

RESOLUTION 2013-Z

**A RESOLUTION OF THE EATONVILLE TOWN COUNCIL AUTHORIZING THE MAYOR
TO ACCEPT A DONATION OF LAND FROM THE NISQUALLY LAND TRUST**

WHEREAS, The Nisqually Land Trust has acquired a parcel of land commonly referred to as the Van Eaton Pond property and wishes to donate it to the town, and;

WHEREAS, the town council wishes to authorize the mayor accept the donation and;

WHEREAS, the property to be donated is legally described and shown on maps attached to this resolution,

NOW THEREFORE, BE IT RESOLVED by the Council of the Town of Eatonville that the mayor is authorized to accept a donation of property as legally described on the attached survey.

PASSED by the Council of the Town of Eatonville at a regular meeting this ____ day of May, 2013.

Raymond Harper, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A

REQUEST FOR SEGREGATION

REVISED LEGAL DESCRIPTION – PARCEL A

The Northwest Quarter of the Northeast Quarter of Section 22, Township 16 North, Range 4 East of the Willamette Meridian;

Except the West 211.00 feet of the North 627.00 feet; and

Except the North 300.00 feet of the East 900.00 feet of the West 1111.00 feet; and

Except the East 152.00 feet of the North 400.00 feet; and

Except Eatonville Highway East, on the North.

Situate in the County of Pierce, State of Washington.

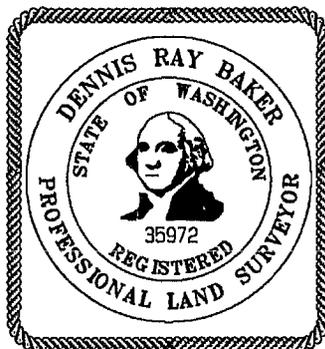
Subject to easements, restrictions and reservations of record.

REVISED LEGAL DESCRIPTION – PARCEL B

The Southwest Quarter of the Northeast Quarter of Section 22, Township 16 North, Range 4 East of the Willamette Meridian;

Situate in the County of Pierce, State of Washington.

Subject to, and together with easements, restrictions and reservations of record.

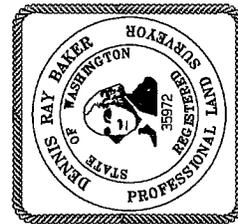
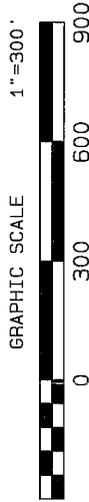


SEGREGATION MAP - REVISED PROPERTY

LOCATED IN THE WEST HALF OF THE NORTHEAST QUARTER
SECTION 22, TOWNSHIP 16 NORTH, RANGE 4 EAST, W.M.
COUNTY OF PIERCE, STATE OF WASHINGTON

LEGEND:

- (R1) SURVEY RECORDED SEPTEMBER 15, 1995 UNDER AUDITOR'S FEE NUMBER 9509150383.
- (D1) STATUTORY WARRANTY DEED RECORDED SEPTEMBER 20, 2011 UNDER AUDITOR'S FEE NUMBER 201109200005.
- FOUND 1/2" DIAMETER REBAR WITH A RED PLASTIC CAP STAMPED: "RIIPINEN LS 21546". SET PER (R1). FLUSH WITH THE GROUND SURFACE. LAST VISITED AUGUST 23, 2012.
- FOUND 1/2" INSIDE DIAMETER IRON PIPE WITH A RED PLASTIC CAP STAMPED: "RIIPINEN LS 21546". SET PER (R1). FLUSH WITH THE GROUND SURFACE. 0.8' EAST OF THE SOUTHEAST CORNER OF A BARBED-WIRE FENCE. VISITED AUGUST 24, 2012.
- SET 1/2" DIAMETER REBAR, 24" IN LENGTH, WITH AN ORANGE PLASTIC CAP STAMPED: "JWMSA PLS 35972" ON SEGREGATION LINE, AUGUST 24, 2012.

