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07/05/2022 10:38:03 AM \$219.50
AUDITOR, Pierce County, WASHINGTON

After Recording Return Original
Signed Covenant to:
Section Manager
Toxics Cleanup Program
Southwest Region
Department of Ecology
PO Box 47600
Olympia WA 98504-7600

Environmental Covenant (Clear Creek Habitat Improvement Project (Phase II))

Grantor: Port of Tacoma

Grantee: State of Washington, Department of Ecology (hereafter Ecology)

Brief Legal Description: Portion of Section 11, Township 20N, Range 03E, WM

Addl Legal Description: Exhibit A, Legal description of parcels within which the Project Area subject to this Covenant is located

Exhibit B, Legal description of Project Area subject to Covenant

Exhibit C, Plan view illustration of Project Area subject to Covenant

Tax Parcel Nos.: Portion of 5000350671 and Portion of 5000350672

RECITALS

a. This document grants a valid and enforceable environmental (restrictive) covenant (hereafter “Covenant”) executed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, the Model Toxics Control Act (“MTCA”), chapter 70A.305 RCW, and Uniform Environmental Covenants Act (“UECA”), chapter 64.70 RCW.

b. The covenants granted herein are required conditions of the remedy selected by the United States Environmental Protection Agency (“EPA”) for the Commencement Bay Nearshore/Tideflats Superfund Site [WAD980726368] [Ecology Facility ID 42] (“Site”) Operable Unit 1 on September 30, 1989 (“Record of Decision” or “ROD”). Operable Unit 1 includes the Mouth of Hylebos Waterway Problem Area and the remedy for this area is further described in an Explanation of Significant Differences (“ESD”) dated July 28, 1997, and a separate ESD dated August 3, 2000. The Consent Decree for the Mouth of the Hylebos Waterway Problem Area, *U.S. v. Port of Tacoma, et al.*, Civil Action No. 05-CV-05103 (W.D. Wash. 2005; “Consent Decree”), requires implementation of the remedy. As part of that remedy, Grantor was required to construct a habitat mitigation project at Clear Creek Habitat Improvement Project (Phase II), which is adjacent to the existing Clear Creek Habitat Improvement Project (Phase I). The Clear Creek Habitat Improvement Project (Phase II) compensated for and offset the unavoidable environmental impacts of the remedial actions that occurred at the Mouth of Hylebos Waterway Problem Area.

c. Grantor is the owner of Pierce County Tax Parcel Nos. 5000350671 and 5000350672, which parcels are legally described in Exhibit A (hereafter “Property”). The portion of this Property that is the Clear Creek Habitat Improvement Project (Phase II) area and subject to the conditions of this Covenant is legally described in Exhibit B (“Project Area”). Exhibit C is a plan view illustration of the Project Area. If there are differences between Exhibits B and C, the legal description in Exhibit B shall prevail.

d. It is the purpose of this Covenant to restrict certain activities and uses of the Project Area to protect the integrity of the Clear Creek Habitat Improvement Project (Phase II), as well as to obligate Grantor to implement the Clear Creek Habitat Improvement Project Long-Term Monitoring and Maintenance Plan (“LTMP”) as approved by EPA, including any future modifications to the LTMP approved by EPA and Ecology, in order to provide long-term protection of this constructed habitat site. A copy of the administrative record supporting the Clear Creek Habitat Improvement Project (Phase II), including the ROD, ESD, LTMP, related administrative record, and Consent Decree, is on file with EPA Region 10 or its successor agency and is available for public review. In order to make arrangements for such review, a person may contact the EPA Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

e. This Covenant grants Ecology, as Holder of this Covenant, certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest under MTCA or CERCLA. The rights of Ecology and EPA as an “agency” under UECA, other than Ecology’s right as a holder, are not an interest in real property.

COVENANT

The Port of Tacoma, as Grantor and owner of the Property, hereby grants to the Washington State Department of Ecology the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the Project Area and run with the land and be binding on all current and future owners of any portion of, or interest in, the Project Area.

