

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
Port of Vancouver	No. DE 18152

TO: Patty Boyden
 Director of Environmental Services
 Port of Vancouver
 3103 NW Lower River Road
 Vancouver, WA 98660

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	6
VII.	WORK TO BE PERFORMED.....	7
VIII.	TERMS AND CONDITIONS.....	9
	A. Payment of Remedial Action Costs.....	9
	B. Designated Project Coordinators.....	10
	C. Performance.....	11
	D. Access.....	11
	E. Sampling, Data Submittal, and Availability.....	12
	F. Public Participation.....	13
	G. Retention of Records.....	14
	H. Resolution of Disputes.....	14
	I. Extension of Schedule.....	16
	J. Amendment of Order.....	17
	K. Endangerment.....	18
	L. Reservation of Rights.....	18
	M. Transfer of Interest in Property.....	19
	N. Compliance with Applicable Laws.....	19
	O. Indemnification.....	21
IX.	SATISFACTION OF ORDER.....	22
X.	ENFORCEMENT.....	22
EXHIBIT A	Site Location Map	
EXHIBIT B	Facility Location Map	
EXHIBIT C	Agreed Order 18152 Extent Map	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Vancouver (Port) under this Agreed Order (Order) is to provide for additional remedial action at a portion of the Site referred to in the Ecology database as “Vancouver Port of NuStar Cadet Swan” Site, where there has been a release or threatened release of hazardous substances. This Order requires the Port to prepare a Feasibility Study and preliminary draft Cleanup Action Plan regarding certain hazardous substances on and in the vicinity of the Cadet and Swan portions of the Site. Ecology believes the actions required by this Order are in the public interest. This Order is in addition to, and does not supersede, Agreed Order No. 07-TC-S DE5189, Agreed Order No. 07-TC-S DE3938, and DE-15806.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port’s responsibilities under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as “Vancouver Port of NuStar Cadet Swan”, Facility Site Identification (FS-ID) 1026. The Site constitutes a facility under RCW 70.105D.020(8).

The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. The Site boundaries have not yet been defined. Based upon factors currently known to Ecology, the Site is generally located in the southern half of Section 21 and northern half of Section 28 in Township 1 North, Range 1 East, Willamette Meridian) in Vancouver, Washington. See the Site Location Map (Exhibit A). For administrative convenience, the Site is identified by four portions: (i) the Swan portion between 2001 and 2501 West Fourth Plain Boulevard; (ii) the Cadet portion at 2500 West Fourth Plain Boulevard; (iii) the NuStar portion at 2565 NW Harborside Drive; and (iv) KM Operating Area portion at 2701 NW Harborside Drive. The four portions are presented on the Facility Location Map (Exhibit B). The area of the Site to be covered by the Feasibility Study and preliminary draft Cleanup Action Plan under this Agreed Order is presented on the Swan and Cadet Agreed Order 18152 Extent Map (Exhibit C). Based on factors currently known to Ecology, the areas covered by the Feasibility Study and preliminary draft Cleanup Action Plan are only a portion of the Site and the map's boundaries do not reflect the boundaries of the Site as defined by MTCA.

B. Parties: Refers to the State of Washington, Department of Ecology and the Port.

C. Potentially Liable Persons (PLPs): Refers to the Port, Cadet Manufacturing Company, NuStar Terminals Services, Inc. (NuStar), and Kinder Morgan Bulk Terminals, LLC (KMBT).

D. Subject PLP: Refers to the Port of Vancouver, which is the sole PLP subject to this Order.

E. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Subject PLP.

A. Portions of the Site are located in a floodplain and is bounded on the southwest by the Columbia River. All five Pacific salmon species, steelhead, eulachon (smelt), American shad, white sturgeon, and other aquatic species spend various stages of their life cycles in the Columbia River adjacent to the Site. Juvenile anadromous fish use the river in the vicinity of the Site as a migratory corridor, as well as a rearing and foraging area. White sturgeon and smelt may use the deeper pools in the vicinity of the Site for spawning grounds. The Confederated Tribes and Bands of the Yakama Nation and the State of Washington are co-managers of these fish species as signatories to the 2018-2027 U.S. v. Oregon Management Agreement.

B. Releases to groundwater of halogenated volatile organic compounds (HVOCs), including Trichloroethene (TCE) and Perchloroethene (PCE) and other related compounds, occurred at the Swan, Cadet and NuStar portions of the Site. HVOCs have come to be located at the KM Operating Area. Each portion of the Site contains some HVOCs in groundwater.

