



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Ecology Division
2425 Bristol Court SW 2nd Floor • Olympia WA 98502
PO Box 40117 • Olympia WA 98504-0117 • (360) 586-6770

February 6, 2017

Steven J. Thiele
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

RE: *State of Washington, Department of Ecology v. Port of Everett and ESY, Inc.*
Snohomish County Superior Court No. 12-2-03430-1

Dear Mr. Thiele:

Enclosed are conformed copies of the Order Entering Amended Consent Decree, Joint Motion for Entry of Amended Consent Decree, and First Amendment to Consent Decree in the above-captioned case, filed on February 2, 2017. Also enclosed are conformed copies of the Declaration of Hun Seak Park and the Declaration of John A. Level.

Thank you for your assistance in this matter.

Sincerely,

TERESA L. TRIPPEL
Legal Assistant to
JOHN A. LEVEL
Assistant Attorney General
(360) 586-4618

tlt

Enclosures

cc w/enc.: Hun Seak Park, Department of Ecology



FILED

FEB 02 2017

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT and ESY, INC.,

Defendants.

NO. 12-2-03430-1

ORDER ENTERING AMENDED
CONSENT DECREE

Having reviewed the Joint Motion for Entry of the Amended Consent Decree, it is hereby ORDERED AND ADJUDGED that the Amended Consent Decree in this matter is entered and that the court shall retain jurisdiction over the Amended Consent Decree to enforce its terms.

DATED this 2nd day of February 2017
~~December 2016.~~

SUSAN C. GAER

Superior Court Judge/Commissioner

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1 Presented by:

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3 ROBERT W. FERGUSON
4 Attorney General

STOEL RIVES LLP

5 

6 JOHN A. LEVEL, WSBA #20439
7 Assistant Attorney General
8 Attorneys for Plaintiff
9 State of Washington, Department of Ecology
10 (360) 586-6753

11 STEVEN J. THIELE, WSBA #20275
12 Attorneys for Defendant
13 Port of Everett
14 (206) 386-7530

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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT and ESY, INC.,

Defendants.

NO. 12-2-03430-1

JOINT MOTION FOR ENTRY OF
AMENDED CONSENT DECREE

Plaintiff, State of Washington, Department of Ecology and Defendant Port of Everett (Port), (collectively, "the Parties"), bring this motion seeking amendment of the March 7, 2012 Consent Decree (2012 Consent Decree) in this matter and entry of the attached Amended Consent Decree regarding remedial actions taken at the Everett Shipyard Site (Site) in Everett, Washington.

This amendment of the 2012 Consent decree is necessary to document the changes to the work required by Exhibit B (the 2012 Cleanup Action Plan) to the 2012 Consent Decree. The 2012 Cleanup Action Plan required the Port to conduct certain remedial actions at the Site, which included the removal of contaminated sediment. Declaration of Hun Seak Park (Park Decl.) ¶ 3. In 2014, crews conducting cleanup work found several unexpected obstructions adjacent to a bulkhead in the in-water area of the Site. Park Decl. ¶ 3 Ecology determined the obstructions prevented full removal of contaminated sediment. *Id.* To address this situation, the

1 Parties agreed to cap the obstructed areas with clean material and record an environmental,
2 restrictive covenant for the parcel in question that will limit future in-water activities (to
3 prevent recontamination of the Site). *Id.* The obstructed in-water area was capped with clean
4 fill material in January 2015. *Id.* A draft Amended Consent Decree, amended Cleanup Action
5 Plan, and restrictive covenant were subject to public notice and comment, pursuant to WAC
6 173-340-600. Park Decl. ¶ 5.


7 The named defendants and signatories to the 2012 Consent Decree included the Port
8 and ESY, Inc. In August 2012, Defendant ESY, Inc. was administratively dissolved.
9 Declaration of John A. Level ¶ 3, Exhibit A. Since the corporate entity that was ESY, Inc. has
10 been dissolved, the Amended Consent Decree, the Joint Motion for Entry of Amended Consent
11 Decree, and the Order Entering Amended Consent Decree do not have signatures by
12 representatives of ESY, Inc.

