

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

UNITED STATES DEPARTMENT
OF THE NAVY.

AGREED ORDER

No. DE 12817

TO: UNITED STATES DEPARTMENT OF THE NAVY
Attention: Jackie Queen
2000 West Marine View Drive, Room 225
Everett, WA 98207

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and the United States Department of the Navy (Navy) under this Agreed Order (Order), executed pursuant to the Model Toxics Control Act (MTCA) RCW 70.105D, the Hazardous Waste Management Act (HWMA) RCW 70.105, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. § 9601, et seq., is to ensure the completion of remedial investigation and feasibility study (RI/FS) and preparation of a draft cleanup action plan (DCAP) at a Site where there has been a release or threatened release of hazardous substances.

On February 16, 2016, Ecology executed an Agreed Order (No. DE 11350) with Kimberly-Clark Worldwide, Inc. (K-C), Port of Everett (Port), and the Washington State Department of Natural Resources (DNR). That Agreed Order (hereinafter, Agreed Order 11350) requires K-C, the Port, and DNR to conduct a RI/FS per WAC 173-340-350 and WAC 173-204-560, and to develop a DCAP per WAC 173-340-350 through 173-340-380 and WAC 173-204-560 through and 173-204-580, addressing potential in-water (e.g., marine sediment) contamination at the East Waterway Site (Site).

This Order requires the Navy to cooperate with the PLPs under Agreed Order 11350 (i.e., K-C, the Port, and DNR). Navy cooperation includes, but is not limited to, providing access to its property, available data, and review and comment on draft reports to ensure the completion of the RI/FS and DCAP by the PLPs under Agreed Order 11350. Ecology believes the actions required by this Order are in the public interest.

B. This Order shall not be construed as proof or admission of liability or responsibility for any releases of hazardous substances or costs for the completion of the RI/FS and preparation of a DCAP, or an admission of any factual or legal findings, conclusions or determinations contained in the Order.

II. JURISDICTION

This Order is issued pursuant to 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 Navy agrees to undertake all actions required by the terms and conditions of this Order. The Navy 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, WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the East Waterway Site and is generally located in the Everett Harbor area (along the industrialized waterfront), directly west of downtown Everett. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. For areas landward of the ordinary high water mark Ecology will seek to implement another agreement with the Navy, if necessary. Based upon factors currently known to Ecology, the Site is generally described in the Site location map and vicinity diagram provided in **Exhibit A**, Figures 1 and 2. The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology and the United States Department of the Navy.

C. Potentially Liable Person (PLP): Means any person Ecology finds, based on credible evidence, to be liable under RCW 70.105D.040. The PLPs for the Site, as determined by Ecology, include K-C, the Port, the Navy, and DNR.

D. 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.

E. Remedial Investigation/Feasibility Study: Means a remedial action that consists of activities conducted to collect, develop, and evaluate sufficient information regarding a site to select a cleanup action.

F. Remedial Action: For purposes of this Order means the RI/FS and preparation of the DCAP.

G. Draft Cleanup Action Plan (DCAP): Means the draft document that selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action.

H. Interim Remedial Action: Means a remedial action conducted under WAC 173-340-430.

V. FINDINGS OF FACT

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

A. The East Waterway is located in the Everett Harbor area (along the industrialized waterfront) at the mouth of the Snohomish River, directly west of downtown Everett, Snohomish County, Washington. The Site location is depicted in the diagram attached to this Agreed Order as **Exhibit A**. The Facility Site ID No. is 2733 and the Cleanup Site ID No. is 4297.

B. K-C is an owner and an operator at the Site. Predecessors in interest to K-C operated a pulp and paper mill at East Waterway from about 1931 until 1995, when K-C merged with Scott Paper Company. K-C operated the facility from 1995 until its shutdown in April 2012.

C. The Navy is an owner and an operator at the Site. The Navy owned and operated a Naval Industrial Reserve Shipyard at East Waterway, which included portions of East Waterway tidelands, from about 1942 to 1960. In 1986, the Navy re-purchased the land that was once used for its shipyard operations from the Port and developed its current Naval Station Everett.

D. The Port is an owner and an operator at the Site. The Port currently owns and operates several marine terminals (i.e., Hewitt, Pacific, and South Terminal) located at East Waterway. In addition, the Port is a former owner and operator of properties that are currently owned by the Navy at East Waterway. Those properties were also owned and/or operated, at

various times, by Pacific Tow Boat Company (Pacific Tow Boat) and Foss Launch & Tug Co. (Foss), among others.

E. DNR is the manager of the State-owned aquatic lands under constitutional and statutory mandates. Title 79 RCW authorizes DNR to lease state-owned aquatic lands. On September 1, 2002, DNR entered into a Port Management Agreement (PMA) with the Port of Everett (Port) that is effective until August 31, 2032. Under the PMA, DNR delegated to the Port the management of “State-owned aquatic lands” within East Waterway as shown in **Exhibit A**, Figure 3. RCW 79.105.420 authorizes DNR and the Port district, upon request of a Port district, to enter into an agreement to manage “State-owned aquatic lands” that front property owned or controlled by the Port district.

F. Historical operations and current property status of the Site are summarized below.

1. Sanborn maps published in 1902 and 1914 show that the current K-C Site (between Everett Avenue and 21st Street) was occupied by the Clark-Nickerson Lumber Company (planing and saw mill) and the Everett Flour Mill Company.
2. Puget Sound Pulp and Timber Company formed in 1927, and in 1936 the Soundview Pulp Company assumed ownership. The sulfite pulp mill began operation in 1931 with five digesters and two pulp drying machines.
3. Soundview Pulp Company merged with Scott Paper Company in 1951 and four Scott tissue machines were added to the facility from 1953 to 1955. The current distribution/warehouse facility located on the south end of the site was constructed in 1959.
4. K-C and Scott Paper Company merged in 1995 and K-C was later registered as owner of the pulp and paper mill.
5. K-C continued pulp and paper mill operations until all manufacturing at the K-C mill ceased on April 15, 2012. Prior to this (on March 30, 2012), K-C submitted permit applications and a State Environmental Protection Act (SEPA) checklist with the City of Everett for demolition activities proposed for its mill. The activities included demolition of the K-C mill facility upland from the shoreline, not including any structures or utilities wholly located more than 2 feet below existing grade. The purpose of the mill demolition was, following facility closure, to prepare the property for sale. The City of Everett issued a final determination of non-significance (DNS) related to these activities on May 25, 2012. Demolition of the K-C mill started in summer 2012 and was completed in July 2013.

6. On December 20, 2012, Ecology and K-C entered into Agreed Order DE 9476 for performing an RI/FS, conducting opportunistic interim actions (*i.e.*, removal of contamination in the uplands), and preparation of a DCAP for the K-C upland area. This work is currently being conducted by K-C per the Agreed Order.
7. **Mill Production** – The sulfite mill produced approximately 500 tons per day of bleached sulfite pulp as reported in 1942. After 2007, the sustainable production capacity of the mill was estimated at 440 tons per day, with a maximum capacity of 450 tons. The sulfite pulping process involves cutting logs into wood chips which are then digested in a limestone and sulfur solution. The limestone and sulfur are treated to produce sulphurous acid, which was used in the cooking process. According to Ecology’s industrial section, the mill was converted to an ammonia-based sulfite process in 1974 and a recovery furnace was built.
8. **Wood Chipping and Log Rafting** – The facility contained a log pond that was used for temporary storage of logs that were rafted to the mill. **Exhibit A** Figures 4 to 7 show the log pond. The logs were chipped on-site. The log chipping equipment was removed and operations were discontinued at the mill in 1970. The log pond was filled in sometime between 1979 and 1981. In addition to the on-site chipping operations, K-C also barged wood chips to the mill for use in pulp and paper manufacturing during its operational history.
9. **Surface Water Discharges** – Until 1951, all wastewater from the mill was discharged untreated to the In-Water Area at outfalls located adjacent to the facility. It was reported in 1949 that the K-C mill discharged approximately 45 million gallons of wastewater daily into the In-Water Area. Wastewater from the K-C mill, which was discharged through up to seven on-site sewers (*see Exhibit A*, Figure 11), largely consisted of concentrated sulfite waste liquor (SWL), waste bleach water, and pulp fiber wash water. In 1951, concentrated SWL from the mill was re-routed to a deep-water outfall (Outfall SW001) located south of the facility in the vicinity of the former Weyerhaeuser Mill A pulp and paper mill (*see Exhibit A*, Figure 12). Concentrated SWL from the Weyerhaeuser Mill A mill operation was also discharged through Outfall SW001 at this time. Outfall SW001 extended about 3,000 feet offshore; the terminal one-third was a multiple-port diffuser that discharged at depths of about 300 to 340 feet.

In 2004, K-C constructed for itself and the City of Everett a joint deepwater outfall replacement project (Outfall 100) to replace deep water Outfall SW001, which was dilapidated and demolished in the nearshore area. Outfall 100 is located in the same general vicinity as former Outfall SW001 (*see Exhibit A*, Figure 12). Outfall 100 became fully operational in 2005. Under its National Pollutant Discharge Elimination System (NPDES; Permit No. WA-000062-1) permit, K-C was authorized to discharge treated process wastewater, storm water, and non-contact cooling water from deep water Outfall 100. Regional municipal wastewater from the Cities of Everett and Marysville was and continues to be discharged through Outfall 100. K-C was also authorized to discharge treated process wastewater, storm water, and non-contact cooling water from Outfalls 003 and 008 in emergencies and shutdowns. Outfalls 003

and 008 are identified on **Exhibit A**, Figure 11. On September 5, 2012, K-C sent Ecology's Industrial Section a notice of their intent to surrender NPDES permit WA-000062-1. Ecology's Industrial Section sent K-C correspondence on September 19, 2012 that NPDES permit WA-000062-1 was terminated.

10. **Wastewater Treatment** – In July 1965, the mill put into operation waste sedimentation facilities (with two primary clarifiers) and an interceptor sewer system (*see Exhibit A*, Figure 6). Prior to implementation of this system in 1965, mill wastes were directly discharged untreated to the In-Water Area through seven sewers, or to deep-water Outfall SW001 as discussed in subparagraph 9 of paragraph F, section V. An industrial wastewater treatment plant was constructed at the K-C mill in 1979 and put on-line in January 1980 (**Exhibit A**, Figures 8 and 9). The plant included two secondary clarifiers and secondary aeration basins.
11. **Bulk Petroleum Operations** – In addition to the pulp and paper operations, bulk petroleum storage operations were conducted on the Site. These bulk petroleum storage operations included fuel storage facilities operated by Associated Oil Company (predecessor to Texaco) and Standard Oil (predecessor to Chevron). As early as 1930, Associated Oil Company and Standard Oil occupied the area underneath the K-C distribution/warehouse. Bulk petroleum storage operations associated with Associated Oil and/or Standard Oil are identified on aerial photographs from 1947 to 1992 as presented in **Exhibit A**, Figures 4 through 9. In about 1994-1995, the mill switched from Bunker C oil to diesel as fuel for the facility's Number 14 boiler. At that time, the most eastern tank located just north of the distribution warehouse was replaced with a 250,000-gallon diesel above ground storage tank (AST; *see Exhibit A*, Figure 10). The original tank at this location stored sulfite liquor.
12. **Hazardous Waste** – During its operation, the K-C facility was a Resource Conservation and Recovery Act (RCRA) regulated waste generator. The facility generated more than 2,200 pounds/month of RCRA regulated wastes. As a result, the facility was a "Large Quantity Generator" of dangerous wastes and is subject to the accumulation standards of WAC 173-303-200.

Ecology conducted a dangerous waste inspection at the facility on November 16, 2009 and identified the following waste streams to be present at that time: polychlorinated biphenyl (PCB) ballast, fluorescent lights, used oil, paint, thinner, desiccant, dye, mortar containing lead, grease, paint chips with lead, spray cans, and lab waste. As part of the decommissioning and demolition of the mill, K-C prepared a closure report that documented the RCRA clean closure of the former pulp and paper mill, including its Hazardous Waste Accumulation Unit (HWAU). Ecology's Industrial Section approved this report on November 12, 2013.

