

# HOOD CANAL COORDINATING COUNCIL

## In-Lieu Fee Mitigation Plan

Bob and Melissa Olson Nearshore  
Marine Tideland and Riparian Preservation



FINAL DRAFT July 22, 2021

## Table of Contents

List of Tables.....	i
List of Figures .....	i
Executive Summary .....	2
1. Introduction.....	2
Overview .....	2
Impacts Being Mitigated .....	3
Credit Generation.....	3
Transfer of Obligations.....	3
2. Goals and Objectives .....	3
Goal 1: Prevent Future Site Disturbance.....	3
Goal 2: Improve Marine Riparian Functions .....	3
3. Mitigation Site Selection .....	4
4. Baseline Conditions .....	6
Puget Sound Energy Easement .....	6
Existing Road and Trails.....	7
Topography and Streams .....	7
Soils .....	8
Vegetation .....	8
Salmonid Freshwater Aquatic Resources.....	8
Nearshore.....	8
Wildlife .....	10
Weeds.....	10
Structures and Debris.....	11
5. Mitigation Work Plan .....	11
Structure Removal & Debris Removal.....	11
Prevent Unauthorized Use or Access .....	11
Weed Control .....	12
6. Determination of Credits.....	12
Credit Calculation .....	12
7. Performance Standards.....	16

Goal 1: Prevent future site disturbance .....	16
Goal 2: Improve Marine Riparian Functions .....	16
8. Monitoring.....	17
Protocol for Determining Site Protection .....	17
Protocol for Determining Weed Control.....	17
Protocol for Debris .....	17
Party Responsible for Conducting Monitoring.....	17
Monitoring Reports.....	17
9. Maintenance Plan.....	18
Weed Treatment .....	18
Road and Trails.....	18
Human Impacts .....	18
10. Credit Release Schedule .....	19
11. Adaptive Management Plan.....	21
Encroachment/Vandalism/Un-authorized Use .....	21
Natural Events .....	21
12. Site Protection Instrument.....	21
13. Draft Long-term Management and Maintenance Plan.....	21
Parties Responsible for Long-Term Management and Maintenance .....	22
Site Inspection Frequency and Activities .....	22
14. Financial Assurances .....	23
15. Force Majeure .....	23
16. Implementation.....	24
Responsible Parties .....	24
Reporting.....	24
Access .....	24
Figures .....	A
APPENDIX 1 - EASEMENT .....	B
APPENDIX 2 – DECLARATION OF LAND USE RESTRICTIONS AND REAL PROPERTY COVENANTS .....	C
APPENDIX 3 – COOPERATIVE AGREEMENT BETWEEN GREAT PENINSULA CONSERVANCY AND HOOD CANAL COORDINATING COUNCIL .....	D

## List of Tables

<b>Table 1.</b> Site Selection Criteria .....	5
<b>Table 2.</b> Area of Weed Species Coverage in Accessible Areas.....	11
<b>Table 3.</b> Nearshore Interim Tool Credit Generation By Habitat Class: Olson Nearshore Mitigation Project. ....	15
<b>Table 4.</b> Summary of Reports and Monitoring Tasks.....	18
<b>Table 5.</b> Credits Release Schedule By Habitat Class.....	20

## List of Figures

<b>Figure 1.</b> Impact sites and mitigation site locations within the North Assessment and Management Unit.....	A1
<b>Figure 2A.</b> Vicinity Map Olson Nearshore Site, Poulsbo, Washington.....	A2
<b>Figure 2B.</b> Olson Nearshore Site – surveyed tideland ownership, upland riparian parcels, site protection buffers and Puget Sound Energy easement with buffer.....	A3
<b>Figure 3.</b> Olson Nearshore Site showing elevation contours and Geological Hazard areas. ....	A4
<b>Figure 4.</b> United States Department of Agriculture Natural Resources Conservation Service Custom Soil Resources Report map, November 29, 2018. ....	A5
<b>Figure 5.</b> Typical conditions within the riparian forest communities. ....	A6
<b>Figure 6.</b> Olson Nearshore drift cells (left) and Washington Department of Fish and Wildlife forage fish survey and spawning map (right).....	A7
<b>Figure 7.</b> Marine vegetation survey: June 14, 2018, tidal elevation -3.7ft MLLW. Eelgrass shown in green polygons, <i>Ulva</i> and macroalgae in teal polygons.....	A8
<b>Figure 8.</b> Olson Nearshore non-native weed species locations.....	A9
<b>Figure 9.</b> Structures on Olson Nearshore Mitigation site. ....	A10
<b>Figure 10.</b> Olson Nearshore mitigation site riparian credit areas, Puget Sound Energy easement and buffer, and 50 foot site protection buffer.....	A11



## Executive Summary

The Bob and Melissa Olson Nearshore Project (Olson Nearshore) is located in Poulsbo, Kitsap County, Washington. The mitigation site is situated along the shoreline of Hood Canal and is within the North Assessment and Mitigation Unit of the Marine Service Area; Hydrological Unit Code 17110018 (**Figure 1**). The site is located at the end of a private easement off Johnson Road NW (**Figure 2A**). Geographic coordinates are: 47.78474432 N and -122.688031 W. The project will protect and restore nearshore intertidal vegetated and non-vegetated habitat and marine riparian habitat.

The primary purpose of this mitigation action is to protect the existing high value and quality feeder bluffs and tideland resources, along with the associated intact riparian habitat from degradation. This site will generate mitigation credits through preservation of marine riparian and intertidal habitats.

The site totals 26.92 acres comprised of 20.38 acres of forested riparian area and 6.54 acres of tideland intertidal habitat (**Figure 2A**). The site is composed of two undeveloped tax parcels (Kitsap County parcel numbers 332701-3-003-2006 and 332701-3-038-2005 (**Figure 2A**)). The site is zoned one dwelling unit per five acres and at least four potential building areas occur on the mitigation site which pose a threat for development of the site, although development restrictions, such as set-backs, may occur due to the steep slopes on the site.

The Olson Nearshore in-lieu fee mitigation site is anticipated to generate 2.790 intertidal non-vegetated credits, 0.348 intertidal vegetated credits, and 4.515 riparian credits. The Olson Nearshore Project will be monitored for achievement of performance standards for at least five years. Mitigation credits will be released over time as performance standards are met.

## 1. Introduction

### Overview

The purpose of this mitigation plan is to describe details of the Bob and Melissa Olson Nearshore Project (Olson Nearshore) which will protect nearshore intertidal vegetated and non-vegetated habitats, and associated marine riparian habitat along Hood Canal (**Figure 1**).

The Olson Nearshore Project will be implemented under Hood Canal Coordinating Council's (HCCC) In Lieu Fee (ILF) Program by HCCC to provide compensatory mitigation for unavoidable impacts associated with permitted project or regulatory enforcement actions elsewhere in the Program's Marine Service Area.

The Olson Nearshore Project parcels were acquired in 2018 utilizing HCCC ILF Program funds, and the fee simple title is held by Great Peninsula Conservancy (GPC) a non-profit land trust.

This Mitigation Plan, in its entirety, will be appended to the HCCC's In Lieu Fee Program Instrument<sup>1</sup>, authorized June 15, 2012, as amended.

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<sup>1</sup> Hood Canal Coordinating Council In-Lieu Fee Program Instrument Basic Agreement – Final, June 15, 2021 and Hood Canal Coordinating Council In-Lieu Fee Program Instrument Technical Appendices and Compensation Planning Framework – Final June 15, 2012.

## Impacts Being Mitigated

The Olson Nearshore Project is expected to fully or partially offset impacts associated with the following impact projects (**Figure 1**):

- U.S. Navy: Explosives Handling Wharf 2 (EHW2; 2012), NWS-2009-572 and Ecology WQC#9157 (2.700 subtidal non-vegetated debits, 2.420 subtidal vegetated debits, 1.980 intertidal non-vegetated debits and 2.440 riparian debits)
- U. S. Navy: Land Water Interface (LWI; 2018), NWS-2013-243 and Ecology WQC#13636 (0.158 subtidal non-vegetated debits, 0.233 subtidal vegetated debits, 0.240 intertidal vegetated debits, 0.628 intertidal non-vegetated debits, and 3.336 riparian debits)

Additional impact projects may be assigned to the Olson Nearshore Project with Interagency Review Team<sup>2</sup> (IRT) approval.

## Credit Generation

A total of 20.38 acres of forested riparian habitat and 6.54 acres of intertidal habitat spanning approximately 488 linear feet of shoreline will be perpetually protected.

Of the 20.38 acres of riparian habitat, 15.47 acres will generate riparian mitigation credits, while the remaining acreage includes site protection buffers and a utility easement for Puget Sound Energy (PSE) of 30 feet in width (inclusive of a 10 foot buffer on either side of the 10 foot wide easement) and approximately 624 feet long (**Figure 2B**). The entire 6.54 acres of tideland will generate mitigation credit as no buffers will be placed on the tidelands. Using the HCCC's ILF Program Nearshore Interim Tool, this in-lieu fee mitigation site is anticipated to generate 2.790 intertidal non-vegetated credits, 0.348 intertidal vegetated credits, and 4.515 riparian credits.

## Transfer of Obligations

Responsibility for completing the mitigation has been transferred to HCCC's federally and state authorized ILF Program via agreements with the impact projects listed above in Section 1.

HCCC issued a Statement of Sale for each ILF credit purchase. Statements of Sale are on file with the HCCC ILF Program, as well as regulatory agencies.

## 2. Goals and Objectives

The Olson Nearshore project is designed to meet the following goals and objectives.

### Goal 1: Prevent Future Site Disturbance

*Objective 1: Preserve Aquatic Ecosystem Processes and Functions, and Generate Marine Credit*

### Goal 2: Improve Marine Riparian Functions

*Objective 2: Weed Control*

*Objective 3: Remove Structures and Debris*

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<sup>2</sup> Representatives from federal, state, tribal and local regulatory and resource agencies providing advice and assistance to the Co-chairs the U.S. Army Corps of Engineers and Washington State Department of Ecology.  
HCCC ILF Program Mitigation Plan – Olson Nearshore

### 3. Mitigation Site Selection

The Olson Nearshore site was selected according to the guidance within the Program Instrument Appendix H which states that if functions lost at an impact site are not of critical ecological importance to the marine Assessment and Mitigation Unit (AMU)<sup>3</sup>, the site selection process for both in-kind and out-of-kind mitigation will expand outward to adjacent sub-basins or AMUs (not to exceed the service area boundary) until several possible sites are found that meet watershed needs and are sustainable according to best available science. The Program Instrument further states that for impacts to functions that are of critical ecological importance<sup>4</sup> to the marine drift cell/AMU, site selection shall look for in-kind receiving sites within the marine AMU reach or marine drift cell where the impact(s) occurred that replaces the functions lost, that are located near the impact site, and are sustainable. If no in-kind mitigation receiving site is available within the marine drift cell, the Program will methodically expand the search for in-kind mitigation receiving sites outward to adjacent reaches or drift cells, but will not to exceed the AMU area boundary.

The Instrument also discusses the 2008 Federal Mitigation Rule requirement to acquire land and complete initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee (33 CFR 332.8(n)(4)). In cases when appropriate in-sub-basin/AMU mitigation projects (e.g. sufficient type, magnitude, and sustainability of ecological lift) cannot be identified within 18 months, the HCCC ILF Program Manager shall seek a site for in-kind, out-of-sub-basin/AMU mitigation, or out-of-kind mitigation using the nested approach not to exceed the service area boundary, until several possible sites are found that meet watershed needs and would be sustainable according to best available science.

Potential roster site areas for the Marine Service Area were identified by the HCCC in 2013. This analysis identified segments of shoreline by habitat value and management strategy (restore, protect, enhance) to narrow the focus for finding mitigation sites. While the analysis identifies key areas for investigation, it is not specific enough to evaluate sites at the parcel level. No sites from the roster list were found to be executable at this time.

HCCC has made every attempt to follow the guidance for site selection protocol stated within the Program Instrument for impacts to functions of critical ecological importance. However, due to the difficulty of finding appropriate mitigation properties, some mitigation credit fulfillment may not be able to follow the nested search approach for critical ecological importance functions and will need to follow a nested search approach for non-critical ecological importance.

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<sup>3</sup> Within the HCCC ILF Program Instrument (Appendix B) AMUs are defined as the sub-geography at which the Program will assess and mitigate resource impacts in the marine/nearshore service area. Each AMU displays a range of geography, land use, historic and future impacts, geology, patterns of littoral drift, oceanography and habitat complexes, but do not display clear distinctions at their boundaries or in all characteristics.

<sup>4</sup> HCCC ILF Program Instrument states (Appendix H.1.): "Critical ecological importance shall be determined from available information and best professional judgment as to whether or not the ecosystem within a particular area cannot afford to lose the specific functions." Marine vegetated habitats, both subtidal and intertidal, are thought by HCCC to be of critical ecological importance due to the difficulty to replace these habitats.

The EHW2 and LWI Projects impact vegetated subtidal and intertidal habitats which are considered to be of critical ecological importance to the marine drift cell/AMU where the impacts are located. To determine if the Olson Nearshore site was an appropriate mitigation match for the EHW2 and LWI credit sales, the following criteria were considered (**Table 1**).

<b>Table 1. Site Selection Criteria</b>	
<b>Criteria</b>	<b>Response</b>
Within the same Assessment and Mitigation Unit (AMU) as the credit sale?	Yes, North Hood Canal ( <b>Figure 1</b> )
What mitigation objectives of the AMU does this site address?	<ul style="list-style-type: none"> <li>• Preserve intact feeder bluffs</li> <li>• Prevent bank hardening</li> <li>• Allow for natural erosion and beach forming processes</li> <li>• Minimize the loss of marine riparian vegetation due to residential development</li> <li>• Increase quality and extent of nearshore habitat for forage fish – acquire land for preservation</li> <li>• Minimize water quality and quantity impacts associated with development and timber harvest activities – prevent new impervious surfaces</li> </ul>
Within the same drift cell as the impact site? If no, is site within an adjacent drift cell?	Yes ( <b>Figure 6</b> ) N/A
Proximity to impact site?	3 shore miles ( <b>Figure 1</b> )
Important habitat features present? If yes, list.	Yes. <ul style="list-style-type: none"> <li>• Feeder bluffs</li> <li>• Intact riparian area with mature timber, overhanging vegetation and undercut banks</li> <li>• Highly functioning tidelands; without impairments</li> <li>• Eelgrass meadow</li> <li>• Approximately mid-point of long (~17 miles) drift cell – to provide benefits down-drift</li> <li>• Salmon stream –presumed presence for fall chum</li> <li>• Steep slopes and ravine in riparian area; seasonal/surface water run-off</li> </ul>
Proximity to other protected properties?	No.
Threat of development?	Yes, developable uplands for up to 4 home sites.

The Olson Nearshore site was identified as an appropriate fit for mitigation of the EHW2 and LWI credit sales due to its location within the same drift cell, habitat types and functions provided, proximity to the impact site, size of the site, threat of development on the site, and land acquisition availability. Site characteristics that further support the site selection are detailed below in Section 4. Baseline Conditions. Both EHW2 and LWI projects included impacts to subtidal habitat. It has been

impossible for HCCC to acquire subtidal acreage despite extensive searches. This is due primarily to the fact that Washington State (Department of Natural Resources) owns the majority of subtidal habitat in the State. The Olson Nearshore site meets the HCCC Instrument's nested site selection approach for out-of-kind compensation, should out-of-kind mitigation credits be needed. The site could provide compensation for the subtidal impacts with valuable and high functioning intertidal habitat. The application of out-of-kind compensation was reviewed in consultation with the IRT U.S. Army Corps of Engineers Co-Chair and IRT (IRT Meeting March 25, 2019). Additional impact projects may be assigned to the Olson Nearshore Project with IRT review.

#### 4. Baseline Conditions

The Olson Nearshore site is located in Poulsbo, Washington. It contains 20.38 acres of uplands with 6.54 acres of adjoining tidelands including approximately 488 linear feet of intact shoreline, with the majority of the shoreline being feeder bluffs (**Figure 2A**). The site is comprised of two tax parcels, all undeveloped land (**Figure 2A**). The site includes a Puget Sound Energy utility easement in the northeast riparian area (**Figure 2B**).

The site lies within the central Puget Lowland and is part of a regional north-south trending trough that extends from southwest British Columbia to near Eugene, Oregon. The Puget Lowland is bounded on the west by the Olympic Mountains and on the east by Cascade Range and the lowland is filled with glacial and nonglacial sediment.

The setting surrounding the Olson Nearshore site is rural residential. Residential, single family home development has occurred along the shoreline on the north and south sides of the site. Pioneer Way NW, a relatively major paved road, borders the eastern side of the site. Some undeveloped forested lands remain to the south of the site.

Baseline information has been collected to establish the site conditions prior to mitigation project actions. The baseline data was collected by foot survey of the site utilizing existing access and trails for primary access, with secondary access off trail where possible. Parts of the site (approximately 5.68 acres) are inaccessible by foot due to dangerously steep and unstable slopes and other unsafe conditions (see Topography discussion below). Structures, debris, roads and weeds (in accessible areas) are mapped using the Collector for ArcGIS database developed by HCCC.

##### **Puget Sound Energy Easement**

A powerline occurs on the property near the northern property boundary (**Figure 2B**). This powerline provides power to one residence adjoining the property to the north. The power line corridor is approximately 624 feet long and the PSE easement is 10 feet in width. Additionally, a 10 foot non-credit generating buffer has been placed on either side of the PSE easement making the total area excluded from credit generation approximately 624 feet long by 30 feet in width (0.43 acres). The power line travels from Pioneer Way Northwest to the adjoining residence through intact upland forested habitat and is constructed with five power poles, guy wires, and one power supply line. The forest habitat in and immediately surrounding the easement is composed of red alder (*Alnus rubra*) and conifer tree species along with dense shrub and fern understory. Some weed species (**Figure 8**) are present either within the easement area or closely adjacent; predominantly Scotch broom (*Cytisus*

*scoparius*) and Himalayan blackberry (*Rubus armeniacus*).

### Existing Road and Trails

An old road occurs on the property from the Johnson Road access easement into the property interior on the south side of the ravine, heading to the east approximately 300 feet before transitioning into a trail that continues on, looping back to the south, approximately 625 feet before exiting the property.

A second trail occurs on the property that begins near the access to the property off of the Johnson Road access easement and travels approximately 500 feet through the upland forest and down the slope to the beach. The trail is narrow, steep and in places hazardous. The vegetation in the area of the trail is composed of large overstory trees, predominantly Western red cedar (*Thuja plicata*), Douglas fir (*Pseudotsuga menziesii*) and bigleaf maple (*Acer macrophyllum*); with dense understory of native shrub species and ferns. At the lower end of the trail, near the interface with the tidelands, the trail crosses an area where seasonal surface runoff discharges from a small ravine (See Topography and Streams) forming a plunge pool approximately 6 feet deep and a incised stream section before discharging on to the beach. Portions of the trail in this area have eroded and become undercut by the seasonal discharge.

### Topography and Streams

Approximately one-half of the site has slopes ranging from 0 to 15 percent. A perennial stream that outlets to Hood Canal bisects the site in an east/west orientation in a steep ravine approximately 70 to 100 feet deep and 1,480 feet long (**Figure 3**). The ravine slopes range from 45 to 70 percent. These slopes also predicate the erosion hazards which range from severe in the ravine area and along the shoreline, to slight in the areas outside the ravine. Based on Kitsap County's Geological Hazard mapping, approximately 50% of the site has moderate to severe erosion potential<sup>5</sup> (**Figure 3**). The ravine portion of the site is mapped by Kitsap County to contain a Category II Critical Aquifer Recharge Area<sup>6</sup>.

A second, smaller ravine occurs in the southwestern portion of the site and conveys seasonal surface water run-off to the shoreline. This ravine is approximately 440 feet in length and 25 to 30 feet deep, with evidence of active erosion.

