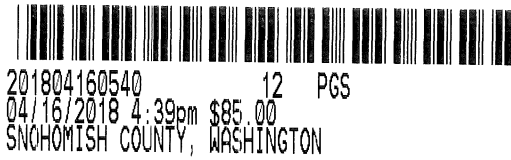


After Recording Return  
Original Signed Covenant to:  
Hun Seak Park  
Toxics Cleanup Program  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600



## Environmental Covenant

**Grantors:** Port of Everett, City of Everett

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

**Brief Legal Description:** NE1/4 SE1/4, Section 18, Township 29N, Range 05E

**Tax Parcel Nos.:** 29051800401200, 29051800401300, 29051800401500, 29051800209100, 29051800209103, 29051800209104 (Port of Everett); N/A City right-of-way along West Marine View Drive immediately east of Parcel 29051800401200 (City of Everett)

**Cross Reference:** March 7, 2012 Consent Decree, Snohomish County Superior Court No. 12-2-03430-1; February 2, 2017 First Amendment to Consent Decree

### RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a site commonly known as Everett Shipyard Inc (FSID #2794). The Property is legally described in Exhibit A and illustrated in Exhibit B, which is attached (hereafter "Property").
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Antimony, arsenic, lead, carcinogenic polycyclic aromatic hydrocarbons (cPAHs)
Groundwater	Arsenic, copper, nickel, zinc, bis(2-ethylhexyl)phthalate
Sediment	Metals, tributyltin, semi-volatile organic compounds

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the

**COPY**

site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology's web page:

<https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=3655>

These include the following documents:

- 2014 Upland Site Cleanup Construction Completion Report, Everett Shipyard, Everett, Washington, July 22, Landau Associates
  - 2017 Sediment Cleanup Construction Completion Report, Everett Shipyard Site, Everett, Washington, February 22, Landau Associates
  - 2017 Revised Soil, Groundwater and Sediment Management Plan, Everett Shipyard Site Everett, Washington, February 16, Landau Associates
- e. This Covenant grants Ecology 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 which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its' right as a holder, are not an interest in real property.

#### COVENANT

The Port of Everett and City of Everett, as Grantors and fee simple owners of the Property hereby grant to Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantors that such covenants shall supersede any prior interests the GRANTORS have in the Property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

#### **Section 1. General Restrictions and Requirements.**

The following paragraphs present general restrictions and requirements shall apply to the Property. More specific requirements and procedures for conducting intrusive activities in areas of the Property containing residual contamination are provided in the Soil, Groundwater and Sediment Management Plan identified in Paragraph d of the Recitals section.

- a. Interference with Remedial Action.** The Grantors shall not engage in any activity on the Property 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.
- b. Protection of Human Health and the Environment.** The Grantors shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. Continued Compliance Required.** Grantors shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

**d. Leases.** Grantors shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

**e. Preservation of Reference Monuments.** Grantors 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, Grantors 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 requirements shall apply to the Property:

**a. Containment of Soil Materials.** The remedial action for part of the Property is based on containing contaminated soil beneath a concrete sidewalk at and located as illustrated in **Exhibit B**. The primary purpose of this keeping this sidewalk in place is to prevent direct contact with, and water infiltration into, contaminated soil. As such, the following restrictions shall apply within the area illustrated in **Exhibit B**:

Any activity that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantors shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantors shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

**b. Groundwater Use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

**c. Sediments.** The residual contamination on the Property includes contaminated marine sediments. As such, the following restrictions shall apply to minimize potential disturbance of these sediments within the sediment containment area of the Property illustrated in Exhibit B:

Any activity within this area that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling devices, piling, anchors or similar devices; dredging; installation of buried utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantors shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantors shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

No docks or other structures shall be constructed within the sediment containment area without prior written approval of Ecology.

No dredging shall be allowed within the sediment containment area without prior written approval of Ecology.

No ships or boats shall be allowed to anchor or use side thrusters within the sediment containment area.

**d. Monitoring.** Several groundwater monitoring wells are located on the Property to monitor the performance of the remedial action. The Grantors shall maintain clear access to these devices and protect them from damage. The Grantors shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantors shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

**Section 3. Access.**

**a.** The Grantors shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

**b.** The Grantors freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

**c.** No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

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

- i.** Provide written notice to Ecology 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: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON 4/10/18 AND RECORDED WITH THE SNOHOMISH COUNTY AUDITOR UNDER RECORDING NUMBER 201804160540. 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, provide Ecology 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 Grantors become aware of any violation of this Covenant, Grantors shall promptly report such violation in writing to Ecology.

