

GRANTOR:

State of Washington
Department of Natural Resources
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

GRANTEE:

Equilon Enterprises, LLC
dba Shell Oil Products US
PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Lena Thompson
DATE 10/20/2021

WHEN RECORDED, RETURN TO:

First American Title NCS
601 Travis Street, Suite 1875
Houston, Texas 77002
Attn: Jan Ruiz
NCS: 988973

AQUATIC LANDS OUTFALL EASEMENT

Legal: Portion of Fidalgo Bay Bedlands Adjacent to Sec's 20 and 29, T.35 N. R. 2 R. W.M., Skagit County, WA.

DNR Lease No.: 51-076264

Parcel No.: No parcel number per the Skagit County Assessor's Office.

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

AQUATIC LANDS OUTFALL EASEMENT

AQUATIC LANDS EASEMENT NO. 51-076264

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (State), and EQUILON ENTERPRISES, L.L.C. (registered in the state of Delaware), d.b.a, SHELL OIL PRODUCTS US, a limited liability Company ("Tenant").

SECTION 1 GRANT AND LOCATION OF EASEMENT

1.1 Easement Property. State grants and conveys to Grantee a nonexclusive easement for a term of years (the Easement) over, upon, and under the property described in Exhibit A (the Easement Property).

1.2 Rights of Third Parties. This Easement is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or the federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Easement are any right to harvest or collect any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel or other valuable materials. State reserves the right to grant easements and other land uses on the Easement Property to others when the easement or other land uses will not unreasonably interfere with Grantee's Permitted Use.

1.3 Inspection. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property or the existence of hazardous substances on the Easement Property. Grantee has inspected the Easement Property and accepts it "AS IS."

1.4 Surveys, Maps, and Plans. In executing this Easement, State is relying upon the surveys, plats, diagrams, and/or legal descriptions provided by Grantee. Grantee is not relying upon and State is not making any representations about any surveys, plats, diagrams, and/or legal descriptions provided by State.

SECTION 2 USE OF EASEMENT

2.1 Permitted Use. This Easement is granted for the purpose of and is limited to constructing, installing, operating, maintaining, and repairing the outfall pipeline shown in Exhibit A ("Permitted Use") and Exhibit B, ("Plan of Operations"). No modification to the permitted use shall be allowed without State's prior written consent. Any modification to the improvements approved under this subsection shall only be undertaken after complying with Sections 6 and 13. The outfall, and associated facilities that make use of the outfall, shall be constructed and operated in accordance with the provisions of the Plan of Operations contained in Exhibit B.

2.2 Restrictions on Use. Grantee shall not cause or permit any damage to natural resources on or adjacent to the Easement Property. Grantee shall also not cause or permit any filling activity to occur on the Easement Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in, on, or adjacent to the Easement Property, except as approved in writing by State or pursuant to discharges made in full compliance with a valid NPDES permit. Grantee shall neither commit nor allow waste to be committed to, on, or adjacent to the Easement Property. If Grantee fails to comply with all or any of the restrictions on use set out in this Subsection 2.2, State may terminate this Easement in accordance with Section 12 and, at State's discretion, may take any steps reasonably necessary to remedy such failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly in, on, or adjacent to the Easement Property. This section shall not in any way limit Grantee's liability under Section 8, below.

2.3 Conformance with Laws. Grantee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Easement Property. This includes, but is not limited to, all state and federal laws, regulations, order or permits governing the construction, operation, repair and maintenance of the outfall pipeline shown in Exhibit A.

2.4 Liens and Encumbrances. Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Easement Property.

2.5 Amendment upon Change of Permit Status. This Easement is granted in reliance upon Grantee's agreement to operate an outfall in substantially the same manner as described in the regulatory permits it has obtained as of the date this Easement was executed, and in full compliance with those permits. State reserves the right to amend the terms and conditions of this easement in those cases where any regulatory permit (including, but not limited to, any National Pollutant Discharge Elimination Systems (NPDES) Permit, Hydraulic Project Approval, U.S. Army Corps of Engineers Section 404 Permit, or Shoreline Substantial Development Permit) is modified in any manner that

affects the performance of any obligation or covenant under this Easement. This right to amend the Easement shall expressly include those circumstances where the permit is modified to allow for a change in the manner in which the outfall is operated, or a change in the type, quality, or quantity of effluent being discharged. State similarly reserves the right to amend this Easement where Grantee fails to operate in conformance with its permits and where such failure could affect the lands and natural resources associated with the Easement area and any adjacent state lands or natural resources. This right to amend the Easement shall operate independent of any right to terminate the Easement pursuant to Section 12 or any other provision of this Easement. In the event that Grantee disagrees with any amendments that are required by State under this Subsection, Grantee's sole option shall be to request that the Easement be terminated upon sixty days written notice. In the event that the Easement is terminated under these circumstances, Grantee shall be allowed a pro rata reduction in any fees paid under Subsection 4.1 for the remaining unused Term, with the exception that no refund of any fees shall be provided if the outfall is allowed to remain in place pursuant to the provisions of Subsection 13.4.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is Thirty (30) years (the "Term"), beginning on the 1st day of September, 2004 (the "Commencement Date"), and ending on the 31st day of August, 2034, (the "Termination Date"), unless renewed pursuant to subsection 3.2 or terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement. No interim renewals are contemplated. Grantee may apply for a new easement prior to, or upon expiration of this easement. Any renewal application will be evaluated using the statutes, guidelines and policies utilized by State at the time the application is being reviewed in conjunction with the provisions of Subsection 3.3.

