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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON

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12 UNITED STATES OF AMERICA, )  
13 STATE OF WASHINGTON THROUGH )  
14 THE WASHINGTON DEPARTMENT )  
OF ECOLOGY, SUQUAMISH TRIBE, )  
AND TULALIP TRIBES, )

15 )  
16 Plaintiffs, )

17 )  
18 v. )

19 )  
20 JELD-WEN, INC., KIMBERLY CLARK )  
21 CORP., AND WEYERHAEUSER NR )  
COMPANY, )

22 )  
23 Defendants. )

Civil Action No.: 2:18-cv-00113

24  
25 **CONSENT DECREE**

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28 CONSENT DECREE

UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
P.O. Box 7611, Washington, DC 20044  
202-514-5270

## I. BACKGROUND

A. The Plaintiffs have filed a complaint in this matter against Jeld-Wen, Inc., Kimberly Clark Corp., and Weyerhaeuser NR Company (“Settling Defendants”) pursuant to the Model Toxics Control Act (“MTCA”), chapter 70.105D RCW; chapter 90.48 RCW; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A), for Natural Resource Damages as a result of releases of hazardous substances and discharges of oil into the Port Gardner Bay Area. The Port Gardner Bay Area (as defined below and depicted in Appendix A) includes the lower Snohomish River, Everett Waterfront, East Waterway, and a portion of Possession Sound in and near Everett, Washington. Several industrial facilities, including those currently or formerly owned and/or operated by the Settling Defendants (identified in Appendix B), have contributed hazardous substances and oil to the Port Gardner Bay Area.

B. The United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“NOAA”); the United States Department of the Interior (“DOI”); the Washington Department of Ecology on behalf of the State of Washington; the Suquamish Tribe; and the Tulalip Tribes (collectively, “the Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), 40 C.F.R. Part 300, subpart G, and RCW 70.105D.040(2), serve as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, or loss of Natural Resources under their trusteeship.

C. Investigations conducted by the Trustees and others have detected hazardous substances in the sediments, soils and groundwater of the Port Gardner Bay Area, including, but not limited to, polychlorinated dibenzodioxins and furans (“dioxins”), polychlorinated biphenyls (“PCBs”), organochlorine pesticides and related products, polycyclic aromatic hydrocarbons (“PAHs”), metals (including lead, mercury, copper, chromium, and arsenic), volatile and semi-volatile organic compounds (including 4-methylphenol), perchlorate, herbicides, organic

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1 solvents, antifouling agents such as tributyltin and other butyltins, and wood waste degradation  
2 products (including sulfide and ammonia).

3 D. Plaintiffs allege that hazardous substances and oil released to the Port Gardner  
4 Bay Area from the facilities currently or formerly owned and/or operated by Settling Defendants,  
5 identified in Appendix B, have caused injury to, destruction of and loss of natural resources  
6 under Plaintiffs' trusteeship, including fish, shellfish, wildlife, marine sediments, and resources  
7 of cultural significance. Plaintiffs further allege that each of them and the public have suffered  
8 the loss of natural resource services (including ecological services as well as direct and passive  
9 human use losses) as a consequence of those injuries.

10 E. Although the Trustees initiated but have not completed a full natural resource  
11 damage assessment for the Port Gardner Bay Area, the Trustees have developed and analyzed  
12 information sufficient to support a settlement that is fair, reasonable and in the public interest.

13 F. To facilitate resolving natural resource damage claims, relying upon the results of  
14 remedial investigations, regulatory standards, and scientific literature, the Trustees developed an  
15 estimate of the amount of injury to natural resources that had occurred as a result of releases of  
16 hazardous substances and discharges of oil to the Port Gardner Bay Area. The Trustees  
17 quantified the effects of the injuries in terms of the losses of ecological services over affected  
18 areas and over time, discounted to a present value. Plaintiffs used discounted service acre-years  
19 ("DSAYs") to describe both the scale of the injuries, and the amount of habitat restoration they  
20 are seeking to compensate for the injuries.

21 G. Plaintiffs assert that hazardous substance releases and oil discharges to the Port  
22 Gardner Bay Area have become dispersed and commingled to the extent that the effects of  
23 releases of one Potentially Responsible Party ("PRP") cannot be readily distinguished from  
24 another's. Plaintiffs further assert that the circumstances of the contamination make all PRPs  
25 who contributed to the contamination jointly and severally liable for all injuries to natural  
26 resources that have resulted from the contamination. As a consequence, Plaintiffs assert the right  
27 to recover for the loss of all the calculated DSAYs and associated damage assessment costs from

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any PRP. Without prejudice to their position and solely for purposes of facilitating settlement with individual PRPs, the Plaintiffs have determined that settling with the Settling Defendants for a portion of the natural resource damages attributable to all Port Gardner Bay Area sources would result in a fair and equitable resolution of Plaintiffs' claims. Plaintiffs have agreed to settle their claims against Settling Defendants for the equivalent of 400 DSAYs (117 for Jeld-Wen, 153 for Kimberly-Clark, and 130 for Weyerhaeuser), of the total 1,019 DSAYs estimated by the Trustees for the Port Gardner Bay Area, and a portion of the Trustees' unreimbursed damage assessment costs. The Trustees have estimated the cash damages equivalent of the DSAYs allocated to Settling Defendants to total \$3,946,633.

