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SAN JUAN COUNTY, WASHINGTON

SI A. STEPHENS, AUDITOR

DFG

FILED AT THE REQUEST OF:
LAW OFFICE OF DONALD E. EATON
P.O. Box 460
Friday Harbor, WA 98250

DOCUMENT TITLE: DECLARATION RESTRICTIVE COVENANT
GRANTOR: TOWN OF FRIDAY HARBOR,
A Washington Municipal Corporation
GRANTEES: STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY
ABBREVIATED LEGAL DESCRIPTION: PTN. Gov. Lot 6, Sec 12, T35N, R3W
San Juan County, Washington
ASSESSOR'S TAX PARCEL NUMBER: 351350602

DECLARATION OF RESTRICTIVE COVENANT
Town of Friday Harbor Court Street Right-Of-Way

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by the Town of Friday Harbor (Town), a Washington municipality, its successors and assigns, as simple fee owners of the real property commonly referred to as that portion of the Court Street Right-Of-Way which is located northeasterly of First Street (hereinafter "the ROW Property"), adjacent to the former Unocal Petroleum Bulk Plant #0266 property currently owned by the Port of Friday Harbor (Port), located between Front and First Streets in the Town of Friday Harbor, County of San Juan, State of Washington, and the State of Washington Department of Ecology, its successors and assigns (hereafter referred to as "Ecology").

Declaration of Restrictive Covenant - 1

An independent remedial action (hereafter referred to as "Remedial Action") occurred at the ROW Property and the adjacent former Unocal Petroleum Bulk Plant #0266 (Figure 1) that is the subject of this restrictive covenant (hereafter referred to as "Restrictive Covenant"). The Remedial Action conducted at these properties is described in the following documents:

1. Report titled "Groundwater Compliance Monitoring Plan, Former Unocal Bulk Plant 0266, Facility Site ID No. 2653, Friday Harbor, Washington", prepared by GeoEngineers, Inc. (GeoEngineers), Redmond, WA., for Unocal AMG - West Region (Unocal), Edmonds, WA., and dated April 15, 2003.
2. Report titled "Final Cleanup Report, Former Unocal Bulk Plant 0226 and Vicinity, Facility Site ID No. 2653, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated January 28, 2003.
3. Report titled "June 2002 Groundwater Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated July 25, 2002.
4. Report titled "Final Revised Cleanup Action Plan, Former Unocal Bulk Plant 0226 and Vicinity, Facility Site ID No. 2653, Friday Harbor House Expansion and Front Street Turnaround Projects, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated May 23, 2002.
5. Report titled "March 2002 Ground Water Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated May 1, 2002.
6. Report titled "December 2001 Groundwater Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated February 6, 2002.
7. Report titled "Draft Cleanup Action Plan, Former Unocal Bulk Plant 0226, and Vicinity, Port Expansion and Front Street Turnaround Projects, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated November 28, 2001.

8. Report titled "September 2001 Groundwater Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated November 28, 2001.

9. Report titled "April/May 2001 Groundwater Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated November 27, 2001.

10. Report titled "April/May 2001 Groundwater Monitoring, Former Unocal Bulk Plant 0226, Front Street, Friday Harbor, Washington", prepared by GeoEngineers for Unocal, and dated June 29, 2001.

11. Report titled "Revised Supplemental Site Characterization; Former Unocal Bulk Plant 0226, Friday Harbor, WA.", prepared by GeoEngineers for Unocal, and dated January 06, 1999.

12. Report titled "Supplemental Site Characterization; Former Unocal Bulk Plant 0266, Friday Harbor, WA.", prepared by GeoEngineers for Unocal, and dated October 23, 1998.

13. Ecology's draft Opinion Letter to Port of Friday Harbor regarding environmental concerns at the former Unocal Bulk Terminal 0266, and dated May 28, 1998.

14. Report titled "Summary Report: Interim TPH Policy - Data Evaluation, Former Bulk Fuel Terminal 0226, Friday Harbor, WA.", prepared by GeoEngineers for Unocal, and dated January 07, 1998.

15. Report titled "Supplemental Report: Subsurface Contamination Study, Former Fuel Bulk Plant, Friday Harbor, WA.", prepared by GeoEngineers for Unocal, and dated January 28, 1991.

16. Report titled "Report of Geoenvironmental Services: Subsurface Contamination Study, Former Fuel Bulk Plant, Friday Harbor, WA.", prepared by GeoEngineers for Unocal, and dated October 26, 1987.

