

## INTERLOCAL AGREEMENT REGARDING WETLANDS

This Agreement Regarding Wetlands (Agreement) is made by the Port of Tacoma, a Washington port district ("Port"), SSA Containers, Inc. ("SSA"), and the Puyallup Tribe of Indians, a federally-recognized Indian tribe ("Tribe"), and collectively ("Parties").

### 1. Background

1.1 Under the terms of a Real Estate Purchase and Sale Agreement dated April 22, 2008, and as the Parties intend to amend it in 2013 (the "Purchase and Sale Agreement"), the Port agreed to sell certain property to the Tribe, including property known as the Arkema Triangle, described and depicted on **Exhibit "A"** to this Agreement. Under the Purchase and Sale Agreement, the Port agreed to remediate the Arkema Triangle of hazardous substances.

1.2 SSA is working with the Tribe on redevelopment of certain properties, including the Arkema Triangle, and has agreed to undertake certain work on the Arkema Triangle to facilitate that redevelopment.

1.3 The Port has determined that completion of its remediation obligations does not include responsibility for temporary wetland impacts that will result from removal of hazardous substances from the Arkema Triangle property. The Port is willing to be responsible for the necessary work to remediate certain areas as wetland so long as SSA pays the Port for that wetland work, which by this Agreement SSA agrees to do.

1.4 The Tribe has agreed to allow the Port and its contractor and its agents construction access through the Tribe's adjacent property described and depicted on **Exhibit "B"** to this Agreement (Tribe Property) for the completion of the mitigation work described below.

1.5 The Parties memorialize these agreements as follows:

### 2. Overall Purpose of the Agreement

The purpose of this Agreement is to clarify the Parties' respective responsibilities for the disturbed wetland areas. This Agreement does not alter or limit any of the Port's obligations under the Purchase and Sale Agreement.

### 3. Port Access to Tribe's Property

The Tribe agrees to allow the Port and its agents and contractors to temporarily use the Tribe Property described in Exhibit B lying west of the Arkema Triangle for purposes of the Port's remediation work on the Arkema Triangle. The Port agrees to install a temporary chain link construction fence around the Tribe Property during the length of the remediation work. Once the Port's remediation work on the Arkema Triangle is complete, the Tribe Property is to be restored to its pre-existing condition and the existing fence on the west edge of the Arkema Triangle be restored as near as practicable to its original location and

condition. The Port agrees to keep the Tribe Property lien-free and to restore it as nearly as practicable to its pre-existing condition following completion of the Port's Arkema Triangle work. The Port agrees to indemnify and defend the Tribe against any liens or liability of any kind arising out of the use of the Tribe Property under the terms of this Agreement.

#### 4. Port's Initial Obligation

The Port, through its contractor, will excavate contaminated soils from the Arkema Triangle. As to all areas outside of the areas delineated as jurisdictional wetlands, the Port will fill to grades equal to those prior to excavation with clean suitable soil, and apply a final course of gravel to stabilize the surface soils, to meet the Port's own storm water requirements, and to meet any applicable governmental requirements. As to those areas delineated as jurisdictional wetlands, and as depicted on **Exhibit "C"**, the Port will fill to grades equal to those prior to excavation with clean suitable soil, but will not provide the final course of gravel. Upon completion of this described work, the Port will notify SSA in writing that the work has been completed.

#### 5. Process for Completion of Work

The Parties are cooperating so that the Arkema Triangle remediation work and wetland work can be coordinated for their mutual benefit. The following describes the Parties' mutually agreed process through which the major elements will be completed. However, the Parties acknowledge that, as with any cleanup work, unanticipated conditions may develop, and they agree to cooperate with any schedule or process changes that may serve their mutual interests.

5.1 SSA shall provide the Port a scope of work and construction drawings for the Wetland Work necessary to remediate the jurisdictional area depicted on **Exhibit "C"** as wetlands, following a format specified by the Port within one (1) day of receiving the Port's required drawing and specification format. This work (the "Wetland Work") will generally consist of installing approximately twelve (12) inches of moisture retentive manufactured soil and seeding with a native western Washington wetland seed mix. The scope of work and construction drawings for the Wetland Work provided by SSA to the Port will have a level of detail sufficient for permitting and construction.

