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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, STATE OF	)	
WASHINGTON, PUYALLUP TRIBE OF	)	
INDIANS, and MUCKLESHOOT INDIAN TRIBE,	)	CIVIL NO.
	)	
Plaintiffs,	)	CONSENT DECREE
	)	
v.	)	
	)	
ADVANCE ROSS SUB COMPANY, BNSF	)	
RAILWAY COMPANY, BP PRODUCTS NORTH	)	
AMERICA, INC. AND ATLANTIC RICHFIELD	)	
COMPANY, BRANDRUD FURNITURE, INC.,	)	
NEMSHOFF CHAIRS, INC. AND HERMAN	)	

CONSENT DECREE - 1

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1 MILLER, INC., CANAM MINERALS/KLEEN )  
2 BLAST DIV., CARSTENS COMPANY, CHEVRON )  
3 U.S.A. INC., UNION OIL COMPANY OF )  
4 CALIFORNIA, TEXACO DOWNSTREAM )  
5 PROPERTIES INC., CITY WATERWAY )  
6 INVESTMENTS, INC., CLOSING DAYS, INC., )  
7 FORMERLY KNOWN AS RICHARD A. JOHNSON )  
8 CEDAR PRODUCTS, INC., FORMERLY D/B/A )  
9 JOHNSON POSTMAN COMPANY, EXXONMOBIL )  
10 OIL CORPORATION AND EXXON MOBIL )  
11 CORPORATION, F. S. HARMON )  
12 MANUFACTURING COMPANY, )  
13 GLACIER NORTHWEST, INC. (LONE STAR )  
14 NORTHWEST), GLOBE MACHINE )  
15 MANUFACTURING COMPANY, GULL )  
16 INDUSTRIES, INC., INVESTCO FINANCIAL )  
17 CORPORATION, J.M. MARTINAC )  
18 SHIPBUILDING CORPORATION, KING COUNTY )  
19 METRO TRANSIT DIVISION, )  
20 LOUISIANA-PACIFIC CORPORATION, MARINE )  
21 IRON WORKS, INC., MCFARLAND CASCADE )  
22 HOLDINGS, INC., CASCADE POLE AND )  
23 LUMBER COMPANY AND MCFARLAND )  
24 CASCADE POLE & LUMBER COMPANY, )  
25 MENASHA CORPORATION, MOORAGE )  
26 ASSOCIATES, LLC, MOUNTAIN STATES )  
27 POWER (PACIFICORP), MUFG UNION BANK, )  
28 N.A., NESTLÉ USA, INC., NICHOLS TRUCKING )  
COMPANY / JOHN AND ELDEENA NICHOLS, )  
NORTHWEST ETCH TECHNOLOGY, INC., )  
OFFICEMAX INCORPORATED, OLYMPIC )  
CHEMICAL CORPORATION, OMYA, INC., )  
PACIFIC NORTHERN OIL CORP., PETRICH )  
MARINE DOCK, LLC, PHILLIPS 66 COMPANY, )

26 CONSENT DECREE - 2

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1 PRECISION MACHINE WORKS, INC., PREMIER )  
 2 INDUSTRIES, INC., PUGET SOUND ENERGY, )  
 3 RAINIER PLYWOOD CO., SHELL OIL )  
 4 COMPANY, SHORE TERMINALS LLC, )  
 5 SUPERVALU, INC., THE BOEING COMPANY, )  
 6 THE DIL TRUST, INCLUDING ITS )  
 7 PREDECESSOR THE DILLINGHAM )  
 8 CORPORATION, THE JACK MORRIS ESTATE/ )  
 9 MORRIS FAMILY TRUSTS, THE JOSEPH L. )  
 10 TRUCCO AND JEAN E. TRUCCO LIVING TRUST, )  
 11 COLONIAL FRUIT & PRODUCE, INC., THE )  
 12 WATTLES COMPANY, THREE RIVERS )  
 13 MANAGEMENT, INC. FOR THE FORMER )  
 14 HYGRADE FOOD PRODUCTS CORP., )  
 15 TRUCK-RAIL HANDLING, INC., UNION PACIFIC )  
 16 RAILROAD COMPANY, WASHINGTON FLORAL )  
 17 SERVICE, INC., WASHINGTON STATE )  
 18 DEPARTMENT OF TRANSPORTATION, and )  
 19 WOODWORTH & COMPANY, INC. )  
 20 )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )  
 26 )  
 27 )  
 28 )

Defendants.

I. INTRODUCTION

The United States of America (“United States”), on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case against defendants Advance Ross Sub Company, BNSF Railway Company, BP Products North America, Inc. and Atlantic Richfield Company, Brandrud

CONSENT DECREE - 3

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1 Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc., CanAm Minerals/Kleen Blast  
2 Div., Carstens Company, Chevron U.S.A. Inc., Union Oil Company of California, Texaco  
3 Downstream Properties Inc., City Waterway Investments, Inc., Closing Days, Inc., formerly  
4 known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a Johnson Postman Company,  
5 ExxonMobil Oil Corporation and Exxon Mobil Corporation, F. S. Harmon Manufacturing  
6 Company, Glacier Northwest, Inc. (Lone Star Northwest), Globe Machine Manufacturing  
7 Company, Investco Financial Corporation, J.M. Martinac Shipbuilding Corporation, King  
8 County Metro Transit Division, Louisiana-Pacific Corporation, Marine Iron Works, Inc.,  
9 McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and McFarland Cascade  
10 Pole & Lumber Company, Menasha Corporation, Moorage Associates, LLC, Mountain States  
11 Power (PacifiCorp), MUFG Union Bank, N.A., Nestlé USA, Inc., Nichols Trucking Company /  
12 John and Eldeena Nichols, Northwest Etch Technology, Inc., OfficeMax Incorporated, Olympic  
13 Chemical Corporation, OMYA, Inc., Pacific Northern Oil Corp., Petrich Marine Dock, LLC,  
14 Phillips 66 Company, and its predecessor-in-interest ConocoPhillips Company, Precision  
15 Machine Works, Inc., Premier Industries, Inc., Puget Sound Energy, Rainier Plywood Co., Shell  
16 Oil Company, Shore Terminals LLC, SUPERVALU, Inc., The Boeing Company, The DIL  
17 Trust, including its predecessor the Dillingham Corporation, The Jack Morris Estate/Morris  
18 Family Trusts, The Joseph L. Trucco and Jean E. Trucco Living Trust, Colonial Fruit & Produce,  
19 Inc., The Wattles Company, Three Rivers Management, Inc. for the former Hygrade Food  
20 Products Corp., Truck-Rail Handling, Inc., Union Pacific Railroad Company, Washington Floral  
21 Service, Inc., Washington State Department of Transportation, and Woodworth & Company, Inc.  
22  
23  
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26 CONSENT DECREE - 4

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1 (“Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response,  
2 Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model  
3 Toxics Control Act (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act  
4 (CWA), 33 U.S.C. § 1321; the Washington Water Pollution Control Act (WPCA), chapter 90.48  
5 RCW; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §  
6 2702(b)(2)(A). This Consent Decree (the “Decree”) addresses the claims asserted in the  
7 Complaint against Defendants for Natural Resource Damages (as defined below) in the  
8 Commencement Bay Environment (as defined below).  
9

10  
11 II. RECITALS

12 A. The United States Department of Commerce, acting through NOAA; the United  
13 States Department of the Interior; the Washington Department of Ecology on behalf of the State  
14 of Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively,  
15 “the Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA,  
16 42 U.S.C. § 9607(f), Section 1321(f)(5) of CWA, Section 1006(b) of OPA, 33 U.S.C. § 2706(b),  
17 and 40 C.F.R. Part 300, subpart G, MTCA and the WPCA, serve as trustees for natural resources  
18 for the assessment and recovery of damages for injury to, destruction of, or loss of natural  
19 resources under their trusteeship.  
20

21  
22 B. Investigations conducted by the United States Environmental Protection Agency  
23 (“EPA”), the Trustees, and others have detected hazardous substances in the sediments, soils and  
24 groundwater of the Commencement Bay Environment, including but not limited to arsenic,  
25

26 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,  
27

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1 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and  
2 polychlorinated biphenyls (PCBs). In particular, the Trustees have documented the presence of  
3 over 23 hazardous substances in the marine sediments of Commencement Bay's Thea Foss and  
4 Wheeler-Osgood Waterways.  
5

6 C. The Trustees began assessing natural resource damages in the Commencement  
7 Bay Environment in October 1991 by finding that hazardous substances had been released into  
8 the Commencement Bay Environment; that public trust natural resources had likely been injured  
9 by the releases; that data sufficient to pursue a natural resource damage assessment were  
10 available or could likely be obtained at a reasonable cost; and that, without further action,  
11 implemented and planned response actions would not adequately remedy the resource injuries.  
12 *See Preassessment Screen of Natural Resource Damages in the Commencement Bay*  
13 *Environment Due to Activities Taking Place In and About the Commencement Bay/Nearshore*  
14 *Tideflats (CB/NT) Superfund Site (October 29, 1991). The Trustees notified representatives of*  
15 *known potentially responsible parties ("PRPs") of their intent to conduct a damage assessment.*  
16 *The Trustees subsequently entered into a Funding and Participation Agreement for Phase 1 of the*  
17 *Commencement Bay-Wide Natural Resource Damage Assessment, dated February 10, 1993,*  
18 *with several of the major PRPs. The Trustees published a report on the results of Phase 1 of the*  
19 *damage assessment process in June 1995. Those major PRPs did not participate in subsequent*  
20 *stages of the damage assessment, and the Trustees continued the process independently. The*  
21 *Trustees have now completed a series of studies during Phase 2 of the damage assessment,*  
22 *focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and*

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26 CONSENT DECREE - 6

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1 salmonids. Results of those studies were published in a series of reports, consisting of  
2 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data  
3 Analysis Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E.  
4 Stein, 1998, Fish injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R.  
5 Arkoosh, Ed Casillas, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of  
6 Chemical Contaminants from the Hylebos Waterway on Disease Resistance of Juvenile Salmon;  
7 Ed Casillas, Bich-Thuy L. Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn  
8 and John E. Stein, 1998, Effects of Chemical Contaminants from the Hylebos Waterway on  
9 Growth of Juvenile Chinook Salmon; and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier,  
10 Margaret M. Krahn and John E. Stein, 1998, Exposure of Juvenile Chinook Salmon to Chemical  
11 Contaminants Specific to the Hylebos Waterway. While the Trustees' studies were specific to  
12 the nearby Hylebos Waterway, the Trustees assert that the study results are equally applicable to  
13 the circumstances of the Thea Foss and Wheeler-Osgood Waterways. Without admitting  
14 Plaintiffs' allegations, the Plaintiffs and Defendants (collectively, the "Parties" and, individually,  
15 a "Party") agree that no further natural resource damage assessment is required to effectuate the  
16 purposes of this Consent Decree, with respect to Defendants.

20 D. Plaintiffs have filed a complaint (the "Complaint") pursuant to Section 107 of  
21 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.;  
22 and OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendants of damages for injury to,  
23 destruction of, and loss of natural resources resulting from releases of hazardous substances into  
24 the Commencement Bay Environment, including the costs of assessing the damages.

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1 E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned  
2 and/or operated real property or facilities from which storm water, surface water runoff,  
3 wastewater, other process discharges, and/or groundwater have flowed to the Commencement  
4 Bay Environment. Plaintiffs also allege that investigations by EPA and others have detected  
5 concentrations of hazardous substances in soils, groundwater or sediments on, in or adjacent to  
6 those properties or facilities. Some of these hazardous substances are found in the sediments of  
7 the Commencement Bay Environment.  
8

9 F. Plaintiffs allege in the Complaint that hazardous substances have been released to  
10 the Commencement Bay Environment from properties or facilities owned and/or operated by  
11 each Defendant through direct discharge, surface water runoff, groundwater and seeps, and that  
12 those hazardous substances have caused injury to, destruction of and loss of natural resources in  
13 the Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,  
14 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further  
15 allege that each of them and the public have suffered the loss of natural resource services  
16 (including ecological services as well as direct and passive human use losses) as a consequence  
17 of those injuries.  
18  
19

20 G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a  
21 vessel or a facility; (b) a person who at the time of disposal or release of any hazardous substance  
22 owned or operated any facility at which such hazardous substances were disposed of; (c) a  
23 person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged  
24 with a transporter for transport for disposal or treatment, of hazardous substances owned or  
25

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1 possessed by such person, by any other party or entity, or otherwise generated any hazardous  
2 substance disposed of or treated, at any facility or incineration vessel owned or operated by  
3 another party or entity and containing such hazardous substances; and/or (d) a person who  
4 accepts or accepted any hazardous substances for transport to disposal or treatment facilities,  
5 incineration vessels or sites selected by such person from which there is a release or a threatened  
6 release of a hazardous substance that causes the incurrence of response costs within the meaning  
7 of 42 U.S.C. § 9607 and RCW 70.105D.040.

9 H. Defendants each deny all the allegations of the Complaint.

10 I. Although the Trustees have initiated but not yet completed a natural resource  
11 damage assessment for the Commencement Bay Environment, the Trustees have developed and  
12 analyzed information sufficient to support a settlement that is fair, reasonable and in the public  
13 interest.  
14

15 J. To facilitate resolving natural resource damage claims, relying upon the results of  
16 the damage assessment studies, remedial investigations, regulatory standards, and scientific  
17 literature, the Trustees developed an estimate of the amount of injury to natural resources that  
18 had occurred as a result of releases of hazardous substances to the Thea Foss and Wheeler-  
19 Osgood Waterways. The Trustees quantified the effects of the injuries in terms of the losses of  
20 ecological services over affected areas of the waterway and over time, discounted to the current  
21 year. The Trustees used the term *discounted ecological service acre-years* (DSAYs) to describe  
22 both the scale of the injuries, and the amount of habitat restoration they are seeking to  
23 compensate for the injuries.  
24

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1 and by this reference incorporated herein, and perform any additional activities described in  
2 Appendix A; (2) to permanently protect a portion of the bed and shoreline of the Wheeler-  
3 Osgood Waterway ("Wheeler-Osgood Site," described in Appendix B) by executing and  
4 recording the Wheeler-Osgood Site deed restriction, attached hereto as Appendix C, intended to  
5 preserve the site in perpetuity for use as a habitat restoration site; (3) to pay \$50,000.00 to  
6 support project oversight by the Trustees; (4) to pay \$188,894.00 toward the Trustees' long-term  
7 restoration project oversight and stewardship activities and (5) to reimburse \$833,705.00 in  
8 natural resource damage assessment costs incurred by the Trustees.  
9

10  
11 M. The Trustees have determined that the timely actions and expenditures to be  
12 undertaken by Defendants under this Consent Decree are appropriate and necessary to protect  
13 and restore the natural resources allegedly injured as a result of alleged actions or omissions of  
14 Defendants that are addressed herein, that such timely actions and expenditures will produce  
15 DSAYs sufficient to offset Defendants' allocated liability, and are adequate to redress  
16 Defendants' responsibility for the Natural Resource Damages that are the subject of this  
17 proceeding. In return the Trustees have agreed to covenant not to sue Defendants for Natural  
18 Resource Damages as provided below in Paragraph 53.  
19

20 N. Defendants do not admit any liability to Plaintiffs arising out of the transactions  
21 or occurrences alleged in the Complaint and the matters alleged in this Consent Decree.  
22

23 O. Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that  
24 this Decree has been negotiated by the Parties in good faith; that settlement of this matter will  
25 avoid prolonged and complicated litigation between the Parties; and that this Decree is fair,  
26

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1 reasonable, and in the public interest.

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

3 III. JURISDICTION AND VENUE

4  
5 1. This Court has jurisdiction over the subject matter of this action pursuant to 28  
6 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b).  
7 The Court has personal jurisdiction over the Parties. Solely for the purposes of this Decree and  
8 the underlying Complaint, the Parties waive all objections and defenses that they may have to  
9 jurisdiction of the Court or to venue in this District. The Parties may not challenge the terms of  
10 this Decree or this Court's jurisdiction to enter and enforce this Decree.  
11

12 IV. PARTIES BOUND

13 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of  
14 Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns.  
15 Any change in ownership or corporate or other legal status, including but not limited to any  
16 transfer of assets or real or personal property, will in no way alter the status or responsibilities of  
17 the Parties under this Decree.  
18

19 3. Defendants shall provide a copy of this Consent Decree to each contractor hired  
20 by them to perform any of the work required by this Consent Decree, and to each person  
21 representing Defendants with respect to any such work, and shall condition all future contracts  
22 entered into by Defendants hereunder upon performance of the work in conformity with the  
23 terms of this Consent Decree. Defendants or their contractors shall provide written notice of the  
24 Consent Decree to all subcontractors hired by Defendants' contractors to perform any portion of  
25  
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1 the work. Defendants shall be responsible for ensuring that all work performed by their  
2 contractors and subcontractors is performed in accordance with this Consent Decree.

3  
4 V. DEFINITIONS

5 4. Unless otherwise expressly provided, terms used in this Decree that are defined in  
6 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in  
7 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in  
8 any attached appendix, the following definitions will apply:

9 a. "CERCLA" means the Comprehensive Environmental Response  
10 Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

11 b. "Commencement Bay Environment" means the waters of Commencement  
12 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,  
13 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash  
14 Point. These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle  
15 Waterway, St. Paul Waterway, Puyallup River from the mouth south to the present City limits,  
16 Milwaukee Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area  
17 includes but is not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as  
18 identified or amended by the EPA, including the B&L Landfill, and areas affected by releases of  
19 hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.  
20  
21

22 c. "Commencement Bay Restoration Account" means the Commencement  
23 Bay Natural Resource Restoration Account authorized by the Order Directing the Deposit of  
24 Natural Resource Damages into the Registry of the Court in *United States v. Port of Tacoma*,  
25

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1 No. C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix D).

2 d. "Consent Decree" or "Decree" means this Consent Decree and all attached  
3 appendices. In the event of a conflict between this Consent Decree and any Appendix, the  
4 Consent Decree will control.  
5

6 e. "Countyline Project" or "Project" means the Countyline Project described  
7 in Appendix A.

8 f. "Day" means a calendar day. In computing any period of time under this  
9 Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of  
10 time will run until the close of business of the next working day.  
11

12 g. "DSAYs" means discounted ecological service acre-years, the metric  
13 established by the Trustees to determine the scale of Natural Resource Damages liability  
14 associated with the Thea Foss and Wheeler-Osgood Waterways and the natural resource  
15 restoration efforts needed to compensate for injury to, destruction or loss of natural resources  
16 giving rise to liability.  
17

18 h. "Defendant" means each one of, and "Defendants" means all of, Advance  
19 Ross Sub Company, BNSF Railway Company, BP Products North America, Inc. and Atlantic  
20 Richfield Company, Brandrud Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc.,  
21 CanAm Minerals/Kleen Blast Div., Carstens Company, Chevron U.S.A. Inc., Union Oil  
22 Company of California, Texaco Downstream Properties Inc., City Waterway Investments, Inc.,  
23 Closing Days, Inc., formerly known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a  
24 Johnson Postman Company, ExxonMobil Oil Corporation and Exxon Mobil Corporation, F. S.  
25

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1 Harmon Manufacturing Company, Glacier Northwest, Inc. (Lone Star Northwest), Globe  
2 Machine Manufacturing Company, Investco Financial Corporation, J.M. Martinac Shipbuilding  
3 Corporation, King County Metro Transit Division, Louisiana-Pacific Corporation, Marine Iron  
4 Works, Inc., McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and  
5 McFarland Cascade Pole & Lumber Company, Menasha Corporation, Moorage Associates,  
6 LLC, Mountain States Power (PacifiCorp), MUFG Union Bank, N.A., Nestlé USA, Inc., Nichols  
7 Trucking Company / John and Eldeena Nichols, Northwest Etch Technology, Inc., OfficeMax  
8 Incorporated, Olympic Chemical Corporation, OMYA, Inc., Pacific Northern Oil Corp., Petrich  
9 Marine Dock, LLC, Phillips 66 Company, and its predecessor-in-interest ConocoPhillips  
10 Company, Precision Machine Works, Inc., Premier Industries, Inc., Puget Sound Energy, Rainier  
11 Plywood Co., Shell Oil Company, Shore Terminals LLC, SUPERVALU, Inc., The Boeing  
12 Company, The DIL Trust, including its predecessor the Dillingham Corporation, The Jack  
13 Morris Estate/Morris Family Trusts, The Joseph L. Trucco and Jean E. Trucco Living Trust,  
14 Colonial Fruit & Produce, Inc., The Wattles Company, Three Rivers Management, Inc. for the  
15 former Hygrade Food Products Corp., Truck-Rail Handling, Inc., Union Pacific Railroad  
16 Company, Washington Floral Service, Inc., Washington State Department of Transportation, and  
17 Woodworth & Company, Inc.

21  
22 i. "Entry of the Consent Decree" means the date that the Court signs and  
23 enters the Decree into the record of the above-captioned matter after the close of the public  
24 comment period.

25 j. "King County" means the King County Department of Natural Resources

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1 and Parks, as sponsor and implementer of the Countyline Project. It does not mean or include  
2 the King County Metro Transit Division, a named Defendant herein.

3 k. "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

4 l. "Natural Resources" means that definition as provided in 42 U.S.C. §  
5 9601(16).  
6

7 m. "Natural Resource Damages" means damages, including costs of damage  
8 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D  
9 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; Chapter 90.48 RCW; and  
10 Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for  
11 injury to, destruction of, or loss of natural resources resulting from releases of hazardous  
12 substances or discharges of oil to the Commencement Bay Environment at or from sites along,  
13 adjacent to or draining to the Thea Foss and Wheeler Osgood Waterways.  
14

15 n. "Parties" mean the United States, the State of Washington, the Puyallup  
16 Tribe of Indians, the Muckleshoot Indian Tribe and Defendants.  
17

18 o. "Plaintiffs" means the United States, the State of Washington, the  
19 Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.  
20

21 p. "Project Site" means the approximately 121 acre site composed of all or a  
22 portion of King and Pierce County tax parcels in Pacific and Sumner, Washington, and  
23 unincorporated Pierce County, Washington, as more particularly indicated in Appendix A, in  
24 which King County has or is in the process of obtaining real property interests sufficient to  
25 construct, repair, and maintain the Countyline Project in perpetuity, in a manner consistent with  
26

CONSENT DECREE - 16

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1 the terms of this Consent Decree.

2 q. "Trustees" mean the United States Department of Commerce, acting  
3 through NOAA; the Department of the Interior; the Washington State Department of Ecology, on  
4 behalf of the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian  
5 Tribe.  
6

7 r. "Wheeler-Osgood Site" means the approximately four-acre site composed  
8 of a portion of Pierce County tax parcel 0320041028, in Tacoma, Washington, as indicated in  
9 Appendix B, that is owned by Defendant BNSF Railway Company that will become subject to a  
10 Deed Restriction (Appendix C) intended to preserve the site in perpetuity for use as a habitat  
11 restoration site.  
12

13 VI. GENERAL PROVISIONS

14 5. The Complaint states claims upon which relief may be granted.

15 6. Nothing in this Consent Decree shall be construed as an admission of liability by  
16 any Defendant for any claims or allegations made in the Complaint or in this Consent Decree.  
17

18 7. Except where otherwise expressly provided, each Defendant shall be jointly and  
19 severally responsible for performing the obligations undertaken by Defendants under this Consent  
20 Decree, including those obligations specifically undertaken by King County. Plaintiffs may take  
21 such actions as provided below to enforce the terms of this Consent Decree against any one or  
22 more of Defendants as Plaintiffs may choose.  
23

24 8. All activities undertaken by Defendants pursuant to this Consent Decree shall be  
25 performed in accordance with the requirements of all applicable laws and permits.

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1 compliance with CERCLA or any other law. Compliance with this Consent Decree does not  
2 diminish or affect Defendants' responsibility to comply with any applicable federal, state or local  
3 law or regulation. The Parties agree that Defendants are responsible for achieving and maintaining  
4 complete compliance with all applicable federal, state and local laws, regulations and permits.  
5

6 VII. PROJECT SITE

7 13. King County has obtained or is in the process of obtaining all real property interests  
8 necessary to construct, operate, maintain and repair the Project Site forever for open space, flood  
9 protection and control, salmon recovery and conservation purposes. Each parcel or portion of a  
10 parcel constituting the Project Site as shown in Appendix E-1 hereto shall be subject to deed  
11 restrictions, the form of which are attached as Appendices E-2 and E-3 hereto, and which shall be  
12 recorded prior to the initiation of construction of the Project, and which shall bind such parcels in  
13 perpetuity to the restrictions and requirements of this Consent Decree.  
14

15 VIII. PROJECT DEVELOPMENT

16  
17 14. Defendants shall provide the funds and services and ensure that all necessary steps  
18 are taken to construct the Countyline Project and to perform any additional activities in accordance  
19 with the details, specifications and project development schedule set out in Appendix A.  
20

21 15. Defendants shall avoid taking any action on the Project Site property or adjacent  
22 property owned or controlled by Defendants that is inconsistent with this Consent Decree and that  
23 would interfere with the Countyline Project such that it would substantially decrease the likelihood  
24 of success of the Project. Provided, however, that Defendants (including their agents, contractors,  
25 successors and assigns) are authorized to use, develop, and operate on adjacent property as is  
26

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1 consistent with existing or subsequently issued permits and is otherwise in compliance with  
2 applicable law, and such use, development and operations shall not be considered inconsistent with  
3 this Consent Decree or an interference with, or diminishment of, the Countyline Project. Provided,  
4 however, that no Defendant shall take or permit to be taken any action on adjacent property that  
5 constitutes a trespass on the Project Site. Defendants shall notify the Trustees in writing at least  
6 30 days prior to entering into any contracts for or applying for any permits for the taking of any  
7 actions on the Countyline Project Site other than those identified in Appendix A. Such notice shall  
8 include a narrative description of the proposed actions plus a site diagram indicating the location  
9 of the proposed actions.  
10  
11

12 16. Within 120 days after completion of construction of the Countyline Project,  
13 Defendants shall submit a written Notice of Completion to the Trustees. The Notice of Completion  
14 shall include copies of all permits issued for the Countyline Project plus a set of as-built project  
15 drawings. The Trustees shall review the course and results of the development of the Countyline  
16 Project to determine whether the Project has been completed in accordance with Appendix A.  
17 Within 60 days after receiving the Notice of Completion, the Trustees shall submit to Defendants  
18 either (a) a written notice identifying specific deficiencies the Trustees determine must be satisfied  
19 for the Countyline Project to be completed in accordance with Appendix A (Notice of  
20 Deficiencies); or (b) a written notice of the Trustees' determination that the Project has been so  
21 completed (Notice of Approval of Completion). Following receipt of a Notice of Deficiencies,  
22 Defendants shall correct the identified deficiencies and complete the Countyline Project in  
23 accordance with Appendix A, and submit to the Trustees an amended Notice of Completion for  
24  
25  
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1 review and response in accordance with this Paragraph. Any delay in completing Countyline  
2 Project construction as a result of the operation of this Paragraph shall not in and of itself constitute  
3 grounds for relief from the requirement to pay stipulated penalties under Section XVIII for  
4 compliance delays.  
5

6 17. Within 180 days following receipt of the Trustees' Notice of Approval of  
7 Completion for the Countyline Project, Defendants shall submit to the Trustees a Project  
8 Completion Accounting. The Project Completion Accounting shall itemize the costs incurred by  
9 King County in developing the Countyline Project and shall be substantially in the form of  
10 Appendix F attached hereto.  
11

12 IX. POST-CONSTRUCTION MONITORING AND ADAPTIVE MANAGEMENT

13 18. To confirm that the Countyline Project produces the number of DSAYs needed to  
14 offset the Defendants' allocated liability, Defendants shall monitor the performance of the Project  
15 over a period not to exceed ten years ("Monitoring Period") to demonstrate that, on average, the  
16 White River inundates at least 32.5 acres of the Project Site ("Inundation Goal"). Such monitoring  
17 shall be performed in accordance with the following particulars:  
18

19 a. Defendants shall monitor site inundation by means of an aerial photograph  
20 which shall be taken between February 1 and March 31 for each year of required monitoring  
21 ("Required Monitoring Event").  
22

23 b. Except as provided in Paragraph 20, Defendants shall acquire the required  
24 aerial photograph in the first, third, fifth, seventh and tenth years following completion of  
25 construction. Defendants may elect to acquire aerial photographs between February 1 and March  
26

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1 31 in other years during the Monitoring Period.