H. The Parties agree, and this Court by entering this Consent Decree finds, that this Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, that this Decree will expedite the restoration and protection of natural resources at and near the Port Gardner Bay Area, that the damage payments to be provided under this Decree constitute appropriate actions necessary to protect and restore the natural resources allegedly injured by releases or threatened releases of hazardous substances by the Settling Defendants, and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court also has personal jurisdiction over the Settling Defendants. Solely for purposes of this Consent Decree and the underlying Complaint, the Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Defendants shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

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### III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, the Suquamish Tribe, the Tulalip Tribes, and upon each Settling Defendant and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

### IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. Whenever terms listed below are used in this Consent Decree, or Appendices A or B, the following definitions shall apply solely for purposes of this Consent Decree:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

b. "Commerce" shall mean the United States Department of Commerce and its successor departments, agencies, or instrumentalities.

c. "Consent Decree" or "Decree" shall mean this consent decree, including Appendices A and B.

d. "Day" or "day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOI" shall mean the United States Department of the Interior and its successor departments, agencies, or instrumentalities.

f. "DSAYs" means discounted service acre-years, the metric established by the Trustees to quantify the scale of Natural Resource Damages liability associated with the Port Gardner Bay Area and the natural resource restoration efforts needed to compensate for injury to, destruction or loss of natural resources giving rise to liability.

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g. “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

h. “Natural Resource Damages” shall mean any damages, including the costs of damage assessment, recoverable by the Trustees under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; Chapter 90.48 RCW; and Section 1002(b)(2) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2), for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources, including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment of natural resources; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15, and applicable State or tribal law, resulting from releases of hazardous substances or discharges of oil to the Port Gardner Bay Area, where such release or discharge occurred on or before the Effective Date of this Consent Decree at the locations identified for each Settling Defendant on Appendix B.

i. “Natural Resources” shall mean that definition as provided in 42 U.S.C. § 9601(16).

j. “MTCA” shall mean the Model Toxics Control Act, Chapter 70.105D RCW.

k. “Parties” shall mean the United States, the State of Washington, the Suquamish Tribe, the Tulalip Tribes, and the Settling Defendants.

l. “Plaintiffs” shall mean the United States, the State of Washington, the Suquamish Tribe, and the Tulalip Tribes.

m. “Port Gardner Bay Area” shall mean the area depicted on Appendix A, attached, including the lower Snohomish River, Everett Waterfront, East Waterway, and a portion of Possession Sound in and near Everett, Washington.

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n. “Settling Defendant” shall mean each one of, and “Settling Defendants” shall mean all of, Jeld-Wen, Inc., Kimberly Clark Corp., and Weyerhaeuser NR Company.

o. “State” shall mean the State of Washington, and the Washington State Department of Ecology.

p. “Tribes” shall mean the Suquamish Tribe and the Tulalip Tribes.

q. “Trustees” shall mean Commerce, acting through NOAA; DOI; the Washington State Department of Ecology, on behalf of the State of Washington; the Suquamish Tribe; and the Tulalip Tribes.

r. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including Commerce and DOI.

## V. GENERAL PROVISIONS

4. The Complaint states claims upon which relief may be granted.

5. Nothing in this Decree shall be construed as an admission of fact or liability by Settling Defendants for any claims or allegations made in the Complaint or in this Decree nor shall Settling Defendants’ entry of this Decree be construed as agreement with the claims or allegations made in the Complaint or in this Decree.

6. This Decree shall not be used as evidence of Settling Defendants’ alleged liability in any action or proceeding other than an action or proceeding to enforce the terms of this Decree.

## VI. PAST ASSESSMENT COST REIMBURSEMENT

7. Within thirty (30) days of the Effective Date of this Decree, Settling Defendants shall pay the amounts for past assessment costs incurred by the Trustees through May 27, 2017 (for NOAA) and June 30, 2017 (for DOI, the State and the Tribes), as described below:

### a. Payments for Assessment Costs Incurred by the United States.

1. Within 30 days after the Effective Date, Settling Defendants shall pay the amounts below to the United States for assessment costs incurred by the United States:  
Jeld-Wen: \$70,320

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1        Kimberly-Clark: \$91,801

2        Weyerhaeuser: \$78,133

3        Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department  
4        of Justice account, in accordance with instructions provided to Settling Defendants by the  
5        Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Western District  
6        of Washington after the Effective Date. The payment instructions provided by the FLU will  
7        include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to  
8        identify all payments required to be made in accordance with this Consent Decree. The FLU  
9        will provide the payment instructions to:  
10       

11        For Jeld-Wen:

12        Dwayne Arino  
13        Vice President, Environmental Affairs  
14        JELD-WEN, Inc.  
15        3250 Lakeport Blvd.  
16        Klamath Falls OR 97601  
17        541-883-3373  
18        darino@jeldwen.com

19        and

20        Kenneth Luther, JD  
21        Environmental Claims Examiner  
22        Brandywine Group  
23        Insurance & Reinsurance Companies  
24        2603 Camino Ramon, Suite 300  
25        San Ramon, CA 94583  
26        925-598-6144  
27        kluther@chubb.com

