

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)	
)	
Gorst Creek Landfill)	U.S. EPA Region 10
Port Orchard, Kitsap County, Washington)	CERCLA Docket No. 2016-10-0041
)	
ST Trust)	Proceeding under sections 104 and
Settling Respondent)	122 of the Comprehensive Environmental
)	Response, Compensation and Liability Act,
Department of the Navy)	42 U.S.C. §§ 9604 and 9622
Settling Federal Agency)	
)	

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 104 and 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9604 and 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the Office Director for the Region 10 Office of Environmental Cleanup by Regional Delegation No. 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, now rests with the Assistant Attorney General of the Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA, the ST Trust (“Settling Respondent”) and the Department of the Navy (“Settling Federal Agency”). The EPA, Settling Respondent and Settling Federal Agency are collectively referred to as the “Parties.” Settling Respondent consents to and will not contest the authority of the United States, and the Settling Federal Agency consents to and will not contest the authority of EPA, to enter into this Settlement Agreement or to implement or enforce its terms. Settling Respondent and Settling Federal Agency are collectively referred to as “Settling Parties.”

II. BACKGROUND

3. This Settlement Agreement concerns the Gorst Creek Landfill (“Site”) located at or around 4275 State Highway 3 Southwest in Port Orchard, Washington, and identified by Kitsap County Assessor as parcel number 012301-4-022-1005. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. The Site consists of a landfill located in Gorst Creek Ravine, assumed to contain approximately 150,000 cubic yards of waste. Site assessment and investigation has identified that the waste contains and is a source of hazardous substances. Sampling data from the surface of the landfill and in soil and sediment downstream of the landfill has identified the presence of hazardous substances. The landfill also impedes the flow of Gorst Creek which causes localized flooding that may cause the release and erosion of additional waste material, which may include hazardous substances, from the landfill to the surrounding environment. This settlement will provide funding for the EPA to complete a response action that will remove the landfill and restore the creek ravine to address the release and threatened release of hazardous substances at and from the Site, as specified in the Action Memorandum included as Appendix 1 to this agreement.

5. In performing response actions at the Site, EPA has incurred response costs including investigative, assessment and enforcement costs at the Site, and will incur additional response costs in the future.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA and the Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Settlement Agreement.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

9. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation or administrative proceedings by allowing Settling Parties to make cash payments in the amount of the total response costs, to provide Site access and to implement land use restrictions to resolve their alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and under Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site as provided in the Covenants by EPA in Section IX, subject to the Reservations of Rights by EPA in Section X, and as provided in the Covenants by Settling Parties in Section XI.

V. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“Action Memorandum” shall mean the response action decision document for the Gorst Creek Landfill included with this Settlement Agreement as Appendix 1 and incorporated by reference herein.

“Additional Response Costs” shall mean the amount of Removal Costs that exceed the Initial Payment defined herein and described in Paragraph 34, as determined by the Revised Cost Estimate prepared pursuant to Paragraph 35.

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Respondent, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following property located at or around 4275 State Highway 3 Southwest in Port Orchard, Washington, identified by Kitsap County Assessor as parcel number 012301-4-022-1005.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Final Cost Estimate” shall mean the final estimate of Removal Costs prepared pursuant to Paragraph 36.b.

“Final Payment” shall mean the amount of Removal Costs that exceed the sum of the Initial Payment, Additional Response Costs, and any Supplemental Response Costs paid on behalf of the Settling Federal Agency, as determined by the Final Cost Estimate prepared pursuant to Paragraph 36.b.

“Gorst Creek Landfill Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Initial Payment” shall mean the payment of \$24,844,500 toward Removal Costs by the United States on behalf of Settling Federal Agency, described in Paragraph 34, below.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Past Response Costs” shall mean all costs, including but not limited to, direct and indirect costs, that EPA incurred at or in connection with the Site through the date this Settlement Agreement is executed by all Parties, plus Interest on all such costs through such date.

“Parties” shall mean EPA, the ST Trust and the Department of the Navy.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Removal Costs” shall mean all costs of response to implement the Work, including but not limited to EPA direct and indirect payroll costs, direct and indirect contractor costs, travel costs and laboratory costs.

“Revised Cost Estimate” shall mean the revised estimate of Removal Costs included in the Cost Update Report prepared pursuant to Paragraph 35.

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Federal Agency” shall mean the Department of the Navy and its successor departments, agencies, or instrumentalities.

“Settling Parties” shall mean the Settling Respondent and the Settling Federal Agency.

“Settling Respondent” shall mean the ST Trust and its successors and assigns.

“Site” shall mean the Gorst Creek Landfill Site, encompassing approximately 5.7 acres, located at or around 4275 State Highway 3 Southwest in Port Orchard, Kitsap County, Washington, identified by Kitsap County Assessor parcel number and generally shown on the map included in Appendix 2.

“State” shall mean the State of Washington.

“Supplemental Cost Estimate” shall mean the revised estimate of Removal Costs prepared pursuant to Paragraph 36.a.

“Supplemental Response Costs” shall mean the amount of Removal Costs that exceed the sum of the Initial Payment and Additional Response Costs as determined by the Supplemental Cost Estimate prepared pursuant to Paragraph 36.a.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agency.

“Work” shall mean all activities to implement the response action selected by the Action Memorandum. The definition of Work shall not include the activities imposed on the Settling Respondent by Section XIII of this Settlement Agreement.

VI. FINDINGS OF FACT, CONCLUSIONS OF LAW AND DETERMINATIONS

For the purposes of this Settlement Agreement, EPA finds and the Settling Respondent and Settling Federal Agency neither admit nor deny the following findings:

11. The Site includes a triangular waste disposal area or landfill of approximately 5.7 acres located in a ravine through which Gorst Creek flows (“Gorst Creek Ravine”). The landfill in the Gorst Creek Ravine is approximately 700 feet long, reaches depths of approximately 60 to 80 feet, and is estimated to contain 150,000 cubic yards of waste. To create the landfill, Gorst Creek was channeled through a 24-inch corrugated steel culvert placed on the floor of the ravine. As described in more detail below, between approximately 1968 and 1989 the ravine was filled with waste disposed of on top of the culvert. A depiction of the Site is appended to this Settlement Agreement as Appendix 2.

12. Settling Respondent is the current legal owner of the Site.

13. Washington State Highway 3 is located adjacent to the Site approximately 100 yards downstream of the waste disposal area. As Gorst Creek exits the culvert beneath the landfill, it flows under State Highway 3, and then approximately four miles downstream to Sinclair Inlet in the Puget Sound.

14. From approximately July 1, 1969 until June 30, 1970, Settling Federal Agency transported waste from the Puget Sound Naval Shipyard to the Site for disposal. Between 1970 and 1989, the landfill accepted public waste primarily from local residents. The Site is estimated to contain 150,000 cubic yards of waste. Other than Navy, no significant single-source generator of waste to the landfill has been identified.

15. In 1989, disposal operations ceased and the Site was abandoned. No actions were taken to close the landfill in accordance with state or federal requirements, including requirements at 40 C.F.R. Part 258, Subpart F, which was promulgated to protect against the release of hazardous constituents from landfills into the environment.

16. On March 19, 1997, it rained seven inches in a 24-hour period. The precipitation increased the flow of Gorst Creek and resulted in the impoundment of a significant volume of water upstream of the culvert passage beneath the landfill. The impoundment of Gorst Creek caused surface water to bypass the culvert and flood through and over the top of the landfill, causing the downstream slope of the landfill to erode and slide into Gorst Creek. The landfill slide dispersed waste material in and around the upstream entrance to the culvert conveying Gorst Creek beneath State Highway 3, and up to a half mile downstream. In addition, the impoundment of water upstream of the landfill elevated the water level of Gorst Creek and resulted in the saturation of landfill debris. Seven days after the landfill slide, on March 26, 1997, a groundwater sample collected from the City of Bremerton monitoring well BR-11

detected elevated concentrations of hazardous substances including cadmium at 42.7 micrograms per liter ($\mu\text{g/L}$), copper at 3.0 $\mu\text{g/L}$, and zinc at 75 $\mu\text{g/L}$.

17. Following an inspection of the Site, Washington State Department of Ecology (“Ecology”), Washington State Department of Transportation (“WSDOT”) and the Kitsap County Health District (“KCHD”) met to discuss Site conditions on April 7, 1997, and concluded that the instability of the landfill and potential for additional slope failure presented an imminent threat to public health, safety and the environment. These entities identified three main areas of immediate concern resulting from the instability of the landfill: (1) potential threats and damage to State Highway 3, (2) potential impacts to downstream well fields, including the City of Bremerton’s wells, and (3) adverse impact to fish habitat from continued sedimentation and debris.

18. Following the Site visit on April 7, 1997, Hong West & Associates, Inc., completed a geotechnical evaluation of the landfill for WSDOT dated April 22, 1997. The geotechnical evaluation was conducted to address WSDOT concerns that future landslides from the landfill would wash waste debris into and against the culvert under State Highway 3, blocking stream flow and causing flooding that could impact the highway and erosion that could threaten the stability of the highway embankment. The geotechnical evaluation documented erosional gullies at the top of the downstream landfill slope and water seepage at the base of the landfill. Based on this information, the evaluation concluded that heavy storm events cause a combination of overland flow down the landfill slope and stream flow through the landfill likely due to a partially or completely blocked culvert. The evaluation concluded that these conditions could lead to future large-scale landslide events.

19. In April 1997, the Settling Federal Agency contracted with Foster Wheeler Environmental Corporation to conduct an inspection of the Site. The inspection report identified various waste debris downstream of the landfill which may have been sources of hazardous substances including two 500-gallon tanks, lead acid batteries, automobile waste, scrap metal, and various five-gallon containers. The report further confirmed that the downstream slope of the landfill was continuing to erode into Gorst Creek, and concluded that the structural instability of the landfill would lead to further erosion of the landfill and releases of waste material to the downstream environment. Specifically, Foster Wheeler concluded that the landfill slope would continue to slide and send additional waste debris downstream, further undercutting of the landfill slope and exacerbating the slope failure.

20. In February 2001, Ecology placed the Site on its “Hazardous Sites List” and assigned it the highest priority ranking.

21. Heavy rainfall in January 2002 again caused Gorst Creek to impound upstream of the landfill and to flood through and over top of the landfill. The resulting flood washed waste from the landfill downstream and destroyed the uppermost rip-rap catchment berm constructed by WSDOT to protect State Highway 3 following the 1997 slope failure.

22. Following the 2002 flood event, Ecology referred the Site to EPA and requested assistance to address Site conditions. EPA conducted a preliminary assessment and inspection of the Site on January 28, 2003. At the time of the inspection, Gorst Creek was impounded upstream of the landfill a distance of approximately 400 feet, with standing water reaching depths of up to 30 feet. EPA deployed a video camera into the culvert and confirmed that the

culvert had collapsed beneath the weight of the landfill approximately 450 feet upstream of the culvert outflow. A second culvert collapse was observed approximately 20 feet downstream of the culvert inflow. EPA was unable to inspect the condition of the approximately 220 feet of culvert between the two observed collapsed areas.

23. In November 2003, EPA returned to collect onsite samples from soil, groundwater, surface water, sediment, and six borehole samples of the landfill at depths of four to twenty feet. EPA also collected three additional offsite sediment samples in Gorst Creek at locations downstream of the Site. Onsite sampling results identified the following hazardous substances at concentrations that exceeded health-based screening levels: two polychlorinated biphenyls (“PCBs”) – Aroclor-1242 and Aroclor-1254; six pesticides – aldrin, alpha-chlordane, dieldrin, endrine, keon, gamma-chlordane, and heptachlor; two metals – arsenic and lead; and four semivolatile organic compounds (“SVOCs”) – 2-methylnaphthalene, naphthalene, phenanthrene and bis[2-ethylhexyl]phthalate. Downstream offsite sediment samples detected concentrations of dichlorodiphenyltrichloroethane (DDT), dichlorodiphenyldichloroethylene (DDE), PCBs and copper at levels exceeding federal ecological screening levels.