Ecology and EPA have the full rights to enforce the restrictions, conditions, or other rights set forth in this Covenant, as provided by law, including but not limited to CERCLA, MTCA and UECA.

Section 1. General Restrictions and Requirements.

The Clear Creek Habitat Improvement Project (Phase II) is not part of the Site but was required by the ROD as modified by the 1997 and 2000 ESDs, Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and the Consent Decree to be constructed to offset the remedial action at the Site. As such, the following general restrictions and requirements shall apply to the Project Area:

a. **Interference with Remedial Action.** The Grantor shall not engage in any activity in the Project Area that may impact or interfere with the remedial action and any operation, maintenance,

inspection or monitoring of that remedial action without prior written approval from Ecology and EPA.

b. Protection of Human Health and the Environment. The Grantor shall not engage in any activity in the Project Area that may threaten continued protection of human health or the environment without prior written approval from Ecology and EPA.

c. Continued Compliance Required. Grantor shall not convey any interest in any portion of the Project Area without providing for the continued adequate and complete operation, maintenance and monitoring of the remedial action in the Project Area and continued compliance with this Covenant.

d. Preservation of Reference Monuments. Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and obligations shall apply to the Project Area.

a. Land Use Restrictions. The Project Area shall be used for the Clear Creek Habitat Improvement Project (Phase II) in accordance with the Consent Decree. No person shall engage in any residential or commercial use in the Project Area, without the prior written approval of Ecology and EPA. No person shall engage in any activity in the Project Area that damages or disturbs the integrity of the Clear Creek Habitat Improvement Project (Phase II), without the prior written approval of Ecology and EPA. Examples of activities that may damage or disturb the integrity of the Clear Creek Habitat Improvement Project (Phase II) are construction of additional buildings or roads.

b. Land Use Obligations. In order to ensure the long-term protection of the Clear Creek Habitat Improvement Project (Phase II), Grantor is required to implement the EPA approved Clear Creek Habitat Improvement Project LTMP.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components in the Project Area necessary to construct, operate, inspect, monitor, and maintain the remedial action in the Project Area.

b. The Grantor freely and voluntarily consents to provide Ecology, EPA, and their authorized representatives, upon reasonable notice, the right to enter the Project Area at reasonable times to evaluate the effectiveness of this Covenant and associated remedial action taken in the Project Area, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial action conducted in the Project Area, and to inspect related records.

c. No right of access or use by a third party to any portion of the Project Area is conveyed or consensually provided by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest in any part of the Project Area, including but not limited to title, easement, leases, and security or other interests, must:

- i. Unless otherwise agreed to in writing by Ecology and EPA, provide written notice to Ecology and EPA of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: PURSUANT TO A REMEDIAL ACTION OVERSEEN BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE PIERCE COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology and EPA, provide Ecology and EPA with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology and EPA.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology and EPA in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be either personally delivered or sent by first class parcel post to the following persons. Any change in this contact information shall be submitted in writing and in advance of such change to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first-class parcel post, such as e-mail or other electronic means, may be used for these communications.

| | | |
|---|---|---|
| Director, Environmental Programs Port of Tacoma P.O. Box 1837 Tacoma, WA 98401-1837 (253) 383-5841 | Director, Superfund and Emergency Management Division, USEPA 1200 Sixth Avenue Seattle, WA 98101 | Section Manager, Toxics Cleanup Program Southwest Region Department of Ecology P.O. Box 47775 Olympia, WA 98505-7775 (360) 407-6000 |
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Section 5. Modification or Termination.

a. Grantor must provide written notice to Ecology, EPA, and the Commencement Bay Trustees (NOAA, Restoration Center, Northwest Regional Supervisor), and obtain approval from Ecology and EPA at least sixty (60) days in advance of any proposed activity or use of the Project Area in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

i. Ecology or EPA must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology and EPA approve of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the Site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology and EPA that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to EPA and others required by RCW 64.70.070.

