

CONFORMED COPY

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AUDITOR, Pierce County, WASHINGTON

Filed for record at request of:  
After recording return to:

Port of Tacoma  
Real Estate Department  
PO Box 1837  
Tacoma WA 98401

**AMENDED AND RESTATED ENVIRONMENTAL COVENANT  
(Milwaukee Habitat Area – Port of Tacoma-Owned)**

Grantor: Port of Tacoma  
Grantee/Holder: Port of Tacoma  
Abbr. Legal Description: Ptn Blks 7 and 8, Tacoma Tidelands  
Addl. Legal Description: Exhibit B, pages 8 – 11 of this document  
Reference: Environmental Covenant, Recording No. 201107260471  
Tax Parcel Nos.: Portion of 8950000121

**0. Amended And Restated Instrument.** This instrument is recorded to correct and restate information presented in the drawing in Exhibit A of this instrument. This Amended and Restated Environmental Covenant replaces and supersedes the Environmental Covenant (Milwaukee Habitat Area – Port of Tacoma-Owned) recorded on July 26, 2011 under Pierce County Auditor File No. 201107260471.

**1. Purpose and Background.** This instrument grants an Environmental Covenant pursuant to the Washington State Uniform Environmental Covenants Act, RCW Chapter 64.70 ("UECA"), to the Port of Tacoma ("Grantee" or "Holder"), imposing certain conditions and restrictions on real property located in Pierce County, Washington, which property is described on Exhibit B hereto ("Property"). The Property is a portion of Tax Parcel No. 8950000121 as shown on Exhibit A hereto and shown and described on Exhibit B hereto. This Environmental Covenant is established pursuant to the Commencement Bay Nearshore/ Tidelands Superfund Site; Sitcum Waterway Problem Area Consent Decree ("Consent Decree"), which was entered on October 8, 1993 in the United States District Court for the Western District of Washington at Tacoma in the case entitled *United States of America et al. v. Port of Tacoma*, Civil Action No. C93-5462 RJB, pursuant to Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9622 et seq. ("CERCLA"). The Property described herein and on Exhibit B is owned by Grantor and is part of the "Sitcum Waterway Remediation Project" as defined in the Consent Decree. The United States Environmental Protection Agency ("EPA") selected a remedy for the Commencement Bay Nearshore/Tidelands Superfund Site; Sitcum Waterway Problem Area ("Site") on September 30, 1989 ("Record of Decision" or "ROD") and further described the Sitcum Waterway Remediation Project in an Explanation of Significant Differences ("ESD") dated June 24, 1993. The Consent Decree requires implementation of the remedy as provided in the Consent Decree, which includes the dredging of the Blair Waterway and the Sitcum Waterway; the disposition of contaminated dredged sediments in a nearshore confined disposal facility constructed in a portion of the former Milwaukee Waterway, covered by a cap, and contained by a closure berm ("Milwaukee NCDF");

and the implementation of habitat mitigation projects at and beyond the mouth of the Milwaukee Waterway ("Milwaukee Habitat Area"), and at an additional mitigation project ("Clear Creek Habitat Improvement Project (Phase 1)" or "Clear Creek Phase 1 Habitat Area"). The habitat mitigation projects compensate for and offset the unavoidable environmental impacts of the Sitcum Waterway Remediation Project. This Environmental Covenant applies to that portion of the Milwaukee Habitat Area located on property owned by the Port of Tacoma. It is intended that a separate Environmental Covenant will apply to the portion of the Milwaukee Habitat Area located on property owned by the State within the Port Management Area, and a separate Aquatic Lands Easement for Conservation Uses will apply to the portion of the Milwaukee Habitat Area located on property owned by the State outside of the Port Management Area. A separate Environmental Covenant recorded under Pierce County Auditor File No. 201111220132 covers a portion of the Property described in Exhibit B and other property. The prior recorded Environmental Covenant applies to the Milwaukee NCDF, and is in addition to and not superseded by this Environmental Covenant. The ROD, ESD, related administrative record, and Consent Decree, are on file with EPA Region 10 or its successor agency, presently located at 1200 Sixth Avenue, Seattle, WA 98101.

