

Former Pace National Site
500 7TH Avenue South
Kirkland, Washington
Site Cleanup ID# 5063
Facility Site ID# 2159

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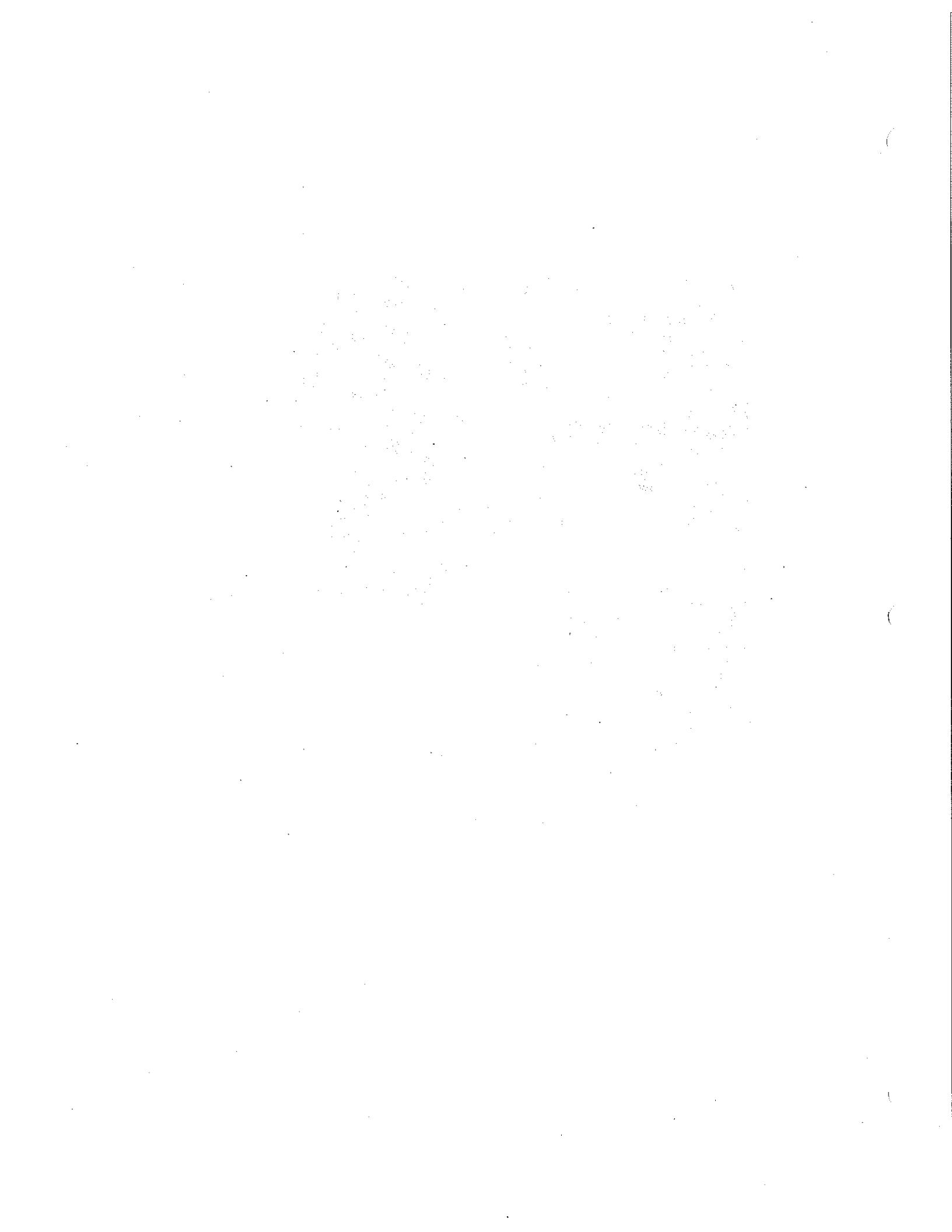


Consent Decree



Toxics Cleanup Program
Northwest Regional Office
Washington State Department of Ecology
Bellevue, Washington

January 2012



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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ULTRA CORPORATION, a Washington
corporation,

Defendant.

NO.

PACE NATIONAL CONSENT
DECREE

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Ultra Corporation, a Washington corporation, (Defendant) under this Decree is
4 to provide for remedial action at a facility where there has been a release or threatened release
5 of hazardous substances. This Decree requires Defendant to undertake the remedy set forth in
6 the Clean-up Action Plan, which includes the implementation of a Compliance Monitoring
7 Plan, attached hereto as Exhibit B which requires, in part, monitoring on-going natural
8 attenuation of groundwater impacts at the Site.

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

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

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

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

22 E. This Decree shall not be construed as proof of liability or responsibility for any
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;
24 provided, however, that Defendant shall not challenge the authority of the Attorney General
25 and Ecology to enforce this Decree.
26

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

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

4 **II. JURISDICTION**

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

7 B. Authority is conferred upon the Washington State Attorney General by RCW
8 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after
9 public notice and any required hearing, Ecology finds the proposed settlement would lead to a
10 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

14 D. Ecology has given notice to Defendant of Ecology's determination that
15 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

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

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

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

22 H. Defendant has agreed to undertake the actions specified in this Decree and
23 consents to the entry of this Decree under MTCA.

24 **III. PARTIES BOUND**

25 This Decree shall apply to and be binding upon the Parties to this Decree, their
26 successors and assigns. The undersigned representative of each party hereby certifies that he

1 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
2 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
3 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
4 responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents,
5 contractors, and subcontractors retained to perform work required by this Decree, and shall
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
7 this Decree.

8 IV. DEFINITIONS

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

11 A. Site: The Site is referred to as Pace National and is generally located at 500 7th
12 Avenue S., Kirkland Washington. The Site is specifically identified and described in the Site
13 Diagram, attached hereto as Exhibit A. The Site constitutes a Facility under RCW
14 70.105D.020(5).

15 B. Parties: Refers to the State of Washington, Department of Ecology and Ultra
16 Corporation.

17 C. Defendant: Refers to Ultra Corporation, a Washington corporation, and its
18 successors and assigns. Ultra Corporation was formerly known as Pace National Corporation.

