

ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS

(1) This Environmental Protection Easement and Declaration of Restrictive Covenants ("Easement and Covenant") is made this 28 day of Oct., 1997, by and between Ketchikan Pulp Company ("Grantor"), having an address of P.O. Box 6600, Ketchikan, Alaska, 99901, and the State of Alaska Department of Natural Resources ("Grantee"), having an address of 3601 "C" Street, Suite 960, Anchorage, Alaska 99503, for use by the State of Alaska Department of Environmental Conservation (DEC), as represented by its State of Alaska Department of Law.

WITNESSETH:

(2) WHEREAS, Grantor is the owner of a parcel of land and tide and submerged lands located in the Ketchikan Gateway Borough, State of Alaska, more particularly described on **Exhibit A** attached hereto and made a part hereof ("the Property"); and

(3) WHEREAS, the U.S. Environmental Protection Agency (EPA) and the State of Alaska Department of Environmental Conservation (DEC) intend to select response actions for the Property in Records of Decision pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, AS 46.03.822, and/or pursuant to a consent decree dated September 19, 1995, filed under U.S. v. Ketchikan Pulp Company, No. A92-587-CV (D. Alaska);

- (4) WHEREAS, the parties hereto agree (a) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response actions; and (b) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and
- (5) WHEREAS, Grantor wishes to cooperate fully with the Grantee and EPA in the implementation of all response actions at the Property;

NOW, THEREFORE:

- (6) Grant: Grantor, for good and sufficient consideration received, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, (a) a right to enforce said use restrictions for the duration of this Easement and Covenant as established in Paragraph (9) below, and (b) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
- (7) Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
- (8) Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land, and are binding on the Grantor:
- (a) Uses of the Property are limited to commercial or industrial use.

- (b) The Property shall not, at any time, be used, in whole or in part, for human habitation, schooling of children, hospital care, child care or any purpose necessitating around-the-clock residence by humans.
 - (c) Drilling of drinking water wells is prohibited.
 - (d) Use of ground water for drinking water is prohibited.
 - (e) Controls specified in the "Management Plan for Arsenic and Rock and Soil," prepared by Exponent for KPC, dated July 1998, to limit concentrations of arsenic from crushed rock shall be complied with.
 - (f) Soils in the nearshore fill area or soils underneath paved areas or structures at the pulp mill site that are exposed in the future, e.g., as the result of excavation or demolition activities, shall be properly characterized and managed in accordance with applicable disposal requirements.
 - (g) Projects or activities that materially damage the cap applied to tide and submerged lands shall be required, at the direction of EPA, to redress such impacts, e.g., a dredging project that may erode or displace large portions of the cap will be required to repair or replace the cap.
- (9) Modification of restrictions: The restrictions for the Property set forth in Paragraphs (8)(a) through (f) above shall exist until 2099, or until concentrations of the contaminants set forth in **Exhibit B** attached hereto no longer exceed site-specific, risk-based, residential cleanup levels, whichever comes first. The restriction set forth in

Paragraph (8)(g) above for tide and submerged lands shall exist until 2020 or until EPA determines that healthy benthic communities exist in the capped tide and submerged lands, whichever comes earlier. The above restrictions may be terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

(10) Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable and continuing right of access under the terms and conditions of this instrument at all reasonable times to the Property for purposes of implementing the following activities pursuant to CERCLA, AS 46.03.822, or the above-referenced consent decree. Grantee, in its sole discretion, may relinquish this easement for right of access.

Grantee may designate EPA as its authorized representative for the following activities:

- (a) Implementing response actions for the Property selected by EPA and/or DEC in Records of Decision.
- (b) Verifying any data or information submitted to EPA or the Grantee by the Grantor.
- (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument, CERCLA, AS 46.03.822, or the above-referenced consent decree.
- (d) Monitoring response actions on the Property including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation,

obtaining split or duplicate samples.

- (e) Conducting periodic reviews of any response action(s) selected by EPA and/or DEC, including but not limited to, reviews required by applicable statutes and/or regulations.
- (f) Assessing the need for and implementing additional or new response actions authorized under CERCLA, AS 46.03.822, or the above-referenced consent decree.

(11) Reserve rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not contrary to the restrictions, rights and easements granted herein.

(12) Other Authorities. Nothing in this document shall limit or otherwise affect the State of Alaska's or EPA's rights of entry and access or their authority to take response actions under CERCLA, the National Contingency Plan (NCP), or other federal or state law.

(13) No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed or authorized by this instrument nor are any such existing rights affected by this instrument.

