UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT TACOMA

UNITED STATES OF AMERICA, ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION and THE UNITED STATES DEPARTMENT OF THE INTERIOR; STATE OF WASHINGTON THROUGH THE DEPARTMENT OF ECOLOGY; LOWER ELWHA KLALLAM TRIBE; PORT GAMBLE S'KLALLAM TRIBE; AND THE JAMESTOWN S'KLALLAM TRIBE, Plaintiffs, v. NIPPON PAPER INDUSTRIES USA CO., LTD., MERRILL & RING INC., GEORGIA-PACIFIC LLC, THE PORT OF PORT ANGELES, OWENS CORNING, and the CITY OF PORT ANGELES Defendants.	CIVIL NO. 21-cv-5204 CONSENT DECREE

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I. INTRODUCTION

The State of Washington, through the Department of Ecology; the United States of America on behalf of the Department of Commerce, through the National Oceanic and Atmospheric Association, and the United States Department of Interior; the Lower Elwha Klallam Tribe; the Port Gamble S'Klallam Tribe; and the Jamestown S'Klallam Tribe (collectively, "Plaintiffs" or the "Trustees", and individually, a "Plaintiff" or "Trustee"), have filed a complaint (the "Complaint") in this case against defendants Nippon Paper Industries USA Co., Ltd., Merrill & Ring Inc., Georgia-Pacific LLC, the Port of Port Angeles, and Owens Corning, among other parties, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607; Section 311(f)(4) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(f)(4); and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A); the Model Toxics Control Act ("MTCA"), Wash. Rev. Code § 70A.305.040(2); and Wash. Rev. Code § 90.48.142 for Covered Natural Resource Damages (as defined below) at the Western Port Angeles Harbor Site ("Site"). This Consent Decree (the "Decree") addresses the claims asserted in the Complaint against Nippon Paper Industries USA Co., Ltd., Merrill & Ring Inc., Georgia-Pacific LLC, the Port of Port Angeles, and Owens Corning ("Defendants").

II. RECITALS

A. The Trustees, under the authority of Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006 of OPA, 33 U.S.C. § 2706, Section 311(f)(5) of the CWA, 33 U.S.C. §1321(f)(5), 40 C.F.R. Part 300, subpart G, MTCA, Wash. Rev. Code § 70A.305.040(2), and Wash. Rev. Code § 90.48.142, serve as trustees for natural resources for the assessment and

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recovery of damages for injury to, destruction of, or loss of natural resources under their trusteeship.

B. Investigations conducted by both Defendants and the Trustees found that hazardous substances, such as elevated concentrations of metals, semivolatile organic compounds, dioxin/furans, phthalates, and PCBs have been released at the Site. Hazardous substances in sediment throughout the Harbor above State criteria have been cited in multiple investigations by the Department of Ecology from 2008 to 2012 (Port Angeles Harbor Preassessment Screen, 2013).

C. The Trustees have completed a natural resource damage assessment for the Site for the purpose of settlement with Defendants (Proposed Estimate of Natural Resource Damages in Port Angeles Harbor Port Angeles, Washington, 2014). Based on these findings, the Trustees and Defendants agree that there is sufficient information to effectuate the purposes of this Consent Decree with respect to Defendants.

D. Plaintiffs have filed the Complaint pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MTCA, Wash. Rev. Code § 70A.305.040 (2); and Wash. Rev. Code § 90.48.142, seeking recovery from Defendants of damages for injury to, destruction of, and loss of natural resources resulting from releases of hazardous substances at the Site, including the costs of assessing the damages.

E. Plaintiffs allege that hazardous substances have been or are being released from facilities and that those hazardous substances have caused injury to, destruction of, and loss of natural resources at the Site under Plaintiffs' trusteeship, including fish, shellfish, invertebrates,

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birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each of them and the public have suffered the loss of natural resource services (including ecological services as well as direct and passive human use losses) as a consequence of those injuries. Tribal Trustees also allege harm to practice of tribal culture and to exercise of treaty rights as a result of harm to Port Angeles Harbor's natural resources.

F. Plaintiffs allege that each Defendant is liable under one or more of the bases enumerated in 42 U.S.C. § 9607(a), Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MTCA, Wash. Rev. Code § 70A.305.040(1), and Wash. Rev. Code § 90.48.142.

G. The Trustees have developed and analyzed information sufficient to support a settlement that is fair, reasonable, and in the public interest.

H. In settlement of this action, Defendants have agreed, subject to the terms of this Consent Decree, to pay $8,500,000 to the Trustees in damages.

I. Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint and the matters alleged in this Consent Decree.

J. Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and in the public interest.

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

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III. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, Section 311(n) of the CWA, 33 U.S.C. § 1321(n); Section 1017(b) of OPA, 33 U.S.C. § 2717(b); 42 U.S.C. § 9613(b), and 33 U.S.C. § 2717(b) and over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), Section 1017(b) of OPA, 33 U.S.C. § 2717(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district, and because the Site is located in this district.

2. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

3. The Complaint states claims upon which relief may be granted pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f) of the CWA, 33 U.S.C. § 1321(f); and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); MCTA, Wash. Rev. Code § 70A.305.040(2), and Wash. Rev. Code §90.48.142.

IV. PARTIES BOUND

4. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law. Any change in ownership or corporate status of the Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' responsibilities under this Consent Decree.

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5. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

V. DEFINITIONS

6. Terms used in this Consent Decree that are defined in CERCLA, MTCA, CWA, OPA, Wash. Rev. Code § 90.48.142, or in regulations promulgated thereunder and have the meanings assigned to them in CERCLA, MTCA, CWA, OPA, Wash. Rev. Code § 90.48.142, or in such regulations, shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq*.;

b. "CWA" means the Clean Water Act, as amended, 33 U.S.C. § 1251. *et seq*.;

c. "Complaint" shall mean the complaint filed by the United States, the Tribal Trustees, and the State in this action;

d. "Consent Decree" or "Decree" means this Consent Decree and all appendices attached hereto (listed in Section XVI.);

e. "Covered Natural Resource Damages" means damages, including costs of damage assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; MTCA, Rev. Code Wash. § 70A.305.040(2); Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4); Wash. Rev. Code § 90.48.142; and Section 1002(b)(2) of the OPA, 33 U.S.C. § 2702(b)(2), for injury to, destruction of, loss of, loss of use of, or impairment of, natural resources within the Site as

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described in Appendix A or the portion of the Rayonier Mill Study Area, identified in Appendix B, below the mean higher high water line, resulting from releases or threatened releases of hazardous substances or discharges of oil to Port Angeles Harbor and adjoining shorelines, from and on Defendants' Facilities, where such release or threatened release occurred on or before the effective date of this Consent Decree and which are known to have come to be located at either the Site as described in Appendix A or the portion of the Rayonier Mill Study Area, identified in Appendix B, below the mean higher high water line;

f. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

g. "Defendants" means Nippon Paper Industries USA Co., Ltd., Merrill & Ring Inc., Georgia-Pacific LLC, the Port of Port Angeles, and Owens Corning;

h. "Defendants' Facilities" means the following facilities described for each Defendant. For reference, these facilities are generally depicted and described on the Defendants' Facilities Map in Appendix D, including in the Harbor Area. In case of conflict between the Defendants' Facilities Map (including the accompanying table index) and this Consent Decree, the definition in this Consent Decree shall control:

(1) Georgia-Pacific LLC: paper mill facility located at or near the property identified by the address 1805 Marine Drive including lands on and near Ediz Hook leased from the City of Port Angeles, former outfalls into Port Angeles Harbor for process effluent and stormwater, and state aquatic lands covered by DNR Leases in the Harbor Area including, but not limited to, DNR Leases No. A.L. 16695, A.L.

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16696, A.L. 3093, A.L. 3094, A.L. 5881, A.L. 5882, A.L. 5883, A.L. 11177, A.R.L. 3094, A.R.L. 5881, A.R.L. 8863, A.R.L. 11175, HA-1429, HA-1701, HA-2237, HA-2455, HA-2615, HA-16697, HA-16698, HA-1428, HA-1429, HA-1701, HA-1702, HA-2055, HA-2237, HA-2456, HA-1406, H.A 1692, H.A. 2057, and H.A. 2434.

(2) Merrill & Ring Inc.: the lumber mill facility located at or near the property previously identified by the addresses 1313 and 1608 Marine Drive and adjacent leased state aquatic lands, including those covered by DNR Harbor Area Lease Numbers 2219 (including fill area), 2301, 2047 (including fill area), and Harbor Lease 22-002301.

(3) Nippon Paper Industries USA Co., Ltd.: the paper mill facility and related facilities located at or near the addresses 1313, 1608, 1805, 1815, and 1902 Marine Drive, including lands on and near Ediz Hook leased from the City of Port Angeles, and adjacent leased state aquatic lands, including those covered by DNR Leases No. 51-032481, 20-012614, 20-012019, 22-012614, 22-002615, 22-002697, 22-077766, 22-002301 and Harbor Area Lease Nos. 2219, 2047, and 2434.

(4) Owens Corning: the mill and facilities owned and operated by Fibreboard at or near 1313 Marine Drive, along with leased areas contiguous with the Fibreboard plant site and tidelands along Ediz Hook, from 1919 through 1970, including those covered by DNR Leases No. H.A. 1140, H.A. 1414, H.A. 1684, H.A. 2044, H.A. 879, H.A. 1433, H.A. 1719, A.L. 3107, and A.L. 5911.

