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KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF SUNNYSIDE,

Defendant.

NO. 12 2 04273 9

PROSPECTIVE PURCHASER
CONSENT DECREE
RE: CREAM WINE SITE

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Sunnyside (Defendant) under this Decree is to (1) resolve the potential liability of Defendant for contamination at the Cream Wine Site (Site) arising from a release or threatened release of hazardous substances, in advance of the Defendant purchasing an ownership interest in the Site and (2) facilitate the cleanup of the Site for redevelopment or reuse. This Decree requires Defendant to undertake the remedy set forth in the Cleanup Action Plan (CAP), attached hereto as Exhibit C. Ecology has determined that these actions are necessary to protect human health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there as not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

C. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the Parties do not intend to discharge non-settling Parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part from any liable person for sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts provided; however, that the Defendant shall not challenge the jurisdiction of the Washington State Attorney General (Attorney General) and Ecology in any proceeding to enforce this Decree.

F. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

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Now, therefore, it is **HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.

B. Authority is conferred upon the Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice of and any required hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. In addition, pursuant to RCW 70.105D.040(5), the Attorney General may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided the settlement will yield substantial new resources to facilitate cleanup; will expedite remedial action consistent with the rules adopted under MTCA; and that Ecology determines based upon available information that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

C. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree, and that the remedial actions required by this Decree are necessary to protect human health and the environment based on the planned future use of the Site as contemplated by the Parties under this Decree.

D. Defendant has not been named a PLP for the Site and has certified under Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA. However, Defendant is currently in the process of acquiring the property located at 111 E. Lincoln Avenue, Sunnyside, Washington from U.S. Bank National Association, as Custodian/Trustee, by Zions Agricultural Finance its attorney in fact. Defendant will incur potential liability under RCW 70.105D.040(1)(a) at the time it acquires an interest in the Site for performing remedial actions or

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paying remedial costs incurred by Ecology or third parties resulting from past releases or threatened releases of hazardous substances at the Site. This Decree settles Defendant's liability as described herein for this Site upon its purchase of the Property.

E. Ecology finds that this Decree will yield substantial new resources to facilitate cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards established under RCW 70.105D.030(2)(e) and WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of the Site; and will not likely contribute to the existing release or threatened release at the Site, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree will provide a substantial public benefit in three categories: tax revenue, job creation, and neighborhood revitalization.

1. The redevelopment of the Site is forecasted to generate $347,000 to $380,000 per year in on-going tax revenues.

2. The redevelopment is projected to create approximately 100 permanent jobs when fully built out, which would represent a large employment increase in this small community.

3. The conceptual redevelopment plans for the Site include preserving locally important historical features, including a 1940s era water tower.

4. The cleanup of the Site will help remove blight and provide economic lift to the area.

F. Defendant has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

G. This Decree has been subject to public notice and comment.

III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully

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authorized to enter into this Decree and to execute and legally bind such Party to comply with the terms of this Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree. No change in corporate ownership or corporate status shall alter Defendant's responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

IV. DEFINITIONS

Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as the Cream Wine Site and is generally located at 111 E. Lincoln Avenue, Sunnyside, Washington. The Site is more particularly described in the Site Diagram, attached hereto as Exhibit A. The Site constitutes a facility under RCW 70.105D.020(5).

B. Property: Refers to the property located at 111 E. Lincoln Avenue, Sunnyside, Washington that Defendant intends to purchase. A legal description of the Property is attached hereto as Exhibit B. The Property comprises the entire Site.

C. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and Port of Sunnyside.

D. Defendant: Refers to the Port of Sunnyside.

E. Consent Decree or Decree: Refers to this Prospective Purchaser Consent Decree and each of the exhibits to the Decree. All exhibits are integral and enforceable parts of this Decree. The terms "Consent Decree" or "Decree" shall include all exhibits to this Prospective Purchaser Consent Decree.

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V. FINDINGS OF FACT

Ecology makes the following findings of fact without any express or implied admissions of such facts by Defendant:

A. The Site is located in Sunnyside, Washington, and consists of 4.67 acres. The Site is bordered by Lincoln Avenue and residential areas to the north; industrial development to the south; First Street, a residential area, and Valley View Market to the west; and a commercial development to the east. The Site is more particularly described in the Site Diagram (Exhibit A).

B. From approximately 1942 to 1946, Morning Milk Company constructed and operated a processing plant and operated on the Property. In 1946 Carnation Company acquired the Property and operated the processing plant until 1986. Carnation Company was acquired by Nestle USA, Inc.'s. The plant was closed in 1986. From 1986 to 1990, the Defendant owned the Site. In 1988 the Defendant leased the Site to Cascade Cellars, Ltd. Partnership for use as a winery. During the Defendant's ownership there was no release or threatened release of any hazardous substances onto the Site. From 1990 to 1992, Alfred B. Seitz and Virginia L. Seitz owned the Site. From 1992 to 2007, the Site was owned by Washington Hills Cellars Inc. (WHC) and was again used as a winery. In 2007, Federal Agricultural Mortgage Company foreclosed on the Site because WHC was unable to make payments on loan(s) secured by the Property. In 2007, Cream Winery leased the property for operation of a winery, and vacated it in 2010. The Site has been vacant since 2010.

C. A Phase I Environmental Site Assessment was conducted at the Site in 2006 by Blue Mountain Environmental Consulting, Inc. A Phase II Environmental Site Investigation and Retro Underground Storage Tanks (USTs) Site Closure was prepared in 2007 by Blue Mountain Environmental Consulting, Inc. In 2008, a Final Alternate Source Evaluation and a Summary of Shallow Soil and Groundwater Investigation were prepared by Kennedy/Jenks Consultants. In 2009, Kennedy/Jenks Consultants drafted a Completion of Cleanup at the Former Apex Winery Site, which is adjacent to Time Oil Property. In 2010, Kennedy/Jenks Consultants prepared a

Report of Independent Actions. In 2011, a Phase I Environmental Site Assessment was prepared by Maul Foster & Alongi, Inc. In 2012, Maul Foster & Alongi, Inc. completed a Draft Focused Site Assessment Report for the Site.

D. Environmental assessments and investigations conducted on the Property since 2006 indicated total petroleum hydrocarbons (TPH), toluene, chloroform, methyl tert-butyl ether, (MTBE) and perchloroethylene (PCE) in the groundwater and TPH, lead, and acetone in the soil. The TPH and MTBE contamination was confirmed to be from an off-site source. Remedial actions, led by Time Oil Company are currently addressing the MTBE issues. The perchloroethylene (PCE) source was not identified during the environmental assessments and investigations but was confirmed to be originating from off-site. According to the 2012 Draft Focused Site Assessment Report the sources of the soil contaminants was likely surface releases from former site operations. These releases represent a threat to human health and the environment and require remedial actions.

E. The contaminants of concern at the Site that exceed MTCA cleanup levels are lead in soil and PCE in groundwater. Ecology has assigned the Site an overall priority ranking of 2 pursuant to MTCA.

F. The Site has been used for an evaporated milk plant and wineries and is zoned as heavy industrial by the City of Sunnyside.

G. The current owner of the Property, Federal Agricultural Mortgage Corporation, foreclosed on the Property in 2007 because the previous owner, WHC, defaulted on loan payments secured by the Property.

H. Defendant is currently in the process of acquiring the Property from Federal Agricultural Mortgage Corporation. Transfer of ownership will occur on or prior to December 31, 2012.

I. Defendant proposes to clean up the Site and make it available for redevelopment for commercial use, consistent with MTCA and its implementing regulations, WAC 173-340, and applicable City of Sunnyside zoning provisions and comprehensive plan designations.

J. The application of MTCA Method A cleanup levels are appropriate for lead in soil and PCE in groundwater at the Site based on the planned future use of the Site as contemplated by the Parties under this Decree

VI. WORK TO BE PERFORMED

This decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site.

A. Defendant shall perform the remedial actions specified in detail in the CAP (Exhibit C) and the Scope of Work and Schedule (Exhibit D). These exhibits are incorporated by reference and are an integral and enforceable part of this Decree. A summary of the work to be performed is as follows:

1. Groundwater exceeding cleanup levels for PCE will be treated with in situ chemical oxidation with quarterly compliance monitoring and analysis at existing on-site monitoring wells.

2. Soil exceeding cleanup levels for lead will be excavated and disposed of off-site in a permitted disposal facility. The excavation area will be backfilled with clean, imported fill.

3. Prepare and submit all necessary documents as identified in the CAP and Scope of Work and Schedule. All deliverables identified in the CAP, Scope of Work and Schedule are hereby incorporated by reference and are an integral and enforceable part of this Decree.

B. Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit D) to cover

these actions. All work conducted by Defendant under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Norm Hepner
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452
509-457-7127

The project coordinator for the Defendant is:

Jed Crowther
Port of Sunnyside
P.O. Box 329
Sunnyside, WA 98944
509-839-7678

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

Any Party may change its respective project coordinator. Written notifications shall be given to the other Party at least ten (10) calendar days prior to the change.

VIII. PERFORMANCE

All geologic and hydrogeologic work performed pursuant to this Decree shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided by RCW 18.220 and 18.43.130.

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

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

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.220 or 18.43.130.

Defendant 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 Decree, in advance of their involvement at the Site.

IX. CERTIFICATION OF DEFENDANT

Defendant represents and certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to Ecology the information currently in its possession or control that relates to the environmental conditions at and in the vicinity of the Site, or to the Defendant's right and title thereto.

Defendant represents and certifies that it did not cause or contribute to a release or threatened release of hazardous substances at the Site and is not otherwise currently potentially liable for the Site under RCW 70.105D.040(1).

X. ACCESS

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that Defendant either owns, controls, or has access rights to all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs and contracts related to the work being performed pursuant to the Decree; reviewing Defendant's progress in carrying out the terms of this Decree; 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 Decree; and verifying the data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendant where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Defendant unless an emergency prevents such notice. All Parties 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.

XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

With respect to the implementation of this Decree, Defendant 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), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section XII (Progress Reports), 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, Defendant shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Defendant pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Defendant and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Decree, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section X (Access), Ecology shall notify Defendant prior to any sample collection activity unless an emergency prevents such notice.

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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.

XII. PROGRESS REPORTS

Defendant shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Decree. The Progress Reports shall include the following:

A. A list of on-site activities that have taken place during the quarter;

B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;

C. Description of all deviations from the Scope of Work and Schedule (Exhibit D) during the current quarter and any planned deviations in the upcoming quarter;

D. For any deviations from the schedule, a plan for recovering lost time and maintaining compliance with the schedule;

E. All raw data (including laboratory analyses) received by Defendant during the past quarter and an identification of the source of the sample; and

F. A list of deliverables for the upcoming quarter if different from the schedule.

All progress reports shall be submitted by the tenth (10^{th}) day of the third month in which they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports and any other documents submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

XIII. RETENTION OF RECORDS

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXX (Effective Date), Defendant shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project

contractors and subcontractors. Upon request of Ecology, Defendant shall make all records available to Ecology and allow access for review within a reasonable time.

XIV. 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 Defendant without provision for continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

Prior to the Defendant's transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, Defendant shall provide a copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer. Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent with this Consent Decree and notify all transferees of the restrictions on the use of the Property.

XV. RESOLUTION OF DISPUTES

A. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

1. Upon receipt of Ecology's project coordinator's written decision, or the itemized billing statement, Defendant has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

2. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

3. Defendant may then request regional management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Program Section Manager within seven (7) days of receipt of the Ecology project coordinator's decision.

4. Ecology's Regional Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of Defendant's request for review.

5. If Defendant finds Ecology's regional Section Manager's decision unacceptable, Defendant may then request final management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of the Regional Section Manager's decision.

6. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of request for review of the Regional Section Manager's decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to Defendant, Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Defendant presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

C. 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. Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay, the other Party may seek sanctions.

D. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the court so orders.

XVI. AMENDMENT OF DECREE

The project coordinators may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonable withheld by any Party.

Defendant shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing in a timely manner after the written request for amendment is received. If the amendment to the Decree is a substantial change, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XV (Resolution of Disputes).

XVII. EXTENSION OF SCHEDULE

A. 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 good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

1. The deadline that is sought to be extended;
2. The length of the extension sought;
3. The reason(s) for the extension; and

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4. Any related deadline or schedule that would be affected if the extension were granted.

B. The burden shall be on Defendant 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:

1. Circumstances beyond the reasonable control and despite the due diligence of Defendant 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 Defendant; or

2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

3. Endangerment as described in Section XVIII (Endangerment).

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

C. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension is granted.

D. 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:

1. Delays in the issuance of a necessary permit which was applied for in a timely manner;

2. Other circumstances deemed exceptional or extraordinary by Ecology; or

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3. Endangerment as described in Section XVIII (Endangerment).

XVIII. ENDANGERMENT

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

In the event Defendant determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Defendant may cease such activities. Defendant 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, Defendant shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant'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 XVII (Extension Schedule), for such period of time as Ecology determines is reasonable under the circumstances.

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

XIX. COVENANT NOT TO SUE

A. Covenant Not to Sue: In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendant regarding the release or threatened release of hazardous substances covered by this Decree.

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This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A) and those hazardous substances that Ecology knows are located at the Site as of the date of entry of this Decree. This Decree does not cover any other hazardous substance or area. Ecology retains all of its authority relative to any substance or area not covered by this Decree. In addition, this Decree does not settle any potential liability Defendant may incur for acquiring any further interest in the Site not addressed under this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

1. Criminal liability;

2. Liability for damages to natural resources; or

3. Any Ecology action, including cost recovery, against PLPs not a Party to this Decree.

If factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment, the Court shall amend this Covenant Not to Sue.

B. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against Defendant to require it to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following circumstances:

1. Upon Defendant's failure to meet the requirements of this Decree, including, but not limited to, failure of the remedial action to meet the cleanup standards identified in the CAP (Exhibit C);

2. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment;

3. Upon the availability of new information regarding factors previously unknown to Ecology, including the nature or quantity of hazardous substances at the Site,

and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment; or

4. After consultation with the Defendant, upon Ecology's determination that additional remedial actions are necessary to achieve the cleanup standards within the reasonable restoration time frame as set forth in the CAP.

C. Except in the case of an emergency, prior to instituting legal or administrative action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen (15) calendar days notice of such action.

XX. CONTRIBUTION PROTECTION

With regard to claims for contribution against Defendant, the Parties agree that Defendant is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

XXI. INDEMNIFICATION

Defendant agrees, to the extent permitted by law, to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to person or for loss or damage to property to the extent arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, Defendant 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 Decree.

XXII. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by Defendant pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other federal,

state, or local requirements that Ecology has determined are applicable and that are known at the time of entry of this Decree have been identified in the CAP (Exhibit C).

B. Pursuant to RCW 70.105D.090(1), Defendant is 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, Defendant shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Decree, have been identified in the CAP (Exhibit C).

Defendant 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 Decree. In the event either Defendant or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other Party of this determination. Ecology shall determine whether Ecology or Defendant shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant 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 Defendant and how Defendant must meet those requirements. Ecology shall inform Defendant in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendant shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

C. 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 Defendant shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including requirements to obtain permits.

XXIII. REMEDIAL ACTION COSTS

Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Decree preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. 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 costs incurred, Defendant 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, and 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 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

If Defendant satisfactorily fulfills all of its obligations under this Decree, Ecology will not seek to recover any of its costs under this section, including work performed both prior to and subsequent to the entry of this Decree.

XXIV. IMPLEMENTATION OF REMEDIAL ACTION

If Ecology determines that Defendant has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all

portions of the remedial action that remains incomplete. If Ecology performs all or portions of the remedial action because of Defendant's failure to comply with the obligations under this Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance with Section XXIV (Remedial Action Costs), provided that Defendant is not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

Except where necessary to abate an emergency situation, Defendant shall not perform any remedial actions at the Site outside those remedial actions required by this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XVI (Amendment of Decree).

XXV. PERIODIC REVIEW

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall submit information to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

XXVI. PUBLIC PARTICIPATION

A Public Participation Plan is required for this Site, and is attached hereto as Exhibit E. Ecology developed the Public Participation Plan in conjunction with the Defendant. Ecology shall maintain the responsibility for public participation at the Site. However, Defendant shall cooperate with Ecology, and shall:

A. If agreed to by Ecology, develop appropriate mailing list, 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.

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

C. 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.

D. When requested by Ecology, arrange and/or continue information repositories at the following locations:

1. Yakima Valley Libraries—Sunnyside Branch
   621 Grant
   Sunnyside, WA 98944

2. Ecology's Central Regional Office
   15 West Yakima Avenue, Suite 200
   Yakima, WA 98902-3452

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 Central Regional Office in Yakima, Washington.

XXVII. DURATION OF DECREE

The remedial program required pursuant to this Decree shall be maintained and continued until Defendant has received written notification form Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XIX (Covenant Not to Sue) and Section XX (Contribution Protection) shall survive.

XXVIII. CLAIMS AGAINST THE STATE

Defendant hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies. Without limiting the foregoing, while the Defendant may apply for funding from the State Toxics Control Account or any local Toxics Control Account; however, if funding is denied or limited the Defendant will make no claim against the State Toxics Control Account or any local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendant expressly reserves the right to seek to recover any costs incurred in implementing this Decree from any other PLP. This Section does not limit or address funding that may be provided under WAC 173-322 or 173-340.

XXIX. EFFECTIVE DATE

This Decree is effective upon the date that title to the Property vests in Defendant, following the entry of this Decree by the Court. If Defendant does not purchase the Property by December 31, 2012, this Decree shall be null and void, and Defendant will be under no obligation to perform the work required by this Decree.

