

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

The Port of Tacoma

No. DE13921

at the Taylor Way and Alexander Avenue Fill
Area (TWAAFA) Site

TO: Port of Tacoma
C/o Scott Hooton
P.O. Box 1837
Tacoma, WA 98401-1837

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Tacoma (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Specifically, this Agreed Order requires the Port to implement an Interim Action Work Plan, prepare an Interim Action Report, and implement institutional controls. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

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

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Taylor Way and Alexander Avenue Fill Area (TWAAFA). The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently

known to Ecology, the Site is generally located at the 1500 Block of Taylor Way East in Tacoma, Washington, as shown in the in the Site Location Diagram (Exhibit A).

The Site includes the following properties:

(1) The former CleanCare Corporation facility, which is located on Pierce County Assessor's Parcel Numbers (APNs) 0321352066, 0321352054, and 0321352050 (CleanCare Parcels);

(2) Portions of the PSC facility, including APNs 0321352043, 0321352044, 0321352053, 0321352062, 0321263003, and 0321263024 (PSC Parcels); and

(3) Portions of the following properties owned by the Port (Port Parcels): APNs 0321356008, 0321267005, and 0321355007 (Former ProLogis Property), APN 0321352063 (Potter Property), and APNs 0321263045 and 0321352064 (Hylebos Marsh).

B. Interim Action Area: Refers to the portion of the Site where the interim action will occur under this Agreed Order, which consists of the following properties owned by the Port: APNs 0321356008, 0321267005, and 0321355007 (Former ProLogis Property).

C. Potentially Liable Person (PLP): Refers to the Port of Tacoma (Port) for purposes of this Agreed Order implementing an interim action on the Former ProLogis Property. The following parties have also been named as PLPs for the entire TWAAFA Site: David Bromley (also known as Mr. David E. G. Bromley); Donald Oline; the Port of Tacoma (Port); General Metals of Tacoma (General Metals); Occidental Chemical Corporation (Occidental); Stericycle Environmental Solutions, Inc. (Stericycle); Burlington Environmental, LLC (also known as PSC), a wholly-owned subsidiary of Stericycle; and Potter Property, LLC (Potter). Ecology may identify additional parties, not currently identified in this Order, as PLPs in the future based upon credible evidence.

D. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and the Port.

E. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

F. Public Review Draft: Designation for a document that has been reviewed by Ecology and approved as ready for public comment.

G. Final: Designation for a document after public comment and Ecology approval.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

All Site Parcels

- A. Prior to the 1930s, the area consisted of tidal marsh/tide flats of the Puyallup River Delta. Dredging of the Blair and Hylebos Waterways and filling the intervening land (including the Site) with dredge spoils likely occurred at least once during each decade from the 1930s through the 1970s. By the late 1960s, the Site and surrounding area had been partially filled with dredge spoils from nearby waterways, resulting in a freshwater marsh 5 to 6 feet above the former saltwater marsh.
- B. During the late 1960s to early 1980s, Mr. Donald Oline operated an unpermitted landfill at the Site (Landfill). Materials discarded and used as fill at the Landfill included lime solvent sludge, byproducts of auto scrapping (auto fluff), wood waste, and other lime wastes.
- a. Lime solvent sludge was transported to the Landfill from the Hooker Chemical Company (which later became Occidental) facility. Those lime solvent sludges were contaminated with trichloroethylene (TCE), tetrachloroethylene (PCE), and vinyl chloride.
 - b. Auto fluff was transported to the Landfill from the General Metals facility. Elevated concentrations of arsenic, cadmium, chromium, copper, lead, zinc, and PCBs have been detected in auto fluff samples from the Site.

- C. Information from previous studies and reports establishes that the TWAAFA Site's soil and/or groundwater are contaminated with total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), pesticides, and metals at concentrations that exceed MTCA cleanup standards. In addition, the Site's indoor air may contain concentrations of one or more VOCs that exceed cleanup levels, and methane concentrations represent a potential fire and/or explosion hazard for buildings and subsurface structures at the Site.
- D. Ecology believes that the VOCs, SVOCs, PCBs, and metals contamination present at the TWAAFA Site is primarily a result of releases from the auto fluff and/or lime solvent sludge wastes that were disposed of at the Landfill. Ecology believes that the TPH contamination present at the Site is primarily a result of releases from operations at the former CleanCare facility and the former Chempro/PSC facility.
- E. Additional relevant information about the TWAAFA Site is contained within the following document: GeoEngineers, *Data Summary and Conceptual Site Model, Taylor Way and Alexander Avenue Fill Site, Prepared for the Port of Tacoma*, July 1, 2008.

