

AFTER RECORDING RETURN TO:

City of Bainbridge Island, Washington
Attn: City Manager
280 Madison Avenue North
Bainbridge Island, Washington 98110

ENVIRONMENTAL COVENANT

Grantor(s): City of Bainbridge Island, Washington, a municipal corporation

Holder(s): National Oceanic and Atmospheric Administration, on behalf of the Department of Commerce

U.S. Fish and Wildlife Service, on behalf of the United States Department of the Interior

Washington Department of Ecology, on behalf of the State of Washington

The Muckleshoot Indian Tribe

The Suquamish Tribe

Short Legal Description: That portion of the West half of the Southeast quarter, Section 27, Township 25 North, Range 2 East, Willamette Meridian, City of Bainbridge Island, Kitsap County, Washington, conveyed by Auditor's File No.1106151 [Complete legal description in Attachment A.]

Assessor's Property Tax
Parcel/Account Number(s): 272502-4-006-2000

I. Purpose and Background

This Environmental Covenant (Covenant) is made and entered into by the individual natural resource trustees who are members of the Elliott Bay Trustee Council, which is comprised of the National Oceanic and Atmospheric Administration (“NOAA”), on behalf of the Department of Commerce; the U.S. Fish and Wildlife

Service (“USFWS”), on behalf of the United States Department of the Interior; the Washington Department of Ecology and Washington Department of Fish and Wildlife, on behalf of the state of Washington; the Muckleshoot Indian Tribe; and the Suquamish Tribe (collectively, “the Elliott Bay Trustees” or “Trustees”) and the City of Bainbridge Island, Washington (“City,” “Grantor” or “Owner”) (together “the Parties” and individually as a “Party”).

The Trustee Council is operating under the *Memorandum of Agreement for Elliott Bay, the Duwamish River and Eagle Harbor* (effective date 1/19/06). In this MOA, the Trustee Council agreed that proceeds from the settlement in United States, the Suquamish Tribe and the Muckleshoot Indian Tribe v. Pacific Sound Resources et al., W.D. Wash. C94-697 (entered 8/29/94) shall be used for the restoration of natural resources injured as a result of releases of hazardous substances at the former Pacific Sound Resources/Wyckoff facilities in Eagle Harbor and West Seattle. The Trustees developed the *Restoration Plan and Environmental Assessment for the Wyckoff/Eagle Harbor Site, Bainbridge Island, Washington* (hereafter “the Restoration Plan”) that describes the types of habitat that will restore the injured natural resources in Eagle Harbor. The Grantor owns the property described in Attachment A located in or proximate to Eagle Harbor, Bainbridge Island, Washington (hereinafter referred to as “the Property”). The Owner intends the Property to be used for public park purposes, including passive recreation and habitat purposes and developed a design for a shoreline habitat restoration project including public shoreline access park amenities (hereinafter “the Project”) located on a portion of the Property (hereinafter referred to as “the Restored Area”) depicted in Attachment B. The Owner contacted the Trustees to seek financial assistance in the development of the shoreline habitat restoration component of the Project in the Restored Area. The Trustees evaluated the shoreline habitat restoration design developed by the City, found that it was consistent with the goals outlined in the Restoration Plan, and determined that it was appropriate to provide funding for the construction of the shoreline habitat restoration component of the Project within the Restored Area.

II. Conveyance and Covenant

This instrument grants a valid and enforceable environmental covenant pursuant to the Washington State Uniform Environmental Covenant Act, RCW Chapter 64.70 *et seq.*, (the Act) imposing certain conditions and restrictions on real property located in Kitsap County, Washington. The covenants granted in this instrument are required conditions as a result of funding provided by the Trustees for construction, monitoring, and maintenance of the Project within the Restored Area on the Property. Grantor covenants to the Holder and its assigns, that Grantor is lawfully seized in fee simple of the Property, that the Grantor has good and lawful right and power to sell and convey the Property or any interest therein, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof. Grantor further covenants that the Property is free and clear of encumbrances, except that the Property is subject to the terms, conditions and covenants of the Deed of Right to Use Land for Public Recreation Purposes between Grantor and the State of Washington, dated ~~_____~~ July 15, 2010 (Recording No. ~~201007290198~~ _____) and the Real Property Exchange Agreement between the Grantor and the Island Seniors Community LLC, dated January 28, 2005 ~~(Recording No. _____)~~. With this Covenant, Grantor hereby binds Grantor, its successors, and assigns, to the restrictions and conditions set forth herein, and conveys to the Holder such restricted property interests. The Holders have the full rights provided by RCW Chapter 64.70 to enforce the restrictions, conditions, or other rights set forth herein.

Grantor makes the following covenant as to limitations, restrictions, and uses to which the Restored Area within the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall be perpetual, and shall be binding on all parties and all persons claiming under them, including the Owner of any portion of or interest in the Property:

1. The Restored Area within the Property is dedicated for the Project and shall be used for habitat purposes, including enhancement, restoration, monitoring and maintenance of restored nearshore habitat; public passive recreation; public access; and construction and maintenance of approved and existing structures and underground utilities, all as presented in the Project plans and designs. Objectives of the habitat

restoration are to facilitate the restoration of natural nearshore functions, structures, and functions; to restore intertidal marsh habitat; and, to remove fill and artificial materials from the nearshore area. Any authorized uses of the Restored Area shall be consistent with the shoreline habitat restoration and public passive recreation purposes of the Project.