3.3 Development of Disposal Alternatives. Grantee acknowledges that it is State's goal to reduce the reliance on the receiving waters of Washington State for the disposal of waste effluent, stormwater and other discharges, and to promote water re-use. Any renewal of this easement shall be dependent upon Grantee's satisfactory progress towards the implementation of reasonably practical disposal alternatives that abate the effect of the pollution constituents on state-owned aquatic lands and their associated biological communities. To assure that such progress is made during the Term of this Easement, Grantee shall submit a written report at the time of application to renew the NPDES Permit, or every five (5) years, whichever is sooner. The report will identify: (1) activities undertaken since the previous report to reduce discharges as well as efforts to decrease chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities; and (2) current and future plans, including funding, for reducing discharges and decreasing chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities. In any request for renewal, if Grantee has not provided evidence satisfactory to State, that it is making progress towards disposal alternatives that abate pollution impacts, the State may require

Grantee to undertake a thorough investigation and analysis of reasonably practical disposal alternatives to the Permitted Use. If such review is required, it shall be completed prior to any renewal of this Easement. In the alternative, State may rely on its own alternatives analysis in accordance with WAC 332-30-122 and such other regulations as State has or may promulgate. Grantee acknowledges that the processing of any renewal application is contingent upon compliance with this Subsection 3.3, and that State is under no obligation to issue a new Easement. Grantee further acknowledges that a failure to anticipate and conduct the disposal alternatives investigation and analysis may delay or prevent renewal of this Easement.

3.4 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Easement Property to Grantee on the Commencement Date, this Easement shall not be void or voidable, nor shall State be liable to Grantee for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of any Use Fee. In the event Grantee takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of any Use Fee. If the Easement Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.5 End of Term. Upon the expiration or termination of this Easement, Grantee shall surrender the Easement Property to State in the same or better condition as on the Commencement Date.

SECTION 4 USE FEE

4.1 Fee. Grantee shall pay a single use fee in the amount of Thirty Two Thousand Eight Hundred Sixty One Dollars and 66/100 cents (\$32,861.66) for the term specified in Section 3.1 (Term Defined), which shall be due and payable on or before the Commencement Date. Nothing in this subsection shall preclude State's ability to charge Grantee a fee for any impacts to natural resources on or adjacent to the Easement Property that are directly or indirectly associated with the Permitted Use or Grantee's use or occupation of the Easement Property.

4.2 Payment Place. Payment for any annual Use Fee or other sum payable to State under the terms of this agreement is to be made to State at the following address:

DEPARTMENT OF NATURAL RESOURCES
Financial Management Division
1111 Washington St SE
PO Box 47041
Olympia, WA 98504-7041

4.3 Late Charges and Interest. If any Use Fee or sum payable to State under the terms of this Easement is not received by State within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the

payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State as a result of the delay. If any Use Fee is not paid within thirty (30) days of the date due, then Grantee shall, in addition to paying the late charges established above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid.

4.4 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest Use Fee due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the Use Fee or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

4.5 No Counterclaim, Setoff, or Abatement of Use Fee. Except as expressly set forth elsewhere in this Easement, the Use Fee and all other sums payable by Grantee pursuant to this Easement shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 5 COORDINATION OF ACTIVITIES

Grantee shall coordinate the dates of its construction and other major activities on the Easement Property with State. Except in the case of an emergency, Grantee shall provide State with written notice of its intent to enter upon the Easement Property at least five (5) days prior to entry.

SECTION 6 MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

During the term of this Easement, Grantee shall maintain the outfall pipeline, and any other Improvements on the Easement Property, in good condition and working order. Subject to the limitations in Section 13, Grantee shall promptly repair, at its sole cost, all damages to any improvements on the Easement Property, or to any natural resources on or adjacent to the Easement Property, which are caused by Grantee's activities. All work performed by Grantee shall be completed in a careful and workmanlike manner to State's satisfaction, free of any claims or liens. Upon completion of any work performed by Grantee, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition it was in prior to commencement of the work. Pursuant to Section 13 of this Easement, State's prior written consent and approval shall be required prior to undertaking any significant work within the Easement Property, but shall not be required for any routine maintenance or repair of improvements made by the Grantee pursuant to its obligation to maintain the Easement Property in good order and repair. Exhibit B describes the routine maintenance that does not require State's prior consent. In the event of an Emergency, Grantee may take reasonable steps to abate the emergent

event, but shall promptly notify State in writing of the actions it has taken and that it proposes to take thereafter. Once the immediate emergency is under control, any further work shall require State's prior written consent in accordance with the provisions of this Easement.

