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12/14/2011 03:42:14 PM \$74.00
AUDITOR, Pierce County, WASHINGTON

After Recording Return To:
Port of Tacoma
Real Estate Department
PO Box 1837
Tacoma, WA 98401-1837

ENVIRONMENTAL COVENANT
(Milwaukee Habitat Area – State-Owned within Port Aquatic Lands Management Area)

Grantor(s): Port of Tacoma
Washington Department of Natural Resources
Grantee(s)/Holder(s): Port of Tacoma
Washington Department of Natural Resources
Abbr. Legal Description Ptn of Harbor Area in front of Tracts 7 and 8, Tacoma
Tidelands, Pierce County, Washington
Add'l Legal Description Complete Legal Description on Exhibit B, Pages 10–13 of
this Document
Tax Parcel Nos: N/A
Cross Reference: N/A

1. PURPOSE. This instrument is an environmental covenant (“Covenant”) executed pursuant to the Uniform Environmental Covenants Act, Chapter 64.70 RCW. It imposes certain conditions and restrictions on real property located in Pierce County, Washington, which property is generally shown on Exhibit A hereto, and is more expressly shown and legally described on Exhibit B hereto (“Property”).

2. BACKGROUND.

a. Property Interests. Upon the effective date of this Covenant, the Property is aquatic land owned by the State of Washington. Under Title 79 RCW, the Washington State Department of Natural Resources (“DNR”) is the statutory manager of state-owned aquatic lands. DNR has delegated the management of the Property to the Port of Tacoma under Port Aquatic Lands Management Agreement No. 20-080007 (“PMA”). The PMA requires DNR’s agreement for habitat mitigation on state-owned aquatic land. DNR hereby grants approval for this Covenant.

The Property is subject to other interests arising under treaties, statutes and the common law, including the Public Trust Doctrine; in accordance with RCW 64.70.030, such interests are not subordinated to this Covenant.

Upon the effective date of this Covenant, the Property is within a Harbor Area. Under Article XV of the Washington State Constitution, Harbor Areas are reserved for the conveniences of navigation and commerce. This Covenant complies with this reservation because it does not interfere with the passage of vessels or impede commerce.

b. Environmental Response Project. The Property is aquatic land in the Operable Unit 01 of the Commencement Bay Nearshore/Tideflats ("CB/NT") Superfund Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* The Property is the site of an environmental response project conducted under a consent decree concerning the Sitcum Waterway Problem Area entered on October 8, 1993 in the United States District Court for the Western District of Washington in *United States of America et al. v. Port of Tacoma*, Civil Action No. C93-5462 RJB ("Consent Decree"). A copy of the Notice of Consent Decree is recorded with the Pierce County Auditor's Office (Recording No. 200912230320).

Specifically, the Property is part of the Milwaukee Habitat Area, which is a habitat mitigation project to compensate for and offset unavoidable environmental impacts of the Sitcum Waterway Remediation Project. This Environmental Covenant applies only to that portion of the Milwaukee Habitat Area located on property owned by the State of Washington and managed by the Port of Tacoma under the PMA. DNR and the Port intend that the portions of the Milwaukee Habitat Area not covered by this Covenant will be covered by a separate agreement and/or covenant. Specifically, DNR intends to grant Port an Aquatic Lands Easement For Conservation Uses to the portion of the Milwaukee Habitat Area on state-owned aquatic lands not managed by the Port under the PMA. Further, the Port intends to create an Environmental Covenant on property owned by the Port.

The environmental response project is described in detail in the Administrative Record, which includes but is not limited to:

- Consent Decree entered October 8, 1993 in Case No. C93-5462 RJB.
- Record of Decision ("ROD") for the Commencement Bay Nearshore/Tideflats Superfund Site dated September 30, 1989.
- Explanation of Significant Differences ("ESD") for the Sitcum Waterway Remediation Project dated June 24, 1993.

Upon the effective date of this Covenant, the Administrative Record is on file with United States Environmental Protection Agency Region 10 or its successor agency, located at 1200 Sixth Avenue, Seattle, WA 98101.

3. PARTIES.

a. Grantors: Port of Tacoma ("Port") and Washington State Department of Natural Resources ("DNR").

b. Holders: Port and DNR

c. **Agency:** United States Environmental Protection Agency Region 10. In accordance with RCW 64.70.030(2), the rights granted to the Agency under Chapter 64.70 RCW are not interests in real property.

