



Periodic Review

Cap Sante Marine
10198 Q Avenue
Anacortes, WA 98221

Facility Site ID#: 67532227
Cleanup Site ID#: 1678

Prepared by:
Headquarters Region Office
Toxics Cleanup Program

August 2020

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INTRODUCTION

This document is a review by the Washington State Department of Ecology (Ecology) of post-cleanup Site conditions and monitoring data to assure human health and the environment are being protected at the Cap Sante Marine (Site). Cleanup at this Site was implemented under the Model Toxics Control Act (MTCA) regulations, Chapter 173-340 Washington Administrative Code (WAC).

Cleanup activities at this Site were completed under Agreed Order 9917 – Superior Court of Skagit County – dated January 17, 2014. The cleanup actions resulted in concentrations of petroleum hydrocarbons, carcinogenic and non-carcinogenic polycyclic aromatic hydrocarbons remaining at the Site that exceed MTCA cleanup levels. The MTCA cleanup levels for soil are established under WAC 173-340-740. The MTCA cleanup levels for groundwater are established under WAC 173-340-720. WAC 173-340-420(2) requires Ecology to conduct a periodic review of a Site every five years under the following conditions:

1. Whenever the department conducts a cleanup action.
2. Whenever the department approves a cleanup action under an order, agreed order or consent decree.
3. Or, as resources permit, whenever the department issues a no further action opinion,
4. and one of the following conditions exists at the site:
 1. Institutional controls or financial assurance are required as part of the cleanup;
 2. Where the cleanup level is based on a practical quantitation limit; or
 3. Where, in the department's judgment, modifications to the default equations or assumptions using Site-specific information would significantly increase the concentration of hazardous substances remaining at the Site after cleanup or the uncertainty in the ecological evaluation or the reliability of the cleanup action is such that additional review is necessary to assure long-term protection of human health and the environment.

When evaluating whether human health and the environment are being protected, the factors Ecology shall consider include [WAC 173-340-420(4)]:

1. The effectiveness of ongoing or completed cleanup actions, including the effectiveness of engineered controls and institutional controls in limiting exposure to hazardous substances remaining at the Site.
2. New scientific information for individual hazardous substances of mixtures present at the Site.
3. New applicable state and federal laws for hazardous substances present at the Site.
4. Current and projected Site use.
5. Availability and practicability of higher preference technologies; and
6. The availability of improved analytical techniques to evaluate compliance with cleanup levels.

Ecology shall publish a notice of all periodic reviews in the Site Register and provide an opportunity for public comment.

2.0 SUMMARY OF SITE CONDITIONS

2.1 Site History

The property was acquired by the Port of Anacortes in 1956 and leased to a series of tenants who operated a boatyard and marina support area providing small boat storage, boat launch, boat maintenance, and offshore fueling facilities. From the late 1970s to 2007, Cap Sante' Marine, Ltd. occupied the northern portion of the Site and provided small vessel storage, launch, and minor maintenance services. Vessel fueling was historically provided from a float located offshore from the site. Fuel was supplied to the float through a series of underground pipelines that were supplied by underground storage tanks located within the Cap Sante' Marine lease area. The southern portion of the site, the Fisherman's Work Area and Parking Area, is generally flat, paved with asphalt, and has been used as a work and parking area since the late 1980s.

During the 1980s, petroleum fuel was observed seeping into the marine waters at several locations east and southeast of the Site. The seeps were the result of leaking underground storage tanks and/or their associated pipelines. In 1984, the Port of Anacortes installed and operated a petroleum recovery system to control the fuel seepage. After approximately six months of operation, petroleum seepage was no longer observed and the recovery operation was stopped.

In 2007, the Port of Anacortes completed an interim action to address petroleum contamination associated with the historical underground storage tanks and pipelines.

Currently, a tenant of the Port of Anacortes leases part of the property where the site is located to operate a restaurant. Other parts of the property are used for pedestrian access, parking, and boat launching.

2.2 Site Investigations

In September of 1983, eight soil borings and three test pits were installed at the site. Eight soil borings and one test pit were converted to groundwater monitoring wells. Free product was observed on one occasion in three of five soil borings and in four of five soil borings on another occasion. The report concluded that the likely source of the petroleum seeps were the underground storage tanks serving the marina.

In May of 2004, nineteen soil samples and six groundwater samples were collected from six soil borings. Analytical results showed that gasoline, benzene, and xylene exceeded MTCA Method A cleanup levels in four locations. Analyses of the groundwater samples showed that gasoline, diesel, and benzene exceeded MTCA Method A standards in two locations. These results demonstrated that the soil and groundwater contamination was downgradient from the location of the underground storage tanks.

In 2005, seven soil samples and five groundwater samples were collected and analyzed for gasoline, diesel, oil, benzene, ethylbenzene, toluene, and xylene. There were no exceedances of the respective MTCA Method A standards for oil, ethylbenzene, toluene, or xylene in any of the soil samples. Gasoline and benzene exceeded their respective MTCA Method A standards in five of seven soil samples. Diesel exceeded the MTCA Method A standard in three of seven samples. There were no exceedances of the respective MTCA Method A standards for oil, ethylbenzene, toluene, and xylene in any of the five groundwater samples. Gasoline, diesel, and benzene exceeded their respective MTCA Method A standards in all five groundwater samples. The five sampling locations with soil and groundwater exceedances all adjoined the underground storage tank area.

In 2007, twelve sediment samples were collected from along the shoreline and analyzed for gasoline. Gasoline was not detected in any of the three samples. Diesel concentrations ranged from 27 – 110 mg/Kg. Oil concentrations ranged from 67 – 370 mg/Kg. All twelve samples were analyzed for volatile petroleum hydrocarbons (benzene, ethylbenzene, toluene, xylene, and methyl tertiary butyl ether). Volatile petroleum hydrocarbons were not detected in any of the twelve sediment samples. The results of the sediment sampling showed that there is no evidence that historical fuel releases from the Site have adversely affected sediment quality within the marina.