SECTION 7 INTERFERENCE WITH OTHER USES OF EASEMENT PROPERTY

Grantee shall exercise its rights under this Easement so as to minimize and avoid, to the fullest extent reasonably possible, interference with State's use of the Easement Property or with the public's right to use Fidalgo Bay and its associated waters for purposes of recreation, navigation, or commerce including rights under the Public Trust Doctrine. Any improvements constructed by Grantee on the Easement Property shall be placed and constructed so as to allow, to the fullest extent reasonably possible, unobstructed movement through the water column in the Easement Property. Grantee shall also mark or record the location of the Permitted Use and any related improvements in such locations and with such publications as are necessary to give reasonable notice to the public of the existence of any hazards associated with the improvements, and the location and limitations, if any, of the improvements. The signs and notices shall identify the type of installation (e.g., an outfall pipe) and shall identify Grantee as the person responsible for the Permitted Use and its maintenance.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes defined or regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act (MTCA), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Grantee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of on, in, under, or above the Easement Property, except in accordance and compliance with all applicable laws, permits or licenses.

8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.

- (a) With regard to any Hazardous Substances that may exist in, on, under, or above the Easement Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Grantee.
- (b) Grantee shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Easement Property as of the

Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Easement Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:

- (1) Grantee shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Easement Property;
 - (2) Grantee shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Easement Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Easement Property;
 - (3) Grantee shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
 - (4) If requested, Grantee shall allow reasonable access to the Easement Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
 - (5) If requested, Grantee shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Easement Property. Grantee's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Grantee's obligation to gather sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property, or adjoining the Easement Property, that allows Grantee to effectively meet its obligations under this easement. The standard of care required of Grantee by this Subsection 8.3 shall be that required of a person with actual knowledge of the presence of Hazardous Substances, whether or not Grantee had such actual knowledge.

8.4 Notification and Reporting.

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:

- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;
- (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Easement Property;
- (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;
- (4) Any lien or action with respect to any of the foregoing; or,
- (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.

8.5 Indemnification and Burden of Proof.

- (a) Notwithstanding any NPDES permit or other permit or license that authorizes the discharge or release of Hazardous Substances or other deleterious substances, Grantee shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Easement Property or any adjoining property during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or any adjoining property;
 - (2) The release or threatened release of any Hazardous Substance in, on, under, or above the Easement Property or any adjoining

property, which release or threatened release occurs or occurred during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or adjoining property and as a result of:

- (i) Any act or omission of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates; or,
 - (ii) Any foreseeable act or omission of a third party unless Grantee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (3) A breach of the obligations of Subsection 8.3, above, by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.
- (b) Grantee will have use of and access to the Easement Property. Accordingly, if State seeks to impose liability under Subsection 8.5(a), State will have the initial burden of proving by a preponderance of the evidence the existence, release, or threatened release of Hazardous Substances in, on, under, or above the Easement Property or any adjoining property. Grantee shall then have the burden of proving by a preponderance of the evidence that none of the indemnification provisions apply.

8.6 Cleanup. If a release of Hazardous Substances occurs on, in, under, or above the Easement Property or other State-owned property arising out of any action or inaction described or referred to in Subsection 8.5 above, Grantee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. These actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Grantee shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims. Any cleanup shall be performed in a manner approved in advance in writing by State, except that in emergency situations Grantee may take reasonable and appropriate actions without advance approval.

8.7 Sampling.

- (a) As a condition of State entering into this Easement, Grantee agrees to promptly conduct the environmental investigation specified in Exhibit B (Section 8) of this document. The investigation specified in Exhibit B will be conducted in accordance with generally accepted scientific

methods and principles. State shall be provided the opportunity to review and approve the sampling and analysis plan.

- (b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Easement Property, any adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Grantee shall promptly reimburse State for all costs associated with such Tests.
- (c) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (d) Grantee shall be entitled to obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date Grantee is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Grantee. Any additional costs State incurs by virtue of Grantee's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Grantee.
- (e) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Easement shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or expert opinion work product.

8.8 Sediment Investigation.

- (a) If State has reason to believe that a release or threatened release of Hazardous Substances has occurred on the Easement Property during Grantee's occupancy, State may require Grantee to conduct a Closeout Environmental Assessment (Closeout Assessment) by providing Grantee with written notice of this requirement no later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90)

days of any valid notice to terminate the easement earlier than originally agreed. The purpose of the Closeout Assessment shall be to determine the existence, scope, or effects of any Hazardous Substances on the Easement Property and any associated natural resources. If the initial results of the Closeout Assessment disclose the existence of Hazardous Substances that may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or on any associated natural resources. The Closeout Assessment may include Sediment Sampling. Any Sediment Sampling must include those sample locations and parameters reported in Grantee's Sediment Investigation Report completed at the initiation of this Easement as well as any additional testing requirements State may require based on changes in scientific, statutory, or regulatory standards for information concerning the activities of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.

