

After Recording Return
Original Signed Covenant to:
Marv Coleman
Toxics Cleanup Program
Department of Ecology
300 Desmond Drive
Lacey, WA 98503-1274

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AUDITOR, Pierce County, WASHINGTON

AUDITOR'S NOTE

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Environmental (Restrictive) Covenant

Grantor: Port of Tacoma
Grantee: State of Washington, Department of Ecology
Brief Legal Description: Southwest quarter and west half of southwest quarter of southeast quarter, Section 36, Township 21 North, Range 3 East of Willamette Meridian
Tax Parcel Nos.: 03-21-36-3-013; 03-21-36-3-033; 03-21-36-3-034; 03-21-36-3-037
Reference: Notice Of Presence Of PAH Compounds And Restriction On Residential Use recorded under Pierce County #9504250307 is superseded by this document

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 Pierce County tax parcel number 03-21-36-3-013; (ii) a portion of Pierce County tax parcel number 03-21-36-3-033; (iii) a portion of Pierce County tax parcel number 03-21-36-3-034; and (iv) a portion of Pierce County tax parcel number 03-21-36-3-037. The above tax parcels are part of a site commonly known as the Kaiser site, WAD No. 001882984; the Kaiser site is legally described in Exhibit "A" and has Ecology Facility Site ID #38, and is subject to a Consent Decree entered on November 14, 2016 in Pierce County Superior Court Case No. 16-2-12406-8 (the "Consent Decree"). The portions of the above tax parcels to which this Covenant attaches are depicted in Exhibit "B" 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 principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil and/or Groundwater	Diesel- and oil-range petroleum hydrocarbons, cyanide, fluoride, metals, 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. This includes the following documents: Remedial Investigation and Feasibility Study (Landau Associates 2012a); and Ecology Cleanup Action Plan dated July 1, 2016, Exhibit B to the Consent Decree (the "Cleanup Action Plan").

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant under UECA, certain rights specified in this Covenant. 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.

f. This Covenant supersedes and replaces the Notice Of Presence Of PAH Compounds And Restriction On Residential Use recorded under Pierce County Auditor No. 9504250307.

COVENANT

Port of Tacoma, 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 supersede any prior interests the GRANTOR has in the property and 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. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

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. Land use.

Industrial Land Use: The remedial action for the Property is based on a cleanup designed for industrial land use. As such, the Property shall be used in perpetuity only for industrial 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, growing of food crops, and non-industrial commercial uses.

b. Containment of soil.

The remedial action for the Property is based on removal of waste and contaminated soil, containing contaminated soil in two areas, and monitoring groundwater to confirm that contaminated groundwater is not migrating off of the Property. Contaminated soil in the Former Log Yard Area and the Wet Scrubber Sludge Area is capped with clean soil. Exhibit B shows the approximate locations of these two capped areas. The primary purpose of the caps is to contain contamination and mitigate risk of direct human contact with contaminated soils. As such, the following restrictions shall apply within the areas illustrated in Exhibit B:

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 caps 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) Routine activities involving limited subsurface disturbance of the capped areas, such as sampling, utility trenching or other investigation or maintenance actions and construction activities, shall be followed by restoration of the protective cap upon conclusion of the activity. Intrusive activities in the capped areas that involve worker contact with contaminated soil and/or groundwater shall be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites, in conformance with the July 1, 2016 Site-

specific materials Management Plan and 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.

c. Cap inspection

The Grantor covenants and agrees that it shall inspect the cap in the Former Log Yard Area in compliance with the requirements of the Cleanup Action Plan.

d. Groundwater Use

The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring, or remediation. **Drilling of a well for any water supply purpose is strictly prohibited.** Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law. Notwithstanding the forgoing, the groundwater use restrictions in this section apply only to the use of groundwater beneath the Property in the near surface unconfined aquifer(s) and do not apply to the use of groundwater residing in the confined aquifer(s) at depth that exhibit artesian conditions.

e. 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 wells 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 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 _____ AND RECORDED WITH THE PIERCE COUNTY AUDITOR UNDER 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 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 of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. **Notification Procedure.** Any required written notice, approval, or 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.