G. Navy historical operations are summarized below.

1. The Navy purchased a mole/dike (constructed by the Port in the early 1930s) and adjacent East Waterway tidelands (close to 85 acres) over a span of two

years (1942 to 1943) for the development of their Naval Industrial Reserve Shipyard. The Naval Industrial Reserve Shipyard was used in part to accommodate ships undergoing repair and for the launching and final outfitting of new vessels. The approximate boundary of the Navy's Industrial Reserve Shipyard is presented on **Exhibit A**, Figures 4 to 10.

2. The Naval Industrial Reserve Shipyard, initially operated by the Everett Pacific Shipbuilding and Drydock Company, included a series of docking facilities (Piers A to E), drydock areas, ship building platforms (a.k.a., shipways), and associated storage, fabrication, and assembly structures. Ship building platforms and drydock areas were located on the inner harbor side of the central mole, with fabrication, assembly, and rigging shops located along the western edge of the central mole (**Exhibit A**, Figure 4). Facilities on the north mole included machine, electrical, metal, and pipe shops along with offices and storage areas (**Exhibit A**, Figure 4). Paint shops were associated with five docking piers: three piers (A, B, and C) were located on the central mole, and two piers (D and E) on the inner harbor side of the north mole (**Exhibit A**, Figure 4). It was reported that during World War II, Everett Pacific Shipbuilding and Drydock Company built net laying ships, non-self propelled barracks ships, self-propelled covered lighters, barges, little harbor tugs, and mobile drydocks at the Navy Industrial Reserve Shipyard in Everett. Larger ships were repaired at the piers. The Naval Industrial Reserve Shipyard was operated from 1942 to 1944 by Everett Pacific Shipbuilding and Drydock, and then Pacific Car and Foundry bought the business in 1944. The shipyard operated until 1949, however the Navy maintained ownership until the early 1960s using it in part for their Military Sea Transportation Service (MSTS) Reserve Fleet.
3. In 1959, the Pacific Car and Foundry Company maintained and protected the shipyard at the expense of the Navy. In the early 1960s, the majority of the Navy property was sold to private parties which reportedly included the Scott Paper Company (now K-C), Western Gear, and Foss.
4. In around 1987, the Navy re-purchased the land that was once used for its shipyard operations and developed its current Naval Station Everett (**Exhibit A**, Figures 9 and 10). The Navy purchase included the Port's Pacific Terminal and the Western Gear Property (about 53 acres), and the Port's 80-acre Norton Terminal. *See* paragraph I, section V. *infra* for a summary of Western Gear operations. The Port's Pacific and Norton Terminals were formerly located at the head of East Waterway as shown on **Exhibit A**, Figure 8. As part of the development of Naval Station Everett, the Navy dredged portions of the East Waterway in the vicinity of its two carrier piers and associated breakwater which are shown on **Exhibit A**, Figure 10. The Navy's current property boundary is shown on **Exhibit A**, Figures 4 to 10.
5. In addition to the Navy Shipyard discussed in subparagraphs 1–3 of paragraph G, section V., the Navy constructed a Naval Reserve Center (NRC) in 1947 on lands formerly occupied by the Clark-Nickerson Company planing and sawmill (**Exhibit A**, Figures 4 to 9). The former NRC served as the administrative and operations base for local naval reserve activities. From

1947 until about 1981, naval vessels regularly docked at the former NRC pier. The NRC is shown in **Exhibit A**, Figures 4 to 10). The NRC facility was on a 3.72-acre plot of land and included a main facility (Building No. 1) that consisted of 34 rooms including a garage/shop, boiler room, and diesel generator room. Building No. 2, located just east of Building No. 1, was a former indoor pistol and rifle range that had been renovated and contained classrooms, administrative areas, and a large machine, wood, and sewing shop. Buildings 1 and 2 are shown on **Exhibit A**, Figure 5. Other site features included a paved parking area, a storage shed for paints and associated chemicals, a shed housing a bilge water tank (removed), a valve house, and a pier. Two diesel underground storage tanks (USTs; 5,000 gallon Tank 1 and 3,000 gallon Tank 2) were located immediately south of the boiler room, and supplied fuel for the steam boiler and electrical generator. In the mid-1990s, as part of a Land Exchange Agreement with K-C, the Navy exchanged their NRC property for a K-C owned parcel located north of the current K-C northern boundary. As part of the Land Exchange Agreement, the Navy removed the two diesel USTs (in July 1996) and conducted remediation of environmental contamination resulting from these tanks and other Navy actions at the former NRC. Sampling conducted as part of the K-C upland area RI/FS (under Agreed Order DE 9476) in the area formerly occupied by the NRC showed that there is still contamination in this area. Further investigation and an interim action cleanup of the NRC area were conducted by K-C under the K-C upland area Agreed Order (DE 9476).

H. Port of Everett (Port) historical operations are summarized below.

1. In 1930, the Port produced a proposal to construct a mole or dike extending from 21st Street into the Snohomish River channel to form the East Waterway. The proposal included improvements to the breakwater jetty and dredging of a deep-water loading basin adjacent to the Clark-Nickerson operation.

The Port purchased Tract 0 in 1931, and the initial phase of construction was completed by 1932 (*see* mole configuration on **Exhibit A**, Figure 10). The improvements consisted of two bermed and filled extensions including the main mole and a loading facility for the Clark-Nickerson operation, the latter extending into the present East Waterway area south of 21st Street. As noted in subparagraph 1 of paragraph G, section V., the Navy purchased the mole/dike in the early 1940's along with East Waterway tidelands.

2. The Navy sold its properties (except for the NRC) to private parties in the early 1960s, including affiliates of Foss. The Port re-purchased a portion of the former Navy property (i.e., areas surrounding Piers B, D, and E along the East Waterway), including adjacent submerged and filled lands north of the former Navy property in the early to mid 1970s. The re-purchased Port properties included the Norton Terminal (upland area) and the Pacific Terminal (area surrounding Piers B, D, and E along the East Waterway) as shown on **Exhibit A**, Figures 7 and 8. After purchasing the properties, the Port expanded the upland portion of the Norton Terminal through a hydraulic fill operation between 1978 and 1979. The Port operated the Norton Terminal as a waterfront

industrial and shipping site. At Pacific Terminal, the Port leased space to several industries including: Viking Wire Rope Company, Foss Launch and Tug Company, and Dunlap Towing (**Exhibit A**, Figure 8). Piers B, D, and E at the Pacific terminal were used for log loading along with handling of other commodities. The Port sold its Norton and Pacific Terminal properties to the Navy in around 1987.

3. The southeast margin of the East Waterway area currently contains the Port's Hewitt Terminal as shown on **Exhibit A**, Figure 10. Note that the Port's Pacific Terminal is now located just south and adjacent to Pier 1 as shown on **Exhibit A**, Figure 10. The Port's South Terminal, which is part of the Weyerhaeuser Mill A Former Site, can be seen on **Exhibit A**, Figures 2 and 10. The Port's terminals have handled cargo such as logs, lumber, pulp, steel, aerospace components, alumina ore, cement, ingots, breakbulk cargo (e.g., excavators, windmill blades), roll-on/roll-off cargo (e.g., cars and trucks), and agricultural products. The Port has historically operated wood-products (e.g., whole logs, pulp, lumber) export facilities in the East Waterway. Industries that occupied space within the Port's Hewitt Terminal in 1988 included Anaconda Aluminum, Everett Cold Storage (American Ice & Cold Storage), and Johnston Petroleum Products (Mobil Oil Co.). Some of the Port's current tenants at the Hewitt Terminal include Vigor Shipyard, Dunlap Towing, and Lehigh Cement (**Exhibit A**, Figure 10).

I. Western Gear Company historical operations are summarized below

1. In 1961, the Western Gear Machinery Company replaced the shipyard on portions of the north and central moles as depicted in **Exhibit A**, Figures 6 to 8. The company purchased and occupied an upland portion of the mole and had no waterfront access to the East Waterway. Western Gear specialized in the manufacture of heavy equipment and machinery for the oil drilling industry.

Other activities conducted by Western Gear included: heat treating, pickling, painting, and general operations such as fuel, oil, and chemical storage. Western Gear operated at the site until the sale of its property to the Navy in the mid-1980s.

2. Western Gear was a former permitted discharger of noncontact cooling water through historical Outfalls WG002 and WG003 as shown on **Exhibit A**, Figure 11. A 1985 inspection of the facility noted that PCB contamination was suspected adjacent to the sewers due to faulty joints, and at the outfalls. It was concluded that PCB contamination of the storm sewers was very probable. It was also noted in 1985 that the soil adjacent to the storm sewers were most likely heavily contaminated with oils.

J. **Stormwater Outfalls and Combined Sewer Overflows** – A number of municipal combined sewer overflows (CSOs) and stormwater outfalls have discharged, or continue to discharge, to the East Waterway as shown in **Exhibit A**, Figure 11. Stormwater

outfalls that discharged to the East Waterway, as reported in 1988, are presented in **Exhibit A**, Figure 11. These stormwater outfalls were located on current or former properties owned by the Port, Scott Paper (now K-C), and Western Gear Company. Three storm drains are shown at the Port's Hewitt Avenue Terminal, and one is located on the Port's former Pacific Terminal near industrial outfall WG003. Surface runoff from the K-C property was discharged in four storm drain outfalls. In addition, the northern part of the K-C property was drained into the storm drain discharging near industrial outfall WG003. Another storm drain outfall was located at the northwest portion of the former Western Gear property. Historically, the Everett sewer system, which was constructed prior to the 1930s, discharged sewage directly to Port Gardner. In the 1960s, a system of gravity sewers, pump stations, regulators, and force mains were built to intercept most of these outfalls and convey the sewage to treatment lagoons. It is noted that the historical untreated sewage discharges in East Waterway occurred at the same general CSO locations depicted in **Exhibit A**, Figure 11. CSOs from the City of Everett currently discharge to the East Waterway at three outfall locations: PS04 to PS06.

K. Log rafting and handling in East Waterway are summarized below.

1. The East Waterway has historically been a major log storage and handling area. Aerial photographs from 1947 to 1992 show log rafting in East Waterway (**Exhibit A**, Figures 4 to 9). Areas where log rafting occurred within the East Waterway, as presented in **Exhibit A**, Figure 13, were estimated based on the location of log rafts as they appear on the aforementioned aerial photographs.
2. Activities associated with log rafting, sorting, and handling in the East Waterway have been conducted primarily to support the following industries: sawmilling, pulp and paper milling, and log exporting.
3. Logs were historically rafted and handled in the East Waterway to supply lumber, pulp and paper mills in the vicinity of the waterway, including the Kimberly-Clark mill. As noted above, in 1970 the K-C mill ceased the use of rafted logs and switched over to using wood chips for the mill's fiber source. *See* subparagraph 8 of paragraph F, section V.
4. After the sale of the Naval Industrial Reserve Shipyard in the early 1960s, Pacific Tow Boat, Foss, and the Port, among others, conducted log exporting activities (i.e., rafting and handling of logs for export) at the former Navy Shipyard area. The Port's Hewitt, Pacific, and Norton terminals were used for log export starting in the early 1970s. *See* **Exhibit A**, Figure 7.

5. State-owned aquatic lands within East Waterway and managed by DNR have historically been leased for, or may have been occupied, with log rafts.

L. **East Waterway Conditions** – Based on studies going back to the 1930s, some of the environmental conditions documented within East Waterway have included low dissolved oxygen, low pH, sludge deposits, elevated sulfide concentrations, wood waste accumulations, volatile solids, and damage to fish life. These environmental conditions were the result of discharges and releases from multiple sources including log rafting operations.

