

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

City of Bainbridge Island
Wyckoff/Eagle Harbor Site
Phase III Acquisition Area

No. 06TCPHQ-3867

TO: City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110-1812

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- Exhibit A: Option Agreement – City of Bainbridge Island/The Trust for Public Land
- Exhibit B: Site Diagram and Legal Description
- Exhibit C: Wyckoff/PSR – Bainbridge Island Prospective Purchaser Agreement
- Exhibit D: Ecology Letter to City of Bainbridge Island, August 2, 2002
- Exhibit E: Park Vision and Design Framework
- Exhibit F: Schedule for Work
- Exhibit G: Required Permits

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bainbridge Island (City) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City to take remedial actions that are not in conflict with the U. S. Environmental Protection Agency (EPA) site remedy through the development of the Pritchard Park Remediation and Redevelopment Plan, as specified in Section VII of this Order, in the redevelopment of contaminated land in Bainbridge Island, Washington for Park Use and Development Activities as defined in Section IV of this Order. The actions required by this Order are separate from the EPA Remedy for the site, except to the extent they address operation and maintenance obligations assumed by Ecology under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Trust For Public Land (TPL), working as a facilitator, negotiated an Option Agreement (OA) dated May 14, 2003 with the City, as amended (Exhibit A) under which the City may purchase, in successive and discrete phases, approximately 49.5 acres of the Wyckoff-Eagle Harbor Superfund Site (the Property) in the years 2004-2006, or portions thereof consistent with the OA. TPL negotiated a separate purchase option agreement with Pacific Sound Resources (PSR) Environmental Trust, dated April 11, 2003, in which TPL's goal was to simultaneously reconvey the Property to the extent acquired by TPL pursuant to the OA to the City for Park Use and Development Activities. PSR consented that the City may join as a party thereto and directly purchase the Property or portions thereof, in accordance with the PSR/TPL

purchase agreement, without TPL. The sale to the City of the phase subject to this Order (Phase III, or the Site), as described in Exhibit B took place on February 27, 2006.

The City and the U.S. Environmental Protection Agency (EPA) negotiated a Prospective Purchaser Agreement dated December 8, 2004 (EPA/PSR – Bainbridge Island Prospective Purchaser Agreement), which provided the City with a Covenant Not to Sue from the United States under CERCLA, 42 U.S.C. §9601 et seq., attached as Exhibit C.

It shall be the City's responsibility to ensure that any remedial actions undertaken pursuant to this Order do not conflict with the EPA Remedy. Development and maintenance of the Park on the Site in accordance with the City's plan is intended to partially fulfill operation and maintenance obligations to be assumed by Ecology under CERCLA. In addition, under an Intergovernmental Cost Reimbursement/Funding Agreement that may be negotiated with Ecology, the City may implement additional operation and maintenance activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's responsibility under this Order. The City shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure

that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Wyckoff/Eagle Harbor Superfund Site, Phase III Acquisition Area (Site) and is generally located on the southeastern shoreline of Eagle Harbor on Bainbridge Island. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in Exhibit B to this Order, which includes a detailed Site diagram and legal description. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology and the City of Bainbridge Island.

3. PLP: Refers to the City of Bainbridge Island.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

5. Park Management, Park Upkeep and Compliance Monitoring shall mean performance of management activities related to operation of the park.

6. Park Use and Development Activities shall mean park use, development and construction, including but not limited to the following activities:

a. Visitor and interpretation centers for the former Wyckoff site, and public art or outdoor interpretation structures.

b. Accessory park buildings, roadways, parking lots, trails and pathways, picnic areas, and related recreational uses.

7. Additional Operation and Maintenance – EPA Remedy shall mean the performance of operations and maintenance activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA.

8. Successors in Interest and Assign or successors and assigns shall mean any person who acquires an interest in the Site simultaneous and/or subsequent to the City acquiring an interest in the Site, through purchase, lease, transfer, assignment, or otherwise, and includes the Bainbridge Island Metropolitan Park and Recreation District (BIMPRD), a duly constituted municipality, and/or the National Park Service of the United States (NPS).

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City:

1. Pacific Sound Resources' approximately 49.5-acre former wood treating facility is on the southeastern shoreline of Eagle Harbor on Bainbridge Island, Washington, a municipality. The facility has been divided into four operable units for EPA administrative purposes, which are being remediated as the EPA Wyckoff/Eagle Harbor Superfund Site which was listed on the National Priorities List (NPL) on July 22, 1987, at 52 Federal Register 27620. Of the four operable units (OU), three occur within the Property owned by the City, and a portion of these three units are within the Site addressed by this Order. These include:

a. The East Harbor OU 1. A containment capping remedy was selected for the sediments in the East Eagle Harbor area in 1992 (amended in December 1995). The remedy was implemented in phases; the last phase (Phase III) was completed in 2002. At least 10 years of monitoring is to be conducted to ensure the integrity of the remedy. A portion of the East Harbor OU 1 is within the tidelands of the Site.

b. Wyckoff Soil OU 2. A Record of Decision (ROD) was issued in 2000 that addresses remedy selection for the upland soils. Studies and engineering design are being completed to address soil remediation for OU 2 including the Former Process Area. A portion of

the Wyckoff Soil OU 2 including the eastern portion of the Former Log Storage/Peeler Area is within the Site.

c. Wyckoff Groundwater OU 4. The ROD issued in 2000 addresses remedy selection for the upland groundwater. A portion of the Wyckoff Groundwater OU 4 is within the Site.

2. Wood treating operations at the facility under various owners date back nearly a hundred years. The Wyckoff Company, a closely held Washington corporation, owned and operated the facility from December 1965 until operations ceased in 1994. In 1991, The Wyckoff Company changed its name to PSR, which is The Wyckoff Company's successor in every respect.

3. In August 1994, the United States entered a Consent Decree in the United States District Court for the Western District of Washington, Seattle Division under which the principals of PSR were released from personal liability in exchange for the transfer of all shares of PSR to the PSR Environmental Trust, an entity created by the Decree to liquidate all PSR assets for the benefit of EPA and CERCLA Natural Resource Trustees.

4. EPA has performed numerous investigations of the Site beginning in 1991 and continuing to the date of this Order. Investigations representative of the current conditions (but by no means inclusive of the many studies and design reports completed by EPA and its subcontractors) include:

a. CH2M Hill, 1997. Remedial Investigation Report, for the Wyckoff Soil and Groundwater Operable Units, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, June 13, 1997.

b. USACOE, 2000. Comprehensive Report, Wyckoff NAPL Field Exploration, Soil and Groundwater Operable Units, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, May 2000.

c. USACOE, 2002. Wyckoff/Eagle Harbor East Beach Investigation Report, Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, May 1, 2002.

d. EPA, 2002. Five-Year Review Report. Wyckoff/Eagle Harbor Superfund Site, Bainbridge Island, Washington, September 2002.

e. Striplin Environmental Associates and USACOE, 2003. 2002-2003 Year 8 Environmental Monitoring Report, Wyckoff/Eagle Harbor Superfund Site, East Harbor Operable Unit, Bainbridge Island, Washington, Draft, August 29, 2003.

These reports confirm that environmental media at the upland and intertidal area of the Site contain concentrations of hazardous substances above applicable MTCA cleanup levels, and characterize the upland area of the Site adequately to indicate the need for cleanup activities. The upland area of the Site includes the designated redevelopment areas for Park Use and Development Activities.

5. Contaminants of concern in groundwater and soils at the Property are chemicals from wood treatment processes, primarily creosote-derived polycyclic aromatic hydrocarbons, pentachlorophenol, aromatic carrier oils, and dioxin/furans.

6. In accordance with CERCLA, 42 U.S.C. §9601 et seq., and associated EPA/Ecology agreed roles and responsibilities for the Wyckoff/Eagle Harbor Superfund Site, EPA is developing and will implement a response action at the Site to address protection of human health and the environment (EPA Remedy). Ecology is responsible for a portion of the EPA Remedy cost and all long-term operation and maintenance associated with the EPA Remedy as described in the Ecology letter to the City dated August 2, 2002, Exhibit D. The EPA Remedy is summarized in the Record of Decision and any subsequent ROD Amendment(s), for the Wyckoff/Eagle Harbor Superfund Site, Soil and Groundwater Operable Units, Bainbridge Island, Washington, February 2000.

7. The EPA remedial action objective for the Property is the removal and treatment or disposal of contaminants to the extent practicable, and/or containment thereof. The EPA Remedy may require the implementation of an operation and maintenance program (Section VII.e) to ensure/maintain the integrity of the remedy. The city's park design, construction and maintenance partially satisfy operation and maintenance requirements at the site.

8. The City is a duly constituted municipality under the laws of the State of Washington.

9. The City has conducted land use planning under Ch. 36.70A RCW, and the Site is designated Water-Dependent Industrial, by the Bainbridge Island Comprehensive Plan. The Site has been used for industrial purposes and is currently vacant and is zoned W-DI, Water-Dependent Industrial.

10. The City intends to facilitate the redevelopment of the Site for Park Use and Development Activities consistent with applicable City of Bainbridge Island comprehensive plan designations and zoning regulations as those designations may be revised.

11. The City has prepared a planning document, entitled Park Vision and Design Framework, attached as Exhibit E. The document describes the park vision and design concepts, development constraints, and design review milestones.

VI. ECOLOGY DETERMINATIONS

1. The City is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon its purchase of the Site for Park Remediation and Development Activities, Ecology issued a potentially liable person status letter to the City dated May 3, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated May 17, 2006, the City voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City is a potentially liable person (PLP) under RCW 70.105D.040.

4. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the City to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the

foregoing facts, Ecology believes the remedial actions required by this Order in association with Park Use and Development Activities are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. The City agrees to perform work at the Site by undertaking certain remedial actions which will be accomplished in conjunction with construction, redevelopment, and maintenance of the Park. It shall be the City's responsibility to ensure that any remedial actions undertaken pursuant to this Order do not conflict with the EPA Remedy at the site. This work will facilitate the redevelopment of designated areas of the Site for park use in accordance with the Park Vision and Design Framework (Exhibit E) consistent with the City's zoning and comprehensive plan designations for the Site. The objectives of the work are to ensure that Park design, construction, and use are not in conflict with the EPA Remedy, and will also serve as remediation activities to the extent they partially satisfy operation and maintenance required by the selected EPA Remedy so as to ensure the integrity of the EPA Remedy is maintained at the site and that Park Management, Park Upkeep and Compliance Monitoring will ensure the integrity of the EPA Remedy is maintained at the Site.

2. The City agrees to implement the remedial actions at the Site in accordance with the Scope of Work and the Schedule of Work set forth herein.

3. **Scope of Work.** The Scope of Work includes development of a Pritchard Park Remediation and Redevelopment Plan (PPRRP) which will include park design, park development, and Park Management, Park Upkeep and Compliance Monitoring. As neither the EPA Remedy nor the park design is finalized on the Effective Date of this Order, the Scope of Work for the PRRRP provides a list of plan elements, as summarized below. These plan elements are intended to be protective of health and the environment. It is also intended that these elements not conflict with, and be protective of, the integrity of the EPA Remedy. The

PPRRP will be implemented in phases through a series of sub plans and Engineering Design Reports developed in conjunction with the park development engineering documents. Each phase will relate to Park Concept Areas as described in the Park Vision and Design Framework (Exhibit E). For the Wyckoff/Eagle Harbor Superfund Site, the Park Vision and Design Framework divided the Property into nine Park Concept Areas consisting of five upland zones (Japanese/American Memorial and West Hillside, Ravine, East Hillside, Flatlands, and The Point) and four beach zones (Water Access Beach, Habitat Beach, West Beach, and East Beach). Of these nine Concept Areas, five Park Concept Areas – the East Beach, The Point, a portion of the West Beach, a portion of the Flatlands, and a portion of the East Hillside are within the Site. The City shall submit sub plans for these five concept areas to Ecology for review.

a. Cover and Capping Sub Plan. The PPRRP will address cover and capping elements for specific areas of the site consistent with the Park Vision and Design Framework and the timing of site redevelopment. It is intended that cover and capping will not be in conflict with the EPA Remedy. It is anticipated that cover and capping elements will be initially developed for the East Hillside, Flatlands, and West Beach areas as they will be the first to be redeveloped. After EPA completion of the EPA Remedy and prior to Site redevelopment, cover and capping elements may be developed for The Point and East Beach as appropriate.

Cover and capping elements shall address any need for secondary covers over areas where the EPA Remedy includes a cover or cap over residual contamination exceeding MTCA unrestricted land use soil cleanup levels as defined by WAC 173-340-100; and/or areas where residual contamination may exist at depth. Secondary cover alternatives may include, but are not limited to, soil, landscaping materials, pavement, improved trails, foundation pads, and marker beds such as high visibility materials or excavation barriers like quarry spalls.

b. Excavation Management Sub Plan. Excavation management involves the management of excavations to protect human health and the environment and to maintain the EPA Remedy during redevelopment of the Park or routine maintenance of the Park. This sub plan shall provide standard operating procedures to the City/Park personnel and contractors to ensure workers are informed of the site hazards and that the EPA Remedy is not altered,

modified, or removed. This sub plan also shall provide standard operating procedures to workers when encountering excavations with obvious signs of unexpected contamination. Excavated soil shall be characterized and managed according to this sub plan. Unexpected contaminated soils shall be disposed of consistent with WAC 173-340-700 and methods of transportation and disposal specified in this sub plan.

c. **Worker Health and Safety Sub Plan.** This sub plan shall provide guidance to ensure site workers are protected from potentially hazardous conditions that could be encountered on the Site during Site development. The sub plan shall be consistent with WAC 173-340-810.

d. **Park Management, Park Upkeep and Compliance Monitoring Sub Plan.** This sub plan shall detail any park management, park upkeep, and compliance monitoring activities for park operation. Examples of park management activities include inspection of the secondary protective covers and caps, stormwater quality monitoring as required by applicable permits, and inspection and maintenance of institutional controls.

e. **Best Management Practices Sub Plan.** The PRRRP and any subsequent Engineering Design Reports shall define the Best Management Practices (BMPs) that will be implemented during both redevelopment construction and subsequent Park operations. For the redevelopment phase of the project, the sub plan shall address temporary erosion control, construction stormwater control and treatment, grading, and soil management. For park operations, the sub plan shall address stormwater grading/drainage/treatment requirements, care and maintenance of lawn and landscape areas, and maintenance of impervious surfaces.

f. **Institutional Controls Sub Plan.** Following completion of the EPA Remedy and PRRRP tasks, the City shall develop administrative requirements to be placed on activities, access, or exposure to soil or groundwater at the Site. Planned institutional controls shall include recorded restrictive covenant(s), public signage, security, groundwater use restriction, land use restrictions, and access control. Inspection and maintenance of the Institutional Controls are detailed in the Park Management, Park Upkeep and Compliance Monitoring Sub Plan. The Institutional Controls shall be maintained until concentrations of

hazardous substances in the soil and groundwater are at such levels as to allow for unlimited use and unrestricted exposure. The sub plan shall be consistent with WAC 173-340-440.

g. Additional Operation and Maintenance – EPA Remedy Sub Plan (Optional). Under an Intergovernmental Cost Reimbursement/Funding Agreement that may be negotiated with Ecology, the City may implement additional operation and maintenance activities for operating and maintaining the integrity of the EPA Remedy otherwise obligated to Ecology under CERCLA. The purpose of the Ecology/City Intergovernmental Agreement would be to minimize the overall cost of onsite operation and maintenance activities through the use of local personnel. Prospective tasks may include water level monitoring, contaminant monitoring in groundwater, site security, and operations of any on-site process systems. The City and Ecology will coordinate to develop the Additional Operation and Maintenance – EPA Remedy Sub Plan.

4. Schedule of Work. The City agrees to submit the sub plans, engineering design reports, park development engineering documents, and plans and specifications for the Site to Ecology for review and concurrence in accordance with the Schedule of Work attached as Exhibit F.

5. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable. Prior to such action, the Designated Project Coordinators shall confer in an effort to resolve the problems in deliverables.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

The City shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. The City shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Chung Ki Yee
Department of Ecology
Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503

The project coordinator for the City is:

Libby Hudson, Division Manager
Long Range Planning
City of Bainbridge Island

280 Madison Avenue North
Bainbridge Island, WA 98110-1812

The project coordinators shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City, and all documents, including reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators.

Ecology and the City may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. The City shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the City either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type

equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the City or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify the City prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the City shall cooperate with Ecology, and shall:

1. Develop a plan identifying when and how public involvement will occur throughout the development of the PRRRP. If agreed to by Ecology, the City shall develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the Park development submission for plans associated with the PRRRP, e.g. engineering design elements with incorporated protection of the EPA Remedy into park design, park management, park upkeep and compliance monitoring, or for a shoreline substantial development permit. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110-1812
- (b) Department of Ecology

Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, the City shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the City shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, the City has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(c) The City may then request Ecology management review of the decision. This request shall be submitted in writing to the Ecology Toxics Cleanup Program Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of the City's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the City to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

(a) Circumstances beyond the reasonable control and despite the due diligence of the City including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing and commenting on documents submitted by the City; or

(b) Delays by EPA in implementing the EPA Remedy which preclude completion of elements of Work to be Performed as described in Section VII of this Order; or

(c) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

(d) Endangerment as described in Section VIII.M of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the City.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- (a) Delays in the issuance of a necessary permit which was applied for in a timely manner;
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City. The City shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide

additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the City to cease such activities for such period of time as it deems necessary to abate the danger. The City shall immediately comply with such direction.

If, for any reason, the City determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the City may cease such activities. The City shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the City's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take

additional enforcement actions against the City regarding remedial actions required by this Order, provided the City complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City shall notify Ecology of said transfer. Upon transfer of any interest, the City shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. A list of the required permits known at the time of entry of this Order has been included in Exhibit G.

2. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals. A list of such permits

and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit G.

The City has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the City determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the City shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Restrictive Covenants

The City agrees to record a Restrictive Covenant with the office of the Kitsap County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant

shall restrict future uses of the Site. The City will provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

R. Periodic Review

As remedial action, including ground water monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the City shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

The City agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order, as amended by any modifications, and that the City has complied with all other provisions of this Agreed Order. Ecology may review information pertaining to individual Park Concept

Areas submitted by the City, and, in its sole discretion, may issue the City a letter finding that one or more of the requirements of this Order as specified in Section VII of this Order have been completed in regard to a given Park Concept Area. Such a letter and finding would not diminish the City's liability for the overall site, or affect the provisions of section VIII N. of this Order.