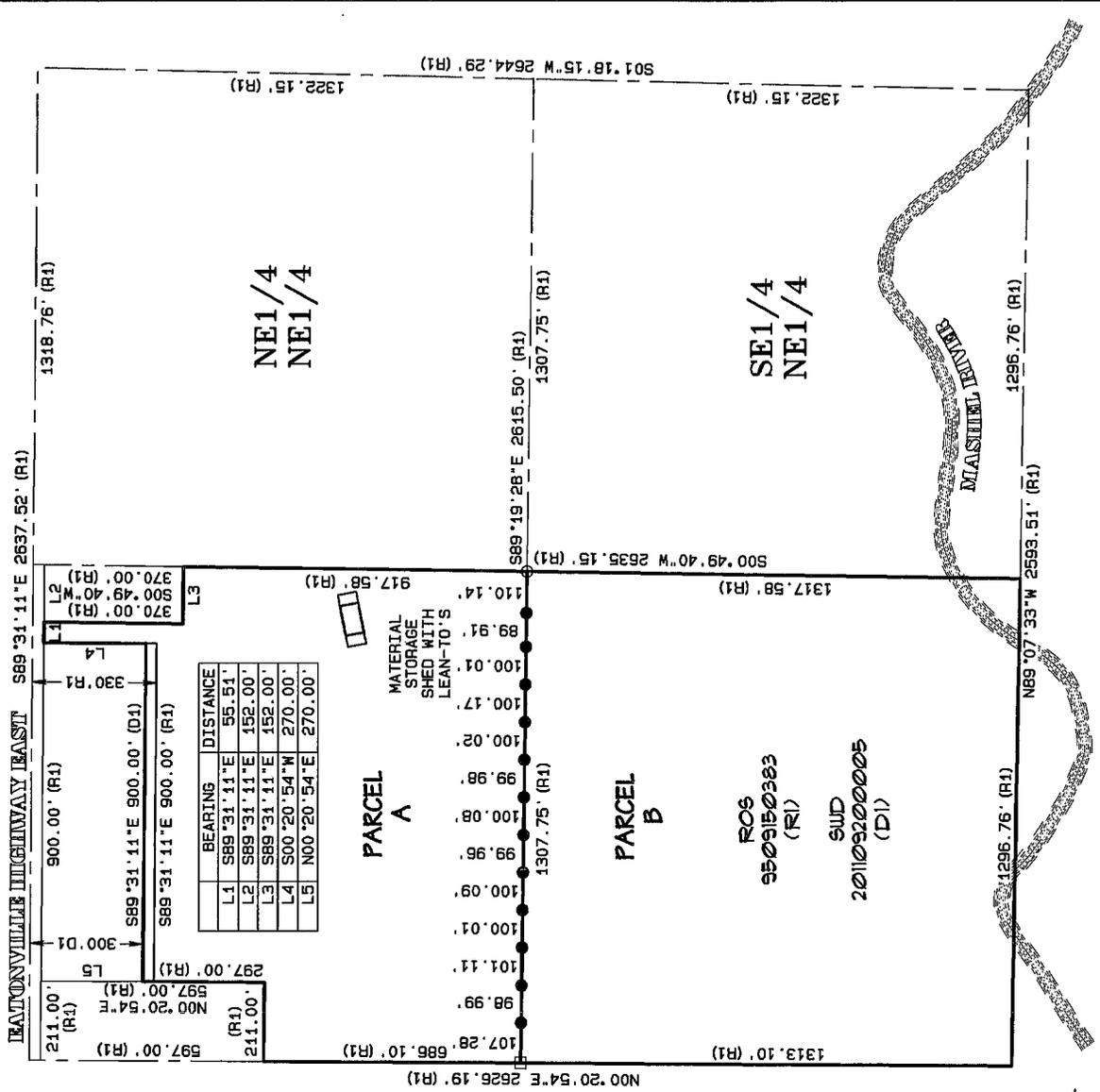


THIS MAP CORRECTLY REPRESENTS A CONSOLIDATION MADE BY ME OR UNDER MY DIRECTION AT THE REQUEST OF NISSUALLY LAND TRUST IN JUNE 2012.

JWM & A

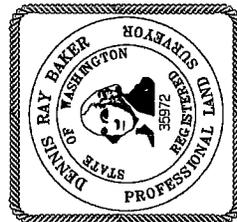
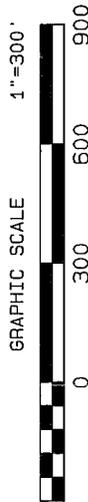
MORRISSETTE & ASSOCIATES
1700 COOPER PT. RD. SW B2
OLYMPIA, WA 98502-1110
OFFICE: (360) 362-9456

REGISTERED PROFESSIONAL LAND SURVEYOR



SEGREGATION MAP - ORIGINAL PROPERTY

LOCATED IN THE WEST HALF OF THE NORTHEAST QUARTER
SECTION 22, TOWNSHIP 16 NORTH, RANGE 4 EAST, W.M.
COUNTY OF PIERCE, STATE OF WASHINGTON