XXX. WITHDRAWAL OF CONSENT

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any Party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no Party shall be bound by the requirements of this Decree.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

Date: Dec 10, 2012

ROBERT M. MCKENNA
Attorney General

DOROTHY H. JAFFE, WSBA #34148
Assistant Attorney General
(360) 586-4637

Date: Dec. 10, 2012

PORT OF SUNNYSIDE

COMMISSIONER ARNOLD MARTIN
Port of Sunnyside
(509) 839-7678

Date: NOV. 5, 2012

COMMISSIONER JAMES GRUBENHOFF
Port of Sunnyside
(509) 839-7678

Date: NOV. 5, 2012

COMMISSIONER JEFFREY MATSON
Port of Sunnyside
(509) 839-7678

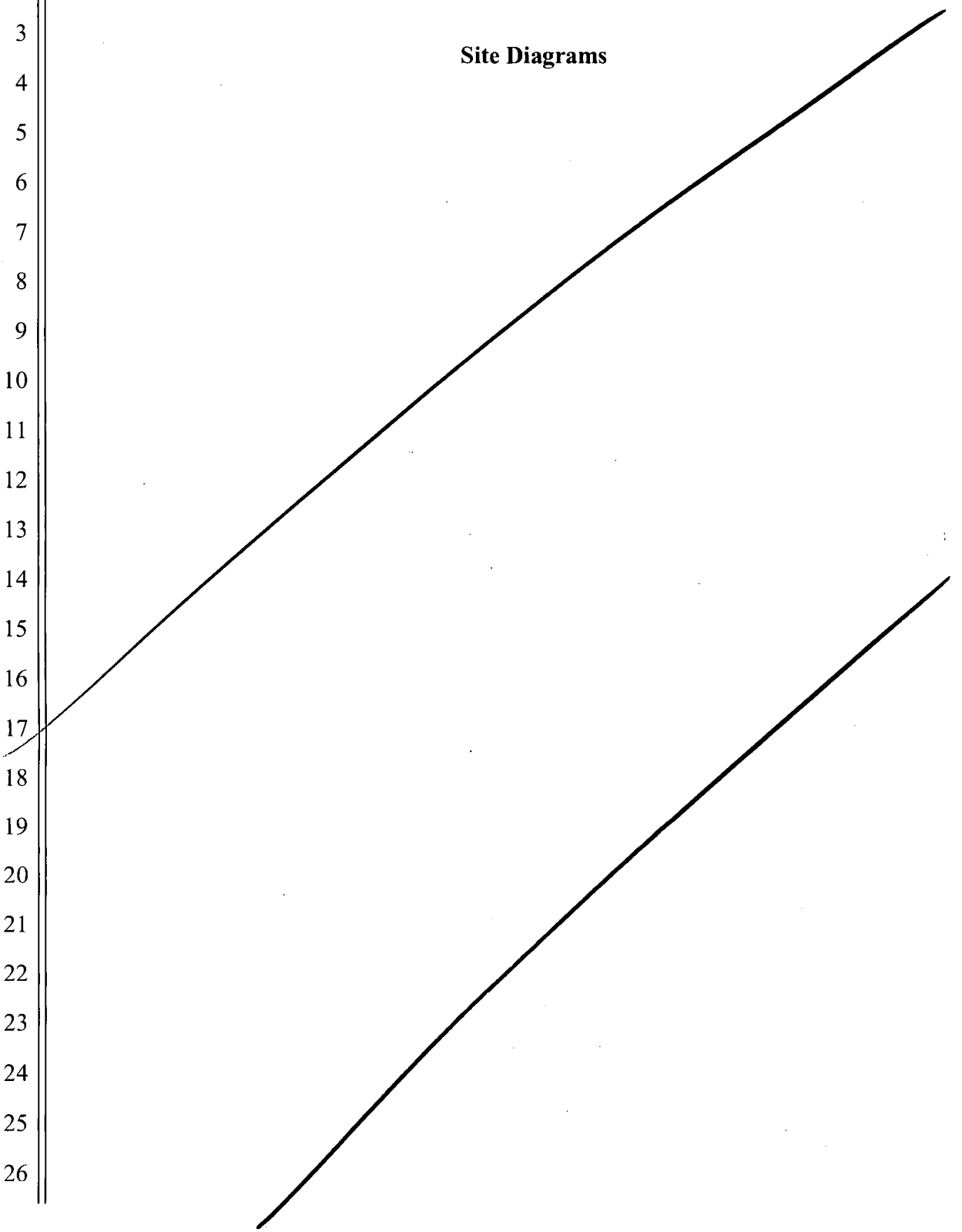
Date: NOV. 5, 2012

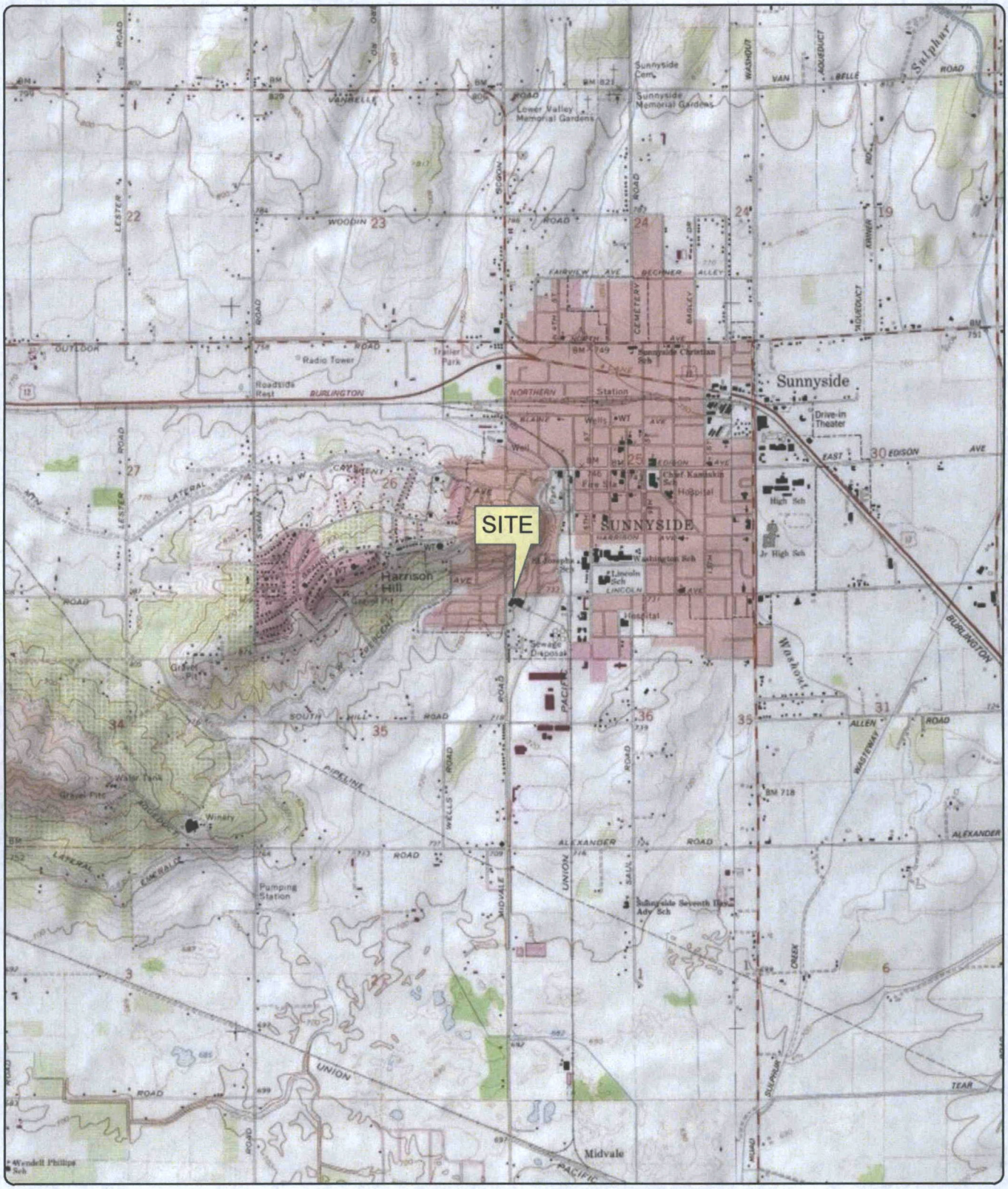
ENTERED this 14 day of Dec. 2012

JUDGE
Yakima County Superior Court

EXHIBIT A

Site Diagrams





Site Address: 111 E Lincoln Ave, Sunnyside, Washington
Source: US Geological Survey (1990) 7.5-minute topographic quadrangle: Sunnyside
Section 36, Township 10 North, Range 22 East

DRAFT

Figure 1
Site Location

Former Cream Wine Property
Port of Sunnyside
Sunnyside, Washington

0 1,500 3,000
Feet

MAUL FOSTER ALONGI
p. 971 544 2139 | www.maulfoster.com

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Path: X:\0346.04\Projects\Fig1 Site Location.mxd Print Date: 9/17/2012 Approved By: J. Pounds Produced By: J. Schane Project: 0346.04.02

EXHIBIT B

Legal Description of the Property

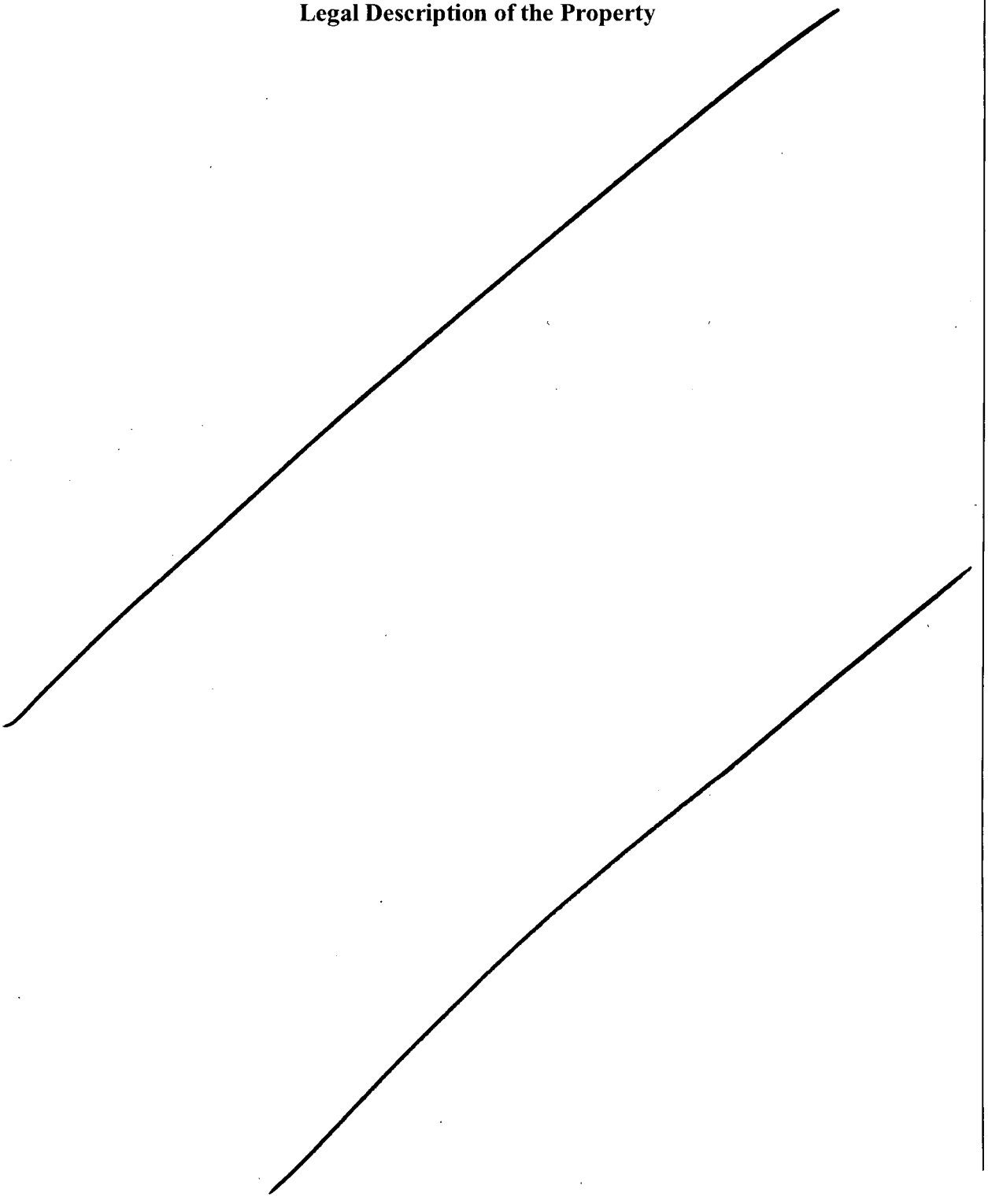


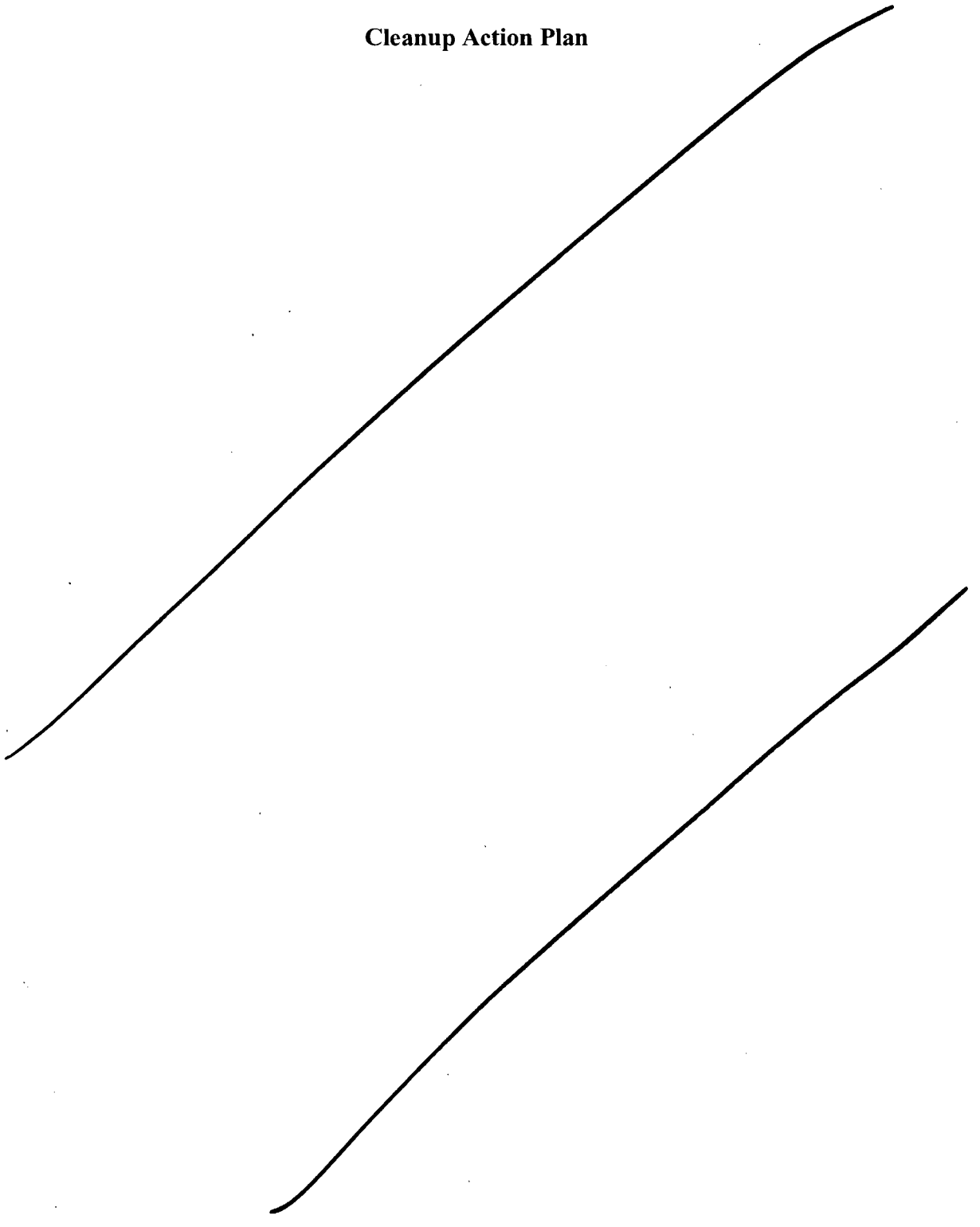
EXHIBIT B
LEGAL DESCRIPTION OF THE PROPERTY
for the Cleanup Action at the Former Cream Wine Site, Sunnyside, WA

Tax Parcel No: 221036-22006

That portion of the Northwest ¼ of the Northwest ¼ of Section 36, Township 10 North, Range 22, E.W.M., Yakima County Washington, more particularly described as follows:
Beginning at the Northwest corner of the said Section 36, Township 10 North, Range 22, E.W.M.;
thence South 00°14'32" East along the West line of said Section 36, a distance of 341.50 feet;
thence North 89°45'28" East, a distance of 16.50 feet to the TRUE POINT OF BEGINNING;
thence North 00°14'32" West, parallel to the West line of said Section 36, a distance of 72.43 feet;
thence North 89°42'28" East, a distance of 13.50 feet;
thence North 00°14'32" West, parallel to the West line of said Section 36, a distance of 138.59 feet to a point of curvature;
thence along a curve to the right having a radius of 100 feet and a central angle of 90°14'32" and whose chord bears North 44°52'44" East, 141.72 feet in length to a point of tangency;
thence North 90° East, parallel with the North line of said Section 36, a distance of 556.02 feet;
thence South 00° East, a distance of 311.50 feet;
thence South 90° West, a distance of 668.63 feet to the TRUE POINT OF BEGINNING.
EXCEPT that portion conveyed to City of Sunnyside by Special Warranty Deed recorded June 8, 2007 under Auditor's File No. 7566116.

EXHIBIT C

Cleanup Action Plan



FINAL CLEANUP ACTION PLAN

Cream Wine Site
Sunnyside, WA

December 2012
Washington Department of Ecology
Toxics Cleanup Program
Central Regional Office
Yakima, WA

TABLE OF CONTENTS

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1.0 INTRODUCTION

This report presents the Washington State Department of Ecology's proposed cleanup action for the Cream Wine site (Site) (Facility Site # 46552166), located at 111 East Lincoln Avenue, Sunnyside, in Yakima County, Washington (Figure 1). This Cleanup Action Plan (CAP) is required as part of the Site cleanup process under the Model Toxics Control Act (MTCA), Ch. 70.105D Revised Code of Washington (RCW), implemented by the Washington State Department of Ecology (Ecology). The cleanup action decision is based on the Focused Site Assessment Report (FSA) and other relevant documents in the administrative record (see section 1.3).

This CAP outlines the following:

- The history of operations, ownership, and activities at the Site;
- The nature and extent of contamination;
- Cleanup levels for the Site that are protective of human health and the environment;
- The selected remedial action for the Site; and
- Compliance monitoring and institutional controls, as required.

1.1 DECLARATION

Ecology has selected this remedy because it will be protective of human health and the environment. Furthermore, the selected remedy is consistent with the preference of the State of Washington as stated in RCW 70.105D.030(1)(b) for permanent solutions.

1.2 APPLICABILITY

Cleanup levels specified in this cleanup action plan are applicable only to the Cream Wine Site. They were developed as a part of an overall remediation process under Ecology oversight using the authority of MTCA, and should not be considered as setting precedents for other sites.

1.3 ADMINISTRATIVE RECORD

The documents used to make the decisions discussed in this cleanup action plan are on file in the administrative record for the Site. Major documents are listed in the reference section. The entire administrative record for the Site is available for public review by appointment at Ecology's Central Regional Office, located at 15 West Yakima Avenue, Suite 200, Yakima, WA 98902-3452. Results from applicable studies and reports are summarized to provide background information pertinent to the CAP. These studies and reports include:

- Environmental Site Assessment, Blue Mountain Environmental Consulting, Inc., 2006
- Phase II Environmental Site Investigation and Retro Underground Storage Tanks (USTs) Site Closure, Blue Mountain Environmental Consulting, Inc., 2007
- Final Alternate Source Evaluation, Kennedy/Jenks Consultants 2008
- Revised Aquifer Evaluation for Production Well Use, Kennedy/Jenks Consultants 2008

- Summary of Shallow Soil and Groundwater Investigation, Kennedy/Jenks Consultants 2008
- Completion of Cleanup at Former Apex Winery Site Adjacent to Time Oil Property, Kennedy/Jenks Consultants 2009
- Report of Independent Actions Facility ID #46552116, Kennedy/Jenks Consultants 2010
- Phase I Environmental Site Assessment, Maul Foster & Alongi 2011
- Focused Site Assessment Report, Maul Foster & Alongi 2012 (includes a Terrestrial Ecological Evaluation [TEE] as Appendix H)

In addition to the Site studies listed above, a significant volume of applicable work has been completed on the Valley View Market (VVM) site to the west of the Site. Studies and reports completed for the VVM site include:

- Environmental Site Assessment, Alisto Engineering Group 1997
- Remedial Investigation/Feasibility Study Report, Maxim Technologies, Inc. 1991
- Corrective Action Plan and January 2000 Groundwater Monitoring Report, Time Oil Company 2000
- Monitoring Well Installation Report, Time Oil Company and Brown and Caldwell 2000
- Bioslurping System Installation Report, Brown and Caldwell 2000
- Remedial Investigation Report, Sound Environmental Strategies Corporation 2009
- In Situ Chemical Oxidation Work Plan, Sound Environmental Strategies Corporation 2010
- Simulation of well capture and advective transport with the operation of the on-site remediation system memorandum, SoundEarth Strategies, Inc. 2011
- Quarterly Groundwater Monitoring Reports, SoundEarth Strategies, Inc. 2010

1.4 CLEANUP PROCESS

Cleanup conducted under the MTCA process requires the preparation of specific documents either by the Potentially Liable Person (PLP) or by Ecology. These procedural tasks and resulting documents, along with the MTCA section that requires their completion, are listed below with a brief description of each task.