5.2 The Port shall incorporate the scope of work and construction drawings for the Wetland Work provided by SSA in the overall Project, and include same in the Port's request for public bids for the Arkema Triangle Work, to be separately bid by contractors.

5.3 The Port shall provide SSA with the Port's proposed construction documents for the Wetland Work for SSA's review, comment and approval, which approval shall not be unnecessarily withheld. SSA shall provide its written comment and decisions to the Port within 48 hours of its receipt of the documents and if there are comments requiring resubmittal, will provide its written decision on resubmittal to the Port within 24 hours of receipt.

5.4 Upon bid opening, the Port shall notify SSA of the presumed lowest responsible and responsive bid which the Port proposes to accept for SSA's review and comment. SSA shall provide any comments within 24 hours of its receipt of the bid.

5.5 The Port shall provide SSA with seven (7) days' written notice of any scheduled pre-construction meeting that addresses the Wetland Work, and SSA shall have the right to attend and participate in that meeting.

5.6 The Port shall provide SSA with at least fourteen (14) days' written notice of the scheduled commencement of the Wetland Work, and SSA shall have the right to observe and inspect the Wetland Work as it is completed.

5.7 The Port will submit contractor pay requests for Wetland Work to SSA and SSA shall pay for such work, by reimbursing the Port within twenty (20) days from its receipt of the pay request.

5.8 Upon completion of the Wetland Work and payment to Port contractor, the Port shall provide SSA with the final as-built drawings as soon as they are submitted to the Port.

## 6. Permit Compliance & Monitoring and Maintenance

6.1 The Port shall be responsible for Model Toxic Control Permit compliance requirements for the Wetland Work, subject to Section 6.2 and 6.3 herein.

6.2 SSA shall be responsible for all monitoring and maintenance costs for work of any kind related to the Wetland Work and wetland area, as well as ensuring that the scope of work and construction drawings for the Wetland Work provided by SSA to the Port complies with local agency substantive requirements.

6.3 SSA agrees to indemnify, hold harmless and defend the Port against any regulatory, citizen suit, or any enforcement actions, penalties, liens, and liability of any kind related to (1) monitoring and maintenance related work of any kind for the Wetland Work and wetland area and related to (2) work of any kind related to compliance with local agency substantive requirements for the Wetland Work as provided by the terms of this Agreement.

## 7. Notices

Any and all notices required or desired to be given under this agreement ("Notice") shall be in writing and shall be validly made if: (i) personally served; (ii) sent by certified, registered, or express mail with postage prepaid and return receipt requested; or (iii) sent by facsimile transmission with transmission and receipt confirmed and the original sent by certified, registered, or express mail with postage prepaid thereon and return receipt requested. Notice shall be deemed given (i) at the time of personal service; (ii) three (3) business days after mailing; or (iii) the next business day after fax transmission as set forth above. Notice shall be effective only if properly addressed to the Party's representative as stated below:

To Port:

Port of Tacoma  
One Sitcum Plaza  
Tacoma, WA 98421  
Attn: Chief Executive Officer  
Fax: (253) 383-9440  
Phone: (253) 383-5841

To SSA:

SSA Containers, Inc.  
1131 SW Klickitat Way  
Seattle, WA 98134  
Attn: Ari Steinberg  
Fax: (206) 624-5911  
Phone: (206) 654-3689

With a Copy to the Tribe:

Puyallup Tribe of Indians  
3009 E. Portland Avenue  
Tacoma, WA 98404  
Attn: Raul Ramos  
Fax: (253) \_\_\_\_\_  
Phone: (253) \_\_\_\_\_

With a copy to Tribe's wholly-owned corporation:

Marine View Ventures, Inc.  
3702 Marine View Drive, Suite 200  
Tacoma, WA 98422  
Attn: Chad Wright  
Fax: (253) 203-0052  
Phone: (253) 203-0050  
[Chad@marineviewventures.com](mailto:Chad@marineviewventures.com)

8 Venue

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

9 Project Financing.

Except as provided above, the parties shall finance its own conduct of responsibilities under this Agreement.

10 Property Ownership.

Except as provided for the Purchase and Sale Agreement, no ownership of property will transfer as a result of this Agreement.

