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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

UNITED STATES OF AMERICA, ON BEHALF )  
OF THE NATIONAL OCEANIC AND )  
ATMOSPHERIC ADMINISTRATION AND THE )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR; THE STATE OF WASHINGTON )  
THROUGH THE WASHINGTON STATE )  
DEPARTMENT OF ECOLOGY; )  
MUCKLESHOOT INDIAN TRIBE; )  
SUQUAMISH INDIAN TRIBE OF THE PORT )  
MADISON RESERVATION, )

Plaintiffs,

v.

GENERAL RECYCLING OF )  
WASHINGTON, LLC; THE DAVID J. JOSEPH )  
COMPANY; NUCOR STEEL SEATTLE, INC., )  
)  
)

Defendants.

Case No. 2:24-cv-00329

CONSENT DECREE

CONSENT DECREE

U. S. DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

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**I. INTRODUCTION**

1  
2 The United States of America (“United States”), on behalf of the National Oceanic and  
3 Atmospheric Administration (“NOAA”) and the United States Department of the Interior  
4 (“DOI”); the State of Washington (the “State”) through the Washington State Department of  
5 Ecology; the Suquamish Indian Tribe of the Port Madison Reservation (“Suquamish Tribe”); and  
6 the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case  
7 against Defendants General Recycling of Washington, LLC (“General Recycling”), The David J.  
8 Joseph Company (“DJJ”), and Nucor Steel Seattle, Inc. (“Nucor Steel Seattle”) (collectively,  
9 “Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response,  
10 Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607; the  
11 Model Toxics Control Act (“MTCA”), RCW 70A.305; Section 311 of the Clean Water Act  
12 (“CWA”), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990  
13 (“OPA”), 33 U.S.C. § 2702(b)(2)(A) for Covered Natural Resource Damages as a result of  
14 releases of hazardous substances and discharges of oil into the Lower Duwamish River (“LDR”)  
15 and/or Elliott Bay (as defined below) from the facility identified in Appendix A to this Consent  
16 Decree. The Lower Duwamish River is an urban waterway in and near Seattle, Washington  
17 which flows into Elliott Bay and has been subject to considerable levels of industrial use  
18 throughout its history and into the present. This Consent Decree (the “Decree”) resolves the  
19 claims asserted in the Complaint against the Defendants including claims for Covered Natural  
20 Resource Damages.  
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**II. BACKGROUND**

1  
2 A. The National Oceanic and Atmospheric Administration; the United States  
3 Department of the Interior; the Washington State Department of Ecology on behalf of the State  
4 of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe (collectively, “the  
5 Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42  
6 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), 40 C.F.R. Part 300, subpart G,  
7 and RCW 70A.305.040(2), serve as trustees for natural resources for the assessment and  
8 recovery of damages for injury to, destruction of, or loss of natural resources and related  
9 resource services under their trusteeship.  
10

11 B. Investigations conducted by the Trustees and others detected hazardous  
12 substances and oil in the surface water, sediments, soils and groundwater of the Lower  
13 Duwamish River, including but not limited to, arsenic, antimony, cadmium, chromium, copper,  
14 mercury, nickel, lead, zinc, bis(2-ethylhexyl) phthalate, hexachlorobenzene,  
15 hexachlorobutadiene, tributyltin (“TBT”), polychlorinated biphenyls (“PCBs”), and polycyclic  
16 aromatic hydrocarbons (“PAHs”). Overall, the Trustees documented the presence of over thirty  
17 (30) hazardous substances in the sediments of the LDR.  
18

19 C. The Trustees began assessing damages to natural resources in the LDR in 1990  
20 by finding that hazardous substances and oil had been released into the LDR; that natural  
21 resources had likely been injured by the releases; that data sufficient to pursue a natural resource  
22 damage assessment were available or could likely be obtained at a reasonable cost; and that,  
23  
24

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1 without further action, future response activities would not adequately remedy the resource  
2 injuries. *See, e.g.*, NOAA, Lower Duwamish River Sediment Characterization Study Report  
3 (Dec. 10, 1998), Elliott Bay Trustee Council, Pre-Assessment Screen for LDR (December  
4 2009), NOAA, Final Lower Duwamish River NRDA Restoration Plan and Programmatic  
5 Environmental Impact Statement (July 2013), and Final Lower Duwamish River NRDA: Injury  
6 Assessment Plan (March 2019).  
7

8 D. Although the Trustees have initiated, but not yet completed a natural resource  
9 damage assessment for the LDR, the Trustees nonetheless developed and analyzed information  
10 sufficient to support settlements that are fair, reasonable, and in the public interest.  
11

12 E. In settlement of this action, Defendants agree, in lieu of and as equivalent to  
13 monetary damages, to construct, develop, monitor, and maintain a habitat restoration project  
14 (“Project”), located along the LDR at 4260 West Marginal Way Seattle, WA 98106-1210 (Parcel  
15 #s 7666703540, 7666703630, 1824049018), as described in the Scope of Work attached hereto  
16 as Appendix B.  
17

18 F. General Recycling has owned and operated the facility located at 4260 West  
19 Marginal Way Seattle, WA 98106-1210 (Parcel #s 7666703540, 7666703630, 1824049018),  
20 identified in Appendix A, from about 2002 to the present. General Recycling is wholly owned  
21 by Nucor Steel Seattle, which is involved in and controls operations at the facility. DJJ  
22 conducted scrap metal operations at the facility between about 2000 and 2009. Historically, this  
23 facility has been used for various activities including scrap metal storage, steel fabrication, log  
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1 and container handling and storage, tug and barge maintenance, and others. The activities at the  
2 facility resulted in discharges of oil and the release of hazardous substances, including but not  
3 limited to, PAHs, PCBs, mercury, TBT, phenols, and phthalates.

4 G. Plaintiffs allege in the Complaint that Defendants own or operate, and/or owned  
5 or operated at the time of the disposal of hazardous substances to the LDR, the facility identified  
6 in Appendix A within the meaning of 42 U.S.C. § 9607 and RCW 70A.305.040. Plaintiffs  
7 allege that hazardous substances have been released and oil discharged to the LDR from the  
8 facility owned and/or operated by Defendants and as identified in Appendix A. The alleged  
9 discharges were to “navigable waters” or “adjoining shorelines” within the meaning of Section  
10 1002(a) of OPA, 33 U.S.C. § 2702(a), and Section 311(b)(3) of the CWA, 33 U.S.C.  
11 § 1321(b)(3). Plaintiffs also allege that investigations have detected hazardous substances in  
12 soils, surface water, groundwater and/or sediments on or in the facility, and some of these same  
13 hazardous substances are found in the surface water and sediments of the LDR. Plaintiffs further  
14 allege that hazardous substances released and oil discharged to the LDR from the facility owned  
15 and/or operated by Defendants have caused injury to, destruction of and loss of natural  
16 resources in the LDR under Plaintiffs’ trusteeship, including fish, shellfish, birds, surface water  
17 and sediments, and resources of cultural significance. Plaintiffs allege that each of them and the  
18 public have suffered the loss of natural resource services (including ecological services as well  
19 as direct and passive human-use losses) as a consequence of those injuries.  
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1 H. To facilitate resolving natural resource damage claims, relying upon the results of  
2 remedial investigations, regulatory standards, and scientific literature, the Trustees developed an  
3 estimate of the amount of injury to natural resources that had occurred as a result of releases of  
4 hazardous substances and discharges of oil to the LDR. The Trustees quantified the effects of the  
5 injuries in terms of the losses of ecological services over affected areas of the LDR and over  
6 time, discounted to a present value. Plaintiffs used the term discounted service acre-years  
7 (“DSAYs”) to describe both the scale of the injuries, and the amount of habitat restoration they  
8 are seeking to compensate for the injuries. At this time, for purposes of early settlements,  
9 including this Consent Decree, the Trustees’ total estimated DSAY number for the LDR is 5,278.  
10

11 I. Plaintiffs assert that hazardous substance releases and oil discharges to the LDR  
12 have become dispersed and commingled to the extent that the effects of releases or discharges of  
13 one Potentially Responsible Party (“PRP”) cannot be readily distinguished from another’s.  
14 Plaintiffs further assert that the circumstances of the LDR contamination make all PRPs who  
15 contributed to the contamination jointly and severally liable for all injuries to natural resources  
16 that have resulted from the contamination. As a consequence, Plaintiffs assert the right to recover  
17 for damages and associated damage assessment costs from any Lower Duwamish River PRP.  
18 Without prejudice to their position and solely for purposes of facilitating early settlements with  
19 individual PRPs, the Trustee Council developed a streamlined process for allocating natural  
20 resource damages liability among the PRPs. Plaintiffs determined that settling with Defendants  
21 for a portion of the natural resource damages attributable to all LDR sources would result in a  
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1 fair and equitable resolution of Plaintiffs' claims. Taking into consideration prior settlements  
2 with other PRPs who bore some liability for hazardous substance contamination of the LDR and  
3 releases of hazardous substances and oil by non-settling parties, Plaintiffs have agreed to settle  
4 their claims against Defendants as provided in this Consent Decree. Plaintiffs determined, based  
5 on the facts regarding Defendants' ownership and operations and other equitable factors, that  
6 Defendants account for 158.6 of the total estimated DSAYs for the LDR. By resolving  
7 Defendants' alleged liability in this Consent Decree, the restoration described in the attached  
8 Scope of Work provides substantial benefits to natural resources earlier than otherwise would be  
9 realized, thereby allowing for earlier recovery of natural resources in the LDR. The Trustees  
10 determined that the Project, as described in this Consent Decree, will provide sufficient  
11 restoration value to compensate for Defendants' alleged liability. The nearly three-acre Project  
12 will restore marsh, riparian, intertidal, and subtidal habitats to support juvenile salmon and other  
13 injured resources in a high-priority area of the river. The project is configured to optimize critical  
14 off-channel habitat for salmonids and other fish species to feed and rest, and riparian habitat for  
15 birds to nest and forage.  
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19 J. Defendants deny all or portions of the allegations of the Complaint and all or  
20 portions of the allegations contained in Paragraphs F through I of this Section. Defendants do not  
21 admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the  
22 Complaint or in this Consent Decree.  
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1 K. Plaintiffs and Defendants (collectively, the “Parties” and, individually, a “Party”)  
2 agree that neither Plaintiffs nor any Defendant will use this settlement (including the terms of  
3 this Decree and the basis for the compromise contained in other documents filed in this action in  
4 support of this Decree) in any other forum, whether in litigation, administrative proceedings,  
5 formal or informal negotiations, or otherwise, to resolve, attempt to resolve, or in any way  
6 influence the resolution of, other claims between Plaintiffs and any Defendant in the LDR (as  
7 defined below); provided, however, that this provision does not limit Plaintiffs or Defendants  
8 from using otherwise available factual information referenced in documents filed in support of  
9 this Decree. The restriction in the preceding sentence applies to, but is not limited to, claims  
10 other than Covered Natural Resources Damages that the United States (on behalf of the United  
11 States Environmental Protection Agency) and the State may have against any Defendant under  
12 CERCLA, the Solid Waste Disposal Act (as amended by the Resource Conservation and  
13 Recovery Act), 42 U.S.C. § 6901 et seq., or MTCA in the LDR.  
14  
15

16 L. The Parties agree, and this Court by entering this Consent Decree finds, that this  
17 Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid  
18 prolonged and complicated litigation between the Parties, that this Decree will expedite the  
19 restoration and protection of natural resources at and near the Lower Duwamish River and Elliott  
20 Bay, that the timely implementation of the Project and payments to be provided under this  
21 Decree constitute appropriate actions necessary to protect and restore the natural resources  
22 allegedly injured by releases or threatened releases of hazardous substances or discharges of oil,  
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1 that such timely actions and expenditures are adequate to redress Defendants' alleged liability for  
2 the Covered Natural Resource Damages that are the subject of this proceeding, and that this  
3 Decree is fair, reasonable, and in the public interest.

4 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

5  
6 **III. JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over the subject matter of this action pursuant to 28  
8 U.S.C. §§ 1331, 1345 and 1367, 42 U.S.C. § 9613(b), and 33 U.S.C. § 2717(b). The Court has  
9 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying  
10 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the  
11 Court or to venue in this District. The Parties shall not challenge the terms of this Decree or this  
12 Court's jurisdiction to enter and enforce this Decree.  
13

14 **IV. PARTIES BOUND**

15 2. This Decree is binding upon the United States, the State, the Suquamish Tribe, the  
16 Muckleshoot Indian Tribe, and upon Defendants and their successors and assigns. Any change in  
17 ownership or corporate or other legal status, including but not limited to any transfer of assets or  
18 real or personal property, shall in no way alter the status or responsibilities of any Defendant  
19 under this Decree.  
20

21 3. Defendants shall provide a copy of this Consent Decree to each contractor hired  
22 by Defendants to perform any of the work required by this Consent Decree, and to each person  
23 representing Defendants with respect to any such work, and shall condition all future contracts  
24

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1 entered into by Defendants hereunder upon performance of the work in conformity with the  
2 terms of this Consent Decree. Defendants or their contractors shall provide written notice of the  
3 Consent Decree to all subcontractors hired by Defendants' contractors to perform any portion of  
4 the work. Defendants shall nonetheless be responsible for ensuring that all work performed by  
5 their contractors and subcontractors is performed in accordance with this Consent Decree.  
6

## 7 V. DEFINITIONS

8 4. Unless otherwise expressly provided, terms used in this Decree that are defined in  
9 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in  
10 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in  
11 any attached appendix, the following definitions will apply:  
12

13 a. "Adaptive Management" and "Adaptive Management Plans" shall have the  
14 meaning as defined in Appendix B.

15 b. "As-built Drawings" means the set of drawings submitted by Defendants upon  
16 completion of the Project, which will reflect all changes made in the specifications and working  
17 drawings during the construction process, and show the dimensions, geometry, and location of  
18 all elements of the work completed pursuant to Appendix B.

19 c. "CERCLA" means the Comprehensive Environmental Response, Compensation,  
20 and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*  
21  
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1 d. "Consent Decree" or "Decree" means this Consent Decree and all attached  
2 appendices identified in Section XXV (Integration/Appendices), and any final plans approved  
3 hereunder.

4 e. "Construction Completion Date" means the date of the Trustees' Notice of  
5 Approval of Completion of Construction pursuant to Paragraph 11.

6 f. "Contingency Measures" shall have the meaning set forth in Appendix B.

7 g. "Covered Natural Resource Damages" means damages, including costs of damage  
8 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70A.305  
9 RCW; Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321; and Section 1002 of the  
10 Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b), and any other statutory or common  
11 law, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources,  
12 including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or  
13 impairment of Natural Resources; (ii) the costs of restoration, rehabilitation, or replacement of  
14 injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of  
15 planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment,  
16 diminution in value, or loss of use of natural resources; and (v) each of the categories of  
17 recoverable damages described in 43 C.F.R. § 11.15, and applicable State or tribal law, resulting  
18 from releases of hazardous substances or discharges of oil to the LDR and/or Elliott Bay, or  
19 adjoining shorelines, where such release or discharge occurred on or before the Effective Date of  
20 this Consent Decree, at or from the facility identified in Appendix A. Damages, injury to,

1 destruction of, loss of, loss of use of, or impairment of Natural Resources resulting from releases  
2 of hazardous substances or discharges of oil originating from Defendants' operations or activities  
3 outside of the facility identified in Appendix A are not included in Covered Natural Resource  
4 Damages, even if those hazardous substances or discharges of oil reach the LDR and/or Elliott  
5 Bay by flowing over, under, or through any portion of the facility identified in Appendix A.  
6

7 h. "Day" means a calendar day. In computing any period of time under this Consent  
8 Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time will  
9 run until the close of business of the next working day. "Working day" means a day other than a  
10 Saturday, Sunday, or federal holiday.

11 i. "Defendants," and individually "Defendant," means General Recycling of  
12 Washington, LLC, the David J. Joseph Company, and Nucor Steel Seattle, Inc.

13 j. "Discounted Service-Acre Year" or "DSAY" means the amount of a specific suite  
14 of ecological services determined to be produced per acre of a given type of habitat over a period  
15 of years, the total of which are discounted to a present value.  
16

17 k. "Effective Date" shall have the meaning set forth in Section XXIII.

18 l. "Elliott Bay" means any portion of Elliott Bay (including the shoreline, intertidal  
19 and subtidal areas, tributaries, estuaries and bottom sediments) in the State of Washington where  
20 hazardous substances originating from the facility identified in the definition of Covered Natural  
21 Resource Damages and Appendix A have come to be located.  
22  
23

1 m. “Final Design Package” means the package submitted by Defendants to the  
2 Trustees including the final design and specifications for all Project elements, as described in  
3 Section 9.1 of Appendix B.

4 n. “Lower Duwamish River” or “LDR” means any portion of the Duwamish  
5 Waterway (including the shoreline, intertidal areas, tributaries, estuaries and bottom sediments)  
6 in the State of Washington where hazardous substances originating from the facility identified in  
7 the definition of Covered Natural Resource Damages and Appendix A have come to be located.  
8 The LDR includes the in-waterway portions of three Superfund Sites: the Harbor Island  
9 Superfund Site (located south of downtown Seattle, Washington, including the East Waterway  
10 and West Waterway that flow from the south end of Harbor Island north to Elliott Bay), the  
11 Lower Duwamish Waterway Superfund Site (approximately five miles of the Duwamish River  
12 from the southern tip of Harbor Island south to the area around the Norfolk Combined Sewer  
13 Overflow/Storm Drain in Tukwila, Washington), and the Lockheed West Superfund Site (areas  
14 in and around the site formerly known as Lockheed Shipyard No. 2, located near the confluence  
15 of the West Waterway and Elliott Bay).  
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19 o. “MTCA” means the Model Toxics Control Act, Chapter 70A.305 RCW.

20 p. “Natural Resources” means that definition as provided in 42 U.S.C. § 9601(16).

21 q. “Parties” means the United States, the State of Washington, the Suquamish Tribe,  
22 the Muckleshoot Indian Tribe, and Defendants.  
23  
24

1 r. “Plaintiffs” means the United States, the State of Washington, the Suquamish  
2 Tribe, and the Muckleshoot Indian Tribe.

3 s. “Project” means all the work and other commitments as described in Appendix B.

4 t. “Project Site” means the area outlined for the Project in Appendix B.

5 u. “Stewardship” means actions required by Defendants pursuant to Paragraph 14 of  
6 this Consent Decree intended to preserve, protect, or maintain the Project and the Project Site as  
7 identified in Appendix B, including (a) maintaining, restoring, or replacing the ecological  
8 function of the Project; and (b) maintaining, restoring, or replacing physical components of the  
9 Project.  
10

11 v. “Success Criteria” are the standards for performance of the Project as specified in  
12 the Scope of Work attached as Appendix B.  
13

14 w. “Trustees” means the National Oceanic and Atmospheric Administration; the  
15 United States Department of the Interior; the Washington State Department of Ecology, on  
16 behalf of the State of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe.  
17

18 x. “United States” means the United States of America and each department, agency  
19 and instrumentality of the United States, including the United States Department of Commerce  
20 and the United States Department of the Interior.  
21

## 22 VI. GENERAL PROVISIONS

23 5. This Decree is not, and shall not be construed to be, a permit issued pursuant to  
24 any law. All activities undertaken by Defendants pursuant to this Decree shall be performed in  
25



1 accordance with the requirements of all applicable laws and permits. Where any portion of the  
2 activities undertaken pursuant to this Decree requires a federal, state, or local permit or approval,  
3 Defendants shall submit timely and complete applications and take all other actions necessary to  
4 obtain such permits or approvals. Defendants may seek relief under the provisions of Section XV  
5 (Force Majeure) for any delay in or prevention of the performance of the obligations of this  
6 Decree resulting from a failure to obtain, or a delay in obtaining, any federal or state permit or  
7 approval required for such performance, including but not limited to the deadlines set forth in  
8 Paragraph 10 and in Appendix B, provided that it has submitted timely and complete  
9 applications and taken all other actions necessary to obtain all such permits or approvals.

10  
11 6. Defendants shall ensure that all work performed under this Decree shall be  
12 conducted as set forth in the Scope of Work attached as Appendix B hereto to achieve the  
13 objective of constructing and maintaining the Project to meet the Success Criteria identified in  
14 Appendix B. If the Trustees determine that Defendants are not complying with the requirements  
15 set forth in the Decree, including Appendix B, the Trustees shall provide written notice to  
16 Defendants specifying the basis for their determination of noncompliance. Defendants may  
17 correct the noncompliance or invoke the dispute resolution procedures set forth in Section XIII.  
18 The Trustees may require Defendants to take actions to alter, suspend, or cease ongoing  
19 activities, and to alter, postpone, or refrain from taking proposed actions, as are necessary to  
20 ensure compliance with the terms of this Decree and any plans or proposals adopted hereunder.  
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1 If Defendants dispute any such requirements imposed by the Trustees, Defendants may invoke  
2 the dispute resolution procedures set forth in Section XIII.

3 7. Plaintiffs do not, by their consent to the entry of this Decree, warrant or aver in  
4 any manner that Defendants' compliance with this Decree will result in compliance with  
5 CERCLA or any other law. The Parties agree that Defendants are responsible for complying with  
6 all applicable federal, state, tribal and local laws, regulations, and permits.  
7

8 8. All approvals and disapprovals made by the Trustees under this Consent Decree  
9 shall be communicated to Defendants by one of the Trustees on behalf of all the Trustees. Except  
10 as specifically provided otherwise herein, all such communications shall be in writing (including  
11 electronic writing) and shall indicate that the communication is on behalf of all Trustees.  
12

### 13 **VII. RESTORATION PROJECT**

14 9. Defendants shall fund and perform all activities for the Project in accordance with  
15 the terms set out in the Scope of Work for the Project attached as Appendix B.  
16

#### 17 **Design and Construction Activities for the Project**

18 10. Construction Schedule and Contingencies.

19 a. After completion of necessary design work for the Project, including timely  
20 submission of design packages to the Trustees for review as described in Appendix B, and after  
21 the Trustees' approval in writing of the Final Design Package for the Project, Defendants shall  
22 commence construction on the Project in accordance with the schedule set forth in Table 4 of  
23 Appendix B.  
24

1           b. Defendants shall complete construction of the Project within three years after the  
2 Effective Date of this Decree. If Defendants have not completed construction of the Project  
3 within twelve months of the deadline identified in this Paragraph 10(b), then Defendants shall  
4 either (i) pay to the Trustees the sum of \$300,000 as compensation for the additional delay in  
5 restoration of Natural Resources, or (ii) perform additional restoration work outside of the  
6 Project Site agreed upon in writing by Defendants and the Trustees. For each subsequent twelve-  
7 month period in which Defendants have not completed construction of the Project, Defendants  
8 shall either (i) pay to the Trustees the sum of \$300,000 as compensation for the additional delay  
9 in restoration of Natural Resources, or (ii) perform additional restoration work outside of the  
10 Project Site agreed upon in writing by Defendants and the Trustees. Defendants' obligations  
11 under this subparagraph are in addition to any other obligations or applicable penalties under this  
12 Decree, including Section XIV (Stipulated Penalties).  
13  
14

15           11. Within sixty (60) days after completion of all construction, installation or  
16 enhancement activities for the Project, pursuant to the approved Final Design Package, such that  
17 the Project has been placed in operation and is expected to perform and function as designed,  
18 Defendants shall submit As-Built Drawings with a written Notice of Completion of Construction  
19 to the Trustees, as more thoroughly described in Appendix B. The Trustees shall review the  
20 results of the development of the Project to determine whether the Project has been constructed  
21 in accordance with, and as designed to meet the Success Criteria set forth in Appendix B. Within  
22 sixty (60) days after receiving the Notice of Completion of Construction, the Trustees shall  
23  
24

1 submit to Defendants either (a) a written notice identifying specific deficiencies the Trustees  
2 determine must be satisfied for the Project to be completed in accordance with Appendix B  
3 (Notice of Deficiencies); or (b) a written notice of the Trustees' determination that the Project  
4 has been so completed (Notice of Approval of Completion of Construction). Within sixty (60)  
5 days of receipt of a Notice of Deficiencies, or as otherwise agreed to in writing by the Trustees,  
6 Defendants shall correct the identified deficiencies and complete the Project in accordance with  
7 Appendix B, and submit to the Trustees an amended Notice of Completion of Construction for  
8 review and response in accordance with this Paragraph. Any delay in completing construction of  
9 the Project as a result of the operation of this Paragraph shall not in and of itself constitute  
10 grounds for relief from the requirement to pay compensation under Paragraph 10(b) of this  
11 Section or stipulated penalties under Section XIV for compliance delays.