- Remedial Investigation and Feasibility Study – Washington Administrative Code (WAC) 173-340-350
  The RI/FS documents the investigations and evaluations conducted at the Site from the discovery phase to the RI/FS document. The RI collects and presents information on the nature and extent of contamination, and the risks posed by the contamination. The FS presents and evaluates Site cleanup alternatives and proposes a preferred cleanup alternative. The document is prepared by the PLP, approved by Ecology, and undergoes public comment. The FSA meets the RI/FS requirements for this Site.
- Cleanup Action Plan - WAC 173-340-380
  The CAP sets cleanup levels and standards for the Site, and selected the cleanup actions intended to achieve the cleanup levels. The document is prepared by Ecology, and undergoes public comment.
- Engineering Design Report, Construction Plans and Specifications - WAC 173-340-400

The report outlines details of the selected cleanup action, including any engineered systems and design components from the CAP. These may include construction plans and specifications with technical drawings. The document is prepared by the PLP and approved by Ecology. Public comment is optional.

- Operation and Maintenance Plan(s) - WAC 173-340-400
  These plans summarize the requirements for inspection and maintenance of cleanup actions. They include any actions required to operate and maintain equipment, structures, or other remedial systems. The document is prepared by the PLP and approved by Ecology.
- Cleanup Action Report - WAC 173-340-400
  The Cleanup Action Report is completed following implementation of the cleanup action, and provides details on the cleanup activities along with documentation of adherence to or variance from the CAP. The document is prepared by the PLP and approved by Ecology.
- Compliance Monitoring Plan - WAC 173-340-410
  Compliance Monitoring Plans provide details on the completion of monitoring activities required to ensure the cleanup action is performing as intended. It is prepared by the PLP and approved by Ecology.

2.0 SITE BACKGROUND

2.1 SITE HISTORY

The Site is currently vacant. The approximately 33,000 square feet main building existing on-site was originally constructed for a milk plant by the Morning Milk Company, which owned the property and operated the facility from approximately 1942 to 1946. Carnation acquired the property and owned and operated the facility from approximately 1946 to 1986. The Port of Sunnyside bought the property in 1986 and leased the facility to a winery in 1988, then sold it to the Seitz family in 1990. In 1992, the property was bought by Washington Hills Cellars (WHC) and used as a winery. Federal Agricultural Mortgage Corporation foreclosed on the property in 2007 because WHC was unable to make loan payments. Cream Wine leased the property for operation of a winery in 2007 and vacated it in 2010.

Groundwater at the Cream Wine Site was impacted by a release from an underground storage tank (UST) at the Valley View Market (VVM) site to the west of the Site at 107 West Lincoln Avenue, Sunnyside, Washington. In 1996, Time Oil Company discovered petroleum hydrocarbon contamination on the VVM site during installation of cathodic protection on the UST system. Time Oil Company initiated a remedial investigation on the VVM site and discovered that the release resulted in migration of petroleum hydrocarbons onto the Cream Wine Site. Time Oil Company has conducted remedial actions, including air sparging, soil vapor extraction, and in situ chemical oxidation, and greatly reduced the petroleum impacts to groundwater (and associated impacts form the fuel additive methyl tert-butyl ether [MTBE]). Based on these efforts, the contaminant concentration trends indicate that cleanup standards will be achieved in the near future. However, during investigations conducted for the petroleum cleanup, another contaminant of concern, tetrachloroethene (PCE), was detected in groundwater

on the Cream Wine Site at concentrations above state cleanup standards. Studies indicate that the PCE was not released from the fueling station, but is attributable to an off-Site source.

A number of recognized environmental conditions (RECs) were identified on the Site during the Phase I Environmental Site Assessment (MFA, 2011). These features were investigated during the focused site assessment and the only contamination found in association with these on-Site RECs was a lead exceedance in one soil sample collected adjacent to the former chemical storage building. Based on previous investigations, the source of the lead contamination in soil is likely a surface release from former site operations. There are no continuing sources of hazardous-substance releases at the Site.

2.2 SITE INVESTIGATIONS

Multiple investigations and remedial actions have been completed on the VVM site since 1997. Many of these investigations include information for the Cream Wine Site as it pertains to the cleanup of the petroleum hydrocarbon plume from the VVM site. In approximately 2005, PCE was detected in groundwater at the Site during a sampling event associated with the remedial system operation for the VVM site. Since that initial detection of PCE, additional investigation has been conducted at the Site to further characterize the nature and extent of PCE impacts in groundwater as well as to investigate the potential for environmental impacts associated with the RECs identified in the Phase I Environmental Site Assessment (MFA, 2011). The previous study findings are integrated into the FSA and this report.

2.3 PHYSICAL SITE CHARACTERISTICS

2.3.1 SITE LOCATION

The Site is located at 111 East Lincoln Avenue, Sunnyside, Washington, and is zoned heavy industrial. The Site comprises approximately 4.67 acres and is located in section 36, township 10 north, and range 22 east of the Willamette Meridian, on tax lots 221036-22006 (see Figure 1).

The Site is bordered by Lincoln Avenue and residential areas to the north; industrial development to the south; First Street, a residential area, and Valley View Market (VVM) to the west; and a commercial development to the east (Ken's Auto Wash & Quick Lube). The VVM property once included a laundry and dry cleaner that, based on Polk directory records, operated between 1968 and 1990.

For the Site's current features, see Figure 2. The Site has three structures:

- The winery/main building covers approximately 33,000 square feet. It is composed of many rooms, including processing rooms, storage room, cold rooms, boiler room, office rooms, rest rooms, a warehouse area, and a product testing laboratory. The building structure consists of various materials, including wood, metal, brick, and concrete block.
- The former chemical storage building covers approximately 200 square feet. It has a concrete floor and is constructed of concrete blocks.

- The remediation building covers approximately 200 square feet and houses the VVM groundwater remediation system.

2.3.2 Topography and Climate

The Site is located in the Lower Yakima Valley at the toe of Harrison Hill and is nearly flat topographically. The climate in the Yakima Valley is typified by hot and dry summers and cool and moist winters. The mean annual temperature is 48 to 54 degrees Fahrenheit and the mean annual precipitation is 6 to 12 inches (USDA, 2012).

2.3.3 Geology and Hydrogeology

The Site is located on late Pliocene lacustrine deposits composed of interbedded silt and fine-grain sands deposited by the Missoula Floods (Maxim, 1999). The lacustrine deposits may be up to 90 feet thick; they overlie coarse-grained fluvial deposits from former channels of the Columbia River. These fluvial deposits compose the Snipes Mountain Conglomerate and may range in thickness from 90 up to 450 feet (Maxim, 1999). Unconsolidated deposits in the area may be up to 2,000 feet thick and are underlain by the Wanapum Basalt, which is part of the Columbia River Basalt Group (SES, 2009). In the Sunnyside area, unconsolidated deposits are typically up to 400 feet thick (SES, 2009). Multiple aquifers are present in both the unconsolidated deposits and the basalts (SES, 2009).

Soil boring observations indicate that most of the Site is underlain by 10 to 15 feet of silt overlying an approximately 20- to 35-foot-thick deposit of interbedded silty sand and sandy silt, which most likely represent the lacustrine deposits discussed above. A dense silt and clay unit underlies the silty sand and sandy silt, generally at a depth of 40 feet below ground surface (bgs).

The silty sand and sandy silt deposits make up an unconsolidated, shallow aquifer that has been observed to be hydraulically disconnected from deeper groundwater present beneath the Site (Kennedy/Jenks, 2008). Groundwater was typically encountered between 11.5 and 22 feet bgs, and the average groundwater flow direction historically observed at the Site is toward the southeast (SES, 2011). The underlying silt and clay unit was characterized as unsaturated and likely acts as a fully confining unit, based on the observed absence of moisture and the hydraulic discontinuity between the shallow and deep groundwater units identified by previous investigations (Kennedy/Jenks, 2008).

3.0 Remedial Investigation

A remedial investigation was performed to assess the nature and extent of contamination in soil and groundwater, as described in the FSA.

3.1 Soil

The only indicator hazardous substance identified in soil is lead, which is limited to one exceedance in shallow soil at GP08 (1.0 bgs) (see Figure 2). Lead contamination is vertically bounded at GP08 at 5 feet bgs. Petroleum hydrocarbons were also detected in this sample, but at

concentrations below screening levels. Lead was detected in multiple other locations across the Site, but at concentrations well below screening levels. Acetone was detected at the Site in one sample collected from the stormwater swale at the eastern edge of the Site, but at a concentration below screening levels. Therefore, lead is the only indicator hazardous substance in soil at the Site and lead impacts are restricted to shallow soil in the area adjacent to the former chemical storage building.

3.2 GROUNDWATER

The only indicator hazardous substance identified in groundwater is PCE. Stable isotope data indicate that a single source is responsible for the PCE contamination, and the presence of PCE upgradient of the Site and downgradient of a former dry cleaner suggests that the source likely originated upgradient. Historical data indicate that there is a strong declining trend in PCE concentrations, and PCE has not been detected in groundwater downgradient of the Site. Given the estimated plume travel times and the rate of decline in concentrations, and based on the extent of current PCE detections, PCE concentrations in groundwater downgradient of the Site are not expected to exceed cleanup levels at any time in the future. Figure 3 shows PCE sampling results from the FSA.

Petroleum hydrocarbons, toluene, chloroform, and MTBE were also detected in groundwater at the Site. MTBE was detected at a concentration above screening levels in one well (RW09), a recovery well associated with the Time Oil Company remediation system; all other constituents were detected at concentrations below screening levels. Although MTBE was detected above screening levels, MTBE is a known groundwater contaminant associated with the UST release at the VVM site and is being actively remediated by Time Oil Company. In addition, MTBE was only detected in approximately 6 percent of the groundwater samples collected on-site during the FSA investigation. MTBE is not considered an indicator hazardous substance for the Site given the low frequency of detection, the fact that it originates from an off-site source (there are no known or suspected sources of MTBE on-site), and since off-Site remediation activities are addressing MTBE. Therefore, no remediation is required for MTBE at the Site.

3.3 RISKS TO HUMAN HEALTH AND THE ENVIRONMENT

The Site is zoned heavy industrial and is surrounded by a mix of industrial, commercial, and residential properties. It is anticipated that the Site will be redeveloped for industrial or commercial use.

Exposures to human populations could occur through contact with contaminated surface soil, dust entrained in air, or ingestion of contaminated groundwater. The shallow aquifer is not currently used and is not likely to be used in the future due to current zoning regulations (SES, 2009) and considering the presence of the deeper aquifer, from which existing production wells draw water. In addition, future construction activities for the proposed development will not include excavation to depths approaching the groundwater table. Production wells exist at the Site, but they draw water from a deeper aquifer that has been shown to be hydraulically segregated from the shallow aquifer containing the PCE plume. Therefore, the ingestion and direct contact pathways for groundwater are currently incomplete and are reasonably likely to

remain incomplete in the future. It is highly unlikely that any drinking water supplies have been impacted; however, since the shallow aquifer is a potential drinking water source, exposure due to ingestion of contaminated water is included as a potential risk. Since PCE contamination is not present in shallow groundwater (i.e., PCE was not detected at the water table but was detected in the deeper groundwater samples collected within the shallow aquifer) and PCE has not been detected beneath any occupied existing buildings or sites for planned buildings, vapor intrusion does not currently pose a threat and the groundwater-volatilization-to-indoor pathway is incomplete.

There are no surface water bodies on or adjacent to the Site. Therefore, the groundwater to surface water pathway is incomplete.

The leaching to groundwater pathway for soil is incomplete. Empirical evidence indicates that soil impacts are not causing unacceptable groundwater concentrations and the soil-to-drinking-water pathway was deemed incomplete, based on the current and likely future uses of shallow groundwater and the hydraulic segregation of shallow groundwater from the deep aquifer.

Exposure to environmental receptors is limited. There is substantial on-site human disturbance and development, and no important resources for wildlife. The surrounding area consists of industrial and residential properties unlikely to provide quality ecological habitat. Given low habitat quality, ecological exposure to soil at the Site is expected to be insignificant.

4.0 CLEANUP STANDARDS

MTCA requires the establishment of cleanup standards for individual sites. The two primary components of cleanup standards are cleanup levels and points of compliance. Cleanup levels determine the concentration at which a substance does not threaten human health or the environment. All environmental media that exceeds a cleanup level is addressed through a remedy that prevents exposure. Points of compliance represent the locations on the site where cleanup levels must be met.

4.1 OVERVIEW

The process for establishing cleanup levels involves the following:

- Determining which method to use;
- Developing cleanup levels for individual contaminants in each media;
- Determining which contaminants contribute to the majority of the overall risk in each media (indicator hazardous substance); and
- Adjusting the cleanup levels downward based on total site risk.

The MTCA Cleanup Regulation provides three options for establishing cleanup levels: Methods A, B, and C.

- Method A may be used to establish cleanup levels at routine sites or sites with relatively few hazardous substances.

- Method B is the standard method for establishing cleanup levels and may be used to establish cleanup levels at any site.
- Method C is a conditional method used when a cleanup level under Method A or B is technically impossible to achieve or may cause significantly greater environmental harm. Method C also may be applied to qualifying industrial properties.

The MTCA administrative rules define the factors used to determine whether a substance should be retained as an indicator for the Site. When defining cleanup levels at a site contaminated with several hazardous substances, Ecology may eliminate from consideration those contaminants that contribute a small percentage of the overall threat to human health and the environment. WAC 173-340-703(2) provides that a substance may be eliminated from further consideration based on:

- The toxicological characteristics of the substance which govern its ability to adversely affect human health or the environment relative to the concentration of the substance;
- The chemical and physical characteristics of the substance which govern its tendency to persist in the environment;
- The chemical and physical characteristics of the substance which govern its tendency to move into and through the environment;
- The natural background concentration of the substance;
- The thoroughness of testing for the substance;
- The frequency of detection; and
- The degradation by-products of the substance.

MTCA also considers the limits of analytical chemistry. If the practical quantitation limit of a substance is greater than the risk-based cleanup level, then the cleanup level can be set equal to that limit.

MTCA requires that the total risk from all contaminated media not exceed certain levels. The total site cancer risk shall not exceed $1x10^{-5}$, and the hazard index (calculated for chemicals with similar non-carcinogenic toxicity endpoints) shall not exceed 1. After the cleanup level for each media is developed, the risks from each chemical and media are summed. If the total site cancer risk and/or hazard index exceeds the levels listed above, then the cleanup levels are adjusted downward until cancer risk is less than $1x10^{-5}$ and the hazard index is less than or equal to 1 for each endpoint. MTCA does not specify how the risks can be adjusted, as long as the individual cleanup level standard for each chemical is not violated.

4.2 Terrestrial Ecological Evaluation

WAC 173-340-7490 requires that sites perform a terrestrial ecological evaluation (TEE) to determine the potential effects of soil contamination on ecological receptors. Sites may be removed from further ecological consideration by either documenting an exclusion using the criteria set forth in WAC 173-340-7491 or conducting a simplified TEE procedure as set forth in WAC 173-340-7492. The simplified TEE provides an evaluation process that may be used to identify sites which do not have a substantial potential for posing a threat of significant adverse effects to terrestrial ecological receptors, and thus may be removed from further ecological

consideration during the remedial investigation and cleanup process. The simplified TEE exposure analysis procedure set forth under WAC 173-340-749(2)(a)(ii) and in MTCA Table 749-1 was completed as part of the FSA. The simplified TEE results indicate that the Site does not pose a substantial threat to potential ecological receptors and no further ecological evaluation is necessary. Therefore, environmental exposure pathways are deemed incomplete and cleanup levels were not established for ecological receptors.

4.3 Site Cleanup Levels

The FSA and previous investigations documented the presence of contamination in soil and groundwater at the Site. Cleanup levels will be developed for both of these media.

Because the Site has relatively few hazardous substances, limited exposure pathways, and was removed for further ecological consideration based on the results of the simplified terrestrial ecological evaluation, it is considered a "routine cleanup action". Therefore, Method A applies. Although the Site qualifies as an "industrial property" as defined in WAC 173-340-200, the proposed redevelopment is for commercial or industrial use. Therefore, the Method A, unrestricted land use values are appropriate for soil and groundwater.

Groundwater cleanup level development is shown in Table 1. If a state or federal drinking water standard exists for a contaminant, that standard is compared to MTCA risk-based criteria to determine if it is protective. If it is not protective, it is adjusted to a hazard quotient of 1 or cancer risk of $1x10^{-5}$. If no state or federal standard exists, then MTCA Method A criteria are applied.

Soil cleanup level development is shown in Table 2. Standards are evaluated for any state or federal laws and Method A values. The lowest of these standards is set as the preliminary cleanup level, unless that number is below background. As stated earlier, the Site was removed from terrestrial ecological evaluation; therefore, ecological standards do not apply.

4.4 Point of Compliance

The MTCA Cleanup Regulation defines the point of compliance as the point or points where cleanup levels shall be attained. Once cleanup levels are met at the point of compliance, the Site is no longer considered a threat to human health or the environment.

WAC 173-340-740(6) gives the point of compliance requirements for soil. The standard point of compliance for direct contact is soil within 15 feet of the ground surface throughout the entire site. This standard point of compliance is applied to soil on the Site.

The point of compliance for groundwater is defined in WAC 173-340-720(8). Groundwater points of compliance are established for the entire Site from the top of the saturated zone to the lowest potentially-affected portion of the aquifer. Alternatively, a conditional point of compliance may be set if it can be demonstrated that it is not practicable to meet cleanup levels throughout the site within a reasonable restoration time frame. This conditional point of compliance will be as close as practicable to the source, not to exceed the property boundary. A conditional point of compliance for groundwater is not proposed at this time.

5.0 CLEANUP ACTION SELECTION

5.1 REMEDIAL ACTION OBJECTIVES

The remedial action objectives describe the actions necessary to protect human health and the environment through eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route. These objectives are developed by evaluating the characteristics of the contaminated media, the characteristics of the hazardous substances present, migration and exposure pathways, and potential receptor points.

Soil has been contaminated with lead as a result of past activities at the Site. Groundwater at the Site has been contaminated with PCE as a result of off-Site, upgradient sources. Potentially complete exposure pathways for lead in soil include dermal contact or inhalation of dust. Ingestion is a potentially complete exposure pathway for PCE in groundwater. Potential soil receptors include on-site workers, trespassers, residents of nearby neighborhoods, passersby, and nearby off-site workers. Based on the current and reasonably anticipated future use of shallow groundwater, no groundwater receptors were identified; however, on-site workers and residents of nearby neighborhoods may be potential receptors if groundwater use changes in the future.