X. ENFORCEMENT

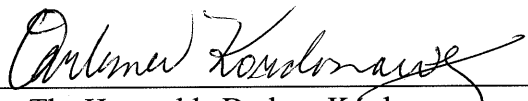
Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event the City refuses, without sufficient cause, to comply with any term of this Order, the City will be liable for:
 - (a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 - (b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

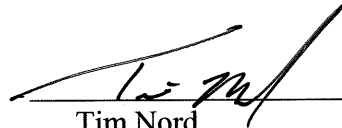
Effective date of this Order: October 16, 2006

The City of Bainbridge Island



The Honorable Darlene Kordonowy
Mayor of the City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110-1812
206-842-2545

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Tim Nord
Manager, Land & Aquatic Lands Cleanup
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600
360-407-7226

Exhibit A

**Option Agreement
City of Bainbridge Island/The Trust for Public Land**

OPTION AGREEMENT

This is an Agreement dated as of May 14, 2003, between the City of Bainbridge Island, a political subdivision of the State of Washington ("Buyer"), and The Trust for Public Land, a California nonprofit public benefit corporation ("Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

BUYER:

The City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, Washington 98116
Attn: City Clerk
Tel: (206)842-2545
FAX: (206)780-8600

SELLER:

The Trust for Public Land
1011 Western Avenue, Suite 605
Seattle, WA 98104
Attn: Kent Whitehead / Tom Tyner
Tel: (206) 587-2447
FAX: (206) 382-3414

B. Seller holds a valid and enforceable option to purchase that certain real property located in Bainbridge Island, Kitsap County, Washington, described on Exhibit A attached to this Agreement and hereby incorporated by this reference, which property is generally known as the "Wyckoff site". A true and correct copy of a Memorandum of Seller's option is attached hereto as Exhibit B and incorporated by this reference. Said real property, is comprised of fifty (50) acres, more or less, together with any and all improvements, fixtures, timber, water and minerals located thereon and any and all rights appurtenant thereto, including but not limited to all timber rights, water rights, grazing rights, access rights and mineral rights to be owned or acquired by Seller pursuant to Seller's option, (the real property and all rights appurtenant thereto are collectively called the "Subject Property.")

C. It is the mutual goal and intention of Seller and Buyer that the Subject Property be preserved and used eventually for public, open space and recreational purposes. Towards

this end, Seller desires to sell its rights to the Subject Property, and Buyer desires to buy Seller's rights to the Subject Property, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Option. In consideration of the payment by Buyer to Seller of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller grants and conveys to Buyer an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option"), subject to the satisfaction of the conditions precedent set forth in Paragraph 5 below. In granting this Option, Seller expressly promises and agrees that: (i) if Seller purchases from the current owner any portion or all of the Subject Property prior to Buyer's exercise of the Option pursuant to Paragraph 5 below, Seller shall sell the Subject Property pursuant to the terms and conditions set forth in this Agreement; or (ii) if Seller is not the owner of the Subject Property at the time Buyer exercises any part of the Option, as set forth in Paragraph 5 below, Seller shall exercise Seller's rights under Seller's option to purchase the Subject Property, and shall undertake all reasonable means necessary to facilitate Buyer's purchase of the Subject Property, or any portion thereof, from Seller pursuant to the terms of this Agreement, including, but not limited to facilitating a direct deed, if deemed appropriate by the parties.

2. Term. The Option shall be effective as of the mutual execution date of the Agreement (the "Effective Date"); provided, that Buyer shall pay to Seller an creditable but nonrefundable Option consideration of \$25,000.00 on or before December 1, 2003 and, unless extended by Buyer pursuant to the terms herein, shall expire on June 29, 2004 (the "Initial Option Term").

2.1 Extension of Initial Option Term. On or before June 29, 2004, Buyer, at Buyer's option, may exercise the Option as to the entire Subject Property or as to at least a mutually-agreeable portion of the Subject property, to be determined by the parties at a later date, pursuant to the terms set forth in Paragraph 4 below. Closing of the purchase and sale of the Subject Property for which the option is exercised pursuant to this Paragraph 2.1 shall occur not later than December 31, 2004.

Provided that Buyer has exercised the Option with respect to at least a mutually-acceptable portion of the Subject Property (as set forth above), Buyer, at Buyer's option, may extend this Option as to the remainder portion of the Subject Property past the Initial Option Term by notifying Seller in writing of Buyer's election to extend the Initial Option Term as to the remainder Subject Property and by paying to Seller the creditable but nonrefundable additional Option consideration in the amount of Twenty Five Thousand Dollars (\$25,000.00) on or before December 1, 2004. Upon Buyer's satisfaction of the contingencies set forth

herein, the Initial Option Term shall be extended through June 29, 2005 (the "First Extended Option Term").

2.2 Extension of First Extended Option Term. On or before June 29, 2005, Buyer, at Buyer's sole option, may exercise this Option as to the entire remainder Subject Property or as to at least a mutually-agreeable portion of the remainder Subject property, to be determined by the parties at a later date, pursuant to the terms set forth in Paragraph 4 below. Closing of the purchase and sale of the Subject Property for which the Option is exercised pursuant to this Paragraph 2.2 shall occur not later than December 31, 2005.

Provided that Buyer has exercised the Option with respect to at least a mutually-acceptable portion of the remainder Subject Property (as set forth above), Buyer, at Buyer's option, may extend this Option as to the remainder portion of the Subject Property past the First Extended Option Term by notifying Seller in writing of Buyer's election to extend the First Extended Option Term as to the remainder Subject Property on or before December 1, 2005. Upon Buyer's satisfaction of the notice contingency set forth herein, the First Extended Option Term shall be extended through June 29, 2006 (the "Second Extended Option Term"). If Buyer extends the First Extended Option Term as provided herein, Buyer shall have until June 29, 2006 to exercise the Option to purchase the total remaining Subject Property. If Buyer exercises the Option as set forth herein, closing of the purchase and sale of the remainder Subject Property shall occur no later than December 31, 2006.

3. Exercise. In the event Buyer elects to exercise the Option or any portion thereof, it shall do so by: (i) notifying Seller in writing within the term specified in Paragraph 2 above, and (ii) upon Buyer's first exercise of the Option (if exercised in phases) by paying to Seller the sum of Two Hundred Thousand Dollars (\$200,000.00) as an earnest money deposit to be applied toward the Purchase Price of the Subject Property for which the Option is exercised. Such notice and payment shall be deemed timely if it is received by Seller by facsimile transmission or by mail, first class postage prepaid, or delivered personally by courier or Express Mail to Seller within the term specified in Paragraph 2. If the Option is exercised in phases, no additional earnest money deposit shall be required as a condition to Buyer's purchase of any of the remainder Subject Property.

4. Purchase Terms.

(a) Price. In the event that Buyer exercises the Option in accordance with the terms of this Agreement, Seller shall sell to Buyer, or shall cause the current owner of the Subject Property to convey to Buyer, and Buyer shall buy from Seller, the Subject Property for a total purchase price of Eight Million Dollars (\$8,000,000.00).

(b) Method of Payment. The Purchase Price shall be payable in cash on the close of escrow.

(c) Purchase in Phases. Buyer may purchase the entire Subject Property, or Buyer may purchase some or all of the Subject Property in one or more phases. The configuration and sequence of each phase of the purchase must be mutually agreeable to both Buyer and Seller. If Buyer elects to purchase the Subject Property in more than one phase, then the Purchase Price for each phase shall be calculated based on the value of the various parcels making up the Subject Property as set forth in the appraisal of the Subject Property performed by Anthony C. Gibbons of ReSolve, which appraisal has been approved by both Buyer and Seller ("the Appraisal"). If Buyer elects to purchase the Subject Property in one or more phases, then all references in this Agreement to the terms "Subject Property" and "Purchase Price" shall be deemed to be references to the applicable phase of the Subject Property as the context requires.

If Buyer elects to purchase the Subject Property in more than one phase, then after December 31, 2004, the appraisal establishing the fair market value of the Subject Property performed by Anthony C. Gibbons of ReSolve shall be updated for any purchase beyond the first purchase phase, and the Purchase Price for the remaining portions of the Subject Property adjusted to reflect any change in value of the remaining portions of the Subject Property. Provided, however, that for any portion of the Subject Property that is purchased in phases after December 31, 2004, if the appraised value is higher than the Seller's agreed upon purchase price for the same Subject Property with the current owner pursuant to Seller's option, then Seller shall sell the Subject Property for the Seller's agreed upon price with the current owner. If the revised appraised value of such Subject Property is less than Seller's agreed upon purchase price for the same Subject Property with the current owner pursuant to Seller's option, then the parties shall endeavor to renegotiate the Purchase Price in good faith.

In the event that this Agreement terminates due to a failure of any of the contingencies set forth herein (other than as a result of Buyer's breach of this Agreement), or is otherwise terminated by either party in accordance with the provisions of this Agreement, any earnest money deposit paid by Buyer, and any accrued interest thereon, shall be returned to Buyer, in total, without recourse.

In the event of Buyer's breach of this Agreement, Seller's sole recourse against Buyer shall be the payment to Seller of the earnest money deposit paid by Buyer. In the event of Seller's breach of this Agreement, Buyer shall have all remedies against Seller available at law or in equity, including but not limited to specific performance.

5. Escrow and Closing: Conditions Precedent to Seller's Obligation to Convey the Subject Property to Buyer. Upon Buyer's exercise of the Option, or at any earlier time as may be convenient, the parties shall open an escrow with a title company acceptable to Buyer and Seller to serve as the escrow holder (the "Escrow Holder"), for the purpose of closing the purchase and sale of the Subject Property. Escrow on the first phase of the purchase of the Subject Property shall close no event later than December 31, 2004. Closing on subsequent phases of the purchase shall close no later than December 31 of each succeeding year until the entire Subject Property has been conveyed or this Agreement has terminated,

whichever comes first. Seller's obligation to convey the Subject Property to Buyer is contingent on satisfaction of the following conditions precedent:

(a) Buyer's timely notification to Seller of Buyer's intention to exercise the Option and purchase the Subject Property within the time frame set forth in this Agreement;

(b) Seller's ability to obtain good and marketable title to the Subject Property following exercise of Seller's option with the current owner of the Subject Property. If Buyer exercises the Option in accordance with this Agreement, Seller will exercise its option with the current owner to acquire the Subject Property, and will proceed in good faith and with due diligence to complete the acquisition of the Subject Property from its current owner in order to be in a position to convey good and marketable title to Buyer, or, alternatively Seller will use all reasonable and best efforts to facilitate a direct transfer from the current owner to Buyer, in accordance with the terms and conditions set forth herein.

6. Title. Seller shall convey the Subject Property to Buyer or to Buyer's designee, or shall cause the current owner of the Subject Property to convey the Subject Property to Buyer by a statutory warranty deed subject only to (a) a lien for nondelinquent real property taxes; and (b) any other matters approved by Buyer in writing.

7. Title Insurance. Seller shall provide Buyer with a standard coverage owner's policy of title insurance, in form and substance acceptable to Buyer, in the amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Paragraph 6 above.

8. Seller's Preclosing Covenants. Seller shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, (a) make, extend or permit, or knowingly permit the current owner of the Subject Property to make, extend or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Subject Property which will not be removed, released or terminated at closing, or (b) take or permit any action, or knowingly allow the current owner of the Subject Property to take or permit any action that could materially reduce the value of the Subject Property.

9. Seller's Representations. Both Buyer and Seller acknowledge that the Subject Property is involved in an active environmental remediation under the auspices of the U.S. Environmental Protection Agency (the "EPA"). In addition to such rights and responsibilities pertaining to the EPA, Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement, and, at or prior to closing, will have full power and authority to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement, either directly or by having the current owner of the Subject Property convey title directly to Buyer or Buyer's designee.

(b) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or pending or threatened against Seller which could affect Seller's interest in the Subject Property, affect the value of the Subject Property, or subject an owner of the Subject Property to liability, other than the acknowledge EPA clean-up.

(c) Within Seller's knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, which affects the Subject Property or any portion thereof which will not be removed at closing, other than the acknowledge EPA clean-up.

(e) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Buyer may elect to terminate this Agreement, in which case Buyer shall have no obligation to purchase the Subject Property.

10. Remedies Upon Default. In the event either party defaults in the performance of its obligations under this Agreement, the non-defaulting party shall have all remedies provided by law or equity.

11. Right to Inspect Subject Property. During the term of this Agreement Buyer through its employees and agents may enter upon the Subject Property for the purpose of making inspections and investigations as Buyer deems appropriate, including, without limitation, performing a Phase I environmental site assessment of the soils and waters on the Subject Property. All tests or inspections shall be at Buyer's expense, and Buyer shall indemnify and hold Seller harmless from and against any and all costs, claims or damages incurred or suffered by Buyer, its agents or employees, in performing such tests or inspections. Buyer will notify Seller in advance if and when it plans to conduct any inspection or investigations on the Subject Property, and to the extent reasonably possible, will schedule such investigation or inspection at a time that is convenient and agreeable to Seller.

12. Prorations and Fees. Real property taxes on the Subject Property shall be prorated as of the close of escrow based upon the latest available tax bill. The escrow fee shall be divided equally between the parties. Seller shall be responsible for the excise tax due on the sale. Seller shall pay for the title insurance policy as specified hereinabove. Other fees and

charges shall be allocated in accordance with the customary practice of the county in which the Subject Property is located.

13. Notices. All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. Except as provided for specifically elsewhere in this Agreement, all notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or, if delivered by hand, courier service or Express Mail, shall be deemed given when delivered; or, if transmitted by facsimile, shall be deemed given when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Legal Costs. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

15. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will indemnify and hold the other party harmless from said claim.

16. Time of the Essence. Time is of the essence of this Agreement.

17. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

18. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

19. Modification. No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

20. Assignment of Buyer's Interest. The parties hereto agree that the Buyer may assign its interest in this Agreement to an organization or entity that is a qualified organization at the time of transfer under Section 170(h) of the Code, and the applicable regulations promulgated thereunder. Buyer shall not assign its interest in this Agreement to any for-profit entity or organization without Seller's prior written consent.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Counterparts and Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. Signatures required under this Agreement may be transmitted by facsimile and, once received by the party to the Agreement to whom such signatures were transmitted, shall be binding on the party transmitting its signatures as though they were an original signature of such party.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

THE CITY OF BAINBRIDGE ISLAND, a
political subdivision of the State of Washington

By: *Emilee Rindman*

Title: Mayor

Date: June 2, 2003

SELLER:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

By: *Thomas S. Lynes*

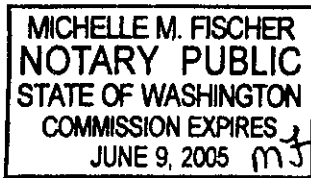
Title: REGIONAL COUNSEL

Date: JUNE 4, 2003

ACKNOWLEDGMENTS

STATE OF)
) ss.
COUNTY OF)

On this 2nd day of June, 2003, before me, the undersigned notary for the State of Washington, personally appeared Dartane Kordalawy, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Mayor on behalf of the City named therein, and acknowledged to me that the she executed said instrument as its free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated to me that (s)he was authorized to so execute said instrument.



Michelle M. Fischer
Print Name: Michelle M. Fischer
NOTARY PUBLIC in and for the State of
WA, residing at Silverdale
My appointment expires: June 9, 2005

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 4th day of June, 2003, before me, Daniel K. Wilson, the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Lyner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Regional Counsel, on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.



Daniel K. Wilson
Print Name: DANIEL K. WILSON
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My appointment expires: 02/04/06

DUPLICATE ORIGINAL

FIRST AMENDMENT TO OPTION AGREEMENT

This First Amendment to Option Agreement, dated June 23, 2005, is made between THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation ("Buyer"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Seller").

RECITALS

I. Seller and Buyer have previously entered into an Option Agreement dated as of May 14, 2003, (the "Agreement"), with regard to certain real property on Bainbridge Island in Kitsap County, Washington, as legally described on "Exhibit A" to the Agreement, which Exhibit A is incorporated herein by this reference.

II. Seller and Buyer desire to enter into this First Amendment to amend the Agreement in certain respects, and to continue all other terms and conditions in full force and effect.

AGREEMENT

In consideration of the mutual promises, covenants, and conditions set forth herein, and other valuable consideration, the parties hereby agree as follows:

A. Terminology. The terms used in this Amendment shall have the same meanings as in the Agreement, unless a different meaning is required by the context hereof.

B. Section 2.2 of the Agreement: The second full paragraph of Section 2.2 of the Agreement is deleted in its entirety, and the following new second full paragraph of Section 2.2 is inserted in its place:

Buyer has exercised its Option and completed its purchase of that portion of the Subject Property identified as Block A and Block C-1 on the map attached hereto as **Exhibit C** and hereby incorporated by this reference. Provided that Buyer exercises its Option with respect to at least Parcel C-2 of the Subject Property (as shown on Exhibit C), on or before the expiration of the First Extended Option Term, then Buyer, at Buyer's option, may extend this Option as to the remainder of the Subject Property (consisting of Block B) through December 15, 2005 by notifying Seller in writing of Buyer's election to extend the First Extended Option term as to the remainder of the Subject Property, such notice to be received by Buyer on or before June 29, 2005. Upon Seller's receipt of such notice from Buyer, the Option Term shall be extended through December 15, 2005 (the "Second Extended Option Term"), provided, however, that Buyer shall pay Option consideration to Seller in the sum of Fifteen Thousand Dollars (\$15,000.00) on or before

September 30, 2005 if Buyer wishes to have the Option on Block B extend through the end of the Second Extended Option Term. Such Option consideration shall be applied toward the purchase price of the Block B if Buyer exercises the Option as to Block B, but shall otherwise be nonrefundable. If Buyer exercises the Option as to Block B, then closing on the purchase of Block B shall occur on or before January 31, 2006.

If Buyer exercises the Option as to Block C-2 as set forth herein, then the purchase price for Block C-2 shall be \$650,000.00, and closing on the purchase of Block C-2 shall occur as soon as reasonably possible following exercise but in no event later than October 31, 2005. To the extent that a boundary line adjustment or other subdivision is required to accomplish the purchase and sale of Block C-2 as contemplated herein, Seller agrees to promptly submit an application for such adjustment/subdivision and the parties agree to reasonably cooperate with each other in obtaining approval for such adjustment/subdivision from any governmental agency with jurisdiction over said application. The parties shall share equally in the costs of such application process; provided, that neither party shall claim any reimbursement for administrative acts performed by that party in pursuit of any agency approval which may be required.

C. Entire Agreement; No Other Modifications to Agreement. This First Amendment sets forth the entire agreement of the parties with respect to the amendment of the Agreement and supersedes and shall control over any inconsistent provisions of the Agreement, any previous extensions or other amendments of the Agreement, and any other prior written or oral agreements relating to the subject matter hereof. Except as specifically set forth herein, all of the terms of the Agreement shall continue in effect without modification or waiver. Any further modifications to the Agreement must be in writing and signed by both Seller and Buyer.

D. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

EXECUTED as of the date first set forth above.