13 The Parties request that the court approve and enter the Amended Consent Decree,
14 pursuant to Consent Decree Section XV (Amendment to Decree). The Parties also request that
15 the court retain jurisdiction over this action until the work required by the Amended Consent
16 Decree is completed and the Parties request a dismissal of this action.

17 DATED this 15th day of December 2016.

18 ROBERT W. FERGUSON
19 Attorney General

STOEL RIVES LLP

20 
21 JOHN A. LEVEL, WSBA #20439
22 Assistant Attorney General
23 Attorneys for Plaintiff
State of Washington, Department of Ecology
(360) 586-6753

STEVEN J. THIELE, WSBA #20275
Attorneys for Defendant
Port of Everett
(206) 386-7530

1 Parties agreed to cap the obstructed areas with clean material and record an environmental,
2 restrictive covenant for the parcel in question that will limit future in-water activities (to
3 prevent recontamination of the Site). *Id.* The obstructed in-water area was capped with clean
4 fill material in January 2015. *Id.* A draft Amended Consent Decree, amended Cleanup Action
5 Plan, and restrictive covenant were subject to public notice and comment, pursuant to WAC
6 173-340-600. Park Decl. ¶ 5.

7 The named defendants and signatories to the 2012 Consent Decree included the Port
8 and ESY, Inc. In August 2012, Defendant ESY, Inc. was administratively dissolved.
9 Declaration of John A. Level ¶ 3, Exhibit A. Since the corporate entity that was ESY, Inc. has
10 been dissolved, the Amended Consent Decree, the Joint Motion for Entry of Amended Consent
11 Decree, and the Order Entering Amended Consent Decree do not have signatures by
12 representatives of ESY, Inc.

13 The Parties request that the court approve and enter the Amended Consent Decree,
14 pursuant to Consent Decree Section XV (Amendment to Decree). The Parties also request that
15 the court retain jurisdiction over this action until the work required by the Amended Consent
16 Decree is completed and the Parties request a dismissal of this action.

17 DATED this ____ day of December 2016.

18 ROBERT W. FERGUSON
19 Attorney General

STOEL RIVES LLP



20
21 JOHN A. LEVEL, WSBA #20439
22 Assistant Attorney General
23 Attorneys for Plaintiff
State of Washington, Department of Ecology
(360) 586-6753

STEVEN J. THIELE, WSBA #20275
Attorneys for Defendant
Port of Everett
(206) 386-7530

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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT and ESY, INC,

Defendants.

NO. 12-2-03430-1

FIRST AMENDMENT TO CONSENT
DECREE

This First Amendment to the Consent Decree is issued pursuant to the authority of Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

STATEMENT OF CURRENT CONDITIONS

A. In March 2012, the State of Washington, Department of Ecology (Ecology), Port of Everett (the Port), and ESY, Inc. (ESY), entered into a Consent Decree, which was signed by this Court and filed on March 7, 2012. The Consent Decree represents a negotiated settlement between Ecology, the Port, and ESY, Inc. Ecology, the Port, and ESY are collectively referred to as "the Parties."

B. The Consent Decree provides for remedial action based upon the release of hazardous substances and applies to the Everett Shipyard Site (as defined in the Consent

1 Decree), which includes upland property upland and adjacent in-water areas located generally
2 at 1016 14th Street west of West Marine View Drive, Everett.