4. **CONVEYANCE AND COVENANTS.** Grantors hereby make and convey to Holders, the following covenants regarding restrictions on the Property:

a. **Uses and Activities.** No person shall use the Property in any way that impedes the achievement of objectives for, damages, or disturbs the habitat mitigation project described above without obtaining prior written authorization from the Agency. This prohibition includes, but is not limited to, (1) any activity that damages or removes the habitat mitigation project, (2) dredging and excavation, (3) placement of fill.

b. **Notice of Covenant in Conveyance.** No person shall convey any interest in the Property unless the deed, lease, or other instrument conveying the interest in the Property provides notice that the Property is subject to the Consent Decree and is subject to this Covenant.

c. **Provision for Continued Operation.** No person shall convey any interest in the Property unless the deed, lease, or other instrument conveying the interest in the Property provides adequate and complete provision for any continued operation, maintenance, and monitoring of the habitat mitigation project as required by the Consent Decree.

d. **Notice of Conveyance.** Any person conveying any interest in the Property shall provide thirty (30) days advance written notice to the Holders and the Agency. Such notice shall include the name and address of the party receiving the interest.

e. **Inspection.** No person shall prevent authorized representatives of the Agency and the Natural Resources Trustees, who are identified in the Consent Decree, from entering the Property at reasonable times in accordance with the Consent Decree to evaluate performance of the habitat mitigation project. No person shall prevent authorized representatives of the Agency and the Holders from entering the Property at reasonable times to evaluate compliance with this Covenant.

5. **COVENANTS RUN WITH THE LAND; SUCCESSORS AND ASSIGNS.** The covenants and terms set forth in this Covenant shall run with the land and continue as a servitude on the Property to bind and inure to the benefit of the Parties and their respective representatives, heirs, successors, and assigns until terminated as provided for in this Covenant.

6. **TERMINATION.** This Covenant runs in perpetuity unless terminated as provided for in RCW 64.70.090 and .100, or amendments or successors thereto.

7. **RESERVATION OF RIGHTS.** Each Grantor hereby reserves for itself and its respective representatives, heirs, successors, and assigns all rights accruing from ownership of and other interests in the Property that are not conditioned, restricted, or prohibited by this Covenant.

8. **ENFORCEMENT.** Compliance with this Covenant may be enforced pursuant to RCW 64.70.110, or amendments or successors thereto. EPA retains and does not waive any enforcement authority it has under federal law.

9. AMENDMENT AND NOTIFICATION. This Covenant may be amended in accordance with the procedures and process for amendment under RCW 64.70.100, or amendments or successors thereto.

10. NOTICE. Upon the effective date of this Covenant, notice to the parties who must be notified by the terms of this Covenant may be delivered to:

State of Washington
Department of Natural Resources
Aquatic Resources Division
1111 Washington Street SE
PO Box 47027
Olympia, Washington 98504-7027

United States Environmental Protection Agency
Region 10
ATTN: Director
Office of Environmental Cleanup
1200 Sixth Avenue, Suite 900
Seattle WA 98101

Port of Tacoma
Attn: Real Estate Department
One Sitcum Way
PO Box 1837
Tacoma WA 98401

11. GENERAL PROVISIONS

a. Entire Agreement. This 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 Covenant and the covenants and other provisions contained herein.

b. No Waiver. Failure of any party to enforce compliance with this Covenant is not a waiver of the party's right to take subsequent enforcement actions. The waiver of any breach of any term or covenant of this Covenant is not a waiver of such term or covenant, of any subsequent breach of the same, or of any other term or covenant contained herein.

c. Invalidity. The invalidity, voidness, or illegality of any provision of this Covenant does not affect, impair, or invalidate any other provision of this Covenant.

d. Applicable Law. This Covenant is to be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

e. Headings. The headings used in this Covenant are for convenience only and in no way define, limit, or extend the scope of this Covenant or the intent of any provision.

THIS COVENANT requires the signature of all Parties and is effective on the date of the last signature below. The undersigned parties represent and certify that they are authorized to execute this Covenant.