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

22 E. Ultra Property: Refers to the real property located generally at 500 7th Avenue
23 S., Kirkland Washington. A legal description of the Ultra Property is attached as Exhibit C.

24 V. FINDINGS OF FACTS

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

1 A. The Pace National Site subject to the Work to be Performed in this Consent
2 Decree is generally located at 500 7th Avenue South, approximately 0.5 mile south of
3 downtown Kirkland. The 5-acre Ultra Property is bounded to the north by 7th Avenue South,
4 to the east by Burlington Northern Santa Fe Railway tracks, to the south by the Lakeview
5 Elementary School, and to the west by residential properties. The Site, as depicted in
6 Exhibit A, is generally located on the northern portion of the Ultra Property, as described in
7 Exhibit C, and is consistent with the historical and current area where Hazardous Substances
8 had come to be located.

9 B. Based on a Phase I Environmental Site Assessment Update completed by Hart
10 Crowser (dated November 14, 2003), the Ultra Property was occupied by several residential
11 dwellings from the early 1900s until the early 1960s when the Property was converted to
12 commercial/industrial applications. The Seattle Door Company built an office building in the
13 northeastern corner of the Property in 1963. The Tye Lumber Company stored wood products
14 for builders in the northern portion of the Property until PACE National (PACE) purchased the
15 Property in 1969.

16 C. PACE operated a specialty chemical mixing and packaging facility on the
17 northern portion of the Property from 1971 to approximately 1990. In addition to a large
18 former industrial/warehouse and office building, the PACE facility had 14 underground storage
19 tanks (USTs) containing regulated and unregulated substances such as alcohols, oils, and
20 proprietary mixtures used to formulate products. *See* Exhibit B sections 2 and 3 and figure 2
21 for more details.

22 D. Between 1990 and 2006 (when the PACE building was demolished) the
23 Property was used for retail storage. The southern half of the Property has remained largely
24 undeveloped and consists of trees and dense shrubs. Based on the available information, no
25 operations occurred on the southern portion of the Ultra Property.

26 E. PACE changed its name to Ultra Corporation in 1991.

1 F. Numerous environmental investigations and independent remedial actions have
2 been completed at the Property including extensive soil and groundwater investigation and
3 sampling, source area soil removal actions and groundwater treatment interim remedial
4 actions. Some of these actions were undertaken as independent remedial actions and others
5 were undertaken under the Voluntary Cleanup Program and Agreed Order No. 6221. Agreed
6 Order No. 6221 is attached hereto as Exhibit D. The actions taken to date include:

7 1. Prior to 2007, investigations showed chemicals of concern in soil, which
8 included chlorinated volatile organic compounds (perchloroethene, trichloroethene,
9 dichloroethenes, and vinyl chloride), petroleum substances (gasoline-, diesel- and oil-
10 range petroleum hydrocarbons), mineral spirits and pesticides. Groundwater testing
11 prior to 2007 showed the same suite of chemicals plus chloromethane and arsenic.
12 After interim remedial actions were instituted from the 1990s to 2006, testing showed
13 that there were no known chemicals of concern in the soil and only one solvent, vinyl
14 chloride, persisted in groundwater (SES RI/FS 2010).

15 2. Remedial actions included removal of the 14 underground storage tanks
16 (USTs) in 1990 and tanks were reported in good condition. Impacted soil was
17 excavated in conjunction with the tank removal and other interim remedial actions.

18 3. Removal of oil/water separator, one above ground storage tank, and
19 1,000 gallon flow-through Ecology tank in 1999 by PSCI Environmental (PSCI). Five
20 soil samples were submitted for chemical analyses and results showed several
21 pesticides (including chlorodane, pentachlorophenol, heptachlor, 4,4-DDD, 4,4-DDE,
22 and delta BHC) were detected in at least one of the tank excavation soil samples.
23 Subsequently, Galloway Environmental, Inc (GEI) directed the excavation and
24 treatment of impacted soil.

25 4. In May 2000 GEI also excavated and removed 45 tons of petroleum-
26 impacted soil from the Railroad Unloading Area (RUA) located at the northeast corner

1 of the Property. GEI noted that concentrations of target compounds in the final
2 excavation sidewall and bottom samples did not exceed MTCA method A residential
3 cleanup levels.

4 5. In December 2000 GEI installed a hand auger boring adjacent to the
5 former Railroad Unloading Area and found diesel- and oil-range petroleum
6 hydrocarbons in a grab groundwater sample.

7 6. In 2003 Hart Crowser conducted an environmental assessment under
8 Ecology's Voluntary Cleanup Program and removed an additional 105 tons of
9 petroleum- and chlorinated solvent-impacted soils and backfilled with clean soil. Prior
10 to backfilling, a cleanup treatment method using Hydrogen Reducing Compound
11 (HRC) was added to the excavation to enhance in situ biological degradation of the
12 residual chlorinated solvents present in shallow groundwater.

13 7. In 2006 Hart Crowser conducted more excavation at five areas and
14 removed contaminated soil offsite for treatment and/or disposal. Post excavation
15 sampling showed no detections above MTCA method A residential cleanup levels with
16 the exception of one common solvent, vinyl chloride in groundwater. *See Exhibit D for*
17 *more details.*

18 A. In accordance and compliance with the December 19, 2008 Agreed Order No.
19 6221, Ultra performed a Remedial Investigation and Feasibility Study (RI/FS), and prepared a
20 draft RI/FS report, and draft Cleanup Action Plan (CAP) for the Site.

21 1. The draft RI/FS identified vinyl chloride in groundwater as the only
22 chemical of concern at the Site remaining above MTCA method A cleanup level and it
23 is found solely in groundwater. All other chemicals of concern at the Site are below the
24 MTCA cleanup levels in soil and groundwater for unrestricted use (i.e. MTCA Method
25 A).