3 **FIRST AMENDMENT TO CONSENT DECREE**

4 Based on the foregoing, the Parties to the Consent Decree stipulate and agree that the
5 Consent Decree, including all Exhibits attached thereto, shall be further amended, pursuant to
6 the provisions of Section XV of the Consent Decree. This amendment does not attempt to
7 recite all of the provisions of the Consent Decree. Provisions of the Consent Decree not
8 specifically changed in this amendment remain in full force and effect. The amendment to the
9 Consent Decree is as follows:

10 **VI. WORK TO BE PERFORMED**

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


14 C. Based on the information discovered in the implementation of the Cleanup
15 Action Plan (CAP) and follow-up Engineering Design effort Ecology determined that it was
16 not feasible to remove of all contaminated sediment from the entire contaminated area where
17 sediment concentrations exceed the Sediment Management Standards cleanup levels. Based
18 on this determination, the CAP is hereby amended. The PLPs shall perform all tasks set forth
19 in the Amended CAP (Exhibit B) and implement the Amended CAP in accordance with the
20 Amended CAP's schedule, including the following for the In-Water Area:

- 21 1. One or more environmental covenants (WAC 173-340-440(9)) or similar
22 institutional controls will be required for the In-Water Area at the Site
23 where contaminants at concentrations above cleanup levels or wood
24 waste/debris were left behind at the conclusion of the cleanup action.
- 25 2. Long-term monitoring is required to take place in the In-Water Area of the
26 Site where contaminants at concentrations above cleanup levels or
historical debris were left behind at the conclusion of the cleanup action.
Long-term monitoring will take place at the 5-year review point under a
scope agreed upon by Ecology and the Port to verify that the containment
caps remain intact.

1 **XX. LAND USE RESTRICTIONS**


2 The Port shall cause to be recorded a Restrictive Covenant for the In-Water Area of the
3 Site with the office of the Snohomish County Auditor within thirty (30) days of the entry of the
4 First Amendment to Consent Decree with the Snohomish County Superior Court. The
5 Restrictive Covenant shall restrict future uses of the In-Water Area of the Site. The Port shall
6 provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of
7 the recording date.

8 **STATE OF WASHINGTON**
9 **DEPARTMENT OF ECOLOGY**

10 
11 James Pendowski
12 Program Manager
13 Toxics Cleanup Program
14 (360) 407-7177


15 Date: 1/4/17

ROBERT W. FERGUSON,
ATTORNEY GENERAL

16 
17 John A. Level, WSBA No. 20439
18 Assistant Attorney General
19 (360) 586-6753

20 Date: 1/5/17

21 **THE PORT OF EVERETT**

22 
23 LES REARDANZ
24 Chief Administrative Officer
25 Port of Everett
26 (425) 259-3164

Date: 12/27/16

ENTERED this 2nd day of February 2017.

SUSAN C. GAER

JUDGE /COMMISSIONER
Snohomish County Superior Court

EXHIBIT B
AMENDMENT TO CLEANUP ACTION PLAN

Everett Shipyard Site
Everett, Washington

Issued by:
Washington State Department of Ecology
Toxics Cleanup Program
Land and Aquatic Lands Cleanup Section
Headquarters Office, Olympia

October 1, 2016

**Amendment to the Cleanup Action Plan
Everett Shipyard Sediment Cleanup Action
Summary of Deviation with In-water Construction Activities**

The cleanup action for contaminated marine sediment at the Everett Shipyard (ESY) Site under the Cleanup Action Plan (CAP) consisted of two major parts:

- Dredging and offsite disposal of the dredged material at Republic Services' Roosevelt Regional Landfill, a Subtitle D solid waste landfill facility located near Roosevelt, Washington.
- Demolition of marine structures to facilitate removal of contaminated sediments.

The Port of Everett contracted with Magnus Pacific Corporation (MPC) to implement the sediment cleanup action. In-water construction activities were primarily conducted between August 25, 2014 and February 15, 2015.

To facilitate removal of contaminated sediment, the marine railway, Travel Lift/Boat Haul-Out facility, three docks, and various floats and a number of creosoted timber piles were demolished, size reduced, and disposed at the Roosevelt Regional Landfill. In addition, portions of certain docks and floats in the marina were also disconnected and temporarily relocated to provide access for MPC equipment and marina users to the dredge areas. The creosoted timber bulkheads in the north dredge area were replaced with a new, epoxy-coated, steel sheet pile bulkhead and tieback/deadman anchor system to allow sediment removal directly adjacent to the bulkhead.

