

PORT MANAGEMENT AGREEMENT 22-080031

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Port Management Agreement No. 22-080031 PORT OF SEATTLE

This Port Management Agreement ("Agreement"), effective as of the 1st day of November, 1997 ("the Effective Date"), by and between the state of Washington ("the State"), through the Department of Natural Resources ("DNR"), and the PORT OF SEATTLE, a Washington municipal corporation ("the Port"),

WITNESSETH:

Whereas, DNR is directed by law to manage aquatic lands owned by the state of Washington; and

Whereas, RCW 79.90.475 authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage state-owned aquatic lands as set forth in said law; and

Whereas, this agreement is in the form of the Model Port Management Agreement approved by the Washington Board of Natural Resources pursuant to RCW 79.90.475 and the implementing regulations; and

Whereas, the Port has requested such an agreement; and

Whereas, DNR has determined that it is in the best interest of the state of Washington to enter into such an agreement with the Port,

Now, therefore, the parties hereto hereby agree as follows:

1. Term.

a. <u>Term.</u> This Agreement shall commence on the effective date, inclusive, and shall continue in full force and effect until the 31st day of October, 2027, (Expiration Date), inclusive, a period of thirty (30) years referred to as the "Term."

b. New Port Management Agreement.

(1) If either party desires to enter into a new Port Management Agreement following the Expiration Date, the parties will meet (as often as necessary) during the two years prior to the Expiration Date to determine the feasibility of entering into a new Port Management Agreement. The parties may at that time, based on the laws of the state of Washington and in the form of the Model Port Management Agreement in effect as of that date, negotiate a new management agreement.

- (2) If either party decides it is not in its best interest to enter into a new agreement, the parties shall decide on the fair and reasonable allocation of the leasehold revenues for those Port leases that are in existence on the Property as of the Expiration Date. Consideration will be given to the Port's need to receive a fair return on capital invested by the Port on the Property. If the parties are unable to agree on a reasonable allocation of leasehold revenues as stated above, then either party may invoke the dispute resolution procedures under Section 24(b) below. In this event this agreement will be extended until such time as the dispute resolution regarding allocation has been concluded.
- 2. <u>Delegation</u>. DNR hereby delegates management to the Port, and the Port hereby accepts this delegation and agrees to manage the parcels of state-owned aquatic lands listed on Exhibit A, which are attached hereto and incorporated by reference, (hereinafter referred to as the "Property"), as of the Effective Date of this Agreement in accordance with the provisions hereof.

The parties intend that this Agreement encompass all authority required for the Port to effectively manage the Property as contemplated by RCW 79.90.475. The parties acknowledge that the delegation by DNR and the management by the Port contemplated by this Agreement is subject to and in accordance with State Law and regulations, including but not limited to applicable provisions of the Washington Administrative Code, the State Environmental Policy Act, the Aquatic Lands Act, the Shoreline Management Act, and the Growth Management Act. DNR retains the authority to set state-wide aquatic lands policy through administrative code provisions or adoption of policy by the Board of Natural Resources, as provided by law. The Port is responsible for implementation of that policy.

If future circumstances indicate that additional authority is required to effectively manage the Property, the Port may request such authority from DNR, which approval shall not be unreasonably withheld.

The Port is hereby granted exclusive authority to enter into leases or other use authorizations, including leases or use authorizations to itself, for the Property or portions thereof, except as otherwise provided herein. All such leases and use authorizations shall be subject to this Agreement and shall have a copy of the Agreement attached thereto and incorporated by reference. Said leases and use authorizations shall survive this Agreement. Any such lease by the Port shall contain a clause which states that upon termination of this Agreement (or successors thereof), or removal of the leased property therefrom, the lessor of said lease shall become DNR. The Port shall furnish to DNR copies of new leases, lease renewals, lease modifications, and surrender of leaseholds on parcels included in this Agreement upon execution of said lease documents.

The Port may not execute a lease or use authorization with itself for the Property to the extent the term of the lease or use authorization extends beyond the term of this Agreement.

DNR's delegation to the Port does not include the authority to bind the State or DNR to any financial obligations, to any environmental remediation of the Property, or to any habitat mitigation involving the Property without DNR's written consent.

3. <u>Property</u>.

Exhibit A contains a common description, legal description, planned use (if known, or if not, so stated), and map identifying each parcel of the Property. The Port may request management of any additional parcel of state-owned aquatic lands which meets the criteria established by law. Additional parcels approved by DNR for Port management shall be added to this Agreement by amending Exhibit A. DNR's approval for such requests shall be timely made and shall not be unreasonably withheld; however, DNR may consider whether the Port is meeting its current management obligations; whether DNR has invested in, planned for, or is legally committed to, a specific use which is inconsistent with the Port's proposed use for the requested parcel; whether Port acquisition would operate to release prior lessees or users to the detriment of the State; or whether litigation is pending or threatened concerning the parcel.

DNR shall respond to the Port in writing within forty-five (45) days of request either (i) approving or denying the request or (ii) identifying that additional information is needed for a decision. Once that additional information has been provided DNR shall respond to the Port in writing within forty-five (45) days, either approving or denying the request. If the DNR denies a request, DNR shall submit in writing its reasons for denial of the request. If DNR fails to submit such written responses as provided herein, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) days (excluding weekends and state holidays) of receipt of appeal, then request shall be deemed approved and Exhibit A shall be amended.

Any parcel which no longer meets the criteria established by law shall cease to be covered by this Agreement and the management thereof shall return to DNR. Any parcel may be deleted from this Agreement at any time by mutual agreement. The Port shall promptly notify DNR of such parcel no longer meeting the criteria and such notice shall be deemed to amend Exhibit A. If all subject property is deleted this Agreement shall terminate. If any parcel is no longer included in this Agreement for any reason, upon cessation the Port shall promptly remit to DNR its pro rata share of any prepaid rent received for that parcel.

- 4. Access. It is not the intent that any parcel owned by the State which is not covered by this Agreement, or any property owned by the Port should be left without access as a result of the Port's management of the Property. Provisions for access to such parcels shall be listed on Exhibit A or its amendments.
- 5. Acceptance/Relinquishment of the Property Management. Except as otherwise agreed in writing the Port hereby accepts management of the Property listed on Exhibit A in its condition existing as of the Effective Date of this Agreement, or with respect to parcels added to Exhibit A in the future, the date such parcel(s) becomes listed on Exhibit A, and agrees, at its sole expense, to conform to federal, state, and local laws and regulations governing and regulating the use of the Property. DNR has disclosed to the Port all conditions known to DNR which would adversely affect the use of the Property and the Port acknowledges that neither DNR nor DNR's agent has made any warranty as to the suitability of the Property for conduct of the Port's business.

At the termination of this Agreement the Port shall relinquish management of the Property which shall be in its condition existing as of the date identified in the paragraph above,

or in a reasonable condition which would result from prudent management, except normal wear and tear as to improvements; provided, this section is not intended to address damages caused by contamination which shall be addressed under Section 8, <u>Hazardous Substances</u>, below.

6. Standard of Management. Management of the Property shall be consistent with Chapters 79.90 through 79.96 RCW, as amended, which state in pertinent part that: "[t]he manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state." Management shall also be consistent with the implementing regulations adopted by the DNR or the Board of Natural Resources, and policies adopted by the Board of Natural Resources. Adoption of such policies shall be preceded by ninety (90) days notice to the Washington Public Ports Association, or its successor, with adequate opportunity for comment before the Board of Natural Resources. The DNR and the Washington Public Ports Association, or its successor, shall meet annually to review statutes, regulations and policies.

The administrative procedures for management of the Property shall be those of Title 53 RCW.

7. <u>Use/Planning</u>. The Port may use the Property for port purposes as authorized in Title 53 RCW so long as said use is consistent with the Washington State Constitution and laws of the state of Washington. In the event the parties develop and agree in writing upon a long-range plan for aquatic land use for the Property, the Port may enter into leases for nonwater-dependent uses consistent with that plan without DNR approval. In the absence of a long-range plan for aquatic use of a portion of the Property, if the Port contemplates the possible lease or use of that portion of the Property for nonwater-dependent uses, it shall give DNR notice of its intentions at the earliest practicable time. DNR shall promptly meet with the Port to review the proposal for its consistency with the aquatic land policies of Chapters 79.90 through 79.96 RCW, as amended, and the implementing regulations adopted by DNR.

8. <u>Hazardous Substances</u>.

Definitions.

- (1) <u>Hazardous Substances</u>. For purposes of this Agreement, a Hazardous Substance is any substance that is or may be in the future:
- (a) Designated as, or that contains components designated as, hazardous, dangerous, toxic, or harmful by applicable federal, state, or local law, regulation, statute or ordinance; and/or
 - (b) Subject to regulation by such laws.
- (2) <u>Application Date</u>. For purposes of this Agreement, the Application Date is the date on which application was first made by the Port for entry into this Agreement, unless the parties agree in writing that control of properties subject to this Agreement is assumed by the Port at a later date.
- (3) <u>Liability</u>. As used in this Section 8, "Liability" means any obligation or cost of any kind arising from the release or threatened release of Hazardous Substances, or from any alleged violation of or failure to comply with any law referenced in Subsection 8(b), where the release, threatened release, alleged violation, or failure to comply is related to or arises out of the use or control of the Property. Liability includes damages (including natural resource

damages), claims, governmental investigations, proceedings or requirements, attorney fees in any investigation, administrative proceeding, trial or appeal, or witness or consultant costs.

b. <u>Compliance</u>. During the term of this Agreement, the Port shall comply, at its own expense, with all applicable governmental laws, regulations, permits, orders or requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances related to or arising out of the Port's use or control of the Property. The Port, the lessees, and sublessees shall correct and remediate, if necessary, in accordance with applicable laws at their own expense any failure of compliance which occurs during the term of this Agreement.

c. Notice of Environmental Action.

- (1) The Port shall promptly notify DNR, upon discovery of all spills, discharges or releases of any Hazardous Substances affecting the Property which are required to be reported to any federal, state, or local regulatory agency.
- (2) DNR and Port shall promptly notify each other, upon discovery of any failure to comply with federal, state, or local laws or regulations with respect to the Property. Each shall promptly notify the other, upon discovery of any inspections on the Property by any regulatory entity, any fines, any regulatory orders for response or interim cleanup actions (actual or proposed), or any negotiations with any regulatory entity for a consent decree under any herein mentioned authority, or concerning any plans for any independent cleanup or mitigation and restoration of natural resources on the Property. This provision shall apply to orders issued to DNR or the Port or any third party concerning the Property.
- Indemnity. To the extent permitted by law, the Port agrees to defend, indemnify, and hold the State, as the owner of aquatic lands, and DNR, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or DNR related to or arising out of the use and control of the Property by the Port or anyone acting under authority of the Port from the Application Date through the end of the Term. This indemnity shall not apply to any imposition or attempted imposition of Liability that is related to or arises out of the use and control of the Property by the State or anyone acting under the authority of the State, other than the Port or anyone acting under the authority of the Port. This indemnity applies to the State solely in its capacity as the owner of aquatic lands and to DNR in its capacity as the manager of aquatic lands and does not extend to other units of state government or to the State in any capacity other than as owner of aquatic lands. Notwithstanding this provision or any other provision of this Agreement, the Port shall not be precluded from seeking relief from any other agency of state government other than DNR under the State Model Toxics Control Act, CH. 70.105D RCW ("MTCA"), the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq. ("CERCLA"), other similar statutes, or common law, for contribution, cost recovery, damages or other reimbursement for remediation of Hazardous Substance releases.

- e. <u>Pre-existing Contamination</u>. The parties intend that this Agreement not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the Application Date ("Pre-existing Contamination") under CERCLA, MTCA, or other laws that create cleanup obligations. In order to effectuate this intent, the parties agree that this Agreement will not be construed to be an indemnification or assignment of liability for any Pre-existing Contamination. Any determination of liability or responsibility for addressing Pre-existing Contamination shall be undertaken without regard to this Agreement.
- 9. <u>Port Regulations</u>. The Port may adopt written policies and regulations to implement this Agreement and to direct the management of the Property. All such policies and regulations shall be submitted to DNR for review and comment prior to becoming effective. Any such policies or regulations must be consistent with this Agreement.
- 10. Rent. The following shall apply:
- a. <u>Port Use</u>. The Port shall pay to DNR no rent for use of any portion of the Property or any state-owned improvements. In the event the Port engages in a nonwater-dependent use of any portion of the Property or any state-owned improvements, the Port shall establish the full fair market rental in dollars according to WAC 332-30-125 and shall remit, in dollars, to DNR eighty-five percent (85%) of that amount.
- b. <u>Third Party Uses</u>. If the use of any portion of the Property involves a lease or other use authorization to a third party, rent for such portion shall be collected and distributed according to law. In the event the use is nonwater-dependent, the Port shall establish the fair market rental in dollars and shall remit, in dollars, to DNR that portion required by law.
- 11. <u>Insurance and Performance Security</u>. When the Port uses or leases any portion of the Property (including state-owned improvements) to a third party, the Port shall require the following:

a. <u>Insurance</u>.

- (1) <u>Liability</u>. Bodily injury liability, including death, and property damage liability in an amount of not less than one million dollars (\$1,000,000) or such lesser amount approved by DNR, which approval shall not be unreasonably withheld. If the Port makes a written request for a lower insurance amount, DNR has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If DNR fails to respond within forty-five (45) day period, the Port shall have the right to appeal to the Supervisor of the Department of Natural Resources for a decision. If DNR fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.
- (2) <u>Casualty</u>. Fire and extended coverage for the insurable replacement cost of any state-owned improvements identified in Exhibit B. DNR shall provide the Port with the replacement cost value within sixty (60) days of the Port's request.

(3) In each of the cases above the State shall be named as an additional insured.

b. <u>Performance Security</u>.

- (1) Rent Security. For those portions of the Property leased to third parties the Port shall require the third party to provide to the Port a bond, rent insurance, or other security in accordance with the requirements of RCW 53.08.085; provided, the Port commission shall not waive the rent security requirement or lower the amount of such requirement.
- (2) Other Security. In addition, as is appropriate for the use occurring on the Property, the Port may require security for the performance of other lease terms including removal of improvements, trade fixtures, personal property, and hazardous substances.
- c. <u>Interim Use</u>. When the Port leases any portion of the Property (including state-owned improvements) to a third party for a period of ninety (90) days or less, the third party shall not be required to provide insurance and performance security as stated in this Section 11 if the Port has its own insurance in the same amounts on the Property and the State is named as an additional insured.
- 12. Removal of Valuable Materials. Except as permitted by RCW 79.90.150 no valuable materials as referred to in Chapters 79.90 79.96 RCW shall be removed from any parcel subject to this Agreement without the prior written approval of DNR. If any approved removal requires payment to DNR for the value of the valuable materials removed, such payment shall be made within ninety (90) days of the removal.

13. <u>Fills</u>.

- a. <u>"Fill" defined.</u> For the purposes of this Agreement, the term "Fill" means any material which has been added to increase the elevation of State-owned aquatic lands and includes rip rap, bulkheads, drainage systems or paving. "Fill" does not include confined disposal of contaminated sediments which is addressed under Section 14.
- b. Adding or Removing Fill. If the Port or any of the Port's tenants proposes adding fill or removing fill from any portion of the Property, the Port shall give DNR notice of such intention at the earliest practical time. DNR shall promptly meet with the Port to review the proposal. If the proposed fill is consistent with Chapters 79.90 through 79.96 RCW, as amended, and implementing regulations, DNR shall issue written approval, which approval shall not be unreasonably withheld.
- c. <u>Rent</u>. Except as provided for below in Subsection 13(d), rent for state-owned aquatic lands underlying the fill will be determined by the use occurring on the fill and distribution of rent will be in accordance with Section 10 of this agreement.
- d. <u>Fills with Upland Characteristics</u>. The Port and DNR disagree as to whether filled state-owned aquatic lands with the characteristics of uplands are a nonwater-dependent use of the underlying aquatic lands. Until and unless the legislature or a court of competent jurisdiction interprets RCW 79.90.480(6) to indicate the contrary, the Port and DNR agree that the following principles control the establishment and distribution of rent between the Port and DNR for filled state-owned aquatic lands:
- (1) The aquatic lands policies of RCW 79.90 control the establishment and distribution of rent for filled state-owned lands.

- (2) As provided in statute, rent for state-owned aquatic lands that have been filled to the point of having the characteristic of uplands will be the full fair market rental value of the filled land pursuant to WAC 332-30-125, or as amended, if the State owns the fill and has a right to charge for the fill.
- (3) Rents for filled state-owned aquatic lands which have the characteristics of uplands will be distributed according to the use of the filled state-owned aquatic lands. Rents for water-dependent uses shall be paid to the Port. Rents for nonwater-dependent uses shall be divided between the Port and DNR. These understandings are set forth in detail in Section 10 of this Agreement.
- e. <u>Owner of Fill Identified</u>. Fills placed on the Property prior to the Effective Date of this agreement and during the term of this Agreement shall be listed on Exhibit C. The owner of any fill which remains severed from the aquatic land shall be identified. Otherwise the fill shall be considered part of the aquatic lands, and shall be so identified.

14. <u>Confined Disposal of Contaminated Sediments.</u>

- a. <u>Definition</u>. Confined Disposal of Contaminated Sediments means containment or isolation of contaminated sediments. This includes nearshore confined disposal, multi-user confined disposal, deep water confined aquatic disposal, and capping of contaminated sediments.
- b. <u>Exclusion from Agreement</u>. Confined Disposal of Contaminated Sediments is not covered under this Agreement, and is not considered a Fill for the purposes of Section 13.
- c. <u>Agreement with DNR</u>. A separate written agreement addressing Confined Disposal of Contaminated Sediments may be negotiated between the Port and DNR.

15. <u>Improvements</u>.

- a. <u>State-Owned Improvements</u>. All state-owned improvements located on the Property are listed on Exhibit B. Improvements that become the property of the State during the term of this Agreement shall be listed on Exhibit B. These improvements shall remain the property of the State and shall be maintained at the Port's sole expense in a good condition and state of repair. Upon the cessation or termination of this Agreement as to any portion of the Property, the Port shall return said portion, together with the state-owned improvements, to DNR in a condition as good as when received, normal wear and tear excepted.
- b. <u>Non-State Owned Improvements</u>. A management agreement or lease shall be deemed continuous from one term to the next (even after the expiration date) so long as the Port or the third party controls physical possession of the improvements and is diligently pursuing issuance of a new Agreement or lease.
- (1) At any time during the continuous term of this, or any successor, Agreement(s), the Port shall determine whether improvements placed on the Property during the term of any lease are to be removed, and no compensation shall be due to the State for any such removal. DNR shall make such determination as to then existing improvements on final expiration or termination of this Agreement. The Port or the third party owner shall bear all costs of removal and of returning the parcel to the condition existing prior to placement of the improvements.

(2) <u>Title to Improvements</u>.

- (a) Title to Port-constructed improvements shall remain with the Port so long as the parcel upon which they are located is continuously subject to a management agreement or lease with the State. Thereafter, title shall pass to the State.
- (b) Title to third party-constructed improvements shall remain with the third party so long as the parcel upon which they are located is subject to a continuous lease. Thereafter, title shall pass to the State; provided, the Port may purchase the improvements from the third party for value; and further provided, the Port shall give notice to DNR if said improvements are being purchased from a bankruptcy trustee.

16. Easements.

a. <u>Easements Granted by DNR.</u>

- (1) DNR may grant permanent easements across any portion of the Property. For purposes of this Agreement, outfalls of any type and sediment impact zones are considered permanent easements. DNR shall obtain the Port's written approval prior to making such grants, which approval shall not be unreasonably withheld. The Port has forty-five (45) days following receipt of the request to respond in writing either approving or rejecting the request. If the Port fails to respond within the forty-five (45) day period, the State shall have the right to appeal to the Port Commission for a decision. If the Port fails to submit a written response within ten (10) business days (excluding weekends and state holidays) of receipt of appeal, the request shall be deemed approved.
- (2) Any request to DNR by the Port and its Lessee for a permanent easement across any portion of the Property shall be promptly considered and approval shall not be unreasonably withheld or delayed.
- (3) If DNR grants any easements, DNR shall require the grantee to indemnify the Port to the same extent that the grantee indemnifies the State.
- b. <u>Easements Granted by Port</u>. The Port may grant non-permanent easements without DNR approval so long as the term of each grant does not exceed the maximum term allowed by statute for leases of the burdened portion of the Property. Under no condition shall the term of any non-permanent easement exceed the Term of this Agreement unless approved by DNR.
- 17. <u>Local Improvement Districts</u>. Pursuant to RCW 79.44.040, the Commissioner of Public Lands (Commissioner) shall have the exclusive authority to consent or withhold consent to the inclusion of any portion of the Property in any local improvement district (LID). The Commissioner shall not withhold consent if the Port agrees to pay any assessment against the Property by such LID, regardless of when levied. The Port shall be responsible, during the term of this Agreement, for installments due on pre-existing LID assessments.
- 18. <u>Taxes</u>. Except for taxes and other governmental charges imposed by law on third parties, the Port shall be responsible for, and shall pay when due, all taxes, fees, licenses, and other governmental charges of whatever character or arising out of, or attributable to, the Property or to the Port's management, use and/or leasing thereof during the term of this Agreement.

- 19. Entry. Upon reasonable notice DNR shall have right of entry to the Property at reasonable times for any lawful purposes. Such entry, however, will be subject to reasonable security and safety regulations and shall not unreasonably interfere with the use of the Property.
- 20. <u>Audits</u>. DNR may periodically review the management of the Property by the Port for consistency with the Agreement, all applicable laws, chapters 79.90 through 79.96 RCW, policies adopted by the Board of Natural Resources, and administrative code provisions. DNR will promptly notify the Port if it believes the Port is not complying.

The Port shall make all records concerning the management of any portion of the Property available to DNR upon request.

- 21. <u>Liens and Encumbrances</u>. The Port shall keep the Property free from liens and other encumbrances (other than leases and other use authorizations authorized in Sections 2 <u>Delegation</u>, 16 <u>Easements</u>, and 17 <u>Local Improvement Districts</u>). Nothing in this Agreement shall be construed as authorizing the Port to obligate the State, directly or indirectly, to any costs, expenses, or financial liability on account of the management, use, lease, or other actions taken by the Port with respect to the Property.
- 22. <u>Eminent Domain</u>. If at any time during the term of the Agreement the Property or any part thereof is taken or condemned by any authority having the power of eminent domain, the Port, DNR, and any other person having a legal interest shall have the right to appear in such proceedings and be represented by their respective counsel, and each may claim just compensation for its respective loss or damage sustained by the taking or condemnation. Any award, compensation, damages, or payment by reason of such taking shall be apportioned within such proceeding and each party shall take such amount, if any, as may be awarded to it.
- 23. <u>Non-Waiver</u>. The failure of either party to insist upon the strict performance of any of the covenants or conditions of this Agreement in any one or more instances shall not be construed to be a waiver thereof. In the event that a default is for other than the payment of money, the acceptance by either party of payments required under the Agreement shall not be deemed as a waiver of such default.

24. <u>Dispute Resolution</u>.

a. <u>Dispute</u>. Means that whenever the Port and DNR cannot agree on the factual circumstances necessary to interpret this Agreement, or whenever the Port and DNR cannot agree on the application of any operative sections of this Agreement, either party may declare that a dispute exists concerning the Agreement.

b. <u>Dispute Resolution</u>.

(1) If either party declares the existence of a dispute concerning this Agreement, the declaring party shall so notify the other party and shall provide a written statement of the facts, its interpretation of the Agreement, and its position concerning such dispute. Within fifteen (15) days the other party shall provide to the declaring party a written statement addressing those same three elements. Within fifteen (15) days after the declaring

party has received the other party's written statement, the parties shall meet and try to resolve the dispute.

- (2) If the parties fail to resolve the dispute as provided in Subsection 24(1) above, then either party may request further review within fifteen (15) days by giving notice to the other party. Thereafter, the Supervisor of the Department of Natural Resources and the Port's Chief Administrative Officer (in the event the Port has no Chief Administrative Officer, then such person shall be designated by the Port Commission) shall meet within thirty (30) days of the request and try to resolve the dispute.
- (3) In the event the dispute is not resolved within sixty (60) days after their first meeting as provided by Subsection 24(2) above, either party may request a meeting between the Commissioner of Public Lands and a member of the Port Commission empowered to represent the Port. Within sixty (60) days after such request, said two individuals shall meet and attempt to resolve such dispute. In the event they are unable to resolve the dispute within said sixty (60) day period, either party may petition the Superior Court for resolution of the dispute.
- (4) During dispute resolution arising under Section 1(b)(2), the parties agree to extend the existing Agreement, as provided for in Section 1(b)(2).
- 25. Termination for Default. DNR may cancel this Agreement or remove any portion of the Property therefrom for any failure by the Port to perform its obligations under this Agreement on six (6) months written notice to the Port, unless, within that time, the Port cures such default. DNR's decision whether to cancel the Agreement or to remove any portion of the Property shall be reasonably exercised. If the default is of a character which cannot be remedied within six (6) months, the Port shall notify DNR and the parties shall agree on a reasonable period to remedy the default. In the event the parties cannot agree on a period, that shall be referred to resolution as provided in Section 24, Dispute Resolution. Failure to cure the default within such period may result in cancellation or removal of any portion of the Property upon notice. The decision by DNR to give notice of its intention to cancel this Agreement, or to remove a portion of the Property for default after expiration of the period for cure, shall constitute a dispute and shall be appropriate for resolution under Section 24, Dispute Resolution, herein.

26. <u>Notices</u>. All notices required by law or this Agreement shall be in writing and may be personally served or sent by first class mail. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service is by first class mail, service shall be conclusively deemed made three (3) days after the deposit thereof in the United States mail, postage prepaid, addressed to the parties to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DNR:

DEPARTMENT OF NATURAL RESOURCES

Aquatic Resources Division 1111 Washington Street SE

PO Box 47027

Olympia, WA 98504-7027

PORT:

PORT OF SEATTLE

P.O. Box 1209 Seattle, WA 98111

- 27. <u>Attorney Fees</u>. In the event either party shall be required to bring any action to enforce any of the provisions of this Agreement or shall be required to defend any action brought by the other with respect to this Agreement the prevailing party in such action shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.
- 28. <u>Assignment</u>. No part of this Agreement may be assigned or otherwise transferred.
- 29. <u>Severability</u>. If any provision of this Agreement or its application to any person, or circumstance is held invalid, the remainder of the Agreement or the application of the provision to other persons or circumstances is not affected.

30. <u>Amendments/Supplemental Provisions</u>.

- a. If, during the term of this Agreement, the Board of Natural Resources approves amendments to the Model Port Management Agreement pursuant to RCW 79.90.475, DNR shall give notice of that fact to the Port. Either party may request that this Agreement be amended to conform to the newly approved Model Port Management Agreement.
- b. If unique conditions relating to management of the Property arise during the term of this Agreement, either party may request that a supplemental provision be added to this Agreement to accommodate those unique conditions. Such supplemental provisions shall not address issues of general port industry interest or interest to any other Washington port district, as determined by the Washington Public Ports Association (WPPA), or its successor organization. WPPA shall be given sixty (60) days to review the terms of any supplemental provision. WPPA shall give notice to DNR if WPPA determines the proposed terms are of general port district interest or of interest to any other Washington port district.
- c. Acceptance of a subsequent Model Port Management Agreement or inclusion herein of a supplemental provision must be by mutual agreement of the parties.

- 31. <u>Survival</u>. All obligations of the parties to be performed under the terms and conditions of this Agreement, including but not limited to, obligations occurring after the termination of this Agreement or removal of any portion of the Property from this Agreement shall not cease upon termination or removal, and shall continue as obligations until fully performed.
- 32. <u>Entire Agreement</u>. This is the entire agreement between the parties. There are no other agreements, either oral or written, that have not been incorporated into this Agreement. No amendments to this Agreement shall be binding unless the amendment is in writing and signed by the parties.

