

**FIVE-YEAR REVIEW REPORT FOR  
KETCHIKAN PULP COMPANY SUPERFUND SITE  
KETCHIKAN, ALASKA**



**Prepared by**

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*9/21/15*

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## LIST OF ABBREVIATIONS

ADOT&PF	Alaska Department of Transportation and Public Facilities
ADEC	Alaska Department of Environmental Conservation
ADNR	Alaska Department of Natural Resources
APDES	Alaska Pollutant Discharge Elimination System
AMHS	Alaska Marine Highway System
AOC	Administrative Order on Consent
AOC	Area of Concern
ARAR	Applicable or Relevant and Appropriate Requirement
ATS	Alaska Tidelands Survey
ATSDR	Agency for Toxic Substances and Disease Registry
BLM	Bureau of Land Management
CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CoC	Contaminants of Concern
CSFo	Cancer Slope Factor, oral
cy	Cubic Yards
DTSR	Detailed Technical Studies Report
EMS	Emergency Medical System
ENR	Enhanced Natural Recovery
EPA	United States Environmental Protection Agency
ESI	Expanded Site Investigation
GFP	Gateway Forest Products
HI	Hazard Index
IC	Institutional Controls
IRIS	Integrated Risk Information System
KGB	Ketchikan Gateway Borough
KPC	Ketchikan Pulp Company
LMRP	Long-Term Monitoring and Reporting Plan
LP	Louisiana-Pacific Corporation
mg/kg	Milligrams per kilogram
MLLW	Mean Lower Low Water
MNR	Monitored Natural Recovery
NCP	National Contingency Plan
NPDES	National Pollutant Discharge Elimination System

NPL	National Priorities List
O&M	Operations and Maintenance
OSWER	Office of Solid Waste and Emergency Response
OU	Operable Unit
PAH	Polynuclear Aromatic Hydrocarbons
PCB	Polychlorinated Biphenyl
PCDDs/Fs	Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans
ppm	Parts Per Million
PRG	Preliminary Remediation Goal
PRP	Potentially Responsible Party
PSSA	Power Systems & Supplies of Alaska LLC
RA	Remedial Action
RAO	Remedial Action Objective
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RD/RA	Remedial Design/Remedial Action
RI	Remedial Investigation
RI/FS	Remedial Investigation/Feasibility Study
RfD	Reference Dose
RKG	Renaissance Ketchikan Group
ROD	Record of Decision
RSL	Regional Screening Level
SARA	Superfund Amendments and Reauthorization Act
TCDD	2,3,7,8-tetrachlorodibenzo-p-dioxin
TEC	Toxic Equivalent Concentration
TLP	Thin Layer Placement
USS	United States Survey

## EXECUTIVE SUMMARY

The Ketchikan Pulp Company (KPC) site is located on the shoreline of Ward Cove, near Ketchikan, Alaska. The KPC site is not listed on the National Priorities List (NPL). The site is divided into two Operable Units (OUs): the Uplands Operable Unit and the Marine Operable Unit. This is the third Five-Year Review Report, and it is a statutory review.

The remedy at the Marine OU is protective of human health and the environment. For the Marine OU, remedial action construction is complete, the remedy is functioning as intended, and the Certificate of Completion has been issued. The remedial action objectives (RAOs) for the sediment remedy have been achieved, and institutional controls (ICs) remain in effect. Because RAOs have been achieved, monitoring pursuant to the Long-Term Monitoring and Reporting Plan (LMRP) is no longer necessary.

The remedy at the Uplands OU is protective of human health and the environment. For the Uplands OU, construction is complete, the RAOs have been met, the Certification of Completion has been issued, and ICs remain in effect. As recommended in the previous Five-Year Review, the dioxin levels for the Uplands OU were reassessed due to new 2012 Regional Soil Screening Levels and it was determined that the remedy is still protective of human health and the environment as long as the ICs are functioning.

The three current property owners at the site are the Ketchikan Pulp Company/Louisiana-Pacific Corporation (KPC/LP), Power Systems and Supplies of Alaska LLC (PSSA), and the Alaska Department of Transportation and Public Facilities (ADOT&PF)/Alaska Marine Highway System (AMHS). KPC owns the landfill; PSSA owns the upland pulp mill site (minus the landfill) and a large portion of the marine property; and ADOT&PF owns a portion of the upland and marine properties. PSSA leases its property to Ward Cove Industries LLC, which in turn, is actively leasing buildings and portions of its property to multiple businesses and entities. ADOT&PF has proposed to remove pilings and build a new AMHS ferry terminal on its upland and marine property at the head of the Cove. Two new Alaska Pollutant Discharge Elimination System (APDES) permits have been issued in the Cove, with a potential third permit to be issued during 2015. With all of this redevelopment, the ICs remain effective and protective of the Uplands and Marine OUs due to KPC, Ward Cove Industries LLC, and ADOT&PF's coordination with the United States Environmental Protection Agency (EPA) and Alaska Department of Environmental Conservation (ADEC) on IC implementation and property changes. Additional coordination will be necessary during the extensive construction and property development for ADOT&PF's ferry terminal proposal and the list of development prospects identified by Ward Cove Industries LLC.

All remedies at the site are protective of human health and the environment.

## Five-Year Review Summary Form

SITE IDENTIFICATION		
<b>Site Name:</b> Ketchikan Pulp Company		
<b>EPA ID:</b> AKD009252230		
<b>Region:</b> 10	<b>State:</b> AK	<b>City/County:</b> Ketchikan, Ketchikan Gateway Borough
SITE STATUS		
<b>NPL Status:</b> Non-NPL		
<b>Multiple OUs?</b> Yes	<b>Has the site achieved construction completion?</b> Yes	
REVIEW STATUS		
<b>Lead agency:</b> EPA <b>If "Other Federal Agency" was selected above, enter Agency name:</b>		
<b>Author name (Federal or State Project Manager):</b> Karen Keeley (Marine OU) and Anne Christopher (Uplands OU)		
<b>Author affiliation:</b> EPA		
<b>Review period:</b> March 2015 – August 2015		
<b>Date of site inspection:</b> June 2, 2015		
<b>Type of review:</b> Statutory		
<b>Review number:</b> 3		
<b>Triggering action date:</b> August 28, 2010		
<b>Due date (five years after triggering action date):</b> August 28, 2015		

## Five-Year Review Summary Form (continued)

### Issues/Recommendations

**OU(s) without Issues/Recommendations Identified in the Five-Year Review:**

**Marine and Uplands OUs**

### Protectiveness Statement(s)

*Include each individual OU protectiveness determination and statement. If you need to add more protectiveness determinations and statements for additional OUs, copy and paste the table below as many times as necessary to complete for each OU evaluated in the FYR report.*

<i>Operable Unit:</i> Marine OU	<i>Protectiveness Determination:</i> Protective	<i>Addendum Due Date (if applicable):</i>
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*Protectiveness Statement:*

The remedy at the Marine OU is protective of human health and the environment.

<i>Operable Unit:</i> Uplands OU	<i>Protectiveness Determination:</i> Protective	<i>Addendum Due Date (if applicable):</i>
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*Protectiveness Statement:*

The remedy at the Uplands OU is protective of human health and the environment.

### Sitewide Protectiveness Statement

<i>Protectiveness Determination:</i> Protective	<i>Addendum Due Date (if applicable):</i>
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*Protectiveness Statement:*

The remedies at the site are protective of human health and the environment.

# KETCHIKAN PULP COMPANY SITE

## KETCHIKAN, ALASKA

### 1 INTRODUCTION

The purpose of this third Five-Year Review is to ensure that remedial actions selected in the Records of Decision (RODs) and implemented for the Ketchikan Pulp Company (KPC) Site Operable Units (OUs) continue to be protective of human health and the environment, and are functioning as designed. To achieve this purpose, this review evaluates the status of implementation of the selected remedies, identifies any significant variances from the RODs, and makes recommendations for reconciling variances and/or for improving performance of remedial actions. In addition, the review identifies any new information that becomes evident, documents that no new contaminant sources or exposure pathways were discovered, and verifies that no new work was performed that was not identified in the RODs. The methods, findings, and conclusions of reviews are documented in the Five-Year Review reports. In addition, Five-Year Review reports identify issues or deficiencies found during the review, if any, and recommendations to address them.

The United States Environmental Protection Agency (EPA) is preparing this Five-Year Review pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 121 and the National Contingency Plan (NCP). CERCLA Section 121(c) states that:

*If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five years after initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section [104] or [106], the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.*

The EPA interpreted this requirement further in the NCP, at 40 Code of Federal Regulations (CFR) Section 300.430(f)(4)(ii), which states:

*If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall review such action no less often than every five years after the initiation of the selected remedial action.*

The EPA Region 10 is the lead Agency for the KPC site and this is the third five-year review for the site. The triggering action for this review is the date of the last five-year review, which was signed August 28, 2010. The EPA Region 10 conducted the first five-year review of the KPC remedy implemented at the Uplands and Marine OUs from February through June 2005 and a second five-year review from February through August 2010. Five-year reviews are required



due to the fact that hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure.

## 2 SITE CHRONOLOGY

The KPC site is not on the NPL.

**Table 1 - Chronology of Site Events**

<b>Event</b>	<b>Date</b>
KPC operated a dissolving sulfite pulp mill	1954-1997
Preliminary site investigations	1991, 1993
Entry of EPA Clean Water Act and Clean Air Act Consent Decree for investigation and feasibility study work for the Marine OU	September 19, 1995
Responsible party implemented sediment investigation and feasibility study work (referred to as Detailed Technical Studies Report [DTSR]) for the Marine OU	September 1995 – March 2000
EPA performed Expanded Site Investigation (ESI)	1997
EPA CERCLA Administrative Order on Consent (AOC) between KPC, Louisiana-Pacific (LP) Corporation (the parent company of KPC), and the Alaska Department of Environmental Conservation (ADEC) - Primarily for the Uplands OU	June 1997
KPC/LP, per the AOC, completed early pre-ROD actions focused on the Uplands OU (removal of contaminated soil and upland sediment, building demolition, and cleaning out roof cisterns used for water collection and storage of drinking water)	Spring 1998 to summer 1999
Final DTSR	May 1999
Issued Proposed Plan for public comment - Marine OU	July 12, 1999
Recording of “Environmental Protection Easement and Declaration of Restrictive Covenants”	October 28, 1999
Sale of KPC assets to Gateway Forest Products (GFP), Inc., including Ward Cove real property other than the landfill and the pipeline and dam parcels, USS 3400 and 3401.	November 5, 1999
ROD Signed - Marine OU	March 29, 2000
ROD Signed - Uplands OU	June 7, 2000
EPA approval of remedial design and start of remedial action – Marine OU	October 24, 2000
EPA/KPC/LP/GFP Consent Decree (CERCLA) for responsible party performance of Remedial Design/ Remedial Action for Uplands and Marine OUs entered by federal court	November 20, 2000
Field construction - Marine OU	October 2000-February 2001
Pre-final inspection performed - Marine OU	February 28, 2001
Final inspection performed - Marine OU	April 4, 2001
EPA approval of final construction report - Marine OU	July 10, 2001

<b>Event</b>	<b>Date</b>
EPA approval of final Long-Term Monitoring and Reporting Plan for Marine OU	September 17, 2001
Final cap for last open cell in Uplands OU landfill cap installed	2001
EPA approval of addendum to the Long-Term Monitoring and Reporting Plan for the Marine OU	January 3, 2002
Environmental Easement and Declaration of Covenants, by and between KPC, Ketchikan Gateway Borough (KGB), and GFP	July 18, 2003
Field sampling for long-term monitoring in Marine OU	July 2004
Environmental Easement and Declaration of Covenants, by and between KPC and KGB	July 15, 2004
Responsible party submits draft 2004 Monitoring Report for Marine OU	October 2004
KGB creates Ward Cove Southeast (S.E.) Replat (Plat No. 2005-30) and auctions off some of the parcels	August 2005
EPA comment letter on draft 2004 Monitoring Report for Marine OU	January 14, 2005
Preliminary Close Out Report signed for Marine OU	February 25, 2005
Responsible party submits final 2004 Monitoring Report for Marine OU	June 27, 2005
First Five-Year Review completed	August 2, 2005
Renaissance Ketchikan Group purchases Ward Cove properties	May 2006
KGB creates the Ward Cove West Replat (Plat No. 2006-10)	March 2006
IC documents for Ward Cove Pipeline Parcels approved	June 27, 2006
Field sampling for second long-term monitoring event- Marine OU	July 2007
KPC submits draft of 2007 Monitoring Report for Marine OU	January 31, 2008
KGB reacquires Ward Cove property from Renaissance Ketchikan Group through foreclosure	October 2008
EPA comment letter on draft 2007 Monitoring Report for Marine OU	October 28, 2008
Tenants sign new leases with the KGB	2009
KPC submits final 2007 Monitoring Report for Marine OU	April 24, 2009
EPA approves 2007 Monitoring Report for Sediment Remediation in Ward Cove, AK	May 7, 2009
EPA fact sheet mailed indicating RAOs met for Marine OU	May 2009
Pre-certification inspection/meeting for Marine OU	June 10, 2009
Certification of completion and extension letter for Remedial Action Report for Marine OU	June 11, 2009
Draft Remedial Action Report – Marine OU	August 5, 2009
Final Remedial Action Report – Marine OU	October 1, 2009
EPA issues Certification of Completion for Remedial Action, Uplands Operable Unit	January 21, 2010
EPA issues Certification of Completion for Remedial Action, Marine and Uplands Operable Units	January 22, 2010
State of Alaska (ADOT&PF) bought Lot 3A of Tract 3005 as	June 16, 2010

Event	Date
depicted on Plat 2010-19 Ketchikan Recording District, First Judicial District, State of Alaska from KGB (see Attachment 21)	
Second Five-Year Review completed	August 28, 2010
KGB notified EPA that Power Systems & Supplies of Alaska LLC (PSSA) purchased the former KPC mill site, including Parcels 1 through 12.	April 18, 2011
KGB requested that AK DNR issue a partial release from the 1999 Environmental Easement and Restrictive Covenants with respect to restrictions relating to certain marine tidelands with ATS 1, as set forth in paragraph 8(g).	2010-2011
PSSA purchased the KPC property from KGB and leases the property to Ward Cove Industries LLC and other businesses (see Attachments 22 and 23).	January 4, 2012
ADOT&PF coordinates with EPA, the U.S. Army Corp of Engineers, and ADEC on sampling and analysis plans for construction/development on their property, the AMHS Ward Cove Marine Facility Feasibility Plan and ferry terminal proposal, and structural removal of pilings and shoreline debris efforts within the Uplands and Marine OUs	2012-2015
PSSA notifies EPA and ADEC of all property that they have leased and ensured that they have notified all lessees of the institutional controls at the site (see Attachment 24)	2012-2015
APDES Permit No. AK0053392 issued to KPC for Ward Cove Landfill (permit effective May 1, 2013-April 30, 2018)	March 28, 2013
PSSA and ADOT&PF coordinate development of the Cove and follow the IC requirements: received notification from PSSA regarding a Right of Entry Agreement with ADOT&PF for drilling test holes on "Bolles Ledge" near the property AMHS's property line	October 23, 2013
APDES Permit No. AK0053384 issued to Full Cycle LLC for Ward Cove Wastewater Treatment Plant (permit effective November 1, 2014-October 31, 2019)	October 1, 2014
2015 Five-Year Review site visit by EPA	June 2, 2015

### 3 BACKGROUND

#### 3.1 Physical Characteristics

The KPC site is located on the shoreline of Ward Cove, approximately 5 miles north of Ketchikan, Alaska (Figure 1). The KPC site is comprised of uplands and patented tidelands in Ward Cove. Ward Cove is one mile long and has a maximum width of 0.5 mile. Water depth to the bottom of the Cove is greater than -120 ft mean lower low water (MLLW). Ward Creek, located on the east end of Ward Cove, is the primary source of fresh water to the Cove.

The Marine OU includes the northern half of Ward Cove and other marine areas where there has been a migration of hazardous substances from Ward Cove or the Uplands OU (Figure 2). The Marine OU consists of approximately 250 acres in Ward Cove, of which approximately 80 acres have been designated in the ROD as an Area of Concern where remedial action objectives have been met and sediment contamination no longer poses a risk to benthic organisms. Sediments in the Cove are subtidal; intertidal sediments are limited to a very small area near the mouth of Ward Creek. The shoreline of the Cove is mostly rocky and relatively steep.

Located on the north shoreline of Ward Cove, the Uplands OU covers approximately 85 acres (Figure 2). Ward Cove is a coastal valley bounded by Slide Ridge to the north and Ward Mountain to the south.

To the north of the former pulp mill area, the terrain slopes steeply upward to a peak approximately 2,100 feet above mean sea level, at a distance of approximately one mile from the shoreline. The area surrounding the former pulp mill is largely forested with pockets of industrial/commercial and residential properties clustered along North Tongass Highway, and some properties used for recreational purposes. There is no residential area along the shoreline (see Attachment 7).

The former pulp mill was built mainly on steep bedrock. Coarse gravel fill and “shot rock” were used as fill material to a depth of 11 feet to 25 feet. The former mill area was fenced and had an unmanned gate access. In 2014, ADOT&PF took out the mill property fencing and gate during a highway straightening project and only replaced the gate. The gate restricts vehicle access to the property when closed, but the gate is usually left open all day so that employees and customers can access the site.

The area has a maritime climate, characterized by mild, wet conditions, receiving an average 151 inches of precipitation annually.

Groundwater in the Uplands OU consists of a transient, shallow aquifer system that exists in the fill areas above the fractured bedrock, a shallow aquifer in the fractured bedrock, and a potential discontinuous deeper aquifer within the fractured bedrock. This groundwater is considered Class III groundwater and thus, non-potable. According to ADEC, the shallow aquifer and potential deeper aquifer are not considered a reasonably expected future source of drinking water.

In 2010, drinking water for this area was supplied by the Ketchikan public water supply system and was stored in a water storage tank on site. Now, the mill property has a storage tank and potable water is trucked in, homes in the surrounding area use catchment systems, and the AMHS engineering facility catches roof water.

A pipeline (wood stave) running from Connell Lake to the former pulp mill facility provides an industrial water supply. A service road (3 foot wide path) allows access to most of the pipeline and is open to the public for walking. A gate limits motor vehicle access by the public. A large dam at Connell Lake (man-made) and the four-foot diameter pipeline supplied water to the former mill and now serve as a water source for fire prevention for the North Tongass Fire and Emergency Medical Services (EMS) Area and a sewage treatment plant on the former mill property. There were several historic small storage/disposal areas along the pipeline, but now

only pipes are stored on the trail temporarily. The habitat along the pipeline is heavily forested and since the pipeline is gravity fed, the general gradient is downward towards Ward Cove.

The Wood Waste and Ash Disposal Landfill is located at Dawson Point, just west of the former pulp mill facility and east of Refuge Cove. The area around the landfill is heavily forested. The landfill is situated on thin soil covering fractured bedrock. Groundwater flows through fractures steeply down-gradient to Ward Cove and Refuge Cove. Groundwater is not now used as a resource and does not likely represent a future resource.

### ***3.2 Land and Resource Use***

The former KPC facility began operations as a dissolving sulfite pulp mill in 1954 and discharged pulp mill effluent to Ward Cove until March 1997, when pulping operations terminated. Equipment associated with pulp mill operations has largely been dismantled and removed from the site. In November 1999, the KPC upland mill property (excluding the landfill and the pipeline and dam parcels USS 3400 and 3401) and patented tidelands in Ward Cove were sold from KPC to Gateway Forest Products, Inc. (GFP).

For a short time, GFP operated a sawmill and veneer mill, producing lumber and veneer, chips for pulp, and hog fuel as a by-product. GFP initiated Chapter 11 Bankruptcy proceedings in 2001, and the U.S. Bankruptcy Court dismissed the action in 2002. GFP no longer owns or operates on any property within the KPC site.

The Ketchikan Gateway Borough (the Borough) then owned all of the former KPC and GFP property which was subject to the November 20, 2000 Remedial Design/ Remedial Action Consent Decree and ICs. The only exception is the landfill parcel, which is still owned by KPC. The Borough originally obtained the property in 5 different ways. First, the Borough obtained 28 parcels from GFP in December 2002 in connection with the foreclosure on its deed of trust interest from a loan made in 1999. Second, the Borough foreclosed on acquired interests in a deed of trust originally granted in favor of Tymatt, Inc. and Tyler Rental concerning USS 1706 and the unsubdivided remainder of USS 1754, to which title was acquired in December of 2002. Third, the Borough foreclosed on its loan interest, a first deed of trust, on USS 1056 lot 3 and the unnamed 10.25 acre portion of ATS 1 (an odd shaped portion which contains the dock and extends both in front of the former sawmill and inland under warehouses) and obtained title in December 2002. Fourth, in December 2003, Foothill Capital transferred to the Borough USS 1862; ATS 1 portion C-1; ATS 1 portion A; USS 2090 portion B; USS 2923; and a 5.16 acre portion of USS 056 adjacent to USS 2923. Fifth, KPC transferred USS 2004 lot 1; USS 3400; and USS 3401 to the Borough.

In 2005, the Borough subdivided the southeast side of Ward Cove (Ward Cove S.E. Replat 2005-30, see Attachment 6) and auctioned off parcels including: Tract 3011, Tract 3013, Tract 3015, Tract 3017, Tract 3019, USS 1656, USS 1653, USS 1655, USS 1208, USS 1207, and USS 1508. Tract 3017 contains the Dredge Spoils Subarea of the Uplands Operable Unit. Along the shoreline, this parcel also contains small portions of the Marine Operable Unit. In May 2006, Renaissance Ketchikan Group (RKG) purchased the remaining Ward Cove Properties and leased portions of the site to Ty-Matt, Loggerville Holdings, Rhineco, GCI, Tongass Forest Enterprises,

Anderes Oil, The Grotti Vikings, Ketchikan Wood Technology, Lighthouse Marine, and Pool Engineering.

In March 2006, the Borough created the Ward Cove West Replat – Plat No 2006-10 (see Attachment 6). In May 2006, a 3 acre parcel along the pipeline, which was subject to an earlier agreement between the Borough and KPC, was transferred from BLM to the State of Alaska and from the State of Alaska to the Borough. After the transfer these parcels were made subject to the ICs of the ROD (see Attachments 9 and 10).

In October 2008, the Borough reacquired the property through foreclosure. Multiple tenants signed new leases with the Borough, including: Alaska Growth Capital, First City Players, First City Wood Haulers, Fritz Peters, GCI, Lighthouse Marine, Loggerville Holdings, Olson Marine, Rhineco, SEAPA, and Tongass Forest Enterprises. In 2010, the lessees at Ward Cove included the State of Alaska Department of Transportation and Public Facilities (ADOT&PF)/Alaska Marine Highway System (AMHS) Department of Administration, Alaska Whole Wood (Tongass Forest Enterprises), Crux Equipment Leasing, Inc., First City Players, First City Wood Haulers, Fritz Peters, GCI, Olson Marine, and Rhineco, Inc.

The State of Alaska purchased a portion of the former KPC Facility from the Borough for lay-up and operational berths for the AMHS on June 16, 2010 (Attachment 21). A Phase II Environmental Site Assessment Report, Ketchikan Ward Cove Property was completed by CH2M Hill for the ADOT&PF (CH2M Hill, April 2010).

On April 18, 2011, the Borough notified the EPA that the former site of the Ketchikan Pulp Company mill was purchased by Power Systems & Supplies of Alaska LLC (PSSA). Properties transferred pursuant to the purchase and sale agreement include Parcels 1 through 12. PSSA was aware and willing to undertake each and all of the obligations associated with the ICs and the terms of the 2003 Settlement Agreement between the Ketchikan Gateway Borough and Ketchikan Pulp Company. On January 4, 2012, the EPA received closing documents of the sale and transfer of Ketchikan Gateway Borough's interest and ownership in the Ward Cove Properties to PSSA (see Attachment 23). Along with this notice are copies of two different Deeds of Trust which have been filed in the Ketchikan recording district and the Alaska Pacific Bank's requisite acknowledgement to be bound by the July 14, 2003 Agreement and the notice provision that the transaction was subject to the Environmental Protection Easement and declaration of Restrictive Covenants, dated October 28, 1999. After PSSA purchased the KPC property from the Borough, it began leasing the property to Ward Cove Industries LLC and other businesses (see Attachment 4 for a map of property ownership as of 2013 and Attachment 24 for a list of the current lessees on the PSSA property).

The current land use for the surrounding area is recreational, residential, commercial, and industrial (see Attachment 7). The former KPC upland property is industrial/commercial and is expected to remain industrial/commercial. The majority of the parcels are zoned Heavy Industrial by the Ketchikan Gateway Borough (see Attachment 7). The primary use of Ward Cove has been navigation and recreation, including fishing. In addition to a homeport for commercial fishing vessels, Ward Cove Industries LLC is planning for an industrial hub that will also serve the oil and gas, mining, transportation, tourism and timber industries (see Attachment 22). Although there are potential land use changes being pursued by Ward Cove Industries LLC, it is anticipated that a mix of land uses similar to present uses will continue into the future.

According to the Alaska Department of Fish and Game, there are no public health advisories for consumption of seafood from Ward Cove.

### ***3.3 History of Contamination***

The KPC mill operated continuously from 1954 until 1997, processing raw logs into lumber, pulp, and hog fuel. The principal product of the KPC mill was dissolving-grade sulfite pulp. When pulp production began, effluent from the mill was discharged directly to Ward Cove. After 1971, effluent was treated in a wastewater treatment plant located at the mill. After treatment, wastewater was discharged to Ward Cove.

The processes and conditions considered possible sources of chemicals of concern (CoC) included wastewater discharges, wood waste and ash disposal in landfill, stormwater discharges, release of airborne contaminants from the power boilers, and spills and accidental releases.

Specifically for the Marine OU, contamination at the site was discovered through water quality and sediment studies of Ward Cove that were conducted to evaluate the potential environmental effects associated with discharges from the KPC facility. Mill operations affected sediments through the release of large quantities of organic material as by-products from wood pulping. This organic material altered the physical structure of the sediments, and thus the type and amount of benthic (bottom-dwelling) organisms. Degradation of the organic-rich pulping and by-product led to anaerobic conditions in the sediment and production of ammonia, sulfide, and 4-methylphenol in quantities that were potentially toxic to benthic organisms in sediments on the bottom of Ward Cove. The chemicals of concern for sediments were ammonia, sulfide, and 4-methylphenol.

For the Uplands OU, sources of contamination were the use of oils and lubricants in the fuel storage areas, maintenance shop and paint shop; polychlorinated biphenyls (PCBs) from electrical transformers and capacitors; heavy metal, polynuclear aromatic hydrocarbons (PAHs) and dioxins/furans from ash generation and sludge generation in storage areas, as well as the wood waste/ash landfill; and, naturally-occurring arsenic contamination from “shot rock” fill material.

Other areas of contamination were the aeration basins, grit chamber soils, filter plant soils and several storage/disposal areas along the pipeline. The soil contamination outlined above was remediated during pre-ROD activities. EPA supervised the removal actions, which were conducted by KPC. Imported soil and rock products containing fines to be placed on the surface at the site were controlled by a Management Plan for Arsenic in Rock and Soil. Other potential contaminated areas not discovered during the investigation and feasibility study were managed by the use of ICs. The wood waste and ash landfill was capped in 2001 and will be monitored for 30 years. The landfill is permitted under ADEC solid waste permit #9713-BA001, and on March 28, 2013, ADEC issued APDES Permit No. AK0053392 to KPC for the landfill (permit effective May 1, 2013-April 30, 2018), which requires quarterly reporting.

### ***3.4 Initial Response***

The KPC site is not listed on the NPL.

Marine OU - The Ward Cove sediment investigation and feasibility study was implemented pursuant to a 1995 Clean Water Act and Clean Air Act Consent Decree with KPC. The Consent Decree embodied a settlement between the United States and KPC for violations at the KPC facility of the Clean Water Act and the Clean Air Act. Under the terms of the settlement, KPC agreed to pay a penalty of \$3.1 million. KPC also agreed to implement requirements for operating the mill (e.g., using only certified wastewater treatment operators) and to perform certain projects.

One such project was to develop and implement the Ward Cove Sediment Remediation Project. EPA Superfund performed oversight of the sediment investigation and feasibility study and other work performed under the Consent Decree. Upon completion of the investigation and feasibility study work, EPA issued a CERCLA Proposed Plan (July 1999), and the ROD (March 2000). EPA's Superfund program then directed the completion of the sediment remediation project pursuant to a CERCLA Remedial Design/Remedial Action Consent Decree with KPC, its parent company, Louisiana-Pacific Corporation (LP), and the new owner of the Ward Cove facility, GFP.

No removal actions or responses occurred prior to the ROD.

Uplands OU - KPC/LP, EPA, and ADEC entered into a CERCLA Administrative Order on Consent (AOC) during June 1997. The AOC required KPC/LP to undertake early pre-ROD activities focused on the Uplands OU that involved the removal of contaminated soil and upland sediment (ditch sediment). Soil removal was completed at the access road ditch, railroad track areas, compressor area, the paint shop/maintenance shop, the former bulk fuel area, and storage areas along the pipeline. KPC also conducted building demolition and cleaned out roof cisterns used for water collection and storage of drinking water in the mill vicinity. These activities were conducted between spring of 1998 and summer of 1999 with ADEC and EPA oversight.

The ROD for the Uplands OU site was signed on June 7, 2000. The early actions completed in the Uplands OU were a significant part of the Selected Remedy. As such, development and detailed evaluation of a series of cleanup alternatives in the form of a Feasibility Study was not completed for the Uplands OU. The Selected Remedy in the ROD included development and implementation of the institutional control (IC) plan for anticipated current and future land use, a management plan for arsenic in rock and soil, and other ICs to ensure that the early actions remained protective.

### ***3.5 Basis for Taking Action***

Marine OU - Hazardous substances in Ward Cove sediments include ammonia, hydrogen sulfide, and 4-methylphenol. These substances potentially posed an unacceptable ecological risk to benthic (bottom-dwelling) organisms.



An ecological risk assessment was conducted using a food-web assessment to estimate risks of bioaccumulative chemicals to representative birds and mammals at the top of the Ward Cove food web. The chemicals evaluated were arsenic, cadmium, mercury, zinc, chlorinated dioxins/furans, and PAHs. The results of this assessment indicated that there were no unacceptable risks to higher trophic level organisms in Ward Cove.

A human health risk assessment was conducted to identify potential risks posed by chemicals detected in sediments or seafood (e.g., fish, shellfish). Ingestion of seafood that may contain chemicals bioaccumulated from the sediments was identified as the only complete exposure pathway for humans. The chemicals that were evaluated included: arsenic, cadmium, mercury, zinc, phenol, 4-methylphenol, chlorinated dioxins/furans, and PAHs. Results concluded that sediments in Ward Cove did not pose an unacceptable risk to human health.

Direct human contact with sediments in Ward Cove is unlikely because of the depth of water overlying the affected sediments and the cold climate. Although direct contact is unlikely, this potential exposure was evaluated in a worst-case analysis and results indicated that sediments did not pose unacceptable risks to people.

Uplands OU - The early actions taken in the Uplands OU removed the most contaminated source material, eliminated unacceptable risks from direct contact with soils, eliminated soil transport to Ward Cove, eliminated leaching of surface soil contaminants to groundwater, and minimized potential future direct contact with subsurface soils at the site.

The paint shop/maintenance shop had an excess carcinogenic risk estimate of  $3 \times 10^{-4}$ , exceeding industrial worker risk for the combination of total PCBs, arsenic, and benzo(a)pyrene, and a total non-carcinogenic hazard index (HI) of 8. Lead industrial soil concentrations were also exceeded at the paint shop and the pipeline. State soil cleanup levels were exceeded in several areas prior to the EPA-supervised removal activities conducted by KPC. ICs now control subsurface use and disturbance to minimize exposure for industrial uses.

A baseline human health and ecological risk assessment was conducted prior to the removal actions. This assessment and State cleanup standards formed the basis for the removal actions, which were conducted at the pulp mill site and the water pipeline access road. Several pathways were fully evaluated, but did not require quantitative risk calculations due to the lack of a complete exposure pathway or lack of chemicals of potential concern for the pathways. Exposure pathways that were quantitatively evaluated in the human health risk assessment were as follows:

- Current and future adult workers in onsite areas and in areas where aerial deposition had affected soils were evaluated for potential exposures to CoCs via ingestion, dermal contact, and inhalation.
- Current or future adult workers who might contact soils along the former pipeline access road via ingestion, dermal contact or inhalation.
- Offsite residents (adults and children) in aerial deposition areas were evaluated for potential exposures to CoCs via ingestion, dermal contact, inhalation, and consumption of homegrown produce.

- Offsite residents who had amended their yards with grit from the Uplands OU were evaluated for potential exposures to dioxins in soil via ingestion, dermal contact, inhalation, and consumption of homegrown produce.

The only completed exposure pathways exceeding the human health based risk levels applied by the EPA and the State was for current adult workers at the pulp mill site (the paint shop/maintenance shop area as described above).

In addition, potential exposures for residents who use water from cisterns that may have been affected by aerial deposition of power boiler stack emissions was considered in the remedial investigation and in a separate consultation by the Agency for Toxic Substances and Disease Registry (ATSDR) in 1998. The ATSDR assessment determined that there were no adverse health effects prior to cistern cleaning.

## **4 REMEDIAL ACTIONS**

### ***4.1 Marine OU Remedy Selection***

The ROD for the Marine OU of the KPC site was signed on March 29, 2000. Remedial Action Objectives (RAOs) were developed based on data collected during the sediment investigation and feasibility study to aid in the development and screening of remedial alternatives considered for the ROD.

In order to eliminate or minimize the ecological risk associated with the toxicity of Ward Cove sediments to benthic organisms, the response action achieved these RAOs:

- Reduce toxicity of surface sediments
- Enhance recolonization of surface sediments to support a healthy marine benthic infauna community with multiple taxonomic groups

Chemical-specific bulk sediment criteria were not established as cleanup levels for the CoCs (ammonia, sulfide, and 4-methylphenol) at the site. The ROD concluded that the success of the remedy would be best measured by those indicators most directly representative of RAOs, i.e., sediment toxicity and the health of benthic infauna. Thus, site-specific biological criteria for sediment toxicity and the health of benthic infauna were established to evaluate the protectiveness of the Selected Remedy and the rate at which the RAOs were being achieved.

The major components of the remedy selected in the ROD are described below.

### ***4.2 Marine OU Remedy Implementation***

In a Consent Decree signed with EPA on November 20, 2000, KPC/LP agreed to perform

RD/RA, implement long-term monitoring, and pay past and future costs for carrying out work in the Marine OU. The RD was conducted in conformance with the ROD, and was approved in 2004. The field work for RA construction was completed in February 2001, and EPA approved the final construction report in July 2001. Pursuant to Paragraphs 41 through 43 of the CERCLA Consent Decree, KPC and GFP each agreed to implement ICs for the property owned by each company.

The remedy that was selected for the Marine OU is listed below (verbatim from the ROD, Part 1: Declaration). Following each component of the remedy that was listed in the ROD is italicized text describing actual construction completion. Figure 3 depicts the areas of thin layer placement, dredging, piling removal, and natural recovery.

- Placement of a thin-layer cap (approximately 6- to 12-inches) of clean, sandy material where practicable. Thin-layer capping is estimated to be practicable over approximately 21-acres within the Area of Concern. Thin-layer capping is preferable over mounding.

*Constructed thin-layer (approximately 6- to 12-inches) placement of clean, sandy material over an estimated 27 acres. The increase in acreage is due to the fact that thin layer placement was found to be successful over a broader area, and it was not necessary to construct mounding.*

- Placement of clean sediment mounds in areas where thin-layer capping is either infeasible or impracticable, and where mounding is considered to be practicable. Mounding is currently considered to be practicable in areas where the organic-rich sediments are less than 5 ft thick and have a bearing capacity that is greater than 6 psf. Mounding is estimated to be practicable over approximately 6-acres within the Area of Concern.

*Thin-layer placement was found to be practicable over the entire 27-acres, so mounding was not constructed.*

- Dredging of approximately 17,050 cubic yards (cy) of bottom sediments from an approximate 4-acre area in front of the main dock and dredging of approximately 3,500 cy of bottom sediments from an approximate 1-acre area near the shallow draft barge berth area to accommodate navigational depths, with disposal of the dredged sediments at an upland location. After dredging, a thin-layer cap of clean, sandy material will be placed in dredged areas unless native sediments or bedrock is reached during dredging.

*Dredged approximately 8,701 cubic yards (cy; pay volume) of bottom sediments from an area in front of the main dock and an area near the shallow draft barge berth area to accommodate navigational depths, with disposal of the dredged sediments at an upland location. The dredging volume estimate was less than expected because native, clean sediments were encountered at a shallower depth than anticipated. After dredging, thin layer placement of clean, sandy material was constructed in dredged areas where native sediments or bedrock was not reached.*

- Removal of sunken logs from the bottom of Ward Cove in areas to be dredged.

*Sunken logs (approximately 680 tons) were removed from the bottom of Ward Cove in areas to be dredged.*

- Natural recovery in areas where neither capping nor mounding is practicable. Natural recovery is estimated to be the remedy for approximately 50 acres of the 80-acre Area of Concern, as follows:
  - 1) 8-acre area in the center of Ward Cove and 2-acre area near Boring Station 8 that exhibit a very high-density of sunken logs (>500 logs/ 10,000 m<sup>2</sup>);
  - 2) 13.5-acre area where water depth to the bottom of the Cove is greater than -120 ft MLLW and the depth of the sediment is currently considered to be too great to cap;
  - 3) 14.5-acre area where slopes are estimated to be greater than 40 percent and are currently considered to be too steep for capping or mounding material to remain in place;
  - 4) 11-acre area where the organic-rich sediments do not have the bearing capacity (i.e., strength is less than 6 pounds per square foot) to support a sediment cap and are too thick (i.e., thickness is greater than 5 feet) to practicably allow for placement of sediment mounds; and,
  - 5) 0.2-acre area near the sawmill log lift where maintenance dredging generally occurs on an annual basis.

*In areas where thin-layer placement was not constructed, allowed for monitored natural recovery in approximately 52 acres.*

- ICs requiring that post-remediation activities within the Area of Concern that materially damage the thin-layer cap or mounds will be required to redress such damage, at the direction of EPA.

*While the remedy selected for the Marine OU assumed that Ward Cove would be redeveloped in the future, institutional controls are required and have been implemented to prevent the disturbance of the waste remaining on site and affects how the site may be redeveloped. Section IX of the 2000 ROD prohibits persons from “using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness” of the remedy. Per Section XI of the 2000 ROD, this institutional control will remain in effect even after the Remedial Action Objectives are achieved.*

*In 1999 – before EPA had issued the ROD and before KPC had entered into a CERCLA Consent Decree (CD) to perform the remedial design and remedial action – KPC recorded an Environmental Easement and Declaration of Covenants on its property (“1999 Covenant”). The 1999 Covenant described restrictions on the use of Ward Cove, including, but not limited to, a requirement that any damage to the sediment cap be redressed by KPC at EPA’s direction. The 1999 Covenant designated the State of*

*Alaska, Department of Natural Resources (ADNR) as the holder of the easement, and the ADNR subsequently granted oversight of the easement to the ADEC.*

*On February 16, 2010, the then-owner of the tidelands, Ketchikan Gateway Borough (“the Borough”), requested that ADNR release some or all of the restrictions established in the 1999 Covenant with respect to certain marine tidelands within Alaska Tidelands Survey (ATS) 1. Following lengthy negotiations in 2010 and 2011, the State of Alaska Department of Law agreed through written correspondence with the Borough on a partial release, which only applied to the restriction set forth in Paragraph 8(g) of the 1999 Covenant. Paragraph 8(g) of the 1999 Covenant stated: “Projects or activities that materially damage the cap applied to tide and submerged lands shall be required, at the direction of EPA, to redress such impacts, e.g., a dredging project that may erode or displace large portions of the cap will be required to repair or replace the cap.” The Department of Law agreed to this release based on the language of the 1999 Covenant, which stated that the restriction set forth in Paragraph 8(g) only exists until EPA determines that healthy benthic communities exist in the submerged lands.*

*It is unclear whether the partial release was ever formally memorialized in a signed document; however, the validity of Paragraph 8(g) of the 1999 Covenant is immaterial to the protectiveness of the remedy. The 1999 Covenant was in place before the ROD was issued in 2000 and was subsequently superseded by the July 2004 Environmental Easement and Declaration of Covenants (“2004 Covenant”). The 2004 Covenant, which was entered into by the Borough and KPC after KPC completed the remedy in Ward Cove, states, inter alia:*

*The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove [CERCLA] Consent Decree.*

*In accordance with the 2004 Covenant, in the event of any such damage to the cap, the Borough (or any future owner) must immediately report the damage to EPA and KPC and then restore the cap. The 2004 Covenant states that the restricted uses shall run with the land and be binding on all future owners, and the terms and conditions shall be for a period of twenty years, after which time the Covenant shall be automatically extended for successive periods of ten years unless an instrument signed by KPC has been recorded agreeing to terminate the restrictions.*

*Ultimately, any activity that materially damages the thin-layer sediment cap at Ward Cove would be inconsistent with the ROD and a violation of the institutional controls, including the 2004 Covenant, and may also be considered a release of hazardous substances, subjecting the owner of the sediments to liability under Section 107(a) of CERCLA.*

- Implementation of a long-term monitoring program for the remedial action until RAOs are achieved, at the direction of EPA.

*EPA approved a long-term monitoring program for the remedial action, which was implemented until RAOs were achieved. Based on results of the 2007 long-term monitoring data, it was determined that RAOs were achieved in Ward Cove (EPA 2009, see Attachment 18).*

- Subtidal investigation of sediments near the east end of the main dock, and subsequent dredging and disposal of PAH-contaminated sediments, as deemed appropriate by EPA.

*PAH-contaminated sediments were dredged along with other dredged materials. Submerged creosote-soaked pilings were also removed from the area of PAH contaminated sediments.*

The deviations, which were not considered significant enough to require documentation in an Explanation of Significant Difference, from the remedy selected in the ROD are as follows:

- Thin-layer placement occurred over a larger area than was estimated in the ROD;
- The ROD allowed for “mounding” if thin-layer placement could not be implemented - “mounding” did not occur as thin-layer placement was effective in all areas;
- The dredging volume was less than was estimated in the ROD.

EPA determined that all RA construction activities, including the implementation of ICs, were performed according to the requirements of the ROD and Consent Decree.

The Preliminary Close-Out Report was signed on February 25, 2005.

### ***4.3 Marine OU Long-Term Monitoring and Reporting***

Remediation activities were completed in 2001. On behalf of KPC/LP, KPC conducted long-term monitoring and reporting according to the monitoring plan that was approved by EPA in September 2001. The primary objectives of the Ward Cove long-term monitoring program included the following:

- Compare sediment toxicity in thin capped and natural recovery areas in the remediated area with sediment toxicity in reference areas located elsewhere in the cove
- Compare the characteristics of benthic communities in thin capped and natural recovery areas in the remediated area with the characteristics of communities in reference areas located elsewhere in the cove
- Evaluate temporal trends in sediment toxicity in the thin capped and natural recovery areas of the remediated area
- Evaluate temporal trends in the characteristics of benthic macroinvertebrate communities found in the thin capped and natural recovery areas of the remediated areas

- Evaluate chemical concentrations and their relationship to sediment toxicity and benthic community structure.

The specific components of sediment quality used for the monitoring program were as follows:

- Sediment chemistry - Surface (0 to 10 centimeters) sediment samples were analyzed for conventionals, ammonia, and 4-methylphenol.
- Sediment toxicity - Surface sediment samples were evaluated using amphipod bioassay toxicity tests.
- Benthic macroinvertebrate communities - Characteristics of benthic communities were evaluated by collection and enumerating the organisms found in surface sediment samples.

Sediment chemistry and toxicity were assessed during the sediment investigation and feasibility study and therefore these monitoring components could be compared to pre-remedial conditions as well as to reference areas. Temporal trends in sediment chemistry, sediment toxicity, and benthic infauna were evaluated by comparing pre-remediation data with monitoring data collected in July 2004 and 2007. The analytical methods for chemistry and toxicity testing were comparable to those used in the sediment investigation and feasibility study. Benthic infauna measurements were compared to reference area conditions and qualitative data collected prior to remediation.

The design of the Ward Cove monitoring program built on different categories of benthic strata, which were based on water depth and on the kind of remedial action taken. Multiple sampling stations were evaluated within each benthic stratum to estimate average (or mean) conditions in the stratum and to provide a measure of within-stratum variability so that statistical analyses could be conducted. A total of 37 Area of Concern stations and 2 reference area stations were sampled during the monitoring program.

The characteristics of benthic communities can be influenced by water depth and sediment character. Therefore, the Area of Concern was subdivided into various benthic strata as follows based on water depth (four strata):

- very shallow areas (<20 ft water depth at mean lower low water (MLLW); 5 stations),
- shallow areas (20–70 ft MLLW; 16 stations),
- moderately deep areas (70–120 ft MLLW; 11 stations), and
- deep areas (>120 ft MLLW; 5 stations).

Remedial action strata were defined as either enhanced natural recovery (ENR) (i.e., thin layer placement (TLP) areas; 15 stations) or monitored natural recovery (MNR) areas (22 stations). The shallow, MNR stratum was further subdivided into an area with thick organic deposits (>5 feet) adjacent to the former pulp mill and an area with more limited organic deposits along the north shore near the mouth of the cove.

On May 7, 2009, EPA approved the final 2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (April 2009). EPA also concurred that the RAOs for the sediment remedy were achieved, that the remedy at the Marine OU was protective of human health and the

environment, and monitoring pursuant to the long-term monitoring and reporting plan (LMRP) was no longer necessary.

#### ***4.4 Uplands OU Remedy Selection***

The ROD for the Uplands OU was signed on June 7, 2000 and included the following RAOs:

1. Reduce cancer and noncancer risks to current and future workers from exposure to soil contaminants
2. Minimize future cancer and noncancer risks to off-site or future residents from contaminated soil or groundwater exposure
3. Minimize on-site workers' arsenic exposure from future use of imported rock products
4. Minimize potential migration of contaminants to Ward Cove from the landfill.

The remedial investigation confirmed the presence of the following chemicals of potential concern in soil at the site: arsenic, lead, manganese, polycyclic aromatic hydrocarbons (PAHs), polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDDs/Fs), PCBs, and petroleum hydrocarbons. After comparison with screening values and calculation of risk estimates, arsenic, lead, PAHs, PCBs, and petroleum hydrocarbons were identified as CoCs requiring consideration of remedial actions. Table 1 of the Uplands OU ROD (see Attachment 25) compares the baseline chemical concentration ranges and risk estimates throughout the OU before the early actions were completed to the residual concentrations and risks following the implementation of the early actions. Because the early actions completed at the OU reduced the chemical concentrations and risks to acceptable levels, development and detailed evaluation of a series of cleanup alternatives in the form of a Feasibility Study was not completed for the Uplands OU.

#### ***4.5 Uplands OU Remedy Implementation***

The RAOs for the Uplands OU selected remedy were partially met through the completion of the early removal actions. Development and implementation of the Institutional Control Plan for anticipated current and future land use, the Management Plan for Arsenic in Rock and Soil, and other ICs were selected to ensure that the early actions remained protective and to meet the first three RAOs. These ICs were implemented through:

- Ketchikan Gateway Borough zoning restrictions;
- Management Plan for Arsenic in Rock and Soil, finalized July 1998;
- Environmental Protection Easement and Declaration of Restrictive Covenants for KPC's property, recorded on October 28, 1999;
- Institutional Control Plan, including Excavation and Soil Handling Procedures, dated June 2000;
- Environmental Easement between KPC and ADNR regarding the Wood Waste and Ash Disposal Landfill at Dawson Point, recorded August 6, 2001;



- Environmental Easement and Declaration of Covenants, between Ketchikan Gateway Borough, Ketchikan Pulp Company, and Gateway Forest Products, recorded July 18, 2003;
- Environmental Easement and Declaration of Covenants, between Ketchikan Gateway Borough and Ketchikan Pulp Company, recorded July 15, 2004; and
- Equitable Servitude and Easements and Subordination Agreement for the Pipeline Parcels granted by the Ketchikan Gateway Borough in favor of the ADNR, recorded May 1, 2006.

To meet RAO number 4, the selected remedy for the Wood Waste and Ash Disposal Landfill was to close and cover the landfill with a geomembrane cap, place a topsoil cover over the geomembrane, establish a vegetative cover and maintain the final cover, the passive gas venting system, and the leachate treatment system. The cap was installed in 1997 with an open cell constructed on top of that cap to receive ash from the power boilers which ran until March 1998. The final cap for this remaining open cell was installed in 2001. The remedy also included long-term visual and surface water monitoring to detect the potential for public ecological receptor endangerment or water quality standard or permit violations. The Wood Waste and Ash Disposal Landfill was also included in the Institutional Control Plan, Management Plan for Arsenic in Rock and Soil, and recorded Restrictive Covenants.

#### ***4.6 Uplands OU Long-Term Monitoring and Reporting***

The Uplands OU ROD requires long-term monitoring at the landfill in accordance with all applicable permits (i.e., ADEC solid waste permit and regulations, EPA NPDES permit, ADEC APDES permit) and development and implementation of an operation and maintenance program for the landfill to ensure long term viability of the cap system, including ensuring no tree growth occur that could compromise the integrity of the cap. KPC conducts visual inspections and periodic maintenance of the landfill cap and collects surface water samples to assess the site surface water, as well as maintains operation of the landfill leachate treatment and aeration ponds. KPC submitted a National Pollutant Discharge Elimination System (NPDES) permit application to the EPA (and ADEC) in March 2009. However, because the EPA began transferring authority for Federal NPDES permitting and compliance/enforcement programs to the State of Alaska on October 31, 2008, the KPC permit application was transferred to ADEC's Alaska Pollutant Discharge Elimination System Program. As of October 31, 2009, the State of Alaska has authority under the APDES Program for the KPC Ward Cove Landfill Leachate permit (#AK0054492). That permit expired on September 30, 2009, so KPC continued to operate under the expired permit while a new permit application was processed. On March 28, 2013, ADEC issued APDES Permit No. AK0053392 to KPC for the landfill (permit effective May 1, 2013-April 30, 2018), which requires quarterly reporting. The landfill is also permitted under ADEC solid waste permit #9713-BA001.

On October 1, 2014, an APDES permit (APDES Permit No. AK0053384) was issued to Full Cycle LLC, a company leasing property from PSSA, for the Ward Cove Wastewater Treatment Plant (permit effective November 1, 2014-October 31, 2019).

PSSA and ADOT&PF enforce ICs with all leaseholders and coordinate with EPA and ADEC on all potential subsurface construction projects.

## **5 PROGRESS SINCE THE LAST FIVE-YEAR REVIEW**

RAOs have been achieved at the Marine and Uplands OUs. Certificates of Completion were documented for the Marine OU and Uplands OU by EPA letter to KPC dated January 22, 2010 (see Attachment 13).

### **Previous Protectiveness Statements from the last Five-Year Review (August 28, 2010)**

Marine OU:

“The remedy at the Marine OU is protective of human health and the environment. For the Marine OU, remedial action construction is complete, the remedy is functioning as intended, and the Certificate of Completion has been issued. The remedial action objectives (RAOs) for the sediment remedy have been achieved, and institutional controls (ICs) and Restrictive Covenants remain in effect.”

Uplands OU:

“The remedy at the Uplands OU is protective of human health and the environment. For the Uplands OU, construction is complete, the RAOs have been met, the Certification of Completion has been issued, and ICs and Restrictive Covenants remain in effect.”

Sitewide:

“All remedies at the site are protective of human health and the environment.”

### **Status of Recommendations from the Last Five Year Review (August 28, 2010)**

For the Marine OU, there were no recommendations made in the previous Five-Year Review (August 28, 2010).

For the Uplands OU, the previous Five-Year Review (August 28, 2010) included the recommendation: “The Borough should inform EPA and the Alaska Department of Environmental Conservation (ADEC) of lease/sale activity and EPA and ADEC should increase oversight during a time of high construction activity, at least once each year. The Borough (or current property owner) should submit a yearly summary of actions taken at the property, including sales, leases, implementation of ICs. The Borough should develop a plain language summary of the enforceable institutional controls for distribution to interested lessees or purchasers, with approval by EPA and ADEC.”

This recommendation has been addressed. PSSA, Ward Cove Industries LLC, and ADOT&PF have maintained good communication with EPA over the past five years in regards to leases, sales of property and proposed development. EPA has reviewed sampling and construction plans for several real and proposed construction projects to determine consistency with ICs, such as ADOT&PF’s ferry terminal proposal and plans for the structural removal of pilings in the Cove. PSSA and Ward Cove Industries LLC have been submitting new lessee notifications to the EPA

as they occur instead of a yearly summary and have been distributing copies of the actual institutional control documents to their tenants instead of providing them with a summary.

For Sitewide, there were no recommendations made in the previous Five-Year Review (August 28, 2010).

## **6 FIVE-YEAR REVIEW PROCESS**

### ***6.1 Administrative Components/Community Involvement/Document Review***

The Five-Year Review team was comprised of the Remedial Project Managers responsible for the Marine and Uplands OUs. There are no current active citizen groups associated with the KPC site. External stakeholders, including the State, were notified of the start of this Five-Year Review in April 2015. In May 2015, a newspaper ad was placed in the Ketchikan Daily News to notify the public of the upcoming Five-Year Review. The Five-Year Review consisted of a review of relevant documents including decision documents (RODs), remedial action completion reports, long-term monitoring plans and reports, environmental laws and regulations, enforcement documents, and all documents submitted to meet the institutional control requirements.

### ***6.2 Data Review - Marine OU***

The detailed results of the monitoring program are provided in the 2004 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (Exponent, June 2005) and Final Remedial Action Report, Sediment Remediation in Ward Cove Marine Operable Unit, Ketchikan Pulp Company Site, Ketchikan, Alaska (Integral September 2009). The data from the final monitoring event (2007) was summarized in the 2010 Five-Year Review Report and additional details on the long-term monitoring data are provided in the Executive Summary of the 2007 Monitoring Report (reproduced herein as Attachment 17). Based on the results of the monitoring program, the EPA determined that the RAOs for the Marine OU have been achieved and that no further sediment monitoring would be performed pursuant to the LMRP. The EPA approved the 2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (April 2009) on May 7, 2009 (see Attachment 18).

KPC submitted a Final Remedial Action Report for the Sediment Remediation in Ward Cove Marine Operable Unit, Ketchikan Pulp Company Site, Ketchikan, Alaska in September 2009 and the document was approved by EPA Region 10 on October 1, 2009.

The following documents pertaining to the Marine OU were received since the last Five-Year Review:

- June 10, 2010. ADOT&PF letter and attachments regarding Project 68704 KTN Lay-up Berth & Mooring Structures. Attachments include:

- April 2010 Budgetary Cost Estimate for Ketchikan Ward Cove Property Demolition & Cleanup for Layup Berth & Mooring Structures;
- August 27, 2009 Response to Peer Reviews of CH2M Hill Ward Cove Scour Study; and
- May 29, 2009 Potential for Scour at Ward Cove from Proposed AMHS Ferry Operations.

The letter indicates that the State of Alaska and the KGB have signed a memorandum of agreement to complete transfer of part of the Ward Cove property by June 30, 2010. The letter states: “The AMHS intends to make immediate use of the warehouse on this parcel and begin planning for an office facility and a vessel berth. Please note that the parcel to be acquired does not include the dock, avoids most of the sand cap, and roughly coincides with the location the scour report indicates could be used as a working berth without disturbing the sand cap.”

- August 8, 2011. Letter regarding Ketchikan Gateway Borough’s Amended Request for Partial Release from 1999 Environmental Easement and Restrictive Covenants with Respect to Certain Marine Tidelands within ATS 1: AGO No. 663-06-0111.
- May 20, 2013. Alaska Marine Highway System Ward Cove Marine Facility Feasibility Plan AKSAS Project Number 73111 Parts 1-3.
- July 16-August 1, 2013. Ward Cove Dredge- Figures 1-4.
- August 12, 2013. Draft Dredge Material Sampling and Analysis Plan, AMHS Ward Cove Marine Facility.
- August 31, 2013. U.S. Army Corps of Engineers Application for Department of the Army Permit for Ward Cove Structure Removal.
- September 9, 2013. Draft Quality Assurance Project Plan (QAPP) for Dredge Material Sediment Sampling for the Alaska Marine Highway System Ward Cove Marine Facility Feasibility Study.
- September 10, 2013. Final Dredge Material Sampling and Analysis Plan, AMHS Ward Cove Marine Facility.
- November 1, 2013. Revised 2 Final Dredge Material Sampling and Analysis Plan, AMHS Ward Cove Marine Facility.
- August 14, 2014. ADOT&PF Individual Permit Application for dredging in Ward Cove, state project 70006.
- September 29, 2014. AK0053384 Ward Cove APDES Permit.
- October 3, 2014. Email regarding Ward Cove Structure and shoreline debris removal-- USACE Authorization for work in waters of the U.S. (UNCLASSIFIED).
- October 9, 2014. USACE Alaska District letter to ADOT&PF requesting additional information.
- November 13, 2014. ADOT&PF letter providing additional information to USACE Alaska District.
- January 13, 2015. Ward Cove Permit 20150106.
- January 27, 2015. USACE Public Notice of Application for Permit, POA-2013-273, for ADOT’s proposed AMHS Ward Cove Marine Facility Project, including 17 drawings.
- January 27, 2015. USACE Alaska District letter to ADOT, requesting additional information for ADOT’s permit application POA-2013-273 for the AMHS Ward Cove Facility.
- April 14, 2015. ADOT&PF receives three permit transfers from the Ketchikan Borough for Ward Cove.
- April 16, 2015. ADOT&PF provides agencies with project demolition and removal plans for pilings and debris in Ward Cove.

- June 25, 2015. USACE Alaska District letter to ADOT, closing ADOT's permit application POA-2013-273 for the AMHS Ward Cove Facility.

In 2010, ADOT&PF acquired ownership of a portion of the KPC site post-remediation and has since proposed the construction and operation of a ferry terminal project in Ward Cove. ADOT&PF plans to construct and operate a ferry terminal in waters adjacent to the Sediment Cap and within the Superfund Area of Concern (AOC). The proposed design currently shows that nearshore fill will be placed on a small portion of the Sediment Cap. Also, navigation into Ward Cove is currently impeded by Bolles Ledge, a shallow shoal located within the AOC that is covered with thousands of sunken logs. To deepen the area near Bolles Ledge, ADOT&PF proposes to use underwater explosive materials to blow up the ledge, and to extract and remove thousands of logs. The overall construction of the terminal is projected to include dredging, rock blasting, filling, log removal activities, and installation of structures (pilings, trestles, docks, etc.) within and adjacent to the AOC. Additionally, once completed, daily terminal operations are projected to include use by three agencies' ferries and vessels of a turning basin in waters directly above sediments located within the AOC and of a berth within 50 feet of the Sediment Cap.

EPA is working with ADOT&PF, ADEC, and USACE Alaska District to ensure that ADOT&PF demonstrates that the current proposed construction and operations will not materially impair the thin-layer Sediment Cap.

### **6.3 Data Review - Uplands OU**

The following documents were reviewed for the Uplands OU:

- Exponent. 1998. Remedial Investigation Report, Ketchikan Pulp Company Site, Volumes I-III.
- Ecology and Environment. 1998. Final Ketchikan Pulp Company Expanded Site Inspection Report, Volume 1 and 2.
- Exponent. 1999. Technical Memorandum 9, Technical Approach for Evaluating Arsenic Bioavailability in Soil and Crushed Rock.
- US EPA. 2000. Ketchikan Pulp Company (KPC) Ketchikan, Alaska Uplands Operable Unit, Record of Decision.
- Exponent. 2000. Management Plan for Arsenic in Rock and Soil.
- Exponent. 2000. Institutional Control Plan for the Ketchikan Pulp Company Site.
- Ketchikan Gateway Borough. 2005. Ketchikan Gateway Borough Sale of West Ward Cove – Phase 2 Property Information.
- PSSA's notification letters to lessees from January 9, 2012 to May 27, 2015 and template lease (see Appendix 24)
- Fact sheets and compliance histories for APDES Permit No. AK0053392 issued to KPC for Ward Cove Landfill (permit effective May 1, 2013-April 30, 2018) and APDES Permit No. AK0053384 issued to Full Cycle LLC for Ward Cove Wastewater Treatment Plant (permit effective November 1, 2014-October 31, 2019)
- Information on 2013 Regional Soil Screening Levels for dioxins

In addition, interviews were conducted with the following individuals:

Evonne Reese and Bruce Wanstall- ADEC Project Managers  
Sally Wanstall and Amber Bennett- ADEC APDES Program  
Phil Benning, Barry Hogarty, and John Peterson- KPC  
Dave Spokely, Andrew Spokely, Jen Spokely, and Glen Thompson- PSSA/Ward  
Cove Industries LLC  
Kirk Miller, Christa Hagan, and Ward Mace- ADOT&PF

Interview Records are provided in Attachment 1.

A site visit was conducted on June 2, 2015. The Site Inspection Checklist is provided in Attachment 2 and associated photographs are provided in Attachment 3. Site visit participants included representatives from KPC, PSSA and Ward Cove Industries LLC, EPA, and ADEC. The visit included the mill site property, the KPC landfill and lagoon, and the pipeline and dam at Connell Lake. The site visit did not include observations of the Marine OU Sediment Cap. During the site visit, PSSA/Ward Cove Industries LLC records and protocols for management of this property were reviewed. Attachment 4 includes a map of the former KPC holdings that are now held by PSSA and ADOT&PF (the landfill is not shown on the map, but is still owned by KPC).

Since the ROD specified ICs as the primary selected cleanup action, review of the Uplands OU involved a review of property ownership, land use and ICs, all of which play a significant role in the effectiveness of the intended remedy. Notable ownership changes since the last five-year review include:

- On June 16, 2010, the State of Alaska (ADOT&PF) purchased a portion (Tract 3005, Lot 3A) of the former KPC Facility from Ketchikan Gateway Borough for lay-up and operational berths for the AMHS.
- On April 18, 2011, the Ketchikan Gateway Borough notified the EPA that the former site of the Ketchikan Pulp Company mill was purchased by PSSA. Properties transferred pursuant to the purchase and sale agreement include Parcels 1 through 12. On January 4, 2012, the EPA received closing documents of the sale and transfer of Ketchikan Gateway Borough's interest and ownership in the Ward Cove Properties to PSSA.
- The land ownership of all parcels associated with this former KPC site, except the Wood Waste and Ash Landfill, Tract 3017, and Tract 3005, Lot 3A are now in the ownership of PSSA and ADOT&PF.
- PSSA is leasing land and buildings within its parcels to promote industrial growth and jobs for Ketchikan, while maintaining ICs outlined in the ROD (see Attachment 24).

PSSA and ADOT&PF have maintained records of all parcels and have enforced the ICs. KPC has documented landfill cap integrity through periodic monitoring, settlement surveys, and cap inspections. Monitoring and inspections have verified the stability of the engineering.

Significant physical changes at the property since 2010 include:

- Many of the former KPC buildings and structures remain on the property in various states of disrepair, however, there have been no violations of ICs prohibiting excavation of building foundations, soils, or pavement.
- The Borough removed the paint shop/maintenance shop before the property was sold to PSSA. The building debris was cleaned up and rock was placed on top of the site. Logs are stored on top of the rock cover and there is no potential for digging or future exposure. ICs are in place.
- The foundation of the power plant was removed, but was not dug out below ground surface.
- In 2012, ADOT&PF removed contaminated sediment from the oil/water separator and associated settling pond at the AMHS Marine Engineering Warehouse.
- In 2014, ADOT&PF took out the mill property fencing and gate during a highway straightening project and only replaced the gate.
- ADOT&PF has not done any upland construction, but has done some upland improvements and plans to build another building in the near future which will be coordinated with EPA and ADEC.
- PSSA and Ward Cove Industries LLC have not proposed any construction projects yet, but they have many development ideas for the near future (see Appendix 22) and will coordinate with EPA and ADEC.

Because of the above developments over the past five years, KPC, PSSA and ADOT&PF now own all of the former KPC and GFP property which is subject to the Consent Decree and ICs. Ownership and management of the properties is clear, record keeping is thorough and complete, and the ICs are being enforced. The completeness of KPC, PSSA, and ADOT&PF's records and PSSA's notification of ICs to prospective leaseholders indicates that, for at least the foreseeable future, these ICs will be enforced.

## 7 TECHNICAL ASSESSMENT

### ***7.1 Question A: Is the Remedy Functioning as Intended by the Decision Documents?***

Marine OU – Yes. Construction of the remedial action is complete, all long-term monitoring efforts are complete, and the results show that the remedy is functioning as intended and that RAOs have been achieved.

ICs are adequate and complete; no additional actions related to ICs are necessary. EPA and ADEC should continue coordinating with ADOT&PF on the structural removal of pilings in the Cove, the proposed AMHS ferry terminal, and any other potential development within the Marine OU. PSSA and Ward Cove Industries LLC also have development plans within the Cove that need to be monitored and reviewed to ensure that no harm is done to the Marine OU remedy (see Attachment 22). These are ongoing requirements which are currently being complied with.

Uplands OU – Yes. Most remediation activities were complete prior to the ROD. The ROD called for implementation of: a) institutional controls to limit use of the upland properties to commercial/industrial (with the exception of the pipeline access road where it was restricted to

commercial/industrial or recreational use), to prohibit groundwater use, and to require sampling, characterization, and proper management of the soil in the event of excavation or demolition activities; b) an arsenic management plan to limit exposure to arsenic from crushed rock used on the site; and c) long-term monitoring and care of the landfill. All of these elements were put in place and are functioning as intended.

The ICs were designed to be protective after remediation, even in the event of land transfers, and have proven effective through multiple land transactions. PSSA and ADOT&PF now own all of the former KPC and GFP property which is subject to the Consent Decree and ICs (with the exception of the Dawson Point Landfill still owned by KPC) so ownership and management of the properties is clear, record keeping is thorough and complete, and the ICs are being enforced. The completeness of KPC, PSSA, and ADOT&PF's records and PSSA's notification of ICs to prospective leaseholders indicates that, for at least the foreseeable future, these ICs will be enforced. EPA and ADEC should continue coordinating with ADOT&PF regarding plans to construct a new building on its property and with PSSA and Ward Cove Industries LLC regarding their development ideas (see Attachment 22) that need to be evaluated to ensure no new exposure pathways are created and that the Uplands OU remedy and ICs are still protective.

In addition, most waste (asbestos, hazardous material) originally left on site after remediation has been removed and landfill closure has been successful with no runoff or unauthorized effluent apparent to date under the landfill's APDES permit; therefore, the ICs in place are adequate and complete and there is no evidence that the original remedy is not protective and effective.

## ***7.2 Question B: Are the Exposure Assumptions, Toxicity Data, Cleanup Levels, and Remedial Action Objectives (RAOs) used at the Time of the Remedy Still Valid?***

Marine OU – Yes. Site conditions have not significantly changed since the ROD. While ownership and land use for many of the Uplands OU properties adjacent to the Marine OU have changed significantly since the ROD, the uncertainty in land use of areas outside of the Marine OU does not bear on the protectiveness of the remedy. The original assumptions regarding current and future land use and contaminants of concern for the Marine OU are still valid.

The RAOs for this project are also still valid. There are no changes in the standards identified as ARARs in the ROD, and there are no newly promulgated standards that might be ARARs to the site, that bear on the protectiveness of the remedy.

Uplands OU – Yes. After review of the current State and Federal applicable or relevant and appropriate regulations (ARARs), the EPA believes that the ROD exposure assumptions and RAOs are still protective.

The ROD utilized industrial worker exposure assumptions for areas evaluated on-site. As part of the 2010 Five-Year Review, a recalculation based on a residential scenario was conducted using standard EPA equations and parameters (see Attachment 12). The total risk exceeds a threshold of 1E-04 for all areas with the exception of the former bottom ash storage pile soils, wood waste and sludge disposal subarea soils, and forested and developed area soil. This reinforced the



ROD requirement that the Uplands OU properties remain subject to ICs precluding residential use.

The original risk and exposure assessment calculated a PCB bioavailability of 100 percent, so the 10 ppm cleanup level is conservative and protective. The underlying oral toxicity values for arsenic, benzo(a)pyrene, and PCBs have not changed. The industrial screening level of 1000 mg/kg for lead remains protective. See Attachment 25 for a list of all Upland OU cleanup levels.

On February 17, 2012, the EPA released the final non-cancer dioxin reassessment, publishing a non-cancer toxicity value, or reference dose (RfD), for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) in EPA's Integrated Risk Information System (IRIS). The Agency followed current cancer guidelines and incorporated the latest data and physiological/biochemical research into the reassessment. The May 2012 updated non-cancer dioxin Regional Screening Levels (RSL) are 51 ppt TEQ for residential soil and 597 ppt TEQ for commercial/industrial soil (based on the IRIS RfD for TCDD). Table 1 of the Uplands OU ROD (see Attachment 25) lists a summary of chemical concentrations, risk estimates, early actions, and residual concentrations and risks. All residual concentrations of dioxins in the Uplands OU listed in Table 1 are below the new RSL of 597 ppt TEQ for commercial/industrial soil (see Attachment 26). By keeping the property zoned as commercial/industrial with functional ICs preventing any new exposure pathways, the Uplands OU remedy meets the new dioxin RSLs and remains protective.

### ***7.3 Question C: Has any Other Information Come to Light that Could Call into Question the Protectiveness of the Remedy?***

Marine OU – No other information has come to light that calls into question the protectiveness of the remedy.

Uplands OU – No other information has come to light that calls into question the protectiveness of the remedy. However, because ADOT&PF took out the mill property fencing and gate during a highway straightening project in 2014 and only replaced the gate, the need to replace the fence as an engineering control to limit access to the site should be evaluated. At this time, personnel are on the property to observe activities and there is no evidence of activities that would impact protectiveness of the remedy.

### ***7.4 Technical Assessment Summary***

Marine OU – According to the data reviewed, the remedy is functioning as intended by the ROD, and RAOs have been achieved. There have been no changes in the physical conditions of the OU that would affect the protectiveness of the remedy. There are no newly-promulgated ARARs for sediments. There have been no changes to the standardized risk assessment methodologies and input parameters that could affect the protectiveness of the remedy. There is no other information that calls into question the protectiveness of the remedy.

Uplands OU – According to the data reviewed, the site inspection, and interviews, the remedy is functioning as intended by the ROD. The physical changes that have occurred in the mill area

have resulted in the removal of some of the residual asbestos and hazardous substances which could have posed risks in the event of exposure under some scenarios.

There have been no newly promulgated ARARs for the other chemicals of concern in the Uplands OU. There have been no substantial changes in risk assessment methodologies and input parameters that affect the protectiveness of the remedy. There is no other information that calls into question the protectiveness of the remedy. Current management monitoring and record keeping practices of KPC, PSSA, and ADOT&PF have improved the effectiveness of the ICs.

## **8 SUMMARY OF ISSUES & RECOMMENDATIONS/FOLLOW-UP ACTIONS**

No issues and recommendations that affect current and/or future protectiveness were identified during this third Five-Year Review.

Action items that were identified during this third Five-Year Review and do not affect protectiveness, but are expected to require future action, are summarized below in Table 3.

**Table 2. Action Items That Do Not Affect Remedy Protectiveness**

<b>OU # Name</b>	<b>Action Item</b>
Marine OU	ADOT&PF is proposing to remove pilings and build an AMHS ferry terminal on its property within the Marine OU. ADOT&PF should continue coordination with EPA and ADEC on all development proposals for the Cove.
Marine OU	PSSA and Ward Cove Industries LLC may propose to build concrete float docks of various slip sizes, which could test the protectiveness and enforcement capabilities of the ICs. Additional coordination may be necessary during construction to ensure proper interpretation of IC guidelines. PSSA and Ward Cove Industries LLC should continue coordination with EPA and ADEC on all development proposals in the Cove.
Marine OU	Two APDES permits have been issued to discharge into Ward Cove and there is potential that a third permit will be issued in 2015. EPA should be aware of the APDES permits that are issued in the Cove to ensure that the discharges do not harm the Marine OU remedy.
Uplands OU	PSSA and Ward Cove Industries LLC are actively seeking industrial development of this property. New construction could test the protectiveness and enforcement capabilities of the ICs. Additional coordination may be necessary during construction to ensure proper interpretation of IC guidelines. PSSA and Ward Cove Industries LLC should inform EPA and ADEC of lease/sale activity and EPA and ADEC should increase oversight during a time of high construction activity.

<b>OU # Name</b>	<b>Action Item</b>
Uplands OU	PSSA and Ward Cove Industries LLC have questions regarding the borders that require ICs as defined in the Uplands OU Consent Decree compared to “all KPC properties” requiring ICs as defined in other documents. KPC, PSSA, and ADOT&PF should summarize the areas on a map for each parcel related to the ROD, easements, and covenants to aid future review of the site ICs and development plans.
Uplands OU	Because ADOT&PF took out the mill property fencing and gate during a highway straightening project in 2014 and only replaced the gate, the need to replace the fence as an engineering control to limit access to the site should be evaluated.

EPA has determined that KPC, PSSA, and ADOT&PF are performing their IC responsibilities and are expected to continue to do so, such that the remedy is and is expected to remain protective. Nonetheless, since PSSA is actively leasing portions of the property and both PSSA and ADOT&PF have development plans for their properties, the good communication and coordination that has been occurring will need to continue, and additional coordination may be necessary should extensive construction result from property development or transfer. Therefore EPA has made the recommendations for action items above, and KPC, PSSA and ADOT&PF have indicated their willingness to follow through with implementation. EPA and ADEC will track their implementation and re-evaluate their effectiveness as part of the next five-year review.

## **9 PROTECTIVENESS STATEMENT**

### **Marine OU**

The remedy at the Marine OU is protective of human health and the environment.

### **Uplands OU**

The remedy at the Uplands OU is protective of human health and the environment.

### **Sitewide**

The remedy for the site is protective of human health and the environment.

## **10 NEXT FIVE-YEAR REVIEW**

The next review is due by 28 August 2020.

## **LIST OF FIGURES**

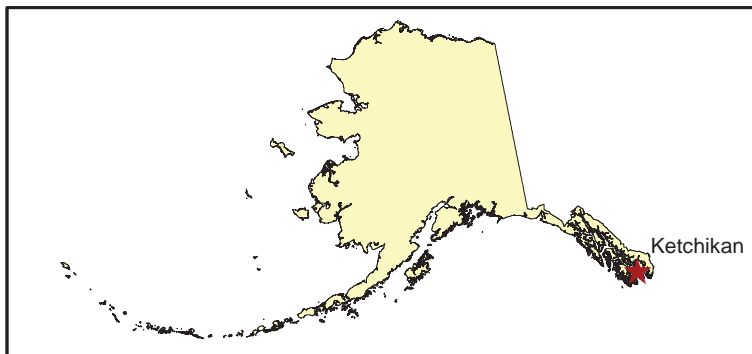
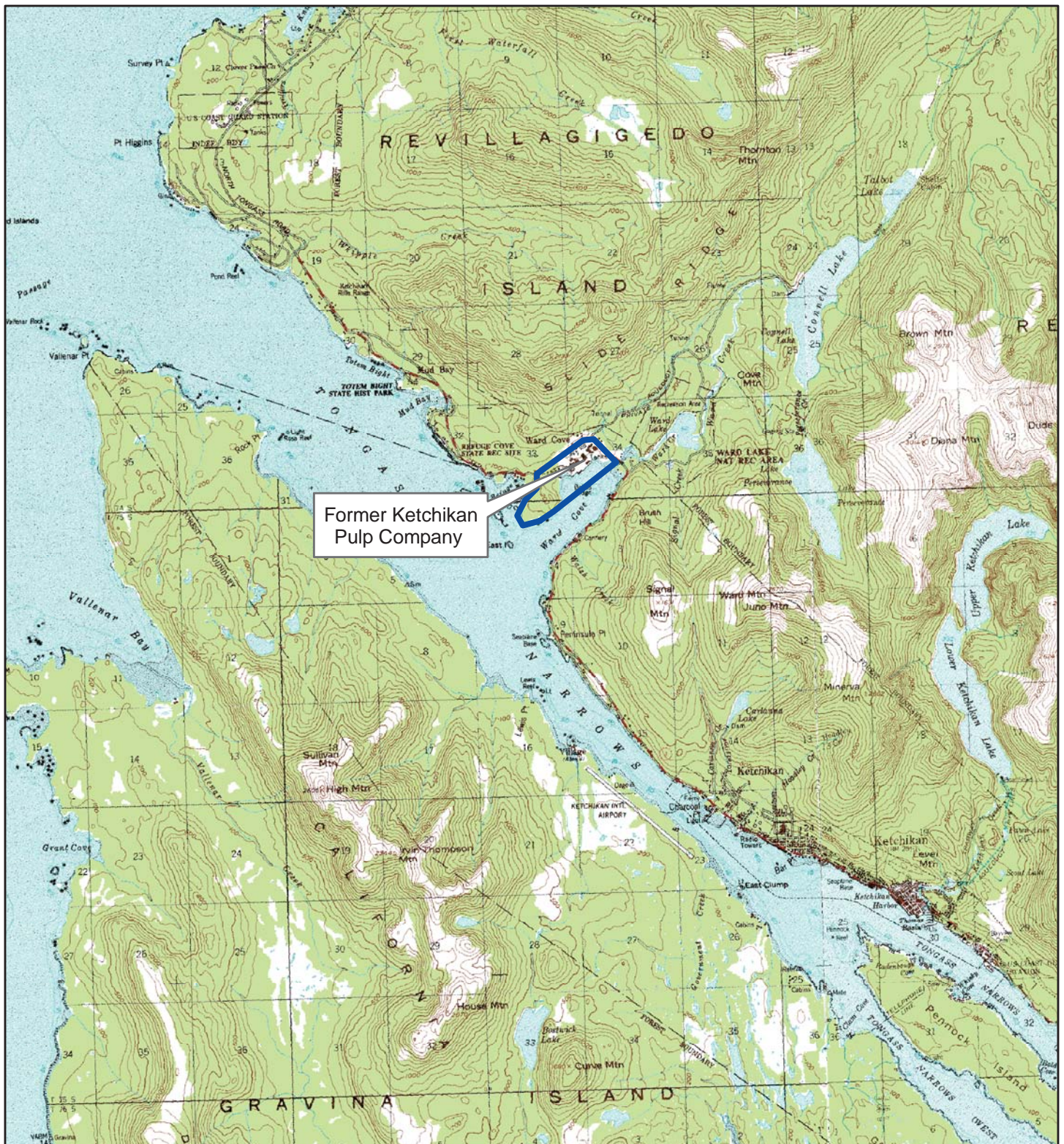
Figure 1	Ward Cove Property Location
Figure 2	Marine and Uplands Operable Units, former Ketchikan Pulp Company Site, Ketchikan, Alaska
Figure 3	Location of the Ward Cove Area of Concern (AOC), areas of thin layer placement, dredging, piling removal, and natural recovery (Figure 2, from 2009 Final Remedial Action Report)

## **LIST OF ATTACHMENTS**

Attachment 1	Interview Records
Attachment 2	Site Inspection Checklist and Building Map
Attachment 3	Photographs
Attachment 4	Map of Ward Cove Properties
Attachment 5	Ketchikan Pulp Site Parcels Ownership Changes from 2010-2015
Attachment 6	Ward Cove Plat and Replats
Attachment 7	Zoning Areas and Regulations
Attachment 8	Commitment for Title Insurance
Attachment 9	Letter from Perkins Coie, to Jacques Gusmano, EPA dated June 27, 2006, regarding Institutional Control Documents for Ward Cove Pipeline Parcels
Attachment 10	Equitable Servitude and Easement, and Subordination Agreement Pipeline Parcels, by Ketchikan Gateway Borough to ADNR, recorded May 1, 2006
Attachment 11	2003 Agreement between Ketchikan Gateway Borough, Gateway Forest Products, and Ketchikan Pulp Company, recorded July 16, 2008
Attachment 12	Ketchikan Pulp Company Residential Risk Calculation
Attachment 13	Certification of Completion Letters for Uplands and Marine Operable Units, dated January 21 and 22, 2010
Attachment 14	Letter from Sheila Eckman (EPA) to KGB (Bockhorst) and Alaska Assistant Attorney General (Welsh), dated January 25, 2010, regarding: CERCLA Liability Associated with Potential Redevelopment of Ward Cove
Attachment 15	Environmental Easement and Declaration of Covenants, recorded July 18, 2003, between Ketchikan Gateway Borough, Ketchikan Pulp Company, and Gateway Forest Products
Attachment 16	Environmental Easement and Declaration of Covenants, recorded July 15, 2004, between Ketchikan Gateway Borough and Ketchikan Pulp Company

- Attachment 17 Executive Summary, 2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (April 2009)
- Attachment 18 Letter from Karen Keeley (EPA) to Phil Benning (KPC), dated May 7, 2009, regarding: EPA Approval of 2007 Monitoring Report
- Attachment 19 Environmental Easement, recorded August 6, 2001, between Ketchikan Pulp Company and State of Alaska, Department of Natural Resources
- Attachment 20 Environmental Easement and Declaration of Restrictive Covenants, recorded October 28, 1999, between Ketchikan Pulp Company and State of Alaska, Department of Natural Resources
- Attachment 21 Email from Kirk Miller (ADOT&PF) to EPA (Karen Keeley), dated October 23, 2014, regarding: Submerged land ownership and Letter from Reuben Yost (ADOT&PF) to EPA, dated June 10, 2010, regarding Project 68704 KTN Lay-up Berth & Mooring Structures
- Attachment 22 Ward Cove Industries LLC 2015 Development Plan Map
- Attachment 23 Letter from Amy Briggs (KGB) to EPA (Karen Keeley), dated January 4, 2012, regarding: Closing documents related to sale of Ward Cove between KGB and PSSA
- Attachment 24 List of Power Systems and Supplies of Alaska LLC's Lessees and Template Lease/Letters Sent to Lessees
- Attachment 25 Uplands Operable Unit Record of Decision, Table 1 (June 7, 2000)
- Attachment 26 Ketchikan Pulp Company 2015 Five-Year Review Question B Dioxin Reassessment





Source: USGS 7.5-Minute Topographic Quadrangle, Ketchikan (B-6), Alaska, 1995.

**FIGURE 1** Former Ketchikan Pulp Company Ward Cove Property Location





**Legend**

Operable Unit (OU) Boundary (approximate)

Uplands OU

Marine OU

**FIGURE 2**  
Marine and Uplands Operable Units,  
Former Ketchikan Pulp Company Site  
Ketchikan, Alaska

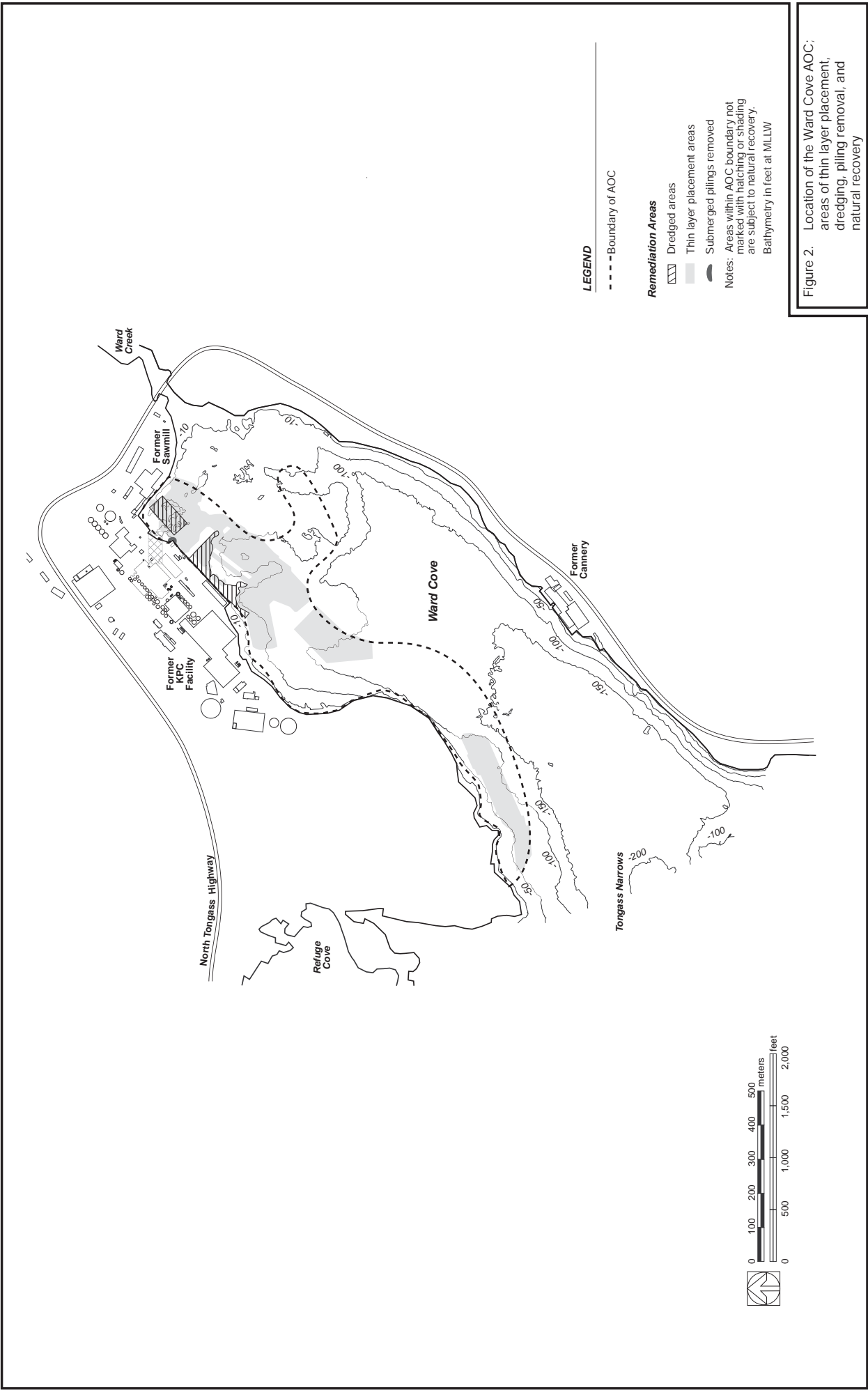


Figure 2. Location of the Ward Cove AOC; areas of thin layer placement, dredging, piling removal, and natural recovery

Figure 3



## **Attachment 1**

Interview Records

**Questions for KPC Site Visit/Interviews: Conference Call 6/11/15**

Anne Christopher and Sandy Halstead for EPA

Evonne Reese and Bruce Wanstall for ADEC

Phil Benning, Barry Hogarty, and John Peterson for KPC

Dave Spokely, Andrew Spokely, Glen Thompson, and Jen Spokely for Ward Cove Industries LLC

Kirk Miller, Christa Hagan, and Ward Mace for ADOT&PF

1. Who owns each parcel of land? KPC, Spokelys' companies, ADOT&PF to explain and provide a map if possible
  - a. 2013 map that I sent out is still current
  - b. Power Systems and Supplies of AK LLC is the company that owns all the Spokelys' property. Ward Cove Industries LLC and the Spokelys' other companies lease the property/buildings from PSSA
2. List of lessees on each parcel: Spokelys and ADOT&PF to provide info
  - a. They will send me a map and a list of lessees
  - b. ADOT has no leases
3. Are the Institutional Control Plan and Restrictive Covenants still being followed and do they remain effective?
  - a. Yes, they are being followed and remain effective.
  - b. Glen will send me the missing notifications from 7/26/13 and 4/28/15
4. How are KPC, the Spokelys, and ADOT&PF following the Institutional Control Plan?
  - a. Dave Spokely asked if they can send quarterly notifications or yearly summaries instead of notifying EPA and ADEC of every property transfer/lease update and he asked if they will need to send the notifications forever. John Peterson reminded Dave that the notification requirement is in the Consent Decree, so it is not easily changed. Anne told Dave that the ICs/notification requirement will be in place forever or for as long as the contamination is left onsite.
  - b. Dave asked where the Upland OU borders are that require ICs vs. "all KPC properties" mentioned in some documents. John Peterson said that the Upland OU Consent Decree describes the borders as well as a series of environmental easements and covenants. All the covenants have different notification requirements, so it gets confusing.
  - c. \*\*the question about where the Upland OU borders are that require ICs vs. "all KPC properties" is a conversation that needs to happen on another call. → Make a recommendation in the 5YR report to review the borders of the Upland OU to determine where the Spokelys can develop the property.
5. Has there been extensive construction as a result of property development or transfer?
  - a. No construction in the Uplands yet, but there will be in the near future. It will be coordinated with EPA and ADEC.
6. Once per year, KPC, the Spokelys, and ADOT&PF (or current property owner) should submit a brief report to the United States Environmental Protection Agency (EPA) and Alaska Department of Environmental Conservation (ADEC) on institutional control implementation and property changes. Has this occurred? If so, who have the reports been sent to at EPA and ADEC?
  - a. They have been submitting copies of the notifications for each lease, but have not been sending EPA/ADEC a yearly summary. Glen is willing to send a yearly summary if we tell him what data we would want in the summary and in what format.
7. A plain language summary of the enforceable institutional controls was recommended to be developed by the Ketchikan Gateway Borough for distribution to interested lessees or purchasers. Have the Spokelys done this too?