Marine sediment in the north and south dredge areas was removed using a barge-mounted fixed-arm excavator with an environmental bucket, while sediment between the upper and lower timber bulkheads at the north end of the north dredge area was removed during low tides with a Vactor truck. Dredged material was offloaded at a temporary, onsite transloading facility, loaded into lined trucks, and transported to Republic Services' transfer station in Seattle for subsequent loading into containers for rail shipment to the landfill. Based on pre- and post-dredging surveys, approximately 9,500¹ cubic yards of contaminated sediment was removed from the marine areas of the Site.

¹ This dredge volume is almost twice the estimated volume of contaminated sediment described in the CAP (4,800 cubic yard).

During dredging along the new sheet pile bulkhead in the north dredge area, some obstructions were encountered directly adjacent to portions of the bulkhead that prevented MPC's dredging equipment from reaching the final design dredge elevation (which ranged from -12 to -14 ft MLLW). A dive survey indicated that the obstructions included a number of derelict timber piles, some chunks of concrete, and quarry spalls. With Ecology's concurrence per the Port's request the obstructions were left in place and capped with clean backfill that was placed adjacent to the new sheet pile bulkhead.

Following completion of sediment dredging and collection of sediment samples, marine area backfill and habitat mix materials were placed adjacent to the new and/or existing bulkheads in the north and south dredge areas using both land and barge-based equipment to return the sediment mudline adjacent to the bulkhead to its pre-dredging configuration. Based on the results of sediment sampling that demonstrated exceedances of cleanup levels in certain post-dredging sediment samples, a thin layer of sand was placed in four designated areas in the north dredging area to address dredging residuals. Based on pre- and post-backfill surveys, approximately 4,900 cubic yards of backfill, habitat mix, and residuals layer materials were placed in the marine sediment dredging areas.

Marine water quality monitoring during in-water demolition, dredging, and backfilling activities indicated that surface water quality criteria established for the project were not exceeded.

Deviations of the sediment cleanup action completed at the ESY Site, as compared to elements addressed in the Cleanup Action Plan (CAP) – 2011, consist of the following:

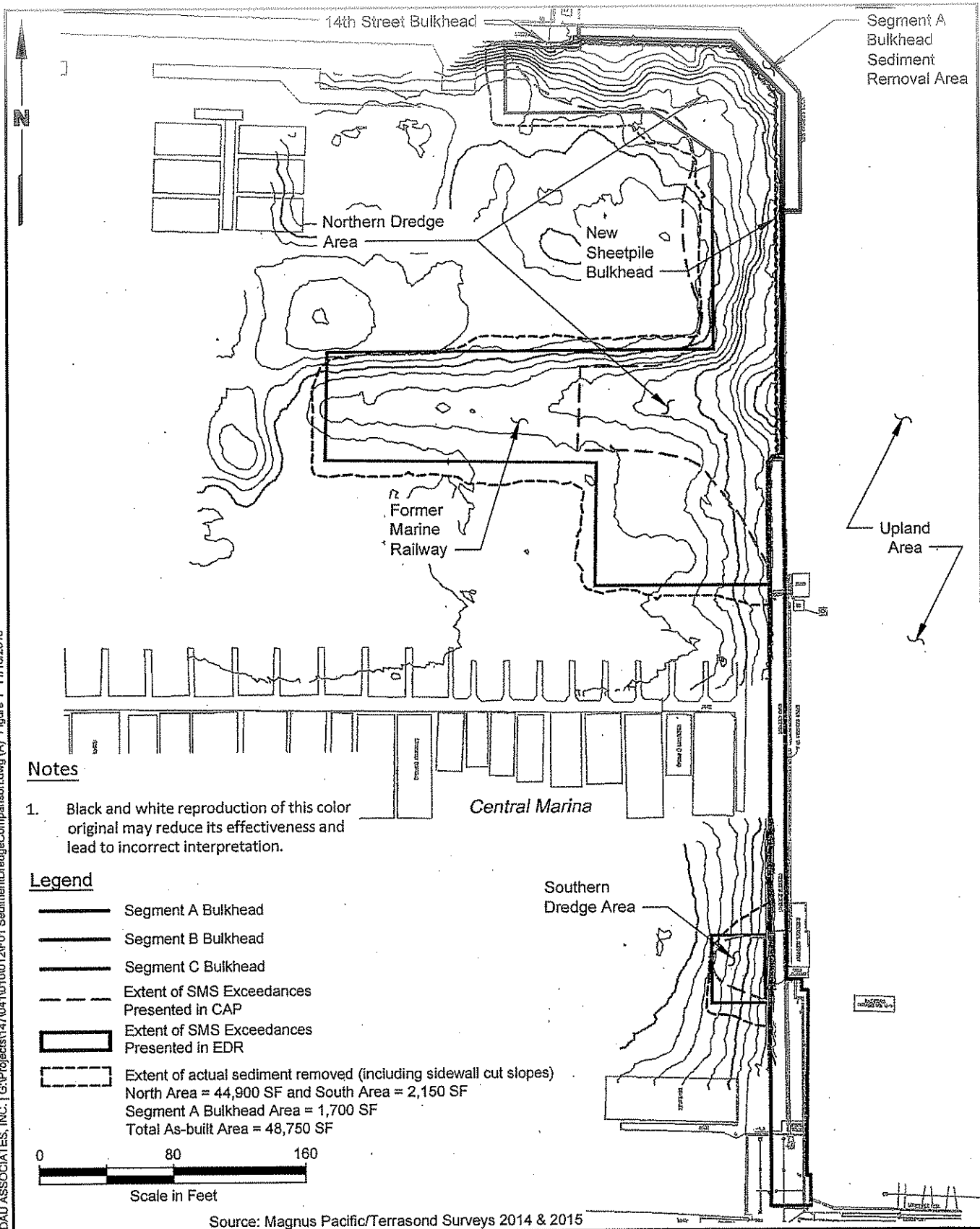
- Due to deteriorated conditions and the risk of failure during sediment removal, the creosoted timber bulkheads in the north dredge area were replaced with a new sheet pile bulkhead in order to allow sediment removal directly adjacent to the bulkhead. This deviation was documented in Section 4.0 of the Sediment Engineering Design Report (EDR) and its as-built drawing along with data will be recorded in the final Construction Completion Report. Following dredging, imported, clean backfill was placed on the marine side of the new bulkhead to increase the stability of the new bulkhead and return the sediment mudline to its pre-cleanup elevations.
- Instead of complete removal of all marine sediment exceeding cleanup levels, as specified in the CAP and Engineering Design Report (EDR), Ecology concurred with the Port's suggestion of capping of limited areas containing cleanup level

exceedances with clean imported granular fill materials. Complete removal of all marine sediment would have threatened the stability of the existing bulkhead (segment C), or areas adjacent to the new bulkhead in the northern dredge area where obstructions prevented dredging deeper. Bulkhead area capping was documented in Section 3.2 of the Sediment EDR. Ecology approved the capping of obstructions and residual materials along the new bulkhead in the north dredge area during a conference call with the Port on January 21, 2015 (as documented in a follow-up email from the Port to Ecology on January 23, 2015). The capped areas were all immediately adjacent to the bulkhead. All capped materials were located deeper than the planned post-dredging mudline elevation and outside of marina navigation areas, so the capped areas will not be affected by future marina maintenance dredging. As-built drawing along with data will be recorded in the final Construction Completion Report.

