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Mount Vernon, WA 98273

Document Title:

DE MINIMIS CONSENT DECREE

Reference Number : 20-2-00601-29

Grantor(s):

☐ additional grantor names on page ____.

1. CHARLES MOON CREDIT TRUST

2.

Grantee(s):

☐ additional grantee names on page ____.

1. SKAGIT COUNTY

2.

Abbreviated legal description:

☐ full legal on page(s) ____.

PORTION OF GOVERNMENT LOT 1 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4
OF SECTION 3, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.,

Assessor Parcel / Tax ID Number:

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

P19684



FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2020 SEP 17 AM 10:59
CONFORM AND RETURN

I, MELISSA BEATON, Clerk of the Superior Court of the State of Washington, for Skagit County, do hereby certify that this is a true copy of the original now on file in my office. Dated 9/15/20



MELISSA BEATON, County Clerk
By: [Signature]
Deputy Clerk

ORIGINAL

**STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CHARLES MOON CREDIT TRUST,

Defendant.

NO. 20-2-00601 29

DE MINIMIS CONSENT DECREE

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DE MINIMIS
CONSENT DECREE

1

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
(360) 586-6770

29

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I. INTRODUCTION

1
2 1. The mutual objectives of the State of Washington, Department of Ecology
3 (Ecology) and Charles Moon Credit Trust (Defendant) under this *de minimis* consent decree
4 (Decree) are:

5 A. To reach a final settlement between the Parties with respect to the Site
6 pursuant to RCW 70.105D.040(4), that allows Defendant to provide valuable
7 consideration to Ecology to resolve Defendant's alleged liability under RCW 70.105D,
8 thereby reducing litigation relating to the March Point Landfill, a.k.a. Whitmarsh
9 Landfill, Site (Site).

10 B. To simplify any remaining administrative and judicial enforcement
11 activities concerning the Site by eliminating a potentially liable person, whose
12 contribution is insignificant in amount and toxicity, from further involvement at the Site.

13 C. To obtain settlement with Defendant for Defendant's fair share of costs
14 incurred and to be incurred at or in connection with the Site by Ecology, and by other
15 persons.

16 D. To provide for full and complete contribution protection for Defendant
17 with regard to the Site pursuant to RCW 70.105D.040(4)(d) and Section XVI
18 (Contribution Protection) herein.

19 2. Ecology has determined that these actions are necessary to protect human health
20 and the environment.

21 3. The Complaint in this action is being filed simultaneously with this Decree. An
22 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
23 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
24 Parties agree that settlement of these matters without litigation is reasonable and in the public
25 interest, and that entry of this Decree is the most appropriate means of resolving these matters.
26

1 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
2 terms.

3 5. By entering into this Decree, the Parties do not intend to discharge non-settling
4 parties from any liability they may have with respect to matters alleged in the Complaint. The
5 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
6 sums expended under this Decree.

7 6. This Decree shall not be construed as proof of liability or responsibility for any
8 releases of hazardous substances or cost for remedial action nor an admission of any facts;
9 provided, however, that Defendant shall not challenge the authority of the Attorney General and
10 Ecology to enforce this Decree.

11 7. Pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D and its
12 regulations, WAC 173-340, Ecology has developed a draft MTCA Cleanup Action Plan (CAP)
13 for the Site. After the draft CAP has been subject to public comment (pursuant to WAC 173-
14 340-600(14)), Ecology will respond to any public comments, modify the draft CAP (if warranted
15 by public comment), and then finalize the CAP. After Ecology has finalized the CAP, the Parties
16 will amend this Decree to add the final CAP as an exhibit to the Decree.

17 8. The Court is fully advised of the reasons for entry of this Decree, and good cause
18 having been shown,

19 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

20 **II. JURISDICTION**

21 1. This Court has jurisdiction over the subject matter and over the Parties pursuant
22 to MTCA, RCW 70.105D.

23 2. Authority is conferred upon the Washington State Attorney General by
24 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
25 after public notice and any required hearing, Ecology finds the proposed settlement would lead
26 to a more expeditious cleanup of hazardous substances. Whenever practical and in the public

1 interest, the attorney general may expedite such a settlement with persons whose contribution is
2 insignificant in amount and toxicity. RCW 70.105D.040(4)(a). RCW 70.105D.040(4)(b)
3 requires that such a settlement be entered as a consent decree issued by a court of competent
4 jurisdiction.