- a. Spokelys are giving the actual documents, not a summary. Google docs or CD.
  - b. If the EPA or ADEC want to draft a summary, they would hand it out. If not, they are giving the full documents to the lessees so there is less confusion about the requirements for the property.
- 8. \*Compare the ADEC database for the site with the list of documents in the site file from 2010 to 2015. Send it to KPC, the Spokelys, and ADOT&PF and ask them to verify that it is complete or edit it with the correct site chronology. (\*to do after the site inspection)
  - a. Anne to confirm with Glen
- 9. 2 APDES permits for the site, and potentially a third: KPC landfill, Full Cycle LLC, and Boyer Towing
  - a. Have there been any permit violations in the last 5 years? Any runoff or effluent problems?
    - i. KPC landfill: no effluent violations; hoping to reduce the monitoring requirements with ADEC
    - ii. Full Cycle LLC: wastewater treatment plant inherited from Ketchikan Gateway Borough that had problems (lots of violations for non-reporting and effluent problems). New permit/new applicant for Full Cycle issued in 2014
  - b. Are any of the contaminants of concern at the site listed in the discharge limits in the permits?
- 10. Is there any residential area along the shoreline that has been developed since 2010?
  - a. No.
- 11. Is the former mill area still fenced with an unmanned gate access?
  - a. No, DOT took the fencing out last year during the highway straightening, but put a gate back up without the fencing (the only fencing that is missing). Future conversation to see if a fence is still needed because they have employees and customers coming in and out so they would prefer not to have one.
  - b. Landfill is still fenced and locked. Gate for mill property so no vehicles, but no fence. (they leave the gate open for customers all day)
  - c. → I talked to Sandy and she said that a fence may not be necessary to keep the ICs functional. Given that the property is staffed onsite, there is a constant flow of people (not an abandoned property), and the site is not that accessible (have to go down a steep hill to get to the site), there might not be a huge need for a fence. → Could put in a recommendation that does not affect protectiveness of the remedy to monitor whether or not the ICs are still functional and protective without a fence around the mill site.
- 12. According to ADEC during the 2010 5YR, the shallow aquifer and potential deeper aquifer below the site were not considered a reasonably expected future source of drinking water. Is this still true?
  - a. Yes.
- 13. In 2010, groundwater was not used as a resource and did not likely represent a future resource. Is this still true?
  - a. Yes, no functional wells in the area.
- 14. During the 2010 5YR, drinking water for this area was supplied by the Ketchikan public water supply system and was stored in a water storage tank on site. Is this still true?
  - a. Mill has a storage tank and they truck in potable water, all the other homes use catchment systems. AHMS property catch water from roof (the engineering facility)

15. A pipeline (wood stave) running from Lake Connell to the former pulp mill facility provides an industrial water supply. A service road allows access to most of the pipeline. A gate limits motor vehicle access by the public. Is this still true?
  - a. Still gated off to vehicle use, open to public for walking (3ft wide path)
16. A large dam at Connell Lake (man-made) and the four-foot diameter pipeline supplied water to the former mill and in 2010 served as a fire prevention water source for the North Tongass Fire and Emergency Medical Services (EMS) Area. There were plans for other potential industrial uses of this water supply. Is the water supply used by other industry now?
  - a. Only use for water now is for sewage treatment plant and fire hydrants. Need DNR permit to use that water...applying now.
17. Are there still several historic small storage/disposal areas along the pipeline?
  - a. No storage on the pipeline now. Some pipes on the trail that will be used soon.
18. The Borough was in the process of subdividing the property for ease of sale. Since much of the land is subject to institutional controls and deed restrictions, the Borough was taking steps to ensure that prospective buyers and lessors were fully aware of the restrictions that are imposed on these properties. The Borough had published all the Ward Cove Environmental Notice Documents on their website. Did the Borough inform the Spokelys of all of the institutional controls and restrictive covenants and are the Spokelys now informing their lessees too?
  - a. Yes.
19. The former KPC upland property was zoned as industrial/commercial and was expected to remain industrial/commercial. The majority of the parcels were zoned Heavy Industrial by the Ketchikan Gateway Borough. Is this still true?
  - a. Yes.
  - b. Anne checked KBG online GIS zoning map on 6/19/15 and the property is still industrial/commercial.
20. In 2010, the primary use of Ward Cove was navigation and recreation, including fishing. There were no public health advisories for consumption of seafood from Ward Cove. Is this still true?
  - a. Yes, to the best of their knowledge. Anne called AK Department of Fish and Game and confirmed that there are no fish advisories for Ward Cove at this time.
21. The Spokelys want to start a geoduck and oyster hatchery and nursery. Have they started that yet?
  - a. Intended to do it last year. Oceans AK got a grant for a nursery. Spokelys will probably look at doing it next year.
22. The wood waste and ash landfill has been capped and is currently scheduled for monitoring for 30 years. Do we have monitoring reports to review? Part of the APDES permit?
  - a. Yes, the landfill has an APDES permit and ADEC reviews the monitoring reports.
23. The paint shop/maintenance shop had an excess carcinogenic risk estimate of  $3 \times 10^{-4}$ , exceeding industrial worker risk for the combination of total PCBs, arsenic, and benzo(a)pyrene, and a total non-carcinogenic hazard index (HI) of 8. Lead industrial soil concentrations were also exceeded at the paint shop and the pipeline. State soil cleanup levels were exceeded in several areas prior to the EPA-supervised removal activities conducted by KPC. Institutional Controls and Environmental Protective Easements will monitor subsurface use and disturbance to control and minimize exposure for industrial uses. Are ICs still working for the paint shop/maintenance shop?
  - a. Building doesn't exist anymore. Borough removed it. Area is cleaned up and they put rock on top. IC are in place. Logs stored on top of the rocks, no potential for digging or future exposure.

24. For the Upland OU, exposure pathways that were quantitatively evaluated in the human health risk assessment were as follows:

- a. Current and future adult workers in onsite areas and in areas where aerial deposition has affected industrial soils were evaluated for potential exposures to CoCs via ingestion, dermal contact, and inhalation.
- b. Current or future adult workers who might contact soils along the former pipeline access road via ingestion, dermal contact or inhalation.
- c. Offsite residents (adults and children) in aerial deposition areas were evaluated for potential exposures to CoCs via ingestion, dermal contact, inhalation, and consumption of homegrown produce.
- d. Offsite residents who have amended their yards with grit were evaluated for potential exposures to dioxins in soil via ingestion, dermal contact, inhalation, and consumption of homegrown produce.

The only completed exposure pathways exceeding the human health based risk levels applied by the EPA and the State was for current adult workers at the pulp mill site (the paint shop/maintenance shop area as described above). Are the paint shop/maintenance shop still used? Are there any new exposure pathways that should be evaluated for the site?

No. Recommendation to evaluate commercial development of lodge...is that commercial or residential? Commercial lodge would be in an area that had not been used by KPC...so area may not have been characterized. Discussion to be had.

25. The Borough and KPC entered into and recorded an Environmental Easement and Declaration of Covenants in July 2004 (2004 Covenant). In the 2004 Covenant, the Borough agreed to comply with all Ward Cove institutional controls that were set forth in the Consent Decree and recorded in the 1999 Covenant, or otherwise, including the restriction on damaging the cap. Have ADOT and the Spokelys done the same?

- a. Yes.

26. The selected remedy for the Uplands OU included compliance with already-existing institutional controls to ensure the former pulp mill area remains commercial/industrial and that portions of the pipeline access road where cleanup activities occurred are not developed for residential use. These institutional controls are implemented through:

- a. Ketchikan Gateway Borough zoning restrictions;
- b. Management Plan for Arsenic in Rock and Soil, prepared July 1998;
- c. Environmental Protection Easement and Declaration of Restrictive Covenants, recorded on October 28, 1999;
- d. Excavation and Soil Handling Procedures, outlined in the Institutional Controls Plan, dated June 2000;
- e. Environmental Easement between KPC and ADNR, recorded August 6, 2001;
- f. Environmental Easement and Declaration of Covenants, between Ketchikan Gateway Borough, Ketchikan Pulp Company, and Gateway Forest Products, recorded July 18, 2003;
- g. Environmental Easement and Declaration of Covenants, between Ketchikan Gateway Borough and Ketchikan Pulp Company, recorded July 15, 2004; and
- h. Equitable Servitude and Easements granted by the Ketchikan Gateway Borough in favor of the ADNR, recorded May 1, 2006.

Have these been updated for ADOT&PF and the Spokelys?

Glen's response: The short answer is "yes". The individual, original documents were not amended as that might be a herculean task, but all of the purchase documents are very specific that the covenants apply to "all successor and assigns" and PSSA was required to acknowledge

same. The covenants and decrees apply to any transfer or assignment of interest in the property including leases and deeds of trust. Any time a person has unfettered access rights to the property, they are required to sign the CERCLA acknowledgement and abide by the ICs.

27. The selected remedy for the Wood Waste and Ash Disposal Landfill was to close and cover the landfill with a geomembrane cap, place a topsoil cover over the geomembrane, establish a vegetative cover and maintain the final cover, the passive gas venting system, and the leachate treatment system. **Check the vegetative cover, passive gas venting system, and leachate treatment system during the site inspection.**

a. See Sandy's site inspection checklist

28. The Ketchikan Gateway Borough enforced ICs with all leaseholders and coordinated with EPA and ADEC on all potential subsurface construction projects. Have the Spokelys been coordinating with ADEC and EPA?

a. No construction projects yet, but Spokelys will meet with Phil and John and coordinate with EPA and ADEC on future construction projects.

b. ADOT: No upland construction. Upland improvements, plan to build another building. Karen is working on it, Bruce and Evonne at ADEC in the loop. Marine OU- removal of pilings; ferry terminal proposal

29. Are there any active citizen groups associated with the KPC site?

a. No.

30. Ask Spokelys for a list of significant physical changes at the property

a. Removed the foundation of the power plant, but not below the surface

b. Check in with Jonathan Lappin at the Ketchikan Gateway Borough for any physical changes from August 2010-December 2011 (PSSA bought the property from KGB in Dec 2011)

31. The Upland ROD called for implementation of: a) institutional controls to limit use of the upland properties to commercial/industrial (with the exception of the pipeline access road where it was restricted to commercial/industrial or recreational use), to prohibit groundwater use, and to require sampling, characterization, and proper management of the soil in the event of excavation or demolition activities; b) an arsenic management plan to limit exposure to arsenic from crushed rock used on the site; and c) long-term monitoring and care of the landfill.

a. If the pipeline area can be used recreationally, maybe the bear viewing area that Spokelys are proposing is ok?

b. Are Spokelys and ADOT&PF sampling before all excavation and demolition?

c. Is the arsenic management plan enforced?

i. Sampled near the new wastewater treatment plant near the log vats/near the waterfront, sampling had some petroleum, but not arsenic

32. As part of the 2010 five year review a residential risk assessment was recalculated which confirmed the need for the ROD requirement that the Upland OU properties remain subject to ICs precluding residential use. Does this preclude the Spokelys' ability to build a lodge on the site?

a. Barry Hogarty and John Peterson- is the area within the Upland OU? We don't know that it is. Check Appendix E in Consent Decree. Check delineations of the Upland OU. KPC does have the private easements and covenants of 2003 and 2004. Property restricted to "commercial activities of an industrial nature." Lodge is likely in that area. A prior owner had the same interest. KPC to coordinate with Spokelys.

Areas to cover during the site visit: the mill area, dock facilities, wooden pipeline and associated dam, landfill, and aeration ponds

During the 2010 site visit, Borough records and protocols for management of this property were reviewed. Attachment 4 includes a map of the former KPC holdings that are now held by the Ketchikan Gateway Borough, and a summary of covenants, easements, and other authorities associated with institutional controls, and of other relevant real property interests or contractual terms.

\* Need an updated map and summary of easements, etc. from KPC, Spokelys, and ADOT&PF (any changes since the 2013 map?)

Recommendation from Evonne: Summarize the areas on a map for each parcel related to each easement/covenant/documents to aid future review of the site

## **Attachment 2**

Site Inspection Checklist and Building Map



## Site Inspection

- The Third Five Year Review site inspection for Ketchikan Pulp Company (KPC) was conducted on-site at Ward Cove, Ketchikan, Alaska by EPA Region 10 and Alaska Department of Environmental Conservation staff on June 2, 2015.
- The site inspection involved physical observations of current land use conditions, documentation of conditions with photos, and a review of electronic records and repositories. Areas visited included the mill site property, the KPC landfill and lagoon, and the pipeline and dam at Connell Lake. The site visit did not include observations of the marine sediment cap.
- The majority of the mill site property, pipeline, and dam are now under the ownership of Ward Cove Industries, LLC. Land use and leasee's at the mill site include a number of commercial business involved in marine supply and transport and timber-related operations. Many of the former KPC buildings and structures remain on the property in various states of disrepair, however building foundations, soils, and pavement have not been excavated in accordance with institutional controls for the site. A number of watercraft are moored off the dock and shore of the mill site. The wooden stave pipe road is designated as a recreational foot trail by the United States Forest Service. Access to the pipeline road is limited to foot traffic by locked gates at areas where the trail intersects roads. A 300 foot portion of the water stave pipe was encased under the North Tongass Highway during a road realignment project in 2013. The Connell Lake dam face is intact and shows no observable structural defects. Access to the dam structure is limited by chain link fencing and a locked gate.
- The KPC landfill and leachate lagoon remain the property and responsibility of KPC. The landfill and lagoon are well maintained and land use has not changed. The chain link fence around the lagoon is locked and intact. A current Alaska Pollutant Discharge Elimination System Permit (APDES) for lagoon discharge requires quarterly reporting to the Alaska Department of Environmental Conservation (ADEC).
- The Alaska Department of Transportation owns a parcel at the eastern end of the mill site which includes a large paved parking area and a building which houses the Alaska Marine Highway System (AMHS) Engineering Facility. AMHS also leases the former KPC mill office from Ward Cove Industries LLC as an administration building.

On June 2, 2015, EPA staff reviewed the electronic site document repository maintained by Ward Cove Industries, LLC on Google Drive. EPA also reviewed the lease agreement (attached), notification to agencies of leasee's on site, and leasee acknowledgement of receipt of the CERCLA KPC Consent Decree which describes institutional controls and land use restrictions at the site.

## Appendix X: Site Inspection Checklist

FIVE-YEAR REVIEW SITE INSPECTION CHECKLIST				
I. SITE INFORMATION				
Site Name: Ketchikan Pulp Company		Date of Inspection: June 2, 2015		
Location/ Region: Ward Cove, Ketchikan, AK/ R10		EPA ID: AKD009252230		
Agency, Office or Company Leading the Five-Year Review: EPA Region 10		Weather/Temperature: overcast, 55 deg F, calm		
Remedy Includes: (Check all that apply)				
<input checked="" type="checkbox"/> Landfill cover/containment				
<input type="checkbox"/> Monitored natural attenuation				
<input type="checkbox"/> Access controls				
<input type="checkbox"/> Ground water containment				
<input checked="" type="checkbox"/> Institutional controls				
<input type="checkbox"/> Vertical barrier walls				
<input type="checkbox"/> Ground water pump and treatment				
<input type="checkbox"/> Surface water collection and treatment				
<input type="checkbox"/> Other: _____				
Attachments: <input checked="" type="checkbox"/> Inspection team roster attached <input checked="" type="checkbox"/> Site map attached				
II. INTERVIEWS (check all that apply)				
1. O&M Site KPC				
Phil Benning		Ketchikan Pulp Company		06/02/2015
Name		Title		Date
Interviewed <input checked="" type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone Phone: 907-225-2151				
Problems, suggestions <input type="checkbox"/> email: _____				
2. O&M Mill Site				
Dave Spokely		Ward Cove Industries LLC		06/02/2015
Name		Title		Date
Interviewed <input checked="" type="checkbox"/> at site <input type="checkbox"/> at office <input type="checkbox"/> by phone Phone: 907-617-3450				
Problems/suggestions <input type="checkbox"/> email: Dave@wciak.com				
3. Local Regulatory Authorities and Response Agencies (i.e., state and tribal offices, emergency response office, police department, office of public health or environmental health, zoning office, recorder of deeds, or other city and county offices). Fill in all that apply.				
Agency Alaska Department of Env. Conservation				
Contact	Evonne Reese	Contaminated	06/02/2015	907-465-5229
	Name	Sites Project	Date	Phone No.
		Manager		
		Title		
Problems/suggestions <input type="checkbox"/> email: evonne.reese@alaska.gov				
Agency US EPA R10				
Contact	Sandra Halstead	Remedial	06/02/2015	907-271-1218
	Name	Project	Date	Phone No.
		Manager		
		Title		
Problems/suggestions <input type="checkbox"/> email: halstead.sandra@epa.gov				
4. Other Interviews (optional) <input type="checkbox"/> Report attached: _____				
Barry Hogarty, Technical Environmental Services –AK, 907-617-4561 (b) (6)				

Brian Farcy, Ward Cove Industries, LLC, 907-617-7622, brian@wciak.com			
Andrew Spokely, Power Systems and Supplies of Alaska/Ward Cove Industries, LLC, 907-617-3392, andrew@pssak.com			
<b>III. ON-SITE DOCUMENTS AND RECORDS VERIFIED</b> (check all that apply)			
1.	<b>O&amp;M Documents</b> <input type="checkbox"/> O&M manual <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A <input checked="" type="checkbox"/> Historic layout <input checked="" type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A <input type="checkbox"/> Maintenance logs <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: <u>As-builts for most mill site buildings are not available. Site maps of former mill site buildings used for reference during site inspection</u>		
2.	<b>Site-Specific Health and Safety Plan</b> <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Contingency plan/emergency response plan <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>Ward Cove Industries plans were available for review</u>		
3.	<b>O&amp;M and OSHA Training Records</b> <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____		
4.	<b>Permits and Service Agreements</b> <input type="checkbox"/> Air discharge permit <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Effluent discharge <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A <input type="checkbox"/> Waste disposal, POTW <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A <input type="checkbox"/> Other permits: _____ <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>Two APDES permits: KPC and Full Cycle LLC</u>		
5.	<b>Gas Generation Records</b> <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____		
6.	<b>Settlement Monument Records</b> <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: _____		
7.	<b>Ground Water Monitoring Records</b> <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input checked="" type="checkbox"/> N/A Remarks: <u>Fractured bedrock - no groundwater on site</u>		
8.	<b>Leachate Extraction Records</b> <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>KPC lagoon and landfill leachate</u>		
9.	<b>Discharge Compliance Records</b> <input type="checkbox"/> Air <input type="checkbox"/> Readily available <input type="checkbox"/> Up to date <input type="checkbox"/> N/A <input checked="" type="checkbox"/> Water (effluent) <input checked="" type="checkbox"/> Readily available <input checked="" type="checkbox"/> Up to date <input type="checkbox"/> N/A Remarks: <u>KPC lagoon and Full Cycle LLC APDES permits</u>		

10.	<b>Daily Access/Security Logs</b>	<input type="checkbox"/> Readily available	<input type="checkbox"/> Up to date	<input checked="" type="checkbox"/> N/A
Remarks: _____				
<b>IV. O&amp;M COSTS</b>				
1.	<b>O&amp;M Organization</b>			
	<input type="checkbox"/> State in-house	<input type="checkbox"/> Contractor for state		
	<input checked="" type="checkbox"/> PRP in-house	<input type="checkbox"/> Contractor for PRP		
	<input type="checkbox"/> Federal facility in-house	<input type="checkbox"/> Contractor for Federal facility		
	<input type="checkbox"/> _____			
2.	<b>O&amp;M Cost Records</b>			
	<input type="checkbox"/> Readily available	<input type="checkbox"/> Up to date		
	<input type="checkbox"/> Funding mechanism/agreement in place	<input type="checkbox"/> Unavailable		
	Original O&M cost estimate: _____ <input type="checkbox"/> Breakdown attached			
	Total annual cost by year for review period if available			
	From: <u>mm/dd/yyyy</u>	To: <u>mm/dd/yyyy</u>	_____	<input type="checkbox"/> Breakdown attached
	Date	Date	Total cost	
3.	<b>Unanticipated or Unusually High O&amp;M Costs during Review Period</b>			
	Describe costs and reasons: _____			
<b>V. ACCESS AND INSTITUTIONAL CONTROLS</b> <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A				
<b>A. Fencing</b>				
1.	<b>Fencing Damaged</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Gates secured	<input type="checkbox"/> N/A
	Remarks: <u>Fencing removed from most of mill site perimeter by former owner, Ketchikan Gateway Borough; new fence around AMHS state-owned land by Engineering facility; fence intact around landfill lagoon; fence intact around access to Connell Lake dam structure</u>			
<b>B. Other Access Restrictions: Locked Gates – at vehicle entry points to roads at mill site, water pipeline, landfill lagoon</b>				
1.	<b>Signs and Other Security Measures</b>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A	
	Remarks: <u>Numerous signs for no trespassing and restricted access</u>			
<b>C. Institutional Controls (ICs)</b>				

<b>1. Implementation and Enforcement</b>			
Site conditions imply ICs not properly implemented		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Site conditions imply ICs not being fully enforced		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Type of monitoring (e.g., self-reporting, drive by): <u>self reporting; observation at site visit</u>			
Frequency: <u>with each new leasee; annual reporting to EPA, ADEC suggested</u>			
Responsible party/agency: <u>Ward Cove Industries LLC</u>			
Contact	<u>Glen Thompson</u>	<u>glen@wciak.com</u>	<u>907-617-2122</u>
Name	Title	Date	Phone no.
Reporting is up to date		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A
Reports are verified by the lead agency		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A
Specific requirements in deed or decision documents have been met		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> N/A
Violations have been reported		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> N/A
Other problems or suggestions: <input type="checkbox"/> Report attached			
<b>2. Adequacy</b> <input checked="" type="checkbox"/> ICs are adequate <input type="checkbox"/> ICs are inadequate <input type="checkbox"/> N/A Remarks: <u>Development plans for the site will require coordination between Ward Cove Industries and EPA/ADEC</u>			
<b>D. General</b>			
<b>1. Vandalism/Trespassing</b> <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> No vandalism evident Remarks: <u>Prior to Ward Cove Industries taking possession, metals and other debris removed from site illegally</u>			
<b>2. Land Use Changes On Site</b> <input type="checkbox"/> N/A Remarks: <u>Many new commercial businesses using site and warehouse space</u>			
<b>3. Land Use Changes Off Site</b> <input type="checkbox"/> N/A Remarks: <u>Planned development for parcels adjacent to the water pipeline</u>			
<b>VI. GENERAL SITE CONDITIONS</b>			
<b>A. Roads</b> <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A			
<b>1. Roads Damaged</b> <input type="checkbox"/> Location shown on site map <input checked="" type="checkbox"/> Roads adequate <input type="checkbox"/> N/A Remarks: _____			
<b>B. Other Site Conditions</b>			
Remarks: <u>Former mill site infrastructure is mostly intact; some buildings have been demolished</u>			
<b>VII. LANDFILL COVERS</b> <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A			
<b>A. Landfill Surface</b>			

1.	<b>Settlement</b> (low spots)	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Settlement not evident
	Arial extent: _____		Depth: _____
	Remarks: <u>KPC provides settlement surveys to ADEC Solid Waste division</u>		
2.	<b>Cracks</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Cracking not evident
	Lengths: _____	Widths: _____	Depths: _____
	Remarks: _____		
3.	<b>Erosion</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Erosion not evident
	Arial extent: _____		Depth: _____
	Remarks: _____		
4.	<b>Holes</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Holes not evident
	Arial extent: _____		Depth: _____
	Remarks: _____		
5.	<b>Vegetative Cover</b>		
	<input checked="" type="checkbox"/> Grass		
	<input checked="" type="checkbox"/> Cover properly established		
	<input checked="" type="checkbox"/> No signs of stress		
	<input type="checkbox"/> Trees/shrubs (indicate size and locations on a diagram)		
	Remarks: <u>mowing occurs during summer months to prevent alder tree growth on cap</u>		
6.	<b>Alternative Cover</b> (e.g., armored rock, concrete)		<input checked="" type="checkbox"/> N/A
	Remarks: _____		
7.	<b>Bulges</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Bulges not evident
	Arial extent: _____		Height: _____
	Remarks: _____		
8.	<b>Wet Areas/Water Damage</b>		
	<input checked="" type="checkbox"/> Wet areas/water damage not evident		
	<input type="checkbox"/> Wet areas	<input type="checkbox"/> Location shown on site map	Arial extent: _____
	<input type="checkbox"/> Ponding	<input type="checkbox"/> Location shown on site map	Arial extent: _____
	<input type="checkbox"/> Seeps	<input type="checkbox"/> Location shown on site map	Arial extent: _____
	<input type="checkbox"/> Soft subgrade	<input type="checkbox"/> Location shown on site map	Arial extent: _____
	Remarks: _____		
9.	<b>Slope Instability</b>		
	<input type="checkbox"/> Slides		
	<input type="checkbox"/> Location shown on site map		
	<input checked="" type="checkbox"/> No evidence of slope instability		
	Arial extent: _____		
	Remarks: _____		
<b>B. Benches</b>			
	<input type="checkbox"/> Applicable		
	<input checked="" type="checkbox"/> N/A		
	(Horizontally constructed mounds of earth placed across a steep landfill side slope to interrupt the slope in order to slow down the velocity of surface runoff and intercept and convey the runoff to a lined channel.)		

1.	<b>Flows Bypass Bench</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay
Remarks: _____			
2.	<b>Bench Breached</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay
Remarks: _____			
3.	<b>Bench Overtopped</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> N/A or okay
Remarks: _____			
<b>C. Letdown Channels/ Drainage Swale</b>		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A
(Channel lined with erosion control mats, riprap, grout bags or gabions that descend down the steep side slope of the cover and will allow the runoff water collected by the benches to move off of the landfill cover without creating erosion gullies.)			
1.	<b>Settlement</b> (Low spots)	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of settlement
Aerial extent: _____		Depth: _____	
Remarks: _____			
2.	<b>Material Degradation</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of degradation
Material type: _____		Aerial extent: _____	
Remarks: _____			
3.	<b>Erosion</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of erosion
Aerial extent: _____		Depth: _____	
Remarks: _____			
4.	<b>Undercutting</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> No evidence of undercutting
Aerial extent: _____		Depth: _____	
Remarks: _____			
5.	<b>Obstructions</b>	Type: _____	<input checked="" type="checkbox"/> No obstructions
<input type="checkbox"/> Location shown on site map		Aerial extent: _____	
Size: _____			
Remarks: _____			
6.	<b>Excessive Vegetative Growth</b>	Type: _____	
<input checked="" type="checkbox"/> No evidence of excessive growth			
<input type="checkbox"/> Vegetation in channels does not obstruct flow			
<input type="checkbox"/> Location shown on site map		Aerial extent: _____	
Remarks: _____			
<b>D. Cover Penetrations</b>		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A

1.	<b>Gas Vents</b>	<input type="checkbox"/> Active	<input checked="" type="checkbox"/> Passive
	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning	<input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
	<input type="checkbox"/> Evidence of leakage at penetration	<input type="checkbox"/> Needs maintenance	<input type="checkbox"/> N/A
Remarks: _____			
2.	<b>Gas Monitoring Probes</b>	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
	<input type="checkbox"/> Evidence of leakage at penetration	<input type="checkbox"/> Needs maintenance	<input checked="" type="checkbox"/> N/A
Remarks: _____			
3.	<b>Monitoring Wells</b> (within surface area of landfill)		
	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning	<input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
	<input type="checkbox"/> Evidence of leakage at penetration	<input type="checkbox"/> Needs maintenance	<input checked="" type="checkbox"/> N/A
Remarks: <u>former piezometers at bottom of landfill slope, no longer monitored</u>			
4.	<b>Extraction Wells Leachate</b>	<input type="checkbox"/> Properly secured/locked	<input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition
	<input type="checkbox"/> Evidence of leakage at penetration	<input type="checkbox"/> Needs maintenance	<input checked="" type="checkbox"/> N/A
Remarks: _____			
5.	<b>Settlement Monuments</b>	<input type="checkbox"/> Located	<input type="checkbox"/> Routinely surveyed <input checked="" type="checkbox"/> N/A
Remarks: _____			
<b>E. Gas Collection and Treatment</b>		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	<b>Gas Treatment Facilities</b>		
	<input type="checkbox"/> Flaring	<input type="checkbox"/> Thermal destruction	<input type="checkbox"/> Collection for reuse
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance	
Remarks: _____			
2.	<b>Gas Collection Wells, Manifolds and Piping</b>		
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance	
Remarks: _____			
3.	<b>Gas Monitoring Facilities</b> (e.g., gas monitoring of adjacent homes or buildings)		
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance	<input type="checkbox"/> N/A
Remarks: _____			
<b>F. Cover Drainage Layer</b>		<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> N/A
1.	<b>Outlet Pipes Inspected</b>	<input type="checkbox"/> Functioning	<input type="checkbox"/> N/A
Remarks: _____			
2.	<b>Outlet Rock Inspected</b>	<input type="checkbox"/> Functioning	<input type="checkbox"/> N/A
Remarks: _____			
<b>G. Detention/Sedimentation Ponds</b>		<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> N/A



1.	<b>Siltation</b>	Area extent: _____	Depth: _____	<input type="checkbox"/> N/A
	<input checked="" type="checkbox"/> Siltation not evident			
	Remarks: _____			
2.	<b>Erosion</b>	Area extent: _____	Depth: _____	
	<input checked="" type="checkbox"/> Erosion not evident			
	Remarks: _____			
3.	<b>Outlet Works</b>	<input checked="" type="checkbox"/> Functioning		<input type="checkbox"/> N/A
	Remarks: <u>extremely low flow due to driest May on record in Ketchikan</u>			
4.	<b>Dam</b>	<input type="checkbox"/> Functioning		<input checked="" type="checkbox"/> N/A
	Remarks: _____			
<b>H. Retaining Walls</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A				
1.	<b>Deformations</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Deformation not evident	
	Horizontal displacement: _____	Vertical displacement: _____		
	Rotational displacement: _____			
	Remarks: _____			
2.	<b>Degradation</b>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Degradation not evident	
	Remarks: _____			
<b>I. Perimeter Ditches/Off-Site Discharge</b> <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A				
1.	<b>Siltation</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Siltation not evident	
	Area extent: _____	Depth: _____		
	Remarks: _____			
2.	<b>Vegetative Growth</b>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> N/A	
	<input checked="" type="checkbox"/> Vegetation does not impede flow			
	Area extent: _____	Type: _____		
	Remarks: _____			
3.	<b>Erosion</b>	<input type="checkbox"/> Location shown on site map	<input checked="" type="checkbox"/> Erosion not evident	
	Area extent: _____	Depth: _____		
	Remarks: _____			
4.	<b>Discharge Structure</b>	<input checked="" type="checkbox"/> Functioning	<input type="checkbox"/> N/A	
	Remarks: <u>small natural drainages monitored for landfill leachate. No flow at time of the site visit due to extremely low precipitation in May</u>			
<b>VIII. VERTICAL BARRIER WALLS</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A				
1.	<b>Settlement</b>	<input type="checkbox"/> Location shown on site map	<input type="checkbox"/> Settlement not evident	
	Area extent: _____	Depth: _____		
	Remarks: _____			

2.	<b>Performance Monitoring</b>	Type of monitoring: _____
	<input type="checkbox"/> Performance not monitored	
	Frequency: _____	<input type="checkbox"/> Evidence of breaching
	Head differential: _____	
	Remarks: _____	
<b>IX. GROUND WATER/SURFACE WATER REMEDIES</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
<b>A. Ground Water Extraction Wells, Pumps and Pipelines</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		
1.	<b>Pumps, Wellhead Plumbing and Electrical</b>	
	<input type="checkbox"/> Good condition	<input type="checkbox"/> All required wells properly operating <input type="checkbox"/> Needs maintenance <input type="checkbox"/> N/A
	Remarks: _____	
2.	<b>Extraction System Pipelines, Valves, Valve Boxes and Other Appurtenances</b>	
	<input type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance
	Remarks: _____	
3.	<b>Spare Parts and Equipment</b>	
	<input type="checkbox"/> Readily available	<input type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided
	Remarks: _____	
<b>B. Surface Water Collection Structures, Pumps and Pipelines</b> <input checked="" type="checkbox"/> Applicable <input type="checkbox"/> N/A		
1.	<b>Collection Structures, Pumps and Electrical</b>	
	<input checked="" type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance
	Remarks: _____	
2.	<b>Surface Water Collection System Pipelines, Valves, Valve Boxes and Other Appurtenances</b>	
	<input checked="" type="checkbox"/> Good condition	<input type="checkbox"/> Needs maintenance
	Remarks: _____	
3.	<b>Spare Parts and Equipment</b>	
	<input checked="" type="checkbox"/> Readily available	<input type="checkbox"/> Good condition <input type="checkbox"/> Requires upgrade <input type="checkbox"/> Needs to be provided
	Remarks: _____	
<b>C. Treatment System</b> <input type="checkbox"/> Applicable <input checked="" type="checkbox"/> N/A		

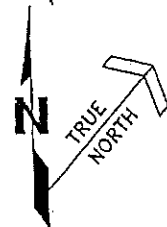
1.	<b>Treatment Train</b> (check components that apply) <div style="display: flex; flex-wrap: wrap; margin-top: 5px;"> <div style="width: 33%;"><input type="checkbox"/> Metals removal</div> <div style="width: 33%;"><input type="checkbox"/> Oil/water separation</div> <div style="width: 33%;"><input type="checkbox"/> Bioremediation</div> <div style="width: 33%;"><input type="checkbox"/> Air stripping</div> <div style="width: 33%;"><input type="checkbox"/> Carbon adsorbers</div> <div style="width: 33%;"><input type="checkbox"/> Filters: _____</div> <div style="width: 33%;"><input type="checkbox"/> Additive (e.g., chelation agent, flocculent): _____</div> <div style="width: 33%;"><input type="checkbox"/> Others: _____</div> <div style="width: 33%;"><input type="checkbox"/> Good condition</div> <div style="width: 33%;"><input type="checkbox"/> Needs maintenance</div> <div style="width: 33%;"><input type="checkbox"/> Sampling ports properly marked and functional</div> <div style="width: 33%;"><input type="checkbox"/> Sampling/maintenance log displayed and up to date</div> <div style="width: 33%;"><input type="checkbox"/> Equipment properly identified</div> <div style="width: 33%;"><input type="checkbox"/> Quantity of ground water treated annually: _____</div> <div style="width: 33%;"><input type="checkbox"/> Quantity of surface water treated annually: _____</div> </div> <div style="margin-top: 5px;">Remarks: _____</div>
2.	<b>Electrical Enclosures and Panels</b> (properly rated and functional) <div style="display: flex; margin-top: 5px;"> <div style="width: 33%;"><input type="checkbox"/> N/A</div> <div style="width: 33%;"><input checked="" type="checkbox"/> Good condition</div> <div style="width: 33%;"><input type="checkbox"/> Needs maintenance</div> </div> <div style="margin-top: 5px;">Remarks: _____</div>
3.	<b>Tanks, Vaults, Storage Vessels</b> <div style="display: flex; margin-top: 5px;"> <div style="width: 25%;"><input checked="" type="checkbox"/> N/A</div> <div style="width: 25%;"><input type="checkbox"/> Good condition</div> <div style="width: 25%;"><input type="checkbox"/> Proper secondary containment</div> <div style="width: 25%;"><input type="checkbox"/> Needs maintenance</div> </div> <div style="margin-top: 5px;">Remarks: _____</div>
4.	<b>Discharge Structure and Appurtenances</b> <div style="display: flex; margin-top: 5px;"> <div style="width: 33%;"><input type="checkbox"/> N/A</div> <div style="width: 33%;"><input checked="" type="checkbox"/> Good condition</div> <div style="width: 33%;"><input type="checkbox"/> Needs maintenance</div> </div> <div style="margin-top: 5px;">Remarks: _____</div>
5.	<b>Treatment Building(s)</b> <div style="display: flex; margin-top: 5px;"> <div style="width: 33%;"><input type="checkbox"/> N/A</div> <div style="width: 33%;"><input checked="" type="checkbox"/> Good condition (esp. roof and doorways)</div> <div style="width: 33%;"><input type="checkbox"/> Needs repair</div> </div> <div style="margin-top: 5px;"><input type="checkbox"/> Chemicals and equipment properly stored</div> <div style="margin-top: 5px;">Remarks: <u>Houses generator for continuous flow meter</u></div>
6.	<b>Monitoring Wells</b> (pump and treatment remedy) <div style="display: flex; margin-top: 5px;"> <div style="width: 33%;"><input type="checkbox"/> Properly secured/locked</div> <div style="width: 33%;"><input type="checkbox"/> _____ Functioning</div> <div style="width: 33%;"><input type="checkbox"/> Routinely sampled</div> <div style="width: 33%;"><input type="checkbox"/> Good condition</div> </div> <div style="margin-top: 20px; display: flex;"> <div style="width: 33%;"><input type="checkbox"/> All required wells located</div> <div style="width: 33%;"><input type="checkbox"/> Needs maintenance</div> <div style="width: 33%;"><input checked="" type="checkbox"/> N/A</div> </div> <div style="margin-top: 5px;">Remarks: _____</div>

<b>D. Monitoring Data</b>	
1. <b>Monitoring Data</b> <input checked="" type="checkbox"/> Is routinely submitted on time APDES permit <input checked="" type="checkbox"/> Is of acceptable quality	
2. <b>Monitoring Data Suggests:</b> <input type="checkbox"/> Ground water plume is effectively contained <input type="checkbox"/> Contaminant concentrations are declining	
<b>E. Monitored Natural Attenuation</b>	
1. <b>Monitoring Wells</b> (natural attenuation remedy) <input type="checkbox"/> Properly secured/locked <input type="checkbox"/> Functioning <input type="checkbox"/> Routinely sampled <input type="checkbox"/> Good condition <input type="checkbox"/> All required wells located <input type="checkbox"/> Needs maintenance <input checked="" type="checkbox"/> N/A Remarks: _____	
<b>X. OTHER REMEDIES</b>	
If there are remedies applied at the site and not covered above, attach an inspection sheet describing the physical nature and condition of any facility associated with the remedy. An example would be soil vapor extraction.	
<b>XI. OVERALL OBSERVATIONS</b>	
<b>A. Implementation of the Remedy</b>	Describe issues and observations relating to whether the remedy is effective and functioning as designed. Begin with a brief statement of what the remedy is designed to accomplish (e.g., to contain contaminant plume, minimize infiltration and gas emissions). <u>The upland remedy to contain on-site waste in a capped landfill remains protective. The landfill cap is mowed frequently to prevent tree growth and cap penetration. The landfill leachate is collected in a geomembrane lined lagoon. Outflow from the lagoon is monitored under an Alaska Pollutant Discharge Elimination System permit. Upland mill site remedies remain protective through institutional controls which restrict excavation and prevent disturbance of uncharacterized soils.</u>
<b>B. Adequacy of O&amp;M</b>	Describe issues and observations related to the implementation and scope of O&M procedures. In particular, discuss their relationship to the current and long-term protectiveness of the remedy. <u>Operation and maintenance of the landfill cap and lagoon are optimized and KPC provides a full time staff to oversee the landfill/lagoon remedy. Implementation of the institutional controls for limiting disturbance of pavement, building foundations, and soil in the mill area will be necessary as development of new commercial businesses are established on the site. O&amp;M of the dam and water stave pipe appear to be improved under the ownership of Ward Cove Industries.</u>
<b>C. Early Indicators of Potential Remedy Problems</b>	Describe issues and observations such as unexpected changes in the cost or scope of O&M or a high frequency of unscheduled repairs that suggest that the protectiveness of the remedy may be compromised in the future. <u>None observed</u>
<b>D. Opportunities for Optimization</b>	Describe possible opportunities for optimization in monitoring tasks or the operation of the remedy. <u>Ketchikan Pulp Company has been granted a reduced reporting frequency for their APDES permit from monthly to quarterly.</u>

Commercial  
and for  
marina  
(Shower,)

Marina  
area  
Concrete  
foot  
planned

PL  
NORTH



SCALE  
0' 100' 200' 300'

WARD COVE



Ketchikan Pulp Company

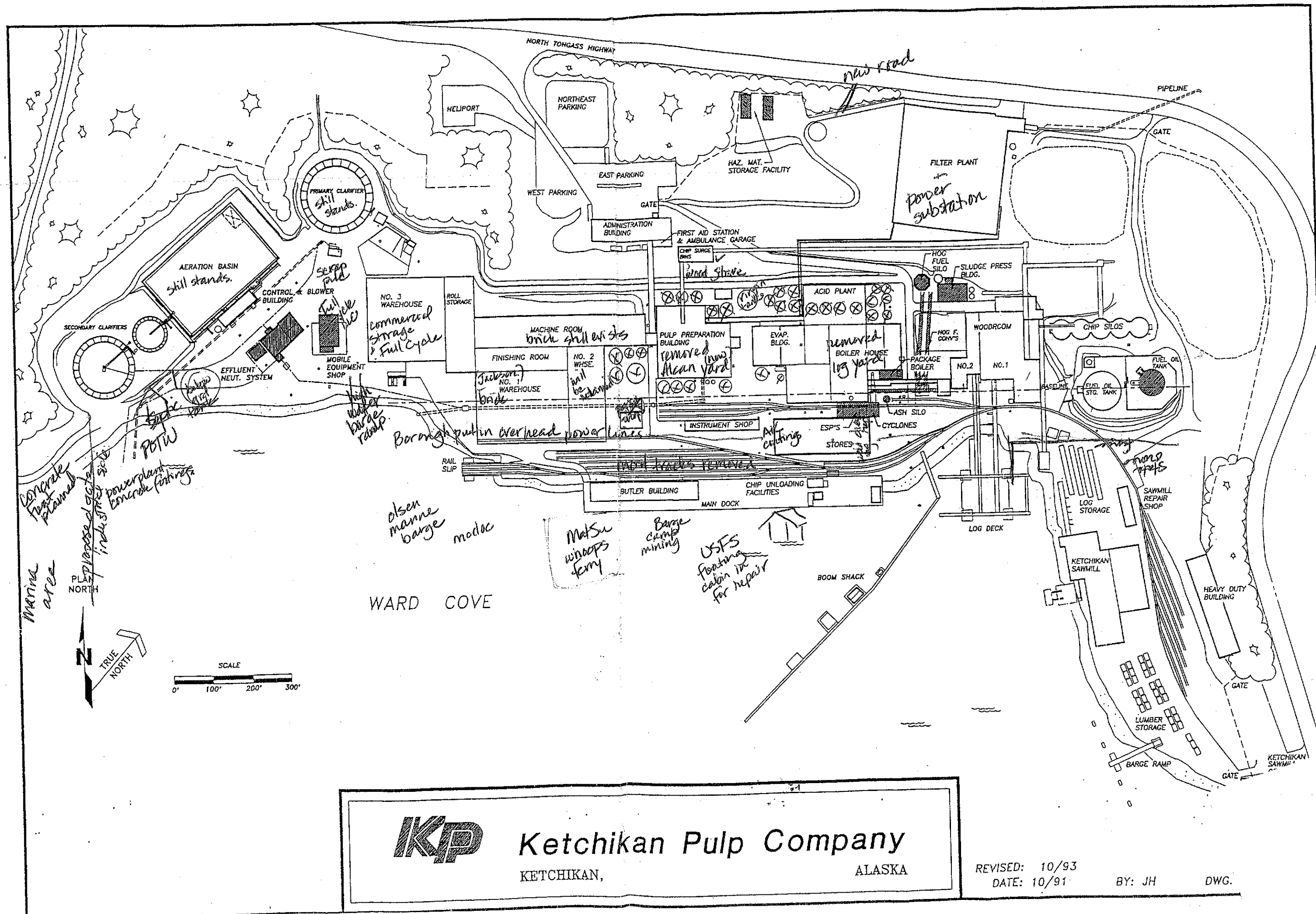
KETCHIKAN,

ALASKA

REVISED: 10/93  
DATE: 10/91

BY: JH

DWG.



## **Attachment 3**

Photographs

Ketchikan Pulp Company Third Five Year Review Site Visit Photograph Log

Photos taken June 2, 2015 at Ward Cove, Ketchikan, Alaska



Photo 1. Former KPC Mill Office, leased as an administration building to Alaska Marine Highway System



Photo 2. View to southeast downslope from administration building



Photo 3. View of abandoned power substation, northeast of administration building. Yellow building in background is former KPC Filter Plant and can be seen from North Tongass Highway.



Photo 4. Former Hazardous Waste buildings. Floor drains to catchment basin.



Photo 5. Electrostatic precipitators from KPC mill. Alcan log sorting yard on former boiler house site.



Photo 6. New fence installed by Ketchikan Gateway Borough at N. Tongass Hwy. Site perimeter fence was removed by KGB.





Photo 7. View east of silo's and former demolished woodroom and boiler house buildings.



Photo 8. View to south of rubble from former woodroom building.

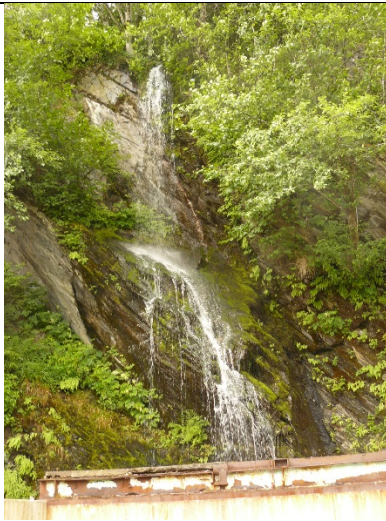


Photo 9. Leaking pipe 'waterfall' to north of demolished woodroom building



Photo 10. View west of former boiler house building, now used by Alcan as a log sorting yard. No. 2 Warehouse is the yellow building in the background



Photo 11. View east of silos and demolished former woodroom building.



Photo 12. New fence defining ADOT / AMHS Engineering Facility property in the southeast corner of the mill site.





Photo 13. View north of silo's and 1 million gallon fuel tank. Tank interior has been restored for future marine fuel storage and distribution.



Photo 14. View of Alaska Marine Highway System Engineering building on east end of mill site.



Photo 15. View Northwest from AMHS parking lot towards former mill site.



Photo 16. View west of mill site and Ward Cove from North Tongass Highway



Photo 17. View to southeast from AMHS across Ward Cove with remaining pilings. Proposed new location of AMHS ferry terminal



Photo 18. AMHS ferry "Malaspina" docked at current ferry terminal in Ketchikan. The proposed new Ward Cove AMHS terminal would berth ferries as large as the "Malaspina". This picture is for scale and comparative purposes





Photo 19. View of the southeast portion of Ward cove. Leasee USFS floating cabin moored to dock



Photo 20. Matanuska-Susitna "MV Susitna" ferry moored at the KPC dock.



Photo 21. Mining company barge leasing a mooring spot on the KPC dock



Photo 22. MV Modoc leasing a mooring space in Ward cove. High water barge off-loading ramp on shoreline.



Photo 23. Olson Barge Company leasing a mooring spot in Ward Cove.



Photo 24. West side of former KPC building 'stores'. Leased by AK Powder Coatings





Photo 25. View of east side of former KPC building 'stores' with diesel engine repair leasee



Photo 26. View to north from former KPC 'stores' building. Alcan log sorting yard in mid; one remaining wood stave silo behind logs.



Photo 27. Western face of No. 1 Warehouse, currently leased as a shop for Tongass Wood products.



Photo 28. No. 3 Warehouse on the northwest side of the mill site. Used and leased for dry storage



Photo 29. View north of No. 2 Warehouse (on left). Former paint shop removed from behind building in center. Note overhead powerlines installed by KGB.



Photo 30. Former KPC Building rubble on site. Aeration basin secondary clarifiers in background.





Photo 31. Former KPC building mobile equipment shop.



Photo 32. Former KPC effluent neutralization building. Used by Full Cycle LLC.



Photo 33. Scrap metal yard. Aeration basin concrete tank in background.



Photo 34. View of mill site from west looking east



Photo 35. Gravel road north of aeration basin area up to North Tongass Hwy. Incline of road difficult to ascertain in photo.



Photo 36. On-site quarry used for fill rock.





Photo 37. Geomembrane lined sediment lagoon at the KPC landfill. Note six foot chain link fence surrounding lagoon. Inlet pipe.



Photo 38. Lagoon aerators. Extant but deactivated in 2007



Photo 39. Locked gate for KPC landfill lagoon



Photo 40. Landfill generator and storage building.



Photo 41. Flow pumps for KPC landfill lagoon.



Photo 42. Outflow/ discharge point for landfill lagoon. APDES sample point of compliance.





Photo 43. "natural area" outflow from lagoon with landfill upslope.



Photo 44. Landfill leachate compliance monitoring location SWL12. Dry at time of site inspection and normally is a small flowing creek.



Photo 45. Looking upslope from landfill toe. Former manhole vent in foreground; passive landfill vents seen on landfill horizon.



Photo 46. Top of KPC landfill looking to the southeast.



Photo 47. Top of KPC landfill, view looking southwest.



Photo 48. Surface overland flow drainage swale on top of landfill.





Photo 49. Locked gate at Connell Lake dam structure.



Photo 50. Connell Lake Dam structure



Photo 51. Connell Lake, view to northeast. Log boom put into place by Ward Cove Industries to prevent log buildup on dam spillway face.



Photo 52. Outflow from dam and intake point for wood pipeline.



Photo 53. Wood pipeline carries water 3.1 miles to KPC mill site

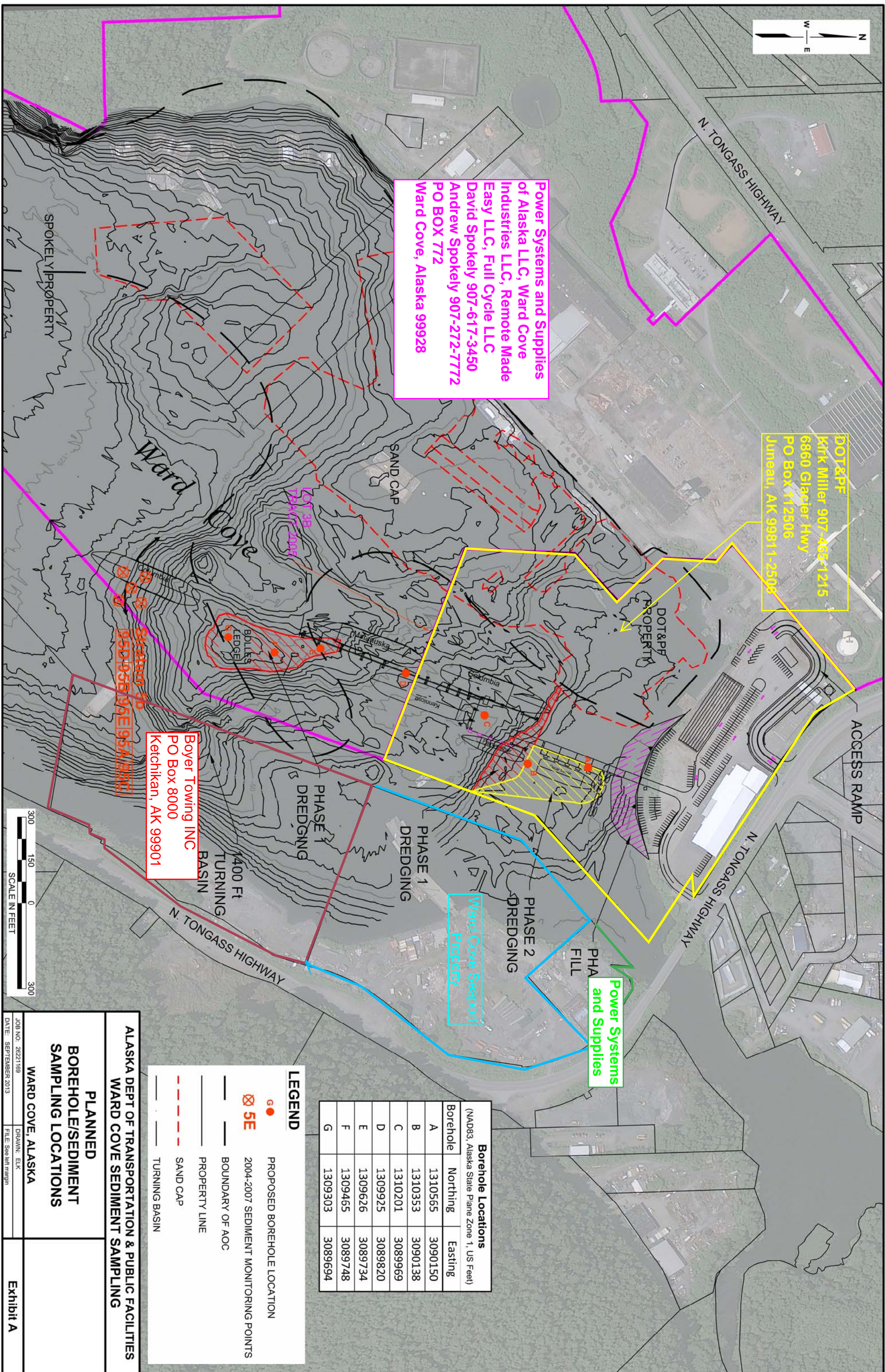


Photo 54. Wood stave pipeline

## **Attachment 4**

Map of Ward Cove Properties







## **Attachment 5**

Ketchikan Pulp Site Parcels Ownership Changes from 2010-2015

# Former Ketchikan Pulp Company



303310001000 (Parcel) 3100012.115, 1319933.214 (1)

2010

303310001000 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
303310001000	WARD LAKE RD	KETCHIKAN GATEWAY BOROUGH		585300	1253700	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015

Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



307490034001 (Parcel) 3090678.782, 1313266.547 (1)

2010

307490034001 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
307490034001	PIPELINE ROW E SIDE APPROX 1400' FROM NTH	KETCHIKAN GATEWAY BOROUGH			0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015

Power Systems &  
Supplies of Alaska  
LLC



# Former Ketchikan Pulp Company



313310002000 (Parcel) 3090012.115, 1312683.214 (1)

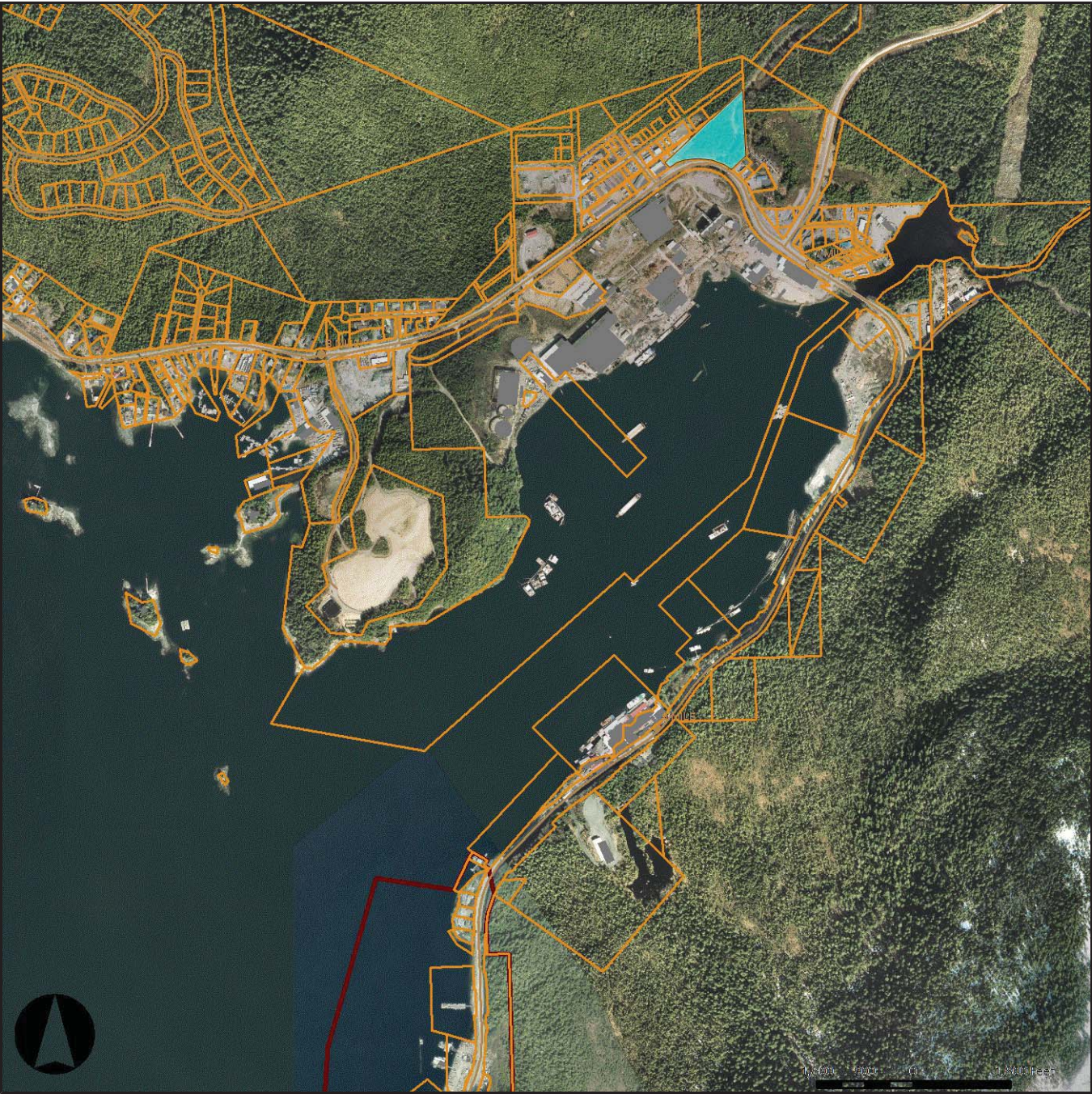
2010  
313310002000 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313310002000	N TONGASS HWY 7100 BLK	KETCHIKAN GATEWAY BOROUGH		59600	0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems &  
Supplies of Alaska  
LLC



# Former Ketchikan Pulp Company



313310032500 (Parcel) 3089651.004, 1312294.325 (1)

2010

313310032500 (Parcel) (1)

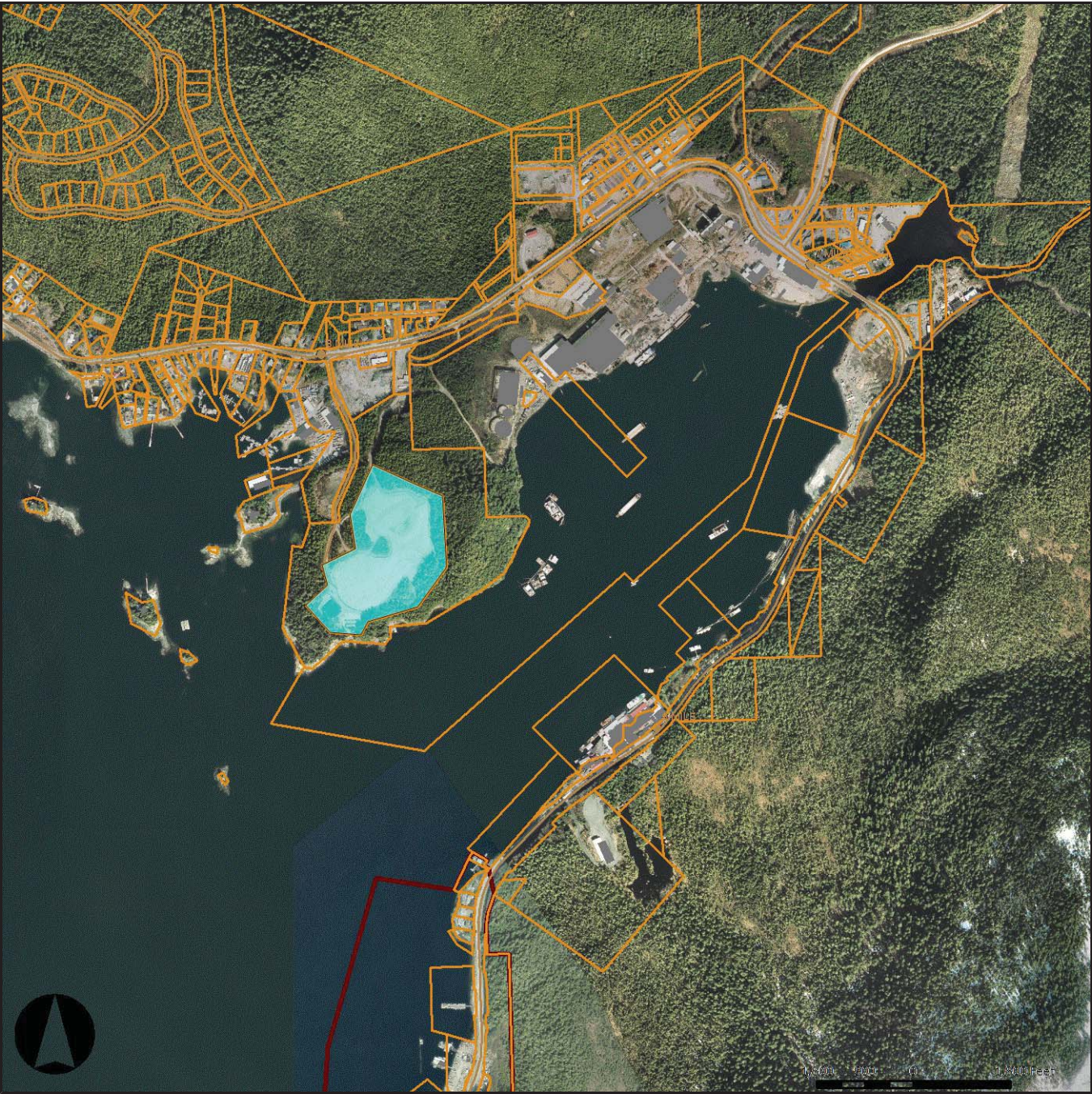
PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313310032500	N TONGASS HWY 7200 BLK	KETCHIKAN GATEWAY BOROUGH		273300	0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015

Power Systems &  
Supplies of Alaska  
LLC



# Former Ketchikan Pulp Company



313340038000 (Parcel) 3086651.004, 1308572.103 (1)

2010

313340038000 (Parcel) (1)

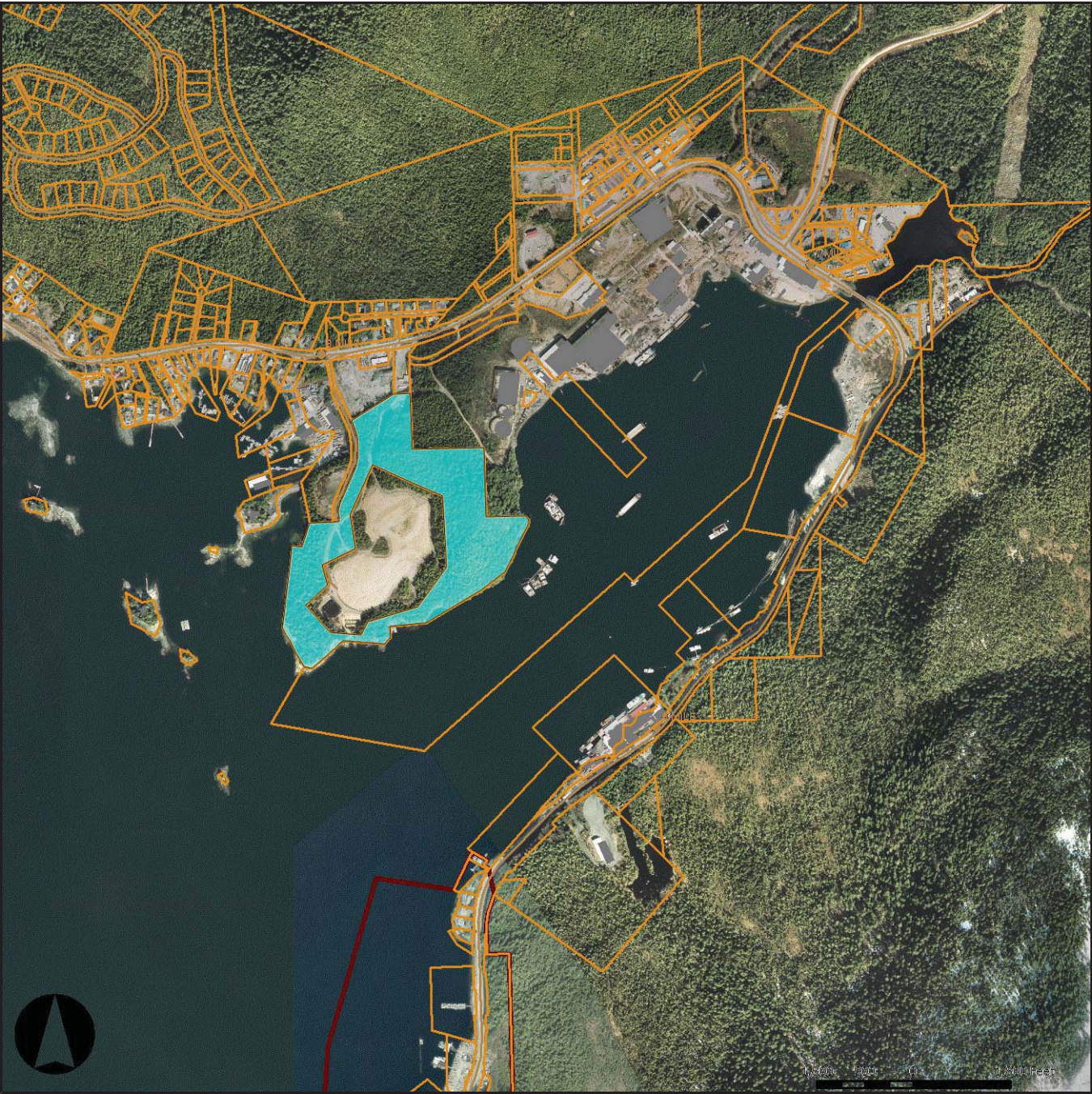
PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340038000	BRUSICH RD	KETCHIKAN PULP COMPANY	ATTN BENNING PHIL	16000	0	PO BOX 6600	KETCHIKAN	AK	99901	KETCHIKAN PULP COMPANY

2015

Ketchikan Pulp Company



# Former Ketchikan Pulp Company



313340039500 (Parcel) 3087262.115, 1309183.214 (1)

2010

313340039500 (Parcel) (1)

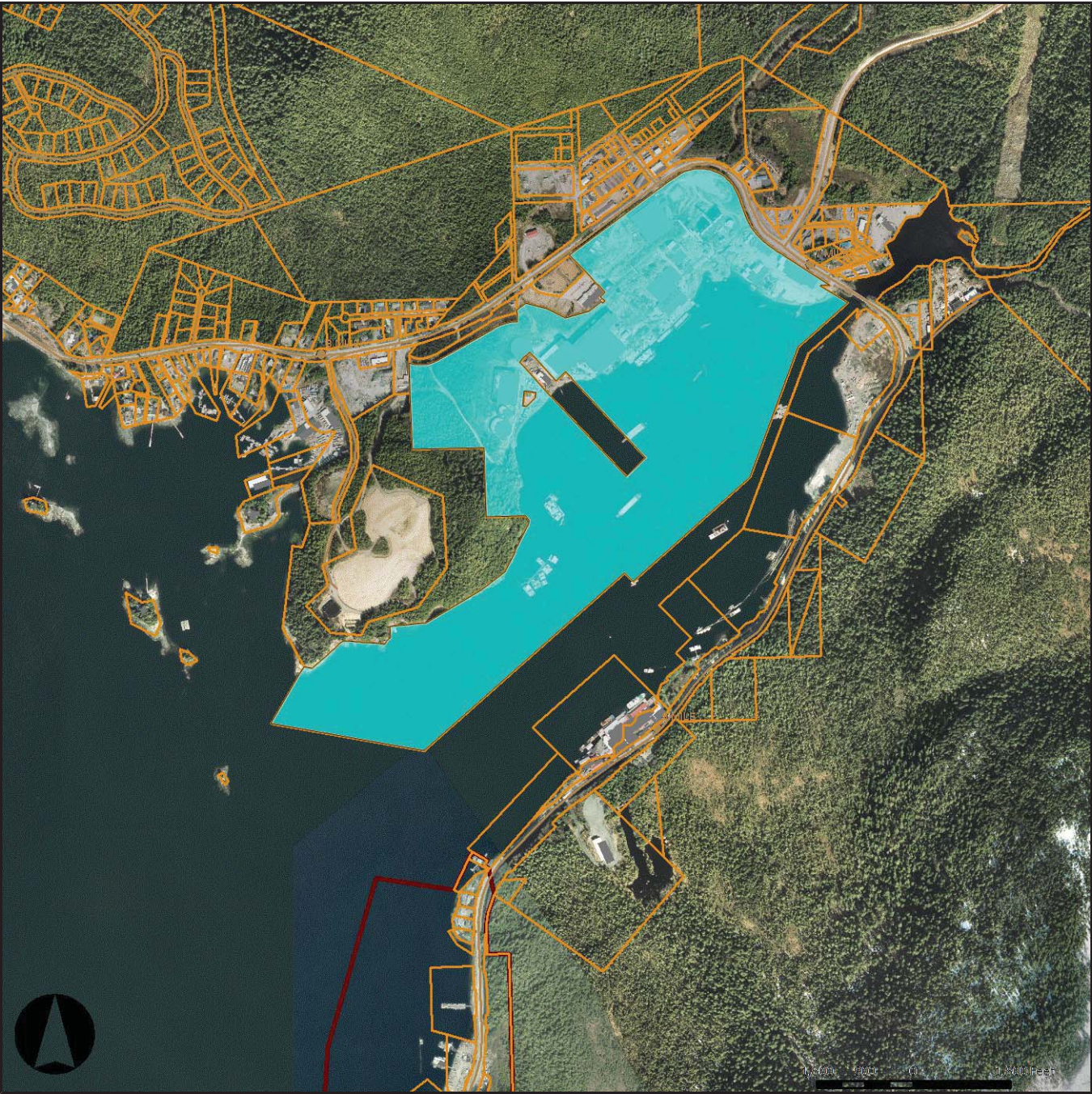
PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340039500	BRUSICH RD	KETCHIKAN GATEWAY BOROUGH		194300	0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015

Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



313340040100 (Parcel) 3089442.671, 1310210.992 (1)

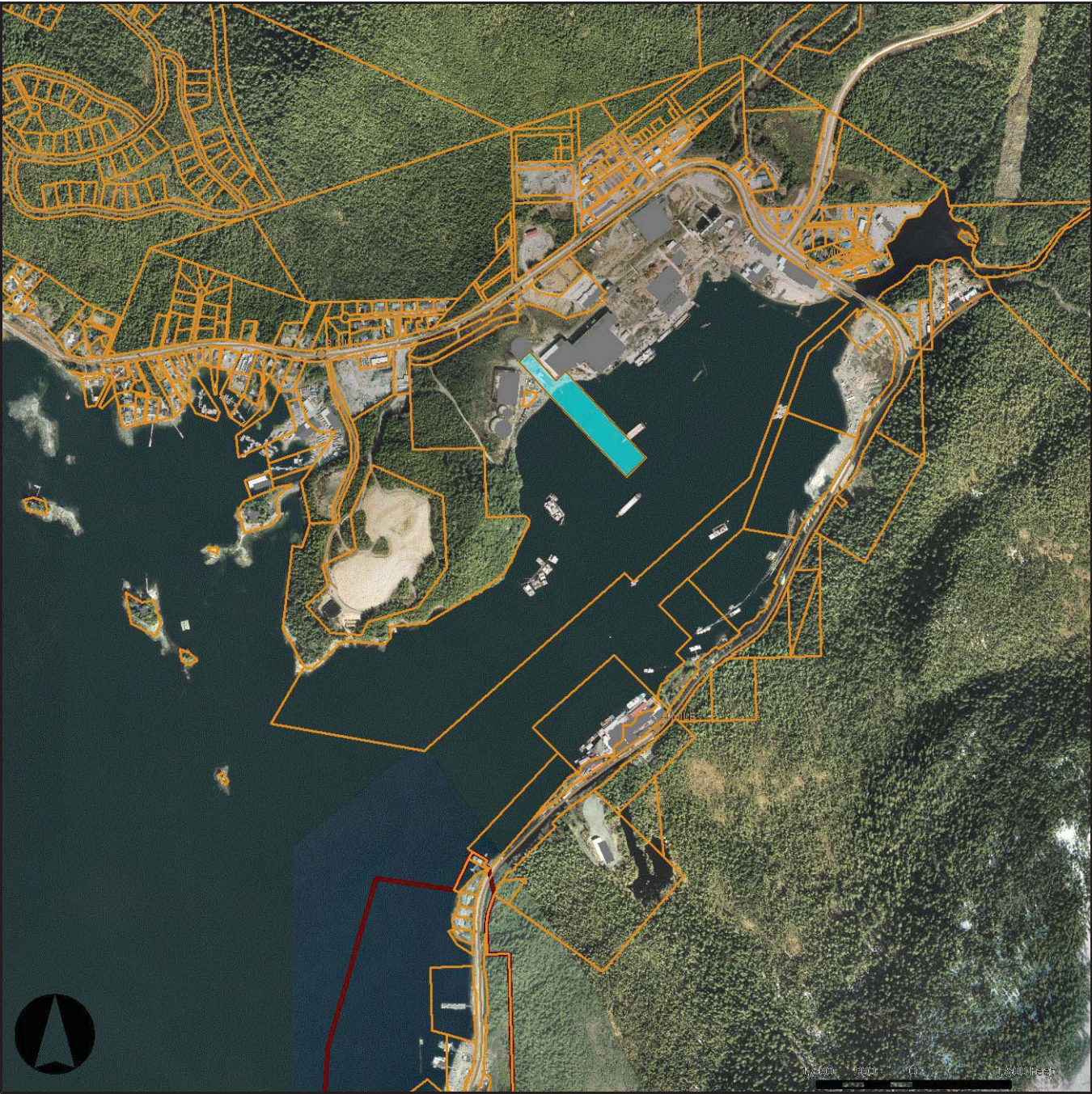
2010  
313340040100 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340040100	N TONGASS HWY 7037	KETCHIKAN GATEWAY BOROUGH		3476200	1615400	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems & Supplies of Alaska LLC and State of Alaska (ADOT&PF)



# Former Ketchikan Pulp Company



313340040500 (Parcel) 3088428.782, 1309766.547 (1)

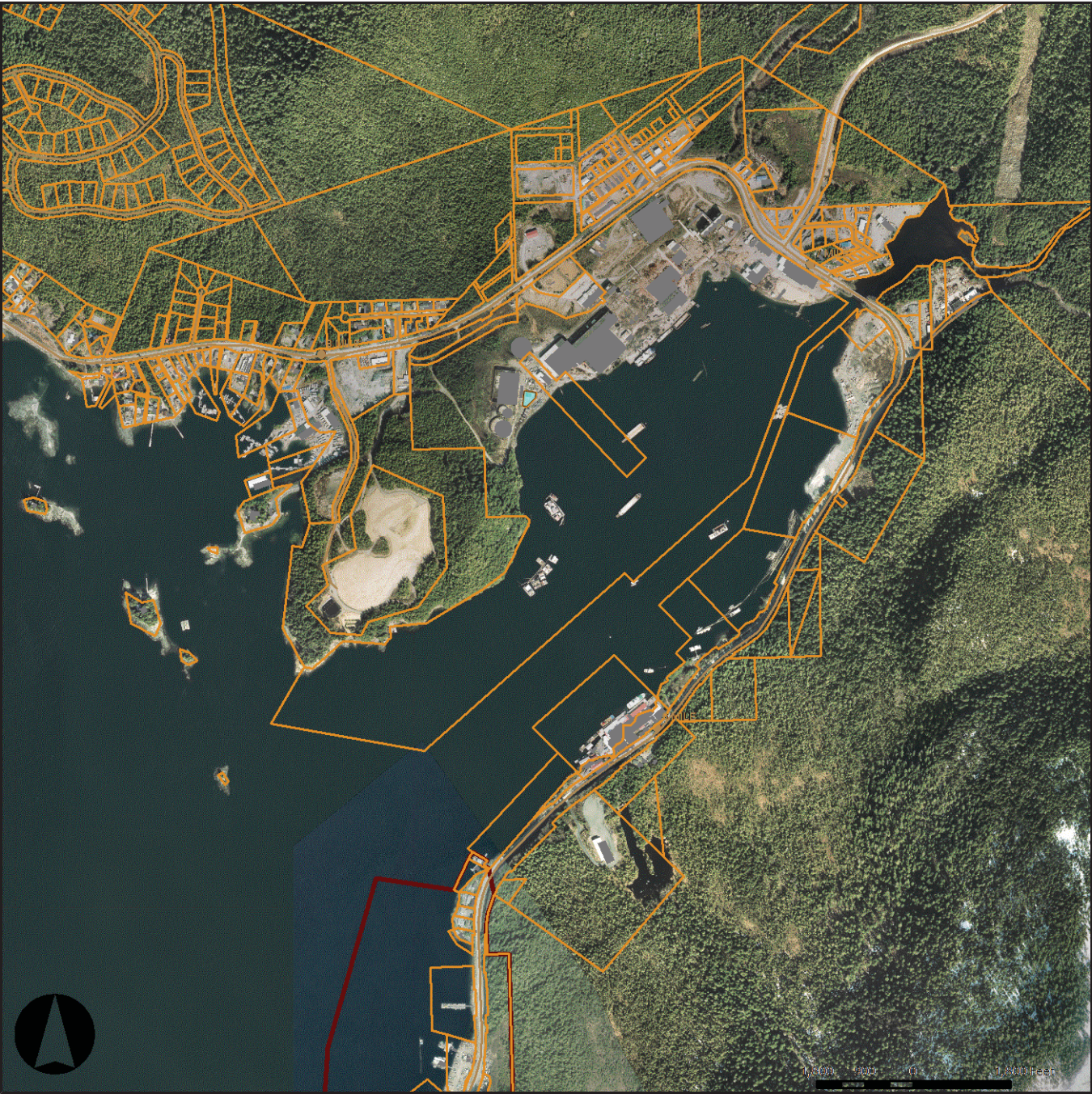
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PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340040500	N TONGASS HWY 7691	KETCHIKAN GATEWAY BOROUGH		309400	266600	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



313340040700 (Parcel) 3087928.782, 1309905.436 (1)

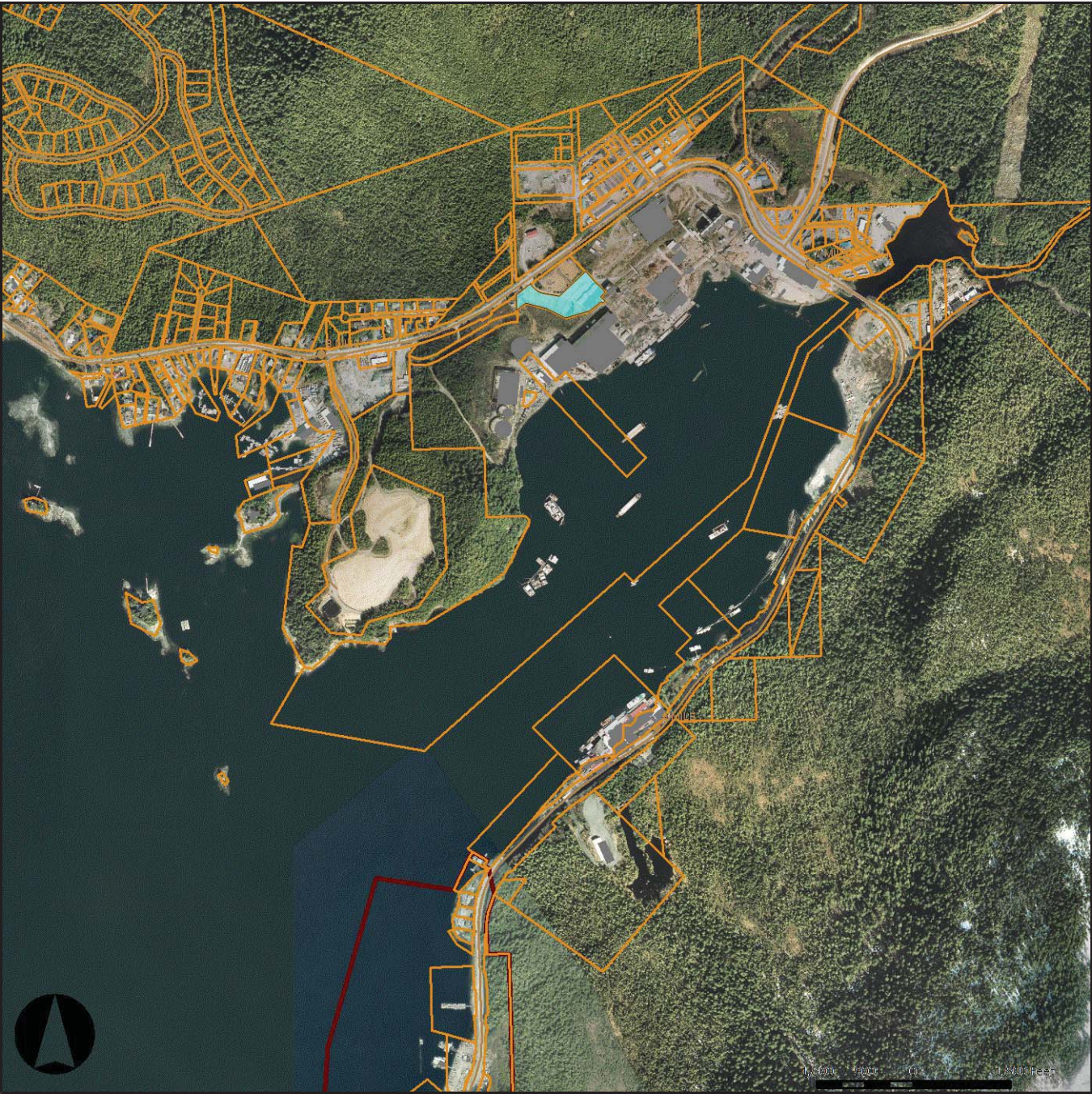
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313340040700 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340040700	N TONGASS HWY 7757	KETCHIKAN GATEWAY BOROUGH		34500	37200	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



313340041500 (Parcel) 3088289.893, 1310738.77 (1)

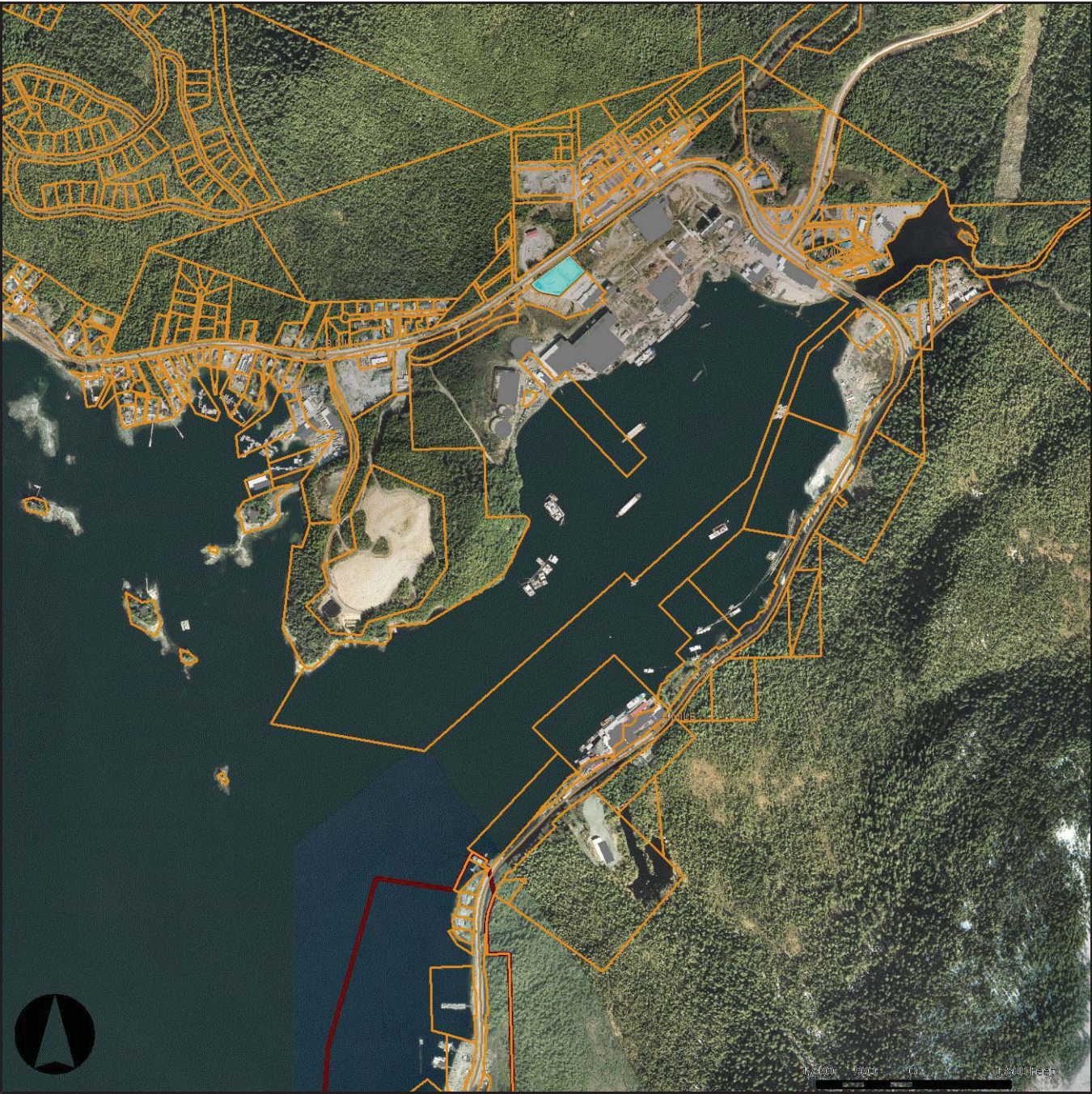
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PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340041500	N TONGASS HWY 7559	KETCHIKAN GATEWAY BOROUGH		472600	522700	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



313340041600 (Parcel) 3088206.56, 1311072.103 (1)

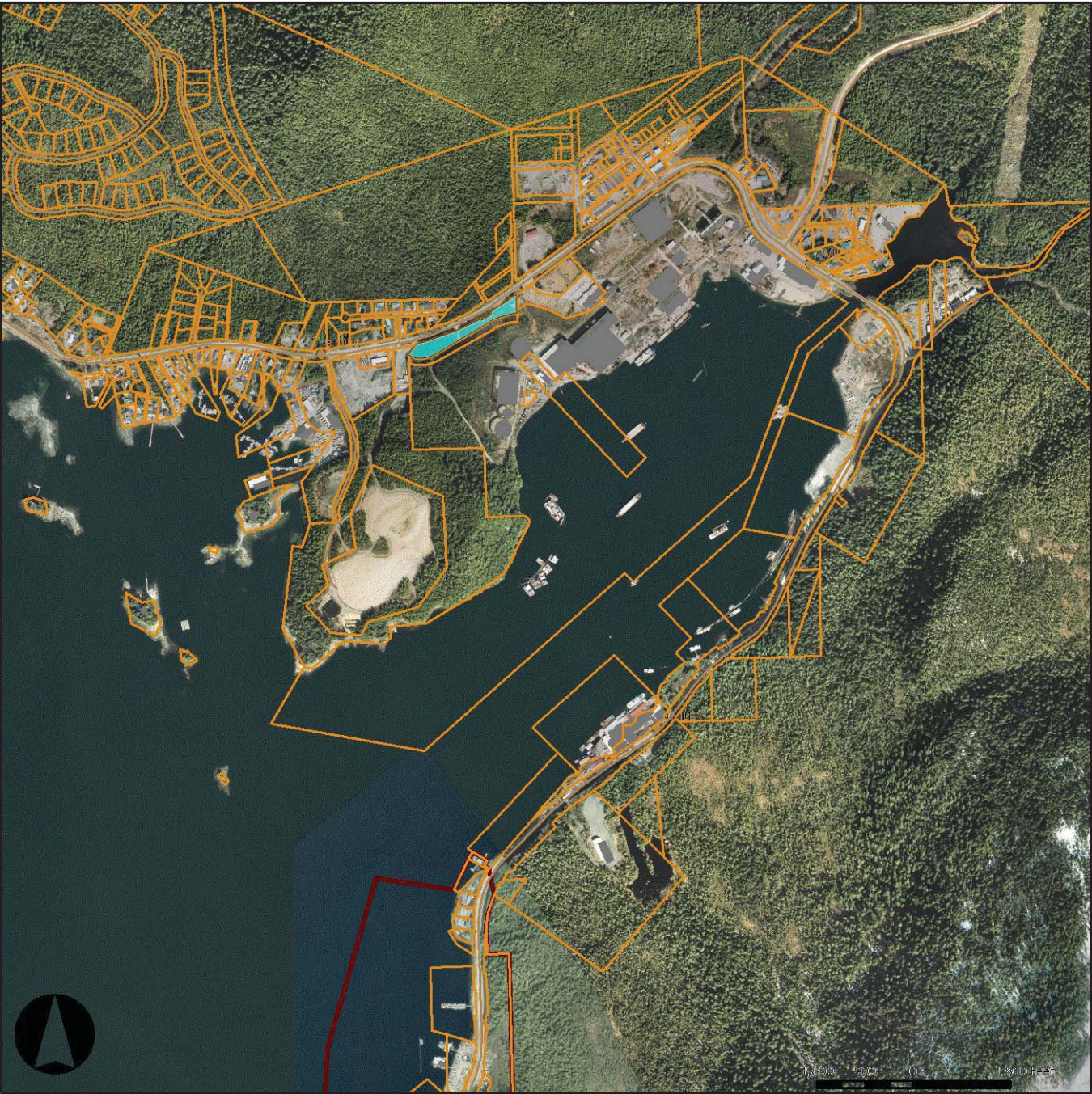
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313340041600 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340041600	N TONGASS HWY 7559	KETCHIKAN GATEWAY BOROUGH		294900	0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems & Supplies of Alaska LLC



# Former Ketchikan Pulp Company



313340041700 (Parcel) 3087039.893, 1310377.659 (1)

2010  
313340041700 (Parcel) (1)

PARCELNO	LOCATION	OWNER_NAME	OWNER_2	APR_LAND_V	APR_IMPS	ADDRESS	CITY	STATE	ZIP	Display Field
313340041700	N TONGASS HWY 7700 BLK	KETCHIKAN GATEWAY BOROUGH		301100	0	1900 FIRST AVE SUITE 210	KETCHIKAN	AK	99901	KETCHIKAN GATEWAY BOROUGH

2015  
Power Systems &  
Supplies of Alaska  
LLC

## **Attachment 6**

Ward Cove Plat and Replats







No. 61-784

This certifies that the within instrument was filed  
for record in the office of the  
KETCHIKAN RECORDING DISTRICT  
and filed on the 5th day  
of June 1961 at 3:32  
o'clock P.M., and indexed in Vol. 1  
of 32  
of the record of said office at Ketchikan, Alaska.  
RICHARD B. LAUBER - - - Recorder  
--DISTRICT MAGISTRATE--









OWNER'S CERTIFICATE

We hereby certify that we are the owners of portions of U.S. Survey No. 1, 208, 1508, 1653, 1656, 1659 & A15 and that we are the owners of the same and that we approve this plat of survey.