(5) Port of Port Angeles: properties currently or formerly owned or operated at the

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addresses 1313 Marine Drive, 1433 Marine Drive, and 1608 Marine Drive (where Fibreboard Corporation and Merrill & Ring Inc. operated mill and lumber facilities, now Terminals 5, 6, and 7); 832 Boat Haven Drive (the Boat Haven Marina); Terminal 3; 637 Marine Drive, 617 Marine Drive, and 102 North Cedar Street (Marine Trades Area); Terminal 1; 202 North Cedar Street (Terminals 1 and 3); 301 Marine Drive and 439 Marine Drive (former K Ply facility); Terminal 4 (West of North Oak Street and West Railroad Avenue); 101 East Railroad Avenue (Terminal 2/Black Ball Ferry Terminal), 115 East Railroad Avenue (Landing Mall), and 315 North Lincoln Street (City Pier); and state aquatic lands leased or managed by the Port under a Port Management Agreement (as documented in Port Management Agreement (PMA) No. 22-080013 and Leases No. HA-1878, HA-2047, HA-2219, and amendments, thereto) and including, but not limited to, state aquatic lands leased outside the PMA: 22-0083897, 22-074157, and 22-080609, and prior to the PMA.

i. "Harbor Area" means the area of Port Angeles Harbor depicted in Appendix D where the State of Washington, acting through the Department of Natural Resources and its predecessor agencies, has leased and continues to lease state-owned aquatic lands to public and private entities.

j. "Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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k. "MTCA" means the Model Toxics Control Act, Chapter 70A.305 RCW;

l. "OPA" means the Oil Pollution Act of 1990, 33 U.S.C §2701, et seq.;

m. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

n. "Parties" means the State of Washington, through the Department of Ecology ("Ecology"); the United States Department of Commerce, through the National Oceanic and Atmospheric Administration ("NOAA"); the United States Department of Interior ("DOI"); the Lower Elwha Klallam Tribe; the Port Gamble S'Klallam Tribe; the Jamestown S'Klallam Tribe; and Nippon Paper Industries USA Co., Ltd.; Merrill & Ring Inc.; Georgia-Pacific LLC; Owens Corning; and the Port of Port Angeles;

o. "Port Angeles Harbor" means the harbor adjacent to the City of Port Angeles and the Strait of Juan de Fuca and enclosed on the west and north by the Ediz Hook, on the east by a line running southeasterly from the tip of Ediz Hook to the mouth of Morse Creek, and by the mean higher high water line on all land boundaries, as generally depicted on Appendix C;

p. "Site" or "Western Port Angeles Harbor Site" is generally located in the western part of Port Angeles Harbor up to the mean higher high water line on all land boundaries, as identified and delineated in the Site Diagram attached as Appendix A, and is further defined by the extent of contamination caused by the release of hazardous substances;

q. "State" shall mean the State of Washington;

r. "Trustees" means Ecology, NOAA, DOI, the Lower Elwha Klallam Tribe, the Port Gamble S'Klallam Tribe, and the Jamestown S'Klallam Tribe (the three tribes may be referred to as "the Tribal Trustees");

s. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities.

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VI. PAYMENTS BY THE DEFENDANTS

7. Within 30 days after the effective date, Defendants shall pay a total of $8,500,000 to the Plaintiffs as follows.

a. Payment Instructions. Defendants shall pay a total of $8,500,000, to the United States, the State, and Tribal Trustees for Covered Natural Resource Damages. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with written instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Western District of Washington after the Effective Date. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

William F. Joyce
Joyce Ziker Partners, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101
(206) 957-5960
wjoyce@jzplaw.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States in accordance with Section XIII (Notices).

b. Of the total amount to be paid by Defendants pursuant to this Paragraph, payment will be deposited as follows:

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(1) $236,372.00 shall be deposited in the DOI NRDAR Fund, to be applied toward natural resource damage assessment and restoration planning costs incurred by DOI.

(2) $278,096.04 shall be deposited in the NOAA DARR Fund, to be applied toward natural resource damage assessment and restoration planning costs incurred by NOAA.

(3) $7,985,531.96 shall be deposited in a segregated sub-account within the NRDAR Fund. From these amounts, $265,114.23 is to be paid out to the non-federal Trustees for their past assessment and restoration planning costs incurred prior to September 28, 2019, and the remainder is to be managed by the United States DOI NRDAR for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII.

8. Notice of Payment. Upon making any payment under Paragraph 7, Defendants shall send written notice that payment has been made to the United States Department of Justice, Ecology, NOAA, DOI, the Lower Elwha Klallam Tribe, the Port Gamble S'Klallam Tribe, and the Jamestown S'Klallam Tribe in accordance with Paragraph 27 and shall reference the civil action number, CDCS Number and DOJ case number 90-11-3-10973.