28        For Kimberly-Clark:

      Cindy Jernigan  
      Kimberly-Clark Corporation  
      Global Sustainability, Senior Remediation Specialist  
      1400 Holcomb Bridge Road; Roswell, GA 30076  
      (office) 770/587-7014

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(email) Cindy.Jernigan@kcc.com, (fax) 920/969-4591

For Weyerhaeuser:

Carol Wiseman  
Remediation Project Manager  
Weyerhaeuser NR Company  
220 Occidental Avenue South  
Seattle, WA 98104  
(360) 562-7733  
Carol.Wiseman@weyerhaeuser.com

on behalf of Settling Defendants. Settling Defendants may change the individuals to receive payment instructions on their behalf by providing written notice of such change to the United States in accordance with Section XVI (Notices).

2. Of the total amount to be paid by Settling Defendants pursuant to Subparagraph 7.a.(1):

(a) \$128,583 shall be deposited in the DOI NRDAR Fund, to be applied toward natural resource damage assessment costs incurred by DOI.

(b) \$111,671 shall be deposited in the NOAA DARRF, to be applied toward natural resource damage assessment costs incurred by NOAA.

b. Payment for Assessment Costs Incurred by the State. Within 30 days after the Effective Date, Settling Defendants shall pay the amounts below to the State of Washington for assessment costs incurred by the State, totaling \$50,224.

Jeld-Wen: \$14,609

Kimberly-Clark: \$19,215

Weyerhaeuser: \$16,400

Payment shall be made by check or electronic fund transfer to the Washington State Department of Ecology, referencing account 1T491. If payment is made by mail, Settling Defendants shall send checks to:

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Cashiering Unit  
Department of Ecology  
P.O. Box 47611  
Olympia, WA 98504-7611

c. Payment of Assessment Costs Incurred by the Suquamish Tribe. Within 30 days after the Effective Date, Settling Defendants shall pay the amounts below to the Suquamish Tribe for assessment costs incurred by the Tribe, totaling \$25,097.

Jeld-Wen: \$7,346

Kimberly-Clark: \$9,589

Weyerhaeuser: \$8,162

Payment shall be made by check to the Suquamish Tribe bearing the notation "Port Gardner Bay NRDA."

d. Payment of Assessment Costs Incurred by the Tulalip Tribes. Within 30 days after the Effective Date, Settling Defendants shall pay the amounts below to the Tulalip Tribes for assessment costs incurred by the Tribes, totaling \$28,678.

Jeld-Wen: \$8,394

Kimberly-Clark: \$10,958

Weyerhaeuser: \$9,326

Payment shall be made by check to the Tulalip Tribes bearing the notation "Port Gardner Bay NRDA." Settling Defendants shall transmit payment by check to:

Mr. Timothy A. Brewer  
Office of the Reservation Attorney  
The Tulalip Tribes  
6406 Marine Drive  
Tulalip, WA 98271

8. Payment of Interim Costs. The Trustees shall provide Settling Defendants with a bill requiring payment of costs incurred by the Trustees after the dates identified in Paragraph 7 through the Effective Date of the Consent Decree, up to \$35,000. Within 30 days of receiving the

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1 bill requiring payment of costs from the Trustees, Settling Defendant shall pay the costs in  
2 accordance with the procedures set forth in Paragraphs 7.a-d and 9.

3 9. At the time of each payment pursuant to Paragraphs 7.a-d. and 8, Settling  
4 Defendants will send notice that payment has been made to the Trustees and DOJ in accordance  
5 with Section XVI (Notices). Such notice will reference Port Gardner Bay NRDA, DOJ case  
6 number 90-11-3-10859 and the civil action number.

## 7 **VII. PAYMENT OF NATURAL RESOURCE DAMAGES**

8 10. Within thirty (30) days of the Effective Date of this Decree, Settling Defendants  
9 will pay to the Trustees a total of \$3,946,633 for Natural Resource Damages, as follows:

10 Jeld-Wen: \$1,155,141

11 Kimberly-Clark: \$1,508,002

12 Weyerhaeuser: \$1,283,490

13 Payment shall be made by EFT to the U.S. Department of Justice account in accordance with  
14 Paragraph 7.a.(1). The payment shall be disbursed to a segregated sub-account within the NRDAR  
15 Fund ("Port Gardner Bay Account"), to be managed by the U.S. Department of the Interior for the  
16 joint benefit and use of the Trustees to pay for natural resource restoration projects to be jointly  
17 selected by the Trustees.

## 18 **VIII. FAILURE TO MAKE TIMELY PAYMENTS**

19 11. If a Settling Defendant fails to make any payment under Paragraphs 7, 8 or 10 by  
20 the required due date, interest shall be assessed at the rate specified for interest on investments of  
21 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded  
22 annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate  
23 of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to  
24 change on October 1 of each year. Interest on late payments shall accrue beginning on the date of  
25 lodging of the Consent Decree through the date on which the payment is made.

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## IX. STIPULATED PENALTIES

12. Late Payments. Settling Defendants shall pay a stipulated penalty of \$5,000 per day that each payment pursuant to Paragraphs 7, 8 and 10 is not made by the required due date.

