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MAY 23 2001
ATTORNEY GENERAL'S OFFICE
Ecology Division

RECEIVED
In King County Superior Court Cases
MAY 17 2001
Deborah S. Johnson
Superior Court Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE SEATTLE ART MUSEUM, THE
CITY OF SEATTLE, AND THE
MUSEUM DEVELOPMENT
AUTHORITY

Defendants.

NO. 01-2-18070-003

PROSPECTIVE PURCHASER
CONSENT DECREE RE: 10 BROAD
STREET, SEATTLE, WASHINGTON

PROSPECTIVE PURCHASER CONSENT DECREE RE:
10 BROAD STREET, SEATTLE, WASHINGTON
C:\TEMP\GWViewer\ABroadStr.doc

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
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13 EXHIBITS

- 14 Exhibit A: Site Diagram and Legal Description
- 15 Exhibit B: Draft Cleanup Action Plan
- 16 Exhibit C: Schedule
- 17 Exhibit D: Site Use Plan
- 18 Exhibit E: Restrictive Covenant
- 19 Exhibit F: Sampling/Monitoring and Contingency Plan
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I. INTRODUCTION

This prospective purchaser consent decree ("Decree") is made and entered into by and between the Washington State Department of Ecology ("Ecology"), the Seattle Art Museum ("SAM"), the City of Seattle ("City") and the Museum Development Authority ("MDA"). SAM, the City and the MDA are herein referred to as "Defendants."

1. WHEREAS, the purpose of this Decree is to resolve the potential liability of Defendants for known and suspected contamination at the 10 Broad Street Property in Seattle, Washington (the "Site") arising from a release or threatened release of hazardous substances, to promote the public interest by expediting cleanup activities at the Site and to facilitate the cleanup and redevelopment of contaminated properties in Seattle, Washington.

2. WHEREAS, a Site Diagram and Legal Description are attached as Exhibit A and a Site Use Plan for the proposed park is attached as Exhibit D.

3. WHEREAS, Defendants have proposed to participate in the cleanup of the Site and redevelop the Site into a sculpture park consistent with applicable City zoning provisions and comprehensive plan designations.

4. WHEREAS, SAM has entered into a contract to acquire the Site. Under the contract, SAM has the option to assign its right to purchase the Site to the City, King County and/or the MDA.

5. WHEREAS, SAM intends to assign its right to purchase the Site to the City and the City intends to purchase the Site. The MDA will obtain a property interest (by ownership, lease or license) in the Site from the City, and the MDA will perform the remedial action outlined in the Consent Decree. SAM will then obtain a property interest in the Site and will develop, operate and maintain the park.

6. WHEREAS, in the absence of this Decree, at the time they acquire the Site, Defendants would incur potential liability under RCW 70.105D.040(1)(a) of the Model Toxics

1 Control Act ("MTCA") for performing remedial actions, or for paying remedial costs incurred by
2 Ecology, resulting from past releases or threatened releases of hazardous substances at the Site,
3 and Defendants have certified that they are not otherwise currently liable under MTCA for
4 remedial action at the Site.

5 7. WHEREAS, Defendants have developed a Cleanup Action Plan ("CAP") to
6 address soil and groundwater contamination at the Site.

7 8. WHEREAS, this Decree promotes the public interest by expediting cleanup
8 activities at the Site consistent with MTCA, Chapter 70.105D RCW and its implementing rules
9 in Chapter 173-340 WAC.

10 9. WHEREAS, Defendants shall perform the remediation specified in this Decree
11 and the CAP, attached as Exhibit B, in exchange for a covenant not to sue and protection from
12 contribution actions under MTCA.

13 10. WHEREAS, Defendants' plans for the redevelopment of the Site, as shown on
14 Exhibit D, are not likely to contribute to contamination at the Site, interfere with remedial actions
15 that may be needed on the Site, or increase human health risks to persons at or in the vicinity of
16 the Site.

17 11. WHEREAS, this Decree will provide a substantial public benefit by promoting
18 redevelopment of a former commercial/industrial site and yielding substantial new resources to
19 facilitate cleanup to prevent migration of contaminants to Elliott Bay and other areas of the Site.

20 12. WHEREAS, Defendants' remedial actions will lead to a more expeditious cleanup
21 of hazardous substances at the Site than would otherwise occur, and will promote protection of
22 the public health and the environment.

23 13. WHEREAS, the Complaint in this action is being filed simultaneously with this
24 Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in
25 this case. However, the parties wish to resolve the issues raised by Ecology's Complaint. In
26 addition, the parties agree that settlement of these matters without litigation is reasonable and in

1 | the public interest and that entry of this Decree is the most appropriate means of resolving these
2 | matters.

3 | 14. WHEREAS, the Court is fully advised of the reasons for entry of this Decree, and
4 | good cause having been shown:

5 | IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

6 | **II. AUTHORITY, JURISDICTION AND VENUE**

7 | 15. This Court has jurisdiction over the subject matter and over the parties pursuant to
8 | MTCA, RCW 70.105D. Venue is proper in King County pursuant to RCW 70.105D.050(5)(b).

9 | 16. Authority is conferred upon the Washington State Attorney General by
10 | RCW 70.105D.040(4)(a) and RCW 70.105D.040(5) to enter into a settlement with persons not
11 | currently liable for remedial actions at a facility who propose to purchase property if, after public
12 | notice, Ecology finds the proposed settlement will lead to a more expeditious cleanup of
13 | hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e). In
14 | addition, the Attorney General may agree to the settlement if the settlement will yield substantial
15 | new resources to facilitate cleanup and expedite remedial action consistent with rules adopted
16 | under MTCA, and Ecology finds that the redevelopment or reuse of the property is not likely to
17 | contribute to the existing release or threatened release, interfere with remedial actions that may
18 | be needed at the site, or increase health risks to persons at or in the vicinity of the site. RCW
19 | 70.105D.040(4)(b) require that such a settlement be entered as a consent decree issued by a court
20 | of competent jurisdiction.

21 | 17. Ecology has determined that hazardous substances have been released at the Site.
22 | Ecology has not made a determination that Defendants are PLPs for the Site and Defendants
23 | have certified that they are not currently liable under RCW 70.105D. Were Defendants to
24 | acquire an interest in the Site, however, they could become PLPs as owners or operators under
25 | RCW 70.105D.040(1)(a). This Decree is entered prior to Defendants' operation of the Site, or
26 | acquisition of any property interest in the Site, to resolve their potential liability for known or

1 | suspected Site contamination described in reports and in the CAP and to facilitate a more
2 | expeditious cleanup of the Site than otherwise would occur. This Decree is entered into pursuant
3 | to the authority set forth in RCW 70.105D.040(5).

4 | 18. By entering into this Decree, Defendants agree not to challenge Ecology's
5 | jurisdiction in any proceeding to enforce this Decree. Defendants consent to the issuance of this
6 | Decree and agree to perform the remedial actions as specified in this Decree.

7 | 19. All Exhibits attached to this Decree are integral and enforceable parts of this
8 | Decree.

9 | **III. PARTIES BOUND**

10 | 20. This Decree shall apply to and be binding upon the signatories to this Decree.
11 | The undersigned representative of each party hereby certifies that he or she is fully authorized to
12 | enter into this Decree and to execute and legally bind such party to comply with this Decree.
13 | Defendants agree to undertake all actions required by the terms and conditions of this Decree and
14 | not to contest state jurisdiction regarding this Decree. No change in ownership or corporate
15 | status shall alter the responsibility of Defendants under this Decree. Defendants shall provide a
16 | copy of this Decree to all agents, contractors and subcontractors retained to perform work
17 | required by this Decree and shall ensure that all work undertaken by such contractors and
18 | subcontractors will be in compliance with this Decree.

19 | 21. Pursuant to RCW 70.105D.040(4)(e)(ii), Ecology has determined that this Decree
20 | is not based on unique circumstances. Therefore, the stay of enforcement against successors in
21 | interest in RCW 70.105D.040(4)(e) applies to this Decree.

22 | **IV. DEFINITIONS**

23 | 22. Unless otherwise expressly provided herein, terms used in this Decree that are
24 | defined in MTCA, Chapter 70.105D RCW, or in regulations promulgated under MTCA, Chapter
25 | 173-340 WAC, shall have the meaning assigned to them in MTCA or in such regulations.
26 |

1 Whenever terms listed below are used in this Decree or in the attachments hereto, the following
2 definitions shall apply:

3 "Decree" shall mean this Decree and all attachments hereto. In the event of conflict
4 between this Decree and any Exhibit, this Decree shall control.

5 "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

6 "Section" shall mean a portion of this Decree identified by a Roman numeral and
7 including one or more Paragraphs.

8 "Site" shall mean the property located at 10 Broad Street in Seattle, Washington, depicted
9 on and legally described in Exhibit A, attached hereto and incorporated herein by this reference.
10 The Site is a "facility" as defined in MTCA per RCW 70.105D.020(4).

11 "Successors in Interest and Assigns" shall mean any person who acquires an interest in
12 the Site through purchase, lease, transfer, assignment, or otherwise.

13 V. STATEMENT OF FACTS

14 23. The Site is located on the northwest corner of Elliott Avenue and Broad Street,
15 east of Elliott Bay near Pier 70 in downtown Seattle, Washington. A Site Diagram is attached as
16 Exhibit A.

17 24. The Site was used for welding and/or automobile service operations from
18 approximately 1916 until 1973. Since 1976, the Site has been used for commercial purposes,
19 specifically a pizza restaurant and pool hall.

20 25. A number of underground storage tanks were located on the Site, but a 1975
21 demolition grading plan indicates that the tanks were to be removed.

22 26. Numerous environmental investigations have been conducted at the Site by
23 consultants for a potential purchaser of the property and by SAM. Elevated concentrations of
24 petroleum hydrocarbons have been encountered in soil and groundwater on the Site and in soil
25 just east of the Site in Elliott Avenue.
26

1 27. Petroleum hydrocarbons at the Site appear to be derived primarily from weathered
2 gasoline, and to a lesser degree, diesel and oil products. Gasoline-range hydrocarbons are
3 present at concentrations exceeding cleanup levels primarily within the smear zone near the
4 groundwater table along the northeastern portion of the property. Elevated concentrations of
5 gasoline-, diesel- and oil-range hydrocarbons were also encountered in near-surface soils in the
6 center of the Site, but diesel- and oil-range hydrocarbons are typically below soil cleanup levels.

7 28. BTEX compounds were also encountered at concentrations above cleanup levels,
8 in the same general vicinity as the petroleum hydrocarbons. Shallow soil samples beneath Elliott
9 Avenue also contained elevated benzene concentrations but did not contain significant
10 concentrations of gasoline-range hydrocarbons.

11 29. MTBE was detected in preliminary soil samples using a gas chromatography
12 screening method. GC mass spectrometry confirmation testing did not detect MTBE in any of
13 the soil or groundwater samples.

14 (30.) RI/FS HART CROWSER 1999 detected petroleum hydrocarbon vapors
15 associated with gasoline above the Method B criteria, north and adjacent to the site.

16 31. Groundwater concentrations appear to have decreased over time, possibly due to
17 natural attenuation. Gasoline-range hydrocarbons are the only contaminant that exceeded
18 cleanup levels during the most recent sampling event. Recent groundwater samples taken at the
19 western (down-gradient) boundary of the Site did not exceed cleanup levels.

20 (32.) These environmental conditions were reported in a Remedial
21 Investigation/Feasibility Study dated January 29, 2001. The Feasibility Study analyzed remedial
22 alternatives and identified appropriate cleanup standards as required pursuant to MTCA. Based
23 on the results of the Feasibility Study, Defendants proposed and Ecology approved a final
24 remedy as outlined in the Work to be Performed, Section VII, below and as described more fully
25 in the attached CAP (Exhibit B).

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VI. DESCRIPTION OF PLANNED PROJECT

33. Defendants intend to acquire and operate the Site.

34. Defendants plan to create a public sculpture park at the Site and the adjacent site recently purchased by SAM. The park will include sculptures, pedestrian trails, and landscaped open space. The adjacent property to the east will also contain an underground parking lot. An exhibition building and accessory structures (e.g., restrooms, espresso stands) may be placed on the adjacent site. Alaskan Way will consist of a shoreline promenade, an extension of the Myrtle Edwards Park waterfront bike trail, landscaped open space, possibly paved parking areas and small slab-on-grade structures. Pedestrian bridges will be built to allow pedestrian crossing at Elliott Avenue and the railroad right-of-way adjacent to Alaskan Way. The Site and its relationship to the larger sculpture park project is depicted in Exhibit D to this Decree.

VII. WORK TO BE PERFORMED, SCHEDULE AND LAND USE RESTRICTIONS

35. This Decree contains a program designed to protect public health, welfare, and the environment from the known, suspected, or threatened release of hazardous substances or contaminants at, on, or from the Site. The requirements of such program are described in detail in this section of the Decree and in the Cleanup Action Plan (Exhibit B) and in the schedule set forth in Exhibit C.

36. Defendants have performed the Remedial Investigation/Feasibility Study and agree to perform the remedial actions herein and as described in the CAP and Schedule to eliminate contaminated soil and groundwater direct contact and soil to groundwater, groundwater to surface water and vapor exposure pathways to known or suspected hazardous substances at or from the Site and protect human health and the environment from the release or threatened release of known or suspected hazardous substances at or from the Site.

1 37. Defendants shall perform remedial actions in the attached CAP pursuant to the
2 Schedule attached at Exhibit C. Defendants, through their contractor(s) and subcontractor(s) as
3 necessary, shall accomplish the following tasks:

4 a) Task 1: Implement the Cleanup Action Plan (CAP), Exhibit B and the
5 Sampling/Monitoring and Contingency Plan, Exhibit F, including but not
6 limited to the following:

7 i. Excavation of TPH-impacted soil to the extent practicable, as
8 outlined in Exhibit B.

9 ii. Implement ambient air and groundwater sampling program to
10 evaluate the effectiveness of the remedial action, as outlined in Exhibits B
11 and F.

12 iii. Implement indoor air monitoring program if buildings are to be
13 placed at the Site, as outlined in Exhibit F.

14 iv. Design and implement contingency plan, if necessary, as outlined
15 in Exhibit F.

16 b) Task 2: Provide for public participation.

17 c) Task 3: Provide Remedial Design.

18 d) Task 4: Implement the Compliance Monitoring Program as outlined in
19 the CAP (Exhibit B) and the Sampling/Monitoring and
20 Contingency Plan (Exhibit F), which also includes:

21 i. Protection Monitoring.

22 ii. Performance Monitoring.

23 iii. Confirmation Monitoring.

24 e) Task 5: Implement Schedule attached hereto as Exhibit C.

25 Defendants agree not to perform any remedial actions on the Site that are inconsistent with the
26 remedial actions required under this Consent Decree.

38. Defendants shall obtain any and all state, federal, or local permits required by
applicable law before commencing the remedial action at the Site, except as provided in

1 Section XXI. Defendants shall prepare a Site Safety and Health Plan in accordance with WAC
2 173-340-810 and the most recent OSHA, WISHA, Ecology, and EPA guidance and applicable
3 regulations, for Ecology review. Defendants shall also provide a security system at the Site
4 designed to prevent entry by unauthorized persons during the excavation work.

5 39. Defendants shall be prohibited from using the Site in a manner likely to cause or
6 contribute to the existing release, interfering with remedial actions performed or that may be
7 needed at the Site, or increasing health risks to persons or risks to the environment at or in the
8 vicinity of the Site. Defendants agree to ensure that its Successors in Interest and Assigns are
9 prohibited from using the Site in a manner likely to cause or contribute to the existing release,
10 interfering with remedial actions that are performed or may be needed at the Site, or increasing
11 health risks to persons or risks to the environment at or in the vicinity of the Site.

12 40. Defendants shall file a Restrictive Covenant with the deed for the Site if the
13 concentrations of hazardous substances on the Site exceed the cleanup levels following soil
14 sampling (Exhibit B, Section 8.0), groundwater monitoring (Exhibit F, Section 3.0) and ambient
15 air sampling (Exhibit F, Section 1.0), which will be performed to evaluate the effectiveness of
16 the excavation action, as outlined in the CAP (Exhibit B). The specific provisions to be included
17 in the Restrictive Covenant will be determined based on the media impacted by the residual
18 hazardous substances on the Site. The alternative provisions that may be included in the
19 Restrictive Covenant are outlined in Exhibit E. If a Restrictive Covenant is required under this
20 section, Defendants shall provide Ecology with a copy of the version of the Covenant proposed
21 for filing at least seven (7) days prior to the actual filing of the document. If a Restrictive
22 Covenant is required, Defendants, or their Successors in Interest and Assigns, after
23 confirmational monitoring has shown that contaminants are no longer present at the Site above
24 applicable cleanup levels, may record an instrument that provides that the Restrictive Covenants
25 provided in Exhibit E shall no longer limit uses of the Site or be of any further force or effect, but
26 only with Ecology's prior written approve of such instrument.

1 41. If permanent heated buildings with closed basements or first floors shall be placed
2 on the Site and if, after active remedial measures, confirmational monitoring and sampling and
3 analysis to evaluate indoor air issues have been completed, soil vapor at the Site exceeds
4 applicable cleanup levels with respect to indoor air, provisions in Section 2.0 of the
5 Sampling/Monitoring and Contingency Plan (Exhibit F) regarding the placement of permanent
6 heated buildings and engineering controls for soil vapors shall be implemented for any such
7 proposed building. Defendants shall file a restrictive covenant with the deed if engineering
8 controls are required to address indoor air issues. This section shall survive and continue in full
9 force and effect after the Decree is dismissed.

10 VIII. ECOLOGY COSTS

11 42. Defendants agree to pay past costs from January 2, 2001, to present and future
12 costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by
13 Ecology or its contractors for, or on, the Site under Chapter 70-105D RCW, for investigations,
14 remedial actions, oversight and administration associated with this Decree (including preparation
15 and negotiation of this Decree). Ecology costs shall include costs of direct activities and support
16 costs of direct activities as defined in WAC 173-340-550(2). Defendants agree to pay the
17 required amount within ninety (90) days of receiving from Ecology an itemized statement of
18 costs that includes a summary of costs incurred, an identification of involved staff, and the
19 amount of time spent by involved staff members on the project. A general statement of work
20 performed will be provided upon request. Itemized statements and costs shall be prepared
21 quarterly. Failure to pay Ecology costs within ninety (90) days of receipt of the itemized
22 statement will result in interest charges as allowed by law. Defendants reserve the right to
23 review and approve any charges prior to payment. Any dispute regarding remedial and
24 investigation costs for the Site shall be subject to dispute resolution pursuant to Section XIV.
25 Defendants reserve the right to pay the undisputed portion of an invoice and not pay the disputed
26 portion.

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IX. DESIGNATED PROJECT COORDINATORS

43. The project coordinator for Ecology is:

Nnamdi Madakor
Toxics Cleanup Program
Department of Ecology
Northwest Regional Office
3190 160th Avenue Southeast
Bellevue, WA 98008
Telephone: (425) 649-7000

The project coordinator for Defendants is:

Chris Rogers
Seattle Art Museum
P.O. Box 22000
Seattle, WA 98122
Telephone: (206) 654-3221

44. Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and Defendants and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working-level staff contacts for all or portions of the implementation of the Work to be Performed, Section VII, and attached Cleanup Action Plan. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree.

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

X. PERFORMANCE

46. All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with

1 | experience and expertise in hazardous waste site investigation and cleanup. Any construction
2 | work must be under the supervision of a professional engineer. Defendants shall notify Ecology
3 | in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any
4 | contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of
5 | their involvement at the Site.

6 | XI. CERTIFICATION OF DEFENDANTS

7 | 47. Defendants represent and certify that, to the best of their knowledge and belief,
8 | they have fully and accurately disclosed to Ecology the information currently in their possession
9 | or control that relates to the environmental conditions at and in the vicinity of the Site, or to
10 | Defendants' right and title thereto.

11 | 48. Defendants represent and certify that they did not cause or contribute to a release
12 | or threatened release of hazardous substances at the Site and are not otherwise potentially liable
13 | under RCW 70.105D.040(1), except by becoming owners and/or operators of the Site.

14 | XII. TRANSFER OF INTEREST IN PROPERTY

15 | 49. Prior to any voluntary or involuntary conveyance or relinquishment of title,
16 | easement, leasehold, or other interest in any portion of the Site, Defendants shall provide for
17 | continued compliance with all of the conditions of this Decree. Prior to transfer of any legal or
18 | equitable interest in all or any portion of the Site during the effective period of this Decree,
19 | Defendants shall provide a copy of this Decree to any prospective purchaser, lessee, transferee,
20 | assignee, or other successor in interest of the Site; and, at least thirty (30) days prior to any
21 | transfer, Defendants shall notify Ecology of said contemplated transfer. This Paragraph shall not
22 | apply to transfer of any legal or equitable interest by one Defendant to another Defendant.

23 | 50. Defendants shall ensure that any future use of the Site is restricted such that
24 | activities that would contribute to the existing release or threatened release, interfere with
25 | remedial actions at the Site, or increase health risks to persons or risks to the environment at or in
26 | the vicinity of the Site are prohibited.

1 Program Manager's decision shall be Ecology's final decision on the
2 disputed matter.

3 55. If Ecology's final written decision is unacceptable to Defendants, Defendants
4 shall have the right to submit the dispute to the Court for resolution. The parties agree that one
5 judge should retain jurisdiction over this case and shall as necessary, resolve any dispute arising
6 under this Decree. In the event Defendants present an issue to the Court for review, the Court
7 shall review the action or decision of Ecology under an arbitrary and capricious standard of
8 review.

9 56. The parties agree to use the dispute resolution process in good faith and agree to
10 expedite, to the extent possible, the dispute resolution process whenever it is used. When either
11 party uses the dispute resolution in bad faith or for purposes of delay, the other party may seek
12 sanctions.

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

16 XV. CONTRIBUTION PROTECTION

17 58. With regard to claims for contribution against Defendants for matters addressed in
18 this Decree, Ecology agrees that Defendants are entitled to protection from contribution actions
19 or claims as is provided by MTCA, RCW 70.105D.040, or as otherwise provided by law.

20 XVI. COVENANT NOT TO SUE UNDER MTCA; REOPENERS

21 59. In consideration of compliance by Defendants with the terms and conditions of
22 this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all
23 administrative, legal, and equitable remedies and enforcement actions available to Ecology
24 against Defendants for the release or threatened release of known or suspected hazardous
25 substances at the Site covered by the terms of this Decree. Ecology covenants not to sue
26

1 Defendants, its Successors in Interest and Assigns for matters covered by the terms of this
2 Decree, provided that Defendants, or its Successors in Interest and Assigns have substantially
3 complied with this Decree.