12  
13  
14 **Initial Maintenance and Monitoring of the Project**

15 12. Concurrent with the submission of the Final Design Package for the Project,  
16 Defendants shall develop and submit to the Trustees for their review and approval a Maintenance  
17 and Monitoring Plan, as further described in Section 7 of Appendix B, to monitor and maintain  
18 the vegetation and habitat of the Project and ensure the project overall meets the Success Criteria  
19 set forth in Appendix B for a period of ten (10) years from the Construction Completion Date of  
20 the Project, including any needed Contingency Measures or Adaptive Management Plans as  
21 directed by the Trustees (and defined in Appendix B). Upon completion of this ten-year initial  
22 maintenance and monitoring period for the Project, Defendants shall provide written Notice of  
23  
24

1 Completion of Initial Maintenance and Monitoring Obligations to the Trustees in accordance  
2 with Section XXII (Notices and Submissions). Within forty-five (45) days after receiving the  
3 Notice of Completion of Initial Maintenance and Monitoring Obligations, the Trustees shall  
4 submit to Defendants either (a) a written notice identifying specific deficiencies the Trustees  
5 determine must be satisfied for the initial maintenance and monitoring obligations to be  
6 completed in accordance with Appendix B (Notice of Deficiencies); or (b) a written notice of the  
7 Trustees' determination that the initial maintenance and monitoring obligations are completed  
8 (Approval of Completion of Initial Maintenance and Monitoring Obligations). In the event the  
9 Trustees identify, in a Notice of Deficiencies, specific deficiencies with Defendants' compliance  
10 with its obligations, Defendants shall correct the identified deficiencies and complete the Project  
11 in accordance with Appendix B. Within sixty (60) days of Defendants' receipt of a Notice of  
12 Deficiencies from the Trustees, or as otherwise agreed to in writing by the Trustees, Defendants  
13 shall complete all corrective actions and submit to the Trustees an amended Notice of  
14 Completion of Initial Maintenance and Monitoring Obligations for review and response in  
15 accordance with this Paragraph. The date of the Trustees' Approval of Completion of Initial  
16 Maintenance and Monitoring Obligations for the Project shall constitute the "Initial Maintenance  
17 and Monitoring Obligations Completion Date."  
18  
19  
20

21 **Stewardship of the Project**

22 13. In order to achieve permanent preservation of the Project Site, and all ecological  
23 functions provided by the Project be maintained in perpetuity, Defendants shall ensure  
24

1 conservation easements are granted and recorded for the Project Site, including obtaining  
2 necessary agreements to grant and record such conservation easement(s) for property owned by  
3 other parties, if any, in the form set forth in Appendix C for the Project Site, and in a form  
4 reviewed and approved by the Trustees for property owned by any other party, and shall take all  
5 other appropriate actions necessary to ensure that the Project Site will not be used in a manner  
6 inconsistent with the requirements of this Decree. General Recycling shall grant and record such  
7 conservation easements within sixty (60) days of the Construction Completion Date.  
8

9 14. Defendants shall be responsible for Stewardship of the Project, including  
10 maintaining vegetation and other habitat attributes, controlling invasive vegetation, debris  
11 removal, and undertaking corrective actions (e.g., restoring or replacing physical components of  
12 the Project) to address any negative impacts to the Project that affect the ecological services  
13 provided by the Project, as set forth more fully in Appendix B and the Stewardship Plan  
14 approved by the Trustees. For purposes of this Decree, Defendants' responsibility for  
15 Stewardship of the Project shall extend twenty (20) years from the Initial Maintenance and  
16 Monitoring Obligations Completion Date, or sooner if the Trustees agree that a "force majeure"  
17 event prevents further Stewardship. Negative impacts identified in this Paragraph include events  
18 with a foreseeable occurrence (such as, for example, the beaching of an abandoned barge or  
19 unauthorized human access) but do not include "force majeure" events. During year seven of the  
20 ten-year initial maintenance and monitoring period for the Project described in Paragraph 12,  
21 Defendants shall develop and submit to the Trustees for their review and approval a Stewardship  
22  
23  
24

1 Plan, consistent with Section 8 of Appendix B. The Stewardship Plan shall include a plan for  
2 implementing Stewardship for the project over the 20-year Stewardship period pursuant to this  
3 Consent Decree.

4 15. Defendants shall be responsible for continued Stewardship for the Project in  
5 accordance with Paragraph 14, even if General Recycling does not own the Project Site. The  
6 Trustees recognize that the Project Site may include property that is owned by other parties  
7 including, but not limited to, the State. Defendants recognize that they are solely responsible for  
8 securing the cooperation of all property owners in order to successfully complete and maintain  
9 the Project in accordance with this Consent Decree as more fully detailed in Appendix B.

10 Defendants shall obtain agreements from all property owners that provides Defendants with all  
11 access necessary to fulfill Defendants' responsibilities under this Paragraph. Any inability of  
12 Defendants to successfully complete or maintain the Project in accordance with Appendix B  
13 resulting from disputes with any property owners shall not constitute a "force majeure" event.

14 16. If ownership of any property within the Project Site is transferred prior to the  
15 expiration of Defendants' obligations in Paragraph 14, such transfer shall not affect or lessen  
16 Defendants' obligations under that Paragraph, or any other provision of this Decree. Defendants  
17 shall obtain an agreement from property owners that requires that, as a condition of any such  
18 transfer, the entity to which any property is transferred shall be required to provide Defendants  
19 with any access necessary to fulfill Defendants' responsibilities under this Decree and the  
20 Trustees with access consistent with Section VIII (Access to Information and Project Site) of this

1 Decree. Within sixty (60) days prior to any proposed transfer of property within the Project Site,  
2 Defendants shall provide the Trustees with written notice of the proposed transfer, identifying  
3 the entity that will own the property, certifying that Defendants provided a copy of this Decree to  
4 such entity and providing a copy of the proposed access agreement for review and approval by  
5 the Trustees.  
6

7 **General Project Development Provisions**

8 17. Defendants shall not take any action that is inconsistent with this Decree and that  
9 would adversely affect the Project.

10 18. Defendants shall undertake all activities required by applicable law to address  
11 cultural resource issues associated with the Project, including, as applicable, consultation with  
12 tribes and the Washington State Department of Archaeology and Historic Preservation,  
13 conducting a background and Project review by an archaeologist who meets the Department of  
14 the Interior's professional qualification standards at 36 C.F.R. Part 61, and conducting cultural  
15 resource surveys or monitoring activities.  
16

17 19. The Trustees may conduct additional work themselves, at their own expense, on  
18 the Project Site. If such work is conducted prior to completion of initial construction by  
19 Defendants, the Trustees will conduct any such work in a manner that does not hinder  
20 Defendants' timely completion of the Project or otherwise interfere with the performance of  
21 Defendants' obligations under this Decree. Prior to performing additional work pursuant to this  
22  
23  
24



1 Consent Decree, the Trustees shall prepare and provide to Defendants for their approval a Health  
2 and Safety Plan.

3 **Financial Assurances**

4           20.     Construction of the Project. In order to ensure that Defendants perform their  
5 obligations under Paragraph 10 of this Decree to construct the Project, Defendants' parent  
6 company, Nucor Corporation, has executed a guarantee to construct the project in favor of the  
7 Trustees, attached at Appendix D. As set forth in Appendix D, on the first anniversary of the  
8 Effective Date, Nucor Corporation shall demonstrate its continued financial ability to guarantee  
9 these obligations by submitting to the Trustees copies of its most recent Form 10-K Annual  
10 Report. Each year thereafter until the Trustees issue a Notice of Approval of Construction  
11 Completion in accordance with Paragraph 10, Nucor Corporation shall submit its most recent  
12 Form 10-K Annual Report to the Trustees within 30 days after filing of such report. In the event  
13 the Trustees determine that the financial information available to them does not demonstrate  
14 Nucor Corporation's ability to guarantee construction of the Project, or Nucor Corporation fails  
15 to timely submit its most recent Form 10-K Annual Report to the Trustees, then Defendants shall  
16 establish and maintain financial assurance in the amount then needed to fulfill their remaining  
17 obligations to construct the Project in one or more of the mechanisms listed below, in an amount  
18 and form approved by the Trustees. Defendants may use multiple mechanisms only if the  
19 mechanisms used in combination are limited to surety bonds guaranteeing payment, letters of  
20 credit, trust funds, and/or insurance policies:  
21  
22  
23  
24

1 a. A surety bond guaranteeing construction of the Project that is issued by a  
2 surety company among those listed as acceptable sureties on federal bonds as set forth in  
3 Circular 570 of the U.S. Department of the Treasury;

4  
5 b. An irrevocable letter of credit, payable to or at the direction of the  
6 Trustees, that is issued by an entity that has the authority to issue letters of credit and  
7 whose letter-of-credit operations are regulated and examined by a federal or state agency;

8  
9 c. A trust fund established for the benefit of the Trustees that is administered  
10 by a trustee for the fund (and where the trustee for the fund is not a “Trustee” as defined  
11 in Paragraph 4.w) that has the authority to act as a trustee for the fund and whose trust  
12 operations are regulated and examined by a federal or state agency; or

13  
14 d. A policy of insurance that provides the Trustees with acceptable rights as  
15 beneficiaries thereof and that is issued by an insurance carrier that has the authority to  
16 issue insurance policies in the applicable jurisdiction and whose insurance operations are  
17 regulated and examined by a federal or state agency.

18  
19 21. Financial Assurances for Initial Maintenance and Monitoring, Adaptive  
20 Management, and Stewardship of the Project. In order to ensure Defendants’ completion of its  
21 initial maintenance and monitoring requirements set forth in Paragraph 12, any Adaptive  
22 Management Plans as required pursuant to Appendix B, and Stewardship requirements set forth  
23 in Paragraph 14 (for the 20-year Stewardship period pursuant to this Consent Decree), within

1 forty-five (45) days of the Trustees' authorization to commence construction on the Project  
2 pursuant to Paragraph 10 of this Decree, Defendants shall establish financial assurance  
3 mechanisms in the amounts of five hundred thousand dollars (\$500,000) (initial maintenance and  
4 monitoring), four hundred thousand dollars (\$400,000) (adaptive management), and five hundred  
5 seventy five thousand dollars (\$575,000) (Stewardship for the 20-year period pursuant to  
6 Paragraph 14 of this Consent Decree). The financial assurance mechanisms shall be in the forms  
7 set forth in Appendices E, F, and G. Defendants shall maintain each such financial assurance  
8 mechanism until released as set forth in this Section, such that the financial assurance  
9 mechanism is legally binding and fully effective.  
10

11  
12 22. Defendants shall diligently monitor the adequacy of the financial assurance  
13 mechanisms required by Paragraphs 20 and 21. If Defendants become aware of any information  
14 indicating that the amount, form, or terms of the financial assurance mechanisms required by  
15 Paragraphs 20 and 21 is inadequate or otherwise no longer satisfies the requirements of this  
16 Section, Defendants shall notify the Trustees of such information within seven (7) days. If the  
17 Trustees determine that the amount, form, or terms of any financial assurance mechanism  
18 required by Paragraphs 20 and 21 is inadequate or otherwise no longer satisfies the requirements  
19 of this Section, the Trustees will provide written notice to Defendants of such determination.  
20 Defendants shall, within thirty (30) days after notifying the Trustees or receiving written notice  
21 from the Trustees under this Paragraph, secure and submit to the Trustees for approval a proposal  
22 for a revised financial assurance mechanism that satisfies the requirements of this Section. The  
23  
24

1 Trustees may extend this deadline for such time as is reasonably necessary for Defendants, in the  
2 exercise of due diligence, to secure and submit to the Trustees a proposal for a revised financial  
3 assurance mechanism not to exceed sixty (60) days. Defendants shall follow the procedures of  
4 Paragraph 23 in seeking approval of, and submitting documentation for, the revised financial  
5 assurance mechanism. Defendants' inability to secure financial assurance in accordance with this  
6 Section does not excuse performance of any other obligation under this Decree.  
7

8           23.     Modification of Amount, Form, or Terms of Financial Assurance Mechanisms.

9 Defendants may submit, on any anniversary of the Effective Date of this Decree or at any other  
10 time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the  
11 financial assurance mechanisms required by Paragraphs 20 and 21. Any such request must be  
12 submitted to the Trustees in accordance with this Section, and must include an estimate of the  
13 cost of the remaining work, an explanation of the bases for the cost calculation, and a description  
14 of the proposed changes, if any, to the form or terms of the financial assurance mechanism. The  
15 Trustees will notify Defendants in writing of their decision to approve or disapprove a requested  
16 reduction or change pursuant to this Paragraph. Defendants may reduce the amount of the  
17 financial assurance mechanism only in accordance with: (a) the Trustees' approval; or (b) if there  
18 is a dispute, the agreement or final judicial decision resolving such dispute under Section XIII  
19 (Dispute Resolution). Defendants may change the form or terms of the financial assurance  
20 mechanism only in accordance with the Trustees' approval. Any decision made by the Trustees  
21 on a request submitted under this Paragraph to change the form or terms of a financial assurance  
22  
23  
24

1 mechanism shall not be subject to challenge by Defendants pursuant to the dispute resolution  
2 provisions of this Decree or in any other forum. Within thirty (30) days after receipt of the  
3 Trustees' approval of the requested modifications, or the agreement or decision resolving a  
4 dispute related to a requested reduction in amount, pursuant to this Paragraph, Defendants shall  
5 submit to the Trustees documentation of the reduced, revised, or alternative financial assurance  
6 mechanism.  
7

8           24.    Trustee Access to the Financial Assurance Mechanisms.

9                   a.    If the Trustees determine that Defendants have ceased, or are seriously late  
10 or deficient in performing or completing, the construction, monitoring, maintenance, Adaptive  
11 Management, and/or Stewardship obligations as set forth in this Section then, in accordance with  
12 Paragraphs 20 and 21, the Trustees are entitled to: (1) implementation or completion of the  
13 construction, monitoring, maintenance, Adaptive Management, and Stewardship obligations for  
14 the Project as set forth in this Section (and Appendix B) and/or (2) require that any funds  
15 guaranteed be paid in accordance with Paragraph 24(e).  
16  
17

18                   b.    If the Trustees make such determination under Paragraph 24(a) and  
19 require that funds be paid under Paragraph 24(a)(2), the Trustees shall issue a written notice  
20 (“Access to Financial Assurance Notice”) to Defendants. Any Access to Financial Assurance  
21 Notice issued by the Trustees will specify the grounds upon which such notice was issued and  
22 will provide Defendants an opportunity to remedy the deficiencies specified in the Notice.  
23  
24

1 Defendants shall remedy, to the Trustees' satisfaction, the deficiencies set forth in the Notice  
2 within fifteen (15) days of receipt of such notice.

3  
4 i. If Defendants have not remedied to the Trustees' satisfaction the  
5 deficiencies set forth in the Notice within fifteen (15) days of Defendants' receipt  
6 of such notice, the Trustees may at any time thereafter exercise their right of  
7 access to the financial assurance mechanism(s) required by this Section as the  
8 Trustees deem necessary to implement or complete the construction, monitoring,  
9 maintenance, Adaptive Management, and/or Stewardship obligations.

10  
11 ii. Except as specifically provided elsewhere in this Decree, Defendants may  
12 invoke the procedures set forth in Section XIII (Dispute Resolution), to dispute  
13 the Trustees' exercise of their right of access to the financial assurance  
14 mechanism(s). However, notwithstanding Defendants' invocation of such dispute  
15 resolution procedures, and during the pendency of any such dispute, the Trustees  
16 may in their sole discretion commence and continue to exercise their right of  
17 access to the financial assurance mechanism(s) until the earlier of (1) the date that  
18 Defendants remedy, to the Trustees' satisfaction, the circumstances giving rise to  
19 the Trustees' issuance of the Access to Financial Assurance Notice, or (2) the date  
20 that a final decision is rendered in accordance with Section XIII (Dispute  
21 Resolution) requiring the Trustees to terminate such exercise of their right of  
22 access to the financial assurance mechanism(s). Following either event, the

1 Trustees shall cease obligating any further funds from the financial assurance  
2 mechanism(s), unless the final Dispute Resolution decision allows the Trustees to  
3 continue obligating or spending funds. The Trustees shall not be required to repay  
4 any funds already obligated or spent by the Trustees.

5  
6 c. If the Trustees are notified by the agent or guarantor of a financial  
7 assurance mechanism required by this Section, that it intends to resign and/or cancel the financial  
8 assurance mechanism, and Defendants fail to provide an alternative financial assurance  
9 mechanism in accordance with Paragraph 22 at least thirty (30) days prior to the cancellation  
10 date, the funds guaranteed under such mechanism must be paid in full to the Trustees prior to  
11 cancellation in accordance with Paragraph 24(e).

12  
13  
14 d. If, upon issuance of an Access to Financial Assurance Notice by the  
15 Trustees, the Trustees are unable for any reason to promptly secure the resources guaranteed  
16 under the financial assurance mechanism, whether in cash or in kind, to continue and complete  
17 the Project, then the Trustees are entitled to demand an amount, as determined by the Trustees,  
18 sufficient to cover the cost of the remaining work to be performed. Defendants shall, within  
19 fourteen (14) days of such demand, pay the amount demanded as directed by the Trustees.

20  
21 e. Any amounts required to be paid under this Paragraph shall be, as directed  
22 by the Trustees: (i) paid to the Trustees in order to facilitate the completion of the work by the  
23 Trustees or by another person; or (ii) deposited into an interest-bearing account, established at a

1 duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the  
2 completion of the work by another person. Upon issuance of an Access to Financial Assurance  
3 Notice by the Trustees, the Trustees may use any and all funds obtained from such Access to  
4 Financial Assurance Notice to complete the obligation(s) identified in the Access to Financial  
5 Assurance Notice. In addition, the Trustees may use their own funds to complete such  
6 obligations and may seek reimbursement of any such expended funds pursuant to the provisions  
7 of Paragraph 31. For any and all work conducted by the Trustees and their contractors pursuant  
8 to this Paragraph, Defendants shall provide the Trustees and their contractors with relevant  
9 information and access to the Project Site as requested by the Trustees and their contractors.  
10  
11

12 25. Release, Cancellation, or Discontinuation of Financial Assurance Mechanisms.

13 Defendants shall not release, cancel, or discontinue the financial assurance mechanisms required  
14 by this Section, except as provided pursuant to this Paragraph and as set forth in Appendices D-  
15 G. Defendants may release, cancel, or discontinue the financial assurance mechanisms only: (a)  
16 after the Construction Completion Date set forth in Paragraph 10(b) for the financial assurance  
17 mechanism required by Paragraph 20, after the Initial Maintenance and Monitoring Obligations  
18 Completion Date set forth in Paragraph 12 for the financial assurance mechanism required by  
19 Paragraph 21 for initial Maintenance and Monitoring, after the date for completion of Adaptive  
20 Management Plan requirements pursuant to Appendix B for the financial assurance mechanism  
21 required by Paragraph 21 for Adaptive Management, and after the expiration of the time period  
22 set forth in Paragraph 14 for the financial assurance mechanism required by Paragraph 21 for  
23  
24



1 Stewardship, and in accordance with the Trustees' written notice of approval of such release,  
2 cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation or  
3 discontinuance of any financial assurance mechanism, in accordance with the agreement or final  
4 judicial decision resolving such dispute under Section XIII (Dispute Resolution).

5  
6 **Fund for Permanent Stewardship of the Project Site**

7  
8 26. Within thirty (30) days of the Effective Date of the Consent Decree, Defendants  
9 shall make a payment of five hundred thousand dollars (\$500,000.00) to fund permanent  
10 stewardship of the Project. The purpose of this payment is to fund stewardship of the Project Site  
11 by the Trustees following the time period of Defendants' obligations pursuant to Paragraphs 12  
12 (Initial Maintenance and Monitoring of the Project) and 14 (Stewardship of the Project).  
13 Defendants shall pay this amount to the United States via the payment instructions in Paragraph  
14 32(a)(1). The funds shall be deposited in the DOI Natural Resource Damage Assessment and  
15 Restoration Fund. Defendants shall provide notice of the payment, in accordance with Section  
16 XXII (Notices and Submissions). Any funds paid pursuant to this Paragraph that are not utilized  
17 by the Trustees to fund permanent stewardship of the Project Site may be applied by the Trustees  
18 toward one or more additional habitat restoration projects in the Lower Duwamish River.  
19  
20

21 **VIII. ACCESS TO INFORMATION AND PROJECT SITE**

22  
23 27. To facilitate the Trustees' oversight responsibilities, and in accordance with  
24 Appendix C, Defendants will provide the Trustees full access to the Project Site for purposes of

1 inspecting or observing Defendants' progress in implementing the Project required under this  
2 Decree.

3 28. Commencing upon the date of lodging of this Decree, and in accordance with  
4 Appendix C, Defendant agrees to provide the Trustees and their contractors access at all  
5 reasonable times to the Project Site and to any property under the control of Defendants to which  
6 access is required for the oversight or implementation of this Decree. This right of access does  
7 not include a right to enter Defendants' buildings. The Trustees shall give notice prior to access.  
8 Defendants shall have the right to accompany any Trustee or its representative on the property  
9 for purposes of security at the Project Site. Each Trustee shall have the authority to enter freely  
10 and move about such property at all reasonable times and in a reasonable manner, including  
11 compliance with all safety requirements, for purposes of overseeing the requirements of this  
12 Decree, including, but not limited to:

- 15 a. Monitoring and assessing progress on the planning, development,  
16 maintenance, and monitoring of the Project;
- 17 b. Verifying any data or information submitted to the Trustees;
- 18 c. Inspecting and copying records, operation logs, contracts, or other  
19 documents maintained or generated by Defendants or its contractors hereafter retained to  
20 perform work undertaken pursuant to this Decree;
- 21 d. Conducting such tests, investigations or sample collections as deemed  
22 necessary to monitor compliance with this Decree, investigate or assess contamination at or near  
23

1 the Project Site, or to assist in further identifying and quantifying natural resource injuries  
2 requiring restoration actions and in planning and carrying out further restoration actions.

3 Defendants shall be provided with copies of all data, sampling results and reports/documentation  
4 of any tests, investigations or sampling conducted under this paragraph provided it is not  
5 otherwise privileged;

6  
7 e. Perform work at the Project Site in accordance with Paragraph 19.

8 29. Plaintiffs may direct that Defendants use a camera, sound recording device, or  
9 other type equipment to record the work done under this Decree or injury to natural resources  
10 and provide copies of any such recordings to the Trustees. Defendants may retain a copy of any  
11 such recordings. Trustees may also use their own camera, sound recording device, or other  
12 equipment to record the work done under this Decree or injury to natural resources. Defendants  
13 shall be provided with a copy of any such recordings made by the Trustees provided it is not  
14 otherwise privileged.  
15

16 **IX. SELECTION OF CONTRACTORS**

17  
18 30. The selection of any contractor hereafter retained by Defendants to perform any  
19 of the work required under this Consent Decree shall be subject to Trustee approval. Defendants  
20 shall notify the Trustees in writing of the name, title, and qualifications of any contractor  
21 Defendants proposes to retain, and of any proposed changes in the selection of a contractor. The  
22 Trustees will notify Defendants in writing of the approval or disapproval of a proposed  
23 contractor. The Trustees' assent to the proposed selection or change of a contractor may be  
24

1 presumed unless the Trustees notify Defendants in writing of their objection to the proposed  
2 selection or change within thirty (30) days of Defendants' written selection notice.

3 **X. REIMBURSEMENT OF RESTORATION IMPLEMENTATION COSTS**

4 31. Defendants agree to reimburse the Trustees' costs incurred in implementing and  
5 overseeing the Project described in Appendix B to this Decree. The period during which the  
6 Trustees will incur implementation costs ends on the ending date of Defendants' responsibility  
7 for Stewardship for the Project, as set forth in Paragraph 14. Defendants shall reimburse these  
8 costs as follows: Each year, beginning on the Effective Date of this Decree, the Trustees shall  
9 provide Defendants with an invoice detailing their costs through the prior calendar year of  
10 implementing and overseeing the Project and provide a non-binding estimate of the Trustees'  
11 anticipated costs for the next one-year period. Within sixty (60) days of receipt of the Trustees'  
12 invoice, Defendants shall reimburse the Trustees for those costs. Defendants shall make all such  
13 payments as directed by the Trustees, and provide notice of such payments, in accordance with  
14 Section XXII (Notices and Submissions). If Defendants believe that any of the Trustees'  
15 invoiced costs were not incurred in implementing and overseeing the Project, Defendants may  
16 invoke the Dispute Resolution provisions of Section XIII as to the disputed costs only; any costs  
17 for which Defendants do not invoke Dispute Resolution shall be paid within sixty (60) days of  
18 receipt of the Trustees' invoice.  
19  
20  
21  
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**XI. PAST ASSESSMENT COST REIMBURSEMENT**

1  
2           32.     Within thirty (30) days of the Effective Date of this Decree, Defendants will pay a  
3 total of \$360,558.12 for past assessment costs incurred by the Trustees through October 8, 2022  
4 for NOAA; September 30, 2022 for DOI; and March 23, 2023 for the Suquamish Tribe, as  
5 described below.

6  
7           a.     Payment for Assessment Costs Incurred by the United States.

8           (1)     Within thirty (30) days after the Effective Date, Defendants shall pay a total of  
9 \$348,812.56 to the United States for assessment costs incurred by the United States. Payment  
10 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice  
11 account, in accordance with instructions provided to Defendants by the Financial Litigation  
12 Program (“FLP”) of the United States Attorney’s Office for the Western District of Washington  
13 after the Effective Date. The payment instructions provided by the FLP will include a  
14 Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify  
15 all payments required to be made in accordance with this Decree. The FLP will provide the  
16 payment instructions to:  
17

18 Gregory J. Murphy  
19 greg.murphy@nucor.com

20 on behalf of Defendants. Defendants may change the individuals to receive payment instructions  
21 on their behalf by providing written notice of such change to the United States in accordance  
22 with Section XXII (Notices and Submissions).  
23

1 (2) Of the total amount to be paid by Defendants pursuant to this  
2 Subparagraph 32(a)(1):

3 (a) \$74,117.04 shall be deposited in the DOI Natural Resource Damage Assessment  
4 and Restoration Fund, to be applied toward natural resource damage assessment  
5 costs incurred by DOI.

6 (b) \$274,695.52 shall be deposited in the NOAA Damage Assessment and  
7 Restoration Revolving Fund, to be applied toward natural resource  
8 damage assessment costs incurred by NOAA.

9  
10 b. Payment for Assessment Costs Incurred by the Suquamish Tribe. Within thirty  
11 (30) days after the Effective Date, Defendants shall pay a total of \$11,745.56 to the Suquamish  
12 Tribe for assessment costs incurred by the Tribe. Payment shall be made by check to the  
13 Suquamish Tribe bearing the notation “Lower Duwamish River NRDA” and mailed to the  
14 address as follows:

15  
16 Address: Suquamish Tribe  
17 Attention: Finance Director  
18 P.O. Box 498  
19 Suquamish, WA 98392

20 33. Payment for Interim Assessment Costs. The Trustees shall provide Defendants  
21 with a bill requiring payment of costs incurred by the Trustees after the dates identified in  
22 Paragraph 32 through the Effective Date of the Consent Decree. Within thirty (30) days of  
23 receiving the bill requiring payment of costs from the Trustees, Defendants shall pay the costs in  
24 accordance with the procedures set forth in Paragraphs 32(a) & (b) and 34.