13. All penalties shall begin to accrue on the day after the payment is due, and shall continue to accrue through the final day the payment is made. Plaintiffs may give Settling Defendant written notification of the late payment. Plaintiffs may send Settling Defendant a written demand for the payment of stipulated penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether Plaintiffs have notified Settling Defendant of a late payment.

14. All payments for stipulated penalties for late payments to the United States under this Paragraph will be deposited by EFT to the United States Treasury in accordance with Paragraph 7.a.(1). Payments for stipulated penalties for late payments to the State of Washington, the Suquamish Tribe or the Tulalip Tribes shall be paid in accordance with the procedures set forth in Paragraph 7. At the time of each payment, Settling Defendant will send notice that payment has been made to the Trustees and DOJ in accordance with Section XVI (Notices). This notice will reference Port Gardner Bay Area NRD, DOJ Case Number 90-11-3-10859, and the civil action number.

15. All penalties accruing under this Section shall be due and payable within thirty (30) days of a Settling Defendant's receipt from Plaintiffs of a demand for payment of the penalties.

16. If a Settling Defendant fails to pay stipulated penalties when due, Plaintiffs may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the day after payment is due.

17. If Plaintiffs bring a motion or a separate action in court to enforce this Decree and prevail, Plaintiffs shall be entitled to recover from the Settling Defendant or Defendants their reasonable costs of such motion or action, including, but not limited to, costs of attorney time.

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1           18.     Payments made under this Section are in addition to any other remedies or  
2 sanctions available to Plaintiffs by virtue of a Settling Defendant's failure to comply with the  
3 requirements of this Decree.

4           19.     Notwithstanding any other provision of this Section, Plaintiffs may, in their  
5 unreviewable discretion, waive payment of any portion of the stipulated penalties that have  
6 accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Settling  
7 Defendants from payments as required by Section VI (Past Assessment Cost Reimbursement) or  
8 Section VII (Payment of Natural Resource Damages) or from performance of any other  
9 requirement of this Decree.

10          20.     All penalties shall begin to accrue on the day after the complete performance is  
11 due or the day a violation occurs and shall continue to accrue through the final day of the  
12 correction of the noncompliance or completion of activity. Nothing in this Consent Decree shall  
13 prevent the simultaneous accrual of separate penalties for separate violations of this Consent  
14 Decree.

#### 15                   **X.     TRUSTEES' USE OF NATURAL RESOURCE DAMAGES**

16          21.     Management and Application of Funds. DOI shall, in accordance with law,  
17 manage and invest those funds paid to the Port Gardner Bay Account pursuant to Paragraph 10  
18 of this Consent Decree, and any return on investments or interest accrued on those funds, for the  
19 joint use by the Trustees in connection with restoration, rehabilitation, or replacement of Natural  
20 Resources affected by the release of hazardous substances in Port Gardner Bay. DOI shall hold  
21 such funds in the Port Gardner Bay Account, including return on investments or accrued interest,  
22 subject to the provisions of this Consent Decree, and shall not make any charge against the Port  
23 Gardner Bay Account for any investment or management services provided.

24          22.     The Trustees commit to the expenditure of the funds set forth in Paragraph 10 for  
25 the design, implementation, permitting (as necessary), monitoring, and oversight of restoration  
26 projects and for the costs of complying with the requirements of the law to conduct the  
27 restoration planning and implementation process. The Trustees plan to use these funds in

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accordance with the Trustees' Damage Assessment Restoration Plan and Environmental Assessment for the Port Gardner Bay Area, issued in August 2016, and adopted as final in October 2016, unless a change in circumstances makes it appropriate for the Trustees to revise such Plan. The Plan, which was subject to a public comment period, identifies a preferred alternative to restore, replace, and/or acquire the equivalent of injured Natural Resources and services. In the event costs to implement the Restoration Plan are higher than anticipated, or the implementation of the Restoration Plan is otherwise infeasible, uneconomical, or impractical for any reason, this circumstance shall not give rise to any right to additional payments from Settling Defendants. In the event the funds paid under this Consent Decree are utilized for purposes other than those described in the Restoration Plan, such change in use of funds shall not give rise to any right to additional payments from Settling Defendants.

23. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the Port Gardner Bay Account to restore, rehabilitate or replace Natural Resources in accordance with applicable law, this Consent Decree, and any Memorandum of Understanding among them. Defendants shall not be entitled to dispute, in any other forum or proceeding, any decision relating to the Trustees' use of funds or restoration efforts under this Section, and the rights and protections afforded to Defendants under the covenant not to sue and contribution protection provisions in Sections XI (Covenants by Plaintiffs) and XIV (Effect of Settlement/Contribution) shall not be affected in any way by the Trustees' use or administration of such funds.

