UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF: ACE TANK & EQUIPMENT COMPANY UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601, et seq., as amended.	10-98-0063-CERCLA AGREEMENT AND COVENANT NOT TO SUE ACE TANK & EQUIPMENT COMPANY

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), the United States Department of the Interior, the Puyallup Indian Tribe, the Muckleshoot Indian Tribe (hereinafter referred to as the "Federal and Tribal Natural Resource Trustees"), the United States Environmental Protection Agency ("EPA") and Ace Tank & Equipment Company ("Ace Tank") (collectively the "Parties").

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. The Settling Respondent is incorporated under the laws of the State of Washington.

Its principal place of bus iness is currently in Seattle, Washington.

4. The Settling Respondent intends to purchase the property formerly owned by the Tacoma Boatbuilding Company ("TBC"), located within the Commencement Bay Nearshore/Tideflats Superfund Site in Tacoma, Washington ("Property"). The Property is located at 1840 Marine View Drive and includes several buildings associated with the operations of TBC's boat building and boat repair operations, and some storage sheds. The property consists of approximately 19 acres. A legal description of the Property is attached to this Agreement as Exhibit 1, and a map depicting the configuration of the Property is attached as Exhibit 2.

5. Settling Respondent intends to use the Property for sales, service, administration and manufacturing of tanks and other petroleum equipment. Tank manufacturing consists of purchasing steel sheet and plate from steel suppliers, forming and welding the material into tanks, and coating the final product. Ace Tank may perform the painting or sandblasting of the tanks' outer surface. Ace shall perform such operations indoors within specially designed and approved sandblasting and painting buildings and in conformance with all applicable laws and regulations, including the Puget Sound Air Pollution Control Agency regulations.

6. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII, IX, X, and XI the potential liability of the Settling Respondent for the Existing Sediment Contamination, as defined in Paragraph 12 of Section II ("Definitions"), at the Commencement Bay Nearshore/Tideflats Superfund Site ("CB N/T Site") which would otherwise result from Settling Respondent becoming the owner of the Property.

7. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

8. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA and the Federal, State, and Tribal Natural Resource Trustees of a substantial benefit,

is in the public interest.

II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

10. "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB N/T Site" or "Site") means the entire Commencement Bay Nearshore/ Tideflats Superfund Site, including contaminated sediments and sources of contamination within the Site, located in Tacoma, Washington as defined in the CB N/T Record of Decision.

11. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

12. "Existing Sediment Contamination" means all contamination of the intertidal and subtidal sediments at the Site by hazardous substances, pollutants or contaminants released at or from the Property, including (i) all releases from the Uplands Area of the Property to the intertidal and subtidal sediments that occurred prior to the effective date of this Agreement, and (ii) all releases to intertidal and subtidal sediments that result from hazardous substances, pollutants, or contaminants present at the Property as of the effective date of this Agreement. "Existing Sediment Contamination" does not include (i) contamination from releases of hazardous substances, pollutants or contaminants which are not present at the Property as of the effective date of this Agreement, (ii) contamination of the Uplands Area of the Property, and (iii) contamination of the Site unrelated to releases from the Property.

13. "Hylebos Waterway Problem Areas" refers to the contaminated sediments at and adjacent to the Head and Mouth of the Hylebos Waterway, two of eight Problem Areas at the Site described in the CB N/T Record of Decision.

14. "Intertidal" shall mean the shoreline portion of the Property between elevation 0 feet MLLW and +12 feet MLLW.

15. "Launching Area" shall mean the area located at the southern boundary of the

property and consists of a 50-foot wide marine railway constructed on timber ties, which are supported on piles. The top of the timber ties are located at about the existing mudline. A timber beam, approximately 15 inches thick, spans from tie to tie to support each rail. The marine railway is bounded on each side by a 25-foot wide strip of intertidal sediment (Side Area). These side areas are then bounded by timber piers that parallel the marine railway. The Launching Area is sloped at approximately 20:1 horizontal to vertical.

16. "Parties" shall mean EPA, the Federal and Tribal Natural Resource Trustees and the Settling Respondent.

17. "Property" shall mean the property formerly owned by Tacoma Boatbuilding Company which is described in Exhibit 1 of this Agreement, is comprised of approximately 19 acres, is located at 1840 Marine View Drive, and is depicted generally on the map attached as Exhibit 2.

18. Record of Decision ("ROD") shall mean the EPA Record of Decision relating to the CB N/T Site, including the Hylebos Waterway Problem Areas, signed on September 30, 1989, by the Regional Administrator, EPA Region 10, and all attachments thereto.

19. "Settling Respondent" shall mean Ace Tank & Equipment Company, located at 1143 Elliott Ave, Seattle, WA 98119.

20. "Subtidal" shall mean the offshore portion of the property, which is below elevation 0 feet MLLW.

21. "Successors in Interest and Assigns" means any "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), including if the person is a corporation, its officers, directors, and employees acting within the scope of their employment, and the corporation's shareholders, who is granted, acquires or receives right, title, or interest including through sale, lease or foreclosure to any portion of the Tacoma Boatbuilding Property subsequent to the execution of this Agreement. No person can be a Successor in Interest or Assign for purposes of this Agreement and Covenant Not to Sue until he or she agrees in writing to be bound by the requirements of this Agreement and EPA and the Federal and Tribal Natural Resource Trustees provide written approval.

22. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

23. "Uplands Area" shall mean the generally flat portion of the property behind the shoreline. Upland elevations are typically at and above elevation +17 feet MLLW.

24. "Work" shall mean all activities Settling Respondent is required to perform under this Agreement.

III. STATEMENT OF FACTS

A. CB N/T Superfund Site.

25. On September 8, 1983, portions of Commencement Bay shallow water, shoreline, tideflats, sediments, and upland areas in Tacoma, Washington were listed on the National Priorities List of hazardous substance sites pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as amended. 48 *Fed. Reg.* 40,658 (September 8, 1983). The Commencement Bay waters, shoreline, sediments, tideflats, upland areas and other areas within the CB N/T Site were contaminated as a result of the release of a variety of hazardous substances and waste products into the terrestrial, freshwater, groundwater, and marine environments.

26. On September 30, 1989, EPA issued a Record of Decision ("ROD") that identified eight "Problem Areas" of contaminated sediments and sources of contamination within the CB N/T Site. The selected remedy for the eight CB N/T Problem Areas includes the following elements: (1) site use restrictions; (2) source control; (3) natural recovery of marginally contaminated sediments; (4) active remediation of more significantly contaminated sediments; and (5) long-term monitoring.

27. Any current or former owner or operator of contaminated sediments or sources of contamination within the CB N/T Site, among others, may be liable to the United States under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607.

28. The Property is adjacent to the Head of the Hylebos Waterway Problem Areas. The hazardous substances and materials which have been released into the environment at the Head of the Hylebos Waterway include, but are not limited to, polychlorinated biphenyls, high molecular weight

polyaromatic hydrocarbons and phenols, arsenic, copper, mercury, zinc, lead, nickel, tetrachloroethane, xylene, chlorinated benzenes, chlorinated butadienes, and Phenol, all of which are "hazardous substances," as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are "pollutants or contaminants" as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

29. Information presented in the ROD indicates that the remedy for the Hylebos Waterway Problem Areas will require active remediation and confined disposal of contaminated sediments.

30. In November, 1993, EPA began a remedial design phase of cleanup for the Hylebos Waterway Problem Areas to further refine the areal extent of the contamination, assess natural recovery predictions, evaluate source control measures, and select a remediation plan for the Hylebos Waterway Problem Areas.

B. TBC Property.

31. TBC operated a steel and aluminum shipbuilding and repair operation on the Property adjacent to the Head of the Hylebos Waterway from 1969 until 1992, when TBC filed for Chapter 11 bankruptcy. TBC's operations included hull and structural welding, metal cutting, machining, sandblasting, painting, carpentry, pipe-fitting, electronic equipment installation and repair, and electrical wiring.

32. On April 24, 1989, EPA issued a CERCLA general notice of liability letter to TBC, designating it a potentially responsible party ("PRP") for the cleanup of the Hylebos Waterway Problem Areas at the CB N/T Site. On June 21, 1993, EPA sent TBC a Special Notice Letter designating it a PRP for the cleanup of the Hylebos Waterway Problem Areas. TBC filed for Chapter 11 bankruptcy in 1992. The Property is currently an asset of the bankruptcy estate.

33. On April 4, 1989, EPA requested information from TBC pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). On July 17, 1989 TBC provided its written response to EPA's request, and described its operations on the Property. TBC used the Property for the manufacture and repair of watercraft since approximately 1970. The Washington State Department of Ecology ("DOE"),

also has inspected TBC's operation. The inspection identified spent sandblast grit in the Uplands Area and Launching and Intertidal areas. Samples taken of the spent grit/sediment mixture showed levels of metals above the Sediment Quality Objective identified in the CB N/T ROD.

34. In August, 1989, the Washington State DOE issued three enforcement actions against TBC for polluting the waters of the state and violating the State's Dangerous Waste Regulations. In February, 1991, TBC and DOE signed a consent order requiring TBC to submit a draft sampling plan and a completed NPDES permit application. Data collected subsequent to the order showed that contaminants, including copper, lead, and zinc, were being transported from the Property to the Hylebos Waterway.

35. DOE determined that the Property was an ongoing source of copper, lead and zinc to the Hylebos Waterway in its May, 1993 Milestone 2 Source Control Status Report for the Head of the Hylebos Waterway Problem Area.

36. Pursuant to an Adminstrative Order on Consent between EPA and the Hylebos Waterway Cleanup Committee, the Cleanup Committee performed sampling of Intertidal and Subtidal areas adjacent to the Property in 1994. Sampling results identified that the area was contaminated with sandblast grit containing arsenic, copper, zinc, antimony and lead exceeding EPA's Sediment Quality Objectives.

C. The Settling Respondent

37. The Settling Respondent intends to purchase the Property from the bankruptcy estate.

38. The Settling Respondent hired Hart Crowser as a consultant to gather data at the Property in November, 1996. As a result of this information gathering, Hart Crowser produced the "Tacoma Boat Data Package, dated November 22, 1996, which documents the existence of hazardous substances, pollutants and contaminants on and in the Uplands Area and Intertidal and Subtidal areas of the Property.

