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COMMENCEMENT BAY NT - THEA FOSS DISPUTE RESOLUTION ON THE CITY'S CLAIM OF FORCE MAJEURE  
(TFCDR)

July 7, 2006

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**SUB-HEAD: 22. 1... Vol. 1 - Background Information (Z)**

**SUB-HEAD: 22. 1. 4.. Vol. 1 - Review of Historical Data**

22. 1. 4.. Vol. 1 -

DATE: 11/15/1991

AUTHOR(S):

Hart Crowser, Inc.

DOC ID: 1239032 IMAGED

PAGES: 108

ADDRESSEE(S):

Foss Maritime Company

Simpson Tacoma Kraft Company

DESCRIPTION:

Historical Characterization, Potential Contamination Sources, The Middle Waterway, Tacoma, Washington.

**HEADING: 23. 0... HEAD OF THEA-FOSS (FORMERLY CITY) WATERWAY (Z)**

**SUB-HEAD: 23. 8... Vol. 1 - Enforcement: RA Consent Decree (Z)**

**SUB-HEAD: 23. 8. 11.. Vol. 1 - Dispute Resolution - 12/30/05**

**SUB-HEAD: 23. 8. 11. 1. Vol. 1 - Correspondence**

23. 8. 11. 1. Vol. 1 - DOC ID: 1239001 IMAGED  
DATE: 1/3/2006 PAGES: 1  
AUTHOR(S): Mary L. Henley/City of Tacoma ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Email following O'Loughlin's verbal notification regarding two potential Force Majeure issues, (marginalia).

23. 8. 11. 1. Vol. 1 - DOC ID: 1239002 IMAGED  
DATE: 1/18/2006 PAGES: 2  
AUTHOR(S): Mary L. Henley/City of Tacoma ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Letter regarding Thea Foss and Wheeler-Osgood Waterways Remediation Project, Enforceable Schedule Force Majeure Notification.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239003 IMAGED  
DATE: 1/26/2006 PAGES: 1  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S):  
John O'Loughlin/City of Tacoma  
Bill Conley/KPFF Consulting Engineers

DESCRIPTION: Email regarding old photos/drawings of Middle Waterway.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239004 IMAGED  
DATE: 1/30/2006 PAGES: 5  
AUTHOR(S): Mary L. Henley/City of Tacoma ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

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DESCRIPTION:

Letter responding to 1/26/06 email regarding Thea Foss and Wheeler-Osgood Waterways Remediation Project, EPA Request for Middle Waterway Photo and Drawings, with two figures and one aerial photo.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239005 IMAGED  
DATE: 2/3/2006 PAGES: 3  
AUTHOR(S): John O'Loughlin/City of Tacoma ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION:

Email regarding maps from Middle Waterway and Data Quality Review, with Site Plan for Middle Waterway.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239006 IMAGED  
DATE: 2/7/2006 PAGES: 4  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S): John O'Loughlin/City of Tacoma

DESCRIPTION:

Response to 2/3/06 email regarding maps from Middle Waterway and Data Quality Review, with annotated Site Plan for Middle Waterway.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239007 IMAGED  
DATE: 2/7/2006 PAGES: 3  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S): Mary L. Henley/City of Tacoma

DESCRIPTION:

Letter regarding the City of Tacoma's notification of a potential Force Majeure - Thea Foss and Wheeler-Osgood Waterways, (less enclosure).

23. 8. 11. 1. Vol. 1 - DOC ID: 1239008 IMAGED  
DATE: 2/9/2006 PAGES: 4  
AUTHOR(S): John O'Loughlin/City of Tacoma ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION:

Email transmitting a highlighted plan sheet with the buildings outlined.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239009 IMAGED  
DATE: 2/13/2006 PAGES: 3  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S): Mary L. Henley/City of Tacoma

DESCRIPTION:

Letter regarding the City of Tacoma's notification on 12/30/05 of a potential Force Majeure event and a request for extension.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239010 IMAGED  
DATE: 2/15/2006 PAGES: 2  
AUTHOR(S): ADDRESSEE(S):

(TFCDR) COMMENCEMENT BAY NT - THEA FOSS DISPUTE RESOLUTION ON THE CITY'S CLAIM OF FORCE M

Emile Pitre/U. S. Army Corps of Engineers

Piper L. Peterson Lee/EPA

DESCRIPTION:

Letter regarding pilings in Middle Waterway, with Anchor Environmental's Demolition Plan.

