



Conservation Futures 2021 Application Addendum for COVID-19

To the extent that it is possible to do so safely, we will strive to conduct in-person site visits and meetings during the 2021 Conservation Futures grant cycle. Note that any site visits or meetings conducted in person would strictly adhere to all current safety protocols, including masking, distancing, and disinfection. However, depending on the restrictions in place, site visits may need to be completed over multiple days or in a virtual format to accommodate the group size of the Technical Advisory Committee (TAC) and Citizens' Advisory Board (CAB). Project presentations may also need to be completed remotely to comply with current restrictions regarding group meetings.

Please provide the following information to assist with planning in the event that conventional site visits and in person presentations are not possible this year:

1. Is parking available for more than one vehicle at the property associated with this application?
No
2. If parking for multiple vehicles is available, how many vehicles can be accommodated at one time? **There is parking for one vehicle only. Additional public parking is located along Marine View Drive at Dick Gilmur Park that is ~ 2 blocks away.**
3. Are you able to accommodate more than two days of site visits during the review period if needed? **Yes**
4. If virtual site visits must be arranged, are you willing to allow Pierce County staff equipped with cameras and/or drones to access the property to collect the necessary information? **Yes**
5. Are you able to provide a virtual presentation via Zoom or another video conferencing platform?
Yes
6. Do you have any concerns that must be accommodated in order to provide a virtual presentation, such as specific platforms that won't work or restricted times for participation?
No
7. Do you have any additional concerns related to COVID-19 that should be considered when reviewing your application? **No**



Pierce County

Conservation Futures

2021 Application

Conservation Futures Application

APPLICATION DEADLINE:

Completed applications must be received by
4:30 p.m. on March 15, 2021

CONTACT:

Naomi Gebo

Conservation Futures Program Coordinator

(253) 798-4252

naomi.gebo@piercecountywa.gov

Please return completed applications to:



Pierce County Parks & Recreation
Environmental Services Building
Chambers Creek Regional Park
9850 64th Street W.
University Place, WA 98467-1078



APPLICATION CHECKLIST

Each hard copy application must be accompanied by 35 copies (three-hole punched, unbound). In addition, an electronic copy of the following information should be submitted to naomi.gebo@piercecountywa.gov:

- This fully completed and signed application including:
 - Signed Willing Seller Statement
 - Signed Sponsor's Statement
 - Signed Receiving Agency Statement (if different from the Sponsor)
- A Leverage Statement to demonstrate the availability of all Matching Funds (must include a guarantee of an amount of money from an identified source for expenditure on the project identified in this application by a certain date). **See Appendix A**
- A map showing the location of the property in Pierce County and related protected open space, trails, and parks. **See Figure 9**
- A site map of the property showing an aerial photograph with parcel lines, roads, and buildings **See Figures 1 and 2**
- One site map of the property for each unique natural feature showing parcel lines, aerial photography and a natural resource (e.g. one map showing hydrologic features, one map showing topography, etc.) **See Figures 3-7**

Additional Application Requirements as Applicable:

- For each property that is subject to an executed option to purchase (Eligibility, Question 8), a copy of the executed option must be provided to the Pierce County Parks and Recreation Department by the application deadline.
- For each property that has proposed active recreational use (Eligibility, Question 12), include a conceptual site plan showing the general location of the recreational features in relation to any critical areas that may be on the property and including the additional information described in Question 12.

NOTE: Submission of an incomplete application will result in the property being ineligible for participation in the current Conservation Futures grant cycle.



Pierce County

Conservation Futures

2021 Application

SPONSOR INFORMATION

Sponsor's name: **City of Tacoma Passive Open Space Program**

Sponsor type: **City**

(e.g. City, County, Town, Individual, Non-Profit Group, Land-Trust, Tribe)

Sponsor's mailing address: **326 E D St., Tacoma, WA 98421-0801**

Contact person: **Aris Efting**

Day phone: **(253)208-2428**

Cell phone: **(253)208-2428**

Email: **aefting@cityoftacoma.org**

RECEIVING AGENCY INFORMATION (if different from Sponsor)

Receiving Agency's name:

Receiving Agency type:

(e.g. City, County, Town, Individual, Non-Profit Group, Land-Trust, Tribe)

Receiving Agency's mailing address:

Contact person:

Day phone: () -

Cell phone: () -

Email:



PROPERTY INFORMATION

Property Project Name: Marine View Dr Open Space

Street Address: 5119 Marine View Dr, Tacoma, WA 98146

Type of Acquisition: fee simple

(e.g. fee simple, conservation easement, mineral rights, etc.)

Pierce County Tax Parcels:

| Tax Parcel | Acreage | Current Zoning | Assessed Value |
|------------|---------|-------------------------|----------------|
| 0321222052 | 15.5 | Vacant land undeveloped | \$359,300 |
| | 0.00 | | |
| | 0.00 | | |
| | 0.00 | | |
| | 0.00 | | |
| | 0.00 | | |
| | 0.00 | | |
| | 0.00 | | |

Special instructions for accessing the property: Enter via the paved utility access road off Marine View Dr. The address is listed on the mailbox at the entrance. There is one parking spot located halfway up the paved road on the Marine View Dr street side. To exit, continue to the top of the road and follow the road down to Marine View Dr. Otherwise, it is recommended to park at Dick Gilmur Park, 5002 Marine View Dr, and walk to the property.

PROPERTY OWNER'S INFORMATION

Owner's name: Eternity Development Limited

Owner's mailing address: 2040 W 22ND AV EUGENE, OR 97405-1511

Day phone: (206)227- 6799

Cell phone: () -

Email: 136480466@qq.com, the owner's broker email is christinezhang@skylineproperties.com



PROJECT ELIGIBILITY

1. Is the property currently considered a legal lot of record? **Yes**

If No, will the property become a legal lot of record prior to the acquisition? (Choose)

Note: Costs associated with the creation of a legal lot of record are not eligible for reimbursement with Conservation Futures funds.

2. Does the property have legal access? (e.g., check yes if there is access from a public road or a recorded easement for a private road or alley) **Yes**
3. Is public access compatible with the conservation priorities on the property? If so, will reasonable year-round public access be provided? **Yes**

If Yes, please answer the following:

3a. Where will access be provided and what portion of the property will be open to public use?

Signs will be posted, requesting people visiting the property to remain on the informal path to prevent damaging vegetation. This path runs south to north along the utility access/easement on the western side of the stream (See Figure 8).

3b. Will the property be used as a public park or be otherwise open to the public at all times (e.g., seven days a week)? **No**

If you answered Yes to Question 3b, proceed to Question 4. If you answered No, please provide the following additional information:

3c. Describe the type(s) of access that is proposed (e.g., restricted, directed, etc.).

Access would be restricted from dusk to dawn do to safety concerns. There is no lighting on the property.

3d. Describe the hours and days the property will be open for public use.

Open 7 days a week, dawn to dusk.

3e. Provide the estimated timeline for implementing the public access described above following property acquisition.

Access already exists, however signs would be installed within 3 months of property purchase regarding parking and property use.

3f. Describe any restrictions or impediments to public access on the property.

Uneven ground, no ADA access.

3g. If a public access plan for this project is still under development, when do you anticipate a plan will be available for review?