2. The Restored Area within the Property includes a designated “View Corridor” as depicted in Attachment B, and provides for water views from the midpoint of the “Meadow” across the restored saltwater marsh. Vegetation within this designated View Corridor may be maintained in accordance with paragraph II.5 of this Agreement.

3. All of the following activities are strictly prohibited: any activity that interferes, damages or disturbs the integrity or maintenance of the Project; any activity that would degrade or diminish the ecological values of the habitat or its function as a habitat; any activity that causes the release or exposure to the environment of any hazardous substances at the Project; or any activity that would otherwise interfere with the Project such that it would adversely affect the likelihood of success of the Project located on the Property. Some non-exclusive examples of activities that may be prohibited in the Restored Area based on the foregoing criteria include the following: drilling, dredging, or excavating, logging, land clearing, residential development, or commercial development. Nothing in this section is to be construed to prohibit public access to the Restored Area so long as such public access is accomplished in a manner that does not interfere with, damage or diminish the ecological value or function of the Project.

4. The Grantor must restrict leases to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Restored Area portion of the Property.

5. A vegetation maintenance manual (Attachment C) provides general guidelines for maintaining the habitat plants of the Project within the Restored Area, including removal of invasive non-native plants. Vegetation maintenance is permitted within the View Corridor to retain the view from the “Meadow”, as depicted in Attachment B. Two “Maintenance Zones” shall be provided within the View Corridor as depicted in Attachment B, and shall be marked on the ground. Plants within Maintenance Zone 1

may be pruned to a height of 4 feet. Plants in Maintenance Zone 2 may be pruned to a height of 2 feet. Removal of invasive species or volunteer species not depicted on the approved final construction planting plan may be removed from either Maintenance Zone. Hazardous trees that threaten human life or property may be removed from any part of the Restored Area, provided that the City determines that the tree satisfies the definition of a “Hazard tree” as set forth in Bainbridge Island Municipal Code Section 16.20.030, as now in effect or as subsequently amended. No other maintenance or construction activity shall be permitted in the Restored Area portion of the Property without prior written approval from each of the Holders, except that required for construction or maintenance of structures and utilities included in the permits obtained for the Project and shown in the final construction plans, including the nonmotorized boat launch area (“kayak launch”), beach access pathways, overwater viewing structure, and existing outbuilding and associated utilities.

6. Any damage to habitat caused by the construction or maintenance of structures in the permits obtained for the Project must be repaired by the Grantor and returned to the condition existing prior to the maintenance activity within 1 year.

7. The Grantor covenants that it will not sell or transfer the Property to any person who would utilize the Restored Area for purposes other than for habitat and passive recreational use.

III. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by Section II.

IV. Enforcement

Compliance with this Covenant may be enforced pursuant to the Washington State Uniform Environmental Covenant Act. The Holders shall have full enforcement rights. Failure by any party to enforce compliance with this Covenant in a timely manner shall not be deemed a waiver of the party’s right to take subsequent enforcement actions.

V. Recordation

Grantor shall record this instrument in the official records of Kitsap County, Washington and shall pay the costs associated with recording. The Parties shall take such actions and execute such additional documents, including copies of this Covenant or a short form of such document as may be required to record evidence of this Covenant for the Property.

VI. Termination and Modification

This Covenant may only be amended or terminated in accordance with the procedures and process contained in the amendment and termination provisions of the Washington State Uniform Environmental Covenant Act, RCW 64.70.100 and as set forth herein.

VII. Miscellaneous

1. Covenant Limitations. This Covenant shall not be used as evidence of the Grantor's alleged liability in any action or proceeding other than an action or proceeding to enforce the terms of this Covenant.

2. Failure by the City to Comply with this Covenant. If the Grantor fails to comply with any of the terms and conditions of this Covenant, the Holders have a property interest as identified by the Washington State Uniform Environmental Covenant Act, RCW 64.70 *et seq* to enforce the environmental covenants noted therein.

3. Sale or Conveyance of the Project Site by the City. Pursuant to the terms and conditions of this Covenant, the Grantor agrees that it will not sell the Restored Area portion of the Property, but will hold ownership of the Restored Area portion of the Property and preserve the Restored Area so as to maintain the integrity of the Project in perpetuity or will transfer the Property to the Bainbridge Island Metropolitan Parks and Recreation District with the condition that it hold ownership of the Property and preserve the Restored Area portion of the Property so as to maintain the integrity of the Project in perpetuity.

4. Notices. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Covenant, it will be directed to the

individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of the Covenant for the Parties:

As to the United States and as to the Trustees:

Craig O'Conner
Special Counsel
General Counsel of Natural Resources
National Oceanic and Atmospheric Administration
7600 Sand Point Way
Seattle, WA

As to the City:

City Manager
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, Washington 98110

5. Entire Covenant. This Covenant, inclusive of all Attachments, contains the entire agreement between the Parties as to the subject matter hereof and supersedes all other agreements.

6. Obligations. To the extent there are any conflicts between the terms and obligations of the Lease and those of the Covenant, the terms and conditions of the Covenant control.

VIII. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Covenant.

IN WITNESS WHEREOF, the City of Bainbridge Island, Grantor and Owner has executed this Environmental Covenant and on this _____ day of _____, 2010.

Signatory's printed name _____

Signature _____
City of Bainbridge Island

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged and signed in my presence on the ____ day of _____, in the year _____, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.