26 2. Sound Environmental Strategies (now known as SoundEarth Strategies

1 or SES) also conducted a Supplemental Remedial Investigation at the Site to address
2 data gaps identified by Ecology including soil and groundwater investigation of the
3 adjacent 7th Avenue South right of way and the Moss Bay Vista Condominium
4 property located at 431 7th Avenue South, Kirkland, WA, King County Parcel No.
5 5678300000, (the "MBV Property") which is adjacent to the west property boundary of
6 the Site. Initial soil and groundwater sampling on the MBV Property documented no
7 contaminants of concern above MTCA method A cleanup levels for unrestricted land
8 use except for one occurrence of diesel range petroleum hydrocarbons. The diesel
9 range petroleum hydrocarbons are not associated with the Site.

10 3. As part of the Agreed Order, SES conducted two remedial technology
11 pilot tests to evaluate two cleanup methods. One method used in situ treatment of the
12 groundwater at the Site using EHC[®] reactive zero valent iron barrier wall and the
13 second method used bioaugmentation. The pilot test results showed that neither
14 alternative method was viable to treat residual vinyl chloride groundwater
15 concentrations at this Site.

16 4. The draft RI/FS identified Monitored Natural Attenuation of vinyl
17 chloride in groundwater concentrations as the preferred remedy for the Site.

18 5. Ecology approved the draft RI/FS Report on December 1, 2010, and the
19 document went out for public comment on January 27, 2012. The thirty (30) day public
20 comment period terminated on February 27, 2012.

21 B. On April 13, 2011, in accordance and compliance with Agreed Order No. 6221,
22 Ultra prepared and submitted to Ecology a draft CAP to implement the preferred remedy of
23 Monitored Natural Attenuation of vinyl chloride in groundwater at the Site.

24 VI. WORK TO BE PERFORMED

25 This Decree contains a program designed to protect human health and the environment
26

1 from the known release, or threatened release, of hazardous substances or contaminants at, on,
2 or from the Site.

3 A. Defendant shall perform the work specified in detail in the CAP (Exhibit B) and
4 the Scope of Work and Schedule (Exhibit E). The work to be performed generally includes the
5 following:

6 1. The CAP requires Monitored Natural Attenuation of the groundwater
7 containing residual vinyl chloride above the current MTCA Method A cleanup level
8 concentration.

9 2. Compliance monitoring will be conducted as specified in the
10 Compliance Monitoring Plan (Exhibit B) and under WAC 173-340-410.

11 3. Semi-annual Progress Reports are required for Monitored Natural
12 Attenuation remedial action with groundwater compliance monitoring in accordance
13 with Section XI. (Progress Reports).

14 4. After four semi-annual sampling events, Ecology will evaluate the
15 progress of the Monitored Natural Attenuation remedial action.

16 a. If the vinyl chloride concentration continues to decline, then
17 Ecology will require Ultra to revise the Groundwater Compliance Monitoring
18 Plan to decrease the number of wells monitored and/or change to annual
19 monitoring until four consecutive monitoring events demonstrate that the vinyl
20 chloride concentration is at or below MTCA Method A cleanup level for
21 unrestricted land use at all points of compliance.

22 b. If the vinyl chloride concentration remains constant, Defendant
23 may submit a request for final closure and delisting of the Site conditioned upon
24 recordation of appropriate restrictive covenants for the Site addressing
25 groundwater usage and construction worker protection (the "Restrictive
26 Covenant Closure"). In such circumstance, no further monitoring of the

1 groundwater would be required except in accordance with Periodic Review
2 pursuant to Section XXIV of this Decree. Any such restrictive covenant shall
3 be recorded with the office of the King County Auditor against title to that
4 portion of the Ultra Property then constituting the Site.

5 c. If the vinyl chloride concentration stays constant or increases,
6 then Ecology may require additional monitoring, additional data evaluation,
7 and/or the institution of a contingency plan.

8 5. A site closure report will be prepared and submitted to Ecology after
9 completing four consecutive compliance monitoring events where monitoring results
10 show vinyl chloride concentration below MTCA Method A cleanup level at all points
11 of compliance, as outlined in the CAP, see Exhibit B. If the Restrictive Covenant
12 Closure is implemented, then a site closure report will be prepared and submitted to
13 Ecology prior to recordation of the restrictive covenant

14 6. If there is an inconsistency between the Decree, the CAP (Exhibit B)
15 and the Scope of Work and Schedule (Exhibit E), the terms and conditions of the CAP
16 (Exhibit B) shall apply.

17
18 B. In order to implement the CAP, Defendant will prepare and submit for
19 Ecology's review and approval all documents necessary to conduct the final clean up action.
20 All deliverables identified in the CAP (Exhibit B) and Scope of Work and Schedule (Exhibit
21 E), once approved by Ecology, are hereby incorporated by reference and become an integral
22 and enforceable part of this Decree.

23 C. Defendant agrees not to perform any remedial actions outside the scope of this
24 Decree unless the Parties agree to modify the Scope of Work with Schedule (Exhibit E) to
25 cover these actions. All work conducted by Defendant under this Decree shall be done in
26 accordance with Chapter 173-340 WAC unless otherwise provided herein.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Maura S. O'Brien, PG/HG #869
4 Professional Geologist/Hydrogeologist
5 Toxics Cleanup Program - NWRO
6 Department of Ecology
7 3190 - 160th Avenue SE
8 Bellevue, WA 98008-5452
9 Phone: 425-649-7249

7 The project coordinator for Defendant is:

8 Thomas Cammarata
9 SoundEarth Strategies, Inc.
10 (dba Sound Environmental Strategies)
11 2811 Fairview Ave East, Suite 2000
12 Seattle, Washington 98102
13 Main: 206-306-1900
14 Direct: 206-436-5940
15 Mobile: 206-261-8046

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

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

23 **VIII. PERFORMANCE**

24 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
25 the supervision and direction of a geologist licensed in the State of Washington or under the
26 direct supervision of an engineer registered in the State of Washington, except as otherwise

1 provided for by Chapters 18.220 and 18.43 RCW.

