

6.10 Cell 1: Environmental Covenant



RESTRICTIVE COVENANT

Former Fort Vancouver Plywood Site
901 Port Way, Vancouver, Washington
The Port of Vancouver, USA, Owner

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(i)(f) and (g) and WAC 173-340-440 by the Port of Vancouver, USA, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

Work to clean up the property (hereafter "Remedial Action") is described in the Agreed Order entered into between the Port of Vancouver and Ecology (Agreed Order No. DE 99TC-S 108), and the attachments to the Agreed Order and in documents referenced in the Agreed Order. These documents are on file at Ecology's Southwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of metals, petroleum hydrocarbon compounds, and volatile organic compounds which exceed the Model Toxics Control Act Method A Residential Cleanup Level for soil established under WAC 173-340-740. This Restrictive Covenant is also required because a conditional point of compliance has been established for shallow groundwater discharging from the site to the Columbia River in accordance with WAC 173-340-720(d).

The undersigned, The Port of Vancouver, USA, is the fee owner of real property (hereafter "Property") in the County of Clark, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Attachment A of this Restrictive Covenant and made a part hereof by reference.

The Port of Vancouver makes the following declaration as to limitations, restrictions, and uses to which the 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 Property (hereafter "Owner").

Section 1. The following restrictions apply to the property:

1. "The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the City of Vancouver's zoning regulations codified in the City of Vancouver Municipal Code, Chapter 20 as of the date of this Restrictive Covenant."

2. "Shallow-zone groundwater from the property shall not be used e.g., domestic, agricultural, or any use as a potable water supply source."

3. "Any activity on the Property that results in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."



Section 2. Any activity on the Property that interferes with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

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

Section 4. The Owner of the property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. 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 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 Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the 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 Property at reasonable times for the purpose of 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 8. The Owner of the 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 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.

Date: February 26, 1999

PORT OF VANCOUVER

By: Laurance Paulson
Title: Executive Director

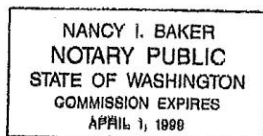
STATE OF WASHINGTON)

County of Clark)

) ss.

On this 26th day of February, 1999, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Laurance Paulson, known to be the Executive Director of the Port of Vancouver, the municipal corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of that corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the instrument on behalf of the corporation.

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



Nancy I. Baker
NOTARY PUBLIC in and for the State of
Washington, residing at Vancouver
My Commission Expires: 4/1/99

01/08/99



BICKFORD
MURSELL
SURVEYING

ATTACHMENT A

September 25, 1996
Job No. 1574

PORT OF VANCOUVER
FT. VANCOUVER PLYWOOD SITE
PARCEL A
(EASTERLY PARCEL)

CELL 1

BEGINNING at a point that is 434.09 feet South and 1267.72 feet East of the concrete monument in the West line of the Ames Short Donation Land Claim, said concrete monument being N00°44'45"E, 136.05 feet from the Southwest corner of said Claim, said monument being the point of origin for the Port of Vancouver and the City of Vancouver coordinate systems;

THENCE S41°39'06"E, 164.00 feet;

THENCE S43°42'22"E, 203.54 feet to the East right-of-way line of Port Way;

THENCE Southerly, along the arc of a 1128.75 foot radius curve, concave Westerly, through a central angle of 14°16'16", an arc distance of 281.14 feet (chord bears S29°44'57", 280.42 feet);

THENCE S36°53'16"W, 470.44 feet to the Inner Harbor Line;

THENCE N48°34'36"W, along said line, 542.76 feet;

THENCE N47°30'27"E, 785.06 feet to the point of beginning.

Containing 8.16 acres.

NOTE: CELL 1 REVISED TO EXCLUDE
A 50' WIDE BY 785' LONG STRIP ON
THE WEST SIDE OF THE ABOVE AREA
TO COMPRISE 7.26 ACRES.