Name (signature) _____

Notary Public for the state of _____

My Commission expires on _____

Printed Name _____

DRAFT

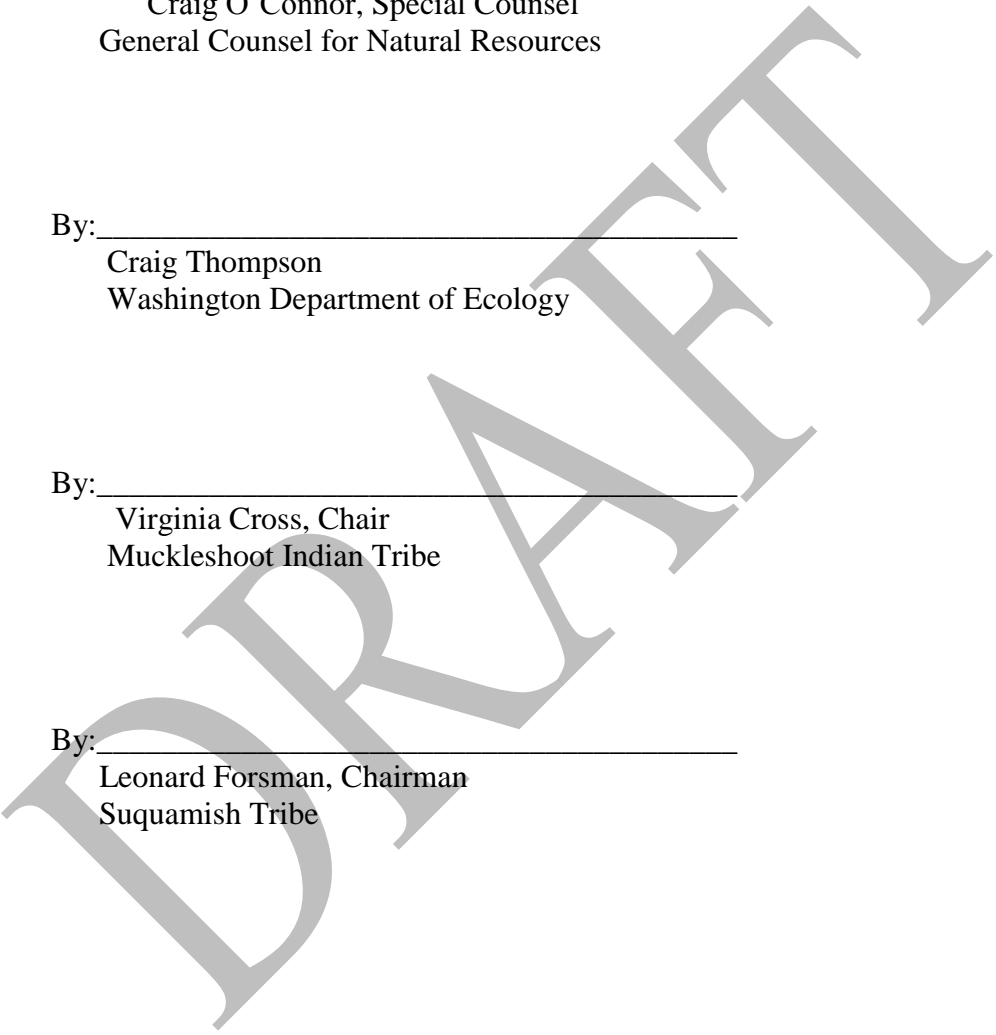
The forgoing Environmental Covenant and Access Agreement is hereby approved and certified.

By: _____
On behalf of NOAA and USFWS
Craig O'Connor, Special Counsel
General Counsel for Natural Resources

By: _____
Craig Thompson
Washington Department of Ecology

By: _____
Virginia Cross, Chair
Muckleshoot Indian Tribe

By: _____
Leonard Forsman, Chairman
Suquamish Tribe



ATTACHMENT A

Assessor's Account No. 272502-4-006-2000

That portion of the West half of the Southeast quarter, Section 27, Township 25 North, Range 2 East, Willamette Meridian, City of Bainbridge Island, Kitsap County, Washington, conveyed by Auditor's File No.1106151, described as follows;

The West half of the Southwest quarter of the Northwest quarter of the Southeast quarter of said Section 27;

EXCEPT roads;

AND EXCEPT the East 60 feet thereof.

Together with tidelands of the 2nd class suitable for the cultivation of oysters described as follows:

That portion of the tract of oysterlands conveyed by the State of Washington to J. A. Rea and J.M. Sparkman, by deed dated July 10, 1903 described as follows by metes and bounds:

Beginning at the most westerly point of said oysterland and running thence along the Government Meander Line South 84°53' East 1250.70 feet; Thence North 53°17' East 530 feet, more or less, to a point where the West line of the Northwest quarter of the Southeast quarter of Section 27, Township 25 North, Range 2 East, Willamette Meridian, in Kitsap County, Washington, if produced South, would intersect said Meander Line, said point being the True Point of Beginning;

Thence along said Meander Line, North 53°17' East 205.00 feet; Thence South 51°18' East 150 feet, more or less, to most westerly point of Tract 4, Gidner's Tracts, according to plat recorded in Volume 3 of plats, Page 36, in Kitsap County, Washington; Thence leaving said Meander Line running South 14° West 360 feet, more or less, to the center of channel in Eagle Harbor;

Thence westerly along said centerline 140 feet; Thence northerly 350 feet more or less to the Point of Beginning.