(14) Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 19 __, RECORDED IN THE KETCHIKAN RECORDING DISTRICT, FIRST JUDICIAL DISTRICT, STATE OF ALASKA, ON _____, 19 __, IN BOOK __, PAGE __ THAT IS IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF ALASKA.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

(15) Administrative jurisdiction: The interests conveyed to the State of Alaska by this instrument are to its Department of Natural Resources, for administration by its Department of Environmental Conservation.

(16) Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process without regard to the existence or nonexistence of any dominant estate. Grantee or its authorized representative shall be entitled to enforce the rights of access set forth in Paragraph (10) above. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and AS 46.03.822. Enforcement of the terms of this instrument shall be at the discretion of the Grantee; any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

(17) Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument.

(18) Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

(19) Notices: Unless and until changed by Grantor or Grantee, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Ketchikan Pulp Company
 Attn: President and General
 Manager
 c/o Louisiana-Pacific Corp.
 111 SW 5th Avenue
 Portland, Oregon 97204

To Grantee:

State of Alaska
 Department of Natural Resources
 Division of Mining, Land and Water
 Realty Services Section
 3601 "C" Street, Suite 960
 Anchorage, Alaska 99503

AND

State of Alaska
 Department of Environmental Conservation
 Spill Prevention & Response
 410 Willoughby Avenue, Suite 105
 Juneau, Alaska 99801-1795

(20) General provisions:

- (a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States and the State of Alaska.
- (b) Liberal construction: Any general rule of construction to the contrary

notwithstanding, this instrument shall be liberally construed in favor of the Grant of this instrument to effect the purpose of this instrument and policy and purpose of CERCLA, the above-referenced consent decree, and applicable state law. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

- (c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- (d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
- (e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties

hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude held by Grantee in gross without regard to the existence or absence of privity of estate with Grantor or its successors or assigns, and shall run with the Property for the duration of this Easement and Covenant as established in Paragraph (9) above. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantor under this instrument are freely assignable. The rights of the Grantee under this instrument are freely assignable to governmental bodies, subject to the notice provisions hereof. The term "EPA" shall include any successor agencies of EPA.

- (g) Termination of Rights and Obligations: Grantor's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

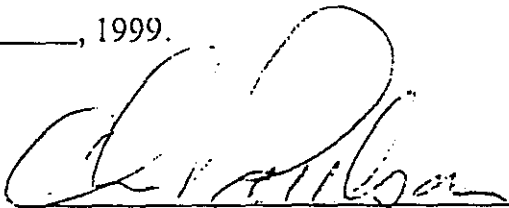
- (h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the State of Alaska and its assigns

forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed
in its name.

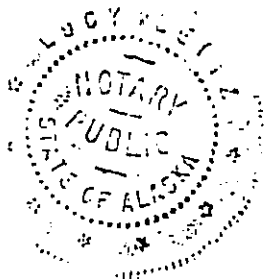
Executed this 28th Day of Oct., 1999.

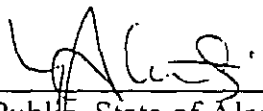
By: 
Chris Paulson
Its: President & General Manager
Ketchikan Pulp Company

STATE OF ALASKA)
 : ss
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 28th day of Oct., 1999, at ~~Juneau~~ ^{Ketchikan},
Alaska, before me, the undersigned, a Notary Public in and for the State of Alaska, duly
commissioned and sworn, personally appeared Chris Paulson, known to
me and known to me to be the person he represents himself to be, and the same identical
person who executed the above and foregoing document regarding an Environmental
Protection Easement and Declaration of Restrictive Covenants, and who acknowledged to
me that he executed the same freely and voluntarily for the purposes and uses herein
mentioned.

WITNESS my hand and official seal the day, month and year in this
certificate first written above.




Notary Public, State of Alaska
My Commission Expires: 9-19-2002

This easement and declaration is accepted this 27 day of October, 19 99.

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES

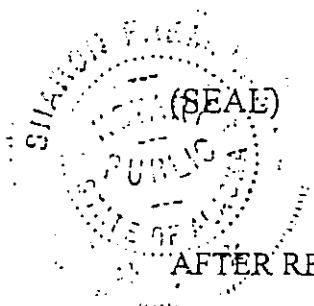
By: Paul S. [unclear]

SE Regional Manager

STATE OF ALASKA)
:SS
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 27 day of Oct, 1999, before me; the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared [unclear], known to me and to me known to be the [unclear], and he/she acknowledged to me that he/she signed as accepting the foregoing Environmental Protection Easement and Declaration of Restrictive Covenants, granting to the State of Alaska, those lands described therein, and he/she executed the foregoing instrument freely and voluntarily.