In addition to the ravines on the property that generally occur in an east to west orientation with steep slope faces to the north and south; west facing bluffs occur within the uplands and along the bluff face with the tidelands (**Figure 3**). The upland bluffs, approximately 95 feet high, occur generally in the south western section of the property where the property transitions from: flat upland to near vertical to moderate steep slopes (approximately 20 to 84 percent inclinations). A second narrow upland bench to a short (20 feet) steep slope to the beach occurs in the southwest corner. These steep-faced bluffs are sediment feeder bluffs and occur along the majority of the tidelands (See

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<sup>5</sup> Kitsap County Department of Community Development. Geologic Hazardous Maps: Landslide Hazards and Erosion Hazards. Maps Published: February 23, 2017.

<sup>6</sup> Category II Critical Aquifer Recharge Areas. Category II critical aquifer recharge areas are areas that provide recharge effects to aquifers that are current or potentially will become potable water supplies and are vulnerable to contamination based on the type of land use activity.

Nearshore; **Figure 3**). The feeder bluffs are of high value for supporting ecological processes of the tidelands as feeder bluffs provide the sediment needed to support and sustain the intertidal habitat.

## Soils

The United States Department of Agriculture Web Soil Survey Custom Soil Resources Report for the site<sup>7</sup> indicates that on-site soil origins are sandy or gravelly outwash and/or ablation till in the stream ravine area, and volcanic ash mixed with glacial drift over dense glaciomarine deposits in the areas above the ravine. Three soils types occur on site (**Figure 4**): Dystric Xerothents<sup>8</sup> (approximately 45% of the site), Kapowsin gravelly ashy loam (approximately 50% of the site), and Poulsbo gravelly sandy loam (approximately 5% of the site). These soils are described as moderately well drained with low to very low available water storage profile, with depth to groundwater ranging in the area above the stream ravine from 11 to 30 inches, to over 80 inches in the ravine. Water storage potential and depth to groundwater is strongly influenced by on-site slopes.

Sandy, loamy soil is present on the shoreline bluff face and swallow nesting burrows are present (**Figure 4**).

The riparian soils are reported to best sustain the following tree and forest understory vegetation species: Douglas fir, bigleaf maple, red alder, Western hemlock (*Tsuga heterophylla*), Western red cedar, bracken fern (*Pteridium aquilinum*), salal (*Gaultheria shallon*), trailing blackberry (*Rubus ursinus*), Western swordfern (*Polystichum munitum*), Cascade Oregon grape (*Mahonia nervosa*), evergreen huckleberry (*Vaccinium ovatum*), red huckleberry (*V. parvifolium*), Western trillium (*Trillium ovatum*) and non-native Himalayan blackberry. The average tree height site index for Douglas fir is 110 to 123 feet<sup>7</sup>.

## Vegetation

Field survey of the riparian forest community identified the following mixed forest: western red cedar, bigleaf maple, Douglas fir, red alder, and some Western hemlock. With an understory primarily composed of swordfern, Cascade Oregon grape, tall Oregon grape (*Mahonia aquifolium*), salmonberry (*Rubus spectabilis*), and salal (**Figure 5**).

## Salmonid Freshwater Aquatic Resources

The perennial unnamed stream that bisects the site is reported to support fall chum salmon (*Oncorhynchus keta*) and resident coastal cutthroat trout (*Oncorhynchus clarkii clarkii*)<sup>9</sup>. No salmon post-spawning carcasses have been observed in the lower reaches of the creek.

## Nearshore

Geomorphically this site is within the beaches classification with associated bluffs landform<sup>10</sup>. The backshore is composed of high and low bluff with intact riparian cover, primarily composed of Western red cedar, bigleaf maple, Pacific madrone (*Arbutus menziesii*), and Douglas fir overstory with

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<sup>7</sup> USDA Natural Resources Conservation Service Web Soil Survey. Custom Report July 28, 2017 & November 29, 2018.

<sup>8</sup> Found in streams and valleys, parent material sandy and gravelly outwash and or ablation till.

<sup>9</sup> Washington Department of Fish and Wildlife on-line SalmonScape Map:  
<http://apps.wdfw.wa.gov/salmonscape/map.html>

<sup>10</sup> Shipman, H. 2008. A Geomorphic Classification of Puget Sound Nearshore Landforms



an understory of vine maple (*Acer circinatum*), thimbleberry (*Rubus parviflorus*), and swordfern. A minor infestation of non-native invasive butterfly bush (*Buddleia davidii*) occurs along the shoreline. Washington State Department of Ecology's (Ecology) Coastal Atlas<sup>11</sup> maps the shoreline to be primarily feeder bluff, with a small segment near the mouth of the creek and surface water drainage ravine as being an accretion shoreform. A treated wood deck on the shoreline is a minor impediment to sediment source, sediment transport, and water quality. The deck is 22 feet long and 8 feet wide, and is fully enclosed on three sides with treated timbers (**Figure 9**).

The site is located approximately in the middle of a very long, 17 mile, right to left drift cell (**Figure 6**). It is likely that feeder bluffs on the site provide sediment benefits to the shoreline only in the immediate vicinity, possibly supplementing the accretion area just down drift.

No forage fish spawning is documented on the site, although a sand lance spawning area is mapped to the north of the site (**Figure 6**).

Puget Sound Institute's Updated Habitat Classifications for Puget Sound<sup>12</sup> places this site in habitat class 78 (estuarine, intertidal, mixed fine, and partly enclosed), a common habitat class in Hood Canal. This is also the habitat class at the impact sites located at Naval Base Kitsap Bangor. Characteristics of this habitat class include: low wave energy; mixed sand and mud with some gravel on the upper shore; high productivity due to eelgrass and micro- and macro-algae; and detritivores in the sediment are dense and are a prey source for other invertebrates and birds and fish. Eelgrass areas are used by a variety of birds including great blue herons, Western grebes, and brant. Raccoon, deer, skunk and weasels may forage on the shore.

Field investigations found the intertidal substrate to be composed primarily of sand and gravel, with interspersed small rock. Closer to the riparian edge, ranging from 25 to 80 feet from the toe of the bluff, the substrate is predominantly gravel; and north of the creek outlet, gravel substrate extends closer to 200 feet off-shore. Substrate is firm and stable enough to support Pacific oysters (*Crassostrea gigas*) which are present in dispersed clusters. Other species observed include:

- Shore crabs (*Hemigrapsus* spp)
- Sand dollars (*Dendraster excentricus*), large areas of juvenile sand dollars
- Cockles (*Clinocardium nuttallii*)
- Littleneck clams (Manila littleneck: *Ruditapes philippinarum*, Pacific littleneck: *Leukoma staminea*)
- Varnish clams (*Nuttallia obscurata*)
- Mussels (*Mytilus edulis*)
- Dungeness crab, numerous molts (*Cancer* or *Metacarcinus magister*)
- Red rock crab (*Cancer productus*)
- Kelp crabs (*Pugettia* spp)
- Moon snail (*Euspira lewisii*), egg collars observed
- Barnacles (*Balanus glandula*)
- Gulls (*Larus* spp)

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<sup>11</sup> Washington State Department of Ecology Coastal Atlas on-line mapping tool:  
<https://fortress.wa.gov/ecy/coastalatlas/tools/Map.aspx>

<sup>12</sup> Puget Sound Institute, 2014. Updated Habitat Classifications for Puget Sound:  
<https://www.eopugetsound.org/habitats/shore-types>



- Belted Kingfisher (*Megaceryle alcyon*)
- North American River otter (*Lontra canadensis*) – tracks only
- American Black bear (*Ursus americanus*) – game camera sightings

The shallow nearshore of the site provides important migratory corridor, nursery area, spawning and rearing habitat for a variety of fish, shellfish and terrestrial species.

Marine vegetation was surveyed on June 14, 2018 during an extreme low tide event of -3.6 feet MLLW. Marine vegetation (macro-algae and eelgrass species) is present on 0.97 acres of the intertidal area. The vegetation occurs in patches across the tidelands, with the exception of a band of eelgrass that is present across the width of the western portion of the site and extends off-site both to the north and south (**Figure 7**). This band of dense eelgrass begins near the lower extent of the tidelands and continues westward off-site into deeper water. The eelgrass band is predominantly composed of native eelgrass (*Zostera marina*), and covers approximately 0.15 acres of the on-site tidelands. The remaining vegetated area (0.82 acre), is predominantly attached *Ulva*, both stringy and leafed forms. Other green/brown algae were mixed in with the *Ulva*, and a limited amount of *Fucus* was present, primarily attached to logs.

## Wildlife

Observations of wildlife species in addition to those listed in the Nearshore section above include various birds, including pileated woodpecker (*Dryocopus pileatus*), great horned owl (*Bubo virginianus*), belted kingfisher, and various gull species. A number of large snags providing cavity nesting and/or foraging opportunities were observed on the site (**Figure 5**). Columbian black-tailed deer (*Odocoileus hemionus columbianus*) utilize the riparian forest and occur throughout the riparian area. Black bear spoor is observed frequently on the site and bears have been seen on game cameras. Other mammals utilizing the site include coyote (*Canis latrans*), North American river otter, raccoon (*Procyon lotor*), rabbit (species unknown), squirrel (species unknown), opossum (*Didelphis virginiana*), and Bobcat (*Lynx rufus*).

## Weeds

Five of Kitsap County's noxious weeds of concern are present within the riparian area including: Butterfly bush, Himalayan blackberry, English ivy (*Hedera helix*), herb Robert (*Gernanium robertianum*), and Scotch broom. Control of these weed species identified on the property is not required by Kitsap County but is recommended. Another non-native plant found on-site, but not considered a noxious weed by Kitsap County, is English holly (*Ilex aquifolium*).

The accessible<sup>13</sup> weed areas have been mapped and are shown on **Figure 8**. The areas of weed coverage have been estimated as shown in **Table 2**. Total percent weed cover within the accessible riparian area is shown in **Table 2**.

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<sup>13</sup> The presence of steep slopes across the upland portion of the site create accessibility and safety issues limiting walkable areas of the site where worker safety is not jeopardized.

<b>Table 2. Area of Weed Species Coverage in Accessible Areas.</b>	
<b>Species</b>	<b>Square Feet (sf)</b>
Himalayan blackberry ( <i>Rubus armeniacus</i> )	1,154
Scotch broom ( <i>Cytisus scoparius</i> )	103
English ivy ( <i>Hedera helix</i> )	8,154
English holly ( <i>Ilex aquifolium</i> )	4,440
Butterfly bush ( <i>Buddleja davidii</i> )	15
Herb Robert ( <i>Gernanium robertianum</i> )	4,440
<b>TOTAL AREA</b>	<b>18,306</b>
<b>% of ACCESSIBLE RIPARIAN AREA</b> (approximately 14.7 acres are accessible)	<b>2.9%</b>

### Structures and Debris

A creosote treated wood timber deck occurs on the shoreline (**Figure 9**). The deck is 22 feet long and 8 feet wide, and is located at the toe of the hillslope on the beach near the southwestern property corner. The deck functions as a small bulkhead on the shoreline and is anchored in-place on multiple 8-inch by 8-inch creosote posts buried into the beach substrate. A small (4 feet by 4 feet) plywood storage shed is situated on top of the deck. A short set of stairs (approximately 16 feet long) to the deck is in place between the riparian area and the deck. A second set of stairs (approximately 3 feet wide by 50 feet long) occurs at the top of the bluff in the riparian area to provide access to a lower upland bench and footpath to the deck (**Figure 9**).

A number of residential debris items have been found in the riparian area including: a large multi-piece children's modular outdoor playset, burn barrel, garden hoses, corrugated black drain pipe, and metal car parts (frame, fenders, etc.).

## 5. Mitigation Work Plan

The work plan for this site is to remove the existing residential debris in the riparian area; remove the deck on the tidelands including the storage shed on the deck, and the stairs to the deck; remove the second set of stairs in the riparian area; protect the site from unauthorized use or access; implement weed control as described within this document; and maintain the site at its current level of functions or better.

### Structure Removal & Debris Removal

As described in Section 4, existing residential structures and debris occur on the intertidal area and within the riparian area of the site. These items will be removed at Year 0 and disposed of as appropriate. The site will be monitored for new debris which will be removed, if feasible, as part of site maintenance. Undesirable debris occurring on the tidelands (typically transient flotsam and jetsam) will be removed when feasible to hand-carry off site.

### Prevent Unauthorized Use or Access

A metal farm gate will be placed at the property line boundary at the end of the easement off of Johnson Road to control unauthorized access onto the site and prevent use of the road and trails.

Signs will be placed on the property boundaries indicating that the site is a habitat preserve and public access is not allowed. Tree limbs and other natural debris will be allowed to accumulate on the trails and road to provide organic material that will decompose and begin soil recovery on-site. The road and trails will be monitored for two growing seasons to determine if native vegetation is colonizing the exposed soils. If not, site maintenance will include installation of native shrubs where soils are suitable. It is anticipated that within the road bed only a few areas will be found to support native plants due to the presence of imported gravel and heavily compacted soils.

## Weed Control

Due to presence of steep slopes across the upland portion of the site which create accessibility and safety issues, weed control will be limited to walkable areas of the site where worker safety is not jeopardized (**Figures 3 and 8**). Weed control through hand removal, mechanical removal, or application of herbicides will be conducted during the Establishment Phase<sup>14</sup> (estimated to be five years in duration) sufficient to meet the performance standards.

Control will be implemented on Butterfly bush, Himalayan blackberry, English ivy, Scotch broom and English holly to work towards reducing the footprint of the mapped weed occurrences (**Figure 8**). Control of herb Robert will be implemented on an opportunistic basis when weed control work for other species is occurring in the area where herb Robert is found. In some areas English ivy is very well established and has ascended large trees into their upper canopy, or is located on steep slopes. Control will be implemented to reduce the footprint of English ivy where safely accessible, but complete removal is not anticipated for this species.

Any non-native invasive knotweed species (*Polygonum* spp.) found on-site will be treated with the appropriate herbicide. Follow-up control actions will be implemented as needed.

## 6. Determination of Credits

Credit calculations utilized the Nearshore Interim Tool. Mitigation credits for this site will be generated primarily by legal protection of the site and preservation of highly valued functional intertidal and riparian habitats. The removal of the deck/storage shed/stairs on the tidelands and the stairs in the riparian area, while important actions to improve site functions, only result in small footprints of restored habitat and potentially minimal restoration credits (Nearshore Interim Tool is an area-based tool), therefore restoration mitigation strategy credits will not be requested. Credit release for these removal actions will be included within preservation mitigation strategy credits, upon completion of the performance standard for these actions.

## Credit Calculation

The site includes both credit-generating areas and non-credit-generating areas including the site protection buffers (riparian only) described below and the Puget Sound Energy powerline easement and its buffers described above in Section 4. The credit generating areas on the site are within three habitat classes: intertidal vegetated, intertidal non-vegetated, and riparian.

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<sup>14</sup> **Establishment Phase** means the period of time from project construction until all mitigation credits associated with a project have been released, i.e. when a mitigation project is still “earning” mitigation credit. Source: HCCC ILF Program Instrument 2012.

### Non-credit Generating Site Protection Buffers

Non-credit generating site protection buffers were reviewed within the habitat classes in consultation with the IRT U.S. Army Corps of Engineers Co-Chair and IRT (IRT Meetings: February 14, 2018, April 20, 2018, and March 25, 2019). Site protection buffers are important to safeguard the functions provided by credit-generating habitat areas (**Figures 2B and 10**). The buffers protect habitat features and functions on-site from off-site influences, and minimize the risk of impact from off-site land uses. The width of a buffer is based on the minimum distance necessary to protect the functions provided.

#### *Riparian Habitat Buffers*

A 50-foot wide buffer has been applied along the full riparian area property boundary (**Figures 2B and 10**). This buffer was deemed the minimum distance necessary to protect marine riparian functions from off-site actions that could impact the functions on-site. As described in the Baseline Conditions section above, the riparian area is highly functioning mixed-species mature forest.

#### *Intertidal Habitat Buffers:*

Site protection buffers were not applied to intertidal habitats due to the extremely dynamic natural littoral processes that occur on tidelands, and the influences of the ebb and flow of tides, storm events, and sediment/substrate movement; all of which are highly variable both on a temporal and spatial scale, and as such not predictable in perpetuity.

### Credit Generation Nearshore Interim Tool Calculations

The Nearshore Interim Tool's credit calculation formula utilizes the acres of habitat within each habitat class divided by a conversion factor to provide the number of acre-credits for each habitat type and applied mitigation strategy.

$$\text{Acres of Mitigation Habitat} \div \text{Conversion Factor} = \text{Number of Credits}$$

Appendix D.2.2 of the Program Instrument provides the following discussion on conversion factors:

*The conversion factors are scaled similarly to ratios in the wetland tool (Appendix D.1) based on the mitigation strategy (e.g. restoration has less risk than establishment, or preservation does not replace degraded area), but have relatively low magnitudes given that a majority of the risks associated with mitigation were already considered in the Risk Factor in Table 1. The proposed conversion factors are subject to adjustment by the Sponsor and the Corps and Ecology in consultation with the IRT within the range provided during mitigation action planning efforts dependent on factors such as temporal loss, site conditions, and perceived effectiveness (or risk) of the proposed mitigation strategy (e.g., a commonly implemented mitigation technique, rather than an un-tested approach, may justify lower conversion factors).*

Appendix D.2.2 Table 2 of the HCCC Instrument provides conversion factor (CF) ranges based on the mitigation strategy used at the mitigation site. The mitigation strategy for the Olson Nearshore site is preservation<sup>15</sup> with a CF range from 2.0 to 5.0.

Using the Nearshore Interim Tool, CFs have been selected based on the habitat functions provided on-site, the site condition, proximity and benefit to or effect on aquatic resources, and the risk of the mitigation action (**Table 3**). **Table 3** below presents the habitat class acres generating mitigation credits (less site protection buffers and PSE easement with buffers), CFs, and resultant mitigation credits generated by the site. Proposed CFs have been reviewed with the Program IRT U.S. Army Corps of Engineers Co-Chair and IRT (IRT Meeting March 25, 2019).

#### Credit Calculations – Intertidal Vegetated Habitat Class

A total of 0.97 acres of vegetated intertidal habitat occurs within the site. Of this area, 0.82 acres was predominately attached *Ulva* with mixed green/brown algae also scattered among the *Ulva*. Some *Fucus* was present on logs along the beach (not counted in coverage area). A CF of 3.0 was selected as this area is dominated by attached *Ulva* which has a slightly lower ecological value than other marine aquatic vegetation. The remaining 0.15 acres of vegetated habitat is a band of eelgrass covering the width of the site and that extends off-site north and south along the shoreline and westward into deeper water. A CF of 2.0 was selected for this area due to the higher ecological value from the presence of critically important eelgrass. Credit calculations are shown in **Table 3**.

#### Credit Calculations – Intertidal Non-Vegetated Habitat Class

A total of 5.58 acres of non-vegetated intertidal habitat occurs within the site. A CF of 2.0 was selected for this credit calculation due to the highly functioning condition of the habitat, resulting in 2.790 credits (**Table 3**).

#### Credit Calculations – Riparian Habitat Class

All riparian areas are intact, mature, mixed-species forest habitat providing important functions to the marine shoreline and on-site freshwater resources. The riparian area has been divided into three crediting areas (as per IRT review April 20, 2018): one within 200 feet of the shoreline (Riparian Shoreline); a second credit area along the fish bearing stream corridor including to the top of the ravine (Riparian Stream); and a third credit area which encompasses the remaining riparian area located outside of the top of the ravine and further than 200 feet from the shoreline (Riparian) (**Figure 10**). The differentiation of these areas within the riparian footprint is based on the nexus these areas have to aquatic resources; both the marine and freshwater water resources. The topographic relief on the site strongly influences the habitat functions, the effects on the aquatic systems, and the potential for threats to functions from adjacent land uses.

Each of these three credit areas have CFs selected to reflect the functions provided, condition of the habitat, and the applicable mitigation strategy. The non-credit generating buffer for site protection (as per IRT review February 14, 2018 and April 20, 2018; **Figure 10**) and the PSE easement have been

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<sup>15</sup> ILF Program Instrument June 15, 2012. Definition: Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

excluded from the credit generating footprint within the habitat class. Total riparian mitigation credits generated is calculated at 4.515; details for each component area are presented below.