- (b) Prior to undertaking the Closeout Assessment, Grantee shall submit a proposed plan in writing for State's approval. The plan shall be provided to State within sixty (60) days of the State's notice requiring the Closeout Assessment. If State fails to respond in writing, either approving or disapproving of the proposed plan, within sixty (60) days of its receipt, the proposed plan shall be deemed approved. Grantee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

8.9 Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Easement and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 NATURAL RESOURCE DAMAGES

9.1 Impacts to Natural Resources. In accordance with Subsection 2.2, Grantee's use or occupation of the Easement Property must be undertaken in a manner that will not result in any damage to natural resources on or adjacent to the Easement Property. In the event that Grantee's use or occupation of the Easement Property results in damage to natural resources, Grantee shall be in default of this Easement agreement and State may exercise its right to terminate the Easement pursuant to Section 12 of this agreement in addition to any other remedies available to State under Sections 8 and 9 of this agreement or at law or in equity.

9.2 Mitigation for Unanticipated or Excessive Natural Resource Damages. Grantee agrees that if any natural resources are lost or damaged as a direct or indirect result of the Permitted Use, then Grantee shall be required to undertake the following steps:

- (a) Grantee shall be required to prepare and implement a written plan for eliminating or minimizing any future impacts that is satisfactory to State;
- (b) To the extent that it is not possible to avoid impacts, Grantee shall be required to prepare and implement a plan for the replacement of any lost or damaged natural resource values that is satisfactory to the State;
- (c) Grantee shall be required to prepare and implement a written plan for monitoring and reporting on the implementation of all actions required under Subsections 9.2 (a) and (b) that is satisfactory to State.
- (d) To the extent that lost resource values cannot be replaced, or continue to be damaged, Grantee shall pay State for the value of the lost or damaged resource values. In the event the parties to this Agreement cannot agree upon any measure of damages, a three-member panel of appraisers shall be appointed, consisting of natural resource economists. One member shall be appointed by and at the cost of State, one member by and at the cost of Grantee, and the third member by mutual agreement of the first two panel members with the cost to be borne equally by State and Grantee. The decision of a majority of the members of the panel shall be made based upon generally accepted valuation principles utilized by natural resource damage trustees in Comprehensive Environmental Response, Compensation, and Liability Act and Model Toxic Control Act proceedings. The decision shall be binding on the parties to this Agreement.

9.3 Indemnification. Notwithstanding any mitigation plan, any regulatory permits or licenses authorizing discharges, or any other provision in this Agreement (including subsection 2.1), Grantee shall indemnify, defend, and hold the State harmless from all claims for damages to, or the loss of, natural resource values that are made against the State as a direct or indirect result of Grantee's Permitted Use, including all resource

claims brought by Indian tribes, other federal, state, or local agencies, or members of the public. No damages or fees paid by Grantee to State under any other provision of this Agreement shall be allowed as a setoff against Grantee's obligations under this Subsection 9.5 to indemnify, defend, and hold the State harmless against the claims of third parties.

SECTION 10 REPORTING

Grantee shall, at State's request, provide State with copies of all reports, studies, or audits which pertain to environmental problems and concerns associated with the Easement Property, and which are or were prepared by or for Grantee and submitted to any federal, state, or local authorities as required by any federal, state, or local permit, license, or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics Permit, any State Water Quality Certification, or Substantial Development Permit.

SECTION 11 PRESERVATION OF SURVEY CORNERS

Grantee shall exercise the utmost care to ensure that all legal land subdivision survey corners and witness objects are preserved. If any survey corners or witness objects are destroyed or disturbed, Grantee shall reestablish them by a registered professional engineer or licensed land surveyor in accordance with U.S. General Land Office standards, at Grantee's own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in the process of construction of improvements must be adequately referenced and/or replaced in accordance with all applicable laws and regulations in force at the time, including but not limited to, Chapter 58.24 RCW. The references must be approved by State prior to removal of the survey corners and/or witness objects.

SECTION 12 TERMINATION OF EASEMENT

This Easement shall terminate if Grantee receives notice from State that Grantee is in breach of this Easement and Grantee fails to cure that breach within sixty (60) days of State's notice. If the breach is not reasonably capable of being cured within the sixty (60) days, Grantee shall commence the cure within the sixty (60) day period and continue the cure with diligence until completion. In addition to terminating this Easement, State shall have any other remedy available to it. State's failure to exercise its right to terminate at any time shall not waive State's right to terminate for any future breach. If Grantee ceases to use the Easement Property for the purposes set forth in this Easement for a period of five (5) successive years, this Easement shall terminate without further action by State and Grantee's rights shall revert to State. This Easement may also terminate if Grantee provides State with sixty (60) days written notice of its intent to terminate the Easement, in a form satisfactory to State. Any obligations of Grantee which are not fully performed upon termination of this Easement shall not cease, but shall continue as obligations until fully performed.

SECTION 13 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT

13.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Easement Property: An outfall pipe that parallels the wharf to a diffuser discharge. These improvements are not owned by State "Existing Improvements".

13.2 Grantee-Owned Improvements. So long as this Easement remains in effect, Grantee shall retain ownership of all Existing Improvements, and all improvements and trade fixtures it may place on the Easement Property in accordance with Subsection 2.1 (collectively Grantee-Owned Improvements as more fully described in Exhibits A and B). Grantee-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 13.5 below. No Grantee-Owned Improvements shall be placed on the Easement Property without State's prior written consent.