Owner: KETCHIKAN GATEWAY BOROUGH Date: 8/1/05

NOTARY ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 1st day of August, 2005, by:

Notary Public in and for the State of Alaska

My commission expires: 9/15/08

CERTIFICATION OF PAYMENT OF TAXES

I hereby certify that, to the best of my knowledge and belief, the taxes on the property described herein are:

paid in full

Director of Administrative Services Ketchikan Gateway Borough

CERTIFICATE OF APPROVAL BY THE PLATTING BOARD

I hereby certify that the subdivision shown has been found to comply with the subdivision regulations of the State of Alaska, and that the plat is a true and correct representation of the land and other details are correct according to said field notes.

First Judicial District, Ketchikan, Alaska.

Platting Board Chairman

Platting Board Member

Director of Administrative Services

City Engineer

Surveying Engineer

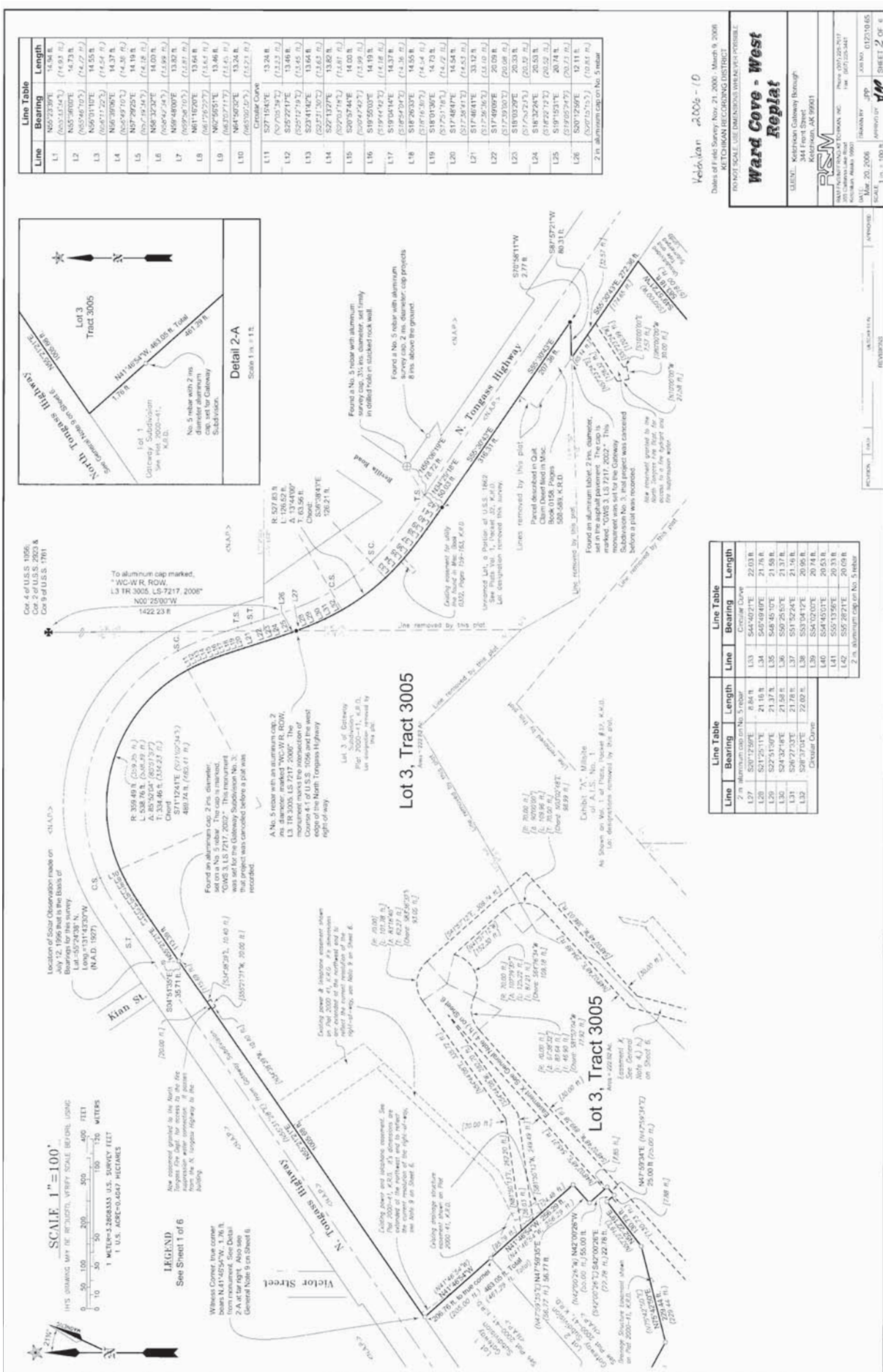
Director of Assessment

LINE TABLE

NUMBER	DIRECTION	DISTANCE
L30	S 18°54'09" W	87.95'
L31	S 55°01'23" E	32.48'
L32	S 18°54'09" W	87.95'
L33	S 55°01'23" E	32.48'
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L330	S 18°54'09" W	8



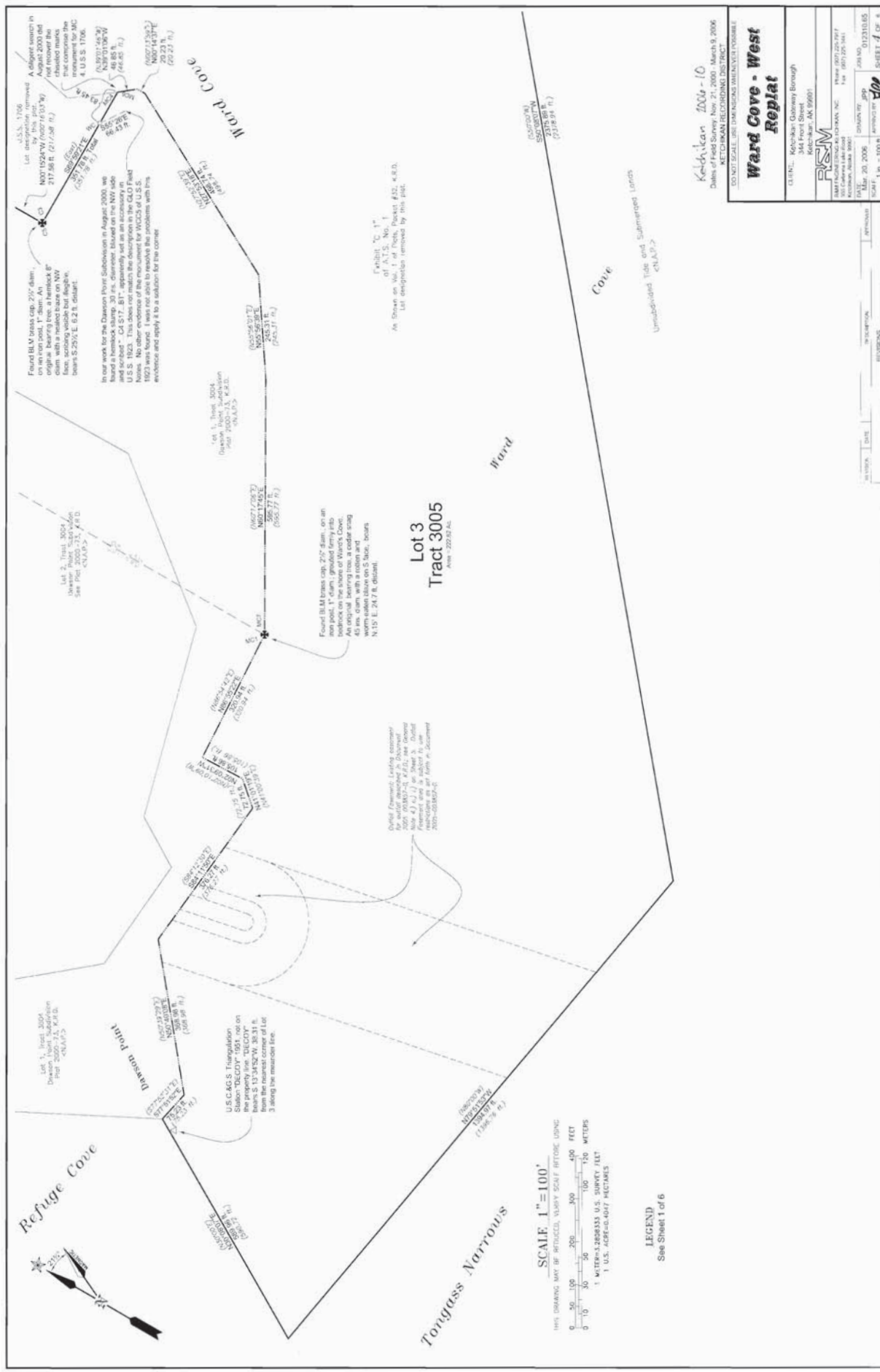












**Kedonian Inc.-10**  
Dates of Field Survey: Nov. 21, 2000 - March 9, 2006  
KETCHIKAN RECORDING DISTRICT

**Ward Cove - West Replat**

CLIENT: Ketchikan Gateway Borough  
344 Ford Street  
Ketchikan, Alaska 99901

PROJECT: 100-10  
DATE: 03/21/06  
SHEET: 1 of 6

BY: [Signature]  
CHECKED BY: [Signature]  
DATE: 03/21/06





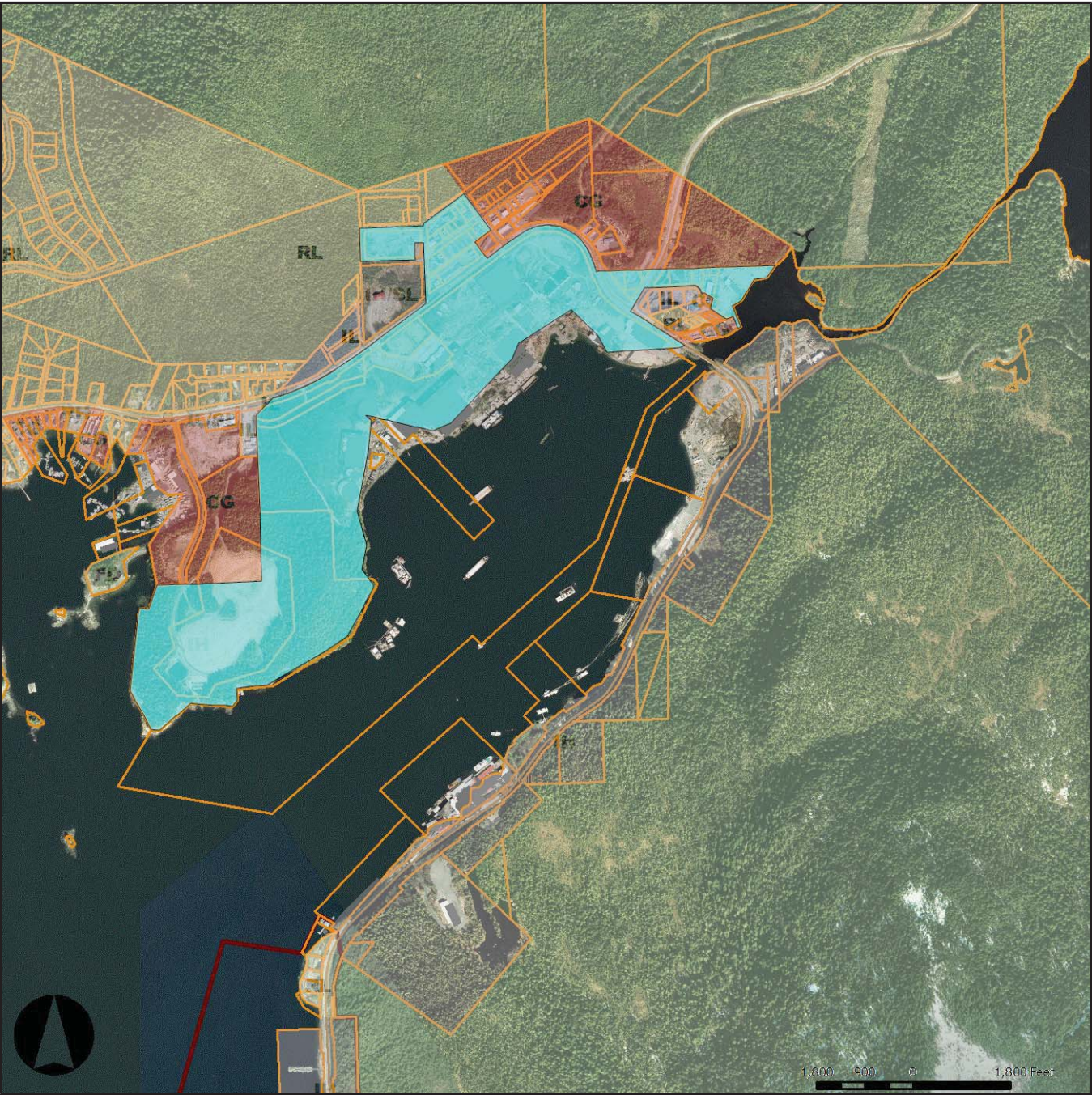


## **Attachment 7**

Zoning Areas and Regulations



# Industrial Zoned Area - KPC



IH (ZONING) 3088912.158, 1311175.13 (1)

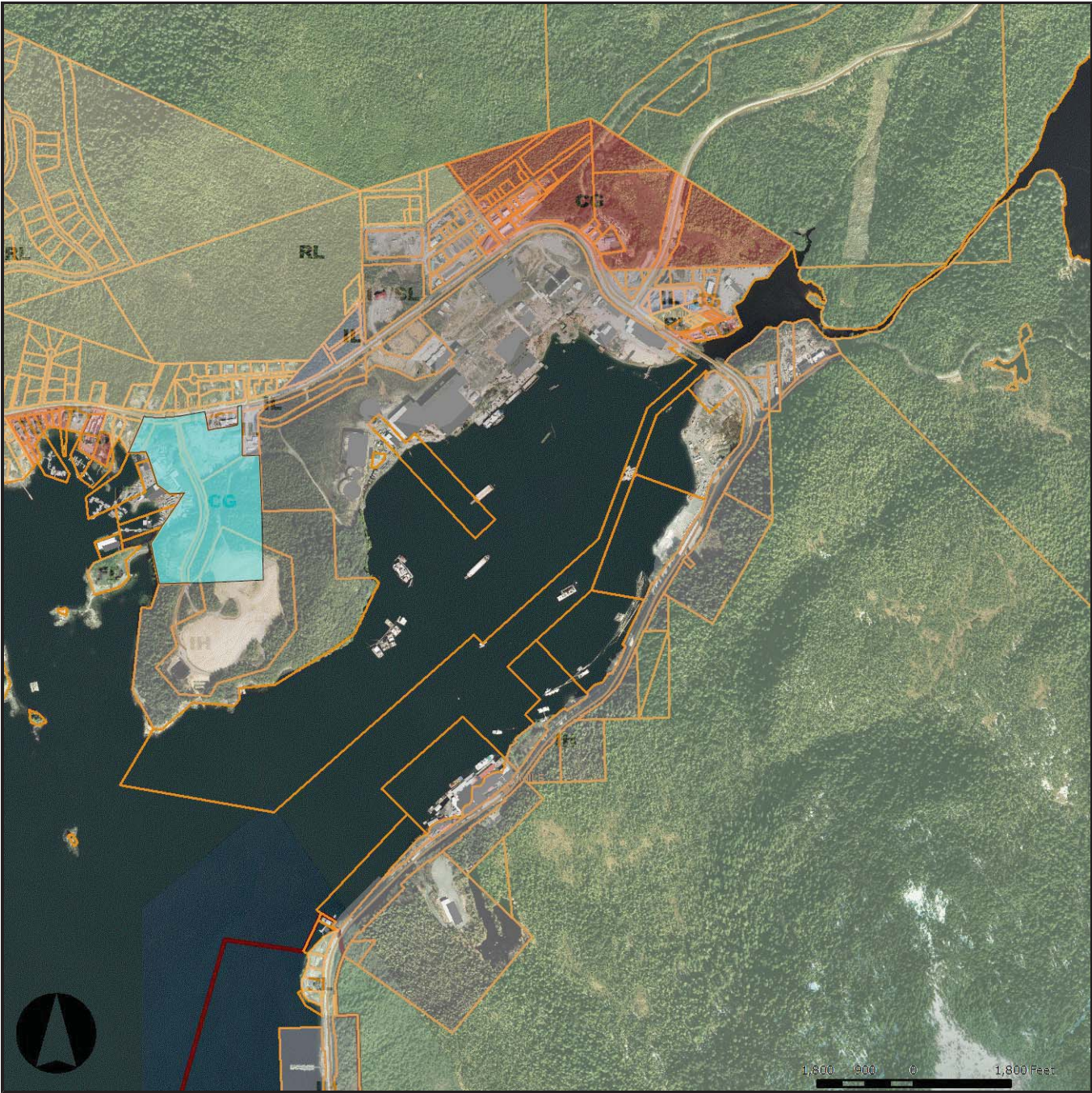
2010

IH (ZONING) (1)

Object ID	ZONE_TYPE	ZONE_DIST	REZONE	ZONE_CLASS	SL_OVERLAY	MOBIL_OVER	OVERLAY	Shape.area	Shape.len	Display Field
187	IH	IH		INDUSTRIAL	NL			6615942.177255	22374.93043	IH



# Commercial Zoned Area - KPC



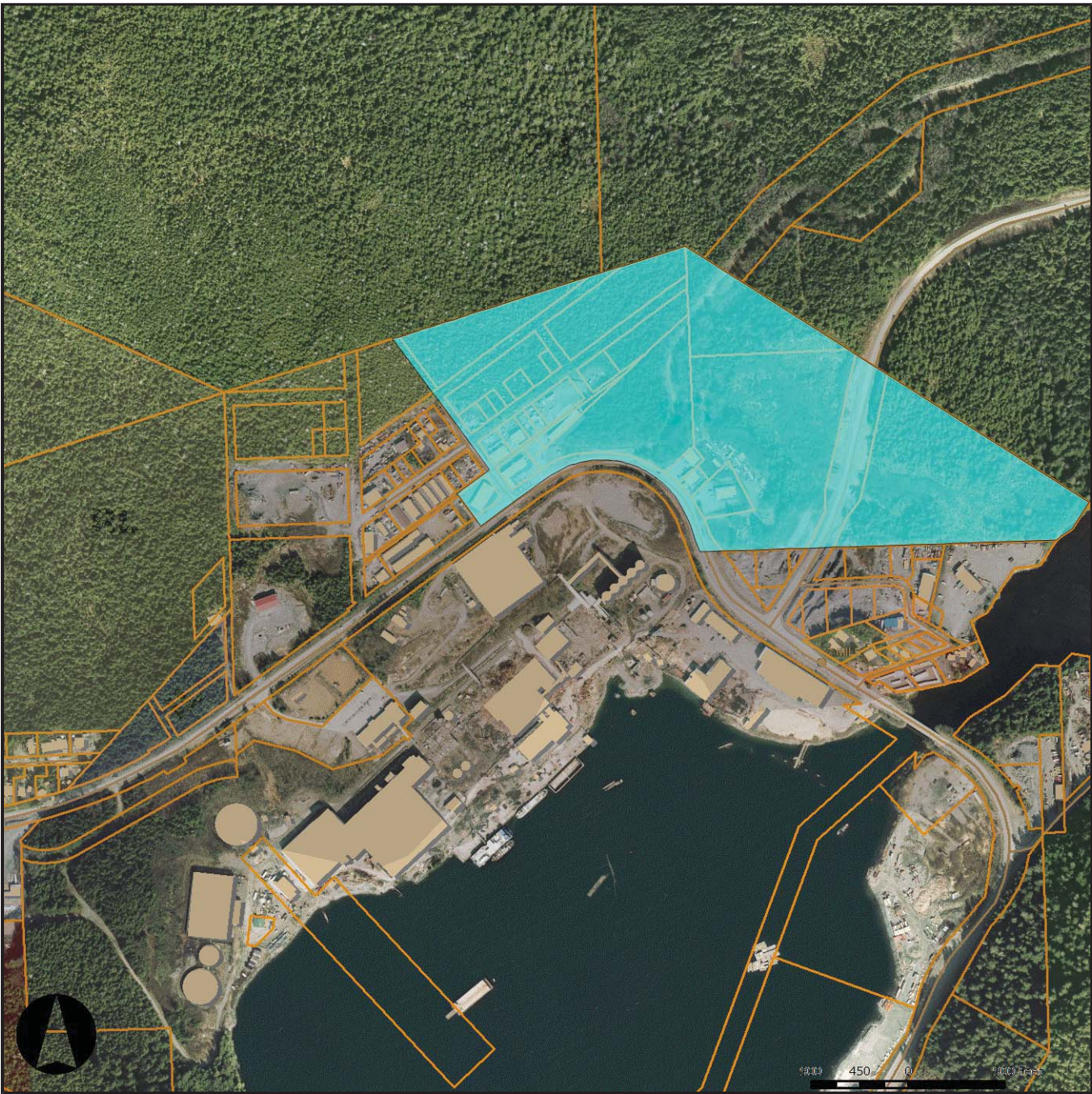
CG (ZONING) 3086641.324, 1309459.852 (1)

2010  
CG (ZONING) (1)

Object ID	ZONE_TYPE	ZONE_DIST	REZONE	ZONE_CLASS	SL_OVERLAY	MOBIL_OVER	OVERLAY	Shape.area	Shape.len	Display Field
145	CG	CG		COMMERCIAL	NL			1344527.474186	5868.649111	CG



# Commercial Zoned Area - KPC



CG (ZONING) 3090024.22, 1312315.889 (1)

2010

CG (ZONING) (1)

Object ID	ZONE_TYPE	ZONE_DIST	REZONE	ZONE_CLASS	SL_OVERLAY	MOBIL_OVER	OVERLAY	Shape.area	Shape.len	Display Field
248	CG	CG		COMMERCIAL	NL			2340389.050376	7704.481958	CG



# Future Development Zoned Area - KPC



FD (ZONING) 3090138.752, 1313066.977 (1)

2010

FD (ZONING) (1)

Object ID	ZONE_TYPE	ZONE_DIST	REZONE	ZONE_CLASS	SL_OVERLAY	MOBIL_OVER	OVERLAY	Shape.area	Shape.len	Display Field
222	FD	FD		FUTURE DEV.	NL			3375427546.45092	439596.636001	FD

**60.10.070. IH Zone, Heavy Industrial Zone.**

(A) *Uses permitted:*

(1) *Principal uses:*

- (a) All principal uses permitted in the IL Zone except multifamily dwellings and rooming and boarding houses provided that dormitories for persons employed on the premises and homes of a caretaker or watchman employed on the premises are permitted;
- (b) Automobile, airplane and truck assembling;
- (c) Airplane, rail and marine shipping terminals;
- (d) Food processing plants;
- (e) Wood processing plants;
- (f) Auto wrecking and junk yards provided that such uses be screened from all abutting major thoroughfares or collector streets by six (6) foot high sight-obscuring fences of good appearance acceptable to the planning and zoning commission;
- (g) Manufacturing plants using heavy machinery;
- (h) Coal or coke yards;
- (i) Hot-mix asphalt and concrete batch plants.
- (j) Fuel distribution facilities subject to continued compliance with relevant fire prevention codes and other applicable laws and regulations.

(2) The conditional uses which may be permitted by the planning commission as provided in section 60.10.110, are:

- (a) Mobile buildings as office, commercial or watchman's quarters subject to the requirements listed in section 60.10.100;
- (b) Mobile building sales lots subject to the requirements listed in section 60.10.100.
- (c) Boarding kennels subject to the requirements listed in section 60.10.113.
- (d) Commercial shopping centers subject to the requirements listed in 60.10.080(N).
- (e) Telecommunications facilities subject to the requirements of 60.10.117(A).

(3) Accessory uses which are clearly incidental to permitted uses and which will not create a nuisance or hazard including signs as permitted in section 60.10.090 and telecommunications antennas as set forth in section 60.10.117.

(4) All uses not otherwise prohibited by law.

(B) *Uses prohibited:*

(1) Any use or structure not listed under permitted principal or accessory uses.

(C) *Development requirements:*

(1) Minimum lot width: Fifty (50) feet.

(2) Lot area, yard, coverage and height requirements: None, except that whenever an IH Zone abuts or is separated by an alley from a residential zone, a fifty (50) foot wide buffer shall be provided, or where necessary be re-established, between the use or structure in the IH zone and the boundary of the residential zone.

(3) Off-street parking and loading shall be provided as required in section 60.10.085.

(Ord. No. 34, 5-27-68; Code 1969, §49.15.140; Ord. No. 368, §§16, 17, 7-21-80; Ord. No. 482, §1, 11-21-83; Ord. No. 939, §7, 5-16-94; Ord. No. 1031, §7, 5-19-97; Ord. No. 1079, §10, 11-16-98; Ord. No. 1091, §6, 3-1-99; Ord. No. 1093, §2, 5-17-99; Ord. No. 1150, §1, 9-18-00; Ord. No. 1294, §1, 2-2-04; Ord. No. 1398, §10, 7-24-06)



**60.10.060. CG Zone. General Commercial Zone.**

(A) *Uses permitted:*

(1) *Principle uses:*

- (a) All principal uses permitted in the CC Zone;
- (b) Gasoline service stations;
- (c) Automotive sales agencies;
- (d) Laundromats and bakeries;
- (e) Public and private off-street parking lots;
- (f) Drive-in businesses;
- (g) One (1) and two (2) family dwellings, provided that such uses shall be conducted on floors other than the ground floor except where the ground floor elevation differs from the elevation of the nearest adjacent improved right-of-way by greater than ten (10) feet. In cases where residential use is allowed as the sole use of the property, the development requirements of the medium density residential zone, 60.10.040(D) shall apply.

(2) Accessory uses which are clearly incidental and permitted uses and which will not create a nuisance or hazard, including signs as set forth in section 60.10.090 and telecommunications antennas as set forth in section 60.10.117.

(3) The following conditional uses may be permitted by the planning commission to the extent and in the manner provided in section 60.10.110 of the KGB Code:

- (a) All tax-exempt uses, subject to the requirements listed in section 60.10.080(A);
- (b) Manufacturing, fabricating, assembling, enclosed storage, and repairing, including automotive repair, provided that such uses meet development requirements (C)(1) through (C)(11) of the IL Zone;
- (c) Boarding kennels subject to the requirements listed in section 60.10.113.
- (d) Heliports and helistops;
- (e) Mobile buildings as office, commercial or watchman's quarters subject to the requirements listed in section 60.10.100;
- (f) Travel trailer parks subject to the requirements listed in section 60.10.100;

- (g) Mobile building sales lots subject to the requirements listed in section 60.10.100.
- (h) Small scale food and seafood processing operations as defined in section 60.10.140.
- (i) Veterinary clinics;
- (j) Commercial shopping centers subject to the requirements listed in 60.10.080(N).
- (k) Telecommunications facilities subject to the requirements of 60.10.117(A).

(B) *Uses prohibited:*

- (1) Any use or structure not listed under permitted principal, accessory and conditional uses.

(C) *Development requirements:*

- (1) Minimum lot width: Fifty (50) feet.
- (2) Lot area, yard and coverage requirements: None except as stated in section 60.10.080.
- (3) Maximum height of all structures: Fifty (50) feet measured as prescribed under definitions for maximum structure height or maximum building height and grade, as applicable.
- (4) Off-street parking and loading space required and shall be provided as required in section 60.10.085.
- (5) All open storage shall be enclosed by an eight (8) foot high fence.
- (6) Whenever a CG Zone abuts or is separated by an alley from a residential zone, the use or building in the CG Zone shall be screened by a sight-obscuring fence or hedge.

(Code 1969, §49.15.120; Ord. No. 64, 5-4-70; Ord. No. 136, §3, 8-20-73; Ord. No. 368, §14, 7-21-80; Ord. No. 414, §1, 5-3-82; Ord. No. 761, §9, 9-4-90; Ord. No. 939, §5, 5-16-94; Ord. No. 1031, §5, 5-19-97; Ord. No. 1041, §2, 9-2-97; Ord. No. 1079, §§6, 7, 11-16-98; Ord. No. 1089, §9, 2-16-99; Ord. No. 1091, §4, 3-1-99; Ord. No. 1294, §1, 2-2-04; Ord. No. 1391, §1, 4-17-06; Ord. No. 1398, §8, 7-24-06)

O.B.A.—Variances, 73-16.

**60.10.030. FD Zone. Future Development Zone.**

(A) *Uses permitted:*

(1) *Principal uses:*

- (a) Watershed reserves and wildlife preserves;
- (b) Campgrounds, hunting and fishing areas, skiing areas and other developments for outdoor recreation;
- (c) Forest reserves and agriculture;
- (d) Logging, mining and extraction of natural resources subject to the development requirements stated herein;
- (e) One (1) family dwellings, subject to the development requirements stated herein;
- (f) Hotels and lodges.
- (g) Temporary uses and buildings subject to the requirements listed in section 60.10.107.

(2) *Accessory uses:*

- (a) Structures and uses which are necessary to conducting permitted principal uses.
- (b) Telecommunications antennas which are attached to a permitted structure and which will not create a nuisance or hazard as set forth in 60.10.117.

(3) *[Conditional uses:]* The conditional uses which may be permitted by action of the planning commission as provided in section 60.10.110, are:

- (a) Travel trailer parks subject to the requirements listed in section 60.10.100;
- (b) Cottage industries subject to the requirements listed in section 60.10.074;
- (c) Storage of explosives, subject to compliance with all applicable local, state and federal laws and regulations.
- (d) Telecommunications facilities subject to the requirements of 60.10.117(A).

(B) *Uses prohibited:*

- (1) Any use or structures not listed under permitted principal and accessory uses.

(C) *Development requirements:*



- (1) For all logging, mining and similar industrial extractive activities, a strip of uncleared land at least one hundred (100) feet wide shall be provided between such uses and all public rights-of-way and all adjoining boundaries of residential zones or recreational areas.
- (2) For all cabins and similar residential structures permitted in this zone the development requirements shall be as stated in section 60.10.033(C) of the RS Zone.

(Code 1969, §49.15.060; Ord. No. 341, §2, 9-4-79; Ord. No. 368, §6, 7-21-80; Ord. No. 639, §4, 12-21-87; Ord. No. 716, §1, 11-20-89; Ord. No. 743, §§1, 2, 6-4-90; Ord. No. 939, §2, 5-16-94; Ord. No. 1031, §2, 5-19-97; Ord. No. 1294, §1, 2-2-04; Ord. No. 1398, §1, 7-24-06)

**60.10.065. II Zone. Light Industrial Zone.**

(A) *Uses permitted:*

(1) *Principal uses:*

- (a) All principal uses permitted in the CG Zone, except one (1) and two (2) family dwellings;
- (b) Enclosed storage yards and contractors' yards except for auto wrecking yards and junkyards;
- (c) Light manufacturing, fabricating, assembling and storage uses of a character that meets the development requirements listed below;
- (d) Automotive repair;
- (e) Bus and trucking terminals;
- (f) Veterinary clinics;
- (g) Dormitories for persons employed on the premises or dwellings for a caretaker or a watchman.

(2) The conditional uses which may be permitted by the planning commission to the extent and in the manner as provided in section 60.10.110 of the KGB Code:

- (a) All tax-exempt uses subject to the requirements listed in section 60.10.080(A);
- (b) Mobile buildings as office, commercial or watchman's quarters subject to the requirements listed in section 60.10.100;
- (c) Mobile building sales lots subject to the requirements listed in section 60.10.100;
- (d) Small scale food and seafood processing operations as defined in section 60.10.140;
- (e) Boarding kennels subject to the requirements listed in section 60.10.113;
- (f) Commercial shopping centers subject to the requirements listed in 60.10.080(N).
- (g) Fuel distribution facilities subject to continued compliance with relevant fire prevention codes and other applicable laws and regulations.
- (h) Telecommunications facilities subject to the requirements of 60.10.117(A).

(3) Accessory uses which are clearly incidental to permitted uses and which will not create a nuisance or hazard, including signs as set forth in section 60.10.090 and

telecommunications antennas as set forth in section 60.10.117.

(B) *Uses prohibited:* Any use or structure not listed under permitted principal or accessory uses.

(C) *Development requirements:*

- (1) *Noise limitation:* In all IL Zones the noise emanating from the use of property shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. The maximum permissible sound pressure level, measured at the boundary line between the IL Zone and any residential zone shall be no greater than the following between the hours of 7:00 p.m. and 7:00 a.m.:

<i>Frequency Band Cycles Per Second</i>	<i>Sound Pressure Level Decibels RE 0.0002 Dynes/cm<sup>2</sup></i>
20—75 .....	69
75—150 .....	54
150—300 .....	47
300—600 .....	41
600—1,200 .....	37
1,200—2,400 .....	34
2,400—4,800 .....	31
4,800—10,000 .....	28

During other hours each of the sound level measurements may be increased not to exceed ten (10) decibels over the above figures.

- (2) *Electrical interference:* The proposed use or structure shall not interfere with electrical processes in nearby buildings or land uses.
- (3) *Lighting:* Any lighting shall not be used in a manner which produces glare on public highways and neighboring property. Arc welding, acetylene torch cutting and similar processes shall be performed so as not to be seen outside the property.
- (4) *Fire and safety hazards:* The storage and handling of flammable liquids, liquefied petroleum, gases and explosives shall comply with the fire prevention code and all other applicable laws and regulations. Enameling and paint-spraying operations shall be permitted when incidental to the principal use and when such operations are contained within a building of two (2) hour fire-resistive construction.
- (5) *Vibration:* Any machine or operation which causes a displacement exceeding three-thousandths (3/1000) of one (1) inch as measured at the property line is prohibited.
- (6) *Odor:* Uses causing the emission of obnoxious odors of any kind and the emission of any toxic or corrosive fumes or gases are prohibited.



- (7) *Dust and smoke:* Dust and smoke created by industrial operations shall not be exhausted or wasted into the air in such a manner as to create a nuisance.
- (8) *Open storage:* Any storage shall not be located closer than twenty-five (25) feet to any street right-of-way. Any storage shall be enclosed with an eight (8) foot view-obscuring high fence of good appearance acceptable to the planning and zoning commission. Whenever lumber, coal or other combustible material is stored, a roadway shall be provided, graded and maintained from the street to the rear of the property to permit free access for fire trucks at any time.
- (9) *Shipping and receiving:* No shipping and receiving dock located within one hundred (100) feet of a residential district shall be operated between the hours of 7:00 p.m. and 7:00 a.m.
- (10) *Residential buffer:* Wherever an IL Zone abuts or is separated by an alley from a residential zone, the use or building in the IL Zone shall be screened by a sight-obscuring enclosure.
- (11) *Minimum lot width:* Fifty (50) feet.
- (12) *Lot area, yard and coverage requirements:* None except as stated in section 60.10.080.
- (13) *Maximum height of all structures:* Thirty (30) feet measured as prescribed under definitions for maximum structure height or maximum building height and grade as applicable.
- (14) *Off-street parking and loading space* shall be provided as required in section 60.10.085.

(Code 1969, §49.15.130; Ord. No. 368, §15, 7-21-80; Ord. No. 515, §3, 10-15-84; Ord. No. 761, §10, 9-4-90; Ord. No. 906, §1, 6-7-93; Ord. No. 939, §6, 5-16-94; Ord. No. 1031, §6, 5-19-97; Ord. No. 1041, §2, 9-2-97; Ord. No. 1079, §§8, 9, 11-16-98; Ord. No. 1089, §10, 2-16-99; Ord. No. 1091, §5, 3-1-99; Ord. No. 1093, §3, 5-17-99; Ord. No. 1121, §§1, 2, 11-15-99; Ord. No. 1294, §1, 2-2-04; Ord. No. 1391, §2, 4-17-06; Ord. No. 1398, §9, 7-24-06)

**60.10.055. CC Zone. Central Commercial Zone.**

**(A) *Uses permitted:***

- (1) Principal uses:
  - (a) Retail and wholesale businesses;
  - (b) Business and consumer services, including newspaper and printing establishments and radio and television studios;
  - (c) Banks and business and professional offices;
  - (d) Theaters and other commercial recreation uses;
  - (e) Hotels and motels;
  - (f) Multiple-family dwellings, dormitories, rooming and boarding houses, except when located on the ground floor and within fifty (50) feet of the right-of-way line of a collector street;
  - (g) Private clubs, lodges, fraternal organizations, union halls, hiring halls and social halls, except establishments operating under a beverage dispensary or club license from the State of Alaska Alcohol Beverage Control Board;
  - (h) One (1) and two (2) family dwellings, provided that any such use shall be conducted on floors other than the ground floor;
  - (i) Residential use of commercial space, existing as of [June 7, 1993,] the adoption of this ordinance, provided that all residential building code requirements are met.
  - (j) Temporary uses and buildings subject to the requirements listed in section 60.10.107.
- (2) Accessory uses which are clearly incidental to permitted uses and which will not create a nuisance or hazard, including signs as set forth in section 60.10.090 and telecommunications antennas as set forth in section 60.10.117.
- (3) The following conditional uses may be authorized by the planning commission to the extent and in the manner provided in section 60.10.110 of the KGB Code:
  - (a) All tax-exempt uses, subject to the requirements listed in section 60.10.080(A);
  - (b) Public and private off-street parking lots, concessionaire's stands (subject to the provisions contained in section 60.10.080(O)), drive-in businesses, gasoline service stations, auto sales agencies, minor and major automobile repair and tire recapping and other automobile repair and tire recapping and other automotive uses, subject to

the following requirements:

1. That exits and entrances be located to prevent traffic congestion and hazards;
  2. That the proposed use be located so it will not divide the concentrated pedestrian shopping area which is intended for this zone.
- (c) Light manufacturing, fabricating, assembling and repairing, subject to the following requirements:
1. Such use shall be conducted on floors other than the ground floor except where clearly subsidiary and incidental to a principal use permitted in this zone.
  2. Such uses may not include any uses not meeting the development requirements (1) through and including (11) of the IL Zone.
- (d) Heliports and helistops.
- (e) Mobile buildings as office, commercial or watchman's quarters subject to the requirements listed in section 60.10.100.
- (f) Travel trailer parks subject to the requirements listed in section 60.10.100.
- (g) Commercial shopping centers subject to the requirements listed in 60.10.080(N).
- (h) Telecommunications facilities subject to the requirements of 60.10.117(A).

(B) *Uses prohibited:* Any use of [or] structure not listed under permitted principal, accessory and conditional uses.

(C) *Development requirements:*

- (1) Minimum lot width: Twenty (20) feet.
- (2) Lot area, yard, coverage and height requirements: None except as stated in section 60.10.080.
- (3) Off-street parking and loading: In the CC Zone, it is planned that the off-street parking shall be provided principally by public and commercial parking lots and garages; therefore, private off-street parking in this zone will only be as required in section 60.10.085. Off-street loading space is required and shall be provided as required in section 60.10.085.
- (4)
  - (a) Any business, service, repair, storage or merchandise display shall be conducted wholly within an enclosed building, except concessionaire's stands operating under



the terms and conditions of a conditional use permit by action of the planning commission.

- (b) Conditional use permits for concessionaire's stands must be reviewed annually for compliance with the current development requirements contained in this chapter (title).

(Code 1969, §49.15.110; Ord. No. 136, §2, 8-20-73; Ord. No. 368, §12, 7-21-80; Ord. No. 515, §§1, 2, 10-15-84; Ord. No. 599, §1, 3-17-87; Ord. No. 906, §2, 6-7-93; Ord. No. 939, §§1, 4, 5-16-94; Ord. No. 1001, §1, 10-21-96; Ord. No. 1031, §§1, 4, 5-19-97; Ord. No. 1091, §3, 3-1-99; Ord. No. 1141, §1, 6-19-00; Ord. No. 1158, §1, 10-16-00; Ord. No. 1294, §1, 2-2-04; Ord. No. 1398, §7, 7-24-06)

**60.10.005. Establishment of zones and provision for official zoning map.**

(a) The Ketchikan Gateway Borough is hereby divided into the following zones, as shown on the official zoning map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter:

FD	Future Development Zone
RR	Rural Residential Zone
RS	Suburban Residential Zone
RL	Low Density Residential Zone
RN	Neighborhood Residential Zone
RM	Medium Density Residential Zone
RH	High Density Residential Zone
CD	Commercial Development Zone
CC	Central Commercial Zone
CG	General Commercial Zone
IL	Light Industrial Zone
IH	Heavy Industrial Zone
PLI	Public Lands and Institutions Zone
AD	Airport Development Zone
CI	Superimposed Cottage Industry Zone
HD	Creek Street Historic District Zone
MBU	Mobile Building Unrestricted Zone
MBR	Mobile Building Restricted Zone

(b) Regulations applying to each zone as set forth in the following sections of this chapter [title] and all other requirements of this chapter [title] are hereby adopted.

(c) Public notice shall be given in a newspaper of general circulation in the borough stating the date, time, place and purpose of the hearing. The notice shall be published at least ten (10) days prior to the date of the hearing. A copy of the proposed official zoning map shall be available in the department of planning and community development for public inspection. The official zoning map, and any rezone resulting in a change thereto, shall be adopted by the assembly by ordinance. After the official zoning map has been duly adopted as herein provided the borough clerk shall cause the following certificate to be permanently and securely affixed to each index sheet of each book of the official zoning map:

"I, \_\_\_\_\_, Borough Clerk for the Ketchikan Gateway Borough, Alaska, certify that the zoning map to which this certificate is affixed is Map Book \_\_\_\_\_ of the seven (7) official zoning map books which comprise the official zoning map duly adopted by Ordinance No. \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

To this certificate, I have set my hand and the seal of the Ketchikan Gateway Borough, Alaska, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Borough Clerk"

The official zoning map shall be kept in the department of planning and community development. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the copy of the official zoning map that is located in the department of planning and community development shall be the final official zoning map authority regarding the current zoning status of land and water areas; provided, however, in the event of any discrepancy between the legal description or zoning of the property rezoned as set forth on the official zoning map and as described in the specific ordinance zoning or changing the zone of such property or area, the description and zoning set forth in the amending ordinance shall control and prevail over the official zoning map.

(d) Changes to the official zoning map resulting by reason of a rezone adopted by the assembly by ordinance shall be entered on the official zoning map by the borough manager or designee in accordance with the provisions of section 60.10.130(B)(9), of the KGB Code.

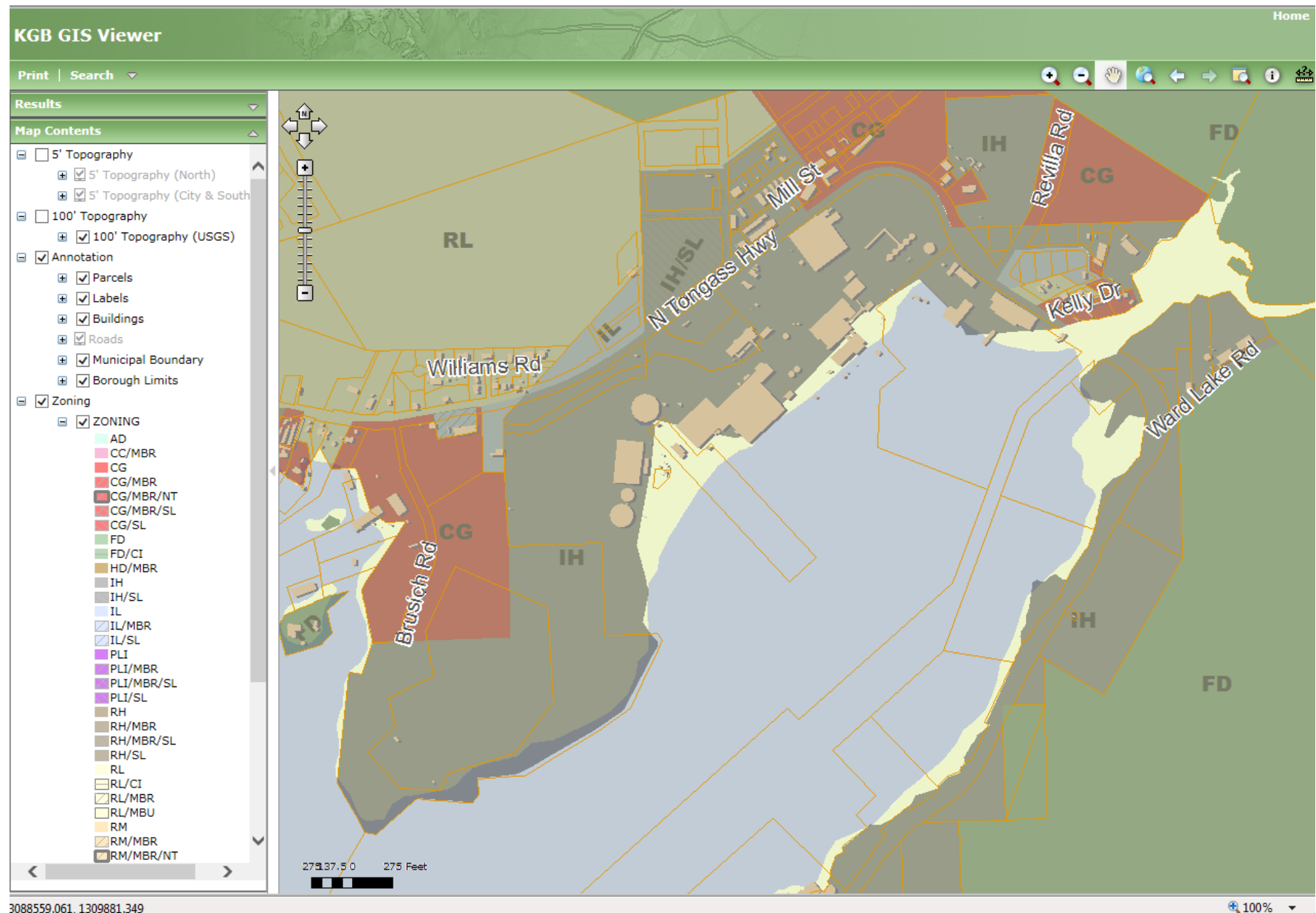
(e) In the event the official zoning map or any part thereof, becomes damaged, lost or destroyed the borough assembly may adopt a new official zoning map as herein provided which shall be based upon and generated from the most current digital zoning map computer tape, and upon adoption such new zoning map, or part thereof, shall supersede the prior official zoning map, or part thereof, and thereafter constitute the official zoning map.

(Code 1969, §49.15.010; Ord. No. 263, §§2—4, 9-6-77; Ord. No. 680, §§2, 3, 3-20-89; Ord. No. 738, §7, 4-23-90; Ord. No. 851, §1, 4-20-92; Ord. No. 1363, §2, 7-18-05)



Ketchikan Gateway Borough's Online GIS Zoning Map of Ward Cove as of June 19, 2015.

<http://206.223.197.181/kgbgisviewer/>



CG- General Commercial; IH- Heavy Industrial; IL- Light Industrial; FD- Future Development; RL- Low Density Residential Zone

## **Attachment 8**

Commitment for Title Insurance

**ALASKA ESCROW AND TITLE INSURANCE AGENCY, INC.**

2030 Sea Level Drive Suite 201  
Ketchikan, Alaska 99901  
TEL:(907)225-9077 FAX:(907)225-9076

8800 Glacier Hwy Suite 102  
Juneau, Alaska 99801  
TEL:(907)789-1161 FAX:(907)789-1159

**Title Officer:** Mike Jausoro  
**Reference:** 68704

**Order Number:** 38427

**COMMITMENT FOR TITLE INSURANCE**  
**SCHEDULE A**

Updated March 16, 2010 (See Effective Date)bm  
Amended and Updated March 23, 2010 (See effective date) KAS  
Amended May 10, 2010 (See Effective date)bm

**1. Effective Date:** March 22, 2010 at 8:00 a.m.

**2. Policy Or Policies To Be Issued:**

( X ) ALTA OWNER S POLICY, (6/17/06)  
( X ) STANDARD ( ) EXTENDED

**Amount:** TO BE DETERMINED  
**Premium:** \$250.00

**Proposed Insured:** State of Alaska

( ) ALTA LOAN POLICY (6/17/06)

**Amount:**  
**Premium:**

**3. The estate or interest in the land described or referred to in this Commitment and covered herein is:**

FEE SIMPLE ESTATE

**4. Title to said estate or interest in said land is at the effective date hereof vested in:**

Ketchikan Gateway Borough

**5. The land referred to in this commitment is described as follows:**

Lots 2 and 3, Tract 3005 of the Ward Cove-West Replat of Lot 3, Gateway Subdivision (Plat 2000-41), apportion of U.S. Survey 1862, U.S. Survey 1706, unsubdivided remainder of U.S. Survey 1754 and a portion of Alaska Tidelands Survey No. 1, according to the plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.

We have been informed but  
do not insure that the said  
property is also known as:  
NHN North Tongass Highway  
Ketchikan, Alaska 99901



## **SCHEDULE B**

### **REQUIREMENTS**

#### **I. The following are the requirements to be complied with:**

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured:
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Pursuant to the State of Alaska, Division of Insurance Order No. R92-1, dated May 4, 1992, the charge for providing this commitment is to be billed at this time. Payment of this charge must be made within 30 days of this initial billing. In the event this transaction fails to close, the minimum billing will be the cancellation fee in accordance with our filed rate schedule.

NOTE: Investigation should be made to determine if there are any service, installation, maintenance, construction, reimbursement and/or hookup charges/costs for sewer, water, garbage, electricity or other utilities outstanding and not of record.

### **NOTICE**

In 1999, the Alaska Department of Natural Resources began recording maps of claimed rights of way which may have been created under a federal law known as "RS 2477", pursuant to Alaska Statute 19.30.400. Because the maps are imprecise, the exception from coverage shown on Paragraph 2f. General Exceptions has been taken. Questions regarding the State's RS 2477 claims should be directed to the Department of Natural Resources, Public Information Center, 770 W. 5<sup>th</sup> Avenue, Anchorage, Alaska 99501.

#### **II. Schedule B of the Policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:**

- 1) Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment

## **SCHEDULE B**

### **GENERAL EXCEPTIONS**

- 2) a. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings whether or not shown by the records of such agency or by the public records.
- b. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
- c. (1) For Owners Policy: Easements, claims of easements, or encumbrances which are not shown by the public records.  
(2) For Loan Policy: Easements, liens or encumbrances, or claims thereof which are not shown by the public records.
- d. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
- e. (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excepted under (1), (2) or (3) are shown by the public records.
- f. Rights of the state or federal government and/or public in and to any portion of the land for right of way as established by federal statute RS 2477 (whether or not such rights are shown by recordings of easements and/or maps in the public records by the State of Alaska showing the general location of these rights of way).
- g. Any lien or right to lien, for services, labor or material heretofore or hereafter furnished imposed by law and not shown by the public records.

### **SPECIAL EXCEPTIONS**

- 3) Taxes and/or assessments, if any, due the City of Ketchikan and/or Ketchikan Gateway Borough, a report of which will follow.
- 4) Reservations and exceptions as contained in the U.S. Patent and acts relating thereto.
- 5) Reservations and exceptions as contained in the State of Alaska Patent and acts relating thereto.
- 6) Easements and notes as shown on Plat No. 2000-41 and Plat No. 2006-10.
- 7) Any prohibition of or limitation of use, occupancy or improvements of the land resulting from the rights of the public or riparian owners to use any portion thereof which is now or formerly may have been covered by water, and the rights of the public as set forth in Alaska statutes 38.05.128.

(Continued on next page)

## **SCHEDULE B**

- 8) Terms, provisions and reservations under the Submerged Land Act (43 USC 1301, 67 Stat. 29) and the Enabling Act (Public Law 85-508, 72 Stat. 339).
- 9) Paramount rights and easements in favor of the United States to regulate commerce, navigation, fishing and the production of power.
- 10) Any adverse claim based upon the assertion that any portion of said land was not tidelands subject to disposition by the State of Alaska, or that any portion thereof has ceased to be tidelands by reason of erosion, or by reason of having become upland by accretion.
- 11) Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003 and recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004128-0.
- 12) Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by an between Ketchikan Pulp Company, Grantor, and the State of Alaska, Department of Natural Resources, Grantee, according to the terms and provisions thereof dated October 28, 1999 and recorded October 28, 1999 in Book 305 at Page 772.

Said instrument contains the following provision:

Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, Including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 19\_\_\_\_ RECORDED IN THE KETCHIKAN RECORDED DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON \_\_\_\_\_, 19\_\_\_\_, IN BOOK \_\_\_\_ AT PAGE \_\_\_\_ THAT IS IN FAVOR OF AN ENFORCEBLY BY, THE STATE OF ALASKA.

(Continued on next page)



## **SCHEDULE B**

- 13) Reservations and exceptions as contained in Deed recorded November 15, 1999 in Book 306 at Page 72 as follows:

Reserving and excepting, however, unto the Grantor, all right, title, equity and interest as set forth in the Plant Systems Easement, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Plant Systems Easement establishes the terms and conditions of such easement over and upon the following of the parcels, described in Exhibit 1:

NOTE: Said instrument also contained the following conditions, reservations and restrictions which have been released by instrument recorded November 1, 2002 at Instrument No. 2002-004405-0.

Subject to, however, all covenants, restrictions and agreements as set forth in the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities establishes the terms and conditions of covenants applicable to, and binding upon, Parcel No. 1 through and including Parcel No. 15 of the parcels of real property described in Exhibit 1.

Reserving and excepting, however, unto the Grantor, all right, title, equity and interest as set forth in the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities establishes the terms and conditions of an easement over and upon Parcel No. 1 through and including Parcel No. 15 of the parcels of real property described in Exhibit 1.

- 14) Associated Real Property and Water Rights Agreement, and the terms and provisions thereof, entered into by an between Ketchikan Pulp Company, a Washington corporation, Seller, and Gateway Forest Productions, Inc., an Alaska corporation, Purchaser, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 84.

Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

- 15) Plant Systems Easement, and the terms and provisions thereof, entered into by an between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 99.

Amendment to Plant Systems Easement recorded December 15, 2000 in Book 319 at page 360.

Second Amendment to Plat Systems Easement recorded January 3, 2001 in Book 320 at Page 421.

(Continued on next page)

## **SCHEDULE B**

- 16) Water Use Site Easement, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 125.

Amendment to Water Use Site easement recorded December 12, 2000 in Book 319 at page 250.

- 17) Option Agreement to Purchase Water Use Site, and the terms and provisions thereof, entered into by and between Gateway Forest products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 149.

Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0 also with Exception No. 24.

- 18) Option Agreement to Purchase Excess Water, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 160.

Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

(Continued on next page)

## **SCHEDULE B**

- 19) Terms and provisions as contained in that certain Warranty Deed dated May 2, 2006 and recorded May 2, 2006 at Document No. 2006-001753-0 including the following:

FURTHER SUBJECT TO the limitations and obligations identified in Section 15 (d) of the Real Estate Sale Agreement entered into by and between GRANTEE, Renaissance Ketchikan Group LLC, as Purchaser, and GRANTOR, Ketchikan Gateway Borough, as Seller, executed on behalf of the GRANTOR/Seller by Borough Manager Roy Eckert on October 13, 2005 and identified as Borough Document 05-114, as amended by Addendum One, Addendum Two, Addendum Three and Addendum Four to said Real Estate Sale Agreement (hereinafter, collectively, "Amended Real Estate Sale Agreement"), including without limitation the following:

GRANTEE in further consideration for, and as a condition to, this Amended Real Estate Sale Agreement, hereby agrees that the real property interests it is hereby acquiring from the GRANTOR are subject to the same limitations and conditions as the ones applicable to the GRANTOR which are set forth in that certain Agreement dated July 13, 2003, by and between Ketchikan Pulp Company and the Ketchikan Gateway Borough, which is the GRANTOR hereunder, a copy of which Agreement is attached to the Amended Real Estate Sale Agreement as Exhibit O and is incorporated herein by reference as though fully set forth. In particular, all releases, waivers and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including but not limited to environmental claims, whether arising under CERCLA, 42 USC §9601 et seq.; RCRA, 42 USC §6901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the GRANTOR concurred, are hereby agreed to be applicable and in full force and effect.

Further the parties to this agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs and assigns, are third party beneficiaries of this agreement and any future agreements concerning the property.

GRANTEE HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THE PROPERTY.

FURTHER SUBJECT TO the terms and provisions of that certain Agreement dated July 13, 2003 by and between Ketchikan Pulp Company and the Ketchikan Gateway Borough, which is the GRANTOR hereunder, a copy of which Agreement is attached to the Amended Real Estate Sale Agreement as Exhibit O, and is incorporated herein by reference as fully as if set forth.

FURTHER SUBJECT TO the leases identified in Exhibit E to the Amended Real Estate Sale Agreement.

(Special Exception No. 19 continued to next Page)



## **SCHEDULE B**

RESERVING AND EXCEPTING, HOWEVER, UNTO THE GRANTOR, reservation of a 15% water usage right as provided in Section 3(a)(i) and 3(c) of the October 13, 2005 Real Estate Sale Agreement (Borough Document 05-114).

RESERVING AND EXCEPTING, HOWEVER, UNTO THE GRANTOR, reservation of the personal property identified in Section 3(a)(vii) and on Exhibit K of the October 13, 2005 Real Estate Sale Agreement (Borough Document 05-114).

- 20) Certain springing easements created by foreclosure as set forth on Exhibit "B" and "C" of that certain Deed of Trust dated November 2, 1999 and recorded November 5, 1999 in Book 306 at Page 169.
- 21) Acknowledgment That Interest Conveyed Are Subject to Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between the Ketchikan Gateway Borough, an Alaska municipal corporation, and Ketchikan Pulp Company, according to the terms and provisions thereof, dated August 2, 2003 and recorded August 4, 2003 under Ketchikan Recording District Serial No. 2003-004419-0.
- 22) Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.
- 23) Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, and Ketchikan Pulp Company, a Washington corporation, according to the terms and provisions thereof, dated July 14, 2004 and recorded July 15, 2004 under Ketchikan Recording District Serial No. 2004-002967-0.

NOTE: Effects of that certain Subordination Agreement, executed by Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0.

- 24) Reservations, conditions, and easements as contained in that certain Quitclaim Deed between Ketchikan Pulp Company, a Washington corporation, Grantor, and the Ketchikan Gateway Borough, a municipal corporation, Grantee, dated July 11, 2003 and recorded July 22, 2003 at Document No. 2003-004183-0.
- 25) Consolidated Easement for Landfill entered into by and between the Ketchikan Gateway Borough, a municipal corporation and Ketchikan Pulp Company, a Washington corporation, according to the terms and provisions thereof, dated September 23, 2005 and recorded at Document No. 2005-003857-0.
- 26) Easement for Utility Line granted by Gateway Forest Products, Inc., Grantor, in favor of the City of Ketchikan d.b.a. Ketchikan Public Utilities, Grantee, according to the terms and provisions thereof, recorded March 16, 2000 in Book 310 at Page 500.

(Continued on next page)

## **SCHEDULE B**

- 27) Easement for Utility Line granted by James K. Erickson, Gateway Forest Products, Inc., Grantor, to the City of Ketchikan d.b.a. Ketchikan Public Utilities, its successors and assigns, Grantee, according to the terms and provisions thereof, dated February 17, 2001 and recorded February 22, 2001 in Book 322 at Page 159.
- 28) Easement for Landfill Outfall, granted by Gateway Forest Products, Inc., an Alaska corporation, Grantor, in favor of Ketchikan Pulp Company, a Washington corporation, its successors and assigns, Grantee, according to the terms and provisions thereof, dated April 30, 2002 and recorded April 30, 2002 under Ketchikan Recording District, Serial No. 2002-001755-0.
- (Affects a portion lying within ATS No. 1 and other property)
- 29) Terms and provisions as contained in that certain Quitclaim Deed dated October 12, 2007 and recorded on October 12, 2007 at Document No. 2007-004314-0.
- 30) Judgment, and the terms and provisions thereof:
- |               |   |
|---------------|---|
| AGAINST:      | Renaissance Ketchikan Group, LLC                                    |
| AMOUNT:       | \$102,312.42 plus additional interest and penalties that may accrue |
| RECORDED:     | April 8, 2008   |
| DOCUMENT NO.: | 2008-001196-0   |
- 31) A copy of this report has been sent to Stewart Title for approval; said report is subject to any changes or amendments that may be required by Stewart Title.

Mike Jausoro/kas  
Updated March 16, 2010 (See Effective Date)bm  
Amended and Updated March 23, 2010 (See effective date) KAS  
Amended May 10, 2010 (See Effective date)bm

**NOTE:** Please be aware that a change in coverage amount may necessitate a change in the premium amount.

### **END OF GENERAL AND SPECIAL EXCEPTIONS**

## **Attachment 9**

Letter from Perkins Coie, to Jacques Gusmano, EPA dated June 27, 2006, regarding Institutional Control Documents for Ward Cove Pipeline Parcels





Eric B. Fjelstad  
PHONE: 907.263.6973  
EMAIL: efjelstad@perkinscoie.com

1029 West Third Avenue, Suite 300  
Anchorage, AK 99501-1981  
PHONE: 907.279.8561  
FAX: 907.276.3108  
www.perkinscoie.com

June 27, 2006

Jacques Gusmano  
U.S. Environmental Protection Agency  
Region 10 – Alaska Operations Office  
Federal Building Room 537  
222 West Seventh Avenue, No. 19  
Anchorage, AK 99513-7588

**Re: Institutional Control Documents for Ward Cove Pipeline Parcels**

Dear Mr. Gusmano:

Please find enclosed copies of the following documents that, with the cooperation of the State of Alaska and the Ketchikan Gateway Borough, have been recorded in the Ketchikan Recording District to implement institutional controls with respect to the three Ward Cove pipeline parcels under the auspices of the CERCLA consent decree in *United States v. Gateway Forest Products, Inc., et al*, No. A00-225 CV (D. Alaska) ("Consent Decree"):

1. Patent from State of Alaska to Ketchikan Gateway Borough of Section 34, Lot 1 ("the 3.09 Acre Parcel") that is referred to in paragraph (46) of the Ward Cove Consent Decree as "the pipeline access road area." Patent to the 3.09 Acre Parcel was recorded on May 1, 2006 as Document No. 2006-1705;
2. Equitable Servitude and Easement (AS 34.17.010-AS 34.17.060), executed by the Ketchikan Gateway Borough, as Grantor, in favor of the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, Grantee, dated April 24, 2006, and recorded May 1, 2006, at Document No. 2006-001706-0, implementing institutional controls with respect to the 3.09 Acre Parcel;
3. Equitable Servitude and Easement (AS 34.17.010-AS 34.17.060), executed by the Ketchikan Gateway Borough, as Grantor, in favor of the State of Alaska, Department of Natural Resources, Division of Mining, Land and

[16411-0031/AA061780.005]

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Perkins Coie LLP and Affiliates

June 27, 2006

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Water, Realty Services Section, Grantee, dated April 24, 2006, and recorded May 1, 2006, at Document No. 2006-001707-0, implementing institutional controls with respect to portions of U. S. Survey 3400 and U. S. Survey 2923;

4. Subordination Agreement, executed by Ketchikan Pulp Company and the Ketchikan Gateway Borough for the benefit of the State of Alaska, dated May 1, 2006, and recorded May 1, 2006, at Document No. 2006-001708-0, by which KPC agreed to subordinate certain of its prior recorded interests to the rights of the State of Alaska under the two Equitable Servitude and Easement documents noted above; and,
5. Correction to Equitable Servitude and Easement dated May 26, 2006, and recorded June 2, 2006, at Document 2006-002278-0, by which Exhibit 1 to the institutional controls regarding U. S. Survey 3400 and U. S. Survey 2923 was effectively added to that document and made a matter of record.

The parcels made subject to these institutional controls are located upland of KPC's former Ward Cove pulp mill site, near the pipeline from the Connell Lake Dam. The institutional control documents were drafted in conformance with Appendix H of the Consent Decree, as well as the institutional control document that EPA and ADEC previously approved for the Ward Cove Landfills in 2001.

This completes obligations under the Consent Decree for the establishment of institutional controls at Ward Cove. To summarize, there are now four controlling instruments in place. The first instrument, entitled "Environmental Protection Easement and Declaration of Restrictive Covenants," was executed on October 28, 1999, and recorded October 28, 1999, at Book 305, Page 772, and applies to the main plant parcel and ancillary areas, including Alaska Tidelands Survey No. 1. The second instrument, entitled "Environmental Easement," was executed on June 29, 2001, was recorded August 6, 2001, at Book 329, Page 680, and applies to the Ward Cove landfill. Copies of these are also enclosed. The most recent two instruments, just executed and recorded in May 2006, apply to areas adjacent to the pipeline access road, upland of north of North Tongass Highway. Of these four areas, KPC still owns and operates the Ward Cove Landfills and retains responsibility for implementing the institutional controls in that area.

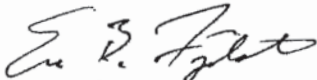
The State of Alaska was represented in this matter by Ruth Hamilton Heese from the Attorney General's Office ((907) 465-3600; [Ruth\\_Hamilton\\_Heese@law.state.ak.us](mailto:Ruth_Hamilton_Heese@law.state.ak.us))

June 27, 2006

Page 3

and Sandra Singer from the Department of Natural Resources ((907) 269-8586; sandra\_singer@dnr.state.ak.us). Should you have any questions, please contact Ms. Heese, Ms. Singer, or the undersigned.

Sincerely,



Eric B. Fjelstad

EBF:sc

cc: Gina Belt, U.S. DOJ w/encs.  
Bill Janes, ADEC w/encs.  
~~Barry J. Hogarty w/encs.~~  
Ruth Hamilton Heese, Dept. of Law w/o encs.  
Sandra Singer, ADNR w/o encs.  
Scott Brandt-Erichsen, KGB w/o encs.  
Phil Benning, KPC w/o encs.  
John Peterson, Ziegler Law Firm w/o encs.



## **Attachment 10**

Equitable Servitude and Easement, and Subordination Agreement Pipeline Parcels, by Ketchikan Gateway Borough to ADNR, recorded May 1, 2006

**EQUITABLE SERVITUDE AND EASEMENT**

AS 34.17.010 – AS 34.17.060

This Equitable Servitude and Easement (hereinafter "Instrument") is made by and between the Ketchikan Gateway Borough, a second class Borough of the State of Alaska (whose address is 344 Front Street, Ketchikan, Alaska 99901), as grantor (hereinafter, with its successors and assigns, "Grantor"), and the State of Alaska (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 West Seventh Avenue, Suite 1050A, Anchorage, Alaska 99501-3579), as grantee (hereinafter, with its assigns, "Grantee"), for good and valuable consideration.

WHEREAS, all of the real property referred to herein is located in, and all patents referred to as recorded are in the **Ketchikan Recording District**, First Judicial District, State of Alaska;

WHEREAS, Grantor is the owner of the following described parcel of real property, which is hereinafter referred to as the "Property":

TOWNSHIP 74 SOUTH, RANGE 90 EAST, COPPER RIVER MERIDIAN, ALASKA, Section 34: Lot 1, containing 3.09 acres more or less, according to the Survey Plat accepted by the United States Department of Interior, Bureau of Land Management in Anchorage, Alaska on January 28, 2003, and officially filed March 3, 2003;

WHEREAS, Grantor wishes to make the Property subject to this Instrument;

WHEREAS, the Property was formerly used by Ketchikan Pulp Company ("KPC") for storage of industrial materials, which resulted in its contamination with substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), and 18 AAC 75;

WHEREAS, on November 20, 2000, KPC, Gateway Forest Products ("GFP"), and the United States entered into a CERCLA consent decree in the case of *United States v. Gateway Forest Products, Inc.*, et al, No. A00-225 CV (D. Alaska) ("Consent Decree") to address hazardous substances contamination issues associated with KPC's historical operating areas at Ward Cove, including the Property;

WHEREAS, the Consent Decree required KPC and Gateway to implement appropriate institutional controls on certain portions of real property owned or controlled by KPC or GFP, as the case may be;

WHEREAS, the Consent Decree is binding upon KPC, GFP, the United States, and their respective heirs, successors, and assigns;

WHEREAS, KPC was granted permission to utilize the Property under a 1952 Amendment to Special Use Permit, and that Amendment extended to the Property, the terms of the 1951 Forest Service Special Use Permit that allowed KPC to build and operate the Connell Lake dam, and the pipeline for it that runs adjacent to the Property on U.S. Survey 3400;

WHEREAS, Grantor previously included areas adjacent to U.S. Survey 3400 in municipal entitlement lands that Grantor selected from the State of Alaska, and such lands selected by Grantor included the Property, but issuance of patent to the State of Alaska was delayed;

WHEREAS, investigation and remediation work undertaken by KPC and completed in 1998 identified the Property as an area where institutional controls would be required;

WHEREAS, KPC entered a services agreement with the U.S. Department of Interior, Bureau of Land Management ("BLM") in 2000 under which, when BLM undertook to survey surrounding municipal entitlement lands for patent to the State of Alaska, it would survey the Property as a separate parcel. This would allow the area to be made subject to institutional controls to be patented by BLM as a separate parcel;

WHEREAS, the Patent to the State of Alaska with respect to the Property was issued by BLM on November 21, 2005 as Fed. Patent No. 50-2006-0058, recorded on the 30th day of November, 2005 as Document No. 2005-4744-0;

WHEREAS, the State of Alaska issued the Patent to Grantor with respect to the Property on the 25<sup>th</sup> day of April, 2006 as Patent No. 20179, recorded concurrently with this Instrument;

WHEREAS, GFP went into bankruptcy during 2001;

WHEREAS, on July 14, 2003, KPC, GFP, and Grantor entered into a settlement agreement ("Settlement Agreement") to resolve issues arising from or relating to the GFP bankruptcy. Under the Settlement Agreement, the Grantor undertook obligations relating to establishment of and compliance with institutional controls on property formerly owned by KPC and GFP, including the Property;

WHEREAS, the Alaska Department of Environmental Conservation ("ADEC") has determined that groundwater is not a current or potential future drinking water source on or around the Property;





WHEREAS, ADEC has determined, and Grantor has agreed, that the recording of this Instrument is necessary as an institutional control as part of the Consent Decree; and

WHEREAS, the requirements, rights, covenants, conditions, prohibitions, and restrictions of this Instrument (hereinafter "Provisions") are intended to protect human health, safety, and welfare and the environment and maintain and enhance water quality.

NOW, THEREFORE, pursuant to the laws of Alaska, including AS 34.17.010-AS 34.17.060, Grantor does hereby grant and convey to Grantee forever, with warranties of title, subject however to easements, rights, reservations, conditions, restrictions, and limitations of the United States, and third parties, if any, of record, an equitable servitude and easement, including the right of entry thereto, of the nature and character and to the extent set forth below.

**1. Restrictions:**

Unless otherwise specifically authorized in writing by ADEC or its successor in administrative function or assigns, the Property is subject to the following restrictions (hereinafter, "Restrictions"):

- a. Uses of the Property are limited to commercial or industrial use.
- b. The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care, or any purpose necessitating around-the-clock residence by humans.
- c. Drilling of drinking water wells is prohibited.
- d. Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
- e. No activities shall be allowed on the Property, without prior approval of ADEC in writing, that involve use of groundwater, or potential exposure of Waste Materials within the Property. Waste Materials shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or AS 46.03.826(5); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6903(27), AS 46.03.900(26), or the State of Alaska Solid Waste Management Regulations, 18 AAC 60.

**2. Required Activities:**

Grantor shall comply with the Restrictions in this Instrument and with the terms and conditions of any ADEC permit regulating activities on the Property.



### 3. Right-of-Entry:

During reasonable hours, after reasonable notice, and subject to reasonable security requirements, ADEC and its Authorized Representatives shall have the right to enter in, on, upon, over, and across any portion of the Property to determine whether the Provisions herein have been or are being complied with. This Right-of-Entry shall include a right of access for, but not be limited to, conducting the following activities:

- a. Verifying any data or information submitted to the United States or the State of Alaska.
- b. Conducting investigations relating to contamination located at or near the Property.
- c. Obtaining samples.
- d. Assessing the need for, planning, or implementing additional response actions at or near the Property.
- e. Implementing the activities required to be performed under the Consent Decree pursuant to the conditions set forth in Paragraph (101) of the Consent Decree.
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Grantor or its agents consistent with Section XXIV (Access to Information) of the Consent Decree.
- g. Monitoring and assessing compliance with the Consent Decree and any requirements or restrictions of this instrument.
- h. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

Violation of, or reasonable suspicion of the violation of, any of the Provisions herein shall give ADEC and its Authorized Representatives the right, privilege, and license to enter in, on, upon, over, and across any portion of the Property and to investigate, abate, mitigate, or cure such violation, at the expense of Grantor, provided written notice of the violation is given to Grantor, describing what activity is necessary to investigate or correct the violation, and Grantor fails to cure the violation within a time specified in such notice. Such activities include, but are not limited to, the right to store, move, and remove equipment and supplies; construct, operate, maintain, alter, repair, and remove devices for the monitoring, containment, and treatment of contamination in soil, air and water; investigate and collect samples; excavate and remove waste, pollutants, hazardous substances, contaminated soils, contaminated waste; deposit uncontaminated soil; and the performance of any other activity which may be reasonably necessary and incident to ADEC's investigation and response. Any such entry by ADEC or its Authorized Representatives shall not be deemed a trespass or any other wrongful entry or remaining on the Property, and Grantee shall not be subject to liability to Grantor for such entry



or any action taken to investigate, abate, mitigate, or cure a violation. ADEC and its Authorized Representatives shall be considered invitees on the Property, and the Grantor shall make every reasonable effort to inform ADEC and its Authorized Representatives of hazards or hazardous areas to prevent personal injury.

To enable them to carry out the activities contemplated under this Instrument, Grantor also grants and conveys to Grantee, for the use and benefit of ADEC and its Authorized Representatives, a right of access over and across those portions of the following-described real property: U. S. Survey 3400; Triangle, U. S. Survey 2923; and, that portion of U. S. Survey 1056 lying northerly of the northerly boundary line of North Tongass Highway, Ketchikan Recording District, First Judicial District, State of Alaska, being adjacent to U. S. Survey 2923 and comprised of 5.16 acres. The portions of these three parcels which shall be subject to this right of access shall consist of the areas thereof located between the Property and the adjacent public rights-of-way of North Tongass Highway and Revilla Road, and which are subject to the Easement by and between Ketchikan Pulp Company, as grantor, and the United States of America, acting by and through the Forest Service, Department Agriculture, recorded October 23, 2000, at Book 317, Page 595 ("the Easement"). In addition, to the extent the Property is adjacent to, but not abutting, the areas subject to the Easement, the right of entry hereby granted shall also extend to those areas of the foregoing parcels which are necessary or convenient to allow access to the Property. With respect to the areas subject to the Easement, this right of access is granted in accordance with, and subject to, the terms of the Easement. The right of access hereby granted is for purposes of allowing ADEC and its Authorized Representatives to conduct any and all activities contemplated by this Instrument.

#### **4. Contaminants of Concern that May be Present on the Property:**

During an investigation and remediation of the Property completed in 1998, contaminated soil and surface debris were removed from the Property by KPC. There are areas on the Property where contaminants may remain in the soil in concentrations potentially greater than cleanup levels established by ADEC or EPA. These contaminants include petroleum products, polychlorinated bipheynyls, pentachlorophenol, lead, chromium, and arsenic. Most areas, where active remediation activities occurred, were filled to original grade with clean soil, covered with clean soil, and seeded with grass.

#### **5. General Provisions:**

a. This Instrument is for the benefit of Grantee and conveys the perpetual right to Grantee, acting through ADEC and contractors, employees, and authorized representatives acting on ADEC's behalf (herein, "Authorized Representatives"), to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

b. No right of access or use by the general public to any portion of the Property is conveyed or authorized by this Instrument.





c. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee, or grantee and each of their heirs, successors, transferees, or assigns agrees with Grantor and each other to be bound by the Provisions herein.

d. Grantor hereby reserves unto itself, its successors, and assigns, any and all rights and privileges in and to the use of the Property, including the right of access to the Property, which are not contrary to the restrictions, rights, and easement granted herein.

e. The Provisions herein shall run with the land in perpetuity, and shall be binding upon Grantor, and each of Grantor's heirs, successors, grantees, lessees, transferees, and assigns and each of their heirs, successors, grantees, lessees, transferees, and assigns.

f. Nothing in this Instrument shall relieve Grantor from liability for injuries occurring on, or resulting from, its activities on the Property for which Grantor would otherwise ordinarily be liable. Grantor shall be liable for and shall indemnify and hold Grantee harmless from liability for injuries and damage which arise because of its status as Grantee. Grantor shall also indemnify Grantee for all costs, including attorneys' fees, which arise from its status as Grantee.

g. Grantor hereby covenants to and with Grantee that Grantor is lawfully seized of the surface estate, in fee simple, of the Property, has good and lawful right and power to sell and convey the same, that the same is free and clear of encumbrances, except as specified herein and as of record, and that Grantor will forever warrant and defend the equitable servitude and easement (including the right of entry) conveyed to Grantee by this Instrument against the claims and demands of all persons.

h. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Instrument or any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Instrument or for imposing any Provision which may be unenforceable.

i. This Instrument may be enforced by Grantors or Grantee in a court of law. The interpretation and performance of this Instrument shall be governed by the laws of Alaska.

j. Upon violation of any of the Provisions herein, Grantee may seek any available legal or equitable remedy to enforce this Instrument, and shall be entitled to recover damages for violations of the Provisions herein to the public or to the environment protected herein under applicable federal or state law.



k. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Ketchikan Gateway Borough  
Attn: Borough Attorney  
344 Front Street  
Ketchikan, AK 99901

To Grantee:

Department of Natural Resources  
Director, Division of Mining, Land and Water  
Realty Services Section  
550 West Seventh Avenue, Suite 1050A  
Anchorage, AK 99501-3579

With a copy to:

Program Manager, Contaminated Sites Program  
Alaska Department of Environmental Conservation  
Division of Spill Prevention and Response  
410 Willoughby, Suite 303  
Juneau, AK 99801-1795

l. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application, and the other Provisions herein shall remain in full force and effect.

m. Any general rule of construction to the contrary notwithstanding, this Instrument shall be construed so as to effect the purpose for which it was granted to Grantee. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Instrument.

n. Grantor shall notify ADEC and Grantee at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Grantor's interest in the Property. Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: The interest conveyed hereby is subject to an Equitable Servitude and Easement dated \_\_\_\_\_, 2\_\_\_\_, recorded in the public land records on \_\_\_\_\_, 2\_\_\_\_, in book \_\_\_\_\_, page \_\_\_\_\_, of the Ketchikan Recording District, First Judicial District, State of Alaska, in favor of, and enforceable by, the State of Alaska.



o. Grantor shall notify ADEC within ten (10) days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property under the Ketchikan Gateway Borough zoning code or any successor code.

p. This Equitable Servitude and Easement does not impose liability on the State of Alaska nor does it make the State of Alaska a responsible party under the Comprehensive Environmental Response, Compensation and Liability Act or AS 46.03 or similar federal or state statutes, regulations or local ordinances.

**6. Termination:**

This Instrument shall be vacated and shall be of no further force and effect upon the recordation in the Ketchikan Recording District, First Judicial District, State of Alaska by ADEC of a Notice of Vacation of Equitable Servitude and Easement. ADEC shall execute and record a Notice of Vacation of Equitable Servitude and Easement at such time as it, in its sole discretion, determines that the prohibited and required activities and other provisions of this Instrument are no longer necessary for the protection of human health, safety, welfare, and the environment. The Notice of Vacation of Equitable Servitude and Easement shall be executed by ADEC and state that ADEC has determined that the prohibited and required activities and other provisions of the Equitable Servitude and Easement are no longer necessary for the protection of human health, safety, and welfare, and the environment and further state that the Equitable Servitude and Easement are hereby vacated. If Grantor requests a termination of this Instrument, any costs incurred by ADEC in reviewing a potential termination shall be paid by Grantor.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the dates written below. This Instrument is effective on the date of the last acknowledged signature.

**[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]**





KETCHIKAN GATEWAY BOROUGH

By Roy A. Eckert  
Roy A. Eckert  
General Manager

GRANTOR'S ACKNOWLEDGMENT

STATE OF ALASKA                     )  
   ) ss.  
FIRST JUDICIAL DISTRICT         )

THIS IS TO CERTIFY that on this 24 day of April, 2006, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy A. Eckert, to me known and known to be the ~~General Manager~~ <sup>Borough</sup> and the person who executed the above and foregoing Equitable Servitude and Easement on behalf of the Ketchikan Gateway Borough, and who acknowledged to me that he signed the same as the ~~General Manager~~ <sup>Borough</sup>, in the name of and for and on behalf of the Ketchikan Gateway Borough, freely and voluntarily and by authority of the Ketchikan Gateway Borough Assembly and on oath stated that he was authorized to execute said instrument.