**c. Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantors is authorized to respond to such an event in accordance with state and federal law. The Grantors

must notify Ecology 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 personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Port of Everett: Erik Gerking Director of Environmental Programs Port of Everett 1205 Craftsman Way, Suite 200 Everett, WA 98201 (425)388-0604 <a href="mailto:erikg@portofeverett.com">erikg@portofeverett.com</a>	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
City of Everett: Mike Palacios Real Property Manager 3200 Cedar Street Everett, WA 98201 (425) 257-8938 <a href="mailto:mpalacios@ci.everett.wa.us">mpalacios@ci.everett.wa.us</a>	

**Section 5. Modification or Termination.**

**a.** Grantors must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property 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 must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves 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 Grantors may submit a request to Ecology 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 Grantors.

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

**c.** Ecology 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 MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, 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 of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

**d.** The Grantors shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantors, upon request by Ecology, shall be obligated to pay for Ecology'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 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.

The undersigned Grantor warrants it hold title(s) to the Property and have authority to execute this Covenant.

EXECUTED this 3 day of April, 2018.



Lisa Lefebber  
Acting CEO/ Executive Director

### GRANTOR ACKNOWLEDGMENT

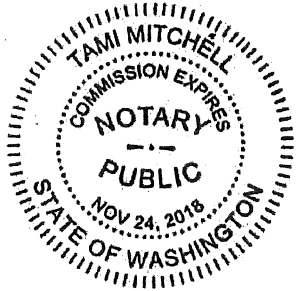
STATE OF WASHINGTON

COUNTY OF SNOHOMISH

On this 3<sup>rd</sup> day of April, 2018, I certify that LISA LEFEBER personally appeared before me, acknowledged that he is the ACTING CEO/EXECUTIVE DIRECTOR of the Port of Everett that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of the Port of Everett, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said corporation.



Notary Public in and for the State of  
Washington, residing at Snohomish.  
My appointment expires 11-24-18.



The undersigned Grantor warrants it hold the title(s) to the Property and have authority to execute this Covenant.

EXECUTED this 4<sup>TH</sup> day of APRIL, 2018.

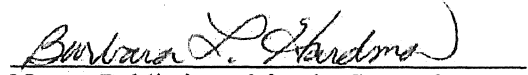
  
Michael Palacios  
Real Property Manager

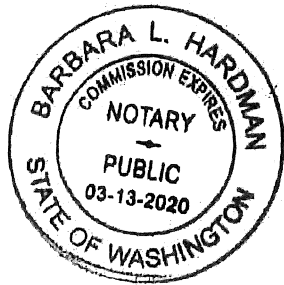
### GRANTOR ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

On this 4<sup>TH</sup> day of April, 2018, I certify that Michael Palacios personally appeared before me, acknowledged that he is the Real Property Manager of the City of Everett that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of the City of Everett, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said corporation.

  
Notary Public in and for the State of  
Washington, residing at Everett.  
My appointment expires 3-13-2020.





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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Barry Rogowski

Barry Rogowski  
Headquarters Cleanup Section Manger  
Toxics Cleanup Program  
HQ Regional Office

Dated: April 10, 2018

**STATE ACKNOWLEDGMENT**

STATE OF WASHINGTON  
COUNTY OF THURSTON

On this 10<sup>th</sup> day of April, 2018, I certify that Barry Rogowski personally appeared before me, acknowledged that he is the Headquarters Cleanup Section Manager for the Washington State Department of Ecology's Toxics Cleanup Program 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 was authorized to execute said instrument for said state agency.

Valerie L Pearson  
Notary Public in and for the State of  
Washington, residing at Lacey, WA.  
My appointment expires: 03/28/2020