2 c. Defendants shall acquire the aerial photographs at a time of day, with sun  
3 angle, image angle, weather and lighting conditions, elevation, and image resolution sufficient to  
4 permit unambiguous determination of the extent of site inundation.  
5

6 d. Defendants shall provide NOAA an electronic, ortho-rectified copy of the  
7 photograph by May 31 in any year in which Defendants acquire aerial photographs under  
8 Subparagraph 18.b.

9  
10 19. The Trustees shall use the supplied photographs to calculate the acres of inundation  
11 of the Project Site, and shall recalculate the average inundation acreage after each Required  
12 Monitoring Event. The Trustees shall also perform such calculations for any other years in which  
13 Defendants provide aerial photographs that satisfy the conditions of Subparagraphs 18.a- d. The  
14 Trustees shall notify Defendants of the results of their calculations within 45 days after each  
15 calculation or recalculation.  
16

17 20. If the Trustees' calculation of the acres of inundation exceeds an average of 48.8  
18 acres over the course of any three consecutive monitoring events, including Required Monitoring  
19 Events and any monitoring conducted in other years as provided in Subparagraph 18.b, the  
20 requirements of this Section shall be deemed fulfilled and Defendants shall have no further  
21 monitoring or adaptive management requirements for the Project.  
22

23 21. If, following the third Required Monitoring Event, the Trustees' calculation of  
24 average inundation of the Project Site demonstrates that the inundation does not exceed 29.3 acres,

25 the Trustees and Defendants shall, within 60 days after the Trustees' notice to Defendants, meet

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1 to discuss the conditions preventing the Project Site from achieving the Inundation Goal and what  
2 measures Defendants will take to increase the likelihood of achieving the Inundation Goal by the  
3 end of the Monitoring Period.

4  
5 22. If, following the last Required Monitoring Event, the Trustees' calculations  
6 demonstrate that the ten-year average inundation of the Project Site falls short of the Inundation  
7 Goal, the Trustees shall so notify the Defendants by issuing a Notice of Deficiency. The Notice of  
8 Deficiency shall identify the number of acres of average inundation and corresponding number of  
9 DSAYs that the Site failed to produce.

10  
11 a. Within 60 days following the date of the Trustees' Notice of Deficiency,  
12 Defendants shall submit to the Trustees a proposed plan and schedule for taking actions, on the  
13 Project Site or elsewhere in a location approved by the Trustees adjacent to or downstream of the  
14 Project Site, to produce a sufficient number of DSAYs to offset the shortfall identified in the Notice  
15 of Deficiency.

16  
17 b. Within 45 days following receipt of the Defendants' proposed plan and  
18 schedule, the Trustees shall respond with specific comments or a statement indicating the Trustees'  
19 acceptance of the proposed plan and schedule.

20  
21 c. Within 45 days following the date of the Trustees' comments, Defendants  
22 shall either revise and implement the proposed plan and schedule consistent with the Trustees'  
23 comments and thereafter commence work in accordance with the revised plan and schedule, or  
24 shall compensate the Trustees for the identified DSAY shortfall by paying the sum of \$66,000  
25 times the total DSAY shortfall, adjusted by the increase in the Consumer Price Index over the

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1 Monitoring Period. Payments in accordance with this Subparagraph will be made to the  
2 Department of the Interior's Natural Resource Damage Assessment and Restoration Revolving  
3 Fund, per instructions provided by the Trustees.  
4

5 X. ACCESS TO INFORMATION AND PROJECT SITE

6 23. To facilitate their oversight responsibilities, the Trustees shall have full access to  
7 all work in progress required under this Consent Decree.

8 24. From and after the Effective Date, Defendants shall cause the Trustees and their  
9 contractors to have access at all reasonable times to the Project Site and to any property under the  
10 control of any Defendant to which access is required for the oversight or implementation of this  
11 Consent Decree. Where the property to which access is sought is not otherwise open to public  
12 access, the Trustees shall give notice to the property owner(s) and King County prior to access.  
13 Each Trustee shall have the authority to enter freely and move about such property at all reasonable  
14 times for the purposes of overseeing the requirements of this Consent Decree, including, but not  
15 limited to:  
16  
17

18 a. Monitoring and assessing progress on the planning, development,  
19 maintenance and monitoring of the Countyline Projects;

20  
21 b. Verifying any data or information submitted to the Trustees;

22  
23 c. Inspecting and copying records, operation logs, contracts or other  
24 documents maintained or generated by Defendants or their contractors hereafter retained to  
25

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1 perform work undertaken pursuant to this Consent Decree;

2  
3 d. Conducting such tests, investigations or sample collections as deemed  
4 necessary to monitor compliance with this Consent Decree or to assist in further identifying and  
5 quantifying natural resource injuries requiring restoration actions and in planning and carrying out  
6 maintenance actions as provided in Subparagraph 24.f;

7  
8 e. Using a camera, sound recording device or other type equipment to record  
9 the work done under this Consent Decree or injuries to natural resources;

10  
11 f. Undertaking any maintenance action as the Trustees determine appropriate.  
12 Such maintenance actions shall only be taken with the approval of the property owner(s) and King  
13 County, which approval may be withheld only upon a showing that the proposed action would be  
14 inconsistent with the purposes of the Project as described in Appendix A (including the Project's  
15 flood control purposes), would be inconsistent with other provisions of this Consent Decree or  
16 other applicable law, or would impose costs or additional liability upon Defendants or King  
17 County. For the purposes of this Subparagraph 24.f, "maintenance" does not include any repair,  
18 modification, or alteration that changes the ecological function, character, scope or size of the  
19 Project as described in Appendix A.  
20  
21

22 25. Defendants shall have the right to accompany any Trustee or its representative on  
23 the property. Anyone provided access through this Consent Decree shall comply with applicable  
24 health and safety requirements and shall not interfere with ongoing operations.  
25

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1 and of the fact that the transfer and use of the parcel are subject to the requirements and restrictions  
2 of this Consent Decree (attached hereto as Appendix C).

3 30. As provided in Appendix C, BNSF shall not sell, grant, lease or otherwise transfer  
4 to any party an interest in the real property comprising the Wheeler-Osgood Site other than as  
5 specifically contemplated in this Consent Decree without the prior written consent of the Trustees,  
6 and the United States Department of Justice ("DOJ").  
7

8 31. Defendants shall avoid taking any action on the Wheeler-Osgood Site or on  
9 adjacent property owned or controlled by any Defendant that would substantially diminish the  
10 value of the Wheeler-Osgood Site as natural resource habitat. Provided, however, Defendants  
11 (including their agents, contractors, successors and assigns) are authorized to use, develop and  
12 operate on adjacent property as is consistent with existing or subsequently issued permits and is  
13 otherwise in compliance with applicable law, and such use and operations shall not be considered  
14 an interference with, or diminishment of, the deed restrictions for the Wheeler-Osgood Site set  
15 forth in Appendix C. Provided, however, that no Defendant shall take or permit to be taken any  
16 action on adjacent property that constitutes a trespass on the Wheeler Osgood Site.  
17  
18

19 32. The Trustees may at any time implement, or authorize any third party to implement,  
20 such further restoration actions on the Wheeler-Osgood Site as they determine appropriate. Such  
21 further restoration actions shall only be taken with the approval of BNSF Railway Co. and under  
22 a mutually acceptable access agreement between the Trustees and BNSF. BNSF's approval may  
23 be withheld only upon a showing that the proposed activity would be inconsistent with the  
24 purposes of preserving and enhancing the ecological value of the site, would be inconsistent with  
25

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1 other provisions of this Consent Decree or other applicable law, would unreasonably interfere with  
2 BNSF Railway Co.'s use of adjacent property, or would impose costs upon BNSF Railway Co.

3 XIV. PERMANENT RESTORATION PROJECT STEWARDSHIP

4  
5 33. Defendants' agreement to develop the Countyline Project and to preserve the  
6 existing habitat values of the Wheeler-Osgood Site is intended to generate ecological services  
7 sufficient to offset Defendants' allocated liability for natural resource damages calculated by the  
8 Trustees in terms of DSAYs. The Trustees' computation of DSAYs assumes that restoration  
9 projects constructed as designed will produce ecological services in perpetuity. To ensure that the  
10 public receives the full benefit of the agreed restoration actions, Defendants also agree to  
11 contribute financially to the costs of long-term monitoring, maintenance and adaptive management  
12 of the Countyline Project after fulfilling all permit requirements as required by Section VIII.  
13 Defendants also agree to contribute financially to the costs of long-term monitoring, maintenance  
14 and adaptive management of the Wheeler-Osgood Site beginning on the Effective Date of this  
15 Consent Decree. Defendants' financial contributions to the costs of long-term monitoring,  
16 maintenance and adaptive management for the Countyline Project and Wheeler Osgood Site  
17 described in this Paragraph will be fully satisfied upon Defendants' payment of the sums provided  
18 in Section XV below, and Defendants will have no other continuing funding obligations under this  
19 Decree.  
20  
21  
22

23 XV. PAYMENT OF COSTS OF PROJECT OVERSIGHT,  
24 LONG TERM STEWARDSHIP AND  
25 NATURAL RESOURCE DAMAGE ASSESSMENT

26 34. Within 30 days of the Effective Date, Defendants will pay to the Trustees

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1 \$238,894.00, consisting of the \$50,000.00 for restoration project oversight costs as stipulated  
2 above in Paragraph 27, plus the \$188,894.00 to contribute to the Trustees' long-term oversight and  
3 stewardship activities as stipulated above in Paragraph 33. This payment will be made by  
4 electronic funds transfer per directions provided by the Clerk of the Court for deposit into the  
5 Commencement Bay Natural Resource Restoration Account.  
6

7 35. Within 30 days of the Effective Date, Defendants will pay to the Trustees additional  
8 sums totaling \$833,705.00 in natural resource damage assessment costs. These sums shall be paid  
9 in the following amounts and particulars:

10  
11 Trustee: National Oceanic and Atmospheric Administration  
12 Amount: \$269,615.47

13 Trustee: U.S. Department of the Interior  
14 Amount: \$379,452.65

15 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic  
16 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT  
17 procedures. Payment shall be made in accordance with instructions provided to Defendants by the  
18 Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any  
19 payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be  
20 credited on the next business day. Defendants shall provide at least five days' notice to the  
21 Financial Litigation Unit before making the transfer.  
22

23  
24 Payments to the other Trustees shall be made by certified checks, or as otherwise directed  
25 by the recipient, with the notation "Thea Foss NRDA Mediation Group - Commencement Bay

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1 Assessment Costs,” in the amounts indicated and made payable and addressed as follows:

2 Trustee: State of Washington  
3 Amount: \$63,485.02  
4 Payee: State of Washington/Department of Ecology  
5 Address: State of Washington  
6 Department of Ecology  
7 Attention: Cashiering Section  
8 P.O. Box 5128  
9 Lacey, WA 98503-0210

10 Trustee: Puyallup Tribe of Indians  
11 Amount: \$114,033.59  
12 Payee: Puyallup Tribe of Indians  
13 Address: Mr. William Sullivan  
14 Environmental Protection Department  
15 Puyallup Tribe of Indians  
16 2002 E. 28th Street  
17 Tacoma, WA 98404

18 Trustee: Muckleshoot Indian Tribe  
19 Amount: \$7,118.27  
20 Payee: Muckleshoot Indian Tribe  
21 Address: Mr. Rob Otsea  
22 Office of the Tribal Attorney  
23 Muckleshoot Indian Tribe  
24 39015 172nd Avenue S.E.  
25 Auburn, WA 98002

26 36. At the time of each payment Defendants will send notice that payment has been  
27 made to the Trustees and DOJ in accordance with Section XXV (Notices and Submissions). Such  
28 notice will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil

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1 action number set forth in the caption of this Consent Decree.

2 XVI. FAILURE TO MAKE TIMELY PAYMENTS

3 37. If Defendants fail to make any payment under Paragraphs 34-35 by the required  
4 due date, interest shall be assessed at the rate specified for interest on investments of the EPA  
5 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on  
6 October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest is  
7 the rate in effect at the time the interest accrues. The rate of interest is subject to change on October  
8 1 of each year. Interest will continue to accrue on the unpaid balance through the date of payment.  
9

10 XVII. DISPUTE RESOLUTION

11 38. Unless otherwise expressly provided for in this Consent Decree, the dispute  
12 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
13 under or with respect to this Consent Decree.  
14

15 39. Any dispute which arises under or with respect to this Consent Decree shall in the  
16 first instance be the subject of informal negotiations between the Trustees and Defendants. The  
17 period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute  
18 arises, unless the parties to the dispute agree otherwise in writing. The dispute shall be considered  
19 to have arisen when the Trustees send Defendants a written notice specifying the nature of the  
20 dispute and requested relief ("Notice of Dispute") or Defendants send the Trustees a written Notice  
21 of Dispute.  
22  
23  
24  
25



1 Dispute Resolution Representatives may have reached on one or more issues. In such event, the  
2 Trustees shall within five (5) days of the conclusion of the formal dispute resolution process notify  
3 Defendants in writing that the formal dispute resolution process has concluded. Defendants may  
4 seek judicial review of the Trustees' Statement of Position (as modified by any agreements the  
5 Formal Dispute Resolution Representatives may have reached) pursuant to the following  
6 Subparagraph.  
7

8 e. Any matter in dispute shall be reviewable by this Court, provided that a  
9 motion for judicial review of the decision is filed by Defendants with the Court and served on all  
10 Parties within twenty-one (21) days of receipt of the Trustees' letter notifying Defendant of the  
11 conclusion of the formal dispute resolution process. The motion shall include a description of the  
12 matter in dispute (including both Statements of Position), the efforts of the parties to resolve the  
13 dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved  
14 to ensure orderly implementation of this Consent Decree. The Parties shall jointly move the Court  
15 to establish a schedule under which the Plaintiffs file a response to Defendants' motion within  
16 twenty-one (21) days of receipt of the motion, and Defendants file a reply brief within five (5)  
17 business days of receipt of the response. If the Court does not grant the motion for such a schedule,  
18 then the Parties shall file the response and reply in accordance with the schedule set forth in the  
19 Local Rules for the Western District of Washington.  
20  
21  
22  
23  
24  
25

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1 f. The Court may rule based on the administrative record, with or without oral  
2 argument, and shall review Trustees' Statement of Position or its resolution of the dispute under  
3 the standards of the Administrative Procedures Act.  
4

5 g. The foregoing notwithstanding, the Parties acknowledge that disputes may  
6 arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an  
7 expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition  
8 the Court for the imposition of an expedited schedule.  
9

10 41. The invocation of formal dispute resolution procedures under this Section shall not  
11 extend, postpone, or affect in any way any obligation of the Defendants under this Consent Decree,  
12 not directly in dispute, unless the Trustees or the Court agree otherwise. Stipulated penalties with  
13 respect to the disputed matter shall continue to accrue, but payment otherwise required under  
14 Section XVIII shall be stayed pending resolution of the dispute. Notwithstanding the stay of  
15 payment, stipulated penalties shall continue to accrue from the first day of noncompliance with  
16 any applicable provision of this Consent Decree. In the event that the Defendants do not prevail  
17 on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII  
18 (Stipulated Penalties).  
19  
20

21 XVIII. STIPULATED PENALTIES

22 42. The Parties stipulate that delays in carrying out the activities required herein may  
23 diminish the compensatory value attributable to those activities. Consequently, in the event that  
24 Defendants exceed the deadline provided for one of the activities described below (subject to any  
25

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1 modifications agreed to under Section XXIX) and such delay is not excused through operation of  
2 the dispute resolution provisions (Section XVII) and/or the force majeure provisions (Section  
3 XIX), Defendants shall, as a stipulated penalty, increase the financial contributions it makes under  
4 this Consent Decree to fund habitat restoration actions, over and above any payments required  
5 elsewhere under this Consent Decree, as follows:

7           a.     For each week Defendants fail to comply with a deadline under  
8 Paragraph 34 or 35 for making any payment; in the Countyline Project Development Schedule  
9 included in Appendix A; under Paragraph 16 for submitting a Notice of Completion; under  
10 Paragraph 17 for submitting a Project Completion Accounting; under Paragraph 18 for providing  
11 a performance monitoring photograph; under Subparagraph 22.a for submitting a proposed plan  
12 and schedule; under Subparagraph 22.c for implementing the plan or making the required payment;  
13 or under Paragraph 51 for providing copies of certificates of insurance and insurance policies,  
14 Defendants shall pay a stipulated penalty in the amount of \$1,000. Where the delay extends  
15 beyond the second week, the stipulated penalty shall apply to each additional day of delay for each  
16 such missed deadline. For purposes of this Subparagraph, a week shall equal a continuous period  
17 of seven days.

20           b.     Stipulated penalties are due and payable within 30 days of the date of the  
21 demand for payment of the penalties by the Trustees. All payments to the Trustees under this  
22 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check  
23 will be deposited in the Commencement Bay Restoration Account.

25           c.     At the time of each penalty payment under this Paragraph, Defendants will

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1 send notice that payment has been made to the Trustees and DOJ in accordance with Section XXV  
2 (Notices and Submissions). This notice will reference Commencement Bay NRDA, DOJ Case  
3 Number 90-11-2-1049, and the civil action number set forth in the caption of this Consent Decree.  
4

5 d. Penalties will accrue as provided in this Paragraph regardless of whether the  
6 Trustees have notified Defendants of the violation or made a demand for payment, but the penalties  
7 need only be paid upon demand. Penalties for late payments will begin to accrue on the day after  
8 payment is due. All other penalties will begin to accrue on the day after the Trustees' notice of  
9 noncompliance pursuant to Paragraph 9 and will continue to accrue through the date of payment.  
10 Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate  
11 violations of this Decree.  
12

13 e. Defendants may dispute the Trustees' right to the penalties identified under  
14 Subparagraph a. above by invoking the dispute resolution procedures of Section XVII.  
15

16 43. If Defendants fail to pay stipulated penalties when due, the Trustees may institute  
17 proceedings to collect the penalties, as well as interest. Defendants shall pay Interest on the unpaid  
18 balance, which shall begin to accrue on the date of demand made pursuant to Subparagraph 42.b.  
19

20 44. If Plaintiffs bring a motion or a separate action in court to enforce this Decree and  
21 prevail, Defendants will reimburse Plaintiffs for all costs of such action, including but not limited  
22 to costs of attorney time.

23 45. Payments made under this Section are in addition to any other remedies or sanctions  
24 available to Plaintiffs by virtue of Defendants' failure to comply with the requirements of this  
25 Decree.

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1 46. Notwithstanding any other provision of this Section, Plaintiffs may, in their  
2 unreviewable discretion, waive payment of any portion of the stipulated penalties that have  
3 accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants from  
4 payment as required by Section XV or from performance of any other requirement of this Consent  
5 Decree.  
6

7 47. The Trustees may use sums paid as stipulated penalties under Paragraph 42 to pay  
8 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore  
9 Commencement Bay natural resources.  
10

11 XIX. FORCE MAJEURE

12 48. "Force majeure," for purposes of this Consent Decree, is defined as any event  
13 arising from causes beyond the control of Defendants that delays or prevents the performance of  
14 any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation.  
15 The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best  
16 efforts to anticipate any potential force majeure event and use best efforts to address the effects of  
17 any potential force majeure event (1) as it is occurring and (2) following the potential force majeure  
18 event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not  
19 include financial inability to fulfill the obligation. The requirement that Defendants exercise "best  
20 efforts to fulfill the obligation" also includes, where necessary, the filing of legal actions to compel  
21 contract performance in accordance with the design and schedule approved by the Trustees herein.  
22  
23

24 49. a. If any event occurs or has occurred that may delay the performance of any  
25 obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants

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1 shall notify the Trustees within 14 days of when Defendants first knew that the event might cause  
2 a delay. Within 30 days thereafter, Defendants shall provide a written explanation and description  
3 of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken  
4 to prevent or minimize the delay; a schedule for implementation of any measures to be taken to  
5 prevent or mitigate the delay or the effect of the delay; and the rationale for attributing such delay  
6 to a force majeure event (if Defendants intend to assert such a claim). Defendants shall include  
7 with any notice all available documentation supporting their claim that the delay was attributable  
8 to a force majeure event. Failure to comply with the above requirements will preclude Defendants  
9 from asserting any claim of force majeure for that event.  
10  
11

12           b. If the Trustees agree that the delay or anticipated delay is attributable to a  
13 force majeure event, the time for performance of the obligations under this Consent Decree that  
14 are affected by the force majeure event will be extended by the Trustees for such time as is  
15 necessary. An extension of the time for performance of the obligations affected by the force  
16 majeure event shall not, of itself, extend the time for performance of any other obligation. If the  
17 Trustees do not agree that the delay or anticipated delay has been or will be caused by a force  
18 majeure event, the Trustees will notify Defendants in writing of their decision.  
19

20           c. If Defendants elect to invoke the dispute resolution procedures set forth in  
21 Section XVII, above, regarding a claimed force majeure event it shall do so no later than 30 days  
22 after receipt of the Trustees' notice of disagreement. In any such proceeding Defendants shall  
23 have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated  
24 delay has been or will likely be caused by a force majeure event, that the duration of the delay or  
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1 the extension sought was or will be warranted under the circumstances, that Defendants exercised  
2 best efforts to fulfill the obligation in question, and that Defendants complied with the  
3 requirements of this Paragraph. If Defendants carry this burden, the delay at issue shall be deemed  
4 not to be a violation by Defendants of the affected obligation of this Consent Decree.  
5

6 XX. INDEMNIFICATION; INSURANCE

7 50. a. The Plaintiffs do not assume any liability by entering into this agreement.  
8 Defendants shall, or shall cause King County to, indemnify, save and hold harmless each of the  
9 Plaintiffs and/or their officials, agents, employees, contractors, subcontractors, or representatives  
10 from any and all damage claims or causes of action arising from or on account of the acts or  
11 omissions of Defendants or King County and/or their officers, employees, agents, contractors,  
12 subcontractors, representatives, and any persons acting on their behalf or under their control, in  
13 carrying out the requirements of this Consent Decree. Further, Defendants agree to, or agree to  
14 cause King County to, pay the Plaintiffs all costs they incur, including but not limited to attorneys  
15 fees and other expenses of litigation and settlement, arising from or on account of damage claims  
16 made against the Plaintiffs based on acts or omissions of Defendants or King County or their  
17 officers, employees, agents, contractors, subcontractors, representatives and any persons acting on  
18 their behalf or under their control, in carrying out the requirements of this Consent Decree. None  
19 of the Plaintiffs shall be held out as a party to any contract entered into by or on behalf of  
20 Defendants in carrying out the requirements of this Consent Decree. Neither Defendants nor King  
21 County shall be considered an agent of any Plaintiff, and Defendants shall require King County to  
22 affirmatively acknowledge that it is not acting as an agent of any Plaintiff.  
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1 King County, compliance with applicable laws and regulations regarding the provision of worker's  
2 compensation insurance. Defendants shall, or cause King County to, resubmit such evidence each  
3 year on the anniversary of the Effective Date of this Consent Decree. If Defendants demonstrate  
4 by evidence satisfactory to the Trustees that any contractor or subcontractor maintains insurance  
5 equivalent to that described above, or insurance covering the same risks but in a lesser amount,  
6 then, with respect to that contractor or subcontractor, Defendants need provide only that portion  
7 of the insurance described above that is not maintained by the contractor or subcontractor.  
8

9  
10 52. The Trustees agree to require that any contractor who performs work for them in  
11 the Countyline Project area or the Wheeler Osgood Site shall agree to indemnify and hold harmless  
12 King County or BNSF, respectively, and their agents, employees and representatives, against all  
13 claims of any nature, including, but not limited to, claims by third parties for death, personal injury,  
14 or property damage, and claims for environmental liability that arise as the result of negligent acts  
15 or omissions of such contractor, its employees, representatives and agents in carrying out the  
16 provisions of this Consent Decree. Such indemnity shall be limited to actual damages only, and  
17 shall not extend to consequential damages or any other liability except as stated herein.  
18

19 **XXI. COVENANT NOT TO SUE BY PLAINTIFFS**

20  
21 53. Except as specifically provided in Section XXII (Reservations of Rights) below,  
22 Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to  
23 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the  
24 Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990  
25 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages. This covenant not to sue will  
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1 take effect upon the Effective Date of this Consent Decree and continue in effect conditioned upon  
2 the satisfactory performance by Defendants of their obligations under this Consent Decree. This  
3 covenant not to sue extends only to each Defendant and its heirs, successors and assigns, and does  
4 not extend to any other person.  
5

6 **XXII. RESERVATIONS OF RIGHTS**

7 54. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against  
8 Defendants with respect to all matters not expressly included within the Covenant Not to Sue by  
9 Plaintiffs in Paragraph 53. Notwithstanding any other provision of this Consent Decree, the  
10 Plaintiffs reserve all rights against Defendants with respect to:  
11

12 a. liability for costs of response incurred or to be incurred by Plaintiffs under  
13 any federal or State statute, provided, however, that nothing in this Subparagraph 54.a shall be  
14 deemed to supersede or conflict with the provisions of the consent decree[s] entered in United  
15 States v. Advance Ross Sub Company et al., W.D. Wash. Case number C03-5117RJB (March 3,  
16 2003) and United States v. Atlantic Richfield Company et al., W.D. Wash. Case number C03-  
17 5117RJB (March 3, 2003);  
18

19 b. liability for damages to natural resources (including assessment costs) as  
20 defined 42 U.S.C. §§ 9601(6 & 16) that are not expressly included within the Covenant Not to Sue  
21 by Plaintiffs in Paragraph 53;  
22

23 c. liability for damages to natural resources (including assessment costs) as  
24 defined in 42 U.S.C. §§ 9601(6 & 16) within the Commencement Bay Environment resulting from  
25

26 new releases of hazardous substances from any Defendant's operations after the Effective Date of  
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1 this Consent Decree, or resulting from any Defendant's transportation, treatment, storage, or  
2 disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous  
3 substances after the Effective Date of this Consent Decree;

4  
5 d. liability for injunctive relief or administrative order enforcement under any  
6 federal or State statute;

7 e. liability for costs incurred or to be incurred by the Agency for Toxic  
8 Substances and Disease Registry in or regarding the Commencement Bay Environment;

9 f. additional claims for Natural Resource Damages if conditions, factors or  
10 information in the Commencement Bay Environment, not known to the Trustees as of the Effective  
11 Date, are discovered that, together with any other relevant information, indicate that there is a  
12 threat to the environment, or injury to, destruction of, or loss of natural resources of a type  
13 unknown, or of a magnitude significantly greater than was known, as of the Effective Date, which  
14 is attributable to any Defendant (for purposes of this Subparagraph, information known to the  
15 Trustees shall consist of any information in the files of, or otherwise in the possession of, any one  
16 of the individual Trustees, or their contractors or consultants who worked on the Trustees' natural  
17 resource damages assessment and liability allocation projects);

18  
19  
20 g. criminal liability to the United States or State; and

21 h. claims in this action or in a new action based on a failure of Defendants to  
22 satisfy the requirements of this Consent Decree.  
23

24 55. The Parties acknowledge that post-remedial monitoring in the Thea Foss and  
25 Wheeler-Osgood Waterways has shown that some level of recontamination of remediated areas of  
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1 waterway sediments is occurring and that the recontamination is evidence that there are on-going  
2 sources of hazardous substances to the waterways. Defendants assert that none of them is a  
3 significant on-going source of such recontamination, and the Trustees agree that they have no  
4 information indicating that any Defendant is a significant on-going source of hazardous substances  
5 to the waterways. The Parties agree the Defendants' assertions, and the Trustees' lack of contrary  
6 information, shall constitute the information regarding the status of Thea Foss Waterway  
7 contamination that is known to the Trustees as of the Effective Date for purposes of the preceding  
8 Paragraph.  
9

10  
11 **XXIII. COVENANT NOT TO SUE BY DEFENDANTS**

12 56. Each Defendant covenants not to sue and agrees not to assert any claims or causes  
13 of action against the United States, the State of Washington, the Puyallup Tribe of Indians and the  
14 Muckleshoot Indian Tribe or their contractors or employees, for any civil claims or causes of action  
15 relating to Natural Resource Damages.  
16

17 **XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

18 57. Nothing in this Consent Decree shall be construed to create any rights in, or grant  
19 any cause of action to, any person or entity not a Party to this Consent Decree. Each of the Parties  
20 expressly reserves any and all rights (including, but not limited to, any right to contribution),  
21 defenses, claims, demands, and causes of action they each may have with respect to any matter,  
22 transaction, or occurrence relating in any way to the Commencement Bay Environment against  
23 any person or entity not a Party hereto.  
24

25 58. The Parties agree, and by entering this Consent Decree this Court finds, that each  
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1 Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from  
2 contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2),  
3 and RCW 70.105D.040(4)(d), for Natural Resource Damages, provided, however, that if the  
4 Trustees exercise their rights under the reservations in Section XXII (Reservation of Rights) with  
5 regard to any Defendant, such Defendant will no longer be entitled to protection from such  
6 contribution actions or claims for Natural Resource Damages as are within the scope of the  
7 exercised reservation.  
8

9         59. Each Defendant agrees that it will notify the Trustees and the United States in  
10 writing no later than 60 days before bringing a suit or claim for contribution for Natural Resource  
11 Damages. Each Defendant also agrees that it will notify the Trustees and the United States in  
12 writing within 15 days of service of a complaint or claim upon them relating to a suit or claim for  
13 contribution for Natural Resource Damages. In addition, each Defendant will notify the Trustees  
14 and the United States within 15 days of service or receipt of any Motion for Summary Judgment  
15 and within 15 days of receipt of any order from a court setting a case for trial for matters related  
16 to this Decree.  
17

18         60. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs  
19 for injunctive relief, recovery of response costs, or other appropriate relief other than Natural  
20 Resource Damages, no Defendant shall assert, and nor may it maintain, any defense or claim based  
21 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or  
22 other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent  
23 proceeding were or should have been brought in the instant case; provided, however, that nothing  
24

25  
26 CONSENT DECREE - 45

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1 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 53  
2 and 56.

