

After Recording Return  
Original Signed Covenant  
to:

Electronic Copy

Andrew Smith  
Toxics Cleanup Program  
Department of Ecology  
PO Box 47775  
Olympia, WA 98504-7775

## Environmental Covenant

**Grantor:** West Bay Marina Associates

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

**Brief Legal Description:** PLUM DLC & FCT BEING PTN TR A BLA-53352/574

DAF: BEG NE COR 8408020110; N22-58-27W 107.95F ALG INNER HRBR LN; S66-44-33W 109.08F; S17-24-54E 105.21F; N67-39-05E 207.29F POB.

Tax Parcel Nos.: 09750018003

Cross Reference: 4651229

### 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 or all of a site commonly known as West Bay Marina under Ecology Facility ID No. 92753273. 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:

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01/08/2020 10:47 AM Covenant  
Thurston County Washington  
WESTBAY MARINA ASSOCIATES

Pages: 10



Medium	Principal Contaminants Present
Soil	Dioxins, Furans
Groundwater	N/A
Surface Water/Sediment	N/A

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology.

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.

f. This Covenant amends and supercedes and replaces in its entirety that certain Covenant recorded October 4, 2018 under Thurston County recording number 4651229.

## COVENANT

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

### Section 1. General Restrictions and Requirements.

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

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

b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.



c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

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

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

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

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

**Containment of Soil/Waste Materials.** The remedial action for the Property is based on containing contaminated soils under a cap consisting of the West Bay Marina office building, concrete capped sidewalks/areas, and surrounding asphalt paved areas as illustrated in Exhibit B (Site Plan Detail Following Remedial Excavation). The primary purpose of this cap is to protect from direct contact with the contaminants. As such, the following restrictions shall apply within the area shown on Exhibit B as "Region of Property Defined under Environmental Covenant Control" (Restricted Area).

Any activity within the Restricted Area that will compromise the integrity of the Containment 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 Containment Cap is defined by the asphalt, concrete and structures covering the soil contamination within the Restricted Area on Exhibit B. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the Containment 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 shall not alter or remove the existing structures within the Restricted Area in any manner that would expose said contaminated soil and waste materials, result in a release to the environment of said contaminants, or create a new exposure pathway, without prior written approval of Ecology. Should the Grantor propose to remove all or a portion of the existing structures illustrated in Exhibit B that access to the underlying

contamination is feasible, Ecology may require treatment or removal of the underlying contaminated soil and waste materials.

As required by Ecology, but not more often than every 5 years, the property owner shall provide to Ecology a report with photographs and a description of the condition of the Containment Cap, also detailing any necessary or anticipated maintenance for the Containment Cap or changes to conditions at the Site affecting the remedy.

**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 of the Property including but not limited to title, easement, leases, and security or other interests, must:
  - i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
  - 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 OF THIS COVENANT] AND RECORDED WITH THE THURSTON COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.**



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.

Neil Falkenburg West Bay Marina Associates 2100 W Bay Dr NW Olympia, WA 98502  Phone: (360) 946-2022	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 <a href="mailto:ToxicsCleanupProgramHQ@ecy.wa.gov">ToxicsCleanupProgramHQ@ecy.wa.gov</a>
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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 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 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 it holds the title to the Property and has authority to execute this Covenant.





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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By: Rebecca S. Lawson  
Title: SW REGION MANAGER  
Dated: 1/7/2020

STATE OF WASHINGTON  
COUNTY OF THURSTON

On this 7<sup>th</sup> day of January, 2020 I certify that Rebecca S. Lawson personally appeared before me, acknowledged that **he/she** is the SWRO - TCP 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.



Treasure A Mitchell  
Notary Public in and for the  
State of Washington  
Residing at McCleary, WA  
My appointment expires 8/2/2023



## Exhibit A

### LEGAL DESCRIPTION

That portion of Parcel A of Boundary Line Adjustment No. BLA-SS-5335 as recorded September 6, 1984 under Auditor's File No. 8409060030, described as follows:

