XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

78. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 79, 80, and 82 of this Section, the United States on behalf of EPA covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Sitcum Waterway Problem Area, the Milwaukee Waterway, and the Blair Waterway, and for recovery of Past Response Costs incurred prior to the effective date of this Consent Decree. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51.a. of Section XVII (Reimbursement of Response Costs and Settlement of Natural Resource Damage Claims). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

b. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of this Consent Decree, the United States, on behalf of the federal Natural Resource Trustees, and the other Natural Resource Trustees on their own behalf, covenant

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not to sue in this action or in a new action against Settling Defendant, pursuant to CERCLA or Chapter 70.105D RCW for recovery of Past Trustee Assessment Costs, Future Trustee Assessment Costs, and the Settling Defendant's liability for Natural Resource Damages caused by releases of hazardous substances from property owned, managed or operated by Settling Defendant within the Commencement Bay Environment incurred prior to the effective date of this Consent Decree. These covenants not to sue shall take effect upon the receipt by the Natural Resource Trustees of the payments required by Paragraph 51.b.i. of Section XVII (Reimbursement of Response Costs and Settlement of Natural Resource Damage Claims). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

79. Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States and the Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site if, prior to certification of completion of the Remedial Action:

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(i) conditions at the Sitcum Waterway Problem Area, the Milwaukee Waterway, or the Blair Waterway, previously unknown to Plaintiffs, are discovered, or

(ii) information, previously unknown to Plaintiffs, is received, in whole or in part; or

(2) to reimburse the United States or the Natural Resource Trustees for additional costs of response or for natural resource damages if, prior to certification of completion of the Remedial Action, conditions or information in the Commencement Bay Environment, previously unknown to Plaintiffs, are discovered; and these previously unknown conditions or information referred to in (i) and (ii) above together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment, or that there is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude greater than was known, at the time of entry of this Consent Decree.

80. Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States and the Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further

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response actions relating to the Site if, subsequent to certification of completion of the Remedial Action:

(i) conditions at the Sitcum Waterway Problem Area, the Milwaukee Waterway, or the Blair Waterway, previously unknown to Plaintiffs, are discovered, or

(ii) information, previously unknown to Plaintiffs, is received, in whole or in part; or

(2) to reimburse the United States or the Natural Resource Trustees for additional costs of response or for natural resource damages if, subsequent to certification of completion of the Remedial Action, conditions or information in the Commencement Bay Environment, previously unknown to the Plaintiffs, are discovered; and these previously unknown conditions or information referred to in (i) and (ii) above together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment, or that there is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude greater than was known, at the time of certification of completion of the Remedial Action.

81. For purposes of Paragraph 79, the information and the conditions known to Plaintiffs shall include only that information and those conditions set forth in the Record of Decision for the Site, the administrative record supporting the Record of Decision, and in information received and approved by

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EPA pursuant to the AOC. For purposes of Paragraph 80, the information and the conditions known to Plaintiffs shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received and approved by EPA pursuant to the requirements of the AOC and this Consent Decree prior to Certification of Completion of the Remedial Action. As regards Natural Resource Damages, for purposes of Paragraphs 79 and 80, the injury to, destruction of, or loss of natural resources known shall include those addressed by the Preassessment Screen issued by the Natural Resource Trustees on or about October 29, 1991.

82. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 78. The United States and the Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Sitcum Waterway Remediation Project area;

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(3) liability for response costs and damages for injury to, destruction of, or loss of natural resources other than that caused by releases of hazardous substances from property owned, managed or operated by Settling Defendant within the Commencement Bay Environment;

(4) criminal liability;

(5) liability for violations of federal, tribal, or state law which occur during or after implementation of the Remedial Action; and

(7) liability for additional operable units and problem areas at the Site or the final response action, or for EPA response costs, other than Past Response Costs, that are not reimbursed under the AOC or this Consent Decree.