5 3. Ecology has determined that a release or threatened release of hazardous
6 substances has occurred at the Site that is the subject of this Decree.

7 4. Ecology has given notice to Defendant of Ecology's determination that
8 Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

9 5. The actions to be taken pursuant to this Decree are necessary to protect public
10 health and the environment.

11 6. This Decree has been subject to public notice and comment.

12 7. Ecology finds that this Decree will lead to a more expeditious cleanup of
13 hazardous substances at the Site in compliance with the cleanup standards established under
14 RCW 70.105D.030(2)(e) and WAC 173-340.

15 8. Based upon information currently known to Ecology, Ecology has determined
16 that Defendant's contribution to the Site is insignificant in amount and toxicity and Defendant
17 qualifies for a *de minimis* settlement pursuant to RCW 70.105D.040(4)(a).

18 9. Defendant has agreed to undertake the actions specified in this Decree and
19 consents to the entry of this Decree under MTCA.

20 III. PARTIES BOUND

21 1. This Decree shall apply to and be binding upon the Parties to this Decree, their
22 successors and assigns. The undersigned representative of each party hereby certifies that he or
23 she is fully authorized to enter into this Decree and to execute and legally bind such party to
24 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
25 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
26 responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents,

1 contractors, and subcontractors retained to perform work required by this Decree, and shall
2 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
3 this Decree.

4 IV. DEFINITIONS

5 1. Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
6 WAC 173-340-200 shall control the meanings of the terms in this Decree.

7 A. Site: The Site is referred to as March Point Landfill, a.k.a. Whitmarsh
8 Landfill, Site and is generally located at 9663 South March Point Road, Anacortes,
9 Washington. The Site constitutes a facility under RCW 70.105D.020(8). The Site is
10 defined by where a hazardous substance, other than a consumer product in consumer use,
11 has been deposited, stored, disposed of, or placed, or otherwise come to be located. This
12 Decree is limited in scope to the geographic area of the Site described in Exhibit A.

13 B. Parties: Refers to the State of Washington, Department of Ecology and
14 the Charles Moon Credit Trust.

15 C. Defendant: Refers to Charles Moon Credit Trust.

16 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
17 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
18 Decree. The terms "Consent Decree" or "Decree" shall include all exhibits to this
19 Consent Decree.

20 E. Cleanup Settlement Account: Refers to the special account created in the
21 state treasury, pursuant to RCW 70.105D.130, and to which a court order directs
22 payment.

23 F. Potentially Liable Persons (PLPs): Refers to the Charles Moon Credit
24 Trust, Ralph Hillestead, Shell Oil Company (Shell), Skagit County, the Snow Mountain
25 Land Company, Texaco Inc. (Texaco), and Washington State Department of Natural
26 Resources (DNR).

1 G. Performing Parties: Refers to PLPs who will be implementing a future,
2 finalized CAP at the Site under a MTCA order or consent decree. The Performing Parties
3 may include representatives, contractors, successors, or assigns for the following Site
4 PLPs: Shell, Skagit County, Texaco, and DNR.

5 **V. FINDINGS OF FACT**

6 1. Ecology makes the following findings of fact without any express or implied
7 admissions of such facts by Defendant.

8 A. The Site is located adjacent to Padilla Bay and Padilla Bay Lagoon and
9 northeast of South March Point Road in Anacortes, Washington, and consists of
10 approximately 14 acres. The address of the Site is 9663 South March Point Road in
11 Anacortes, Skagit County, Washington. The March Point Landfill Site consists of
12 approximately 14 acres of upland and filled tidelands located north of South March Point
13 Road at the base of a bluff in the tidelands area of Padilla Bay in Anacortes, Washington.
14 Ownership of the land within the Site, as shown in Exhibit A, is as follows:

- 15 • The properties found at Skagit County Parcel Numbers P19713 and P19676 are
16 owned by Snow Mountain Land Company, LLC; the State of Washington owns
17 the aquatic lands waterward of the 1890 meander line (est.) abutting P19713 and
18 P1967 to the railroad right-of-way.
 - 19 • The Charles Moon Credit Trust and the Estate of the late M. Ellen Moon, Trustee,
20 own the property found at Skagit County Parcel Number P19684. Harry F. Cook
21 sold the real property found on Parcel Number P19684 to Charles E. Moon in
22 November 1998. In 2003, the late Mr. Moon transferred that property to the
23 Charles Moon Credit Trust in a quitclaim deed.
 - 24 • Per Skagit County Assessors records, the late Ralph Hillestead owns the property
25 found at Skagit County Parcel Number P19761.
- 26

1 The Site is bounded by South March Point Road to the south, the BNSF Railway
2 Company (BNSF) railroad causeway and Padilla Bay to the north and northeast, and the
3 Swinomish Indian Reservation to the east and southeast. A diagram of the Site is attached
4 as Exhibit A.

