COOPERATIVE AGREEMENT
AMONG CITY OF FEDERAL WAY, KING COUNTY, PUYALLUP TRIBE OF INDIANS, MUCKLESHOOT INDIAN TRIBE, WASHINGTON DEPARTMENT OF ECOLOGY, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, WASHINGTON DEPARTMENT OF NATURAL RESOURCES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE AND BUREAU OF INDIAN AFFAIRS REGARDING THE WEST HYLEBOS ACQUISITION PROPERTY PROJECT

I. PARTIES

This Agreement is entered into among King County, the City of Federal Way, and the Commencement Bay Natural Resource Trustees (Trustees) consisting of: The Puyallup Tribe of Indians (Puyallup Tribe); The Muckleshoot Indian Tribe (Muckleshoot Tribe); the Washington Department of Ecology (Ecology) as lead state natural resource trustee; the Washington Department of Natural Resources (WDNR); the Washington Department of Fish and Wildlife (WDFW); the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce; and the U.S. Department of the Interior (DOI) including the U.S. Fish and Wildlife Service (USFWS) and the Bureau of Indian Affairs (BIA). King County, the City of Federal Way and the Trustees collectively shall hereafter be identified as the Parties. This Cooperative Agreement concerns the management and use of property provided to the City of Federal Way. The property has been acquired with funds provided by King County and the Trustees.

II. RECITALS

A. The Trustees, acting under applicable state, federal and tribal law, enter into this Cooperative Agreement in furtherance of their general responsibilities to restore, replace and acquire the equivalent of natural resources of the Commencement Bay environment injured by releases of hazardous substances.

B. The Trustees are also parties to a Memorandum of Agreement Regarding Natural Resource Damage Assessment in the Commencement Bay, Washington Environment (MOA), including its First Supplement concerning Coordination in the Use of Natural Resource Damage Assessment and Restoration Planning Contributions and Application of Natural Resource Damage Recoveries (MOA Supplement). The MOA Supplement provides that the Trustees may enter into separate agreements or memoranda of understanding to define their respective roles and responsibilities regarding habitat restoration projects undertaken by or on behalf of the Trustees. As between and among the Trustees, the terms of this Cooperative Agreement are intended to apply in addition to those of the MOA and the MOA Supplement, the terms of which are hereby incorporated by reference solely for purposes of defining the rights and relationships among the Trustees.

C. As a consequence of settlements of natural resource damage claims against several parties, the Trustees have obtained funds, real property and commitments of in-kind services to be used for natural resource restoration purposes. The Trustees have adopted the

Commencement Bay Natural Resource Damage Assessment Restoration Plan (Commencement Bay NRDA Restoration Plan) to guide use of the funds, property and services, and have begun implementing the Commencement Bay NRDA Restoration Plan by identifying potential restoration projects and suitable project sites.

D. Among the proposed restoration project sites identified by the Trustees is a property along Hylebos Creek, a tributary to Commencement Bay, known informally as the West Hylebos Acquisition Property. The property is located at First Avenue South at 366th Street in King County, Washington, and consists of a single tax parcel (King County Assessor's Office Tax Account # 2921049023). Through a resolution of the Trustee Council (Resolution 2003-04, adopted March 11, 2003), the Trustees have agreed to partner with the King County Conservation Futures Program and the City of Federal Way in the acquisition of the West Hylebos Acquisition Property by contributing natural resource damage funds toward the purchase price.

E. Under the authority of RCW 84.34.200-84.34.250, and King County Code Chapter 26.12, King County has established a Conservation Futures Fund Program, through which King County uses earmarked property tax receipts to acquire rights and interests in open space, wetlands, habitat areas, farm, agricultural and timber lands. Per King County Code 26.12.010, property or rights acquired under the Conservation Futures Fund Program are to be subject to covenants and property restrictions to run with the land in perpetuity and in fulfillment of requirements necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment. King County is authorized to transfer property or rights acquired under the Conservation Futures Fund Program, subject to such covenants and property restrictions, to a city, state or local governmental agency empowered to hold fee simple or other interests in land on behalf of the public.