**2. Covenants and Conveyance.** Grantor hereby makes and conveys to Holder, and Holder's successors or assigns, the following covenants regarding limitations, restrictions, and uses to which the Property may be put:

**a.** The Property shall be used for a habitat mitigation project in accordance with the Consent Decree. Section 5.3.1 of the Operations, Maintenance, and Monitoring Plan, Sitcum Waterway Remediation Project, dated June 3, 1994, as amended through March 30, 1995 ("OMMP"), which was prepared for the Milwaukee Habitat Area Mitigation Project pursuant to the Consent Decree and approved by EPA, states the following goals for the Milwaukee Habitat Area Mitigation Project:

- Provide a saltmarsh.\*\*\*
- Provide habitat characteristics that yield an increase in habitat function relative to existing habitats (provide high quality habitat).
- Provide habitat available to juvenile salmonids throughout the tidal cycle.
- Provide a range of habitat types to compensate for habitat losses for species of concern and indirectly benefit other species with similar or overlapping habitat requirements.

The objectives, performance standards for each objective, and monitoring activities to address the objectives, are described in OMMP Section 5, Tables 5-1 through 5-6, and Appendix C.

\*\*\*The goal to provide a saltmarsh was not attained due primarily to natural processes, and EPA determined that the Port is not required to implement any further contingency actions with respect to that goal by Memorandum dated September 30, 2003.

**b.** No person shall engage in any commercial use on the Property, without the prior written approval of EPA. No person shall engage in any activity on the Property that damages or disturbs the integrity of the Milwaukee Habitat Area on the Property, without the prior written approval of EPA. Examples of activities that may damage or disturb the integrity of the Milwaukee Habitat Area on the Property are excavation, dredging, or filling.

**c.** Any deed or other instrument conveying any interest in the Property subsequent to the date of this Environmental Covenant shall be subject to the covenants and restrictions in this Environmental Covenant, and shall contain a notice stating that the Property is subject to the Consent Decree and this Environmental Covenant.

d. Any deed or other conveyance of any interest in the Property shall make adequate provisions for any continued monitoring or maintenance of the Milwaukee Habitat Area on the Property required by the Consent Decree.

e. At least thirty (30) days prior to the conveyance of any ownership interest in the Property, Grantor shall give written notice of the Consent Decree and this Environmental Covenant to the grantee of such conveyance, and shall give written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree and this Environmental Covenant was given to the grantee.

f. Consistent with the Consent Decree, authorized representatives of EPA and the Natural Resource Trustees shall have the right to enter the Property at reasonable times to evaluate the remedial action taken on the Property pursuant to the Consent Decree, including action taken pursuant to the OMMP, obtain samples, inspect records related to the remedial action, and assess compliance with the Consent Decree and this Environmental Covenant.

**3. Reservation of Rights by Grantor.** Grantor hereby reserves unto itself and its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned or restricted by this Environmental Covenant.

**4. Covenants Run With Land; Successors and Assigns.** The covenants, rights, duties, and agreements set forth herein shall be covenants and servitudes that run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, heirs, successors, and assigns, including, but not limited to, corporate and legal successors, successors in title, and future lessees, users, and owners of any portion of or interest in the Property.

**5. Duration; Amendment; Termination.** The duration of this Environmental Covenant shall be perpetual, unless amended or terminated in accordance with the amendment or termination provisions of the UECA, RCW 64.70.090 and .100, or amendments or successors thereto.

**6. Enforcement.** This Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to UECA and CERCLA. EPA and Holder shall have full enforcement rights as provided by law.

**7. Agency Interest.** EPA is signing this Environmental Covenant pursuant to RCW 64.70.040(e). Pursuant to RCW 64.70.030(2), the rights granted to EPA under UECA or this Environmental Covenant are not interests in real property.

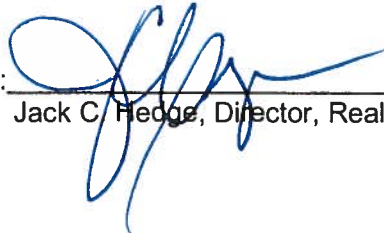
**8. General Provisions.** This Environmental Covenant including the exhibits attached hereto contains the entire understanding between the parties and supersedes any prior understandings and agreements between the parties or any of them respecting this Environmental Covenant and the covenants and other provisions contained herein. Each party to this Environmental Covenant certifies that it is authorized to enter into this Environmental Covenant. Grantor further certifies that it believes that it has fee simple title to the Property, and will defend the same. Each person signing this Environmental Covenant certifies that such person is authorized to execute this document and bind the party on whose behalf such person is signing. No delay in exercising any right or remedy of any party hereunder shall constitute a waiver thereof, and no waiver of the breach of any provision of this Environmental Covenant shall be construed as a

waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Environmental Covenant. This Environmental Covenant shall be governed by, construed, and enforced in accordance with the internal laws of the State of Washington. The headings in this Environmental Covenant are for convenience only and do not in any way limit or affect the terms and provisions hereof. If any term, covenant or condition of this Environmental Covenant is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and this Environmental Covenant shall be construed as if such invalid or unenforceable provision had never been contained herein.

DATED: November 18, 2011.

GRANTOR AND HOLDER

PORT OF TACOMA


By:   
Jack C. Hedge, Director, Real Estate

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )


On this 18 day of November, 2011, personally appeared before me the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, JACK C. HEDGE, to me known to be the Director, Real Estate, of the PORT OF TACOMA, a municipal corporation, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the seal of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.



  
Printed Name: Annika Kay Dean  
Notary Public in and for the State of WA  
My appointment expires: 11-20-15

APPROVED AS TO FORM:

  
Counsel for Port of Tacoma

DATED: November 2, 2011.

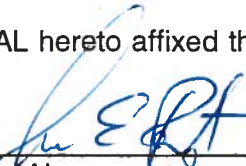
ENVIRONMENTAL PROTECTION AGENCY

By:   
Daniel D. Opalski, Director  
Office of Environmental Cleanup

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KING       )

On this 2 day of November, 2011, personally appeared before me the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, DANIEL D. OPALSKI, to me known to be the Director, Office of Environmental Cleanup, of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

  
Printed Name: Sara E. Bent  
Notary Public in and for the State of WA  
My appointment expires: 9-23-12



## EXHIBITS

That portion of the Milwaukee Habitat Area located on property owned by the Port of Tacoma is located within Tax Parcel No. 8950000121 as shown in the drawing contained in Exhibit A on page 7 below.

The legal description and drawing of that portion of the Milwaukee Habitat Area located on property owned by the Port of Tacoma is contained in Exhibit B on pages 8 – 11 below. It is intended that a separate Environmental Covenant will apply to the portion of the Milwaukee Habitat Area located on property owned by the State within the Port Management Area, and a separate Aquatic Lands Easement for Conservation Uses will apply to the portion of the Milwaukee Habitat Area located on property owned by the State outside of the Port Management Area. A separate Environmental Covenant recorded under Pierce County Auditor File No. 201111220132 covers a portion of the Property described in Exhibit B and other property.