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



[Signature]
Notary Public in and for the State of Alaska
My commission expires 5/24/03

AFTER RECORDING PLEASE RETURN ORIGINALS TO:

Carol Shobe, Chief
Realty Services Section
State of Alaska, Department of Natural Resources
Division of Mining, Land and Water
3601 "C" Street, Suite 960
Anchorage Alaska 99503

Location Index:
Sections 33 and 34, T. 74 S., R 90 E., CRM
Sections 3 and 4, T. 75 S., 90 E., CRM

STATE BUSINESS, NO CHARGE

M:\KPCSUPERFUM\FINAL-IC.wpd

EXHIBIT A
To The Environmental Protection Easement
And Declaration of Restrictive Covenants

Description of "the Property"

PARCEL NO. 1:

ALASKA TIDELANDS SURVEY NO. 1 (CR 74S 90E), according to the recorded plat thereof, (mistakenly recorded in the Juneau Recording District as Plat No. 292), Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: That portion thereof taken by the State of Alaska, Department of Transportation and Public Facilities by that certain Declaration of Taking (filed under Ketchikan Superior Court Case No. 1KE-87-444 CI) recorded May 28, 1987 in Book 149 at Page 625.

PARCEL NO. 2:

U.S. Survey 1056, accepted by the General Land Office, in Juneau, Alaska on January 24, 1919, and located within the Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: Those portions of U.S. Survey 1056 situated upland (North) of the north Right-of-way line of the North Tongass Highway;

Excepting therefrom: That certain portion thereof conveyed to Eugene Wacker and Lillian Wacker, his wife by Warranty Deed recorded January 27, 1950 in Volume "W" of Deeds at Page 614;

Also excepting therefrom: That certain portion conveyed to The United States of America by Right-of-Way Deed recorded April 28, 1949 in Volume "W" of Deeds at Page 397.

PARCEL NO. 13:

Lots 1-7, inclusive, Block 1, Lots 1-6, inclusive, Block 2, Lots 1-4, inclusive, Block 3 and Lots 1-16, inclusive Block

4, and the Unsubdivided Remainder, according to the subdivision plat of U.S. Survey 1754 recorded March 8, 1956 in Volume 1 of Plats at Packet 20, Ketchikan Recording District, First Judicial District, State of Alaska;

Excepting therefrom: Those portions of U.S. Survey 1754 situated upland (North) of the North Tongass Highway.

PARCEL NO. 15:

That portion of U.S. Survey 1862, according to the plat of survey approved by the Department of the Interior, General Land Office in Washington, D.C., on January 20, 1931 and located within the Ketchikan Recording District, First Judicial District, State of Alaska, more particularly described as follows: Beginning at U.S. Location Monument No. 2; thence North 32 degrees 27 minutes West a distance of 155.5 feet to Corner No. 1 of U.S. Survey 1862 and the true point of beginning of the portion herein described; thence North 0 degrees 25 minutes West a distance of 515 feet, more or less, to a point on the South Right of Way line of North Tongass Highway, which point is 50 feet from the center line of said highway and at right angles to Engineers Station 299+50; thence along that portion of a spiral curve to the left whose chord bears South 24 degrees 30 minutes East a distance of 114.65 feet; thence along the arc of a 527.46 foot radius curve the long chord of which bears South 36 degrees 35 minutes East a distance of 126.14 feet; thence along a spiral curve whose chord bears South 51 degrees 21 minutes East a distance of 210.05 feet; thence South 55 degrees 27 minutes East a distance of 316.97 feet; thence South 34 degrees 33 minutes West a distance of 50 feet; thence South 55 degrees 27 minutes East a distance of 137.00 feet; thence South 88 degrees 00 minutes West a distance of 535 feet more or less along Meander Line No. 11 of U.S. survey 1862; thence North 29 degrees 30 minutes West a distance of 155.50 feet along Meander Line No. 12 of U.S. Survey 1862 to Corner No. 1, which is the point of beginning;

ALSO: That portion of U.S. Survey 1862 lying with the North Tongass Highway Right of Way as created by a deed dated April 1, 1949 and recorded in Volume "W" of Deeds at Page 362, Ketchikan Recording District, First Judicial District,

State of Alaska, and as conveyed to Ketchikan Pulp Company by Quitclaim Deed recorded July 27, 1988 in Book 158 at Page 588.

Excepting therefrom: Those portions of U.S. Survey 1862 situated upland (north) of the north Right-of-way line of the North Tongass Highway.

**Exhibit B to Environmental Protection Easement
and Declaration of Restrictive Covenants**

Contaminants of Concern

Arsenic

Dioxin

Lead

Petroleum

Polycyclic aromatic hydrocarbons (benz(a)anthracene, benzo(b)fluoroanthene,
benzo(a)pyrene, and dibenz(a,h)anthracene)

Polychlorinated biphenyls

004531 NC
RECORDING DISTRICT

1999 OCT 28 PM 3:34
REQUESTED BY
ALASKA STATE OF