4 A. Reopeners: In the following circumstances the State of Washington may
5 exercise its full legal authority to address releases of hazardous substances at the Site
6 notwithstanding the Covenant Not to Sue set forth above:

- 7 1. In the event Defendants fail to comply with the terms and
8 conditions of this Decree, including all attachments, and, after
9 written notice of noncompliance, fails to come into compliance.
- 10 2. In the event new information becomes available regarding factors
11 previously unknown to Ecology, and Ecology determines, in light
12 of this information, that further remedial action is necessary at the
13 Site to protect human health or the environment.
- 14 3. In the event the remedial action conducted at the Site fails to meet
15 the requirements set forth in Section VII of this Decree and the
16 attached Cleanup Action Plan.
- 17 4. In the event the Site is used for any activities that contribute to the
18 existing release or threatened release, interfere with remedial
19 actions that may be needed at the Site, or increase health risks to
20 persons at or in the vicinity of the Site.

21 B. Applicability. The Covenant Not To Sue set forth above shall have no
22 applicability whatsoever to:

- 23 1. Criminal liability;
- 24 2. Any Ecology action against PLPs not party to this Decree; and
- 25 3. Any claims by the State for Natural Resources Damages.

26 XVII. DEFENDANTS' RESERVATION OF RIGHTS

60. Defendants reserve all rights and defenses that they may have and which are not
otherwise addressed in the Decree.

1 have been included in the CAP and are incorporated by reference herein as binding and
2 enforceable requirements in this Decree.

3 67. Defendants have a continuing obligation to determine whether additional permits
4 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
5 action under this Decree. In the event either Defendants or Ecology determines that additional
6 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
7 remedial action under this Decree, it shall promptly notify the other party of this determination.
8 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
9 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly
10 consult with the appropriate state and/or local agencies and provide Ecology with written
11 documentation from those agencies of the substantive requirements those agencies believe are
12 applicable to the remedial action. Ecology shall make the final determination on whether the
13 additional substantive requirements must be met by Defendants and on how Defendants must
14 meet those requirements. Ecology shall inform Defendants in writing of these requirements and
15 Defendants shall have an opportunity to comment on such requirements. Once established by
16 Ecology, the additional requirements shall be enforceable requirements of this Decree.
17 Defendants shall not begin or continue the remedial action potentially subject to the additional
18 requirements until Ecology makes its final determination.

19 68. Ecology shall ensure that notice and opportunity for comment is provided to the
20 public and appropriate agencies prior to establishing the substantive requirements under this
21 section.

22 69. Pursuant to RCW 70.105D.090(2), in the event that Ecology determines that the
23 exemption from complying with the procedural requirements of the laws referenced in RCW
24 70.105D.090(1) would result in the loss of approval from a federal agency necessary for the state
25 to administer any federal law, such exemption shall not apply and Defendants shall comply with
26

1 both the procedural and substantive requirements of the laws referenced in RCW
2 70.105D.090(1), including any requirements to obtain permits.

3 XXII. SAMPLING, DATA REPORTING, AND AVAILABILITY

4 70. With respect to the implementation of this Decree, Defendants shall make the
5 results of all sampling, laboratory reports, and/or test results generated by them, or on their
6 behalf available to Ecology and shall submit these results in accordance with Section XXIII of
7 this Decree.

8 71. If requested by Ecology, Defendants shall allow split or duplicate samples to be
9 taken by Ecology and/or Ecology's authorized representatives of any samples collected by
10 Defendants pursuant to the implementation of this Decree. Defendants shall notify Ecology at
11 least seven (7) working days in advance of any sample collection or work activity at the Site.
12 Ecology shall, upon request, allow split or duplicate samples to be taken, at Defendants' sole
13 expense, by Defendants, or their authorized representatives, of any samples collected by Ecology
14 pursuant to the implementation of this Decree, provided they do not unreasonably interfere with
15 the Department's sampling. Without limiting Ecology's rights under Section XX, Ecology shall
16 endeavor to notify Defendants at least five (5) working days prior to any sampling collection
17 activity.

18 XXIII. PROGRESS REPORTS

19 72. Defendants shall submit to Ecology written progress reports that describe the
20 actions taken to implement the requirements of this Decree. The progress report shall be
21 prepared as set forth in the following schedule:

22 *Monthly during the excavation action; and

23 *Quarterly during post-remedial monitoring activities.

24 The progress reports shall contain the following:

25 A. A list of on-Site activities that have taken place during the reporting
26 period;

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

3 C. Description of all deviations from the schedule during the current
4 reporting period and any planned deviations in the upcoming reporting period;

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

7 E. All data (including laboratory analyses) which, after the QA/QC program
8 has been performed, have been received by Defendants during the past reporting period and an
9 identification of the source of the samples; and

10 F. A list of deliverables for the upcoming reporting period if different from
11 the schedule.

12 73. All progress reports shall be submitted by the tenth day of the month following
13 each reporting period after the effective date of this Decree. Unless otherwise specified, progress
14 reports and any other documents submitted pursuant to this Decree shall be sent by certified mail,
15 return receipt requested, to Ecology's project coordinator.

16 XXIV. EXTENSION OF SCHEDULE

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

22 75. An extension shall only be granted for such period of time as Ecology determines
23 is reasonable under the circumstances. A requested extension shall not be effective until
24 approved by Ecology. Ecology shall act upon any written request for extension in a timely
25 fashion. It shall not be necessary to formally amend this Decree pursuant to Section XIII when a
26 schedule extension is granted.

1 appropriate. During any stoppage of work under this Section, the obligations of Defendants with
2 respect to the work under this Decree that is ordered to be stopped shall be suspended and the
3 time periods for performance of that work, as well as the time period for any other work
4 dependent upon the work that is stopped, shall be extended, pursuant to Section XXIV of this
5 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

6 81. In the event Defendants determines that activities undertaken in furtherance of
7 this Decree or any other circumstances or activities are creating an endangerment to the people
8 on the Site or in the surrounding area or to the environment, Defendants may stop
9 implementation of this Decree for such period of time necessary for Ecology to evaluate the
10 situation and determine whether Defendants should proceed with implementation of the Decree
11 or whether the work stoppage should be continued until the danger is abated. Defendants shall
12 notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours
13 after such stoppage of work, and thereafter provide Ecology with documentation of the basis for
14 the work stoppage. If Ecology disagrees with Defendants' determination, it may order
15 Defendants to resume implementation of this Decree. If Ecology concurs with the work
16 stoppage, Defendants' obligations shall be suspended and the time period for performance of that
17 work, as well as the time period for any other work dependent upon the work that was stopped,
18 shall be extended, pursuant to Section XXIV of this Decree, for such period of time as Ecology
19 determines is reasonable under the circumstances.

20 XXVI. IMPLEMENTATION OF REMEDIAL ACTION

21 82. If Ecology determines that Defendants have failed without good cause to
22 implement the remedial action described herein and in the CAP, Ecology may, after notice to
23 Defendants, perform any or all portions of the remedial action that remain incomplete. If
24 Ecology performs all or portions of the remedial action because of Defendants' failure to comply
25 with the obligations under this Decree, Defendants shall reimburse Ecology for the costs of doing
26

1 such work, provided that Defendants shall not be obligated under this Section to reimburse (Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

3 **XXVII. PUBLIC PARTICIPATION**

4 83. Ecology shall maintain the responsibility for public participation at the Site.
5 However, Defendants shall cooperate with Ecology with respect to the following public
6 participation activities:

7 A. Prepare drafts of public notices and fact sheets at important stages of the
8 remedial action, such as the submission of work plans and engineering design reports. Ecology
9 will finalize (including editing if necessary) and distribute such fact sheets and prepare and
10 distribute public notices of Ecology's presentations and meetings;

11 B. Each party shall notify the other party's project coordinator prior to the
12 preparation of all press releases and fact sheets, and at least one week before major meetings with
13 the interested public and local governments regarding the remediation of the Site. Likewise,
14 Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets, and
15 before major meetings with the interested public and local governments;

16 C. Participate in public presentations on the progress of the remedial action at
17 the Site. Participation may be through attendance at public meetings to assist in answering
18 questions, or as a presenter;

19 D. In cooperation with Ecology, arrange and/or continue information
20 repositories to be located at the following locations:

21 Seattle Public Library
22 Downtown Branch
23 Government Documents
24 1000 4th Avenue, 2nd Floor
25 Seattle, Washington

26 Department of Ecology
Northwest Regional Office
3190 160th Avenue Southeast

1 Bellevue, Washington
2
3 Seattle Art Museum Library
4 100 University St., 5th Floor
5 Seattle, Washington

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

10 **XXVIII. DURATION OF DECREE AND RETENTION OF JURISDICTION;
11 CERTIFICATIONS BY ECOLOGY**

12 84. This Decree shall remain in effect and this Court shall retain jurisdiction over both
13 the subject matter of this Decree and the parties for the duration of the performance of the terms
14 and provisions of this Decree for the purpose of enabling any of the parties to apply to the Court,
15 consistent with the dispute resolution process set forth in Section XIV, and the amendment
16 process set forth in Section XIII, for such further order, direction, and relief as may be necessary
17 or appropriate to ensure that obligations of the parties have been satisfied. The Decree shall
18 remain in effect until Defendants have received written notification from Ecology that the
19 requirements of this Decree have been satisfactorily completed. Ecology shall provide such
20 written notification or notice of any deficiencies in the completion of the requirements of this
21 Decree within one hundred and eighty (180) days of receiving notice from Defendants that the
22 requirements of the Decree have been satisfied. Within sixty (60) days of Defendants' written
23 notice that any noted deficiencies have been corrected, Ecology shall provide written notification
24 that the requirements of the Decree have been satisfied or notice of any deficiencies that still
25 remain. Upon receipt of written notification from Ecology that the requirements of this Decree
26 have been satisfactorily completed, the parties shall move the Court to dismiss the Consent
Decree. The provisions set forth in Section XV (Contribution Protection), Section XVI
(Covenant Not to Sue Under MTCA; Reopeners), Section XXX (Indemnification), and other

1 such continuing or reserved rights of Defendants or Ecology under this Decree shall survive the
2 dismissal of the Decree pursuant to this paragraph. This Decree shall in no way limit the
3 authority of Ecology to obtain all legal or equitable remedies available against persons not party
4 to this Decree and against all persons, parties or non-parties, for releases of hazardous substances
5 at the Site not covered by this Decree.

6 **XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

7 85. This Decree has been the subject of public notice and comment under RCW
8 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
9 more expeditious cleanup of hazardous substances, in compliance with applicable cleanup
10 standards, and is in the public interest.

11 86. If the Court withdraws its consent, this Decree shall be null and void at the option
12 of any party and the accompanying complaint shall be dismissed without costs and without
13 prejudice. In such an event, no party shall be bound by the requirements of this Decree. This
14 paragraph shall not create a basis for withdrawal of consent or termination of this Decree other
15 than those created by the terms of this Decree or that exist by operation of law or equity.

16 **XXX. INDEMNIFICATION**

17 87. Defendants agree to indemnify and save and hold the State of Washington, its
18 employees, and agents harmless from any and all claims or causes of action for death or injuries
19 to persons or for loss or damage to the Site arising from or on account of acts or omissions of
20 Defendants, their officers, employees, agents, or contractors in entering into and implementing
21 this Decree. However, Defendants shall not indemnify the State of Washington nor save nor
22 hold its employees and agents harmless from any claims or causes of action arising out of the
23 negligent acts or omissions of the State of Washington, or employees or agents of the State, or its
24 contractors in implementing the activities pursuant to this Decree.

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XXXI. CLAIMS AGAINST THE STATE

88. Without in any way impairing the rights of the MDA or the City to seek and utilize grants and loans pursuant to RWC 70.105D.070, Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies and further that Defendants will make no claim against the state toxics control account or any local toxics control account for any costs incurred in implementing this Decree. Except as provided above, however, Defendants expressly reserve their rights to seek to recover any costs incurred in implementing this Decree from any other PLP.

XXXII. EFFECTIVE DATE

89. This Decree is effective only after the date on which title to the Site vests in Defendants and the date on which the Court enters the Decree.

So ordered this 1st day of May, 2001.

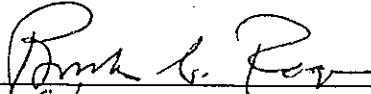
RECEIVED
MAY 17 2001

KIMBERLEY D. PROCHNA

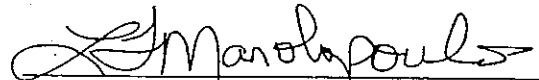
JUDGE
King County Superior Court

1 The undersigned parties enter into this Prospective Purchaser Consent Decree on the d
2 specified below.

3 THE SEATTLE ART MUSEUM

4
5 
6 Chairman

7 DATED 3/28/2001

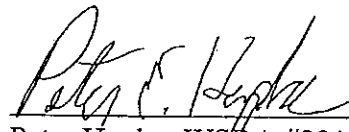

Lynn Manolopoulos, WSBA #21069

DATED 3/28/01

8
9 CITY OF SEATTLE

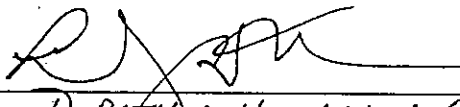
10 
11 KENNETH R. BOUNDS

12 DATED 3/28/2001

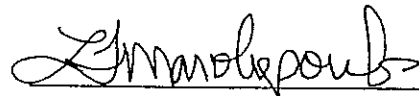

Peter Hapke, WSBA #23159

DATED 3/28/01

13
14 MUSEUM DEVELOPMENT AUTHORITY

15 
16 DOROTHY H. MANN
17 PRESIDENT

18 DATED 03-28-01



Lynn Manolopoulos, WSBA #21069

DATED 3/28/01

19
20 CHRISTINE O. GREGOIRE
Attorney General, by and through

21 

22 STEVEN J. THIELE, WSBA #20275
23 Assistant Attorney General
24 Attorney for Plaintiff
25 State of Washington
Department of Ecology

26 DATED 5-15-01

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



James Pendowski
Program Manager
Toxics Cleanup Program

DATED 5/4/01

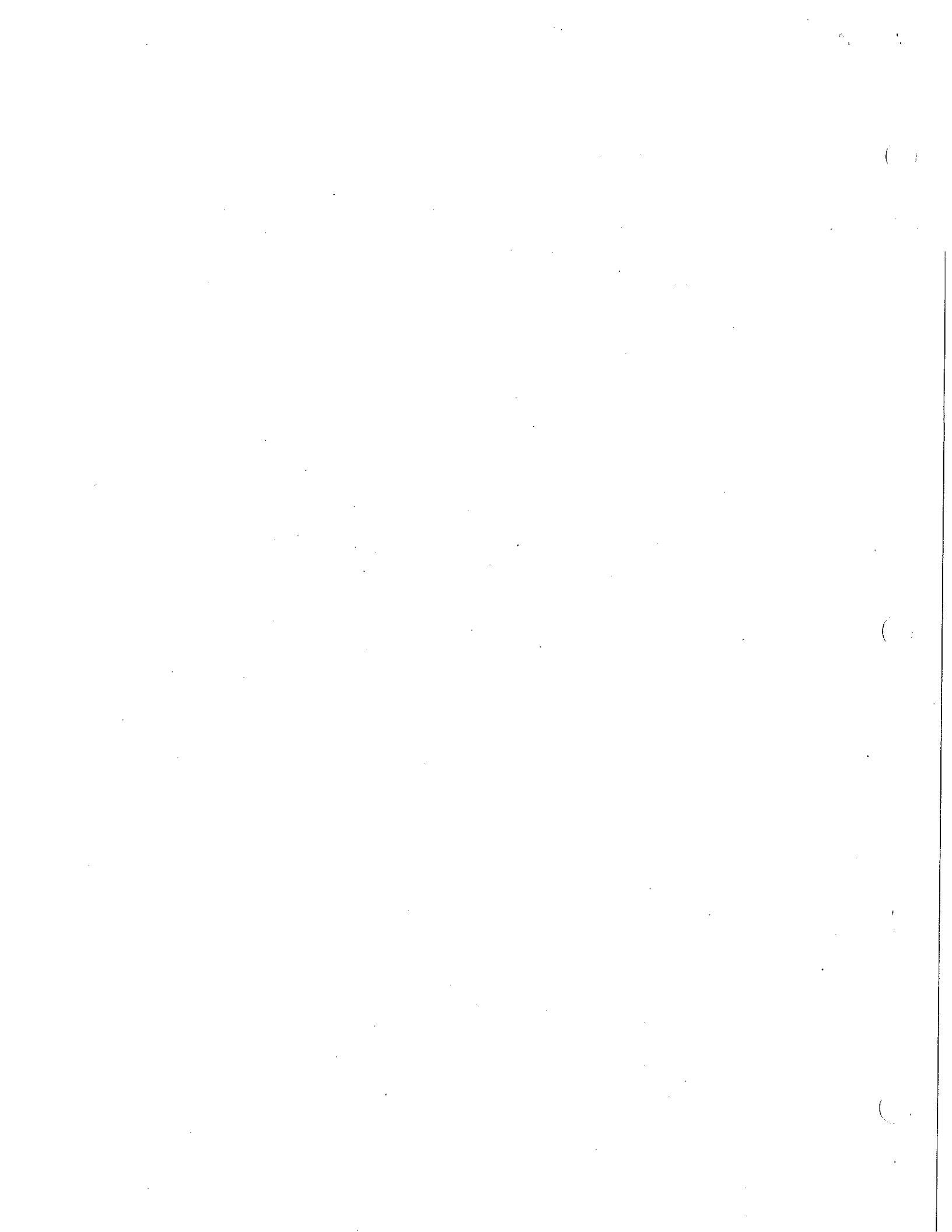
PROSPECTIVE PURCHASER CONSENT DECREE RE:
10 BROAD STREET, SEATTLE, WASHINGTON
C:\TEMP\GWV\Viewer\BroadStr.doc

27 ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

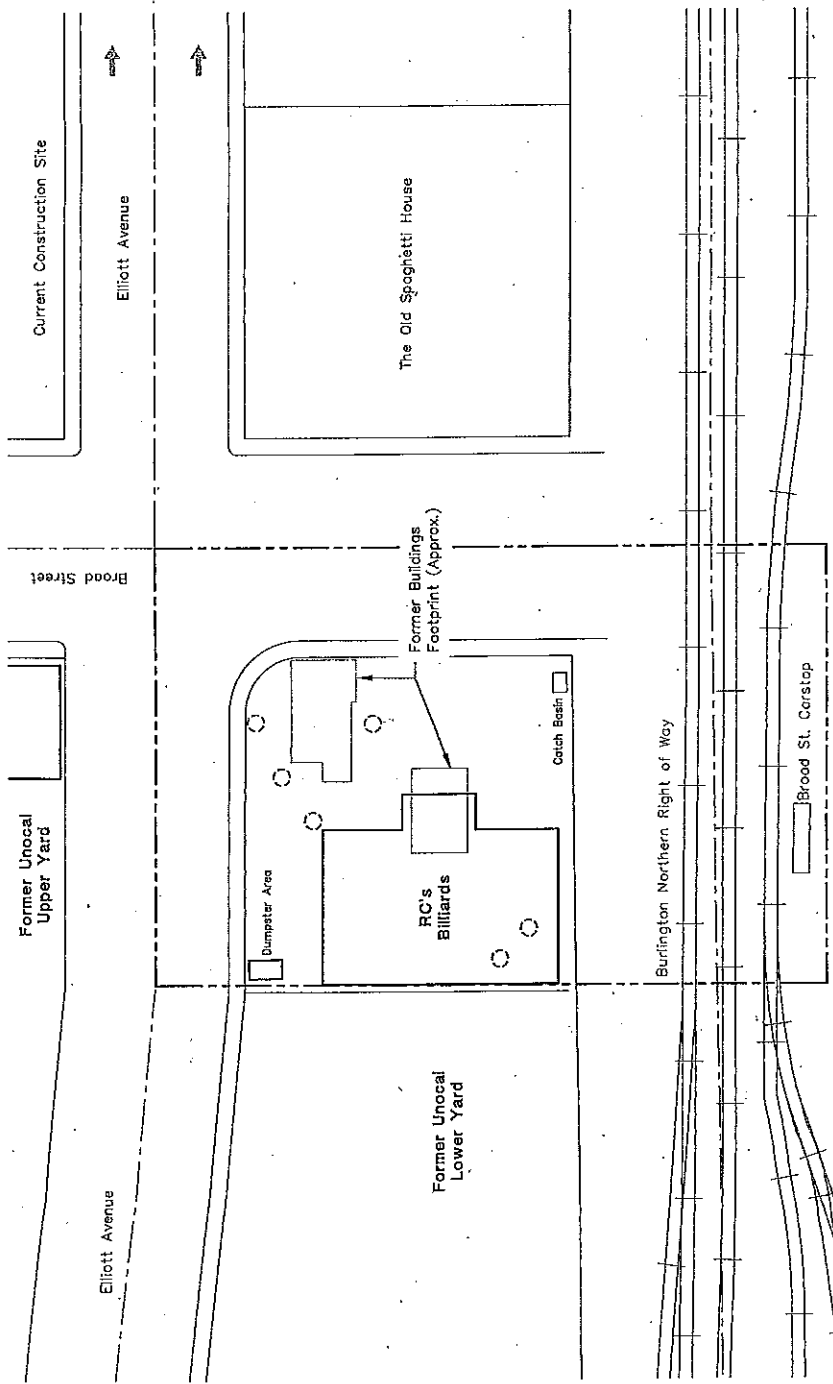
Exhibit A
Site Diagram
10 Broad Street Property
Seattle, Washington

Prepared by
Seattle Art Museum

March 23, 2001



Site Plan



Alaskan Way

Former Unocal Off-Site Area

Burlington Northern Right of Way

Brood St. Corstop

The Old Spoglietti House

Former Buildings Footprint (Approx.)