Thirty-three soil samples were collected from fourteen shallow (less than six feet) soil borings and analyzed for gasoline, diesel, oil, chromium, copper, lead, zinc, volatile organic compounds, and polycyclic aromatic hydrocarbons. All samples were analyzed for all analytes, except chromium, copper, and zinc. Two soil samples were analyzed for chromium, copper, and zinc. All three analytes were detected in both soil samples but only the concentration of copper exceeded the respective MTCA standard. Eight of the fourteen soil sampling locations had no exceedances of MTCA Method A standards for any analyte. At three locations, gasoline concentrations exceeded the MTCA Method A soil standard. At one location, diesel exceeded the MTCA Method A soil standard. At a separate location, copper exceeded the MTCA Method A soil standard. At a different location, lead exceeded the MTCA Method A soil standard. Thirteen soil samples were collected from nine deeper (greater than six feet) soil borings. All thirteen soil samples were analyzed for gasoline, diesel, and oil. Three soil samples were analyzed for benzene, ethylbenzene, toluene, and xylene with ethylbenzene, toluene, and xylene being detected in two of the three soil samples. One of the two ethylbenzene detections had a concentration in excess of the MTCA Method A standard. Benzene was detected in one soil sample at a concentration above the MTCA Method A standard. Ten of thirteen soil samples were analyzed for volatile organic compounds, with only one detection (naphthalene) exceeding their MTCA Method A standard. All thirteen soil samples were analyzed for carcinogenic and non-carcinogenic polycyclic aromatic hydrocarbons. There were no detections above the respective MTCA standards. The four shallow soil sampling locations with exceedances of gasoline, diesel, benzene, or lead were in close proximity to the historical petroleum recovery trench. The other two exceedances, one of copper and one of carcinogenic polycyclic aromatic hydrocarbons, were elsewhere on the site. Five of the six deeper soil samples with exceedances of gasoline or diesel were in close proximity to either the historical petroleum recovery trench or the former underground storage tanks. One deeper soil sample with an exceedance of gasoline was elsewhere on the site.

Six groundwater samples were collected and analyzed for gasoline, volatile organic compounds, polycyclic aromatic hydrocarbons, total and dissolved lead, and hexavalent chromium. While numerous analytes were detected, only two concentrations, for gasoline and benzene in the same well, exceeded their respective MTCA Method A standards. The well was in close proximity to the historical petroleum recovery trench.

In 2011 and 2012, as part of an investigation into an adjoining site, six soil borings were drilled on the Cap Sante' site. Thirteen soil samples were collected from the six borings and analyzed for gasoline, diesel, oil, lead, and volatile organic compounds. Nine soil samples from four wells were analyzed for polycyclic aromatic hydrocarbons while three samples from one well were analyzed for polychlorinated biphenyls. Gasoline and volatile organic compounds were not detected in any of the samples. Polychlorinated biphenyls were not detected in any of the three samples analyzed. Lead was detected in two of thirteen samples. One volatile organic compound (naphthalene) was detected in one of nine samples. Oil was detected in seven of thirteen samples while diesel was detected in four of thirteen samples. None of the concentrations of any detected analyte exceeded the respective MTCA Method A standards.

Between August of 2014 and February of 2018, groundwater samples were collected from two monitoring wells, two samples each in 2014, 2015, and 2017, with one sample each in- 2018. The samples were analyzed for gasoline, diesel, oil, and carcinogenic and non-carcinogenic polycyclic aromatic hydrocarbons. The inland groundwater well had no detections of any analyte in any round of sampling except for two polycyclic aromatic hydrocarbons in one round. Both concentrations were below the site cleanup standards. The shoreline groundwater well had one detection of gasoline, four detections of diesel, and no detections of oil, all in sampling rounds 3 – 7. All concentrations were below the site cleanup level. There were numerous detections of non-carcinogenic polycyclic aromatic hydrocarbons, again all in sampling rounds 3 – 7. All concentrations were below the site cleanup levels. One carcinogenic polycyclic aromatic hydrocarbon – benzo (a) anthracene – was detected in sampling rounds 3 and 4 but not in sampling rounds 5 – 7. The concentration of benzo (a) anthracene was below the site cleanup level.

2.3 Cleanup Levels and Points of Compliance

Preliminary soil cleanup levels for the Site were developed as part of the Ecology-approved Cap Sante Work Plan (Landau, 2007b) and are based on MTCA Method A values for unrestricted land use, MTCA Method B standard formula values for the protection of human health and MTCA Method B soil concentrations protective of groundwater calculated using Ecology's fixed parameter, three-phase partitioning model (MTCASGL Workbook; WAC 173-340-747(4)(b)). In addition to these criteria, natural background soil metals concentrations in Washington state (Ecology, 1994) were considered in accordance with WAC 173-340-705(6) and WAC 173-340-709 where the lowest applicable regulatory criteria, adjusted for natural background metals concentrations, were selected as the preliminary soil cleanup levels.

As discussed in the Investigation Data Report (Data Report; Landau, 2007a), cPAH concentrations in saturated zone soil at several locations exceeded the preliminary cleanup levels. However, in accordance with WAC 173-340-747(9), it has been empirically demonstrated with groundwater analytical results that these cPAH concentrations in saturated soil are protective of groundwater and adjacent marine surface water (cPAHs were not detected above the preliminary groundwater cleanup levels). Based on this empirical demonstration and consultation with Ecology, the proposed soil cleanup level for cPAHs within the saturated zone was set at 0.137 milligrams per kilogram (mg/kg) total cPAH toxicity equivalent (TEQ).

Groundwater at, or potentially affected by the Site contamination is not currently used for drinking water and is not a reasonable future source of drinking water because of its proximity to marine surface water. Groundwater cleanup criteria were developed to be adequately protective of aquatic organisms and of humans that ingest these marine organisms. Except for petroleum hydrocarbons (gasoline, diesel and heavy oil), MTCA Method B marine surface water preliminary cleanup levels were developed in accordance with WAC 173-340-730(3). Because cleanup levels protective of marine surface water have not been established for petroleum hydrocarbons, gasoline-, diesel- and heavy oil-range hydrocarbon cleanup levels for groundwater were referenced from MTCA Table 720-1 (MTCA Method A), in accordance with WAC 173-340-730(3)(b)(iii)(C).

The standard point of compliance for the proposed human health based-direct contact soil cleanup levels is throughout the soil column from the ground surface to 15 feet bgs, in accordance with WAC 173-340-740(6)(d). The points of compliance for soil cleanup levels based on protection of groundwater as marine surface water are 0-5 feet bgs for the unsaturated zone and 5 feet bgs and greater for the saturated zone.