**Exhibit A**

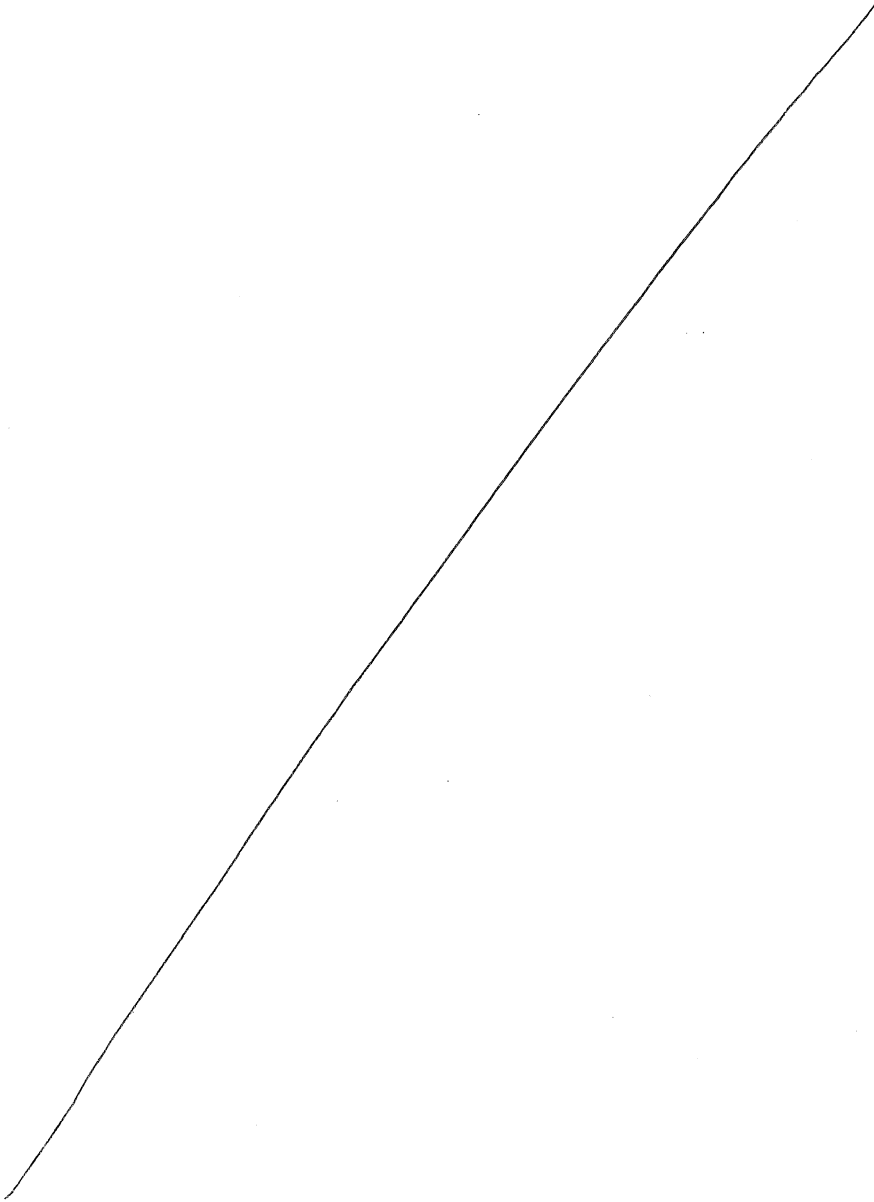
**LEGAL DESCRIPTION**

NE1/4 SE1/4, Section 18, Township 29N, Range 05E. The legal description for the Property and the specific covenant areas within the Property are more specifically defined on Exhibit B.