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

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

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

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

14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have full authority to enter and
16 freely move about all property at the Site that Defendant either owns, controls, or has access
17 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation
18 logs, and contracts related to the work being performed pursuant to this Decree; reviewing
19 Defendant's progress in carrying out the terms of this Decree; conducting such tests or
20 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
21 other documentary type equipment to record work done pursuant to this Decree; and verifying
22 the data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to
23 secure access rights for those properties within the Site not owned or controlled by Defendant
24 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
25 or any Ecology authorized representative shall give reasonable notice before entering any Site
26 property owned or controlled by Defendant unless an emergency prevents such notice. All

1 Parties who access the Site pursuant to this Section shall comply with any applicable Health
2 and Safety Plan(s). Ecology employees and their representatives shall not be required to sign
3 any liability release or waiver as a condition of Site access.

4 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

5 With respect to the implementation of this Decree, Defendant shall make the results of
6 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to
7 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology
8 in both printed and electronic formats in accordance with Section XI. (Progress Reports),
9 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
10 subsequent procedures specified by Ecology for data submittal.

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

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

23 **XI. PROGRESS REPORTS**

24 Defendant shall submit to Ecology written Progress Reports describing the actions
25 taken during the previous reporting period to implement the requirements of this Decree on the
26 frequency as specified in the CAP (Exhibit B) and the Scope of Work and

1 Schedule (Exhibit E). The Progress Reports shall include the following:

2 A. A list of on-site activities that have taken place during the reporting period;

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

5 C. Description of all deviations from the Scope of Work with Schedule (Exhibit E)
6 during the current reporting period and any planned deviations in the upcoming reporting
7 period;

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

10 E. All raw data (including laboratory analyses) received by Defendant during the
11 past reporting period will be entered into Ecology's EIM data system with required
12 identification of the source of the sample; and

13 F. A list of deliverables for the upcoming reporting period if different from the
14 schedule.

15 All Progress Reports shall be submitted by the tenth (10th) day of the month in
16 which they are due after the effective date of this Decree and 45 days after laboratory results
17 are available. Unless otherwise specified, Progress Reports and any other documents
18 submitted pursuant to this Decree shall send two hard copies by US mail and one electronic
19 copy to Ecology's project coordinator.

20 XII. RETENTION OF RECORDS

21 During the pendency of this Decree, and for ten (10) years from the date this Decree is
22 no longer in effect as provided in Section XXVII. (Duration of Decree), Defendant shall
23 preserve all records, reports, documents, and underlying data in its possession relevant to the
24 implementation of this Decree and shall insert a similar record retention requirement into all
25 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant
26

1 shall make all records available to Ecology and allow access for review within a reasonable
2 time.

3 XIII. TRANSFER OF INTEREST IN PROPERTY

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

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

15 XIV. RESOLUTION OF DISPUTES

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

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

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

1 3. Defendant may then request regional management review of the
2 decision. This request shall be submitted in writing to the Northwest Region Toxics
3 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's
4 project coordinator's written decision.

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

8 5. If Defendant finds Ecology's Regional Section Manager's decision
9 unacceptable, Defendant may then request final management review of the decision.
10 This request shall be submitted in writing to the Toxics Cleanup Program Manager
11 within seven (7) days of receipt of the Regional Section Manager's decision.

12 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
13 the dispute and shall endeavor to issue a written decision regarding the dispute within
14 thirty (30) days of Defendant's request for review of the Regional Section Manager's
15 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final
16 decision on the disputed matter.

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

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

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

4 XV. AMENDMENT OF DECREE

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

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

13 Defendant shall submit a written request for amendment to Ecology for approval.
14 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
15 written request for amendment is received. If the amendment to the Decree is a substantial
16 change, Ecology will provide public notice and opportunity for comment. Reasons for the
17 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
18 not agree to a proposed amendment, the disagreement may be addressed through the dispute
19 resolution procedures described in Section XIV. (Resolution of Disputes).

20 XVI. EXTENSION OF SCHEDULE

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

- 25 1. The deadline that is sought to be extended;
- 26 2. The length of the extension sought;

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

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

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

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

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

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

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

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

23 D. An extension shall only be granted for such period of time as Ecology
24 determines is reasonable under the circumstances. Ecology may grant schedule extensions
25 exceeding ninety (90) days only as a result of:
26

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

6 **XVII. ENDANGERMENT**

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

11 In the event Defendant determines that any activity being performed at the Site is
12 creating or has the potential to create a danger to human health or the environment, Defendant
13 may cease such activities. Defendant shall notify Ecology's project coordinator as soon as
14 possible, but no later than twenty-four (24) hours after making such determination or ceasing
15 such activities. Upon Ecology's direction, Defendant shall provide Ecology with
16 documentation of the basis for the determination or cessation of such activities. If Ecology
17 disagrees with Defendant's cessation of activities, it may direct Defendant to resume such
18 activities.

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

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

1 **XVIII. COVENANT NOT TO SUE**

2 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
3 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
4 actions against Defendant, including its officers and directors, regarding the release or
5 threatened release of hazardous substances covered by this Decree.

6 This Decree covers only the Site specifically identified in the Site Diagram
7 (Exhibit A), and those hazardous substances that Ecology knows are located at the Site as of
8 the date of entry of this Decree. This Decree does not cover any other hazardous substance or
9 area. Ecology retains all of its authority relative to any substance or area not covered by this
10 Decree.

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

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

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

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

- 23 1. Upon Defendant's failure to meet the requirements of this Decree,
24 including, but not limited to, failure of the remedial action to meet the cleanup
25 standards identified in the CAP (Exhibit B);
26

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

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

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

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

14 **XIX. CONTRIBUTION PROTECTION**

15 With regard to claims for contribution against Defendant, the Parties agree that
16 Defendant, including its officers and directors, is entitled to protection against claims for
17 contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

18 **XX. LAND USE RESTRICTIONS**

19 As provided for in the CAP, if the Defendant chooses to implement the "Restrictive
20 Covenant Closure" then Defendant shall record a Restrictive Covenant with the office of the
21 King County Auditor within ten (10) days of receiving approval from Ecology. The
22 Restrictive Covenant shall restrict future uses of the Site. Defendant shall provide Ecology
23 with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

24 **XXI. INDEMNIFICATION**

25 Defendant agrees to indemnify and save and hold the State of Washington, its
26 employees, and agents harmless from any and all claims or causes of action for death or

1 injuries to persons or for loss or damage to property to the extent arising from or on account of
2 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into
3 and implementing this Decree. However, Defendant shall not indemnify the State of
4 Washington nor save nor hold its employees and agents harmless from any claims or causes of
5 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
6 the employees or agents of the State, in entering into or implementing this Decree.