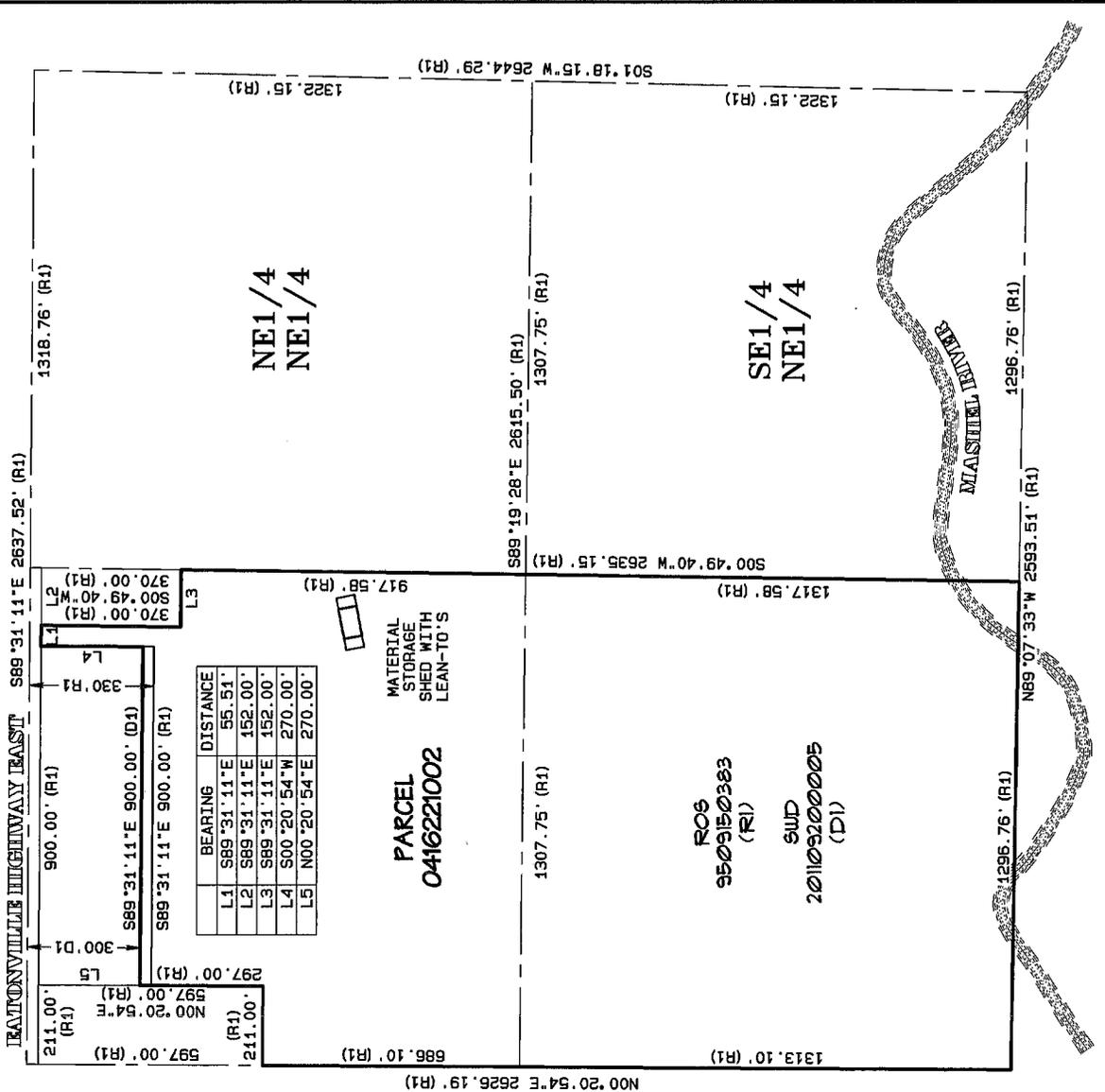


THIS MAP CORRECTLY REPRESENTS A
CONSOLIDATION MADE BY ME OR UNDER
MY DIRECTION AT THE REQUEST OF
NESSUALLY LAND TRUST IN JUNE 2012.

JWM&A

MORRISSETTE & ASSOCIATES
1700 COOPER PT. RD. SW B2
OLYMPIA, WA 98502-1110
OFFICE: (360) 352-9456

REGISTERED PROFESSIONAL LAND SURVEYOR



	BEARING	DISTANCE
L1	S89°31'11"E	65.51'
L2	S89°31'11"E	152.00'
L3	S89°31'11"E	152.00'
L4	S00°20'54"W	270.00'
L5	N00°20'54"E	270.00'

**PARCEL
0416221002**

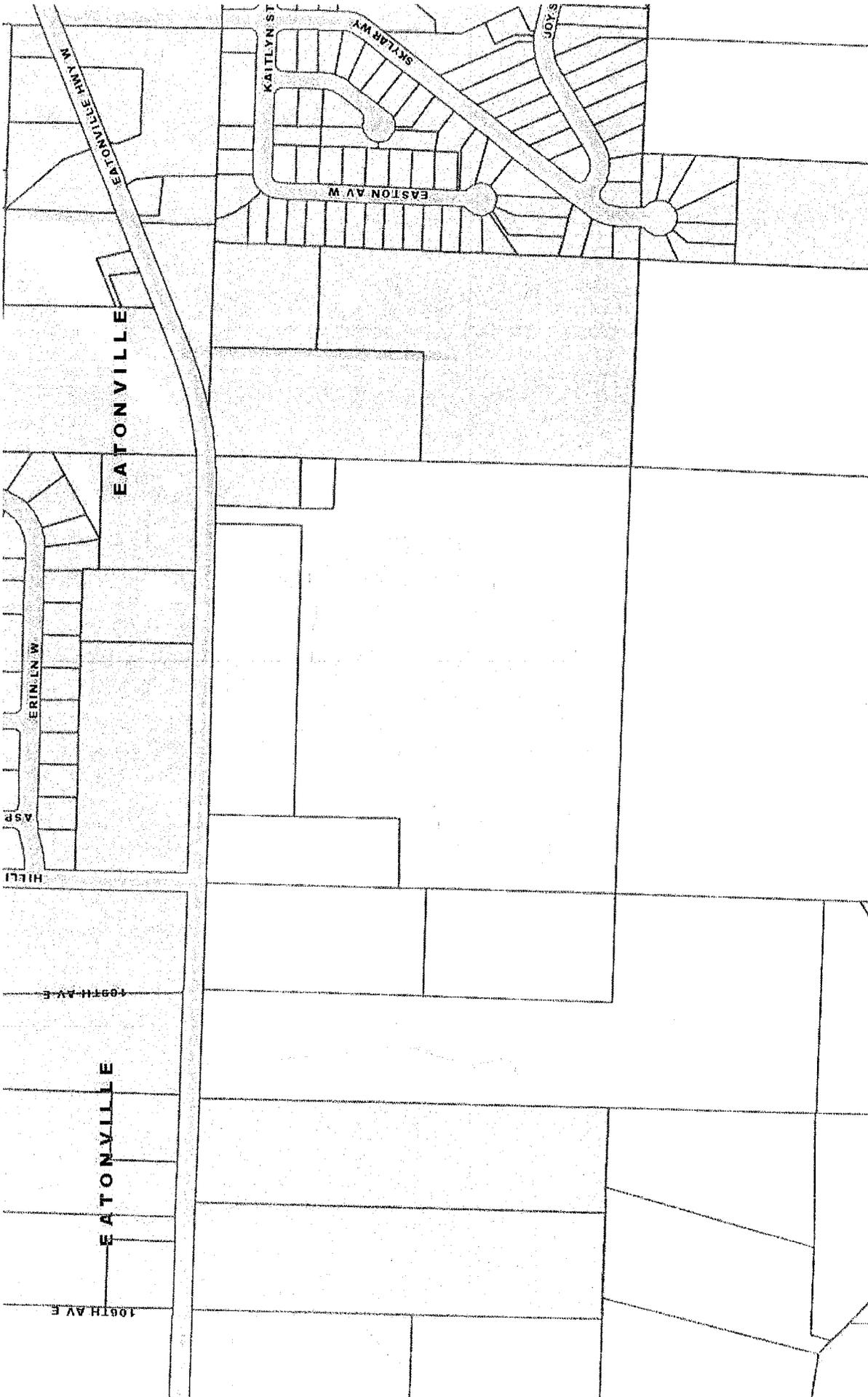
MATERIAL
STORAGE
SHED WITH
LEAN-TO S

ROG
9509150383
(R1)
SUD
201109200005
(D1)