83. In the event EPA determines that the Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future

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Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

84. Notwithstanding any other provision of this Consent Decree, the United States and the Natural Resource Trustees retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANT

85. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Natural Resource Trustees with respect to the Sitcum Waterway Remediation Project or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States and the Natural Resource Trustees, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Sitcum Waterway Remediation Project, or arising in respect to Natural Resource Damages caused by releases of hazardous substances from property owned, managed or operated by Settling Defendant within the Commencement Bay Environment, or any claims arising out of response activities at the Sitcum Waterway Remediation Project. However, the Settling Defendant

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reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

86. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including the right to contribution protection), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

87. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to

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such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

88. The Settling Defendant has reviewed the information and data generated with regard to sources of hazardous substances in the Sitcum Waterway and has concluded that the costs of seeking reimbursement for Settling Defendant's costs of remediation from other parties would not be cost effective and could delay the Remedial Action pursuant to this Consent Decree. Therefore, Settling Defendant agrees not to bring any claim for contribution against any party for those portions of the Work related to the Remedial Action for the Phase 1 Area identified in the Administrative Order on Consent (attached as Appendix B to this Consent Decree). Settling Defendant reserves all rights to bring claims for contribution against any person with respect to all other matters, including, but not limited to: (1) any Additional Response Actions pursuant to Paragraph 18; and (2) Natural Resource Damages, including Past Trustee Assessment Costs, Future Trustee Assessment Costs, and payments made pursuant to Paragraph 51.b.ii. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States and other Natural Resource Trustees in writing no later than sixty (60) days prior to the initiation of such suit or claim.

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89. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States and other Natural Resource Trustees within 10 days of service of the complaint on it. In addition, Settling Defendant shall notify the United States and other Natural Resource Trustees within ten (10) days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

90. In any subsequent administrative or judicial proceeding initiated by the United States or the other Natural Resource Trustees for injunctive relief, recovery of response costs, natural resource damages, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States and the other Natural Resource Trustees in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

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XXV. ACCESS TO INFORMATION

91. Settling Defendant shall provide to EPA and the Lead Natural Resource Trustee, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Sitcum Waterway Remediation Project or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA and the Lead Natural Resource Trustee, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

92. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or the Lead Natural

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Resource Trustee, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

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

93. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information

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evidencing conditions at or around the Sitcum Waterway Remediation Project.

XXVI. RETENTION OF RECORDS

94. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion of the Work), Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Sitcum Waterway Remediation Project, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

95. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records

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

96. Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Sitcum Waterway Remediation Project since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sitcum Waterway Remediation Project and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

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XXVII. NOTICES AND SUBMISSIONS

97. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Whenever, under the terms of this Consent Decree, the Settling Defendant is required to give notice to the United States and/or EPA or to submit a document to the United States and/or EPA, the Settling Defendant shall also give notice or submit such document to the Lead Natural Resource Trustee. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Natural Resource Trustees, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-711

and

Thomas W. Swegle
WA Bar Number 15667
U.S. Department of Justice
Envt. Enforcement, P.O. Box 7611
Washington, D.C. 20044
(202) 514-3143

Director, Hazardous Waste Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

As to EPA:

Margaret Justus
EPA Project Coordinator
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

As to the Settling Defendant:

Dick Gilmur
Port of Tacoma's Project Coordinator
Port of Tacoma
P.O. Box 1837
Tacoma, Washington 98401-1837

As to the Lead Natural Resource Trustee:

Robert A. Taylor
National Oceanic and Atmospheric Administration
Damage Assessment and Restoration Center
7600 Sand Point Way NW, BIN C15700
Seattle, Washington 98115

As to the State:

Fred Gardner
Department of Ecology - Rowesix
Box 47600
Olympia, Washington 98504-7600

XXVIII. EFFECTIVE DATE

98. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

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XXIX. RETENTION OF JURISDICTION

99. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

100. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A - Conceptual Design for the Additional Mitigation Project.

Appendix B - Administrative Order on Consent for Remedial Design Study of the Sitcum Waterway between the Port of Tacoma and EPA, U.S. EPA Docket No. 1091-01-04-122, March 29, 1991.

Appendix C - Record of Decision for the Commencement Bay Nearshore/Tideflats Superfund Site, including the Sitcum Waterway Problem Area, signed on September 30, 1989, by the Regional Administrator, EPA Region 10, and all attachments thereto.

Appendix D - Sediment Quality Objectives that are specified in Table 5 of the ROD.

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Appendix E - Wasser & Winters Property

Appendix F - Option to Buy Real Property

XXXI. COMMUNITY RELATIONS

101. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA or the Lead Natural Resource Trustee, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Natural Resource Trustees to explain activities at or relating to the Site.