- The deviation in terms of area coverage/volume of contaminated sediment to be dredged between final field construction and CAP/EDR is explained in tabular form below and depicted in the attached Figure 1. A restrictive covenant for the In-Water Area where contamination remains above cleanup level is required to ensure the integrity of the capped area. The Port will record this restrictive covenant with the office of the Snohomish County Auditor within thirty (30) days of the entry of the First Amendment to Consent Decree with the Snohomish County Superior Court. The Port shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date. The Restrictive Covenant shall restrict future activities and uses in the In-Water Area of the Site. *See Decree’s Exhibit D.*

	Sediment Remedial Conceptual Design	Volume Removed, Cubic Yard	Removal Area, Square Feet
CAP	Estimated volume for the complete mass removal	4,800	25,000
EDR		9,000	40,250
As-built (final)	Actual Removal	9,500	48,750







LANDAU ASSOCIATES, INC. | G:\Projects\14704\10101012\F01 SedimentDredgeComparison.dwg (A) "Figure 1" 1/18/2015

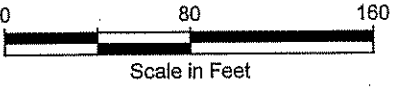


Notes

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

Legend

-  Segment A Bulkhead
-  Segment B Bulkhead
-  Segment C Bulkhead
-  Extent of SMS Exceedances Presented in CAP
-  Extent of SMS Exceedances Presented in EDR
-  Extent of actual sediment removed (including sidewall cut slopes)
North Area = 44,900 SF and South Area = 2,150 SF
Segment A Bulkhead Area = 1,700 SF
Total As-built Area = 48,750 SF



Source: Magnus Pacific/Terrasond Surveys 2014 & 2015



<p>Sediment Cleanup Action Everett Shipyard Site Everett, Washington</p>	<p>Sediment Dredge Prism Comparison CAP vs. EDR vs. As-Built</p>	<p>Figure 1</p>
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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT and ESY, INC.,

Defendants.

NO. 12-2-03430-1

DECLARATION OF
HUN SEAK PARK

RE: AMENDED CONSENT DECREE

I, HUN SEAK PARK, make the following declaration:

1. I am over the age of 18, competent to be a witness herein, and make this declaration in that capacity. I state the following based upon my personal knowledge.
2. I am employed as an Environmental Engineer at the Washington State Department of Ecology (Ecology), Toxics Cleanup Program, Headquarters Cleanup Section. I am the designated Site Manager for the Everett Shipyard Site, and I am therefore knowledgeable about matters relating to that Site.
3. The State of Washington, Department of Ecology (Ecology), Port of Everett (Port), and ESY, Inc. (ESY), entered into a Consent Decree for the Everett Shipyard Site, which was signed by this court and filed on March 7, 2012. Exhibit B to the Consent Decree, the Cleanup Action Plan, required the Port and ESY to conduct certain remedial actions at the

1 Site, which included removal of contaminated sediment. During remedial work in
2 January 2015, work crews found several unexpected obstructions adjacent to a bulkhead in the
3 In-Water Area of the Site. Ecology determined the obstructions prevented full removal of
4 contaminated sediment, as was required by the Cleanup Action Plan. To address this situation,
5 the parties agreed to cap the obstructed areas with clean material and record a restrictive
6 covenant for the parcel in question that will limit future in-water activities (to prevent
7 recontamination of the Site). The obstructed In-Water Area was capped with clean fill material
8 in February 2015.

9 4. To reflect the change to the work required by the 2012 Cleanup Action Plan, the
10 parties agreed to amend that Cleanup Action Plan and the 2012 Consent Decree, pursuant to
11 Section XV (Amendment to Decree) of the Consent Decree.

12 5. The draft Amended Consent Decree and amended Exhibit B (Amendment to
13 Cleanup Action Plan) to the Decree were subject to public notice and review. Ecology received
14 one comment during the public comment period, which Ecology reviewed, considered, and
15 responded to.