24. In June 2004, EPA completed an Integrated Assessment (“IA”) documenting the results of its 2003 sampling and site investigation. The IA concluded from sampling data that the landfill contains significant concentrations of hazardous substances including pesticides, PCBs, metals and SVOCs, and that the collapsed culvert and resulting flood events provide a pathway for the release or threatened release of hazardous substances to Gorst Creek and the downstream environment, with the potential to impact nearby receptors including groundwater wells, sport fisheries, and the Suquamish Tribe fish hatchery. Suquamish Tribe is a federally recognized Indian Tribe with rights under the 1855 Treaty of Point Elliot to fish and gather shellfish at usual and accustomed areas in the Puget Sound which include the downstream segment of Gorst Creek and Sinclair Inlet.

25. On December 3, 2007, the Site received eight inches of rainfall, which caused Gorst Creek to impound upstream of the culvert entrance to the landfill and to flow over and through the landfill, causing severe flooding and downstream slope erosion. On December 4, 2007, KCHD inspected the Site and observed a landfill slide of approximately 200 cubic yards of waste material and debris. Waste material was observed in Gorst Creek up to a half-mile downstream of the Site. The landfill slide resulted in a significant amount of waste material and debris blocking the State Highway 3 culvert, requiring WSDOT to use an excavator to clear accumulated debris from the culvert and highway embankment.

26. In 2011, EPA prepared an Engineering Evaluation and Cost Analysis (“EE/CA”). As part of the EE/CA, EPA conducted additional soil, sediment, and groundwater sampling in July and August 2011. Sampling results identified hazardous substances at concentrations exceeding health and ecological screening levels, including chromium, cadmium, copper, lead, manganese, mercury, nickel, zinc, two PCBs (Aroclors 1248 and 1254), chloroform and methyl tert-butyl ether (“MTBE”). The 2011 sampling results were generally consistent with the results from the November 2003 sampling event, confirming the conclusion of the 2004 IA that the landfill is an ongoing source of hazardous substances to the downstream environment including pesticides, PCBs, metals, and SVOCs.

27. The public comment period on the EE/CA commenced on May 16, 2012 and ended on June 16, 2012. During the comment period the EPA received comments from Washington Department of Fish and Wildlife (“WDFW”) and the Suquamish Tribe, and letters supporting a response action at the Site from the City of Bremerton and the KCHD.

28. The EE/CA concluded that the collapsed culvert restricts the flow of Gorst Creek, causing water to impound upstream of the landfill. Impoundment of water upstream of the landfill may also result in significant downstream flooding events. Large storm events increase the level of impounded water and result in water flooding through the landfill and eventually overtopping the upper elevation of the landfill. Flooding through and overtop of the landfill presents a threat of release of hazardous substances from the landfill and contributes to landfill instability by eroding the downstream landfill slope as water carries waste from the landfill to the downstream environment.

29. The WDFW has identified Gorst Creek as a migratory corridor and as habitat for coho salmon (*Oncorhynchus kisutch*), listed as a threatened species under the Endangered Species Act, and for coast-resident cutthroat trout (*O. clarki*), a state of Washington priority species. Cutthroat trout have been observed in Gorst Creek immediately below the Site. According to the National Marine Fisheries Service, because Gorst Creek is a tributary to the Puget Sound, there is also the potential for occurrence of other federally-listed species including Puget Sound Chinook salmon (*O. tshawytscha*) and Puget Sound steelhead (*O. mykiss*).

30. The WDFW assessed the impact of the landfill to fish resources, including threatened and endangered species. WDFW determined that the landfill slope failure resulted in impacts up to a half-mile downstream. These impacts included dispersion of waste debris and heavy sand and silt loading to the downstream reaches of Gorst Creek. Sand and silt loading filled areas of wetlands associated with Gorst Creek and caused the Creek to braid into several channels that were created by wide and thick sand and gravel deposits. Downstream of the Site, waste material was observed to have concentrated into debris piles which further affected the natural flow of Gorst Creek.

31. The WDFW assessment concluded that future landfill slides could impact fish resources by causing silting and sedimentation of spawning and rearing habitat. Additional sedimentation and silting loads would also increase water column turbidity. Heavy or prolonged periods of turbidity can kill fish by clogging or abrading gills or by impairing feeding ability. Hazardous substances identified at and immediately downstream of the Site, including heavy metals and SVOCs, can change water pH levels and alter water chemistry impacting juvenile salmon as they undergo body chemistry changes to prepare for life in saltwater.

32. Since the Site first came to the attention of State and County regulators in 1997, no action has been taken to address the collapsed culvert, unstable landfill slope, and releases or threat of releases of hazardous substances to the surrounding and downstream environment.

33. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Settling Respondent and Settling Federal Agency are “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Based upon the findings, the Settling Respondent is alleged to be a responsible party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), due to its current ownership of the Site. Settling Federal Agency is alleged to be a responsible party under Section 107(a)(3), 42 U.S.C. § 9607(a)(3), and potentially liable in contribution to Settling Respondent pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f)(1).

d. The conditions at the Site constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The removal action to be funded by this Settlement Agreement, and described in the Action Memorandum attached as Appendix 1, is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. PAYMENT OF RESPONSE COSTS

34. Initial Payment on behalf of Settling Federal Agency. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agency, shall pay an Initial Payment of \$24,844,500.00 to the EPA Gorst Creek Landfill Special Account. The amount of this Initial Payment is 90% of the estimated total costs, as of the date of this Settlement Agreement, to perform the Work and to pay Removal Costs. The amount paid on behalf of Settling Federal Agency pursuant to this Paragraph shall be retained and used by EPA only at or in connection with the Site. The Initial Payment shall be made to the Gorst Creek Landfill Special Account.

35. EPA Progress and Cost Update Reports. The estimated total cost, as of the date of this Settlement Agreement, to perform the Work and to reimburse EPA for Removal Costs is \$27,605,000.00. EPA’s Project Coordinator shall submit to the U.S. Department of Justice and Settling Federal Agency a Progress Report (“Progress Report”) that includes: (a) a description of work performed during each 90-day period that work occurs starting on the day Work commences; and (b) a standard regional summary and accounting of costs incurred during that 90-day period, in a format similar to the sample attached hereto as Appendix 3. The Progress Report shall be submitted within 30 days after the end of the 90-day period covered by the Progress Report. In addition to the Progress Reports, not later than 180 days after the commencement of the Work, the EPA shall submit to the U.S. Department of Justice and Settling Federal Agency a Cost Update Report (“Cost Update Report”) that includes (a) any revisions to the original \$27,605,000.00 estimate of the total costs for the Work, accompanied by an explanation of any cost increases (“Revised Cost Estimate”); and (b) the estimated amount of money needed for EPA to complete the Work under this Settlement Agreement, including reimbursement to EPA of Removal Costs.

a. All Reports shall be sent by first-class mail and electronic mail to:

Austin D. Saylor
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
601 D Street, N.W.
Washington, D.C. 20044
Re: DJ# 90-7-3-20293
austin.saylor@usdoj.gov

Erika Zimmerman
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
c/o NOAA, Damage Assessment
7600 Sand Point Way, N.E.
Seattle, WA 98115
Re: DJ# 90-11-3-11176
erika.zimmerman@usdoj.gov

Aundrea Taplin
Senior Counsel (Sustainability)
Office of the Assistant Secretary of the Navy
Energy, Installations & Environment
1000 Navy Pentagon
Washington, D.C. 20350
aundrea.taplin@navy.mil

36. Payment of Response Costs on behalf of Settling Federal Agency. If a Revised Cost Estimate, as defined in Paragraph 35, identifies that the cost of completing the Work will exceed the amount of the United States' Initial Payment, then the United States on behalf of Settling Federal Agency shall pay 90% of the Additional Response Costs.

a. Following any payment of Additional Response Costs by the United States on behalf of Settling Federal Agency, if EPA expects Removal Costs to exceed the amount of the Initial Payment plus any amount paid by the United States on behalf of the Settling Federal Agency as Additional Response Costs, EPA may submit to the U.S. Department of Justice and Settling Federal Agency a Supplemental Cost Estimate reflecting any change in the estimated total costs to complete the Work accompanied by an explanation of any cost increases. The United States on behalf of the Settling Federal Agency shall pay 90% of the Supplemental Response Costs, which is defined as the difference in costs between the Removal Costs estimated in the Supplemental Cost Estimate and the sum of the Initial Payment and Additional Response Costs paid by the United States on behalf of the Settling Federal Agency.

b. Notwithstanding the above, EPA may at any time submit to the Department of Justice and the Settling Federal Agency a Final Cost Estimate for the total costs to complete the Work, accompanied by an explanation of any cost increases. EPA shall not seek payment from the United States on behalf of the Settling Federal Agency for any costs above the

amount specified in a Final Cost Estimate. The United States on behalf of the Settling Federal Agency shall pay 100% of the Final Payment, which is defined as the difference in costs between the Removal Costs estimated in the Final Cost Estimate and the sum of the total Removal Costs paid as Initial Payment, Additional Response Costs and any Supplemental Response Costs by the United States on behalf of the Settling Federal Agency.

c. In the event that payment of any Additional Response Costs, Supplemental Response Costs or Final Payment are disputed by Settling Federal Agency, the United States on behalf of Settling Federal Agency shall pay only that portion of the required payment that is attributable to the costs that are undisputed by Settling Federal Agency. The remaining portion of the amounts payable under this Paragraph that are attributable to disputed costs shall be paid pursuant to Paragraph 36.d as soon as reasonably practicable after the dispute is resolved.

d. Any payment of Additional Response Costs, Supplemental Response Costs, or Final Payment by the United States on behalf of the Settling Federal Agency required pursuant to Paragraphs 36, 36.a, or 36.b shall be made to the Gorst Creek Landfill Special Account as soon as reasonably practicable following receipt of the Revised Cost Estimate, Supplemental Cost Estimate, or Final Payment, as the case may be.

37. Notwithstanding any other provision of the Settlement Agreement, nothing herein shall be construed to require the United States, on behalf of Settling Federal Agency, to make any payments or otherwise be liable for any costs other than those required to implement the response action selected by the Action Memorandum, Appendix 1.

38. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of the United States on behalf of Settling Federal Agency under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

39. Resolution of Disputes with Settling Federal Agency Concerning Payment of Additional Response Costs or Supplemental Response Costs.

a. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding the United States' obligation on behalf of Settling Federal Agency's obligation to pay EPA for Additional Response Costs, Supplemental Response Costs or Final Payment. The dispute resolution procedures in this Paragraph are limited to disputes regarding payment of response costs. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by EPA.

b. Settling Federal Agency may dispute all or part of Additional Response Costs, Supplemental Response Costs or Final Payment if Settling Federal Agency determines that EPA has made a mathematical error or included a cost item that is not within the definition of Additional Response Costs, Supplemental Response Costs or Final Payment, or if Settling Federal Agency believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the National Oil and Hazardous

Substances Contingency Plan (“National Contingency Plan”), 40 C.F.R. Part 300. During the resolution of any dispute over costs, the United States on behalf of Settling Federal Agency shall proceed to pay the full amount of the uncontested costs to EPA as specified in Paragraph 36 (as applicable) as soon as reasonably practicable. If any dispute over costs is resolved before payment is made, the amount to be paid will be adjusted consistent with the resolution of the dispute.

c. If Settling Federal Agency objects to any Additional Response Costs, Supplemental Response Costs or Final Payment, it shall notify the EPA official identified in Paragraph 69 in writing of its objection(s) as soon as practicable but in no case more than 30 days after receipt of the Revised Cost Estimate, Supplemental Cost Estimate or Final Cost Estimate subject to dispute, unless the objection(s) has/have been resolved informally. EPA and Settling Federal Agency shall have 30 days from EPA’s receipt of the written objection(s) to resolve the dispute through formal negotiations (the “Negotiation Period”). The Negotiation Period may be extended at the sole discretion of EPA.

d. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the parties to the dispute, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Office Director level or higher, in consultation with the Environmental Enforcement and Environmental Defense Sections of the U.S. Department of Justice, Environment & Natural Resources Division, will issue a written decision on the dispute to Settling Federal Agency, which shall not constitute final agency action for purposes of judicial review. EPA’s decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, the United States on behalf of Settling Federal Agency shall make payment to the Gorst Creek Special Account in accordance with the instructions in Paragraph 36.d.

VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

40. Stipulated Penalty.

a. If Settling Respondent does not comply with its obligations set forth in Paragraph 58.c, Settling Respondent shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance.

All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Respondent’s receipt from EPA of a demand for payment of the penalties. If Settling Respondent fails to make any payment required by EPA’s demand, Interest shall accrue on the stipulated penalty amount from the date due through the date of payment. Settling Respondent shall identify all payments to EPA under this Section as “stipulated penalties” and shall pay them by official bank check made payable to “EPA Hazardous Substances Superfund.” The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, Site/Spill ID Number 10GL, and the EPA Docket Number for this action and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Settling Respondent shall send notice that payment has been made to EPA as provided in Paragraph 69.

c. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Respondent of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

41. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Respondent's failure to comply with the requirements of this Settlement Agreement, Settling Respondent's failure or refusal to comply with any term or condition of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

42. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Respondent's payment of stipulated penalties shall not excuse Settling Respondent from performance of any other requirements of this Settlement Agreement.

IX. COVENANTS BY EPA

43. Covenants for Settling Respondent by EPA. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Work, Past Response Costs and Removal Costs. With respect to present and future liability, these covenants shall take effect upon the Effective Date. The effectiveness of these covenants are conditioned upon the satisfactory performance by Settling Respondent of its obligations under this Settlement Agreement. These covenants extend only to Settling Respondent and do not extend to any other person.

44. Covenants for Settling Federal Agency by EPA. Except as specifically provided in Section X (Reservation of Rights by EPA), EPA covenants not to take administrative action against Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Work, Past Response Costs and Removal Costs. These covenants shall take effect upon the initial payment by the United States on behalf of Settling Federal Agency pursuant to Paragraph 34. The

effectiveness of these covenants are conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Settlement Agreement. These covenants extend only to Settling Federal Agency and do not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

45. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Respondent and Settling Federal Agency with respect to all matters not expressly included within Paragraph 43 (Covenants for Settling Respondent by EPA) and Paragraph 44 (Covenant for Settling Federal Agency by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Respondent and EPA reserves and this Settlement Agreement is without prejudice to, all rights against Settling Federal Agency, with respect to:

- a. liability for failure of Settling Respondent or Settling Federal Agency to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Respondent when such ownership or operation commences after signature of this Settlement Agreement by Settling Respondent;
- e. liability based on Settling Respondent's or Settling Federal Agency's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Respondent or Settling Federal Agency.
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

46. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

XI. COVENANTS BY SETTLING RESPONDENT AND SETTLING FEDERAL AGENCY

47. Covenants by Settling Respondent. Settling Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Washington State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

48. Covenant by Settling Federal Agency. Settling Federal Agency agrees not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site and this Settlement Agreement. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Settlement Agreement) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

49. Except as provided in Paragraph 51 (claims against other PRPs) and Paragraph 56 (res judicata and other defenses), the covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section X (Reservations of Rights by EPA), other than in Paragraph 45.a (liability for failure to meet a requirement of the Settlement Agreement) or 45.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

50. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

51. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other, and Settling Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

52. Except as provided in Paragraph 51 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XI (Covenants by Settling Respondent and Settling Federal Agency), each of the Settling Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a

Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

53. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Respondent and Settling Federal Agency have, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section X (Reservations of Rights by EPA), other than in Paragraphs 45.a (liability for failure to meet a requirement of the Settlement Agreement) or 45.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

54. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Respondent and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

55. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

56. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section IX.

57. Effective upon signature of this Settlement Agreement by Settling Respondent, such Settling Respondent agrees that the time period commencing on the date of its signature and ending on the date of completion of the performance obligation pursuant to Paragraph 58.c, Section VIII (Failure to Comply with Settlement Agreement), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the

United States related to the “matters addressed” as defined in Paragraph 53, and that, in any action brought by the United States related to the “matters addressed,” such Settling Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XIII. PROPERTY REQUIREMENTS

58. Agreements Regarding Access and Non-Interference. Settling Respondent shall, with respect to its Affected Property:

a. Provide the United States and its representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Respondent or its agents, consistent with Section XIV (Retention of Records);
- (6) Assessing Settling Respondent’s compliance with the Settlement Agreement;
- (7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

c. Within 30 days of the Effective Date, execute and record with the Kitsap County Assessor the environmental covenant for the Site, pursuant to RCW 64.70, attached hereto as Appendix 4, which will conserve Gorst Creek Ravine in its restored state following completion of the response action by prohibiting future development of the Site.

59. Settling Respondent shall not Transfer its Affected Property without first securing EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under Paragraph 58 (Agreements Regarding Access and Non-Interference). Such approval by the EPA shall not be unreasonably withheld.

60. If EPA determines in a decision document prepared in accordance with the NCP that additional institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Respondent shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

61. Notice to Successors-in-Title.

a. Settling Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a response action regarding the Site; and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

62. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Respondent shall continue to comply with its obligations under the Settlement Agreement.

63. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. RETENTION OF RECORDS

64. Settling Parties shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

65. Privileged and Protected Claims.

a. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 65.b, and except as provided in Paragraph 65.c.

b. If Settling Parties assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name,

title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Parties shall provide the record to EPA in redacted form to mask the privilege or protection only. Settling Parties shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Parties' favor.

c. Settling Parties may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

66. Business Confidential Claims. Settling Respondent may assert that all or part of a Record submitted to EPA under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records submitted to EPA determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Respondent.

67. Settling Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, documents, or other information including records, reports, documents and other information in electronic form (other than identical copies) relating to its potential liability regarding the Site, since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

68. The United States acknowledges that the Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XV. NOTICES AND SUBMISSIONS

69. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party

by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA: Jeffrey Rodin, Federal On-Scene Coordinator
1200 6th Avenue, Suite 900
Mail Stop ECL-133
Seattle, WA 98101
Phone: 206-553-6709
Email: rodin.jeffry@epa.gov

As to Settling Federal Agency: Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-7-3-20293

Austin D. Saylor
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
601 D Street, N.W.
Washington, D.C. 20044
Re: DJ# 90-7-3-20293
austin.saylor@usdoj.gov

Aundrea Taplin
Senior Counsel (Sustainability)
Office of the Assistant Secretary of the Navy
Energy, Installations & Environment
1000 Navy Pentagon
Washington, D.C. 20350
aundrea.taplin@navy.mil

As to Settling Respondent: ST Trust
William J. Nilles, Jr., Trustee
413 State Route 702 E
Roy, WA 98580

Paul Hirsch
PO Box 771
Manchester, WA 98353

XVI. INTEGRATION/APPENDICES

70. This Settlement Agreement and its appendices constitute the final, complete, and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix 1" is the Action Memorandum selecting the response action for the Site; "Appendix 2" is a map depicting the Site; "Appendix 3" is an example of standard regional cost summary and accounting documentation; and "Appendix 4" is the Environmental Covenant to be recorded by Settling Respondent for the Site;

XVII. PUBLIC COMMENT

71. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

72. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 71 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.


XIX. WITHDRAWAL OF ORDERS

73. Upon the Effective Date of this Settlement Agreement, EPA shall withdraw the RCRA 7003 Order EPA issued to Settling Federal Agency, effective February 26, 2015. EPA shall send written notice of the RCRA 7003 Order withdrawal to Settling Federal Agency (including to the recipients specified above in Section XV (Notices and Submissions)) within seven days after the Effective Date of this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

1/13/2016
Dated



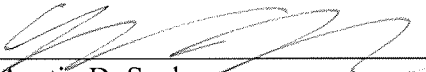
Sheila Fleming
Acting Director, Environmental Cleanup Office
U.S. Environmental Protection Agency Region 10
1200 6th Avenue, Suite 900
Seattle, WA 98101

Signature Page for Settlement Agreement Regarding Gorst Creek Landfill Site


U.S. DEPARTMENT OF JUSTICE:

JOHN C. CRUDEN
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

January 19, 2016
Dated


Austin D. Saylor
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044

January 19, 2016
Dated

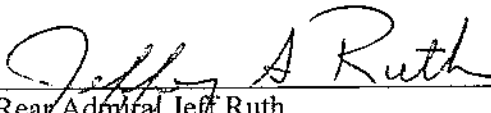

Erika M. Zimmerman
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
7600 Sand Point Way, NE, c/o NOAA
Seattle, Washington 98115

*(Austin Saylor for Erika Zimmerman,
w/ permission)*

Signature Page for Settlement Agreement Regarding Gorst Creek Landfill Site

FOR SETTLING FEDERAL AGENCY:

8 JAN 16
Dated

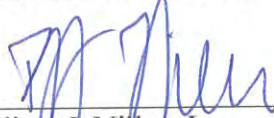


Rear Admiral Jeff Ruth
Commander, Navy Region Northwest
1100 Hunley Road
Silverdale, WA 98315

Signature Page for Settlement Agreement Regarding Gorst Creek Landfill Site

FOR THE ST TRUST:

12/14/15
Dated



William J. Nilles, Jr.
Trustee, ST Trust
413 State Route 702 E
Roy, WA 98580

APPENDICES

- Appendix 1 -- Gorst Creek Landfill Action Memorandum**
- Appendix 2 -- Gorst Creek Landfill/ Bremerton Auto Wrecking Site Map**
- Appendix 3 -- Example of Regional Cost Summary and Accounting Documentation**
- Appendix 4 -- Gorst Creek Landfill Environmental Covenant**

Appendix 1 – Gorst Creek Action Memorandum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL CLEANUP

MEMORANDUM

SUBJECT: Action Memorandum for the Gorst Creek-Bremerton Auto Wrecking Landfill, Kitsap County, Washington

FROM: Jeffry Rodin, Federal On-Scene Coordinator
Emergency Response Unit
Emergency Management Program

THRU: Wally Moon, Manager
Emergency Preparedness and Prevention Unit

TO: Chris Field, Program Manager
Emergency Management Program

I. PURPOSE

The purpose of this Action Memorandum is to document approval of the non-time-critical removal action described herein for the Gorst Creek/Bremerton Auto Wrecking Landfill, Kitsap County, Washington ("Gorst Creek Landfill" or "Site").

This proposed non-time-critical removal action is expected to be performed by the U.S. Environmental Protection Agency (EPA) and in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. Funding for the removal action will be provided through an agreement pursuant to Section 122 of the CERCLA, 42 U.S.C. § 9622, between EPA, the ST Trust and the U.S. Department of the Navy (Navy).

II. SITE CONDITIONS AND BACKGROUND

The CERCLIS ID No. is WAN001002414 and the Site ID No. is 10GL.

A. Site Description

1. Removal site evaluation

The Site is a former landfill that operated from approximately 1968 to 1989. The Site is estimated to contain approximately 150,000 cubic yards of waste including automotive wrecking waste, construction waste, industrial trash, medical wastes, and other wastes from public dumping. The sources of the waste disposed of at the Site include the adjacent automotive wrecking yard, the Puget Sound Naval Shipyard, construction and demolition companies and residential dumping. Landfilling operations at the Site ceased in 1989 but the landfill was not closed pursuant to applicable landfill closure regulations.