Former Unocal Lower Yard

RC's Billiards

Catch Basin

Dumpster Area

Former Unocal Upper Yard

Current Construction Site

Elliott Avenue

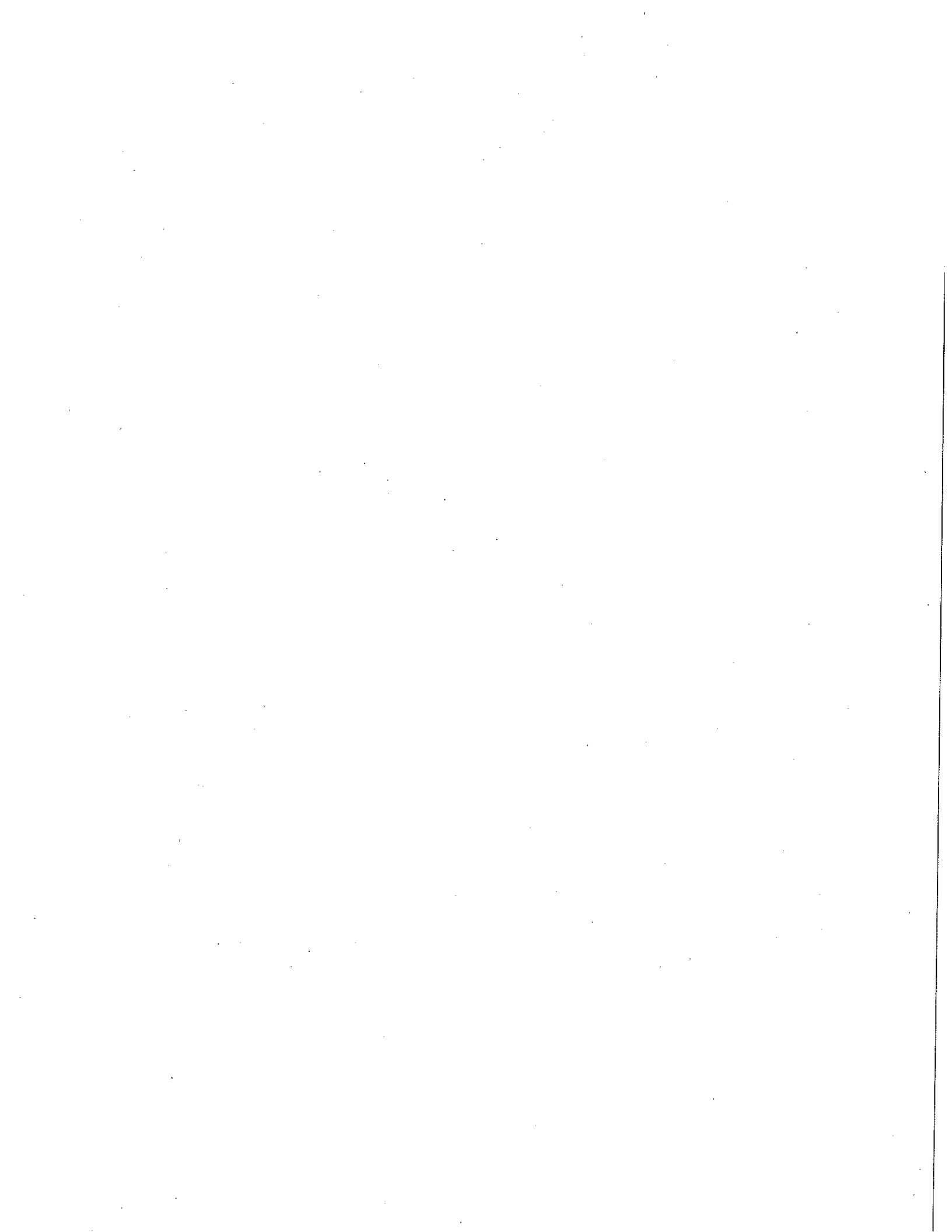
Elliott Avenue

TRUE

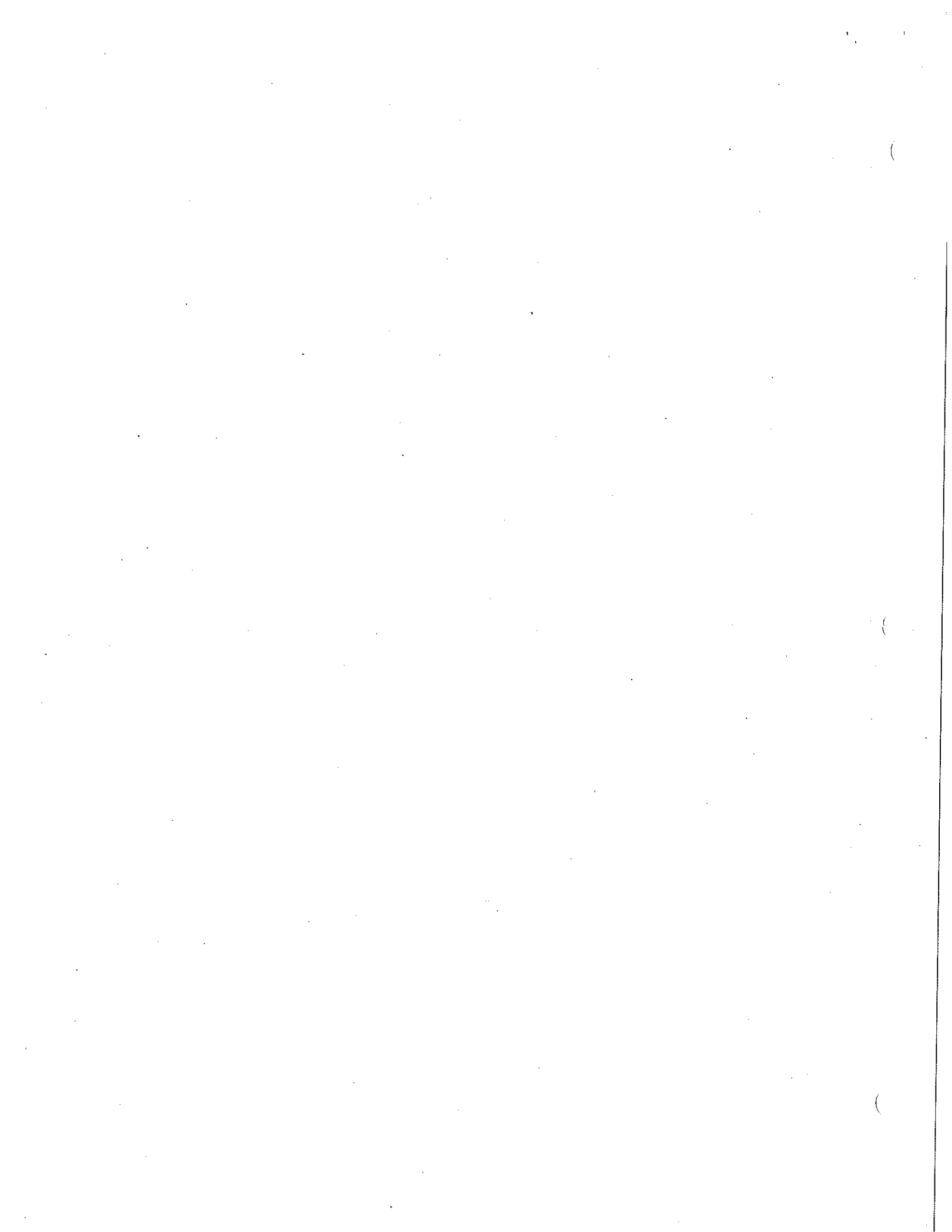
SITE

- Approximate Former Tank Location
- - - Approximate Property Boundary





**EXHIBIT B
CLEANUP ACTION PLAN
10 BROAD STREET
SEATTLE, WASHINGTON**



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APPENDIX A

RAOULT'S LAW INTERIM TPH POLICY WORKSHEETS

**EXHIBIT B
CLEANUP ACTION PLAN
10 BROAD STREET
SEATTLE, WASHINGTON**

1.0 INTRODUCTION

This Cleanup Action Plan (CAP) describes remedial actions that will be performed on the property located at 10 Broad Street in Seattle, Washington (Figure 1). This CAP was prepared on behalf of the City of Seattle (City), the Museum Development Authority (MDA), and the Seattle Art Museum (SAM). The City, MDA, and SAM intend to enter into a Prospective Purchaser Agreement with the Washington State Department of Ecology (Ecology) pursuant to the MTCA, RCW 70.105D.040(5).

This document was prepared in general accordance with requirements listed in the Washington State Model Toxics Control Act (MTCA - WAC 173-340-360). Additional information on the environmental conditions at the site and a discussion of cleanup alternatives are presented in the Remedial Investigation/Feasibility Study (RI/FS), dated January 29, 2001.

2.0 SITE DESCRIPTION

The 10 Broad Street property is located at the northwest corner of Elliott Avenue and Broad Street along the northern end of the waterfront business district (Figure 1). The rectangular property covers a total area of approximately 13,790 square feet and contains an approximately 4,010-square-foot building (Figure 2). RC's Billiards Sports Bar and Grill currently occupies the existing building, which was built around 1976. The remainder of the property is paved or covered with decorative landscaping. The property slopes westward toward Elliott Bay.

The property is bounded to the north by the former Unocal Marketing Terminal (Terminal), to the east by Elliott Avenue, to the west by the Burlington Northern Railroad (BNRR) right of way, and to the south by Broad Street.

2.1 Historical Site Use

Historical records indicate three general periods of site use:

- ▶ **Before 1916 - Residential.** In the early 1900s, several residences were located on the property.

- ▶ **1916 to 1975 - Welding and Automotive Service.** From approximately 1916 to 1973, the site was used for welding and/or automobile service operations. Several underground storage tanks (USTs) were present on the property, most in the southeastern corner of the site. Six USTs were to be removed as part of site redevelopment in 1975, but records documenting the removal have not been located.

- ▶ **1976 to Present - Restaurant.** In 1976, the existing building was constructed. Shakey's Pizza operated a restaurant at the site until the mid-1990s when the current tenant, RC's Billiards, began operations.

2.2 Planned Site Use

In October 2000, SAM entered into a purchase and sale agreement with Larmar, Inc., Marlene Ivy, and Fortune Real Estate Investments, Inc. for the purchase of the 10 Broad Street property. SAM, in partnership with the City and the MDA, intends to create a public sculpture park on the property and the adjacent site of the former Unocal Terminal. The sculpture park will include sculptures, pedestrian trails, and landscaped open space. The 10 Broad Street site will provide safe pedestrian access between the sculpture park and the public waterfront. At this time, there are no plans to install permanent heated building structures on the 10 Broad Street property.

3.0 PREVIOUS CLEANUP ACTIONS

Six USTs likely related to automotive service and/or welding operations were planned to be removed in 1975 during site redevelopment. Records documenting this removal have not been located. No other cleanup actions are known to have occurred at the site.

4.0 CURRENT SITE CONDITIONS

4.1 Hydrogeologic Setting

The site is located in the Puget Sound Lowland physiographic province of Washington State on a southwest-facing hillside along Elliott Bay. Soils beneath the site to a depth of approximately 10 to 15 feet are predominantly silty sand and silt fill materials with occasional brick or wood debris. Underlying the fill layer are beach sands (primarily on the western half of the site) and sandy or silty sandy outwash deposits to an approximate depth of 25 feet. Very dense glacial till underlies the outwash.

Unconfined groundwater is encountered in the fill unit throughout most of the site at depths ranging from 10 to 15 feet. Groundwater generally flows to the west or northwest toward Elliott Bay except during periods of high tide, when flow is temporarily reversed. The net groundwater flux is toward Elliot Bay.

4.2 Soil, Groundwater, and Air Quality

This section summarizes the environmental conditions that currently exist at the property. Our understanding of existing site conditions is based on environmental data from investigations performed both on the property and on the adjacent property, the former Unocal Marketing Terminal. A more detailed discussion of current environmental conditions is presented in the RI/FS.

Soil Quality

Detected soil concentrations of the following constituents exceed MTCA Method A cleanup levels:

- ▶ **Gasoline-Range Petroleum Hydrocarbons.** Soil containing elevated concentrations of gasoline-range petroleum hydrocarbons is present on the eastern half of the site (Figure 3). The occurrence of gasoline-range hydrocarbons is primarily limited to soils at depths of between 10 and 18 feet, but is also present in shallower soils in a small area near the southeast corner of the RC's Billiards building.
- ▶ **Diesel-Range Petroleum Hydrocarbons.** Soil containing elevated concentrations of diesel-range petroleum hydrocarbons is limited to a small area near the southeast corner of the RC's Billiards building, at depths of approximately 10 to 15 feet.
- ▶ **BTEX.** Soil containing elevated concentrations of benzene, ethylbenzene, and xylenes is generally collocated with elevated gasoline-range hydrocarbon concentrations. However, gasoline present in site soil is noticeably weathered and the lighter BTEX components are present at low concentrations or absent in several samples. Shallow soils above 8 feet in depth along the eastern boundary of the site and under Elliot Avenue generally did not contain gasoline-range hydrocarbons except for slightly elevated concentrations of BTEX compounds (Figure 3). The presence of BTEX compounds in this area is likely derived from vapors that migrated from the gasoline source area on the 10 Broad Street property toward the western edge of Elliott Avenue.

Groundwater Quality

Based on groundwater monitoring results collected in November 2000, groundwater at the site is in compliance with screening levels except at well MW-2, in which the gasoline-range hydrocarbon concentration (0.97 mg/L) slightly exceeded the surface water screening level of 0.8 mg/L (Figure 4). Petroleum hydrocarbon and BTEX concentrations observed during this recent sampling event were typically much lower than those observed during the Phase 2 investigations performed by GeoTech Consultants in June of 1988 and February of 1999. For example, gasoline-range hydrocarbon concentrations in wells MW-2 and MW-3 decreased from 19 and 1.6 mg/L to 0.97 mg/L and non-detect, respectively. The apparent decrease in groundwater hydrocarbon concentrations may indicate that significant natural attenuation is occurring.

No chlorinated solvents were detected in site groundwater at concentrations exceeding surface water cleanup levels.

Air Quality

Although air monitoring has not been performed on the site, soil gas and ambient air monitoring has been conducted on the adjacent Lower Yard site as part of the former Unocal Seattle Marketing Terminal Consent Decree field investigation. A number of gasoline-range hydrocarbon compounds were detected at concentrations exceeding Method B residential air cleanup levels in the soil gas samples including two probes (identified as HC-SV9 and HC-SV10) installed along the boundary between the Lower Yard and the 10 Broad Street site (Hart Crowser, 1999). Soil to air modeling results indicated that ambient air concentrations would not exceed MTCA Method B residential cleanup criteria. Ambient air monitoring conducted in the Lower Yard in June 2000 confirmed that hydrocarbons were not present at concentrations exceeding Method B cleanup criteria.

Soil to air modeling results indicated that indoor air in the southern portion of the Lower Yard and the 10 Broad Street property could be impacted due to the presence of 1,3-butadiene. The occurrence of butadiene, which is a low molecular weight (C_4) hydrocarbon present in trace quantities in fresh gasoline, may be the result of gasoline contamination on the 10 Broad Street site.

5.0 CLEANUP OBJECTIVES AND CRITERIA

5.1 Remedial Action Objectives (RAOs)

Cleanup actions to be implemented at the 10 Broad Street site are designed to address the following RAOs:

- ▶ **Prevent Direct Contact with Contaminated Soil.** Prevent direct contact with petroleum-impacted soils exhibiting concentrations above MTCA residential cleanup levels.
- ▶ **Protect Groundwater.** Address petroleum-impacted soil and groundwater to reduce gasoline-range hydrocarbon and benzene concentrations in groundwater to concentrations below MTCA surface water criteria and protect Elliott Bay and its sensitive ecosystem.
- ▶ **Prevent Potential Air Impacts.** Address petroleum-impacted soil and groundwater to prevent the migration of hydrocarbon vapors at concentrations that could cause exceedences of ambient or indoor air cleanup levels at the site or on adjacent properties.

5.2 Indicator Hazardous Substances

Indicator hazardous substances (IHSs) were identified for the 10 Broad Street site using the criteria outlined in WAC 173-340-708(2). The final list of IHSs for soil and groundwater are a subset of the contaminants detected at the site. The final soil IHSs are TPH-gasoline, benzene, ethylbenzene, and xylenes. The final groundwater IHSs are TPH-gasoline, TPH-diesel, and benzene. IHSs in air are based on soil gas sampling results on the adjacent Lower Yard site and include a number of gasoline-range hydrocarbons (Table 2).

5.3 Cleanup Levels

Soil and groundwater cleanup levels for the final IHSs were developed based on the proposed recreational land use of the site and the determination by Ecology that there is no current or planned future groundwater use as a drinking water source. The highest beneficial use of the site groundwater is protection of the adjacent surface waters and its ecosystems. Cleanup levels are designed to prevent petroleum vapors from adversely impacting ambient air, and to prevent elevated dissolved petroleum hydrocarbon concentrations in groundwater from migrating off site and adversely impacting adjacent properties.

The proposed cleanup action for the site was selected based on a comparison of each cleanup action alternative with the following criteria [WAC 173-340-360(2) and (3)] and consideration of the MTCA remedy selection requirements:

- ▶ Overall Protection of Human Health and the Environment;
- ▶ Compliance with Cleanup Standards;
- ▶ Use of Permanent Solutions to the Maximum Extent Practicable;
- ▶ Compliance with ARARs;
- ▶ Provision for Compliance Monitoring; and
- ▶ Provision for Reasonable Restoration Time Frame.

Soil

Proposed cleanup levels for soil are presented in Table 1 and are based on MTCA Method B residential soil cleanup levels for the direct contact pathway and Method A residential (unrestricted) cleanup levels for soil to groundwater and soil to air pathways. The direct contact cleanup level for non-carcinogenic petroleum hydrocarbons will be established based on fraction-specific hydrocarbon testing that will be performed during the pre-remedial field program. The hazard quotient for the direct contact pathway shall not exceed 1 under a residential exposure scenario using procedures outlined in WAC 173-340-740(3).

The soil to groundwater and soil to air cleanup level for gasoline-range hydrocarbons presented in Table 1 is based on the Method A criteria of 100 mg/kg. As noted in section 173-340-740(3)(b)(iii)(C) of the Adopted Amendments to the Model Toxics Control Act (dated February 2001), the soil to air pathway is generally not considered for diesel- and oil-range hydrocarbons given their low volatility. Method B soil to groundwater cleanup levels for diesel- and oil-range hydrocarbons are typically based on residual saturation criteria. Using the Raoult's Law equation presented in the Interim TPH Policy, diesel- and oil-range hydrocarbons will not cause exceedences of the 1 mg/L groundwater cleanup level via dissolution in either unsaturated- (dilution factor of 20) or saturated-zone (dilution factor of 1) soils. Diesel- and oil-range hydrocarbons exhibit very low aqueous solubilities and do not tend to impact groundwater quality in a dissolved form. Appendix A includes Raoult's Law spreadsheets of fresh diesel and bunker oil sample data obtained from a June 1998 report completed for Ecology entitled "Testing the Chemical Assumptions in the TPH Interim Policy for Protectiveness."

The soil to groundwater cleanup level for diesel- and oil-range hydrocarbons of 2,000 mg/kg presented in Table 1 was established using Ecology's conservative default residual saturation criteria for gravelly soils. Site-specific residual

saturation concentrations for diesel and oil products in site soils would likely be significantly higher (less stringent) due to the fine-grained nature of site soils relative to gravels.

Compliance groundwater and ambient air monitoring results will ultimately be used to evaluate compliance with soil to groundwater and soil to air pathways (Table 1). If confirmation groundwater monitoring results are in compliance with groundwater cleanup standards applied to the site for four consecutive quarters, site soil quality will be considered adequately protective of the soil to groundwater pathway. In the event that groundwater monitoring results indicate that contaminated groundwater exceeding surface water criteria is migrating off property and threatening the adjacent marine surface water body (Elliott Bay), and Ecology issues a written determination that contingency remedial actions are necessary, a remedial action plan will be developed to address soils exceeding residential soil cleanup levels.

Confirmation that soil hydrocarbon concentrations are protective of human health and the environment for the soil to ambient air pathway will be based on compliance with ambient air cleanup standards. If confirmation ambient air monitoring results are in compliance with air cleanup standards presented in Table 2 during the two post-remediation sampling events described in Exhibit F to the Consent Decree, site soil quality will be considered to be adequately protective of the soil to ambient air pathway.

Groundwater

Because site groundwater discharges into the adjacent marine surface water body and is not likely a current or potential source of drinking water due to elevated salinity, groundwater quality data are compared to Method B surface water criteria (including Washington State surface water quality standards - Chapter 173-201 WAC). Because there are no established Method A or B surface water criteria for total petroleum hydrocarbons (TPH), screening levels for TPH are based on Method A drinking water cleanup levels (Table 1).

Air

Cleanup levels for ambient and indoor air are based on MTCA Method B cleanup levels (Table 2). In cases where no Method B criteria are available, the Puget Sound Clean Air Agency (PSCAA) Acceptable Source Impact Levels (ASILs) were used. Since no Method B or PSCAA criteria have been established for TPH, Method B air cleanup levels were calculated for each of the petroleum equivalent carbon (EC) fractions identified in the draft revised MTCA regulations (dated August 2000).

Inhalation reference doses used to calculate Method B cleanup levels for these hydrocarbon fractions were obtained from "Ecology Guidance Calculation of TPH Human Health Direct Contact Cleanup Levels Using Default Compositions," which was presented to the Science Advisory Board by Steve Robb in January 1999. Since no inhalation reference doses were available for the EC 3 to EC 5 range and the EC 12+ range, no cleanup levels were calculated for these fractions.

6.0 SUMMARY OF REMEDIAL ALTERNATIVES

The Model Toxics Control Act (MTCA) requires at a minimum that all cleanup actions protect human health and the environment, comply with cleanup standards, comply with applicable state and federal laws, and provide for compliance monitoring. In the RI/FS, we presented the following alternatives:

- ▶ **Capping and Natural Attenuation.** A low permeability cap would prevent direct contact with impacted soils and minimize migration of petroleum vapors from the subsurface to ambient air. Natural attenuation would reduce soil and groundwater hydrocarbon concentrations over the long-term.
- ▶ **Air Sparging, SVE, and Natural Attenuation.** Air sparging and soil vapor extraction (SVE) would reduce TPH concentrations in site soils and groundwater. This alternative would also minimize migration of petroleum vapors to indoor and ambient air pathways, including addressing elevated benzene concentrations beneath Elliott Avenue.
- ▶ **Excavation and Natural Attenuation.** Excavation and off-site disposal of all accessible TPH-impacted soil would prevent direct contact and potential vapor impacts on the property. The presence of asphalt pavement would minimize direct contact exposures and potential vapor impacts from shallow benzene-impacted soil beneath Elliott Avenue. Natural attenuation would likely reduce residual TPH concentrations in soil and groundwater over the long-term.

In the RI/FS detailed evaluation, Air Sparging, SVE, and Natural Attenuation was selected as the most cost-effective remedial alternative. Since the feasibility study was produced, it was decided that **Excavation and Natural Attenuation** was the preferred alternative. The excavation alternative provides a shorter remediation time frame, more completely removes contamination, and minimizes the potential for having to implement contingency remedial actions. The increased

likelihood for requiring contingency remedial actions, performing additional monitoring, and applying institutional controls under the air sparging/SVE alternative makes it less cost effective and less practical to implement than the excavation alternative.

7.0 SELECTED CLEANUP ACTION

The RC's Billiards building is scheduled to be demolished in the Fall of 2001. After the building foundation and asphalt pavement are removed, a field investigation will be performed to determine the extent of contamination under the former building footprint. After determining the extent of contaminated soil, accessible soil exceeding cleanup levels for TPH or BTEX will be excavated and disposed of. The field investigation and excavation are described below.

Field Investigation

Eight soil borings will be advanced in the RC's Billiards building footprint after the building is demolished and the foundation is removed. Proposed boring locations are shown on Figure 5. Locations may be adjusted or additional borings may be performed based on the results of field screening, which is described below.