3 XXV. NOTICES AND SUBMISSIONS

4  
5 61. Whenever notice is required to be given or a document is required to be sent by  
6 one Party to another under the terms of this Decree, it will be directed to the individuals at the  
7 addresses specified below, unless those individuals or their successors give notice of a change to  
8 the other Parties in writing. Written notice as specified constitutes complete satisfaction of any  
9 written notice requirement of the Decree for Plaintiffs and Defendants.

10  
11 **As to the United States and as to DOJ:**

12 Chief, Environmental Enforcement Section  
13 Environment and Natural Resources Division  
14 U.S. Department of Justice  
15 P.O. Box 7611  
16 Washington, D.C. 20044-7611  
(DJ # 90-11-2-1049/16)

17 **As to NOAA:**

18 Robert A. Taylor  
19 NOAA Office of General Counsel GCNR/NW  
20 7600 Sand Point Way NE  
21 Seattle, WA 98115-0070

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

23 Jeff Krausmann  
24 U.S. Fish & Wildlife Service  
25 510 Desmond Dr. SE, Suite 102  
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1 Lacey, WA 98503-1263

2 **As to the State of Washington:**

3  
4 Celina Abercrombie  
5 Toxics Cleanup Program  
6 State of Washington  
7 P.O. Box 47600  
8 Olympia, WA 98504-7600

9 **As to the Puyallup Tribe of Indians:**

10 Bill Sullivan  
11 Environmental Department  
12 Puyallup Tribe of Indians  
13 1850 Alexander Avenue  
14 Tacoma, WA 98421

15 **As to the Muckleshoot Indian Tribe:**

16 Mr. Rob Otsea  
17 Office of the Tribal Attorney  
18 Muckleshoot Indian Tribe  
19 39015 172nd Avenue S.E.  
20 Auburn, WA 98002

21 **As to Advance Ross Sub Company:**

22 Jacqueline Wetzsteon  
23 PacifiCorp  
24 825 NE Multnomah  
25 Suite 1500 LCT  
26 Portland, OR 97232

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2 Senior Vice President  
3 Berkshire Hathaway Energy  
4 106 East Second Street  
5 Davenport, IA 52801

6 Louis A. Ferreira, Esq.  
7 Stoel Rives, LLP  
8 900 SW Fifth Avenue  
9 Suite 2600  
10 Portland, OR 97204

11 **As to BNSF Railway Company:**

12 Allen Stegman  
13 BNSF Railway Company  
14 General Director Environmental & HazMat  
15 2500 Lou Menk Dr., AOB-3  
16 Fort Worth, Texas 76131-2828  
17 817-352-1954  
18 Allen.Stegman@bnsf.com

19 Matthew Wells  
20 Tupper Mack Wells PLLC  
21 2025 First Avenue, Suite 1100  
22 Seattle, WA 98121  
23 206.407.0502 (direct)  
24 wells@tmw-law.com

25 **As to BP Products North America, Inc. and Atlantic Richfield Company:**

26 Douglas S. Reinhart, Esq.  
27 Senior Counsel  
28 BP America, Inc.

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2 Mail Code 200-1W  
3 Naperville, Illinois 60563  
4 Direct: 630-420-5457  
5 Fax: 630-420-5172  
6 Email: douglas.reinhart@bp.com

7 Cynthia Kezos  
8 Strategy Manager  
9 Remediation Management  
10 BP Corporate North America Inc.  
11 4 Centerpointe Drive, Suite 200  
12 La Palma, California 90623  
13 Direct: 714-228-6708  
14 Fax: 714-229-6749  
15 E-Mail: cindy.kezos@bp.com

16 **As to Brandrud Furniture, Inc., Nemshoff Chairs, Inc. and Herman Miller, Inc.:**

17 H. Timothy Lopez  
18 Herman Miller, Inc.  
19 Corporate Secretary  
20 855 East Main Avenue  
21 PO Box 302  
22 Zeeland, MI 49464  
23 Fax 616.654.7218

24 **As to CanAm Minerals/Kleen Blast Div.:**

25 Fionn O'Neill  
26 CanAm Minerals/Kleen Blast Div.  
27 50 Oak ct #210  
28 Danville CA 94526

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1 **As to Carstens Company:**

2 Guy J. Sternal, Esq.  
3 Eisenhower & Carlson, PLLC  
4 1201 Pacific Avenue  
5 Suite 1200  
6 Tacoma, WA 98402

7 **As to Chevron U.S.A. Inc., Union Oil Company of California, Texaco Downstream  
8 Properties Inc.:**

9 Mehagan Hopkins  
10 Project Manager  
11 Superfund and Specialty Portfolios  
12 Chevron Environmental Management Company  
13 6101 Bollinger Canyon Road  
14 San Ramon, CA 94583  
15 Tel 925 790 6989  
16 Fax 925 790 6772  
17 mhopkins@chevron.com

18 **As to City Waterway Investments, Inc.:**

19 Dave Bingham  
20 Johnny's Dock Restaurant & Marina  
21 1900 East D Street,  
22 Tacoma, WA 98421  
23 Phone: (253) 627-3186

24 **As to Closing Days, Inc., formerly known as Richard A. Johnson Cedar Products, Inc.,  
25 formerly d/b/a Johnson Postman Company:**

26 James V. Handmacher  
27 Morton McGoldrick, P.S.

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1 P.O. Box 1533  
2 820 A Street, Suite 600  
3 Tacoma, WA. 98401  
4 (253) 682-7234  
5 jvhandmacher@bvmm.com

6 **As to ExxonMobil Oil Corporation and Exxon Mobil Corporation:**

7 Kevin J. Vaughan  
8 Counsel, Environmental & Safety  
9 Exxon Mobil Corporation  
10 3225 Gallows Road  
11 Suite 3d 0215  
12 Fairfax, VA 22037  
13 Phone – 832-625-8251

14 **As to F. S. Harmon Manufacturing Company:**

15 David Walton  
16 F. S. Harmon Manufacturing Company  
17 2926 South Steele Street  
18 Tacoma WA 98409-7638

19 James V. Handmacher  
20 Morton McGoldrick, P.S.  
21 P.O. Box 1533  
22 820 A Street, Suite 600  
23 Tacoma, WA. 98401  
24 (253) 682-7234  
25 jvhandmacher@bvmm.com

26 **As to Glacier Northwest, Inc. (Lone Star Northwest):**

27 Ed Owens

28 CONSENT DECREE - 51

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1 Vice President–General Manager

2 Glacier Northwest, Inc.

3 5975 East Marginal Way S.

4 Seattle, WA 98134

5 Scott Isaacson

6 Senior Vice President & General Counsel

7 CalPortland Company

8 2025 E. Financial Way

9 Glendora, CA 91741

10 **As to Globe Machine Manufacturing Company:**

11 Loren Dunn

12 Riddell Williams P.S.

13 1001 Fourth Avenue

14 Suite 4500

15 Seattle, WA 98154

16 **As to Gull Industries, Inc.:**

17 Robie G. Russell, Esq.

18 Russell Law Offices

19 76 South Main Street

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21 (206) 621-2102 O

22 (206) 621-2104 F

23 robielaw@gmail.com

24 **As to Investco Financial Corporation:**

25 Angela L. Humphreys, General Counsel

26 Investco Financial Corporation

27 1302 Puyallup Street

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2 Sumner, WA 98390

3 **As to J.M. Martinac Shipbuilding Corporation:**

4 Sally E. Metteer, Esq.  
5 Wilson Smith Cochran Dickerson  
6 1215 Fourth Ave.  
7 Suite 1700  
8 Seattle, WA 98161

9 **As to King County Metro Transit Division:**

10 General Manager, Metro Transit Division  
11 King County Department of Transportation  
12 201 S. Jackson Street, MS KSC-TR-0415  
13 Seattle, WA 98104

14 Chief Civil Deputy  
15 King County Prosecuting Attorney's Office  
16 King County Courthouse, Room W400  
17 516 Third Avenue  
18 Seattle, WA 98104

18 **As to Louisiana-Pacific Corporation:**

19  
20 Bert P. Krages II, Esq.  
21 6665 S.W. Hampton Street  
22 Suite 200  
23 Portland, OR 97223  
24 P: (503) 597-2525  
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3 Marine Iron Works, Inc.  
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6 Tod Gold  
7 Joyce Ziker Parkinson, PLLC  
8 1601 5th Avenue, Suite 2040  
9 Seattle, WA 98101

10 **As to McFarland Cascade Holdings, Inc., Cascade Pole and Lumber Company and**  
11 **McFarland Cascade Pole & Lumber Company:**

12 Maureen Mitchell, Esq.  
13 Summit Law Group  
14 315 Fifth Avenue So.  
15 Suite 1000  
Seattle, WA 98104-2682

16 **As to Menasha Corporation:**

17 General Counsel  
18 1645 Bergstrom Road  
19 P.O. Box 367  
20 Neenah, WI 54957  
21 (920) 751-1497

22 **As to Moorage Associates, LLC:**

23 Guy J. Sternal, Esq.  
24 Eisenhower & Carlson, PLLC  
25 1201 Pacific Avenue

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3 **As to Mountain States Power (PacifiCorp):**

4 Jacqueline Wetzsteon  
5 PacifiCorp  
6 825 NE Multnomah  
7 Suite 1500 LCT  
8 Portland, OR 97232

9 Cathy Woollums  
10 Senior Vice President  
11 Berkshire Hathaway Energy  
12 106 East Second Street  
13 Davenport, IA 52801

14 Louis A. Ferreira, Esq.  
15 Stoel Rives, LLP  
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19 **As to MUFG Union Bank, N.A.:**

20 Cynthia Wagner  
21 MUFG Union Bank, N.A.  
22 500 S. Main Street  
23 Suite 320  
24 Orange, CA 92868  
25 (714) 565-5635  
26 (714) 565-5691

27 **As to Nestlé USA, Inc.:**

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Yun Au  
Chief Legal Officer and General Counsel  
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**As to Nichols Trucking Company / John and Eldeena Nichols:**

Dianne K. Conway  
Gordon Thomas Honeywell LLP  
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**As to Northwest Etch Technology, Inc.:**

John Dooley  
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**As to OfficeMax Incorporated:**

Dennis L. Radocha  
Assistant General Counsel  
Office Depot/OfficeMax Legal Department  
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ATTENTION: General Counsel  
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**As to Olympic Chemical Corporation:**

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**As to OMYA, Inc.:**

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**As to Pacific Northern Oil Corp.:**

Thomas M. Kilbane  
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**As to Petrich Marine Dock, LLC:**

Clare Petrich  
Petrich Marine Dock  
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1 **As to Phillips 66 Company:**

2 Stephen Parkinson, Esq.  
3 Joyce Ziker Parkinson, PLLC  
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5 Seattle, WA 98101

6 Willette A. DuBose  
7 Legal Specialist  
8 Phillips 66 Company  
9 3010 Briarpark DR, PWC-08-8108-09  
Houston, TX 77042

10 **As to Precision Machine Works, Inc.:**

11  
12 David Baublits  
13 Precision Machine Works, Inc.  
14 2024 Puyallup Ave. E.  
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15 **As to Premier Industries, Inc.:**

16  
17 Courtney Seim  
18 Riddell Williams P.S.  
19 1001 Fourth Avenue  
20 Suite 4500  
Seattle, WA 98154

21 **As to Puget Sound Energy:**

22  
23 Courtney Seim  
24 Riddell Williams P.S.  
25 1001 Fourth Avenue  
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27

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1 Seattle, WA 98154

2 John Rork  
3 Manager, Environmental Services  
4 Puget Sound Energy  
5 10885 NE 4th Street  
6 Bellevue, WA 98004

7 **As to Rainier Plywood Co.:**

8 Shawn O'Day  
9 Richlite Company  
10 624 E. 15th Street  
11 Tacoma, WA 98421  
12 (253) 383-5533

13 **As to Shell Oil Company:**

14 Carol Campagna  
15 Soil & Groundwater Principal Program Manager  
16 20945 S. Wilmington Ave.  
17 Carson CA 90749

18 William E. Platt  
19 Senior Manager, Discontinued Operations, Downstream US and Canada  
20 PCRO and Environmental Claims  
21 One Shell Plaza  
22 910 Louisiana St.  
23 Houston, TX 77002

24 Kimberly Lesniak  
25 Senior Legal Counsel  
26 Downstream Manufacturing & Regulatory  
27 One Shell Plaza

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2 Houston, TX 77002

3 **As to Shore Terminals LLC:**

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5 Stephen Tan  
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10 stan@cascadialaw.com

11 **As to SUPERVALU, Inc.:**

12 Lynette K. Stocker  
13 SUPERVALU  
14 Legal Department  
15 11840 Valley View Road  
16 Eden Prairie, MN 55344  
17 Office: 952.828.4877  
18 Fax: 952.828.4403  
19 lynette.k.stocker@supervalu.com

20 **As to The Boeing Company:**

21 Leah M. Krider  
22 Senior Counsel, Environment, Health & Safety  
23 Office of the General Counsel  
24 The Boeing Company  
25 Mailcode 7830-NE51  
26 5400 International Blvd.  
27 North Charleston, SC 29418

28 **As to The DIL Trust, including its predecessor the Dillingham Corporation:**

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Latham & Watkins LLP  
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Direct Dial: +1.213.891.8234  
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Email: kirk.wilkinson@lw.com

**As to The Jack Morris Estate/Morris Family Trusts:**

David J. Morris, Sole Successor Trustee  
2319 Hobart Ave SW  
Seattle, WA 98116

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The Law Office of Charles M. Davis  
4767 Wharf St.  
Bow, WA 98232  
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**As to The Joseph L. Trucco and Jean E. Trucco Living Trust, Colonial Fruit & Produce, Inc.:**

Kevin Trucco  
9024 Lake Steilacoom Pt Rd SW  
Lakewood, WA 98498  
Phone: 253-272-2102  
Fax: 253-222-8186

**As to The Wattles Company:**

Craig Wattles, President

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1 The Wattles Company  
2 35800 249th Avenue SE  
3 Enumclaw, WA 98022  
4 Tel: 253-272-7205  
5 Email: craig@wattlescompany.com

6 Kurt Peterson  
7 Cascadia Law Group PLLC  
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10 Tel: 206-292-6300  
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15 Seattle, WA 98101  
16 Tel: 206-292-6300  
17 jrehberger@cascadialaw.com

18 **As to Three Rivers Management, Inc. for the former Hygrade Food Products Corp.:**

19 Douglas B.M. Ehlke, Esq.  
20 28840 11th Avenue South  
21 Federal Way, WA 98003

22 Robert S. Markwell  
23 Three Rivers Management, Inc.  
24 Manor Oak One, Suite 200  
25 1910 Cochran Rd.  
26 Pittsburgh, PA 15220

27 Charles E. McChesney II, Esq.  
28 Three Rivers Management, Inc.

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3 Pittsburgh, PA 15220

4 **As to Truck-Rail Handling, Inc.:**

5 Robie G. Russell, Esq.  
6 Russell Law Offices  
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9 (206) 621-2102 O  
10 (206) 621-2104 F  
11 robielaw@gmail.com

12 **As to Union Pacific Railroad Company:**

13 Tod A Gold, Esq.  
14 Joyce Ziker Parkinson, PLLC  
15 1601 Fifth Avenue  
16 Suite 2040  
17 Seattle, WA 98101

18 Gary Honeyman  
19 Manager  
20 Environmental Site Remediation  
21 221 Hodgeman St.  
22 Laramie, WY 82072

23 **As to Washington Floral Service, Inc.:**

24 Mark Berglund  
25 2701 S. 35th Street  
26 Tacoma WA 98409  
27 253-472-8343

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**As to Washington State Department of Transportation:**

Deborah Cade  
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Olympia, WA 98504-0113  
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DeborahC@ATG.WA.GOV

**As to Woodworth & Company, Inc.:**

Jeff Woodworth  
President  
Woodworth Capital, Inc  
3110 Ruston Way, Suite D  
Tacoma, WA 98402

**XXVI. EFFECTIVE DATE**

62. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court into the record of the above-captioned matter.

**XXVII. RETENTION OF JURISDICTION**

63. This Court will retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.

**XXVIII. INTEGRATION/APPENDICES**

64. This Decree and its appendices constitute the final, complete, and exclusive agreement and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the

CONSENT DECREE - 64

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1 settlement other than those expressly contained in this Decree. The following appendices are  
2 attached to and incorporated into this Consent Decree:

3 Appendix A Countyline Project Project Description

4 Appendix B Wheeler-Osgood Site Description

5 Appendix C Wheeler-Osgood Site deed restrictions

6 Appendix D Order Directing the Deposit of Natural Resource Damages into the  
7 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B  
8 (W.D. Wash. Oct. 8, 1993)

9 Appendix E Countyline Project Site deed restrictions

10 Appendix F Form of Project Completion Accounting

11 XXIX. MODIFICATION

12 65. No material modifications shall be made to any requirement under this Consent  
13 Decree without written notification to and written approval of the United States Department of  
14 Justice and the Trustees, Defendants and the Court. Modifications to this Consent Decree  
15 exclusive of the appendices incorporated within that do not materially alter the terms of this  
16 Consent Decree may be made by written agreement between the United States Department of  
17 Justice, the Trustees and Defendants. Modifications to any of the appendices to this Consent  
18 Decree that do not materially alter any of the terms of this Consent Decree may be made by written  
19 agreement between the Trustees and Defendants. The following modifications shall be deemed  
20 not to materially alter the terms of this Consent Decree or the appendices incorporated herein:  
21  
22  
23  
24

25  
26 CONSENT DECREE - 65

27 Michael McNulty  
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1 a. Extensions of deadlines contained in Appendix A, provided that the total of  
2 such extensions shall equal one year or less;

3 b. Project design changes that increase the Countyline Project scale, or that  
4 decrease the Project scale by no more than 10% (ten percent) of the Project's area; or  
5

6 c. Extensions of deadlines for reports, accounts, plans or proposals of 45 days  
7 or less.

8 XXX. ENFORCEMENT

9 66. The requirements of this Consent Decree, including but not limited to deadlines,  
10 schedules and Project designs, are independently enforceable and the delay or failure of the  
11 Trustees to enforce any requirement will not preclude or prejudice the subsequent enforcement of  
12 the same or another requirement.  
13

14 XXXI. TERMINATION

15 67. This Decree as it applies to each Defendant shall terminate upon written notice,  
16 made in accordance with Section XXV, by Defendants to all Plaintiffs that all affirmative actions  
17 required under Section VIII, IX and XIII have been taken, all payments required under Sections  
18 XV (and under Sections XVI and XVIII, if applicable) have been made and all other applicable  
19 requirements of this Decree have been fulfilled, and subsequent written notice by the United States  
20 confirming the performance by Defendants of their obligations under this Decree. Such notice by  
21 the United States shall be sent within 45 calendar days of receipt by all Plaintiffs of the required  
22 payments and notice from Defendants. If the United States fails to send such notice, this Decree  
23 shall terminate automatically on the 46<sup>th</sup> day following receipt by all Plaintiffs of the required  
24

25  
26 CONSENT DECREE - 66

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1 payments and notice from Defendant. The following provisions of this Decree shall survive  
2 termination: Paragraph 15 (actions on Project Site or adjacent properties); Section X (“Access to  
3 Information and Project Site”); Section XIII (“Preservation of “Wheeler-Osgood Site”); (Section  
4 XXI (“Covenant Not to Sue by Plaintiffs”); Section XXII (“Reservations of Rights”); Section  
5 XXIII (“Covenant Not to Sue by Defendants”); and Section XXIV (“Effect of Settlement;  
6 Contribution Protection”).  
7

8 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

9 68. This Decree will be lodged with the Court for a period of not less than 30 days for  
10 public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their  
11 consent if the comments regarding the Decree disclose facts or considerations that indicate this  
12 Decree is inappropriate, improper, or inadequate. Each Defendant consents to the entry of this  
13 Decree without further notice.  
14

15 69. If for any reason this Court does not approve this Decree in the form presented, this  
16 agreement may be voided at the sole discretion of any Party and the terms of the agreement may  
17 not be used as evidence in any litigation between the Parties.  
18

19 XXXIII. SIGNATORIES/SERVICE

20 70. The Assistant Attorney General for the Environment and Natural Resources  
21 Division of the United States Department of Justice and each undersigned representative of the  
22 State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies  
23 that he or she is authorized to enter into the terms and conditions of this Decree and to execute and  
24 bind legally the Party that he or she represents to this document.  
25

26 CONSENT DECREE - 67

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

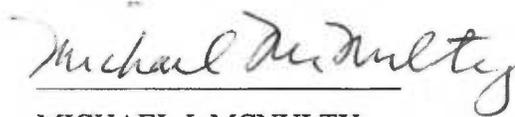


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v.  
2 Advance Ross Sub Company, *et al.*

3 FOR THE UNITED STATES OF AMERICA

4 JOHN C. CRUDEN  
5 Assistant Attorney General  
6 Environment and Natural Resources Division

7  
8 Date: 7/7/15



9 MICHAEL J. MCNULTY  
10 Senior Counsel  
11 Environmental Enforcement Section  
12 United States Department of Justice  
13 P.O. Box 7611, Ben Franklin Station  
14 Washington, D.C. 20044  
15 202-514-1210  
16 [michael.mcnulty@usdoj.gov](mailto:michael.mcnulty@usdoj.gov)

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26 CONSENT DECREE - 69

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

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FOR THE PUYALLUP TRIBE OF INDIANS



Date: May 14, 2015

BILL STERUD  
Chairman, Puyallup Tribal Council  
3009 E. Portland Ave.  
Tacoma, WA 98404  
(253) 573-7800

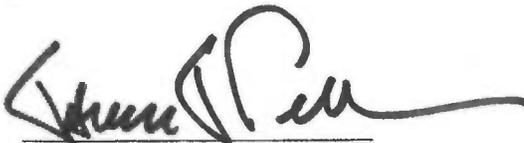
CONSENT DECREE - 70

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

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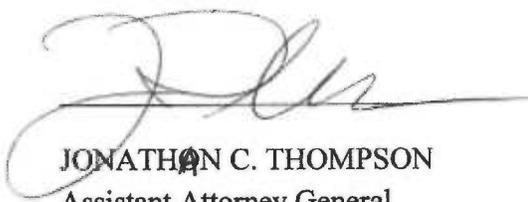
FOR THE STATE OF WASHINGTON

Date: 4/7/15



JAMES PENDOWSKI  
Toxics Cleanup Program Manager  
Washington State Department of Ecology  
PO Box 47600, Olympia, WA 98504  
360-407-7177  
Jim.Pendowski@ecy.wa.gov

Date: 4/16/15



JONATHON C. THOMPSON  
Assistant Attorney General  
Office of the Attorney General of Washington  
2425 Bristol Court SW, Olympia, WA 98504  
360-586-6740  
Jonathon.Thompson@atg.wa.gov

CONSENT DECREE - 71

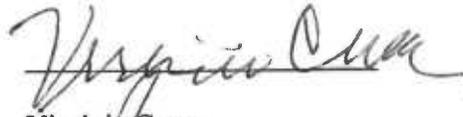
Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR THE MUCKLESHOOT INDIAN TRIBE

2

3 Date: 5/26/15

4



5

Virginia Cross  
Chairperson  
Muckleshoot Indian Tribe  
39015 172<sup>nd</sup> Avenue S.E.  
Auburn, WA 98092  
(253) 939-3311

6

7

8

9

10

11 Date: 5-26-15

12



13

Robert L. Otsea, Jr. WSBA #9367  
Chief Legal Counsel  
Office of the Tribal Attorney  
Muckleshoot Indian Tribe  
39015 - 172<sup>nd</sup> Avenue S.E.  
Auburn, WA 98092  
(253) 939-3311  
[otsea@muckleshoot.nsn.us](mailto:otsea@muckleshoot.nsn.us)

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26 CONSENT DECREE - 72

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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR ADVANCE ROSS SUB COMPANY

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Date: 4-17-15

Cathy S. Woollums

Name Cathy S. Woollums  
Title Senior Vice President, Environmental Services and  
Chief Environmental Counsel for  
Berkshire Hathaway Energy Company  
Address 106 East Second Street  
Davenport, Iowa 52801  
Phone 563-333-8009  
Email cswoolums@berkshirehathawayenergyco.com

Agent authorized to receive service of process by mail on behalf of Advance Ross Sub Company  
with respect to all matters relating to this Decree:

Name Louis A. Ferreira  
Title Partner  
Address 900 SW 5th Ave., Suite 2600, Portland, OR 97204  
Phone 503-294-9412  
email lou.ferreira@stoel.com

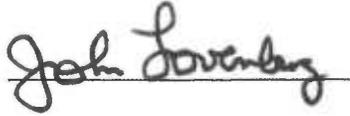
CONSENT DECREE - 73

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR BNSF RAILWAY COMPANY

2

3 Date: March 25, 2015



4

5	Name	John Lovenburg
6	Title	VP of Environmental
7	Address	2500 Lou Menk Dr., AOB-3 Fort Worth, Texas 76131-2828
8	Phone	(817) 352-1459
9	Email	John.Lovenburg@bnsf.com

10

11 Agent authorized to receive service of process by mail on behalf of BNSF Railway Company  
12 with respect to all matters relating to this Decree:

13

14

15

15	Name	CT Corporation
16	Title	Registered Agent for BNSF Railway Company
17	Address	505 Union Av SE, Ste 120 Olympia, WA 98501
18	Phone	(360) 357-6794
19	email	

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CONSENT DECREE - 74

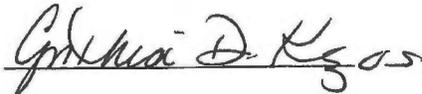
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Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR BP PRODUCTS NORTH AMERICA, INC. AND ATLANTIC RICHFIELD COMPANY

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Date: MARCH 31, 2015 

Name Cynthia D. Kezos  
Title Strategy Manager  
Address BP Corporate NA Inc.  
4 Centerpointe Drive, Suite 200  
La Palma, CA 90623  
Phone 714-228-6708  
Email cindy.kezos@bp.com

Agent authorized to receive service of process by mail on behalf of BP Products North America, Inc. and Atlantic Richfield Company with respect to all matters relating to this Decree:

Name Doug Reinhart, Esq.  
Title Senior Counsel  
Address BP America Inc.  
150 West Warrenville Road  
Building 200, Room 1004V  
Naperville, IL 60563  
Phone 630-420-5457  
Email douglas.reinhart@bp.com

CONSENT DECREE - 75

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR BRANDRUD FURNITURE, INC., NEMSHOFF CHAIRS, INC. AND HERMAN  
2 MILLER, INC.