Site investigations and assessments have detected an array of hazardous substances in environmental media at and downstream of the landfill, including chlorinated pesticides, polychlorinated biphenyls (PCBs), semivolatile organic compounds (SVOCs), volatile organic compounds (VOCs), and metals. There is substantial information indicating that human health and environmental impacts are present at the Site.

2. Physical location

The Site is located at 4275 State Highway 3 SW, approximately 5 miles southwest of Port Orchard, 6 miles south-southwest of Bremerton, and 1.5 miles west of Gorst, Washington (see Figure 1-1, Site Location Map). The Site is located within Gorst Creek, approximately 2.5 miles upstream of Gorst Creek's confluence with Puget Sound at Sinclair Inlet. The site is located at latitude 47.509968° and longitude -122.740767° in the northwest quarter of the southwest quarter of Section 1, Township 23 North, Range 1 West.

The Site and immediate properties to the northeast are zoned "business center" and are not occupied by residents. Adjoining land is zoned as incorporated city and rural residential. The population within one mile of the Site is 1,027.

Gorst Creek flows northwest beneath the landfill through an approximately 880 foot-long, 24-inch diameter corrugated steel culvert. Immediately downstream of the landfill, Gorst Creek flows under State Highway 3 SW through a 48-inch diameter box culvert.

The Gorst Creek area has a temperate climate characterized by warm dry summers and wet, semi-mild winters. The average annual precipitation is 56.37 inches (of which 5.33 is snow), and the average annual temperature is 59.9 degrees Fahrenheit.

A review of sensitive plant and animal species information for the vicinity of the Site indicated that coast-resident cutthroat trout (*O. clarki* [Washington State priority species]) occur or migrate in Gorst Creek. Cutthroat trout have been observed in Gorst Creek immediately downstream of the Site. The U.S. Fish and Wildlife Service (USFWS) indicated that the bull trout (*Salvalinus confluentus*) – Coastal-Puget Sound distinct population segment and marbled murrelet (*Brachyramphus marmoratus*) are listed as threatened species that may be present at or around the Site. Also, the USFWS considers the yellow-billed cuckoo (*Coccyzus americanus*) as a candidate species in Kitsap County and 12 other animals as

species of concern in Kitsap County. (Ref 1)

The National Marine Fisheries Service (NMFS), a branch of NOAA, identified the Puget Sound Chinook salmon (*O. tshawytscha*) evolutionarily significant unit and Puget Sound steelhead (*O. mykiss*) distinct population segment as federally listed threatened species in Puget Sound (National Marine Fisheries Service August 15, 2011). Federally listed threatened Chinook salmon (*O. tshawytscha*) have historically used Gorst Creek, including the portion of the Creek collocated with the Site, for spawning from the headwaters of the Creek down to Sinclair Inlet (Huff 2003a, WDFW 2002). The Suquamish Tribe operates a Chinook salmon fish hatchery in Gorst Creek downstream of the Site. (Ref 2)

3. Site characteristics

The Gorst Creek Landfill is a triangular-shaped parcel of approximately 5.7 acres located within a ravine through which Gorst Creek flows. The ravine was 60 to 80 feet deep at this location before landfilling operations began in 1968. To create the landfill, Gorst Creek was channeled through a 24-inch steel culvert at the bottom of the ravine. From 1968 until 1989, waste was disposed of in the ravine on top of the culvert. The culvert under the landfill, which is approximately 880 feet in length, has collapsed under the weight of the disposed waste in at least two locations, thus diminishing the flow capacity of the culvert. The diminished flow capacity of the culvert results in the impoundment of water upstream of the landfill, causing water to seep and flow through the landfill. During periods of heavy precipitation impounded water periodically overtops and scours the landfill cover, causing the landfill to erode and dispersing waste material and debris into the downstream reaches of Gorst Creek. Presently, the top of the landfill is flush with the surrounding topography and is overgrown with vegetation and covered with debris.

The Site began operating as a landfill in 1968 under the name Ames Auto Wrecking. At this time, the Site and Ames Auto Wrecking were owned by Mel Marler of Bremerton, Washington, who operated the landfill until 1972. In 1968 the 24-inch steel culvert was installed to confine the Gorst Creek flow within a pipe, allowing waste disposal across the full breadth of the Gorst Creek Ravine. In 1972, the property was purchased by Earl King and Louis King. In 1973, K. R. Crawford and Clara D. Crawford and Northern, Inc. became partners with the Kings in ownership of the Site. Mr. and Mrs. King, Mr. and Mrs. Crawford, and Northern, Inc. operated the landfill under the name of Ames Refuse Bremerton Auto Wrecking, Inc. until 1980. In 1980, the property was obtained by Sid Uhinck and Lucille Uhinck who operated the Site as Bremerton Auto Wrecking, Inc. until its closure in 1989. In 2000, the Site was acquired by Kitsap County by tax foreclosure. In February 2001, Vern L. Padgett of Tacoma, Washington purchased the property from the Kitsap County Treasurer at a tax foreclosure sale. In February 2002, Mr. Padgett executed a quit claim deed granting the property to the Carina Trust. In November 2002, the Carina Trust executed a quit claim deed granting the property to Mr. William J. Nilles Senior. In 2005, Mr. William J. Nilles Senior executed a quit claim deed granting the property to the ST Trust. The current trustee of the ST Trust is Mr. William J. Nilles Junior.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

The contaminants of concern at the Site include metals (chromium, cobalt, lead, cadmium, copper, manganese, mercury, nickel, and zinc), and PCBs (Aroclor 1248 and Aroclor 1254) which are all hazardous substances as defined by Section 101(14) of CERCLA, as amended, 42 U.S.C. § 9601(14).

Data regarding the nature and extent of the contaminants of concern found at the Site are summarized below. A more thorough discussion of the Site investigations and data is presented in the Engineering Evaluation/Cost Analysis (EE/CA) completed for the Site in 2012.

The EPA conducted a preliminary assessment at the Site in 2003 and an integrated assessment in 2003-2004. During the integrated assessment, subsurface samples were collected from six boreholes drilled directly into the landfill, and six surface soil samples were also collected at the same locations. Sediment samples were collected from Gorst Creek at locations including downstream of the landfill between the landfill and State Highway 3, downstream of State Highway 3, and just upstream of the landfill near the southeastern slope of the landfill. The results of the integrated assessment indicated that the Aroclor 1254, benzo(a)pyrene, benzo(a)anthracene, and lead in Site soil samples exceeded health-based screening levels. Dichlorodiphenyltrichloroethane (DDT), dichlorodiphenyldichloroethylene (DDE), Aroclor 1254, and copper exceeded the National Oceanic and Atmospheric Administration (NOAA) Screening Quick Reference Tables (SQuiRT) screening levels in sediment samples located between the landfill and State Highway 3 and downstream of State Highway 3. In addition to these contaminants of concern, the integrated assessment noted that medical waste may also be present in the landfill.

In an effort to collect additional information to prepare the EE/CA, the EPA collected additional surface soil samples and sediment samples in July 2011. Surface soil samples were collected from seven locations in the landfill from the surface to 6 inches depth. Laboratory results indicated chromium at concentrations ranging from 19.6 milligram per kilogram (mg/kg) to 47.8 mg/kg, exceeding the EPA Regional Screening Level (RSL) of 5.6 mg/kg for industrial soils, and the Washington Model Toxics Control Act (MTCA) Method A level of 19 mg/kg. Sediment samples from Gorst Creek were tested using 10-day midge (*Chironomus dilutus*) and 28-day amphipod (*Hyalella azteca*) sediment bioassays, as well as chemical analyses for VOCs, SVOCs, pesticides, PCBs, and metals. While no EPA or MTCA screening level exceedances of chemicals of potential concern were observed in the sediment samples, the sediment screening results suggest that growth of benthic organisms may be impaired in Gorst Creek, which may result in less prey for fish, amphibians, and other organisms that feed on benthic organisms. Consequently, sediment contamination may be having a negative impact.

The EPA collected subsurface soil samples and a groundwater sample in August 2011 using an auger drilling rig. The chemicals of potential concern that exceeded the MTCA's cleanup levels and EPA's RSLs for Chemical Contaminants at Superfund Sites (RSLs) included three metals (arsenic, chromium, and cobalt) and two VOCs (chloroform and methyl tert-butyl ether [MTBE]).

In addition to being a source of chemical contaminants to downstream receptors, the landfill has released solid waste into Gorst Creek as a result of high stream flows overtopping and scouring the landfill. In

1997, 2002, 2007 and 2009 after significant storm events, Gorst Creek backed up on the southeast side (upstream side) of the landfill and overtopped the surface of the landfill, causing a portion of the northwest slope of the landfill to fail and wash waste downstream into Gorst Creek. Review of a 2003 inspection video revealed a collapse of the culvert approximately 460 feet upstream of the outflow, severely diminishing the maximum flow capacity of the culvert. A partial collapse was also noted approximately 20 feet downstream of the culvert inflow. Waste from the landfill has been found in Gorst Creek at distances of up to 0.5 miles downstream of the landfill. The erosion of waste and debris from the landfill has obstructed the entrance to the culvert under Washington State Highway 3, prompting the Washington Department of Transportation to take action to remove the obstruction due to concern that a clogged culvert could cause Gorst Creek to impound next to State Highway 3, raising concerns of localized flooding, erosion and damage to the highway embankment and roadway.

5. NPL status

The Site is not listed on the National Priorities List (NPL).

6. Maps, pictures, and other graphic representations

Refer to Figure 1-1 for vicinity map, Figure 1-2B for a site features map, and Figure 3-3 and 3-4 for graphical depiction of the proposed ravine and creek restoration.

B. Other Actions to Date

1. Previous actions

On March 19, 1997, after a significant rainfall event (7.3 inches in 24 hours), Gorst Creek backed up behind the landfill and flooded across the surface of the landfill which caused a portion of the northwest slope of the landfill to fail and wash waste downstream into Gorst Creek (Hart Crowser 2000). Landfill waste was found approximately 0.5 mile downstream in Gorst Creek (Holdcroft 2003). After this slope failure, Washington Department of Transportation installed two rip rap catchment berms with corrugated metal 24-inch culverts were installed on Gorst Creek in an attempt to stop future possible slope failures from washing landfill waste and debris downstream and potentially impacting Washington State Highway 3. The work conducted by Washington Department of Transportation was conducted independently. However, in January 2002, after another heavy rainfall event, Gorst Creek backed up and flooded over the landfill resulting in another slope failure (Holdcroft 2003). This slope failure was smaller than the 1997 failure; however, landfill waste and debris was again released downstream into Gorst Creek, when the most upstream rip rap catchment berm was destroyed by the flood event. The lower catchment berm was washed out sometime after 2003.

There are no government or private actions that have been undertaken in the past under authority of CERCLA or the Clean Water Act that have not been previously discussed.

2. Current actions

There are no government or private activities that are currently being performed at the Site.

C. State and Local Authorities' Roles

1. State and local actions to date

The State of Washington Department of Ecology (Ecology), the Kitsap County Health Department, and the City of Bremerton have been and will continue to be involved with planning for and conducting EPA response activities.

2. Potential for continued State/local response

There are no State agencies with the capabilities to address or implement an appropriate removal strategy for the Gorst Creek landfill. There are no local agencies with the capabilities and appropriate authorities to address or implement an appropriate removal strategy for the Gorst Creek landfill.

Washington Department Ecology, Washington State Department of Fish and Wildlife, along with other federal, state, local, and tribal entities will provide support to the removal action through technical review and comments on Habitat Restoration Plan and designs as requested by EPA.