M. **East Waterway Contamination** – Environmental investigations conducted in the late 1930s to present have documented the presence of chemical contamination including biological toxicity (i.e., bioassay failures) within the East Waterway. Sampling investigations between 1982 and 2013 have documented the following chemical contaminants in East Waterway marine sediments above published Ecology Sediment Management Standards (SMS) (Chapter 173-204 WAC) for Puget Sound Marine sediments:

1. **Metals** – arsenic, copper, lead, mercury and zinc.
2. **Polycyclic Aromatic Hydrocarbons (PAHs)** – acenaphthene, anthracene, benzo(a)pyrene, benzo(g,h,i)perylene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, naphthalene, phenanthrene, pyrene, high molecular weight PAHs, and low molecular weight PAHs.
3. **Semivolatile Organic Compounds** – 1,4-Dichlorobenzene, 2,4-dimethylphenol, 2-methylnaphthalene, 2-methylphenol, 4-methylphenol, benzoic acid, benzyl alcohol, bis(2-ethylhexyl)phthalate, butylbenzylphthalate, dibenzofuran, di-n-octyl phthalate, hexachlorobenzene, N-Nitrosodiphenylamine, pentachlorophenol, and phenol.
4. **Total PCBs** have been detected above background concentrations.
5. **Dioxins/Furans** have been detected above background concentrations.

N. Releases of hazardous substances on upland areas adjacent to the East Waterway are potential sources of contamination to the waterway. Upland sources of contamination to the East Waterway from the K-C upland area are being addressed under Agreed Order DE 9476. Other potential upland source(s) of contamination to the East Waterway will be addressed under a separate agreed order(s). Some of the upland contamination associated with current Navy, K-C,

and Port properties is generally described below. The current Navy, K-C, and Port properties are shown on **Exhibit A**, Figure 2.

1. **Navy Property** – Some of the operations that have occurred on the current Navy upland property (i.e., Naval Station Everett) include timber products manufacturing, ship building and repair, manufacturing of heavy equipment and machinery, and industrial activities associated with the former Norton and Pacific terminals operated by the Port. Upland contamination above MTCA cleanup levels identified during investigations conducted in the late 1980s and early 1990s as part of the development of Naval Station Everett is summarized below.
 - a. **Soil** – Methylene chloride, trichloroethylene (TCE), naphthalene, PAHs, PCBs, and total petroleum hydrocarbons (TPH).
 - b. **Groundwater** – Methylene chloride, 1,2-dichloroethane, TCE, bis(2-ethylhexyl)phthalate, dissolved cadmium, dissolved copper, dissolved nickel, dissolved zinc, and dissolved total cyanide.
2. **K-C Property** – Upland contamination above MTCA cleanup levels at the K-C property primarily include petroleum and metals in soil and groundwater. The nature and extent of contamination in the upland portion of the K-C property is currently being investigated by K-C under Agreed Order DE 9476.
3. **Port Property (Hewitt Terminal)** – Petroleum contamination along with PAHs have been detected above MTCA soil cleanup levels on the Port’s Hewitt Terminal. In addition, groundwater monitoring wells established on the Port’s Hewitt Terminal as part of the ExxonMobil ADC investigation under Agreed Order DE 6184 have concentrations of dissolved petroleum in the diesel and oil ranges that exceed MTCA cleanup levels. Petroleum contamination in soil was documented at the Dunlap Towing facility located on the Port’s Hewitt Terminal in the early 1990s during the decommissioning of two underground storage tanks (USTs).

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations by the Navy:

- A. The Navy is an “owner or operator,” as defined in RCW 70.105D.020(22), of a “facility,” as defined in RCW 70.105D.020(8).
- B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) has occurred at the Site.
- C. Based upon credible evidence, Ecology issued a PLP status letter to the Navy dated April 18, 2013, 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 Navy is a PLP under RCW 70.105D.040. Ecology notified the Navy by letter on August 16, 2013.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the Navy to investigate or conduct other remedial investigations and 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 actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action (as defined under RCW 70.105D.020(33)) 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. 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's Determinations, it is hereby ordered that the Navy cooperate with the PLPs under Agreed Order 11350 (and any additional PLPs that Ecology may subsequently name for the Site) in the following manner:

A. The Navy shall provide access to its property, as set forth in section VIII.D., to allow the PLPs under Agreed Order 11350 to gather the data needed for conducting an RI/FS and completing a DCAP for the Site.

B. The Navy shall provide available data that it has for the Site to the PLPs under Agreed Order 11350, subject to federal laws prohibiting the disclosure of certain confidential information, including critical infrastructure security information, 10 U.S.C. 130e. To the

maximum extent possible, the Navy will redact any confidential information subject to such federal laws rather than withholding entire documents. Navy data may include, but is not limited, to the following: current and past sources of environmental contamination to East Waterway including current and former discharges from outfalls on Navy property (includes existing or former Navy property), Navy operational history at the Site within both upland and in-water areas (includes existing or former Navy property), information on current or former operators on Navy property (includes existing or former Navy property), Navy environmental investigations and cleanup actions at the Site including those performed on existing or former Navy properties, Navy agreements with other parties related to the use of East Waterway, and bathymetry data.

C. The Navy shall review and comment on draft documents that are developed as part of Agreed Order 11350. The Navy's review shall be conducted in accordance with the schedule identified in Exhibit B of Agreed Order 11350. If the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall submit any work plans for these RI/FS activities to Ecology for review and approval, and those plans shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If Ecology and the PLPs under Agreed Order 11350 agree on an interim action under Section VI.E, the Navy shall review and comment on the Interim Action Work Plan. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). If the Navy conducts a portion of an Interim Action pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall submit any work plans for such Interim Action activities for Ecology's review and approval, and those plans shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made, Ecology shall proceed with Dispute Resolution in accordance with section VIII.I.

F. Except where necessary to abate an emergency situation, in the event the Navy agrees to perform any remedial actions at the Site pursuant to an agreement with the PLPs under

Agreed Order 11350, the Navy shall not perform any such actions unless Ecology approves, in writing, such actions. Except where necessary to abate an emergency situation, the Navy shall notify Ecology in writing prior to conducting any interim actions, or other remedial actions at the Site under its CERCLA authorities. In the event the Navy takes an action to abate an emergency situation, it will notify Ecology within 30 days

VIII. TERMS AND CONDITIONS OF ORDER

A. Ecology's Reservation of Rights for Remedial Investigation, Feasibility Study, and Draft Cleanup Plan Costs

Ecology is incurring costs under MTCA for the East Waterway Site for which the Navy may be liable. Ecology specifically reserves the right to require payment of costs from the Navy for costs incurred by Ecology for the East Waterway Site and/or to institute legal or administrative action against the Navy to pursue appropriate cost recovery, pursuant to RCW 70.105D.050.

B. Designated Project Coordinators

The project coordinator for Ecology is:

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

The project coordinator for the Navy is:

Dina Ginn
Naval Facilities Engineering Command Northwest
1101 Tautog Circle, Suite 203, Silverdale, WA 98315
Phone: 360-396-0016
E-Mail: dina.ginn@navy.mil

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 Navy, 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

In the event that the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 1135:

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

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

All construction work performed pursuant to this 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

The project coordinator for the Navy, identified in section VIII.B., shall direct work under this Order; the Navy shall notify Ecology in writing of the identity of any other engineer(s), geologist(s), contractor(s), or subcontractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Without any limitation on any authority conferred on Ecology by law, or to the PLPs by separate agreement, Ecology and the PLPs under Agreed Order 11350, and/or their authorized representatives, shall be allowed to enter the Naval Station Everett property within the Site and the naval restricted area within the Site (*see* 33 CFR 334.1215) at reasonable times for purposes consistent with the provisions of this Agreed Order, subject to any statutory or regulatory requirements necessary to protect national security or mission essential activities (e.g. immediate deployment of Naval vessels). Entry of Naval Station Everett property and the naval restricted area by the PLPs and/or their authorized representatives shall be further subject to the terms and conditions of the Right of Entry Agreement between the PLPs and the Department of Navy (Navy Contract No. N4425517RP00027).

Access consistent with the provisions of this Agreed Order shall include, but not be limited to conducting tests and sampling activities which Ecology deems necessary to complete the activities required by Agreed Order 11350.

Ecology, the PLPs under Agreed Order 11350, and/or their authorized representatives shall provide notice to the Navy at least seven (7) days prior to the date of requested access to the Naval Station Everett property within the Site and/or the naval restricted area within the Site. The Navy Project Coordinator or his/her designee shall coordinate any request for access under this Agreed Order; provide an escort; and coordinate any other access requests.

The Navy shall honor all reasonable requests for access, subject to presentation of appropriate identification and conformance with security requirements. The Navy reserves the right to require an escort for Ecology and the PLPs under Agreed Order 11350, and/or their representatives when visiting Naval Station Everett within the Site and/or the naval restricted area within the Site. Ecology, the PLPs under Agreed 11350, and/or their authorized representatives shall not use any camera, sound recording or other recording device at Naval Station Everett within the Site and/or the naval restricted area within the Site without obtaining the appropriate permission. The Navy shall not unreasonably withhold such permission.

Access granted under this section, shall be subject to those regulations necessary to protect national security or mission essential activities. The Navy reserves the right to terminate and reschedule entry to Naval Station Everett within the Site and/or the naval restricted area within the Site based upon operational needs and mission essential activities. The Navy agrees that conformance with security regulations, operational needs, mission essential activities, or need for an escort will not unduly delay access. Such regulation shall not be applied so as to unreasonably hinder Ecology, the PLPs under Agreed Order 11350, and/or their authorized representatives, from carrying out their authorities and/or responsibilities, respectively, pursuant to Agreed Order 11350. In the event that a request for access under this section is denied by the Navy, the Navy shall provide an explanation within forty-eight (48) hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. Also in the event that a request for access under this section is denied by the Navy, the Navy shall work with Ecology and the PLPs to provide appropriate alternatives.

All parties provided access and conducting work shall be required to conform to Naval Station Everett operational schedules. At no time shall personnel or equipment provided access interfere with openings of the security barriers or with arrival and departures of ships moored at Naval Station Everett. All personnel provided access to waterways must maintain communication with Everett Control (Port Security Boats) on channels 72 or 74 as it is imperative to avoid any in- water interference between Ecology (or their authorized representatives) and/or the PLPs under Agreed Order 11350 (or their authorized representatives), and Naval Station Everett operations.

Navy will work to schedule access at times that minimize conflict, however, Navy reserves the right to withdraw access if security or operational needs require. In the event the Navy withdraws access, Navy shall work with Ecology and/or the PLPs under Agreed Order 11350 to reschedule the requested access.

E. Sampling, Data Submittal, and Availability

If the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 11350, data collected shall be submitted consistent with 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. Attached as **Exhibit B** is Ecology Policy 840: Data Submittal Requirements.

If the Navy intends to undertake any sample collection activity at the Site pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Navy 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. Ecology shall notify the Navy prior to any sample collection activity.

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

F. Public Participation

A Public Participation Plan has been developed for this Site under Agreed Order 11350. Ecology shall maintain the responsibility for public participation at the Site. However, the Navy shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, review mailing list, review drafts of public notices and fact sheets at important stages of the RI/FS and DCAP being conducted under Agreed Order 11350, 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. If the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before initiating major meetings with the interested public and local governments, except as provided below. Likewise, Ecology shall notify the Navy prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public. A "major meeting with the interested public" is a meeting where (a) public notice is provided in advance; and (b) the meeting addresses activities specified under Section VII (Work to be Performed) or Agreed Order 11350's **Exhibit B** (Scope of Work and Schedule). For all press releases, fact sheets, meetings, and other outreach efforts by the Navy with respect to activities included under this Order that do not receive prior Ecology approval, the Navy shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

When requested by Ecology and subject to reasonable notice, participate in public presentations on the progress of the RI/FS and DCAP being prepared pursuant to Agreed Order 11350. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

G. Retention of Records

1. During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to Agreed Order 11350 or work the Navy conducts pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of such activities, and the Navy shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Navy shall make all records available to Ecology and allow access for review within a reasonable time.

