

Return Address:

Mr. Dale Meyers
 Site Manager
 Toxics Cleanup Program
 Department of Ecology
 3190 160th Avenue S.E.
 Bellevue, WA 98008-5452



20161221000033

YARROW BAY YAC COV
 PAGE-001 OF 014
 12/21/2015 08:49
 KING COUNTY, WA

88.00

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)1. Environmental Covenant 2. _____

3. _____ 4. _____

Reference Number(s) of Documents assigned or released: Tax Parcel #172Additional reference #'s on page 1 of document VCP# NW1791 505-9130

Grantor(s) Exactly as name(s) appear on document

1. Yarrow Bay Yacht Basin and Marina, LLC2. With Consent of Washington Federal

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. State of Washington, Department of Ecology

2. _____

Additional names on page _____ of document.

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

Lot 2 Kirkland BLA #LLA07-00020 REC #20071002900006 SD BLA BEING POR OF S 1/2 OF S 1/2 OF GL 2Additional legal is on page 10 of document. STR 17-25-05

Assessor's Property Tax Parcel/Account Number

☐ Assessor Tax # not yet

assigned

172505-9130

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

June L Boitko

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return
Original Signed Covenant to:
MR. DALE MEYERS
SITE MANAGER
Toxics Cleanup Program
Department of Ecology
3190 160TH AVENUE SE
BELLEVUE, WA 98008-5452

Environmental Covenant

Grantor: YARROW BAY YACHT BASIN AND MARINA, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, WITH THE CONSENT OF WASHINGTON FEDERAL, A WASHINGTON CORPORATION

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

Brief Legal Description: LOT 2 KIRKLAND BLA #LLA07-00020 REC #20071002900006 SD BLA BEING POR OF S 1/2 OF S 1/2 OF GL 2 STR 17-25-05 (BEING LOT 2 & POR LOT 1 KIRKLAND BLA #LLA07-00004 REC# 20070706900007)

Tax Parcel Nos.: 172505-9130

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part of a site commonly known as YARROW BAY YACHT BASIN AND MARINA, LLC (ALSO KNOWN AS YARROW BAY MARINA); FACILITY ID: 33911356; VCP No. NW1791. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because, although groundwater in MW-8 has met MTCA Method A cleanup levels for four consecutive quarters, approximately 42 cubic yards of residual soil contamination and contaminated groundwater in the vicinity of monitoring well MW-8 remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property in the area of concern shown on Exhibit B and as more specifically shown on Exhibit C (the "Area of Concern"):

Medium	Principal Contaminants Present
Soil	Gasoline- and diesel-range hydrocarbons, benzene, toluene, ethylbenzene and xylenes
Groundwater	Diesel- and heavy oil-range hydrocarbons

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the

site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology.

c. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an "agency" under UECA, other than its right as a holder, are not an interest in real property.

COVENANT

Yarrow Bay Yacht Basin and Marina, LLC, as Grantor and owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property. Washington Federal, which holds a security interest in the Site, consents to this grant and its recording as indicated by its signature below.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for the Area of Concern to uses and activities consistent with this Covenant and notify all lessors of the Area of Concern of the restrictions on the use of the Area of Concern.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Area of Concern.

a. Containment of Soil/Waste Materials

The remedial action for the Area of Concern at the Property is based on containing residual contaminated soil under a cap consisting of approximately 6- to 8-inches of paved concrete and located as illustrated in Exhibits B and C. The primary purpose of this cap is to minimize the potential for contact with contaminated soil; minimize leaching of contaminants to groundwater and surface water; prevent runoff from contacting contaminated soil; and minimize airborne contaminants. As such, the following restrictions shall apply within the Area of Concern illustrated in Exhibits B and C:

Containment Restriction 1: Any activity on the Property that will compromise the integrity of the cap including, but not limited to,; drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Containment Restriction 2: To minimize the potential for mobilization of contaminants remaining in the soil and groundwater on the Property, no stormwater infiltration facilities or ponds shall be constructed within the Area of Concern at the Property illustrated in Exhibits B and C. Any future stormwater catch basins, conveyance systems, and other appurtenances that may be located within the Area of Concern shall be of water-tight construction.

b. Groundwater Restriction

The groundwater beneath the Area of Concern at the Property illustrated in Exhibits B and C remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted within this area for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

c. Vapor Mitigation

The residual contamination on the Property includes volatile chemicals that may generate harmful vapors. As such, the following shall apply within the Area of Concern at the Property illustrated in Exhibits B and C to minimize the potential for exposure to these vapors: No building or other enclosed structure shall be constructed within the Area of Concern.

d. Compliance Monitoring

Monitor well MW-8, located within the Area of Concern, will be utilized to monitor the performance of the remedial action. The Grantor shall maintain clear access to this monitoring well and protect it from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to this monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Section 3. Access.

