

## Appendix E

### ACCESS AGREEMENT FOR PORT OF TACOMA PROPERTY

#### TIDEFLATS HABITAT CONSERVATION AREA AT A PORTION OF THE FORMER “SOUND REFINING” PROPERTY OWNED BY THE PORT OF TACOMA

This access agreement (this “Agreement”) is entered into by and among the Port of Tacoma (“Port”), Occidental Chemical Corporation (“Occidental”), and the Commencement Bay Natural Resource Trustees comprised of 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 (collectively such Commencement Bay Natural Resource Trustees shall be referred to herein as the “Trustees”)(each such party to this Agreement shall be referred to herein as a “Party” and collectively all such parties shall be referred to herein as the “Parties”). This Agreement shall be effective as of the “Effective Dates” as defined below.

#### RECITALS

A. The Port is the owner of certain real property adjacent to the Hylebos Waterway in Tacoma, Washington that was formerly owned by Sound Refining, Inc.

B. The Port and Occidental have previously entered into an agreement whereby Occidental has the right to implement a habitat restoration project on a portion of the real property owned by the Port. This Agreement partially implements that previous agreement between the Port and Occidental, and that previous agreement shall remain in full force and effect.

C. The Trustees, Occidental, and other parties have entered into a consent decree to address alleged natural resource damage claims that requires the implementation of a habitat restoration project by Occidental on a portion of the real property owned by the Port. The consent decree has been entered by the United States District Court for the Western District of Washington in *United States of America, et al. v. Occidental Chemical Corporation, et al.*, Civil Action No. \_\_\_\_\_.

D. This Agreement grants the Trustees and their consultants access to a portion of the real property owned by the Port so as to facilitate the Trustees’ oversight responsibilities for the habitat restoration project implemented by Occidental on that real property pursuant to the consent decree.

E. This Agreement grants Occidental and its consultants access to a portion of the real property owned by the Port so as to permit Occidental to implement the habitat restoration project on that real property pursuant to the consent decree.

NOW, THEREFORE, in consideration of the terms and conditions of the Agreement, and the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. Premises. The access granted by this Agreement pertains to the Project Site depicted on the attached Figure 1 (incorporated herein by this reference), and the portion(s) of the adjacent real property owned and to be designated by the Port for providing access to the Project Site (referred to herein as the “Premises”).

2. Grant of Access to the Trustees and Their Consultants. The Port agrees to grant the Trustees and their consultants access at all reasonable times to the Premises for the purpose of oversight of implementation of the Consent Decree. Where the property to which access is sought is not otherwise open to public access, the Trustees shall provide notice to the Port prior to access. Each Trustee shall have the authority to enter freely and move about the Project Site 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, and monitoring of the Project required by the Consent Decree; (b) verifying any data or information submitted to the Trustees pursuant to the Consent Decree; (c) inspecting and copying records, operation logs, contracts or other documents maintained or generated by Occidental or its agents or consultants for the work undertaken pursuant to the Consent Decree; (d) conducting such tests, investigation or sample collections as deemed necessary to monitor compliance with the Consent Decree or to assist in further identifying and quantifying natural resource injuries requiring restoration actions; (e) using a camera, sound recording device or other type of equipment to record the work done pursuant to the Consent Decree or injury to natural resources; and (f) undertaking post-construction alterations or further restoration actions, if any, in accordance with Section IX of the Consent Decree. The Port and Occidental shall have the right to accompany any Trustee or its representative on the Premises. The Trustees shall provide the Port and Occidental with copies of all preliminary and final data from any tests, investigation or sampling at the Project Site, within sixty (60) days of such tests, investigation or sampling at the Project Site.

3. Grant of Access to Occidental and Its Consultants. The Port agrees to grant Occidental and its consultants access at all reasonable times to the Premises for the purpose of implementing the Consent Decree’s requirements. Occidental shall provide the Port with copies of all Project deliverables provided to the Trustees pursuant to the Consent Decree. The foregoing shall not be construed to limit the access of Occidental and its consultants to the Premises and other real property owned by the Port granted to Occidental and its consultants by the Port for other purposes.

4. Compliance with Applicable Health and Safety Requirements. All persons gaining access to the Premises pursuant to this Agreement shall comply with applicable health and safety requirements and shall not interfere with ongoing operations.

5. Releases. Occidental releases the Port and agrees to defend and save the Port harmless against all claims made by or on behalf of Occidental or its consultants, agents, or employees for death, personal injury or property damage caused at the Premises by the activities of Occidental (or its consultants, agents, or employees), unless the same be caused solely by the negligence of the Port, its agents, or employees. The Trustees and Occidental respectively shall require any of their respective consultants engaged in any activity at the Premises to respectively release the Port and agree respectively to defend and save the Port harmless against all claims made by or on behalf of such consultants, consultants' agents, or consultants' employees for death, personal injury or property damage caused at the Premises by such consultants, consultants' agents, or consultants' employees, unless the same be caused solely by the negligence of the Port, its agents, or employees. The foregoing shall not be construed to require the Trustees or their consultants to take any responsibility for the acts or omissions of Occidental or its consultants, agents, or employees. The foregoing shall not be construed to require Occidental or its consultants to take any responsibility for the acts or omissions of the Trustees or their consultants, agents, or employees.