5 B. The origin of the Site dates from sometime in the 1950s when unregulated
6 dumping began on a portion of the Site. From 1961 to 1973, DNR, as manager of state-
7 owned land, leased a portion of the Site to Skagit County to operate a sanitary landfill.
8 Skagit County and Island County residents and businesses used this landfill as a disposal
9 area from 1961 to 1973. Written records indicated that the general types of waste
10 disposed of at the landfill included household and commercial solid waste from local
11 municipalities, waste from industrial entities including Shell and Texaco, and waste from
12 others.

13 C. Sediment contamination concerns in the early 1980s led to sample
14 collection and analysis by Tribal, State, and Federal agencies beginning as early as 1985.
15 Sediment investigations prior to the initiation of the Remedial Investigation and
16 Feasibility Study (RI/FS) for the Site are described in the findings of fact for Agreed
17 Order DE-08TCPHQ-5999. Based on sediment bioassay and analytical results, it was
18 determined that contaminants in marine sediments adjacent to the Site do not pose an
19 adverse risk to human health and the environment except for dioxin. A source
20 identification analysis indicated the extent of dioxin contamination is discrete and its
21 source appeared to originate from a nearby, off-site location which is under a separate
22 investigation. As such, the sediments adjacent to the site will not be considered for
23 remedial measures under the Sediment Management Standards (WAC 173-204).

24 D. In November 1984, Ecology and the U.S. Environmental Protection
25 Agency (EPA) conducted a Preliminary Assessment (PA) of the March Point Landfill.
26 The PA identified the potential risk of groundwater and surface water contamination by

1 unknown contaminants. The PA indicated that leachate could be seen surfacing on the
2 eastern boundary, but noted that it was unknown if the leachate contained hazardous
3 substances. The PA also noted that the Shell and Texaco refineries, Allied Chemical
4 sulfuric acid plant, and Northwest Petrochemical Company operated near the Site. The
5 PA recommended further investigation of leachate, installation of groundwater
6 monitoring wells, and collection of historical data on industrial activities and waste
7 dumping practices.

8 E. Ecology conducted an inspection of the landfill in December 1985. As a
9 part of this inspection, Ecology collected three surface water/leachate samples. The
10 samples were analyzed for metals and volatile organic compounds (VOCs). An analysis
11 by the Laucks Laboratory on behalf of Ecology detected arsenic, copper, mercury, and
12 nickel in two surface water/leachate samples at concentrations greater than their
13 respective aquatic life or human health surface water criteria. Ecology concluded that the
14 sampling data results did not show a significant problem at the landfill to warrant further
15 sampling or remedial actions.

16 F. In 1988, Ecology collected one grab leachate sample from northeast of
17 the landfill. Ecology analyzed the leachate sample for priority pollutant metals. Results
18 of the leachate sample showed arsenic, cadmium, chromium, copper, lead, nickel,
19 thalium, and zinc concentrations exceeding their respective surface water criteria.

20 G. In October 1996, the Skagit County Health Department, with Swinomish
21 Indian Tribal Community present, collected two discolored surface water samples. These
22 samples were analyzed for VOCs, semi-volatile organic compounds (SVOCs),
23 pesticides, polychlorobiphenyls (PCBs), and metals. Low levels of a few organic
24 compounds and metals were detected in surface water samples. However, none of the
25 contaminants in surface water samples exceeded their respective surface water criteria.
26

1 H. In 1998, Ecology conducted a limited surface water (leachate)
2 investigation. Ecology collected two surface water (leachate) samples. The leachate
3 samples were analyzed for approximately 400 chemicals consisting of metals, trace
4 metals, cyanide, petroleum hydrocarbons, VOCs, polycyclic aromatic hydrocarbons
5 (PAHs), phenols, chlorinated benzene, phthalate esters, SVOCs, PCBs, organotins,
6 herbicides, and pesticides. Manganese, benzo(a)anthracene and PCB aroclor 1242 were
7 detected at concentrations greater than their respective human health surface water
8 criteria in at least one sample. Diesel was detected at a concentration (470 ug/l – 850 ug/l)
9 greater than MTCA Method-A groundwater cleanup level in one of the leachate samples.
10 In addition, elevated concentrations of iron (5,660 ug/l – 16,200 ug/l) were detected
11 exceeding the EPA Water Quality Criteria of 1,000 ug/l.