Signed this 30th day of September, 1998.

STATE:

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

CHARLES BAUM, Supervisor

R. DINSMORE Executive Director

Signed this day of left, 19 48

PORT:

PORT OF SEATTLE

P.O. Box 1/209 Seattle, WA 98111

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PIER 6. AGREEMENT

Addendum to Port Management Agreement No. 22-080031 Exhibit A-1 Current and Planned Uses

THIS AMENDMENT to Port Management Agreement No. 22-080031 is made by and between the State of Washington Department of Natural Resources (DNR) and the Port of Seattle (Port).

Background

The Port of Seattle (Port) and the Department of Natural Resources (DNR) entered into Port Management Agreement No. 22-080031 (PMA) on September 30, 1998.

DNR recognizes that the Port engages in both water-dependent and nonwater-dependent activities on lands managed under the PMA.

The Port and DNR disagreed on whether the Port office located on Pier 69 was a nonwater-dependent use for which the Port was required to pay rent under the 1984 Aquatic Lands Act.

The Port filed a suit against DNR in <u>Port of Seattle v. DNR</u>, King County Superior Court No. 97-2-22329-6SEA (law suit). DNR filed a counterclaim against the Court in this law suit seeking declaratory relief.

DNR and the Port wish to mutually resolve this matter prior to trial scheduled for February 1, 1999.

Agreement

THEREFORE, the Port and DNR agree as follows:

- 1. <u>Port's Use at Pier 69</u>. The Port's business office at Pier 69 is a nonwater-dependent use as defined in RCW 79.90.465(3).
- 2. <u>Annual Rent</u>. The Port agrees to pay rent at the annual rate of \$40,000.00 per year beginning on February 1, 1999. This annual rent is based on the Port's proportional use of the building equaling 49,009 square feet, excluding public areas and the Port' water-dependent tenants.
- 3. Rent Revaluation. On February 1, 2005, (Revaluation Date) and every six years following the Revaluation Date, the annual rent shall be adjusted to reflect changes in fair market rental rates. These six-year revaluations shall continue throughout the term of the PMA.

- 4. Cap on Rental Revaluation. Changes in the rental rate resulting from a revaluation described in section 3 above shall not increase or decrease the annual rent by more that fifty percent (50%) of the preceding year's annual rent.
- 5. Missed Revaluation. Failure by DNR to revalue the rent as provided in paragraph 3 above shall not affect DNR's right to revalue the rent. At any time DNR may adjust, bill and collect the annual rent retroactively as if the missed revaluation had actually been implemented.
- 6. Disbursement of Rent Paid Prior to this Agreement. Rental payments made by the Port into the DNR Suspense Account pursuant to the Memorandum of Understanding of March 1, 1997 (the MOU) between the Port and DNR shall be deemed and applied toward rent owed by the Port under the terms of the MOU based upon an annual rental rate of \$40,000.00 instead of an annual rental rate of \$54,999.96. Payment above the \$40,000.00 rental rate made by the Port to the Suspense Account shall be refunded by DNR to the Port. The balance of the amount remaining in the Suspense Account shall be dispersed to the appropriate state account(s) as provided by law. The March 1, 1997 Memorandum of Understanding will then terminate upon dispersal of funds.
- 7. Dismissal of the Suit. DNR and the Port agree to dismiss with prejudice their respective claims in Port of Seattle v. Department of Natural Resources, King County Cause No. 97-2-22329-6SEA with each party bearing their own costs and attorneys fees.

Signed this 20x day of Aturn, 1	999.
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	STATE OF WASHINGTON
	DEPARTMENT OF NATURAL
	RESOURCES
	Sent Usell
Signed the, 199	Title: Cothmission / Cable Belle
	PORT:

PORT OF SEATTLE

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF WASHINGTON)				
) ss.	R .			
County of Thurston)	·			
On this				
	SEAL			
	[_MICHELLE BENTON] (Type/Print Name) Notary Public in and for the State of Washington residing atOUMPIO My Commission Expires 4 1 0			

STATE OF WASH	INGTON)
COUNTY OF (KING) ss.
certify that said per the Port for the use	Linda J. Strout I know or have satisfactory evidence that MXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
DATED: [_	September 17, 1998
	SEAL
	Ann DeKoster
	(Type/Print Name)
	Notary Public in and for the State of Washington residing at Seattle
	11/22/00

My Commission Expires_

11/22/98

TABLE OF EXHIBITS PMA 22-080031 Port of Seattle

1. Exhibit A, including:

Seattle Harbor Vicinity Plan

No. 1 Shilshole Bay Marina

No. 2 Fisherman's Terminal

No. 3 Pier 2

No. 4 Terminal 3

No. 5 Terminal 5

No. 6 Terminal 18 - South

No. 7 Terminal 18 - North

No. 8 Terminal 25

No. 9 Terminal 30

No. 10 Terminal 37 - Pier 48

No. 11 Terminal 64/65 & Pier 66

No. 11.1 Pier 64/65 & Pier 66

No. 12 Pier 69

No. 13 Pier 86

No. 14 Terminal 91

No. 15 Terminal 2 - East

No. 16 Pier 27

No. 17 Terminal 30 - North

Each of the individual parts of the Exhibit includes:

- (a) Legal Description and maps showing ports management boundaries
- (b) Fill locations
- (c) Improvement locations
- (d) Upland ownership information
- 2. Exhibit A-1 Current and Planned Uses
- 3. Exhibit B List of Improvements
- 4. Exhibit C List of Fill
- 5. List of environmental reports pertaining to specific properties

No. 22-080031 Table of Exhibits

Exhibit A-1 Current and Planned Uses

PMA 22-080031 Port of Seattle

- 1. **Shilshole Bay Marina:** The facility is a public marina used primarily for pleasure craft, but with some fishing and commercial vessel moorage. There are no Port facilities on any portion of the harbor area in front of the marina. All water-dependent uses. Previous lease: 22-001669.
- 2. **Fishermen's Terminal:** This is a public marina reserved primarily for commercial fishing vessels. The harbor area subject to the Port's PMA application contains a pier which is used by fishing vessels. All water-dependent uses. Previous lease: Waterway Permit # 215.
- 3. **Pier 2:** The harbor area contains no facilities. The abutting upland is part of a Port of Seattle marine facility. The upland facility is currently leased to Crowley Marine Services, Inc., for use as a barge loading/unloading site. All water-dependent uses. Previous Lease: 22-002359.
- 4. **Terminal 3:** Area commonly known as the Lockheed properties. The harbor area contains fill-created uplands and some improvements left by the previous site owner. The Port is developing the site for a future marina container facility and expects to construct a 100' berth extension on the existing dock located on the south end of the waterway. Port shall pay \$118,662.23 in back rent owed under the leases prior to the Port's amending the PMA application to include the Lockheed leases. All water-dependent uses.

Previous Leases: 22-090033, 22-090032, 22-090031.

- 5. **Terminal 5:** The terminal is the site of an existing marine container terminal. The abutting harbor area is used by ships mooring at the terminal. The area is part of the ongoing Southwest Harbor Project. All water-dependent uses. Previous Lease: Waterway Permit # 212.
- 6. **Terminal 18-South:** The terminal is the site of an existing marine container terminal. The harbor area contains some upland fill which is used as a container yard. Terminal 18-South abuts Terminal 18-North. All water-dependent uses. Previous Leases: 22-001689, 22-002012, 22-002022, 22-002023, 22-002267.

- 7. **Terminal 18-North:** The area is used by ships mooring at the terminal. See # 6 above. All water-dependent uses. Previous Lease: Waterway Permit # 212.
- 8. **Terminal 25:** The terminal is the site of an existing marine container terminal. The abutting waterway area is used by ships mooring at the terminal. All water-dependent uses. Previous Lease: Waterway Permit # 212.
- 9. **Terminal 30:** The terminal is the site of an existing marine container terminal. The abutting waterway area is used by ships mooring at the terminal. All water-dependent uses. Previous Lease: Waterway Permit # 212.
- 10. Terminal 37/42/46 & Pier 48: These terminals are the site of existing marine container terminals. The abutting waterway area and harbor area contain portions of docks used as container yards and for moorage of ships calling at the terminals. Pier 48 is the site for passenger vessel activity, including the Victoria Line service. Approximately one-half of the westerly portion of the facility lies within the harbor area. From May through October of each year, Victoria Lines occupies the north side of the Pier. The west and south sides are used by barges and fishing vessels. From October through April of each year beginning in 1994, the Port has been renting out the terminal building to various nonwater-dependent events. Currently, the Port is charging a flat fee of approximately \$3,000 per day. The improvements within the harbor area include the dock and terminal building used to support the vessel activity. All water-dependent uses EXCEPT for the renting out of the terminal building from October through April of each year, which is classified as nonwater-dependent. The agreement with the Port is for payment of ten (10) percent over the normal water-dependent rate for special nonwater-dependent events. The rent formula is: (Upland Value) x (Land Area) x (Aquatic Value @30%) x (Rate of Return (2.7%) x (1.10). This rental rate shall be subject to annual adjustment and provision as provided for in RCW79.90.480 (for water-dependent rental calculation and supporting WACs). For calendar year 1997, the rent amount is \$60.59 per day (\$55.09 plus \$5.50) to the extent nonwater-dependent uses take place on this

Previous Leases: For Terminal 37/42/46: 22-002443.

For Terminal 48: 22-002075.

- Pier 64/65 & Pier 66: Pier 64/65 is commonly referred to as the Bell Harbor Marina. This harbor area will be the site of a public short-stay marina which is part of the Port's Central Waterfront Project. Pier 66 is the site of the main portion of the Port's Central Waterfront Project. The Port is currently developing the site by building a facility which will hold two fish processing plants (Elliott Bay Seafoods aka Bell Street Fish Market and the Fishin' Place), an international conference center (Bell Harbor International Conference Center), a maritime (Odyssey) museum, a restaurant (Anthony's Home Port Restaurant, the Bell Street Diner and the Fish 'n Chip Bar), retail areas (Bell Street Grocery and Deli), office sites, and public access areas. All are water-dependent or water-oriented uses EXCEPT for: Bell Harbor International, Anthony's Home Port Restaurant, Bell Street Diner and the Fish 'n Chip Bar; Bell Street Grocery and Deli; and the office sites are not water-dependent or water-oriented uses, and are classified as nonwater-dependent. The annual rent for these nonwater-dependent uses for 1997-1998 is \$81,231.00. The basis for calculating the rent was negotiated under Lease Agreement No. 22-002780. Future nonwater-dependent rent will be determined per exhibit A-11.1, areas designated as public use will not be charged rent. Areas designated as water-dependent will be charged rent in accordance with WAC 332-30-123 and RCW 79.90.480. Areas designated as category two nonwater-dependent will be charged rent in accordance with WAC 332-30-125 and RCW 79.90.500. Areas designated as category one nonwater-dependent use will be charged rent at a rate Ten Dollars (\$10.00) per square foot less then the category two nonwater-dependent rate. These methods shall remain in effect until:
- 1. The Port of Seattle makes any change in the uses on Pier 64,65 and 66 that affect the square footage assignment as depicted on Exhibit A-11.1. The Port shall immediately notify DNR when any such changes occur;
- 2. The Port of Seattle request additional areas of state-owned aquatic land be added to this agreement;
- 3. The Port and DNR agree to modify the rent calculation methods as a result of DNR conducting a study to determine the relationship of water-dependent, water-oriented, and nonwater-dependent uses on Pier 64/65 and 66.
- 4. Or upon Mutual Agreement.

Areas designated as Public Access on Exhibit A-11.1 and constructed in whole or in part with ALEA or IAC grant funds shall display all signs required by the grant document. In addition, any portion of these areas which are gated or restrict public access for any purpose shall contain signage which informs the public how access may be obtained.

11.

Previous Leases: 22-001776 (terminated), 22-002500 (terminated), 22-002780.

- 12. **Pier 69:** The harbor area is used as the headquarters for the Port and for the site of two tenants (Victoria Clipper and Seafloor Survey International). The two tenants are classified water-dependent. The Port and DNR are currently in disagreement regarding whether the Port offices are considered a non-water dependent or water oriented use. This issue is now subject to litigation in King County Supreme Court, case number 97-2-22329-65EA. Previous Lease: 22-002404.
- 13. **Pier 86:** The upland and harbor area portions are used as a public park, a grain terminal, and a public fishing pier. The Happy Hooker, a small concessionaire type business, is a tenant of the Port. All uses are water-dependent EXCEPT for the Happy Hooker, which is a **nonwater-dependent** use. No rent is being charged for this small public amenity. Previous Lease: 22-002479.
- 14. **Terminal 91:** This terminal is used for transshipment of fruit, automobiles, and other products. Fishing and other commercial vessels also moor at the facility. The abutting harbor area contains a portion of the two piers. All water-dependent uses. Previous Lease: None.
- 15. Pier 27: This is a newly acquired piece of property which is currently not being used by the Port. The Port expects to develop the area as part of a larger marine project involving container terminals to the north and south. The abutting waterway area currently contains a moorage ramp. Previous Lease: None.
- 16. **Terminal 2 East:** Commonly referred to as the Wyckoff/PSR properties. The harbor area contains fill-created uplands and some improvements left by the previous owner of the site. The Port is currently in the midst of developing the site for a container and intermodal on-dock rail facility. The tenant for the site will be American President Lines. The use is water-dependent. Previous Lease: None

17. **Terminal 30 North:** This parcel, previously occupied by GATX Corporation, will be used as a moorage facility for large vessels, while the area behind the sheetpile bulkhead will be used for maritime commercial activities. All uses are water-dependent. Previous Leases: 22-090002 (GATX)

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Exhibit B - Improvements

PMA 22-080031 Port of Seattle

1. Shilshole Bay Marina:

- (a) Breakwater Owned by Federal Government
- (b) Marina related improvements (docks, pilings, slips) Owned by Port

2. Fishermen's Terminal:

- (a) Marina related improvements (concrete pier/pilings) Owned by Port
- 3. Pier 2:
 - (a) None
- 4. Terminal 3:
 - (a) Concrete dock and pilings Owned by Port
- 5. Terminal 5:
 - (a) Docks, pilings and aprons Owned by Port
- 6. Terminal 18 South:
 - (a) Docks, pilings, aprons and cranes Owned by Port
- 7. Terminal 18 North:
 - (a) Docks, pilings, apron and cranes Owned by Port
- 8. Terminal 25:
 - (a) Docks, pilings, apron and cranes Owned by Port
- 9. **Terminal 30:**
 - (a) Docks, pilings, apron and cranes Owned by Port
- 10. **Terminal 37/42/46:**
 - (a) Docks, pilings, apron and cranes Owned by Port
- 11. **Terminal 48:**
 - (a) Docks, pilings, apron, cranes and a 100,000 sf wooden building Owned by Port
- 12. **Pier 64/65:**
 - (a) Marina related improvements (dock, slips, pilings) Owned by Port

13. **Pier 66:**

(a) Various buildings -- conference center, restaurant, museum, diner, retail store, and offices -- Owned by Port

14. Pier 69:

- (a) Office building Owned by Port
- (b) Concrete apron Owned by Port
- (c) Dock Owned by Victoria Clipper

15. **Pier 86:**

- (a) Concrete fishing pier Owned by Port
- (b) Small concession building Owned by Port
- (b) Elevated conveyor belt structure Owned by Cargill

16. **Terminal 91:**

(a) Tip ends of piers 90 & 91 - Owned by Port

17. **Pier 27:**

(a) Wood ramp - Owned by Port

18. Terminal 2 East:

(a) None. However, Port has future plans to install rail lines (on filled aquatic lands) which it will own.

19. Terminal 30 North:

- (a) Sheetpile bulkhead -Owned by Port
- (b) Wooden dock Owned by Port

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Exhibit C -- Fills on State-Owned Aquatic Lands

PMA 22-080031 Port of Seattle

Please refer to Exhibit A -- Maps and Legal Description for information regarding fill location with reference to the following properites:

- 1. Terminal 2 East
- 2. Terminal 3
- 3. Terminal 5
- 4. Terminal 18
- 5. Terminal 25
- 6. Terminal 27
- 7. Terminal 30
- 8. Terminals 37- Pier 48
- 9. Pier 66
- 10. Pier 86

Terminal 108 Sediment Chemistry & Bioassay

'87 404 permit dredge chem & bioassay

Terminal 108 Biology

'88-89 mitigation site post-construction monitoring

Turning Basin Biology

Coastal America site monitoring

Terminal 115 Sediment Chemistry & Bioassay

'85 404 permit dredge chem & bioassay

'93 404 permit dredge chem & bioassay

Kellogg Island Biology

'89 biological assessment

Terminal 105 Sediment Chemistry & Bioassay

'85 404 permit dredge chem & bioassay maintenance

'85 404 permit dredge chem & bioassay construction

'94/95 Coastal America site chem.

Terminal 5 Sediment Chemistry & Bioassay

'84 404 permit dredge chem & bioassay

'91 404 permit dredge chem & bioassay

'92 404 permit dredge chem & bioassay

'94 404 permit dredge chem & bioassay

'95/96 404 permit dredge chem & bioassay

Southwest Harbor Sediment Chemistry, Bioassays, and Biology EIS Appendices

A-1,2,3,4 aquatic area assessments

B-1,2 aquatic area feasability study/cleanup action plan

F-3,4,5,6,7 specific aquatic environmental analysis

Terminal 18 Chemistry & Biology

'82 404 permit dredge chem

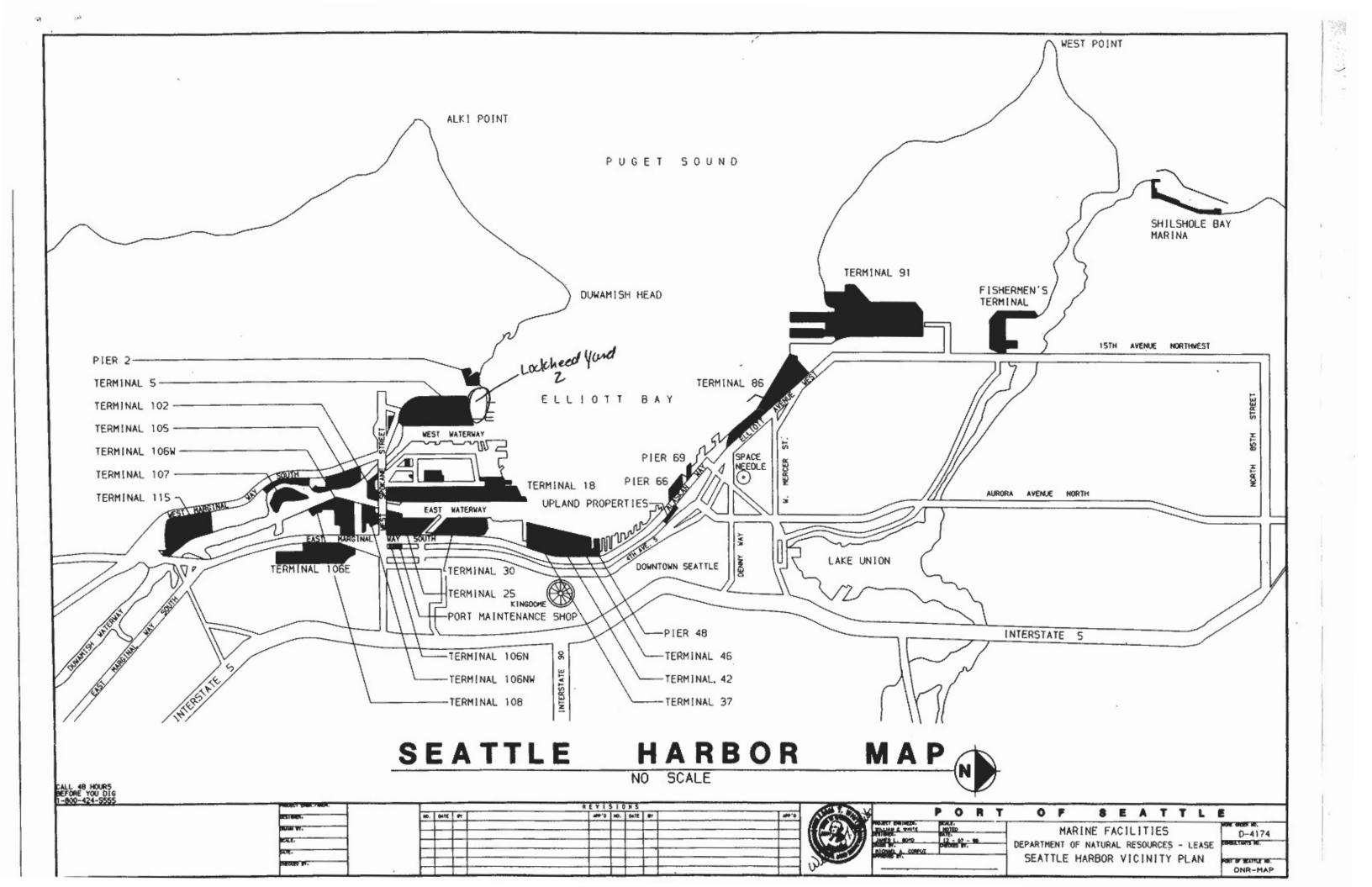
'83 underdock colonization study

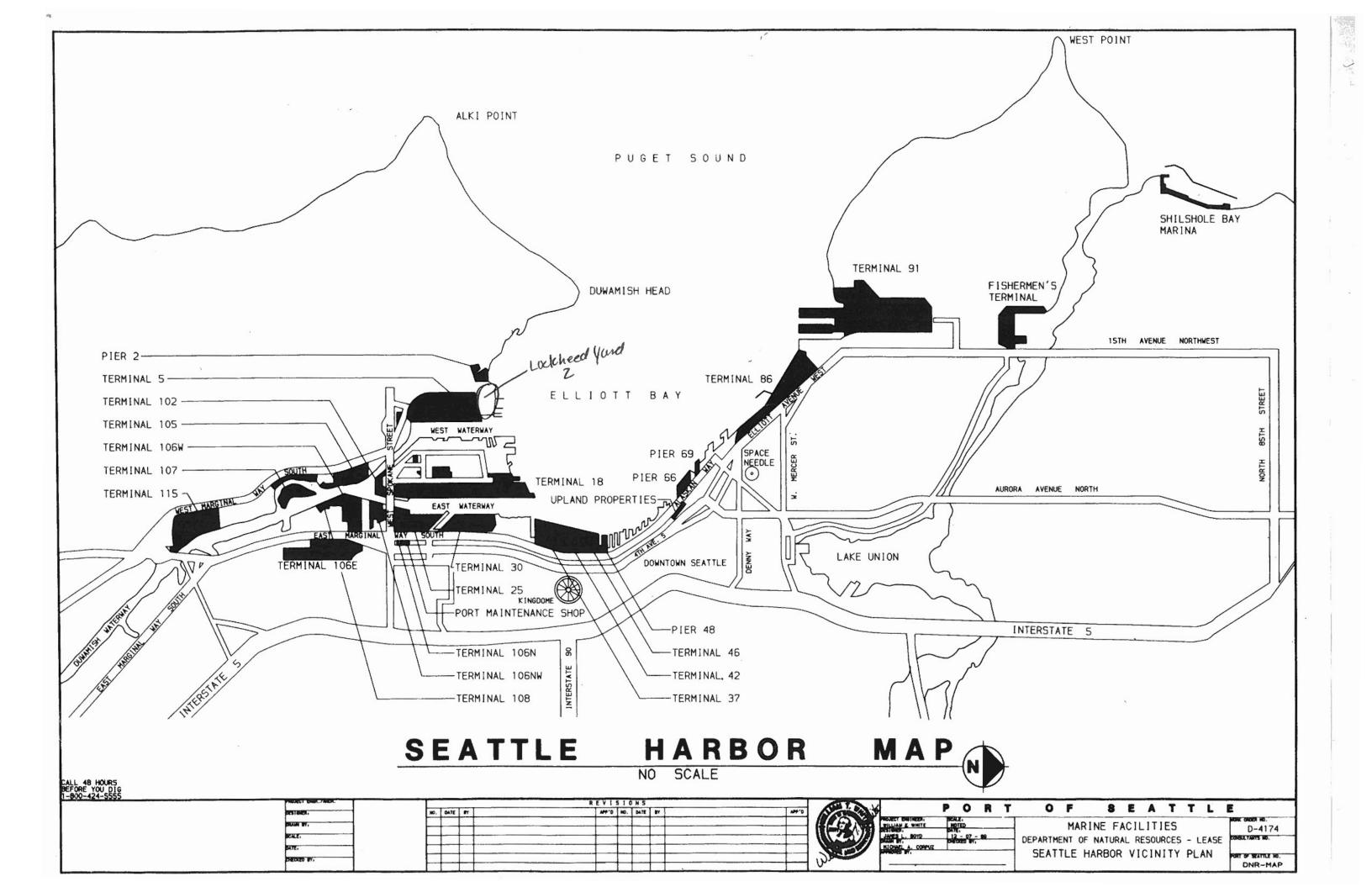
'96 404 permit dredge chem & bioassay THIS STUDY IN PROCESS

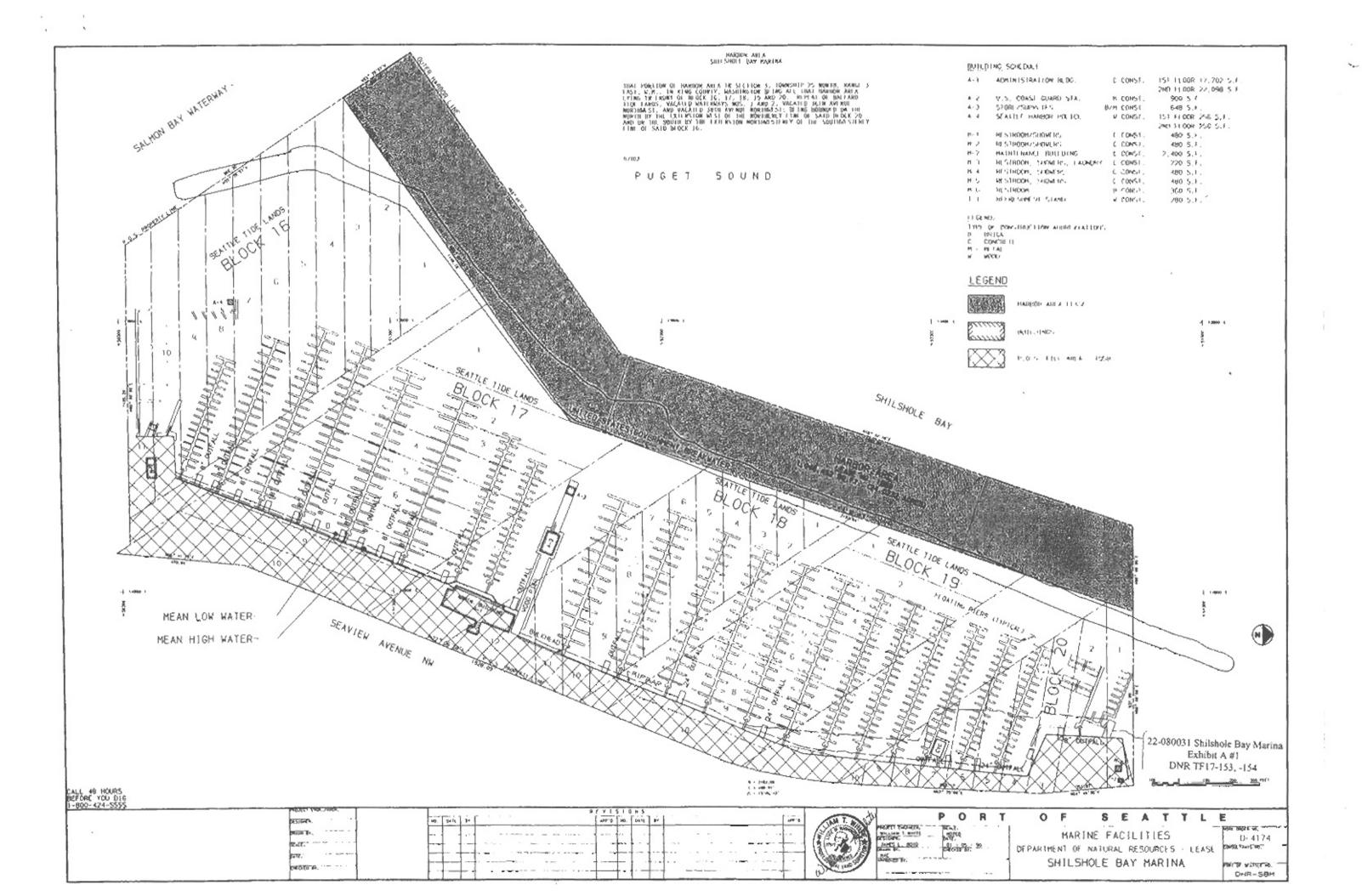
Harbor Island Superfund Supplemental Remedial Investigation