39. Concomitant with this Agreement, Settling Respondent shall perform remedial work on the Uplands Area of the Property pursuant to a consent decree with DOE in the manner

described in the Cleanup Action Plan prepared by DOE, a copy of which is attached hereto as Exhibit 3.

40. The Settling Respondent represents, and for the purposes of this Agreement EPA and the Federal and Tribal Trustees rely on those representations, that Settling Respondent's involvement with the Property and the CB/NT Site has been limited to the following: Performing an environmental assessment and making an offer to purchase the Property and performing limited prepurchase investigation and cleanup activities, including activities described in paragraph 38 above.

IV. PAYMENT

41. In consideration of and in exchange for the United States' and the Puyallup and Muckleshoot Tribes' Covenants Not To Sue in Section IX herein, Settling Respondent agrees to: (1) pay the Federal, State and Tribal Natural Resource Trustees the sum of $65,000, within 30 days of the effective date of this Agreement in accordance with Paragraph 43 below and (2) perform work in accordance with Section V of this Agreement.

42. The Settling Respondent shall make any payments to EPA required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID# 10-G1 and name and address of Settling Respondent. The check should be sent to:

U.S. Environmental Protection Agency
Region 10
ATTN: Superfund Accounting
P.O. Box 360903M
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in Section XVI (Notices and Submissions) and to EPA Region 10 Financial Management Officer, MD-144, 1200 Sixth Avenue, Seattle, Washington 98101.

43. The Settling Respondent shall make all payments to the Federal, State, and Tribal Natural Resource Trustees required by this Agreement in the form of a certified check or checks made payable to:

Registry of the Court
c/o Clerk of the Court
U.S. District Court
Western District of Washington
1010 Fifth Avenue, Room 215
Seattle, WA 98104

The check or checks shall reference the Commencement Bay Natural Resource Restoration account established pursuant to Civil No. C93-5462B. The Settling Respondent shall send photocopies of each check and of any transmittal letter accompanying each check to be sent to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Washington DC 20044; Kirsten Erikson, NOAA Damage Assessment and the Restoration Center, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

44. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. WORK TO BE PERFORMED

45. Within 12 months of the effective date of this Agreement, Settling Respondent shall complete the remedial actions described in the Cleanup Action Plan ("CAP") that is attached to this Agreement as Exhibit 3.

(a) The scope of activities to be performed include removal and disposal of Upland Area sandblast grit, solid materials and debris and removal and disposal of sediment containing sandblast grit from open Intertidal Areas of the property including the marine Launchway Area. All remedial actions described in Sections 6.1 through 6.3, and Section 6.5 of the CAP ("Required Work") shall be performed by Settling Respondent irrespective of the cost of performing such actions.[1] Remedial actions described in Section 6.4 of the CAP, i.e., excavation between the elevation of +4 feet MLLW and 0 feet MLLW in the Launching Area("Optional Work"), shall be performed as set forth in subparagraphs (b) through

[1] Required Work, i.e., the work to be performed by Respondent irrespective of cost, includes excavation of the Launching Area down to the +4 MLLW contour.

(e) below.

(b) Upon performance of the Required Work, Settling Respondent shall submit a letter to EPA that states that the Required Work has been completed and that includes a statement of the costs incurred by Settling Respondent for the Required Work.

(c) Settling Respondent may complete the Optional Work and the Required Work as a single field event.

(d) If the cost of the Required Work is less than $805,000, Settling Respondent shall perform Optional Work such that its combined expenditures for Required and Optional Work total $870,000, unless all Required and Optional Work can be completed for a lesser amount.

(e) If the cost of the Required Work equals or exceeds $805,000, Settling Respondent shall perform Optional Work in the amount of $65,000 for Optional Work, unless all Required and Optional Work can be completed for a lesser amount.

(f) After completion of Required and Optional Work, but not longer than 13 months from the effective date of this Agreement, Settling Respondent shall provide to EPA and the Federal and Tribal Natural Resource Trustees the following documentation:

(i) A letter from DOE approving the Work performed under Section V of this Agreement. If such letter from DOE has not been received within 13 months from the effective date of this Agrement, Settling Respondent shall submit its own report required under § 6.8 of the CAP certifying satisfactory completion of the Work.

(ii) An itemized cost summary and copies of paid invoices for costs incurred in performing the Work, such as invoices for removal, transportation and disposal of soil; backfilling soil; consulting services; analytical work; and all other activities necessary for the Work to be performed. The cost summary and invoices shall distinguish between Required Work and Optional Work.

(iii) An affidavit from an officer of Settling Respondent certifying that the cost summary and invoices are true and accurate to the best of his or her knowledge.

(g) If the cost summary and invoices show that Settling Respondent has incurred costs in performing Required Work and Optional Work in a total amount less than $870,000, Settling Respondent shall transmit payment of the difference between $870,000 and the costs incurred in performing the Work to the Hazardous Substances Superfund. The amount of such payment to the Hazardous Substances Superfund shall not exceed $65,000. Payment shall be made within 30 days of receipt of written notice from EPA approving the itemized cost summary and the amount of the payment, if any. Payment shall be made in accordance with the instructions set forth in Paragraph 38.

46. The Settling Respondent will perform the Intertidal Area cleanup as a remedial action under DOE's oversight under a Consent Decree and in coordination with EPA and the Federal and Tribal Natural Resource Trustees. Coordination with EPA and the Federal and Tribal Natural Resource Trustees shall include providing copies of all documents submitted to DOE, and notification of all Settling Respondent's applications to discharge to the Hylebos Waterway to EPA's remedial project manager, Peter Contreras, and to the natural resource trustee representative, Chris Beaverson, at the addresses listed in Paragraph 67, below.

47. No later than twelve months after the effective date of this Agreement. Settling Respondent shall provide EPA with a letter from DOE certifying the completion of all Work performed under Section V of this Agreement.

VI. ACCESS/NOTICE TO SUCCESSOR IN INTEREST

48. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and the Federal and Tribal Natural Resource Trustees, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA

oversight, or restoration actions under Trustee oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions and restoration actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response or restoration actions at the Site under federal law. EPA and the Federal and Tribal Natural Resource Trustees agree to provide reasonable notice to the Settling Respondent of the timing of response actions and restoration actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and the Federal and Tribal Natural Resource Trustees retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901,("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

49. Within 30 days after the effective date of this Agreement, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office, Pierce County, State of Washington. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XVI (Notices and Submissions).

50. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation as provided for in Paragraph 44 above. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XII (Parties Bound/Transfer of Covenant), of the Agreement and, where appropriate, Section V (Work to be Performed).

VII. DUE CARE/COOPERATION

51. Settling Respondent shall exercise due care at the CB N/T Site and with respect to

the Existing Sediment Contamination and shall comply with all applicable local, State, and federal laws and regulations. The implementation of response actions and restoration actions at the CB N/T Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA and the Federal and Tribal Natural Resource Trustees in the implementation of response actions and restoration actions at the Site and further agrees not to interfere with such response or restoration actions. EPA and the Federal and Tribal Natural Resource Trustees agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all necessary action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA representatives designated in paragraph 63 of this Agreement of such release or threatened release.

VIII. CERTIFICATION

52. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the Federal and Tribal Natural Resource Trustees all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Sediment Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property or the CB N/T Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property or the CB N/T Site. If the United States and the Puyallup and Muckleshoot

Tribes determine that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States and Puyallup and Muckleshoot Tribes reserve all rights they may have.

IX. UNITED STATES AND TRIBES' COVENANTS NOT TO SUE

53. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement, and upon completion of the Work specified in Section V (Work to Be Performed) to the satisfaction of EPA and the Federal and Tribal Natural Resource Trustees, the United States and the Puyallup and Muckleshoot Tribes covenant not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs and natural resource damages pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Sediment Contamination.

X. RESERVATION OF RIGHTS

54. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States and Tribes' Covenants Not to Sue). The United States and Puyallup and Muckleshoot Tribes reserve and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Work to be Performed), Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), Section XV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property or the CB/NT Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees and which is contamination that does not fall within the definition of Existing Contamination;

(c) any liability for existing contamination or future releases of hazardous substances, pollutants or contaminants to the Uplands Area of the Property and which is all contamination which does not fall within the definition of Existing Sediment Contamination;

(d) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Sediment Contamination;

(e) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the CB N/T Site after the effective date of this Agreement, not within the definition of Existing Sediment Contamination;

(f) criminal liability;

(g) liability for violations of local, State or federal law or regulations.

55. With respect to any claim or cause of action asserted by the United States or the Puyallup and/or Muckleshoot Tribes, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Sediment Contamination.

56. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or the Puyallup and/or Muckleshoot Tribes may have against any person, firm, corporation or other entity not a party to this Agreement.

57. Nothing in this Agreement is intended to limit the right of EPA or the Federal and Tribal Natural Resource Trustees to undertake future response or restoration actions at the CB N/T Site or to seek to compel parties other than the Settling Respondent and its successors, assignees, lessees or sublessees to perform or pay for response actions or restoration actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response or restoration actions which may be taken or be required by EPA or the Federal and Tribal Natural Resource Trustees in exercising their authority under federal law. Settling Respondent acknowledges that it is purchasing property where response actions and restoration actions may be required.

XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

58. In consideration of the United States and Tribes' Covenants Not To Sue in Section IX of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States or Puyallup and Muckleshoot Tribes, their authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims 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, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response or restoration activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

59. The Settling Respondent reserves, and this Agreement 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 Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein 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).

XII. PARTIES BOUND/TRANSFER OF COVENANT

60. This Agreement shall apply to and be binding upon the United States, and the Puyallup and Muckleshoot Tribes, and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

61. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA and the Federal and Tribal Natural

Federal and Tribal Natural Resource Trustees that the Property or the CB N/T Site is fit for any particular purpose.

XIV. DOCUMENT RETENTION

65. The Settling Respondent agrees to retain and make available to EPA and the Federal and Tribal Natural Resource Trustees all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA and the Federal and Tribal Natural Resource Trustees of the location of such documents and shall provide EPA and the Federal and Tribal Natural Resource Trustees with an opportunity to copy any documents at the expense of EPA or the Federal and Tribal Natural Resource Trustees. The Settling Respondent agrees to retain all documents relating to the Work to be Performed under Section V, for ten years from completion of the work to the satisfaction of EPA and the Federal and Tribal Natural Resource Trustees.