C. HVOC contamination at the Swan portion of the Site was discovered in 1997 near former Port Building 2220. TCE was released during the former Swan Manufacturing Company's operations where electric heaters were manufactured. TCE in a vapor degreasing tank was used to clean sheet metal parts from 1956 to 1964 at the former Swan building location. In 1964, Swan moved from this location to 2500 West Fourth Plain Boulevard where heater manufacturing continued. In 1972 the Swan Manufacturing Company and assets were purchased by Cadet Manufacturing Company.

D. Contamination at the Cadet portion of the Site was discovered in 1998 by the Port when evaluating the presence of chlorinated solvents in shallow groundwater to the east and north of the Swan source area. TCE was released from cleaning sheet metal parts in a vapor degreasing tank which was used in a building on the Cadet portion of the Site from 1964 until 1976. In 2006, the Port acquired the Cadet Manufacturing Company's property (and building) as part of a settlement agreement and subsequently entered into Agreed Order 07-TC-S DE-5189 with Ecology. As specified in that Agreed Order, the Port agreed to complete a remedial

investigation and feasibility study for the Site. Ecology has approved Remedial Investigation reports for the Swan Manufacturing Company and Cadet Manufacturing Company sites.

E. Several Agreed Orders have been executed for the Swan, Cadet and NuStar portions of the Site. These Agreed Orders were for preparation and completion of Remedial Investigation and Feasibility Study (RI/FS) reports and for initiation of various interim actions to clean up source areas and resulting groundwater contamination.

Swan Portion

- In 1998, Agreed Order No. 98-TC-S337 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2001, Agreed Order No. 01-TCPVA-3257 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2008, Agreed Order No. 07-TC-S DE5189

Cadet Portion

- In 2000, Agreed Order No. 00TCPVA-847 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2008, Agreed Order No. 07-TC-S DE5189

NuStar Portion

- In 1998, Agreed Order No. DE 98-TC-S338 (*superseded by AO No. 07-TC-S DE 3938*)
- In 2007, Agreed Order No. 07-TC-S DE3938

On January 16, 2014, the Project Schedules in Agreed Orders No. 07-TC-S DE 3938 and 07-TC-S DE5189 were amended to require the Port and NuStar to submit a single, jointly prepared, draft FS report for the Swan, Cadet and NuStar portions of the Site.

F. On March 12, 2015, the Port and NuStar entered into Agreed Order No. DE 11137, requiring preparation and submittal of a preliminary draft Cleanup Action Plan (dCAP) for the Site.

G. On May 20, 2019, the Port, NuStar, and KMBT entered into Agreed Order No. DE 15806 requiring the parties to complete a Supplemental Remedial Investigation (RI) regarding the release or potential release of contaminants associated with materials handled by NuStar and materials handled by KMBT (including but not limited to copper, related metals, ammonia, and nitrate) at a portion of the Site, prepare a Supplemental RI Report, and prepare a draft FS for the Site.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Subject PLP.

A. The Port is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated March 3, 1998, pursuant to RCW 70.105D.040, -.020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated April 14, 1998.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Boundaries between HVOC groundwater plumes from Swan, Cadet and NuStar source areas were indistinguishable and therefore considered a single Site. Following interim

actions taken at the Site, 2019 HVOC groundwater data indicates there is now a clear separation of remaining contamination in the Swan and Cadet areas from contamination in the NuStar source area. Ecology has determined that a preliminary draft Cleanup Action Plan can be drafted for the Swan and Cadet portions of the Site.

F. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Swan and Cadet portions of the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. Prepare a draft FS for the Swan and Cadet portions of the Site in accordance with WAC 173-340-350 that identifies and assesses alternatives with the standard point of compliance for each environmental media containing hazardous substances. Submit a draft FS within 120 days from the effective date of this Order. Ecology will endeavor to provide comments to the Port within forty-five (45) days of receipt of the draft FS.

B. Within 120 days of the of Ecology's approval of the FS as a Public Review draft FS, the Port shall prepare and submit a preliminary draft Cleanup Action Plan (dCAP) in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Swan and Cadet portion of the Site, and addresses the requirements

for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. The preliminary dCAP shall include a general description of the proposed cleanup action, cleanup standards from the RI and FS documents, and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action.

C. Preparation of a Final Cleanup Action Plan (CAP) is not a part of this Order. Ecology intends to write the Final CAP. The Final CAP will be implemented in a subsequent agreed order, enforcement order, or consent decree.

D. If the Subject PLP learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, sediment and/or surface water, the Subject PLP, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

E. All plans or other deliverables submitted by the Subject PLP for Ecology's review and approval under shall, upon Ecology's approval, become integral and enforceable parts of this Order.