2. Nothing in this Order is intended to waive any right the Navy may have under

applicable law to limit disclosure of documents protected by the attorney work-product privilege, the attorney-client privilege, another privilege, or other federal non-disclosure statutes. If the Navy withholds any requested records based on an assertion of privilege or other statutory basis for non-disclosure, the Navy shall provide Ecology with a log specifying the records withheld and the applicable privilege or non-disclosure statute. No Site-related data collected by Navy concerning contaminant concentrations pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the Navy elects to invoke dispute resolution, the Navy 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 Navy has thirty (30) 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 seven (7) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those seven (7) calendar days, then within twenty-one (21) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; the Navy'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 Navy may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Headquarters Toxics Cleanup Section Manager within twenty-one (21) 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 activities 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 related to work being conducted pursuant to an agreement with the PLPs under Agreed Order 11350, 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. If the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 11350, the Navy shall follow a schedule for the agreed upon activities. An extension of the schedule for such activities shall be granted only when a request for an extension is submitted in a timely fashion, generally at least twenty (20) 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 Navy 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 Navy 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 Navy;

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

c. Endangerment as described in Section VIII.K (Endangerment).

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 Navy, except insofar as the parties to this Agreed Order recognize and acknowledge that the payment obligations of the Navy can only be paid from appropriated funds legally available for such purpose and nothing in this Agreed Order shall be interpreted or construed as a commitment or requirement that the Navy obligate or pay funds in contravention of the Anti-Deficiency Act , 31 U.S.C. sec. 1341, or any other applicable provision of federal law.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Navy 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 Navy. If the Navy proposes an amendment, the Navy shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site by the Navy pursuant to an agreement with the PLPs under Agreed Order 11350 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 Navy to cease such activities for such period of time as it deems necessary to abate the danger. The Navy shall immediately comply with such direction.

In the event the Navy determines that any of the Work being performed by the Navy pursuant to Section VII of this Order or any activity being performed at the Site by the Navy pursuant to an agreement with the PLPs under Agreed Order 11350 is creating or has the potential

to create a danger to human health or the environment, the Navy may cease such activities. The Navy 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 Navy shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Navy's cessation of activities, it may direct the Navy to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Navy'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 or the Navy, 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 Chapter 70.105D RCW. 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 Navy to recover costs related to the RI/FS and DCAP paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Navy regarding the RI/FS and DCAP required by this Order, provided the Navy complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different RI/FS and other remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such RI/FS and other 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 Navy does not implicitly or explicitly agree to Ecology's Findings of Fact or Determinations, nor does it admit to any liability for the Site. Although the Navy may commit to conduct some activities under the terms of this Order, the Navy 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 Real Property Interest

No transfer of any of the Navy's real property interests in any portion of the Site during the effective period of this Order shall be executed without provision for continued implementation of all requirements of this Order and implementation of any portion of the RI/FS activities which the Navy agrees to conduct pursuant to an agreement with the PLPs under Agreed Order 11350.

Prior to the Navy's transfer of any real property interest in any portion of the Site, and during the effective period of this Order, the Navy 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 Navy shall notify Ecology of said transfer. Upon transfer of any real property interest, the Navy shall assure that the transfer mechanism prohibits uses and activities inconsistent with this Order.

N. Compliance with Applicable Laws

1. All actions carried out by the Navy at the Site 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 or 42 U.S.C. § 9621.2.

2. Pursuant to RCW 70.105D.090(1), the Navy is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Navy shall comply with the substantive requirements of such permits or approvals.

The Navy has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required if the Navy conducts a portion of the RI/FS activities pursuant to an agreement with the PLPs under Agreed Order 11350. In the event either Ecology or the Navy determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for any such activities conducted pursuant to an agreement with the PLPs under Agreed Order 11350, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Navy shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Navy 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 action.

Ecology shall make the final determination on the additional substantive requirements that must be met by the Navy and on how the Navy must meet those requirements. Ecology shall inform the Navy in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Navy shall not begin or continue the remedial action, conducted pursuant to an agreement with the PLPs under Agreed Order 11350, potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 Navy 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.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the Navy's receipt of written notification from Ecology that the Navy has completed the actions required by section VII of this

Order, as amended by any modifications, and that the Navy 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:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

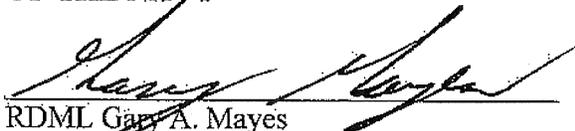
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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: 1/9/18

**UNITED STATES DEPARTMENT
OF THE NAVY**



RDML Gary A. Mayes
Commander, Navy Region Northwest
1100 Hunley Road
Silverdale, Washington 98315
(360) 315-5001

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Barry Rogowski, Manager
Land and Aquatic Lands Cleanup Section
Toxics Cleanup Program
300 Desmond Drive Southeast
Lacey, Washington 98503
(360) 407-7226

EXHIBIT A

**SITE LOCATION, VICINITY, PROPERTY, AND
HISTORICAL FIGURES**

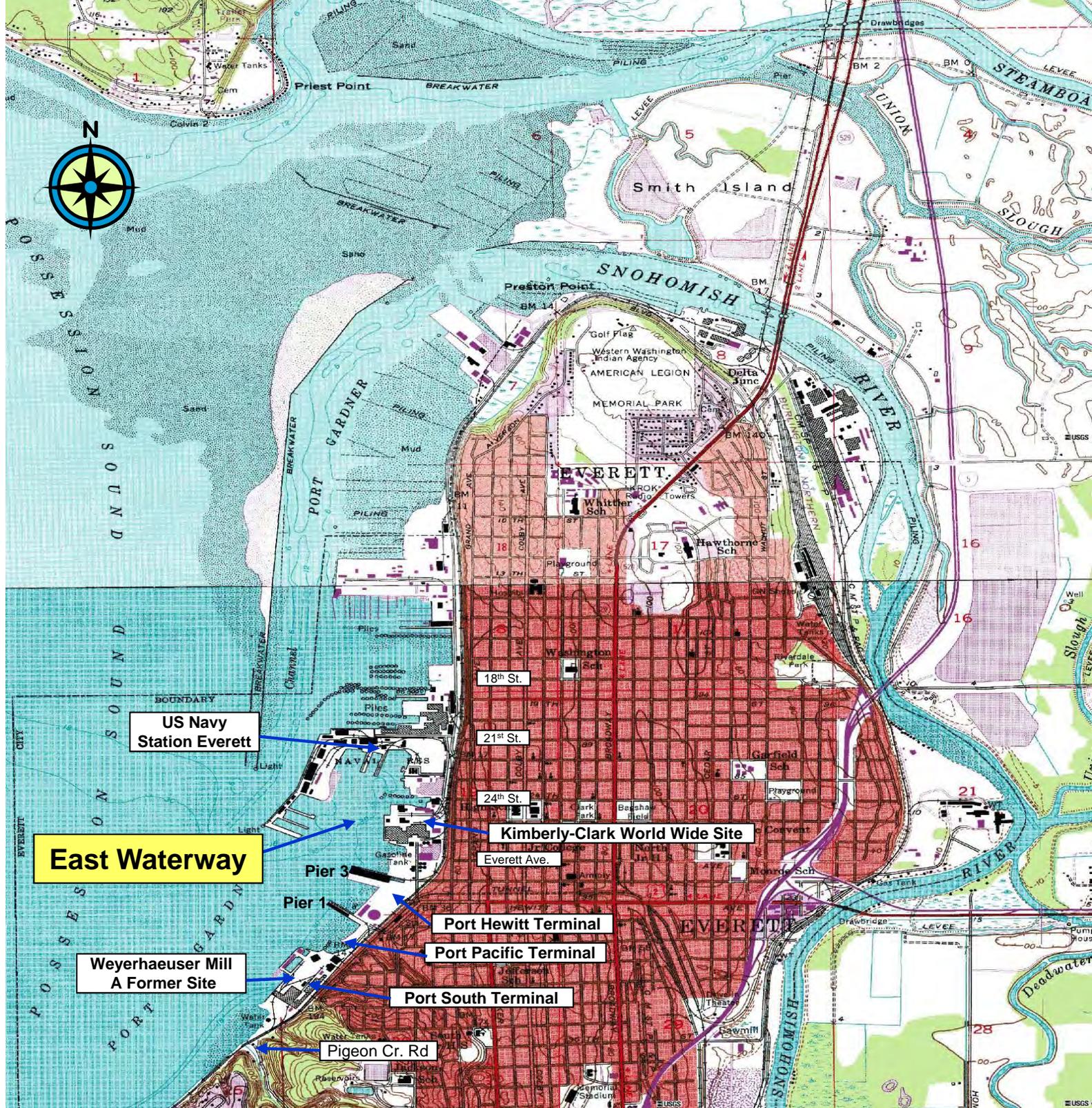
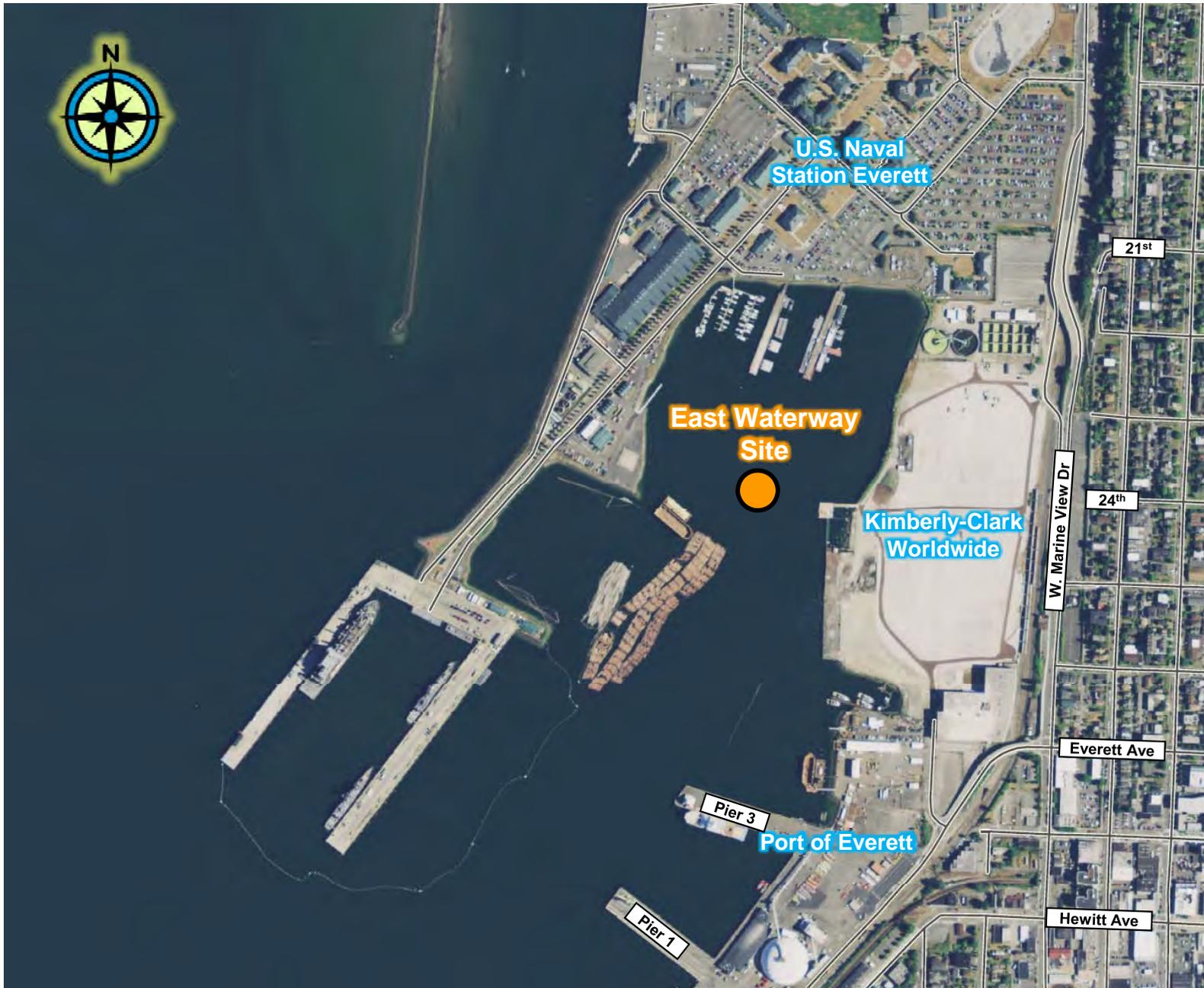