MAINTENANCE
TRAIL

NE1/4
NE1/4

SE1/4
NE1/4



EATONVILLE

EATONVILLE

KAITLYN ST

SKYLAR WY

JOY S

EASTON AV W

EATONVILLE

ERIN LN W

ASP

HILL

109TH AV E

100TH AV E

WHEN RECORDED RETURN TO:
Nisqually Land Trust
Attn: Nicole Hill
1420 Marvin road NE
Suite C Box 243
Lacey, WA 98516

**PIERCE COUNTY AUDITOR/RECORDER
INDEXING FORM**

Document Title: STATUTORY WARRANTY DEED

Grantor: Nisqually Land Trust, a non-profit organization in the State of Washington

Grantee: Town of Eatonville, a municipal corporation and political subdivision of the State of Washington

Abbreviated Legal: PORTION Section 22 Township 16 Range 04 Quarter

Parcel Numbers: 0416221013

STATUTORY WARRANTY DEED

GRANTOR, Nisqually Land Trust, a Washington non-profit corporation, for and in consideration of TEN DOLLARS (\$10.00) in hand paid, and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, conveys and warrants to GRANTEE, Town of Eatonville, a municipal corporation and political subdivision of the State of Washington, in fee simple absolute, the following described real estate situated in Pierce County, Washington, to wit:

Section 22 Township 16 Range 04 Quarter 12 BEG 211 FT E OF NW COR OF NE TH S 627 FT TH W 211 FT TO W LI OF NE TH S TO SW COR OF NW OF NE TH E TO SE COR OF NW OF NE TH N TO NE COR NW OF NE TH W TO BEG EXC E 152 FT OF N 400 FT & EXC N 300 FT OF E 900 FT OF W 1111 FT OF NW OF NE EXC RD APPROVED SUBD BY P CO PALS DEPT 2/7/13 OUT OF 1-002 SEG 2013-0370 JP 4/19/13 JP

Subject to the following:

SUBJECT TO a non-exclusive non-descript easement across the property for ingress and egress to the portion of the property retained by GRANTOR; and

SUBJECT TO restrictions and covenants, including the terms and provisions of the Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant recorded September 20, 2011, Auditor File 201109200007, a record of Pierce County, Washington; and

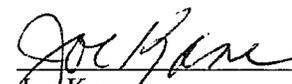
SUBJECT TO restrictions and covenants, including the terms and provisions of a Deed of Right to Use Land For Salmon Recovery Purposes held by and to the benefit of the State of Washington acting through the Washington State Salmon Recovery Funding Board and the Washington State Recreation and Conservation Office, recorded on March 14, 2012, Auditor file 201203140178, a record of Pierce County, Washington.

SUBJECT TO other easements, covenants, conditions and restrictions of record.

The said GRANTOR hereby covenants that it will forever warrant and defend all right, title and interest in and to said Property, and the quiet and peaceable possession thereof, unto said GRANTEE, its successors and assigns.

Dated this 1 day of May, 2013.

Nisqually Land Trust, a Washington non-profit corporation.

By: 
Joe Kane
Executive Director

Ticor
6472920E

201109200006 8 PGS
09/20/2011 08:30:00 AM \$69.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:
Washington Recreation and Conservation Office
PO BOX 40917 - Attn: Kathryn Moore
Olympia, WA 98504-0917

Please print legibly or type information.

Document Title(s)	Deed of Right to use Land for Salmon Recovery Purposes
Grantor(s)	Nisqually Land Trust
____ Additional Names on Page ____ of Document	
Grantee(s)	State of Washington, acting through the WA State Salmon Rec Funding Board
____ Additional Names on Page ____ of Document	
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)	
Complete Legal Description on Page ____ of Document	
Auditor's Reference Number(s)	
Assessor's Property Tax Parcel/Account Number(s)	
0416221002	
<p>The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p> <p>I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.</p>	
<p>_____ Signature of Requesting Party (Required for non-standard recordings only) Gpcovst.doc rev 4/02</p>	

EXCISE TAX EXEMPT DATE 9-19-11
Pierce County

By Kymorn Auth. Sig

68

Upon Recording, Please Return To:
Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917
Attn: Kathryn Moore

DEED OF RIGHT TO USE LAND FOR SALMON RECOVERY PURPOSES

Grantor: Nisqually Land Trust

Grantee: STATE OF WASHINGTON, acting by and through the WASHINGTON STATE SALMON RECOVERY FUNDING BOARD and the WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, including any successor agencies.

Abbreviated
Legal

Description: Portion of Section 22, Township 16 North, Range 4 East, Pierce County, Washington; also known as Assessor's Parcel No. 0416221002 (More particularly described in Exhibit "A" (Legal Description), and as depicted in Exhibit "B" (Property Map))

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the General Fund Federal - Salmon Recovery Funding Board Account. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled Project Number 08-2019 signed by the Grantor on the 30th day of January 2009 and the Grantee the 6th day of February 2009 and supporting materials which are on file with the Grantor and the Grantee in connection with the Project Agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the Project Agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes riparian, instream, upland, and floodplain habitat. This habitat supports or may support priority species or groups of species including but not limited to Chinook salmon and steelhead trout.
2. The Grantor shall allow public access to the Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the Project

Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with salmon recovery purposes and the Project Agreement.