12 I. In August 2002, the Skagit County Health Department conducted a site
13 hazard assessment of the landfill and the Site was ranked using the Washington State
14 Ranking Method. The Site was assigned an overall priority ranking of 2 pursuant to
15 MTCA.

16 J. On March 4, 2008, Ecology, Shell, Skagit County, Texaco, and DNR
17 entered into Agreed Order No. DE-08TCPHQ-5999, which required Shell, Skagit
18 County, Texaco, and DNR to conduct a RI/FS and develop a draft Cleanup Action Plan
19 for the Site.

20 K. The final RI/FS Report (RI/FS), prepared by AMEC Environmental and
21 Infrastructure, Inc., documented the nature and extent of hazardous substances in various
22 media including sediment, soil, groundwater, seep, and surface water (Final Remedial
23 Investigation/Feasibility Study Report, March Point (Whitmarsh) Landfill, Skagit
24 County, Washington, February 2017). The RI/FS demonstrated the following
25 contaminants of concern that exceed MTCA cleanup levels in soil are present at the Site:
26 antimony, arsenic, barium, cadmium, copper, lead, mercury, nickel, zinc, 4,4'-DDD,

1 4,4'-DDE, aldrin, dieldrin, aroclor 1254, 2,4-dimethylphenol, 2-methylphenol,
2 benzo(a)anthracene, benzo(a)pyrene, bis(2-ethylhexyl)phthalate, chrysene,
3 dibenzofuran, phenol, benzene, gasoline range petroleum hydrocarbons, and heavy oil
4 range petroleum hydrocarbons. The RI/FS demonstrated the following contaminants of
5 concern that exceed MTCA cleanup levels in groundwater are present at the Site: arsenic,
6 copper, iron, lead, manganese, mercury, selenium, silver, 1-methylnaphthalene, 2,4-
7 dimethylphenol, benzo(a)anthracene, bis(2-ethylhexyl)phthalate, chrysene, 4,4'-DDD,
8 4,4'-DDE, alpha-BHC, aroclor 1232, aroclor 1242, aroclor 1248, total PCBs, and
9 benzene. The RI/FS demonstrated the following contaminants of concern that exceed
10 MTCA cleanup levels in surface water are present at the Site: arsenic, copper, lead,
11 manganese, mercury, nickel, silver, zinc, butylbenzylphthalate, chrysene, bis(2-
12 ethylhexyl)phthalate, benzene, and 4,4'-DDD. In addition, biological testing of
13 sediments in the Padilla Bay Lagoon adjacent to the landfill using *Ampelisca abdita*,
14 *Dendrobaena excentricus*, *Neanthes arenaceodentata*, and *Microtox* was conducted during
15 the RI. Based on these tests, no impacts to sediments from the landfill were identified.
16 Furthermore, analysis of sediments adjacent to the landfill in the Padilla Bay Lagoon for
17 bioaccumulative chemicals (PCBs, dioxins, and furans) showed no actionable
18 concentrations above background were associated with the landfill. Elevated
19 concentrations of dioxins and furans were found adjacent to the landfill. However,
20 Ecology determined that these elevated concentrations may not be associated with the
21 landfill but were from some off-site, possibly upstream sources. Based on these sediment
22 findings, no sediment-related corrective measures have been included the Cleanup
23 Action Plan.

24 L. Based on the documented facts, Ecology has determined that remedial
25 action at the Site can be facilitated by *de minimis* settlement with Defendant. Ecology
26 has reviewed the activities of the Moon Trust concerning their real property at the Site

1 and determined that their contribution, if any, to the releases of hazardous substances at
2 the Site is insignificant in amount and quantity.

3 **VI. WORK TO BE PERFORMED**

4 1. This Decree requires remedial actions to be completed that are designed to protect
5 human health and the environment from the known release of hazardous substances or
6 contaminants at, on, or from the Site. Defendant agrees to settle their liability with Ecology by:

7 A. Allowing Ecology and/or the Performing Parties to access/enter the real
8 property found on Skagit County Assessor Parcel Number P19684 to conduct:

9 (1) remedial actions to remedy releases or threatened releases of hazardous
10 substances under a future CAP or Interim Action Plan for the Site,

11 (2) anticipated compliance monitoring, and

12 (3) long-term operation and maintenance or monitoring of any future
13 constructed remedy.