Exhibit A – Figure 1 Site Location Map

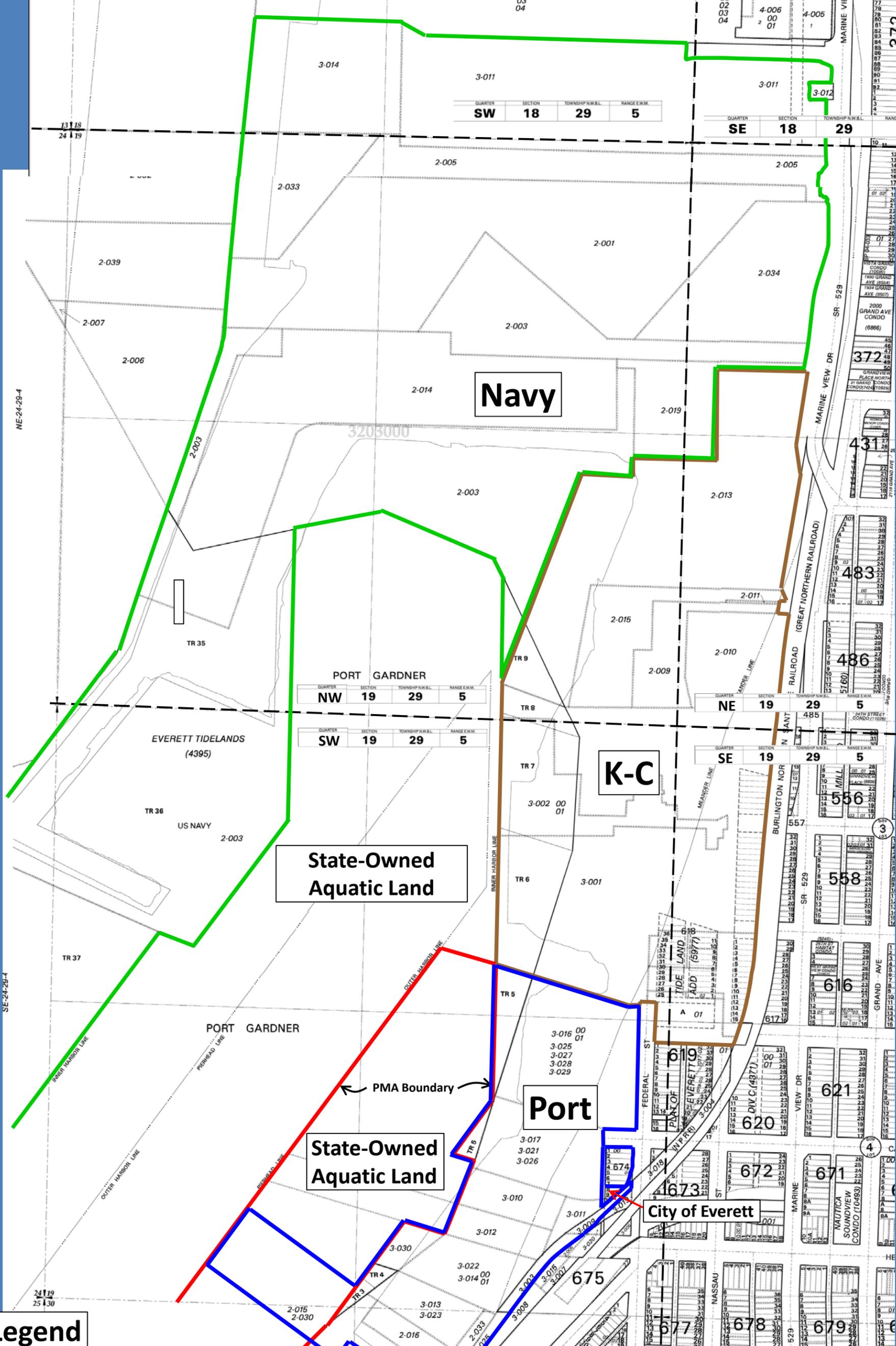
Source: USGS 7.5 Minute Quadrangle Maps (Everett and Marysville Quadrangle Maps; Photo Revised – 1968 and 1973)



QUADRANGLE LOCATION



**Exhibit A – Figure 2
East Waterway Site – General Site Vicinity**



Legend

- Navy Property
- Port of Everett Property
- Kimberly-Clark Property
- Port Management Agreement (PMA)
- Boundary with DNR
- Source: PMA No. 20-080027
- - - Quarter Section Boundary Line

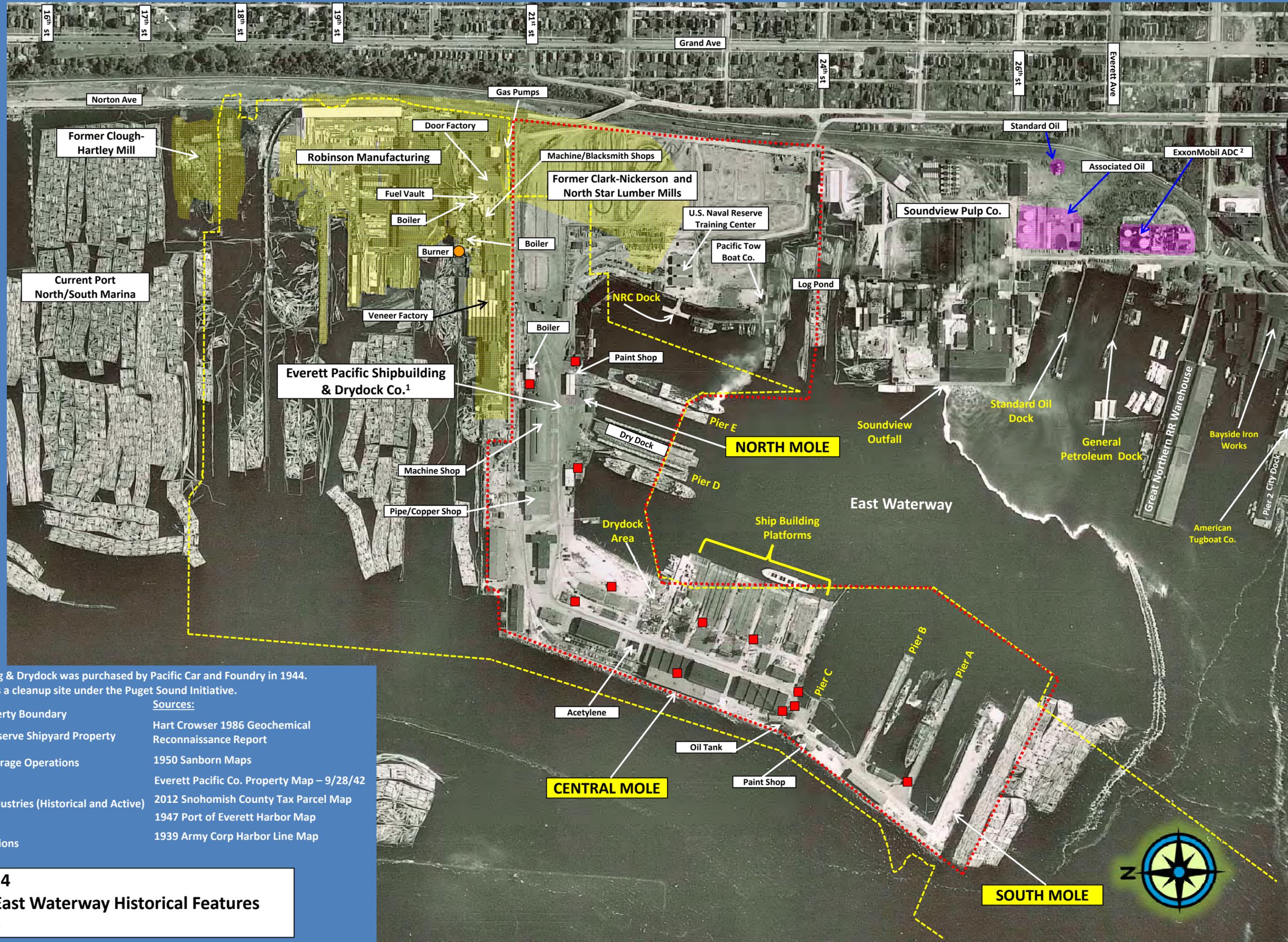


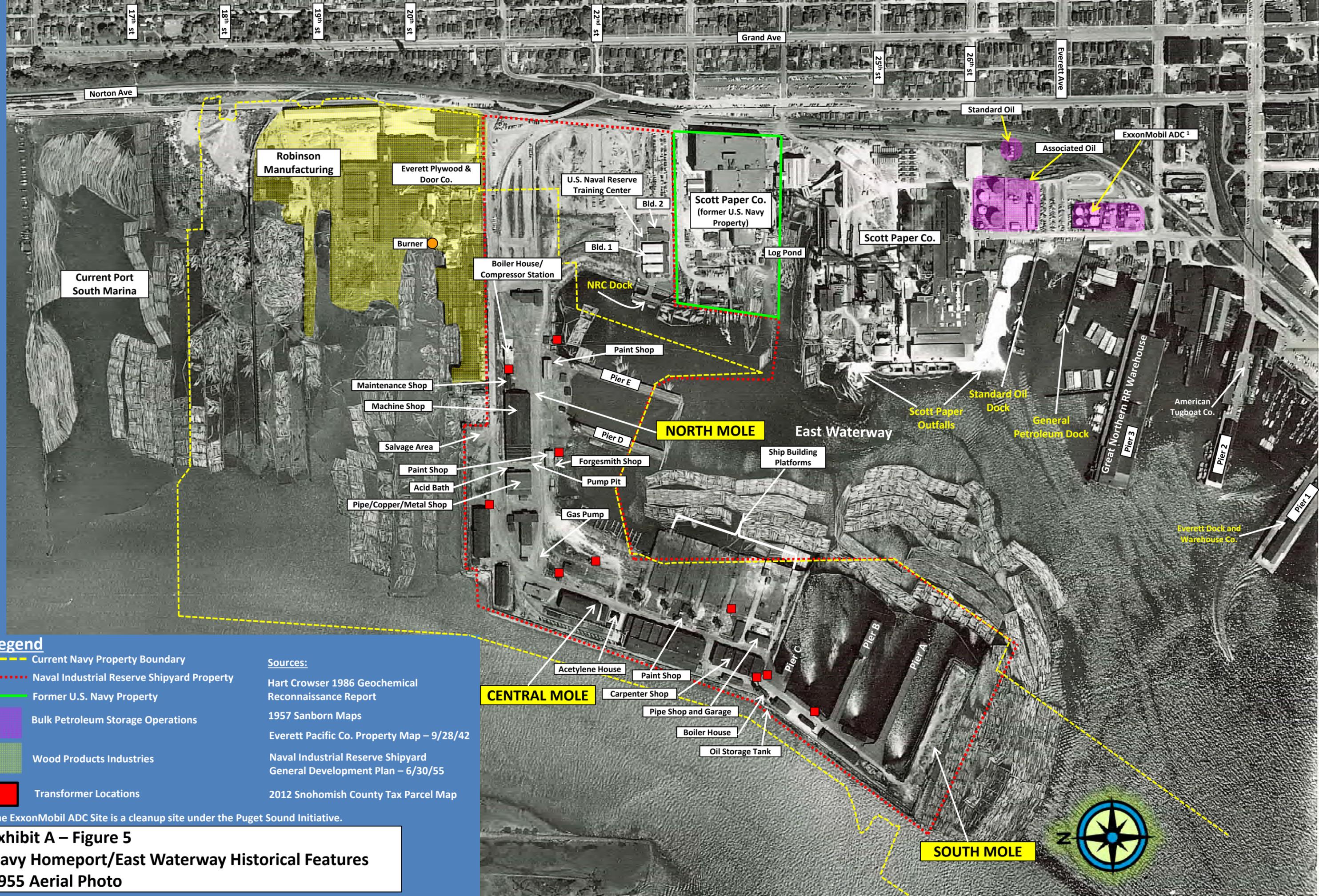
Exhibit A – Figure 3
Snohomish County Tax Parcel Map
Showing Township/Range/Section