11 No Third Party Beneficiaries

This Agreement is entered into solely for the mutual benefit of the parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

12 SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

13 Legal Obligations.

This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.

14 Time Is Of The Essence.

The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.

15. Copies Filed With County Auditor or Posted On Parties' Web Site:

Copies of this Agreement shall either be filed with the Pierce County Auditor's Office after execution or posted on each parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective party authorities

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the date of recording.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

PORT OF TACOMA

By: [Signature]  
John Wolfe

Title: Chief Executive Officer

Date: October 11, 2013

SSA CONTAINERS, INC

By: [Signature]  
MARK KNUDSEN

Title: PRESIDENT, S&K PACIFIC

Date: 10/16/13

APPROVED:

PUYALLUP TRIBE OF INDIANS

By: [Signature]

Title: CEO, MVU

Date: 10/21/13

**EXHIBIT A**

**LEGAL DESCRIPTION**

A PARCEL OF LAND SITUATE IN THE NORTHWEST QUARTER OF SECTION 36,  
TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:

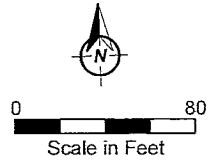
THAT PORTION OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE  
SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND ALL OF THE SOUTHEAST  
QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID  
SECTION 36 LYING SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT-OF-WAY LINE  
OF TAYLOR WAY SHOWN ON RECORD OF SURVEY RECORDED UNDER RECORDING  
NO. 9604170418.

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF TACOMA BY  
WARRANTY DEED RECORDED UNDER RECORDING NO. 8708110370.

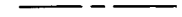
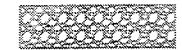