Scott Hooton Port of Tacoma PO Box 1837 Tacoma, WA 98401-1837 (253) 383-9428	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. 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 personal delivery or mail, these documents may be provided electronically in a format agreed upon at the time of submittal.

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 of 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 RCW 64.70 and RCW 70.105D 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, and a copy of the Covenant and proof of recording to any 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 RCW 70.105D and RCW 64.70. 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 shall be responsible for all costs associated with implementation of this Covenant. Furthermore, 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, RCW 70.105D, and the Uniform Environmental Covenants Act, RCW 64.70.

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.

SIGNATURES ARE ON FOLLOWING PAGES

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



James Pendowski
Program Manager, Toxics Cleanup Program

Dated: 4/11/17

STATE OF WASHINGTON)
COUNTY OF THURSTON)

On this 11th day of April, 2017, I certify that James J Pendowski personally appeared before me, acknowledged that he is the Toxic Cleanup Program Manager 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 Valerie Pearson
Notary Public in and for the State of Washington
Residing at: Lacey Washington
My appointment expires: 03-28-2020

Exhibit A

LEGAL DESCRIPTION OF KAISER SITE

Parcel A

That certain property situated in the southwest quarter of the southeast quarter and the southwest quarter of Section 36, Township 21 North, Range 3 East of the W.M., as shown on a certain Pierce County Record of Survey drawing recorded under Auditor's No. 8512030273 in Pierce County, Washington, lying southwesterly of the southerly right of way line of Taylor Way, more particularly described as follows:

Beginning at a point on the south line of said Section 36, being the southeast corner of the southwest quarter (the south quarter corner) of said Section 36; thence north $89^{\circ}00'20''$ west, 163.91 feet along the south line of said Section 36; thence north $00^{\circ}02'09''$ east, 416.30 feet along the east line of Bonneville Power Administration Substation Site (BPA) property recorded under Auditor's No. 1378605; thence south $63^{\circ}32'10''$ west 211.50 feet along the northeasterly line of said BPA's property; thence continuing north $89^{\circ}57'51''$ west, 1172.22 feet along the north line of said BPA's property to the northwest corner of said BPA property, said point being the northeast corner of a tract of land conveyed to the Port of Tacoma, recorded under Auditor's No. 1919462; thence continuing north $89^{\circ}57'51''$ west 189.18 feet along the north line of Port of Tacoma property; thence north $47^{\circ}16'01''$ west 829.39 feet along the northeasterly property line of the Port of Tacoma, recorded under Auditor's No. 1919462 to the east line of a tract of land conveyed to the Port of Tacoma, recorded under Auditor's No. 8110260223; thence north $01^{\circ}14'50''$ east, 757.30 feet parallel with the west line of the northwest quarter of the southwest quarter of said Section 36, to the southwest corner of a tract of land conveyed to Kaiser Aluminum and Chemical Corporation recorded under Auditor's Nos. 8110260224 and 1440041; thence north $00^{\circ}0'0''$ east 411.54 feet along the west line of said Kaiser Aluminum's property, Auditor's No. 8110260224 to the northwest corner of said tract of land; thence north $90^{\circ}00'00''$ east, 1319.70 feet along the north line of said property, to the southerly right of way line of Taylor Way; thence south $49^{\circ}19'39''$ east, 678.23 feet along the southerly right of way line of said Taylor Way, to a brass plug monument at the intersection of the southerly right of way line of Taylor Way with the northerly line of the south half of the south half of the northeast quarter of the southwest quarter of said Section 36, as described in auditor's no. 8110260224; thence continuing south $49^{\circ}19'39''$ east, 1549.37 feet along the southerly right of way line of said Taylor Way to the east line of the west half of the southwest quarter of the southeast quarter of said Section 36; thence south $00^{\circ}43'04''$ west, 651.47 feet along the east line of the west half of said subdivision to the south line of Section 36; thence north $89^{\circ}42'41''$ west, 647.71 feet along the south line of said Section 36 to the south quarter corner of said Section 36, Township 21 North, Range 3 East of the W.M., and the point of beginning.

Parcel B

A non-exclusive easement for the purpose of placement, operation and maintenance of a drainage pipe as granted by instrument recorded under recording number 9309220180.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Exhibit B

PROPERTY MAP