THE TRUST FOR PUBLIC LAND,
a California non profit public benefit corporation

By : James E. Lynn

Title: REGIONAL COUNSEL

Date: JUNE 23, 2005

THE CITY OF BAINBRIDGE ISLAND,
a political subdivision of the State of Washington

By: Ornelma Kordman

Title: Mayor

Date: June 27, 2005

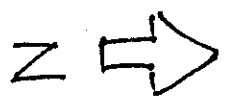
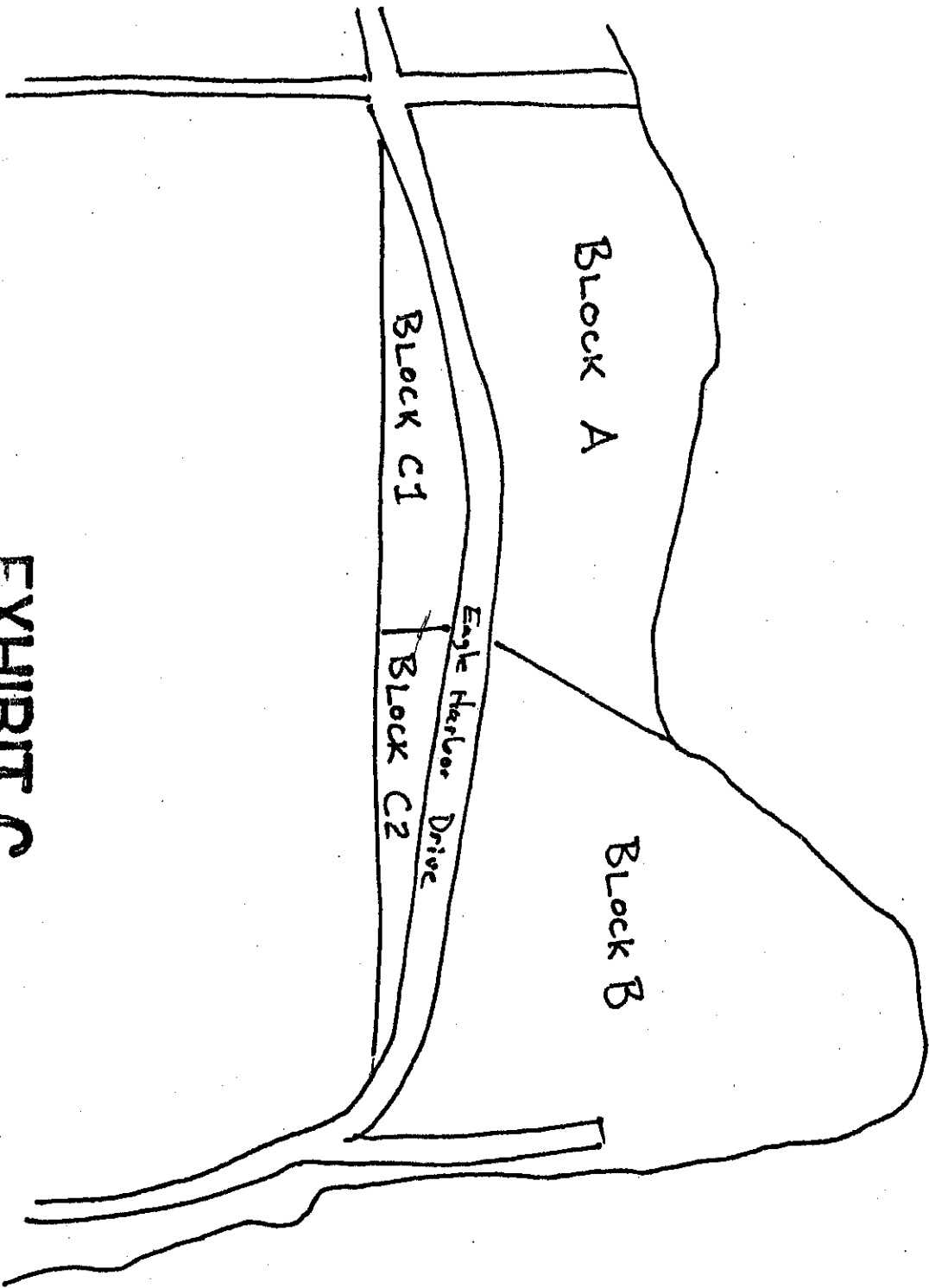


EXHIBIT C

SECOND AMENDMENT TO OPTION AGREEMENT

This Second Amendment to Option Agreement is made between THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation ("Buyer"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Seller"). This instrument amends that Option Agreement for land in Kitsap County first entered into by the Buyer and Seller on May 14, 2003, and as that instrument has been subsequently amended.

Exercise. Add to the section:

If Buyer exercises this option as to Block B, then Buyer's obligation to close shall be conditioned upon:

Buyer's City Council approval by January 25, 2006, of the terms and conditions of an Agreed Order with the Department of Ecology concerning the environmental condition of the property and Buyer's readiness to close. Buyer to inform Seller in writing as to the satisfaction of this condition no later than close of business on January 26, 2006.

Closing: If Buyer exercises this option on Block B then Buyer shall close by February 28, 2006, subject to the condition of exercise stated herein.

Entire Agreement. This Amendment sets forth the entire agreement of the parties with respect to the amendment of the Agreement and supersedes and shall control over any inconsistent provisions of the Agreement, any previous extensions or other amendments of the Agreement, and any other prior written or oral agreements relating to the subject matter hereof. Except as specifically set forth herein, all of the terms of the Agreement shall continue in effect without modification or waiver. Any further modifications to the Agreement must be in writing and signed by both Seller and Buyer.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and, when taken together, shall constitute a fully executed Agreement.

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EXECUTED as of the date of the date last made below.

THE TRUST FOR PUBLIC LAND,
a California non-profit public benefit corporation

By: _____

Title: _____

Date: _____

THE CITY OF BAINBRIDGE ISLAND,
A political subdivision of the State of Washington

By: _____

Title: _____

Date: _____

Amendment to Option (Block B)

Pg. 2 of 2

Exhibit B

Site Diagram and Legal Description

EXHIBIT B
Site Legal Description

Government Lot 4, Section 35, Township 25 North, Range 2 East, Willamette Meridian;

EXCEPT that portion conveyed to The City of Bainbridge Island and the Bainbridge Island Park and Recreation District by Bargain and Sale Deed recorded under Kitsap County Auditor's file number 200412170364;

AND EXCEPT that portion conveyed to The City of Bainbridge Island and The Bainbridge Island Metropolitan Park and Recreation District by Bargain and Sale Deed recorded under Kitsap County Auditor's file number 200510280449;

TOGETHER WITH tidelands of the Second Class to the line of extreme low tide, as conveyed by the State of Washington, situate in front of, adjacent to and abutting thereon.

SITUATE: City of Bainbridge Island, Kitsap County, Washington.

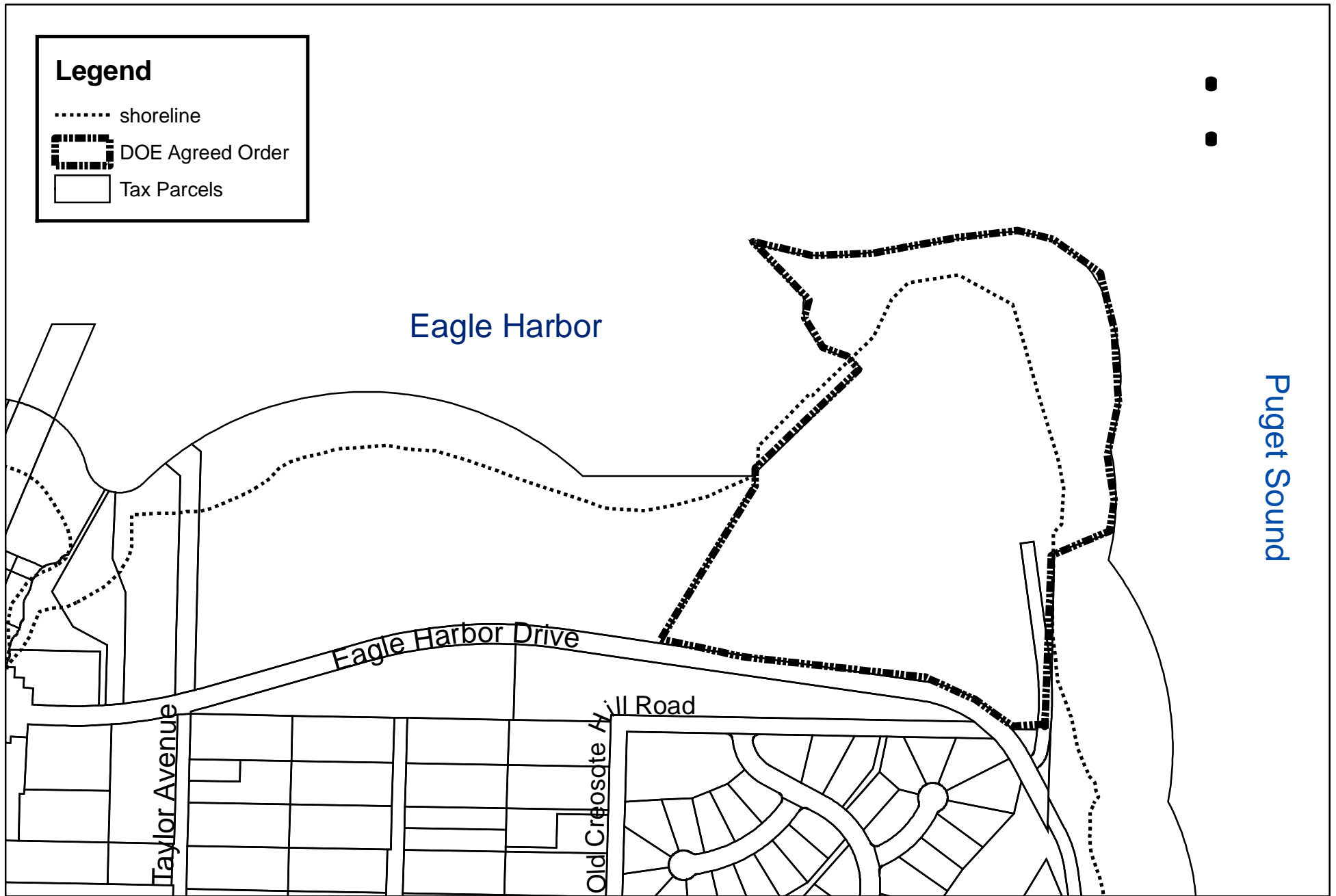


Exhibit B:
Site Diagram of Ecology Agreed Order

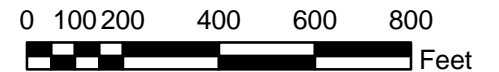


Exhibit C

Wyckoff/PSR – Bainbridge Island Prospective Purchaser Agreement



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

January 4, 2005

Reply To
Attn Of: ECL 113

Ms. Libby Hudson
Senior Planner
City of Bainbridge Island
280 Madison Ave North
Bainbridge Island, WA 98110-1812

Re: Transmittal of Wyckoff/PSR -Bainbridge Island
Prospective Purchases Agreement

Dear Libby:

Enclosed please find the above-referenced document which was signed by the U.S. Department of Justice on December 8, 2004.

Please let me know if I can provide additional information at this time.

Sincerely,

MJ Nearman
Wyckoff/Eagle Harbor Project Manager

CORR LOG
31087

**CITY OF
BAINBRIDGE ISLAND
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LH JF
DEPT. OF PLANNING &
COMMUNITY DEVELOPMENT**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:
The former Wyckoff/PSR Facility
Bainbridge Island, Washington, a portion
of the Wyckoff/Eagle Harbor Superfund
Site

UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT OF 1980, 42 U.S.C.
§ 9601, ET SEQ., AS AMENDED.

EPA DOCKET NO. 10-2005-0051

AGREEMENT AND COVENANT
NOT TO SUE CITY OF
BAINBRIDGE ISLAND

1
2 I. INTRODUCTION

3 This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and
4 between the United States on behalf of the Environmental Protection Agency ("EPA") and the City
5 of Bainbridge Island ("City" or "Settling Respondent"). This Agreement is entered into pursuant to
6 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended
7 ("CERCLA"), 42 U.S.C. §9601, et seq., and the authority of the Attorney General of the United
8 States to compromise and settle claims of the United States.

9 The Trust For Public Land ("TPL"), working as a facilitator with the buyer and seller,
10 negotiated an Option Agreement ("OA") dated April 11, 2003 ("Exhibit 1") under which TPL may
11 purchase approximately 49.5 acres of the Wyckoff-Eagle Harbor Superfund Site ("Site") on
12 Bainbridge Island, Washington (the "Property") in the years 2004-2006, or portions thereof,
13 consistent with the OA. The Property is the former Wyckoff, a/k/a Pacific Sound Resources
14 ("PSR"), wood treating facility, as legally described in the attached OA. TPL's goal, in accordance
15 with the OA, is to simultaneously reconvey the Property to the extent acquired by TPL pursuant to
16 the OA to the City for Park Use and Development Activities, as defined in Paragraph 3. The seller
17 of the Property and the Parties herein agree that the City may join the OA as a party thereto and may
18 directly purchase the Property or portions thereof, in accordance with the OA, without TPL.
19 According to the Settling Respondent, TPL provides expertise in real property acquisition for public
20 entities, including an established network for grants, fund raising and other support.

21 The Property is currently owned by PSR, formerly The Wyckoff Company. In 1994, PSR
22 entered into a consent decree with the United States and tribal natural resource trustees pursuant to
23 which it is required to liquidate all of its assets and transfer the proceeds into the PSR Environmental
24 Trust ("Trust"). The PSR Environmental Trustee also serves as the Chief Executive and sole officer
25 of PSR. Funds held by the Trust are, in accordance with the Consent Decree, dedicated for use by
26 EPA and certain federal and tribal natural resource trustees to remediate contaminants of concern
27 and restore natural resources at the Site and at the Pacific Sound Resources Superfund Site in West

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2 Seattle, Washington. Pursuant to the Consent Decree, proceeds from any sale of the Property by
3 PSR shall be disbursed solely to EPA.

4 The Property was used for treating wood and related activities from the early 1900s until
5 1994. Particularly the subsurface of a significant portion of the Property remains highly
6 contaminated. EPA has spent approximately \$100 million dollars toward remediating the facility,
7 including a recently completed experimental steam cleaning remedial action pilot project, and
8 projects very significant future remedial action expenditures. Due to the highly contaminated nature
9 of significant portions of the subsurface of the Property, associated contaminated off-shore
10 sediments, associated remedial outcome uncertainties, and associated uncertainties regarding
11 prospects for future redevelopment of the Property in its suburban-Seattle island location, its fair
12 market value has been difficult to assess. The Trust and the City jointly commissioned the most
13 current appraisal for the Property which arrived at a total fair market value of \$8 million. This
14 appraisal was used to set the purchase for the Property in the OA. TPL will receive a professional
15 services fee based on the amount of the Property purchased. This fee could range from \$207,500 to
16 \$520,000, depending on how much property is purchased and when the purchase occurs. According
17 to Settling Respondent, this fee is intended to reimburse TPL for its staff time and other costs related
18 to the project. If all options are exercised, approximately \$7.5 million, minus taxes and closing
19 costs, will be available for future remedial action at either or both Wyckoff/PSR Superfund Sites as
20 the funds are paid in 2004-2006 in accordance with the OA. The OA represents the only outstanding
21 viable offer for the Property to date. A Prospective Purchaser Agreement from the United States is a
22 contingency of the OA.

23 The Settling Respondent agrees to undertake all actions required by the terms and conditions
24 of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations
25 and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling
26 Respondent for the Existing Contamination at the Site that might otherwise result from Settling
27 Respondent becoming the owner of the Property. The Settling Respondent's entry into this

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2 Agreement does not constitute an admission of any liability by the Settling Respondent or TPL. The
3 resolution of this potential liability is in the public interest.
4

5 II. DEFINITIONS

6 Unless otherwise expressly provided herein, terms used in this Agreement which are defined
7 in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them
8 in CERCLA or in such regulations, including any amendments thereto.

9 1. "EPA" shall mean the United States Environmental Protection Agency and any successor
10 departments or agencies of the United States.

11 2. "Existing Contamination" shall mean:

12 a. any hazardous substances, pollutants or contaminants, present or existing on or
13 under the Site as of the effective date of this Agreement;

14 b. any hazardous substances, pollutants or contaminants that migrated from the
15 Property prior to the effective date of this Agreement;

16 c. any hazardous substances, pollutants or contaminants presently at the Site that
17 migrate onto or under or from the Property after the effective date of this Agreement, unless
18 migration is caused by, contributed to, or exacerbated by Settling Respondent; and

19 d. any hazardous substances, pollutants or contaminants at the Site originating
20 outside the Property that have become commingled with hazardous substances, pollutants or
21 contaminants within the scope of the foregoing subparagraphs a, b, and c of this Paragraph 2, unless
22 such hazardous substances, pollutants or contaminants are released in whole or in part by Settling
23 Respondent.

24 3. "Park Use and Development Activities" shall mean park use, development, construction,
25 operation and maintenance, including but not limited to the following activities:

26 a. a war internment memorial, visitor and interpretation centers for the memorial and
27 the former Wyckoff site, and public art or outdoor interpretation structures;

28 Wyckoff/PSR-Bainbridge Island Prospective Purchases Agreement - Page 4

1
2 b. accessory park buildings, roadways, parking lots, trails and pathways, a public
3 dock, picnic areas, and related recreational uses.

4 4. "Parties" shall mean the United States on behalf of EPA and the Settling Respondent.

5 5. "Property" shall mean that portion of the Site, encompassing approximately 49.5 acres,
6 that is described in Exhibit 1 of this Agreement.

7 6. "Site" shall mean the Wyckoff-Eagle Harbor Superfund Site, encompassing the Property,
8 located on Creosote Place, Bainbridge Island, Kitsap County, Washington, and all areas, including
9 tidelands, aquatic bedlands and sediments, on or to which hazardous substances and/or pollutants or
10 contaminants have come to be located.

11 7. "Trust" shall mean the PSR Environmental Trust.

12 8. "United States" shall mean the United States of America, its departments, agencies, and
13 instrumentalities.

14 III. STATEMENT OF FACTS

15 9. PSR's approximately 49.5-acre former wood treating facility is on the southeastern
16 shoreline of Eagle Harbor on Bainbridge Island, Washington, a municipality. The facility has been
17 divided into various operable units for EPA administrative purposes, which are among the operable
18 units of the Wyckoff/Eagle Harbor Superfund Site which was listed on the National Priorities List
19 ("NPL") on July 22, 1987, at 52 Fed. Reg. 27620.

20 10. Wood treating operations at the facility under various owners date back nearly a hundred
21 years. The Wyckoff Company, a closely held Washington corporation, owned and operated the
22 facility from December 1965 until operations ceased in 1994. In 1991, The Wyckoff Company
23 changed its name to PSR, which is The Wyckoff Company's successor in every respect.

24 11. In August 1994, the United States entered a Consent Decree in the United States District
25 Court for the Western District of Washington, Seattle Division under which the principals of PSR
26 were released from personal liability in exchange for the transfer of all shares of PSR to the PSR
27 Environmental Trust, an entity created by the Decree to liquidate all PSR assets for the benefit of

28 Wyckoff/PSR-Bainbridge Island Prospective Purchases Agreement - Page 5

1
2 EPA and CERCLA Natural Resource Trustees.

3 12. Contaminants of concern in groundwater and soils at the Property are chemicals from
4 wood treatment processes, primarily creosote-derived polycyclic aromatic hydrocarbons (PAHs),
5 pentachlorophenol (PCP), aromatic carrier oils, and dioxin/furans. It is estimated that 1 million
6 gallons of non-aqueous phase liquids (NAPL) still remain in the subsurface of the facility.