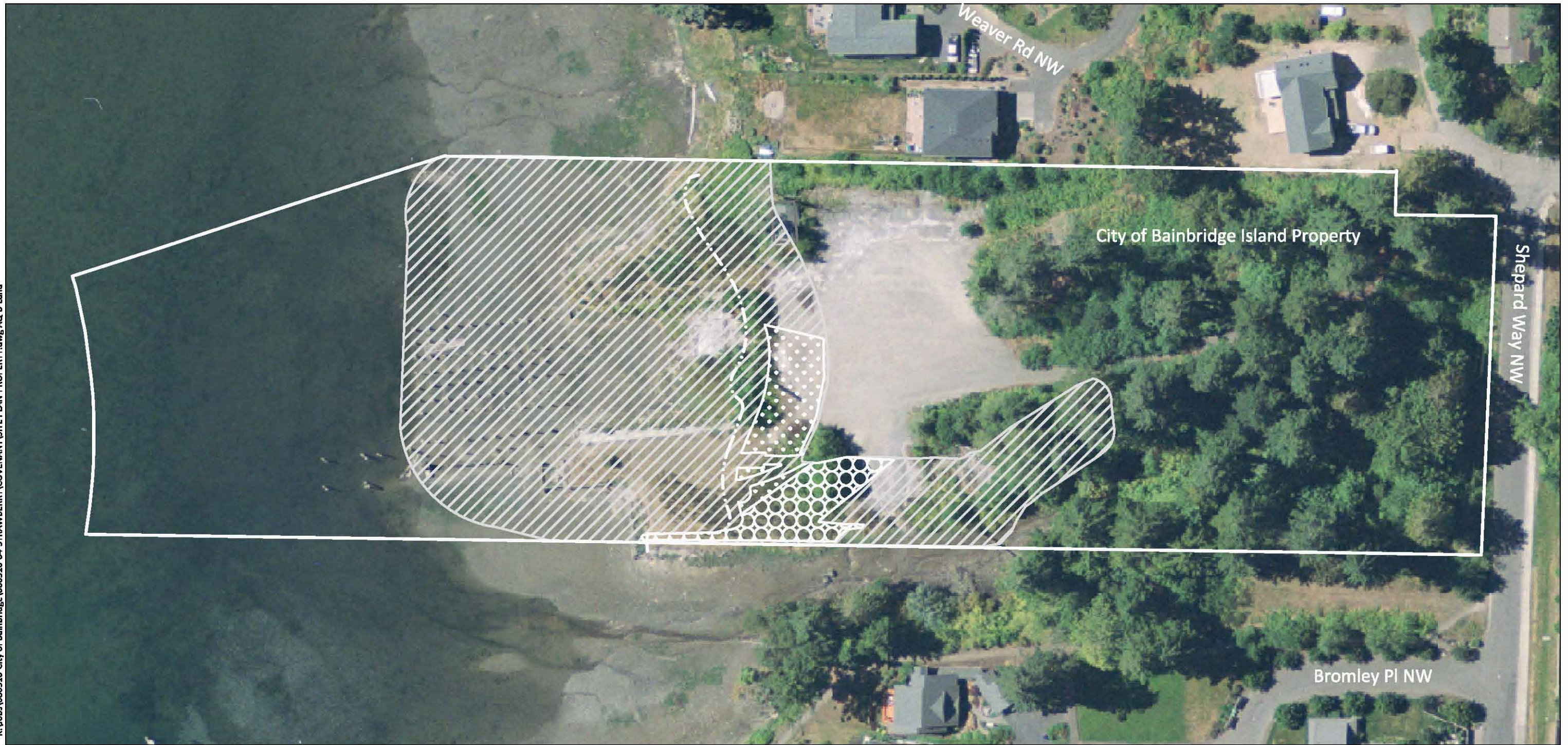
EXCEPT such portion, if any, as falls within the uplands of the Northwest quarter of the Southeast quarter of said Section 27;

EXCEPT the East 60 feet thereof.

Together with and subject to easements, restrictions and reservations of record.

K:\Jobs\080510-City of Bainbridge\COVENANT\SITE PLAN-PROPERTY.dwg AQ-B-Land



Jul 30, 2010 1:42pm ahook

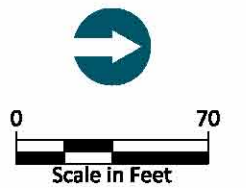


SOURCE: Aerial provided by COBI
HORIZONTAL DATUM: Washington State Plane North, NAD83.
VERTICAL DATUM: NAVD88.

LEGEND:

-  Property Boundary
-  Restored Area
-  OHWM

-  Maintenance Zone 1: High Shrub
-  Maintenance Zone 2: Low Shrub and Groundcover



1 MAINTENANCE PLAN

The following sections are elements of the Strawberry Plant Park Shoreline Restoration that may require maintenance. A maintenance schedule is provided in Tables 1 and 2.

1.1 Waterfowl Protection

Temporary protection is needed from waterfowl such as Canada Geese during the establishment of the marsh planting area. The need for maintenance will be assessed and may include such measures as replanting or a waterfowl enclosure. After the establishment of the marsh planting area, the waterfowl protection will be removed.

1.2 Trash and Yard Debris Removal

The site is susceptible to trash and yard debris dumping because of its location in an urban area. Debris will be removed from the site.

1.3 Weeding

Non-native and invasive species will be removed during construction and replanted with a greater diversity of native species. New plantings and favorable growing conditions should be able to recolonize the site quickly. Non-native and invasive species should be kept to no more than 10 percent of the aerial cover. Maintenance will include hand pulling weeds and replanting with native species.