c. Ecology and EPA shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including CERCLA, MTCA, and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology and EPA, and any forbearance, delay, or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology or EPA of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology and EPA under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request from Ecology or EPA, shall be obligated to pay for Ecology's and EPA's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of CERCLA, MTCA, and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

GRANTOR:

PORT OF TACOMA



Signature

by: Jason Jordan

Title: Director, Environmental and Planning Programs

Date: 6/21/22

STATE OF WASHINGTON
COUNTY OF PIERCE

On this 21 day of June, 2022, I certify that JASON JORDAN personally appeared before me, acknowledged that **he/she** is the DIRECTOR, ENV. & PLANNING of the Port of Tacoma that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said entity.





Notary Public in and for the State of Washington
Residing at Pierce County
My appointment expires 4/15/25

WASHINGTON STATE DEPARTMENT OF ECOLOGY

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above described Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Marian L. Abbett For
Signature

by: Rebecca S. Lawson

Title: Section Manager, Toxics Cleanup Program, Southwest Region

Dated: July 5, 2022

STATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 5th day of July, 2022, I certify that Marian L. Abbett personally appeared before me, acknowledged that he/she is the Acting SWRO-TCP section manager of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.

Treasure A Mitchell
Notary Public in and for the State of Washington

Residing at McCleary, WA

My appointment expires 8-2-2023



Messrs. L. B. Smith & Co.

July 8, 1928.

Washington
D. C.

Mr. J. H. [unclear]

Messrs. L. B. Smith & Co.
Washington, D. C.

Treasurer, L. B. Smith & Co.

Washington, D. C.

July 8, 1928



U.S. ENVIRONMENTAL PROTECTION AGENCY

The U.S. Environmental Protection Agency hereby approves of the above described Environmental Covenant.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 10



Calvin J. Terada

Director
Superfund and Emergency Management Division
U.S. EPA, Region 10

Dated: June 29, 2022

EXHIBITS

The Clear Creek Habitat Improvement Project (Phase II) is located within Tax Parcel Nos. 5000350671 and 5000350672. The legal description of those tax parcels is contained in Exhibit A. The legal description of the Clear Creek Habitat Improvement Project (Phase II), the Project Area subject to this Covenant, is contained in Exhibit B. An illustration of the Clear Creek Habitat Improvement Project (Phase II), the Project Area subject to this Covenant, is contained in Exhibit C.

EXHIBIT A

**Legal Description of Tax Parcel Nos. 5000350671 and 5000350672
Within Which the Project Area Subject To This Covenant Is Located**

Legal Description of Tax Parcel No. 5000350671:

THAT PORTION OF LOT 67, PORT OF TACOMA ASSESSOR'S TRACTS, LYING WITHIN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, LYING WITHIN THE CITY OF TACOMA AND DESCRIBED AS FOLLOWS:

TRACT 12, INDIAN ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY AUDITOR, LYING EAST OF TACOMA-PUYALLUP COUNTY ROAD, AND TRACTS 13 AND 14 OF SAID INDIAN ADDITION, LYING EAST OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY.

TOGETHER WITH THAT PORTION OF GOVERNMENT LOT 4 OF SAID SECTION LYING SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 5 AND LYING BETWEEN THE EASTERLY MEANDER LINE OF THE OLD CHANNEL OF THE PUYALLUP RIVER AND THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION;

ALSO TOGETHER WITH ALL THAT PORTION OF THE ABANDONED CHANNEL OF THE PUYALLUP RIVER WITHIN THE GOVERNMENT MEANDER LINE LYING EAST OF THE EAST LINE OF TRACTS 12 AND 13 OF SAID INDIAN ADDITION AND WEST OF THE NORTH-SOUTH 1/16 LINE.