#### *Riparian Shoreline*

This area extending landward 200 feet from the shoreline is high value due to the proximity to the marine shoreline and freshwater resources (stream corridor and seasonal water drainage), the presence of overhanging vegetation, mature vegetation, and feeder bluff sediment source potential. A CF of 2.0 was applied to the 1.56 acres of habitat in this area, which results in 0.780 mitigation credits. The CF was selected at the lower end of the CF range (results in highest level of credits possible) as this area is adjacent to the marine shoreline, contains overhanging vegetation, and has feeder bluffs with sediment source potential.

#### *Riparian Stream*

This riparian area is along the fish-bearing stream corridor including to the top of the ravine with steep slopes and mature vegetation. This area provides fewer direct benefits to the marine aquatic system so a CF of 3.0 was applied to the 7.15 acres of habitat in this area, which results in 2.383 mitigation credits.

#### *Riparian*

The remaining riparian area located outside of the top of the ravine and further than 200 feet from shoreline provides supporting forest cover to the stream corridor and marine shoreline. A CF of 5<sup>16</sup> was applied to the 6.76 acres of habitat in this area, which results in 1.352 mitigation credits.

<b>Table 3. Nearshore Interim Tool Credit Generation By Habitat Class: Olson Nearshore Mitigation Project.</b>						
	<b>Intertidal Non-wetland Vegetated (macro-algae)</b>	<b>Intertidal Non-wetland Vegetated (eelgrass)</b>	<b>Intertidal Non-wetland Non- vegetated</b>	<b>Riparian Shoreline</b>	<b>Riparian Stream</b>	<b>Riparian</b>
Total Habitat Class Acres (excluding buffers/easement)	0.97		5.58	15.47		
Habitat Class Acres	0.82	0.15	5.58	1.56	7.15	6.76
Preservation Conversion Factor	3	2	2	2	3	5
Mitigation Credits Generated (habitat class acres ÷ conversion factor)	0.273	0.075	2.790	0.780	2.383	1.352
<b>Total Potential Credits</b>	<b>0.348</b>		<b>2.790</b>	<b>4.515</b>		

<sup>16</sup> The U.S. Army Corps of Engineers IRT Co-Chair revised this conversion factor during their 2021 review of the Draft Mitigation Plan from a Conversion Factor of 4, approved by the IRT in 2019, to a Conversion Factor of 5 citing the need to be consistent with riparian/upland preservation credit ratios used for mitigation banks.

## 7. Performance Standards

### Goal 1: Prevent future site disturbance

*Objective 1: Preserve Aquatic Ecosystem Functions and Generate Marine Credit*

Performance Standard	Documentation
<b>1a.</b> Protect ecosystem functions by completing the development of IRT-approved site protection instruments and record to title.	Provide the IRT with electronic copies of the signed site protection instruments and evidence that the documents have been recorded with Kitsap County and placed on title. ( <a href="#">Appendix 1</a> and <a href="#">Appendix 2</a> ).
Prevent unauthorized use and access to the site through installation of gate and signs.	Year 0 report with photographs documenting the installation of gate and signs.
<b>1b.</b> Protect ecosystem functions by completing the development of IRT-approved Long Term Management and Maintenance Plan.	Provide the IRT with electronic copies of the Final Long Term Management and Maintenance Plan for their review and approval.

### Goal 2: Improve Marine Riparian Functions

*Objective 2: Weed Control*

Performance Standard	Documentation
<b>2a.</b> The combined cover of the following weed species will be a maximum of 15%* of the accessible <sup>17</sup> area of the site in all monitoring years: <ul style="list-style-type: none"> <li>Himalayan blackberry (<i>Rubus armeniacus</i>)</li> <li>Scotch broom (<i>Cytisus scoparius</i>)</li> <li>English ivy (<i>Hedera helix</i>)</li> <li>English holly (<i>Ilex aquifolium</i>)</li> <li>Butterfly bush (<i>Buddleia davidii</i>)</li> </ul>	Monitoring reports in Years 1, 3, and 5 documenting the percent cover of these weed species and control actions in accessible areas.
<b>2b.</b> Non-native invasive knotweed species ( <i>Polygonum</i> spp.) occurring in accessible areas will be treated with the appropriate herbicide.	Monitoring reports in Years 1, 3, and 5 documenting identification and control actions in accessible areas.

\*Based on field reconnaissance foot survey GIS data collection estimating plant size (estimated square feet) or patch size (estimated square feet, length and width).

*Objective 3: Remove Structures and Debris*

Performance Standard	Documentation
<b>3a.</b> In Year 0 remove existing residential structures and debris from the site identified in Section 4.	Year 0 report with photographs documenting the removal of structures and debris.
<b>3b.</b> Document any debris encountered after Year 0 greater than 5 feet x 5 feet. Remove accessible on-site debris.	Monitoring reports in Years 1, 3 and 5 documenting the presence and/or removal of debris including; photographs, location and description. Individual small pieces of garbage will not be documented.

<sup>17</sup> The steep slopes in the riparian area prohibit safe access to certain areas. There is a high risk for personnel safety and disturbance of bluff soils that does not warrant attempting to access these locations. Field crews will use their best judgement and training to determine where it is safe to work on the slope.



## 8. Monitoring

Monitoring will occur annually for at least 5 years to track the success of the project and identify maintenance needs. The results will be documented in reports in Years 1, 3, and 5 or until the end of the establishment phase. Monitoring will also identify problems requiring remedial action or adaptive management measures.

### Protocol for Determining Site Protection

A visual inspection of the accessible areas of the site and the mitigation site boundary will be conducted at least annually to determine if encroachment or unauthorized land use has occurred. Any encroachment or unauthorized land use found will be photo documented. A visual inspection of gate(s), fencing, and signs installed on the site will be conducted at least annually and photo documented. Remote survey equipment, such as unmanned aerial vehicles, may be utilized on steep terrain portions of the site.

Should it be determined that encroachment or unauthorized land use has occurred, appropriate notifications will happen and actions necessary to resolve the situation will be implemented which can include legal action.

### Protocol for Determining Weed Control

The presence and extent of weed species listed in Performance Standard 2a in the accessible areas will be monitored in Years 1, 3 and 5 of the establishment phase. Accessible portions of the site will be visually inspected for weed presence through a random walking survey. Infestations of weed species listed in Performance Standard 2a measuring at least 100 square feet in size will be mapped in the Collector database and photo documented. All occurrences of non-native invasive knotweed species in accessible areas will be documented regardless of size.

Follow-up control actions will be implemented as needed to achieve the performance standards.

### Protocol for Debris

The site will be inspected for debris and litter during routine maintenance activities and during annual surveys. Visual inspection in accessible areas will be conducted by foot. Debris larger than 5 feet by 5 feet will be mapped in the Collector database and photo documented.

### Party Responsible for Conducting Monitoring

HCCC will be responsible for conducting site monitoring and for submitting monitoring reports. HCCC may contract out all or portions of the monitoring activities. A third party entity may be utilized to conduct encroachment monitoring, however HCCC will be responsible for ensuring encroachment monitoring is completed.

### Monitoring Reports

Monitoring reports evaluating the success of the project in meeting the stated goals, objectives and performance standards will be submitted by HCCC to the IRT Co-Chairs and IRT. Reports will be submitted in Years 0, 1, 3 and 5, and if needed, every other year for the duration of the establishment phase (**Table 4**).



HCCC will provide a brief Year 0 report to the IRT documenting achievement of performance standards 1a (installation of gate and signs) and 3a (removal of structures and debris).

Subsequent monitoring reports will contain the following information: a narrative of overall site status, a description of applicable performance standards, an assessment of whether the performance standards were achieved, list of actions taken within the reporting year, status of weeds and weed control actions taken, debris presence and removal actions taken, an encroachment report, and a list of recommended maintenance actions.

<b>Table 4. Summary of Reports and Monitoring Tasks.</b>					
<b>Year</b>	<b>Report Name</b>	<b>Performance Standard</b>	<b>Monitoring Task</b>	<b>Monitoring Area</b>	<b>Site Visits</b>
Year 0	Year 0	1a and 3a	Document: gate and sign installation; and structure and debris removal - Year 0	Site	Year 0
Years 1, 3, 5	Monitoring Report		Encroachment	Site	Annually
		2a	Weed presence – Years 1, 3, 5	Site	Annually, April-September
		2b	Knotweed presence– Years 1, 3, 5	Site	Annually, June-September
		3b	Debris presence – Years 1, 3, 5	Site	Annually, June-September

## 9. Maintenance Plan

HCCC ILF Program staff will coordinate and/or conduct mitigation site maintenance during the establishment phase.

### Weed Treatment

Weed species control may include manual or mechanical control, or the use of herbicide as needed.

### Road and Trails

If native vegetation does not naturally colonize the road and trails, native shrubs will be installed where soils are suitable. Decommissioning of the road and trails may include soil scarification to increase planting success, and placement of wood debris. It is anticipated that within the road bed only limited areas will be found to support native plants due to the presence of imported gravel and heavily compacted soils. Techniques may be applied for native plant seeding if thought to be feasible and effective.

### Human Impacts

If human impacts (trespass, litter, vandalism) occur on-site, HCCC will work with the landowner to prevent further unauthorized access to the site. Management actions that may be taken to deter encroachment and/or unauthorized site use or access may include installation of native plants, fencing, and/or signage consistent with this mitigation plan and site protection instruments, or as directed by the U.S. Army Corps of Engineers or Washington State Department of Ecology as beneficiaries of the Declaration of Land Use Restrictions and Real Property Covenants ([Appendix 2](#)).

HCCC may utilize the contingency funds described in Section 14 to repair damage to the site, which could include installing native plants, garbage/debris removal, or legal action.

Minor garbage and debris (i.e. individual bottles, cans, and litter) will be removed when encountered but not documented. Large debris on the tidelands or within the riparian area may not be removed if it is not feasible to be hand-carried off-site or accessed with equipment needed for removal.

Installed gate(s), signs, and/or fencing will be replaced if lost or damaged.

## **10. Credit Release Schedule**

No credits will be released until Performance Standard 1a has been met. The credits will be requested for release as performance standards are achieved following the credit release schedule in **Table 5**.

If HCCC is not able to meet a particular performance standard by the Year indicated, HCCC may submit documentation of successful achievement of the performance standard during a subsequent Year, and the IRT Co-chairs (in consultation with the IRT) may release the appropriate credits.

**Table 5. Credits Release Schedule By Habitat Class.**

Total Potential Credits								
Intertidal Non-wetland Vegetated	Intertidal Non-wetland Non-vegetated	Riparian						
0.348	2.790	4.515						
			YEAR 0			YEAR 5		
			HABITAT CLASS			HABITAT CLASS		
			INTERTIDAL VEGETATED	INTERTIDAL NONVEGETATED	RIPARIAN	INTERTIDAL VEGETATED	INTERTIDAL NONVEGETATED	RIPARIAN
Goal 1. Prevent Future Site Disturbance								
1a. Site protection documents recorded to title and Installation of gate and signage.			0.313	2.093	3.161			
1b. Final Long Term Management and Maintenance Plan						0.035	0.279	0.452
Goal 2. Improve Marine Riparian Functions								
2a. The combined cover of weed species will be a maximum of 15% at Year 5								0.451
2b. Non-native invasive knotweed (Polygonum spp.) will be treated with the appropriate herbicide								
3a. Remove existing residential structures and debris from the site.				0.418	0.451			
3b. Document any debris encountered or removed after Year 0 greater than 5 feet x 5 feet.			Routine Site Maintenance No Credit Release Requested					
TOTAL CREDITS RELEASED BY HABITAT CLASS			0.313	2.511	3.612	0.035	0.279	0.903
Percentage of Credits Released By Habitat Class By Year			90%	90%	80%	10%	10%	20%

## 11. Adaptive Management Plan

HCCC retains the flexibility to implement adaptive management actions in consultation with the IRT that are consistent with the overall mitigation objectives. Minor adaptive management actions (re-planting, weed control, litter/debris removal) do not require consultation with the IRT and will be implemented and reported on in required monitoring reports. Emergency actions to avoid or reduce site damage also do not require consultation with the IRT, but the IRT will be informed and/or consulted after an emergency action has been taken.

### Encroachment/Vandalism/Un-authorized Use

The site will be inspected for signs of encroachment, trespass, vandalism, and/or un-authorized use at least annually. Reasonable actions will be taken to deter trespass, repair vandalism, and resolve encroachment.

HCCC may utilize the contingency funds to repair damage, which may include planting or garbage/debris removal. Prior to any adaptive management and/or contingency plan being implemented, it must be approved by the IRT Co-Chairs (after consultation with the IRT), and a Spending Agreement must be executed.

### Natural Events

If natural events occur during the establishment phase (such as wind storms, fire, earthquake, landslide, or flooding) that damage or impair features of the site, HCCC will assess the site conditions and the findings will be reported to the IRT Co-Chairs and the IRT. The assessment will determine if site repair or restoration is needed and if any proposed actions could be sufficiently funded through the contingency account. The assessment will also determine if site monitoring or maintenance activities need to be modified to address the new site condition.

## 12. Site Protection Instrument

The Olson site property was purchased fee simple utilizing ILF mitigation funds and title is held by the land trust GPC of Bremerton, Washington. An Easement held by HCCC ([Appendix 1](#)) and a Declaration of Land Use Restrictions and Real Property Covenants, designating the Corps and Ecology as third party beneficiaries ([Appendix 2](#)), were recorded to title within one-hundred and eighty (180) days of Closing. Additionally, a Cooperative Agreement was established between HCCC and GPC to formalize the working structure of site ownership and management ([Appendix 3](#)). GPC is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, and also qualified as a non-profit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250. GPC's primary purpose is the conservation, preservation, and enhancement of the waters, wetlands, aquatic and terrestrial wildlife habitats, forestlands, scenic areas, open spaces, recreational lands, and agricultural lands of or in proximity to Kitsap County, Mason County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

## 13. Draft Long-term Management and Maintenance Plan

The HCCC, as ILF Program Sponsor, will be responsible for developing and implementing the Long-Term Management and Maintenance (LTMM) Plan at the completion of the establishment phase. This

plan must be approved by the IRT Co-Chairs, following consultation with the IRT, prior to the termination of the establishment phase of the Olson Nearshore Project. Once the establishment phase of the Olson Nearshore Project has terminated pursuant to the ILF Instrument, the Sponsor will assume responsibility for implementing that LTMM Plan, unless the Sponsor assigns this responsibility pursuant to the provisions of ILF Instrument. If the Sponsor elects to request the approval of the IRT to assign long-term management and maintenance to a Long-Term Steward pursuant to the ILF Instrument, the long-term management and maintenance assignment agreement will reflect that the assignee has assumed the obligation, owed to the IRT, of accomplishing the LTMM Plan.

A primary goal of the mitigation site is to preserve a self-sustaining natural aquatic system that maintains the intended level of functionality with minimal human intervention, including long-term site maintenance. As such, natural changes to the vegetative community that occur after all site establishment phase performance standards have been met (other than changes caused by specified weed species) are not expected to require modification.

The Sponsor or Long-Term Steward will prepare and submit a LTMM report to the Co-Chairs annually or as outlined in the Final LTMM Plan. The report will provide all information required in the Final LTMM Plan including, survey results for weed species and non-native invasive knotweed, maintenance actions taken, and details of any encroachment or prohibited uses on the site.

### **Parties Responsible for Long-Term Management and Maintenance**

The HCCC or assigned Long-Term Steward will complete an annual encroachment review of the site and will comply with the Declaration of Land Use and Real Property Covenants Agreement ([Appendix 2](#)).

The HCCC or assigned Long-Term Steward will be responsible for the maintenance and monitoring of the site. HCCC will retain access to the site through an easement ([Appendix 1](#)).

### **Site Inspection Frequency and Activities**

#### *LTMM Objective 1. Protect Aquatic Ecosystem Functions- Encroachment and Prohibited Uses*

A visual inspection of the accessible areas of the mitigation site will be conducted at least annually to determine if encroachment, trespass or unauthorized land use has occurred. Remote survey equipment, such as unmanned aerial vehicles, may be utilized on steep terrain portions of the site. Should it be determined that encroachment, trespass, or other conditions which are not allowed under the terms of the site protection instruments has occurred, appropriate notifications will happen and the necessary action to resolve the situation will be implemented, which can include legal action.

Management actions that may be taken to deter encroachment could include native plantings, fencing, and/or signage consistent with the site protection instruments.

#### *LTMM Objective 2. Monitor Weed Species of Concern*

##### *2a. Weed Control*

HCCC (or assign) will complete a walking survey of the accessible areas of the mitigation site at least annually to monitor for weed species that are required for control based on that year's Kitsap County-published weed list. Control method will be determined based on the weed species encountered and

accessibility, and may include manual or mechanical removal and the use of herbicides if necessary.

#### *2b. Non-native Invasive Knotweed Control*

HCCC (or assign) will inspect the site annually to locate and apply control measures for any occurrence of non-native invasive knotweed. Maintenance actions will include the use of herbicides to control the non-native invasive knotweed. In the event that HCCC determines that effective control of non-native invasive knotweed is no longer practical due to broad scale infestation within the watershed, or is unreasonably expensive, HCCC will request consideration by the Program IRT Co-Chairs for appropriate changes to the Long-Term Management and Maintenance Plan.

#### *2c. Site Maintenance*

HCCC (or assign) will complete a walking survey of the accessible areas of the site at least annually to monitor post-establishment phase for the continued functionality of the site. Any changes from anticipated natural conditions will be reported.

Physical features such as gates, fencing, and signage that are present when the site enters long-term management will be the responsibility of the long-term steward to maintain. However, these features can be relocated should a natural event happen, such as a landslide, which requires relocation of these features. Damage or loss of these features due to theft or vandalism will require the long-term steward to replace the feature. The steward can substitute materials of the feature (e.g. metal signs to replace wood signs) to reduce the likelihood of future theft or vandalism. If it is determined that these features are no longer needed to facilitate or protect the ecological functions of the site, then they may be removed if consistent with the site protection documents.

### **14. Financial Assurances**

A contingency account for the Marine Service Area has been established. This account is funded as a percentage of the credit sales in the Service Area. Available contingency funds from this account can be used as needed (authorized through a Spending Agreement) for the Olson Nearshore site. These funds can also be used to develop and implement adaptive management as needed.

### **15. Force Majeure**

If an event occurs, beyond the reasonable control of HCCC, which results in significant adverse impacts to the project, the Force Majeure terms of the ILF Program Instrument (Basic Agreement Section IV. P.) will apply:

*The Sponsor may request, pursuant to Article VI.C., and the Corps and Ecology may approve changes to the construction, operation, project objectives, performance standards, timelines, or crediting formula, pursuant to the standards and procedures specified in applicable Appendices if all of the following occur: an act or event causes substantial damage such that it is determined to be a force majeure; such act or event has a significant adverse impact on the quality of the aquatic functions, native vegetation, or soils of the mitigation site; and such act or event was beyond the reasonable control of the Sponsor, its agents, contractors, or consultants to prevent or mitigate.*

Force majeure events include natural or human-caused catastrophic events or deliberate and unlawful acts by third parties. Examples of events beyond the control of the HCCC include but are not limited to: acts of nature (floods, extended drought, earthquake, forest fire, windstorm, landslide, and ocean conditions/sea level rise) and human-caused events (war, riot, spill of a hazardous or toxic substance and fire).

## **16. Implementation**

Responsibility for completing the mitigation has been transferred to HCCC as part of agreements with multiple impact project proponents through HCCC's state and federally authorized ILF Mitigation Program. HCCC will implement this mitigation by utilizing a combination of resources and contractors.

### **Responsible Parties**

Hood Canal Coordinating Council  
17791 Fjord Drive NE  
Suite 118  
Poulsbo, WA 98370-8481  
ATTN: Mitigation Program Manager

### **Reporting**

To document completion of performance standard 1a: Protect ecosystem functions by completing the development of IRT approved site protection instruments and record to title; HCCC will provide the IRT with copies of the site protection instruments.

To document completion of performance standard 1a: Prevent unauthorized use and access to the site through installation of gate and signs; HCCC will provide the IRT a Year 0 report with photographs documenting the installation of gate and signs.

To document completion of performance standard 3a: Remove existing residential structures and debris from the site identified in Section 4; HCCC will provide the IRT with a Year 0 report with photographs documenting the removal of structures and debris.