7 Sediments in areas of Eagle Harbor are contaminated with PAHs and other organic compounds, as
8 well as with metals, primarily mercury. The wood treating facility is the major source of PAHs to
9 the East Harbor through both past operating practices and contaminant transport through the
10 subsurface. An additional source of contaminants to Eagle Harbor was created when sludge from
11 tanks and sumps was used as fill material between an old and new bulkhead at the facility in the
12 1950s.

13 13. The remedial action objective for the Property is the removal and treatment or disposal
14 of subsurface contaminants to the extent practicable, or containment thereof. EPA is still evaluating
15 a recently completed pilot study to test the applicability and effectiveness of thermal remediation
16 (steam injection with groundwater and contaminant extraction) which helped reveal numerous
17 technical issues which must be addressed before full scale thermal remediation could be applied at
18 the Site. In addition to any potentiality for full-scale thermal remediation, EPA anticipates
19 implementation of surface capping as necessary, primarily over the Former Process Area, and
20 containment of contaminated groundwater and NAPL with a vertical structure and extraction system,
21 and construction of a new treatment plant for continued treatment of contaminated groundwater.

22 14. The primary remedial action objective for the East Harbor sediments is the achievement
23 of Washington Sediment Quality Standards (SQS) and reduction of contaminants in fish and
24 shellfish to levels protective of human health and the environment. Over 50 acres of heavily
25 contaminated subtidal sediments in the East Harbor were capped to address adverse biological
26 effects and free-phase oily contamination. Intertidal and upland sediments in the Former Log
27 Storage/Peeler Area were capped or consolidated in the Former Process Area. EPA constructed a

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2 2-acre Habitat Mitigation Beach along the shoreline to mitigate for loss of intertidal areas adjacent to
3 the Former Process Area. A sheet pile wall was constructed around the highly contaminated Former
4 Process Area to minimize potential flow of contaminants to Eagle Harbor.

5 15. TPL is a private non-profit Internal Revenue Service Code 501(c)(3) organization, duly
6 incorporated under the laws of the state of California. Settling Respondent City is a duly constituted
7 municipality under the laws of the state of Washington.

8 16. Settling Respondent represents, and for the purposes of this Agreement EPA relies on
9 such representations, that neither Settling Respondent nor TPL have had any involvement with the
10 Property or the Site related to releases of any hazardous substances, pollutants, or contaminants, and
11 have not caused or contributed to the release or threatened release of any hazardous substances,
12 pollutants, or contaminants at the Site, and that Settling Respondent's and TPL's involvement with
13 the Property has been limited to their role as prospective purchaser and purchase facilitator of the
14 Property, respectively.

15 IV. UNDERTAKINGS

16 17. In consideration of and in exchange for the United States' Covenant Not to Sue in
17 Section VIII herein, Settling Respondent agrees that EPA may use well water from on-site well(s) as
18 may be required for remedial purposes without cost or charge to the United States to the extent that
19 the City has rights, authority or control of or to such water. EPA will use reasonable efforts to avoid
20 material impacts to surrounding users, adjacent aquifers and existing City wells located in Taylor
21 Avenue. The City will further provide public administrative and record keeping support through
22 provision of a Superfund document archive at City Hall, and will provide public meeting space for
23 EPA public outreach related to the Site.

24 V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

25 18. Commencing upon the date that it acquires title to any portion of the Property, Settling
26 Respondent agrees to provide, and ensures that TPL will provide, to EPA, its authorized officers,
27 employees, representatives, and any persons performing response actions under EPA oversight, an

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2 irrevocable right of access to such portion(s) at all reasonable times and to any other property to
3 which access is required for the implementation of response actions at the Site, to the extent access
4 to such other property is controlled by Settling Respondent, for the purposes of conducting response
5 actions at the Site under federal law. EPA agrees to provide reasonable notice to Settling
6 Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any
7 provision of this Agreement, EPA retains all of its access authorities and rights, including
8 enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended
9 by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any
10 other applicable statute or regulation, including any amendments thereto.

11 19. With respect to any portion of the Property acquired pursuant to the OA, the Settling
12 Respondent shall execute and record either Exhibit 2 ("EPA Access Rights, Covenants and Use
13 Restrictions, a/k/a 'Institutional Controls'"), or a document approved by EPA which sets forth the
14 institutional controls and land use restrictions and/or limitations selected to date in Exhibit 2 in the
15 Recorder's Office of Kitsap County, State of Washington. Within 30 days of recording, the Settling
16 Respondent shall provide EPA with a certified copy of the original recorded document showing the
17 clerk's recording stamps. The City further acknowledges that subsequent institutional controls may
18 be developed and selected by EPA in future Record(s) of Decision (ROD) or ROD Amendment(s),
19 and the City agrees, in accordance with this Paragraph, to implement such institutional controls in
20 the form of use restrictions and/or limitations which may require recording in a manner substantially
21 similar to that set forth in this Paragraph. The City is not obligated under this Agreement to provide
22 funds, materials, supplies or personnel for implementation or completion of any other remedial
23 action at the Site, except as may be required in response to exacerbation of Existing Contamination
24 or releases of contaminants consistent with the Reservation of Rights in Section IX of this
25 Agreement. All future EPA remedial action decisions, including those selecting institutional
26 controls the City has agreed to implement, shall be subject to the public comment and participation
27 processes set forth in Section 117 of CERCLA and in the National Contingency Plan ("NCP") at 40

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C.F.R. 300.430(f)(3)-(6).

20. Settling Respondent shall ensure that any successor entity(ies) in interest, lessees, and sublessees of any portion of the Property that Settling Respondent acquires shall provide the same access and cooperation. Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on any such portion of the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments of or successions to any such portion of the Property or an interest in the Property are consistent with this Section and Section XI (Parties Bound/Transfer of Covenant) of the Agreement.

VI. DUE CARE/COOPERATION

21. Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. In order to minimize or eliminate potential adverse environmental consequences related to Park Use and Development Activities, the City will confer with EPA consistent with Exhibit 2. However, such conferral shall not be construed as approval or acceptance by EPA of any Park Use or Development Activities or other improvements, and any exacerbation of Existing Contamination or any releases of contaminants as a result of such activities may result in environmental liability for the City, consistent with the Reservation of Rights Section of this Agreement, as well as for any other responsible parties. The Settling Respondent further recognizes that the implementation of response actions at the Site may interfere with its use of the Property. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to cooperate with the City and to use reasonable effort: 1) to minimize any interference with the Settling Respondent's use of the Property by such entry and response; 2) to use Creosote Place as the primary means of entry and access, except when in EPA's discretion environmental response activities may be more effectively or efficiently implemented by alternative entry and/or access; and 3) not to jeopardize, undermine or materially damage Park Use and

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2 Development Activities on the Property. In the event that Settling Respondent becomes aware of
3 any action or occurrence that causes or threatens a release of hazardous substances, pollutants or
4 contaminants at or from the Property that constitutes an emergency situation or may present an
5 immediate threat to public health or welfare or the environment, Settling Respondent shall
6 immediately take all appropriate action to prevent, abate, or minimize such release or threat of
7 release, and shall, in addition to complying with any applicable notification requirements under
8 Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such
9 release or threatened release.

10 VII. CERTIFICATION

11 22. By entering into this agreement, Settling Respondent certifies that to the best of its
12 knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling
13 Respondent and TPL and all information in the possession or control of its officers, directors,
14 employees, contractors and agents that relates in any way to any Existing Contamination or any past
15 or potential future release of hazardous substances, pollutants or contaminants at or from the Site and
16 to its qualification for this Agreement. Settling Respondent also certifies that to the best of its
17 knowledge and belief neither it nor TPL has caused or contributed to a release or threat of release of
18 hazardous substances or pollutants or contaminants at the Site. If the United States determines that
19 information provided by Settling Respondent is not materially accurate and complete, this
20 Agreement, within the sole discretion of the United States, shall be null and void and the United
21 States reserves all rights it may have.

22 VIII. UNITED STATES' COVENANT NOT TO SUE

23 23. Subject to the Reservation of Rights in Section IX of this Agreement, the United States
24 covenants not to sue or take any other civil or administrative action against Settling Respondent for
25 and to the extent Settling Respondent acquires Property pursuant to the OA (or from TPL after TPL
26 has so acquired such Property), and this Agreement for any and all civil liability for injunctive relief
27 or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§

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2 9606 or 9607(a) with respect to the Existing Contamination.

3 IX. RESERVATION OF RIGHTS

4 24. The covenant not to sue set forth in Section VIII above does not pertain to any matters
5 other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The
6 United States reserves and the Agreement is without prejudice to all rights against Settling
7 Respondent with respect to all other matters, including but not limited to, the following:

8 (a) claims based on a failure by Settling Respondent to meet a requirement of this
9 Agreement, including but not limited to Section IV (Undertakings), Section V (Access/Notice to
10 Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs);

11 (b) any liability resulting from past or future releases of hazardous substances, pollutants or
12 contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors,
13 assignees, lessees or sublessees or TPL;

14 (c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees,
15 lessees or sublessees, or TPL, of Existing Contamination;

16 (d) any liability resulting from the release or threat of release of hazardous substances,
17 pollutants or contaminants, at the Site after the effective date of this Agreement, not within the
18 definition of Existing Contamination;

19 (e) criminal liability;

20 (f) liability for damages for injury to, destruction of, or loss of natural resources, and for the
21 costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

22 (g) liability for violations of local, State or federal law or regulations.

23 25. With respect to any claim or cause of action asserted by the United States, the Settling
24 Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is
25 attributable solely to Existing Contamination.

26 26. Nothing in this Agreement is intended as a release or covenant not to sue for any claim
27 or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity,

28 Wyckoff/PSR-Bainbridge Island Prospective Purchases Agreement - Page 11

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2 which the United States may have against any person, firm, corporation or other entity not a party to
3 this Agreement.

4 27. Nothing in this Agreement is intended to limit the right of EPA to undertake future
5 response actions at the Site or to seek to compel parties other than the Settling Respondent to
6 perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict
7 or limit the nature or scope of response actions which may be taken or be required by EPA in
8 exercising its authority under federal law. Settling Respondent acknowledges it is purchasing
9 options to purchase Property or may receive Property where response actions may be required.

10 X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

11 28. In consideration of the United States' Covenant Not To Sue in Section VIII of this
12 Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or
13 causes of action against the United States, its authorized officers, employees, or representatives with
14 respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for
15 reimbursement from the Hazardous Substance Superfund established pursuant to the Internal
16 Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other
17 provision of law, any claim against the United States, including any department, agency or
18 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any
19 claims arising out of response activities at the Site, including claims based on EPA's oversight of
20 such activities or approval of plans for such activities.

21 29. The Settling Respondent reserves, and this Agreement is without prejudice to, actions
22 against the United States based on negligent actions taken directly by the United States, not
23 including oversight or approval of either Settling Respondent's plans or activities, that are brought
24 pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign
25 immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to
26 constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §
27 9611, or 40 C.F.R. § 300.700(d).

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2 XI. PARTIES BOUND/TRANSFER OF COVENANT

3 30. This Agreement shall apply to and be binding upon the United States, and shall apply to
4 and be binding upon the Settling Respondent, its officers, directors, officials, agents and employees.
5 The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII
6 shall apply to Settling Respondent's officers, directors, officials, agents or employees to the extent
7 that the alleged liability of such person is based on his/her status and in his/her capacity as an officer,
8 director, or employee of Settling Respondent, and not to the extent that the alleged liability arose
9 independently of the alleged liability of Settling Respondent. Each signatory of a Party to this
10 Agreement represents that he or she is fully authorized to enter into the terms and conditions of this
11 Agreement and to legally bind such Party.

12 31. EPA hereby consents to the assignment or transfer of the rights and obligations of the
13 Settling Respondent under this Agreement to the Bainbridge Island Park and Recreation District
14 (BIPRD), a duly constituted municipality under the laws of the state of Washington, or to the
15 National Park Service of the United States (NPS), or upon EPA approval in writing of such an entity,
16 potentially to a third as yet unidentified substantially similar public entity, in connection with and for
17 the purpose of developing or operating the Property as a park, and no further consent of EPA is
18 required for purposes of this Paragraph. Except for a transfer to one of the entities described in this
19 Paragraph, no rights, benefits and obligations conferred upon Settling Respondent under this
20 Agreement shall pass to any subsequent purchaser or other grantee of the Property or any portion
21 thereof. Such subsequent purchaser or grantee may seek an Agreement and Covenant Not to Sue
22 from the United States, or may elect to avail itself of the provisions of the Small Business Liability
23 Relief and Brownfields Revitalization Act of 2001.

24 32. In the event of a transfer of any portion of the Property acquired by Settling Respondent
25 pursuant to the OA (or from TPL pursuant to the OA) to the one of the entities described in
26 Paragraph 31 above, such entity shall continue to be bound by all the terms and conditions, and
27 subject to all the benefits, of this Agreement except as EPA and such entity may agree otherwise and

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2 modify this Agreement, in writing, accordingly.

3 33. Prior to or simultaneous with any such transfer, the BIPRD, NPS or EPA-approved third
4 entity described in Paragraph 31 above, must consent in writing to be bound by the terms of this
5 Agreement including but not limited to the certification requirement in Section VII of this
6 Agreement in order for the Covenant Not to Sue in Section VIII to be available to such entity. The
7 Covenant Not To Sue in Section VIII shall not be effective with respect to such entity if such entity
8 fails to provide such written consent to EPA.

9 XII. DISCLAIMER

10 34. This Agreement in no way constitutes a finding by EPA as to the risks to human health
11 and the environment which may be posed by contamination at any portion of the Property or the Site,
12 nor constitutes any representation by EPA that any portion of the Property or the Site is fit for any
13 particular purpose.

14 XIII. DOCUMENT RETENTION

15 35. Settling Respondent agrees to retain and, subject to any and all rights and protections that
16 may be asserted by or afforded to Settling Respondent based on attorney-client, work product,
17 business propriety, trademark, and/or confidentiality protections and/or privileges, to make available
18 to EPA all business and operating records, contracts, Site studies and investigations, and other
19 documents relating to releases or threatened releases of hazardous substances at any portion of the
20 Property acquired pursuant to the OA for at least ten years following the effective date of this
21 Agreement unless otherwise agreed to in writing by EPA. At the end of ten years, the Settling
22 Respondent shall notify EPA of the location of such documents and shall provide EPA with an
23 opportunity to copy any documents at the expense of EPA.

24 XIV. PAYMENT OF COSTS

25 36. If Settling Respondent fails to comply with the terms of this Agreement, including, but
26 not limited to, the provisions of Section IV (Undertakings) of this Agreement, it shall be liable for all
27 litigation and other enforcement costs incurred by the United States to enforce this Agreement or

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2 otherwise obtain compliance.

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XV. NOTICES AND SUBMISSIONS

37. All notices and submissions required under this Agreement shall be sent to the following:

MaryJane Nearman
Remedial Project Manager
United States Environmental Protection Agency
Region X, M/S ECL-113
1200 Sixth Avenue
Seattle, Washington 98101

XVI. EFFECTIVE DATE

38. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that the United States has fully executed this Agreement. The effective date of the rights, benefits and obligations of this Agreement for Settling Respondent shall be the date of the legal transfer of title to any portion(s) of the Property, in accordance with the OA and this Agreement, to Settling Respondent, and such benefits shall extend only to such legally transferred portion(s) upon transfer.

XVII. TERMINATION

39. If Settling Respondent believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, Settling Respondent may request in writing that EPA agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until Settling Respondent receives written agreement from EPA to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

40. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this

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2 Agreement. The matters addressed in this Agreement are all response actions taken or to be taken
3 and response costs incurred or to be incurred by the United States, the State of Washington, or any
4 other person for the Site with respect to the Existing Contamination.

5 41. Settling Respondent agrees that with respect to any suit or claim for contribution brought
6 by it for matters related to this Agreement it will notify the United States in writing no later than 60
7 days prior to the initiation of such suit or claim.

8 42. Settling Respondent also agrees that with respect to any suit or claim for contribution
9 brought against it for matters related to this Agreement it will notify in writing the
10 United States within 10 days of service of the complaint on it.

11 XIX. EXHIBITS

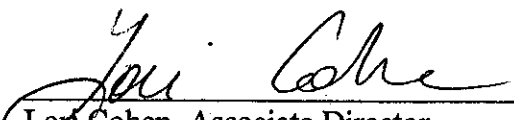
12 43. Exhibit 1 shall mean the Option Agreement dated April 11, 2003.
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Ecology identified that there is no page 17

1 44. Exhibit 2 shall mean the document entitled, EPA Access Rights, Covenants and Use
2 Restrictions, a/k/a Institutional Controls.

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4 IT IS SO AGREED:

5 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
6 BY:

7
8 
9 Lori Cohen, Associate Director
Environmental Cleanup Office, Region X

11/1/04
Date

10


11

12

13 IT IS SO AGREED:

14 UNITED STATES DEPARTMENT OF JUSTICE
15 BY:

16

17 
Thomas L. Sansonetti

12.8.04
Date

18 Thomas L. Sansonetti
19 Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

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IT IS SO AGREED:
CITY OF BAINBRIDGE ISLAND
BY:

Darlene Kordonowy

Darlene Kordonowy
Mayor
City of Bainbridge Island

October 14, 2004

Date

DUPLICATE ORIGINAL

OPTION AGREEMENT

This is an Agreement dated as of April 11, 2003, between Pacific Sound Resources ("Seller"), and The Trust for Public Land, a California nonprofit public benefit corporation ("Buyer").

RECEIVED

RECITALS

JUN 8 2003

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

OFFICE OF REGIONAL COUNSEL
EPA REGION X

SELLER:

Pacific Sound Resources

c/o Daniel Silver
421 S. Capitol Way, Suite 303
Olympia, Washington 98501
Tel: (360) 754-9343

BUYER:

The Trust for Public Land
1011 Western Avenue, Suite 605
Seattle, WA 98104
Attn: Kent Whitehead
Thomas E. Tyner
Tel: (206) 587-2447
FAX: (206) 382-3414

B. Seller is the owner of certain real property in Kitsap County, Washington, described on Exhibit A attached to this Agreement and hereby incorporated by this reference.

Said real property, which comprises forty nine and a half (49.5) acres, more or less, together with any and all improvements, fixtures, timber, water and minerals located thereon and any and all rights appurtenant thereto including but not limited to timber rights, water rights, grazing rights, access rights and mineral rights, other than those improvements and fixtures which have been installed and operated by the United States Environmental Protection Agency ("EPA") as part of the environmental remediation of said real property, and subject to the reservation of rights and use restrictions which may be placed on the real property as part of the continuing environmental remediation under the direction of EPA, all as discussed in more detail below. Said real property together with the appurtenant rights enumerated in the preceding sentence shall be referred to in this Agreement as the "Subject Property." For the purposes of this Agreement, the Subject Property shall consist of those four parcels identified on the map attached to this Agreement as Exhibit B and hereby incorporated by this reference, which four parcels may be referred to in this Agreement as "Block A", "Block B", "Block C1" and "Block C2", respectively.

