004 (Landau Associates 2004) and a data gaps investigation (DGI) conducted in late 2004 and early 2005 (Landau Associates 2005). The RI field activities were conducted in 2009 and 2010 (Landau Associates 2011).

2.4.1 INVESTIGATION ACTIVITIES

Over 500 soil samples have been collected throughout the Site and submitted for laboratory analysis. Laboratory analysis of the soil samples included volatile organic compounds (VOCs); semivolatile organic compounds (SVOCs) including cPAHs; organotins [e.g., tributyl tin (TBT) ion]; metals; and petroleum hydrocarbons.

Investigation of groundwater quality at the Site has consisted of laboratory analysis of groundwater samples collected from 35 monitoring wells and 56 soil boring locations (temporary well points). Groundwater samples were analyzed for VOCs, SVOCs including cPAHs, metals, and petroleum hydrocarbons.

A total of 22 surface sediment samples and 11 subsurface (core) samples were collected from the aquatic portion of the Site. Sediment samples were tested for metals (arsenic, cadmium, chromium, copper, lead, mercury, silver, and zinc); SVOCs; polychlorinated biphenyls (PCBs); and conventional parameters [grain size, total organic carbon (TOC), total volatile solids (TVS), total solids, ammonia, and total sulfides]. Sediment samples were also analyzed for organotin pore water and samples were archived for possible bulk organotin analysis.

As part of the RI, one surface water sample was collected from the 12th Street Yacht Basin. The surface water sample was analyzed for dissolved arsenic.

2.4.2 ENVIRONMENTAL CONDITIONS

This section summarizes Site environmental conditions for affected media based on the results of the RI, and on data from previous investigations that represent current conditions. Environmental

conditions that existed prior to implementation of the interim action are discussed briefly in Section 2.5 and in more detail in the interim action report (Landau Associates 2008). The Site RI/FS (Landau Associates 2011) should be reviewed for a more detailed discussion of current Site conditions. The West End Interim Action and draft RI/FS reports can be viewed by using the web link provided in Section 2.3.

Soil and groundwater analytical data were compared to applicable Model Toxics Control Act (MTCA) criteria for unrestricted site use to evaluate Site environmental conditions in the RI/FS. In general, the Method B approach was used for the evaluation of soil and groundwater. However, Method A cleanup levels were applied to certain constituents for which Method B cleanup levels have not been promulgated (e.g., lead and petroleum hydrocarbons), and for constituents with unique considerations addressed by Ecology in development of the Method A values (e.g., arsenic).

Sediment analytical data were compared to the Sediment Management Standards (SMS; WAC 173-204) Sediment Quality Standards (SQS) and Cleanup Screening Levels (CSL) to support evaluation of the nature and extent of contamination. The two SMS criteria are promulgated by Ecology as follows:

- The marine SQS (WAC 173-204-320), the concentration below which effects to biological resources and human health are unlikely
- The marine CSL (WAC 173-204-520), the concentration above which more than minor adverse biological effects may be expected.

2.4.2.1 Soil Quality

The evaluation of the nature and extent of Site soil contamination is based on soil samples collected prior to the RI that are representative of soil that remains at the Site following completion of the interim action. The locations for samples representing soil remaining are shown on Figure 5. Due to the interim action conducted at the Site prior to implementation of the RI/FS (discussed in Section 2.5), the extent of soil contamination at the Site is very limited. Post interim action sampling results show that only arsenic and copper have been detected in soil at concentrations exceeding applicable MTCA soil cleanup levels. The locations of the MTCA soil cleanup level exceedances are shown on Figure 5.

The concentrations associated with the arsenic exceedances, 24 milligram per kilogram (mg/kg) and 29 mg/kg, are only slightly greater than the MTCA Method A soil cleanup level of 20 mg/kg. A statistical evaluation of the arsenic results for soil remaining in the area of the two arsenic exceedances indicated that soil met the arsenic cleanup level based on the MTCA regulations governing evaluation of soil compliance monitoring data (WAC 173-340-740[7]). As a result, arsenic is not considered a constituent of concern (COC) for Site soil.

Copper is present in soil remaining at the Site at concentrations exceeding the copper MTCA Method B soil cleanup level based on the protection of groundwater (36 mg/kg)[1], as shown on Figure 5. Soil samples collected during the interim action indicated that some of these exceedances could be associated with naturally occurring copper in the ballast rock for the former crane-rail located in this area, although four exceedances occurred outside of the ballast rock area. In total, less than 10 percent of the final compliance monitoring samples exceeded the copper MTCA Method B soil cleanup level based on protection of groundwater.

The copper MTCA Method B soil cleanup level protective of groundwater is only applicable to areas where copper contamination is present in Site groundwater, which is limited to the northwest Site shoreline where the copper groundwater cleanup level (3.1 micrograms per liter [µg/L]) is slightly exceeded. The copper MTCA Method B soil cleanup level applicable to areas where groundwater copper concentrations do not exceed the cleanup level (the majority of the Site) is 3,000 mg/kg based on direct human contact, and is not exceeded at the Site. The highest remaining copper soil concentration at the Site (388 mg/kg detected in sample F1d.1-B11) is almost an order of magnitude below the MTCA Method B soil cleanup level based on direct contact (3,000 mg/kg).

The copper MTCA Method B soil cleanup level for the protection of groundwater (36 mg/kg) is based on the natural background soil concentration for Washington State (*see* footnote 1). This concentration is so low that it is commonly exceeded where no known source of copper contamination is present and often at locations where copper groundwater contamination is not present. These conditions are exhibited at the Site in that copper soil concentrations exceed the cleanup level based on the protection of marine surface water at numerous locations throughout the Site where the copper groundwater cleanup level is not exceeded (Figure 5; *see* light blue dots). In the northwest portion of the Site where the copper Method B groundwater cleanup level is slightly exceeded, ballast rock associated with the crane-rail contains elevated concentrations of naturally occurring copper. However, because copper groundwater concentrations in the northwest shoreline area only slightly exceed the groundwater cleanup level, and the copper soil concentrations in this area are similar to concentrations elsewhere on the Site where the copper Method B groundwater cleanup level is not exceeded, it does not appear that the residual soil copper concentrations in the northwest shoreline area, including the ballast rock, are the source of the slightly elevated copper groundwater concentrations in this area. This is further supported

[1] Because groundwater is not a current or likely future source of drinking water and because it discharges to marine surface water, groundwater cleanup levels were developed based on marine surface water cleanup levels protective of human health and aquatic organisms in accordance with WAC 173-340-730. The soil cleanup level for copper was adjusted to reflect natural background (i.e., 36 mg/kg; Ecology 1994) because the background concentration exceeded the modeled concentration (1.1 mg/kg) protective of groundwater as surface water. Refer to Section 5.3.2 of the Draft RI/FS Report for additional information on the development of soil cleanup levels (Landau Associates2011).

by the significant reduction in copper groundwater concentrations in the RI-MW-1 vicinity subsequent to the interim action, where the copper groundwater concentration has declined from 56.8 µg/L to 5 µg/L.

Based on the above considerations, it is concluded that the source of copper groundwater contamination was removed during the interim action, even though a specific copper source was not identified, and the slightly elevated copper groundwater concentrations are residual groundwater contamination that will dissipate with time. As a result, copper is not considered a COC for Site soil.

Based on the foregoing evaluation, Ecology has determined that Site soil contamination was fully remediated during the interim action (discussed in Section 2.5) and no soil COCs remain for the Site. As a result, soil is not considered a media of concern for the Site and will not be addressed in the DCAP.

2.4.2.2 Groundwater Quality

The evaluation of the nature and extent of Site groundwater contamination is based on post-interim action (RI) groundwater monitoring at 18 monitoring well locations and 17 soil boring locations (temporary well points) shown on Figure 6. Only dissolved arsenic, dissolved copper, oil-range petroleum hydrocarbons, and vinyl chloride were detected in groundwater at concentrations exceeding the applicable MTCA groundwater cleanup levels during the RI. The analytical results that are the basis for delineating the extent of the dissolved arsenic, dissolved copper, and vinyl chloride groundwater contamination are presented on Figure 7. The extent of oil-range petroleum hydrocarbons is not presented on Figure 7 because only one sample exceeded the oil-range petroleum hydrocarbon groundwater MTCA Method A cleanup level and is, therefore, not considered a groundwater COC (*see* Section 6.4.1.1 of the Draft RI/FS for more discussion on petroleum in groundwater; Landau 2011).

As shown on Figure 7, exceedances of the arsenic groundwater MTCA Method A cleanup level are limited to the northern and western areas of the Site, with the highest concentration in the north-central portion of the Site (RI-MW-15 and RI-MW-16). Dissolved copper exceedances are more limited than dissolved arsenic and occur at only two locations (RI-MW-1 and RI-MW-3) near the western shoreline. As shown on Figure 7, exceedances of the vinyl chloride groundwater MTCA Method B cleanup level are limited to a localized area in the north-central portion of the Site in the vicinity of wells RI-MW-11 and RI-MW-15.

The extent and magnitude of the dissolved copper groundwater exceedances are relatively small. The maximum dissolved copper concentration detected in groundwater at the Site was 5 µg/L compared to the MTCA Method B cleanup level of 3.1 µg/L. The maximum RI groundwater dissolved copper concentration of 5 µg/L is significantly lower than the concentration of 48 µg/L detected prior to the interim action, and appears to be a remnant of pre-interim action groundwater quality impacts that is anticipated to dissipate over time.

Dissolved arsenic groundwater concentrations in the northwest portion of the Site exhibit similar characteristics to dissolved copper in that the current dissolved arsenic concentrations are only slightly above the groundwater MTCA Method A cleanup level, concentrations of dissolved arsenic in groundwater have decreased significantly since completion of the interim action, and current dissolved arsenic concentrations are anticipated to continue decreasing as groundwater quality continues to adjust to post-interim action equilibrium

To evaluate the extent of contamination in groundwater at the Site, groundwater quality at the point of groundwater discharge to Port Gardner and 12th Street Yacht Basin was evaluated during the RI. Groundwater at the shoreline wells are a significant distance from the actual point of discharge to surface water during low tides, when groundwater discharge to surface water is greatest. To evaluate the groundwater quality at the point of discharge to marine surface water, the dissolved arsenic and vinyl chloride concentrations in an angled well constructed at the shoreline in the north-central portion of the Site (MW-11A) were compared to the concentrations measured at an adjacent vertical well (RI-MW-11) to determine the percent reduction in concentration achieved by monitoring groundwater closer to the groundwater/surface water interface. This percent reduction in concentration was then applied to groundwater data for existing vertical shoreline wells to calculate the concentration of relevant constituents at the point of groundwater discharge to surface water.

The concentration of vinyl chloride in the angled well is significantly below the groundwater MTCA Method B cleanup level, which directly demonstrates through groundwater quality monitoring that the vinyl chloride MTCA Method B cleanup level is achieved at the conditional point of compliance established at the groundwater/surface water interface. The minimum observed concentration reduction factor observed between RI-MW-11 and RI-MW-11A was 4.6 for vinyl chloride, and 5.3 for dissolved arsenic. Based on the lowest concentration reduction factor of 4.6, the groundwater cleanup levels for all constituents, including dissolved arsenic and copper, are being achieved at the point of groundwater discharge to marine surface water near the Site northwest corner vertical shoreline wells that exhibited cleanup level exceedances .

Although the groundwater MTCA Method A cleanup level for dissolved arsenic was not achieved in RI-MW-11A, it approached to within a factor of 2. The point of discharge for groundwater to surface water remains about 12 ft north of the angled well, and both the amount of dispersion and the degree of oxygenation will increase significantly between RI-MW-11A and the shoreline. The impact of increased oxygenation is likely to have at least as significant, if not greater, an impact on dissolved arsenic concentrations at the surface water interface than dispersion due to the geochemical conversion of arsenite to arsenate under aerobic (oxygen-rich) conditions.

Based on RI-MW-11A being located only about half the distance between RI-MW-11 and the shoreline, and the minimum 5.3 concentration reduction factor exhibited in dissolved arsenic concentrations between RI-MW-11 and RI-MW-11A, it is reasonable and conservative to assume that a concentration reduction factor of 5 is achieved between RI-MW-11A and the shoreline, which represents a total concentration reduction factor of 25 between the vertical shoreline wells and the shoreline.

Based on the maximum dissolved arsenic concentration of 9 µg/L detected in MW-11A and a concentration reduction factor of 5 between the angled well and the shoreline, the estimated maximum arsenic concentration at the surface water interface is 1.8 µg/L, which is well below the groundwater MTCA Method B cleanup level of 5 µg/L. Other considerations that support the conclusion that the dissolved arsenic groundwater MTCA Method A cleanup level is being achieved at the point of groundwater discharge to surface water, and that human health and the environment are adequately protected, include:

- Dissolved arsenic is below laboratory reporting limits in surface water measured directly adjacent to the RI-MW-11 area.
- Dissolved arsenic concentrations in groundwater are not impacting sediment near the Site. Total arsenic results for the 2009 sediment sampling event ranged from 6 to 30 mg/kg, which are significantly below the SMS SQS (57 mg/kg) and CSL (93 mg/kg) for arsenic.
- Applicable water quality criteria are based on chronic exposure, whereas, at a tidally influenced shoreline such as that present at the Site, groundwater discharge to surface water only occurs at lower tidal elevations. As a result, exposure is not continuous and instead is likely to be limited to about 50 percent of the time. As a result, criteria based on chronic exposure overestimates the risk posed by Site groundwater to surface water receptors by about a factor of 2.
- Fish tissue testing conducted by SAIC for Ecology in Port Gardner Bay indicates that concentrations of dissolved arsenic in Site groundwater are not impacting fish and shellfish in the Site vicinity. Dissolved arsenic concentrations in English sole tissue samples (whole body), Dungeness crab hepatopancreas samples, and Dungeness Crab meat samples collected in areas along the western shore of the Site were lower than, or similar to, the concentrations for samples collected at locations more than 1.5 miles west and south of the Site (SAIC 2009). The dissolved arsenic tissue concentration for English sole was lower in the sample collected near the Site than in the other two samples collected in Port Gardner Bay.

2.4.2.3 Sediment Quality

The evaluation of the nature and extent of Site sediment is based on analytical results for surface sediment samples collected at 19 locations during the RI. The sampling locations are shown on Figure 8. Sediment quality data were compared to the SQS and CSL and the dry weight equivalent to these criteria. This comparison of the sediment sample analytical results to the SMS criteria indicated that no concentrations exceeded the CSL and, except for the concentration of fluoranthene in one sample (RI-SED-18), no constituents were detected at concentrations exceeding the SQS. The organic carbon-

normalized fluoranthene result for sample RI-SED-18 was 221.2 mg/kg compared to the SQS of 160 mg/kg. Sample RI-SED-18 is located east of the Site in the North Marina area, as shown on Figure 8.

The source of the fluoranthene exceedance is most likely the wooden 14th Street bulkhead formerly located immediately north of the exceedance. This former bulkhead was constructed using creosote-treated pilings and timbers, and fluoranthene is a common chemical associated with creosote. The former wooden bulkhead was replaced in 2006 with a cathodically protected steel sheet-pile bulkhead.

2.5 INTERIM ACTION

An interim action was conducted at the Site between June 2006 and March 2008 to address contaminated soil and groundwater at 50 interim action areas identified based on previous Site characterization activities. Pre-interim action soil and groundwater sampling locations with interim action cleanup level exceedances are shown on Figures 9 and 10, respectively. The interim action included excavation and offsite disposal of arsenic, copper, cPAH, lead, mercury, 1-methylnaphthalene and/or petroleum hydrocarbon-impacted soil; *in-situ* soil agitation; free product and contaminated water recovery; and the collection and analysis of compliance monitoring samples to verify that interim action cleanup levels were achieved. Interim action areas are shown on Figure 11.

A total of 43,600 tons (about 27,000 yd^3) of contaminated soil was removed from the Site during the interim action. A summary of the interim actions implemented within each area is provided in Table 1. A more detailed description of the interim actions is provided in the *West End Site Interim Action Report* (Landau Associates 2008).

3.0 DISCUSSION OF CLEANUP STANDARDS

This section discusses Site cleanup standards for chemical constituents that were detected in affected Site media at concentrations above screening levels developed for the RI/FS. These affected media include groundwater and sediment. As discussed previously in Section 2.4.2.1, soil is not considered a media of concern for the Site and will not be addressed in the DCAP. Cleanup standards consist of: 1) cleanup levels defined by regulatory criteria that are adequately protective of human health and the environment, and 2) the point of compliance at which the cleanup levels must be met.

3.1 GROUNDWATER

Cleanup levels for groundwater developed under MTCA represent the concentration of COCs that are protective of human health and the environment for identified potential exposure pathways, based on the highest beneficial use (HBU) and the reasonable maximum exposure (RME) for each affected media. The process for developing cleanup levels consists of identifying the HBU and RME for affected media, determining those that represent the greatest risk to human health or the environment, and determining the cleanup levels for the COC in affected media.

The HBU for groundwater is considered discharge to surface water (Port Gardner and the 12th Street Yacht Basin). Based on a groundwater HBU of discharge to surface water, the RME for groundwater is the more conservative of: 1) uptake by aquatic organisms based on aquatic water quality criteria, and 2) ingestion of affected aquatic organisms by humans. As a result, federal (National Toxics Rule [40 CFR 131.36] and National Recommended Water Quality Criteria [EPA 2006]) and state (MTCA Method B formula values and Chapter 173-201A) surface water criteria based on human consumption of fish and federal (National Recommended Water Quality Criteria [EPA 2006]) and state (MTCA Method B formula values and Chapter 173-201A) surface water quality criteria protective of aquatic life were evaluated as potential cleanup levels for groundwater. The most stringent of the applicable criteria, adjusted to the practical quantitation limit (PQL) or background concentrations, if appropriate, is identified as the Site groundwater cleanup value, shown in Table 2.

