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Skagit County Auditor

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11 9:52AM

Document Title:

Approval of Conditional Point of Compliance, Former Scott Paper Mill Site Consent Decree

Reference Number :

Grantor(s):

☐ additional grantor names on page ____.

1. Northwest Educational Service District 189

2.

Grantee(s):

☐ additional grantee names on page ____.

1. Port of Anacortes

2.

Abbreviated legal description:

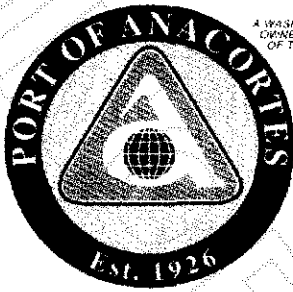
☐ full legal on page(s) ____.

Lct 2A Seafarers View

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____.

P 32 948



A WASHINGTON PUBLIC PORT
OWNED BY THE RESIDENTS
OF THE LOCAL COMMUNITY

FIRST AND COMMERCIAL AVENUE • P.O. BOX 297 • ANACORTES, WA 98221 USA
(360) 293-3134 • FAX (360) 293-9608 • WWW.PORTOFANACORTES.COM

July 17, 2006

Attn: Mr. Jerry Jenkins
Superintendent
Northwest Educational Service District 189
1601 R Ave
Anacortes, WA 98221

**Re: Request for Approval of Conditional Point of Compliance
Former Scott Paper Mill Site Consent Decree
Port of Anacortes, Anacortes, WA**

Dear Mr. Jenkins,

As you know, the Port of Anacortes (Port) is working with Kimberly-Clark Corporation and the Washington State Department of Ecology (Ecology) to address cleanup of the former Scott Paper Mill Site in Anacortes. Upland soils for Parcels 1 and 3 of the northern portion of the site are currently being investigated for contamination along with the groundwater for Parcels 1, 2 and 3 (Attachment 1). Parcel 2 upland soils were cleaned up in 1999 by Sun Healthcare Systems, Inc. (SHS) which bought the property from the Port. In the context of that transaction, the Port agreed to carry out any further cleanup measures that Ecology requires for Parcel 2. Later, SHS subdivided Parcel 2 into four separate lots and sold one of those lots to you.

On June 25, 2003 you entered into an Environmental Remediation Agreement (ERA) with the Port in order to ensure that cleanup obligations for your acquired portion of Parcel 2 clearly remain with the Port. The ERA defines the responsibilities of both the property owner and of the Port with respect to the investigation and cleanup of Parcel 2 soils and groundwater (Attachment 2). Although the Parcel 2 upland soils were cleaned up prior to your purchase of property from SHS, groundwater which runs beneath Parcel 2 is still under investigation as part of the overall cleanup work for the former Scott site.

Ecology and the Port are addressing groundwater at the site in a holistic fashion. That is, the Port and Kimberly-Clark are investigating groundwater under and adjacent to the entire site, and plan to propose cleanup measures as needed to address site groundwater across the entire Scott site. Part of this holistic approach is use of a "conditional point of compliance" close to the location where groundwater moves into Fidalgo Bay. The purpose of the point of compliance is to determine where at the site groundwater quality will be measured to ensure that aquatic life in Fidalgo Bay is protected. A shoreline location for these measurements makes sense, as it is close to the discharge of

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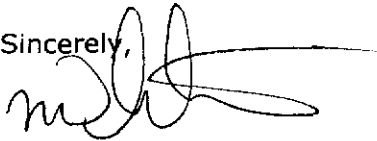
groundwater to surface water. However, because portions of the site are now owned by multiple parties, use of this point of compliance for cleanup, investigation and planning requires the site's property owners to agree in writing to the measurement of groundwater quality at a location other than each owner's property boundary.

The Port understands that you were not anticipating further agreements with respect to the Scott site cleanup, since the Port has taken on all responsibility for cleanup of historic contamination (such as groundwater issues) under the ERA. However, Ecology's cleanup regulations specify that property owners must expressly agree to use of a conditional point of compliance at a location other than the property boundary, since contamination is likely to move with groundwater throughout the site but compliance with groundwater standards will only be determined at the point of compliance. The Port has retained responsibility for groundwater cleanup for the entire site, including groundwater under your current property, but since the Port no longer owns the entire site, your agreement is necessary for the cleanup and investigations to move forward on their current course.

