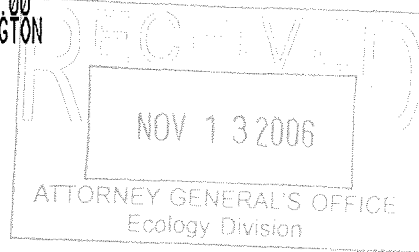




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 11/01/2006 2:23pm \$40.00  
 PIERCE COUNTY, WASHINGTON

Name & Return Address:

Polly McNeill  
 Summit Law Group  
 315 Fifth Ave S Suite 1000  
 Seattle, WA 98104



Document Title(s)  Declaration of Restrictive Covenant –Historical Property With Cap (404)
Grantor - Weyerhaeuser Company
Grantee - State of Washington, Department of Ecology
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)  Tract X of that Record of Survey for Boundary Line Adjustment No. 06-01, recorded under Recording No. 200608225007, Records of Pierce County, Washington  Complete Legal Description in Exhibit A of the Document
Auditor's Reference Number – Recording No. 200608225007
Assessor's Property Tax Parcel/Account Number(s) – 0119271006
The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.  I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.
_____ Signature of Requesting Party (Required for non-standard recordings only)

## DECLARATION OF RESTRICTIVE COVENANT

### HISTORICAL PROPERTY (WITH CAP)

This Declaration of Restrictive Covenant ("Restrictive Covenant") is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 this 17th day of Oct, 2006, by the Weyerhaeuser Company ("Weyerhaeuser"), its successors and assigns, and the State of Washington, Department of Ecology ("Department of Ecology"), and its successors and assigns.

The undersigned, Weyerhaeuser, covenants that it is the fee owner of real property in Pierce County, Washington, legally described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference ("Property"). See Exhibit B for illustrative purpose only. For specific boundaries rely on above legal description.

The Property is within an area commonly referred to as "Parcel One" of the "Former DuPont Works Site" that was the subject of work to clean up the Property ("Remedial Action") under the Washington Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. The Remedial Action is described in the Consent Decree entered in *State of Washington, Department of Ecology v. Weyerhaeuser Company and E.I. DuPont de Nemours and Company* (Thurston County Cause No. 03-2-10484-7), in attachments to the Decree and in documents referenced in the Decree, including without limitation the Cleanup Action Plan attached to the Consent Decree as Exhibit A, and incorporated therein by reference. The Cleanup Action Plan is on file and available for inspection at the Washington State Department of Ecology, Toxics Cleanup Program, P.O. Box 47775, Olympia, WA 98504-7775. A legal description of Parcel One is attached as Exhibit C, and a nonbinding illustration of the site's boundaries is shown on Exhibit B.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations at portions of the Property of hazardous substances which exceed the soil and groundwater cleanup levels specified in MTCA for unrestricted land uses.

Weyerhaeuser makes the following declaration as to limitations, conditions, restrictions, and uses to which the Property may be put and specifies that such declarations shall run with the land as provided by law and shall be binding on Weyerhaeuser, its successors and assigns, and any and all parties and persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter, "Owner").

Section 1: Restrictions on Use of Property. The Property is a culturally-significant site. Development and use of the Property, if any, (a) shall be subject to prior approval and express permission of the Washington Department of Archaeology and Historical Preservation, the Nisqually Indian Tribe and the Department of Ecology; (b) shall be only as allowed under the City of DuPont zoning regulations and Comprehensive Land Use Plan and under MTCA; and (c) shall in no event be developed and used for any of the following: residential uses, schools, daycares, parks, recreational uses, or any other use in which the likelihood of children having sustained access to soils can be reasonably anticipated.

Section 2: Restrictions on Activities. The Owner may maintain the Property consistent with its preservation as a culturally-significant site. Notification of any excavation, whether accidental or authorized by the Department of Ecology, must be provided to the Department of Archaeological and Historical Preservation and the Nisqually Indian Tribe. Maintenance of any impervious surfaces is expressly permitted without notice so long as appropriate health and safety protocols are followed. For development activities permitted under this Restrictive Covenant, excavated soils must be managed properly and unless put back in place, must be either placed in an area within the boundaries of the Former DuPont Works Site (including but not limited to the parcel on which this Restrictive Covenant is recorded), or disposed off-site in accordance with applicable regulations; provided, however, that any excavated soils removed from the areas identified in Exhibit C and discussed in Section 3 below that cannot be put back in place **must** be disposed off-site in accordance with applicable regulations. Excavated soils shall be managed to minimize exposure to workers and other adults, including but not limited to the use of best management practices to control dust and surface water runoff; and to prevent exposure to children. Any activity on the Property that could interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited without prior written approval from the Department of Ecology.