13.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Grantee-Owned), Grantee shall submit to State plans and specifications which describe the proposed activity. A "major repair" or an "alteration" shall be defined as any work performed within the Easement Property that substantially changes the configuration or location of any Improvement or that may result in substantial adverse impacts to the environment. Construction shall not commence until State has approved those plans and specifications and Grantee has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved unless State notifies Grantee otherwise within the sixty (60) days. Upon completion of construction, Grantee shall promptly provide State with as-built plans and specifications. Routine maintenance and emergency maintenance activities shall be undertaken in accordance with the provisions of Section 6.

13.4 Removal. Upon the termination of this Easement without any renewal, Grantee shall remove or retire any improvements located upon the Easement Property in accordance with the provisions of this Subsection and shall restore the Easement Property to a condition substantially similar to its natural state prior to the construction and operation of the outfall.

- (a) **Notification.** Prior to, or within one hundred eighty (180) days after, the Termination Date, State shall notify Grantee in writing whether it intends to require the removal of the improvements or whether the improvements shall be abandoned in place. In the event State fails to provide any notice of its intent, Grantee shall remove the improvements in accordance with the provisions of this Subsection.

- (b) **Removal.** In those cases where the improvements shall be removed, Grantee agrees to provide a written plan, to be approved in writing by State, for the removal of the improvements and for the restoration of the Easement Property. The plan shall identify a timeline for removal and restoration, shall identify any impacts to the Easement Property, associated natural resources, or surrounding lands and resources, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed removal would disrupt existing state lands or natural resources and would be detrimental to the long term use and management of the state's lands and resources, State may notify Grantee that the improvements must be abandoned in place in accordance with the provisions of this Subsection.
- (c) **Abandonment.** In those cases where the improvements shall be abandoned in place, Grantee agrees to provide a written plan, to be approved in writing by State, for abandonment and restoration. The plan shall identify a timeline for abandonment and restoration, shall identify the location of the improvements, shall propose a suitable means for plugging any abandoned pipelines, shall identify the means for notifying the public of the existence of any abandoned improvements, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed abandonment would be detrimental to the long-term use and management of the state's lands and resources, State may notify Grantee that the improvements must be removed in accordance with the provisions of this Subsection.
- (d) **Plans for Removal or Abandonment.** Grantee shall provide the plan for removal or abandonment within ninety (90) days after the actual or deemed notification of state's removal or abandonment requirement is provided. State shall then have ninety (90) days in which to approve or reject the plan. State's failure to respond within the time allowed shall be deemed an approval of the plan.
- (e) **Costs to Remove or Abandon, and to Restore.** Grantee agrees to undertake the removal and disposal of the improvements, or the abandonment of the improvements, and the restoration of the Easement Property, at its sole cost and expense. Grantee agrees to perform any removal and restoration activities in a prompt and expeditious manner upon approval of any plans. If Grantee fails to timely meet its obligations under this Subsection State may perform Grantee's obligations and seek reimbursement.
- (f) **Ownership of Abandoned Improvements.** Any improvements that are allowed to be abandoned in place shall become the property of State without any payment by State.

To the extent that Grantee-Owned Improvements include items of personal property which may be removed from the Easement Property without harming the Property, or diminishing the value of the Property or the improvements, State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Easement. Any Grantee-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision.

13.5 Unauthorized Improvements. Improvements made on the Easement Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by State in Exhibit A (Unauthorized Improvements) shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Grantee to sever, remove, and dispose of them, charge Grantee a Use Fee for the use of them, or both. If Grantee fails to remove an Unauthorized Improvement upon request, State may remove it and charge Grantee for the cost of removal and disposal.

SECTION 14 INDEMNITY

Grantee shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Easement Property by Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Grantee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This section shall not in any way limit Grantee's liability under Section 8 or Section 9, above.

SECTION 15 INSURANCE

15.1 Financial Security.

- (a) At its own expense, Grantee shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Zero Dollars (\$ 0.00), which shall secure Grantee's full performance of its obligations under this Easement, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond.
- (b) Upon any default by Grantee in its obligations under this Easement, State may collect on the Bond to offset the liability of Grantee to State. Collection on the Bond shall not relieve Grantee of liability, shall not limit

any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Easement because of the default.

15.2 Insurance. At its own expense, Grantee shall procure and maintain during the Term of this Easement, the insurance coverages and limits described in Subsections 15.2 (a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by Best's Insurance Reports, or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

- (1) **Commercial General Liability Insurance.** Grantee shall procure and maintain Commercial General Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Grantee's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description

Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment of this Easement;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (v) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) **Property Insurance.** Grantee shall procure and maintain property insurance covering all real property located on or constituting a part of the Easement Property in an amount equal to the replacement value of all improvements on the Easement Property. Such insurance may have commercially reasonable deductibles.

