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7	STATE OF WASHINGTON		
8	SNOHOMISH COUNTY SUPERIOR COURT		
9	STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,	NO. 12-2-03430-1	
10	Plaintiff,	FIRST AMENDMENT TO CONSENT DECREE	
11		DECREE	
12	v. PORT OF EVERETT and ESY, INC,		
13			
14	Defendant.		
15	This First Amendment to the Consent Decree is issued pursuant to the authority o		
16	Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).		
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18	STATEMENT OF CURRENT CONDITIONS		
19	A. In March 2012, the State of Washington, Department of Ecology (Ecology),		
20	Port of Everett (the Port), and ESY, Inc. (ESY), entered into a Consent Decree, which was		
20	signed by this Court and filed on March 7, 2012. The Consent Decree represents a negotiated		
	settlement between Ecology, the Port, and ESY, Inc. Ecology, the Port, and ESY are		
22	collectively referred to as "the Parties."		
23	B. The Consent Decree provides for remedial action based upon the release of		
24	hazardous substances and applies to the Everett Shipyard Site (as defined in the Consent		
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Decree), which includes upland property upland and adjacent in-water areas located generally
 at 1016 l4th Street west of West Marine View Drive, Everett.

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FIRST AMENDMENT TO CONSENT DECREE

Based on the foregoing, the Parties to the Consent Decree stipulate and agree that the Consent Decree, including all Exhibits attached thereto, shall be further amended, pursuant to the provisions of Section XV of the Consent Decree. This amendment does not attempt to recite all of the provisions of the Consent Decree. Provisions of the Consent Decree not specifically changed in this amendment remain in full force and effect. The amendment to the Consent Decree is as follows:

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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.

C. Based on the information discovered in the implementation of the Cleanup Action Plan (CAP) and follow-up Engineering Design effort Ecology determined that it was not feasible to remove of all contaminated sediment from the entire contaminated area where sediment concentrations exceed the Sediment Management Standards cleanup levels. Based on this determination, the CAP is hereby amended. The PLPs shall perform all tasks set forth in the Amended CAP (Exhibit B) and implement the Amended CAP in accordance with the Amended CAP's schedule, including the following for the In-Water Area:

- 1. One or more environmental covenants (WAC 173-340-440(9)) or similar institutional controls will be required for the In-Water Area at the Site where contaminants at concentrations above cleanup levels or wood waste/debris were left behind at the conclusion of the cleanup action.
- 2. Long-term monitoring is required to take place in the In-Water Area of the Site where contaminants at concentrations above cleanup levels or historical debris were left behind at the conclusion of the cleanup action. Long-term monitoring will take place at the 5-year review point under a scope agreed upon by Ecology and the Port to verify that the containment caps remain intact.

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1	X	X. LAND	USE RESTRICTIONS
2	The Port shall cause to be recorded a Restrictive Covenant (Exhibit D) for the In-Water		
3	Area of the Site with the office of the Snohomish County Auditor within thirty (30) days of the		
4	entry of the First Amendment to Consent Decree with the Snohomish County Superior Court.		
5	The Restrictive Covenant shall restrict future uses of the In-Water Area of the Site. The Port		
6	shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days		
7	of the recording date.		
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9	STATE OF WASHINGTON DEPARTMENT OF ECOL		ROBERT W. FERGUSON, ATTORNEY GENERAL
10			
11	James Pendowski Program Manager		John A. Level, WSBA No. 20439 Assistant Attorney General
12	Toxics Cleanup Program (360) 407-7177		(360) 586-6753
13	Date:		Date:
14	Date		Date
15	THE PORT OF EVERETT		ESY, INC.
16			
17	LES REARDANZ		NICK EITEL
18	Chief Administrative Officer Port of Everett		President ESY, Inc.
19	(425) 259-3164		
20	Date:		Date:
21	Date		Date
22	ENTERED this	day of	2016.
23			
24			JUDGE /COMMISSIONER
25			Snohomish County Superior Court
26			
	FIRST AMENDMENT TO CONS	SENT	3 ATTORNEY GENERAL OF WASHINGTON

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