9. Non-Compliance with Payment Obligations.

a. *Interest*. In the event any payment required by Paragraph 7 is not made when due, the Defendants shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

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b. *Stipulated Penalties*. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 7 is not made when due, the Defendants shall also pay stipulated penalty of $5,000 per violation per day for the first 30 days that a payment is late, and $15,000 per violation per day thereafter through the date of full payment.

c. *Payment of Interest and Stipulated Penalties*. Any Interest payments under Subparagraph 9.a shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount. Any stipulated penalty payments under Subparagraph 9.b shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Washington. From these stipulated penalties, twenty percent (20%) shall be deposited in the United States Treasury, and the remaining eighty percent (80%) shall be deposited into the segregated sub-account within the NRDAR Fund to be managed by the United States DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VII.

d. The obligations of Defendants to pay amounts owed the Trustees under this Consent Decree are joint and several. In the event of the insolvency of any Defendant or the failure by any Defendant to make the payments required under this Consent Decree, the remaining Defendants shall be responsible for such payments.

VII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS

10. Management and Application of Funds. In addition to the $265,114.23 to be paid out to the non-federal Trustees in accordance with Subparagraph 7.b.(3), all funds deposited in a

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segregated sub-account within the NRDAR Fund under that Subparagraph, shall be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Consent Decree. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any planning, administrative, oversight, or monitoring costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

11. Restoration Planning. The Trustees intend to prepare a separate Restoration Plan describing how the funds dedicated for Trustee-sponsored natural resource restoration efforts under this Section will be used. As provided by 43 C.F.R. § 11.93, the Restoration Plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The Restoration Plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. To the extent it is consistent with 43 C.F.R. Part 11, the Trustees will seek to prioritize projects that meet the selection criteria outlined in the Restoration Plan and that will provide direct benefits to the natural resources in Port Angeles Harbor.

12. Decisions regarding any use or expenditure of funds under this Section shall be made by unanimous agreement of the Trustees. Defendants shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section. Nothing in this Paragraph is intended to alter or modify any right, obligation, or limitation on the Trustees' implementation of Trustee-sponsored natural resource restoration efforts under any applicable law, rule, or regulation.

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VIII. COVENANT NOT TO SUE BY PLAINTIFFS

13. Except as specifically provided in Section IX (Reservations of Rights) below, Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), MTCA, Chapter 70A.305 RCW, Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), Wash. Rev. Code § Chapter 90.48.142, and Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), to recover Covered Natural Resource Damages. This covenant not to sue shall take effect upon receipt of the Defendants' payments pursuant to Paragraph 7 of this Consent Decree. This covenant extends only to Defendants and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS

14. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve all rights against Defendants with respect to:

a. claims based on a failure by a Defendant to meet a requirement of this Consent Decree;

b. liability for costs of response incurred or to be incurred by Plaintiffs under any federal or State statute;

c. liability for damages or other costs incurred or to be incurred by the Plaintiffs that are not within the definition of Covered Natural Resource Damages;

d. liability for damages to natural resources (including assessment costs) as defined in 42 U.S.C. §§ 9601; Chapter 70A.305 RCW; Section 311(f)(4) of the CWA, 33 U.S.C. §

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1321(f)(4); and Section 1002(b)(2)(A) of the OPA, 33 U.S.C. § 2702(b)(2)(A); Wash. Rev. Code § 90.48.142, or any other applicable federal or state law concerning response to hazardous substance or oil releases, resulting from new releases of hazardous substances at or from the Site after the effective date of this Consent Decree;

e. liability for damages to natural resources (including assessment costs) as defined in 42 U.S.C. §§ 9601 and Chapter 70A.305 RCW, or any other applicable federal or state law concerning response to hazardous substance or oil releases, based upon the Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Site, after the effective date of this Consent Decree;

f. liability for injunctive relief or administrative order enforcement under any federal or State statute;

g. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site and Rayonier Mill Study Area below the mean higher high water line;

h. additional claims in this action or in a new action for Covered Natural Resource Damages if conditions, factors, or information at the Site or the Rayonier Mill Study Area (identified in Appendix B), not known to the Trustees as of the date of lodging, are discovered that, together with any other relevant information, indicate that there is a threat to the environment, or injury to, destruction of, or loss of natural resources of a type unknown or of a magnitude significantly greater than was known, at the time of the date of lodging of this Consent Decree. Information known to the Trustees shall consist of any information in the files of, or otherwise in the possession of, any one of the individual Trustees, or their contractors,

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subcontractors, or consultants who worked on the Trustees' natural resource damage assessment in Port Angeles Harbor;

i. liability for civil penalties under the Clean Water Act or any other applicable federal or state law if the release or discharge violated a regulatory requirement under that statute; and

j. criminal liability to the United States or State.

X. COVENANT NOT TO SUE BY DEFENDANTS

15. Defendants covenant not to sue and agree not to assert any claims or causes of action against the Plaintiffs, or their contractors or employees, relating to Covered Natural Resource Damages or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement of any payment for Covered Natural Resource Damages from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; and

b. any claim against the United States, the State, or the Tribal Trustees pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Covered Natural Resource Damages.

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

17. Settling Defendants agree not to file a brief or otherwise oppose any other

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settlement agreements that resolve liability for natural resource damages at the Site between the Trustees and persons who are not a party to this Consent Decree.

XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action they each may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional relief (including response action, response costs, and natural resource damages) and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2). Nor does this Consent Decree diminish the right of the State of Washington to pursue any such persons to obtain additional relief under RCW 70A.305.

19. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2), and that Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW 70A.305.040(4)(d), or as may be otherwise provided by law, for Covered Natural Resource Damages; provided, however, that if the Plaintiffs exercise their rights under the reservations in Section IX, other than in Paragraphs 14(f) (criminal liability), the contribution

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Environment and Natural Resources Division
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protection afforded by this Consent Decree will no longer include those matters that are within the scope of the exercised reservation. The contribution protection afforded by this Consent Decree shall take effect upon receipt of Defendants' payments pursuant to Section VI of this Consent Decree.

20. Defendants agree that with respect to any suit or claim for contribution brought against a Defendant for matters related to this Consent Decree, the Defendant will notify the persons identified in Section XIII (Notices and Submissions) in writing within 10 days of service of the complaint or claim upon it. In addition, the Defendant shall notify the persons identified in Section XIII (Notices and Submissions) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. Defendants also agree that they will notify the Trustees in writing no later than 60 days before bringing a suit or claim for contribution for Covered Natural Resource Damages. Defendants also will notify the Trustees of any settlement of claims (regardless of whether the claim is filed or unfiled) for contribution for Covered Natural Resource Damages.

22. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief other than Covered Natural Resource Damages, Defendants shall not assert, nor may they maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not

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to sue set forth in Section VIII.

23. Beyond the scope of this Consent Decree and settlement of Covered Natural Resource Damages claims, nothing in this Consent Decree constitutes a waiver or a relinquishment of arguments by Owens Corning relating to the discharge of claims under Section 1141 of the United States Bankruptcy Code (11 U.S.C. §1141), including but not limited to, the Sixth Amended Joint Plan of Reorganization for Owens Corning and its Affiliated Debtors and Debtors-in- Possession (the "Bankruptcy Plan") entered in Case No. 00-03837, United States Bankruptcy Court for the District of Delaware, and the Order confirming the Bankruptcy Plan. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief -- other than Covered Natural Resource Damages in this Consent Decree -- Owens Corning expressly reserves the right to seek a determination from the United States Bankruptcy Court for the District of Delaware that the Plaintiffs' claims were discharged under the Bankruptcy Plan and reserves the ability to exercise its rights under the 2003 Settlement Agreement between Owens Corning and the United States related to Case No. 00-03837, including arguing that claims by United States shall be treated and liquidated as general unsecured claims under the Bankruptcy Plan. Equally, the Plaintiffs reserve all rights in any subsequent proceedings in any forum, including the right to contest any of the above arguments.

XII. RETENTION OF RECORDS

24. Until 5 years after the effective date, Defendants shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that concern

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their or others' liability under CERCLA or MTCA in Port Angeles Harbor. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

25. At the conclusion of this document retention period, Defendants shall notify the Trustees at least 90 days prior to the destruction of any such records or documents, and, upon written request by the Trustees, Defendants shall deliver any such non-privileged records or documents to the Trustees. Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

26. Each Defendant hereby certifies individually that, to the best of its knowledge and belief, after a reasonable inquiry that fully complies with the Federal Rules of Civil Procedure, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by any Trustee.

XIII. NOTICES AND SUBMISSIONS

27. Whenever notice is required to be given or a document is required to be sent by

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one Party to another under the terms of this Decree, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of this Consent Decree for Plaintiffs and Defendants,

As to Trustees

State

Rebecca S. Lawson, PE, LHG
Interim Program Manager
Toxics Cleanup Program
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Jeff Krausmann
Washington Fish and Wildlife Office
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NOAA

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National Marine Fisheries Service, Restoration Center
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Office of Response and Restoration, Assessment and Restoration Division
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Jamestown S'Klallam Tribe

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Port Gamble S'Klallam Tribe

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As to United States

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ# 90-11-3-10973

Rachel Hankey
Trial Attorney
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As to Defendants:

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(404) 652-7497

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Maureen Mitchell
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Nippon Paper Industries USA Co., LTD.:

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Owens Corning:

Paul Lewandowski
Director, Regulatory Law

Rachel Hankey
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wjoyce@jzplaw.com

XIV. EFFECTIVE DATE

28. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket, except as otherwise provided herein.

XV. RETENTION OF JURISDICTION

29. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such

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further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes.

XVI. INTEGRATION/APPENDICES

30. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Site Diagram

Appendix B: Rayonier Mill Study Area Map

Appendix C: Port Angeles Harbor Map

Appendix D: Defendants' Facilities Map and Table

XVII. MODIFICATION

31. No material modifications shall be made to any requirement under this Consent Decree without written notification to and written approval of the United States Department of Justice and the Trustees, Defendants, and the Court. Modifications to this Consent Decree that do not materially alter the terms of this Consent Decree may be made by written agreement between the United States Department of Justice, the Trustees, and Defendants.