## **XI. COVENANTS BY PLAINTIFFS**

24. Except as provided by Section XII (Reservation of Rights by Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311(f) of the CWA, 33 U.S.C. § 1321(f); Chapter 90.48 RCW; and Section 1002(a) of OPA, 33 U.S.C. § 2702(a), to recover Natural Resource Damages. This covenant not to sue shall take effect upon receipt of Settling Defendants' complete payment of costs pursuant to Paragraphs 7,

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8 and 10 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

## **XII. RESERVATIONS OF RIGHTS BY PLAINTIFFS**

25. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, with respect to all matters not expressly included within the Plaintiffs' covenants in Section XI. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve all rights against the Settling Defendants with respect to:

- a. liability for failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for costs of response (i.e., removal and remedial costs to respond to hazardous substances) incurred or to be incurred by Plaintiffs under any federal or State statute or Tribal law;
- d. liability for damages to natural resources (including assessment costs) as defined in 42 U.S.C. §§9601(6) and (16) that are not expressly included within the Plaintiffs' covenants in Section XI;
- e. liability for damages to natural resources (including assessment costs) as defined in 42 U.S.C. §§9601(6) and (16) within the Port Gardner Bay Area resulting from a Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of hazardous substances after the lodging of this Consent Decree;
- f. liability for damages to natural resources (including assessment costs) as defined in 42 U.S.C. §§9601(6) and (16) for releases or threatened releases of hazardous substances or discharges of oil to areas outside of the Port Gardner Bay Area;

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1                   g.       liability for injunctive relief or administrative order enforcement under  
2 any federal or State statute; and

3                   h.       liability under Section 107(a)(4)(D) of CERCLA, 42 U.S.C. §  
4 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42  
5 U.S.C. § 9604(i) in or regarding the Port Gardner Bay Area.

6           26.       Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve  
7 the right to institute proceedings against Settling Defendants in this action or in a new action  
8 seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Port  
9 Gardner Bay Area, unknown to the Trustees at the date of lodging of this Decree that result in  
10 releases of hazardous substances or discharges of oil that contribute to injury to, destruction of,  
11 or loss of Natural Resources, or (2) information received after the date of lodging of the Decree  
12 which indicates that there is injury to, destruction of, or loss of Natural Resources of a type or  
13 future persistence that was unknown, or of a magnitude significantly greater than was known to  
14 the Trustees at the date of lodging of this Decree.

### 15                                   **XIII. COVENANTS BY THE SETTLING DEFENDANTS**

16           27.       Settling Defendants covenant not to sue and agree not to assert any claims or  
17 causes of action against the United States, the State, the Suquamish Tribe, or the Tulalip Tribes,  
18 or their contractors or employees, with respect to Natural Resource Damages or this Consent  
19 Decree, including, but not limited to:

20                   a.       any direct or indirect claim for reimbursement of any payment for Natural  
21 Resource Damages from the Hazardous Substance Superfund based on CERCLA Sections 107,  
22 111, 112, 113, or any other provision of law; or

23                   b.       any claim against the United States or the State pursuant to Sections 107  
24 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages.

### 25                                   **XIV. EFFECT OF SETTLEMENT/CONTRIBUTION**

26           28.       Nothing in this Consent Decree shall be construed to create any rights in, or grant  
27 any cause of action to, any person not a Party to this Consent Decree. Each of the Parties

28 CONSENT DECREE

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202-514-5270



expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Port Gardner Bay Area against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States and the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional relief (including response action, response costs, and natural resource damages, including costs of damage assessment) and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA.

29. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States and the State within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA and RCW 70.105D.040(4)(d), or as may be otherwise provided by law, for Natural Resource Damages; provided, however, that if the Plaintiffs exercise rights against Settling Defendants under the reservations in Section XII, other than Paragraphs 25(a) (claims for failure to meet a requirement of this Consent Decree) and 25(b) (criminal liability), the contribution protection afforded by this Consent Decree will no longer include those matters that are within the scope of the exercised reservation.

30. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the Plaintiffs in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States, the State and the Tribes for Natural Resource Damages within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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31. Each Settling Defendant shall, with respect to any suit or claim brought by it for contribution for Natural Resource Damages, notify the Plaintiffs in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants shall also notify in writing the Plaintiffs within 10 days of any settlement of its claims (regardless of whether the claim is filed or unfilled) for contribution of Natural Resource Damages.

32. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the Plaintiffs within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the Plaintiffs within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

33. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs or Natural Resource Damages, or other appropriate relief relating to the Port Gardner Bay Area, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceedings were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XI (Covenants by the Plaintiffs).

## XV. RETENTION OF RECORDS

34. Until ten (10) years after Settling Defendant's payments to Plaintiffs pursuant to Paragraphs 7, 8 and 10, Settling Defendants shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability or the liability of any other person under CERCLA with respect to the Port Gardner Bay Area. The above record retention requirement shall apply regardless of any corporate retention policy to the contrary.

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35. At the conclusion of this document retention period, Settling Defendants shall notify the Plaintiffs at least ninety (90) days prior to the destruction of any such records or documents, and, upon written request by Plaintiffs, and except as provided in Paragraph 36 (Privileged and Protected Claims), Settling Defendants shall deliver any such non-privileged records or documents to Plaintiffs.

36. Privileged and Protected Claims. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Decree shall be withheld on the grounds that they are privileged.

37. Settling Defendants hereby each certify individually that, to the best of its knowledge and belief, after a thorough inquiry that fully complies with the Federal Rules of Civil Procedure, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Port Gardner Bay Area since notification of potential liability by any Trustee.