F. If the Parties agree on an interim action under Section VI.F, the Subject PLP shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The Subject PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the Subject PLP is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

G. If Ecology determines that the Subject PLP has failed to make sufficient progress or failed to implement the remedial action required by this Order, in whole or in part, Ecology may, after notice to the Subject PLP, perform any or all portions of the remedial action required by this Order or at Ecology's discretion allow the Subject PLP an opportunity to correct. In an emergency, Ecology is not required to provide notice to the Subject PLP, or an opportunity for dispute resolution prior to performing remedial action required under this Order. The Subject PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

H. Except where necessary to abate an emergency situation or where required by law, the Subject PLP shall not perform any remedial actions at the Site to address the contamination that is the subject of this Order, outside those remedial actions required by this Order or another MTCA Order for this Site, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Subject PLP must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The Subject PLP shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work concerning this Order performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the Subject PLP shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that

includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Craig Rankine, Cleanup Site Manager
Department of Ecology Toxics Cleanup Program
SWRO – Vancouver Field Office
12121 NE 99th Street, Suite 2100
Vancouver, WA 98682
(360) 690-4795
craig.rankine@ecy.wa.gov

The project coordinator for the Port is:

Patty Boyden
Director of Environmental Services
Port of Vancouver
3103 NW Lower River Road
Vancouver, WA 98660
(360) 823-5318
pboyden@portvanusa.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port and documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators.

The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order. Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The Subject PLP shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the Subject PLP either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Subject PLP's progress in carrying out the terms of this Order; conducting such tests or collecting such samples

as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Subject PLP.

The Subject PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Subject PLP where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Subject PLP unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Subject PLP shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5) and as specified by Ecology, all sampling data shall be submitted to Ecology in electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Subject PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Subject PLP pursuant to implementation of this Order. The Subject PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Subject PLP and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify the Subject PLP prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the Subject PLP shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the Subject PLP prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Subject PLP that do not receive prior Ecology approval, the Subject PLP shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Vancouver Community Library
901 C Street
Vancouver, WA 98660

- b. Ecology's Southwest Regional Office
300 Desmond Dr.
Lacey, WA 98504-7775

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Subject PLP shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Subject PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Subject PLP may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the Subject PLP withholds any requested records based on an assertion of privilege, that Subject PLP shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the Subject PLP elects to invoke dispute resolution that Subject PLP must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the Subject PLP has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Subject PLP's position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. The Subject PLP may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the

work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. A request by the Subject PLP for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and when good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Subject PLP to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Subject PLP including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Subject PLP.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Subject PLPs.

3. Ecology shall act upon the Subject PLP's written request for extension in a timely fashion. Ecology shall give the Subject PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the

extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At the Subject PLP's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Subject PLP. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Subject PLP shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Subject PLP to cease such activities for such period of time as it deems necessary to abate the danger. The Subject PLP shall immediately comply with such direction.

In the event the Subject PLP determine that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Subject PLP may cease such activities. The Subject PLP shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Subject PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Subject PLP's cessation of activities, it may direct the Subject PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Subject PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Subject PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take

additional enforcement actions against the Subject PLP regarding remedial actions required by this Order, provided the Subject PLP complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the Subject PLP does not admit to any liability for the Site. Although the Subject PLP is committing to conducting the work required by this Order under the terms of this Order, the Subject PLP expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Subject PLP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to a Subject PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, that Subject PLP shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, that Subject PLP shall notify Ecology of said transfer. Upon transfer of any interest, that Subject PLP shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by the Subject PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including

requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The Subject PLP has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Subject PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Subject PLP must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Subject PLP pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the Subject PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Subject PLP must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the Subject PLPs may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Subject PLP shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The Subject PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Subject PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required

for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Subject PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Subject PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Subject PLP and on how the Subject PLP must meet those requirements. Ecology shall inform the Subject PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Subject PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Subject PLP shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

O. Indemnification

The Subject PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Subject PLP, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the Subject PLP shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the Subject PLP's receipt of written notification from Ecology that the Subject PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the Subject PLP has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 10/08/2020

PORT OF VANCOUVER



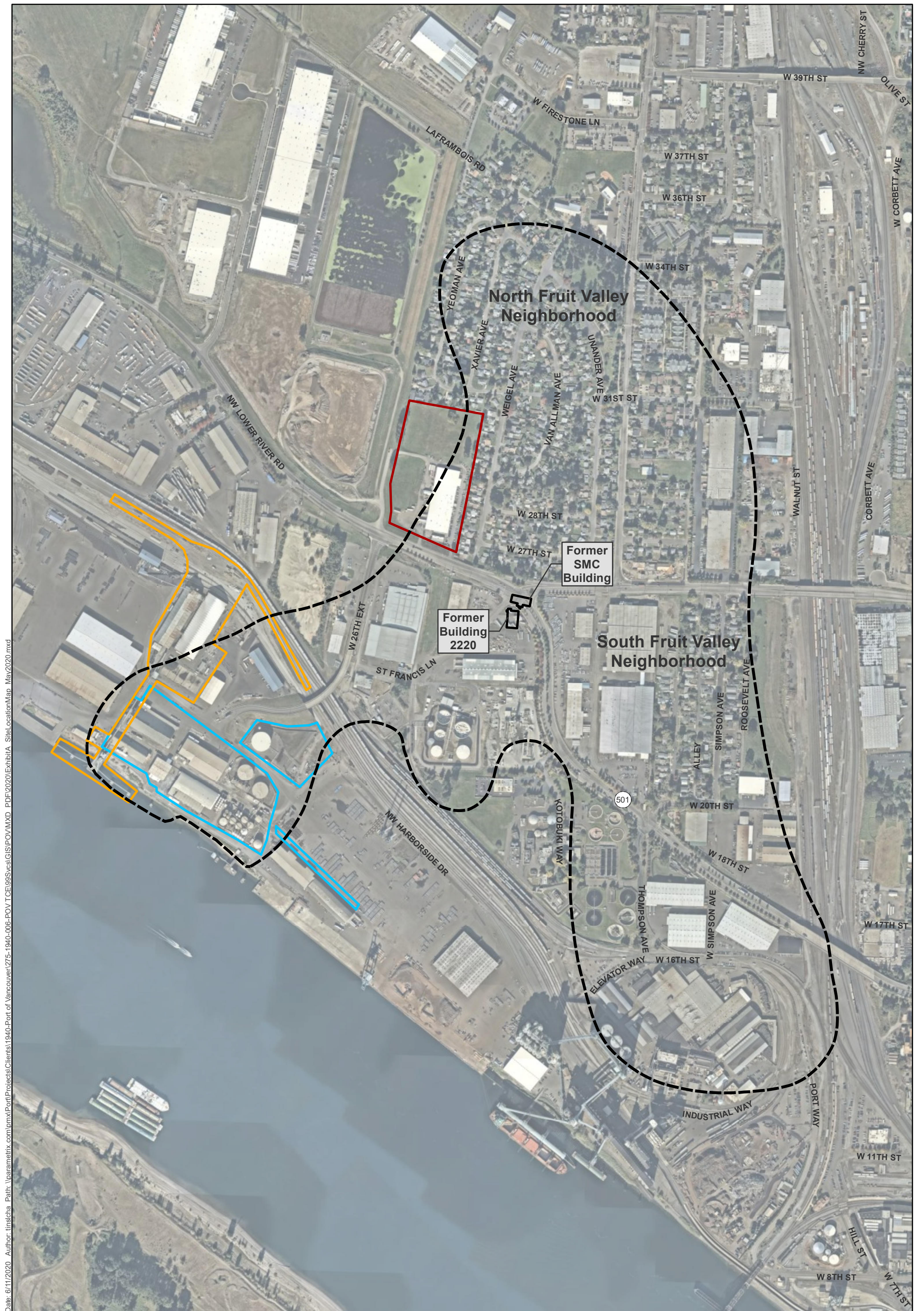
Patty Boyden
Director of Environmental Services
Port of Vancouver, USA
(360) 823-5318

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Marian Abbett, P.E.
Acting Section Manager
Toxics Cleanup Program
Southwest Regional
Office (360) 407-6257

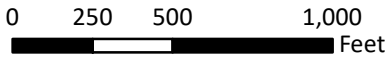
EXHIBIT A



Date: 6/11/2020_Author: tinscha_Path: \\parametrix.com\pmx\Port\Projects\Clients\1940-Port of Vancouver\1940-006-POV\TCE\99\Srves\GIS\POV\MXD_PDF\2020\ExhibitA_SitelocationMap_May2020.mxd

Parametrix

Source: © Mapbox, © OpenStreetMap, Port of Vancouver



- Site - Historical Maximum Extent of HVOC Contamination
- Cadet Facility
- Kinder Morgan Facility
- NuStar Facility