(360) 693-1361
1310 MAIN STREET
VANCOUVER, WASHINGTON 98660

(503) 224-1407
29970 S.W. TOWNCENTER LOOP W.
SUITE 2-423
WILSONVILLE, OREGON 97070

08/25/98 WED 13:13 (TX/RX NO 58181)

Exhibit A - Page 1 of 2

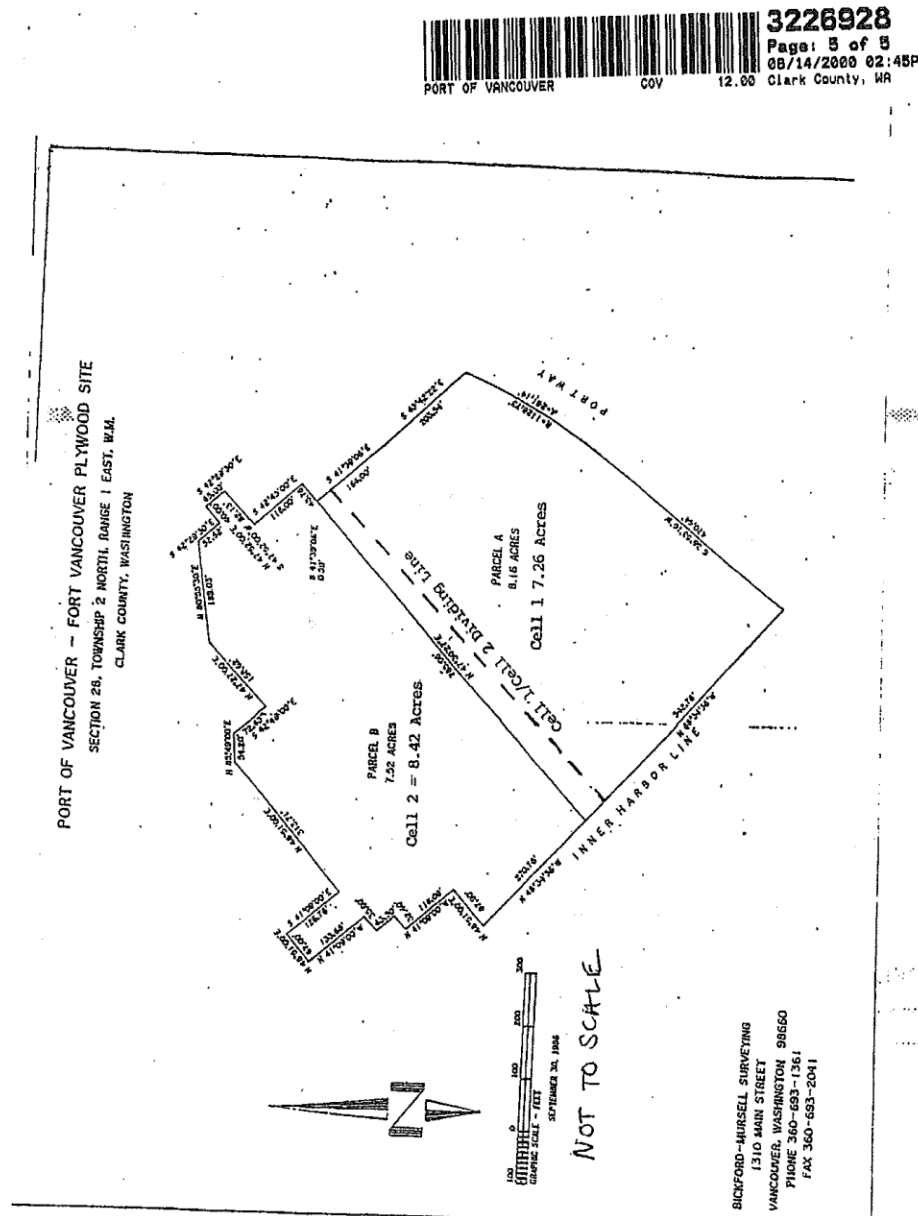


Exhibit A. FIGURE 3
page 2 of 2

Cell 2: Restrictive Covenant

4155720 COV
RecFee - \$39.0000 Pages: 8 - PORT OF VANCOUVER
Clark County, WA 4/21/08 11:41 AM

AFTER RECORDING RETURN TO:

Patricia Boyden
Port of Vancouver, USA
3103 NW Lower River Rd.
Vancouver, WA 98660-1027

COPY

Cell 2

COVER SHEET

DOCUMENT TITLE: Restrictive Covenant

REFERENCE NUMBER(S):

NAME(S) OF GRANTOR(S): Port of Vancouver, USA

NAME(S) OF GRANTEE(S): Washington Department of Ecology

PAGE(S) WHERE ADDITIONAL NAMES CAN BE FOUND: N/A

ABBREVIATED LEGAL DESCRIPTION: #51, East half of Section 28, Township 2 North,
Range 1 East

ASSESSOR'S PROPERTY TAX PARCEL NUMBER: 058657-000

RESTRICTIVE COVENANT

Port of Vancouver, USA
Former Fort Vancouver Plywood Site—Cell 2

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Port of Vancouver, U.S.A., its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

The undersigned, Port of Vancouver, U.S.A., is the fee owner of real property (hereafter "Property") in the County of Clark, State of Washington, that is subject to this Restrictive Covenant. The Property is legally described in Exhibit A of this restrictive covenant and made a part hereof by reference.

An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the documents listed in Exhibit B. These documents are on file with Ecology.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations in soil of petroleum hydrocarbons that exceed the applicable Model Toxics Control Act (hereafter "MTCA") cleanup levels. In addition, this Restrictive Covenant is required because halogenated volatile organic compounds and metals are present in groundwater at levels exceeding applicable cleanup standards.

The Port of Vancouver, U.S.A. makes the following declaration as to limitations, restrictions, and uses to which the 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 (hereafter "Owner") and tenants of any portion of or interest in the Property.

Section 1.

a. The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the City of Vancouver's zoning regulations codified in Chapter 20.440 of the Vancouver Municipal Code as of the date of this Restrictive Covenant.

b. Groundwater contaminated with halogenated volatile organic compounds and metals remains beneath the property. No groundwater may be taken from the Property for domestic, agricultural, or any other use.

c. Soil contaminated with petroleum hydrocarbons, lead, and carcinogenic polycyclic aromatic hydrocarbons was removed from the Property during the Remedial Action but some contaminated soil remains at the property. To complete the Remedial Action, an asphalt cap was constructed over the entire Property to contain residual soil contamination. Any activity on the Property that may result in the release or exposure to the environment of the

contaminated soil that was contained as part of the Remedial Action, or creates a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

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

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

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. 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.

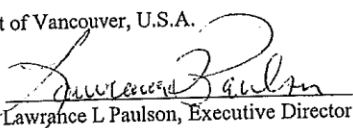
Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the 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 Property at reasonable times for the purpose of 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 8. The Owner of the 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 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.

Port of Vancouver, U.S.A.

By: 
Lawrence L. Paulson, Executive Director

Date: 4-12-06

STATE OF WASHINGTON)
) ss.
County of Clark)

On this day personally appeared before me LAWRENCE L. PAULSON, Executive Director of the PORT OF VANCOUVER, and to me known to be the individual that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Port of Vancouver for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 12th day of April, 2006.

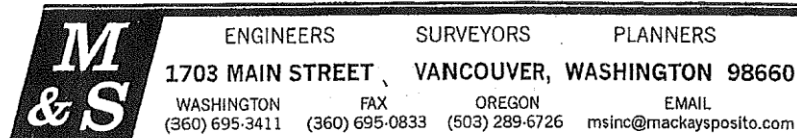


Marie E Day
Print Name Here: Marie E Day
NOTARY PUBLIC in and for the State of
Washington residing at Vancouver
My Commission Expires: 1-2-10

EXHIBIT A

13033ld1
8-16-00
GOF/gof

Mackay & Sposito Inc.