Section 3: Protection of Residual Contaminants. The Owner shall not penetrate, alter, damage, remove or breach in any manner the durable, permeable, engineered material (“Cap”) installed over contaminated soils at various places throughout the Property; nor remove or excavate any contaminated soils below the Cap in any manner that may result in the release of or exposure to hazardous substances without prior written approval from the Department of Ecology. Only plants with shallow roots that will not penetrate the Cap are allowed to be installed and maintained above the Cap. The locations of the Property where contaminated soil has a Cap over it, as well as the elevations and contours of the Caps themselves, are described in Exhibit C, attached hereto and incorporated herein by this reference.

Section 3.1: Cap Integrity: Specifically, the Owner shall not perform or allow any person to perform any of the following activities through or under the Cap:

- a. drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface of the Cap beyond its load bearing capability, piercing the surface with a rod, spike or similar item; or
- b. excavation or removal of loam, peat, sand, gravel, rock, or any other mineral or natural resource; or

- c. planting of large trees or other vegetation the roots of which would breach the Cap; or
- d. any other activity which penetrates, breaches, or disturbs the structural integrity of the Cap without first obtaining the express written consent of the Department of Ecology.

Section 3.2: Emergency or Accidental Damage to Cap. If it becomes necessary to excavate below or penetrate the Cap as part of a response to an emergency (e.g. repairing utility lines or responding to a fire or flood) or if the Cap is accidentally breached for any reason, the requirements of the previous subsection may be suspended, provided that the Owner:

- a. notifies the Department of Ecology and Weyerhaeuser of such emergency or accident as soon as possible but no more than twenty-four hours after learning of such emergency or accident; and
- b. notifies the Washington Office of Archaeology and Historical Preservation and the Nisqually Indian Tribe as soon as possible but no more than forty-eight hours after learning of such emergency or accident; and
- c. limits the actual disturbance involved in such excavation or breach to the minimum reasonably necessary to adequately respond to the emergency.

Section 4: Change of Use. The Owner must notify and obtain approval from the Department of Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology may approve any inconsistent use only after public notice and comment; provided however, in no event may any change in use be approved that would allow for residential uses, schools, daycares, parks, recreational uses, or any other use in which the likelihood of children having sustained access to soils can be reasonably anticipated.

Section 5: Notice of Conveyance. The Owner must give thirty (30) days' advance written notice to the Department of Ecology of the Owner's intent to convey any interest in the Property. Within thirty (30) days of the date any instrument conveying a fee title interest is executed, grantor must provide the Department of Ecology with a certified true copy of the instrument and, if it has been recorded in the public land records, its recording reference. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 6: Leasehold Interests. The Owner must restrict leases to uses and activities consistent with this Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 7: Recordation. Within thirty (30) days of the date of execution, the Owner shall record this Restrictive Covenant with the Pierce County Assessor's Office, and provide evidence of recordation to the Department of Ecology.

Section 8: Notice Requirement. The Owner shall include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, and mortgages a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF A RESTRICTIVE COVENANT, DATED \_\_\_\_\_, RECORDED IN THE PUBLIC LAND RECORDS ON \_\_\_\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY THE STATE OF WASHINGTON.**

Section 9: Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other shall be in writing and shall be served personally or sent by first class mail postage prepaid, addresses as follows:

**To Weyerhaeuser:**

Director, Environmental Affairs  
Mail Stop EC2 2C1  
P.O. Box 9777  
Federal Way, WA 98063-9777

**To the Department of Ecology:**

Washington State Department of Ecology  
Toxics Cleanup Program  
P.O. Box 47775  
Olympia, WA 98504-7775

Section 10: Groundwater Withdrawal. The Owner of the Property must not permit withdrawal of groundwater from the Property for drinking water purposes, unless authorized by the Department of Ecology. Withdrawal of groundwater from monitoring wells for the purpose of extracting samples for analysis is expressly permitted.

Section 11: Access. The Owner shall allow authorized representatives of the Department of Ecology, E.I. DuPont de Nemours Company and Weyerhaeuser the right to enter the Property at reasonable times for the purpose of monitoring compliance with the terms of this Restrictive Covenant, evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Property, and to inspect records that are related to the Remedial Action.

Section 12: No Public Access and Use. No right of access or use by the general public to any portion of the Property is conveyed by this Restrictive Covenant.