3. Government-to-government consultation with the Suquamish Tribe

Staff-to-staff level coordination has occurred between the EPA and the Suquamish Tribe regarding the characterization of the Site and with development of the proposed removal action for the Site. On April 16, 2012, the EPA offered the Suquamish Tribe formal government-to-government consultation on the EE/CA, which was completed on January 25, 2013. The EPA offered formal consultation to the Tribe on the action selected by this Action Memorandum on July 23, 2015. The Suquamish tribe accepted EPA invitation for formal consultation and a future meeting is currently scheduled.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The current conditions at the Site meet the following factors which indicate that the Site is a threat to the public health or welfare or the environment and a removal action is appropriate under Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

A. Threats to Public Health or Welfare

1. Exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants (300.415[b][2][I])

Potential human exposure routes include direct contact with hazardous substances, pollutants or contaminants in surface soil, groundwater, sediment, and surface water. Routes of exposure include ingestion, dermal absorption, and inhalation. Human receptors include nearby residents, visitors to the Site, trespassers, and passers-by. Additionally, the eroded waste from the landfill, including hazardous

substances, pollutants or contaminants, in the stream sediments and water is being transported from the Site downgradient into the Gorst Creek watershed, presenting potential offsite exposure routes. Some metals are carcinogenic or toxic, and may adversely impact humans, affecting the central nervous system (mercury, lead), kidneys or liver (mercury, lead, cadmium, copper), or skin, bones and teeth (nickel, cadmium, copper, chromium). Polychlorinated Biphenyls (PCBs) cause a variety of adverse health impacts to animals including cancer and other detrimental effects to the immune system, reproductive system, nervous system, and endocrine system.

2. Minimization or elimination of the effects of weather conditions that may cause hazardous substances, pollutants or contaminants to migrate or to be released (300.415[b][2][v])

Heavy rain storms which could occur any time of year, but most typically occur during the fall and winter months, can cause water impoundment upstream of landfill due to the reduced flow capacity in the damaged culvert beneath the landfill. The impounded water can cause increased water levels within the landfill, saturating the landfill waste. Severe impoundment may result in water overtopping of the landfill, scouring the landfill cover, and dislodging landfill waste which is deposited downstream, as occurred during storm events in 1997, 2002, 2007 and 2009.

The erosion of the landfill, and increase of water flow through the landfill contributes to waste in the stream, increase sedimentation and contaminants being transported down gradient into the Gorst Creek watershed. The contamination at the Site includes pesticides, PCBs, SVOC, metals, and VOCs.

4. Availability of other appropriate federal or state response mechanisms to respond to the release (300.415[b][2][viii])

Neither Washington Department Ecology, Kitsap County, or the landowner have sufficient resources to provide an appropriate or timely response to address the potential human health and ecological risks associated with the landfill contaminants.

B. Threats to the Environment

1. Exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants (300.415[b][2][i])

Contaminants of ecological concern include seven metals (cadmium, copper, lead, manganese, mercury, nickel, and zinc) and two PCBs (Aroclor 1248 and Aroclor 1254). On the landfill surface, terrestrial plants, soil invertebrates, and wildlife may be at risk from high levels of metals in soil. The metals cadmium, lead, nickel, and zinc pose the greatest potential ecological risks. In Gorst Creek downstream from the landfill, sediment PCB levels detected are high enough to reduce growth of benthic macroinvertebrates.

Ecological receptors can become exposed to Site contaminants through direct contact with the contaminants of concern in soil, groundwater, sediment, or surface water; ingestion of the contaminants of concern, and through the food chain by consuming animals and plants that have accumulated Site-related contamination.

2. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate (300.415[b][2][iv])

As described above, cadmium, lead, nickel, and zinc are found at elevated concentrations in surface and subsurface soils and are susceptible to windblown dispersal throughout the facility and adjoining properties. Precipitation runoff from the landfill surface can transport sediment with elevated metals concentrations to Gorst Creek. Additionally, copper and mercury may pose risks due to elevated surface and subsurface soil concentrations.

3. Minimization or elimination of the effects of weather conditions that may cause hazardous substances, pollutants or contaminants to migrate or to be released (300.415[b][2][v])

Heavy rainfall events will cause water to become impounded behind/upstream of the landfill, resulting in elevated water levels within the landfill and contributing to leaching and mobilization of hazardous substances, pollutants or contaminants. Extremely heavy rainfall events will cause water impoundment up to the point where the landfill is overtopped by impounded Gorst Creek water. Overtopping of the landfill will result in scouring of landfill cover, erosion of landfill waste and debris into the downstream reaches of Gorst Creek, mobilizing hazardous substances, pollutants or contaminants within the landfill. Additionally, there is the potential for eroded landfill waste and debris to clog the Washington Highway 3 culvert downstream of the landfill, causing Gorst Creek to impound next to the Highway and threatening erosion of and damage to the Highway embankment and potential flooding of the roadway.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, welfare, or the environment.

V. EXEMPTION FROM STATUTORY LIMITS

The statutory limit of \$2,000,000 and 12 month cap does not apply to this non-time critical removal action which will be funded through a settlement with the U.S. Department of Navy.

NCP 300.415(k) states that removals done pursuant to Section 122 of CERCLA, 42 USC 9622, are not subject to restrictions in NCP 300.415(b)(5).

VI. PROPOSED ACTION AND ESTIMATED COSTS

A. Proposed Action

1. Proposed action description

Landfill Removal

The response action to address Gorst Creek Landfill includes removing all landfill contents, off-Site disposal of landfill waste, and reconstruction of the original creek channel. The landfill contents will be excavated, segregated to the extent practicable, and then transported to recycling facilities or landfills for disposal, dependent on waste types.

Reconstruction of Gorst Creek Channel

The Gorst Creek channel will be improved to restore hydraulic functionality and habitat and to provide fish passage capability through the Site. Restoration will include vegetating the ravine slopes, and constructing the creek channel at a gradient similar to the natural configuration prior to landfill development with appropriate rock and woody materials to provide habitat and hydraulic control.

Natural restoration techniques will be utilized to stabilize slopes and stream banks utilizing plants and woody debris. Seeding and rooted plantings will take longer to establish than riprap and other hard armoring stabilization methods, but offers important advantages. The natural restoration approach helps restore a naturally functioning waterway, reduces bank erosion, provides habitat and supports natural biodiversity.

Engineering and Institutional Controls

Engineering and institutional controls will minimize the potential for human exposure to any residual contamination by restricting the development of the Site and use of Site resources. Such controls will also assure the proper hydraulic functioning of Gorst Creek and maintenance of the reconstructed ravine. An enforceable environmental covenant will be developed and recorded to implement such limitations.

Construction Best Management Practices

Appropriate and practicable construction Best Management Practices (BMPs) will be implemented during cleanup activities to protect workers, the community, and the environment from short-term construction impacts such as erosion and sedimentation, fugitive dust, noise, use of public roadways, and other similar potential impacts.

Waste materials will be monitored continuously as they are uncovered during the removal action. Wastes will be evaluated by sampling and laboratory analysis, by field measurements, and by visual observations. Non-hazardous wastes such as inert construction debris will be reused, disposed of, or recycled in accordance with appropriate solid waste disposal or recycling requirements. Hazardous wastes will be segregated, transported and disposed appropriately with hazardous waste profile and waste manifest documentation.

Greener Cleanup Best Management Practices

Appropriate and practicable greener cleanup BMPs will be implemented, to the extent practicable, during cleanup activities, including, but not limited to, minimizing energy consumption (e.g., using new and well-maintained equipment), minimizing generation and transport of fugitive dust (e.g., implementation of construction BMPs), minimizing waste generation through reuse (e.g., concrete and riprap) and recycling (e.g., scrap metal), minimizing impacts to water resources (e.g., implementation of construction stormwater and surface water BMPs), minimizing areas requiring activity or use limitations (e.g., source removal), minimizing unnecessary soil and habitat disturbance, and minimizing lighting and noise disturbance (e.g., implementation of construction BMPs).

Monitoring and Maintenance

The proposed response action will result in the removal of all landfill waste and the reconstruction of the Gorst Creek Ravine. Monitoring and maintenance will be necessary only to assure the proper functioning of the reconstructed Gorst Creek Ravine and the restrictions established by the environmental covenant. Monitoring compliance with environmental covenant will be conducted by the owner of the Site and the Kitsap County Health District. The EPA, at its discretion, may also provide initial monitoring and maintenance of the Site if determined to be necessary or appropriate. Monitoring and maintenance of the restored ravine and creek channel will include only observations and activities related to the successful establishment of vegetation and stabilized slopes and creek channel.

2. Contribution to remedial performance

No further actions are expected for the Site. However, if additional action is required, this action will not impede future actions based on available information.

3. EE/CA

On March 25, 2011, the EPA signed an Approval Memorandum to prepare the EE/CA. A draft EE/CA was prepared in April 2012. Based on the analysis of the nature and extent of contamination and on the cleanup objectives for the Site, a limited number of removal action alternatives were identified and selected for detailed analysis. The EE/CA identified an initial preferred removal alternative that individually and comparatively best satisfied the following evaluation criteria- effectiveness, implementability, and cost.

Notice of the draft EE/CA was published in Kitsap Sun Newspaper on May 16, 2012 and subject to a 30-day public comment ending on June 16, 2012. The draft EE/CA was made available at the Kitsap Regional Library in Bremerton, Washington, and a web site was established at <http://www.epaosc.org/BremertonAutoWreckingGorstCreek> to provide the public with information about the Site and electronic access to the draft EE/CA and other relevant materials.

In a letter dated April 16, 2012, the EPA offered government-to-government consultation to the Suquamish Tribe, which operates a Chinook salmon fish hatchery in Gorst Creek downstream of the Site and has usual and accustom fishing rights in the area. In a letter dated September 16, 2012, the Suquamish Tribe provided the EPA with written comments on the draft EE/CA and requested a meeting to consult with the EPA on the proposed alternatives. An in-person consultation with representatives

from the Suquamish Tribe was conducted on January 25, 2013 to discuss the proposed options in the draft EE/CA. An informal meeting between the EPA and Washington State Department of Fish and Wildlife, and Suquamish Tribe Fisheries was held on January 31, 2013 to discuss their comments on the EE/CA and the potential for creek restoration.

In addition to consulting with the Suquamish Tribe, the EPA received written comments from the Washington Department of Fish and Wildlife and letters of support from the City of Bremerton and the Kitsap County Health Department.

Based on the comments received, and on consideration of the goals and long-term costs of the proposed response action, the EPA determined that the preferred microtunneling/culvert replacement option set forth in the 2012 EE/CA was not appropriate. The WDFW and Suquamish comments opposed the preferred culvert replacement alternative, criticizing the alternative as a temporary solution that would be difficult to maintain and result in the continued impairment and degradation of the creek ecosystem, fish habitat, and fish passage. The WDFW and Suquamish commented that as long as the landfill occupies the stream corridor, there exists a potential for downstream habitat degradation. The commenters also noted that installation of a new culvert under the landfill would not restore fish passage. Fish would not travel upstream through a new 880-foot culvert, so the landfill would continue to be a barrier to the upper reaches of Gorst Creek, precluding access to upstream habitat.

The WDFW raised concerns that the 880-foot culvert would be extremely challenging to maintain and would likely collapse again under the weight of the landfill. The Suquamish raised additional concerns that the streamlined ecological and human health risk assessments in the EE/CA did not adequately consider risks to Tribal populations, who have treaty rights to harvest fish and shellfish in Gorst Creek, a usual and accustomed fishing area for the Suquamish. Both the WDFW and Suquamish supported landfill removal and creek restoration as a more permanent remedy that would restore the creek ecosystem and fish passage and habitat.