PORT OF VANCOUVER
LEGAL DESCRIPTION
ADJUSTED FORMER FORT VANCOUVER PLYWOOD LEASEHOLD
VANCOUVER, WASHINGTON

That portion of the Amos Short Donation Land Claim No. 51 lying in the East Half of Section 28, Township 2 North, Range 1 East, Willamette Meridian, City of Vancouver, Clark County, Washington, described as follows:

Beginning at a 2 inch iron pipe marking the Northwest corner of said Short Donation Land Claim as shown in Book 39' of Surveys at Page 125, records of said county; thence along the West line of said Short Donation Land Claim South 02° 19' 42" West 3631.16 feet to the Southwest corner thereof; thence continuing along the Southerly projection of said West line South 02° 19' 42" West 740.33 feet; thence South 87° 40' 18" East 617.91 feet to a point on the Inner Harbor Line as shown on the 1981 Supplemental Maps of Vancouver Harbor on file in the Office of the Commissioner of Public Lands at Olympia and also shown in unrecorded Survey Book "D" at Page 155-C, records of said county, said point being the True Point of Beginning; thence along said Inner Harbor Line North 45° 24' 01" West 319.81 feet; thence leaving said Inner Harbor Line North 50° 25' 57" East 93.59 feet; thence North 39° 34' 03" West 51.28 feet; thence North 49° 01' 57" East 652.27 feet; thence North 82° 30' 27" East 142.92 feet to a point on the arc of a 1600.00 foot radius curve; thence from a tangent bearing of North 56° 35' 27" East, along said curve to the left, through a central angle of 10° 47' 03", an arc distance of 301.15 feet; thence South 04° 01' 12" West 110.69 feet to a point of curvature with a 500.00 foot radius curve; thence along said curve to the left, through a central angle of 03° 55' 50", an arc distance of 34.30 feet to a point of tangency; thence South 00° 05' 22" West 114.99 feet to a point of curvature with a 275.00 foot radius curve; thence along said curve to the right, through a central angle of 36° 51' 40", an arc distance of 176.92 feet to a point on the Northwesterly line of the

13033ld1
8-16-00
GOF/gof

"Pacific Coast Shredding Leasehold" parcel; thence along said Northwesterly line South
49° 05' 00" West, 815.08 feet to the True Point of Beginning.

Containing approximately 8.070 acres.