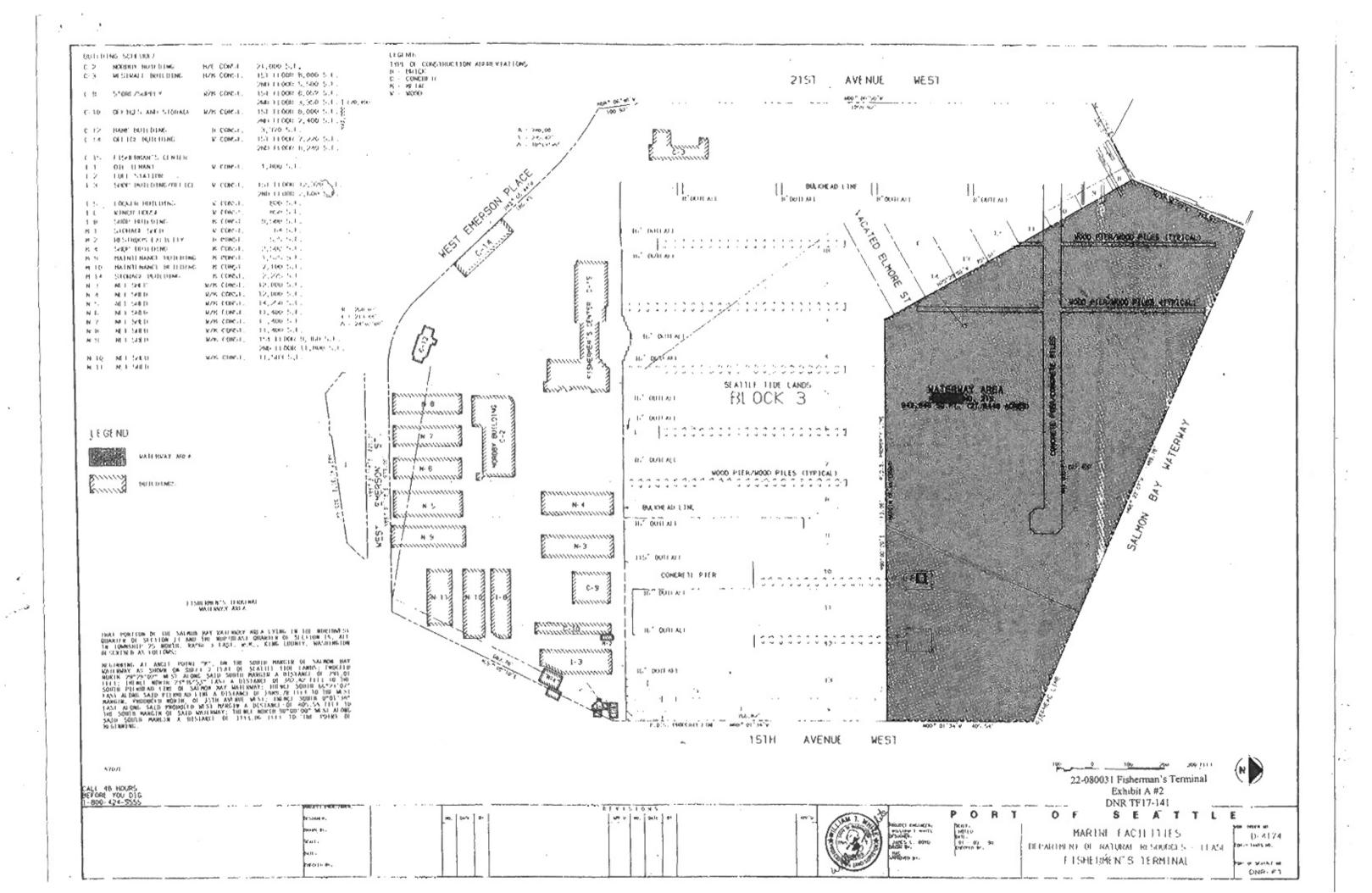
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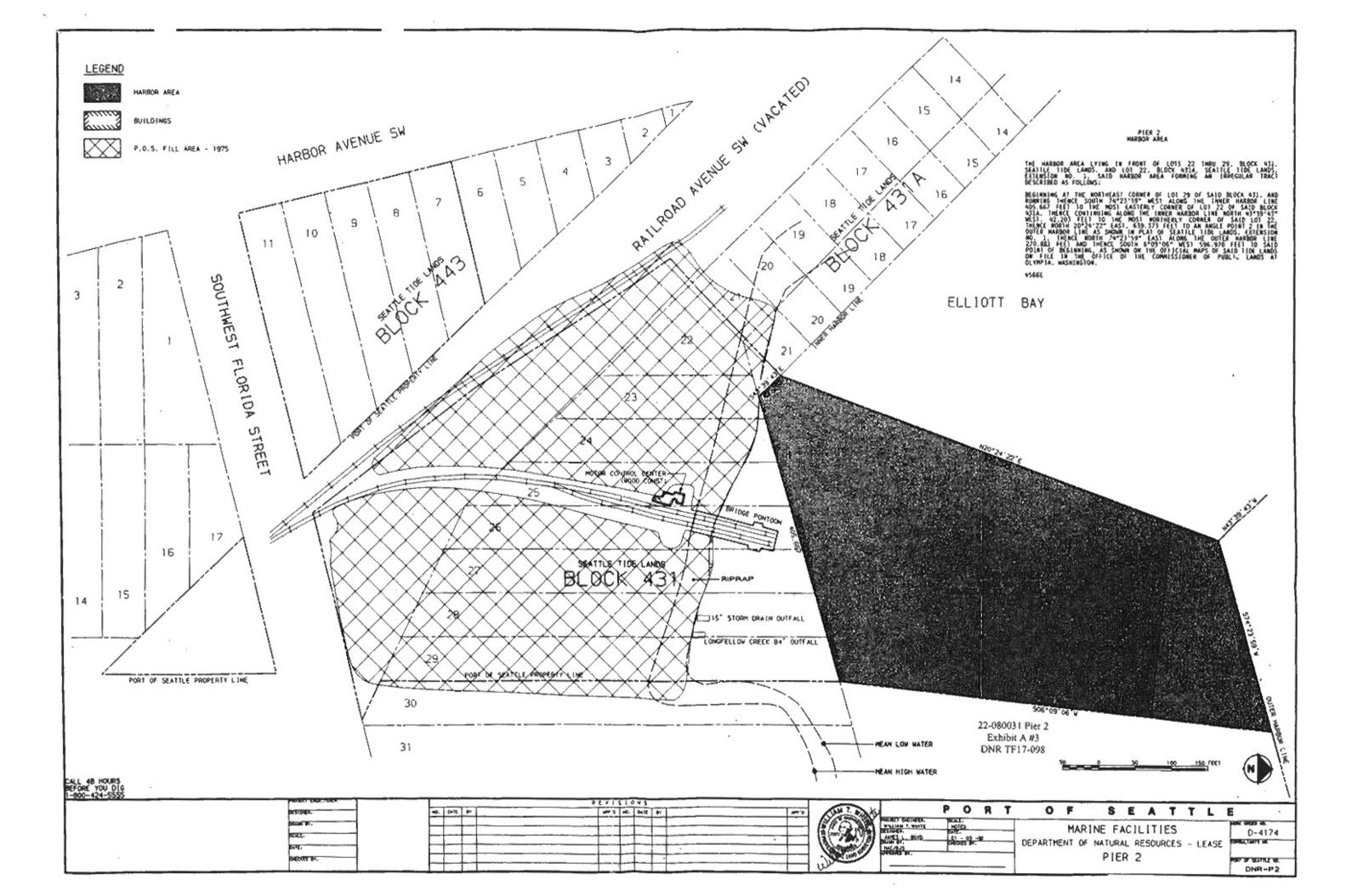
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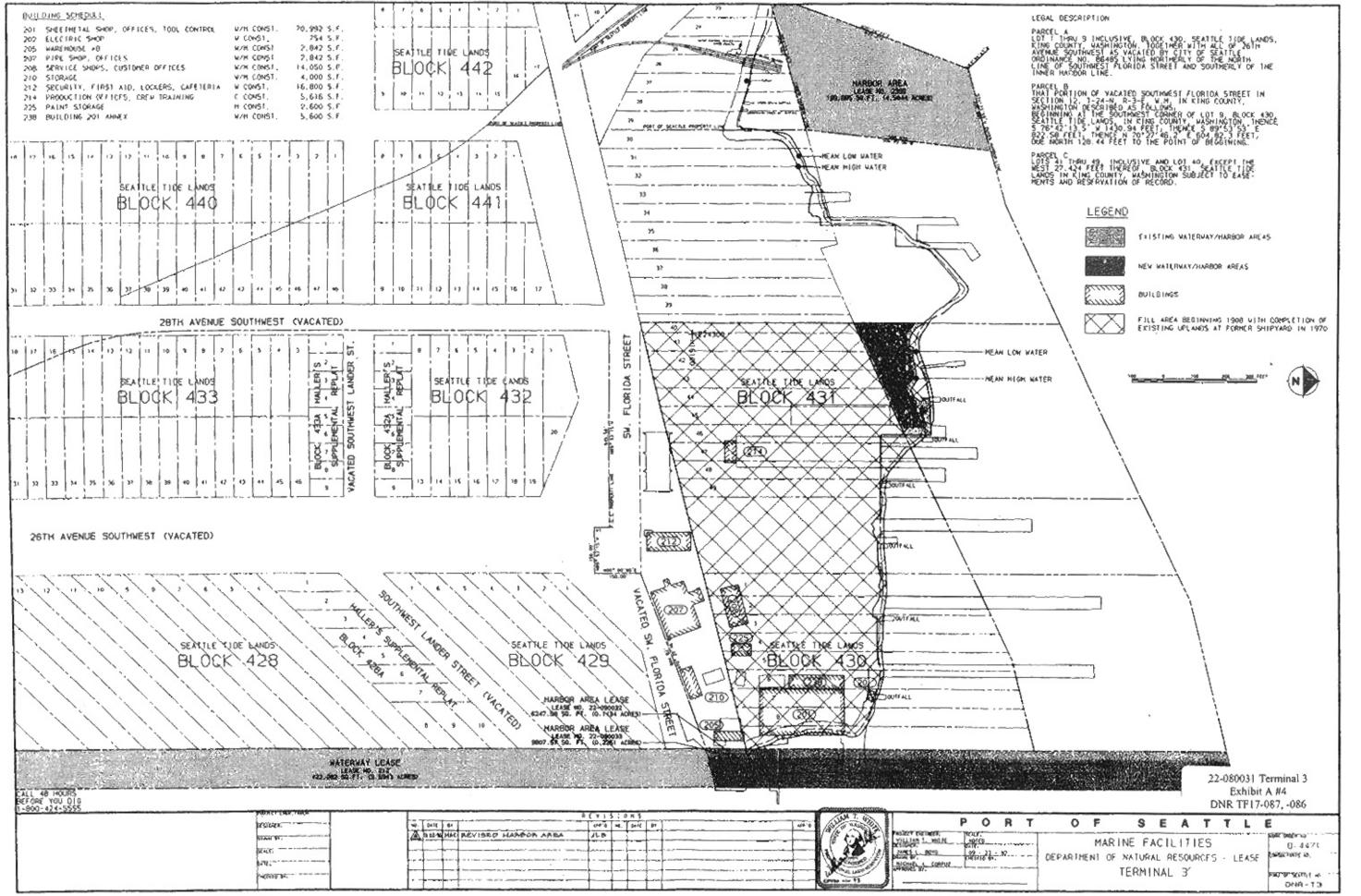