The EPA considered and agreed with the comments submitted by the WDFW and the Suquamish. In selecting the response action, the EPA accounted for the practical concerns raised by the commenters. A replaced 880-foot culvert would be difficult to maintain and keep clear of debris, and there is a high probability the culvert would collapse again in the future and require additional response action. The EPA also concluded that although the culvert replacement alternative was cost-effective in the near term, heightened operation and maintenance requirements and the likelihood of a future culvert failure made this alternative less protective and potentially more expensive over the long-term.

4. Applicable or relevant and appropriate requirements

The NCP requires that removal actions attain applicable or relevant and appropriate requirements (ARARs) under federal or state environmental or facility siting laws, to the extent practicable considering the exigencies of the situation (40 C.F.R. § 300.415p). In determining whether compliance with ARARs is practicable, the EPA may consider the scope of the removal action and the urgency of the situation (40 C.F.R. § 300.415[j]). Potential ARARs were screened in the EE/CA.

Refer to Table 2 of the EE/CA for project-related federal and state ARARs.

5. Project schedule

The start of response actions is anticipated on or about January 2016, and the project is estimated to require approximately 10 months to complete the majority of on-site activities. Maintenance and inspection to maintain the stream channel, vegetation, and the restored slope of the ravine will continue for approximately 18 months after completion of major on site activities. This is to assure erosion controls are maintained, the ravine slope remains stabilized, the vegetation becomes properly established, and temporary erosion controls installed on site are removed.

The goal is to establish a natural functioning stream which will support native vegetation and contribute to the establishment of a stable stream channel. Vegetation and natural erosion control measures typically take longer to establish but provide better long term stability than engineering controls such as rip rap or other hard armoring. The goal of the creek restoration is to use natural methods to minimize creek bank erosion while allowing natural processes to function normally.

After completion of the on-site removal activities, and an extended period for maintenance of the erosion control features the removal will be completed and conclude EPAs action.

B. Estimated Costs

The CERCLA agreement between the EPA, ST Trust and Department of the Navy will provide funding for the estimated cost for the recommended removal action, which is estimated at \$27,610,000.00. This estimate includes EPA oversight and contractor costs.

VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the response action should be delayed or not taken, hazardous substances, pollutants or contaminants at the Site will remain as potential human health and ecological threats.

VIII. OUTSTANDING POLICY ISSUES

Since the landfill will be removed, and the ravine restored similar to pre-landfill condition, the recommended removal action is expected to require minimal long-term maintenance and monitoring. Monitoring and maintenance may be necessary to assure the proper hydraulic functioning of the ravine and successful stabilization of the ravine slopes.

IX. ENFORCEMENT

Refer to attached confidential enforcement addendum.

X. RECOMMENDATION

This decision document sets forth the recommended removal action for the Bremerton Auto Wrecking Landfill—Gorst Creek Site, Kitsap County, Washington, that has been developed in accordance with CERCLA, and is consistent with the NCP. The recommended removal action is based on the administrative record for the Site.

Conditions at the site meet the NCP 40 C.F.R. § 300.415(b) criteria for a removal action and I request your approval of the recommended removal action.

XI. APPROVAL/DISAPPROVAL

By the approval that appears below, the EPA selects the removal action for the Site as set forth in the recommendations contained in this Action Memorandum.

APPROVAL:



Chris Field, Program Manager
Emergency Management Program
Office of Environmental Cleanup

1/20/16

Date

DISAPPROVAL:

Chris Field, Program Manager
Emergency Management Program
Office of Environmental Cleanup

Date

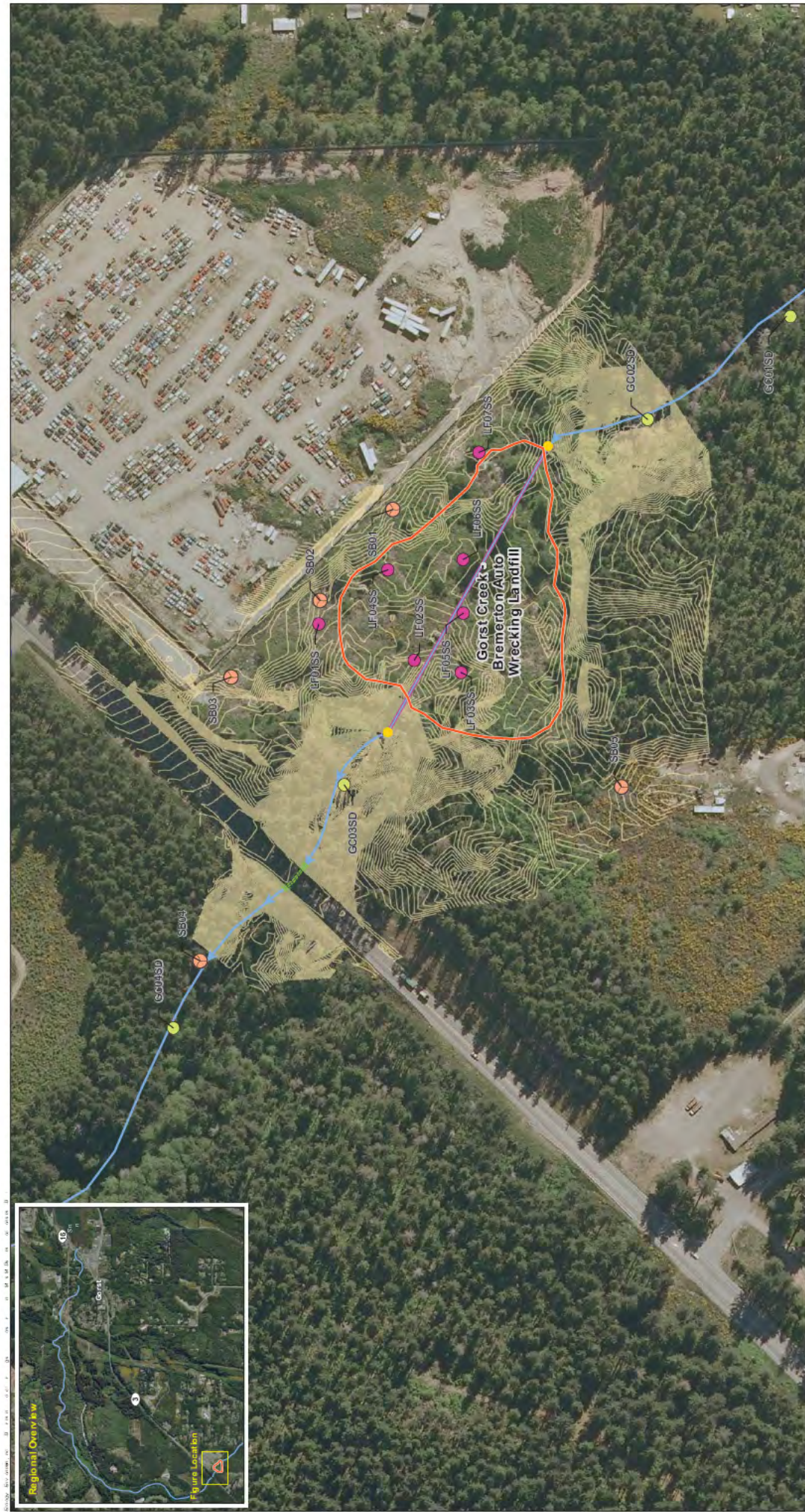
XII. References

1. U.S. Fish and Wildlife Service. August 26, 2010. *Listed and Proposed Endangered and Threatened Species and Critical Habitat; Candidate Species; and Species of Concern in Kitsap County*. Prepared by USFWS, Washington Fish and Wildlife Office. Accessed October 20, 2011 <http://www.fws.gov/wafwo/speciesmap/Kitsap082610.pdf>.
2. National Marine Fisheries Service. August 15, 2011. *Northwest Regional Office Endangered Species Act (ESA) Salmon Listings*. Accessed October 20, 2011. <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Steelhead/STPUG.cfm> and <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Chinook/CKPUG.cfm>
3. Huff, Mike (The Suquamish Tribe Fisheries Department). February 28, 2003. Personal communication. Re: types of salmon in Gorst Creek. To Kerrie Stewart, Ecology and Environment, Inc., Seattle, Washington.
4. Washington State Department of Fish and Wildlife. December 2002. *Sensitive Information Reports*.

XIII. Attachments

Confidential Enforcement Addendum

FIGURE 1
SITE LOCATION MAP



Gorst Creek Landfill

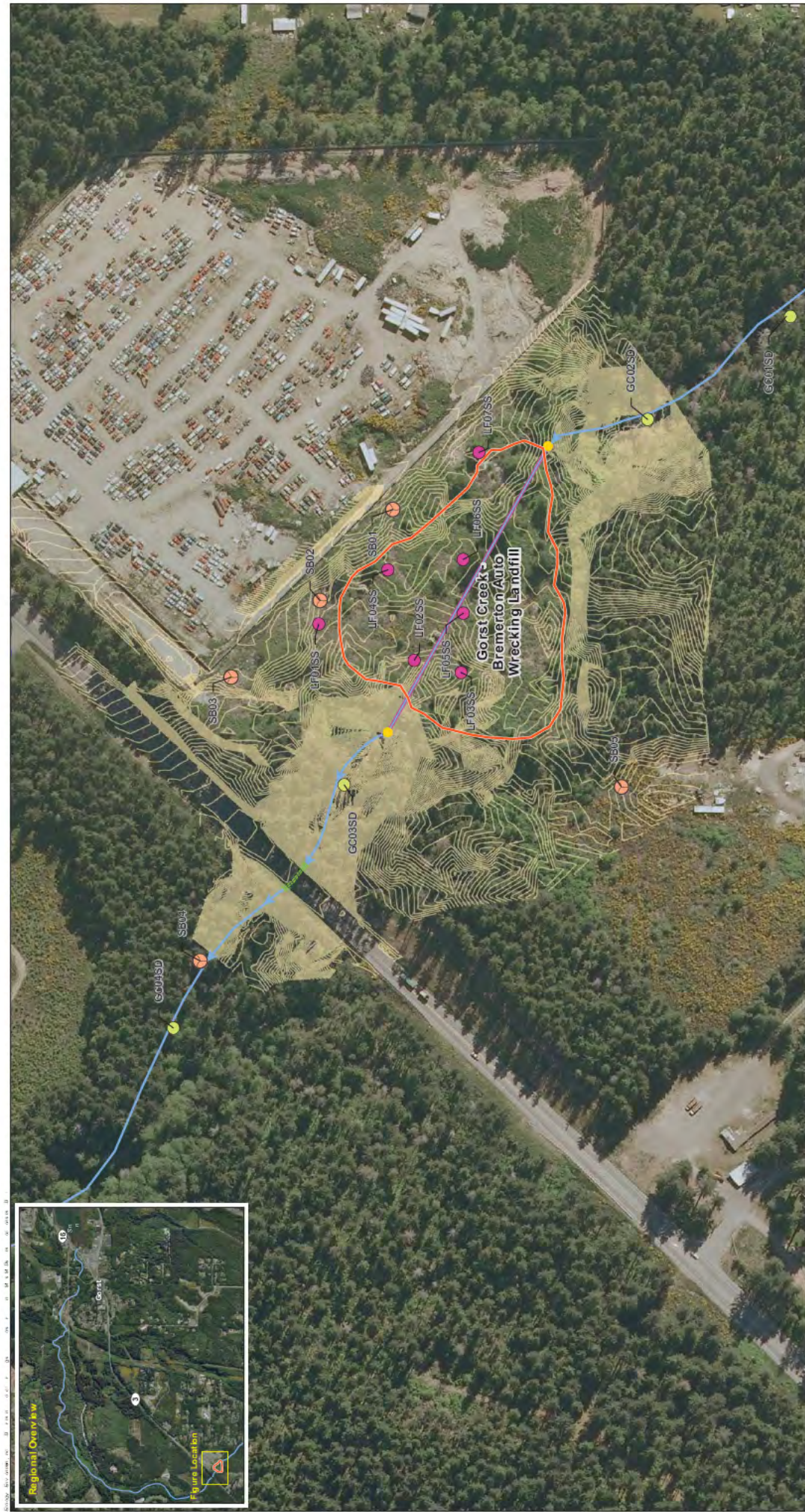
Port Orchard, Washington

- Soil Boring Locations
- G Series Samples, GCO1S
- L Series Samples
- Existing well
- Outfall location
- 24-in ch corrugated metal pipe under the landfill
- Goorst Creek - Bremerton Auto Wrecking landfill boundary

