


After recording return to:
Environmental Covenants Coordinator
Washington State Dept of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia WA 98504-7600


202012280273 CPENNY 16 PGS
12/28/2020 10:38:07 AM \$118.50
AUDITOR, Pierce County, WASHINGTON

Environmental (Restrictive) Covenant

Grantor: Port of Tacoma

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

Brief Legal Description:

Section 26 Township 21 Range 03 Quarter 34 LOT 1 OF S P 2003-10-29-5007 TOG/W EASE & RESTRICTIONS OF REC OUT OF 3-042 SEG 2005-0385 9/22/04JK

Section 35 Township 21 Range 03 Quarter 21 LOT 2 OF S P 2003-10-29-5007 TOG/W EASE & RESTRICTIONS OF REC OUT OF 032126-3-042 SEG 2005-0385 9/22/04JK

Section 35 Township 21 Range 03 Quarter 21 LOT 3 OF S P 2003-10-29-5007 TOG/W EASE & RESTRICTIONS OF REC OUT OF 032126-3-042 SEG 2005-0385 9/22/04JK

Tax Parcel Nos.: 0321355007, 0321356008, 0321267005

Reference: Agreed Order No. DE 04TCPSR-1160, Prologis Site and Agreed Order No. DE13921, Taylor Way and Alexander Avenue Fill Area (TWAafa) Site.

A. 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 ProLogis Development Services Incorporated, Facility/Site ID #1770486, Cleanup Site ID #2240, and the Taylor Way and Alexander Avenue Fill Area, Facility/Site ID #1403183, Cleanup Site ID #4692. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- 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	Total Petroleum Hydrocarbons (TPH) Total carcinogenic polycyclic aromatic hydrocarbons (cPAH), pentachlorophenol, and MTCA-regulated metals.
Groundwater	TPH, benzene, pentachlorophenol, and MTCA-regulated metals.

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 site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents:

Remedial Investigation ProLogis Taylor Way Property, Prepared by Floyd/Snider, October 3, 2006

Feasibility Study, ProLogis Taylor Way Property. Prepared by Floyd/Snider, December 2006

Rangor Building Phase I Environmental Site Assessment. Prepared by Floyd/Snider, November 1, 2007.

1514 Taylor Way Development, Interim Action Work Plan. Prepared by Floyd/Snider, June 2017.

1514 Taylor Way Development, Interim Action Completion Report. Prepared by Floyd/Snider, June 2020.

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.

B. COVENANT

Port of Tacoma, as Grantor and owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has 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.

C. Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

a. **Interference with Remedial Action.** The Grantor 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 Grantor 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. Grantor 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. Grantor 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. 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.

D. 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. Land use.

Industrial Land Use: The remedial action for the Property is based on a clean-up designed for industrial property. As such, the Property shall be used in perpetuity only for industrial uses, as that term is defined in the rules promulgated under Chapter 70.105D RCW. Prohibited uses on the Property include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, grazing of animals, and growing of food crops.

b. Containment of Soil/Waste Materials.

The remedial action for the Property is based on containing contaminated soil under a cap consisting of imported fill materials with an average thickness of 3 feet and located as illustrated in Exhibits C and D. The primary purpose of this cap is to minimize the infiltration of rainwater that promotes leaching and recharge of the fill aquifer. As such, the following restrictions shall apply within the area illustrated in Exhibits C and D:

- Any activity on the Property 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 Grantor 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 Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.
- The Grantor covenants and agrees that it shall every 2½ years, or at another time as approved in writing by Ecology, inspect the cap and report to Ecology within thirty (30) days of the inspection, in writing and in a form or format approved by Ecology, the condition of the cap and any changes to the cap or activities that would impair its performance.

c. 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.

d. Monitoring.

Several groundwater monitoring wells will be installed on the Property as required by a future administrative order and as described in the *Final Data Gaps Work Plan, Taylor Way and Alexander Avenue Fill Area Site*.¹ The Grantor shall maintain clear access to all groundwater monitoring wells installed on the Property and protect them from damage. The Grantor 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 Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

E. Section 3. Access.

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

F. Section 4. Notice Requirements.

- a. **Conveyance of Any Interest.** The Grantor, 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 [DATE] AND RECORDED WITH THE [COUNTY] 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.