Exhibit A
Site Location Map

Port of Vancouver
Agreed Order 18152

EXHIBIT B

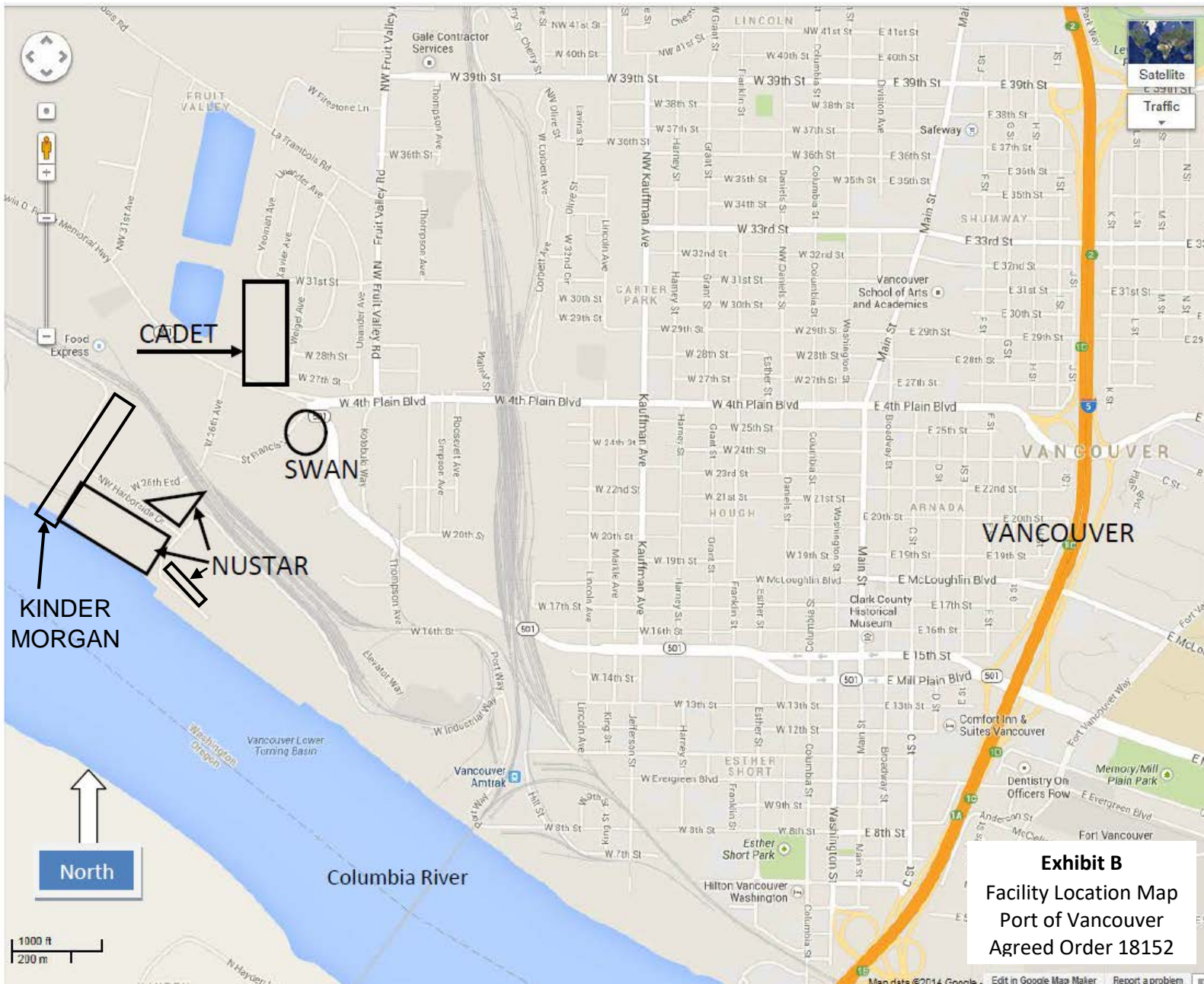


Exhibit B
 Facility Location Map
 Port of Vancouver
 Agreed Order 18152

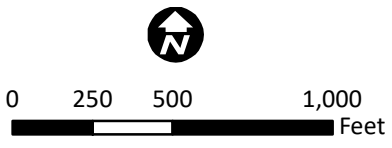
EXHIBIT C



Date: 6/11/2020 Author: tinscha Path: \\parametrix.com\pmx\Port\Projects\Clients\1940-Port of Vancouver\1940-006-POV\TCE\99\Srvs\GIS\POV\MXD_PDF\2020\Exhibit_C_SwanAndCadet\SitePortionMap_May2020.mxd

Parametrix

Source: © Mapbox, © OpenStreetMap, Port of Vancouver



- Site - Historical Maximum Extent of HVOC Contamination
- Area of Site Included in Agreed Order 18152
- Cadet Facility
- Kinder Morgan Facility
- NuStar Facility

Exhibit C
Agreed Order 18152 Extent Map

Port of Vancouver
Agreed Order 18152