Because the proposed final groundwater cleanup levels are based on protection of marine surface water and not protection of groundwater as drinking water, the proposed conditional point of compliance for the preliminary groundwater cleanup levels was set at where groundwater discharges to Fidalgo Bay.

2.4 Remedial Actions

In November of 2007, two underground storage tanks, one gasoline and one diesel, both 12,000 gallons, were excavated and taken off site. Petroleum and metals contaminated soil (9,900 cubic yards) was taken off-site to a permitted facility. Sixty-seven confirmational soil samples were analyzed for gasoline, diesel, oil, benzene, ethylbenzene, toluene, xylene, carcinogenic, and non-carcinogenic polycyclic aromatic hydrocarbons. Seven soil samples were analyzed for chromium, copper, lead, and zinc. Where an exceedance of a cleanup standard occurred, the soil was over excavated and a deeper soil sample was analyzed for the same analytes. No exceedances of the cleanup standards were found in the final soil confirmational samples.

2.5 Environmental Covenant

Based on the Site use, surface cover and cleanup levels, it was determined that the Site was eligible for a 'No Further Action' determination if an environmental covenant (Covenant) was recorded for the property. A Covenant was recorded for the Site in 2014 that imposed the following limitations:

1. The remedial action for the property is based on a cleanup designed for commercial property. As such, the property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the property include, but are not limited to, residential uses, childcare facilities, K – 12 public or private schools, parks, grazing of animals, or growing of food crops.
2. The remedial action for the Property is based on containing contaminated soil. The Cap Sante' Marine Lease Area cap consists of plantings and gravel. The Fisherman's Work Area and Parking Area cap consists of asphalt. The two capped areas are shown in Appendix C of the Covenant. The primary purpose of the cap is to contain contamination and mitigate risk of direct human/terrestrial wildlife contact with contaminated soils. As such, the following restrictions shall apply:
 1. With the exception of activities carried out consistent with Section 2(B)(ii), any activity on the Property that will compromise the integrity of the cap including: drilling, digging, piercing the cap with a sampling device, post, stake, or similar device, grading, excavation, installation of underground utilities, removal of the cap, or application of loads in excess of the cap bearing capacity, is prohibited without prior written approval of Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing repairs.
 2. Activities which temporarily disturb the capped areas, such as utility trenching, or other maintenance actions shall restore the protective cap upon conclusion of the activity. Intrusive activities in the capped areas that involve worker contact with the contaminated soil shall be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites and in conformance with a site-specific health and safety plan. Prior to conducting any activities that will disturb the capped areas, the Grantor shall provide written notice to Ecology.

3.0 PERIODIC REVIEW

3.1 Effectiveness of completed cleanup actions

The Covenant for the Site was recorded and is in place. This Covenant prohibits activities that will result in the release of contaminants at the Site without Ecology's approval, and prohibits any use of the property that is inconsistent with the Covenant. This Covenant serves to ensure the long term integrity of the remedy.

Soils with petroleum hydrocarbons, carcinogenic and non-carcinogenic polycyclic aromatic hydrocarbon concentrations higher than MTCA cleanup levels are still present at the Site. However, the remedy prevents human exposure to this contamination by ingestion and direct contact with soils. The Covenant for the property will ensure that the contamination remaining is contained and controlled.

3.2 New scientific information for individual hazardous substances for mixtures present at the Site

There is no new scientific information for the contaminants related to the Site.

3.3 New applicable state and federal laws for hazardous substances present at the Site

The cleanup at the Site was governed by Chapter 173-340 WAC (2007 ed.). WAC 173-340-702(12) (c) [2007 ed.] provides that,

"A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provision in this chapter on cleanup levels, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment."

Although cleanup levels changed for petroleum hydrocarbon compounds as a result of modifications to MTCA in 2001, contamination remains at the Site above the new MTCA Method A and B cleanup levels. Even so, the cleanup action is still protective of human health and the environment. A table comparing MTCA cleanup levels from 2013 to 2020 is available below.

Analyte	2013 MTCA Method A Soil Cleanup Level (ppm)	2013 Method A Saturated Soil Cleanup Level (ppm)	2020 MTCA Method A/B Soil Cleanup Level (ppm)	2020 MTCA Method A/B Saturated Soil Cleanup Level (ppm)	2013 MTCA Method A Surface Water Cleanup Level (ppb)	2020 MTCA Method A/B Surface Water Cleanup Level (ppb)
Gasoline ²	30/100	30/100	30/100		800/1,000	800/1,000
Diesel	2,000	2,000	2,000		500	500
Oil	2,000	2,000	2,000		500	500
Acenaphthene	66	3	4,800	5	643	640
Acenaphthylene	NE	NE	NE	NE	NE	NE
Anthracene	12,285	617	2,400	110	25,900	26,000
Benzo(ghi)perylene	NE	NE	NE	NE	NE	NE
Fluoranthene	89	4	3,200	32	90	90
Fluorene	547	28	3,200	51	3,460	3,500
Naphthalenes	138	7	5	0.24	4,940	4,900
Phenanthrene	NE	NE	NE	NE	NE	NE
Pyrene	2,400	177	2,400	33	2,590	2,600
Benzo(a)anthracene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Benzo(a)pyrene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Benzo(b)fluoranthene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Benzo(k)fluoranthene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Chrysene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Dibenzo(a,h)anthracene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Indeno(1,2,3-cd)pyrene	See TEQ	See TEQ	See TEQ	See TEQ	0.018	0.035
Total carcinogenic PAHs(TEQ)	0.137	0.137	0.1	0.19	0.100	0.100 ¹

Cleanup Level Comparison Table

MTCA = Model Toxics Control Act
 NE = None Established
 ppb = parts per billion
 ppm = parts per million
 TPH = total petroleum hydrocarbons

TEQ = toxicity equivalent quotient

- (1) – the value shown is the MTCA Method A standard for groundwater. The MTCA Method B standard for surface water – 1.6×10^{-5} µg/l - is below the practical quantitation limit for this site.
- (2) – the values for gasoline, diesel, and oil are the MTCA Method A standards for groundwater, as there are no MTCA Method B standards for petroleum hydrocarbons in surface water.

3.4 Current and projected Site use

The Site is currently used for commercial marine purposes. There have been no changes in current or projected future Site or resource uses.

3.5 Availability and practicability of higher preference technologies

The remedy implemented included containment of hazardous substances, and it continues to be protective of human health and the environment. While higher preference cleanup technologies may be available, they are still not practicable at this Site.