Please acknowledge your agreement to a groundwater conditional point of compliance in the shoreline area for Scott site by signing this letter in the space provided below. For your reference, a figure from the Port/Ecology Consent Decree is attached (Attachment 1) along with the Port/NWESD ERA signed on June 25, 2003. If you have any questions concerning the groundwater investigations and cleanup or any other issues related to the investigation and cleanup of the former Scott site, please do not hesitate to call me at (360) 299-1827.

We appreciate your continued cooperation with the Port in our efforts to address Scott Site contamination issues.

Sincerely,



PORT OF ANACORTES

Margaret Schwertner
Environmental Project Manager

Attachments: Attachment 1 - Consent Decree Site
Attachment 2 - Environmental Remediation Agreement

I agree to the use of a conditional point of compliance for Scott site groundwater as close to the groundwater/surface water interface is as technically practicable, as proposed by the Port.

By: David W. Jenkins

Its: Superintendent

Date: 8/1/06

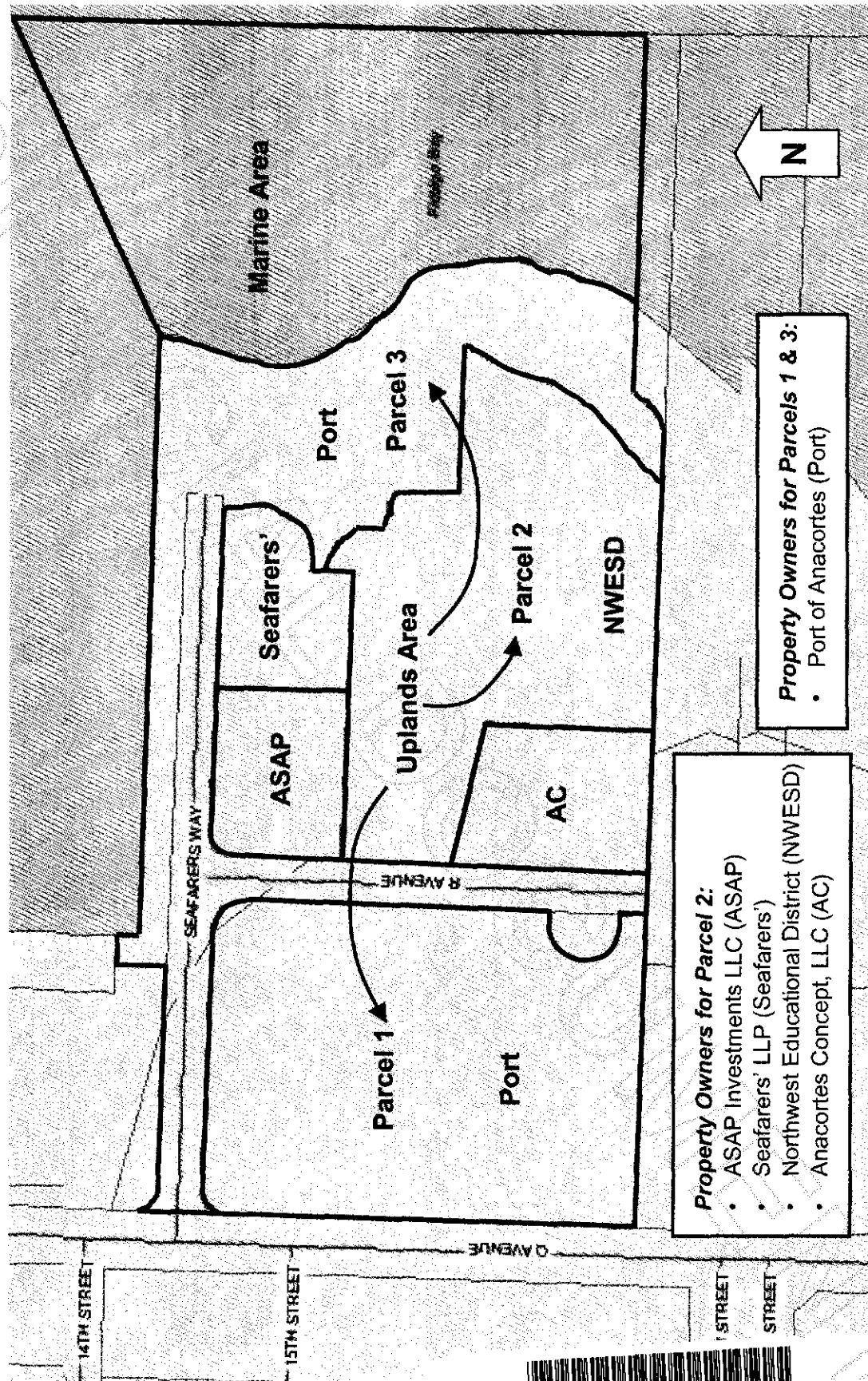
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Attachment 1 – Consent Decree Site