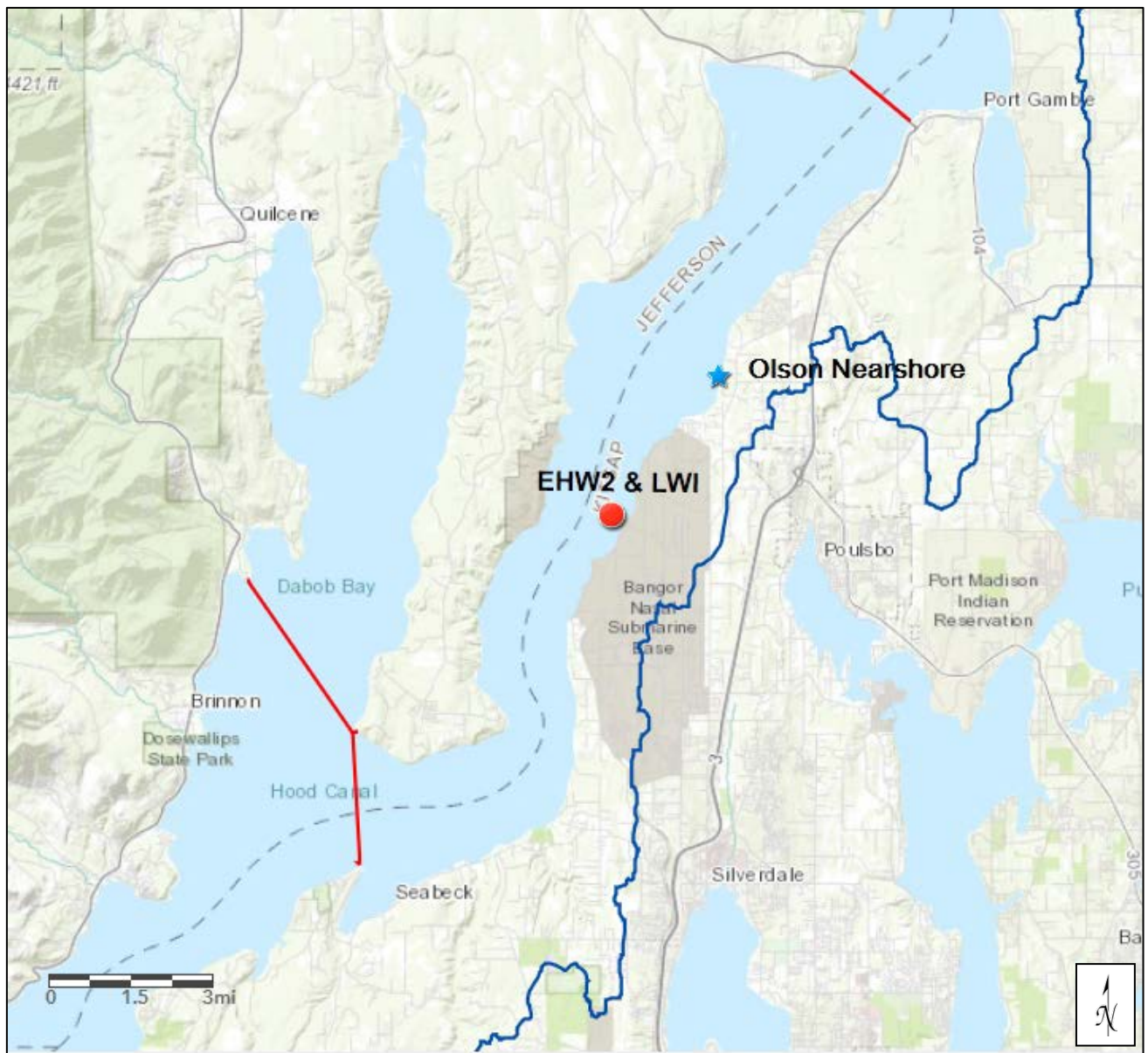
The project will be monitored annually for at least 5 years to track the success of the project and identify maintenance needs. Monitoring reports evaluating the success of the project in meeting the stated goals, objectives and performance standards will be prepared and submitted in Years 1, 3, and 5 in accordance with the approved mitigation plan (Table 4).

### **Access**

Access to the site will be provided to members of the IRT, through coordination with HCCC, to verify site conditions and ensure the mitigation is implemented according to the approved plan.

## Figures





**Figure 1.** Impact sites and mitigation site locations within the North Assessment and Management Unit.

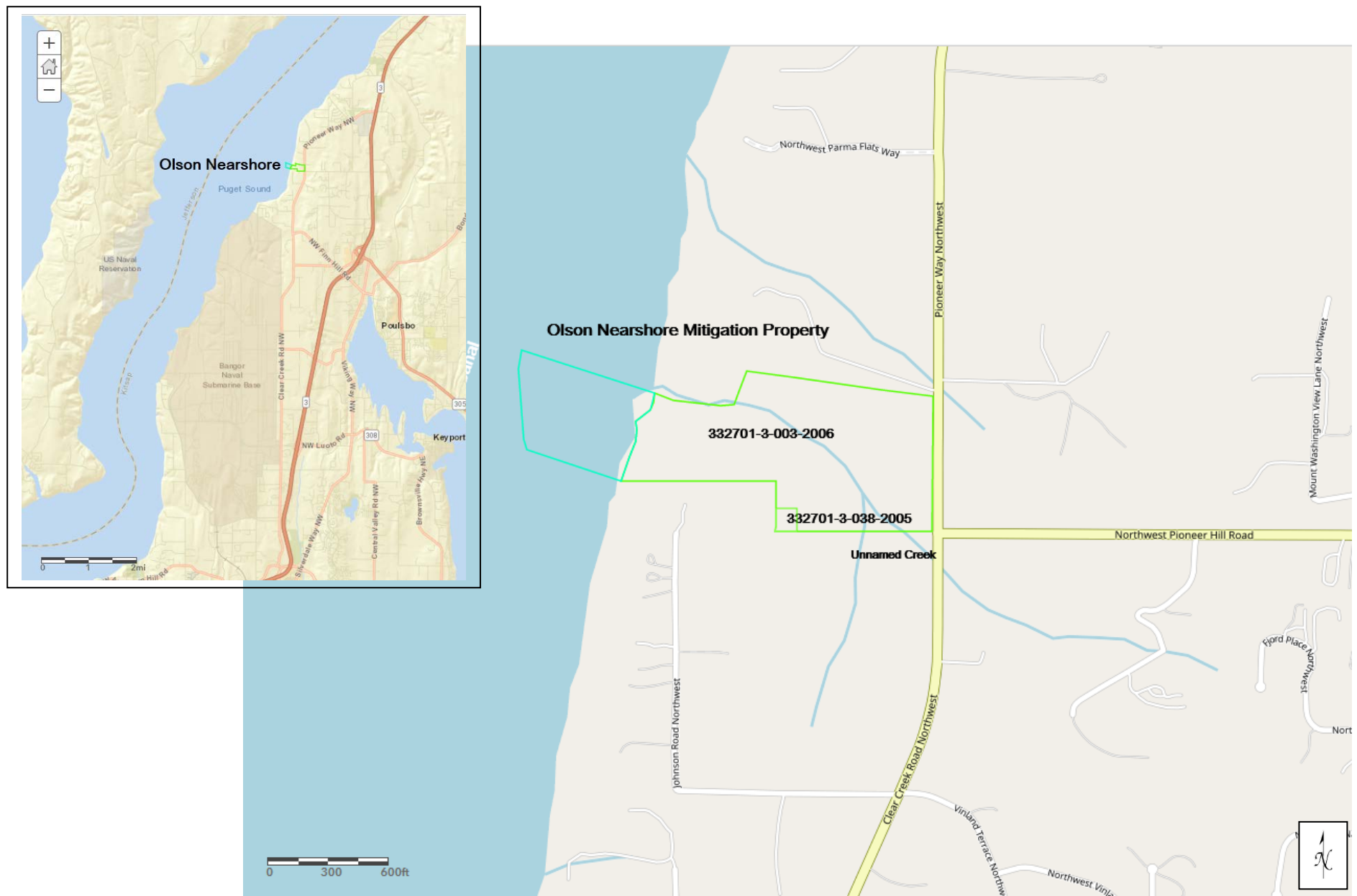
Red lines indicate the boundaries of the Marine Assessment and Management Units.

Blue line indicates the HCCC ILF Program Area boundary.

Impact Projects:

EHW2 = Explosives Handling Wharf 2

LWI = Land Water Interface



**Figure 2A.** Vicinity Map Olson Nearshore Site, Poulsbo, Washington.



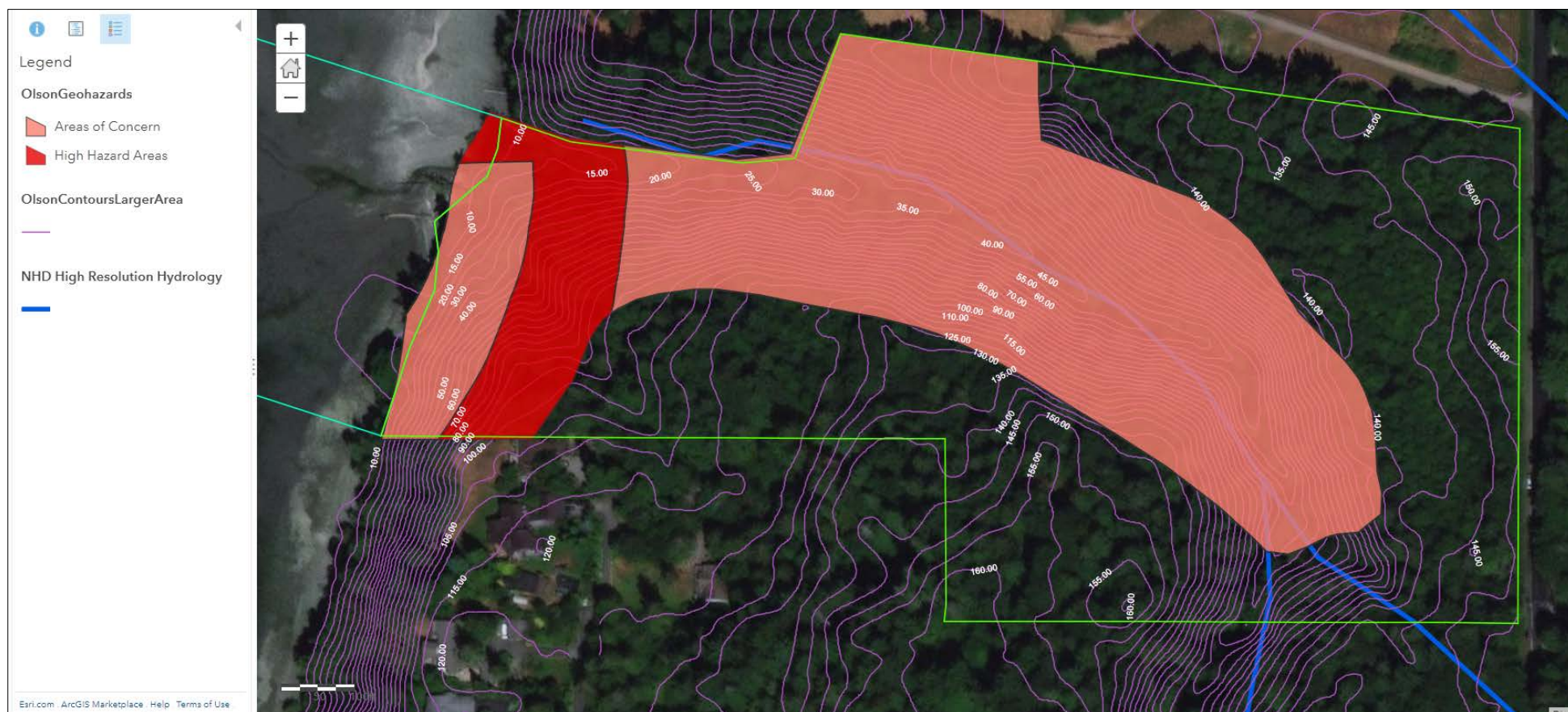
**Figure 2B.** Olson Nearshore Site – surveyed tideland ownership, upland riparian parcels, site protection buffers and Puget Sound Energy easement with buffer.

Site Protection Buffer = 50 feet in width within the marine riparian area.

Puget Sound Energy easement for power line to adjoining property = 30 feet width in total including 10 foot buffer on either side of easement.

Blue line = stream channels as mapped by the National Hydrography Dataset, high resolution.





**Figure 3.** Olson Nearshore Site showing elevation contours and Geological Hazard areas.

Source: Kitsap County LiDAR 5 foot contours and Kitsap County GeoHazrd mapping. [www.kitsapgov.com/gis](http://www.kitsapgov.com/gis).





**Figure 4.** United States Department of Agriculture Natural Resources Conservation Service Custom Soil Resources Report map, November 29, 2018.

Soil Map Unit 10 = Dystric Xerothents.

Soil Map Units 22 and 23 = Kapowsin gravelly ashy loam.

Soil Map Unit 41 = Poulsbo gravelly sandy loam.

Photo on right: Sandy loamy soil on tideland bluff face with swallow nesting holes on the bluff face.





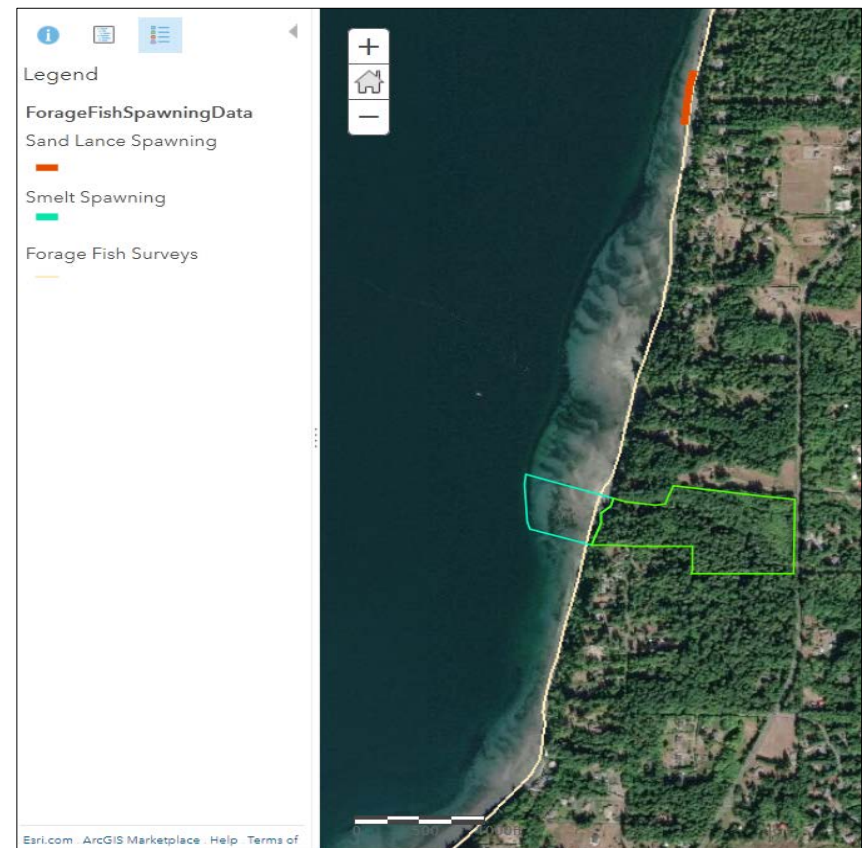
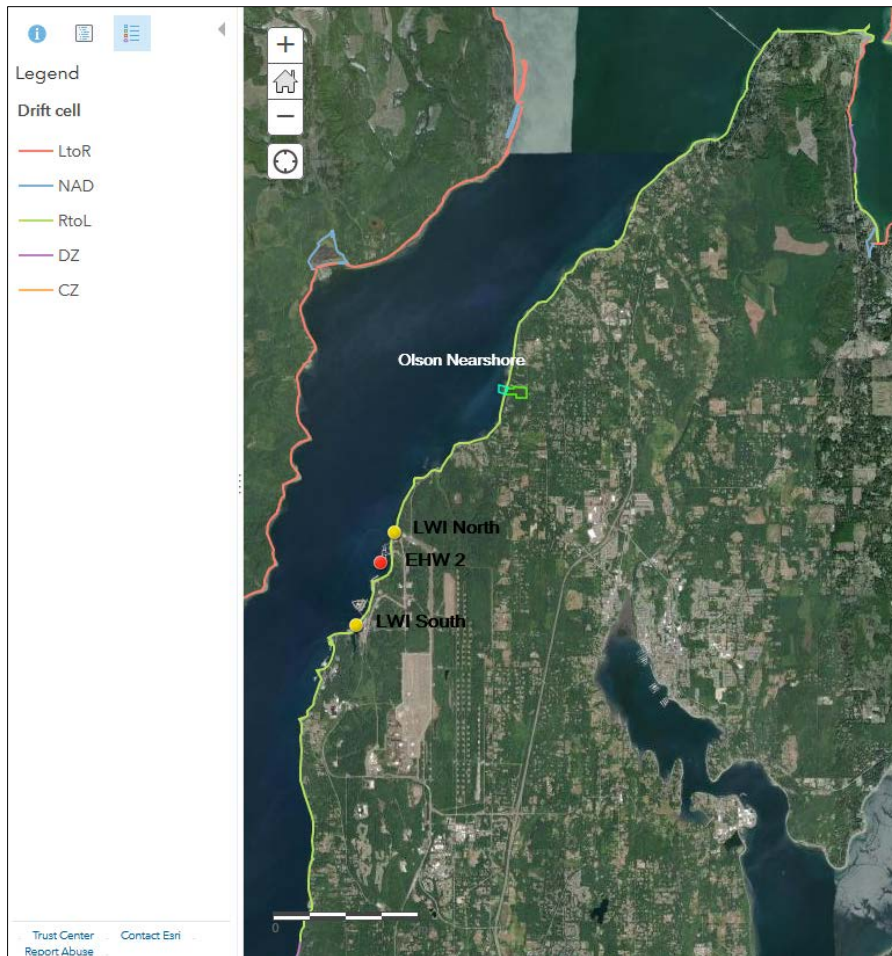
**Figure 5.** Typical conditions within the riparian forest communities.

Photo top: riparian area looking down slope towards the main ravine, surveyor in center of photo.

Photo bottom right: alder dominated riparian area near eastern property boundary.

Photo bottom left: evidence of cavity nesting in forested riparian area.

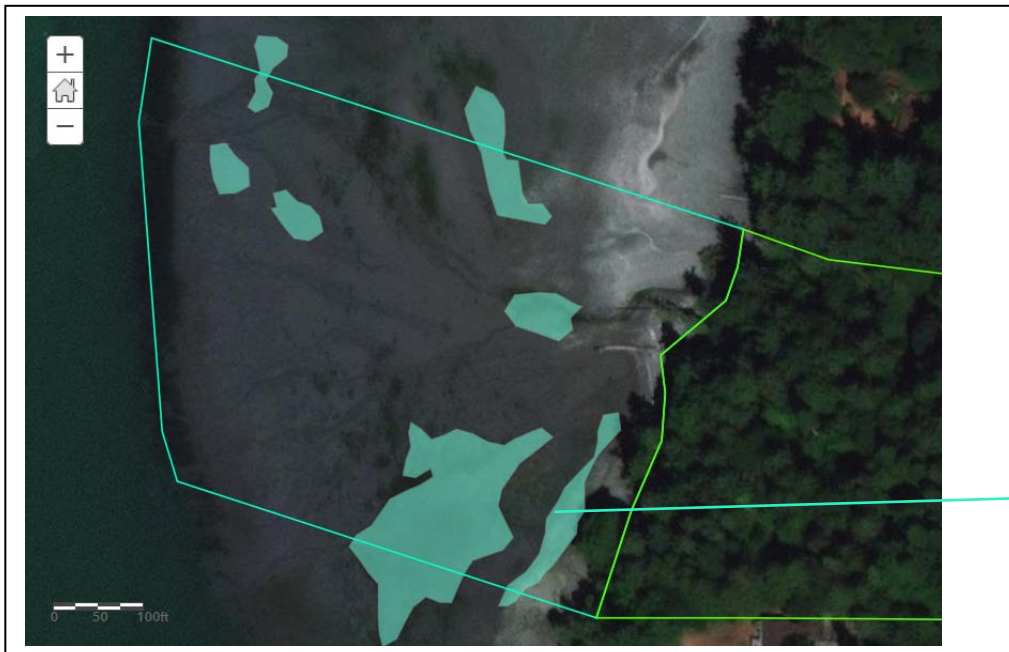
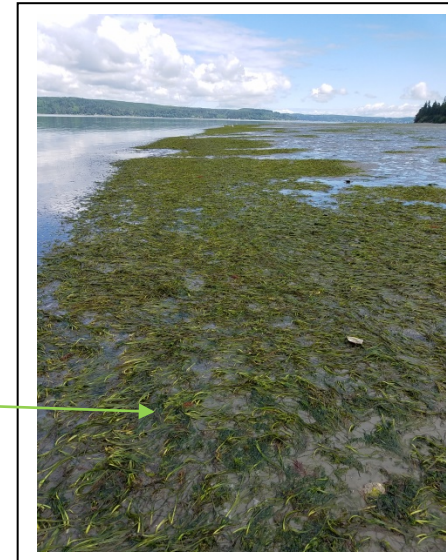




**Figure 6.** Olson Nearshore drift cells (left) and Washington Department of Fish and Wildlife forage fish survey and spawning map (right).