Soil samples will be collected continuously during advancement and will be screened in the field for the presence of volatile hydrocarbons using a portable photoionization detector (PID). A Hart Crowser field geologist will log the geology and stratigraphy of the boreholes and will document physical evidence of contamination encountered during drilling. Approximately two to three samples per boring (up to 24 samples) will be submitted for chemical analysis of gasoline-range petroleum hydrocarbons by Method NWTPH-G, BTEX compounds by EPA Method 8260, and diesel- and oil-range hydrocarbons by Method NWTPH-Dx. At least one representative sample will also be analyzed for fraction-specific hydrocarbons using the VPH/EPH test procedure. Results of this soil sampling program will be summarized in the remedial design report and will be used to plan the excavation.

Excavation and Backfilling

The estimated area and depth of the excavation required to remove TPH-impacted soil is shown on Figure 6. The eastern excavation boundary will be at the shoring wall along Elliott Avenue, which will be located as close as practicable to the edge of the sidewalk. The western, northern, and southern

boundaries of the excavation will be determined by the extent of contamination and by limitations arising due to sloping requirements. Soil containing TPH and BTEX above cleanup levels will be excavated and stockpiled on the adjacent Lower Yard property.

The excavation is expected to extend to a maximum depth of 18 feet based on data collected during the Remedial Investigation. North, west, and south side walls will be sloped at a grade of 2H:1V or as determined to be appropriate based on site conditions. The maximum expected depth is between 2 and 5 feet below the water table but will vary with the season, the tide and practicability considerations. The excavation will generally not be dewatered because groundwater in the excavation will act to minimize sloughing of clean soil from the sidewalls. However, limited dewatering may be performed to assist in excavating and shoring activities. If contaminated soil is encountered below 18 feet in depth, it will be removed to the extent practicable. To minimize the amount of soil removed below the water table, the excavation will be conducted during the dry season, and soil below 15 feet in depth will be removed only during periods of low tide to the extent practicable.

Since much of the soil in the planned area of excavation is expected to be below cleanup levels but will need to be removed to access underlying contaminated soils, excavated soil will be screened in the field for organic vapors with a PID and for petroleum odors and stains. Soil will be segregated in stockpiles based on field screening results. Samples from each stockpile will be analyzed for petroleum hydrocarbons (including NWTPH-G/BTEX and NWTPH-D extended). Soil below cleanup levels will be used as backfill if geotechnically suitable. Soil impacted with TPH and BTEX above cleanup levels will be transported to an Ecology-approved recycling or disposal facility.

When field screening indicates that soil above cleanup levels has been removed, sidewall and bottom verification samples will be collected and analyzed for petroleum hydrocarbons. Verification sampling is described in more detail in section 8.0. If verification sample results exceed site cleanup levels, additional soil will be excavated (if practicable).

Groundwater Management

Groundwater may be removed in limited quantities for the following purposes:

- ▶ To remove visible petroleum contamination, if more than a sheen is observed; or
- ▶ To aid in shoring or excavating below the water table if practicable.

Groundwater from the excavation will be collected in a temporary storage tank. Collected water will be chemically profiled and disposed of at an appropriate waste disposal facility.

Runoff and Erosion Control

Soil stockpiles will be covered to minimize precipitation contact and runoff. Soil excavated in the saturated zone will contain excess water unless dewatering is performed. Engineering controls such as berms, temporary visqueen covers, or other appropriate measures will be used to prevent runoff and erosion from stockpiles or other construction areas.

8.0 COMPLIANCE MONITORING

Compliance monitoring is performed to confirm that human health and the environment are protected during the construction, operation, and maintenance of the cleanup action. Compliance monitoring also confirms that the cleanup action has attained the cleanup standards prescribed by the cleanup plan and confirms the long-term effectiveness of the remedial action. Compliance monitoring at the site will be performed as follows:

- ▶ Protection monitoring will be implemented during construction by ensuring that site workers are appropriately trained in health and safety and that health and safety and contingency plans for encountering hazardous materials are available during construction. Impacted soils will be stockpiled with appropriate contact and runoff controls.

- ▶ Performance monitoring will be conducted during construction, which will include verification and stockpile sampling and analysis. Verification soil samples will be collected from the north, west, and south side walls of the excavation to confirm that remaining soils do not contain TPH or BTEX concentrations above cleanup levels. One shallow (in the 0- to 10-foot depth interval) and one deep (in the 10- to 20- foot depth interval, at the approximate top of the water table) sample will be collected for every 50 linear feet of side wall. Four bottom samples will be collected. Samples will be analyzed for petroleum hydrocarbons (including NWTPH-G/BTEX and NWTPH-D extended). If verification sample results exceed site cleanup levels, additional soil will be excavated (if practicable).

Contaminated soil will be transported off site to an Ecology-approved recycling or disposal facility. Excavated soil will be screened for organic

vapors with a PID, segregated in stockpiles, and characterized for disposal in accordance with the requirements of the treatment facility. Stockpile size will be limited to 500 cubic yards. Three characterization samples will be collected from stockpiles containing less than 100 cubic yards of soil and five characterization samples will be collected from stockpiles containing between 100 and 500 cubic yards of soil. Samples will be analyzed for BTEX and gasoline-, diesel-, and oil-range TPH. Soils below cleanup levels will be used as on-site fill if geotechnically suitable.

- ▶ Confirmation monitoring will be implemented to ensure the long-term effectiveness of the remedial action and contingency response actions (if necessary) to protect human health and the environment. After excavation and site restoration, confirmation sampling of groundwater and air will be performed to evaluate remediation effectiveness as further described in Exhibit F, Sampling/Monitoring and Contingency Plan. Groundwater monitoring will be performed on a quarterly basis until constituent concentrations are below MTCA Method B surface water cleanup criteria for four consecutive quarters. Two rounds of ambient air monitoring will be performed during summer and fall conditions following the excavation and restoration of the site.

Additional actions such as soil vapor extraction, capping, or long-term monitoring may be implemented if groundwater or air sample results exceed cleanup levels. If groundwater or air cleanup levels are exceeded, SAM, the City, and MDA will submit a supplemental cleanup action plan for Ecology's review prior to implementing additional cleanup activities.

- ▶ Permanent heated buildings with closed basements or first floors are not planned for the site; however, if any are installed at a later date, a soil vapor investigation will be performed along the proposed footprint of the building to determine if engineering controls are needed. An indoor air sampling and analysis plan will be submitted to Ecology for its review and approval. If petroleum hydrocarbon vapor concentrations exceed MTCA indoor air criteria, engineering controls will be incorporated in the building design. An indoor air impact assessment report summarizing the results of the vapor sampling and design of any proposed engineering controls will be submitted to Ecology for review and approval. Following implementation of the approved engineering controls (if needed), an indoor air compliance monitoring program will be developed.

8.1 Points of Compliance

Soil. The determination of adequate soil treatment will be based on the remedial actions' ability to comply with the soil cleanup levels established for the site. The point of compliance for direct contact soil cleanup levels will be the upper 15 feet of soil at the site.

Groundwater. The determination of adequate groundwater treatment will be based on the remedial actions' ability to comply with the groundwater (surface water) cleanup levels established for the site. Achievement of cleanup levels in groundwater shall be measured at compliance monitoring wells located near the downgradient edge of the site (not to exceed the property boundary). A conditional point of compliance may be located at the downgradient edge of the property, if necessary.

Air. The achievement of cleanup levels in ambient air shall be measured in the breathing space on the property. The achievement of cleanup levels in indoor air, if permanent, heated buildings are constructed on the property, shall be in the breathing space of the lowest level of the structure.

9.0 SCHEDULE

SAM, the City, and the MDA shall submit to Ecology for review a draft remedial design report and construction plans and specifications (collectively referred to as remedial design documents). Ecology will endeavor to review and comment on the draft remedial design documents within fifteen working days. SAM, the City, and the MDA shall submit to Ecology final remedial design documents prior to performing the excavation. SAM, the City, and the MDA shall implement the approved remedial action in accordance with the terms and schedule contained in those documents. Excavation will be performed during the dry season, to maximize the amount of contaminated soil that can be removed given practicability considerations. SAM, the City, and the MDA shall submit construction documentation to Ecology in accordance with the approved remedial design documents.

Exhibit C to the Consent Decree outlines relevant milestones from the cleanup through the construction process for the proposed sculpture park.

10.0 INSTITUTIONAL CONTROLS

Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to

hazardous substances at the site. Such measures are required to ensure continued protection of human health and the environment when a cleanup action results in residual concentrations of hazardous substances which exceed MTCA Methods A or B cleanup levels and where conditional points of compliance are established. These institutional controls include placement of a deed restriction on the property. At this time, no institutional controls are planned. These are considered in the Contingency Plan (Exhibit F to the Consent Decree).

11.0 WORK CONSTRUCTION

The Schedule to begin work under this proposed CAP is provided in Exhibit C to the Consent Decree. Work construction at the site will be conducted under a Health and Safety Plan prepared under WAC 173-340-810.

12.0 DETERMINATIONS

Section 173-340-360(10) of the MTCA regulation states that the draft Cleanup Action Plan should include a preliminary determination that the cleanup action complies with subsections (2) and (3) of WAC 173-340-360. As specified in subsections 2 and 3, the selected cleanup action is designed to accomplish the following.

12.1 Protect Human Health and the Environment

Implementation of the preferred remedial alternative will minimize potential exposures from each of the pathways identified as being of potential concern. Removing petroleum-impacted soil is the most effective alternative for minimizing direct contact, hydrocarbon leaching, and vapor emissions. A contingency plan as described in Exhibit F to the Consent Decree will include backup remedial technologies that will ensure the continued protection of human health and the environment.

12.2 Compliance with Cleanup Standards per WAC 173-340-700 through -760

The goal of this cleanup action is to protect surface water quality, prevent direct contact with affected soils, and eliminate potential sources of vapor emissions. The cleanup action is intended to meet cleanup standards for ambient air, groundwater, and soil. If cleanup standards are not met, additional action will be taken to ensure the goals are realized, as outlined in the Contingency Plan (Exhibit F to the Consent Decree).

12.3 Compliance with Applicable State and Federal Laws per WAC 173-340-710

The cleanup action will comply with all relevant laws and requirements, as required in Section 173-340-710 of the MTCA. A detailed analysis of federal, state, and local laws and regulations that pertain to this project is provided in the **ARARs and Applicable Regulations** section of the RI/FS.

SAM, the MDA, and the City shall obtain any and all state, federal, or local permits required by applicable law, and not exempted pursuant to the Consent Decree, before commencing remedial actions at the site. This requirement shall include preparation of a SEPA checklist.

Ecology will ensure that the cleanup action meets the substantive requirements of all state and local permits that apply to this project.

12.4 Provide Compliance Monitoring per WAC 173-340-410

Performance monitoring will be conducted during the remedial action to confirm that cleanup actions have attained cleanup levels and treatment goals. Confirmation monitoring will be conducted after the excavation is complete to confirm and ensure that cleanup actions have attained cleanup and performance standards. Protection monitoring will be used to ensure that human health and the environment are being adequately protected during construction and operation of the cleanup actions.

12.5 Use Permanent Solutions to the Maximum Extent Practicable per WAC 173-340-360(4), (5), (7), and (8)

Excavating impacted soil permanently removes contaminants. The preferred remedy is protective of human health and the environment, can be effectively implemented, and is cost-effective. It is the most practicable alternative for addressing the primary exposure pathways of concern. Soil vapor extraction is considered as part of the post-excavation contingency response action backup plan. Soil vapor extraction will also permanently remove petroleum from contaminated soils and ensure protection of human health and the environment.

12.6 Short-Term Effectiveness

Short-term effectiveness [WAC 173-340-360(5)(iii)] considers how the cleanup action will impact human health and the environment during implementation and prior to achievement of cleanup levels. The selected alternative will involve earth moving and excavation activities that could cause contaminated materials to be released through dust, increased erosion potential, or removal from the

site on vehicles. These potential impacts will be mitigated through dust and erosion control actions and other best management practices. Exposure to contaminated materials that may be encountered during construction will be addressed through a worker health and safety plan and by complying with OSHA standards.

When the preferred remedial action is implemented, it will be immediately effective in preventing human direct contact or inhalation of petroleum hydrocarbons.

12.7 Long-Term Effectiveness

Long-term effectiveness [WAC 173-340-360(5)(ii)] is measured in terms of the magnitude of residual risk and the adequacy and reliability of the cleanup action.

The proposed cleanup action effectively prevents human exposure over the long-term by removing soil impacted with hazardous constituents. Natural attenuation will continue to reduce the quantity of petroleum hydrocarbons in soil and groundwater over the long-term. The compliance monitoring and contingency program outlined in Exhibit F to the Consent Decree will ensure the long-term effectiveness of the remedial action to meet RAOs established for the site.

12.8 Permanent Reduction of Toxicity, Mobility, or Volume

This evaluation criterion addresses the preferential implementation of treatment technologies that permanently and significantly reduce toxicity, mobility, and volume of the hazardous substances present. Petroleum-impacted soils disposed of off-site will be treated using thermal desorption if soil characteristics meet facility acceptance requirements. Thermal desorption permanently reduces the toxicity, mobility, and volume of contaminants. Natural attenuation will also decrease the toxicity, mobility, and volume of petroleum hydrocarbons in soil and groundwater over the long-term.

12.9 Ability to be Implemented

The proposed cleanup action involves conventional technologies (e.g., excavation, shoring, thermal desorption) that should be easily implemented.

12.10 Cleanup Cost

Cleanup costs for the selected alternative is slightly higher than the other alternatives evaluated (see RI/FS for detailed cost estimates), but this alternative involves fewer contingencies and is likely the most cost-effective option.

12.11 Consider Public Concerns per WAC 173-340-600

The public will be given the opportunity to comment during a 30-day public comment period. The following documents are presented for public comment:

- ▶ Remedial Investigation/Feasibility Study Report;
- ▶ Cleanup Action Plan; and
- ▶ Consent Decree.

The following are attached as Exhibits to the Consent Decree:

- ▶ Site Diagram showing site location and current site conditions (Exhibit A);
- ▶ Cleanup Action Plan (Exhibit B - this exhibit);
- ▶ Schedule for completing relevant milestones of the cleanup process through construction of the park (Exhibit C);
- ▶ Proposed Site Use Plan (Exhibit D);
- ▶ Draft Restrictive Covenant Language Document (Exhibit E); and
- ▶ Sampling/Monitoring and Contingency Plan (Exhibit F).

Ecology will consider all comments received. At the end of the comment period, Ecology will prepare a responsive summary listing each comment received and Ecology's response to the comment.

Further, the public will be given an opportunity to comment on the Remedial Design when it is submitted to Ecology.

13.0 REFERENCES

Ecology, 2000. Proposed Amendments to the Model Toxics Control Act Cleanup Regulation. Chapter 173-340 WAC. August, 2000.

Hart Crowser, 1999. Draft Focused Supplemental Site Characterization, Former Unocal Seattle Marketing Terminal Property, Seattle, Washington. August 18, 1999.

Hart Crowser, 2000. Draft Remedial Investigation/Feasibility Study, 10 Broad Street Site, Seattle, Washington. December 19, 2000.

F:\Docs\Jobs\701801\BroadStreet\ExhibitB(rev3).doc

Table 1 - Proposed Cleanup Criteria for Detected Constituents in Soil and Groundwater

Constituent	Proposed Cleanup Level
Groundwater in ug/L	
Benzene	43 ¹
Toluene	48,500 ¹
Ethylbenzene	6,910 ¹
Xylenes	16,000 ¹
Gasoline-Range Hydrocarbons	1,000 ²
Diesel-Range Hydrocarbons	1,000 ²
Oil-Range Hydrocarbons	1,000 ²
Free Product	No Sheen ³
Soils in mg/kg	
Benzene	34.5 ⁴ /0.5 ⁶
Toluene	16,000 ⁴ /40 ⁶
Ethylbenzene	8,000 ⁴ /20 ⁶
Xylenes	160,000 ⁴ /20 ⁶
Gasoline-Range Hydrocarbons	TBD ⁵ /100 ⁶
Diesel-Range Hydrocarbons	TBD ⁵ /2,000 ⁷
Oil-Range Hydrocarbons	TBD ⁵ /2,000 ⁷

Notes:

TBD - To be determined

¹ Based on MTCA Method B surface water cleanup level

² Based on MTCA Method A drinking water cleanup level

³ Although no free product has been encountered at the site to date, the no sheen criteria will be applicable to the area beneath the building where no groundwater quality data have been collected

⁴ Direct contact cleanup levels based on Method B residential criteria

⁵ Direct contact cleanup levels for non-carcinogenic petroleum hydrocarbons will be based on achieving a hazard quotient of 1 under a residential exposure scenario using procedures outlined in WAC 173-340-740(3).

⁶ Soil to groundwater and soil to air cleanup levels based on Method A residential criteria. Confirmation that soil concentrations are protective of the soil to groundwater and soil to air pathways will be based on compliance with groundwater and ambient air cleanup standards. If these pathways are not in compliance, additional remedial actions may be implemented to address soils exceeding these Method A soil cleanup levels.

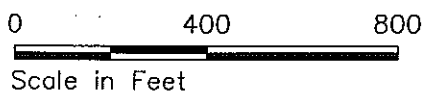
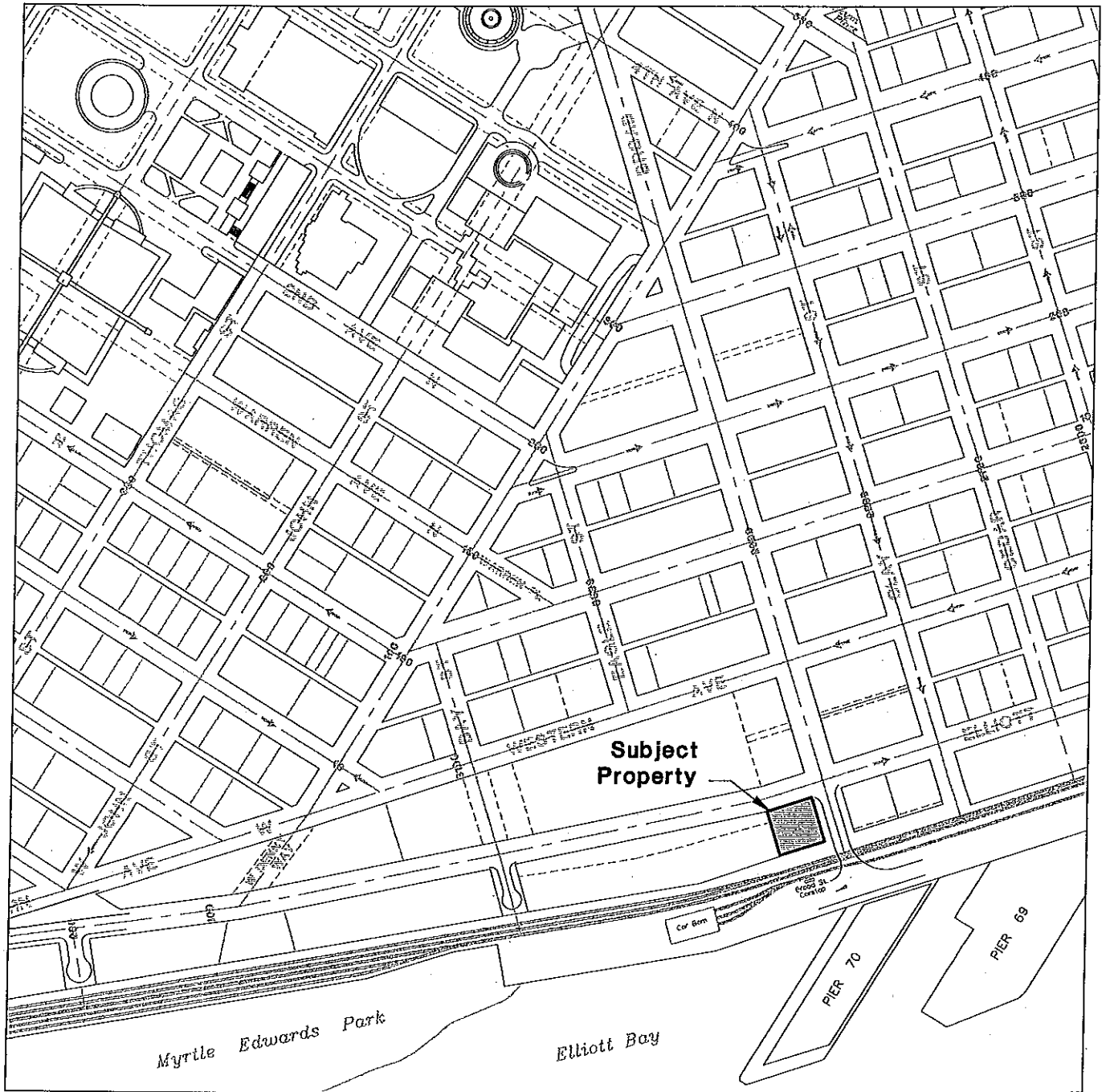
⁷ Soil to groundwater cleanup levels for diesel- and oil-range hydrocarbons are based on residual saturation criteria in accordance with the Interim TPH Policy.