6. Third Parties' Claims. The Trustees and Occidental respectively shall require any of their respective consultants engaged in any activity at the Premises to respectively agree to defend and save the Port harmless against claims of third parties for death, personal injuries or property damage arising from or contributed to by the acts or omissions of such consultants, consultants' agents, or consultants' employees, or any operation conducted by such consultants, consultants' agents, or consultants' employees at the Premises. The foregoing shall not be construed to require the Trustees or their consultants to take any responsibility for the acts or omissions of Occidental or its consultants, agents, or employees. The foregoing shall not be construed to require Occidental or its consultants to take any responsibility for the acts or omissions of the Trustees or their consultants, agents, or employees.

7. Waivers of Subrogation. This Agreement specifically includes waivers of subrogation by Occidental against all losses sustained by Occidental, its employees, or insurers, and arising from their activities at the Premises.

8. Effective Dates. This Agreement shall be effective from the date of entry of the Consent Decree by the United States District Court for the Western District of Washington and thereafter for so long as is necessary pursuant to the Consent Decree.

FOR THE PORT OF TACOMA:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FOR OCCIDENTAL CHEMICAL CORPORATION:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FOR THE DEPARTMENT OF THE INTERIOR/U.S. FISH AND WILDLIFE SERVICE:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FOR THE WASHINGTON DEPARTMENT OF ECOLOGY:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FOR THE PUYALLUP TRIBE OF INDIANS:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

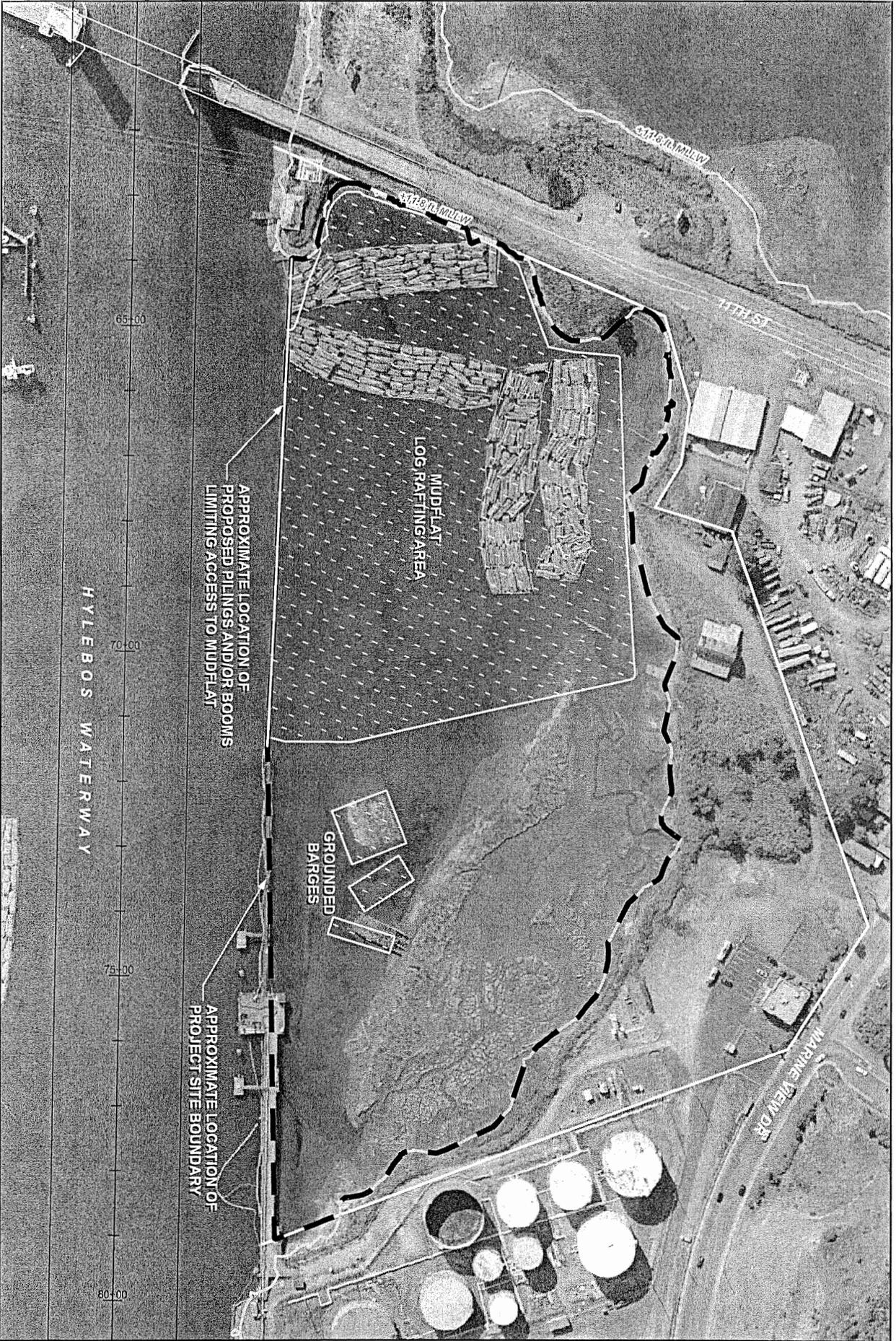
FOR THE MUCKLESHOOT INDIAN TRIBE:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



APPROXIMATE LOCATION OF PROPOSED PILING AND/OR BOOMS LIMITING ACCESS TO MUDFLAT

MUDFLAT LOG RAFTING AREA

GROUNDED BARGES

APPROXIMATE LOCATION OF PROJECT SITE BOUNDARY

Figure 1 Project Site