C. It is the Buyer's intention that the Subject Property be preserved and used eventually for public, open space and recreational purposes. However, this intention shall not be

construed as a covenant or condition to this Agreement. Buyer makes no representation that any efforts it may undertake to secure the eventual government acquisition of the Subject Property will be successful.

D. Seller acknowledges that Buyer is entering into this Agreement in its own right and that Buyer is not an agent of any governmental agency or entity.

THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. **Option.** In consideration of the payment by Buyer to Seller of the option consideration described below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller grants to Buyer, subject to all the terms and conditions hereof, an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option").

2. **Term.**

(a) **The Initial Option Term.** The Option shall be effective as of the date the Agreement is last signed (the "Effective Date") and shall expire on June 30, 2004 (the "Initial Option Term") unless otherwise previously terminated as provided below.

(b) **The First Extended Option Term.** Provided Buyer has complied with the terms of this Agreement, including, but not limited to timely making all of the Option consideration payments described below and exercising the Option and closing on the purchase as to at least a portion of the Subject Property as described below, then, upon the expiration of the Initial Option Term, Buyer may extend the term of the Option as to the balance of the Subject Property for an additional period through June 30, 2005 (the "First Extended Option Term") by so notifying Seller in writing on or prior to the expiration of the Initial Option Term.

(c) **The Second Extended Option Term.** Provided Buyer has complied with the terms of this Agreement, including, but not limited to timely making the Option consideration payments described below and exercising the Option and closing on the purchase as to at least the minimum portions of the Subject Property as described below, then, upon the expiration of the First Extended Option Term, Buyer may again extend the term of the Option as to any remaining portion of the Subject Property for an additional period through June 30, 2006 (the "Second Extended Option Term") by so notifying Seller in writing on or prior to the expiration of the First Extended Option Term.

3. **Purchase Terms.**

(a) **Price.** In the event that Buyer exercises the Option, Seller shall sell to Buyer and Buyer shall buy from Seller the Subject Property for a purchase price equal to Eight Million Dollars (\$8,000,000.00) (the "Purchase Price"), allocated as follows:

	Location	Approx. Area	Price
Block A	West End	18 acres	\$4,600,000
Block B	East End	24.5 acres	\$2,500,000
Block C1	Southwest End	2.5 acres	\$300,000
Block C2	Southeast End	4.5 acres	\$600,000
Total		49.5 acres	\$8,000,000

(b) **Method of Payment.** The Purchase Price shall be payable in cash on the close of escrow.

(c) **Purchase Price Adjustment.** If Buyer elects to purchase the Subject Property in more than one phase, then the allocated Purchase Price for each of the Blocks as set forth above will be adjusted each year beginning in 2005. The adjustment will consist of an annual increase of three percent (3%) in the Purchase Price of any portion of the Subject Property not purchased prior to January 1, 2005 calculated on a non-compounded basis from January 1, 2003 to the date of closing. If Buyer purchases some or all of the Subject Property after January 1, 2005, the adjusted purchase price for that portion of the Subject Property purchased will be prorated as of the date that the purchase actually closes. By way of example, if the Purchase Price of the portions of the Subject Property not purchased by December 31, 2004 is One Million Dollars (\$1,000,000.00), then the adjusted Purchase Price for that property beginning January 1, 2005 would be One Million Ninety Thousand Dollars (\$1,090,000.00) (three percent times the value of all such unpurchased property calculated from January 1, 2003 to December 31, 2005) if Buyer closes on the purchase of the remaining property on December 31, 2005. However, if Buyer closes on the purchase of all that remaining property on July 1, 2005, then the final adjusted Purchase Price would be One Million Seventy Five Thousand Dollars (\$1,075,000.00) (the full \$30,000.00 in increased value added for both the years 2003 and 2004 but the 2005 increase being prorated over number of actual days of the year that have passed prior to closing).

(d) **Purchase in Phases.** Buyer may purchase the Subject Property in one or more phases, provided, however, that if Buyer elects to purchase the Subject Property in phases, the phases shall consist of one of the following combinations of Blocks at the specified purchase prices:

Blocks Purchased	Price
Block A	\$4,600,000
Block B	\$2,500,000
Blocks A & B	\$7,100,000
Blocks A & C1	\$4,900,000

Blocks A, C1 and C2	\$5,500,000
Blocks A, B, and C1	\$7,400,000
Blocks A, B, C1 and C2	\$8,000,000

On or before the expiration of the Initial Option Term, Buyer may exercise the Option as to all of the Subject Property or as to one or more Blocks of the Subject Property as set forth above, provided, however, that Buyer must exercise the Option as to at least Block A of the Subject Property. If Buyer fails to exercise the Option as to at least Block A of the Subject Property on or before the end of the Initial Option Term, or if Buyer following exercise, fails without legal excuse to close the purchase of Block A, then this Agreement shall terminate and Buyer shall have no further rights to any of the Subject Property.

In addition, if prior to the expiration of the Initial Option Term Buyer elects to exercise the Option as to both Block A and Block B, then, on or before the expiration of the First Extended Option Term, Buyer may only exercise its Option as to both remaining Blocks C1 and C2 (rather than exercising the Option as to Block C1 during the First Extended Option Term and then exercising the Option as to Block C2 during the Second Extended Option Term).

Buyer and Seller shall cooperate in order to complete any necessary lot line adjustment, subdivision or tax parcel segregation (a "Parcel Segregation") in order to segregate the relevant Blocks of the Subject Property so that any portion of the Subject Property conveyed by Seller or any portion of the Subject Property retained by Seller are lawful, segregated parcels. In the event the parties are diligently pursuing a Parcel Segregation but said Parcel Segregation is not completed by the date otherwise established for closing, the closing date shall be extended for such period as necessary, not to exceed 180 days, to complete the Parcel Segregation.

If Buyer purchases the Subject Property in phases as described above, then all references in this Agreement to the terms "Subject Property" and "Purchase Price" shall be deemed to refer to both the entire Subject Property and to that particular phase being purchased by Buyer as the context requires. The terms and condition of this Agreement shall apply to each phase of the purchase.

(d) **Payment of Option Consideration.** All Option consideration paid by Buyer to Seller under this Agreement shall be credited toward the Purchase Price if Buyer exercises the Option, but shall otherwise be nonrefundable except as specifically set forth below. If Buyer has paid Option consideration to Buyer and the Option Agreement terminates for any reason (other than Seller's failure or refusal without valid legal excuse to complete the transactions contemplated by this Agreement), then Seller shall retain all such Option consideration paid by Buyer. Buyer shall pay Seller consideration for the Option as follows:

(i) **The Initial Option Term.** Buyer shall pay Seller the sum of Four Hundred Thousand Dollars (\$400,000.00), payable as follows:

(aa) Sixty Five Thousand Dollars (\$65,000.00) on or before July 1, 2003;

(bb) One Hundred Thirty Five Thousand Dollars (\$135,000.00) on or before December 31, 2003; and

(cc) Two Hundred Thousand Dollars (\$200,000.00) on or before July 1, 2004.

(ii) **The First and Second Extended Option Terms.** Buyer shall pay Seller Option consideration for both the First and the Second Extended Option Terms in an amount equal to two and a half percent (2.5%) of the aggregate Purchase Price for those remaining Blocks of the Subject Property which Buyer has not yet purchased. The Option consideration for the First and Second Extended Option Terms shall be payable in four equal quarterly installments due January 2, April 1, July 1 and October 1 of 2005 and 2006. By way of example, if Buyer had exercised the Option during the Initial Option Term as to all of the Subject Property except a portion having a remaining Purchase Price of One Million Dollars (\$1,000,000.00), then the option consideration payable for the First Extended Option Term would be Twenty Five Thousand Dollars (\$25,000.00) (2.5% times the remaining Purchase Price), and Buyer would pay Seller such additional Option consideration in four equal quarterly installments of Six Thousand Two Hundred Fifty Dollars (\$6,250.00).

e) **Refund of Option Consideration.** All Option consideration shall be nonrefundable provided Seller complies with its obligations under this Agreement, except that Seller shall promptly refund to Buyer all Option consideration paid by Buyer to Seller under this Agreement if (a) Seller is unable to deliver title to the Subject Property in conformance with the requirements of Section 6 below to Buyer at closing; or (b) Buyer (or Buyer's successor in interest) does not obtain from EPA a prospective purchaser agreement or its equivalent in a form acceptable to Buyer (or Buyer's successor in interest) as described in Section 29 below.

4. **Exercise.** In the event Buyer elects to exercise the Option, it shall do so by notifying Seller in writing within the term specified in Section 2. Such notice shall indicate that portion of the Subject Property to which Buyer is exercising the Option, and shall be deemed timely if it is transmitted by confirmed facsimile, deposited in the mail, first class postage prepaid, or delivered personally by courier or Express Mail within the term specified in Section 2. Buyer shall make a good faith effort to exercise its Option sooner rather than later during the term of the Option, and will let Seller know immediately if in Buyer's best professional judgment it is not likely that Buyer will be in a position to exercise the Option during the term of the Option.

5. **Escrow and Closing.** Upon Buyer's exercise of the Option, or at any earlier time as may be convenient, the parties shall open an escrow with Pacific Northwest Title Insurance Company of Kitsap County, Silverdale, Washington, to serve as the escrow holder (the "Escrow Holder"), for the purpose of closing the purchase and sale of the Subject Property. If Buyer exercises the Option as to the entire Subject Property, then escrow shall close on a date set forth

in a written notice to Buyer from Seller which shall be not less than thirty (30) days from said notice but in any event no later than December 31, 2004. If Buyer elects to purchase the Subject Property in phases as described above, the escrow for each of the phases shall close on a date set forth in a written notice to Buyer from Seller which shall be not less than thirty (30) days from said notice but in any event no later than the December 31 of the year in which the term of the option for that year expires (i.e., December 31, 2004, December 31, 2005 and December 31, 2006, respectively). If Buyer has exercised the Option as to all or any portion of the Subject Property, but fails without valid legal excuse to close on the purchase of the relevant portion of the Subject Property within the timeframe set forth above, then this Agreement shall immediately terminate, and Buyer shall have no further rights with respect to the Subject Property.

6. **Title.** Within thirty (30) days after mutual execution and delivery of this Agreement, Seller shall provide Buyer with a preliminary commitment to insure an ALTA standard owner's policy of title insurance relating to the Subject Property (the "Commitment"), together with complete and legible copies of all exceptions and encumbrances noted thereon. The Commitment shall be issued by Pacific Northwest Title Insurance Company of Kitsap County, Silverdale, Washington (the "Title Company"). Buyer shall have thirty (30) days after receipt of the Commitment (the "Title Review Period") to advise Seller in writing of any encumbrance, restrictions, easement or other matters shown on the Commitment (collectively "Exceptions") to which Buyer objects. Except as otherwise provided for below, all Exceptions to which Buyer does not object in writing prior to the expiration of the Title Review Period shall be deemed accepted by Buyer.

If Buyer timely objects to any Exceptions, then Seller shall advise Buyer in writing within thirty (30) days after receipt of Buyer's written objections: (a) which Exceptions Seller will remove at Closing, (b) which exceptions the Title Company has agreed to remove from the title policy to be issued at Closing, and (c) which Exceptions will not be removed by Seller or the Title Company. If Seller does not otherwise give an adequate, complete, timely and written notice to Buyer regarding any Exception to which Buyer has timely objected, then Seller shall be deemed to have given notice to Buyer that such Exception will not be removed by Seller or the Title Company at or prior to Closing.

Within thirty (30) days after Seller's receipt of Buyer's written objections, if Seller has not agreed to remove all Exceptions to which Buyer objects, Buyer shall notify Seller in writing of Buyer's election to either (a) terminate this Agreement, or (b) waive its objections to the Exceptions that Seller will not remove or cause the Title Company to insure around, in which event such Exceptions shall be deemed to be accepted by Buyer. If Buyer does not terminate this Agreement in writing within the thirty (30) day period, then Buyer shall be deemed to have waived its objections to the Exceptions that Seller will not remove or cause the Title Company to insure around.

Buyer acknowledges that the EPA is engaged in an active remediation effort on portions of the Subject Property, and that following closing the EPA will need to continue to have access to portions of the Subject Property in order to carry out its remediation activities. In addition, Buyer acknowledges that until such remediation efforts are completed, portions of the Subject Property will be subject to use restrictions, and that portions of the Subject Property may be

subject to permanent covenants and use restrictions. Buyer, EPA and Seller will cooperate to attempt to develop mutually acceptable instruments (the "EPA Access Rights, Covenants and Use Restrictions") within the time period specified in Section 29 below to reflect the need for access and use restrictions on the Subject Property, and such encumbrances on the Subject Property shall be deemed to be Permitted Exceptions.

All exceptions approved or deemed approved by Buyer under this Section, together with all matters that would have been disclosed by an inspection or ALTA survey of the Subject Property, and all other matters approved by Buyer under this Agreement shall be "Permitted Exceptions."

At Closing, Seller shall convey the Subject Property to Buyer or to Buyer's designee by means of a Bargain and Sale deed subject only to the Permitted Exceptions.

7. **Title Insurance.** Seller shall provide Buyer with an ALTA standard coverage owner's policy of title insurance in the amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the Permitted Exceptions. Buyer may elect to obtain an extended coverage policy or any endorsements, provided Buyer shall be responsible for any and all survey costs and any additional premiums required for such extended coverage or endorsements.

8. **Seller's Preclosing Covenants.** Seller shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, make, extend or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Subject Property which will not be removed, released or terminated at closing except to resolve outstanding issues with the City of Bainbridge Island regarding the water tower located on Block C2 and a possible well protection easement on Block A for the City's Taylor Avenue well. Buyer and Seller acknowledge that EPA is involved in active remediation of portions of the Subject Property, and that nothing in this Paragraph shall be deemed to prohibit, restrict or limit in any way Seller's or EPA's on-going activities in this regard.

9. **Seller's Representations.** Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement, and will have full power and authority to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement, subject to the approval of the EPA as described herein.

(b) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof, to liability except with regard to the environmental contamination at the site which shall be addressed as provided in Section 29 below.

(c) Within Seller's knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Subject Property or any portion thereof other than outstanding issues with the City of Bainbridge Island regarding the water tower located on Block C2 and a possible well protection easement on Block A for the City's Taylor Avenue well and the rights of access, control and use of the EPA to conduct the on-going environmental remediation.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof other than with respect to the environmental contamination under remediation by EPA.

(d) Within Seller's knowledge, there is no lease, license, permit, option, right of first refusal or other agreement, except as may be disclosed in the Commitment, which affects the Subject Property or any portion thereof and which will not be removed at closing other than the rights of access, control and use of the EPA to conduct the on-going environmental remediation.

(e) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations, unless corrected, supplemented or repudiated by Seller as provided for below prior to the close of escrow, shall be deemed to have been made as of the close of escrow and shall survive the close of escrow for a period of one (1) year following the close of escrow. Any claim which Buyer may have at any time for a breach of any such representation or warranty, whether known or unknown, which is not asserted by written notice to Seller within such one (1) year period shall not be valid or effective, and the Seller shall have no liability with respect thereto.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties (an "Exception Matter"), Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties ceases to be true before the close of escrow, Buyer may elect to terminate this Agreement, in which case Buyer shall have no obligation to purchase the Subject Property. Buyer's failure to give Seller notice of its election to terminate this Agreement within ten (10) days of Seller's notice of an Exception Matter shall be deemed a waiver by Buyer of such Exception Matter. Except as provided in Section 6 with respect to delivery of title at closing, Seller shall have no obligation to cure or remedy any Exception Matter and Seller shall have no liability whatsoever to Buyer under this Agreement with respect to any such Exception Matter.

For the purposes of this Section 9, the phrase "to the best of Seller's knowledge" shall mean to the best of the actual present knowledge of Daniel Silver (without any independent investigation, research or inquiry, and with absolutely no personal liability).

10. **Buyer's Representations.** Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended from time to time, the "Code") and is included in the "Cumulative List of Organizations" described in Section 170(c) of the Internal Revenue Code published by the Internal Revenue Service. Buyer is not a private foundation within the meaning of Section 509(a) of the Code. Buyer is qualified to do business in the State of Washington, and execution of this Agreement by Buyer and its delivery to Seller have been duly authorized and no further corporate action is necessary on the part of Buyer to make this Agreement fully and completely binding upon Buyer in accordance with its terms. Buyer's execution, delivery and consummation of this Agreement shall not result in any default or violation of any agreement or law by which Buyer is bound.

11. **Remedies Upon Default.** In the event Buyer defaults in the performance of its obligations under this Agreement, Seller shall have all remedies provided by law or equity. In the event the transaction does not close because Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall have as its sole and exclusive remedy the right to specifically enforce this Agreement or to receive, immediately upon demand, a refund of all Option consideration and reimbursement of Buyer's reasonable costs of entering into this Agreement, investigating the Subject Property, and otherwise preparing to purchase the Subject Property, not to exceed \$100,000. Buyer hereby releases any and all right to recover actual damages incurred as a result of Seller's default.

12. **Right to Inspect Subject Property.** During the term of this Agreement Buyer through its employees and agents may upon obtaining EPA's prior consent enter upon the Subject Property for the purpose of making inspections and investigations as Buyer deems appropriate and EPA approves, including, without limitation, performing environmental site assessments of the soils, waters and improvements on the Subject Property. All tests or inspections shall be at Buyer's expense, and Buyer shall indemnify and hold Seller and EPA harmless from and against any and all costs, claims or damages incurred or suffered by Buyer, its agents or employees, in performing such tests or inspections and Buyer shall indemnify, defend and hold Seller and EPA harmless from any claims, demands and causes of action for personal injury, property damage, remedial or response action or costs related to such action, mechanics' liens, violations of laws or breach of contract or lease that arise out of or are related to Buyer's activities on the Subject Property prior to Closing, including without limitation, Seller's and EPA's costs, expenses and attorney's fees, except to the extent such claims, demands or causes of action arise out of Seller's or EPA's negligence. Without expanding Buyer's obligations set forth above, it is understood that Buyer shall not be liable for or responsible for the discovery or reporting as required by law of any hazardous or environmental condition on the Subject Property. Notwithstanding anything to the contrary herein, this indemnity shall survive the termination of this Agreement. Buyer's entry shall be at reasonable times approved by EPA and in compliance with all laws, leases, and other agreements of Seller and EPA. Unless Seller has given its prior written consent, (i) no improvements shall be constructed upon the Subject Property, no materials, vehicles or equipment shall be placed or stored on the Subject Property except for the purposes of testing, and no construction activity shall be conducted on the Subject

Property, and (ii) no grading, filling, excavation or other disturbance of the soils shall be permitted. Buyer's activities shall not violate any law, regulation, ordinance or permit. Buyer will notify Seller and EPA in advance if and when it plans to conduct any inspection or investigations on the Subject Property. Buyer will provide to Seller and EPA a copy of any reports or assessments obtained by Buyer regarding the Subject Property.

13. **Risk of Loss.** All risk of loss shall remain with Seller until closing. In the event the Subject Property is destroyed or damaged after Buyer has exercised the Option and prior to close of escrow, Buyer may rescind this Agreement. Nothing in this paragraph shall be deemed to release Buyer from responsibility or liability for any damage or destruction caused by the acts of Buyer or Buyer's agents.

14. **Prorations and Fees.** Real property taxes on the Subject Property shall be prorated as of the close of escrow based upon the latest available tax bill. The escrow fee shall be divided equally between the parties. Seller shall be responsible for the excise tax due on the sale of the Subject Property to Buyer and the premium for the ALTA standard form owner's title insurance policy. Buyer shall pay the recording fee on the conveyance and any additional premium for an extended form title insurance policy or any endorsements. Other fees and charges shall be allocated in accordance with the customary practice of Kitsap County.

15. **Notices.** All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by confirmed facsimile transmission, personally by hand, courier service or Express Mail, or by certified class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given three (3) days after deposited in the mail, certified postage prepaid, addressed to the party to be notified; or, if delivered by hand, courier service or Express Mail, shall be deemed given when delivered; or, if transmitted by facsimile, shall be deemed given when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

16. **Legal Costs.** If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court including those on appeal.

17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will indemnify and hold the other party harmless from said claim.

18. **Time of the Essence.** Time is of the essence of this Agreement.

19. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their respective heirs, personal representatives, assigns, and other successors in interest.

20. **Memorandum of Option.** Concurrently with the signing of the Agreement the parties shall sign a Memorandum of Option in the form of Exhibit B, which is attached to this Agreement and incorporated herein by this reference. Buyer may cause the Memorandum of Option to be recorded in the real property records of Kitsap County, Washington, only after Seller has given Buyer written notice that the EPA has approved or ratified this Agreement and the transaction contemplated by this Agreement as described at Section 28. If the Buyer does record the memorandum of this Agreement and for any reason a sale shall not close, Buyer agrees to provide any and all documentation and to do whatever is necessary to remove said recording from the record title of the Seller.

21. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

22. **Modification.** No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

23. **Oral Agreements and Representations.** There are no oral or other agreements, including but not limited to any representations or warranties, which modify or affect this Agreement. Seller shall not be bound by, nor liable for, any warranties or other representations made by any other person, partnership, corporation or other entity unless such representations are set forth in a written instrument duly executed by Seller. Buyer acknowledges to Seller that in entering into this Agreement, Buyer is not relying on any warranties except those expressly set forth herein.

24. **Nonmerger.** Except as specifically provided otherwise in Section 9, the terms and provisions of this Agreement shall not merge in, but shall survive, the closing of the transaction contemplated hereunder and the deed to be delivered pursuant hereto.

25. **Assignment of Buyer's Interest.** Buyer shall not assign its interest in this Agreement to any individual, entity, or organization without Seller's prior written consent, which may be withheld in Seller's sole discretion, and any purported assignment made without such consent shall be null and void.

26. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

27. **Counterparts and Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. Signatures required under this Agreement may be transmitted by facsimile and, once received by the party to the Agreement to whom such signatures were transmitted, shall be binding on the party transmitting its signatures as though they were an original signature of such party.

28. **Approval by EPA.** This Agreement shall automatically terminate on the day thirty (30) days from the date it is last signed by all parties unless on or before the expiration of such thirty (30) day period the EPA has approved or ratified this Agreement and the transaction contemplated by this Agreement.

29. **Additional Conditions Precedent.** The obligations of Buyer and Seller to complete the closing of the transaction or transactions contemplated by this Agreement are subject to and conditioned upon receipt by Buyer of a prospective purchaser agreement mutually acceptable to Buyer and EPA or its equivalent, no later than July 1, 2003. In addition, the obligations of Buyer and Seller to complete the closing of the transaction or transactions contemplated by this Agreement are subject to and conditioned upon the satisfaction or written waiver by Buyer and Seller of the following conditions precedent in addition to any other conditions precedent set forth within this Agreement: (a) mutual acceptance no later than July 1, 2003 of the form and substance of the EPA Access Rights, Covenants and Use Restrictions described in Section 6, (b) mutual acceptance of the description of each phase of the Subject Property if Buyer elects to purchase the Subject Property in more than one phase as described in Section 2, (c) satisfactory completion of any Parcel Segregation required in connection with Buyer's exercise of the Option as to any phase of the Subject Property as described in Section 2. If Buyer and Seller shall fail to satisfy each of the foregoing conditions precedent prior to the dates set forth in this paragraph or, if no date is specified, prior to the date of any closing under this Agreement, then this Agreement shall terminate, the escrow shall be cancelled, all Option consideration paid by Buyer to Seller shall be refunded to Buyer, and neither party shall have any further obligation to the other under this Agreement except for indemnity and other obligations intended to survive the expiration or termination of this Agreement.

30. **AS-IS.** Except for the Section 9 representations and warranties, Buyer acknowledges that Seller has made no representations or warranties, and Buyer accepts the Subject Property in its current condition "As Is - Where Is." The use of the term "as is" within this Agreement shall mean "as is" except to the extent provided otherwise in Seller's express representations and warranties within this Agreement. **SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY INCLUDING, WITHOUT LIMITATION: ANY REPRESENTATION OR WARRANTY WITH RESPECT TO (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ACCESS, SOILS, GEOLOGY, ANY GROUND WATER OR ANY ENVIRONMENTAL CONTAMINATION, HAZARDOUS SUBSTANCES, OR MATERIALS; (B) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (C) THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PROPERTY; (E) THE COMPLIANCE OF THE PROPERTY OR THE PROPERTY'S OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, OR ORDINANCES OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR ANY COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE PROPERTY. SELLER SHALL HAVE NO**

LIABILITY OR OBLIGATION FOR, AND BUYER EXPRESSLY AND SPECIFICALLY RELEASES AND DISCHARGES SELLER FROM, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE CURRENT CONDITION OF THE SUBJECT PROPERTY.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

BUYER:

PACIFIC SOUND RESOURCES

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: [Signature]

By: Thomas E Dyer

Title: President

Title: REGIONAL COUNSEL

Date: April 14, 2003

Date: APRIL 11, 2003

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss.

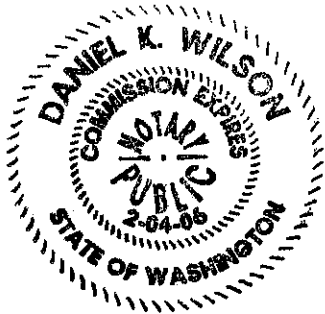
On this 14 day of APRIL, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared DANIEL SILVER to me known to be the President of PACIFIC SOUND RESOURCES, and executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of PACIFIC SOUND RESOURCES, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL here to affixed the day and year first above written.

[Signature]
NOTARY PUBLIC in and for the State of Washington, residing at Dumma
My commission expires 03/19/05
Print Name Julie Bunnig

State of Washington)
) ss.
 County of King)

On this 11th day of April, 2003, before me, the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Tynes, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Regional Counsel, on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.



Daniel K. Wilson
 Print Name: DANIEL K. WILSON
 NOTARY PUBLIC in and for the State of
Washington residing at Seattle
 My appointment expires: 02/04/06

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

LEGAL DESCRIPTION (AS PUBLISHED BY METROSCAN)

MetroScan Full Legal

APN:3525 021 001 20

GOVERNMENT LOT 3 EXCEPT EAGLEDALE CREOSOTE ROAD. TOGETHER WITH 2ND CLASS TIDELANDS ADJOINING TO LINE OF EXTREME LOW TIDE AND EXCEPT COUNTY ROAD NO. 10 & 49. TOGETHER WITH THAT PORTION OF VACATED ROAD TO THE SOUTH PER COMMISSIONERS JOURNAL VOLUME 18, PAGE 129, WHICH UPON VACATION ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

MetroScan Full Legal

APN:3525 021 002 20

L 4 & TL F L 4 EX TO CO RD & EX TO EAGLEDALE CREOSOTE RD

	Location	Approx. Area	Price
Block A	West End	18 acres	\$4,600,000
Block B	East End	24.5 acres	\$2,500,000
Block C1	Southwest End	2.5 acres	\$300,000
Block C2	Southeast End	4.5 acres	\$600,000
Total		49.5 acres	\$8,000,000

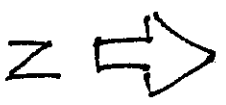
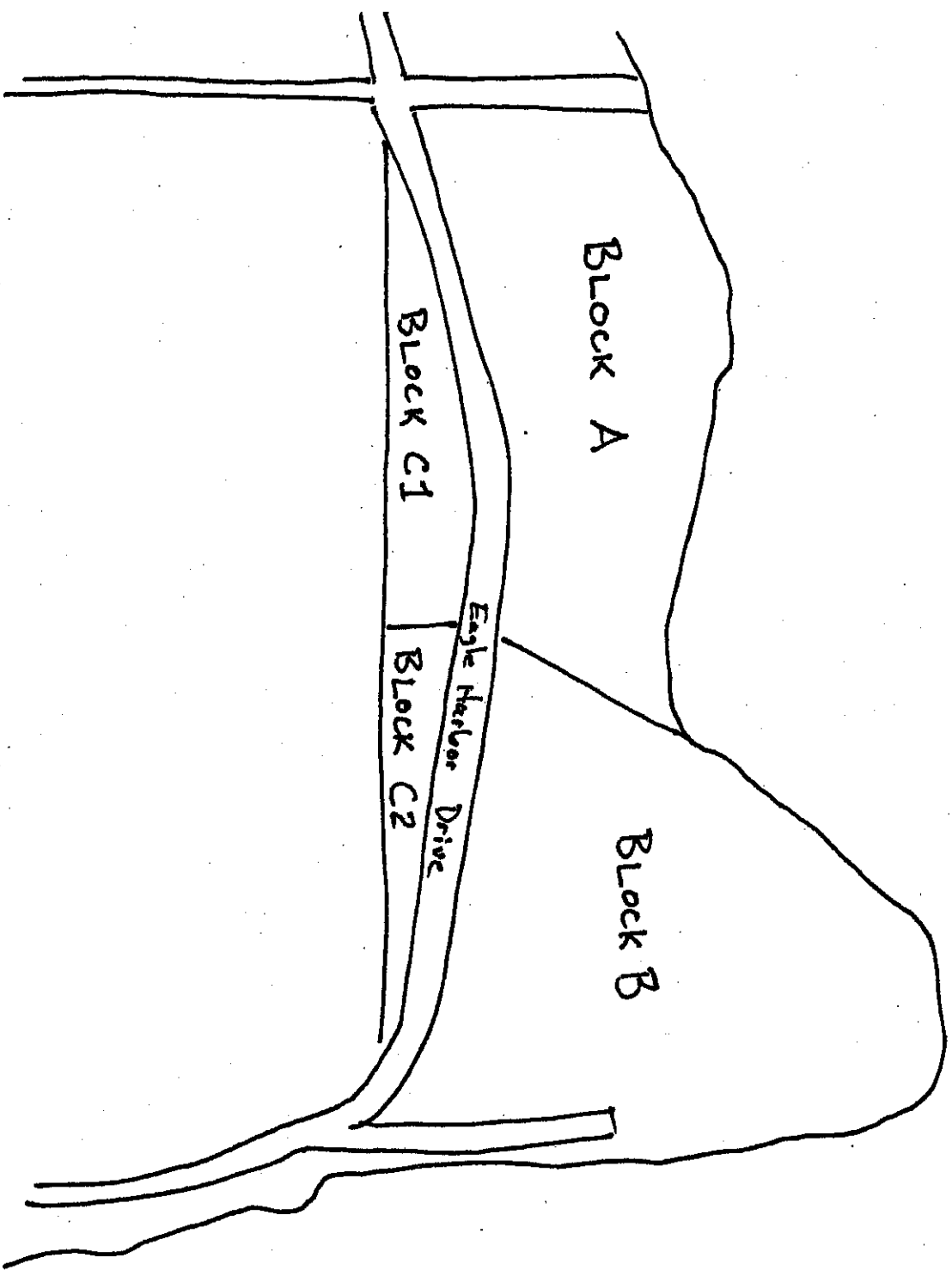


EXHIBIT B

FORM OF MEMORANDUM OF OPTION

When recorded mail to:

THE TRUST FOR PUBLIC LAND
1011 Western Avenue, Suite 605
Seattle, WA 98104
Attn: Thomas E. Tyner
(206) 587-2447

MEMORANDUM OF OPTION

This is a Memorandum of a certain Option Agreement (the "Option Agreement") dated as of April 11, 2003, between Pacific Sound Resources, as seller ("Seller"), and The Trust for Public Land, a California nonprofit public benefit corporation, as buyer ("Buyer"). By said Option Agreement, Seller has granted to Buyer an exclusive option (the "Option") to purchase that certain real property located in Kitsap County, Washington, described on Exhibit A attached hereto (the "Subject Property").

The Option shall be effective as of the date the Option Agreement is last signed (the "Effective Date") and shall expire on June 30, 2004, subject to the rights of the parties to either extend or terminate the option as set forth in the Option Agreement.

This Memorandum is made by Buyer and Seller to impart constructive notice of the existence of the Option. Nothing in this Memorandum is intended to modify, amend or interpret the Option Agreement and in the event of any conflict between the terms of this Memorandum and the terms of the Option Agreement, the Option Agreement shall control.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

PACIFIC SOUND RESOURCES

By: 

Title: President

Date: April 14, 2003

BUYER:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit
corporation

By: 

Title: REGIONAL COUNSEL

Date: APRIL 15, 2003

ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF Thurston)

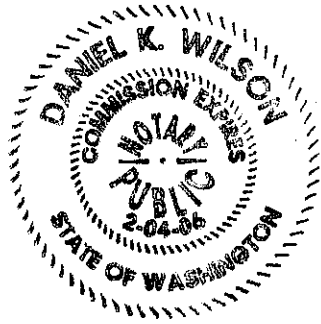
On this 14 day of April, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared DANIEL SILVER, to me known to be the PRESIDENT of PACIFIC SOUND RESOURCES that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of PACIFIC SOUND RESOURCES, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at [Address]
My commission expires 03/19/05
Print Name [Name]

State of Washington)
) ss.
County of King)

On this 15th day of April, 2003, before me, , the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Tyler, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Regional Counsel, on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.



[Signature]
Print Name: DANIEL K. WILSON
NOTARY PUBLIC in and for the State of
Washington residing at Seattle
My appointment expires: 02/04/06

EXHIBIT 2

“EPA Access Rights, Covenants and Use Restrictions, a/k/a ‘Institutional Controls’”

1. The above title without “a/k/a ‘Institutional Controls,’” was taken from Section 6 of the Option Agreement (Exhibit 1 to the Agreement to which this document is Exhibit 2) executed by the buyer and seller in April 2003. Because the EPA model format for Prospective Purchaser Agreements comprehensively covers EPA Access Rights, such rights are not addressed in this document. Similarly, since there are no outstanding Covenants to consider, and Use Restrictions are generally subsumed under the broader category of EPA remedial action known as Institutional Controls, the “a/k/a” was added to the title of this Exhibit by the Parties to the Agreement who agree that this document, with the text of the Agreement, meets the intent of the parties to Exhibit 1 in their reference to this document in Section 6 of Exhibit 1.

2. In accordance with Paragraph 19 of the Agreement, EPA identified Institutional Controls in the form of use restrictions and/or limitations in the *East Harbor Operable Unit Wyckoff/Eagle Harbor Superfund Site Record of Decision*, (Section 10.2.3) dated September 1994 (EH ROD), and in the *Wyckoff/Eagle Harbor Superfund Site Soil and Groundwater Operable Units Bainbridge Island, Washington Record of Decision* (Declaration, Section 9.1, and Section 12.1), dated February 2000 (S&G ROD). In addition:

a. The no-anchor zone established in accordance with the EH ROD is physically larger than the existing area of sediment capping. EPA will upon request supply the United States Coast Guard (USCG) with precise information regarding the extent of existing capping to assist the USCG in considering a request by Settling Respondent for a waiver in a portion of the no anchor zone consistent with the no anchor zone listing in the Federal Register. EPA has no current plans for or projection of future sediment capping within the no anchor zone, however future capping and other remedial action, within the no anchor zone and beyond it, related to environmental conditions at the Site cannot be ruled out at this time.)

b. In accordance with the S&G ROD, EPA excavated contaminated soil from the Former Log Storage/Peeler Area to meet the substantive requirements of MTCA Method B. This remedial action has been completed and confirmation soil sampling, as documented in the Soil Removal Report Former Log Storage/Peeler Area dated February 28, 2003, indicates that the soils in this area meet this standard; therefore, no additional land use restrictions are anticipated at this time for the protection of human health or the environment.

c. Pursuant to the S&G ROD, EPA created and/or restored approximately 1500 linear feet of shoreline and approximately 1.5 acres of intertidal habitat, including a coastal vegetated buffer. The vegetated buffer was constructed to: (1) provide separation between functioning intertidal habitat and upland human activity; (2) moderate the impacts of stormwater runoff by stabilizing soils, providing erosion control and filtering suspended solids; and (3) provide essential habitat for fish and upland shoreline wildlife for use in feeding, breeding, rearing, and cover from predators. Any activities by the Settling Respondent shall be consistent with maintenance of the created and/or restored shoreline and vegetated buffer.

d. For development setback requirements along the habitat mitigation beach, the Settling Respondent shall use the standards for recreational development in the Conservancy Shoreline Environment as specified in the Bainbridge Island Shoreline Master Program (Bainbridge Island Municipal Code 16.12.150 Table 4-2 or its successor) and the Shoreline Management Act [see RCW 90.58 or its successor and WAC 173-22].

3. Settling Respondent shall not alter, modify, or remove any existing structures or caps implemented or installed as environmental response action, or such structures or caps which may come to exist as a result of future remedial action at the Site, in any manner that may damage or adversely affect the integrity or function of any structure or cap.

4. Consistent with Paragraph 21 of the Agreement, the Settling Respondent may share plans with EPA with regard to its projected Park Use and Development Activities, such as a projected Soil Management/Construction Contingency Plan, and seek such informal advice or assistance as EPA may be able to provide.

5. With the exception of withdrawals from the existing on-site water supply well, Well 01-CT01, and unless otherwise agreed to by EPA, Settling Respondent shall not install wells nor withdraw, nor allow third parties to withdraw, groundwater from the Property.

6. Settling Respondent must obtain written approval from EPA prior to any proposed use of the Property that is inconsistent with this Exhibit or the Agreement. As set forth in the Agreement, subsequent institutional controls may be developed and selected by EPA in future Record(s) of Decision or ROD Amendment(s), and the City agreed in Paragraph 19 of the Agreement to implement such institutional controls in the form of use restrictions and/or limitations which may require recording in a manner substantially similar to that set forth in Paragraph 19. This Exhibit may be modified or amended by the Parties to further clarify Settling Respondent's limitations, obligations or responsibilities.

Exhibit D

Ecology Letter to City of Bainbridge Island, August 2, 2002



RECEIVED

AUG 07 2002

EXECUTIVE

CORR LOG

22846

Mayor Kordonowy
L. Nordby
S. Warren
L. Hudson
Vault

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

August 2, 2002

The Honorable Darlene Kordonowy, Mayor
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110-1812.

RE: Proposed Wyckoff-Nikkei WWII Memorial Site

Dear Mayor Kordonowy:

I was recently briefed by Libby Hudson of your staff on the City of Bainbridge Island's proposal to turn the Wyckoff Superfund site into a public park. This briefing included a request that the Department of Ecology outline the state's obligations under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), commonly referred to as Superfund.

Under CERCLA and its implementing regulation, the National Oil and Hazardous Substances Pollution Contingency Plan, the State of Washington is required to pay for 10% of the remedial action costs and 100% of the operation and maintenance costs at sites in which parties responsible for the pollution are unable to pay for the cleanup. Such is the case at the Wyckoff site. The State of Washington fully intends to fulfill its statutory obligation at the Wyckoff site.

I support and wish you success in your efforts on the park. Should you or your staff need additional information, please feel free to contact me at (360) 407-7226.

Sincerely,

Tim Nord
Headquarters Section Manager
Toxics Cleanup Program

TN:cp

cc: ← Steve Thiele, AAG ←
Hanh Gold, EPA

Exhibit E

Park Vision and Design Framework

Exhibit E – Pritchard Park/ Japanese American Memorial Bainbridge Island, Washington

Park Vision and Design Framework

Park Vision

This is a 50-acre waterfront park where kayakers, bicyclists, and families will stand in the midst of a natural setting, surrounded on three sides by nearly a mile of beach. The waters at their feet, once fouled by oil and creosote, will provide a home for native shorebirds and Puget Sound fish, including juvenile salmon. The harbor before them will bustle with daily boating activity, and the forest behind them will provide wildlife habitat and may one day be a fine representation of the magnificent forests that once lined the shores of Puget Sound.

Throughout the park's meandering trails, visitors will be able to partake in a varied menu of recreational opportunities and also learn of the natural and human history that infuses the site. In gathering spaces and interpretive areas, visitors will learn of Native American activities that once occurred here, and about the economic and environmental impacts of the industry that once dominated the property. Visitors will gain an appreciation of our nation's great commitment to cleaning and restoring the earth and learning from our past mistakes.

On the westernmost portion of the property, another reminder of our past and our commitment to the future will stand amid the forest. At the former Eagledale ferry dock, along Taylor Avenue, hundreds of Japanese Americans departed Bainbridge Island for internment camps on March 30, 1942. They were the first of over 100,000 people of Japanese descent to be evacuated from their homes under presidential order during World War II, and their experience and that of the community will be acknowledged and honored through a nationally significant memorial that gently urges us to "let it not happen again."

There are many beautiful parks that provide opportunities for recreation, or preservation of natural habitat, or memorials that help us remember and learn from the past. Not many parks are all these things at once, which is the vision of Pritchard Park and the Japanese American Memorial, *Nidoto Nai Yoni* (Let it not Happen Again).

As envisioned, the park experience will focus on the site: the views, the wildlife, the forest and waterfront environment, the history, and the recreational opportunities. The park will offer active and passive waterfront recreation and will showcase design strategies that promote a sustainable environment. The park will re-establish ecological patterns within the landscape, setting the stage for public awareness of natural systems, while also incorporating information and education of the site history and environmental remediation.

Design Concept Framework

Overall Framework

Realizing the Park vision will require certain components based on the Park vision; local and regional needs; funding opportunities; and cultural, environmental and economic opportunities.

Two major thematic areas make up the Park concept:

- The eastern end of the site will focus on the remediation and ecology of the land, with the theme, “Restoration of Nature”
- The western end will focus on the “recognition of human dignity” with a memorial to the Japanese Americans of Bainbridge Island who were interned by our government during World War II, with the theme “Let it not happen again”, or “*Nidoto Nai Yoni*”

The park design will highlight the federally funded Superfund restoration results, and draw on the recreational opportunities and rich ecology and history of the site to create a series of connected landscapes that tell the story of the land, culture and history. The park design will maximize the site’s commanding views of the surrounding land and waterscape, while integrating infrastructure features, and cultural and ecological interpretation as the site is further remediated. Site planning and construction methods will be utilized that respond to the opportunities and amenities of the site and will be consistent with any special constraints related to the remediation of this former industrial property as outlined in the elements of the Pritchard Park Remediation and Redevelopment Plan (PPRR Plan, as specified in the Ecology Agreed Order), including: a. Cover and Capping Sub Plan; b. Excavation Management Sub Plan; c. Worker Health and Safety Sub Plan; d. Park Management, Park Upkeep and Compliance Monitoring Sub Plan; e. Best Management Practices Sub Plan; and f. Institutional Controls Sub Plan.

Following are the primary components of the park design framework:

- A. Site Interpretation
 1. Memorial
 2. Restoration/ remediation and ecological/ cultural
- B. Remediation
- C. Recreation
- D. Connections
- E. Infrastructure
- F. Site Planning and Construction Methods

A. Site Interpretation

The Park and Memorial will be designed with a focus on interpretation of the historical, cultural, ecological, and remediation aspects of the property. The two major themes of the Park will also have two main focuses. The Memorial, located at the west end of the site, will emphasize cultural and historic events that took place there, with a focus on educating and understanding past governmental actions and the cultural implications of these actions. The east end of the Park will focus on the innovative industrial technology of the past, the contamination of the land and water, and the governmental actions taken to restore the contaminated property and bring it back to safe, active use for people and

wildlife. Both thematic areas will provide facilities for cultural and historical interpretation. The Bainbridge Island Historical Society and Suquamish Tribe should be involved in the development of the site's historical and cultural interpretation.

1. Memorial

The Bainbridge Island Nikkei World War II Exclusion Memorial, *Nidoto Nai Yoni*, defines the western portion of the site. The vision of the Memorial is to honor the 227 Bainbridge Island internees through an evocative and contemplative design which informs visitors of historic injustices and the fragility of assumed rights. The Memorial design is being developed by the Bainbridge Island Japanese American Community (BIJAC), while development of the Memorial is being coordinated jointly with BIJAC, the City and the Park District.

The Memorial will be established as the first public re-use of the site through the development of a memorial walk with site interpretation, wetland and wetland interpretation, contemplative gardens, visitor center, interpretive pier, and support parking. Parking for beach access to Pritchard Park is also being provided. The Phase I design for the Memorial portion of the Park has been processed through the City permitting procedures. Future Memorial design and development will be coordinated and linked with the eastern portions of the Park.

2. Restoration, Ecology and Culture

The Park design will highlight the remediation efforts of the former Wyckoff Company, Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology). Park design and interpretation will tell the story of how this former industrial site became contaminated, how the community worked to address the environmental contamination, and how the property is being restored. The design will also mark the past cultural use of the area, and showcase the cultural aspects in conjunction with the ecological features of the site.

The design will emphasize the ecological aspects of the Park by:

- Establishing educational and interpretive programs to observe, explain and interpret the remediation of the site
- Providing interpretive facilities that can be utilized now and after the final clean up remedy is completed
- Preserving fish and wildlife habitat, native woodlands, and significant ornamental plant specimens, while also allowing for park use
- Protecting the habitat beach and the intertidal/woodland transition zone while providing waterfront access and maintaining habitat protection buffers along the shoreline
- Highlighting and enhancing significant cultural areas and providing for ecological site development, such as a learning center, an arboretum, or native vegetation demonstration garden
- Controlling invasive plants, protecting native species, and providing new planting and landscaping that enhances restored areas, reestablishing a small piece of the native forest that once inhabited these shores

- Capitalizing on opportunities for the development of unique places to experience the site, such as the forest knoll, the topographic high point in this area of the site
- Emphasizing and enhancing the commanding site views that exist on the property
- Portraying the cultural use of the site, including use by indigenous people, industrial technologies of the past, and site connections to regional and national events
- Involving the Historical Society and Suquamish Tribe in highlighting the cultural aspects of the site

B. Remediation

Because some of the Park property (the Point) will continue to undergo remediation, it is necessary that the Park design respond to any constraints necessitated from the remediation. The park will be designed to ensure the construction and use are not in conflict with the EPA Remedy. This will be coordinated with the final remediation plans to ensure the integrity of the EPA Remedy is maintained, and the work will be closely coordinated with the EPA and Ecology through site planning and construction design, consistent with the Pritchard Park Remediation and Redevelopment Plan (PPRR Plan) and the work Schedule referenced in the Ecology Agreed Order. The PPRR Plan ensures protection of human health and the environment during development of the park and ensures that the park design is not in conflict with the EPA Remedy and includes the following elements that need to be addressed in any park development activity of the final phase property purchase:

- Cover and Capping Sub Plan
- Excavation Management Sub Plan
- Worker Health and Safety Sub Plan
- Park Management, Park Upkeep and Compliance Monitoring Sub Plan
- Best Management Practices Sub Plan
- Institutional Controls Sub Plan

Site access for the on-going remediation will be needed. Restricting public access to certain areas of the site is necessary in accordance with the City's agreement with EPA. This agreement, the Prospective Purchaser Agreement, and any institutional controls that EPA requires as part of the final remedy must be considered in the design, including:

- Land use restrictions and other limitations that EPA requires
- Restriction on anchoring in Eagle Harbor, in the vicinity of the protective harbor cap
- Adherence to the protection measures for the habitat beach that is located along much of the shore west of the Point
- A requirement that activities and development must not adversely impact any of the remedy installations
- Sharing the Park development plans with EPA
- A requirement that no new wells will be allowed
- Coordination of design and site use to minimize conflicts with the requirements of on-going remediation operation and maintenance

C. Recreation

The Park is planned for a variety of regional recreational uses. However, the main recreational focus of the Park (and a grant funding requirement), is to serve a regional need for active waterfront recreation. Considering its location at the southern entrance to Eagle Harbor, and the fact that the site has nearly a mile of waterfront, it is important that public access for active water recreation be provided. Enjoying the dramatic views and forested shoreline environment are also fundamental components to the recreational aspects of the Park.

Key components that will enhance the recreational opportunities of the property include:

- Public beach access
- Regional recreational opportunities and park facilities for waterfront recreational programs such as car-top boat launch and related facilities
- Water access and water recreation components primarily for non-motorized boat access
- Opportunity for a future public dock or pier
- Community gathering spaces that includes picnic areas and fire circles
- Children's play areas

D. Connections

Because the Park will showcase the multiple aspects of the property, the design must be integrated and connect the various unique landscapes that embody the site. The park should connect to Winslow and Eagle Harbor, which are the cultural, community and commercial core of Bainbridge Island. The Park must also be connected to the local community and adjacent neighborhoods. Park connections include:

- Connecting the Park to Waterfront Park and the Washington State Ferry Terminal.
- Promoting an inner harbor ferry system as a private venture capitalizing on existing infrastructure
- Including the Park in the Washington Water Trails System within the Puget Sound
- Extending the waterfront trail to the Park (pedestrian access)
- Connecting the Park to the Harbor's past by promoting and celebrating the cultural history associated with this site and other related sites within the harbor.
- Involving the Historical Society and Suquamish Tribe in site interpretation and connections to other cultural sites.
- Providing safe bicycling and walking access to the Park
- Providing for vehicle access and bus access to the Park
- Building upon the implemented habitat beach and work with adjacent private property owners to establish almost a mile of accessible shoreline and intertidal habitat
- Connecting to the adjacent neighborhoods and a community trail system as part of the Non-Motorized Transportation Plan
- Establishing Eagle Harbor Drive as a parkway through the Park

E. Infrastructure

The Park design will require the extension of existing services or the development of new services.

Necessary services will include providing:

- Water, sewage, storm drainage and electricity for site facilities
- On-site septic systems until such time as the area is served with public sewer
- An electrical power metering system for the Park, separate from the existing on-site power provided for remediation activities
- Security lighting (extensive site lighting is not anticipated)

Access, vehicular circulation and pedestrian circulation are important infrastructure components to consider in the design. Vehicular infrastructure design considerations include:

- Providing vehicle access to the Park via two public roads -- Eagle Harbor Drive and Creosote Place. Primary access to the Park will be off of Eagle Harbor Drive, west of Creosote Place, and primary access to the Memorial and beach access (car-top boat launch) is from Eagle Harbor Drive, east of Taylor Avenue.
- Creating a safe park entrance experience that announces the Park and balances the concerns and needs of the adjoining neighborhood
- Providing parking, access and facilities adjacent to the Point
- Creating a safe, functional and unique site circulation scheme utilizing abandoned roadways

Pedestrian circulation will be integrated into all areas of the Park through a series of trails for exploration, interpretation, recreation and viewing opportunities. This could include constructing a footbridge across the ravine.

F. Site Planning and Construction Methods

Structures, roadways, parking areas, and landscaping will be located in conjunction with the final remedy plan to insure that Park development will maintain the protective level provided by the EPA Remedy. Site grading will be consistent with the final remedy of the site, EPA restrictions or institutional controls, and any design requirements of the Ecology Agreed Order.

Grading, excavation, and construction will be conducted in accordance with the Ecology Agreed Order through the approved Cover and Capping Sub Plan, Excavation Management Sub Plan, Worker Health and Safety Sub Plan, Best Management Practices Sub Plan, and the Institutional Controls Sub Plan.

Construction methods will be consistent with the final remedy of the site. Structures will be built using standard wood, timber, or peeled log construction on simple concrete spread footings. The footing depth and design will ultimately depend on the constraints pose by the EPA Remedy and on the stability of the soil fill. Roof and paving coverage areas and other impervious surfaces will be built to maintain the EPA Remedy. Roofs may also be constructed using “green roof” construction which can enhance the stormwater management methods used on the site.

Park Concept Areas

The park development zones outlined below are identified on the attached map. The park is divided into five upland zones and four different beach zones. Each of these defined

areas offer different opportunities and require design consideration based on site constraints. In addition, the property was purchased in three phases as outlined on the attached map. Development of properties in all three phases must comply with the terms and conditions of the EPA Prospective Purchaser Agreement and any EPA Institutional Controls, while development of property acquired in the final phase is also subject to requirements in the Ecology Agreed Order.

Upland Areas:

Japanese American Memorial and West Hillside, Ravine, East Hillside, Flatlands, and the Point

A. Japanese American Memorial and West Hillside- First phase property purchase

Existing Features: This area includes the Taylor Avenue Road End, which is the historic site of the old Eagledale Ferry Dock.

Design Approach and Considerations: The evocative and contemplative Memorial will honor the 227 Bainbridge Island internees and focus on their stories, reflecting on the historic constitutional injustices and reinstatement of rights, with the theme of “let it not happen again” (*Nidoto Nai Yoni*). Site design and interpretation will tell these stories in the context of Island life and the times of war, connecting local, national and world issues to the events at this site, and telling how these events remain relevant in current times.

Anticipated Design Elements:

- Memorial walk, sculpture and two entry/exit gates - interpretation of the events that lead to the forced evacuation of the Bainbridge Island Japanese Americans, the life left behind and personal experiences
- Pier and additional interpretation to represent leaving the Island
- Wetland boardwalk with wetland interpretation
- Contemplative Japanese-style garden
- Interpretive center, meeting space, restrooms, and information kiosk

B. Ravine - Forested Uplands – First phase property purchase

Existing Features: This area incorporates a steep ravine with an intermittent stream and the forested hillside fronting Eagle Harbor Drive. This area offers great views through an existing mature greenbelt.

Design Approach and Considerations: The primary focus for this area is to 1) retain the existing forest habitat, 2) develop trails that reveal the natural environmental amenities of the area, and 3) connect to other areas of the Park. This area also acts as a buffer between the contemplative Memorial to the west, and the more active park to the east.

Anticipated Design Elements:

- Maintain the greenbelt view of the site from the Ferry
- Trails that take advantage of the natural forested environment and offer viewpoints at rest areas along the way
- Footbridge across ravine
- Native plant and forested ravine interpretation

- Indoor/outdoor gathering areas

C. East Hillside- Second and final phase property purchase

Existing Features: This area is the historic site of the company town known as Creosote, which included worker homes and company buildings and was the first electrified area on the Island. Although all the buildings have been removed, some of the gardens and ornamental plants remain. This area slopes to the north and east and offers views across of Eagle Harbor, Wing Point and the Puget Sound to the north and across the Puget Sound to Seattle and Mt. Rainier to the east and southeast.

Design Approach and Considerations: This area of the Park will focus on the site history and restoration story, and will provide for an interface of activities, such as interpretive and recreational facilities, parking, picnic and gathering spaces, environmental clean up interpretation, and play areas. The Park design will take advantage of the views and topography, utilizing them to provide park amenities that blend in with the landscape. As the historical location of the company town development, this area is suitable for the more intensely developed Park functions, such as visitor areas, parking and restroom facilities. Site interpretation will include both recreational and educational features that will be interwoven into the park design. Design of parking lots and other facilities will be integrated into the landscape and screened with trees and native vegetation. The main entrance to the park will be in this area, near Creosote Place.

Anticipated Design Elements:

- Main vehicular entrance
- Cultural, historical and ecological interpretative center
- Native American interpretation
- Trails
- Parking
- Play areas for kids
- Indoor/outdoor gathering area
- Restrooms
- Signage

D. Flatlands- First and final phase property purchase

Existing Features: This portion of the site is located at the base of the East Hillside, but is not intended to include the area fenced off for further remediation. Most of the area is not vegetated. As the name indicates, this area is level and connects to the Point, the Ravine and the East Hillside.

Design Approach and Considerations: This zone acts as a connector between the other park areas. The level nature of the area lends itself well to recreational park features and functions that require a level surface, such as beach access for all ages and those with disabilities, play areas, sports courts, or parking lots. It is the most suitable area for many of the anticipated park development features, and is the best location for viewing the on-going remediation activities of the Point.

Anticipated Design Elements:

- Gathering areas, picnic shelters, fire circles

- Play areas, sports courts
- Trails
- Restrooms
- Interpretative buildings/structures/visitor center and observation area
- Parking lots, roadway, utilities

E. The Point – Final phase property purchase

Existing Features: The Point offers the most expansive views for the park user, with an almost 360-degree viewpoint. It is also the chief focus area of the Superfund clean up and contains several buildings and a parking area associated with the on-going clean up operations. The final remedy for the Superfund site will shape the design of this portion of the site. A steel sheetpile wall, protruding above ground level at various heights currently surrounds the shoreline boundaries of the site and will likely remain after the final remedy is selected.

Design Approach and Considerations:

General Design Approach: Site design will emphasize the phenomenal view aspects of the Point and reflect the historical and environmental impacts by acknowledging the Superfund legacy and human endeavor involved in restoring the site. The park design will provide a balance of elements in a context that incorporates natural habitat functions with manmade restoration, providing for human interaction with the landscape.

Enhancement of the final remedy features will be incorporated with the design for this area. Other design considerations related to the final remedy and operation and maintenance will be required in the future. Because much is unknown about how this area of the property will function until the final remedy is selected and in place, the design considerations have been divided into “general” and more “specific” based on different site issues for the Point.

General Design Considerations:

- The Environmental Protection Agency and Department of Ecology must be provided with access to complete the site remedy clean up and any required operation and maintenance of the final remedy
- The steel sheetpile wall surrounding much of the Point will remain in place as a necessary component of the remedy
- Public access must be restricted to the East Beach

Specific Design Approaches and Design Considerations for the Point:

- Topography

Approach: Provide ground surface undulation to incorporate interest and function into the landscape.

Considerations: The surface of this area needs articulation to add interest to the landscape. Topography changes could include berming or other surface grading alteration, such as ha-ha’s. These surface treatments can serve multiple functions such as stormwater drainage control, focusing visitor attention to key viewpoints, providing additional screening of remedy features or separating activity areas. As part of the berming or grading, added features could include fabric markers or a layer of quarry spalls that will provide a protective feature to the remedy.

- Trails

Approach: Pathways and trails are important links, providing a park experience that enhances connectivity to viewpoints, interpretative sites, and other park amenities.

Considerations: Trails may be constructed using a variety of surface materials, including gravel, asphalt, structural grass containment and wooden boardwalks, and can provide vehicle access for monitoring, or other necessary remedy-related activity.

- Interpretation

Approach: Provide interpretive sites and special nodes of interest that inform, educate and enhance the visitor's experience through the park.

Considerations: These interpretative sites will focus on the clean up remedy, history, and environment of the site. Interpretive sites can range from simple placards to larger interactive features.

- Picnic Areas

Approach: Strategically place picnic shelters to allow enjoyment of views, while not blocking important views for other park users.

Considerations: Location will be in close proximity to parking areas to facilitate public use. Secondary or smaller picnic areas may be placed at more remote locations.

- Resting Amenities

Approach: Place benches and gathering spaces to provide public enjoyment and resting points.

Considerations: Distribute these across the site or group in conjunction with interpretive areas, amenities, or along pathways.

Anticipated Design Elements:

- Public access opportunities
- Site Interpretation - cultural, historical and environmental restoration
- Maintain 360° views
- Berms and ground undulation and landscaping that enhance site views
- Cultural gathering areas
- View points
- Promenade suitable for multi-age (walking, jogging) with access to shoreline

Beach Areas: Water Access Beach, Habitat Beach, West Beach, and East Beach

Each of the four beach areas provide water views and most provide direct water access. All four of these beach areas are located along the south shore of Eagle Harbor and border on a no-anchor zone established by the United States Coast Guard (USCG) at the request of the Environmental Protection Agency. The no-anchor zone is a protection measure for the in-water sediment cap that EPA placed on the floor of Eagle Harbor. Any development proposed within the water outside of the location of the sediment cap, but within the no-anchor zone, must first receive a special waiver from the USCG.

A. Water Access Beach- First phase property purchase

Existing Features: Most of this beach is in a natural state with mature vegetation lining the low bank shoreline. Some of the beach includes a documented surf smelt spawning area.

Design Approach and Considerations: This beach is the primary water access for the western portion of the site and is intended to provide public access for human powered boats.

Anticipated Design Elements:

- Memorial pier, just west of the beach
- Future public dock location, outside sediment cap located in harbor
- Car-top boat launch area for public

B. Habitat Beach- First phase property purchase

Existing Features: This beach is the newly created and/or restored habitat beach intended by the Environmental Protection Agency as mitigation for the nearshore impact of the sheetpile wall. It includes a constructed sandy beach and a vegetated buffer that was installed along the upland edge of the habitat beach. The beach and vegetated buffer provide essential habitat for fish and shoreline wildlife for feeding, breeding, rearing and cover from predators.

Design Approach and Considerations: The primary intent for this area is to maintain the habitat beach for wildlife, while allowing appropriate passive, human use along the beach. Protection of the habitat beach and vegetated buffer is paramount. The vegetation buffer must be maintained, while also providing for trails and pathways to the beach through the buffer. Enhancement of the vegetation buffer is anticipated. Picnicking, viewing and resting areas will only be allowed above the vegetative buffer area.

Anticipated Design Elements:

- Trails
- Vegetation enhancement, possibly including a shoreline native vegetation demonstration area
- Picnic areas
- Benches

C. West Beach – Final phase property purchase

Existing Features: This sandy beach includes part of the sedimentation cap that extends from the harbor floor to the upland sheetpile wall.

Design Approach and Considerations: The beach area is intended for passive shore access.

Anticipated Design Elements:

None

D. East Beach- Final phase property purchase

Existing Features: This beach extends around the Point to the south and is sandy along the inner harbor area, but consists primarily of cobbled material along the east side of the

Point. The eastern portion of this beach is still experiencing seeps of contamination offshore and EPA is restricting public access to this entire beach area.

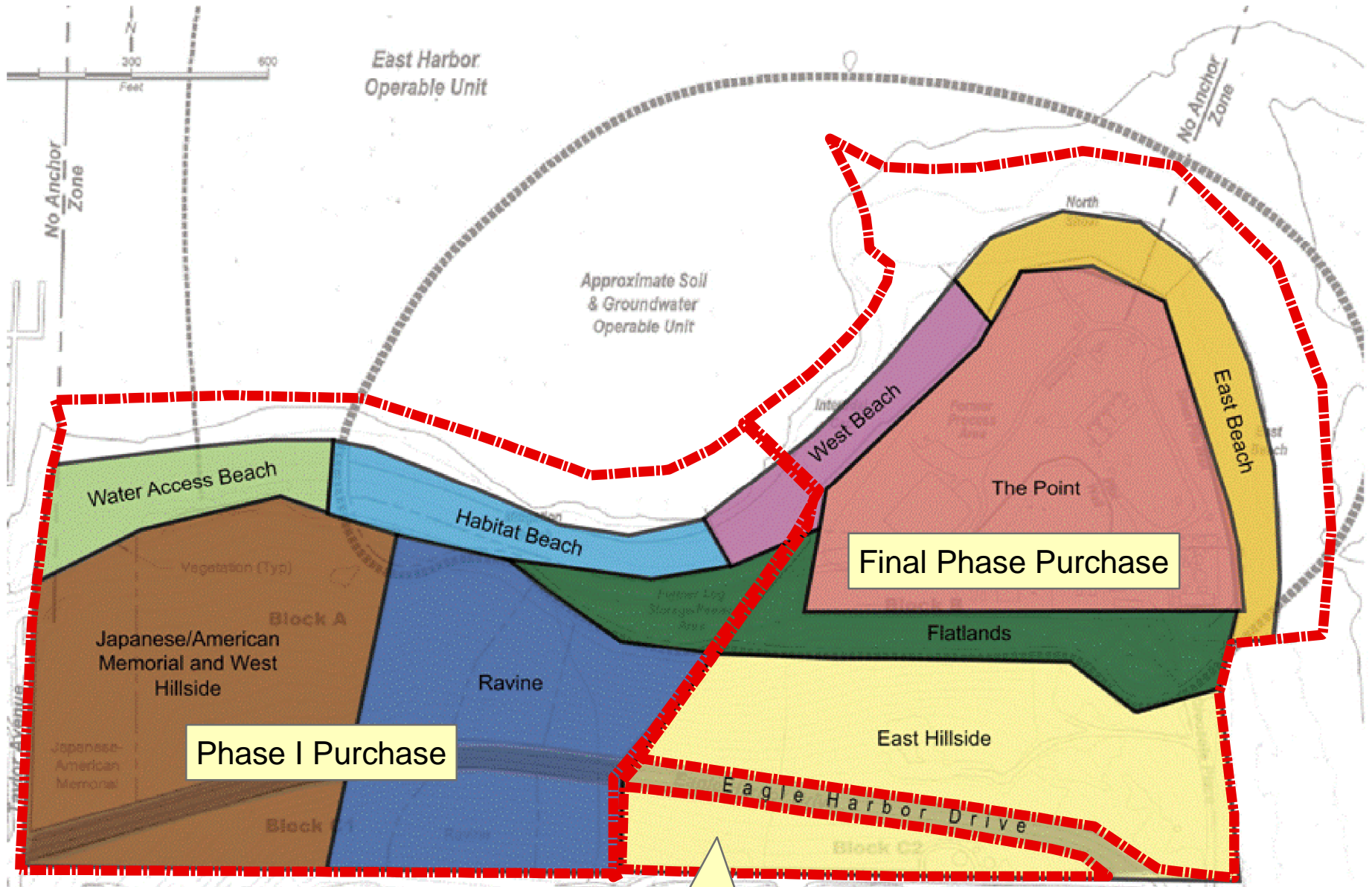
Design Approach and Considerations: The park design needs to incorporate elements that restrict public access to this beach. Signs and markers will be important, but also some type of environmental interpretation that will explain the natural forces along the eastern shore and why contamination remains in this area.

Anticipated Design Elements:

- Signage
- Interpretative markers
- Barriers that incorporate art and site interpretation

Attachments:

- A. Map- Park Development Zones
- B. Park Development Zone Designation Table
- C. Park Preliminary Site Project Profile
- D. Pritchard Park Design Timeline and Milestones



**Park Development Zone Phases
&
Property Purchase Phases**

Phase 2 Purchase



Purchase Phases

Park Development Zones/ Activities Matrix

Proposed Pritchard Park Project

Exhibit A-2

Park Development Zone Designations

	East Hillside	Ravine	J/A Memorial & West Hillside	Flatlands	The Point	East Beach	West Beach	Habitat Beach	Water Access Beach
	<i>Sloped site, outside clean-up area some historic significance</i>	<i>Critical area minimal development</i>	<i>J/A memorial, developed per plan West hillside-sloped, minimal development potential</i>	<i>Flat adjacent to clean-up area</i>	<i>Development potential pending final remedy decision</i>	<i>No public access</i>	<i>Public access, sandy beach</i>	<i>Public access, emphasize habitat preservation</i>	<i>Small craft access, in conjunction with J/A memorial</i>
Potential Park Activities									
Fire Circles	X		X	X	DOR				
Buildings- Vented	X		X	X	DOR				
Buildings-Enclosed Heated	X		X	X					
Buildings - Open Structure	X		X	X	X				
Parking Lots and Roads	X		X	X	X				
Trails/Bridge/ Boardwalks	X	X	X	X	X		X	X	X
Playgrounds	X		X	X	Limited/DOR				
Sports Court									
Playfield/Impervious	X		X	X	DOR				
Playfield Pervious	X		X	X	DOR				
Dock									X
Picnic/BBQ Areas	X	X	X	X	X				
Septic System	X		X	X					
Landscaping and Berming	X	X	X	X	X				
Storm Drainage (Upland Area)	X	X	X	X					
Utilities- (i.e. water, power, pumps)	X	X	X	X	DOR				

X - Possible Use

DOR - Dependant on Remedy

Park Vision – Attachment C

Pritchard Park Preliminary Site Project Profile

Subject to Selected Remedy, Funding, Permitting and Approvals, 10-19-05

Site Prep/Clearing	120,000 – 217,800 SF
Site Grading	10,000 – 40,000 CY
Asphalt Paving	10,000 – 16,000 SF
Gravel Trails	36,000 – 50,000 SF
Site Fences / Barriers	6,000 – 12,000 LF
Bridge	0 – 1 Steel Cross Beam
Boardwalk	3,000 – 6,000 SF
Site Utilities	
G – style oil separator catch basins	
Water hook up and water meter into existing system	
Septic or vault system	
Electric on site service	

Park Furniture

Benches	8 – 16
Drinking	
Fountain	2 – 4
Picnic Pads	
Concrete	4 – 8
Tables	4 – 8
Trash	
Receptacles	8 – 16

Subject to further public process and design, as noted, additional pervious and impervious surfaces may occur on site. See Park Development Zones/ Activities Matrix.

Memorial Construction at Pritchard Park and Phase I:

World War II Nikkei Interment and Exclusion Memorial Project Site Calculations:

Historic Resources Protection:

Bank stabilization	80-100 lf - shoreline
Pipe outfall realignment	

Site Disturbance:

Clearing/Grading	101,644 sf
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Walls:

Rockery Walls	850-900 lf – height varies
Concrete Retaining	

Garden paths / Trails:

Existing trails to remain	1320 sf - natural path
Proposed Paths	1640 sf - new garden paths
Memorial Walk	4000 sf

Boardwalk:		
Landing/wetland		587 sf - wetland boardwalk
Bridges		1913 sf - boardwalk bridges
Site Access:		
Access Drives		18,000 sf – drop off/entry drives
Parking		8100 sf – upper/lower lots
Drop off		4700 sf – turn around/drop off
Wetland:		
Wetland		20,659 sf - existing
Wetland Buffer		45,640 sf - existing
Mitigation Wetland		2567 sf - proposed
Mitigation Buffer		16,208 sf - proposed
Buffer Replacement		6340 sf - proposed
Utilities:		
Storm Drainage	350 lf – storm pipe	
Electrical	240 lf – electrical conduit	
Irrigation	880 lf – irrigation mainline	
Sleeving	80 lf – 4” pvc sleeving	
Structures:		
Well House Existing	220 sf – to be removed	
New Well House Proposed	150 sf	
Kiosk	20 sf – open structure	
Japanese Gates (2)	160 sf – total, open structures	
Restroom – fut phse	370 sf	
Meeting Room – fut phse	520 sf	
Interpretive Cntr. – fut phse	2620 sf	

Pritchard Park Design Time Line and Milestones

Phase 1 – Inventory and Site Assessment, Development of a Park Design Program

Phase 2 – Schematic Design and Implementation Program

Public Involvement

University of Washington, Landscape Architecture Design Symposium, 2001

Dirt Workshop, 2002

Wyckoff Acquisition Task Force, 2002

Products derived from the abovementioned include:

- Park Development Zones / Activities Matrix, 2005
- Park Development Zone Design, 2005

Proposed Public Involvement, 2006-2008

This project phase shall involve public involvement with participation from stakeholders, such as, City, Park District, NPS, EPA, Ecology, Japanese – American WW II Internment Memorial Committee, Bainbridge Island Land Trust, Bainbridge Island Historical Society, Washington Water Trails or aquatic facilities representative, Suquamish Tribe, Trails Committee, neighbors, resource person, and Island residents.

Design Development Process to include:

- Conduct an RFP and hire consultant
- Convene an advisory committee and provide background material for membership certification pertaining to grant, federal and state constraints
- Review Park design concept framework, environmental conditions and considerations, topographic information, Memorial concept and development plans, motorized plans and non-motorized plans, archeological and historical data, photos, and plans, shoreline aspects, wildlife and habitat data and maps, property restrictions and covenants, and other baseline data as appropriate.
- Facilitate 2-3 public workshops,
- Provide graphics and written information as required for public outreach efforts
- Present 2 updates and Bainbridge Is. Metropolitan Park Board and City Council meetings.
- Present 2 updates and City Council.

Permitting and Environmental Review, 2008 subject to Selected Remedy:

- Identify permitting/regulatory requirements and deadlines
- Complete SEPA checklist for the schematic design.

Phase 1 Tasks & Products:

- Define project parameters, gather necessary materials, identify additional information, review community involvement strategies and finalize project timetable.
- Meet with advisory committee and conduct site visit- committee and consultant

- Conduct and assemble a base map identifying natural and man-made features, such as topography, wetlands, streams, vegetation, utilities, structures, boundaries, easements, archeological, buffers.
- Conduct an inventory and assessment of the site's trees utilizing an arborist,
- Prepare graphic summarizing site opportunities and constraints using existing, baseline, surveys, GIS and other available resources.
- Prepare report that summarizes identified issues and opportunities,
- Prepare an inventory and analysis, consult with the Suquamish Tribe and EPA, and submit report to Department of Ecology.
- Facilitate and conduct workshop that ascertains public sentiment towards needs, desires, opportunities and constraints.
- Based upon the results of site analysis, technical input and public workshops, develop preliminary park Design Program detailing proposed and additional site improvements as appropriate by the Pritchard Park Remediation and Redevelopment Plans, detailing proposed preserve uses, design character and design criteria.

Phase II Tasks:

- Establish criteria for schematic alternatives.
- Prepare two schematic design alternatives based upon approved Design Program, prepare an operational / maintenance cost model (management plan).
- Prepare narrative that summarizes existing conditions, design alternatives, working with the Japanese – American WWII Internment Memorial and NPS (National Park Service); Identify cost implications, regulatory criteria, and other issues that require further analysis; and Consult with the Tribe, EPA and Ecology on the design alternatives.
- Follow up with Park's Design Committee
- Conduct a community workshop to solicit input on schematic design alternatives.
- Meet with appropriate City, County, State and Federal permitting officials to review initial schematic design direction
- Meet with Park's Design Committee to review comments form workshop and to solicit direction on draft schematic design.
- Brief Park Board and Council
- Create draft schematic design based upon preferred elements from alternative designs and update cost estimates and operational models.
- Create draft implementations strategy for development of the park that identifies priorities from improvements, responsibilities for improvements and timeline for implementing improvements.
- Identify scope and schedule of permitting process.
- Attend meetings with Parks staff to review draft schematic designs and phasing program.
- Conduct community workshop to solicit input on the draft schematic design and phasing program.
- Meet City permitting authorities to review draft schematic design and phasing program.

- Redefine cost draft schematic design and phasing program incorporating gathered input.
- Revise cost estimates.
- Meet with the Parks Design Committee to review workshop comments.
- Make minor revisions to schematic design following workshop comment integration.
- Prepare SEPA Checklist as needed.

Tentative Timeline depending on Remedy & Funding:

Winter 2006-2007	Consultant selection
Jan. – March 2007	Project start, inventory and site analysis
February 2007	RFQ Submittal Deadline and Committee Selection
March 2007	Short list for RFQ candidates and interviews
March 2007	Park Design Committee certification
April-May 2007	Initial public meeting (Review Park Vision)
April-May 2007	Develop schematic design alternatives
May-June 2007	Second public meeting (Schematic Alternatives)
June 2007	Complete public process for Phase I-Schematic Alternatives
June 2007	Park Board/City Council- Project update (Schematic Alternatives)
July -Sept 2007	Phase 2 -Develop Preferred Alternative: complete public process for Phase 2
September 2007	Third public meeting (Preferred Alternative)
October 2007	Park Board/City Council - Approval of Preferred Alternative and implementation Strategies, cost estimates, and identification of regulatory permitting requirements
October 2007	March 2008 – Environmental and legal review of Park Master Plan
April 2008	Park Board/City Council - Approval of final Park Master Plan

Exhibit F

Schedule for Work

EXHIBIT F Schedule for Work

Task	Schedule
Submit Draft Phase I Pritchard Park Remediation and Redevelopment Plan (PPRRP) to Ecology—Hillside, Flatlands and West Beach Areas	Within 90 days of shoreline permit submittal
Submit Final Phase I PRRRP to Ecology	Following resolution of Ecology comments, and within 30 days after receipt of shoreline permit
Submit Draft Construction Drawings and Specifications	At time of construction permit submittal
Resolve Ecology Review Comments	Within 60 days of construction permit submittal
Submit Final Plans and Specifications	30 days after construction permit issuance
Submit Draft Phase II PRRRP to Ecology—The Former Process and East Beach Areas	Within 90 days of shoreline permit submittal
Submit Final Phase II PRRRP to Ecology	Following resolution of Ecology comments, and within 30 days after receipt of shoreline permit
Submit Draft Construction Drawings and Specifications	At time of construction permit submittal
Resolve Ecology Review Comments	Within 60 days of construction permit submittal
Submit Final Plans and Specifications	30 days after construction permit issuance

Exhibit G

Required Permits

EXHIBIT G Required Permits

Necessary city of Bainbridge Island land use and construction permits required for park development:

- Shoreline Substantial Development Permit (SSDP)
- Site Plan Review
- Critical Areas Review
- Building Permit