- (3) Worker's Compensation/Employer's Liability Insurance. Grantee shall procure and maintain:

- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements;
- (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
\$1,000,000	\$1,000,000	\$2,000,000

- (iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements.
- (4) Builder's Risk Insurance. As applicable, Grantee shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Easement Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.
- (5) Business Auto Policy Insurance. As applicable, Grantee shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (6) Contractor's Pollution Liability. Grantee shall obtain procure and maintain contractor's pollution legal liability, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site clean-up costs, cover gradual and sudden pollution, and includes in its scope of coverage natural resource damage claims. Coverage shall be maintained in an amount of at least:

1. \$1,000,000 each occurrence for contractor's operations at the site(s) identified above; and
2. If the policy contains a general aggregate limit or policy limit, it shall be at least \$5,000,000.

Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:

- (i) The Insurance Certificate must state that the insurer is covering hazardous substance removal.
 - (ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.
 - (iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Easement Property.
 - (iv) The extended reporting period (tail) must be purchased to cover a minimum of thirty six (36) months beyond completion of work.
- (b) Terms of Insurance. The policies required under Subsection 15.2 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 15.2 shall meet the following requirements:
 - (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
 - (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;
 - (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Grantee;
 - (4) With the exception of Contractor's Pollution Liability (governed by the provisions of Subsection 15.2(a)(6)), all liability policies must provide coverage on an occurrence basis; and,

(5) Liability policies shall not include exclusions for cross liability.

- (c) **Proof of Insurance.** Grantee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in Section 15, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the easement number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Grantee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Grantee must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Grantee from liability for losses and settlement expenses greater than these amounts.

15.3 State's Acquisition of Insurance. If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Grantee shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 4.3 from the date of State's notice of the expenditure until Grantee's repayment.

SECTION 16 TAXES AND ASSESSMENTS

Grantee shall promptly pay all taxes, assessments and other governmental charges of any kind whatsoever levied as a result of this Easement or relating to Grantee's improvements constructed pursuant to this Easement.

SECTION 17 ADVANCE BY STATE

If State advances or pays any costs or expenses for or on behalf of Grantee, including but not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of improvements, or other amounts not paid when due, Grantee shall reimburse State the amount paid and shall pay interest on such amount at the rate of one percent (1%) per month from the date State notifies Grantee of the advance or payment.

SECTION 18 NOTICE

Any notices required or permitted under this Easement may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time-to-time:

To State: DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

To Grantee: EQUILON ENTERPRISES, L.L.C. d.b.a, SHELL OIL PRODUCTS US
PO Box 622
Anacortes, WA 98221-0622

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 19 ASSIGNMENT

Grantee shall not assign its rights in the Easement or grant any rights or franchises to third parties, without State's prior written consent. State reserves the right to change the terms and conditions of this Easement upon its consent to any assignment.

SECTION 20 SUCCESSORS AND ASSIGNS

This Easement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

SECTION 21 TIME IS OF THE ESSENCE

TIME IS OF THE ESSENCE as to each and every provision of this Easement.

SECTION 22 APPLICABLE LAW AND VENUE

This Easement shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement shall be in the Superior Court for Thurston County, Washington.

SECTION 23 RECORDATION

Grantee shall record this Easement in the county in which the Easement Property is located, at Grantee's sole expense. Grantee shall provide State with recording information, including the date of recordation and file number. Grantee shall have thirty (30) days from the Commencement Date to comply with the requirements of this subsection. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording upon State's demand.

SECTION 24 MODIFICATION

Any modification of this Easement must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

SECTION 25 MISCELLANEOUS

25.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee will provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

25.2 Headings. The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

25.3 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property, if any, are merged into this Easement.

25.4 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Easement shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement.

25.5 Cumulative Remedies. The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

25.6 Language. The word "Grantee" as used in this Easement shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Grantee, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

25.7 Invalidity. If any provision of this Easement shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Easement.

THIS EASEMENT requires the signature of all parties and is executed as of the date of the last signature below.

EQUILON ENTERPRISES, L.L.C., D.B.A,
SHELL OIL PRODUCTS US,
A limited liability company

Dated: August 24, 20 04

By: Thomas N. Smith
THOMAS N. SMITH

Title: Refinery Manager

Address: PO Box 622
Anacortes, WA 98221-0622

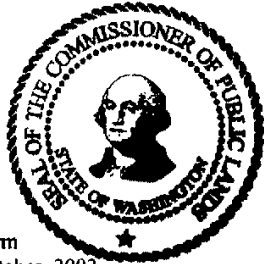
STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Dated: 9/21/4, 20

By: Doug Sutherland
DOUG SUTHERLAND

Title: Commissioner of Public Lands

Address: 1111 Washington St SE
Olympia, WA 98504-7027



Approved as to form
this 14th day of October, 2002
Michael S. Grossmann
Assistant Attorney General
State of Washington

CORPORATE ACKNOWLEDGMENT

STATE OF Washington)
) ss
 COUNTY OF Sleagat)

On this 24th day of August, 2004, before me personally appeared THOMAS N. SMITH to me known to be the SHELL OIL PRODUCTS US of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