3.6 Availability of improved analytical techniques to evaluate compliance with cleanup levels

The analytical methods used at the time of the remedial action were capable of detection below selected Site cleanup levels. The presence of improved analytical techniques would not affect decisions or recommendations made for the Site.

4.0 CONCLUSIONS

1. The cleanup actions completed at the Site appear to be protective of human health and the environment.
2. Soils cleanup levels have not been met at the standard point of compliance for the Site; however, the cleanup action has been determined to comply with cleanup standards since the long-term integrity of the containment system is ensured, and the requirements for containment technologies are being met.

3. Institutional controls in the form of a covenant are in place at the Site and will be effective in protecting public health and the environment from exposure to hazardous substances and protecting the integrity of the cleanup action.

Based on this periodic review, Ecology has determined that the requirements of the Covenant are being followed. No additional cleanup actions are required by the property owner. It is the property owner's responsibility to continue to inspect the Site to assure that the integrity of the remedy is maintained.

4.1 Next Review

The next review for the Site will be scheduled five years from the date of this periodic review. In the event that additional cleanup actions or institutional controls are required, the next periodic review will be scheduled five years from the completion of those activities.

5.0 REFERENCES

Draft Cleanup Action Plan – Cap Sante Marine Site – Anacortes, Washington – March 20, 2013

Public Review Draft Work Plan, Remedial Investigation/Feasibility Study, and Interim Action – Cap Sante Marine Lease Area – Anacortes, Washington – April 2, 2007

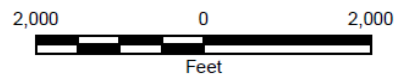
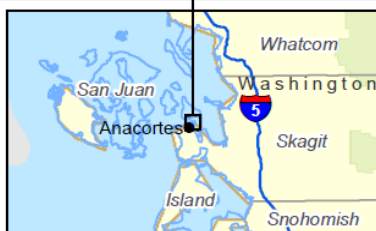
Port of Anacortes – Petroleum Seepage Study – Anacortes, Washington – November 1, 1983

Port of Anacortes - *Environmental Covenant*. - August 5, 2014

Ecology. *Site Visit*. – a site visit was not conducted because of limitations due to the coronavirus pandemic.

Note: the above documents, and other site documents, may be found on Ecology's webpage for this site at: <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=1678>

6.0 APPENDIX



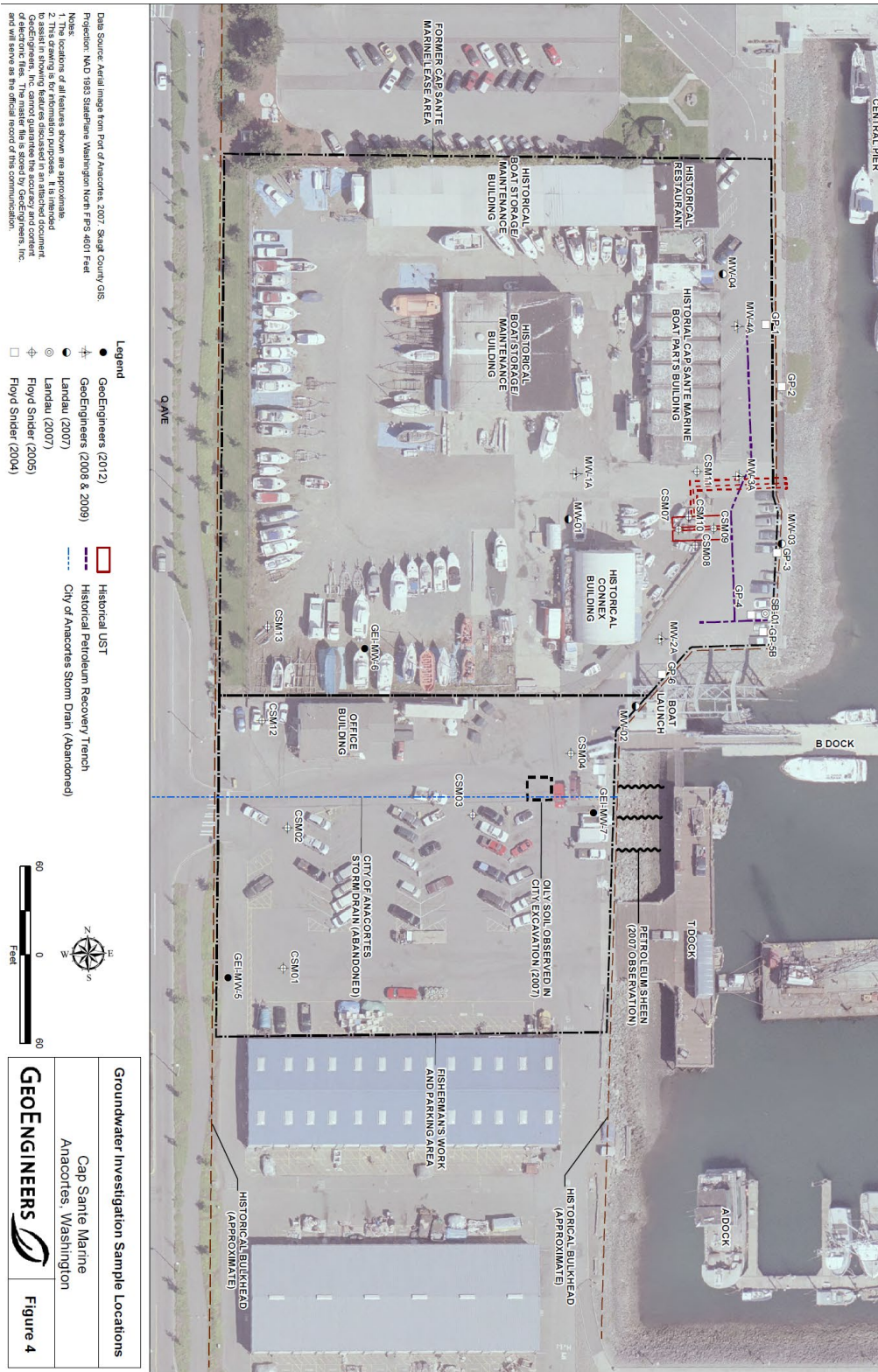
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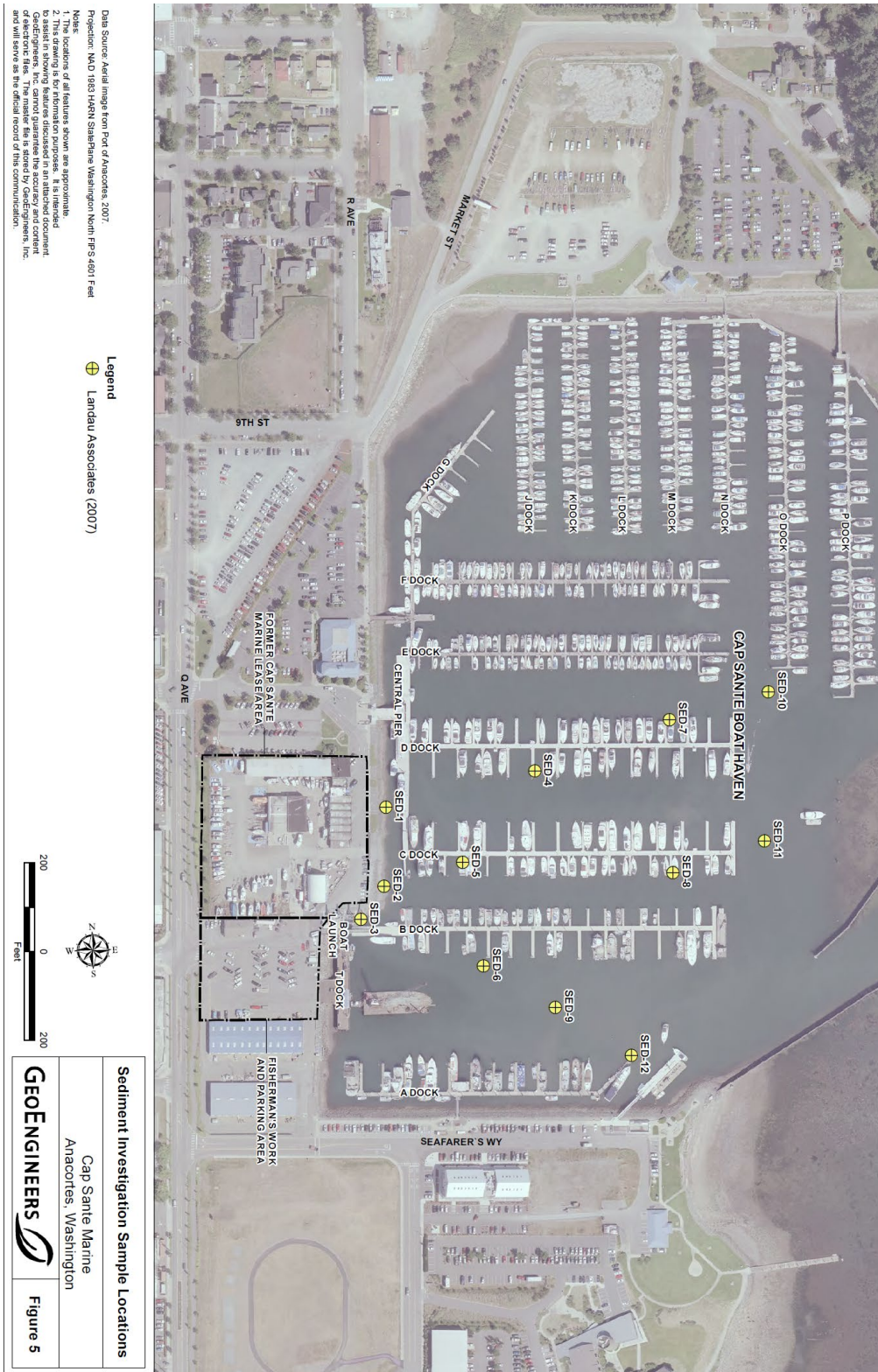
1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. can not guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.
3. It is unlawful to copy or reproduce all or any part thereof, whether for personal use or resale, without permission.