Property Owners for Parcel 2:

- ASAP Investments LLC (ASAP)
- Seafarers' LLP (Seafarers')
- Northwest Educational District (NWESD)
- Anacortes Concept, LLC (AC)

Property Owners for Parcels 1 & 3:

- Port of Anacortes (Port)



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Attachment 2 - ERA Between Port of Anacortes and NWESD

Environmental Remediation Agreement

This Environmental Remediation Agreement is entered into by and between the Port of Anacortes, a Washington municipal corporation ("Port") and Northwest Education Service District No. 189, a political subdivision of the State of Washington ("NWESD") on this 4th day of June, 2003.

The Port is the owner and former owner of certain parcels of land located in Anacortes, Skagit County, Washington, legally described as Lots 1, 2 and 3 of Short Plat No. ANA-98-003, recorded in the official records of Skagit County under Auditor's File No. 9902170072, along with some associated tidelands (the "Covered Property").

In March, 1999, the Port sold Lot 2 of the Covered Property (the "Sold Property") to Sun Healthcare Systems, Inc. now Shared Healthcare Systems, Inc. ("SHS"). SHS subsequently subdivided the Sold Property into four (4) lots.

NWESD is purchasing that portion of the Sold Property legally described on Exhibit A attached hereto (the "NWESD Property").

NWESD and the Port wish to confirm certain agreements regarding the environmental conditions of the Covered Property and NWESD Property and responsibility for environmental remediation of the Covered Property and NWESD Property.

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

1. Definitions.

(a) Environmental Soil Conditions. Environmental Soil Conditions shall mean any actual or potential hazardous substance contamination contained with the soils, wood waste, or other solid materials on the Sold Property.

(b) Environmental Groundwater Conditions. Environmental Groundwater Conditions shall mean any actual or threatened hazardous substance contamination in the ground water on or off the Sold Property.

(c) Environmental Off Site Conditions. Environmental Off Site Conditions shall mean any actual or threatened hazardous substance contamination existing on or under the Covered Property, but off the Sold Property, including Environmental Soil Conditions or Environmental Groundwater Conditions that have migrated, or may in the future migrate, from the Sold Property.



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(d) Environmental Remediation. Environmental Remediation shall mean the investigation, testing, removal, monitoring or treatment of hazardous substances as may be required to comply with Environmental Laws.

(e) Hazardous Substances. As used herein, "hazardous substance" shall mean any substance, material, waste, pollutant, or contaminant that is defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance" or "dangerous waste" under Environmental Laws.

(f) Environmental Laws. As used herein, Environmental Laws shall mean: RCW Chapter 70.105 (Hazardous Waste Management Act) or RCW Chapter 70.105D (Hazardous Waste Cleanup-Model Toxics Control Act "MTCA"), or their implementing regulations; the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the National Contingency Plan published by the Environmental Protection Agency (40 CFR Parts 300 and 302); the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. §6901; or the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") 42 USC 9601 et seq., all as amended, replaced or succeeded.

2. Responsibility for Environmental Soil Conditions. NWESD shall be solely responsible for Environmental Soil Conditions on or under the NWESD Property. The Port bears no responsibility or liability for Environmental Soil Conditions on the Sold Property.

3. Environmental Groundwater and Environmental Off Site Conditions. The Port agrees to indemnify, defend and hold NWESD and any party taking a security interest in the NWESD Property harmless from any and all claims, demands or causes of action for Environmental Remediation arising out of Environmental Groundwater Conditions or Environmental Off Site Conditions. This indemnity shall not apply to the release or any hazardous substance first brought onto the NWESD Property after the date of this Agreement, or to releases caused by NWESD or any user or occupant of the NWESD Property. This Indemnity is expressly conditioned upon NWESD's compliance with Sections 5, 6, 7 and 8 of the Agreement; provided that nothing contained in Section 5 hereof shall prevent the parties from enforcing the terms of this Agreement.

