



**202410230059**

10/23/2024 03:25 PM Pages: 1 of 13 Fees: \$315.50  
Skagit County Auditor

After Recording Return  
Original Signed Covenant to:

Erik G. Snyder  
HQ Section Manager  
Toxics Cleanup Program  
Department of Ecology

## **Environmental Covenant**

**Grantor:** MJB Properties, LLC

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

**Brief Legal Description:** See Exhibit A 19/35/02

**Tax Parcel Nos.:** P32972, P32974, P32975, P32976, P32977, P32979, P32981, P78002,  
P78006, and P131158

### **RECITALS**

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 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 MJB South Hydro Fill; Facility Site ID 7681. 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	None
Groundwater	Arsenic and Lead
Surface Water/Sediment	N/A

- 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 at <https://apps.ecology.wa.gov/cleanupsearch/site/1434>. This includes the Closure Report for the MJB South Hydro Fill Area prepared by Farallon Consulting in October 2013.
- e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As 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 (CERCLA), 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its right as Holder, are not an interest in real property.

## COVENANT

MJB Properties, LLC, as Grantor and fee simple 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.

### 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.

## **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. **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.

## **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.

#### **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. This requirement does not apply to individual boat leases.
  - ii.** Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

**iii. 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.**
  - iv.** 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.

MJB Properties, LLC  
5050 1st Avenue South  
Suite 102  
Seattle, WA 98134  
206-762-9125

Environmental Covenants Coordinator  
Washington State Department of Ecology  
Toxics Cleanup Program  
P.O. Box 47600  
Olympia, WA 98504 – 7600  
(360) 407-6000  
ToxicsCleanupProgramHQ@ccy.wa.gov



**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 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 Grantor 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 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.

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

EXECUTED this 9<sup>th</sup> day of September, 2024.

Gary Merlino

by: Gary Merlino

Title: Manager

STATE OF Washington

COUNTY OF King

On this 9<sup>th</sup> day of September 2024, I certify that Gary Merlino personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Authorized Signatory of MJB Properties, LLC to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



John  
Notary Public in and for the State of Washington

Residing at Kirkland WA

My appointment expires 11/09/2026

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

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

A handwritten signature in black ink, appearing to read 'Erik Snyder', is written over a horizontal line.

By: Erik Snyder

Title: Toxics Cleanup Program,  
Headquarters Section Manager

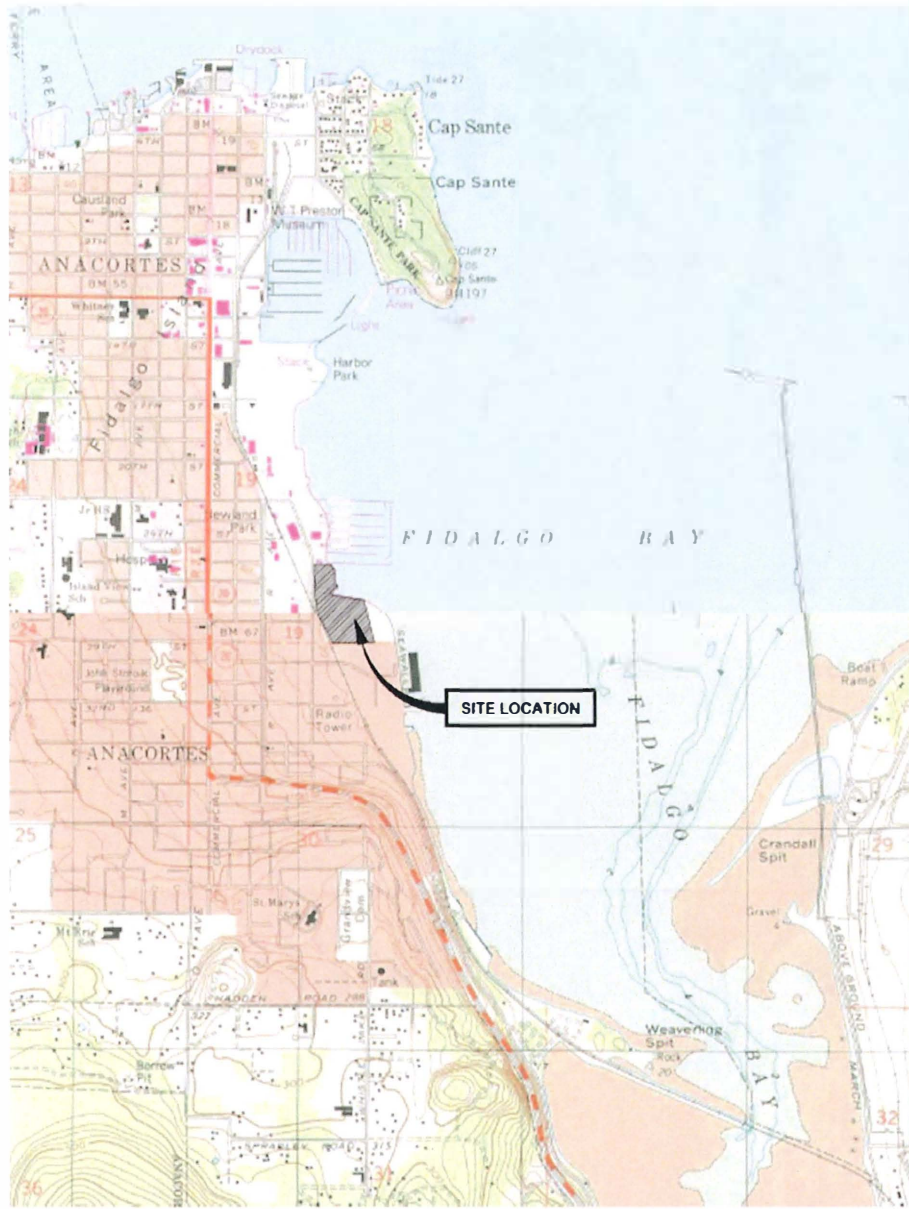
Dated:



**EXHIBIT A**  
**LEGAL DESCRIPTION**

- P32972** ANACORTES TIDE LANDS N 100FT OF S 140FT OF TR 26, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M.
- P32974** ANACORTES TIDE LANDS S 40FT TR 26 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M.
- P32975** ANACORTES TIDE LANDS TR 27 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ALSO VAC N1/2 26TH ADJ
- P32976** ANACORTES TIDE LANDS N1/2 TR 28 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ALSO VAC S1/2 26TH ADJ
- P32977** ANACORTES TIDE LANDS S1/2 TR 28 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ALSO VAC N1/2 26TH ADJ
- P32979** ANACORTES TIDE LANDS TR 29 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., ALSO VAC S1/2 27TH & N1/2 28TH ST ADJ
- P32981** ANACORTES TIDE LANDS TR 30 PL 10, SECTION 19, TOWNSHIP 35 NORTH, RANGE 2 EAST, W.M., TGW VAC 29TH ST & S1/2 28TH ST ADJ
- P78002** S 100 FEET OF LOT 43, ANACORTES INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGES 19 TO 21, RECORDS OF SKAGIT COUNTY, WASHINGTON
- P78006** LOT 44, ANACORTES INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGES 19 TO 21, RECORDS OF SKAGIT COUNTY, WASHINGTON.
- P131158** LOTS 45 46 AND 47, ANACORTES INDUSTRIAL PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGES 19 TO 21, RECORDS OF SKAGIT COUNTY, WASHINGTON. TGW VACATED PORTION OF 28TH STREET VACATED BY ORD #1487 LYING EAST OF THE ABANDONED BN RR R/W WHICH UPON SAID VACATION REVERTED TO THE ABUTTING PORTIONS OF SAID PREMISES BY OPERATION OF LAW EXCEPT THAT PORTION OF SAID LOT 47 LYING SOUTH OF THE SOUTH LINE OF PLATE NO 10 ANACORTES TIDE AND SHORE LANDS ACCORDING TO THE OFFICIAL MAP THEREOF ON FILE IN THE OFFICE OF THE STATE LAND COMMISSIONER AT OLYMPIA EXTENDED WEST TO THE SOUTHWESTERLY LINE OF SAID LOT 47

**EXHIBIT B**  
**PROPERTY MAP**



**FARALLON CONSULTING**  
975 5th Avenue Northwest  
Issaquah, WA 98027

**FIGURE 1**  
SITE VICINITY MAP  
MJB PROPERTIES PROPERTY PLAN  
ANACORTES, WASHINGTON

Drawn By: DEW	Checked By: DC	Date: 6/21/12	Disk Reference: 299002
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EXHIBIT C  
MAP ILLUSTRATING LOCATION OF RESTRICTIONS

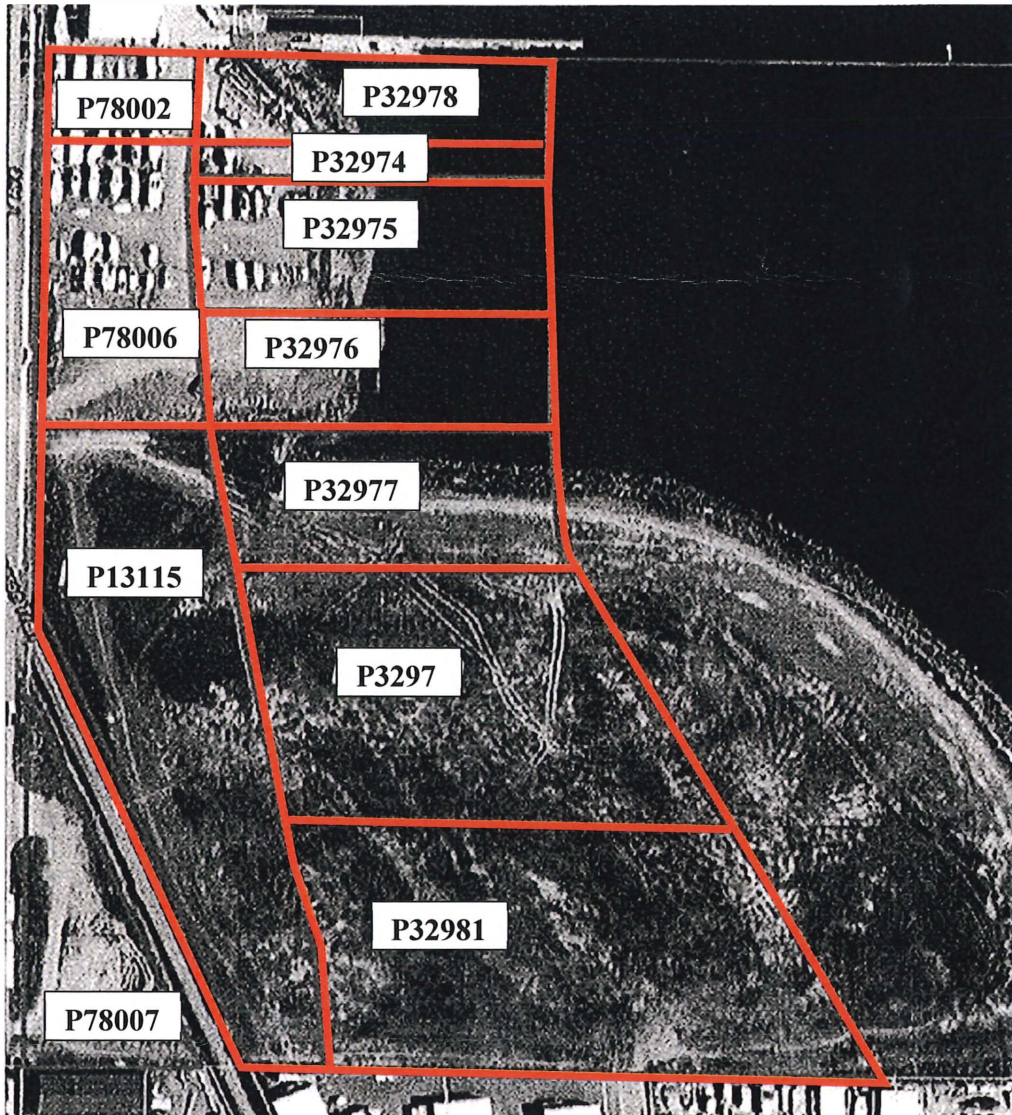


FIGURE 2

MJB SOUTH HYDRO FILL UPLAND AREA PARCELS COVERED UNDER NFA  
Department of Ecology – Toxics Cleanup Program- HQ Cleanup Section

\*In-water parcel areas excluded



**EXHIBIT D**  
**SUBORDINATION AGREEMENT**

KNOW ALL PERSONS, That U.S. Bank National Association, the owner and holder of that certain Fee and Leasehold Deed of Trust bearing the date the 25<sup>th</sup> day of June, 2012, executed by MJB Properties, LLC, and recorded in the office of the County Auditor of Skagit County, State of Washington, on July 12, 2012, under Auditor's File Number 201207020066, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated September 9, 2024, executed by MJB Properties, LLC, and recorded in \_\_\_\_\_ County, Washington under Auditor's File Number \_\_\_\_\_.

Signature 

by: Philip J. Davis

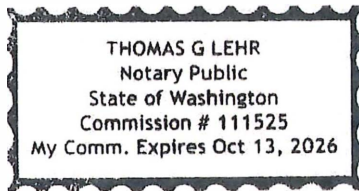
Title: Senior Vice President

Dated: 9/12/2024

**CORPORATE ACKNOWLEDGMENT**

STATE OF Washington  
COUNTY OF King

On this 12 day of September, 2024, I certify that Philip J. Davis personally appeared before me, acknowledged that he is the Senior Vice President 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.



Thomas G. Lehr  
Notary Public in and for the State of Washington  
Residing at Kirkland WA  
My appointment expires 10/13/26