Sources: Washington Department of Ecology Coastal Atlas Drift Cells: <https://apps.ecology.wa.gov/coastalatlasc/tools/Map.aspx>

Washington Department of Fish and Wildlife Forage Fish Spawning Data – ArcGIS Online Update July 2, 2020.



**Figure 7.** Marine vegetation survey: June 14, 2018, tidal elevation -3.7ft MLLW. Eelgrass shown in green polygons, *Ulva* and macroalgae in teal polygons. Photo top and bottom right looking north. Note: band of eelgrass at low tide line extends off-site to north, south, and west (into deeper water).





**Figure 8.** Olson Nearshore non-native weed species locations.

Gray polygons = inaccessible access areas.



**Figure 9.** Structures on Olson Nearshore Mitigation site.

Photo top: deck/bulkhead with access stairs from upland area and storage shed.

Photo bottom: stairs to beach from top of bluff in upper riparian area.





**Figure 10.** Olson Nearshore mitigation site riparian credit areas, Puget Sound Energy easement and buffer, and 50 foot site protection buffer.

## **APPENDIX 1 - EASEMENT**

**Upon Recording Return to:**

Hood Canal Coordinating Council  
c/o Mitigation Program Manager  
17791 Fjord Drive NE, Suite 122  
Poulsbo, WA 98370-8481

**HOOD CANAL COORDINATING COUNCIL**

**201803080054**

Easement Rec Fee: \$ 86.00  
03/08/2018 09:38 AM  
Dolores Gilmore, Kitsap Co Auditor

Page: 1 of 13

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<b>DOCUMENT TITLE:</b>	<b>EASEMENT</b>
<b>GRANTOR:</b>	<b>GREAT PENINSULA CONSERVANCY</b>
<b>GRANTEE:</b>	<b>HOOD CANAL COORDINATING COUNCIL</b>
<b>LEGAL DESCRIPTION:</b>	<b>PTN OF GOVERNMENT LOT 3 SEC. 33, T. 27N., R. 1 E., W.M.</b>
<b>ASSESSOR'S TAX PARCEL NOS.:</b>	<b>332701-3-003-2006 &amp; 332701-3-038-2005</b>

---

THIS EASEMENT AGREEMENT (this "Agreement") is made as of this 7<sup>th</sup> day of March, 2018, by and between the Great Peninsula Conservancy, a Washington nonprofit corporation ("Grantor") and the Hood Canal Coordinating Council, a Washington nonprofit entity ("Grantee").

**I. RECITALS**

1. Grantor is a publicly supported, Washington nonprofit corporation, tax exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended. Grantor is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is the conservation, preservation and enhancement of the waters, wetlands, aquatic and wildlife habitat, forestlands, scenic areas, open spaces, recreational lands and agricultural lands of or in proximity to Kitsap County, Mason

EASEMENT

County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

2. Grantee is a nonprofit entity organized under the Revised Code of Washington (RCW) Chapter 24.03 and recognized by the Internal Revenue Service as having 501(c)(3) tax exempt status. The HCCC In-Lieu Fee ("ILF") Program has been acknowledged by the US Army Corps of Engineers ("Corps of Engineers") and the Washington State Department of Ecology ("Ecology") as meeting federal and state requirements for operating an in-lieu fee program, as evidenced by the execution of the Hood Canal Coordinating Council In-Lieu Fee Program Instrument, dated June 15, 2012 (the "Program Instrument").

3. HCCC's ILF Program funded the acquisition of real property in Kitsap County, specifically described in Exhibit A (the "Property") to preserve 20.52 acres of marine riparian uplands and 6.5 acres of adjoining tideland habitat (based on Kitsap County parcel mapping). Grantor and Grantee entered into a cooperative agreement in which Grantor agreed to own the Property in fee simple and in return grant this Easement to Grantee.

4. The Property possesses natural, open space, marine riparian, feeder bluff and tideland habitat (collectively referred to as the "Conservation Values") of great importance to the HCCC In-Lieu Fee Program.

5. Grantor agrees to grant an Easement for mitigation, habitat restoration, preservation and conservation on the Property to Grantee. The Easement will allow Grantee to preserve, restore and rehabilitate the aquatic and terrestrial habitat as approved by the Corps of Engineers and Ecology pursuant to the ILF Program Instrument.

## II. AGREEMENT

IN CONSIDERATION OF THE FOREGOING and the performance of the mutual covenants herein, the parties agree as follows:

1. **Purpose** -- It is the purpose of this Easement to limit any future improvement, development or use of the Property that is inconsistent with the mission of the ILF Fee Program and the Grantees efforts to preserve, restore, rehabilitate, enhance and maintain the ecological functions of the Property.

2. **Rights of the Grantee** - Grantor hereby grants, warrants and conveys the following rights to the Grantee:

(a) *Access.* To access the Property at any time and with reasonable notice and undertake actions on the Property in order for HCCC to meet its obligations for mitigation credit sales and compliance with the ILF Program Instrument and related obligations.

(b) *Mitigation and Restoration Actions.* To undertake any action on the Property authorized by the ILF Program Instrument and related obligations. These actions may include, but are not limited to: removal of a small dock structure on the beach and associated stairs descending from the bluff, site surveys, mapping, removal of garbage and litter, weed and invasive plant control; erect signage; install, remove or maintain fencing and re-vegetation in disturbed areas.

(c) *Obtain Permits and Implement Mitigation and Restoration Activities.* Grantee may seek and obtain all necessary permits to engage in Mitigation and Restoration Activities without the authorization or approval of the Grantor so long as the work is consistent with the purpose of this Easement. Grantee will provide Grantor a copy of applications submitted and permits obtained. If a regulatory agency requires Grantor to sign as the landowner, Grantor's authorization will not be unreasonably withheld.

(d) *Conservation of the Property.* The right to prohibit development or use of the Property that is incompatible with the purpose of the Easement.

(e) *Enforcement.* The right to enforce this Easement as provided for herein.

(f) *Restoration from Damage.* The right to require Grantor to repair or restore any area or feature of the Property that may be damaged by any inconsistent activity on or use of the Property as provided herein.

**3. Prohibited Uses** -- Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. This Agreement does not restrict activities to improve the native habitat on the property undertaken pursuant to ILF Program and approved by the Army Corps of Engineers and Ecology. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as permitted by the Ecology, Army Corps of Engineers and Grantee:

(a) *Construction and Improvements.* The placement or construction of any buildings, structures, or other improvements of any kind, including, without limitation, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines.

(b) *Road and Trail Construction.* The paving or covering of any portion of the Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material or the construction of a road or trail.

(c) *Commercial Development.* Any commercial or industrial use or activity on the Property, including, but not limited to, commercial or recreational activities involving active recreation.

(d) *Agricultural Activities.* Any domestic animal grazing or agricultural activities of any kind; and application of biocides except when determined by the Grantee to be necessary for the eradication of non-native plant species and such application is by the narrowest spectrum, least persistent material appropriate for the target species.

(e) *Introduced Vegetation.* The planting or intentional introduction of non-native species of plants.

(f) *Waste Disposal.* The disposal, storage, or release of yard waste, hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Property. The term "release" shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this real property covenant shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

(g) *Subdivision or Land Encumbrances.* Legal or de facto division, subdivision or partitioning of the Property from its current configuration is prohibited. The granting of easements for rights-of-way for roads, power lines, pipelines, or electronic sites is prohibited unless authorized by Grantee.

(h) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, campgrounds or any other activity involving individuals or the public or private clubs or associations engaging in organized active recreation.

(i) *Hunting.* Conducting or allowing hunting activities, including construction of blinds, camping areas, access trails, and any other hunting related activities.

(j) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Property.



(k) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(l) *Vehicles.* The operation of motorized vehicles except as part of any riparian restoration or maintenance activity.

(m) *Timber Harvest or Vegetation Removal.* The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead native trees and other native vegetation, **except** as needed to conduct restoration activities or to remove danger trees that pose a hazard to neighboring structures, access roads or facilities.

**4. Retained Rights of Grantor** -- Grantor reserves to itself and to its members and their personal representatives, heirs, successors and assigns, any use of, or activity on, the Property that is not inconsistent with the purpose of these equitable servitudes and real property covenants and that is not prohibited herein. Grantor reserves the right but not the obligation of removing litter and removing and controlling invasive and non-native species, in coordination with the Grantee.

Grantor may grant or assign an interest in whole or in part to the Property to any land trust that has adopted the Land Trust Alliance Standards and Practices, subject to approval from the Grantee, provided that approval of Grantee may not be unreasonably withheld. Grantee requires 60 (sixty) days notice prior to transfer of ownership in whole or in part.

**5. Enforcement** -- The Grantee shall have the right to prevent and correct violation of the terms of this Easement. If the Grantee determines that the Grantor is in violation, or a violation of the terms of this Easement is imminent, the Grantee shall give written notice to Grantor of such violation. Grantor shall have thirty days to cure such violation. If the violation is not cured, Grantee may bring an action at law or in equity to enforce the terms of this Agreement.

**6. Notice and Approval** -- All notices provided for herein may be sent by Federal Express or other overnight courier service, personally delivered, or mailed registered or certified mail, return receipt requested. The addresses to be used in connection with such correspondence and notices are the following, or other such address as a party shall from time to time direct:

GPC	Sandra Staples-Bortner Executive Director Great Peninsula Conservancy
-----	---

	423 Pacific Ave., Suite 401 Bremerton, WA 98337 (360) 373-3500
HCCC	Scott Brewer Executive Director Hood Canal Coordinating Council 17791 Fjord Drive NE Suite 122 Poulsbo, WA 98370-8481 (360) 930-8634

Correspondence contact information changes shall be provided to all parties within 30 days of such change.

**7. Subsequent Transfers** - Grantor agrees to incorporate the terms of this Easement in any deed or legal instrument by which it divests itself of any interest in the Property, including a leasehold interest. Grantor expressly intends that this Easement touches and concerns the Property and the conditions, covenants and restrictions contained herein shall be deemed covenants running with the land and shall inure to the benefit of, and shall be binding upon, the respective heirs, successors, grantees and assigns of the parties and to any parties hereafter having any right, title or interest in or to the Property or any portion thereof. This Easement shall continue in perpetuity unless otherwise modified in writing by Grantor and Grantee as provided herein.

**8. Modification** -- All amendments shall be in writing, approved by the Grantee and recorded in the real property records of Kitsap County, Washington. Amendments shall be recorded on title.

**9. Severability** -- If any provision of this real property covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

**10. Entire Agreement** -- This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement.

**11. Controlling Law** - This Easement shall be construed in accordance with the laws of the United States and the State of Washington. Venue shall lie in Kitsap County.

**12. Subject to Title Matters of Record.** This instrument is subject to those title matters of record described in Exhibit B attached hereto and incorporated herein by reference.

**13. Effective Date** – The effective date of this instrument shall be the date of its recording in the official records of Kitsap County, Washington.

{Signature Pages Follow}



**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

By: Sandra Staples-Bortner  
Sandra Staples-Bortner,  
Its Executive Director

Dated: 2-28-2018

STATE OF WASHINGTON           )  
  )ss.  
COUNTY OF KITSAP           )

On this 28th day of February, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sandra Staples-Bortner** to me known as the Secretary of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this 28th day of February, 2018.

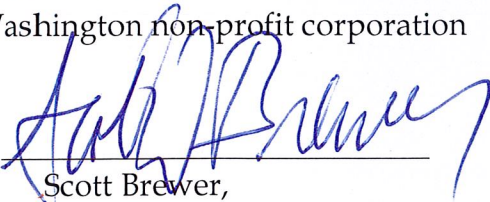


Name: Cindy Jo Moore  
NOTARY PUBLIC in and for the State of  
Washington, residing at Port Orchard  
My Commission expires Feb 13 2020.

**HOOD CANAL COORDINATING COUNCIL**

a Washington non-profit corporation

By:

  
Scott Brewer,  
Its Executive Director

Dated:

MARCH 7, 2018

STATE OF WASHINGTON )

)ss.

COUNTY OF KITSAP )

On this 7th day of March, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Scott Brewer** to me known as the **Executive Director** of the **Hood Canal Coordinating Council**, he executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this 7th day of March, 2018.



Marilynne A. Goishi  
Name: Marilynne A. Goishi

NOTARY PUBLIC in and for the State of Washington, residing at 17791 Fjord Dr NE Ste 154, Poulsbo, WA  
My Commission expires 5-19-20.

EASEMENT

## Exhibit A

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### **KITSAP COUNTY PARCEL NO. 332701-3-003-2006**

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, UTILITIES, AND INGRESSES AND EGRESS AS SET FORTH IN EASEMENT RELOCATION AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8908230125.

### **KITSAP COUNTY PARCEL NO. 332701-3-038-2005**

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ACCESS AS DESCRIBED AND DELINEATED IN BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382.

## Exhibit B

### Special Exceptions:

1. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on January 11, 1955, under Kitsap County Auditor's File No. 609232.

For: Road  
Affects: The South 15 feet of said premises

2. Easement for electric transmission and distribution line, and the terms and conditions thereof, together with necessary appurtenances, as granted by instrument recorded on January 29, 1980, under Kitsap County Auditor's File No. 8001290025.

To: Puget Sound Power and Light Company  
Affects: A portion of Parcel I

3. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on August 26, 2013, under Kitsap County Auditor's File No. 201308260382.

For: Access  
Affects: The South 15 feet of said premises

Said instrument is a re-recording of instrument recorded February 14, 2006 under Auditor's File No. 200602140148.

4. Agreement and the terms and conditions thereof:

By and Between: Owners  
Dated: June 16, 1989  
Recorded: August 23, 1989  
Auditor's File No.: 8908230125  
Regarding: Relocation of easement established under Auditor's File No. 8208030045

5. Waiver of damages by reason of the construction of a roadway adjoining said premises, and the right to make necessary slopes for cuts or fills upon property herein described as granted in deed:

Granted To: Kitsap County  
Recorded: July 19, 1948  
Auditor's File No.: 472522  
Affects: Parcel I

6. Exceptions and Reservations contained in deed from the State of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry of opening, developing and working the same and providing that such rights shall not be



exercised until provision has been made for full payment of all damages sustained by reason of such entry; recorded under Auditor's File No. 269945.

Note: No examination has been made to determine the present record owner of the above minerals, or mineral lands and appurtenant rights thereto, or to determine matters which may affect the lands or rights so reserved.

Right of State of Washington or its successors, subject to payment of compensation therefore, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, as reserved in deed referred to above.

Affects: Tidelands

7. Any adverse claim by reason of the question of location, boundary or area of said land which may be dependent upon the location of the line of ordinary high tide of Puget Sound.
8. Any question that may arise as to the location of the lateral boundaries of the tidelands or shore lands described herein.
9. Any prohibition of or limitation of use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water.
10. Any claim of right, title or interest which may be asserted by the State of Washington or the public to the beaches or accretions to the uplands.
11. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

Affects: Tidelands

12. Declaration of Boundary Line Adjustment and the terms and conditions thereof: Recorded: February 14, 2006  
Auditor's File No.: 200602140148

Said instrument is a re-recording of instrument recorded August 26, 2013 under Auditor's File No. 201308260382.

13. Matters delineated, described and noted on Survey recorded July 26, 1982, in Volume 18, Page 047, under Auditor's File No. 8207260081.

## **APPENDIX 2 – DECLARATION OF LAND USE RESTRICTIONS AND REAL PROPERTY COVENANTS**

**Upon Recording Return to:**

Hood Canal Coordinating Council  
c/o Mitigation Program Manager  
17791 Fjord Drive NE, Suite 122  
Poulsbo, WA 98370-8481

HOOD CANAL COORDINATING

201803080055

Covenants Rec Fee: \$ 87.00

03/08/2018 09:38 AM

Dolores Gilmore, Kitsap Co Auditor

Page: 1 of 14



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DOCUMENT TITLE:	DECLARATION OF LAND USE RESTRICTIONS AND REAL PROPERTY COVENANTS
GRANTOR:	GREAT PENINSULA CONSERVANCY
BENEFICIARIES:	UNITED STATES, ARMY CORPS OF ENGINEERS
	STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY
LEGAL DESCRIPTION:	PTN OF GOVERNMENT LOT 3, SEC. 33, T. 27N., R. 1 E., W.M
ASSESSOR'S TAX PARCEL NOS.:	332701-3-003-2006 & 332701-3-038-2005

---

THIS DECLARATION OF LAND USE RESTRICTION AND REAL PROPERTY COVENANTS AGREEMENT (this "Agreement") is made as of this 28th day of February, 2018, by Great Peninsula Conservancy, a Washington nonprofit corporation ("Grantor") for the benefit of the United States Army Corps of Engineers and State of Washington Department of Ecology ("Beneficiaries").

DECLARATION OF LAND USE  
RESTRICTIONS AND REAL 1  
PROPERTY COVENANTS

## I. RECITALS

1. Grantor is a publicly supported, Washington nonprofit corporation, tax exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended. Grantor is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is the conservation, preservation and enhancement of the waters, wetlands, aquatic and wildlife habitat, forestlands, scenic areas, open spaces, recreational lands and agricultural lands of or in proximity to Kitsap County, Mason County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

2. The Hood Canal Coordinating Council ("HCCC") is a nonprofit entity organized under the Revised Code of Washington (RCW) Chapter 24.03 and recognized by the Internal Revenue Service as having 501(c)(3) tax exempt status. The HCCC In-Lieu Fee ("ILF") Program has been acknowledged by the US Army Corps of Engineers ("Corps of Engineers") and the Washington State Department of Ecology ("Ecology") as meeting federal and state requirements for operating an in-lieu fee program, as evidenced by the execution of the Hood Canal Coordinating Council In-Lieu Fee Program Instrument, dated June 15, 2012 (the "Program Instrument"). The Grantor executed an Easement providing HCCC with site access to undertake mitigation measures authorized by the ILF Program ("Easement").

3. HCCC's ILF Program funded the acquisition of real property in Kitsap County, specifically described in Exhibit A attached hereto and incorporated herein by this reference (the "Property") to preserve 20.52 acres of marine riparian uplands and 6.5 acres of adjoining tideland habitat (based on Kitsap County parcel mapping). Under the terms of the Program Instrument, the Corps of Engineers and Ecology must be beneficiaries of any restrictive covenants on the Property.

4. The Property possesses natural, open space, marine riparian, feeder bluff and tideland habitat (collectively referred to as the "Conservation Values") of great importance to the Beneficiaries and the HCCC In-Lieu Fee Program. The HCCC ILF Program will facilitate and administer restoration and enhancement activities on the Property as approved by the Corps of Engineers and Ecology.

5. Grantor wishes to grant these Declaration of Land Use Restriction and Real Property Covenants as consideration of the monies received for purchasing the

property from the HCCC's ILF Program and in accordance with the Program Instrument.