F. The City of Federal Way has adopted goals and policies in its Comprehensive Plan, adopted pursuant to the Growth Management Act, that encourage the acquisition and development of parks within the City, and acquiring the West Hylebos Acquisition Property would further the goals and policies of that Plan.

G. The purpose of this Cooperative Agreement is to identify the rights and responsibilities of the Parties regarding the West Hylebos Acquisition Property and the restoration project potentially to be developed on it.

III. AUTHORITY

This Cooperative Agreement is entered into pursuant to the Natural Resource Trustee provisions of section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9607(f), Section 311 of the Clean Water Act (CWA), as amended, 33 U.S.C. §1321, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart G, 40 C.F.R. §§300.600 – 300.615, Interlocal Cooperation Act, RCW 39.34, RCW 84.34.200-84.34.250, and other applicable federal state and tribal law. The following officials or their designees act on behalf of the public as state, federal and tribal Trustees for natural resources under this Cooperative Agreement:

The Tribal Council, or its designee, for the Puyallup Tribe of Indians;

The Tribal Council, or its designee, for the Muckleshoot Indian Tribe;

The Secretary of the Interior;

The Undersecretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce;

The Director of the Department of Ecology for the State of Washington, as lead state Trustee, the Commissioner of Public Lands of the State of Washington, and the Director of the Washington Department of Fish and Wildlife.

IV. TERMS AND CONDITIONS

A. West Hylebos Acquisition Property Project.

The West Hylebos Acquisition Property Project (West Hylebos Project) consists of: (1) acquisition of the West Hylebos Acquisition Property by King County using Conservation Futures Fund monies and natural resource damage funds provided by the Trustees, (2) transfer of the West Hylebos Acquisition Property to the City of Federal Way subject to a restrictive covenant, attached hereto as Exhibit 1, to ensure the property will be preserved and used consistently with the purpose of this Cooperative Agreement, (3) preservation of existing habitat values, and (4) potential alterations and improvements by the Trustees of existing upland and aquatic habitat on the West Hylebos Acquisition Property, as described below in Section IV.C., to benefit fish and wildlife species that utilize the Commencement Bay environment. The overall purpose of the Restoration Project is to restore natural resources injured by releases of hazardous substances. This purpose will be accomplished by taking actions to protect and enhance fish and wildlife habitat at the site and by precluding inconsistent uses of the property, thereby increasing the ecosystem complexity and habitat value of Commencement Bay and its tributaries for birds, wildlife, fish and other aquatic organisms.

B. Property Ownership, Use and Maintenance.

1. West Hylebos Acquisition Property Ownership. King County shall acquire ownership of the West Hylebos Acquisition Property, and shall transfer ownership to the City of Federal Way subject to a restrictive covenant on the deed in the form attached hereto as Exhibit 1 ("Restrictive Covenant"). King County and the City of Federal Way shall cause the Restrictive Covenant with a copy of this Cooperative Agreement attached to be filed in the real property records for King County. It is the purpose of this Restrictive Covenant to assure that the West Hylebos Acquisition Property will remain available for habitat restoration in perpetuity. The City of Federal Way shall take such action as is necessary to preclude use of the property inconsistent with the purposes of this Cooperative Agreement.

2. West Hylebos Acquisition Property Use. Activities may be conducted on the West Hylebos Acquisition Property that are consistent with the purpose provided in Section IV.A. above. Use of, or activity on, the West Hylebos Acquisition Property inconsistent with this purpose is prohibited and the Parties acknowledge and agree that they will not conduct, engage in, or permit such use or activity.