14 The period of time that Ecology and any Performing Parties shall be allowed to access/
15 enter the real property found on Skagit County Parcel Number P19684 shall be for the
16 time necessary to implement the remedial actions required by the CAP or an Interim
17 Action Plan, and complete the long-term monitoring and operation and maintenance
18 required for the Site.

19 B. Implementing institutional controls on the real property found on Skagit
20 County Assessor Parcel Number P19684. One of the institutional controls the future CAP
21 will require to be implemented under the CAP is the recording of Environmental
22 (Restrictive) Covenants with the Skagit County Assessor's Office. In consultation with
23 Defendant, or any person who subsequently acquires an ownership interest in the real
24 property found on Skagit County Parcel Number P19684, Ecology will prepare a
25 restrictive covenant for Skagit County parcel P19684 consistent with WAC 173-340-
26 440, RCW 64.70, and any policies or procedures specified by Ecology. The

Environmental (Restrictive) Covenant shall restrict future activities and uses of the property/Skagit County parcel P19684 as agreed to by Ecology and Defendant. After approval by Ecology, Defendant, or any person who subsequently acquires an ownership interest in the real property found on Skagit County Parcel Number P19684, shall record the Environmental (Restrictive) Covenant for Skagit County parcel P19684 with the office of the Skagit County Auditor as detailed in the Schedule (Exhibit B). Defendant, or any person who subsequently acquires an ownership interest in the real property found on Skagit County Parcel Number P19684, shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

2. Except in cases of emergency or where required by law, Defendant agrees not to perform any remedial actions at the Site except as provided by this Decree. In the event of an emergency, or where actions are taken as required by law, Defendant must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event. All actions conducted by Defendant under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.

VII. COOPERATION AND PROPERTY ACCESS

1. Defendant agrees to cooperate fully with Ecology and further agrees not to interfere with remedial actions performed at the Site by Ecology or Performing Parties operating under an Order or Decree with Ecology for performance of remedial action at the Site. This includes, but is not limited to, Defendant placing an environmental (restrictive) covenant on property within the Site that Defendant owns if required by Ecology. Ecology agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize interference with Defendant's operations by such entry and remedial actions.

2. Defendant shall (with respect to all property at the Site that Defendant either owns, controls, or has access rights to) provide Ecology, Performing Parties and their

1 representatives, contractors, and subcontractors with access at all reasonable times to its property
2 to conduct any activity relating to response actions at the Site. Ecology, or any Ecology
3 authorized representative, or Performing Parties shall give reasonable notice before entering any
4 Site property owned or controlled by Defendant unless an emergency prevents such notice.
5 Ecology, or any Ecology authorized representative, or Performing Parties who access the Site
6 pursuant to this section shall comply with any applicable health and safety plan(s). Ecology
7 employees and their representatives shall not be required to sign any liability release or waiver
8 as a condition of Site property access.

9 3. Ecology or any Ecology authorized representative shall have access to enter and
10 freely move about all property at the Site that Defendant either owns, controls, or has access
11 rights to at all reasonable times for the purposes of, *inter alia*: conducting such tests or collecting
12 such samples as Ecology may deem necessary; using a camera, sound recording, or other
13 documentary type equipment to record work done pursuant to a MTCA Cleanup Action Plan or
14 Interim Action. Defendant shall make all reasonable efforts to secure access rights for those
15 properties within the Site not owned or controlled by Defendant where remedial activities or
16 investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized
17 representative shall give reasonable notice before entering any Site property owned or controlled
18 by Defendant unless an emergency prevents such notice. All Parties who access the Site pursuant
19 to this section shall comply with any applicable health and safety plan(s). Ecology employees
20 and their representatives shall not be required to sign any liability release or waiver as a condition
21 of Site property access.

22 4. Defendant shall, with respect to all property at the Site that Defendant either
23 owns, controls, or has access rights to, refrain from using its property in any manner that Ecology
24 determines will (i) pose an unacceptable risk to human health or the environment due to exposure
25 to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity,
26 or protectiveness of remedial actions at the Site.

1 5. In the event that Defendant becomes aware of any action or occurrence that
2 causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the
3 Site that constitutes an emergency situation or may present an immediate threat to public health
4 or welfare or the environment, Defendant shall immediately take all appropriate action to
5 prevent, abate, or minimize such release or threat of release, and shall, in addition to complying
6 with any applicable notification requirements under the MTCA, or any other law, immediately
7 notify Ecology of such release or threatened release.