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

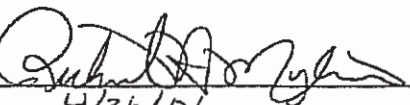


Notary Public for Alaska  
Harriett J. Edwards  
My commission expires: 1/27/2010

## ACCEPTANCE

ON BEHALF OF the State of Alaska, pursuant to AS 38.05.035(a)(12), I do hereby accept this Equitable Servitude and Easement conveying to the State of Alaska, its successors in administrative function and assigns, the interests in the Property described therein as an Institutional Control, pursuant to 18 AAC 75.375 (as of 1/22/99), to be managed and enforced by the Department of Environmental Conservation or its successor, pursuant to the management right assignment issued as ADL 107454 for the portion of U.S. Survey 3400 described in this Instrument, to protect human health, safety, and welfare, and the environment and to enhance or maintain water quality.

### STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES

By:   
4/26/06  
\_\_\_\_\_  
Director  
Division of Mining, Land and Water

#### Location Index:

Section 4,  
Township 74 S., Range 90 E.,  
Copper River Meridian, Alaska

Section 33,  
Township 75 S., Range 90 E.,  
Copper River Meridian, Alaska

#### AFTER RECORDING RETURN TO:

Ruth Hamilton Heese  
Assistant Attorney General  
State of Alaska  
Department of Law  
Environmental Section  
P.O. Box 110300  
Juneau, AK 99811



**EQUITABLE SERVITUDE AND EASEMENT**

AS 34.17.010 – AS 34.17.060

This Equitable Servitude and Easement (hereinafter "Instrument") is made by and between the Ketchikan Gateway Borough, a second class Borough of the State of Alaska (whose address is 344 Front Street, Ketchikan, Alaska 99901), as grantor (hereinafter, with its successors and assigns, "Grantor"), and the State of Alaska (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 West 7th Avenue, Suite 1050A, Anchorage, Alaska 99501-3579), as grantee (hereinafter, with its assigns, "Grantee"), for good and valuable consideration.

WHEREAS, all of the real property referred to herein is located in, and all deeds referred to as recorded are in the **Ketchikan Recording District**, First Judicial District, State of Alaska;

WHEREAS, Grantor is the owner of the following described parcels of real property:

U. S. Survey 3400; and

That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning, hereinafter referred to as "Triangle, U. S. Survey 2923."

WHEREAS, Grantor wishes to make two specific areas of U. S. Survey 3400 and one specific area within the Triangle, U. S. Survey 2923 subject to this Instrument;

WHEREAS, the two portions of U. S. Survey 3400 and the one area within the Triangle, U. S. Survey 2923, which are to be made subject to this Instrument are described with particularity in Exhibit 1, attached hereto and incorporated herein by reference;

WHEREAS, the areas of U. S. Survey 3400 and of the Triangle, U. S. Survey 2923 to be made subject to this Instrument are described in Exhibit 1 as, respectively, "Parcel 1," "Parcel 2" and "Parcel 3," and are hereinafter referred to collectively as the "Property".

WHEREAS, the Property was formerly used by Ketchikan Pulp Company ("KPC") for storage of industrial materials, which resulted in its contamination with substances defined as



hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), and 18 AAC 75;

WHEREAS, on November 20, 2000, KPC, Gateway Forest Products ("GFP"), and the United States entered into a CERCLA consent decree in the case of *United States v. Gateway Forest Products, Inc.*, et al, No. A00-225 CV (D. Alaska) ("Consent Decree") to address hazardous substances contamination issues associated with KPC's historical operating areas at Ward Cove, including the Property;

WHEREAS, the Consent Decree required KPC and Gateway to implement appropriate institutional controls on certain portions of real property owned or controlled by KPC or GFP, as the case may be;

WHEREAS, the Consent Decree is binding upon KPC, GFP, the United States, and their respective heirs, successors, and assigns;

WHEREAS, KPC conveyed Triangle, U.S. Survey 2923 to GFP by a Quitclaim Deed recorded on November 5, 1999, at Book 306, Page 72;

WHEREAS, GFP went into bankruptcy during 2001 and, through a series of foreclosures and related matters, the most recent of which was a Quitclaim Deed to Grantor recorded on December 18, 2003, as Document No. 2003-006529-0, Grantor became owner of Triangle, U.S. Survey 2923;

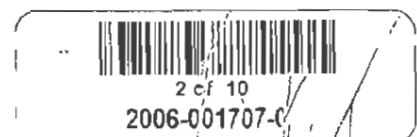
WHEREAS, on July 14, 2003, KPC, GFP, and Grantor entered into a settlement agreement ("Settlement Agreement") to resolve issues arising from or relating to the GFP bankruptcy. Under the Settlement Agreement, the Grantor undertook obligations relating to establishment of and compliance with institutional controls on property formerly owned by KPC and GFP, including the Property;

WHEREAS, by Quitclaim Deed executed incident to the Settlement Agreement on July 14, 2003, and recorded on July 18, 2003, as Document No. 2003-004125-0, KPC conveyed U.S. Survey 3400 to Grantor. That Quitclaim Deed explicitly incorporated the Settlement Agreement into its terms;

WHEREAS, the Alaska Department of Environmental Conservation ("ADEC") has determined that groundwater is not a current or potential future drinking water source on or around the Property;

WHEREAS, ADEC has determined, and Grantor has agreed, that the recording of this Instrument is necessary as an institutional control as part of the Consent Decree; and

WHEREAS, the requirements, rights, covenants, conditions, prohibitions, and restrictions of this Instrument (hereinafter "Provisions") are intended to protect human health, safety, and welfare and the environment and maintain and enhance water quality.



NOW, THEREFORE, pursuant to the laws of Alaska, including AS 34.17.010-AS 34.17.060, Grantor does hereby grant and convey to Grantee forever, with warranties of title, subject however to easements, rights, reservations, conditions, restrictions, and limitations of the United States, and third parties, if any, of record, an Equitable Servitude and Easement over the Property, including the right of entry thereto, of the nature and character and to the extent set forth below.

**1. Restrictions:**

Unless otherwise specifically authorized in writing by the Alaska Department of Environmental Conservation or its successor in administrative function or assigns (hereinafter, "ADEC"), the Property is subject to the following restrictions (hereinafter, "Restrictions"):

- a. Uses of the Property are limited to commercial or industrial use.
- b. The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care, or any purpose necessitating around-the-clock residence by humans.
- c. Drilling of drinking water wells is prohibited.
- d. Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
- e. No activities shall be allowed on the Property, without prior approval of ADEC in writing, that involve use of ground water, or potential exposure of Waste Materials within the Property. Waste Materials shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or AS 46.03.826(5); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6903(27), AS 46.03.900(26), or the State of Alaska Solid Waste Management Regulations, 18 AAC 60.

**2. Required Activities:**

Grantor shall comply with the Restrictions in this Instrument and with the terms and conditions of any ADEC permit regulating activities on the Property.

**3. Right of Entry:**

During reasonable hours, after reasonable notice, and subject to reasonable security requirements, ADEC and its Authorized Representatives shall have the right to enter in, on, upon, over, and across any portion of the Property to determine whether the Provisions herein



have been or are being complied with. This right of entry shall include a right of access for, but not be limited to, conducting the following activities:

- a. Verifying any data or information submitted to the United States or the State of Alaska.
- b. Conducting investigations relating to contamination located at or near the Property.
- c. Obtaining samples.
- d. Assessing the need for, planning, or implementing additional response actions at or near the Property.
- e. Implementing the activities required to be performed under the Consent Decree pursuant to the conditions set forth in Paragraph (101) of the Consent Decree.
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Grantor or its agents consistent with Section XXIV (Access to Information) of the Consent Decree.
- g. Monitoring and assessing compliance with the Consent Decree and any requirements or restrictions of this instrument.
- h. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

Violation of, or reasonable suspicion of the violation of, any of the Provisions herein shall give ADEC and its Authorized Representatives the right, privilege, and license to enter in, on, upon, over, and across any portion of the Property and to investigate, abate, mitigate, or cure such violation, at the expense of Grantor, provided written notice of the violation is given to Grantor, describing what activity is necessary to investigate or correct the violation, and Grantor fails to cure the violation within a time specified in such notice. Such activities include, but are not limited to, the right to store, move, and remove equipment and supplies; construct, operate, maintain, alter, repair, and remove devices for the monitoring, containment, and treatment of contamination in soil, air and water; investigate and collect samples; excavate and remove waste, pollutants, hazardous substances, contaminated soils, contaminated waste; deposit uncontaminated soil; and the performance of any other activity which may be reasonably necessary and incident to ADEC's investigation and response. Any such entry by ADEC or its Authorized Representatives shall not be deemed a trespass or any other wrongful entry or remaining on the Property, and Grantee shall not be subject to liability to Grantor for such entry or any action taken to investigate, abate, mitigate, or cure a violation. ADEC and its Authorized Representatives shall be considered invitees on the Property and the Grantor shall make every reasonable effort to inform ADEC and its Authorized Representatives of hazards or hazardous areas to prevent personal injury.





To enable them to carry out the activities contemplated under this Instrument, Grantor also grants and conveys to Grantee, for the use and benefit of ADEC and its Authorized Representatives, a right of access over and across those portions of the following-described real property: U. S. Survey 3400; Triangle, U. S. Survey 2923; and, that portion of U. S. Survey 1056 lying northerly of the northerly boundary line of North Tongass Highway, Ketchikan Recording District, First Judicial District, State of Alaska, being adjacent to U. S. Survey 2923 and comprised of 5.16 acres. The portions of these three parcels which shall be subject to this right of access shall consist of the areas thereof located between the Property and the adjacent public rights-of-way of North Tongass Highway and Revilla Road, and which are subject to the Easement by and between Ketchikan Pulp Company, as grantor, and the United States of America, acting by and through the Forest Service, Department Agriculture, recorded October 23, 2000, at Book 317, Page 595 ("the Easement"). In addition, to the extent the Property is adjacent to, but not abutting, the areas subject to the Easement, the right of entry hereby granted shall also extend to those areas of the foregoing parcels which are necessary or convenient to allow access to the Property. With respect to the areas subject to the Easement, this right of access is granted in accordance with, and subject to, the terms of the Easement. The right of access hereby granted is for purposes of allowing ADEC and its Authorized Representatives to conduct any and all activities contemplated by this Instrument.

#### **4. Contaminants of Concern that May be Present on the Property:**

During an investigation and remediation of the Property completed in 1998, contaminated soil and surface debris were removed from the Property by KPC. There are areas on the Property where contaminants may remain in the soil in concentrations potentially greater than cleanup levels established by ADEC or EPA. These contaminants include petroleum products, polychlorinated bipheynyls, pentachlorophenol, lead, chromium, and arsenic. Most areas where active remediation activities occurred were filled to original grade with clean soil, covered with clean soil, and seeded with grass.

#### **5. General Provisions:**

a. This Instrument is for the benefit of Grantee and conveys the perpetual right to Grantee, acting through ADEC and contractors, employees, and authorized representatives acting on ADEC's behalf (herein, "Authorized Representatives"), to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

b. No right of access or use by the general public to any portion of the Property is conveyed or authorized by this Instrument.

c. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee, or grantee and each of their heirs, successors, transferees, or assigns agrees with Grantor and each other to be bound by the Provisions herein.



d. Grantor hereby reserves unto itself, its successors, and assigns, any and all rights and privileges in and to the use of the Property, including the right of access to the Property, which are not contrary to the restrictions, rights, and easement granted herein.

e. The Provisions herein shall run with the land in perpetuity, and shall be binding upon Grantor, and each of Grantor's heirs, successors, grantees, lessees, transferees, and assigns and each of their heirs, successors, grantees, lessees, transferees, and assigns.

f. Nothing in this Instrument shall relieve Grantor from liability for injuries occurring on, or resulting from, its activities on the Property, for which Grantor would otherwise ordinarily be liable. Grantor shall be liable for and shall indemnify and hold Grantee harmless from liability for injuries and damage which arise because of its status as Grantee. Grantor shall also indemnify Grantee for all costs, including attorneys' fees, which arise from its status as Grantee.

g. Grantor hereby covenants to and with Grantee that Grantor is lawfully seized of the surface estate, in fee simple, of the Property, has good and lawful right and power to sell and convey the same, that the same is free and clear of encumbrances, except as specified herein and as of record, and that Grantor will forever warrant and defend the equitable servitude and easement (including the right of entry) conveyed to Grantee by this Instrument against the claims and demands of all persons.

h. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Instrument or any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Instrument or for imposing any Provision which may be unenforceable.

i. This Instrument may be enforced by Grantors or Grantee in a court of law. The interpretation and performance of this Instrument shall be governed by the laws of Alaska.

j. Upon violation of any of the Provisions herein, Grantee may seek any available legal or equitable remedy to enforce this Instrument, and shall be entitled to recover damages for violations of the Provisions herein to the public or to the environment protected herein under applicable federal or state law.

**[CONTINUED ON THE FOLLOWING PAGE]**



k. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Ketchikan Gateway Borough  
Attn: Borough Attorney  
344 Front Street  
Ketchikan, AK 99901

To Grantee:

Department of Natural Resources  
Director, Division of Mining, Land and Water  
Realty Services Section  
550 West 7th Avenue, Suite 1050A  
Anchorage, AK 99501-3579

With a copy to:

Program Manager, Contaminated Sites Program  
Alaska Department of Environmental Conservation  
Division of Spill Prevention and Response  
410 Willoughby Suite 303  
Juneau, AK 99801-1795

l. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application, and the other Provisions herein shall remain in full force and effect.

m. Any general rule of construction to the contrary notwithstanding, this Instrument shall be construed so as to effect the purpose for which it was granted to Grantee. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Instrument.

n. Grantor shall notify ADEC and Grantee at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Grantor's interest in the Property. Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: The interest conveyed hereby is subject to an Equitable Servitude and Easement dated \_\_\_\_\_, 2\_\_\_\_, recorded in the public land records on \_\_\_\_\_, 2\_\_\_\_, in book \_\_\_\_\_, page \_\_\_\_\_, of the Ketchikan Recording District, First Judicial District, State of Alaska, in favor of, and enforceable by, the State of Alaska.





o. Grantor shall notify ADEC and Grantee within ten (10) days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property under the Ketchikan Gateway Borough zoning code or any successor code.

p. This Equitable Servitude and Easement does not impose liability on the State of Alaska nor does it make the State of Alaska a responsible party under the Comprehensive Environmental Response, Compensation and Liability Act or AS 46.03 or similar federal or state statutes, regulations or local ordinances.

#### **6. Termination:**

This Instrument shall be vacated and shall be of no further force and effect upon the recordation in the Ketchikan Recording District, First Judicial District, State of Alaska by ADEC of a Notice of Vacation of Equitable Servitude and Easement. ADEC shall execute and record a Notice of Vacation of Equitable Servitude and Easement at such time as it, in its sole discretion, determines that the prohibited and required activities and other provisions of this Instrument are no longer necessary for the protection of human health, safety, welfare and the environment. The Notice of Vacation of Equitable Servitude and Easement shall be executed by ADEC and state that ADEC has determined that the prohibited and required activities and other provisions of the Equitable Servitude and Easement are no longer necessary for the protection of human health, safety and welfare and the environment and further state that the Equitable Servitude and Easement are hereby vacated. If Grantor requests a termination of this Instrument, any costs incurred by ADEC in reviewing a potential termination shall be paid by Grantor.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the dates written below. This Instrument is effective on the date of the last acknowledged signature.

**[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]**



KETCHIKAN GATEWAY BOROUGH

By *Roy A. Eckert*  
Roy A. Eckert  
General Manager

GRANTOR'S ACKNOWLEDGMENT

STATE OF ALASKA                   )  
  ) ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 24<sup>th</sup> day of April, 2006, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy A. Eckert, to me known and known to be the ~~General Manager~~ <sup>Borough Mgr</sup>, and the person who executed the above and foregoing Equitable Servitude and Easement on behalf of the Ketchikan Gateway Borough, and who acknowledged to me that he signed the same as the ~~General Manager~~ <sup>Borough Mgr</sup>, in the name of and for and on behalf of the Ketchikan Gateway Borough, freely and voluntarily and by authority of the Ketchikan Gateway Borough Assembly and on oath stated that he was authorized to execute said instrument.

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



Notary Public for Alaska


*Holly Rosendin*  
My commission expires: 9/15/08



## ACCEPTANCE

ON BEHALF OF the State of Alaska, pursuant to AS 38.05.035(a)(12), I do hereby accept this Equitable Servitude and Easement conveying to the State of Alaska, its successors in administrative function and assigns, the interests in the Property described therein as an Institutional Control, pursuant to 18 AAC 75.375 (as of 1/22/99), to be managed and enforced by the Department of Environmental Conservation or its successor, pursuant to the management right assignment issued as ADL 107453 for the portion of U.S. Survey 2923 described in this Instrument, to protect human health, safety, and welfare, and the environment and to enhance or maintain water quality.

### STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES

By   
4/26/06  
Director  
Division of Mining, Land and Water

#### Location Index:

Section 4,  
Township 74 S., Range 90 E.,  
Copper River Meridian, Alaska

Section 33,  
Township 75 S., Range 90 E.,  
Copper River Meridian, Alaska

#### AFTER RECORDING RETURN TO:

Ruth Hamilton Heese  
Assistant Attorney General  
State of Alaska  
Department of Law  
Environmental Section  
P.O. Box 110300  
Juneau, AK 99811





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**2006-001708-0**

Recording Dist: 102 - Ketchikan  
5/1/2006 8:54 AM Pages: 1 of 7



cc

### **SUBORDINATION AGREEMENT**

This Subordination Agreement ("this Agreement"), made and entered into this 1 day of May, 2006 by, between and among **KETCHIKAN PULP COMPANY**, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901 ("KPC"), the **KETCHIKAN GATEWAY BOROUGH**, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 ("Borough"), for the benefit of the **STATE OF ALASKA**, whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 West Seventh Avenue, Suite 1050A, Anchorage, Alaska 99501-3579 ("State"), WITNESSETH:

### **RECITALS**

**WHEREAS**, all real property referred to in this Agreement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

**WHEREAS**, by Quitclaim Deed executed on or about July 11, 2003 and recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004125-0 ("the USS 3400 Quitclaim"), KPC quitclaimed to the Borough parcels of real property and related interests, including fee ownership of U. S. Survey 3400;

**WHEREAS**, the USS 3400 Quitclaim set forth the following Acknowledgment and Acceptance of Conveyance ("Borough Acceptance"), which was duly executed on behalf of the Borough on or around July 14, 2003:

The Ketchikan Gateway Borough ("Borough") hereby acknowledges and accepts the conveyance from

Ketchikan Pulp Company ("KPC"), set forth in the within and foregoing Quitclaim Deed, of KPC's right, title and interest in and to U.S. Survey 3400..., which conveyance and acceptance is subject to (1) the reservations stated therein; and, (2) the terms and conditions of the Agreement by and between the Borough and KPC dated July 14, 2003 ("Agreement"). Upon the terms and conditions of the Agreement, the Borough hereby assumes all obligations arising from or related to U.S. Survey 3400...

Any and all right, title and interest reserved to or otherwise arising for the benefit of KPC with respect to U. S. Survey 3400 by reason of the USS 3400 Quitclaim including, without limitation, by reason of the Borough Acceptance, are hereinafter referred to as "USS 3400 Quitclaim Interests;"

**WHEREAS**, on or about July 14, 2003 the Borough, KPC and Gateway Forest Products, Inc., an Alaska corporation, entered into the Environmental Easement and Declaration of Covenants, recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004128-0 and hereinafter referred to as "the 2003 Covenants and Easement."

**WHEREAS**, the 2003 Covenants and Easement recognized and established certain covenant and easement rights for the benefit of KPC with respect to U. S. Survey 3400 and portions of U. S. Survey 2923, hereinafter referred to as the "USS 3400 and USS 2923 Covenant and Easement Interests."

**WHEREAS**, the 2003 Covenants and Easement also recognized and established certain covenant and easement rights for the benefit of KPC with respect to Lot 1, Section 34, T.74S., R.90E., C.R.M., as more particularly described in Exhibit A thereof; said parcel is hereinafter referred to as "Lot 1, Section 34;"

**WHEREAS**, the covenant and easement rights recognized and established under the 2003 Covenants and Easement with respect to Lot 1, Section 34, for the benefit of KPC are hereinafter referred as the "Lot 1, Section 34 Covenant and Easement Interests;"



**Whereas**, on or about July 14, 2004 the Borough and KPC entered into the Environmental Easement and Declaration of Covenants, recorded July 15, 2004 under Ketchikan Recording District Serial No. 2004-002967-0 and hereinafter referred to as "the 2004 Covenants and Easement."

**WHEREAS**, the 2004 Covenants and Easement recognized and established certain covenant and easement rights for the benefit of KPC with respect to portions of U. S. Survey 2923, hereinafter referred to as the "USS 2923 Covenant and Easement Interests."

**WHEREAS**, by the State's Patent recorded on the 15<sup>th</sup> day of ~~April~~ May, 2006 under Ketchikan Recording District Serial No. 2006-001705-0, the State has issued patent conveying to the Borough Lot 1, Section 34, which parcel is described therein as "Section 34: Lot 1, containing 3.09 acres more or less, according to the Survey Plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on January 28, 2003, and officially filed March 3, 2003;" nevertheless, for purposes of this Agreement only, said parcel is still referred to as "Lot 1, Section 34;"

**WHEREAS**, the Borough, as the owner of Lot 1, Section 34, with the cooperation and consent of KPC, has granted to the State, with respect to Lot 1, Section 34, the Equitable Servitude and Easement that was recorded on the 15<sup>th</sup> day of May, 2006 under Ketchikan Recording District Serial No. 2006-001706-0, and is hereinafter referred to as the "Lot 1, Section 34 DNR Servitude and Easement;"

**WHEREAS**, the Borough, with the cooperation and consent of KPC has granted to the State, with respect U. S. 3400 and portions of U. S. 2923, the Equitable Servitude and Easement that was recorded on the 15<sup>th</sup> day of May, 2006 under Ketchikan Recording District Serial No. 2006-001707-0, and is hereinafter referred to as the "USS 3400 and USS 2923 DNR Servitude and Easement;"

**WHEREAS**, as set forth in this Agreement, the parties desire to adjust the priorities between the interests reserved or granted to KPC under the foregoing recorded





documents and the two Equitable Servitude and Easement documents recently granted by the Borough to and for the benefit of the State.

**NOW, THEREFORE,** in consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Borough and KPC hereby agree as follows:

**1. Subordination in Favor of State's Lot 1, Section 34 DNR Servitude and Easement.** Notwithstanding the prior recording of the 2003 Covenants and Easement, KPC hereby agrees to, and by this instrument hereby does, subordinate its Lot 1, Section 34 Covenant and Easement Interests to the interests in and to Lot 1, Section 34, granted by the Borough to the State in the Lot 1, Section 34 DNR Servitude and Easement.

**2. Subordination of USS 3400 Quitclaim Interests in Favor of State's USS 3400 and USS 2923 DNR Servitude and Easement.** Notwithstanding the prior recording of the USS 3400 Quitclaim, KPC hereby agrees to, and by this instrument hereby does, subordinate its USS 3400 Quitclaim Interests to the interests in and to U.S. Survey 3400 granted by the Borough to the State in the USS 3400 and USS 2923 DNR Servitude and Easement.

**3. Subordination of USS 3400 and USS 2923 Covenant and Easement Interests in Favor of State's USS 3400 and USS 2923 DNR Servitude and Easement.** Notwithstanding the prior recording of the 2003 Covenants and Easement, KPC hereby agrees to, and by this instrument hereby does, subordinate its USS 3400 and USS 2923 Covenant and Easement Interests to the interests in and to U.S. Survey 3400 and U. S. Survey 2923 granted by the Borough to the State in the USS 3400 and USS 2923 DNR Servitude and Easement.

**4. Subordination of USS 2923 Covenant and Easement Interests in Favor of State's USS 3400 and USS 2923 DNR Servitude and Easement.** Notwithstanding the prior recording of the 2004 Covenants and Easement, KPC hereby agrees to, and by this instrument hereby does, subordinate its USS 2923 Covenant and Easement Interests to the interests in and to U.S. Survey 2923 granted by the Borough



to the State in the USS 3400 and USS 2923 DNR Servitude and Easement.

**5. Parties' Rights and Obligations Otherwise to Remain in Full Force and Effect.** This Agreement shall only affect the parties' rights and obligations as expressly set forth herein. The provisions of this Agreement herein shall run with the land in perpetuity, and shall be binding upon the parties, and their respective heirs, successors, grantees, lessees, transferees, and assigns, and each of their heirs, successors, grantees, lessees, transferees, and assigns.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**KETCHIKAN PULP COMPANY**

Christopher M. Keyes  
Christopher M. Keyes  
Assistant Secretary

By Neil Sherman  
Neil Sherman  
President

**KETCHIKAN GATEWAY BOROUGH**

Harriet Edwards  
Harriet Edwards  
Clerk

By Roy A. Eckert  
Roy A. Eckert  
Manager

STATE OF ALASKA                    )  
  : ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 1 day of May, 2006, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Roy A. Eckert** and **Harriet Edwards**, to me known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State



of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

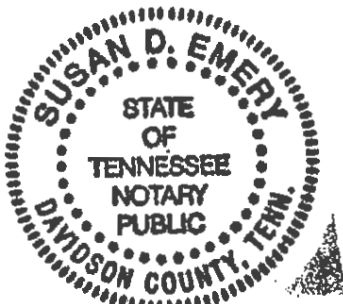


Kacie L. Paxton  
Notary Public in and for Alaska  
My Commission Expires: 1/30/10

STATE OF TENNESSEE )  
: ss.  
Davidson County )

THIS IS TO CERTIFY that on this 21<sup>st</sup> day of April, 2006, before me, the undersigned, a notary public in and for the State of Tennessee, duly commissioned and sworn, personally appeared Neil Sherman and Christopher M. Reyes, to me known to be the President and Assistant Secretary, respectively, of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.



My Commission Expires NOV. 14, 2009

Susan D. Emery  
Notary Public for Tennessee  
My Commission expires: 11-14-09





WHEN RECORDED, RETURN TO:

Ruth Hamilton Heese  
Assistant Attorney General  
State of Alaska  
Department of Law  
Environmental Section  
Post Office Box 110300  
Juneau, Alaska 99811





500

**CORRECTION TO EQUITABLE SERVITUDE AND EASEMENT**

This Correction To Equitable Servitude And Easement ("this Correction"), made and entered into this 26<sup>th</sup> day of May, 2006, is made by, between and among the **Ketchikan Gateway Borough**, a second class Borough of the State of Alaska (whose address is 344 Front Street, Ketchikan, Alaska 99901), hereinafter "Borough", **Renaissance Ketchikan Group LLC**, an Idaho Limited Liability Company (whose mailing address is 3695 S. Jojoba Way, Chandler, Arizona 85248), hereinafter "Renaissance", and the **State of Alaska** (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 West 7th Avenue, Suite 1050A, Anchorage, Alaska 99501-3579), hereinafter, "State", WITNESSETH:

**Recitals**

A. All property descriptions referenced in this Correction are located in, and all references to recorded documents are recorded in, the **Ketchikan Recording District**, First Judicial District, State of Alaska.

B. On or about April 24, 2006, the Borough, as grantor, executed the Equitable Servitude and Easement ("the Servitude") that was recorded on May 1, 2006 as Document No. 2006-001707-0. On or about April 26, 2006, the State, as grantee, executed the acceptance set forth in the Servitude.

C. By the Servitude, upon the terms set forth therein, the Borough granted and conveyed to the State, as grantee, an Equitable Servitude and Easement with respect to certain specified areas within the following described parcels of real property:

U. S. Survey 3400; and

That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning, hereinafter referred to as "Triangle, U. S. Survey 2923."

D. The two specific areas of U. S. Survey 3400 and the one specific area within the Triangle, U. S. Survey 2923 that were made subject to the Servitude were to be described with particularity in Exhibit 1, which was agreed upon by the Borough and the State. However, by oversight, when the Servitude document was finalized, executed and recorded, the exhibit was not attached to and recorded with the Servitude.

E. By the Statutory Warranty Deed recorded on May 2, 2006 as Document No. 2006-001753-0, the Borough conveyed to Renaissance a number of parcels, including U.S. Survey 3400 and the Triangle, U. S. Survey 2923. By the Deed of Trust and Security Agreement also recorded on May 2, 2006 as Document No. 2006-001754-0, Renaissance, as trustor, conveyed to Ketchikan Title Agency Inc., as trustee, for the benefit of the Borough, as beneficiary, a security interest in and to a number of parcels, including U. S. Survey 3400 and the Triangle, U. S. Survey 2923.

F. The parties, including Renaissance as the current owner of U. S. Survey 3400 and Triangle, U. S. Survey 2923, wish to execute and record this Correction with Exhibit 1 attached hereto, to address the status of Exhibit 1.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Exhibit 1 Attached.** Exhibit 1 to the Servitude is attached hereto. By this reference, Exhibit 1 is incorporated into this Correction, and thereby incorporated into the Servitude.





2. **Servitude to Remain in Full Force and Effect.** The effect of this Correction is only to address the status of Exhibit 1, and to make it a matter of record. This Correction does not otherwise alter the terms or conditions of the Servitude, and the terms and conditions of the Servitude shall remain in full force and effect. This Correction and Exhibit 1 are retroactive, effective to the date of the Servitude that was recorded on May 1, 2006, as Document No. 2006-001707-0.

3. **Execution of This Correction.** This Correction may be executed in any number of counterparts, each of which shall be deemed an original, and all said counterparts shall together constitute one and the same Correction, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized representatives, the day and year next below written.

**KETCHIKAN GATEWAY BOROUGH**

By   
Roy A. Eckert  
Borough Manager

**RENAISSANCE KETCHIKAN GROUP LLC**

By   
Jerry Jenkins  
Managing Member

STATE OF ALASKA )  
                                  ) ss:  
First District )

THIS IS TO CERTIFY that on this 24<sup>th</sup> day of May, 2006, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared **Roy A. Eckert**, to me known and known to be the Borough Manager and the person who executed the above and foregoing Correction to Equitable Servitude and Easement on behalf of the Ketchikan Gateway Borough, and who acknowledged to me that he signed the same as the Borough Manager, in the name of and for and on behalf of the Ketchikan Gateway Borough, freely and voluntarily and by authority of the Ketchikan Gateway Borough Assembly and on oath stated that he was authorized to execute said instrument.

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



Holly Rosendin  
Notary Public for Alaska  
Commission expires: 9/15/08



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2006-002278-0

STATE OF ALASKA     )  
                                  ) ss:  
First District         )

THIS IS TO CERTIFY that on this 24 day of May, 2006, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, **Jerry Jenkins** personally appeared before me and is known to be the Managing Member of Renaissance Ketchikan Group LLC, a limited liability company formed under the laws of the State of Idaho, the company which executed the above and foregoing instrument, and who on oath stated he is duly authorized to execute said instrument, and acknowledged that he signed the same freely and voluntarily on behalf of said company for the purposes therein mentioned.

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



Holly Rosendin  
Notary Public for Alaska  
Commission expires: 9/15/08

**STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES**

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

By \_\_\_\_\_  
Director  
Division of Mining, Land and Water

STATE OF ALASKA     )  
                                  ) ss:  
Third District         )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of May, 2006; before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared \_\_\_\_\_, to me known and known to be the Director of the Division of Mining, Land and Water, State of Alaska, Department of Natural Resources, and the person who executed the above and foregoing Correction to Equitable Servitude and Easement on behalf of the Alaska Department of Natural Resources, and who acknowledged to me that he signed the same as the Director of the Division of Mining, Land and Water, in the name of and for and on behalf of the Alaska Department of Natural Resources, freely and voluntarily and by authority of the Alaska Department of Natural Resources and on oath stated that he was authorized to execute said instrument.

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

\_\_\_\_\_  
Notary Public for Alaska  
Commission expires: \_\_\_\_\_



STATE OF ARIZONA )  
 ) ss:  
Maricopa County )

THIS IS TO CERTIFY that on this \_\_\_\_ day of May, 2006, before me, the undersigned, a Notary Public in and for the State of Arizona, duly commissioned and sworn, **Jerry Jenkins** personally appeared before me and is known to be the Managing Member of Renaissance Ketchikan Group LLC, a limited liability company formed under the laws of the State of Idaho, the company which executed the above and foregoing instrument, and who on oath stated he is duly authorized to execute said instrument, and acknowledged that he signed the same freely and voluntarily on behalf of said company for the purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public for Arizona  
Commission expires: \_\_\_\_\_

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES

Date: 5-26-06

By [Signature]  
Director  
Division of Mining, Land and Water

STATE OF ALASKA )  
 ) ss:  
Third District )

THIS IS TO CERTIFY that on this 26<sup>th</sup> day of May, 2006, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared Richard Mylius to me known and known to be the Director of the Division of Mining, Land and Water, State of Alaska, Department of Natural Resources, and the person who executed the above and foregoing Correction to Equitable Servitude and Easement on behalf of the Alaska Department of Natural Resources, and who acknowledged to me that he signed the same as the Director of the Division of Mining, Land and Water, in the name of and for and on behalf of the Alaska Department of Natural Resources, freely and voluntarily and by authority of the Alaska Department of Natural Resources and on oath stated that he was authorized to execute said instrument.

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



Jennifer Dufresne  
Notary Public for Alaska  
Commission expires: with office

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2006-002278-0

**Location Index:**

Section 4,  
Township 74 S., Range 90 E.,  
Copper River Meridian, Alaska

Section 33,  
Township 75 S., Range 90 E.,  
Copper River Meridian, Alaska

**AFTER RECORDING RETURN TO:**

Ruth Hamilton Heese  
Assistant Attorney General  
State of Alaska  
Department of Law  
Environmental Section  
P.O. Box 110300  
Juneau, AK 99811





**LEGAL DESCRIPTION**  
Equitable Servitude and Easement  
February 22, 2006

**"Parcel 1"**

This description is a portion of U.S. Survey 3400, according to the official plat of U.S. Survey 3400 approved April 18, 1955 (herein referred to as "U.S. Survey 3400") and bounded by Tract C and Lot 1 of the BLM subdivision survey of Sections 27 and 34, Township 74 South, Range 90 East, Copper River Meridian (herein referred to as "Tract C" or "Lot 1", accordingly), according to the plat officially filed March 3, 2003, for purposes of granting an equitable servitude and easement, and is more particularly described as follows:

Commencing at Corner Number One of U.S. Survey 3400;

thence S 55°40'1"E (a record bearing of S 55°45' E) along the common property line between U.S. Survey 2923 and U.S. Survey 3400, a distance of 203.01'

thence N 42°21'27" E (a record bearing of N 42°20' E) along the common boundary of U.S. Survey 3400 and Tract C a distance of 321.98'

thence around a non-tangent curve to the right through a central angle of 11°10'08" an arc distance of 14.17', a chord bearing of S 47°54'27" W, a distance of 14.14' along the common boundary of U.S. Survey 3400 and Tract C (a record chord bearing of S 47°53' W, chord distance of 0.214 chains, arc length of 0.214 chains)

thence N 53° 28' 33" E (a record bearing of N 53° 26' E) along the common boundary of U.S. Survey 3400 and Lot 1 a distance of 767.06'

thence around a curve to the right through a central angle of 6° 16' 16" an arc distance of 19.28', a chord bearing of N 56° 36' 25" E along the common boundary of U.S. Survey 3400 and Lot 1 to the TRUE POINT OF BEGINNING;

thence N 10°18'10" E, a distance of 44.13'

thence N 29°27'51" E, a distance of 40.58'

thence N 54°29'56" E, a distance of 27.35'

thence N 70°52'13" E, a distance of 53.63'

thence N 74°51'05" E, a distance of 85.03'

thence N 75°20'17" E, a distance of 74.07'

*Equitable Servitude and Easement*

**EXHIBIT 1**  
**Page 1 of 9 Page(s)**

U.S.S. 3400 and U.S.S 2923

Page 1



thence N 73°49'32" E, a distance of 77.24'  
thence N 74°40'44" E, a distance of 76.77'  
thence N 75°40'42" E, a distance of 71.89'  
thence N 74°46'45" E, a distance of 66.88'  
thence N 74°50'32" E, a distance of 53.73'  
thence N 75°05'21" E, a distance of 62.17'  
thence N 75°14'02" E, a distance of 83.06'  
thence N 75°17'00" E, a distance of 87.94'  
thence N 74°00'46" E, a distance of 65.32'  
thence N 65°50'16" E, a distance of 62.38'  
thence N 58°55'54" E, a distance of 65.91'  
thence N 57°08'22" E, a distance of 88.36'  
thence N 56°56'15" E, a distance of 80.26'  
thence N 52°20'06" E, a distance of 59.55'  
thence N 49°25'39" E, a distance of 55.00'  
thence N 49°28'24" E, a distance of 61.21'  
thence N 53°05'57" E, a distance of 68.26'  
thence N 63°40'40" E, a distance of 59.99'  
thence N 70°44'17" E, a distance of 68.12'  
thence N 70°44'17" E, a distance of 68.12'  
thence N 73°09'06" E, a distance of 55.53'  
thence N 64°27'39" E, a distance of 62.61'

EXHIBIT 1  
Page 2 of 9 Page(s)

*Equitable Servitude and Easement*

U.S.S. 3400 and U.S.S 2923  
Page 2



thence N 53°49'48" E, a distance of 51.66'

thence N 49°30'19" E, a distance of 57.17'

thence N 52°42'27" E, a distance of 71.86'

thence N 63°48'49" E, a distance of 52.68'

thence N 76°59'28" E, a distance of 60.25'

thence S 89°50'49" E, a distance of 1.84'

thence S 89°50'49" E, a distance of 52.18'

thence S 85°33'55" E, a distance of 70.00'

thence S 84°55'15" E, a distance of 34.61'

thence S 06°04'00" W, a distance of 80.06' to the common boundary of U.S. Survey 3400 and Tract C

thence N 84°00'04" W, a distance of 114.34' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of N 83°56'00" W,)

thence around a curve to the left through a central angle of 48°51'00" an arc distance of 142.03', a chord bearing of S 71°34'26" W, a distance of 137.77' along the boundary of U.S. Survey 3400, (a record chord bearing of S 71°38'30" W, chord distance of 2.090 chains, arc length of 2.154 chains)

thence S 47°08'56" W, a distance of 70.33' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 47°13' W, a distance of 1.067 chains)

thence around a curve to the right through a central angle of 28°58'00" an arc distance of 198.07', a chord bearing of S 61°37'56" W, a distance of 195.97' along the common boundary of U.S. Survey 3400 and Tract C (a record chord bearing of S 61°42' W, chord distance of 2.973 chains, arc length of 3.006 chains)

thence S 76°06'56" W, a distance of 50.49' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 76°11' W, a distance of 0.766 chains)

thence around a curve to the left through a central angle of 27°34'00" an arc distance of 110.95', a chord bearing of S 62°19'56" W, a distance of 109.88' along the common boundary of U.S. Survey 3400 and Tract C, (a record chord bearing of S 62°24' W, chord distance of 1.667 chains, arc length of 1.684 chains)





thence S 48°32'56" W, a distance of 147.72' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 48°37' W, a distance of 2.241 chains)

thence around a non-tangent curve to the right through a central angle of 9°39'10" an arc distance of 70.05', a chord bearing of S 53°24'07" W, a distance of 69.97', along the common boundary of U.S. Survey 3400 and Tract C, (a record chord bearing of S 53°26'30" W, chord distance of 1.060 chains, arc length of 1.061 chains)

thence S 58°13'37" W, a distance of 214.00' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 58°16' W, a distance of 3.242 chains)

thence around a curve to the right, through a central angle of 16°52'00" an arc distance of 143.95', a chord bearing of S 66°39'37" W a distance of 143.43', along the common boundary of U.S. Survey 3400 and Tract C, (a record chord bearing of S 66°42' W, chord distance of 2.173 chains, arc length of 2.181 chains)

thence S 75°05'37" W, a distance of 788.20' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 75°08' W)

thence S 75°10'11" W, a distance of 48.32' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 75°08' W, a record distance of 0.733 chains)

thence around a curve to the left, through a central angle of 15°46'59" an arc distance of 48.51', a chord bearing of S 67°38'4" W a distance of 48.36', along the common boundary of U.S. Survey 3400, Tract C and Lot 1 to the POINT OF BEGINNING  
Containing 162,891 square feet or 3.7395 acres, more or less.

### **"Parcel 2"**

This description is a portion of U.S. Survey 3400, according to the official plat of U.S. Survey 3400 approved April 18, 1955 (herein referred to as "U.S. Survey 3400") and bounded by Tract C and Lot 1 of the BLM subdivision survey of Sections 27 and 34, Township 74 South, Range 90 East, Copper River Meridian (herein referred to as "Tract C" or "Lot 1", accordingly), according to the plat officially filed March 3, 2003, for purposes of granting an equitable servitude and easement, and is more particularly described as follows:

Commencing at Corner Number One of U.S. Survey 3400;

thence S 55°40'1"E (a record bearing of S 55°45' E) along the common boundary of U.S. Survey 2923 and U.S. Survey 3400, a distance of 138.02' to the TRUE POINT OF BEGINNING;

thence N 39°48'34" E, a distance of 16.71'

**EXHIBIT** 1  
**Page** 4 **of** 9 **Page(s)**

*Equitable Servitude and Easement*

*U.S.S. 3400 and U.S.S 2923*  
*Page 4*





thence N 39°56'49" E, a distance of 29.43'

thence N 40°06'23" E, a distance of 67.44'

thence N 40°47'15" E, a distance of 71.99'

thence N 41°14'51" E, a distance of 53.75'

thence N 44°16'36" E, a distance of 59.77'

thence N 54°44'59" E, a distance of 43.67'

thence N 80°01'48" E, a distance of 51.06'

thence S 81°18'08" E, a distance of 52.57' to a point along the common boundary of U.S. Survey 3400, Lot 1 and Tract C

thence S 53°28'33" W, a distance of 67.26' along the common boundary of U.S. Survey 3400 and Tract C

thence around a non-tangent curve to the left through a central angle of 11°10'08" an arc distance of 14.17', a chord bearing of S 47°54'27" W, a distance of 14.14' along the common boundary of U.S. Survey 3400 and Tract C (a record chord bearing of S 47°53' W, chord distance of 0.214 chains, arc length of 0.214 chains)

thence S 42°21'27" W, a distance of 321.98' along the common boundary of U.S. Survey 3400 and Tract C (a record bearing of S 42°20" W, a distance of 321.98 feet, or 4.872 chains)

thence N 55°40'01" W, a distance of 64.99' along the common boundary of U.S. Survey 3400 and U.S. Survey 2923 (a record bearing of N 55°45' W) to the POINT OF BEGINNING

Containing 25,751 square feet or 0.591 acres, more or less.

### **"Parcel 3"**

This description is a portion of U.S. Survey 2923, according to the official plat of U.S. Survey 2923 approved July 5, 1950 (herein referred to as "U.S. Survey 2923") and according to the official plat of U.S. Survey 3400 approved April 18, 1955 (herein referred to as "U.S. Survey 3400"), for purposes of granting an equitable servitude and easement, and is more particularly described as follows:

Commencing at Corner Number One of U.S. Survey 3400;

**EXHIBIT** 1  
Page 5 of 9 Page(s)

*Equitable Servitude and Easement*

U.S.S. 3400 and U.S.S 2923  
Page 5



11 of 15

2006-002278-0

thence S 55°40'1" E (a record bearing of S 55°45' E) along the common boundary of U.S. Survey 2923 and U.S. Survey 3400, a distance of 138.02' to the TRUE POINT OF BEGINNING;

thence S 55°40'1" E (a record bearing of S 55°45' E) along the common boundary of U.S. Survey 2923 and U.S. Survey 3400, a distance of 49.38'

thence S 8°5'45" E, a distance of 30.45'

thence S 8°37'27" E, a distance of 74.29'

thence S 58°6'40" W, a distance of 69.41'

thence N 77°44'51" W, a distance of 43.63'

thence N 62°0'10" W, a distance of 67.23'

thence N 38°38'41" E, a distance of 46.59'

thence N 39°45'38" E, a distance of 58.65'

thence N 39°45'41" E, a distance of 59.60' to the common boundary of U.S. Survey 2923 and U.S. Survey 3400, the POINT OF BEGINNING  
Containing 15,872 square feet or 0.364 acres, more or less.

EXHIBIT 1  
Page 6 of 9 Page(s)

*Equitable Servitude and Easement*

U.S.S. 3400 and U.S.S 2923  
Page 6



12 of 15  
2006 002278 0

# CURVE TABLE

NUMBER	DELTA	CHORD BEARING	T'	R'	ARC	CHORD LENGTH
C1	11°06'00"	N 47°58'54" E (N 47°32' E)	26.58	273.57 (4.131 cts)	53.00 (0.800 cts)	52.82 (0.789 cts)
C2	22°07'20"	N 84°34'24" E (N 84°08'30" E)	73.56	378.27 (5.701 cts)	145.28 (2.194 cts)	144.38 (2.180 cts)
C3	16°52'00"	N 86°33'53" E (N 86°42' E)	42.87	289.18 (4.380 cts)	85.13 (1.289 cts)	84.82 (1.285 cts)
C4	08°38'58"	N 53°18'23" E (N 53°28'30" E)	18.22	215.82 (3.270 cts)	36.35 (0.551 cts)	36.31 (0.550 cts)
C5	27°34'00"	N 62°16'35" E (N 62°24' E)	105.60	430.46 (6.529 cts)	207.11 (3.141 cts)	205.12 (3.111 cts)
C6	28°58'00"	N 61°34'35" E (N 61°42' E)	49.61	192.05 (2.913 cts)	97.09 (1.473 cts)	96.08 (1.457 cts)
C7	48°51'00"	N 71°31'05" E (N 71°38'30" E)	166.41	366.41 (5.557 cts)	312.40 (4.738 cts)	303.03 (4.956 cts)
C8	55°35'31"	N 68°07'05" E (N 68°14'30" E)	111.09	210.74 (3.193 cts)	204.47 (3.101 cts)	196.55 (2.981 cts)
C9	20°43'00"	N 29°58'17" E (N 30°03'30" E)	29.17	159.81 (2.420 cts)	57.71 (0.875 cts)	57.40 (0.870 cts)
C10	09°42'39"	N 14°47'37" E (N 14°50'30" E)	18.02	212.12 (3.214 cts)	35.95 (0.545 cts)	35.91 (0.544 cts)
C44	20°43'00"	S 29°58'17" W (S 30°03'30" W)	65.77	359.80 (5.450 cts)	130.09 (1.971 cts)	129.39 (1.960 cts)
C45	55°34'07"	S 88°10'26" W (S 88°14'30" W)	216.40	410.72 (6.223 cts)	398.34 (6.044 cts)	382.91 (5.809 cts)
C46	48°51'00"	S 71°34'28" W (S 71°38'30" W)	75.65	186.58 (2.527 cts)	142.03 (2.154 cts)	137.77 (2.090 cts)
C47	28°58'00"	S 81°37'56" W (S 81°42' W)	101.20	391.78 (5.943 cts)	198.07 (3.005 cts)	195.97 (2.973 cts)
C48	27°34'00"	S 82°19'56" W (S 82°24' W)	56.57	230.60 (3.499 cts)	110.95 (1.684 cts)	109.88 (1.667 cts)
C49	09°39'10"	S 53°24'07" W (S 53°28'30" W)	35.11	415.80 (6.300 cts)	70.05 (1.061 cts)	69.87 (1.060 cts)
C50	16°52'00"	S 86°39'37" W (S 86°42' W)	72.50	489.01 (7.410 cts)	143.95 (2.181 cts)	143.43 (2.173 cts)
C51	22°03'15"	S 84°29'56" W (S 84°06'30" W)	34.32	176.11 (2.671 cts)	67.79 (1.028 cts)	67.37 (1.022 cts)
C52	11°10'08"	S 47°54'27" W (S 47°53' W)	7.11	72.67 (1.101 cts)	14.17 (0.214 cts)	14.14 (0.214 cts)

TRACT A

ROAD CENTERLINE

NON TANGENT C2

P.T. 2

PIPELINE C

(N 53°05' E)  
N 53°32'5.4" E  
765.26'  
(11.570 cts)

REVISD BOUNDARY REFLECTING BLM SURVEY OFFICIALLY FILED 5/03/05

LOT 1

"PARCEL 2"  
FOR INSTITUTIONAL C  
25,751 SQUARE FEET

EXHIBIT 1

"PARCEL 3" Page 7 of 9 Page(s)  
FOR INSTITUTIONAL CONTROLS  
15,872 SQUARE FEET, 0.364 ACRES

USS 1056  
(HES 55)

USS 2923

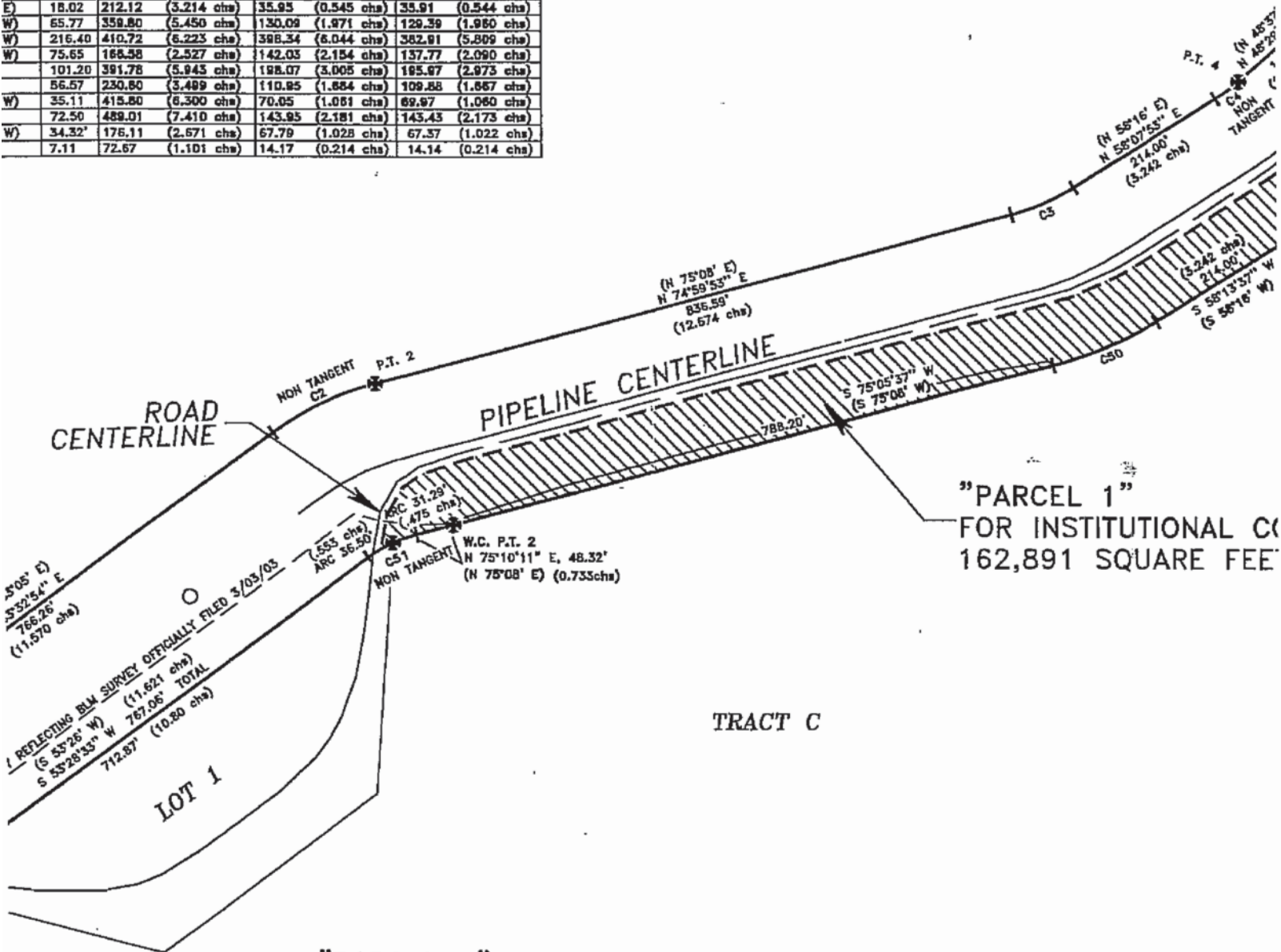
USS 3400





# CURVE TABLE

	T	R	ARC	CHORD LENGTH
	26.58	273.57 (4.131 chs)	53.00 (0.800 chs)	52.92 (0.799 chs)
E)	73.56	576.27 (6.701 chs)	145.28 (2.194 chs)	144.38 (2.180 chs)
	42.87	289.18 (4.360 chs)	85.13 (1.289 chs)	84.82 (1.285 chs)
E)	18.22	215.82 (3.270 chs)	36.35 (0.551 chs)	36.31 (0.550 chs)
	105.60	430.48 (8.529 chs)	207.11 (3.141 chs)	205.12 (3.111 chs)
	49.61	192.05 (2.913 chs)	97.09 (1.473 chs)	96.06 (1.457 chs)
E)	186.41	366.41 (5.557 chs)	312.40 (4.738 chs)	303.03 (4.956 chs)
E)	111.09	210.74 (3.193 chs)	204.47 (3.101 chs)	198.55 (2.981 chs)
E)	29.17	159.81 (2.420 chs)	57.71 (0.875 chs)	57.40 (0.870 chs)
E)	18.02	212.12 (3.214 chs)	35.93 (0.545 chs)	35.91 (0.544 chs)
W)	65.77	359.80 (5.450 chs)	130.09 (1.971 chs)	129.39 (1.960 chs)
W)	216.40	410.72 (6.223 chs)	388.34 (6.044 chs)	382.91 (5.809 chs)
W)	75.65	168.58 (2.527 chs)	142.03 (2.154 chs)	137.77 (2.090 chs)
	101.20	391.78 (5.943 chs)	198.07 (3.005 chs)	195.67 (2.973 chs)
	56.57	230.80 (3.489 chs)	110.95 (1.684 chs)	109.88 (1.667 chs)
W)	35.11	415.80 (6.300 chs)	70.05 (1.061 chs)	69.97 (1.060 chs)
	72.50	489.01 (7.410 chs)	143.93 (2.181 chs)	143.43 (2.173 chs)
W)	34.32	176.11 (2.671 chs)	67.79 (1.028 chs)	67.37 (1.022 chs)
	7.11	72.67 (1.101 chs)	14.17 (0.214 chs)	14.14 (0.214 chs)

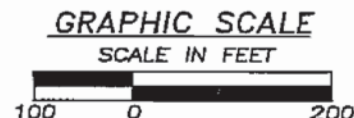


"PARCEL 1"  
FOR INSTITUTIONAL CONTROLS  
162,891 SQUARE FEET

"PARCEL 2"  
FOR INSTITUTIONAL CONTROLS  
25,751 SQUARE FEET, 0.591 ACRES

"PARCEL 3"  
FOR INSTITUTIONAL CONTROLS  
15,872 SQUARE FEET, 0.364 ACRES

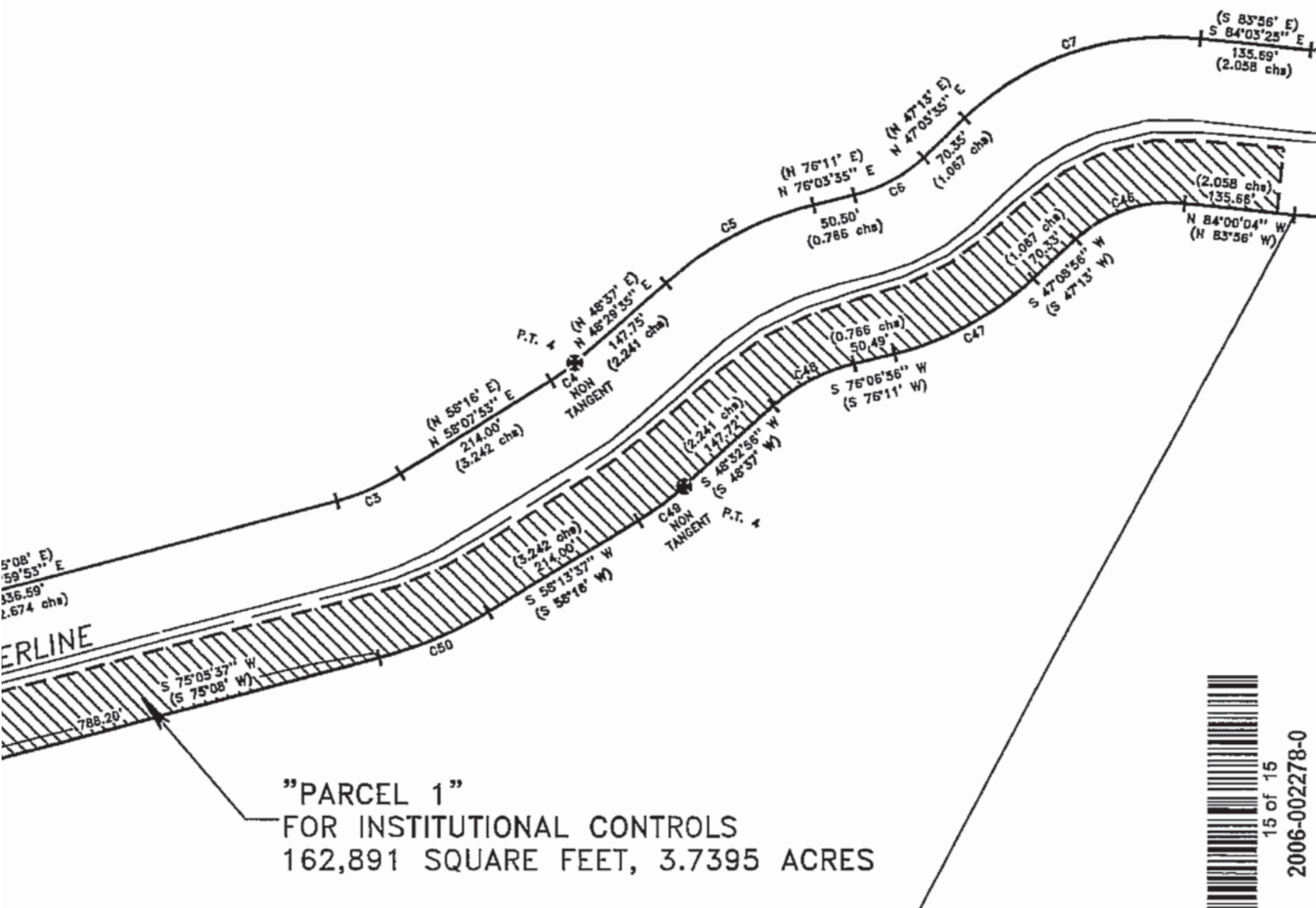
EXHIBIT 1  
Page 8 of 9 Page(s)



PROJECT NO. 052758	SCALE: 1" = 200'	DRAWN BY:
-----------------------	---------------------	-----------







"PARCEL 1"  
FOR INSTITUTIONAL CONTROLS  
162,891 SQUARE FEET, 3.7395 ACRES

TRACT C

TRACT 37

EXHIBIT 1  
Page 9 of 9 Page(s)

ROLS  
591 ACRES

AREAS UNDER  
INSTITUTIONAL CONTROLS  
U.S. SURVEYS 3400 & 2923  
KETCHIKAN, ALASKA

## GRAPHIC SCALE

SCALE IN FEET



CLIENT: KETCHIKAN PULP COMPANY  
P.O. BOX 6600  
KETCHIKAN, ALASKA 99901

PROJECT NO. 052758	SCALE: 1" = 200'	DRAWN BY: S.A.M.	CHECKED BY: S.A.M.	DATE: 2/22/06	SHEET NO. 1 OF 1
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## **Attachment 11**

2003 Agreement between Ketchikan Gateway Borough, Gateway Forest Products, and  
Ketchikan Pulp Company, recorded July 16, 2008

24  
A  
L  
A  
S  
K  
A

2008-002806-0

Recording Dist: 102 - Ketchikan  
7/16/2008 11:11 AM Pages: 1 of 72



After Recording Return to:

Ketchikan Gateway Borough  
Borough Attorney's Office  
344 Front Street  
Ketchikan, AK 99901

THIS COVER SHEET HAS BEEN ADDED TO  
THIS DOCUMENT TO PROVIDE SPACE FOR  
THE RECORDING DATA. THIS COVER  
SHEET APPEARS AS THE FIRST PAGE OF  
THE DOCUMENT IN THE OFFICIAL PUBLIC  
RECORD.

DO NOT DETACH

## AGREEMENT

This Agreement is entered into this 14<sup>th</sup> day of July, 2003, by and between the Ketchikan Gateway Borough, Gateway Forest Products, Inc., and Ketchikan Pulp Company.

### **RECITALS**

**WHEREAS**, Ketchikan Pulp Company sold its former pulp mill site, substantially all of its operating assets, and other real properties in or near Ward Cove, Ketchikan, Alaska, to Gateway Forest Products, Inc. pursuant to the terms and conditions of an Asset Purchase Agreement ("APA") dated November 3, 1999;

**WHEREAS**, Gateway Forest Products, Inc. and Ketchikan Pulp Company executed and delivered various Ancillary Agreements as part of the APA, including the Allocation of Environmental Responsibilities Agreement (Exhibit "F"), which set forth the environmental liabilities retained by Ketchikan Pulp Company and those being assumed by Gateway Forest Products, Inc., the terms and conditions of which were incorporated by reference into the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities (Exhibit "F-1"), both of which thereafter were incorporated by reference into the Quitclaim Deed, recorded in the Ketchikan Recording District on November 5, 1999 at Book 306, Page 72, effectuating the transfer of assets and real property from Ketchikan Pulp Company to Gateway Forest Products, Inc. as contemplated by the APA;

**WHEREAS**, Gateway Forest Products, Inc. unsuccessfully attempted to reorganize under Chapter 11 of the Bankruptcy Code and now is in default of its payment obligations to both Ketchikan Pulp Company and the Ketchikan Gateway Borough;

**WHEREAS**, Gateway Forest Products, Inc. granted Ketchikan Pulp Company an Easement For Landfill Outfall which was recorded as Document No. 2002-001755-0 on April 30, 2002;

**WHEREAS**, the parties may disagree with respect to the validity and applicability of the Environmental Allocation Agreement and the Environmental Allocation Easement, insofar as certain parcels of real property are concerned, the purpose of this Agreement is to fully and finally resolve any and all related disputes; to facilitate redevelopment of properties in the Ward Cove area; to remove asbestos from certain structures situated on USS 1056, Lot 3; and to provide for the orderly transfer to the Ketchikan Gateway Borough of certain properties currently owned by Gateway Forest Products, Inc. and Ketchikan Pulp Company;

**WHEREAS**, the parties further desire to modify the terms of the Environmental Allocation Agreement and the Environmental Allocation Easement, and to otherwise resolve certain issues outstanding between them; and





**WHEREAS**, capitalized terms shall be construed by reference to the definitions or explanations given in this Agreement, including the Recitals, the text, and the Definitions section;

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereby agree as follows:

## **TERMS AND CONDITIONS**

### **1. Parties and Scope.**

(a) Except as otherwise specifically provided in this Agreement, the term "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska. Where the term "Borough Entities" is utilized, it means and refers to the Borough, as well as its successors, heirs, and assigns, and also includes its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, any third party contractually related, directly or indirectly, other than Ketchikan Pulp Company and Gateway Forest Products, Inc., to the Borough, as well as their heirs, successors and assigns.

(b) Except as otherwise specifically provided in this Agreement, the term "Gateway" means and refers to Gateway Forest Products, Inc., an Alaska corporation.

(c) Except as otherwise specifically provided in this Agreement, the term "KPC" means and refers to Ketchikan Pulp Company, a Washington corporation.

(d) Notwithstanding the foregoing, the respective successors, heirs, and assigns of the Ketchikan Gateway Borough, Gateway Forest Products, Inc., and Ketchikan Pulp Company, shall be relieved of their obligations to comply with this Agreement to the extent such party no longer holds any interest in the Borough Property; provided, however, that any such party's responsibility and liability for acts and omissions occurring during the period in which that party held any ownership, leasehold, or other interest in the Borough Property (and any party's rights to payment, reimbursement, indemnification, release, or a defense regarding the same) shall survive such transfer. Nothing in this subsection shall diminish or relieve the obligations or liabilities of the Ketchikan Gateway Borough, Gateway Forest Products, Inc. or Ketchikan Pulp Company from the obligations of this Agreement.

### **2. Definitions.**

The terms used in this Agreement shall have the following meanings, which are to be equally applicable to both the singular and plural forms of the terms defined. All documents and plats referred to as filed, recorded, or both, are on file in the Ketchikan Recording District, First Judicial District, State of Alaska:



- (a) "Borough Property" means the following parcels of property, all of which are located in or near Ketchikan, Alaska. All references to Borough Property shall mean and include all fixtures, structures, facilities, and improvements upon such parcels and property, as well as all water rights and other appurtenant rights:

(i) **The "Ward Cove Parcels":**

- All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292);
- Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41;
- That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres;
- U.S. Survey 1706;
- The Unsubdivided Remainder of U.S. Survey 1754;
- That portion of U.S. Survey 1862, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North 32°27' West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North 0°25' West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24°30' East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36°35' East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51°21' East a distance of 210.05 feet; thence South 55°27' East a distance of 316.97 feet; thence South 34°33' West a distance of 50 feet; thence South 55°27' East a distance of 137.00 feet; thence South 88°00' West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North 29°30' West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1,

1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588;

- U.S. Survey 2090;
- That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning;
- Tract 3004, Lot 1; and
- Alaska Tidelands Survey No. 439.

(ii) **The "Pipeline Access Road Parcel"** The term "Pipeline Access Road Parcel" means and refers to Lot 1, Sec. 34, T. 74S., R.90E., C.R.M., a diagram of which is attached hereto as Exhibit "A" to Appendix "1".

(iii) **The "KPC Landfill Periphery Parcel"**: The term "KPC Landfill Periphery Parcel" means and refers to Lot 1, Tract 3004, according to the plat filed November 28, 2000 as Plat 2000-73.

(iv) **The "Dam and Pipeline Parcels"**: The term "Dam and Pipeline Parcels" refers to U.S. Survey 3400 and U.S. Survey 3401.

(b) **"Costs"** means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.

(c) **"Environmental Allocation Agreement"** or **"Exhibit F,"** means the Allocation of Environmental Responsibilities Agreement;

(d) **"Environmental Allocation Easement"** or **"Exhibit F-1,"** means the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities;



- (e) "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law, including causes of action arising in tort.
- (f) "Excess Water Option Agreement" means the Option Agreement to Purchase Excess Water, recorded in the Ketchikan Recording District on November 5, 1999, at Book 306, Page 160 (APA Exhibit "H-3");
- (g) "Foothill" means Foothill Capital Corporation, the entity which loaned Gateway some of the monies necessary to acquire the KPC assets and to complete construction of the veneer mill.
- (h) "Hazardous Substances" means substances which constitute hazardous substances under either the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.
- (i) "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District, and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources ("DNR") requires in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- (j) "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- (k) "Losses" means all known and unknown claims, causes of action, liabilities, payment requests or demands, losses, costs, expenses (including, without limitation, reasonable attorneys', experts', and other consultants' fees), penalties, fines, equitable relief, and damages.
- (l) "Mud Bight Tidelands Lease" means the KPC Alaska Tidelands Lease serialized by the State of Alaska, Department of Natural Resources, as





Tidelands Lease ADL 34507, that is applicable to the property identified as ATS No. 698, Tract B, which was assigned by KPC to Gateway, but which the State of Alaska refused to transfer because of new log storage permitting regulations, resulting in its retention by KPC.

- (m) "Office and Hangar Lease" means the Office and Hangar Lease Agreement, executed on November 3, 1999 and attached at Tab 5 to the APA, and for which a memorandum of lease for the office space was recorded November 15, 1999 at Book 306, Page 503 and a memorandum of lease for the hangar was recorded on November 12, 1999 at Book 306, Page 406.
- (n) "Plant Systems Easement" means that certain agreement recorded November 5, 1999 at Book 306, Page 990 (APA Exhibit "H-1"), as amended by the following:
  - Amendment to Plant Systems Easement, recorded December 15, 2000, at Book 319, Page 360.
  - Second Amendment to Plant Systems Easement, recorded January 3, 2001, at Book 320, Page 421.
- (o) "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous Substance.
- (p) Subdivisions: Some portions of the Borough Property are the subject of either current subdivisions or ones to be recorded after the effective date of this Agreement. The properties which are the subject of such subdivision may be referenced in this Agreement with the description thereof as it currently exists or as it will as a result of such subdivision. These subdivisions are referred to as follows:
  - (i) The term "No. 1 Subdivision" means and refers to Gateway Subdivision No. 1, a subdivision of U.S. Survey 1056, which created USS 1056, Lots 1, 2, and 3, according to the plat thereof filed and recorded on the 14 day of August, 2000 as Plat No. 2000-41.
  - (ii) The term "No. 2 Subdivision" means and refers to Gateway Subdivision No. 2, a subdivision of Lot 3 within U.S. Survey 1056, which will create USS 1056, Lot 3-A, and re-name the remainder of USS 1056 as Tract A, approved by the Ketchikan Gateway Borough Planning & Zoning Commission on October 9, 2001.



- (iii) The term "No. 3 Subdivision" means and refers to Gateway Subdivision No. 3, a subdivision of USS 1056, Tract A and ATS-1, Exhibit A, which will create USS 1056, Lot 3-B, and ATS-1, Lots A, B, C. and D, approved by the Ketchikan Gateway Borough Planning & Zoning Commission on February 12, 2002.
- (q) "Ward Cove Area" means the water body commonly known as Ward Cove, including marine waters to the ordinary high water mark and sediments underlying such waters, and also means the surface and subsurface areas of those portions of U.S. Surveys 1056, 1208, 1508, 1653, 1656, 1659, 1706, 1754, and 1862 lying seaward of the North Tongass Highway, and the filled portions of ATS-1, including any structures or other improvements located thereon.
- (r) "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered by the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, *United States vs. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation*, Case No. A00-225 CV (JKS).
- (s) "Ward Cove Landfills" means the industrial landfill which KPC owns and operates upon Lot 2, Tract 3004, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73.
- (t) "Water Rights Agreement" means the Associated Real Property and Water Rights Agreement, recorded November 5, 1999 at Book 306, Page 84 (APA Exhibit "H").
- (u) "Water Use Site Easement" means the Water Use Site Easement, recorded November 5, 1999, at Book 306, Page 125 (APA Exhibit "H-2"), as amended by the following:
- Amendment to Water Use Site Easement, recorded December 12, 2000, at Book 319, Page 250.
- (v) "Water Use Site Option Agreement" means the Option Agreement to Purchase Water Use Site, recorded November 5, 1999, at Book 306, Page 149 (APA Exhibit "H-4"), as amended by the following:
- Amendment to Option Agreement to Purchase Water Use Site, recorded December 12, 2000, at Book 319, Page 258.



All of the definitions provided in the Recitals are incorporated herein by reference as though fully set forth, and all of the definitions provided anywhere in this Agreement, including the Recitals and the text, shall constitute binding terms of this Agreement.

### **3. Property Covered.**

(a) This Agreement applies to the Borough Property, more fully described in Section 2(a), which are the property interests the Borough has or is expected to receive, whether by foreclosure or otherwise, from Gateway, Foothill, or KPC. However, except as otherwise expressly provided, to the extent the Borough does not acquire any of the property interests, the terms of this Agreement shall not apply.

(b) The obligations of a future holder of any interest in a parcel or area of real property set forth in Section 2(a), or a portion thereof, shall be limited to the parcel, area, or portion held by such party and shall not be interpreted to create liability for other parcels or areas not held by such party.

### **4. Environmental Allocation Agreement And Environmental Allocation Easement Superseded.**

(a) The Environmental Allocation Agreement and Environmental Allocation Easement currently apply to the following parcels:

- (i) All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), except Exhibit "C-2";
- (ii) Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41;
- (iii) That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres;
- (iv) U.S. Survey 1706;
- (v) The Unsubdivided Remainder of U.S. Survey 1754;
- (vi) That portion of U.S. Survey 1862, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North  $32^{\circ}27'$  West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North  $0^{\circ}25'$  West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to

Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24°30' East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36°35' East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51°21' East a distance of 210.05 feet; thence South 55°27' East a distance of 316.97 feet; thence South 34°33' West a distance of 50 feet; thence South 55°27' East a distance of 137.00 feet; thence South 88°00' West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North 29°30' West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588;

- (vii) U.S. Survey 2090;
- (viii) That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning; and
- (ix) Tract 3004, Lot 1.

(b) This Agreement and the accompanying Environmental Easement and Covenants ("Borough Easement"), the form of which is attached hereto as Appendix "1," shall supersede and replace the Environmental Allocation Agreement and Environmental Allocation Easement with respect to any parcel or parcels of the Borough Property listed in subsection (a), when the Borough takes title and the Borough Easement is executed and recorded.

(c) This Agreement and the Borough Easement shall not affect the applicability of the terms and conditions of the Environmental Allocation Agreement or Environmental Allocation Easement as to any real property other than any parcel or parcels to which the Borough has taken title.





(d) The Borough Easement shall be executed and recorded only after the Borough obtains title to the Borough Property, whether by foreclosure or otherwise, but shall be subject only to the Borough's title, including all reservations, easements and restrictions of record.

**5. Applicability of the Borough Easement.**

(a) Once title to any one or more parcels of Borough Property set forth in Section 2(a) is taken by the Borough, the Borough shall execute and deliver to KPC in recordable form, an easement in substantially the same form as Appendix "1."

(b) A Form of Easement and Covenant Vacation, removing the Environmental Allocation Agreement and the Environmental Allocation Easement, to be utilized only as and when the Borough obtains title to one or more parcels of the Borough Property, is attached as Appendix "2." KPC, Gateway and the Borough shall execute and record the Easement and Covenant Vacation contemporaneous with their execution and recordation of the Borough Easement; provided, however, that once Gateway no longer is the owner of a parcel, or a portion of any parcel, of the Borough Property, its agreement no longer shall be necessary to vacate the Environmental Allocation Agreement and the Environmental Allocation Easement with respect to that parcel or portion.

**6. Governmental Easement Unaffected.**

This Agreement shall not be interpreted to diminish the rights of the State of Alaska or the United States under that certain *Environmental Protection Easement and Declaration of Restrictive Covenants* recorded in the Ketchikan Recording District on October 28, 1999 at Book 305, Page 772.

**7. Ward Cove Sand Cap.**

(a) The Borough agrees to application of the covenants, which are set forth in Appendix "1" hereto, relating to the cap or capping materials that have been applied to the sediments of Ward Cove pursuant to the provisions of the Ward Cove Consent Decree ("Sand Cap").

(b) While the Borough, or any of its instrumentalities, for example a port authority, owns any portion of Alaska Tidelands Survey No. 1, the Borough further covenants and agrees that it shall be liable for any damage to the Sand Cap arising out of the acts or omissions of the Borough, its employees, agents, contractors, lessees, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, or any third party contractually related, directly or indirectly to the Borough, other than KPC and Gateway; provided, however, that the Borough shall not be responsible or liable for damage to the Sand Cap to the extent such damage results from the activities or operations of KPC, its agents, servants, employees, officers, directors, partners, principals, shareholders and contractors.



(c) The Borough agrees to impose appropriate contractual requirements and port use regulatory provisions regarding the capping materials on parties with which it does business, consistent with the requirements imposed in accordance with the terms of Appendix "1."

(d) KPC agrees that this Agreement does not diminish, or shift to the Borough, KPC's responsibility to monitor, at KPC's cost, the Ward Cove Cap, as set forth in the Ward Cove Consent Decree and in the *Long Term Monitoring and Reporting Plan for Sediment Remediation in Ward Cove* prepared by Exponent or any remediation which may be required as a result.

#### **8. Institutional Controls.**

(a) The Borough Entities agree that they will adhere to and comply with, at their expense, any and all Institutional Controls which apply to the Borough Property. Further, the Borough Entities agree that they will comply with future Institutional Controls which may become applicable to the Borough Property as a result of EPA, DEC, or DNR imposed limitations. The Borough shall have the right to seek modification of existing or future Institutional Controls. Any such amendment to Institutional Controls, or future limitations which relax restrictions imposed on the Borough Property, or which would result in costs assessed against, or otherwise adversely affect KPC, shall not be negotiated without KPC's participation. The Borough Entities will not seek payment or damages from KPC for the cost of implementing these Institutional Controls or for any resulting diminution in value of any such parcels.

(b) For each parcel or area comprising the Borough Property, the Borough Entities shall only be obligated to comply with the existing or new Institutional Controls that are applicable to such parcel or area.

(c) In the event that any governmental entity seeks to compel KPC to impose Institutional Controls on the Borough Property, KPC promptly will notify the Borough and tender to the Borough the right to conduct the requisite negotiations, subject to the limitations of this section. The Borough will grant KPC the opportunity to participate in those proceedings. Under no circumstances, however, shall this section be interpreted to require the Borough or KPC to indemnify the other for any costs of Remediation.

(d) The Borough agrees to impose, upon the Borough Entities, appropriate contractual requirements regarding adherence to and compliance with, at their expense, any Institutional Controls, consistent with the provisions contained in this section.

#### **9. Government Oversight Costs.**

(a) The parties acknowledge that the Ward Cove Consent Decree requires that governmental oversight costs must be paid if governmental oversight is required in connection with the Borough Property. The parties agree that each shall be responsible for any governmental oversight costs that may be assessed by appropriate government



agencies for obligations or liabilities allocated to each party under this Agreement, attributable to inquiries or operations that any of them have initiated or conducted or which may occur in the future. Each party shall further be liable for such costs when caused by inquiries or operations of: third parties which have been, or will be, doing, or seeking to do, business with or at the direction of a party; a past or prospective purchaser or lessee; or a third party objecting to past, current or proposed activities, uses or operations of a party or its permittees. For example, KPC would be responsible for oversight costs related to future remediation in Ward Cove arising from newly discovered contamination attributable to operations during its ownership. Similarly, the Borough would be responsible for oversight costs associated with future development or other operations at Ward Cove.

(b) In the event of any disagreement between the parties as to whether a particular governmental oversight cost is properly attributable to KPC, the Borough, Gateway, or should be shared in some manner between them, the parties agree that they shall jointly provide copies of this Agreement and any related relevant instruments to and solicit the opinion of that government agency with respect to responsibility for the oversight costs. The opinion of the government agency shall be deemed presumptively correct. Any party seeking to allocate responsibility differently than the agency shall have the burden of proof on that issue. Under no circumstances, however, shall this section be interpreted to require the Borough or KPC to indemnify the other for any costs of Remediation.

#### **10. Disclosure of Environmental Conditions by KPC to Borough.**

(a) Ketchikan Pulp Company has conducted an inquiry concerning environmental conditions at the Borough Property. To the best of KPC's knowledge, as defined under AS 45.01.201(28), it has disclosed to the Borough all material information concerning the environmental conditions at the Borough Property which arose prior to KPC's sale of the Borough Property to Gateway.

(b) KPC has provided the Borough the following information concerning known environmental conditions with respect to the Borough Property:

- (i) Items set forth in a letter from Donna Willard to Cabot Christianson dated September 28, 2001, including the Schedule of Exceptions attached to the APA;
- (ii) Items provided by John Peterson as set forth in his letter to Cabot Christianson dated October 2, 2001;
- (iii) Information provided to Borough consultant Ray Bloom set forth in the letter from Chris Paulson dated October 17, 2001;
- (iv) Four boxes of site characterization and other associated documents, a listing of which was included, developed by Exponent and PTI





Environmental Services under the Ward Cove CERCLA process overseen by EPA and DEC, which were shipped via Alaska Airlines Goldstreak along with a cover letter from John Peterson to Cabot Christianson dated December 17, 2001, as well as two indices entitled "Uplands Operable Unit" and "Marine Operable Unit;"

- (v) A synopsis prepared by KPC, and set forth in a letter from John Peterson to Cabot Christianson dated January 4, 2002, as well as the enclosures, including the one titled "Overview, Characterization Activities Associated with the Former Ketchikan Pulp Company Site," prepared by Exponent (December 2001);
- (vi) The ALTEC Report transmitted to Cabot Christianson and Scott Brandt-Erichsen, via Federal Express, on December 22, 2001; and
- (vii) Information provided to Scott Brandt-Erichsen in and with the February 20, 2002 letter from John Peterson, relating to the dam, pipeline and water rights.

(c) The Borough has had ample opportunity to review the information provided by KPC, as listed above, as well as to seek the advice of counsel and third-party consultants. The Borough also has had sufficient time to inspect the Borough Property and to confer with appropriate agency officials concerning its regulatory history. The Borough is entering into this Agreement in reliance upon its own due diligence, in addition to KPC's representations set forth herein.

(d) Except as provided In Section 19(b) and (h), if KPC agrees, or a court finds, (i) that KPC breached the representation in subsection (a) above by failing to disclose to the Borough material information concerning contamination attributable to KPC's operations at the Borough Property of which the Borough does not otherwise have knowledge, as defined under AS 45.01.201(28), prior to entering into this Agreement; or (ii) that subsequently discovered, undisclosed contamination arising from KPC's operations is found to exist, and if the Borough Entities are subject to a final agency directive or order that they are responsible for investigating or remediating such contamination, then KPC agrees that it will, at its option, either remediate or pay for the remediation of such contamination to the regulatory cleanup standards then applicable and in force. However, nothing herein shall be interpreted to limit KPC's ability to request adjudication or otherwise to challenge the nature or scope of Investigation or Remediation activities sought by any agency.

(e) The Borough Entities agree that such Remediation shall be the sole and exclusive remedy for any KPC liability, established pursuant to the provisions of subsection (d), and that the Borough Entities shall be precluded from seeking any other damages or equitable relief, including compensatory damages, consequential damages, lost income, and any other expenses, costs, or losses. The limitation on the Borough Entities' remedies in the preceding sentence shall apply only if KPC diligently pursues





the required Investigation and Remediation activities, and KPC does not unreasonably delay such activities or unreasonably interfere with the Borough Entities' use of the Borough Property.

**11. Environmental/Real Property Release by the Borough and Subsequent Buyers.**

(a) For purposes of this section only, Ketchikan Pulp Company shall mean and include the corporation and its agents, servants, employees, officers, directors, partners, principals, and shareholders, as well as all of their insurance companies and contractors ("KPC Releasees").

(b) Except as otherwise provided in this Agreement, the Borough hereby releases, forever discharges, and covenants not to sue the KPC Releasees with regard to any and all Losses, whether past, present, or future, arising out of or in any way related to the Ward Cove Area and the real property interests, together with any improvements situated thereon, which are identified in Section 2(a) hereof, including: (1) any environmental claims for conditions which have been discovered or disclosed as described in Section 10, whether arising under CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. § 6901 *et seq.*; AS 46.03.822; or any other authority; and (2) any and all other known and unknown claims and causes of action, whether arising under statute, contract, common law, tort, or any other law or legal theory (the "Release").

(c) The parties further covenant and agree that the provisions of this Agreement supersede and replace the environmental provisions contained in the loan agreement and the assignment and assumption agreement, both dated June 14, 1999, and that certain deed of trust dated December 13, 1999, recorded December 21, 1999 at Book 307, Page 629, Records of the Ketchikan Recording District, First Judicial District. The Release also shall extend, without limitation, to all Losses, whether attributable to KPC, Gateway, or otherwise, arising out of, or in any manner related to, the Environmental Allocation Agreement, the Environmental Allocation Easement, or both, or to the environmental obligations set forth in any one or more of the following: (1) Agreement For Loan dated June 14, 1999; (2) Agreement For Assignment, Assumption and Release dated June 14, 1999; and (3) the Deed of Trust dated December 13, 1999 and any amendments thereto.

(d) The Borough acknowledges and agrees that it is familiar with the decisions of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978); *Schmidt v. Lashley*, 627 P.2d 201 (Alaska 1981); and *Mitchell v. Mitchell*, 655 P.2d 748 (Alaska 1982), and that it has contemplated the possibility that new facts may subsequently be discovered which may affect its rights to relief, and that, except as otherwise provided in this Agreement, it nevertheless is the Borough's intention to fully release and forever discharge the KPC Releasees and Gateway with regard to any and all known and unknown Losses arising out of or in any way related to the matters described herein.



(e) The Borough further acknowledges and agrees that it is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969), and that it nevertheless intends to fully release all individuals, firms or corporations who could at any future date be possible defendants in any action arising out of or in any way related to the matters set forth, as fully as though they were specifically listed and named herein.

(f) The Borough specifically renounces and releases any right it may now or hereafter have to reform, rescind, modify, or set aside this Release because of mutual or unilateral mistake. The risk of mistake is hereby assumed by the Borough. It is further acknowledged and agreed that no representation, promise, or inducement, other than those specifically expressed in this Agreement, has been made to secure this Release.

(g) The Borough acknowledges and agrees that it has had an adequate opportunity to consult with counsel of its own choosing and to review all of the terms and conditions herein, and that this Release is entered into without haste and without any disparity of bargaining power.

(h) The Borough agrees that it shall contractually require its successors, heirs, and assigns to affirmatively accept and be bound by the terms of this Agreement. To that end, the Borough shall include the following language in any lease, sale, or conveyance of any interest in all or part of the Borough Property and shall contractually require any successor, heir, or assign to impose such language in future leases, including amendments thereto, sales, and conveyances:

[Name of lessee, purchaser, or interest holder] in further consideration for, and as a condition to, this Agreement, hereby agrees that the real property interests it hereby is acquiring from the Borough, whether by deed, lease, deed of trust assignment or release, or otherwise, are subject to the same limitations and conditions as the ones applicable to the Borough which are set forth in that certain agreement dated \_\_\_\_\_, a copy of which is attached hereto and is incorporated by reference as though fully set forth. In particular, all releases, waivers and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including but not limited to environmental claims, whether arising under CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. § 6901 *et seq.*; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the Borough concurred, are hereby agreed to be applicable and in full force and effect.

Further, the parties to this Agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs and assigns, are third party beneficiaries of this Agreement and any future agreements concerning the property.

[Name of lessee, purchaser, or interest holder] HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR



CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN  
ALL OR PART OF THIS PROPERTY.

Furthermore, the Borough agrees that, in the event it releases all or a portion of its security interests set forth in that certain deed of trust executed by Gateway on April 16, 2001, which was recorded on April 17, 2001 at Book 324, Page 395, without taking title to the property thereby encumbered, the foregoing language likewise shall be included as a condition to any such release.

**12. NPDES Permit and Outfall Pipe 001.**

(a) The Borough agrees that it will maintain the Plant Pipeline System and Discharge System, to and through outfall pipe 001 and associated facilities, including any replacement or alternative discharge pipe or conveyance that is the functional equivalent of outfall 001, identified in NPDES Permit AK-000092-2 ("Outfall 001"), in good working order and in a condition sufficient to accommodate existing and future wastewater discharges associated with the Ward Cove Landfills.