SIGNATURES APPEAR ON FOLLOWING PAGES

GRANTOR and HOLDER

FOR THE STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES



PETER GOLDMARK
Commissioner of Public Lands
State of Washington
Department of Natural Resources
1111 Washington St SE MS 47001
Olympia, Washington 98504-7001

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this 5TH day of December, 2011, personally appeared before me Peter Goldmark, to me known to be the Commissioner of Public Lands, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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



Notary Public in and for the State of
Washington, residing at Olympia
My appointment expires 2/25/2012.

APPROVED AS TO FORM ONLY:

19th day of July 2011

By: Janis Snoey
Assistant Attorney General

GRANTOR AND HOLDER

PORT OF TACOMA


By: 
Jack C. Hedge, Director
Real Estate and Asset Management

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)


On this 25th day of October, 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 and Asset Management, 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: 11-19-11

APPROVED AS TO FORM:


Counsel for Port of Tacoma

AGENCY

The foregoing Environmental Covenant is hereby approved and certified.

U.S. ENVIRONMENTAL PROTECTION AGENCY

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

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 13 day of December, 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.



Carol Diann Kennedy
Printed Name: Carol Diann Kennedy
Notary Public in and for the State of WA
My appointment expires: 09/17/2011

EXHIBITS

The Milwaukee Habitat Area is shown in Exhibit A on page 9 below. The Property subject to this Covenant is shown in Exhibit B on pages 10 through 13 below.