¹ Prepared by Dalton, Olmsted & Fuglevand, for General Metals, Glenn Springs Holdings, Port of Tacoma, and Clean Earth, dated July 2020.

- 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 Grantor become aware of any violation of this Covenant, Grantor 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 Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor 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.

Scott Hooton Port of Tacoma PO Box 1837 Tacoma, WA 98401-1837 (253) 383-9428 <i>Shooton@PortofTacoma.com</i>	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 —7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

- a. Grantor 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 Covenant². For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site³:
 - 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 Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any

² Example of inconsistent uses are using the Property for a use not allowed under the covenant (i.e. mixed residential and commercial use on a property restricted to industrial uses), OR drilling a water supply well when use of the groundwater for water supply is prohibited by the covenant.

³ An example of an activity that is unlikely to be considered a permanent modification is a proposal to disturb a cap to repair an existing underground utility that passes through the site. However, installing a new underground utility within a capped area would be a permanent change.

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 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 Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, 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.

SIGNATURES ARE ON FOLLOWING PAGES

The undersigned Grantor warrants it holds the title to the Property and has authority to execute this Covenant.

PORT OF TACOMA

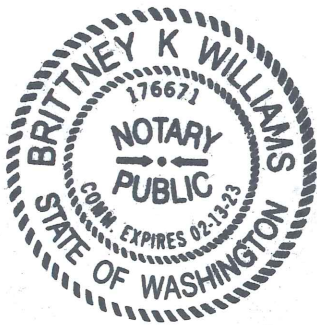
By: Eric Johnson
Eric Johnson
Executive Director
(253) 428-8633

Date: November 18, 2020

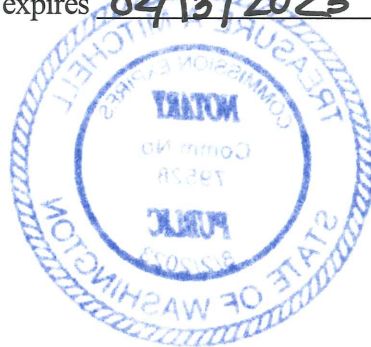
STATE OF WASHINGTON

COUNTY OF PIERCE

On this 18 day of November, 2020, I certify that Eric Johnson personally appeared before me, acknowledged that he is the Executive Director of the corporation 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.



Brittny Williams
Notary Public in and for the State of Washington
Residing at Pierce County, WA
My appointment expires 02/13/2023



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

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

By: Marian L. Abbett

Marian L. Abbett, P.E.
Acting Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6257

Date: 12/3/20

STATE OF WASHINGTON

COUNTY OF THURSTON

On this 3rd day of December, 2020, 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 McClary, WA
My appointment expires 8-2-2023

Exhibit A

LEGAL DESCRIPTION

PARCEL A:

THAT PORTION OF LOTS 1,2, AND 3, CITY OF TACOMA SHORT PLAT NO. MPD2003-00046, RECORDED UNDER AUDITORS FILE NO. 200310295007, RECORDS OF PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1:

THENCE ALONG THE WEST LINE OF SAID LOT 1, SOUTH 01'32'10" WEST, 395.60 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE SOUTH LINE OF SAID LOT 1, SOUTH 88'25'24" EAST, 179.41 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE ALONG THE WEST SIDE OF SAID LOT 2, SOUTH 13'06'46" EAST, 44.01 FEET; THENCE SOUTH 67'59'41" EAST 54.34 FEET; THENCE SOUTH 22'00'19" EAST 36 FEET; THENCE SOUTH 67'59'41" EAST, 534.13 FEET; THENCE SOUTH 45'53'14" EAST, 57.39 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3; THENCE ALONG THE EAST LINE OF SAID LOT 3, NORTH 44'06'46" EAST, 355.75 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE ALONG THE NORTHERN LINES OF SAID LOTS 1 THROUGH 3, INCLUSIVE, NORTH 67'59'41" WEST, 1,107.31 FEET TO THE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF LOTS 2, AND 3, CITY OF TACOMA SHORT PLAT NO. MPD2003-00046, RECORDED UNDER AUDITORS FILE NO. 200310295007, RECORDS OF PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID SHORT PLAT; THENCE ALONG THE WEST LINE OF SAID LOT 1, SOUTH 01'32'10" WEST 395.60 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE SOUTH LINE OF SAID LOT 1, SOUTH 88'25'24" EAST, 179.41 FEET TO THE SOUTHEAST CORNER OF SAID SLOT 1; THENCE ALONG THE WEST LINE OF SAID LOT 2, SOUTH 13'06'46" EAST, 44.01 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE WEST LINE OF SAID LOT 2, SOUTH 05'02'03" WEST, 40.70 FEET; THENCE SOUTH 67'59'41" EAST, 268.91 FEET; THENCE SOUTH 22'00'19" WEST 27.00 FEET; THENCE SOUTH 67'59'41" EAST, 79.80 FEET TO A POINT ON THE SOUTH SIDE OF SAID LOT 3; THENCE ALONG THE SOUTH SIDE OF SAID LOT 3, SOUTH 88'25'24" EAST, 112.06 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3; THENCE ALONG THE EAST SIDE OF SAID LOT 3, NORTH 44'06'46" EAST, 199.45 FEET; THENCE NORTH 45'53'14" WEST 57.39 FEET; THENCE NORTH 67'59'41" WEST 534.13 FEET; THENCE SOUTH 22'00'19" WEST 36.00 FEET; THENCE NORTH 67'59'41" WEST, 54.34 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C:

THAT PORTION OF LOTS 2, AND 3, CITY OF TACOMA SHORT PLAT NO. MPD2003-00046, RECORDED UNDER AUDITORS FILE NO. 200310295007, RECORDS OF PIERCE COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID SHORT PLAT; THENCE ALONG THE WEST LINE OF SAID LOT 1, SOUTH 01'32'10" WEST, 395.60 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE SOUTH LINE OF

SOID LOT 1, SOUTH 88'25'24" EAST, 179.41 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE ALONG THE WEST SIDE OF SAID LOT 2, SOUTH 05'02'03" WEST, 40.70 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE OF LOT 2, SOUTH 05'02'03" WEST, 147.28 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 67'59'41" WEST 79.80 FEET; THENCE NORTH 67'59'41" WEST 79.80 FEET; THENCE NORTH 22'00'19" EAST 27.00 FEET; THENCE NORTH 67'59'41" WEST, 268.91 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit B
PROPERTY MAP

EXHIBIT B

1514 TAYLOR WAY
TACOMA, WA 98421
PORT PARCEL: 95

SHEET: 1 OF 1
PURPOSE: ENVIRONMENTAL
COVENANT
DATE: 9/21/2020
AUTHOR: Brian Archer

Legend
 Port Parcel 95
 Tax Parcels



DISCLAIMER: The information included on this map has been compiled by Port of Tacoma staff from a variety of sources and is subject to change without notice. These data are intended for informational purposes and should not be used for legal or other site-specific uses. The Port of Tacoma makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or origin to the use of such information.