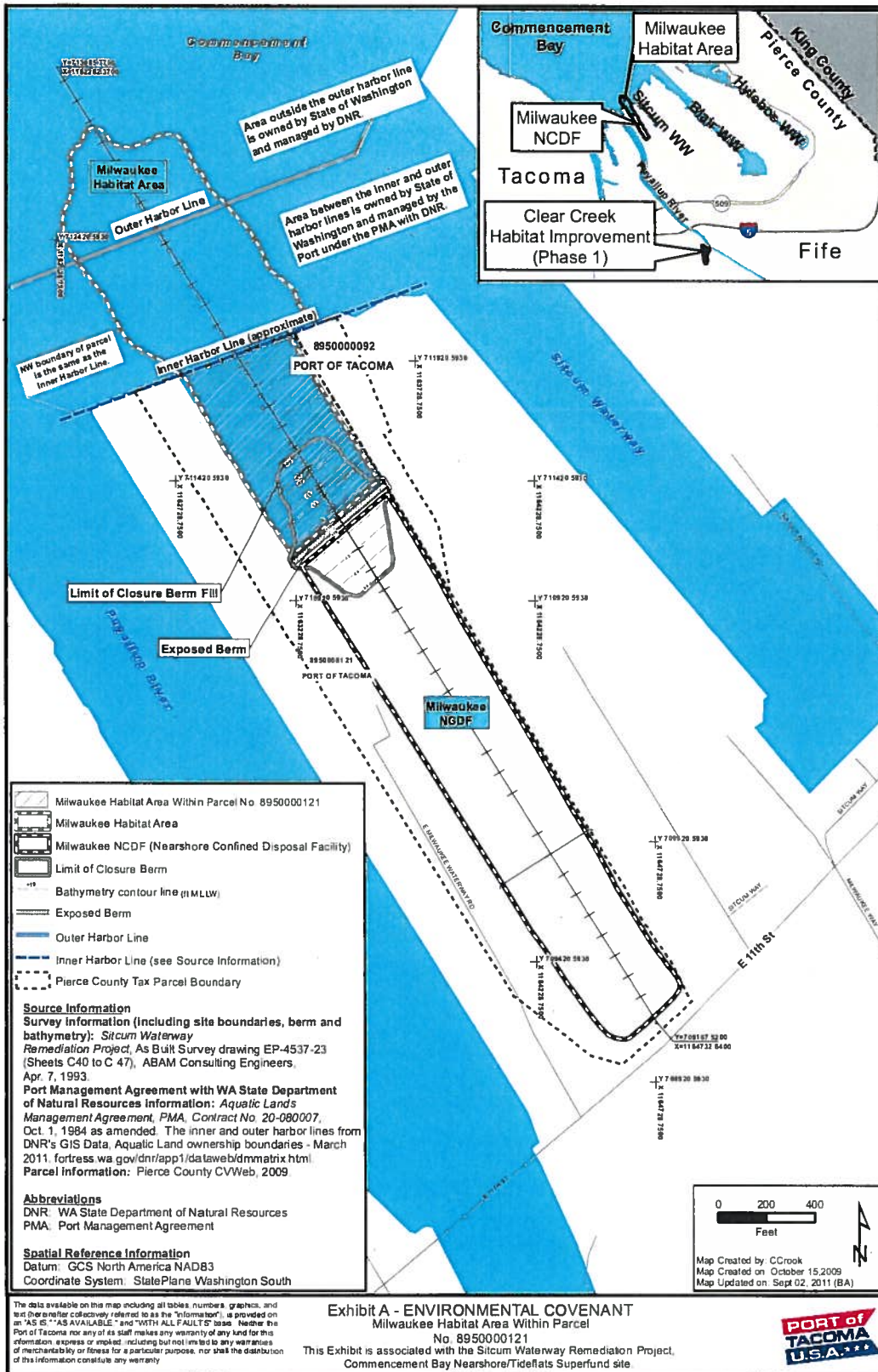


EXHIBIT B

MILWAUKEE HABITAT AREA DESCRIPTION

WITHIN PARCEL NO. 8950000121

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

A PORTION OF TRACTS 7 AND 8, VACATED YOKOHAMA STREET, AND A PORTION OF VACATED RAILROAD AVENUE AS SHOWN ON SHEET 4 IN VOLUME 1 OF THE TACOMA TIDELANDS, ACCORDING TO THE MAP THEREOF FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, SEPTEMBER 3, 1895, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11<sup>TH</sup> STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA SURVEY CONTROL MAP";

THENCE SOUTH 44°06'22" WEST, 4652.71 FEET TO A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION OF EAST 11<sup>TH</sup> STREET AND THORNE ROAD, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925 AS SHOWN ON AFORESAID MAP;

THENCE SOUTH 44°06'10" WEST, 1967.97 FEET TO A POINT ON THE MILWAUKEE WATERWAY BASELINE, AS SHOWN IN SITCUM WATERWAY REMEDIATION PROJECT PLANS DATED 6-3-93;

THENCE NORTH 32°13'46" WEST ALONG SAID BASELINE, 2587.21 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 49°30'42" WEST, 236.04 FEET;

THENCE NORTH 83°09'22" WEST, 14.71 FEET;

THENCE NORTH 35°04'09" WEST, 74.22 FEET;

THENCE NORTH 33°43'28" WEST, 88.68 FEET;

THENCE NORTH 32°40'08" WEST, 119.35 FEET;

THENCE NORTH 30°49'48" WEST, 114.84 FEET;

THENCE NORTH 32°50'46" WEST, 79.12 FEET;

THENCE NORTH 32°39'34" WEST, 49.02 FEET;

THENCE NORTH 30°40'09" WEST, 130.06 FEET;

THENCE NORTH 28°42'03" WEST, 47.62 FEET;

THENCE NORTH 25°27'49" WEST, 57.17 FEET;