1.4 Irrigation

Irrigation will be supplied to the following planting areas: forested (shade and sun), shrub (low, high, and willow), groundcovers, and transition area . The marsh area will not receive any irrigation. The irrigation system will be assessed for signs of failure, and replacement parts or additional measures will be attended to.

1.5 View Pruning

The planting design maintains a view corridor through the middle of the site. The view corridor only includes shrubs and groundcovers. Permanent capped rebar stakes will be placed at the edge of the view corridors to mark its limits. Non-planted species will be removed from the view corridor planting area. Additionally, pruning heights within Maintenance Zone 1 ("High Shrub") will be a maximum of 4-feet. Pruning heights

within Maintenance Zone 2 (“Low Shrub and Groundcover”) will be a maximum of 2-ft. In the remaining portion of the site, only non-native plants species will be removed. See Table 2.

1.6 Plant Replacement Due to Mortality or Vandalism

Plants have been selected that have high survivability and have been found thriving on the site or nearby reference area. However, drought, vandalism, or other factors may require the need for replacement. The site will need to be assessed for plant mortality. If survival falls below 90 percent or areas larger than 10 square feet become bare of living specimens, plants will be replaced within 90 days if still within the planting window. If this 90 day period ends beyond the planting window, replacement may occur by the following planting window. . Before replanting the reason(s) for mortality will be evaluated. If the originally planted species are not considered suitable for site conditions more appropriate, alternate species may be planted.

If, during the maintenance period, other maintenance needs are identified as necessary to ensure the success of the Strawberry Plant Park Shoreline Restoration site, they will be implemented.

1.7 Responsible Parties

The City of Bainbridge Island is responsible for financing and authorizing maintenance activities. The City may undertake maintenance measures, or contract that service.

**Table 1
Maintenance Schedule**

Maintenance Plan Element	Timing for Inspection	Inspector	Timing for Action
Waterfowl Protection	Summer/annually	Field staff	Within 30 days of observation
Trash Removal	Summer/annually	Field staff	Within 30 days of observation
Weeding	Summer/annually (bi-annually in Year 1)	Field staff	Within 30 days of observation
Irrigation	Summer/annually	Field staff	Within 30 days of observation
View Pruning	Fall/annually	Field staff	Within 30 days of observation
Plant Replacement	Summer/annually	Field staff	Within 90 days of observation

Table 2
View Pruning Action Schedule

Planting Area	Removal Action	Min. Pruning Height
Marsh	Remove non-native plants	N/A
Transition Area (Dune grass)	Remove non-native plants	N/A
Groundcover	Remove non-planted plants	2-feet
Low Shrubs	Remove non-planted plants	2-feet
High Shrubs	Remove non-native plants	4-feet
Willow	Remove non-native plants	N/A
Forested (sun)	Remove non-native plants	N/A
Forested (shade)	Remove non-native plants	N/A

AFTER RECORDING RETURN TO:

City of Bainbridge Island, Washington
Attn: City Manager
280 Madison Avenue North
Bainbridge Island, Washington 98110

ENVIRONMENTAL COVENANT

Grantor(s): City of Bainbridge Island, Washington, a municipal corporation

Holders(s): National Oceanic and Atmospheric Administration, on behalf of the Department of Commerce

U.S. Fish and Wildlife Service, on behalf of the United States Department of the Interior

Washington Department of Ecology, on behalf of the State of Washington

The Muckleshoot Indian Tribe

The Suquamish Tribe

Short Legal Description: That portion of Parcel B of BLA, AFN 200411240195, Government Lots 3 & 4, Section 35, Township 25 North, Range 2 Eastthe....., Willamette Meridian, City of Bainbridge Island, Kitsap County, Washington, conveyed by Auditor’s File No 200602270199.....
[Complete legal description in Attachment A.]

Assessor's Property Tax
Parcel/Account Number(s): 352502-1-002-2000***

I. Purpose and Background

This Environmental Covenant (Covenant) is made and entered into by the individual natural resource trustees who are members of the Elliott Bay Trustee Council, which is comprised of the National Oceanic and Atmospheric Administration (“NOAA”), on behalf of the Department of Commerce; the U.S. Fish and Wildlife

Service (“USFWS”), on behalf of the United States Department of the Interior; the Washington Department of Ecology and Washington Department of Fish and Wildlife, on behalf of the state of Washington; the Muckleshoot Indian Tribe; and the Suquamish Tribe (collectively, “the Elliott Bay Trustees” or “Trustees”) and the City of Bainbridge Island, Washington (“City,” “Grantor” or “Owner”) (together “the Parties” and individually as a “Party”).

The Trustee Council is operating under the *Memorandum of Agreement for Elliott Bay, the Duwamish River and Eagle Harbor* (effective date 1/19/06). In this MOA, the Trustee Council agreed that proceeds from the settlement in United States, the Suquamish Tribe and the Muckleshoot Indian Tribe v. Pacific Sound Resources et al., W.D. Wash. C94-697 (entered 8/29/94) shall be used for the restoration of natural resources injured as a result of releases of hazardous substances at the former Pacific Sound Resources/Wyckoff facilities in Eagle Harbor and West Seattle. The Trustees developed the *Restoration Plan and Environmental Assessment for the Wyckoff/Eagle Harbor Site, Bainbridge Island, Washington* (hereafter “the Restoration Plan”) that describes the types of habitat that will restore the injured natural resources in Eagle Harbor. The Grantor owns the property described in Attachment A located in or proximate to Eagle Harbor, Bainbridge Island, Washington (hereinafter referred to as “the Property”). The Owner intends the Property to be used and managed for public park and conservation purposes, including the protection and interpretation of significant historical and recreational values and developed a design for a shoreline habitat restoration project including driveway relocation, public trail, and public shoreline access park amenities (hereinafter “the Project”) located on a portion of the Property (hereinafter referred to as “the Restored Area”) depicted in Attachment B. The Owner contacted the Trustees to seek financial assistance in the development of the shoreline habitat restoration component of the Project in the Restored Area. The Trustees evaluated the shoreline habitat restoration design developed by the City, found that it was consistent with the goals outlined in the Restoration Plan, and determined that it was appropriate to provide funding for the construction of the shoreline habitat restoration component of the Project within the Restored Area.