As restoration begins, the existing informal path that will be used to transport restoration materials will be mulched to identify the path for volunteers and guests, prevent invasive species establishment, and prevent erosion. Public access will be primarily for volunteer restoration work and then by appointment.

PROJECT ELIGIBILITY

4. Is the property part of a current or anticipated eminent domain (condemnation) proceeding? **No**
5. Does the property contain structures that are necessary for the intended use of the property? (e.g., a barn on a farm preservation property) **No**

If Yes, please explain:

6. Does the property contain structures that are not necessary for the intended use of the property which cannot be removed immediately after completion of the acquisition? **Yes**

If Yes, please explain:

There are several public utility structures associated with stormwater and wastewater that can be seen on Figure 8. The only above ground structures are manholes and some associated vaults.



PROJECT ELIGIBILITY

7. Is the property one acre or larger in size, or contiguous with other preserved open space property?

Yes

8. Is the property subject to an executed purchase agreement or option agreement? **No**

If Yes, a copy of the agreement must be provided to the Pierce County Parks and Recreation Department by the application deadline.

9. Is the property subject to governmental policies or regulations that limit the future uses of the property? (e.g., critical areas, zoning, forest practices, etc.)

Yes, the site is considered a critical area due to steep slopes, a stream, and most likely the presence of wetlands.

10. Are there any requirements that must be met before the Receiving Agency will accept the property (e.g., removal of buildings or hazardous materials)? **No**

If so, please explain:

11. Describe the proposed future uses of the property including passive and/or active recreation, habitat restoration, timber management, agricultural production, and educational opportunities.

Habitat restoration shall occur on the site by both volunteers and City employed Washington Conservation Corps crews. Environmental education is provided as part of training volunteers working on site.

PROJECT ELIGIBILITY

12. Does the Receiving Agency's proposed future use include active recreational uses as part of its management of the property? **No**

If Yes, this application must include a conceptual site plan showing the types (e.g., ballfields, zipline, horseshoe pits, etc.) and general location of the recreational features in relation to any critical areas that may be on the property. The plan must demonstrate how the identified conservation priorities will be preserved and must include accessory uses (e.g., parking, restrooms), a timeline for development, and actions that can be taken to protect the environmental integrity of the site. The plan must also include a summary of estimated capital improvement, maintenance, and operation costs related to active recreation.

13. What is your estimated timeline for closing this transaction if funds are awarded?

July 31, 2022

(Please be aware that if this project is funded, funding will not be available until after January 1, 2022. The availability of funds for a given project will be dependent on the final project ranking.)



14. List and describe the major tasks and schedule you will use to complete this project.

1/3/2022 – 1/31/2022 Title review and contracting

2/1/2022 – 3/29/2022 Appraisal

3/30/2022 – 4/13/2022 Review appraisal

4/14/2022 – 5/12/2022 Pierce Co review and document preparation

5/13/2022 – 6/3/2022 Offer/Purchase sales agreement with seller

6/6/2022 – 7/4/2022 COT Council action

7/5/2022 – 7/19/2022 Closing

8/1/2022 – 11/1/2022 Recruitment of volunteer site steward & installation of parking and property usage signs

11/2022 – approx. 02/2026 Volunteers begin allowable restoration actions per Tacoma Municipal Code 13.11 in areas with slopes < 25%, beginning with the removal of invasive weeds and installing native plants in these areas . Restoration progress will depend upon the number of volunteers.

01/2023 – 01/2024 A comprehensive Landscape Management Plan (LMP) will be developed and needed permits applied for.

06/2023 – approx. 09/2023 WCC crews will begin allowable actions per TMC 13.11 to remove invasive weeds on slopes > 25% with Planning and Development Services staff review.

01/2024 – 02/2024 WCC crews will install plants on slopes per the LMP

09/2024 – 01/2027 WCC crews will perform infill planting and maintenance as needed

Ongoing - In perpetuity maintenance will be performed as needed and public access will be overseen as requested.



EVALUATION CATEGORIES AND SCORING

CONSERVATION FUTURES PRIORITIES

The property must exhibit at least one of the Conservation Futures Priorities identified in Chapter 2.97.030 PCC.

Designate the Primary (required), Secondary (optional) and Tertiary (optional) Conservation Futures Priorities for property from the table below.

| Conservation Futures Priorities (In no order of priority) | |
|--|---|
| Resource Conservation | |
| | 1) Agricultural Lands |
| | 2) Timber Lands |
| | 3) Wooded Areas |
| Biodiversity Conservation | |
| | 4) Critical Salmon Habitat |
| | 5) Fish and Wildlife Habitat Conservation Areas |
| | 6) Prairie Land |
| Marine Shoreline Conservation | |
| | 7) Marine Waters |
| | 8) Marine Estuaries and Tidal Marshes |
| Lake, River and Stream Conservation | |
| | 9) Streams and Rivers |
| | 10) Lakes |
| Trail Conservation | |
| | 11) Trails and Corridors |
| Natural Heritage Conservation | |
| | 12) Open Space Passive Recreation Areas |
| | 13) Parks with Active Recreation Areas |
| | 14) Scenic Viewpoints and Corridors |
| | 15) Archeological and Historic Landmark Sites |

Primary: 3) Wooded Areas

Secondary: 5) Fish and Wildlife Habitat Conservation Areas

Tertiary: 9) Streams and Rivers



Having a diverse plant palette will also increase climate resilience. Species would include Sitka spruce, grand fir, Western white pine and other native species already present at an overall density of 194 trees/acre. Once trees are several years established, additional native shrubs and groundcover plants would be installed to further increase plant diversity, including Pacific ninebark, tall Oregon grape, Nootka rose, Osoberry, evergreen huckleberry and other native species already present at a density of 1,016 plants/acre. It is estimated that approximately 1.6 acres will require intensive restoration, and these areas are located in or near the stream buffer and along property boundaries. The sloped portion of the parcel is generally healthy and should only require infill planting, and is not likely to require BMP installation to prevent erosion. If needed, BMP's such as coir logs or silt fence will be installed above the stream to prevent erosion from any upland restoration reaching the stream. BMP's shall follow guidelines set forth by the COT Stormwater Management Manual (2016).

- C. What restrictions will be included in the property management plan or conservation easement to protect this Conservation Futures Priority?

Wooded Areas: The nominated property would be enrolled in the COT OS portfolio. The goal of the OS program is to support native species dominated, sustainable, functioning forests, therefore only native plants or climate adapted plants approved by COT PDS shall be used in restoration work. Brush-cutting and herbicide treatment of blackberry or other invasive weeds shall not take place in the spring or summer during the breeding season of native and migratory birds. Only a licensed applicator shall apply herbicide. A utility easement exists on the property (Figure 8), therefore this easement shall remain clear. No trees or large shrubs will be planted over/near the utility easement, structures or buried pipes. We are looking into placing a deed restriction on the property, such as a conservation easement.

- D. Indicate how the project meets the local critical areas ordinance and/or demonstrates accepted best practices for conservation and property management.