25 CONSENT DECREE



1 unless the parties to the dispute agree otherwise in writing. The dispute shall be considered to  
2 have arisen when the Trustees send Defendants a written notice specifying the nature of the  
3 dispute and requested relief (“Notice of Dispute”) or a Defendant sends the Trustees a written  
4 Notice of Dispute.

5           38.     a.       If the Parties cannot resolve a dispute by informal negotiations under the  
6 preceding Paragraph, then the position advanced by the Trustees shall be considered binding  
7 unless, within twenty-one (21) days after the conclusion of the informal negotiation period (i.e.,  
8 forty-two (42) days after the date of the Notice of Dispute) a Defendant invokes the formal  
9 dispute resolution procedures of this Section by serving on the Trustees a written Statement of  
10 Position on the matter in dispute, including, but not necessarily limited to, any factual data,  
11 analysis or opinion supporting that position and any supporting documentation relied upon by the  
12 Defendant.  
13 Defendant.

14                   b.       Within twenty-one (21) days after receipt of a Defendant’s Statement of  
15 Position, the Trustees shall serve on such Defendant their written Statement of Position,  
16 including, but not necessarily limited to, any factual data, analysis or opinion supporting that  
17 position and all supporting documentation relied upon by the Trustees. Within twenty-one (21)  
18 days after receipt of the Trustees’ Statement of Position, such Defendant may submit a Reply. If  
19 such Defendant submits a Reply, within twenty-one (21) days of receipt of the Reply, the  
20 Trustees shall issue a Revised Statement of Position or provide written notice to such Defendant  
21 that the Trustees’ Statement of Position is final.  
22  
23  
24



1 c. An administrative record of the dispute shall be maintained by the  
2 Trustees and shall contain all Statements of Position and any Reply, including supporting  
3 documentation, submitted pursuant to this Section.

4 d. The Trustees' Statement of Position or Revised Statement of Position  
5 shall be binding upon such Defendant unless, within twenty-one (21) days after receipt of the  
6 Trustees' Statement of Position or Revised Statement of Position (or Notice that the Statement of  
7 Position is final), whichever is later, Defendant files with the Court and serves on the Parties in  
8 accordance with Section XXII (Notices and Submissions) a motion for judicial review of the  
9 decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief  
10 requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly  
11 implementation of the Decree. The motion shall also include any supporting factual data,  
12 analysis, opinion, or documentation. The Trustees may file a response to Defendant's motion,  
13 and Defendant may file a reply, in accordance with the schedule set forth in the Local Rules for  
14 the Western District of Washington. The foregoing sentence notwithstanding, the Parties  
15 acknowledge that disputes may arise that require judicial resolution on an expedited basis. In  
16 such cases, the Parties shall agree on an expedited schedule or, absent prompt agreement, any  
17 Party to the dispute may petition the Court for the imposition of an expedited schedule.  
18  
19  
20

21 e. The Court may rule based on the administrative record (including the  
22 Trustees' and Defendant's Statements of Position and Replies), with or without oral argument,  
23  
24  
25

1 and shall review the Trustees' Statements of Position or its resolution of the dispute under the  
2 standards of the Administrative Procedure Act.

3 f. Except as expressly stated elsewhere in this Decree, any matter in dispute  
4 shall be reviewable by this Court.

5 39. The invocation of formal Dispute Resolution procedures under this Section shall  
6 not extend, postpone, or affect in any way any obligation of any Defendant under this Decree,  
7 not directly in dispute, unless the Trustees or the Court agree otherwise. Stipulated Penalties with  
8 respect to the disputed matter shall continue to accrue as set forth in Paragraph 42 during the  
9 Dispute Resolution process, but payment otherwise required under Section XIV shall be stayed  
10 pending resolution of the dispute. In the event that the Defendant does not prevail on the  
11 disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XIV.  
12  
13

#### 14 **XIV. STIPULATED PENALTIES**

15 40. Late Payments by Defendants. Defendants shall pay a stipulated penalty of \$5,000  
16 per day that each payment pursuant to Section X (Reimbursement of Restoration Implementation  
17 Costs) or Section XI (Reimbursement of Past Assessment Costs) is not made by the required due  
18 date.  
19

20 41. Failure to Meet Deadlines or Satisfy Requirements of the Decree. The Parties  
21 stipulate that the time period for implementing the Project is a significant factor in the settlement  
22 reached in this Decree and that delay in carrying out the activities required in this Decree may  
23 diminish the compensatory value attributable to those activities. Consequently, in the event that  
24

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26 42

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28 Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

1 Defendants fail to meet a deadline or satisfy other requirements in this Decree (subject to any  
 2 modifications agreed to under Section XXIII), including those set forth in Appendix B, and any  
 3 delay is not excused through operation of the provisions of Section XV (Force Majeure), then  
 4 Defendants shall pay stipulated penalties per violation per day as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1 <sup>st</sup> through 14 <sup>th</sup> day	\$500
15 <sup>th</sup> through 30 <sup>th</sup> day	\$750
31 <sup>st</sup> day and beyond	\$1,000

10 Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate  
 11 violations of this Decree. Stipulated penalties under this Paragraph are in addition to the  
 12 remedies available under Paragraph 10(b) and Paragraph 24 (Trustee Access to Financial  
 13 Assurance Mechanisms).  
 14

15 42. All penalties shall begin to accrue on the day after the complete performance or  
 16 payment is due or the day a violation occurs, and shall continue to accrue through the final day  
 17 of the payment, correction of the noncompliance or completion of the activity. Following the  
 18 Trustees' determination that Defendants have failed to comply with a requirement of this Decree,  
 19 the Trustees shall give Defendants written notification of the same and describe the  
 20 noncompliance. The Trustees shall send Defendants a written demand for the payment of the  
 21 penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of  
 22 whether the Trustees have notified Defendants of the violation.  
 23  
 24

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1           43.     Payments under this Section shall be made as follows: 40% of the total to the  
2 United States; 20% of the total to the State; 20% of the total to the Suquamish Tribe; and 20% of  
3 the total to the Muckleshoot Indian Tribe. All payments for stipulated penalties to the United  
4 States will be deposited by EFT to the United States Treasury in accordance with Paragraph  
5 32(a)(1). Payments for stipulated penalties to the State or the Tribes shall be paid in accordance  
6 with the procedures set forth in Paragraph 32. At the time of each payment, Defendants will send  
7 notice that payment has been made to the Trustees and DOJ in accordance with Section XXII  
8 (Notices and Submissions). This notice will reference Lower Duwamish River NRDA, DOJ Case  
9 Number 90-11-3-07227/14, and the civil action number.  
10

11           44.     All penalties accruing under this Section shall be due and payable within thirty  
12 (30) days of Defendants' receipt from the Trustees of a demand for payment of the penalties,  
13 unless a Defendant invokes the Dispute Resolution procedures under Section XIII (Dispute  
14 Resolution).  
15

16           45.     Any Defendant may dispute the Trustees' right to the penalties identified under  
17 Paragraph 41 above by invoking the procedures of Section XIII (Dispute Resolution). Penalties  
18 identified for late payments under Paragraph 40 above are not subject to Section XIII (Dispute  
19 Resolution).  
20

21           46.     If Defendants fail to pay stipulated penalties when due, Plaintiffs may institute  
22 proceedings in this Court to collect the penalties, as well as interest. Defendants shall pay interest  
23

1 on the unpaid balance, which shall begin to accrue on the day after payment or complete  
2 performance is due.

3 47. If Plaintiffs bring a motion to enforce this Decree and prevail, Plaintiffs shall be  
4 entitled to recover from Defendants their reasonable costs of such motion or action, including,  
5 but not limited to, costs of attorney time.  
6

7 48. Penalties shall continue to accrue as provided in Paragraph 42 during any dispute  
8 resolution period, but need not be paid until the following:

9 a. If the dispute is resolved by agreement or by a decision of the Trustees that is not  
10 appealed to this Court, accrued penalties determined to be owing shall be paid to the Trustees  
11 within fifteen (15) days of the agreement or the receipt of the Trustees' decision or order;  
12

13 b. If the dispute is appealed to this Court and the Trustees prevail in whole or in part,  
14 Defendants shall pay all accrued penalties determined by the Court to be owed to the Trustees  
15 within sixty (60) days of receipt of the Court's decision or order, except as provided in  
16 Subparagraph (c) below;  
17

18 c. If the District Court's decision is appealed by any Party, Defendants shall pay all  
19 accrued penalties determined by the District Court to be owing to the Trustees into an interest-  
20 bearing escrow account within sixty (60) days of receipt of the Court's decision or order.

21 Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days.  
22 Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall  
23 pay the balance of the account to the Trustees or to Defendants to the extent that they prevail.  
24

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26 45

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Seattle, WA 98115  
(202) 532-3258



1 foreseeable probability of occurrence pursuant to Paragraph 14, or the failure to achieve Success  
2 Criteria for the Project.

3 a. If any event occurs or has occurred that may delay the performance of any  
4 obligation under this Decree, whether or not caused by a force majeure event, Defendants shall  
5 notify the Trustees within fourteen (14) days of when Defendants first knew that the event might  
6 cause a delay. Within thirty (30) days after notifying the Trustees, Defendants shall provide a  
7 written explanation and description of the reasons for the delay; the anticipated duration of the  
8 delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for  
9 implementation of any measures to be taken to prevent or mitigate the delay or the effect of the  
10 delay; and the rationale for attributing such delay to a force majeure event (if a Defendant  
11 intends to assert such a claim). Defendants shall be deemed to know of any circumstance of  
12 which Defendants, any entity controlled by Defendants, or a Defendant's contractors or  
13 subcontractors knew or should have known. Defendants shall include with any notice all  
14 available documentation supporting its claim that the delay was attributable to a force majeure  
15 event. Failure to comply with the above requirements will preclude Defendants from asserting  
16 any claim of force majeure for that event, provided, however, that if the Trustees, despite the late  
17 or incomplete notice, are able to assess to their satisfaction whether the event is a force majeure  
18 event under this Paragraph, and whether Defendants exercised best efforts under this Paragraph,  
19 the Trustees may, in their unreviewable discretion, excuse in writing Defendants' failure to  
20 submit timely or complete notices under this Paragraph.  
21  
22  
23  
24

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1           b.       If the Trustees agree that the delay or anticipated delay is attributable to a  
2 force majeure event, the time for performance of the obligations under this Decree that are  
3 affected by the force majeure event will be extended by the Trustees for such time as the  
4 Trustees determine is necessary. An extension of the time for performance of the obligations  
5 affected by the force majeure event shall not, of itself, extend the time for performance of any  
6 other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will  
7 be caused by a force majeure event, the Trustees will notify Defendants in writing of their  
8 decision.  
9

10           c.       If a Defendant elects to invoke the Dispute Resolution procedures set forth  
11 in Section XIII, above, regarding a claimed force majeure event, it shall do so no later than  
12 fifteen (15) days after receipt of the Trustees' notice of disagreement. In any such proceeding,  
13 Defendants shall have the burden of demonstrating by a preponderance of the evidence that the  
14 delay or anticipated delay has been or will likely be caused by a force majeure event, that the  
15 duration of the delay or the extension sought was or will be warranted under the circumstances,  
16 that the Defendants exercised best efforts to fulfill the obligation in question, that best efforts  
17 were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with  
18 the requirements of this Paragraph. If such Defendant carries this burden, the delay at issue shall  
19 be deemed not to be a violation by such Defendant of the affected obligation of this Decree.  
20  
21  
22  
23  
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25



**XVI. INDEMNIFICATION; INSURANCE**

1  
2           52.    a.       Plaintiffs do not assume any liability by entering into this Decree.  
3 Defendants shall indemnify and hold harmless each of the Plaintiffs and/or their agents,  
4 employees and representatives from any and all damage claims or causes of action arising from  
5 negligent or other wrongful acts or omissions of Defendants and/or each of their respective  
6 officers, employees, agents, contractors, subcontractors, representatives and any persons acting  
7 on its behalf or under its control in carrying out activities pursuant to this Decree. Further,  
8 Defendants agree to pay Plaintiffs all costs Plaintiffs incur, including but not limited to  
9 attorneys' fees and other expenses of litigation and settlement, arising from or on account of  
10 claims made against Plaintiffs based on negligent or other wrongful acts or omissions of  
11 Defendants or their officers, employees, agents, contractors, subcontractors, representatives, and  
12 any persons acting on its behalf or under its control, in carrying out activities pursuant to this  
13 Decree. None of the Plaintiffs shall be held out as a party to any contract entered into by or on  
14 behalf of Defendants in carrying out activities pursuant to this Decree. Neither Defendants nor  
15 any contractor or representative of Defendants shall be considered an agent of any Plaintiff, and  
16 Defendants shall require any contractor hereafter retained by a Defendant who performs work for  
17 Defendants in carrying out activities pursuant to this Consent Decree to affirmatively  
18 acknowledge that it is not acting as an agent of any Plaintiff.  
19  
20  
21

22                   b.       Plaintiffs shall give Defendants written notice of any claim for which one  
23 or more Plaintiffs plan to seek indemnification pursuant to Paragraph 52(a), and shall consult  
24

1 with Defendants (including, but not limited to, responding to any Defendant’s reasonable  
2 requests for information regarding any proposed settlement of that claim) prior to settling such  
3 claim.

4 53. Defendants waive all claims against Plaintiffs for damages or reimbursement or  
5 for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any  
6 contract, agreement, or arrangement between any Defendant and any person for performance of  
7 activities pursuant to this Decree, including, but not limited to, claims on account of construction  
8 delays. In addition, Defendants shall indemnify and hold harmless Plaintiffs with respect to any  
9 and all claims for damages or reimbursement arising from or on account of any contract,  
10 agreement, or arrangement between any Defendant and any person for performance of activities  
11 pursuant to this Decree, including, but not limited to, claims on account of construction delays.

12 54. No later than fifteen (15) days before commencing any work on the Project Site,  
13 Defendants shall cause to be maintained comprehensive general liability insurance and  
14 automobile liability insurance with limits of \$10,000,000 (ten million dollars), combined single  
15 limit. The Trustees shall be named additional insureds on any such policies with respect to all  
16 liability arising out of the activities performed by or on behalf of Defendants pursuant to this  
17 Decree. In addition, for the duration of this Decree Defendants shall satisfy, or shall ensure that  
18 its contractors or subcontractors satisfy, all applicable laws and regulations regarding the  
19 provision of worker’s compensation insurance for all persons performing any work involved in  
20 implementing this Decree. No later than fifteen (15) days before commencing any work involved

1 in implementing this Decree, Defendants shall provide to the Trustees certificates of such  
2 insurance and copies of such insurance policies. Defendants shall resubmit such certificates and  
3 copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If  
4 Defendants demonstrate by evidence satisfactory to the Trustees that any contractor or  
5 subcontractor maintains insurance equivalent to that described above, or insurance covering the  
6 same risks but in a lesser amount, then, with respect to that contractor or subcontractor,  
7 Defendants need provide only that portion of the insurance described above that is not  
8 maintained by the contractor or subcontractor.  
9

10 **XVII. COVENANT NOT TO SUE BY PLAINTIFFS**

11 55. Except as specifically provided in Section XVIII (Reservations of Rights) below,  
12 Plaintiffs covenant not to sue or to take administrative action against any Defendant pursuant to  
13 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70A.305 RCW; RCW 90.48.367(5);  
14 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; Section 1002(a) of the Oil  
15 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(a); or any applicable tribal law, to recover  
16 Covered Natural Resource Damages. This covenant not to sue will take effect upon Defendants'  
17 payment of costs pursuant to Section XI (Past Assessment Costs Reimbursement) and is  
18 conditioned upon the satisfactory performance by Defendants of their obligations under this  
19 Consent Decree. This covenant not to sue extends only to Defendants and does not extend to any  
20 other person except to successors and assigns of Defendants, but only to the extent that liability  
21 is based solely on such person's status as the successor or assign of Defendants.  
22  
23  
24

**XVIII. RESERVATIONS OF RIGHTS**

1  
2           56.       Plaintiffs reserve, and this Decree is without prejudice to, all rights against  
3 Defendants with respect to all matters not expressly included within the Covenant Not to Sue by  
4 Plaintiffs in Section XVII. Notwithstanding any other provision of this Consent Decree,  
5 Plaintiffs reserve all rights against Defendants with respect to:

6                   a.       liability for any other costs, including without limitation, costs of response  
7 incurred or to be incurred by the United States, the State, or the Tribes under any federal or State  
8 statute or tribal law that are not within the definition of Covered Natural Resource Damages;  
9

10                   b.       liability for damages to Natural Resources (including assessment costs) as  
11 defined in 42 U.S.C. § 9601(6), (16) that are not within the definition of Covered Natural  
12 Resource Damages;  
13

14                   c.       liability for damages to Natural Resources (including assessment costs) as  
15 defined in 42 U.S.C. § 9601(6), (16) within the Lower Duwamish River and/or Elliott Bay  
16 resulting from new releases of hazardous substances or discharges of oil at or from the facility  
17 identified in Appendix A and originating from a Defendant’s operations or activities after the  
18 Effective Date of this Decree;  
19

20                   d.       liability for damages to Natural Resources (including assessment costs) as  
21 defined in 42 U.S.C. § 9601(6), (16) based upon a Defendant’s transportation, treatment, storage,  
22 or disposal, or the arrangement for the transportation, treatment, storage, or disposal of  
23

1 hazardous substances at or in connection with the Lower Duwamish River and/or Elliott Bay,  
2 after the Effective Date of this Decree;

3 e. liability for injunctive relief or administrative order enforcement under  
4 any federal or State statute;

5 f. liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs  
6 of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);  
7

8 g. additional claims for Covered Natural Resource Damages if conditions,  
9 factors or information in the Lower Duwamish River and/or Elliott Bay, not known to the  
10 Trustees as of the Effective Date, are discovered that, together with any other relevant  
11 information, indicate that there is a threat to the environment, or injury to, destruction of, or loss  
12 of Natural Resources of a type unknown, or of a magnitude significantly greater than was  
13 known, as of the Effective Date of this Decree (for purposes of this Subparagraph, information  
14 known to the Trustees shall consist of any information in the files of, or otherwise in the  
15 possession of, any one of the individual Trustees, or their contractors or consultants who worked  
16 on the Trustees' natural resource damages assessment and liability allocation Project);  
17  
18

19 h. criminal liability to the United States or State; and

20 i. liability for failure of Defendants to satisfy the requirements of this Decree.

21 **XIX. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY**  
22 **DEFENDANTS**

23 57. Defendants covenant not to sue and agree not to assert any claims or causes of  
24 action against the United States, the State, the Suquamish Tribe, and the Muckleshoot Indian

1 Tribe, or their contractors or employees, relating to Covered Natural Resource Damages,  
2 including, but not limited to:

3 a. any direct or indirect claim for reimbursement of any payment for Covered  
4 Natural Resource Damages from the Hazardous Substance Superfund based on CERCLA  
5 Sections 107, 111, 112, 113, or any other provision of law;

6 b. any claim against the United States, the State, or the Tribes pursuant to Sections  
7 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Covered Natural Resource  
8 Damages; or  
9

10 c. any claims arising out of activities related to the Restoration Project,  
11 including, without limitation, claims based on the Trustees' approval of the Project, oversight  
12 and monitoring of the Project, and/or approval of plans for such activities.  
13

14 58. Defendants reserve, and this Decree is without prejudice to, all rights, including  
15 defenses and counterclaims, with respect to all matters reserved in Section XVIII (Reservation of  
16 Rights); however, Defendants' reservation in this Paragraph is only to the same extent and for  
17 the same matters, transactions, or occurrences as are raised in the claims asserted by the  
18 Plaintiffs pursuant to Section XVIII.  
19

20 **XX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

21 59. Nothing in this Decree shall be construed to create any rights in, or grant any  
22 cause of action to, any person not a Party to this Decree. Each of the Parties expressly reserves  
23 any and all rights (including, but not limited to, any right to contribution pursuant to Section 113  
24

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1 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action each Party may  
2 have with respect to any matter, transaction, or occurrence relating in any way to the Lower  
3 Duwamish River and/or Elliott Bay against any person not a Party hereto. Nothing in this Decree  
4 diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42  
5 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional relief (including  
6 response action, response costs, and natural resource damages) and to enter into settlements that  
7 give rise to contribution protection pursuant to Section 113(f)(2).  
8

9         60.       The Parties agree, and by entering this Decree this Court finds, that this  
10 settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2), and that  
11 each Defendant is entitled, as of the Effective Date of this Decree, to protection from  
12 contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2),  
13 and RCW 70A.305.040(4)(d), and as may be otherwise provided by law, for Covered Natural  
14 Resource Damages; provided, however, that if Plaintiffs exercise their rights under the  
15 reservations in Section XVIII, other than in Paragraphs 56(h) (criminal liability) and 56(i)  
16 (failure to satisfy a requirement of this Decree), the contribution protection afforded by this  
17 Decree will no longer include those matters that are within the scope of the exercised reservation.  
18  
19

20         61.       Defendants agree to notify the Trustees and the United States in writing no later  
21 than sixty (60) days before bringing a suit or claim for contribution for Covered Natural  
22 Resource Damages. Defendants also will notify the Trustees of any settlement of its claims  
23 (regardless of whether the claim is filed or unfiled) for contribution for Covered Natural  
24

25 CONSENT DECREE

1 Resource Damages. Each Defendant also agrees that it will notify the Trustees and the United  
2 States in writing within ten (10) days of service of a complaint or claim upon such Defendant  
3 relating to a suit or claim for contribution for Covered Natural Resource Damages. In addition,  
4 Defendants will notify the Trustees and the United States within ten (10) days of service or  
5 receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order  
6 from a court setting a case for trial for matters related to this Decree.  
7

8 62. In any subsequent administrative or judicial proceeding initiated by Plaintiffs for  
9 injunctive relief, recovery of response costs, or other appropriate relief other than Covered  
10 Natural Resource Damages, Defendants shall not assert, nor may they maintain, any defense or  
11 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,  
12 claim-splitting, or other defenses based upon any contention that the claims raised by Plaintiffs  
13 in the subsequent proceeding were or should have been brought in the instant case; provided,  
14 however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue set  
15 forth in Sections XVII and XIX.  
16

#### 17 **XXI. RETENTION OF RECORDS**

18  
19 63. Until ten (10) years after Defendants' receipt of the Trustees' notification  
20 pursuant to Paragraph 12 (Notice of Approval of Completion of Initial Maintenance and  
21 Monitoring Obligations), Defendants shall preserve and retain all non-identical copies of records  
22 and documents (including records or documents in electronic form) now in its possession or  
23 control or which come into its possession or control that relate in any manner to its liability or  
24



1 the liability of any other person under CERCLA with respect to the Lower Duwamish River  
2 and/or Elliott Bay. Defendants must also retain, and instruct their respective contractors and  
3 agents to preserve, for the same period of time specified above, all non-identical copies of the  
4 last draft or final version of any documents or records (including documents or records in  
5 electronic form) now in its possession or control or which come into its possession or control that  
6 relate in any manner to the performance of the Project, provided, however, that Defendants (and  
7 their contractors and agents) must respectively retain, in addition, copies of all data generated  
8 during the performance of the Work and not contained in the aforementioned documents  
9 required to be retained. Each of the above record retention requirements shall apply respectively  
10 and individually to Defendants, regardless of any corporate retention policy to the contrary.  
11

12  
13 64. At the conclusion of this document retention period, Defendants shall notify the  
14 Trustees at least ninety (90) days prior to the destruction of any such records or documents, and  
15 except as provided in Paragraph 65 (Privileged and Protected Claims), upon written request by  
16 the Trustees, Defendants shall deliver any such non-privileged records or documents to the  
17 Trustees.  
18

19 65. Privileged and Protected Claims. Defendants may assert that certain documents,  
20 records and other information are privileged under the attorney-client privilege or any other  
21 privilege recognized by federal law. If Defendants assert such a privilege, it shall provide  
22 Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of  
23 the document, record, or information; (3) the name and title of the author of the document,  
24



1 As to the United States and as to DOJ:

2 EES Case Management Unit  
3 Environment and Natural Resources Division  
4 U.S. Department of Justice  
5 P.O. Box 7611  
6 Washington, D.C. 20044-7611  
7 Eescdcopy.enrd@usdoj.gov  
8 (DJ #90-11-3-07227/14)

9 Erika Wells  
10 U.S. Department of Justice  
11 c/o NOAA/Damage Assessment  
12 7600 Sand Point Way, NE  
13 Seattle, WA 98115  
14 Erika.wells@usdoj.gov

15 As to NOAA:

16 Joe Edgell  
17 NOAA Office of General Counsel  
18 7600 Sand Point Way N.E.  
19 Seattle, WA 98115  
20 joseph.edgell@noaa.gov

21 Marla Steinhoff  
22 Regional Resource Coordinator  
23 Office of Response and Restoration  
24 Assessment and Restoration Division  
25 7600 Sand Point Way NE, Bldg. 1,  
26 Seattle, WA 98115-6349  
27 Marla.steinhoff@noaa.gov

28 CONSENT DECREE

1 As to the United States Department of the Interior:

2 Deirdre Donahue  
3 U.S. Department of the Interior  
4 Office of the Solicitor  
5 601 SW 2nd Avenue, Suite 1950  
6 Portland, OR 97204  
7 Deirdre.donahue@sol.doi.gov

8 Jeff Krausmann  
9 U.S. Fish & Wildlife Service  
10 510 Desmond Dr. SE, Suite 102  
11 Lacey, WA 98503-1263  
12 Jeff\_krausmann@fws.gov

13 As to the State:

14 John Level  
15 Assistant Attorney General  
16 2425 Bristol Court S.W.  
17 P.O. Box 40117  
18 Olympia, WA 98504 0117  
19 John.level@atg.wa.gov

20 As to the Suquamish Tribe:

21 Kendra Martinez  
22 Suquamish Tribe  
23 Office of Tribal Attorney  
24 P.O. Box 498  
25 Suquamish, WA 98392-0498  
26 kmartinez@Suquamish.nsn.us

27 With a copy to Dave Askman  
28 Outside counsel to Suquamish Tribe  
dave@askmanlaw.com

25 CONSENT DECREE

1 As to the Muckleshoot Indian Tribe:

2 Rob Otsea and Trent Crable  
3 Office of the Tribal Attorney  
4 Muckleshoot Indian Tribe  
5 39015 172nd Avenue S.E.  
6 Auburn, WA 98002  
7 Trent.crable@muckleshoot.nsn.us

8 As to Defendants:

9 Christopher J. Esbrook  
10 Michael Kozlowski  
11 Esbrook P.C.  
12 321 N. Clark St. Suite 1930  
13 Chicago, Illinois 60654  
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16 Patrick Jablonski  
17 Nucor Steel Seattle  
18 2424 SW Andover Street  
19 Seattle, WA 98106  
20 pat.jablonski@nucor.com

### 21 **XXIII. EFFECTIVE DATE**

22 68. The effective date of this Consent Decree shall be the date upon which the  
23 approval of this Decree is recorded on the Court's docket.