3. The Grantor shall allow access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.

4. Without prior written consent by the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the salmon recovery purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the salmon recovery purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute salmon recovery land must be of reasonably equivalent habitat qualities, characteristics and location for the salmon recovery purposes as the Real Property prior to any inconsistent use; (2) the substitute salmon recovery land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed, the Project Agreement includes any amendments thereto that occurred prior to or may occur subsequent to the execution of this Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Salmon Recovery Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Salmon Recovery Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this Deed.



EXHIBIT A
Legal Description

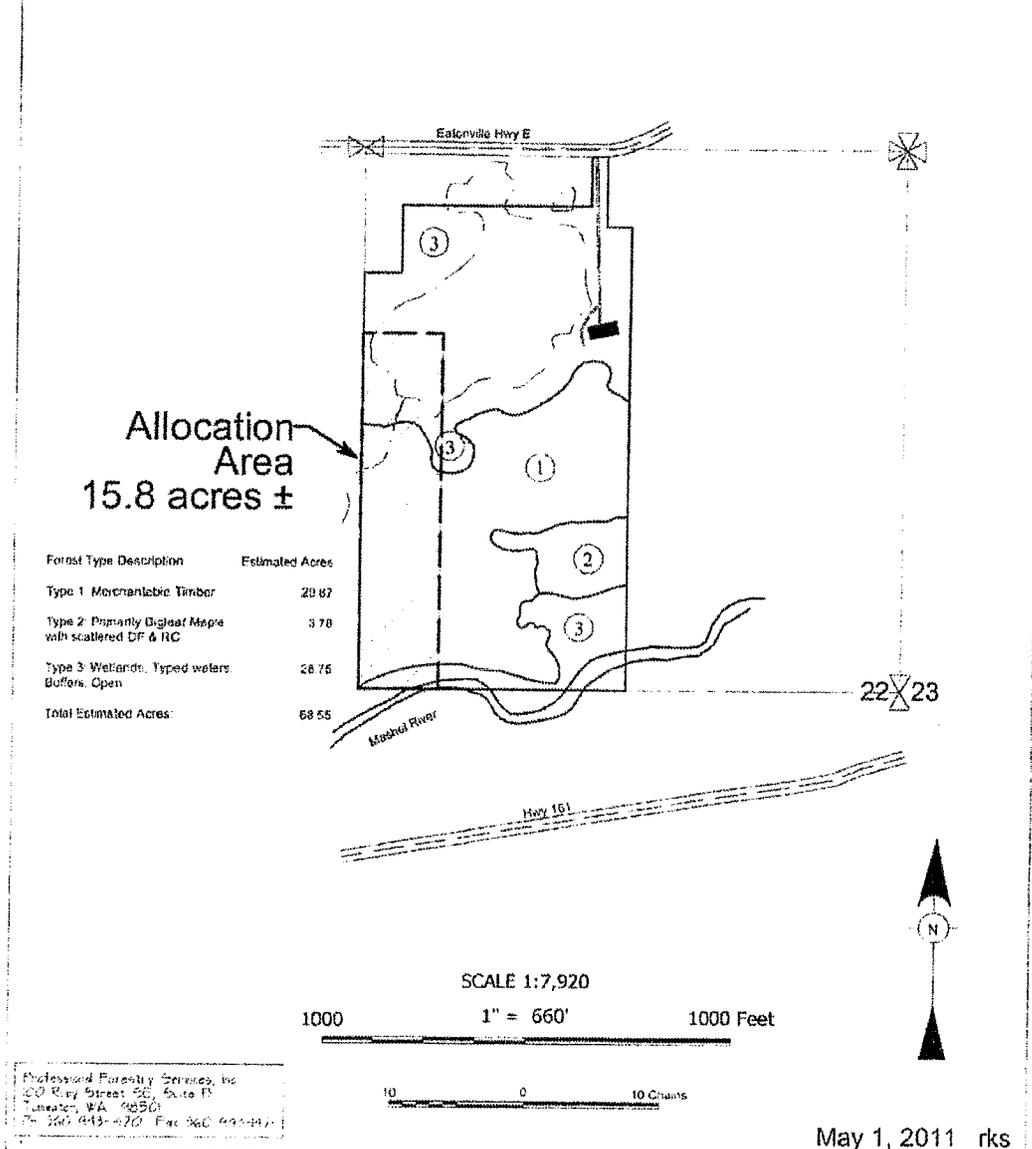
Beginning at the Southwest corner of the West $\frac{1}{2}$ Northeast $\frac{1}{4}$ of Section 22, Township 16 North, Range 6 East, W.M., thence east 396 feet, thence north 1,738 feet, thence west 396 feet, thence south 1,738 feet to the point of beginning, comprising a total of 15.8 acres.



**EXHIBIT B
Property Map¹**

**Van Eaton Property
Portion of Section 22
Township 16 North, Range 4 East, W. M.
Pierce County, Washington**

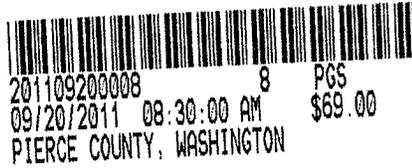
ALLOCATION AREA



RCO Project No. 08-2019, Mashel Shoreline Protection Phase I, Nisqually Land Trust

¹ Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable, (5) boundary line of land acquired; and, (6) North arrow and scale. A professional legal survey may substitute for the preceding map elements.

4 TICOT
6472920E



Name & Return Address:

Nisqually Land Trust
1420 Marvin Rd NE, Ste C, PMB 243
Lacey, WA 98516

Please print legibly or type information.