Wooded Areas: The entire nominated property qualifies as a critical area, thus restoration will abide by the Tacoma Municipal Code 13.11.200 and 13.11.210 regarding critical areas (Appendix B), in addition to other required state and local permits. Strategies of the OS Program to support native species dominated, sustainable, functioning forests include the following: planting only native or climate-adapted species; planting at least 2/3 evergreen vegetation; planting with a minimum of 5 tree, 5 shrub and 3 groundcover species to ensure diversity and climate-adaptation; planting at a density to ensure 100% soil-binding root mass; obtaining near 100% tree canopy cover; planting vegetation to improve the quality and reduce the quantity of stormwater run-off reaching surface waters; reducing invasive species; improving wildlife habitat; reducing trash and pollution; and supporting public education by training volunteers in habitat restoration. In addition, all BMP's used will be bio-degradable or photo-degradable and non-toxic to the environment. BMP's shall follow guidelines set forth by the COT Stormwater Management Manual (2016).



CONSERVATION FUTURES PRIORITIES
AS IDENTIFIED IN CHAPTER 2.97.030 PCC

NOTE: Be sure to provide responses in all sections of questions #1-3 below. Your answers should include detailed information regarding any restrictions or restoration actions proposed to protect and/or enhance the Conservation Futures Priorities identified.

1. Primary Conservation Futures Priority (0-30 points): I will add the corrected text later.
 - A. Explain in 250 words or less how the property demonstrates the characteristics of this Conservation Future Priority:

Wooded Areas: The nominated parcel is a 15.5 acre wooded area contiguous with two City of Tacoma (COT) owned Open Space (OS) parcels (Figure 2). OS parcel 4353001440 is 5.0 acres and OS parcel 4353001451 is 8.1 acres, and both are located on the northern border of the nominated parcel. These OS parcels are not adjacent, thus purchasing this property would create 28.6 acres of contiguous OS property by connecting the two existing city owned OS parcels. There is ~ 65% native tree canopy cover on the nominated parcel, made up of a significant stand of madrone trees, and other mature native trees including shore pine, Douglas-fir, Western redcedar, cottonwood, bigleaf maple and red alder. The understory has many native species including twinberry, salmonberry, salal, snowberry, trailing blackberry and swordfern at risk of being overtaken by ground ivy. The existing plant community is diverse and has plants indicative of wetlands near the stream and upland seeps. Ivy is beginning to become established, but would be easy to remove as much of it covers the ground and growth up the trees typically hasn't reached the crowns, however this will happen soon without intervention. There are three stormwater catch basins immediately below the nominated parcel that capture stormwater overflow from the gulch (Figure 8). These are piped directly into the Puget Sound, therefore maintaining a healthy forest in this area could help filter upland run-off and reduce the amount of sediment and nutrients reaching the Puget Sound.

- B. What steps will you take to protect and/or enhance this Conservation Futures Priority into the future? Include a description of any planned restoration activities.

Wooded Areas: Prior to any work being done on the property, OS staff would consult with COT Planning and Development Services (PDS) permitting staff to determine the approvals required. We would ensure all work would conform to critical areas guidelines as set forth by Tacoma Municipal Code 13.11 (Appendix B) and other state and local permits. The entire parcel is considered a critical area due to the presence of wetlands (Figure 3), a stream (Figure 4) and steep slopes (Figure 7). OS staff, which includes a Certified Wetland Professional, could perform a wetland delineation and classification. Habitat restoration would begin with invasive weed removal, which includes mostly English ivy and Himalayan blackberry. The ivy would be hand-pulled and rolled, while the areas with monocultures of blackberry would be brush-cut to the ground and sprayed with an herbicide safe for aquatic use. Re-treatment of blackberry would occur if needed. Ivy rings would also be cut around trees and other invasive weeds would be removed using best practices. Much of this work is located near the central valley of the gulch where it is flat enough for volunteers to work. Work on the slopes would be limited to COT employed Washington Conservation Corps (WCC) crews. All restoration work would be overseen by OS staff. In open areas with partial sun exposure, native evergreen trees would be planted to increase the evergreen canopy and species and age diversity as most of the large conifer trees are mid to late stage.



2. Secondary Conservation Futures Priority (0-15 points):

- A. Explain in 250 words or less how the property demonstrates the characteristics of this Conservation Futures Priority:

Fish and Wildlife Habitat Conservation Area: Approximately 80% of the nominated parcel is considered a WDFW Priority Species Area for Terrestrial Habitat and it is a biodiversity corridor (WDFW, 2017) (Figures 5 & 6). No species are specifically named, however the description from the WDFW Priority Habitat Species (PHS) map states: STEEP SLOPES AND BLUFFS OVERLOOKING THE COMMENCEMENT BAY WATERWAYS. SEVERAL SMALL TRIBUTARY STREAMS WITHIN THIS AREA. RAPTOR HABITAT AND REFUGIA FOR MANY BIRD AND MAMMAL SPP. The site is a diverse gulch with steep upland areas and flat lowlands providing a diverse tree canopy and native understory, wetlands (Figure 3), a stream (Figure 4) and numerous seeps, along with many natural tree snags and nurse logs. The parcel has the ability to support bats, coyotes, deer, and many small mammals, in addition to a variety of raptors, songbirds, tree frogs and other amphibians. This site is continuous with a much larger biodiversity corridor that runs parallel to Marine View Drive from McMurray Rd to Heron Ridge Dr, an expanse of over 2 miles. Ensuring this property remains undeveloped and managed to sustain a diverse, healthy forest system will provide habitat and safe passage for wildlife. A healthy forest will also improve the water quality of stormwater run-off, which is captured in three catch basins immediately below the property that flow directly into Commencement Bay (Figure 8).

CONSERVATION FUTURES PRIORITIES, CONTINUED

AS IDENTIFIED IN CHAPTER 2.97.030 PCC

- B. What steps will you take to protect this Conservation Futures Priority into the future? Include a description of any planned restoration activities.

Fish and Wildlife Habitat Conservation Area: Restoration shall follow guidance described in Primary Conservation Futures Priority Section (1B) above. As volunteers, WCC crews and OS staff are working on-site removing invasive species and developing site restoration plans, they will gain a better understanding of wildlife present on-site and can add plants to the planting palette with wildlife in mind.

- C. What restrictions will be included in the property management plan or conservation easement to protect this Conservation Futures Priority?

Fish and Wildlife Habitat Conservation Area: Restrictions shall be the same as Primary Conservation Futures Priority Section (1C) above.

- D. Indicate how the project meets the local critical areas ordinance and/or demonstrates accepted best practices for conservation and property management.

Fish and Wildlife Habitat Conservation Area: Property management shall be the same as Primary Conservation Futures Priority Section (1D) above.



3. Tertiary Conservation Futures Priority as designated on application (0-5 points):

- A. Explain in 250 words or less how the property demonstrates the characteristics of this Conservation Futures Priority

Streams and Rivers: The nominated parcel has an intermittent stream that runs the entire length of the property from the northern border of the property to the southern border (Figure 4). There is hyporheic exchange along the stream length, or rather an exchange of surface and subsurface water. There are numerous seeps in the upland areas of the property that clearly feed stream flow. Much of the flow becomes subsurface near the southern border of the property. Here it is most likely mixing with groundwater and flowing directly into the Puget Sound. This stream was running during our last site visit in March 2021, and the channel was easily identifiable. The stream buffer zone appears to consist of riparian wetlands due to the presence of facultative wetland vegetation, including twinberry, salmonberry, Western redcedar, cottonwood, and red alder. The buffer zone of the stream has a gentle slope and does not show signs of erosion or streambed scour. The stream shoreline and buffer are beginning to be encroached upon by invasive species that could limit the function of the stream. If the property were developed, it is likely this stream would become piped.