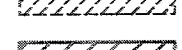

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

PROPERTY ADDRESS: 2920 TAYLOR WAY, TACOMA WA 98421

TAX ACCOUNT/PARCEL NUMBER: 0321362056

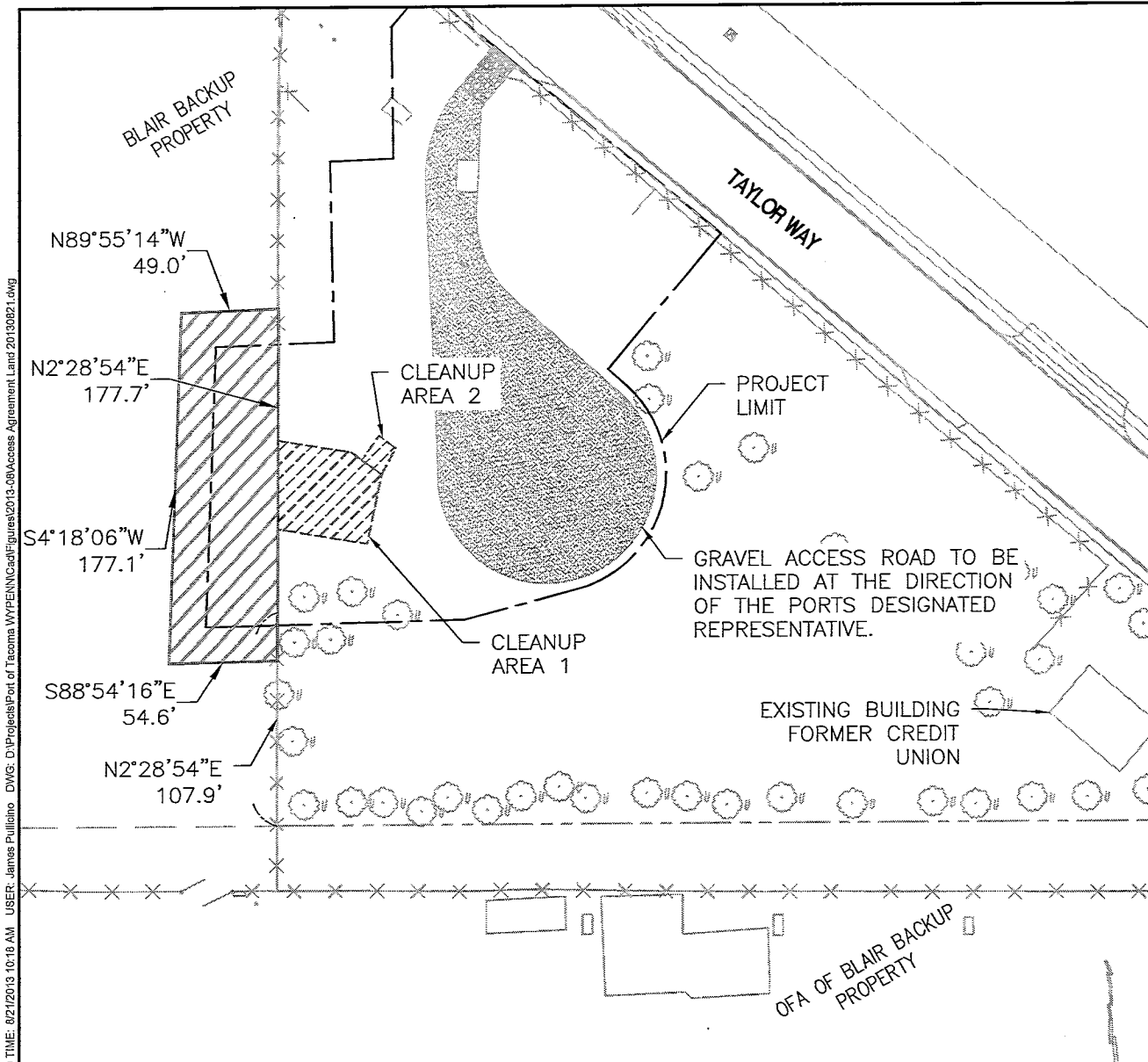


**LEGEND**

-  PROJECT LIMITS
-  CONSTRUCTION ENTRANCE/EXIT
-  GRAVEL ACCESS ROAD
-  CLEANUP AREA
-  CONSTRUCTION AND ACCESS EASEMENT


**NOTES**

1. HORIZONTAL DATUM: WASHINGTON NORTH AMERICAN DATUM (SOUTH ZONE) 1983/2007 PORT OF TACOMA DATUM, STATE PLANE COORDINATES, WASHINGTON SOUTH ZONE.