(b) Throughout the period during which water from Connell Lake is required by NPDES Permit AK-00092-2 ("Permit") to be discharged through Outfall 001, the Borough shall use its best efforts to maintain a flow of approximately 2.0 to 2.2 MGD of water through the pipeline. The Borough furthermore agrees that KPC shall have the first priority right to use and discharge up to 2.2 MGD of water, leachate and other effluent to and through Outfall 001.

(c) The Borough and KPC have agreed to a cost sharing formula equitably allocating the associated expenses of the Permit, which is set forth in Appendix "3" to this Agreement. This formula will remain in force until KPC obtains its own NPDES permit and completes construction of its own outfall, at which time the cost sharing and the duties set out in subsections (a) and (b) shall terminate.

**13. Easement for New Outfall.**

(a) KPC is in the process of obtaining a new NPDES permit pursuant to which a separate outfall for the Ward Cove Landfills will be constructed. An easement for that purpose was granted by Gateway and recorded on April 30, 2002 as Document 2002-001755-0 ("New Outfall Easement"). In conjunction therewith, Gateway and the Borough have commenced, and will diligently pursue, the process necessary to modify, amend, or have reissued the current NPDES permit governing Outfall 001. If accepted by the issuing agency, the Borough will be named as permittee.

(b) In the pending foreclosure litigation entitled *Foothill Capital Corporation vs. Gateway Forest Products, Inc., et al.*, Case No. A02-275-CV (RRB), being prosecuted by Foothill on behalf of the Borough, the Borough shall cause Foothill to execute a subordination agreement protecting KPC's interest in the New Outfall Easement granted by Gateway to KPC as set forth in subsection (a). The Borough will





take all other measures necessary to ensure that the New Outfall Easement otherwise survives and remains unaffected by the foreclosure litigation.

(c) In the event the Environmental Allocation Easement is vacated from ATS-1, Exhibit "C-1," the New Outfall Easement shall be expressly excluded therefrom.

(d) If, in the permitting process, the EPA or DEC determines that another outfall location is necessary, Gateway and the Borough will execute all documents necessary to amend the New Outfall Easement. The easement shall consist of a right of free access to and across the property subject to the New Outfall Easement for the purpose of constructing, using, maintaining, and replacing the new outfall pipe and free access across other portions of ATS-1, Exhibit "C-1" as needed to construct, maintain, repair, and replace the new outfall. The Borough, Gateway, and KPC shall cooperate in good faith to promptly draft, execute, and record such easement when the precise location has been identified. To the extent Foothill retains or acquires any interest in the easement premises, the Borough also will cause Foothill to execute and deliver the necessary easement amendment documents.

(e) This easement shall include the provision that KPC, with respect to the construction, use, and maintenance of the new outfall pipe, and the Borough, with respect to its operations and activities in the area subject to the New Outfall Easement, shall each cooperate so as to not unreasonably interfere with the other's activities and operations.

#### **14. Dam and Pipeline.**

(a) KPC has agreed to donate, and the Borough has agreed to accept the gifting of, the assets set forth in subsection (b) hereof. The parties further agree that this Agreement, shall become binding and effective only upon consummation of their donation and acceptance.

(b) The following transactions will be executed, finalized, and simultaneously recorded as soon as reasonably practicable after the execution of this Agreement and submitted to DNR:

- (i) Quitclaim Deed conveying the Dam Parcel, Pipeline Parcel, Water Use Site Easement, Plant Systems Easement, and water rights to the Borough;
- (ii) Assignment of KPC's application pending before DNR to amend its Certificate of Appropriation filed March 21, 2002, and its Water Rights Application filed May 2, 2002 to the Borough;
- (iii) Assignment to and assumption of the Excess Water Option Agreement by the Borough;





- (iv) Assignment to and assumption of the Water Use Site Option Agreement by the Borough;
- (v) Assignment to and assumption of the Water Rights Agreement by the Borough; and
- (vi) Assignment to and assumption of the Certificate of Approval To Operate A Dam, NID ID#AK00010, issued by DNR on November 14, 2002.

(c) KPC shall release its rights in the temporary Special Use Permit issued by the United States Forest Service for operation of the Connell Lake dam facility and shall support its reissuance to the Borough.

(d) The Borough expressly agrees that it is taking the foregoing assets, where is, as is, and without any warranty of any kind whatsoever.

**15. Ward Cove Landfills.**

(a) KPC will retain ownership of the Ward Cove Landfills parcel described as Tract 3004, Lot 2. Except as otherwise provided herein, KPC agrees to be responsible for all operation, maintenance, and permitting obligations for the Ward Cove Landfills, other than the operation, maintenance, and use of Outfall 001 and associated facilities by Gateway, the Borough, and other parties. Promptly after the effective date of this Agreement, the Environmental Allocation Agreement and the Environmental Allocation Easement shall be vacated with respect to this parcel.

(b) KPC has agreed to donate, and the Borough has agreed to accept the gifting of, Tract 3004, Lot 1, upon the terms and conditions set forth in Appendix "1," Section III.A.6 which shall be reserved in KPC's quitclaim deed to the Borough, or the Borough shall grant to KPC, including a perpetual access easement between the public right of way of North Tongass Highway and Tract 3004, Lot 2, as well as a perpetual easement for an effluent discharge line and accompanying access between Tract 3004, Lot 2, and ATS-1, Exhibit "C-1" as set forth in Appendix "4" hereto.

(c) After construction of the effluent discharge line has been completed and its location established, the Borough will cooperate with KPC in executing and recording a single consolidated easement which will detail the pipeline location across both Tract 3004, Lot 1 and ATS-1, Exhibit "C-1." The consolidated easement will be upon terms consistent with the New Outfall Easement and the effluent discharge line easement across Tract 3004, Lot 1, and will supersede the provisions of both of those easements. In addition, in order that all of KPC's easements with respect to the Ward Cove Landfills are set forth in a single document, this consolidated easement also will include terms which provide for, and therefore supersede, the separate easement with respect to access to the Ward Cove Landfills from North Tongass Highway.



## **16. Pipeline Access Road Parcel.**

(a) The three-acre parcel along the pipeline access road, the "Pipeline Access Road Parcel," as more particularly described in Section 2(a)(ii), is subject to the future imposition of Institutional Controls pursuant to Paragraph 46 of the Ward Cove Consent Decree. The parties will cooperate with each other and relevant government agencies with respect to the development and imposition of Institutional Controls required for the Pipeline Access Road Parcel.

(b) If acceptable to relevant government agencies, the Borough will retain ownership of the Pipeline Access Road Parcel upon receiving title from the State and work cooperatively with KPC to facilitate the development and implementation of Institutional Controls satisfactory to relevant government agencies responsible for activities under Paragraph 46 of the Ward Cove Consent Decree.

(c) If such relevant government agencies are not agreeable to the course of action described in the previous sentence, the Borough shall convey the Pipeline Access Road Parcel to KPC at no cost within 45 days of receiving title to the property from the State. In such instance, KPC and the Borough shall work cooperatively to develop Institutional Controls satisfactory to relevant government agencies under Paragraph 46 of the Ward Cove Consent Decree and within 45 days of KPC's compliance with Paragraph 46 of the Ward Cove Consent Decree as determined by relevant government agencies, KPC will reconvey the Pipeline Access Road Parcel to the Borough at no cost.

(d) The Borough will not seek payment or damages from KPC for the cost of implementing any Institutional Controls or for any resulting diminution in value of the Pipeline Access Road Parcel. Furthermore, the Borough agrees that it will adhere to and comply with, at its expense, any and all Institutional Controls, required by the Ward Cove Consent Decree or any other authority, which are or may become applicable to the Pipeline Access Road Parcel, the activities conducted thereon, or both and will cooperate with KPC with respect to any future modifications to Institutional Controls required by relevant government agencies.

## **17. Office and Hangar Lease.**

(a) KPC agrees to compromise its rights under the Office and Hangar Lease ("Lease") as follows: KPC will vacate the offices in its former administration building which it currently occupies and the Lease as to that facility only will be terminated. In return, KPC shall be granted the right to occupy the helicopter hangar premises through December 31, 2005. That occupancy shall be rent-free on the same terms and conditions, including payment for utilities, set forth in the Office and Hangar Lease, at which point the Lease shall terminate.

(b) In the event that the Borough were to either sell the hangar property or acquire a long term paying tenant, KPC shall vacate the premises, provided that suitable alternate facilities (e.g. approximately 2600 square feet with telephone lines, electricity,



water and data ports), are made available in the administration building or another suitable structure. In that event, KPC would be entitled to utilize that space until December 31, 2005 on the same terms and conditions as the current Lease.

#### **18. Mud Bight Tideland Lease.**

The Borough has elected to accept the Mud Bight Tideland Lease and KPC will cooperate by executing appropriate documents, participating in meetings, and carrying out other steps reasonably necessary to effectuate the transfer. If the Borough fails to request a transfer or file the appropriate documents within ninety (90) days after this Agreement becomes effective, KPC shall be entitled to surrender the Mud Bight Tideland Lease to the State of Alaska.

#### **19. Asbestos Abatement.**

(a) KPC shall retain a certified asbestos abatement contractor to remove, as soon as practicable (the estimate for which is four months after completion of a 30 day mobilization period) and, subject to obtaining all necessary permits and authorizations, the asbestos-containing materials ("ACM") specifically identified, from the following structures:

- (i) Powerhouse: Abatement of all ACM from the piping systems, tanks, and equipment throughout the powerhouse portion of the building, including the interiors and exteriors of the power and recovery boilers, as well as the piping in the 28 and 29 conveyors;
- (ii) Turbine Room: Abatement of all ACM, including the underbellies, but not the interiors, of the turbines, which, provided an acceptable release has been executed in accordance with Section 19(c), will remain in the building pending completion of the abatement work but thereafter shall be removed by their owners within ninety (90) days. The asbestos contractor shall use commercially reasonable efforts, so long as they do not result in additional costs, to protect the turbines from damage. However, in the event any such damage occurs, the liability of both KPC and the abatement contractor is limited to the price which the owners of the turbines paid at auction to acquire them;
- (iii) Wood Room: Abatement of panels in the electrical control room;
- (iv) Machine Room: Removal of the metal doors containing ACM; and
- (v) Roofing Materials: Removal of the roof coverings of the powerhouse/turbine complex which have been ascertained to be composed of a material containing non-friable asbestos.





(b) The Borough specifically acknowledges that other facilities at Ward Cove, including the Filter Plant, Secondary Treatment Plant, Administration Building, Maintenance/Stores Building, Wood Room and Machine Room/Finishing Room, may contain ACM in such elements as roofing materials, flooring and siding. The Borough hereby releases, indemnifies and will defend KPC from and against any and all liability, claims, losses and other expenses, including costs and attorney fees, whether arising under CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. § 6901 *et seq.*; AS 46.03.822; or any other authority, which may be incurred as a result of the continuing presence of any materials containing ACM in or on KPC's former Ward Cove structures, other than the materials identified for removal in subsection (a) hereof.

(c) Prior to the commencement of abatement work, the Borough and Gateway shall either: (i) secure the removal of property from the premises which is owned by third persons, other than the turbines which shall be removed within ninety (90) days following completion of the abatement work; (ii) obtain a release from such third parties, including one which will permit the turbines to remain in the building during the abatement process; or (iii) agree to indemnify, hold harmless and defend KPC from any liability, claims, losses or expenses incurred as a result of damages sustained to property owned by third parties. In addition, the owners of the turbines shall indemnify, hold harmless and defend the Borough from any liability, claims, losses, or expenses incurred as a result of any damage which might be sustained to the turbines.

(d) During the abatement process, surface areas in the powerhouse will be cleaned from the top level to the trenches on the first level. All ACM and cross-contaminated materials shall be disposed of in accordance with applicable law. All water used during the abatement will be filtered before being released. The abatement contractor will have the discretion to leave non-ACM wastes, such as refractory bricks and metal, in or adjacent to the buildings or to dispose of them. The asbestos abatement contractor shall not be obligated to perform any demolition but shall be entitled to perform such demolition or modifications of the buildings, structures and equipment as necessary or convenient to abate ACM.

(e) Gateway shall be the owner of the work/project. KPC shall secure all abatement services, which shall be performed in accordance with applicable law. The charges incurred for employment of an abatement contractor shall be the sole responsibility of KPC.

(f) Gateway and the Borough shall grant KPC and its agents vehicular access to the areas to be abated, including to the No. 2 set of evaporators; shall coordinate unrelated activities occurring at or around the premises to be abated thereby ensuring that the abatement work is not impeded; and shall otherwise fully cooperate in the endeavor. Furthermore, Gateway and the Borough shall provide an adequate, suitable outside storage area, between the bleach plant and the powerhouse, in which to collect all ACM material for subsequent shipping.





(g) The Borough will provide electrical power, sewer and water adequate for performance of the abatement work. The charges for those services will be based on usage and will be billed at the normal rates which other tenants at KPC's former Ward Cove facilities pay. After the first \$5,000.00 in electrical, sewer and water services have been provided at Borough cost or expense, KPC shall be billed the flat sum of \$1,500.00 per month until the abatement work has been completed. Only in the event that the abatement work has not been completed with twelve (12) months of its commencement shall the fee to be paid by KPC be subject to renegotiation.

(h) Gateway, on behalf of itself and future owners, future tenants, transferees, assignees, and successors, as well as the Borough to the extent it may become any of the foregoing, shall release KPC from any and all claims regarding ACM, to the extent KPC may be liable, under the Environmental Allocation Agreement and the Environmental Allocation Easement, statutory or common law, or for any other reason.

(i) Gateway and the Borough hereby agree to indemnify, hold harmless and defend KPC from and against any claims and losses regarding ACM located anywhere in or on the former KPC structures, other than those materials identified in subsection (a) hereof. Neither the Environmental Allocation Agreement, the Environmental Allocation Easement nor the Borough Easement will be applicable for purposes of imposing future liability on KPC for either ACM abatement activities or reimbursement therefore or indemnity for any related claims or losses, whether arising under CERCLA, 42 U.S.C. § 9601 *et seq.*; RCRA, 42 U.S.C. § 6901 *et seq.*; AS 46.03.822; or any other authority. Such claims, if any, shall be governed solely by the provisions of this Agreement.

(j) The Borough and Gateway each accept all risk that the abatement work may damage or otherwise adversely affect, directly or indirectly, the structures from which the ACM is removed or the condition of the contents of the building, including the power boilers. In the event that the turbines are not removed within ninety (90) days after the abatement work is completed, they shall be deemed to have been abandoned and may be disposed of at no cost to Gateway or their owners. The Borough or the then current owners shall accept all responsibility for any asbestos that might remain within their interiors. Acceptance of the foregoing risk constitutes a full and final release of all potential liability of KPC, its agents, employees, consultants and contractors, together with their employees, and extends to all damage or destruction, whether caused by negligence or other fault.

(k) The Borough will take possession and control of all structures from which ACM is removed immediately upon the conclusion of the abatement work. The Borough, at its sole cost and expense, plans to demolish the powerhouse once all ACM has been removed. The Borough shall indemnify, defend and hold KPC harmless from and against all liability, claims, expenses and losses associated therewith. KPC will cause the abatement contractor to provide to the Borough, at the completion of the project, a written certification that all ACM identified in subsection (a) has been removed, other than any which may be located inside the turbines. KPC will cause the abatement contractor, prior to mobilization, to agree to indemnify and defend the



Borough and Gateway on the same terms that the contractor agrees to indemnify and defend KPC from Losses arising from damage to property (other than the buildings, structures, and equipment from which, or in the area where, ACM is being abated) and injury to persons, including death. KPC shall also cause the abatement contractor, prior to mobilization to designate the Borough and Gateway as additional insureds under its general liability insurance coverage upon the same terms as KPC is so designated.

## **20. Reservation of Borough Rights.**

Nothing in this Agreement shall be construed to limit, in any manner, the Borough's right to foreclose on any security interest which it holds with respect to the Borough Property, except that this Agreement shall remain effective notwithstanding the Borough's acquisition of subsequent ownership and title.

## **21. Notice, Cooperation, and Non-Interference.**

(a) KPC and the Borough hereby covenant and agree to cooperate to avoid any unreasonable interference with KPC's and the Borough's respective activities and operations at the properties set forth in Section 2(a) hereof.

(b) KPC, Gateway and the Borough further covenant and agree to give the other parties advance written notice of any material excavation, digging, or other similar activities on any of the properties set forth in Section 2(a) hereof.

## **22. General Mutual Release of Existing Claims.**

(a) For purposes of this section only, Ketchikan Gateway Borough shall mean and include the Borough, as well as any of its subdivisions, elected officials, managers, agents, and employees ("KGB Releasees"). Ketchikan Pulp Company shall mean and include the corporation and its agents, servants, employees, officers, directors, partners, principals, and shareholders, as well as all of their insurance companies and contractors ("KPC Releasees"). Gateway Forest Products, Inc. shall mean and include the corporation and its agents, servants, employees, officers, directors, partners, principals and shareholders, as well as their insurance companies and contractors ("Gateway Releasees").

(b) Except as otherwise provided in this Agreement, the Ketchikan Gateway Borough hereby dismisses, releases, forever discharges, and covenants not to sue, either the KPC Releasees or the Gateway Releasees with regard to any and all Losses existing upon the effective date of this Agreement, including but not limited to Losses arising out of or in any way related to: (1) Gateway; (2) the Gateway bankruptcy proceeding (Bankr. D. Alaska, Case No. K-01-00157); (3) the Ketchikan Gateway Borough's acquisition of claims relating to the Gateway bankruptcy proceeding; (4) the Participation Agreement executed by the Ketchikan Gateway Borough and Ketchikan Pulp Company in August of 1999 and the resulting veneer study provided by Ketchikan Pulp Company; and (5) any



and all other Losses arising under statute, contract, common law, tort, or any other law or legal theory, or any combination thereof.

(c) Except as otherwise provided in this Agreement, Ketchikan Pulp Company and Gateway Forest Products, Inc. hereby dismiss, release, forever discharge, and covenant not to sue, the KGB Releasees, with regard to any and all Losses existing upon the effective date of this Agreement, including but not limited to Losses arising out of or in any way related to: (1) Gateway; (2) the Gateway bankruptcy proceeding (Bankr. D. Alaska, Case No. K-01-00157); (3) the Ketchikan Gateway Borough's acquisition of claims relating to the Gateway bankruptcy proceeding; (4) the Participation Agreement executed by the Ketchikan Gateway Borough and Ketchikan Pulp Company in August of 1999 and the resulting veneer study provided by Ketchikan Pulp Company; and (5) any and all other Losses arising under statute, contract, common law, tort, or any other law or legal theory, or any combination thereof.

(d) The parties agree that the pending lawsuits entitled *Ketchikan Gateway Borough vs. Ketchikan Pulp Company et al.*, Case No. 1KE-02-489 CI, filed in the Superior Court for the State of Alaska, First Judicial District at Ketchikan; and *Ketchikan Pulp Company vs. Ketchikan Gateway Borough*, Case No. 3AN-03-7081 CI, filed in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, will be dismissed with prejudice, each party thereto shall bear its own costs and attorney fees.

(e) With respect to that certain litigation entitled *Foothill Capital Corporation vs. Gateway Forest Products, Inc., et al.*, Case No. A02-275-CV (RRB), pending in the United States District Court for the District of Alaska, when this Agreement becomes binding and effective, KPC shall withdraw its opposition to Foothill's pending motion for summary judgment and, so long as its New Outfall Easement is protected as provided in this Agreement, shall lodge no further objections. Additionally, Gateway shall convey to the Borough any redemption or repurchase rights which it may have with respect to the property which is the subject of the foreclosure action brought by Foothill, and any rights under existing permits for the site, at no cost to the Borough. Furthermore, each party thereto shall bear its own costs and attorney fees.

(f) The parties acknowledge and agree that they are familiar with the decisions of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978); *Schmidt v. Lashley*, 627 P.2d 201 (Alaska 1981); and *Mitchell v. Mitchell*, 655 P.2d 748 (Alaska 1982), and that they have contemplated the possibility that new facts may subsequently be discovered which may affect their rights to relief, and that, except as otherwise provided in this Agreement, it is nevertheless the parties' intention to fully release and forever discharge each other with regard to any and all known and unknown Losses arising out of or in any way related to the matters described herein.

(g) The parties further acknowledge and agree that they are familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969), and that they nevertheless intend to fully release all individuals, firms or corporations who could at any future date be possible defendants in any action arising out of or in any way





related to the matters set forth herein as fully as though they were specifically listed and named herein.

(h) The parties specifically renounce and release any right they may now or hereafter have to reform, rescind, modify, or set aside this release because of mutual or unilateral mistake. The risk of mistake is hereby assumed by the parties. It is further acknowledged and agreed that no representation, promise, or inducement, other than those specifically expressed in this Agreement, has been made to secure this release.

(i) The parties acknowledge and agree that they have had an adequate opportunity to consult with counsel of their own choosing and to review all of the terms and conditions herein, and that this release is entered into without haste and without any disparity of bargaining power.

### **23. Further Assurances.**

(a) The parties agree to draft, execute, and record, as appropriate, and as soon as reasonably practicable after the effective date of this Agreement, such documents as may be necessary or appropriate to carry out the intent of this Agreement, including any pleadings necessary to dismiss pending litigation.

(b) The parties also agree to perform any further acts and to draft, execute and record any additional documents that may be necessary and appropriate in the future to carry out the terms of this Agreement.

(c) After this Agreement has become binding and effective, KPC shall consent to the No. 2 and No. 3 Subdivisions of U.S. Survey 1056, Lot 3 and ATS-1, Exhibit "A," as well as their recordation.

### **24. Default and Remedies.**

(a) Time is of the essence for this Agreement, and the parties hereto shall promptly perform all of the obligations set forth herein.

(b) A party shall be in material default ("Default") in the event that it fails to promptly perform any of its obligations under this Agreement.

(c) If a party Defaults in any way in the performance of any of its obligations under this Agreement, then the party or parties entitled to such performance shall be entitled to perform or secure performance of such obligation(s) and shall be entitled to recover any and all damages arising in any way from or caused by the Default. Recoverable damages shall include, but not be limited to, all expenses of performance, securing performance, or any combination thereof, and all incidental costs and damages incurred as a consequence of the Default, including fines, penalties and fees incurred, investigation and testing costs, if any, attorneys', experts', and other consultants' fees incurred, and any other damages suffered.





(d) The parties acknowledge and agree that the nature of many of the rights, obligations, and liabilities set forth in this Agreement are such that it would be impossible to measure and compensate, in money, the harm which will accrue by reason of a party's Default. As a result, any remedy at law for recovery of damages may be inadequate. The parties shall therefore be entitled, in their discretion, to enforce this Agreement in law or in equity, or both. If a party elects to seek equitable relief to enforce the provisions hereof, any party against whom such action or proceeding is brought hereby waives the claim or defense therein that the enforcing party has an adequate remedy at law, and such party shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

(e) The Borough agrees to indemnify and defend Ketchikan Pulp Company and hold it harmless from any Losses to Ketchikan Pulp Company arising out of or with respect to any Default relating to the Borough's obligation to ensure that any entity to which it conveys any interest in the Borough Property executes valid and enforceable instruments releasing Ketchikan Pulp Company, as set forth in Section 11 above. The Borough furthermore agrees to require its heirs, successors and assigns to place the identical language in any future conveyance and to cooperate with KPC in the event that action is necessary to enforce Section 11.

## 25. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by facsimile (with confirmation copy of such faxed material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this section):

(a) if to KPC:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, Oregon 97205  
Attention: Christopher M. (Kit) Keyes, Esq.  
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
P.O. Box 4000-98  
Hayden Lake, Idaho 83835-9460

Attention: Chris Paulson  
Facsimile: (503) 821-5431  
Physical Address: 13403 N. Government Way

with a copy to:

Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901  
Attention: John Peterson, Esq.  
Facsimile: (907) 225-5513

(b) if to the Borough:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Manager  
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Clerk  
Facsimile: (907) 247-8439

(c) if to Gateway:

Gateway Forest Products, Inc.  
Post Office Box 779  
Ward Cove, Alaska 99928  
Attention: Dick Leary  
Facsimile: (907) 247-1646

and:



Gateway Forest Products, Inc.  
7517 Tyne Drive  
Anchorage, Alaska 99502  
Attention: Jim Erickson



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**26. No Third-Party Beneficiaries.**

Except as otherwise set forth, this Agreement is for the sole benefit of the parties hereto and their respective successors, heirs, and assigns, and nothing herein, express or implied, is intended to or shall confer, upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**27. Governing Law.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alaska.

**28. Jurisdiction; Venue; Service.**

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.

**29. Liberal Construction.**

Notwithstanding any general rule of construction to the contrary, this Agreement shall be liberally construed in favor of effectuating the parties' intentions. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable.

**30. Severability.**

If any portion of this Agreement is deemed invalid, illegal, or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith to modify this



Agreement, in a mutually acceptable manner, so as to effect the original intent of the parties as closely as possible.

**31. Interpretation.**

(a) When required by the context, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter genders, and vice versa.

(b) Except as otherwise specifically indicated, all references in this Agreement to an "Appendix" or "Appendices" are to the corresponding Appendices to this Agreement, as the same may be amended from time to time in accordance with the terms hereof.

(c) Headings used in this Agreement have been included for convenience and ease of reference only and shall not in any manner influence the construction or interpretation of any provision of this Agreement.

(d) "Includes" or "including" means "including, without limitation."

**32. Opportunity to Review and Consult Counsel.**

The parties to this Agreement acknowledge and agree that they have had an adequate opportunity to consult with counsel of their own choosing and to review all of the terms and conditions herein. The parties further represent that they have participated in the drafting of this Agreement, and they acknowledge and agree that this Agreement shall not be construed as having been drafted by any particular party or parties.

**33. Amendments and Waiver.**

This Agreement may not be amended or modified except by an instrument in writing duly executed by Ketchikan Pulp Company, Gateway Forest Products, Inc. and the Ketchikan Gateway Borough or their respective successors, heirs, and assigns, if any, holding an interest in the property at issue. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, nor as a waiver of any other term or condition.

**34. Counterparts.**

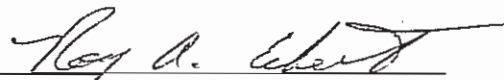
This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.



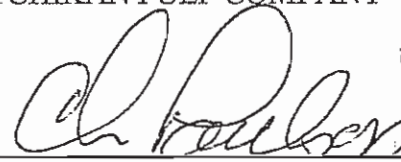


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and date first written above.

KETCHIKAN GATEWAY BOROUGH

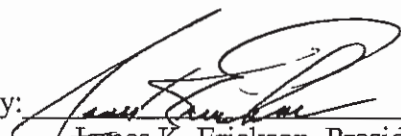
By:   
Roy A. Eckert, Manager

KETCHIKAN PULP COMPANY

By:   
Chris Paulson, President



GATEWAY FOREST PRODUCTS, INC.

By:   
James K. Erickson, President



## APPENDIX "1"

### FORM OF ENVIRONMENTAL EASEMENT AND DECLARATION OF COVENANTS

This Environmental Easement and Declaration of Covenants ("Easement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501, KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901, and GATEWAY FOREST PRODUCTS, INC., an Alaska corporation, Post Office Box 779, Ward Cove, Alaska 99928, WITNESSETH:

#### RECITALS

**WHEREAS**, all real property referred to in this Easement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

**WHEREAS**, on November 3, 1999, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into certain agreements including the Allocation of Environmental Responsibilities Agreement ("Environmental Allocation Agreement"), more commonly known as Exhibit "F," and the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Environmental Allocation Easement"), more commonly known as Exhibit "F-1," which incorporated by reference Exhibit "F," governing certain properties;

**WHEREAS**, The Environmental Allocation Easement was specifically incorporated into that certain Quitclaim Deed executed by Ketchikan Pulp Company in favor of Gateway Forest Products, Inc., which was recorded on November 5, 1999 at Book 306, Page 72;

**WHEREAS**, the parties now desire to remove the Environmental Allocation Easement and the Environmental Allocation Agreement from certain parcels of real property located at Ward Cove, formerly owned by Ketchikan Pulp Company and to replace it with this Easement;

**WHEREAS**, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. have ongoing interests, including but not limited to, operational and regulatory considerations, in the Ward Cove real property and desire to impose on the those properties certain terms and conditions as covenants that will run with the land for the purpose of making such terms and conditions applicable to the



Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc., as well as any of their successors and assigns holding an interest in the properties;

**WHEREAS**, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into an Agreement dated \_\_\_\_\_, 2003 governing the parties' respective rights and responsibilities ("Agreement"); and

**WHEREAS**, Ketchikan Pulp Company has an ongoing interest in ensuring that it has access to the Ward Cove properties to accommodate the satisfaction of its continuing environmental obligations at the Ward Cove facility;

**NOW, THEREFORE**, In consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. hereby agree as follows:

**I. DEFINITIONS.**

The terms used in this Easement shall have the following meanings, which shall be equally applicable to both the singular and plural forms of the terms defined:

- A. "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska, and the Borough's successors, heirs, and assigns.
- B. "Costs" means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.
- C. "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law, including causes of action arising in tort.
- D. "Gateway" means and refers to both Gateway Forest Products, Inc., an Alaska corporation, and Gateway's successors, heirs, and assigns.



- E. "Hazardous Substances" means substances which constitute hazardous substances under the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.
- F. "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources ("DNR") requires in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- G. "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- H. "KPC" means and refers broadly to both Ketchikan Pulp Company, a Washington corporation, and KPC's successors, heirs, and assigns.
- I. "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous Substance.
- J. "Ward Cove Area" means the water body commonly known as Ward Cove including marine waters to the ordinary high water mark and sediments underlying such waters, and also means the surface and subsurface areas of those portions of U.S. Surveys 1056, 1208, 1508, 1653, 1656, 1659, 1706, 1754, and 1862 lying seaward of the North Tongass Highway, and the filled portions of ATS-1, including any structures or other improvements located thereon.
- K. "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered in the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, *United States vs. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation*, Case No. A00-225 CV (JKS).
- L. "Ward Cove Landfills" means the industrial landfill which KPC owns and operates upon Tract 3004, Lot 2, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73.





## **II. PARCELS TO WHICH THE COVENANTS SHALL APPLY.**

The covenants contained in this Easement shall apply to the following parcels of real property ("Ward Cove Property"):

### **PARCEL NO. 1:**

U.S. Survey 1706.

### **PARCEL NO. 2:**

The unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754, recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

### **PARCEL NO. 3:**

Lot 1, Tract 3004, according to the plat filed November 28, 2000 as Plat 2000-73.

### **PARCEL NO. 4:**

U.S. Survey 3400.

### **PARCEL NO. 5:**

U.S. Survey 3401.

### **PARCEL NO. 6:**

Lot 1, Sec. 34, T.74S., R.90E., C.R.M., as more particularly described in Exhibit "A" hereto.

## **III. COVENANTS.**

The Borough, KPC and Gateway, for good and sufficient consideration received, do hereby covenant and declare that, with respect to the properties listed in Section II. hereof, the following provisions shall be covenants that run with and bind the Ward Cove Property and the parties, and each parties' respective personal representatives, heirs, successors and assigns as to the Ward Cove Property or any interest therein obtained through any mechanism, including but not limited to, conveyances, assignments, or foreclosures:



**A. Touch and Concern.**

The Ward Cove Covenants touch and concern the Ward Cove Property, in that each and all of the Covenants directly benefit the property, resolve regulatory issues which have limited development and thereby increase its market value. The Ward Cove Covenants are fully enforceable by the parties with respect to the Ward Cove Property or any interest therein. If a party refuses to acknowledge the applicability of the Ward Cove Covenants to such party, any other party shall be entitled to enforce the terms of this instrument in law and in equity.

**B. Ward Cove Area.**

1. The Borough covenants and agrees that it shall comply with any Institutional Controls which are or may become applicable to the Ward Cove Property, including those imposed through, or under the Ward Cove Consent Decree, or otherwise.

2. The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove Consent Decree. The Borough further covenants and agrees that if it damages such cap, it will immediately report the relevant circumstances to EPA and KPC and restore the cap to a condition and to specifications as directed by the EPA or by any governmental body having primary regulatory jurisdiction over the work undertaken by KPC under the Ward Cove Consent Decree, but the Borough and KPC will be under no obligation to restore the cap until directed to do so by the EPA or other governmental body having jurisdiction.

3. The Borough's obligations, pursuant to Section 2 hereof, extend to the activities and operations of its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, and any third party contractually related, whether directly or indirectly.

4. Nothing in this Easement shall be interpreted to prohibit KPC from exercising any legal rights it may have with respect to matters arising under the Ward Cove Consent Decree.

5. KPC, Gateway and the Borough agree to give the other parties advance written notice of any material excavation, digging or other similar activities relating to the Ward Cove Property.

6. The Ward Cove Landfills are located within Lot 2, Tract 3004 ("Landfill Parcel") and are operated pursuant to a permit issued by the State of Alaska, Department of Environmental Conservation ("DEC"). Lot 1 of Tract 3004 surrounds the Landfill Parcel, which KPC agreed to donate to the Borough only upon the condition that use restrictions and other conditions would be implemented in order to ensure that neither the



Borough nor its successors in interest would unreasonably interfere with the operation and maintenance of the Ward Cove Landfills. To accomplish those objectives, KPC and the Borough covenant and agree as follows:

- a. The future use of Lot 1, Tract 3004 by the Borough and its successors in interest shall be limited to commercial activities of an industrial nature which are compatible with operation in close proximity to an industrial landfill;
- b. The Borough and its successors in interest shall take all reasonable measures to protect against any interference with operation of the Ward Cove Landfills, including appropriate terracing of any rock extraction to preserve subjacent support; and
- c. The Borough hereby fully and finally releases KPC from all liability arising from or in any way related to operation and maintenance of the Ward Cove Landfills, excepting only to the extent damages may occur from a violation of, or failure to obtain, the DEC permit for the landfills. This release extends to any and all claims and liabilities, whether arising from negligence, or other fault, or otherwise. The Borough shall require each of its successors in interest, whether by lease, deed, or otherwise, as a condition to acquisition of any interest in or to Lot 1, Tract 3004, to execute the same release in favor of KPC.

**C. Future Subdivision.**

These Covenants shall not preclude subdivision of any parcel of the Ward Cove Property; provided, however, that upon any subdivision, replat, plat modification or other similar action, all portions of the Ward Cove Property which previously were subject to these Covenants, shall remain subject thereto; provided, however, that the obligations imposed by these covenants shall be limited to the parcel, area, or portion held by a party and shall not be interpreted to create liability for other parcels or areas not held by such party.

**D. Further Assurances.**

1. The parties covenant and agree both to adhere to and comply with current Institutional Controls and to cooperate with respect to the development and implementation of additional Institutional Controls, which shall include the development of an instrument or instruments to ensure that Institutional Controls arising under the Ward Cove Consent Decree, or otherwise, will run with the property and be enforceable against bona fide purchasers.

2. The parties covenant and agree that this Easement shall govern and be binding with respect to, the acts and omissions of each respective party's employees,



agents, contractors, and any third party contractually related, whether directly or indirectly, to the respective party.

**E. Term of Ward Cove Covenants.**

Each and all of the Ward Cove Covenants, and all the burdens and benefits thereof, shall run with the Ward Cove Property and shall be binding on any person having any ownership interest in the Ward Cove Property under the terms and conditions set forth in the Ward Cove Covenants for a period of twenty (20) years from the Effective Date, after which time the Ward Cove Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Ward Cove Covenants in whole or in part.

**F. Termination of Rights and Obligations of Covenants Through Transfer of Ownership Interest.**

A party is relieved of its obligations to comply with the Ward Cove Covenants imposed on the Ward Cove Property upon, and to the extent, that a party transfers or no longer holds an interest in the Ward Cove Property, except that liability or responsibility for acts or omissions occurring prior to transfer shall survive such transfer; provided, however, that nothing in this Easement shall diminish or relieve the parties, or any successor or assign of the parties from their respective obligations under the Agreement.

The Borough, KPC, and Gateway, together with each parties' respective successors and assigns, are hereinafter referred to as the "Parties."

**IV. EASEMENT.**

**A. Reservation of Easement.**

1. The Parties acknowledge and agree that, upon the terms and conditions set forth in this Easement, the Borough grants to KPC an easement interest (the "Easement") in and to the following properties (the "Easement Property") to allow KPC and its successors and assigns to undertake any activity contemplated by the Agreement and by subsection III.B. hereof. It is the express intent of Grantor and Grantee that the burden and benefit of this Easement shall run with the land upon any conveyance of the Ward Cove Property, during the term of this Easement, including any extension thereof:

**PARCEL NO. 1:**

Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41.





**PARCEL NO. 2:**

That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres.

**PARCEL NO. 3:**

U.S. Survey 1706.

**PARCEL NO. 4:**

U.S. Survey 1754

**PARCEL NO. 5:**

That portion of U.S. Survey 1862, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North  $32^{\circ}27'$  West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North  $0^{\circ}25'$  West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South  $24^{\circ}30'$  East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South  $36^{\circ}35'$  East a distance of 126.14 feet; thence along a spiral curve whose chord bears South  $51^{\circ}21'$  East a distance of 210.05 feet; thence South  $55^{\circ}27'$  East a distance of 316.97 feet; thence South  $34^{\circ}33'$  West a distance of 50 feet; thence South  $55^{\circ}27'$  East a distance of 137.00 feet; thence South  $88^{\circ}00'$  West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North  $29^{\circ}30'$  West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

**PARCEL NO. 6:**

U.S. Survey 2090.

**PARCEL NO. 7:**

That certain portion of U.S. Survey 2923, more particularly described as follows:

Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning.

**PARCEL NO. 8:**

U.S. Survey 3400.

**PARCEL NO. 9:**

U.S. Survey 3401.

**PARCEL NO. 10:**

Lot 1, Sec. 34, T. 74S., R.90E., C.R.M., as more particularly described in Exhibit "A" hereto.

**PARCEL NO. 11:**

Tract 3004, Lot 1, according to the plat filed November 28, 2000 as Plat 2000-73.

**PARCEL NO. 12:**

All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof (mistakenly recorded in the Juneau Recording District as Plat No. 292).

**PARCEL NO. 13:**

ALASKA TIDELANDS SURVEY NO. 439.

2. The Parties covenant and agree that KPC hereby is granted an easement interest in and to the Easement Property set forth in subsection A.1. hereof, consisting of a right of free access to and across the Easement Property to allow KPC to undertake or observe any sampling and Investigatory activities, Remediation activities, and any reasonable actions necessary to support or implement Investigatory and Remediation activities at the Easement Property. KPC's right of access shall also include, without limitation, the right to use the Easement Property to the extent reasonably necessary for a staging area or otherwise to comply with Environmental Laws and the directives or orders of governmental agencies relating to the Easement Property.



3. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by, or reflected in, any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.

4. KPC's access rights, as described herein, shall not prevent the Borough Entities from constructing any buildings or other improvements on the Borough Property. In that event, KPC will exercise its access and staging rights in a manner which will not unreasonably interfere with the Borough Entities' uses or development of the properties.

**B. Term.**

The Easement shall become effective on the Effective Date and shall have an initial term of twenty (20) years from the Effective Date, after which time the Easement shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Easement in whole or in part.

**C. Subdivision.**

This Easement shall not preclude the subdivision of any parcels of the Ward Cove Property, but upon any subdivision, replat, plat modification, or other similar action, all portions of the Ward Cove Property which previously were subject to this Easement shall remain subject thereto.

**V. EFFECTIVE DATE.**

This Easement shall become effective ("Effective Date") on the date of recordation, simultaneous with recordation of the Vacation of Covenants and Easement releasing the same parcels

**VI. LIBERAL CONSTRUCTION.**

Any general rule of construction to the contrary, this Easement shall be liberally construed in favor of effectuating the Parties' desire to establish the Easement in favor of KPC and to make the Ward Cove Covenants run with, and apply to, the Ward Cove Property and to make the Ward Cove Covenants binding upon any and all successors and assigns of the Parties. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable.



## VII. DISPUTES.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.

## VIII. MISCELLANEOUS.

### A. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by telecopy (with confirmation copy of such telecopied material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section VIII.A.):

#### 1. if to KPC:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, Oregon 97205  
Attention: Christopher M. (Kit) Keyes, Esq.  
Facsimile: (503) 821-5323





and:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
P.O. Box 4000-98  
Hayden Lake, Idaho 83835-9460  
Attention: Chris Paulson  
Facsimile: (208) 762-1667

Physical Address: 13403 N. Government Way

with a copy to:

Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901  
Attention: John Peterson, Esq.  
Facsimile: (907) 225-5513

2. if to the Borough:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Manager  
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Clerk  
Facsimile: (907) 247-8439

3. if to Gateway:

Gateway Forest Products, Inc.  
Post Office Box 779  
Ward Cove, Alaska 99928  
Attention: Dick Leary  
Facsimile: (907) 247-1646

and:

Gateway Forest Products, Inc.  
7517 Tyne Drive  
Anchorage, Alaska 99502  
Attention: Jim Erickson

**B. Headings.**

The descriptive headings contained in this Easement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Easement.

**C. Severability.**

If any provision of this Easement, or the application of any provision to a person or circumstance, is found to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

**D. No Third-Party Beneficiaries.**

This Easement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Easement.

**E. Amendment; Waiver.**

This Easement may not be amended or modified except by an instrument in writing duly executed and recorded by the Parties. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the Party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Easement; provided however, that once Gateway no longer is the owner of any part or parcel of the Ward Cove Property, its agreement no longer shall be necessary to effectuate amendment of either the Covenants or the Easement and its signature no longer will be required.

**F. Governing Law.**

This Easement shall be governed by, and construed in accordance with, the laws of the State of Alaska, applicable to covenants and agreements affecting real property executed and to be performed in that State.



NOTICE: THE INTERESTS CONVEYED HEREBY ARE  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS DATED OCTOBER 28, 1999, RECORDED IN THE  
KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL  
DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 AT  
BOOK 305, PAGE 772.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be  
duly executed as of the date first written above.

**GATEWAY FOREST PRODUCTS, INC.**

By \_\_\_\_\_  
James K. Erickson  
President

\_\_\_\_\_  
Richard D. Leary  
Secretary

**KETCHIKAN PULP COMPANY**

By \_\_\_\_\_  
Chris Paulson  
President

\_\_\_\_\_  
Douglas P. Anderson  
Assistant Secretary

**KETCHIKAN GATEWAY BOROUGH**

By \_\_\_\_\_  
Roy A. Eckert  
Manager

\_\_\_\_\_  
Harriet Edwards  
Clerk



STATE OF ALASKA                    )  
  : ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Roy A. Eckert** and **Harriet Edwards**, to me known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  : ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **James K. Erickson**, to me known to be the President, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
Commission expires: \_\_\_\_\_





STATE OF ALASKA                     )  
  : ss.  
FIRST JUDICIAL DISTRICT         )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Richard D. Leary**, to me known to be the Secretary, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
Commission expires: \_\_\_\_\_

STATE OF IDAHO                     )  
  : ss.  
COUNTY OF KOOTENAI            )

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Idaho duly commissioned and sworn, personally appeared **Chris Paulson and Douglas P. Anderson**, to me known to be the President and Assistant Secretary respectively of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

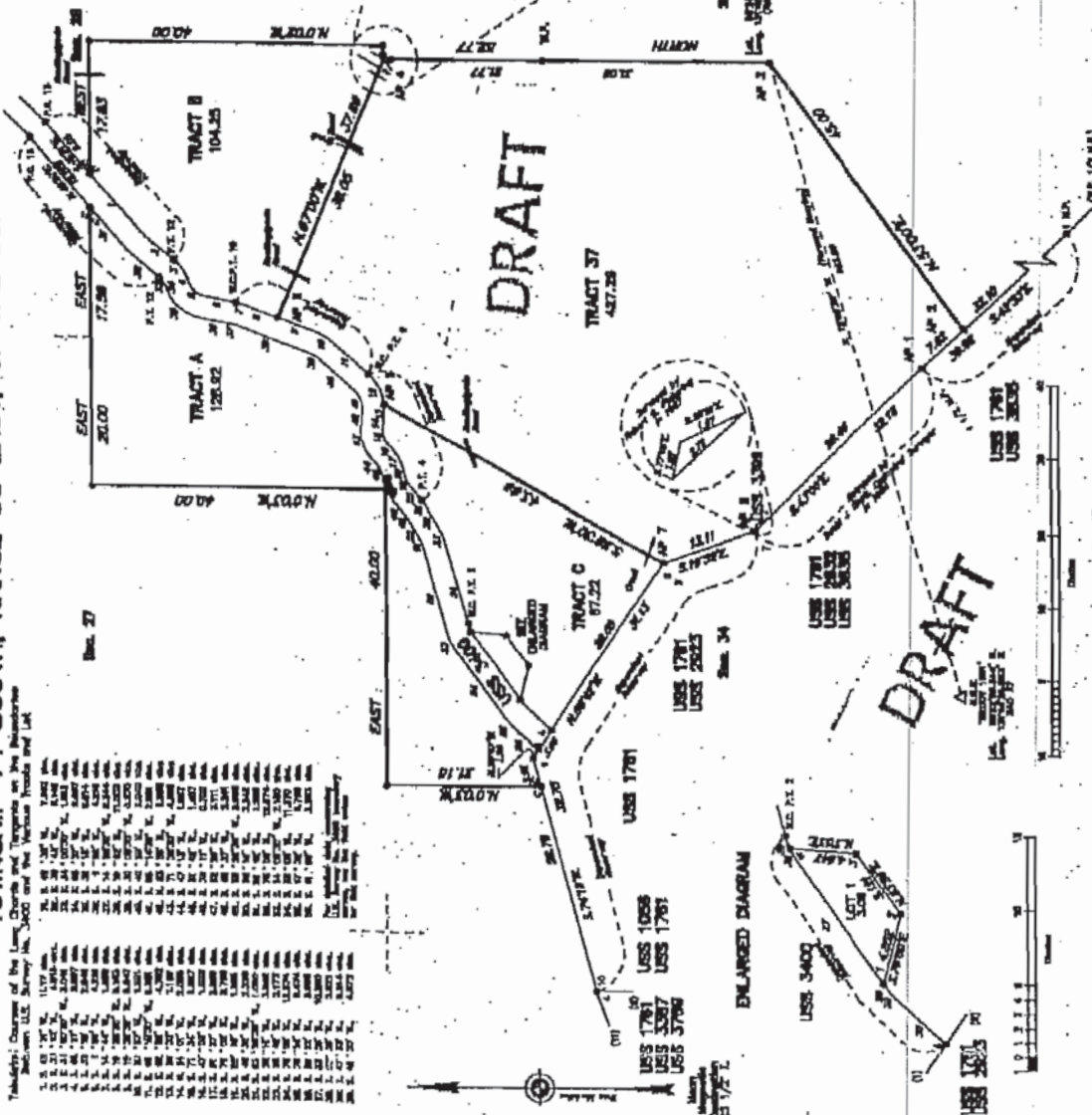
WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Commission expires: \_\_\_\_\_



**Subjects:** Courses of the Law, Church and Temporal; as well as Mathematics

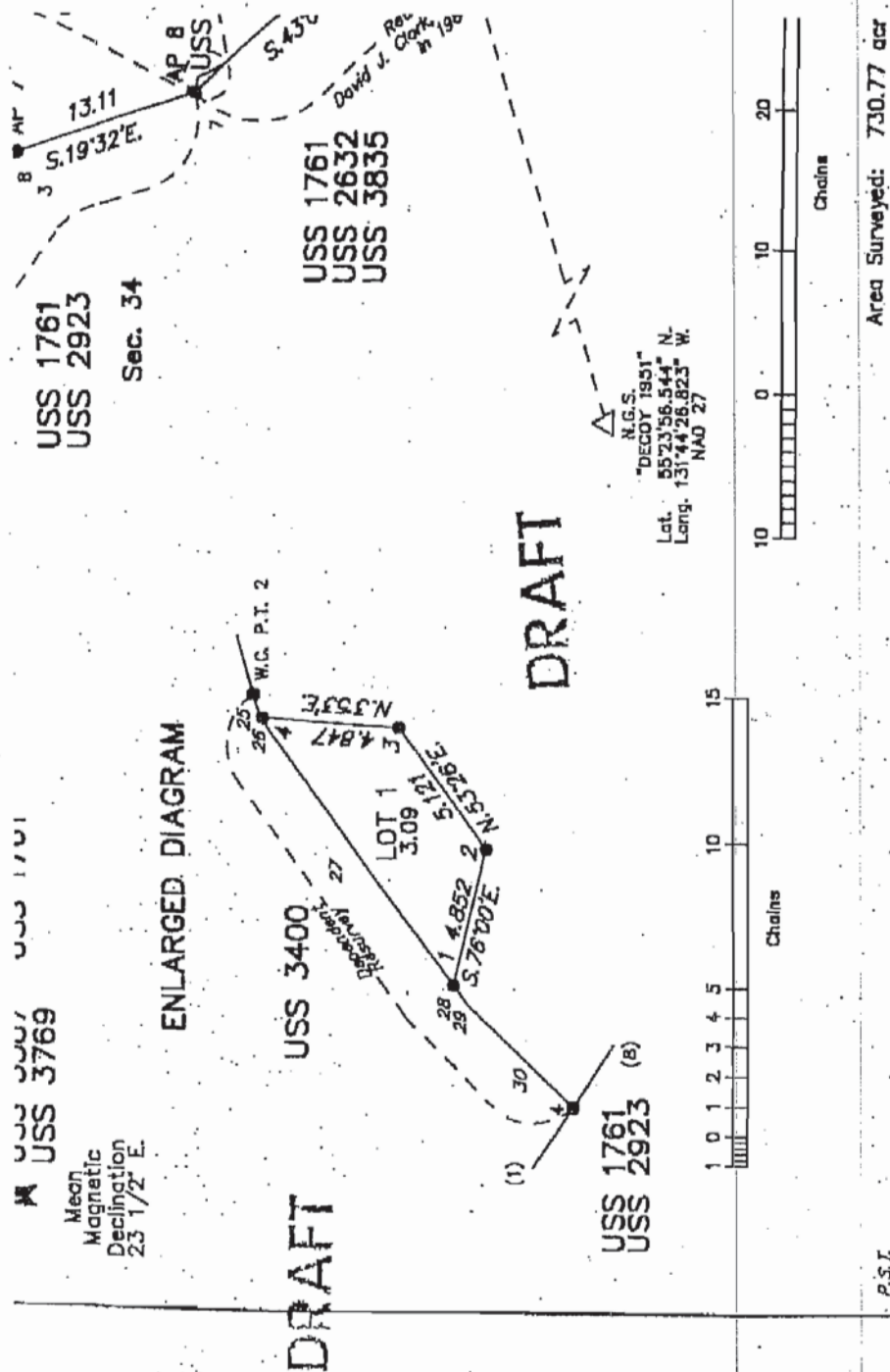
A history of attempts is contained in the table.



**Information on the Project**

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## APPENDIX "2"

### VACATION OF COVENANTS AND EASEMENT

This Vacation of Easement and Covenants ("Vacation"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between, KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 ("Borough"), KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901 ("KPC"), and GATEWAY FOREST PRODUCTS, INC., an Alaska corporation, Post Office Box 779, Ward Cove, Alaska 99928 ("Gateway"), WITNESSETH:

### RECITALS

**WHEREAS**, all real property referred to in this Vacation is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

**WHEREAS**, on November 3, 1999, KPC and Gateway entered into an Allocation of Environmental Responsibilities Agreement ("Environmental Allocation Agreement") setting forth the environmental liabilities retained by KPC and those being assumed by Gateway;

**WHEREAS**, the terms of the Environmental Allocation Agreement were incorporated by reference into the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Environmental Allocation Easement");

**WHEREAS**, the Quitclaim Deed, recorded in the Ketchikan Recording District on November 5, 1999 at Book 306, Page 72, effectuating the transfer of certain assets and real property from KPC to Gateway, specifically reserved and incorporated by reference the Environmental Allocation Easement;

**WHEREAS**, the Borough thereafter acquired security interests in certain of the affected parcels or real property;

**WHEREAS**, KPC, Gateway and the Borough now desire to release certain of the parcels of real property from the constraints of the Environmental Allocation Easement; and

**WHEREAS**, KPC, Gateway and the Borough also desire to establish terms which will permit release of the Environmental Allocation Agreement and the Environmental





Allocation Easement without Gateway's consent, once Gateway no longer is the owner of a parcel or a portion of a parcel which previously was subject thereto;

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Borough, KPC and Gateway hereby agree as follows:

The Environmental Allocation Easement shall hereby be vacated and be of no further force or effect with respect to the following described property:

**PARCEL NO. 1:**

U.S. Survey 1706.

**PARCEL NO. 2:**

The Unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

**PARCEL NO. 3:**

Lots 1 and 2, Tract 3004, according to the plat filed November 28, 2000 as Plat 2000-73.

This Vacation shall become effective ("Effective Date") on the date of recordation, simultaneous with recordation of the Environmental Easement and Covenants affecting the same parcels with which it will be replaced.

Once Gateway no longer is the owner of a parcel, or a portion of any parcel, of the property previously subject thereto, its agreement no longer shall be necessary to vacate the Environmental Allocation Agreement and the Environmental Allocation Easement with respect to that portion or parcel.



IN WITNESS WHEREOF, the parties hereto have caused this Vacation to be duly executed as of the date first written above.

**GATEWAY FOREST PRODUCTS, INC.**

\_\_\_\_\_  
Richard D. Leary  
Secretary

By \_\_\_\_\_  
James K. Erickson  
President

**KETCHIKAN PULP COMPANY**

\_\_\_\_\_  
Douglas P. Anderson  
Assistant Secretary

By \_\_\_\_\_  
Chris Paulson  
President

**KETCHIKAN GATEWAY BOROUGH**

\_\_\_\_\_  
Harriet Edwards, Clerk

By \_\_\_\_\_  
Roy A. Eckert  
Manager

STATE OF ALASKA                    )  
  : ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Roy A. Eckert** and **Harriet Edwards**, to me known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that



the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska

My Commission Expires: \_\_\_\_\_

STATE OF ALASKA

)

: ss.

FIRST JUDICIAL DISTRICT

)

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Richard D. Leary**, to me known to be the Secretary, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska

Commission expires: \_\_\_\_\_

STATE OF ALASKA

)

: ss.

THIRD JUDICIAL DISTRICT

)

THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **James K. Erickson**, to me known to be the President, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.



WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Alaska  
Commission expires: \_\_\_\_\_





STATE OF IDAHO )  
 : ss.  
COUNTY OF KOOTENAI )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Idaho, duly commissioned and sworn, personally appeared **Chris Paulson** and **Douglas P. Anderson**, to me known to be the President and Assistant Secretary respectively of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Commission expires: \_\_\_\_\_



## APPENDIX "3"

### COST SHARING AGREEMENT

This Agreement ("Agreement") is entered into by and between the Ketchikan Gateway Borough ("Borough") and Ketchikan Pulp Company ("KPC"), for the sharing of costs with respect to certain NPDES permit obligations.

In consideration of the mutual promises, covenants and conditions set forth herein, the parties hereby agree as follows:

#### TERMS AND CONDITIONS

##### I. PURPOSE.

The purpose of this Agreement is to allocate the costs of water sampling, testing and reporting as required for compliance with USEPA NPDES Permit # AK 000092-2 ("Main Outfall Permit").

##### II. STATEMENT OF MUTUAL INTERESTS AND BENEFITS:

A. Gateway Forest Products, Inc. is presently the owner of, and permittee with respect to, the Main Outfall Permit. The Borough owns, leases or otherwise controls property which contains infrastructure leading to the discharge point at Outfall 001 in Ward Cove which is permitted under the Main Outfall Permit. KPC owns an industrial landfill on property near Dawson Point in Ward Cove which contains infrastructure presently leading to the same discharge point and outfall in Ward Cove permitted under the Main Outfall Permit.

B. From time to time in the past, the Borough and KPC have each paid or otherwise assisted in defraying expenses for sampling, testing, reporting or other operations under the Main Outfall Permit. Given the parties' similar interests with respect to operations under the Main Outfall Permit, they now wish to establish more definite terms for the sharing of costs with respect to such operations.

C. KPC has applied for issuance of a new NPDES permit for separate discharge from its Dawson Point landfill ("New Outfall Permit"). In addition, the Main Outfall Permit will expire on December 15, 2003 and the Borough is pursuing re-issuance



of the Main Outfall Permit, with either Gateway Forest Products, Inc. or the Borough to be named as permittee.

D. The operational cost sharing under this Agreement will be an interim arrangement which, unless earlier terminated, will not continue once KPC begins separate operations under the New Outfall Permit. From that point, each party will be responsible for its own costs of operation.

### III. BOROUGH OBLIGATIONS.

The Borough hereby commits to the following obligations and responsibilities:

- A. Use of its personnel or contractor(s) to conduct the water sampling, testing, and reporting required under the Main Outfall Permit;
- B. Compilation of actual costs of sampling, testing, and reporting, including reasonable personnel costs actually incurred in such sampling, testing and reporting; and
- C. Payment of a 60% proportionate share of the costs of sampling, testing, and reporting, including personnel costs as described above.

### IV. KPC OBLIGATIONS.

KPC shall pay a 40% proportionate share of the costs of sampling, testing, and reporting, including a 40% proportionate share of personnel costs as described above. With respect thereto:

- A. Payments shall be based on monthly invoices;
- B. Payments shall be payable to the Ketchikan Gateway Borough and shall be made within 30 days of receipt of an invoice and supporting documentation, which shall include Borough employee time cards and rates of pay, as well as invoices evidencing any out-of-pocket expenses; and
- C. Borough employees, the costs for which are shared by KPC are not, for any purpose or in any manner or context, employees of KPC. Independent contractors retained by the Borough, the costs for which are shared by KPC are not, for any purpose or in any manner or context, contractors of KPC.



## **V. INDEMNIFICATION.**

**A.** Each party will be responsible for its own acts and omissions, and those of its officers, employees, agents, and permittees, and for any discharges from property under its ownership, lease, or other control which are a material cause of any violation of permit requirements or applicable law. Each party will indemnify, defend and hold harmless the other party, to the maximum extent allowed by law, from any claim of, or liability or penalty for, any discharge for which a party bears responsibility as set forth above, and for errors, omissions or negligent or willful acts of any kind, including attorney fees, damages to property or injury to a person, and death, occasioned thereby which may result from the sampling, testing, and reporting activities undertaken pursuant to the terms of this Agreement.

**B.** In the event of any disagreement between the parties as to whether the matters which are addressed in subsection A., including: (1) whether a particular discharge is a material cause of any violation of permit requirements or applicable law; (2) whether, based upon the allocation described in subsection A., a particular discharge is the responsibility of KPC or the Borough; or (3) whether the responsibility should be shared between them, based upon the allocation of responsibility set forth in subsection A., the parties agree that they shall jointly solicit the opinion of the government agency asserting the violation. If the government agency is unwilling to render an opinion, the parties shall select a mutually acceptable third party to hear arguments and resolve the dispute. The decision of the government agency or third party, as the case may be, shall be deemed presumptively correct. Any party seeking to allocate responsibility differently than that government agency or third party, as the case may be, shall have the burden of proof on that issue. Under no circumstances, however, shall this section be interpreted to require the Borough or KPC to indemnify the other for any costs of Remediation.

## **VI. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.**

**A.** The Borough shall maintain all records of sampling, testing, and reporting under the Main Outfall Permit pursuant to this Agreement and each party, or its representative, shall have access to and the right to examine all such records. The right of access to records, regarding activity of the Borough's employees and independent contractors in sampling, testing and reporting under the Main Outfall Permit pursuant to this Agreement, shall not expressly or impliedly establish any right of access or examination with respect to any other records of the Borough, KPC or any other entity or person.

**B.** As used in this provision, the term "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other





form. All records pertinent to the testing shall be retained for a minimum period of five (5) years or as otherwise required by law.

## **VII. PUBLIC RECORDS.**

A. The parties understand and agree that this Agreement and the sampling, testing, and reporting records of the Borough, its employees and independent contractors, generated pursuant hereto, are public records. These records are, to the extent not otherwise exempt therefrom, subject to the State and Borough public records laws.

B. In addition, to the extent that books, records and documents of the Borough, with respect to revision of the Main Outfall Permit, constitute public records and are not otherwise exempt from State and Borough public records laws, this Agreement does not change that status.

C. KPC's books, records and documents, whether with respect to operations under the Main Outfall Permit prior to the execution of this Agreement, with respect to the New Outfall Permit, or otherwise, are not subject to ederal, State, or Borough public record laws and are not made subject thereto by this Agreement.

## **VIII. PARTICIPATION IN SIMILAR ACTIVITIES.**

This Agreement in no manner restricts KPC or the Borough from participating in similar activities with other public or private agencies, organizations, and individuals.

## **IX. COMMENCEMENT AND PERFORMANCE PERIOD.**

This Agreement is effective as of the date the last required signature is appended on behalf of both KPC and the Borough.

## **X. TERMINATION.**

A. Any of the parties, in writing, may terminate this Agreement at any time before the date of expiration by providing 30 days' written notice.

B. Neither the Borough nor KPC shall incur any contractual or other obligation to any third party which would be subject to the cost sharing terms of this Agreement, unless such obligation is expressly subject to termination upon not less than



thirty (30) days' prior written notice. Upon either party issuing written notice of termination of this Agreement, neither party shall be liable for any cost sharing obligation which is incurred more than thirty (30) days after the date that notice of termination is provided. Following notice of termination, the parties shall be obligated with respect to cost sharing only for expenses which are within the scope of this Agreement, and incurred either prior to the notice of termination or in the thirty (30) day period following notice. This Agreement will then terminate at the end of the thirty (30) day notice period, except that obligations which are incurred within the term of this Agreement will survive until discharged by performance or by operation of law.

## XI. MISCELLANEOUS.

### A. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by telecopy (with confirmation copy of such telecopied material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section XI.A):

#### 1. if to KPC:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, Oregon 97205  
Attention: Christopher M. (Kit) Keyes, Esq.  
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
P.O. Box 4000-98  
Port Hayden, Idaho 83835-9460  
Attention: Chris Paulson  
Facsimile: (208) 762-1667

Physical Address: 14303 N. Government Way



with a copy to:

Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901  
Attention: John Peterson, Esq.  
Facsimile: (907) 225-9401

2. if to the Borough:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Manager  
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Clerk  
Facsimile: (907) 247-8439

**B. Headings.**

The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

**C. Severability.**

If any provision of this Agreement, or the application of any provision to a person or circumstance, is found to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, the remainder of the provisions of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

**D. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the Parties and their respective successors and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.



**E. Amendment; Waiver.**

This Agreement may not be amended or modified except by an instrument in writing duly executed and recorded by the Parties. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the Party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.

**F. Governing Law.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last written date below.

DATE: \_\_\_\_\_

**KETCHIKAN GATEWAY BOROUGH**

By: \_\_\_\_\_  
Roy A. Eckert  
Manager

DATE: \_\_\_\_\_

**KETCHIKAN PULP COMPANY**

By: \_\_\_\_\_  
Chris Paulson  
President





## APPENDIX "4"

### EASEMENT FOR LANDFILL OUTFALL AND ACCESS

This Easement For Landfill Outfall And Access ("Easement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between the **Ketchikan Gateway Borough**, a municipal corporation organized pursuant to the laws of the State of Alaska, 344 Front Street, Ketchikan, Alaska 99901, ("**Borough**") and **Ketchikan Pulp Company**, a Washington corporation qualified to do business in Alaska, Post Office Box 6600, Ketchikan, Alaska 99901, ("**KPC**"), WITNESSETH:

#### RECITALS

A. All real property referred to in this Easement is located in, and all documents and plats referred to as filed or recorded, are filed or recorded in, the Ketchikan Recording District, First Judicial District, State of Alaska.

B. By Quitclaim Deed of even date, to be recorded immediately prior to this Easement, KPC is donating to the Borough the following described real property, referred to hereinafter as the "Donated Property":

Lot 1, Tract 3004, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73.

C. KPC is the owner of record, retaining ownership of the following described real property, referred to hereinafter as the "Landfill Parcel:"

Lot 2, Tract 3004, Dawson Point Subdivision, according to the plat thereof filed and recorded on November 28, 2000 as Plat 200-73.

D. There are industrial landfills ("Ward Cove Landfills") located upon the Landfill Parcel which are permitted and utilized by KPC for the disposal and



remediation of industrial waste material generated from KPC's pulping and related operations at its Ward Cove pulp mill.

E. The continued operation of the Ward Cove Landfills will require the construction, operation and maintenance of a separate outfall pipeline ("Outfall") which will run seaward from the Landfill Parcel, across the Donated Parcel and across a portion of Alaska Tideland Survey No. 1, Exhibit "C-1," so as to convey landfill effluent to be discharged into the marine waters of Ward Cove.

F. As contemplated by the parties, KPC has filed an application with the U.S. Environmental Protection Agency in order to construct and operate the separate Outfall to serve only Ward Cove Landfills.

G. The operation of the Ward Cove Landfills requires that KPC maintain an assured route for vehicular, heavy equipment and pedestrian access from the public right-of-way of North Tongass Highway to and from the Landfill Parcel.

Reserving and excepting, however, unto the Grantor, all right, title, equity and interest as set forth in the Easement For Landfill Outfall And Access, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Easement For Landfill Outfall And Access establishes the terms and conditions of an easement for a landfill outfall, and an easement for access, over and upon and across the said Lot 1, Tract 3004, Dawson Point Subdivision.

NOW, THEREFORE, incident to KPC's donation to the Borough of the Donated Parcel, and for other good and valuable consideration, the receipt of which is acknowledged, the Borough and KPC hereby acknowledge and agree that KPC has reserved and excepted from its Quitclaim Deed conveyance of the Donated Parcel to the Borough, for its assigns and its successors in ownership of the Landfill Parcel, perpetual easements, upon the terms and conditions of this Easement, as follows:



1. **Outfall Easement.** There is reserved to KPC an easement over, under, upon and across the Donated Parcel, in order for KPC to design, construct, operate, use, inspect, maintain, repair and replace (all of which are hereinafter collectively referred to as "Operate" or, as the context requires, "Operation") the Outfall pipeline for the discharge of effluent from the Ward Cove Landfills to an elevation approximately 50 feet below MLLW. The easement for the Outfall shall consist of two aspects, an exclusive easement for the actual Outfall pipe, and a nonexclusive area for construction, maintenance and other support operations.

a. The portion of the Donated Property upon, over, under and across which the exclusive aspect of the outfall easement is reserved (hereinafter, "Outfall Easement Area") is more particularly described as follows:

A strip of land 50' wide, 25' on either side of the centerline of an Outfall pipeline, which KPC shall be entitled to construct and maintain upon the Donated Property in the approximate location shown on Exhibit "A," attached hereto and incorporated herein by this reference.

This location is subject to amendment after the Outfall is constructed, as set forth below. Within the Outfall Easement Area, KPC's entitlement to Operate the Outfall pipe and related infrastructure, if any, shall be exclusive, such that the Borough shall not conduct any tree falling, construction, excavation, or other ground disturbing activities without KPC's prior written consent, which consent shall not be compelled by operation of law or otherwise.

b. The portion of the Donated Property upon, over, under and across which the nonexclusive aspect of the outfall easement is reserved ("Outfall Support Area") is more particularly described as follows:

A strip of land 100' wide, 50' on either side of the centerline of an Outfall pipeline, which KPC shall be entitled to construct and maintain upon the



Donated Property in the approximate location shown on Exhibit "A," attached hereto and incorporated herein by this reference.

This location is also subject to amendment after the Outfall is constructed, as set forth below. KPC shall be entitled to use the Outfall Support Area for access to the Outfall Easement Area and otherwise as necessary or convenient to support Operation of the Outfall pipe and related infrastructure, if any. KPC's rights to the portion of the Outfall Support Area outside the Outfall Easement Area shall be nonexclusive and, therefore, shall not prevent the Borough from conducting activities therein which do not interfere with KPC's Operation of the Outfall pipe and related infrastructure, if any.

2. **Amendment of Easement After Construction of Outfall.** After KPC has completed construction of the Outfall, KPC shall be entitled to prepare and record an Amended Easement Description which will specify with greater particularity the as-built location of the Outfall and, with reference thereto, the location of the Outfall Easement Area and the Outfall Support Area. In the event that the Borough is then the owner of Alaska Tideland Survey No. 1, Exhibit "C-1," which is the parcel seaward of the Donated Property, then this Easement, together with the corresponding easement for the Operation of the Outfall across that parcel, shall be consolidated into a single perpetual easement providing for the Operation of the Outfall and related infrastructure, if any, and for access to the Landfill Parcel from both North Tongass Highway and the navigable waters of Ward Cove.

3. **Access Easement.** The plat of the Dawson Point Subdivision, filed November 28, 2000 as Plat 2000-73 is hereinafter referred to as the "Plat." There is also reserved to KPC an easement ("Access Easement") upon and across all of the access and other easement areas of the Donated Parcel described or referenced in the Plat,





whether referenced in the Plat as private, joint use ,or otherwise. The Access Easement shall apply to the locations and areas depicted or described in the Plat ("Access Areas"). The Access Easement shall be for a private easement upon across and through all of the Access Areas, and is reserved for KPC, its assigns and successors in the Landfill Parcel, their employees and third parties authorized by any of them, including personnel of independent contractors. The Access Easement also permits ingress and egress for their vehicles and equipment, including heavy equipment, to travel between the Landfill Parcel and the public right of way of North Tongass Highway. These access rights shall include access for all activities which may be necessary or convenient to Operation of the Ward Cove Landfills, including maintenance and repair of the roads and other Access Areas. KPC's easement rights to the Access Areas shall be non-exclusive, and the Borough and its successors and assigns also shall be entitled to use the Access Areas for purposes and in manners which do not interfere with the access and other rights reserved to KPC to for the Operation of the Ward Cove Landfills.

4. Utility and Leachate Pipeline. There are also reserved to KPC a perpetual easement to Operate the utility line which provides utility service to the Landfill Parcel ("Utility Easement") and an easement to Operate the leachate pipeline which runs from the Landfill Parcel to the treatment facility located on U.S. Survey 1754 ("Leachate Easement"). The Utility Easement and the Leachate Easement shall apply to the locations and areas depicted or described in the Plat. The Leachate Easement shall be subject to termination by KPC when it is able to begin use of its separate Outfall pipe, and therefore discontinue use of the leachate pipeline shown in the Plat.



5. Easement to Run with and Be Binding Upon the Property.

This Easement shall run with the Donated Property and be binding upon the Borough, as well as its successors and assigns in and to the Donated Property. The easement rights herein granted to KPC shall be for the benefit of, and shall run with, the Landfill Parcel, and shall be for the benefit of KPC's successors in the Landfill Parcel and KPC's assigns.

DATED at Ketchikan, Alaska this \_\_\_\_ day of \_\_\_\_\_, 2003.

**KETCHIKAN GATEWAY BOROUGH**

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

Roy A. Eckert  
Manager

\_\_\_\_\_  
Harriet Edwards  
Clerk

**KETCHIKAN PULP COMPANY**

By \_\_\_\_\_

Chris Paulson  
President

\_\_\_\_\_  
Douglas P. Anderson  
Assistant Secretary



STATE OF ALASKA                    )  
  : ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared **Roy A. Eckert** and **Harriet Edwards**, to me known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

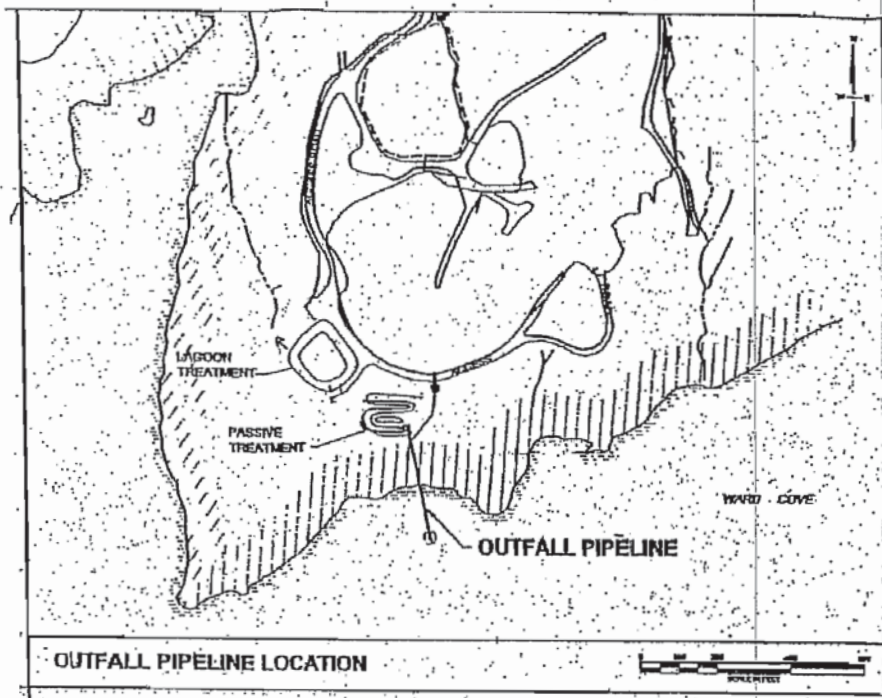
STATE OF IDAHO                    )  
  : ss.  
COUNTY OF KOOTENAI        )

THIS IS TO CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned, a notary public in and for the State of Idaho, duly commissioned and sworn, personally appeared **Chris Paulson** and **Douglas P. Anderson** to me known to be the President and Assistant Secretary respectively of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Commission expires: \_\_\_\_\_











## **Attachment 12**

Ketchikan Pulp Company Residential Risk Calculation



# Ketchikan Pulp Company (EPA ID AKD009252230)

## Five-Year Review - Residential Risk Calculation

### 25-Jun-10

Recalculation of Table 6, 'Summary of upper-bound carcinogenic risk estimates and noncancer hazard indices for CoPCs in soil-worker scenario,' from the ROD.

Recalculation completed through Oak Ridge National Laboratory (ORNL) Risk Assessment Information System (RAIS) Contaminated Media (Risk) Calculator.)

[http://rais.ornl.gov/cgi-bin/prg/RISK\\_search?select=chem](http://rais.ornl.gov/cgi-bin/prg/RISK_search?select=chem)

Standard EPA equations and parameters used for calculations.

Consistent with the ROD, Aroclor 1254 data used for total PCBs,

Consistent with the ROD, 2,3,4,8-TCDD TEF used for Dioxins and Furans.

## Resident Equation Inputs for Soil/Sediment

Variable	Value
EF <sub>r</sub> (exposure frequency) day/yr	350
ED <sub>r</sub> (exposure duration - resident) yr	30
ED <sub>0-2</sub> (exposure duration first phase) yr	2
ED <sub>2-6</sub> (exposure duration second phase) yr	4
ED <sub>6-16</sub> (exposure duration third phase) yr	10
ED <sub>16-30</sub> (exposure duration fourth phase) yr	14
LT (lifetime - resident) yr	70
ET <sub>r</sub> (exposure time - resident) hr	24
BW <sub>a</sub> (body weight - adult) kg	70
BW <sub>c</sub> (body weight - child) kg	15
ED <sub>c</sub> (exposure duration - child) yr	6
IRS <sub>a</sub> (soil intake rate - adult) mg/day	100
IRS <sub>c</sub> (soil intake rate - child) mg/day	200
SA <sub>a</sub> (skin surface area - adult) cm <sup>2</sup> /day	5700
SA <sub>c</sub> (skin surface area - child) cm <sup>2</sup> /day	2800
AF <sub>a</sub> (skin adherence factor - adult) mg/cm <sup>2</sup>	0.07
AF <sub>c</sub> (skin adherence factor - child) mg/cm <sup>2</sup>	0.2
IFS <sub>adj</sub> (age-adjusted soil ingestion factor) mg-yr/kg-day	114.3
DFS <sub>adj</sub> (age-adjusted soil dermal factor) mg-yr/kg-day	360.8
IFSM <sub>adj</sub> (mutagenic age-adjusted soil ingestion factor) mg-yr/kg-day	489.5
DFSM <sub>adj</sub> (mutagenic age-adjusted soil dermal factor) mg-yr/kg-day	1445



Toxicity and Physical-Chemical Data

Chemical	Chronic RfD (mg/kg-day)	Ingestion SF (mg/kg-day) <sup>-1</sup>	Chronic RfC (mg/m3)	Inhalation Unit Risk (µg/m3) <sup>-1</sup>	ABS <sub>gi</sub>	ABS <sub>derm</sub>	Dia	Diw	H <sup>+</sup>	Kd	Volatilization Factor (m <sup>3</sup> /kg)	Particulate Emission Factor (m <sup>3</sup> /kg)
Arsenic, Inorganic	0.0003	1.5	0.000015	0.0043	1	0.03	-	-	-	29	-	13600000000
Benzofalpyrene	-	7.3	-	0.0011	1	0.13	-	-	0.0000187	-	-	13600000000
PeCDD, 2,3,7,8-	-	130000	-	-	1	0.03	-	-	0.0000899	-	-	13600000000
Aroclor 1254	0.00002	2	-	0.000571	1	0.14	-	-	0.0115699	-	-	13600000000

### Resident RISK for Soil/Sediment - Access Road Ditch Soils and Sediments

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	157	6.69	0.00738	0.562	7.26	0.000369	0.00000204	0.0000349	0.000404
PeCDD, 2,3,7,8-	0.00016					0.0000326		0.00000308	0.0000357
*Total Risk/HI	-	6.69	0.00738	0.562	7.26	0.000401	0.00000204	0.000038	4.40E-04

Output generated 25JUN2010:16:08:38

### Resident RISK for Soil/Sediment - Wood Room / Log Deck Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	84	3.58	0.00395	0.301	3.88	0.000197	0.000000109	0.0000187	0.000216
*Total Risk/HI	-	3.58	0.00395	0.301	3.88	0.000197	0.000000109	0.0000187	2.16E-04

Output generated 23JUN2010:18:48:08

### Resident RISK for Soil/Sediment - Soils Near No. 3 Evaporator

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	65	2.77	0.00306	0.233	3.01	0.000153	8.45E-08	0.0000145	0.000167
*Total Risk/HI	-	2.77	0.00306	0.233	3.01	0.000153	8.45E-08	0.0000145	1.67E-04

Output generated 23JUN2010:18:52:49

### Resident RISK for Soil/Sediment - Aeration Basin Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	90	3.84	0.00423	0.322	4.16	0.000211	0.000000117	0.00002	0.000232
*Total Risk/HI	-	3.84	0.00423	0.322	4.16	0.000211	0.000000117	0.00002	2.32E-04

Output generated 23JUN2010:18:55:39

### Resident RISK for Soil/Sediment - Grit Chamber Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	100	4.26	0.0047	0.358	4.62	0.000235	0.00000013	0.0000222	0.000257
*Total Risk/HI	-	4.26	0.0047	0.358	4.62	0.000235	0.00000013	0.0000222	2.57E-04

Output generated 23JUN2010:18:55:39

### Resident RISK for Soil/Sediment - Paint Shop / Former Maintenance Shop Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Aroclor 1254	116	74.2		29.1	103	0.000363	0.00000002	0.000161	0.000524
Arsenic, Inorganic	670	28.6	0.0315	2.4	31	0.00157	0.000000871	0.000149	0.00172
Benzo[a]pyrene	2					0.00000979	1.69E-09	0.00000576	0.000135
*Total Risk/HI	-	103	0.0315	31.5	134	0.00203	0.000000893	0.000347	2.38E-03

Output generated 25JUN2010:15:51:52

### Resident RISK for Soil/Sediment - Former Bottom Ash Storage Pile Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	24	1.02	0.00113	0.0859	1.11	0.0000564	3.12E-08	0.00000534	0.0000617
*Total Risk/HI	-	1.02	0.00113	0.0859	1.11	0.0000564	3.12E-08	0.00000534	6.17E-05

Output generated 23JUN2010:19:06:03

### Resident RISK for Soil/Sediment - Near-Shore Fill Subarea Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	132	5.63	0.00621	0.473	6.1	0.00031	0.000000172	0.0000294	0.00034
*Total Risk/HI	-	5.63	0.00621	0.473	6.1	0.00031	0.000000172	0.0000294	3.40E-04

Output generated 23JUN2010:19:24:49

### Resident RISK for Soil/Sediment - Woodwaste and Sludge Disposal Subarea Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	22	0.938	0.00103	0.0788	1.02	0.0000517	2.86E-08	0.00000489	0.0000566
*Total Risk/HI	-	0.938	0.00103	0.0788	1.02	0.0000517	2.86E-08	0.00000489	5.66E-05

Output generated 24JUN2010:14:29:11

### Resident RISK for Soil/Sediment - Former Storage Area Long Water Pipeline Soils

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Aroclor 1254	15	9.59		3.76	13.3	0.000047	2.59E-09	0.0000208	0.0000677
Arsenic, Inorganic	26	1.11	0.00122	0.0931	1.2	0.0000611	3.38E-08	0.00000578	0.0000669
*Total Risk/HI	-	10.7	0.00122	3.85	14.6	0.000108	3.64E-08	0.0000266	1.35E-04

Output generated 25JUN2010:16:20:32

### Resident RISK for Soil/Sediment - Forested and Developed Area Soil

Chemical	Concentration (mg/kg)	Ingestion HQ	Inhalation Particulates and Volatiles HQ	Dermal HQ	Total HI	Ingestion Risk	Inhalation Particulates and Volatiles Risk	Dermal Risk	Total Risk
Arsenic, Inorganic	11	0.469	0.000517	0.0394	0.509	0.0000258	1.43E-08	0.00000245	0.0000283
PeCDD, 2,3,7,8-	0.000062					0.0000128		0.0000012	0.0000138
*Total Risk/HI	-	0.469	0.000517	0.0394	0.509	0.0000385	1.43E-08	0.00000364	4.21E-05

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## **Attachment 13**

Certification of Completion Letters for Uplands and Marine Operable Units, dated January 21  
and 22, 2010





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
ALASKA OPERATIONS OFFICE  
Room 537, Federal Building  
222 W. 7th Avenue, #19  
Anchorage, AK 99513-7588

January 21, 2010

Phil Benning  
Ketchikan Pulp Company  
P.O.Box 6600  
Ketchikan, AK. 99901

Barry Hogarty  
TECS-AK  
P.O.Box 6193  
Ketchikan, AK. 99901

Re: Certification of Completion, Requirements of Consent Decree,  
Upland Operable Unit, Ketchikan Pulp Company Site  
CERCLA Remedial Design/Remedial Action Consent Decree No.A00-225CV

Dear Mr. Benning and Ms. Hogarty:

Pursuant to Paragraph 66(a) of the above referenced Consent Decree (CD), this letter provides Certification of Completion of the Remedial Action for the Uplands Operable Unit(OU) of the Ketchikan Pulp Company site (KPC Site).

EPA's certification is based on my personal inspection of the KPC Site in May 2005, as well as the certification provided by the Alaska Department of Environmental Conservation (ADEC) that the wood waste and ash disposal Landfill at the KPC Site has been closed in accordance with the ADEC solid waste permit and all applicable regulations. Specifically, ADEC approved the KPC Landfill Closure Plan on May 8<sup>th</sup>, 2001 and on August 10, 2001 verified closure of the landfill and commencement of landfill monitoring, to end in 2025, according to ADEC Solid Waste Regulations.

In addition, pursuant to Section IX and Appendix H of the Consent Decree, KPC has completed its obligations to establish institutional controls at the Site. To summarize, four controlling instruments have been recorded at the Site, which are more fully described by KPC counsel Eric Fjelstad in a letter to EPA dated June 27, 2006.

With this letter, EPA has concluded that all CD requirements for the Uplands OU have been performed and the Remedial Action Objectives have been achieved.

This Certification shall not affect KPC'S remaining obligations under the CD, such as monitoring the landfill and enforcing the institutional controls at the KPC Site.

This Certification does not limit EPA's right to perform periodic reviews of the Site pursuant to Section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA

is appropriate at the Site in accordance with Section 98 of the CD, and in accordance with 42 U.S.C. 9604,9606,9607.

If you have any questions, please contact me at [gusmano.jacques@epa.gov](mailto:gusmano.jacques@epa.gov) or call (907) 271-1271.

Sincerely,

Jacques Gusmano

cc:

April Ingram, Louisiana-Pacific Corporation  
Karen Keeley, EPA Marine OU Project Manager  
Kelly Cole, EPA Office of Regional Counsel  
Deb Yamamoto, Unit Manager, EPA Office of Environmental Cleanup  
Bill Janes, ADEC Project Manager



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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

OFFICE OF  
ENVIRONMENTAL CLEANUP

January 22, 2010

Phil Benning  
Ketchikan Pulp Company  
P.O. Box 6600  
Ketchikan, AK 99901

Re: Certification of Completion, Requirements of Consent Decree  
Marine and Uplands Operable Units, Ketchikan Pulp Company Site  
CERCLA Remedial Design/Remedial Action Consent Decree No. A00-225 CV (JKS)

Dear Mr. Benning:

Pursuant to Paragraph 66(b) of the above-referenced Consent Decree (CD), this letter provides Certification of Completion of the Remedial Action for the Marine Operable Unit (OU) of the Ketchikan Pulp Company Site (KPC) Site. Pursuant to Paragraph 66(c) of the CD, this Marine OU Certification, together with the Uplands OU Certification dated January 21, 2010, constitutes Certification of Completion of the Remedial Action for the entire KPC Site.

EPA's Certification of the Marine OU is based on the Remedial Action Report (Integral Consulting, Inc.; September 30, 2009), which was certified by KPC/Louisiana-Pacific (L-P) on September 30, 2009 and approved by the U.S. Environmental Protection Agency (EPA) on October 1, 2009 (see Record of Preparation, Review, and Approval in the Remedial Action Report, p. v). EPA's approval of the Remedial Action Report constitutes EPA's conclusion and certification that KPC has completed Remedial Action for the Marine OU in full satisfaction of the requirements of the CD, and that the Remedial Action Objectives have been achieved.

This Certification shall not affect KPC's remaining obligations under this CD. In response to KPC's questions regarding certain remaining requirements under the CD, EPA clarifies the following:

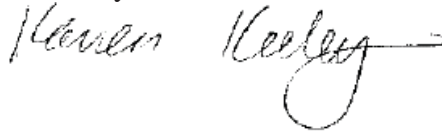
- Annual progress reports for the Marine OU. Pursuant to Paragraph 48 of the CD, KPC/L-P submitted its last annual progress report in November 2009. No further progress reports need to be submitted.

- Section XII, Assurance of Ability to Complete Work. Now that Remedial Action is complete, KPC/L-P is no longer required to submit annual financial assurance pursuant to Section XIII of the CD.
- Section XVII, Indemnification and Insurance, Paragraph 75. KPC/L-P must maintain insurance until the first anniversary of EPA's Certification of Completion of the Remedial Action (i.e., until January 2011), as described in Section XVII of the CD.
- Section XXV, Retention of Records. Pursuant to Paragraph 114 of the CD, KPC/L-P shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions at the Site for ten (10) years after receipt of this certification (i.e., until January 2020). KPC/L-P shall also instruct their contracts and agents to do the same for ten (10) years.