(a) Indemnity Process. At any time NWESD receives any notice of a claim, demand or potential cause of action which may be subject to the Port's indemnity obligations under this paragraph 3, NWESD shall provide notice to the Port concerning the demand or claim as soon as reasonably possible, but in no event later than 30 days from receipt. Upon receipt of notice of the claim, the Port shall have the right, in its sole discretion, to defend and appoint defense counsel for the NWESD. In the event the Port elects to appoint defense counsel, NWESD agrees to the appointment of joint defense counsel and to waive the potential conflict of interest in appointment of joint defense counsel. If the Port elects not to appoint defense counsel or if an actual conflict of interest prevents appointment of joint defense counsel, the Port shall reimburse NWESD for its reasonable attorney fees occurred in the defense of any indemnified



Attachment 2 - ERA Between Port of Anacortes and NWESD

demand or claim. Nothing contained in this Section shall provide the Port with the right to compromise or settle any claim affecting NWESD or the Sold Property without the prior written consent of NWESD, which consent shall not be unreasonably withheld, conditioned or delayed.

4. Release of Certain Claims. NWESD agrees to release and waive any and all claims against the Port for business interruption, lost profits, added costs of development, or similar damages caused by the Environmental Soil Conditions, Environmental Groundwater Conditions and Environmental Off Site Conditions. This release does not limit the Port's obligation to indemnify NWESD under Section 3 above.

5. Covenant not to Pursue Groundwater and Off Site Claims. NWESD further covenants not to sue the Port or any other party for any Environmental Groundwater Conditions or Environmental Off Site Conditions, nor to petition, request or initiate any action through the Department of Ecology or other government agency for the clean up of Environmental Groundwater Conditions or Environmental Off Site Conditions. In the event that any third party initiates or contacts NWESD regarding such actions, NWESD shall immediately notify the Port and tender the defense of such actions to the Port as provided in Section 3.

6. Post-Closing Access to NWESD Property. NWESD agrees to allow the Port post-Closing access to the NWESD Property to investigate, monitor or remediate any Environmental Groundwater Condition. Access will be provided upon reasonable terms and the Port shall take all reasonable steps to minimize the impact of any such activities on NWESD's use of the NWESD Property.

7. Limitation on Subsurface Development. NWESD agrees that, other than utility corridors, footings, foundation slabs, pilings and other incidental subsurface structures, NWESD will not undertake subsurface development on the NWESD Property.

8. Cooperation with Cleanup Activities. The NWESD shall cooperate with the Port in the Port's effort to complete cleanup activities on the Covered Property, including supporting the Port's efforts under the Consent Decree (Skagit County Superior Court Cause No. 032004921) but excluding undertaking or paying for Environmental Remediation. NWESD shall further cooperate with the Port in obtaining a revised "No Further Action" letter from the Department of Ecology concerning the Sold Property as called for in the Consent Decree.

9. NFA Requirements. NWESD acknowledges that it has received the October 26, 2000, Ecology No Further Action letter addressed to Shared Healthcare Systems, Inc. NWESD agrees that it shall be responsible for complying with the requirements of the No Further Action and the Restrictive Covenant with respect to the NWESD Property (except as applied to Environmental Groundwater Conditions, which shall be the responsibility of the Port as provided in this Agreement).



Attachment 2 - ERA Between Port of Anacortes and NWESD

10. Disclosure of Environmental Conditions. NWESD agrees and acknowledges that, in connection with its purchase of the NWESD Property, the NWESD has received the environmental information and reports described on Exhibit B to this Agreement.

11. Assignment. The rights and obligations under this Agreement may be assigned by NWESD to a purchaser of the NWESD Property upon written notice to the Port and receipt of written consent from the Port. Such written notice shall be provided no less than sixty (60) days prior to any proposed transfer. The Port's consent to the assignment shall not be unreasonably withheld, conditioned, or delayed.

12. Entire Agreement. This Agreement contains the entire understanding of the parties and supercedes all prior agreements and understandings among the parties related to the subject matter of this Agreement.