Section 13: Enforcement. Weyerhaeuser, the E.I. DuPont de Nemours Company, and the Department of Ecology shall each have the right, but not the obligation, to enforce the terms of this Restrictive Covenant by resort to specific performance or any legal process; provided, however, that no provision of this Restrictive Covenant shall be construed or intended to impose any obligations, by law or by contract, on the Department of Ecology or Weyerhaeuser or E.I. DuPont de Nemours Company to take action to enforce said restrictions. Neither the right nor authority of the Department of Ecology and Weyerhaeuser and E.I. DuPont de Nemours

Company to enforce this Restrictive Covenant nor a decision made to exercise or not to exercise such authority to right shall give rise to any duty or responsibility on the party of the Department of Ecology or Weyerhaeuser or E.I. DuPont de Nemours Company to exercise or not exercise this right on behalf of any Party or other person or entity. All remedies available hereunder shall be in addition to any and all remedies at law or in equity, including MTCA. Any forbearance, delay or omission to exercise the enforcement rights under this Restrictive Covenant in the event of a breach of any term of this Restrictive Covenant shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights under this Restrictive Covenant. Should legal counsel be employed to enforce this Restrictive Covenant, all costs incurred in such enforcement, including reasonable attorneys' fees shall be paid by the Owner found to be in violation.

Section 14: No Third Party Beneficiary. This Restrictive Covenant is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns, including all current and future owners of any portion or interest in the property. The Parties to this Restrictive Covenant expressly do not intend to benefit any other person or entity, and expressly do not intend to create any third-party beneficiaries to any provision of this Restrictive Covenant, including but not limited to any enforcement provisions.

Section 15: Run with the Land. To the extent that this Restrictive Covenant is construed as a restrictive covenant, it shall run with the land, and shall be binding on the Owners, their successors and assigns, of all or any portion of the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the property owner without adequate and complete provision for the continued observation of this Restrictive Covenant.

Section 16: Severability. Invalidation of any provision or application of a provision of this Restrictive Covenant by any court shall not affect any other provisions or applications.

Section 17: Easement in Gross. To the extent that this Restrictive Covenant creates a negative easement, it shall be construed as an easement in gross for the sole benefit of Weyerhaeuser Company, without whose consent it cannot be released, modified or amended.

Section 18: Reserved Rights. Weyerhaeuser reserves unto itself and its successors and assigns all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, and rights granted herein.

Weyerhaeuser Company has caused this Restrictive Covenant to be signed in its name.

EXECUTED this 9 day of OCTOBER, 2006.

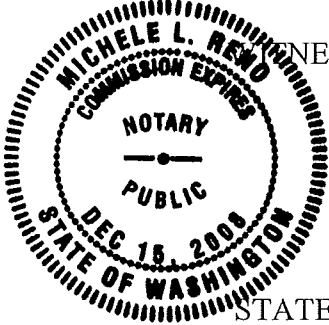
WEYERHAEUSER COMPANY

By: Richard E. Hanson  
Name: Richard E. Hanson  
Title: Executive Vice President and Chief Operating Officer

STATE OF WASHINGTON)

County of King ) : ss.

On this 9 day of OCTOBER, 2006, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard E. Hanson, known to be the Executive Vice President and Chief Operating Officer of Weyerhaeuser Company, the corporation that executed the foregoing Restrictive Covenant, and acknowledged the said Restrictive Covenant to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said Restrictive Covenant.



WITNESS my hand and official seal hereto affixed the day and year written above.

NOTARY PUBLIC in and for the State of Washington. My commission expires: 12-15-08

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

By: Mike Blum  
Name of Person Acknowledging Receipt  
PROJECT COORDINATOR  
Title

Dated: October 12, 2006

- Attachments: Exhibit A – Legal description of Property
- Exhibit B – Depiction of Property
- ~~Exhibit C – Legal description of Placement Areas~~



CONSULTING ENGINEERS LLC



Weyerhaeuser Company  
Job No. 129-044-004-0960  
September 22, 2006

## EXHIBIT A

### LEGAL DESCRIPTION FOR HISTORICAL PROPERTY (WITH CAP)

Tract X of City of Dupont Boundary Line Adjustment No. BLA 06-01, recorded under Recording No. 200608225007, Records of Pierce County, Washington, situate in Section 27, Township 19 North, Range 1 East, W.M., City of Dupont, Pierce County, Washington.

See attached Exhibit "B".

Written by: R.J.W.  
Checked by: M.R.B.