Document Title(s) License Agreement
Grantor(s) Nisqually Land Trust ____ Additional Names on Page ____ of Document
Grantee(s) Van Eaton Family Limited Partnership ____ Additional Names on Page ____ of Document
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) Complete Legal Description on Page ____ of Document
Auditor's Reference Number(s)
Assessor's Property Tax Parcel/Account Number(s)
<p>The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p> <p>I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.</p> _____ Signature of Requesting Party (Required for non-standard recordings only) Gpcovst.doc rev 4/02

69

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 1 day of Sept, 2011, by and between the Nisqually Land Trust, a Washington nonprofit corporation (hereinafter "the Trust"), and Van Eaton Family Limited Partnership, a Washington limited license partnership (hereinafter "the Van Eaton Family").

Recitals

- A. The Trust is owner of certain real property located in the Nisqually Watershed, in Pierce County, Washington, Tax Parcel No. 0416221002, and more particularly described on Attachment 1 attached hereto (collectively, the "Property"); and
- B. The Trust acquired the Property with funds from the Washington Salmon Recovery Funding Board and Pierce County Conservation Futures for the primary purpose of protecting the Property's natural and conservation values, including protection of habitat for threatened Chinook salmon and steelhead trout and forest habitat enhancement, restoration and protection; and
- C. Under the terms of the funding received by the Trust to purchase the Property the Trust is obligated to complete restrictive covenants and have them recorded on the Property to ensure the Property's conservancy status in perpetuity and to manage the property primarily for the conservation of habitat for Chinook salmon and steelhead; and
- D. The Trust purchased the property from the Van Eaton family, who stewarded the property and protected its conservation values through multiple generations of ownership; and
- E. The property has great historical significance to the Van Eaton family; and
- F. The Trust desires to grant to the descendants of T.C. Van Eaton an access agreement to use the Property for quiet enjoyment of the property's natural and historical values.

Agreement

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, but for no specific monetary consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Grant of License.

2 (a) (1) Subject to the conditions contained herein, the Trust grants to the descendants of T.C. Van Eaton, the founder of Eatonville, Washington, and their spouses and adopted children the right to visit said Property for passive day use and quiet enjoyment of said Property's

undeveloped natural state, provided that such use does not compromise or damage the conservation values for which the Trust purchased the property or violate any conservation easements or deed restrictions that have been or will be placed upon the property. All uses shall be subordinate to the conservation restrictions placed on the property. Provided that the license rights for entry and use granted herein shall not be curtailed or terminated. Prohibited uses shall include, but not be limited to, motorized and non-motorized vehicles beyond the area of the driveway/roadway described in 2(a)(2), weapons, fire or fires of any sort, illegal drugs, alcohol, tobacco, amplified sound, domestic animals (except family dogs), and the cutting, harvesting, or collection of trees, brush, and all other plants.

2 (a) (2) The Trust also grants to the descendants of T.C. Van Eaton and their spouses and adopted children the right of ingress and egress, for passive day use and quiet enjoyment of said property, across the existing driveway/roadway situate on the northerly portion of Pierce County Tax Parcel No. 0416221002 (See Attachment 2, Map) which lies between the western boundary line of Pierce County Tax Parcel No. 0416221700 and the east boundary line of Pierce County Tax Parcel No. 0416221008. Motorized and non-motorized vehicle use shall be limited to the first 300 feet of the driveway/roadway starting from Eatonville Highway. Any repair required to correct damage to said driveway/roadway that results from use by the descendants of T.C. Van Eaton and their spouses and adopted children shall be paid for by said individuals. The repairs shall be such as to restore the road to the condition existing prior to said damage, as is reasonably possible, and said repairs shall be performed expediently.

2(a)(3) There shall be a twelve (12) person limit on the size of the parties allowed access at any one time unless the Trust grants permission for a larger party.

2 (a) (4) The Trust and the descendants of T.C. Van Eaton and their spouses and adopted children shall have the right to enforce the terms of this license through appropriate legal means.

3. Term.

The term for the license shall be perpetual. The Trust shall have the right to enforce the terms of this license through appropriate legal means, including but not limited to injunction and damage claims. The individual and address to provide notice from the Trust to the descendants of T.C. Van Eaton and their spouses and adopted children are Terry Van Eaton, 41918 Lynch Creek Road E., Eatonville, WA 98328, or at such other person or place designated by licensee from any person with apparent authority.

4. Running with the land.

The burdens resulting from the licensee rights granted herein, shall run with the land, and burden the Nisqually Valley Trust, their heirs, successors, legal representatives and assigns.

5. Attorney fees and costs.

GRANTOR ACKNOWLEDGMENT

STATE OF Washington)
)ss
COUNTY OF Thurston)

On this 14th day of September, 2011, personally appeared before me Joe Kane, to me known to be the Executive Director of the Nisqually Land Trust that executed the within and foregoing instrument, and acknowledged 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 he was authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

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

Roxanne M Layug
Notary Public in and for the State of Washington, residing at
Thurston

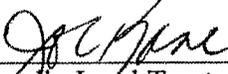
My appointment expires 01-14-12.



In the event that any action is filed in connection with enforcing the terms and conditions of this license, the unsuccessful party in the action shall pay to the prevailing party, in addition to all sums that either party may be called onto pay, a reasonable sum for the prevailing party's attorney's fees and costs.