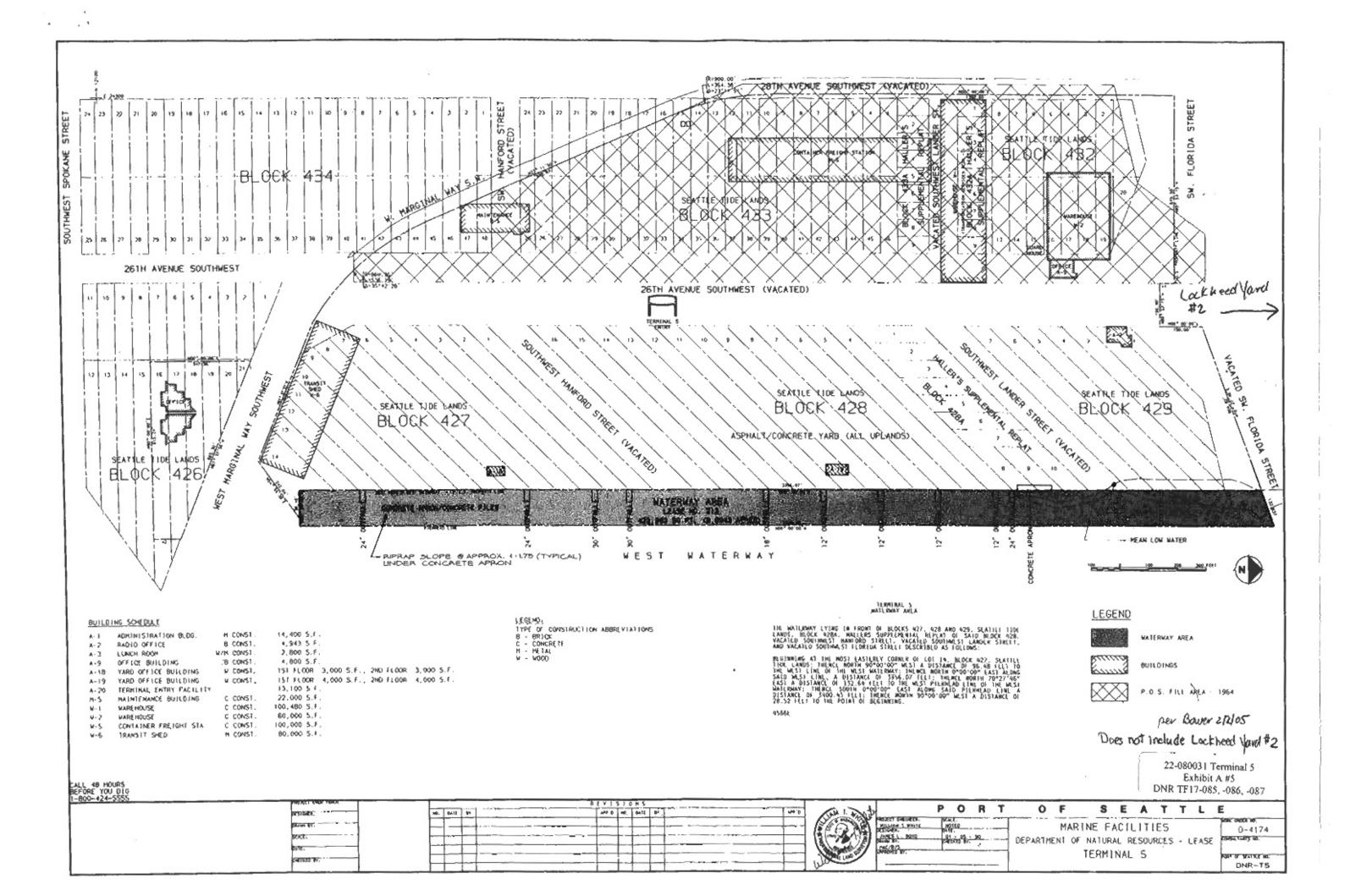


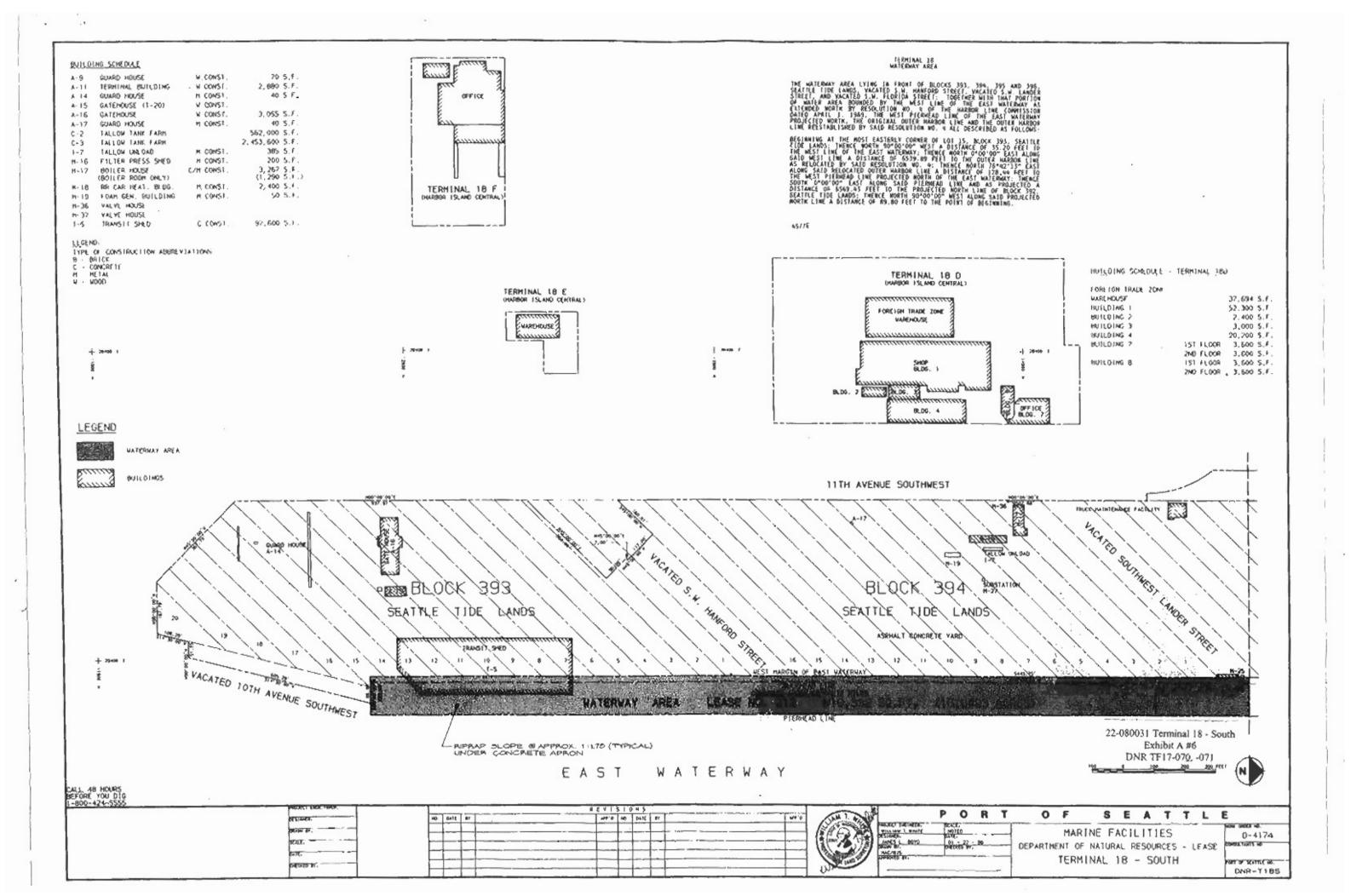


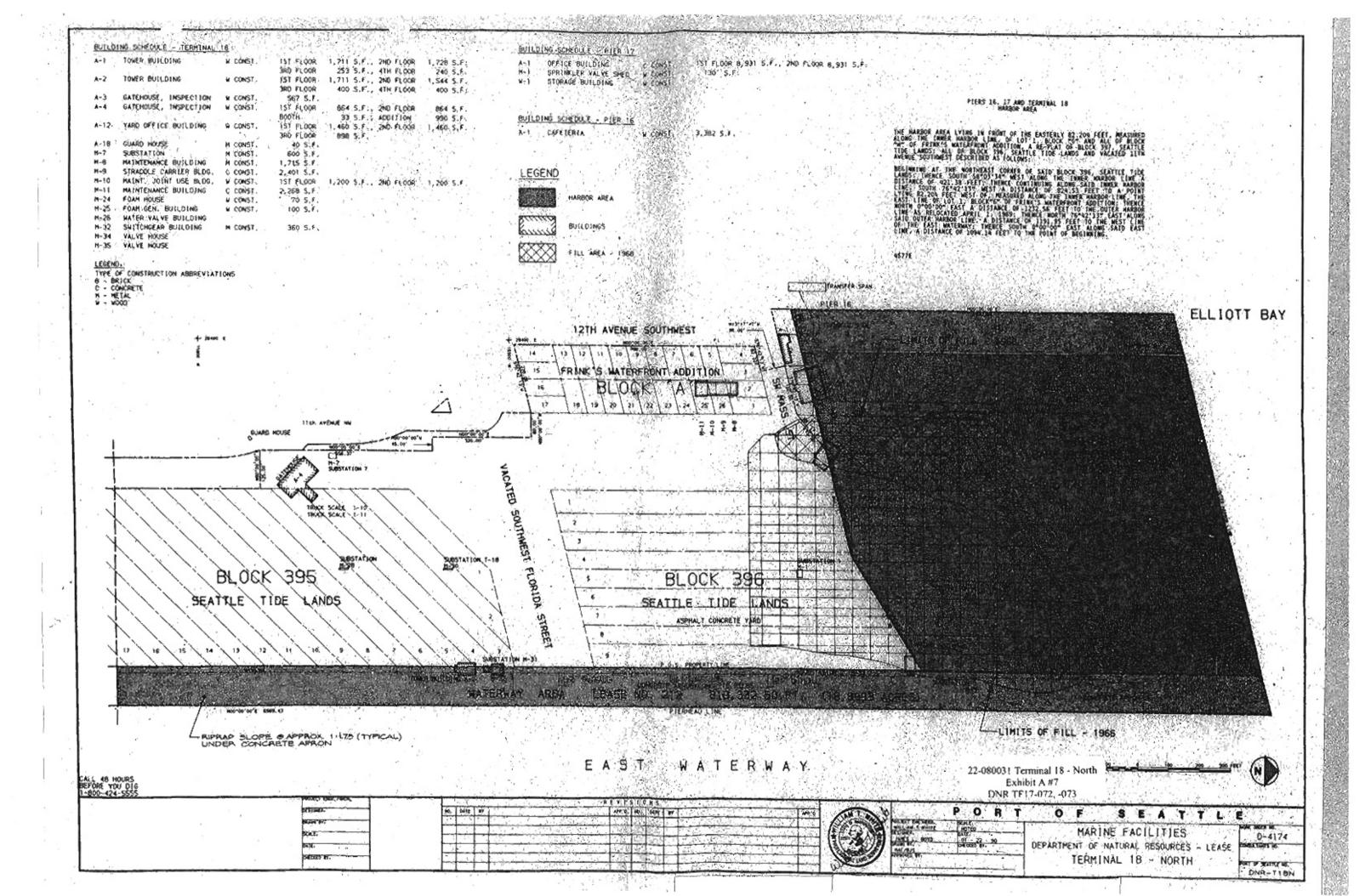


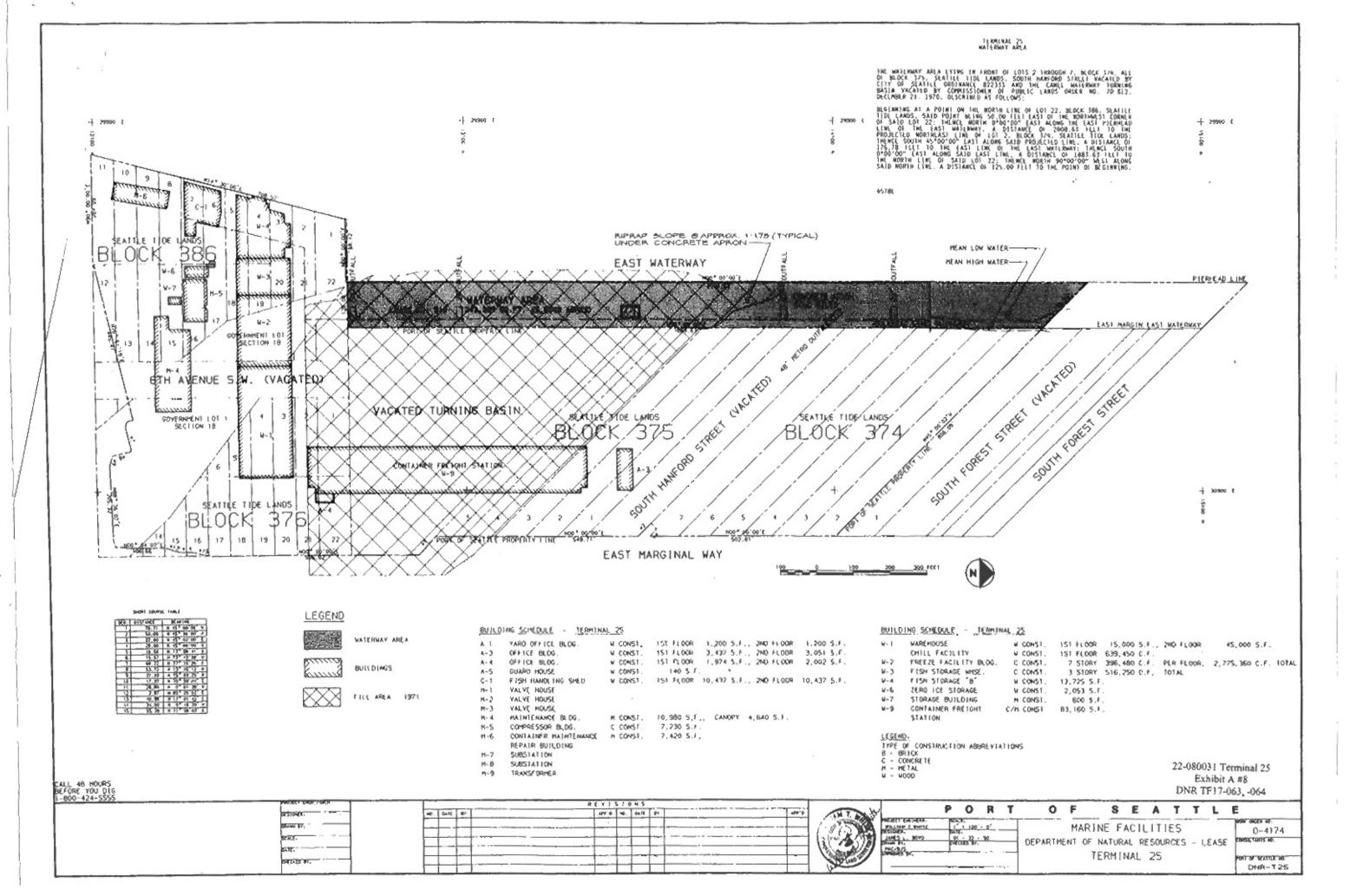


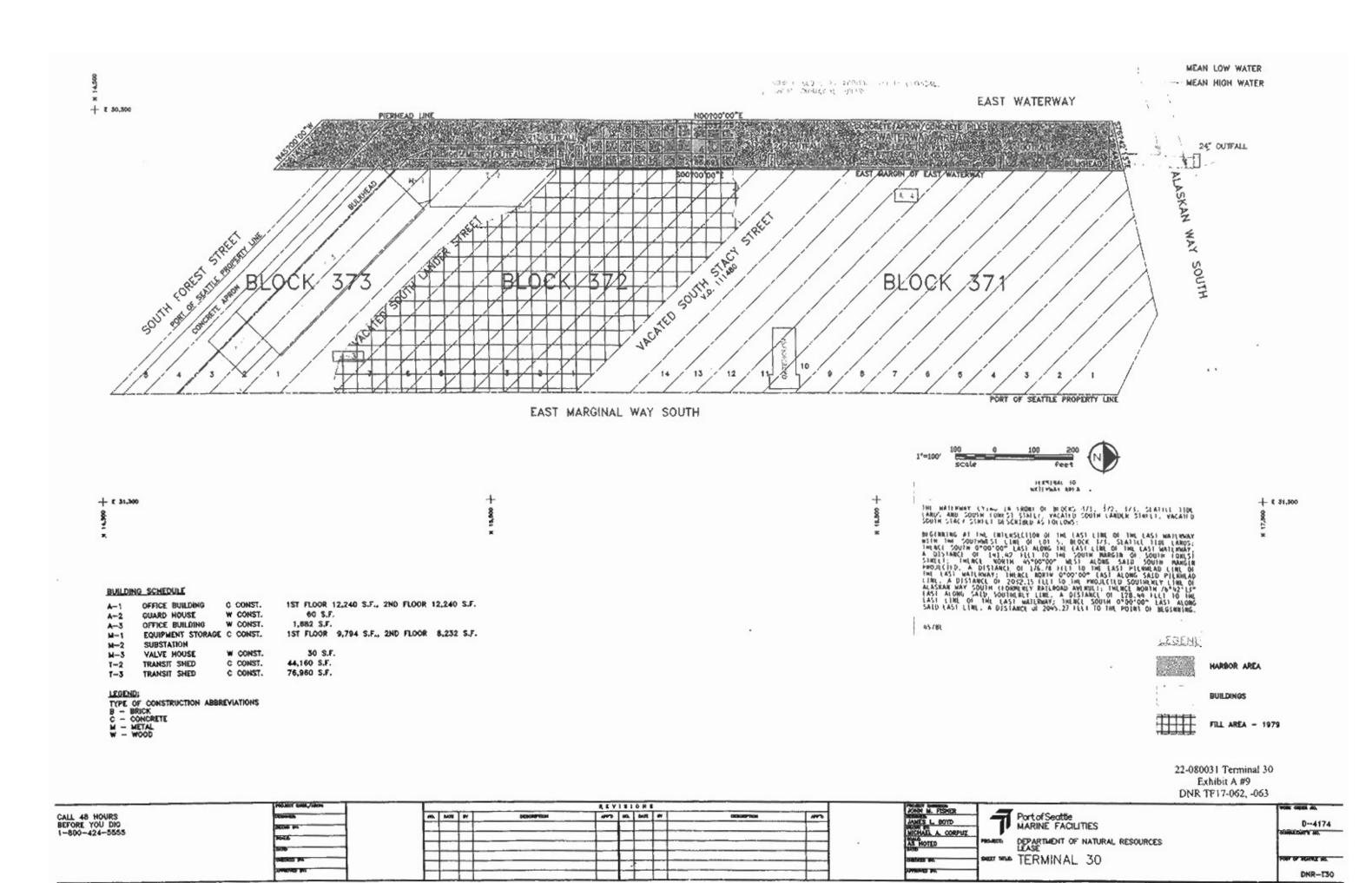


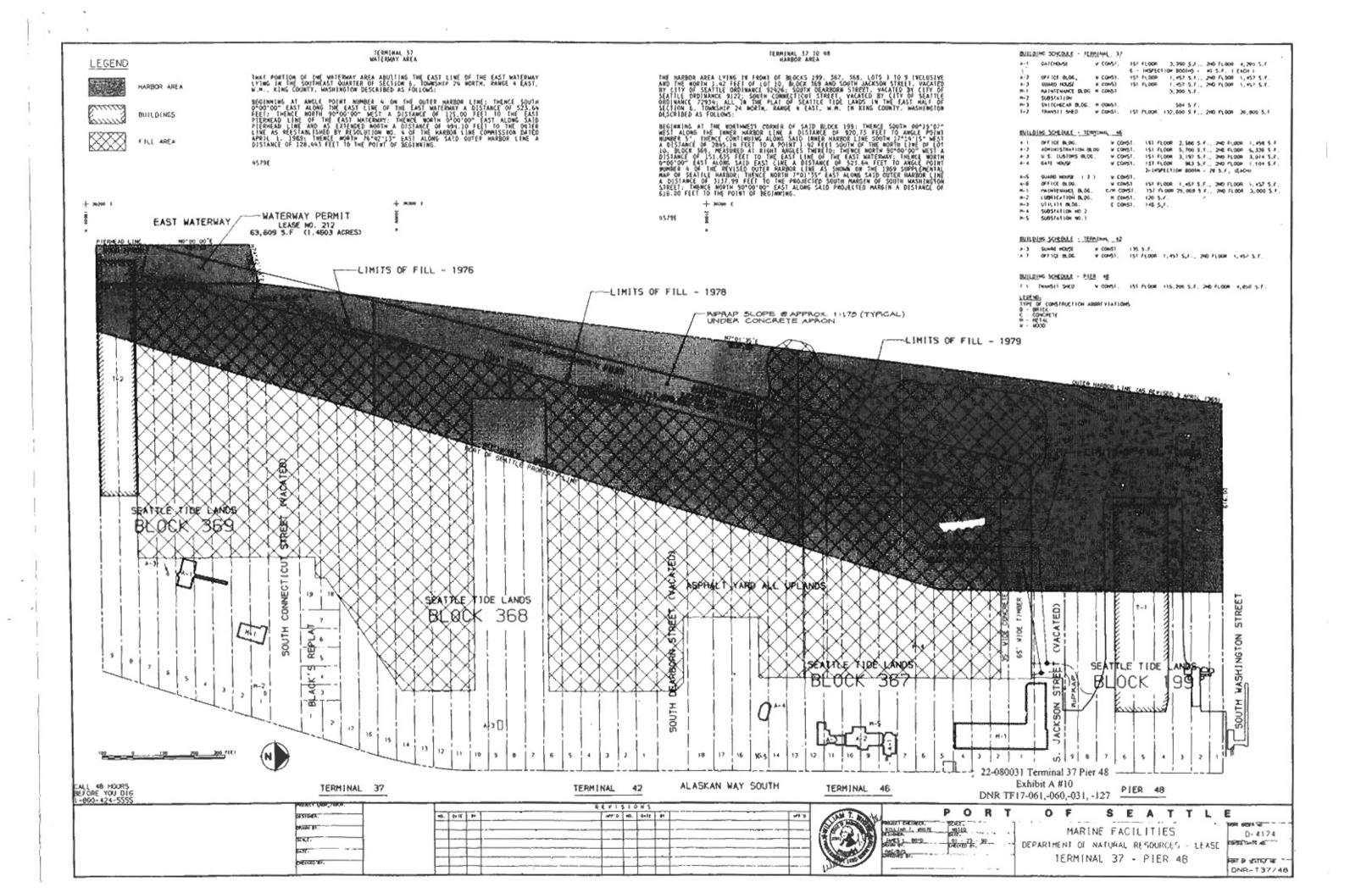


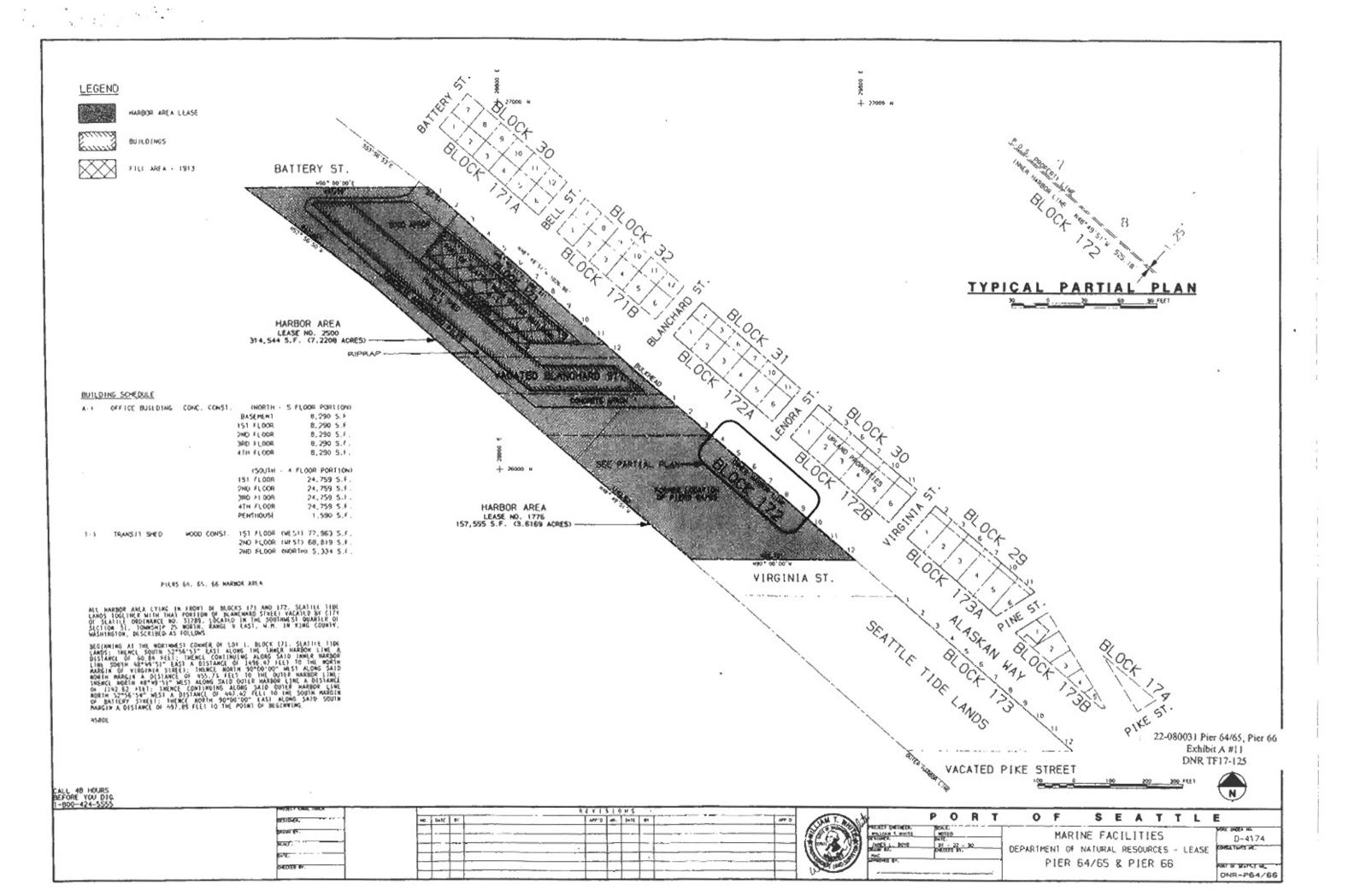


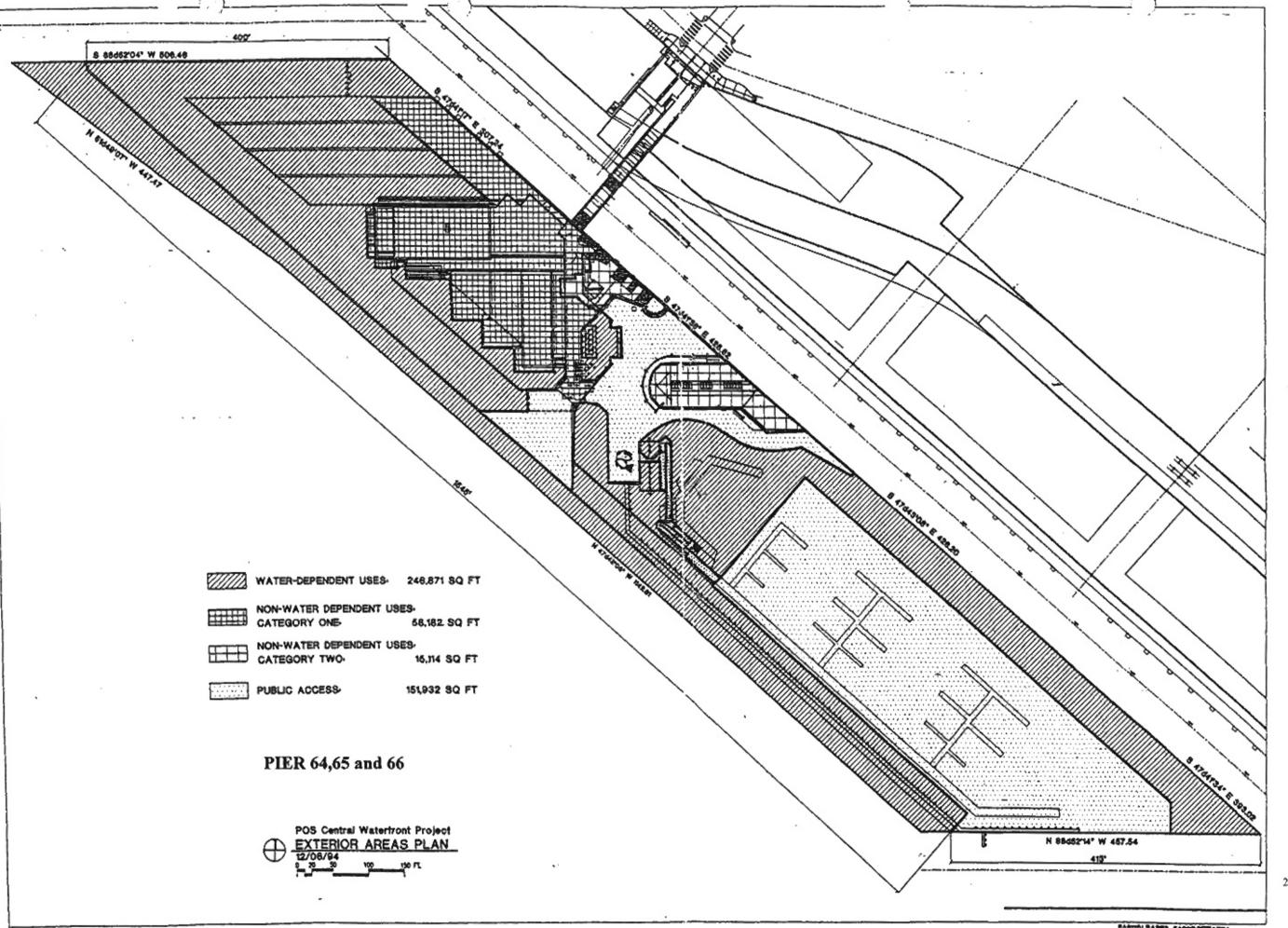




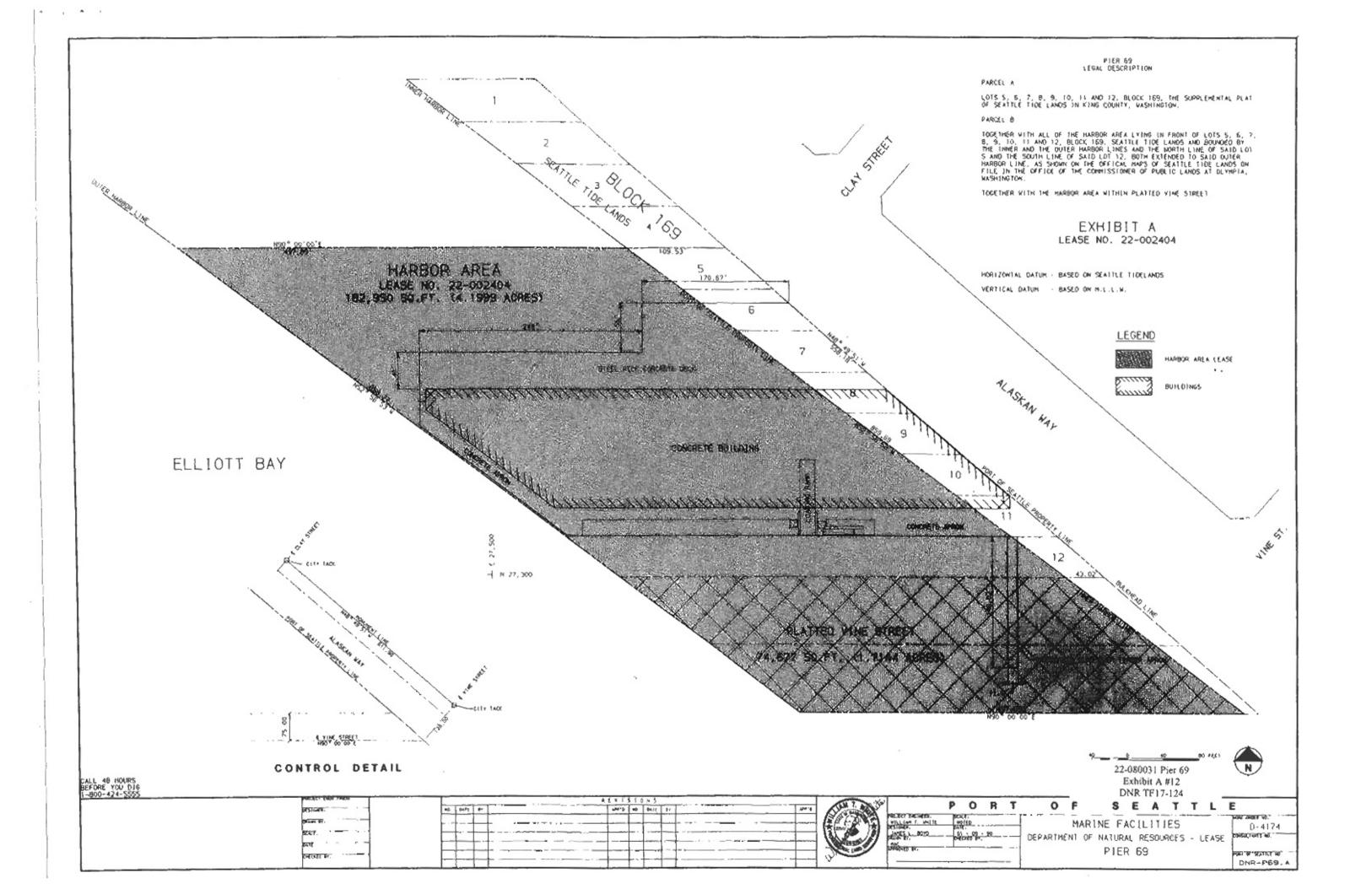


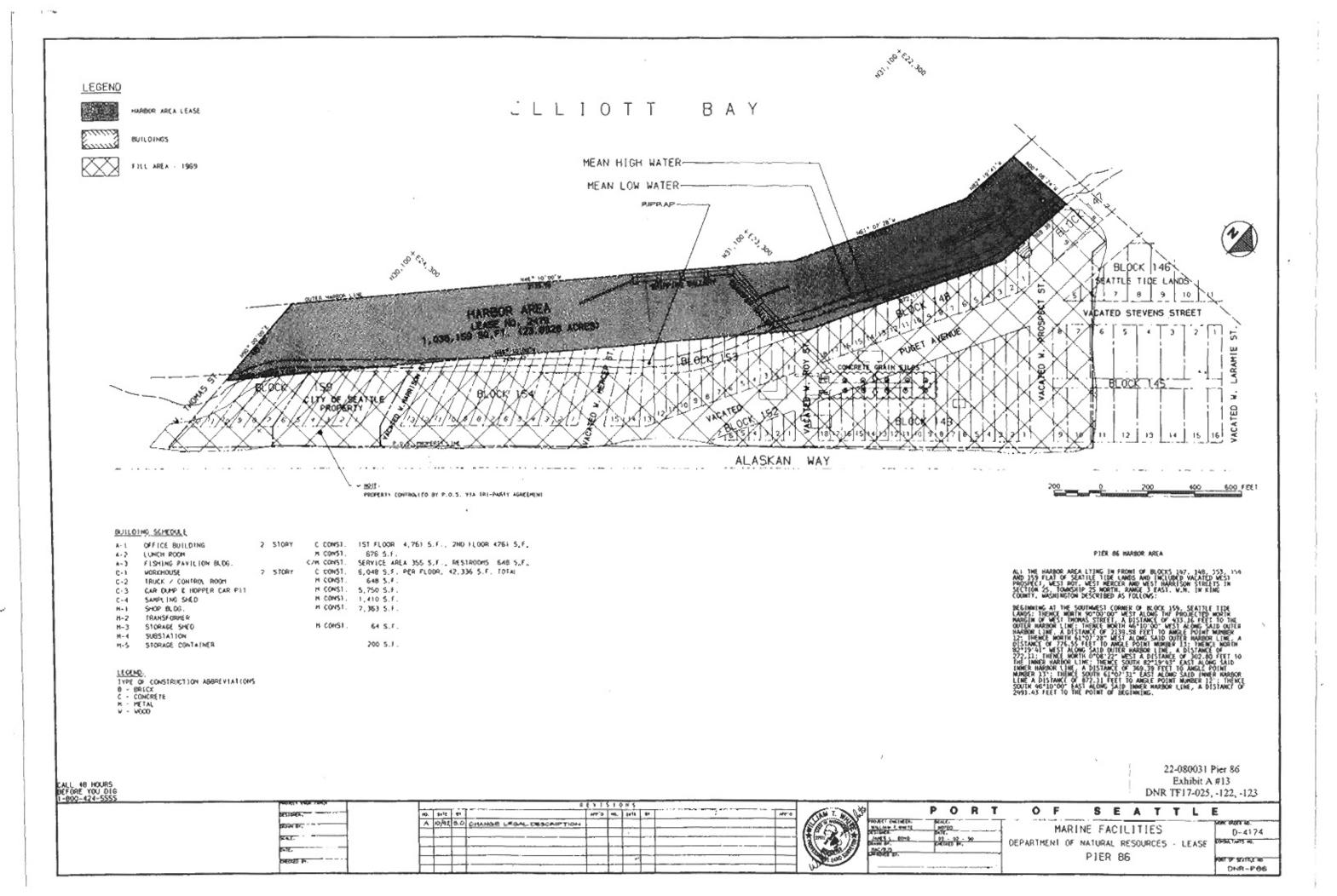


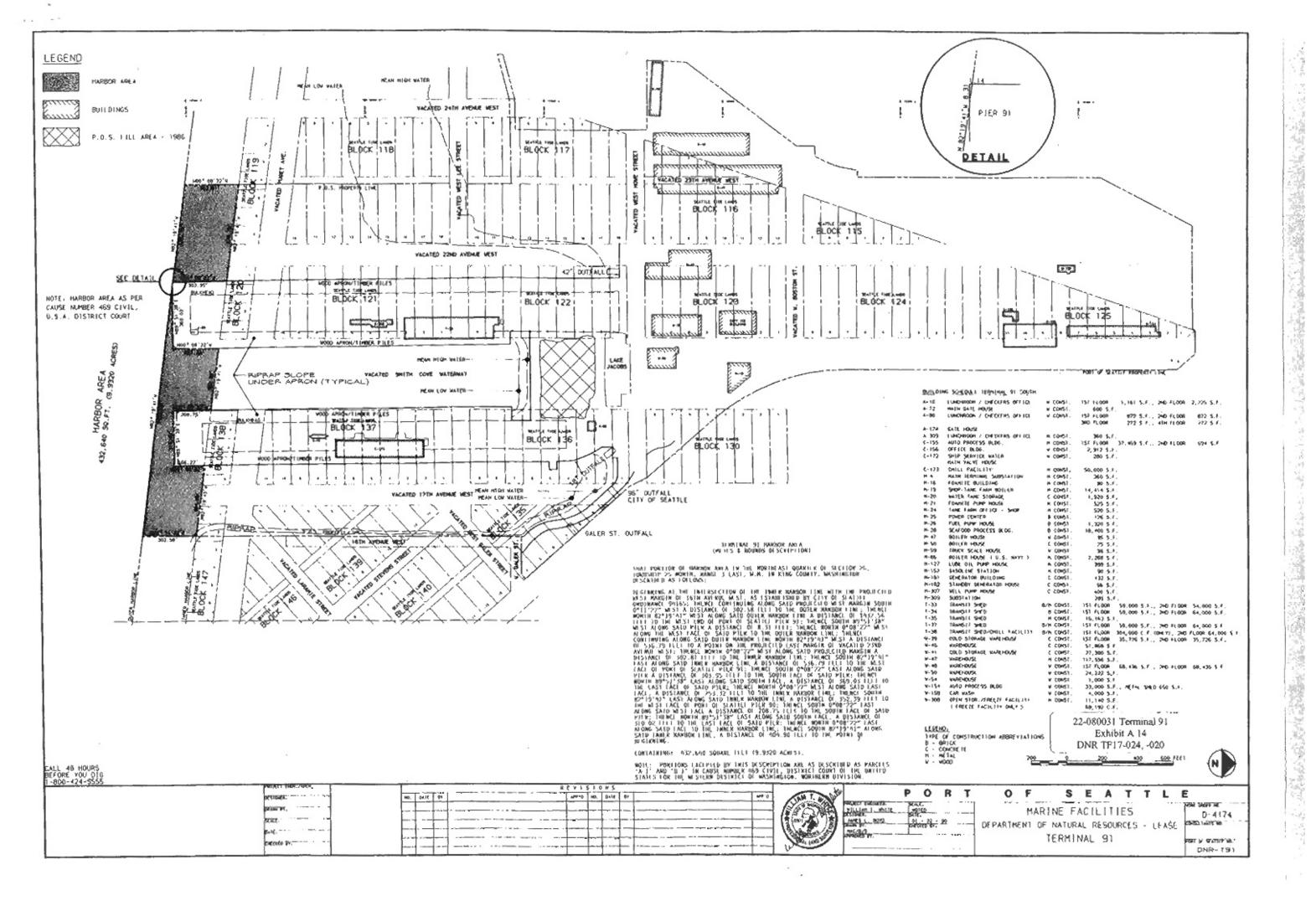


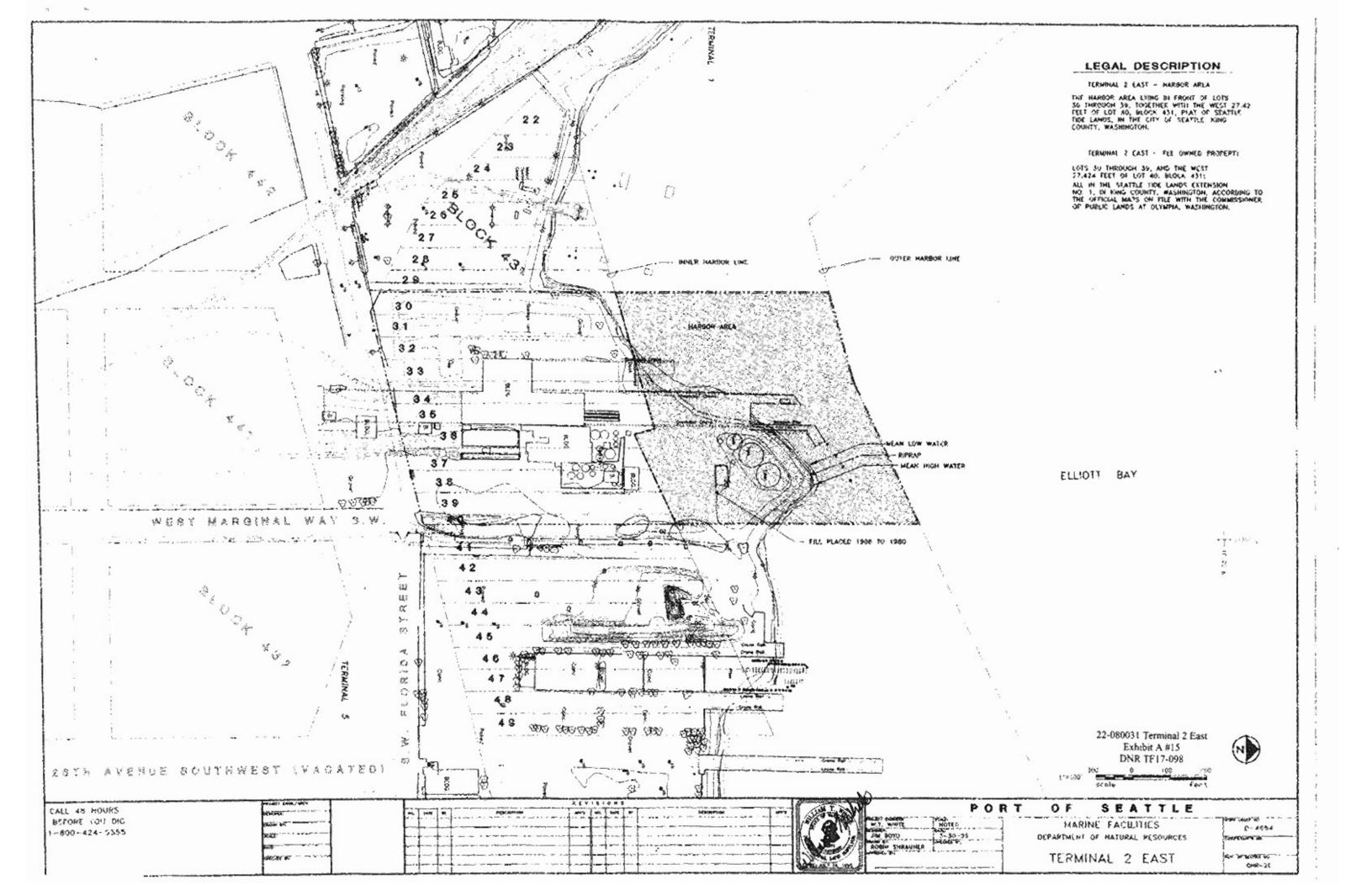


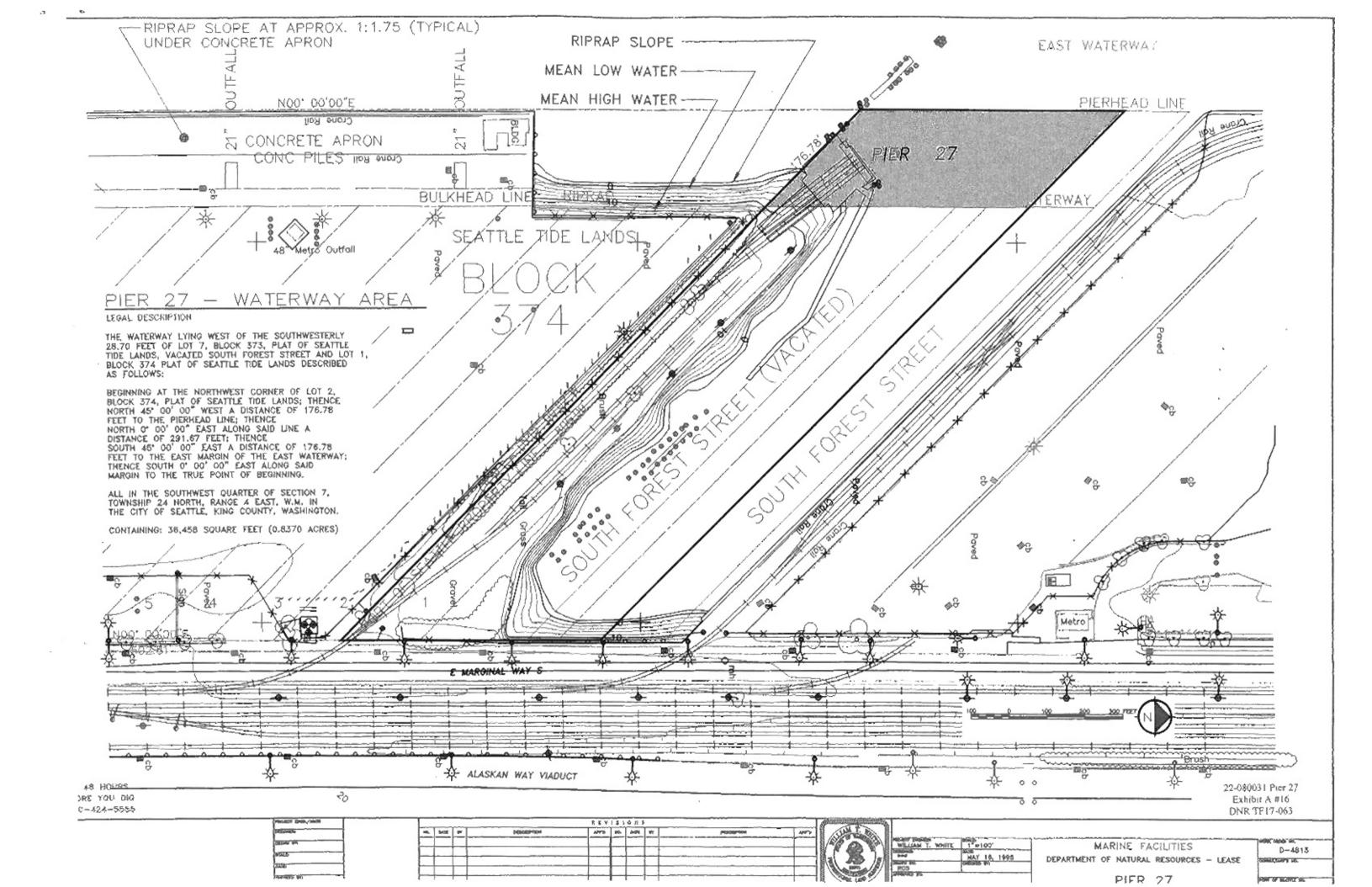
22-080031 Pier 64/65, Pier 66 Exhibit A #11-1 DNR TF17-125

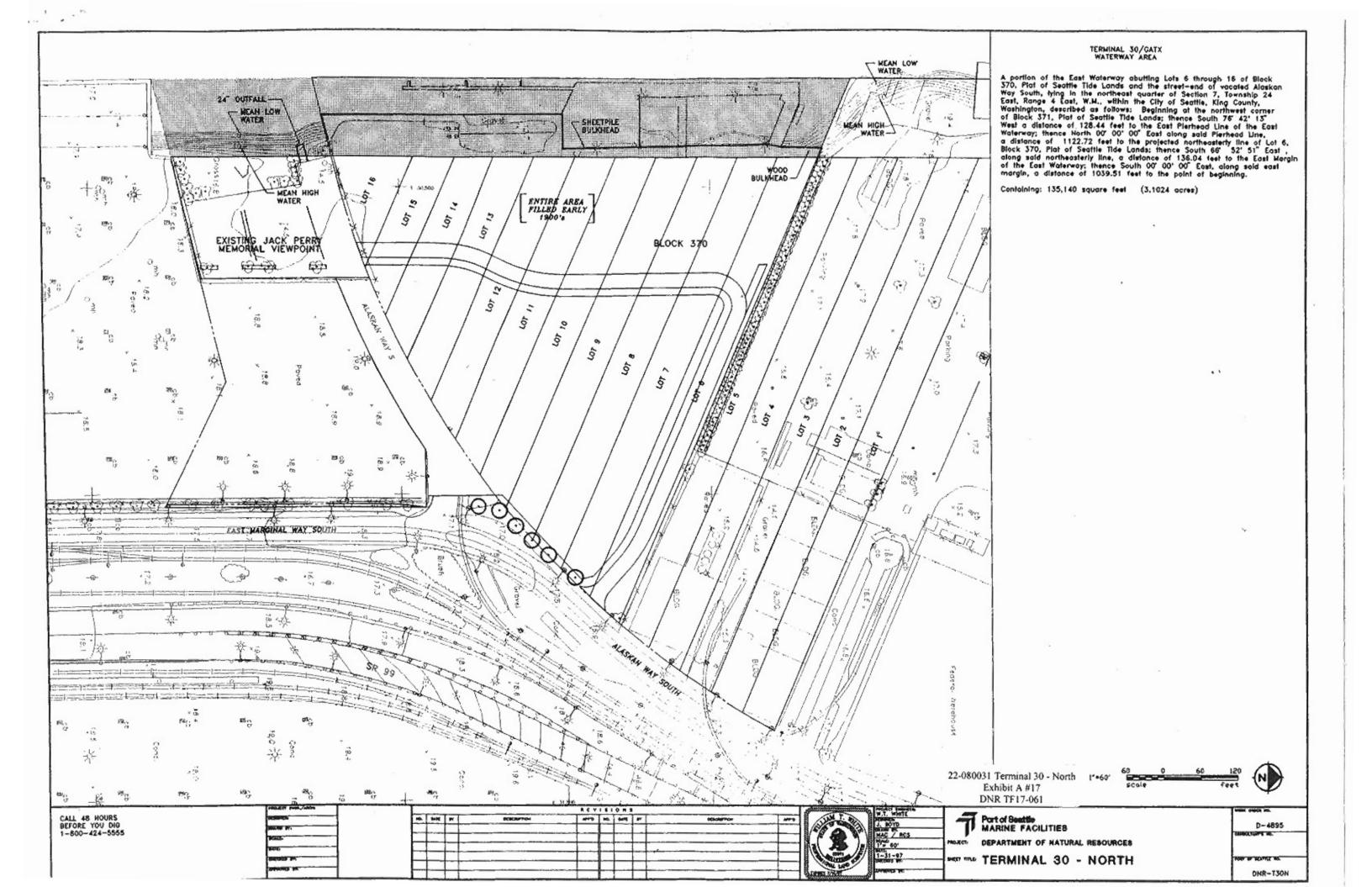












FOR 1 OF SEATTLE PIEN 6. AGREEMENT

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The Port filed a suit against DNR in <u>Port of Seattle v. DNR</u>, King County Superior Court No. 97-2-22329-6SEA (law suit). DNR filed a counterclaim against the Court in this law suit seeking declaratory relief.

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- 7. <u>Dismissal of the Suit</u>. DNR and the Port agree to dismiss with prejudice their respective claims in <u>Port of Seattle v. Department of Natural Resources</u>, King County Cause No. 97-2-22329-6SEA with each party bearing their own costs and attorneys fees.

Signed this 20 day of Hung, 1999.

STATE:

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

Signed the ____ day of _____, 1999.

PORT:

PORT OF SEATTLE

Title: Execution Duiston

Recording Requested By and When Recorded Mail To:

The Department of Natural Resources Aquatic Resources Division P.O. Box 47027 Olympia, WA 98504-7027



RECORDING MEMORANDUM

Amendment to Port Management Agreement No. 22-080031

- 1. Grantor:
 - a. Washington State Department of Natural Resources
 - b. 1111 Washington St SE M/S 47027 Olympia, WA 98504-7027
- 2. Grantee:.
 - a. Port of Seattle
 - b. 2711 Alaskan Way Seattle, WA 98121
- 3. Additional Grantee names on page N/A of document.
- 4. THIS Amendment to Port Management Agreement No. 22-080031
 ("Instrument") is made and granted by Grantor, Washington State Department of Natural Resources (DNR), a state agency, to the Port of Seattle ("Grantee"). For valuable consideration, DNR has granted all the rights, interests, and responsibilities in the above Amendment to Port Management Agreement No. 22-080031 to Grantee in the property (the "Property") with the following Legal Descriptions:
- 5. a. Abbreviated legal description: Bedlands fronting Lots 1 through 9, Block 199, PLAT OF SEATTLE TIDELANDS, the northeast quarter of Section 6, Township 24 North, Range 4 East, W. M., in King County, State of Washington.
 - b. Additional legal description is on page Exhibit A of document.
- DNR Document No.: 22-080031
- 7. Duration of Port Management Agreement: Thirty (30) Years, expiration date: 31st day of October, 2027.
- 8. Assessor's Property Tax Parcel Account Number(s): none



STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES PETER GOLDMARK, Commissioner of Public Lands

AMENDMENT TO PORT MANAGEMENT AGREEMENT

Agreement No. 22-080031

This Agreement is made between the PORT OF SEATTLE (the "Port"), a Government Agency, whose address is 2711 Alaskan Way, Seattle, Washington 98121, and the STATE OF WASHINGTON acting through the Department of Natural Resources (the "State"), whose address is 1111 Washington Street SE, Olympia, Washington 98504-7027.

BACKGROUND

- A. The State and the Port entered into Port Management Agreement No. 22-080031 ("PMA") on November 1, 1997, and the Port has managed lands subject to this agreement under the PMA or other agreements with the State since at least as early as February 1, 1958.
- B. Paragraph 3 of the PMA provides that any parcel which no longer meets the criteria established by law for inclusion in the PMA may be deleted from the PMA upon mutual agreement of the Port and the State.
- C. A portion of the property identified in the PMA as Parcel 10 is no longer eligible for inclusion in the PMA because the Port has sold, and now lacks the requisite control over, the abutting upland property.
- D. The Port has requested said portion of Parcel 10 be removed from the PMA.
- E. The State believes that it is in the best interests of the State of Washington to grant the Port's request.

PMA Amendment 1 22-080031

IT IS THEREFORE AGREED that the PMA is hereby amended as follows:

SECTION 1 PMA AMENDMENTS

Exhibit A to the PMA, which provides the legal descriptions for the state-owned aquatic lands under Port management pursuant to the PMA, is hereby amended to remove a portion of the parcel of land identified on page number ten (10) of exhibit A as "Terminal 37 – Pier 48" (PMA Parcel 10). The property to be removed from the PMA pursuant to this Agreement (the "Property") is directly waterward of the upland described in the legal description attached as Exhibit A to this amendment.

The Port shall provide a complete survey, which meets the State's requirements of records of survey, of the portion of the property identified as "Terminal 37 – Pier 48" that will remain in the PMA following amendment in accordance with Sections 3 and 4 of this Agreement.

SECTION 2 NO RELEASE

This Agreement does not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the date of this Agreement under the Comprehensive Environmental Response, Compensation, and Liability Act, the Model Toxics Control Act, or other laws that create cleanup obligations. The Port acknowledges that to the extent allowed by law it has the obligation to defend, indemnify, and hold the State of Washington, as the owner of aquatic lands, and the Department of Natural Resources, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or the Department of Natural Resources related to or arising out of the use and control of the property to be removed from the PMA by the Port or anyone acting under authority of the Port from the PMA Application Date through the end of the Term of the PMA in accordance with Section 8(d) of the PMA and that nothing in this Agreement affects the Port's obligation. However, the parties recognize that a Purchase and Sale Agreement (PSA) for this property was entered into by the Washington State Department of Transportation and the Port on July 23, 2008. The PSA identifies the State of Washington, Department of Transportation as the "Buyer" and the Port of Seattle as the "Seller." The PSA provides for the Buyer to undertake certain responsibilities with respect to hazardous substances as set forth in paragraphs 11.1-12 and elsewhere in the PSA. This Amendment to the PMA (No. 22-080031) does not affect or alter the responsibilities assumed by the State of Washington, Department of Transportation as the "Buyer" under the PSA.