The Parties agree that activities conducted in accordance with the terms and conditions of applicable laws, regulations and permit requirements and any restoration project plan (Restoration Project Plan) developed by the Trustees in consultation with the City of Federal Way and King County for the site would be consistent with the purposes of providing habitat value in the Commencement Bay environment, including but not limited to:

- construction, maintenance and adaptive management activities in accordance with the Restoration Project Plan, such as land grading, excavation, and recontouring, vegetation removal, substrate enhancement and planting native vegetation
- ecological surveys and research
- low impact recreation (wildlife viewing/observation)
- construction and maintenance of informational and educational signs or kiosks
- activities to control non-native, invasive or noxious plants and animals
- construction of a path or trail with construction, design, location, and of materials intended to minimize disturbance of sensitive habitat areas
- emergency activities to protect public health and safety
- designation of a parking area as needed to provide public access to the West Hylebos Acquisition Property and/or contiguous publicly owned property dedicated to similar use, provided that the size, configuration, design and elements of any such parking area shall be subject to the agreement of the Parties.

The Parties agree that activities that would not be consistent with the purposes of providing habitat value in the Commencement Bay environment include but are not limited to:

- alteration of hydrology, including dredging, diking, draining or filling, except pursuant to the Restoration Project Plan
- constructing buildings or structures not permitted above
- storage of vehicles, vessels, containers, equipment or other items except temporary storage of equipment or materials in use for restoration project development, monitoring and maintenance and routine site maintenance
- any activities causing significant water pollution, erosion or sedimentation
- removal or disturbance of native vegetation, except in connection with transplanting activities for further habitat restoration projects as specifically agreed among the Parties
- aquaculture of non-native species
- waste disposal or storage including sewage, manure, garbage, pesticides or hazardous waste
- application of fertilizers or pesticides, except pursuant to restoration project plans as specifically agreed among the Parties
- mining
- intentional disruption of wildlife
- planting of invasive non-native vegetation
- erection of commercial billboards and signs

The listing of specific activities herein as being consistent with or not consistent with the purposes of this Cooperative Agreement is not intended to be exhaustive. The conducting by any person of the listed activities considered consistent with the purposes of this Cooperative Agreement shall be subject to the access restrictions of Section IV.B.3. of this Cooperative Agreement.

3. West Hylebos Acquisition Property Access.

a. At all reasonable times the Parties (or other parties specifically designated by any of the Parties) may enter and freely move about the West Hylebos Acquisition Property for the purposes of site inspection and forWest Hylebos Project implementation, the process for which is described in Section IV.C. below, performing project monitoring or adaptive management, or carrying out the terms of this Cooperative Agreement.

b. Access by the general public to any part of the West Hylebos Acquisition Property shall be in accordance with applicable laws, regulations or ordinances and such reasonable use restrictions as the Parties determine necessary to further the purposes of the West Hylebos Project.

4. West Hylebos Acquisition Property Maintenance. The City of Federal Way shall perform ordinary upkeep and maintenance of the West Hylebos Acquisition Property. The term "ordinary upkeep and maintenance" means tasks that a prudent land manager would perform in the normal course of managing similar property. Maintenance of the Restoration Project other than ordinary upkeep and maintenance shall be dealt with under Section IV.C.1. of this Cooperative Agreement.

C. Restoration Project Development, Administration and Implementation.

1. The Trustees intend to develop an as-yet undesigned habitat restoration project on the West Hylebos Acquisition Property potentially involving alterations and improvements of existing upland and aquatic habitat features. In designing any such habitat restoration project, the Trustees shall consult with King County and the City of Federal Way, and may consult with non-governmental entities including without limitation the Friends of the Hylebos Wetlands. Prior to the development of any such habitat restoration project, the Parties will enter into a Restoration Project Memorandum of Understanding, which shall include and incorporate an agreed project design and shall address details of project administration and implementation. As between the Parties, the Trustees shall be responsible for designing, developing, implementing and constructing any such habitat restoration project for the West Hylebos Acquisition Property.

2. The Trustees shall also be responsible for any project maintenance and adaptive management activities for any such project. For purposes of this Cooperative Agreement, "adaptive management activities" means additional actions that need to be taken on the West Hylebos Acquisition Property to maintain the constructed habitat or change the habitat in some manner to meet the West Hylebos Project purpose provided in Section IV.A. above. Anticipated changes or developments that may require adaptive management include, among others, the failure of vegetation to establish or spread, substantial erosion or sedimentation that adversely alters habitat characteristics, or adverse impacts from offsite development or access to the property. Provided, however, that adaptive management to address adverse impacts that result mainly from access to and/or use of the property by employees, agents or contractors of King County or the City of Federal Way shall be the responsibility of the party responsible for causing the adverse impacts. Adaptive management to address adverse impacts that result mainly from the public's access to and or use of the property shall be the responsibility of the City of Federal Way.