Interim Action Area (Former ProLogis Property)

- F. This property was first developed by Mutual Fir Column Company and/or Buffelen Lumber and Manufacturing in the 1920s for lumber milling and planing. This use continued until 1975, when the property was leased to Lindal Cedar Homes for manufactured home construction. However, most of APN 0321267005 and the southern portion of APNs 0321356008 and 0321355007 remained as wetlands/marsh until they were filled-in during the 1970s.
- G. AOL Express, a trucking company, operated at the property from August 1983 until 1992. Other warehouse operators included Gateway Consolidators (1984) and APR Freight Forwarders and Carr-Gottstein Foods, also known as JB Gottstein (1987-2000).
- H. In 1990, total petroleum hydrocarbons – gasoline range (TPH-G) soil and groundwater contamination from a leaking underground storage tank (UST) was discovered. This

contamination was cleaned up on behalf of AOL Express, and in June 2000, Ecology issued a No Further Action determination for the UST TPH-G release.

- I. In 1989, ProLogis purchased the property. By 2000, ProLogis had subdivided the property into the current parcel divisions and demolished the former lumber facility and warehouse buildings. Sometime after 2000, ProLogis constructed a stormwater detention pond on APNs 0321356008 and 0321355007.
- J. In January 2005, ProLogis entered into Ecology Agreed Order DE 04TCPSR-1160 to perform a remedial investigation (RI) and feasibility study (FS).
 - a. As part of the RI, ProLogis investigated potential releases of hazardous substances that may have been caused by industrial and/or fill activities historically conducted on the ProLogis Property or on adjoining properties. Sampling results showed that the following contaminants of concern are present within the Interim Action Area in concentrations that exceed MTCA cleanup standards: TPH, SVOCs, and metals.
 - b. The ProLogis FS recommended capping the contaminated soils with pavement or buildings in conjunction with Site redevelopment as the preferred remedy. This preferred remedy was designed to address the primary pathway of concern (groundwater to marine surface water) by eliminating or reducing the leaching of fill soils and subsequently reducing recharge of the fill aquifer in order to maintain and/or improve groundwater quality.
 - c. In December 2005, Ecology received the final RI/FS report and confirmed that the scope of work associated with Agreed Order DE 04TCPSR-1160 was completed. The final RI/FS report is available in the following documents:
 1. Floyd Snider, *ProLogis Taylor Way Property, Remedial Investigation*, October 2006.
 2. Floyd Snider, *ProLogis Taylor Way Property, Feasibility Study*, December 2006.

K. The Port purchased the Former ProLogis Property in 2007. The property was vacant until 2015, when the Port used it for temporary storage of new automobiles.

L. In November 2016, the Port entered into a lease agreement with real estate developer Avenue 55, LLC (Avenue 55) for the purpose of redeveloping the Former ProLogis Property. The agreement requires Avenue 55 to obtain all necessary permits, consents, and approvals, including a Determination of Non-Significance under the State Environmental Policy Act (SEPA DNS). The agreement also establishes issuance of this fully-executed Agreed Order as a prerequisite to the enforceability of the lease.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Port.

A. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

B. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated August 8, 2007, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated November 19, 2007.

C. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

D. Under WAC 173-340-430, an interim action is a remedial 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, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan.

The Avenue55 lease agreement described in Section V.L contemplates the construction of a warehouse building on the parcels located within the Interim Action Area. Performing an interim action in conjunction with this redevelopment will result in a faster and more cost effective cleanup of this portion of the Site than would otherwise occur under the broader cleanup process for the entire TWAAFA Site. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430.

Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.G If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site and that these actions are conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. Interim Action Work Plan

The Port shall implement and complete the remedial activities described in the 1514 Taylor Way Development Interim Action Work Plan (IA Work Plan). The Public Review Draft IA Work Plan was approved by Ecology by e-mail dated June 19, 2017, and is attached as Exhibit B to this Order. The interim action consists of capping contaminated soil with asphalt pavement and/or warehouse buildings constructed during property redevelopment. Before construction, approximately 2 to 4 feet of clean fill will likely be placed on top of the existing Interim Action Area surface in order to raise the grade elevation. If placed prior to construction, this clean fill

will serve as an additional cap/cover over contaminated soil. The interim action will also involve the following remedial activities: abandonment of groundwater monitoring wells within the Interim Action Area; performance of a methane hazard assessment to evaluate the potential hazard to new buildings and structures at the site as a result of methane vapors; soil gas sampling; contingent design, installation, and testing of a methane and/or soil gas mitigation system (Vapor Mitigation System); contaminated soil handling and disposal; groundwater handling and disposal; stormwater management; clean fill stockpile management; and health and safety monitoring.