3 Date: April 1, 2015

X 

4  
5 Name Tim Lopez  
6 Title General Counsel  
7 Address 855 East Main Ave, Zeeland, MI 49464  
8 Phone 616.654.3000  
9 Email tim\_lopez@hermanmiller.com

10 Agent authorized to receive service of process by mail on behalf of Brandrud Furniture, Inc.,  
11 Nemshoff Chairs, Inc. and Herman Miller, Inc. with respect to all matters relating to this Decree:

12 Name Tim Lopez  
13 Title General Counsel  
14 Address 855 East Main Avenue, Zeeland, MI 49464  
15 Phone 616.654.3000  
16 Email tim\_lopez@hermanmiller.com

26 CONSENT DECREE - 76

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR CANAM MINERALS/KLEEN BLAST DIV.  
2

3 Date: 4/30/15  
4

T-S-

5 Name: Timothy Spurgeon  
6 Title: President CEO  
7 Address: 50 Oak Court Suite 210  
8 Phone: 925.831.9800  
9 Email: [tim@kleenblast.com](mailto:tim@kleenblast.com)

10 Agent authorized to receive service of process by mail on behalf of CanAm Minerals/Kleen Blast  
11 Div with respect to all matters relating to this Decree:

12 Name: Timothy Spurgeon  
13 Title: President CEO  
14 Address: 50 Oak Court Suite 210  
15 Phone: 925.831.9800  
16 Email: [tim@kleenblast.com](mailto:tim@kleenblast.com)

26 CONSENT DECREE - 77

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR CARSTENS COMPANY

2

3 Date: 3/26/13

4



5

Name: Peter O. Carstens

6

Title: President

Address: 1202 E. Sprague Ave, Suite 202  
Spokane WA 99202

7

Phone: (509) 747-3947

8

Email: peter@carstensmanagement.com

9

10

Agent authorized to receive service of process by mail on behalf of Carstens Company with respect to all matters relating to this Decree:

11

12

13

Name: Guy J. Sternal

14

Title: Attorney

Address: Eisenhower & Carlson, PLLC  
1201 Pacific Ave, Suite 1200  
Tacoma WA 98402

15

16

Phone: (253) 572-4500

17

Email: gsternal@eisenhowerlaw.com

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26 CONSENT DECREE - 78

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR CHEVRON U.S.A. INC.

2 Date: April 22 2015



3 Name: Frank G. Soler  
4 Title: Assistant Secretary for Chevron U.S.A. Inc.  
5 Address: 6001 Bollinger Canyon Rd., San Ramon, CA 94583  
6 Phone: 925-842-1000

7  
8  
9 Agent authorized to receive service of process by mail on behalf of Chevron U.S.A. Inc. with  
10 respect to all matters relating to this Decree:

11 Name: Corporation Service Company  
12 Title: Agent for Service of Process  
13 Address: 2710 Gateway Oaks Dr., Suite 150N  
14 Sacramento, CA 95833  
15 Phone: 916-641-5100

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26 CONSENT DECREE - 79

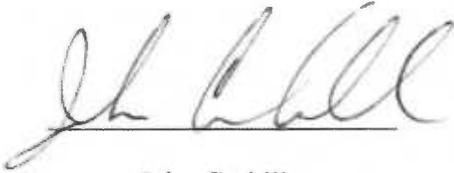
27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR CITY WATERWAY INVESTMENTS, INC.

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Date:

5-12-2015



Name: John Crabill  
Title: President  
Address: 1900 East D St, Tacoma, WA 98421  
Phone: (253) 627 3186  
Email: johncrabill@icloud.com

Agent authorized to receive service of process by mail on behalf of City Waterway Investments, Inc. with respect to all matters relating to this Decree:

Name: David Bingham  
Title: Secretary - Treasurer  
Address: 1900 East D St, Tacoma, WA 98421  
Phone: (253) 627 3186  
Email: winston3609@yahoo.com

CONSENT DECREE - 80

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR CLOSING DAYS, INC., FORMERLY KNOWN AS RICHARD A. JOHNSON CEDAR  
2 PRODUCTS, INC., FORMERLY D/B/A JOHNSON POSTMAN COMPANY

3

4 Date: 4-7-15

  
\_\_\_\_\_

5

6

Name Fred Nix  
Title President  
Address 5640 South Durango  
Tacoma, WA  
Phone 253-537-8824  
Email fnix54@gmail.com

7

8

9

10

11

12 Agent authorized to receive service of process by mail on behalf of Closing Days, Inc., formerly  
13 known as Richard A. Johnson Cedar Products, Inc., formerly d/b/a Johnson Postman Company  
with respect to all matters relating to this Decree:

14

15

Name James V. Handmacher  
Title Attorney  
Address 820 A Street, Suite 600  
Tacoma, WA 98402  
Phone 253-627-8131  
Email jvhandmacher@bvmm.com

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26 CONSENT DECREE - 81

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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR EXXONMOBIL OIL CORPORATION AND EXXON MOBIL CORPORATION

2  
3 Date: May 1, 2015



4 Name: Len M. Racioppi  
5 Title: Agent and Attorney-in-Fact  
6 Address: 22777 Springwoods Village Parkway, Spring TX 77389  
7 Phone: 832-624-2039  
8 Email: len.m.racioppi@exxonmobil.com

9  
10 Agent authorized to receive service of process by mail on behalf of ExxonMobil Oil Corporation  
11 and Exxon Mobil Corporation with respect to all matters relating to this Decree:

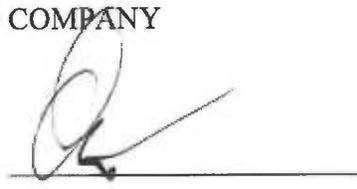
12 Name: Kevin J. Vaughan  
13 Title: Counsel  
14 Address: 22777 Springwoods Village Parkway, Spring TX 77389  
15 Phone: 832-625-8251  
16 Email: kevin.j.vaughan@exxonmobil.com

17  
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26 CONSENT DECREE - 82

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR F. S. HARMON MANUFACTURING COMPANY

2  
3 Date: March 24, 2015



4  
5 Name David Walton  
6 Title President  
7 Address 2926 South Steele Street  
8 Tacoma WA 98409-7638  
9 Phone (425) 345-2032  
10 Email DAVID.WALTON7@comcast.net

11 Agent authorized to receive service of process by mail on behalf of F. S. Harmon Manufacturing  
12 Company with respect to all matters relating to this Decree:

13 Name James V. Handmacher  
14 Title Attorney  
15 Address 820 A Street, Suite 600  
16 Tacoma, WA 98402  
17 Phone (253) 627-8131  
18 Email jvhandmacher@bvmm.com

19  
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26 CONSENT DECREE - 83

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR GLACIER NORTHWEST, INC. (LONE STAR NORTHWEST),

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Date: April 20, 2015 

Name	Ed Owens
Title	Vice President-General Manager
Address	5975 East Marginal Way S., Seattle, WA 98134
Phone	(206) 764-3000
Email	EOwens@calportland.com

Agent authorized to receive service of process by mail on behalf of Glacier Northwest, Inc. (Lone Star Northwest) with respect to all matters relating to this Decree:

Name	Registered Agent Solutions, Inc. (RASI)
Title	
Address	3400 Capitol Blvd S. #101, Olympia, WA 98501
Phone	
Email	

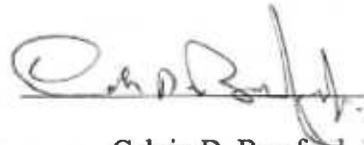
CONSENT DECREE - 84

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR GLOBE MACHINE MANUFACTURING COMPANY

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Date: 28 April 15



Name	Calvin D. Bamford, Jr.
Title	President
Address	Globe Machine Manufacturing Company 701 East D Street Tacoma, WA 98421
Phone	(253) 383-2584
Email	calb@globemachine.com

Agent authorized to receive service of process by mail on behalf of Globe Machine Manufacturing Company with respect to all matters relating to this Decree:

Name:	Loren Dunn
Title:	Principal
Address:	Riddell Williams P.S. 1001 Fourth Avenue, Suite 4500 Seattle, WA 98154
Phone:	(206) 389-1794
Email:	ldunn@riddellwilliams.com

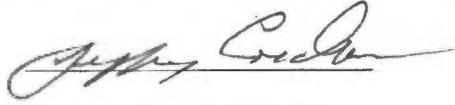
CONSENT DECREE - 85

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR GULL INDUSTRIES, INC.

2

3 Date: 4/27/15



4

5

Name	Jeffrey M. Cordova
Title	CFO/VP
Address	PO Box 24687
	Seattle, WA 98124
Phone	(206) 624-5900
email	jmc@gulloil.com

6

7

8

9

10

Agent authorized to receive service of process by mail on behalf of Gull Industries, Inc. with respect to all matters relating to this Decree:

11

12

Name	Robie G. Russell
Title	Attorney at Law
Address	76 South Main Street
	Seattle, WA 98104-2514
Phone	(206) 621-2102
email	robielaw@gmail.com

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CONSENT DECREE - 86

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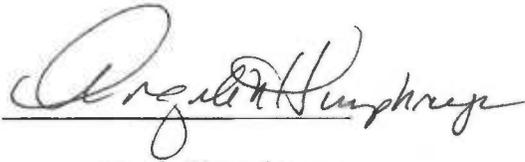
Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR INVESTCO FINANCIAL CORPORATION

2

3

Date: 4/28/15



4

5

Name	Angela Humphreys
Title	Vice President – General Counsel
Address	1302 Puyallup St., Sumner, WA 98390
Phone	(253) 863-6200
Email	ahumphreys@investco.com

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Investco Financial  
11 Corporation with respect to all matters relating to this Decree:

11

12

Name	Angela Humphreys
Title	Vice President – General Counsel
Address	1302 Puyallup St., Sumner, WA 98390
Phone	(253) 863-6200
Email	ahumphreys@investco.com

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26 CONSENT DECREE - 87

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Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR J.M. MARTINAC SHIPBUILDING CORPORATION

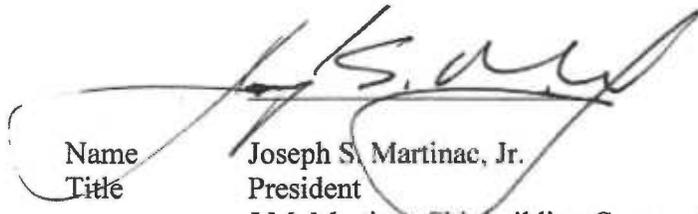
2

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Date: May 6, 2015

4

5



Name	Joseph S. Martinac, Jr.
Title	President
Address	J.M. Martinac Shipbuilding Corporation 2902 North 27 <sup>th</sup> Tacoma, WA. 98407
Phone	(253) 761-6122
Email	martinac@martinacship.com

6

7

8

9

10

11

Agent authorized to receive service of process by mail on behalf of J.M. Martinac Shipbuilding Corporation with respect to all matters relating to this Decree:

12

13

Name	Sally E. Metteer
Title	Attorney
Address	Wilson Smith Cochran Dickerson 901 Fifth Avenue, Suite 1700 Seattle, WA 98164
Phone	(206) 623-4100
Email	metteer@wscd.com

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CONSENT DECREE - 88

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Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR KING COUNTY METRO TRANSIT DIVISION

2  
3 Date: 4/23/15

Kevin Desmond

4  
5 Name Kevin Desmond  
6 Title General Manager, KC Metro Transit Division  
7 Address 201 South Jackson Street, M/S KSC-TR-0415  
8 Seattle, WA 98104  
9 Phone 206-477-5910  
10 Email kevin.desmond@kingcounty.gov

11 Agent authorized to receive service of process by mail on behalf of King County Metro Transit  
12 Division with respect to all matters relating to this Decree:

13 Name King County Metro Transit  
14 Title General Manager's Office  
15 Address 201 South Jackson Street, M/S KSC-TR-0415  
16 Seattle, WA 98104

17 With a copy to:

18 Chief Civil Deputy  
19 King County Prosecuting Attorney's Office  
20 King County Courthouse, Room W400  
21 516 Third Avenue  
22 Seattle, WA 98104

23  
24  
25  
26 CONSENT DECREE - 89

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR LOUISIANA-PACIFIC CORPORATION

2

3

Date: 4/14/2015

  
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4

5

Name	April A. Ingram
Title	Assoc. General Counsel
Address	414 Union St., Suite 2000, Nashville TN 37219
Phone	(615) 986-5691
Email	<a href="mailto:april.ingram@lpcorp.com">april.ingram@lpcorp.com</a>

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Louisiana-Pacific  
11 Corporation with respect to all matters relating to this Decree:

11

12

Name	United States Corporation Company
Title	
Address	300 Deschutes Way SW, Suite 304 Tumwater, WA 98501
Phone	
email	

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CONSENT DECREE - 90

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Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR MARINE IRON WORKS, INC.

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Date: 5-4-15



Name	Martin A. Petrich
Title	VP & Secretary
Address	5205 Orca Drive NE, Tacoma, WA 98422
Phone	(253) 878-5770
Email	marpet1@comcast.net

Agent authorized to receive service of process by mail on behalf of Marine Iron Works, Inc. with respect to all matters relating to this Decree:

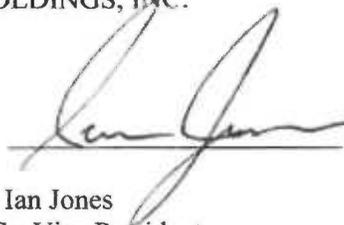
Name	Tod Gold
Title	Attorney
Address	1601 5 <sup>th</sup> Avenue, Suite 2040, Seattle, WA 98101
Phone	(206) 957-5953
Email	tgold@jzplaw.com

CONSENT DECREE - 91

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR MCFARLAND CASCADE HOLDINGS, INC.

2  
3 Date: April 30/15



4  
5 Name Ian Jones  
6 Title Sr. Vice President  
7 Address 1640 East Marc, Tacoma, WA 98421  
8 Phone (253) 572-3033  
9 email IJones@Stella-Jones.com

10 Agent authorized to receive service of process by mail on behalf of McFarland Cascade  
11 Holdings, Inc. with respect to all matters relating to this Decree:

12 Name Maureen Mitchell  
13 Title Attorney, Summit Law Group  
14 Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104  
15 Phone (206) 676-7000  
16 email MaureenM@summitlaw.com

26 CONSENT DECREE - 92

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

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FOR CASCADE POLE AND LUMBER COMPANY

Date: *April 30/15*



Name Ian Jones  
Title Senior Vice President  
Address 1640 East Marc, Tacoma, WA 98421  
Phone (253) 572-3033  
email IJones@Stella-Jones.com

Agent authorized to receive service of process by mail on behalf of Cascade Pole and Lumber Company with respect to all matters relating to this Decree:

Name Maureen Mitchell  
Title Attorney, Summit Law Group PLLC  
Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104  
Phone (206) 676-7000  
email MaureenM@Summitlaw.com

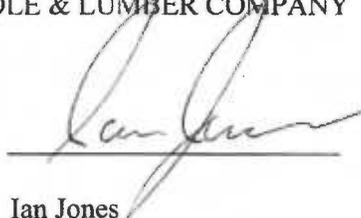
CONSENT DECREE - 93

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR MCFARLAND CASCADE POLE & LUMBER COMPANY

2  
3 Date:

*April 30/15*



4  
5 Name Ian Jones  
6 Title Senior Vice President  
7 Address 1640 East Marc, Tacoma, WA 98421  
8 Phone (253) 572-3033  
9 email IJones@Stella-Jones.com

10 Agent authorized to receive service of process by mail on behalf of and McFarland Cascade Pole  
11 & Lumber Company with respect to all matters relating to this Decree:

12 Name Maureen Mitchell  
13 Title Attorney, Summit Law Group PLLC  
14 Address 315 5th Ave. S., Suite 1000, Seattle, WA 98104  
15 Phone (206) 676-7000  
16 email MaureenM@summitlaw.com

17  
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26 CONSENT DECREE - 94

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR MENASHA CORPORATION

2

3

Date: 4/30/2015



4

5

Name: Mark P. Fogarty  
Title: Vice President, General Counsel and Corporate Secretary  
Address: 1645 Bergstrom Road, Neenah, WI 54957-0367  
Phone: (920) 751-1497  
Email: Mark.Fogarty@menasha.com

6

7

8

9

10 Agent authorized to receive service of process by mail on behalf of Menasha Corporation with  
11 respect to all matters relating to this Decree:

11

12

Name	CT Corporation
Title	
Address	208 South LaSalle St. Suite 814 Chicago, IL 60604
Phone	312-345-4328
email	

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CONSENT DECREE - 95

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR MOORAGE ASSOCIATES, LLC

2

3

Date: 03/30/2015      Albert C. Smith

4

5

Name: Albert C. Smith  
Title: Member  
Address: P.O. Box 782  
Palo Alto, CA 94023  
Phone: (650) 948-2087  
Email: acs2087@gmail.com

6

7

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Agent authorized to receive service of process by mail on behalf of Moorage Associates, LLC with respect to all matters relating to this Decree:

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CONSENT DECREE - 96

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR MOUNTAIN STATES POWER (PACIFICORP)

2

3 Date: 4-17-15

*Cathy S. Woollums*

4

5

Name Cathy S. Woollums  
Title Senior Vice President, Environmental Services and  
Chief Environmental Counsel for  
Berkshire Hathaway Energy Company

6

7

Address 106 East Second Street  
Davenport, Iowa 52801

8

9

Phone 563-333-8009  
Email cswollums@berkshirehathawayenergyco.com

10

11

12 Agent authorized to receive service of process by mail on behalf of Mountain States Power  
(PacifiCorp) with respect to all matters relating to this Decree:

13

14

Name Louis A. Ferreira  
Title Partner  
Address 900 SW Fifth Ave., Suite 2600, Portland, OR 97204  
Phone 503-294-9412  
email lou.ferreira@stoel.com

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26 CONSENT DECREE - 97

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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR MUFG UNION BANK, N.A.

2

3

Date: 5/1/15 Cynthia Wagner

4

5

Name Cynthia Wagner  
Title Director  
Address 500 S. Main Street, Suite 320  
Orange, CA 92868  
Phone (714) 565-5635  
Email Cynthia.wagner@unionbank.com

6

7

8

9

10

11

Agent authorized to receive service of process by mail on behalf of MUFG Union Bank, N.A with respect to all matters relating to this Decree:

12

13

14

15

16

Name Cynthia Wagner  
Title Director  
Address 500 S. Main Street, Suite 320  
Orange, CA 92868  
Phone (714) 565-5635  
Email Cynthia.wagner@unionbank.com

17

18

19

20

Name Joseph J. Catalano  
Title DGC & Managing Director  
Address 400 California St, 16<sup>th</sup> Floor  
San Francisco, CA 94104  
Phone (415) 765-2506  
Email joseph.catalano@unionbank.com

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CONSENT DECREE - 98

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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR NESTLÉ USA, INC.

2

3 Date: 3/27/15



4

5

Name Yun Au  
Title Chief Legal Officer & General Counsel  
Address 800 North Brand Blvd., Glendale, CA 91203  
Phone (818) 549-6703  
email Yun.Au@US.nestle.com

JE 3/27/15

6

7

8  
9  
10 Agent authorized to receive service of process by mail on behalf of Nestlé USA, Inc. with  
11 respect to all matters relating to this Decree:

12

Name CT Corporation System  
Title n/a  
Address 818 West 7th St., 2nd Fl., Los Angeles, CA 90017  
Phone (213) 627-8252  
email n/a

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CONSENT DECREE - 99

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR NICHOLS TRUCKING COMPANY / JOHN AND ELDEENA NICHOLS

2  
3 Date: 3-26-15

*Robert W. Stack*

4  
5 Name Robert W. Stack  
6 Title Terminal Manager  
7 Address 424 East 19<sup>th</sup> St.  
8 Tacoma, WA 98421  
9 Phone (253) 272-8495  
10 Email bob@nicholstrucking.com

11 Agent authorized to receive service of process by mail on behalf of Nichols Trucking Company/  
12 John and Eldeena Nichols with respect to all matters relating to this Decree:

13 Name Dianne K. Conway  
14 Title Attorney  
15 Address c/o Gordon Thomas Honeywell LLP  
16 1201 Pacific Ave., Suite 2100  
17 Tacoma, WA 98402  
18 Phone (253) 620-6500  
19 Email dconway@gth-law.com

20  
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26 CONSENT DECREE - 100

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR NORTHWEST ETCH TECHNOLOGY, INC.

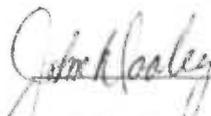
2

3

Date: 4/6/15

4

5

  
Name: John Dooley  
Title: CEO  
Address: 2601 South Hood Street  
Tacoma WA 98411  
Phone: (253) 572-2401  
Email: johnd@nwetch.com

6

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Agent authorized to receive service of process by mail on behalf of Northwest Etch Technology, Inc. with respect to all matters relating to this Decree:

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CONSENT DECREE - 101

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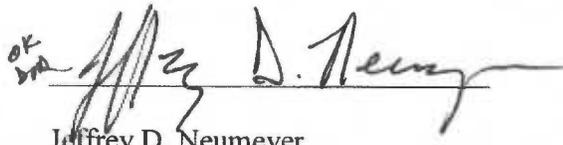
Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR OFFICEMAX INCORPORATED

2

3

Date: 03/30/2015

of  
VP 

4

5

Jeffrey D. Neumeyer  
Vice President and Associate General Counsel  
1111 West Jefferson Street, Suite 510  
Boise, ID 83702  
Tel: 208.388.4177  
Jeffrey.Neumeyer@officedepot.com

6

7

8

9

10

Agent authorized to receive service of process by mail on behalf of OfficeMax Incorporated with respect to all matters relating to this Decree:

11

12

Corporate Creations  
11380 Prosperity Farms Road #221E  
Palm Beach Gardens, FL 33410  
www.CorporateCreations.com  
Tel: (561) 694-8107  
Fax: (561) 694-1639

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CONSENT DECREE - 102

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR OLYMPIC CHEMICAL CORPORATION

2  
3 Date: 5/1/15

William Krause

4  
5 Name William Krause  
6 Title Secretary  
7 Address 17411 NE Union Hill Road, Redmond, WA 98052  
8 Phone (425) 889-3759  
9 Email will.krause@univarcorp.com

10 Agent authorized to receive service of process by mail on behalf of Olympic Chemical  
11 Corporation with respect to all matters relating to this Decree:

12 Name Michell Ulick Rosenthal  
13 Title Partner (Veris Law Firm)  
14 Address 1809 Seventh Ave., Suite 1400, Seattle, WA 98101  
15 Phone (206) 535-6006  
16 Email michelle@verislawgroup.com

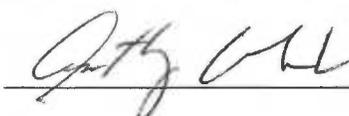
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26 CONSENT DECREE - 103

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

28

1 FOR OMYA, INC.

2  
3 Date: 4-27-2015



4  
5 Name Antholy Colak  
6 Title Chief Executive Officer  
7 Address 9987 Carver Road, Suite 300  
8 Cincinnati, OH 45242  
9 Phone 513-387-4600  
10 Email Anthony.Colak@omya.com

11 Date: 4-27-2015



12 Name Michael Phillips  
13 Title Chief Financial Officer  
14 Address 9987 Carver Road, Suite 300  
15 Cincinnati, OH 45242  
16 Phone 513-387-4600  
17 Email Michael.Phillips@omya.com

18 Agent authorized to receive service of process by mail on behalf of OMYA, Inc. with respect to  
19 all matters relating to this Decree:

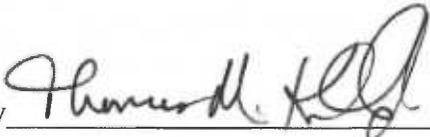
20 Name Jeffrey T. Golenbock, Attorney  
21 Title Partner  
22 Address 437 Madison Avenue  
23 New York, NY 10022  
24 Phone 212-907-7373  
25 Email jgolenbock@golenbock.com

26 CONSENT DECREE - 104

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR PACIFIC NORTHERN OIL CORP., a dissolved Washington corporation

2 THOMAS M. KILBANE ATTORNEY AT LAW PLLC

3  
4  
5 Date: May 1, 2015 By 

6 Name Thomas M. Kilbane  
7 Title Authorized Person  
8 Address 8164 NE Yeti Lane  
9 Phone Bainbridge Island, WA 98110  
email (206) 484-1307  
tom@kilbanelaw.com

10 Agent authorized to receive service of process by mail on behalf of Pacific Northern Oil Corp., a  
11 dissolved Washington corporation, with respect to all matters relating to this Decree:

12 Name Thomas M. Kilbane  
13 Title Authorized Person  
14 Address 8164 NE Yeti Lane  
15 Phone Bainbridge Island, WA 98110  
16 email (206) 484-1307  
17 tom@kilbanelaw.com

26 CONSENT DECREE - 105

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR PETRICH MARINE DOCK, LLC

2

3

4

Date: 3/27/15

*Clare Petrich*

5

Name: Clare Petrich

6

Title: Managing Partner

7

Address: 1118 East D Street, Tacoma, WA 98421

8

Phone: 253-272-1005

9

Email: clare@harbornet.com

10

11

Agent authorized to receive service of process by mail on behalf of Petrich Marine Dock, LLC with respect to all matters relating to this Decree:

12

13

Name: Kimberly Seely

14

Title: Attorney

15

Address: 4015 Ruston Way, Suite 200, Tacoma, WA 98402

16

Phone: 253-203-6820

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Email: kseely@coastlinelaw.com

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CONSENT DECREE - 106

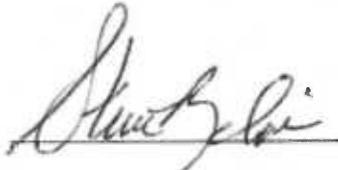
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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR PHILLIPS 66 COMPANY

2  
3 Date: 4-1-15



4  
5 Name Steve Belin  
6 Title Remediation Manager, Remediation Management  
7 Address 420 South Keeler, PB-1715, Bartlesville, OK 74003  
8 Phone 918-977-5399  
9 Email Steve.A.Belin@P66.com

10 Agent authorized to receive service of process by mail on behalf of Phillips 66 Company with  
11 respect to all matters relating to this Decree:

12 Name United States Corporation Company  
13 Title Agent for Service of Process  
14 Address 300 Deschutes Way SW, Suite 304  
15 Tumwater, WA 98501  
16 Phone 800-927-9800  
17 Email info@cscinfo.com

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26 CONSENT DECREE - 107

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR PRECISION MACHINE WORKS, INC.