The following remedial action objectives are intended to address the significant potential exposure pathways:

- Prevent or minimize direct contact or ingestion of contaminated soil by humans or ecological receptors; and
- Prevent or minimize ingestion of contaminated groundwater by humans or ecological receptors.

5.2 CLEANUP ACTION ALTERNATIVES

Cleanup alternatives are evaluated as part of the Site FSA. The feasibility study included the evaluation of two options for soil and groundwater cleanup. The alternatives were scored and ranked using relevant criteria as described in WAC 173-340-360. Each of the considered alternatives includes a combination of one or more of the following remedial actions:

- Soil removal
- Monitored natural attenuation
- In situ groundwater treatment
- Groundwater monitoring

These remedial action options were combined to develop two alternatives, each intended to address all contaminated media at the Site. The following alternatives were developed based on the alternatives proposed in the FSA. Both Alternatives 1 and 2 include the same proposed remedy for lead-contaminated soil.

5.2.1 ALTERNATIVE 1: IN SITU TREATMENT AND SOIL REMOVAL

This alternative represents one of two options for groundwater remediation. Alternative 1 includes the following actions:

- Soil Removal
  - Excavate soil with lead concentrations exceeding the cleanup level, characterize, and dispose of the soil off-site at a permitted disposal facility. The initial area of excavation will be determined based on field screening results; the final excavation area will be determined by confirmation sampling of excavation sidewalls and floor.
  - Backfill excavation area with clean, imported fill to existing ground surface elevation and compact to a minimum of 92 percent, based on the Modified Proctor Test (ASTM, 2012).
- In Situ Treatment
  - Obtain an underground injection control permit for in situ chemical oxidation and conduct a pilot study to determine the effectiveness of this remedy. The pilot study will be conducted in the monitoring well that has exhibited the highest PCE concentrations on the Site (MW17) and will include two rounds of groundwater monitoring (one pre-injection and one post-injection) for VOC analysis at the pilot study well (MW17) and one down-gradient monitoring well (MW20).
  - If the pilot study results are favorable, conduct treatment injections in the eight monitoring wells exhibiting PCE cleanup level exceedances (wells RW02 through RW05, MW08, MW11, MW15, and MW17). Injection treatment at monitoring well MW17 will require permission to access the public right-of-way. If the in situ treatments are effective, cleanup levels may be achieved within 1 to 2 years.
  - Conduct quarterly monitoring and VOC analysis at four existing on-site monitoring wells (MW13, MW17, MW19, and MW20; see Figure 2) for at least one year, followed by periodic monitoring if necessary. The objectives of the groundwater monitoring are: (1) confirm effectiveness of the in situ chemical oxidation treatment; (2) collect the necessary data for making a determination of No Further Action, based on compliance with cleanup levels; and (3) confirm that PCE-impacted groundwater is not migrating past the POC or down-gradient of the Site property boundary.

5.2.2 Alternative 2: Monitored Natural Attenuation and Soil Removal

Alternative 2 includes the same approach for remediation of lead-contaminated soil as Alternative 1. Groundwater contamination will be addressed through monitored natural attenuation. Data indicate that concentrations of PCE in groundwater are declining through natural processes and are likely to continue to decrease to below cleanup levels in a reasonable timeframe. If historical trends continue, cleanup levels may be achieved within 5 years. The remedial action for groundwater in this alternative would be to conduct analysis of groundwater through sampling of four existing on-site monitoring wells on a regular basis to track future trends until PCE concentrations achieve cleanup levels.

5.3 Regulatory Requirements

The MTCA Cleanup Regulation sets forth the minimum requirements and procedures for selecting a cleanup action. A cleanup action must meet each of the minimum requirements specified in WAC 173-340-360(2), including certain threshold and other requirements. This section outlines these cleanup action requirements and procedures as set forth in the regulation. Section 5.4 provides an evaluation of the cleanup alternatives with respect to these criteria.

5.3.1 Threshold Requirements

WAC 173-340-360(2)(a) requires that the cleanup action shall:

- Protect human health and the environment;
- Comply with cleanup standards (see Section 5.0);
- Comply with applicable state and federal laws (see Section 5.3.5); and
- Provide for compliance monitoring.

5.3.2 Other Requirements

In addition, WAC 173-340-360(2)(b) states that the cleanup action shall:

- Use permanent solutions to the maximum extent practicable;
- Provide for a reasonable restoration time frame; and
- Consider public concerns

WAC 173-340-360(3) describes the specific requirements and procedures for determining whether a cleanup action uses permanent solutions to the maximum extent practicable. A permanent solution is defined as one where cleanup levels can be met without further action being required at the Site other than the disposal of residue from the treatment of hazardous substances. To determine whether a cleanup action uses permanent solutions to the maximum extent practicable, a disproportionate cost analysis is conducted. This analysis compares the costs and benefits of the cleanup action alternatives and involves the consideration of several factors, including:

- Protectiveness;
- Permanent reduction of toxicity, mobility and volume;
- Cost;
- Long-term effectiveness;
- Short-term risk;
- Implementability; and
- Consideration of public concerns.

The comparison of benefits and costs may be quantitative, but will often be qualitative and require the use of best professional judgment.

WAC 173-340-360(4) describes the specific requirements and procedures for determining whether a cleanup action provides for a reasonable restoration time frame.

5.3.3 Groundwater Cleanup Action Requirements

At sites with contaminated groundwater, WAC 173-340-360(2)(c) requires that the cleanup action meet certain additional requirements. Permanent cleanup actions shall be used when possible, and if a non-permanent action must be used, the regulation requires that the following two requirements be met:

1) Treatment or removal of the source of the release shall be conducted for liquid wastes, areas of high contamination, areas of highly mobile contaminants, or substances that cannot be reliably contained; and
2) Groundwater containment (such as barriers) or control (such as pumping) shall be implemented to the maximum extent practicable.

5.3.4 Cleanup Action Expectations

WAC 173-340-370 sets forth the following expectations for the development of cleanup action alternatives and the selection of cleanup actions. These expectations represent the types of cleanup actions Ecology considers likely results of the remedy selection process; however, Ecology recognizes that there may be some sites where cleanup actions conforming to these expectations are not appropriate.

- Treatment technologies will be emphasized at sites with liquid wastes, areas with high concentrations of hazardous substances, or with highly mobile and/or highly treatable contaminants;
- To minimize the need for long-term management of contaminated materials, hazardous substances will be destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites with small volumes of hazardous substances;
- Engineering controls, such as containment, may need to be used at sites with large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable;
- To minimize the potential for migration of hazardous substances, active measures will be taken to prevent precipitation and runoff from coming into contact with contaminated soil or waste materials;
- When hazardous substances remain on-site at concentrations which exceed cleanup levels, they will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances;
- For sites adjacent to surface water, active measures will be taken to prevent/minimize releases to that water; dilution will not be the sole method for demonstrating compliance;
- Natural attenuation of hazardous substances may be appropriate at sites where 1) source control is conducted to the maximum extent practicable, 2) leaving contaminants on-site doesn't pose an unacceptable risk, 3) there is evidence that natural degradation is occurring and will continue to occur, and 4) appropriate monitoring is taking place; and
- Cleanup actions will not result in a significantly greater overall threat to human health and the environment than other alternatives.

5.3.5 Applicable, Relevant, and Appropriate, and Local Requirements

WAC 173-340-710(1) requires that all cleanup actions comply with all applicable state and federal law. It further states that the term "applicable state and federal laws" shall include legally applicable requirements and those requirements that the department determines "...are relevant and appropriate requirements." This section discusses applicable state and federal law, relevant and appropriate requirements, and local permitting requirements which were considered and were of primary importance in selecting cleanup requirements. If other requirements are identified at a later date, they will be applied to the cleanup actions at that time.

MTCA provides an exemption from the procedural requirements of several state laws and from any laws authorizing local government permits or approvals for remedial actions conducted under a consent decree, order, or agreed order (RCW 70.105D.090). However, the substantive requirements of a required permit must be met. The procedural requirements of the following state laws are exempted:

- Ch. 70.94 RCW, Washington Clean Air Act;
- Ch. 70.95 RCW, Solid Waste Management, Reduction, and Recycling;
- Ch. 70.105 RCW, Hazardous Waste Management;
- Ch. 75.20 RCW, Construction Projects in State Waters;
- Ch. 90.48 RCW, Water Pollution Control; and
- Ch. 90.58 RCW, Shoreline Management Act of 1971.

WAC 173-340-710(4) sets forth the criteria that Ecology evaluates when determining whether certain requirements are relevant and appropriate for a cleanup action. Table 3 lists the state and federal laws that contain the applicable or relevant and appropriate requirements that apply to the cleanup action at the Site. Local laws, which may be more stringent than specified state and federal laws, will govern where applicable.

5.4 Evaluation of Cleanup Action Alternatives

The requirements and criteria outlined in Section 5.3 are used to conduct a comparative evaluation of alternatives one and two and to select a cleanup action from those alternatives. Table 4 provides a summary of the ranking of the alternatives against the various criteria.

5.4.1 Threshold Requirements

5.4.1.1 Protection of Human Health and the Environment and Compliance with Cleanup Standards

Alternatives 1 and 2 reduce or eliminate risk from contaminated soil and groundwater through a combination of removal and monitored natural attenuation, or removal and chemical treatment. These remedial actions will eliminate exposure pathways and protect human health and the environment and will comply with cleanup standards.

5.4.1.2 Compliance with State and Federal Laws

The selected cleanup levels are consistent with MTCA. Additionally, local, state and federal laws related to environmental protection, health and safety, transportation, and disposal apply to each proposed alternative. During remedial design, the selected alternative will be designed to comply with applicable, relevant, and appropriate requirements.

5.4.1.3 Provision for Compliance Monitoring

There are three types of compliance monitoring which are: protection, performance, and confirmational. Protection monitoring is designed to protect human health and the environment during the construction and operation & maintenance phases of the cleanup action. Performance monitoring confirms that the cleanup action has met cleanup and/or performance standards. Confirmational monitoring confirms the long-term effectiveness of the cleanup action once cleanup standards have been met or other performance standards have been attained. Both cleanup alternatives require varying levels of all three types of compliance monitoring and therefore will meet this provision.

5.4.2 OTHER REQUIREMENTS

5.4.2.1 Use of Permanent Solutions to the Maximum Extent Practicable

As discussed previously, to determine whether a cleanup action uses permanent solutions to the maximum extent practicable, the disproportionate cost analysis specified in the regulation is used. The analysis compares the costs and benefits of the cleanup action alternatives and involves the consideration of several factors. The comparison of costs and benefits may be quantitative, but will often be qualitative and require the use of best professional judgment.

Costs are disproportionate to the benefits if the incremental costs of an alternative are disproportionate to the incremental benefits of that alternative. Based on the analysis described below, it has been determined that alternatives 1 and 2 have equal rankings for use of a permanent solution to the maximum extent practicable. Alternative 1 provides a higher degree of protection, but the cost is almost twice that of Alternative 2.

- Protectiveness

Protectiveness is a factor by which human health and the environment are protected by the cleanup action, including the degree to which existing risks are reduced; time required to reduce risk at the facility and attain cleanup standards; on-site and off-site risks resulting from implementing the cleanup action alternative; and improvement of the overall environmental quality. Both of the cleanup alternatives are protective. Alternative 1 has the highest degree of protectiveness because it is expected to reduce groundwater PCE concentrations below cleanup levels in a relatively short timeframe (1 to 2 years). Alternative 2 is less protective because a longer remediation timeframe is required to meet groundwater cleanup levels. The fate and transport analysis included in the FSA indicates that PCE concentrations in groundwater are expected to decline to below the cleanup level within 5 years if historical trends of natural

attenuation continue. Groundwater exposure pathways are deemed incomplete for both human and ecological receptors and PCE is not expected to migrate off-Site at concentrations above cleanup levels.

- Permanent Reduction of Toxicity, Mobility and Volume

Permanence is a factor by which the cleanup action alternative permanently reduces the toxicity, mobility, or volume of hazardous substances. It takes into account the adequacy of the alternative in destroying the hazardous substances, the reduction or elimination of hazardous substance releases and sources of releases, the degree of irreversibility of the waste-treatment process, and the characteristics and quantity of treatment residuals generated. Removal of soils is a permanent remedial action because it permanently eliminates the source of releases at the Site. Both alternatives are equivalently permanent with respect to groundwater, as PCE is destroyed by either natural or chemically-enhanced attenuation processes. Therefore, Alternatives 1 and 2 are ranked equally for permanence.

- Cleanup Costs

Costs are approximated based on specific design assumptions for each alternative. Although the costs provided by consultants are estimates based on design assumptions that might change, the relative costs can be used for this evaluation. The estimated cost for Alternative 1 ($274,200 to $338,300) is almost twice the cost for Alternative 2 ($176,700 to $182,300). For a detailed description of the costs involved with each alternative, please refer to the FSA.

Alternatives 1 and 2 include anticipated costs for disposing a portion of lead-contaminated soil above 100 mg/kg as hazardous waste. If this soil can be stabilized on-site, then costs can be reduced through disposal at a less expensive landfill.

- Long-Term Effectiveness

Long-term effectiveness includes the degree of certainty that the alternative will be successful; the reliability of the alternative for the expected duration of hazardous substances remaining on site at concentrations that exceed cleanup levels; the magnitude of residual risk with the alternative in place; and the effectiveness of controls required to manage treatment residues or remaining wastes. Long-term effectiveness of Alternative 1 is considered slightly higher than Alternative 2, since it has a greater likelihood of successfully decreasing PCE concentrations to below cleanup levels over a shorter timeframe.

- Short-Term Risk

Short-term risks to remediation workers, the public, and the environment are assessed under this criterion. Generally, short-term risks are expected to be linearly related to the amount of material handled, treated, and/or transported and disposed of (e.g., worker injury per cubic yard excavated [equipment failure], public exposure per cubic yard-mile transported [highway accident]).

This factor addresses the risk to human health and the environment associated with the alternative during construction and implementation, and the effectiveness of measures that will be taken to manage such risks. Potential exposure via transport, handling, and excavation required for both of the alternatives could lead to short-term risks. Alternative 2 requires less handling of oxidizing chemicals and mobilization of heavy equipment for groundwater treatment, and therefore involves lower short-term risks than Alternative 1.

- Implementability

This factor addresses whether the alternative can be implemented and is technically possible. The availability of necessary materials; regulatory requirements; scheduling; access for construction operations and monitoring; and integration with existing and neighboring site uses must be considered. The proposed alternatives are both well proven and have been employed at many sites throughout the United States; both are readily implementable and rank equivalently.

- Consider Public Concerns

This factor includes considering concerns from individuals; community groups; and local governments, tribes, federal and state agencies, and any other organization that may have an interest in or knowledge of the site and that may have a preferred alternative. Both alternatives provide opportunity for members of the public to review and comment on plans. No major concerns were raised by the public during community meetings that occurred during the investigation process.

5.4.2.2 Provide a Reasonable Restoration Time Frame

WAC 173-340-360(4) describes the specific requirements and procedures for determining whether a cleanup action provides for a reasonable restoration time frame, as required under subsection (2)(b)(ii). The factors that are used to determine whether a cleanup action provides a reasonable restoration time frame are set forth in WAC 173-340-360(4)(b) and include:

- Potential risks posed by the site to human health & the environment;
- Practicability of achieving a shorter restoration time frame;
- Current Site use and nearby resources that are or may be affected by the Site;
- Potential future use of the site and nearby resources that are or may be affected by the Site;
- Availability of alternative water supplies;
- Likely effectiveness and reliability of institutional controls;
- Ability to control and monitor migration of hazardous substances;
- Toxicity of hazardous substances; and
- Natural processes that reduce contaminant concentrations and are documented to occur.

Both alternatives include soil removal to cleanup levels, which provides flexibility for current and future Site use, reduces risk, and does not require institutional controls for soil. Alternative 1 provides groundwater treatment and would potentially provide the shortest restoration time

frame (1 to 2 years, if the treatment is effective) and would help control the migration of hazardous substances. Alternative 2 relies on natural attenuation; therefore, it is expected that alternative 2 will provide a potentially longer restoration timeframe (less than 5 years, if historical trends continue) than Alternative 1.

5.4.3 Groundwater Cleanup Action Requirements

Cleanup actions that address groundwater must meet the specific requirements described in Section 5.3.3 in addition to those listed above. Both alternatives meet the requirement of a permanent groundwater cleanup action required under WAC 173-340-360(2)(c). Alternative 1 includes active groundwater treatment. Alternative 2 meets the requirement through natural attenuation, which is a form a treatment. Although the treatment will not actively be enhanced, monitoring will provide evidence that treatment is occurring under natural processes.

5.4.4 Cleanup Action Expectations

Specific cleanup action expectations are outlined in WAC 173-340-370 and are described in Section 5.3.4. Alternatives 1 and 2 address these expectations in the following manner:

- Alternatives 1 and 2 include source control measures through the targeted removal of accessible contaminated soils and groundwater treatment. Natural attenuation is an effective groundwater treatment because leaving contaminants on-site will not pose an unacceptable risk, degradation has been demonstrated to occur at the Site, and regular monitoring will be conducted. Soil removal and both groundwater treatment options effectively remove or reduce the overall threat to human health and the environment. These actions meets the following cleanup expectations:
    - Treatment technologies will be emphasized at sites with liquid wastes, areas with high concentrations of hazardous substances, or with highly mobile and/or highly treatable contaminants.
    - To minimize the need for long-term management of contaminated materials, hazardous substances will be destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites with small volumes of hazardous substances.
    - To minimize the potential for migration of hazardous substances, active measures will be taken to prevent precipitation and runoff from coming into contact with contaminated soil or waste materials.
    - Natural attenuation of hazardous substances may be appropriate at sites where 1) source control is conducted to the maximum extent practicable, 2) leaving contaminants on-site doesn't pose an unacceptable risk, 3) there is evidence that natural degradation is occurring and will continue to occur, and 4) appropriate monitoring is taking place; and
    - Cleanup actions will not result in a significantly greater overall threat to human health and the environment than other alternatives.

The following cleanup expectations are not applicable to the Site:

- Engineering controls, such as containment, may need to be used at sites with large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable.
- When hazardous substances remain on-site at concentrations which exceed cleanup levels, they will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances.
- For sites adjacent to surface water, active measures will be taken to prevent/minimize releases to that water; dilution will not be the sole method for demonstrating compliance.

5.5 DECISION

Based on the analysis described above, Alternative 1 was selected as the proposed remedial action for the Cream Wine Site. The alternative meets each of the minimum requirements for remedial actions and provides a potentially shorter timeframe (1 to 2 years) for achieving cleanup objectives.

Alternative 1 meets each of the threshold requirements and uses permanent solutions to the maximum extent practicable. The cost for alternative 2 is significantly less, but it is less protective in the short term and requires a potentially longer timeframe (approximately 5 years) to achieve reductions in groundwater concentrations of PCE to levels below the cleanup levels. Table 4 provides a summary of the relative ranking of each alternative in the decision process.

6.0 SELECTED REMEDIAL ACTION

The proposed cleanup action for the Site includes the excavation of all soils exceeding the cleanup level of 250 mg/kg for lead. Groundwater will be addressed through in situ chemical oxidation. Existing on-site wells can be used for the treatment and monitoring.