- B. What steps will you take to protect this Conservation Futures Priority into the future? Include a description of any planned restoration activities.

Streams and Rivers: The stream shoreline and surrounding buffer require the most intensive restoration, and the area is estimated to be approximately 1.1 acres. Prior to any work being done on the property, OS staff would consult with COT Planning and Development Services (PDS) permitting staff to determine the approvals required. We would ensure all work would conform to critical areas guidelines as set forth by Tacoma Municipal Code 13.11 (Appendix B) and other state and local permits. OS staff, which includes a Certified Wetland Professional, could perform a wetland delineation and classification. Habitat restoration would begin with invasive weed removal, which includes mostly English ivy and Himalayan blackberry. The ivy would be hand-pulled and rolled, while the areas with monocultures of blackberry would be brush-cut to the ground and sprayed with an herbicide safe for aquatic use. Re-treatment of blackberry would occur if needed. Hand work and some planting will be performed by volunteers, and herbicide application, brush-cutting and some planting will be performed by WCC crews. All restoration work would be overseen by OS staff. In addition to the plants mentioned in Primary Conservation Futures Priority Section (1B) the following plants would be added to the riparian area planting palette, including: cascara, black hawthorn, bald hip rose, red osier dogwood, oceanspray and possibly others. Given the slow moving, shallow nature of the stream along with established vegetation, there isn't currently any scouring or stream bank erosion, however the stream would be observed throughout the year and erosion control methods would be applied if needed. This might include strategically locating on-site woody debris and/or installing additional native plants. There is currently a silt fence in place along most of the western side of the stream. This fence would be left in place until invasive species are removed to determine the best course of action for removal or if removal is recommended.



- C. What restrictions will be included in the property management plan or conservation easement to protect this Conservation Futures Priority?

Streams and Rivers: Restrictions shall be the same as Primary Conservation Futures Priority Section (1C) above.

CONSERVATION FUTURES PRIORITIES, CONTINUED
AS IDENTIFIED IN CHAPTER 2.97.030 PCC

- D. Indicate how the project meets the local critical areas ordinance and/or demonstrates accepted best practices for conservation and property management.

Streams and Rivers: Property management shall be the same as Primary Conservation Futures Priority Section (1D) above.

PROGRAM GOALS

- 4. Answer the following if your project will involve a conservation easement: **We are currently assessing if this is possible for the nominated property, and will do so if feasible.**

How many dwelling units currently exist on the property?
 What is the proposed impervious coverage limitation (%)?
 Who will hold the conservation easement (primary)?
 Will there be any co-holders or beneficiaries?

Note: If participating in Title 18G PCC, you must specify this in your application and include all associated intents and parameters related to future use of the property. Your application must clearly demonstrate how the project will comply with the criteria set forth in Title 18G.

- 5. Is the acquisition of the property supported by adopted local or regional environmental goals and plans? (0-5 points) **Yes**

If Yes, please explain and attach a copy of the adopted plan section that relates to this nomination.

See Appendix C.

One of the primary goals of the City of Tacoma Passive Open Space program is “to support native species dominated, sustainable, functioning forests.” The nominated property is currently in good health, however invasive Himalayan blackberry and English ivy threaten this forest system. Without intervention, the health and function of this area could decrease rapidly.

As part of Tacoma’s 2025 Strategic Plan, “one of the goals is to sustain and improve Tacoma’s natural environment, which would in turn improve stormwater quality.” The nominated property receives overland stormwater flow from the upland developed neighborhood, intercepts rainfall, and conveys stormwater run-off directly to Commencement Bay in the Puget Sound. It is



important the nominated property maintain vegetated cover, preserve current stormwater benefit, and improve the property's resiliency to climate change and other development through active habitat restoration.

The Tacoma Environmental Action Plan has goals "to sustain and improve Tacoma's natural environment, and to foster appreciation and stewardship of wildlife and natural resources. Measurements of these outcomes include increased tree canopy, increased acres of actively managed open space ecosystem habitat, and increased volunteers engaged in stewardship activities. Additional actions include reducing stormwater quantity and quality by developing Management Plans using best practices for the natural condition, to develop and manage an open space program on watershed planning that seeks to own the most valuable properties and effectively manages and restores habitat, using volunteers as appropriate." Purchasing the nominated parcel would increase acres of open space, enable us to increase the tree canopy and improve stormwater quantity and quality, as well as provide another space for volunteer involvement. The nominated property is considered a valuable property due to it's connectivity to adjacent City owned open space, the extensive tree canopy with significant stands of madrone, and the entire parcel being a critical area.

Tacoma is part of the Green Cities Partnership with member cities throughout the north and south sound areas. "Forterra works with municipalities to achieve long-term plans and community-based stewardship programs to care for valuable forests and natural areas in urban environments through restoration." We will be recruiting and supervising volunteers to perform restoration on the nominated parcel.

6. Describe how the proposed future use of the property is compatible with the Conservation Futures Priority(s) identified on the property. (0-5 points)

The property shall be preserved and protected as well as managed and maintained to achieve a native species dominated, healthy forest and wetland/stream ecosystem to support diverse wildlife habitat and educate members of the community on wetland, stream and forest restoration best practices as well as the general importance and value of passive open space. A detailed description of the methods to achieve this goals are outlined in the Conservation Futures Priorities - Primary (Wooded Areas), Secondary (Fish and Wildlife Habitat Conservation Areas) and Tertiary (Streams and Rivers) Priorities.



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PROGRAM GOALS, CONT.

7. Is the property within a designated Urban Growth Area (UGA)? (5 points) **Yes**
8. Is the property contiguous with (abuts) or would acquisition of the property create a linkage with another preserved open space property? (0-5 points) **Yes**

If Yes, list the total acres of contiguous open space and describe the ownership and current use of the contiguous property.

The nominated property is 15.5 acres and is adjacent to two COT owned Open Space parcels, managed using the guiding Open Space Program principles to support native species dominated, sustainable, functioning forests. One of the City owned adjacent Open Space parcels is 8.1 acres and the other is 5.0 acres and currently, these are not contiguous. Purchasing the nominated property would connect the existing Open Space properties making for a contiguous 28.6 acres of forested land (see Figure 2) thus increasing management and restoration efficiencies and preserving a wider corridor.

9. Is the property threatened by development as defined in PCC 2.97.020? (0-5 points) **Yes**

"Threatened" means that the property will likely not be available in its current open space condition within the next three years from the date Conservation Futures applications are due. Evidence of threat may include, but is not limited to, the following: (1) development activity adjacent to or within the vicinity of the property which may impact the condition of the property; (2) the property is currently listed for sale; (3) applications for development permits associated with the property have previously been submitted; (4) the conservation priorities of the property are not adequately protected by existing development regulations.

If Yes, please explain.

The nominated property fulfills items 1, 2 and 4 above as it is currently owned by a developer who has moved overseas, and the property is actively for sale. There is a possibility of the property being purchased to build one or more homes. This could impact the health and function of the forest due to loss of pervious surface and disturbance. This may also result in the existing stream becoming piped. Built structures may be put in place to stabilize areas of the slope graded for construction. There is also a grandfathered development (20+ acres) that has been permitted directly adjacent to the northeast of this property – making the preservation of this property even more important as of that adjacent habitat is likely to disappear.