Table 2 - Proposed Cleanup Levels for Constituents of Potential Concern in Air

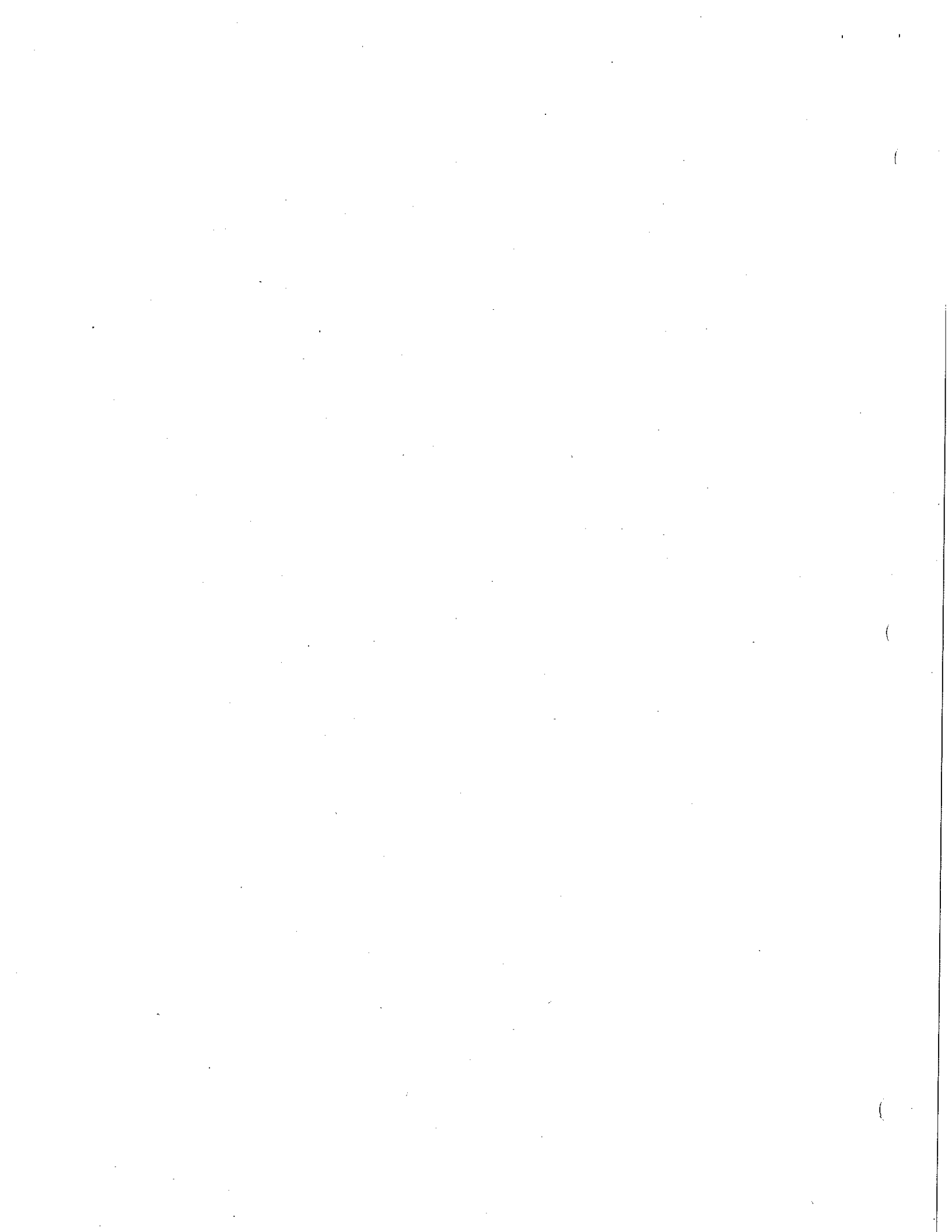
Compound	MTCA Method B in ug/m³
Benzene	0.259
Toluene	183
Ethylbenzene	457
m,p-Xylene	320
o-Xylene	320
1,3,5-Trimethylbenzene	420 ⁽¹⁾
1,2,4-Trimethylbenzene	420 ⁽¹⁾
Propylene	---
1,3-Butadiene	0.00417
Hexane	91.4
Cyclohexane	3400 ⁽¹⁾
4-Ethyltoluene	---
Heptane	5,500 ⁽¹⁾
Napththalene	170 ⁽¹⁾
C3 to C5 Aliphatic Hydrocarbons	---
C5 to C6 Aliphatic Hydrocarbons	9,120
C6 to C8 Aliphatic Hydrocarbons	9,120
C8 to C10 Aliphatic Hydrocarbons	136
C10 to C12 Aliphatic Hydrocarbons	136
C12+ Aliphatic Hydrocarbons	---
C6 to C8 Aromatic Hydrocarbons	---
C8 to C10 Aromatic Hydrocarbons	80
C10 to C12 Aromatic Hydrocarbons	80
C12+ Aromatic Hydrocarbons	---

⁽¹⁾PSCAA Acceptable Source Impact Level (ASIL) used as no Method B criterion exists for this constituent.

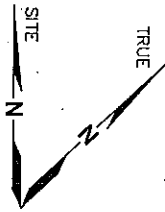
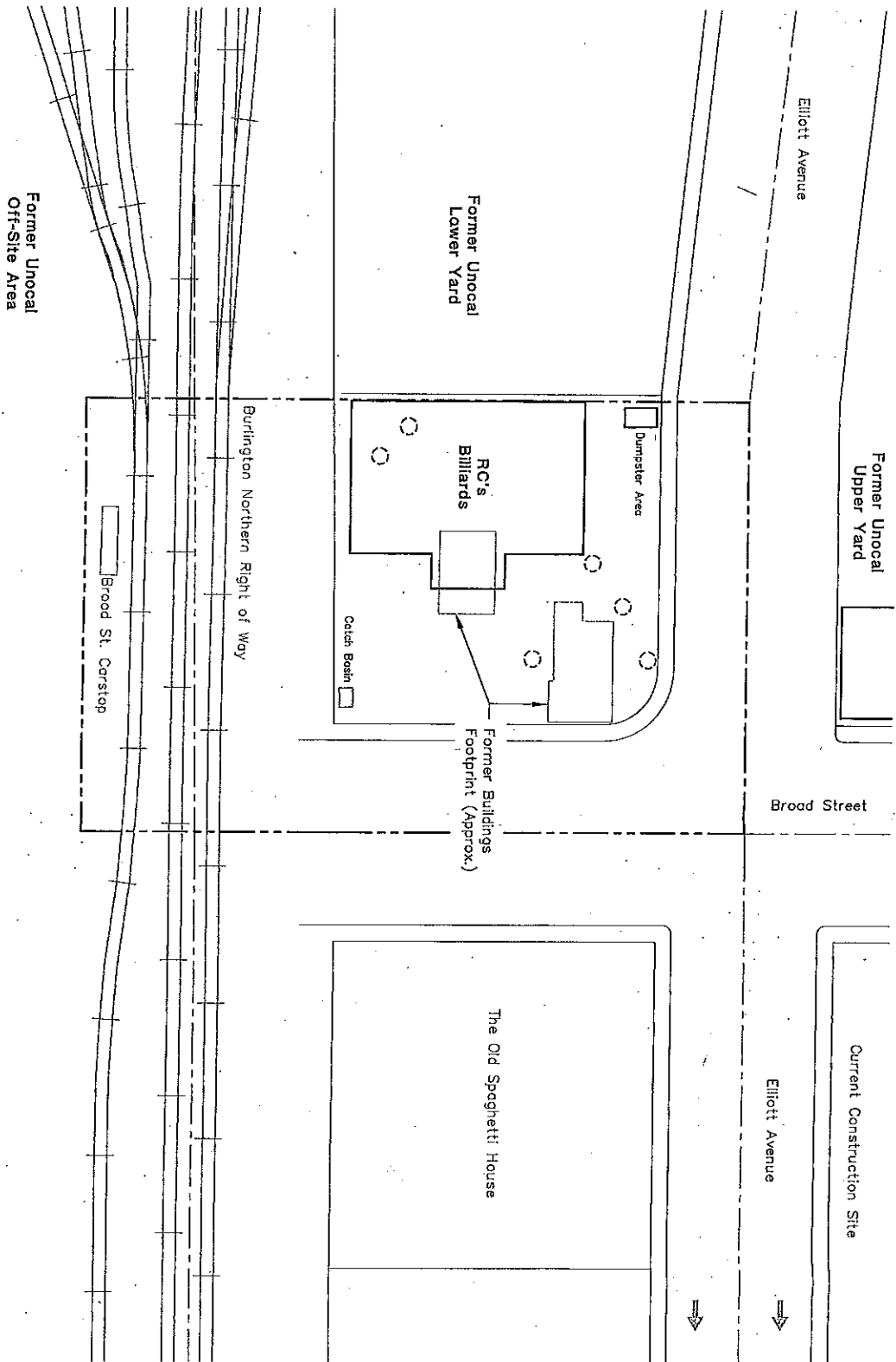
Vicinity Map



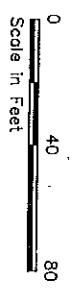
HARTCROWSER
J-7018-01 1/01
Figure 1



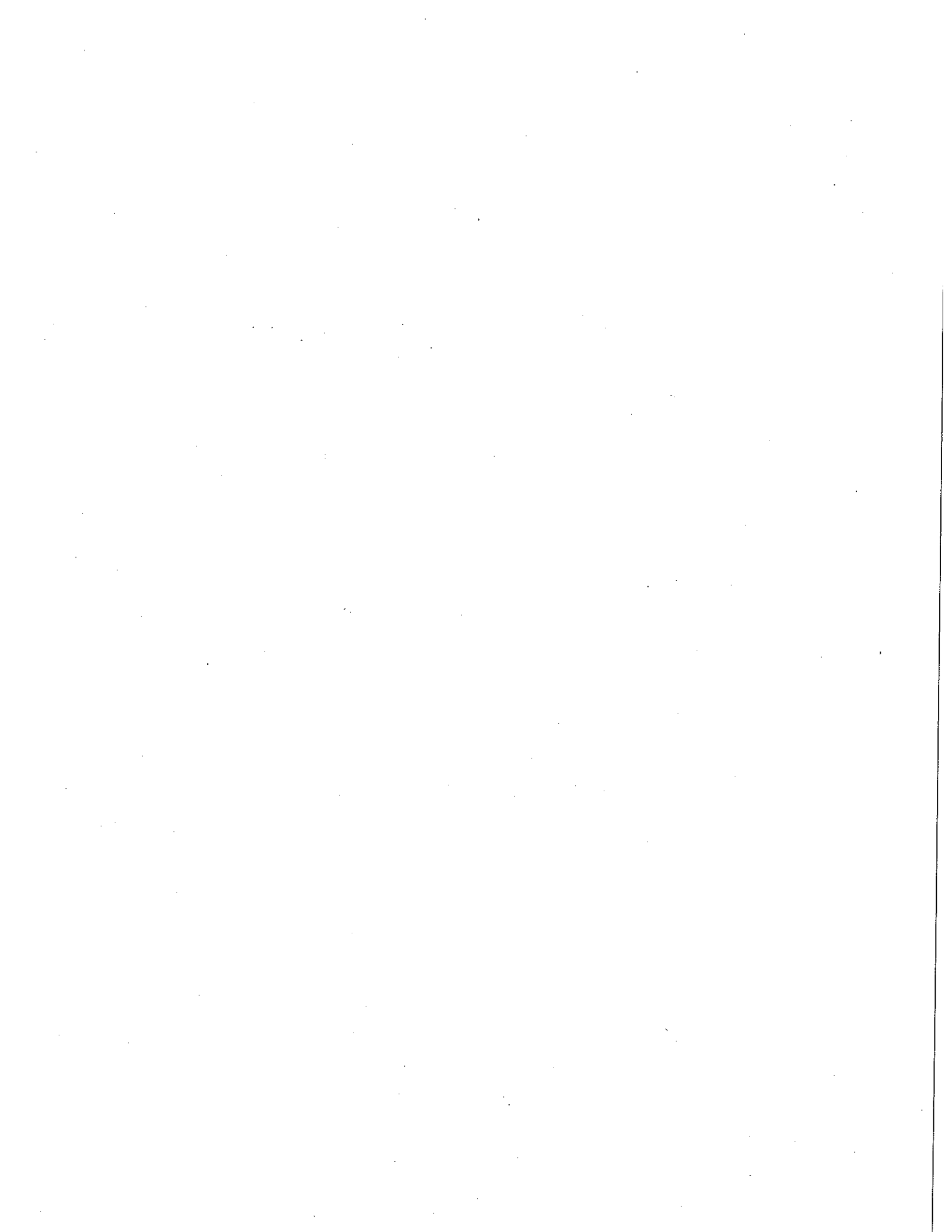
Site Plan



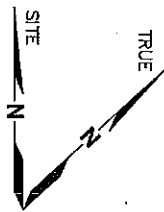
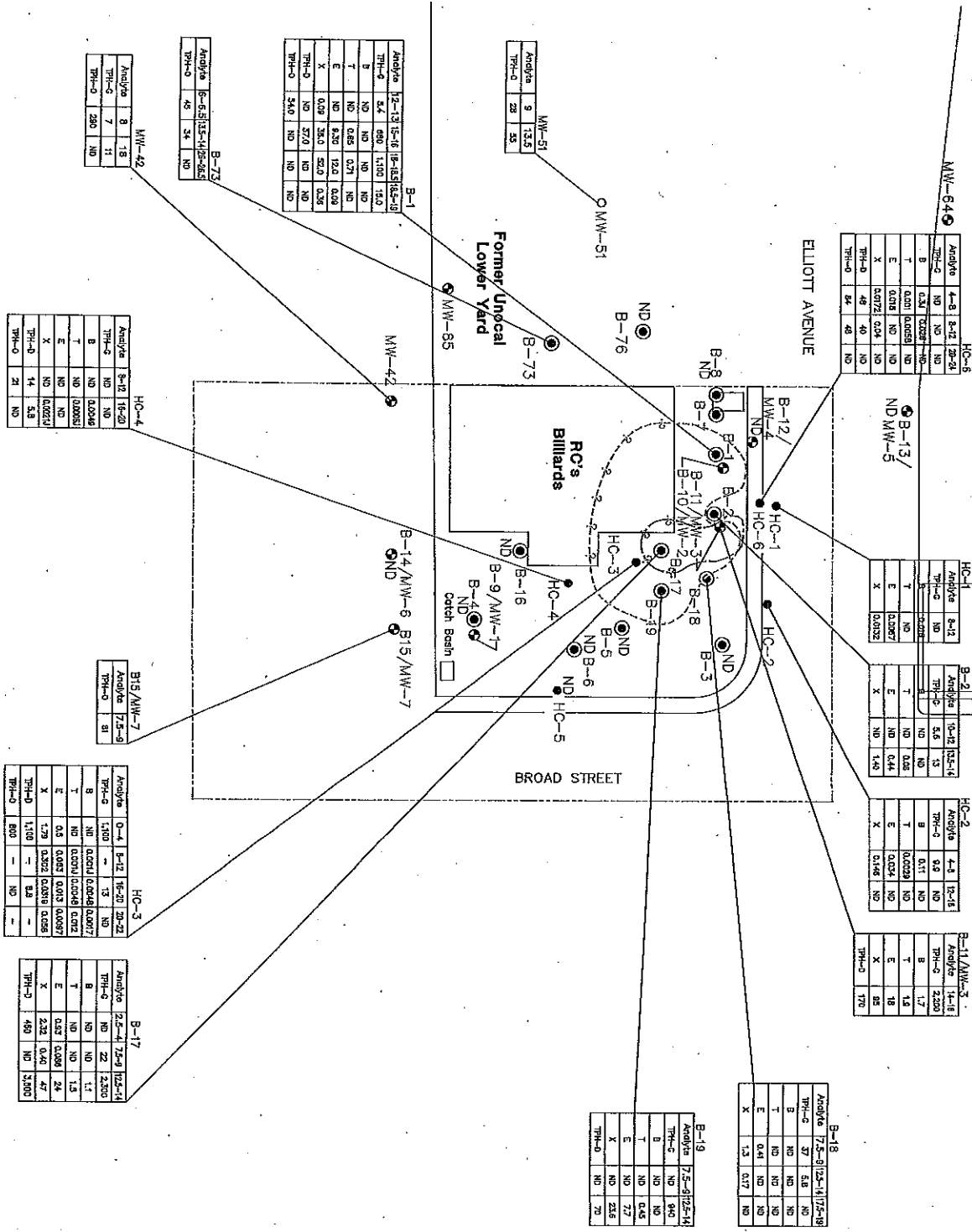
- Approximate Former Tank Location
- - - - - Approximate Property Boundary