8 **VIII. DESIGNATED PARTY CONTACT**

9 1. Ecology's designated contact is:

10 Arianne Fernandez
11 Toxics Cleanup Program
12 PO Box 47600
13 Olympia, WA 98504
14 360-407-7209

15 2. The Defendant's designated contact is:

16 Gary Moon, Co-Trustee of the Charles Moon Credit Trust
17 2089 Timberline Drive
18 Bellingham, WA 98226
19 Cell: 360-319-7705

20 3. Each party contact shall be responsible for overseeing the implementation of this
21 Decree. Ecology's contact will be Ecology's designated representative for the Site. To the
22 maximum extent possible, communications between Ecology and Defendant and all documents,
23 including reports, approvals, and other correspondence concerning the activities performed
24 pursuant to the terms and conditions of this Decree shall be directed through the party contacts.
25 All documents required by this Decree or correspondence pertaining to this Decree shall be sent
26 by overnight delivery service and/or email transmittal to the designated party contact.

 4. Any party may change its respective contact. Written notification shall be given
to the other party at least ten (10) calendar days prior to the change.

IX. TRANSFER OF INTEREST IN PROPERTY

1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Defendant without provision for continued access and to refrain from using the property to same extent as is provided under Section VII (Cooperation and Property Access) or continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, Defendant shall provide a copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer. Upon transfer of any interest, Defendant shall notify all transferees of the restrictions on the activities and uses of the property under this Decree and incorporate any such use restrictions into the transfer documents.

X. RESOLUTION OF DISPUTES

1. In the event that Defendant elects to invoke dispute resolution, Defendant must utilize the procedure set forth below.

A. Upon the triggering event (receipt of Ecology's contact's written decision or an itemized billing statement), Defendant has fourteen (14) calendar days within which to notify Ecology's contact in writing of its dispute (Informal Dispute Notice).

B. The parties' contacts shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the parties' contacts cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's contact shall issue a written decision (Informal Dispute Decision) stating: the nature of the

1 dispute; the Defendant's position with regards to the dispute; Ecology's position with
2 regards to the dispute; and the extent of resolution reached by informal discussion.

3 C. Defendant may then request regional management review of the dispute.
4 This request (Formal Dispute Notice) must be submitted in writing to the Headquarters
5 Land and Aquatic Lands Cleanup Section Manager within seven (7) calendar days of
6 receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include
7 a written statement of dispute setting forth: the nature of the dispute; the disputing party's
8 position with respect to the dispute; and the information relied upon to support its
9 position.

10 D. The Section Manager shall conduct a review of the dispute and shall issue
11 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
12 days of receipt of the Formal Dispute Notice.

13 E. If Defendant finds Ecology's Headquarters Land and Aquatic Lands
14 Cleanup Section Manager's decision unacceptable, Defendant may then request final
15 management review of the decision. This request (Final Review Request) shall be
16 submitted in writing to the Toxics Cleanup Program Manager within seven (7) calendar
17 days of Defendant's receipt of the Decision on Dispute. The Final Review Request shall
18 include a written statement of dispute setting forth: the nature of the dispute; the disputing
19 party's position with respect to the dispute; and the information relied upon to support
20 its position.

21 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
22 the dispute and shall issue a written decision regarding the dispute (Final Decision on
23 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
24 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
25 disputed matter.
26

2. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Defendant presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

3. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

4. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

XI. AMENDMENT OF DECREE

1. The party contacts may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

2. Substantial changes to the work to be performed shall require formal amendment of this Decree. Ecology will provide public notice and opportunity for comment on a proposed formal amendment. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Such formal amendment shall become effective upon entry by the Court.

3. When requesting a substantial change to the Decree, a party shall submit a written request to the other party for approval. That party shall indicate its approval or disapproval in writing and in a timely manner after the written request for formal amendment is received. Reasons for the disapproval of a proposed formal amendment to the Decree shall be stated in

1 writing. Agreement to amend the Decree shall not be unreasonably withheld by any party. If a
2 party does not agree to a proposed formal amendment, the dispute may be submitted to the Court
3 for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall,
4 as necessary, resolve any dispute arising under this Decree.