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XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations that indicate this Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

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

XIX. SIGNATORIES/SERVICE

34. The Deputy Section Chief for the Environmental Enforcement Section within the Environment and Natural Resources Division of the United States Department of Justice and each undersigned representative of the State, the Lower Elwha Klallam Tribe, the Port Gamble S'Klallam Tribe, the Jamestown S'Klallam Tribe, and Defendants certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Party that they represent to this document.

35. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

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requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree. Electronic and digital signatures will be accepted and treated as original.

XX. FINAL JUDGMENT

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, the Lower Elwha Klallam Tribe, the Port Gamble S'Klallam Tribe, the Jamestown S'Klallam Tribe, and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 9th day of June, 2021.

ROBERT J. BRYAN
United States District Judge

Rachel Hankey
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Environment and Natural Resources Division
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Signature Page for Decree regarding Western Port Angeles Harbor
U.S., et al., v. Nippon Paper Industries USA Co., Ltd, et.al.

FOR THE UNITED STATES OF AMERICA:

Date: 3/16/21

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources
Division U.S. Department of Justice
Washington, D.C. 20530

Date: 3/19/21

RACHEL A. HANKEY
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FOR THE STATE OF WASHINGTON:

Rebecca S. Lawson, PE, LHG Acting Program Manager

Digitally signed by Rebecca S. Lawson, PE, LHG Acting Program Manager
Date: 2021.02.04 14:14:47 -08'00'

Date: 2/4/2021

REBECCA S. LAWSON
Toxic Cleanup Program Manager
Department of Ecology

Date: 2/5/2021

JONATHAN THOMPSON
Assistant Attorney General
State of Washington

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FOR THE LOWER ELWHA KLALLAM TRIBE:

Date: Feb. 4, 2021

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Attorney for the Lower Elwha Klallam Tribe

Frances G. Charles, Chairwoman
Lower Elwha Klallam Tribe
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FOR THE PORT GAMBLE S'KLALLAM TRIBE:

Date: 2/9/21

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Attorney for Port Gamble S'Klallam Tribe

Jeromy Sullivan, Chairman
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FOR THE JAMESTOWN S'KLALLAM TRIBE:

Date: 2/25/2021

W. Ron Allen
Chair/ CEO
Jamestown S'Klallam Tribe

Rachel Hankey
United States Department of Justice
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U.S., et al., v. Nippon Paper Industries USA Co., Ltd, et.al.

FOR NIPPON PAPER INDUSTRIES USA CO., LTD.

Date: February 4th, 2021

Kentaro Ide
President
c/o Fox Rothschild LLC
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U.S., et al., v. Nippon Paper Industries USA Co., Ltd, et.al.

FOR MERRILL & RING INC.

Date: 2/5/21

Nicole Kimzey
Chief Operating Officer
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(360) 452-2367

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United States Department of Justice
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U.S., et al., v. Nippon Paper Industries USA Co., Ltd, et.al.

FOR GEORGIA-PACIFIC LLC

Date: 2/2/2021

Bryant Champion

Bryant Champion
Senior Vice President, Environmental Affairs
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U.S., et al., v. Nippon Paper Industries USA Co., Ltd, et.al.