## **XVI. NOTICES**

38. Whenever, under this Consent Decree, notice is required to be given by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise

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1 specified. Except as otherwise provided, written notice to a Party by regular mail in accordance  
2 with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

3 **As to the United States and as to DOJ:**

4 EES Case Management Unit  
5 U.S. Department of Justice  
6 Environment and Natural Resources Division  
7 P.O. Box 7611  
8 Washington, D.C. 20044-7611  
9 Re: DJ #90-11-3-10859

10 **As to the United States Department of Interior:**

11 Alexandra James  
12 Office of the Regional Solicitor  
13 U.S. Department of the Interior  
14 805 SW Broadway, Suite 600  
15 Portland, OR 97205  
16 (503) 231-2145  
17 (503) 231-2166 (fax)  
18 alexandra.james@sol.doi.gov

19 Jeff Krausmann  
20 Fish and Wildlife Biologist/NRDA Specialist  
21 U.S. Fish and Wildlife Service  
22 Washington Fish and Wildlife Office  
23 510 Desmond Drive, SE, Suite 102  
24 Lacey, Washington 98503-1263  
25 ph. 360-753-6053  
26 jeff\_krausmann@fws.gov

27 **As to the National Oceanic and Atmospheric Administration:**

28 Christopher J. Plaisted  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
U.S. Department of Commerce  
501 W. Ocean Blvd, Suite 4470  
Long Beach, CA 90802

**As to the State of Washington:**

Donna Podger

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Environment and Natural Resources Division  
P.O. Box 7611, Washington, DC 20044  
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1 Toxics Cleanup Program  
2 Washington State Department of Ecology  
3 State of Washington  
4 P.O. Box 47600  
5 Olympia, WA 98504-7600

6 John A. Level  
7 Attorney General's Office  
8 P.O. Box 40117  
9 Olympia, WA 98504-0117

10 **As to the Suquamish Tribe:**

11 Melody Allen  
12 Office of Tribal Attorney  
13 P.O. Box 498  
14 18690 Suquamish Way  
15 Suquamish, WA 98392

16 **As to the Tulalip Tribes:**

17 Kimberly Ordon  
18 Law Offices of Kimberly Ordon, PS  
19 P.O. Box 1407  
20 Duvall, WA 98019-1407

21 Timothy Brewer  
22 Tulalip Tribes Office of the Reservation Attorney  
23 6406 Marine Drive  
24 Tulalip, WA 98271

25 **As to Jeld-Wen, Inc.:**

26 Dwayne Arino  
27 Vice President, Environmental Affairs  
28 JELD-WEN, Inc.  
3250 Lakeport Blvd.  
Klamath Falls OR 97601  
541-883-3373  
darino@jeldwen.com

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**As to Kimberly Clark Corp.:**

Deputy General Counsel, Litigation  
Kimberly-Clark Corporation  
2100 Winchester Road  
Neenah, WI 54956

Director, Environmental Sustainability  
Kimberly-Clark Corporation  
1400 Holcomb Bridge Road  
Roswell, GA 30076

**As to Weyerhaeuser:**

Michael Dunning  
Perkins Coie LLP  
1201 3<sup>rd</sup> Avenue, Suite 4900  
Seattle, WA  
98101-3099

Carol Wiseman  
Weyerhaeuser NR Company  
220 Occidental Avenue South  
Seattle, WA 98104

**XVII. RETENTION OF JURISDICTION**

39. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction of this Consent Decree, or to effectuate or enforce compliance with its terms.

**XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

40. This Consent Decree shall be lodged with the Court for at least thirty (30) days for public notice and comment. The Plaintiffs reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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1           41.     If for any reason the Court should decline to approve this Consent Decree in the  
2 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the  
3 agreement may not be used as evidence in any litigation between the Parties.

#### 4                                   **XIX. SIGNATORIES/SERVICE**

5           42.     The Assistant Attorney General for the Environment and Natural Resources  
6 Division of the Department of Justice and each undersigned representative of the State of  
7 Washington, the Suquamish Tribe, the Tulalip Tribe, and Settling Defendants certifies that he or  
8 she is fully authorized to enter into the terms and conditions of this Consent Decree and to  
9 execute and legally bind such Party that he or she represents to this document.

10          43.     Each Settling Defendant agrees not to oppose entry of this Consent Decree by this  
11 Court or to challenge any provisions of this Consent Decree unless any Plaintiff has notified  
12 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

13          44.     Each Settling Defendant shall identify on the attached signature page, the name,  
14 address, and telephone number of an agent who is authorized to accept service of process by mail  
15 on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.  
16 Settling Defendants agree to accept service in that manner and to waive the formal service  
17 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
18 rules of this Court, including, but not limited to, service of summons. Settling Defendants need  
19 not file answers to the complaint unless or until the Court expressly declines to enter this  
20 Consent Decree.

#### 21                                   **XX. FINAL JUDGMENT**

22          45.     This Consent Decree, and its appendices, constitute the final, complete, and  
23 exclusive agreement and understanding among the Parties regarding the settlement embodied in  
24 this Consent Decree. The Parties acknowledge that there are no representations, agreements, or  
25 understandings relating to the settlement other than those expressly contained in this Consent  
26 Decree.