23. 8. 11. 1. Vol. 1 -

DOC ID: 1239011 IMAGED

DATE: 2/28/2006

PAGES: 1

AUTHOR(S):

Mary L. Henley/City of Tacoma

ADDRESSEE(S):

Piper L. Peterson Lee/EPA

DESCRIPTION:

Letter regarding the Thea Foss and Wheeler-Osgood Waterways Remediation Project, Middle Waterway Tideflat Habitat, Notice of Dispute of Force Majeure Denial.

23. 8. 11. 1. Vol. 1 -

DOC ID: 1239012 IMAGED

DATE: 3/16/2006

PAGES: 1

AUTHOR(S):

Piper L. Peterson Lee/EPA

ADDRESSEE(S):

John O'Loughlin/City of Tacoma

Mary L. Henley/City of Tacoma

DESCRIPTION:

Email regarding the informal Force Majeure period and a meeting time to resolve the issue.

23. 8. 11. 1. Vol. 1 -

DOC ID: 1239013 IMAGED

DATE: 3/16/2006

PAGES: 2

AUTHOR(S):

Kelly Cole/EPA

ADDRESSEE(S):

Doug Mosich/City of Tacoma

DESCRIPTION:

Email requesting more information regarding the City's Force Majeure request.

23. 8. 11. 1. Vol. 1 -

DOC ID: 1239014 IMAGED

DATE: 3/17/2006

PAGES: 2

AUTHOR(S):

Mary L. Henley/City of Tacoma

ADDRESSEE(S):

Piper L. Peterson Lee/EPA

DESCRIPTION:

Email regarding a meeting time to resolve the City's Force Majeure issue.

23. 8. 11. 1. Vol. 1 -

DOC ID: 1239015 IMAGED

DATE: 3/29/2006

PAGES: 4

AUTHOR(S):

John O'Loughlin/City of Tacoma

ADDRESSEE(S):

Kelly Cole/EPA

Lori G. Cohen/EPA

Piper L. Peterson Lee/EPA

(TFCDR) COMMENCEMENT BAY NT - THEA FOSS DISPUTE RESOLUTION ON THE CITY'S CLAIM OF FORCE M

DESCRIPTION:

Email transmitting the City's Discussion Agenda for the 3/30/06 meeting.

23. 8. 11. 1. Vol. 1 - DOC ID: 1222985 IMAGED  
DATE: 3/30/2006 PAGES: 1  
AUTHOR(S): ADDRESSSEE(S):  
Kelly Cole/EPA Doug Mosich/City of Tacoma

DESCRIPTION:

Email regarding Force Majeure Issue.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239016 IMAGED  
DATE: 3/30/2006 PAGES: 1  
AUTHOR(S): ADDRESSSEE(S):  
Doug Mosich/City of Tacoma Kelly Cole/EPA

DESCRIPTION:

Email promising the requested letter outlining the matters discussed at the 3/30/06 meeting.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239029 IMAGED  
DATE: 3/30/2006 PAGES: 1  
AUTHOR(S): ADDRESSSEE(S):  
Hart Crowser, Inc. Unknown

Berger/ABAM Engineers, Inc.

DESCRIPTION:

Handout at the 3/30/06 meeting with the City of Tacoma, Thea Foss and Wheeler-Osgood Waterways Remediation Project, Middle Waterway Tideflat Habitat Site Plan, dated 11/09/04, with annotations.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239031 IMAGED  
DATE: 3/30/2006 PAGES: 1  
AUTHOR(S): ADDRESSSEE(S):  
Hart Crowser, Inc. Unknown

Berger/ABAM Engineers, Inc.