10. Is the property designated Agricultural Resource Land (zoned ARL)? (5 points) **No**



PROJECT BUDGET

| Budget | Conservation Futures Request | Matching Funds | TOTALS |
|--|------------------------------|---------------------|---------------------|
| Acquisition (Fee or CE) | \$323,370.00 | \$35,930.00 | \$359,300.00 |
| Appraisal | \$5,000.00 | \$0.00 | \$5,000.00 |
| Review Appraisal | \$1,500.00 | \$0.00 | \$1,500.00 |
| Closing cost, escrow, title, and recording fees, etc. | \$1,500.00 | \$0.00 | \$1,500.00 |
| Non-reimbursable expenses: Surveys, BLA, environmental assessments | \$ | \$0.00 | \$0.00 |
| Other: Type other here | \$ 0.00 | \$0.00 | \$0.00 |
| TOTAL | \$331,370.00 | \$ 35,930.00 | \$367,300.00 |

For non-profit applicants only

Are you requesting administration funds to complete the project? (Choose)

If so, how much? **\$0.00**

Note: Pierce County limits administrative cost reimbursement to 5% of the Conservation Futures investment toward the purchase price.

Is your organization planning to request a donation or payment from a third-party as a result of completing this project? (e.g. stewardship endowment) **No**



MATCHING FUNDS

Identify the Source(s) of Match (list separately if more than one source)

1. Amount \$35,930.00 Source City of Tacoma 2021/22 Biennium Budget (see Appendix A)

Is this funding source: Public
Are these funds secured? Yes
What date do these funds expire? 12/31/2022 (Example date 1/1/2021)

2. Amount \$0.00 Source

Is this funding source: (Choose)
Are these funds secured? (Choose)
What date do these funds expire? (Example date 1/1/2021)

3. Amount \$0.00 Source

Is this funding source: (Choose)
Are these funds secured? (Choose)
What date do these funds expire? (Example date 1/1/2021)

Note: Pierce County reserves the right to withdraw Conservation Futures funding from a project if an applicant is unable to provide the matching funds identified in their application.



PIERCE COUNTY
CONSERVATION FUTURES

SPONSOR'S STATEMENT

1. I understand the intent of the Pierce County Conservation Futures Program and have received the Administrative Guidelines for the Conservation Futures Program.
2. I have been in contact with the owners of the property under consideration for Conservation Futures funding and known as Pierce County tax parcel numbers:
3. In addition, I have notified the owners of the property that their property is being considered for Conservation Futures funding, as provided for in Chapter 2.97 of the Pierce County code.

Danée Radice

3/5/2021

Sponsor's Signature

Date

WILLING SELLER/ OWNER'S STATEMENT

1. I am the legal owner of the property described in the Pierce County Conservation Futures Application.
2. I am aware that my property has been proposed as a Conservation Futures project and that the purchase amount paid by Pierce County may not exceed fair market value, as determined by a qualified appraiser.
3. I understand that if the grant is successfully awarded, I will be contacted and asked to engage in negotiations to conserve my property.
4. My signature represents my interest in selling my property, or a right to my property, if we can come to a negotiated set of reasonable terms.
5. If I am affiliated with the project sponsor or receiving agency, I will recuse myself from decisions made by the project sponsor to purchase my property.

Authentisign
[Signature]

03/07/2021

Landowner's Signature

Date



Pierce County

Conservation Futures

2021 Application

PIERCE COUNTY
CONSERVATION FUTURES
RECEIVING AGENCY AFFIDAVIT
(IF APPLICABLE)

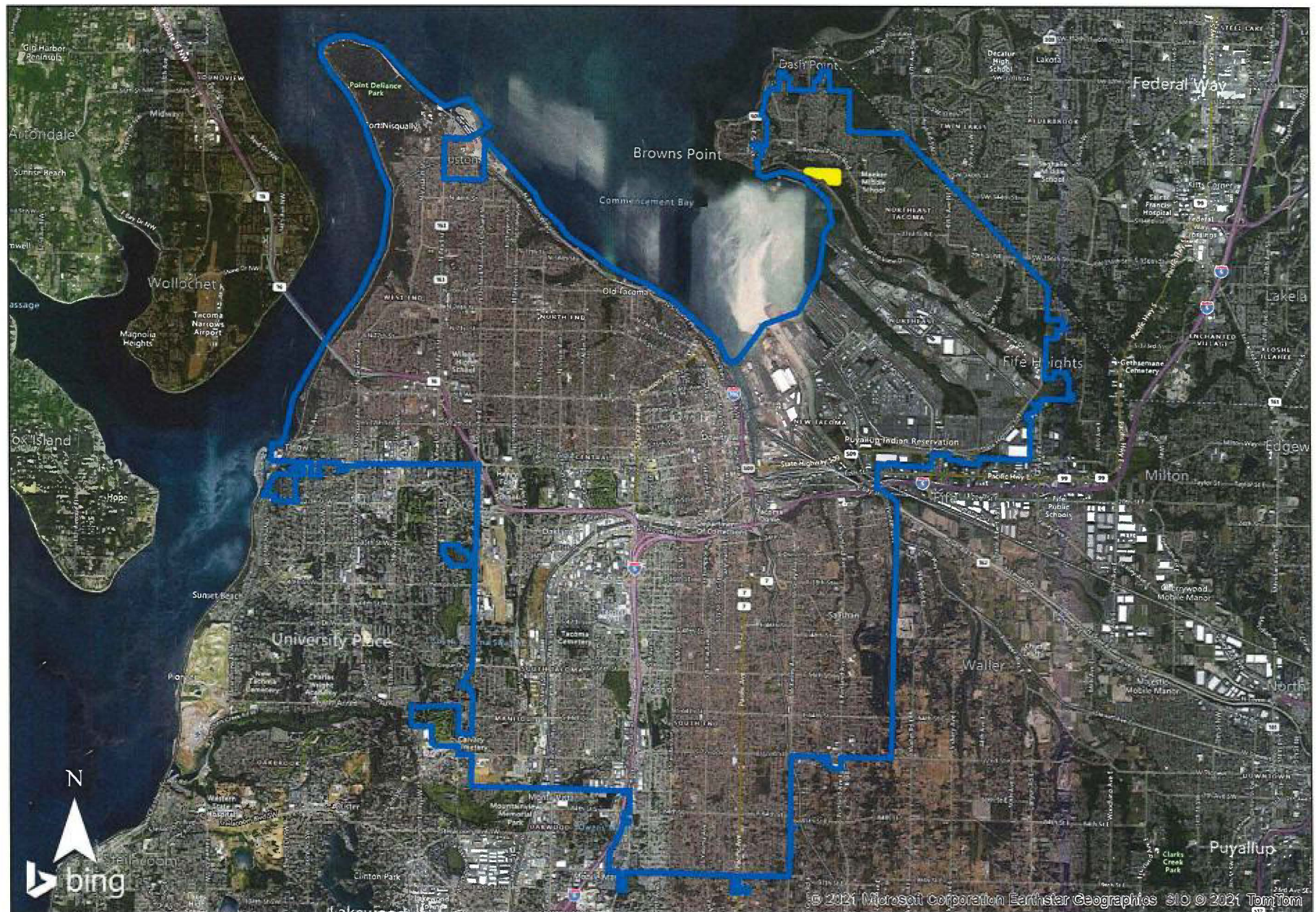
1. I have reviewed and approve of this Conservation Futures application made on my behalf.
2. At the successful completion of the Conservation Futures project, the **City of Tacoma** will accept the property interest acquired and protect and steward the Conservation Futures Priorities as stated in the application, in perpetuity.