EXCEPT THE RIGHT OF WAY FOR CLEAR CREEK CHANNEL.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

Legal Description of Tax Parcel No. 5000350672:

THAT PORTION OF LOT 67, PORT OF TACOMA ASSESSOR'S TRACTS, LYING WITHIN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, LYING OUTSIDE OF THE CITY OF TACOMA AND DESCRIBED AS FOLLOWS:

BEGINNING 417.18 FEET SOUTH OF THE NORTHWEST CORNER OF GOVERNMENT LOT 7; THENCE SOUTHERLY AND SOUTHEASTERLY ALONG THE CENTERLINE OF CLEAR CREEK CHANNEL TO A POINT 384 FEET WEST OF THE EAST LINE OF THE SAID SOUTHWEST QUARTER; THENCE SOUTH 20 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF THE NORTHERN PACIFIC RAILROAD; THENCE NORTHERLY AND WESTERLY ALONG SAID RIGHT OF WAY 968 FEET TO THE SOUTH LINE OF GOVERNMENT LOT 6; THENCE WEST ALONG SAID SOUTH LINE 121.91 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 6 901.38 FEET TO THE POINT OF BEGINNING.

EXCEPT THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 7; THENCE EAST ON THE NORTH LINE OF SAID LOT 7 TO THE WESTERLY RIGHT OF WAY LINE OF CLEAR CREEK CHANNEL; THENCE SOUTH 28°56'50" WEST TO THE WESTERLY LINE OF SAID LOT 7; THENCE NORTH ON SAID WEST LINE TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION LYING SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 5 AND NORTHWESTERLY OF CLEAR CREEK CHANNEL.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT B

LEGAL DESCRIPTION OF PROJECT AREA SUBJECT TO THIS COVENANT

CLEAR CREEK HABITAT IMPROVEMENT PROJECT (PHASE II)

For purposes of this Covenant, the legal description for Clear Creek Habitat Improvement Project (Phase II) is that portion of Pierce County Tax Parcel Nos. 5000350671 and 5000350672 (described above) outside of the boundary of Clear Creek Habitat Improvement Project (Phase I) (described below), except that portion lying west of the Northern Pacific Railroad right of way.

CLEAR CREEK HABITAT IMPROVEMENT (PHASE 1) DESCRIPTION

"THIS DESCRIPTION IS ASSOCIATED WITH THE SITCUM WATERWAY REMEDIATION PROJECT, COMMENCEMENT BAY NEARSHORE/TIDEFLATS SUPERFUND SITE."

A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY MARGIN OF P.S.H.5 (RIVER ROAD), AND THE NORTHWEST CORNER OF THE RIGHT OF WAY OF THE STATE OF WASHINGTON OF CLEAR CREEK CHANNEL, AS DEPICTED ON RECORD OF SURVEY UNDER AUDITOR'S FILE NO. 8301030171, RECORDS OF PIERCE COUNTY, WASHINGTON; THENCE SOUTH 27°43'02" WEST ALONG THE WEST LINE OF SAID CLEAR CREEK CHANNEL, A DISTANCE OF 506.78 FEET, MORE OR LESS, TO THE TACOMA CITY LIMITS BOUNDARY;

THENCE SOUTH 01°09'14" EAST ALONG SAID CITY LIMITS, A DISTANCE OF 58.87 FEET; THENCE SOUTH 88°50'46" WEST, 28.48 FEET;

THENCE SOUTH 18°10'34" WEST, 12.30 FEET TO THE BEGINNING OF A 71.35-FOOT RADIUS CURVE CONCAVE TO THE EAST;

THENCE ALONG SAID CURVE 26.57 FEET THROUGH A CENTRAL ANGLE OF 21°20'13" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE EAST, FROM WHICH THE RADIUS POINT BEARS NORTH 86°50'21" EAST, A DISTANCE OF 82.95 FEET;

THENCE ALONG SAID CURVE SOUTHEASTERLY 33.58 FEET THROUGH A CENTRAL ANGLE OF 23°11'47";

THENCE SOUTH 27°32'28" EAST, 19.85 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST, FROM WHICH THE RADIUS POINT BEARS SOUTH 65°57'40" WEST, A DISTANCE OF 131.84 FEET;