D. Dispute Resolution.

1. Avoidance of Disputes. The Parties agree to work cooperatively, to consult informally and to use best efforts to avoid disputes concerning the implementation of this Cooperative Agreement.

2. Notice of Dispute. If a dispute arises between the Parties concerning the implementation of this Cooperative Agreement, any party may initiate dispute resolution by giving written notice thereof to the other parties. In the case of an actual or threatened violation of the Cooperative Agreement, the notice shall identify corrective action sufficient to cure the violation and to restore any portion of the West Hylebos Acquisition Property injured as a result of the violation.

3. Informal Negotiations. Following receipt of a notice of dispute, the Parties shall attempt to resolve the dispute expeditiously and informally. If the dispute is resolved by informal negotiations, the Parties shall memorialize the resolution of the dispute by an exchange of letters.

4. Formal Negotiations - Preparation of Joint Statement of Position. If the Parties are unable to reach a resolution of a dispute through informal negotiations, after fourteen (14) calendar days following delivery of the notice of dispute described above in subparagraph 2 any party may initiate formal negotiations by providing written notice to the other parties of the notifying party's intent to develop a Joint Statement of Position. The Joint Statement of Position shall consist of a concise written statement of the issues in dispute, including the relevant facts upon which the dispute is based and the data, analysis or opinion supporting each position, and any supporting documentation on which each party relies. The Parties shall complete the Joint Statement of Position within fourteen calendar (14) days following receipt of the formal negotiations notice, or by such later date as the Parties shall agree. Upon completion of the Joint Statement of Position, the dispute shall be referred to authorized officials of each Party for resolution. Each Party shall advise the other Parties in writing of the identity of the authorized official designated to participate in the dispute resolution process. The resolution agreed to by such authorized officials shall be binding upon the Parties. The Joint Statement of Position shall constitute the exclusive factual record of the dispute in the event that the Parties are unable to resolve the dispute and any party seeks judicial resolution.

E. Removal of the Restrictive Covenant and Termination of the Cooperative Agreement.

The Restrictive Covenant may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

1. The Parties jointly agree to extinguish the restriction or release a portion of the West Hylebos Project from the terms of restriction, upon a determination by Trustees in their discretion in consultation with King County and the City of Federal Way that circumstances have rendered the purpose of the West Hylebos Project, as provided in Paragraph IV.A. above, impractical to achieve.

2. Upon petition by one or all of the Parties, a court having jurisdiction over this restriction determines by judicial proceedings that circumstances have rendered the purpose of the West Hylebos Project as provided in Paragraph IV.A. above impossible to achieve.

3. All or any of the West Hylebos Acquisition Property is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. The Parties shall act jointly to recover the full value of the interest in the West Hylebos Acquisition Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting from the taking or in-lieu purchase.

4. The Parties agree that the proceeds to which the City of Federal Way shall be entitled after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the West Hylebos Acquisition Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided, by Washington law. The City of Federal Way shall use such proceeds only to obtain similar substitute property acceptable to all the Parties within Commencement Bay or within the Puyallup-Carbon-White Rivers watershed closest to Commencement Bay if one within Commencement Bay is unavailable. The City of Federal Way shall impose upon such substitute property a restrictive covenant on the deed in the form attached hereto as Exhibit 1.

F. Subsequent Transfer.

The City of Federal Way shall:

1. Not sell, transfer or otherwise divest itself of all or any portion of the West Hylebos Acquisition Property, including, without limitation, a leasehold interest, without prior written approval of the Trustees and King County.

2. Incorporate the terms of the Restrictive Covenant by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the West Hylebos Acquisition Property, including, without limitation, a leasehold interest.

3. Describe the Restrictive Covenant in and append it to any executory contract for the transfer of any interest in the West Hylebos Acquisition Property.