XV. PAYMENT OF COSTS

66. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), or Section V (Work to be Performed) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States and the Federal and Tribal Natural Resource Trustee to enforce this Agreement or otherwise obtain compliance.

XVI. NOTICES AND SUBMISSIONS

67. Settling Respondent, and any Successors in Interest or Assigns, agree to provide copies of all notices and submissions specified in this Agreement, including notice of payments (with a copy of the check), notice of property transfer, and notice of any spills of hazardous substances from the facility. A copy of such notices shall be mailed to EPA as follows:

Office of Regional Counsel
Elizabeth McKenna, Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158

Resource Trustees in their sole discretion. In making this determination, EPA will consider those factors reasonably related to the assignment and transference of rights, benefits and obligations under this Agreement, including the likelihood that the successor or assigns' activities will aggravate or contribute to contamination or interfere with response actions at the CB/NT Site, whether the operation or development of the property by the successor or assign will pose health risks to the nearby community and those persons present at the CB/NT Site, and whether the successor or assign is a potentially responsible party at the CB/NT Site.

62. The Settling Respondent agrees to pay the reasonable costs incurred by EPA and the Federal and Tribal Natural Resource Trustees to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

63. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the Federal and Tribal Natural Resource Trustees and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section IX and the Contribution Protection in Section XIX to be available to that party. The Covenant Not To Sue in Section IX and the Contribution Protection in Section XIX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA and the Federal and Tribal Natural Resource Trustees and until EPA and the Federal and Tribal Natural Resource Trustees provide their written consent.

XIII. DISCLAIMER

64. This Agreement in no way constitutes a finding by EPA or the Federal and Tribal Natural Resource Trustees as to the risks to human health and the environment which may be posed by contamination at the Property or the CB N/T Site nor constitutes any representation by EPA or the

Seattle, Washington 98101

Environmental Cleanup Office
Peter Contreras, Remedial Project Manager
U.S. Environmental Protection Agency
1200 Sixth Avenue, ECL-113
Seattle, Washington 98101

Financial Management Office (notice of payment only)
Joe Penwell
U.S. Environmental Protection Agency
1200 Sixth Avenue, MD-149
Seattle, Washington 98101

To the Trustees as Follows:

Chris Beaverson
NOAA
c/o the Environmental Protection Agency, Region 10
1200 Sixth Avenue
M/S HW113
Seattle, WA 98101

Kirsten Erikson
NOAA
Damage Assessment and the Restoration Center
7600 Sand Point Way, N.E.
Seattle, WA 98115-0070

Copies of any notices to Settling Respondent shall be mailed as follows:

Mr. Allen Reese
Ace Tank & Equipment Company
P.O. Box 9039
Seattle, WA 98109

Mr. Ralph H. Palumbo
Summit Law Group
1505 Westlake Avenue North, Suite 300
Seattle, Washington 98109

XVII. EFFECTIVE DATE

68. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that the United States, the Puyallup Indian Tribe and the Muckleshoot Indian Tribe have fully executed the Agreement after review of and response to any public comments received.

XVIII. TERMINATION

69. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other parties to terminate such provision(s).

XIX. CONTRIBUTION PROTECTION

70. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and reimbursement of all response costs incurred or to be incurred by the United States and or the Puyallup and Muckleshoot Tribes or any other person for the CB N/T Site with respect to the Existing Sediment Contamination, and all natural resource damages at the CB/NT Site resulting from Existing Sediment Contamination.

71. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States and the Puyallup and Muckleshoot Tribes in writing no later than 60 days prior to the initiation of such suit or claim.

72. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States and the Puyallup and Muckleshoot Tribes within 10 days of service of the complaint on them.

XX. EXHIBITS

73. The following is a list of Exhibits to this Agreement which are incorporated by and referenced herein:

"Exhibit 1" shall mean the description of the Property which is the subject of this

Agreement.

"Exhibit 2" shall mean the map depicting the Site.

"Exhibit 3" shall mean the Cleanup Action Plan.

"Exhibit 4" Agreement of Successors and Assigns.

XXII. PUBLIC COMMENT

74. This Agreement shall be subject to a thirty-day public comment period, after which EPA and the Federal and Tribal Natural Resource Trustees may modify or withdraw their consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED THIS 15th DAY OF April, 1998:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Chuck Fitling

Regional Administrator, Region 10

IT IS SO AGREED THIS 11th DAY OF April, 1998:

UNITED STATES DEPARTMENT OF JUSTICE

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

IT IS SO AGREED THIS 9th DAY OF April, 1998:

PUYALLUP INDIAN TRIBE

Bill Sterud
Name

Chairman
Title

IT IS SO AGREED THIS 24th DAY OF APRIL, 1998:

MUCKLESHOOT INDIAN TRIBE:

Name John Daniels Jr.

Tribal Council Chair
Title

IT IS SO AGREED THIS 26 DAY OF March, 1998:

ACE TANK & EQUIPMENT COMPANY:

R. Allan Reece

Ace Tank & Equipment Company

President

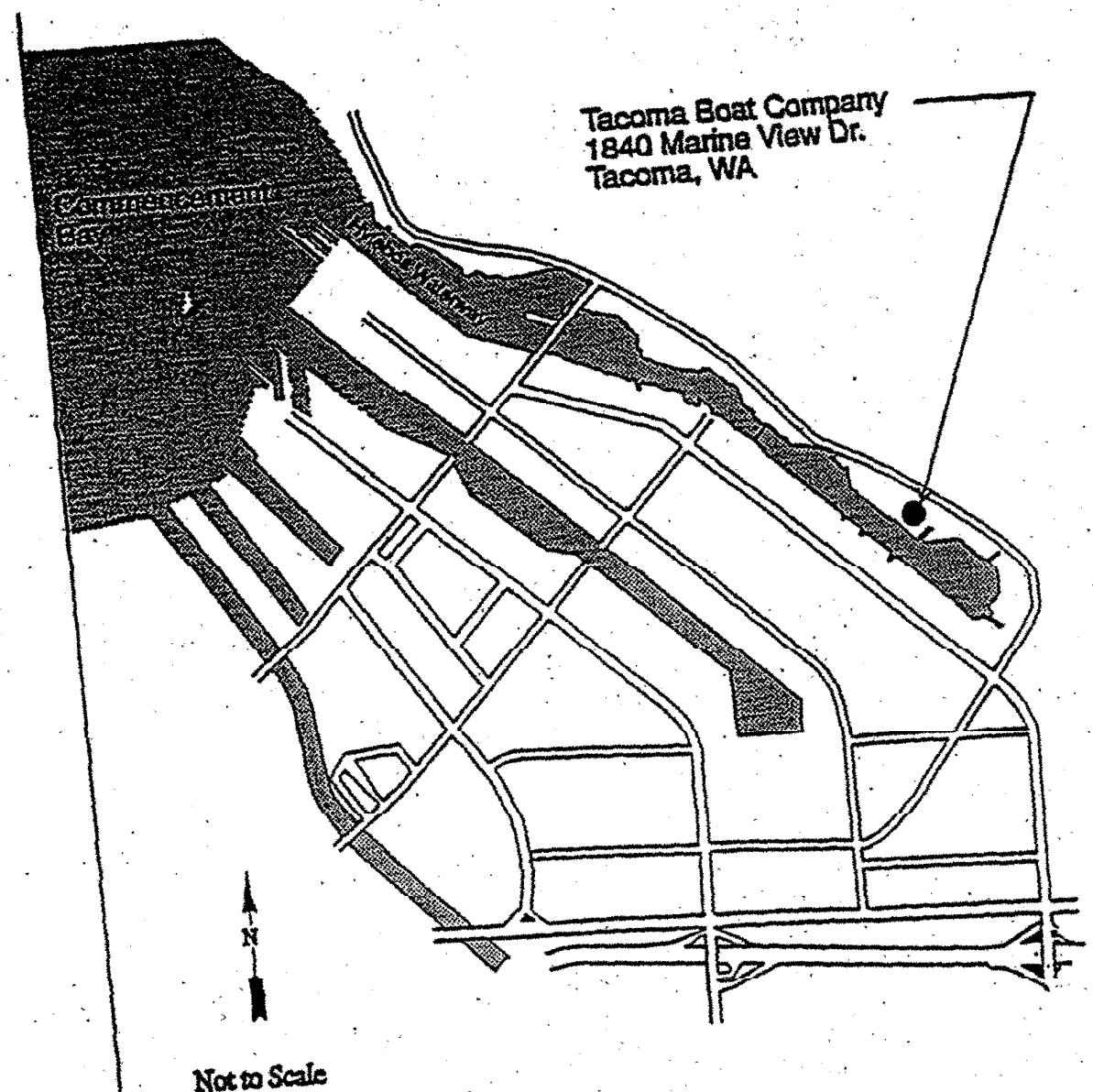
Title

EXHIBIT 1

LEGAL DESCRIPTION

Commencing at a brass monument at the Northwest corner of the Southwest quarter of the Northeast quarter of Section 36, Township 21 North, Range 3 East of the Willamette Meridian; thence on a bearing of South 88°59'24" East along the North line of said Southwest quarter of the Northeast quarter of Section 36 for a distance of 220.10 feet to a point on the Southwesterly right of way line of Marine View Drive, (sometimes called Hylebos Access Road); thence on an angle to the right of 33°55'56" on a bearing of South 55°03'28" East following said right of way line for a distance of 43.70 feet to the true point of beginning for this description; thence continuing along said right of way line a distance of 119.21 feet to the point of curvature of a curve to the left having a radius on the right of way line of 5779.58 feet; then along the arc of said curve to the left a distance of 310.24 feet to the point of tangency of said curve; then on a bearing of South 58°08'00" East a distance of 392.62 feet to a point; thence on an angle to the right of 99°52'25" on a bearing of South 41°44'25" West a distance of 1092.30 feet to a point on the Northeasterly Pierhead Line of Hylebos Waterway; thence on an angle to the right of 90°00'00" on a bearing of North 48°15'35" West a distance of 812.10 feet to a point; then on an angle to the right of 90°00'00" on a bearing of North 41°44'25" East a distance of 965.83 feet to the true point of beginning, in Pierce County, Washington.