Receiving Agency's Signature

Date

3-13-21

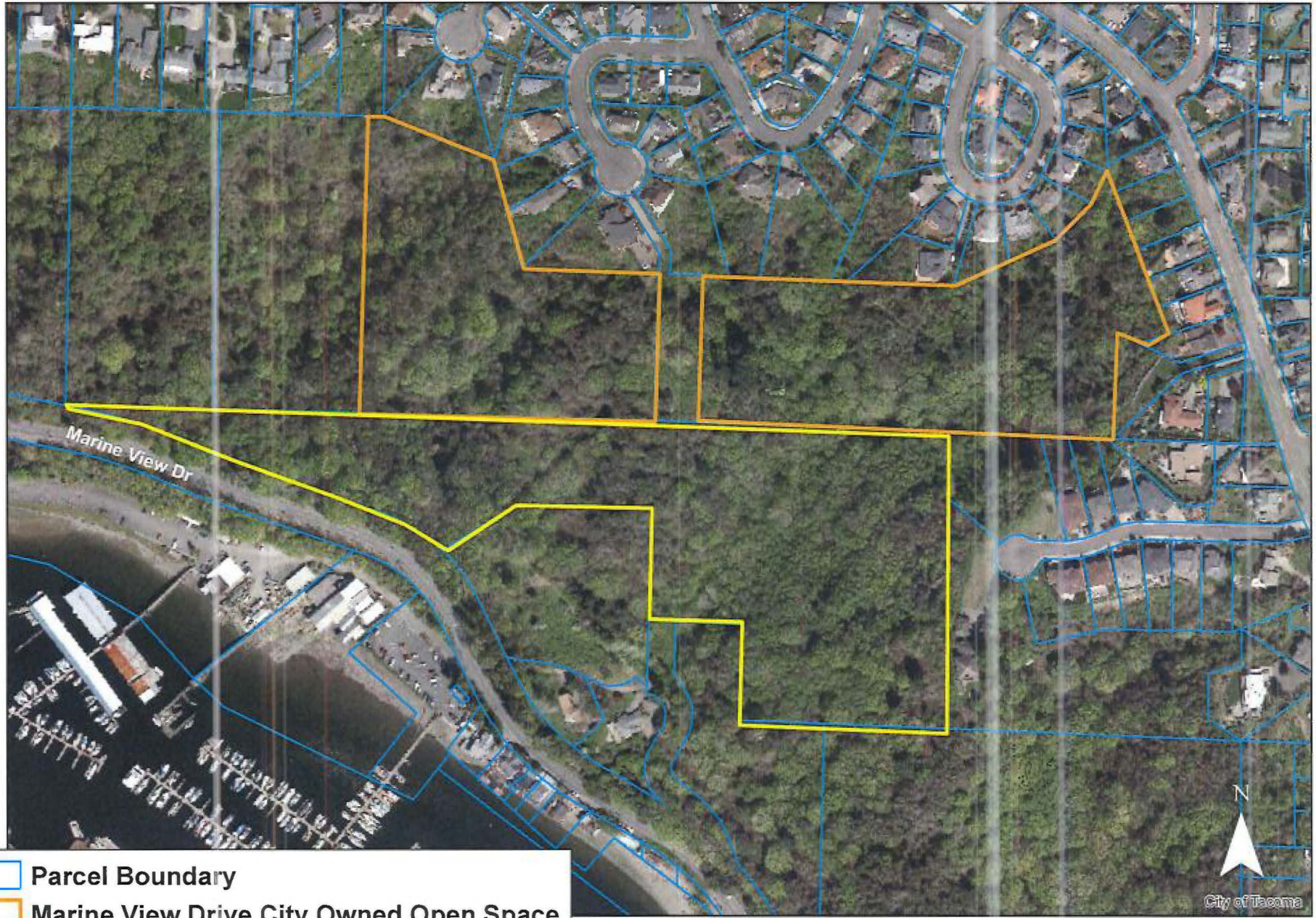
Figure 1. Marine View Drive Conservation Futures Nominated Property



 Tacoma City Boundary
 Nominated Property (not to scale)

1 0.5 0 1 Miles


**Figure 2. Marine View Drive City Owned Open Space
and Conservation Futures Nominated Property**






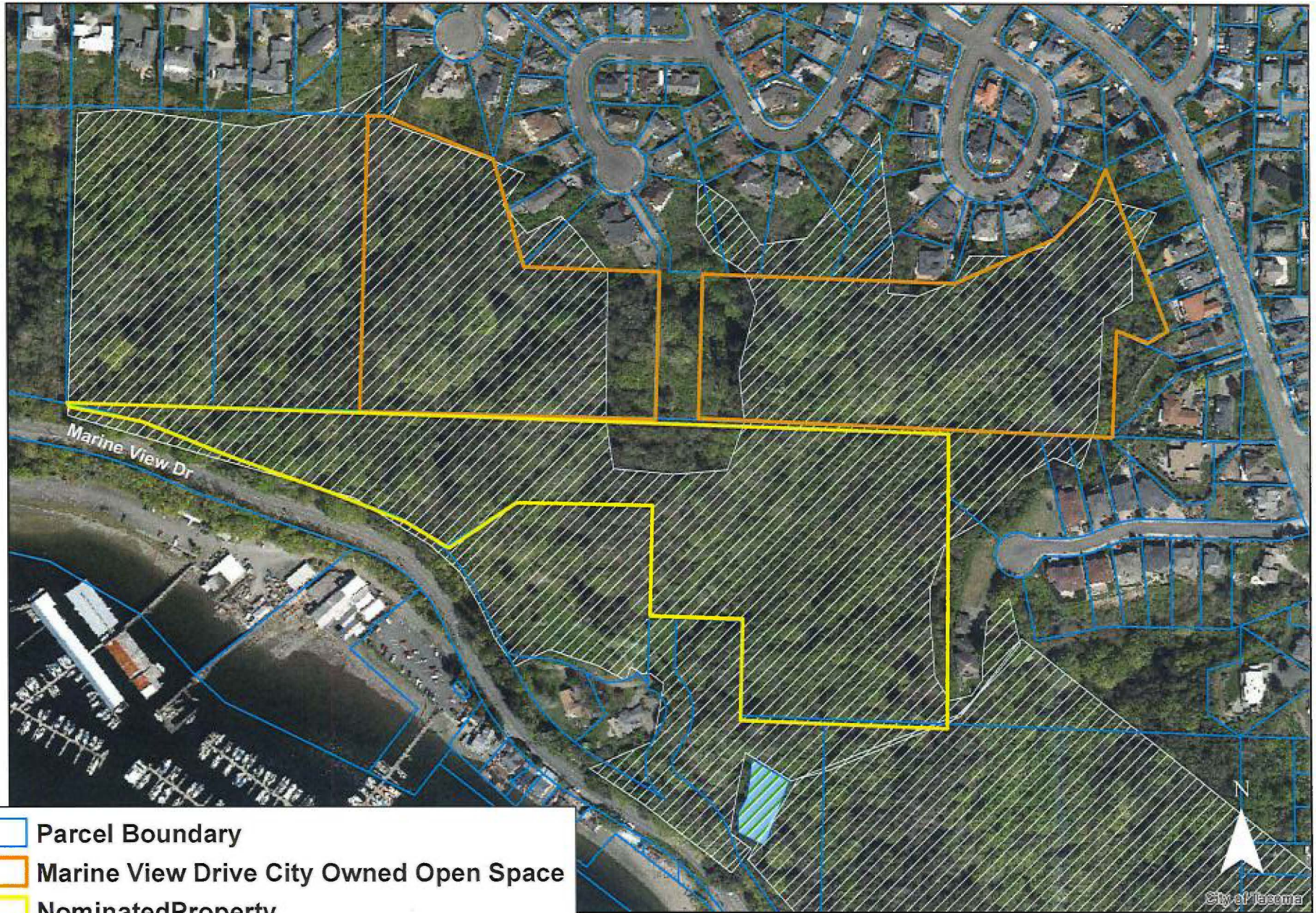
-  Parcel Boundary
-  Marine View Drive City Owned Open Space
-  Nominated Property



Figure 3. Marine View Drive Open Space Wetlands



- Parcel Boundary
- Marine View Drive City Owned Open Space
- Nominated Property
- High Probability Wetland
- Known Wetland

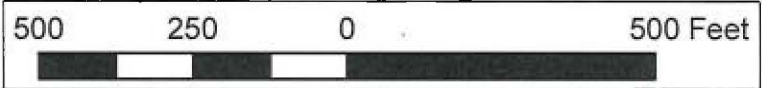
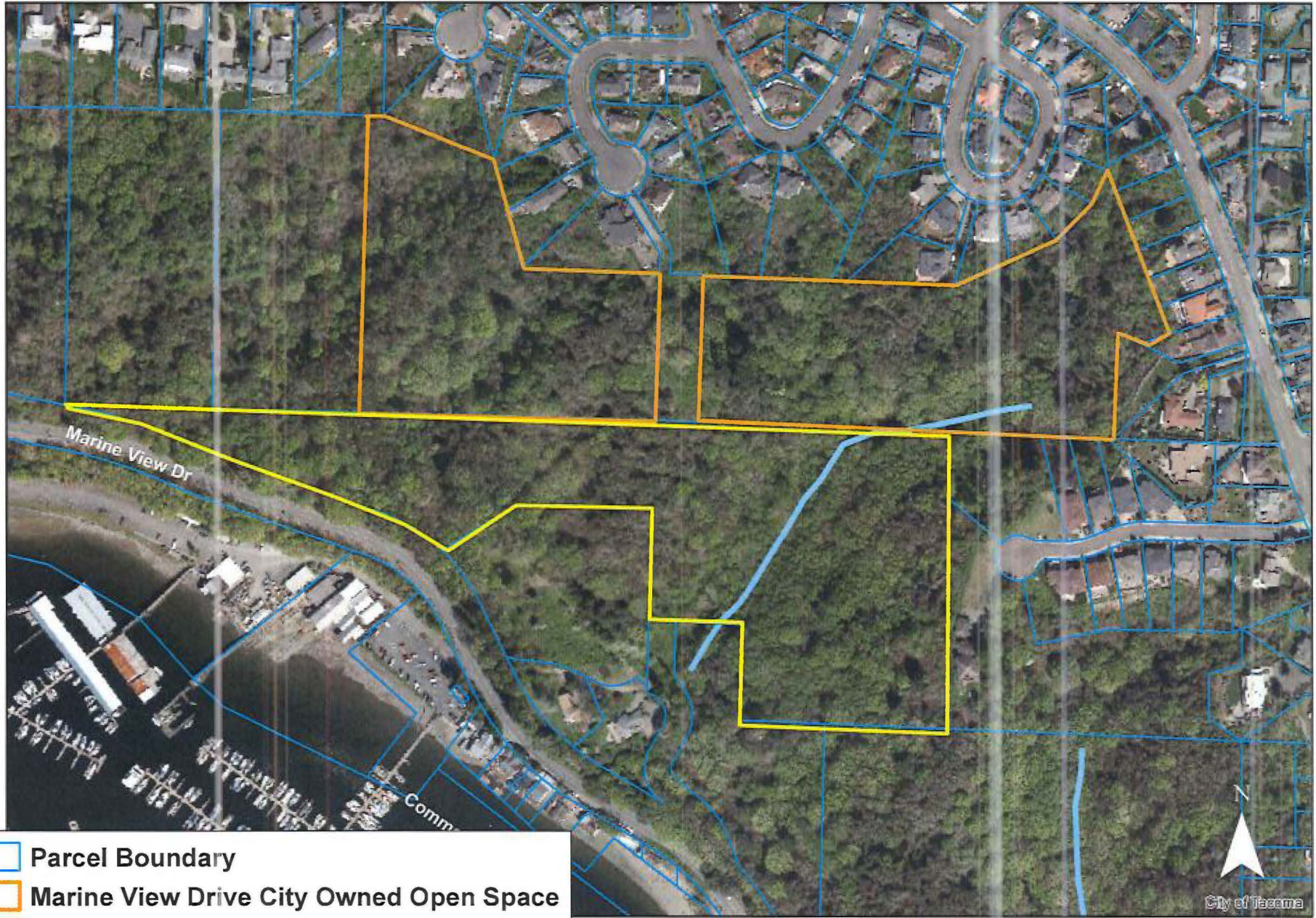
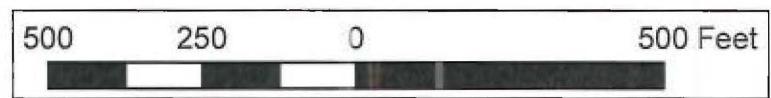