DESCRIPTION:

Handout at the 3/30/06 meeting with the City of Tacoma, Figure 3, Thea Foss and Wheeler-Osgood Waterways Remediation Project, Middle Waterway Tideflat Habitat Site Plan, dated 11/09/04.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239017 IMAGED  
DATE: 4/13/2006 PAGES: 6  
AUTHOR(S): ADDRESSSEE(S):  
Mary L. Henley/City of Tacoma Piper L. Peterson Lee/EPA

(TFCDR) COMMENCEMENT BAY NT - THEA FOSS DISPUTE RESOLUTION ON THE CITY'S CLAIM OF FORCE M

DESCRIPTION:

Letter outlining the matters discussed at the 3/30/06 meeting regarding the Thea Foss and Wheeler-Osgood Waterways Remediation Project, Force Majeure Follow-up, with annotated Middle Waterway Tideflat Habitat Site Plan, (marginalia).

23. 8. 11. 1. Vol. 1 - DOC ID: 1239018 IMAGED  
DATE: 4/20/2006 PAGES: 1  
AUTHOR(S): PIPER L. PETERSON LEE/EPA ADDRESSEE(S):  
John O'Loughlin/City of Tacoma  
Mary L. Henley/City of Tacoma

DESCRIPTION:

Email regarding the Force Majeure response and requesting additional information.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239019 IMAGED  
DATE: 4/24/2006 PAGES: 1  
AUTHOR(S): MARY L. HENLEY/CITY OF TACOMA ADDRESSEE(S):  
PIPER L. PETERSON LEE/EPA

DESCRIPTION:

Response to the request for additional information regarding the City's Force Majeure.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239020 IMAGED  
DATE: 4/28/2006 PAGES: 2  
AUTHOR(S): DOUG MOSICH/CITY OF TACOMA ADDRESSEE(S):  
KELLY COLE/EPA

DESCRIPTION:

Email regarding the Force Majeure Follow-up and notice of an extension of the informal negotiations period to 5/5/06.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239021 IMAGED  
DATE: 5/1/2006 PAGES: 1  
AUTHOR(S): PIPER L. PETERSON LEE/EPA ADDRESSEE(S):  
John O'Loughlin/City of Tacoma  
Mary L. Henley/City of Tacoma

DESCRIPTION:

Email regarding the Force Majeure and requesting additional data.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239022 IMAGED  
DATE: 5/4/2006 PAGES: 2  
AUTHOR(S): KELLY COLE/EPA ADDRESSEE(S):  
MARY L. HENLEY/CITY OF TACOMA

DESCRIPTION:

Email extending the informal negotiation period for the Force Majeure issue until 5/19/06.

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23. 8. 11. 1. Vol. 1 - DOC ID: 1239023 IMAGED  
DATE: 5/10/2006 PAGES: 1  
AUTHOR(S): Kymberly C. Takasaki/U. S. Army Corps of Engineers  
ADDRESSEE(S): John O'Loughlin/City of Tacoma  
Mary L. Henley/City of Tacoma

DESCRIPTION: Email requesting Middle Waterway historical information.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239024 IMAGED  
DATE: 5/11/2006 PAGES: 1  
AUTHOR(S): Mary L. Henley/City of Tacoma  
ADDRESSEE(S): Kymberly C. Takasaki/U. S. Army Corps of Engineers

DESCRIPTION: Response to email requesting Middle Waterway historical information.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239025 IMAGED  
DATE: 5/11/2006 PAGES: 2  
AUTHOR(S): Kymberly C. Takasaki/U. S. Army Corps of Engineers  
ADDRESSEE(S): Mary L. Henley/City of Tacoma

DESCRIPTION: Email regarding Middle Waterway historical information and asking Anchor or Simpson for it.

23. 8. 11. 1. Vol. 1 - DOC ID: 1222990 IMAGED  
DATE: 5/17/2006 PAGES: 5  
AUTHOR(S): Kymberly C. Takasaki/U. S. Army Corps of Engineers  
ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION: Email forwarding Middle Waterway, Project# Middle Waterway, F St/E 11th St., Tacoma, WA - EDR# 1674770.1s - Part 2 of 5.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239026 IMAGED  
DATE: 5/19/2006 PAGES: 3  
AUTHOR(S): Kelly Cole/EPA  
ADDRESSEE(S): Doug Mosich/City of Tacoma

DESCRIPTION: Letter regarding Force Majeure- Thea Foss and Wheeler-Osgood Waterways, and providing EPA's decision per the informal dispute process of the Consent Decree.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239033 IMAGED  
DATE: 6/26/2006 PAGES: 4  
AUTHOR(S): Piper L. Peterson Lee/EPA  
ADDRESSEE(S): File

DESCRIPTION:

Personal communication between Piper Peterson Lee, John Bower (DNR) and Kelly Cole (EPA) regarding Middle Waterway demarcations on supplemental plats dated 8/18/1902 and 6/5/1925, with handwritten notes.