• Data Sources: ESRI Data & Maps
Projection: NAD 1983 UTM Zone 10N

Vicinity Map	
Cap Sante Marine Anacortes, Washington	
GEOENGINEERS	Figure 1

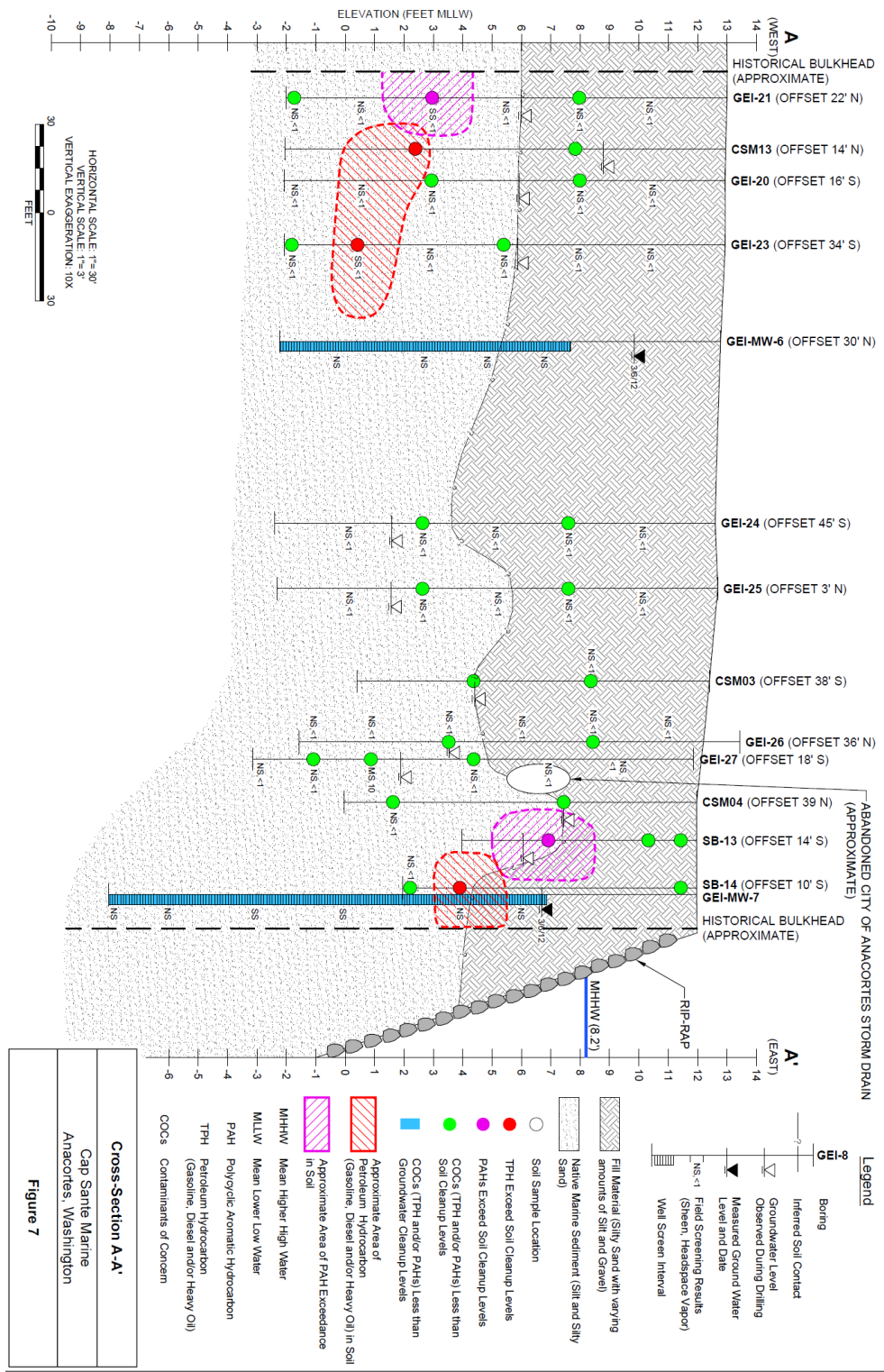


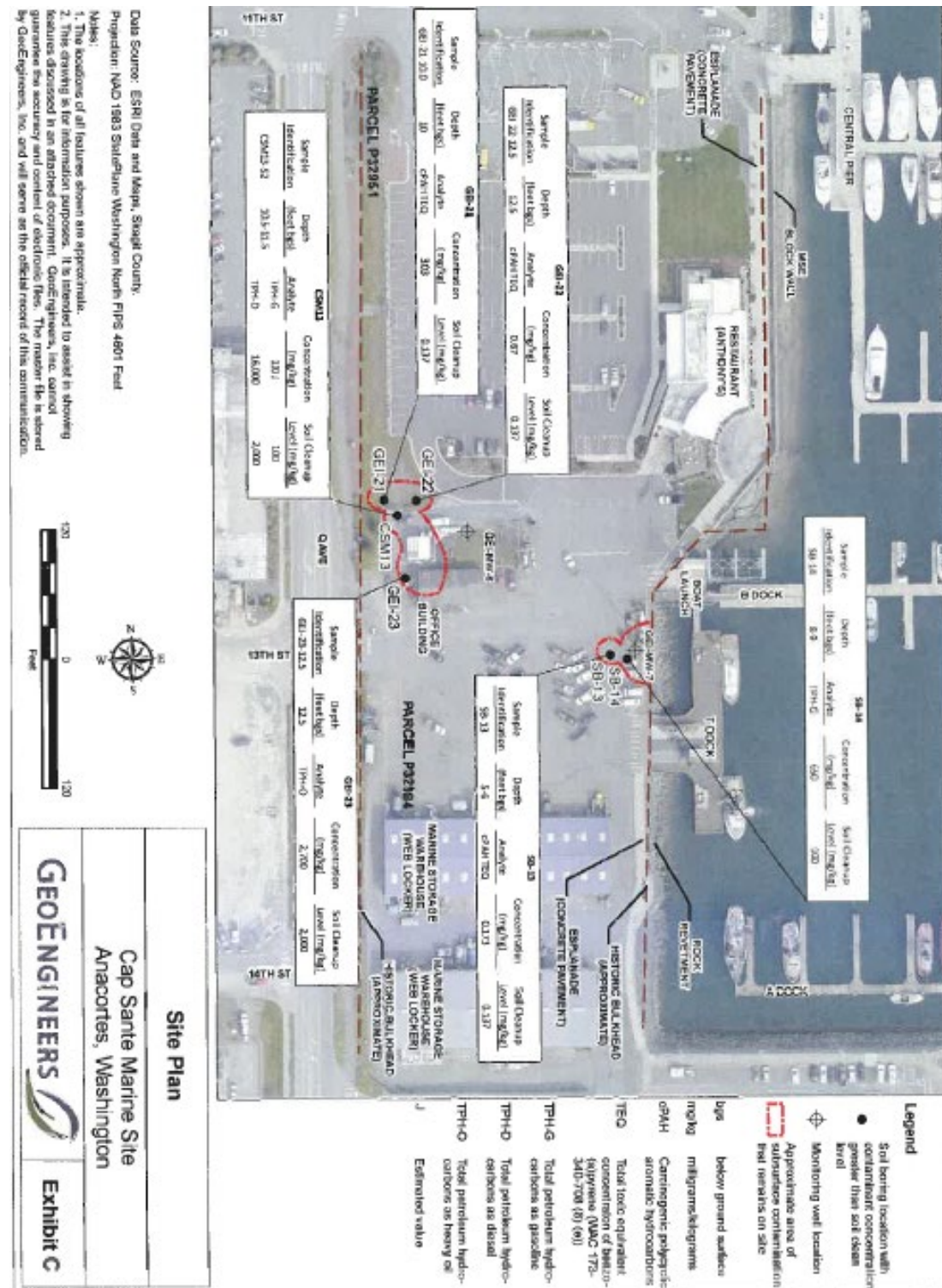






Concentration Map





Environmental Covenant

After recording return to:

Nicholas M. Acklam
Toxics Cleanup Program
Washington State Department of Ecology
Post Office Box 47600
Olympia, WA 98504-7600


201408050034
Skagit County Auditor \$82.00
8/5/2014 Page 1 of 11 11:03AM

DOCUMENT: ENVIRONMENTAL COVENANT
GRANTOR: PORT OF ANACORTES
GRANTEE: WASHINGTON STATE DEPARTMENT OF ECOLOGY
BRIEF LEGAL DESCRIPTION: PTN. TR 8, PL 10, ANACORTES TIDE LANDS; AND PTN. TR 31, PL 10, ANACORTES TIDE LANDS
TAX PARCEL #S: P32951; P32984
CROSS REFERENCE: NONE

ENVIRONMENTAL COVENANT

RECITALS

A. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), Chapter 64.70 RCW.