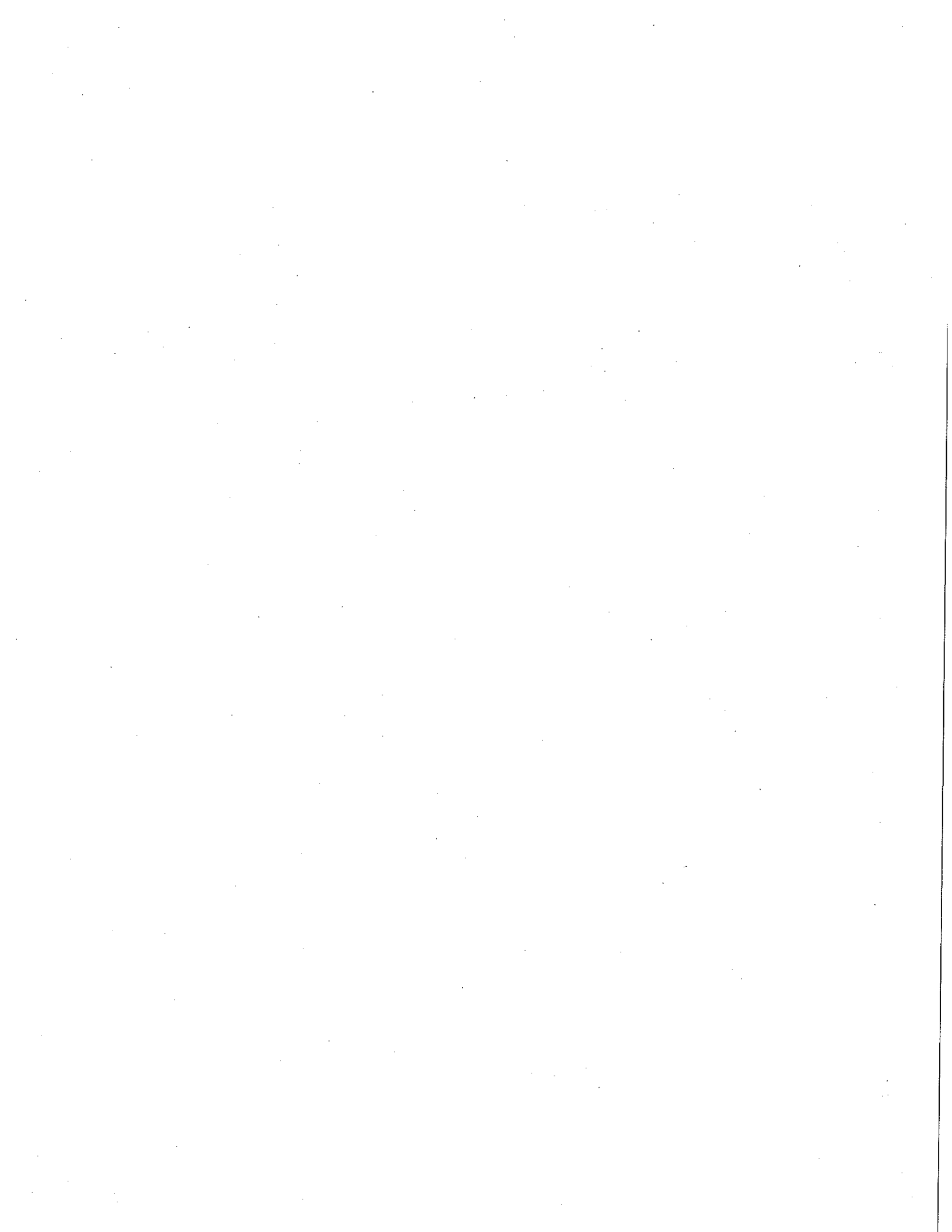
Alaskan Way

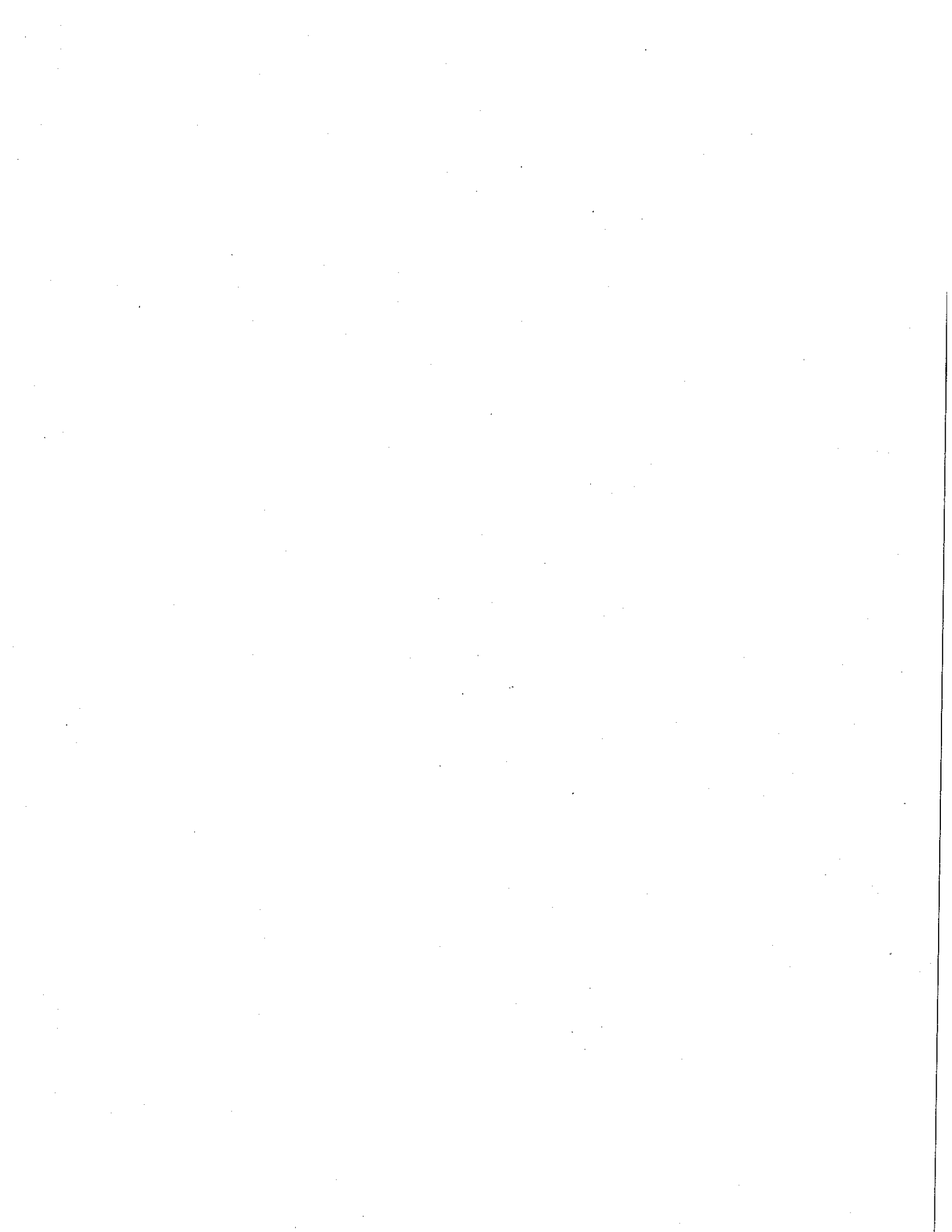


Summary of Soil Quality Data



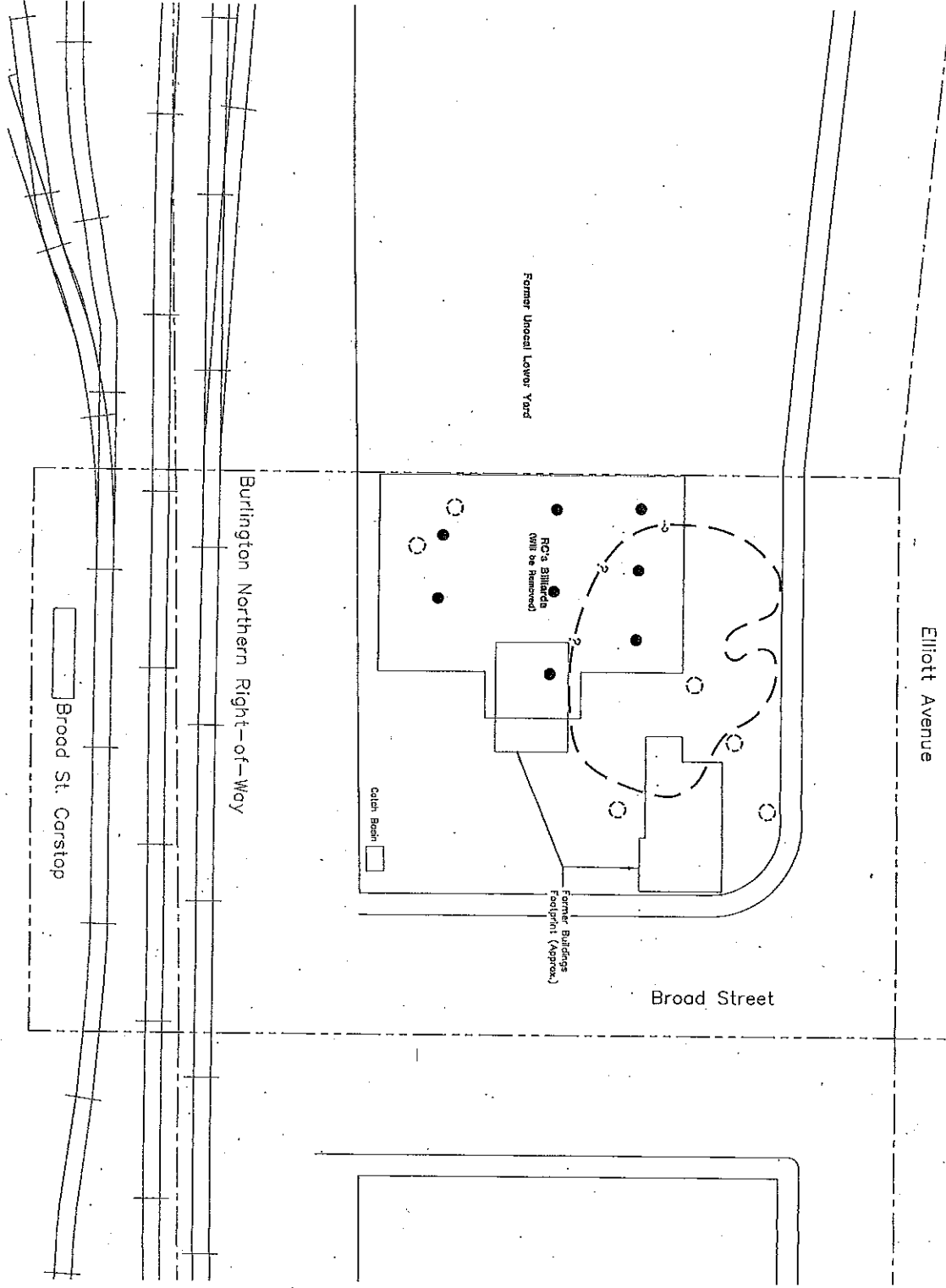
- Boring installed by Hart Crowser as Part of R/F/S Field Investigation
 - Boring installed During Previous Field Investigation by Geotechnicians or Geotechn Consultants.
 - MW-32 Monitoring Well
 - MW-51 Abandoned Well
 - Analyte 7.5-9 (Depth of Sample in Feet)
 - TPH-G Gasoline-Range
 - B Benzene
 - T Toluene
 - E Ethylbenzene
 - X Xylenes (Total)
 - TPH-D Diesel-Range
 - TPH-O Oil-Range
 - ND Not Detected for above Analytes
 - Estimated extent of Gasoline-Range Hydrocarbon Concentrations > 100 mg/Kg
 - Estimated Extent of Benzene Concentrations > 0.5 mg/Kg
- Notes:
 1) Results are reported in parts per million (ppm).
 2) Shaded results exceed applicable MPCA Method A Residential Cleanup Levels.
- Approximate Property Boundary





Soil Sampling Location Plan

0.81 3/16/01 1=30 (cra)NA/Charlotte2
70180128



● Preliminary Soil Boring Location

○ Approximate Former Tank Location

— Estimated Extent of Gasoline—Range Hydrocarbon Concentrations > 100 mg/kg or Benzene Concentrations > 0.5 mg/kg

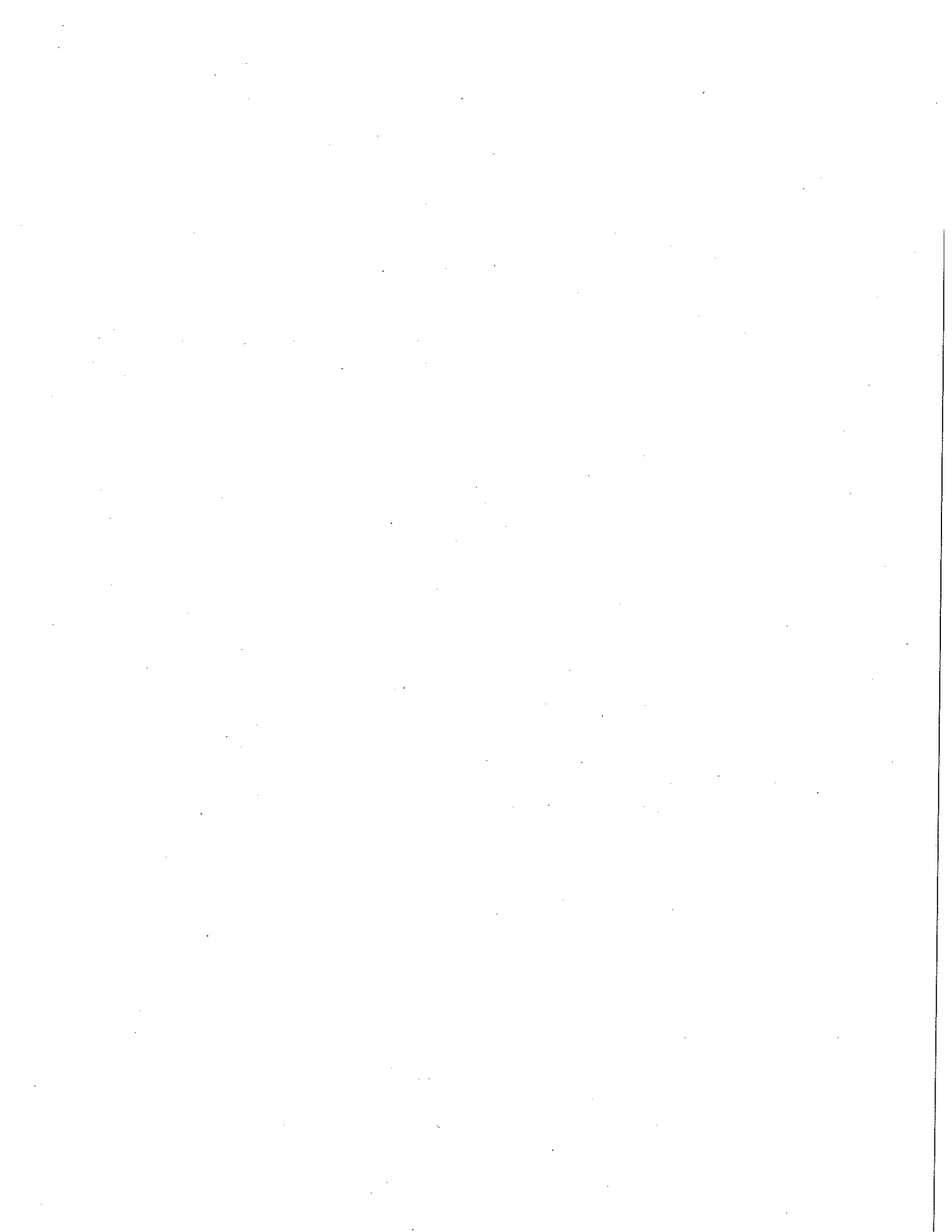
--- Approximate Property Boundary

TRUE

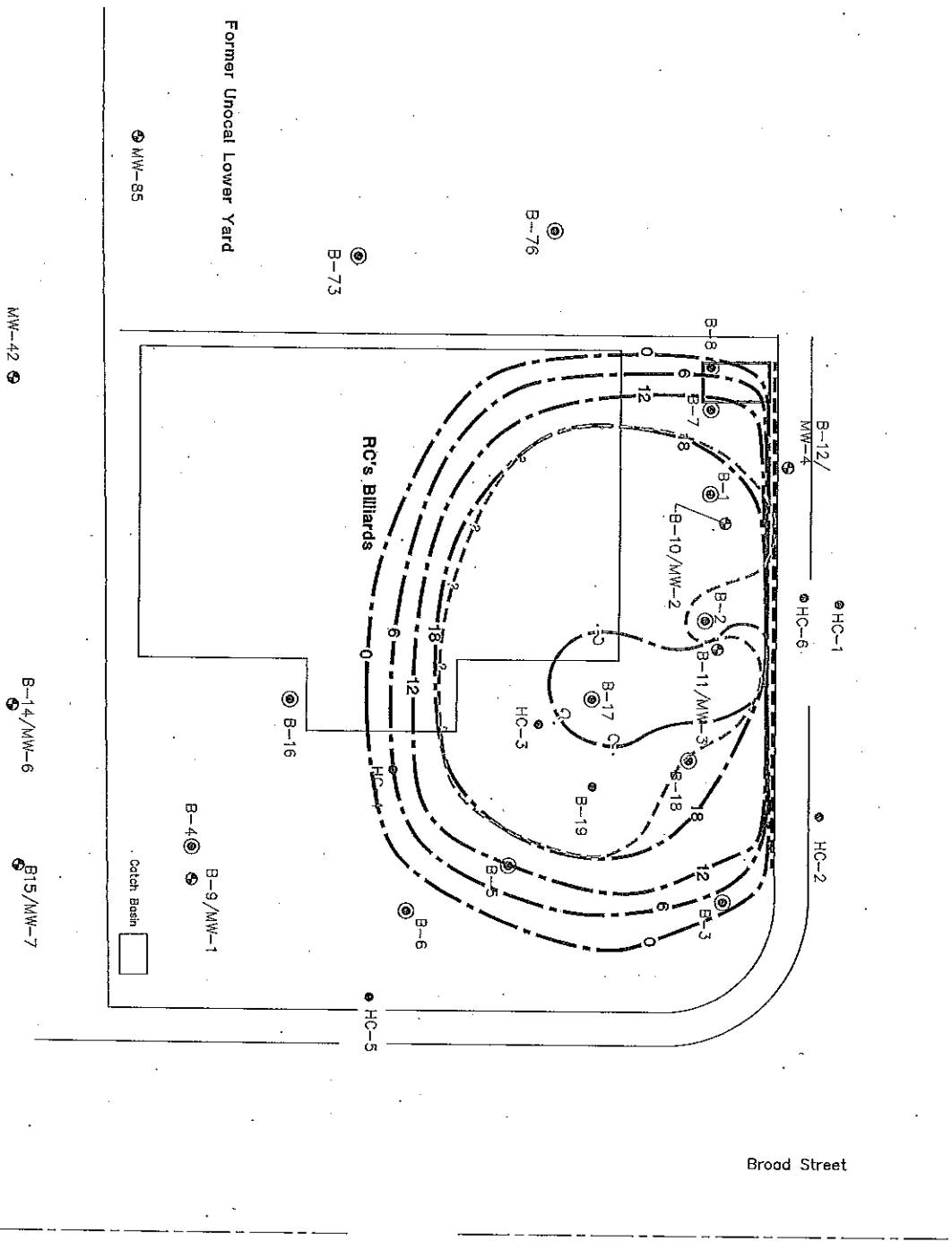
SITE

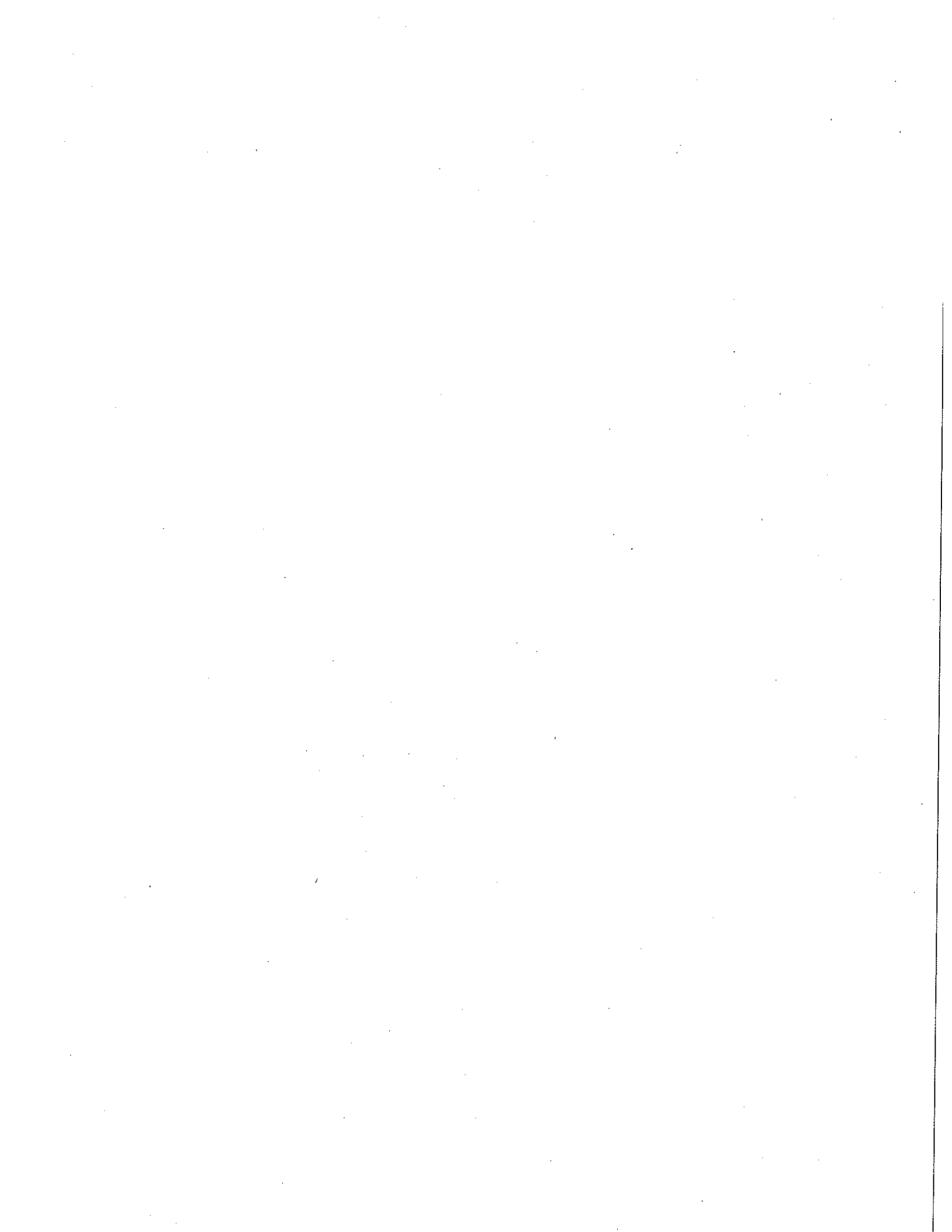
0 30 60

Scale in Feet

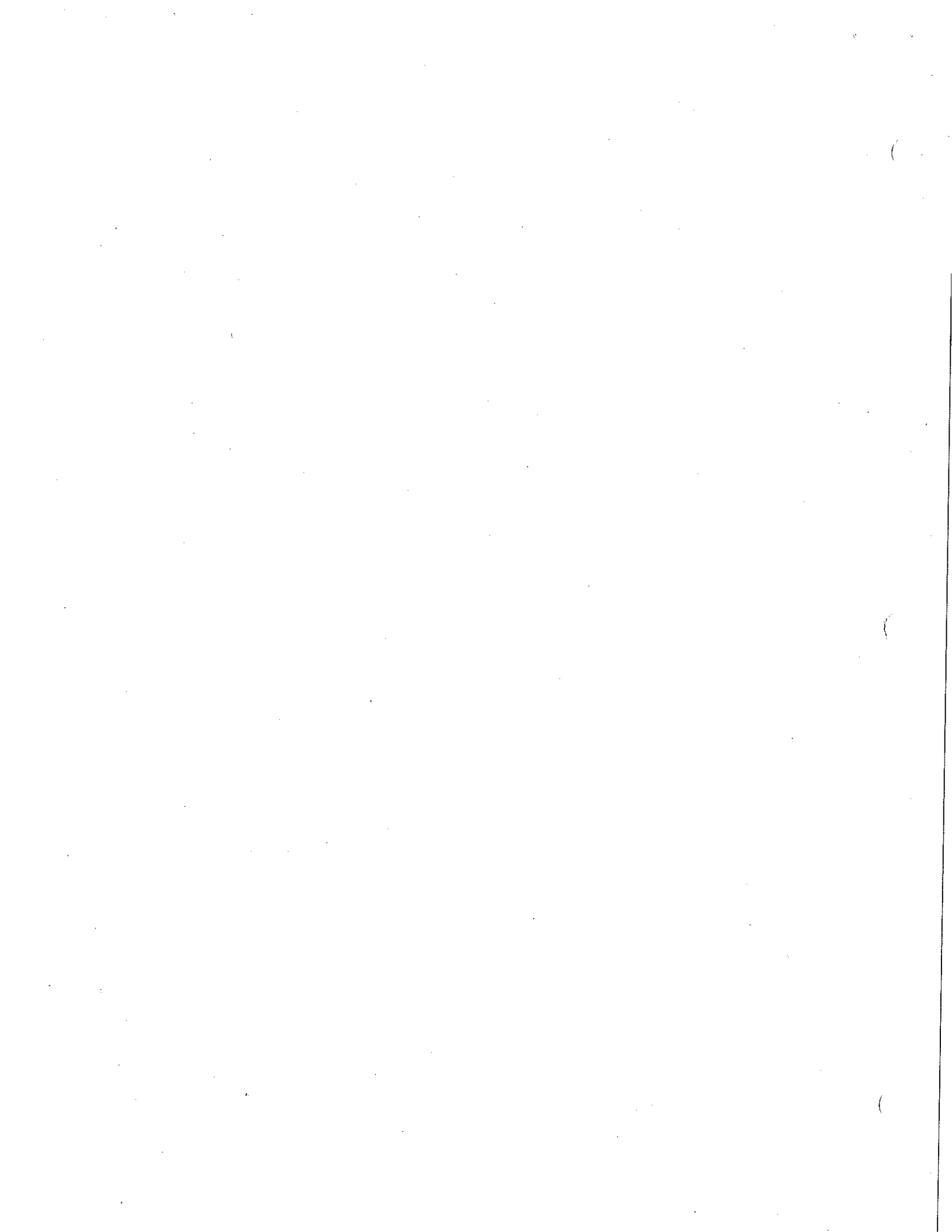


Excavation and Natural Attenuation Alternative





APPENDIX A
RAOULT'S LAW INTERIM TPH POLICY WORKSHEETS



**SOIL CLEANUP LEVEL CALCULATIONS FOR HUMAN HEALTH WITH SURROGATE APPROACH
for SOIL-TO-GROUNDWATER PATHWAY**

Option 2: Soil/Pore Water Partitioning and Groundwater Mixing

Date of Cleanup Level Testing: 3/14/2001

Name of Site:

Address of Site:

Type of Contamination:

Soil Sample ID:

Groundwater Use (enter the number):

Passed for TPH Test?