This certification does not limit EPA's right to perform periodic reviews of the Site pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site in accordance with Section 98 of the CD, and in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

If you have any questions, please contact me at 206-553-2141 or [keeley.karen@epa.gov](mailto:keeley.karen@epa.gov).

Sincerely,



Karen Keeley  
EPA Project Manager

cc: Kelly Cole, EPA Office of Regional Counsel  
Sheila Eckman, Unit Manager, EPA Office of Environmental Cleanup  
Jacques Gusmano, EPA Alaska Operations Office  
Lucinda Jacobs, Integral Consulting, Inc.  
Bill Janes, Alaska Department of Environmental Conservation



## **Attachment 14**

Letter from Sheila Eckman (EPA) to KGB (Bockhorst) and Alaska Assistant Attorney General (Welsh), dated January 25, 2010, regarding: CERCLA Liability Associated with Potential Redevelopment of Ward Cove



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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

OFFICE OF  
ENVIRONMENTAL CLEANUP  
ECL-111

January 25, 2010

Mr. Dan Bockhorst  
Ketchikan Gateway Borough  
1900 1<sup>st</sup> Avenue  
Ketchikan, Alaska 99901

Mr. Richard Welsh  
Asst. Attorney General  
Transportation Section  
P.O. Box 110300  
Juneau, Alaska 99811-0300

Re: CERCLA Liability Associated with Potential Redevelopment of Ward Cove in  
Ketchikan, Alaska

Dear Mssrs. Bockhorst and Welsh:

This letter addresses issues related to the Alaska Department of Transportation & Public Facilities Marine Highway System's (AMHS) and the Ketchikan Gateway Borough's (KGB) proposed agreement to use Ward Cove as a ferry lay-up berth and operational facility. The primary purpose of this letter is to apprise AMHS and KGB about CERCLA liability that the proposed operations may cause. It also summarizes issues that EPA has been discussing with KGB and AMHS since early 2009.

Ward Cove consists of approximately 250 acres. In March 2000, EPA issued a Record of Decision (ROD) addressing the Marine Operable Unit (Marine OU) at the Ketchikan Pulp Company Site (KPC Site), which set forth a remedy that addressed 80 acres of contamination in Ward Cove. The remedy was intended to protect the environment, and more specifically, the benthic community populating the sediments there. Of the 80-acre remedy, the ROD called for monitored natural recovery on approximately 53 acres and for a thin-layer sand cap for the remaining 27 acres. Under EPA oversight, KPC performed remedial action construction in Ward Cove between 2000 and 2001. In May 2009, EPA concluded that the multiple lines of evidence used to evaluate sediment quality in the Marine OU indicate that the Remedial Action Objectives have been achieved, and that sediments support healthy benthic communities. Because waste was left in place, the ROD also called for institutional controls to ensure that the remedy would remain intact and protective of the environment. The institutional control at issue here requires post-remediation activities within the area of concern that materially damage the thin-layer cap to be redressed, at the direction of EPA. The use restrictions set forth in the ROD are currently still in effect at Ward Cove. The 2000 ROD language has not changed, nor has the way in which EPA interprets and enforces the ROD.

Unrestricted use of Ward Cove would have been feasible only if all contaminated sediments had been dredged, removed, and properly disposed. Given the location of Ward Cove, the amount and type of contamination, and the cost of such disposal (estimated to be more than \$200 million in past studies), this was not a feasible alternative at the time (see Response to Comment 73 in the ROD). However, in designing the remedial action, EPA did take into consideration the anticipated future uses in the cove. EPA also sought public comment on its proposed remedy – a combination of monitored natural recovery, thin-layer capping, and dredging. The Borough supported EPA’s remedy at the time (KGB letter to EPA, September 10, 1999, which included reference to the KGB’s earlier September 22, 1998 letter).

To ensure that the remedy selected would remain protective, the ROD called for institutional controls to be established that would restrict certain uses in Ward Cove. The Borough was consulted on the anticipated future uses and restrictions set forth in the proposed remedy. The future use of the cove was assumed to include normal vessel traffic and anchoring. EPA stated in the ROD that certain pile-driving activities would be consistent with the remedy, but that dredging would materially damage the cap and would therefore be prohibited. During the design phase, and based on public input, EPA considered the requirements for reasonably anticipated current and future commercial navigation in Ward Cove (see Design Analysis Report for the Marine Operable Unit of the KPC Site, prepared by Exponent and Hartman Consulting Corporation, September 2000). As stated in the document, “The Ward Cove channel and berth will cater to a range of ship types appropriate for reasonably anticipated current and future shipping activity in Ward Cove. These anticipated uses focus on two types of deep draft ships, the bulk cargo vessel and the cruise ship.” A propeller scour analysis was also conducted. Based on input at the time, ferry traffic was not considered in these analyses.

To implement the ROD, Section IX (Access & Institutional Controls) of the 2000 Superfund Consent Decree (CD) for the Marine OU specifically prohibited persons from “using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree.” In particular, paragraph 43(b) of the CD ensures that “If projects or activities materially damage the Sediment Cap applied to Patented Tidelands, Gateway [the owner at the time] shall be required, at the direction of EPA, to redress such impacts, e.g., Gateway shall be required to repair or replace the impacted portions of the Sediment Cap if a dredging project exposes substantial areas of non-native organic-rich sediments and thus adversely affects the continued recovery of the benthic community in the sediments.”

Paragraph 43(b) of the CD also required that a Monitoring and Reporting Work Plan (Plan) be submitted to EPA in order to further implement Paragraph 27 of the CD and the provision related to Sediment Cap damage. The part of the Plan related to Sediment Cap damage, which was submitted by Exponent on January 3, 2002 and approved by EPA on January 15, 2002, described the procedure for actions that could materially damage the cap. The Plan clearly stated that the CD’s requirement to refrain from damaging the cap and to replace the cap if necessary were binding on the current and any future owners of patented tidelands in Ward Cove. It also stated, among other things, that “The property owner of the tidelands will be liable for EPA’s costs associated with reviewing and overseeing the action or proposed action that is deemed by EPA to violate the institutional control.”



In 1999 – before EPA had issued the ROD and before KPC had entered into a CD to perform the remedial action – KPC recorded an Environmental Easement and Declaration of Covenants on its property (1999 Covenant). The 1999 Covenant described restrictions on the use of Ward Cove, including a requirement that any damage to the sediment cap be redressed by KPC at EPA's direction. It designated the State of Alaska, Department of Natural Resources and the Department of Environmental Conservation as the holder of the easement.

After KPC completed the remedy in Ward Cove, it replaced the 1999 Covenant with a new one. The July 2004 Environmental Easement and Declaration of Covenants (2004 Covenant) is the one that currently applies, and it is an agreement between KPC and the Borough, which was the new owner of the KPC Site. In the 2004 Covenant, the Borough agreed to comply with all Ward Cove institutional controls that were set forth in the Consent Decree, including the restriction on damaging the cap. It states:

*The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove Consent Decree.*

According to the 2004 Covenant, in the event of any such damage to the cap, the Borough (or any future owner) must immediately report the damage to EPA and KPC and then restore the cap. The 2004 Covenant states that the restricted uses shall run with the land and be binding on all future owners, and the terms and conditions shall be for a period of twenty (20) years, after which time the Covenant shall be automatically extended for successive periods of ten (10) years unless an instrument signed by KPC has been recorded agreeing to terminate the restrictions. EPA would have to approve any such termination and would do so only if the contamination were completely removed and there was no longer a need for a thin-layer cap.

Therefore, while the remedy selected for the Marine OU assumed that Ward Cove would be redeveloped in the future, the institutional controls that were put in place to protect that remedy do affect how the site may be redeveloped. Any activity that materially damages the thin-layer sediment cap at Ward Cove would be a violation of the ROD, the institutional controls, and the 2004 Covenant, and may also be considered a release of hazardous substances, subjecting KGB, as owner of the sediments, to liability under Section 107(a) of CERCLA. See 42 U.S.C. § 9607(a). If AMHS becomes a lessee at Ward Cove and if its activities were to disrupt the sediment cap, it, too, would be subject to liability as an operator under CERCLA.

EPA has not conducted its own independent evaluation of whether your proposed redevelopment plans at Ward Cove would in fact materially damage the sand cap materials, or cause a release of hazardous substances. However, the agency does have a copy of the CH2M HILL May 2009 scour study titled “*Potential for Scour at Ward Cove from Proposed AMHS Ferry Operations.*” It is our understanding that AMHS commissioned this report as part of its due diligence when it was considering purchasing portions of Ward Cove for its ferry operations. The report concluded that AMHS ferry traffic would likely disturb the remedial sand cap in Ward Cove. EPA is also aware that KGB hired two firms to peer review CH2M HILL's assessment and conclusions: (1) Dalton, Olmsted & Fuglevand, Inc., and Windward



Environmental LLC, "*Peer Review of the 2009 CH2M HILL Scour Study of Ward Cove*" (July 31, 2009), (2) PND Engineers, Inc., "*Ward Cove Sediment Scour – Peer Review of Scour Assessment*" (July 28, 2009). Subsequently, CH2M HILL prepared "*Response to Peer Reviews of CH2M HILL Ward Cove Scour Study*" (August 27, 2009). EPA has copies of these reports as well.

If the proposed ferry operations were to result in a disruption to the capped sediments in Ward Cove, EPA could take a number of actions. It could, for example, perform its own independent monitoring in the future to determine if a release has occurred, the cost of which could be assessed against the current owner and/or operator. Another option would be to order one or both of the parties to remediate the damage and pay for EPA's oversight of the cleanup work.

While it is not EPA's role to approve or disapprove of specific development projects at the KPC Site, it is EPA's role to ensure that the remedy in place at Ward Cove remains protective of the environment. As the owner at the KPC Site, it is KGB's role to ensure that projects that proceed on site are consistent with the ROD, the institutional controls, and 2004 Covenant.

As a reminder, EPA will be conducting the next Five-Year Review for the KPC Site this year.

If you have any questions, please contact me at [eckman.sheila@epa.gov](mailto:eckman.sheila@epa.gov) or by phone 206-553-0455.

Sincerely,

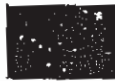


Sheila Eckman  
Unit Manager

cc: Phil Benning, KPC  
Kelly Cole, EPA Office of Regional Counsel  
Jacques Gusmano, EPA Alaska Operations Office  
Karen Keeley, EPA Office of Environmental Cleanup  
Bob Weinstein, Office of Senator Mark Begich, Field Representative, Southern Southeast Alaska

## **Attachment 15**

Environmental Easement and Declaration of Covenants, recorded July 18, 2003, between  
Ketchikan Gateway Borough, Ketchikan Pulp Company, and Gateway Forest Products



**2003-004128-0**

Recording Dist: 102 - Ketchikan  
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Ziegler Law Firm

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Ketchikan Recording District

## ENVIRONMENTAL EASEMENT AND DECLARATION OF COVENANTS

This Environmental Easement and Declaration of Covenants ("Easement"), made and entered into this 14<sup>th</sup> day of July, 2003, by and between KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501, KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901, and GATEWAY FOREST PRODUCTS, INC., an Alaska corporation, Post Office Box 779, Ward Cove, Alaska 99928, WITNESSETH:

### RECITALS

**WHEREAS**, all real property referred to in this Easement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

**WHEREAS**, on November 3, 1999, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into certain agreements including the Allocation of Environmental Responsibilities Agreement ("Environmental Allocation Agreement"), more commonly known as Exhibit "F," and the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Environmental Allocation Easement"), more commonly known as Exhibit "F-1," which incorporated by reference Exhibit "F," governing certain properties;

**WHEREAS**, The Environmental Allocation Easement was specifically incorporated into that certain Quitclaim Deed executed by Ketchikan Pulp Company in favor of Gateway Forest Products, Inc., which was recorded on November 5, 1999 at Book 306, Page 72;

**WHEREAS**, the parties now desire to remove the Environmental Allocation Easement and the Environmental Allocation Agreement from certain parcels of real property located at Ward Cove, formerly owned by Ketchikan Pulp Company and to replace it with this Easement;

**WHEREAS**, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. have ongoing interests, including but not limited to, operational and regulatory considerations, in the Ward Cove real property and desire to impose on the those properties certain terms and conditions as covenants that will run with the land for the purpose of making such terms and conditions applicable to the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc., as well as any of their successors and assigns holding an interest in the properties;





WHEREAS, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into an Agreement dated \_\_\_\_\_, 2003 governing the parties' respective rights and responsibilities ("Agreement"); and

WHEREAS, Ketchikan Pulp Company has an ongoing interest in ensuring that it has access to the Ward Cove properties to accommodate the satisfaction of its continuing environmental obligations at the Ward Cove facility;

NOW, THEREFORE, In consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. hereby agree as follows:

#### I. DEFINITIONS.

The terms used in this Easement shall have the following meanings, which shall be equally applicable to both the singular and plural forms of the terms defined:

- A. "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska, and the Borough's successors, heirs, and assigns.
- B. "Costs" means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.
- C. "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law, including causes of action arising in tort.
- D. "Gateway" means and refers to both Gateway Forest Products, Inc., an Alaska corporation, and Gateway's successors, heirs, and assigns.
- E. "Hazardous Substances" means substances which constitute hazardous substances under the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.



- F. "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources ("DNR") requires in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- G. "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- H. "KPC" means and refers broadly to both Ketchikan Pulp Company, a Washington corporation, and KPC's successors, heirs, and assigns.
- I. "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous Substance.
- J. "Ward Cove Area" means the water body commonly known as Ward Cove including marine waters to the ordinary high water mark and sediments underlying such waters, and also means the surface and subsurface areas of those portions of U.S. Surveys 1056, 1208, 1508, 1653, 1656, 1659, 1706, 1754, and 1862 lying seaward of the North Tongass Highway, and the filled portions of ATS-1, including any structures or other improvements located thereon.
- K. "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered in the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, *United States vs. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation*, Case No. A00-225 CV (JKS).
- L. "Ward Cove Landfills" means the industrial landfill which KPC owns and operates upon Tract 3004, Lot 2, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73.



## **II. PARCELS TO WHICH THE COVENANTS SHALL APPLY.**

The covenants contained in this Easement shall apply to the following parcels of real property ("Ward Cove Property"):

### **PARCEL NO. 1:**

U.S. Survey 1706.

### **PARCEL NO. 2:**

The unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754, recorded March 8, 1956 in Volume 1 of Plats at Packet 20.

### **PARCEL NO. 3:**

Lot 1, Tract 3004, according to the plat filed November 28, 2000 as Plat 2000-73.

### **PARCEL NO. 4:**

U.S. Survey 3400.

### **PARCEL NO. 5:**

U.S. Survey 3401.

### **PARCEL NO. 6:**

Lot 1, Sec. 34, T.74S., R.90E., C.R.M., as more particularly described in Exhibit "A" hereto.

## **III. COVENANTS.**

The Borough, KPC and Gateway, for good and sufficient consideration received, do hereby covenant and declare that, with respect to the properties listed in Section II. hereof, the following provisions shall be covenants that run with and bind the Ward Cove Property and the parties, and each parties' respective personal representatives, heirs, successors and assigns as to the Ward Cove Property or any interest therein obtained through any mechanism, including but not limited to, conveyances, assignments, or foreclosures:

### **A. Touch and Concern.**

The Ward Cove Covenants touch and concern the Ward Cove Property, in that each and all of the Covenants directly benefit the property, resolve regulatory issues



which have limited development and thereby increase its market value. The Ward Cove Covenants are fully enforceable by the parties with respect to the Ward Cove Property or any interest therein. If a party refuses to acknowledge the applicability of the Ward Cove Covenants to such party, any other party shall be entitled to enforce the terms of this instrument in law and in equity.

**B. Ward Cove Area.**

1. The Borough covenants and agrees that it shall comply with any Institutional Controls which are or may become applicable to the Ward Cove Property, including those imposed through, or under the Ward Cove Consent Decree, or otherwise.

2. The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove Consent Decree. The Borough further covenants and agrees that if it damages such cap, it will immediately report the relevant circumstances to EPA and KPC and restore the cap to a condition and to specifications as directed by the EPA or by any governmental body having primary regulatory jurisdiction over the work undertaken by KPC under the Ward Cove Consent Decree, but the Borough and KPC will be under no obligation to restore the cap until directed to do so by the EPA or other governmental body having jurisdiction.

3. The Borough's obligations, pursuant to Section 2 hereof, extend to the activities and operations of its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, and any third party contractually related, whether directly or indirectly.

4. Nothing in this Easement shall be interpreted to prohibit KPC from exercising any legal rights it may have with respect to matters arising under the Ward Cove Consent Decree.

5. KPC, Gateway and the Borough agree to give the other parties advance written notice of any material excavation, digging or other similar activities relating to the Ward Cove Property.

6. The Ward Cove Landfills are located within Lot 2, Tract 3004 ("Landfill Parcel") and are operated pursuant to a permit issued by the State of Alaska, Department of Environmental Conservation ("DEC"). Lot 1 of Tract 3004 surrounds the Landfill Parcel, which KPC agreed to donate to the Borough only upon the condition that use restrictions and other conditions would be implemented in order to ensure that neither the Borough nor its successors in interest would unreasonably interfere with the operation and maintenance of the Ward Cove Landfills. To accomplish those objectives, KPC and the Borough covenant and agree as follows:





- a. The future use of Lot 1, Tract 3004 by the Borough and its successors in interest shall be limited to commercial activities of an industrial nature which are compatible with operation in close proximity to an industrial landfill;
- b. The Borough and its successors in interest shall take all reasonable measures to protect against any interference with operation of the Ward Cove Landfills, including appropriate terracing of any rock extraction to preserve subjacent support; and
- c. The Borough hereby fully and finally releases KPC from all liability arising from or in any way related to operation and maintenance of the Ward Cove Landfills, excepting only to the extent damages may occur from a violation of, or failure to obtain, the DEC permit for the landfills. This release extends to any and all claims and liabilities, whether arising from negligence, or other fault, or otherwise. The Borough shall require each of its successors in interest, whether by lease, deed, or otherwise, as a condition to acquisition of any interest in or to Lot 1, Tract 3004, to execute the same release in favor of KPC.

**C. Future Subdivision.**

These Covenants shall not preclude subdivision of any parcel of the Ward Cove Property; provided, however, that upon any subdivision, replat, plat modification or other similar action, all portions of the Ward Cove Property which previously were subject to these Covenants, shall remain subject thereto; provided, however, that the obligations imposed by these covenants shall be limited to the parcel, area, or portion held by a party and shall not be interpreted to create liability for other parcels or areas not held by such party.

**D. Further Assurances.**

1. The parties covenant and agree both to adhere to and comply with current Institutional Controls and to cooperate with respect to the development and implementation of additional Institutional Controls, which shall include the development of an instrument or instruments to ensure that Institutional Controls arising under the Ward Cove Consent Decree, or otherwise, will run with the property and be enforceable against bona fide purchasers.

2. The parties covenant and agree that this Easement shall govern and be binding with respect to, the acts and omissions of each respective party's employees, agents, contractors, and any third party contractually related, whether directly or indirectly, to the respective party.



**E. Term of Ward Cove Covenants.**

Each and all of the Ward Cove Covenants, and all the burdens and benefits thereof, shall run with the Ward Cove Property and shall be binding on any person having any ownership interest in the Ward Cove Property under the terms and conditions set forth in the Ward Cove Covenants for a period of twenty (20) years from the Effective Date, after which time the Ward Cove Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Ward Cove Covenants in whole or in part.

**F. Termination of Rights and Obligations of Covenants Through Transfer of Ownership Interest.**

A party is relieved of its obligations to comply with the Ward Cove Covenants imposed on the Ward Cove Property upon, and to the extent, that a party transfers or no longer holds an interest in the Ward Cove Property, except that liability or responsibility for acts or omissions occurring prior to transfer shall survive such transfer; provided, however, that nothing in this Easement shall diminish or relieve the parties, or any successor or assign of the parties from their respective obligations under the Agreement.

The Borough, KPC, and Gateway, together with each parties' respective successors and assigns, are hereinafter referred to as the "Parties."

**IV. EASEMENT.**

**A. Reservation of Easement.**

1. The Parties acknowledge and agree that, upon the terms and conditions set forth in this Easement, the Borough grants to KPC an easement interest (the "Easement") in and to the following properties (the "Easement Property") to allow KPC and its successors and assigns to undertake any activity contemplated by the Agreement and by subsection III.B. hereof. It is the express intent of Grantor and Grantee that the burden and benefit of this Easement shall run with the land upon any conveyance of the Ward Cove Property, during the term of this Easement, including any extension thereof.

**PARCEL NO. 1:**

Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41.

**PARCEL NO. 2:**

That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres.

**PARCEL NO. 3:**

U.S. Survey 1706.

**PARCEL NO. 4:**

U.S. Survey 1754

**PARCEL NO. 5:**

That portion of U.S. Survey 1862, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North  $32^{\circ}27'$  West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North  $0^{\circ}25'$  West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South  $24^{\circ}30'$  East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South  $36^{\circ}35'$  East a distance of 126.14 feet; thence along a spiral curve whose chord bears South  $51^{\circ}21'$  East a distance of 210.05 feet; thence South  $55^{\circ}27'$  East a distance of 316.97 feet; thence South  $34^{\circ}33'$  West a distance of 50 feet; thence South  $55^{\circ}27'$  East a distance of 137.00 feet; thence South  $88^{\circ}00'$  West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North  $29^{\circ}30'$  West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

**PARCEL NO. 6:**

U.S. Survey 2090.



**PARCEL NO. 7:**

That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning.

**PARCEL NO. 8:**

U.S. Survey 3400.

**PARCEL NO. 9:**

U.S. Survey 3401.

**PARCEL NO. 10:**

Lot 1, Sec. 34, T. 74S., R.90E., C.R.M., as more particularly described in Exhibit "A" hereto.

**PARCEL NO. 11:**

Tract 3004, Lot 1, according to the plat filed November 28, 2000 as Plat 2000-73.

**PARCEL NO. 12:**

All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof (mistakenly recorded in the Juneau Recording District as Plat No. 292).

**PARCEL NO. 13:**

ALASKA TIDELANDS SURVEY NO. 439.

2. The Parties covenant and agree that KPC hereby is granted an easement interest in and to the Easement Property set forth in subsection A.1. hereof, consisting of a right of free access to and across the Easement Property to allow KPC to undertake or observe any sampling and Investigatory activities, Remediation activities, and any reasonable actions necessary to support or implement Investigatory and Remediation





activities at the Easement Property. KPC's right of access shall also include, without limitation, the right to use the Easement Property to the extent reasonably necessary for a staging area or otherwise to comply with Environmental Laws and the directives or orders of governmental agencies relating to the Easement Property.

3. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by, or reflected in, any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.

4. KPC's access rights, as described herein, shall not prevent the Borough Entities from constructing any buildings or other improvements on the Borough Property. In that event, KPC will exercise its access and staging rights in a manner which will not unreasonably interfere with the Borough Entities' uses or development of the properties.

#### **B. Term.**

The Easement shall become effective on the Effective Date and shall have an initial term of twenty (20) years from the Effective Date, after which time the Easement shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Easement in whole or in part.

#### **C. Subdivision.**

This Easement shall not preclude the subdivision of any parcels of the Ward Cove Property, but upon any subdivision, replat, plat modification, or other similar action, all portions of the Ward Cove Property which previously were subject to this Easement shall remain subject thereto.

#### **V. EFFECTIVE DATE.**

This Easement shall become effective ("Effective Date") on the date of recordation, simultaneous with recordation of the Vacation of Covenants and Easement releasing the same parcels

#### **VI. LIBERAL CONSTRUCTION.**

Any general rule of construction to the contrary, this Easement shall be liberally construed in favor of effectuating the Parties' desire to establish the Easement in favor of KPC and to make the Ward Cove Covenants run with, and apply to, the Ward Cove Property and to make the Ward Cove Covenants binding upon any and all successors and assigns of the Parties. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the



provision valid shall be favored over any interpretation that would render it invalid or unenforceable.

## VII. DISPUTES.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.

## VIII. MISCELLANEOUS.

### A. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by telecopy (with confirmation copy of such telecopied material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section VIII.A.):

#### 1. if to KPC:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, Oregon 97205  
Attention: Christopher M. (Kit) Keyes, Esq.  
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation

P.O. Box 4000-98  
Hayden Lake, Idaho 83835-9460  
Attention: Chris Paulson  
Facsimile: (208) 762-1667

Physical Address: 13403 N. Government Way

with a copy to:

Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901  
Attention: John Peterson, Esq.  
Facsimile: (907) 225-5513

2. if to the Borough:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Manager  
Facsimile: (907) 247-6625

with a copy to:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Clerk  
Facsimile: (907) 247-8439

3. if to Gateway:

Gateway Forest Products, Inc.  
Post Office Box 779  
Ward Cove, Alaska 99928  
Attention: Dick Leary  
Facsimile: (907) 247-1646

and:

Gateway Forest Products, Inc.  
7517 Tyne Drive  
Anchorage, Alaska 99502  
Attention: Jim Erickson



**B. Headings.**

The descriptive headings contained in this Easement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Easement.

**C. Severability.**

If any provision of this Easement, or the application of any provision to a person or circumstance, is found to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

**D. No Third-Party Beneficiaries.**

This Easement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Easement.

**E. Amendment; Waiver.**

This Easement may not be amended or modified except by an instrument in writing duly executed and recorded by the Parties. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the Party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Easement; provided however, that once Gateway no longer is the owner of any part or parcel of the Ward Cove Property, its agreement no longer shall be necessary to effectuate amendment of either the Covenants or the Easement and its signature no longer will be required.

**F. Governing Law.**

This Easement shall be governed by, and construed in accordance with, the laws of the State of Alaska, applicable to covenants and agreements affecting real property executed and to be performed in that State.

**NOTICE: THE INTERESTS CONVEYED HEREBY ARE  
SUBJECT TO AN ENVIRONMENTAL PROTECTION  
EASEMENT AND DECLARATION OF RESTRICTIVE  
COVENANTS DATED OCTOBER 28, 1999, RECORDED IN THE  
KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL**

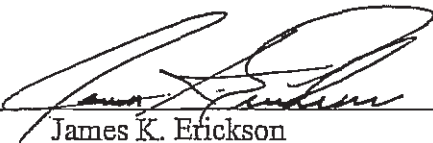


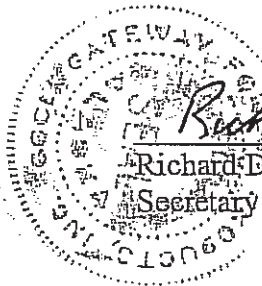
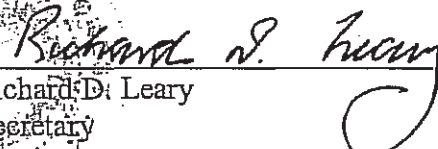


DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 AT  
BOOK 305, PAGE 772.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be  
duly executed as of the date first written above.

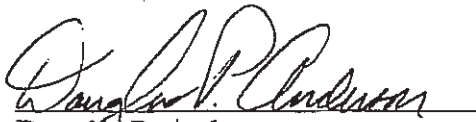
GATEWAY FOREST PRODUCTS, INC.

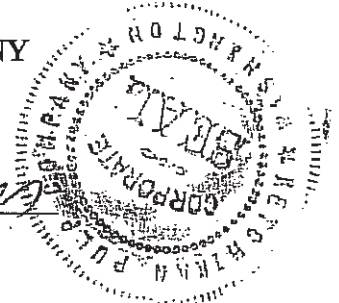
By   
James K. Erickson  
President

  
  
Richard D. Leary  
Secretary

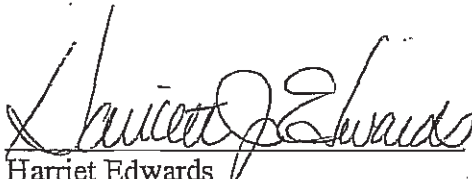
KETCHIKAN PULP COMPANY


By   
Chris Paulson  
President

  
Douglas P. Anderson  
Assistant Secretary



KETCHIKAN GATEWAY BOROUGH

  
Harriet Edwards  
Clerk

By   
Roy A. Eckert  
Manager

STATE OF ALASKA )  
: ss.  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 14<sup>th</sup> day of July 2003, before  
me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned  
and sworn as such, personally appeared Roy A. Eckert and Harriet Edwards, to me  
known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal  
corporation established pursuant to the laws of the State of Alaska which executed the



above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the borough seal thereto on behalf of the Borough and that the seal affixed thereto is the borough seal thereof; and who acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

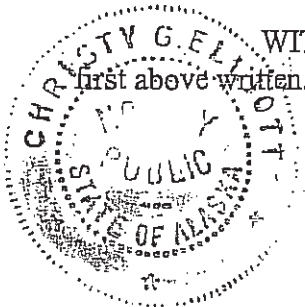
WITNESS my hand and seal the day and year last above written.



Cindy M. Montgen  
Notary Public in and for Alaska  
My Commission Expires: 5/7/07

STATE OF ALASKA                    )  
  : ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 15<sup>th</sup> day of July, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Richard D. Leary**, to me known to be the Secretary, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.



WITNESS my hand and official seal the day and year in this certificate first above written.

Christy G. Emlin  
Notary Public for Alaska  
Commission expires: 8/23/04

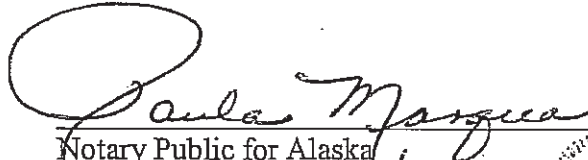
STATE OF ALASKA                    )  
  : ss.  
THIRD JUDICIAL DISTRICT        )

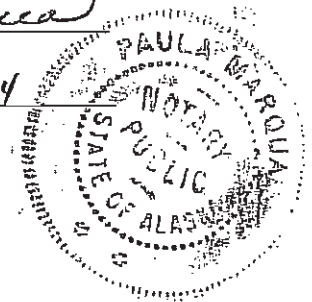
THIS IS TO CERTIFY that on this 16<sup>th</sup> day of July, 2003, before me, the undersigned, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared **James K. Erickson**, to me known to be the President, of Gateway Forest Products, Inc., an Alaska corporation, the corporation which executed the



above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said corporation and that the seal affixed thereto is the corporate seal thereof; who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

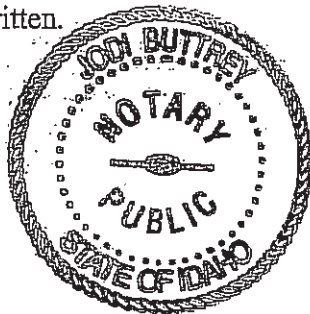
  
Notary Public for Alaska  
Commission expires: 4-17-04




STATE OF IDAHO                    )  
  : ss.  
COUNTY OF KOOTENAI        )

THIS IS TO CERTIFY that on this 14<sup>th</sup> day of July, 2003, before me, the undersigned, a notary public in and for the State of Idaho, duly commissioned and sworn, personally appeared **Chris Paulson** and **Douglas P. Anderson**, to me known to be the President and Assistant Secretary respectively of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they was duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that he signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

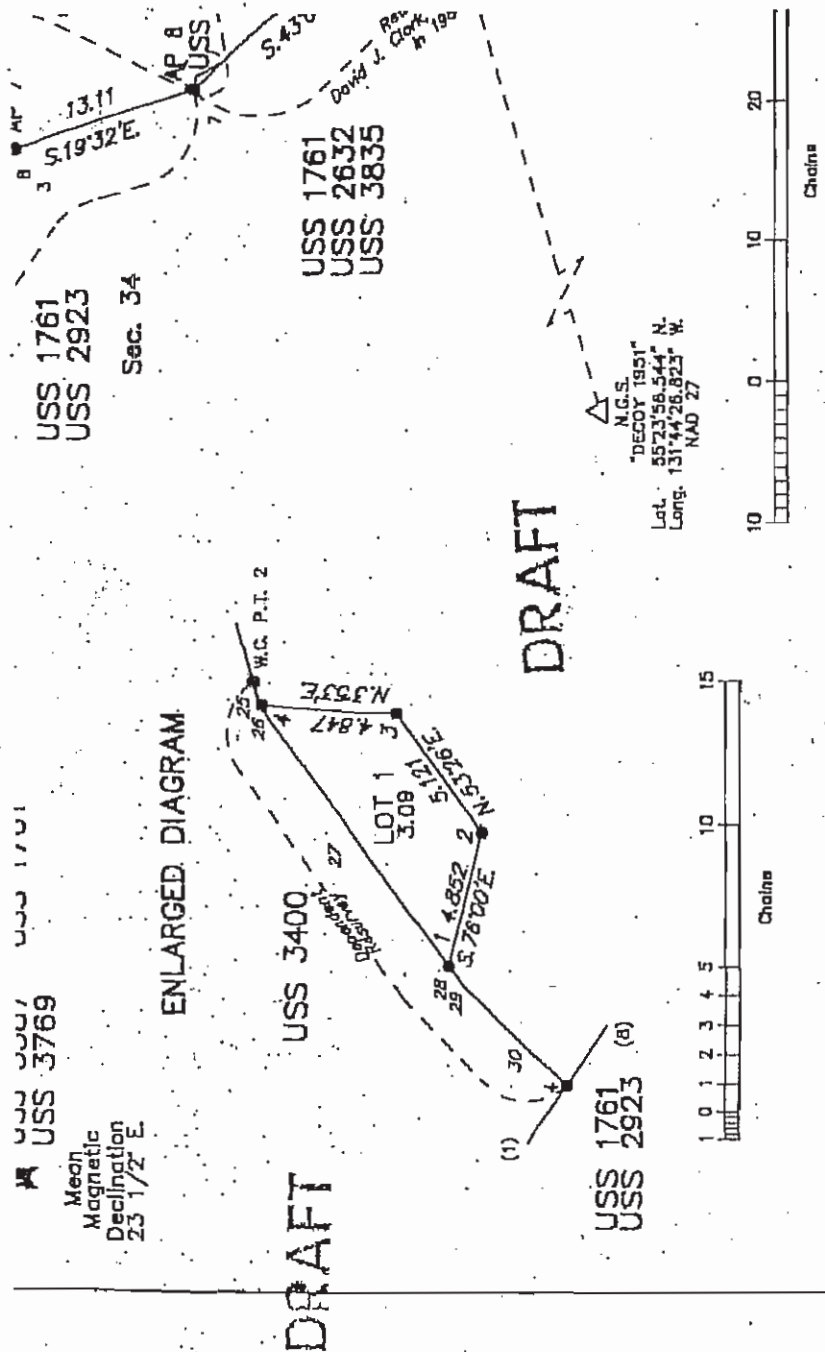


  
Notary Public for Idaho  
Commission expires: 6/19/08

WHEN RECORDED, RETURN TO:

The Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901









## **Attachment 16**

Environmental Easement and Declaration of Covenants, recorded July 15, 2004, between  
Ketchikan Gateway Borough and Ketchikan Pulp Company

A  
L  
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S  
K  
A

ccc/cc

## ENVIRONMENTAL EASEMENT AND DECLARATION OF COVENANTS

This Environmental Easement and Declaration of Covenants ("Easement"), made and entered into this 14<sup>th</sup> day of July, 2004, by and between KETCHIKAN GATEWAY BOROUGH, a municipal corporation, 344 Front Street, Ketchikan, Alaska 99501 and KETCHIKAN PULP COMPANY, a Washington corporation, Post Office Box 6600, Ketchikan, Alaska 99901, WITNESSETH:

## RECITALS

WHEREAS, all real property referred to in this Easement is located in, and all documents and plats referred as filed or recorded, are filed or recorded in the Ketchikan Recording District, First Judicial District, State of Alaska;

WHEREAS, on November 3, 1999, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into certain agreements including the Allocation of Environmental Responsibilities Agreement ("Environmental Allocation Agreement"), more commonly known as Exhibit "F," and the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities ("Environmental Allocation Easement"), more commonly known as Exhibit "F-1," which incorporated by reference Exhibit "F," governing certain properties;

WHEREAS, The Environmental Allocation Easement was specifically incorporated into that certain Quitclaim Deed executed by Ketchikan Pulp Company in favor of Gateway Forest Products, Inc., which was recorded on November 5, 1999 at Book 306, Page 72;

WHEREAS, the parties now desire to remove the Environmental Allocation Easement and the Environmental Allocation Agreement from certain parcels of real property located at Ward Cove, formerly owned by Ketchikan Pulp Company and to replace it with this Easement;

WHEREAS, the Ketchikan Gateway Borough and Ketchikan Pulp Company have ongoing interests, including but not limited to,

operational and regulatory considerations, in the Ward Cove real property and desire to impose on the those properties certain terms and conditions as covenants that will run with the land for the purpose of making such terms and conditions applicable to the Ketchikan Gateway Borough and Ketchikan Pulp Company, as well as any of their successors and assigns holding an interest in the properties;

WHEREAS, the Ketchikan Gateway Borough, Ketchikan Pulp Company and Gateway Forest Products, Inc. entered into an Agreement dated July 14, 2003 governing the parties' respective rights and responsibilities ("Agreement"); and

WHEREAS, Ketchikan Pulp Company has an ongoing interest in ensuring that it has access to the Ward Cove properties to accommodate the satisfaction of its continuing environmental obligations at the Ward Cove facility;

NOW, THEREFORE, In consideration of the promises and of the mutual agreements and covenants hereinafter set forth, the Ketchikan Gateway Borough and Ketchikan Pulp Company hereby agree as follows:

#### I. DEFINITIONS.

The terms used in this Easement shall have the following meanings, which shall be equally applicable to both the singular and plural forms of the terms defined:

- A. "Borough" means and refers to the Ketchikan Gateway Borough, a municipal corporation organized pursuant to the laws of the State of Alaska, and the Borough's successors, heirs, and assigns.
- B. "Costs" means, with respect to Remediation and Investigation activities, actual reasonable expenditures, including but not limited to, reasonable attorneys' fees and defense costs, contractor costs, consultant costs, governmental oversight costs and other necessary expenditures.
- C. "Environmental Laws" means all State of Alaska, local, and federal laws, statutes, regulations, and ordinances of any kind relating to environmental protection or compliance as they currently exist and as they may come to be amended, including but not limited to, the federal Clean Water Act; Clean Air Act; Toxic Substances Control Act; Comprehensive Environmental Response, Compensation and Liability Act; Resource Conservation and Recovery





Act; Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Hazardous Materials Transportation Act; laws designated in Alaska Statutes Title 46; and common law, including causes of action arising in tort.

- D. "Gateway" means and refers to both Gateway Forest Products, Inc., an Alaska corporation, and Gateway's successors, heirs, and assigns.
- E. "Hazardous Substances" means substances which constitute hazardous substances under the Comprehensive Environmental Response, Compensation Liability Act or under AS 46.03.822.
- F. "Institutional Controls" means the Environmental Protection Easement and Declaration of Restrictive Covenants in favor of the State of Alaska, Department of Natural Resources, recorded on October 28, 1999, at Book 305, page 772 in the Ketchikan Recording District and such other measures, controls, limitations, prohibitions, procedures, or protocols that the United States Environmental Protection Agency ("EPA"), the Alaska Department of Environmental Conservation ("DEC") or the Alaska Department of Natural Resources ("DNR") requires in order to maintain the integrity of a remedial or removal action or prevent a release or threatened release of a Hazardous Substance.
- G. "Investigation or Investigatory" means actions to assess the nature and extent of Hazardous Substances contamination, including sampling and other necessary activities.
- H. "KPC" means and refers broadly to both Ketchikan Pulp Company, a Washington corporation, and KPC's successors, heirs, and assigns.
- I. "Remediation" means actions to remove, clean up, treat, or dispose of Hazardous Substances from the environment, including but not limited to, actions which may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment from a release or threatened release of a Hazardous Substance.
- J. "Ward Cove Area" means the water body commonly known as Ward Cove including marine waters to the ordinary high water mark and sediments underlying such waters, and also means the surface and subsurface areas of those portions of U.S. Surveys 1056, 1208, 1508, 1653, 1656, 1659, 1706, 1754, and 1862 lying seaward of the North Tongass Highway, and the filled portions of ATS-1, including any structures or other improvements located thereon.



- K. "Ward Cove Consent Decree" means the consent decree with the EPA and the U.S. Department of Justice entered in the U.S. District Court for the District of Alaska: CERCLA Remedial Design/Remedial Action Consent Decree, *United States vs. Gateway Forest Products, Inc., Ketchikan Pulp Company, & Louisiana-Pacific Corporation*, Case No. A00-225 CV (JKS).
- L. "Ward Cove Landfills" means the industrial landfill which KPC owns and operates upon Tract 3004, Lot 2, Dawson Point Subdivision, according to the plat thereof filed November 28, 2000 as Plat 2000-73.

## II. PARCELS TO WHICH THE COVENANTS SHALL APPLY.

The covenants contained in this Easement shall apply to the following parcels of real property ("Ward Cove Property"):

### PARCEL NO. 1:

All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the unrecorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), except Exhibit "C-2" thereto, the parcel so excepted being more particularly described as follows:

From U.S.L.M. No. 2 measure South 71°56' East 896.28 feet to Corner M. C. 2 of U. S. Survey #1508 identical with Corner M. C. 1 of U. S. Survey #1659 and the point of beginning, thence following the meander lines established by and fronting U. S. Survey #1508: South 51°15' West 83.16 feet; South 7°00' East 66.66 feet; South 24°15' East 65.34 feet; South 70°00' East 139.26 feet; North 60°45' East 58.08 feet; South 45°00' East 45.54 feet; South 21°45' West 223.74 feet; South 23°45' East 29.70 feet; North 75°15' East 28.38 feet; North 41°30' East 203.28 feet; South 73°45' East 82.50 feet; South 84°30' East 88.44 feet; South 6°45' East 66.66 feet; South 19°00' West 93.72 feet; South 35°15' West 91.08 feet; South 53°15' West 68.64 feet; South 41°30' West 121.44 feet; South 64°00' West 84.48 feet; South 49°15' West 106.92 feet; South 11°30' West 138.60 feet to Corner M. C. 1 of U. S. Survey #1508 identical with Corner M. C. 1 of U. S. Survey #1208; thence following the meander lines established by and fronting U. S. Survey #1208: South 14°00' West 158.40 feet; South 34°30' West 19.80 feet; South 17°30' West 105.60 feet; South 53°45' West 46.20 feet; South 4°30' East 39.60 feet; South 23°45' West



85.80 feet; South 71°45' West 39.60 feet; South 6°15' West 46.20 feet; North 85°45' West 59.40 feet; North 52°45' West 66.00 feet; South 64°45' West 39.60 feet; South 45°00' West 39.60 feet; South 85°30' West 39.60 feet; North 55°15' West 26.40 feet; South 58°00' West 39.60 feet; South 8°45' West 144.54 feet; South 16°45' West 72.60 feet; South 3°30' West 59.40 feet; South 36°15' West 66.00 feet; South 16°45' West 39.60 feet; South 7°00' East 69.30 feet to Corner M. C. 4 of U. S. Survey #1208 identical with Corner M. C. 2 of U. S. Survey #1655; thence following the meander lines established by and fronting U.S. Survey #1655: South 24°00' West 29.70 feet; South 30°15' West 130.02 feet South 23°15' West 136.62 feet; South 9°00' West 89.10 feet; South 8°00' East 36.30 feet to Corner M. C. 1 of U. S. Survey #1655 identical with Corner M. C. 1 of U. S. Survey #1653; thence following the meander lines established by and fronting U. S. Survey #1653: South 10°00' West 132.00 feet; South 30°15' West 36.96 feet; North 79°45' West 64.02 feet; South 55°45' West 62.04 feet; South 18°30' West 38.94 feet; South 41°45' West 44.88 feet; South 32°45' West 96.36 feet; South 15°15' East 48.18 feet; South 64°30' West 60.72 feet; South 0°45' West 44.88 feet; South 25°00' West 120.78 feet; South 72°00' West 21.78 feet; North 51°15' West 44.22 feet; South 81°15' West 46.86 feet; South 74°15' West 165.66 feet; South 30°45' West 211.86 feet to Corner M. C. 2 of U. S. Survey #1653 identical with Corner M.C. 1 of U. S. Survey #1656; thence North 42°55' West 712.99 feet to a point identified as PT-1; thence North 50°00' East 1,011.33 feet to a point identified as PT-2; thence North 22°00' East 1,674.54 feet to a point identified as PT-3; thence North 50°00' East 580.76 feet to intersect with the R.O.W. line on the North Tongass Highway; thence South 2°27' West 76.51 feet to the point of beginning.

**PARCEL NO. 2:**

Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41.

**PARCEL NO. 3:**

That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres.





PARCEL NO. 4:

That portion of U.S. Survey 1862, more particularly described as follows:

Beginning at U.S. Land Mark No. 2; thence North 32°27' West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North 0°25' West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24°30' East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36°35' East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51°21' East a distance of 210.05 feet; thence South 55°27' East a distance of 316.97 feet; thence South 34°33' West a distance of 50 feet; thence South 55°27' East a distance of 137.00 feet; thence South 88°00' West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North 29°30' West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning.

ALSO: That portion of U.S. Survey 1862 lying within the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

PARCEL NO. 5:

U.S. Survey 2090.

PARCEL NO. 6:

That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey 2923; thence South 55°45' East along the northeasterly





boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning.

### III. COVENANTS.

The Borough and KPC, for good and sufficient consideration received, do hereby covenant and declare that, with respect to the properties listed in Section II. hereof, the following provisions shall be covenants that run with and bind the Ward Cove Property and the parties, and each parties' respective personal representatives, heirs, successors and assigns as to the Ward Cove Property or any interest therein obtained through any mechanism, including but not limited to, conveyances, assignments, or foreclosures:

#### A. Touch and Concern.

The Ward Cove Covenants touch and concern the Ward Cove Property, in that each and all of the Covenants directly benefit the property, resolve regulatory issues which have limited development and thereby increase its market value. The Ward Cove Covenants are fully enforceable by the parties with respect to the Ward Cove Property or any interest therein. If a party refuses to acknowledge the applicability of the Ward Cove Covenants to such party, any other party shall be entitled to enforce the terms of this instrument in law and in equity.

#### B. Ward Cove Area.

1. The Borough covenants and agrees that it shall comply with any Institutional Controls which are or may become applicable to the Ward Cove Property, including those imposed through, or under the Ward Cove Consent Decree, or otherwise.

2. The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove Consent Decree. The Borough further covenants and agrees that if it damages such cap, it will immediately report the relevant circumstances to EPA and KPC and restore the cap to a condition and to specifications as directed by the EPA or by any governmental body having primary regulatory jurisdiction over the work undertaken by KPC under the Ward Cove Consent Decree, but the Borough and KPC will be under no obligation to restore the cap until directed to do so by the EPA or other governmental body having jurisdiction.



3. The Borough's obligations, pursuant to Section 2 hereof, extend to the activities and operations of its employees, agents, contractors, invitees, licensees, representatives, permittees, joint venturers, instrumentalities, port authorities, and any third party contractually related, whether directly or indirectly.

4. Nothing in this Easement shall be interpreted to prohibit KPC from exercising any legal rights it may have with respect to matters arising under the Ward Cove Consent Decree.

5. KPC and the Borough agree to give the other party advance written notice of any material excavation, digging or other similar activities relating to the Ward Cove Property.

6. The Ward Cove Landfills are located within Lot 2, Tract 3004 ("Landfill Parcel") and are operated pursuant to a permit issued by the State of Alaska, Department of Environmental Conservation ("DEC"). Lot 1 of Tract 3004 surrounds the Landfill Parcel, which KPC agreed to donate to the Borough only upon the condition that use restrictions and other conditions would be implemented in order to ensure that neither the Borough nor its successors in interest would unreasonably interfere with the operation and maintenance of the Ward Cove Landfills. To accomplish those objectives, KPC and the Borough covenant and agree as follows:

- a. The future use of Lot 1, Tract 3004 by the Borough and its successors in interest shall be limited to commercial activities of an industrial nature which are compatible with operation in close proximity to an industrial landfill;
- b. The Borough and its successors in interest shall take all reasonable measures to protect against any interference with operation of the Ward Cove Landfills, including appropriate terracing of any rock extraction to preserve subjacent support; and
- c. The Borough hereby fully and finally releases KPC from all liability arising from or in any way related to operation and maintenance of the Ward Cove Landfills, excepting only to the extent damages may occur from a violation of, or failure to obtain, the DEC permit for the landfills. This release extends to any and all claims and liabilities, whether arising from negligence, or other fault, or otherwise. The Borough shall require each of its successors in interest, whether by lease, deed, or otherwise, as a condition to acquisition of any interest in or to Lot 1, Tract 3004, to execute the same release in favor of KPC.





C. Future Subdivision.

These Covenants shall not preclude subdivision of any parcel of the Ward Cove Property; provided, however, that upon any subdivision, replat, plat modification or other similar action, all portions of the Ward Cove Property which previously were subject to these Covenants, shall remain subject thereto; provided, however, that the obligations imposed by these covenants shall be limited to the parcel, area, or portion held by a party and shall not be interpreted to create liability for other parcels or areas not held by such party.

D. Further Assurances.

1. The parties covenant and agree both to adhere to and comply with current Institutional Controls and to cooperate with respect to the development and implementation of additional Institutional Controls, which shall include the development of an instrument or instruments to ensure that Institutional Controls arising under the Ward Cove Consent Decree, or otherwise, will run with the property and be enforceable against bona fide purchasers.

2. The parties covenant and agree that this Easement shall govern and be binding with respect to, the acts and omissions of each respective party's employees, agents, contractors, and any third party contractually related, whether directly or indirectly, to the respective party.

E. Term of Ward Cove Covenants.

Each and all of the Ward Cove Covenants, and all the burdens and benefits thereof, shall run with the Ward Cove Property and shall be binding on any person having any ownership interest in the Ward Cove Property under the terms and conditions set forth in the Ward Cove Covenants for a period of twenty (20) years from the Effective Date, after which time the Ward Cove Covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Ward Cove Covenants in whole or in part.

F. Termination of Rights and Obligations of Covenants Through Transfer of Ownership Interest.

A party is relieved of its obligations to comply with the Ward Cove Covenants imposed on the Ward Cove Property upon, and to the extent, that a party transfers or no longer holds an interest in the Ward Cove Property, except that liability or responsibility for acts or omissions occurring prior to transfer shall survive such



transfer; provided, however, that nothing in this Easement shall diminish or relieve the parties, or any successor or assign of the parties from their respective obligations under the Agreement.

The Borough and KPC, together with each parties' respective successors and assigns, are hereinafter referred to as the "Parties."

#### IV. EASEMENT.

##### A. Reservation of Easement.

1. The Parties acknowledge and agree that, upon the terms and conditions set forth in this Easement, the Borough grants to KPC an easement interest (the "Easement") in and to the following properties (the "Easement Property") to allow KPC and its successors and assigns to undertake any activity contemplated by the Agreement and by subsection III.B. hereof. It is the express intent of Grantor and Grantee that the burden and benefit of this Easement shall run with the land upon any conveyance of the Ward Cove Property, during the term of this Easement, including any extension thereof:

##### PARCEL NO. 1:

All of ALASKA TIDELANDS SURVEY NO. 1 (CR 74s 90E), according to the unrecorded plat thereof (mistakenly recorded in the Juneau Recording District as Plat No. 292), except Exhibit "C-2" thereto, the parcel so excepted being more particularly described as follows:

From U.S.L.M. No. 2 measure South 71°56' East 896.28 feet to Corner M. C. 2 of U. S. Survey #1508 identical with Corner M. C. 1 of U. S. Survey #1659 and the point of beginning, thence following the meander lines established by and fronting U. S. Survey #1508: South 51° 15' West 83.16 feet; South 7°00' East 66.66 feet; South 24° 15' East 65.34 feet; South 70°00' East 139.26 feet; North 60°45' East 58.08 feet; South 45°00' East 45.54 feet; South 21°45' West 223.74 feet; South 23°45' East 29.70 feet; North 75°15' East 28.38 feet; North 41°30' East 203.28 feet; South 73°45' East 82.50 feet; South 84°30' East 88.44 feet; South 6°45' East 66.66 feet; South 19°00' West 93.72 feet; South 35°15' West 91.08 feet; South 53°15' West 68.64 feet; South 41°30' West 121.44 feet; South 64°00' West 84.48 feet; South 49°15' West 106.92 feet; South 11°30' West 138.60 feet to Corner M.





C. 1 of U. S. Survey #1508 identical with Corner M. C. 1 of U. S. Survey #1208; thence following the meander lines established by and fronting U. S. Survey #1208: South 14°00' West 158.40 feet; South 34°30' West 19.80 feet; South 17°30' West 105.60 feet; South 53°45' West 46.20 feet; South 4°30' East 39.60 feet; South 23°45' West 85.80 feet; South 71°45' West 39.60 feet; South 6°15' West 46.20 feet; North 85°45' West 59.40 feet; North 52°45' West 66.00 feet; South 64°45' West 39.60 feet; South 45°00' West 39.60 feet; South 85°30' West 39.60 feet; North 55°15' West 26.40 feet; South 58°00' West 39.60 feet; South 8°45' West 144.54 feet; South 16°45' West 72.60 feet; South 3°30' West 59.40 feet; South 36°15' West 66.00 feet; South 16°45' West 39.60 feet; South 7°00' East 69.30 feet to Corner M. C. 4 of U. S. Survey #1208 identical with Corner M. C. 2 of U. S. Survey #1655; thence following the meander lines established by and fronting U.S. Survey #1655: South 24°00' West 29.70 feet; South 30°15' West 130.02 feet South 23°15' West 136.62 feet; South 9°00' West 89.10 feet; South 8°00' East 36.30 feet to Corner M. C. 1 of U. S. Survey #1655 identical with Corner M. C. 1 of U. S. Survey #1653; thence following the meander lines established by and fronting U. S. Survey #1653: South 10°00' West 132.00 feet; South 30°15' West 36.96 feet; North 79°45' West 64.02 feet; South 55°45' West 62.04 feet; South 18°30' West 38.94 feet; South 41°45' West 44.88 feet; South 32°45' West 96.36 feet; South 15°15' East 48.18 feet; South 64°30' West 60.72 feet; South 0°45' West 44.88 feet; South 25°00' West 120.78 feet; South 72°00' West 21.78 feet; North 51°15' West 44.22 feet; South 81°15' West 46.86 feet; South 74°15' West 165.66 feet; South 30°45' West 211.86 feet to Corner M. C. 2 of U. S. Survey #1653 identical with Corner M.C. 1 of U. S. Survey #1656; thence North 42°55' West 712.99 feet to a point identified as PT-1; thence North 50°00' East 1,011.33 feet to a point identified as PT-2; thence North 22°00' East 1,674.54 feet to a point identified as PT-3; thence North 50°00' East 580.76 feet to intersect with the R.O.W. line on the North Tongass Highway; thence South 2°27' West 76.51 feet to the point of beginning.

PARCEL NO. 2:

Lot 3, Gateway Subdivision, within U.S. Survey 1056 (H.E.S.) according to the plat thereof filed August 14, 2000 as Plat No. 2000-41.



PARCEL NO. 3:

That portion of U.S. Survey 1056, lying northerly of the northerly boundary of North Tongass Highway, being adjacent to U.S. Survey 2923 and comprised of 5.16 acres.

PARCEL NO. 4:

That portion of U.S. Survey 1862, more particularly described as follows: Beginning at U.S. Land Mark No. 2; thence North  $32^{\circ}27'$  West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North  $0^{\circ}25'$  West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South  $24^{\circ}30'$  East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South  $36^{\circ}35'$  East a distance of 126.14 feet; thence along a spiral curve whose chord bears South  $51^{\circ}21'$  East a distance of 210.05 feet; thence South  $55^{\circ}27'$  East a distance of 316.97 feet; thence South  $34^{\circ}33'$  West a distance of 50 feet; thence South  $55^{\circ}27'$  East a distance of 137.00 feet; thence South  $88^{\circ}00'$  West a distance of 535 feet more or less along Meander Line No. 11 of U.S. Survey 1862; thence North  $29^{\circ}30'$  West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District, State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

PARCEL NO. 5:

U.S. Survey 2090.

PARCEL NO. 6:

That certain portion of U.S. Survey 2923, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey



2923; thence South 55°45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89°33' West a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence North 0°27' West along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning.

2. The Parties covenant and agree that KPC hereby is granted an easement interest in and to the Easement Property set forth in subsection A.1. hereof, consisting of a right of free access to and across the Easement Property to allow KPC to undertake or observe any sampling and Investigatory activities, Remediation activities, and any reasonable actions necessary to support or implement Investigatory and Remediation activities at the Easement Property. KPC's right of access shall also include, without limitation, the right to use the Easement Property to the extent reasonably necessary for a staging area or otherwise to comply with Environmental Laws and the directives or orders of governmental agencies relating to the Easement Property.

3. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by, or reflected in, any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.

4. KPC's access rights, as described herein, shall not prevent the Borough Entities from constructing any buildings or other improvements on the Borough Property. In that event, KPC will exercise its access and staging rights in a manner which will not unreasonably interfere with the Borough Entities' uses or development of the properties.

#### B. Term.

The Easement shall become effective on the Effective Date and shall have an initial term of twenty (20) years from the Effective Date, after which time the Easement shall be automatically extended for successive periods of ten (10) years each, unless an instrument properly signed by KPC, has been recorded in the Ketchikan Recording District, First Judicial District, State of Alaska, agreeing to terminate the Easement in whole or in part.

#### C. Subdivision.

This Easement shall not preclude the subdivision of any parcels of the Ward Cove Property, but upon any subdivision, replat, plat modification, or other similar action, all portions of the Ward Cove Property which previously were subject to this Easement shall remain subject thereto.





V. EFFECTIVE DATE.

This Easement shall become effective ("Effective Date") on the date of recordation, simultaneous with recordation of the Vacation of Covenants and Easement releasing the same parcels

VI. LIBERAL CONSTRUCTION.

Any general rule of construction to the contrary, this Easement shall be liberally construed in favor of effectuating the Parties' desire to establish the Easement in favor of KPC and to make the Ward Cove Covenants run with, and apply to, the Ward Cove Property and to make the Ward Cove Covenants binding upon any and all successors and assigns of the Parties. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid or unenforceable.

VII. DISPUTES.

The parties each irrevocably consent to the exclusive venue and jurisdiction of any state or federal court located in the First or Third Judicial Districts, State of Alaska, for the purposes of any suit, action, or other proceeding of any type whatsoever arising out of this Agreement or the subject matter hereof; provided, however, that if jury trial is sought by any party, the proceeding will be instituted in a locale other than Ketchikan. To the maximum extent permitted by applicable law, each party waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court. Each party agrees that service of process may be made upon it wherever it can be located or by certified mail directed to its address for notices under this Agreement.





VIII. MISCELLANEOUS.

A. Notices.

All notices, requests, claims, demands and other communications given or made pursuant hereto shall be in writing (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by telecopy (with confirmation copy of such telecopied material delivered in person or by registered or certified mail, postage prepaid, return receipt requested) or by registered or certified mail (postage prepaid, return receipt requested) to the respective party at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section VIII.A.):

1. if to KPC:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Legal Department  
805 S.W. Broadway, Suite 700  
Portland, Oregon 97205  
Attention: Christopher M. (Kit) Keyes, Esq.  
Facsimile: (503) 821-5323

and:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
P.O. Box 4000-98  
Hayden Lake, Idaho 83835-9460  
Attention: Chris Paulson  
Facsimile: (208) 762-1667

Physical Address: 13403 N. Government Way

with a copy to:

Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901  
Attention: John Peterson, Esq.  
Facsimile: (907) 225-5513

2. if to the Borough:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Manager  
Facsimile: (907) 247-6625



with a copy to:

Ketchikan Gateway Borough  
344 Front Street  
Ketchikan, Alaska 99901  
Attention: Borough Clerk  
Facsimile: (907) 247-8439

**B. Headings.**

The descriptive headings contained in this Easement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Easement.

**C. Severability.**

If any provision of this Easement, or the application of any provision to a person or circumstance, is found to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

**D. No Third-Party Beneficiaries.**

This Easement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Easement.

**E. Amendment; Waiver.**

This Easement may not be amended or modified except by an instrument in writing duly executed and recorded by the Parties. Waiver of any term or condition of this Agreement shall only be effective if in writing, duly executed by the Party to be bound thereby, and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Easement.

**F. Governing Law.**

This Easement shall be governed by, and construed in accordance with, the laws of the State of Alaska, applicable to covenants and agreements affecting real property executed and to be performed in that State.

**NOTICE: THE INTERESTS CONVEYED HEREBY ARE SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF**



RESTRICTIVE COVENANTS DATED OCTOBER 28, 1999, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 AT BOOK 305, PAGE 772.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

KETCHIKAN PULP COMPANY

Douglas P. Anderson  
Douglas P. Anderson  
Assistant Secretary

By

Chris Paulson  
Chris Paulson  
President

KETCHIKAN GATEWAY BOROUGH

Harriet Edwards  
Harriet Edwards  
Clerk

By

Roy A. Eckert  
Roy A. Eckert  
Manager

STATE OF ALASKA )  
: SS.  
FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 14th day of July, 2004, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy A. Eckert and Harriet Edwards, to me known to be the Manager and the Clerk of the Ketchikan Gateway Borough, a municipal corporation established pursuant to the laws of the State of Alaska which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument and affix the Borough seal thereto on behalf of the Borough and that the seal affixed thereto is the Borough seal thereof; and who



acknowledged to me that the same was signed freely and voluntarily on behalf of the Borough for the uses and purposes therein mentioned.

WITNESS my hand and seal the day and year last above written.



Cindy M. Montgomery  
Notary Public in and for Alaska  
My Commission Expires: 5/7/07

STATE OF Idaho )  
COUNTY OF Kootenai ) : ss.

THIS IS TO CERTIFY that on this 16th day of June, 2004, before me, the undersigned, a notary public in and for the State of Idaho, duly commissioned and sworn, personally appeared Chris Paulson and Douglas P. Anderson, to me known to be the President and Assistant Secretary respectively of Ketchikan Pulp Company, a Washington corporation, the corporation which executed the above and foregoing instrument; who on oath stated that they were duly authorized to execute said instrument on behalf of said corporation and who acknowledged to me that they signed and sealed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate above written.



Jodi Buttrely  
Notary Public in and for Idaho, Hayden Lake  
My Commission expires: 6/19/08

WHEN RECORDED, RETURN TO:

The Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901





## **Attachment 17**

Executive Summary, 2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska  
(April 2009)

# **2007 MONITORING REPORT FOR SEDIMENT REMEDIATION IN WARD COVE, ALASKA**

*Prepared for*  
**Ketchikan Pulp Company**  
9487 North Tongass Highway  
P.O. Box 6600  
Ketchikan, AK 99901



411 1st Avenue S.  
Suite 550  
Seattle, WA 98104

April 2009

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Appendix A. Data Collected during the 2007 Sampling Event

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## EXECUTIVE SUMMARY

This monitoring report has been prepared for Ketchikan Pulp Company in compliance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 consent decree (November 2000), the Ward Cove remedial investigation and feasibility study (RI/FS) (Exponent 1999), the record of decision (ROD) for the Marine Operable Unit of Ward Cove (U.S. EPA 2000a), and the long-term monitoring and reporting plan for sediment remediation in Ward Cove (LMRP) (Exponent 2001), which was approved by the U.S. Environmental Protection Agency (EPA). The multiple lines of evidence used to evaluate sediment quality in the Ward Cove area of concern (AOC) indicate that the remedial action objectives (RAOs) have been achieved. The lines of evidence include quantitative and qualitative evaluations of temporal and spatial trends in toxicity responses, benthic macroinvertebrate community characteristics, and supporting measurements of chemicals of concern (CoCs) and conventional variables. These measurements have been conducted on AOC sediments since remedial efforts were implemented in 2000/2001.

## BACKGROUND

The RI/FS was conducted in Ward Cove from 1996 to 1999. Of the approximately 250 acres of Ward Cove that were evaluated during the RI/FS, 80 acres were designated as an AOC where remedial action was warranted (Exponent 1999).

Sediment concentrations of persistent chemicals that are toxic or that have the potential to bioaccumulate in marine organisms (e.g., mercury, polychlorinated dibenzo-*p*-dioxin and polychlorinated dibenzofuran) were low and did not pose unacceptable risks to human health, fish, or wildlife (i.e., birds and mammals). However, potential risks to benthic macroinvertebrates were predicted from three CoCs (i.e., ammonia, 4-methylphenol, and sulfide) based on results of sediment toxicity tests and synoptic measurements of those chemicals. These CoCs are natural degradation products of pulp mill by-products, are themselves non-persistent, and are readily oxidized in the natural environment. The cessation of pulp mill activities in May 1997, the non-persistent nature of the CoCs, the physical constraints of the site bathymetry and sediment characteristics, and the potential for natural recovery were all considered during remedy selection.

Remedial action within the AOC was performed between October 2000 and February 2001. Because the risks were limited to benthic macroinvertebrate communities and the CoCs were non-persistent, the remedy relied largely on monitored natural recovery and enhanced natural recovery. Enhanced natural recovery using thin layer placement (TLP) with 6–12 in. of clean sand was successfully implemented at approximately 27 acres within Ward Cove. Monitored natural recovery was the preferred alternative for the remainder of the 80-acre AOC.

Although three CoCs were identified in the RI/FS, only ammonia and 4-methylphenol were selected in the ROD for the long-term monitoring effort, and evaluations of both CoCs were specified as being based on bulk sediment chemical measurements (i.e., as they were in the RI/FS). Sulfide was not selected for the long-term monitoring effort in the ROD because dissolved sulfide (i.e., the form of sulfide most likely to be toxic to benthic macroinvertebrates) cannot be adequately characterized by bulk sediment chemistry measurements. In addition, it was not considered practical, efficient, or ecologically relevant in the ROD to monitor sulfide in pore water, given its high spatial and temporal variability.

## REMEDIAL ACTION OBJECTIVES AND MONITORING STUDY DESIGN

EPA identified RAOs for Ward Cove in the ROD. Specifically, the response action was intended to achieve the following RAOs:

- Reduce toxicity of surface sediments
- Enhance recolonization of surface sediments to support healthy marine benthic macroinvertebrate communities with multiple taxonomic groups.

As stated in the ROD, monitoring data were evaluated using a weight-of-evidence approach to determine whether consistent and acceptable progress has been made toward achieving the RAOs, rather than strict triggers for additional actions. The weight-of-evidence approach is recommended by EPA for sediment quality assessments throughout the United States as a part of EPA's national sediment assessment programs, and is consistent with the most current methods of sediment assessment recommended by national experts.

In using a weight-of-evidence approach to evaluate if RAOs have been achieved, EPA considered all information relevant to whether benthic communities at a particular location are recovering as expected. A weight-of-evidence approach is also considered appropriate for this site because determining whether the benthic community is recovering at an acceptable rate is a more sophisticated analysis than would be captured by strict numerical trigger values, such as determining whether a thick cap has been breached.

The LMRP was designed to evaluate progress made in achieving the RAOs following completion of remedial activities in Ward Cove in 2001. The LMRP specified that monitoring would occur every three years in July until RAOs were achieved. The program was designed to evaluate three major indicators of sediment quality: 1) sediment chemistry, 2) sediment toxicity, and 3) benthic macroinvertebrate communities, with the central focus on toxicity and macroinvertebrate communities, which directly relate to the RAOs. Although site-specific sediment quality values were developed for ammonia and 4-methylphenol during the RI/FS to help determine the boundaries of the AOC (Exponent 1999), these values were used in the long-term monitoring effort only to help interpret the related biological results. These site-specific

sediment quality values were not designed for use as RAOs, because ammonia and 4-methylphenol are non-persistent and readily oxidized in the natural environment.

To best represent the varying conditions in the 80-acre AOC, it was divided into seven benthic strata based on water depth and the kind of remedial action taken: natural recovery (four strata) or TLP (three strata). Each stratum had five to seven monitoring stations located within it. At most stations, single samples were collected for sediment toxicity and benthic community evaluations. Seven of the monitoring stations represented locations characterized for the RI/FS. Five replicate laboratory toxicity tests were conducted for four of these seven RI/FS locations to allow temporal comparisons of sediment toxicity responses to be made on a statistical basis. Two reference area strata were designated within the cove, based on water depth and distance from known sources of chemical contamination. Spatial comparisons were made by statistically comparing the mean conditions in each AOC stratum with the conditions found in its respective depth-specific reference area stratum.

The specific components of sediment quality used for the Ward Cove monitoring were as follows:

- **Sediment Chemistry**—Each surface sediment sample (0–10 cm horizon) was analyzed for the two CoCs (i.e., ammonia and 4-methylphenol), to assist in the interpretation of the sediment toxicity and benthic community results. Sediment samples were also analyzed for selected conventional variables (i.e., grain size distribution, organic content, and total solids) to also assist in the interpretation of the biological results.
- **Sediment Toxicity**—The potential toxicity of each surface sediment sample was evaluated using the 10-day amphipod test based on *Eohaustorius estuarius*. This test is commonly used to evaluate sediment toxicity of marine and estuarine sediments, and has standardized and well-established test protocols. In addition, this test is consistent with the test used to characterize sediment toxicity in Ward Cove for the RI/FS (i.e., the 10-day amphipod test based on *Rhepoxynius abronius*). Although *R. abronius* was originally used in the RI/FS, it was necessary to change the test species in 2004 to *E. estuarius*, because of uncertainties involved with obtaining an adequate number of healthy *R. abronius* for testing. Because these amphipods have been documented to be sensitive to chemical toxicity and are directly exposed to sediment contaminants, they provide an environmentally conservative assessment of the changes in sediment toxicity following remediation in Ward Cove.
- **Benthic Communities**—The characteristics of benthic communities in various parts of Ward Cove were directly evaluated by collecting and enumerating the organisms found in surface sediment samples collected from the site. Benthic communities are commonly used to assess sediment quality because these organisms are relatively stationary and live in close association with the bottom sediments (U.S. EPA 1990). Sediments were sieved (>1.0 mm), retained material was transferred to appropriate containers and fixed

with buffered formalin, and organisms were transferred to the laboratory for taxonomic analysis. Sediment samples were sorted with a minimum accuracy of 95 percent and taxonomic identifications were made to the lowest taxonomic level practical by qualified taxonomic experts. Quantitative evaluations of individuals and major taxa included comparisons between the AOC strata (i.e., TLP and natural recovery strata) and reference areas with respect to a variety of benthic metrics based on abundance, richness, and Swartz' dominance index (SDI). Qualitative observations of key benthic macroinvertebrate taxa were also made to determine whether the communities were recolonizing the TLP and natural recovery areas consistent with the classical patterns identified for disturbed benthic habitats.

As described in the LMRP, the long-term monitoring strategy for the Ward Cove AOC implicitly recognized the limited degree of the risk posed by Ward Cove sediments (i.e., absence of bioaccumulative chemicals; absence of risks to humans, fish, and wildlife) and the inherent uncertainties in the rate of natural recovery. The LMRP adopted a flexible, adaptive risk management strategy to interpret the monitoring data and determine appropriate actions. The lines of evidence used to support this approach included the multiple measures of sediment quality, and both qualitative and quantitative interpretation methods.

The long-term monitoring approach used for Ward Cove is consistent with the recommendations of recent EPA guidance for addressing contaminated sediments at hazardous waste sites (U.S. EPA 2005), which was not available when the LMRP was prepared in 2001. The monitoring approach is consistent with the six-step process for developing and implementing a monitoring plan (U.S. EPA 2004; see Highlight 8-3 of U.S. EPA 2005). In addition, the monitoring approach is consistent with the remedy-specific monitoring approaches recommended by U.S. EPA (2005) for both monitored natural recovery and *in situ* capping or TLP. The monitoring data for Ward Cove were evaluated using a combination of physical, chemical, and biological endpoints. U.S. EPA (2005) also emphasizes the use of multiple lines of evidence for assessing natural recovery and achievement of RAOs. Finally, U.S. EPA (2005) suggests that EPA project managers use an adaptive management approach that involves re-evaluating site assumptions as new information is gathered.

## MONITORING DATA INTERPRETATION

Monitoring data were evaluated using two types of analyses. Each is intended to address different aspects of progress toward recovery of the benthic macroinvertebrate communities in the Ward Cove AOC:

- **Comparison of TLP and Natural Recovery Areas to Reference Areas**—Allows decisions to be made regarding recovery in TLP and natural recovery areas



- **Evaluation of Temporal Trends in TLP and Natural Recovery Areas**—Allows progress toward recovery to be evaluated.

Based on the results of the 2004 monitoring event (Exponent 2005), EPA determined that monitoring at one of the four natural recovery areas identified in the ROD was no longer necessary. That area was the shallow natural recovery area with thin organic deposits (i.e., Stratum 2c). Additional monitoring of Stratum 2c was not considered necessary because the RAOs had been achieved—sediment toxicity was reduced and benthic recolonization was enhanced such that Stratum 2c now supports healthy benthic communities with multiple taxonomic groups. Stratum 2c is therefore not addressed in this 2007 monitoring report.

The progress toward recovery based on the 2007 monitoring data is summarized in the following table and in the text below:

Summary of Recovery Status for Various Biological Indicators in Ward Cove Based on 2007 Data<sup>a</sup>

Indicator	Stratum					
	Thin-Layer Placement			Natural Recovery		
	1	2a	3a	2b	3b	4
Sediment Toxicity	✓	✓	✓	✓	✓	✓
Benthic Community Metrics <sup>b</sup>	100%	100%	100%	33% <sup>c</sup>	100%	100%
Abundance						
Total abundance	✓	✓	✓	--	✓	✓
Taxa abundance						
Molluscs	✓	✓	✓	--	✓	✓
Polychaetes	✓	✓	✓	✓	✓	✓
Arthropods	✓	✓	✓	✓	✓	✓
Richness						
Total richness	✓	✓	✓	--	✓ <sup>d</sup>	✓
Taxa richness						
Molluscs	✓	✓	✓	--	✓ <sup>d</sup>	✓
Polychaetes	✓	✓	✓	--	✓ <sup>d</sup>	✓
Arthropods	✓	✓	✓	✓	✓	✓
SDI	✓	✓	✓	--	✓ <sup>d</sup>	✓

✓ = For sediment toxicity: Survival is greater than the 75 percent screening value specified in the LMRP.  
For benthic metrics: Value is not significantly lower ( $P>0.05$ ) than the respective mean reference value.

-- = Significantly lower ( $P\leq 0.05$ ) than the respective mean reference value.

<sup>a</sup> Sediment chemistry was analyzed, but not included in this table because it is not applicable to RAOs. Stratum 2c is not included in this table because results of the 2004 monitoring event showed that this area had achieved the RAOs (see above text for further explanation).

<sup>b</sup> Percentages indicate the number of benthic metrics that are not significantly lower ( $P>0.05$ ) than their respective mean reference values (note that for Stratum 3b, uncertainty exists for some benthic metrics due to low statistical power).

<sup>c</sup> Recovery of benthic communities is progressing in this stratum (see text on p. xvii for explanation).

<sup>d</sup> Low statistical power for benthic comparisons.

## Overall AOC

Sediment toxicity was not only reduced throughout the AOC in 2007, but exceeded the screening value of 75 percent (as specified in the LMRP) in all AOC strata, indicating that the RAO based on sediment toxicity has been achieved throughout the AOC. In 2004, mean amphipod survival in Stratum 2c also exceeded the screening value of 75 percent, indicating that the RAO based on sediment toxicity had been achieved in that stratum, which, as described previously, was considered recovered after the 2004 monitoring event. In addition, mean survival for all TLP and natural recovery strata was not significantly lower ( $P>0.05$ ) than the reference values. Although statistical comparisons for Stratum 4 were affected by low statistical power, the fact that mean survival for that stratum was greater than the screening value of 75 percent indicates that the RAO based on sediment toxicity has been achieved.

In addition to the above information, specific temporal patterns for the six strata sampled in 2007 for sediment toxicity can be summarized as follows:

- Values of mean amphipod survival for all three TLP areas in 2007 were very high (i.e., 92–95 percent) and comparable to the values found in 2004 (i.e., 93–96 percent). In the natural recovery areas, values of mean amphipod survival in 2007 (i.e., 80–96 percent) generally were considerably higher than the values found in 2004 (i.e., 32–76 percent).
- For individual stations within the strata, amphipod survival exceeded the screening value of 75 percent at all 15 stations sampled in the TLP areas, which was consistent with the 2004 results. In the natural recovery areas, amphipod survival exceeded the minimum acceptable value at 14 of the 17 stations sampled in 2007, compared with only 7 of the 17 stations sampled in 2004.

Remedial efforts have successfully enhanced recolonization of surface sediment to support healthy marine benthic macroinvertebrate communities with multiple taxonomic groups throughout most of the AOC. As discussed above, the RAO for benthic communities was achieved in 2004 for Stratum 2c. Of the six strata sampled in 2007, community metrics were not significantly lower ( $P>0.05$ ) than reference values in the three TLP areas and two natural recovery areas indicating that the RAO for benthic macroinvertebrate communities has been achieved in most parts of the AOC. Benthic metrics at the remaining natural recovery area (i.e., Stratum 2b) were significantly lower ( $P\leq 0.05$ ) than reference values for the following metrics: total abundance, total richness, polychaete richness, mollusc abundance, mollusc richness, and SDI. Stratum 2b is discussed in greater detail below.

In addition to the results described above for community metrics, a number of additional qualitative and quantitative benthic analyses were conducted on the 2007 data, including evaluations of the successional stages of key benthic species, temporal patterns in community characteristics, multivariate analysis of benthic communities, and taxa richness at individual stations. The results of those analyses are summarized below and show that, in general, diverse

communities comprising multiple taxa now inhabit the three TLP areas and two of the three natural recovery areas (i.e., Strata 3b and 4). The results of the additional benthic analyses can be summarized as follows:

- Approximately 6,800 benthic macroinvertebrates from 130 taxa were sampled as part of the 2007 sampling event, compared to the approximately 4,500 individuals from 117 taxa that were sampled in 2004. The 2004 results for Stratum 2c were not included in these comparisons, because that stratum was not evaluated in 2007. These values represent increases of approximately 33 and 10 percent in the total numbers of individuals and taxa over the 3-year period between monitoring events.
- The number of polychaete taxa and the relative abundance of polychaetes declined in 2007 compared to 2004, whereas the number of mollusc taxa and the relative abundance of molluscs increased between the two sampling periods. This pattern continues the trend of an increasing representation of molluscs in the benthic communities that was first identified in 2004.
- The benthic communities in the TLP areas in 2007 continued to be characterized primarily by species commonly found in areas where organic enrichment is declining, as they were in 2004. These species include the polychaete *Prionospio steenstrupi* and the bivalves *Axinopsida serricata* and *Parvilucina tenuisculpta*. Although benthic communities in the three natural recovery areas were characterized primarily by species commonly found in organically enriched areas, the relative abundance of the polychaete *Capitella capitata* declined substantially, as the abundances of the polychaetes *Nephtys cornuta* and *Dorvillea annulata* increased. The decline in the abundances of *C. capitata* is notable, as this species complex is a classic indicator of organic enrichment throughout the world. Coupled with the decline in nematodes (i.e., another classic indicator of organic enrichment) that occurred between 1992 and 2004, the decline in *C. capitata* indicates that conditions in the natural recovery areas have been continually improving over time.
- If *C. capitata* and nematodes are removed from the benthic communities sampled in 1992, 2004, and 2007, mean total abundance in 2004 (95 individuals per station) is nearly identical to the value found in 1992 (100 individuals per station), and the value found in 2007 (250 individuals per station) is two and one-half times the 1992 value. These results indicate that total abundances of benthic communities (exclusive of species characteristic of high levels of organic enrichment) increased substantially between the 2004 and 2007 monitoring events.
- With respect to the number of benthic taxa that accounted for more than 5 percent of total abundance at any station in the AOC, there were only seven such taxa in 1992. In 2004, the number of these taxa increased relatively modestly to 11 taxa, but by 2007, the number increased substantially to 28 taxa. These results indicate that many more species were becoming numerically important at various stations throughout the AOC in 2007, which is an indication that conditions have improved in the AOC since 2004.

- Results of multivariate analyses of the benthic macroinvertebrate data collected in Ward Cove in 2007 showed that three distinct clusters or groups of stations were apparent, with the natural recovery areas clustering with the reference areas and the TLP areas clustering only with themselves. These results indicate that TLP in the cove has resulted in benthic communities that are different from the communities found in the natural recovery and reference areas. Given the other characteristics of these communities described in this report, it can be concluded that TLP in the cove has resulted in modifications of the communities such that they are now enhanced beyond the reference conditions. In addition, although the natural recovery areas have not shown the same degree of enhancement, they are now relatively similar to the reference conditions.

## Stratum 2b

Although six benthic community metrics for Stratum 2b were found to be significantly lower ( $P \leq 0.05$ ) than reference values, mean amphipod survival in this stratum in 2007 exceeded the minimum acceptable value of 75 percent specified in the LRMP, indicating that this stratum has fully recovered with respect to the RAO based on sediment toxicity. Additional lines of evidence based on sediment toxicity, sediment chemistry, and benthic community species composition also indicate that overall recovery of the stratum is occurring, including benthic community recovery. These lines of evidence are described in greater detail in the main body of this report, including the conclusions section.

The multiple lines of evidence for Stratum 2b indicate that this stratum has made substantial advances in overall recovery. For example, sediment toxicity conditions in Stratum 2b have fully recovered with respect to the RAO for sediment toxicity, and mean concentrations of both CoCs (i.e., ammonia and 4-methylphenol) and total organic carbon (TOC) declined by 20 to 50 percent between 2004 and 2007. The patterns observed for individual benthic macroinvertebrate taxa support the conclusion that benthic community recovery is progressing. That is, the polychaete *N. cornuta* (a Successional Stage III species) has become a dominant member of the benthic community in Stratum 2b (accounting for 41 percent of individuals in 2007 compared to less than 5 percent in 2004), whereas the relative abundance of the polychaete *C. capitata* (a Successional Stage I species) has declined substantially in that stratum, such that this species accounted for only 6 percent of individuals in 2007, compared to 93 percent of individuals in 2004.

The weight of evidence described above for Stratum 2b indicates that the RAO for sediment toxicity has been achieved, and that consistent and acceptable progress has been made towards achieving the RAO for healthy benthic communities comprising multiple taxa. Because the sediments in Stratum 2b are no longer toxic, benthic community recovery will continue in the future. In addition, the CoC and TOC concentrations in Stratum 2b will likely continue to decline, because the major source of organic loadings to Ward Cove has been removed, further indicating that benthic community recovery will continue in the future. Therefore, based on



the benthic succession patterns described in the general literature as well as the degree of benthic community recovery that has already occurred in other parts of the Ward Cove AOC, there is a weight of evidence that benthic community recovery will continue to proceed in Stratum 2b.

From the standpoint of the overall Ward Cove AOC, Stratum 2b represents a relatively small area (i.e., approximately 12 percent of the AOC). Therefore, it is unlikely that the slower recovery observed in that stratum relative to the remainder of the AOC will have a substantial impact on organisms at higher trophic levels that prey on benthic macroinvertebrates, such as crabs and a number of demersal fish species. As noted in the ROD, a benefit of achieving the RAOs in the Ward Cove AOC is that a healthy benthic macroinvertebrate community will provide a diverse food source for organisms at higher trophic levels.

## **SUMMARY AND RECOMMENDATIONS**

The RAOs have been achieved in Ward Cove. The results of the 2004 and 2007 monitoring events demonstrate that environmental conditions throughout the Ward Cove AOC have improved substantially since the RI/FS was conducted in 1996–1999. In addition, most conditions showed continual improvement between 2004 and 2007. The TLP has been successful in eliminating sediment toxicity and stimulating colonization of benthic macroinvertebrate species such that diverse communities comprising multiple taxa now inhabit most parts of the TLP areas, and exhibit enhanced characteristics beyond those of the reference areas. In addition, recovery is proceeding in the natural recovery areas, such that all four areas surpassed sediment toxicity screening levels and three of the four areas have achieved healthy benthic communities with multiple taxonomic groups. The weight of evidence for the remaining natural recovery area (i.e., Stratum 2b) indicates that, in addition to surpassing sediment toxicity screening levels, substantial and acceptable progress has been made towards achieving a healthy benthic community. There are numerous reasons to predict that diversification of benthic communities in Stratum 2b will continue to proceed, because sediment toxicity in that area has achieved the RAO, concentrations of TOC and the two CoCs declined by 20 to 50 percent between 2004 and 2007, and the major source of CoCs to the AOC has been removed.

Based on the results of both the 2004 and 2007 monitoring events, it is concluded that TLP and natural recovery have been successful remediation tools for the Ward Cove AOC. Sediment toxicity has been reduced and benthic recolonization has been enhanced such that the overall AOC now supports healthy benthic communities with multiple taxonomic groups. The RAOs have been achieved and monitoring is no longer necessary.

## **Attachment 18**

Letter from Karen Keeley (EPA) to Phil Benning (KPC), dated May 7, 2009, regarding: EPA  
Approval of 2007 Monitoring Report



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 10**

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

OFFICE OF  
ENVIRONMENTAL CLEANUP

May 7, 2009

Phil Benning  
Ketchikan Pulp Company  
P.O. Box 6600  
Ketchikan, AK 99901

Barry Hogarty  
TECS-AK  
P.O. Box 6193  
Ketchikan, AK 99901

Re: EPA Approval of *2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (April 2009)*, prepared for Ketchikan Pulp Company by Integral Consulting Marine Operable Unit, Ketchikan Pulp Company (KPC) Site  
Consent Decree No. A00-225 CV (JKS)

Dear Mr. Benning and Ms. Hogarty:

With this letter, the U.S. Environmental Protection Agency (EPA) approves the final *2007 Monitoring Report for Sediment Remediation in Ward Cove, Alaska (Integral Consulting 2009)*, submitted to EPA for the Marine Operable Unit at the KPC Site, pursuant to the Long-term Monitoring and Reporting Plan for Sediment Remediation in Ward Cove (LMRP; Exponent 2001). With acceptance of this report, EPA also concurs that the Remedial Action Objectives (RAOs) for the sediment remedy have been achieved and monitoring pursuant to the LMRP is no longer necessary.

As you know, sediment remedial action was performed within the 80-acre Area of Concern (AOC) in Ward Cove between October 2000 and February 2001. The sediment remedy addressed risks to benthic macroinvertebrates from three chemicals of concern (i.e., ammonia, 4-methylphenol, and sulfide). As documented in the Record of Decision (ROD; EPA 2000), EPA had determined that the contaminated sediments were not toxic to human health or to birds and mammals living in the Cove. The sediment remedial action relied largely on monitored natural recovery and enhanced natural recovery. Enhanced natural recovery using thin layer placement (TLP) with 6-12 inches of clean sand was successfully implemented at approximately 27 acres within Ward Cove. Monitored natural recovery was the remedial alternative for the remainder of the AOC. The first long-term monitoring effort occurred in Ward Cove in 2004, and the second monitoring effort occurred in 2007.

EPA identified RAOs for the sediment cleanup in the Record of Decision. Specifically, the response action was intended to achieve the following RAOs:

- Reduce toxicity of surface sediments
- Enhance recolonization of surface sediments to support healthy marine benthic macroinvertebrate communities with multiple taxonomic groups.

