

After recording return to:

Nicholas M. Acklam  
Toxics Cleanup Program  
Washington State Department of Ecology  
Post Office Box 47600  
Olympia, WA 98504-7600



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**DOCUMENT:** ENVIRONMENTAL COVENANT  
**GRANTOR:** PORT OF ANACORTES  
**GRANTEE:** WASHINGTON STATE DEPARTMENT OF ECOLOGY  
**BRIEF LEGAL DESCRIPTION:** PTN. TR 8, PL 10, ANACORTES TIDE LANDS; AND PTN. TR 31, PL 10, ANACORTES TIDE LANDS  
**TAX PARCEL #S:** P32951; P32984  
**CROSS REFERENCE:** NONE

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### ENVIRONMENTAL COVENANT

#### 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. This Covenant applies to (i) a portion of Skagit County tax parcel number P32951 and (ii) a portion of Skagit County tax parcel number P32984. Both tax parcels are legally described in Exhibit "A" attached hereto and are part of a site commonly known as Cap Sante Marine, facility ID #67532227. The portions of each parcel to which this Restrictive Covenant attaches are depicted in Exhibit "B" attached hereto, and are collectively referred to hereinafter as the "Property".
- C. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principle contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	Gasoline, diesel, and heavy oil range petroleum hydrocarbons and/or carcinogenic polycyclic aromatic hydrocarbons (cPAHs)

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 the Washington State Department of Ecology ("Ecology"). This includes the following documents: Remedial Investigation and Feasibility Study and Cleanup Action Plan.

E. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

## 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, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor 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.

e. Amendment to the Covenant. Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a



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manner that is inconsistent with this Covenant.<sup>1</sup> Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

## **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 the Property.

a. Commercial Land Use. The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include, but are not limited to, residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. Containment of Soil. The remedial action for the Property is based on containing contaminated soil. The Cap Sante Marine Lease Area cap consists of plantings (bark and small shrubs) and gravel. The Fisherman's Work and Parking Area cap consists of asphalt. Exhibit C attached hereto illustrates these two capped areas. The primary purpose of this cap is to contain contamination and mitigate risk of direct human/terrestrial wildlife contact with contaminated soils. As such, the following restrictions shall apply within the area illustrated in Exhibit C:

(i) With the exception of activities carried out consistent with Section 2 (b)(ii), any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with 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. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. 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.

(ii) Activities that temporarily disturb the capped areas, such as utility trenching or other maintenance actions shall restore the protective cap upon conclusion of the activity. Intrusive activities in the capped areas that involve worker contact with contaminated soil shall be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites and in conformance with a site-specific health and safety plan. Prior to conducting any activities that will disturb the capped areas; the Grantor shall provide written notice to Ecology.

## **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.

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<sup>1</sup>Examples of inconsistent uses are: using the Property for a use not allowed under the covenant (for example, mixed residential and commercial use on a property that is restricted to industrial uses); OR, drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.



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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 records related to the remedial action.

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 in any part of the Property including, but not limited to title, easement, leases, and security or other interests, must:

i. Notify Ecology 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 to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, 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 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. Notice. Any required written notice, approval, or communication shall be personally delivered or sent by first class U.S. mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Chris Johnson Port of Anacortes 100 Commercial Avenue Anacortes, WA 98221 (360) 293-3134	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program Post Office Box 47600 Olympia, WA 98504-7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

**Section 5. Modification or Termination.**

a. 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 Chapter 64.70 RCW and Chapter 70.105D RCW 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. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.

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 Chapter 70.105D RCW and Chapter 64.70 RCW. 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. The 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.

e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, Chapter 70.105D RCW and Uniform Environmental Covenants Act, Chapter 64.70 RCW.

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, paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section, paragraph or exhibit but does not override the specific requirements in that section, paragraph or exhibit. The undersigned representative of Grantor warrants that the Port of Anacortes holds the title to the Property and has authority to execute this Covenant.





**EXHIBIT A**  
**LEGAL DESCRIPTIONS**

**Tax Parcel No. P32951**

Anacortes Tide Lands Tract 8, Plate 10, together with the south half of vacated 11<sup>th</sup> Street, the west half of vacated R Avenue, the north half of vacated 13<sup>th</sup> Street and vacated alley, as per City of Anacortes Ordinance No. 1201 dated November 6, 1956, situated in Section Nineteen (19), Township Thirty-Five (35) North, Range Two (2) East of W.M.

Situate in Skagit County, State of Washington.