GRANTOR/SELLER:

DATE: 9/14/11

By: 
Nisqually Land Trust, by
Joe Kane, Executive Director
1420 Marvin Road NE
Suite C, PMB 243
Lacey, WA 98516-3878

GRANTEE/BUYER:

DATE: 09/01/11

By: 
Van Eaton Family Limited Partnership, by
Terry Van Eaton, General Partner
41918 Lynch Creek Road E.
Eatonville, WA 98328

GRANTEE ACKNOWLEDGMENT

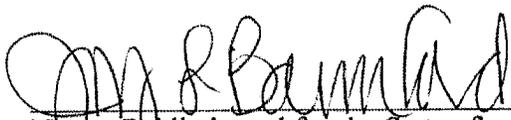
STATE OF WASHINGTON)

)ss

COUNTY OF THURSTON)

On this 1 day of Sept, 2011, personally appeared before me Terry Van Eaton, to me known to be the General Partner of the Van Eaton Family Limited Partnership that executed the within and foregoing instrument, and acknowledged 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 he was authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

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


Notary Public in and for the State of
Washington, residing at Eatonville

My appointment expires 4/13/12.



ATTACHMENT 1
Legal Description

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22,
TOWNSHIP 16 NORTH, RANGE 4 EAST, W.M., RECORDS OF PIERCE COUNTY,
WASHINGTON; AND
BEGINNING AT A POINT 211 FEET EAST OF THE NORTHWEST CORNER OF THE
NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 16 NORTH, RANGE 4 EAST, W.M.,
RECORDS OF PIERCE COUNTY, WASHINGTON;
THENCE SOUTH 627 FEET;
THENCE WEST 211 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER;
THENCE SOUTH TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF
THE NORTHEAST QUARTER;
THENCE EAST TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF
THE NORTHEAST QUARTER;
THENCE NORTH TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF
THE NORTHEAST QUARTER;
THENCE WEST TO THE POINT OF BEGINNING;
EXCEPT THE EAST 152 FEET OF THE NORTH 400 FEET AND;
EXCEPT THE NORTH 300 FEET OF THE EAST 900 FEET OF THE WEST 1105 FEET OF
THE NORTHWEST
QUARTER OF THE NORTHEAST QUARTER; AND
EXCEPT THE ROAD.

**ATTACHMENT 2
Map**



1-002

3 Ticor
477908

201109200007 9 PGS
09/20/2011 08:30:00 AM \$132.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:
Pierce County Parks and Rec
9112 Lakewood Drive SW, Suite 100
Lakewood, WA 98499

Please print legibly or type information.

Document Title(s)	Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant
Grantor(s)	Nisqually Land Trust
Additional Names on Page	of Document
Grantee(s)	Pierce County
Additional Names on Page	of Document
Legal Description (Abbreviated, i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)	
Complete Legal Description on Page	of Document
Auditor's Reference Number(s)	
Assessor's Property Tax Parcel/Account Number(s)	0416221002
<p>The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p> <p>I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.</p>	
<p>Signature of Requesting Party (Required for non-standard recordings only)</p> <p>Gpcovst.doc rev 4/02</p>	

For reference only, not for re-sale.

69

DUPLICATE

**PIERCE COUNTY CONSERVATION FUTURES
STEWARDSHIP AGREEMENT AND RESTRICTIVE
COVENANT**

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND RESTRICTIVE COVENANT (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 19 below) by and between NISQUALLY LAND TRUST, a Washington nonprofit corporation (hereinafter "NLT") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County"). NLT and Pierce County may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

RECITALS

WHEREAS NLT is sole owner in fee simple of that certain parcel of real property in Pierce County, Washington, legally described in **Exhibit A** attached hereto and by this reference incorporated herein (hereinafter "Subject Property"); and

WHEREAS the Subject Property contains features consistent with the purposes and values described in chapter 84.34 of the Revised Code of Washington (hereinafter "RCW") and chapters 2.96 and 2.97 of the Pierce County Code (hereinafter "PCC") including, without limitation: (a) wildlife habitat areas; (b) streams; (c) wetlands; (d) wooded spaces; (e) open spaces; and (f) aquifer recharge and flood control areas (hereinafter collectively "Conservation Characteristics"); and

WHEREAS NLT acquired title to the Subject Property in part with funds from Pierce County's Conservation Futures Fund in exchange for its promise to hold title to the same in perpetuity as open space land for and on behalf of the general public in accordance with the terms, covenants, conditions and restrictions set forth in that certain Deed of Right to Use Land for Salmon Recovery Purposes recorded 09-20-11 under Pierce County Auditor's Recording No. 20110920006 (hereinafter "Deed of Right") and in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, NLT and Pierce County hereby agree as follows:

A G R E E M E N T

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

For reference only, not for re-sale.

For reference only, not for re-sale.

2. Intent of Agreement. The Parties intend by this Agreement: (a) NLT shall hold title to the Subject Property in perpetuity or shall cause title to the Subject Property to be held in perpetuity as open space land for and on behalf of the general public in accordance with the terms of the Deed of Right and this Agreement; (b) NLT or its assigns shall forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics of the Subject Property; and (c) that the terms of this Agreement shall, pursuant to chapter 84.34 RCW and chapters 2.96 and 2.97 of Pierce County Code: (i) constitute a covenant and/or equitable servitude running with the Subject Property in perpetuity in fulfillment of the legal and contractual requirements of NLT and Pierce County with respect thereto; and (ii) forever bind NLT and Pierce County and their respective heirs, devisees, executors, administrators, grantees, assigns and successors in interest.

3. Use of Subject Property.

3.1 By NLT. NLT shall use and manage the Subject Property in accordance with all applicable federal, state, county and local laws, rules, regulations and standards so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Characteristics thereof.

3.2 By General Public. NLT shall permit the general public to have access to the Subject Property at reasonable hours and times of year for passive recreational activities consistent with the intent of this Agreement including, without limitation: (a) trail-walking; (b) wildlife viewing; and (c) wetland vegetation identification; provided, however, NLT's obligation to permit access to the general public does not include an affirmative duty to develop trails, parking for vehicles and/or bicycles, restroom facilities or any other facilities or infrastructure.