## II. AGREEMENT

IN CONSIDERATION OF THE FOREGOING and the performance of the mutual covenants herein, Grantor declares as follows:

**1. Declaration of Real Property Covenant** -- Grantor voluntarily establishes these equitable servitudes and real property covenants in perpetuity over the Property on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Property.

**2. Purpose** -- It is the purpose of these equitable servitudes and real property covenants to ensure that the Property will be preserved and restored as authorized by the HCCC's ILF Program and then retained forever in a natural, open space and scenic condition. Grantor and the Beneficiaries intend that these equitable servitudes and real property covenants will confine the use of the Property as provided herein.

**3. Rights of the Beneficiaries** -- To accomplish the purpose of these equitable servitudes and real property covenants the following rights may be exercised by the Beneficiaries:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this real property covenant in accordance with Sections 9 and 10; provided that, except in cases where the Beneficiaries determine that immediate entry is required to prevent, terminate, or mitigate a violation of this real property covenant, such entry shall be upon prior reasonable notice to Grantor;
- (c) To erect signage, install or maintain fencing, to perform riparian or tideland restoration, monitoring and maintenance and remove litter; and
- (d) To conduct, with reasonable prior notice to Grantor: removal of a small dock structure on the beach and associated stairs descending from the bluff, survey, site preparation, removal of invasive or non-native vegetation, installation of native plants, and other activities associated with enhancement or restoration.

**4. Prohibited Uses** -- Any use of the Property, except for HCCC's ILF Program's restoration and enhancement activities approved by the Corps of Engineers

and Ecology, inconsistent with the purpose of these equitable servitudes and real property covenants is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as permitted by the Beneficiaries:

(a) *Construction and Improvements.* The placement or construction of any new buildings, structures, or other improvements of any kind, including, without limitation, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines.

(b) *Road and Trail Construction.* The paving or covering of any portion of the Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material or the construction of a road or trail.

(c) *Commercial Development.* Any commercial or industrial use or activity on the Property, including, but not limited to, commercial or recreational activities involving active recreation.

(d) *Agricultural Activities.* Any domestic animal grazing or agricultural activities of any kind; and application of biocides except when determined by the Beneficiaries to be necessary for the eradication of non-native plant species and such application is by the narrowest spectrum, least persistent material appropriate for the target species.

(e) *Introduced Vegetation.* The planting or intentional introduction of non-native species of plants.

(f) *Waste Disposal.* The disposal, storage, or release of yard waste, hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Property. The term "release" shall mean any release, generation, treatment, disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this real property covenant shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

(g) *Subdivision or Land Encumbrances.* Legal or de facto division, subdivision or partitioning of the Property from its current configuration is prohibited. The granting of easements for rights-of-way for roads, power lines, pipelines, or electronic sites is prohibited unless authorized by Beneficiaries.

(h) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, campgrounds or any other activity involving individuals or the public or private clubs or associations engaging in organized active recreation.

(i) *Hunting.* Conducting or allowing hunting activities, including construction of blinds, camping areas, access trails, and any other hunting related activities.

(j) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Property.

(k) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(l) *Vehicles.* The operation of motorized vehicles except as part of any riparian restoration or maintenance activity.

(m) *Timber Harvest or Vegetation Removal.* The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead native trees and other native vegetation, **except** as needed to conduct restoration activities or to remove danger trees that pose a hazard to neighboring structures, access roads or facilities.

**5. Retained Rights of Grantor** -- Grantor reserves to itself and to its members and their personal representatives, heirs, successors and assigns, any use of, or activity on, the Property that is not inconsistent with the purpose of these equitable servitudes and real property covenants and that is not prohibited herein. Grantor reserves the right but not the obligation of removing litter and removing and controlling invasive and non-native species, in coordination with the Beneficiaries. Grantor may grant or assign an interest in whole or in part to the Property to any land trust that has adopted the Land Trust Alliance Standards and Practices, subject to approval from the Beneficiaries, provided that approval of Beneficiaries may not be unreasonably withheld. Beneficiaries require 60 (sixty) days notice prior to transfer of ownership in whole or in part.

6. **Responsibilities of Grantor Not Affected** -- Other than as specified herein, these equitable servitudes and real property covenants are not intended to impose any legal or other responsibility on the Beneficiaries, or in any way to affect any existing obligation of the Grantor as owner of the Property. This shall include, but not be limited to: taxes, upkeep and maintenance, remediation, control over the property, and liability.

7. **The Beneficiaries Right to Restore the Property** -- In the event that any of the Conservation Values of the Property are impaired, the Beneficiaries shall have the right, but not the obligation, to restore all or portions of the Property.

8. **Access** -- No right of access by the general public to any portion of the Property is created by these equitable servitudes and real property covenants.

9. **Hood Canal Coordinating Council** -- The Beneficiaries may designate HCCC as an agent to enforce any of the Beneficiaries' rights under this Agreement.

10. **Enforcement** -- The Beneficiaries shall have the right to prevent and correct violation of the terms of this real property covenant.

(a) *Notice of Failure.* If the Beneficiary determines that the Grantor is in violation of the terms of this real property covenant or that a violation is threatened, the Beneficiary shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this real property covenant, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Beneficiary.

(b) *Grantor's Failure to Respond.* In addition to the rights granted in Section 3, including the right of entry, the Beneficiary may bring an action as provided for in Section 10(c) below if Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from the Beneficiary; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *The Beneficiary's Action.* The Beneficiary may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this real property covenant, to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this real property covenant or



injury to any of the Conservation Values protected by this real property covenant, including damages for the loss of the Conservation Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, the Beneficiary, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without the Beneficiary being required to post bond or provide other security.

(d) *Immediate Action Required.* If the Beneficiary, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Beneficiary may pursue remedies under this Section 10 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) *Nature of Remedy.* The rights under this Section 10 apply equally in the event of either actual or threatened violations of the terms of this real property covenant. Grantor agrees that the remedies at law for any violation of the terms of this real property covenant are inadequate and Beneficiary shall be entitled to the injunctive relief described in this Section 10 both prohibitive and mandatory, in addition to such other relief to which Beneficiary may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) *Costs of Enforcement.* Provided the Beneficiary first provides Grantor with a Notice of Failure and Grantor fails to respond, all reasonable costs incurred by the Beneficiary in enforcing the terms of this real property covenant against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this real property covenant shall be borne by Grantor. The substantially prevailing party in a judicial enforcement action regarding this real property covenant shall be entitled to reimbursement of all reasonably incurred attorney's fees and litigation expenses.

(g) *The Beneficiary's Discretion.* Any forbearance by the Beneficiary to exercise rights under this real property covenant in the event of any violation of any terms of this real property covenant shall not be deemed or construed to be a waiver of such term or of any rights under this real property covenant. No delay or omission by the Beneficiary in the exercise of any right or remedy shall impair such right or

remedy or be construed as a waiver.

(h) *Acts Beyond Grantor's Control.* Nothing contained in this real property covenant shall be construed to entitle the Beneficiary to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, nor shall Grantor be required to take steps to abate or mitigate injury to the Property resulting from such causes.

**11. Notice and Approval --** All notices provided for herein may be sent by Federal Express or other overnight courier service, personally delivered, or mailed registered or certified mail, return receipt requested. The addresses to be used in connection with such correspondence and notices are the following, or other such address as a party shall from time to time direct:

<b>GPC</b>	Sandra Staples-Bortner Executive Director 423 Pacific Ave., Suite 401 Bremerton, WA 98337 (360) 373-3500
<b>Army Corps of Engineers</b>	Suzanne Anderson Mitigation Program Manager PO Box 3755 Seattle, WA 98124 (206) 764-3708
<b>Ecology</b>	Lauren Driscoll Shorelands and Environmental Assistance Program PO Box 47600 300 Desmond Drive Olympia, WA 98504-7600 (360) 407-6140
<b>HCCC</b>	Scott Brewer Executive Director 17791 Fjord Drive NE Suite 122 Poulsbo, WA 98370-8481 (360) 930-8634

Correspondence contact information changes shall be provided to all parties within 30 days of such change.

**12. Notice of Transfer of Property by Grantor and Successor and Assigns** -- The Property may be transferred consistent with Section 5 of this Agreement.

**13. Termination of Real property Covenant** -- This real property covenant may only be terminated with the concurrence of the Beneficiaries.

**14. Modification** -- All amendments shall be in writing, approved by the Beneficiaries and recorded in the real property records of Kitsap County, Washington. Amendments shall be recorded on title.

**15. Interpretation** -- This real property covenant shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

**16. Perpetual Duration** -- This real property covenant shall be a binding servitude running with the land in perpetuity.

**17. Severability** -- If any provision of this real property covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

**18. Entire Agreement** -- This instrument sets forth the entire agreement of the parties with respect to the terms of this Declaration of Land Use Restrictions and Real Property Covenants and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms thereof.

**19. Subject to Title Matters of Record.** This instrument is subject to those title matters of record described in Exhibit B attached hereto and incorporated herein by reference.

**20. Effective Date** -- The effective date of this instrument shall be the date of its recording in the official records of Kitsap County, Washington.

IN WITNESS WHEREOF, the Grantor has set its hands on the date first written above.

{Signature Pages Follow}

**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

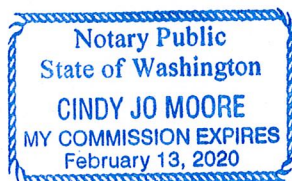
By: Kathleen Peters  
Kathleen Peters  
Its President

Dated: 2/28/18

STATE OF WASHINGTON                    )  
  )ss.  
COUNTY OF KITSAP                    )

On this 28th day of February 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Kathleen Peters** to me known as the President of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this 28th day of February, 2018.



Name: Cindy Jo Moore  
NOTARY PUBLIC in and for the State of  
Washington, residing at Port Orchard  
My Commission expires Feb 13, 2020

**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

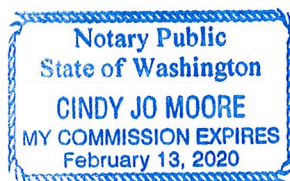
By: Sandra Staples-Bortner  
Sandra Staples-Bortner,  
Its Executive Director

Dated: 2-28-2018

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KITSAP            )

On this 28th day of February, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sandra Staples-Bortner** to me known as the Secretary of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this 28th day of February, 2018.



Name: Cindy Jo Moore  
NOTARY PUBLIC in and for the State of  
Washington, residing at Port Orchard  
My Commission expires Feb 13, 2020



## Exhibit A

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### **KITSAP COUNTY PARCEL NO. 332701-3-003-2006**

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, UTILITIES, AND INGRESSES AND EGRESS AS SET FORTH IN EASEMENT RELOCATION AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8908230125.

### **KITSAP COUNTY PARCEL NO. 332701-3-038-2005**

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ACCESS AS DESCRIBED AND DELINEATED IN BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382.

## Exhibit B

### Special Exceptions:

1. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on January 11, 1955, under Kitsap County Auditor's File No. 609232.  
For: Road  
Affects: The South 15 feet of said premises
  2. Easement for electric transmission and distribution line, and the terms and conditions thereof, together with necessary appurtenances, as granted by instrument recorded on January 29, 1980, under Kitsap County Auditor's File No. 8001290025.  
To: Puget Sound Power and Light Company  
Affects: A portion of Parcel I
  3. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on August 26, 2013, under Kitsap County Auditor's File No. 201308260382.  
For: Access  
Affects: The South 15 feet of said premises
- Said instrument is a re-recording of instrument recorded February 14, 2006 under Auditor's File No. 200602140148.
4. Agreement and the terms and conditions thereof:  
By and Between: Owners  
Dated: June 16, 1989  
Recorded: August 23, 1989  
Auditor's File No.: 8908230125  
Regarding: Relocation of easement established under Auditor's File No. 8208030045
  5. Waiver of damages by reason of the construction of a roadway adjoining said premises, and the right to make necessary slopes for cuts or fills upon property herein described as granted in deed:  
Granted To: Kitsap County  
Recorded: July 19, 1948  
Auditor's File No.: 472522  
Affects: Parcel I
  6. Exceptions and Reservations contained in deed from the State of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry of opening, developing and working the same and providing that such rights shall not be

exercised until provision has been made for full payment of all damages sustained by reason of such entry; recorded under Auditor's File No. 269945.

Note: No examination has been made to determine the present record owner of the above minerals, or mineral lands and appurtenant rights thereto, or to determine matters which may affect the lands or rights so reserved.

Right of State of Washington or its successors, subject to payment of compensation therefore, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, as reserved in deed referred to above.

Affects:                      Tidelands

7. Any adverse claim by reason of the question of location, boundary or area of said land which may be dependent upon the location of the line of ordinary high tide of Puget Sound.
8. Any question that may arise as to the location of the lateral boundaries of the tidelands or shore lands described herein.
9. Any prohibition of or limitation of use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water.
10. Any claim of right, title or interest which may be asserted by the State of Washington or the public to the beaches or accretions to the uplands.
11. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

Affects:                      Tidelands

12. Declaration of Boundary Line Adjustment and the terms and conditions thereof: Recorded:        February 14, 2006  
Auditor's File No.:        200602140148

Said instrument is a re-recording of instrument recorded August 26, 2013 under Auditor's File No. 201308260382.

13. Matters delineated, described and noted on Survey recorded July 26, 1982, in Volume 18, Page 047, under Auditor's File No. 8207260081.

## **APPENDIX 3 – COOPERATIVE AGREEMENT BETWEEN GREAT PENINSULA CONSERVANCY AND HOOD CANAL COORDINATING COUNCIL**

**COOPERATIVE AGREEMENT  
BETWEEN  
GREAT PENINSULA CONSERVANCY  
AND  
HOOD CANAL COORDINATING COUNCIL**

This Cooperative Agreement ("Agreement") is between Great Peninsula Conservancy ("GPC") and Hood Canal Coordinating Council ("HCCC") on this 10<sup>th</sup> day of January, 2018.

**I. RECITALS**

1. GPC is a nonprofit corporation organized under the Revised Code of Washington (RCW) Chapter 24.03 and qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended. GPC is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is the conservation, preservation and enhancement of the waters, wetlands, aquatic and wildlife habitat, forestlands, scenic areas, open spaces, recreational lands and agricultural lands of or in proximity to Kitsap County, Mason County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

2. HCCC is a nonprofit corporation organized under Chapter 24.03 RCW and recognized by the Internal Revenue Service as having 501(c)(3) tax exempt status. HCCC operates an In-Lieu Fee ("ILF") Program. The HCCC ILF Program is acknowledged by the US Army Corps of Engineers and the Washington State Department of Ecology ("Ecology") as meeting federal and state requirements for operating an in-lieu fee program, as evidenced by the execution of the Hood Canal Coordinating Council In-Lieu Fee Program Instrument, dated June 15, 2012 ("Program Instrument"). The ILF Program may be used to transfer the mitigation responsibility of a project proponent to HCCC. The Program Instrument specifies how mitigation fees can be spent on mitigation receiving sites.

3. HCCC intends to use ILF Program funds to acquire real property in Kitsap County, specifically described in Exhibit A (the "Property") to preserve 20.52 acres marine riparian uplands with 6.5 acres adjoining tideland habitat (based on Kitsap County parcel mapping). HCCC will protect, rehabilitate and enhance the Property in order to facilitate the generation of mitigation credits pursuant to the Program Instrument. HCCC will manage the rehabilitation of the Property. The US Army Corps of Engineers and Ecology have approved the spending of ILF Program funds to acquire the Property.

4. The purpose of this Agreement is to establish a relationship between HCCC and GPC for the ownership and management of the Property. GPC will hold fee simple ownership



in the Property and manage the Property in accordance with a Declaration of Land Use Restrictions and Real Property Covenants, Easement and the terms of this Agreement.

5. GPC and HCCC acknowledge that the Property is a receiving site for mitigation fees and its protection is intended to facilitate the generation of credits sold to offset development in the Hood Canal Marine Service Area. HCCC will undertake certain actions to protect the Property's existing habitat functions and improve habitat function, including removing a small dock structure on the beach and associated stairs descending from the bluff, and control invasive and noxious weed species and replanting weed control areas if deemed appropriate and feasible.

6. This Agreement is entered into between GPC and HCCC to specify how HCCC's ILF Program will fund certain activities on the Property. Funding activities on the Property will proceed in generally two phases. Phase One will be during the "Establishment Phase" in which HCCC will undertake certain restoration/rehabilitation, monitoring and maintenance actions on the property and GPC will hold title to the Property and monitor the Property annually for encroachment. Phase Two will be the "Long-term Management Phase" in which HCCC will undertake certain maintenance and management actions on the Property and GPC will hold fee simple title to the Property, monitor the Property annually for encroachment and comply with the Declaration of Land Use and Real Property Covenants Agreement in perpetuity.

IN CONSIDERATION OF THE FOREGOING, the parties agree as follows:

## **II. AGREEMENT TO FUND ACQUISITION OF PROPERTY**

1. **Acquisition of Property.** GPC agrees to receive fee simple title of the Property, own the Property in perpetuity, and operate according to this Agreement and Declaration of Land Use Restrictions and Real Property Covenants and Easement to protect Conservation Values of the Property. HCCC agrees to fund the acquisition of the Property, as authorized by the Army Corps of Engineers and Ecology through an executed Spending Agreement dated January 9 2018, and comply with the obligations of the Program Instrument. GPC agrees to receive title of the Property at Closing.

2. **HCCC's Responsibilities and Rights in the Acquisition of the Property.** HCCC agrees to pay the purchase price of the Property and any and all closing costs. HCCC agrees to close the transaction on or before January 22, 2018 ("Closing").

3. **GPC Responsibilities and Rights in the Acquisition of the Property.** GPC agrees to:

- a. Execute the Declaration of Land Use Restriction and Real Property Covenant ("Declaration"), substantially in the same form as included in Exhibit B attached hereto; and or any additional modifications required by the Army Corps of Engineers and/or Washington State Department of Ecology. GPC shall sign the

Declaration, and have it recorded, within one-hundred and eighty (180) days of Closing;

- b. Execute the Easement ("Easement") for HCCC, substantially in the same form as included in Exhibit C, attached hereto. GPC and HCC shall sign the Easement, and have it recorded, within 180 days Closing;
- c. GPC agrees to act in good faith and to sign conveyance documents as part of Closing; and
- d. GPC agrees to also act in good faith and sign amendments to the Declaration or Easement after Closing if needed to comply with the requirements of the ILF Program.

4. **Boundary Line Survey.** Within 180 days of closing, HCCC shall contract with a competent land surveyor to have the Property boundaries surveyed and marked. HCCC will investigate whether the tidelands can be surveyed. If HCCC determines the cost is reasonable, HCCC will contract with a competent land surveyor to survey the tidelands. HCCC shall notify GPC of the timing and results of the survey.

### **III. AGREEMENT FOR PROPERTY ACCESS AND COORDINATION DURING THE "ESTABLISHMENT PHASE"**

1. **Definition of Establishment Phase.** The Program Instrument defines the "*Establishment Phase*" as:

the period of time from project construction until all mitigation credits associated with a project have been released, i.e. when a mitigation project is still "earning" mitigation credit. The end of the establishment phase marks the beginning of the *long-term management phase*.

HCCC estimates the Establishment Phase of the project will be five to seven years from the date GPC acquires the Property. The Mitigation Plan, a document developed by the ILF Program, will specify the activities that will occur on the Property during the Establishment Phase. The Mitigation Plan shall be approved by the Army Corps of Engineers and Ecology.

2. **GPC's Responsibilities and Rights During the Establishment Phase.** GPC shall protect the ownership of the Property during the Establishment Phase by protecting the Property from any liens or encumbrances, not otherwise disclosed in the Declaration and Easement, and perform an annual encroachment review. Encroachment shall not be construed to include the unauthorized or illegal removal or harvest of shellfish resources. GPC shall pay all due and owing property taxes and provide evidence of such payment within the annual encroachment review report. GPC shall provide HCCC with a copy of each annual encroachment review report within 60 days of completion, no later than December 1 annually. If encroachment occurs, GPC shall undertake such administrative or legal action as may be

necessary to protect the Property. HCCC shall reimburse GPC for all reasonable and necessary costs for conducting the encroachment study and reasonable legal and administrative expenses for any enforcement actions incurred during the Establishment Phase, pursuant to paragraph 5 within Section III of this Agreement.