Legend

- - - Current Navy Property Boundary
 - - - Naval Industrial Reserve Shipyard Property
 - Bulk Petroleum Storage Operations
 - Wood Products Industries (Historical and Active)
 - Transformer Locations
- ¹Everett Pacific Shipbuilding & Drydock was purchased by Pacific Car and Foundry in 1944.
²The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.
- Sources:**
 Hart Crowser 1986 Geochemical Reconnaissance Report
 1950 Sanborn Maps
 Everett Pacific Co. Property Map – 9/28/42
 2012 Snohomish County Tax Parcel Map
 1947 Port of Everett Harbor Map
 1939 Army Corp Harbor Line Map

Exhibit A – Figure 4
Navy Homeport/East Waterway Historical Features
1947 Aerial Photo





Legend

- Current Navy Property Boundary
- Naval Industrial Reserve Shipyards Property
- Former U.S. Navy Property
- Bulk Petroleum Storage Operations
- Wood Products Industries
- Transformer Locations

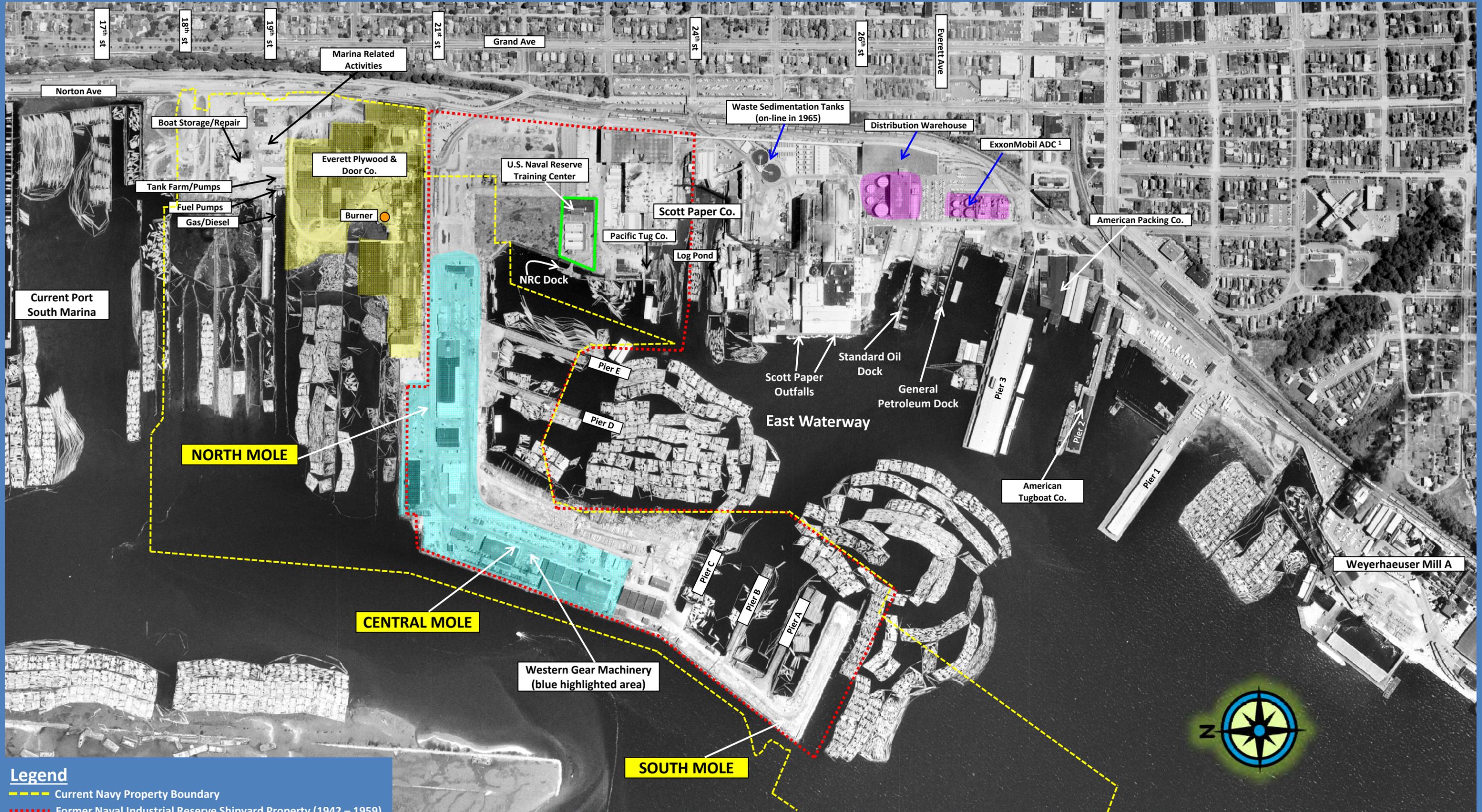
Sources:

- Hart Crowser 1986 Geochemical Reconnaissance Report
- 1957 Sanborn Maps
- Everett Pacific Co. Property Map – 9/28/42
- Naval Industrial Reserve Shipyards General Development Plan – 6/30/55
- 2012 Snohomish County Tax Parcel Map

¹The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Exhibit A – Figure 5
Navy Homeport/East Waterway Historical Features
1955 Aerial Photo





- Legend**
- Current Navy Property Boundary
 - Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
 - U.S. Navy Property
 - Bulk Petroleum Storage Operations
 - Wood Products Industries

Exhibit A – Figure 6
Navy Homeport/East Waterway Historical Features
1966 Aerial Photo

Sources:
 Hart Crowser 1986 Geochemical Reconnaissance Report
 Everett Pacific Co. Property Map – 9/28/42
 2012 Snohomish County Tax Parcel Map
 1961 Everett Harbor Map. Corp of Engineers
¹The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.



Port of Everett Property (purchased in 1975)
Hydraulic Dredge Filled 1978-1979

NORTH MOLE

CENTRAL MOLE

SOUTH MOLE

Western Gear Machinery (blue highlighted area)

- Legend**
- - - Current Navy Property Boundary
 - - - Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
 - - - U.S. Navy Property
 - Bulk Petroleum Storage Operations
 - Port of Everett Terminals

Sources:
 Hart Crowser 1986 Geochemical Reconnaissance Report
 Everett Pacific Co. Property Map – 9/28/42
 2012 Snohomish County Tax Parcel Map
 1975 and 1979 Army Corp Everett Harbor and Snohomish River, Washington Condition
 Pentec 1992. Port of Everett Landscape Analysis. Port Gardner and the Snohomish river Estuary. Dec. 30, 1992.
¹The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Exhibit A – Figure 7
Navy Homeport/East Waterway Historical Features
1976 Aerial Photo

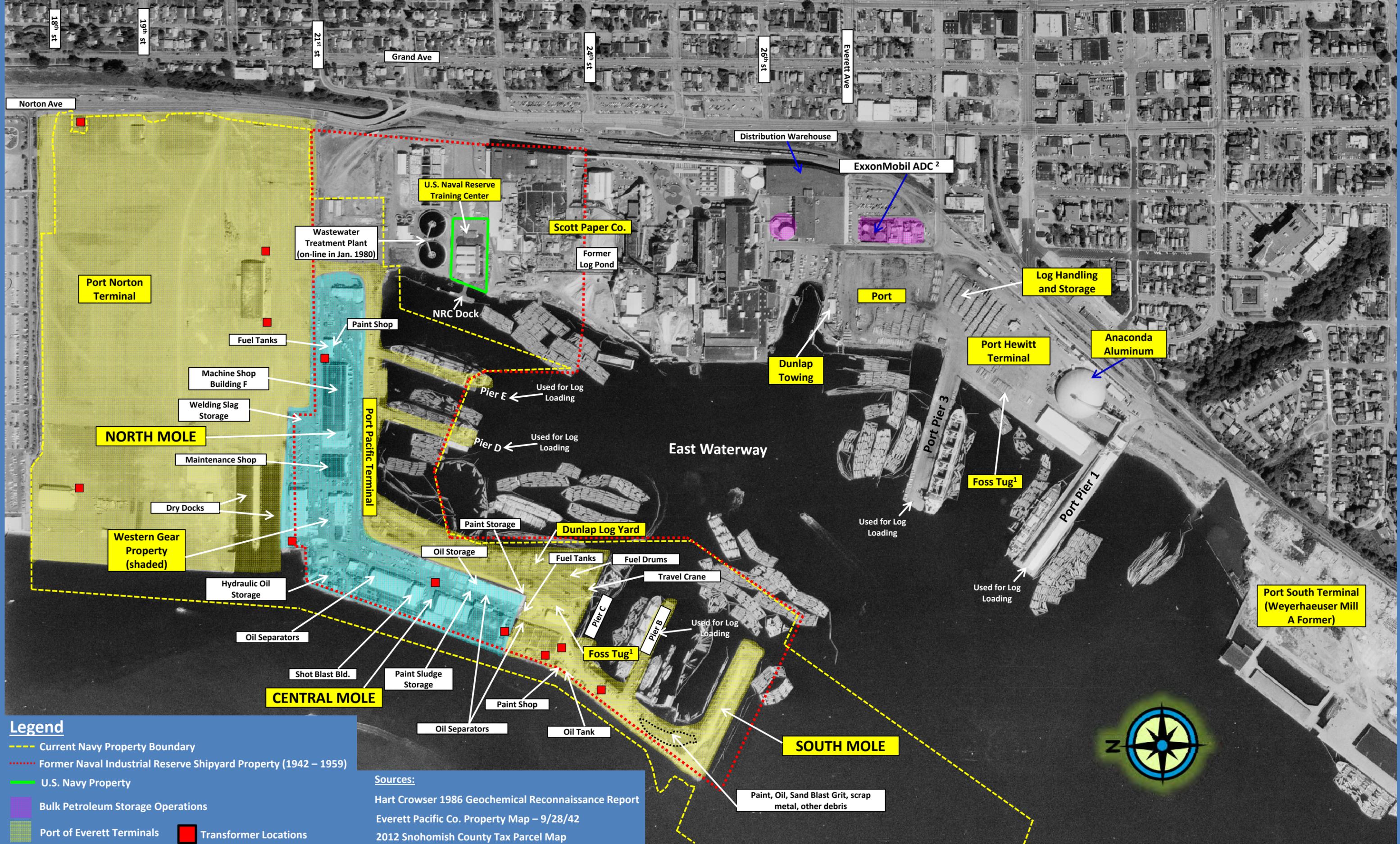
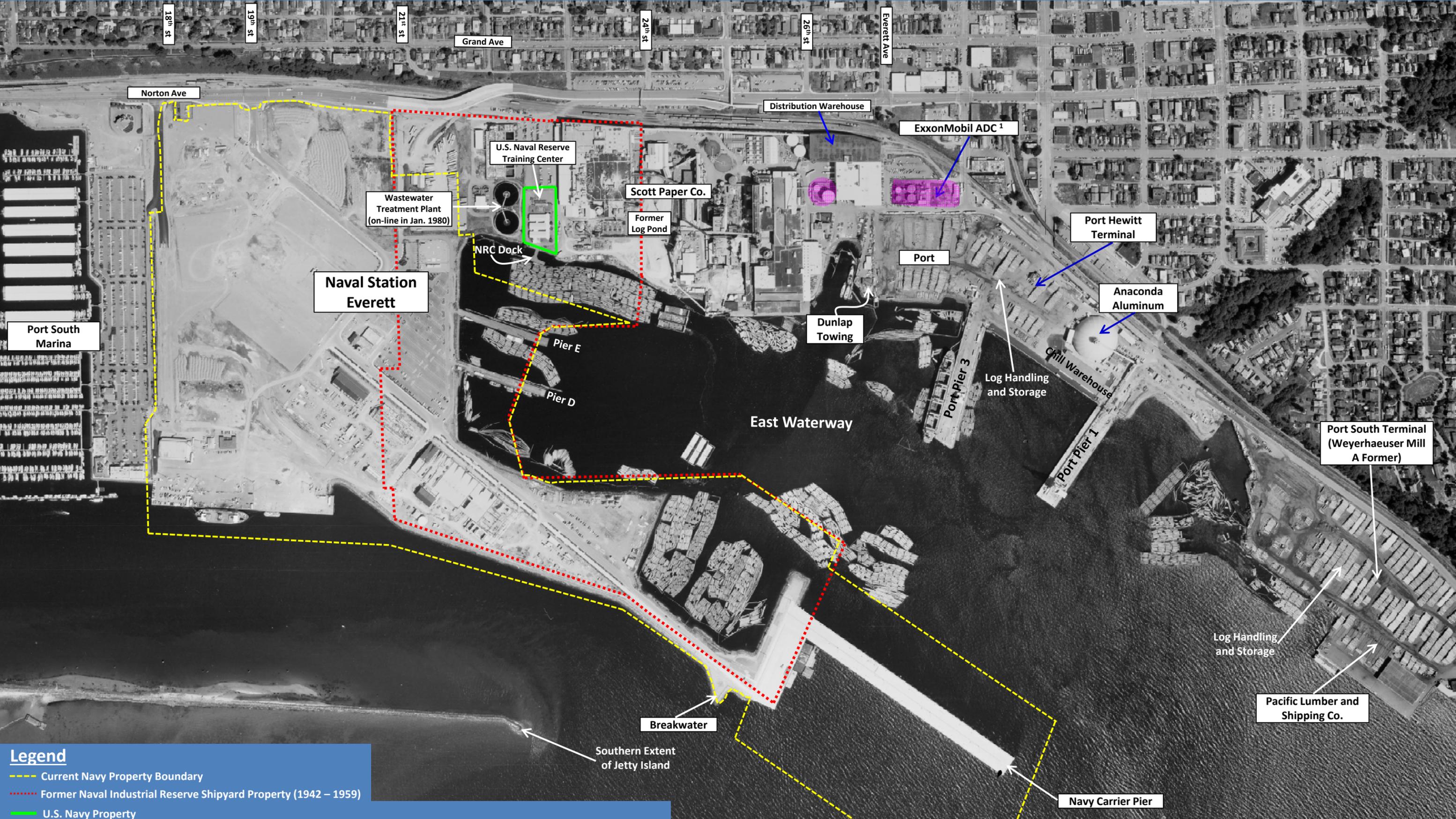