**DRAFT SUBMITTAL  
NOT APPROVED  
FOR  
CONSTRUCTION**

PORT OF TACOMA TACOMA, WASHINGTON WYPENN INTERIM ACTION
<b>CONSTRUCTION AND ACCESS EASEMENT</b>





 DALTON OLMSTED FUGLEVAND
<b>ATTACHMENT 1</b>
AUG 20, 2013

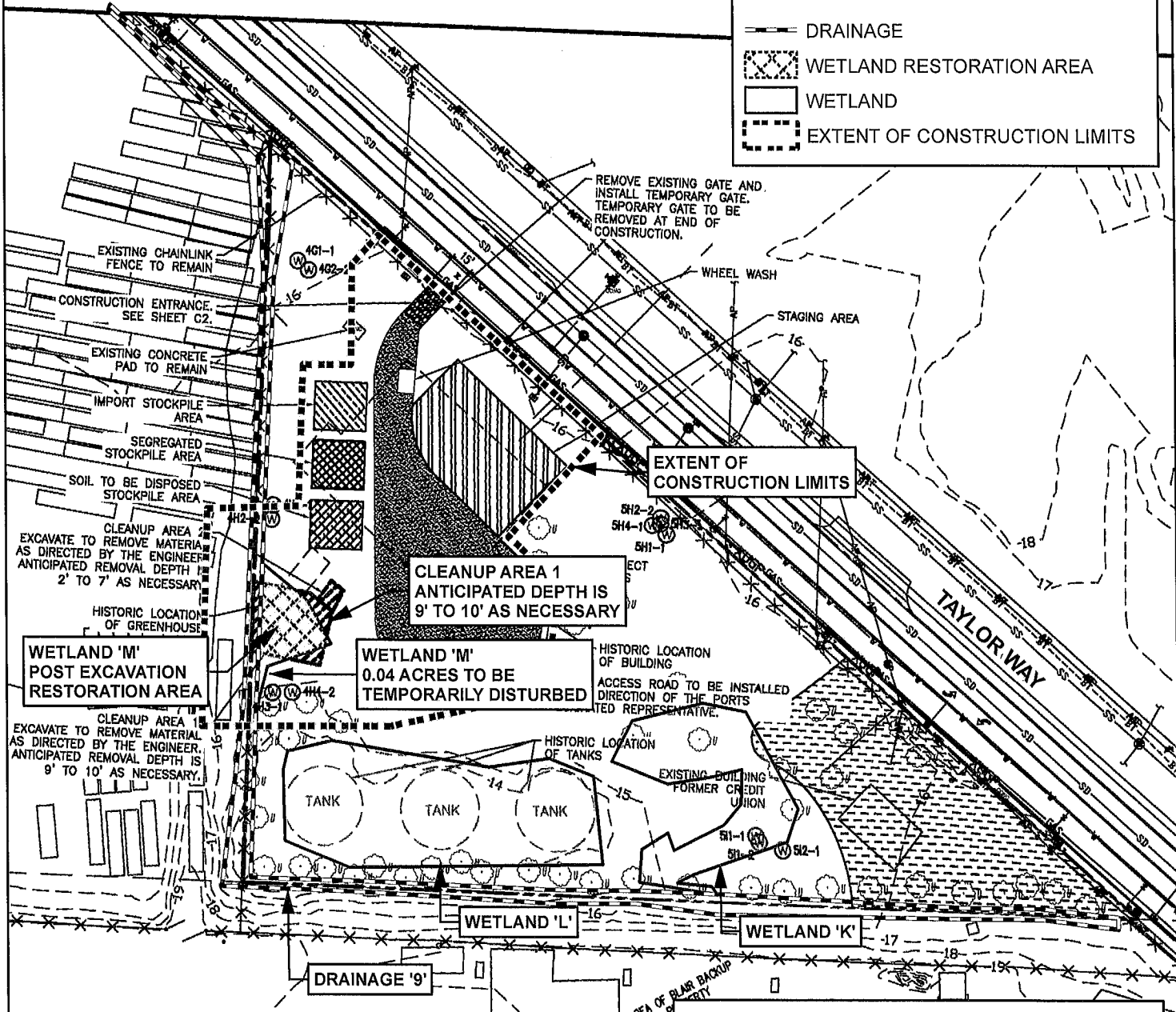
**EXHIBIT B**

PLOT TIME: 8/21/2013 2:14 PM MOD TIME: 8/21/2013 10:18 AM USER: James Pulicino DWG: D:\Projects\Port of Tacoma WYPENN\Cad\Figures\2013-08\Access Agreement Land 20130821.dwg















**LEGEND**

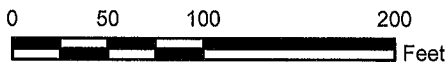
-  DRAINAGE
-  WETLAND RESTORATION AREA
-  WETLAND
-  EXTENT OF CONSTRUCTION LIMITS



**LEGEND**

	CLEANUP AREA		SOIL TO BE DISPOSED STOCKPILE AREA
	CONSTRUCTION ENTRANCE/EXIT SEE DETAIL 2/03.		SEGREGATED STOCKPILE AREA
	GRAVEL ACCESS ROAD		IMPORT STOCKPILE AREA
	STAGING AREA		AREA WITH ARSENIC CONCENTRATION LESS THAN 20MG/KG
	-10- EXISTING CONTOUR MAJOR		4H4-2 EXISTING MONITORING WELL TO BE MARKED AND PROTECTED
	EXISTING CONTOUR MINOR		
	PROJECT LIMITS		

NOTE: Background image from Port of Tacoma, Wypenn Interim Action Drawing, Site Plan, Sheet C4



Project Name: Wypenn Shallow Soil Interim Action/Cleanup  
 Owner: Port of Tacoma  
 44° 15' 53.8 N  
 122° 22' 54.08 W



PURPOSE: Cleanup to MTCA standards for industrial landuse.

APPLICANT REFERENCE:

PROPOSED: Excavate and backfill approx. 1,000 cubic yards soil material

DATUM: NGVD

LOCATION:  
 2920 Taylor Way  
 Tacoma, WA 98421

IN: Wetland 'M'  
 NEAR/AT: Tacoma  
 COUNTY: Pierce STATE: WA

ADJACENT PROPERTY OWNERS:  
 1) Puyallup Tribe

**CONSTRUCTION PLAN**

SHEET: 3 of 4

DATE: Sept 2013

**EXHIBIT C**