As stated in the ROD, monitoring data were evaluated using a weight-of-evidence approach to determine whether consistent and acceptable progress was made toward achieving the RAOs. The weight-of-evidence approach is recommended by EPA for sediment quality assessments as part of EPA's national sediment assessment programs, and is consistent with the most current methods of sediment assessment recommended by national experts.

The multiple lines of evidence used to evaluate sediment quality in the Ward Cove AOC indicate that the RAOs have been achieved. The lines of evidence include quantitative and qualitative evaluations of temporal and spatial trends in toxicity responses (amphipod bioassays) and benthic macroinvertebrate community characteristics (including statistical analyses comparing benthic metrics between remediated and reference areas), as well as supporting measurements of chemicals of concern and conventional variables (sediment chemistry).

In making this decision, EPA has considered the following information: site-specific studies, including the 2004 and 2007 monitoring results from Ward Cove; site-specific decision documents, including the ROD and the LMRP; EPA guidance on long-term monitoring programs, including the Contaminated Sediment Remediation Guidance for Hazardous Waste Sites; and technical support provided by EPA oversight contractors.

In consideration of other similar sites in Alaska, EPA evaluated the long-term monitoring approach and site monitoring data for the Alaska Pulp Corporation (APC) pulp mill site in Sitka, for which the Alaska Department of Environmental Conservation issued a ROD in 1999 (see Technical Memorandum, December 19, 2008). Based on that review, EPA's monitoring plan and decision-making approach is not inconsistent with the State's approach at the APC pulp mill site, and the environmental data set for Ward Cove is more comprehensive than that for the APC site.

Finally, in consideration of potential consistency issues with other EPA Superfund sediment decisions, I contacted Steve Ells, EPA OSRTI Sediments Team Leader, and performed a search on EPA's ROD database, to identify potential sediment sites that included both a RAO for benthic infauna recovery and a long-term monitoring plan that required collection and statistical analysis of benthic infaunal communities to assess the long-term effectiveness of the remedial action in achieving the RAOs. Based on this work, only two RODs were identified that meet both these criteria – the KPC Marine OU ROD and Region 10's Commencement Bay/Nearshore Tideflats ROD, specifically for St. Paul Waterway. The decision-making approach for these RODs was similar.

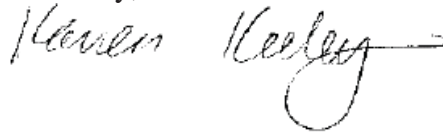


As you know, five-year reviews will continue to be performed at the site. Section 121(c) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9621, mandates that, no less often than every five years, EPA must review remedial actions where hazardous substances, pollutants or contaminants remain in place to assure that human health and the environment are being protected by the remedial action being implemented. Pursuant to Paragraph 31 of Section VII (Remedy Review) of the Consent Decree, EPA may request that KPC/L-P conduct any studies and investigations necessary in order to permit EPA to conduct reviews of whether the remedial action and the institutional controls plan are protective of human health and the environment.

EPA will post the 2007 monitoring report on the KPC web site, which is available at this link: <http://yosemite.epa.gov/r10/cleanup.nsf/webpage/Alaska+Cleanup+Sites>. A copy of the report (hard copy and CD) will also be placed in the repository at the Ketchikan Library.

We appreciate your efforts in producing a high quality report. If you have any questions, please contact me at or [keeley.karen@epa.gov](mailto:keeley.karen@epa.gov) or 206-553-2141.

Sincerely,



Karen Keeley  
EPA Project Manager

cc: Ed Carlson, Louisiana Pacific Corporation  
Sheila Eckman, Unit Manager, EPA Office of Environmental Cleanup  
Bill Janes, Alaska Department of Environmental Conservation  
Lucinda Jacobs, Integral Consulting, Inc.

## **Attachment 19**

Environmental Easement, recorded August 6, 2001, between Ketchikan Pulp Company and State of Alaska, Department of Natural Resources

BOOK 0329 PAGE 680

**ENVIRONMENTAL EASEMENT**

This Easement (hereinafter "Instrument") is made by and between Ketchikan Pulp Company, a Washington corporation (whose address is P.O. Box 6600, Ketchikan, Alaska 99901), as grantor (hereinafter, with its successors and assigns, "Grantor"), and the State of Alaska (whose address is State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, 550 W. 7th Avenue, Suite 1050A, Anchorage, Alaska 99501-3579), as grantee (hereinafter, with its assigns, "Grantee"), for good and valuable consideration.

WHEREAS, Grantor is the owner of certain real property subject to this Instrument (hereinafter the "Property") which is more particularly described below:

Lot 2, Tract 3004 of the Dawson Point Subdivision, being a subdivision of U.S. Survey 1993, Lot 2B, Tract B, U.S. Survey 1923 and an Unnamed portion of U.S. Survey 1923, according to that plat of survey recorded as Plat #2000-73 in the Ketchikan Recording District, First Judicial District, State of Alaska.

WHEREAS, the Property received for disposal materials constituting a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601 *et seq.* ("CERCLA"), and 18 AAC 75;

WHEREAS, the Property was subject to a determination under 18 AAC 75.350 that groundwater is not a current or potential future drinking water source;

WHEREAS, in lieu of a more comprehensive cleanup, the Alaska Department of Environmental Conservation has determined, and Grantor has agreed that, the recording of this Instrument is necessary as an institutional control as part of the consent decree dated November 20, 2000, filed in *United States v. Gateway Forest Products, Inc., et al*, No. A00-225 CV (D. Alaska) (the "Consent Decree");

WHEREAS, by resolution of May 23, 2001, documentation of which is provided to the State of Alaska herewith, the Board of Directors of Ketchikan Pulp Company has authorized the execution of this Instrument; and

WHEREAS, the requirements, rights, covenants, conditions, prohibitions and restrictions of this Instrument (hereinafter "Provisions") are intended to protect human health, safety, and welfare and the environment and maintain and enhance water quality.

NOW, THEREFORE, pursuant to the laws of Alaska including AS 34.17.010-AS 34.17.060, Grantor does hereby grant and convey to Grantee forever, with warranties

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of title, subject however to easements, rights, reservations, conditions, restrictions, and limitations of the United States, and third parties, if any, of record, a nonexclusive Easement over the Property of the nature and character and to the extent set forth below.

**1. Restrictions:**

Unless otherwise specifically authorized in writing by the Alaska Department of Environmental Conservation or its successor in administrative function or assigns (hereinafter, "ADEC"), the Property is subject to the following restrictions:

- a. Uses of the Property are limited to commercial or industrial use.
- b. The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care or any purpose necessitating around-the-clock residence by humans.
- c. Drilling of drinking water wells is prohibited.
- d. Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for Grantor, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
- e. No activities shall be allowed on the Property that involve use of ground water, potential exposure of Waste Materials within the Property (other than those activities constituting, or associated with, the already-in-place leachate treatment system), or potential interference with the integrity of the landfill cap. Waste Materials shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or AS 46.03.825(5); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6903(27) or the State of Alaska Solid Waste Management Regulations, 18 AAC 60.

**2. Required Activities:**

Grantor shall comply with the terms and conditions of any ADEC permit regulating activities on the property.

**3. Right of Entry:**

During reasonable hours, after reasonable notice and subject to reasonable security requirements, ADEC and its Authorized Representatives shall have the right to enter in, on, upon, over and across any portion of the Property to determine whether the Provisions herein have been or are being complied with. This right of entry shall include a right of access for, but not be limited to, conducting the following activities:



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a. Monitoring the activities Grantor is required to perform under the Consent Decree.

b. Verifying any data or information submitted to the United States or the State of Alaska.

c. Conducting investigations relating to contamination at or near the Property.

d. Obtaining samples.

e. Assessing the need for, planning, or implementing additional response actions at or near the Property.

f. Implementing the activities Grantor is required to perform under the Consent Decree pursuant to the conditions set forth in Paragraph (101) of the Consent Decree.

g. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Grantor or its agents consistent with Section XXIV (Access to Information) of the Consent Decree.

h. Assessing Grantor's compliance with the Consent Decree.

i. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

Violation of, or reasonable suspicion of the violation of, any of the Provisions herein shall give ADEC and its Authorized Representatives the right, privilege, and license to enter in, on, upon, over, and across any portion of the Property and to investigate, abate, mitigate or cure such violation, at the expense of Grantor, provided written notice of the violation is given to Grantor, describing what activity is necessary to investigate or correct the violation and Grantor fails to cure the violation within a time specified in such notice. Such activities include but are not limited to the right to store, move, and remove equipment and supplies; construct, operate, maintain, alter, repair and remove devices for the monitoring, containment and treatment of contamination in soil, air and water; investigate and collect samples; excavate and remove waste, pollutants, hazardous substances, contaminated soils, contaminated waste; deposit uncontaminated soil; and the performance of any other activity which may be reasonably necessary and incident to ADEC's investigation and response. Any such entry by ADEC or its Authorized Representatives shall not be deemed a trespass or any other wrongful entry or remaining on the Property, and Grantee shall not be subject to liability to Grantor for such entry or any action taken to investigate, abate, mitigate or cure a violation. ADEC and its Authorized Representatives shall be considered invitees on the property and the Grantor shall make every reasonable effort to inform ADEC and its Authorized Representatives of hazards or hazardous areas to prevent personal injury.

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**4. Types of Wastes Disposed on Property:**

The Property received various types of industrial wastes associated with an adjacent pulping facility, including woodwaste, flyash, recovery boiler ash, woodwaste boiler bottom ash, dredge material, and other miscellaneous solid wastes.

**5. Additional Information Concerning the Property:**

The ash landfill on the Property, formerly regulated under ADEC Solid Waste Permit No. 9113-BA005, and the woodwaste landfill on the Property, formerly regulated under ADEC Solid Waste Permit No. 9213-BA-001, were closed in 1997. Closure of the two landfills involved regrading the slopes to a maximum 3:1 grade, installing drainage improvements to manage run-on and run-off of stormwater, improving leachate collection and treatment, and covering the landfill with an engineered cap. The engineered cap consists of, from bottom to top, a geotextile cushion, a 60-mil LLDPE geomembrane, a geocomposite drainage net, a drainage rock layer, and a vegetated topsoil surface layer. A landfill gas venting system has also been installed.

Improvements to the leachate collection system include relining the leachate collection trench and replacing the piping that discharges leachate into the aeration basin. The aeration basin is lined with 60-mil LLDPE, and contains three surface aerators in the aeration side of the basin, which is separated from the quiescent basin by baffle curtain. The quiescent basin discharges into a passive treatment system which consists of a constructed wetlands. At the present, the effluent from the passive treatment system discharges to an outfall owned by Gateway Forest Products.

During closure of the two landfills in 1997, a new cell, designed to contain flyash, was constructed on top of the woodwaste landfill. This landfill is regulated under ADEC Solid Waste Permit No. 9713-BA001. The landfill is fully lined and contains a leachate collection system that discharges into the leachate treatment system for the other two landfills. The engineered liner consists of a geotextile cushion, and a 60-mil LLDPE geomembrane liner. This landfill is scheduled to be closed in 2001 after it is filled to capacity with dredged material from Ward Cove.

**6. General Provisions:**

a. This Instrument is for the benefit of Grantee and conveys the perpetual right to Grantee, acting through ADEC and contractors, employees and authorized representatives acting on ADEC's behalf (herein, "Authorized Representatives"), to enforce and implement the Provisions herein. Nothing herein shall be deemed to create in any third party the right to enforce this Instrument.

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b. No right of access or use by the general public to any portion of the Property is conveyed or authorized by this Instrument nor are any such existing rights affected by this Instrument.

c. All real estate, lots, parcels, or portions thereof located within or on the Property, and any lease, conveyance, or transfer covering or describing any part thereof or interest therein, shall be subject to the Provisions herein. By acceptance of such conveyance or transfer, each lessee, transferee or grantee and each of their heirs, successors, transferees or assigns agrees with Grantor and each other to be bound by the Provisions herein.

d. Grantor hereby reserves unto itself, its successors, and assigns, any and all rights and privileges in and to the use of the Property, including the right of access to the Property, which are not contrary to the restrictions, rights and easement granted herein.

e. The Provisions herein shall run with the land in perpetuity and shall be binding upon Grantor.

f. Nothing in this Instrument shall relieve Grantor from liability for injuries occurring on, or resulting from its activities on the Property, for which Grantor would otherwise ordinarily be liable. Grantor shall be liable for and shall indemnify and hold Grantee harmless from liability for injuries and damage which arise because of its status as Grantee. Grantor shall also indemnify Grantee for all costs, including attorneys' fees, which arise from its status as Grantee.

g. Grantor hereby covenants to and with Grantee that Grantor is lawfully seized of the surface estate, in fee simple, of the Property, has good and lawful right and power to sell and convey the same, that the same is free and clear of encumbrances, except as specified herein and as of record, and that Grantor will forever warrant and defend the easement conveyed to Grantee by this Instrument against the claims and demands of all persons.

h. To the maximum extent permitted by law, the Provisions herein shall not be subject to waiver or abandonment due to non-enforcement or violation of this Instrument or any of the Provisions herein on all or any portion of the Property. No waiver of the breach of any of the Provisions herein shall constitute a waiver of a subsequent breach of the same Provision or any other Provision. No right of action shall accrue for or on account of the failure of any person to exercise any right created by this Instrument nor for imposing any Provision which may be unenforceable.

i. This Instrument may be enforced by Grantors or Grantee in a court of law. The interpretation and performance of this Instrument shall be governed by the laws of Alaska.



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j. Upon violation of any of the Provisions herein, Grantee may seek any available legal or equitable remedy to enforce this Instrument and shall be entitled to recover damages for violations of the Provisions herein to the public or to the environment protected herein under applicable federal or state law.

k. Any notice, demand, request, consent, approval, or communication that a party desires or is required to give another shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Ketchikan Pulp Company  
c/o Louisiana-Pacific Corporation  
Attn: Legal Department  
111 S.W. Fifth Avenue  
Suite 4200  
Portland, Oregon 97204

To Grantee:

Department of Natural Resources  
Director, Division of Mining, Land and Water  
Realty Services Section  
550 W. 7th Avenue, Suite 1050A  
Anchorage, Alaska 99501-3579

With a copy to:

Program Manager, Contaminated Sites Program  
Alaska Department of Environmental Conservation  
Division of Spill Prevention and Response  
410 Willoughby Suite 303  
Juneau, Alaska 99801-1795

l. The determination that any Provision herein, or its application to any person or circumstance, is invalid shall not affect any other Provision herein or its application and the other Provisions herein shall remain in full force and effect.

m. Any general rule of construction to the contrary notwithstanding, this Instrument shall be construed so as to effect the purpose for which it was granted to Grantee. Any ambiguities shall be resolved in a manner that best accomplishes the purpose of this Instrument.

n. Grantor shall notify ADEC at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Grantor's interest in the Property. Grantor shall include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:



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NOTICE: The interest conveyed hereby is subject to an Easement dated \_\_\_\_\_, 2001, recorded in the public land records on \_\_\_\_\_, 2001, in book \_\_\_\_\_, page \_\_\_\_\_, of the Ketchikan Recording District, First Judicial District, State of Alaska, in favor of, and enforceable by, the State of Alaska.

o. Grantor shall notify ADEC within ten (10) days prior to Grantor's petitioning for or filing of any document initiating a rezoning of the Property under the Ketchikan Gateway Borough zoning code or any successor code.

**7. Termination:**

This Instrument shall be vacated and shall be of no further force and effect upon the recordation in the Ketchikan Recording District, First Judicial District, State of Alaska by ADEC of a Notice of Vacation of Easement. ADEC shall execute and record a Notice of Vacation of Easement at such time as it, in its sole discretion, determines that the prohibited and required activities and other provisions of this Instrument are no longer necessary for the protection of human health, safety, welfare and the environment. The Notice of Vacation of Easement shall be executed by ADEC and state that ADEC has determined that the prohibited and required activities and other provisions of the Easement are no longer necessary for the protection of human health, safety and welfare and the environment and further state that the Easement is hereby vacated. If Grantor requests a termination of this Instrument, any costs incurred by ADEC in reviewing a potential termination shall be paid by Grantor.

IN WITNESS WHEREOF Grantor and Grantee have set their hand on the dates written below. This Instrument is effective on the date of the last acknowledged signature.

**[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]**

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## KETCHIKAN PULP COMPANY

By

Chris Paulson

Its: President and General Manager

## GRANTOR'S ACKNOWLEDGMENT

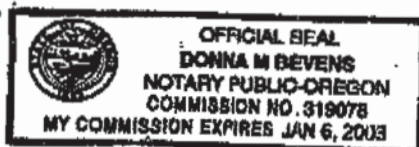
STATE OF OREGON )

) ss.

County of Multnomah )

THIS IS TO CERTIFY that on this 29<sup>th</sup> day of June, 2001, before me, the undersigned, a Notary Public for the State of Alaska, duly commissioned and sworn as such, personally appeared Chris Paulson, to me known and known to be the President and General Manager, and the person who executed the above and foregoing EASEMENT on behalf of the Ketchikan Pulp Company, and who acknowledged to me that he signed the same as the President and General Manager in the name of and for and on behalf of the Ketchikan Pulp Company, freely and voluntarily and by authority of its Board of Directors for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

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

Donna M. Bevins  
(Signature)DONNA M. BEVENS  
(Typed or printed name)Notary Public for the State of Oregon  
residing atVancouver, Washington  
My commission expires: Jan 6, 2003

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**ACCEPTANCE**

Pursuant to AS 38.05.035(a)(12), the State of Alaska hereby accepts this EASEMENT conveying to the State of Alaska, its successors in administrative function and assigns, the interests in the Property described therein as an Institutional Control to be managed and enforced by ADEC pursuant to a Management Right Assignment between ADEC and the Alaska Department of Natural Resources, to protect human health, safety, and welfare, and the environment and to enhance or maintain water quality.

**STATE OF ALASKA, DEPARTMENT  
OF NATURAL RESOURCES**By: Nancy J. Muhlfor Director

Division of Mining, Land and Water

**Location Index:**

Section 4,  
Township 74 S., Range 90 E.,  
Copper River Meridian, Alaska

Section 33,  
Township 75 S., Range 90 E.,  
Copper River Meridian, Alaska

**NO CHARGE- STATE BUSINESS  
AFTER RECORDING RETURN TO:**

Steven A. Daugherty  
Assistant Attorney General  
State of Alaska  
Department of Law  
Natural Resources Section  
P.O. Box 110300  
Juneau, Alaska 99811

RECORDING DISTRICT

003649

KETCHIKAN

NY/CC

2001 AUG -6 PM 2:14

REQUESTED BY

AS/ Dept of Law  
attorney general

## **Attachment 20**

Environmental Easement and Declaration of Restrictive Covenants, recorded October 28, 1999,  
between Ketchikan Pulp Company and State of Alaska, Department of Natural Resources



**ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

(1) This Environmental Protection Easement and Declaration of Restrictive Covenants ("Easement and Covenant") is made this 26 day of Oct., 1997, by and between Ketchikan Pulp Company ("Grantor"), having an address of P.O. Box 6600, Ketchikan, Alaska, 99901, and the State of Alaska Department of Natural Resources ("Grantee"), having an address of 3601 "C" Street, Suite 960, Anchorage, Alaska 99503, for use by the State of Alaska Department of Environmental Conservation (DEC), as represented by its State of Alaska Department of Law.

**WITNESSETH:**

(2) WHEREAS, Grantor is the owner of a parcel of land and tide and submerged lands located in the Ketchikan Gateway Borough, State of Alaska, more particularly described on **Exhibit A** attached hereto and made a part hereof ("the Property"); and

(3) WHEREAS, the U.S. Environmental Protection Agency (EPA) and the State of Alaska Department of Environmental Conservation (DEC) intend to select response actions for the Property in Records of Decision pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, AS 46.03.822, and/or pursuant to a consent decree dated September 19, 1995, filed under U.S. v. Ketchikan Pulp Company, No. A92-587-CV (D. Alaska);

(4) WHEREAS, the parties hereto agree (a) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response actions; and (b) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

(5) WHEREAS, Grantor wishes to cooperate fully with the Grantee and EPA in the implementation of all response actions at the Property;

NOW, THEREFORE:

(6) Grant: Grantor, for good and sufficient consideration received, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, (a) a right to enforce said use restrictions for the duration of this Easement and Covenant as established in Paragraph (9) below, and (b) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

(7) Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

(8) Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantor:

(a) Uses of the Property are limited to commercial or industrial use.

- (b) The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care or any purpose necessitating around-the-clock residence by humans.
  - (c) Drilling of drinking water wells is prohibited.
  - (d) Use of ground water for drinking water is prohibited.
  - (e) Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
  - (f) Soils in the nearshore fill area or soils underneath paved areas or structures at the pulp mill site that are exposed in the future, e.g., as the result of excavation or demolition activities, shall be properly characterized and managed in accordance with applicable disposal requirements.
  - (g) Projects or activities that materially damage the cap applied to tide and submerged lands shall be required, at the direction of EPA, to redress such impacts, e.g., a dredging project that may erode or displace large portions of the cap will be required to repair or replace the cap.
- (9) Modification of restrictions: The restrictions for the Property set forth in Paragraphs (8)(a) through (f) above shall exist until 2099, or until concentrations of the contaminants set forth in **Exhibit B** attached hereto no longer exceed site-specific, risk-based, residential cleanup levels, whichever comes first. The restriction set forth in

Paragraph (8)(g) above for tide and submerged lands shall exist until 2020 or until EPA determines that healthy benthic communities exist in the capped tide and submerged lands, whichever comes earlier. The above restrictions may be terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

(10) Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable and continuing right of access under the terms and conditions of this instrument at all reasonable times to the Property for purposes of implementing the following activities pursuant to CERCLA, AS 46.03.822, or the above-referenced consent decree. Grantee, in its sole discretion, may relinquish this easement for right of access. Grantee may designate EPA as its authorized representative for the following activities:

- (a) Implementing response actions for the Property selected by EPA and/or DEC in Records of Decision.
- (b) Verifying any data or information submitted to EPA or the Grantee by the Grantor.
- (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument, CERCLA, AS 46.03.822, or the above-referenced consent decree.
- (d) Monitoring response actions on the Property including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation,



obtaining split or duplicate samples.

- (e) Conducting periodic reviews of any response action(s) selected by EPA and/or DEC, including but not limited to, reviews required by applicable statutes and/or regulations.
- (f) Assessing the need for and implementing additional or new response actions authorized under CERCLA, AS 46.03.822, or the above-referenced consent decree.

(11) Reserve rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not contrary to the restrictions, rights and easements granted herein.

(12) Other Authorities. Nothing in this document shall limit or otherwise affect the State of Alaska's or EPA's rights of entry and access or their authority to take response actions under CERCLA, the National Contingency Plan (NCP), or other federal or state law.

(13) No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed or authorized by this instrument nor are any such existing rights affected by this instrument.

(14) Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 19 \_\_, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON \_\_\_\_\_, 19 \_\_, IN BOOK \_\_, PAGE \_\_ THAT IS IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF ALASKA.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

(15) Administrative jurisdiction: The interests conveyed to the State of Alaska by this instrument are to its Department of Natural Resources, for administration by its Department of Environmental Conservation.

(16) Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process without regard to the existence or nonexistence of any dominant estate. Grantee or its authorized representative shall be entitled to enforce the rights of access set forth in Paragraph (10) above. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and AS 46.03.822. Enforcement of the terms of this instrument shall be at the discretion of the Grantee; any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

(17) Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument.

(18) Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

(19) Notices: Unless and until changed by Grantor or Grantee, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

**To Grantor:**

Ketchikan Pulp Company  
Attn: President and General  
Manager  
c/o Louisiana-Pacific Corp.  
111 SW 5<sup>th</sup> Avenue  
Portland, Oregon 97204

**To Grantee:**

State of Alaska  
Department of Natural Resources  
Division of Mining, Land and Water  
Realty Services Section  
3601 "C" Street, Suite 960  
Anchorage, Alaska 99503

AND

State of Alaska  
Department of Environmental Conservation  
Spill Prevention & Response  
410 Willoughby Avenue, Suite 105  
Juneau, Alaska 99801-1795

(20) General provisions:

(a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States and the State of Alaska.

(b) Liberal construction: Any general rule of construction to the contrary

notwithstanding, this instrument shall be liberally construed in favor of the Grant of this instrument to effect the purpose of this instrument and policy and purpose of CERCLA, the above-referenced consent decree, and applicable state law. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

- (c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- (d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
- (e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties



hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude held by Grantec in gross without regard to the existence or absence of privity of estate with Grantor or its successors or assigns, and shall run with the Property for the duration of this Easement and Covenant as established in Paragraph (9) above. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantor under this instrument are freely assignable. The rights of the Grantee under this instrument are freely assignable to governmental bodies, subject to the notice provisions hereof. The term "EPA" shall include any successor agencies of EPA.

- (g) Termination of Rights and Obligations: Grantor's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

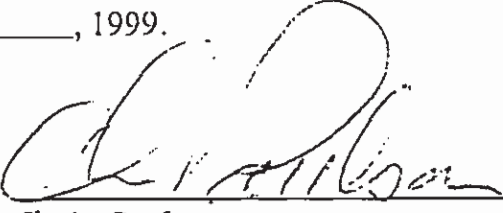
- (h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the State of Alaska and its assigns

forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed  
in its name.

Executed this 28<sup>th</sup> Day of Oct., 1999.


By:   
Chris Paulson  
Its: President & General Manager  
Ketchikan Pulp Company

STATE OF ALASKA                    )  
  : ss  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 28<sup>th</sup> day of Oct., 1999, at Ketchikan,  
Alaska, before me, the undersigned, a Notary Public in and for the State of Alaska, duly  
commissioned and sworn, personally appeared Chris Paulson, known to  
me and known to me to be the person he represents himself to be, and the same identical  
person who executed the above and foregoing document regarding an Environmental  
Protection Easement and Declaration of Restrictive Covenants, and who acknowledged to  
me that he executed the same freely and voluntarily for the purposes and uses herein  
mentioned.

WITNESS my hand and official seal the day, month and year in this  
certificate first written above.



  
Notary Public, State of Alaska  
My Commission Expires: 9-19-2002

This easement and declaration is accepted this 27 day of October,  
19 99.

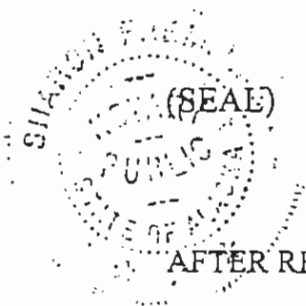
STATE OF ALASKA DEPARTMENT  
OF NATURAL RESOURCES

By: Ross S. [Signature]  
SE [Signature]

STATE OF ALASKA                    )  
  :SS  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 27 day of Oct, 1999, before me; the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared [Signature], known to me and to me known to be the [Signature], and he/she acknowledged to me that he/she signed as accepting the foregoing Environmental Protection Easement and Declaration of Restrictive Covenants, granting to the State of Alaska, those lands described therein, and he/she executed the foregoing instrument freely and voluntarily.

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



[Signature]  
Notary Public in and for the State of Alaska  
My commission expires 5/22/03

AFTER RECORDING PLEASE RETURN ORIGINALS TO:

Carol Shobe, Chief  
Realty Services Section  
State of Alaska, Department of Natural Resources  
Division of Mining, Land and Water  
3601 "C" Street, Suite 960  
Anchorage Alaska 99503



Location Index:

Sections 33 and 34, T. 74 S., R 90 E., CRM

Sections 3 and 4, T. 75 S., 90 E., CRM

STATE BUSINESS, NO CHARGE

M:\KPCSUPERFUND\FINAL-IC.wpd

EXHIBIT A  
To The Environmental Protection Easement  
And Declaration of Restrictive Covenants

Description of "the Property"

PARCEL NO. 1:

ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the recorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: That portion thereof taken by the State of Alaska, Department of Transportation and Public Facilities by that certain Declaration of Taking (filed under Ketchikan Superior Court Case No. 1KE-87-444 CI) recorded May 28, 1987 in Book 149 at Page 625.

PARCEL NO. 2:

U.S. Survey 1056, accepted by the General Land Office, in Juneau, Alaska on January 24, 1919, and located within the Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: Those portions of U.S. Survey 1056 situated upland (North) of the north Right-of-way line of the North Tongass Highway;

Excepting therefrom: That certain portion thereof conveyed to Eugene Wacker and Lillian Wacker, his wife by Warranty Deed recorded January 27, 1950 in Volume "W" of Deeds at Page 614;

Also excepting therefrom: That certain portion conveyed to The United States of America by Right-of-Way Deed recorded April 28, 1949 in Volume "W" of Deeds at Page 397.

PARCEL NO. 13:

Lots 1-7, inclusive, Block 1, Lots 1-6, inclusive, Block 2, Lots 1-4, inclusive, Block 3 and Lots 1-16, inclusive Block

4, and the Unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20, Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: Those portions of U.S. Survey 1754 situated upland (North) of the North Tongass Highway.

**PARCEL NO. 15:**

That portion of U.S. Survey 1862, according to the plat of survey approved by the Department of the Interior, General Land Office in Washington, D.C., on January 20, 1931 and located within the Ketchikan Recording District, First Judicial District, State of Alaska, more particularly described as follows: Beginning at U.S. Location Monument No. 2; thence North 32 degrees 27 minutes West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North 0 degrees 25 minutes West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24 degrees 30 minutes East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36 degrees 35 minutes East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51 degrees 21 minutes East a distance of 210.05 feet; thence South 55 degrees 27 minutes East a distance of 316.97 feet; thence South 34 degrees 33 minutes West a distance of 50 feet; thence South 55 degrees 27 minutes East a distance of 137.00 feet; thence South 88 degrees 00 minutes West a distance of 535 feet more or less along Meander Line No. 11 of U.S. survey 1862; thence North 29 degrees 30 minutes West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District,

State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

Excepting therefrom: Those portions of U.S. Survey 1862 situated upland (north) of the north Right-of-way line of the North Tongass Highway.



**Exhibit B to Environmental Protection Easement  
and Declaration of Restrictive Covenants**

**Contaminants of Concern**

Arsenic

Dioxin

Lead

Petroleum

Polycyclic aromatic hydrocarbons (benz(a)anthracene, benzo(b)fluoranthene,  
benzo(a)pyrene, and dibenz(a,h)anthracene)

Polychlorinated biphenyls

004531 NC  
RECORDING DISTRICT

1999 OCT 28 PM 3:34  
REQUESTED BY  
ALASKA STATE OF

## **Attachment 21**

Email from Kirk Miller (ADOT&PF) to EPA (Karen Keeley), dated October 23, 2014, regarding:  
Submerged land ownership and Letter from Reuben Yost (ADOT&PF) to EPA, dated June 10, 2010,  
regarding Project 68704 KTN Lay-up Berth & Mooring Structures

## Keeley, Karen

---

**From:** Miller, Kirk D (DOT) <kirk.miller@alaska.gov>  
**Sent:** Thursday, October 23, 2014 3:50 PM  
**To:** Keeley, Karen  
**Cc:** Gendron, Jane D (DOT); Hwang, Grace; Amy Briggs (amyb@kgbak.us)  
**Subject:** RE: Ward Cove  
**Attachments:** Warranty Deed ADOT.pdf; Figure 05 Property Ownership.pdf

Karen,

Attached is a copy of the warranty deed for the tract of land that DOT purchased from KGB. I also attached a property ownership figure (not an official survey ownership Plat but clearly shows the various properties).

There are a host of stipulations and referenced documents in the warranty deed (pertaining to the Consent Decree and other environmental agreements between EPA and KGB) that I do not have immediate access to. What else do you need? This deed shows that we own this tract of property – which includes the submerged tidelands and is subject to the various environmental and other commitments made previously.

The dredging work at Bolles Ledge is within submerged tidelands owned by PSSA (David Spokely). At this juncture, we contemplate seeking a legal agreement with PSSA to conduct this work on their property (temporary construction easement) but will not be seeking ownership or transfer of title in any form to DOT. PSSA will continue to own the Bolles Ledge region and is in general agreement (by verbal communication) to allow it to be dredged. Ship traffic of any form will continue to traverse thru the PSSA property – sort of subject to maritime navigational servitude type laws.

Give me a call at 907-465-1215.

Kirk

---

**From:** Keeley, Karen [mailto:Keeley.Karen@epa.gov]  
**Sent:** Thursday, October 23, 2014 2:29 PM  
**To:** Miller, Kirk D (DOT)  
**Cc:** Gendron, Jane D (DOT); Hwang, Grace  
**Subject:** RE: Ward Cove

Been awfully quiet....were you able to find the other documents showing ownership by ADOT?

**Karen Keeley** | Superfund Remedial Project Manager  
**U.S. Environmental Protection Agency | Region 10**  
Office of Environmental Cleanup  
1200 6th Avenue, Suite 900, ELC-111 | Seattle, WA 98101  
p: 206.553.2141

---

**From:** Miller, Kirk D (DOT) [mailto:kirk.miller@alaska.gov]  
**Sent:** Monday, October 20, 2014 10:33 AM  
**To:** Keeley, Karen  
**Cc:** Gendron, Jane D (DOT); Hwang, Grace  
**Subject:** Re: Ward Cove

We will be seeking a legal ROW agreement with Spokely to conduct the Bolles Ledge work. Other areas of dredging are within the AMHS property. Not sure what you mean. We own the tidelands within the DOT property.

(b) (6) . I will call you tomorrow.

Sent from my iPhone

On Oct 20, 2014, at 9:26 AM, "Keeley, Karen" <[Keeley.Karen@epa.gov](mailto:Keeley.Karen@epa.gov)> wrote:

So where is the paperwork showing that Alaska DOT owns the bottom sediments in the Cove? i.e., the area that you are going to dredge?

**Karen Keeley** | Superfund Remedial Project Manager  
**U.S. Environmental Protection Agency | Region 10**  
Office of Environmental Cleanup  
1200 6th Avenue, Suite 900, ELC-111 | Seattle, WA 98101  
p: 206.553.2141

---

**From:** Miller, Kirk D (DOT) [<mailto:kirk.miller@alaska.gov>]  
**Sent:** Monday, October 20, 2014 10:20 AM  
**To:** Keeley, Karen  
**Cc:** Gendron, Jane D (DOT); Hwang, Grace  
**Subject:** Re: Ward Cove

This is a company owned by David Spokley. Not DOT. KGB sold most of the pulp mill site to them.

Sent from my iPhone

On Oct 20, 2014, at 9:16 AM, "Keeley, Karen" <[Keeley.Karen@epa.gov](mailto:Keeley.Karen@epa.gov)> wrote:

Who is Power Systems & Supplies of Alaska? Is this ADOT?

**Karen Keeley** | Superfund Remedial Project Manager  
**U.S. Environmental Protection Agency | Region 10**  
Office of Environmental Cleanup  
1200 6th Avenue, Suite 900, ELC-111 | Seattle, WA 98101  
p: 206.553.2141

---

**From:** Miller, Kirk D (DOT) [<mailto:kirk.miller@alaska.gov>]  
**Sent:** Thursday, October 16, 2014 5:39 PM  
**To:** Keeley, Karen  
**Subject:** RE: Ward Cove

Karen,

Attached are notice letters from KGB to EPA for the sale of Ward Cove property to PSSA. KGB staff has indicated that they provided notification to EPA as well for our property sale and are currently looking for such notice. Also attached is our warranty deed for the KGB to ADOT property sale.



Kirk Miller, PE  
Design Group Chief

---

**From:** Gendron, Jane D (DOT)  
**Sent:** Thursday, October 16, 2014 3:12 PM  
**To:** Keeley, Karen  
**Cc:** Miller, Kirk D (DOT)  
**Subject:** RE: Ward Cove

I will pass your request to the project manager. He just got back. We are also in contact with KGB looking for old permits.

We have tomorrow off (Alaska Day), so will get back to you on Monday if we can find the information you need.

*Jane Gendron*

Southeast Region Environmental Manager  
Alaska Department of Transportation & Public Facilities  
P.O. Box 112506  
Juneau, AK 99811-2506  
907-465-4499

---

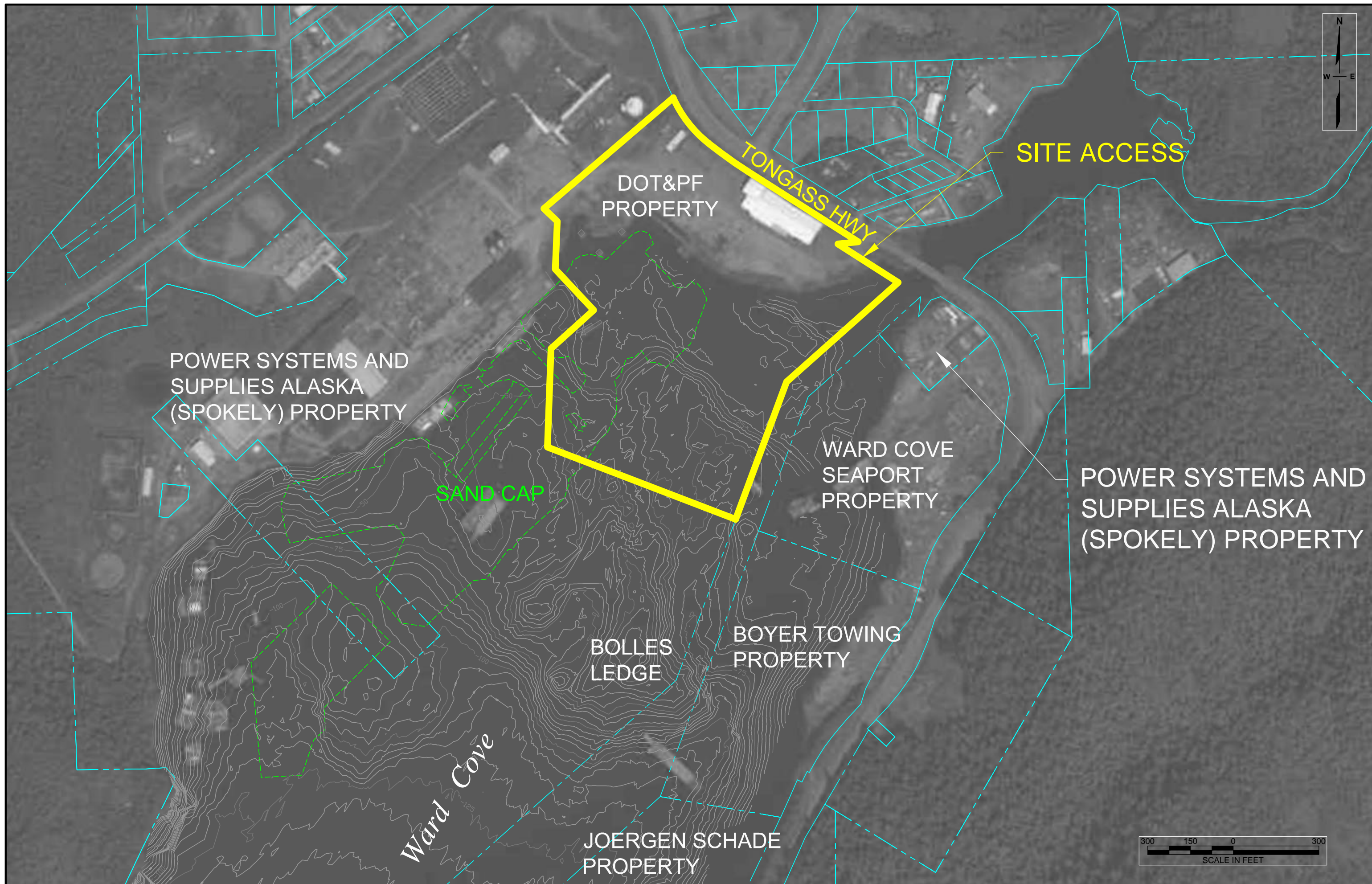
**From:** Keeley, Karen [<mailto:Keeley.Karen@epa.gov>]  
**Sent:** Thursday, October 16, 2014 3:10 PM  
**To:** Gendron, Jane D (DOT)  
**Subject:** Ward Cove

Jane,

We are looking for the transfer of ownership from KGB to Alaska (presumably Alaska DNR) for the submerged tidelands in Ward Cove. I know that the Consent Decree requires notification to EPA, but I am having trouble locating it in our Site Files.

Thanks,

**Karen Keeley** | Superfund Remedial Project Manager  
**U.S. Environmental Protection Agency | Region 10**  
Office of Environmental Cleanup  
1200 6th Avenue, Suite 900, ELC-111 | Seattle, WA 98101  
p: 206.553.2141





STATE BUSINESS: NO CHARGE

**WARRANTY DEED**

38427

The Grantor, **KETCHIKAN GATEWAY BOROUGH**, an Alaska Municipal Corporation and Second Class Borough whose address is 1900 1<sup>st</sup> Avenue, Suite 210, Ketchikan, Alaska 99901, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, conveys and warrants to the State of Alaska whose address is P.O. Box 112500, Juneau, Alaska 99811-2500, the following described real estate located in the Ketchikan Recording District, First Judicial District, State of Alaska:

All and Entire Lot 3A of Tract 3005 as depicted on Plat 2010-19 Ketchikan Recording District, First Judicial District, State of Alaska together with all improvements thereon.

SUBJECT TO the following interests and encumbrances:

1. Reservations and exceptions as contained in the U.S. Patent and acts relating thereto.
2. Reservations and exceptions as contained in the State of Alaska Patent and acts relating thereto.
3. Easements and notes as shown as Plat No. 2000-41 and Plat No. 2006-10.
4. Paramount rights and easements in favor of the United States to regulate commerce, navigation, fishing and the production of power.
5. Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003 and recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004128-0.
6. Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between Ketchikan Pulp Company, Grantor, and the State of

Alaska, Department of Natural Resources, Grantee, according to the terms and provision thereof dated October 28, 1999 and recorded October 28, 1999 in Book 305 at Page 772.

7. Reservations and exceptions as contained in Deed recorded November 15, 1999 in Book 306 at page 72.
8. Plant Systems Easement, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 99.
9. Amendment to Plant Systems Easement recorded December 15, 2000 in Book 319 at page 360.
10. Second Amendment to Plant Systems Easement recorded January 3, 2001 in Book 320 at Page 421.
11. Water Use Site Easement, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 125.
12. Amendment to Water Use Site easement recorded December 12, 2000 in Book 319 at page 250.
13. Terms and provisions as contained in that certain Warranty Deed dated May 2, 2006 and recorded May 2, 2006 at Document No. 2006-001753-0.
14. Acknowledgment That Interest Conveyed Are Subject to Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between the Ketchikan Gateway Borough, an Alaska municipal corporation, and Ketchikan Pulp Company, according to the terms and provisions thereof, dated August 2, 2003 and recorded August 4, 2003 under Ketchikan Recording District Serial No. 2003-004419-0.
15. Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, and Ketchikan Pulp Company, a Washington corporation, according to the terms and provision thereof, dated July 14, 2004 and recorded July 15, 2004 under Ketchikan Recording District Serial No. 2004-002967-0.
16. Subordination Agreement, executed by Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for





the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0.

17. Reservations, conditions, and easements as contained in that certain Quitclaim Deed between Ketchikan Pulp Company, a Washington corporation, Grantor and the Ketchikan Gateway Borough, a municipal corporation, Grantee, dated July 11, 2003 and recorded July 22, 2003 at Document No. 2003-004183-0.
18. Easement for Utility Line granted by James K. Erickson, Gateway Forest Products, Inc., Grantor, to the City of Ketchikan d.b.a. Ketchikan Public Utilities, its successors and assigns, Grantee, according to the terms and provisions thereof, dated February 17, 2001 and recorded February 22, 2001 in Book 322 at Page 159.
19. Terms and provisions as contained in that certain Quitclaim Deed dated October 12, 2007 and recorded on October 12, 2007 at Document No. 2007-004314-0.

In witness whereof, Grantor has caused this instrument to be executed in its name, by its duly authorized officer.

DATED at Ketchikan, Alaska, this 16<sup>th</sup> day of June, 2010.

GRANTOR:

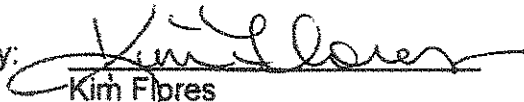
Ketchikan Gateway Borough



Dan Bockhorst  
Borough Manager

ATTEST:

By:



Kim Flores  
Borough Deputy Clerk



3 of 4

2010-002006-0

**BOROUGH ACKNOWLEDGMENTS**

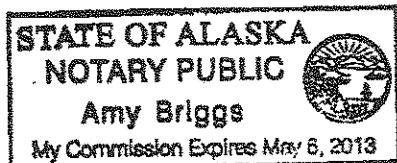
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT

} ss.

THIS IS TO CERTIFY that on this 16<sup>th</sup> day of June, 2010, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **DAN BOCKHORST** and **KIM FLORES** to me known to be the **BOROUGH MANAGER** and **BOROUGH DEPUTY CLERK** of the **KETCHIKAN GATEWAY BOROUGH**, a second class borough, the entity which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said entity; who acknowledged to me that he/she signed and sealed the same freely and voluntarily on behalf of said entity for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.

(Seal)



*Amy Briggs*  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: May 6, 2013

After Recording Return to:  
State of Alaska, Department of Transportation and Public Facilities  
P.O. Box 112500  
Juneau, AK 99811-2500



4 of 4

2010-002006-0

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Design and Engineering Services – Southeast Region  
Preconstruction – Special Projects

LPKCF  
7.16.1  
6/10/10  
**SEAN PARNELL, GOVERNOR**

PO Box 112506  
JUNEAU, ALASKA 99811-2506

FAX: (907) 465-2016  
PHONE: (907) 465-1774

**RECEIVED**

JUN 16 2010

**Environmental  
Cleanup Office**

June 10, 2010

RE: Project 68704 KTN Lay-up Berth &  
Mooring Structures

Dear Agency Representatives and Interested Parties,

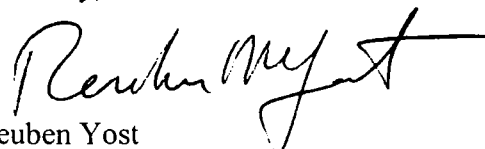
As you may know, the Alaska Department of Transportation and Public Facilities (DOT&PF) has been investigating the possibility of acquiring Ketchikan Gateway Borough property in Ward Cove for an Alaska Marine Highway System (AMHS) vessel lay-up facility. In the course of that investigation, DOT&PF contracted for three additional studies related to the property. The following reports and memoranda are being transmitted to you for your information:

- May 2009 - Potential for Scour at Ward Cove from Proposed AMHS Ferry Operations *Attachment A*
- April 2010 - Ketchikan Ward Cove Property Phase II Environmental Site Assessment Report *Attachment B*
- April 2010 - Budgetary Cost Estimate for Ketchikan Ward Cove Property Demolition & Clean-up for Layup Berth & Mooring Structures *Attachment C*
- August 2009 - Response to Peer Reviews of CH2M Ward Cove Scour Study *Attachment D*

*labelled Figure 2*  
The State of Alaska and the Ketchikan Gateway Borough have signed a memorandum of agreement to complete transfer of part of the Ward Cove property by June 30, 2010. The planned purchase is shown as parcel 2 on the enclosed figure. The AMHS intends to make immediate use of the warehouse on this parcel and begin planning for an office facility and a vessel berth. Please note that the parcel to be acquired does not include the dock, avoids most of the sand cap, and roughly coincides with the location the scour report indicates could be used as a working berth without disturbing the sand cap.

No action on your part is requested at this time. The documents are being transmitted to you for your information only. Please contact me if you have any questions.

Sincerely,



Reuben Yost  
Special Projects Manager

Enclosures: 2 reports, 2 memoranda, 1 parcel figure

**USEPA SF**



**1389003**

Distribution List:

Phillip Benning, Environmental Director  
Ketchikan Pulp Company  
PO Box 6600  
Ketchikan, AK 99901

Jacques Gusmano  
Alaska Operations Office  
222 West 7<sup>th</sup> Ave #19  
Anchorage, AK 99513-7588

Karen Keeley, Superfund Project Manager  
US EPA Region 10  
1200 Sixth Ave. Suite 900  
Seattle, WA 98101

Bill Janes, Environmental Program Manager II  
Department of Environmental Conservation  
PO Box 111800  
Juneau, AK 99811-1800

cc: Jim Beedle, AMHS  
Jeff Stark, ADOL&WFD  
Vic Winters, DOT&PF  
Bob Wright, DOT&PF



Parcels



770 385 0 770 Feet





## **Attachment 22**

Ward Cove Industries LLC 2015 Development Plan Map



**Ward Cove Group**  
 Port of Ward Cove  
 Development Plans  
 June 1, 2015

Legend

geoduck hatchery would be north of Ward Cove

ADOT moved the N. Tongass Hwy in 2013-14 at this corner. Wood stave pipe buried under road and converted to steel

commercial area - road to be widened  
 ←

solid yellow is old hwy  
 yellow open is new

Proposal to level and move the road in green

proposed lodge would be on this hill

boat building business in this corner

fuel dock

proposed AMHS ferry terminal. The largest vessel outline would be the size of the MV "Malaspina" ferry

blue are planned concrete float docks of various slip sizes to accomodate different size vessels

red outline is the proposed Ward Cove Industries property line after parcel adjustment with ADOT/AMHS

East Island

Google earth  
 © 2015 Google  
 Image © 2015 DigitalGlobe

Map provided by Dave Spokely for reference during the 3rd 5YR for Ketchikan Pulp Comany, 6/2/2015

1600 potential lease holders.

fuel dock owned by Corp starting today

← permit to dredge  
 to Bolles ledge



## **Attachment 23**

Letter from Amy Briggs (KGB) to EPA (Karen Keeley), dated January 4, 2012, regarding: Closing documents related to sale of Ward Cove between KGB and PSSA





# KETCHIKAN GATEWAY BOROUGH

AMY L. BRIGGS

1900 First Ave. Ste., 126 • KETCHIKAN, ALASKA 99901

• 907/228-6622 • fax 907/247-8439

amyb@borough.ketchikan.ak.us

OFFICE OF LANDS MANAGEMENT

## RECEIVED

JAN 17 2012

OFFICE OF  
ENVIRONMENTAL CLEANUP

January 4, 2012

Karen Keeley  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900, ECL-111  
Seattle, WA 98101-3140

Re: Sale of Wards Cove

Enclosed you will find the closing documents for the sale of Ward Cove between the Ketchikan Gateway Borough and Power Systems & Supplies of Alaska.

As stated in the July 2000 Consent Decree, the Ketchikan Gateway Borough is required to send the EPA and the State of Alaska a copy of all conveyance documents at the Ward Cove Site. Along with those conveyance documents, we are required to give you the date in which the grantee received the pre-conveyance documents (Consent Decree and The Environmental Protection and Easement and Declaration of Restrictive Covenants).

Power Systems & Supplies of Alaska received those said documents from the Ketchikan Gateway Borough on February 11, 2011, when an Invitation for Bids was released for the sale of Ward Cove. On April 11, 2011, Power Systems & Supplies of Alaska acknowledge those documents and a copy of the Purchase and Sale Agreement was mailed to your agency on April 18, 2011.

If you have any questions regarding this matter, please feel free to call or email me.

Sincerely,

Amy L. Briggs  
Ketchikan Gateway Borough  
Procurement Officer

USEPA SF



1409007

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT KETCHIKANIN RE: DELINQUENT TAXES AND  
SPECIAL ASSESSMENTS FOR THE  
YEAR 2007 AND PRIOR YEARS,  
IN THE KETCHIKAN GATEWAY  
BOROUGH AND CITY OF KETCHIKAN,  
ALASKA.

NO. 1KE-08-54 CIVIL

PARTIAL RELEASE AND  
SATISFACTION OF LIEN

41108

The Petition for Judgment and Decree of Foreclosure recorded on the 8<sup>th</sup> day of April, 2008, document number 2008-001196-0 in the Ketchikan Recorder's Office, First Judicial District, State of Alaska, for delinquent property taxes, penalties, interest, and *against Ketchikan Renaissance Group* collection costs, is hereby released only as against the following property:

1. Lot 3, Tract 3005 of the Ward Cove West replat of lot 3, Gateway Subdivision (Plat 2000-41), A portion of U.S. Survey 1862, U.S. Survey 1706, The unsubdivided remainder of U.S. Survey 1754 and a portion of Alaska Tidelands Survey No. 1 according to the Plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.
2. Lot 2, Tract 3005 of the Ward Cove West Replat of Lot 3, Gateway Subdivision (Plat 200-41), A Portion of U.S. Survey

1862, U.S. Survey 1706, The unsubdivided remainder of U.S. Survey 1754 and A Portion of Alaska Tidelands Survey No. 1, According to the Plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.

3. Lot 1A, Block 4, of the Ward Cove-West Replat of Lots 1-16, inclusive, Block 4, U.S. Survey 1754, according to the plat thereof filed March 24, 2006 as plat No. 2006-10, Ketchikan Recording District First Judicial District, State of Alaska.
4. U.S. Surveys 3400 and 3401, Ketchikan Recording District, First Judicial District, State of Alaska.
5. Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of U.S. Survey No. 2923, thence South 55 degrees 45' East along the northeasterly boundary of the Crawford Tract a distance of 863.37 feet; thence South 89 degrees 33' West a distance fo 709.81 feet more or less to a point on the Westerly boundary of the Crawford Tract; thence North 0 degrees 27' West along the Westerly boundary of the Crawford Tract a distance of 491.50 feet more or less to the point of beginning.
6. All and Entire U.S. Survey 1056, Ketchikan Recording District, First Judicial District, State of Alaska; Excepting therefrom: That certain portion thereof conveyed to Eugene Wacker and Lillian Wacker, his wife by Warranty Deed recorded January 27, 1950 in Volume "W" of Deeds AR Page 614; Also excepting therefrom; that certain portion conveyed to the United States of America by Right-of-way Deed recorded April 28, 1949 in Volume "W" of Deeds at page 397.
7. Lot 2B, Subdivision of Lot 2, Tract B U.S. Survey 1923, according to the plat thereof filed September 5, 1990, as Plat No. 90-25, Ketchikan Recording District, First Judicial District, State of Alaska.

And



8. That portion of USS 1056, consisting of Gateway Subdivision Lot 1, According to Plat 2000-41, Recorded on 8/14/2000 in containing 2.0893 Acres, more or less, located in the Ketchikan Recording District, First Judicial District, State of Alaska.

DATED this 21<sup>st</sup> day of December, 2011, at Ketchikan, Alaska.



Scott A. Brandt-Erichsen  
Borough Attorney  
Ketchikan Gateway Borough

After Recording in the Ketchikan Recording District:  
Return to:

Ketchikan Gateway Borough  
Attorney's Office  
1900 1<sup>st</sup> Ave. Suite 215  
Ketchikan, AK 99901







AFTER RECORDING, RETURN TO:

Power Systems & Supplies of Alaska, LLC  
PO Box 772  
Ward Cove, AK 99928

AETIA 41108

WARRANTY DEED

A.S. 34.15.030

The Grantor, **KETCHIKAN GATEWAY BOROUGH**, whose address is 1900 First Avenue, Suite 210, Ketchikan, AK 99901, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration hand paid, the receipt of which is hereby acknowledged, conveys and warrants to **POWER SYSTEMS & SUPPLIES OF ALASKA, LLC**, whose address is PO Box 772, Ward Cove, AK 99928, Grantee, the following-described real estate:

**PARCEL NO. 1:**

U.S. Survey 3400, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 2:**

U.S. Survey 3401, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 3:**

That portion of U.S. Survey 1056, lying northerly of the northerly boundary line of North Tongass Highway, Ketchikan Recording District, First Judicial District, State of Alaska, EXCEPTING THEREFROM: That certain portion thereof conveyed to Eugene Wacker and Lillian Wacker, his wife by Warranty Deed recorded January 27, 1950 in Volume "W" of Deeds at Page 154; ALSO EXCEPTING THEREFROM: That certain portion conveyed to Ivan Crawford and Meta Crawford, his wife, by Warranty Deed recorded January 7, 1952 in Book "Y" of Deeds at Page 153; ALSO EXCEPTING THEREFROM: That certain portion thereof, more particularly described as follows: BEGINNING at a point on the North boundary line of North Tongass Highway distance of S 0° 25' E 1,360.64 feet from Corner No. 3 of U.S. Survey 1056; thence N 0° 25' W 699.51 feet to a corner marked as C-11 K.P. Co.; thence East 539.72 feet to a corner marked C-10 K.P. Co.; thence South 300 feet to a corner marked C-9 K.P. Co.; thence in an easterly direction 17.56 feet to a point on the Northerly boundary line of North Tongass Highway, being a corner marked as C-8 K.P. Co.; thence in a Southwesterly direction along the existing boundary of North Tongass Highway to the point of beginning.

**PARCEL NO. 4:**

That certain portion of U.S. Survey 2923, Ketchikan Recording District, First Judicial District, State of Alaska, more particularly described as follows: Beginning at the northerly corner of the Crawford Tract, otherwise known as Corner No. 2 of the U.S. Survey 2923; thence S 55° 45' E along the northeasterly boundary of the Crawford Tract, a distance of 863.37 feet; thence S 89° 33' W a distance of 709.81 feet, more or less, to a point on the westerly boundary of the Crawford Tract; thence N 0° 27' W along the westerly boundary of the Crawford Tract a distance of 491.50 feet, more or less, to the point of beginning

**PARCEL NO. 5:**

Lot 1 of the Dawson Point Subdivision of U.S. Survey 1993, Lot 2B, Tract B, U.S. Survey 1923 and an unnamed portion of U.S. Survey 1923, according to the plat thereof filed November 28, 2000 as Plat No. 2000-73, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 6:**

Lot 1, Gateway Subdivision, within U.S. Survey 1056 (H.E.S 55), according to the plat thereof filed August 14, 2000 as Plat No. 2000-41, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 7:**

Lot 2, Tract 3005 of the Ward Cove-West Replat of Lot 3, Gateway Subdivision (Plat 2000-41), a portion of U.S. Survey 1862, U.S. Survey 1706, unsubdivided remainder of U.S. Survey 1754 and a portion of Alaska Tidelands Survey No. 1, according to the plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 8:**

Lot 3B of Ward Cove 2010 Subdivision, according to Plat No. 2010-19, records of the Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 9:**

Lot 1A, Block 4, Ward Cove-West Replat of Lots 1-16, inclusive, Block 4, U.S. Survey 1754, according to the plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 10:**

Township 74 South, Range 90 East, Copper River Meridian, Alaska, Section 34; Lot 1, according to the Survey Plat accepted by the United States Department of the Interior, Bureau of Land Management in Anchorage, Alaska on January 28, 2003, and officially filed on March 3, 2003, Ketchikan Recording District, First Judicial District, State of Alaska. (Also identified as State of Alaska Patent No. 20179, recorded as State of Alaska Document Number: 2006-001705-0, recorded in the Ketchikan Recording District, First Judicial District, State of Alaska.)

**PARCEL NO. 11:**

Lot 2, Gateway Subdivision, within U.S. Survey 1056 (H.E.S 55), according to the plat thereof filed August 14, 2000 as Plat No. 2000-41, Ketchikan Recording District, First Judicial District, State of Alaska.

**PARCEL NO. 12:**

Lot 1, Tract 3005 of the Ward Cove-West Replat of Lot 3, Gateway Subdivision (Plat 2000-41), a portion of U.S. Survey 1862, U.S. Survey 1706, unsubdivided remainder of U.S. Survey 1754 and a portion of Alaska Tidelands Survey No. 1, according to the plat thereof filed March 24, 2006 as Plat No. 2006-10, Ketchikan Recording District, First Judicial District, State of Alaska.



SUBJECT TO the reservations and exceptions as contained in the U.S. Patent and acts relating thereto.

FURTHER SUBJECT TO the reservations and exceptions as contained in the State of Alaska Patent and acts relating thereto.

FURTHER SUBJECT TO any prohibition of or limitation of use, occupancy or improvements of the land resulting from the rights of the public or riparian owners to use any portion thereof which is now or formerly may have been covered by water, and the rights of the public as set forth in Alaska statutes 38.05.128.

FURTHER SUBJECT TO the terms, provisions and reservations under the Submerged Land Act (43 USC 1301, 67 Stat. 29) and the Enabling Act (Public Law 85-508, 72 Stat. 339).

FURTHER SUBJECT TO the paramount rights and easements in favor of the United States to regulate commerce, navigation, fishing and the production of power.

FURTHER SUBJECT TO any adverse claim based upon the assertion that any portion of said land was not tidelands subject to disposition by the State of Alaska, or that any portion thereof has ceased to be tidelands by reason of erosion, or by reason of having become upland by accretion.

FURTHER SUBJECT TO the easements and notes as shown on Plat No. 2005-15. (Affects Parcel No.'s 1 and 2)

FURTHER SUBJECT TO the easements and notes as shown on Plat No. 2000-73. (Affects Parcel No. 5)

FURTHER SUBJECT TO the easements and notes as shown on Plat No. 2000-41. (Affects Parcel No.'s 6 and 11)

FURTHER SUBJECT TO the easements and notes as shown on Plat No. 2006-10. (Affects Parcel No.'s 7 and 12)

FURTHER SUBJECT TO the easements and notes as shown on Plat No. 2010-19. (Affects Parcel No.8)

FURTHER SUBJECT TO the easements in favor of the State of Alaska and/or the United States for highway and related purposes, all as provided in Public Land Orders numbered 601, 757, and 1613 and Department of Transportation Order No. 2665, and amendments thereto, and any assignment of rights therein for recreation, utilities, and other purposes.

FURTHER SUBJECT TO the Terms, Provisions and Restrictions as contained in Highway Easement Deed Recorded May 23, 1969 in Book 33 at Page 360. (Affects Parcel No. 1)

FURTHER SUBJECT TO the easement and the terms and conditions thereof to Grantee State of Alaska, acting by and through it's Department of Highways for the purpose to construct a highway over the above easement area which affects an area of all of that certain tract or parcel of land lying and being situated in U.S. Survey 3400, First Judicial District, State of Alaska, being more particularly bounded and described as follows: Beginning at the BLM Mon PC 24 on the northerly boundary of U.S. Survey 3400 and running South 56° 05' 00" West a distance of 63.53 feet to a point on the boundary of U.S. Survey 3400 which is the point of true beginning: From the point of true beginning running South 16 ° 00' 00" West a distance of 122.26 feet to a point of curve, thence along a curve to the right of 1225.92 feet radius thru an arc of 2 ° 59' 24", thence south 71 ° 00' 36" East a distance of 20.00 feet, thence along a curve to the right of 1245.92 feet radius thru an arc of 5 ° 38' 00", thence South 56 ° 05' 00" West for a distance of 84.60 feet, thence South 50 ° 03' 30" West a distance of 65.01 feet, thence South 44 ° 02' 00" West a distance of 346.50 feet, thence South 52 ° 22' 00" West a distance of 150.81 feet, thence South 60 ° 42' 00" West a distance of 223.61 feet, thence South 69 ° 37' 30" West a distance of 123.58 feet, thence



North 30 ° 43' 00" West a distance of 41.64 feet, thence North 59 ° 17' 00" East a distance of 269.20 feet, thence along a curve to the left of 1079.92 feet radius thru an arc of 27 ° 47' 18", thence North 58 ° 30' 18" West a distance of 9.00 feet, thence along a curve to the left of 1070.92 feet radius thru an arc of 6 ° 15' 00", thence South 64 ° 45' 18" East a distance of 9.00 feet, thence along a curve to the left of 1079.92 feet radius thru an arc of 6 ° 27' 42", thence North 56 ° 05' 00" East a distance of 228.75 feet to the point of true beginning dated August 31, 1964 and recorded October 23, 1964 in Volume 21 at Page 06. (Affects Parcel No. 1)

FURTHER SUBJECT TO an easement and the terms and conditions thereof to Grantee United States of America, acting by and through the Forest Service, Department of Agriculture for the purpose that the public is entitled to use the Easement for hiking and similar recreational uses and for access to National Forest System lands and trails. The Forest Service is entitled to use the Easement to access, operate and maintain Forest Service facilities and trails and such use shall include the use of motor vehicles and heavy equipment, as may be reasonably necessary which affects an area (See Instrument) dated September 14, 2000 and recorded October 23, 2000 in Book 317 at Page 595. (Affects Parcel Numbers 1, 2, 3, and 4 and other property)

FURTHER SUBJECT TO the terms and provisions as contained in Exchange Deed Recorded October 23, 2000 in Book 317 at Page 626. (Affects Parcel No. 1 and Parcel No. 2)

FURTHER SUBJECT TO the provisions contained in that certain Quit Claim Deed recorded July 18, 2003 at Document No. 2003-004125-0. Effect of that certain Subordination Agreement, executed by Ketchikan Pulp Company, and Ketchikan Gateway Borough for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0. (Affects Parcel No. 1 and Parcel No. 2)

FURTHER SUBJECT TO the Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003 and recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004128-0. Effect of that certain Subordination Agreement, executed by Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0. (Covenants apply to Parcels No. 1, 2, 5, 10, portions of 9 and other property. Easement applies to Parcels No. 1-5, 9, 10, and other property. Also, Section IV.A.3 of Easement provisions applies with respect to Parcel No. 6 as follows: "3. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by, or reflected in, any plates of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.")

FURTHER SUBJECT TO the Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between Ketchikan Pulp Company, Grantor, and the State of Alaska, Department of Natural Resources, Grantee, according to the terms and provisions thereof dated October 28, 1999 and recorded October 28, 1999 in Book 305 at page 772. Said Instrument contains the following provision: Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 19\_\_\_\_, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON \_\_\_\_\_, 19\_\_\_\_, IN BOOK \_\_\_\_ AT PAGE \_\_\_\_ THAT IS IN FAVOR OF AND ENFORCEABLE BY, THE STATE OF ALASKA.





FURTHER SUBJECT TO the Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between Ketchikan Pulp Company, Grantor, and the State of Alaska Department of Natural Resources, Grantee, according to the terms and provisions thereof, dated October 28, 1999 and recorded October 28, 1999 in Book 305 at Page 772.

FURTHER SUBJECT TO the Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003 and recorded July 18, 2003 under Ketchikan Recording District Serial No. 2003-004128-0. The easement provisions thereof affect those portions of the subject property previously lying within ATS No. 1. The covenants in said document have no effect on the subject property.

FURTHER SUBJECT TO the reservations and exceptions as contained in Deed by Ketchikan Pulp Company (Grantor) and Gateway Forest Products, Inc. (Grantee) recorded November 15, 1999 in Book 306 at Page 72 as follows: Reserving and excepting, however, unto the Grantor, all right, title, equity and interest as set forth in the Plant Systems Easement, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Plant Systems Easement establishes the terms and conditions of such easement over and upon the following of the parcels, described in Exhibit 1: NOTE: Said instrument also contained the following conditions, reservations and restrictions which have been released by instrument recorded November 1, 2002 at Instrument No. 2002-004405-0. Subject to, however, all covenants, restrictions and agreements as set forth in the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities establishes the terms and conditions of covenants applicable to, and binding upon, Parcel No. 1 through and including Parcel No. 15 of the parcels of real property described in Exhibit 1. Reserving and excepting, however, unto the Grantor, all right, title, equity and interest as set forth in the Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities, by and between Grantor and Grantee of even date, incorporated herein by reference as though fully set forth herein. The Easement and Declaration of Covenants Regarding Allocation of Environmental Responsibilities establishes the terms and conditions of an easement over and upon Parcel No. 1 through and including Parcel No. 15 of the parcels of real property described in Exhibit 1.

FURTHER SUBJECT TO the Associated Real Property and Water Rights Agreement, and the terms and provisions thereof, entered into by and between Ketchikan Pulp Company, a Washington corporation, Seller, and Gateway Forest Products, Inc., an Alaska corporation, Purchaser, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 84. Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

FURTHER SUBJECT TO the Plant Systems Easement, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 99. Amendment to Plant Systems Easement recorded December 15, 2000 in Book 319 at page 360. Second Amendment to Plant Systems Easement recorded January 3, 2001 in Book 320 at Page 421.

FURTHER SUBJECT TO the Water Use Site Easement, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 125. Amendment to Water Use Site easement recorded December 12, 2000 in Book 319 at page 250.



FURTHER SUBJECT TO the Option Agreement to Purchase Water Use Site, and the terms and provisions thereof, entered into by and between Gateway Forest products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at page 149. Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

FURTHER SUBJECT TO the Option Agreement to Purchase Excess Water, and the terms and provisions thereof, entered into by and between Gateway Forest Products, Inc., an Alaskan corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, dated November 3, 1999 and recorded November 5, 1999 in Book 306 at Page 160. Subject to the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

FURTHER SUBJECT TO the Equitable Servitude and Easement, executed by the Ketchikan Gateway Borough, a second class Borough of the State of Alaska, Grantor, in favor of the State of Alaska, Department of Natural Resources, Division of mining, land and Water, Realty Services Section, and its assigns, Grantee, according to the terms and provision thereof, dated April 24, 2006 and recorded May 1, 2006 at Document No. 2006-001707-0. NOTE: Effect of that certain Subordination Agreement, executed by Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0. (Affects Parcels Numbers 1, 3, 4, and other property)

FURTHER SUBJECT TO the terms and provisions as contained in that certain Warranty Deed dated May 2, 2006 and recorded May 2, 2006 at Document No. 2006-001753-0 including the following:

FURTHER SUBJECT TO the limitations and obligations identified in Section 15 (d) of the Real Estate Sale Agreement entered into by and between GRANTEE, Renaissance Ketchikan Group LLC, as Purchaser, and GRANTOR, Ketchikan Gateway Borough, as Seller, executed on behalf of the GRANTOR/Seller by Borough Manager Roy Eckert on October 13, 2005 and identified as Borough Document 05-114, as amended by Addendum One, Addendum Two, Addendum Three and Addendum Four to said Real Estate Sale Agreement (hereinafter, collectively, "Amended Real Estate Sale Agreement"), including without limitation the following:

GRANTEE in further consideration for, and as a condition to, this Amended Real Estate Sale Agreement, hereby agrees that the real property interests it is hereby acquiring from the GRANTOR are subject to the same limitations and conditions as the ones applicable to the GRANTOR which are set forth in that certain Agreement dated July 13, 2003, by and between Ketchikan Pulp Company and the Ketchikan Gateway Borough, which is the GRANTOR hereunder, a copy of which Agreement is attached to the Amended Real Estate Sale Agreement as Exhibit O and is incorporated herein by reference as though fully set forth. In particular, all releases, waivers and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including but not limited to environmental claims, whether arising under CERCLA, 42 USC §9601 et seq.; RCRA, 42 USC §6901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the GRANTOR concurred, are hereby agreed to be applicable and in full force and effect.

Further the parties to this agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs and assigns, are third party beneficiaries of this agreement and any future agreements concerning the property.

GRANTEE HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THE PROPERTY.

FURTHER SUBJECT TO the terms and provisions of that certain Agreement dated July 13, 2003 by and between Ketchikan Pulp Company and the Ketchikan Gateway Borough, which is the GRANTOR hereunder, a copy of which Agreement is attached to the Amended Real Estate Sale Agreement as Exhibit O, and is incorporated herein by reference as fully as if set forth.

FURTHER SUBJECT TO the leases identified in Exhibit E to the Amended Real Estate Sale Agreement.

RESERVING AND EXCEPTING, HOWEVER, UNTO THE GRANTOR, reservation of a 15% water usage right as provided in Section 3(a)(i) and 3(c) of the October 13, 2005 Real Estate Sale Agreement (Borough Document 05-114).

RESERVING AND EXCEPTING, HOWEVER, UNTO THE GRANTOR, reservation of the personal property identified in Section 3(a)(vii) and on Exhibit K of the October 13, 2005 Real Estate Sale Agreement (Borough Document 05-114).

FURTHER SUBJECT TO the Equitable Servitude and Easement, executed by the Ketchikan Gateway Borough, a second class Borough of the State of Alaska, Grantor, in favor of the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, Realty Services Section, and its assigns, Grantee, according to the terms and provisions thereof, dated April 24, 2006 and recorded May 1, 2006 at Document No. 2006-001706-0. Effect of that certain Subordination Agreement, executed by Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0. (Affects Parcel No. 10 and portions of Parcel Numbers. 1, 3, 4, and other property)

FURTHER SUBJECT TO the easement entered into by and between Gateway Forest Products, Inc., an Alaska corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, according to the terms and provisions thereof, dated July 27, 2000 and recorded August 21, 2000 in Book 315 at Page 645. Amendment to Easement, entered into by and between Gateway Forest Products, Inc., an Alaska corporation, Grantor, and Ketchikan Pulp Company, a Washington corporation, Grantee, according to the terms and provisions thereof, dated September 22, 2000 and recorded September 22, 2000 in Book 316 at Page 588. (Affects a portion of Parcel No.'s 3 and 4 and other property)

FURTHER SUBJECT TO the Acknowledgment That Interest Conveyed Are Subject to Environmental Protection Easement and Declaration of Restrictive Covenants, entered into by and between the Ketchikan Gateway Borough, an Alaska municipal corporation, and Ketchikan Pulp Company, according to the terms and provisions thereof, dated August 2, 2003 and recorded August 4, 2003 under Ketchikan Recording District Serial No. 2003-004419-0.

FURTHER SUBJECT TO the terms and provisions as contained in Assignment Assumption and Release recorded July 18, 2003 at Document No. 2003-004126-0.

FURTHER SUBJECT TO the Reaffirmance of Environmental Easement and Declaration of Covenants as to 3.09 Acre Parcel, entered into by and between Ketchikan Pulp Company, a Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, according to the terms and provisions thereof, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001709-0. (Affects Parcel No. 10)

FURTHER SUBJECT TO the Environmental Easement and Declaration of Covenants, entered into by and between Ketchikan Gateway Borough, a municipal corporation, and Ketchikan Pulp Company, a Washington corporation, according to the terms and provisions thereof, dated July 14, 2004 and recorded July 15, 2004 under Ketchikan Recording District Serial No. 2004-002967-0. NOTE: Effects of that certain Subordination Agreement, executed by Ketchikan Pulp Company, a



Washington corporation, and the Ketchikan Gateway Borough, a municipal corporation, for the benefit of the State of Alaska, dated May 1, 2006 and recorded May 1, 2006 at Document No. 2006-001708-0. (Affects Parcel No.'s 3, 4, 9, and other property. Also, Section IV.A.3 of Easement provisions applies with respect to Parcel No. 6 as follows: "3. KPC's right of access shall also include access through and across all access easements which have been or hereafter are established by, or reflected in, any plats of U.S. Survey 1056 or ATS-1, whether those access easements are designated as private access easements or otherwise.")

FURTHER SUBJECT TO the Easement for Utility Line granted by Ketchikan Pulp Company, Grantor, in favor of the City of Ketchikan d.b.a. Ketchikan Public Utilities, Grantee, according to the terms and provisions thereof, dated February 22, 2000 and recorded March 16, 2000 in Book 310 at Page 494. (Affects a portion of Parcel No. 5 and other property)

FURTHER SUBJECT TO the Encroachment Easement entered into by and between Ketchikan Pulp Company, and Gordon S. Harang and Eileen K. Harang, also benefiting the successors and assigns of KPC and Harang, according to the terms and provisions thereof, dated February 28, 2000 and recorded July 6, 2000 in Book 314 at Page 370. (Affects a portion of Parcel No. 5 and other property)

FURTHER SUBJECT TO the Reservations, conditions, and easements as contained in that certain Quitclaim Deed between Ketchikan Pulp Company, a Washington corporation, Grantor, and the Ketchikan Gateway Borough, a municipal corporation, Grantee, dated July 11, 2003 and recorded July 22, 2003 at Document No. 2003-004183-0. (Affects Parcel No. 5, and 10 and other property)

FURTHER SUBJECT TO the Consolidated Easement for Landfill entered into by and between the Ketchikan Gateway Borough, a municipal corporation and Ketchikan Pulp Company, a Washington corporation, according to the terms and provisions thereof, dated September 23, 2005 and recorded at Document No. 2005-003857-0. (Affects Parcel No. 5, and 10 and other property)

FURTHER SUBJECT TO the Easement for Utility Line granted by Gateway Forest Products, Inc., Grantor, in favor of the City of Ketchikan d.b.a. Ketchikan Public Utilities, Grantee, according to the terms and provisions thereof, recorded March 16, 2000 in Book 310 at Page 500. (Affects a portion of Parcel 10)

FURTHER SUBJECT TO the terms and provisions as contained in that certain Quitclaim Deed dated October 12, 2007 and recorded on October 12, 2007 at Document No. 2007-004314-0.

FURTHER SUBJECT TO the Lessor's Consent to Assignment of Lease for Security Purposes and the terms and provisions thereof by and between Renaissance Ketchikan Group, LLC, an Idaho Limited Liability Company, Lessor for Ketchikan Veneer Mill, LLC and Renaissance Ketchikan Group, LLC, Borrower to Alaska Growth Capital BIDCO, Inc., Lender, dated April 12, 2007 and recorded April 28, 2007 at Document No. 2007-001806-0.

FURTHER SUBJECT TO the Assignment of Lease for Security Purposes and the terms and provisions thereof, by and between Ketchikan Veneer Mill, LLC, Assignor and Alaska Growth BIDCO, Inc., Assignee, dated April 18, 2007 and recorded April 26, 2007 at Document No. 2007-001807-0.

FURTHER SUBJECT TO the certain springing easements created by foreclosure as set forth on Exhibit "B" and "C" of that certain Deed of Trust dated November 2, 1999 and recorded November 5, 1999 in Book 306 at Page 169. (Affects a portion lying within ATS No. 1)

FURTHER SUBJECT TO the Easement for Landfill Outfall, granted by Gateway Forest Products, Inc., an Alaska corporation, Grantor, in favor of Ketchikan Pulp Company, a Washington corporation, its successors and assigns, Grantee, according to the terms and provisions thereof, dated April 30, 2002 and recorded April 30, 2002 under Ketchikan Recording District Serial No. 2002-001755-0.





FURTHER SUBJECT TO the Lease, and the terms and conditions thereof from Lessor Ketchikan Gateway Borough to Lessee State of Alaska, Department of Administration dated May 19, 2004 and recorded June 3, 2004 as Document No. 2004-002405-0. Amendment to said lease recorded June 16, 2004 as Document No. 2004-002581-0. Amendment to said lease recorded January 14, 2005 as Document No. 2005-000182-0. Amendment to said lease and recorded March 10, 2005 as Document No. 2005-000882-0. Amendment to said lease and recorded April 17, 2006 as Document No. 2006-001434-0. Amendment to said lease and recorded October 30, 2006 as Document No. 2006-004272-0. Amendment to said lease and recorded May 18, 2007 as Document No. 2007-002120-0. Amendment to said lease and recorded March 2, 2009 as Document No. 2009-000616-0. Amendment to said lease and recorded April 13, 2009 as Document No. 2009-001036-0. Amendment to said lease and recorded April 20, 2009 as Document No. 2009-001111-0. Amendment to said lease and recorded July 29, 2010 as Document No. 2010-002470-0. Amendment to said lease and recorded January 18, 2011 as Document No. 2011-000185-0. (Affects Parcel 11)

FURTHER SUBJECT TO the Easement for Utility Line, granted by the Ketchikan Gateway Borough, Grantor, to the City of Ketchikan, d.b.a. Ketchikan Public Utilities, Grantee, according to the terms and provisions thereof, recorded June 30, 2004 at Document No. 2004-002761-0.

FURTHER SUBJECT TO that Lease, and the terms and conditions thereof from Lessor Ketchikan Gateway Borough to Lessee State of Alaska, Department of Administration dated February 7, 2005 and recorded March 18, 2005 as Document No. 2005-000998-0. Amendment to said lease and recorded April 25, 2005 as Document No. 2005-001544-0. Amendment to said lease and recorded June 30, 2005 as Document No. 2005-002453-0. Amendment to said lease and recorded September 30, 2005 as Document No. 2005-003892-0. Amendment to said lease and recorded December 4, 2006 as Document No. 2006-004745-0. Amendment to said lease and recorded January 4, 2007 as Document No. 2007-000034-0. Amendment to said lease and recorded May 21, 2007 as Document No. 2007-002151-0. Amendment to said lease and recorded September 4, 2008 as Document No. 2008-003468-0. (Affects Parcel 11)

FURTHER SUBJECT TO that Agreement and the terms and conditions thereof between Ketchikan Gateway Borough, Gateway Forest Products, Inc. and Ketchikan Pulp Company dated July 14, 2003 and recorded July 16, 2008 as Document No. 2008-002806-0.



DATED this 28<sup>th</sup> day of December, 2011.

GRANTOR: KETCHIKAN GATEWAY BOROUGH

By: Dan Bockhorst

Its: Manager

Attest:

Karin Zupka  
Borough Clerk

**BOROUGH ACKNOWLEDGMENT**

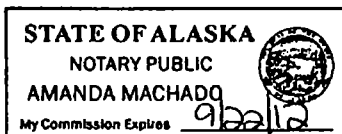
STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 28<sup>th</sup> day of December, 2011, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **DAN BOCKHORST** to me known to be the **Borough Manager** of the **KETCHIKAN GATEWAY BOROUGH**, a municipal corporation, the corporation which executed the above and foregoing instrument; who on oath stated that he was duly authorized to execute said instrument; who acknowledged to me that he signed the same freely and voluntarily on behalf of said corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.



Amanda Machado  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 9/22/12

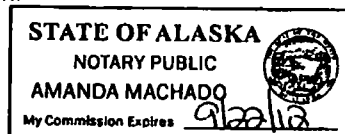
STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 28<sup>th</sup> day of December, 2011, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **KACIE PAXTON** to me known to be the **Borough Clerk** of the **KETCHIKAN GATEWAY BOROUGH**, a second class borough, the entity which executed the above and foregoing instrument; who on oath stated that she was duly authorized to execute said instrument and affix the corporate seal thereto on behalf of said entity; who acknowledged to me that she signed and sealed the same freely and voluntarily on behalf of said entity for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in the certificate first above written.



Amanda Machado  
NOTARY PUBLIC FOR ALASKA  
My Commission Expires: 9/22/12



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2011-003865-0

Recording Dist: 102 - Ketchikan  
12/29/2011 2:25 PM Pages: 1 of 15



**RECORDATION**

REQUESTED BY:  
Alaska Pacific Bank  
Ketchikan Office  
410 Mission St.  
Ketchikan, AK  
99901

**WHEN RECORDED MAIL**

TO:  
Alaska Pacific Bank  
2094 Jordan Ave.  
Juneau, AK 99801

**SEND TAX NOTICES TO:**

POWER SYSTEMS &  
SUPPLIES OF  
ALASKA LLC  
PO Box 772  
Ward Cove, AK  
99928

**FOR RECORDER'S USE ONLY**

41108

**DEED OF TRUST**

THIS DEED OF TRUST is dated December 28, 2011, among POWER SYSTEMS & SUPPLIES OF ALASKA LLC, whose address is 12077 North Tongass Highway, Ketchikan, AK 99901; An Alaskan Limited Liability Company ("Grantor"); Alaska Pacific Bank, whose address is Ketchikan Office, 410 Mission St., Ketchikan, AK 99901 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Alaska Escrow & Title Insurance Agency, whose address is PO Box 5040, Ketchikan, AK 99901 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in the Ketchikan Recording District, First Judicial District, the State of Alaska:

**PARCEL NO. 11:**

Lot 2, Gateway Subdivision, within U.S. Survey 1056 (H.E.S. 55), according to the plat thereof filed August 14, 2000 as Plat No. 2000-41, Ketchikan Recording District, First Judicial District, State of Alaska.

The Real Property or its address is commonly known as 7559 N. Tongass Highway, Ketchikan, AK 99901.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property as security for the indebtedness. In addition to this assignment under common law, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor

**DEED OF TRUST  
(Continued)**

Loan No: 3128

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shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default).

**Duty to Maintain.** Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the





**DEED OF TRUST  
(Continued)**

Loan No: 3128

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**Americans With Disabilities Act.** Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, community property agreement or community property trust or other trust, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Alaska law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property. If any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a cash basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application



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DEED OF TRUST  
(Continued)

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of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the



**Property are a part of this Deed of Trust:**

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.



**DEED OF TRUST  
(Continued)**

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**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.





**DEED OF TRUST  
(Continued)**

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occur with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** With respect to all or any part of the Property, Trustee shall have the right to sell the Property pursuant to a non-judicial foreclosure sale and Trustee or Lender shall have the right to sell the Property upon judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If the power of sale is invoked, Trustee shall



execute a written notice of the occurrence of an Event of Default and of the election to cause the Property to be sold and shall record such notice in each Recording District in which the Property or some part of the Property is located. Trustee shall mail copies of the notice of default, in the manner provided by the laws of Alaska, to Grantor and to such other persons as the laws of Alaska prescribe. Trustee shall give notice of sale and shall sell the Property according to the laws of Alaska. After the lapse of time required by law following the recordation of the notice of default, Trustee, without demand on Grantor, may sell the Property at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender's or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made in the Trustee's deed. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees, and cost of title evidence; (b) to all sums secured by this Deed of Trust in such order as Lender, in Lender's sole discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess proceeds.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the



DEED OF TRUST  
(Continued)

Loan No: 3128

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terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved or pending, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall, upon default, have the right to sell the Property by notice and non-judicial sale, and Trustee or Lender shall have the right to sell the Property by judicial action and foreclosure sale, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office for the Kotchlikon Recording District, First Judicial District, State of Alaska. The instrument shall be executed and acknowledged by Lender or Lender's successor in interest, and shall contain, in addition to all other matters required by state law, the date this Deed of Trust was executed, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, the name and address of the successor trustee, and either an acknowledgment signed and acknowledged by the Trustee named in this Deed of Trust of a receipt of a copy of the instrument or an affidavit of service of a copy of the instrument on the Trustee. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

**NOTICES.** Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.



DEED OF TRUST  
(Continued)

Loan No: 3128

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**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alaska without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Alaska.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the Alaska state courts in the Judicial District at or nearest Lender's address shown herein, or at Lender's option, to the jurisdiction of the courts wherever any Property is located.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Alaska as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words





**DEED OF TRUST  
(Continued)**

Loan No: 3128

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and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means Alaska Pacific Bank, and its successors and assigns.