Figure 1-4
Sample Location Map
July - August 2011

Map Projection NAD 1983 UTM Zone 10N Meter
 Map Scale 1:2,000
 0 25 50 100 150 200 250
 METERS
 1 in = 167 ft

Appendix 2 – Gorst Creek Landfill Site Maps

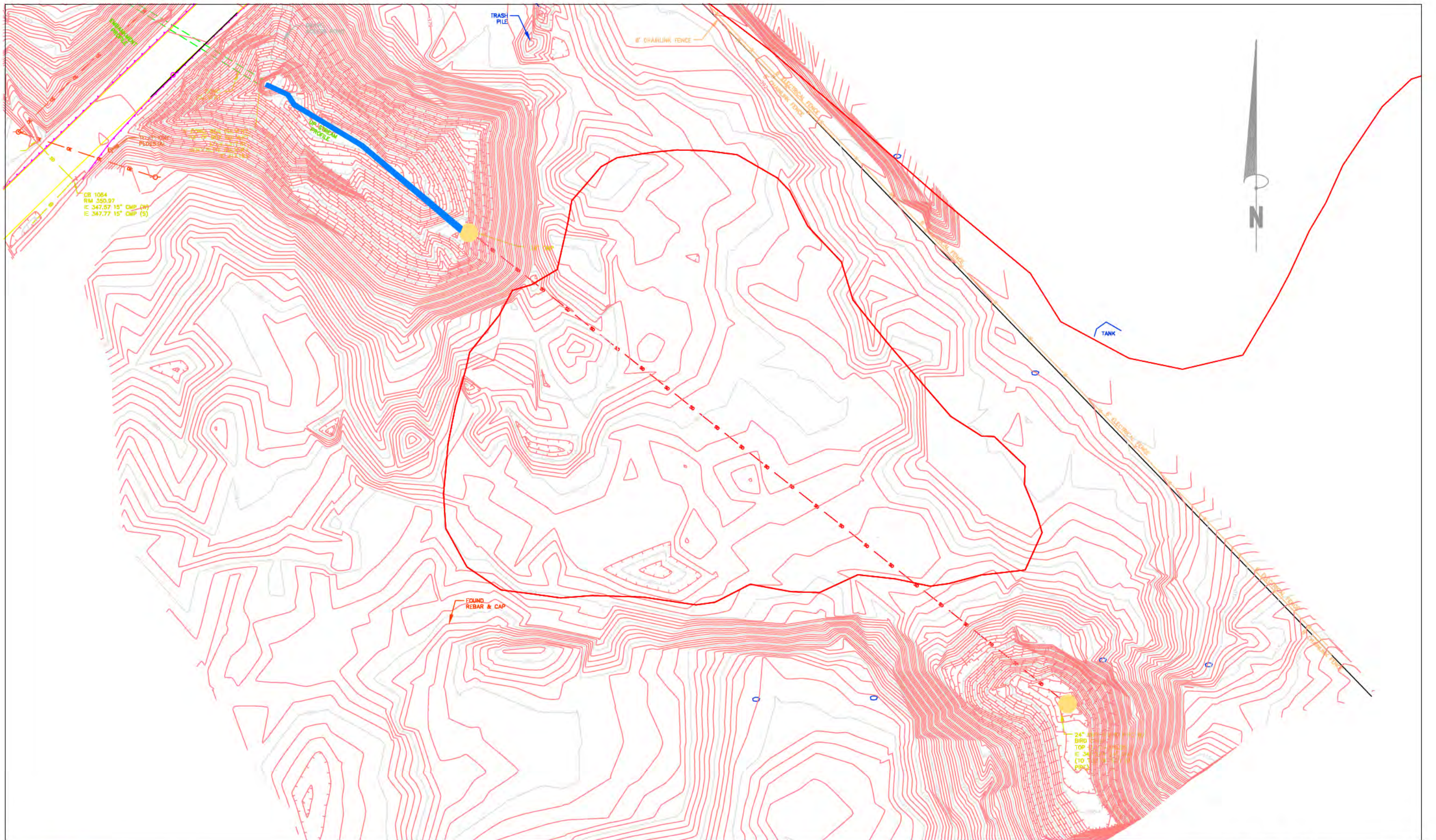


Gorst Creek Landfill

Port Orchard, Washington

Figure 1-4
Sample Location Map
July - August 2011

Map Projection NAD 1983 UTM Zone 10N Meter
 Map Scale 1:2,000
 0 25 50 100 150 200 250
 METERS
 1 in = 167 ft



	<p>● Outfall location</p> <p>--- Existing 24-inch corrugated metal pipe</p> <p>□ Gorst Creek - Bremerton Auto Wrecking landfill boundary</p> <p>— Stream Profile</p> <p>▭ Culvert</p>	<p>Gorst Creek Landfill Port Orchard, Washington</p>	<p>Map Projection: NAD 1983 Washington State Plan North Feet</p>	<p>Figure 1-2B Site Conditions 2011 (Gorst Creek EE/CA) January 2012</p>
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**Appendix 3 – Example of Regional Cost
Summary and Accounting Documentation**

Itemized Cost Summary

GORST CREEK-BREMERTON AUTO WRECKING LAND, PORT ORCHARD, WA SITE ID = 10
GL

Estimated Response Costs From Day 1 Through 07/31/2015

REGIONAL PAYROLL COSTS	\$111,464.18
HEADQUARTERS PAYROLL COSTS	\$664.07
REGIONAL TRAVEL COSTS	\$616.23
EMERGENCY REMOVAL CLEANUP (ERC)	
ENVIRONMENTAL QUALITY MANAGEMENT (EPR70702)	\$1,329.81
EMERGENCY RESPONSE REMEDIAL SERVICE (ERR)	
EQM (EPS71302)	\$1,533.56
OTHER EXPENDITURES	
BANKCARD: ST. MARIES GAZETTE (B2BK0000688)	\$369.36
SF TECHNICAL ASSISTANCE & RESPONSE TEAM (START)	
ECOLOGY AND ENVIRONMENT (68-S0-0101)	\$10,101.65
ECOLOGY AND ENVIRONMENT (EPS70602)	\$555,622.64
ECOLOGY AND ENVIRONMENT (EPS71307)	\$55,969.05
CONTRACT LAB PROGRAM (CLP) COSTS	
FINANCIAL COST SUMMARY	\$46,453.04
MISCELLANEOUS COSTS (MIS)	\$156.06
EPA INDIRECT COSTS	\$280,415.44
Total Site Costs:	<u><u>\$1,064,695.09</u></u>

**Appendix 4 – Gorst Creek Landfill
Environmental Covenant**

AFTER RECORDING RETURN TO:

Kitsap Public Health District
345 6th Street, Suite 300
Bremerton, Washington 98337

ENVIRONMENTAL (RESTRICTIVE) COVENANT

Grantor: ST Trust (Owner)
William J. Nilles Jr., Trustee
413 State Route 702 E
Roy, Washington 98580-8848

Grantee/ Holder: Kitsap Public Health District
345 6th Street, Suite 300
Bremerton, Washington 98337

Legal Description: Located in Port Orchard, Kitsap County, Washington. Full legal description provided as Exhibit A and depicted in Exhibit B.

Tax Parcel Nos.: 012301-4-022-1005

ENVIRONMENTAL (RESTRICTIVE) COVENANT

I. Purpose and Background

Grantor, ST Trust, hereby binds Grantor and its successors and assigns to the covenants, conditions and restrictions identified herein and grants such other rights under this Environmental (Restrictive) Covenant (hereafter “Environmental Covenant”) made this ____ day of _____, 2016.

This instrument grants a valid and enforceable Environmental Covenant pursuant to the Washington State Uniform Environmental Covenants Act (“UECA”), Revised Code of Washington (“RCW”) Chapter 64.70, to the Kitsap Public Health District and its successors and assigns (“Kitsap” or “Holder”). Notwithstanding RCW 64.70.030, it is expressly agreed that the right of Kitsap as a holder is not an ownership interest under the Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW, or the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) 42 U.S.C. § 9601 *et seq.*, or any other statute, regulation or ordinance that would impose obligations or restrictions due to ownership interest.

The covenants, conditions and restrictions granted herein are requirements of an Administrative Order on Consent (“AOC”) entered into between ST Trust and the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the Department of the Navy, EPA Docket No. 2016-10-0041, in the matter of a Non-Time-Critical Removal Action for the Gorst Creek Landfill Site (“Site”). The AOC concerns the implementation and settlement of claims for the environmental response action selected in the Gorst Creek Action Memorandum dated _____, 2016 (“Action Memorandum”).

Between about 1968 and 1989, the Site was operated as a landfill with waste disposed in Gorst Creek Ravine on top of a 24-inch steel culvert through which Gorst Creek was channeled.

The landfill, encompassing about 5.7 acres, is approximately 700 feet long, reaches depths of approximately 60 to 80 feet, and was estimated to contain 150,000 cubic yards of waste when it ceased operation. Site assessment and investigation identified that the waste contains and is a source of hazardous substances. Sampling data from the surface of the landfill and in soil and sediment downstream of the landfill identified the presence of “hazardous substances,” as that term is defined under CERCLA section 101(14), 42 U.S.C. § 9601(14). The weight of the landfill crushed the 24-inch steel culvert, impeding the flow of Gorst Creek causing localized flooding and resulting in the release and erosion of additional waste material, including hazardous substances, from the landfill to the surrounding environment. The Action Memorandum selected a response action to remove all waste from the landfill to protect public health and the environment from the release and/or threatened release of hazardous substances at and from the Site and to restore the creek ravine.

The removal action set forth in the Action Memorandum is an “environmental response project” within the meaning of UECA. The purpose of this covenant is to implement post-removal site controls that will conserve Gorst Creek in its restored state after completion of the removal action by prohibiting all future development of the Site.

The property that is the subject of this Environmental Covenant is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (“Property”). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

II. Administrative Record

A copy of the administrative record supporting the removal action for the Site is on file with EPA or its successor agency and is available for public review. In order to make arrangements for

such review, a person may contact the EPA Region 10 Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

III. Conveyance and Covenant

This instrument is an Environmental Covenant executed pursuant to UECA, concerning the Property owned by Grantor. Grantor covenants to and with the Holder, and its successor and assigns, that Grantor is lawfully seized in fee simple of the Property, that the Grantor has good and lawful right and power to sell and convey the Property or any interest therein, that the Property is free and clear of encumbrances, except those reviewed and acknowledged by EPA Region 10 in an ownership guarantee dated _____, 2016, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

With this Environmental Covenant Grantor hereby binds Grantor, its successors, and assigns, to the covenants, conditions and restrictions set forth herein, and conveys to the Holder such restricted property interests. The Washington State Department of Ecology (“Ecology”) and EPA shall have the full rights to enforce the covenants, conditions, restrictions or other rights set forth herein as provided by law including but not limited to CERCLA, MTCA and UECA.

Grantor makes the following covenants as to limitations, restrictions and uses of the Property and specifies that such covenants, conditions and restrictions shall run with the land, as provided by law, shall inure to the benefit of the parties hereto, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of, or interest in, the Property (hereinafter “Owner”):

The primary purpose of this Environmental Covenant is to conserve the Property in its restored state after completion of the response action. As such, the following covenants, conditions and restrictions shall apply:

1. All development of the Property is prohibited, including but not limited to the construction of buildings or other structures or the extraction of any natural resources for profit.