**Tax Parcel No. P32984**

The east 270 feet of Anacortes Tide Lands Tract 31, Plate 10, together with the south half of vacated 13<sup>th</sup> Street and the west half of vacated R Avenue, as per City of Anacortes Ordinance No. 1201 dated November 6, 1956, situated in Section Nineteen (19), Township Thirty-Five (35) North, Range Two (2) East of W.M.

Situate in Skagit County, State of Washington.

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**EXHIBIT B**  
**PROPERTY MAP**

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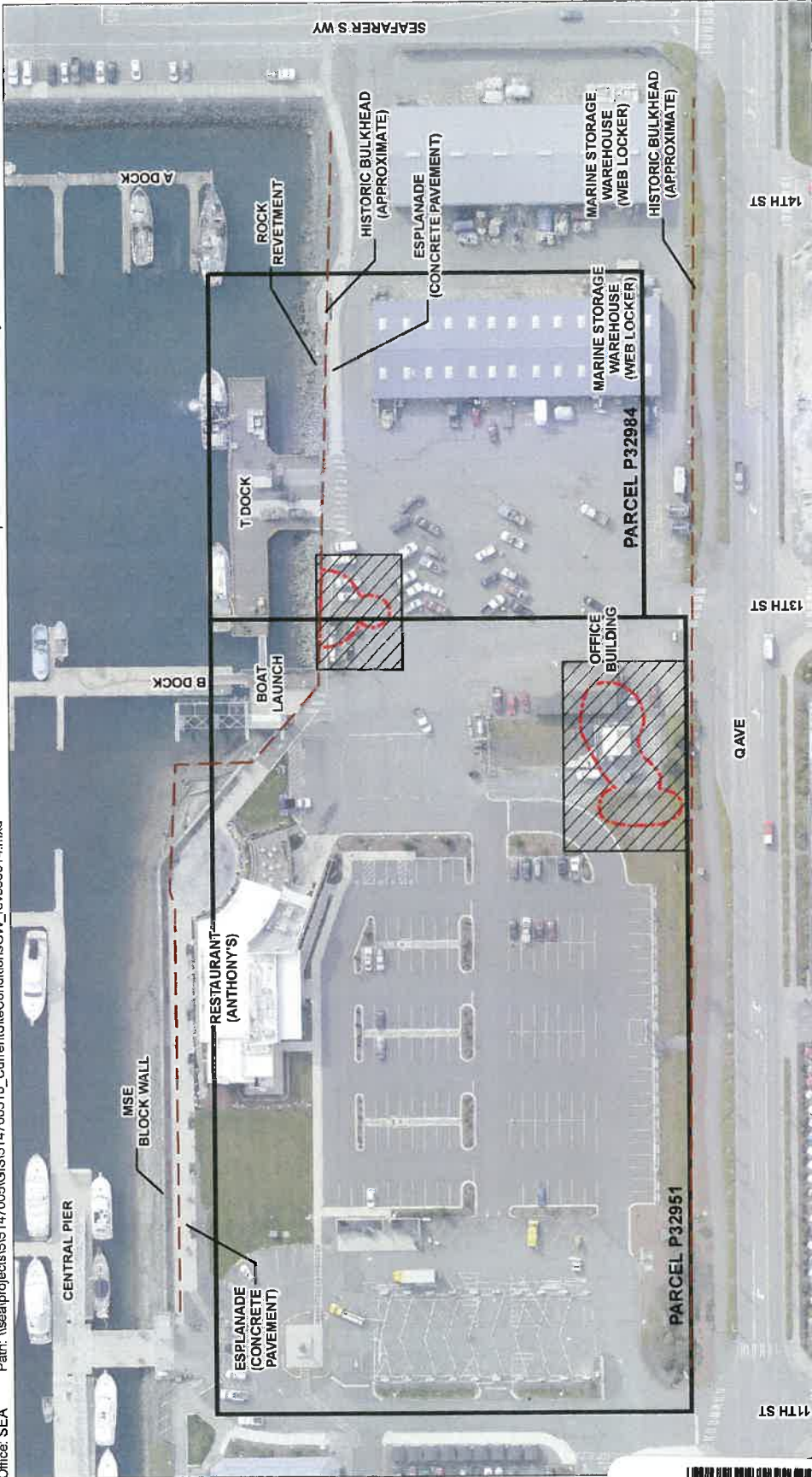


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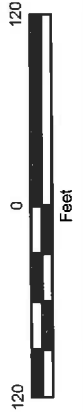
Map Revised: 02 June 2014 maugust

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**Legend**

-  Approximate area of subsurface contamination that remains on site
-  Tax parcel boundary
-  Restrictive Covenant Area



**Restrictive Covenant Area**

Cap Sante Marine Site  
Anacortes, Washington



**Exhibit B**



**EXHIBIT C**  
**CAPPED AREAS**



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