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28 CONSENT DECREE

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Environment and Natural Resources Division  
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202-514-5270

1           46.     Upon entry of this Consent Decree by the Court, this Consent Decree shall  
2 constitute a final judgment between and among the Parties. The Court finds that there is no just  
3 reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54  
4 and 58.

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6 SO ORDERED THIS 5 DAY OF April, 2018.

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11 United States District Judge

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UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
P.O. Box 7611, Washington, DC 20044  
202-514-5270

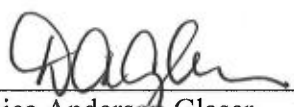


1 Signature Page for Consent Decree Regarding the Port Gardner Bay Area.

2  
3 **FOR THE UNITED STATES OF AMERICA:**

4  
5  
6 Jeffrey H. Wood  
7 United States Department of Justice  
8 Acting Assistant Attorney General  
9 Environment and Natural Resources Division  
10 Washington, D.C. 20530

11  
12 Date 1/10/18

13   
14 Danica Anderson Glaser  
15 Trial Attorney  
16 United States Department of Justice  
17 Environment and Natural Resources Division  
18 Environmental Enforcement Section  
19 P.O. Box 7611, Washington, DC 20044  
20 202-514-5270  
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28 CONSENT DECREE

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Environment and Natural Resources Division  
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202-514-5270

1 Signature Page for Consent Decree Regarding the Port Gardner Bay Area.

2  
3 **FOR THE STATE OF WASHINGTON:**

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5  
6 Date

11/15/17



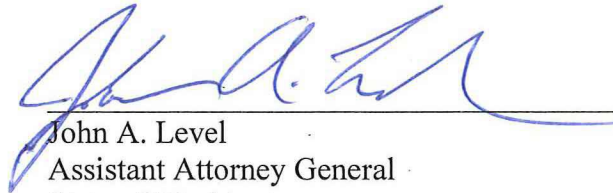
Maia Bellon

Director

Washington State Department of Ecology

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9  
10  
11 Date

11/21/17



John A. Level

Assistant Attorney General

State of Washington

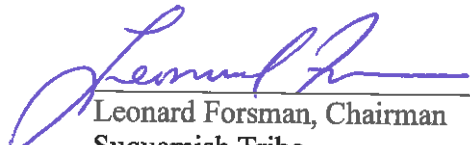
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UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE, Seattle, WA 98115  
206-526-6608

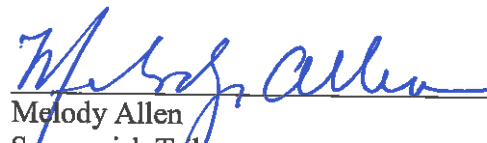
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2  
3 **FOR THE SUQUAMISH TRIBE:**

4  
5  
6 Date 11/20/17

7   
Leonard Forsman, Chairman  
Suquamish Tribe  
Post Office Box 498  
Suquamish, Washington 98392

8  
9  
10  
11 Date 11/20/17

12   
Melody Allen  
Suquamish Tribe  
Legal Department  
P.O. Box 498  
Suquamish, WA 98392-0498  
(360) 394 8488

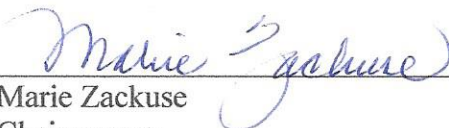
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Environment and Natural Resources Division  
7600 Sand Point Way NE, Seattle, WA 98115  
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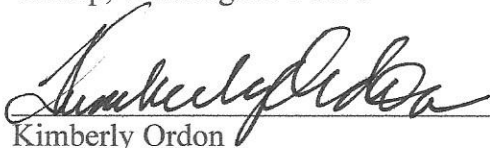
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2  
3 **FOR THE TULALIP TRIBES:**


4  
5  
6 Date 11-29-17

  
Marie Zackuse  
Chairwoman  
The Tulalip Tribes  
6406 Marine Drive  
Tulalip, Washington 98271

7  
8  
9  
10  
11 Date 11-29-17

  
Kimberly Ordon  
Law Offices of Kimberly Ordon, PS  
P.O.Box 1407  
Duvall, WA 98019-1407

12  
13  
14  
15 Date 11.29.17

  
Timothy Brewer  
Tulalip Tribes Office of the Reservation Attorney  
6406 Marine Drive  
Tulalip, WA 98271

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28 CONSENT DECREE

UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE, Seattle, WA 98115  
206-526-6608

1 Signature Page for Consent Decree Regarding the Port Gardner Bay Area.

2  
3 **FOR JELD-WEN, INC.:**

4  
5  
6 Date 11/6/17



7 Laura W. Doerre  
8 Executive Vice President, General Counsel and Chief Compliance  
9 Officer  
10 JELD-WEN, INC.  
11 440 S. Church St., Suite 400, Charlotte, N.C. 28202  
12 704-378-5700  
13 LDoerre@jeldwen.com  
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28 **CONSENT DECREE**

**UNITED STATES DEPARTMENT OF JUSTICE**  
Environment and Natural Resources Division  
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206-526-6608

1 Signature Page for Consent Decree Regarding the Port Gardner Bay Area.

2  
3 **FOR KIMBERLY CLARK CORP.:**

4  
5  
6 Date 6<sup>th</sup> Nov 2017

7 

8 Sandra MacQuillan,  
9 Senior Vice President  
10 Chief Supply Chain Officer

11 Authorized agent to accept service:

12 CT Corporation System  
13 1999 Bryan St #900  
14 Dallas, TX 75201  
15 (214) 979-1172



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206-526-6608

1  
2 Signature Page for Consent Decree Regarding the Port Gardner Bay Area.