Compliance monitoring will take place, and will be established in a Compliance Monitoring Plan to be submitted to and approved by Ecology in conjunction with Engineering Design Plans. Protection monitoring will involve dust control during any work with contaminated soil. Performance monitoring will consist of the evaluation of groundwater sampling results. Confirmational monitoring will not take place until cleanup levels have been met.

Monitoring is required until such time as the Site meets MTCA requirements for demonstrating that remediation is complete.

6.1 GROUNDWATER MONITORING

Groundwater monitoring is required to determine effectiveness of the in situ treatment, and will include the quarterly sampling of wells for PCE. Groundwater monitoring shall be performed in accordance with the approved Compliance Monitoring Plan, with a short-term goal of measuring the effectiveness of the in situ treatment pilot study, and eventual full treatment, and a long-term goal of achieving cleanup levels. Additionally, groundwater data will be evaluated on an annual

basis using Ecology's Draft Vapor Intrusion Guidance (Ecology, 2009) to determine if risks from soil vapor remain at the Site.

6.2 INSTITUTIONAL CONTROLS

Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances at the Site. Such measures are required to assure both the continued protection of human health and the environment and the integrity of the cleanup action whenever hazardous substances remain at the Site at concentrations exceeding applicable cleanup levels. Institutional controls can include both physical measures and legal and administrative mechanisms. WAC 173-340-440 provides information on institutional controls, and the conditions under which they may be removed.

No institutional controls are planned for the Site at this time.

6.3 FINANCIAL ASSURANCES

WAC 173-340-440 states that financial assurance mechanisms shall be required at sites where the selected cleanup action includes engineered and/or institutional controls. Financial assurances are not required at this Site because no institutional controls are planned for the Site.

6.4 PERIODIC REVIEW

As long as groundwater cleanup levels have not been achieved, WAC 173-340-420 states that at sites where a cleanup action requires an institutional control or financial assurance, a periodic review shall be completed no less frequently than every five years after the initiation of a cleanup action. No institutional controls or financial assurances are planned for the Site; however, periodic reviews will be required at the Site until cleanup levels have been achieved in groundwater under the provision that additional review may be necessary to assure long-term protection of human health and the environment. After groundwater cleanup levels have been achieved, periodic reviews will cease.

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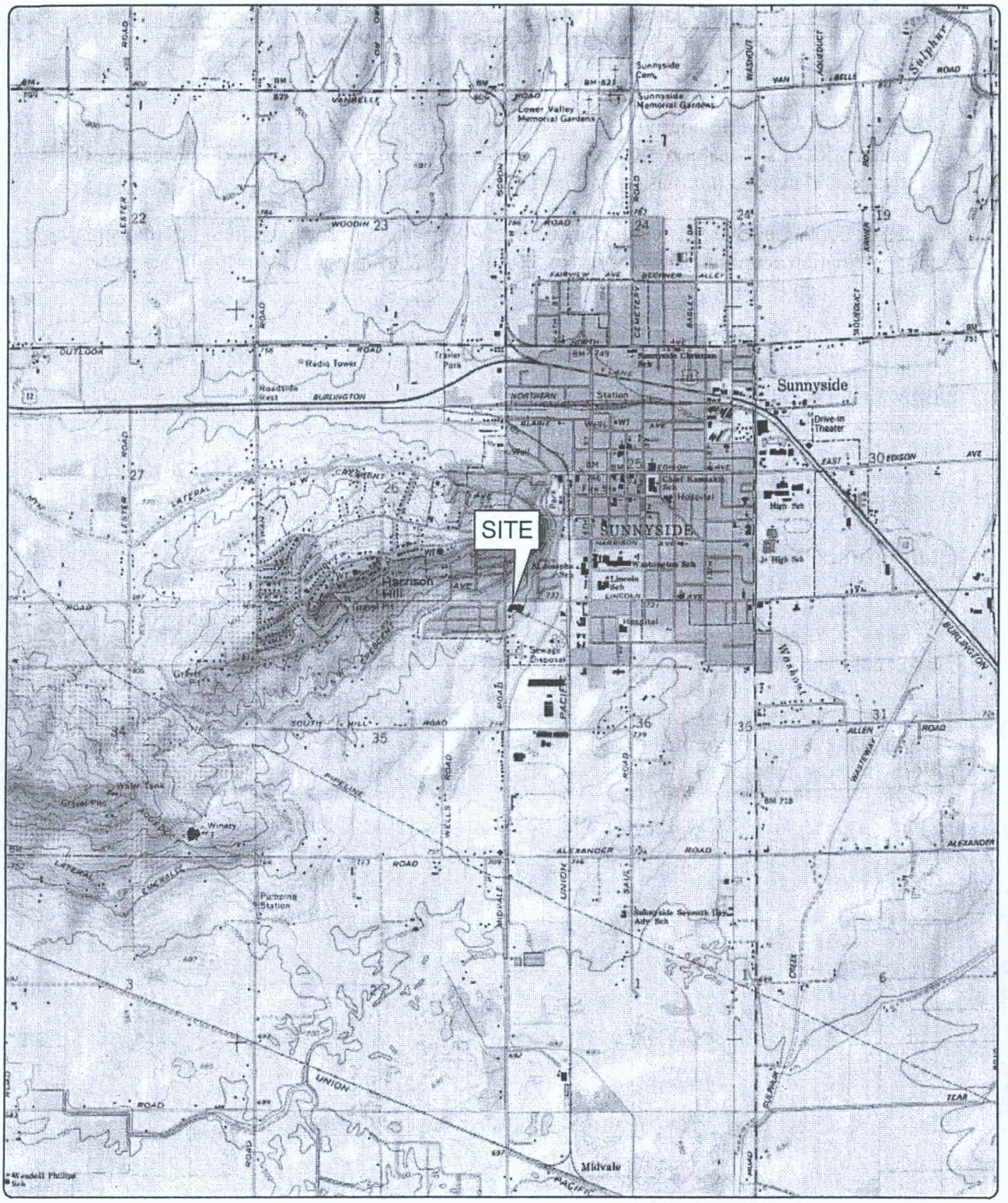

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Source: US Geological Survey (1990) 7.5-minute topographic quadrangle: Sunnyside
Section 36, Township 10 North, Range 22 East

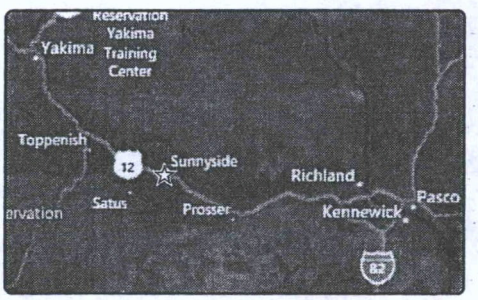

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Figure 1
Site Location

Former Cream Wine Property
Port of Sunnyside
Sunnyside, Washington

0 1,500 3,000
Feet

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Project: 0346.04.02 Produced By: J. Schane Approved By: J. Pounds Print Date: 9/17/2012 Path: X:\0346.04\Projects\Fig1_Site Location.mxd

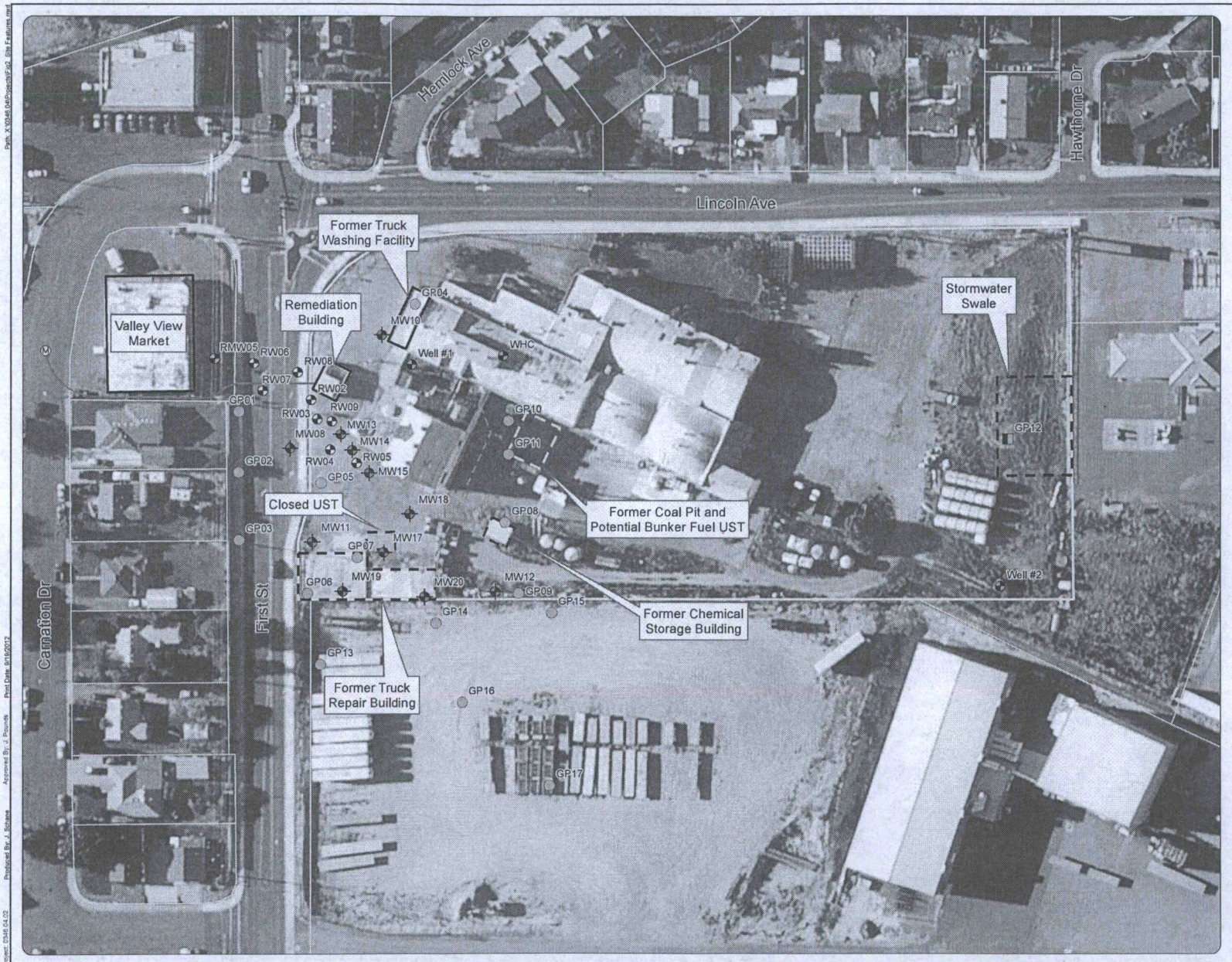

Figure 2
Site Features

Former Cream Wine Property
Port of Sunnyside
Sunnyside, Washington

DRAFT

Legend

- Boring Location
- Monitoring Well
- Monitoring/Recovery Well
- Production Well
- Recovery Well
- Soil Sample Location
- Existing Manhole Sanitary Sewer
- Former Wastewater Line/ Former Open Ditch
- Discharge Line from Remediation Building
- Site Boundary (Approximate)
- Tax Lots (Approximate)

Note: Sample locations were surveyed by Gray's Survey and Engineering on June 18 and 19, 2012.

0 40 80
Feet

Source: Aerial photograph obtained from ESRI, Inc. ArcGIS Online/Bing Maps

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Project: 0546.04.02 Produced By: J. Schiess Approved By: J. Pounds Print Date: 9/19/2012

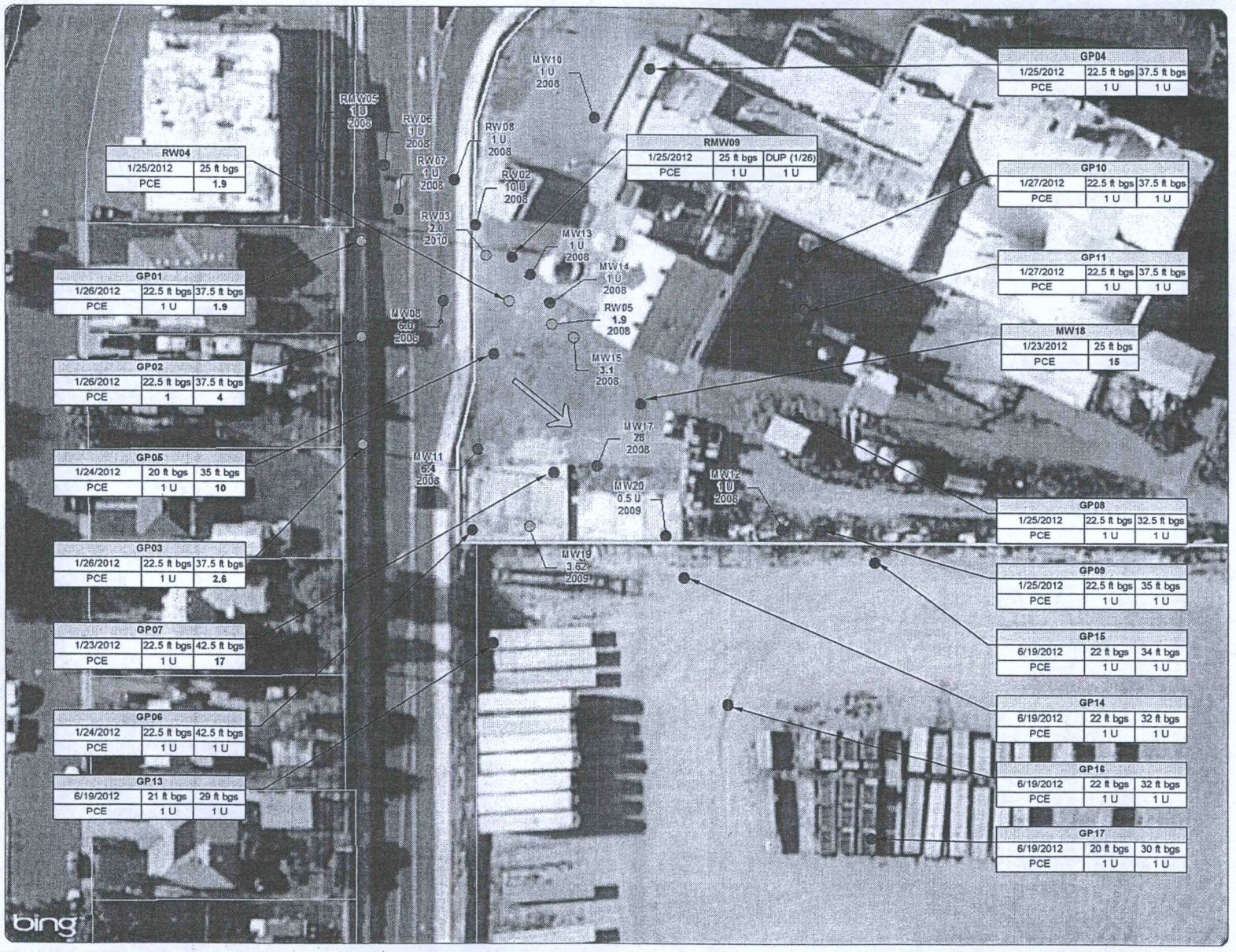

Figure 3
Groundwater PCE Results

Former Cream Wine Property
Sunnyside, Washington

DRAFT

Legend

Sample Locations

- PCE Non-Detection
- PCE Detection - Below CUL
- PCE Detection - Above CUL

MW10 1 U 2008 — Historical PCE Data (Location, Concentration, Date)

Current PCE Data

Groundwater Flow Direction

Site Boundary (Approximate)

Tax Lots (Approximate)

Notes:

1. PCE = Tetrachloroethene
2. All concentrations are measured in micrograms per liter (µg/L).
3. **Bold** values exceed cleanup levels.
4. ft bgs = feet below ground surface
5. DUP = duplicate sample
6. U = Analyte was not detected at or above method detection limit
7. Average historical groundwater flow direction as reported by SES, 2011.
8. Historical data were obtained from SES, 2011.
9. Historical data for monitoring wells MW19 and MW20 were obtained from Kennedy/Jenks, 2009.
10. CUL = Model Toxics Control Act Method A Cleanup Level for PCE of 5 ug/L.

0 25 50
Feet

Source: Aerial photograph obtained from ESRI, Inc. ArcGIS Online/Bing Maps. Historical well data from SoundEarth Strategies (2011).

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Produced By: jschow Approved By: K. Hirsch Print Date: 10/9/2012
Project: 0346.06

Analyte	Max Concentration (C_m)	Human Health Criteria			Background	Indicator Hazardous Substance?	Basis	Final Cleanup Level
		Method A unrestricted	Method B, carcinogen	Method B, non-carcinogen				
	mg/kg	mg/kg	mg/kg	mg/kg	mg/kg			mg/kg
Metals								
Lead	876	250	NR	NR	15	yes		250
TPH								
Gasoline Range Organics	49	100	NR	NR		no	C_m<CUL	
Diesel Range Organics	155	2000	NR	NR		no	C_m<CUL	
Lube Oil Range Organics	399	2000	NR	NR		no	C_m<CUL	
Heavy Oil Range Organics	554	2000	NR	NR		no	C_m<CUL	
VOCs								
Acetone	0.199	NR	NR	72000		no	C_m<CUL	

Notes:
mg/kg = milligrams per kilogram
NR = not researched - no value exists for this parameter
TPH = total petroleum hydrocarbons
gray shading = selected cleanup level

Table 2. Soil Cleanup Levels Evaluation

Analyte	Max Concentration (C_m)	Applicable State & Federal Laws				MTCA Cancer Risk at MCL	MTCA Hazard Quotient at MCL	Is MCL Protective?	Adjusted MCL	Method A	Indicator Hazardous Substance?	Basis	Final Cleanup Level
		Federal MCL	Federal MCLG	State MCL	Minimum MCL								
	µg/L	µg/L	µg/L	µg/L	µg/L				µg/L	µg/L			µg/L
Chloroform	2.1	80	0	80	80		0.988	yes		NR	no	C_m<CUL	
Methyl tert-butyl ether (MTBE)	250	NR	NR	NR	NR					21	no	(a)	
Tetrachloroethene (PCE)	17	5	0	5	5	$2.38x10^{-7}$	0.104	yes		5	yes		5
Toluene	6.2	1000	1000	1000	1000		1.56	no	640	1000	no	C_m<CUL	

Notes:

(a) not selected as an indicator hazardous substance due to the low detection frequency, active remediation, and off-site source.