3.3 No Discrimination. Uses by the general public as provided in this Section 3 shall be without regard to race, creed, color, gender, religion, national origin or residence of the user.

3.4 Conflict. In the event of any conflict between the property use provisions of this Agreement and those set forth in the Deed of Right, the Deed of Right shall control.

4. Maintenance. NLT shall keep and maintain the Subject Property, together with any improvements or alterations in, on, under or about the Subject Property, in a neat, clean, safe and sanitary condition in accordance with all applicable federal, state, county and local laws, rules, regulations and standards.

5. Improvements and Alterations. NLT or its assigns shall submit any plans for proposed improvements or alterations to the Subject Property to

For reference only, not for re-sale.

Pierce County for prior review and written approval to assure compliance and consistency with the intent of this Agreement. The term "improvements" shall not include routine maintenance, but shall include, and not be limited to, trails, picnic tables, viewpoints, rest areas, benches, restrooms, parking lots, fencing and signs.

6. Fees and Charges. NLT may charge user or other types of fees in connection with the public use of the Subject Property; provided, however, that such fees and charges shall be commensurate with the value of the recreational services or opportunities furnished and are within the prevailing range of public fees and charges within the state of Washington for the particular activity involved.

7. Indemnification. NLT, for itself, its successors and assigns, shall defend, indemnify and hold Pierce County, and its elected and appointed officials, employees and agents, harmless to the maximum extent allowed by law from and against any and all liabilities, claims, demands, suits, judgments, costs and attorney fees of any kind, type or nature whatsoever arising out of or relating in any way relating to the Subject Property or to the subject matter of this Agreement.

8. Notices. Notices required or desired to be given under this Agreement shall be in writing and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) fax to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of: (a) Three (3) business days from deposit in the United States mail; (b) the delivery date as shown in the regular business records of the overnight courier service; or (c) the date of automatic confirmed receipt by the recipient's fax, as the case may be. Notices shall be addressed as follows:

NLT: Nisqually Land Trust
Attn: Joe Kane
1420 Marvin Road NE, Suite C, PMB 243
Lacey, WA 98516-3878
Telephone: 360-489-3400
Facsimile: 360-489-3333
Email: jkane@nisquallylandtrust.org

Pierce County: Pierce County Parks & Recreation Services
Attn: Grant Griffin
9112 Lakewood Dr SW Suite 100
Lakewood, WA 98499
Telephone: 253-798-4049
Facsimile: 253-582-7461
Email: ggriffi@co.pierce.wa.us

Copy to:

Pierce County Prosecuting Attorney/Civil Division
Attn: David H. Prather, Deputy Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-6732
Facsimile: 253-798-6713
Email: dprathe@co.pierce.wa.us

Any Party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

NOTICE: Any electronic mail addresses provided above are for convenience only and are not valid for purposes of providing notices under this Agreement.

9. Enforcement; Remedies. If NLT fails in any material respect to perform its obligations under this Agreement with respect to the Subject Property, Pierce County may seek: (a) specific performance of this Agreement; or (b) any other remedy available at law or in equity.

10. Attorney Fees; Venue. The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Agreement shall be entitled to recover costs and reasonable attorney fees including, without limitation, reasonable attorney fees and expenses incurred in appellate proceedings, and expenses for witnesses (including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

11. Negotiation and Construction. This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington.

12. Time. Time is of the essence of this Agreement and of every term and provision hereof.

13. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all written or oral agreements or understandings, if any. This Agreement may be modified only in writing signed by both Parties.

14. Date of Performance. If the date of any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

For reference only, not for re-sale.

DRAFT

For reference only, not for re-sale.

15. Cost of Performance. Except as otherwise expressly provided in this Agreement, all covenants, agreements and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

16. Binding Effect. The terms, covenants, conditions and restrictions set forth in this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors and assigns.

17. Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

18. Recording. This Agreement shall be recorded in its entirety with the Auditor of Pierce County, Washington.

19. Effective Date. "Effective Date" shall mean the date upon which the Pierce County Executive (who shall be last person to sign) shall have executed this Agreement as indicated opposite her name below.

[SIGNATURES & ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

PIERCE COUNTY SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

Approved as to legal form only:

[Signature] 5/17/11
Deputy Prosecuting Attorney Date

Recommended:

[Signature] 5/12/11
Director, Parks & Recreational Services Date

[Signature] 6/3/11
Director, Budget & Finance Date

Final Action:

[Signature] 6/13/11
Pierce County Executive Date

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 13th day of June, 2011, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared PAT MCCARTHY, known to me to be the executive of Pierce County, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
NOTARY SIGNATURE
PRINTED NAME Constance B Perry
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT TACOMA
MY COMMISSION EXPIRES 4-16-2012



For reference only, not for re-sale.

EXHIBIT A
(Legal Description of Subject Property)

Beginning at a point 211 feet East of the Northwest corner of the Northeast quarter of Section 22, Township 16 North, Range 4 East, W.M., records of Pierce County, Washington;

THENCE South 627 feet;

THENCE West 211 feet to the West line of the Northeast quarter;

THENCE South to the Southwest corner of the Northwest quarter of the Northeast quarter;

THENCE East to the Southeast corner of the Northwest quarter of the Northeast quarter;

THENCE North to the Northeast corner of the Northwest quarter of the Northeast quarter;

THENCE West to the Point of Beginning.

EXCEPT the East 152 feet of the North 400 feet and

EXCEPT the North 300 feet of the East 900 feet of the West 1,105 feet of the Northwest quarter of the Northeast quarter and

EXCEPT COUNTY ROAD.

Situate in the County of Pierce, State of Washington.

For reference only, not for re-sale.