At least one sample exceeded the groundwater cleanup levels for arsenic, copper, vinyl chloride, and lube oil. The lube oil exceedance occurred during the initial RI groundwater monitoring event just following the interim action. Lube oil was not detected for three consecutive monitoring events following the initial event; therefore, lube oil is not carried forward as a COC for Site groundwater. The remaining constituents that exceeded the groundwater cleanup levels are carried forward as COCs for Site groundwater, as summarized in Table 2.

Under MTCA, the point of compliance is the point or location on the Site where the cleanup levels must be attained. The point of compliance for groundwater is typically throughout the Site when

groundwater is considered a potential source of potable drinking water. If groundwater discharge to surface water represents the HBU, MTCA provides for a conditional point of compliance at the point of discharge of groundwater to the surface water receiving body. As a result, the point of entry of groundwater to Port Gardner and the 12th Marina is the conditional point of compliance for Site groundwater.

3.2 SEDIMENT

Sediment cleanup standards were developed according to SMS requirements. The SQS and CSL values have been developed for a suite of analytes that includes metals, polycyclic aromatic hydrocarbons (PAHs) and other SVOCs, PCBs, and ionizable organic compounds. The SQS are the most stringent SMS numeric criteria and represent the goal for sediment cleanups. Only fluoranthene has been detected in sediment above the SQS; therefore, only fluoranthene is carried forward as a COC for Site sediment. The sediment cleanup level for fluoranthene is provided in Table 2.

The point of compliance for sediment will be the upper 10 centimeters (cm), which is considered the predominantly biologically active zone. The area of fluoranthene-impacted sediment is shown on Figure 12.

4.0 SELECTED CLEANUP ACTION

This section describes and evaluates the selected cleanup action for the Site. The other cleanup alternatives considered for the Site and evaluated in the RI/FS are also summarized

4.1 DESCRIPTION OF THE SELECTED CLEANUP ACTION

As discussed in Section 2.4, the nature and extent of contamination at the Site consists of limited upland areas of groundwater contamination and an isolated location of low level sediment contamination. As a result, the selected cleanup action will consist of long-term groundwater compliance monitoring and institutional controls to address upland contamination and monitored natural recovery (MNR) to address sediment contamination.

An environmental restrictive covenant will be placed on the Site as an institutional control to protect the integrity of the cleanup action following implementation. The restrictive covenant will have the following elements to address activities that could compromise the integrity of the cleanup action:

- Groundwater use for potable water will be prohibited.
- Groundwater extracted for construction dewatering or other nonpotable purposes will be managed, treated, and discharged in conformance with an Ecology-approved groundwater management plan.
- Intrusive activities that involve worker contact with contaminated groundwater will be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites and in conformance with a Site-specific health and safety plan.

The institutional controls will be placed over the entire Site to prevent the use of groundwater for potable purposes, and over the areas of residual groundwater contamination shown on Figure 12 for other purposes (e.g., construction dewatering).

Long-term compliance monitoring will consist of monitoring groundwater quality from eight existing monitoring wells along the shoreline and monitoring sediment at one location in the southeast corner of the Site, as shown on Figure 12. Groundwater quality will be monitored quarterly for 1 year to demonstrate compliance with cleanup standards. Sediment quality will be monitored at a single location in the vicinity of RI monitoring station RI-SED-18 in the summer of 2012 (3 years following the collection of sample RI-SED-18) and no additional sediment monitoring will be conducted if compliance with the fluoranthene SQS is achieved. Based on the anticipated schedule for the fourth quarter of groundwater monitoring, the sediment monitoring event will be conducted concurrent with the fourth quarter groundwater monitoring event. Table 3 identifies the analytical parameters that will be monitored at each compliance monitoring location.

As described in Section 2.4.2.2, water quality data associated with the angled well evaluation indicate that a concentration reduction factor of at least 25 times occurs between vertical wells at the shoreline and the actual groundwater/surface water interface. As a result, a concentration reduction factor of 25 will be applied to the groundwater compliance monitoring data collected from vertical wells to evaluate whether groundwater cleanup standards are being achieved and maintained at the Site. If quarterly groundwater monitoring results associated with RI-MW-11 and RI-MW-11A show a concentration reduction factor less than that required to demonstrate that the groundwater cleanup standards are being achieved based on available data, additional groundwater and/or surface water quality monitoring may be required.

4.2 EVALUATION OF SELECTED CLEANUP ACTION

The selected cleanup action was evaluated to determine whether it meets the minimum requirements to be considered compliant with the MTCA regulations, as specified in WAC 173-340-360(2). The MTCA minimum requirements include threshold requirements and other requirements. The threshold requirements are:

- Protection of human health and the environment
- Compliance with cleanup standards
- Compliance with applicable state and federal laws
- Provision for compliance monitoring.

In addition to the threshold requirements, the selected cleanup action must also meet the following requirements:

- Use of permanent solutions to the maximum extent practicable
- A reasonable restoration timeframe
- Consideration of public concerns.

The selected cleanup action is evaluated against these criteria in the following sections.

4.2.1 THRESHOLD REQUIREMENTS

In order for a cleanup action to meet the threshold requirements it must adequately protect human health and the environment, comply with cleanup standards, comply with state and federal laws, and provide for compliance monitoring. The selected cleanup action meets these requirements. Almost all contaminant mass was removed from the Site during the interim actions, eliminating any potential for direct human contact with soil containing COC concentrations above the proposed cleanup levels. Institutional controls will prevent direct contact with or ingestion of contaminated groundwater, and

groundwater and sediment compliance monitoring will confirm that cleanup standards are achieved and maintained at the conditional point of compliance for Site groundwater, which is the groundwater/surface water interface at the shoreline, and at the point of compliance for Site sediment, which is throughout the predominantly biologically active zone (upper 10 centimeters of sediment). The selected cleanup action will comply with MTCA, all other applicable state laws, and all applicable federal laws.

4.2.2 PERMANENCE

MTCA requires that cleanup actions be permanent to the maximum extent practicable, and identifies a number of criteria to evaluate whether this requirement is achieved. The remainder of this section provides an evaluation of the selected cleanup action against the permanence criteria.

4.2.2.1 Overall Protectiveness

The selected cleanup action will provide a high level of overall protectiveness of human health and the environment. Long-term groundwater and sediment compliance monitoring and implementation institutional controls will reduce the risk that human or ecological receptors are exposed to groundwater or sediment with chemical concentrations exceeding the cleanup levels. Additionally, risks during implementation will be minimal because the selected cleanup action does not include construction activities.

4.2.2.2 Long-Term Effectiveness

The selected cleanup action provides a high degree of certainty that it will be successful. Because contaminant mass and potential future sources of contamination have largely been removed from the Site, compliance with the groundwater cleanup standards has been demonstrated at the proposed conditional point of compliance at the shoreline, and the extent of sediment contamination is very limited, the potential for the selected cleanup action to not be successful is negligible. Because the selected cleanup action does not require active remediation to achieve cleanup standards, its long-term reliability is assured, and the lack of significant residual contaminant mass results in a very low residual risk.

4.2.2.3 Management of Short-Term Risks

Because the selected cleanup action does not involve additional active remediation, and protection of human health and the environment during construction and implementation is not a consideration, resulting in minimal short-term risk.

4.2.2.4 Permanent Reduction of Toxicity, Mobility, and Volume of Hazardous Substances

As previously discussed, about 40,600 tons, almost all of the contaminant mass, was removed from the Site during the interim actions and groundwater quality monitoring demonstrates that the residual groundwater contamination is not migrating beyond the shoreline. As a result, the selected cleanup action substantially reduces the volume of hazardous substances at the Site when considered in conjunction with the interim action.

4.2.2.5 Implementability

The selected cleanup action is easily implemented. Groundwater compliance monitoring will be conducted using existing monitoring wells, and institutional controls in the form of deed restrictions could be implemented by the Port following finalization of the DCAP.

4.2.2.6 Cleanup Costs

The estimated cost for implementing the institutional controls and conducting long-term groundwater compliance monitoring, including reporting, is $41,000.

4.2.3 Restoration Timeframe

The MTCA [WAC 173-340-360(6)(a)] specifies that the following factors be considered in establishing a "reasonable" timeframe:

- Potential risks to human health and the environment
- Practicability of achieving a shorter restoration timeframe
- Current use of the Site, surrounding areas, and associated resources that are, or may be, affected by releases from the Site
- Potential future use of the Site, surrounding areas, and associated resources that are, or may be, affected by releases from the Site
- Availability of alternate water supplies
- Likely effectiveness and reliability of institutional controls
- Ability to control and monitor migration of hazardous substances from the Site
- Toxicity of the hazardous substances at the Site
- Natural processes that reduce concentrations of hazardous substances and have been documented to occur at the Site or under similar Site conditions.

The selected cleanup action will achieve upland cleanup standards immediately following implementation, which will address potential risks to human health and the environment. Sediment cleanup standards will be achieved as soon as sediment compliance monitoring demonstrates that the fluoranthene SQS has been achieved through MNR, which is anticipated to occur by the first round of

sediment compliance monitoring in 2012. Given that the cleanup standards will be achieved immediately following implementation, or shortly thereafter, achieving a shorter restoration timeframe is not practicable.

The selected cleanup action will be compatible with current and potential future use of the Site; the primary consideration for future land use will be the proper management of extracted groundwater if construction dewatering is required and the integration of the groundwater compliance monitoring wells into the development. The City of Everett provides municipal water to the Site, and Site groundwater is not considered a potable water supply, so availability of an alternate water supply is not an issue. Site institutional controls will be largely limited to requirements for management of extracted groundwater, which can be easily and reliably implemented. The control and monitoring of hazardous substances will be easily achieved by the selected cleanup action because contamination is limited to localized areas of groundwater and sediment contamination that will be monitored by the compliance monitoring program. Additionally, with the contaminant mass largely removed from the Site during the interim actions, natural processes are anticipated to further reduce concentrations of hazardous substances in groundwater and sediment.

4.2.4 Public Participation and Community Acceptance

A public comment period will be held to allow the public and parties affected by the cleanup action an opportunity to provide comment on this document. Ecology will review all public comments submitted during public comment period, and will incorporate them, as appropriate, in the final cleanup action plan (CAP). You will receive notice by regular mail or e-mail that Ecology has received your comments, along with an explanation about how the comments were addressed.

5.0 SUMMARY OF OTHER CLEANUP ACTION ALTERNATIVES

Because of the thoroughness of the interim action, residual soil contamination that could potentially be targeted for removal, treatment, or containment as part of a final cleanup action is not present at the Site. As such, potential cleanup alternatives for the Site are limited, and cleanup action alternatives were not developed to address Site soil.

Actively remediating Site groundwater contamination through containment or treatment was considered, but was determined to be impracticable. A shoreline barrier wall in conjunction with a long-term groundwater extraction and treatment system was one alternative considered to address Site groundwater contamination. Other potential technologies that provide containment without groundwater extraction and treatment, such as permeable reactive barrier (PRB) walls, were considered, but determined to not likely be effective at the Site because of gradient reversals resulting from tidal fluctuations and potential interferences in PRB performance caused by saline water in the near-shore reaction zone.

Arsenic is difficult and expensive to treat due to the low concentrations required to achieve the proposed arsenic groundwater cleanup level, and a barrier wall would be required along the shoreline to minimize the amount of surface water extracted to maintain containment. Because the apparent cause of residual arsenic groundwater contamination (reduced groundwater conditions) would not be removed through groundwater extraction, containment would be required in perpetuity. Based on the lack of an identifiable source of arsenic groundwater contamination and the high cost of constructing and operating an effective groundwater extraction/treatment system at the Site, and because it can be demonstrated that cleanup standards can be achieved at a conditional point of compliance at the shoreline, a containment remedy was determined to be impracticable for this portion of the Site, particularly when considered in the context of the extensive amount of contaminant mass removed from the Site during the interim action.

The other groundwater contamination issue at the Site, vinyl chloride, exhibits low concentrations that indicate a limited and diffuse potential source area; the vinyl chloride concentrations do not exceed the cleanup standards at the proposed conditional point of compliance. This condition represents a *de minimus* condition with no practicable opportunity for source removal or mass reduction given that the potential remedies would be containment technologies similar to those described above for arsenic or air sparging/soil vapor extraction (SVE) or bioremediation treatment technologies that would be similarly impracticable due to the lack of a substantive and defined source area.

Based on the lack of remaining contaminant mass and definable source areas, the high cost of actively remediating the limited remaining groundwater contamination, and the demonstrated ability to

achieve groundwater cleanup standards at a conditional point of compliance at the shoreline, cleanup action alternatives that rely on active remediation were determined to be impracticable for the Site.

Based on the limited area of sediment contamination, the low level of the exceedance (less than 50 percent greater than the SQS), and the apparent removal of the potential sources of the contamination, MNR was determined to be the only practicable alternative for sediment cleanup. As discussed in Section 2.4.2.3, the single exceedances of the fluoranthene SQS likely results from the presence of creosote-treated wood commonly used for historic marine structures. The most probable source of fluoranthene is the former 14th Street bulkhead located immediately north of the SQS exceedances, which was constructed using creosote-treated pilings and timbers. However, the bulkhead was replaced in 2006 with an epoxy-coated steel sheetpile structure, eliminating the bulkhead as a potential future source of fluoranthene contamination to sediment. Additionally, all upland structures and associated businesses in the vicinity of the fluoranthene exceedance have been removed and future development in this area will include stormwater treatment prior to discharge, which minimizes the potential for upland sources to impact sediment quality in the future. Based on these considerations, dredging or other methods of active remediation were determined to be impracticable for cleanup of contaminated Site sediment.

6.0 CAP IMPLEMENTATION SCHEDULE

Implementation of the CAP will commence immediately following entry of the consent decree containing the final CAP. Groundwater compliance monitoring will be initiated within 3 months of entry of the consent decree. Sediment compliance monitoring will be conducted concurrent with the fourth round of quarterly groundwater compliance monitoring. The restrictive covenant to address the management of groundwater extracted from the Site will be filed with the County Assessor's office within 6 months of entry of the consent decree. Based on this schedule, it is anticipated that all CAP requirements will be completed within one year following entry of the consent decree with the court, contingent upon the outcome of groundwater and sediment compliance monitoring.

7.0 REFERENCES

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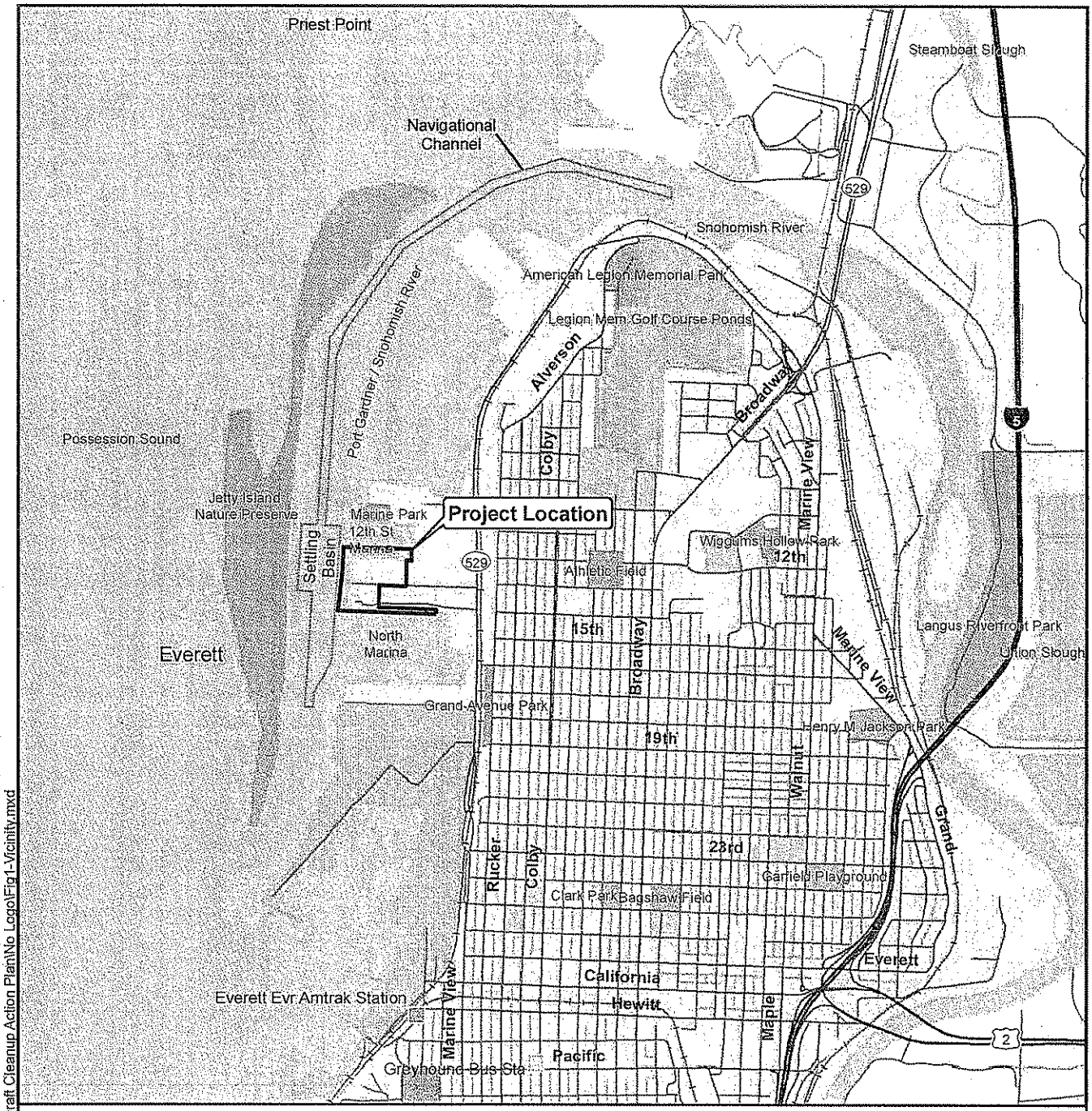