### 24 **XXIV. RETENTION OF JURISDICTION**

25 69. This Court retains jurisdiction over both the subject matter of this Decree and the  
26 Parties for the duration of the performance of the terms and provisions of this Decree for the  
27 purpose of enabling any of the Parties to apply to the Court at any time for such further order,  
28 direction, and relief as may be necessary or appropriate for the construction or modification of

CONSENT DECREE

1 this Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in  
2 accordance with Section XIII (Dispute Resolution).

3 **XXV. INTEGRATION/APPENDICES**

4 70. This Decree and its appendices constitute the final, complete, and exclusive  
5 agreement and understanding with respect to the settlement embodied in this Decree. The Parties  
6 acknowledge that there are no representations, agreements, or understandings relating to the  
7 settlement other than those expressly contained in this Decree. The terms “Consent Decree” and  
8 “Decree” as used herein include the appendices to this Decree. The following appendices are  
9 attached to and incorporated into this Decree:  
10

11 Appendix A Legal Description and Map of the facility included within the definition of  
12 Covered Natural Resource Damages

13 Appendix B Scope of Work for the Project

14 Appendix C Conservation Easement for the Project Site

15 Appendix D Financial Assurance for Construction of the Project

16 Appendix E Financial Assurance for Monitoring and Maintenance of the Project

17 Appendix F Financial Assurance for Stewardship of the Project

18 Appendix G Financial Assurance for Adaptive Management of the Project  
19  
20

21 **XXVI. MODIFICATION**

22 71. No material modifications shall be made to any requirement under this Decree  
23 without written notification to and written approval of the United States Department of Justice  
24 and the Trustees, Defendants, and the Court. Modifications to this Consent Decree exclusive of  
25

26 CONSENT DECREE

1 the appendices incorporated within that do not materially alter the terms of this Decree may be  
2 made by written agreement between the United States Department of Justice, the Trustees, and  
3 Defendants. Modifications to any of the appendices to this Decree that do not materially alter any  
4 of the terms of this Decree may be made by written agreement between the Trustees and  
5 Defendants.  
6

7 **XXVII. ENFORCEMENT**

8 72. The requirements of this Decree, including but not limited to deadlines, schedules  
9 and Project designs, are independently enforceable. Any delay or failure of the Trustees to  
10 enforce any requirement will not preclude or prejudice the subsequent enforcement of the same  
11 or another requirement.  
12

13 **XXVIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

14 73. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the  
15 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A),  
16 performance of Paragraph 3; Paragraph 5; Section VII (Restoration Project), Paragraphs 9-16,  
17 18, 20-23, 26 and related Appendix B; Section VIII (Access To Information And Project Site),  
18 Paragraphs 27-29; Section IX (Selection Of Contractors), Paragraph 30; Section  
19 XVI (Indemnification; Insurance), Paragraphs 52-54; and Section XXI (Retention Of Records),  
20 Paragraphs 63, 64, and 66; and the payments required by Section X (Reimbursement Of  
21 Restoration Implementation Costs), Paragraph 31, and Section XI (Past Assessment Cost  
22 Reimbursement), Paragraphs 32-33, are restitution or required to come into compliance with law.  
23  
24

**XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

1  
2 74. This Decree will be lodged with the Court for a period of not less than thirty (30)  
3 days for public notice and comment. Plaintiffs each reserve the right to withdraw or withhold  
4 their consent if the comments regarding the Decree disclose facts or considerations that indicate  
5 this Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this  
6 Decree without further notice.

7  
8 75. If for any reason this Court does not approve this Decree in the form presented,  
9 this Decree may be voided at the sole discretion of any Party, and the terms of the agreement  
10 may not be used as evidence in any litigation among the Parties.

11  
12 **XXX. SIGNATORIES/SERVICE**

13 76. The Assistant Attorney General for the Environment and Natural Resources  
14 Division of the United States Department of Justice and each undersigned representative of the  
15 State, the Suquamish Tribe, the Muckleshoot Indian Tribe, and Defendants certifies that they are  
16 authorized to enter into the terms and conditions of this Decree and to execute and bind legally  
17 the Party that they represent to this document.

18  
19 77. Defendants agree not to oppose entry of this Decree by this Court or to challenge  
20 any provision of this Decree unless any Plaintiff has notified Defendants in writing that it no  
21 longer supports entry of the Decree.

22  
23 78. Defendants will identify on the attached signature page the name and address of  
24 an agent who is authorized to accept service of process by mail on behalf of each of them with



1 respect to all matters relating to this Decree. Defendants agree to accept service in that manner  
2 and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil  
3 Procedure and any applicable local rules of this Court, including but not limited to service of a  
4 summons. Defendants need not file an answer to the complaint in this action unless or until the  
5 Court expressly declines to enter this Decree.  
6

7 **XXXI. FINAL JUDGMENT**

8 79. Upon approval and entry of this Decree by the Court, this Decree shall constitute a  
9 final judgment between and among the United States, the State, the Suquamish Tribe, the  
10 Muckleshoot Indian Tribe, and Defendants. The Court finds that there is no just reason for delay  
11 and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.  
12

13 SO ORDERED THIS DAY OF , .

14  
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16 \_\_\_\_\_  
17 United States District Judge  
18  
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24

25 CONSENT DECREE

27 U. S. DEPARTMENT OF JUSTICE  
28 Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258


1 Signature Page for Decree regarding the Lower Duwamish River

2 *U.S., et al., v. General Recycling, LLC, et al.*

3  
4 FOR THE UNITED STATES OF AMERICA:

5  
6 TODD KIM  
7 Assistant Attorney General  
8 Environment & Natural Resources Division  
9 U.S. Department of Justice  
10 Washington, D.C. 20530

11 Date: 2/13/2024

  
12 \_\_\_\_\_  
13 ERIKA M. WELLS  
14 Senior Counsel  
15 Environmental Enforcement Section  
16 Environment & Natural Resources Division  
17 U.S. Department of Justice  
18 c/o NOAA Damage Assessment  
19 7600 Sand Point Way, NE  
20 Seattle, Washington 98115

21 OF COUNSEL:

22 JOSEPH EDGELL  
23 Attorney Advisor  
24 National Oceanic and Atmospheric Administration, Office of General Counsel

25 DEIRDRE DONAHUE  
26 U.S. Department of the Interior  
27 Office of the Solicitor

28 CONSENT DECREE

1 Signature Page for Decree regarding the Lower Duwamish River *U.S., et al., v.*  
2 *General Recycling, LLC, et al.*

3  
4 FOR DEFENDANTS:

5  
6  
7 Date: 1/5/2024



8 Chris D. Trunck, Officer and Authorized Signatory,  
9 on behalf of General Recycling of Washington,  
10 LLC; Nucor Steel Seattle, Inc.; and the David J.  
11 Joseph Company

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25 CONSENT DECREE

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27 U. S. DEPARTMENT OF JUSTICE  
28 Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

Signature Page for Decree regarding the Lower Duwamish River

*U.S., et al., v. General Recycling, LLC, et al.*

FOR THE STATE OF WASHINGTON:

Date: 1/23/24

  
BARRY ROGOWSKI

Program Manager  
Toxic Cleanup Program  
Department of Ecology  
Post Office Box 47600  
Olympia, WA 98504-7600

Date: 1/23/24

  
JOHN LEVEL

Assistant Attorney General  
State of Washington  
2425 Bristol Court S.W.  
P.O. Box 40117  
Olympia, WA 98504-0117

CONSENT DECREE


U. S. DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

Signature Page for Decree regarding the Lower Duwamish River

*U.S., et al., v. General Recycling, LLC, et al.*

FOR THE SUQUAMISH TRIBE:

Date: 02/08/2024

DocuSigned by:  
  
F19A5D9A5D7A4A4...

LEONARD FORSMAN  
Chairman  
Suquamish Tribe  
Post Office Box 498  
Suquamish, Washington 98392

CONSENT DECREE


U. S. DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

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1 Signature Page for Decree regarding the Lower Duwamish River  
2 *U.S., et al., v. General Recycling, LLC, et al.*

3 FOR THE MUCKLESHOOT INDIAN TRIBE:  
4

5 Date: 03/05/2024  
6

7   
8 JAISON ELKINS  
9 Chairperson  
10 Muckleshoot Indian Tribe  
11 39015 172nd Ave. S.E.  
12 Auburn, WA 98092-9763  
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25 CONSENT DECREE  
26 (Civ No. \_\_\_\_\_)

27 U. S. DEPARTMENT OF JUSTICE  
28 Environment and Natural Resources Division  
7600 Sand Point Way NE  
Seattle, WA 98115  
(202) 532-3258

# **Attachment A**





King County, King County Assessor's Office, King County GIS Center, EagleMap Technology, Inc.

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is per se sold except by written permission of King County.

Date: 11/16/2023

**General Recycling of Washington  
Seattle, WA  
NRD Settlement Tax Parcels and  
Project Site**



**King County**



**LEGAL DESCRIPTION**

**Parcel A (PIN 766670-3540)**

SEATTLE TIDE LDS EXT #1 TGW LOTS 7 THRU 16 BLK 414 SD PLAT TGW VAC ST ADJ TGW POR GL 8 PCL DAF - BEG SW COR LOT 11 SD BLK 414 BNG NXN N MGN SW IDAHO ST & E MGN W MARGINAL WY SW TH ALG SD E MGN N 23-02-33 W 326.01 FT TO NW COR LOT 7 SD BLK TH N 89-59-58 E 853.33 FT TO NE COR LOT 7 BLK 411 TH S17-56-43E 315.34 FT TO SE COR LOT 11 SD BLK 411 PT ALSO NXN OF W LN (WW DIST #1 & N MGN SW IDAHO ST TH ALG SD N MGN S 89-59-59 W 534.86 FT TO SW COR LOT 12 BLK 414 TH LEAVING SD MGN S 23-02-31 E 65.89 FT TH N 89-57-07 W 41.04 FT TH N 18-16-06 W 63.82 FT TO N MGN OF SW IDAHO ST TH ALG SD MGN S 89-59-59 W 252.77 FT TPOB TGW VAC INDIANA AVE SW ADJ TO SD LOTS TGW VAC W MARGINAL WAY & VAC SW IDAHO ST ADJ PER VAC ORD #123884

**Parcel B (PIN 766670-3630)**

SEATTLE TIDE LDS EXT #1 & LOTS 28-29 BLK 415 SD PLAT & VAC INDIANA ST ADJ TGW PORS OF FOLG-LOTS 1-6 & POR LOT 7 SD BLK 415 & LOTS 1-6 & POR LOT 7 BLK 417 SD PLAT & VAC IOWA AVE & OF GL 8 & SW 1/4 SEC 18-24-04 ALL DAF - BEG NXN OF S LN OF SW IDAHO ST & ELY LN OF MARGINAL WAY TH S 13-12-45 E 401.549 FT TH S 42-53-11 E 1.14 FT TH S89-06-01E 380.22 FT TH S 00-43-48W 6.91 FT TH S89-13-47E 25.09 FT TH N01-21-16E 6.82 FT TH S89-00-02E 408.62 FT TH S18-17-04E 310.50 FT TH S37-05-55W 160.50 FT TH S52-23-51E 8.22 FT TH S37-36-05W 175.00 FT TH S52-23-51E 150.00 FT TH N70-24-36E 18.45 FT TH N37-36-09E 276.84 FT TH N70-24-36E 103.30 FT TH N19-35-39W TO INTERSECT THE SOUTH LN OF SD SW IDAHO ST TH WLY ALG SD SOUTH LN TO THE POB TGW VAC MARGINAL WAY S & VAC SW IDAHO ST ADJ PER VAC ORD #123884

**Parcel C (PIN 182404-9018)**

POR GL 8 & OF SW 1/4 & OF ABANDONED BED OF DUWAMISH RIVER-BEG NXN OF N LN OF BLK 417 SEATTLE TIDE LDS & ELY MGN OF W MARGINAL WAY SW TH S 13-12-45 S 13-12-45 E ALG SD MGN 401.55 FT TH S 42-53-11 E 1.14 FT TH S 89-06-01 E 363.63 FT TO TPOB TH S 13-12-15 E 104.48 FT TH S 54-12-04 E 539.16 FT TH N 37-05-55 E 143.50 FT N 18-17-04 W 310.50 FT TH N 89-00-02 W 408.62 FT TH S 01-21-16 W 6.82 FT TH N 89-13-47 W 25.09 FT TH N 00-43-48 E 6.91 FT TH N 89-06-01 W 16.59 FT TO POB AKA PARCEL A OF SEATTLE LOT BOUNDRY ADJUSTMENT NO 8605585 RECORDING NUMBER 8702250409

# **Attachment B**

---

## **Scope of Work**

General Recycling of Washington Habitat Project

Seattle, Washington

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September 2023

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### ACRONYMS AND ABBREVIATIONS

<b>Acronym/ Abbreviation</b>	<b>Definition</b>
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
City	City of Seattle
DNS	Determination of Nonsignificance
GRW	General Recycling of Washington, LLC
JARPA	Joint Aquatic Resource Permit Application
MLLW	Mean Lower Low Water
NOAA	National Oceanic and Atmospheric Administration
NRD	Natural Resource Damages
NRDA	Natural Resource Damage Assessment
Project	General Recycling of Washington Habitat Project
SAP/QAPP	Sampling and Analysis Plan/Quality Assurance Project Plan
SCO	Sediment Cleanup Objective
SCUM	Sediment Cleanup User's Manual
SEPA	State Environmental Policy Act
SOW	Scope of Work
Trustees	Elliott Bay Trustee Council
USEPA	U.S. Environmental Protection Agency

## **SCOPE OF WORK**

### **General Recycling of Washington Habitat Project**

#### **Seattle, Washington**

### **1.0 INTRODUCTION**

This document is Appendix B to the Consent Decree between the United States of America, on behalf of the National Oceanic and Atmospheric Administration and the United States Department of the Interior, the State of Washington through the Washington State Department of Ecology, the Muckleshoot Indian Tribe, and the Suquamish Indian Tribe (hereafter referred to as the Trustees), and General Recycling of Washington, LLC (GRW), the David J. Joseph Company, and Nucor Steel Seattle, Inc. (hereafter referred to as the Defendants) memorializing the settlement of Natural Resources Damages (NRD) associated with the GRW property (hereafter referred to as the Property). The Property is located adjacent to the Lower Duwamish River within the Lower Duwamish Waterway Superfund Site (Tax Parcels 7666703540, 7666703630, 1824049018). This document is the Scope of Work (SOW) to be completed by GRW to implement a habitat restoration project at the Property (GRW Project) to settle the Trustees' NRD claims as set forth in the Consent Decree. In accordance with the Consent Decree, implementation of the SOW is the joint responsibility of the Defendants. This SOW refers to implementation by GRW because the Defendants anticipate that GRW will implement the SOW on behalf of the Defendants.

Due to the industrialization of the Lower Duwamish River, off-channel habitats used by juvenile salmonids, birds, and other estuarine species have been largely eliminated, which results in limited spring/summer off-channel rearing habitat and limited high-flow refuge. Riparian functions have also been greatly reduced by diking and stream bank development, which results in reduced shading and input of leaf litter and insects. Off-channel and riparian habitats have been identified as limiting factors for Green River anadromous salmonid populations. The GRW NRD settlement has been designed to increase the area of functional habitat for salmonids and other natural resources utilizing the river.

The type of off-channel habitat to be constructed is considered to be highly desirable, as noted in both the Trustees' Lower Duwamish River Natural Resource Damage Assessment (NRDA) Restoration Plan (NOAA, 2013) and the Duwamish Blueprint prepared for the Water Resource Inventory Area 9 Watershed Ecosystem Forum (Ostergaard et al., 2014). As a whole, the Lower Duwamish River habitat serves an important role in the life history of salmonid species, acting as a migration corridor between up-river spawning habitats and the relatively unprotected Elliott Bay estuary.

Along the Lower Duwamish River there is habitat in the vicinity of the Project, including the Port of Seattle Terminal 105 Park (tuʔəlaltx<sup>w</sup> Village Park and Shoreline Habitat) downstream and the Herring's House Park (həʔapus Village Park and Shoreline Habitat) upstream. The Project will be located between these two existing intertidal habitat areas, thus creating a corridor of high quality habitat along this stretch of the river. The location of the Project to these existing habitat restoration sites therefore makes the Project highly beneficial. The Project will provide important habitat diversity, be unique within the industrialized reach of the Lower Duwamish River, and support important ecosystem processes.

This SOW describes the actions GRW is required to undertake to comply with the terms of the NRD settlement, which includes restoration of approximately 2.89 acres of marsh, riparian, intertidal, and subtidal habitats to support juvenile salmon and other injured resources.

The following elements have been or will be implemented by GRW:

- Removal of existing bulkhead wall (260 linear feet) and ecology block retaining wall (130 linear feet), shoreline debris, and approximately 100 creosote-treated pilings.
- Creation of approximately 0.53 acres of riparian buffer between +17 and +12 feet Mean Lower Low Water (MLLW).
- Creation of approximately 1.04 acres of vegetated marsh habitat, including within the off-channel and shoreline portions of the Project between +6 and +12 feet MLLW.
- Creation of approximately 0.69 acres of intertidal habitat between -4 and +6 feet MLLW.
- Habitat function improvement for approximately 0.56 acres of subtidal habitat due to adjacent, highly functioning intertidal and marsh habitat.
- Conversion of approximately 1.53 acres of uplands to aquatic habitat area.
- Construction of vegetated armored slope as a protective berm (0.07 acres).

Quantification of the habitat restoration elements for the Project is presented in Table 1.

The following issues are addressed in this SOW:

- The proposed concept for the Project
- The process that will be used to refine the design of the Project
- The site-specific investigations that will be undertaken as part of the design process for the Project
- The maintenance, monitoring, and stewardship that will be implemented to ensure that the objectives of the restoration are met
- The success criteria and monitoring methods and frequency that will be used for the Project

## **2.0 PROJECT DESCRIPTION**

The Project is designed to maximize the value of habitat by optimizing the area and quality of off-channel marsh and intertidal habitat; optimizing the riparian vegetated buffer; removing shoreline debris and creosote-treated pilings; and providing appropriate maintenance, monitoring, and stewardship to support the establishment and sustainability of the restored habitat.

### **2.1 PROJECT**

The Project will prioritize marsh habitat with adjacent vegetated riparian buffer. The off-channel habitat area will be designed to encourage fish access from the Lower Duwamish River with a wide opening for fish passage in the northern half of the habitat area. The off-channel area will be protected from wave and vessel activity with a shoreline berm that will support riparian vegetation.

The river shoreline south of the off-channel area, between the south end of the protective berm and the existing industrial dock, will be planted with marsh vegetation and a riparian buffer.

An initial conceptual design for the proposed habitat area is shown in Figures 1-4 (Demolition and Debris Removal; Habitat Concept Plan; Habitat Cross Sections). The design will be further refined with Trustee input and approval during the design process undertaken per this SOW, as defined in Section 3.0. Construction of the proposed habitat elevations requires excavation and grading of a 1.9-acre area to achieve suitable elevations for the marsh habitat and channel opening. The excavation will remove several feet of material below the final grade of the habitat and several feet of clean, imported fill will be placed to construct the habitat.

Within the off-channel habitat area, imported clean materials<sup>1</sup> will be placed to support marsh vegetation and intertidal habitat as beneficial habitat substrates. Habitat substrates will be selected with Trustee input and approval during the design process, based on review of habitat substrates in the vicinity habitat areas (refer to Section 3.2). Clean topsoil will be placed within a riparian buffer, to be located in all areas adjacent to the new marsh and in zones along the protective exterior berm.

The marsh and riparian buffer areas will be planted with appropriate vegetation, to be determined with the Trustees' input during the design review process. The selection of appropriate vegetation will utilize empirical findings of successful planting from the vicinity habitat areas described in Section 3.2. Large woody debris will be placed and secured to increase habitat complexity.

GRW will work with the Trustees to design the bathymetry within the off-channel habitat area to achieve an optimal layout and elevations. Additionally, GRW will work with tribal representatives to locate net anchors within the Project to facilitate tribal fisheries.

### **3.0 DESIGN PROCESS**

The Trustees and the GRW design team will refine the Project concepts within the identified project boundaries to maximize habitat function. The final design of the Project will restore/create at least 90 percent of the areas identified in Table 1, or a lesser amount if otherwise approved by the Trustees.

GRW will submit design documents to the Trustees for review and approval at multiple stages of design. This process will facilitate Trustee involvement and support throughout the design process, and consistency between design and permitting. This process, and the specific design documentation required, is described in Section 9.1.

Final designs and specifications of the Project must be approved by the Trustees before the Trustees authorize GRW to begin construction. Any work commenced prior to final design approval will be done at the sole risk of GRW.

---

<sup>1</sup> Sampling and analysis will be performed to ensure that all imported material and all constructed habitat surfaces are confirmed less than criteria for all constituents per the Lower Duwamish River NRDA Trustee Injury Thresholds (NOAA, 2013) and the Sediment Cleanup Objectives (SCOs) presented in Table 8-1 of the Washington State Department of Ecology's Sediment Cleanup User's Manual (SCUM; Ecology, 2021).



The investigations or evaluations required to support design and construction are discussed below.

### 3.1 ENVIRONMENTAL AND GEOTECHNICAL EVALUATION

**Pre-Design Investigation.** A Sampling and Analysis Plan/Quality Assurance Project Plan (SAP/QAPP) for the pre-design investigation will be developed by GRW. The SAP/QAPP will be submitted to the Trustees for review and approval prior to implementation of the pre-design investigation. The SAP/QAPP will compile existing information on soil, groundwater, and sediment quality and historical use; define media to be sampled, sample location and depth, sampling frequency, and field protocols. The SAP/QAPP will also define analytical methods and appropriate criteria to be used in evaluation of resultant chemistry data.

The pre-design investigation includes: 1) determination of the quality of existing soil that will be exposed following excavation of the habitat area, which will form the deeper underlying soils below the imported substrates to be placed within the habitat area; 2) determination of the quality of sediment in the nearshore area within the limits of grading for excavation and filling associated with the Project, including the on-channel marsh areas and intertidal areas where grading is proposed; and 3) determination of the groundwater quality and flow. Geotechnical properties and parameters will also be collected to support engineering design. The results of the pre-design investigation will be summarized in a Pre-Design Investigation Data Summary and Evaluation Memorandum, which will be submitted to the Trustees for review. The results of the environmental evaluation will be utilized to assess the potential risk of migration of chemicals to the top 10 centimeters of the habitat surface (the benthic biologically active zones) and to determine with the Trustees if any remedial action will be conducted in conjunction with construction of the Project.

**Habitat Surfaces.** Sampling and analysis will be performed to assure that all imported material and all constructed habitat surfaces are confirmed clean for all constituents per the Lower Duwamish River NRDA Trustee Injury Thresholds (NOAA, 2013) and the Sediment Cleanup Objectives (SCOs) presented in Table 8-1 of the Washington State Department of Ecology's Sediment Cleanup User's Manual (SCUM; Ecology, 2021). Analytical procedures and suitability criteria will be reviewed and approved by the Trustees as part of the final design process. Following construction completion, monitoring for potential recontamination will be performed as described in Section 7.2.

### 3.2 HABITAT PARAMETER IDENTIFICATION

To assist in informing the design of habitat features for the Project, a review will be made of existing conditions at established constructed habitat sites in the vicinity of the Project, including: the Port of Seattle Terminal 105 Park (tu?əlaɪtʃˌwɪlɪdʒ ˈpɑːk and Shoreline Habitat) and the Herring's House Park (hɛrɪŋz ˈhʌʊs ˈvɪlɪdʒ ˈpɑːk & Shoreline Habitat). These two established habitat restoration projects are downstream and upstream, respectively, of the Project.

As-built documents and recent monitoring reports for these two nearby sites will be obtained if available. GRW will perform a detailed review of plant material and substrates at these sites, to identify and document the plant material that is thriving, and substrates that are stable, at the different elevations at these properties. In October 2022, GRW conducted site visits to these two existing habitat projects with the Port of Seattle and JA Brennan Associates, the designer of Herring's House Park, in attendance. The site visits were conducted to gain an understanding about

selection of plant material and substrates for each elevation zone, and stewardship issues to be aware of. Trustee representatives also attended the site visits. The information gained in these reviews will be summarized in a Habitat Parameter Identification Report, which will be submitted to the Trustees for review.

#### **4.0 PERMITS REQUIRED PRIOR TO CONSTRUCTION**

GRW will be required to comply with all applicable legal requirements for the implementation of the Project. Permits that will be required for construction of the Project may include, but may not be limited to:

- U.S. Army Corps of Engineers: Nationwide 27 General Permit for Aquatic Habitat Restoration with Programmatic Endangered Species Act Consultation.
  - The Trustees have approved the use of the Programmatic Endangered Species Act Consultation for the Project.
- Washington State Department of Ecology: 401 Water Quality Certification.
- Washington State Department of Ecology: Coastal Zone Management Program Certification of Consistency.
- Washington Department of Fish and Wildlife: Hydraulic Project Approval.
- City of Seattle: Shoreline Substantial Development Exemption.
- Washington State Department of Ecology: Construction Stormwater General Permit Coverage.
- City of Seattle: Construction Permit.