THENCE ALONG SAID CURVE SOUTHERLY 57.67 FEET THROUGH A CENTRAL ANGLE OF 25°03'52";

THENCE SOUTH 01°01'32" WEST, 69.42 FEET TO THE BEGINNING OF A 243.65-FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST;

THENCE ALONG SAID CURVE 93.12 FEET THROUGH A CENTRAL ANGLE OF 21°53'51";

THENCE SOUTH 22°22'03" EAST, 96.67 FEET TO THE BEGINNING OF A 166.60-FOOT RADIUS CURVE CONCAVE TO THE WEST;

THENCE ALONG SAID CURVE 90.55 FEET THROUGH A CENTRAL ANGLE OF 31°08'32";

THENCE SOUTH 11°13'47" WEST, 87.90 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, FROM WHICH THE RADIUS POINT BEARS NORTH 73°05'34" WEST, A DISTANCE OF 40.00 FEET;

THENCE ALONG SAID CURVE SOUTHWESTERLY 27.78 FEET THROUGH A CENTRAL ANGLE OF 39°47'33";

THENCE SOUTH 56°41'59" WEST, 22.57 FEET;

THENCE SOUTH 31°37'04" EAST, 13.99 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE WEST, FROM WHICH THE RADIUS POINT BEARS

SOUTH 63°24'32" WEST, A DISTANCE OF 60.00 FEET;

THENCE ALONG SAID CURVE SOUTHERLY 42.46 FEET THROUGH A CENTRAL ANGLE OF 40°33'01";

-PAGE 1 OF 4-

THENCE SOUTH 13°57'33" WEST, 14.56 FEET;
THENCE SOUTH 79°52'31" WEST, 57.00 FEET TO THE EASTERLY MARGIN OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, FROM WHICH THE RADIUS POINT BEARS NORTH 61°08'31" EAST, A DISTANCE OF 1390.56 FEET;
THENCE ALONG SAID EASTERLY MARGIN OF SAID RAILROAD RIGHT OF WAY AND SAID CURVE NORTHWESTERLY 234.25 FEET THROUGH A CENTRAL ANGLE OF 9°38'51" TO THE BEGINNING OF A SPIRAL CURVE CONCAVE TO THE EAST HAVING A LONG CHORD WHICH BEARS NORTH 13°56'54" WEST 385.56 FEET;
THENCE ALONG SAID EASTERLY MARGIN AND SAID SPIRAL CURVE NORTHWESTERLY 385.88 FEET THROUGH A TOTAL THETA ANGLE OF 07°51'54" TO A POINT OF TANGENCY;
THENCE NORTH 11°20'28" WEST ALONG SAID EASTERLY MARGIN, A DISTANCE OF 492.02 FEET TO THE NORTH LINE OF TRACT 12 OF THE PLAT OF THE INDIAN ADDITION TO THE CITY OF TACOMA, RECORDED IN VOLUME 7 OF PLATS AT PAGES 30 AND 31, RECORDS OF PIERCE COUNTY, WASHINGTON;
THENCE NORTH 89°33'13" EAST ALONG SAID NORTH LINE OF TRACT 12, A DISTANCE OF 37.31 FEET TO THE WEST GOVERNMENT MEANDER LINE OF THE ABANDONED PUYALLUP RIVER CHANNEL;
THENCE NORTH 09°47'00" WEST ALONG SAID MEANDER LINE, A DISTANCE OF 432.24 FEET TO THE SOUTHERLY MARGIN OF AFOREMENTIONED P.S.H.5, WHICH LIES 90.00 FEET SOUTHERLY, WHEN MEASURED AT RIGHT ANGLES, AND PARALLEL WITH THE CENTERLINE OF SAID P.S.H.5;
THENCE SOUTH 61°33'20" EAST ALONG SAID SOUTHERLY MARGIN, A DISTANCE OF 514.52 FEET TO A CORNER OF SAID SOUTHERLY MARGIN OPPOSITE ENGINEER'S STATION 342+00 OF SAID P.S.H.5;
THENCE NORTH 28°26'40" EAST ALONG SAID SOUTHERLY MARGIN, A DISTANCE OF 15.00 FEET;
THENCE SOUTH 61°33'20" EAST ALONG SAID SOUTHERLY MARGIN, A DISTANCE OF 160.00 FEET TO THE **POINT OF BEGINNING**.