Data Source: ESRI 2008

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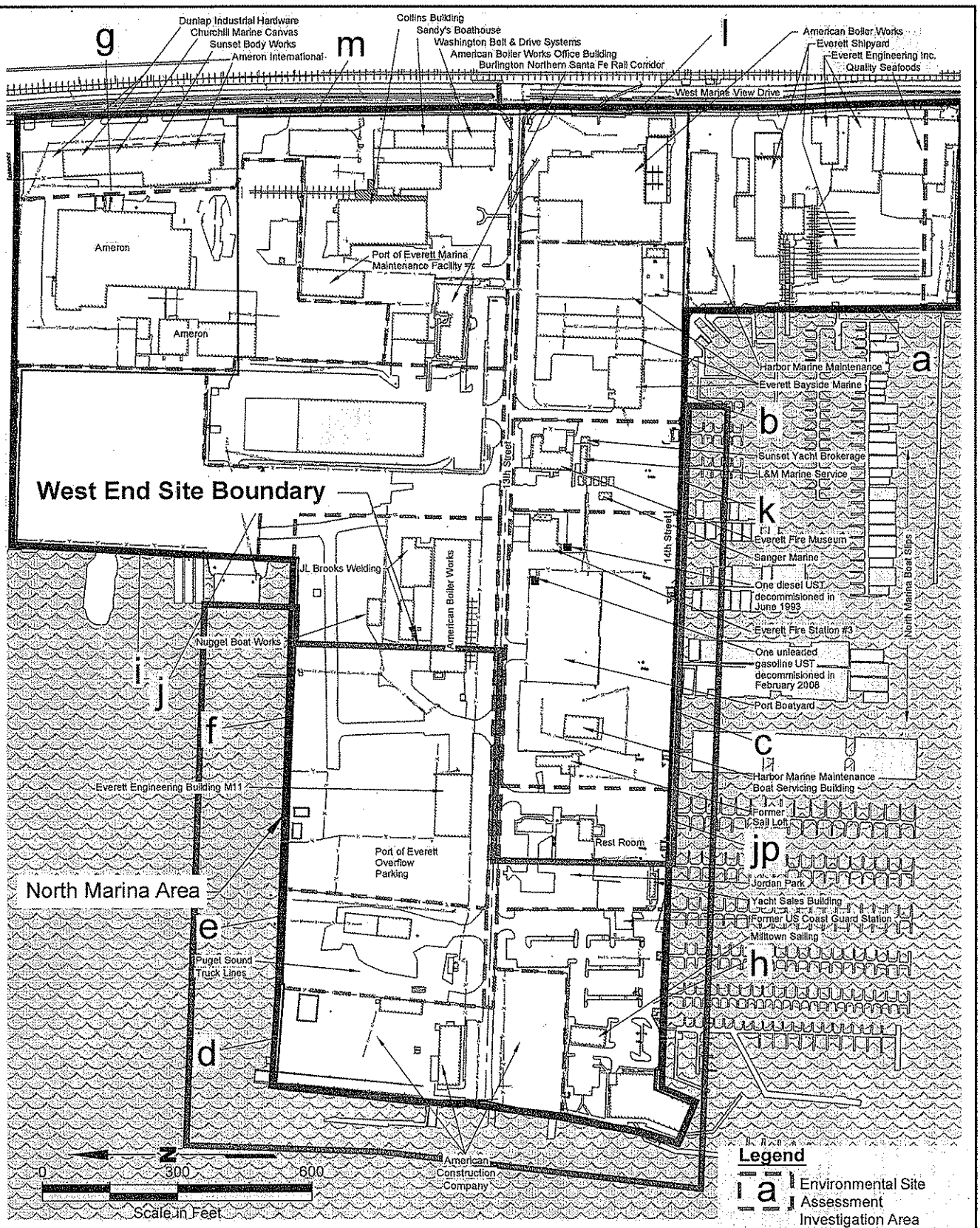
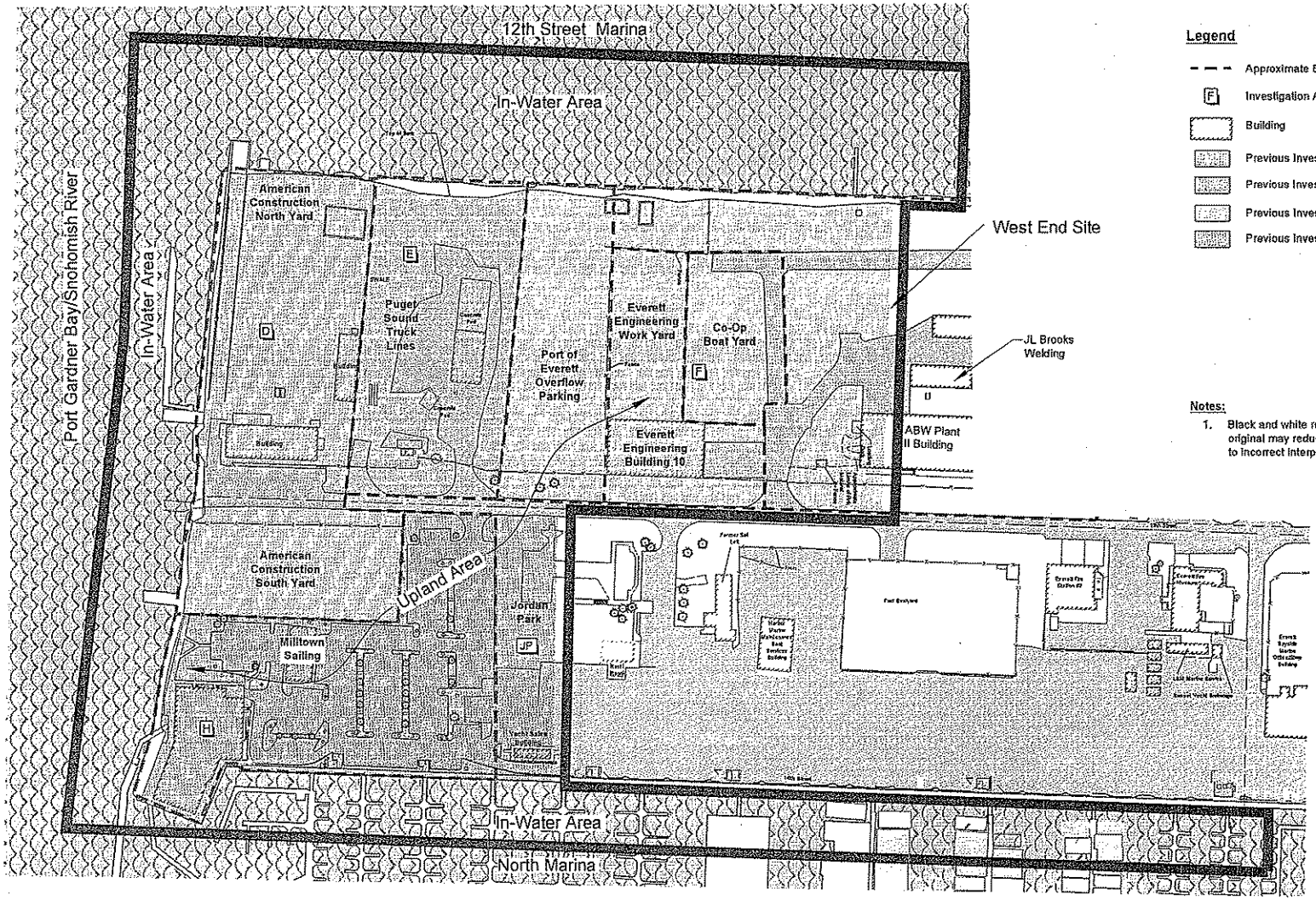
North Marina West End Site Cleanup Action plan Everett, Washington	**Vicinity Map**	Figure 1



Port of Everett\North Marina\Cleanup Action Plan | V:\1147\029\110.111\Final West End RIFS Report\Figure 2.dwg (A) "Figure 2" 3/17/2011

North Marina West End Site Cleanup Action Plan Port of Everett, Washington	**Location Plan**	Figure 2

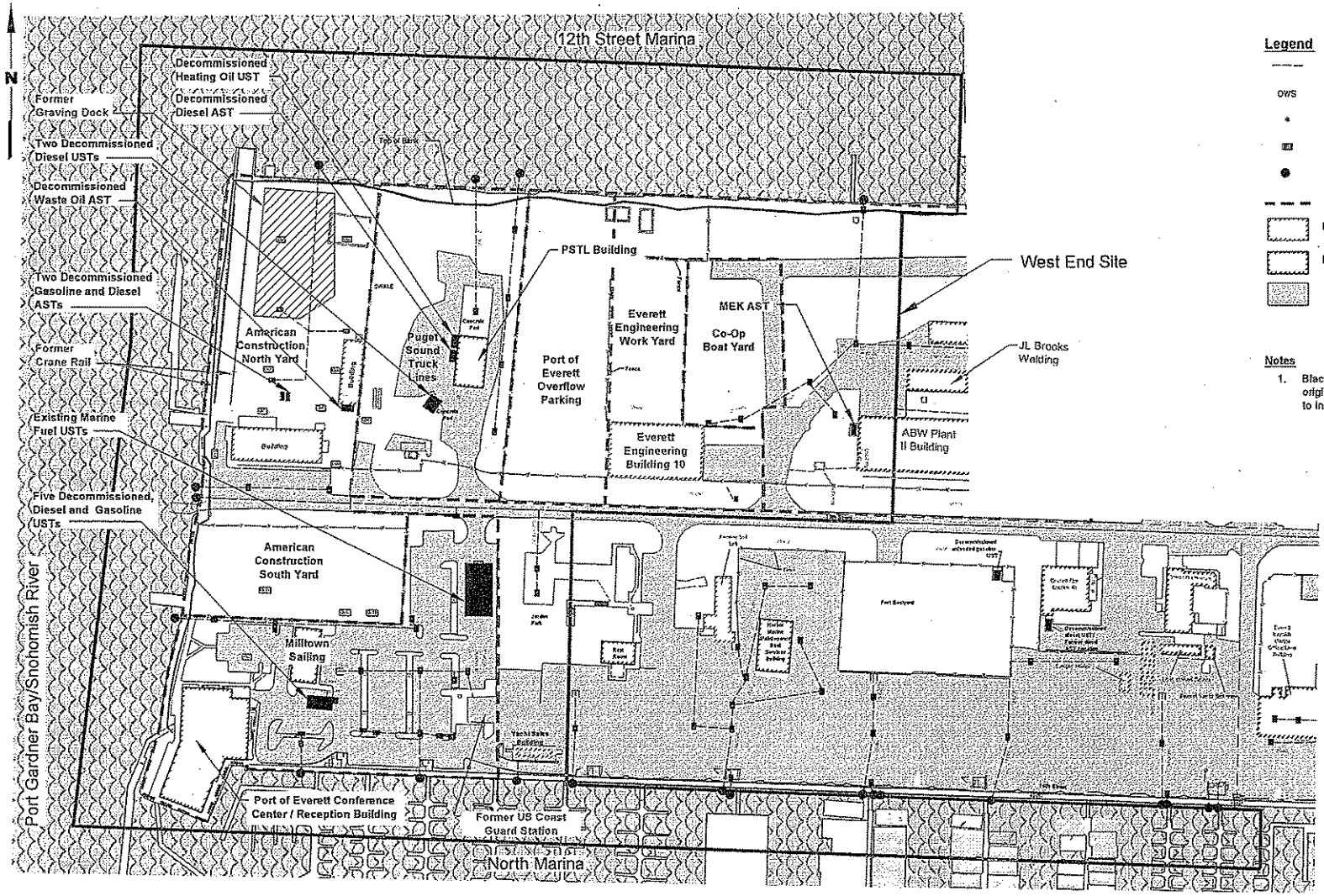


North Marina West End Site
Cleanup Action Plan
Port of Everett, Washington

Site Plan

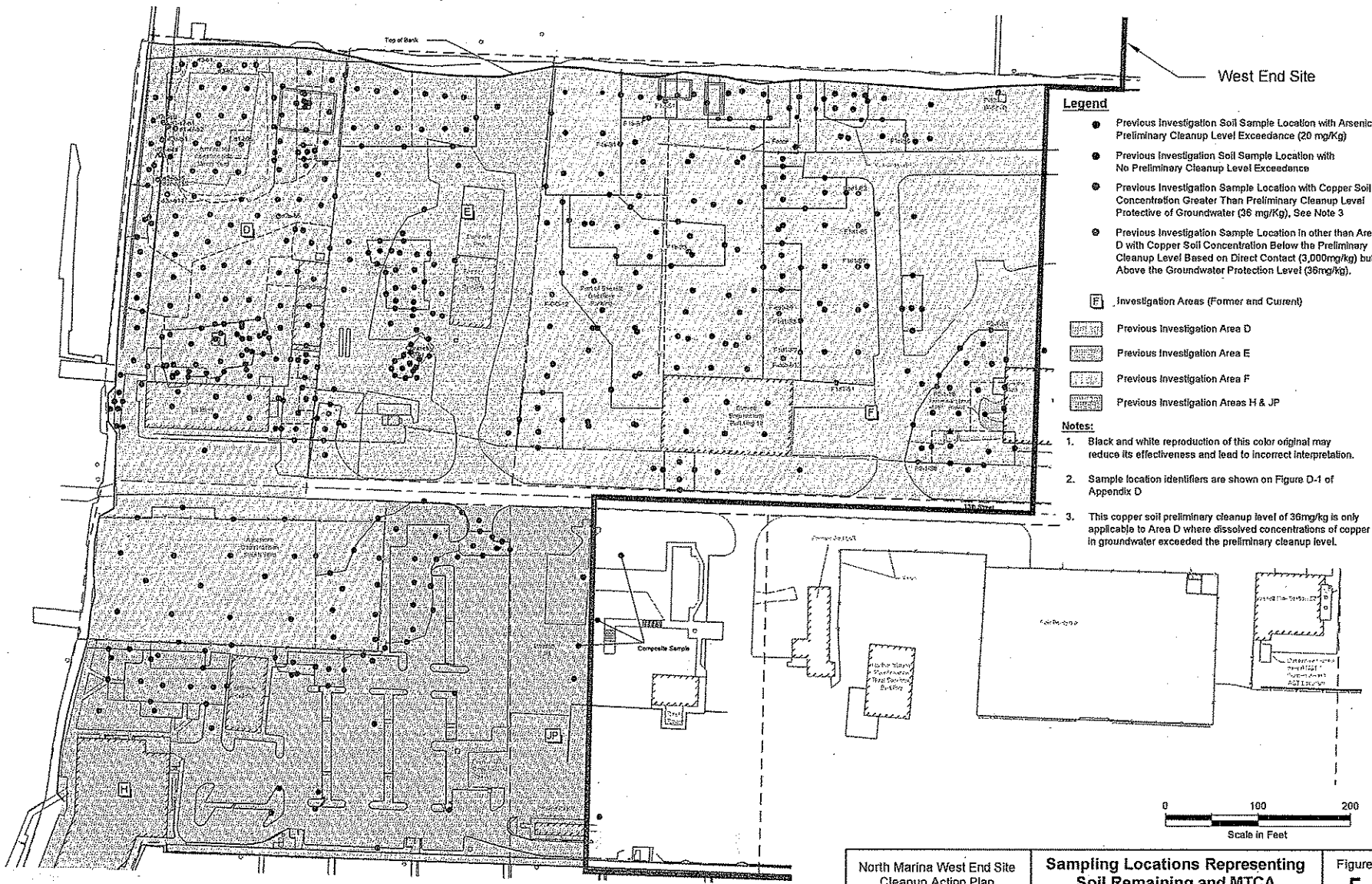
Figure
3

Port of Everett\North Marina\Cleanup Action Plan [V:\1470\0028\110.11\Final West End RIFS Report\Figure 3.dwg (A) 'Figure 3' 3/31/2011



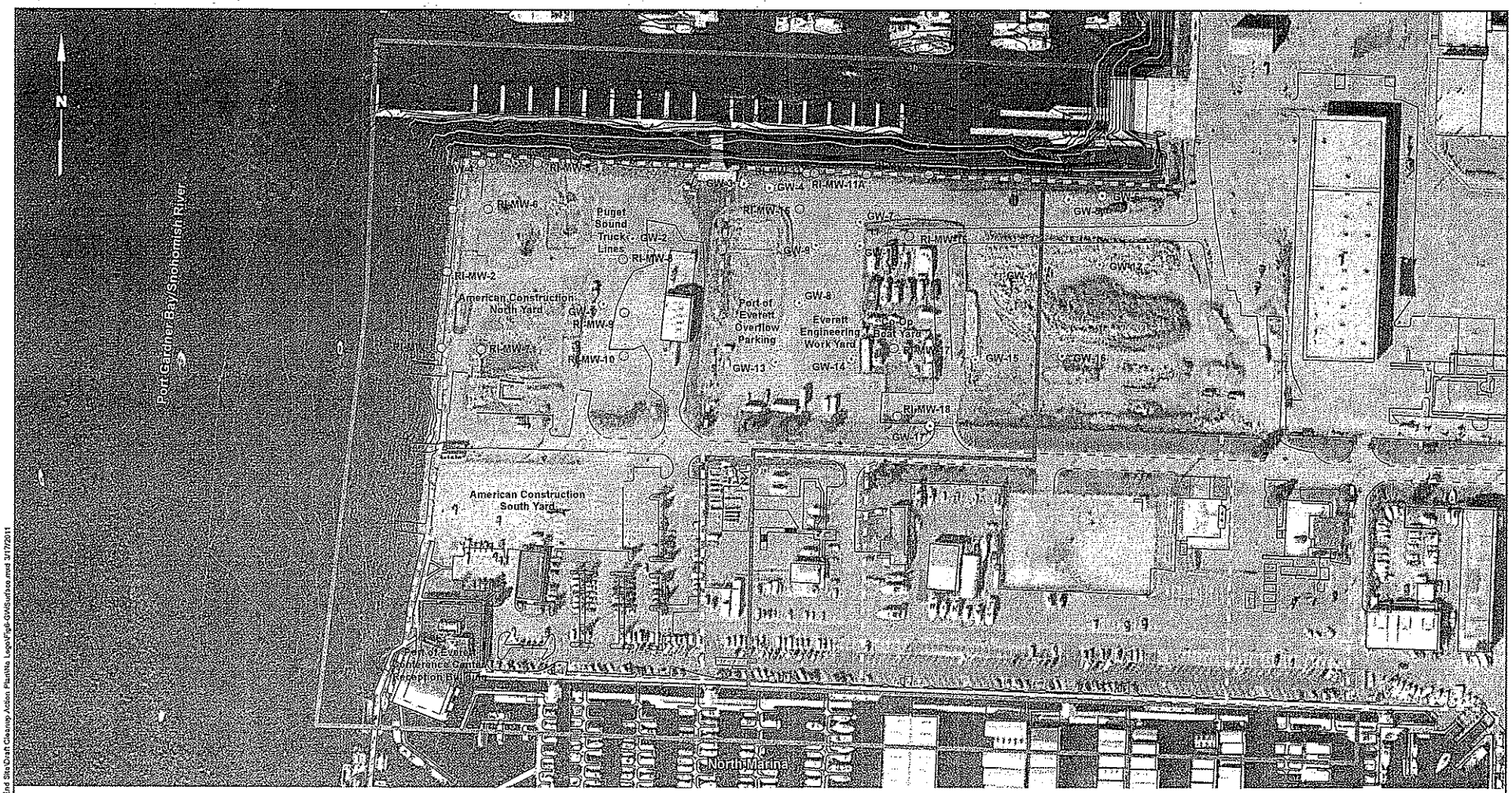
North Marina West End Site RI/FS Report Port of Everett, Washington	**Current and/or Historical Site Features**	Figure **4**