3 **FOR WEYERHAEUSER NR COMPANY:**  
4

5  
6  
7 Date 11/15



Kristen Sawin  
Vice President, Corporate and Government Affairs  
Weyerhaeuser NR Company  
220 Occidental Avenue South  
Seattle, WA 98104

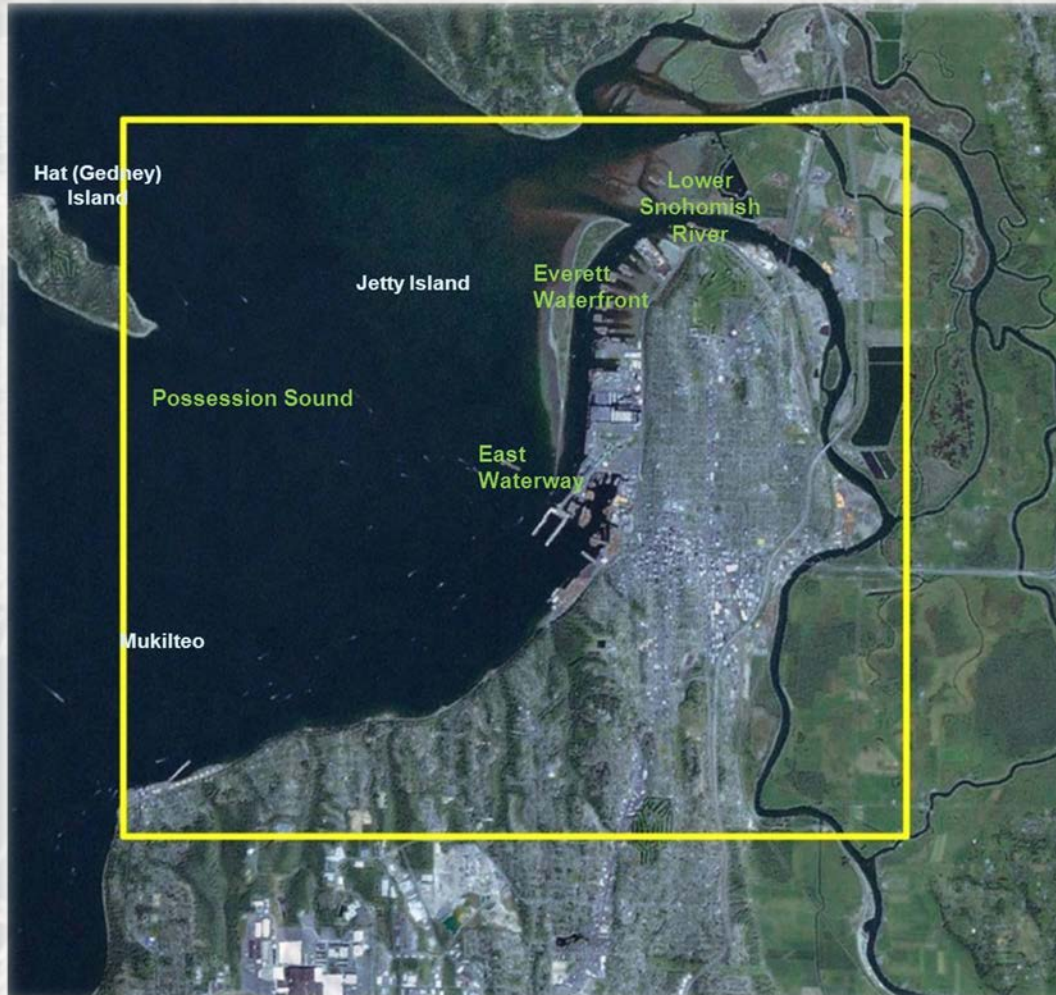
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28 **CONSENT DECREE**

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206-526-6608



APPENDIX A

# Assessment Area





**APPENDIX B**

**Tax Parcels owned and/or operated by Settling Defendants within the Port  
Gardner Bay Area (Listed by Tax Parcel Number)**

**Jeld-Wen, Inc.**

29050700100400 (300 W. Marine View Drive, Everett WA 98201-1030)

29050700101200

**Kimberly Clark Corp.**

29051900300100

29051900300200

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29051900201300

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29051900201000

29051900200900

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00597761801000

00597761800600

00437461700200

29051900201900

00516048600000

00516055600000

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29052100300800

00480100100100

29050700100100

29050800200800

29050800200900

29050700100700

00439700000100

29050600100100

29051800201500

**Weyerhaeuser NR Company**

29053000201800 (3500 Terminal Ave, Everett, WA 98201)

29053000203400