EXHIBIT A

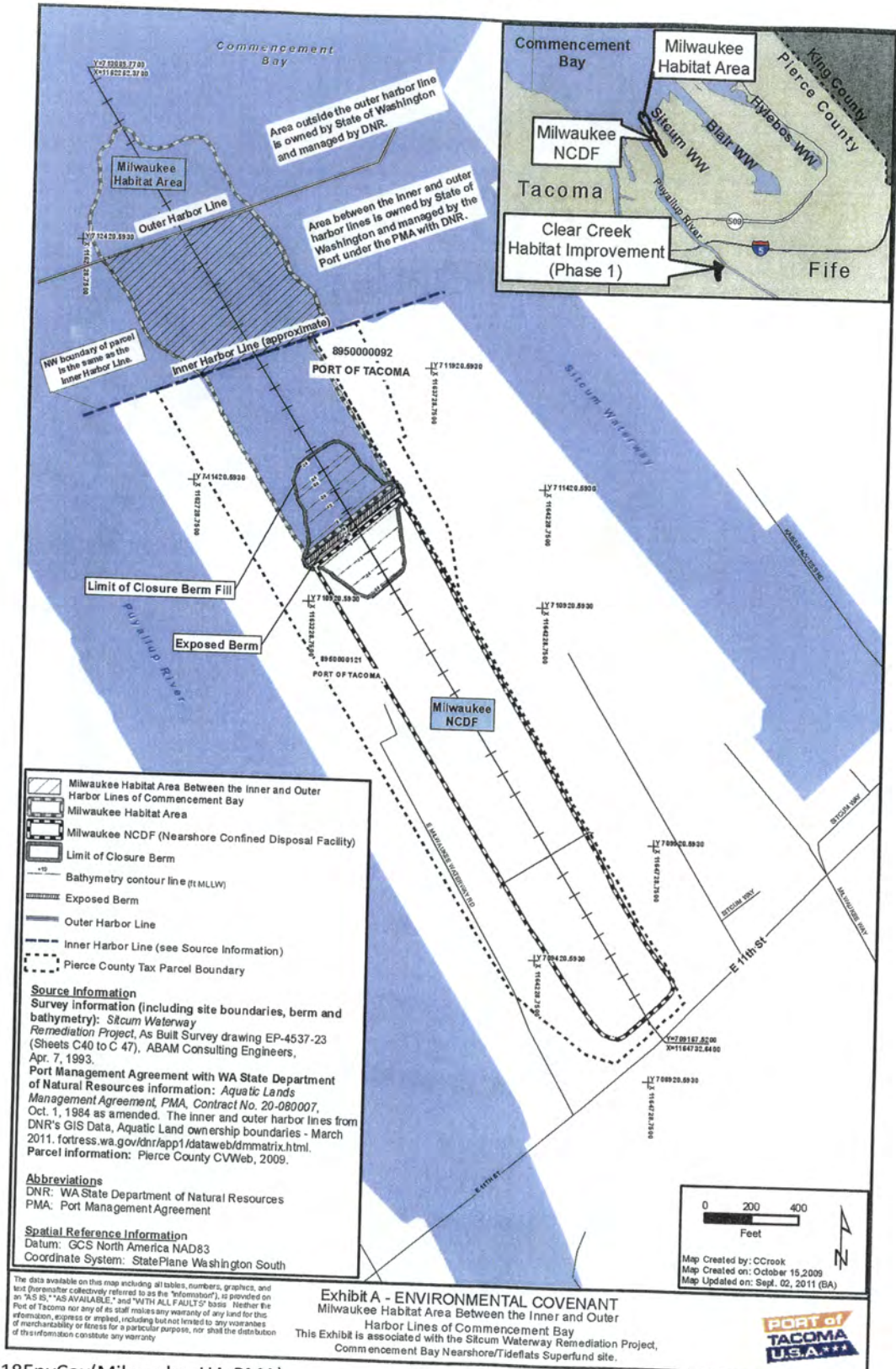


EXHIBIT B

MILWAUKEE HABITAT AREA DESCRIPTION

BETWEEN THE INNER AND OUTER HARBOR LINES OF COMMENCEMENT BAY

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

A PORTION OF THE HARBOR AREA LYING IN FRONT OF TRACTS 7 AND 8, AND VACATED YOKOHAMA STREET 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 11TH 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 11TH 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, 3382.41 FEET, MORE OR LESS, TO THE INNER HARBOR LINE OF COMMENCEMENT BAY AS SHOWN ON RECORD OF SURVEY UNDER AUDITOR'S FILE NO. 200006295005 AND THE **POINT OF BEGINNING**;
THENCE SOUTH 69°38'20" WEST ALONG SAID INNER HARBOR LINE A DISTANCE OF 244.89 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, FROM WHICH THE RADIUS POINT BEARS SOUTH 33°50'50" WEST, 106.00 FEET; THENCE ALONG SAID CURVE NORTHWESTERLY 8.11 FEET THROUGH A CENTRAL ANGLE OF 04°22'53"; THENCE NORTH 60°32'03" WEST, 13.60 FEET TO THE BEGINNING OF A 56.13-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE ALONG SAID CURVE 17.81 FEET THROUGH A CENTRAL ANGLE OF 18°10'34" TO THE BEGINNING OF A 160.25-FOOT RADIUS REVERSE CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG SAID CURVE 17.11 FEET THROUGH A CENTRAL ANGLE OF 06°07'02"; THENCE ALONG A NON-TANGENT LINE NORTH 55°42'41" WEST, 12.84 FEET; THENCE NORTH 59°56'30" WEST, 60.63 FEET; THENCE NORTH 61°36'55" WEST, 73.98 FEET TO THE BEGINNING OF A 184.58-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE ALONG SAID CURVE 115.17 FEET THROUGH A CENTRAL ANGLE OF 35°44'58"; THENCE ALONG A NON-TANGENT LINE NORTH 26°14'52" WEST, 46.63 FEET; THENCE NORTH 25°17'34" WEST, 37.33 FEET; THENCE NORTH 26°48'54" WEST, 62.68 FEET; THENCE NORTH 37°55'22" WEST, 104.32 FEET; THENCE NORTH 39°34'39" WEST, 62.85 FEET; THENCE NORTH 37°31'32" WEST, 23.72 FEET TO THE BEGINNING OF A 285.62-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;