23. 8. 11. 1. Vol. 1 - DOC ID: 1239034 IMAGED  
DATE: 6/26/2006 PAGES: 2  
AUTHOR(S): ADDRESSSEE(S):  
Piper L. Peterson Lee/EPA File

DESCRIPTION:

Personal communication between Piper Peterson Lee, John Bower (DNR) and Kelly Cole (EPA) regarding the Historical Sequence of City Waterway and Surrounding Areas from 1878 to 1938 using U. S. Coast and Geodetic Survey Charts, with handwritten notes.

**SUB-HEAD: 23. 8. 11. 2. Vol. 1 - City of Tacoma Notice of Dispute and Statement of Position**

23. 8. 11. 2. Vol. 1 - DOC ID: 1239027 IMAGED  
DATE: 6/8/2006 PAGES: 91  
AUTHOR(S): ADDRESSSEE(S):  
Karen J. Larkin/City of Tacoma Daniel D. Opalski/EPA

DESCRIPTION:

Thea Foss and Wheeler-Osgood Waterways Remediation Project, City of Tacoma's Statement of Position Regarding Its Claim of Force Majeure at the Middle Waterway Tidelands Habitat Area, with Exhibits A-G.

**SUB-HEAD: 23. 8. 11. 3. Vol. 1 - EPA Statement of Position**

23. 8. 11. 3. Vol. 1 - DOC ID: 1239030 IMAGED  
DATE: 6/28/2006 PAGES: 127  
AUTHOR(S): ADDRESSSEE(S):  
Kelly Cole/EPA Daniel D. Opalski/EPA

Piper L. Peterson Lee/EPA

DESCRIPTION:

Dispute Resolution - Thea Foss Waterway, City's Claim of Force Majeure, EPA's Statement of Position, with attachments.

**SUB-HEAD: 23. 8. 11. 6. Vol. 1 - Guidance/Technical Sources/Maps & Figures**

23. 8. 11. 6. Vol. 1 - DOC ID: 1239035 IMAGED  
DATE: 4/27/1895 PAGES: 3  
AUTHOR(S): ADDRESSSEE(S):  
King County Unknown

DESCRIPTION:

Map of Tacoma Tidelands with document #1153703 - Original Platting of Tacoma Tide Lands as surveyed and Platted by the Board of Appraisers of Tide and Shore Lands for King County, Pages of Index Maps for Tacoma Tide Lands (Formerly in King County) Vol. 1.

23. 8. 11. 6. Vol. 1 - DOC ID: 1239037 IMAGED  
DATE: 6/1/1938 PAGES: 1  
AUTHOR(S): U. S. Coast and Geodetic Survey ADDRESSEE(S): Unknown

DESCRIPTION:

Drawing titled Tacoma Harbor.

23. 8. 11. 6. Vol. 1 - DOC ID: 1239036 IMAGED  
DATE: 10/2/1950 PAGES: 1  
AUTHOR(S): U. S. Army Corps of Engineers ADDRESSEE(S): Unknown

DESCRIPTION:

Drawing titled Tacoma Harbor, Washington, Harbor Lines.

23. 8. 11. 6. Vol. 1 - DOC ID: 1239040 IMAGED  
DATE: 4/20/1998 PAGES: 42  
AUTHOR(S): Anchor Environmental, LLC ADDRESSEE(S): Simpson Tacoma Kraft Company

Parametrix, Inc.

Preston Gates & Ellis

DESCRIPTION:

Technical Memorandum, Supplemental Information to the Preliminary Draft Project Analysis on the St. Paul Peninsula Environmental Improvement and Industrial Redevelopment Project.