XXXII. MODIFICATION

102. Schedules or remedial design plans specified in this Consent Decree or approved under the AOC for completion of the Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

103. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

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XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

104. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

XXXIV. SIGNATORIES/SERVICE

106. The undersigned representative of Settling Defendant to this Consent Decree, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the undersigned representative for each of the other Natural Resource Trustees certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

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107. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

108. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

Presented By: Thomas W. Swegle

THIS 8th DAY OF October, 1993

Robert J. Bryan
United States District Judge

Thomas W. Swegle
WA Bar Number 15667
U.S. Department of Justice
Envt. Enforcement, P.O. Box 7611
Washington, D.C. 20044
(202).514-3143

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Port of Tacoma, relating to the Commencement Bay Nearshore/Tideflats Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 8/11/93

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Thomas W. Swegle
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Gerald A. Emison
Acting Regional Administrator
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Richard G. McAllister
Assistant Regional Counsel
Region 10
U.S. Environmental Protection Agency
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United States v. Port of Tacoma
Consent Decree Signature Page

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Port of Tacoma, relating to the Commencement Bay Nearshore/Tideflats Superfund Site.

FOR THE PORT OF TACOMA

Date: 6-1-93 Jack G. Fabulich

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert I. Goodstein
Title: General Counsel, Port of Tacoma
Address: P.O. Box 1837, Tacoma, Washington 98401
Tel. Number: (206) 383-9470

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THE WASHINGTON DEPARTMENT OF ECOLOGY

Mary Riveland

Dated: 6/4/93

The Washington Department of Ecology

Tanya Barnett

Dated: 3 June 1993

Tanya Barnett
Assistant Attorney General
State of Washington

Thomas W. Swegle
WA Bar Number 15667
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THE PUYALLUP TRIBE OF INDIANS

Dated: 6/30/93

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THE MUCKLESHOOT INDIAN TRIBE

Virginia Cross

Dated: JULY 26, 1995

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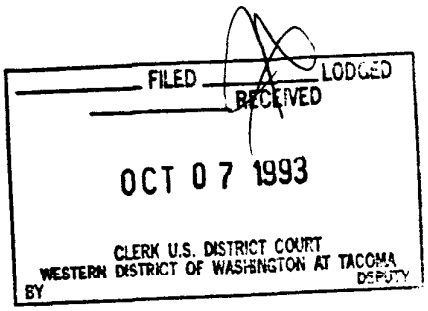
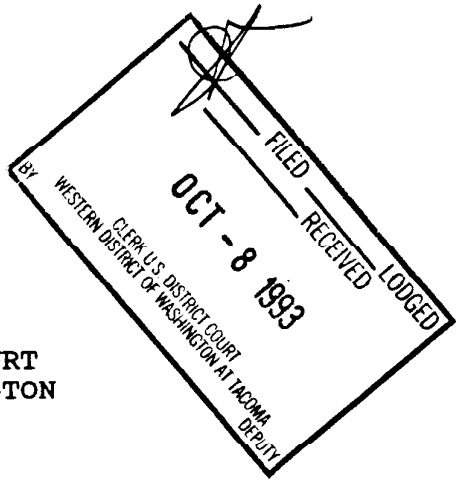
Hon. Robert J. Bryan





c/Financial

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ENTERED
ON DOCKET
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;

Plaintiffs,

v.

PORT OF TACOMA

Defendant

Civil No. C93-5462B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated 8 October 1993

