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After-Recording Return to:

Sandra Caldwell  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

### Environmental Covenant

**Grantor:** MJB Properties LLC

**Grantee:** State of Washington, Department of Ecology

**Abbreviated Legal Description:** Quarter 00 Section 19 Township 35 Range 02 (see Exhibit A for full legal description)

**Tax Parcel Nos.:** P32963 and P32965

## Environmental Covenant

Grantor, MJB Properties LLC, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant ( hereafter "Covenant" ) made this 5<sup>th</sup> day of November, 2013, in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by MJB Properties LLC, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Consent Decree entered in the *State of Washington Department of Ecology v. Port of Anacortes and Kimberly-Clark Corporation*, Skagit County Superior Court No. 09-2-01247-7.
- Cleanup Action Plan (CAP) attached to the Consent Decree (May 8, 2009).
- Engineering Design Report (EDR) prepared by GeoEngineers, Inc. and Anchor Environmental, L.L.C. (March 11, 2010) for the Former Scott Paper Company Mill Site, Anacortes, WA.
- MJB North Area As-Built Construction Completion Report, Former Scott Paper Mill Site, Anacortes, WA prepared by Anchor QEA, LLC (February 2012).

These documents are on file at Ecology's Northwest Regional Office.

The undersigned, MJB Properties LLC, is the fee owner of the "Property" in the County of Skagit, State of Washington, that is subject to this Covenant. The Property is legally described in Exhibit A and Exhibit B to this Covenant, both of which are made a part hereof by reference.



This Environmental Covenant is required because a conditional point of compliance has been established for soil. Within the property are located three areas where residual concentrations of lead, copper, and other metals remain on-site at or below six feet below ground surface (bgs) at levels above Model Toxics Control Act (MTCA) Method B Cleanup Levels for soil. Also within the property is one area where residual concentrations of lead remain onsite at or below ten feet bgs at levels above MTCA Method B Cleanup levels for soil. These four areas, known as Restricted Areas 1 through 4 (hereinafter "Property"), are more particularly described in Exhibit B attached to this Covenant and made a part hereof.

MJB Properties LLC makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork. Provided, however, construction or maintenance activities may be performed at the Property so long as applicable health and safety procedures are implemented, and all media is managed in compliance with applicable Ecology regulations. Prior to performing such work, Owner shall prepare a Health and Safety Plan that describes the applicable requirements and shall notify and obtain approval from Ecology prior to any activity being conducted on the Property. In the event soil will be disposed of off-site, soil shall be characterized and disposed of at a facility legally permitted to accept such soil.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.



Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action. A pledge of the Property, whether all or in part, as collateral for any financing shall not be construed as a conveyance of an interest in the Property.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action. Except in the event of an emergency, Ecology shall provide at least 24 hours' notice prior to entering the Property to Manager, MJB Properties, LLC, at 206.762.9125.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.



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**MJB PROPERTIES LLC**

By: *[Signature]*

Its: MANAGER

Dated: Nov 5, 2013

STATE OF Washington  
COUNTY OF King

On this 5<sup>th</sup> day of November, 2013, I certify that Gary Merlino personally appeared before me, acknowledged that he is a Member of the Limited Liability Company that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said corporation.



*[Signature]*  
Notary Public in and for the State of  
Washington, residing at  
Sumner, WA  
My appointment  
expires 2-19-2014



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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Benny Rogowski*

[Name of Person Acknowledging Receipt]

*Section Manager, Ecology HQ*

[Title]

Dated: *11/14/13*



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**Exhibit A  
Legal Description**

The Property is legally described as follows:

The parcels on which the Restricted Areas are located are legally described as follows. The Restricted Areas are shown with more specificity in Exhibit B.