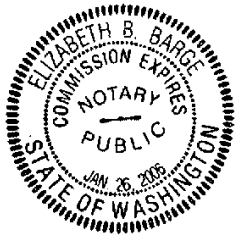
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED: Aug 24, 2004

Elizabeth Barge
 Elizabeth Barge
 (Type/Print Name)

Notary Public in and for the State of Washington
 residing at: Island County

My Commission Expires: JAN 26, 06



STATE OF WASHINGTON)
)ss
COUNTY OF Thurston)

DATED: 9.21.04

Agreement No. 51-076264

Aquatic Lands Outfall Easement Exhibit B – Plan of Operations Shell NPDES Outfall

Use Authorization No. 51-076264

SITE DESCRIPTION AND PRESENT USE

The Shell Puget Sound Refinery is located in Skagit County on Marches Point near the City of Anacortes, Washington. The Shell Puget Sound Refinery (PSR) was originally constructed in 1958. The facility is a fuels refinery that processes approximately 140,000 barrels per of day crude oil into gasoline, diesel, jet fuel and other related hydrocarbon products. The refinery operates an NPDES permitted wastewater treatment plant with an outfall line that extends into Puget Sound from the Northwest end of Marches Point in an unincorporated area of Skagit County.. The outfall line is located adjacent to Sections 20 and 29, Township 35 North, Range 2 East.

This easement authorizes the continued use of state aquatic lands associated with the existing NPDES permitted outfall from the Shell Puget Sound Refinery onto state-owned aquatic land (SOAL). The outfall associated with this easement was originally constructed in 1958 along with the rest of the refinery and no additional modifications are proposed at the time of this submittal.

FUTURE USE AND CONDITIONS

The uses proposed under this easement are unchanged from existing uses. At this time, Puget Sound Refinery (PSR) has no plans to change the existing use or related facilities. PSR will conduct periodic maintenance activities as necessary to maintain the functionality of the existing improvements on the site.

TERMS AND CONDITIONS

SECTION 1 – GRANT AND LOCATION OF THE EASEMENT

1.4 Surveys, Maps, and Plans

The easement area (as shown on Exhibit A) is further described in the legal record of survey for this easement .

SECTION 2 - USE OF EASEMENT

Permitted Use -

Operation and maintenance of an industrial wastewater treatment outfall for the discharge of treated effluent from the Shell Puget Sound Refinery. The permanent easement is a strip of land with a width of five feet on either side of the centerline of the outfall pipeline and the diffuser.

Permits - Grantee will provide State, upon request, with copies of all current renewals, modifications, or appeals of any regulatory permits, approvals, or authorizations relating to Grantee's activities on the easement Property. Operation of this outfall is contingent on Grantee holding a valid NPDES permit. PSR shall remain in compliance with the sediment sampling requirements outlined in the varying NPDES permits, which are typically issued by the State Department of Ecology every five years. In the event that no such requirements exist within a given NPDES permit, this condition will not be enforced.

Amendment upon Change of Permit Status

This Easement is issued based on the assumption that Grantee's activities on the Property are not likely to jeopardize the continued existence of species listed as threatened or endangered under the federal Endangered Species Act (ESA), and/or that the federal agencies responsible for administering the ESA have been consulted pursuant to Section 7(a)(2) and Grantee's activities on the Property will comply with any terms or conditions lawfully imposed by those agencies through that ESA Section 7 consultation, where applicable to the easement.

SECTION 3 - TERM

Development of Disposal Alternatives - In conjunction with the requirements outlined in Subsection 3.3., grantee will provide, at the request of the State, any current NPDES permit reports that address progress toward reducing the reliance on the receiving waters of Washington State for the disposal of wastewater and to promote water re-use as outlined in the facility NPDES permit. Progress may include, but is not limited to:

- The beneficial reuse of reclaimed water as authorized by RCW 90.46 (ie stream augmentation, industrial process supply, agricultural application);
- Pollution prevention activities specified in the NPDES permit; and
- All other efforts related to water re-use and recycling.

SECTION 6 - MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

Maintenance defined - Washington DNR defines maintenance as those usual acts designed to prevent a decline, lapse, or cessation of the approved use and associated improvements. Maintenance does not include any expansion of the permitted use nor does it result in any substantive change from the granted use and associated improvements.

Maintenance Schedule, Methods and Remedies -

The facility NPDES permit periodically requires inspection of the submersed outfall pipe to ensure that the system is in good working order. Maintenance would be performed to address any condition identified in the inspection. Allowable routine maintenance may include, but not be limited to, repairing or replacing section of the discharge pipe or diffusers.

SECTION 8 - ENVIRONMENTAL LIABILITY/RISK ALLOCATIONSampling -

In compliance with the requirements of the Federal Clean Water Act, the Washington State Dept. of Ecology issued NPDES permit number WA-000294-1 to the Shell Puget Sound Refinery in February 2001. The facility includes a permitted wastewater treatment facility and outfall. In 1997, PSR completed an \$10.8 million upgrade of the wastewater treatment facilities that included a new biological section and clarifiers. Since the installation of the new equipment, PSR has not had any violations of our permit requirements that were the result of activities controllable by the facility. PSR's NPDES permit requires numerous studies and limits designed to be fully protective of human health and the environment including:

- Monthly discharge monitoring reports
- Toxicity Compliance Testing
- Sediment Sampling and Analysis
- Treatment Efficiency Study
- Effluent Recharacterization for Human Health
- Pollution Prevention Plans
- Effluent Discharge Outfall Evaluation

These or other pertinent environmental reports will be submitted to the State upon request.