4. Give written notice to Trustees and King County of the transfer of any interest in all or a portion of the West Hylebos Acquisition Property no later than one hundred twenty (120) days prior to the date of such transfer. Such notice to Trustees and King County shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of the City of Federal Way to perform any act required by this Paragraph IV.G. shall not impair the validity of the Restrictive Covenant or limits its enforceability in any way.

G. Notices.

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or receipt after deposit in the United States first class mail addressed as follows:

To Trustees:

National Ocean and Atmospheric Administration
Office of General Counsel - Natural Resources/NW
7600 Sand Point Way NE
Seattle, WA 98115-0070
ATTN: Robert A. Taylor

To City of Federal Way:

Jennifer Schroeder
Director, Parks, Recreation & Cultural Services
City of Federal Way
33530 – 1st Way South
P.O. Box 9718
Federal Way WA 98063=9718
253-661-4040

To King County:

Pam Bissonnette
Director, King County Department of
Natural Resources and Parks
201 South Jackson Street, Suite 700
Seattle, WA 98104
(206) 296-6500

V. GENERAL PROVISIONS

A. Funds Availability. The fiscal obligations of the Trustees hereunder shall be fulfilled solely from and are limited by the funds made available for such activities as a result of the resolution of natural resource damage claims for the Commencement Bay environment. Nothing in this Cooperative Agreement shall be construed to require any Party to spend funds in excess of available appropriations.

B. Severability. The clauses of this Cooperative Agreement are severable, and should any part of this Cooperative Agreement be declared by a court of competent jurisdiction to be invalid, the other parts of this Cooperative Agreement shall remain in full force and effect.

C. Entire Agreement. This Cooperative Agreement constitutes the entire understanding of the Parties with respect to its subject matter.

D. Amendment and Termination. This Cooperative Agreement may not be amended except by written agreement of all parties to this agreement. This Cooperative Agreement shall continue in effect until it is terminated by agreement of all of the Parties. Any amendment to this agreement shall be consistent with the original purpose of the Restrictive Covenant and shall be recorded in the real property records for King County.

E. Execution, Effective Date. This Cooperative Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the

original and shall be retained by the Trustees. The date of execution shall be the date of the final signature of the Parties to this Cooperative Agreement.

F. Default. In the event that any party defaults in the performance of any of that party's obligations under this Agreement, the non-defaulting party or parties shall have all remedies available in law or equity, but no party shall be liable for consequential damage.

G. Parties Bound. The provisions of this Cooperative Agreement shall apply to and be binding upon the Parties to this Cooperative Agreement, their agents, successors and assigns. The undersigned representative of each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into this Cooperative Agreement and to bind that party to it.

IN WITNESS WHEREOF the Parties have executed this Cooperative Agreement on the date and year opposite their signature.

CITY OF FEDERAL WAY

BY: _____ 5/4/04
David Moseley, City Manager Date

ATTEST:

_____
City Clerk, N. Christine Green, CMC

APPROVED AS TO FORM:

_____
Patricia A. Richardson, City Attorney

KING COUNTY

BY: _____ _____
Ron Sims Date
King County Executive

APPROVED AS TO FORM:

_____
Norm Maleng
King County Prosecuting Attorney

THE PUYALLUP TRIBE OF INDIANS

BY: _____ _____
Date

Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE

BY: _____ _____
Date

Chair
Muckleshoot Tribal Council

CITY OF FEDERAL WAY

BY: _____ 5/4/04
David Moseley, City Manager Date

ATTEST:

_____
City Clerk, N. Christine Green, CMC

APPROVED AS TO FORM:

_____
Patricia A. Richardson, City Attorney

KING COUNTY

BY: Pam Bissonnette for 5/21/04
Ron Sims Date
King County Executive

APPROVED AS TO FORM:

_____
Norm Maleng
King County Prosecuting Attorney

THE PUYALLUP TRIBE OF INDIANS

BY: _____ _____
Date

Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE

BY: _____ _____
Date

Chair
Muckleshoot Tribal Council

CITY OF FEDERAL WAY

BY: _____ _____

David Moseley, City Manager Date

ATTEST:

_____

City Clerk, N. Christine Green, CMC

APPROVED AS TO FORM:

_____

Patricia A. Richardson, City Attorney

KING COUNTY

BY: _____ _____

Ron Sims Date

King County Executive

APPROVED AS TO FORM:

_____

Norm Maleng

King County Prosecuting Attorney

THE PUYALLUP TRIBE OF INDIANS

BY: Herman Dillard, March 4, 2004

Date

Chair

Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE

BY: _____ _____

Date

Chair

Muckleshoot Tribal Council

CITY OF FEDERAL WAY

BY: _____ _____
David Moseley, City Manager Date

ATTEST:

_____
City Clerk, N. Christine Green, CMC

APPROVED AS TO FORM:

_____
Patricia A. Richardson, City Attorney

KING COUNTY

BY: _____ _____
Ron Sims Date
King County Executive

APPROVED AS TO FORM:

_____
Norm Maleng
King County Prosecuting Attorney

THE PUYALLUP TRIBE OF INDIANS

BY: _____ _____
Date

Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE

BY: _____ 3-19-04
Date

Chair
Muckleshoot Tribal Council

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____ 4-16-04
Date

WASHINGTON DEPARTMENT OF ECOLOGY
Lead State Trustee

BY: _____ _____
Date

Approved as to Form for the Washington Department of Ecology.

BY: _____ _____
Date

U.S. DEPARTMENT OF THE INTERIOR

BY: _____ _____
Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____ _____

CRAIG R. O'CONNOR Date
Special Counsel for Natural Resorurces

WASHINGTON DEPARTMENT OF ECOLOGY
Lead State Trustee

BY: Polly Zehm 2/2/04
Date

Approved as to Form for the Washington Department of Ecology.

BY: _____ _____
Date

U.S. DEPARTMENT OF THE INTERIOR

BY: _____ _____
Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____ _____

CRAIG R. O'CONNOR
Special Counsel for Natural Resorurces

Date

WASHINGTON DEPARTMENT OF ECOLOGY
Lead State Trustee

BY: _____ _____

Date

Approved as to Form for the Washington Department of Ecology.

BY: _____ 12/30/03

Date

U.S. DEPARTMENT OF THE INTERIOR

BY: _____ _____

Date

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____ _____

CRAIG R. O'CONNOR Date

Special Counsel for Natural Resorurces

WASHINGTON DEPARTMENT OF ECOLOGY

Lead State Trustee

BY: _____ _____

Date

Approved as to Form for the Washington Department of Ecology.

BY: _____ _____

Date

U.S. DEPARTMENT OF THE INTERIOR

BY: _____ JAN 13 2004

Date

Exhibit 1

Restrictive Covenant

Notice is hereby given that the property legally described in exhibit A hereto (the West Hylebos Acquisition Property) is subject to use restrictions and other obligations enforceable by the Natural Resource Trustees for Commencement bay (enumerated in the Cooperative Agreement described below and attached hereto) and King County. The purpose of these restrictions and obligations is to ensure that the West Hylebos Acquisition Property provides habitat value to the public in perpetuity in the Commencement Bay environment.

These restrictions and obligations are described in Section IV of the Cooperative Agreement for the West Hylebos Acquisition Property Restoration Project (Cooperative Agreement), attached hereto and incorporated herein.

Potential purchasers and lessees are further notified that, pursuant to the Cooperative Agreement, the West Hylebos Acquisition Property may not be disturbed in any manner that would impair or interfere with the integrity of the habitat restoration, except as provided in paragraph IV B.2.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the West Hylebos Acquisition Property. This restrictive covenant may be removed from the West Hylebos Acquisition Property only in the manner provided for in the Cooperative Agreement.

DATED this ____day of _____, 2004.
West Hylebos Acquisition Property Owner
By:

Its:

STATE OF WASHINGTON)
)ss
COUNTY OF)

On this ____day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be _____ of _____ the [corporation] that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said [corporation], for the uses and purposes therein mentioned, and on oath stated that _____ is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Washington, residing at _____.
My commission expires _____.