



201705160070

After Recording Return
Original Signed Covenant to:
Arianne Fernandez
Toxics Cleanup Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Skagit County Auditor \$81.00
5/18/2017 Page 1 of 9 10:37AM

Environmental Covenant

Grantor: Port of Anacortes
Grantee: State of Washington, Department of Ecology (hereafter "Ecology")
Brief Legal Description: PTN. TR 13, PL 10, ANACORTES TIDE LANDS, in Skagit County, Washington
Tax Parcel Nos.: P32956
Cross Reference: None

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act (MTCA), chapter 70.105D RCW, and Uniform Environmental Covenants Act (UECA), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as the Former Shell Oil Tank Farm, facility ID 4781157. The Property is legally described in Exhibit A, which is attached hereto, and referred to herein as the "Property."
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Gasoline-, diesel- and heavy oil-range petroleum hydrocarbons, benzene and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) and cadmium

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents: Remedial Investigation and Feasibility Study (RI/FS) Report, Cleanup Action Plan, and Construction Completion (As-Built) Report.
- e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its right as a holder, are not an interest in real property.

COVENANT

The Port of Anacortes, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property,¹ and that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to a portion of the Property where contaminated soil is contained under a cap consisting of two to three feet of overburden which does not exceed soil cleanup levels and roadway and sidewalks located as illustrated in Exhibit B. As such, the following restrictions shall apply within the area illustrated in Exhibit B as the "Restrictive Covenant Area."

- a. **Containment of Soil.** The remedial action for the Property includes installation of a protective barrier of oxygen releasing material (ORM) injected on the site adjacent to the contaminated material left in place to stimulate naturally occurring microbes for enhancing biological degradation of residual organic contaminants. The contaminated soil at the Property is covered by the cap, described above. The primary purpose of this cap is to contain contamination and mitigate risk of direct human/terrestrial wildlife contact with contaminated soils.

(i) Any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with a sampling device, post, stake, or similar device; grading; excavation; installation of underground utilities; removal of the cap; or application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology.

¹ As is the case for all environmental covenants recorded pursuant to MTCA in which Ecology is the Grantee, it is Ecology's understanding and intent that such covenants shall not supersede the Grantor's fee simple ownership interest in the Property.

Upon receiving the Grantor's written request to conduct such activity, Ecology shall endeavour to respond within five (5) business days.

(ii) The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap, including but not limited to any damage caused by a third party. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

b. **Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest within the area of the Property described and illustrated in Exhibit B, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE SKAGIT COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Director of Planning, Properties & Environmental Port of Anacortes 100 Commercial Avenue Anacortes, WA 98221 (360) 293-3134	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504-7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the Property requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant. The Grantor shall also be responsible for the costs associated with this Covenant of monitoring the integrity of the cap, repairing the cap, notification of cap damage, and recording this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned representative of Grantor warrants that the Port of Anacortes holds the title to the Property and has authority to execute this Covenant.

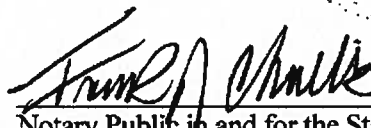
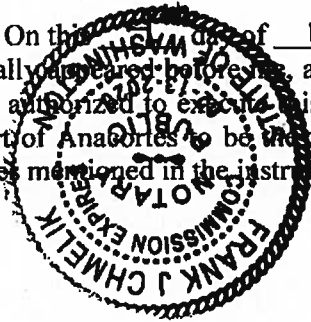
EXECUTED this 4 day of MAY, 2017.



by: Daniel C. Worra
Title: Executive Director

STATE OF WASHINGTON
COUNTY OF SKAGIT

On this 4 day of MAY, 2017 I certify that Daniel Worra personally appeared before me, acknowledged that he signed this instrument, on oath, stated that he was authorized to execute this instrument, and acknowledged it as the Executive Director of the Port of Anacortes to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Notary Public in and for the State of Washington
Residing at BELLINGHAM, WA
My appointment expires _____

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



by: Jim Pendowski
Title: Program Manager, Toxics Cleanup Program

Dated: 3/24/17

STATE OF Washington
COUNTY OF Thurston

On this 24 day of March, 2017, I certify that Jim Pendowski personally appeared before me, acknowledged that he is the Program Manager of the Toxics Cleanup Program of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said state agency.



Valerie L. Pearson
Notary Public in and for the State of Washington
Residing at Lacey, Washington
My appointment expires 03-28-2020

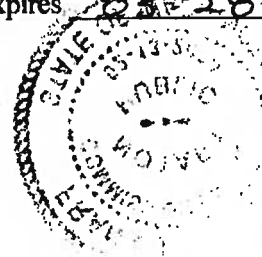


Exhibit A

LEGAL DESCRIPTION

TRACT 13, PLATE 10, ANACORTES TIDE AND SHORELANDS, LOCATED IN SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST OF W.M., EXCEPT THAT PORTION OF TRACT 13, PLATE 10 DESCRIBED AS FOLLOWS:

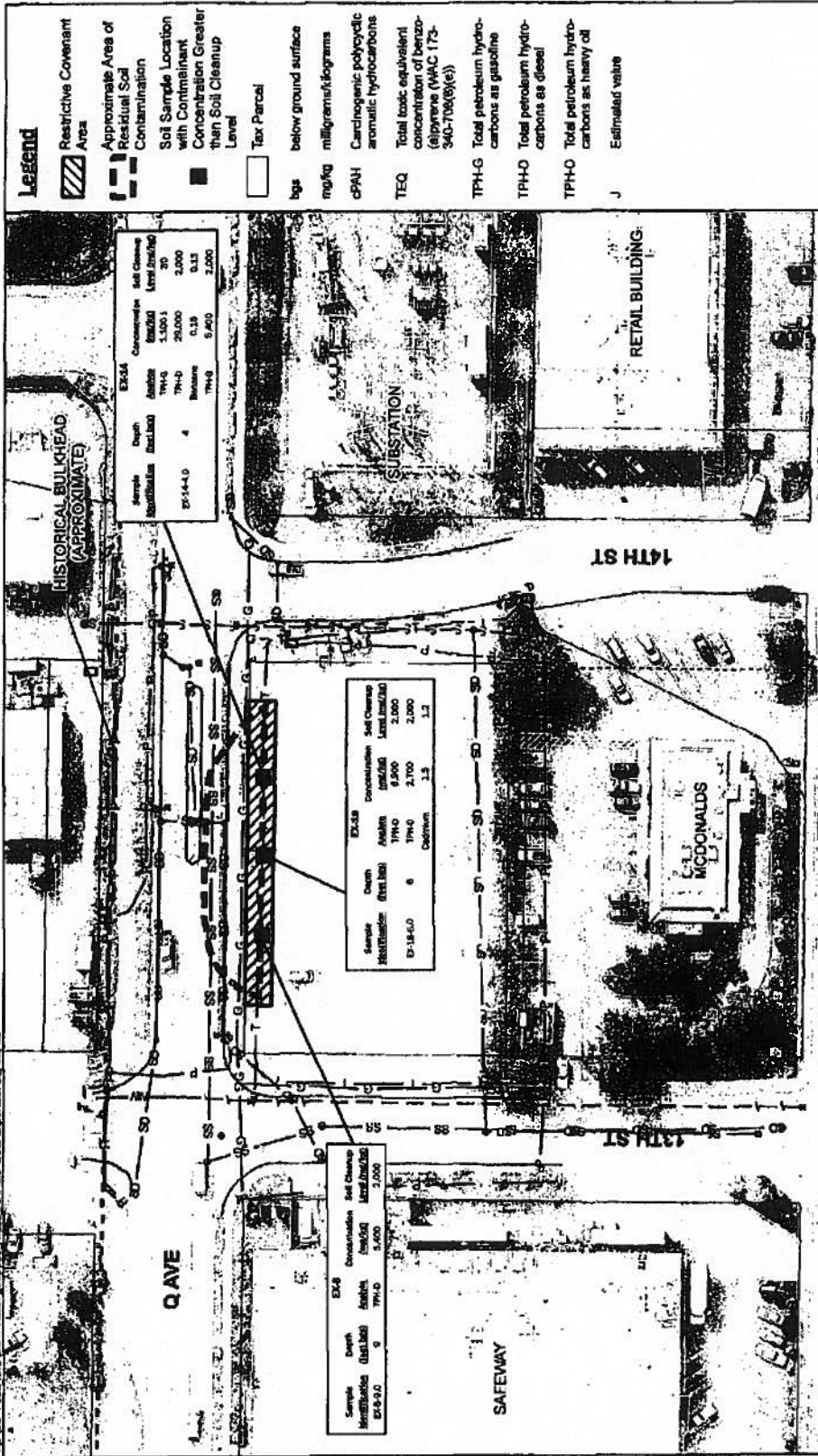
BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT 13, SAID POINT BEING THE INTERSECTION OF THE SOUTHERLY MARGIN OF 13TH STREET AND THE EASTERLY MARGIN OF COMMERCIAL AVE; THENCE NORTH $89^{\circ} 57' 30''$ EAST ALONG SAID SOUTH MARGIN OF 13TH STREET 160.00 FEET; THENCE SOUTH PARALLEL WITH SAID EAST MARGIN OF COMMERCIAL AVE 216.00 FEET TO THE NORTH MARGIN OF 14TH STREET; THENCE SOUTH $89^{\circ} 57' 30''$ WEST ALONG SAID NORTH MARGIN 160.00 FEET TO SAID EAST MARGIN OF COMMERCIAL AVENUE; THENCE NORTH ALONG SAID EAST MARGIN 216.00 FEET TO THE POINT OF BEGINNING.

SITUATE IN SKAGIT COUNTY, STATE OF WASHINGTON.

Exhibit B

CAPPED AREA

P:\15147012\GIS\14701207_Capped Areas_ assumed Date Exported: 08/20/16



Notes:

1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. cannot guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.

Date Source: Aerial Imagery provided by the Port of Anacortes, Imagery date: 2014.

Projection: NAD 1983 StatePlane Washington North FIPS 4601 Feet

Capped Areas

Shell Oil Tank Farm Former
Anacortes, Washington



Exhibit B