C_m = maximum concentration
CUL = cleanup level
gray shading = selected cleanup level
Max = maximum
MCL = maximum contaminant level
MCLG = federal maximum contaminant level goal
NR = not researched - no value exists for this parameter
µg/L = micrograms per liter

Table 1. Groundwater Cleanup Levels Evaluation

Action	Citation	Comment
Cleanup Action Construction	29 CFR 1910	Occupational Safety and Health Act
	Chapter 43.21 RCW	State Environmental Policy Act
	40 CFR 260	Resource Conservation and Recovery Act
	Chapter 173-303 WAC	Washington Dangerous Waste Regulations
	Chapter 173-160 WAC	Minimum Standards for Construction and Maintenance of Wells
	Chapter 296-155 WAC	Safety Standard for Construction
	Chapter 173-340 WAC	Model Toxics Control Act
	Chapter 173-304 WAC	Minimum Functional Standards for Solid Waste Handling
	Yakima County Municipal Code, Title 13	Building and Construction
	Yakima County Municipal Code, Title 16	Environment
Cleanup Standards	Chapter 173-340 WAC	Model Toxics Control Act
	42 USC 300; 40 CFR 141 and 143	Safe Drinking Water Act
	33 USC 1251	Clean Water Act
	Chapter 246-290 WAC	Safe Drinking Water Act for Public Water Supplies
Soil Remediation	40 CFR 264	Resource Conservation and Recovery Act
	Chapter 70.95 RCW; Chapter 173-304 WAC	Minimum Functional Standards for Solid Waste Handling
	Chapter 174-50 WAC	Accreditation of Environmental Laboratories
Groundwater Remediation	Chapter 173-340 WAC	Model Toxics Control Act
	40 CFR 144 and 146	EPA Underground Injection Control Regulations
	40 CFR 141	Safe Drinking Water Act, Primary Drinking Water Regulations
	Chapters 173-150 and 173-154 WAC	State Water Code and Water Rights
	Yakima County Municipal Code, Title 12	Water and Sewage

Table 3. Applicable or Relevant and Appropriate Requirements for the Cleanup Action

Alternative	Description	Protectiveness	Permanence	Long-Term Effectiveness	Management of Short-Term Risks	Implementability	Average	Public Concerns	Total Cost
Alternative 1	In situ treatment with excavation and off-site disposal of all impacted soil	5	5	5	4	4	**4.6**	TBD	**$ 338,300**
Alternative 2	Monitored natural attenuation with excavation and off-site disposal of all impacted soil	4	5	4	5	4	**4.4**	TBD	**$ 182,300**

Table 4. Cleanup Action Alternatives Evaluation

EXHIBIT D

Scope of Work and Schedule

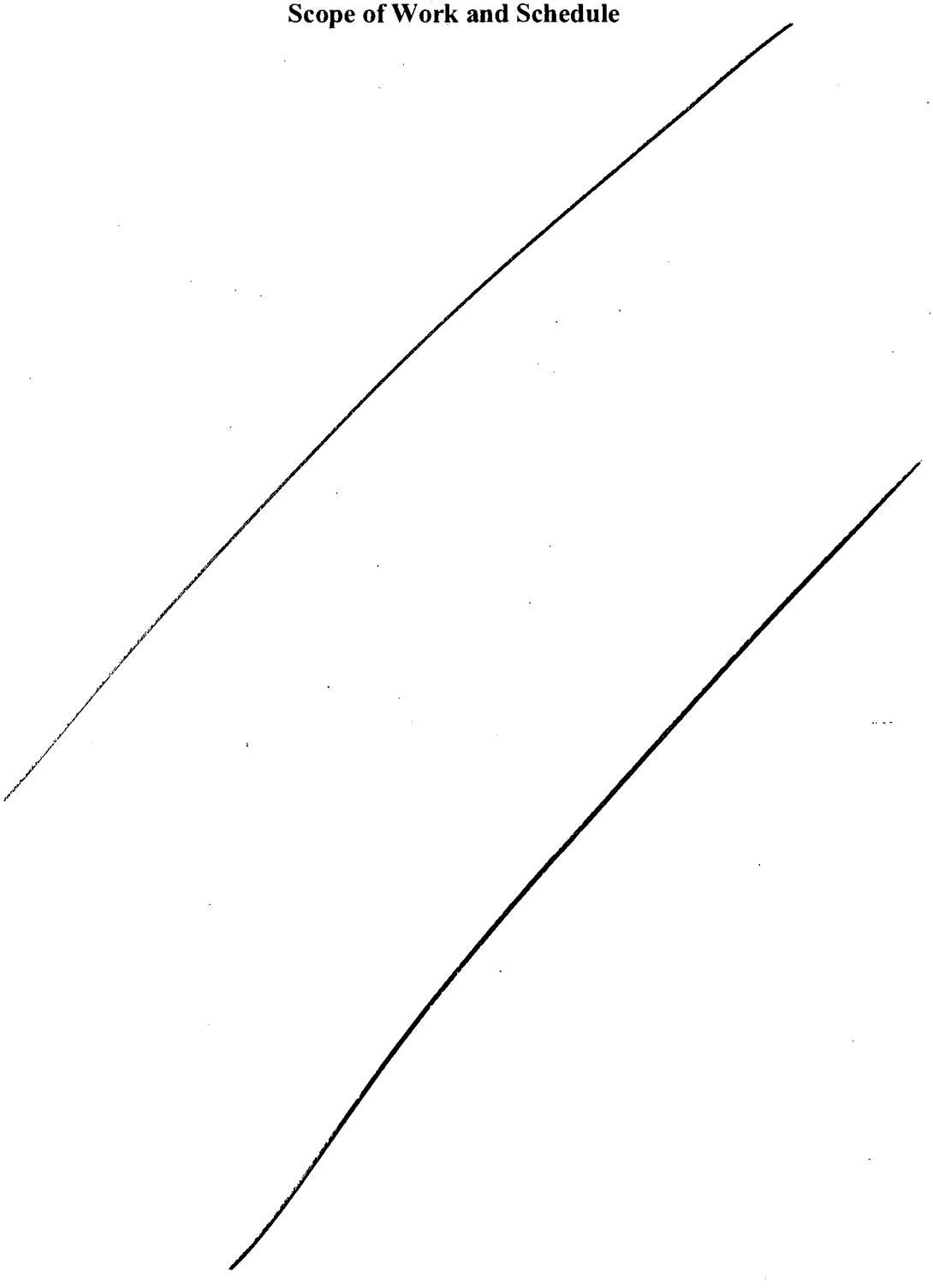

EXHIBIT D
SCOPE OF WORK AND SCHEDULE
for the Cleanup Action at the Former Cream Wine, Sunnyside, WA

The Port of Sunnyside (Port) will perform all elements of this Scope of Work in order to perform a cleanup action at the former Cream Wine (Site). The Port will use this Scope of Work to develop Work Plans to implement the Cleanup Action Plan (CAP). The Port shall provide for all personnel, materials and services necessary for, or incidental to, implementing the CAP.

The cleanup action shall contain the following tasks:

A. Remedial Action Plan:

The Port shall prepare a Remedial Action Plan which will identify the goals of the cleanup action and consider all pertinent information from the Focused Site Assessment (FSA). It will include a brief site operational history and site characterization, characteristics of the contaminants and contaminated media, a summary of the proposed remedial action and a schedule of deliverables. The Remedial Action Plan shall also include the following elements, which shall conform with the requirements of WAC 173-340-400 and WAC 173-303-410:

1. Engineering Design Report

An engineering design report (Report) shall describe in situ chemical oxidation treatment system, along with the characteristics and the anticipated quantities of soil to be removed or consolidated. The Report must include maps identifying existing site conditions, the locations of the proposed cleanup actions, a soil excavation plan, material and design specifications, sampling specifications, information on backfill emplacement, testing, compaction, and final grading.

2. Construction Plans and Specifications

Construction plans and specifications (Plans) shall detail the cleanup actions to be performed and shall be prepared in conformance with good engineering practices and techniques. The Plans shall include a general description and schedule of work to be performed, maps, copies of permits, material specifications, and detailed plans for in situ treatment and soil excavation. Also included shall be specific measures to manage short-term hazards associated with the construction phase of this cleanup action, including dust control, surface water/storm water runoff and any accidental spills. The Plans shall describe the specifics of any quality control testing to be performed and additional information to address applicable state, federal, and local requirements. In addition, these Plans shall include:

a. Health and Safety Plan

The Port will prepare a health and safety plan that conforms to WAC 173-340-810 and includes emergency information, characteristics of waste, levels of protection, hazard evaluation, and any other applicable site specific information.

b. Quality Assurance Project Plan

The Quality Assurance Project Plan from the FSA shall be reviewed, revised as

necessary, and incorporated into the Remedial Action Plan.

c. Data Management

Data shall be managed consistent with the FSA. Any changes shall be submitted with the Plans.

3. Operations and Maintenance Plan

An operations and maintenance plan (O&M Plan) is intended to present technical guidance and regulatory requirements to assure effective operations of a facility or on-going cleanup under normal and emergency conditions. There is no operating facility on this Site. However, there are elements of the cleanup action that will require on-going oversight and maintenance following completion of the cleanup action. The following information shall be included in the O&M Plan:

a. Sampling & Analysis Plan (SAP)

Groundwater monitoring will take place quarterly for groundwater indicators for a minimum of one year. At the end of one year, data will be evaluated by Ecology to determine the sampling schedule beyond one year. Soil sampling will take place during the remedial activities to document compliance with cleanup levels.

The SAP will include soil and groundwater sampling methodology, analytical parameters, quality assurance / quality control protocols, and a groundwater sampling schedule. If any well is damaged or needs to be removed, the SAP will require the installation of a replacement well to Ecology's specifications.

b. Compliance Monitoring

Compliance monitoring consists of protection monitoring, performance monitoring and confirmational monitoring. Protection monitoring confirms that human health and the environment are adequately protected during construction and operation of a cleanup action. Performance monitoring confirms that the cleanup action has attained cleanup and/or performance standards. Confirmational monitoring confirms the long-term effectiveness of the cleanup action once cleanup standards are attained.

Soil monitoring provides protection and performance monitoring. Soil samples will be collected during the implementation of the cleanup action to evaluate the appropriateness and adequacy of the selected actions.

Groundwater monitoring provides performance and confirmational monitoring. Groundwater sampling will take place quarterly for one year. After an evaluation of one year of sampling results by Ecology, the schedule will be reevaluated to determine the frequency of future sampling events.

B. Progress Reports

Progress Reports shall be completed monthly after approval of the Remedial Action Plan. These progress reports shall include a summary of: work in progress, key activities schedules, deliverables submitted, field work and data generated, deviations from work and sampling plans, any subcontracting, analytical services performed, and any key staff changes.

C. Cleanup Action Report
The Port shall submit a final cleanup action report after the completion of all elements of the Remedial Action Plan, except confirmational monitoring. The report shall include, but not be limited to:

- All aspects of the completed cleanup actions, including documentation of in situ treatment, soil removal, and disposition of excavated contaminated soils.
- Site maps illustrating the location of all cleanup related activities, soil and groundwater monitoring data, surveyed groundwater elevation contours, groundwater flow direction.
- All compliance monitoring data gathered.
- A stamped statement from a professional engineer attesting to the completed cleanup actions and substantial compliance with the plans and specifications for the site.

D. Remedial Action Performance and Groundwater Compliance Monitoring Report
To track the performance of the cleanup action, the Port shall prepare and submit to Ecology quarterly reports presenting the results of the first year of compliance monitoring. The schedule of future monitoring reports will be determined by Ecology after the review of data; reports shall coincide with the frequency of monitoring.

Schedule of Deliverables

Deliverables	**Date Due**
1. Effective date of Consent Decree	Start
2. Draft Remedial Action Plan and Schedule of Work to be Performed	240 days after start
3. Final Remedial Action Plan and Schedule of Work to be Performed	30 days after Ecology approval of draft
4. Begin Implementation of Remedial Action following Schedule of Work to be Performed	60 days after approval of plans
5. Draft Cleanup Action Report	60 days after completion of all elements of Remedial Action Plan, except conformational monitoring
6. Final Cleanup Action Report	30 days after Ecology approval of draft
7. Progress Reports	Every month during remedial action
8. Groundwater Compliance Monitoring Reports	Quarterly following initial sampling for one year; future schedule to be determined after Ecology's review of the first year of data

EXHIBIT E

Public Participation Plan

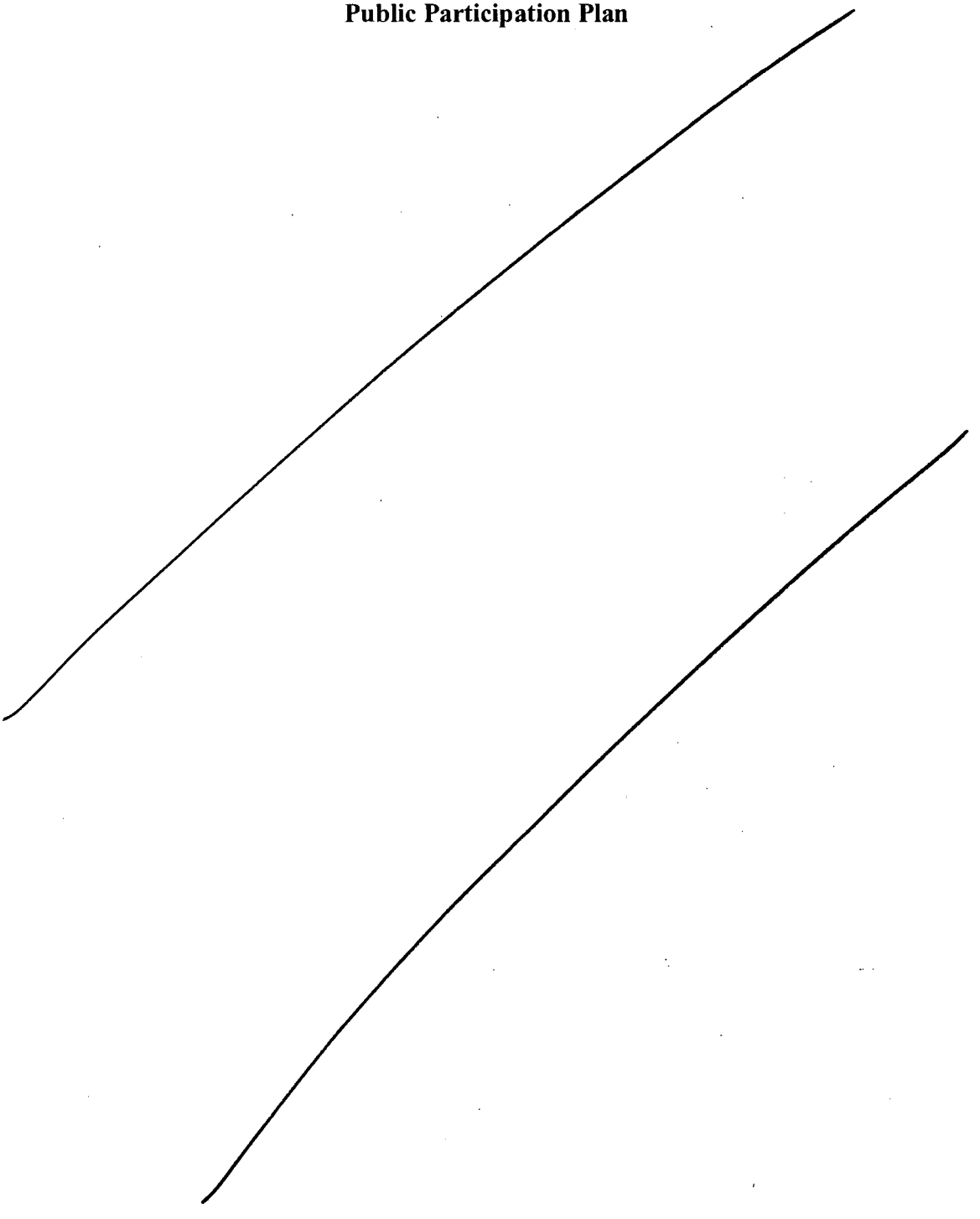

EXHIBIT E

PUBLIC PARTICIPATION PLAN

Cream Wine Site
Facility Site ID No. 46552166
Cleanup Site ID No. 4863

PREPARED BY:
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY
AND
MAUL FOSTER & ALONGI, INC.

October 2012

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Para asistencia en Español Richelle Perez 360/407-7528

Если вам нужно помощь по русский, звоните Tatyana Bistrevesky 509/928-7617

PUBLIC PARTICIPATION PLAN

Getting Involved in Cleanup at the Former Cream Wine Site

Introduction

The site is formally known as the Cream Wine site. Located on the corner of First Street and Lincoln Avenue along a gateway corridor to downtown Sunnyside, the Cream Wine site is important to the whole city. (see Appendix A and A-1).

The approximately 4.6 acre property is located at the corner of two major arterials and one of the main entrances to downtown Sunnyside. The location represents a transition of land uses as the last of a line of industrial properties on First Street with residential neighborhoods to the north and west. The Property is currently zoned Heavy Manufacturing. The property has been developed for industrial use since approximately 1942. An evaporated milk plant operated on the property from that time until 1986. The facility was repurposed as a winery from 1988 to 2010 under different owners and operators. The property has been vacant since the fall of 2010. Environmental investigations on this property have found that solvents have impacted groundwater and there are also high levels of lead in soil at the site. This property has also been impacted by a petroleum hydrocarbon release from underground storage tanks (USTs) from the adjacent Valley View Market property located to the west of the Cream Wine site. The potentially liable party (PLP) for the petroleum release has been identified and taken action to cleanup those impacts, but the solvent and lead issues remain.

The Washington State Department of Ecology encourages the public to learn about and get involved in decision-making opportunities available during cleanup of contamination at the site. This Public Participation Plan (Plan) provides an overview of the public involvement opportunities and the Model Toxics Control Act (MTCA), which guides the formal cleanup process at sites in Washington State. This document also outlines the purpose of the Plan, when public notice will occur, the amount of time the public has to comment, where the potentially affected area is located, and ways the public may get involved in providing feedback. It also provides a site background and community profile.

This Plan is part of a *Prospective Purchaser Consent Decree* which includes a Draft Cleanup Action Plan and State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS). The Prospective Purchaser Consent Decree is a legal document that formalizes the agreement between Ecology and the prospective purchaser for cleanup at a site. Generally, a potentially liable person (PLP) is identified as the responsible party for paying for cleanup at a site. This site is in foreclosure and no viable PLPs exist for the groundwater and soil contamination. The prospective purchaser is *not* a PLP.

The "prospective purchaser" is the Port of Sunnyside. The Port will acquire the Cream Wine site out of foreclosure, remediate existing contamination, and redevelop the site. Remediation will remove potential exposure to contaminants as well as clean up physical hazards at the site. Additionally, redevelopment of the site will generate jobs and provide many enhancements to the City of Sunnyside.

The documents listed above will guide cleanup at the site and will go through a public comment period. Once public comment has been reviewed and changes to the documents are made if applicable, the cleanup moves forward. Cleanup begins after the property is purchased. The Prospective Purchaser Consent Decree relieves the Port of Sunnyside of liability for known contamination once the cleanup is complete.

Purpose of the Plan

There are three primary purposes of the Public Participation Plan:

- Inform the public about ways to participate in the decision-making process related to the site cleanup.
- Gather information from the public that will help Ecology plan for site-related cleanup.
- Provide background about the proposed cleanup, and outline Ecology's roles and responsibilities regarding cleanup activities.

Overview of the Plan and Model Toxics Control Act (MTCA)

In the November 1988 general election, a citizens' initiative passed that is called the Model Toxics Control Act (MTCA). MTCA provides guidelines and requirements for the cleanup of contaminated sites in Washington State. The law sets strict standards so cleanup at sites is protective of human health and the environment. Public participation is an important part of the MTCA process.

Public participation needs are assessed at each site based on public interest and the degree of risk posed by contaminants. Individuals who live near a site, community groups, businesses, organizations, and other interested parties are provided an opportunity to become involved in commenting on the cleanup process. Citizen groups living near contaminated sites may apply for public participation grants to receive technical assistance in understanding the cleanup process and to create additional public participation avenues.

A Public Participation Plan includes requirements for public notice such as:

- Identifying available site-related documents and the locations for review.
- Providing public comment periods.
- Holding public meetings or hearings.

Additional forms of participation may be personal interviews, involvement in citizen advisory groups, questionnaires, or workshops.