Fresh Diesel Standard
1998 Ecology report "Testing the chemical assumptions in the
2

Groundwater for Nonpotable Water Use

YES! TPH in Water will be **0.001** mg/l

TPH Interim Policy for Protectiveness"

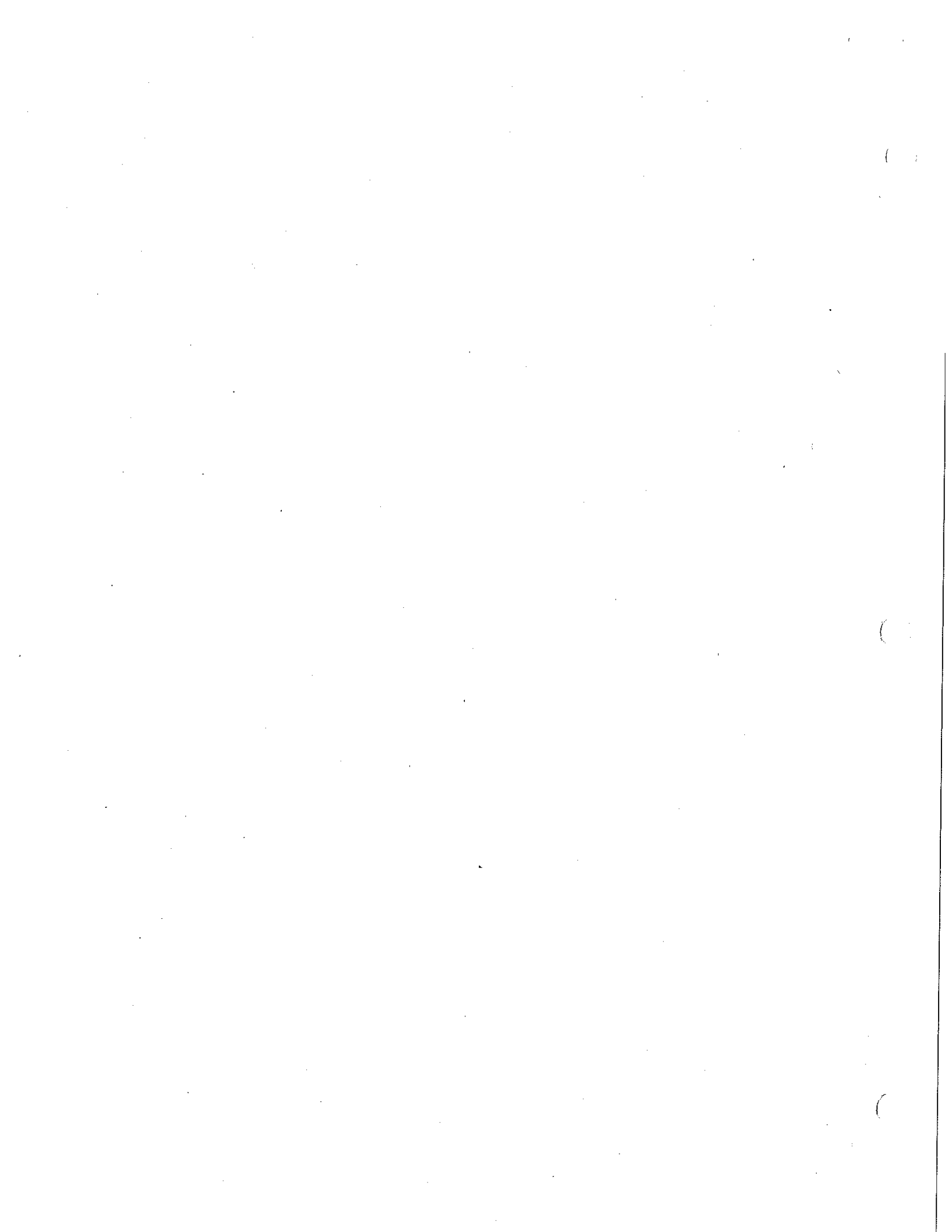
Groundwater Cleanup Level

Groundwater Use	TPH (mg/l)
(1) Drinking Water	1.000
(2) Nonpotable Water	1.000

Dilution Factor (DF): 20

Compound	Soil mg/kg	EC	MW g/mol	Moles mmol/kg	Mol Frac. %	Solubility mg/l	Effect Sol. mg/l	DF	Conc. @well mg/l	Comp. %
Aliphatics										
EC 5-6		5.5	81	0.00E+00	0.00%	2.80E+01	0.00E+00	20	0.00E+00	0.00%
EC >6-8		7.0	100	0.00E+00	0.00%	4.20E+00	0.00E+00	20	0.00E+00	0.00%
EC >8-10		9.0	130	0.00E+00	0.02%	3.30E-01	6.60E-05	20	3.30E-06	0.40%
EC >10-12		11.0	160	0.00E+00	0.08%	2.60E-02	2.08E-05	20	1.04E-06	0.13%
EC >12-16		14.0	200	0.00E+00	0.26%	5.90E-04	1.53E-06	20	7.67E-08	0.01%
EC >16-21		19.0	270	0.00E+00	0.34%	1.00E-06	3.40E-09	20	1.70E-10	0.00%
Aromatics										
Benzene		6.5	78	0.00E+00	0.00%	1.78E+03	0.00E+00	20	0.00E+00	0.00%
Toluene		7.6	92	0.00E+00	0.00%	5.20E+02	0.00E+00	20	0.00E+00	0.00%
Ethylbenzene		-	-	-	-	-	-	-	-	-
Xylenes		-	-	-	-	-	-	-	-	-
*EC >8-10		9.0	120	0.00E+00	0.01%	6.50E+01	6.50E-03	20	3.25E-04	39.23%
EC >10-12		10.0	130	0.00E+00	0.02%	2.50E+01	5.00E-03	20	2.50E-04	30.18%
EC >12-16		14.0	150	0.00E+00	0.07%	5.80E+00	4.06E-03	20	2.03E-04	24.51%
EC >16-21		19.0	190	0.00E+00	0.18%	5.10E-01	9.18E-04	20	4.59E-05	5.54%
EC >21-35		28.0	240	0.00E+00	0.02%	6.60E-03	1.32E-06	20	6.60E-08	0.01%
TPH in Soil =		Total=	0.00E+00	1.00%	TPH in Water =	0.001				

*Aromatic EC >8-10 fraction includes Ethylbenzene and Xylenes.



**SOIL CLEANUP LEVEL CALCULATIONS FOR HUMAN HEALTH WITH SURROGATE APPROACH
for SOIL-TO-GROUNDWATER PATHWAY
Option 2: Soil/Pore Water Partitioning and Groundwater Mixing**

Date of Cleanup Level Testing: 3/14/2001
 Name of Site: Fresh Diesel Standard
 Address of Site: 1998 Ecology report "Testing the chemical assumptions in the
 Type of Contamination:
 Soil Sample ID:
 Groundwater Use (enter the number): **2** **Groundwater for Nonpotable Water Use**
 Passed for TPH Test? **YES!** **TPH in Water will be 0.017 mg/l**

TPH Interim Policy for Protectiveness"

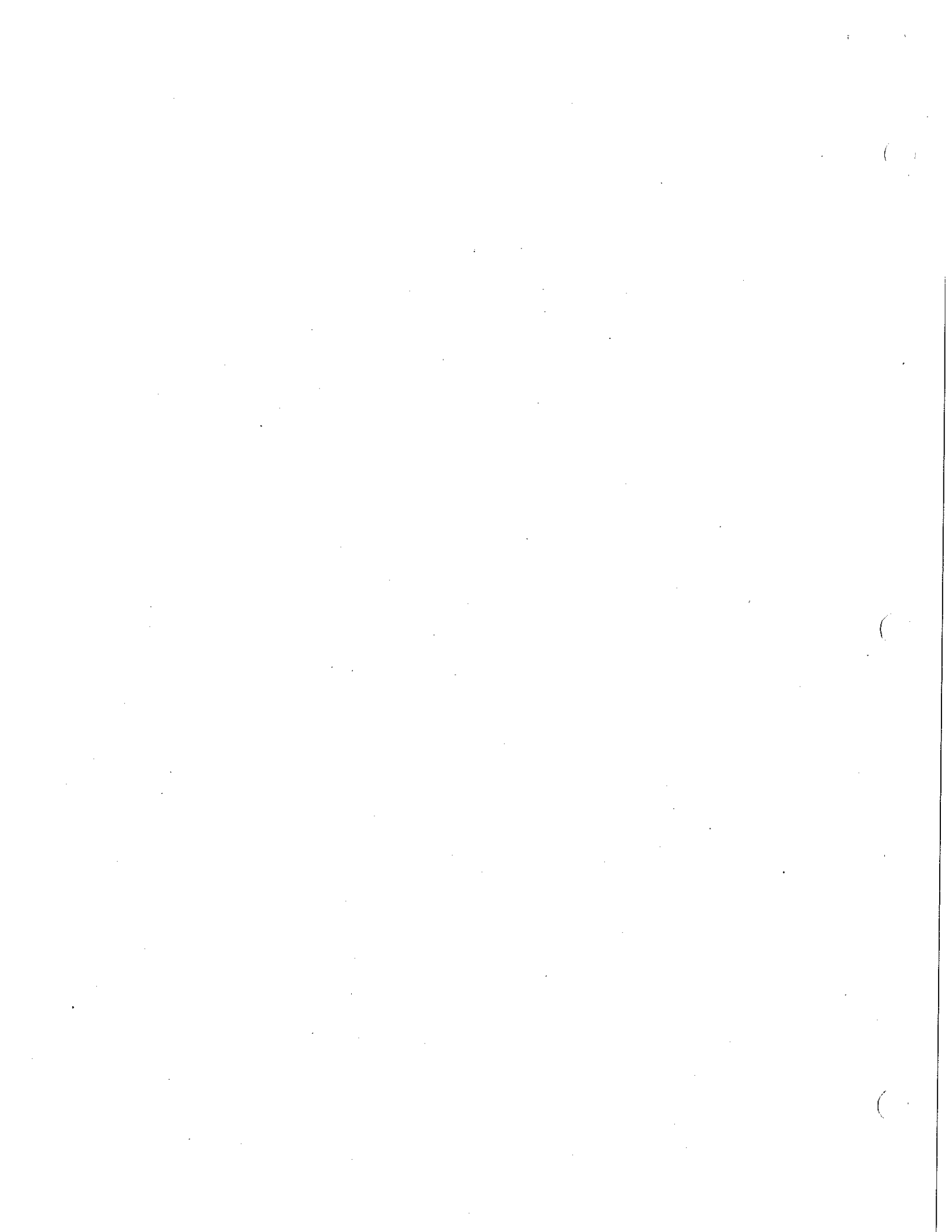
Groundwater Cleanup Level

Groundwater Use	TPH (mg/l)
(1) Drinking Water	1.000
(2) Nonpotable Water	1.000

Dilution Factor (DF):

Compound	Soil mg/kg	EC	MW g/mol	Moles mmol/kg	Mol Frac. %	Solubility mg/l	Effect. Sol. mg/l	DF	Conc. @well mg/l	Comp. %
Aliphatics										
EC 5-6	-	5.5	81	0.00E+00	0.00%	2.80E+01	0.00E+00	1	0.00E+00	0.00%
EC >6-8	-	7.0	100	0.00E+00	0.00%	4.20E+00	0.00E+00	1	0.00E+00	0.00%
EC >8-10	-	9.0	130	0.00E+00	0.02%	3.30E-01	6.60E-05	1	6.60E-05	0.40%
EC >10-12	-	11.0	160	0.00E+00	0.08%	2.60E-02	2.08E-05	1	2.08E-05	0.13%
EC >12-16	-	14.0	200	0.00E+00	0.26%	5.90E-04	1.53E-06	1	1.53E-06	0.01%
EC >16-21	-	19.0	270	0.00E+00	0.34%	1.00E-06	3.40E-09	1	3.40E-09	0.00%
Aromatics										
Benzene	-	6.5	78	0.00E+00	0.00%	1.78E+03	0.00E+00	1	0.00E+00	0.00%
Toluene	-	7.6	92	0.00E+00	0.00%	5.20E+02	0.00E+00	1	0.00E+00	0.00%
Ethylbenzene	-	-	-	-	-	-	-	-	-	-
Xylenes	-	-	-	-	-	-	-	-	-	-
*EC >8-10	-	9.0	120	0.00E+00	0.01%	6.50E+01	6.50E-03	1	6.50E-03	39.23%
EC >10-12	-	10.0	130	0.00E+00	0.02%	2.50E+01	5.00E-03	1	5.00E-03	30.18%
EC >12-16	-	14.0	150	0.00E+00	0.07%	5.80E+00	4.06E-03	1	4.06E-03	24.51%
EC >16-21	-	19.0	190	0.00E+00	0.18%	5.10E-01	9.18E-04	1	9.18E-04	5.54%
EC >21-35	-	28.0	240	0.00E+00	0.02%	6.60E-03	1.32E-06	1	1.32E-06	0.01%
TPH in Soil =			Total=	0.00E+00	1.00%				TPH in Water =	0.017

*Aromatic EC >8-10 fraction includes Ethylbenzene and Xylenes.



**SOIL CLEANUP LEVEL CALCULATIONS FOR HUMAN HEALTH WITH SURROGATE APPROACH
for SOIL-TO-GROUNDWATER PATHWAY**

Option 2: Soil/Pore Water Partitioning and Groundwater Mixing

Date of Cleanup Level Testing: 3/14/2001

Name of Site: Bunker C Standard

Address of Site: 1998 Ecology report "Testing the chemical assumptions in the

Type of Contamination: TPH Interim Policy for Protectiveness"

Soil Sample ID: 2

Groundwater Use (enter the number): 2

Passed for TPH Test? YES!

Groundwater for Nonpotable Water Use

TPH in Water will be 0.001 mg/l

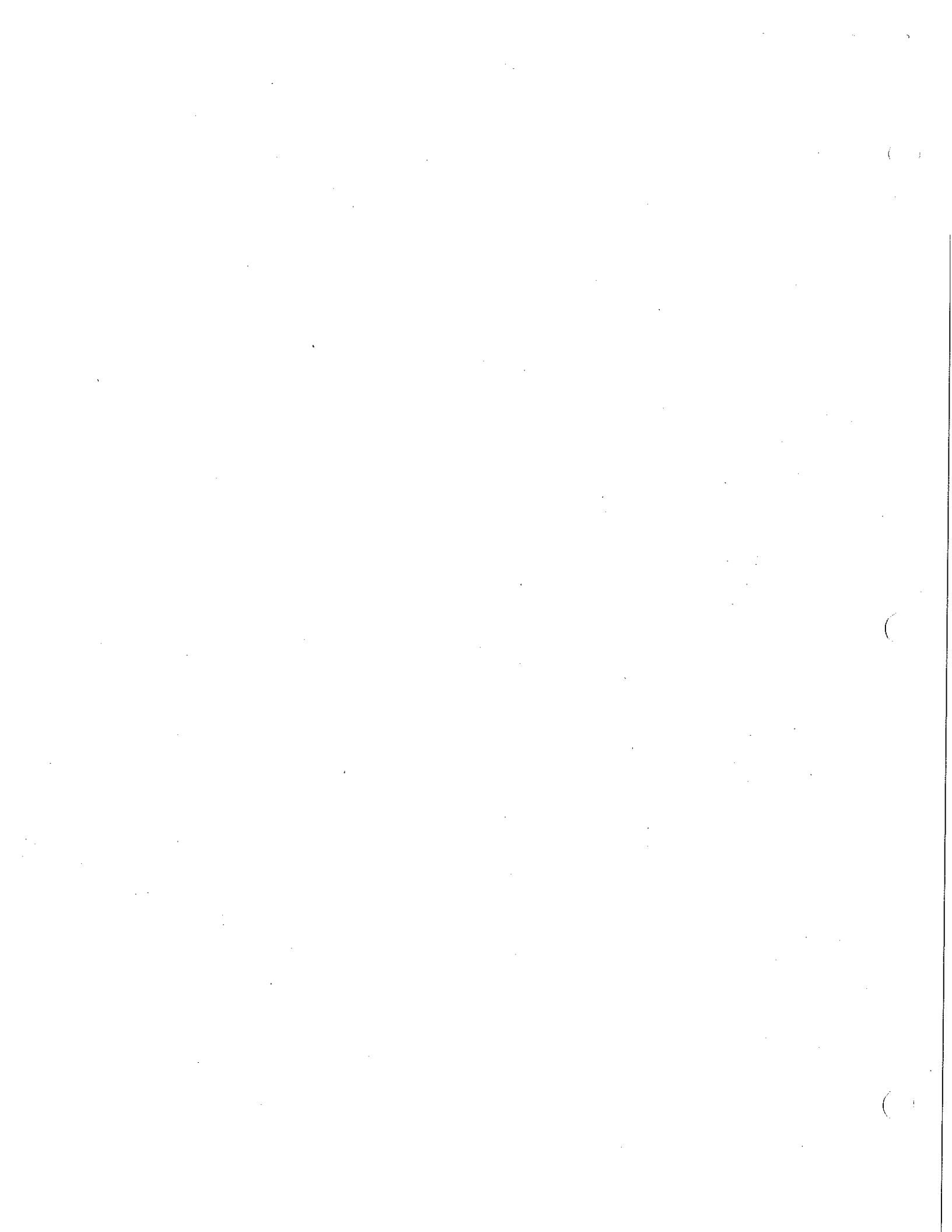
Groundwater Cleanup Level

Groundwater Use	TPH (mg/l)
(1) Drinking Water	1.000
(2) Nonpotable Water	1.000

Dilution Factor (DF): 20

Compound	Soil mg/kg	EC	MW g/mol	Moles mmol/kg	Mol Frac. %	Solubility mg/l	Effect. Sol. mg/l	DF	Conc. @well mg/l	Comp. %
Aliphatics										
EC 5-6	-	5.5	81	0.00E+00	0.00%	2.80E+01	0.00E+00	20	0.00E+00	0.00%
EC >6-8	-	7.0	100	0.00E+00	0.00%	4.20E+00	0.00E+00	20	0.00E+00	0.00%
EC >8-10	-	9.0	130	0.00E+00	0.00%	3.30E-01	0.00E+00	20	0.00E+00	0.00%
EC >10-12	-	11.0	160	0.00E+00	0.00%	2.60E-02	0.00E+00	20	0.00E+00	0.00%
EC >12-16	-	14.0	200	0.00E+00	0.10%	5.90E-04	5.61E-07	20	2.80E-08	0.01%
EC >16-34	-	19.0	270	0.00E+00	0.20%	1.00E-06	1.95E-09	20	9.75E-11	0.00%
Aromatics										
Benzene	-	6.5	78	0.00E+00	0.00%	1.78E+03	0.00E+00	20	0.00E+00	0.00%
Toluene	-	7.6	92	0.00E+00	0.00%	5.20E+02	0.00E+00	20	0.00E+00	0.00%
Ethylbenzene	-	-	-	-	-	-	-	-	-	-
Xylenes	-	-	-	-	-	-	-	-	-	-
*EC >8-10	-	9.0	120	0.00E+00	0.00%	6.50E+01	0.00E+00	20	0.00E+00	0.00%
EC >10-12	-	10.0	130	0.00E+00	0.00%	2.50E+01	0.00E+00	20	0.00E+00	0.00%
EC >12-16	-	14.0	150	0.00E+00	0.15%	5.80E+00	8.41E-03	20	4.21E-04	81.93%
EC >16-21	-	19.0	190	0.00E+00	0.36%	5.10E-01	1.84E-03	20	9.21E-05	17.94%
EC >21-35	-	28.0	240	0.00E+00	0.20%	6.60E-03	1.35E-05	20	6.73E-07	0.13%
TPH in Soil =	-	Total=	0.00E+00	1.00%	TPH in Water =	0.001				

*Aromatic EC >8-10 fraction includes Ethylbenzene and Xylenes.



**SOIL CLEANUP LEVEL CALCULATIONS FOR HUMAN HEALTH WITH SURROGATE APPROACH
for SOIL-TO-GROUNDWATER PATHWAY**

Option 2: Soil/Pore Water Partitioning and Groundwater Mixing

Date of Cleanup Level Testing: 3/14/2001

Name of Site: **Banker C Standard**

Address of Site: **1998 Ecology report Testing the chemical assumptions in the**

Type of Contamination: **2**

Soil Sample ID: **Groundwater for Nonpotable Water Use**

Groundwater Use (enter the number): **YES!**

Passed for TPH Test? **TPH in Water will be 0.010 mg/l**

TPH Interim Policy for Protectiveness"

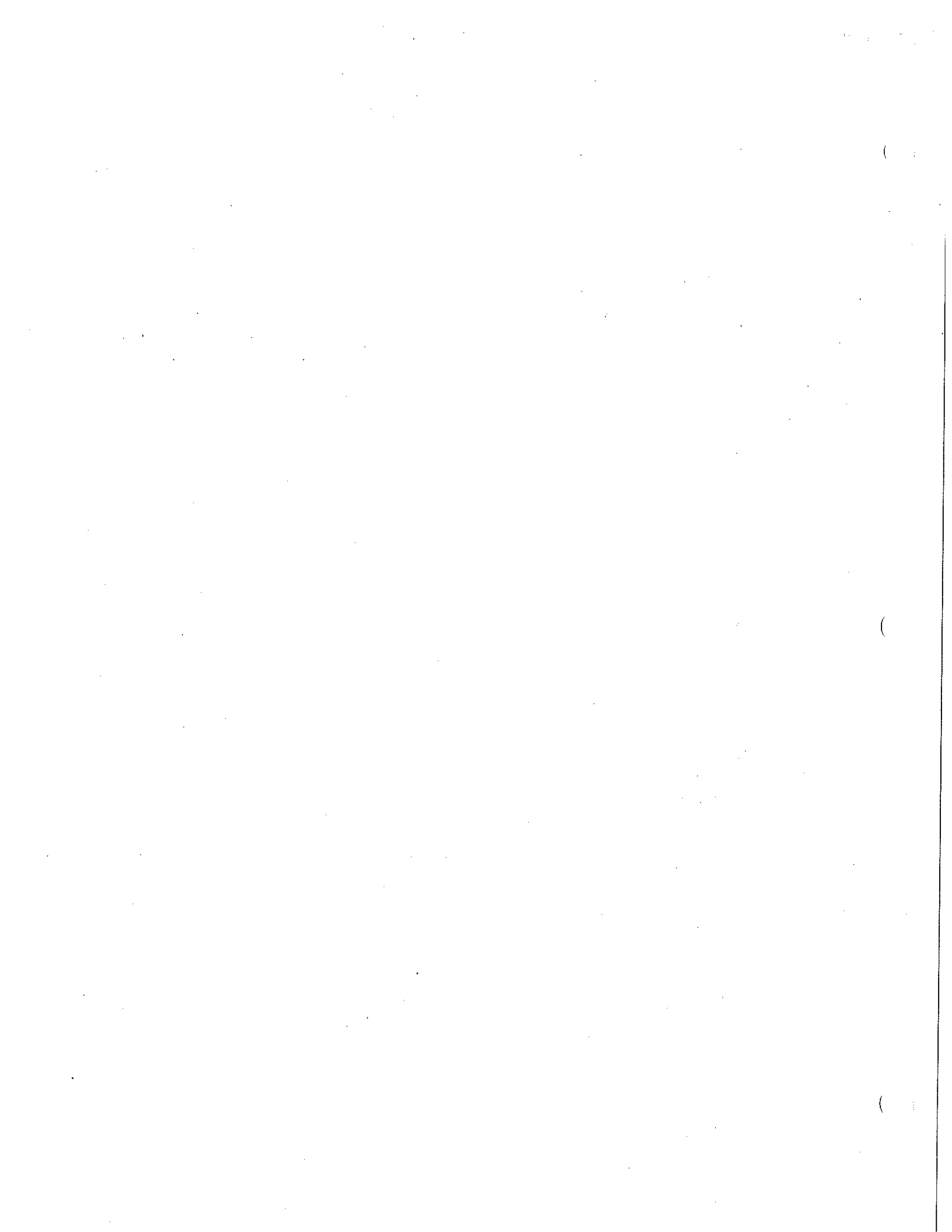
Groundwater Cleanup Level

Groundwater Use	TPH (mg/l)
(1) Drinking Water	1 000
(2) Nonpotable Water	1 000

Dilution Factor (DF): **1**

Compound	Soil mg/kg	EC	MW g/mol	Moles mmol/kg	Mol Frac. %	Solubility mg/l	Effect. Sol. mg/l	DF	Conc. @well mg/l	Comp. %
<i>Aliphatics</i>										
EC >5-6		5.5	81	0.00E+00	0.00%	2.80E+01	0.00E+00	1	0.00E+00	0.00%
EC >6-8		7.0	100	0.00E+00	0.00%	4.20E+00	0.00E+00	1	0.00E+00	0.00%
EC >8-10		9.0	130	0.00E+00	0.00%	3.30E-01	0.00E+00	1	0.00E+00	0.00%
EC >10-12		11.0	160	0.00E+00	0.00%	2.60E-02	0.00E+00	1	0.00E+00	0.00%
EC >12-16		14.0	200	0.00E+00	0.10%	5.90E-04	5.61E-07	1	0.00E+00	0.00%
EC >16-34		19.0	270	0.00E+00	0.20%	1.00E-06	1.95E-09	1	5.61E-07	0.01%
<i>Aromatics</i>										
Benzene		6.5	78	0.00E+00	0.00%	1.78E+03	0.00E+00	1	0.00E+00	0.00%
Toluene		7.6	92	0.00E+00	0.00%	5.20E+02	0.00E+00	1	0.00E+00	0.00%
Ethylbenzene		-	-	-	-	-	-	-	-	-
Xylenes		-	-	-	-	-	-	-	-	-
*EC >8-10		9.0	120	0.00E+00	0.00%	6.50E+01	0.00E+00	1	0.00E+00	0.00%
EC >10-12		10.0	130	0.00E+00	0.00%	2.50E+01	0.00E+00	1	0.00E+00	0.00%
EC >12-16		14.0	150	0.00E+00	0.15%	5.80E+00	8.41E-03	1	8.41E-03	81.93%
EC >16-21		19.0	190	0.00E+00	0.36%	5.10E-01	1.84E-03	1	1.84E-03	17.94%
EC >21-35		28.0	240	0.00E+00	0.20%	6.60E-03	1.35E-05	1	1.35E-05	0.13%
TPH in Soil =		Total=	0.00E+00	1.00%			TPH in Water =		0.010	

*Aromatic EC >8-10 fraction includes Ethylbenzene and Xylenes.