SECTION 3 RECORDS OF SURVEY

The Port will provide the State with complete records of surveys that comply with State standards, including, but not limited to, the standards and guidelines set forth in WAC 332-130, for all PMA parcels by July 1, 2010. The Port will submit to the State for approval two (2) complete sets of amended Exhibits B and C for the PMA by September 1, 2010. The Port will confirm the accuracy of all PMA exhibits annually.

SECTION 4 REPORTING

The Port acknowledges that it continues to have an ongoing obligation to report to the State through the Department of Natural Resources any of the following:

- a) Changes in Port ownership of uplands abutting PMA parcels.
- b) Changes in planned or actual uses of PMA property.
- c) Documentation of water-dependent / nonwater-dependent use areas and classifications.
- d) Development of Improvements.
- e) Development of authorized Fills, Confined Aquatic Disposal Sites, or Mitigation Sites
- f) Creation of an easement through PMA Property.

SECTION 5 WARRANTIES

The Port represents and warrants to the State that (1) the PMA is in full force and effect; (2) the Port is not in default or breach of the PMA; (3) the Port has no knowledge of any claims, offsets, or defenses of the Port under the PMA; and (4) to the best of the Port's knowledge, the property managed under the PMA is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 6 CONFIRMATION OF PMA

All other terms and conditions of Port Management Agreement No. 22-080031 not inconsistent with this Lease Amendment are hereby affirmed and ratified.

SECTION 7 REMOVAL OF IMPROVEMENTS

The Port, in accordance with Section 15(b) of the PMA, will remove all improvements on the state-owned aquatic land removed from the PMA by this Agreement. The Port shall bear all costs of removal and of returning the parcel to the condition existing prior to placement of the improvements as set forth in PMA Section 15(b). The State acknowledges that the Port has contracted with the Washington State Department of Transportation (WSDOT), to fulfill the Port's obligation to remove the improvements occupying the Property. The State agrees to permit the Port the opportunity to remove the improvements through its contract with WSDOT, provided that WSDOT diligently pursues removal of the improvements and obtains any use authorization for the Property required by the State for the use of the Property to accomplish removal of the improvements. In return, the Port agrees that it will not assert any statute of limitations, laches, or any other defense based upon delay or the passage of time in any legal proceeding commenced within six years of the date of this Agreement as a defense to a claim by the State for breach of the Port's obligation to remove the improvements from the Property.

SECTION 8 THIRD PARTIES

This Agreement is intended solely for the benefit of the State and the Port and does not benefit, or create rights for, third parties, including, but not limited to, WSDOT. This Agreement affects no right, claim, immunity, or defense the State or the Port may have against third parties, including, but not limited to WSDOT, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

EXHIBITS

THIS AGREEMENT is subject to the terms and conditions of the exhibit referenced herein, which is attached hereto and by this reference made a part hereof.

Exhibit: Exhibit A, Legal Description of Abutting Upland

THIS AGREEMENT requires the signature of all parties and is effective as of the date of the last signature below.

PORT OF SEATTLE

Executed this / Chay of / , 20 C

Tay Yoshitani

Chief Executive Officer 2711 Alaskan Way Seattle, WA 98121

206-728-3000

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Executed this 24 day of August, 20 09

Peter Goldmark

Commissioner of Public Lands

1111 Washington Street SE

Olympia, WA 98504

360-902-1000

PMA Amendment

Approved as to Form on 7/31/09

By: Terence A. Pruit

Assistant Attorney General, State of Washington

22-080031

PORT ACKNOWLEDGMENT

STATE OF Washington	_)	
COUNTY OF King)	SS
	. /	

I certify that I know or have satisfactory evidence that Tay Yoshitani, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the **Chief Executive Officer of the Port of Seattle** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:8/10/2009	Signature) Kathryn Showen
(Seal or stamp)	Julio Kathryn Thomas (Print Name)
STA STA	Notary Public in and for the State of Washington, residing at
Mining.	Bothell, wat

My appointment expires 1-22-11

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)	
County of) ss	
I certify that I know or have satisfactory evidence the appeared before me, and said person acknowledged that he was authorized to execute the instrument and Public Lands, and ex officio administrator of the De Washington to be the free and voluntary act of such	that he signed this instrument, on oath stated dacknowledged it as the Commissioner of partment of Natural Resources of the State of
the instrument. Dated: £2509	Jan Patt
(Seal or stamp)	(Signature) Rest Peter t
	(Print Name)
NOTARY PUBLIC 6-28-10	Notary Public in and for the State of Washington, residing at Chympau Wh. My appointment expires 4-23-10

EXHIBIT A Pier 48 PMA Amendment 09 Port of Seattle PMA No. 22080031

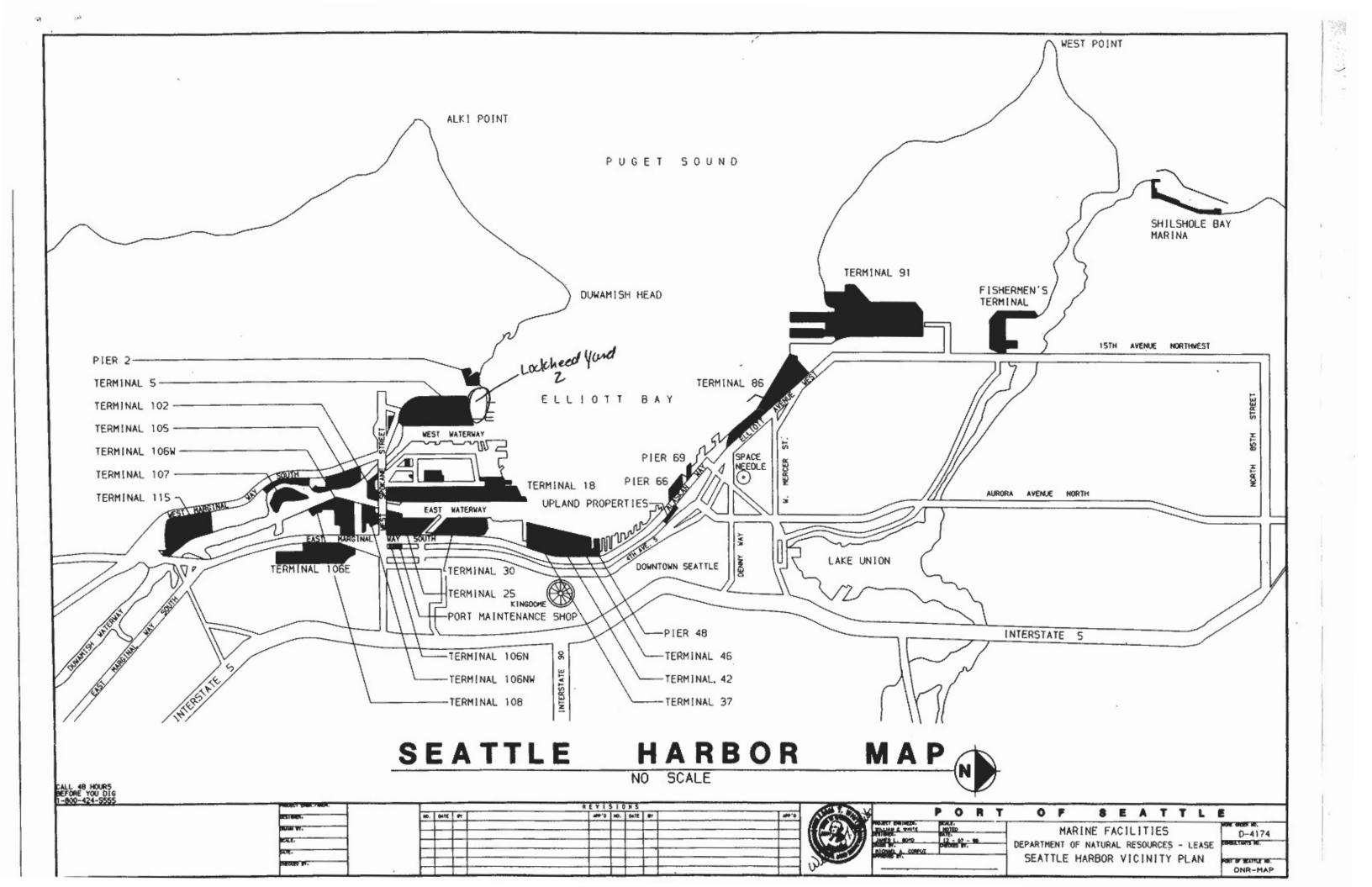
Legal description of uplands abutting the parcel to be removed from the PMA.