In-water permits will be acquired through the Joint Aquatic Resource Permit Application (JARPA) process. The JARPA application will be provided to the Trustees. A State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) will be prepared for review by the City of Seattle as the lead agency. It is assumed that the U.S. Army Corps of Engineers will adopt this environmental review to support its documentation under the National Environmental Policy Act (NEPA). The lead agencies for the SEPA and NEPA processes will be the City of Seattle and the U.S. Army Corps of Engineers. Determining what permits are required for the Project is GRW's responsibility.

#### **5.0 CONSTRUCTION, INITIAL HABITAT CREATION, AND INITIAL PLANTINGS**

After receiving written authorization from the Trustees to begin construction, GRW shall construct the Project according to the Project designs and specifications developed under Section 3.0 of this SOW. The construction phase of the Project will include initial development of habitat and required plantings. Habitat development and initial planting shall be implemented to achieve the success criteria described in the attached Tables 2A, 2B, and 2C.

## 6.0 PROPERTY PROTECTIONS

The Project will be protected in perpetuity through the Declaration of Conservation Easement implemented under the Consent Decree. As further provided in the Consent Decree and below, GRW will implement maintenance and monitoring activities as well as ongoing stewardship to protect the Project (Sections 7.0 and 8.0).

## 7.0 INITIAL MAINTENANCE AND MONITORING

This section describes the Maintenance and Monitoring Plan that will be developed to ensure the Project is successful during the 10-year initial maintenance and monitoring period following construction completion.

The maintenance component of the Maintenance and Monitoring Plan will consist of the initial maintenance requirements. These requirements will be developed to ensure that newly planted vegetation becomes established, debris is removed, and other aspects of the Project are maintained. Elements included in the maintenance component of the Maintenance and Monitoring Plan are discussed in Section 7.1.

The monitoring component of the Maintenance and Monitoring Plan will be developed and followed to determine that the goals and objectives of the Project are being achieved. The success criteria, monitoring tasks and methods, schedule, contingency measures, and adaptive management are discussed in Section 7.2 and set forth in more detail in Tables 2A, 2B, and 2C. Implementation of monitoring will determine if:

- Restoration objectives are being met.
- The maintenance measures are sufficient.
- Contingency measures need to be taken.
- Adaptive management strategies need to be implemented.
- Contingency measures or adaptive management strategies are successful.

### 7.1 MAINTENANCE COMPONENTS

The maintenance component of the Maintenance and Monitoring Plan will include methods, frequency, and duration for maintenance activities, such as:

- **Watering.** Watering will be necessary during plant material establishment. Plantings in some areas may require permanent watering. Weather information will be reviewed to evaluate during what portions of the year watering will be necessary. Monitoring of rainfall and/or soil moisture will be used to determine the need for watering during the first two years after plant installation. Watering methods will be defined in the Maintenance and Monitoring Plan.
- **Mulching.** Mulching will occur during initial plant installation. Supplemental mulching may occur during weeding activities, as necessary.

- **Weeding and Invasive Species Removal.** Weeding around shrubs and invasive species removal will be important during the summer of the first year to ensure establishment and prevent stress to the plants from competition for resources as well as in subsequent years to ensure native plants are being maintained. The frequency of weeding and invasive species removal can be gauged by necessity but should occur at least twice during the spring (ideally May and June), and then once more during the summer months (August or September). Table 3 provides a list of common weed species/invasive species that will be removed. Weeding will be performed using simple hand tools (e.g., rakes, hoes). If weeds persist and prevent the success criteria for native vegetation establishment from being met, despite hand and mechanical removal methods, selective herbicide may be used with Trustee approval. Herbicide type and application methods will be selected and implemented in consultation with the Trustees and a licensed applicator.
- **Dead Plant Removal.** Dead plant material will only be removed after scheduled monitoring to allow for the accurate assessment of planting success needed for the monitoring program. Replacement planting will be detailed under contingency measures in the monitoring component of the Maintenance and Monitoring Plan.
- **Herbivore Control Measures.** Herbivore barriers and plant protection devices will be visually inspected for maintenance issues. Initially, control measures will be inspected at a high frequency, and immediate repairs will be made as necessary until plants are established.
- **Debris Removal.** Anthropogenic material that potentially impairs habitat functions will be removed from the Project on an as-needed basis.
- **Erosion or Accretion Control Measures.** Habitat features and intertidal elevations will be visually assessed for indications of erosion or accretion. Erosion control material and/or substrate addition/removal will be considered, subject to Trustee approval, to ensure habitat features and intertidal elevations remain stable.
- **Signage and Fencing Repair.** Signage and fencing will be visually inspected for maintenance issues. Repairs will be made if any damage is observed.
- **Other Activities.** Other activities may be conducted on an as-needed basis to maintain the site and ensure the success of the Project.

## 7.2 MONITORING COMPONENTS

The monitoring component of the Maintenance and Monitoring Plan will include elements presented in Table 2A - Physical Criteria, Table 2B - Biological Criteria, and Table 2C - Additional Monitoring, and summarized below. Each table presents success criteria, monitoring tasks and methods, schedule, and contingency measures.

**Success Criteria.** Success criteria presented in Tables 2A and 2B will be used during the 10-year initial maintenance and monitoring period to determine if the Project goals are being met. The criteria chosen are adapted from monitoring guidelines developed for the Lower Duwamish River (EBDRP, 2000) and Commencement Bay (CBNRT, 2000) restoration projects and other sources

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of monitoring guidelines. These criteria have been chosen because they are standards that can be measured and for which there are contingency or adaptive management measures that can be applied during the 10-year initial maintenance and monitoring period.

**Monitoring Tasks and Methods.** Monitoring tasks and methods are identified in Tables 2A, 2B, and 2C where practical. The GRW technical team and the Trustees will further develop the methods to be used for monitoring the physical and biological parameters identified in Tables 2A, 2B, and 2C, during the development of the Maintenance and Monitoring Plan. The methods will be documented as standard operating procedures in the Maintenance and Monitoring Plan.

**Schedule.** A detailed as-built survey will be completed within 30 days after the initial planting. Monitoring will occur over the 10-year initial maintenance and monitoring period, beginning after completion of construction of the Project, at the frequencies defined in Tables 2A, 2B, and 2C. Biological monitoring will be performed during the growing season after deciduous plants have flowered or leafed out.

**Contingency Measures.** Contingency measures are included in Tables 2A, 2B, and 2C, and will be further developed as part of the Maintenance and Monitoring Plan for each success criterion in the event that a standard is not met and it is determined that the habitat value is negatively impacted. Contingency measures are activities designed to help meet success criteria. Examples of contingency measures include additional planting, adding soil amendments, augmenting irrigation systems, augmenting herbivore exclusion systems, and adding erosion control material. Prior to any contingency measure being implemented, an investigation as to why the criterion was not met will be conducted. If contingency measures beyond general maintenance activities are judged by the Trustees to be necessary because the habitat has been negatively impacted, GRW will propose contingency measures in consultation with the Trustees and GRW will, upon the Trustees' written approval, implement the approved contingency measures during the next 12 months. Data from an individual sampling year during this period indicating that a success criterion is not in conformance will trigger discussions on the potential to take additional contingency or adaptive management measures.

If GRW is required to implement contingency measures through Year 10, and the Trustees agree that GRW has demonstrated best effort to meet the success criteria through Year 10 (including performing contingency measures as needed), then GRW will not be required to implement additional contingency measures past Year 10, with the exception that additional monitoring may be requested during the 20-year stewardship period (Section 8). This will be documented following Trustee review and approval. The Trustees may also determine that an adaptive management approach is needed to address the issue.

**Adaptive Management.** An adaptive management approach will be used for issues related to the Project success that are not easily addressed with contingency measures. Examples of issues that may require adaptive management include, but not limited to, continued plant mortality with unclear causes, continued erosion of the shoreline, continued sedimentation within the channels, or other issues that impede project success. Adaptive management measures could include, but not limited to, changing plant species, changing plant densities, installing large woody debris, adding or removing substrate, etc. Prior to any adaptive management measure being implemented, GRW will develop an Adaptive Management Plan to be submitted to the Trustees for review and approval.

### **7.2.1 Physical Monitoring**

Physical monitoring will address intertidal habitat area integrity, material stability, habitat mix stability, tidal circulation, site salinity, and elevation/channel morphology. Specific physical monitoring success criteria, monitoring tasks, monitoring methods, schedule, and contingency measures are described in Table 2A.

### **7.2.2 Biological Monitoring**

Biological monitoring will address areal coverage and survival rates of marsh and riparian plantings, invasive species areal coverage in marsh and riparian areas, and the success of herbivore control measures. Specific biological monitoring success criteria, monitoring tasks, monitoring methods, schedule, and contingency measures are described in Table 2B.

### **7.2.3 Additional Monitoring Requirements**

Additional monitoring requirements will include sampling to determine fish and invertebrate prey resources that are present within the footprint of the Project, evaluation of sediment/soil structure, and evaluation of chemical contamination in surface sediments at the Project area over time. Detailed requirements are summarized in Table 2C.

## **8.0 STEWARDSHIP**

As set forth in the Consent Decree, GRW will develop a Stewardship Plan to be implemented after the 10-year initial maintenance and monitoring period is completed. The Stewardship Plan will include maintenance, monitoring, and adaptive management activities from Years 11 through 30, including, but not limited to, conducting yearly site assessments, conducting two monitoring events over the 20-year period (Year 20 and Year 30), maintaining vegetation and other habitat attributes, controlling invasive vegetation, removing debris, and undertaking corrective actions (e.g., restoring or replacing physical components of the Project) to address any negative impacts that affect the ecological services provided by the Project. The Stewardship Plan will include a description of activities that will be conducted to maintain the ecological function of the Project. Stewardship activities will be conducted on an as-needed basis, but at a minimum of once a year from Years 11 through 30.

## **9.0 DOCUMENTATION**

### **9.1 PLANNING AND DESIGN DOCUMENTATION**

GRW will submit documents to the Trustees for review and approval at multiple stages of planning and design, as detailed below. For each deliverable, formal comments from the Trustees will be provided. GRW will produce revised versions of each deliverable addressing Trustee comments and will prepare an accompanying “response to comments” document. This process will facilitate Trustee involvement and support throughout the planning and design process. In addition to submittal of the formal deliverables identified below, GRW will submit in-progress materials as they become available, including results of the pre-design investigation (Pre-Design Investigation Data Summary and Evaluation Memorandum) and habitat parameter identification site visits and



material review (Habitat Parameter Identification Report), as well as other final documents submitted to other entities, including the JARPA application and final construction bid documents.

The following formal design deliverables will be submitted for review and approval:

1. SAP/QAPP, as described in Section 3.1. Trustee approval of this document will be secured prior to implementation of the pre-design investigation.
2. Conceptual design package (30% design). This package will define the proposed opening to the off-channel habitat area, elevations and contouring within the habitat area, and general planting zones. Trustee approval of this package will be secured prior to preliminary design.
3. Habitat mix gradations and substrate selection package (approximately 30% design level). This package will include proposed gradation for habitat mixes to be used in different areas of the Project, habitat mix material specification, and specifications for other primary substrates to be used within the marsh and intertidal areas. This package will include geotechnical and hydrodynamic rationale for selection. Trustee approval of this package will be secured prior to preliminary design.
4. Preliminary design package (60% design). This package will include preliminary design for all Project elements. The level of detail of preliminary design will be based on what is necessary to support the JARPA application. This package will include grading plans and cross sections; material specifications including substrates, planting mixes, and armoring materials; description of construction sequencing; and planting plans. This package will also include results of the environmental and geotechnical evaluation, and habitat parameter identification described in Sections 3.1 and 3.2, respectively. Trustee approval of this package will be secured prior to submitting the JARPA.
5. Draft final design package (90% design). This package will include draft final design and specifications for all Project elements. This package will include grading plans and cross sections; material specifications including substrates, planting mixes, and armoring materials; description of construction sequencing; and planting plans. This package will also include results of the environmental and geotechnical evaluation, and habitat parameter identification described in Sections 3.1 and 3.2, respectively.
6. Final design package (100% design). This package will include final design and specifications for all Project elements. The final design package will include changes to the Project that may be required as part of the permitting process. Approval of the final design package will be secured prior to finalizing construction bid documents. Final design of the Project must be approved by the Trustees before the Trustees authorize GRW to begin construction, per Section 3.0. The final design package will include, at a minimum, the following:
  - Detailed design drawings
  - Materials specifications
  - Description of construction sequencing
  - Estimated construction schedule

- Planting plans and plant schedule
- Maintenance and Monitoring Plan as described in Section 7.0

## **9.2 CONSTRUCTION COMPLETION REPORT**

Within 60 days of completion of the construction activities, a Construction Completion Report will be prepared that describes the as-built condition of the Project. The Construction Completion Report will contain, at a minimum, the as-built drawings, description of the construction activities (e.g., excavation, backfill), description of the habitat features (e.g., as-built acres by habitat type, vegetation planted, large woody debris installed, etc.), discussion of deviations from the SOW or Trustee approved design and specifications documents, and shapefiles of the as-built habitat. The report will be submitted to the Trustees for review and approval with the Notice of Completion of Construction in the manner and as required in the Consent Decree and will serve as the baseline for monitoring that will be conducted as described in Section 7.2.

## **9.3 MAINTENANCE AND MONITORING REPORTS**

After each monitoring event as described in Section 7.2 and Tables 2A, 2B, and 2C, a maintenance and monitoring report will be prepared for submittal to the Trustees. A draft report will be submitted to the Trustees within 90 days of the last monitoring event each year for years monitoring is being conducted. Following Trustee review and comment, the reports will be finalized.

The following will be included in each report:

- Dates of monitoring activities
- A narrative description of methods taken
- Identification of planted and naturally recruited trees and shrubs
- Data tables
- Species lists
- Color photographs
- Aerial photographs or maps showing extent of vegetation coverage with dominant vegetation types
- Interpretation of results, evaluation relative to success criteria
- A description of maintenance activities that were conducted
- A description of contingency measures or adaptive management activities that were taken

Within 90 days of completion of the 10-year initial maintenance and monitoring period, a Maintenance and Monitoring Completion Report will be submitted to the Trustees for review and approval with the Notice of Completion of Initial Maintenance and Monitoring Obligations in accordance with Sections VII (Restoration Project) and XXII (Notices and Submissions) of the Consent Decree.



#### **9.4 STEWARDSHIP PLAN**

GRW will prepare the Stewardship Plan as described in Section 8.0. The Stewardship Plan will be submitted for Trustee review and approval in Year 7 of the 10-year initial maintenance and monitoring period.

#### **10.0 SCHEDULE**

All required deliverables and implementation steps are identified in Table 4 attached.

Trustee review of deliverables will be completed within 45 days of receipt, unless a longer review timeframe is expressly set forth in the Consent Decree or approved by all parties in advance. Any delay in the Trustees' review of deliverables shall not, of itself, extend the time for performance of any obligation by GRW. Deadlines for performance of an obligation may be extended due to additional review time by the Trustees if GRW provides notice and support for the need for an extension and the Trustees agree that the extension is necessary due to the delay.

To accelerate the overall schedule for habitat restoration, at GRW's discretion, design tasks per Section 3.0 of this document, design documentation (Section 9.1), and initiation of permitting (Section 4.0) may occur prior to the Effective Date of the Consent Decree. Any work conducted by GRW prior to the Effective Date of the Consent Decree is at GRW's full risk and cost; the Trustees shall have no responsibility for any costs incurred by GRW if a Consent Decree is not entered by the Court.

Initiation of Construction is contingent on final execution and approval of the Consent Decree by the Court and the Trustees' written authorization for GRW to commence construction, pursuant to Section VII (Restoration Project) of the Consent Decree.

Additionally, initiation of construction is contingent on receipt of all necessary permits or documentation of substantive compliance from federal, state, and local agencies. Construction work is also contingent on the authorized in-water construction work windows. Completion of demolition, construction, and planting may require multiple in-water work seasons. The Project construction will be completed in accordance with the Trustee-approved construction schedule submitted as part of the final design package.

#### **11.0 REFERENCES**

CBNRT (Commencement Bay Natural Resource Trustees), 2000, Commencement Bay, Natural Resource Damage Assessment Restoration Monitoring Plan: NOAA, U.S. Department of Interior and the State of Washington, Seattle, Washington.

EBDRP (Elliott Bay/Duwamish Restoration Program), 2000, Intertidal Habitat Projects Monitoring Program, Panel Publication 23, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, Lacey, Washington.

Ecology (Washington State Department of Ecology), 2021, Sediment Cleanup User's Manual (SCUM), Washington State Department of Ecology, Toxics Cleanup Program, Olympia,

Washington, <https://apps.ecology.wa.gov/publications/SummaryPages/1209057.html>  
(accessed August 1, 2023).

King County (King County Noxious Weed Control Program). 2021. King County Noxious Weeds List: King County, Department of Natural Resources and Parks, Water and Land Resources Division, Seattle, Washington, <https://kingcounty.gov/services/environment/animals-and-plants/noxious-weeds/laws/list.aspx> (Last accessed May 12, 2023).

NOAA (National Oceanic and Atmospheric Administration). 2013. Final Lower Duwamish River NRDA Restoration Plan and Programmatic Environmental Impact Statement: Prepared on behalf of the Lower Duwamish River Natural Resource Damage Assessment Trustee Council, Seattle, Washington.

Ostergaard, Elissa, D. Clark, K. Minsch, S. Whiting, J. Stem, R. Hoff, B. Anderson, L. Johnston, L. Arber, G. Blomberg. 2014. Duwamish Blueprint: Salmon Habitat in the Duwamish Transition Zone: Prepared by the Duwamish Blueprint Working Group for the Water Resource Inventory Area 9 Watershed Ecosystem Forum, Seattle, Washington.

WSNWCB (Washington State Noxious Weed Control Board). 2021. Washington State Noxious Weed List: Washington State Noxious Weed Control Board, Olympia, <https://www.nwcb.wa.gov/printable-noxious-weed-list> (accessed May 21, 2023).

## **Tables**

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**TABLE 2A**  
**SUCCESS CRITERIA FOR RESTORATION PROJECTS (PHYSICAL CRITERIA)**  
General Recycling of Washington Habitat Project  
Seattle, Washington

	<b>Intertidal Habitat Area Integrity</b>	<b>Material Stability</b>	<b>Habitat Mix Stability</b>	<b>Tidal Circulation</b>	<b>Site Salinity</b>	<b>Elevation/Channel Morphology</b>
<b>Success Criteria:</b>	The total acreage between +12 ft MLLW and -4 ft MLLW will remain at least 90% of the as-built acreage.	The as-built contour elevations, especially for plant introductions, will be +/- 0.5 ft of the elevations specified in the construction plan. 75% of the target elevations will be maintained within +/- 0.5 ft of the as-built elevations through Year 10.	Habitat mix will remain present in off-channel and on-channels areas where placed.	The tidal amplitude, as determined by both timing and elevation of high and low tide events, is equivalent inside and outside of the project area.	Salinity is suitable for propagation, colonization, and growth of planted emergent vegetation.	The as-designed low gradients necessary for marsh development are stable over time.
<b>Monitoring Tasks:</b>	Estimate the total acreage between +12 ft MLLW and -4 ft MLLW of the project and provide "as-built" plan drawings upon project completion. Using the "as-builts," and by visual inspection using permanent transects spaced in equal intervals north to south in the marsh and intertidal areas, identify erosional areas. Visually inspect after extreme episodic flood events to determine erosional impacts.	"As-built" plan drawings will be provided upon project completion. Using the "as-builts," and by visual inspection using permanent transects spaced in equal intervals north to south in the marsh and intertidal areas, estimate changes in surface topography. Visually inspect after extreme episodic flood events to determine erosional impacts.	Periodic visual inspections at low tide for changes in habitat mix presence and gradation. Inspections will be made at permanent transect locations representative of site conditions.	Periodic visual inspections of the project area for impeded tidal flow, or potential fish stranding. Record tidal stage from tidal gauges during inspections.	Sample soil and intertidal sediment surface and/or core using standard sampling methods and accredited soils testing laboratory. Note areas void of vegetation.  Determine surface water salinity at multiple locations in the intertidal area to the nearest ppt. Measure dissolved oxygen as appropriate.	Estimate changes in gradient annually (after runoff) and after episodic flood events using permanent transects spaced in equal intervals north to south in the marsh and intertidal areas.
<b>Monitoring Methods:</b>	Topographic survey, geo-referenced aerial photography, visual inspection, photo-points.	Topographic survey, geo-referenced aerial photography, visual inspection, photo-points.	Low tide visual inspection.	Tidal gauges, visual inspection.	Hand-held salinity probe or refractometer, and data logger at multiple locations. Collect 4-6 soil cores along predetermined 10-12 meter transects.	Topographic survey, geo-referenced aerial photography, visual inspection, photo-points.
<b>Schedule:</b>	Years: 0 (as-built), 1, 2, 5, 7, and 10.	Years: 0 (as-built), 1, 2, 5, 7, and 10.	Years: 1, 2, 5, 7, and 10.	Years: 1, 2, 5, 7, and 10.	Years: 0 and as needed if the marsh fails to meet success criteria.	Years: 0 (as-built), 1, 2, 5, 7, and 10.
<b>Contingency Measures:</b>	Observation of deviation from this criterion would trigger investigation into the size of the area affected and evaluation of the impact on habitat quality. If the deviation is determined to negatively impact habitat value, the cause of the deviation and potential actions will be evaluated and contingency measures will be implemented, as needed, in consultation with and upon approval by the Trustees.	Non-structural approaches such as vegetation, fiber mats, or other such "soft" engineered options, will be considered to stabilize excessive erosion.	Observation of significant erosion or removal of habitat mix would trigger investigation into the size of the area affected and evaluation of the impact on habitat quality. If the deviation is determined to negatively impact habitat value, the cause of the deviation and potential actions will be evaluated and contingency measures will be implemented, as needed, in consultation with and upon approval by the Trustees.	Failures of tidal circulation or inundation as prescribed for the site triggers discussion of potential actions.	If salinity is a limiting factor to plant growth and propagation, more appropriate plantings or species will be considered.	Gradient changes that limit the establishment of marsh vegetation or impact tidal circulation will trigger discussion of potential actions, which may include both structural and nonstructural alternatives.

Abbreviations:

ft Feet

MLLW Mean Lower Low Water

Notes:

1 "Year 0" is defined as directly following construction completion. Monitoring thereafter shall occur at any time within the defined calendar year.

**TABLE 2B**  
**SUCCESS CRITERIA FOR RESTORATION PROJECTS (BIOLOGICAL CRITERIA)**  
General Recycling of Washington Habitat Project  
Seattle, Washington

	<b>Marsh Vegetation Areal Coverage and Survival</b>	<b>Marsh Area Invasive Species Areal Coverage</b>	<b>Herbivore Control Measures</b>	<b>Riparian Vegetation Areal Coverage and Survival</b>	<b>Riparian Area Invasive Species Areal Coverage</b>
<b>Success Criteria:</b>	Percent cover of thriving, healthy vegetation of targeted marsh vegetation species should be increasing (or stable at maturity) within the elevations suitable to marsh establishment (between elevation +12 ft MLLW and +6 ft MLLW), with the desired mix of species present. Objectives are 25% cover by area of targeted species at 3 years, 50% cover by area at 5 years, and not less than 75% cover by area at 10 years.	The project should not at any time contain more than 5% cover by area of non-native or invasive plant species within the marsh elevations (between elevation +12 ft MLLW and +6 ft MLLW).	Physical herbivore barriers shall successfully prevent damage to vegetation by Canada geese or other herbivores, until vegetation is fully established.	Percent cover of thriving, healthy native riparian vegetation should be stable or increasing over time, and not less than 90% cover by area within the riparian elevations (greater than +12 ft MLLW) of the project at 10 years. A diversity of species should be present - a minimum of 5% cover each of six species shall be present, ideally at least four species other than willow, alder, and cottonwood.	The project should not contain more than 5% cover by area of non-native or invasive plant species within the riparian elevations (greater than +12 ft MLLW).
<b>Monitoring Tasks:</b>	An as-planted survey will be mapped following initial planting(s). The "as-builts" will be used to confirm that the plantings are installed per the design specifications. An aerial photograph of the full project area will be collected following initial planting(s) and at each monitoring event.  Post-construction, permanent transects will be placed at equal intervals traversing the marsh area north to south. Permanent photo-points will be established along the transects and color photographs will be collected during each monitoring event.  A general walking inspection of the full marsh area will be made to identify any specific areas of concern regarding vegetative health.  Photographs and inspections will be compared to the identical photographs and inspections from the previous monitoring event, to determine change in areal coverage of targeted marsh vegetation species, and overall vegetative community health and survival.	Monitoring will be performed as described for Marsh Vegetation Areal Coverage and Survival.  Photographs and inspections will be evaluated for presence of invasive species, and percent cover by area of non-native or invasive species estimated.	Installation of devices must take place before or simultaneous with planting of marsh vegetation.  Periodic, and initially frequent, visual inspections of herbivore exclusion systems shall be conducted, with immediate repair to reduce damage until the plant root systems have established themselves.  Devices must be maintained for 4 years post-planting (initial planting or re-planting). Periodic monitoring should confirm adequate site maintenance of devices. Observations will be logged at each monitoring event for 5 years post-planting (or re-planting).	An as-planted survey will be mapped following initial planting(s). The "as-builts" will be used to confirm that the plantings are installed per the design specifications. A color aerial photograph of the full project area will be collected following initial planting(s) and at each monitoring event.  Permanent photo-points will be established through the riparian zones and color photographs will be collected during each sampling period.  A general walking inspection of the riparian areas will be made to identify any specific areas of concern regarding vegetative health.  Photographs and inspections will be compared to the identical photographs and inspections from the previous monitoring event, to determine change in areal coverage of targeted riparian vegetation species, and overall vegetative community health and survival.	Monitoring will be performed as described for Riparian Vegetation Areal Coverage and Survival.  Photographs and inspections will be evaluated for presence of invasive species, and percent cover by area of non-native or invasive species estimated.
<b>Monitoring Methods:</b>	Geo-referenced aerial photography, visual inspection with vegetation documentation, photo-points.	Geo-referenced aerial photography, visual inspection with vegetation documentation, photo-points.	Visual inspection.	Geo-referenced aerial photography, visual inspection with vegetation documentation, photo-points.	Geo-referenced aerial photography, visual inspection with vegetation documentation, photo-points.
<b>Schedule:</b>	Years: 0, 1, 2, 3, 5, 7, and 10.	Years: 0, 1, 2, 3, 5, 7, and 10.	Years: 0, 1, 2, 3, and 5 post-planting (or re-planting). If the plant community is well-established by Year 3, monitoring may be discontinued.	Years: 0, 1, 2, 3, 5, 7, and 10.	Years: 0, 1, 2, 3, 5, 7, and 10.
<b>Contingency Measures:</b>	Evidence of decreasing areal coverage of marsh vegetation target species or evidence in reduction in plant community health and survival will trigger consideration of contingency measures. Depending on the hypothesized reason for failure, responses could include additional planting, soil amendments, supplemental irrigation, herbivore exclusions, and/or focused stewardship efforts. Assumptions about appropriate plant species, elevation, and other design factors will be reexamined and adjusted if new information suggests adjustment is appropriate.	Any occurrence of non-native and invasive species exceeding 5% by vegetated area, will be controlled primarily by physical means (weeding). Physical removal will occur as soon as invasive plants are identified and prior to seed set. Chemical treatment (herbicides) will only be considered if physical removal fails. <i>Spartina</i> spp. that is found to colonize any portion of the site (irrespective of the areal coverage) will be removed.	Repair any damage to the herbivore exclusion devices. Modify herbivore exclusion devices to increase effectiveness.  If damage is observed from Nutria or other animals, protective covers around individual plants or stands will be installed and monitored by visual inspection.	Evidence of reduction in areal coverage of targeted riparian vegetation species or evidence in reduction in plant community health and survival will trigger consideration of contingency measures. Depending on the hypothesized reason for failure, responses could include additional planting, soil amendments, supplemental irrigation, herbivore exclusions, and/or focused stewardship efforts. Assumptions about appropriate plant species, elevation, and other design factors will be reexamined and adjusted if new information suggests adjustment is appropriate.	Any occurrence of non-native and invasive species exceeding 5% by vegetated area, will be controlled primarily by physical means (weeding). Physical removal will occur as soon as invasive plants are identified and prior to seed set. Chemical treatment (herbicides) will only be considered if physical removal fails. <i>Spartina</i> spp. that is found to colonize any portion of the site (irrespective of the areal coverage) will be removed.