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Ecology Division

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Clerical Section
Superior Court Clerk

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 STATE OF WASHINGTON, DEPARTMENT
10 OF ECOLOGY,

11 Plaintiff,

12 v.

13 THE SEATTLE ART MUSEUM, THE CITY
14 OF SEATTLE, AND THE MUSEUM
15 DEVELOPMENT AUTHORITY,

16 Defendants.

No. **01-2-13878 2SEA**

**JOINT MOTION FOR ENTRY OF
CONSENT DECREE**

17 **I. INTRODUCTION**

18 Plaintiff, Washington State Department of Ecology ("Ecology"), and Defendants, the
19 Seattle Art Museum ("SAM"), the City of Seattle ("CITY"), and the Museum Development
20 Authority ("MDA"), (jointly the "Parties") bring this motion seeking entry of the attached
21 Prospective Purchaser Consent Decree ("Decree"). This motion is based upon the pleadings
22 filed in this matter.

23 **II. RELIEF REQUESTED**

24 The Parties request that the Court approve and enter the attached Decree. The Decree
25 fully disposes of all issues in this matter. See attached Affidavit of Steven J. Thiele.

**JOINT MOTION FOR ENTRY OF
CONSENT DECREE**

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

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III. FACTS

The Decree between Defendants and Ecology resolves the potential liability of Defendants for known and suspected contamination at the 10 Broad Street property (the "Site") arising from a release of threatened release of hazardous substances, promotes the public interest by expediting cleanup activities at the Site, and facilitates the cleanup and redevelopment of contaminated industrial properties in Seattle, Washington.

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IV. AUTHORITY

RCW 70.94.331(1) and 70.94.141(3) authorize Ecology to issue such orders as may be necessary to effectuate the purposes of chapter 70.94 RCW and enforce such orders through judicial proceedings. RCW 70.94.431 and 43.21B.300 authorize Ecology to issue civil penalties and collect unpaid civil penalties in superior court. In addition, RCW 70.94.425 authorizes Ecology to petition the superior court of the county where a violation is alleged to have occurred for an appropriate order, including injunctive relief.

14 Ecology believes it is appropriate for the Court to exercise its judicial discretion and
15 approve the attached Decree.

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V. CONCLUSION


The Parties request that the Court approve and enter the attached Decree in full resolution of the matters involved in this action. The Parties also request that the Court retain jurisdiction over this action until the work required by the Consent Decree is

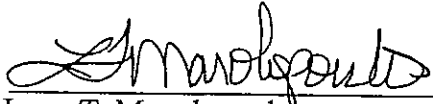
1 completed, at which time the Parties anticipate seeking dismissal of this action.

2
3 DATED this 17th day of May, 2001.

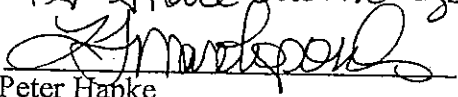
4 CHRISTINE O. GREGOIRE
5 Attorney General

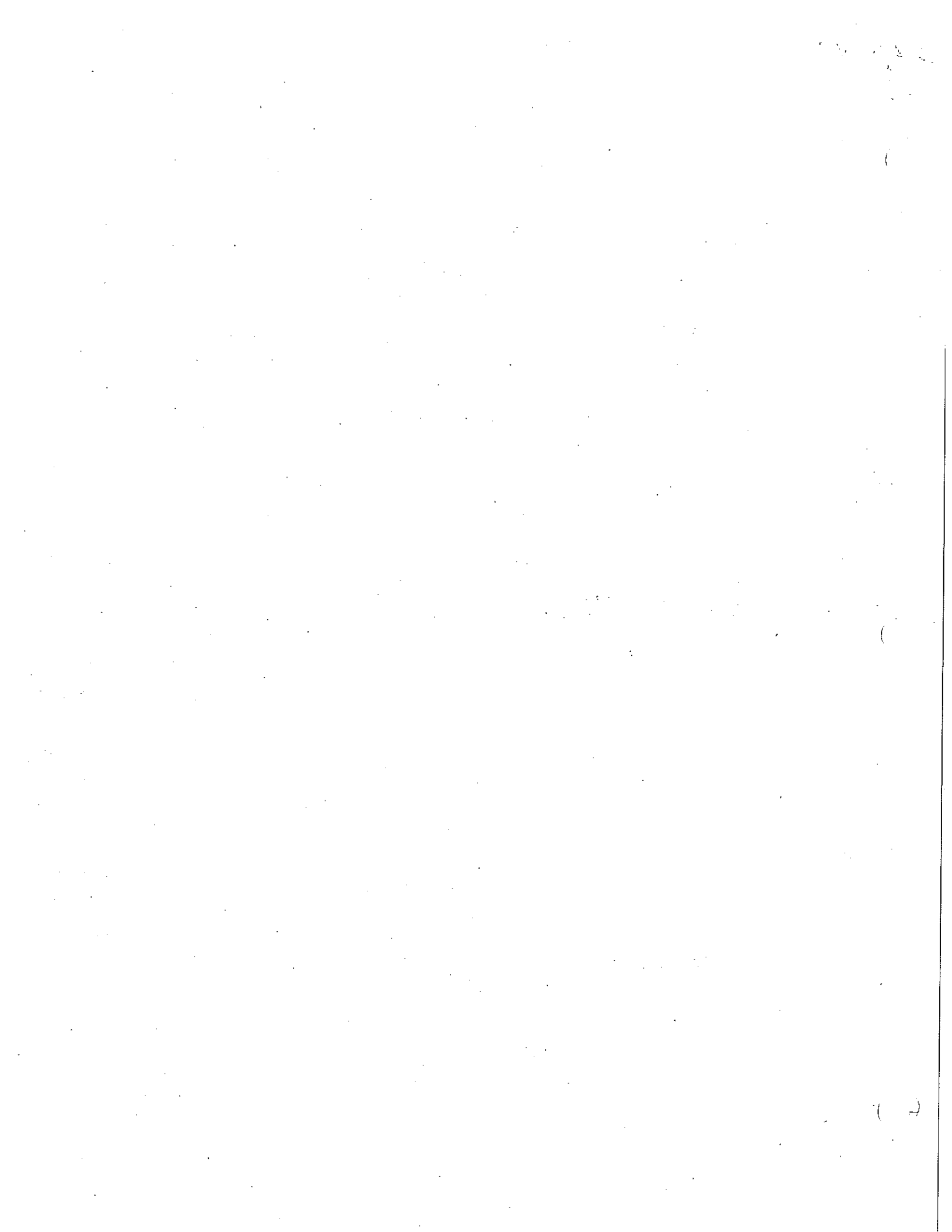
Davis Wright Tremaine LLP

6
7 By: 
8 STEVEN J. THIELE, WSBA #20275
9 Assistant Attorney General
10 Attorney for Plaintiff
11 STATE OF WASHINGTON
12 DEPARTMENT OF ECOLOGY

By: 
Lynn T. Manolopoulos
WSBA No. 21069
Attorneys for Defendants
THE SEATTLE ART MUSEUM and
THE MUSEUM DEVELOPMENT
AUTHORITY

12 THE CITY OF SEATTLE

13 *Per email authorization*
14 By: 
15 Peter Hapke
16 WSBA No. 23159
17 Attorneys for Defendant
18 THE CITY OF SEATTLE
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

THE SEATTLE ART MUSEUM, THE CITY
OF SEATTLE, AND THE MUSEUM
DEVELOPMENT AUTHORITY,

Defendants.

NO. **01-2-13878** 2SEA

**ORDER ENTERING
CONSENT DECREE**

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

DATED this _____ day of _____, 2001.

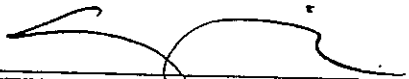
KIMBERLEY D. PROCHIAN

JUDGE/COMMISSIONER
King County

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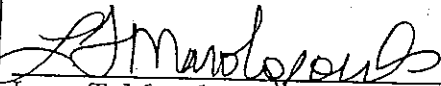
1 Presented by:

2 CHRISTINE O. GREGOIRE
3 Attorney General

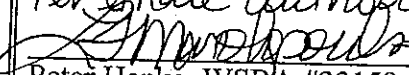
4 
5 STEVEN J. THELE, WSBA #20275
6 Assistant Attorney General
7 Attorney for Plaintiff
8 State of Washington
9 Department of Ecology

8 Dated: 5-16-07

9 DAVIS WRIGHT TREMAINE

10 
11 Lynn T. Manolopoulos, WSBA #21069
12 Attorneys for Defendants
13 THE SEATTLE ART MUSEUM and
14 THE MUSEUM DEVELOPMENT
15 AUTHORITY

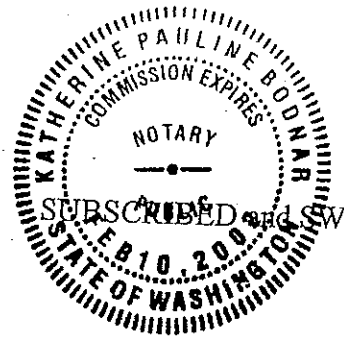
14 Dated: 5/17/01


16 THE CITY OF SEATTLE
17 *Per email authorization*
18 
19 Peter Hapke, WSBA #23159
20 Attorneys for Defendant
21 THE CITY OF SEATTLE

19 5/17/01


1 3. The Decree was the subject of public notice as required by RCW 70.105D.040(4)(a)
2 and WAC 173-340-600, however no comments were received.

3 DATED this 16 day of May, 2001.



4
5 
6 STEVEN J. THIELE

7
8 SUBSCRIBED and SWORN to before me this 16th day of May, 2001.

9
10 
11 NOTARY PUBLIC in and for the State of
12 Washington, residing at Olympia Wa
13 My appointment expires 2.10.03
14 Print Name Katherine P. Bodnar

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

THE SEATTLE ART MUSEUM, THE CITY
OF SEATTLE, AND THE MUSEUM
DEVELOPMENT AUTHORITY,

Defendants.

No. **01-2-13878** 2SEA
01-2-13878 2SEA
COMPLAINT

Plaintiff, State of Washington, Department of Ecology ("Ecology") alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology, to enter a settlement agreement, known as a Prospective Purchaser Consent Decree ("Decree") for a remedial action at a facility where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or Site, is referred to as the 10 Broad Street Property. The Site consists of the facility located on the northwest corner of Elliott Avenue and Broad Street.

COMPLAINT

1

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

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II. JURISDICTION

3. This Court has jurisdiction under Chapter 70.105D RCW, the Model Toxics Control Act ("MTCA"). This Court has jurisdiction over the subject matter and over the parties pursuant to the MTCA. Venue is proper in King County, the location of the property at issue.

4. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(5)(a) to agree to a settlement with any person not currently liable for remedial action at a facility, who intends to purchase, redevelop or reuse a Site if, after public notice, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e). In addition, Ecology must also find that the proposed redevelopment or reuse is not likely to contribute to the existing releases or threatened releases or interfere with remedial actions that may be needed on the Site or increase health risks to persons at or in the vicinity of the Site. Lastly, the Attorney General must find that the settlement will yield substantial new resources to facilitate the cleanup and expedite remedial action consistent with the rules adopted under RCW Chapter 70.105D. Ecology and the Attorney General have made the required finding. Under RCW 70.105D.040(4)(b), such a settlement must be entered as a Consent Decree issued by a court of competent jurisdiction.

5. Ecology has determined that a release or threatened release of a hazardous substance has occurred at the Site.

6. Ecology has given notice to the Seattle Art Museum ("SAM"), the City of Seattle (the "CITY"), and the Museum Development Authority ("MDA") of Ecology's determination as provided in RCW 70.105D.020(12), that upon the CITY's purchase, and the MDA and SAM's acquisition of property interests in the Site, they will be potentially liable persons as

1 owners and/or operators (defined in 70.105D.020(12)) of the Site and notice that there has been
2 a release and/or threatened release of hazardous substances at the Site.

3 III. PARTIES

4 7. Plaintiff Ecology is an agency of the State of Washington responsible for
5 overseeing remedial action at Sites contaminated with hazardous substances under Chapter
6 70.105D RCW.

7 8. Defendants are SAM, the CITY, and the MDA.

8 IV. FACTUAL ALLEGATIONS

9 9. The Site is located at 10 Broad Street in downtown Seattle, Washington.
10 It is bordered by Elliott Avenue on the east, the future Olympic Sculpture Park on the north,
11 and Broad Street on the south. The western boundary is Alaskan Way. A Legal Description
12 and a Site Diagram of the Site are attached as Exhibit A.

13 10. The Site was used by a welding and automotive service facility from approximately
14 1916 to 1973. In 1976, a new building was constructed on the Site and it has been operated as
15 a restaurant since that time.

16 11. Several environmental investigations have been conducted at the Site by third
17 parties. Elevated concentrations of petroleum hydrocarbons have been encountered in soil and
18 groundwater on the eastern portion of the Site.

19 12. The City intends to purchase the Site. SAM and the MDA will each obtain a
20 property interest in the Site.

21 13. SAM, the City and the MDA have performed additional investigation of the Site, to
22 further define the nature and extent of residual contamination that remains on the Site. The
23 findings of this investigation are summarized in the Remedial Investigation/Feasibility Study
24 (RI/FS) report prepared by Hart Crowser for the Defendants, dated January 29, 2001. The Site
25 characterization data obtained by this study as well as by third parties indicate that petroleum-

1 contaminated soils with concentrations above MTCA cleanup levels are present beneath the
2 eastern portion of the Site and Elliott Avenue. Petroleum-contaminated groundwater has also
3 been encountered in this area.

4 14. The RI/FS also analyzed remedial alternatives and identified appropriate cleanup
5 standards as required pursuant to MTCA. Based on the results of the RI/FS, Defendants
6 proposed and Ecology approved a final remedy as outlined in the "WORK TO BE
7 PERFORMED" Section of the Decree and the Cleanup Action Plan (CAP), Schedule and the
8 Sampling/Monitoring and Contingency Plan attached to the Decree as Exhibits B, C and F. In
9 addition, Defendants have agreed to fulfill the other obligations identified in the Decree.

10 15. Defendants plan to make this Site part of the public sculpture park planned for the
11 adjacent site. The park will include sculptures, pedestrian trails, landscaped open space, and an
12 underground parking lot. An exhibition building and accessory structures (e.g., restrooms,
13 espresso stands) may be placed on the park. Alaskan Way will consist of a shoreline
14 promenade, an extension of the Myrtle Edwards Park waterfront bike trail, landscaped open
15 space, possibly paved parking areas and small slab-on-grade structures. Pedestrian bridges will
16 connect the park areas. A detailed outline of the proposed park is contained in the Site Use
17 Plan attached to the Decree as Exhibit D.

18 16. Ecology and the Defendants have entered into a Decree regarding the acquisition of
19 and remedial actions to be taken at the Site. Defendants have agreed to perform remedial
20 actions and accomplish the specific tasks in the Decree. Defendants have agreed not to
21 perform any remedial actions on the Site that are inconsistent with the remedial actions
22 required under the Decree.

23 17. Defendants have agreed to be prohibited from using the Site in a manner likely to
24 cause or contribute to the existing release, interfering with remedial actions performed or that
25 may be needed at the Site, or increasing health risks to persons or risks to the environment at or

1 in the vicinity of the Site. Defendants have agreed to file the appropriate Restrictive Covenants
2 attached to the Decree if and when they are required.

3 **V. CAUSES OF ACTION**

4 18. Plaintiff realleges paragraphs 1 through 17, above.

5 19. Ecology alleges that the Defendants will be responsible for remedial action at the
6 facility pursuant to Chapter 173-340 WAC if they purchase the Site.


7 20. Ecology and the Defendants have entered into a Decree requiring remedial actions
8 at the facility. The Decree has been subject to public notice and comment under RCW
9 70.105D.040(4)(a). No comments were received.

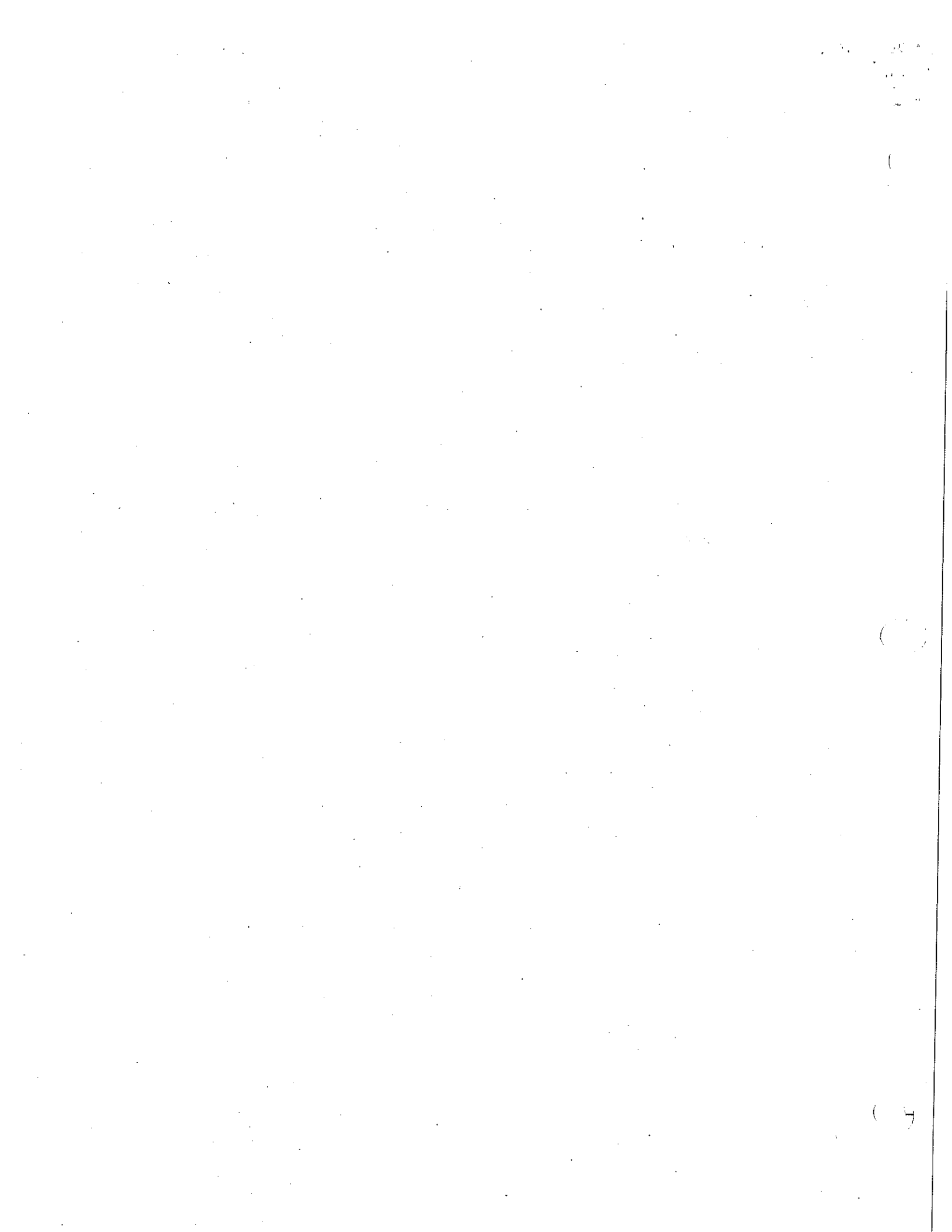
10 **VI. PRAYER FOR RELIEF**

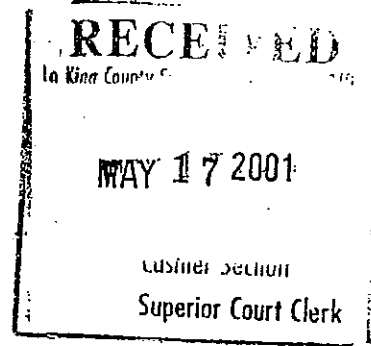
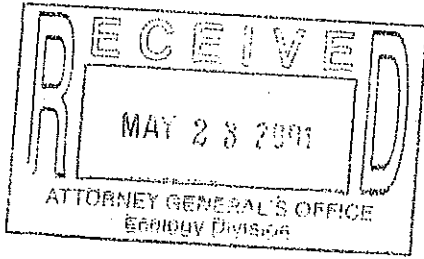
11 WHEREAS Ecology and Defendants have voluntarily entered into a proposed Decree,
12 Ecology requests that the Court, pursuant to RCW 70.105D.040, approve and order the entry of
13 the proposed Decree. Ecology further requests that the Court retain jurisdiction to enforce the
14 terms of the Decree.

15 DATED this 16th day of May, 2001.

16 CHRISTINE O. GREGOIRE
17 Attorney General

18 
19 _____
20 STEVEN J. THIELE, WSBA #20275
21 Assistant Attorney General
22 Attorney for Plaintiff
23 State of Washington
24 Department of Ecology
25 (360) 586-4619





7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 STATE OF WASHINGTON, DEPARTMENT
10 OF ECOLOGY,

11 Plaintiff,

12 v.

13 THE SEATTLE ART MUSEUM, THE CITY
14 OF SEATTLE, AND THE MUSEUM
DEVELOPMENT AUTHORITY,

15 Defendants.

No. **01-2-13878 2SEA**
SUMMONS

16
17 TO: THE SEATTLE ART MUSEUM, THE CITY OF SEATTLE, AND THE MUSEUM
18 DEVELOPMENT AUTHORITY, and its attorney

19 A lawsuit has been started against you in the above-entitled court by the State of
20 Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a
21 copy of which is served upon you with this Summons.

22 The parties have agreed to resolve this matter by entry of a Prospective Purchaser
23 Consent Decree, a copy of which is also attached. Accordingly, this Summons shall not
24 require the filing of an Answer. Further, all disputes arising under this cause shall be resolved
25 under the terms of the Decree.

SUMMONS

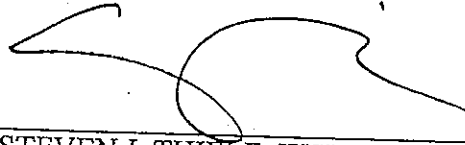
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ATTORNEY GENERAL OF WASHINGTON
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RETURN COPY

DATED this 15th day of May, 2001.

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE, WSBA #20275
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