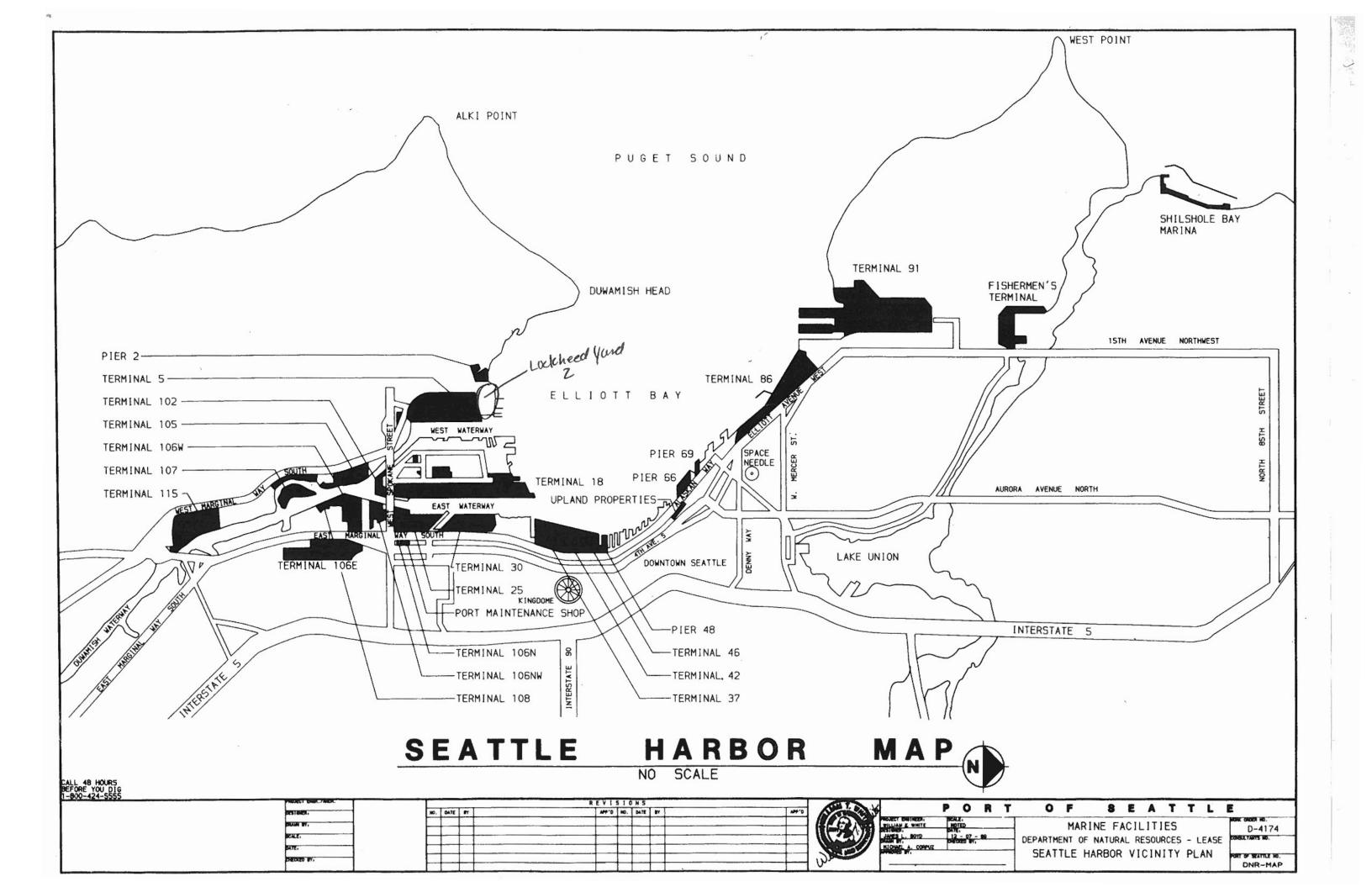
That portion of Lots 1 through 9, Block 199, PLAT OF SEATTLE TIDELANDS, according to the official maps on file at the office of the Commissioner of Public Lands in Olympia, Washington, said Block situated in the Tidelands of the Northeast Quarter of Section 6, Township 24 North, Range 4 East, Willamette Meridian, King County, Washington, more particularly described as follows:

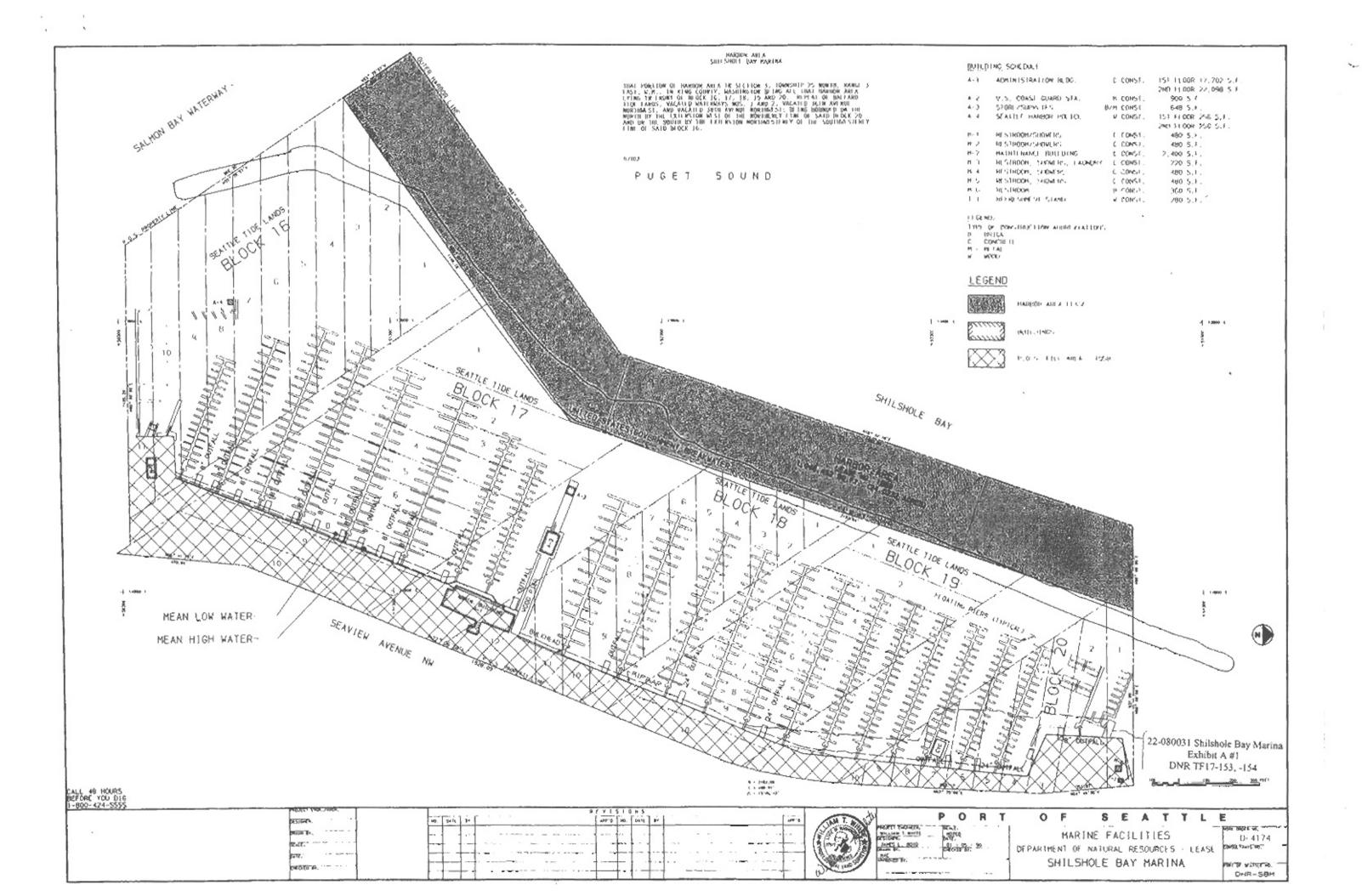
Beginning at the northeast corner of said Lot 1, said corner situated at the intersection of the westerly right of way margin of Alaskan Way with the southerly right of way margin of S. Washington St.; Thence North 88°43'31" West along said southerly margin 180.39 feet to the toe of a concrete seawall as existing April, 2005; Thence South 02°38'50" West, along said seawall toe, 121.03 feet; Thence South 00°51'26" West, along said seawall toe, 324.61 feet; Thence South 01°05'06" East, along said seawall toe, 61.03 feet; Thence North 84°42'34" West, along said seawall toe, 25.84 feet; Thence, North 87°55'19" West, along said seawall toe, 66.42 feet to the westerly end of said concrete seawall and beginning of the toe of a riprap seawall; Thence continuing North 87°55'19" West, along said riprap seawall toe, 29.26 feet; Thence South 00°11'58" East, along said seawall toe, 9.11 feet to the south line of Lot 9 of said Block 199; Thence South 88°44'15" East, along said south line, 310.03 feet to the westerly margin of said Alaskan Way; Thence North 01°10'09" E, along said westerly margin, 400.77 feet to the beginning of a curve concave to the west, having a radius of 664.17 feet; Thence Northwesterly, along the arc of said curve to the left and margin through a central angle of 08°37'36" an arc distance of 112.25 feet to the Point of Beginning.

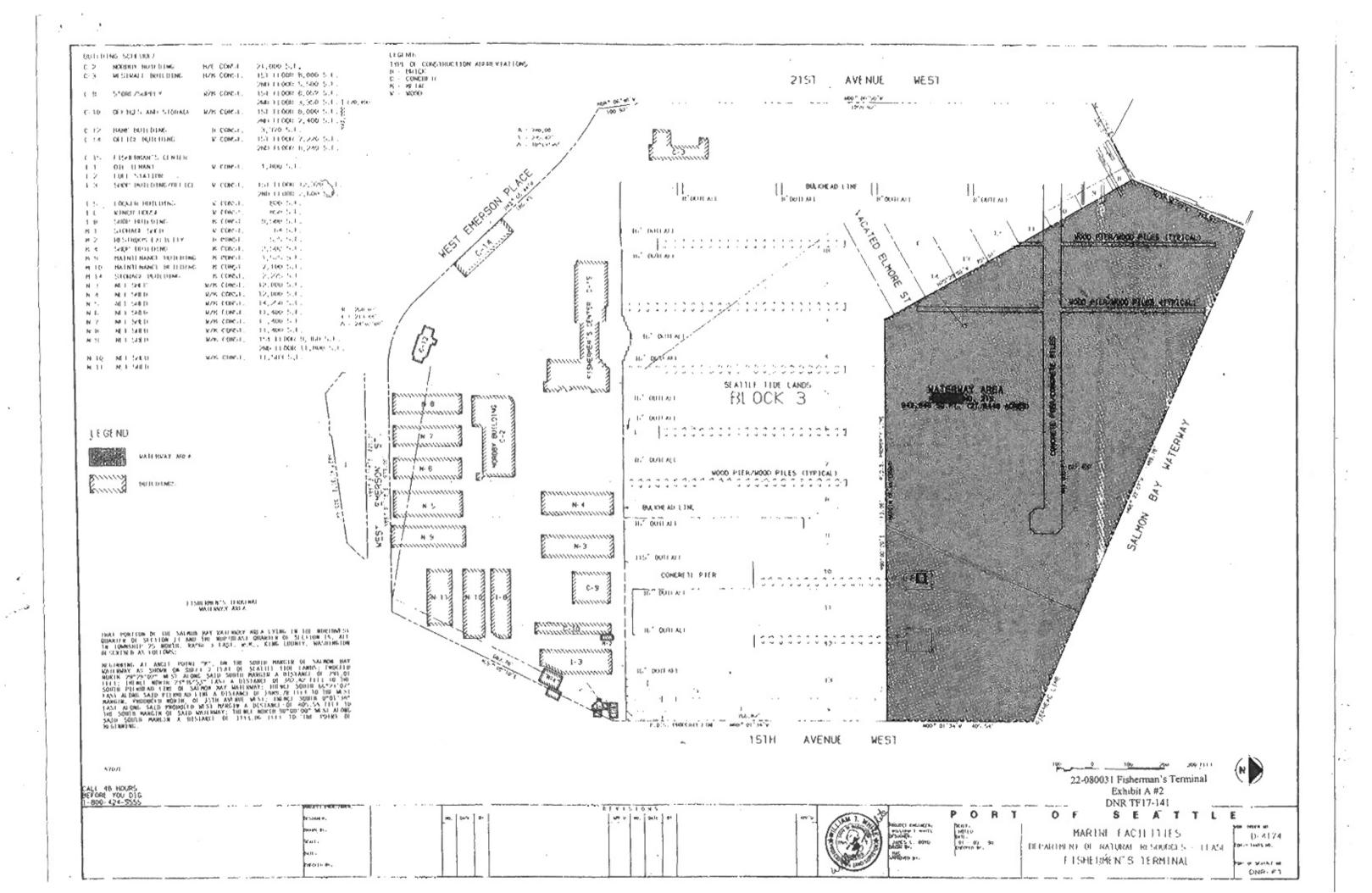
EXCEPT any portion within vacated South Jackson Street.

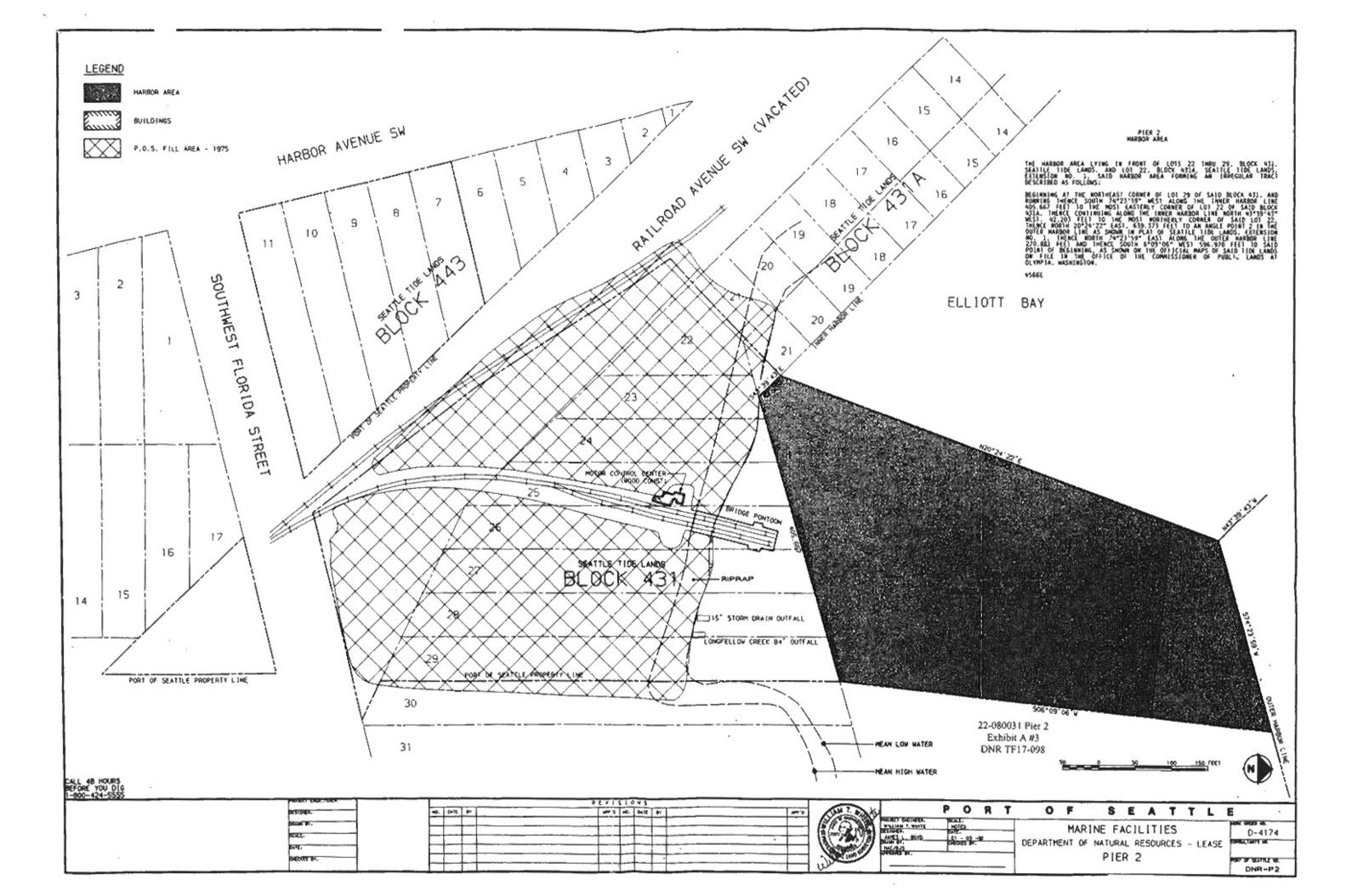
The above described parcel contains 98844 square feet. The Basis of Bearings is based on a record of survey recorded April 28, 2004 (AFN 20040428900001).