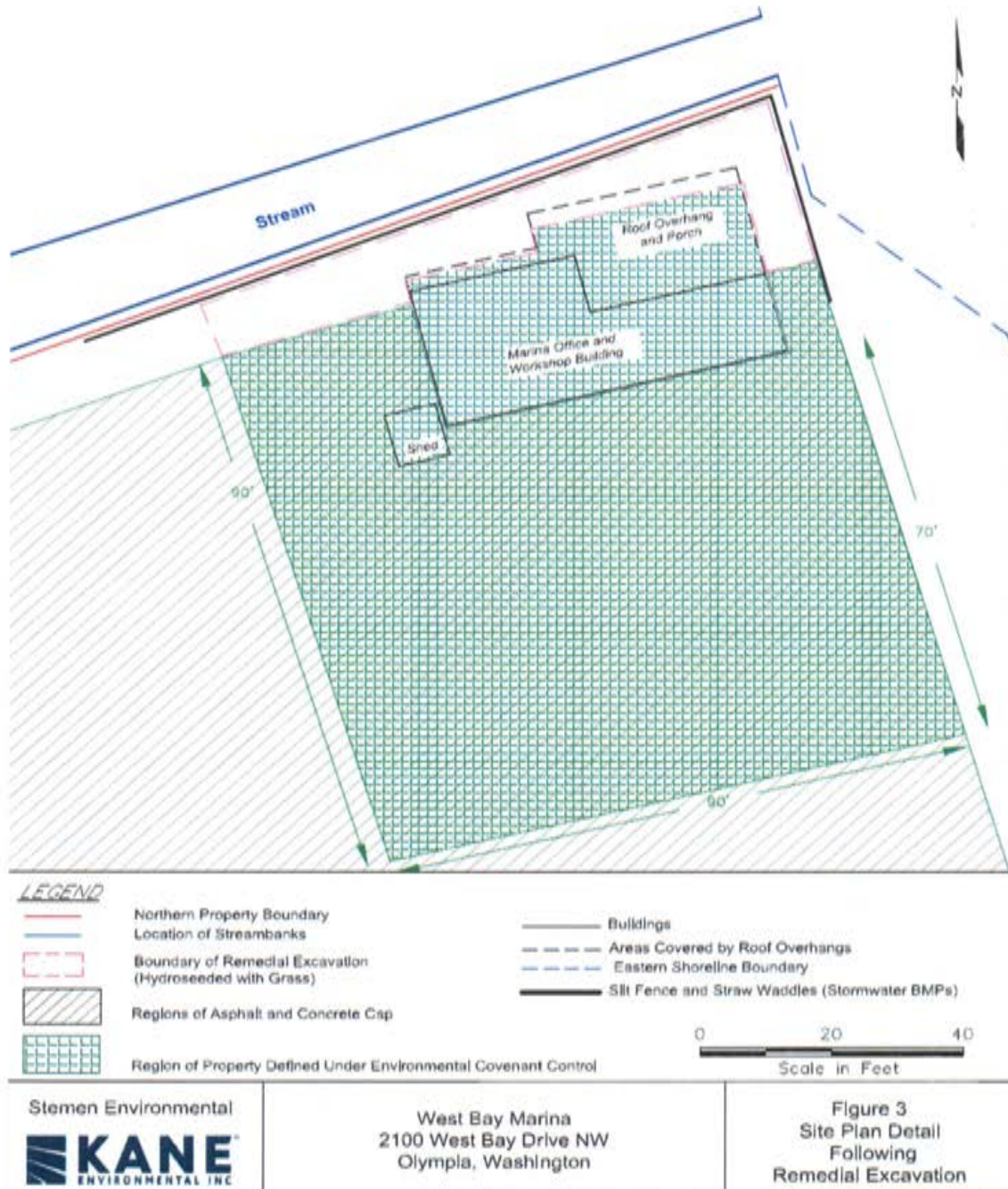
That part of Plumb Donation Claim No. 57, Township 18 North, Range 2 West, W.M., and of Blocks 385 and 386 of Olympia Tide Lands and of adjoining vacated street, described as follows:

Beginning at point North 22° 02' 47" West 252.99 feet from a point on the South line of said Plumb Claim, North 89° 51' 12" East 206.41 feet from the intersection of the Easterly line of Harbor View Drive in West Bay Hills as recorded in Volume 12 of Plats, page 83, therewith; running thence North 22° 02' 47" West 39.85 feet, North 26° West 105.79 feet and North 56° 26' 20" East 4.19 feet more or less to the Westerly line of a former right of way of Port Townsend Southern Railroad Company; thence Northwesterly along said Westerly line of the right of way 220 feet more or less; thence North 67° 39' 05" East 351.74 feet more or less to the Inner Harbor Line of Budd Inlet; thence South 22° 58' 27" East along said Harbor Line 365.62 feet; thence South 67° 39' 05" West 330 feet more or less to the point of beginning; EXCEPTING THEREFROM West Bay Drive.

In Thurston County, Washington.

## Exhibit B

### FIGURE 3-SITE PLAN DETAIL FOLLOWING REMEDIAL EXCAVATION



Stemen Environmental

West Bay Marina  
 2100 West Bay Drive NW  
 Olympia, Washington

Figure 3  
 Site Plan Detail  
 Following  
 Remedial Excavation