7 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

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

13 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural
14 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
15 requiring or authorizing local government permits or approvals. However, Defendant shall
16 comply with the substantive requirements of such permits or approvals. The exempt permits or
17 approvals and the applicable substantive requirements of those permits or approvals, as they
18 are known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).

19 Defendant has a continuing obligation to determine whether additional permits
20 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
21 action under this Decree. In the event either Ecology or Defendant determines that additional
22 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
23 remedial action under this Decree, it shall promptly notify the other party of this determination.
24 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
25 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly
26 consult with the appropriate state and/or local agencies and provide Ecology with written

1 documentation from those agencies of the substantive requirements those agencies believe are
2 applicable to the remedial action. Ecology shall make the final determination on the additional
3 substantive requirements that must be met by Defendant and on how Defendant must meet
4 those requirements. Ecology shall inform Defendant in writing of these requirements. Once
5 established by Ecology, the additional requirements shall be enforceable requirements of this
6 Decree. Defendant shall not begin or continue the remedial action potentially subject to the
7 additional requirements until Ecology makes its final determination.

8 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
9 exemption from complying with the procedural requirements of the laws referenced in RCW
10 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for
11 the State to administer any federal law, the exemption shall not apply and Defendant shall
12 comply with both the procedural and substantive requirements of the laws referenced in RCW
13 70.105D.090(1), including any requirements to obtain permits.

14 **XXIII. REMEDIAL ACTION COSTS**

15 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
16 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
17 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
18 and Decree preparation, negotiation, oversight and administration. These costs shall include
19 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
20 include costs of direct activities and support costs of direct activities as defined in WAC
21 173-340-550(2). Ecology has accumulated \$3,141.42 in remedial action costs related to this
22 facility as of October 31, 2011. Payment for this amount shall be submitted within thirty (30)
23 days of the effective date of this Decree. For all costs incurred subsequent to October 31,
24 2011, Defendant shall pay the required amount within thirty (30) days of receiving from
25 Ecology an itemized statement of costs that includes a summary of costs incurred, an
26 identification of involved staff, and the amount of time spent by involved staff members on the

1 project. A general statement of work performed will be provided upon request. Itemized
2 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
3 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
4 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

8 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that Defendant has failed without good cause to implement the
10 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all
11 portions of the remedial action that remain incomplete. If Ecology performs all or portions of
12 the remedial action because of Defendant's failure to comply with its obligations under this
13 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance
14 with Section XXIII. (Remedial Action Costs), provided that Defendant is not obligated under
15 this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the
16 scope of this Decree.

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

21 **XXV. PERIODIC REVIEW**

22 As remedial action, including groundwater monitoring, continues at the Site, the Parties
23 agree to review the progress of remedial action at the Site, and to review the data accumulated
24 as a result of monitoring the Site as often as is necessary and appropriate under the
25 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
26 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial

1 action at the Site. Ecology reserves the right to require further remedial action at the Site under
2 appropriate circumstances. This provision shall remain in effect for the duration of this
3 Decree.

4 **XXVI. PUBLIC PARTICIPATION**

5 Ecology developed a Public Participation Plan in conjunction with Ultra for this Site.
6 Ecology shall maintain the responsibility for public participation at the Site. However,
7 Defendant shall cooperate with Ecology, and shall:

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

13 B. Notify Ecology's project coordinator prior to the preparation of all press releases
14 and fact sheets, and before major meetings with the interested public and local governments.
15 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact
16 sheets, and before major meetings with the interested public and local governments. For all
17 press releases, fact sheets, meetings, and other outreach efforts by Defendant that do not
18 receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press
19 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by
20 Ecology.

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

24 D. When requested by Ecology, arrange and/or continue information repositories at
25 the following locations:
26

- 1 1. King County Public Library – Kirkland
2 308 Kirkland Avenue
3 Kirkland WA 98033
4 425-822-2459

- 5 2. Washington Department of Ecology
6 Northwest Regional Office
7 3190 160th Ave., S.E.
8 Bellevue, WA 98008
9 425-649-7190

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

14 **XXVII. DURATION OF DECREE**

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

20 **XXVIII. CLAIMS AGAINST THE STATE**

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

XXIX. EFFECTIVE DATE

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

1 **XXX. WITHDRAWAL OF CONSENT**

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

6 STATE OF WASHINGTON
7 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

8 _____
9 JAMES J. PENDOWSKI
10 Program Manager
11 Toxics Cleanup Program
12 360-407-7177

_____ DOROTHY JAFFE, WSBA #34148
Assistant Attorney General
360-586-4637

11 Date: _____

Date: _____

12 ULTRA Corporation

13 _____
14 HELEN GURVICH
15 President
16 206-432-9432

17 Date: _____

18 ENTERED this _____ day of _____ 2011

19 _____
20 JUDGE
21 King County Superior Court
22
23
24
25
26

1 **XXX. WITHDRAWAL OF CONSENT**

2 If the Court withholds or withdraws its consent to this Decree, it sha
3 at the option of any party and the accompanying Complaint shall be dismi
4 and without prejudice. In such an event, no party shall be bound by the re
5 Decree.