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the ROW Property may contain contaminated soils which may require soil remediation if such areas are disturbed. During the course of making certain capital improvements and Remedial Action, as provided for in Chapter 173-340 WAC, it was determined that a limited area of the ROW Property had petroleum contaminated soil and groundwater from historical commercial/industrial land uses. Soil remediation involved removal of petroleum contaminated soil and replacement with clean soil to the excavated area. Since contaminated native or fill material is known to remain in a limited area of the ROW Property (hereinafter "the Restricted Area"), adjacent to the Remedial Action excavation, contaminated materials or soil in the subsurface of the Restricted Area should not be disturbed until properly investigated.

The Restricted Area is shown on Figure 2 attached hereto and is (legally described in Exhibit "A" attached hereto.

Town, as owner, makes the following declaration as to limitations, restrictions, and uses to which the Restricted Area and ROW Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the ROW Property (hereafter referred to as "Owner").

Section 1.

A. Subsurface Activities. Subsurface fill material in the Restricted Area shall not be disturbed because the soil may be affected by known, potential or suspected contamination. Any activity which disrupts the subsurface fill material in the Restricted Area and causes any exposure of contaminated material and/or soils is strictly prohibited. The Owner shall guarantee the preservation of the surface facilities, such as buildings or parking lots, stormwater infiltration controls and surface fill material at the Restricted Area. In the event any subsurface material or soils at the Restricted Area be disturbed, through removal, repair, renovation, or any other action which may, might or could expose these materials and soils, the Department of Ecology shall be notified within thirty (30) days and appropriate action will be required as may be determined by the appropriate regulatory body or agency. Some examples of activities that are prohibited include: drilling, trenching, utilities excavation, bulldozing or earthwork. The infiltration controls include all pervious and impervious landscape features, such as parking lots and bioswales, and stormwater management components, such as building drains and drain clean-out stations. Normal surface activities, such as landscaping or building maintenance, would not apply to these restrictions.

B. Notice Requirement for Change of Use. The ROW Property shall continue to be used for commercial or industrial land-use. Any change in the use of the premises shall require notice to the Department of Ecology for review of the proposed use of the ROW Property.

C. Groundwater Use. Owner will not withdraw, or allow others to withdraw, groundwater from the ROW Property without permission from Ecology. An example of permitted withdrawal would be for Ecology required monitoring or remedial action.

Section 2. Any activity on the ROW Property that may interfere with the integrity of the Restricted Area or Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the ROW Property that may result in the release or exposure to the environment of a hazardous substance that remains on the ROW Property as part of the Remedial Action or Restricted Area, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the ROW Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the ROW Property. No conveyance of title, easement, lease, or other interest in the ROW Property shall be consummated by the Owner without

adequate and complete provision for continued monitoring,
Declaration of Restrictive Covenant - 6

operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the ROW Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the ROW Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the ROW Property at reasonable times for the purpose of evaluating the Remedial Action or Restricted Area; to take samples, to inspect Remedial Actions conducted at the ROW Property or Restricted Area, and to inspect records that are related to the Remedial Action and Restricted Area.

Section 8. The Owner of the ROW Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the ROW Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Dated at Friday Harbor, Washington, this 15th day of May,
2003.

TOWN OF FRIDAY HARBOR

By: Gary G. Boothman
Gary G. Boothman, Mayor

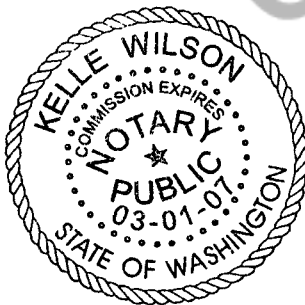
SEAL of the
Town of Friday Harbor
ATTEST:

Kelle' Wilson
Kelle' Wilson, Town Clerk

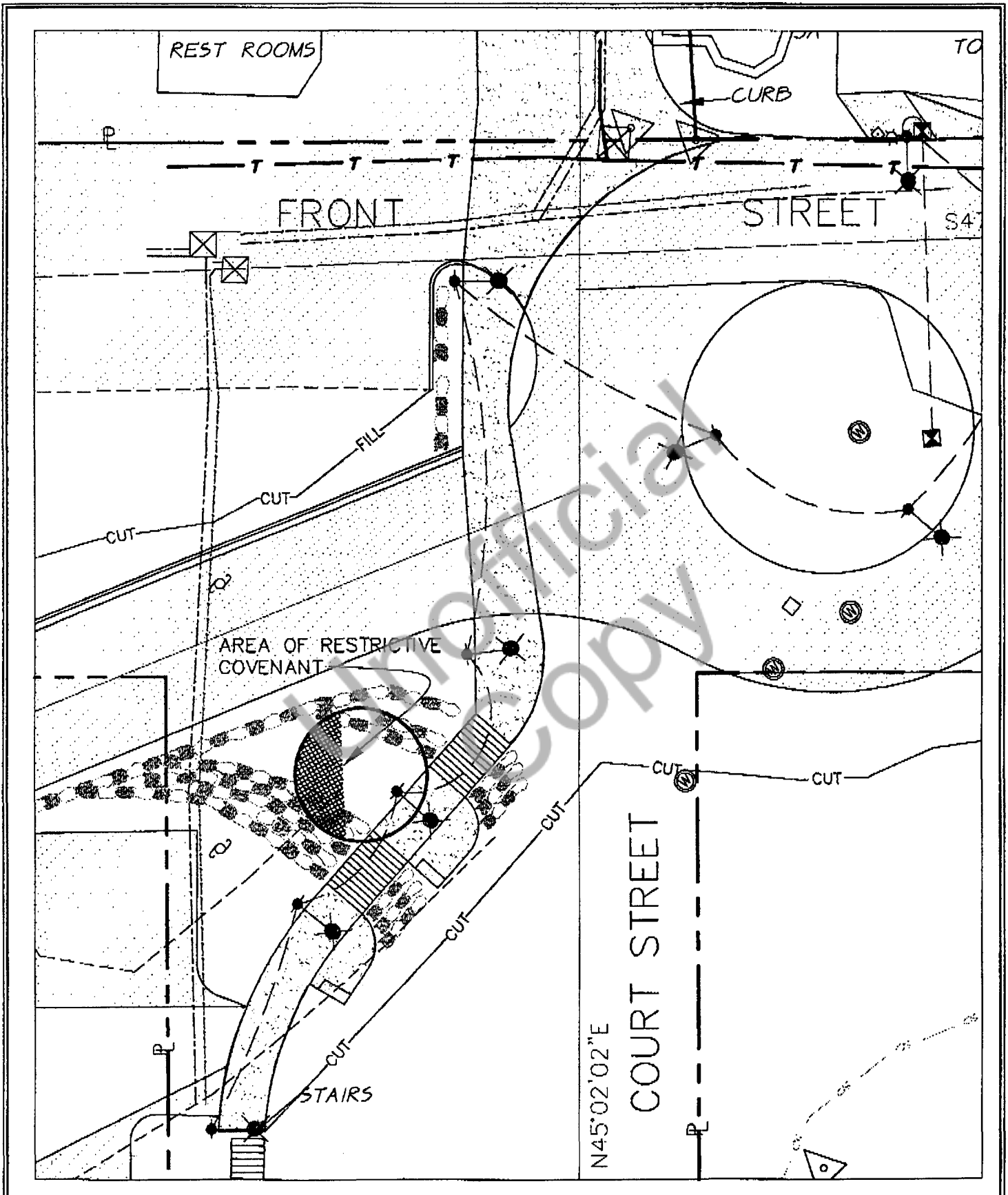
STATE OF WASHINGTON)
)
County of San Juan)

On this 15th day May, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GARY G. BOOTHMAN to me known to be the Mayor of THE TOWN OF FRIDAY HARBOR, a Washington Municipal Corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument 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 was authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day and year first above written.



Kelle' Wilson
NOTARY PUBLIC in and for the
State of Washington, residing
at Friday Harbor
My Commission Expires: 3/1/07
Kelle' Wilson