16 I declare under penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct.

18 DATED this 15 day of December 2016, at Olympia, Washington.

19 
20 HUN SEAK PARK

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**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF EVERETT and ESY, INC.,

Defendants.

NO. 12-2-03430-1

DECLARATION OF
JOHN A. LEVEL

RE: AMENDED CONSENT DECREE

I, JOHN A. LEVEL, make the following declaration:

1. I am now and at all times mentioned a citizen of the United States and a resident of the state of Washington, over the age of 18 years, competent to make this declaration, and have personal knowledge of the facts in this declaration.

2. I am an Assistant Attorney General assigned to represent the Plaintiff State of Washington, Department of Ecology (Ecology) in this matter involving the Everett Shipyard Site, and I am therefore knowledgeable about legal matters relating to that Site.

3. The State of Washington, Department of Ecology (Ecology), Port of Everett (Port), and ESY, Inc. (ESY), entered into a Consent Decree for the Everett Shipyard Site, which was signed by this court and filed on March 7, 2012. On December 1, 2016, I learned that the corporate entity ESY, Inc., a named Defendant in this action, had been administratively

1 dissolved on August 27, 2016. Exhibit A to my declaration is a true and correct copy of a
2 Certificate of Administrative Dissolution for ESY, Inc., issued by the State of Washington,
3 Secretary of State.

4 4. Since the corporate entity that was ESY, Inc., has been dissolved, the Amended
5 Consent Decree, the Joint Motion for Entry of Amended Consent Decree, and the Order
6 Entering Amended Consent Decree do not have signatures for representatives of ESY, Inc.

7 I declare under penalty of perjury under the laws of the state of Washington that the
8 foregoing is true and correct.

9 DATED this 27th day of December 2016, at Olympia, Washington.


10 
11 JOHN A. LEVEL

Exhibit A

UNITED STATES OF AMERICA

The State of



Washington

Secretary of State

ESY INC
ATTN: ATHENA S EITEL
PO BOX 688
EVERETT WA 98206

UBI NUMBER: 313 013 490

**CERTIFICATE OF
ADMINISTRATIVE DISSOLUTION**

In accordance with RCW23B the above entity is hereby administratively dissolved as of
AUGUST 27, 2012.

This action was taken due to the failure of the entity to appoint/maintain a registered agent/valid
physical registered office address within the time set forth by law.

A copy of this certificate is on file in this office:

Corporations Division
Office of the Secretary of State
801 Capitol Way South
P.O. Box 40234
Olympia, WA 98504-0234
(360) 725-0377



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Sam Reed, Secretary of State



June 25, 2012

ESY INC
ATTN: ATHENA S EITEL
PO BOX 688
EVERETT WA 98206

UBI: 313 013 490
LICENSE EXPIRATION: 10/31/2012

NOTIFICATION OF RESIGNATION OF REGISTERED AGENT

TO WHOM IT MAY CONCERN;

We have received resignation of JOHN P HAYES , who is shown on our records as the registered agent for your entity at the following registered office address:

901 FIFTH AVE # 1400
SEATTLE WA 98164

RCW 23B states the entity has 65 days from the date of this notice to appoint a new registered agent and designate a new current registered address within the state of Washington.

Use this link for the online Statement of Change form to update or confirm your agent information. <http://www.sos.wa.gov/corps/StatementofChangenowONLINE.aspx> A downloadable paper form is also available on the corporations home page. Select "File a Statement of Change." No filing fee applies to either of these forms.

**FAILURE TO MEET ABOVE FILING REQUIREMENTS WITHIN THE 65 DAY PERIOD
WILL RESULT IN ADMINISTRATIVE DISSOLUTION OF YOUR ENTITY.
THE EFFECTIVE DATE OF THIS DISSOLUTION WILL BE 8/27/2012.**

*Please call our office at 360-725-0377 if you have any questions.

Thank you,

Sally Woodley
Corporations Division

Enc