Port of Everett\North Marina\Cleanup Action Plan | V:\1-47\025\110.111\Final West End RI\FS Report\Figure 4.dwg (A) "Figure 4" 3/21/2011



North Marina West End Site Cleanup Action Plan Port of Everett, Washington	**Sampling Locations Representing Soil Remaining and MTCA Soil Cleanup Level Exceedances**	Figure **5**

Port of Everett\North Marina\Cleanup Action Plan | V:\1470291\110.111\Final West End RIFS Report\Figure 5.dwg (A) "Figure 5" 3/21/2011



Legend

- RI Direct - Push Groundwater Grab Sample Location
- RI Groundwater Monitoring Well Location
- Post Dredge Minor Contour (2' Interval, MLLW)
- Post Dredge Major Contour (10' Interval, MLLW)
- West End Site Boundary
- Approximate Boundary of Leasehold
- Bathymetry (MLLW) Based on Data Collected in 2003 & 2004
- Harbor Line and River Center Line

0 160 320
Scale in Feet

Data Source: Google Earth (2008 Image); Elevation Contours, Harbor Line, and Centerline of Snohomish River: Port of Everett Hydrographic Survey of Tall Ship Moorage; Post Dredge Elevation Contours (2005, PND Engineers)

Notes:
1. At locations where lube oil was analyzed, diesel and gasoline range petroleum hydrocarbons were also analyzed but were not detected.

North Marina West End Site Cleanup Action Plan
Port of Everett, Washington

RI Groundwater Monitoring Locations

Figure 6

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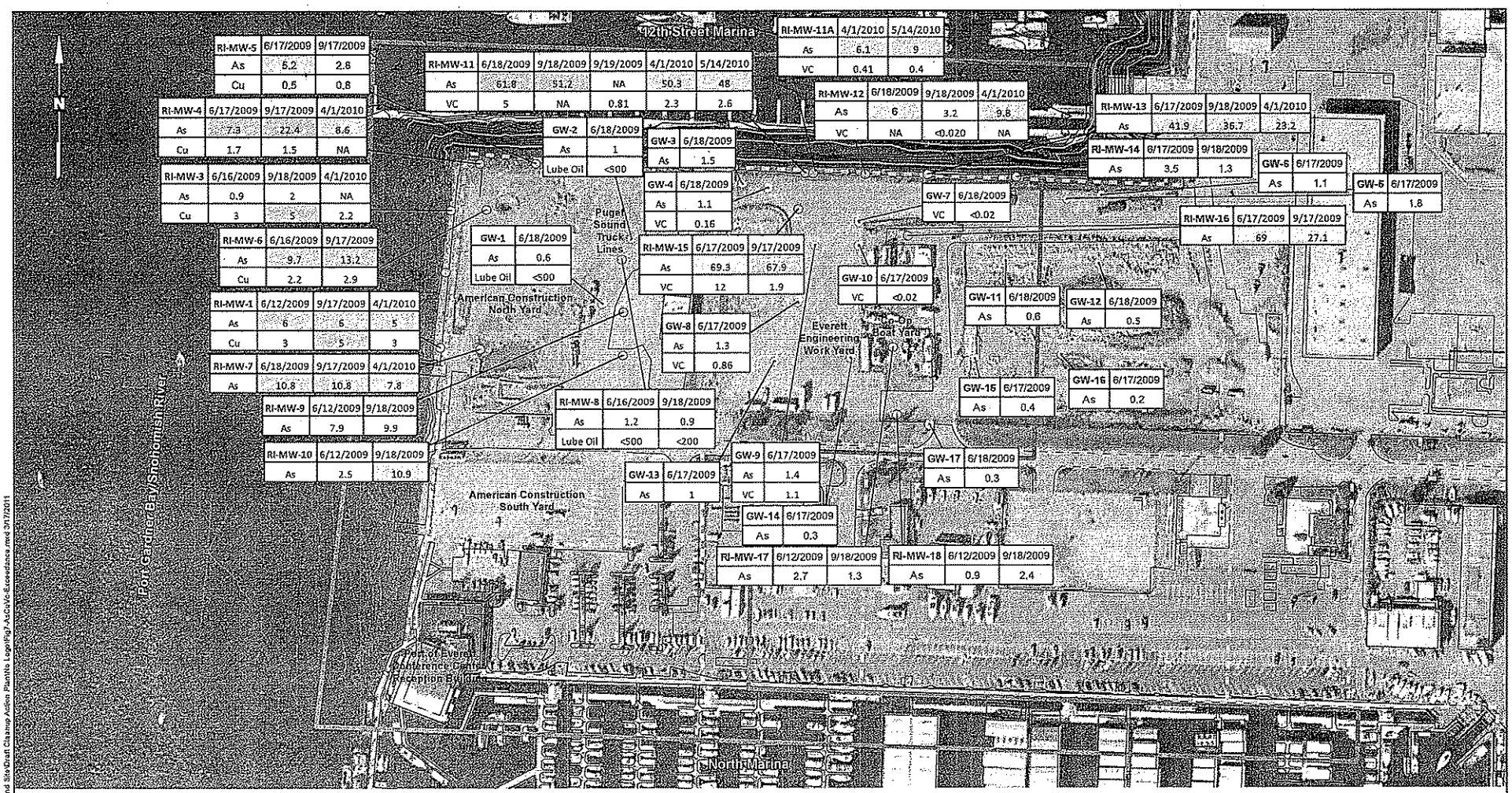

Legend

- 2009 Direct - Push Groundwater Grab Sample Location
- 2009 Groundwater Monitoring Well Location
- Post Dredge Minor Contour (2' Interval, MLLW)
- Post Dredge Major Contour (10' Interval, MLLW)
- West End Site Boundary
- Approximate Boundary of Leasehold
- Bathymetry (MLLW) Based on Data Collected in 2003 & 2004
- Harbor Line and River Center Line

Preliminary Cleanup Levels µg/L	
As	5
Cu	3.1
VC	2.4

Notes:
1. Shaded box indicates preliminary cleanup level exceedance.
2. At locations where lube oil was analyzed, diesel and gasoline range petroleum hydrocarbons were also analyzed but were not detected.
3. NA = Not Analyzed.

0 160 320
Scale in Feet

Data Source: Google Earth (2008 Image); Elevation Contours, Harbor Line, and Centerline of Snohomish River: Port of Everett Hydrographic Survey of Tall Ship Moorage; Post Dredge Elevation Contours (2005, PND Engineers)

North Marina West End Site Cleanup Action Plan Port of Everett, Washington	**MTCA Groundwater Cleanup Level Exceedances**	Figure 7

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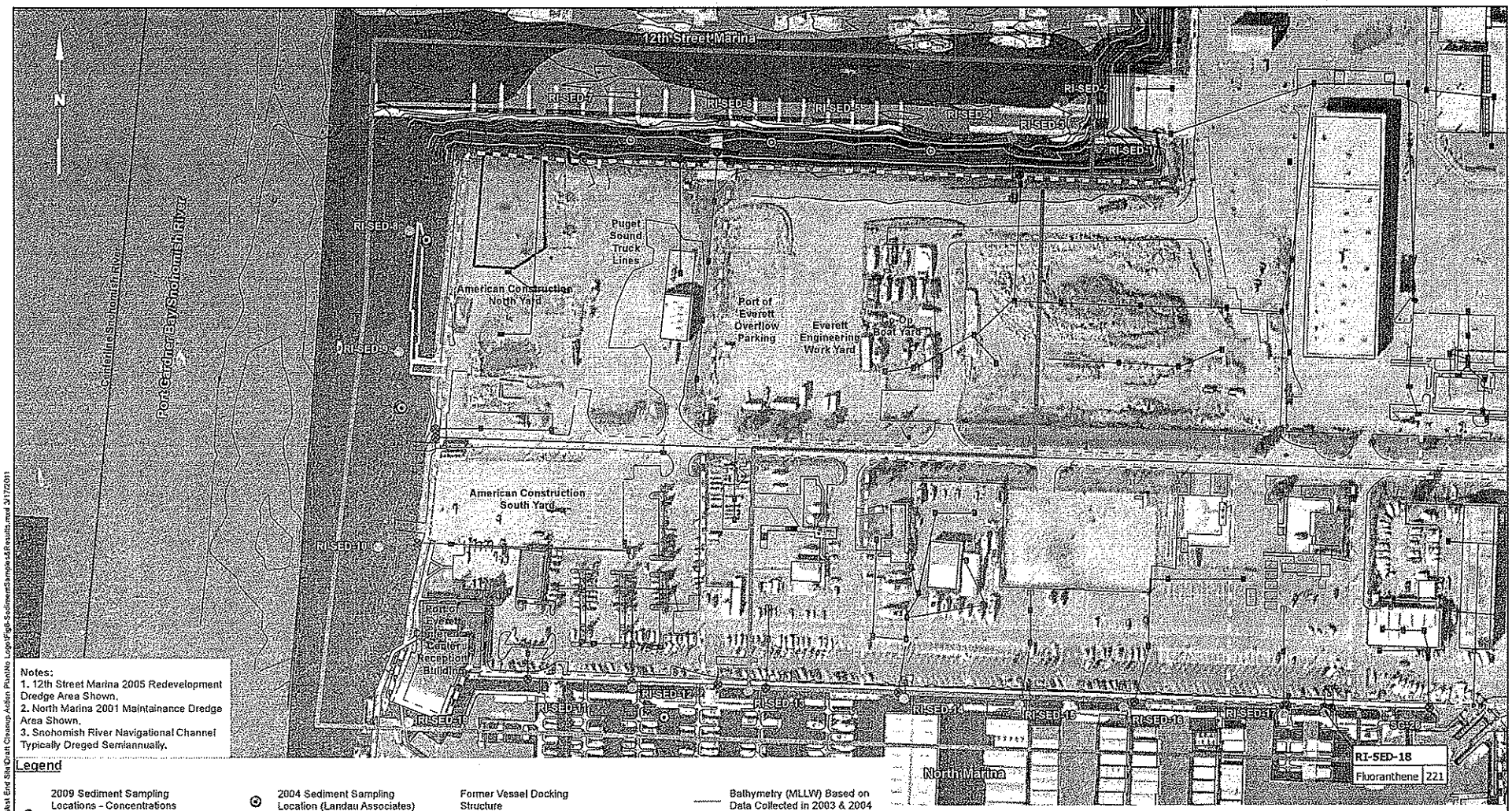

Notes:
1. 12th Street Marina 2005 Redevelopment Dredge Area Shown.
2. North Marina 2001 Maintainance Dredge Area Shown.
3. Snohomish River Navigational Channel Typically Dreged Semiannually.

Legend

- 2009 Sediment Sampling Locations - Concentrations Above SQS and Below CSL (Landau Associates)
- 2009 Sediment Sampling Location - Concentrations Below SQS (Landau Associates)
- Everett Shipyard RI Sediment Location
- 2004 Sediment Sampling Location (Landau Associates)
- 2001 Sediment Sampling Location (Pentec)
- Outfall Location
- Catch Basins and Piping
- Former Vessel Docking Structure
- West End Site Boundary
- Approximate Boundary of Leasehold
- Post Dredge Minor Contour (2' Interval, MLLW)
- Post Dredge Major Contour (10' Interval, MLLW)
- Bathymetry (MLLW) Based on Data Collected in 2003 & 2004
- Harbor Line and River Center Line
- Former Graving Dock Footprint
- Approximate Dredging Areas (See Notes)

Cleanup Levels (mg/kg OC)		
Constituent	SQS	CSL
Fluoranthene	160	1,200

Data Source: Google Earth (2008 Image); Elevation Contours, Harbor Line, and Centerline of Snohomish River: Port of Everett Hydrographic Survey of Tall Ship Moorage; Post Dredge Elevation Contours (2005, PND Engineers)

North Marina West End Site
Cleanup Action Plan
Port of Everett, Washington

RI Sediment Sampling Locations and SQS Cleanup Level Exceedance

Figure 8

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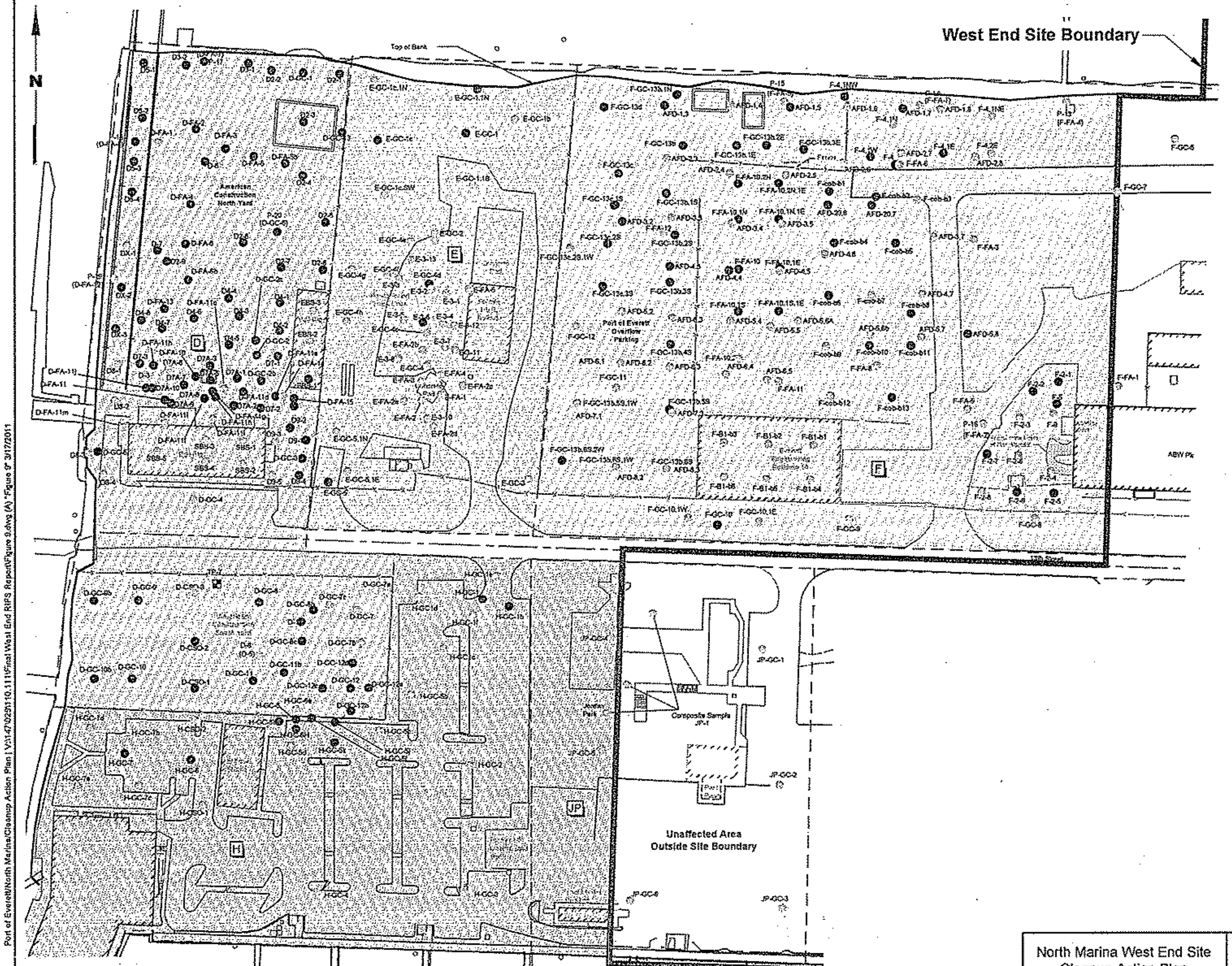


Legend

- ● Previous Investigation Soil Sample Location with Interim Action Cleanup Level Exceedance
- ○ Previous Investigation Soil Sample Location with No Interim Action Cleanup Level Exceedance
- Previous Investigation Area D
- Previous Investigation Area E
- Previous Investigation Area F
- Previous Investigation Areas H & JP

Notes:

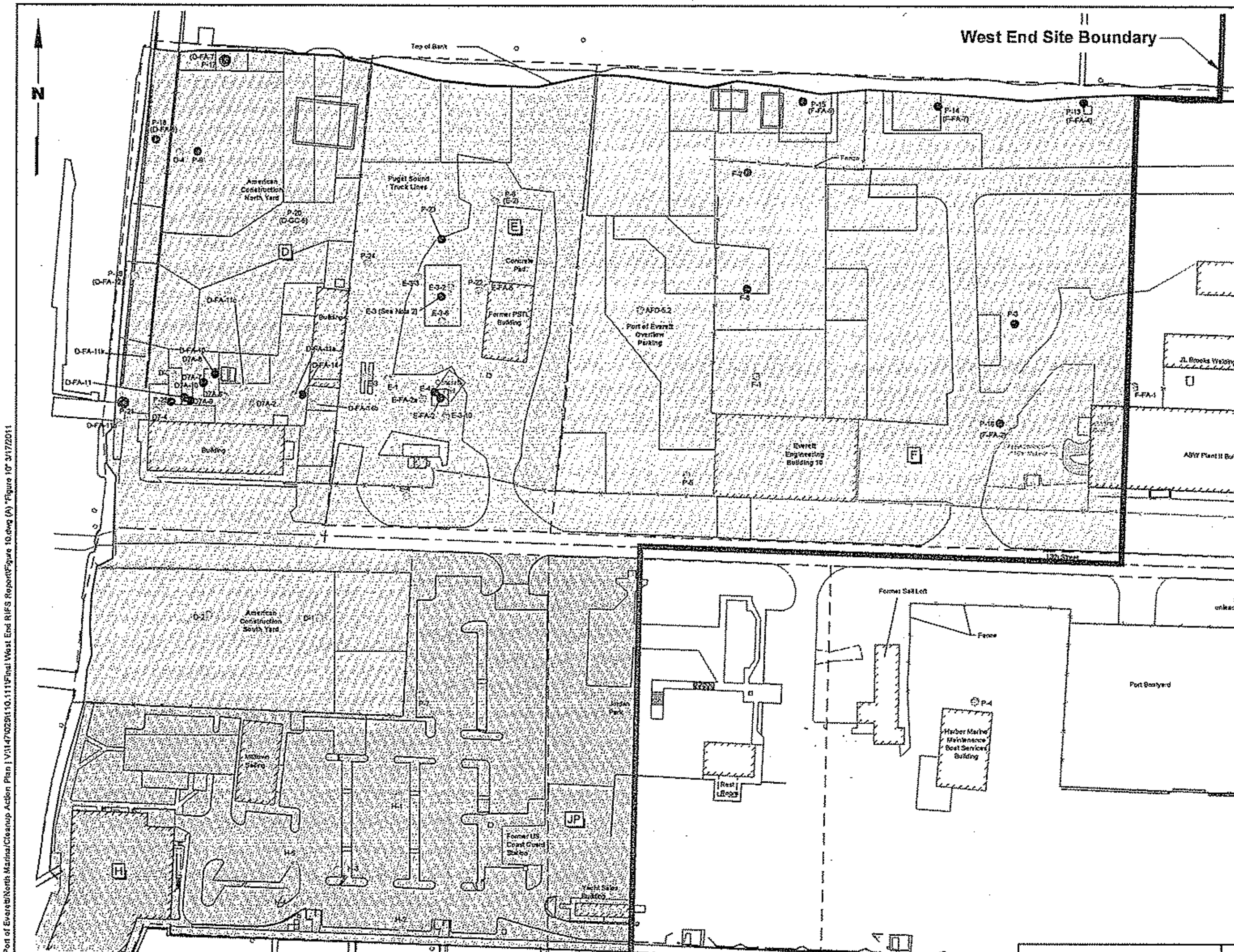
1. Black and white reproduction of this color original may reduce its effectiveness and lead to incorrect interpretation.

0 100 200

Scale in Feet

North Marina West End Site Cleanup Action Plan Port of Everett, Washington	**Pre-Interim Action Soil Sample Locations with Interim Action Soil Cleanup Level Exceedances**	Figure **9**

Port of Everett/North Marina/Cleanup Action Plan | V:\147\025\110.11\Final West End RIFS Report\Figure 9.dwg (A) "Figure 9" 3/17/2011



Legend

- Previous Investigation Groundwater Sample Location with Arsenic Cleanup Screening Level Exceedance
- Previous Investigation Groundwater Sample Location with Vinyl Cloride Cleanup Screening Level Exceedance
- Previous Investigation Groundwater Sample Location with No Cleanup Screening Level Exceedance
- Previous Investigation Groundwater Sample Location with Copper Cleanup Screening Level Exceedance
- Previous Investigation Groundwater Sample Location with Petroleum Hydrocarbon Cleanup Screening Level Exceedance
- Previous Investigation Groundwater Sample Location with Arsenic and Copper Cleanup Screening Level Exceedance
- Previous Investigation Area D
- Previous Investigation Area E
- Previous Investigation Area F
- Previous Investigation Areas H & JP

Notes:

1. Black and white reproduction of this color original may reduce its effectiveness and lead to incorrect interpretation.
2. Interim Action Compliance Monitoring Sample Location

0 100 200
Scale in Feet

North Marina West End Site
Cleanup Action Plan
Port of Everett, Washington

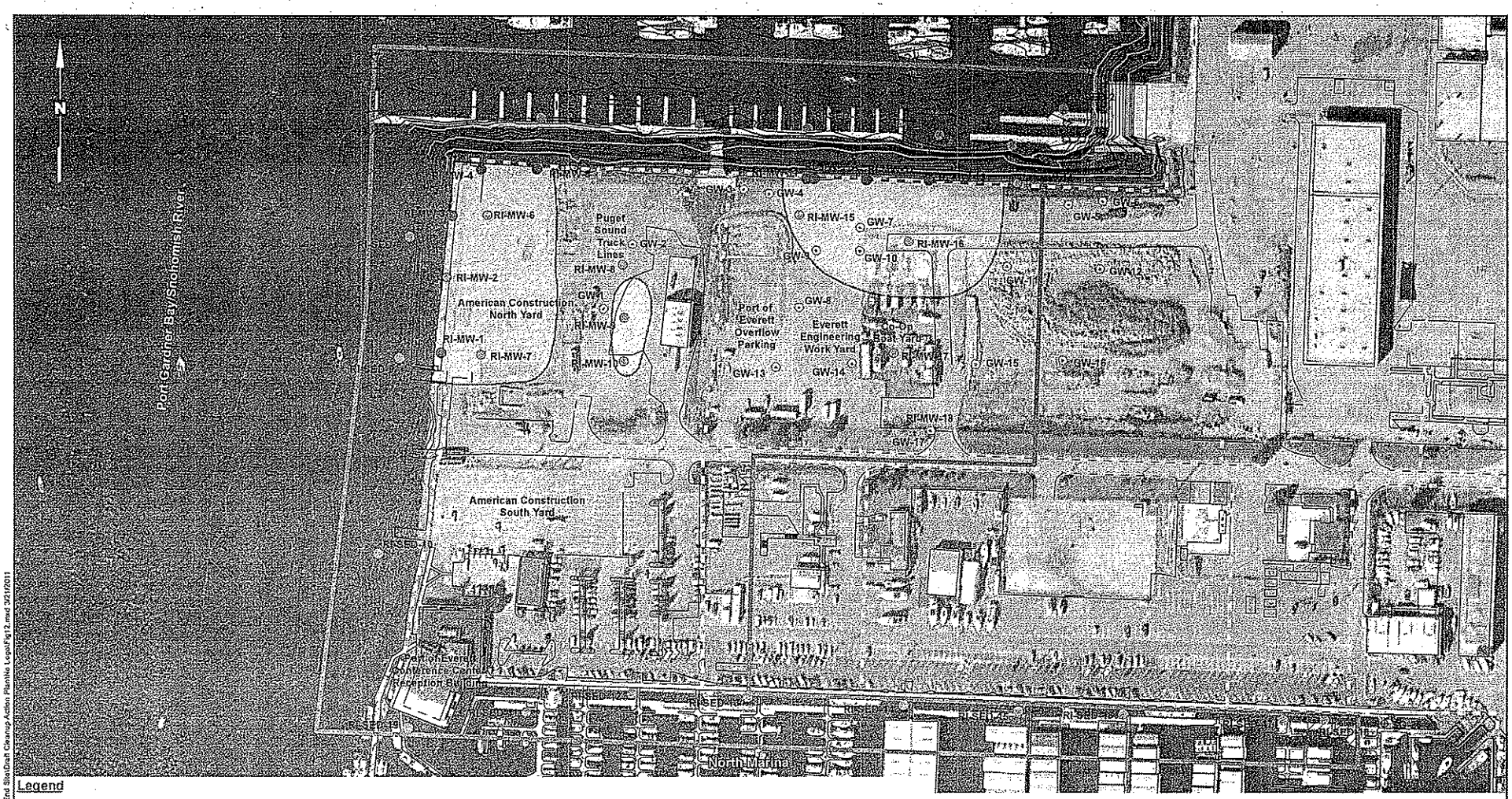
Pre-Interim Action Groundwater Sampling Locations with Interim Action Groundwater Cleanup Level Exceedances

Figure 10

Port of Everett/North Marina/Cleanup Action Plan | V:\147\025\110.111\Final West End RIFS Report\Figure 10.dwg (A) "Figure 10" 3/17/2011

North Marina West End Site Cleanup Action Plan Port of Everett, Washington	**Interim Action Areas**	Figure 11

Port of Everett\North Marina\Cleanup Action Plan [V:\1470\2010\10.111\Final West End RI\FS Report\Figure 11.dwg (A) - Figure 11" 3/17/2011



Legend

- 2009 Sediment Sampling Locations - Concentrations Above SQS and Below CSL (Landau Associates)
- 2009 Sediment Sampling Location - Concentrations Below SQS (Landau Associates)
- Everett Shipyard RI Sediment Location
- Proposed Groundwater Compliance Monitoring Location
- Previous Groundwater Compliance Monitoring Location
- Previous Direct - Push Groundwater Grab Sample Location
- Approximate Extent of Sediment Exceeding Fluoranthene SQS
- Post Dredge Minor Contour (2' Interval, MLLW)
- Post Dredge Major Contour (10' Interval, MLLW)
- West End Site Boundary
- Approximate Boundary of Leasehold
- Bathymetry (MLLW) Based on Data Collected in 2003 & 2004
- Harbor Line and River Center Line
- Residual Groundwater Contamination Area

Notes:
1. At locations where lube oil was analyzed, diesel and gasoline range petroleum hydrocarbons were also analyzed but were not detected.

0 160 320
Scale in Feet

Data Source: Google Earth (2008 Image); Elevation Contours, Harbor Line, and Centerline of Snohomish River: Port of Everett Hydrographic Survey of Tall Ship Moorage; Post Dredge Elevation Contours (2005, PND Engineers)

North Marina West End Site Cleanup Action Plan
Port of Everett, Washington

Residual Groundwater and Sediment Contamination Areas and Compliance Monitoring Locations

Figure 12

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TABLE 1
SUMMARY OF PREVIOUS INTERIM ACTIONS
WEST END SITE
EVERETT, WASHINGTON

Interim Action Area	Indicator Hazardous Substances (IHS)		Interim Cleanup Action Conducted		Compliance Monitoring Conducted Following Interim Cleanup Action?	
	Soil	Groundwater	Soil Removed (tons)	Groundwater	Soil	Groundwater
Investigation Area D						
D-1	Arsenic, Copper, cPAHs	Arsenic	10,554	Source Removal	Yes	No
D-2a	Arsenic, Copper, cPAHs	--	647	--	Yes	--
D-2b	Arsenic, Copper, cPAHs	--	161	--	Yes	--
D-2c	Arsenic, Copper, cPAHs	--	323	--	Yes	--
D-2d	Arsenic, Copper, cPAHs	--	99	--	Yes	--
D-2e	Arsenic, Copper, cPAHs	--	2,244	--	Yes	--
D-2f	Arsenic, Copper, cPAHs	--	297	--	Yes	--
D-3	Arsenic, Copper, cPAHs	Arsenic, Copper	137	Source Removal	Yes	--
D-4a	Arsenic, Copper, cPAHs	--	664	--	Yes	--
D-4b	Arsenic, Copper, cPAHs	--	632	--	Yes	--
D-4c	Arsenic, Copper, cPAHs	--	130		Yes	--
D-5	Arsenic, Copper, cPAHs	Copper	229	Source Removal	Yes	No
D-6	Arsenic, Diesel, Oil	Diesel, Oil	76	Source Removal	Yes	No
D-7	Arsenic, cPAHs, Gasoline, Diesel, Oil	--	1,540	--	Yes	--
D-7d	Arsenic, cPAHs, Gasoline, Diesel, Oil	Gasoline, Diesel, Oil; Arsenic and Copper immediately downgradient	1,834	Source Removal, *In Situ* Soil Agitation, Groundwater Extraction	Yes	Yes; 4 rounds
D-8	Arsenic, cPAHs	Arsenic, Copper	22	--	Yes	--
D-9a	Arsenic, cPAHs	--	159	--	Yes	--
D-9b	Arsenic, cPAHs	--	97	--	Yes	--
D-9c	Arsenic	--	99		Yes	--
D-10	Arsenic, cPAHs	--	2,582	--	Yes	--
D-11	cPAHs	--	2,550	--	Yes	--
Investigation Area E						
E-1a	Arsenic	--	763	--	Yes	--
E-1b	Arsenic	--	1,032	--	Yes	--
E-2	Arsenic	--	141	--	Yes	--
E-3	Diesel	Diesel, Arsenic	657	Source Removal, *In Situ* Soil Agitation, Groundwater Extraction	Yes	Yes; 4 rounds
E-4	Diesel	Diesel	99	Source Removal, *In Situ* Soil Agitation, Groundwater Extraction	Yes	Yes; 5 rounds

TABLE 1
SUMMARY OF PREVIOUS INTERIM ACTIONS
WEST END SITE
EVERETT, WASHINGTON

Interim Action Area	Indicator Hazardous Substances (IHS)		Interim Cleanup Action Conducted		Compliance Monitoring Conducted Following Interim Cleanup Action?	
	Soil	Groundwater	Soil Removed (tons)	Groundwater	Soil	Groundwater
Investigation Area F						
F-1a	Arsenic, cPAHs	Arsenic, Vinyl Chloride	603	Source Removal	Yes	--
F-1b	Arsenic	Arsenic	2,662	Source Removal	Yes	--
F-1c	Arsenic	Arsenic	419	Source Removal	Yes	--
F-1d	Arsenic	Arsenic	1,107	Source Removal	Yes	--
F-2	Arsenic, Lead	--	1,154	--	Yes	--
F-3	Arsenic	--	200	--	Yes	--
F-4a	Arsenic, cPAHs	--	2,868	--	Yes	--
F-4b	Arsenic	Arsenic	734	Source Removal	Yes	--
F-5	cPAHs	--	69	--	Yes	--
F-8a	cPAHs	Arsenic	255	Source Removal	Yes	--
F-8b	cPAHs	Arsenic	594	Source Removal	Yes	--
F-8c	cPAHs	Arsenic	277	Source Removal	Yes	--
F-8d	cPAHs	Arsenic	1,803	Source Removal	Yes	--
F-8e	cPAHs	Arsenic	1,109	Source Removal	Yes	--
F-8f	cPAHs	Arsenic	238	Source Removal	Yes	--
F-8g	cPAHs	Arsenic	632	Source Removal	Yes	--
Investigation Area H						
Area H-1	Arsenic	--	119	--	Yes	--
Area H-2	cPAHs	--	645	--	Yes	--
Area H-3	Arsenic, Mercury	--	362	--	Yes	--

TABLE 2
GROUNDWATER AND SEDIMENT CLEANUP LEVELS FOR CONSTITUENTS OF CONCERN
WEST END SITE, PORT OF EVERETT, WASHINGTON

Constituent of Concern	Groundwater Cleanup Level (µg/L)	Sediment Cleanup Level (mg/kg-OC)
Vinyl Chloride	2.4	NA
Arsenic	5	NA
Copper	3.1	NA
Fluoranthene	NA	160

NA = Not Applicable; analyte is not a constituent of concern for that medium (groundwater or sediment).

TABLE 3
COMPLIANCE MONITORING ANALYTICAL PARAMETERS
WEST END SITE
EVERETT, WASHINGTON

Location	Analyte
MW-1	Copper, Arsenic
MW-3	Arsenic, Copper
MW-4	Arsenic
MW-5	Arsenic
MW-11	Arsenic, Vinyl Chloride
MW-11A	Arsenic, Vinyl Chloride
MW-12	Arsenic
MW-13	Arsenic
RI-SED-18	Fluoranthene

EXHIBIT C

PUBLIC PARTICIPATION PLAN

Site Cleanup:

NORTH MARINA WEST END SITE

11th Street - 14th Street west of
West Marine View Drive
Everett, Washington

PUBLIC PARTICIPATION PLAN

Prepared by:
Washington State Department of Ecology

DEPARTMENT OF
ECOLOGY
State of Washington

Updated June 2011

This Plan is for you!

This Public Participation Plan (Plan) is prepared for the Port of Everett's North Marina West End Site cleanup as part of the requirement of the Model Toxics Control Act (MTCA). The Plan provides information about MTCA cleanup actions and requirements for public involvement, and identifies how Ecology and the Port will support public involvement throughout the cleanup. The Plan is intended to encourage coordinated and effective public involvement tailored to the community's needs around the North Marina West End Site.