13. Notices. All notices and other communications regarding this Agreement shall be in writing and communicated by mail, electronic communication, personal delivery or facsimile to:

Port of Anacortes:
c/o Lynda Brothers
Sonnenschein Nath & Rosenthal
685 Market Street, 10th Floor
San Francisco, California 94105
LBrothers@sonnenschein.com
Phone: (415) 882-0344
Fax: (415) 543-5472

NWESD:
Dr. Jerry Jenkins
Superintendent
Northwest Educational Service District 189
205 Stewart Road
Mount Vernon, WA 98273
email: jjenkins@esd189.org
Phone: 360.424.9573
Fax: 360.424.9180

14. Attorney Fees. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees.

15. Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall have the signature of both parties and each of which shall be deemed an original, all of which when taken together shall be deemed to be a single agreement among the participants.



Attachment 2 - ERA Between Port of Anacortes and NWESD

16. Applicable Law. The parties agree that this Agreement and the contents hereof shall be interpreted and enforced pursuant to the laws of the State of Washington.

17. Mutual Representations. The individuals signing on behalf of each of the Port and NWESD represent and warrant that they are the authorized signatory of their respective party and that all acts necessary to enter into this Agreement have been taken by such party.

PORT OF ANACORTES

By: DAN STAHL

Title: Exec. Dir.

Dated: 04 June 2003

NORTHWEST EDUCATIONAL SERVICE
DISTRICT NO. 189

By: Garold W. Jenkins

Title: Supt.

Dated: 6/25/03



EXHIBIT A

NWESD PROPERTY LEGAL DESCRIPTION

LOT 2A, "SEAFARER'S VIEW", AS RECORDED UNDER AUDITOR'S FILE NO. 200112030101, RECORDS OF SKAGIT COUNTY, WASHINGTON, BEING IN PORTIONS OF GOVERNMENT LOTS 1 AND 2, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., AND OF "PLATE NO. 10 TIDE AND SHORE LANDS OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ANACORTES HARBOR", ACCORDING TO THE OFFICIAL MAP THEREOF ON FILE WITH THE STATE LAND COMMISSIONER AT OLYMPIA, WASHINGTON, TOGETHER WITH ALL THOSE PORTIONS OF LOTS 2C AND 2D, SAID "SEAFARER'S VIEW", LYING SOUTH AND EAST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2C; THENCE NORTH 00° 00' 25" EAST
ALONG THE WEST LINE OF SAID LOT 2C, 6.22 FEET TO THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE SOUTH 89° 58' 10" EAST ALONG SAID LINE, 399.51 FEET; THENCE NORTH 00° 34' 57" WEST, 33.52 FEET TO THAT CERTAIN ANGLE POINT ON THE EASTERLY LINE OF SAID LOT 2D AND THE END OF SAID DESCRIBED LINE, SAID POINT LYING BETWEEN COURSES L4 AND L5 ON SAID EASTERLY LINE;

EXCEPTING FROM SAID LOT 2A THAT PORTION THEREOF LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2B, SAID "SEAFARER'S VIEW"; THENCE
NORTH 00° 00' 25" EAST, ALONG THE WEST LINE OF SAID LOT 2A, 52.70 FEET TO THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE SOUTH 79° 00' 24" EAST ALONG SAID LINE, 201.32 FEET TO AN ANGLE POINT THEREON; THENCE SOUTH 00° 53' 55" WEST ALONG SAID LINE, 232.95 FEET TO THE SOUTH LINE OF SAID LOT 2A AND THE END OF SAID DESCRIBED LINE.
SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

Exhibit A



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Attachment 2 - ERA Between Port of Anacortes and NWESD

EXHIBIT B

Environmental Documents Received

- | | | |
|----|------------------|---|
| 1) | March 24, 2003 | Consent Decree between Port and DOE |
| 2) | October 26, 2000 | NFA letter with declaration of restrictive covenants |
| 3) | August 14, 2000 | Notice of PLP from DOE with response letter |
| 4) | May 18, 2000 | Completion Report by Thermo Retec |
| 5) | August 20, 1999 | Progress Report by Thermo Retec |
| 6) | March 22, 1999 | Interim action Work Plan by Landau (For Port) |
| 7) | January 12, 1999 | Clean Up Action Plan by Thermo Retec |
| 8) | January 8, 1999 | RIFS by Thermo Retec |
| 9) | 1998 & prior | One box of old miscellaneous reports and documents related to the site from the Port of Anacortes. Date is approximate. |

Exhibit B

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