B. This Covenant applies to (i) a portion of Skagit County tax parcel number P32951 and (ii) a portion of Skagit County tax parcel number P32984. Both tax parcels are legally described in Exhibit "A" attached hereto and are part of a site commonly known as Cap Sante Marine, facility ID #67532227. The portions of each parcel to which this Restrictive Covenant attaches are depicted in Exhibit "B" attached hereto, and are collectively referred to hereinafter as the "Property".

C. The Property is the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principle contaminants remain on the Property:

Medium	Principle Contaminants Present
Soil	Gasoline, diesel, and heavy oil range petroleum hydrocarbons and/or carcinogenic polycyclic aromatic hydrocarbons (cPAHs)

D. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology ("Ecology"). This includes the following documents: Remedial Investigation and Feasibility Study and Cleanup Action Plan.

E. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 USC Chapter 103.

COVENANT

The Port of Anacortes, as Grantor and fee simple owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter "Ecology") the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. Interference with Remedial Action. The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. Protection of Human Health and the Environment. The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance, and monitoring of remedial actions and continued compliance with this Covenant.

d. Leases. Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

e. Amendment to the Covenant. Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a



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manner that is inconsistent with this Covenant.¹ Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Commercial Land Use. The remedial action for the Property is based on a cleanup designed for commercial property. As such, the Property shall be used in perpetuity only for commercial land uses as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include, but are not limited to, residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. Containment of Soil. The remedial action for the Property is based on containing contaminated soil. The Cap Sante Marine Lease Area cap consists of plantings (bark and small shrubs) and gravel. The Fisherman's Work and Parking Area cap consists of asphalt. Exhibit C attached hereto illustrates these two capped areas. The primary purpose of this cap is to contain contamination and mitigate risk of direct human/terrestrial wildlife contact with contaminated soils. As such, the following restrictions shall apply within the area illustrated in Exhibit C:

(i) With the exception of activities carried out consistent with Section 2 (b)(ii), any activity on the Property that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

(ii) Activities that temporarily disturb the capped areas, such as utility trenching or other maintenance actions shall restore the protective cap upon conclusion of the activity. Intrusive activities in the capped areas that involve worker contact with contaminated soil shall be conducted by individuals that have the appropriate training and certifications for working on hazardous waste sites and in conformance with a site-specific health and safety plan. Prior to conducting any activities that will disturb the capped areas; the Grantor shall provide written notice to Ecology.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

¹Examples of inconsistent uses are: using the Property for a use not allowed under the covenant (for example, mixed residential and commercial use on a property that is restricted to industrial uses); OR, drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.



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b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect records related to the remedial action.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest in any part of the Property including, but not limited to title, easement, leases, and security or other interests, must:

i. Notify Ecology at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE SKAGIT COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology of the event and response actions planned or taken as soon as practical, but no later than within twenty-four (24) hours of the discovery of the event.

d. Notice. Any required written notice, approval, or communication shall be personally delivered or sent by first class U.S. mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Chris Johnson Port of Anacortes 100 Commercial Avenue Anacortes, WA 98221 (360) 293-3134	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program Post Office Box 47600 Olympia, WA 98504-7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 5. Modification or Termination.

a. If the conditions at the Property requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

- a. This Covenant is being freely and voluntarily granted by the Grantor.
- b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.
- c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, Chapter 70.105D RCW and Uniform Environmental Covenants Act, Chapter 64.70 RCW.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section, paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section, paragraph or exhibit but does not override the specific requirements in that section, paragraph or exhibit. The undersigned representative of Grantor warrants that the Port of Anacortes holds the title to the Property and has authority to execute this Covenant.



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GRANTOR:

PORT OF ANACORTES


Robert Hyde ~~Notary~~ Chris S. Johnson
Executive Director

Dated: 7-15-14

GRANTEE:

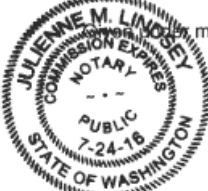
WASHINGTON STATE, DEPARTMENT
OF ECOLOGY


Jim Pendowski
Program Manager, Toxics Cleanup Program

Dated: ~~7-15-14~~ 7/21/14 ^{MLP}

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 11th day of July, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ~~Robert Hyde~~ Chris S. Johnson, known to me to be the Executive Director of the **PORT OF ANACORTES** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of the corporation.



In my hand and official seal this 11th day of July, 2014.

Julienne M. Lindsey
Print Name: Julienne M. Lindsey
NOTARY PUBLIC in and for the
State of Washington, residing at Anacortes, WA

STATE OF WASHINGTON)
) ss.
COUNTY OF Thurston)

On this 21 day of July, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Jim Pendowski, known to me to be the Program Manager of the Toxics Cleanup Program of the **WASHINGTON STATE DEPARTMENT OF ECOLOGY**, and acknowledged the said instrument to be the free and voluntary act and deed of the State of Washington, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of the State of Washington.

Given under my hand and official seal this 21 day of July, 2014.



Ann M. Lowe
Print Name: Ann m. Lowe
NOTARY PUBLIC in and for the
State of Washington, residing at Olympia, WA



**EXHIBIT A
LEGAL DESCRIPTIONS**

Tax Parcel No. P32951

Anacortes Tide Lands Tract 8, Plate 10, together with the south half of vacated 11th Street, the west half of vacated R Avenue, the north half of vacated 13th Street and vacated alley, as per City of Anacortes Ordinance No. 1201 dated November 6, 1956, situated in Section Nineteen (19), Township Thirty-Five (35) North, Range Two (2) East of W.M.

Situate in Skagit County, State of Washington.

Tax Parcel No. P32984

The east 270 feet of Anacortes Tide Lands Tract 31, Plate 10, together with the south half of vacated 13th Street and the west half of vacated R Avenue, as per City of Anacortes Ordinance No. 1201 dated November 6, 1956, situated in Section Nineteen (19), Township Thirty-Five (35) North, Range Two (2) East of W.M.

Situate in Skagit County, State of Washington.