**3. HCCC's Responsibilities and Rights During the Establishment Phase.**

- a. *Access.* GPC expressly gives HCCC and/or an agent, subcontractor or assigns the authority to access the Property at any time with reasonable notice and undertake actions on the Property within the Establishment Phase in order for HCCC to meet its obligations for mitigation credit sales and compliance with the Program Instrument and related obligations.
- b. *Restoration, Monitoring and Maintenance Activities.* HCCC and/or an agent, subcontractor or assigns shall have the authority to undertake any action on the Property authorized by the Mitigation Plan. Active monitoring and maintenance practices and restoration activities may include, but are not limited to: site surveys, mapping, removal of the small dock structure on the beach and associated stairs descending from the bluff, garbage and litter, noxious weed and invasive species control, and re-vegetation with native species in disturbed areas.
- c. *Work Conducted in Reasonable Manner.* HCCC and/or an agent, subcontractor or assigns will complete work on the Property in a reasonable manner, consistent with the Mitigation Plan, and will not undertake any action that will reduce the ecological functions on the Property.

**4. Agents and Subcontractors.**

- a. HCCC or its agents or subcontracts will maintain adequate insurance. Adequate insurance shall be defined as Commercial General Liability Coverage Insurance, professional error and omission liability insurance, as applicable, and workers compensation/employer liability insurance, not less than \$1,000,000 for each policy for each occurrence. Any subcontractors used for site maintenance or restoration activities shall provide HCCC and GPC a certificate of insurance, listing both as additional insured parties and effective for the duration of the activities on the Property.
- b. HCCC shall require that all agents or subcontractors maintain in full force and effect all required licenses, permits, and similar legal authorizations, and comply with all Federal, State and local regulations.

**5. HCCC To Pay For Actions During the Establishment Phase.** HCCC will fund the actions outlined in Paragraph 3 of Section III of this Agreement as well as reimburse GPC for the actions taken in Paragraph 2 of Section III during the Establishment Phase consistent with this paragraph.

- a. HCCC will reimburse GPC for its annual encroachment review, provided that such review shall not exceed \$ 1,000 per year without prior written authorization from HCCC.
- b. HCCC will reimburse GPC for the annual property taxes for the Property.
- c. HCCC will reimburse GPC for reasonable legal and administrative expenses for any enforcement actions incurred during the Establishment Phase, which shall not to exceed \$1,000 per year without prior written authorization from HCCC.

Payment by HCCC is due within 30 days of receipt of the invoice. Invoices must provide supporting documentation (timesheets, mileage records, receipts and required reports) for all requested reimbursements. If an invoice remains unpaid after 30 days from when HCCC receives the invoice, GPC may assess interest on the delinquent amount at a rate of 12 percent per annum.

#### **IV. AGREEMENT FOR PROPERTY ACCESS, COORDINATION AND ENDOWMENT DURING THE "LONG-TERM MANAGEMENT PHASE"**

1. **Definition of the Long-Term Management Phase.** The Program Instrument defines the "Long-Term Management Phase" as that period of time after the Establishment Phase when the "mitigation projects will be managed in accordance with long-term management plans developed for each site." The provisions of this Agreement will apply once the Army Corps of Engineers and Ecology release the mitigation credits and determine the Property is now in the Long-Term Management Phase and authorize spending of the long-term management account funds.

2. **GPC's Responsibilities and Rights During the Long-Term Management Phase.** GPC shall protect the ownership of the Property during the Long-Term Management Phase by paying all due and owing taxes so that no liens or encumbrances are attached to the Property, providing evidence of such payment within the annual encroachment review report, and perform an annual encroachment review. GPC shall provide HCCC with a copy of the annual encroachment review report within 60 days of completion but no later than December 1 annually. If a new encroachment occurs, not otherwise disclosed in the Declaration and Easement, GPC shall undertake such administrative or legal action as may be necessary to protect the Property, as provided herein. GPC has all other rights associated with ownership of the property consistent with the Declaration. GPC also reserves the right, but not the obligation, to remove invasive and non-native species; under coordination with HCCC.

3. **HCCC's Responsibilities and Rights During the Long-Term Management Phase.** HCCC will review GPC's annual encroachment review report. HCCC will maintain records of the Property for compliance with the Program Instrument. HCCC may act on behalf of Army Corps of Engineers or Ecology pursuant to the Declaration.

- a. **Access.** GPC expressly gives HCCC and/or an agent, subcontractor or assigns the authority to access the Property at any time and with reasonable notice and undertake actions on the Property within the Long-Term Management Phase in order for HCCC to meet its obligations for mitigation credit sales and compliance with the Program Instrument and related obligations.
- b. **Maintenance and Management Activities.** HCCC and/or an agent, subcontractor or assigns shall have the authority to undertake any action on the Property authorized by the Mitigation Plan or an Adaptive Management Plan. Active maintenance and management practices may include, but are not limited to, removal of garbage and litter, noxious weed and invasive species control, and re-vegetation with native species.
- c. **Work Conducted in Reasonable Manner.** HCCC and/or an agent, subcontractor or assigns will complete work on the Property in a reasonable manner, consistent with the Mitigation Plan or an Adaptive Management Plan, and will not undertake any action that will reduce the ecological functions on the Property.

4. **HCCC's Rights to Establish New Mitigation Projects on the Property.** HCCC may undertake new actions, in coordination with GPC, that protect or enhance the Conservation Values of the Property as described in the Declaration; including but not limited to native vegetation restoration, and tideland enhancements on the Property to provide additional mitigation if approved by the Army Corps of Engineers, and Ecology. If HCCC obtains approval to establish new mitigation projects on the Property, that portion of the Property will be considered as within the "Establishment Phase" and the terms and conditions of Section III, with the exception of paragraph 5 of Section III, will apply for that portion of the Property. HCCC will fund the actions as outlined in paragraph 3 of Section III. of this Agreement. GPC's responsibilities, as described in paragraphs 2 of Section III and 2 of Section IV shall be funded as stipulated in paragraph 5 of Section IV.

5. **Funding.** After the Army Corps of Engineers and Ecology initially release the mitigation credits and determine the Property is now in the Long-Term Management Phase and authorize spending of the long-term management account funds, HCCC shall transfer \$38,000.00 to GPC to endow the Property in perpetuity.

## V. GENERAL TERMS

1. **Enforcement.** The parties shall have the right to prevent and correct violation of the terms of this Agreement.

2. **Access.** HCCC and its employees, representatives, agents, subcontractors and assigns shall have the right to enter the Property for purposes consistent with this Agreement.



3. **Inspection and Retention of Records.** GPC shall make all financial records, supporting documents, and all other pertinent records relating to the Property available to HCCC for inspection. Records shall be retained for a period of six years after invoice payment made.

4. **Notice and Approval.** All notices provided for herein may be sent by e-mail, Federal Express or other overnight courier service, personally delivered or mailed registered or certified mail, return receipt requested. The addresses to be used in connection with such correspondence and notices are the following, or other such address as a party shall from time to time direct:

GPC	Sandra Staples-Bortner Executive Director Great Peninsula Conservancy 423 Pacific Ave., Suite 401 Bremerton, WA 98337 (360) 373-3500 sandra@greatpeninsula.org
HCCC	Scott Brewer Executive Director Hood Canal Coordinating Council 17791 Fjord Drive NE Suite 122 Poulsbo, WA 98370-8481 (360) 930-8634 sbrewer@hccc.wa.gov

5. **Assignment.** This Agreement is binding on and accrues to the benefit of the parties and their respective successors and assigns. GPC may assign its interest in the Agreement to a subsequent owner of the Property so long as the successor party agrees to the terms of the Agreement, Easement and Declaration and GPC provides HCCC with sixty (60) days prior written notice. HCCC may assign its interest in this Agreement so long as it is approved by the Army Corps of Engineers and Ecology and consistent with the Program Instrument.

6. **Modification.** All amendments shall be in writing and approved by the parties, with signed copies provided to the parties.

7. **Severability.** If any provision of this Agreement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

8. **Specific Performance.** The parties recognize the difficulty of measuring damages resulting from default under this Agreement. Consequently, either party may seek specific performance of this Agreement. The parties expressly waive the defense that remedy in damages is adequate.

9. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the terms of this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Agreement, all of which merge herein.

10. **Governing Law.** This Agreement shall be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this Agreement shall lie in Kitsap County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the day and year first written above.

**GREAT PENINSULA CONSERVANCY**

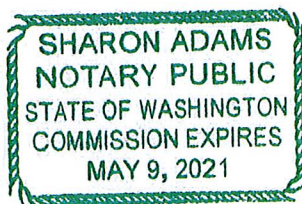
a Washington non-profit corporation

By: Sandra Staples-Bortner  
Sandra Staples-Bortner,  
Its Executive Director

Dated: 1-11-2018

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KITSAP            )

On this 11 day of January, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sandra Staples-Bortner** to me known as the **Executive Director of Great Peninsula Conservancy**, a Washington nonprofit corporation, that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.



SUBSCRIBED and SWORN to before me this 11 day of January, 2018.

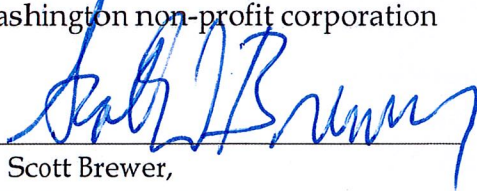
Sharon Adams

Name: Sharon Adams

NOTARY PUBLIC in and for the State of Washington,  
residing at Bremerton.

My Commission expires 05-09-2021

**HOOD CANAL COORDINATING COUNCIL**  
a Washington non-profit corporation


By:   
Scott Brewer,  
Its Executive Director

Dated: 1-16-2018

STATE OF WASHINGTON                     )  
  )ss.  
COUNTY OF KITSAP                     )

On this 16<sup>th</sup> day of JANUARY, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Scott Brewer** to me known as the **Executive Director** of the **Hood Canal Coordinating Council**, a Washington nonprofit corporation, that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.



SUBSCRIBED and SWORN to before me this 16<sup>th</sup> day of JANUARY, 2018.  
  
Name: COLLEEN HULTIN  
NOTARY PUBLIC in and for the State of Washington,  
residing at POULSBORO, WA  
My Commission expires MARCH 19, 2018

## **Exhibit A**

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### **KITSAP COUNTY PARCEL NO. 332701-3-003-2006**

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, UTILITIES, AND INGRESSES AND EGRESS AS SET FORTH IN EASEMENT RELOCATION AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8908230125.

### **KITSAP COUNTY PARCEL NO. 332701-3-038-2005**

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ACCESS AS DESCRIBED AND DELINEATED IN BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382.



Exhibit B

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DECLARATION OF LAND USE RESTRICTION  
AND REAL PROPERTY COVENANTS

**Upon Recording Return to:**

Hood Canal Coordinating Council  
c/o Mitigation Program Manager  
17791 Fjord Drive NE, Suite 122  
Poulsbo, WA 98370-8481

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DOCUMENT TITLE:	DECLARATION OF LAND USE RESTRICTIONS AND REAL PROPERTY COVENANTS
GRANTOR:	GREAT PENINSULA CONSERVANCY
BENEFICIARIES:	UNITED STATES, ARMY CORPS OF ENGINEERS  STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY
LEGAL DESCRIPTION:	PTN OF GOVERNMENT LOT 3, SEC. 33, T. 27N., R. 1 E., W.M
ASSESSOR'S TAX PARCEL NOS.:	332701-3-003-2006 & 332701-3-038-2005

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THIS DECLARATION OF LAND USE RESTRICTION AND REAL PROPERTY COVENANTS AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of January, 2018, by Great Peninsula Conservancy, a Washington nonprofit corporation

("Grantor") for the benefit of the United States Army Corps of Engineers and State of Washington Department of Ecology ("Beneficiaries").

## **I. RECITALS**

7. Grantor is a publicly supported, Washington nonprofit corporation, tax exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended. Grantor is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is the conservation, preservation and enhancement of the waters, wetlands, aquatic and wildlife habitat, forestlands, scenic areas, open spaces, recreational lands and agricultural lands of or in proximity to Kitsap County, Mason County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

8. The Hood Canal Coordinating Council ("HCCC") is a nonprofit entity organized under the Revised Code of Washington (RCW) Chapter 24.03 and recognized by the Internal Revenue Service as having 501(c)(3) tax exempt status. The HCCC In-Lieu Fee ("ILF") Program has been acknowledged by the US Army Corps of Engineers ("Corps of Engineers") and the Washington State Department of Ecology ("Ecology") as meeting federal and state requirements for operating an in-lieu fee program, as evidenced by the execution of the Hood Canal Coordinating Council In-Lieu Fee Program Instrument, dated June 15, 2012 (the "Program Instrument"). The Grantor executed an Easement providing HCCC with site access to undertake mitigation measures authorized by the ILF Program ("Easement").

9. HCCC's ILF Program funded the acquisition of real property in Kitsap County, specifically described in Exhibit A attached hereto and incorporated herein by this reference (the "Property") to preserve 20.52 acres of marine riparian uplands and 6.5 acres of adjoining tideland habitat (based on Kitsap County parcel mapping). Under the terms of the Program Instrument, the Corps of Engineers and Ecology must be beneficiaries of any restrictive covenants on the Property.

10. The Property possesses natural, open space, marine riparian, feeder bluff and tideland habitat (collectively referred to as the "Conservation Values") of great importance to the Beneficiaries and the HCCC In-Lieu Fee Program. The HCCC ILF Program will facilitate and administer restoration and enhancement activities on the Property as approved by the Corps of Engineers and Ecology.

11. Grantor wishes to grant these Declaration of Land Use Restriction and Real Property Covenants as consideration of the monies received for purchasing the property from the HCCC's ILF Program and in accordance with the Program Instrument.

## II. AGREEMENT

IN CONSIDERATION OF THE FOREGOING and the performance of the mutual covenants herein, Grantor declares as follows:

**1. Declaration of Real Property Covenant** -- Grantor voluntarily establishes these equitable servitudes and real property covenants in perpetuity over the Property on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Property.

**2. Purpose** -- It is the purpose of these equitable servitudes and real property covenants to ensure that the Property will be preserved and restored as authorized by the HCCC's ILF Program and then retained forever in a natural, open space and scenic condition. Grantor and the Beneficiaries intend that these equitable servitudes and real property covenants will confine the use of the Property as provided herein.

**3. Rights of the Beneficiaries** -- To accomplish the purpose of these equitable servitudes and real property covenants the following rights may be exercised by the Beneficiaries:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this real property covenant in accordance with Sections 9 and 10; provided that, except in cases where the Beneficiaries determine that immediate entry is required to prevent, terminate, or mitigate a violation of this real property covenant, such entry shall be upon prior reasonable notice to Grantor;
- (c) To erect signage, install or maintain fencing, to perform riparian or tideland restoration, monitoring and maintenance and remove litter; and
- (d) To conduct, with reasonable prior notice to Grantor: removal of a small dock structure on the beach and associated stairs descending from the bluff, survey, site preparation, removal of invasive or non-native vegetation, installation of native plants, and other activities associated with enhancement or restoration.

**4. Prohibited Uses** -- Any use of the Property, except for HCCC's ILF Program's restoration and enhancement activities approved by the Corps of Engineers and Ecology, inconsistent with the purpose of these equitable servitudes and real property covenants is prohibited. Without limiting the generality of the foregoing, the

following activities and uses are expressly prohibited, except as permitted by the Beneficiaries:

(a) *Construction and Improvements.* The placement or construction of any new buildings, structures, or other improvements of any kind, including, without limitation, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines.

(b) *Road and Trail Construction.* The paving or covering of any portion of the Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material or the construction of a road or trail.

(c) *Commercial Development.* Any commercial or industrial use or activity on the Property, including, but not limited to, commercial or recreational activities involving active recreation.

(d) *Agricultural Activities.* Any domestic animal grazing or agricultural activities of any kind; and application of biocides except when determined by the Beneficiaries to be necessary for the eradication of non-native plant species and such application is by the narrowest spectrum, least persistent material appropriate for the target species.

(e) *Introduced Vegetation.* The planting or intentional introduction of non-native species of plants.

(f) *Waste Disposal.* The disposal, storage, or release of yard waste, hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Property. The term "release" shall mean any release, generation, treatment, disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this real property covenant shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

(g) *Subdivision or Land Encumbrances.* Legal or de facto division, subdivision or partitioning of the Property from its current configuration is prohibited. The granting of easements for rights-of-way for roads, power lines, pipelines, or electronic sites is prohibited unless authorized by Beneficiaries.

(h) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, campgrounds or any other activity involving individuals or the public or private clubs or associations engaging in organized active recreation.

(i) *Hunting.* Conducting or allowing hunting activities, including construction of blinds, camping areas, access trails, and any other hunting related activities.

(j) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Property.

(k) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(l) *Vehicles.* The operation of motorized vehicles except as part of any riparian restoration or maintenance activity.

(m) *Timber Harvest or Vegetation Removal.* The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead native trees and other native vegetation, **except** as needed to conduct restoration activities or to remove danger trees that pose a hazard to neighboring structures, access roads or facilities.

**5. Retained Rights of Grantor** -- Grantor reserves to itself and to its members and their personal representatives, heirs, successors and assigns, any use of, or activity on, the Property that is not inconsistent with the purpose of these equitable servitudes and real property covenants and that is not prohibited herein. Grantor reserves the right but not the obligation of removing litter and removing and controlling invasive and non-native species, in coordination with the Beneficiaries. Grantor may grant or assign an interest in whole or in part to the Property to any land trust that has adopted the Land Trust Alliance Standards and Practices, subject to approval from the Beneficiaries, provided that approval of Beneficiaries may not be unreasonably withheld. Beneficiaries require 60 (sixty) days notice prior to transfer of ownership in whole or in part.

**6. Responsibilities of Grantor Not Affected** -- Other than as specified herein, these equitable servitudes and real property covenants are not intended to impose any legal or other responsibility on the Beneficiaries, or in any way to affect any existing obligation of the Grantor as owner of the Property. This shall include, but not be limited to: taxes, upkeep and maintenance, remediation, control over the property, and liability.

**7. The Beneficiaries Right to Restore the Property** -- In the event that any of the Conservation Values of the Property are impaired, the Beneficiaries shall have the right, but not the obligation, to restore all or portions of the Property.

**8. Access** -- No right of access by the general public to any portion of the Property is created by these equitable servitudes and real property covenants.

**9. Hood Canal Coordinating Council** -- The Beneficiaries may designate HCCC as an agent to enforce any of the Beneficiaries' rights under this Agreement.

**10. Enforcement** -- The Beneficiaries shall have the right to prevent and correct violation of the terms of this real property covenant.

(a) *Notice of Failure.* If the Beneficiary determines that the Grantor is in violation of the terms of this real property covenant or that a violation is threatened, the Beneficiary shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this real property covenant, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Beneficiary.

(b) *Grantor's Failure to Respond.* In addition to the rights granted in Section 3, including the right of entry, the Beneficiary may bring an action as provided for in Section 10(c) below if Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from the Beneficiary; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *The Beneficiary's Action.* The Beneficiary may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this real property covenant, to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this real property covenant or injury to any of the Conservation Values protected by this real property covenant, including damages for the loss of the Conservation Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, the Beneficiary, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without the Beneficiary being required to post bond or provide other security.

(d) *Immediate Action Required.* If the Beneficiary, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Beneficiary may pursue remedies under this Section 10 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) *Nature of Remedy.* The rights under this Section 10 apply equally in the event of either actual or threatened violations of the terms of this real property covenant. Grantor agrees that the remedies at law for any violation of the terms of this real property covenant are inadequate and Beneficiary shall be entitled to the injunctive relief described in this Section 10 both prohibitive and mandatory, in addition to such other relief to which Beneficiary may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The



remedies described in this Section 10 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) *Costs of Enforcement.* Provided the Beneficiary first provides Grantor with a Notice of Failure and Grantor fails to respond, all reasonable costs incurred by the Beneficiary in enforcing the terms of this real property covenant against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this real property covenant shall be borne by Grantor. The substantially prevailing party in a judicial enforcement action regarding this real property covenant shall be entitled to reimbursement of all reasonably incurred attorney's fees and litigation expenses.