The Plan complies with MTCA regulations (Chapter 173-340-600 WAC). The Port of Sunnyside, their contractors, Maul Foster and Alongi, Inc. and the WA Department of Ecology will coordinate and implement outreach activities as applicable. Ecology will determine final approval of the Plan as well as any amendments.

A glossary of terms used in this Plan is included as Appendix C. Documents relating to the cleanup action may be reviewed at the repositories listed on page 7 of this Plan. If individuals are interested in knowing more about the site or have comments regarding the Plan, please contact one of the individuals listed below:

WA Department of Ecology Contacts:
Norm Hepner, Site Manager
Washington State Department of Ecology
Central Regional Office
15 West Yakima Avenue
Yakima, WA 98902
509/457-7127
E-mail: norm.hepner@ecy.wa.gov

Frosti Smith, Public Involvement Coordinator
Washington State Department of Ecology
Central Regional Office
15 West Yakima Avenue
Yakima, WA 98902
509/454-7841
Email: frosti.smith@ecy.wa.gov

Roger Johnson, Public Disclosure Coordinator
Washington State Department of Ecology
Central Regional Office
15 West Yakima Avenue
Yakima, WA 98902
509/454-7658
E-mail: roger.johnson@ecy.wa.gov

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Para asistencia en Español
Richelle Perez 360/407-7528

Если вам нужно помощь по русский, звоните
Tatyana Bistrevesky 509/928-7617

Port of Sunnyside Contact:
Jed Crowther
Property, Development, and Project Manager
Phone: 509/839-7678
e-mail: jed@portofsunnyside.com

Michael Stringer
Maul Foster & Alongi, Inc.
911 Western Avenue, Suite 575
Seattle, WA 98104
Phone: 206/498-9147
E-mail: mstringer@maulfoster.com

Public Participation and the Model Toxics Control Act (MTCA)

Ecology's Toxics Cleanup Program investigates reports of contamination that may threaten human health and/or the environment. If an investigation confirms the presence of contaminants, a site is ranked from 1-5 and placed on a Hazardous Sites List. Contamination has been detected on the Cream Wine site, but it has not yet been ranked.

Current or former owners or operators as well as any other potentially liable persons (PLPs) of a site may be held responsible for cleanup of contamination according to the standards set under MTCA. The PLPs are notified by Ecology that a site has contaminants, and the process of cleanup begins with Ecology implementing and overseeing the project.

Site Background

The Cream Wine Site is located at 111 East Lincoln Avenue in the City of Sunnyside, Yakima County, Washington (see Appendix A). The Property is approximately 4.6 acres in size and is generally flat.

The site is bordered by Lincoln Avenue and a residential neighborhood to the north; by a cold storage and warehouse facility to the south, by a commercial fueling station to the west; and by First Street and residential and commercial and development to the east (Valley View Market).

The property has been developed for industrial use since approximately 1942. An evaporated milk plant operated on the Property from that time until 1986. The features of the plant included a truck shop garage, mechanical shop, coal bin and boiler, underground storage tanks (USTs), above ground storage tanks (ASTs), and chemical storage. The facility was repurposed as a winery from 1988 to 2010 under different owners and operators.

The Property is located downslope from a former fueling station at Valley View Market (VVM). VVM had USTs for fuel which resulted in a release that flowed with shallow groundwater towards the southeast under First Avenue and onto the Property. Time Oil Company has conducted remedial actions that have greatly reduced those impacts to groundwater. Based on these efforts, the cleanup related to the fuel release is nearing completion. However, through the sampling program completed for the VVM property, another contaminant of concern, of tetrachloroethylene (aka perchloroethylene or PCE) was detected in groundwater on the Property at concentrations above state cleanup standards. Studies indicate that the PCE was not released from the fueling station. Historical records indicate that a laundry and dry cleaner did operate on the VVM property between 1964 and 1995. PCE was commonly used in dry cleaner operations.

Remedial Investigation Results

Through an Integrated Planning Grant from the Department of Ecology, the Port of Sunnyside was able to complete a comprehensive investigation of environmental contamination issues remaining on the property. This investigation examined the nature and extent of PCE and other potential contaminants on the site. The following summarizes the results.

Soil

- The site investigation results indicate that soil impacts are limited to lead in shallow soil in one location adjacent to a former chemical storage building.

Groundwater

- PCE was the only contaminant in groundwater samples that was detected at concentrations above cleanup levels. Contamination appears to be limited to the shallow groundwater layer.
- Groundwater at the site appears to flow to the southeast. PCE was detected upgradient across First Street, but was not detected downgradient of the property.
- Drinking water has not been impacted by site-related contaminants.

Cleanup Alternatives

Two cleanup alternatives were evaluated for the site.

Alternative 1. *In Situ* Treatment and Targeted Excavation
Lead impacted soil would be excavated to approximately 4 feet below ground surface and disposed of at an off-site permitted facility. The excavated area would be backfilled with clean, imported fill, then compacted and graded. Groundwater impacts would be treated by injecting biological and chemical reagants into the contamination plume to breakdown the PCE into harmless compounds. A pilot test would be conducted as a preliminary step to refine this remedy. Groundwater would be monitored on a regular basis to assess the effectiveness of the remedy.

Alternative 2. Monitored Natural Attenuation and Targeted Excavation
As in Alternative 1, lead impacted soil would be excavated and disposed of at an approved off-site landfill. The excavated area would be backfilled with clean, imported fill, then compacted and graded. Groundwater impacts would be managed through monitored natural attenuation. Historical data on the site indicates declining trends in concentrations of PCE. It is estimated that PCE levels will continue to decline to below state cleanup levels before the groundwater plume migrates off the property. Groundwater would be sampled on a regular basis to monitor whether concentrations continue to naturally decline to below the state cleanup levels.

Protection of human health and the environment were key components of the evaluation. Other factors considered were effectiveness, potential for implementation, cost, compliance with all applicable laws, and long-term monitoring.

Selected Cleanup Actions
A Draft Cleanup Action Plan (DCAP) and Prospective Purchaser Consent Decree have been developed for the site. The DCAP identifies that Ecology has selected Alternative 1, In Situ Treatment and Targeted Excavation as the preferred remedy.

State Environmental Policy Act and Determination of Non-Significance
The State Environmental Policy Act, known as SEPA, requires government agencies to consider potential environmental impacts of a project before beginning the cleanup. After review of a completed environmental checklist and other site-specific information, Ecology has determined the cleanup actions will not have a probable adverse impact on the environment. This action will benefit the environment by reducing the release of toxic chemicals from the site. Therefore, Ecology has issued a Determination of Non-Significance.

Contaminants of Concern
The investigation included evaluation of soil and groundwater for potential chemicals of concern, including diesel- and lube-oil-range total petroleum hydrocarbons (TPH), polycyclic aromatic hydrocarbons, lead, and VOCs (including PCE). Detailed results of the evaluation of contaminants are found in the Focused Site Assessment Report and Cleanup Action Plan.

Community Background

Community Overview
The City of Sunnyside is located in Yakima County, approximately 34 miles southeast of the city of Yakima and 42 miles west of the Tri-cities of Richland, Kennewick and Pasco. As of 2010, the City population is estimated at 15,858 residents, with a countywide population of 243,231. The population of Sunnyside is predominantly Hispanic (82% non-white). The economy of the Yakima Valley is based on

agriculture, along with government services, medical services, and tourism. The major agricultural products are apples, peaches, cherries, hops, pears, beef, wheat, and wine.

The City of Sunnyside is a major agricultural food processing center. The Port of Sunnyside operates an industrial wastewater treatment plant to service this sector. Major food processing facilities include: Darigold (cheese and whey plant), Independent Foods (fruit and juice plant), and Valley Processing (fruit and juice plant). The City is also a medical and retail center for the region.

Community Concerns

The major concerns stated by community members in interviews and community meetings include

Cleanup

- The property has been sitting vacant for a long time and is becoming blighted
- Preventing contamination of groundwater is important
- Uncertainty around environmental conditions has driven businesses away from the property

Redevelopment

- The property has an important location in the City as a gateway
- Future use of the property should create jobs and support the local economy
- Future use should complement existing businesses and give more depth to the local economy
- Future use should capitalize on the iconic features of the water tower and the brick and glass façade and preserve them if feasible
- The community is generally supportive of the proposed future uses future uses of the property
    - Food processing (potentially including retail space and vocational training)
    - Mercado – mixed-use commercial, retail, and agricultural product development center

Public Participation Activities and Timeline

The following are public participation efforts which will occur until the cleanup actions are completed:

❖ A **mailing list** has been developed which includes property owners and residents within 500 feet of the Cream Wine site. It also includes businesses, organizations, elected officials, government agencies, and other individuals who have expressed interest in the cleanup process for the site.

People on the mailing list will receive copies of fact sheets developed regarding the cleanup process via first class mail. Additionally any other interested parties will be added to the mailing list upon request. Other people who are interested may request to be added to the mailing list by contacting Frosti Smith at the Department of Ecology (Phone: 509/454-784, Email: frosti.smith@ecy.wa.gov).

❖ **Public Repositories** have been established and documents may be reviewed at the following offices:

Washington State Department of Ecology
Central Regional Office
15 West Yakima Avenue
Yakima, WA 98902

Contact: Roger Johnson 509/454-7658
e-mail: roger.johnson@ecy.wa.gov

Ecology's website:
https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=4863

Yakima Valley Regional Library – Sunnyside Branch
621 East Grant Avenue
Sunnyside, WA 98944
509/837-3234

Port of Sunnyside Website:
http://www.portofsunnyside.com/

- **Site Register** A notice is also published in a statewide Site Register. It is sent electronically to individuals and organizations who request the publication. If you are interested in receiving the Site Register, contact Linda Thompson of Ecology at 360/407-6069 or e-mail Linda.Thompson@ecy.wa.gov.

- **Fact sheets** are created by Ecology, reviewed by the Port of Sunnyside and distributed to individuals on the mailing list. Fact sheets explain the current status of the cleanup process, give a brief background, and ask for comments from the public. A **30-day comment period** allows the public time to comment at specific stages during the cleanup process.

- **Display ads or legal notices** are published in the Daily Sun News to inform the general public. These notices correlate with the 30-day comment period and associated stage of the cleanup process. They are also used to announce public meetings, workshops, open houses, or hearings.

- **Public meetings, workshops, open houses and public hearings** are held based upon the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. Public meetings must be held in a facility that meets the Americans with Disabilities Act (ADA).

  It is anticipated that public meetings, open houses, or hearings will be held at the [location?]. The date, time and locations of hearings, meetings, workshops, or open houses will be announced in a legal notice in the newspaper, fact sheets, or display ads in accordance with the Model Toxics Control Act (MTCA). A public meeting is currently scheduled for Wednesday, November 7, at 5:30 PM and will be held at the Sunnyside Branch of the Yakima Valley Regional Library, 621 East Grant Avenue, Sunnyside, WA

- Written comments which are received during the 30-day comment periods may be responded to in a **Responsiveness Summary**. The Responsiveness Summary may be sent to those who make written comments and will be available for public review at the Repositories listed at the top of this page.

Answering Questions from the Public

Individuals may want to ask questions about the site, the cleanup process and how to get involved. A list of contacts is provided on page 4 of this Plan.

Public Participation Time Line - Actions Taken

Document or Activity	Date
Public Meeting to discuss Prospective Purchaser Consent Decree, Draft Cleanup Action Plan, State Environmental Policy Act (SEPA) and Determination of Non-Significance (DNS)	November 7, 2012
Public comment period for the Prospective Purchaser Consent Decree, Draft Cleanup Action Plan and State Environmental Policy Act (SEPA) Determination of Non-Significance (DNS)	November 1, 2012 through December 3, 2012
Notice in Ecology's Site Register announcing beginning of formal negotiations for the Prospective Purchaser Consent Decree, Draft Cleanup Action Plan and State Environmental Policy Act (SEPA) and Determination of Non-Significance (DNS).	Date
Community meeting to discuss cleanup and redevelopment planning.	April 16, 2012
Stakeholder interviews to listen to concerns and vision for redevelopment of the site.	August 2011
Updates on the status of cleanup and redevelopment planning process given at Port Commission meetings.	August 2011 – November 2012 (approximately monthly)

APPENDIX A
SITE MAP

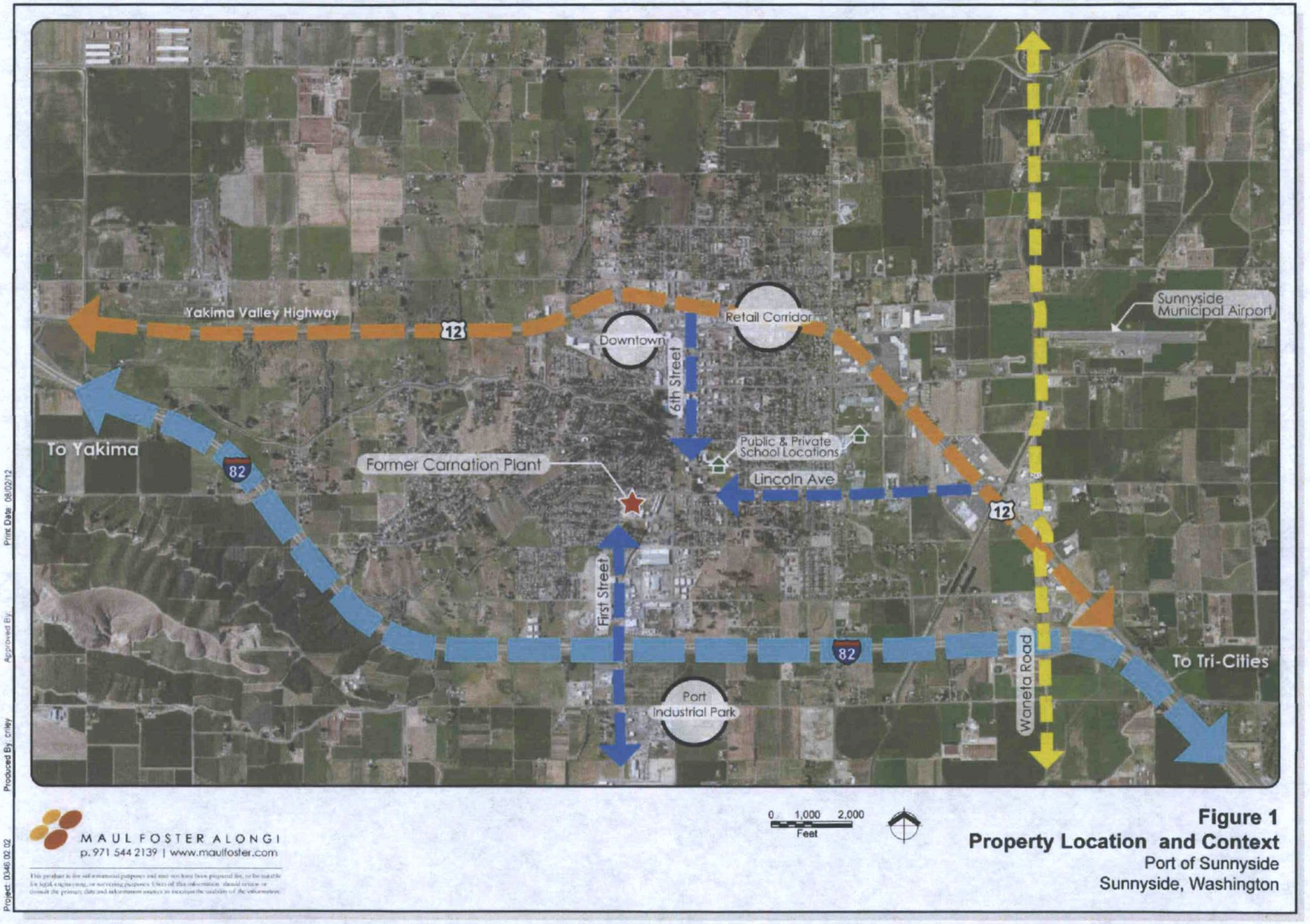
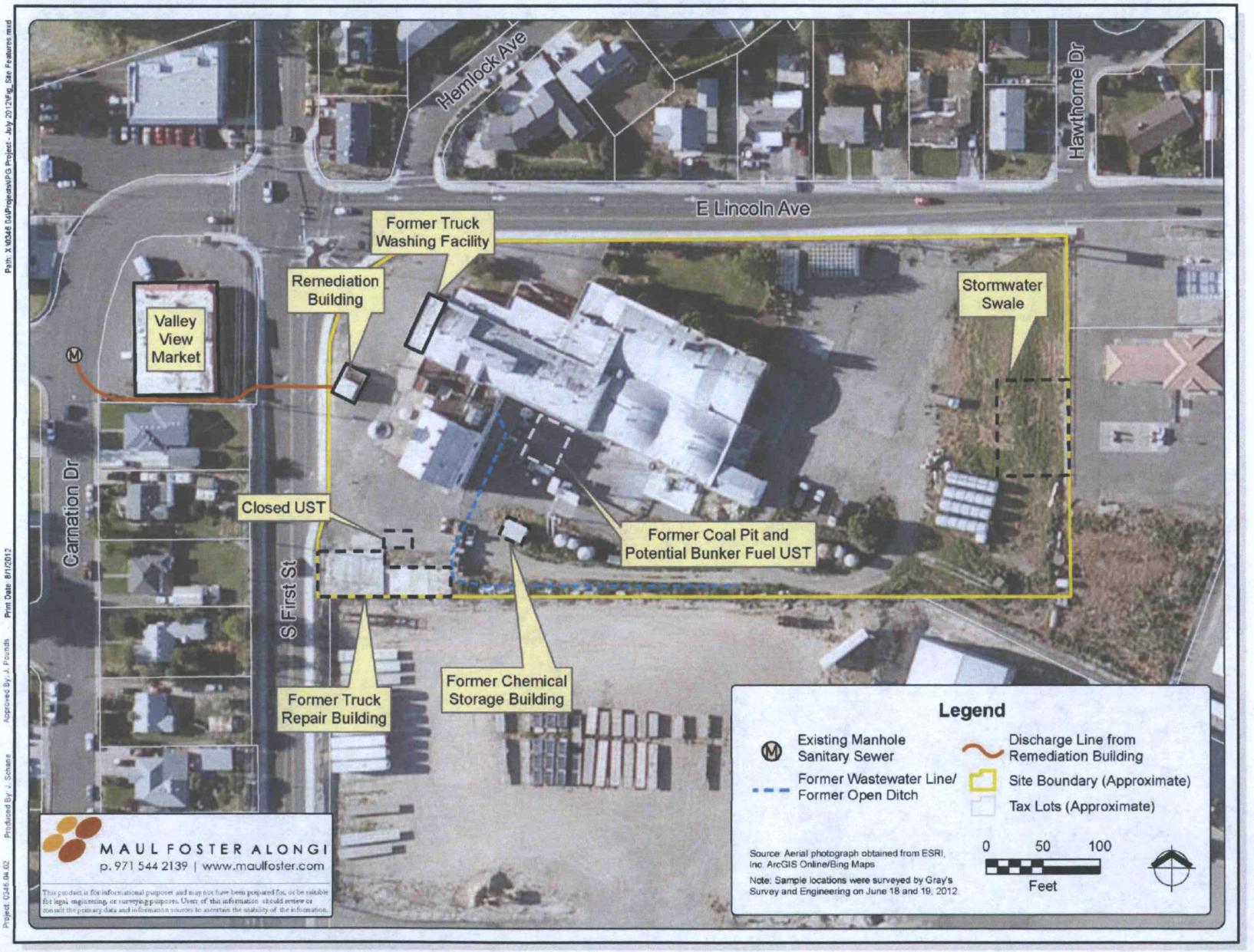