KENNETH W. SWINDAMAN, P.L.S.
WASHINGTON STATE REGISTRATION NO. 34130

APEX ENGINEERING, PLLC
2601 SOUTH 35TH ST. SUITE 200
TACOMA, WASHINGTON 98409
TELEPHONE: (253) 473-4494
FAX: (253) 473-0599

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EXHIBIT B

A PORTION OF THE SOUTHWEST AND NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON

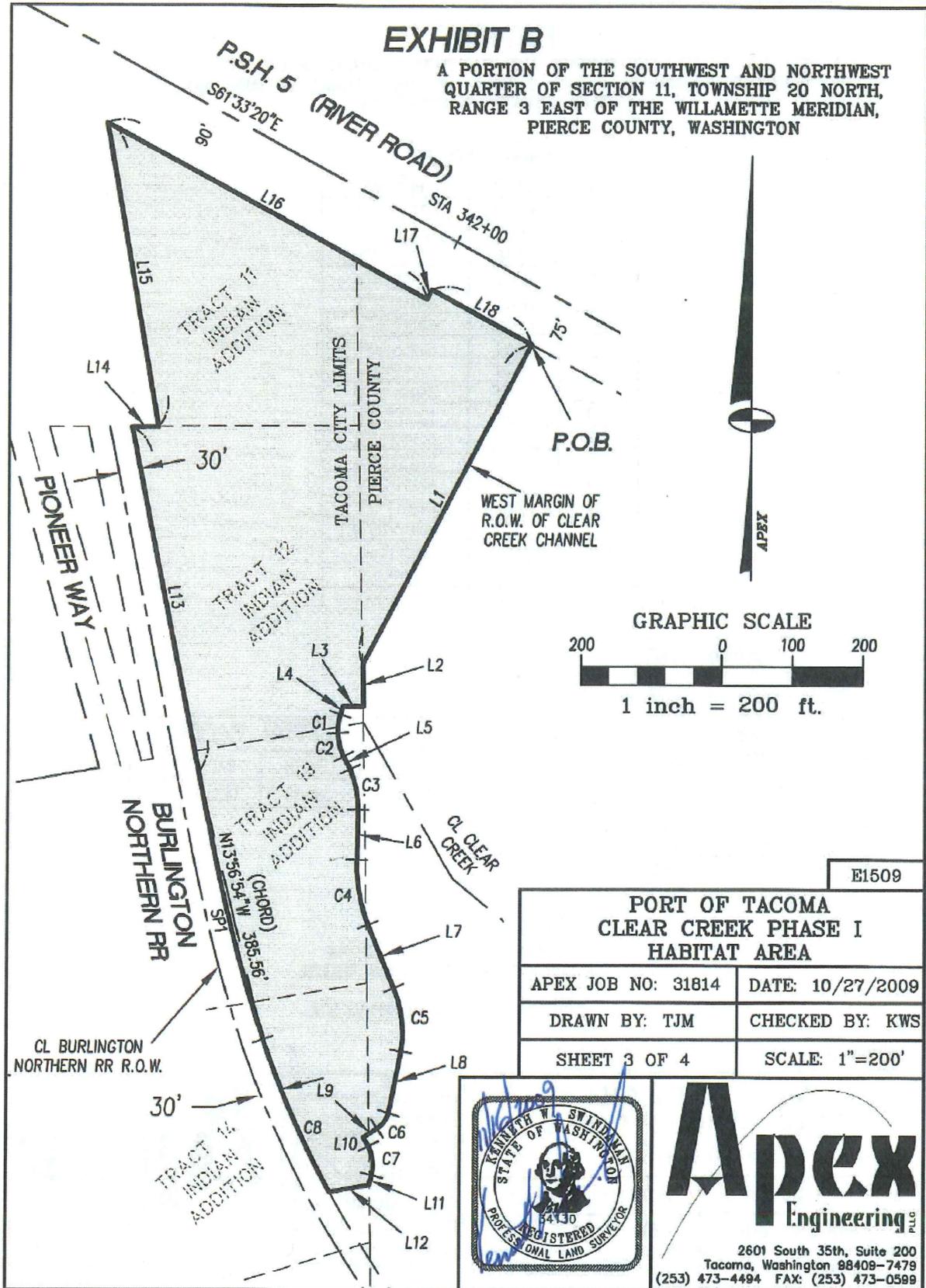


EXHIBIT B

A PORTION OF THE SOUTHWEST AND NORTHWEST QUARTER OF SECTION 11,
TOWNSHIP 20 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN,
PIERCE COUNTY, WASHINGTON

| LINE TABLE | | |
|------------|---------|-------------|
| LINE | LENGTH | BEARING |
| L1 | 506.78' | S27°43'02"W |
| L2 | 58.87' | S01°09'14"E |
| L3 | 28.48' | S88°50'46"W |
| L4 | 12.30' | S18°10'34"W |
| L5 | 19.85' | S27°32'28"E |
| L6 | 69.42' | S01°01'32"W |
| L7 | 96.67' | S22°22'03"E |
| L8 | 87.90' | S11°13'47"W |
| L9 | 22.57' | S56°41'59"W |
| L10 | 13.99' | S31°37'04"E |
| L11 | 14.56' | S13°57'33"W |
| L12 | 57.00' | S79°52'31"W |
| L13 | 492.02' | N11°20'28"W |
| L14 | 37.31' | N89°33'13"E |
| L15 | 432.24' | N09°47'00"W |
| L16 | 514.52' | S61°33'20"E |
| L17 | 15.00' | N28°26'40"E |