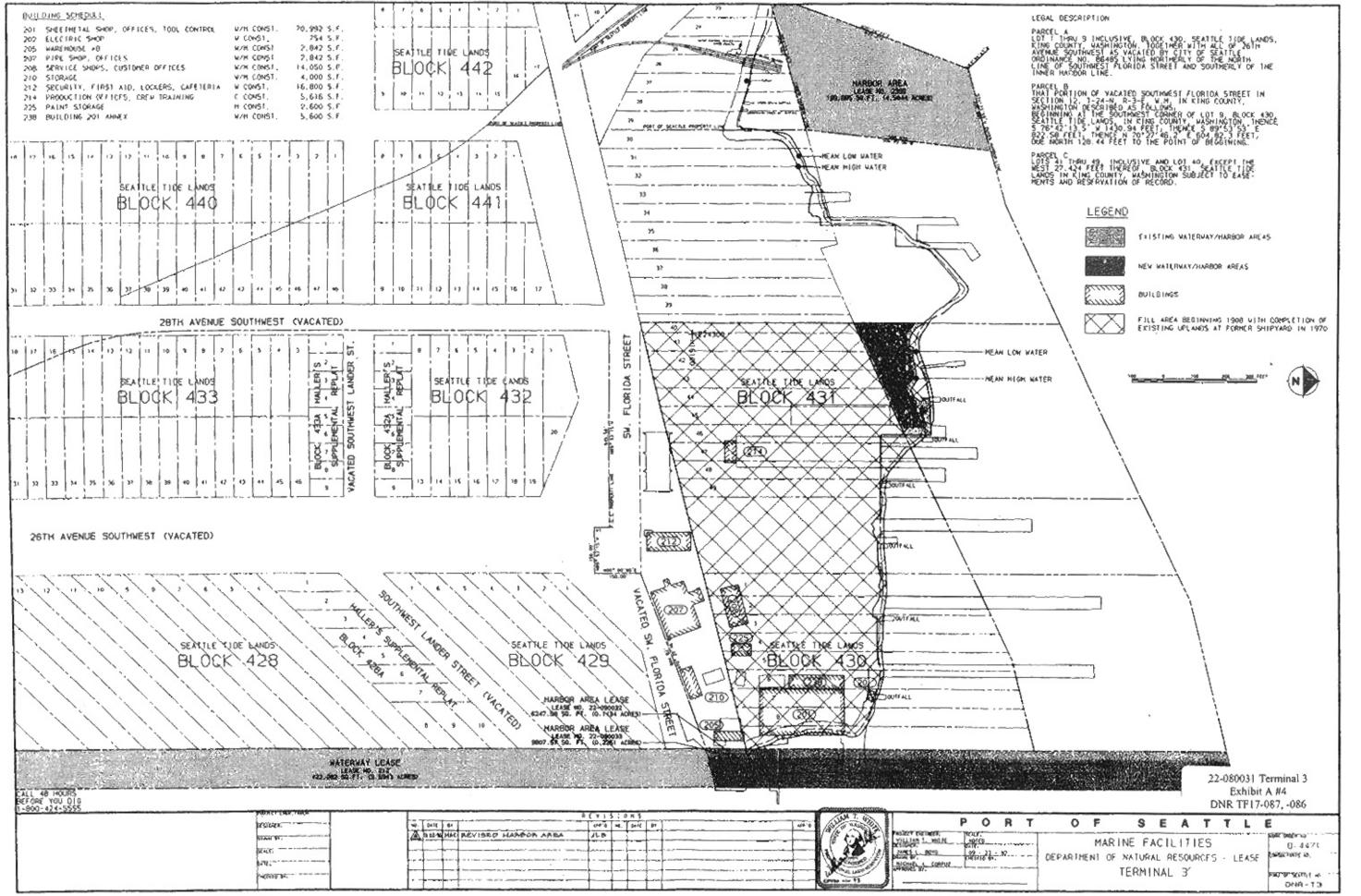


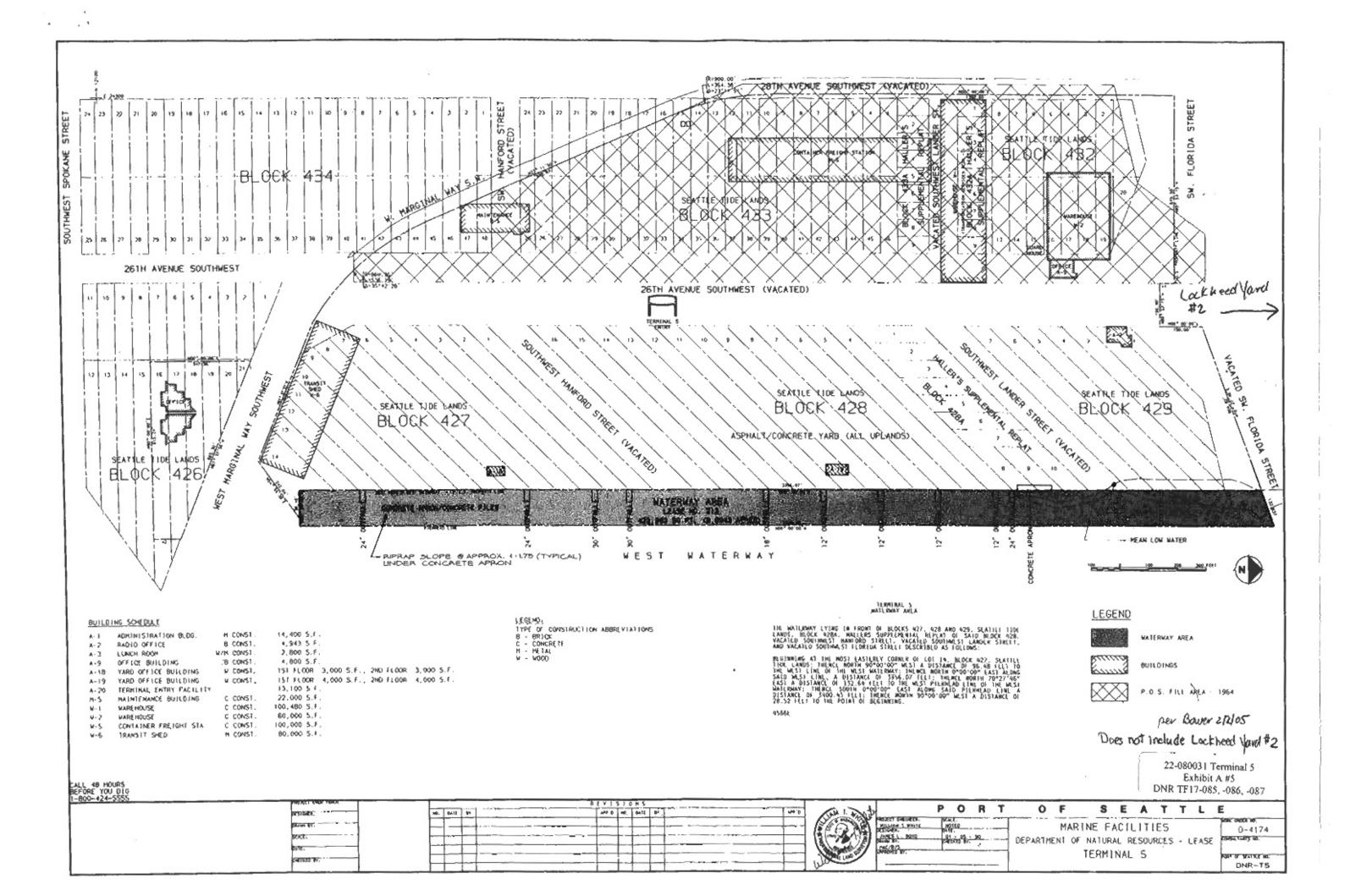


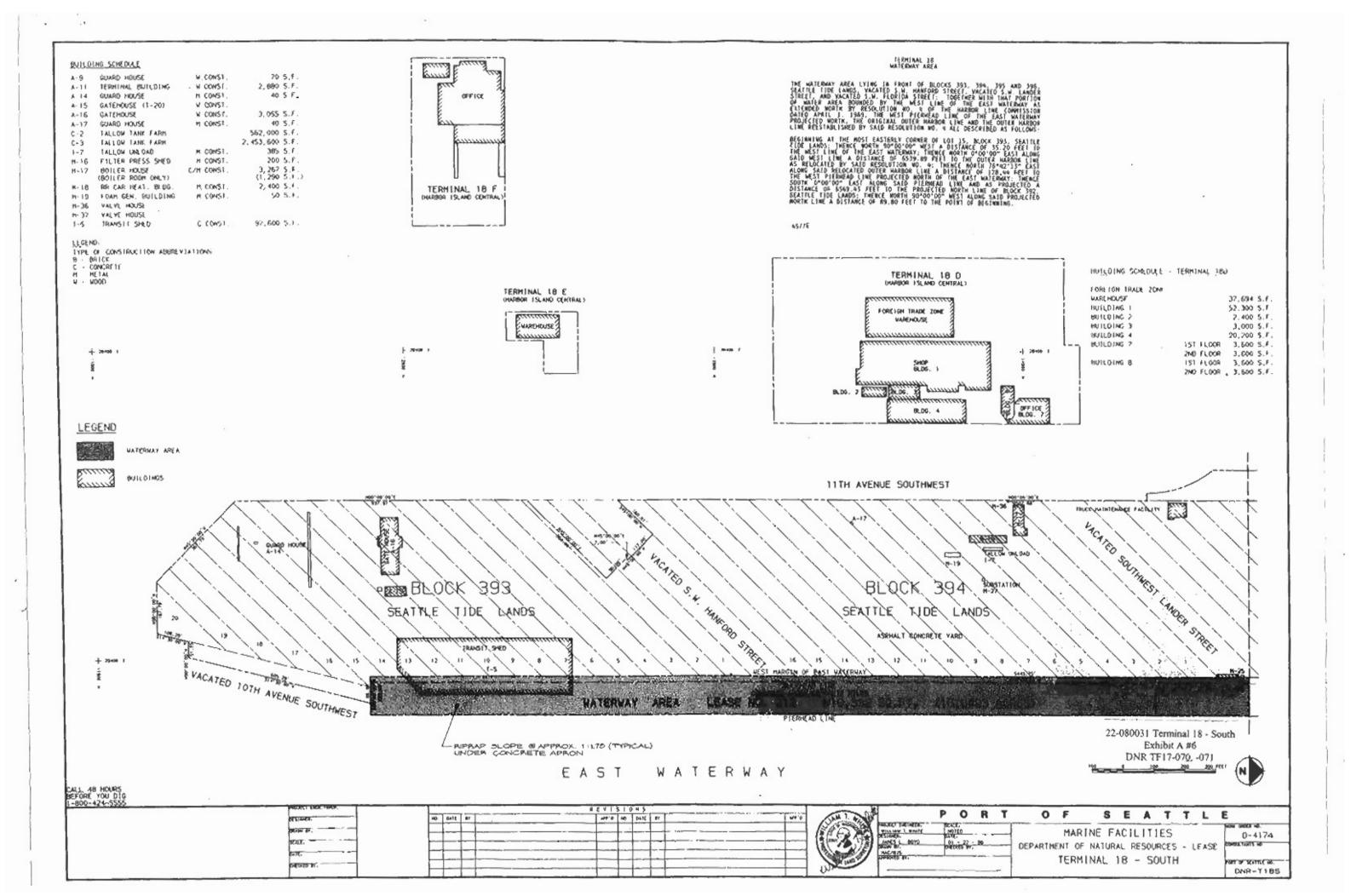


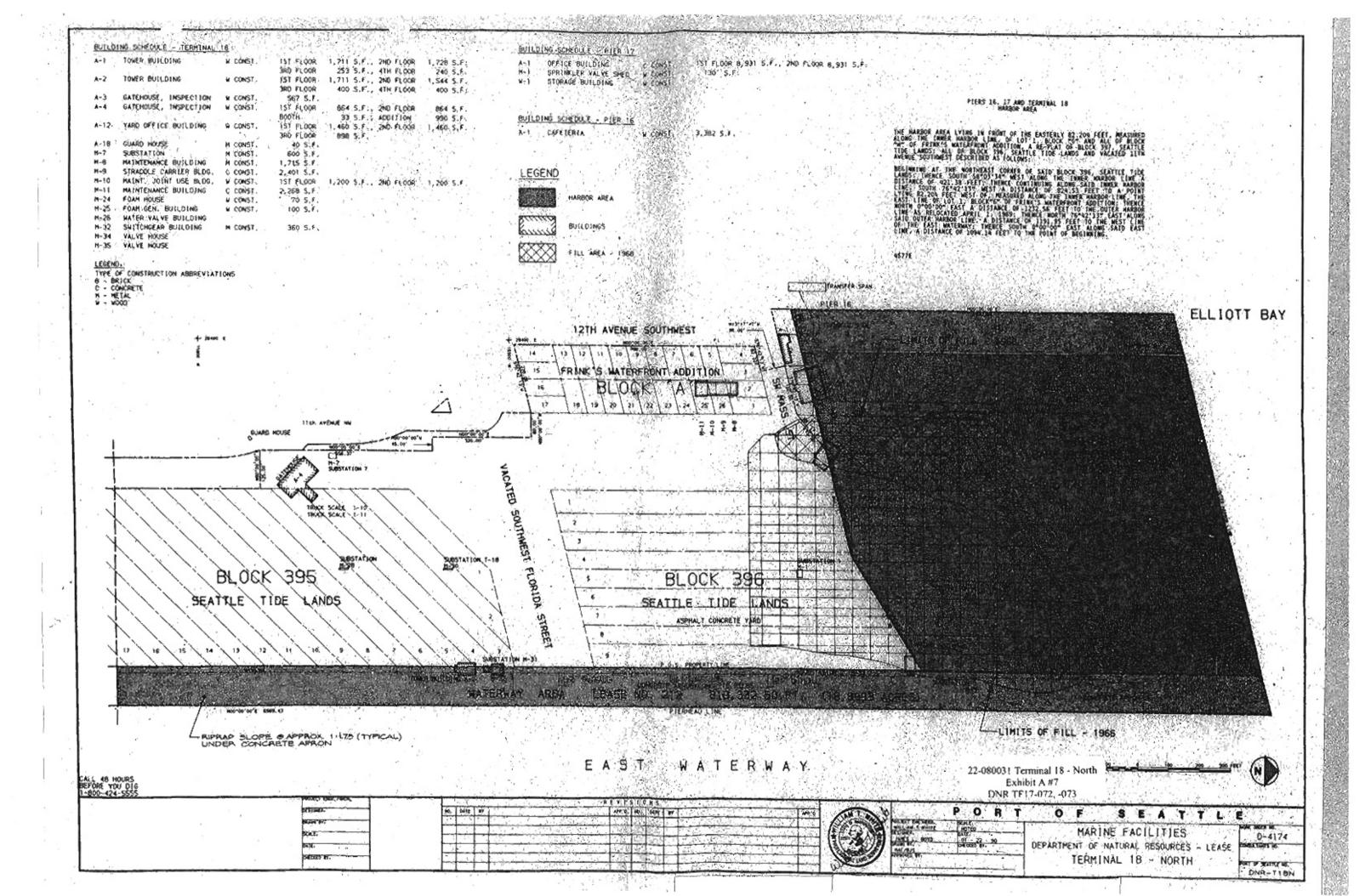


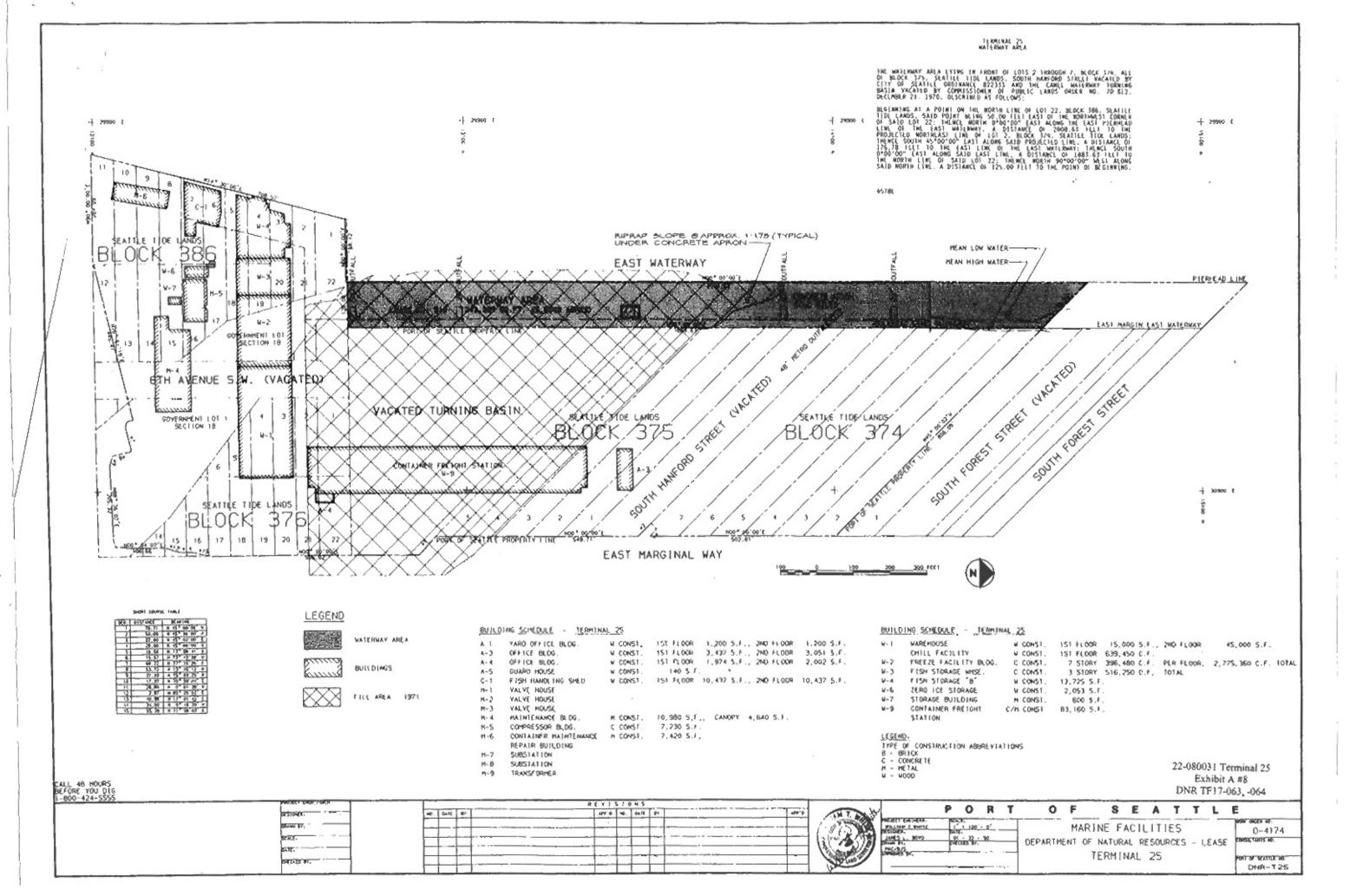


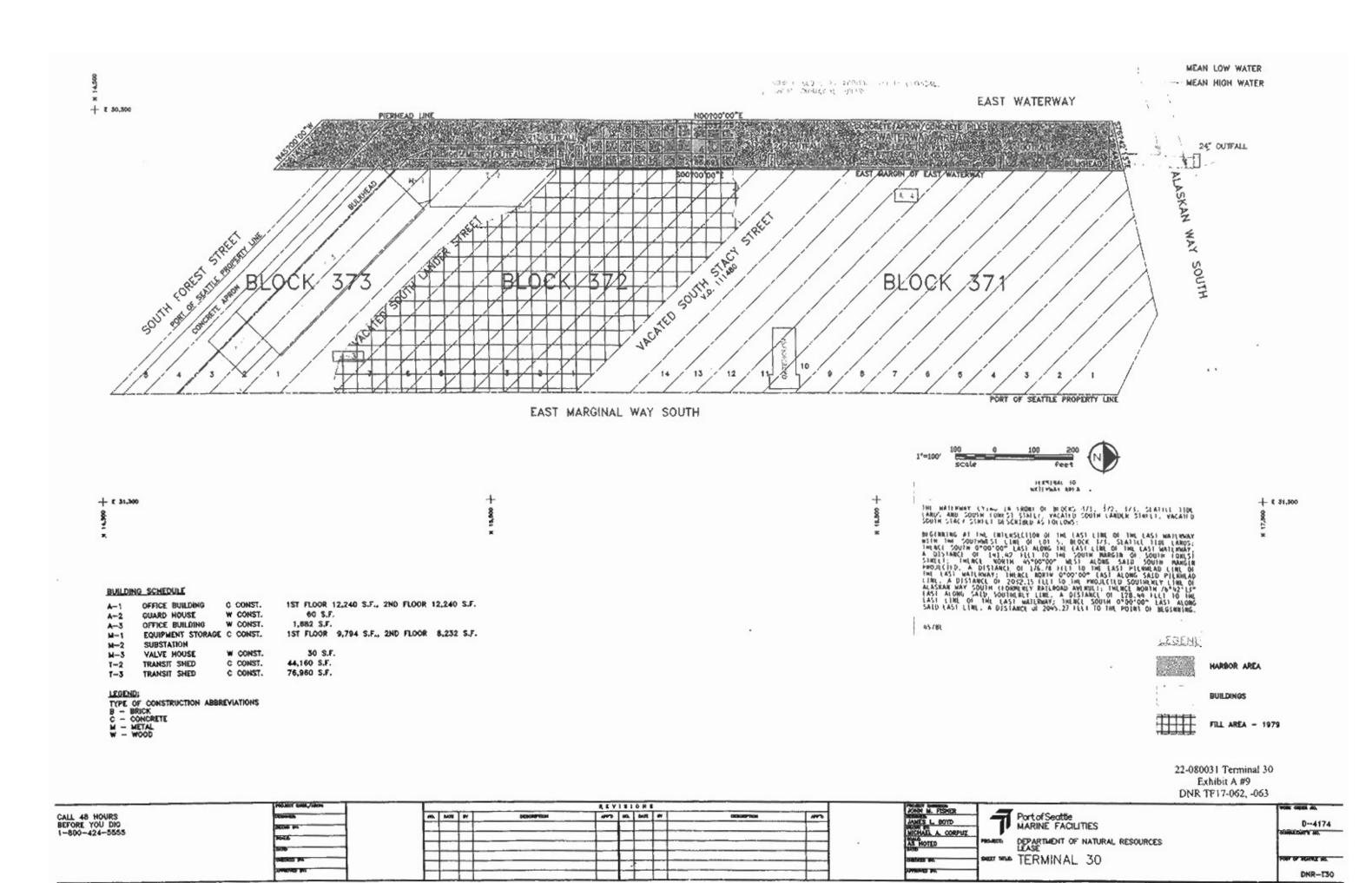


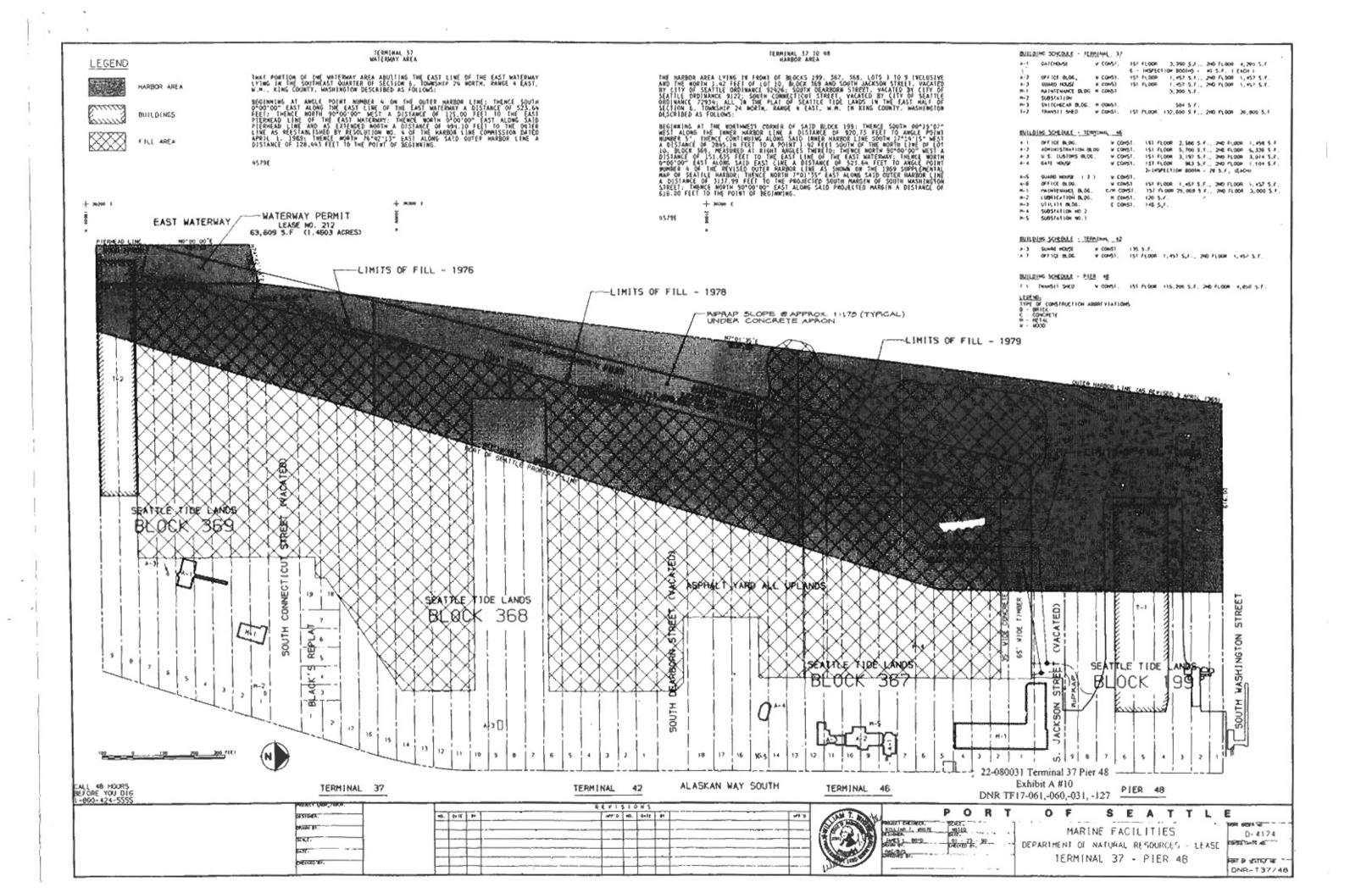


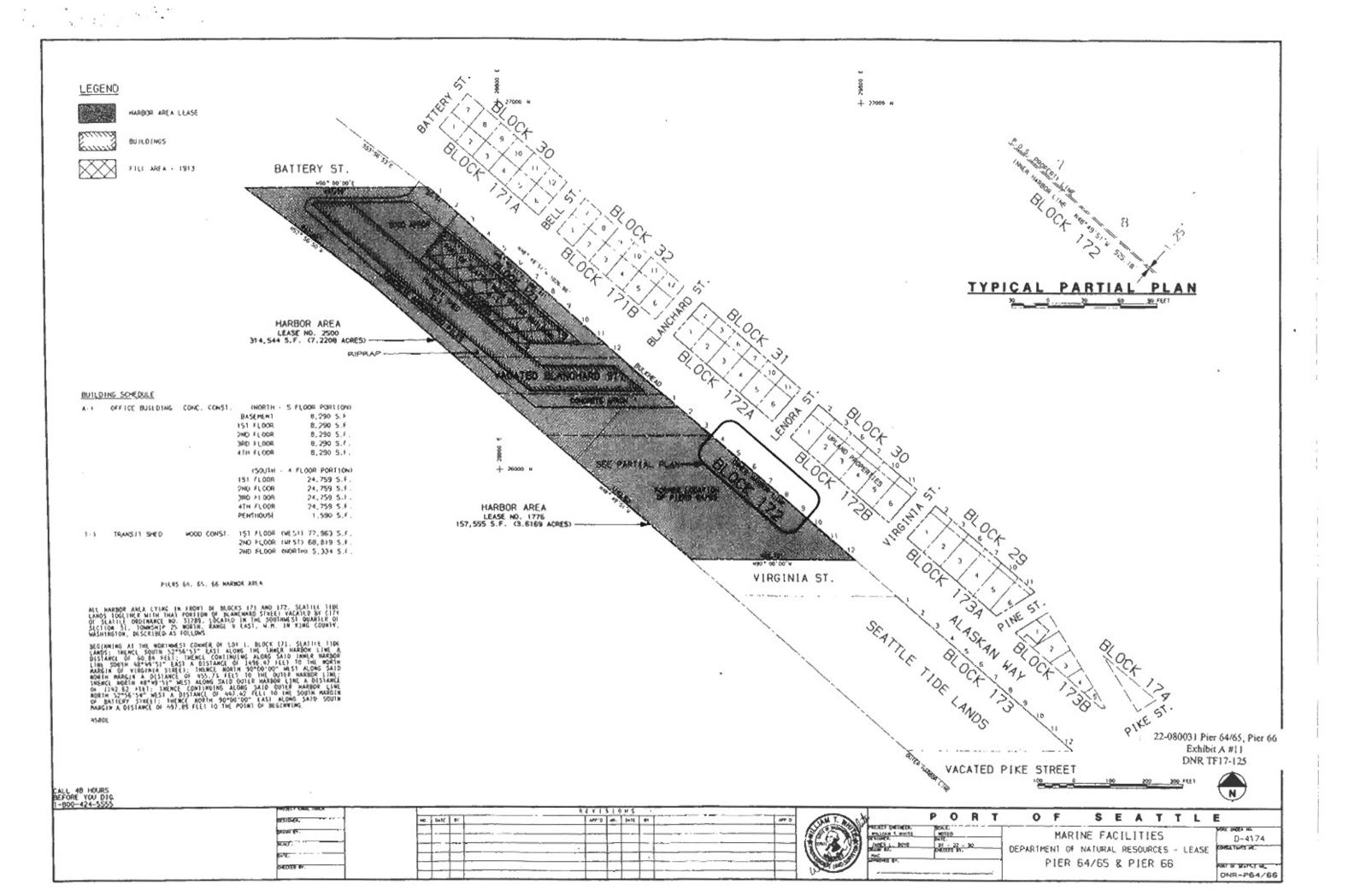


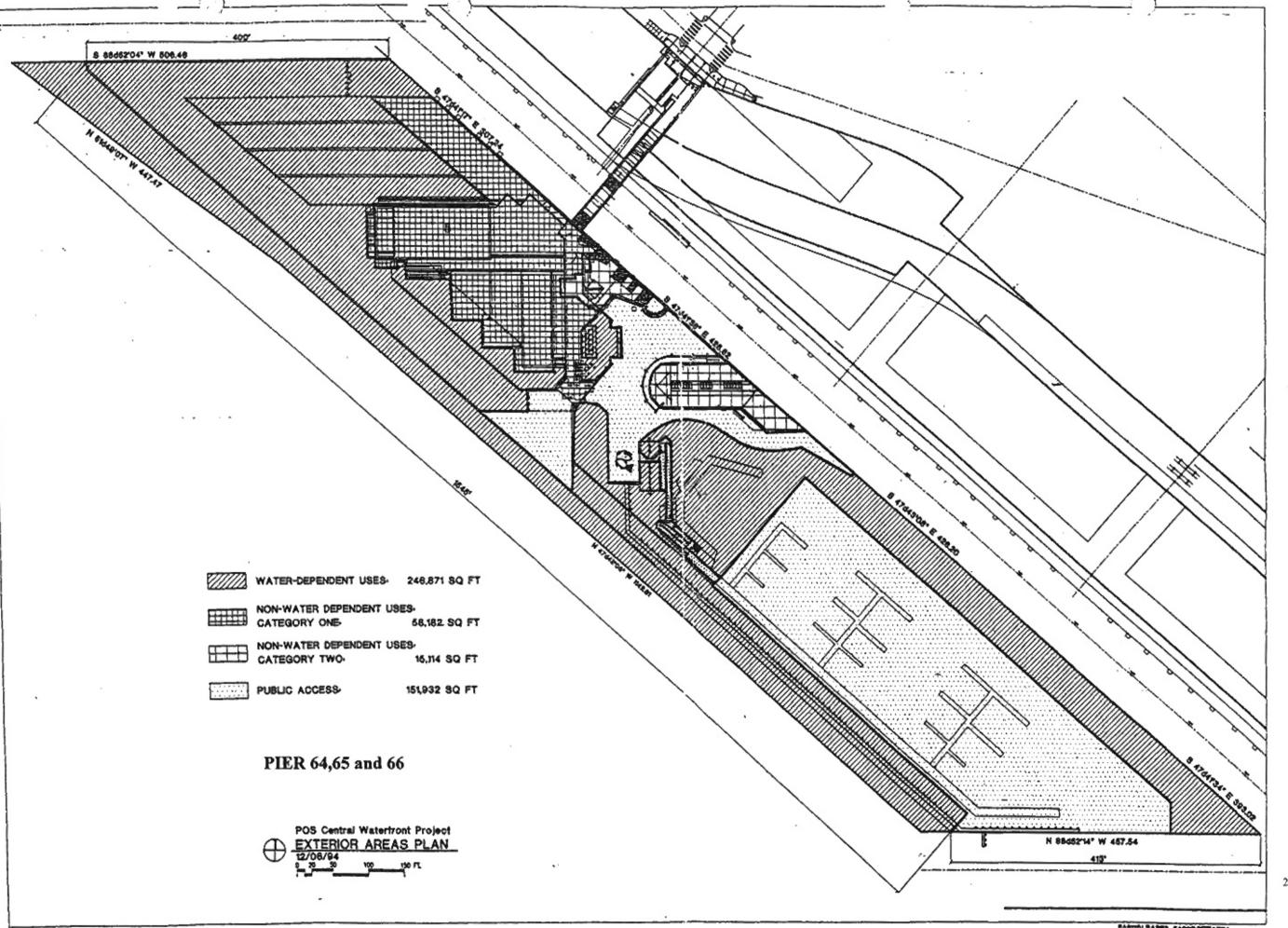




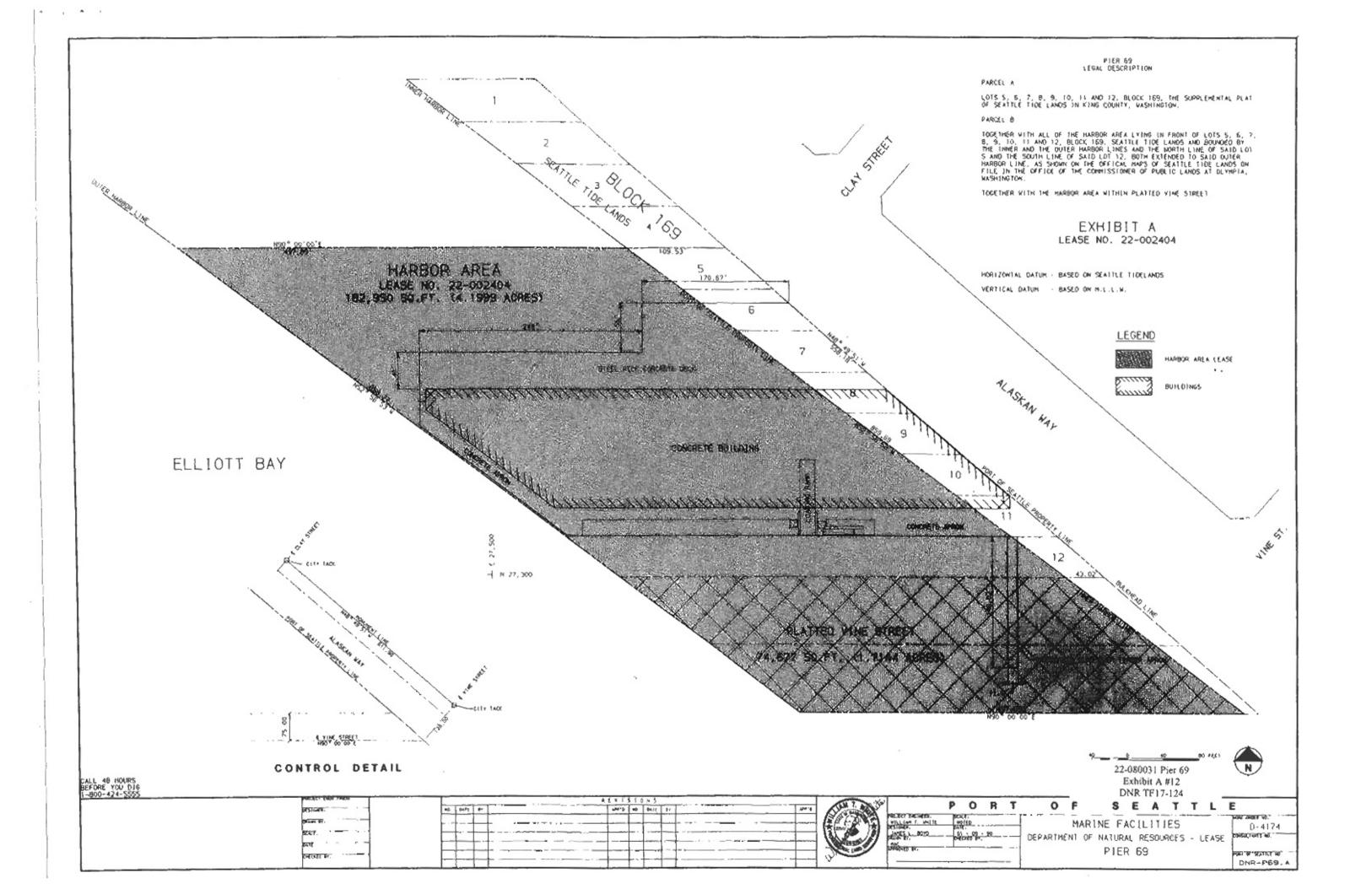


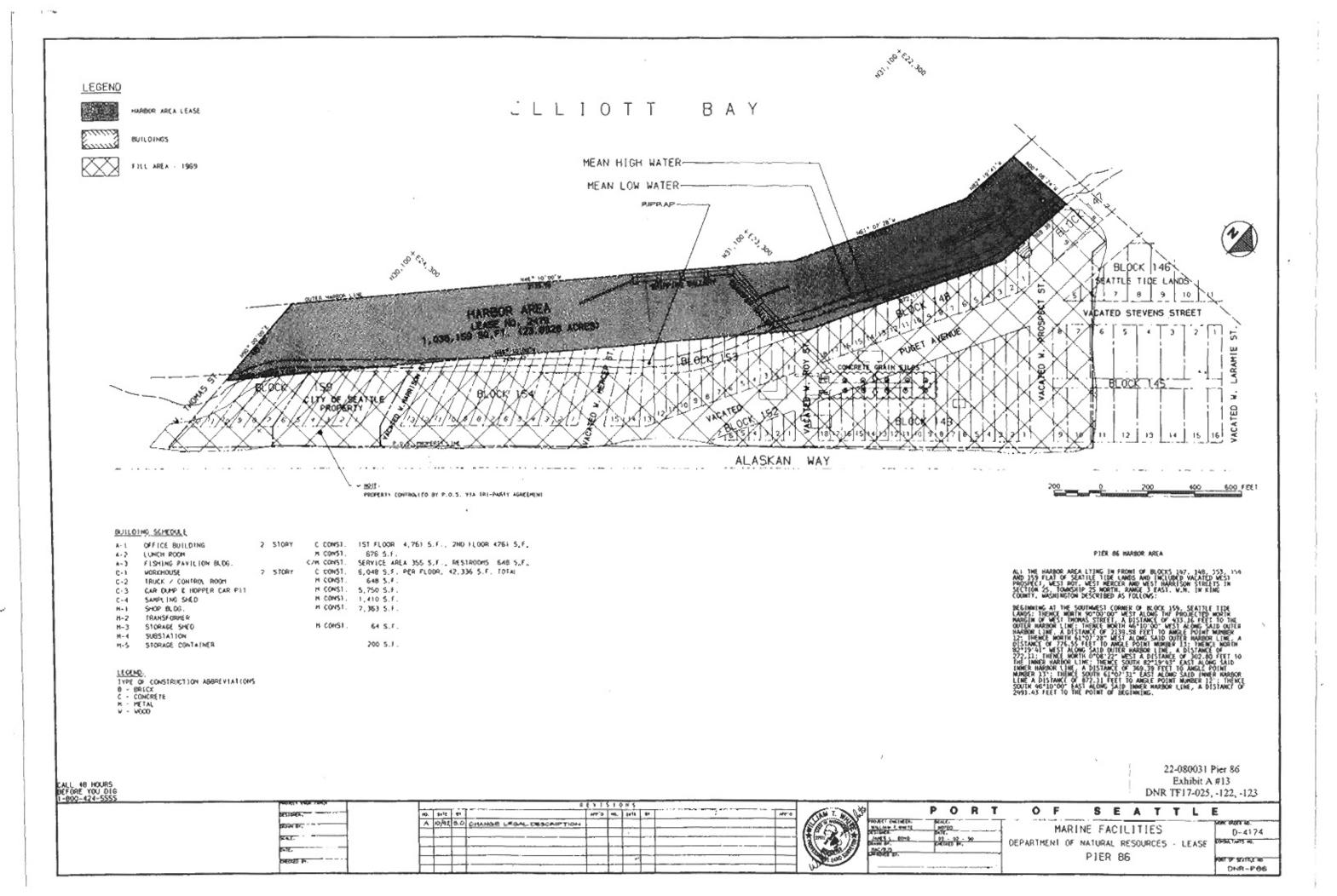


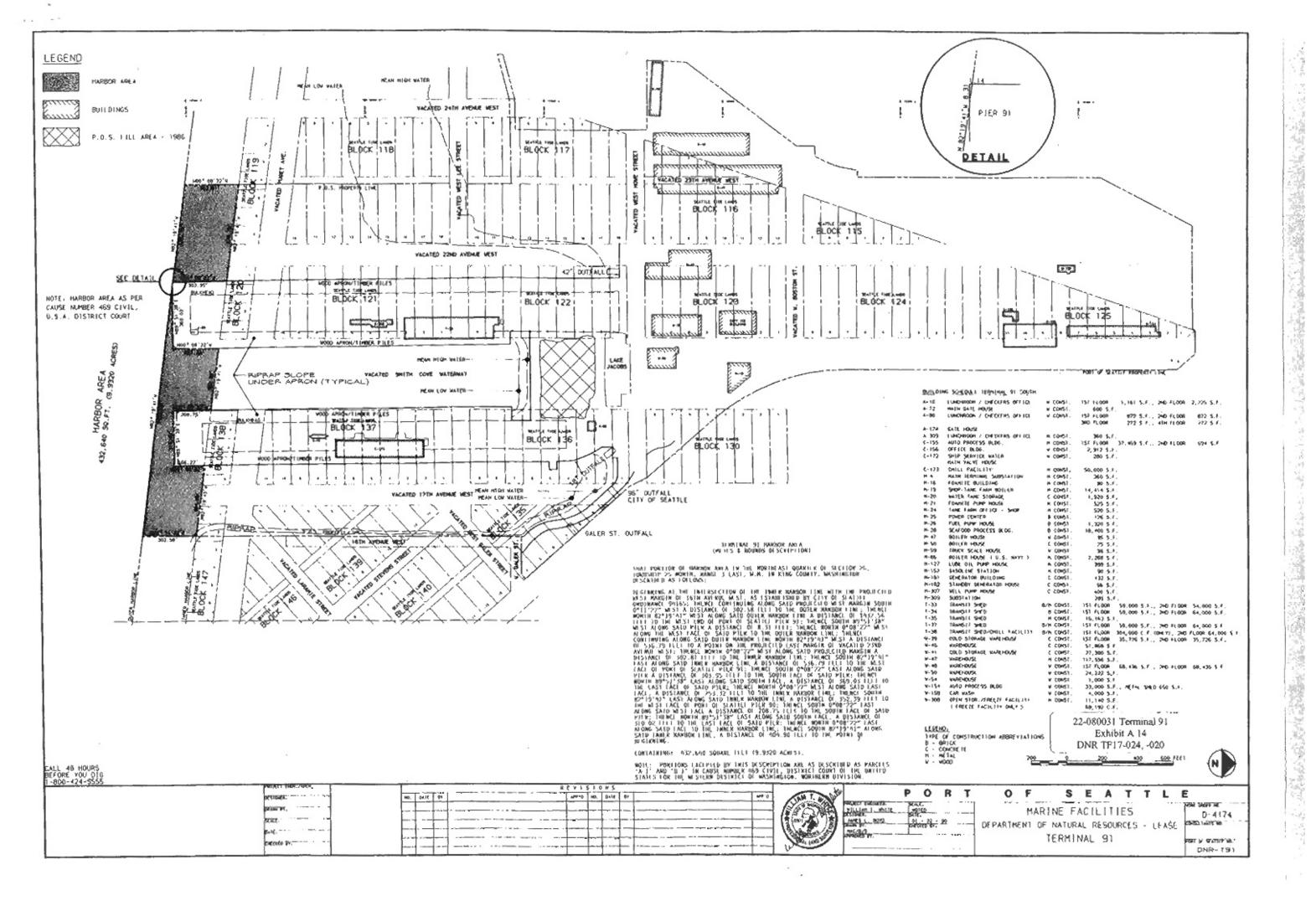


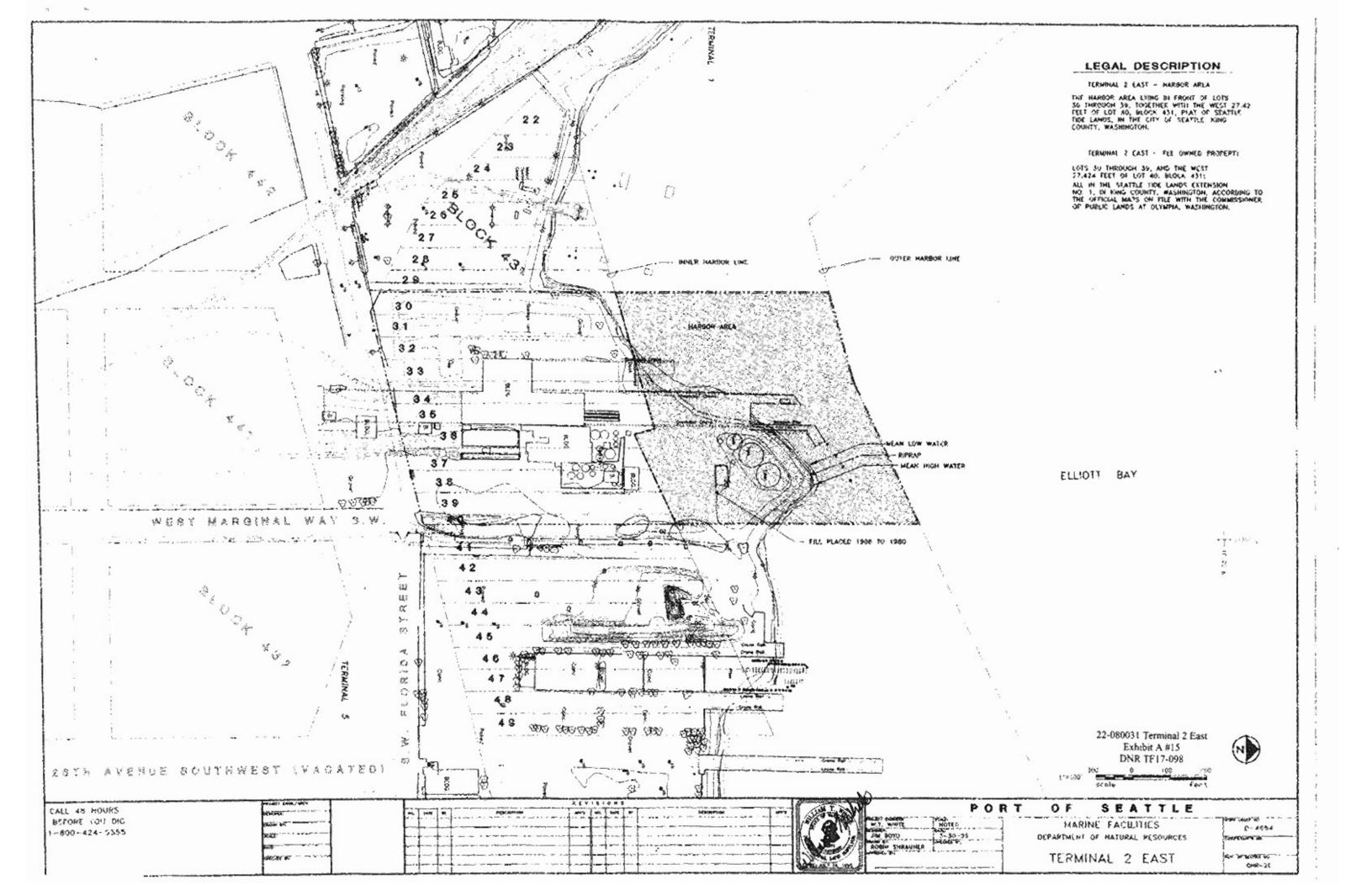


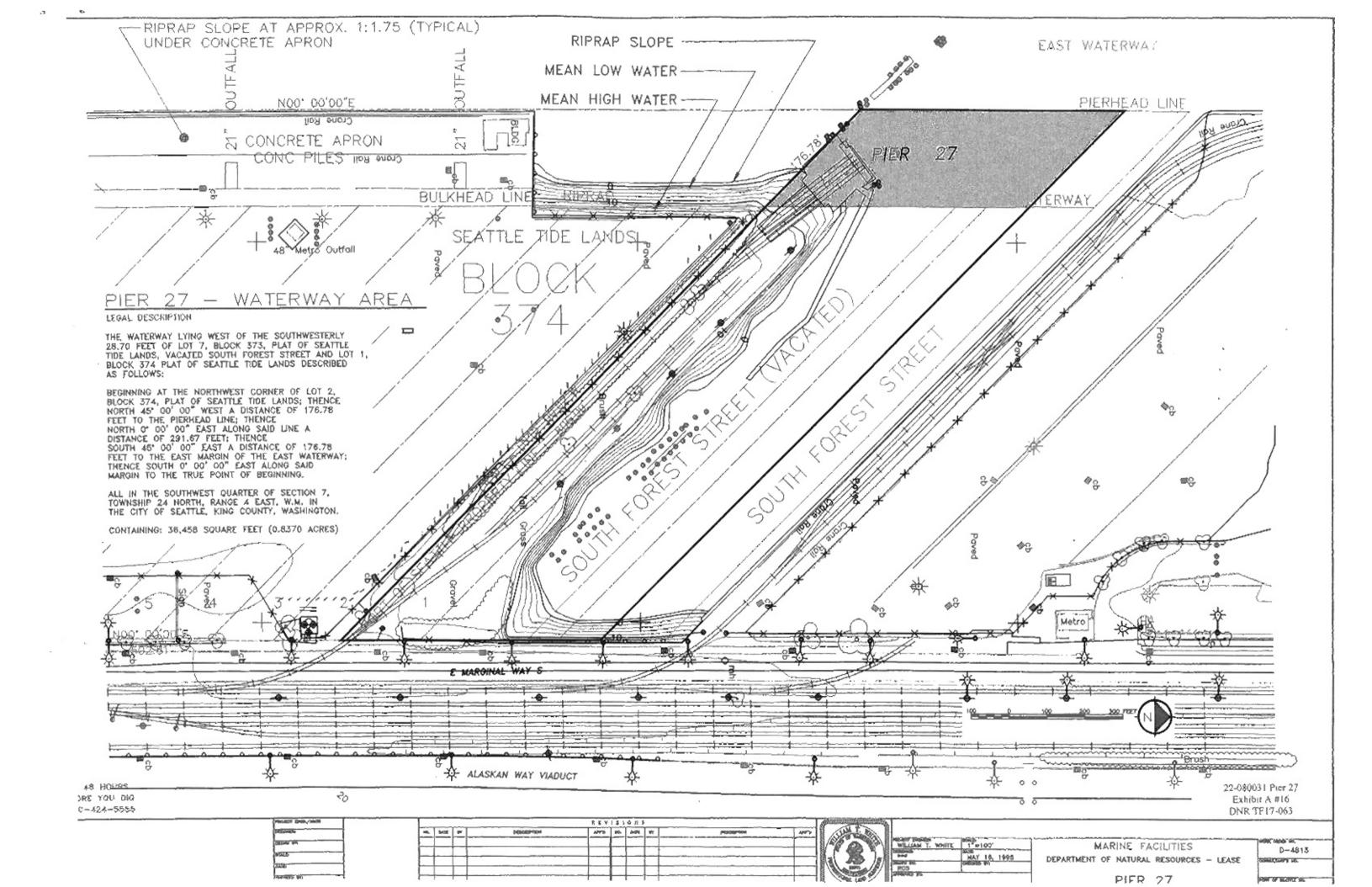
22-080031 Pier 64/65, Pier 66 Exhibit A #11-1 DNR TF17-125

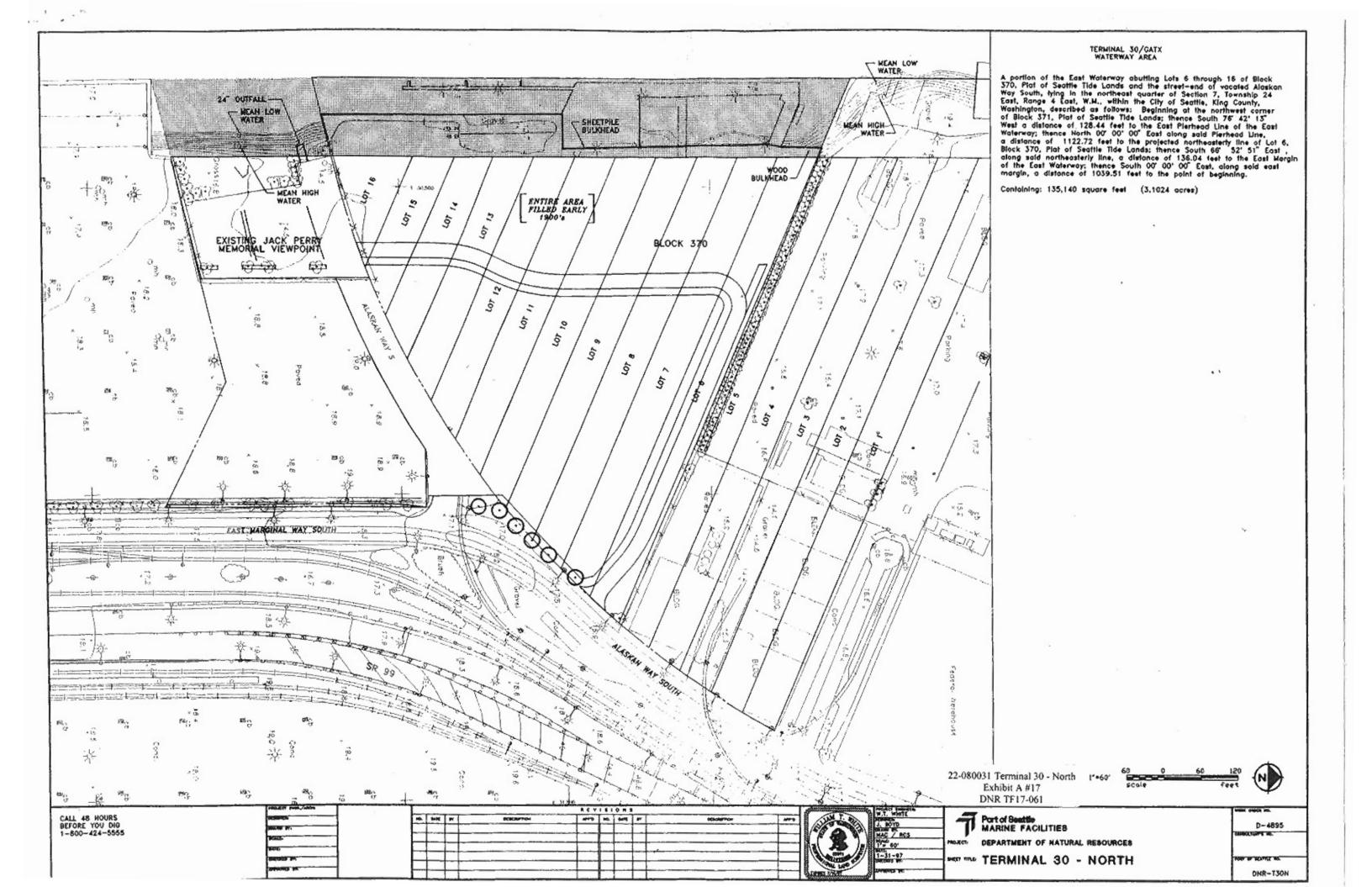












FOR 1 OF SEATTLE PIEN 6. AGREEMENT

Addendum to Port Management Agreement No. 22-080031 Exhibit A-1 Current and Planned Uses

THIS AMENDMENT to Port Management Agreement No. 22-080031 is made by and between the State of Washington Department of Natural Resources (DNR) and the Port of Seattle (Port).

Background

The Port of Seattle (Port) and the Department of Natural Resources (DNR) entered into Port Management Agreement No. 22-080031 (PMA) on September 30, 1998.

DNR recognizes that the Port engages in both water-dependent and nonwater-dependent activities on lands managed under the PMA.

The Port and DNR disagreed on whether the Port office located on Pier 69 was a nonwater-dependent use for which the Port was required to pay rent under the 1984 Aquatic Lands Act.

The Port filed a suit against DNR in <u>Port of Seattle v. DNR</u>, King County Superior Court No. 97-2-22329-6SEA (law suit). DNR filed a counterclaim against the Court in this law suit seeking declaratory relief.

DNR and the Port wish to mutually resolve this matter prior to trial scheduled for February 1, 1999.

Agreement

THEREFORE, the Port and DNR agree as follows:

- 1. <u>Port's Use at Pier 69</u>. The Port's business office at Pier 69 is a nonwater-dependent use as defined in RCW 79.90.465(3).
- 2. Annual Rent. The Port agrees to pay rent at the annual rate of \$40,000.00 per year beginning on February 1, 1999. This annual rent is based on the Port's proportional use of the building equaling 49,009 square feet, excluding public areas and the Port' water-dependent tenants.
- 3. Rent Revaluation. On February 1, 2005, (Revaluation Date) and every six years following the Revaluation Date, the annual rent shall be adjusted to reflect changes in fair market rental rates. These six-year revaluations shall continue throughout the term of the PMA.

- 4. <u>Cap on Rental Revaluation</u>. Changes in the rental rate resulting from a revaluation described in section 3 above shall not increase or decrease the annual rent by more that fifty percent (50%) of the preceding year's annual rent.
- 5. <u>Missed Revaluation</u>. Failure by DNR to revalue the rent as provided in paragraph 3 above shall not affect DNR's right to revalue the rent. At any time DNR may adjust, bill and collect the annual rent retroactively as if the missed revaluation had actually been implemented.
- 6. <u>Disbursement of Rent Paid Prior to this Agreement</u>. Rental payments made by the Port into the DNR Suspense Account pursuant to the Memorandum of Understanding of March 1, 1997 (the MOU) between the Port and DNR shall be deemed and applied toward rent owed by the Port under the terms of the MOU based upon an annual rental rate of \$40,000.00 instead of an annual rental rate of \$54,999.96. Payment above the \$40,000.00 rental rate made by the Port to the Suspense Account shall be refunded by DNR to the Port. The balance of the amount remaining in the Suspense Account shall be dispersed to the appropriate state account(s) as provided by law. The March 1, 1997 Memorandum of Understanding will then terminate upon dispersal of funds.
- 7. <u>Dismissal of the Suit</u>. DNR and the Port agree to dismiss with prejudice their respective claims in <u>Port of Seattle v. Department of Natural Resources</u>, King County Cause No. 97-2-22329-6SEA with each party bearing their own costs and attorneys fees.

Signed this 20 day of Hung, 1999.

STATE:

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

Signed the ____ day of _____, 1999.

PORT:

PORT OF SEATTLE

Title: Execution Duiston

Recording Requested By and When Recorded Mail To:

The Department of Natural Resources Aquatic Resources Division P.O. Box 47027 Olympia, WA 98504-7027



RECORDING MEMORANDUM

Amendment to Port Management Agreement No. 22-080031

- 1. Grantor:
 - a. Washington State Department of Natural Resources
 - b. 1111 Washington St SE M/S 47027 Olympia, WA 98504-7027
- 2. Grantee:.
 - a. Port of Seattle
 - b. 2711 Alaskan Way Seattle, WA 98121
- 3. Additional Grantee names on page N/A of document.
- 4. THIS Amendment to Port Management Agreement No. 22-080031
 ("Instrument") is made and granted by Grantor, Washington State Department of Natural Resources (DNR), a state agency, to the Port of Seattle ("Grantee"). For valuable consideration, DNR has granted all the rights, interests, and responsibilities in the above Amendment to Port Management Agreement No. 22-080031 to Grantee in the property (the "Property") with the following Legal Descriptions:
- 5. a. Abbreviated legal description: Bedlands fronting Lots 1 through 9, Block 199, PLAT OF SEATTLE TIDELANDS, the northeast quarter of Section 6, Township 24 North, Range 4 East, W. M., in King County, State of Washington.
 - b. Additional legal description is on page Exhibit A of document.
- DNR Document No.: 22-080031
- 7. Duration of Port Management Agreement: Thirty (30) Years, expiration date: 31st day of October, 2027.
- 8. Assessor's Property Tax Parcel Account Number(s): none



STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES PETER GOLDMARK, Commissioner of Public Lands

AMENDMENT TO PORT MANAGEMENT AGREEMENT

Agreement No. 22-080031

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BACKGROUND

- A. The State and the Port entered into Port Management Agreement No. 22-080031 ("PMA") on November 1, 1997, and the Port has managed lands subject to this agreement under the PMA or other agreements with the State since at least as early as February 1, 1958.
- B. Paragraph 3 of the PMA provides that any parcel which no longer meets the criteria established by law for inclusion in the PMA may be deleted from the PMA upon mutual agreement of the Port and the State.
- C. A portion of the property identified in the PMA as Parcel 10 is no longer eligible for inclusion in the PMA because the Port has sold, and now lacks the requisite control over, the abutting upland property.
- D. The Port has requested said portion of Parcel 10 be removed from the PMA.
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PMA Amendment 1 22-080031

IT IS THEREFORE AGREED that the PMA is hereby amended as follows:

SECTION 1 PMA AMENDMENTS

Exhibit A to the PMA, which provides the legal descriptions for the state-owned aquatic lands under Port management pursuant to the PMA, is hereby amended to remove a portion of the parcel of land identified on page number ten (10) of exhibit A as "Terminal 37 – Pier 48" (PMA Parcel 10). The property to be removed from the PMA pursuant to this Agreement (the "Property") is directly waterward of the upland described in the legal description attached as Exhibit A to this amendment.