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2601 South 35th Street, Suite 200, Tacoma, Washington 98409
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THENCE ALONG SAID CURVE 8.53 FEET, MORE OR LESS, THROUGH A CENTRAL ANGLE OF 1°42'38" TO THE OUTER HARBOR LINE OF COMMENCEMENT BAY AS PER AFORESAID SURVEY; THENCE NORTH 69°36'53" EAST ALONG SAID OUTER HARBOR LINE A DISTANCE OF 669.85 FEET; THENCE SOUTH 40°28'18" EAST, 43.60 FEET; THENCE SOUTH 44°07'34" EAST, 71.41 FEET; THENCE SOUTH 38°10'44" EAST, 46.06 FEET; THENCE SOUTH 33°58'00" EAST, 79.64 FEET; THENCE SOUTH 19°41'34" EAST, 55.94 FEET TO THE BEGINNING OF A 120.95-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE ALONG SAID CURVE 64.75 FEET THROUGH A CENTRAL ANGLE OF 30°40'17"; THENCE SOUTH 50°21'51" EAST, 14.13 FEET; THENCE SOUTH 54°11'35" EAST, 50.85 FEET TO THE BEGINNING OF A 92.27-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG SAID CURVE 52.40 FEET THROUGH A CENTRAL ANGLE OF 32°32'13"; THENCE ALONG A NON-TANGENT LINE SOUTH 20°34'30" EAST, 21.38 FEET; THENCE SOUTH 18°09'56" EAST, 25.38 FEET; THENCE SOUTH 30°30'03" EAST, 7.62 FEET; THENCE SOUTH 39°14'11" EAST, 17.57 FEET; THENCE SOUTH 41°00'00" EAST, 26.78 FEET; THENCE SOUTH 34°40'43" WEST, 15.00 FEET; THENCE SOUTH 42°04'58" WEST, 15.20 FEET; THENCE SOUTH 46°58'06" WEST, 51.76 FEET; THENCE SOUTH 39°37'07" WEST, 12.21 FEET; THENCE SOUTH 25°53'15" WEST, 10.56 FEET; THENCE SOUTH 03°14'36" WEST, 5.09 FEET; THENCE SOUTH 09°25'14" EAST, 1.36 FEET, MORE OR LESS, TO THE AFORESAID INNER HARBOR LINE; THENCE SOUTH 69°38'20" WEST ALONG SAID INNER HARBOR LINE A DISTANCE OF 243.08 FEET TO THE POINT OF BEGINNING.

(CONTAINING 397,774 SQUARE FEET MORE OR LESS)