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

- a. **Conveyance of Any Interest.** The Grantor, when conveying any interest within the Area of Concern at the Property illustrated in Exhibits B and including, but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON December 21, 2016 AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER 20161221000033. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.
 - c. **Emergencies.** For any emergency or significant change in site conditions due to acts of nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
 - d. **Notification procedure.** Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Yarrow Bay Yacht Basin and Marina, LLC. Mr. Dennis Bortko, Manager Mr. Paul E. Wilcox, Manager 5207 Lake Washington Boulevard NE Kirkland, Washington 98033 425-822-6066 Dennis Bortko: dbortko@msn.com Paul Wilcox: Paul_wfc@live.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the Property:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for

Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

- e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants Yarrow Bay Yacht Basin and Marina, LLC, holds the title to the Property and he has authority to execute this Covenant.

EXECUTED this 25 day of November, 2016.

Yarrow Bay Yacht Basin and Marina, a Washington limited liability company

By: Dennis W. Bortko
Dennis W. Bortko
Its: Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 25 day of November 2016, before me, a Notary Public in and for the State of Washington, personally appeared Dennis W. Bortko, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of Yarrow Bay Yacht Basin and Marina, LLC to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



MJS
NOTARY PUBLIC in and for the State of Washington,
residing at King County
My appointment expires 5-22-2018
Print Name Mary J Sorenson

The undersigned Grantor warrants Yarrow Bay Yacht Basin and Marina, LLC, holds the title to the Property and he has authority to execute this Covenant.

EXECUTED this 25 day of November, 2016.

Yarrow Bay Yacht Basin and Marina, a Washington limited liability company

By: [Signature]

Paul A. Wilcox

Its: Manager


STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 25 day of November, 2016, before me, a Notary Public in and for the State of Washington, personally appeared Paul A. Wilcox, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Manager of Yarrow Bay Yacht Basin and Marina, LLC to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



[Signature]
NOTARY PUBLIC in and for the State of Washington,
residing at K. M. County
My appointment expires 5-22-2018
Print Name Mary J Sorenson



The undersigned Grantor warrants Washington Federal holds a security interest in the Property and consents to the property owners grant of this Covenant and its recording.

EXECUTED this 6 day of DECEMBER, 2016.

Washington Federal, a Washington Corporation

By: [Signature]
Its: VICE PRESIDENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 6th day of November, 2016, before me, a Notary Public in and for the State of Washington, personally appeared David Hasslinger, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the Vice President of Washington Federal to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at Kirkland WA
My appointment expires 5/2/2020
Print Name Gloria Leach

Washington State Department of Ecology

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Signature

ROBERT W. WARREN
SECTION MANAGER
TOXICS CLEANUP PROGRAM
NORTHWEST REGIONAL OFFICE

Date: 12-19-14

Exhibit A

LEGAL DESCRIPTION

REVISED LOT 2 OF CITY OF KIRKLAND LOT LINE ALTERATION NO. LLA07-00020 RECORDED OCTOBER 2, 2007 UNDER RECORDING NO. 20071002900006, IN KING COUNTY, WASHINGTON;

SAID REVISED LOT 2 IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH HALF OF THE SOUTH HALF OF GOVERNMENT LOT 2, SECTION 17, TOWNSHIP 25 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON,

AND OF SECOND CLASS SHORE LANDS ADJOINING, AS CONVEYED BY THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 336051;

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID SOUTH HALF AND THE WESTERLY MARGIN OF LAKE WASHINGTON BOULEVARD NORTHEAST (SAID MARGIN BEING 46.00 FEET WEST OF THE CENTERLINE);