Exhibit A – Figure 8
Navy Homeport/East Waterway Historical Features
1985 Aerial Photo



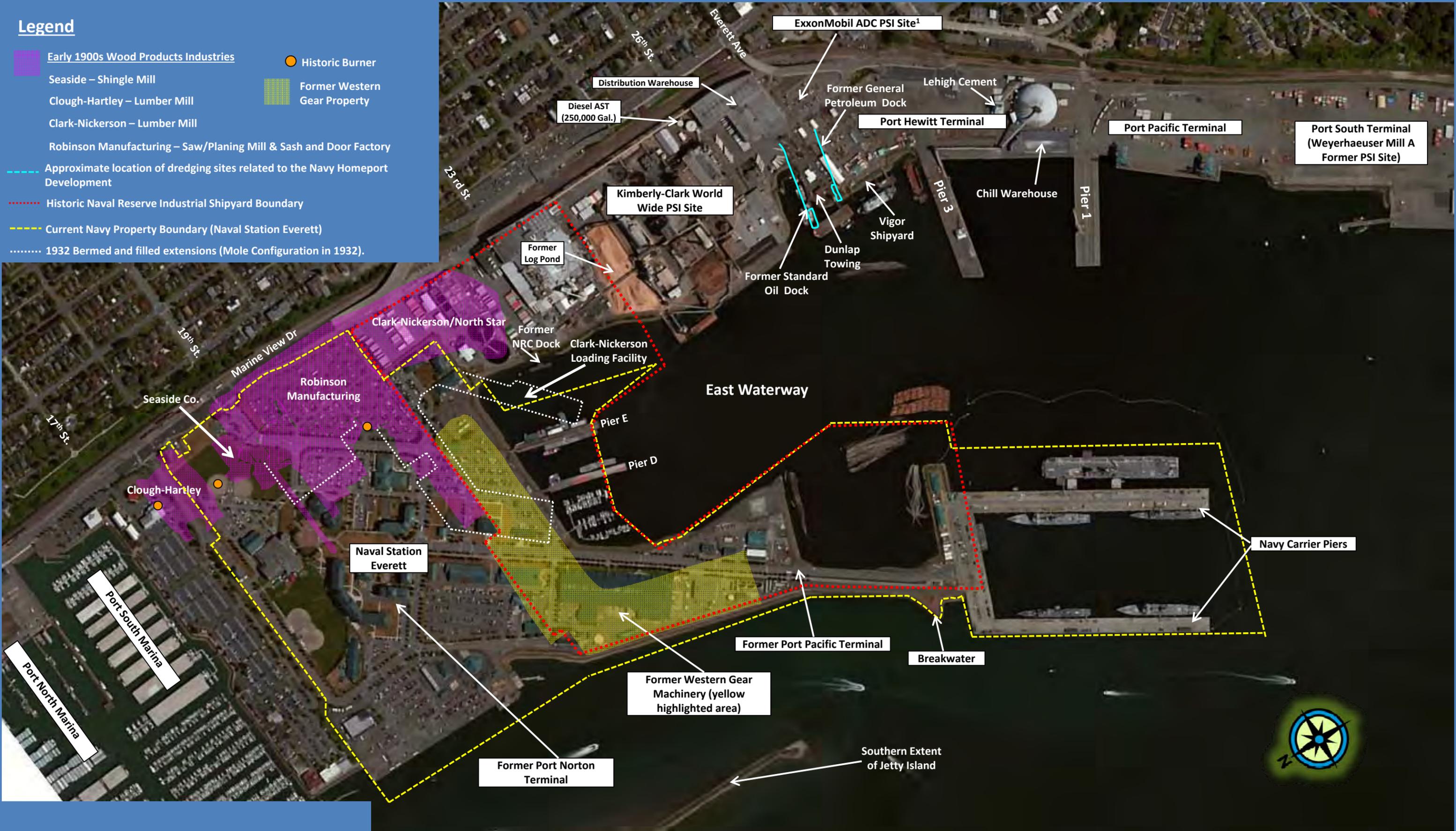
- Legend**
- - - Current Navy Property Boundary
 - - - Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
 - U.S. Navy Property
 - Bulk Petroleum Storage Operations

Sources:
 Everett Pacific Co. Property Map – 9/28/42
 2012 Snohomish County Tax Parcel Map
 Pentec, 1992. Port of Everett Landscape Analysis. Port Gardner and the Snohomish River Estuary. Project No. 21-032. December 30, 1992.
¹The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

Exhibit A – Figure 9
Navy Homeport/East Waterway Historical Features
1992 Aerial Photo

Legend

- Early 1900s Wood Products Industries
- Historic Burner
- Seaside – Shingle Mill
- Former Western Gear Property
- Clough-Hartley – Lumber Mill
- Clark-Nickerson – Lumber Mill
- Robinson Manufacturing – Saw/Planing Mill & Sash and Door Factory
- Approximate location of dredging sites related to the Navy Homeport Development
- Historic Naval Reserve Industrial Shipyard Boundary
- Current Navy Property Boundary (Naval Station Everett)
- 1932 Bermed and filled extensions (Mole Configuration in 1932).



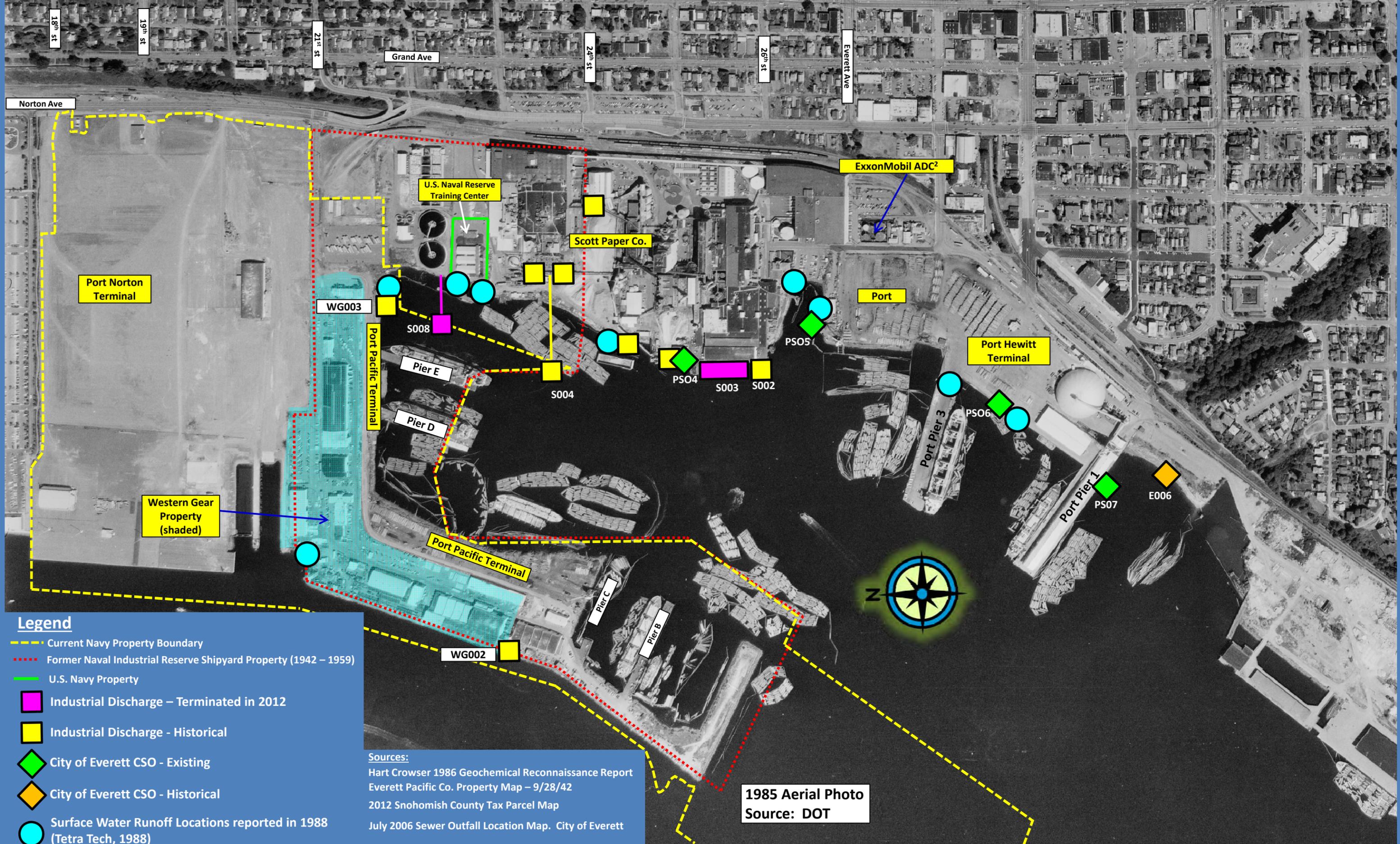
Sources:

- HartCrowser 1986. *Geochemical Reconnaissance Report NAVSTA Puget Sound*. July 1986.
- Everett Pacific Co. Property Map – 9/28/42
- 2012 Snohomish County Tax Parcel Map

¹The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

**Exhibit A – Figure 10
East Waterway Area Features
2012 Aerial Photo**





- Legend**
- Current Navy Property Boundary
 - Former Naval Industrial Reserve Shipyard Property (1942 – 1959)
 - U.S. Navy Property
 - Industrial Discharge – Terminated in 2012
 - Industrial Discharge - Historical
 - City of Everett CSO - Existing
 - City of Everett CSO - Historical
 - Surface Water Runoff Locations reported in 1988 (Tetra Tech, 1988)

Sources:
 Hart Crowser 1986 Geochemical Reconnaissance Report
 Everett Pacific Co. Property Map – 9/28/42
 2012 Snohomish County Tax Parcel Map
 July 2006 Sewer Outfall Location Map. City of Everett

1985 Aerial Photo
 Source: DOT

Exhibit A – Figure 11
Historical and Current Industrial Outfall
Locations in 1988 ¹

Washington State Pollution Control Commission, Olympia, Washington. *Pollutional Effects Of Pulp And Paper Mill Wastes In Puget Sound. A Report On Studies Conducted By The Washington State Enforcement Project.* March 1967.
¹Tetra Tech, 1988. *Everett Harbor Action Program: Evaluation of Potential Contaminant Sources. Final Report.* September 1988.
²The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.