For additional copies of this document, please contact:

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

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

Table of Contents

1.0: Introduction and Overview of the Public Participation Plan

This Public Participation Plan (Plan) explains how you can become involved in improving the health of your community. It describes public participation opportunities that will be conducted during cleanup of a site on the Everett waterfront – the North Marina West End Site (Site). These opportunities are part of a cooperative agreement between the Washington State Department of Ecology (Ecology) and the Port of Everett (port). The current agreement, called an Agreed Order, is a legal document in which the port and Ecology agree to decide on cleanup actions for the North Marina West End Site. The port has completed significant investigation and cleanup of this Site as part of a larger North Marina Redevelopment project, known as Port Gardner Wharf. Ecology is working with the port to complete this investigation and cleanup. The Site is generally located between 11th and 14th Streets off West Marine View Drive, on Port Gardner Bay, Everett, Washington.

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

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

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

- Notifying the public about available reports and studies about the site.
- Notifying the public about review and comment opportunities during specific phases of the cleanup investigation.

---

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

- Providing appropriate public participation opportunities, such as fact sheets, to learn about cleanup documents, and if community interest exists, holding meetings to solicit input and identify community concerns.
- Considering public comments received during public comment periods.

In addition to these basic requirements, the plan may include additional site-specific activities to meet the needs of your community. Based upon the type of the proposed cleanup action, the level of public concern, and the risks posed by the site, Ecology may decide that additional public involvement opportunities are appropriate. The port also keeps the community informed through newsletters and its website, which provides progress on waterfront cleanup.

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

- Provide complete and current information to all interested parties.
- Let you know when there are opportunities to provide input.
- Listen to concerns.
- Address those concerns.

Part of the Puget Sound Initiative

North Marina West End is one of several sites in the Everett area and is part of a larger cleanup effort called the Puget Sound Initiative (PSI). Governor Chris Gregoire and the Washington State Legislature authorized the PSI as a regional approach to protect and restore Puget Sound. The PSI includes cleaning up 50-60 contaminated sites within one-half mile of the Sound. These sites are grouped in several bays around the Sound for "baywide" cleanup efforts. As other sites in the Everett baywide area move forward into investigation and cleanup, information about them will be provided to the community as well as to interested people and groups.

Roles and Responsibilities

Ecology will lead public involvement activities, with support from the port. Ecology maintains overall responsibility and approval authority for the activities outlined in this Plan. The port is responsible for cleanup at this Site. Ecology will ultimately oversee all cleanup activities, and ensure that contamination on this Site is cleaned up to concentrations that are established in state regulations and that protect human health and the environment.

Organization of this Public Participation Plan

The sections that follow in this Plan provide:

- Section 2: Background information about the North Marina West End Site.
- Section 3: An overview of the local community that this plan is intended to engage.
- Section 4: Public involvement opportunities in this cleanup.

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

2.0: Site Background

Site Description and Location

The North Marina West End Site is located generally between 11th and 14th Streets west of West Marine View Drive, in Everett, Snohomish County, Washington (see Figures 1 and 2). It is southwest of the Legion Memorial Golf Course and the American Legion Memorial Park. The upland portion of the Site is about 17 acres in size, and the in-water portion is about 10 acres. It is bounded on three sides by Port Gardner Bay, and on the east by additional Marina property, Burlington Northern Railroad, and West Marine View Drive.

The City of Everett Comprehensive Plan land use map[2] indicates that the Site is zoned waterfront commercial. Zoning to the north is parks/open space and maritime services (industrial), zoning to the east is residential, and to the west includes open water and parks (Jetty Island). As noted earlier, The port is currently in the process of redeveloping the North Marina Area, which includes the Site. Redevelopment will include a mix of marina support, retail, restaurant, hotel, office, residential, and public recreational uses.

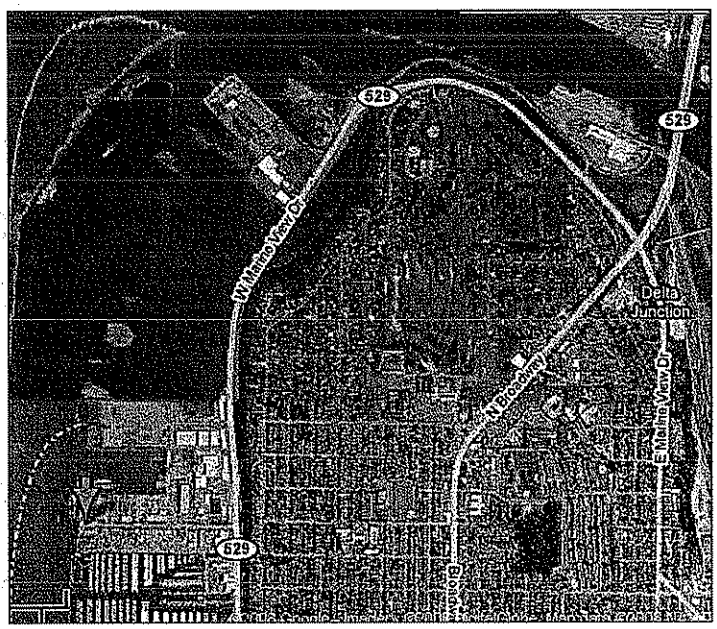

Figure 1: The North Marina West End Site, shown in the above map with an arrow, is generally located between 11th and 14th Streets, west of West Marine View Drive, Everett, WA, in Snohomish County, on Port Gardner Bay.

[2] Planning and Community Development, City of Everett, WA http://www.ci.everett.wa.us/pdf/planning/Comppln_April2009_Reduced.pdf (Accessed June 13, 2011)

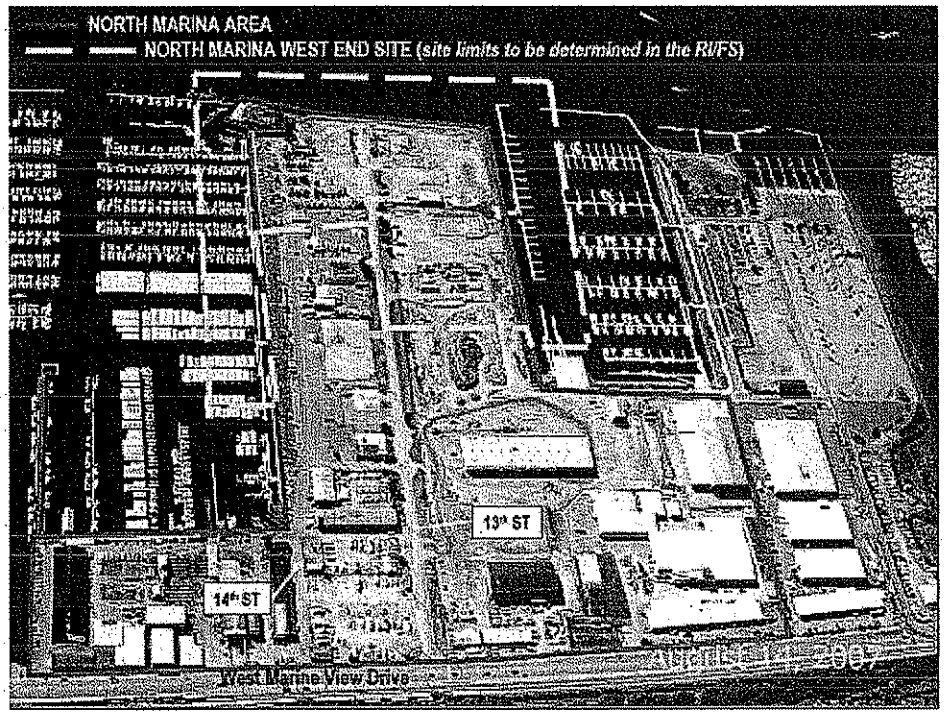

Figure 2: A larger view of the North Marina West End Site, shown in the above photo with a dotted line.

General Site History and Contaminants

From about 1890 until about 1950, timber-product operations dominated waterfront industrial activities at the Site. The North Marina Area was filled to its current configuration between about 1947 and 1955. Since that time, the North Marina West End Site has been used for commercial, marine, and general industrial purposes. Uses included trucking and construction activities, such as welding, pile driving, sandblasting, creosote log storage, and painting. In addition, there were a number of petroleum product storage tanks for diesel fuel, gasoline, waste and heating oil.

The results of several environmental studies showed contamination from these uses in soil, water, and sediment. This contamination includes:

- Semivolatile organic compounds (SVOCs) including polycyclic aromatic hydrocarbons (PAHs) and 1-methylnaphthalene in soil;
- One PAH (acenaphthene) in sediment;
- Petroleum hydrocarbons in soil and groundwater;
- Vinyl chloride in groundwater;
- Metals, including arsenic, copper, lead, and mercury in soil, and

- Metals including dissolved arsenic and copper in groundwater.

An interim action conducted between 2006 and 2008 included excavation and offsite disposal of over 40,000 tons of soil impacted by arsenic, copper, carcinogenic PAHs, 1-methylnaphthalene, lead, mercury, and petroleum hydrocarbons. The interim action also included cleanup of petroleum contaminated groundwater. Ecology is working with the port to complete site investigations and cleanup.

The Cleanup Process

Washington State's cleanup process and key opportunities for you to provide input are outlined in Figure 3. The general cleanup process includes the following steps:

- Interim Action – addresses early cleanup needs at a site prior to completing the final cleanup.
- Remedial Investigation (RI) – investigates the site for types, locations, and amounts of contaminants.
- Feasibility Study (FS) – identifies cleanup options for those contaminants.
- Cleanup Action Plan (CAP) – selects the preferred cleanup option and explains how cleanup will be conducted. The draft CAP, or DCAP, will be an attachment to a formal legal document, called the Consent Decree or Decree.

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

- Draft RI report
- Draft FS report
- Decree and DCAP

These cleanup steps and documents are described in greater detail in the following subsections.

Interim Actions

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

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

Interim actions beyond those already implemented are not currently anticipated on the North Marina West End Site under this Agreed Order.

Remedial Investigation/Feasibility Study Report

The port agreed to conduct an RI/FS on the Site. The RI determines which contaminants are on the Site, where they are located, and whether there is a significant threat to human health or the environment. The draft RI report provides baseline data about environmental conditions that will be used to develop cleanup options. The FS report then identifies and evaluates cleanup options, in preparation for the next step in the process.

The RI and FS processes typically include several phases:

- Scoping
- Site characterization
- Development and screening of cleanup alternatives
- Treatability investigations (if necessary to support decisions)
- Detailed analysis

The Draft RI and FS were combined into one report for the North Marina West End Site. The report was prepared by the port in accordance with the Agreed Order. The report describes exposure pathways, or how contaminants move through upland soil, groundwater, and sediment, and how human health and the environment may be affected. Information about the amount and location of contaminants along with exposure pathways was used to identify cleanup alternatives for the Site.

Overview of the Remedial Investigation

The RI describes the contamination in upland soil, groundwater, and sediments in and surrounding the Site, and determines whether there is a significant threat to human health or the environment. RI results are discussed below.

Soil – Results indicate that interim action – removal of contaminated soil on the Site – was successful, and remaining contaminants of concern (COCs) are compliant with soil cleanup levels identified in the RI/FS.

Groundwater – Results indicate that groundwater on the Site has arsenic, copper and vinyl chloride exceeding cleanup levels. These exceedances appear to be remnants of sources that were removed during the interim action. Since the contaminant sources have been removed, levels of arsenic, copper and vinyl chloride are expected to decrease over time.

Sediment – Chemical tests indicate that marine sediments at the Site have elevated concentrations of fluoranthene (i.e., exceeding Ecology's Sediment Quality Standard or SQS). However, the SQS cleanup level for fluoranthene was exceeded in only a single location, and the source was most likely a nearby bulkhead that was removed during the interim action. Flouranthene is a common chemical associated with creosote and the bulkhead was constructed using creosote-treated pilings and timbers. No other chemicals exceeded SQS cleanup levels.

Overview of the Feasibility Study

The purpose of the FS is to evaluate potential cleanup action alternatives and recommend a preferred cleanup action. Information from the RI about the amount and location of contaminants is used to understand potential risks and identify cleanup alternatives. Alternatives may include contaminant removal, capping, and/or institutional controls to reduce exposure, and they may be used in different combinations.

The results of the RI indicate that the interim action between 2006 and 2008 was very successful and further active remediation is not necessary. After conducting a screening of cleanup action alternatives, a single cleanup action alternative was identified by Ecology and evaluated based on regulatory criteria to address risk on the Site. That cleanup alternative includes the following:

Groundwater – To address groundwater contamination, the cleanup alternative would consist of long-term groundwater compliance monitoring and institutional controls. Institutional controls would include restricting the use of groundwater in the northern portion of the Site where contamination was found.

Sediment – Monitored natural recovery was selected as the preferred alternative for the sediments, using ongoing, naturally occurring processes to reduce sediment impacts over time.

The cleanup alternative does not address soil because the remaining soil concentrations are compliant with soil cleanup levels identified in the RI/FS.

Cleanup Action Plan

The port, under Ecology oversight, prepared a DCAP for the North Marina West End Site.

The DCAP:

- Identifies cleanup levels for groundwater and sediment that the cleanup will achieve. Cleanup levels are stringent, so that future land uses will not be restricted.
- Describes the selected cleanup action and summarizes why this action was selected.

- Presents a schedule to carry out the cleanup.
- Identifies applicable state and federal laws.
- Specifies the types, levels, and amounts of hazardous substances remaining onsite, and the measures that will be used to prevent movement and contact with those substances.

The DCAP recommends that the cleanup action consist of long-term groundwater compliance monitoring and institutional controls to address upland contamination, and monitored natural recovery to address sediment contamination.

Long-term compliance monitoring will include monitoring groundwater quality from eight existing monitoring wells along the shoreline, and monitoring sediment at one location in the southeast corner of the Site.

A legal agreement, called a covenant, will be placed on the Site as an institutional control and will include the following elements:

- Prohibit groundwater use for drinking water.
- Manage, treat, and discharge groundwater used for construction or other non-potable purposes in conformance with an Ecology-approved groundwater management plan.
- Require worker contact with contaminated groundwater to be conducted by individuals with appropriate training and certifications for working on hazardous waste sites.

Implementation of the final CAP will begin immediately following entry into the Consent Decree and all CAP requirements are anticipated to be completed within one year.

Cleanup Consent Decree

The DCAP is an attachment to a formal legal document, called the Consent Decree or Decree. In the Decree, Ecology and the port agree upon the cleanup actions needed to protect human health and the environment at the Site. The Decree requires the port to carry out the cleanup actions that are specifically identified in the final CAP and within the schedule identified in the Decree. An updated Public Participation Plan is also an attachment to the Decree.

3.0: Community Profile

Community Profile

Everett is Snohomish County's largest city and the sixth largest city in the State of Washington. The current population of Everett is approximately 103,000[3] situated within 47.7 square miles. Located on Port Gardner Bay, Everett hosts the West Coast's largest public marina, the third largest container port in the state, the U.S. Navy Homeport Naval Station Everett, and The Boeing Company's assembly plant. The city's 2010 labor workforce was more than 80,000, predominantly employed in technology, aerospace, and service-based industries.[4]

Key Community Concerns

An important part of the Public Participation Plan is to identify key community concerns for each cleanup site.

Many factors are likely to raise community questions, such as the amount of contamination, how the contamination will be cleaned up, or future use of the Site. Community concerns often change over time, as new information is learned and questions are answered. Identifying site-specific community concerns at each stage of the cleanup process is helpful to ensure that they are adequately addressed. On-going key community concerns will be identified for the North Marina West End Site through public comments and other opportunities as detailed in Section 4.

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[3] US Census Bureau, Population and Housing Occupancy Status: 2010. http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_GCTPL2.ST13&prodType=table (Accessed June 14, 2011)

[4] City of Everett. http://www.everettwa.org/default.aspx?ID=314 (Accessed June 14, 2011)

4.0: Public Participation Opportunities

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

Measuring Success

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

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

If we are successful, this process will increase:

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

Activities and Information Sources

Ecology Contacts

Ecology is the lead contact for questions about the cleanup in your community. The Ecology staff person identified in this section is familiar with the cleanup process and activities at the Site. For more information about public involvement or the technical aspects of the cleanup, please contact:

Andy Kallus
Ecology Site Manager
WA State Dept. of Ecology
Toxics Cleanup Program
P.O. Box 47600

Olympia, WA 98504-7600
Phone: (360) 407-7259
E-mail: Andrew.Kallus@ecy.wa.gov

Ecology's Webpage

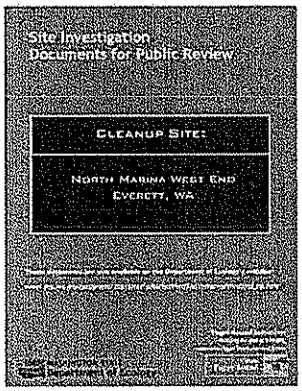
Ecology has created a webpage to provide convenient access to information. Documents such as the Agreed Order, RI/FS draft reports, and cleanup plans, are posted as they are issued during the investigation and cleanup process. Visitors to the webpage can find out about public comment periods and meetings; download, print, and read information; and submit comments via e- mail. The webpage also provides links to detailed information about the MTCA cleanup process. The North Marina West End Site webpage is available at the following address:
https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=934

Information Centers/Document Repositories

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

- **Everett Public Library**
  2702 Hoyt Ave.
  Phone: (425) 257-8010
  Hours: Mon.-Wed. 10 a.m.-9 p.m., Thurs.-Sat. 10 a.m.-6 p.m., Sun. 1-5 p.m.

- **WA Department of Ecology Headquarters**
  300 Desmond Drive
  Lacey, WA 98504-7600
  By appointment. Please contact Carol Dorn at (360) 407-7224 or Carol.Dorn@ecy.wa.gov.



Look for document covers such as the illustration on the right.

Public Comment Periods

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

Notice of Public Comment Periods

Notices for each public comment period will be provided by local newspaper and by mail. These notices indicate the timeframe and subject of the comment period, and explain how you can submit your comments. For the North Marina West End Site, newspaper notices will be posted in The Daily Herald and the Marysville Globe.