2. Owner shall prohibit any uses of the Property or activities on the Property that may interfere with the completed response action, operation and maintenance, monitoring or other measures that may be necessary to conserve the Property in its restored state after completion of the response action.

3. Should Owner become aware of any violation of this Environmental Covenant, Owner shall promptly report such violation to Kitsap and EPA Region 10:

Jeffrey Rodin
Federal On-Scene Coordinator
U.S. EPA Region 10
Emergency Response Unit
1200 Sixth Ave. Suite 900
Seattle WA 98101
206-553-6709
rodin.jeffrey@epa.gov

Keith Grellner R.S.
Environmental Health Director
Kitsap Public Health District
345 6th Street, Suite 300
Bremerton Washington 98337
360-337-5284
keith.grellner@kitsappublichealth.org

4. No conveyance of title, easement, lease or other interest in the Property shall be consummated by Owner without adequate and complete provision for continued adherence to this Environmental Covenant.

5. Owner must provide sixty (60) days advance written notice to Kitsap and EPA Region 10 of Owner's intent to convey or transfer any interest in the Property, including the name and address of the transferee and the date on which the transferee was notified of the AOC and the Environmental Covenant.

6. Owner shall allow authorized representatives of Kitsap and EPA the right to enter the Property, at their own risk, at reasonable times to evaluate the condition of the Property, to determine compliance with this Environmental Covenant and to inspect any aspect of the removal action conducted at the Property including, but not limited to: (1) Verifying any data or information submitted to the United States; (2) Conducting investigations regarding contamination at or near the Property; (3) Obtaining samples; (4) Assessing the need for, planning, implementing, or monitoring response actions; (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by ST Trust or its agents; (6) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and (7) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Property. When practicable, Kitsap or EPA will endeavor to provide Owner at least 48 hours notice prior to entering the Property. When Kitsap and EPA will both be entering the Property, either agency may provide this notice on behalf of both agencies.

IV. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by this Environmental Covenant.

V. Enforcement

Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to CERCLA, UECA, and MTCA. Kitsap, EPA and Ecology shall have full enforcement rights. An action for equitable or injunctive relief for violation of this Environmental Covenant may also be maintained by the other persons and entities set forth in RCW 64.70.110. Failure by any party or person to enforce compliance with this Environmental Covenant in a timely manner shall not be deemed a waiver of the right to take subsequent enforcement actions.

VI. Recordation

Grantor shall record this instrument in the official records of Kitsap County, Washington and shall pay the costs associated with recording.

VII. General Provisions

Agency's Interest. Pursuant to RCW 64.70.030 the rights granted to EPA and Ecology by this Environmental Covenant are not interests in real property. As noted in Section I, *supra*, Kitsap's ownership interest is limited to the terms of this Environmental Covenant.

Liberal Construction. This Environmental Covenant shall be construed in favor of effectuating the purpose of this Environmental Covenant. If any provision is found to be ambiguous, an interpretation consistent with the purposes of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

Costs. Owner, upon request by Kitsap, shall be obligated to pay for Kitsap's costs to process a request for any modification or termination of this Environmental Covenant.

VIII. Termination and Modification

1. This Environmental Covenant may only be amended or terminated with the prior approval of EPA and in accordance with the procedures and process contained in the amendment and termination provisions of UECA, RCW 64.70.090 and 64.70.100. If EPA determines that it is necessary to amend the Environmental Covenant to carry out and maintain the effectiveness of the response action, EPA may request that Kitsap and any other necessary parties amend the Environmental Covenant. Kitsap reserves the right to request amendments to the Environmental Covenant in the event that Kitsap lacks the funds or resources to carry out any responsibilities under the Covenant.

2. By signing this agreement, per RCW 64.70.100, ST Trust agrees to waive all rights to sign amendments to and termination of this Environmental Covenant.

IX. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Environmental Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties each represent and certify that they are authorized to execute this Environmental Covenant.

IN WITNESS WHEREOF, ST Trust has executed this Environmental Covenant on this _____ day of _____, 2016.

Signatory's printed name _____

Signature _____

William J. Nilles Jr., Trustee
For ST Trust, Grantor

STATE OF WASHINGTON)
County of _____)

On this _____ day of _____, 2016, before me personally appeared _____, to me known to be the Trustee of ST TRUST, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the trust, for the uses and purposes therein mentioned, and on oath stated that they were 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.


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

The forgoing Environmental Covenant is hereby approved and certified.

By: _____
Sheila Fleming, Acting Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency Region 10

By: _____
Kitsap Public Health District

The forgoing Environmental Covenant is hereby approved and certified.

By:  _____
Sheila Fleming, Acting Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency Region 10

By: _____
Kitsap Public Health District

Exhibit A to Environmental Covenant – Legal Description of the Property

EXHIBIT "A"

ORDER NO.: 32054732

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 23 NORTH, RANGE 1 WEST, W.M., IN KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY MARGIN OF STATE HIGHWAY NO. 14, AS SAME EXISTED ON APRIL 12, 1957 AND THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY MARGIN 100.00 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES, 35.0 FEET TO THE PRESENT RIGHT-OF-WAY LINE OF PRIMARY STATE HIGHWAY NO. 21; THENCE NORTHEASTERLY ALONG THE SAID PRESENT RIGHT-OF-WAY LINE 100.00 FEET TO A POINT CALLED "X" FOR THE PURPOSE OF THIS DESCRIPTION; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY RIGHT-OF-WAY OF SAID PRIMARY STATE HIGHWAY 790.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE SOUTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER TO A POINT WHICH RUNS SOUTHEASTERLY FROM THE POINT OF BEGINNING AND IS AT RIGHT ANGLES TO THE CENTERLINE OF SAID PRIMARY STATE HIGHWAY; THENCE NORTHWESTERLY ALONG SAID LINE TO THE TRUE POINT OF BEGINNING;

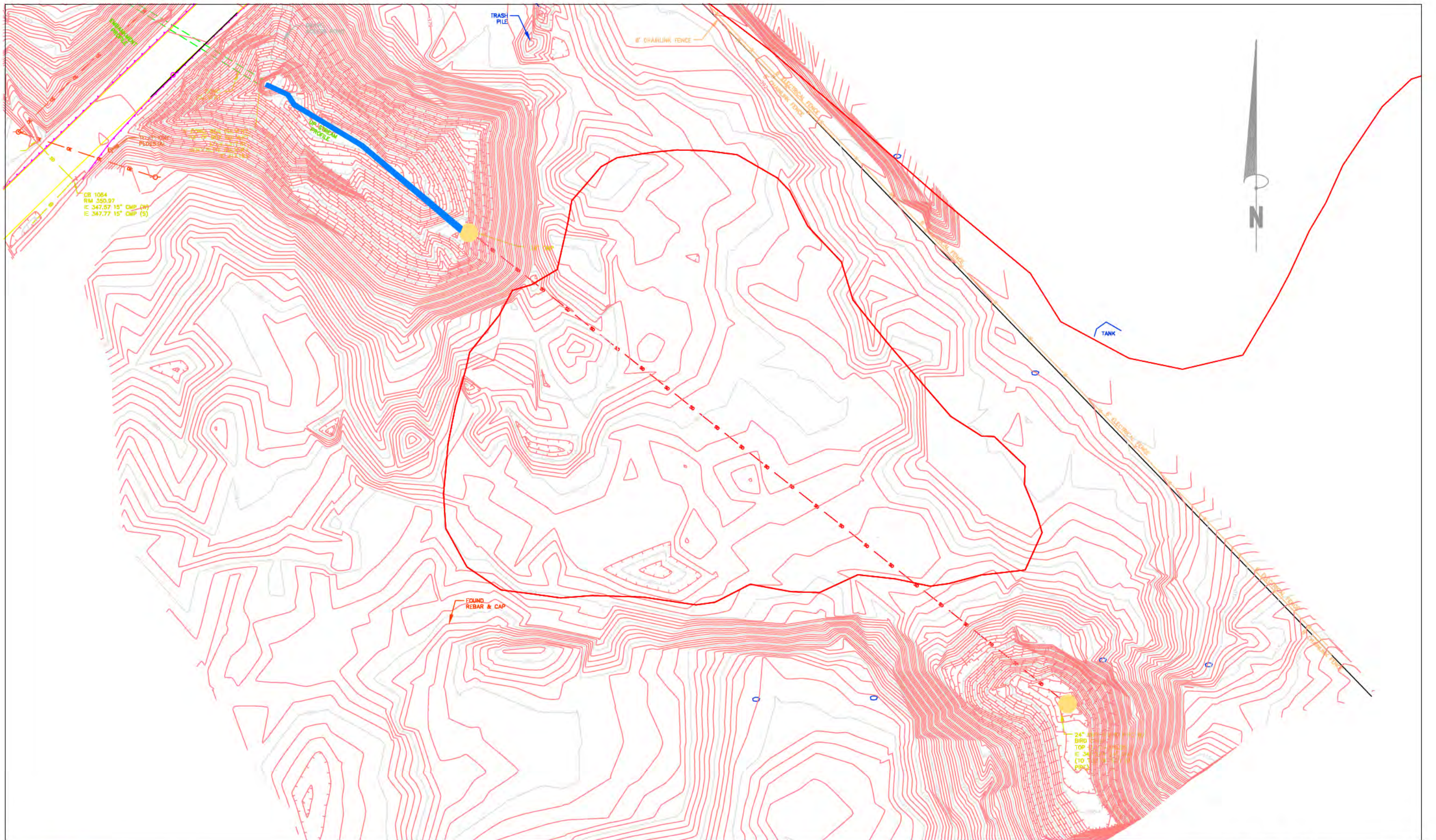
EXCEPT ANY PORTION OF SAID PRIMARY STATE HIGHWAY ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1 WHICH MAY EXTEND INTO THE ABOVE DESCRIBED TRACT;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES, OVER, UNDER AND ACROSS A STRIP OF LAND 60.0 FEET IN WIDTH, AND BEING CONTIGUOUS WITH AND LYING ON THE SOUTHWESTERLY SIDE OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT THE ABOVE MENTIONED POINT "X"; THENCE SOUTHEASTERLY ON A LINE WHICH IS AT RIGHT ANGLES TO THE SOUTH EASTERLY RIGHT-OF-WAY LINE OF SAID PRIMARY STATE HIGHWAY 600.0 FEET; THENCE CONTINUE WITH SAID 60.0 FOOT WIDE EASEMENT BEING CONTIGUOUS WITH AND ON THE SOUTHEASTERLY SIDE OF A LINE WHICH IS PARALLEL WITH THE CENTERLINE OF SAID PRIMARY STATE HIGHWAY, 790.0 FEET TO THE NORTHEASTERLY LINE OF THE ABOVE DESCRIBED TRACT AND END OF SAID EASEMENT. THE ABOVE DESCRIBED 60.0 FOOT WIDE EASEMENT PROVIDED FOR BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 883956.

... END OF EXHIBIT "A" ...

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FORECLOSURE KITSAP CO TRE DEED \$10.00 Kitsap Co, WA

Exhibit B to Environmental Covenant – Map of the Property



	<p>● Outfall location</p> <p>--- Existing 24-inch corrugated metal pipe</p> <p>□ Gorst Creek - Bremerton Auto Wrecking landfill boundary</p>	<p>— Stream Profile</p> <p>▭ Culvert</p>	<p>Gorst Creek Landfill Port Orchard, Washington</p>	<p>Map Projection: NAD 1983 Washington State Plan North Feet</p>	<p>Figure 1-2B Site Conditions 2011 (Gorst Creek EE/CA) January 2012</p>
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