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Date: 4/8/15

David Baublits

Name	David Baublits
Title	Former President
Address	2024 Puyallup Ave. E., Tacoma, WA 98421
Phone	(253) 272-5119
Email	tohspord@hotmail.com

Agent authorized to receive service of process by mail on behalf of Precision Machine Works, Inc. with respect to all matters relating to this Decree:

Name	SAME AS ABOVE
Title	
Address	
Phone	
email	

CONSENT DECREE - 108

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR PREMIER INDUSTRIES, INC.

2

3 Date: April 5<sup>th</sup> 2015 

4

5

Name: Michael R. Wall  
Title: President  
Address: Premier Industries, Inc.  
11126 Vipond Drive NW  
Gig Harbor, WA 98329

6

7

8

Phone: (253) 279-1797  
email

9

10

11

Agent authorized to receive service of process by mail on behalf of Premier Industries, Inc. with respect to all matters relating to this Decree:

12

13

Name: Courtney Seim  
Title: Principal  
Address: Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154  
Phone: (206) 389-1683  
Email: cseim@riddellwilliams.com

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CONSENT DECREE - 109

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

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1 FOR PUGET SOUND ENERGY

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Date: 4/23/2015



Name	Lorna Luebbe
Title	Assistant General Counsel/Director Environmental Services
Address	Puget Sound Energy, Inc. 10885 NE 4th St., PSE 12N Bellevue, WA 98004-5591
Phone	(425) 462-3031
Email	lorna.luebbe@pse.com

Agent authorized to receive service of process by mail on behalf of Puget Sound Energy with respect to all matters relating to this Decree:

Name:	Courtney Seim
Title:	Principal
Address:	Riddell Williams P.S. 1001 Fourth Avenue, Suite 4500 Seattle, WA 98154
Phone:	(206) 389-1683
Email:	cseim@riddellwilliams.com

CONSENT DECREE - 110

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR RAINIER PLYWOOD CO.

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Date: 4/27/2015



Name	Shawn P. O'Day
Title	President
Address	624 E 15 <sup>th</sup> St, Tacoma, WA 98421
Phone	(253) 383-5533 x112
Email	<a href="mailto:shawn@richlite.com">shawn@richlite.com</a>

Agent authorized to receive service of process by mail on behalf of Rainier Plywood Co. with respect to all matters relating to this Decree:

Name	Shawn P. O'Day
Title	President
Address	624 E 15 <sup>th</sup> St, Tacoma, WA 98421
Phone	(253) 383-5533 x112
Email	<a href="mailto:shawn@richlite.com">shawn@richlite.com</a>

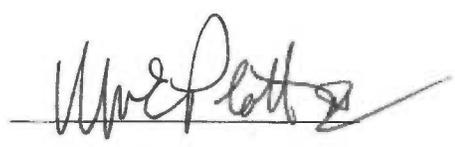
CONSENT DECREE - 111

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR SHELL OIL COMPANY

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Date: 5-5-15



Name	W.E. Platt
Title	Senior Manager
Address	910 Louisiana, Suite 31062C Houston, TX 77002
Phone	713-241-5126
email	ed.platt@shell.com

Agent authorized to receive service of process by mail on behalf of Shell Oil Company with respect to all matters relating to this Decree:

Name	CT Corporation System
Title	
Address	505 Union Avenue SE Olympia, WA 98501
Phone	360-357-6794
email	Not Available

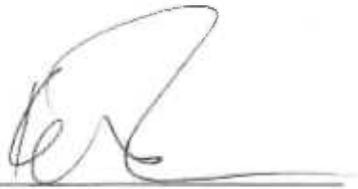
CONSENT DECREE - 112

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR SHORE TERMINALS LLC

2

3 Date: 4/2/2015



4

Karen M. Thompson  
Senior Vice President & General Counsel  
19003 IH-10 West, San Antonio, TX 78257  
(210) 918-2354  
karen.thompson@nustarenergy.com

5

6

7

8

9 Agent authorized to receive service of process by mail on behalf of Shore Terminals LLC with  
10 respect to all matters relating to this Decree:

11

Karen M. Thompson  
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19003 IH-10 West, San Antonio, TX 78257  
(210) 918-2354  
karen.thompson@nustarenergy.com

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26 CONSENT DECREE - 113

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR SUPERVALU, INC.

2

3

Date: 4/28/15

4



5

Name: Kim J. Myrdahl

6

Title: VP, Litigation, Regulatory & Compliance

7

Address: 11840 Valley View Road, Eden Prairie, MN 55344

8

Phone: 952-828-4159

9

Email: Kim.J.Myrdahl@supervalu.com

10 Agent authorized to receive service of process by mail on behalf of SUPERVALU, Inc. with  
11 respect to all matters relating to this Decree:

11

12

Name: CT Corporation

13

Title: CT Corporation

14

Address: 505 Union Avenue SE, Olympia, WA 98501

15

Phone: 360-357-6794

16

Email: N/A

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26 CONSENT DECREE - 114

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Washington, D.C. 20044  
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1 FOR THE BOEING COMPANY

2  
3 Date: \_\_\_\_\_ March 24, 2015 \_\_\_\_\_



4  
5 Name: Leah M. Krider  
6 Title: Senior Counsel  
7 Address: The Boeing Company  
8 5400 International Blvd.  
9 M/C 7830-NE51  
10 North Charleston, SC. 29418-6937  
11 Phone: 843-641-1839  
12 Email: Leah.M.Krider@boeing.com

13  
14 Agent authorized to receive service of process by mail on behalf of The Boeing Company with  
15 respect to all matters relating to this Decree:

16 Name:  
17 Title:  
18 Address: The Boeing Company  
19 c/o Corporation Service Company  
20 2730 Gateway Oaks Drive, Suite 100  
21 Sacramento, CA 95833  
22 Phone: (916)641-5100  
23 Email:

24  
25  
26 CONSENT DECREE - 115

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
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1 FOR THE DIL TRUST, INCLUDING ITS PREDECESSOR THE DILLINGHAM  
2 CORPORATION

3

4 Date: 5/6/15

Kirk A. Wilkinson

5

6

Name Kirk A. Wilkinson  
Title Counsel  
Address c/o Latham & Watkins, 355, South Grand Ave,  
Los Angeles, CA 90071  
Phone (213) 891-8234  
email Kirk.Wilkinson@lw.com

7

8

9

10

11

12 Agent authorized to receive service of process by mail on behalf of The DIL Trust, including its  
predecessor the Dillingham Corporation, only with respect to all matters relating to this Decree:

13

14

Name Kirk A. Wilkinson  
Title Counsel  
Address c/o Latham & Watkins, 355, South Grand Ave,  
Los Angeles, CA 90071  
Phone (213) 891-8234  
email Kirk.Wilkinson@lw.com

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26 CONSENT DECREE - 116

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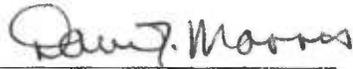
Michael McNulty  
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P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR THE JACK MORRIS ESTATE/MORRIS FAMILY TRUSTS

2

3

Date: 3/24/15



4

Name David J. Morris  
Title Sole Successor Trustee  
Address 2319 Hobart Ave SW  
Seattle WA 98116

5

6

7

Agent authorized to receive service of process by mail on behalf of The Jack Morris Estate/Morris Family Trusts with respect to all matters relating to this Decree:

8

9

Name Charles M. Davis  
Title Attorney for Jack Morris Estate/Morris Family Trusts  
Address 4767 Wharf St  
Bow WA 98232  
Phone (360) 766-3223  
Email Cdavis@davismarine.com

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CONSENT DECREE - 117

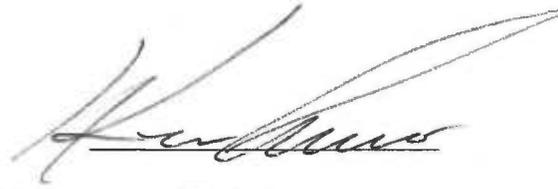
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28

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR THE JOSEPH L. TRUCCO AND JEAN E. TRUCCO LIVING TRUST, COLONIAL  
2 FRUIT & PRODUCE, INC.

3  
4 Date: 4/3/15



5  
6 Name Kevin Trucco  
7 Title Trustee  
8 Address 9024 Lake Steilacoom Point Road SW  
9 Phone (253) 272-2102  
10 Email Kevin@colonialproduce.com

11  
12 Agent authorized to receive service of process by mail on behalf of The Joseph L. Trucco and  
13 Jean E. Trucco Living Trust, Colonial Fruit & Produce, Inc. with respect to all matters relating to  
14 this Decree:

15 Name Kevin Trucco  
16 Title Trustee  
17 Address 9024 Lake Steilacoom Point Road SW  
18 Phone (253) 272-2102  
19 Email Kevin@colonialproduce.com

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26 CONSENT DECREE - 118

27 Michael McNulty  
28 USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR THE WATTLES COMPANY

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Date: April 17, 2015 

Name	Craig Wattles
Title	President
Address	35800 249th Avenue SE, Enumclaw, WA 98022
Phone	253-272-7205
email	craig@wattlescompany.com

Agent authorized to receive service of process by mail on behalf of The Wattles Company with respect to all matters relating to this Decree:

Name	Kurt Peterson
Title	Attorney
Address	1201 Third Avenue, Suite 320, Seattle, WA 98101
Phone	206-292-6300
email	kpeterson@cascadialaw.com

CONSENT DECREE - 119

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR THREE RIVERS MANAGEMENT, INC. FOR THE FORMER HYGRADE FOOD  
2 PRODUCTS CORP.

3  
4 Date: 4-30-2015



5 Name Robert S. Markwell  
6 Title President, Three Rivers Management, Inc.  
7 Address 1910 Cochran Road, Suite 200  
8 Pittsburgh, PA 15220  
9 Phone (412) 208-8812  
10 Email rob.markwell@trmi.biz

11 Agent authorized to receive service of process by mail on behalf of Three Rivers Management,  
12 Inc. for the former Hygrade Food Products Corp. with respect to all matters relating to this  
13 Decree:

14 Name Charles E. McChesney, II  
15 Title Chief Counsel, Three Rivers Management, Inc.  
16 Address 1910 Cochran Road, Suite 200  
17 Pittsburgh, PA 15220  
18 Phone (412) 208-8839  
19 Email charles.mcchesney@trmi.biz

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26 CONSENT DECREE - 120

27 Michael McNulty  
28 USDOJ/ENRD/EES  
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Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-1210

1 FOR TRUCK-RAIL HANDLING, INC.

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Date: 4/23/2015



Name	Lee Schorno
Title	President
Address	45051 Industrial Drive Fremont, CA 94538-6436 (510) 657-4267
email	lschorno@quatp-trh.com

Agent authorized to receive service of process by mail on behalf of Truck-Rail Handling, Inc. with respect to all matters relating to this Decree:

Name	Robie G. Russell
Title	Attorney at Law
Address	76 South Main Street Seattle, WA 98104-2514
Phone	(206) 621-2102
email	robielaw@gmail.com

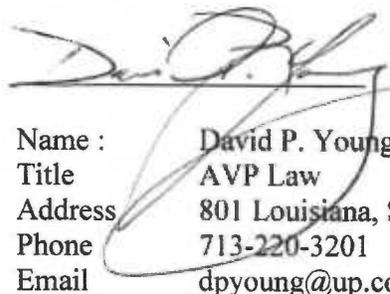
CONSENT DECREE - 121

Michael McNulty  
 USDOJ/ENRD/EES  
 P.O. Box 7611  
 Ben Franklin Station  
 Washington, D.C. 20044  
 (202) 514-1210

1 FOR UNION PACIFIC RAILROAD COMPANY

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Date: May 4, 2015



Name : David P. Young  
Title AVP Law  
Address 801 Louisiana, Suite 300, Houston, TX 77002  
Phone 713-220-3201  
Email dpyoung@up.com

10 Agent authorized to receive service of process by mail on behalf of Union Pacific Railroad  
11 Company with respect to all matters relating to this Decree:

12  
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Name Tod Gold  
Title Attorney  
Address Joyce Ziker Parkinson, PLLC  
1601 5<sup>th</sup> Ave., No. 2040, Seattle, WA 98403  
Phone 206.957.5953  
Email tgold@jzplaw.com

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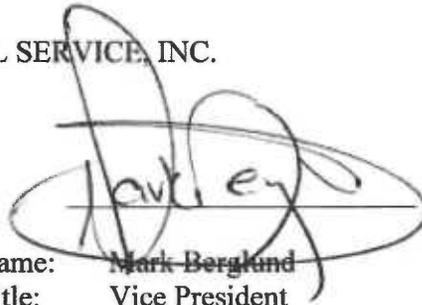
CONSENT DECREE - 122

Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
Ben Franklin Station  
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FOR WASHINGTON FLORAL SERVICE, INC.

Date: 4/14/2015



Name: Mark Berglund  
Title: Vice President  
Address: 2701 S. 35<sup>th</sup> Street  
Tacoma WA 98409  
Phone: (253) 472-8343  
Email: mberglund@washingtonfloral.com

Agent authorized to receive service of process by mail on behalf of Washington Floral Service, Inc. with respect to all matters relating to this Decree:

Name: Mark Berglund  
Title: Vice President  
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Phone: (253) 472-8343  
Email: mberglund@washingtonfloral.com

CONSENT DECREE - 123

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P.O. Box 7611  
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Washington, D.C. 20044  
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1 FOR WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

2  
3 Date: 4/13/15



4  
5 Name Deborah L. Cade  
6 Title Assistant Attorney General  
7 Address PO Box 40113  
8 Olympia, WA 98504-0113  
9 Phone 360-753-4964  
10 Email [DeborahC@atg.wa.gov](mailto:DeborahC@atg.wa.gov)

11 Agent authorized to receive service of process by mail on behalf of Washington State  
12 Department of Transportation with respect to all matters relating to this Decree:

13 Name Deborah L. Cade  
14 Title Assistant Attorney General  
15 Address PO Box 40113  
16 Olympia, WA 98504-0113  
17 Phone 360-753-4964  
18 Email [DeborahC@atg.wa.gov](mailto:DeborahC@atg.wa.gov)

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26 CONSENT DECREE - 124

27 Michael McNulty  
28 USDOJ/ENRD/EES  
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Ben Franklin Station  
Washington, D.C. 20044  
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1 FOR WOODWORTH & COMPANY, INC.

2

3

Date: April 4, 2015



4

5

Name: Jeff Woodworth  
Title: President  
Address: 3110 Ruston Way, Suite D  
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Phone: (253) 759.0165  
Email: jeff@woodworthcapital.com

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Agent authorized to receive service of process by mail on behalf of Woodworth & Company, Inc. with respect to all matters relating to this Decree:

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CONSENT DECREE - 125

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Michael McNulty  
USDOJ/ENRD/EES  
P.O. Box 7611  
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Washington, D.C. 20044  
(202) 514-1210

**APPENDIX A TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Countyline Project Description**

## Countyline Acquisition and Levee Setback Project

### 1. Project Description

The project will consist of a setback levee and biorevetment along the White River in the vicinity of the Cities of Pacific, Auburn and Sumner, WA, between river mile 5.0 and 6.3. The Countyline Acquisition and Levee Setback Project involves reconnection of a currently disconnected portion of the White River floodplain for both flood protection and habitat restoration purposes. The Countyline Project involves a combination of property acquisition, levee modification and floodplain restoration along the left (east) bank of the river between the A Street bridge in Auburn and the 8th Street bridge in Sumner. See Exhibit A for a map of the location of the Countyline Project. The project has been identified as a priority in the adopted 2006 King County Flood Hazard Management Plan. It is also listed as one of the highest priorities in the Salmon Habitat Protection and Restoration Strategy for the Puyallup and Chambers/Clover Creek Watersheds (Water Resource Inventory Area 10/12), which is a chapter of the National Marine Fisheries Service's (NMFS) Puget Sound Salmon Recovery Plan. This project directly addresses limiting factors identified in the recovery plan by restoring and providing off-channel rearing habitat for fall and spring Chinook, coho, and steelhead.

The Countyline Project includes the removal of 3,500 lineal feet (LF) of existing levee prism and revetment material (angular rock and artificial fill material) to allow the White River to meander through the floodplain complex, thus providing increased flood conveyance and storage, and rearing and refuge habitat for juvenile salmonids (See Exhibit B for Conceptual graphic of the Project). Four engineered log structures will be installed in the floodplain to promote side-channel formation and to provide cover and low-flow refuge for salmon. The riparian area (approximately 17 acres) along the upland terrace will be planted with native trees and shrubs to provide a vegetated buffer for wetland protection and to improve ecological functions within this reach of the White River. About 6,000 LF of setback levee will be constructed along the landward side of the upland buffer and will extend northeasterly to the Burlington Northern Santa Fe (BNSF) Railway embankment to provide flood containment. A log biorevetment and bank roughening structure extending 5,000 LF will be constructed along the wetland edge to prevent channel migration beyond the edge of the wetland. The biorevetment will include four bank deflector ELJs embedded into the biorevetment at the downstream edge of the large wetland (Wetland B).

Attached to this Project Description as Exhibit C are excerpts of the design drawings at the 60% level ("60% design drawings") that have been submitted in connection with required permit applications. Due to comments received from permitting agencies, changes will likely be made

to the 60% design drawings that will be reflected in the 90% design drawings and the final (100%) construction drawings. It is anticipated that any changes to the 60% design drawings will be design refinements that reduce adverse environmental impacts that could occur during construction. It is anticipated that these changes resulting from responses to such comments or requirements from the permitting agencies will not substantially alter the fundamental goals of the project or substantially change the quantities of the ecological and flood-protection elements and benefits of the Project described above and in Table 1. During construction, actually encountered field conditions may require slight deviations from the 100% level design drawings. Such changes will be documented in the as-built drawings and shall not compromise the fundamental goals or the ecological and flood-protection elements and benefits of the Project as described above and in Table 1.

**Table 1. Summary of the construction features**

<b>Feature Name</b>	<b>Length (ft)</b>	<b>Width (ft)</b>	<b>Material Quantity</b>	<b>Notes</b>
Setback levee	Approx. 6,000 (+/- 100)	40 to 80 (at base)	Approx. 70,000 cubic yards (CY)	Setback distance varies 30 to 600 ft from river. Levee slopes will be vegetated
Biorevetment and bank roughening structures	Approx. 5,000 (+/- 200)	30	Approx. 546 timber piles and 1,164 key logs	Vertical wood piles with interlaced horizontal logs with rootwads
Restored riparian buffer	Approx. 5,500 (+/- 250)	25 to 125	Approx. 35,000 plant	Native trees and shrubs
Engineered Log Jams (four apex structures)	60 to 80	50 to 90	Approx. 67 timber piles and 141 key logs	Three small ELJs at north end, and one large ELJ near south end of wetland
Removal of riprap levee and other artificial fill materials	Approx. 3,500 (+/- 250)	35 to 115	Approx. 31,000 CY (+/- 10,000 CY)	To be removed to the maximum extent possible but with limited tree disturbance

Construction will occur over a two-year period with the Year One construction expected to begin in May 2016, with mobilization for staging and construction management areas. Access to the project site will be obtained at a southerly point via easements to 8<sup>th</sup> Street East in Sumner and at a northeasterly point via an existing underpass crossing of the BNSF Railway connecting to A Street Southeast in Auburn. Year One will include removal of one residential house and accessory structures, construction of a major portion of the setback levee and log biorevetment during the summer season, construction of engineered log jams if possible, followed with installation of native plantings in the riparian buffer during the fall season. The second year of construction will include the installation of remaining engineered log jams, and the removal of the existing levee prism, riprap rock revetment and artificial fill materials to levels down to the Ordinary High Water line, completion of the setback levee followed by installation of remaining plantings. Salvage and reuse of removed materials will be emphasized in bid requirements to potential contractors. Construction is expected to be complete by the end of 2017. Record drawings will be prepared to document the as-built condition of the project.

2. Required Permits

**a) Federal**

Clean Water Act Section 404 Permit (Army Corps of Engineers)  
National Historic Preservation Act Section 106 Permit (Army Corps of Engineers)  
Endangered Species Act Section 7 Compliance (National Marine Fisheries Service and US Fish and Wildlife Service)

**b) State**

Clean Water Act Section 401 Water Quality Certification (WA Department of Ecology)  
Hydraulic Project Approval (WA Department of Fish and Wildlife)  
State Environmental Policy Act (SEPA) Compliance  
National Pollution Discharge Elimination System Permit (WA Department of Ecology)

**c) Local**

**a. City of Pacific**

Grade and Fill  
Shoreline Exemption  
Critical Areas Review  
Floodplain Development  
Demolition Permit

**b. City of Sumner**

Commercial/Industrial Permit  
Shoreline Exemption  
Resource, Wildlife, and Hazard Area (Critical Areas/Floodplain Analysis)  
Erosion and Sediment Control

**c. Pierce County**

Shoreline Exemption  
Critical Areas Exemption  
Site Development Exemption

3. Project Construction and Development Schedule

a. SEPA completion and permit submittals

July 2013 – June 2014

- b. Local, State, Federal permit approvals December 2015
- c. Construction Start May 2016
- d. Construction completion December 2017

Notice of Completion

120 days after Completion of Construction

#### 4. Project Performance Evaluation Plan

- a. King County will provide the Defendants with Notice of Completion that will include a post-construction report. The Notice will also include record drawings documenting the as-built conditions and demonstrating that the existing levee and revetment riprap have been removed down to the Ordinary High Water Mark level, excluding portions of the levee that are left undisturbed in order to retain existing riparian vegetation.
- b. King County reserves the right to undertake ongoing monitoring, maintenance, and repair activities on the project site in order to meet the requirements of any applicable permits, and to preserve and promote the ecological and flood protection elements and goals of the project.

#### 5. Post-Construction Monitoring and Adaptive Management

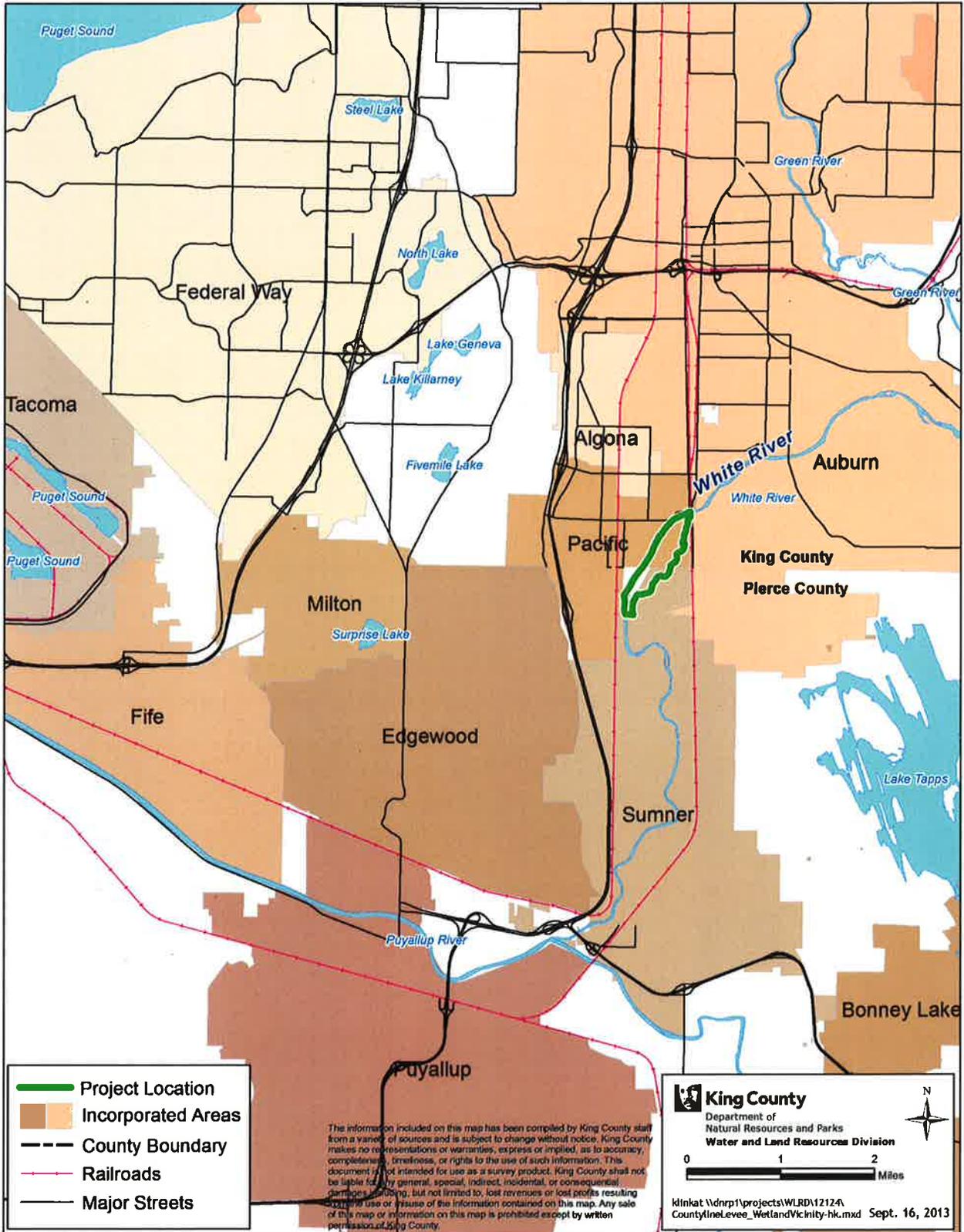
- a. King County will conduct post-construction project monitoring and coordinate with the responsible parties on adaptive management as provided in Section IX of the Consent Decree.