Abbreviations:

Year 0 "Year 0" is defined as directly following construction completion. Biological monitoring to be conducted in Year 0 will be conducted within 60 days of completion of planting. Monitoring thereafter shall occur during the growing season after deciduous plants have flowered or leafed out.

ft Feet

MLLW Mean Lower Low Water

Scope of Work

General Recycling of Washington Habitat Project

**TABLE 2C**  
**ADDITIONAL MONITORING REQUIREMENTS**  
 General Recycling of Washington Habitat Project  
 Seattle, Washington

	Fish Presence	Invertebrate Prey Resources	Sediment/Soil Structure	Chemical Contamination
<b>Objectives:</b>	Estuarine fish should access the project, with increasing utilization and colonization by resident species. Juvenile salmonids should be present. The purpose of this monitoring activity is to provide data as requested by the Trustees. There are no success criteria, contingency measures, or adaptive management activities associated with this monitoring requirement.	Invertebrate prey taxa and fallout insects known to be important to juvenile salmonids should be present. The purpose of this monitoring activity is to provide data as requested by the Trustees. There are no success criteria, contingency measures, or adaptive management activities associated with this monitoring requirement.	Over time, the site may accumulate fine-grained materials and organic matter. This would be evidenced by a decrease in mean grain size and increase in organic carbon in the surface sediments and site soils. Sediment/soil structure data will be collected to assist in discussion of findings from biological monitoring. The purpose of this monitoring activity is to provide data as requested by the Trustees.	Habitat substrate sediments will be evaluated to determine whether they remain less than levels of concern, determined by Lower Duwamish River NRDA Trustee Injury Thresholds (NOAA, 2013) and Washington State Department of Ecology's SCOs listed in Table 8-1 of SCUM (Ecology, 2021).
<b>Monitoring Tasks:</b>	Monitor fish use: Record fork length and source (hatchery or wild) for salmonids. Record presence (species) of non-salmonid fishes. Salmonids will be identified to the genus level and species level, unless there are specific problems identifying them to that level, and instead they will be identified to the genus level. Non-salmonid fish species should also be identified to at least the genus level.	Monitor benthic invertebrate community development and presence of fallout insects. Three samples will be collected for benthic invertebrates and three for fallout insects. In each sample that is collected, invertebrates will be identified to the lowest practical taxonomic level and enumerated.	Determine grain size distribution and organic carbon determination by collecting core samples in conjunction with benthic invertebrate sampling.	The restoration sites will be monitored to determine if the habitat substrate (sediment surface) becomes contaminated over time. Sediment samples will be collected in the off-channel marsh and associated tidal channels. Samples will be evaluated for the Trustees' Contaminants of Concern (NOAA, 2013) and those listed in Table 8-1 of the Washington State Department of Ecology's SCUM (Ecology, 2021). Sample results will be compared to the Trustee Injury Thresholds (NOAA, 2013) and SCOs listed in Table 8-1 of SCUM (Ecology, 2021). The number of sediment samples to be collected will be detailed in a future QAPP and/or the Maintenance and Monitoring Plan, to be submitted for Trustee review and approval.
<b>Monitoring Methods:</b>	Fyke net. Nets set before high tide and monitored during subsequent ebb. Monitor three times (early, mid, late) during peak of juvenile salmonid outmigration (typically March through June).	Benthic invertebrate samples will be collected using grab samples collecting material representative of the top 10 centimeters (cm). Fallout insects will be monitored using floating plastic bans. All samples will be collected once each monitoring year during the peak juvenile salmonid outmigration (typically March through June).	Sampling as defined for benthic invertebrate sampling.	Sediments will be sampled using grab samples collecting material representative of the top 10 cm. Samples will be collected concurrent with the benthic invertebrate sampling, and adjacent to the benthic invertebrate sample locations.
<b>Schedule:</b>	Years: 1, 2, 5, 7, and 10.	Years: 1, 2, 5, 7, and 10.	Years: 1, 2, 5, 7, and 10.	Years: 2, 5, and 10.
<b>Contingency Measures:</b>	None.	None.	If accumulation of fine-grained materials and organic matter is not observed, this will trigger discussions regarding possible causes and appropriate responses.	Contamination of the sediment surface will trigger discussions regarding possible causes and appropriate responses.

Scope of Work  
General Recycling of Washington Habitat Project

**TABLE 3**  
**NOXIOUS WEED LIST**  
General Recycling of Washington Habitat Project  
Seattle, Washington

Common Name	Scientific Name	State Listing <sup>1</sup>	King County Listing <sup>2</sup>	Common Name	Scientific Name	State Listing <sup>1</sup>	King County Listing <sup>2</sup>
absinth wormwood	<i>Artemisia absinthium</i>	C	C	knawweed, spotted	<i>Centaurea Biebersteini</i>	B	B
Austrian fieldress	<i>Rorippa austriaca</i>	C	B	knawweed, Vochin	<i>Centaurea nigrescens</i>	A	A
babysbreath	<i>Gypsophila paniculata</i>	C	—	knawweed, Bohemian	<i>Polygonum bohemicum</i>	B	ND
bird cherry	<i>Prunus avium</i>	—	WOC	knawweed, giant	<i>Polygonum sachalinense</i>	B	ND
bird's-foot trefoil	<i>Lotus corniculatus</i>	—	WOC	knawweed, Himalayan	<i>Polygonum polystachyum</i>	B	ND
bishop's weed	<i>Aegopodium podagraria</i>	—	WOC	knawweed, Japanese	<i>Polygonum cuspidatum</i>	B	ND
black locust	<i>Robinia pseudoacacia</i>	—	WOC	kochia	<i>Kochia scoparia</i>	B	B
blackberry, evergreen	<i>Rubus laciniatus</i>	C	WOC	kudzu	<i>Pueraria montana var. lobata</i>	A	A
blackberry, Himalayan	<i>Rubus armeniacus</i>	C	WOC	lawnweed	<i>Salvia sessilis</i>	C	A
blackgrass	<i>Alopecurus myosuroides</i>	C	B	lepyrodiclis	<i>Lepyrodiclis holosteoides</i>	B	B
blueweed, viper's bugloss	<i>Echium vulgare</i>	B	B	lesser celandine	<i>Ficaria verna</i>	B	ND
Brazilian elodea	<i>Egeria densa</i>	B	B	longspine sandbur	<i>Cenchrus longispinus</i>	C	B
buffalobur	<i>Solanum rostratum</i>	C	C	loosestrife, garden	<i>Lysimachia vulgaris</i>	B	B
bugloss, annual	<i>Anchusa arvensis</i>	B	B	loosestrife, purple	<i>Lythrum salicaria</i>	B	B
bugloss, common	<i>Anchusa officinalis</i>	B	B	loosestrife, wand	<i>Lythrum virgatum</i>	B	—
buttercup, creeping	<i>Ranunculus repens</i>	—	WOC	mayweed, scentless	<i>Matricaria perforata</i>	C	ND
buttercup, tall	<i>Ranunculus acris</i>	—	WOC	meadow clary	<i>Salvia pratensis</i>	A	A
butterfly bush	<i>Buddleia davidii</i>	C	ND	Mediterranean sage	<i>Salvia aethiops</i>	A	A
camelthorn	<i>Alhagi maurorum</i>	B	B	medusahead	<i>Taeniatherum caput-medusae</i>	C	—
cattail, non-native	<i>Typha species</i>	C	—	milk thistle	<i>Silybum marianum</i>	A	A
clary sage	<i>Salvia sclarea</i>	A	A	multiflora rose	<i>Rosa multiflora</i>	—	WOC
cherry laurel	<i>Prunus laurocerasus</i>	—	WOC	nightshade, bittersweet	<i>Solanum dulcamara</i>	—	WOC
cockle, white	<i>Silene latifolia ssp. alba</i>	C	ND	nightshade, silverleaf	<i>Solanum elaeagnifolium</i>	A	A
common barberry	<i>Berberis vulgaris</i>	C	ND	old man's beard	<i>Clematis vitalba</i>	C	ND
common catsear	<i>Hypochaeris radicata</i>	C	ND	oriental clematis	<i>Clematis orientalis</i>	A	A
common cuprina	<i>Crupina vulgaris</i>	A	A	oxeye daisy	<i>Leucanthemum vulgare</i>	C	ND
common fennel	<i>Foeniculum vulgare</i>	B	ND	Pampas grass	<i>Cortaderia selloana</i>	C	ND
common groundsel	<i>Senecio vulgaris</i>	C	ND	parrotfeather	<i>Myriophyllum aquaticum</i>	B	B
common reed	<i>Phragmites australis</i>	B	B	perennial pepperweed	<i>Lepidium latifolium</i>	B	B
common St. Johnswort	<i>Hypericum perforatum</i>	C	ND	perennial sowthistle	<i>Sonchus arvensis</i>	C	ND
common tansy	<i>Tanacetum vulgare</i>	C	ND	poison-hemlock	<i>Conium maculatum</i>	B	B
common teasel	<i>Dipsacus fullanum</i>	C	ND	police-man's helmet	<i>Impatiens glandulifera</i>	B	B
cardgrass, common	<i>Spartina anglica</i>	A	A	primrose, water	<i>Ludwigia hexapetala</i>	B	B
cardgrass, dense flower	<i>Spartina densiflora</i>	A	A	primrose-willow, floating	<i>Ludwigia peploides</i>	A	A
cardgrass, salt meadow	<i>Spartina patens</i>	A	A	puncturevine	<i>Tribulus terrestris</i>	B	—
cardgrass, smooth	<i>Spartina alterniflora</i>	A	A	Ravenna grass	<i>Trididium rovennae</i>	B	ND
chess, hoary	<i>Cardaria draba</i>	C	B	reed canarygrass	<i>Phalaris arundinacea</i>	C	ND
curly-leaf pondweed	<i>Potamogeton crispus</i>	C	ND	reed sweetgrass	<i>Glyceria maxima</i>	A	A
dodder, smoothseed alfalfa	<i>Cuscuta approximata</i>	C	—	ricefield bulrush	<i>Schoenoplectus mucronatus</i>	A	A
dyers woad	<i>Isatis tinctoria</i>	A	A	rough chervil	<i>Chaerophyllum temulum</i>	—	WOC
English holly	<i>Ilex aquifolium</i>	—	WOC	rush, flowering	<i>Butomus umbellatus</i>	A	A
English laurel	<i>Prunus laurocerasus</i>	—	WOC	rush skeletonweed	<i>Chondrilla juncea</i>	B	B
Eurasian watermilfoil	<i>Myriophyllum spicatum</i>	C	ND	Russian knawweed	<i>Acroptilon repens</i>	B	B
European coltsfoot	<i>Tussilago farfara</i>	B	B	Russian olive	<i>Elaeagnus angustifolia</i>	C	—
European mountain-ash	<i>Sorbus aucuparia</i>	—	WOC	rye, cereal	<i>Secale cereale</i>	C	—
fanwort	<i>Cabomba caroliniana</i>	B	B	saltcedar	<i>Tamarix ramosissima</i>	B	B
false brome	<i>Brachypodium sylvaticum</i>	A	A	Scotch broom	<i>Cytisus scoparius</i>	B	—
fanwort	<i>Cabomba caroliniana</i>	B	B	Shiny geranium	<i>Geranium lucidum</i>	B	ND
false brome	<i>Brachypodium sylvaticum</i>	A	A	silver lace vine	<i>Fallopia baldschuanica</i>	—	WOC
field bindweed	<i>Convolvulus arvensis</i>	C	ND	small-flowered jewelweed	<i>Impatiens parviflora</i>	A	A
fragrant water lily	<i>Nymphaea odorata</i>	C	ND	South American spongeplant	<i>Limnolobus laevigatum</i>	A	A
French broom	<i>Genista monspessulana</i>	A	A	Spanish broom	<i>Spartium junceum</i>	A	A
garlic mustard	<i>Alliaria petiolata</i>	A	A	spikeweed	<i>Hemizonia pungens</i>	C	—
giant hogweed	<i>Heracleum mantegazzianum</i>	A	A	spiny cocklebur	<i>Xanthium spinosum</i>	C	ND
goatgrass, jointed	<i>Aegilops cylindrica</i>	C	—	spotted jewelweed	<i>Impatiens capensis</i>	C	ND
goatsrue	<i>Galega officinalis</i>	A	A	spurge flax	<i>Thymelaea passerina</i>	B	A
gorse	<i>Ulex europaeus</i>	B	B	spurge laurel	<i>Daphne laureola</i>	B	ND
grass-leaved arrowhead	<i>Sagittaria graminea</i>	B	B	spurge, eggleaf	<i>Euphorbia oblongata</i>	A	A
Hanging sedge	<i>Carex pendula</i>	—	WOC	spurge, leafy	<i>Euphorbia esula</i>	B	B
hairy willowherb	<i>Epilobium hirsutum</i>	B	C	spurge, myrtle	<i>Euphorbia myrsinites</i>	B	ND
hawkweed, mouseear	<i>Hieracium pilosella</i>	B	B	starthistle, Malta	<i>Centaurea melitensis</i>	B	B
hawkweed, orange	<i>Hieracium aurantiacum</i>	B	B	starthistle, purple	<i>Centaurea calcitrapa</i>	A	A
hawkweed, oxtongue	<i>Picris hieracioides</i>	B	B	starthistle, yellow	<i>Centaurea solstitialis</i>	B	B
hawkweed, polar	<i>Hieracium atratum</i>	B	B	sulfur cinquefoil	<i>Potentilla recta</i>	B	B
hawkweed, queen-devil	<i>Hieracium glomeratum</i>	B	B	Swainsonpea	<i>Sphaerophysa salsula</i>	C	—
hawkweed, smooth	<i>Hieracium laevigatum</i>	B	B	Syrian bean-caper	<i>Zygophyllum faba</i>	A	A
hawkweed, yellow	<i>Hieracium caespitosum</i>	B	B	tansy ragwort	<i>Senecio jacobaea</i>	B	B
hawkweed, yellow devil	<i>Hieracium floribundum</i>	B	B	Texas blueweed	<i>Helianthus ciliaris</i>	A	A
English hawthorn	<i>Crataegus monogyna</i>	C	—	thistle, bull	<i>Cirsium vulgare</i>	C	ND
hedge bindweed	<i>Colostegia sepium</i>	—	WOC	thistle, Canada	<i>Cirsium arvense</i>	C	ND
hedgerparsley	<i>Tarlis arvensis</i>	B	B	thistle, Italian	<i>Cardus pycnocephalus</i>	A	A
henbane, black	<i>Hyoscyamus niger</i>	C	—	thistle, milk	<i>Silybum marianum</i>	A	A
herb Robert	<i>Geranium robertianum</i>	B	B	thistle, musk	<i>Carduus nutans</i>	B	B
hoary alyssum	<i>Berteroa incana</i>	B	B	thistle, plumeless	<i>Carduus acanthoides</i>	B	B
horse-chestnut	<i>Aesculus hippocastanum</i>	B	WOC	thistle, Scotch	<i>Onopordum acanthium</i>	B	B
houndstongue	<i>Cynoglossum officinale</i>	—	B	thistle, slenderflower	<i>Carduus tenuiflorus</i>	A	A
hydrilla	<i>Hydrilla verticillata</i>	A	A	thistle, Turkish	<i>Carduus cinereus</i>	A	A
indigobush	<i>Amorpha fruticosa</i>	B	B	toadflax, Dalmatian	<i>Linaria dalmatica ssp. dalmatica</i>	B	B
italian arum	<i>Arum italicum</i>	C	ND	toadflax, yellow	<i>Linaria vulgaris</i>	C	ND
ivy, Atlantic	<i>Hedera hibernica</i>	C	ND	tree-of-heaven	<i>Ailanthus altissima</i>	C	ND
ivy, English	<i>Hedera helix</i> Baltica	C	ND	velvetleaf	<i>Abutilon theophrasti</i>	B	B
ivy, English	<i>Hedera helix</i> Pittsburgh	C	ND	ventenata	<i>Ventenata dubia</i>	C	ND
ivy, English	<i>Hedera helix</i> Star	C	ND	variable-leaf milfoil	<i>Myriophyllum heterophyllum</i>	A	A
Japanese eelgrass	<i>Nanozostera japonica</i>	C	—	white bryony	<i>Bryonia alba</i>	B	B
Johnsongrass	<i>Sorghum halepense</i>	A	A	whitetop, hairy	<i>Cardaria pubescens</i>	C	—
knawweed, bighead	<i>Centaurea macrocephala</i>	A	A	wild carrot	<i>Daucus carota</i>	C	ND
knawweed, black	<i>Centaurea nigra</i>	B	B	wild chervil	<i>Anthriscus sylvestris</i>	B	B
knawweed, brown	<i>Centaurea jacea</i>	B	B	wild four o'clock	<i>Mirabilis nyctaginea</i>	A	A
knawweed, diffuse	<i>Centaurea diffusa</i>	B	B	yellow archangel	<i>Lamium strumarium galeobdolon</i>	B	ND
knawweed, meadow	<i>Centaurea jacea x nigra</i>	B	B	yellow flag iris	<i>Iris pseudacorus</i>	C	ND
knawweed, Russian	<i>Rhaponticum repens</i>	B	B	yellow floating heart	<i>Nymphaoides peltata</i>	B	B
				yellow nutsedge	<i>Cyperus esculentus</i>	B	B

Notes:  
1 2021 Washington State Noxious Weed Control Board (WSNWCB) Noxious Weed List  
2 2021 King County Noxious Weed List

Designations:  
A Class A Noxious Weed  
B Class B Noxious Weed  
C Class C Noxious Weed  
WOC Weed of Concern  
ND Non-Designated/Non-Regulated  
— Not on list



Scope of Work  
General Recycling of Washington Habitat Project

**TABLE 4**  
**REQUIRED DELIVERABLES AND IMPLEMENTATION STEPS**  
General Recycling of Washington Habitat Project  
Seattle, Washington

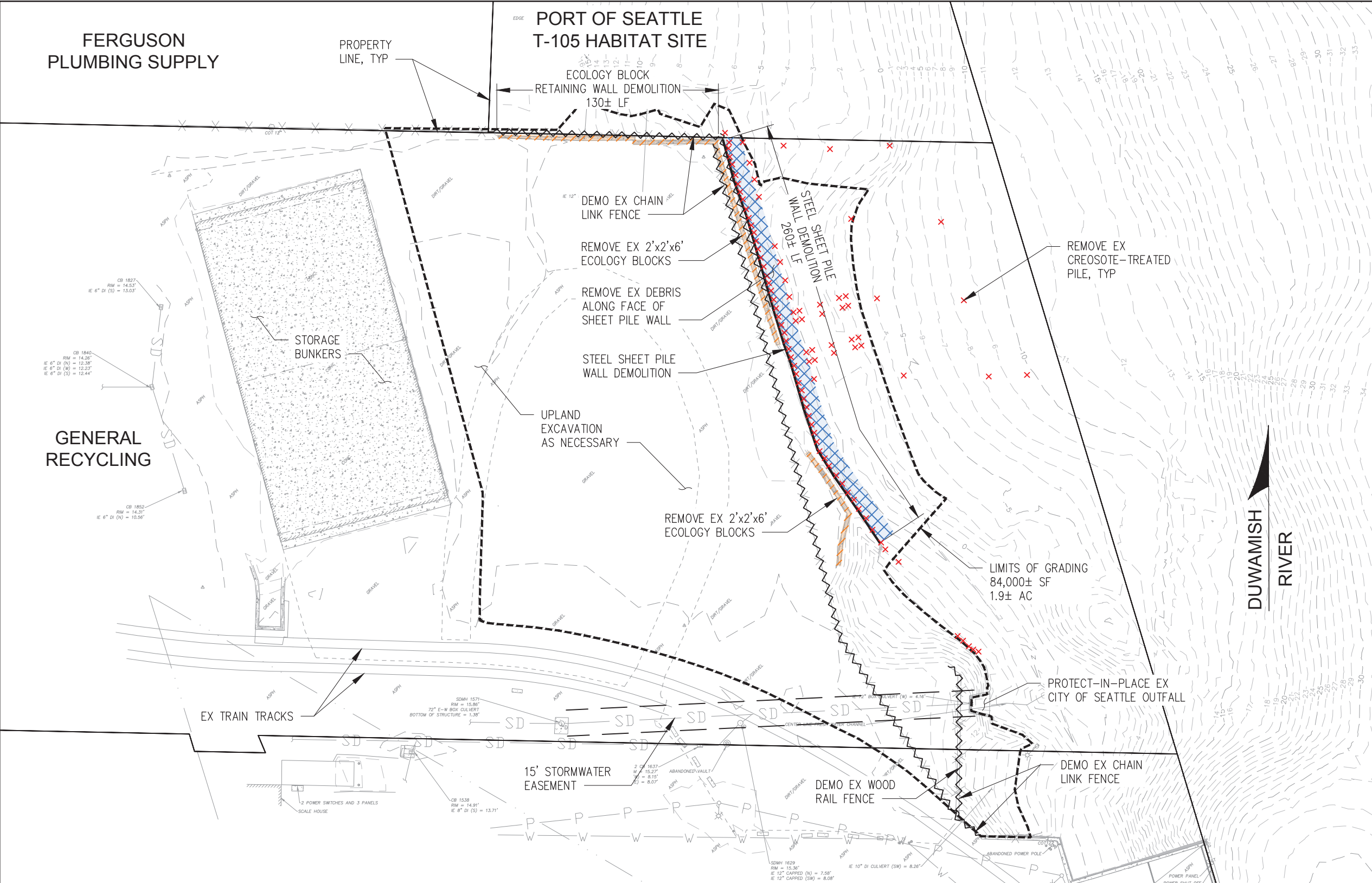
<b>Deliverables and Implementation Steps</b>	<b>Completion Schedule</b>
Consent Decree (CD) Effective Date	
Submit Draft Sampling and Analysis Plan/Quality Assurance Project Plan (SAP/QAPP) for Pre-Design Investigation to Trustees for Review	Within 60 Days of CD Effective Date
Conduct Pre-Design Investigation	Within 60 days of SAP Approval
Submit Conceptual Design Package (30% Design) to Trustees for Review	Within 180 days of CD Effective Date
Submit Habitat Mix Gradations and Substrate Selection Package to Trustees for Review	Within 180 days of CD Effective Date
Submit Preliminary Design Package (60% Design) to Trustees for Review	Within 180 days of Trustee Approval of Conceptual Design Package (30% Design)
Submit JARPA Permit Application and Share a Copy with Trustees for Administrative Record	Within 30 days of Trustee Approval of Preliminary Design Package (60% Design)
Submit Draft Final Design Package (90% Design) to Trustees for Review	Within 90 days of Approval of JARPA Application
Submit Final Design Package (100% Design) to Trustees for Review	Within 90 days of Trustee Approval of Draft Final Design Package (90% Design)
Submit Maintenance and Monitoring Plan to Trustees for Review	Concurrent with Final Design Package (100% Design)
Prepare Construction Documents and Submit the Final Construction Bid Documents to Trustees for Administrative Record	Within 90 days of Trustee Approval of Final Design Package (100% Design)
Engage Contractor and Implement Construction <i>(Note that in-water construction activities can only occur with permitted "fish windows." Construction is anticipated to require one in-water construction season).</i>	Following Receipt of Required Permits and within 60 days of Trustee written authorization to proceed with construction pursuant to Section 5.0 of the SOW
Submit Construction Completion Report to Trustees for Review	Within 60 days of Completion of Construction
Submit written Notice of Completion of Construction to Trustees for Review	Within 60 days of Completion of Construction
Finalize and Record Conservation Easement(s)	Within 60 days of Construction Completion Date
Implement Maintenance and Monitoring Plan and Submit Maintenance and Monitoring Reports to Trustees for Review	Following Completion of Construction – "Year 0" Monitoring is performed within 60 days of completion of planting. Monitoring and Maintenance Reports submitted within 90 days of the last monitoring event each year for years monitoring is being conducted.
Submit Stewardship Plan to Trustees for Review	During Year 7 of the 10-year Initial Maintenance and Monitoring Period

Submit Maintenance and Monitoring Completion Report to Trustees for Review	Within 90 days of completion of the 10-year Initial Maintenance and Monitoring Period
Submit written Notice of Completion of Initial Maintenance and Monitoring Obligations to Trustees for Review	Within 90 days of completion of the 10-year Initial Maintenance and Monitoring Period
Implement Stewardship Plan	Following completion of the 10-year Initial Maintenance and Monitoring Period

## **Figures**

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Plotted: Mar 09, 2023 - 2:20pm rdorr Layout: Plan  
 M:\2022\2200008 FS NRD Settlement General Recycling\2.18 Drawings\Exhibits\2023-03-01 Demolition Exhibit for Trustees\2023-03-01 NRD Habitat Demolition Exhibit.dwg



**NOTES**

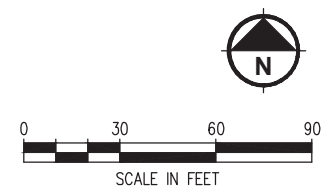
1. TOPOGRAPHIC SURVEY CONDUCTED BY KPFF IN JULY 2022.
2. BATHYMETRIC SURVEY CONDUCTED BY ETRAC IN JULY 2022.
3. VERTICAL DATUM: MLLW.