8/17/00

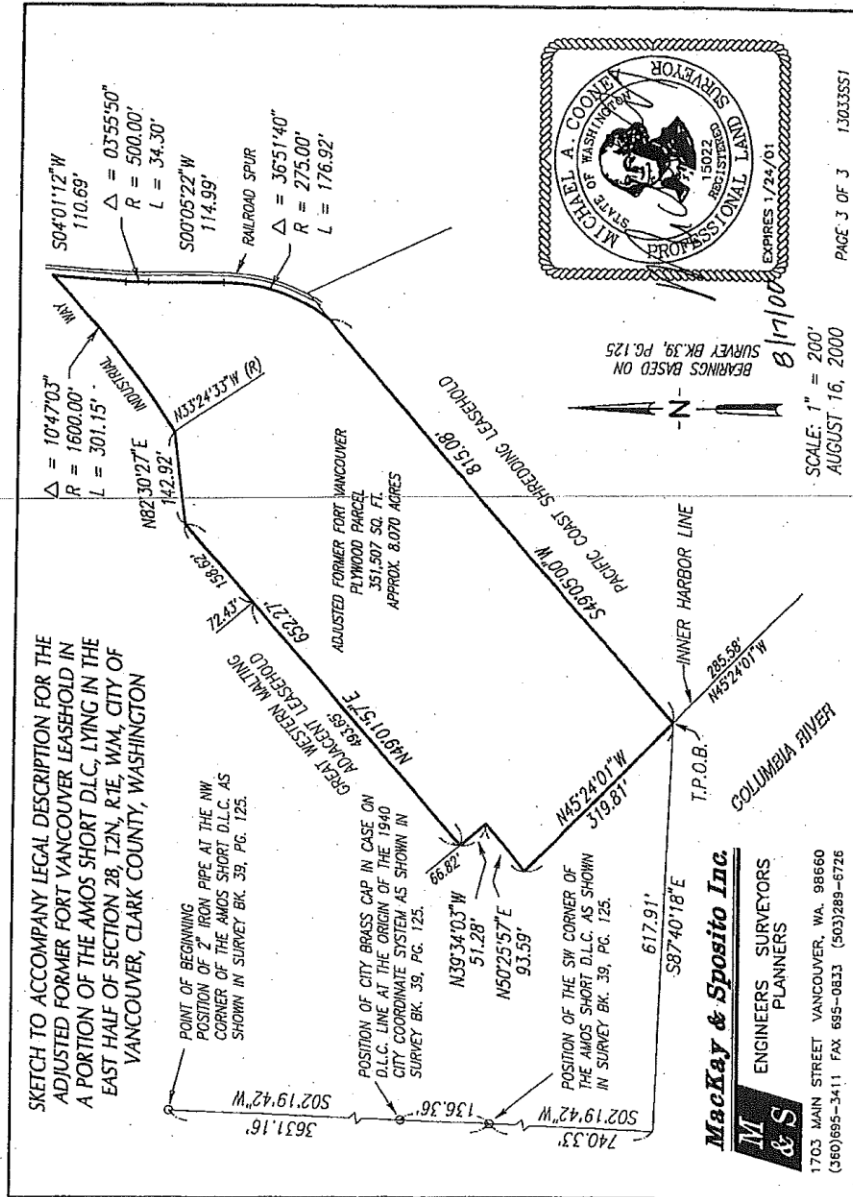


EXHIBIT B

1. Final Cell 2 Remedial Investigation and Feasibility Study, Former Fort Vancouver Plywood Site, Vancouver, Washington, prepared by Kennedy/Jenks Consultants, December, 1999.
2. Cell 2 Remedial Action Plan, Former Fort Vancouver Plywood Site, Vancouver, Washington, prepared by Kennedy/Jenks Consultants, July, 2000.
3. Cell 2 Remedial Action Report, Former Fort Vancouver Plywood Site, Port of Vancouver, Washington prepared by Kennedy/Jenks Consultants, July, 2001.
4. Final Engineering Design Document, Cell 2 Former Fort Vancouver Plywood Leasehold, Port of Vancouver, Washington, prepared by Kennedy/Jenks Consultants, August 2, 2002.
5. Cell 2 Groundwater Monitoring Report, January 2002 Monitoring Event, Former Fort Vancouver Plywood Leasehold, Port of Vancouver, U.S.A., Vancouver Washington, by Kennedy/Jenks Consultants, March 21, 2002.
6. Construction Documentation Report, Cell 2 of the Former Fort Vancouver Plywood Leasehold, Port of Vancouver, Washington, prepared by Kennedy/Jenks Consultants, March 2004.
7. Cell 2 Groundwater Monitoring Report, February 2004, Former Fort Vancouver Plywood Port of Vancouver, U.S.A., Vancouver, Washington, by Environmental Resources Management, July 12, 2004.
8. Cell 2 Groundwater Monitoring Report, June 2004, Former Fort Vancouver Plywood Port of Vancouver, U.S.A., Vancouver, Washington, by Environmental Resources Management, February 24, 2005.
9. Cell 2 Groundwater Monitoring Report, September 2004, Former Fort Vancouver Plywood Port of Vancouver, U.S.A., Vancouver, Washington, by Environmental Resources Management, May 2005.
10. Cell 2 Groundwater Monitoring Report, January 2005, Former Fort Vancouver Plywood Port of Vancouver, U.S.A., Vancouver, Washington, by Environmental Resources Management, August 24, 2005.
11. Cell 2 Groundwater Monitoring Report, May 2005, Former Fort Vancouver Plywood Port of Vancouver, U.S.A., Vancouver, Washington, by Environmental Resources Management, March 2006.