#### 6. Exhibits:

- A. Project Location Map
- B. Aerial Photo and Project Concept Graphic
- C. Project Design Drawings (60% level)

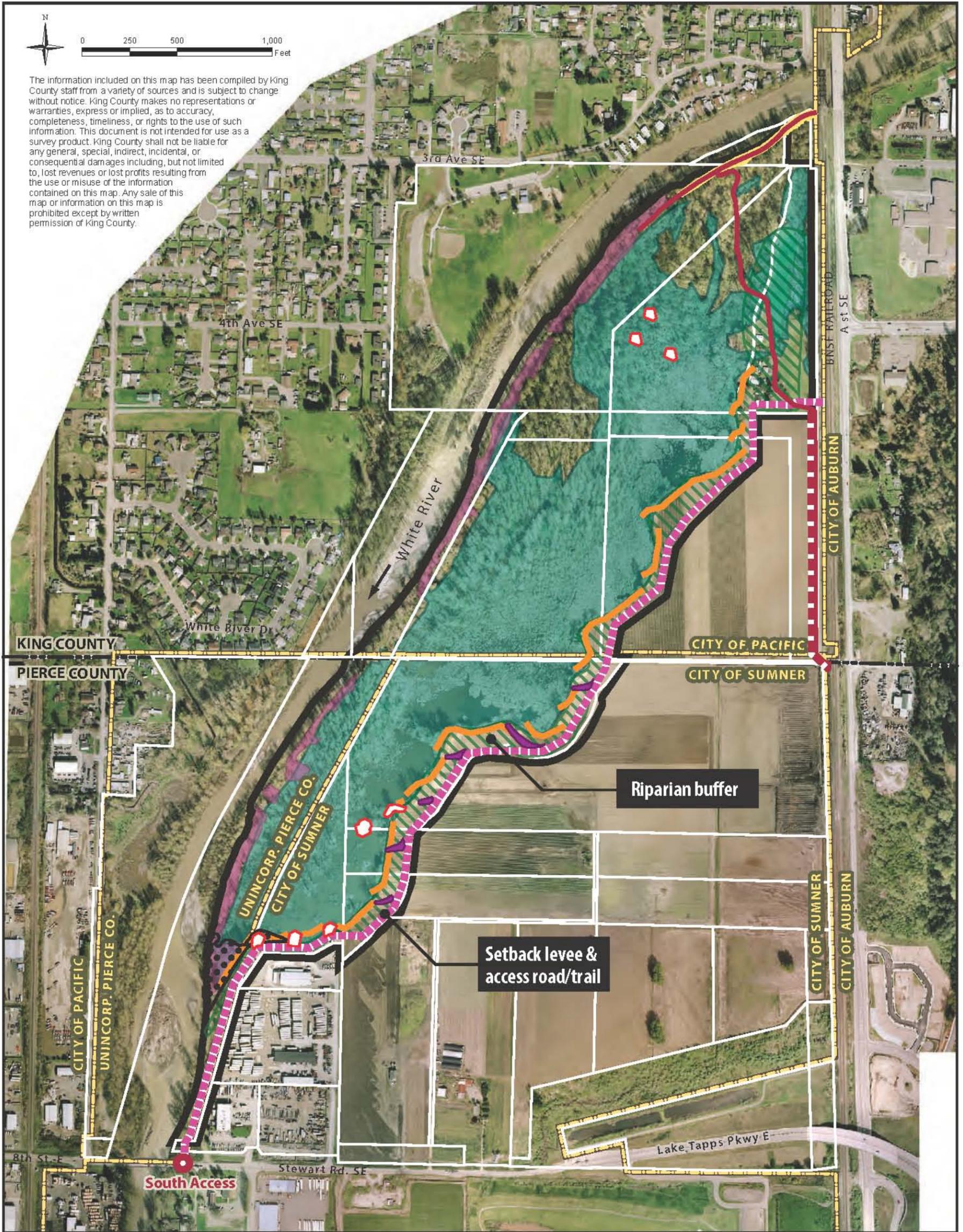
**EXHIBIT A TO  
APPENDIX A TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Countyline Project Location Map**



**EXHIBIT B TO  
APPENDIX A TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Countyline Project Aerial Photo and Project Concept Graphic**



# Project Concept

## WHITE RIVER (COUNTYLINE) LEVEE SETBACK PROJECT

September 2014  
(Based on 60% design)

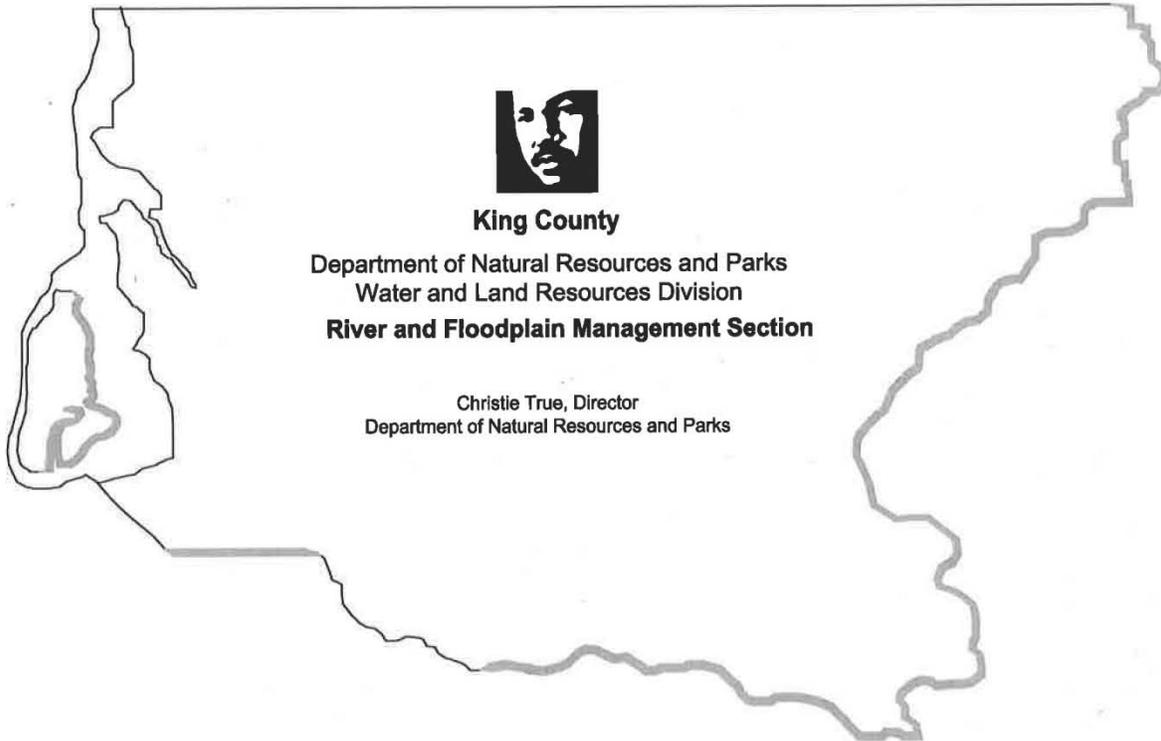
**King County**  
Department of Natural Resources and Parks  
Water and Land Resources Division  
River and Floodplain Management Section

- Project Ingress/Egress
- Setback Levee & Access Road/Trail
- Access Road
- Temporary Access
- Bioengineered Revetment
- Project Site Boundary
- ▲ Engineered Log Structure
- Levee Resurfacing
- Floodplain Roughening Structures and Hummocks
- Parcel of Interest
- Wetland
- Revetment & Levee Removal
- Planting Plan Area
- Culvert Removal, Outlet Channel & Fill Removal
- Incorporated Area Boundary
- County Boundary

VC File: 1409\_4384L\_CountylineCONCEPT.ai LPR - VC File: K:\Innat\1dnhp\projects\WLRD\13067\CountylineLevee\_June2013\_toGraphics.mxd - Produced by: DNR\PT GIS, Visual Communications and Web Unit

**EXHIBIT C TO  
APPENDIX A TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

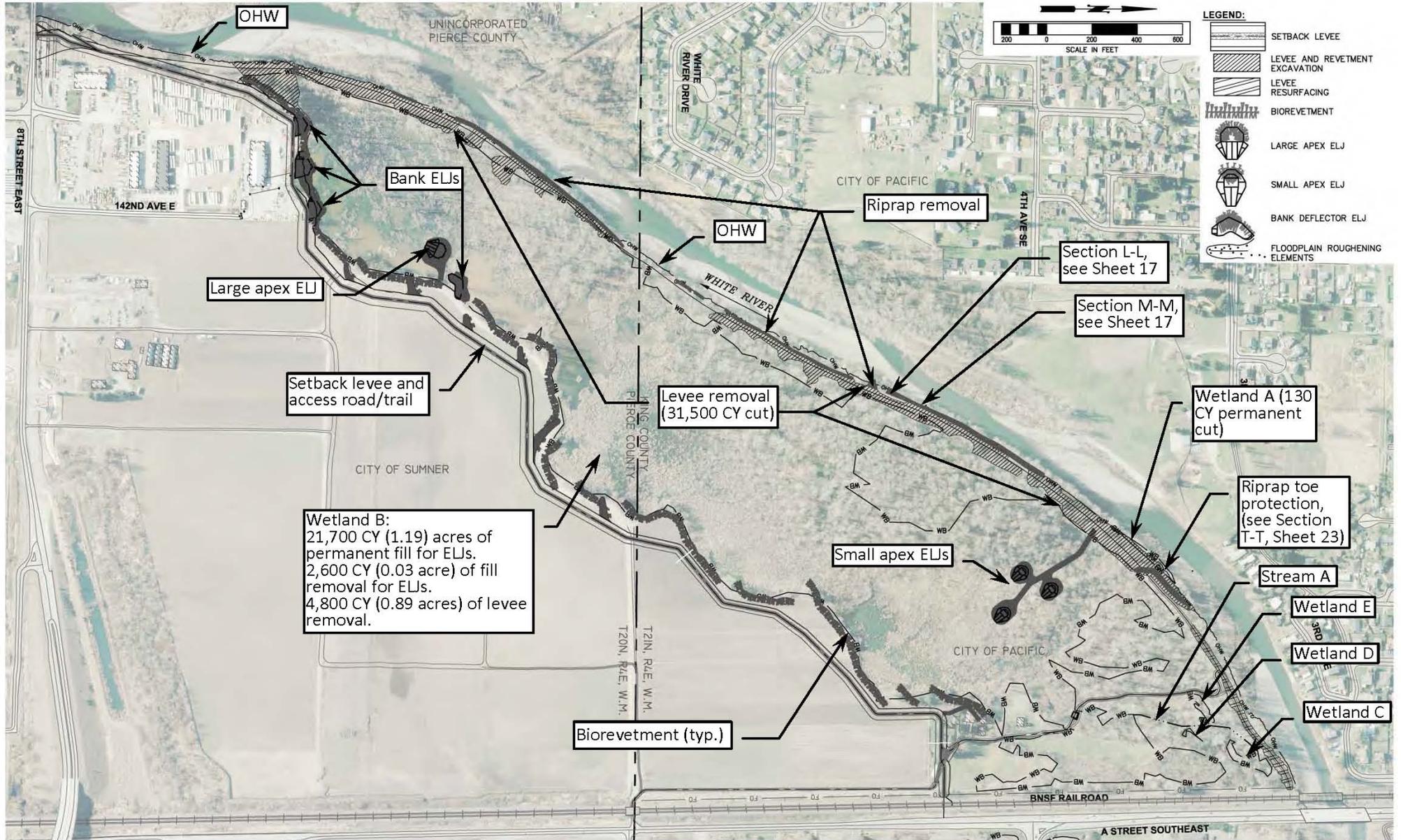
**Countyline Project Design Drawings (60% level, excerpts)**



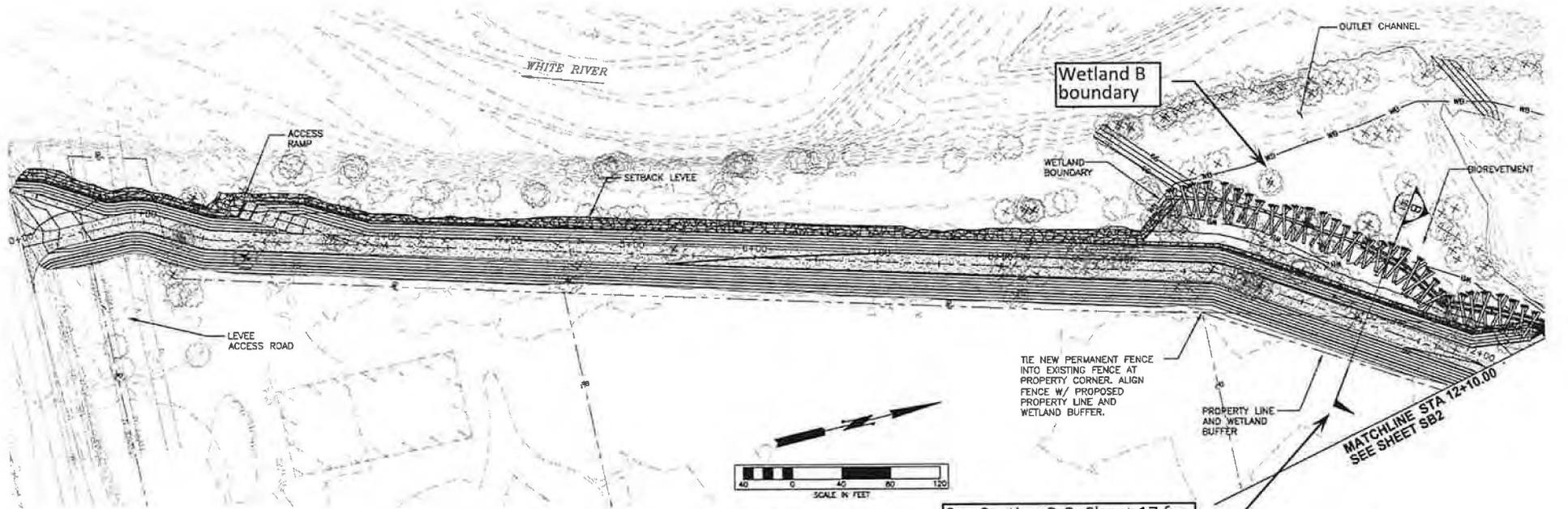
# Countyline Levee Setback

## White River, River Mile 5.00-6.33

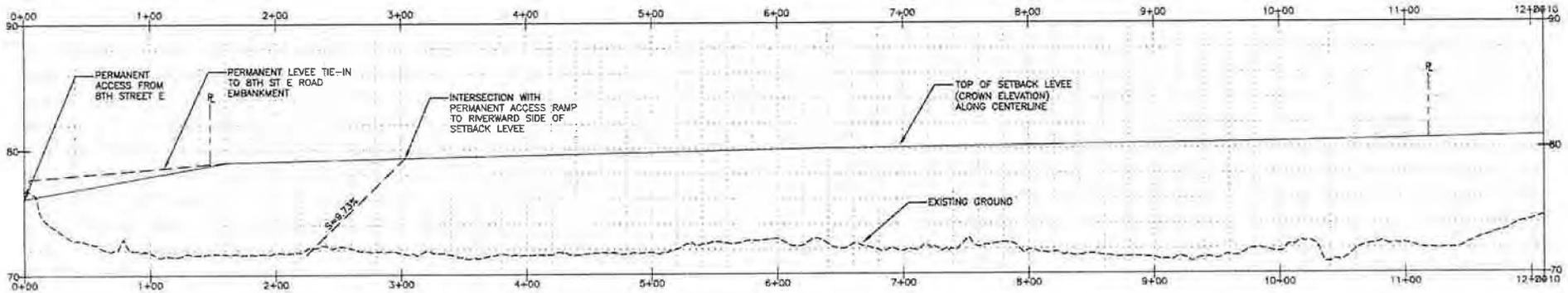
<b>REFERENCE:</b> NWS-2011-211	<b>PROJECT:</b> COUNTYLINE LEVEE SETBACK	<b>IN:</b> WHITE RIVER
<b>APPLICANT:</b> KING COUNTY WATER AND LAND RESOURCES DIVISION	<b>DESCRIPTION:</b> REMOVE EXISTING LEVEE; BUILD NEW SETBACK LEVEE, BIOREVTMENT, AND ENGINEERED LOGJAMS.	<b>CITY:</b> PACIFIC & SUMNER
		<b>COUNTY:</b> KING & PIERCE
		<b>STATE:</b> WASHINGTON
<b>LOCATION:</b> A STREET SE TO 8 <sup>TH</sup> STREET E	<b>LATITUDE:</b> 47.26545 (N EXTENT) 47.24918 (S EXTENT)	<b>DATE:</b> 9/12/13
<b>RIVER MILE:</b> 5.00 TO 6.33	<b>LONGITUDE:</b> -122.2305 (N EXTENT) -122.24198 (S EXTENT)	<b>SHEET:</b> 1 OF 30



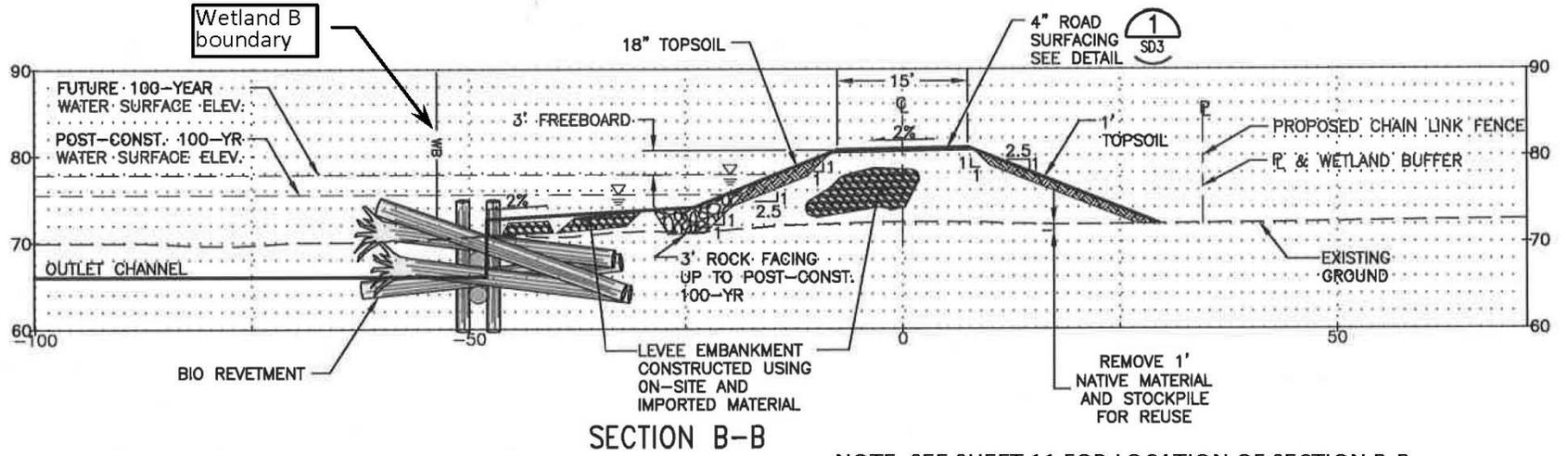
**SITE PLAN**



See Section B-B, Sheet 17 for typical cross-section through setback levee.

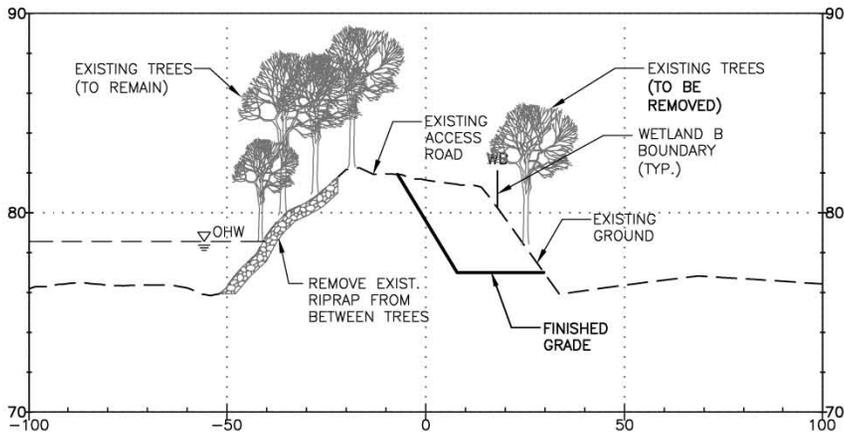


**LEVEE SETBACK PLAN & PROFILE (SOUTH END)**

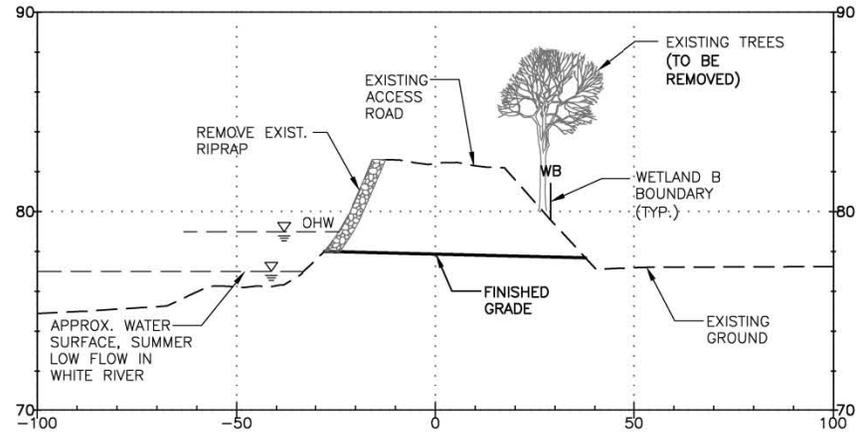


SECTION B-B

NOTE: SEE SHEET 11 FOR LOCATION OF SECTION B-B



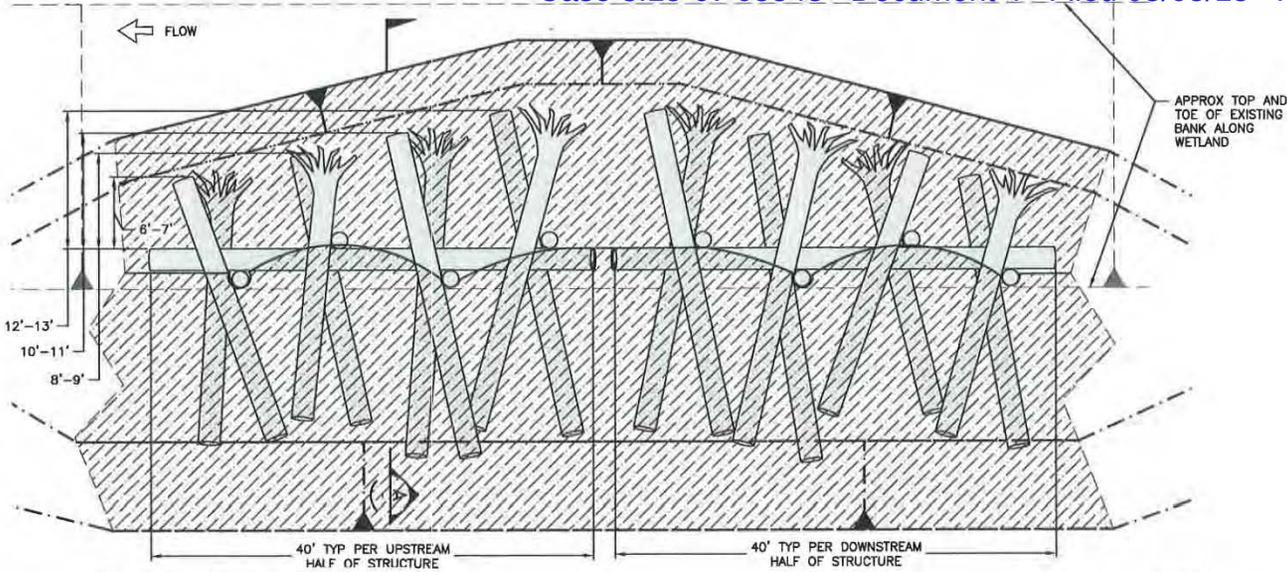
SECTION L-L



SECTION M-M

NOTE: SEE SHEET 5 FOR APPROX. LOCATIONS OF SECTIONS L-L AND M-M.

**LEVEE REMOVAL AND SETBACK LEVEE, TYPICAL SECTIONS**



LOG SCHEDULE - PER 80' STRUCTURE

LOG TYPE	MIN DIA (IN)	LENGTH (FT)	ROOTWAD	TOTAL QTY PER ELJ
P3	18 (BUTT)	45	NO	8
6	24	30	YES	4
7	24	25	YES	4
L4	24	40	NO	4
L6	24	30	NO	4
L7	24	25	NO	4
RACKING	8-16	15-30	OPTIONAL	80
SLASH	-	-	-	80 CY

ELEVATION SCHEDULE FOR ALL BIOREVTMENT STRUCTURES

STRUCTURE #	NO. OF STRUCTURES	BOTTOM OF STRUCTURE EL (FT)	TOP OF STRUCTURE EL (FT)
1-38	38	63	73
39-50	12	64	74
51-56	6	65	75
57-60	4	66	76
61-65	5	67	77
66-75	10	68	78
76-82	7	69	79
83-108	26	70	80

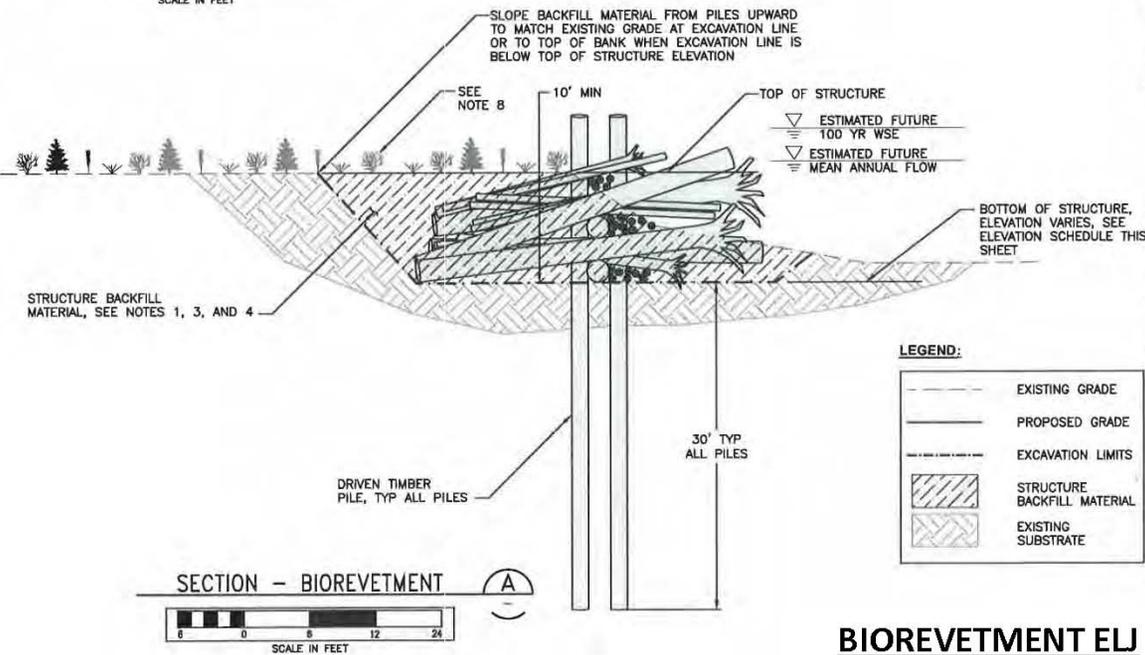
PLAN - BIOREVTMENT

1  
WS2



NOTES:

- EXTENTS OF BACKFILL SHOWN ARE APPROXIMATE AND WILL VARY FOR EACH STRUCTURE.
- EXCAVATION LIMITS SHOWN ARE APPROXIMATE AND WILL VARY BASED ON CONSTRUCTION MEANS AND METHODS, SUBSURFACE CONDITIONS AND LOCATION OF STRUCTURE. CONTRACTOR SHALL ADJUST EXCAVATION LIMITS AS NECESSARY TO COMPLETE CONSTRUCTION.
- FOR "SHINGLED" BIOREVTMENT STRUCTURES, BACKFILL MATERIAL WILL CONSIST OF DRY LEVEE EXCAVATION SPOILS CAPPED WITH A 12" DEEP LAYER OF NATIVE TOPSOIL. PLACE SPOILS WITHIN INTERIOR CORE OF STRUCTURE AND OVER FINAL LAYER OF LOGS IN 2' LAYERS AND COMPACT WITH BACKSIDE OF EXCAVATOR BUCKET. SATURATED BACKFILL MATERIAL THAT CANNOT BE PROPERLY COMPACTED WILL NOT BE ALLOWED. SEE DWGS SB1-SB5 FOR LOCATION OF "SHINGLED" BIOREVTMENT STRUCTURES.
- FOR NON-SHINGLED BIOREVTMENT STRUCTURES, PLACE ONLY DRY NATIVE EXCAVATION SPOILS WITHIN INTERIOR CORE OF STRUCTURE AND OVER FINAL LAYER OF LOGS IN 2' LAYERS AND COMPACT WITH BACKSIDE OF EXCAVATOR BUCKET. SATURATED BACKFILL MATERIAL THAT CANNOT BE COMPACTED PROPERLY WILL NOT BE ALLOWED.
- SEE LOG SCHEDULE ON STRUCTURE LAYERING PLAN FOR DIMENSIONS AND NUMBERS OF EACH LOG TYPE IN STRUCTURE.
- PLACEMENT OF RACKING LOGS SHOWN IS APPROXIMATE. PLACE RACKING LOGS ALONG UPSTREAM FACE OF STRUCTURE. APPROXIMATELY 1/2 OF RACKING LOGS SHALL BE PLACED ACROSS PILE ROWS (PERPENDICULAR TO FLOW) AND 1/2 OF THE RACKING LOGS PARALLEL TO FLOW AND EXTENDING INTO THE CORE OF THE STRUCTURE BETWEEN HORIZONTAL KEY LOGS. RACKING SHALL BE PLACED WITH EACH LAYER OF KEY LOGS, SHALL BE ANGLED UP AND DOWN FROM THE HORIZONTAL, AND SHALL BE PLACED TO CREATE AN INTERLOCKING MATRIX OF LOGS SECURED BETWEEN VERTICAL PILE LOGS AND HORIZONTAL KEY LOGS. COORDINATE WITH THE PROJECT REPRESENTATIVE PRIOR TO PLACING RACKING LOGS, SLASH AND BACKFILLING.
- SEE STRUCTURE LAYERING PLAN FOR SLASH PLACEMENT. SLASH NOT SHOWN HERE FOR CLARITY. PLACE SLASH AS SHOWN ON LAYERING PLAN TO FILL VOIDS BETWEEN RACKING LOGS.
- SEE PLANTING PLAN FOR RECOMMENDED STRUCTURE PLANTING INFORMATION AND DETAILS.