The methane hazard assessment shall be performed in accordance with ASTM E2993-16, *Standard Guide for Evaluating Potential Hazard as a Result of Methane in the Vadose Zone*. All sampling shall be done in accordance with the IA Work Plan and with Section VIII.E (Sampling, Data Submittal, and Availability) of this Order.

B. Methane Survey and Vapor Intrusion Assessment Report

Within 30 days of the receipt of validated sample results and no later than 120 days from the date of sampling, the Port shall submit a draft Methane Survey and Vapor Intrusion Assessment Report for Ecology review and approval. This report shall include a design and installation schedule for the Vapor Mitigation System if data indicate that methane hazard and/or vapor intrusion may occur. The Port shall incorporate Ecology's comments on the draft report according to the Schedule of Work and Deliverables (Exhibit C).

C. Interim Action Report

Within 60 days of the completion of ground disturbing work, hardscape installation, and installation of the Vapor Mitigation System (if required by Ecology), the Port shall submit a draft Interim Action Report for Ecology review and approval. This report shall include a description of the as-built Vapor Mitigation System (if installed), its design and performance specifications, and data and observations collected to demonstrate that the system is performing as designed. The Port shall incorporate Ecology's comments on the draft report according to the Schedule of Work and Deliverables (Exhibit C).

D. Operation and Maintenance (O&M) and Sampling and Analysis Plan

If Ecology requires the Port to install the Vapor Mitigation System, the Port shall submit a draft O&M and Sampling and Analysis Plan for Ecology review and approval within 45 days of the completion of installation. This plan shall describe those activities that will commence post-installation to verify on-going system performance and achievement of mitigation goals, such as inspections, monitoring, and O&M training for the property owner and/or tenant. The plan shall also include roles and responsibilities and a schedule for all proposed and anticipated post-installation activities. The Port shall incorporate Ecology's comments on the draft plan according to the Schedule of Work and Deliverables (Exhibit C).

E. Pursuant to WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), all interim action-related data collected previous to and after the issuance of this Order shall be submitted to Ecology in electronic format. Data collected after the effective date of this Order shall be submitted within 30 days of validated sample results. Data collected previously (such as the 2016 groundwater data and the 2016 methane survey) shall also be entered within one year of the effective date of this Order. For additional information regarding electronic format requirements, see <http://www.ecy.wa.gov/eim>. These data submittal requirements also apply to data collected during the remedial investigation and feasibility study (RI/FS) and subsequent monitoring conducted under this Order (see Section VIII.E).

F. All plans or other deliverables submitted by the Port for Ecology's review and approval under the Schedule of Work and Deliverables (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

G. If Ecology determines that the Port has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action or at Ecology's discretion allow the Port the opportunity to correct. The Port shall reimburse Ecology for the costs of doing such work in accordance with Section VII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

H. Ecology recognizes that this interim action is part of a redevelopment effort as described in this Agreed Order and in the IA Work Plan (Exhibit B). In the event that the redevelopment is no longer a viable project due to a substantial change in circumstances that is beyond the Port's control (e.g., Avenue55 unilaterally withdraws from its agreement with the Port or otherwise defaults on its lease, and does not proceed with the redevelopment project), Ecology will consider renegotiating the scope and schedule of the IA Work Plan with the Port.

I. Except where necessary to abate an emergency situation, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order 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 RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the effective date of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$3,663.86 in remedial action costs related to the interim action for this Site as of March 31, 2017. For all Ecology costs incurred, the Port 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 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Steve Teel
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6247

The project coordinator for the Port is:

Scott Hooton
Port of Tacoma
Environmental Project Manager
P.O. Box 1837
Tacoma, WA 98401
(253) 383-9428

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order 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 Order.

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.

C. Performance

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

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

All construction work performed pursuant to this Order 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 by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The Port 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 Order, in advance of their involvement at the Site.

D. Access

For activities conducted under this Order, Ecology or any Ecology authorized representative shall have access to enter and freely move about all property within the Interim Action Area that the Port 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 Order; reviewing the Port's progress in carrying out the terms of this Order; 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 Order; and verifying the data submitted to Ecology by the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Interim Action Area not owned or controlled by any member of the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by a member of the Port unless an emergency prevents such notice. All persons who access the Interim Action Area 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.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Preliminary data shall also be provided to Ecology for interim review as soon as it becomes available. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), 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 Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify the Port 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

A Public Participation Plan is required for this Interim Action. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the Port.