(g) *The Beneficiary's Discretion.* Any forbearance by the Beneficiary to exercise rights under this real property covenant in the event of any violation of any terms of this real property covenant shall not be deemed or construed to be a waiver of such term or of any rights under this real property covenant. No delay or omission by the Beneficiary in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(h) *Acts Beyond Grantor's Control.* Nothing contained in this real property covenant shall be construed to entitle the Beneficiary to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, nor shall Grantor be required to take steps to abate or mitigate injury to the Property resulting from such causes.

**11. Notice and Approval --** All notices provided for herein may be sent by Federal Express or other overnight courier service, personally delivered, or mailed registered or certified mail, return receipt requested. The addresses to be used in connection with such correspondence and notices are the following, or other such address as a party shall from time to time direct:

<b>GPC</b>	Sandra Staples-Bortner Executive Director 423 Pacific Ave., Suite 401 Bremerton, WA 98337 (360) 373-3500
<b>Army Corps of Engineers</b>	Suzanne Anderson Mitigation Program Manager PO Box 3755 Seattle, WA 98124

	(206) 764-3708
<b>Ecology</b>	Lauren Driscoll Shorelands and Environmental Assistance Program PO Box 47600 300 Desmond Drive Olympia, WA 98504-7600 (360) 407-6140
<b>HCCC</b>	Scott Brewer Executive Director 17791 Fjord Drive NE Suite 122 Poulsbo, WA 98370-8481 (360) 930-8634

Correspondence contact information changes shall be provided to all parties within 30 days of such change.

**12. Notice of Transfer of Property by Grantor and Successor and Assigns –** The Property may be transferred consistent with Section 5 of this Agreement.

**13. Termination of Real property Covenant --** This real property covenant may only be terminated with the concurrence of the Beneficiaries.

**14. Modification --** All amendments shall be in writing, approved by the Beneficiaries and recorded in the real property records of Kitsap County, Washington. Amendments shall be recorded on title.

**15. Interpretation --** This real property covenant shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

**16. Perpetual Duration --** This real property covenant shall be a binding servitude running with the land in perpetuity.

**17. Severability --** If any provision of this real property covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

**18. Entire Agreement --** This instrument sets forth the entire agreement of the parties with respect to the terms of this Declaration of Land Use Restrictions and Real Property Covenants and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms thereof.

**19. Subject to Title Matters of Record.** This instrument is subject to those title matters of record described in Exhibit B attached hereto and incorporated herein by reference.

**20. Effective Date** – The effective date of this instrument shall be the date of its recording in the official records of Kitsap County, Washington.

IN WITNESS WHEREOF, the Grantor has set its hands on the date first written above.  
{Signature Pages Follow}

**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

By: \_\_\_\_\_  
Kathleen Peters  
Its President

Dated: \_\_\_\_\_

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KITSAP            )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Kathleen Peters** to me known as the President of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission expires \_\_\_\_\_.

**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

By: \_\_\_\_\_  
Sandra Staples-Bortner,  
Its Executive Director

Dated: \_\_\_\_\_

STATE OF WASHINGTON        )  
  )ss.  
COUNTY OF KITSAP        )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sandra Staples-Bortner** to me known as the Secretary of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission expires \_\_\_\_\_.

## **Exhibit A**

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### **KITSAP COUNTY PARCEL NO. 332701-3-003-2006**

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, UTILITIES, AND INGRESSES AND EGRESS AS SET FORTH IN EASEMENT RELOCATION AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8908230125.

### **KITSAP COUNTY PARCEL NO. 332701-3-038-2005**

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ACCESS AS DESCRIBED AND DELINEATED IN BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382.



## Exhibit B

### Special Exceptions:

1. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on January 11, 1955, under Kitsap County Auditor's File No. 609232.  
For: Road  
Affects: The South 15 feet of said premises
2. Easement for electric transmission and distribution line, and the terms and conditions thereof, together with necessary appurtenances, as granted by instrument recorded on January 29, 1980, under Kitsap County Auditor's File No. 8001290025.  
To: Puget Sound Power and Light Company  
Affects: A portion of Parcel I
3. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on August 26, 2013, under Kitsap County Auditor's File No. 201308260382.  
For: Access  
Affects: The South 15 feet of said premises  
  
Said instrument is a re-recording of instrument recorded February 14, 2006 under Auditor's File No. 200602140148.
4. Agreement and the terms and conditions thereof:  
By and Between: Owners  
Dated: June 16, 1989  
Recorded: August 23, 1989  
Auditor's File No.: 8908230125  
Regarding: Relocation of easement established under Auditor's File No. 8208030045
5. Waiver of damages by reason of the construction of a roadway adjoining said premises, and the right to make necessary slopes for cuts or fills upon property herein described as granted in deed:  
Granted To: Kitsap County  
Recorded: July 19, 1948  
Auditor's File No.: 472522  
Affects: Parcel I
6. Exceptions and Reservations contained in deed from the State of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry of opening, developing and working the same and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry; recorded under Auditor's File No. 269945.

Note: No examination has been made to determine the present record owner of the above minerals, or mineral lands and appurtenant rights thereto, or to determine matters which may affect the lands or rights so reserved.

Right of State of Washington or its successors, subject to payment of compensation therefore, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, as reserved in deed referred to above.

Affects:                      Tidelands

7. Any adverse claim by reason of the question of location, boundary or area of said land which may be dependent upon the location of the line of ordinary high tide of Puget Sound.
8. Any question that may arise as to the location of the lateral boundaries of the tidelands or shore lands described herein.
9. Any prohibition of or limitation of use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water.
10. Any claim of right, title or interest which may be asserted by the State of Washington or the public to the beaches or accretions to the uplands.
11. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

Affects:                      Tidelands

12. Declaration of Boundary Line Adjustment and the terms and conditions thereof: Recorded:        February 14, 2006  
Auditor's File No.:        200602140148

Said instrument is a re-recording of instrument recorded August 26, 2013 under Auditor's File No. 201308260382.

13. Matters delineated, described and noted on Survey recorded July 26, 1982, in Volume 18, Page 047, under Auditor's File No. 8207260081.

**Exhibit C**

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**EASEMENT**

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**Upon Recording Return to:**

Hood Canal Coordinating Council  
c/o Mitigation Program Manager  
17791 Fjord Drive NE, Suite 122  
Poulsbo, WA 98370-8481

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<b>DOCUMENT TITLE:</b>	<b>EASEMENT</b>
<b>GRANTOR:</b>	<b>GREAT PENINSULA CONSERVANCY</b>
<b>GRANTEE:</b>	<b>HOOD CANAL COORDINATING COUNCIL</b>
<b>LEGAL DESCRIPTION:</b>	<b>PTN OF GOVERNMENT LOT 3 SEC. 33, T. 27N., R. 1 E., W.M.</b>
<b>ASSESSOR'S TAX PARCEL NOS.:</b>	<b>332701-3-003-2006 &amp; 332701-3-038-2005</b>

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THIS EASEMENT AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of January, 2018, by and between the Great Peninsula Conservancy, a Washington nonprofit corporation ("Grantor") and the Hood Canal Coordinating Council, a Washington nonprofit entity ("Grantee").

**II. RECITALS**

12. Grantor is a publicly supported, Washington nonprofit corporation, tax exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended. Grantor is also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is the conservation, preservation and enhancement of the waters, wetlands, aquatic and wildlife habitat, forestlands, scenic areas, open spaces, recreational lands and agricultural lands of or in proximity to Kitsap County, Mason

County, and that part of Pierce County westerly of the Tacoma Narrows of Puget Sound.

13. Grantee is a nonprofit entity organized under the Revised Code of Washington (RCW) Chapter 24.03 and recognized by the Internal Revenue Service as having 501(c)(3) tax exempt status. The HCCC In-Lieu Fee ("ILF") Program has been acknowledged by the US Army Corps of Engineers ("Corps of Engineers") and the Washington State Department of Ecology ("Ecology") as meeting federal and state requirements for operating an in-lieu fee program, as evidenced by the execution of the Hood Canal Coordinating Council In-Lieu Fee Program Instrument, dated June 15, 2012 (the "Program Instrument").

14. HCCC's ILF Program funded the acquisition of real property in Kitsap County, specifically described in Exhibit A (the "Property") to preserve 20.52 acres of marine riparian uplands and 6.5 acres of adjoining tideland habitat (based on Kitsap County parcel mapping). Grantor and Grantee entered into a cooperative agreement in which Grantor agreed to own the Property in fee simple and in return grant this Easement to Grantee.

15. The Property possesses natural, open space, marine riparian, feeder bluff and tideland habitat (collectively referred to as the "Conservation Values") of great importance to the HCCC In-Lieu Fee Program.

16. Grantor agrees to grant an Easement for mitigation, habitat restoration, preservation and conservation on the Property to Grantee. The Easement will allow Grantee to preserve, restore and rehabilitate the aquatic and terrestrial habitat as approved by the Corps of Engineers and Ecology pursuant to the ILF Program Instrument.

### III. AGREEMENT

IN CONSIDERATION OF THE FOREGOING and the performance of the mutual covenants herein, the parties agree as follows:

**1. Purpose** -- It is the purpose of this Easement to limit any future improvement, development or use of the Property that is inconsistent with the mission of the ILF Fee Program and the Grantees efforts to preserve, restore, rehabilitate, enhance and maintain the ecological functions of the Property.

**2. Rights of the Grantee** - Grantor hereby grants, warrants and conveys the following rights to the Grantee:

(a) *Access.* To access the Property at any time and with reasonable notice and undertake actions on the Property in order for HCCC to meet its obligations for mitigation credit sales and compliance with the ILF Program Instrument and related obligations.

(b) *Mitigation and Restoration Actions.* To undertake any action on the Property authorized by the ILF Program Instrument and related obligations. These actions may include, but are not limited to: removal of a small dock structure on the beach and associated stairs descending from the bluff, site surveys, mapping, removal of garbage and litter, weed and invasive plant control, and re-vegetation in disturbed areas.

(c) *Obtain Permits and Implement Mitigation and Restoration Activities.* Grantee may seek and obtain all necessary permits to engage in Mitigation and Restoration Activities without the authorization or approval of the Grantor so long as the work is consistent with the purpose of this Easement. Grantee will provide Grantor a copy of applications submitted and permits obtained. If a regulatory agency requires Grantor to sign as the landowner, Grantor's authorization will not be unreasonably withheld.

(d) *Conservation of the Property.* The right to prohibit development or use of the Property that is incompatible with the purpose of the Easement.

(e) *Enforcement.* The right to enforce this Easement as provided for herein.

(f) *Restoration from Damage.* The right to require Grantor to repair or restore any area or feature of the Property that may be damaged by any inconsistent activity on or use of the Property as provided herein.

**3. Prohibited Uses** -- Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. This Agreement does not restrict activities to improve the native habitat on the property undertaken pursuant to ILF Program and approved by the Army Corps of Engineers and Ecology. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as permitted by the Ecology, Army Corps of Engineers and Grantee:

(a) *Construction and Improvements.* The placement or construction of any buildings, structures, or other improvements of any kind, including, without limitation, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines.

(b) *Road and Trail Construction.* The paving or covering of any portion of the Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material or the construction of a road or trail.

(c) *Commercial Development.* Any commercial or industrial use or activity on the Property, including, but not limited to, commercial or recreational activities involving active recreation.

(d) *Agricultural Activities.* Any domestic animal grazing or agricultural activities of any kind; and application of biocides except when determined by the Grantee to be necessary for the eradication of non-native plant species and such

application is by the narrowest spectrum, least persistent material appropriate for the target species.

(e) *Introduced Vegetation.* The planting or intentional introduction of non-native species of plants.

(f) *Waste Disposal.* The disposal, storage, or release of yard waste, hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Property. The term “release” shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term “hazardous substances” as used in this real property covenant shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

(g) *Subdivision or Land Encumbrances.* Legal or de facto division, subdivision or partitioning of the Property from its current configuration is prohibited. The granting of easements for rights-of-way for roads, power lines, pipelines, or electronic sites is prohibited unless authorized by Grantee.

(h) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, campgrounds or any other activity involving individuals or the public or private clubs or associations engaging in organized active recreation.

(i) *Hunting.* Conducting or allowing hunting activities, including construction of blinds, camping areas, access trails, and any other hunting related activities.

(j) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Property.

(k) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(l) *Vehicles.* The operation of motorized vehicles except as part of any riparian restoration or maintenance activity.

(m) *Timber Harvest or Vegetation Removal.* The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead native trees and other native vegetation, **except** as needed to conduct restoration activities or to remove danger trees that pose a hazard to neighboring structures, access roads or facilities.



**4. Retained Rights of Grantor** -- Grantor reserves to itself and to its members and their personal representatives, heirs, successors and assigns, any use of, or activity on, the Property that is not inconsistent with the purpose of these equitable servitudes and real property covenants and that is not prohibited herein. Grantor reserves the right but not the obligation of removing litter and removing and controlling invasive and non-native species, in coordination with the Grantee.

Grantor may grant or assign an interest in whole or in part to the Property to any land trust that has adopted the Land Trust Alliance Standards and Practices, subject to approval from the Grantee, provided that approval of Grantee may not be unreasonably withheld. Grantee requires 60 (sixty) days notice prior to transfer of ownership in whole or in part.

**5. Enforcement** -- The Grantee shall have the right to prevent and correct violation of the terms of this Easement. If the Grantee determines that the Grantor is in violation, or a violation of the terms of this Easement is imminent, the Grantee shall give written notice to Grantor of such violation. Grantor shall have thirty days to cure such violation. If the violation is not cured, Grantee may bring an action at law or in equity to enforce the terms of this Agreement.

**6. Notice and Approval** -- All notices provided for herein may be sent by Federal Express or other overnight courier service, personally delivered, or mailed registered or certified mail, return receipt requested. The addresses to be used in connection with such correspondence and notices are the following, or other such address as a party shall from time to time direct:

<b>GPC</b>	Sandra Staples-Bortner Executive Director Great Peninsula Conservancy 423 Pacific Ave., Suite 401 Bremerton, WA 98337 (360) 373-3500
<b>HCCC</b>	Scott Brewer Executive Director Hood Canal Coordinating Council 17791 Fjord Drive NE Suite 122 Poulsbo, WA 98370-8481 (360) 930-8634

Correspondence contact information changes shall be provided to all parties within 30 days of such change.

**7. Subsequent Transfers** - Grantor agrees to incorporate the terms of this Easement in any deed or legal instrument by which it divests itself of any interest in the

Property, including a leasehold interest. Grantor expressly intends that this Easement touches and concerns the Property and the conditions, covenants and restrictions contained herein shall be deemed covenants running with the land and shall inure to the benefit of, and shall be binding upon, the respective heirs, successors, grantees and assigns of the parties and to any parties hereafter having any right, title or interest in or to the Property or any portion thereof. This Easement shall continue in perpetuity unless otherwise modified in writing by Grantor and Grantee as provided herein.

**8. Modification --** All amendments shall be in writing, approved by the Grantee and recorded in the real property records of Kitsap County, Washington. Amendments shall be recorded on title.

**9. Severability --** If any provision of this real property covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

**10. Entire Agreement --** This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement.

**11. Controlling Law -** This Easement shall be construed in accordance with the laws of the United States and the State of Washington. Venue shall lie in Kitsap County.

**12. Subject to Title Matters of Record.** This instrument is subject to those title matters of record described in Exhibit B attached hereto and incorporated herein by reference.

**13. Effective Date -** The effective date of this instrument shall be the date of its recording in the official records of Kitsap County, Washington.

{Signature Pages Follow}

IN WITNESS WHEREOF, the Grantor has set its hands on the date first written above.

**GREAT PENINSULA CONSERVANCY**

A Washington non-profit corporation

\_\_\_\_\_  
By: Kathleen Peters  
Its President

Dated:\_\_\_\_\_

STATE OF WASHINGTON            )  
  )ss.  
COUNTY OF KITSAP            )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Kathleen Peters** to me known as the President of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission expires \_\_\_\_\_.

**GREAT PENINSULA CONSERVANCY**  
a Washington non-profit corporation

By: \_\_\_\_\_  
Sandra Staples-Bortner,  
Its Executive Director

Dated: \_\_\_\_\_

STATE OF WASHINGTON        )  
  )ss.  
COUNTY OF KITSAP        )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sandra Staples-Bortner** to me known as the Secretary of **Great Peninsula Conservancy**, a Washington nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission expires \_\_\_\_\_.

**HOOD CANAL COORDINATING COUNCIL**  
a Washington non-profit corporation

By: \_\_\_\_\_  
Scott Brewer,  
Its Executive Director

Dated: \_\_\_\_\_

STATE OF WASHINGTON                    )  
  )ss.  
COUNTY OF KITSAP                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Scott Brewer** to me known as the **Executive Director** of the **Hood Canal Coordinating Council**, he executed the foregoing instrument, and acknowledged the said instrument to be free and voluntary act of said company, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute the said instrument.

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission expires \_\_\_\_\_.

## Exhibit A

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### **KITSAP COUNTY PARCEL NO. 332701-3-003-2006**

RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, UTILITIES, AND INGRESSES AND EGRESS AS SET FORTH IN EASEMENT RELOCATION AGREEMENT RECORDED UNDER AUDITOR'S FILE NO. 8908230125.

### **KITSAP COUNTY PARCEL NO. 332701-3-038-2005**

RESULTANT PARCEL B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382, A RE-RECORDING OF AUDITOR'S FILE NO. 200602140148, BEING A PORTION OF GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 27 NORTH, RANGE 1 EAST, W.M., KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR ACCESS AS DESCRIBED AND DELINEATED IN BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201308260382.



## Exhibit B

### Special Exceptions:

1. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on January 11, 1955, under Kitsap County Auditor's File No. 609232.  
For: Road  
Affects: The South 15 feet of said premises
2. Easement for electric transmission and distribution line, and the terms and conditions thereof, together with necessary appurtenances, as granted by instrument recorded on January 29, 1980, under Kitsap County Auditor's File No. 8001290025.  
To: Puget Sound Power and Light Company  
Affects: A portion of Parcel I
3. Easement, and terms and conditions thereof, affecting a portion of said premises and for the purposes hereinafter stated, as disclosed by instrument recorded on August 26, 2013, under Kitsap County Auditor's File No. 201308260382.  
For: Access  
Affects: The South 15 feet of said premises  
  
Said instrument is a re-recording of instrument recorded February 14, 2006 under Auditor's File No. 200602140148.
4. Agreement and the terms and conditions thereof:  
By and Between: Owners  
Dated: June 16, 1989  
Recorded: August 23, 1989  
Auditor's File No.: 8908230125  
Regarding: Relocation of easement established under Auditor's File No. 8208030045
5. Waiver of damages by reason of the construction of a roadway adjoining said premises, and the right to make necessary slopes for cuts or fills upon property herein described as granted in deed:  
Granted To: Kitsap County  
Recorded: July 19, 1948  
Auditor's File No.: 472522  
Affects: Parcel I
6. Exceptions and Reservations contained in deed from the State of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry of opening, developing and working the same and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry; recorded under Auditor's File No. 269945.

Note: No examination has been made to determine the present record owner of the above minerals, or mineral lands and appurtenant rights thereto, or to determine matters which may affect the lands or rights so reserved.

Right of State of Washington or its successors, subject to payment of compensation therefore, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, as reserved in deed referred to above.

Affects:                      Tidelands

7. Any adverse claim by reason of the question of location, boundary or area of said land which may be dependent upon the location of the line of ordinary high tide of Puget Sound.
8. Any question that may arise as to the location of the lateral boundaries of the tidelands or shore lands described herein.
9. Any prohibition of or limitation of use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water.
10. Any claim of right, title or interest which may be asserted by the State of Washington or the public to the beaches or accretions to the uplands.
11. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

Affects:                      Tidelands

12. Declaration of Boundary Line Adjustment and the terms and conditions thereof: Recorded:              February 14, 2006  
Auditor's File No.:              200602140148

Said instrument is a re-recording of instrument recorded August 26, 2013 under Auditor's File No. 201308260382.

13. Matters delineated, described and noted on Survey recorded July 26, 1982, in Volume 18, Page 047, under Auditor's File No. 8207260081.