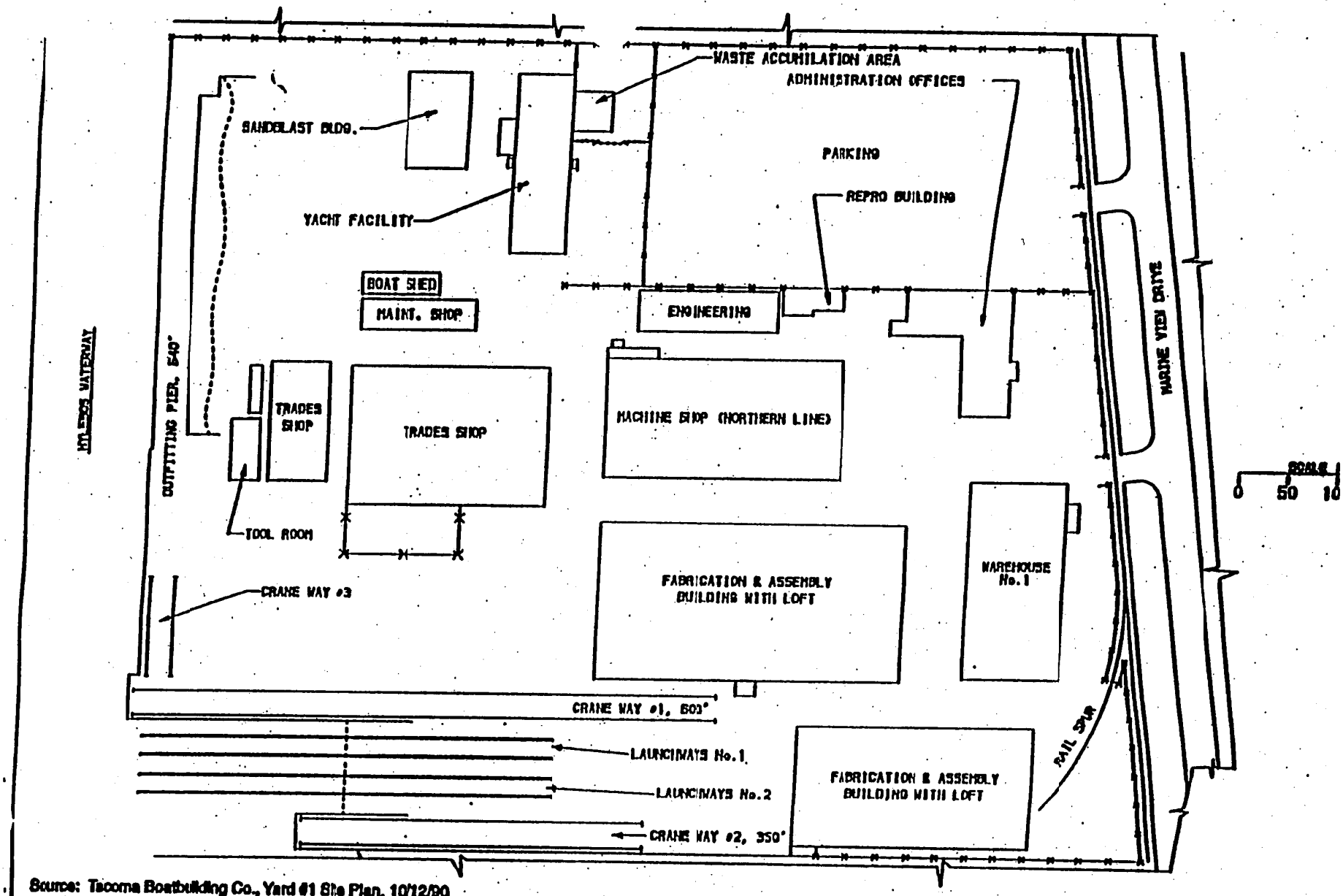
EXHIBIT 2



Tacoma Boat
ACET-001
10/22/97

Figure 1
Vicinity Map

Dalton, Olmsted & Fuglevand, Inc.



Source: Tacoma Boatbuilding Co., Yard #1 Site Plan, 10/12/90

Tacoma Boat
ACET-001
10/22/97

Fig
Site

EXHIBIT 3

RECEIVED
APR 20 1998
OFFICE OF REGIONAL COUNSEL
EPA - REGION X

DRAFT CLEANUP ACTION PLAN
TACOMA BOATBUILDING SITE

1.0 INTRODUCTION

This Cleanup Action Plan (CAP) is provided to describe the proposed remediation at the Tacoma Boatbuilding Company (property/site) located at the head of Hylebos Waterway at 1840 Marine View Drive, Tacoma, Washington (property). It has been prepared to satisfy the requirements of the Model Toxics Control Act (MTCA), Chapter 173-340 Washington Administrative Code (WAC). The purposes of this CAP are to:

1. Describe the property, including a summary of the history and extent of contamination known to exist on and off-shore from the property;

2. Identify the site-specific cleanup standards; and

3. Identify the remedial actions to be conducted at the property.

Ace Tank and Equipment Company (Ace Tank) is in the process of assuming ownership of the property per bankruptcy proceedings. The Department of Ecology (Ecology) and the state Attorney General's Office are in the process of preparing a prospective purchaser consent decree for property cleanup. The United States Environmental Protection Agency (EPA) is also in the process of arriving at a settlement with Ace Tank for intertidal and subtidal cleanup. The remedial actions proposed for this property in the upland area and bank are under Ecology purview. The proposed remedial actions for intertidal and subtidal remediation are under joint Ecology and EPA purview.

Ace Tank plans to demolish certain buildings and structures and then build and operate a tank manufacturing business on the property.

2.0 PROPERTY DESCRIPTION

The 19-acre property, roughly 800 feet wide and 1,000 feet deep, is bordered by the Hylebos Waterway to the southwest, Manke Lumber to the southeast, General Metals of Tacoma to the northwest, and Marine View Drive to the northeast. The property location is shown on the vicinity map, Figure 1.

Aerial photographs and related historical records indicate that the site was undeveloped pasture through the late 1960s. Tacoma Boat Company (Tacoma Boat) has operated at the site, 1840 Marine View Drive, since 1970. By the early 1970s, site buildings reached their current configuration and the site was paved. At that time, the timber pier located immediately southwest of the Launching Way was also constructed. The main concrete portion of the outfitting pier was constructed in the early 1980s.

Tacoma Boat designed, built, and repaired high performance ships for commercial and government customers. Property activities included welding, metal cutting and cleaning, machining

sandblasting, painting, carpentry, and pipefitting. The site is no longer used for ship construction because Tacoma Boat is currently in bankruptcy.

The site is generally flat, graded for drainage to catch basins, which drain to the Hylebos Waterway. The Hylebos Waterway side of the property includes both shoreline and offshore property. For the purpose of the CAP, the property is subdivided into several areas of similar elevation and use characteristics. Each is described below and shown on the Site Plan, Figure 2 or the Shoreline Site Plan, Figure 3. The evaluation definitions for this CAP are as follows:

MLLIW: Definition of zero foot tidal elevation, based on mean lower low water level.

Upland: The generally flat portion of the property behind the shoreline. Upland elevations are typically at and above elevation. +17 feet MLLW.

Bank: The shoreline portion of the property which is above the ordinary high water level (+12 feet MLLW) and adjacent to the upland.

Intertidal: The shoreline portion of the property between elevation 0 feet MLLW and +12 feet MLLW.

Subtidal: The offshore portion of the property, which is below elevation 0 feet MLLW.

Paved Upland Area: With the exception of the bank area described below, the upland at the site is fully paved or under building cover. The paved upland area is surfaced with asphalt concrete or Portland cement concrete. Areas under building cover are not counted as part of the paved upland area of the property.

Unpaved Bank Area: The unpaved bank area is located adjacent to the shoreline and open intertidal slope of the Hylebos Waterway. As shown on Figure 3, the area is approximately 25 feet wide and 335 feet long.

Piers and Docks: The Outfitting Pier, approximately 680 feet long, extends along most of the Tacoma Boat property along the Hylebos shoreline, with the exception of the Launching Ways at the south-end. The southern 285 feet and northern 60 feet of the Outfitting Pier is continuous to the upland and covers the intertidal area. The Outfitting Pier is separated from the upland by a 50-foot wide-open intertidal area adjacent to the 335-foot long Upland Bank Area.

Intertidal Open Area: Roughly half of the intertidal shoreline of the Tacoma Boat property is covered by piers and docks. The two open intertidal areas are the launching ways (discussed below) and an intertidal open area located adjacent to the Unpaved Bank Area of the Tacoma Boat shoreline. This intertidal open area is approximately 35 to 50 feet wide and 335 feet long. It is bounded to the east by the Unpaved Bank Area described above, and to the west by the Outfitting Pier which parallels the shoreline. The elevation of the intertidal slope at the face of the Outfitting Pier is approximately 0 feet MLLW. The intertidal open area is sloped at approximately 2-1/2:1 horizontal to vertical.

Launching Way: The Launching Way is located at the southern boundary of the property and consists of a 50-foot wide marine railway constructed on timber ties, which are supported on piles. The top of the timber ties are located at about the existing mudline. A timber beam, approximately 15 inches thick, spans from tie to tie to support each rail. The marine railway is bounded on each side by a 25-foot wide strip of intertidal sediment (Side Area). These side areas are then bounded by timber piers that parallel the marine railway. The Launching Way is sloped at approximately 20:1 horizontal to vertical.

Subtidal Area: The Subtidal Areas are defined for this Cleanup Action Plan as below elevation 0 feet MLLW. This elevation was selected because it also represents the boundary between the Intertidal Open Area and the Outfitting Pier. Along the Hylebos shoreline, approximately half of the subtidal area is covered by the Outfitting Pier. The Subtidal Area is open outboard of the Outfitting Pier and also in the Launching Ways.