5 XII. EXTENSION OF SCHEDULE

6 1. Defendant's request for an extension of schedule shall be granted only when a
7 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
8 to expiration of the deadline for which the extension is requested, and good cause exists for
9 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 10 A. The deadline that is sought to be extended.
- 11 B. The length of the extension sought.
- 12 C. The reason(s) for the extension.
- 13 D. Any related deadline or schedule that would be affected if the extension
14 were granted.

15 2. The burden shall be on Defendant to demonstrate to the satisfaction of Ecology
16 that the request for such extension has been submitted in a timely fashion and that good cause
17 exists for granting the extension. Good cause may include, but may not be limited to:

- 18 A. Circumstances beyond the reasonable control and despite the due
19 diligence of Defendant including delays caused by unrelated third parties or Ecology,
20 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
21 documents submitted by Defendant.
 - 22 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
23 or other unavoidable casualty.
 - 24 C. Endangerment as described in Section XIV (Endangerment).
- 25
26

3. However, neither increased costs of performance of the terms of this Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Defendant.

4. Ecology shall act upon Defendant's written request for extension in a timely fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to formally amend this Decree pursuant to Section XII (Amendment of Decree) when a schedule extension is granted.

5. At Defendant's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

A. Delays in the issuance of a necessary permit that was applied for in a timely manner.

B. Other circumstances deemed exceptional or extraordinary by Ecology.

C. Endangerment as described in Section XIV (Endangerment).

XIII. ENDANGERMENT

1. In the event Ecology determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Ecology may direct Defendant to cease such activities for such period of time as it deems necessary to abate the danger. Defendant shall immediately comply with such direction.

2. In the event Defendant determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Defendant may cease such activities. Defendant shall notify Ecology's contact as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology

1 disagrees with Defendant's cessation of activities, it may direct Defendant to resume such
2 activities.

3 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
4 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology
5 determines the danger is abated, and the time for performance of such activities, as well as the
6 time for any other work dependent upon such activities, shall be extended, in accordance with
7 Section XIII (Extension of Schedule), for such period of time as Ecology determines is
8 reasonable under the circumstances.

9 4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,
10 or contractors to take or require appropriate action in the event of an emergency.

11 XIV. COVENANT NOT TO SUE

12 1. Covenant Not to Sue: Except as specifically provided in this section, in
13 consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology
14 covenants not to institute legal or administrative actions against Defendant regarding the release
15 or threatened release of hazardous substances covered by this Decree. This Decree is limited to
16 the Site described in Exhibit A, and covers that area and those hazardous substances that Ecology
17 knows are located within that area as of the date of entry of this Decree. This Decree does not
18 cover any other hazardous substance or area. Ecology retains all of its authority relative to any
19 substance or area not covered by this Decree. Nothing in this Decree shall be construed to relieve
20 Defendant of Defendant's duty to exercise due care with respect to hazardous substances at the
21 Site or Defendant's duty to comply with all applicable laws and regulations.

22 This Covenant Not to Sue shall have no applicability whatsoever to:

- 23 A. Criminal liability.
- 24 B. Liability for damages to natural resources.
- 25 C. Any Ecology action, including cost recovery, against PLPs not a party to
26 this Decree.

2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not to Sue if factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment.

3. Reopeners: Notwithstanding any other provision in this Decree, Ecology specifically reserves the right to institute legal or administrative action against Defendant to require it to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following circumstances:

A. Upon Defendant's failure to meet the requirements of this Decree.

B. Upon information being discovered that indicates that the Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Defendant no longer qualifies as a *de minimis* party at the Site.

C. If factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment, either party may petition the Court to amend the Covenant Not to Sue pursuant to RCW 70.105D.040(4)(c).

D. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment.

E. Upon the availability of new information regarding factors previously unknown to Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment.

4. Except in the case of an emergency, prior to instituting legal or administrative action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen (15) calendar days' notice of such action.

XV. CONTRIBUTION PROTECTION

1. With regard to claims for contribution against Defendant, the Parties agree that Defendant is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d). The "matters addressed" in this Decree are all remedial actions taken or to be taken and all remedial action costs incurred or to be incurred, at or in connection with the Site, by Ecology or any other person; provided, however, that if Ecology exercises rights under Section XV (Covenant Not to Sue) to require Defendant to perform additional remedial actions at the Site and/or to pursue appropriate cost recovery from Defendant, the "matters addressed" in this Decree will no longer include those remedial action costs or remedial actions that are within the scope of the exercised reservation.