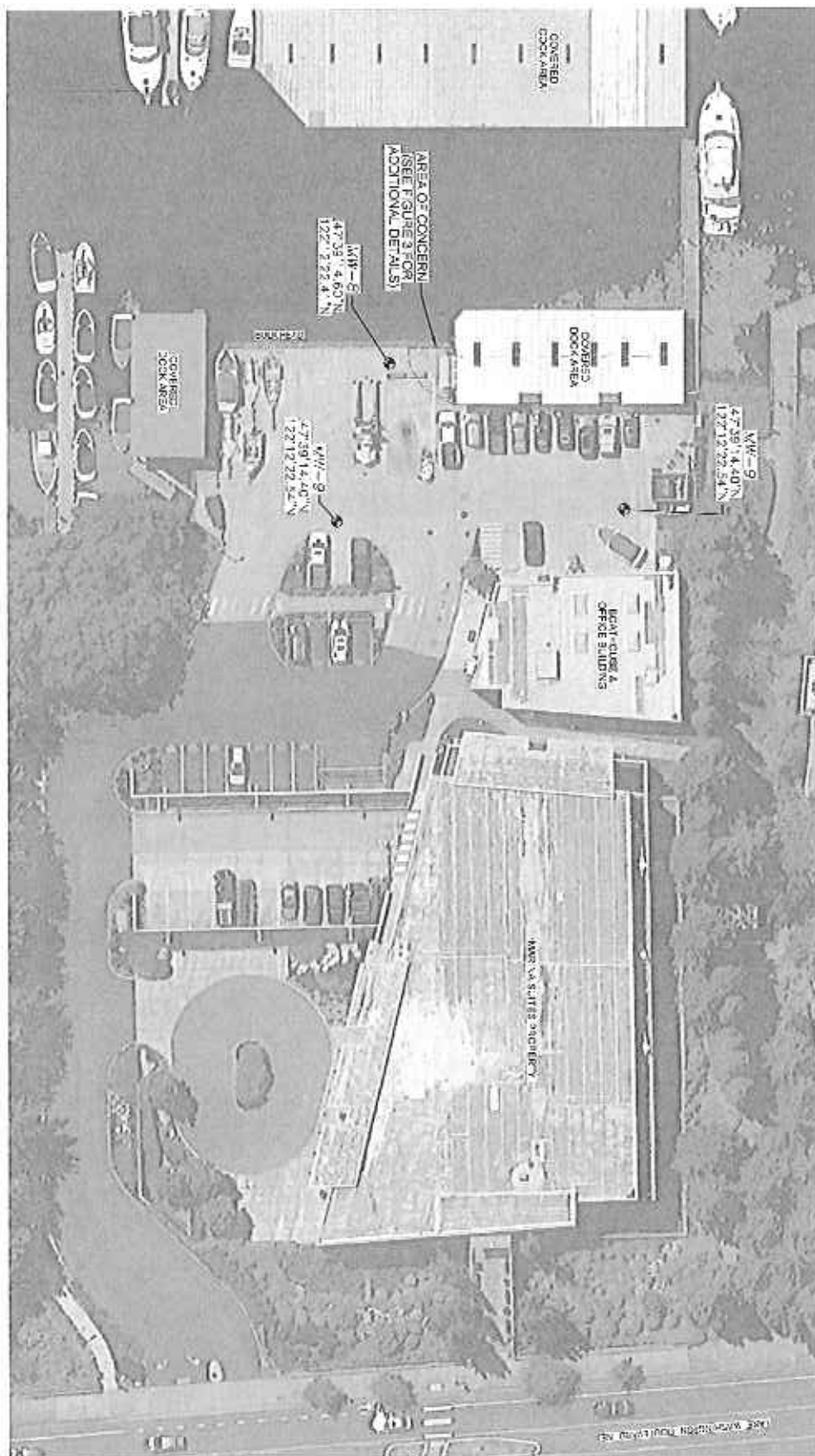
THENCE ALONG SAID MARGIN SOUTH 03°09'47" EAST A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID MARGIN AND BEARING 161.18 FEET;
THENCE SOUTH 45°00'00" WEST A DISTANCE OF 82.78 FEET;
THENCE NORTH 90°00'00" WEST A DISTANCE OF 159.08 FEET;
THENCE NORTH 00°00'00" EAST A DISTANCE OF 102.07 FEET;
THENCE NORTH 61°50'33" WEST A DISTANCE OF 20.63 FEET;
THENCE NORTH 05°51'48" EAST A DISTANCE OF 112.58 FEET TO THE SOUTH LINE OF A TRACT OF LAND DEEDED TO GUSTAF ADOLPH DAHLSTROM AND ELLA MARIE DAHLSTROM, HIS WIFE, BY DEED RECORDED UNDER RECORDING NUMBER 2980236;
THENCE ALONG SAID SOUTH LINE SOUTH 88°51'02" EAST A DISTANCE OF 215.45 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF SAID SOUTH HALF LYING NORTHERLY OF THE SOUTH LINE OF SAID DAHLSTROM PARCEL.

Exhibit B

PROPERTY MAP



SITE PLAN

YARROW BAY MARINA WESTERN PARCEL
5207 1 AVE. WASHINGTON BOULEVARD NE
KIRKI AND, WA

PROJECT NUMBER	202000030	DATE	10/1/18	FIGURE	2
APPROVED BY	KJ	DRAWN BY	SK		
ATC 6347 Seaview Avenue NW Seattle, Washington 98107 Ph: (206) 781-1449 *** Fax: (206) 781-1543					

Exhibit C

MAP ILLUSTRATING LOCATION OF RESTRICTIONS