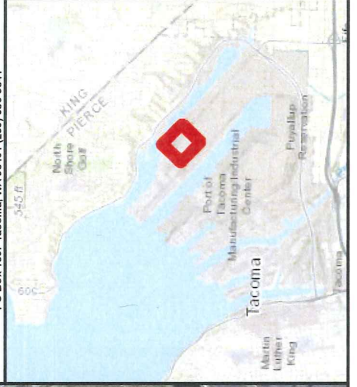
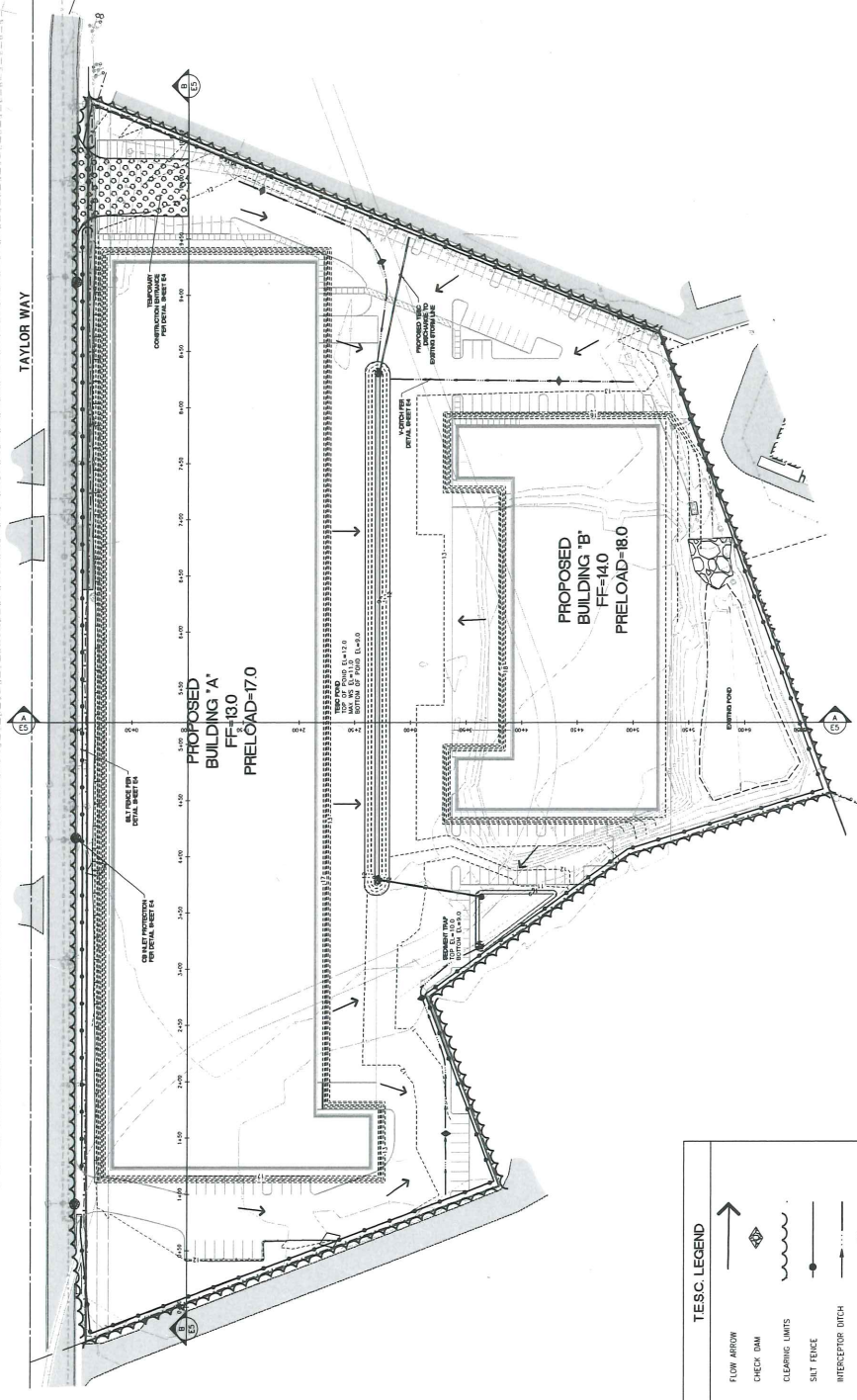


Exhibit C

SECTION LINE LOCATION MAP

TEMPORARY EROSION AND SEDIMENTATION CONTROL PLAN

FOR
AVENUE 55/TAYLOR WAY PHASE 1
 A PORTION OF THE SW 1/4 OF SEC. 26, TOWNSHIP 2N, RANGE 03E
 W.M. PIERCE COUNTY, CITY OF TACOMA, WASHINGTON