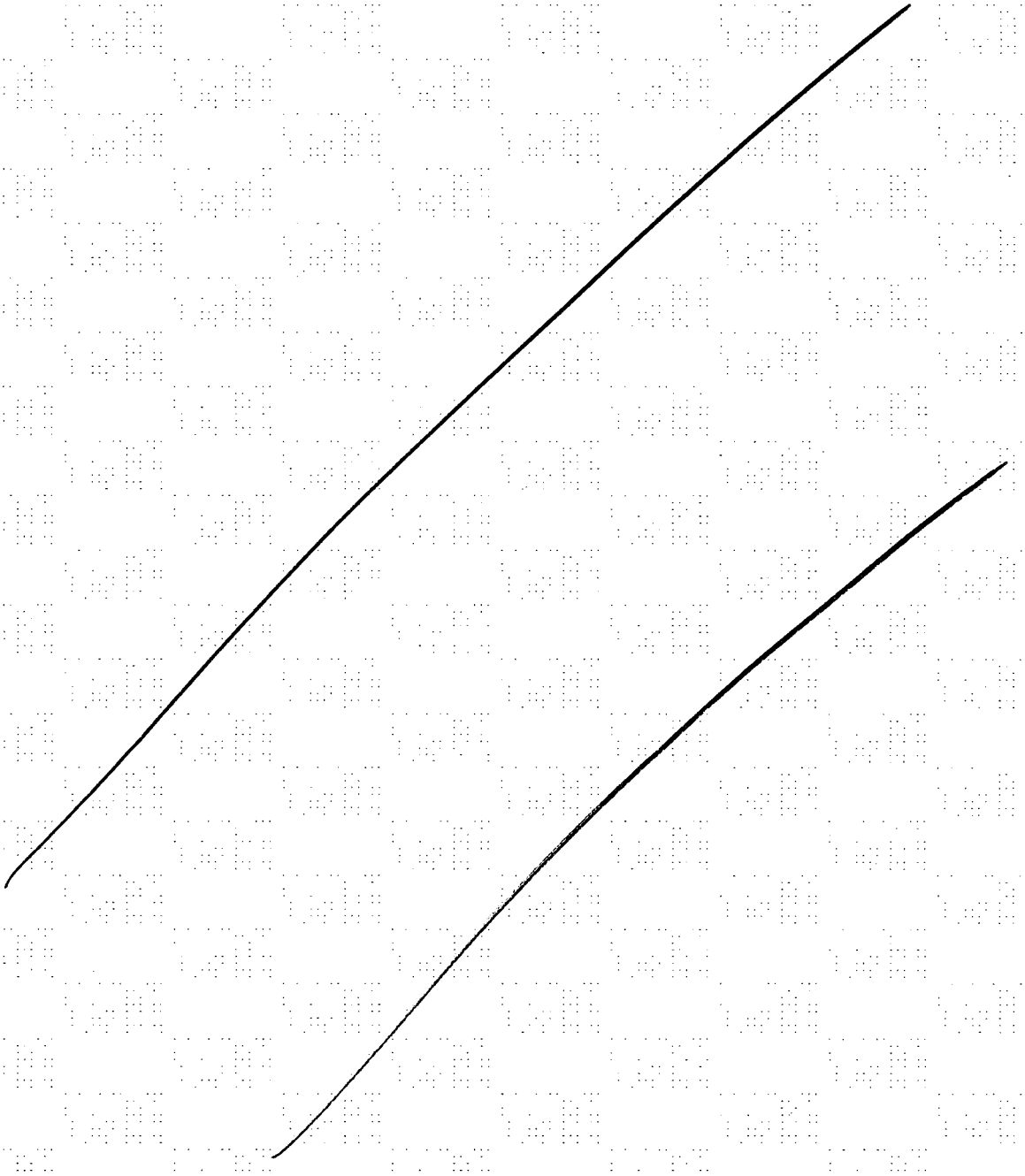
Figure 1
Property Location and Context
Port of Sunnyside
Sunnyside, Washington

APPENDIX A-1


Hemlock Ave
Hawthorne Dr
E Lincoln Ave
Former Truck Washing Facility
Remediation Building
Valley View Market
Stormwater Swale
Carnation Dr
S First St
Closed UST
Former Coal Pit and Potential Bunker Fuel UST
Former Truck Repair Building
Former Chemical Storage Building
Legend
Existing Manhole Sanitary Sewer
Discharge Line from Remediation Building
Former Wastewater Line/ Former Open Ditch
Site Boundary (Approximate)
Tax Lots (Approximate)
Source: Aerial photograph obtained from ESRI, Inc. ArcGIS Online/Bing Maps
Note: Sample locations were surveyed by Gray's Survey and Engineering on June 18 and 19, 2012
0 50 100
Feet
MAUL FOSTER ALONGI
p. 971 544 2139 | www.maulfoster.com
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.
Path: X:\0346.04\Projects\PG Project - July 2012\Fig_Site Features.mxd
Project: 0346.04.02 Produced By: J. Schaer Approved By: J. Portish Print Date: 8/1/2012

View of the Site from the North (above)

APPENDIX B
MAILING LIST
(Made available upon request)



APPENDIX C
GLOSSARY

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided.

Applicable State and Federal Law: All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

Area Background: The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Chronic Toxicity: The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

Cleanup Level: The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Consent Decree: A legal document, approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Containment: A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Enforcement Order: A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

Environment: Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

Exposure: Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

Exposure Pathways: The path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

Facility: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

Feasibility Study (FS): A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

Hazardous Sites List: A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

Hazardous Substance: Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such

quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW: any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

Hazardous Waste Site: Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

Independent Cleanup Action: Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

Initial Investigation: An investigation to determine that a release or threatened release may have occurred that warrants further action.

Interim Action: Any remedial action that partially addresses the cleanup of a site.

Mixed Funding: Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

Model Toxics Control Act (MTCA): Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was approved by voters at the November 1988 general election and known is as Initiative 97. The implementing regulation is WAC 173-340.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

National Priorities List (NPL): EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

Owner or Operator: Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

Potentially Liable Person (PLP): Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

Remedial Investigation: A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

Responsiveness Summary: A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

Risk Assessment: The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Sensitive Environment: An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

Site: See Facility.

Site Characterization Report: A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

Site Hazard Assessment (SHA): An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

Site Register: Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

Surface Water: Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

TCP: Toxics Cleanup Program at Ecology

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

Washington Ranking Method (WARM): Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.

FILED

2012 DEC 14 A 10:50

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. PORT OF SUNNYSIDE, Defendant.	NO. 12 2 04273 9 JOINT MOTION FOR ENTRY OF PROSPECTIVE PURCHASER CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendant, Port of Sunnyside (Port), bring this motion seeking entry of the attached Prospective Purchaser Consent Decree (Decree). This motion is based upon the pleadings filed in this matter, including the Declaration of Norm Hepner, Site Manager, Washington State Department of Ecology, Central Regional Office—Toxics Cleanup Program.

II. RELIEF REQUESTED

The Parties request that the court approve and enter the attached Decree, which governs the cleanup of contamination at the Cream Wine (Site) generally located in Sunnyside, Washington, pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. The parties also request that the court retain jurisdiction over this action until the work required by the Decree is completed and the Parties request a dismissal of this action.

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III. AUTHORITY

A. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement, after public notice and any required hearing, with a person not currently liable for remedial action at a facility, who proposed to purchase, redevelop or reuse the facility, provided that the settlement will yield substantial new resources to facilitate cleanup; the settlement will expedite remedial action; and Ecology determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

IV. AGENCY DETERMINATIONS SUPPORTING ENTRY OF DECREE

A. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree. Declaration of Norm Hepner (Hepner Decl.) ¶ 4.

B. Ecology has determined that contamination at the Site presents a threat to human health and the environment. Hepner Decl. ¶ 5.

C. Ecology has determined that entering into the Decree will yield substantial new resources to facilitate cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC; will promote the public interest by facilitating the redevelopment or reuse of the Site; will provide a substantial public benefit; and will not be likely to contribute to the existing release or threatened release at the Site, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. Hepner Decl. ¶ 6.

D. Ecology has given notice to the City of Ecology's determination that the City will incur potential liability under RCW 70.15D.040(1)(a) at the time it acquires an interest in the Site for performing remedial actions or paying remedial costs incurred by Ecology or third

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parties resulting from past releases or threatened releases of hazardous substances at the site. Hepner Decl. ¶ 7.

E. This Decree has been subject to public notice and comment. Ecology considered all comments received, and determined that no additional public comment was required. Hepner Decl. ¶ 8.

F. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment. Hepner Decl. ¶ 9.

F. Ecology has determined that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC. Hepner Decl. ¶ 9.

V. CONCLUSION

The Parties believe it is appropriate for the court to exercise its discretion and approve the attached Decree, and hereby request that the court enter the attached Order. The parties further request that the court retain jurisdiction to enforce the terms of the Decree.

DATED this 10th day of December, 2012.

ROBERT M. MCKENNA
Attorney General

DOROTHY H. JAFFE, WSBA #34148
Assistant Attorney General

Attorneys for Plaintiff
State of Washington,
Department of Ecology
(360) 586-4637

FRANK J. CHMELIK, WSBA # 13969
Chmelik Sitkin & Davis, P.S.

Attorney for Defendant
Port of Sunnyside
(360) 306-3001

FILED

2012 DEC 14 A 10:50

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF SUNNYSIDE,

Defendant.

NO. 12 2 04273 9

ORDER ENTERING PROSPECTIVE PURCHASER CONSENT DECREE
[Proposed]

Having reviewed the Joint Motion for Entry of the Prospective Purchaser Consent Decree, it is hereby ORDERED AND ADJUDGED that the Prospective Purchaser Consent Decree in this matter is entered and that the court shall retain jurisdiction over the Prospective Purchaser Consent Decree to enforce its terms.

DATED this 14 day of Dec, 2012.

Superior Court Judge/Commissioner

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Presented by:

ROBERT M. MCKENNA
Attorney General

DOROTHY H. JAFFE, WSBA #34148
Assistant Attorney General

Attorneys for Plaintiff
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(360) 586-4637

FRANK J. CHMELIK, WSBA # 13969
Chmelik Sitkin & Davis, P.S.

Attorney for Defendant
Port of Sunnyside
(360) 306-3001

FILED

2012 DEC 14 A 10:50

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. PORT OF SUNNYSIDE, Defendant.	NO. 12 2 04273 9 SUMMONS

TO: Frank Chmelik, attorney for Port of Sunnyside, Defendant;

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Prospective Purchaser Consent Decree, a copy of which is also attached. Accordingly, this Summons shall not require the filing of an Answer.

///

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//

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Further, all disputes arising under this cause shall be resolved under the terms of the Prospective Purchaser Consent Decree.

DATED this 10th day of December, 2012.

ROBERT M. MCKENNA
Attorney General

DOROTHY H. JAFFE, WSBA #34148
Assistant Attorney General

Attorneys for Plaintiff
State of Washington,
Department of Ecology
(360) 586-4637

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2012 DEC 14 A 10:50

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. PORT OF SUNNYSIDE, Defendant.	NO. 12 2 04273 9 COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology) alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology (Ecology) to enter a settlement agreement known as a Consent Decree (Decree), which requires cleanup at a facility where there has been a release and/or threatened release of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or Site, is referred to in Ecology databases as the Cream Wine Site. The Site is generally located 111 E. Lincoln Avenue, Sunnyside, Washington. The Property comprises the entire Site.

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II. JURISDICTION

3. This court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. Venue is proper in Yakima County Superior Court, the location of the Site.

III. PARTIES

4. Plaintiff Ecology is an agency of the State of Washington responsible for overseeing remedial action at sites contaminated with hazardous substances under Chapter 70.105D RCW.

5. Defendant is the Port of Sunnyside (Port). The Port has agreed to enter into a Prospective Purchaser Consent Decree with Ecology under MTCA to remedy the release of hazardous substances at the Cream Wine Site upon taking ownership of the property from Federal Agricultural Mortgage Corporation.

IV. FACTUAL ALLEGATIONS

6. The property comprising the Cream Wine Site is currently in foreclosure and held by Federal Agricultural Mortgage Corporation. The Cream Wine Site is bordered by Lincoln Avenue and residential areas to the north; industrial development to the south; First Street, a residential area, and Valley View Market to the west; and a commercial development to the east. This covers an area of 4.67 acres.

7. From approximately 1942 to 1946, Morning Milk Company constructed a processing plant and operated on the Property. In 1946 Carnation Company acquired the Property and operated the processing plant until 1986. From 1986 to 1990, the Defendant owned the Site. In 1988 the Defendant leased the Site to Cascade Cellars, Ltd Partnership for use as a winery. During the Defendant's ownership there was no release or threatened release of any hazardous substances onto the Site. From 1990 to 1992, Alfred B. Seitz and Virginia L. Seitz owned the Site. From 1992 to 2007, the Site was owned by Washington Hills Cellars Inc. (WHC) and was again used as a winery. In 2007, Federal Agricultural Mortgage

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Company foreclosed on the Site because WHC was unable to make payments on loan(s) secured by the Property. In 2007, Cream Winery leased the property for operation of a winery, and vacated it in 2010.

8. The Site has been vacant since 2010.

9. A Phase I Environmental Site Assessment was conducted at the Site in 2006 by Blue Mountain Environmental Consulting, Inc. A Phase II Environmental Site Investigation and Retro Underground Storage Tanks (USTs) Site Closure was prepared in 2007 by Blue Mountain Environmental Consulting, Inc. In 2008, a Final Alternate Source Evaluation and a Summary of Shallow Soil and Groundwater Investigation were prepared by Kennedy/Jenks Consultants. In 2009, Kennedy/Jenks Consultants drafted a Completion of Cleanup at the Former Apex Winery Site, which is adjacent to Time Oil Property. In 2010, Kennedy/Jenks Consultants prepared a Report of Independent Actions. In 2011, a Phase I Environmental Site Assessment was prepared by Maul Foster & Alongi, Inc. In 2012, Maul Foster & Alongi, Inc. completed a Draft Focused Site Assessment Report for the Site.

10. Environmental assessments and investigations conducted on the Property since 2006 indicated total petroleum hydrocarbons (TPH), toluene, chloroform, methyl tert-butyl ether, (MTBE) and perchloroethylene (PCE) in the groundwater and TPH, lead, and acetone in the soil. The TPH and MTBE contamination was confirmed to be from an off-site source. Remedial actions, led by Time Oil Company are currently addressing the MTBE issues. The perchloroethylene (PCE) source was not identified during the environmental assessments and investigations but was confirmed to be originating from off-site. According to the 2012 Draft Focused Site Assessment Report the sources of the soil contaminants was likely surface releases from former site operations. These releases represent a threat to human health and the environment and require remedial actions.

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11. The contaminants of concern at the Site that exceed MTCA cleanup levels are lead in soil and PCE in groundwater. Ecology has assigned the Site an overall priority ranking of 2 pursuant to MTCA.

12. Defendant proposes to clean up the Site and make it available for redevelopment for commercial use, consistent with MTCA and its implementing regulations, Chapter 173-340 WAC, and applicable City of Sunnyside zoning provisions and comprehensive plan designations.

13. Ecology has determined that contamination at the Site presents a threat to human health and the environment, and that a final cleanup is necessary to remedy the contamination.

14. Ecology has determined that entering into the Decree will yield substantial new resources to facilitate cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC; will promote the public interest by facilitating the redevelopment or reuse of the Site; will provide a substantial public benefit; and will not be likely to contribute to the existing release or threatened release at the Site, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site.

15. Ecology developed a draft Cleanup Action Plan (CAP) for the Site and negotiated a draft Decree with the Port for implementation of the CAP.

16. The draft CAP and draft Decree were subject to public notice and comment. Comments were accepted from November 1 through December 3, 2012.

17. After consideration of all comments received, Ecology issued a final CAP.

18. Ecology and the Port have now entered into the final Decree requiring cleanup of the Site. The final CAP is an integral and enforceable exhibit to the Decree. The Decree is being submitted to the court along with this Complaint.

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V. CAUSES OF ACTION

23. Ecology realleges all preceding paragraphs.

24. Ecology alleges that the Port will be responsible for remedial action at the Site, pursuant to MTCA, Chapter 70.105D RCW, once they take ownership of the real property at 111 E. Lincoln Avenue, Sunnyside, Washington.

VI. PRAYER FOR RELIEF

25. Ecology requests that the court approve and order entry of the proposed Decree.

26. Ecology further requests that the court retain jurisdiction to enforce the terms of the Decree.

DATED this 10th day of December, 2012.

ROBERT M. MCKENNA
Attorney General

DOROTHY H. JAFFE, WSBA #34148
Assistant Attorney General

Attorneys for Plaintiff
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2012 DEC 14 A 10:50

KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. PORT OF SUNNYSIDE, Defendant.	NO. 12 2 04273 9 DECLARATION OF NORM HEPNER

I, Norm Hepner, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed by the Washington State Department of Ecology as a Site Manager in the Toxics Cleanup Program for Ecology's Central Regional Office. I am the designated Site Manager for the Cream Wine Site and I am therefore knowledgeable about matters related to this Site.

3. The Site is located in Sunnyside, Washington.

4. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site.

5. Ecology has determined that contamination at the Site presents a threat to human health or the environment.

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6. Ecology has determined that entering into the Decree will yield substantial new resources to facilitate cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC; will promote the public interest by facilitating the redevelopment or reuse of the Site; will provide a substantial public benefit; and will not be likely to contribute to the existing release or threatened release at the Site, interfere with remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site.

7. Ecology has given notice to the Port of Ecology's determination that the Port will incur potential liability under RCW 70.105D.040(1)(a) at the time it acquires an interest in the Site for performing remedial actions or paying remedial costs incurred by Ecology or third parties resulting from past releases or threatened releases of hazardous substances at the Site.

8. The Prospective Purchaser Consent Decree and Cleanup Action Plan were available for public comment between November 1, 2012, and December 3, 2012. Ecology has determined that no additional public comment is required.

9. Ecology has determined that the actions to be taken pursuant to the Prospective Purchaser Consent Decree are necessary to protect public health and the environment, and will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED this 5 day of DEC, 2012, in YAKIMA, Washington.

NORM HEPNER

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STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff, v. PORT OF SUNNYSIDE, Defendant.	NO. 12-2-04273-9 NOTICE OF APPEARANCE

TO: State of Washington, Department of Ecology

YOU AND EACH OF YOU are hereby notified that the above-named Defendant, Port of Sunnyside, appears in the above-entitled action by the undersigned, and requests that all pleadings and papers of any nature filed or used in said action shall first be served upon the undersigned attorney reserving the statutory time within which to plead further.

DATED this 13th day of December, 2012.

CHMELIK SITKIN & DAVIS P.S.

FRANK J. CHMELIK, WSBA #13969
Co-Counsel for Defendant
Port of Sunnyside

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YAKIMA, WASHINGTON

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF SUNNYSIDE,

Defendant.

No. 12 2 04273 9

ACCEPTANCE OF SERVICE

I, Amber A. Hansen, hereby accept service of the Summons and Complaint in the above-captioned case on behalf of Port of Sunnyside. This Acceptance of Service shall have the same force and effect as if personally served upon Port of Sunnyside.

DATED this 13 day of Dec 2012.

PORT OF SUNNYSIDE

AMBER A. HANSEN
Executive Director
Port of Sunnyside

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
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