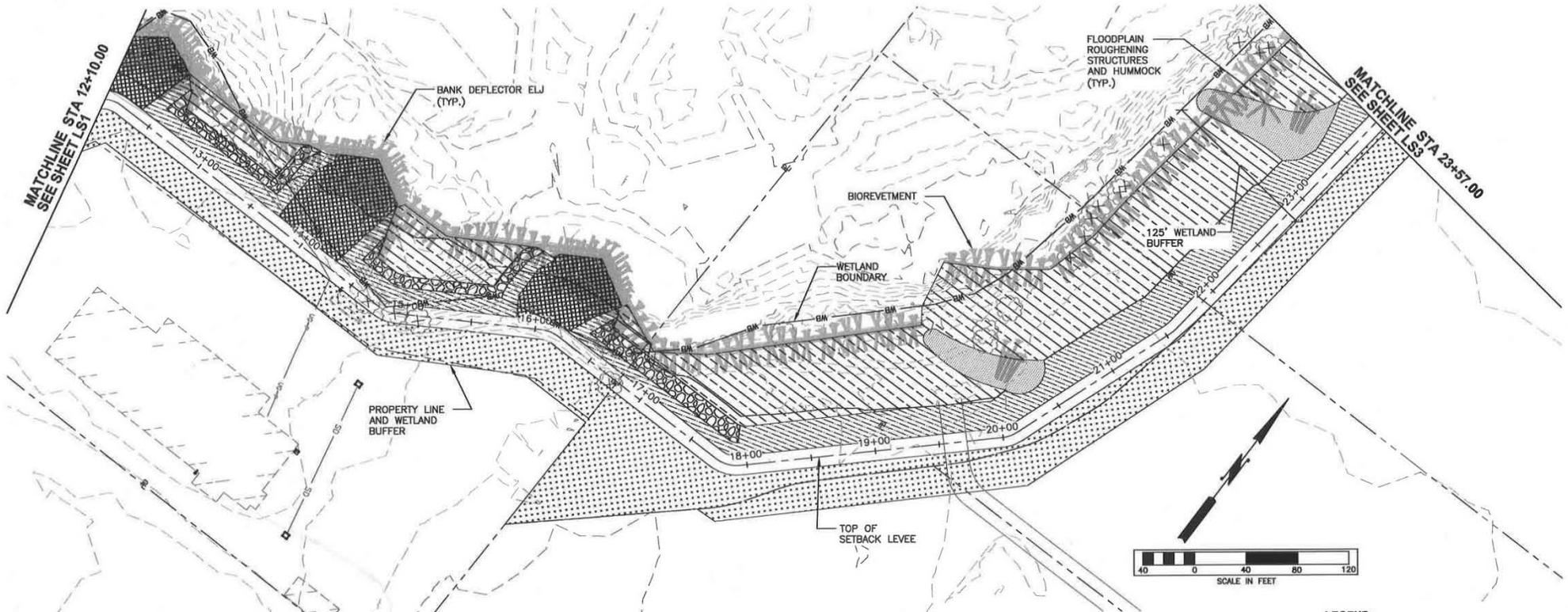


SECTION - BIOREVTMENT

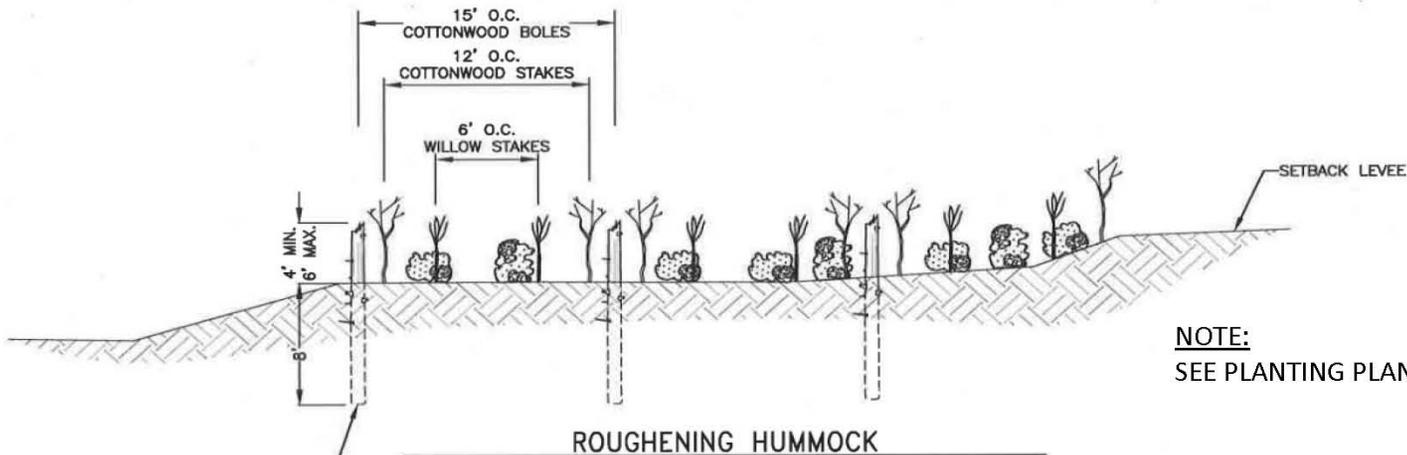
A



**BIOREVTMENT ELJ  
PLAN & SECTION**



**LEGEND:**  
 (Symbol) EX. TREE TO BE PROTECTED  
 (Symbol) EX. TREE TO BE REMOVED



INSTALL COTTONWOOD BOLES IN OPEN PITS DURING LOG STRUCTURE INSTALLATION OR VIA AUGERING, TYP. SEE DRAWINGS WD9-WD10

**PLANTING PLAN & DETAILS**

**NOTE:**  
 SEE PLANTING PLAN TABLE AND LEGEND, SHEET 29.

- NOTES:**
1. PLANT COTTONWOOD LIVESTAKES 12' O.C. AND WILLOW LIVESTAKES 6' O.C. AMONG COTTONWOOD BOLES.
  2. PLANT SHRUBS 4'-6' O.C. IN CLUSTER GAP MOSAIC AS PER WETLAND BUFFER PLAN DETAIL.



**APPENDIX B TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Wheeler-Osgood Site Description**

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARENT PARCEL**

PIERCE COUNTY ASSESSOR'S PARCEL NUMBER 0320041028.

THOSE PORTIONS OF GOVERNMENT LOTS 8 AND 11 OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST OF WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, ALSO BEING A PORTION OF LOT 50 OF THE TACOMA TIDE LANDS, AND A PORTION OF THE WHEELER-OSGOOD WATERWAY, DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF THEA FOSS WATERWAY (CITY WATERWAY) WITH THE CENTERLINE OF WHEELER-OSGOOD WATERWAY, ACCORDING TO THE RECORDED PLAT OF TACOMA TIDE LANDS;

THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF WHEELER-OSGOOD WATERWAY A DISTANCE OF 1,360 FEET, MORE OR LESS, TO THE MOST SOUTHERLY CORNER OF A CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED SEPTEMBER 24, 1957 FROM NORTHERN PACIFIC RAILWAY COMPANY (PREDECESSOR TO BNSF RAILWAY COMPANY) TO NORTHWEST DOOR COMPANY;

THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL OF LAND, 135 FEET, MORE OR LESS, TO THE INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF SAID PARCEL OF LAND;

THENCE SOUTH  $23^{\circ} 56' 26''$  EAST (DEED) ALONG SAID SOUTHEASTERLY EXTENSION A DISTANCE OF 240 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY LINE OF EAST 15TH STREET;

THENCE SOUTH  $73^{\circ} 48'$  WEST ALONG SAID NORTHERLY RIGHT OF WAY TO THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF EAST 15TH STREET WITH A LINE RUNNING PARALLEL WITH AND 8.5 FEET SOUTHWESTERLY OF THE CENTERLINE OF THE FIRST RAILROAD TRACK ON THE ARC OF A CURVE AS NOW CONSTRUCTED, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF WHEELER-OSGOOD WATERWAY, SAID POINT BEING THE MOST EASTERLY CORNER OF A CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED DATED DECEMBER 2, 1997 FROM THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY TO DGK, L.L.C.;

THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE HAVING A RADIUS OF 369.38 FEET A DISTANCE OF 102.52 FEET TO A POINT OF TANGENCY, SAID CURVE BEING 8.5 DISTANT AND PARALLEL TO THE CENTERLINE OF SAID EXISTING RAILROAD TRACK; THENCE ON SAID PARALLEL LINE NORTH  $76^{\circ} 51' 59''$  WEST 167.50 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS SOUTH  $13^{\circ} 08' 01''$  WEST A DISTANCE OF 1014.00 FEET FROM SAID BEGINNING;

THENCE CONTINUING PARALLEL WITH SAID RAILROAD TRACK ALONG THE ARC OF SAID CURVE 106.44 FEET TO A POINT OF TANGENCY;

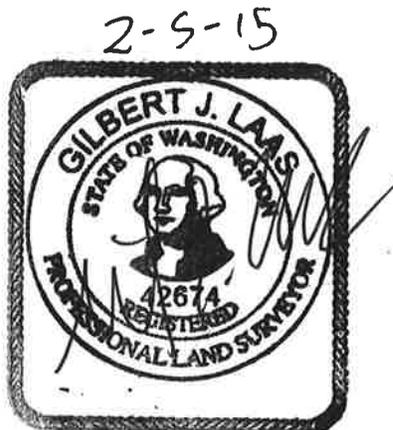
THENCE CONTINUING ON SAID PARALLEL LINE NORTH  $82^{\circ} 52' 51''$  WEST 133.63 FEET TO THE MOST NORTHERLY CORNER OF SAID DGK, L.L.C. PROPERTY AND BEING A POINT ON THE EASTERLY BOUNDARY OF A CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED DATED NOVEMBER 21, 1997 FROM THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY TO STARTING STEP PROPERTIES, L.L.C.;

THENCE NORTH  $02^{\circ} 25' 21''$  EAST (DEED) 28 FEET, MORE OR LESS, TO THE BULKHEAD LINE OF WHEELER-OSGOOD WATERWAY;

THENCE NORTH  $76^{\circ} 31' 20''$  WEST ALONG SAID BULKHEAD LINE 391.12 FEET TO THE NORTHEAST CORNER OF A CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED NOVEMBER 24, 1998 FROM THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY TO GARY LYDEN, ET UX;

THENCE NORTH 76° 31' 20" WEST ALONG SAID BULKHEAD LINE A DISTANCE OF 285.80 FEET TO THE NORTHWEST CORNER OF SAID "LYDEN" PROPERTY;  
THENCE SOUTH 30° 32' 07" WEST ALONG WESTERLY LINE OF SAID "LYDEN" PROPERTY A DISTANCE OF 213.89 FEET TO THE INTERSECTION WITH A DISTANT LINE DRAWN PARALLEL AND CONCENTRIC WITH AND 25.0 FEET NORMALLY DISTANT NORTHEASTERLY FROM THE CENTERLINE OF SAID RAILWAY COMPANY'S OLD DRAWBRIDGE LINE, AS ORIGINALLY LOCATED AND CONSTRUCTED;  
THENCE SOUTHEASTERLY ALONG SAID PARALLEL AND CONCENTRIC LINE, AND ALONG THE SOUTHERLY BOUNDARY OF SAID "LYDEN" PROPERTY AND SAID "STARTING STEP PROPERTY A DISTANCE OF 671.9 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY LINE EAST OF 15 STREET;  
THENCE SOUTH 73° 48' WEST ALONG SAID NORTHERLY RIGHT OF WAY TO THE POINT OF INTERSECTION WITH A LINE DRAWN PARALLEL AND CONCENTRIC WITH 21.0 FEET NORMALLY DISTANT SOUTHWESTERLY FROM THE CENTERLINE OF SAID OLD DRAWBRIDGE LINE;  
THENCE NORTHWESTERLY ALONG THE LAST DESCRIBED PARALLEL AND CONCENTRIC LINE AND ALONG THE NORTHERLY BOUNDARY OF A CERTAIN PARCEL OF LAND DESCRIBED IN DEED DATED NOVEMBER 4, 1997 FROM THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY TO J. M. MARTINAC SHIPBUILDING CORPORATION AND FILED FOR RECORD AS DOCUMENT NO.9711140809, A DISTANCE OF 911 FEET, MORE OR LESS, TO THE EAST LINE OF THEA FOSS WATERWAY (CITY WATERWAY);  
THENCE NORTHERLY ALONG SAID EAST LINE 430 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON.



**LEGAL DESCRIPTION OF TIDELANDS OF PARENT PARCEL SUBJECT TO DEED RESTRICTION**

THAT PORTION TIDELANDS OF THE ABOVE DESCRIBED PARENT PARCEL LYING BELOW THE ORDINARY HIGH TIDE LINE.

EXCEPT THAT PORTION OF TIDELANDS LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE POINT OF INTERSECTION WITH THE EAST BOUNDARY OF THE ABOVE DESCRIBED PARENT PARCEL AND THE ORDINARY HIGH TIDE LINE;

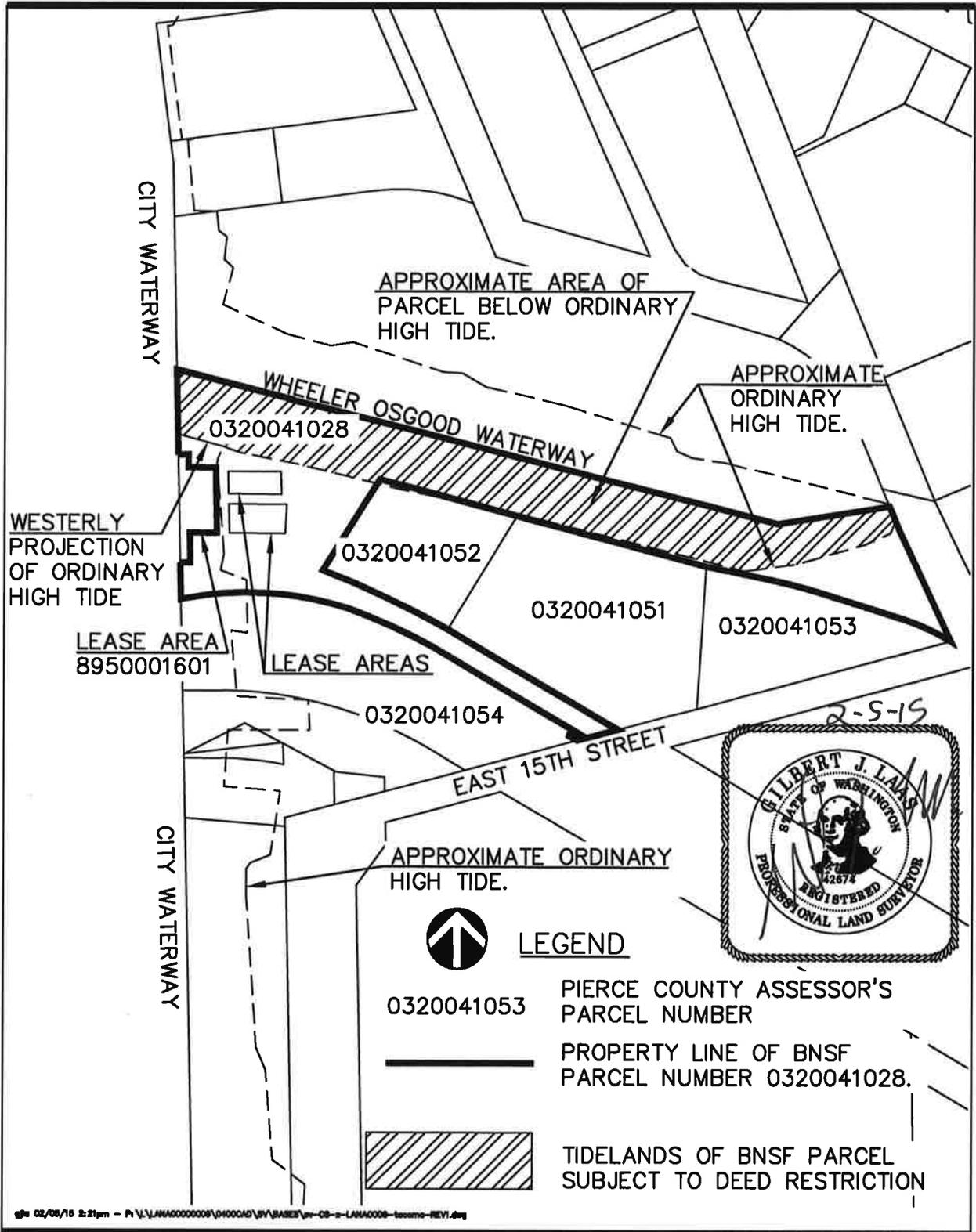
THENCE WESTERLY ALONG SAID ORDINARY HIGH TIDE LINE TO A POINT WHERE THE ORDINARY HIGH TIDE LINE CURVES SHARPLY TO THE SOUTH. THIS POINT ALSO BEING THE WESTERLY MOST POINT OF THE ORDINARY HIGH TIDE LINE ON THE PARENT PARCEL;

THENCE CONTINUING WESTERLY ALONG THE WESTERLY PROJECTION OF SAID ORDINARY HIGH TIDE LINE TO THE INTERSECTION WITH THE WESTERN BOUNDARY OF THE ABOVE DESCRIBED PARENT PARCEL AND THE TERMINUS HEREIN.

SITUATE IN THE CITY OF TACOMA, PIERCE COUNTY, WASHINGTON.

SEE FIGURE 1.

FIGURE 1



g:\02\05\15 2:21pm - P:\LANAG00000009\04000A0\W\BASES\pr-CB-2-LANAG009-10000-REV1.dwg

FIGURE 1

DATE: 2-2-2015      DESIGN: GJLA  
 FILE: LANAG009 /      DRAWN: GJLA



**DAVID EVANS AND ASSOCIATES INC.**  
 1820 W. Marine View Drive, Suite 200  
 Everett Washington 98201  
 Phone: 425.259.4099

**TIDELANDS DEED RESTRICTED EXHIBIT MAP**

**APPENDIX C TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Wheeler-Osgood Site Deed Restrictions**

Appendix C

Wheeler Osgood Site Deed Restrictions

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS**

The BNSF Railway Company (hereafter referred to as the "Declarant") is the owner in fee simple of certain real property located in Pierce County, State of Washington, known as Pierce County Tax Parcel 0320041028. All that portion of such real property that is below and extending up to the line of ordinary high tide (approximately elevation 10.95 feet (3.34 meters) above mean lower low water) is described in Exhibit A and depicted in Figure 1, attached hereto and by this reference incorporated herein, and is hereinafter referred to as the "Wheeler Osgood Site."

For the purpose of implementing the requirements of the consent decree entered by the United States District Court for the Western District of Washington in *United States of America, et al. v. Advance Ross Sub Company, et al.*, Civil Action No. 3:15-cv-05548 (hereinafter referred to as the "Consent Decree"), and making the Wheeler Osgood Site available in perpetuity for the purposes of habitat preservation and restoration, Declarant hereby declares that all of the Wheeler Osgood Site and each part of the Wheeler Osgood Site shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, and reservations which shall constitute covenants running with the land and shall be binding upon the Wheeler Osgood Site and all parties having any right, title or interest in the Wheeler Osgood Site or any part of the Wheeler Osgood Site, their heirs, successors and assigns.

**USE RESTRICTIONS AND RESERVATIONS**

1. Log Rafting Prohibition. The Wheeler Osgood Site and each part of the Wheeler Osgood Site shall not be used for log rafting.

2. Habitat Preservation. Subject to the reservations set forth below in Paragraph 5, the Wheeler Osgood Site and each part of the Wheeler Osgood Site shall be a habitat preservation area that is to remain in its current physical conditions (as modified by the activities contemplated by the Consent Decree and below in Paragraph 3, and as modified by the environment of the Wheeler Osgood Site). Such status as a habitat preservation area shall only impact the Wheeler Osgood Site and shall impose no requirements or restrictions upon adjacent lands.

3. Habitat Restoration. The following entities may at any time implement, or authorize any third party to implement, such further restoration actions on the Wheeler Osgood Site as they determine appropriate: the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Washington State Department of Ecology on behalf of the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (or their respective successors or assigns)(hereinafter collectively referred to as the "Trustees"). Such further restoration actions

shall only be taken with the approval of Declarant and under a mutually acceptable access agreement between the Trustees and Declarant. Declarant’s approval may be withheld only upon a showing that the proposed activity would be inconsistent with the purposes of preserving and enhancing the ecological value of the site, would be inconsistent with other provisions of this Consent Decree or other applicable law, would unreasonably interfere with Declarant’s use of adjacent property, or would impose costs upon Declarant.

4. Sale or Transfer. Declarant shall not sell, grant, lease or otherwise transfer to any party an interest in the real property comprising the Wheeler Osgood Site other than as specifically contemplated in the Consent Decree without the prior written consent of the Trustees, and the United States Department of Justice (“DOJ”).

5. Reservations. The Wheeler Osgood Site and each part of the Wheeler Osgood Site may be used for any purpose other than log rafting, including but not limited to the implementation of additional habitat improvement projects (within or adjacent to the Wheeler Osgood Site) that modify any physical conditions of the Wheeler Osgood Site and may involve temporal impacts to the Wheeler Osgood Site conditions, provided, however, that any such uses that will modify any physical conditions of the Wheeler Osgood Site shall be undertaken only as provided in this paragraph below.

If such uses are to be undertaken by the Declarant (or by its successors or assigns), the Trustees shall be notified in writing as provided by the Consent Decree at least thirty (30) days prior to entering into any contracts for or applying for any permits for the taking of any actions on the Wheeler Osgood Site that will modify any physical conditions of the Wheeler Osgood Site. Such written notice shall include a narrative description of the proposed actions plus a site diagram indicating the location of the proposed actions. Such actions may be undertaken only after consultation with and concurrence by the Trustees. Such concurrence shall not unreasonably be withheld and shall be provided by the Trustees unless the proposed actions would be inconsistent with the purposes of preserving and enhancing the ecological value of the Wheeler Osgood Site.

IN WITNESS WHEREOF, the undersigned being duly authorized by the Declarant herein, has unto set its hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

DECLARANT, BNSF Railway Company

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the individual that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the BNSF Railway Company, for the uses and purposes therein mentioned; and on oath stated that he/she is authorized to execute the Said instrument on behalf of the BNSF Railway Company

WITNESS my hand and official seal hereto affixed the day and year first written above.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**APPENDIX D TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Order Directing the Deposit of Natural Resource Damages into the Registry of the Court in  
United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8, 1993)**

Hon. Robert J. Bryan

FILED \_\_\_\_\_ LODGED \_\_\_\_\_  
 RECEIVED  
 OCT 07 1993  
 CLERK U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON AT TACOMA  
 BY \_\_\_\_\_ DEPUTY

FILED \_\_\_\_\_ RECEIVED \_\_\_\_\_ LODGED \_\_\_\_\_  
 OCT - 8 1993  
 CLERK U.S. DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON AT TACOMA  
 BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 ENTERED  
 ON DOCKET

*cf/Financed*

OCT 8 1993  
 By Deputy \_\_\_\_\_

UNITED STATES OF AMERICA,  
 ON BEHALF OF THE UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY,  
 THE UNITED STATES DEPARTMENT OF  
 THE INTERIOR, AND THE NATIONAL  
 OCEANIC AND ATMOSPHERIC  
 ADMINISTRATION;  
 STATE OF WASHINGTON;  
 PUYALLUP TRIBE OF INDIANS;  
 MUCKLESHOOT INDIAN TRIBE;

Civil No. C93-5462B

ORDER DIRECTING THE  
 DEPOSIT OF NATURAL  
 RESOURCE DAMAGES INTO  
 THE REGISTRY OF THE  
 COURT

Plaintiffs,

v.

PORT OF TACOMA

Defendant

This Order is entered in furtherance of a Consent Decree  
 in the above captioned matter between Plaintiffs the United  
 States of America, State of Washington, Puyallup Tribe of Indians  
 and Muckleshoot Indian Tribe and Defendant the Port of Tacoma  
 ("Settling Defendant"). Under the Consent Decree, Settling  
 Defendant has agreed, among other matters, to pay \$12,000,000

ORDER DIRECTING DEPOSIT OF  
 NATURAL RESOURCE DAMAGES - 1

U.S. Department of Justice  
 Environmental Enforcement Section  
 P.O. Box 7611, Ben Franklin Station  
 Washington, D.C. 20044

9

1 (twelve million dollars), in installments as identified in the  
2 Consent Decree, to the Natural Resource Trustees (National  
3 Oceanic and Atmospheric Administration of the U.S. Department of  
4 Commerce, the U.S. Department of the Interior, the Washington  
5 Department of Ecology (on behalf of the Washington Department of  
6 Fisheries, the Washington Department of Natural Resources, and  
7 the Washington Department of Wildlife), the Puyallup Tribe of  
8 Indians, and the Muckleshoot Indian Tribe) in settlement of  
9 Settling Defendant's liability for Natural Resource Damages  
10 caused by releases of hazardous substances from property owned,  
11 managed or operated by Settling Defendant within the Commencement  
12 Bay Environment, as defined in the Consent Decree. This Order  
13 addresses handling and investment of those funds by the Registry  
14 of the Court.