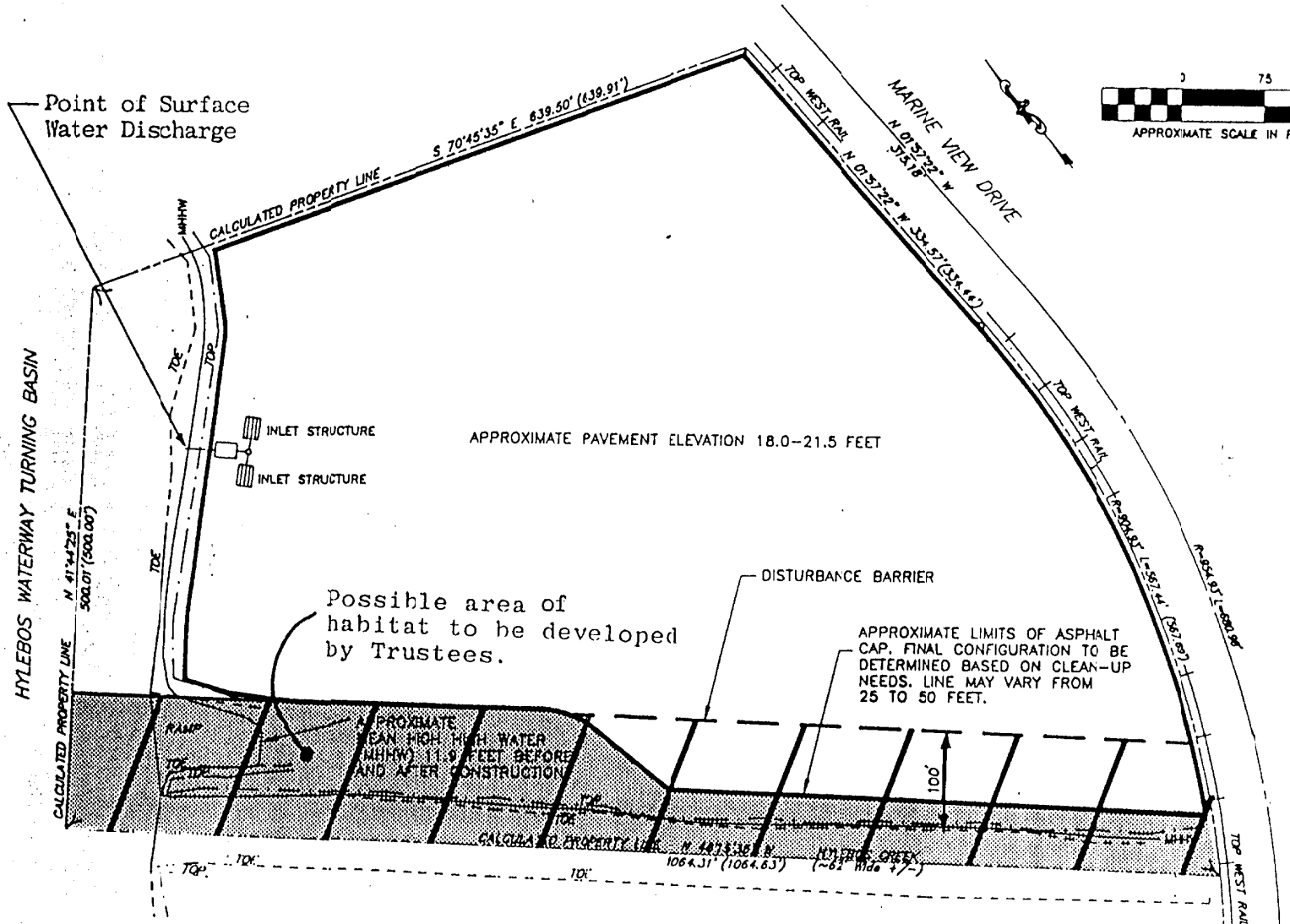
Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington

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

APPENDIX E
Wasser & Winters Property

APPENDIX E: Wasser & Winters Property

EXHIBIT E



TOTAL AREA OF DISTURBANCE BARRIER IS APPROXIMATELY 3.164 ACRES.

PORT OF TACOMA U.S.A.

PORT OF TACOMA
P.O. BOX 1837 TACOMA, WA 98401
(206) 383-5841

WASSER WINTERS SITE
PARCEL 47
PROPOSED PLAN

DWG: SMA047.DWG
DATE: 3-30-93
DRAWN BY: DAH
CHECKED BY: CLR

Description for Disturbance Barrier
on Port of Tacoma Parcel 47

A strip of land 131 feet in width situate in the Southeast Quarter of Section 36, Township 21 North, Range 3 East of the Willamette Meridian, County of Pierce, State of Washington, whose Northeasterly line lies 131.00 feet Northeasterly of, as measured at right angles, the following described line:

BEGINNING at the most Easterly corner of a parcel of land conveyed to Cheney Port Mill Inc. by Statutory Warranty Deed recorded under Auditor's Fee Number 2539897; thence Northwesterly along the Northeasterly line of said parcel, North 48°15'35" West 1064.63 feet to the Pierhead line of the Hylebos Waterway and the **END** of said described line.

The sidelines of said strip of land shall be shortened or lengthened as required to terminate on the West right-of-way line of Marine View Drive and the Pierhead line of said Hylebos Waterway.

Containing 137,820 Square feet or 3.164 acres, more or less.