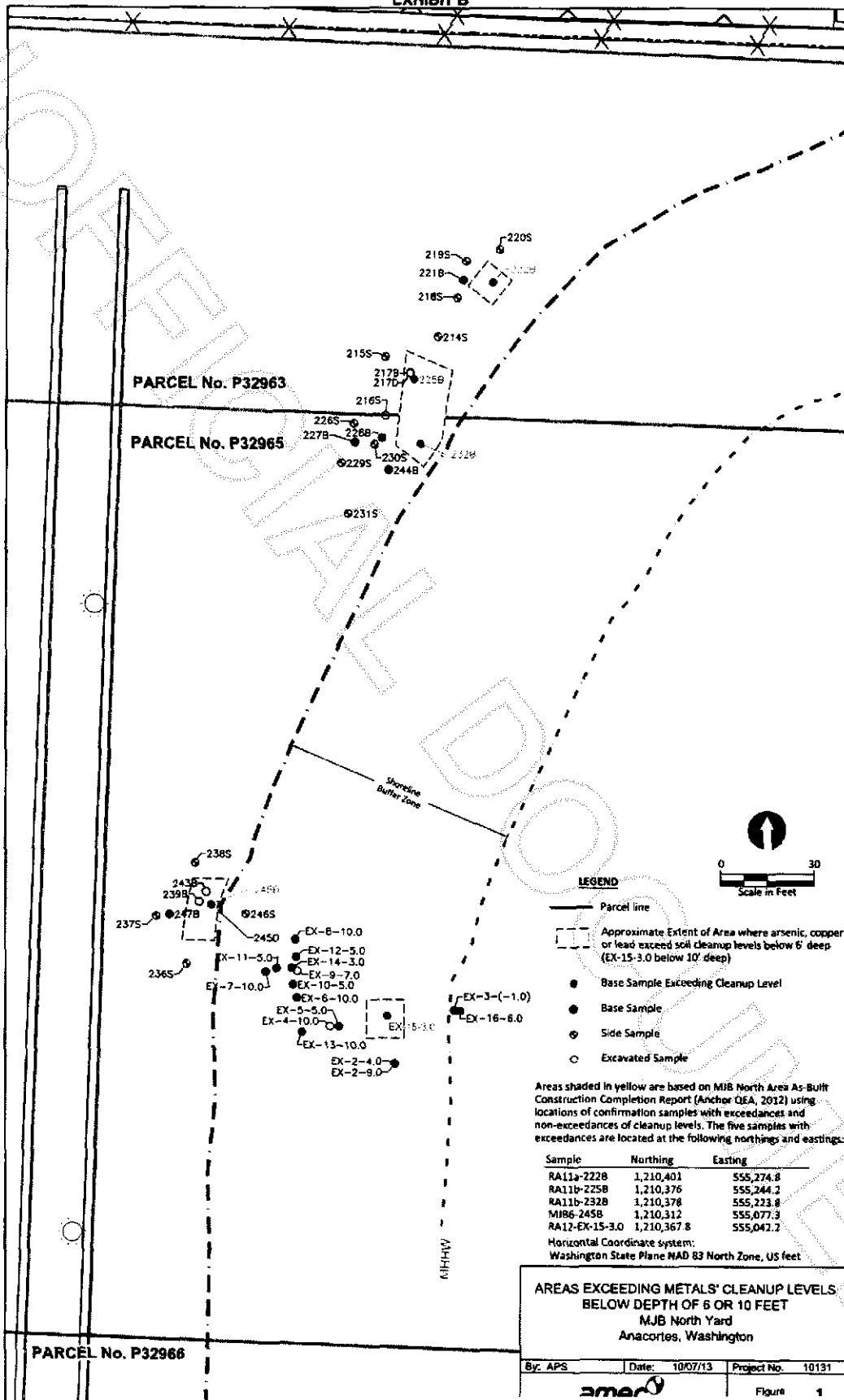
- Parcel No. P32963: ANACORTES TDLDS- S 152FT OF TR 17 PL 10 LESS RT 0-053-02
- Parcel No. P32965: ANACORTES TIDE LANDS TR 18 PL 10



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EXHIBIT B



- LEGEND**
- Parcel line
  - - - Approximate Extent of Area where arsenic, copper or lead exceed soil cleanup levels below 6' deep (EX-15-3.0 below 10' deep)
  - Base Sample Exceeding Cleanup Level
  - Base Sample
  - Side Sample
  - Excavated Sample

Areas shaded in yellow are based on MJB North Area As-Built Construction Completion Report (Anchor QEA, 2012) using locations of confirmation samples with exceedances and non-exceedances of cleanup levels. The five samples with exceedances are located at the following northings and eastings:

Sample	Northing	Easting
RA11a-2228	1,210,401	555,274.8
RA11b-2258	1,210,376	555,244.2
RA11b-2328	1,210,378	555,223.8
MJB6-2458	1,210,312	555,077.3
RA12-EX-15-3.0	1,210,367.8	555,042.2

Horizontal Coordinate System:  
Washington State Plane NAD 83 North Zone, US feet

**AREAS EXCEEDING METALS' CLEANUP LEVELS BELOW DEPTH OF 6 OR 10 FEET**  
MJB North Yard  
Anacortes, Washington

By: APS	Date: 10/07/13	Project No. 10131
Figure		1