3.0 SITE CHARACTERIZATION

Ace Tank retained a consultant in 1996 to perform a focused remedial investigation/feasibility study at the upland, intertidal, and subtidal areas of the property. The scope of the remedial investigation was designed to determine (1) the extent and characteristics of sandblast grit present in the upland, intertidal, and subtidal areas; and (2) the nature and extent of soil and groundwater contamination in the upland areas of the property. The investigation also evaluated remediation, cleanup, and restoration alternatives for each area of the property.

The focused remedial investigation/feasibility study was completed in November 1996. The results are reported in the Tacoma Boat Data Package (the Report), dated November 22, 1996, and are summarized below:

3.1 *Site Geology and Groundwater Occurrence*

The Tacoma Boat site and vicinity are underlain by native tideflat and alluvial sands and silts associated with the ancestral Puyallup River delta system. Based on subsurface sampling data obtained during the 1996 site investigation and review of earlier site investigations, the upper 5 to 10 feet of the upland soils at the site consists of fill material derived from these native tideflat and alluvial materials. Comparison of historical aerial photographs indicates that additional fill was placed along the bank edge in the 1960s to extend the upland portion of the property an additional 50 feet. Site test pit explorations completed in 1996 indicate that this fill material is dominantly sand with lesser silt, gravel, and a few larger cobbles. According to former Tacoma Boat personnel, there is no record of the use of Asarco slag for site fill.

The unconfined groundwater table occurs at depths ranging from about 5 to 7 feet below the upland ground surface at the site. A higher water table may be present during periods of wet weather. Local tidal-related seeps form in the bank area during low tide. Groundwater flow is inferred to be southwesterly toward the waterway, but no permanent monitoring wells are installed at the site. There are no known consumptive uses of shallow groundwater in the vicinity of the site.

3.2 *Sandblast Grit Depositions and SQO Exceedances*

Spent sandblast grit at the site has the physical appearance of black medium-grained sand. The Report showed that sandblast grit is present at the upland and is found mixed with sediment in the intertidal and submerged portions of the property. The Report shows the thickness of sandblast grit in the upland area, and the thickness of sediment containing sandblast grit in the intertidal and subtidal areas of the property. The Report presents estimated volumes of sandblast grit in the upland area and the volume of sediment containing sandblast grit in the intertidal and subtidal areas. The report presents the results of metals analyzed in sandblast grit and sediment containing sandblast grit. The metals which exceeded the Commencement Bay Nearshore/Tideflats (CBN/T) Superfund Record of Decision (ROD) Sediment Quality Objectives (SQOs) are arsenic, copper, and zinc. SQOs pertaining to the site are listed in Table 1. Tributyl tin (TBT) was not found in excess of the CBN/T screening level of 19.25 mg/kg organic carbon normalized. The Report findings are summarized below by area of the site:

Unpaved Bank Area: Sandblast grit ranges in thickness from a ½-foot to 3 feet in the unpaved bank area. The Report estimates in-place volume of sandblast grit at about 500 cubic yards, and the excavation volume at about 1,100 cubic yards.

Intertidal Open Area: Sediment containing sandblast grit in the Intertidal Open Area ranges in thickness from a ½-foot to 2 feet. Directly beneath the sandblast grit, the sediment is much cleaner. It appears that erosion of sandblast grit from the upland bank area has been the primary source of the sandblast grit found in the Intertidal Open Area. One surface sample of sediment containing sandblast grit at 0-0.25 feet disclosed arsenic (200 mg/kg), copper (690 mg/kg), and zinc (1,000 mg/kg) at concentrations above the SQOs. Directly beneath the tested sandblast grit sediment, the sediment samples showed no SQO exceedances at 0.25-0.5 feet. The Report estimated the in-place volume of sediment containing sandblast grit to be about 500 cubic yards, and the excavation volume of up to about 1,100 cubic yards.

Intertidal Under Dock: The Report provides a measurement of the thickness of intertidal sediment containing sandblast grit under the dock. It ranged from 0.1 feet to 0.4 feet and averaged about a ¼-foot thick. The intertidal sediment containing sandblast grit is considerably thinner under the dock as compared to the open area because the presence of the docks seems to limit the release of sandblast grit to intertidal areas from upland areas. The Report estimated the in-place volume of intertidal sediment under docks containing sandblast grit to be about 100 cubic yards, and the excavation volume of up to about 400 cubic yards.

Launching Way: Sediment between the timber ties of the marine railway, including the sediment in the side areas, contain varying concentrations of sandblast grit. Limited sampling at the edge of the side areas, next to the piers, showed three stations with about ½-foot to 1-foot of sediment containing sandblast grit, and a fourth station with 2.5 feet of sediment with sandblast grit. One surface sample of sediment containing sandblast grit at 0-0.8 feet disclosed arsenic (240 mg/kg), copper (1,400 mg/kg), and zinc (1,200 mg/kg) at concentrations above the SQOs. Directly beneath the tested sandblast grit sediment, the

sediment samples showed no SQO exceedences at 0.8-1.3 feet. The Report estimated the in-place volume of intertidal sediment containing sandblast grit to be about 100 cubic yards between the rails and 450 cubic yards in the side areas, and the excavation volume of up to about 150 cubic yards between the rails and 1,000 cubic yards in the side areas.

Subtidal: The subtidal areas were characterized in the Report through collection of three sediment cores along the outside face of the Outfitting Pier. The thickness of sediment containing sandblast grit ranged from 1.5 to 2.5 feet. One subtidal surface sample of sediment containing sandblast grit had no exceedences of the SQOs at 0-2.5 feet. Two surface samples of sediment containing sandblast grit at 0-0.8 feet and at 0-0.9 feet disclosed arsenic 120-140 mg/kg), copper (450-460 mg/kg), and zinc (700-930 mg/kg) at concentrations above the SQOs. Two subtidal sediment samples taken from 2 to 3 feet below the surface showed no metals exceeding the SQOs. One subtidal sediment sample taken from 2 to 3 feet disclosed arsenic (160 mg/kg), copper (500 mg/kg), and zinc (600 mg/kg) at concentrations above the SQOs. The Report estimated the in-place volume of subtidal sediment containing sandblast grit to be about 800 cubic yards in the open areas and 1,800 cubic yards under piers and docks. The report estimated the excavation volumes to be up to about 2,000 cubic yards in the open areas and 2,300 cubic yards in the side areas.

TCLP leachability testing of the sandblast grit indicates the material would not fail leachability and aquatic toxicity criteria under the Washington State Dangerous Waste Regulations (RCW 173-303).

3.3 *Upland Soil and Groundwater*

Four upland soil samples and four groundwater samples were analyzed and included in the Report. The analyses included metals, low and high molecular weight polycyclic aromatic hydrocarbons (LPAHs and HPAHs), phthalates, volatile organics, polychlorinated biphenyls (PCBs), and total petroleum hydrocarbons (TPH). Dissolved arsenic was detected in two of the four Strataprobe groundwater samples. Tetrachloroethylene was detected in one Strataprobe groundwater sample collected near the Maintenance Shop. Gasoline- and Diesel-range hydrocarbons were detected in groundwater from the Strataprobe location near the former underground storage tank near Marine View Drive entrance to the property. Soil samples in the same location were non-detect for petroleum. This fact plus the facts that the tank has been removed, the aquifer is not potable and the site is paved lead Ecology to conclude that the TPH does not pose a threat to human health or the environment.

Although the Remedial Investigation and Feasibility Study was focused, Ecology has determined that the RI/FS is the substantial equivalent to the requirements in WAC 173-340-350 and that the existing information is sufficient to:

A. Provide environmental site characterization; and

B. Provide sufficient evaluation of remediation alternatives such that an effective remedy, in compliance with MTCA, can be selected.

4.0 Summary and Selection of Remedial Alternatives

The MTCA requires at a minimum that all cleanup actions protect human health and the environment, comply with cleanup standards, comply with applicable state and federal laws, and provide for compliance monitoring. In addition, all cleanup actions must consider implementation time, cost effectiveness, permanent solutions, and resource recovery technologies to the maximum extent practicable.

Three potential remediation alternatives were screened and evaluated in the focused FS process to select the most effective, implementable, and cost-effective alternative. A brief description of each alternative is provided below:

4.1 *Summary of Remedial Alternatives*

Alternative 1

a. Removal and disposal of upland sandblast grit.

b. Excavation and disposal of bank sandblast grit. Backfill to original grade with clean fill.

c. Capping of intertidal sediments:

i. Capping with clean sediments and armoring with rip-rap of open intertidal areas (i.e., areas not under docks). Total cap thickness of 3 ft. minimum.

ii. Thin layer capping (6 inches minimum) of intertidal sediments beneath docks, launching ways and side areas.

Alternative 2

a. Removal and disposal of upland sandblast grit.

b. Excavation and disposal of bank sandblast grit. Backfill to original grade with clean fill.

c. Excavation and disposal of intertidal sediments by the U.S. Environmental Protection Agency as part of the Hylebos Waterway cleanup of the Commencement Bay Nearshore/Tideflats Superfund site. Ace Tank would provide a cash settlement to EPA to perform this cleanup.

Intertidal cleanup would occur whenever EPA conducts the Hylebos Waterway cleanup.

Alternative 3

a. Removal and disposal of upland sandblast grit, and

b. Excavation and disposal of bank sandblast grit. Backfill to original grade with clean fill, and

c. Excavation and disposal of sandblast grit from the intertidal open areas (i.e., not under docks) and from the marine launchway area, all by Ace Tank. Areas excavated will be backfilled, if necessary, to maintain the existing slope and a continuous smooth surface.

Note: All three options include differing amounts of additional cash payments by Ace Tank to EPA and Natural Resources Trustees (state and federal). Some or all of any additional cash settlements paid by Ace Tank to EPA may possibly be applied to cleanup of the site beyond the requirements of the remedial action alternatives.

4.2 *Selection Of The Proposed Remedial Alternative*

The following process of elimination was used to arrive at Ecology's proposed remedial alternative:

Alternative 1 was not chosen because this option entails containment (capping), which is not considered as permanent a solution as the other two alternatives.

Alternative 2 was not considered as favorably as Alternative 3 since the timeframe for completion of the work in Alternative 2 as well as any design details are as yet unknown, and subject to delay as part of the overall Hylebos Waterway cleanup.