15 Pursuant to Rule 67 of the Federal Rules of Civil  
16 Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in  
17 accordance with the terms of the Consent Decree, it is hereby

18 1. ORDERED that Settling Defendant, following entry of the  
19 Consent Decree and in accordance with the payment schedules  
20 established therein, pay to the Clerk of the Court all sums  
21 specified in paragraph 51.b. of the Consent Decree, which sums  
22 constitute recovery for Natural Resource Damages and Future  
23 Trustee Assessment Costs, as defined in the Consent Decree; and  
24 it is

25  
26  
27  
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ORDER DIRECTING DEPOSIT OF  
NATURAL RESOURCE DAMAGES - 2

U.S. Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

1 2. ORDERED that Settling Defendant shall make the  
2 aforementioned payments by checks made payable to the Clerk of  
3 the Court, bearing the notation Civil Action No. C93-5462B  
4 (W.D. Wash.), which checks shall be sent to:

5 Office of the United States Attorney  
6 3600 SeaFirst Fifth Avenue Plaza  
7 800 Fifth Avenue  
8 Seattle, Washington 98104

9 The U.S. Attorney shall immediately deposit such funds with the  
10 Registry of the Court. The Settling Defendant shall cause  
11 photocopies of each check and of any transmittal letter  
12 accompanying the check to be sent to: Chief, Environmental  
13 Enforcement Section, Department of Justice, P.O. Box 7611, Ben  
14 Franklin Station, Washington, D.C. 20044; and to Robert A.  
15 Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand  
16 Point Way NE, BIN C15700, Seattle, WA 98115; and it is

17 3. ORDERED that an account shall be established in the  
18 Registry for payments received in the above captioned matter and  
19 for such other payments as may be received from time to time in  
20 connection with restoration and protection of the ecosystem of  
21 the Commencement Bay watershed, and that the account shall be  
22 titled Commencement Bay Natural Resource Restoration Account  
23 ("Commencement Bay Restoration Account"); and it is

24 4. ORDERED that the Clerk of the Court shall administer the  
25 funds so received as follows:  
26

1 a) \$100,000 of the funds received shall be deposited in  
2 such interest-bearing federally insured commercial bank account  
3 or accounts as the Clerk deems appropriate;

4 b) the balance of the funds received shall be used to  
5 purchase 91-day Treasury Securities, at the highest prevailing  
6 interest rate available for such Treasury Securities;

7 c) upon maturity of the Treasury Securities referred to  
8 in subparagraph b), the Clerk shall consult with counsel for the  
9 United States regarding the allocation of the proceeds of such  
10 Treasury Securities between the bank account or accounts  
11 identified in subparagraph a) and the purchase of additional  
12 short-term Treasury Securities. Counsel for the United States  
13 shall consult with representatives of the Natural Resource  
14 Trustees and, depending upon the Natural Resource Trustees'  
15 anticipated funding needs, shall advise the Clerk regarding the  
16 desired allocation of such proceeds between the bank account or  
17 accounts and reinvestment in Treasury Securities. The Clerk may  
18 make any such allocations of funds as directed by counsel for the  
19 United States without further Order of the Court; and it is

20 5. ORDERED that all income earned as interest on funds so  
21 invested or deposited shall be credited to the Commencement Bay  
22 Restoration Account; and it is

23 6. ORDERED that the Natural Resource Trustees may apply to the  
24 Court for an Order establishing an investment procedure or  
25 vehicle alternative to that identified in paragraph 4 above that

1 provides a comparable level of security and earnings potential,  
2 which application may be acted upon by the Court without notice  
3 to or consent by Settling Defendant; and it is

4 7. ORDERED that the Clerk shall prepare quarterly reports on  
5 the status and activity of the Commencement Bay Restoration  
6 Account showing payments received, disbursements made, income  
7 earned, maturity dates of securities held, and principal balance,  
8 and shall distribute the reports to counsel for the United  
9 States; and it is

10 8. ORDERED that funds in the Commencement Bay Restoration  
11 Account shall remain in the Registry until further order of this  
12 Court; and it is

13 9. ORDERED that the Natural Resource Trustees shall establish  
14 such decision making procedures regarding expenditures of funds  
15 from the Commencement Bay Restoration Account as they deem  
16 appropriate. Applications for orders for disbursements from the  
17 Commencement Bay Restoration Account shall be made by the United  
18 States on behalf of the Natural Resource Trustees. The  
19 application shall be supported by a certification of the Natural  
20 Resource Trustees that their determination to make such  
21 disbursement was in compliance with said decision making  
22 procedures and is consistent with the terms of the Consent Decree  
23 and other applicable law. Such applications may be acted upon by  
24 the Court without notice to or consent by Settling Defendant.  
25 Any of the Natural Resource Trustees may petition the Court for

1 review of a decision by the United States to seek or not to seek  
2 an application for an order for disbursement, provided that the  
3 party or parties seeking review have complied with any dispute  
4 resolution provisions adopted as part of the decision making  
5 procedures referred to above; and it is

6 10. ORDERED that counsel for the United States shall serve as  
7 the point of contact for the Clerk on behalf of the Natural  
8 Resource Trustees, and shall distribute copies of the reports  
9 referred to in paragraph 7 of this Order to the other Natural  
10 Resource Trustees; and it is

11 11. ORDERED that the Clerk is authorized and directed by this  
12 Order to deduct for maintaining funds in the Registry Account the  
13 fee as authorized in the Federal Register Vol. 56, No. 213 at  
14 page 56356 (November 4, 1991); and it is

15 12. ORDERED that a certified copy of this Order shall be  
16 served upon the Clerk of this Court.

17  
18 Dated 8 October 1993

  
Hon. Robert J. Bryan, Judge  
United States District Court  
Western District of Washington

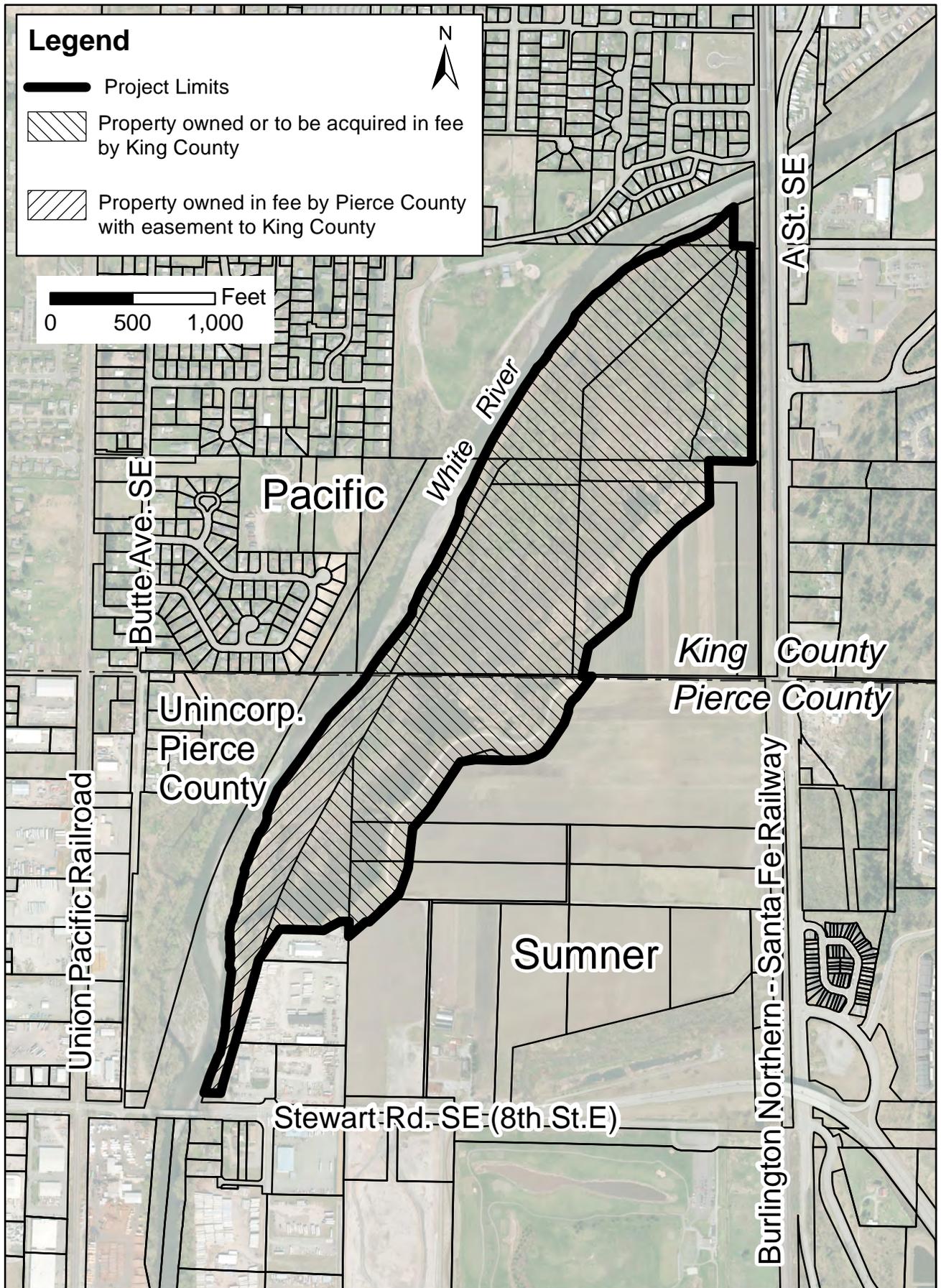
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**APPENDIX E TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Countyline Project Site Deed Restrictions**

**APPENDIX E-1 TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Countyline Project Site**



**APPENDIX E-2 TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**King County Property Deed Restrictions**

**APPENDIX E-2**

When Recorded Mail To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**DECLARATION OF LAND USE RESTRICTION  
AND REAL PROPERTY COVENANT**

Declarant: The King County Department of Natural Resources and Parks.

The Beneficiaries: the United States National Oceanic and Atmospheric Administration, the United States Department of the Interior, the State of Washington Department of Ecology, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

Assessor’s Tax Parcel ID#: [List]

This Declaration of Land Use Restriction and Real Property Covenant (“Real Property Covenant”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the King County Department of Natural Resources and Parks (“Declarant”), for the benefit of the United States National Oceanic and Atmospheric Administration, the United States Department of the Interior, the State of Washington Department of Ecology, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe, (“Beneficiaries”).

WHEREAS, the Declarant makes the following recitals:

A. Declarant is the sole owner in fee simple of the real property located in King County, Washington, and Pierce County, Washington, legally described in Exhibit A (the “Property”), attached hereto and incorporated herein. A map of the property is attached to and made part of this Real Property Covenant, as Exhibit B.

B. Pursuant to its status as Service Provider to the King County Flood Control Zone District (“District”) under an interlocal agreement between King County and the District, Declarant is implementing the Countyline Acquisition and Levee Setback Project, a project that involves reconnection of a currently disconnected portion of the White River floodplain for both flood protection and habitat restoration purposes (“Project”). The Project involves a combination of property acquisition, levee modification and floodplain restoration along the left (east) bank of the White River, between river mile 5.0 and 6.3.

C. For the purposes of implementing the Project, Declarant has obtained the ownership of the fee interest in a number of properties constituting the Property and wishes to subject and bind such properties in perpetuity to the terms of this Real Property Covenant.

D. The Beneficiaries are trustees for natural resources and have filed a complaint against a number of Potentially Responsible Parties (“PRPs” or “Defendants”), in the United States District Court, Western District of Washington at Tacoma, Civil No. \_\_\_\_\_ for natural resource damages. The Beneficiaries and the Defendants have reached a settlement of the claims in Civil No. \_\_\_\_\_ under the terms of a Consent Decree, entered in Civil No. \_\_\_\_\_ as approved by the Court (“Consent Decree”). The Parties to the Consent Decree have identified the Project as providing significant ecological benefits such that it qualifies to partially satisfy the mitigation obligations of Defendants for natural resource damages under the terms of the Consent Decree. In accordance with this, the Defendants have provided significant funding for the Project to meet their mitigation obligations. In order to ensure that the Project meets the performance standards and other obligations contained in the Consent Decree, the Beneficiaries have required that the Property be subject to this Real Property Covenant, which binds the properties constituting the Property to the restrictions and requirements as set forth herein.

NOW, THEREFORE, in consideration of the above and the covenants, terms, conditions and restrictions contained herein, Declarant, does hereby establish a real property covenant on the Property as follows:

1. *The Recitals*

The above Recitals are a material part hereof and are incorporated herein by this reference.

2. *Declaration of Real Property Covenant*

Declarant voluntarily establishes this Real Property Covenant in perpetuity over the Property in the terms and conditions set forth herein for the purpose of binding the Property in perpetuity to the restrictions and requirements contained in Paragraph 14 and 16 of the Consent Decree, as set forth below, and Appendix A of the Consent Decree.

3. *Purpose*

It is the purpose of this Real Property Covenant to ensure that the Property will be retained forever in a natural condition in accordance with its flood protection and habitat restoration purposes and to prevent any use of the Property that will impair or interfere with these purposes. Declarant and the Beneficiaries intend that this Real Property

Covenant will confine the use of the Property to such activities as are consistent with the purposes of this Real Property Covenant.

4. *Rights of the Beneficiaries*

The Beneficiaries, also known as Trustees, are granted the following rights under this Real Property Covenant, as also provided in Paragraph 25 and Appendix A of the Consent Decree:

From and after the effective date of the Consent Decree, the Trustees and their contractors shall have access at all reasonable times to the Property for the oversight or implementation of the Consent Decree. Where the property to which access is sought is not otherwise open to public access, the Trustees shall give notice to King County prior to access. Each Trustee shall have the authority to enter freely and move about such property at all reasonable times for the purposes of overseeing the requirements of the Consent Decree, including, but not limited to:

(a) Monitoring and assessing progress on the planning, development, maintenance and monitoring of the Countyline Project;

(b) Verifying any data or information submitted to the Trustees by the PRPs;

(c) Inspecting and copying records, operation logs, contracts or other documents maintained or generated by King County or its contractors hereafter retained to perform work undertaken pursuant to Appendix A of the Consent Decree;

(d) Conducting such tests, investigations or sample collections as deemed necessary to monitor compliance with the Consent Decree or to assist in further identifying and quantifying injuries requiring natural resource restoration actions and in planning and carrying out maintenance actions as provided in Subparagraph (f);

(e) Using a camera, sound recording device or other type equipment to record the work done under the Consent Decree or injury to natural resources;

(f) Undertaking any maintenance action as the Trustees determine appropriate. Such maintenance actions shall only be taken with the approval of King County, which approval may be withheld only upon a showing that the proposed action would be inconsistent with the purposes of the Project as described in Appendix A of the Consent Decree (including the Project's flood control purposes), would be inconsistent with other provisions of the Consent Decree or other applicable law, or would impose costs or additional liability upon King County. For the purposes of this subparagraph (f), "maintenance" does not include any repair, modification, or alteration that changes the ecological function, character, scope or size of the Project as described in Appendix A.

5. *Prohibited Uses*

Any activity on or use of the Property inconsistent with the purposes of this Real Property Covenant is prohibited.

6. *Reserved Rights*

Declarant reserves any use of, or activity on, the Property that is not inconsistent with the purpose of the real property covenant and that is not prohibited herein. Without limiting the generality of the foregoing, Declarant specifically reserves the following uses and activities:

(a) *Emergencies.* The right to undertake other activities necessary to protect public health, property improvements, or human safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.

(b) *Fence.* The right to install and maintain fences on the perimeter of the Property; any other fencing is permissible, following prior notice to and consultation with the Beneficiaries regarding the location, design and construction of the fences, and the Beneficiaries agree not to remove or damage said fences.

7. *Responsibilities of Declarant Not Affected.*

Other than as specified herein, this Real Property Covenant is not intended to impose any legal or other responsibility on the Beneficiaries, or in any way to affect any existing obligation of the Declarant as owner of the Property.

8. *Notice of Transfer of Property by Declarant and Successor and Assigns*

In the event that the Property itself, or any interest in it, is transferred by the Declarant to a third party, the Declarant, its successors and assigns, shall notify the Beneficiaries in writing, and the document of conveyance shall expressly refer to this Real Property Covenant.

9. *Modification*

This Real Property Covenant may be amended only with the concurrence of all of the Beneficiaries, provided that any such amendment shall be consistent with the purpose of this Real Property Covenant and shall not affect its perpetual duration. All amendments shall be in writing, approved by the Beneficiaries and recorded in the real property records of both King and Pierce County.

10. *Interpretation*

This Real Property Covenant shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

11. *Perpetual Duration*

This Real Property Covenant shall be a binding servitude running with the land in perpetuity.

12. *Notices*

Any notices required by this Real Property Covenant shall be in writing and shall be personally delivered or sent by first class mail to the Declarant, at the following address, unless the Beneficiaries have been notified of a change of address.

To Declarant:

Director, Water and Land Resources Division  
201 South Jackson Street, Suite 600  
Seattle, Washington 98104

13. *Severability*

If any provision of this Real Property Covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.



**APPENDIX E-3 TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Pierce County Property Deed Restrictions**

AFTER PIERCE COUNTY RECORDING RETURN TO:

King County Water and Land Resources Division  
201 S. Jackson St. Ste. 600  
Seattle, WA 98104

**Document Title:** GRANT OF RIVER PROTECTION EASEMENT

**Reference Number of Related Documents:** Abstract Records 413464, 413465 & 413467

**Grantor:** Pierce County, a political subdivision of the State of Washington

**Grantee:** King County, a political subdivision of the State of Washington

**Abbreviated Legal Description:** Pt. East ½ NW ¼ & Pt. NW ¼ NE 1/4 , Sec. 1, T20N, R4E

**Full Legal Description** – See Attachment A

**Assessor's Tax Parcel Number:** N/A

### **RIVER PROTECTION EASEMENT**

For mutual benefits and other good and valuable consideration, receipt of which is hereby acknowledged, the GRANTOR, Pierce County, a political subdivision of the State of Washington, owner in fee of that certain parcel of land (the "Property"), legally described as set forth in Attachment A, incorporated herein and made a part hereof, hereby grant(s) to KING COUNTY, a political subdivision of the State of Washington , its successors and assigns, agents and licensees (GRANTEE), a perpetual easement for the purposes of accessing and constructing, inspecting, monitoring, reconstructing, maintaining and repairing, river bank protection, levees and/or other flood related works, including installing, inspecting and

maintaining all vegetation, environmental restoration measures and any other appurtenances thereto, across, in, under, on, over and upon the left bank of the White River of the above described Property, as graphically depicted in Attachment B, incorporated herein and made a part hereof (“Easement Area”), as constructed or reconstructed, together with reasonable ingress and egress upon the Property to access the Easement Area.

Grantor further grants access to the Easement Area to the Trustees under that certain Consent Decree filed in the lawsuit styled United States, et al. v. Advance Ross, et al. filed in the United States District Court, Western District of Washington at Tacoma, for the purposes of fulfilling the rights and responsibilities of the Trustees under the Consent Decree, and to ensure that the Easement Area will be retained forever in a natural condition in accordance with its flood protection and habitat restoration purposes and to prevent any use of the Property that will impair or interfere with these purposes.

Grantee shall have the right at such time as may be necessary and at the Grantee’s sole discretion, to enter upon the Property and to have unimpeded access to, in and through the Easement Area for the purposes of exercising the Grantee’s rights as described herein.

Grantor agrees not to plant non-native vegetation within the Easement Area and not to remove or otherwise alter any improvements installed by Grantee, including any native vegetation that may be planted and any flood protection works that may be constructed, within the Easement Area, without the prior approval of Grantee. Nothing contained herein shall be construed as granting any license, permit or right, otherwise required by law, to Grantor with respect to the Property and the Easement Area.

For the purposes of this river protection easement, the term “native vegetation” shall mean vegetation comprised of plant species, other than noxious weeds (as identified on the State of Washington noxious weed list found at Washington Administrative Code Chapter 16-750, as amended from time to time), which are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur at the site.

Neither Grantor nor Grantee is hereby obligated to future maintenance, repair or other action related to the above-described exercise of easement rights. Unless specifically stated herein, this river protection easement and/or any flood related works constructed or to be constructed within the Easement Area shall not be construed as granting any rights to any third person or entity, or as a guarantee of any protection from flooding or flood damage, and nothing contained herein shall be construed as waiving any immunity to liability granted to Grantee by any state statute, including Chapters 86.12 and 86.15 of the Revised Code of Washington, or as otherwise granted or provided for by law.

The rights, conditions, and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, and successors in interest and assigns of Grantor and Grantee.

GRANTOR: Pierce County, a political subdivision of the State of Washington

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF PIERCE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_, of Pierce County, a political subdivision of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said County, for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_  
My commission expires \_\_\_\_\_

ACCEPTANCE OF EASEMENT BY GRANTEE:

**KING COUNTY**

BY: \_\_\_\_\_  
Mark Isaacson, Director  
Water and Land Resources Division

DATE: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Mark Isaacson, to me known to be the Director/Water and Land Resources Division, of King County, a political subdivision of the State of Washington, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said County, for the uses and purposes therein mentioned and on oath stated that they were authorized to execute said instrument.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## Attachment A

**LEGAL DESCRIPTION:** Real property in the County of Pierce, State of Washington, described as follows:

Parcel A:

All that part of the East Half of the Northwest Quarter of Section 1, Township 20 North, Range 4 East, W. M., in Pierce County, Washington, on the West side of the Stuck River lying East of a line described as follows:

Beginning at a point on the township line between Township 20 North, Range 4 East, W. M. and Township 21 North, Range 4 East, W. M., all in Pierce County, Washington, which said point of beginning is 212.3 feet West of the Northeast corner of said East Half of the said Northwest Quarter

of said Section 1;

Thence South  $26^{\circ}27'$  West, a distance of 1,040 feet;

Thence South  $20^{\circ}35'$  West, a distance of 631 feet;

Thence South  $14^{\circ}43'30''$  West, a distance of 1,080 feet;

Except any portion thereof lying within property Deeded to Puget Sound Energy, Inc., a Washington corporation, successor in interest to Puget Sound Power & Light Company and Pacific Coast Power Company under Deeds recorded under recording numbers 345769 and 345770.

Parcel B:

That portion of the East Half of the Northwest Quarter of Section 1, Township 20 North, Range 4 East, W. M., in Pierce County, Washington, described as follows:

Beginning at a point on the West right of way line of the proposed new river channel of the Inter-County River Improvement, which said point is 1,190 feet West and 130 feet North of the center of Section 1, Township 20 North, Range 4 East, W. M., in Pierce County, Washington;

Thence East 434.26 feet to the East right of way line of said proposed new river channel;

Thence Northerly along said East right of way line North  $14^{\circ}43'30''$  East 970 feet;

Thence North  $20^{\circ}35'15''$  East 545 feet;

Thence North  $26^{\circ}27'$  East 520 feet;

Thence West 256 feet, more or less, to intersect a line drawn from the North Quarter corner of said Section 1 to the center of the West Half of said Section 1;

Thence Southwesterly along said line, 1,730 feet, more or less, to its intersection with the West right of way line of said proposed new river channel;

Thence South  $14^{\circ}43'30''$  West along said West right of way line, 370 feet, more or less, to the place of beginning;

Except any portion thereof lying within Parcel A above.

Parcel C:

That portion of the East Half of the Northwest Quarter of Section 1, Township 20 North, Range 4 East, W. M., in Pierce County, Washington, described as follows:

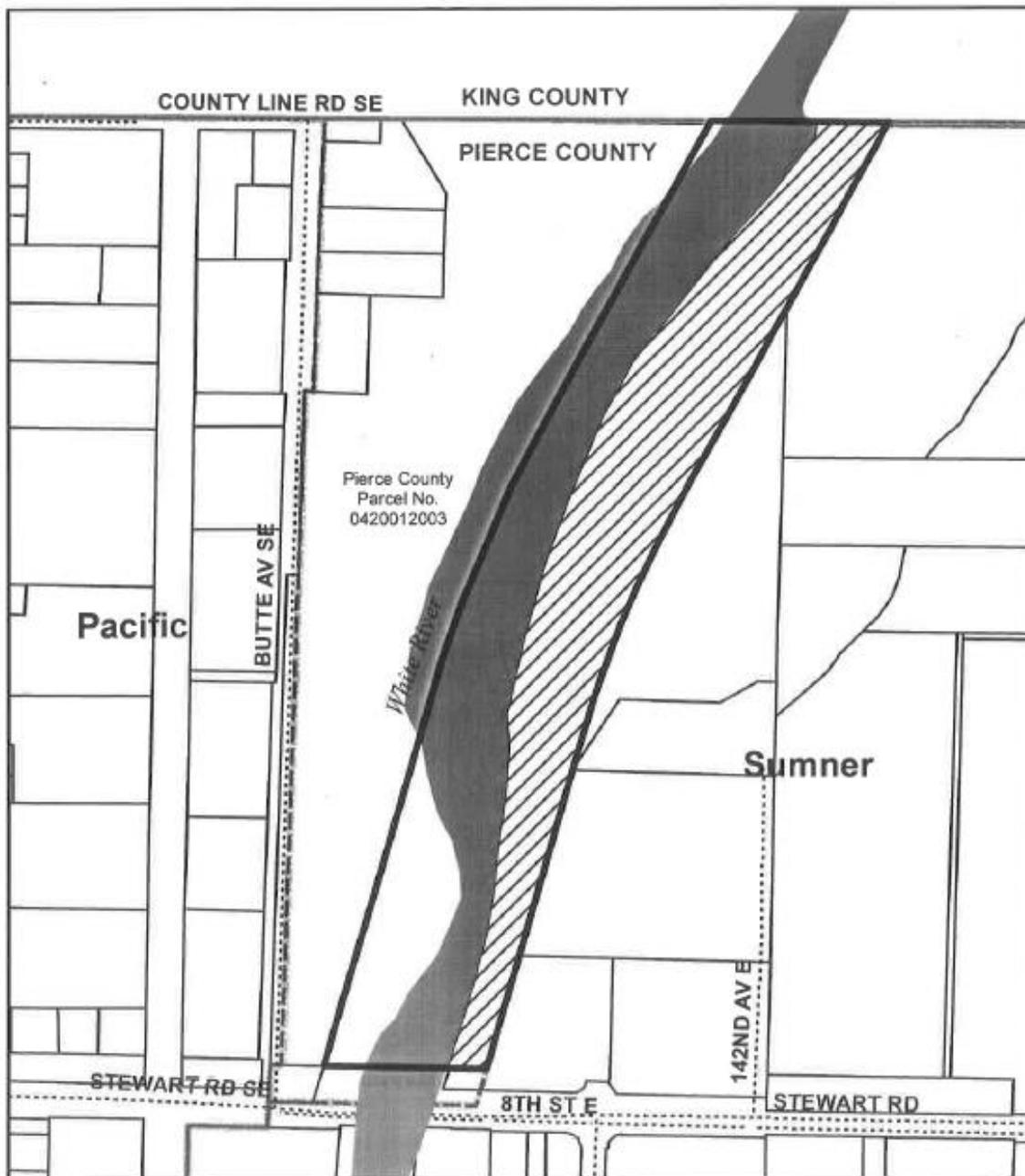
Beginning at a point on the township line between Township 20 North, Range 4 East, W. M. and Township 21 North, Range 4 East, W. M., all in Pierce County, Washington, which point is 2,640 feet, more or less, West of the Northeast corner of said Section 1 Township 20 North, Range 4 East, W. M., in said county, being the North Quarter corner of said Section 1;  
Thence East 265 feet, more or less, to the East right of way line of the proposed new river channel;  
Thence South  $26^{\circ}27'$  West along said East right of way line 740 feet, more or less, to its intersection with the South line of the Northeast Quarter of the Northwest Quarter of said Section 1;  
Thence West along said line 255 feet to a line joining the North Quarter corner of Section 1 and the center of the West Half of said Section 1;  
Thence Northeasterly along said line to the place of beginning;  
Except any portion thereof lying within the Northeast Quarter of said Section 1.

Parcel E:

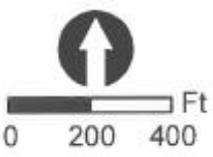
That portion of the West Half of the Northeast Quarter of Section 1, Township 20 North, Range 4 East, W. M., in Pierce County, Washington, described as follows:

Beginning at a point on the township line between Township 20 North, Range 4 East, W. M. and Township 21 North, Range 4 East, W. M., all in Pierce County, Washington, which point is 2,640 feet, more or less, West of the Northeast corner of said Section 1 Township 20 North, Range 4 East, W. M., in said county, being the North Quarter corner of said Section 1;  
Thence East 265 feet, more or less, to the East right of way line of the proposed new river channel;  
Thence South  $26^{\circ}27'$  West along said East right of way line 740 feet, more or less, to its intersection with the South line of the Northeast Quarter of the Northwest Quarter of said Section 1;  
Thence West along said line 255 feet to a line joining the North Quarter corner of Section 1 and the center of the West Half of said Section 1;  
Thence Northeasterly along said line to the place of beginning;  
Except any portion thereof lying within the Northwest Quarter of said Section 1.

### Attachment B: Easement Area



**Legend**

- |   |  |   |
|---|--|---|
|  Pierce Levee Parcel         |  Pierce Co. Tax parcels     |  |
|  Left Bank Easement Area     |  Pierce Co. Roads           |   |
|  Approx White River Location |  Pierce Co. City Boundaries |   |

**APPENDIX F TO  
CONSENT DECREE FOR  
NATURAL RESOURCE DAMAGES**

**Form of Project Completion Accounting**

## Appendix F

## Form of Project Completion Accounting

## Item

Funds Source

	\$
	\$
Thea Foss Mediation Group Funds	\$
Total	\$ X

Expenditures

Property Acquisition	\$
Project Design	\$
Project Permitting	\$
Project Construction - <i>Provide Subcategories</i>	\$
Project Maintenance Budget	\$
Project Management	\$
Total	\$ X