Ecology shall maintain the responsibility for public participation with respect to the Interim Action Area. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and 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.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed during the Interim Action with the interested public and/or local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and/or local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Tacoma Public Library
1102 Tacoma Avenue South
Tacoma, WA 98402
(253) 292-2001
- b. Citizens for a Healthy Bay
535 Dock Street, Suite 213
Tacoma, WA 98402
(253) 383-2429

- c. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
(360) 407-6045

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Interim Action shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington, except for archived records which are stored at State Archives in Olympia, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Port shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Port may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the Port withholds any requested records based on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the Port elects to invoke dispute resolution the Port must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the Port has fourteen (14) calendar days

within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; the Port's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The Port may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. 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.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the

work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. The Port's request for 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:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Port 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:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Port 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 Port;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (Endangerment).

However, subject to the exception set out in Section VII.H, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order.

A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. 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:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Port. Ecology will provide its consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Port shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

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

In the event the Port determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port 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. Upon Ecology's direction, the Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Port'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 VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the Port does not admit to any liability for the Site. Although the Port is committing to conducting the work required by this Order under the terms of this Order, the Port expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. 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 Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order 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 notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. All actions carried out by the Port pursuant to this Order 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. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The Port has a continuing obligation to identify additional applicable federal, state, and local

requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order.

2. All actions carried out by the Port pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order.

3. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) which have been issued by local government, the Parties agree that Ecology has the ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The Port 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 Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port 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 Port and on how the Port must meet those requirements. Ecology shall inform the Port in

writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 Port 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 or approvals.

O. Land Use Restrictions

As detailed in the IA Work Plan (Exhibit B), institutional controls are required for the parcels within the Interim Action Area. Environmental (Restrictive) Covenants will be used to implement the institutional controls. In consultation with Ecology, the Port will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the parcels within the interim action area as agreed to by Ecology and the Port.

After approval by Ecology, the Port shall record the Environmental (Restrictive) Covenants for their respective affected properties with the office of the Pierce County Auditor as detailed in the Schedule of Work and Deliverables (Exhibit C). The Port shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

P. Indemnification

The Port 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Port, their officers, employees, agents, or contractors in entering into and implementing this

Order. However, the Port 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 Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT


Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

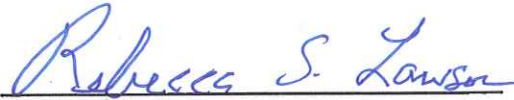
Effective date of this Order: 7/31/2017

PORT OF TACOMA



John Wolfe
Chief Executive Officer
Port of Tacoma
(253) 383-5841

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

EXHIBIT A
SITE LOCATION DIAGRAM

**Exhibit A: Site Plan Showing Generalized Landfill Extent
Taylor Way and Alexander Avenue Fill Site**

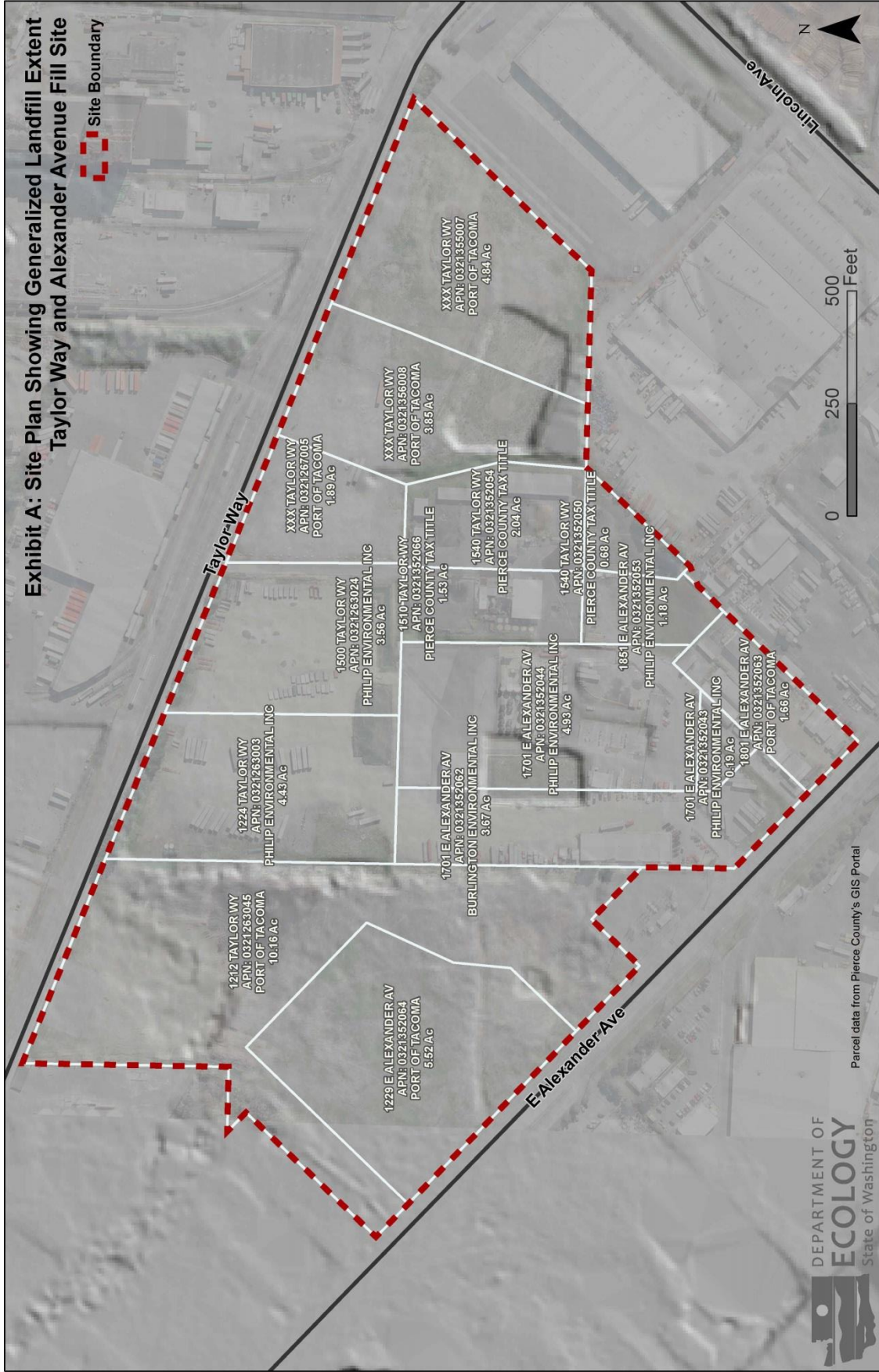
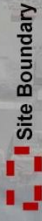


EXHIBIT B
1514 TAYLOR WAY DEVELOPMENT
INTERIM ACTION WORK PLAN

EXHIBIT C

Schedule of Work and Deliverables (page 1 of 2)

Deliverable/Task	Schedule
<u>Begin implementation of Interim Action Work Plan</u>	Immediately after the effective date of this Order.
<u>Submittal of draft Methane Survey and Vapor Intrusion Assessment Report (including design of Vapor Mitigation System if required by Ecology)</u>	Within 30 days of receipt of validated sample results and no later than 120 days from the date of sampling. Ecology's comments shall be incorporated and a revised plan shall be submitted to Ecology within 30 days of the date of Ecology's comment letter.
<u>Submittal of draft Interim Action Report</u>	Within 60 days of the completion of ground disturbing work, hardscape installation, and installation of the Vapor Mitigation System (if required by Ecology). Ecology's comments shall be incorporated and a revised plan shall be submitted to Ecology within 30 days of the date of Ecology's comment letter.
<u>Submittal of draft O&M and Sampling and Analysis Plan</u>	Within 45 days of the completion of installation. Ecology's comments shall be incorporated and a revised plan shall be submitted to Ecology within 30 days of the date of Ecology's comment letter.
<u>Submittal of data collected under this Order in electronic format to EIM</u>	Within 30 days of receipt of validated sample results and no later than 120 days from the date of sampling.
<u>Submittal of data collected prior to effective date of this Order</u>	Within 1 year of the effective date of this Order.

EXHIBIT C

Schedule of Work and Deliverables (page 2 of 2)

Deliverable/Task	Schedule
<u>Submittal of draft Environmental (Restrictive) Covenant(s)</u>	Within 45 days of completion of installation.
<u>Record Environmental (Restrictive) Covenant(s)</u>	Within 10 days of Ecology's approval of the draft Environmental (Restrictive) Covenant(s). The original recorded covenant(s) shall be provided to Ecology within 30 days of the recording date.