\\SL2P\shared_documents\of_anacortes\ordinance\ntecap\marty\32951\COINBENT\DISORDER\RESTRICTIVE_COVENANT\TOWNAL_CAP_SANTC\RESTRICTIVE_COVENANT.DOC



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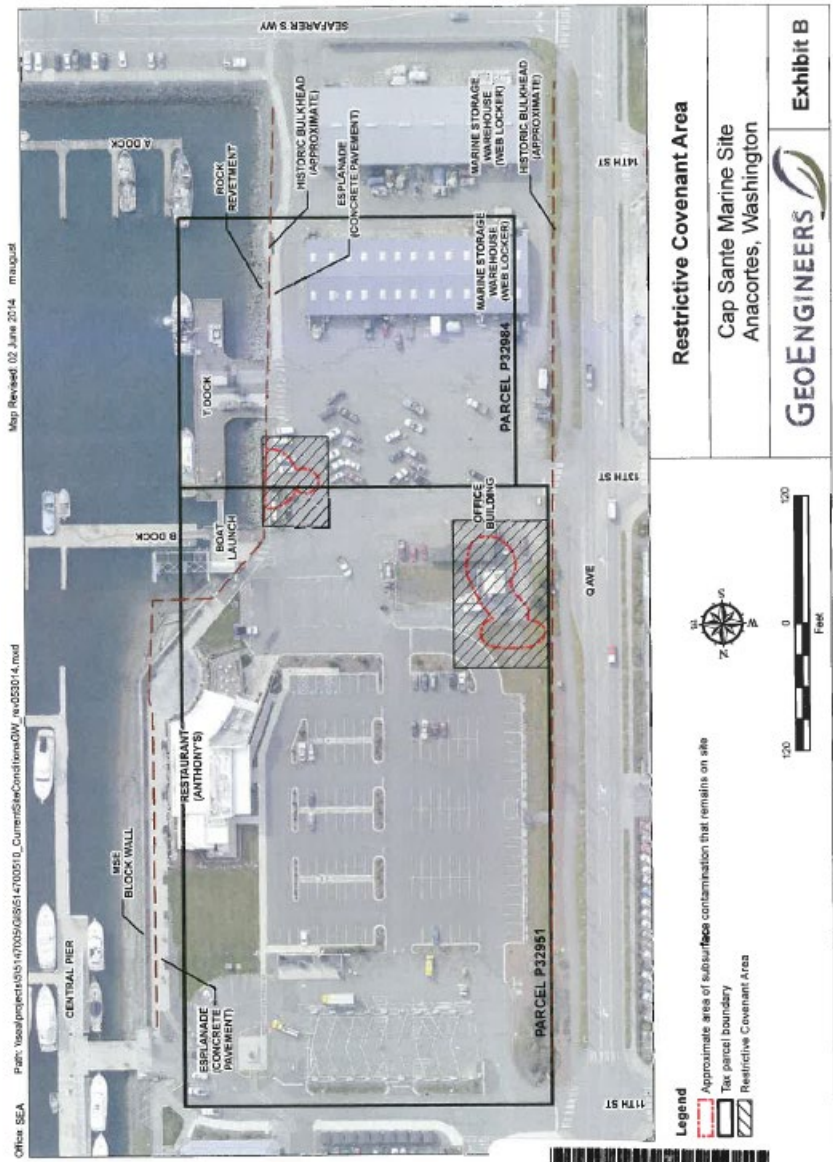
EXHIBIT B
PROPERTY MAP

- R -



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Restrictive Covenant Area
Cap Sante Marine Site
Anacortes, Washington

GEOENGINEERS

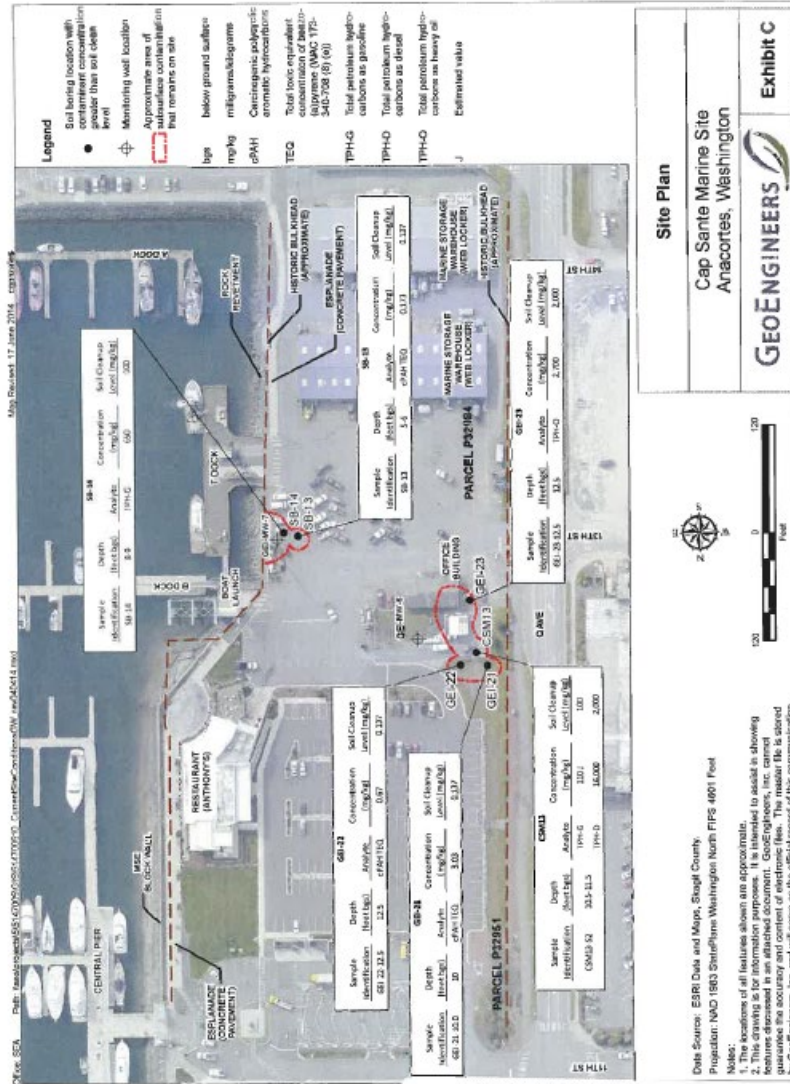
Exhibit B

EXHIBIT C
CAPPED AREAS



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Photo log

Photo 1:

Photo 2:

Photo 3:

Photo 4: