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PIERCE COUNTY, WASHINGTON

JUN 11 2009

Washington State
Department of Ecology

The City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

Environmental Covenant

Grantor(s) (Last name first, then first name and initials)

City of Gig Harbor

Grantee(s) (Last name first, then first name and initials)

State of Washington, Department of Ecology

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Section 05, Township 21, Range 02, Quarter 33

Assessor's Property Tax Parcel or Account Number: 0221053074 and 0221053050

Reference Number(s) of Documents assigned or released: _____

RECEIVED

JUN 11 2009

Washington State
Department of Ecology

Environmental Covenant

Grantor: City of Gig Harbor
Grantee: State of Washington, Department of Ecology
Legal: Section 05 Township 21 Range 02 Quarter 33
Tax Parcel Nos.: 022105-3074 and 022105-3050

Grantor, City of Gig Harbor, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 9th day of June, 2009 in favor of the State of Washington Department of Ecology (hereafter "Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, Revised Code of Washington (hereafter "RCW") 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Washington Laws chapter 104, section 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and Washington Administrative Code (hereafter "WAC") 173-340-440 by City of Gig Harbor, its successors and assigns, and Ecology, its successors and assigns.

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- Agreed Order (hereafter "AO") DE 5597, August 2008.
- Cleanup Action Plan (hereafter "CAP") for the Eddon Boatyard Site (Exhibit B of the AO), June 2008.

These documents are on file at Ecology's Southwest Regional Office.

This Covenant is required because the Remedial Action resulted in some areas with residual concentrations of mercury in bulk sediment and tributyltin in porewater, which exceed the CAP (Section 3) cleanup requirements for sediment (and porewater) established under WAC 173-340-440. In addition, there is an area with potential carcinogenic polychlorinated aromatic hydrocarbons (hereafter "cPAHs") left at depth.

The undersigned, City of Gig Harbor, is the fee owner of real property (hereafter "Property") in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Exhibit A of this Covenant and made a part hereof by reference. However, only specific areas within this Property (identified in Section 1) are restricted by this Covenant.

The City of Gig Harbor makes the following declaration as to limitations, restrictions, and uses to which specific areas within the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1

In August 2008, the City of Gig Harbor and Ecology entered into an AO for the Eddon Boatyard Site. The CAP is Exhibit B to the AO and describes the Remedial Action performed by the City of Gig Harbor for the cleanup of upland and sediment contamination. Two components of the Remedial Action were to cap area SMU3 and determine the appropriate excavation alternative during regrading of area AG-9 (see Exhibit B for a map of these locations). Area SMU3 now has an engineered cap over contaminated sediments (mercury

and tributyltin). AG-9 is the upland area behind the former bulkheads that was graded into a gradual sloped shoreline.

AG-9 – Initial investigations of area AG-9 contained some elevated cPAH concentrations found at +14.5 to +15.5 feet mean lower low water (hereafter “MLLW”). Because no defined charred wood layer or other potential source of cPAHs was encountered at any elevation during excavation, no further remedial action was needed in area AG-9, and the area was regraded to meet designed stabilization elevations. However, the coring locations and elevations where the cPAHs samples were found are included in this Covenant because of the potential that cPAHs may exist in the undisturbed soils left at depth in that location. The area is now approximately 7 feet below the existing grade, and soil-disturbing activities in that area should not exceed a cut of more than 4 feet or an elevation of +18 feet MLLW at that precise location. However, if during the park development digging more than 4 feet were necessary, the Public Works Superintendent would be notified and the following conditions would be met: 1) follow regulatory health and safety protocols, 2) follow regulatory characterization and disposal protocols, and 3) return the area functionally to what is required in the CAP.

SMU3 Cap – Any activity, other than approved long-term monitoring and institutional control implementation (sign placement), on the Property that may result in the release or exposure to the environment of the contaminated sediment that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology. Some examples of activities that are prohibited in the capped area (SMU3) include drilling, digging, anchoring, piercing the surface with a spike or similar item, or dredging.

Section 2

Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3

Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4

The Owner of the Property must give a 30-day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5

The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6

The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

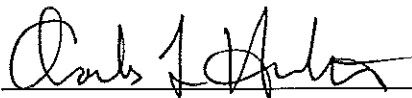
Section 7

The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action, to take samples, to inspect remedial actions conducted at the Property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8

The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

City of Gig Harbor

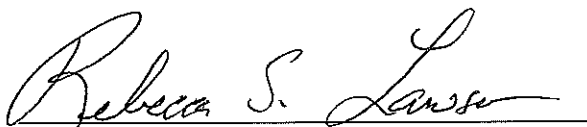


Charles L. Hunter

Mayor

Dated: June 9, 09

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E.

Toxics Cleanup Program

Section Manager

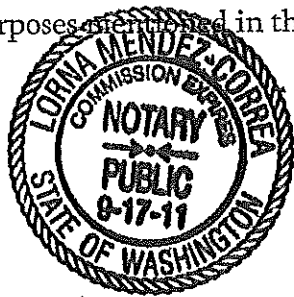
Southwest Region

Dated: 7/2/09

[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF Washington
COUNTY OF Thurston

On this 16th day of July, 2009, I certify that Rebecca Lawson personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the Section Manager [type of authority] of Toxics Cleanup Program Ecology [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Lorna Mendez-Correa
Notary Public in and for the State of
Washington, residing at Olympia
My appointment expires 9/17/11.

STATE OF WASHINGTON
COUNTY OF PIERCE

On this 9th day of June, 2009, I certify that Charles L. Hunter personally appeared before me, acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute this instrument, and acknowledged it as the Mayor of The City Of Gig Harbor to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.



Molly M Towlslee
Notary Public in and for the State of
Washington, residing at Gig Harbor
My appointment expires 12/2/2011.

EXHIBIT A
LEGAL DESCRIPTION

022105-3074

Section 05 Township 21 Range 02 Quarter 33 : COM AT MC AT NW COR LOT 7 TH S 41 DEG 03 MIN E 75.21 FT ALG ML TH S 26 DEG 03 MIN E 200 FT TO TRUE POB TH CONT S 26 DEG 03 MIN E 125.5 FT TH S 19 DEG 49 MIN W 79 FT TH S 50 DEG 55 MIN W 162.65 FT TO HWY TH NLY ALG ELY LI HWY TO PT S 54 DEG 48 MIN W FROM POB TH N 54 DEG 48 MIN E 145 FT TO POB TOG/W TDLDS ABUTT

022105-3050

Section 05 Township 21 Range 02 Quarter 33 : COM NW COR GOVT LOT 7 TH S 01 DEG 13 MIN W 572.82 FT N 50 DEG 55 MIN E 58 FT TO INTER ELY LI OF B H CO RD & POB TH CONT N 50 DEG 55 MIN E 162.55 FT N 19 DEG 49 MIN E 79 FT TO INTER ML OF GIG HARBOR TH S 25 DEG 00 MIN E 90.96 FT N 63 DEG 57 MIN E 55 FT M/L TO A PT THAT IS 287.37 FT E OF & AT R/A TO W LI SEC TH S 01 DEG 13 MIN W 163 FT M/L TO INTER NLY LI SD B H CO RD TH WLY & SLY 272 FT ALG NLY LI SD RD TO BEG TO /W TDLDS ABUTT

EXHIBIT B RESTRICTED AREAS MAP

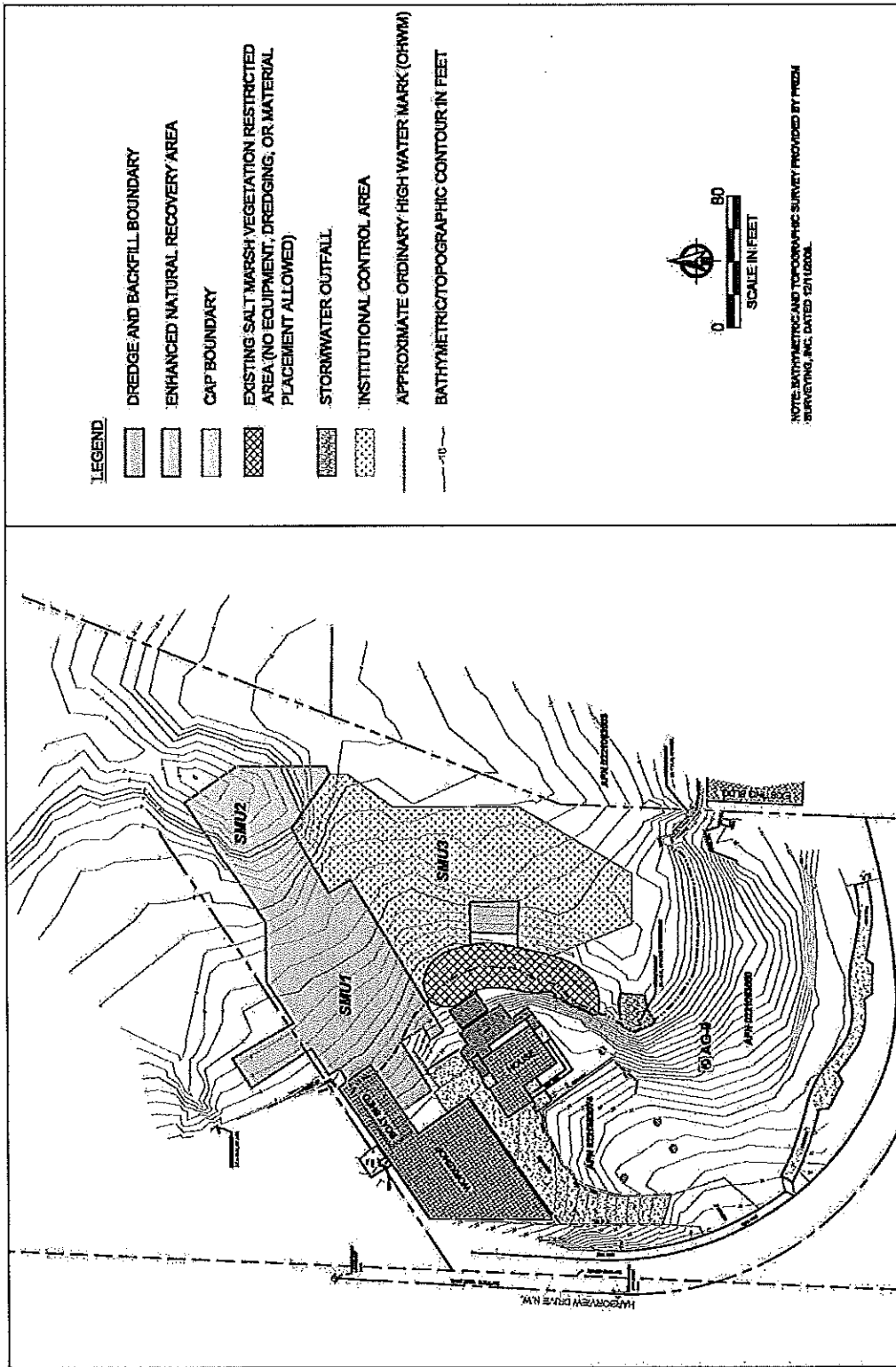


Figure 1
Restricted Areas
Environmental Covenant
Eddon Boatyard