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

Fact Sheets

One common format for public comment notification is the fact sheet. Like the newspaper notice, fact sheets explain the timeframe and purpose of the comment period, but also provide background and a summary of the document under review. Two fact sheets have been prepared for the North Marina West End Site. The first fact sheet explains the Agreed Order and this Public Participation Plan (Appendix A). The second fact sheet explains the Draft Remedial Investigation/Feasibility Study, Draft Cleanup Action Plan and Draft Consent Decree (Appendix B). Future fact sheets will be prepared at key milestones in the cleanup process.

MTCA Site Register

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

- Call (360) 407-6069
- Send an email request to Seth.Preston@ecy.wa.gov or
- Register on-line at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html

Mailing Lists

Ecology maintains both e-mail and regular mail distribution lists throughout the cleanup process. The list is created from carrier route delineations for addresses within one-quarter mile of the Site; potentially interested parties; public meeting sign-in sheets; and requests made in person, or by regular mail or e-email. You may request to be on the mailing list by contacting the Ecology staff person listed earlier in this section.

Optional Public Meetings

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

Submitting Comments

You may submit comments by regular mail or e-mail during public comment periods to the project manager listed earlier in this section.

Response to Comments

Ecology will review all comments submitted during public comment periods, and will modify documents as necessary. You will receive notice by regular mail or e-mail that Ecology has received your comments, along with an explanation about how the comments were addressed.

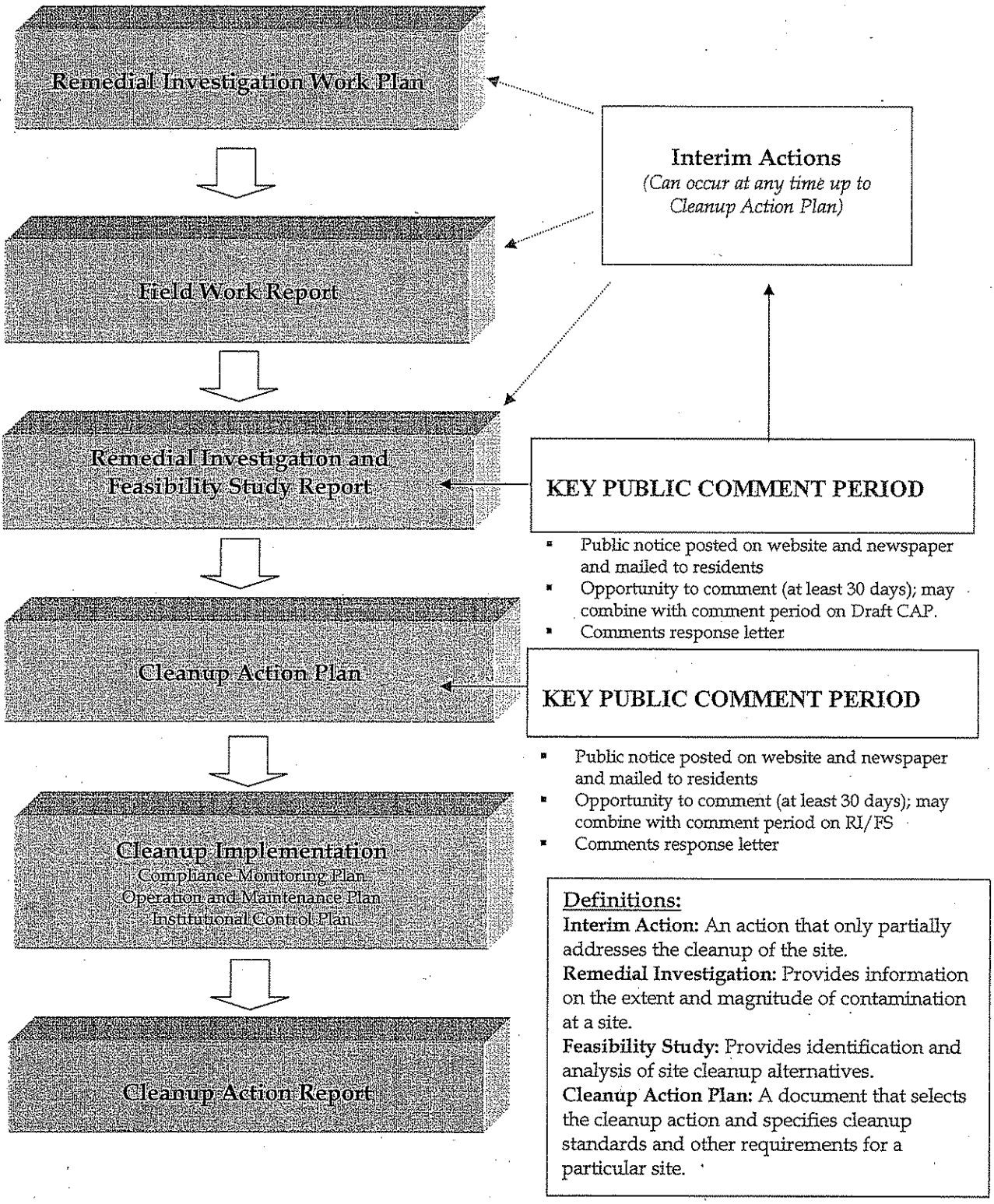
Other

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

Public Participation Grants

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

Figure 3: Washington State Cleanup Process



Glossary

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

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

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

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

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

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

Consent Decree: A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office.

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

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

Interim Action: Any remedial action that partially addresses the cleanup of a site. It is an action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility; an action that corrects a problem that may become

substantially worse or cost substantially more to address if the action is delayed; an action needed to provide for completion of a site hazard assessment, state remedial investigation/feasibility study, or design of a cleanup action.

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

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

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

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

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

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

APPENDIX A
Fact Sheet for Agreed Order
and
Public Participation Plan

North Marina West End Site
Everett, Snohomish County, WA

Site Investigation Documents Ready for Public Review

A PUGET SOUND INITIATIVE site – Reaching the goal of a healthy, sustainable Puget Sound now and forever

WASHINGTON STATE DEPARTMENT OF ECOLOGY

The Department of Ecology welcomes your comments on a proposed agreement and draft Public Participation Plan for a waterfront cleanup Site.

Ecology is asking for your comments on a proposed agreement to study a Site on Puget Sound for cleanup. This Site, the Port of Everett's North Marina West End, is one of several located on the waterfront that will be studied for cleanup under the state's Puget Sound Initiative.

The North Marina West End Site is located between 11th and 14th Streets, off West Marine View Drive on Port Gardner Bay, in Everett, Snohomish County, WA. This is southwest of the Legion Memorial Golf Course, in western Everett.

Site background

Since the early 1900s, the North Marina West End Site has been used for commercial, and marine and general industrial purposes. Uses included trucking and marine construction activities such as welding, pile driving, sandblasting, creosote log storage, and painting. In addition, there were a number of storage tanks for diesel fuel, gasoline, waste- and heating oil.

The results of several environmental studies showed contamination from these uses in soil, groundwater, and sediment. This contamination includes polycyclic aromatic hydrocarbons (PAHs), petroleum hydrocarbons, vinyl chloride, and metals such as arsenic and copper. The Port has completed significant investigation and partial cleanup of this Site. Ecology is working with the Port to complete this investigation and cleanup.

The North Marina West End Site is part of the Port's larger North Marina Redevelopment project, known as Port Gardner Wharf. More information about the redevelopment can be found at the following web site: http://www.portofeverett.com/home/index.asp?page=71.

Overview of the Agreed Order

The proposed agreement, called an Agreed Order, is a legal document between Ecology and the Site owner, the Port of Everett. The Agreed Order describes the additional studies that the Port agrees to perform on the Site.

The Agreed Order covers the following studies and documents:

- Remedial Investigation and Feasibility Study (RI/FS) work plan. It explains the work needed to look for and analyze contamination in soil, water, and sediment.

Ecology requests your comments from May 5 to June 3, 2008

Send comments to:
Andy Kallus, Site Manager
WA Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-7259
E-mail: akal461@ecy.wa.gov

To review documents:
Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
Hours: Mon.-Wed. 10am-9pm, Thurs.-Sat. 10am-6pm, Sun. 1-5pm

WA Department of Ecology
Headquarters
300 Desmond Drive SE
Lacey, WA 98503
By appointment only:
Contact Carol Dorn,
cesg461@ecy.wa.gov or
(360) 407-7224

Ecology web site:
http://www.ecy.wa.gov/programs/tcp/sites/nMarinaWestEnd/nMarinaWestEnd_hp.htm

Facility Site #3306834

Publication Number 08-09-102

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

- RI/FS report. It presents the results of the study and proposes alternatives for cleanup actions.
- Cleanup Action Plan (CAP). It uses RI/FS information to identify a preferred cleanup action and a schedule to remediate the contamination.

The purpose of the Agreed Order is to protect human health and the environment. It ensures that cleanup happens in a timely manner and according to Washington State's cleanup law, the Model Toxics Control Act.

Overview of the draft Public Participation Plan

Ecology and the Port are committed to providing the public with timely information and meaningful opportunities to participate in the cleanup process. As part of this commitment, Ecology and the Port agree to provide a Public Participation Plan. This plan outlines how citizens and interested parties can learn about and provide input on the cleanup.

Your comments and ideas are needed to improve the cleanup. The Public Participation Plan explains how Ecology will do the following:

- Notify the public when and where documents are available for review and comment;
- Notify the public about how they can become involved;
- Provide public participation opportunities; and
- Consider public comments in cleanup decisions.

Protecting and restoring Puget Sound at the North Marina West End Site

Governor Chris Gregoire and the Washington State Legislature approved the Puget Sound Initiative. One of the objectives of the Initiative is to protect and restore Puget Sound, cleaning up 50-60 sites within one-half mile of the Sound. One of these is the North Marina West End Site. These cleanup actions will help to reduce pollution and restore habitat and shorelines in Puget Sound.

Other sites and activities near this Site:

- JELD-WEN Site: A wooden door plant, located at 300 West Marine View Drive (Facility Site #2757)
- Bay Wood Products Site: A former mill and log storage and processing yard, located at 200 West Marine View Drive (Facility Site #4438651)
- Everett Shipyard Site: A ship repair facility, located at 1016 14th Street (Facility Site #2794)

How to submit your comments

Ecology welcomes your comments on the proposed Agreed Order and draft Public Participation Plan May 5 through June 3, 2008. For your review, these documents can be found on the Ecology web site and at the locations listed on the first page of this fact sheet.

For more information about public involvement or the technical aspects of the cleanup, please contact the Ecology Site Manager, Andy Kallus. Contact information can be found on the first page of this fact sheet.

Please send your comments by June 3, 2008, to Ecology's Site Manager, Andy Kallus. Comments may be sent by mail or e-mail. Please include "North Marina West End" in the subject line.

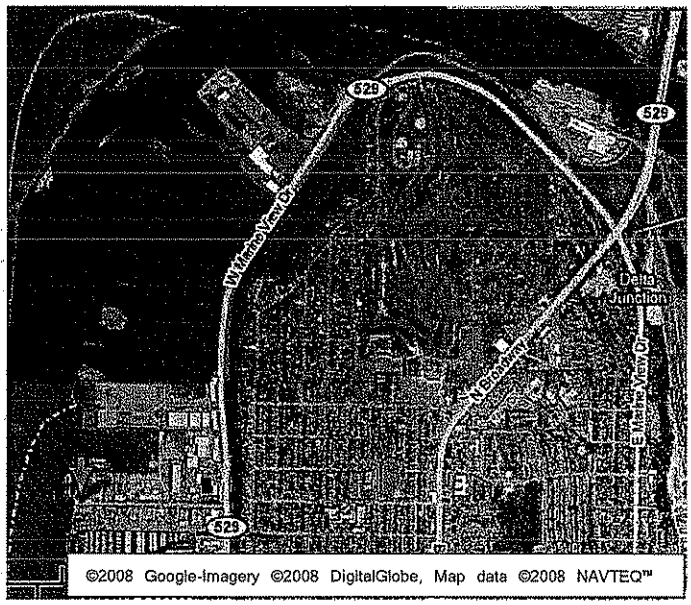
What's next?

Once the public comment period ends, Ecology will review and consider all comments that have been received. The Agreed Order and draft Public Participation Plan may be modified based upon your comments.

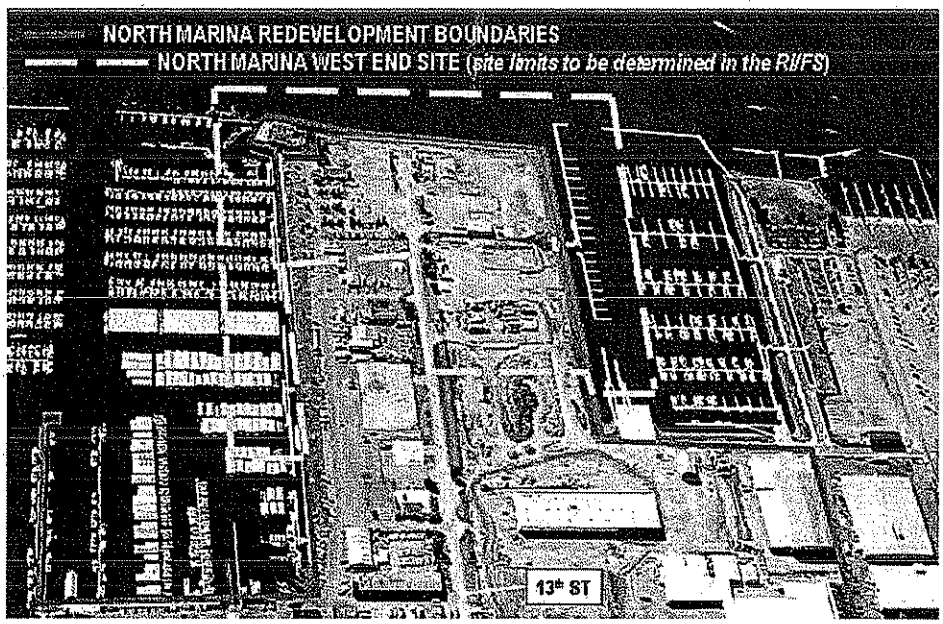
As future documents on the Site are developed, you will be notified of additional public comment periods.

For information about other Ecology public comment periods, meetings, hearings, workshops, and open houses, please visit Ecology's public events calendar at: http://apps.ecy.wa.gov/pubcalendar/calendar.asp. Read *Frequently Asked Questions about Effective Public Commenting* at this link to learn more about the public comment process.

North Marina West End Site, Snohomish County, WA



The North Marina West End Site, shown in the above map with an arrow, is located generally between 11th and 14th Streets, off of West Marine View Drive, on Port Gardner Bay, Everett, WA.



The North Marina West End Site, shown in the above photo with a dotted line, is part of a larger redevelopment effort of the North Marina.

North Marina West End Site, Everett, Snohomish County, WA

Ecology Seeks Public Comment on Draft Documents

Public Comment Period
May 5 to June 3, 2008

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

APPENDIX B
Fact Sheet for Draft Remedial Investigation/Feasibility Study, Draft Cleanup Action Plan and Draft Consent Decree

DEPARTMENT OF ECOLOGY
State of Washington

North Marina West End Site

Toxics Cleanup Program **July 2011**

Investigation and Cleanup Documents Available for Public Review and Comment

A PUGET SOUND INITIATIVE SITE

Reaching the goal of a healthy, sustainable Puget Sound

Ecology Wants Your Input!

The Department of Ecology is asking for your comments on plans to clean up a site in Port Gardner Bay. The Port of Everett's (port) North Marina West End Site (Site) is one of several sites within Port Gardner Bay that Ecology is cleaning up. The Site is located within the port's North Marina Area between 11th and 14th Streets, off West Marine View Drive in Everett, Snohomish County, WA (Figures 1 and 2). This is southwest of the Legion Memorial Golf Course in western Everett. Port Gardner Bay is one of several embayments in Puget Sound that Ecology is studying and cleaning up under the state's Puget Sound Initiative.

You are invited to comment on the following documents:

- **Draft Remedial Investigation/Feasibility Study Report (RI/FS)**
- **Draft Cleanup Action Plan (DCAP)**
- **Draft Consent Decree (Decree)**

Ecology will accept comments from *July 5 through August 5, 2011.* See the box on the right for details about where to review the document and submit comments.

Site Background

From about 1890 until about 1950, timber-product operations dominated waterfront industrial activities at the West End Site (Site). The North Marina Area was filled to its current configuration between about 1947 and 1955. Since that time, the North Marina West End Site has been used for commercial, marine, and general industrial purposes. Uses included trucking and marine construction activities such as welding, pile driving, sandblasting, creosote log storage, and painting. In addition, there

Comments Invited

July 5 through August 5, 2011

Submit Comments and Technical Questions to:

Andy Kallus - Site Manager
WA Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-7259
E-mail: Andrew.Kallus@ecy.wa.gov

Document Review Locations

Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
Phone: (425) 257-8000
Hours: Mon – Wed 10 am - 9 pm
Thurs – Sat 10 am - 6 pm
Sun 1 - 5 pm

WA Department of Ecology Headquarters
300 Desmond Drive SE
Lacey, WA 98503

By appointment only:
Contact Carol Dorn
Carol.Dorn@ecy.wa.gov or
(360) 407-7224

Ecology's Toxics Cleanup Website
https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=934

Facility Site ID #: 3306834

were a number of storage tanks for diesel fuel, gasoline, waste and heating oils. The results of several environmental studies showed contamination from these uses in soil, groundwater, and sediment. This contamination includes semi-volatile organic compounds (SVOCs) including polycyclic aromatic, hydrocarbons (PAHs) and 1-methylnaphthalene, petroleum hydrocarbons, vinyl chloride, and metals such as arsenic and copper.

The port, who is the Site owner, has completed significant investigation and cleanup of this Site. An interim action conducted between 2006 and 2008 included excavation and offsite disposal of over 40,000 tons of soil impacted by arsenic, copper, carcinogenic PAHs, 1-methylnaphthalene, lead, mercury, and petroleum hydrocarbons. The interim action also included cleanup of petroleum contaminated groundwater. Ecology is working with the port to complete site investigations and cleanup.

