

**After Recording Return to:**

Mohsen Kourehdar, PE  
Toxics Cleanup Program  
Department of Ecology  
300 Desmond Drive  
Lacey, WA 98503-1274

**ENVIRONMENTAL COVENANT**

**Grantor:** Port of Olympia  
**Grantee:** State of Washington, Department of Ecology (hereafter "Ecology")  
**Brief Legal Description:** Lot 10, Lot 11, & Lot 12, Olympia Area Rowing Binding Site Plan Amendment #3  
**Tax Parcel Nos.:** 66130000410; 66130000411; 66130000412

**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 the East Bay Redevelopment Site. The Property is legally described in Exhibit A and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

**C.** The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	Arsenic, lead, total petroleum hydrocarbons (TPH) in the gasoline range (TPH-G), total naphthalenes, TPH in the diesel range (TPH-D) and TPH in the heavy oil range (TPH-HO) combined, total carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and total chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (dioxins/furans) were identified as soil constituents of concern (COCs).

**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 the remedial actions conducted are available through Ecology.

**E.** 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

The Port of Olympia, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

### **Section 1. General Restrictions and Requirements.**

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

**a. Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection, or monitoring of that remedial action without prior written approval from Ecology.

**b. Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as 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 continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

**d. Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.

**e. Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within thirty (30) days of discovery of the damage or destruction.

## **Section 2. Specific Prohibitions and Requirements.**

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

**a. Land Use.** Prohibited uses on the Property include but are not limited to K-12 public or private schools, grazing of animals, and growing of food crops.

**b. Containment of Soil/Waste Materials.** The remedial action for the Property is based on containing contaminated soil under a cap consisting of an engineered cap consisting of 12 inches of clean, washed gravel overlying a permeable, geotextile fabric and located as illustrated in Exhibit B. The primary purpose of this cap is to minimize the potential for contact with contaminated soil; prevent runoff from contacting contaminated soil; and minimize airborne contaminants. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Any activity on the Property that will compromise the integrity of the cap including: 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.

The Grantor covenants and agrees that it shall annually, or at another time as approved in writing by Ecology, inspect the cap and report within thirty (30) days of the inspection the condition of the cap and any changes to the cap that would impair its performance.

**c. Stormwater facilities.** To minimize the potential for mobilization of contaminants remaining in the soil on the Property, no stormwater infiltration facilities or ponds shall be constructed within the area of the Property illustrated in Exhibit B. All stormwater catch basins, conveyance systems, and other appurtenances located within this area shall be of water-tight construction.

**d. Groundwater Use.** The groundwater beneath the Property remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering,

investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

**Section 3. Access.**

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

**Section 4. Notice Requirements.**

a. **Conveyance of any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interest, 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 [DATE] AND RECORDED WITH THE THURSTON COUNTY AUDITOR UNDER RECORDING NUMBER [INSERT NUMBER]. 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.

To Grantor: Port of Olympia  
Attn: Environmental Programs Director  
606 Columbia St. NW, Suite 300  
Olympia, WA 98501

To Ecology: Environmental Covenants Coordinator  
Washington State Department of Ecology  
Toxics Cleanup Program  
300 Desmond Drive  
Lacey, WA 98503-1274

**Section 5. Modification or Termination.**

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

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

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

**b.** If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated.

Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

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 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 circumstances 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 provisions had not been contained herein.

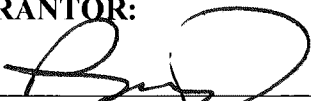
g. A heading used at the beginning of any section or exhibit of this Covenant may be used to aid in the interpretation of that section or exhibit but does not override the specific requirements in that section or exhibit.

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The undersigned warrants that he has authority to execute this Covenant on behalf of the Grantor.

EXECUTED this 13<sup>th</sup> day of NOVEMBER, 2018.

**GRANTOR:**

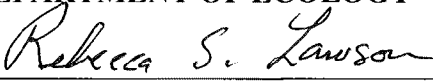
  
\_\_\_\_\_  
(Signature)

Rudy Rudolph  
Interim Executive Director, Port of Olympia

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

**GRANTEE:**

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

  
\_\_\_\_\_  
(Signature)

REBECCA S. LAWSON  
\_\_\_\_\_  
(Printed Name)

Title: SWRD SECTION MANAGER

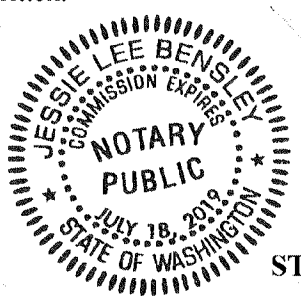
Dated: 11/21/2018

GRANTOR ACKNOWLEDGMENT

STATE OF WASHINGTON)  
) SS.  
COUNTY OF THURSTON)

On this 13<sup>th</sup> day of November, 2018, I certify that Rudy Rudolph personally appeared before me, acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as the Interim Executive Director of the Port of Olympia to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

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

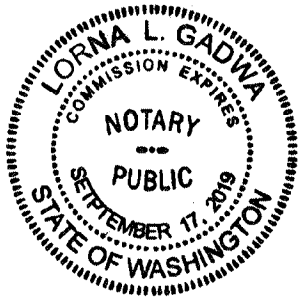


Jessie Bensley  
Print Name: Jessie Bensley  
Notary Public, State of Washington  
My appointment expires July 18, 2019

STATE ACKNOWLEDGMENT

STATE OF Washington)  
) SS.  
COUNTY OF Thurston)

On this 26<sup>th</sup> day of November, 2018, I certify that Rebecca S. Lawson personally appeared before me, acknowledged that **he/she** is the TCP Section Manager of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said state agency.