mpd INC.PS

LAND DESCRIPTION FOR FRONT STREET TURN-AROUND
RESTRICTIVE COVENANT
TOWN OF FRIDAY HARBOR RIGHT-OF-WAY

CIVIL ENGINEERING PLANNING LAND SURVEYING

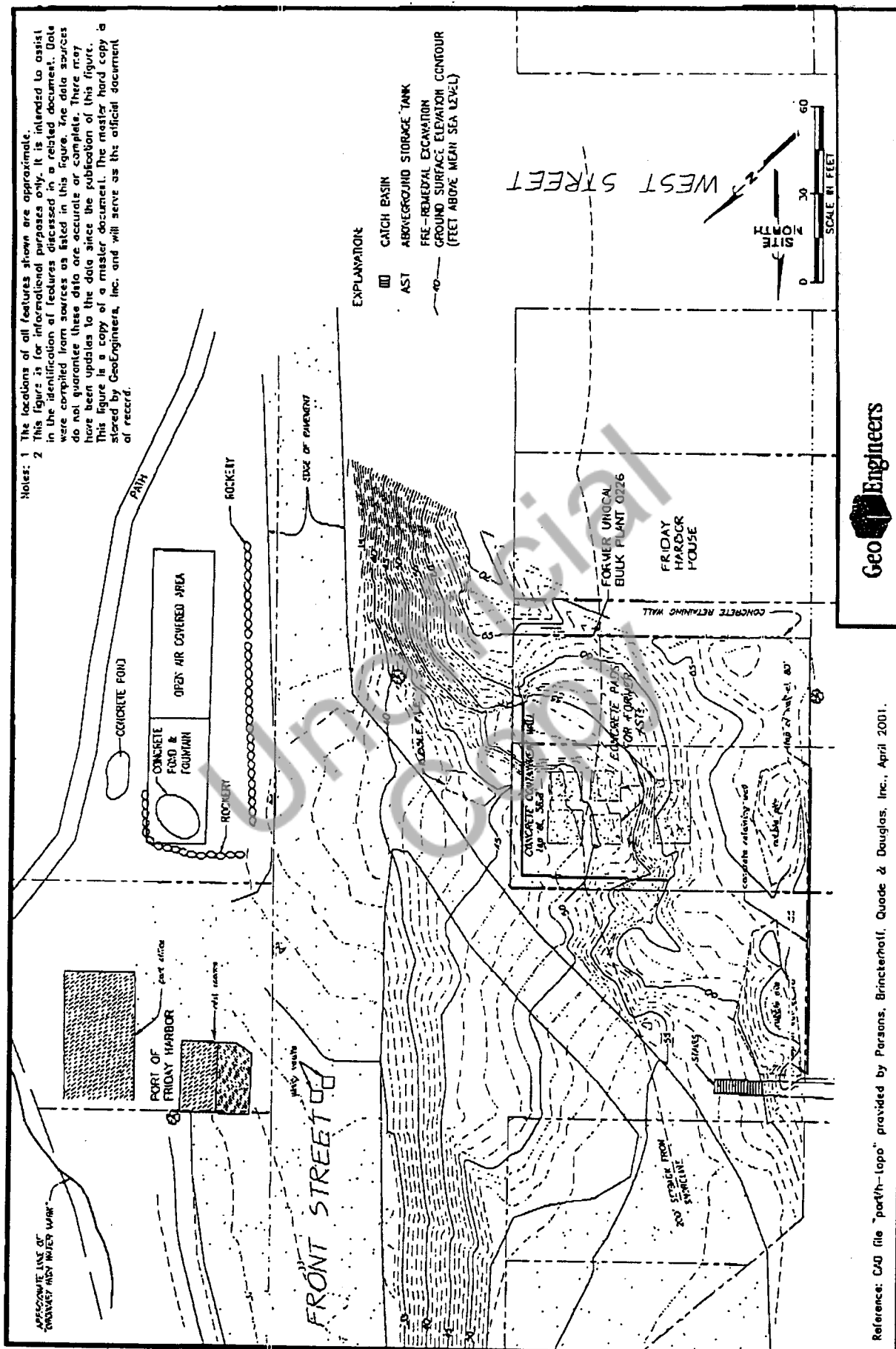
DATE: 5/13/03

SCALE: 1:20

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REVISION

CHECKED BY:



LEGAL DESCRIPTION
FOR
FRONT STREET TURNAROUND
TOWN OF FRIDAY HARBOR
RIGHT-OF-WAY
RESTRICTIVE COVENANT

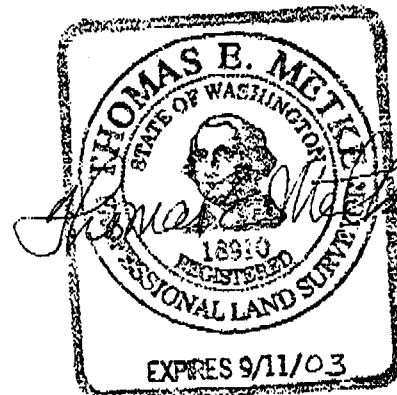
That portion of Government Lot 6, Section 12, Township 35 North, Range 3 West, W.M., in San Juan County, Washington described as follows:

A 20 foot diameter circle of land, the center point of which is located as follows:

COMMENCING at U.S. Coast and Geodetic Survey Triangulation Station "Pickle"; thence North 57°20'23" West 2289.25 feet to U.S. Coast and Geodetic Survey Triangulation Station "Berry"; thence South 9°59'04" West 1655.21 feet to said center point; which point also bears North 80°51'54" East 105.61 feet from the United States Bureau of Land Management 3 1/2" diameter brass monument marking the southwest section corner of said Section 12; and which point has NAD 83 Washington State Plan Co-ordinate System, North Zone, co-ordinates of: Northing 567,904.368 feet, Easting 1,111,388.730 feet.

EXCEPT that portion of the above described circle of land lying southeasterly of the following described line:

COMMENCING at the above described center point of the 20 foot diameter circle of land; thence North 26°02'37" East 10.00 feet to a point on the perimeter of said circle, and the True Point of Beginning; thence South 42°29'15" West 19.18 feet to a point on said perimeter, and the terminus of said line.



MPD, Incorporated, PS

May 13, 2003