THENCE NORTH 26°12'17" WEST, 57.05 FEET TO THE BEGINNING OF A 106.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY;

THENCE ALONG SAID CURVE 55.41 FEET, MORE OR LESS, THROUGH A CENTRAL ANGLE OF 29°56'53" TO THE INNER HARBOR LINE OF COMMENCEMENT BAY AS SHOWN ON RECORD OF SURVEY UNDER AUDITOR'S FILE NO. 200006295005;

THENCE NORTH 69°38'20" EAST ALONG SAID INNER HARBOR LINE A DISTANCE OF 487.96 FEET;

-PAGE 1 OF 4-

2601 South 35<sup>th</sup> Street, Suite 200, Tacoma, Washington 98409  
(235) 473-4494 Fax: (253) 473-0599





THENCE SOUTH 09°25'14" EAST, 8.27 FEET;  
THENCE SOUTH 15°42'30" EAST, 9.89 FEET;  
THENCE SOUTH 22°33'16" EAST, 9.74 FEET;  
THENCE SOUTH 30°34'22" EAST, 16.72 FEET;  
THENCE SOUTH 37°10'48" EAST, 35.15 FEET;  
THENCE SOUTH 33°41'44" EAST, 22.55 FEET;  
THENCE SOUTH 30°02'15" EAST, 183.03 FEET;  
THENCE SOUTH 33°30'37" EAST, 43.66 FEET;  
THENCE SOUTH 31°49'55" EAST, 161.48 FEET;  
THENCE SOUTH 31°31'02" EAST, 215.24 FEET;  
THENCE SOUTH 08°58'46" WEST, 13.00 FEET;  
THENCE SOUTH 49°30'42" WEST, 217.22 FEET TO THE POINT OF BEGINNING.

(CONTAINING 378,783 SQUARE FEET MORE OR LESS)