**LEGEND**

- PROJECT GRADING LIMITS
- EXISTING CONTOUR
- FENCE DEMOLITION
- STEEL SHEET PILE WALL DEMOLITION
- DEBRIS REMOVAL
- ECOLOGY BLOCK REMOVAL
- CREOSOTE-TREATED PILE REMOVAL

DEMOLITION ITEM	QUANTITY
CREOSOTE-TREATED PILING REMOVAL	100±
STEEL SHEET PILE WALL DEMOLITION	260± LF
ECOLOGY BLOCK RETAINING WALL DEMOLITION	130± LF
2'x2'x6' ECOLOGY BLOCK REMOVAL	75±
CHAIN LINK FENCE DEMOLITION	775± LF
WOOD RAIL FENCE DEMOLITION	80± LF

NOTE: ECOLOGY BLOCKS ASSOCIATED WITH THE RETAINING WALL DEMOLITION ARE INCLUDED IN THE ECOLOGY BLOCK REMOVAL QUANTITY.



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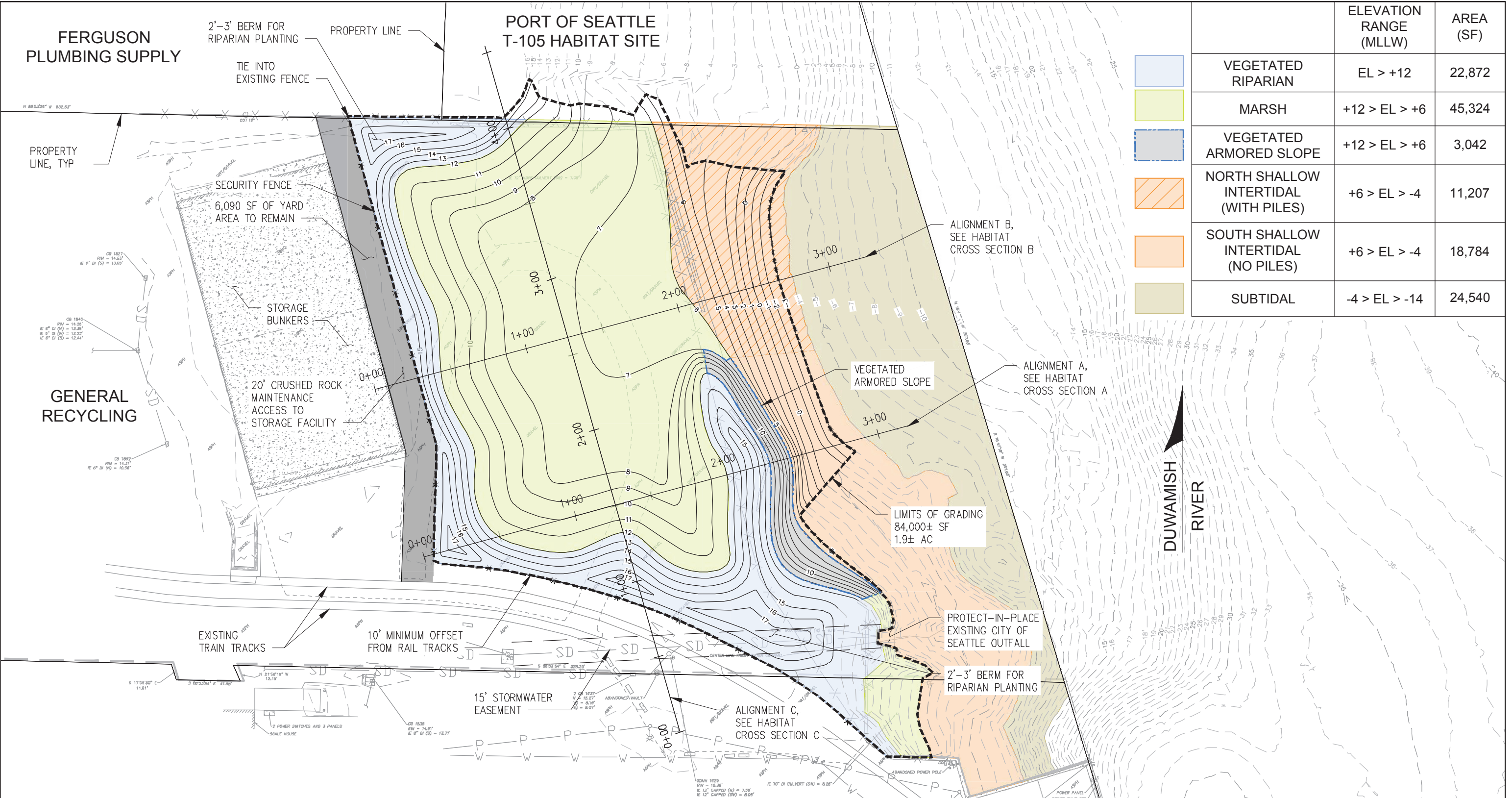


**GENERAL RECYCLING OF WASHINGTON**  
**FIGURE 1**  
**DEMOLITION AND DEBRIS REMOVAL**

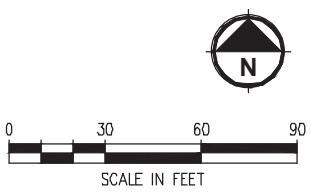
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DRAWN BY: RAD	SHT 1 OF 4



Plotted: May 08, 2023 - 4:20pm rdarr Layout: Plan  
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- NOTES**
1. TOPOGRAPHIC SURVEY CONDUCTED BY KPFF IN JULY 2022.
  2. BATHYMETRIC SURVEY CONDUCTED BY ETRAC IN JULY 2022.
  3. VERTICAL DATUM: MLLW.



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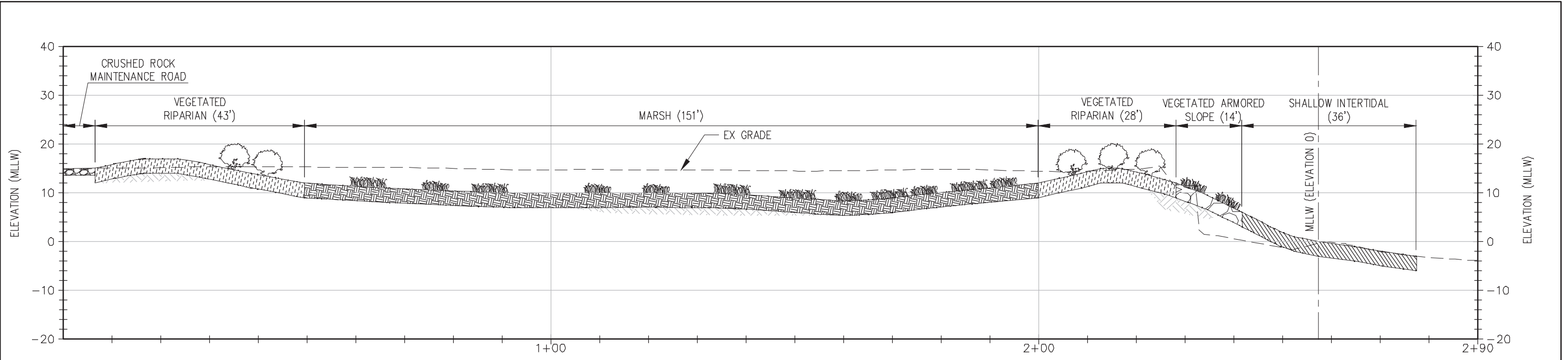
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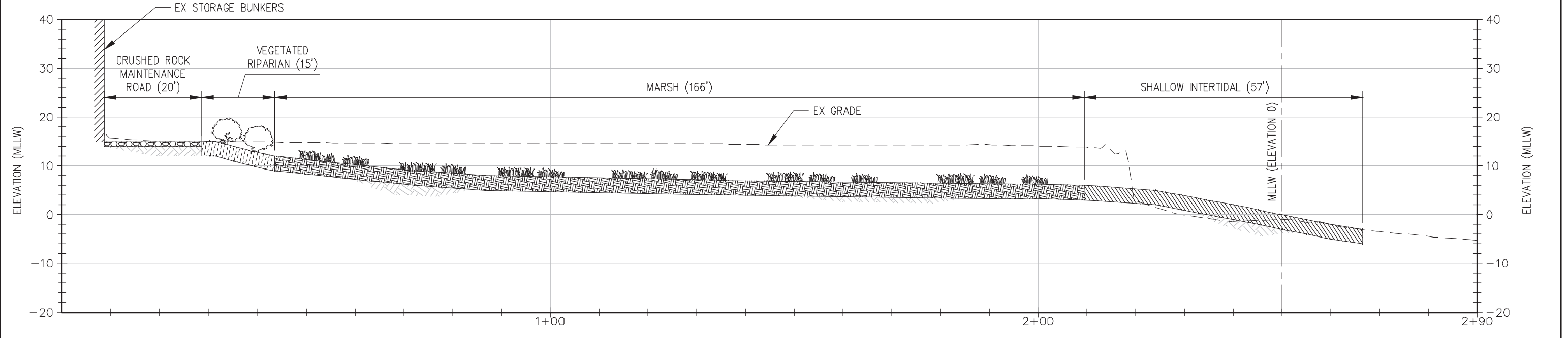
**GENERAL RECYCLING OF WASHINGTON**  
**FIGURE 2**  
**HABITAT CONCEPT PLAN**

DATE: 2023-05-08	SCALE: 1" = 60'
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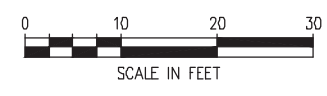
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**A HABITAT CROSS SECTION A**  
 EX-1 SCALE: 1" = 20'-0"



**B HABITAT CROSS SECTION B**  
 EX-1 SCALE: 1" = 20'-0"



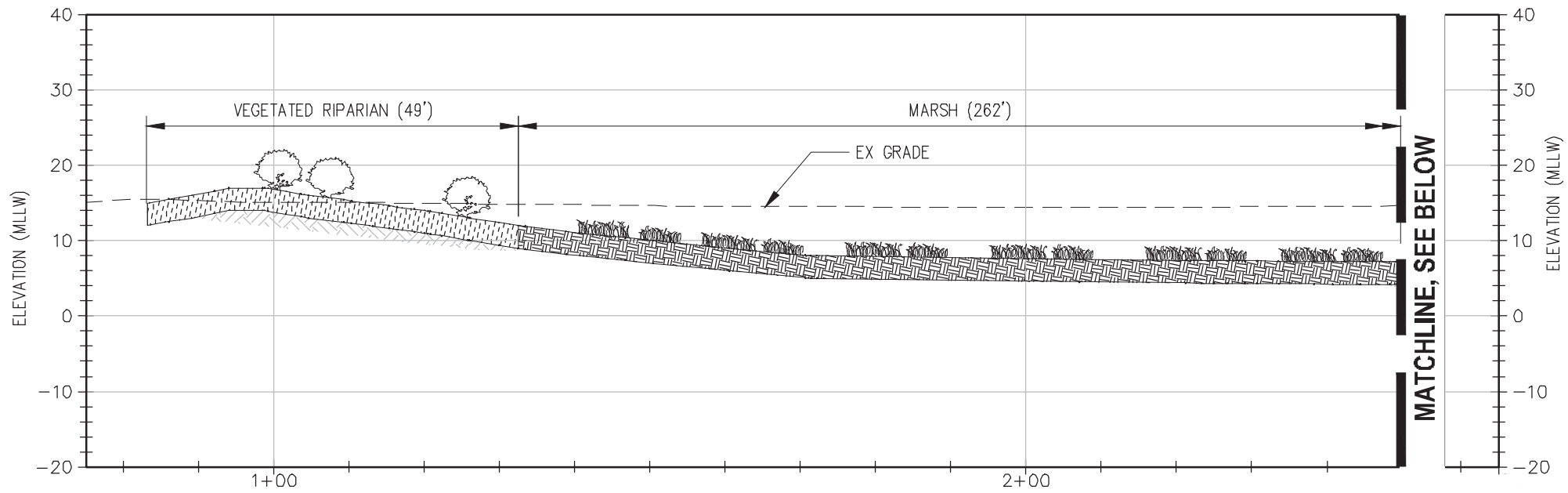
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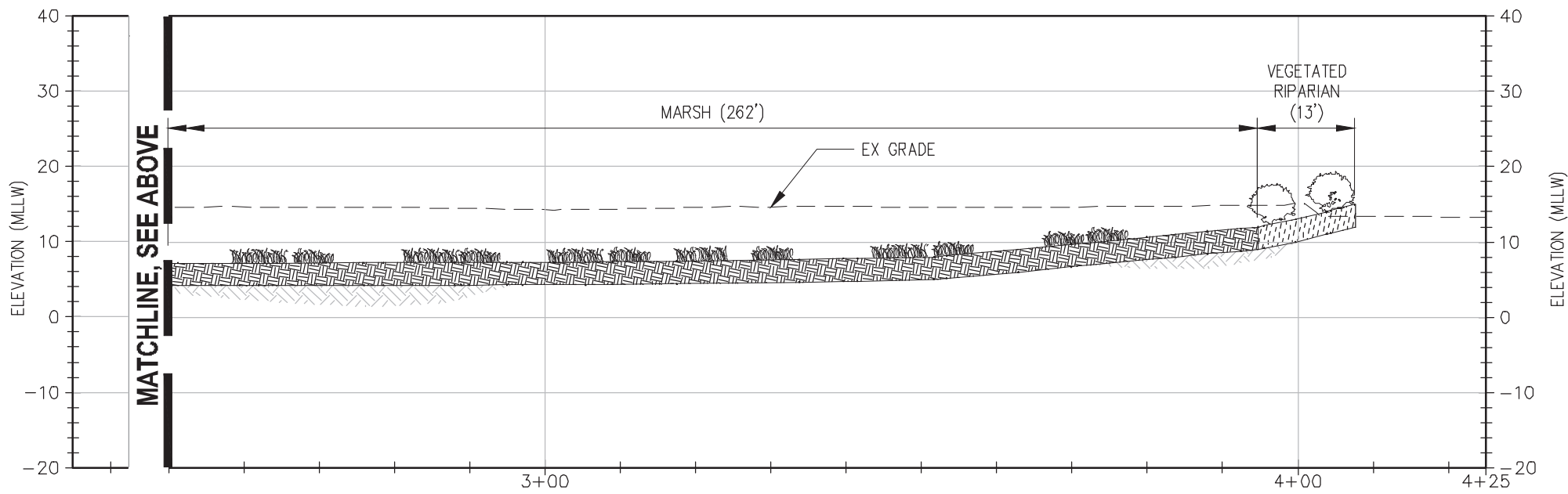


GENERAL RECYCLING OF WASHINGTON  
 FIGURE 3  
 HABITAT CROSS SECTIONS A AND B

DATE: 2022-05-08	SCALE: 1" = 20'
DRAWN BY: RAD	SHT 3 OF 4



**C** HABITAT CROSS SECTION C  
EX-1 SCALE: 1" = 20'-0"



**C** HABITAT CROSS SECTION C  
EX-1 SCALE: 1" = 20'-0"



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GENERAL RECYCLING OF WASHINGTON  
FIGURE 4  
HABITAT CROSS SECTION C

DATE: 2023-05-08	SCALE: 1" = 20'
DRAWN BY: RAD	SHT 4 OF 4

Plotted: May 08, 2023 - 3:54pm rdarr Layout: Profile C  
M:\2022\2200008 FS NRD Settlement General Recycling\2.18 Drawings\Exhibits\2023-04-05 Conceptual Design for Trustees\_Rev 1\2023-05-01 NRD Habitat Concept Design.dwg

## **Attachment C**



<b>Return Address</b>  National Oceanic and Atmospheric Administration Damage Assessment, Remediation, and Restoration Program 7600 Sand Point Way NE Seattle, WA 98115  Attention: Marla Steinhoff
<b>Document Title(s)</b> (or transactions contained therein):  Declaration of Conservation Easement
<b>Reference Number(s) of Documents assigned or released):</b>  n/a
<b>Grantor(s)</b> (Last name first, then first name and initials):  General Recycling of Washington, LLC (GRW)
<b>Grantee(s)</b> (Last name first, then first name and initials):  Washington State Department of Ecology
<b>Legal description</b> (abbreviated: i.e. lot, block, plat or section, township, range)  Portion of [insert metes and bounds description]  Full legal description is on Exhibit A of the document.
<b>Assessor's Property Tax Parcel/Account Number:</b>  7666703540

## Declaration of Conservation Easement

This Declaration of Conservation Easement ("**Declaration**") is made this [redacted] day of [redacted], 20 [redacted] by General Recycling of Washington, LLC ("**Grantor**") for the benefit of Washington State Department of Ecology ("**Ecology**"), for itself and on behalf of the Trustees named in the Consent Decree described below ("**Trustees**").

### Recitals

A. This Declaration is made pursuant to and in accordance with the Consent Decree (Civil No. [insert case number], entered on [insert date] (the "**Consent Decree**")) by and among Grantor as Defendant and the Trustees (and their successors), which include the National Oceanic and Atmospheric Administration (NOAA), the United States Department of the Interior, represented by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology ("**Ecology**", as lead state Trustee), the Washington Department of Natural Resources and the Washington Department of Fish and Wildlife (as State co-Trustees), the Muckleshoot Indian Tribe, and the Suquamish Tribe.

B. Grantor is the fee owner of certain real property (the "**GRW Easement Area**") located in King County, State of Washington that is the subject of the GRW Habitat Project Scope of Work ("**Scope of Work**") attached to the Consent Decree as Appendix A. The GRW Easement Area is legally described in **Exhibit A** attached to and made a part of this Declaration. The GRW Easement Area is also depicted on Exhibit A for reference purposes only. Pursuant to the Consent Decree, Grantor will implement a habitat restoration project (the "**Habitat Project**") on the GRW Easement Area to restore and/or create off-channel and riparian habitats in the Lower Duwamish River to increase the functional habitat for salmonids and other migratory and resident fish and wildlife.

C. Grantor desires to make this declaration of conservation easement in accordance with the terms of the Consent Decree.

## Declaration

NOW THEREFORE, Grantor declares that the GRW Easement Area shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be equitable servitudes in furtherance of a plan for the improvement and use of the GRW Easement Area, and is established and agreed upon for the purpose of enhancing and protecting the values of the GRW Easement Area for the purposes set forth in the Consent Decree. All such covenants, conditions and restrictions shall run with the GRW Easement Area and each part of it, and shall be binding upon, and shall be for the benefit of, Grantor, Ecology and each owner of fee title to all or any portion of the GRW Easement Area and their successors in ownership of fee title.

**Section 1.** GRW Easement Area shall be used only for the Habitat Project and for uses consistent with the Habitat Project. The GRW Easement Area shall not be used for any purpose or activity that interferes with the Habitat Project including, but not necessarily limited to, any activity that interferes with, damages or disturbs the integrity or maintenance of the Habitat Project; any activity that would degrade or diminish the ecological values of the habitat or its function as a habitat; any activity that causes the release or exposure to the environment of any hazardous substances at the Habitat Project; or any activity that would otherwise interfere with the Habitat Project such that it would adversely affect the likelihood of success of the Habitat Project. Activities that are prohibited in the GRW Easement Area, to the full extent of Grantor's property interests, include, but are not limited to:

- (1) Construction, reconstruction, or placement of any permanent building or structure;
- (2) Unseasonable watering; use of fertilizers, biocides or other agricultural chemicals, incompatible fire protection activities; and any and all other uses which may adversely affect the ecological values of this Conservation Easement;
- (3) Grazing and agricultural activity of any kind;
- (4) Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids, or other material;
- (5) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand, or other material on or to a depth of 100 feet below the surface of the GRW Easement Area, or granting or authorizing surface entry for any of these purposes of the GRW Easement Area, or granting or authorizing surface entry for any of these purposes;
- (6) Altering the surface or general topography, including building roads, paving, or otherwise covering the GRW Easement Area with concrete, asphalt, or any other impervious material;
- (7) Transferring any water right necessary to maintain or restore the biological resources of the Habitat Project;
- (8) Planting, introduction, or dispersal of invasive or exotic plant or animal species;
- (9) Manipulating, impounding, or altering any natural watercourse, body of water, or water circulation on the GRW Easement Area and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and

- (10) Permitting a general right of access to the GRW Easement Area; however, permits for specific uses related to upkeep, maintenance and stewardship activities for the GRW Easement Area may be granted on a case-by-case basis.

Notwithstanding the foregoing, nothing herein shall prohibit GRW from taking any action with respect to the GRW Easement Area that is consistent with or pursuant to the Consent Decree.

**Section 2.** Authorized representatives of Ecology and the other Trustees shall have the right to enter the GRW Easement Area at the times and under the circumstances described in the Consent Decree.

**Section 3.** Grantor shall undertake all reasonable actions to prevent unlawful entry of persons whose activities may degrade or harm the Habitat Project and are inconsistent with the Conservation Easement.

**Section 4.** This Declaration may not be modified or amended except by a writing signed by Grantor, Ecology, and the other Trustees.

**Section 5.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the GRW Easement Area is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration. Grantor shall not grant any additional interest in the GRW Easement Area that is superior to or inconsistent with this Conservation Easement, nor shall Grantor transfer, grant, abandon, or relinquish any water or water right associated with the Habitat Project or GRW Easement Area without the prior written authorization of the Trustees. Such consent may be withheld if the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the ecological values provided by the Habitat Project. This Section shall not prohibit the transfer of a fee title or leasehold interest in the GRW Easement Area that is otherwise subject to and complies with the terms of this Conservation Easement.

**Section 6.** This Declaration may be enforced by Ecology or by any other Trustee.

**Section 7.** This Declaration shall be governed by the laws of the State of Washington.

**Section 8.** This Agreement may be executed in a number of identical counterparts. Each of the counterparts will be deemed an original for all purposes and all counterparts will collectively constitute one Agreement.

**Section 9.** The sole remedy for breach of this Declaration shall be specific performance, and damages shall not be recoverable against Grantor or any successor in ownership of the GRW Easement Area; provided, however, that nothing in this Declaration shall limit the remedies that are available to Ecology and the other Trustees under the Consent Decree.

**Section 10.** If any covenant, condition, restriction, provision, term or agreement of this Declaration is to any extent held invalid or unenforceable, the remaining portion thereof and all other terms shall remain valid, enforceable and in effect.

**Section 11.** This Conservation Easement shall be of perpetual duration, it being the express intent of Grantor and Grantee that this Conservation Easement shall not be extinguished by, or merged into, any other interest or estate in the GRW Easement Area now or hereafter held by Grantee or any other party.

**Section 12.** Nothing in this Declaration shall be interpreted or construed to limit the exercise of federal tribal treaty rights.

**GENERAL RECYCLING OF WASHINGTON, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**WASHINGTON STATE DEPARTMENT OF ECOLOGY**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 202\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of General Recycling of Washington, LLC the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was fully elected, qualified and acting as said officer of the company, that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said company.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and fore the State of \_\_\_\_\_, residing at

\_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the Washington State Department of Ecology, the agency that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was authorized to execute said instrument on behalf of said agency.

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

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and fore the State of \_\_\_\_\_, residing at

\_\_\_\_\_  
My commission expires

\_\_\_\_\_

**Exhibit A**

**[insert drawings of location of easement and legal description from survey]**



# Attachment D

**CORPORATE GUARANTEE FOR CONSTRUCTION OF RESTORATION  
PROJECT PURSUANT TO NATURAL RESOURCE DAMAGES CONSENT  
DECREE FOR THE LOWER DUWAMISH RIVER**

Guarantee made this [insert date] by Nucor Corporation, a business corporation organized under the laws of the State of Delaware (“Guarantor”). This Guarantee is made on behalf of General Recycling of Washington, LLC, the David J. Joseph Company, and Nucor Steel Seattle, Inc., each of which is a direct or indirect subsidiary of Guarantor (“Defendants”), the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior; the Washington State Department of Ecology, on behalf of the State of Washington; the Suquamish Indian Tribe; and the Muckleshoot Indian Tribe (collectively, “Trustees”).

**RECITALS**

Whereas, under a Consent Decree, (hereinafter, the “Consent Decree”), between Defendants and the Trustees, relating to the natural resource damages in the Lower Duwamish River (“LDR”), entered pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607; the Model Toxics Control Act (“MTCA”), RCW 70A.305; Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b), Defendants are required to construct a restoration project as defined in the Consent Decree (hereinafter, the “Project”) and to fulfill their other obligations as set forth therein.