6 STATE OF WASHINGTON
7 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

8
9 JAMES J. PENDOWSKI
Program Manager
10 Toxics Cleanup Program
360-407-7177

DOROTHY JAFFE, WSBA
Assistant Attorney General
360-586-4637

11 Date: _____

Date: _____

12 ULTRA Corporation

13
14 *Helen Gurvich*
15 HELEN GURVICH
President
206-432-9432

16 Date: 1/20/12

17
18 ENTERED this _____ day of _____ 2011

19
20
21 JUDGE
King County Superior Court
22
23
24

EXHIBIT A

**ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 - 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

SITE DIAGRAM

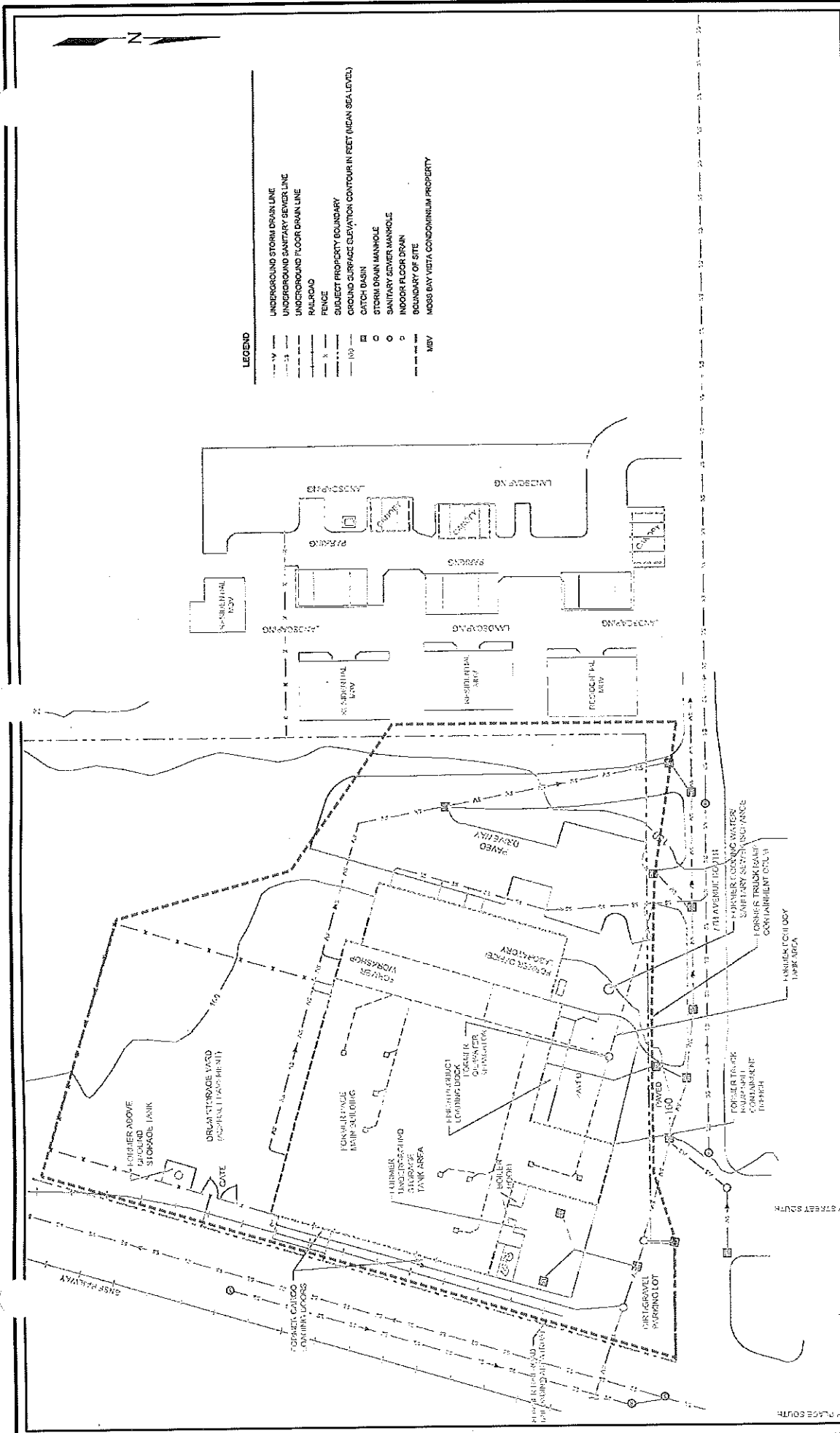
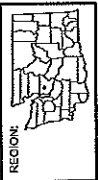
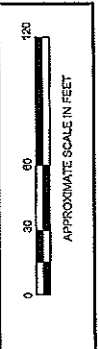


EXHIBIT A
 MAP SHOWING BOUNDARIES OF
 FORMER PACE NATIONAL SITE



PROJECT NAME: FORMER PACE NATIONAL
 PROJECT NUMBER: 0898-001-03
 STREET ADDRESS: 500 7TH AVENUE SOUTH
 CITY, STATE: KIRKLAND, WA