Current Deep Water Outfall 100
 Source: Anchor, 2004. *Sampling and Analysis Report, Outfall 100 Baseline Sediment Sampling For NPDES Permit #WA00062-01 and Associated Permits.* June 2004.


Historic Deep Water Outfall SW001
 Sources: 11/22/72 Weyerhaeuser Company Mill Site Drawing (Drawing No. 5041 D).
 CH2MHILL, 1998. Technical Memorandum. *Kimberly Clark Everett Outfall Replacement Project: Analysis of Sediment Chemistry Database of Stations Located in Port Gardner.* April 28, 1998.


Former Weyerhaeuser Mill A Property Boundary
 Source: 11/22/72 Weyerhaeuser Company Mill Site Drawing (Drawing No. 5041 D)

Exhibit A – Figure 12
Location of Deepwater Diffusers¹

¹The base map was obtained from Ecology's EIM Database.

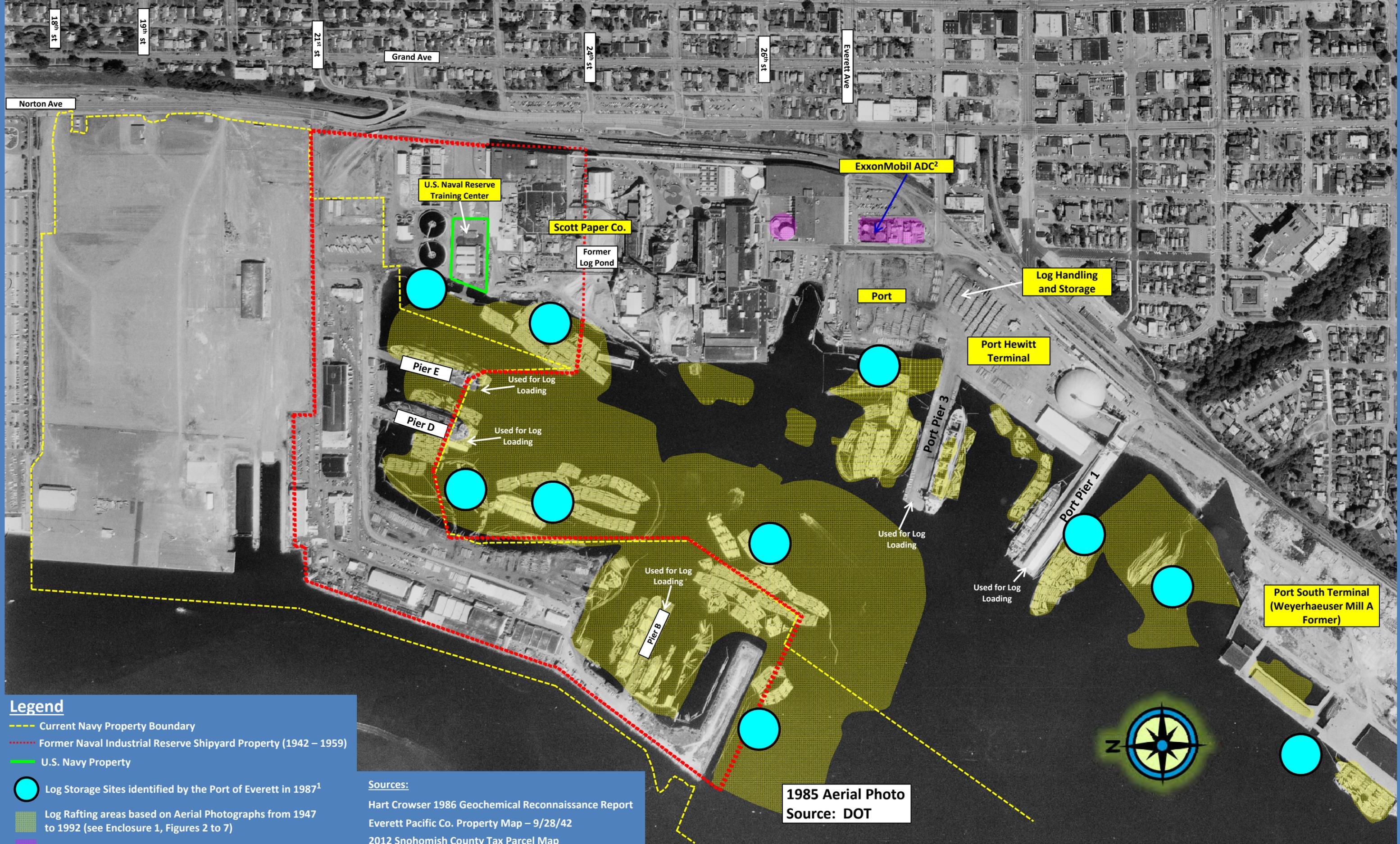


Exhibit A – Figure 13
Log Rafting Areas and General Log Storage Sites¹

¹Port of Everett, 1987. Record of communication from Ed Paskovskis, Director of Operations to the Port Working Group Membership & Commissioners. January 2, 1987.

²The ExxonMobil ADC Site is a cleanup site under the Puget Sound Initiative.

EXHIBIT B

**ECOLOGY POLICY 840 – DATA SUBMITTAL
REQUIREMENTS**



Toxics Cleanup Program

Policy 840: Data Submittal Requirements

Established: August 1, 2005

Revised: April 12, 2016

Contact: Policy & Technical Support Unit, Headquarters

Purpose: This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

References: [WAC 173-340-840 \(5\)](#)
[Chapter 173-204 WAC](#)
[Environmental Information Management System Database](#)
[Sediment Cleanup Users Manual II](#)

Attachments: A - Model Grant and Permit Condition

Disclaimer: This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

Approved by:

James J. Pendowski, Program Manager
Toxics Cleanup Program

Accommodation Requests: To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

Purpose and Applicability

The investigation and cleanup of contaminated sites generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions. The data also need to be accessible by Ecology staff, site owners, consultants, and the general public.

This Policy describes the requirements for submitting environmental monitoring data generated or collected during the investigation and cleanup of contaminated sites under Chapter 70.105D RCW, Model Toxics Control Act (MTCA).

This Policy applies to Ecology staff and any person who investigates or cleans up contaminated sites and submits related environmental sampling data to Ecology, including potentially liable persons, Voluntary Cleanup Program (VCP) customers, prospective purchasers, government agencies, and Ecology contractors.

1. Unless otherwise specified by Ecology, all environmental monitoring data generated during contaminated site investigations and cleanups are required to be submitted to Ecology in both written format and electronically through EIM.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and the Sediment Management Standards (Chapter 173-204 WAC).

The Environmental Information Management System (EIM) is a searchable database that contains data collected by Ecology (or by environmental contractors on behalf of Ecology), and by Ecology grant recipients, local governments, the regulated community, and volunteers.

Under this Policy, data are considered to be “environmental monitoring data” if generated or collected during:

- a. Site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding; or
- b. An independent remedial action.

Under this Policy, data are not considered to be environmental monitoring data if generated or collected for the following studies. This means that entering data into EIM, while encouraged, is optional for:

- a. Non site-specific studies;
- b. Site hazard assessments that result in no further action; and
- c. All initial site investigations.

2. Orders, agreed orders, consent decrees, or permits must include a condition that site-specific environmental sampling data be submitted in compliance with this Policy.

For those reports prepared and submitted for review under an order, agreed order, consent decree, or permit, the environmental sampling data must be entered into EIM at the time of report submittal. If reports for such work do not include documentation that data was submitted in compliance with this Policy, the reports shall be deemed incomplete and a notice will be provided to the submitter.

Generally, Ecology should not review such reports until that documentation is provided. The assistant attorney general assigned to the site should be consulted for an appropriate response when Ecology's review is delayed due to failure of data entry into EIM.

3. Site-specific environmental sampling data must be entered into EIM before Ecology will review independent remedial action reports under the Voluntary Cleanup Program.

For independent remedial action reports prepared and submitted under Ecology's Voluntary Cleanup Program (VCP), environmental sampling data must be entered into EIM at the time any report is submitted requesting an opinion on the sufficiency of the action under the VCP.

However, Ecology may establish an alternate deadline for entering data into EIM if this Policy creates undue hardship on the VCP customer and Ecology does not need the data in EIM to begin the review.¹ But in no case will Ecology issue a No Further Action (NFA) opinion letter under the VCP—either for the whole site or a property located within the site—until the data has been entered into EIM.

If sampling data has not been entered into EIM, Ecology may still review the report for the limited purpose of determining whether it contains sufficient information to provide an opinion. If the report is incomplete, Ecology may also respond to the VCP customer's request for an opinion by issuing an administrative letter rejecting the report and requesting additional information.

¹ For example, when a site has multiple groundwater sampling events over time, it may be more efficient to enter the data into EIM at one time after monitoring is completed, rather than for each monitoring event. Another example would be where a VCP consultant is using EIM for the first time and needs additional time to learn how to use the system.

4. Grants, contracts, interagency agreements or memoranda of understanding issued after the effective date of this Policy must include a condition that site-specific data be submitted in compliance with this Policy.

Reports on such work will not be accepted as complete until the data have been submitted in compliance with this Policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met. Attachment A contains example language to include in these documents.

5. Data generated during upland investigations and cleanups must be submitted electronically using Ecology's EIM.

The Environmental Information Management System is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format.

Additional information about EIM, including instructions for data submittal, can be found on Ecology's EIM website at <http://www.ecy.wa.gov/eim/>. The Toxic Cleanup Program's (TCP) EIM Coordinator can also provide technical assistance to site managers and consultants who use EIM.

6. Data generated during sediment investigations and cleanups must be submitted electronically using Ecology's EIM.

Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through EIM meets the requirement of submitting such data in an electronic format. Electronic data must be submitted to Ecology simultaneously with the accompanying report.

For additional information on sediment sampling and analysis plan requirements, see Ecology's *Sediment Cleanup Users Manual (SCUM II)* Publication No. 12-09-057, available at: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

The Sediment Data Coordinator in TCP's Aquatic Land Cleanup Unit (ALCU) can also provide technical assistance with EIM.

7. Data submitted electronically using EIM must be checked by the Toxics Cleanup Program's EIM Coordinator before the data will be officially loaded into EIM.

Normally, TCP's EIM Coordinator will receive a notice that data have been submitted through EIM. Upon receipt of the notice, the EIM Coordinator should notify the Cleanup Project Manager. The EIM Coordinator then reviews the submittal for quality control and officially loads the data into the system.

Attachment A

Model Grant and Permit Condition

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Model Grant and Permit Condition

The following condition is to be inserted in grants, loans, contracts, interagency agreements, and memoranda of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS, AND LOANS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future funding.)

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