Alternative 3 is the favored and proposed remedial alternative, since it results in removal of the most highly contaminated sediments in the shortest and most controlled timeframe. Although alternative 3 does not include excavation of sediments underneath the docks and may not include excavation of sediments in the deeper intertidal launchway area, these areas will be evaluated for further remediation by EPA in the forthcoming Hylebos Waterway cleanup and possibly in other EPA/Ace Tank settlements.

5.0 CLEANUP STANDARDS

5.1 *Cleanup Action Objectives*

The cleanup action for the property must achieve the following three objectives:

The cleanup action for the property must achieve the following three objectives:

1. **Upland source control of sandblast grit:** Prevent erosion and leaching of existing sandblast grit from the upland portions of the property to the marine environment;

2. **Remediation and restoration of intertidal sediment:** Restore surficial intertidal sediments adjacent to the property to a condition which ensures no adverse effect to the marine environment; and

3. **Sediments underneath docks and in subtidal areas:** No remedial action for these areas have been included in this CAP. EPA will consider these areas for possible remediation as part of the overall Hylebos Waterway Superfund Cleanup.

5.2 *Proposed Cleanup Levels for Intertidal and Upland Areas*

Upland Paved Areas: The objective of upland cleanup is to remove sandblast grit that could migrate or erode to the marine environment from paved areas. The confirmation that sandblast grit removal is complete will be based on a visual absence of accumulated sandblast grit to the standard of normal parking lot maintenance.

Upland Bank and Intertidal Areas: The objective in the upland bank area is to remove sandblast grit from an unpaved area that could erode to the marine environment. Because the upland bank is located immediately adjacent to the marine environment, the chemical cleanup levels are set by the chemical Sediment Quality Objectives (SQOs) in the Commencement Bay Record of Decision (USEPA 1989) (ROD). The Hylebos SQOs are legally applicable requirements per WAC 173-340-710. The SOQs are lower (more stringent) than MTCA Method A Industrial Soil Cleanup Standards listed in WAC 173-340-745, thus they are applicable for soils adjacent to, and sloping toward, salt water bodies such as the Hylebos Waterway. The cleanup level for the intertidal cleanup areas is also set by the chemical SQOs in the Commencement Bay ROD. The cleanup levels based on the CBN/T ROD SQO chemical concentrations for arsenic, zinc, copper, antimony, and lead are summarized in Table 1 below.

Table 1: Proposed Soil/Sediment Cleanup Levels for Tacoma Boat property

Parameter	Cleanup Level mg/kg
Arsenic	57
Antimony	150
Copper	390
Lead	450
Zinc	410

6.0 PROPOSED REMEDIAL ACTION

The remedial action includes two basic components:

Upland Removal: Removal and disposal of upland sandblast grit from the upland areas of the property.

Intertidal Removal: Removal and disposal of sediment containing sandblast grit from open intertidal areas of the property, including launchway area.

In general, cleanup activities shall be conducted such that no petroleum products or other deleterious materials enter surface waters and such that surface waters are not otherwise degraded.

6.1 *Upland Removal of Sandblast Grit and Other Actions*

Solid Materials and Debris: A large quantity of wood, metal, hoses, equipment and machinery, and other solid materials and debris remain at the property from previous yard operations. These materials need to be relocated and/or disposed of off-site to allow for pavement sweeping to be completed. Similar types of materials are currently being placed together on pallets or otherwise staged for load-out. Site personnel have completed much of this task as a means to inventory estimated quantities and to evaluate shipment, recycling, and disposal alternatives. Materials which can be reused for anticipated future Ace Tank operations are being segregated and moved into permanent storage areas. The unusable collected materials will be recycled and/or disposed of off-site in accordance with state, federal, and local laws and regulations.

Upland Paved Areas: Sandblast grit that has accumulated on upland paved areas of the site, including the concrete apron of the marine railway, shall be collected by sweeping. Sweeping will be completed with conventional pavement sweeping equipment and hand brooms. Yard debris and other inventory stored on site shall be moved to allow sweeping of the entire upland paved area. After sweeping of each sub-area of the site is complete, and prior to movement of stored materials back onto the area, Ecology will be notified to observe the area for compliance with the visual removal criteria and to determine if additional removal is required. Since it is anticipated that yard sweeping will required shifting of yard inventory from one sub-area of the yard to another, Ecology will attempt to coordinate site visits so as to not unreasonably impede the cleanup.

An investigation will be completed within two weeks following the upland paved area cleanup to determine if sandblast grit has accumulated in the storm drains where sandblast grit has been stored since the last time the system was cleaned. Storm drains shown from the investigation to contain sandblast grit at levels of concern to Ecology , will be cleaned out using conventional methods within one month from the date of the investigation.

Upland Bank Area: Sandblast grit and soil containing sandblast grit from the Upland Bank Area, shown on Figure 3, shall be excavated and disposed or recycled in conformance with all applicable local, state and federal laws and regulations. Excavation

will be complete when soil is reached that meets the cleanup level (chemical SQOs, Table 1). Excavation depths are estimated to be up to 3 feet. The excavation will be completed with conventional earth-work equipment such as a backhoe or track excavator and dump truck. After excavations are completed, confirmation samples will be obtained as outlined in the Confirmation Sampling Plan (to be submitted to Ecology for approval prior to initiation of upland bank cleanup). As excavation areas are cleared, and approved by Ecology as having complied with site cleanup level requirements, a sand or sand/gravel backfill, free of contamination, will be placed in the excavated areas and compacted to match original site grades.

Storage and Disposal: Collected materials which contain sandblast grit will be placed in a covered stockpile(s), or stored under building cover, so as not to be eroded by rainfall or stormwater. The collected material will be tested and recycled and/or disposed of off-site in accordance with state, federal, and local laws and regulations. Ace Tank must notify Ecology of the recycling/disposal options(s) chosen prior to off-site transport. Ace Tank must receive written approval from Ecology prior to off-site transportation of excavated materials.

6.2 *Excavation of Intertidal Open Areas*

Sandblast grit, sediment containing sandblast grit, and other manmade debris will be excavated from the Intertidal Open Area, which is adjacent to the Upland Bank Area (Figure 3). The area is bounded to the side by the Outfitting Pier, toward the upland by the Upland Bank Area, and toward the water by the 0 foot MLLW contour and the face of the Outfitting Pier.

The sediment containing sandblast grit is generally sandy, while the underlying native clean sediment is generally fine-grained silt. The visual difference between the sandblast sediment and the native sediment will be the preliminary basis for establishing the depth of excavation. The depth of excavation will be verified with sampling and chemical analysis of the bottom of the excavation. Excavation will be complete when sediment is reached that meets the cleanup levels (chemical SQOs, Table 1). Sediment sampling in the intertidal open area indicates the depth of clean sediment ranges from ½ of a foot to 2 feet. Excavation depths are estimated to be a maximum of 3 feet.

The excavation will be completed with conventional earth-work equipment such as a backhoe or track excavator and dump truck. Excavation of intertidal areas shall not occur from March 15 through June 14 to protect migrating juvenile salmonids. In order to minimize erosion, excavation will not occur from areas inundated by tidal waters, and the teeth of the excavator bucket will be covered with a continuous steel plate to effect a relatively smooth excavation face, reducing the disturbance to the native subgrade. After excavations are completed, confirmation samples will be obtained as outlined in the Performance Monitoring Plan (to be submitted to Ecology for approval prior to initiation of cleanup).

The final slope configurations shall be similar to the slope configurations existing prior to excavation, and shall be left as a smooth, continuous surface and not contain depressions

that would result in entrapment of juvenile salmonids or other fish. Backfilling of depressions, if necessacary to achieve the desired slope configuration, will be completed with imported sand or sand and gravel mixture.. Existing bed material in the intertidal area will not be utilized for project construction or fill.

If a fish kill occurs or fish are observed in distress, the project activity will immediately cease and the Washington Department of Fish and Wildlife will be immediately notified.

Excavated sediment will be delivered to a transfer station for transportation to the Roosevelt Regional Landfill in Klickitat County. Excavated sediment will not be stockpiled on the beach, but may initially be placed in a covered stockpile(s), or stored under building cover, so as not to be eroded by rainfall or stormwater, depending on availability of hauling equipment. The collected material will be tested and disposed of off-site in accordance with state, federal, and local laws and regulations.

The metal slag pile located at the southern end of the intertidal open area will also be removed from the slope. The slag material will be tested and recycled and/or disposed of off-site in accordance with state, federal, and local laws and regulations. Ace Tank must notify Ecology of the recycling/disposal options chosen before off-site transport. Ace Tank must receive written approval from Ecology prior to off-site transport of excavated materials.

6.3 *Excavation of Launching Area*

Sandblast grit, sediment containing sandblast grit, and other manmade debris will be excavated in the Launching Area down to the +4 MLLW shown on Figure 3. The area is bounded to the side by the crane way piers, toward the upland by the concrete apron of the launching way, and toward the water by the +4 feet MLLW contour and the end of the crane way.

The sediment containing sandblast grit is generally fine grained, much like the native clean sediment. However, the sandblast containing sediment is softer than the underlying native sediment because of the relatively recent deposition (last 20 years) of the sandblast containing sediment. The difference in density between the sandblast sediment and the native sediment will be utilized in estimating the depth of excavation, as will sediment sampling and analysis. Excavation will be complete when sediment is reached that meets the cleanup levels (see Table 1). Sediment sampling in the Launching Area indicated the sediment varies from a ½ of a foot at three stations to 2.5 feet at a fourth station. Excavation depths are estimated to be a maximum of 3 feet and an average of 1 ½ feet.

The excavation will be advanced with conventional earth-work equipment such as a backhoe or track excavator and dump truck, and shall include the use of hand tools as needed in hard to reach areas near the tracks. Excavation of intertidal areas, such as the launchway, shall not occur from March 15 through June14 to protect migrating juvenile salmonids.In order to minimize erosion, excavation will not occur from areas inundated by tidal waters, and the teeth of the excavator bucket will be covered with a continuous steel plate to effect a relatively smooth excavation face, reducing the disturbance to the native

subgrade. After excavations are completed, confirmation samples will be obtained as outlined in the Performance Monitoring Plan (to be submitted to Ecology for approval prior to initiation of cleanup).