[SECTION 9 - NATURAL RESOURCE DAMAGES]

Numerous independent ecological studies have been completed in the immediate vicinity of the outfall associated with this easement. As indicated in the studies referenced below, the overall health of the sediments, shellfish and marine environment appears to be good.

- **Ecology Publication No. 79-338, November 1997, entitled "Survey for Petroleum and Other Chemical Contaminants in the Sediments of Fidalgo Bay".** The findings and conclusions of the study include the following:
 1. "Results of this survey show the chemical quality of the sediments in Fidalgo Bay to be generally good."

2. "The survey did not clearly identify any chemical contamination that could be linked to adverse effects of herring."

- **Ecology Publication No. 00-03-008**, May 2000, entitled "Results of a Screening Analysis for Metals and Organic Compounds in Shellfish from Padilla Bay and Vicinity." (Includes Fidalgo Bay). The study concludes: "Results of this study show that shellfish in the Padilla/Fidalgo Bay area have a very low level of chemical contamination. In most instances, the concentrations detected appear to be at background level for Puget Sound."
- **National Toxics Rule 303d List** - State and Federal Officials are required to establish water quality standards that are protective of human health and the environment. Should a water body contain levels of pollution that exceed these standards, the water body must be included on the National Toxics Rule 303d list. Water in Fidalgo Bay and Guemes Channel has been extensively tested and no chemical contamination has been found in excess of acceptable water quality standards. Thus, Fidalgo Bay and Guemes Channel are *NOT* listed on the National Toxics Rules 303d list.

In summary, the department of Ecology has strict discharge monitoring requirements and has completed substantial ecological and environmental studies in Fidalgo Bay over a number of years. According to the Washington Dept. of Fisheries, the local herring population in Fidalgo Bay more than doubled during the 10-year window between 1983 and 1992. In conclusion, various ecological studies and environmental indicators show the overall health in the marine environment in Fidalgo Bay to be generally good.

SECTION 10 - REPORTING

Permits - In addition to providing current copies of all regulatory permits that are requested by the State, Grantee agrees to notify State in writing of the renewal, modification, rescission, or appeal of any regulatory permits specifically relating to the Grantee's activities on the Easement Property.

General Reporting – In addition to providing all regulatory permits that are requested by the State, Grantee agrees to make notifications to the State as specified in the facility NPDES permit in the event of the following occurrences:

- *Effluent Exceedances* – All discharges that exceed the National Pollutant Discharge Elimination System (NPDES) permit, or otherwise violate the NPDES permit.
- *Outfall Malfunctions* – Any and all malfunctions in the authorized structure (i.e. – breaks in the pipe).

Formal written notification must also be provided for Effluent Exceedances and Outfall Malfunctions, as well as for all Sediment Criteria Exceedances (levels of

contamination above those defined in Washington's Sediment Management Standards) to the State as specified in the facility NPDES permit.

SECTION 13 - OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT

As stated in Section 13 of the easement, PSR owns and operates the outfall authorized under this easement. It is the intent of PSR to maintain this outfall during the course of this easement and in the event the parties to this easement agree that the outfall is no longer required, PSR shall remove the structure under terms agreed upon at the termination of this easement.

SECTION 18 - NOTICE

Organizational Position changes related to the easement shall be conveyed to State at the time they occur. Upon joint agreement by the grantor and grantee, the change may lead to a meeting whereby the terms and conditions of this contract may be discussed.

Operations Contact/Plant Manager

Name: HSE Manager

Title: HSE Manager

Address: PO Box 622, Anacortes, 98221-0622

Phone: (360) 293-0800

WA DNR Contact

Name: Skagit County Aquatic Land Manager

Title: Aquatic Resources

Address: 919 N. Township St.

Sedro Woolley, WA 98284

Phone: (360) 856-3500

MITIGATION REQUIREMENTS

In the event that any regulatory permit requires the Grantee to provide mitigation on state-owned aquatic lands, Grantee shall complete an authorization to use such state owned aquatic lands prior to implementation of any required mitigation.

The State of Washington



Department of Natural Resources
Hilary Franz Commissioner of Public Lands

Certificate

I, Boyd Barber certify that I have compared the attached copy, or specific part thereof, listed below, with the records in our custody, and that the same, or each of the same, is a true and correct copy of the Record in the Official Custody of the Commissioner of Public Lands of the State of Washington.

FROM THE RECORDS OF:

Department of Natural Resources

Agreement No. 51-076264

(31 pages)



In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the Office of the Commissioner of Public Lands of the State of Washington.

Boyd Barber

September 20, 2021

Records Management Specialist - DNR