**Borrower.** The word "Borrower" means POWER SYSTEMS & SUPPLIES OF ALASKA LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Grantor.** The word "Grantor" means POWER SYSTEMS & SUPPLIES OF ALASKA LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

**Lender.** The word "Lender" means Alaska Pacific Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated December 28, 2011, in the original principal amount of \$1,785,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Deed of Trust is January 1, 2032. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions



DEED OF TRUST  
(Continued)

Loan No: 3128

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to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Alaska Escrow & Title Insurance Agency, whose address is PO Box 5040, Ketchikan, AK 99901 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By: [Signature]  
David C. Spokely, Member of POWER SYSTEMS &  
SUPPLIES OF ALASKA LLC

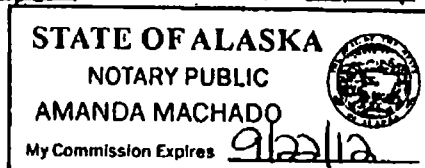
By: [Signature]  
Andrew P. Spokely, Member of POWER SYSTEMS &  
SUPPLIES OF ALASKA LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Alaska )  
 ) SS  
First JUDICIAL DISTRICT )

On this 28<sup>th</sup> day of December, 20 11, before me, the undersigned Notary Public, personally appeared David C. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC and Andrew P. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC, and known to me to be members or designated agents of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By: [Signature] Residing at Ketchikan  
Notary Public in and for the State of Alaska My commission expires 9/22/12



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2011-003865-0

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**REQUEST FOR FULL RECONVEYANCE**

(To be used only when obligations have been paid in full)

To: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

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

Beneficiary: \_\_\_\_\_

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

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

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LASER PRO Lending, Ver. 6.67.00.004 Copr. Harland Financial Solutions, Inc. 1097, 2011.  
All Rights Reserved. - AK F:\APPS\CF\NLPL\G01.FC TR-7066 PR-11



## KPC AGREEMENT ACKNOWLEDGEMENT

This KPC AGREEMENT ACKNOWLEDGEMENT is attached to and by this reference is made a part of the Deed of Trust, dated December 28, 2011, and executed in connection with a loan or other financial accommodations between ALASKA PACIFIC BANK and POWER SYSTEMS & SUPPLIES OF ALASKA LLC.

Alaska Pacific Bank, referred to in this Deed of Trust as "Lender" and sometimes as "Beneficiary," in further consideration for, and as a condition to, this instrument, hereby agrees that the real property interests it is hereby acquiring from, Power Systems & Supplies of Alaska LLC, as referred to herein as the "Trustor" under the terms of this Deed of Trust, are subject to the same limitations and conditions as the ones applicable to and which are set forth in that "Agreement," entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003, and recorded July 16, 2008, under Ketchikan Recording District Serial No. 2008-002806-0, Ketchikan Recording District, First Judicial District, State of Alaska, a copy of which Beneficiary acknowledges having received, and which is incorporated by reference in this instrument as fully set forth herein. In particular, all releases, waivers, and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including, but not limited to, environmental claims, whether arising under CERCLA, 42 USC 9601 et seq.; RCRA, 42 USC 6901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the Borough concurred, are hereby agreed to be applicable and in full force and effect.

Further, the parties to this Agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs, and assigns, are third party beneficiaries of this Agreement and any future agreements concerning the property.

BENEFICIARY, the Alaska Pacific Bank, HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THIS PROPERTY.

THIS KPC AGREEMENT ACKNOWLEDGEMENT IS EXECUTED ON DECEMBER 28, 2011.

BENEFICIARY:

BY: 

Loan Officer of Alaska Pacific Bank.

THIS KPC AGREEMENT ACKNOWLEDGEMENT IS EXECUTED ON DECEMBER 28, 2011.

GRANTOR:

POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By: 

David C. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By: 

Andrew P. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC





KPC AGREEMENT ACKNOWLEDGEMENT  
PAGE 2

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED OCTOBER 28, 1999 RECORDED IN THE KETCHIKAN RECORDED DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 IN BOOK 305 AT PAGE 772 THAT IS IN FAVOR OF AND ENFORCEABLY BY, THE STATE OF ALASKA.

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2011-003866-0

Recording Dist: 102 - Ketchikan

12/29/2011 2:27 PM Pages: 1 of 15



**RECORDATION**

**REQUESTED BY:**

Alaska Pacific Bank  
Ketchikan Office  
410 Mission St.  
Ketchikan, AK  
99901

**WHEN RECORDED MAIL**

**TO:**

Alaska Pacific Bank  
Ketchikan Office  
410 Mission St.  
Ketchikan, AK  
99901

**SEND TAX NOTICES TO:**

Alaska Pacific Bank  
Ketchikan Office  
410 Mission St.  
Ketchikan, AK  
99901

**FOR RECORDER'S USE ONLY**

41108

**DEED OF TRUST**

THIS DEED OF TRUST is dated December 28, 2011, among POWER SYSTEMS & SUPPLIES OF ALASKA LLC, whose address is 12077 North Tongass Highway, Ketchikan, AK 99901; An Alaskan Limited Liability Company ("Grantor"); Alaska Pacific Bank, whose address is Ketchikan Office, 410 Mission St., Ketchikan, AK 99901 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Alaska Escrow & Title Insurance Agency, whose address is PO Box 5040, Ketchikan, AK 99901 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in the Ketchikan Recording District, First Judicial District, the State of Alaska:

**PARCEL NO. 13:**

Tract 3019 of the Ward Cove S.E. Replot of portions of U.S. Survey No.'s 1508 and 1859, and a portion of Alaska Tidelands Survey No. 1, according to the plat thereof filed August 2, 2005 as Plat No. 2005-30, Ketchikan Recording District, First Judicial District, State of Alaska.

The Real Property or its address is commonly known as 8851 N. Tongass Highway, Ketchikan, AK 99901. The Real Property tax identification number is 313220006100.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property as security for the indebtedness. In addition to this assignment under common law, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**DEED OF TRUST  
(Continued)**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property (this privilege is a license from Lender to Grantor automatically revoked upon default).

**Duty to Maintain.** Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities



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applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, community property agreement or community property trust or other trust, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Alaska law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the existing indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with



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standard extended coverage endorsements on a cash basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other



rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice all at Grantor's expense, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2)



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contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This Instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Grantor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Grantor fails to make any payment when due under the indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.



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**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after Lender sends written notice to Grantor demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** With respect to all or any part of the Property, Trustee shall have the right to





sell the Property pursuant to a non-judicial foreclosure sale and Trustee or Lender shall have the right to sell the Property upon judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of the election to cause the Property to be sold and shall record such notice in each Recording District in which the Property or some part of the Property is located. Trustee shall mail copies of the notice of default, in the manner provided by the laws of Alaska, to Grantor and to such other persons as the laws of Alaska prescribe. Trustee shall give notice of sale and shall sell the Property according to the laws of Alaska. After the lapse of time required by law following the recordation of the notice of default, Trustee, without demand on Grantor, may sell the Property at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender's or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made in the Trustee's deed. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees, and cost of title evidence; (b) to all sums secured by this Deed of Trust in such order as Lender, in Lender's sole discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess proceeds.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or



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any portion of the Property.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved or pending, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate unless payment of interest at that rate would be contrary to applicable law, in which event such expenses shall bear interest at the highest rate permitted by applicable law from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee (pursuant to Lender's instructions) are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall, upon default, have the right to sell the Property by notice and non-judicial sale, and Trustee or Lender shall have the right to sell the Property by judicial action and foreclosure sale, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office for the Ketchikan Recording District, First Judicial District, State of Alaska. The instrument shall be executed and acknowledged by Lender or Lender's successor in interest, and shall contain, in addition to all other matters required by state law, the date this Deed of Trust was executed, the names of the original Lender, Trustee, and Grantor, the book and page where this Deed of Trust is recorded, the name and address of the successor trustee, and either an acknowledgment signed and acknowledged by the Trustee named in this Deed of Trust of a receipt of a copy of the instrument or an affidavit of service of a copy of the instrument on the Trustee. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

**NOTICES.** Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at



all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Alaska without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Alaska.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the Alaska state courts in the Judicial District at or nearest Lender's address shown herein, or at Lender's option, to the jurisdiction of the courts wherever any Property is located.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Alaska as to all indebtedness secured by this Deed of Trust.



DEED OF TRUST  
(Continued)

Loan No: 3128

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**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Beneficiary.** The word "Beneficiary" means Alaska Pacific Bank, and its successors and assigns.

**Borrower.** The word "Borrower" means POWER SYSTEMS & SUPPLIES OF ALASKA LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

**Grantor.** The word "Grantor" means POWER SYSTEMS & SUPPLIES OF ALASKA LLC.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

**Lender.** The word "Lender" means Alaska Pacific Bank, its successors and assigns.

**Note.** The word "Note" means the promissory note dated December 28, 2011, in the original principal amount of \$1,785,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Deed of Trust



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2011-003866-0



Is January 1, 2032. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all issues and profits thereon and proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

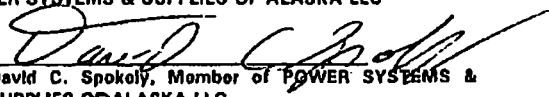
**Trustee.** The word "Trustee" means Alaska Escrow & Title Insurance Agency, whose address is PO Box 5040, Ketchikan, AK 99901 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By:

  
David C. Spokely, Member of POWER SYSTEMS &  
SUPPLIES OF ALASKA LLC

By:

  
Andrew P. Spokely, Member of POWER SYSTEMS &  
SUPPLIES OF ALASKA LLC



## LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Alaska )  
 ) SS  
First JUDICIAL DISTRICT )

On this 26th day of December, 20 11, before me, the undersigned Notary Public, personally appeared David C. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC and Andrew P. Spokely, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC, and known to me to be members or designated agents of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By Amyandall Machado Residing at Ketchikan  
Notary Public in and for the State of Alaska My commission expires 9/22/12  
**STATE OF ALASKA**  
NOTARY PUBLIC  
AMANDA MACHADO  
My Commission Expires 9/22/12

## REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: \_\_\_\_\_ Beneficiary: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_



## KPC AGREEMENT ACKNOWLEDGEMENT

This KPC AGREEMENT ACKNOWLEDGEMENT is attached to and by this reference is made a part of the Deed of Trust, dated December 28, 2011, and executed in connection with a loan or other financial accommodations between ALASKA PACIFIC BANK and POWER SYSTEMS & SUPPLIES OF ALASKA LLC.

Alaska Pacific Bank, referred to in this Deed of Trust as "Lender" and sometimes as "Beneficiary," in further consideration for, and as a condition to, this instrument, hereby agrees that the real property interests it is hereby acquiring from, Power Systems & Supplies of Alaska LLC, as referred to herein as the "Trustor" under the terms of this Deed of Trust, are subject to the same limitations and conditions as the ones applicable to and which are set forth in that "Agreement," entered into by and between Ketchikan Gateway Borough, a municipal corporation, Ketchikan Pulp Company, a Washington corporation, and Gateway Forest Products, Inc., an Alaska corporation, according to the terms and provisions thereof, dated July 14, 2003, and recorded July 18, 2008, under Ketchikan Recording District Serial No. 2008-002808-0, Ketchikan Recording District, First Judicial District, State of Alaska, a copy of which Beneficiary acknowledges having received, and which is incorporated by reference in this instrument as fully set forth herein. In particular, all releases, waivers, and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including, but not limited to, environmental claims, whether arising under CERCLA, 42 USC 9601 et seq.; RCRA, 42 USC 8901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which the Borough concurred, are hereby agreed to be applicable and in full force and effect.

Further, the parties to this Agreement agree that Ketchikan Pulp Company, its shareholders, successors, heirs, and assigns, are third party beneficiaries of this Agreement and any future agreements concerning the property.

BENEFICIARY, the Alaska Pacific Bank, HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS SHALL BE INCORPORATED INTO ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THIS PROPERTY.

THIS KPC AGREEMENT ACKNOWLEDGEMENT IS EXECUTED ON DECEMBER 28, 2011.

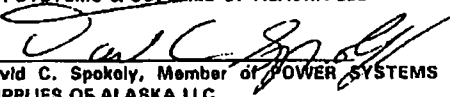
BENEFICIARY:

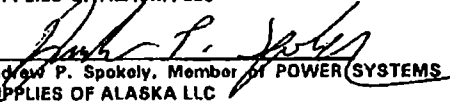
BY:   
Loan Officer of Alaska Pacific Bank.

THIS KPC AGREEMENT ACKNOWLEDGEMENT IS EXECUTED ON DECEMBER 28, 2011.

GRANTOR:

POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By:   
David C. Spokoly, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC

By:   
Andrew P. Spokoly, Member of POWER SYSTEMS & SUPPLIES OF ALASKA LLC

UNRECORDED COPY OF THIS INSTRUMENT IS FILED FOR RECORDATION IN THE PUBLIC RECORDS OF THE STATE OF ALASKA, KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, SERIAL NO. 2011-003866-0



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KPC AGREEMENT ACKNOWLEDGEMENT  
PAGE 2

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED OCTOBER 28, 1999 RECORDED IN THE KETCHIKAN RECORDED DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON OCTOBER 28, 1999 IN BOOK 305 AT PAGE 772 THAT IS IN FAVOR OF AND ENFORCEABLY BY, THE STATE OF ALASKA.

DCS





## **Attachment 24**

List of Power Systems and Supplies of Alaska LLC's Lessees and Template Lease/Letters Sent to Lessees

Attachment 24: List of Power Systems and Supplies of Alaska LLC's Lessees and Template Letters Sent to Lessees

Title of Letters below: Acknowledgement of requirements for Power Systems & Supplies of Alaska LLC to supply a copy of the KPC Consent Decree documents and appendices to property tenants (each with attachment signed by new lessee)

Doc Date	PSSA Lessee	Attachment	Author	Author Organization	Addressee Organization
5/27/15	Byron Construction and Artisan Tradition	Acknowledgement letter signed by Jim Byron II of Byron Construction and Jason Sonnenschein of Artisan Tradition	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
5/27/15	Federal Express Corporation	Acknowledgement letter signed by Wiley Johnson, Jr. of Federal Express Corporation	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
4/28/15	AAB Boom Truck	Acknowledgement letter signed by Brian Nicholas of AAB Boom Truck	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
4/28/15	Pacific Airways Inc.	Acknowledgement letter signed by Stephen Montanus of Pacific Airways Inc.	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
3/25/15	Reaper Rebuilds LLC	Acknowledgement letter signed by Wade Purdy of Reaper Rebuilds LLC	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
7/26/13	Alaska Welding and Repair LLC	Acknowledgement letter signed by Brent Connor of Alaska Welding and Repair LLC	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
7/26/13	Alcan Forest Products, LP	Acknowledgement letter signed by Eric Nichols of Alcan Forest Products, LP	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
6/23/14	Rainbird Quilting	Acknowledgement letter signed by Marge Kraft of Rainbird Quilting	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
5/22/14	Northrim Bank	Acknowledgement letter signed by Brad Kiefer of Northrim Bank	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
10/18/13	ADOT&PF	Acknowledgement letter signed by Ray Peterson of Alaska DOT&PF	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
10/7/13	Modoc	Acknowledgement letter signed by Peter Bennison, owner of M/V Modoc	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
9/10/13	Ward Cove Industries LLC	Acknowledgement letter signed by Ward Cove Industries LLC	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources

9/10/13	Full Cycle LLC	Acknowledgement letter signed by Full Cycle LLC	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
9/10/13	Remote Made Easy LLC	Acknowledgement letter signed by Remote Made Easy LLC	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
8/23/13	Elliott Bay Design Group	Acknowledgement letter signed by Joe Pritting of Elliott Bay Design Group	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
10/3/12	Fixits Precision Machine	Acknowledgement letter signed by Jimmie Myers of Fixits Precision Machine (no longer an active tenant)	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
10/3/12	Wayne Olsen	Acknowledgement letter signed by Wayne Olsen	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
10/3/12	J. Michael Scott	Acknowledgement letter signed by J. Michael Scott	Thompson, Glen	Power Systems & Supplies of Alaska	Alaska Department of Natural Resources
1/9/12	Alaska Pacific Bank	Notice of Properties Interest transferred by Power Systems and Supplies of Alaska LLC (PSSA) to Alaska Pacific Bank on December 28th 2011.	Spokely, Andrew	Power Systems & Supplies of Alaska	EPA

Federal Express Corporation, Pacific Airways, and Remote Made Easy are tenants on the parcel marked in blue (on Ward Cove Seaport Property also owned by PSSA) on the 2013 map (Attachment 4). This parcel does not appear to require notice because it was not part of the Uplands Unit, but PSSA has been including it in the reporting because some of the documents subsequent to the 1999 Covenants and the Consent Decree appear to have broadened the scope of reporting. All of the other leases are in the magenta parcel labeled as PSSA.



# REMOTE MADE EASY



Power Systems and Supplies of Alaska LLC † Ward Cove Industries LLC † Remote Made Easy LLC † Full Cycle LLC  
PO Box 772 † Ward Cove † Alaska † 99928  
(907) 247-7772 † (907) 220-6055 (Fax)

## CERCLA ACKNOWLEDGEMENT

I, \_\_\_\_\_,

on behalf of \_\_\_\_\_

hereby acknowledge that on (date) \_\_\_\_\_,

I received copies of the following:

- a) 30 page AGREEMENT, plus four (4) Appendices, by and among Ketchikan Gateway Borough, Gateway Forest Products, Inc. and Ketchikan Pulp Company dated July 14, 2003.
- b) 83 page CERCLA REMEDIAL DESIGN / REMEDIAL ACTION CONSENT DECREE signed by the United States District Judge on November 20, 2000.
- c) 17 page Stewart Title report dated December 29, 2011 composed of Schedule A and Schedule B.

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_



## INDUSTRIAL LEASE

This Industrial Lease ("Lease") is entered into and made effective this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **Ward Cove Industries LLC** ("Lessor") and \_\_\_\_\_ ("Lessee").

### RECITALS

A. Lessor is the Property Manager and primary lessee of certain industrial real property located at Ward Cove Alaska. The real property is herein referred to as the "Lessor's Property."

B. Upon the terms and conditions set forth in this Lease, Lessor is willing to grant Lessee a Leasehold interest in and to that portion of the Lessor's Property together with improvements and parking area which are herein referred to as the "Leased Premises," and more particularly described as follows:

### SEE APPENDIX A FOR LEASED PROPERTY DETAIL

C. Lessor's Property is subject to comprehensive environmental covenants and restrictions that affect the transferability of property interest and use of the Lessor's Property. The covenants and restrictions that encumber the Lessor's Property have been disclosed to Lessee prior to the Lessee's execution of this Lease. The environmental covenants and restrictions that encumber the Lessor's Property, and thereby encumber the Leased Premises, are herein referred to as the "Environmental Undertakings" and are more particularly defined in Sections 21.b and 43 of this Lease. Lessee acknowledges receipt of the Environmental Undertakings prior to executing this Lease, and is willing to abide by the terms, conditions, covenants, and restrictions stated therein that affect Lessee use, possession, and occupancy of the Leased Premises under the terms of this Lease.

### LEASE

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Leased Premises.** Lessor leases to Lessee and Lessee leases from Lessor the Leased Premises for the Lease Term, defined in Section 3, below, at the rental rate, and upon all other terms, covenants, and conditions in this Lease.

2. **Use of Leased Premises; Common Area.**

- a. The Leased Premises shall be used for industrial purposes including those described in **Appendix A** and any purpose as may otherwise be approved hereafter by Lessor in writing. Lessee shall conduct its operations within the Leased Premises in an orderly and commercially reasonable manner, that is at all times in full compliance with the terms and conditions of this Lease, and all applicable federal, state and local Laws, statutes, regulations and ordinances. Lessee shall not annoy, disturb, endanger, or act in an offensive manner to occupants and persons coming

on to, or that occupy any portion of the Lessor's Property or adjacent properties within Ward Cove, which are owned, managed, or leased by Lessor at anytime during the Lease Term.

b. Lessee shall not do or permit any act that is likely to:

(i) cause any structural damage to the Leased Premises; or

(ii) cause damage to any part of the Leased Premises, except to the extent reasonably necessary for the installation of Trade Fixtures, equipment, machinery, or the construction of alterations as permitted under this Lease or as approved in writing in advance by Lessor; or

(iii) violate Environmental Undertakings, as that term is defined in Section 21.b., below; or

(iv) violate Prior Undertakings, as that term is defined in Section 43, below; or

(v) violate any Environmental Law, as that term is defined in Section 43, below.

c. Lessee shall not commit any waste in, upon, or around the Leased Premises and shall keep the Leased Premises in a neat, clean, attractive, and orderly condition, free of trash and debris. The Leased Premises shall be used and maintained by Lessee in such manner as to avoid nuisance from dust, smoke, obnoxious odors, fumes, vapors, dust, noise, or otherwise. Lessee shall not keep or store any explosives on the Leased Premises, without the written approval of Lessor being first given after receipt of approval for such placement or storage being given by all government agencies having jurisdiction thereof.

d. Lessee shall use and maintain the Leased Premises in compliance with all applicable Laws, statutes, regulations, and ordinances and the requirements of any insurance Lessee is required to maintain and carry under the terms of this Lease.

e. Lessee, its invitees, licensees, agents, contractors, venders, and employees shall have the non-exclusive right to use and have access to the Leased Premises over and through the Lessor's Property within that area designated as the "Common Area" on **Appendix A** attached hereto. The Common Area will be used by Lessee in common with others having the right to enter the Lessor's Property from the North Tongass Highway. The Lessor does not warrant that the Common Area is suitable for any particular purpose, nor does Lessor assume or undertake the express or implied responsibility for the maintenance or repair of the Common Area. Lessor shall not be obligated or otherwise responsible for snow removal from the Common Area. Lessee hereby releases, discharges, and agrees to indemnify Lessor, its successor, and assigns, of and from any and all claims, demands, or causes of action which may arise from or pertain to Lessee's use of the Common Area. Lessor reserves the right to modify, substitute, or alter the Common Area from time to time, provided a reasonable alternative means of ingress and egress to the Leased Premises is provided to Lessee.

f. Lessee further agrees that during the Lease, Lessee shall not cause or permit any use of the Leased Premises, or any portion thereof, in any illegal manner. Lessee shall, at Lessee's own expense, comply with all applicable local, state, and federal Laws,

ordinances, rules, and regulations.

g. Lessee acknowledges and agrees that the rights and entitlements set forth in this Lease are the only rights and entitlements granted to Lessee, and therefore, Lessee acknowledges that there is no easement, right, or entitlement, express or implied, other than that specifically herein granted by Lessor.

**3. Lease Term; Termination; Renewal.**

a. The term of this Lease shall commence on \_\_\_\_\_, herein referred to as the "Commencement Date," and continue through to \_\_\_\_\_ (the "Lease Term").

b. Lessee shall have the option to terminate this Lease as described in **Appendix A.**

c. Lessee shall have the option to renew this Lease as described in **Appendix A.**

**4. Base Rent; Late Payment; Escalation of Rent.**

a. Lessee shall pay "Base Rent" during the Lease Term in the amount of **Some Number of Dollars(\$xx,000)** which shall be paid in monthly installments of **A number Dollars(\$\_\_\_\_\_)** per month with the first payment of rent to be paid to Lessor on or before the Commencement Date and continuing thereafter on or before the 1st day of each month thereafter until the end of the Lease Term. Rent shall be payable in lawful money of the United States to Lessor at the address stated in this Lease or to any other address that Lessor may designate from time to time. The payment of Base Rent shall **NOT** include Lessee's obligation to pay any federal, state, or municipal sales tax or other tax attributable to Lessee's possession of the Leased Premises.

b. Lessee shall pay a late payment fee of **\$NA** for any payment of Base Rent that is not received by Lessor on or before the payment due date stated above. In addition, Lessee shall pay interest (herein, "Chargeable Interest") at the rate of ten and one half percent (10.5%) for all unpaid rent and other charges Lessee is obligated to pay under the terms of this Lease. The late payment fee and Chargeable Interest on unpaid rent shall be paid to Lessor as additional rent on the date payment of Base Rent is next due to be paid. Lessee's obligation to pay rent shall be prorated in the last month of the Lease based upon the portion of the month during which Lessee occupies the Leased Premises if different than the intended expiration date stated in Section 3, above.

c. Base Rent shall be adjusted annually as described in **Appendix A.**

**5. Taxes.**

a. Lessor shall be responsible for and shall pay all state, federal, and municipal property tax levied against the Leased Premises during the Lease Term. As used in this Lease, the term "Property Taxes" shall mean any and all taxes, assessments, levies, and other charges of any kind, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any existing or future general or special assessments, and any increases resulting from reassessments made in connection with a change in ownership, new

construction, or any other cause), now or later imposed by any governmental or quasi-governmental authority or special district having the power to tax or levy assessments, which are levied or assessed against or with respect to the value, occupancy, or use of all or any portion of the Leased Premises.

b. Lessee shall be responsible for and shall pay all municipal, state, and federal taxes assessed against and levied upon Trade Fixtures, furnishings, equipment, and all other personal property of Lessee situated within the Leased Premises, or elsewhere.

6. **Security Deposit.** As defined in **Appendix A.**

7. **Possession and Condition of Leased Premises.** Lessee acknowledges that Lessee is familiar with the condition of the Leased Premises, and the suitability of the Leased Premises for Lessee's intended needs and purposes. Accordingly, Lessee accepts possession of the Leased Premises as of the Commencement Date, in its current condition on the basis of "AS IS," together with all faults and defects, known or unknown, and subject to all applicable Laws governing and regulating the use of the Leased Premises, including, but not limited to, the Environmental Undertakings, defined in Section 21.b., below. Lessee did take the opportunity to inspect the Leased Premises, and optionally to have it inspected by qualified persons prior to execution of this Lease. THE LEASED PREMISES ARE BEING ACCEPTED BY LESSEE "AS IS" IN THEIR PRESENT CONDITION AND STATE OF REPAIR, WITH NO EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, ASSURANCES, OR WARRANTIES BEING GIVEN BY LESSOR TO LESSEE, UPON WHICH LESSEE HAS RELIED IN EXECUTING THIS LEASE, WHICH RELATE OR OTHERWISE PERTAIN TO THE PHYSICAL CONDITION, QUALITY OF CONSTRUCTION, WORKMANSHIP, STATE OF REPAIR, OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY LESSOR.

8. **Hazardous Substances.**

a. Lessee agrees that any kind and all handling, transportation, storage, treatment, disposal, or use of Hazardous Substances by Lessee in or about the Leased Premises shall strictly comply with all applicable Environmental Laws. The terms Hazardous Substances and Environmental Laws are more particularly defined in Section 43, below.

b. Lessee agrees to indemnify, defend, and hold Lessor harmless from any liabilities, losses, claims, damages, penalties, fines, attorney fees, expert fees, court costs, remediation costs, investigation costs, or other expenses resulting from or arising out of Lessee's use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about the Leased Premises.

c. If the presence of Hazardous Substances on the Leased Premises caused or permitted by Lessee results in the contamination of the Leased Premises or any water or soil beneath or adjacent to the Leased Premises, Lessee shall give immediate notice to Lessor, in writing, of the contamination, at Lessee's sole cost, and shall promptly take all reasonable action necessary to investigate and remedy the contamination.

d. Lessor and Lessee each agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Substances or the potential or actual violation of Environmental Laws that relate to the Leased Premises for which either party receives written notification or otherwise becomes aware from a governmental



agency or third-person.

e. Lessee shall not use, handle, store, transport, generate, release, or dispose of any Hazardous Substances on, under, or about the Leased Premises, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct business at the Leased Premises, and (ii) other Hazardous Substances that are necessary for the operation of Lessee's business and for which Lessor gives written consent prior to the Hazardous Substances being brought onto the Leased Premises. At any time during the Lease Term, Lessee shall, within ten (10) days after written request from Lessor, disclose in writing all Hazardous Substances that are being used by Lessee on the Leased Premises, the nature of the use, and the manner of storage and disposal.

## **9. Repairs and Maintenance.**

a. Lessee shall, at Lessee's cost, keep the Leased Premises clean and maintain in good order, condition, and repair the facilities, fixtures, and improvements, including, without limitation, the following:

(i) all fixtures, interior walls, floors, carpets, and ceilings in the Leased Premises;

(ii) all windows, roll up doors, entrance doors, entrances, and plate glass in the Leased Premises;

(iii) all electrical fixtures and all equipment contained in the Leased Premises, including all light fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment, and systems;

(iv) signage, including, but not limited to, warning signs, parking lot signage, or fixed lit or unlit signs situated within the Leased Premises; and

(v) all repairs and replacements required of Lessee shall be promptly made with new materials of like kind and quality as previously existing. If the work affects the structural parts of the Leased Premises or if the estimated cost of any item of repair or replacement is in excess of Five Thousand Dollars (\$5000.00), Lessee shall first obtain Lessor's written approval of the scope of the work, the plans for the work, the materials to be used, and the contractor hired to perform the work.

b. If Lessee fails to perform Lessee's obligations under this Section 9, or under any other section of this Lease, after five (5) days prior written notice to Lessee, except in an emergency when no notice shall be required, Lessor may enter the Leased Premises, perform the obligations on Lessee's behalf, and recover the cost of performance, as additional rent payable by Lessee on the date the next installment of Base Rent is due under the Lease.

## **10. Alterations.**

a. Lessee shall not construct any alterations, improvements, or additions, or otherwise alter the Leased Premises (herein, "Alterations") without Lessor's prior written consent. If Lessor's approval for any Alterations is required, Lessee shall not undertake the Alterations until Lessor has given written consent to the plans and specifications, and the Alterations shall be constructed substantially in compliance with plans and specifications approved by a

licensed, bonded, and qualified contractor. All Alterations shall be constructed in accordance with all Laws using new materials of good quality.

b. Lessee shall not commence construction of any Alterations until:

(i) all required government approvals, licenses, and permits have been obtained;

(ii) all requirements regarding insurance imposed by this Lease have been satisfied; and

(iii) Lessee has given Lessor at least ten (10) days prior written notice of Lessee's intention to commence construction.

c. Lessee shall pay, when due, all claims for labor or materials furnished in connection with Alterations that are or may become mechanics' or materialmen's liens against the Leased Premises or any interest in them. Lessee shall have the right, in good faith, to contest the validity of any lien, claim, or demand, provided that Lessee shall, at Lessee's sole expense, defend Lessor against such lien, claim, or demand. In addition, Lessor may require Lessee to pay Lessor's actual attorney fees and costs reasonably incurred in connection with the defense of any such lien, claim, or demand. Lessee shall pay and satisfy any adverse judgment that may be rendered to enforce such lien, claim, or demand against Lessor or the Leased Premises. Any cost or payment incurred by Lessor under this Section 10.c., shall be paid as additional rent on the next rent due date after written notice of the cost and payments incurred is delivered to Lessee.

d. All Alterations shall be and remain the property of Lessor during the Lease Term, and shall not be altered or removed from the Leased Premises. At the expiration or sooner termination of the Lease Term, all Alterations shall remain the property of Lessor, and Lessor shall have no obligation to reimburse Lessee for any portion of the value or cost of the Alterations. However, Lessor shall have the right to require Lessee to remove any Alterations made to the Leased Premises. The determination of what Alterations are to be removed shall be made by Lessor at the time approval is given to Lessee for the making of the Alterations. In that event, Lessee shall remove the Alterations, at Lessee's cost, that are required by Lessor to be removed prior to the expiration or sooner termination of the Lease Term. After removal of any Alteration, Lessee shall surrender the Leased Premises in a good, clean, and safe condition, similar to the condition that existed prior to construction of the Alteration, less ordinary wear and tear.

11. **Trade Fixtures.** Lessee shall have the right, at any time, and from time to time, during the Lease Term and any renewal or extension, at Lessee's sole cost and expense, to install and affix in, to, or on the Leased Premises items for use in Lessee's trade or business that Lessee, in Lessee's sole discretion, deems advisable (collectively, "Trade Fixtures"). Trade Fixtures shall remain the property of Lessee and may be removed at the expiration of the Lease Term or any extension, provided that any damage to the Leased Premises caused by the removal of Trade Fixtures or equipment shall be repaired by Lessee, at Lessee's sole expense, and further provided that Lessor shall have the right but not the obligation to keep any Trade Fixtures or equipment that Lessee otherwise elects to abandon.

12. **Insurance; Waiver of Subrogation.** See **Appendix A.**

**13. Damage and Destruction to Leased Premises.**

a. If the Leased Premises are materially damaged to the extent of ten percent (10%) or more of the then full replacement cost from a cause not insured against under casualty insurance, either party shall have the right to terminate this Lease by giving written notice of termination to the other party within thirty (30) days after the date of the damage or destruction, in which case this Lease shall terminate as of the receipt of such notice. If the Lease is not so terminated, then Lessor shall diligently proceed to repair and restore the Leased Premises, and Lessee shall remain obligated to pay all rent as due.

b. If the Leased Premises are damaged to the extent of ten percent (10%) or more of the then full replacement cost from a cause covered by casualty insurance, and that damage or destruction may be repaired or restored within ninety (90) days after commencement of repair or restoration, then Lessor shall diligently proceed to repair and restore the Leased Premises, in which case, Lessor shall have a right to the proceeds of all insurance on the Leased Premises up to the amount necessary to effect full repairs. In such event, Lessee shall remain obligated to pay all rent as due.

If Lessor reasonably determines that the Leased Premises cannot be repaired or restored within ninety (90) days, Lessor will give immediate written notice to Lessee regarding the inability to make repairs, stating therein the period Lessor reasonably anticipates repairs will be completed. In that event, Lessee shall have the right to terminate this Lease by written notice to Lessor given within thirty (30) days after the date on which the notice regarding the inability to make repairs within (90) ninety days occurs, however, Lessor shall have a right to the proceeds of all insurance on the Leased Premises up to the amount necessary to effect full repairs. If the Lease is not so terminated, then Lessor shall diligently proceed to repair and restore the Leased Premises, and Lessee shall remain obligated to pay all rent as due.

c. If the Leased Premises are damaged to the extent of fifty percent (50%) or more of its replacement cost, Lessee may elect to terminate this Lease by written notice given within sixty (60) days after the date of damage or destruction. If the Lease is not so terminated, then Lessor shall diligently proceed to repair and restore the Leased Premises, and Lessee shall remain obligated to pay all rent as due. Lessor shall have a right to the proceeds of all insurance on the Leased Premises without payment or reimbursement therefrom to Lessee for any loss or damage Lessee may have incurred as a result of the damage to the Leased Premises.

**14. Condemnation.** If any part of the Leased Premises is condemned or otherwise taken under the power of eminent domain or conveyed in lieu of condemnation, and the condemnation or taking materially and adversely affects Lessee's occupancy of the Leased Premises to the extent that the business of Lessee becomes impossible to continue, either party shall, at its option, have the right to terminate this Lease. Lessor shall receive any and all sums awarded that may be paid in connection with any condemnation or taking, and Lessee waives any entitlement to any portion of the condemnation award made to Lessor. If the Leased Premises is temporarily condemned or taken, this Lease shall be unaffected, and Lessee shall continue to pay all rent payable under this Lease.

**15. Utilities.** See **Appendix A.**

**16. Assignment and Subletting the Leased Premises.** Any attempted "Assignment" without Lessor's consent shall constitute an Event of Default, shall be voidable at Lessor's option.

For purposes of this Lease, the term "Assignment" shall mean the transfer, exchange, conveyance, or sale of any or all of a portion of the leasehold interest held by Lessee as provided under the terms of this Lease. Lessor's consent to any one Assignment shall not constitute a waiver of the provision of this Section 16 as to any subsequent Assignment or consent to any subsequent Assignment. If consent to an Assignment is given, Lessee shall remain obligated to Lessor for the timely payment of rent and performance of the other obligations under this Lease. The acceptance of rent by Lessor from any person other than Lessee shall not affect or be construed as a waiver by Lessor of any provision of this Lease, nor shall acceptance of rent from a third person be construed as an implied consent to an Assignment. Lessor shall not be obligated to consent to an Assignment or subletting of all or any portion of the Leased Premises that may be requested by Lessee. In the event Lessor is requested by Lessee to consider a request for Assignment or subletting of the Leased Premises, Lessee shall (i) pay all reasonable costs incurred by Lessor in reviewing the terms and conditions of the assignment or subletting agreement, including reasonable attorney fees incurred by Lessor to evaluate acceptability of the assignee and to prepare documents relating thereto, including such documents as may be required by Environmental Undertakings, (ii) comply with Environmental Undertakings, as that term is defined in Section 21.b., below, (iii) guarantee the performance of the assignee or sublessee and (iv) assignee or sublessee shall execute an acknowledgment assuming and being legally bound by the terms and conditions of this Lease. The Assignment or subletting of the Leased Premises, or any portion thereof, shall comply with and include the notices, acknowledgments, and agreements by which the assignee or sublessee assumes the obligation to be bound as set out in Section 21.b. – f., below.

**17. Indemnity; Waiver and Release.**

a. Lessee agrees to indemnify, defend, and hold Lessor and Lessor's employees, agents, and contractors harmless from all liability, penalties, losses, damages, costs, expenses, causes of action, claims, or judgments arising from or directly or indirectly related to any death, bodily injury, personal injury, or property damage that may arise from or pertain to: (i) any cause, claim, demand, action, or occurrence in or about the Leased Premises during the Lease Term and any extension of the Lease Term; (ii) the acts, omissions, negligence, or willful misconduct of Lessee or Lessee's agent, employee, subcontractor, contractor, invitee, affiliate, or third person, wherever it occurs; or (iii) an Event of Default, including, but not limited to, a violation of an Environmental Law, Prior Undertakings, and Environmental Undertakings. The provisions of this Section 17, shall survive the expiration or sooner termination of this Lease.

b. Lessee, as a material consideration for this Lease, waives and releases all claims against Lessor, its employees, agents, representatives and affiliates with respect to all matters for which Lessor has disclaimed liability pursuant to this Lease. Lessee agrees that Lessor, its agents, employees, representatives, and affiliates will not be liable for any loss, injury, death, or damage (including consequential damages) to persons, property, or Lessee's business occasioned by theft, force majeure, fire, explosion, injunction, court order, water, leak, construction, alternation, condition, defect, fault, or repair of the Leased Premises or the Lessor's Property, or from any act, omission, or negligence of any other third person, including, but not limited to, occupants, tenants, and subtenants of the Lessor's Property.

**18. Default.** Each of the following shall constitute an Event of Default under this Lease (each, "Event of Default"):

a. Lessee's failure to make any payment within three (3) days after receipt of Lessor's written notice of non-payment of rent and failure to pay Base Rent, late payment fee, and such other payments then due and owing to Lessor.



b. The failure of Lessee to perform any of the covenants, conditions, or provisions of this Lease to be performed by Lessee, other than those requiring any payment to Lessor, where this failure continues for a period of ten (10) days after Lessee's receipt of written notice describing the Event of Default and the opportunity for Lessee to cure the default within that period. However, if the nature of Lessee's failure reasonably requires more than thirty (30) days for cure, Lessee shall not be deemed to be in default if Lessee commences to cure the default within such thirty (30) day period and thereafter diligently continues the cure to completion.

c. Any of the following occurrences shall constitute an Event of Default:

(i) The making by Lessee of any general arrangements or assignments for the benefit of Lessee's creditors;

(ii) Lessee becoming a "debtor" as defined in 11 U.S.C.A. § 101 or any successor statute, unless, in the case of a petition filed against Lessee, it is dismissed within sixty (60) days after filing;

(iii) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets at the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days of this appointment; or

(iv) The attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the Leased Premises or of Lessee's interest in this Lease, where this seizure is not discharged within thirty (30) days after the seizure.

d. The vacation or abandonment of the Leased Premises by Lessee.

e. Lessee's Assignment in violation of Section 16 of this Lease.

19. **Remedies on Default by Lessee.** Upon the occurrence of an Event of Default, Lessor, in addition to any other rights or remedies available to Lessor at law or in equity, shall have the right to:

a. Terminate this Lease and all rights of Lessee by giving Lessee written notice that this Lease is terminated, in which case Lessor may recover from Lessee the sum of:

(i) all unpaid Base Rent, including additional rent, late payment charges, and interest that had been earned at the time of termination;

(ii) distraint for any and all rental payments due and accrued;

(iii) re-entry of the premises by Lessor, the changing of locks on the door, taking possession of the premises, and removal and storage of all personal property, including Fixtures, owned or reasonably believed to be owned by Lessee, at Lessee's cost, and without responsibility or liability for any loss or damage that may result to such property, provided Lessee is given not less than five (5) days notice of the date on which such removal and storage will commence;

(iv) any other amount necessary to compensate Lessor for all the

costs, losses, and damages proximately caused by Lessee's failure to perform Lessee's obligations or that, in the ordinary course of things, would be likely to result;

(v) the right to collect rents or charges that would otherwise be paid to Lessee by occupants of the premises, upon giving written notice to Lessee of Lessor's action to collect such charges and rent from the occupants;

(vi) the right to declare all rents and other payments due and payable to Lessor and to enforce the payment thereof and the right to perfect all rights and interest to which Lessor shall be entitled; and

(vii) the right to recover damages from Lessee including (a) the cost of performing Lessee's obligations under the Lease, (b) the right to judgment against Lessee for all amounts due and owing to Lessor under the Lease, less such rent and payments received from Lessee and third persons, (c) actual attorney fees incurred by Lessor in exercising Lessor's rights under the Lease in the Event of Default, which right is intended to supersede the customary award of attorney fees under Civil Rule 82 of the Alaska Rules of Civil Procedure which provides only a partial award of attorney fees to a prevailing party, and (d) for an award of interest at the rate of twelve percent (12%) per annum on any unpaid rents and other charges to which Lessor is entitled to collect under the terms of this Lease in the Event of Default.

b. Continue this Lease, and from time to time, without terminating this Lease, either (i) recover, through the filing of civil actions against Lessee or occupant of the Leased Premises, all rent and other amounts payable as they become due or (ii) relet the Leased Premises or any part of the Leased Premises on behalf of Lessee for any term, at any rent, and pursuant to any other provisions as Lessor deems advisable, all with the right, at any rent, and pursuant to any other provisions as Lessor deems advisable, all with the right, at Lessee's cost, to make alterations and repairs to the Leased Premises. Should Lessor elect to relet the Leased Premises under this provision, Lessor shall be entitled to collect from Lessee, either directly or through the filing of a civil action, the deficiency of unpaid rent and other amounts payable to Lessor under this Lease that are due and owing after first deduction from such amount all rents and charges collected after the premises are relet. Upon the occurrence of an Event of Default, Lessor shall also have the right, with or without terminating this Lease, to re-enter the Leased Premises, change the locks to the door, and at Lessee's expense and costs, remove all persons and property from the Leased Premises. Lessor may cause property so removed from the Leased Premises to be stored in a public warehouse or elsewhere at the expense and for the account of Lessee. In such event, Lessor shall not be responsible for, or liable to, Lessee for any loss or damage caused or resulting to Lessee's property removed from the Leased Premises and stored, whether such loss or damage results directly or indirectly from Lessor's acts, omission, or negligence.

c. None of the following remedial actions, singly or in combination, shall be construed as an election by Lessor to terminate this Lease unless Lessor has in fact given Lessee written notice that this Lease is terminated or unless a court of competent jurisdiction decrees termination of this Lease:

(i) any act by Lessor to maintain or preserve the Leased Premises;

(ii) any efforts by Lessor to relet the Leased Premises;

(iii) any re-entry, repossession, or reletting of the Leased Premises; or

(iv) any re-entry repossession, or reletting of the Leased Premises by Lessor pursuant to this Section 19. If Lessor takes any of the aforementioned remedial actions without terminating this Lease, Lessor may nevertheless at any time after taking remedial action, elect to terminate this Lease by written notice to Lessee.

d. If Lessor relets the Leased Premises, Lessor shall apply the rents and other revenue in the following order: (i) to the payment of any indebtedness, other than Base Rent due from Lessee to Lessor; (ii) to the payment of any cost of reletting, including, without limitation, finder's fees and leasing commissions; (iii) to the payment of the cost of any necessary maintenance and repairs to the Leased Premises; and (iv) to the payment of Base Rent and other amounts due and unpaid. Lessor shall hold and apply the excess, if any, to payment of future amounts payable as they become due. Should revenue from reletting during any month, after application pursuant to the foregoing provisions, be less than the sum of (i) Lessor's expenditures for the Leased Premises during that month, and (ii) the amounts due from Lessee during that month, Lessee shall pay the deficiency to Lessor immediately upon demand.

e. After the occurrence of an Event of Default, Lessor, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Lessee, provided that Lessor, by prior notice, shall first allow Lessee a reasonable opportunity to cure, as set forth in Section 18 above, except in cases of emergency, where Lessor may proceed without prior notice to Lessee. Lessee shall, within five (5) days of demand, reimburse Lessor for all costs, including costs of settlements, defense, court costs, and actual attorney fees that Lessor may incur in the course of any cure.

f. No security or guaranty for the performance of Lessee's obligations, which Lessor may now or hereafter hold, shall in any way constitute a bar or defense to any action initiated by Lessor for unlawful detainer or for the recovery of the Leased Premises, for enforcement of any obligation of Lessee, or for the recovery of damages caused by a breach of this Lease by Lessee or by an Event of Default.

g. Except insofar as this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to Lessor is intended to be exclusive of any other right or remedy given now or later or existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by that party of any violation or nonperformance by the other party of any obligations, leases, or covenants shall be deemed a waiver of any subsequent violation or nonperformance of the same or any other covenant, lease, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of rights or remedies with respect to that violation or nonperformance.

20. **Default by Lessor.** Lessor shall not be in default unless Lessor fails to perform obligations specifically accepted by Lessor under the provisions of this Lease within thirty (30) days after receipt of written notice of default that states in detail the provision(s) of this Lease that Lessee asserts has been breached by the actions or inactions of Lessor. Lessor shall have thirty (30) days after receipt of Lessee's written notice of default to cure or otherwise remedy the assertion of default brought by Lessee. In the event Lessor's effort to cure the default requires more than thirty (30) days for performance, Lessor shall not be in default if Lessor promptly commences performance within the thirty (30) day period and afterwards

diligently cures the default asserted by Lessee.

**21. Subordination; Attornment; Environmental Undertakings.**

a. Lessee acknowledges and agrees that this Lease, and all rights hereunder, shall be subject and subordinate to all prior exceptions, reservations, leases, licenses, easements, restrictions, deeds of trusts, mortgages, licenses, permits, agreements, and rights-of-way of record (collectively, "Prior Undertakings"), which now exist in, on, to, over, or affecting the Leased Premises, which are more particularly described in Section 43 below, and which Lessee, as a material consideration of this Lease agrees not to violate. Upon written request of Lessor, or any holder of a Prior Undertaking, Lessee will, in writing, subordinate its rights hereunder to the lien of a Prior Undertaking, including any mortgage or deed of trust which encumbers Lessor's Property or any improvement hereafter placed upon Lessor's Property, and to all advances made or hereafter to be made upon the security thereof, provided that the mortgagee or beneficiary, as the case may be, shall agree to recognize this Lease and to not disturb Lessee's tenancy under this Lease in the event of foreclosure, so long as Lessee is not in default of this Lease. In the event any proceedings are brought for foreclosure of a Prior Undertaking, or in the event of the exercise of power of sale under a Prior Undertaking, Lessee shall attorn to the purchaser, upon any such foreclosure, or sale, and recognize such purchaser as Lessor under this Lease. Lessee agrees that any such holder of a Prior Undertaking shall not be liable for any default of Lessor under the Lease occurring before the foreclosure sale. Lessee shall, at any time and from time to time, upon not more than ten (10) days written notice from Lessor, execute, acknowledge, and deliver to Lessor a statement in writing (i) certifying that this Lease represents the entire agreement between Lessor and Lessee, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) certifying the commencement and termination dates of the Lease Term; (iii) certifying that there has been no Assignment or other transfer by Lessee of this Lease, or any interest therein; and (iv) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder and that Lessee has no right of offset, counterclaim, or deduction against rent, or specifying such defaults, if any, are claimed together with the amount of any offset, counterclaim, or deduction alleged by Lessee. Any such statement may be relied upon by any prospective purchaser or lender upon the security of Lessor's Property. Lessee's failure to deliver such statement within such time shall be conclusive and binding upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor; (ii) that there are no uncured defaults in Lessor's performance and that Lessee has no right of offset, counterclaim, or deduction against rent; and (3) that no more than one month's rent has been paid in advance.

b. Lessee further acknowledges that this Lease is subordinate to, and shall at all times comply with, certain agreements, decisions, and declarations of records that concern or relate to the contamination and cleanup of Hazardous Substances from properties previously owned and occupied by the Ketchikan Pulp Company within the area known as "Ward Cove," which include that Environmental Protection Easement and Declaration of Restrictive Covenants identified in Section 21.c., below, and the CERCLA Remedial Design/Remedial Action Consent Decree entered November 20, 2000 in the United States District Court for the District of Alaska, Case No. A00-225 CV JKS, the Quitclaim Deed dated July 11, 2003, recorded as Ketchikan Recording District Document No. 2003-004183-0 the Agreement dated July 14, 2003 by, between, and among the Ketchikan Gateway Borough, Gateway Forest Products, Inc. and Ketchikan Pulp Company, the Environmental Easement and Declaration of Covenants dated July 14, 2003, the Acknowledgement that Interests Conveyed are Subject to



Environmental Easement and Declaration of Covenants dated August 2, 2003, and the Environmental Easement and Declaration of Covenants dated July 14, 2004, which are herein collectively referred to as "Environmental Undertakings." Lessee acknowledges that the aforementioned Environmental Undertakings were made available to Lessee and reviewed in their entirety by or on behalf of Lessee at Lessor's office located at P.O. Box 772, Ward Cove, Alaska 99928, at least seven (7) days prior to the execution of this Lease by Lessee.

c. Without limiting the foregoing representations relating to the acknowledgement set forth in Section 21.b., above, Lessor further gives the following NOTICE relating to the Environmental Undertakings as follows:

**THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION AGENCY (EPA) EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED OCTOBER 28TH, 1999, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON OCTOBER 28TH, 1999, BOOK 0305, PAGE 772 THAT IS IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF ALASKA.**

d. Lessee acknowledges that Lessor did not, prior to the execution of this Lease, extend any offer to explain the meaning, purpose, or impact of the documents referred to as the Environmental Undertakings that are described in Section 21.b., above. Any research or investigation into these documents shall be done at Lessee's sole effort and expense. Any assistance provided by Lessor shall be assumed to be for Lessor's exclusive benefit and convenience.

e. Lessee agrees to reimburse Lessor for any government oversight costs relating to the Environmental Undertakings that are charged to Lessor by governmental agencies caused or resulting from Lessee's actions, proposed actions, or investigation of possible actions in connection with Lessee's occupancy or use of the Leased Premises. Such agreement by Lessee to reimburse for government oversight costs will include, without limitation, any and all government oversight costs for which Lessor is liable under the Environmental Undertakings, including Section 9 of the Environmental Easement and Declaration of Covenants Agreement Dated July 14, 2003, and which result from Lessee's actions, proposed actions or investigation of possible actions in connection with Lessee's occupancy or use of the Leased Premises. Said agreement to reimburse Lessor survives termination of the lease.

f. Lessee acknowledges and agrees that by executing this Lease, Lessee agrees to be bound by the Agreement dated July 14, 2003, and in further consideration for, and as a condition to, acceptance of this Lease, Lessee hereby agrees that the real property interests it hereby is acquiring from Lessor are subject to the same limitations and conditions as the ones applicable to Lessor which are set forth in that certain Agreement by and between the Ketchikan Gateway Borough, Gateway Forest Products, Inc., and Ketchikan Pulp Company, dated July 14, 2003, a copy of which was provided to Lessee prior to the execution of this Lease, and is incorporated by reference as though fully set forth herein. In particular, all releases, waivers, and limitations on claims against Ketchikan Pulp Company, its agents, servants, employees, officers, directors, partners, principals, shareholders, or any of their insurance companies and contractors, including, but not limited to, environmental claims, whether arising under CERCLA, 42 U.S.C. § 9601 et seq.; RCRA, 42 U.S.C. § 6901 et seq.; AS 46.03.822; or otherwise, as they now exist or hereafter may be amended, to which Lessor concurred, are hereby agreed to be applicable and in full force and effect.

Further, Lessee agrees that Ketchikan Pulp Company, its shareholders, successors, heirs, and assigns are third party beneficiaries of the above referenced July 14, 2003 Agreement, of Lessee's agreement set forth in the preceding paragraph, and any future agreements concerning the Leased Premises.

LESSEE HEREBY AGREES THAT LANGUAGE IDENTICAL TO THE PREVIOUS TWO PARAGRAPHS OF SECTION 21.F., SHALL BE INCORPORATED IN ANY FUTURE LEASE, SALE, OR CONVEYANCE OF ANY INTEREST (INCLUDING DEEDS OF TRUST) IN ALL OR PART OF THE LEASED PREMISES.

22. **Transfer of Leased Premises.** If Lessor transfers the Leased Premises, Lessor shall be relieved of all liability for the performance of Lessor's obligations that accrue after the date of the transfer. However, any prepaid rent or Security Deposit held by Lessor at the time of the transfer shall be delivered to the transferee.

23. **Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by such holding.

24. **Time of the Essence.** Time is of the essence under this Lease.

25. **Additional Rent.** All monetary obligations of Lessee to Lessor under the Lease, including, but not limited to, Base Rent shall be deemed additional rent.

26. **Integration.** This Lease constitutes the entire Lease between Lessor and Lessee, and there are no leases, agreements, or representations between the parties except as expressed in this Lease. Lessee acknowledges that neither Lessor nor Lessor's representatives have made any legally binding representation, assurance, or warranty upon which Lessee has relied upon as to any matter except those expressly set forth in this Lease. There are no oral Leases between Lessor and Lessee affecting this Lease, and this Lease supersedes and cancels all previous negotiation, arrangements, brochures, website statements, or representations concerning Lessor's Property, leases, and understandings, if any, between Lessor and Lessee with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is fully executed by both Lessor and Lessee. No subsequent change or addition to this Lease shall be legally binding on the parties until the modification is fully executed in writing and signed by Lessor and Lessee.

27. **Notice.** Except as otherwise expressly provided by Law, all notices or other communications required or permitted by this Lease or by Law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed given when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to:

Lessee at:

NEW CLIENT LLC  
PO Box XXX  
Ward Cove, AK 99928  
907-247-XXXX  
ATTN: Somebody

*with a copy to:*

and to Lessor at: Ward Cove Industries LLC  
Post Office Box 772  
Ward Cove, Alaska 99901  
ATTN: David Spokely

*with a copy to:* H. Clay Keene, Esq.  
Keene & Currall, P.C.  
540 Water Street, Suite 302  
Ketchikan, Alaska 99901

Either party, Lessee or Lessor, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

28. **Waiver.** No delay or omission of the right to exercise any power by either party shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term, or condition of this Sublease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either party to or any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. **Memorandum of Lease.** Neither this Lease nor a memorandum of this Lease shall be recorded as a public record in the Ketchikan Recording District, or elsewhere, at anytime following the execution of the Lease unless approved and written consent are first given and signed by Lessor.

30. **Return of Leased Premises.** Upon the expiration or sooner termination of this Lease, Lessee shall vacate and surrender the Leased Premises to Lessor in the same condition as existed at the Commencement Date, except for reasonable wear and tear. If the Leased Premises are not so surrendered at the termination of this Lease, Lessee shall be liable to Lessor for all costs incurred by Lessor in returning the Leased Premises to the required condition. Lessee shall indemnify Lessor against loss or liability resulting from delay by Lessee in surrendering the Leased Premises, including, without limitation, any claims made by any succeeding Lessee or losses to Lessor due to lost opportunities to Lease to succeeding Lessees.

31. **Holdover.** At the end of the Lease Term, or any extension, if Lessee holds over for any reason, it is hereby agreed that in the absence of a written Lease to the contrary, Lessee's possession of the Leased Premises shall be from month-to-month only and not a renewal of this Lease, or an extension for any additional term. In that case, Lessee shall pay Base Rent in an amount equal to the Base Rent times some factor payable immediately prior to the end of the Term or any extension, and the month-to-month tenancy shall be subject to every other term, covenant, and condition contained in this Lease that is consistent with and not contrary to a month-to-month tenancy. Lessor shall be entitled to terminate the month-to-month tenancy by first giving Lessee not less than ten (10) days notice prior to the date on which the tenancy will terminate.

32. **Cumulative Remedies.** No remedy of election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at Law or in equity.

33. **Covenants and Conditions.** Each term of this Lease performable by Lessee shall be deemed both a covenant and a condition.

34. **Binding Effect.** Subject to Section 16 of this Lease, this Lease shall be binding on and inure to the benefit of the parties and their successors and assigns.

35. **Attorney Fees.** If either party brings an action to enforce the Lease, the prevailing party shall be entitled to actual reasonable attorney's fees as determined by the court. For purposes of this Section 35, the parties agree that a prevailing party to a civil action concerning the Lease shall be awarded based on the actual reasonable attorney fees incurred by that party, and not under Alaska Rules of Civil Procedure, Civil Rule 82, or its successor.

36. **Lessor Right of Entry.** Lessor and its agents may enter the Leased Premises at any reasonable time after giving at least twenty-four (24) hours prior written notice to Lessee, except in the case of emergency, for the purpose of:

- (i) inspecting the Leased Premises;
- (ii) posting notices of non-responsibility;
- (iii) supplying any service to be provided by Lessor to Lessee;
- (iv) showing the Leased Premises to prospective purchasers, mortgagees, or Lessees;
- (v) making necessary alterations, additions, or repairs;
- (vi) performing Lessee's obligations when Lessee has failed to do so after written notice from Lessor and the expiration of the applicable cure period, if any; and
- (vii) responding to an emergency.

Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this Section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of Lessee from the Leased Premises.

37. **Merger.** The voluntary or other surrender of this Lease by Lessee, a mutual cancellation of this Lease, or a termination by Lessor shall not cause a merger, and shall, at the option of Lessor, terminate all existing subtenancies or may, at the option of Lessor, cause an Assignment to Lessor of all of these subtenancies.

38. **Security of Leasehold Interest.** Lessee acknowledges that Lessor shall have no obligation to provide any guard service or other security measures to the Leased Premises and Lessee assumes all responsibility for the protection of Lessee, Lessee's agents, invitees, customers, or third parties, and the property of Lessee and of Lessee's agents, invitees, and customers from acts of third parties in, on, or about the Leased Premises. Nothing in this Lease shall prevent Lessor, at Lessor's sole option, from providing security protection for the Leased Premises.

39. **Easements, Dedications.** Lessor reserves the right to grant easements, reserve rights, make dedications, and alter the existing plat of Lessor's Property, that Lessor



deems necessary or desirable, and to record official plat maps, reservations, covenants, dedications, and restrictions, so long as such do not unreasonably interfere with Lessee's use of the Leased Premises. Lessee agrees to sign any of these documents within five (5) days of the receipt of a request by Lessor.

40. **Authority.** The individual executing this Lease on behalf of Lessee represents and warrants that the individual is duly authorized to execute and deliver this Lease or, if a corporation, partnership or LLC, is duly authorized to execute and deliver this Lease on behalf of the corporation, partnership or LLC in accordance with its by-laws, partnership agreement, or operating agreement, and that this Lease is binding upon the corporation, partnership or LLC, as applicable, in accordance with its terms. Each of the persons executing this Lease on behalf of a corporation, partnership or LLC covenants and warrants that the party for whom the person is executing this Lease is duly authorized and existing, that it is qualified to do business in Alaska, and that it has full right and authority to enter into this Lease.

41. **Governing Law and Forum.** This Lease shall be governed by the Law of the State of Alaska, and any litigation concerning this Lease between the parties shall be initiated in the Alaska Superior Court, First Judicial District, at Ketchikan, to the jurisdiction and venue of which the parties hereby irrevocably consent.

42. **Offer.** Preparation of this Lease by Lessor or Lessor's agent and submission to Lessee shall not be deemed an offer to Lease. This Lease shall become binding on Lessor and Lessee only when fully executed by Lessor and Lessee.

43. **Definitions.** As used in this Lease the following terms shall have the following meanings:

"**Alterations**" is defined in Section 10.a. hereof.

"**Assignment**" is defined in Section 16 hereof.

"**Base Rent**" is defined in Section 4 hereof.

"**Chargeable Interest**" is defined in Section 4 hereof.

"**Commencement Date**" Is the date on which the terms of the Lease are implemented and further defined in Section 3.a., hereof.

"**Environmental Laws**" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined below), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Leased Premises), occupational or environmental conditions on, under, or about the Leased Premises, as now or may at any later time be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 U.S.C.A. § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 U.S.C.A §§ 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 U.S.C.A. § 2601 et seq.]; the Federal Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A §§ 136 et seq.]; the Superfund

Amendments and Reauthorization Act [42 U.S.C.A S §9601 et seq.]; the Clean Air Act [42 U.S.C.A § S 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300 et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. § 655 and § 6571]; together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Leased Premises, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**“Environmental Undertakings”** means and refers to the Environmental Protection Easement and Declaration of Restrictive Covenants identified in Section 21.c., below, and the CERCLA Remedial Design/Remedial Action Consent Decree entered November 20, 2000 in the United States District Court for the District of Alaska, Case No. A00-225 CV JKS, referred to hereinafter as the “Ward Cove Consent Decree”, the Quitclaim Deed dated July 11, 2003, recorded as Ketchikan Recording District (hereinafter “KRD”) Document No. 2003-004183-0, the Agreement dated July 14, 2003 by, between, and among Gateway Forest Products, Inc. and Ketchikan Pulp Company, the Environmental Easement and Declaration of Covenants dated July 14, 2003, recorded as KRD Document No. 2003-004128-0, the Acknowledgement that Interests Conveyed are Subject to Environmental Easement and Declaration of Covenants dated August 2, 2003, and the Environmental Easement and Declaration of Covenants dated July 14, 2004 recorded as KRD Document No. 2004-002967-0.

**“Event of Default”** is defined in Section 18 hereof.

**“Hazardous Substances”** includes, without limitation: those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in CERCLA, RCRA, TSCA, or under any other Environmental Law; those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. § 172.101, or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 C.F.R. Part 302]; other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and any material, waste, or substance that is (i) a petroleum or refined petroleum product; (ii) asbestos; (iii) polychlorinated biphenyl; (iv) designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317; (v) a flammable explosive; or (vi) a radioactive material.

**“Lessor”** is defined in the preamble hereto.

**“Law”** shall mean any constitution, statute, ordinance, regulation, rule, judicial decision, administrative order, covenant, restriction, or other requirement of any governmental entity, including, without limitation, all Environmental Laws.

**“Lease”** is defined in the preamble hereto.

**“Leased Premises”** is defined in **Appendix A** hereof.

**“Lease Term”** is defined in Section 3 hereof.

**"Lessee"** is defined in the preamble hereto.

**"Prior Undertakings"** constitutes all prior exceptions, reservations, leases, licenses, easements, restrictions, agreements, rights-of-way, covenants, encumbrances which are of public record, having been recorded in the Ketchikan Recording District.

**"Property Taxes"** is defined in Section 5 hereof.

**"Security Deposit"** is defined in Section 6.

**"Trade Fixtures"** is defined in Section 11.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first set forth above.

**LESSOR**  
**Ward Cove Industries LLC**

---

David Spokely, Member

**LESSEE**  
**NEW CLIENT LLC**

---

Somebody, Member

## Appendix A

### Leased Premises.

Leased premises include a portion of the Leased Property commonly known as that portion of USS 1056 formerly known as the Ketchikan Pulp Mill and more specifically some portion of the mill and possibly shown on the attached map.

### 2. Use of Leased Premises; Common Area.

a. The Leased Premises shall be used for some kind of legal business; and other compatible uses.

b. The Common Area includes all platted, designated and/or improved roads and parking lots immediately adjacent to the Leased Premises or providing direct access to same, not otherwise secured from public use generally or specifically set aside for other uses but Lessor. Common areas may be changed from time to time at the discretion of WCI as Property Manager.

### 3. Lease Term; Termination; Renewal.

b. Either party shall have the option to terminate this Lease under specified circumstances that we describe in this appendix. In such event, the party wishing to terminate the Lease shall give the other party not less than some (xx) days written notice of the election to terminate this Lease. The termination of the Lease shall become effective on the date set forth in the written notice of termination.

c. This Lease shall terminate at the end of the current term unless extended in writing by Lessor and Lessee.

### 4. Base Rent; Late Payment; Escalation of Rent.

c. Base rent shall be adjusted annually as mutually agreed by the parties.

### 6. Security Deposit. As defined in Appendix A.

Lessee shall NOT pay a "Security Deposit".

### 12. Insurance; Waiver of Subrogation.

a. Lessee shall, at Lessee's expense, obtain and keep in force during the Lease Term:

(i) Commercial General Liability (CGL) policy of insurance, including property damage, bodily injury, premises operations including explosion, collapse, and underground, products and completed operations, broad form property damage and personal injury coverages, with combined single limit coverage of at least One Million Dollars



**(\$1,000,000.00) per occurrence**, and a general aggregate combined single limit of bodily injury and property damage of at least **Two Million Dollars (\$2,000,000)**; that policy shall include contractual liability, insuring Lessee's performance of indemnification obligations contained in this Lease. The CGL policy shall be written as an "occurrence" policy, as distinguished from a "claims made" policy;

(ii) a policy of fire and "all risk" property damage insurance from physical damage to Lessee's equipment, personal property, and Trade Fixtures located on the Leased Premises for full replacement cost;

(iii) Commercial Automobile Liability Insurance, including all owned, hired, and non-owned automobiles with single limit coverage of not less than **Five Hundred Thousand Dollars (\$500,000.00)** per accident and **One Million Dollars (\$1,000,000.00)** aggregate; and,

(iv) Worker's Compensation Insurance as required by the State of Alaska with employee liability limits of One Million Dollars (\$1,000,000.00) – each accident/One Million Dollars (\$1,000,000.00) disease – each employee/One Million Dollars (\$1,000,000.00) disease policy limits or as otherwise required by statute.

b. Where applicable, each policy of insurance required to be carried out by Lessee, pursuant to Section 12.a., above.

(i) shall name Lessor and any other parties in interest that Lessor reasonably designates as additional named insureds, including the Ketchikan Pulp Company;

(ii) shall be primary insurance that provides that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage of Lessor;

(iii) shall be in a form satisfactory to Lessor;

(iv) shall be carried with companies reasonably acceptable to Lessor;

(v) shall provide that the policy shall not be subject to cancellation, lapse, or change, except after at least thirty (30) days prior written notice to Lessor; and

(vi) shall contain a severability clause. If Lessee has in full force a blanket policy of liability insurance with the same coverage for the Leased Premises as described in Section 12.a., above, that blanket insurance shall satisfy the requirements of Section 12.a., provided that the blanket policy specifically states the address of the Leased Premises as being covered. A copy of each policy evidencing the insurance required to be carried by Lessee pursuant to Section 12.a., or a certificate of the insurer, certifying that the policy has been issued, which provides the coverage required by Section 12.a., and which contains the specified provisions, shall be delivered to Lessor prior to the time Lessee takes possession of the Leased Premises and upon renewal of those policies, not less than thirty (30) days prior to the expiration of the term of the coverage.

c. Lessor may maintain during the Lease Term a policy of standard fire insurance including coverage using the special Causes of Loss, or similar form and including Boiler and Machinery insurance, and Business Interruption coverage. Lessor shall be entitled to

all proceeds paid to Lessor under the terms of said insurance.

d. Lessor and Lessee hereby waive any rights either may have against the other, on account of any loss or damage incurred by either party or his or her respective property, arising from any risk covered by fire and extended coverage insurance required to be maintained under the terms of this Lease, and which compensates the insured party, and the parties each, on behalf of his or her respective insurance company, waive any right of subrogation that it may have against a party. The parties' respective insurance company(s) shall give written approval to the foregoing waiver of subrogation prior to the execution of this Lease.

e. Lessor shall be entitled to any higher limits of coverage provided by any of Lessee's policies required in this Section 12.

15. **Utilities.** Lessee shall promptly pay, as they become due, all charges for utilities or services furnished directly to or used by Lessee on or about the Leased Premises.

Facility Aerial





## REMOTE MADE EASY



Power Systems and Supplies of Alaska LLC † Ward Cove Industries LLC † Remote Made Easy LLC † Full Cycle LLC  
PO Box 772 Ward Cove Alaska 99928  
(907) 247-7772 (907) 220-6055 (Fax)

June 2, 2015

Delivery via Certified Mail

State Of Alaska – Dept. of Natural Resources  
Division of Mining, Land and Water Realty Services  
550 W. 7<sup>th</sup> Ave  
Suite 1050A  
Anchorage, AK 99501-3579

RE: Acknowledgement of requirements for Ward Cove Industries LLC (WCI) to supply a copy of the KPC Consent decree documents and each of the accompanied appendixes to property tenants.

Dear DNR Realty Division:

Enclosed you will find a copy of the acknowledgement letter, signed by \_\_\_\_\_, to be bound by the July 14, 2003 Agreement referenced therein, and the Notice provision that the agreement was subject to the Environmental Protection Easement and declaration of Restrictive Covenants dated October 28, 1999.

This is in regard to the Lease entered into between WCI and \_\_\_\_\_ effective \_\_\_\_\_, 2015 for a portion of the Ward Cove property affected by the referenced documents, to wit:

\_\_\_\_\_  
\_\_\_\_\_  
Said Lease also specifies the requirements to be bound by the July 14, 2003 Agreement referenced therein, and the Notice provision that the agreement was subject to the Environmental Protection Easement and declaration of Restrictive Covenants dated October 28, 1999.

We are sending a copy of this letter and the enclosed documents to recipients listed below, as required in the October 1999 Environmental Protection Easement and Declaration of Restrictive Covenants and the November 2000 Consent Decree.

Should you require any further documentation, please do not hesitate to contact us.

Sincerely,

Glen Thompson  
Comptroller

Enclosures:

Cover Letter  
Acknowledgement Letter

CC: John Peterson, Ziegler Law Firm  
Phillip Benning, Ketchikan Pulp Company  
Bill Janes, DEC Contaminated Sites Specialist  
Dept. of Natural Resources, Realty Division  
Cami Grandinetti, EPA Coordinator – UOP  
Karen Keeley, DEC Contaminated Sites Specialist



## Certified letter listing

John Peterson  
Zeigler Law Firm  
307 Bawden St.  
Ketchikan, AK 99901

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Phil Benning  
Ketchikan Pulp Company  
PO Box 6600  
Ketchikan, AK 99901

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Cami Grandinetti, Project Coordinator  
United States EPA  
Region 10  
1200 Sixth Ave.  
Suite 900, ECL -113  
Seattle, WA 98101-3140

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Alaska Department of Environmental Conservation  
Attn: Bill Janes  
PO Box 118003  
Juneau, AK 99811-1800

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Karen Keeley, Project Coordinator  
United States EPA  
Region 10  
1200 Sixth Ave.  
Suite 900, ECL -111  
Seattle, WA 98101-3140

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State of Alaska – Dept of Natural Resources  
Division of Mining, Land and Water Realty Services  
550 W. 7<sup>th</sup> Ave  
Suite 1050A  
Anchorage, AK 99501-3579

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## **Attachment 25**

Uplands Operable Unit Record of Decision, Table 1 (June 7, 2000)

**Table 1. Summary of chemical concentrations, risk estimates, early actions, and residual concentrations and risks**

Area (scenario/pathways evaluated)	Chemicals Above Screening Levels	Baseline		Excess Risk Estimate	Action or Note	Residual		
		Concentration Range	Screening Level <sup>a</sup>			Residual Concentration Range	Residual Risk	
<b>Pulp Mill Area</b>								
<b>Process Subarea</b>								
Access Road and Ditch (occupational)	Arsenic <sup>b</sup>	56–182 mg/kg	7.6 mg/kg	4x10 <sup>-5</sup>	Ditch sediment removed in 1998 as part of early action, some fill added to road with regrading.  No Cleanup Level	5.5–157 mg/kg	4x10 <sup>-5</sup>	
	PCDD/F	5.5–162 ng/kg (TEC)	38 ng/kg (TEC)	5x10 <sup>-6</sup>		8.2–30.2 ng/kg (TEC)	9x10 <sup>-7</sup>	
Wood Room/Log Deck Area (occupational)	Arsenic <sup>b</sup>	84 mg/kg	7.6 mg/kg	2x10 <sup>-5</sup>		84 mg/kg	2x10 <sup>-5</sup>	
Wood Room/Log Deck Seep Water (Migration to Ward Cove)	Manganese	0.267 mg/L (seep water)	0.0285 mg/L background <sup>c</sup>		Hog fuel removed in spring 1998 <sup>c</sup>	- -	- -	
Soils near Evaporator No. 3 (occupational)	Arsenic <sup>b</sup>	65 mg/kg	7.6 mg/kg	1x10 <sup>-5</sup>		65 mg/kg	1x10 <sup>-5</sup>	
<b>Mill Support Subarea</b>								
Aeration Basin Soils (occupational)	Arsenic <sup>b</sup>	1.3–90 mg/kg	7.6 mg/kg	2x10 <sup>-5</sup>		1.3–90 mg/kg	2x10 <sup>-5</sup>	
Grit Chamber Soils (occupational)	Arsenic <sup>b</sup>	10–100 mg/kg	7.6 mg/kg	2x10 <sup>-5</sup>		10–100 mg/kg	2x10 <sup>-5</sup>	
Paint Shop/Former Maintenance Shop (occupational)		0.94–670 mg/kg	7.6 mg/kg	2x10 <sup>-4</sup>	Soil removed in 1999 as part of early action. Cleanup Levels:	1.53–33.9 mg/kg	8x10 <sup>-6</sup>	
	Lead	<10–4,270 mg/kg	1,000 mg/kg			1,000 mg/kg	<10–274 mg/kg	- -
	Benzo[a]pyrene (cPAH RPC)	<0.013–4.42 mg/kg	0.90 mg/kg	5x10 <sup>-6</sup>		0.90 mg/kg	0.0143–0.0444 mg/kg	1x10 <sup>-7</sup>
	PCBs	<0.050–499 mg/kg	10 mg/kg	1x10 <sup>-4</sup>		10 mg/kg	<0.067–8.46 mg/kg	8x10 <sup>-6d</sup>
Former Bottom Ash Storage Pile (occupational)	Arsenic <sup>b</sup>	4.9 and 44 mg/kg <sup>e</sup>	7.6 mg/kg	5x10 <sup>-6</sup>		4.9 and 44 mg/kg <sup>e</sup>	5x10 <sup>-6</sup>	
Caustic Tanks and Pipeline (occupational)	None					None	- -	
Equipment Storage Area (occupational)	None					None	- -	
Filter Plant Soils (occupational)	None					None	- -	
<b>Near-shore Fill Subarea</b>								
(occupational)	Arsenic <sup>b</sup>	0.5–132 mg/kg	7.6 mg/kg	3x10 <sup>-5</sup>		0.5–132 mg/kg	3x10 <sup>-5</sup>	
	PCBs	0.49 μg/L (Undissolved) <sup>f</sup>	0.00017 μg/L <sup>f</sup>			0.49 μg/L (undissolved) <sup>f</sup>	- -	
<b>Wood Waste and Sludge Disposal Area</b>								
(occupational)	Arsenic <sup>b</sup>	1–22 mg/kg	7.6 mg/kg	5x10 <sup>-6</sup>		1–22 mg/kg	5x10 <sup>-6</sup>	

Table 1. (cont.)

		Baseline				Residual	
Area (scenario/pathways evaluated)	Chemicals Above Screening Levels	Concentration Range	Screening Level <sup>a</sup>	Excess Risk Estimate	Action or Note	Residual Concentration Range	Residual Risk
Petroleum Soils Areas							
Railroad Tracks Area (comparison with ADEC regulations)	Benz[a]anthracene	<0.007–56 mg/kg	9 mg/kg	--	Soil removed in 1999 as part of early action. Cleanup Level: 9,000 ug/kg	<0.0067–1.18 mg/kg	--
	Benzo[b]fluoranthene	<0.007–28 mμg/kg	9 mg/kg	--	9 mg/kg	<0.0067–1.2 mg/kg	--
	Benzo[a]pyrene	<.007–16 mg/kg	0.9 mg/kg	--	0.9 mg/kg	<0.0067–0.73 mg/kg	--
	Dibenz[a,h]anthracene	<.007–2 mg/kg	0.9 mg/kg	--	0.9 mg/kg	<0.0134–0.204 mg/kg	--
Compressor Area (comparison with ADEC regulations)	DRO	17,000–50,000 mg/kg	8,250 mg/kg	--	Soil removed in 1999 as part of early action. Cleanup Level: 8,250 mg/kg	885–8,960 mg/kg	--
Bulk Fuel Tank Area (comparison with ADEC regulations)	RRO	39,000–120,000 mg/kg	8,300 mg/kg	--	8,300 mg/kg	2,160–22,800 mg/kg	--
	DRO	8.4–31,000 mg/kg	8,250 mg/kg	--	Soil removed in 1999 as part of early action. Cleanup Level: 8,250 mg/kg	<25–14,500 mg/kg	--
	RRO	23–36,000 mg/kg	8,300 mg/kg	--	8,300 mg/kg	<50–14,200 mg/kg	--
	Benz[a]anthracene	0.120–24 mg/kg	9 mg/kg	--	9 mg/kg	0.00978 mg/kg	--
	Benzo[a]pyrene	0.110–19 mg/kg	0.9 mg/kg	--	0.9 mg/kg	0.0132–22.7 mg/kg	--
Dredge Spoils Area							
(occupational)	None					None	--
Wood Waste and Ash Disposal Landfill							
(occupational)	None					None	--
Former Storage Area along the Water Pipeline Road							
(occupational)	Arsenic <sup>b</sup>	1.21–72.6 mg/kg	7.6 mg/kg	6x10 <sup>-6</sup>	Soil removed in 1999 as part of early action.	<0.5–89.5 mg/kg	9x10 <sup>-6</sup>
	Lead	<10–2,210 mg/kg	1,000 mg/kg	--	Cleanup Level: 1,000 mg/kg	<10–2,210 mg/kg	--
	PCBs	<0.400–6,410 mg/kg	10 mg/kg	1x10 <sup>-5</sup>	10 mg/kg	0.468–7.9 mg/kg	4x10 <sup>-6</sup>
	TPH–oil	1–34,000 mg/kg	9,700 mg/kg	--	9,700 mg/kg	None	--
Aerial Deposition Areas							
Forested and Developed Area Soils (residential/ingestion, dermal contact, produce consumption)	Arsenic <sup>b</sup>	2.4–138 mg/kg	7.6 mg/kg	2x10 <sup>-5</sup>		2.4–138 mg/kg	2x10 <sup>-5</sup>
	PCDD/F (TEC)	0.89–137 ng/kg (TEC)	7.4 ng/kg	1x10 <sup>-5</sup>		0.89–137 ng/kg (TEC)	1x10 <sup>-5</sup>
Grit in Residential Yards							
(Residential/ingestion, dermal contact, produce consumption)	Arsenic <sup>b</sup>	3.73–7.9 mg/kg	7.6 mg/kg	--		3.73–7.9 mg/kg	--
	PCDD/F (TEC)	5.1–28.2 ng/kg (TEC)	7.4 ng/kg	2x10 <sup>-6</sup>		5.1–28.2 ng/kg (TEC)	2x10 <sup>-6</sup>

Footnotes continued on following page.

**Table 1. (cont.)**

Note: Boxes indicate those areas where soil has been removed.

--	- not applicable
ADEC	- Alaska Department of Environmental Conservation
cPAH	- carcinogenic polycyclic aromatic hydrocarbon
DRO	- diesel-range organics
EPA	- U.S. Environmental Protection Agency
PAH	- polycyclic aromatic hydrocarbon
PCB	- polychlorinated biphenyl
PCDD/F	- polychlorinated dibenzo-p-dioxin and polychlorinated dibenzofuran
RPC	- relative potency concentration
RRO	- residual-range organics
TEC	- toxic equivalent concentration
TPH	- total petroleum hydrocarbon

<sup>a</sup> Screening levels were as follows: EPA Region 10 PCB risk-based cleanup level for nonresidential soils of 10 mg/kg; EPA OSWER guidance for lead in nonresidential soils of 1,000 mg/kg (U.S. EPA 1989a); ADEC TPH soil cleanup standard for protection of groundwater (18 AAC 75); EPA risk-based concentrations for PCDD/F in industrial soils (U.S. EPA 1998). Screening levels for arsenic onsite and offsite based on background concentrations. Screening level for PCDD/F in grit based on background concentrations.

<sup>b</sup> Arsenic levels are addressed in the arsenic management plan (Exponent 1998). Arsenic bioavailability estimates described in the arsenic management plan suggest that risks associated with exposure to arsenic in soil may be much lower than those shown here.

<sup>c</sup> Screening level based on background in Tongass Narrows (E&E 1991). Hog fuel was identified as a source of manganese. Removal of hog fuel from the site in spring of 1998 eliminated this source. In addition, manganese was not identified as a chemical of potential concern in the Ward Cove investigation. For these reasons, manganese was not carried through the risk assessment.

<sup>d</sup> Two additional samples with PCB concentrations of 60.2 and 13.5 mg/kg, which were collected from rock at the bottom of the excavation, were not included in the residual risk calculations given their inaccessibility and low volume.

<sup>e</sup> Field duplicate results.

<sup>f</sup> Screening level based on marine human health criteria (U.S. EPA 1999). During the remedial investigation, dissolved concentrations of PCBs were estimated to reach 0.00017 µg/L within 0.1 meter of the shoreline.



## **Attachment 26**

Ketchikan Pulp Company 2015 Five-Year Review Question B Dioxin Reassessment

## Attachment 26: Ketchikan Pulp Company 2015 Five-Year Review Question B Dioxin Reassessment

On February 17, 2012, the EPA released the final non-cancer dioxin reassessment, publishing a non-cancer toxicity value, or reference dose (RfD), for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) in EPA's Integrated Risk Information System (IRIS). The Agency followed current cancer guidelines and incorporated the latest data and physiological/biochemical research into the reassessment. The May 2012 updated non-cancer dioxin Regional Screening Levels (RSL) are 51 ppt TEQ for residential soil and 597 ppt TEQ for commercial/industrial soil (based on the IRIS RfD for TCDD).

Table 1 of the 2000 Ketchikan Pulp Company (KPC) Uplands Operable Unit (OU) Record of Decision (ROD) (see Attachment 25) lists a summary of chemical concentrations, risk estimates, early actions, and residual concentrations and risks. All residual concentrations of dioxins in the Uplands OU listed in Table 1 are below the new RSL of 597 ppt TEQ for commercial/industrial soil. By keeping the property zoned as commercial/industrial with functional ICs preventing any new exposure pathways, the Uplands OU remedy meets the new dioxin RSLs and remains protective.

### **Information Considered:**

#### **Dioxin Website**

EPA Superfund dioxin website, at

<http://epa.gov/superfund/health/contaminants/dioxin/dioxinsoil.html> containing:

- Q/As on implementing the non-cancer toxicity value, or reference dose (RfD), at CERCLA and RCRA sites.
- Dioxin Toolbox addressing the sampling, analysis, bioavailability and disposal of dioxin.

#### **Impact of Dioxin RfD on Soil Cleanup Levels**

Regional Screening Tables available at: [http://www.epa.gov/reg3hwmd/risk/human/rb-concentration\\_table/](http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/)

#### **1998 Preliminary Remediation Goals versus Updated Regional Screening Levels for Dioxin in Soil**

Scenario	1998 PRGs	2013 Regional Soil Screening Levels
Residential	1 ppb (or 1,000 ppt TEQ)	51 ppt TEQ
Commercial/Industrial	5 – 20 ppb (or 5,000 – 20,000 ppt TEQ)	597 ppt TEQ

#### **Notes from the 2000 KPC Uplands OU ROD:**

- 7.2.1 Identification of Chemicals of Concern  
“Dioxins in forested areas on Slide Ridge and north of North Tongass Highway were identified as COCs and were evaluated in a food-web model. Dioxin 2,3,7,8-TCDD toxic equivalent concentrations (TECs) in the 12 forest soil samples within the aerial deposition area ranged from 5.2 to 80 ng/kg with an average concentration of 23 ng/kg. The 95 percent UCL on the arithmetic

mean of the dioxin TEC (37 ng/kg) exceeds the background concentration (7.4 ng/kg), thus, dioxins were retained for further evaluation.”

- From the footnote on Table 7 (page 87): “PCDDs/Fs represent toxic equivalent concentrations based on data for 2,3,7,8-tetrachlorodibenzo-p-dioxin and on toxicity equivalence factors provided in U.S. EPA (1989a) using one-half of the detection limit for undetected congeners.” [So they did apply ND = 0.5]
- Table 1 of the ROD (page 77) shows the Dioxin screening level 38 ng/kg (TEC) which is even below the residential screening level of 51 ppt level.

#### • 5.2.2. Conceptual Site Model for Ecological Receptors

The conceptual site model also includes ecological receptors in off-site upland habitats (i.e. Slide Ridge) potentially exposed to contaminants from past deposition of stack emissions. Some terrestrial receptors (e.g., small mammals) are likely to occur on Dawson Point because habitat around the landfill is primarily older second growth forest. This habitat is represented by the risk evaluation for small mammal receptors in forested areas.

#### **Logic to compare the residual dioxin concentration ranges in Table 1 of the ROD to the new dioxin Regional Soil Screening Levels:**

- The TEFs used to calculate the TEQ (TECs) for the ROD were EPA 1989 instead of the currently recommended 2005 WHO TEFs (assuming that they used the 1989 TEFs for all dioxin data previously collected).
- Below is a table of the TEFs to compare the current TEFs vs ROD TEFs. If mammals are the only receptor evaluated/pathway complete for the CSM as indicated in ROD 5.2.2, then all 1989 EPA TEFs used to calculate the summary TEQs were more conservative than the 2005 WHO TEFs. (The TEQ would have been higher than if calculated based on 2005 TEFs). TEFs which are now a greater multiplier than in the 1989 TEFs are highlighted, but since only the summed TEC/TEQs were reported it is unclear if there were hits of those specific compounds. Since birds/fish are not receptor pathways for this site, then that wouldn't matter for the site regardless.
- Based on the information provided, it is concluded that the residual concentrations listed in the ROD would be below the updated EPA dioxin criteria indicated.

Target Analyte	ROD TEFs	Current TEFs		
	EPA 1989 TEF (a)	WHO 2005 TEF Mammal	WHO 1998 Fish	WHO 1998 Bird
1,2,3,4,6,7,8-Heptachlorodibenzodioxin	0.01	0.01	0.001	0.001
1,2,3,4,6,7,8-Heptachlorodibenzofuran	0.01	0.01	0.01	0.01
1,2,3,4,7,8,9-Heptachlorodibenzofuran	0.01	0.01	0.01	0.01
1,2,3,4,7,8-Hexachlorodibenzodioxin	0.1	0.1	0.5	0.05
1,2,3,4,7,8-Hexachlorodibenzofuran	0.1	0.1	0.1	0.1
1,2,3,6,7,8-Hexachlorodibenzodioxin	0.1	0.1	0.01	0.01
1,2,3,6,7,8-Hexachlorodibenzofuran	0.1	0.1	0.1	0.1
1,2,3,7,8,9-Hexachlorodibenzodioxin	0.1	0.1	0.01	0.1
1,2,3,7,8,9-Hexachlorodibenzofuran	0.1	0.1	0.1	0.1

1,2,3,7,8-Pentachlorodibenzodioxin	0.5	1	1	1
1,2,3,7,8-Pentachlorodibenzofuran	0.05	0.03	0.05	0.1
2,3,4,6,7,8-Hexachlorodibenzofuran	0.1	0.1	0.1	0.1
2,3,4,7,8-Pentachlorodibenzofuran	0.5	0.3	0.5	1
2,3,7,8-Tetrachlorodibenzodioxin	1	1	1	1
2,3,7,8-Tetrachlorodibenzofuran	0.1	0.1	0.05	1
Octachlorodibenzodioxin	0.001	0.0003	0.0001	0.0001
Octachlorodibenzofuran	0.001	0.0003	0.0001	0.0001