The final slope configurations shall be similar to the slope configurations existing prior to excavation, and shall be left as a smooth, continuous surface and not contain depressions that would result in entrapment of juvenile salmonids or other fish. Backfilling of depressions, if necessacary to achieve the desired slope configuration, will be completed with imported sand or sand and gravel mixture.. Existing bed material in the intertidal area will not be utilized for project construction or fill.

If a fish kill occurs or fish are observed in distress, the project activity will immediately cease and the Washington Department of Fish and Wildlife will be immediately notified.

Excavated sediment will be delivered to a transfer station for transportation to the Roosevelt Regional Landfill in Klickitat County. Excavated sediment will not be stockpiled on the beach, but may initially be placed in a covered stockpile(s), or stored under building cover, so as not to be eroded by rainfall or stormwater, depending on availability of hauling equipment. The collected material will be tested and disposed of off-site in accordance with state, federal, and local laws and regulations.

6.4 *Optional Launching Area Excavation*

The terms of the Prospective Purchaser Consent Decree for the Tacoma Boat Property provides for additional active remediation through excavation in the lower reaches of the launching area (+4 to ∅ feet MLLW), provided that funds remain in the estimated project budget (see Section 6.7 below) following completion of the other required remedial actions on the property.

Sandblast grit and sediment containing sandblast grit would be excavated from the Optional Launching Area Excavation from +4 to ∅ feet MLLW, shown on Figure 3. The area is bounded to the northwest by the crane way, to the southeast by the property line, toward the upland by the Launching Area Excavation, and toward the water by the 0 feet MLLW contour. The methods of excavation and disposal as well as the methods of determining and confirming the depth of excavation would be consistent with those described above for the Launching Area Excavation.

6.5 *Repair of Outfalls*

A 12-inch diameter concrete stormwater outfall is located within the Intertidal Open Area excavation. It would be removed prior to excavation and then replaced with a similar pipe extended to below 0 foot MLLW on the slope.

6.6 *Sequencing and Schedule of Cleanup*

Because upland deposits of sandblast grit are acting as a source to the intertidal areas, the upland cleanup will be completed prior to initiating the intertidal excavation.

Upland cleanup of paved areas and the bank area will completed within 150 days of Ace Tank's purchase of the property and prior to initiating the intertidal cleanup.

Excavation at the Intertidal Open Area and Launching Way will occur during daylight periods of low tide so the work can be completed and observed prior to inundation by the tide. Daylight low tides reaching 0 feet MLLW or lower typically occur during late March to September. Since intertidal work is prohibited from March 15 through June 14 for protection of migrating juvenile salmonids, the intertidal work is scheduled to commence between June 14 and the end of September in the year immediately following the purchase of the property. Based on current purchase plans the work will be completed in 1998.

6.7 *Remediation Cost Estimate*

The estimated cost of implementing this work plan is as follows:

Task	Cost
Upland Paved Area	$131,000
Upland Bank Area	$126,000
Intertidal Open Slope Area	$225,000
Launching Area	$205,000
Contingency (15% upland, 18.5% intertidal)	$118,000
Remediation Subtotal	$805,000

Note : Ace Tank agrees to complete all remedial actions required in this CAP regardless of cost. The above cost estimate was provided for selection of the cleanup actions for the Tacoma Boat property as required in WAC 173-340-360, as well as demonstrating that Ace Tank would yield substantial new resources to facilitate cleanup of the Tacoma Boat property. Ace Tank also agrees that if the cost of the remedial actions required in this CAP is less Than $805,000, Ace Tank shall perform the Optional Launching Area Excavation such that Ace Tank's combined expenditures for the remedial actions required in this CAP and the Optional Launching Area Excavation total $870,000, unless the remedial actions required by this CAP and the Optional Launching Area Excavation can be completed for a lesser amount. Ace Tank also agrees that if the cost of the remedial actions required by this CAP equals or exceeds $805,000, Ace Tank shall spend $65,000 on the Optional Launching Area Excavation, unless the remedial actions required by this CAP and the Optional Launching Area Excavation can be completed for a lesser amount.

6.8 *Reporting*

The cleanup action will be documented in a report which will be submitted to Ecology within 120 days after the construction is completed. This report will include:

- Description of the cleanup actions.
- Description of the conditions encountered during upland bank area excavation.
- Site map showing bank and intertidal area excavations, depth of excavations, and results of confirmation sampling.
- Estimates of the quantities of soil and sediment excavated and of imported backfill.
- Documentation of shipment and proper disposal of all excavated soil/sediment.
- Summary of confirmational monitoring data.
- Demonstrations of attainment of cleanup levels.

7.0 Justifications for the Selected Remedial Action

The cleanup action, as proposed, is designed to accomplish the following requirements:

1. Protect human health and the environment.

2. Comply with cleanup standards per WAC 173-340-700 through 760.

3. Comply with applicable state and federal laws per WAC 173-340-710.

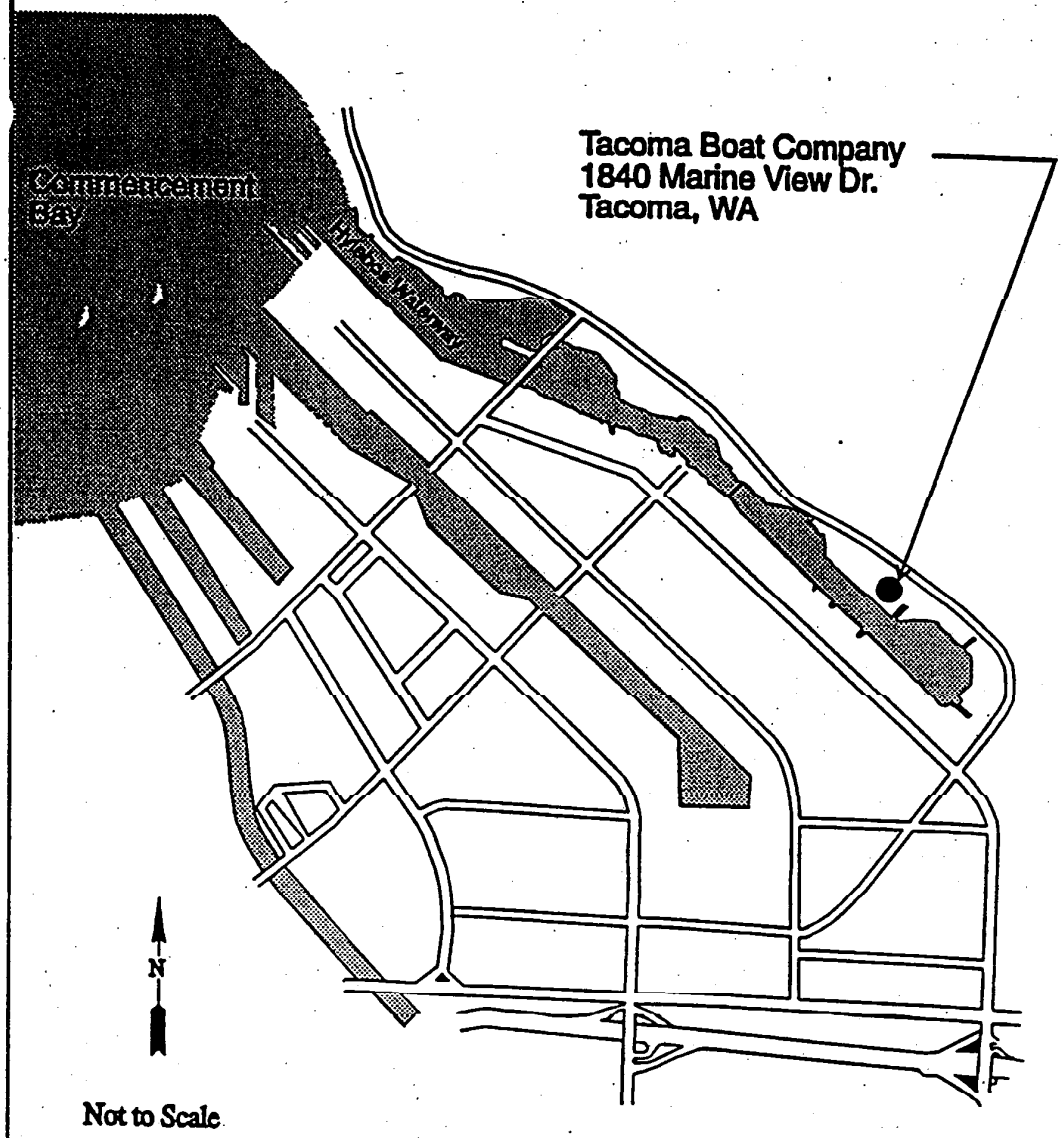
4. Provide compliance monitoring per WAC 173-340-410.