II. Conveyance and Covenant

This instrument grants a valid and enforceable environmental covenant pursuant to the Washington State Uniform Environmental Covenant Act, RCW Chapter 64.70 *et seq.*, (the Act) imposing certain conditions and restrictions on real property located in Kitsap County, Washington. The covenants granted in this instrument are required conditions as a result of funding provided by the Trustees for construction, monitoring, and maintenance of the Project within the Restored Area on the Property. Grantor covenants to the Holder and its assigns, that Grantor is lawfully seized in fee simple of the Property, that the Grantor has good and lawful right and power to sell and convey the Property or any interest therein, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof. Grantor further covenants that the Property is free and clear of encumbrances, except that the Property is subject to the terms, conditions and covenants of- and the encumbrances listed in the Amended and Re-Recorded Bargain and Sale Deed between Puget Sound Resources and the Grantor and the Bainbridge Island Metropolitan Park and Recreation District, dated November 29, 2004 (Recording No. 200612260108). With this Covenant, Grantor hereby binds Grantor, its successors, and assigns, to the restrictions and conditions set forth herein, and conveys to the Holder such restricted property interests. The Holders have the full rights provided by RCW Chapter 64.70 to enforce the restrictions, conditions, or other rights set forth herein.

Grantor makes the following covenant as to limitations, restrictions, and uses to which the Restored Area within the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall be perpetual, and shall be binding on all parties and all persons claiming under them, including the Owner of any portion of or interest in the Property:

1. The Restored Area within the Property is dedicated for the Project and shall be used for habitat purposes, including enhancement, restoration, monitoring and maintenance of restored nearshore habitat; passive recreation; public access; and construction and maintenance of approved and existing structures and underground utilities, all as presented in the Project plans and designs. An objective of the shoreline habitat restoration is to facilitate the restoration of natural shoreline processes, structures,

and functions that form and maintain nearshore habitat, which includes allowing the natural erosion of soils and other materials (e.g., vegetation) to occur at the site. Any authorized uses of the Restored Area shall be consistent with the shoreline habitat and passive recreation purposes of the Project.

2. The Restored Area within the Property includes a public trail and designated “Trail View Corridor” as depicted in Attachment B, and provides for trail connections and water views from the bluff. Vegetation along the trail may be maintained in accordance with paragraph II.5 of this Agreement.

3. All of the following activities are strictly prohibited: any activity that interferes, damages or disturbs the integrity or maintenance of the Project; any activity that would degrade or diminish the ecological values of the habitat or its function as a habitat; any activity that causes the release or exposure to the environment of any hazardous substances at the Project; or any activity that would otherwise interfere with the Project such that it would adversely affect the likelihood of success of the Project located on the Property. Some non-exclusive examples of activities that may be prohibited in the Restored Area based on the foregoing criteria include the following: drilling, dredging, or excavating, logging, land clearing, residential development, or commercial development. Nothing in this section is to be construed to prohibit public access to the Restored Area so long as such public access is accomplished in a manner that does not interfere with, damage or diminish the ecological value or function of the Project.

4. The Grantor must restrict leases to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Restored Area portion of the Property.

5. A vegetation maintenance manual (Attachment C) provides general guidelines for maintaining the habitat plants of the Project within the Restored Area, including removal of invasive non-native plants. Vegetation maintenance is permitted within the Trail View Corridor to allow for views along the bluff, as depicted in Attachment B. Hazardous trees that threaten human life or property may be removed from any part of the Restored Area, provided that the City determines that the tree satisfies the definition of a “Hazard tree” as set forth in Bainbridge Island Municipal Code Section 16.20.030, as

now in effect or as subsequently amended. No other maintenance or construction activity shall be permitted in the Restored Area portion of the Property without prior written approval from each of the Holders, except that required for construction or maintenance of structures and utilities included in the permits obtained for the Project and shown in the final construction plans.

6. Any damage to habitat caused by the construction or maintenance of structures in the permits obtained for the Project must be repaired by the Grantor and returned to the condition existing prior to the maintenance activity within 1 year.

7. The Grantor covenants that it will not sell or transfer the Property to any person who would utilize the Restored Area for purposes other than for habitat and passive recreational use.

III. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by Section II.

IV. Enforcement

Compliance with this Covenant may be enforced pursuant to the Washington State Uniform Environmental Covenant Act. The Holders shall have full enforcement rights. Failure by any party to enforce compliance with this Covenant in a timely manner shall not be deemed a waiver of the party's right to take subsequent enforcement actions.

V. Recordation

Grantor shall record this instrument in the official records of Kitsap County, Washington and shall pay the costs associated with recording. The Parties shall take such actions and execute such additional documents, including copies of this Covenant or a short form of such document as may be required to record evidence of this Covenant for the Property.