23. 8. 11. 6. Vol. 1 - DOC ID: 1239038 IMAGED  
DATE: 11/2/1999 PAGES: 54  
AUTHOR(S): John Bower/Washington State Dept. of Natural Resources ADDRESSEE(S): Unknown

DESCRIPTION:

Draft Preliminary Report: Historical Review and Analysis, Middle Waterway Transactions.

23. 8. 11. 6. Vol. 1 - DOC ID: 1239041 IMAGED  
DATE: 9/27/2005 PAGES: 50  
AUTHOR(S): Iain Wingard/Floyd Snider ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION:

Memorandum regarding, Middle Waterway Tideflat Habitat Characterization Results, with data CD, (marginalia).

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23. 8. 11. 6. Vol. 1 - DOC ID: 1239042 IMAGED  
DATE: 6/27/2006 PAGES: 15  
AUTHOR(S): John Bower/Washington State Dept. of Natural Resources ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Series of email transmitting requested U. S. Coast and Geodetic Maps for Middle Waterway, with PDF versions on a CD ROM.

**SUB-HEAD: 23. 8. 11. 7. Vol. 1 - CONFIDENTIAL**

23. 8. 11. 7. Vol. 1 - DOC ID: 1222982 IMAGED CONFIDENTIAL  
DATE: 1/24/2006 PAGES: 1  
AUTHOR(S): Kelly Cole/EPA ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Email regarding CB/NT Thea Foss - City's Force Majeure Claim.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222983 IMAGED CONFIDENTIAL  
DATE: 2/7/2006 PAGES: 2  
AUTHOR(S): Sheila M. Eckman/EPA ADDRESSEE(S):  
Piper L. Peterson Lee/EPA  
Kelly Cole/EPA

DESCRIPTION: Email regarding Force Majeure response to City -- draft for comments.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222984 IMAGED CONFIDENTIAL  
DATE: 3/16/2006 PAGES: 2  
AUTHOR(S): Kelly Cole/EPA ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Email forwarding Force Majeure comment.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222986 IMAGED CONFIDENTIAL  
DATE: 4/25/2006 PAGES: 3  
AUTHOR(S): Kymberly C. Takasaki/U. S. Army Corps of Engineers ADDRESSEE(S):  
Piper L. Peterson Lee/EPA

DESCRIPTION: Email regarding Force Majeure response re: Hart Crowser and Berger Abam.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222987 IMAGED CONFIDENTIAL  
DATE: 5/2/2006 PAGES: 2  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S):  
Sheila M. Eckman/EPA  
Kelly Cole/EPA

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Piper L. Peterson Lee/EPA

Lori G. Cohen/EPA

DESCRIPTION: Email regarding Force Majeure.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222988 IMAGED CONFIDENTIAL  
DATE: 5/4/2006 PAGES: 1  
AUTHOR(S): Kelly Cole/EPA ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION: Email regarding Middle Waterway photos/maps, with post-it note.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222989 IMAGED CONFIDENTIAL  
DATE: 5/16/2006 PAGES: 27  
AUTHOR(S): Kelly Cole/EPA ADDRESSEE(S): Piper L. Peterson Lee/EPA

DESCRIPTION: Email transmitting ASTM sections.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222991 IMAGED CONFIDENTIAL  
DATE: 5/18/2006 PAGES: 2  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S): Kelly Cole/EPA

DESCRIPTION: Email forwarding Middle Waterway historical information.

23. 8. 11. 7. Vol. 1 - DOC ID: 1222992 IMAGED CONFIDENTIAL  
DATE: 5/19/2006 PAGES: 1  
AUTHOR(S): Kelly Cole/EPA ADDRESSEE(S): Lori G. Cohen/EPA  
Piper L. Peterson Lee/EPA

DESCRIPTION: Email regarding Force Majeure letter.

23. 8. 11. 7. Vol. 1 - DOC ID: 1239043 IMAGED CONFIDENTIAL  
DATE: 6/27/2006 PAGES: 1  
AUTHOR(S): Piper L. Peterson Lee/EPA ADDRESSEE(S): File

DESCRIPTION: Handwritten notes from 6/27/06 meeting between Piper Peterson Lee, Kym Takasaki and Kelly Cole.