5. Use permanent solutions to the maximum extent practicable per WAC 173-340-360(4), (5), (7), and (8).

6. Consider public concerns, if any, raised during public comment on the draft cleanup action plan per 173-340-360(10) through (13). The public will be given the opportunity to comment during a 30-day public comment period. Ecology will consider all comments received and prepare a Responsiveness Summary. The Responsiveness Summary will list each comment received and Ecology's response to the comment

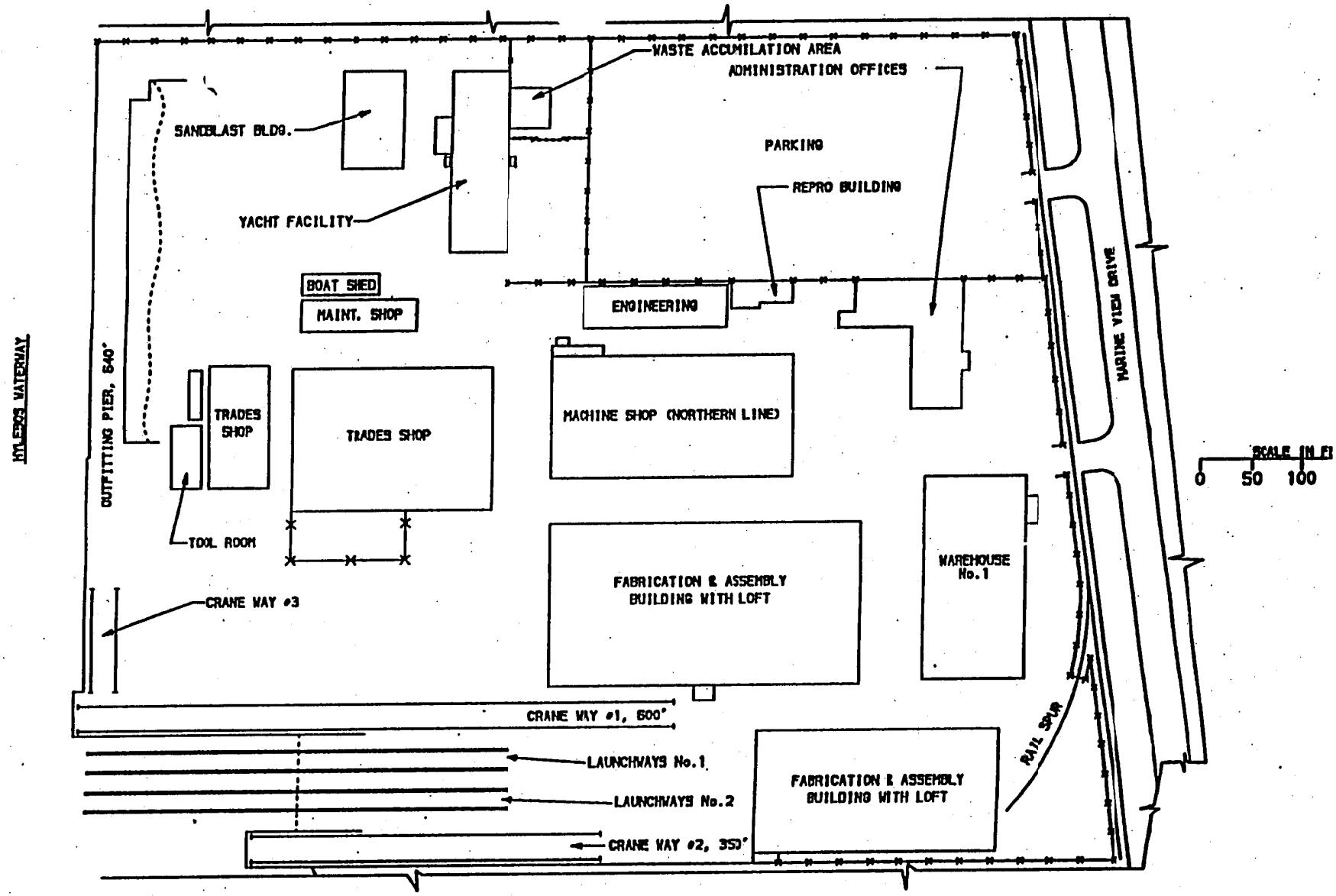
8.0 Schedule for Implementation/Upcoming Activities

Ecology and Ace Tank have negotiated a Prospective Purchaser Consent Decree for the cleanup of this property. The consent decree will be entered in court, to become effective upon acquisition of title to property by Ace Tank. Site remediation activities will take place per the schedule listed in the consent decree, Work to be Performed and Schedule section.



Tacoma Boat
ACET-001
10/22/97

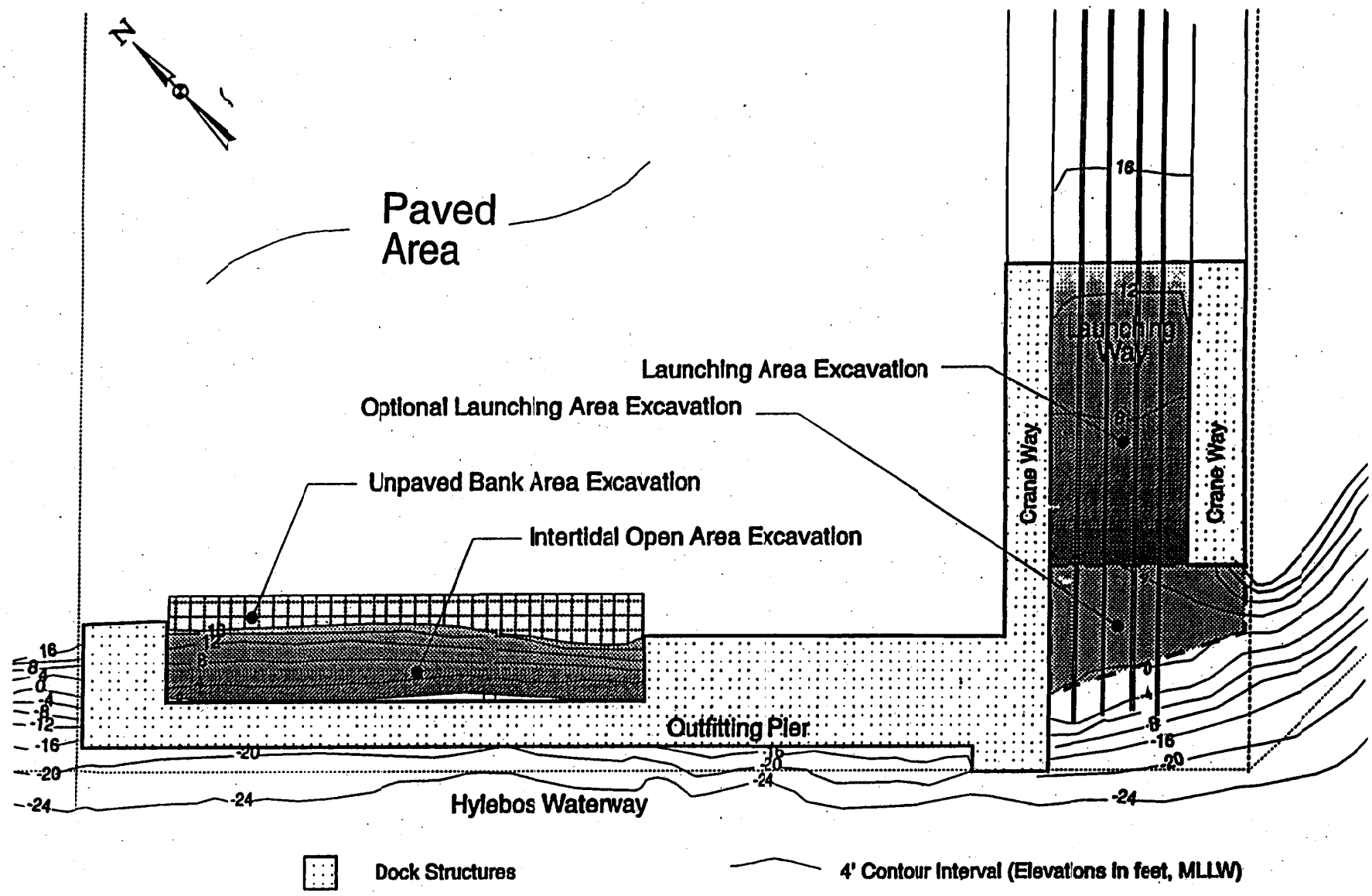
Figure 1
Vicinity Map
Dalton, Olmsted & Fuglevand, Inc.



Source: Tacoma Boatbuilding Co, Yard #1 Site Plan, 10/12/90

Tacoma Boat
ACET-001
10/22/97

Figu
Site I



Base Map from Figure 3-2c of Event 1A and 1B Data Report, Hylebos Waterway Pre-Remedial Design Program, Striplin Environmental, June 1996

Tacoma Boat
ACET-001
10/22/97

0 100 200
Scale in Feet

Figur
Shoreline Excavation P
Dalton, Olmsted & Fuglevan

EXHIBIT 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

IN THE MATTER OF: ACE TANK & EQUIPMENT COMPANY	)	[Docket Number]
UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601, et seq., as amended.	)	AGREEMENT AND COVENANT NOT TO SUE RE: ACE ACE TANK & EQUIPMENT COMPANY
	)	AGREEMENT OF SUCCESSORS IN INTEREST AND ASSIGNS

Pursuant to Section XII, Paragraph 61 of the attached Agreement and Covenant Not to Sue dated April 13, 1998 ("Agreement"), which is attached hereto and by this reference incorporated herein, the undersigned Successor in Interest and Assign hereby provides notice to the Environmental Protection Agency ("EPA") of its acquisition of a right, title or interest in the former Tacoma Boatbuilding Property, more fully described in the attached Agreement.

This undersigned Successor in Interest and Assign further agrees, as set forth in Paragraph 63 of the Agreement, to be bound by all applicable provisions of the Agreement including, but not limited to, the specific obligations set forth in Section VI (Access), Section VII (Due Care/Cooperation), and Section XII (Parties Bound/Transfer of Covenant).

The undersigned Successor in Interest and Assign by executing this agreement, hereby provides its certification to the statements and conditions contained in Section VIII of the attached

Agreement. This Agreement of Successors in Interest and Assigns shall be effective upon execution by EPA, the Federal and Tribal Natural Resource Trustees (as defined in the Agreement) and the undersigned Successor in Interest and Assign, and shall be binding in all respects upon such Successor in Interest and Assign.

It is understood and agreed by the undersigned Successor in Interest and Assigns that all the rights and benefits conferred upon Settling Respondent under the attached Agreement including, but not limited to, the covenant not to sue and contribution protection, shall not be effective until EPA and the Federal and Tribal Natural Resource Trustees provide their written consent below. Such consent shall be granted in their sole discretion in accordance with paragraph 61 of the Agreement.

APPROVED AND CONSENTED TO:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

_____ _____

Regional Administrator, Region 10 Date

IT IS SO AGREED BY THE UNDERSIGNED SUCCESSOR IN INTEREST AND ASSIGN:

_____

BY: _____

TITLE: _____

DATE: _____

ADDRESS: _____

_____

_____

APPROVED AND CONSENTED TO:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

_____ _____

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

APPROVED AND CONSENTED TO:

PUYALLUP TRIBE OF INDIANS

BY:

_____ _____

Name/Title Date

APPROVED AND CONSENTED TO:

MUCKLESHOOT INDIAN TRIBE

BY:

_____ _____

Name/Title Date