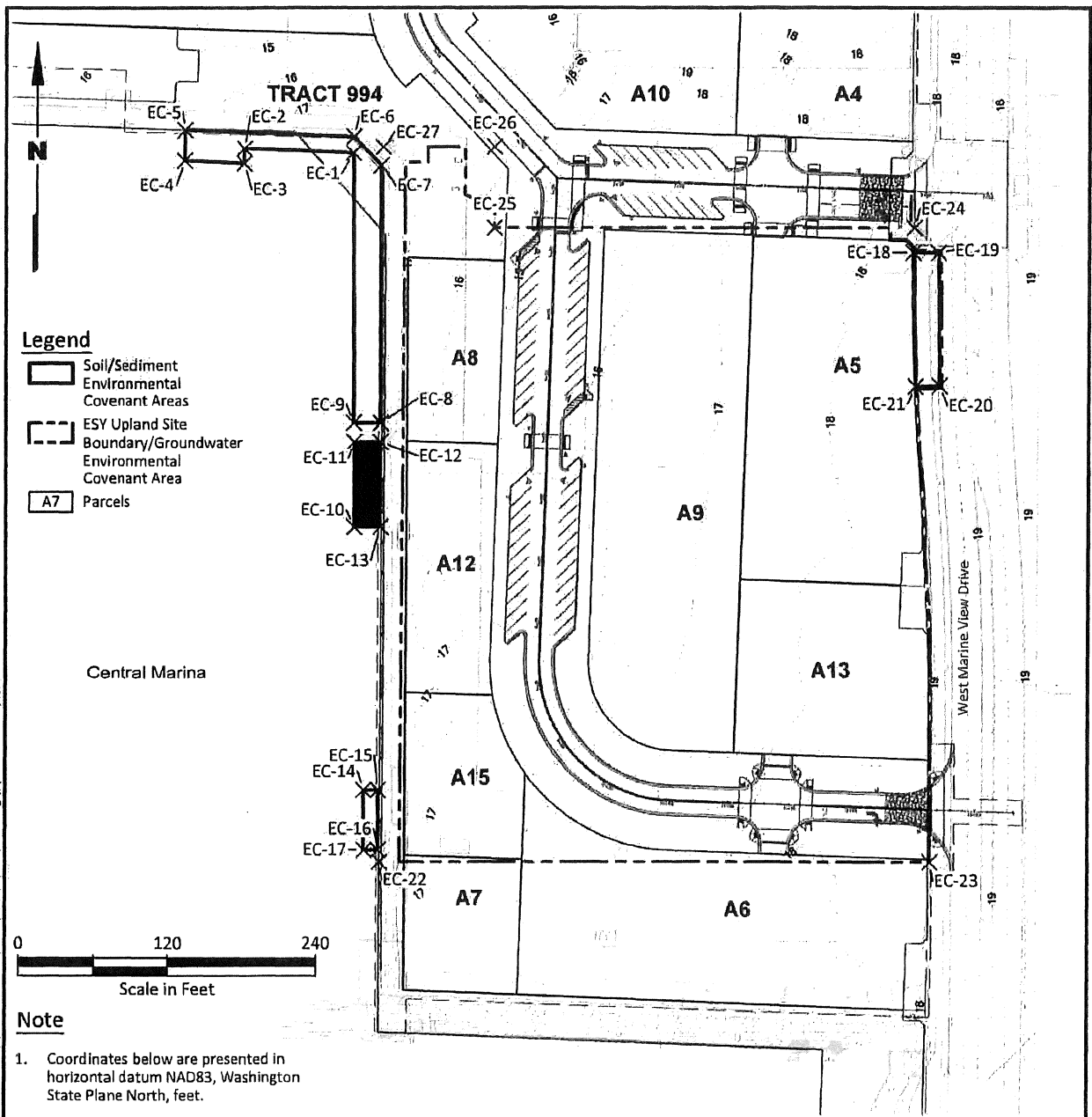


**Exhibit B**

**PROPERTY MAP & LOCATION OF RESTRICTIONS**



LANDAU ASSOCIATES, INC. | c:\projects\147\041\010\015\Exhibit B EnvironmentalCovenantAreas.dwg (A) "Exhibit B" 1/4/2017



**Note**

- Coordinates below are presented in horizontal datum NAD83, Washington State Plane North, feet.

Reference Point Designation	Reference Point Northing	Reference Point Easting	Reference Point Designation	Reference Point Northing	Reference Point Easting	Reference Point Designation	Reference Point Northing	Reference Point Easting
EC-1	367475.2521	1301946.1316	EC-10	367173.4853	1301947.2736	EC-19	367394.8772	1302421.9748
EC-2	367478.8965	1301858.2546	EC-11	367242.1321	1301947.2736	EC-20	367287.6593	1302422.8321
EC-3	367466.7736	1301857.9838	EC-12	367242.1321	1301968.4957	EC-21	367286.8597	1302403.3695
EC-4	367469.0136	1301809.3687	EC-13	367173.4853	1301968.4957	EC-22	366903.5871	130968.1423
EC-5	367493.7361	1301809.6055	EC-14	366961.3663	1301955.2497	EC-23	366903.4434	1302415.9576
EC-6	367488.5556	1301946.6082	EC-15	366961.3663	1301967.0945	EC-24	367414.6244	1302402.2053
EC-7	367465.0181	1301968.5110	EC-16	366913.0868	1301967.0945	EC-25	367414.8067	1302060.6375
EC-8	367257.6577	1301968.4359	EC-17	366913.0868	1301955.7497	EC-26	367480.0509	1302060.7252
EC-9	367257.8483	1301946.6326	EC-18	367394.7604	1302401.4581	EC-27	367480.1050	1301970.2809

Source: Port of Everett 2016



Everett Shipyard Site Everett, Washington	<b>Environmental Covenant Areas</b>	Exhibit <b>B</b>
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