I:\ESM-JOBS\129\44\004\DOCUMENTS\129044-33.DOC



33915 1st Way South  
Suite 200  
Federal Way, WA 98003

Tel (253) 838 6113  
Fax (253) 838 7104  
Toll Free (800) 345 5694

Bolholt (425) 415 6144  
Cle Elum (509) 674 1905  
www.esmclvll.com

Civil Engineering  
Project Management  
Land Surveying

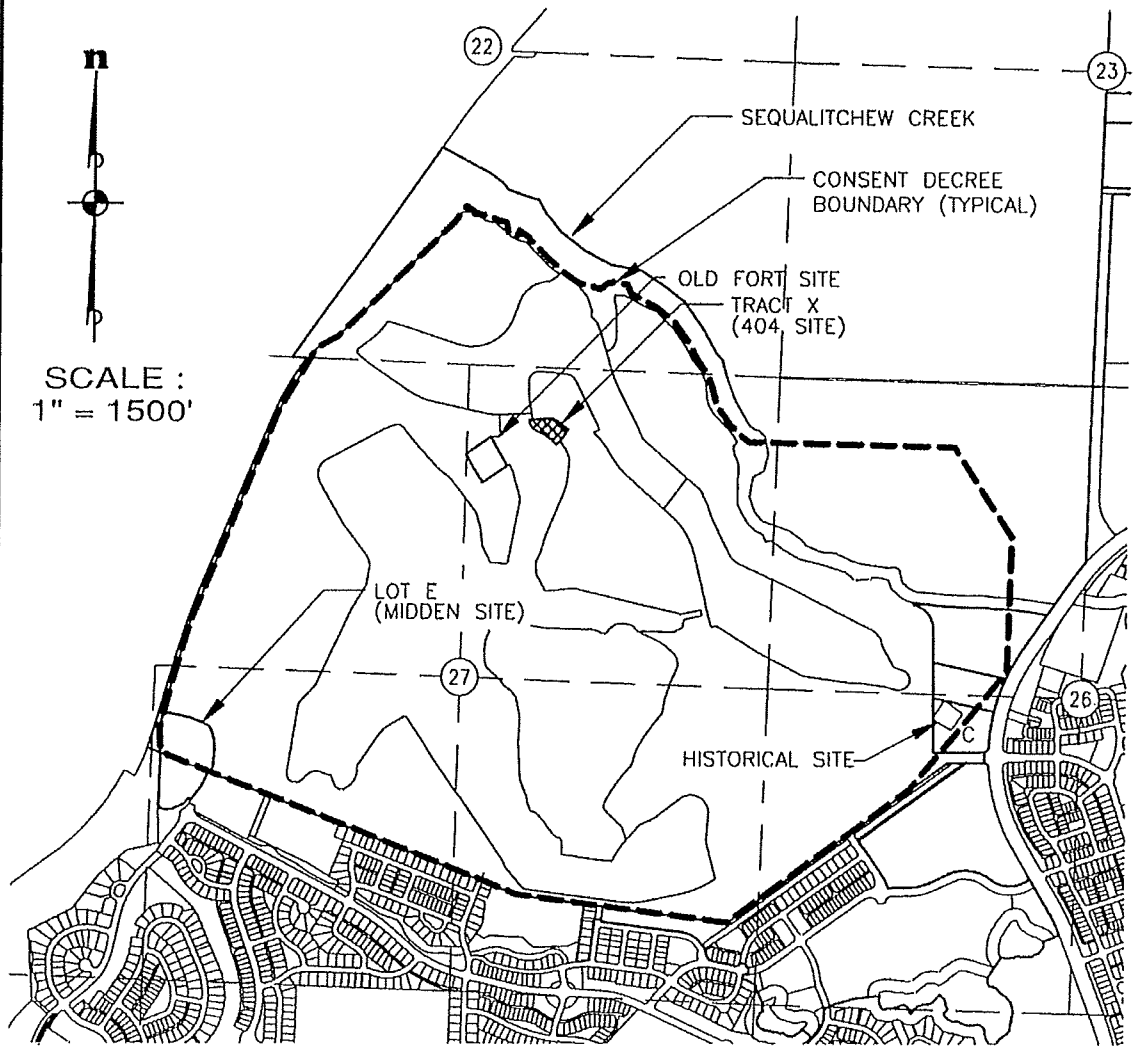
Land Planning  
Public Works  
Landscape Architecture




# EXHIBIT "B"

TO ACCOMPANY LEGAL DESCRIPTION FOR  
HISTORICAL PROPERTY (WITH CAP)

A PORTION OF THE NE QUARTER OF SECTION 27, TOWNSHIP 19 NORTH,  
RANGE 1 EAST, W.M., CITY OF DUPONT, PIERCE COUNTY, WASHINGTON



## LEGEND

 SUBJECT AREA



**CONSULTING ENGINEERS LLC**

720 S. 348th Street  
Federal Way, WA 98003

FEDERAL WAY (253) 838-6113  
DOTHELL (425) 415-6144

[www.esmcivil.com](http://www.esmcivil.com)

Civil Engineering  
Public Works

Land Surveying  
Project Management

Land Planning  
Landscape Architecture

JOB NO. 129-044-004-0960

DWG: 129\44\004\EXHIBITS\SR-15.DWG

DATE : 09-22-06

DRAWN : MRB/RJW

SHEET 1 OF 1