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

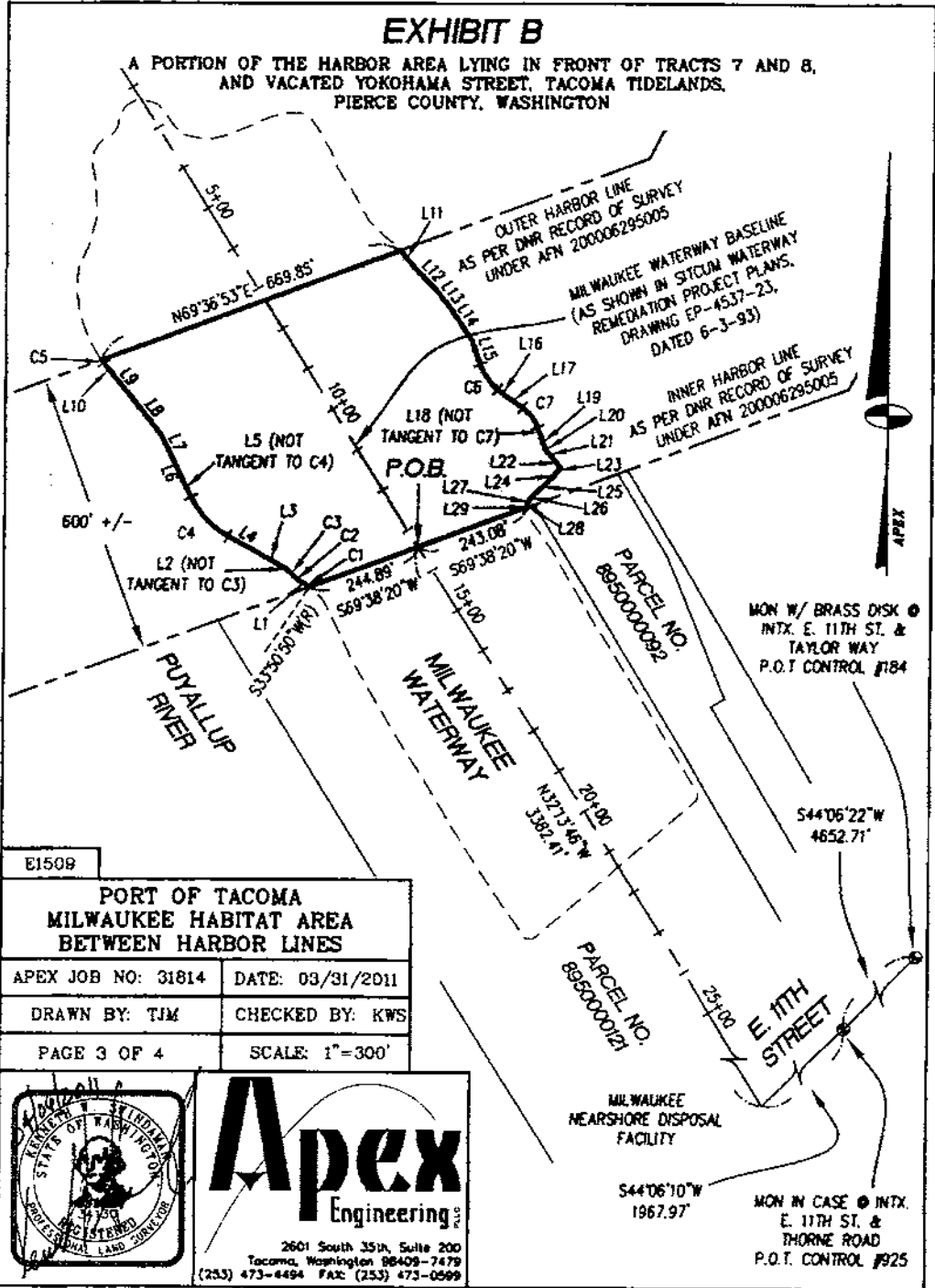
-PAGE 2 OF 4-

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EXHIBIT B

A PORTION OF THE HARBOR AREA LYING IN FRONT OF TRACTS 7 AND 8,
AND VACATED YOKOHAMA STREET, TACOMA TIDELANDS,
PIERCE COUNTY, WASHINGTON



E1509	
PORT OF TACOMA MILWAUKEE HABITAT AREA BETWEEN HARBOR LINES	
APEX JOB NO: 31814	DATE: 03/31/2011
DRAWN BY: TJM	CHECKED BY: KWS
PAGE 3 OF 4	SCALE: 1"=300'



Apex
Engineering

2601 South 35th, Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0999

EXHIBIT B

A PORTION OF THE HARBOR AREA LYING IN FRONT OF TRACTS 7 AND 8,
AND VACATED YOKOHAMA STREET, TACOMA TIDELANDS,
PIERCE COUNTY, WASHINGTON



CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	8.11'	106.00'	04°22'53"
C2	17.81'	56.13'	18°10'34"
C3	17.11'	160.25'	06°07'02"
C4	115.17'	184.58'	35°44'58"
C5	8.53'	285.62'	01°42'38"
C6	64.75'	120.95'	30°40'17"
C7	52.40'	92.27'	32°32'13"

LINE TABLE		
LINE	LENGTH	BEARING
L1	13.60'	N60°32'03"W
L2	12.84'	N55°42'41"W
L3	60.63'	N59°56'30"W
L4	73.98'	N61°36'55"W
L5	46.63'	N26°14'52"W
L6	37.33'	N25°17'34"W
L7	62.68'	N26°48'54"W
L8	104.32'	N37°55'22"W
L9	62.85'	N39°34'59"W
L10	23.72'	N37°31'32"W
L11	43.80'	S40°28'18"E
L12	71.41'	S44°07'34"E
L13	46.06'	S38°10'44"E
L14	79.64'	S33°58'00"E
L15	55.94'	S19°41'34"E
L16	14.13'	S50°21'51"E
L17	50.85'	S54°11'35"E
L18	21.38'	S20°34'30"E
L19	25.38'	S18°09'56"E
L20	7.62'	S30°30'03"E
L21	17.57'	S39°14'11"E
L22	26.78'	S41°00'00"E
L23	15.00'	S34°40'43"W
L24	15.20'	S42°04'58"W
L25	51.76'	S46°58'06"W
L26	12.21'	S39°37'07"W
L27	10.56'	S25°53'15"W
L28	5.09'	S03°14'36"W
L29	1.36'	S09°25'14"E

NOTE:

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

E1509

PORT OF TACOMA MILWAUKEE HABITAT AREA BETWEEN HARBOR LINES			
APEX JOB NO: 31814	DATE: 03/31/2011		
DRAWN BY: TJM	CHECKED BY: KWS		
PAGE 4 OF 4	SCALE: 1"=300'		

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