DATE: 01/03/2011
 DRAWN BY: NAC/BLR
 CHECKED BY: TJC
 CAD FILE: 0898-001-2010CMP_BS



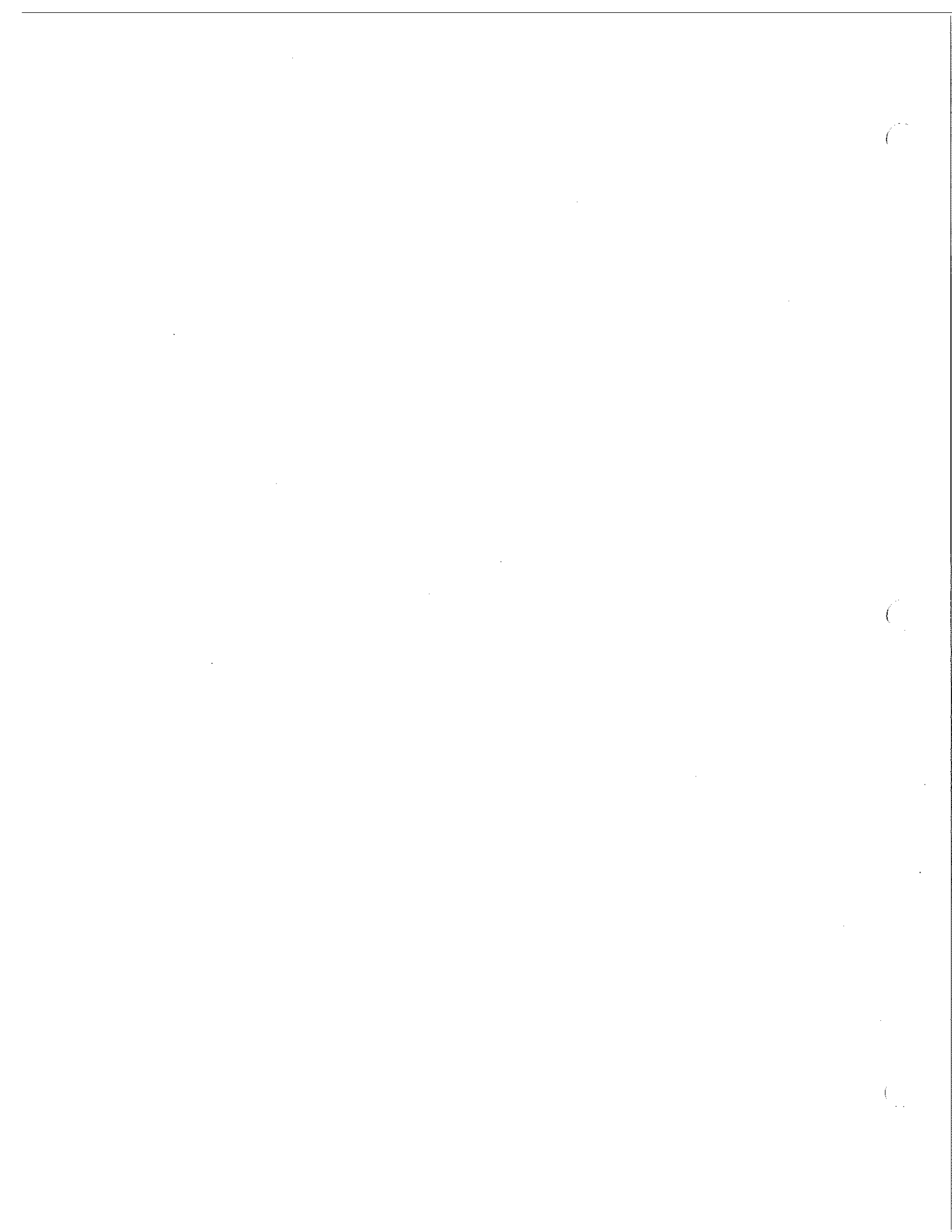


EXHIBIT B

**ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 - 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

CLEANUP ACTION PLAN

EXHIBIT C

**ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 - 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT A

ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 – 7th AVENUE SOUTH, KIRKLAND, WASHINGTON

LEGAL DESCRIPTION

THAT PORTION OF LOT 12 LYING WEST OF NORTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY AND THAT PORTION OF LOTS 15 AND 16 LYING EAST OF A LINE WHICH IS THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 12 AS EXTENDED SOUTHERLY TO THE SOUTH LINE OF LOT 16 AND LYING WEST OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT RECORDED IN VOLUME 11 PLATS, PAGE 94, IN KING COUNTY, WASHINGTON; EXCEPT THE NORTH 15 FEET OF THE WESTERLY 325 FEET CONVEYED TO THE CITY OF KIRKLAND BY DEED RECORDED UNDER RECORDING NUMBER 7104230470.