VI. Termination and Modification

This Covenant may only be amended or terminated in accordance with the procedures and process contained in the amendment and termination provisions of the

Washington State Uniform Environmental Covenant Act, RCW 64.70.100 and as set forth herein.

VII. Miscellaneous

1. Covenant Limitations. This Covenant shall not be used as evidence of the Grantor's alleged liability in any action or proceeding other than an action or proceeding to enforce the terms of this Covenant.

2. Failure by the City to Comply with this Covenant. If the Grantor fails to comply with any of the terms and conditions of this Covenant, the Holders have a property interest as identified by the Washington State Uniform Environmental Covenant Act, RCW 64.70 *et seq* to enforce the environmental covenants noted therein.

3. Sale or Conveyance of the Project Site by the City. Pursuant to the terms and conditions of this Covenant, the Grantor agrees that it will not sell the Restored Area portion of the Property, but will hold ownership of the Restored Area portion of the Property and preserve the Restored Area so as to maintain the integrity of the Project in perpetuity or will transfer the Property to the Bainbridge Island Metropolitan Parks and Recreation District with the condition that it hold ownership of the Property and preserve the Restored Area portion of the Property so as to maintain the integrity of the Project in perpetuity.

4. Notices. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Covenant, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of the Covenant for the Parties:

As to the United States and as to the Trustees:

Craig O'Conner
Special Counsel
General Counsel of Natural Resources
National Oceanic and Atmospheric Administration

7600 Sand Point Way
Seattle, WA

As to the City:

City Manager
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, Washington 98110

5. Entire Covenant. This Covenant, inclusive of all Attachments, contains the entire agreement between the Parties as to the subject matter hereof and supersedes all other agreements.

6. Obligations. To the extent there are any conflicts between the terms and obligations of the Lease and those of the Covenant, the terms and conditions of the Covenant control.

VIII. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Covenant.

IN WITNESS WHEREOF, the City of Bainbridge Island, Grantor and Owner has executed this Environmental Covenant on this _____ day of _____, 2010.

Signatory's printed name _____

Signature _____
City of Bainbridge Island

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged and signed in my presence on the ____ day of _____, in the year _____, by the person(s) who appeared before me and who acknowledged it to be his/her/their free and voluntary act.

Name (signature) _____

Notary Public for the state of _____

My Commission expires on _____

Printed Name _____

DRAFT

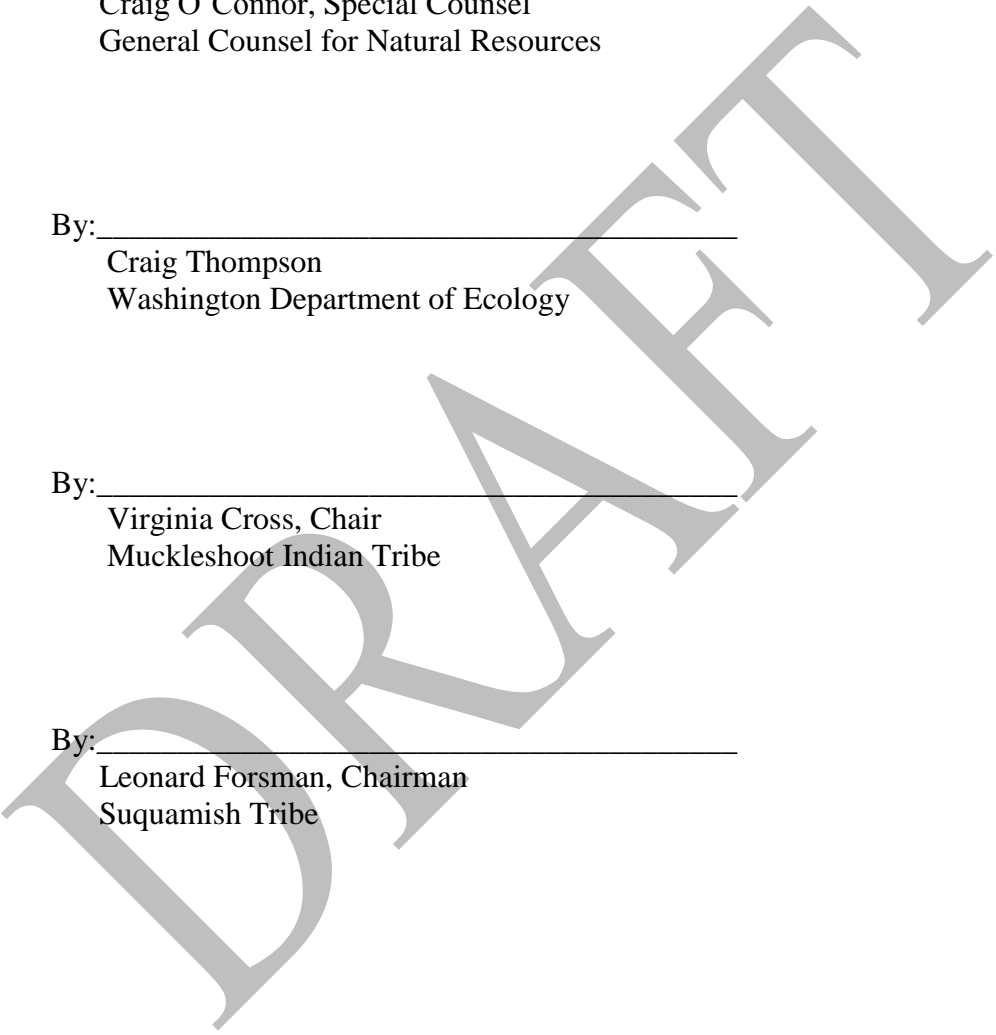
The forgoing Environmental Covenant and Access Agreement is hereby approved and certified.