FOR THE PORT OF PORT ANGELES

Date: Feb 22, 2021

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Executive Director
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United States Department of Justice
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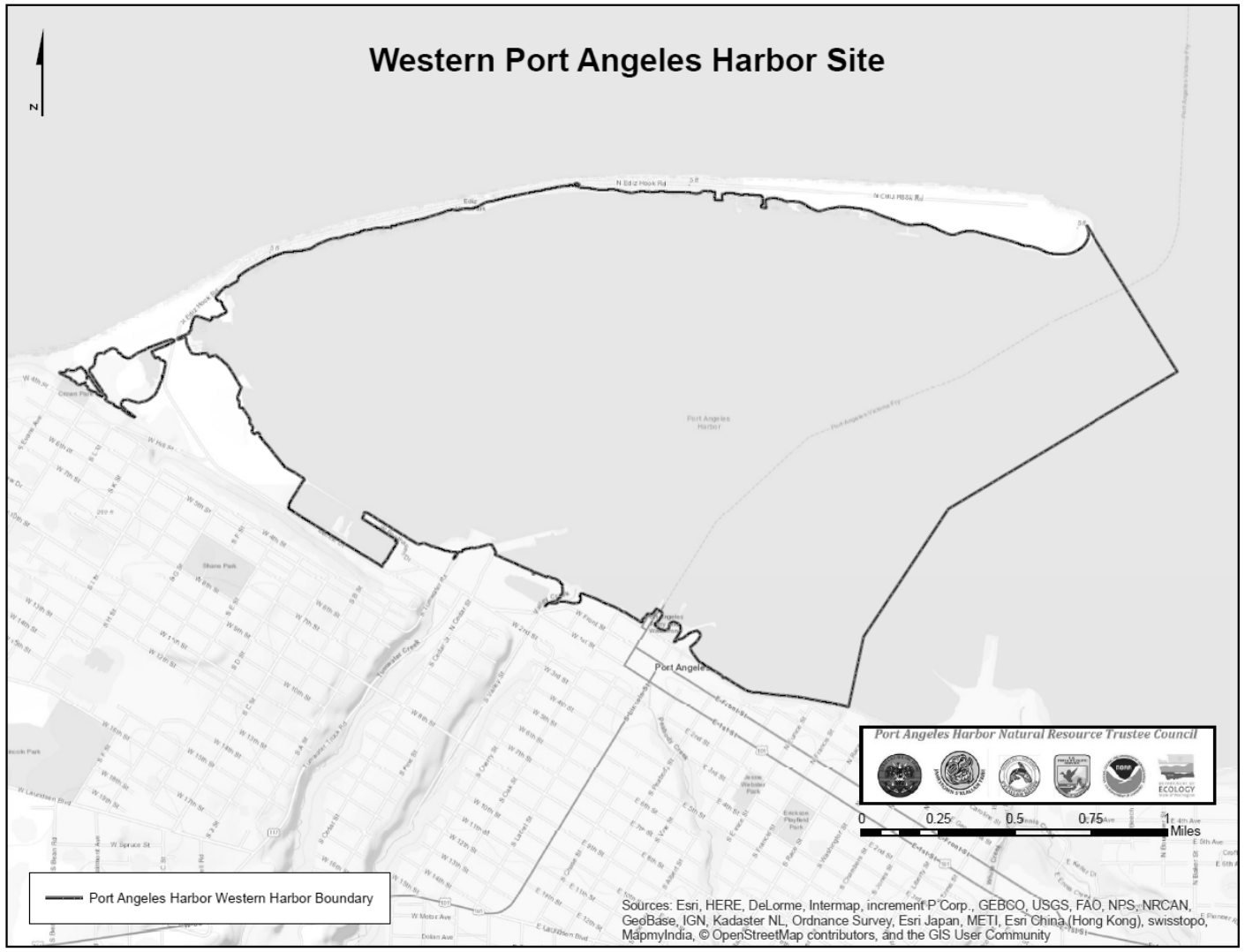
FOR OWENS CORNING

Date: February 5, 2021

James Gibb
Vice President
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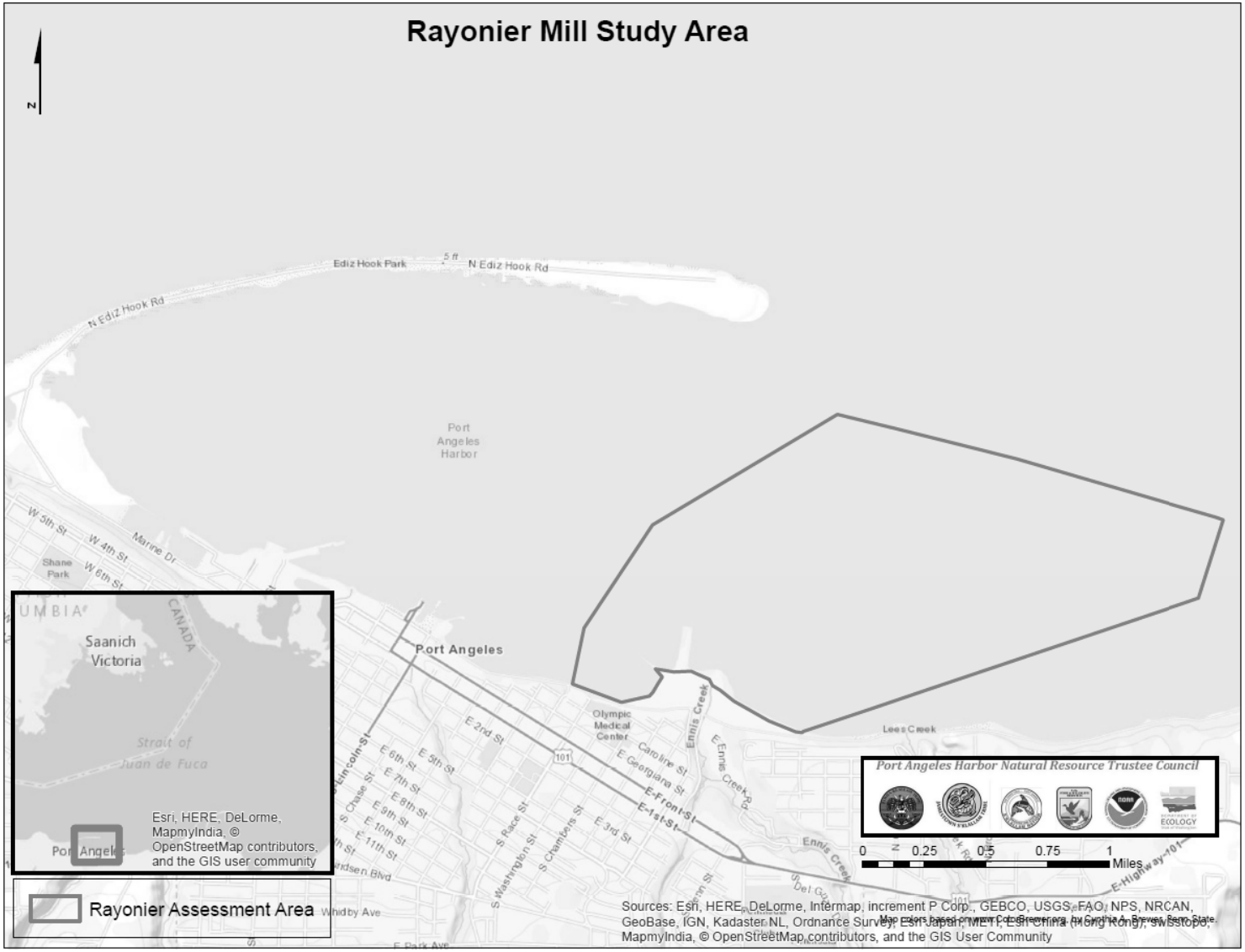
APPENDIX A