Robert N. Erb, P.L.S.
Washington State Registration No. 18082

April 3, 1993
Project No. 7526

Sitts & Hill Engineers, Inc.
2901 South 40th Street
Tacoma, Washington 98409
(206) 474-9449

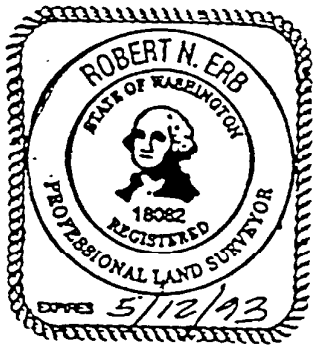


EXHIBIT E

APPENDIX F
Option to Buy Real Property

OPTION TO BUY PROPERTY

NATURAL RESOURCE TRUSTEE
(Optionee)

PORT OF TACOMA
(Optionor)

1. Option. This Agreement is an Option to Purchase Real Property pursuant to the Sitcum Waterway Consent Decree related to a Natural Resource Damage claim asserted by Optionee.

2. Parties. This Agreement is between the NATURAL RESOURCE TRUSTEES, or such of them who may be nominated, as Optionee and the PORT OF TACOMA as Optionor.

3. Property Description. The property subject to the option (herein referred to as the "Option Area") is a part of that property commonly referred to by Optionor as the "East West Road Property". The legal description of the Option Area is described in Exhibit 1 attached to this Agreement.

4. Easement. At such time as the Option is exercised, Optionor shall reserve such easements as are necessary for reasonable ingress and egress across the Option Area. Optionor and Optionee will consult prior to any development of the Option Area by the Optionee and prior to the development of any easement improvement by Optionor so that any easement improvement made by Optionor will be designed to minimize impact on the habitat values of the Option Area.

5. Consideration. The rights, duties and obligations of the Optionee and Optionor pursuant to the Sitcum Waterway Consent Decree shall constitute reasonable consideration for this Option to Buy Real Property. In addition, Optionor agrees that it shall not take any action upon the "East West Road Property" that adversely impacts habitat protection values with the Option Area. Subject to the foregoing, nothing herein shall preclude Optionor's development of the "East West Road Property" outside the Option Area for industrial or commercial purposes.

6. Purchase Price. The purchase price of the property shall be the fair market value of the property as determined by an MAI appraiser mutually agreeable to the parties at the time the option is exercised. If the parties cannot agree upon an appraiser, then each party shall select one (1) appraiser and they shall select a third. The three (3) appraisers shall be instructed to determine value by consensus of the three.

7. Purchase Terms. Cash at closing, or such other valuable consideration as the parties may agree to at closing.

8. Option/Time Limit. In consideration of the rights, duties and obligations of the parties set forth in the Sitcum Waterway Consent Decree, the Optionee shall have the right to acquire the Option area no later than five (5) years after the date of the entry of the Sitcum Waterway Consent Decree.

9. Notice

a) Exercise of Option. Optionee may exercise this Option, only by written notice delivered or sent (postmarked) by certified mail, to Optionor at the Port of Tacoma, One Sitcum Plaza, Tacoma, Washington 98421 (P. O. Box 1837, 98401), at least thirty (30) days in advance of the expiration date of this Option.

b) Development or Use of Property. The Optionor shall provide Optionee with not less than ninety (90) days written notice of any development on the "East West Road Property" outside the Option Area.

10. Extension. There may be one (1) additional five (5) year extension of this Option upon mutually acceptable terms.

11. Closing. At least ten (10) days before the expiration date of this Option, the Optionee shall deposit into escrow with _____, the Closing Agent, all monies and documents necessary to close this transaction on or before the expiration date. Within five (5) days of deposit of Optionee's documents and money, Optionor shall deposit into escrow with said Closing Agent all documents and money required of the Optionor to close this sale.

12. Time is of the Essence. Time is of the essence of this Option. In the event that:

(a) Optionee shall fail to give notice of exercise of this Option within the time provided herein;

(b) This sale shall fail to close prior to the expiration date (through no fault of Optionor); or

(c) Optionee shall fail to deposit all necessary documents and money into escrow on or before the time required below; then this Option shall be null and void and Optionee's privilege to buy the property shall terminate.

13. Conveyance. Title to the property shall be conveyed by Statutory Warranty Deed. Conveyance of the fee interest herein shall be subject to a convenant restricting the use of the property to that of a natural habitat protection area. Optionor and Optionee shall each pay one-half of the escrow fee.

DATED this _____ day of _____, 19___.

_____ _____

OPTIONOR

_____

_____

_____

_____

OPTIONEES

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I hereby certify that I know or have satisfactory evidence that

_____

(Optionor's Name) appeared before me and signed this instrument and acknowledged it to be _____ free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this _____ day of _____, 19___.

_____
Notary Public in and for the
State of Washington, residing at

_____

My appointment expires: _____

RJG:ram:bonnie
OptProp
6/4/93