Draft Remedial Investigation/ Feasibility Study Report

The Draft RI and FS were combined into one report for the North Marina West End Site. The report was prepared by the port under an Agreed Order (legal agreement) with Ecology. The report describes *exposure pathways*, or how contaminants move through upland soil, groundwater, and sediment, and how human health and the environment may be affected. Information about the amount and location of contaminants along with exposure pathways was used to identify *cleanup alternatives* for the Site.

Overview of the Remedial Investigation

The RI describes the contamination in upland soil, groundwater, and sediments in and surrounding the Site, and determines whether there is a significant threat to human health or the environment. RI results are discussed below.

Soil – Results indicate that interim action – removal of contaminated soil on the Site – was successful, and remaining contaminants of concern (COCs) are compliant with soil cleanup levels identified in the RI/FS.

Groundwater – Results indicate that groundwater on the Site has arsenic, copper and vinyl chloride exceeding cleanup levels. These exceedances appear to be remnants of sources that were removed during the interim action. Since the contaminant sources have been removed, levels of arsenic, copper and vinyl chloride are expected to decrease over time.

Sediment – Chemical tests indicate that marine sediments at the Site have elevated concentrations of fluoranthene (i.e., exceeding Ecology's Sediment Quality Standard or SQS). However, the SQS cleanup level for fluoranthene was exceeded in only a single location, and the source was most likely a nearby bulkhead that was removed during the interim action. Flouranthene is a common chemical associated with creosote and the bulkhead was constructed using creosote-treated pilings and timbers. No other chemicals exceeded SQS cleanup levels.

Overview of the Feasibility Study

The purpose of the FS is to evaluate potential cleanup action alternatives and recommend a preferred cleanup action. Information from the RI about the amount and location of contaminants is used to understand potential risks and identify cleanup alternatives. Alternatives may include contaminant removal, capping, and/or institutional controls to reduce exposure, and they may be used in different

combinations.

The results of the RI indicate that the interim action between 2006 and 2008 was very successful and further active remediation is not necessary. After conducting a screening of cleanup action alternatives, a single cleanup action alternative was identified by Ecology and evaluated based on regulatory criteria to address risk on the Site. That cleanup alternative includes the following:

Groundwater – To address groundwater contamination, the cleanup alternative would consist of long-term groundwater compliance monitoring and institutional controls. Institutional controls would include restricting the use of groundwater in the northern portion of the Site where contamination was found.

Sediment – Monitored natural recovery was selected as the preferred alternative for the sediments, using ongoing, naturally occurring processes to reduce sediment impacts over time.

The cleanup alternative does not address soil because the remaining soil concentrations are compliant with soil cleanup levels identified in the RI/FS.

Overview of the Draft Cleanup Action Plan

The port, under Ecology oversight, prepared a Draft Cleanup Action Plan (DCAP) for the North Marina West End Site.

The DCAP:

- Identifies cleanup levels for groundwater and sediment that the cleanup will achieve. Cleanup levels are stringent, so that future land uses will not be restricted.
- Describes the selected cleanup action and summarizes why this action was selected.
- Presents a schedule to carry out the cleanup.
- Identifies applicable state and federal laws.
- Specifies the types, levels, and amounts of hazardous substances remaining onsite, and the measures that will be used to prevent movement and contact with those substances.

The DCAP recommends that the cleanup action consist of long-term groundwater compliance monitoring and institutional controls to address upland contamination, and monitored natural recovery to address sediment contamination.

Long-term compliance monitoring will include monitoring groundwater quality from eight existing monitoring wells along the shoreline, and monitoring sediment at one location in the southeast corner of the Site.

A legal agreement, called a covenant, will be placed on the Site as an institutional control and will include the following elements:

- Prohibit groundwater use for drinking water.
- Manage, treat, and discharge groundwater used for construction or other non-potable purposes in conformance with an Ecology-approved groundwater management plan.
- Require worker contact with contaminated groundwater to be conducted by individuals with appropriate training and certifications for working on hazardous waste sites.

Implementation of the final CAP will begin immediately following entry into the Consent Decree and all CAP requirements are anticipated to be completed within one year.

Overview of the Draft Consent Decree

The DCAP is an attachment to a formal legal document, called the Consent Decree or Decree. In the Decree, Ecology and the port agree upon the cleanup actions needed to protect human health and the environment at the Site. The Decree requires the port to carry out the cleanup actions that are specifically identified in the final CAP and within the schedule identified in the Decree. An updated Public Participation Plan is also an attachment to the Decree.

Why This Cleanup Matters

Protecting and restoring Puget Sound

Governor Chris Gregoire and the Washington State Legislature established the Puget Sound Initiative to protect and restore Puget Sound. Seven embayments in Puget Sound have been identified as high-priority cleanup areas as part of this Initiative, including Port Gamble, Dumas Bay, Padilla and Fidalgo Bays, Port Angeles, Budd Inlet, and Port Gardner Bay. Combined, this work includes cleaning up 50-60 sites within one-half mile of the Sound. One of these is the North Marina West End Site. These cleanup actions will help to reduce pollution and restore habitat and shorelines in Puget Sound.

Other Port Gardner Bay sites include:

- Bay Wood Products: A former sawmill and log storage facility, located at 200 West Marine View Drive.
- Jeld-Wen: A former wooden door plant, located at 300 West Marine View Drive.
- TC Systems Inc: A plant that formerly chemically treated and painted metal parts in support of the aviation and boating industries, located between 10th and 11th Streets off West Marine View Drive.
- North Marina Ameron/Hulbert: A former sawmill and current concrete pole manufacturing facility, located between 11th and 13th Streets at West Marine View Drive.
- Everett Shipyard, Inc.: A former ship repair facility, located at 1016 14th Street.
- ExxonMobil ADC: A former petroleum storage and distribution facility, located at 2717 and 2731 Federal Avenue.

For more information about other cleanup sites: https://fortress.wa.gov/ecy/gsp/SiteSearchPage.aspx.

What Happens Next?

Once the public comment period ends on August 5, Ecology will review and consider all comments. Cleanup documents may be modified based on your comments. The Public Participation Plan for this Site is updated and has more information about the cleanup process and how you can get involved. Ecology will notify you about future cleanup work and public comment periods.

For information about other Ecology public comment periods, meetings, and other events, please visit Ecology's public events calendar at: http://apps.ecy.wa.gov/pubcalendar/calendar.asp.

What can you do?

1. Read about the cleanup in this handout.
2. To get more detailed information, review the supporting documents at the locations listed on page one.
3. Write down your comments and questions. Send them to the Department of Ecology at the address shown on page one.

We appreciate your comments and concerns.
Thank you.

North Marina West End Site

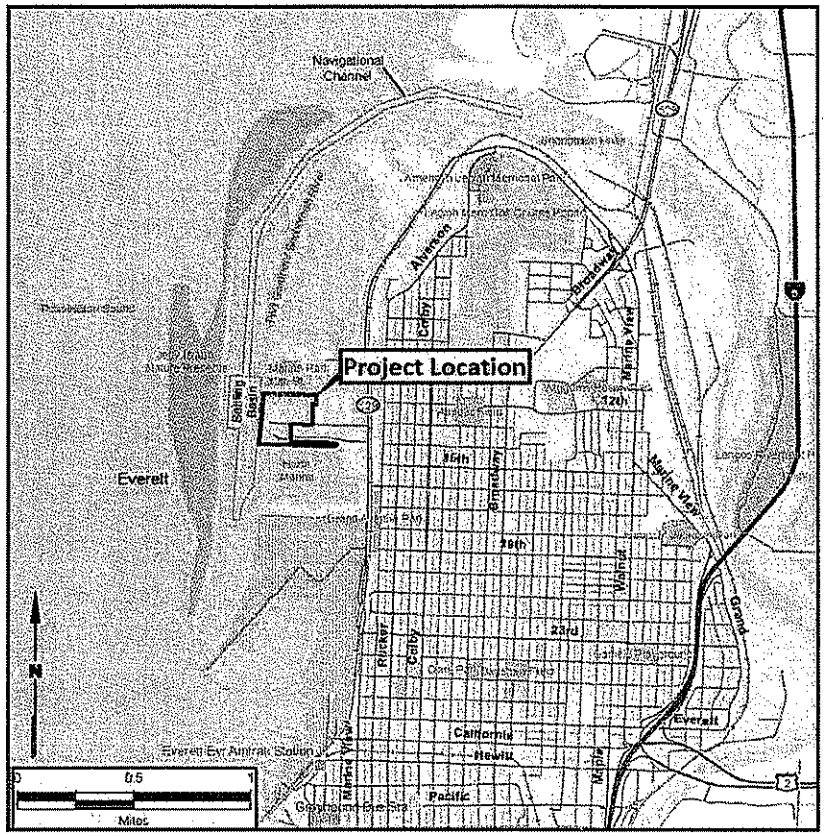


Figure 1. The North Marina West End Site is located between 11th and 14th Streets, off West Marine View Drive in Everett, WA. (Figure 1 from the RI/FS)

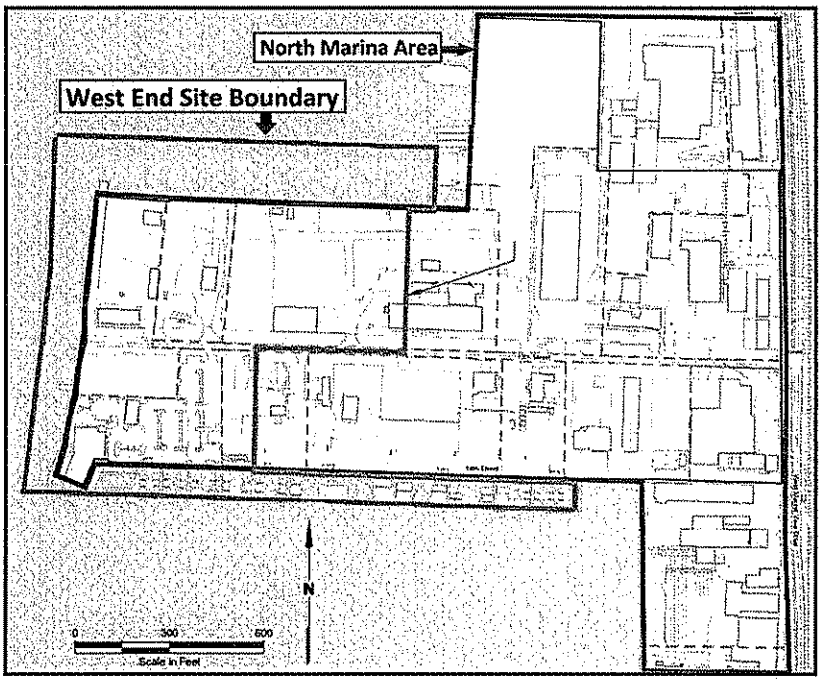


Figure 2. The North Marina West End Site is part of the Port of Everett's North Marina Area Redevelopment Project, Port Gardner Wharf. (Modified Figure 2 from the RI/FS)

DEPARTMENT OF
ECOLOGY
State of Washington
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

North Marina West End Site, Everett
Snohomish County, WA

Ecology Seeks Public Comment on Draft Site Investigation Documents

Public Comment Period:
July 5 through August 5, 2011

Facility Site ID #: 3306834

Help with other formats?

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

EXHIBIT D

RESTRICTIVE COVENANT

EXHIBIT - D

Restrictive Covenant

After Recording Return to:

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

Environmental Covenant

Grantor: Port of Everett
Grantee: State of Washington, Department of Ecology
Legal: See Attachment A
Tax Parcel Nos.: See Attachment A
Cross Reference: NA

Grantor, Port of Everett, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this . day of _____, 200__ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Port of Everett, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

Cleanup Action Plan, North Marina West End Site, Everett, WA, dated _____2011

These documents are on file at Ecology's Headquarters Office.

This Restrictive Covenant is required because a conditional point of compliance has been established for groundwater.

The undersigned, Port of Everett, is the fee owner of real property (hereafter "Property") in the County of Snohomish, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A of this covenant and made a part hereof by reference.

The Port of Everett makes the following declaration as to limitations, restrictions, and uses to which the Property 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, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

1. No groundwater may be taken for potable use from the Property from the areas of the Property shown on Attachment A to this Covenant.

2. Groundwater extracted from the areas of the Property shown on Attachment A for construction dewatering or other nonpotable purposes shall be managed, treated, and discharged in conformance with an Ecology-approved groundwater management plan.

3. Intrusive activities in the areas of the Property shown on Attachment A to this Covenant that involve worker contact with contaminated groundwater will be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites and in conformance with a Site-specific health and safety plan.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial

Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

PORT OF EVERETT

_____

Leslie E. Reardanz III
Chief Adminsitrative Officer

Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

_____

Tim Nord
Section Manager, Aquatic and Land Unit

Dated: _____

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF WASHINGTON
COUNTY OF SNOHOMISH

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

_____
Notary Public in and for the State of
Washington, residing at _____.
My appointment expires_____.

[CORPORATE ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

_____
Notary Public in and for the State of
Washington, residing at _____.
My appointment expires_____.

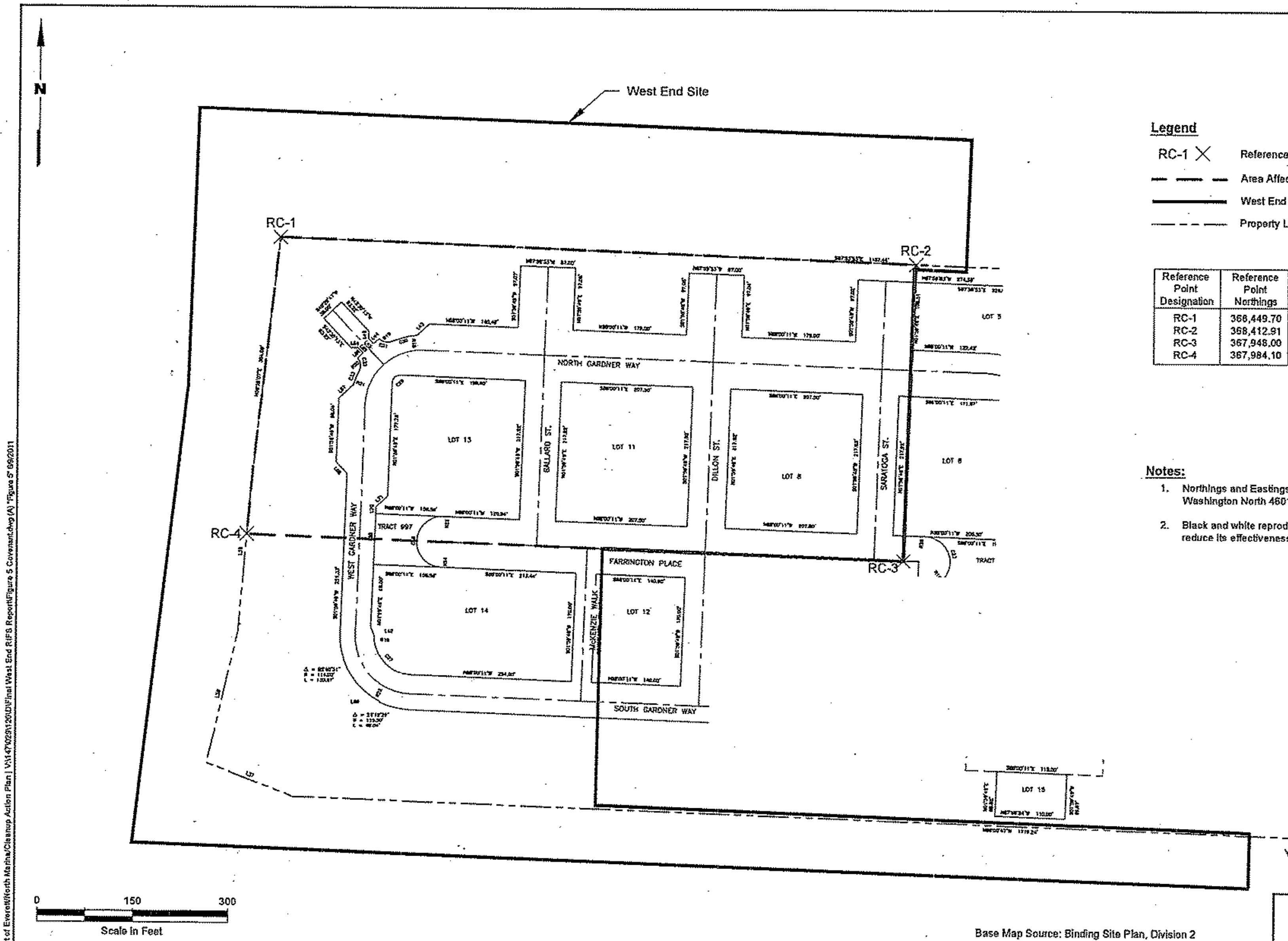
[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the _____ [type of authority] of _____ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

_____
Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

Attachment A
Legal Description



Legend

- RC-1 ✕ Reference Point Designation
- — — — Area Affected by Restrictive Covenant
- ——— West End Site
- — - - — Property Line

Reference Point Designation	Reference Point Northings	Reference Point Eastings
RC-1	366,449.70	1,300,209.57
RC-2	368,412.91	1,301,212.11
RC-3	367,948.00	1,301,195.04
RC-4	367,984.10	1,300,159.22

Notes:

1. Northings and Eastings are in US State Plane1983, Washington North 4601, NAD 83 (CONUS)
2. Black and white reproduction of this color original may reduce its effectiveness and lead to incorrect interpretation.

Base Map Source: Binding Site Plan, Division 2 of Port of Everett North Marina, Reid Middleton July 12, 2007

Attachment A
Restrictive Covenant Area

Port of Everett/North Marina/Cleanup Action Plan | V:\147\029\120\D\Final West End RIFS Report\Figure 5 Covenant.dwg (A) "Figure 5" 6/9/2011