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APPENDIX B



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APPENDIX C

PORT ANGELES HARBOR



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APPENDIX D



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APPENDIX D cont'd

Defendants' Facilities for NRD Consent Decree

Figure Number	Defendant	Description
1	Georgia-Pacific LLC	Paper mill facility located at or near the property identified by the address 1805 Marine Drive including lands on and near Ediz Hook leased from the City of Port Angeles, former outfalls into Port Angeles Harbor for process effluent and stormwater, and state aquatic lands covered by DNR leases in the Harbor Area.
	Nippon Paper Industries USA Co., Ltd	The paper mill facility and related facilities located at or near the addresses 1805, 1815, and 1902 Marine Drive, including lands on and near Ediz Hook leased from the City of Port Angeles, and adjacent leased state aquatic lands, including those covered by DNR leases.
2	Port of Port Angeles	Terminals 5 and 6 properties currently or formerly owned or operated by the Port at 1608 Marine Drive, including adjacent state aquatic lands leased or managed under the 1985 Port Management Agreement (PMA) between the Port and the Washington Department of Natural Resources or under prior leases/agreements.
	Nippon Paper Industries USA Co., Ltd	The log storage and related facilities located at or near the property previously identified by the address 1608 Marine Drive, including adjacent leased state aquatic lands leased or managed under the PMA or under prior leases/agreements.
	Merrill & Ring Inc.	The lumber mill facility located at or near the property previously identified by the address 1608 Marine Drive, including adjacent leased state aquatic lands.
3 and 4	Port of Port Angeles	Terminal 7 properties currently or formerly owned or operated at the address 1313 and 1433 Marine Drive, including adjacent leased state aquatic lands leased or managed under the PMA or under prior leases/agreements.
	Nippon Paper Industries USA Co., Ltd	The chip loading and related facilities located at or near the property previously identified by the address 1313 Marine Drive and adjacent leased state aquatic lands, including those covered by DNR leases.

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APPENDIX D cont'd

Defendants' Facilities for NRD Consent Decree

Figure Number	Defendant	Description
	Merrill & Ring Inc.	The lumber mill facility located at or near the property previously identified by the address 1313 Marine Drive and adjacent leased state aquatic lands, including those covered by DNR Harbor Area leases.
	Owens Corning	The mill and facilities owned and operated by Fibreboard at or near 1313 Marine Drive, along with leased areas contiguous with the Fibreboard plant site and tidelands along Ediz Hook, from 1919 through 1970, including those covered by DNR leases.
5	Port of Port Angeles	832 Boat Haven Drive (the Boat Haven Marina), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
6	Port of Port Angeles	Terminal 3, including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
7	Port of Port Angeles	637 Marine Drive (Marine Trades Area), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
8	Port of Port Angeles	102 North Cedar Street/617 Marine Drive (Marine Trades Area), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
9	Port of Port Angeles	Terminal 1, including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
10	Port of Port Angeles	202 North Cedar Street (Terminals 1 and 3), including adjacent state aquatic lands, leased or managed under the PMA or under prior leases/agreements.
11	Port of Port Angeles	439 Marine Drive (former K Ply facility), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
12	Port of Port Angeles	301 Marine Drive (former K Ply facility), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.

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APPENDIX D cont'd

Defendants' Facilities for NRD Consent Decree

Figure Number	Defendant	Description
13	Port of Port Angeles	Terminal 4 (West of North Oak Street and West Railroad Avenue), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.
14	Port of Port Angeles	101 East Railroad Avenue (Terminal 2/Black Ball Ferry Terminal), 115 East Railroad Avenue (Landing Mall), 315 North Lincoln Street (City Pier), including adjacent state aquatic lands leased or managed under the PMA or under prior leases/agreements.

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