Lorna L. Gadwa  
Print Name: Lorna L. Gadwa  
Notary Public, State of Washington  
My appointment expires September 17, 2019



Exhibit A

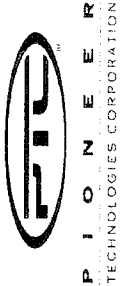
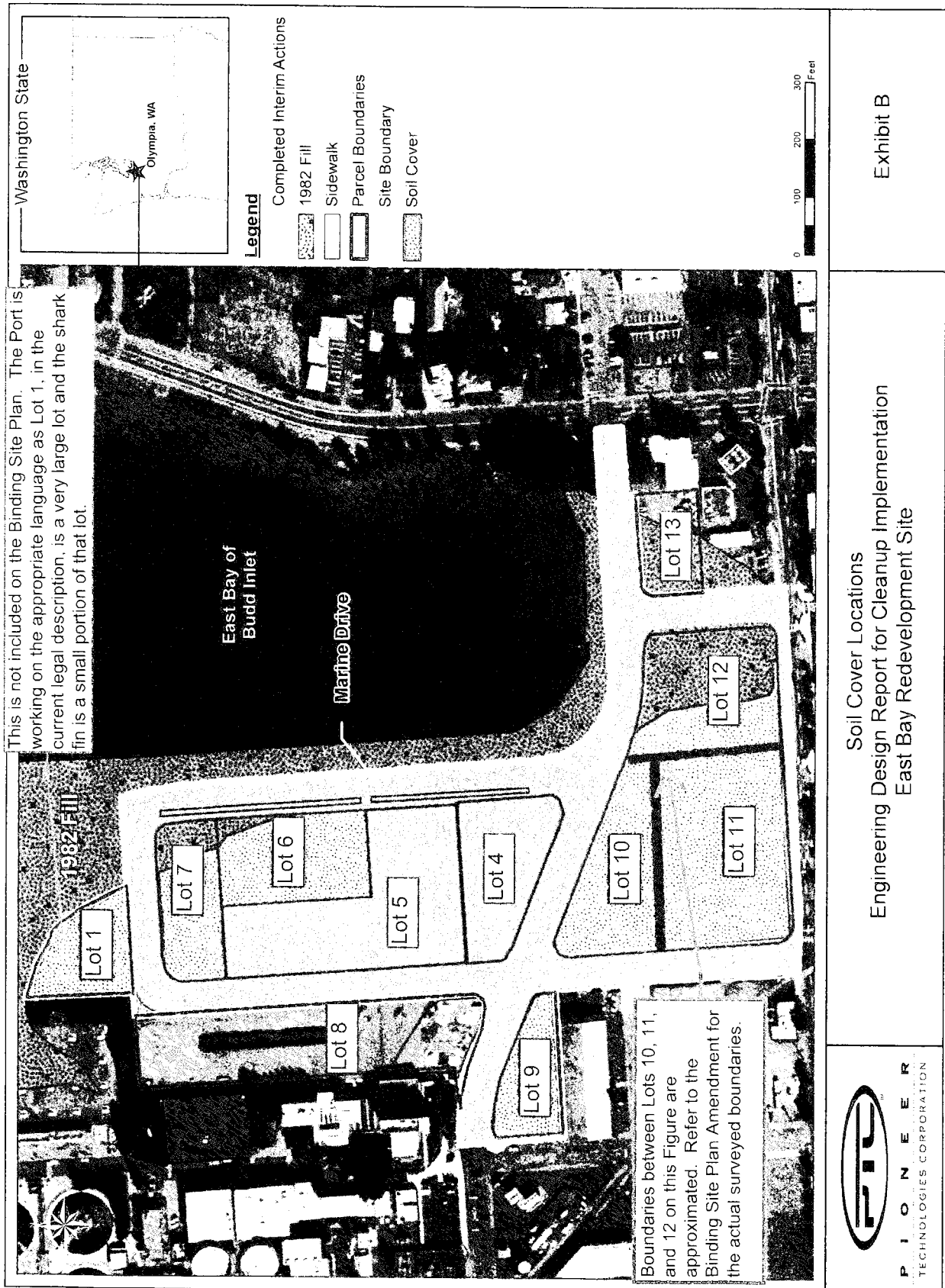
Legal Description

Lots 10, 11, and 12, Olympia Area Rowing Binding Site Plan Amendment #3

LOTS 10, 11 AND 12 OF OLYMPIA AREA ROWING BINDING SITE PLAN THIRD AMENDMENT, AS RECORDED FEBRUARY 13, 2018 UNDER AUDITOR'S FILE NO. 4611194.

Exhibit B

Illustration of Lots 10, 11, and 12, Olympia Area Rowing Binding Site Plan Amendment #3



Soil Cover Locations  
 Engineering Design Report for Cleanup Implementation  
 East Bay Redevelopment Site

Exhibit B