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

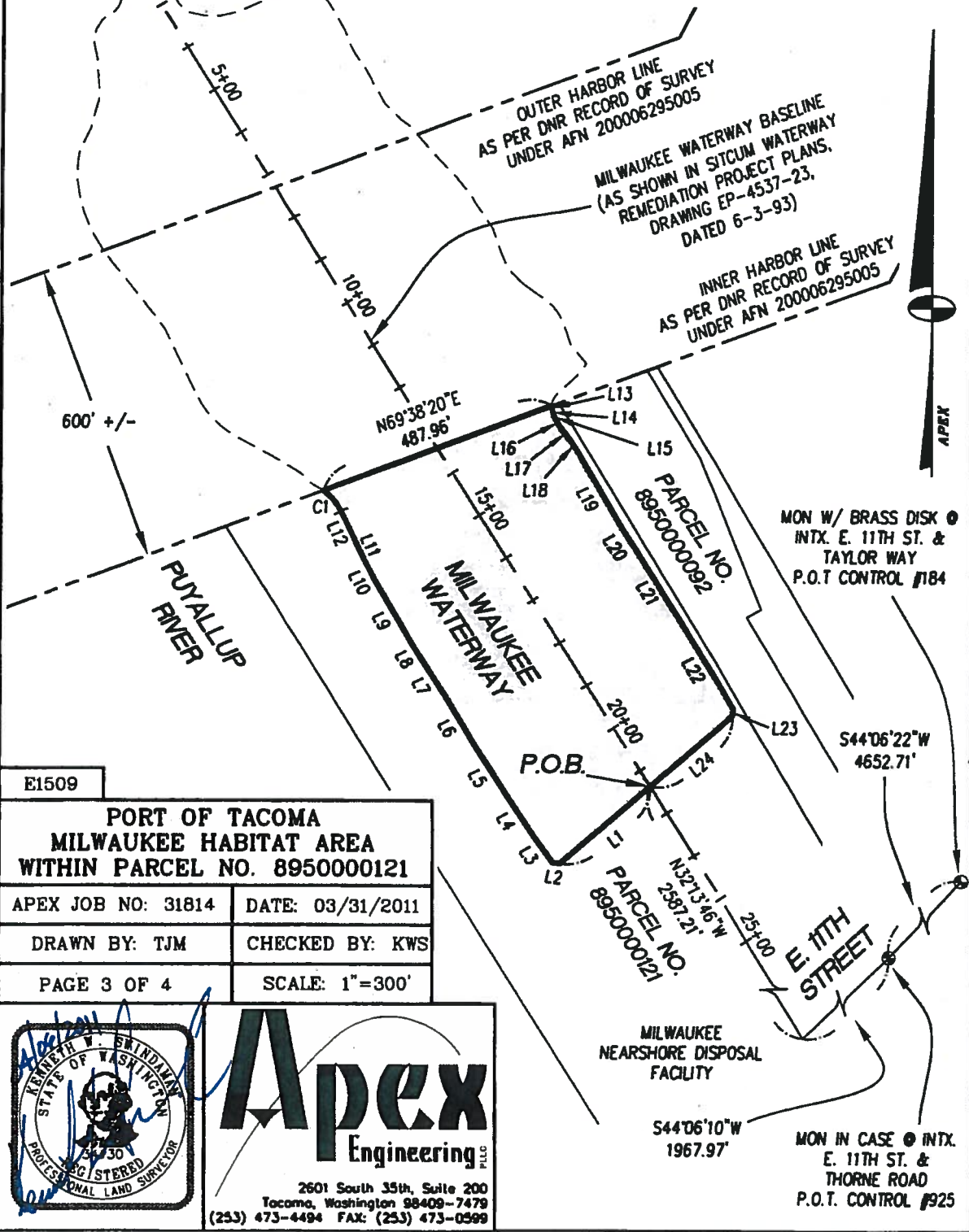
-PAGE 2 OF 4-

2601 South 35<sup>th</sup> Street, Suite 200, Tacoma, Washington 98409  
(235) 473-4494 Fax: (253) 473-0599



# EXHIBIT B

A PORTION OF TRACTS 7 AND 8, VACATED YOKOHAMA STREET, AND  
A PORTION OF VACATED RAILROAD AVENUE, TACOMA TIDELANDS,  
PIERCE COUNTY, WASHINGTON



E1509

<b>PORT OF TACOMA MILWAUKEE HABITAT AREA WITHIN PARCEL NO. 8950000121</b>	
APEX JOB NO: 31814	DATE: 03/31/2011
DRAWN BY: TJM	CHECKED BY: KWS
PAGE 3 OF 4	SCALE: 1"=300'



Apex

Engineering P.L.L.C.

2601 South 35th, Suite 200  
Tacoma, Washington 98409-7479  
(253) 473-4494 FAX: (253) 473-0598

## EXHIBIT B

A PORTION OF TRACTS 7 AND 8, VACATED YOKOHAMA STREET, AND  
A PORTION OF VACATED RAILROAD AVENUE, TACOMA TIDELANDS,  
PIERCE COUNTY, WASHINGTON

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	55.41'	106.00'	29°56'53"

LINE TABLE		
LINE	LENGTH	BEARING
L1	236.04'	S49°30'42"W
L2	14.71'	N83°09'22"W
L3	74.22'	N35°04'09"W
L4	88.68'	N33°43'28"W
L5	119.35'	N32°40'08"W
L6	114.84'	N30°49'48"W
L7	79.12'	N32°50'46"W
L8	49.02'	N32°39'34"W
L9	130.06'	N30°40'09"W
L10	47.62'	N28°42'03"W
L11	57.17'	N25°27'49"W
L12	57.05'	N26°12'17"W
L13	8.27'	S09°25'14"E
L14	9.89'	S15°42'30"E
L15	9.74'	S22°33'16"E
L16	16.72'	S30°34'22"E
L17	35.15'	S37°10'48"E
L18	22.55'	S33°41'44"E
L19	183.03'	S30°02'15"E
L20	43.66'	S33°30'37"E
L21	161.48'	S31°49'55"E
L22	215.24'	S31°31'02"E
L23	13.00'	S08°58'46"W
L24	217.22'	S49°30'42"W

**NOTE:**

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

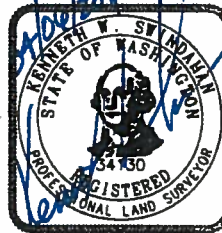
E1509

**PORT OF TACOMA  
MILWAUKEE HABITAT AREA  
WITHIN PARCEL NO. 8950000121**

APEX JOB NO: 31814      DATE: 03/31/2011

DRAWN BY: TJM      CHECKED BY: KWS

PAGE 4 OF 4      SCALE: 1"=300'



Apex

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