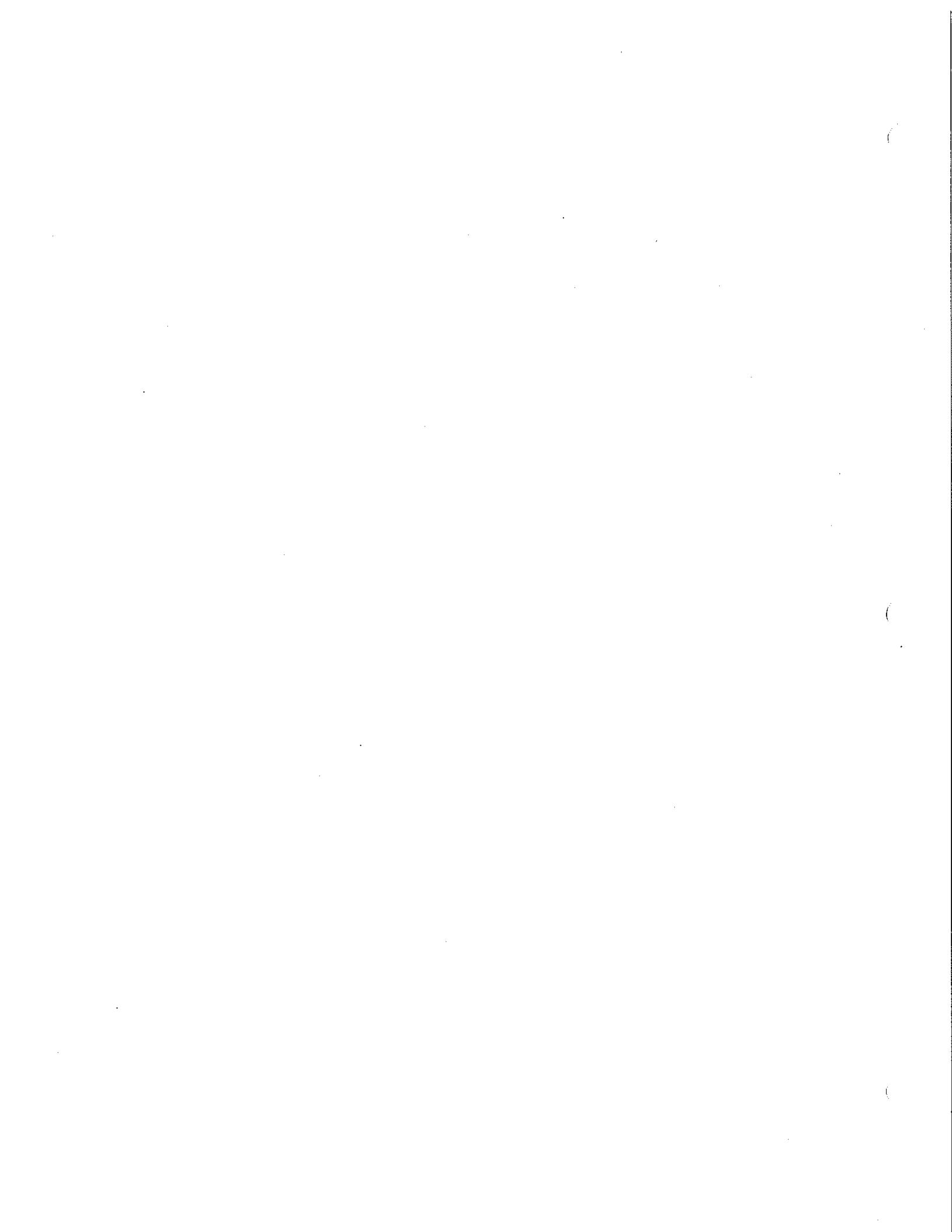


EXHIBIT D

**ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 - 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

AGREED ORDER No. 6221

EXHIBIT E

**ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 - 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

SCOPE OF WORK WITH SCHEDULE

**EXHIBIT E
ULTRA CORPORATION
FORMER PACE NATIONAL SITE
500 – 7TH AVENUE SOUTH, KIRKLAND, WASHINGTON**

PROPOSED SCOPE OF WORK WITH SCHEDULE

Draft 12/20/11

All work performed at and around the Site pursuant to the Decree shall be accomplished in accordance with Chapter 173-340 WAC. Documents prepared by the defendant shall be submitted for review and approval by Ecology.

The proposed schedule lists the work tasks to implement this Cleanup Action for the Ultra Corporation, former Pace National site. The work tasks include all significant work elements and deliverable due dates following WAC 173-340-400.

Task 0. Public Involvement and Finalize Documents.

- Public Comment Period – January 27 – February 27, 2012
- Public Meeting, if requested -
- Ecology's Responsiveness Summary - March 2012
- Finalize documents (Consent Decree, Cleanup Action Plan with Compliance Monitoring Plan, Quality Assurance Project Plan, and Health and Safety Plan)– March 2012
- Lodging of Consent Decree at King County Superior Court –estimated March 2012

Task 0 Schedule. To be completed at the time of court lodging the Consent Decree. The date of court lodging of the Consent Decree will begin the time clock for this schedule and scope of work.

Task 1. Implement Monitored Natural Attenuation (MNA) of the groundwater containing residual vinyl chloride above the current MTCA Method A cleanup level concentrations.

Task 1. Schedule. Semi-annual groundwater compliance monitoring will take place in the wet season (approximately February 2012 and 2013); and in the dry season (approximately September 2011 and 2012). The groundwater compliance monitoring will be conducted as specified in Exhibit B, in the Compliance Monitoring Plan and in accordance with WAC 173-340-410.

Task 2. Semi-Annual Progress Reports.

Task 2. Schedule. Progress Reports will be submitted to Ecology forty-five (45) days after laboratory analytical results are received for each monitoring event. The Progress Report shall meet the requirements identified in Section XI of the Consent Decree.

Task 3. Ecology and Ultra review of MNA and Compliance Monitoring results.

Ultra will meet with Ecology to evaluate the effectiveness of MNA and compliance with the Site cleanup requirements.

If the vinyl chloride concentration continues to decline, Ecology will require Ultra to revise the Groundwater Compliance Monitoring Plan to decrease the number of wells monitored and/or change to annual monitoring.

Alternatively, if the vinyl chloride concentration remains constant, Defendant may submit a request for final closure and delisting of the Site conditioned upon recordation of appropriate restrictive covenants for the Site addressing groundwater usage and construction worker protection (hereinafter referred to as the "Restrictive Covenant Closure"). In such circumstance, no further monitoring of the groundwater would be required except in accordance with Periodic Review pursuant to Section XXIV of the Consent Decree. Any such restrictive covenant shall be recorded with the office of the King County Auditor against title to that portion of the Ultra Property then constituting the Site.

If the vinyl chloride concentration stays constant or increases, then Ecology may require additional monitoring, additional data evaluation, and/or the institution of a contingency plan.

Task 3. Schedule. Within forty-five (45) days of receiving the Progress Report for the fourth monitoring event (February 2013), Ecology will schedule a review meeting with Ultra, estimated to be held in May-June 2013, to make a decision based on the MNA and CMP results.

Task 4. Continue MNA and Groundwater Compliance Monitoring (GCM) until compliance monitoring is complete or implement the Task 3 revision if the vinyl chloride concentration stays constant or increases.

In the event the Restrictive Covenant Closure is implemented in accordance with Task 3 then Task 4 will not be required. Ultra will proceed to Task 5.

In all other circumstances, MNA and groundwater compliance monitoring will continue pursuant to the findings in Task 2, or an implemented revised compliance monitoring or contingency plan, based on the findings in Task 3, will continue until four consecutive monitoring events demonstrate that the vinyl chloride concentration is at or below MTCA Method A cleanup level for unrestricted land use at all points of compliance.

Task 4. Schedule. MNA with GCM will be conducted for approximately two to five years in order to complete the remedial action and to meet MTCA Method A cleanup levels. The estimated date to complete MNA with GCM is 2014-2017.

Task 5. Closure Report and request to close Consent Decree and delist the Site.

Ultra will prepare a Closure Report documenting that it has either met the MTCA Method A cleanup levels, or instituted the Restrictive Covenant Closure Option, and with Ecology approval, will then request to close the Consent Decree and delist the site.

Task 5. Schedule. Ultra will submit a Closure Report within sixty (60) days of Ecology approval of the compliance monitoring results reported in the final Progress Report, which is estimated to be submitted in 2014 - 2017. Ecology will review and approve the Closure Report within sixty (60) days of receipt, or notify Ultra of additional tasks to be completed for closure.

Task 6. Close Consent Decree and delist site.

- Public Comment Period 30 days.
- Public meeting, if requested.
- Review public comments and Ecology to prepare Responsiveness Summary.
- Record Closure of Consent Decree at King County Superior Court.
- Delist site from state hazardous sites list.

Task 6. Schedule. Within 90-120 days after Ecology's approval of the Closure Report, closure of the Consent Decree in the King County Superior Court will be completed and the site will be delisted.