Whereas, the Consent Decree requires Defendants to provide financial assurance to the Trustees for their performance of construction of the Project.

Whereas, in order to provide such financial assurance for construction of the Project required by the Consent Decree, Defendants have agreed to provide the Trustees with a guarantee, issued by Guarantor, of Defendants’ obligations to construct the Project arising under the Consent Decree, all as set forth more fully in this Guarantee.

Whereas, Guarantor has demonstrated to the Trustees’ satisfaction that it has the financial ability to fund the construction of the Project, including that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f), and agrees to comply with the reporting and notification requirements for guarantors as specified in the Consent Decree and this Guarantee.

**AGREEMENT**

1. For value received from Defendants, Guarantor guarantees to the Trustees that, in the event that Defendants fail to construct the Project as required by the Consent Decree, Guarantor shall do so or immediately, upon written demand from the Trustees, deposit into an account specified by the Trustees, in immediately available funds and without

setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining work to construct the Project as of such date, as determined by the Trustees.

2. For so long as this Guarantee is in effect, on the first anniversary of the Effective Date of the Consent Decree, as defined therein, Guarantor shall demonstrate its continued financial ability to fund construction of the Project by submitting to the Trustees copies of its most recent Form 10-K Annual Report. Each year thereafter until the Trustees issue a Notice of Approval of Construction Completion in accordance with Paragraph 10 of the Consent Decree, Guarantor shall submit its most recent Form 10-K Annual Report to the Trustees within 30 days after filing of such report.

3. Guarantor agrees that, within 30 days after being notified by the Trustees of a determination by the Trustees that Guarantor does not demonstrate financial ability to fund construction of the Project and is disallowed from continuing as a guarantor, Guarantor shall establish alternative financial assurance as specified in the Consent Decree, as applicable, in the name of Defendants unless Defendants have done so.

4. Guarantor agrees to notify the Trustees, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

5. Guarantor agrees to remain bound under this Guarantee notwithstanding any or all of the following: amendment or modification of the Consent Decree or any documents, instruments or agreements executed in connection therewith, the extension or reduction of the time to perform construction of the Project required by the Consent Decree, or any other modification or alteration of an obligation of Defendants pursuant to the Consent Decree.

6. Guarantor agrees to remain bound under this guarantee for as long as Defendants must comply with the applicable financial assurance requirements of the Consent Decree, except as provided in paragraph 7 of this Guarantee.

7. Guarantor may terminate this Guarantee by sending notice, by certified mail, to the Trustees and to Defendants, provided that this Guarantee may not be terminated unless and until Defendants obtain, and the Trustees approve, alternative financial assurance as specified in the Consent Decree.

8. Guarantor agrees that if Defendants fail to provide alternative financial assurance as specified in the Consent Decree and obtain written approval of such assurance from the Trustees within 90 days after a notice of cancellation by Guarantor is received by the Trustees from Guarantor, Guarantor shall provide such alternative financial assurance in the name of Defendants.

9. Guarantor expressly waives notice of acceptance of this Guarantee by the Trustees or by Defendants. Guarantor also expressly waives notice of amendments or

modifications of the Consent Decree or any documents, instruments or agreements executed in connection therewith.

10. All notices, elections, approvals, demands, and requests required or permitted hereunder shall be given in writing to (unless updated from time to time) the following:

If to Guarantor: Mike Keller  
General Manager – Corporate Controller  
mike.keller@nucor.com

If to Defendants: Christopher Bedell  
General Manager – Corporate Legal Affairs  
chris.bedell@nucor.com; and

If to the Trustees:

DOJ:

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Eescdcopy.enrd@usdoj.gov  
(DJ #90-11-3-07227/14)

Erika Wells  
U.S. Department of Justice  
c/o NOAA/Damage Assessment  
7600 Sand Point Way, NE  
Seattle, WA 98115  
Erika.wells@usdoj.gov

NOAA:

Joe Edgell  
NOAA Office of General Counsel, Natural Resources Division  
Damage Assessment and Restoration Center  
7600 Sand Point Way N.E.  
Seattle, WA 98115  
joseph.edgell@noaa.gov

Marla Steinhoff  
Regional Resource Coordinator  
Office of Response and Restoration  
Assessment and Restoration Division

7600 Sand Point Way NE, Bldg. 1,  
Seattle, WA 98115-6349  
Marla.steinhoff@noaa.gov

United States Department of the Interior:

Deirdre Donahue  
U.S. Department of the Interior  
Office of the Solicitor  
601 SW 2nd Avenue, Suite 1950  
Portland, OR 97204  
Deirdre.donahue@sol.doi.gov

Jeff Krausmann  
U.S. Fish & Wildlife Service  
510 Desmond Dr. SE, Suite 102  
Lacey, WA 98503-1263  
Jeff\_krausmann@fws.gov

State:

John Level  
Assistant Attorney General  
2425 Bristol Court S.W.  
P.O. Box 40117  
Olympia, WA 98504 0117  
John.level@atg.wa.gov

Suquamish Indian Tribe:

Kendra Martinez  
Suquamish Indian Tribe  
Office of Tribal Attorney  
P.O. Box 498  
Suquamish, WA 98392-0498  
kmartinez@Suquamish.nsn.us

Muckleshoot Indian Tribe:

Rob Otsea and Trent Crable  
Office of the Tribal Attorney  
Muckleshoot Indian Tribe  
39015 172nd Avenue S.E.  
Auburn, WA 98002  
Trent.crable@muckleshoot.nsn.us

11. Notwithstanding anything to the contrary, all parties acknowledge and agree that this Guarantee shall become effective only upon the Effective Date of the Consent Decree as that term is defined in the Consent Decree such that if the Consent Decree is not finally approved by a court of competent jurisdiction, this Guarantee shall be null and void and without effect and the parties shall be placed in a position of *status quo ante* as though this Guarantee were never executed.

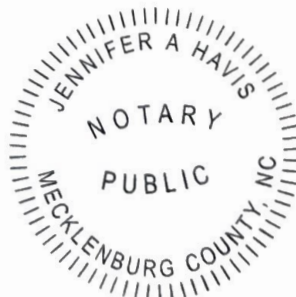
**IN WITNESS WHEREOF**, the parties hereto, by their authorized representatives duly authorized, intending to be legally bound, have caused this Guarantee to be duly executed and delivered as of the date first above written.

Name of Guarantor: Nucor Corporation  
Authorized signature for guarantor: [Signature]  
Name of person signing: Michael D. Keller  
Title of person signing: Vice President & Corporate Controller  
Contact information for signatory: milke.keller@nucor.com

State of North Carolina  
County of Mecklenburg

On this January 10<sup>th</sup> 2024, before me personally came Michael D Keller to me known, who, being by me duly sworn, did depose and say that she/he is Vice President & Corporate Controller of Nucor Corporation, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

Jennifer A Havis  
[Signature of Notary Public]



# **Attachment E**

*This is a draft for discussion purposes only. It does not represent a liability of the bank at this time.*

*Any letter of credit issued will be printed on bank letterhead.*

U.S. BANK NATIONAL ASSOCIATION  
GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402

SWIFT: USBKUS44  
TELEPHONE: 612-303-7395  
612-303-7374  
FACSIMILE: 612-303-5226

**IRREVOCABLE LETTER OF CREDIT  
NUMBER SLC \_\_\_\_\_**

**[ISSUANCE DATE]**

**BENEFICIARY:**

National Oceanic & Atmospheric  
Administration (NOAA)  
7600 Sandpoint Way NE  
Building 1 (DARC)  
Seattle, WA 98115  
Attn: [NOAA to insert]

**APPLICANT:**

General Recycling of Washington, LLC  
4260 West Marginal Way  
Seattle, WA 98106

**AMOUNT:**

\$ 500,000.00 (initial maintenance and monitoring)

**EXPIRATION DATE:**

\_\_\_\_\_,  
OR AS EXTENDED

AT THE REQUEST AND FOR THE ACCOUNT OF \_\_\_\_\_ ("APPLICANT"), WE U.S. BANK NATIONAL ASSOCIATION 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G ("ISSUER") ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SLC \_\_\_\_\_ ("STANDBY") IN FAVOR OF \_\_\_\_\_ ("BENEFICIARY") IN THE MAXIMUM AGGREGATE AMOUNT OF \$500,000.

ISSUER UNDERTAKES TO BENEFICIARY TO PAY BENEFICIARY'S DEMAND FOR PAYMENT IN THE CURRENCY AND FOR AN AMOUNT AVAILABLE UNDER THIS STANDBY AND IN THE FORM OF THE ANNEXED PAYMENT DEMAND COMPLETED AS INDICATED AND PRESENTED TO ISSUER AT THE FOLLOWING PLACE FOR PRESENTATION: U.S. BANK NATIONAL ASSOCIATION, 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G, ON OR BEFORE THE EXPIRATION DATE.

THE EXPIRATION DATE OF THIS STANDBY IS [DATE].

THE EXPIRATION DATE OF THIS STANDBY SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE ONE YEAR PERIODS, UNLESS ISSUER NOTIFIES BENEFICIARY BY OVERNIGHT COURIER, REGISTERED MAIL OR OTHER RECEIPTED MEANS OF DELIVERY SENT TO BENEFICIARY'S ABOVE-STATED ADDRESS THIRTY (30) OR MORE DAYS BEFORE THE THEN CURRENT EXPIRATION DATE THAT ISSUER ELECTS NOT TO EXTEND THE EXPIRATION DATE. *[THE EXPIRATION DATE IS NOT SUBJECT TO AUTOMATIC EXTENSION BEYOND [DATE], AND ANY PENDING AUTOMATIC ONE-YEAR EXTENSION SHALL BE INEFFECTIVE BEYOND THAT DATE.]*

PAYMENT AGAINST A COMPLYING PRESENTATION SHALL BE MADE WITHIN 3 BUSINESS DAYS AFTER PRESENTATION BY WIRE TRANSFER TO A DULY REQUESTED ACCOUNT OF BENEFICIARY. AN ADVICE OF SUCH PAYMENT SHALL BE SENT TO BENEFICIARY'S ABOVE- STATED ADDRESS.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.



THIS STANDBY IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND, U.S. BANK NATIONAL ASSOCIATION'S OBLIGATIONS UNDER THIS STANDBY ARE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE COURTS LOCATED IN THE STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION TO ENFORCE U.S. BANK NATIONAL ASSOCIATION'S OBLIGATIONS UNDER THIS STANDBY.

ALL DOCUMENTS MUST BE ISSUED IN THE ENGLISH LANGUAGE EXCEPT THAT ANY STAMPS, LEGALIZATION, OR ENDORSEMENTS, SHOWN ON A DOCUMENT MAY BE IN A LANGUAGE OTHER THAN ENGLISH. DOCUMENTS WHICH SHOW PRE-PRINTED FIELD HEADINGS IN BOTH ENGLISH AND A SECOND LANGUAGE ARE ALSO ACCEPTABLE. ANY PROPER NAMES (INCLUDING NAMES OF PERSONS, ENTITIES, VESSELS) THAT USE NON-LATIN CHARACTERS MUST BE TRANSLITERATED USING LATIN-ALPHABET CHARACTERS.

ISSUER SHALL NOT BE LIABLE FOR ANY DELAY, NON-RETURN OF DOCUMENTS, NON-PAYMENT, OR OTHER ACTION OR INACTION COMPELLED BY A JUDICIAL ORDER OR BY ANY LAW OR REGULATION APPLICABLE TO ISSUER.

U.S. BANK NATIONAL ASSOCIATION

***DRAFT***

---

AUTHORIZED SIGNATURE

ANNEXED PAYMENT DEMAND

[INSERT DATE]

TO: U.S. BANK NATIONAL ASSOCIATION  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402  
ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G

RE: STANDBY LETTER OF CREDIT NO. SLC \_\_\_\_\_, DATED [DATE], ISSUED BY U.S. BANK NATIONAL ASSOCIATION ("STANDBY")

THE UNDERSIGNED BENEFICIARY DEMANDS PAYMENT OF [INSERT CURRENCY/AMOUNT] UNDER THE STANDBY.

BENEFICIARY STATES THAT:

INSERT ONE OF THE FOLLOWING ALTERNATIVE STATEMENTS:

APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**.

OR

THE STANDBY IS SET TO EXPIRE FEWER THAN THIRTY (30) DAYS FROM THE DATE HEREOF, BECAUSE ISSUER HAS GIVEN A NOTICE OF NON-EXTENSION OF THE STANDBY, AND THE AMOUNT DEMANDED IS REQUIRED AS CASH COLLATERAL TO SECURE THE UNMATURED OR CONTINGENT OBLIGATIONS OF APPLICANT UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**. BENEFICIARY FURTHER STATES THAT THE PROCEEDS FROM THIS DEMAND WILL BE USED TO SECURE THE ABOVE-IDENTIFIED OBLIGATIONS AND THEN TO SATISFY THEM AS THEY BECOME ABSOLUTE AND DUE AND THAT BENEFICIARY WILL ACCOUNT TO APPLICANT FOR ANY PROCEEDS THAT ARE NOT SO USED.

BENEFICIARY REQUESTS THAT PAYMENT BE MADE BY WIRE TRANSFER TO AN ACCOUNT OF BENEFICIARY AS FOLLOWS: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY'S BANK, AND NAME AND NUMBER OF BENEFICIARY'S ACCOUNT].

[BENEFICIARY'S NAME AND ADDRESS]

BY ITS AUTHORIZED OFFICER:

[INSERT ORIGINAL SIGNATURE]  
[INSERT TYPED/PRINTED NAME AND TITLE]

  X  

AUTHORIZED SIGNATURE, APPLICANT  
AS AUTHORIZATION TO ISSUE IN THIS  
FORM

# **Attachment F**

*This is a draft for discussion purposes only. It does not represent a liability of the bank at this time.*

*Any letter of credit issued will be printed on bank letterhead.*

U.S. BANK NATIONAL ASSOCIATION  
GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402

SWIFT: USBKUS44  
TELEPHONE: 612-303-7395  
612-303-7374  
FACSIMILE: 612-303-5226

**IRREVOCABLE LETTER OF CREDIT  
NUMBER SLC \_\_\_\_\_**

**[ISSUANCE DATE]**

**BENEFICIARY:**

National Oceanic & Atmospheric  
Administration (NOAA)  
7600 Sandpoint Way NE  
Building 1 (DARC)  
Seattle, WA 98115  
Attn: [NOAA to insert]

**APPLICANT:**

General Recycling of Washington, LLC  
4260 West Marginal Way  
Seattle, WA 98106

**AMOUNT:**

\$ 575,000.00 (stewardship)

**EXPIRATION DATE:**

\_\_\_\_\_,  
OR AS EXTENDED

AT THE REQUEST AND FOR THE ACCOUNT OF [NAME OF APPLICANT] ("APPLICANT"), WE U.S. BANK NATIONAL ASSOCIATION 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G ("ISSUER") ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SLC \_\_\_\_\_ ("STANDBY") IN FAVOR OF [NAME OF BENEFICIARY] ("BENEFICIARY") IN THE MAXIMUM AGGREGATE AMOUNT OF [CURRENCY/AMOUNT].

ISSUER UNDERTAKES TO BENEFICIARY TO PAY BENEFICIARY'S DEMAND FOR PAYMENT IN THE CURRENCY AND FOR AN AMOUNT AVAILABLE UNDER THIS STANDBY AND IN THE FORM OF THE ANNEXED PAYMENT DEMAND COMPLETED AS INDICATED AND PRESENTED TO ISSUER AT THE FOLLOWING PLACE FOR PRESENTATION: U.S. BANK NATIONAL ASSOCIATION, 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G, ON OR BEFORE THE EXPIRATION DATE.

THE EXPIRATION DATE OF THIS STANDBY IS [DATE].

THE EXPIRATION DATE OF THIS STANDBY SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE ONE YEAR PERIODS, UNLESS ISSUER NOTIFIES BENEFICIARY BY OVERNIGHT COURIER, REGISTERED MAIL OR OTHER RECEIPTED MEANS OF DELIVERY SENT TO BENEFICIARY'S ABOVE-STATED ADDRESS THIRTY (30) OR MORE DAYS BEFORE THE THEN CURRENT EXPIRATION DATE THAT ISSUER ELECTS NOT TO EXTEND THE EXPIRATION DATE. *[THE EXPIRATION DATE IS NOT SUBJECT TO AUTOMATIC EXTENSION BEYOND [DATE], AND ANY PENDING AUTOMATIC ONE-YEAR EXTENSION SHALL BE INEFFECTIVE BEYOND THAT DATE.]*

PAYMENT AGAINST A COMPLYING PRESENTATION SHALL BE MADE WITHIN 3 BUSINESS DAYS AFTER PRESENTATION BY WIRE TRANSFER TO A DULY REQUESTED ACCOUNT OF BENEFICIARY. AN ADVICE OF SUCH PAYMENT SHALL BE SENT TO BENEFICIARY'S ABOVE- STATED ADDRESS.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.

THIS STANDBY IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND, U.S. BANK NATIONAL ASSOCIATION'S OBLIGATIONS UNDER THIS STANDBY ARE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE COURTS LOCATED IN THE STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY ACTION TO ENFORCE U.S. BANK NATIONAL ASSOCIATION'S OBLIGATIONS UNDER THIS STANDBY.

ALL DOCUMENTS MUST BE ISSUED IN THE ENGLISH LANGUAGE EXCEPT THAT ANY STAMPS, LEGALIZATION, OR ENDORSEMENTS, SHOWN ON A DOCUMENT MAY BE IN A LANGUAGE OTHER THAN ENGLISH. DOCUMENTS WHICH SHOW PRE-PRINTED FIELD HEADINGS IN BOTH ENGLISH AND A SECOND LANGUAGE ARE ALSO ACCEPTABLE. ANY PROPER NAMES (INCLUDING NAMES OF PERSONS, ENTITIES, VESSELS) THAT USE NON-LATIN CHARACTERS MUST BE TRANSLITERATED USING LATIN-ALPHABET CHARACTERS.

ISSUER SHALL NOT BE LIABLE FOR ANY DELAY, NON-RETURN OF DOCUMENTS, NON-PAYMENT, OR OTHER ACTION OR INACTION COMPELLED BY A JUDICIAL ORDER OR BY ANY LAW OR REGULATION APPLICABLE TO ISSUER.

U.S. BANK NATIONAL ASSOCIATION

***DRAFT***

---

AUTHORIZED SIGNATURE

ANNEXED PAYMENT DEMAND

[INSERT DATE]

TO: U.S. BANK NATIONAL ASSOCIATION  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402  
ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G

RE: STANDBY LETTER OF CREDIT NO. SLC \_\_\_\_\_, DATED [DATE], ISSUED BY U.S. BANK NATIONAL ASSOCIATION ("STANDBY")

THE UNDERSIGNED BENEFICIARY DEMANDS PAYMENT OF [INSERT CURRENCY/AMOUNT] UNDER THE STANDBY.

BENEFICIARY STATES THAT:

INSERT ONE OF THE FOLLOWING ALTERNATIVE STATEMENTS:

APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**.

OR

THE STANDBY IS SET TO EXPIRE FEWER THAN THIRTY (30) DAYS FROM THE DATE HEREOF, BECAUSE ISSUER HAS GIVEN A NOTICE OF NON-EXTENSION OF THE STANDBY, AND THE AMOUNT DEMANDED IS REQUIRED AS CASH COLLATERAL TO SECURE THE UNMATURED OR CONTINGENT OBLIGATIONS OF APPLICANT UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**. BENEFICIARY FURTHER STATES THAT THE PROCEEDS FROM THIS DEMAND WILL BE USED TO SECURE THE ABOVE-IDENTIFIED OBLIGATIONS AND THEN TO SATISFY THEM AS THEY BECOME ABSOLUTE AND DUE AND THAT BENEFICIARY WILL ACCOUNT TO APPLICANT FOR ANY PROCEEDS THAT ARE NOT SO USED.

BENEFICIARY REQUESTS THAT PAYMENT BE MADE BY WIRE TRANSFER TO AN ACCOUNT OF BENEFICIARY AS FOLLOWS: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY'S BANK, AND NAME AND NUMBER OF BENEFICIARY'S ACCOUNT].

[BENEFICIARY'S NAME AND ADDRESS]

BY ITS AUTHORIZED OFFICER:

[INSERT ORIGINAL SIGNATURE]  
[INSERT TYPED/PRINTED NAME AND TITLE]

  X  

AUTHORIZED SIGNATURE, APPLICANT  
AS AUTHORIZATION TO ISSUE IN THIS  
FORM

# Attachment G

*This is a draft for discussion purposes only. It does not represent a liability of the bank at this time.*

*Any letter of credit issued will be printed on bank letterhead.*

U.S. BANK NATIONAL ASSOCIATION  
GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402

SWIFT: USBKUS44  
TELEPHONE: 612-303-7395  
612-303-7374  
FACSIMILE: 612-303-5226

**IRREVOCABLE LETTER OF CREDIT  
NUMBER SLC \_\_\_\_\_**

**[ISSUANCE DATE]**

**BENEFICIARY:**

National Oceanic & Atmospheric  
Administration (NOAA)  
7600 Sandpoint Way NE  
Building 1 (DARC)  
Seattle, WA 98115  
Attn: [NOAA to insert]

**APPLICANT:**

General Recycling of Washington, LLC  
4260 West Marginal Way  
Seattle, WA 98106

**AMOUNT:**

\$ 400,000.00 (adaptive management)

**EXPIRATION DATE:**

\_\_\_\_\_,  
OR AS EXTENDED

AT THE REQUEST AND FOR THE ACCOUNT OF [NAME OF APPLICANT] ("APPLICANT"), WE U.S. BANK NATIONAL ASSOCIATION 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G ("ISSUER") ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SLC \_\_\_\_\_ ("STANDBY") IN FAVOR OF [NAME OF BENEFICIARY] ("BENEFICIARY") IN THE MAXIMUM AGGREGATE AMOUNT OF [CURRENCY/AMOUNT].

ISSUER UNDERTAKES TO BENEFICIARY TO PAY BENEFICIARY'S DEMAND FOR PAYMENT IN THE CURRENCY AND FOR AN AMOUNT AVAILABLE UNDER THIS STANDBY AND IN THE FORM OF THE ANNEXED PAYMENT DEMAND COMPLETED AS INDICATED AND PRESENTED TO ISSUER AT THE FOLLOWING PLACE FOR PRESENTATION: U.S. BANK NATIONAL ASSOCIATION, 800 NICOLLET MALL, MINNEAPOLIS, MN 55402, ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G, ON OR BEFORE THE EXPIRATION DATE.

THE EXPIRATION DATE OF THIS STANDBY IS [DATE].

THE EXPIRATION DATE OF THIS STANDBY SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE ONE YEAR PERIODS, UNLESS ISSUER NOTIFIES BENEFICIARY BY OVERNIGHT COURIER, REGISTERED MAIL OR OTHER RECEIPTED MEANS OF DELIVERY SENT TO BENEFICIARY'S ABOVE-STATED ADDRESS THIRTY (30) OR MORE DAYS BEFORE THE THEN CURRENT EXPIRATION DATE THAT ISSUER ELECTS NOT TO EXTEND THE EXPIRATION DATE. *[THE EXPIRATION DATE IS NOT SUBJECT TO AUTOMATIC EXTENSION BEYOND [DATE], AND ANY PENDING AUTOMATIC ONE-YEAR EXTENSION SHALL BE INEFFECTIVE BEYOND THAT DATE.]*

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PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.



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U.S. BANK NATIONAL ASSOCIATION

***DRAFT***

---

AUTHORIZED SIGNATURE

ANNEXED PAYMENT DEMAND

[INSERT DATE]

TO: U.S. BANK NATIONAL ASSOCIATION  
800 NICOLLET MALL  
MINNEAPOLIS, MN 55402  
ATTN: GLOBAL TRADE & STANDBY SERVICES, BC-MN-H20G

RE: STANDBY LETTER OF CREDIT NO. SLC \_\_\_\_\_, DATED [DATE], ISSUED BY U.S. BANK NATIONAL ASSOCIATION ("STANDBY")

THE UNDERSIGNED BENEFICIARY DEMANDS PAYMENT OF [INSERT CURRENCY/AMOUNT] UNDER THE STANDBY.

BENEFICIARY STATES THAT:

INSERT ONE OF THE FOLLOWING ALTERNATIVE STATEMENTS:

APPLICANT IS OBLIGATED TO PAY THE BENEFICIARY THE AMOUNT DEMANDED UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**.

OR

THE STANDBY IS SET TO EXPIRE FEWER THAN THIRTY (30) DAYS FROM THE DATE HEREOF, BECAUSE ISSUER HAS GIVEN A NOTICE OF NON-EXTENSION OF THE STANDBY, AND THE AMOUNT DEMANDED IS REQUIRED AS CASH COLLATERAL TO SECURE THE UNMATURED OR CONTINGENT OBLIGATIONS OF APPLICANT UNDER (OR IN CONNECTION WITH) THE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT TITLED **[AGREEMENT TITLE]** AND DATED **[DATE]**. BENEFICIARY FURTHER STATES THAT THE PROCEEDS FROM THIS DEMAND WILL BE USED TO SECURE THE ABOVE-IDENTIFIED OBLIGATIONS AND THEN TO SATISFY THEM AS THEY BECOME ABSOLUTE AND DUE AND THAT BENEFICIARY WILL ACCOUNT TO APPLICANT FOR ANY PROCEEDS THAT ARE NOT SO USED.

BENEFICIARY REQUESTS THAT PAYMENT BE MADE BY WIRE TRANSFER TO AN ACCOUNT OF BENEFICIARY AS FOLLOWS: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY'S BANK, AND NAME AND NUMBER OF BENEFICIARY'S ACCOUNT].

[BENEFICIARY'S NAME AND ADDRESS]

BY ITS AUTHORIZED OFFICER:

[INSERT ORIGINAL SIGNATURE]  
[INSERT TYPED/PRINTED NAME AND TITLE]

  X  

AUTHORIZED SIGNATURE, APPLICANT  
AS AUTHORIZATION TO ISSUE IN THIS  
FORM