The Port shall provide a complete survey, which meets the State's requirements of records of survey, of the portion of the property identified as "Terminal 37 – Pier 48" that will remain in the PMA following amendment in accordance with Sections 3 and 4 of this Agreement.

SECTION 2 NO RELEASE

This Agreement does not alter or affect whatever Liability or responsibility either party may have for Hazardous Substance releases, or threatened releases, that occurred prior to the date of this Agreement under the Comprehensive Environmental Response, Compensation, and Liability Act, the Model Toxics Control Act, or other laws that create cleanup obligations. The Port acknowledges that to the extent allowed by law it has the obligation to defend, indemnify, and hold the State of Washington, as the owner of aquatic lands, and the Department of Natural Resources, as manager of aquatic lands, harmless from any imposition or attempted imposition of Liability upon the State or the Department of Natural Resources related to or arising out of the use and control of the property to be removed from the PMA by the Port or anyone acting under authority of the Port from the PMA Application Date through the end of the Term of the PMA in accordance with Section 8(d) of the PMA and that nothing in this Agreement affects the Port's obligation. However, the parties recognize that a Purchase and Sale Agreement (PSA) for this property was entered into by the Washington State Department of Transportation and the Port on July 23, 2008. The PSA identifies the State of Washington, Department of Transportation as the "Buyer" and the Port of Seattle as the "Seller." The PSA provides for the Buyer to undertake certain responsibilities with respect to hazardous substances as set forth in paragraphs 11.1-12 and elsewhere in the PSA. This Amendment to the PMA (No. 22-080031) does not affect or alter the responsibilities assumed by the State of Washington, Department of Transportation as the "Buyer" under the PSA.

SECTION 3 RECORDS OF SURVEY

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The Port acknowledges that it continues to have an ongoing obligation to report to the State through the Department of Natural Resources any of the following:

- a) Changes in Port ownership of uplands abutting PMA parcels.
- b) Changes in planned or actual uses of PMA property.
- c) Documentation of water-dependent / nonwater-dependent use areas and classifications.
- d) Development of Improvements.
- e) Development of authorized Fills, Confined Aquatic Disposal Sites, or Mitigation Sites
- f) Creation of an easement through PMA Property.

SECTION 5 WARRANTIES

The Port represents and warrants to the State that (1) the PMA is in full force and effect; (2) the Port is not in default or breach of the PMA; (3) the Port has no knowledge of any claims, offsets, or defenses of the Port under the PMA; and (4) to the best of the Port's knowledge, the property managed under the PMA is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

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SECTION 8 THIRD PARTIES

This Agreement is intended solely for the benefit of the State and the Port and does not benefit, or create rights for, third parties, including, but not limited to, WSDOT. This Agreement affects no right, claim, immunity, or defense the State or the Port may have against third parties, including, but not limited to WSDOT, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

EXHIBITS

THIS AGREEMENT is subject to the terms and conditions of the exhibit referenced herein, which is attached hereto and by this reference made a part hereof.

Exhibit: Exhibit A, Legal Description of Abutting Upland

THIS AGREEMENT requires the signature of all parties and is effective as of the date of the last signature below.

PORT OF SEATTLE

Executed this / Chay of / , 20 C

Tay Yoshitani

Chief Executive Officer 2711 Alaskan Way Seattle, WA 98121

206-728-3000

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Executed this 24 day of August, 20 09

Peter Goldmark

Commissioner of Public Lands

1111 Washington Street SE

Olympia, WA 98504

360-902-1000

PMA Amendment

Approved as to Form on 7/31/09

By: Terence A. Pruit

Assistant Attorney General, State of Washington

22-080031

PORT ACKNOWLEDGMENT

STATE OF Washington	_)	
COUNTY OF King)	SS
	. /	

I certify that I know or have satisfactory evidence that Tay Yoshitani, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the **Chief Executive Officer of the Port of Seattle** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:8/10/2009	Signature) Kathryn Showen
(Seal or stamp)	Julio Kathryn Thomas (Print Name)
STA STA	Notary Public in and for the State of Washington, residing at
Mining.	Bothell, wat

My appointment expires 1-22-11

STATE ACKNOWLEDGMENT

ER GOLDMARK is the person who signed this instrument, on oath stated wledged it as the Commissioner of t of Natural Resources of the State of or the uses and purposes mentioned in
on Petit
Ron Dettat
Name)
Public in and for the State of ngton, residing at who pointment expires 4-28-10

EXHIBIT A Pier 48 PMA Amendment 09 Port of Seattle PMA No. 22080031

Legal description of uplands abutting the parcel to be removed from the PMA.

That portion of Lots 1 through 9, Block 199, PLAT OF SEATTLE TIDELANDS, according to the official maps on file at the office of the Commissioner of Public Lands in Olympia, Washington, said Block situated in the Tidelands of the Northeast Quarter of Section 6, Township 24 North, Range 4 East, Willamette Meridian, King County, Washington, more particularly described as follows:

Beginning at the northeast corner of said Lot 1, said corner situated at the intersection of the westerly right of way margin of Alaskan Way with the southerly right of way margin of S. Washington St.; Thence North 88°43'31" West along said southerly margin 180.39 feet to the toe of a concrete seawall as existing April, 2005; Thence South 02°38'50" West, along said seawall toe, 121.03 feet; Thence South 00°51'26" West, along said seawall toe, 324.61 feet; Thence South 01°05'06" East, along said seawall toe, 61.03 feet; Thence North 84°42'34" West, along said seawall toe, 25.84 feet; Thence, North 87°55'19" West, along said seawall toe, 66.42 feet to the westerly end of said concrete seawall and beginning of the toe of a riprap seawall; Thence continuing North 87°55'19" West, along said riprap seawall toe, 29.26 feet; Thence South 00°11'58" East, along said seawall toe, 9.11 feet to the south line of Lot 9 of said Block 199; Thence South 88°44'15" East, along said south line, 310.03 feet to the westerly margin of said Alaskan Way; Thence North 01°10'09" E, along said westerly margin, 400.77 feet to the beginning of a curve concave to the west, having a radius of 664.17 feet; Thence Northwesterly, along the arc of said curve to the left and margin through a central angle of 08°37'36" an arc distance of 112.25 feet to the Point of Beginning.

EXCEPT any portion within vacated South Jackson Street.

The above described parcel contains 98844 square feet. The Basis of Bearings is based on a record of survey recorded April 28, 2004 (AFN 20040428900001).