By: _____
On behalf of NOAA and USFWS
Craig O'Connor, Special Counsel
General Counsel for Natural Resources

By: _____
Craig Thompson
Washington Department of Ecology

By: _____
Virginia Cross, Chair
Muckleshoot Indian Tribe

By: _____
Leonard Forsman, Chairman
Suquamish Tribe



|

ATTACHMENT A

Assessor's Account No. 352502-1-002-2000

Resultant Parcel B of Boundary Line Adjustment recorded under Auditor's File No. 200411240195, being a portion of Government Lots 3 and 4, Section 35, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington, lying Westerly of the following described line:

Beginning at the West quarter corner of said Section 35;

Thence along the East-West centerline of said Section 35, South 88°57'00" East 2636.39 feet to the center of said Section 35;

Thence along the North line of the plat of Eagle Harbor Acre Tracts as recorded in volume 2, page 80 of plats, in Kitsap County, South 89°01'49" East 1000.00 feet to the True Point of Beginning;

Thence leaving said North line, North 01°39'59" East 288.38 feet to the Northerly right of way of NE Eagle Harbor Drive;

Thence Easterly along said right of way on a 1462.39 foot radius curve to the right, the center of which bears South 02°39'18" West through a central angle of 05°33'28", an arc distance of 141.86 feet;

Thence continuing along said right of way, South 81°47'14" East 299.49 feet;

Thence leaving said right of way, North 30°28'39" East 567.00 feet to the West face of the South end of a steel sheet pile bulkhead;

Thence along said West face and its Northerly extension North 02°17'00" East to the Northerly limits of said Government Lot 4 and the terminus.

EXCEPT NE Eagle Harbor Drive;

EXCEPT Rockaway Beach Road NE;

EXCEPT Creosote Place NE;

EXCEPT NE Creosote Road;

TOGETHER with Second Class Tidelands to the line of extreme low tide as conveyed by the State of Washington, situate in front of, adjacent to and abutting thereon; the easterly boundary thereof being described as follows: Beginning at the meander corner between Section 35 and 36, said Township and Range, which meander corner was located and marked with a stone monument by Gardner and Gardner, Civil Engineers, in April 1909, said boundary line extending from said meander corner north 73°26'30" east to the low tide line of Puget Sound, which line was established by the decree entered in Kitsap County Superior Court Cause No. 2025.

Subject to and together with easements, restrictions, and reservations of record.

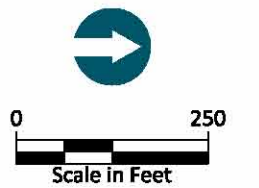
K:\Jobs\080510-City of Bainbridge\080510-02-PRITCHARD_EAST\COVENANT\SITE PLAN-PROPERTY.dwg App B Restored Area

Jul 30, 2010 3:28pm ahook



SOURCE: Aerial provided by COBI
HORIZONTAL DATUM: Washington State Plane North, NAD83.
VERTICAL DATUM: NAVD88.

LEGEND:
 Property Boundary
 Restored Area



1 MAINTENANCE PLAN

The following sections are elements of the Pritchard Park East Bluff Shoreline Restoration that may require maintenance. A maintenance schedule is provided in Table 1.

1.1 Trash and Yard Debris Removal

The site is susceptible to trash and yard debris dumping because of its location in an urban area. Debris will be removed from the site.

1.2 Weeding

Non-native and invasive species will be removed during construction and replanted with a greater diversity of native species. New plantings and favorable growing conditions should be able to recolonize the site quickly. Non-native and invasive species should be kept to no more than 10 percent of the aerial cover. Maintenance will include hand pulling weeds and replanting with native species.

1.3 Irrigation

Irrigation will be supplied to the New Riparian Planting areas. The irrigation system will be assessed for signs of failure, and replacement parts or additional measures will be attended to.

1.4 Plant Replacement Due to Mortality or Vandalism

Plants have been selected that have high survivability and have been found thriving on the site or nearby reference area. However, drought, vandalism, or other factors may require the need for replacement. The site will need to be assessed for plant mortality. If survival falls below 90 percent or areas larger than 100 square feet become bare, plants will be replaced within 90 days if still within the planting window. If this 90 day period ends beyond the planting window, replacement may occur by the following planting window. Before replanting the reason(s) for mortality will be evaluated. If the originally planted species are not considered suitable for site conditions more appropriate, alternate species may be planted.

If, during the monitoring program, other maintenance needs are identified as necessary to ensure the success of the Strawberry Plant Park Shoreline Restoration site, they will be implemented.

1.5 Responsible Parties

The City of Bainbridge Island is responsible for financing and authorizing maintenance activities. The City may undertake maintenance measures, or contract that service.

DRAFT

Table 1
Maintenance Schedule

Maintenance Plan Element	Timing for Inspection	Inspector	Timing for Action
Trash Removal	Summer/annually	Field staff	Within 30 days of observation
Weeding	Summer/annually (bi-annually in Year 1)	Field staff	Within 30 days of observation
Irrigation	Summer/annually	Field staff	Within 30 days of observation
Plant Replacement	Summer/annually	Field staff	Within 90 days of observation

DRAFT