XVI. INDEMNIFICATION

1. Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (i) for death or injuries to persons, or (ii) for loss or damage to property to the extent arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Decree.

XVII. COMPLIANCE WITH APPLICABLE LAWS

1. All actions carried out by Defendant pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.

XVIII. PUBLIC PARTICIPATION

1. A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it

1 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone
2 or in conjunction with Defendant. Ecology shall maintain the responsibility for public
3 participation at the Site. However, Defendant shall cooperate with Ecology, and shall:

4 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
5 of public notices and fact sheets regarding this settlement. As appropriate, Ecology will
6 edit, finalize, and distribute such fact sheets and prepare and distribute public notices of
7 Ecology's presentations and meetings.

8 B. Notify Ecology's contact prior to the preparation of all press releases and
9 fact sheets, and before meetings with the interested public and/or local governments
10 related to remedial action work to be performed under this Decree. Likewise, Ecology
11 shall notify Defendant prior to the issuance of all press releases and fact sheets, and
12 before meetings with the interested public and/or local governments regarding remedial
13 action work to be performed under this Decree. For all press releases, fact sheets,
14 meetings, and other outreach efforts by Defendant that do not receive prior Ecology
15 approval, Defendant shall clearly indicate to its audience that the press release, fact sheet,
16 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

17 C. When requested by Ecology, participate in public presentations regarding
18 this settlement. Participation may be through attendance at public meetings to assist in
19 answering questions, or as a presenter.

20 D. When requested by Ecology, arrange and/or continue information
21 repositories at the following locations:

- 22 1. Anacortes Public Library
23 1200 9th Street
24 Anacortes, WA 98221
- 25 2. Department of Ecology
26 Toxics Cleanup Program
Headquarters Office
300 Desmond Drive SE
Olympia, WA 98504-7600

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Headquarters Land and Aquatic Lands Cleanup Section Regional Office in Lacey, Washington.

XIX. DURATION OF DECREE

1. This Decree shall remain in effect, and this Court shall retain jurisdiction over both the subject matter of the Decree and the parties for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate to ensure that obligations of the parties have been satisfied. Ecology will provide written notification to Defendant that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section VII (Cooperation and Property Access), Section X (Transfer of Interest in Property), Section XV (Covenant Not to Sue), and Section XVI (Contribution Protection) shall survive.

XX. CLAIMS AGAINST THE STATE AND PERFORMING PLPS

1. Defendant hereby agrees that it will not seek to recover any costs accrued in implementing this Decree from the State of Washington or any of its agencies; and further, that Defendant will make no claim against the State's MTCA Cleanup accounts for any costs incurred in implementing this Decree.

2. Defendant hereby agrees that it will not assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under RCW 70.105D.080) that they may have for response costs relating to the Site against any other person who is a potentially liable party (PLP) under MTCA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against the Defendant.

XXI. EFFECTIVE DATE

1. This Decree is effective upon the date it is entered by the Court.

XXII. WITHDRAWAL OF CONSENT

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Rebecca Lawson for Rebecca Lawson
Acting Program Manager

ROBERT W. FERGUSON
Attorney General

John A. Level
JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
360-586-6753

Date: 9/3/2020

Date: 9/3/2020

CHARLES MOON CREDIT TRUST

CHARLES MOON CREDIT TRUST

GARY MOON
Co-Trustee of the Charles Moon Credit Trust
360-319-7705

PAUL MOON
Co-Trustee of the Charles Moon Credit Trust
425-330-0329

Date: _____

ENTERED this ____ day of _____ 2020.

JUDGE
Skagit County Superior Court

DE MINIMIS
CONSENT DECREE

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

REBECCA LAWSON, P.E., LHG
Program Manager
Toxics Cleanup Program
360-407-7177

JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
360-586-6753

Date: _____

Date: 7/16/20

CHARLES MOON CREDIT TRUST

CHARLES MOON CREDIT TRUST

Gary Moon
GARY MOON
Co-Trustee of the Charles Moon Credit Trust
360-319-7705

Paul Moon
PAUL MOON
Co-Trustee of the Charles Moon Credit Trust
425-330-0329

Date: _____

ENTERED this 17 day of Sept 2020.

Dore Needy
JUDGE
Skagit County Superior Court

DE MINIMIS
CONSENT DECREE

26

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
(360) 586-6770

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SKAGIT COUNTY, WASH
FILED

SEP 14 2020

MELISSA BEATON, CO. CLERK
Deputy

EXHIBIT A