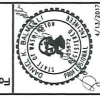


TESC. LEGEND

→	FLOW ARROW
⬢	CHECK DAM
~	CLEARING LIMITS
—	SILT FENCE
—	INTERCEPTOR DITCH
⊗	INLET PROTECTION

TEMPORARY EROSION AND SEDIMENTATION CONTROL PLAN FOR TACOMA PHASE 1

AVENUE 55
 600 UNIVERSITY STREET SUITE 2305
 SEATTLE, WA 98101



BAGHADEI
 CONSULTING ENGINEERS
 18215 22ND AVENUE SOUTH
 KENT, WA 98032
 (206) 875-8222
 (206) 875-8782 FAX

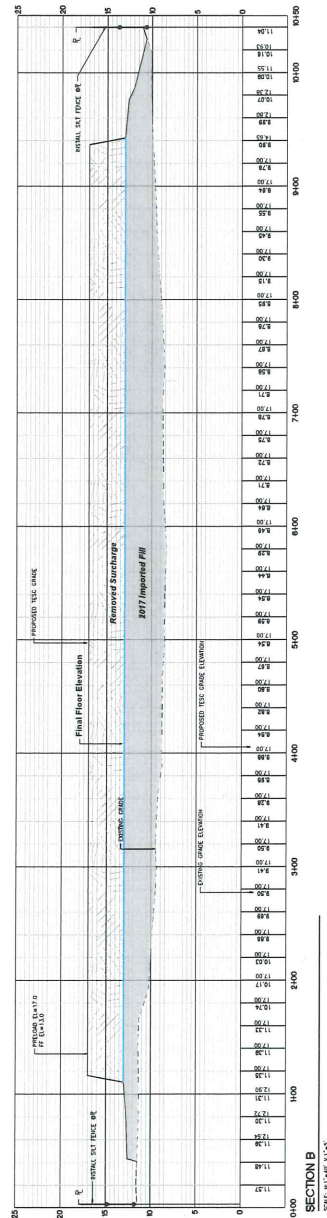
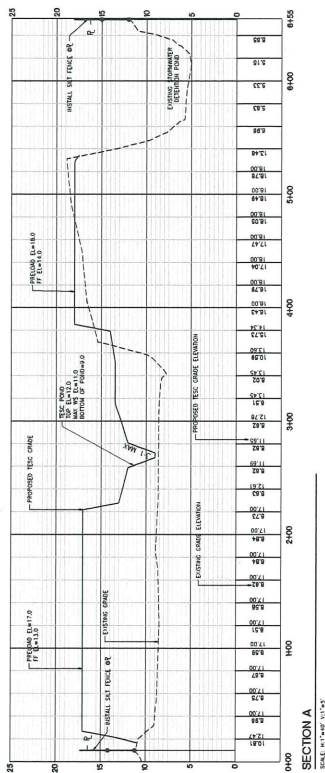
I:\GIS\Projects\1514-TaylorWay\1514MCR\Figure 3.1 Section Line Location Map.ai
 08/17/2010

Exhibit D

SECTION LINES SHOWING PRELOAD AND FINAL FILL ELEVATIONS

TEMPORARY EROSION AND SEDIMENTATION CONTROL PROFILES

FOR
AVENUE 55/TAYLOR WAY PHASE 1
 A PORTION OF THE SW 1/4 OF SEC. 20, TOWNSHIP 2N, RANGE 03E
 WM. PIERCE COUNTY, CITY OF TACOMA WASHINGTON



	License No. 18293 State: WA	Project No. 18293 Date: 05/27/2018
	1825 72ND AVENUE SOUTH KENT, WA 98032 (425) 422-6222 (425) 422-8722 FAX	
State: WA License No.: 18293 Date: 05/27/2018	Project No.: 18293 Date: 05/27/2018	Project No.: 18293 Date: 05/27/2018



Interim Action Completion Report
 1514 Taylor Way Development
 Tacoma, Washington

Figure 3.2
 Section Lines Showing Preload and Final Fill Elevations

N:\GIS\Projects\18293-TaylorWay\18293-TaylorWay\Final\18293-TaylorWay\18293-TaylorWay-Final-Fill-Elevations.dwg
 05/27/2018