| L18 | 160.00' | S61°33'20"E |

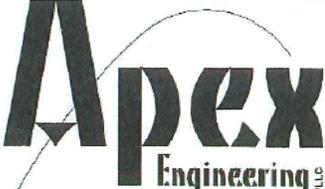
| CURVE TABLE | | | |
|-------------|---------|----------|-----------|
| CURVE | LENGTH | RADIUS | DELTA |
| C1 | 26.57' | 71.35' | 21°20'13" |
| C2 | 33.58' | 82.95' | 23°11'47" |
| C3 | 57.67' | 131.84' | 25°03'52" |
| C4 | 93.12' | 243.65' | 21°53'51" |
| C5 | 90.55' | 166.60' | 31°08'32" |
| C6 | 27.78' | 40.00' | 39°47'33" |
| C7 | 42.46' | 60.00' | 40°33'01" |
| C8 | 234.25' | 1390.56' | 09°39'07" |

| SPIRAL TABLE | | | |
|--------------|--------|---------|-----------|
| SPIRAL | LENGTH | RADIUS | THETA |
| SP1 | 385.88 | 1420.56 | 07°51'54" |

NOTE:

THIS EXHIBIT IS ASSOCIATED WITH THE
SITCUM WATERWAY REMEDIATION PROJECT,
COMMENCEMENT BAY
NEARSHORE/TIDEFLATS SUPERFUND SITE.

E1509

| | | | |
|--|------------------|--|---|
| PORT OF TACOMA CLEAR CREEK PHASE I HABITAT AREA | |  |  |
| APEX JOB NO: 31814 | DATE: 10/27/2009 | | |
| DRAWN BY: TJM | CHECKED BY: KWS | | |
| SHEET 4 OF 4 | SCALE: 1"=200' | | |

2601 South 35th, Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0599

EXHIBIT C

ILLUSTRATION OF PROJECT AREA SUBJECT TO THIS COVENANT