Figure 4. Marine View Drive Open Space Streams

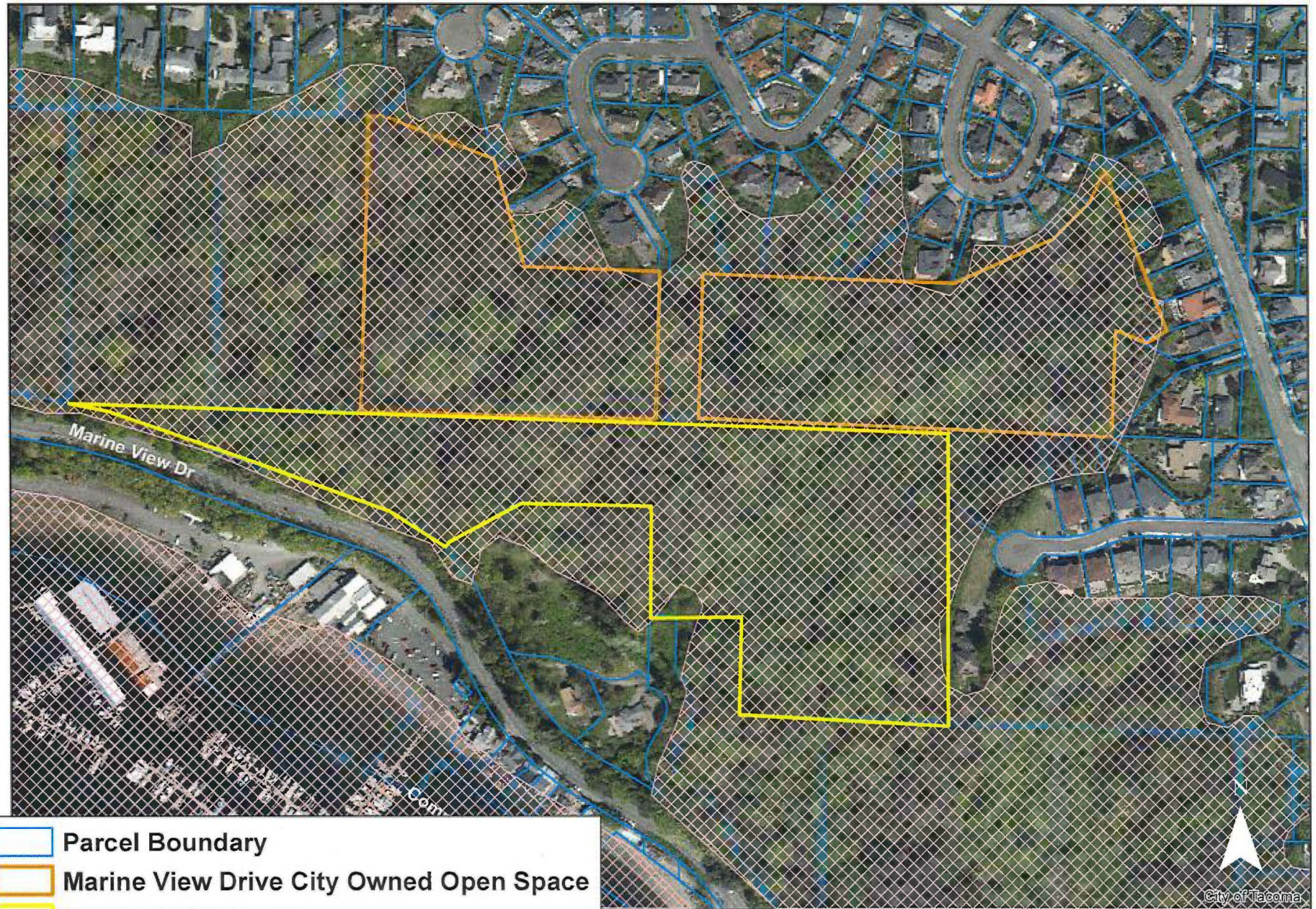






- Parcel Boundary
- Marine View Drive City Owned Open Space
- Nominated Property
- Stream



City of Tacoma

Figure 5. Marine View Drive Open Space WDFW Priority Species Habitat



-  Parcel Boundary
-  Marine View Drive City Owned Open Space
-  Nominated Property
-  Priority Species Habitat

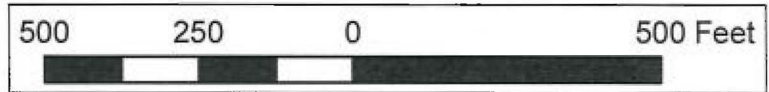


Figure 6. Marine View Drive Open Space Habitat Corridor

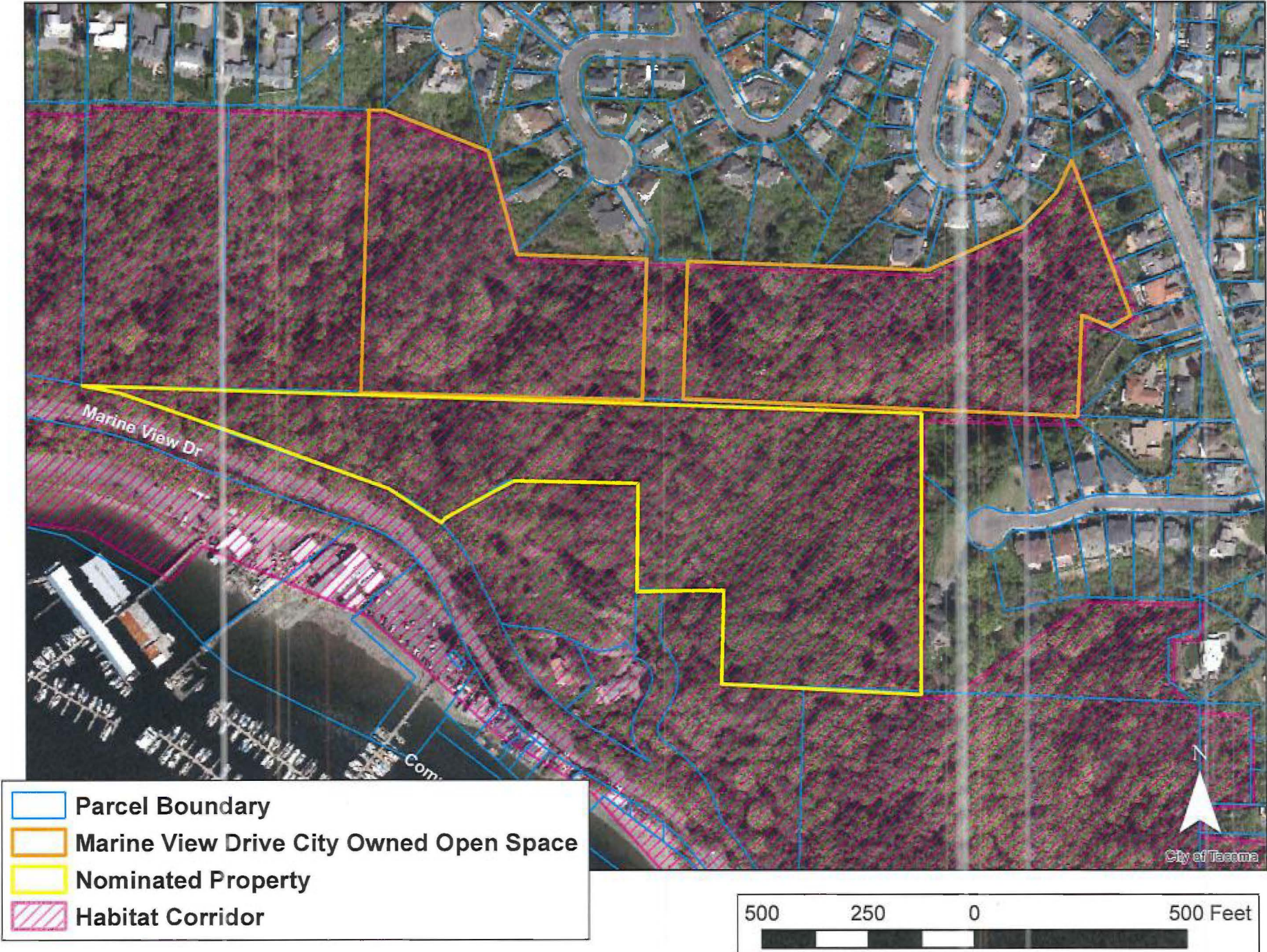
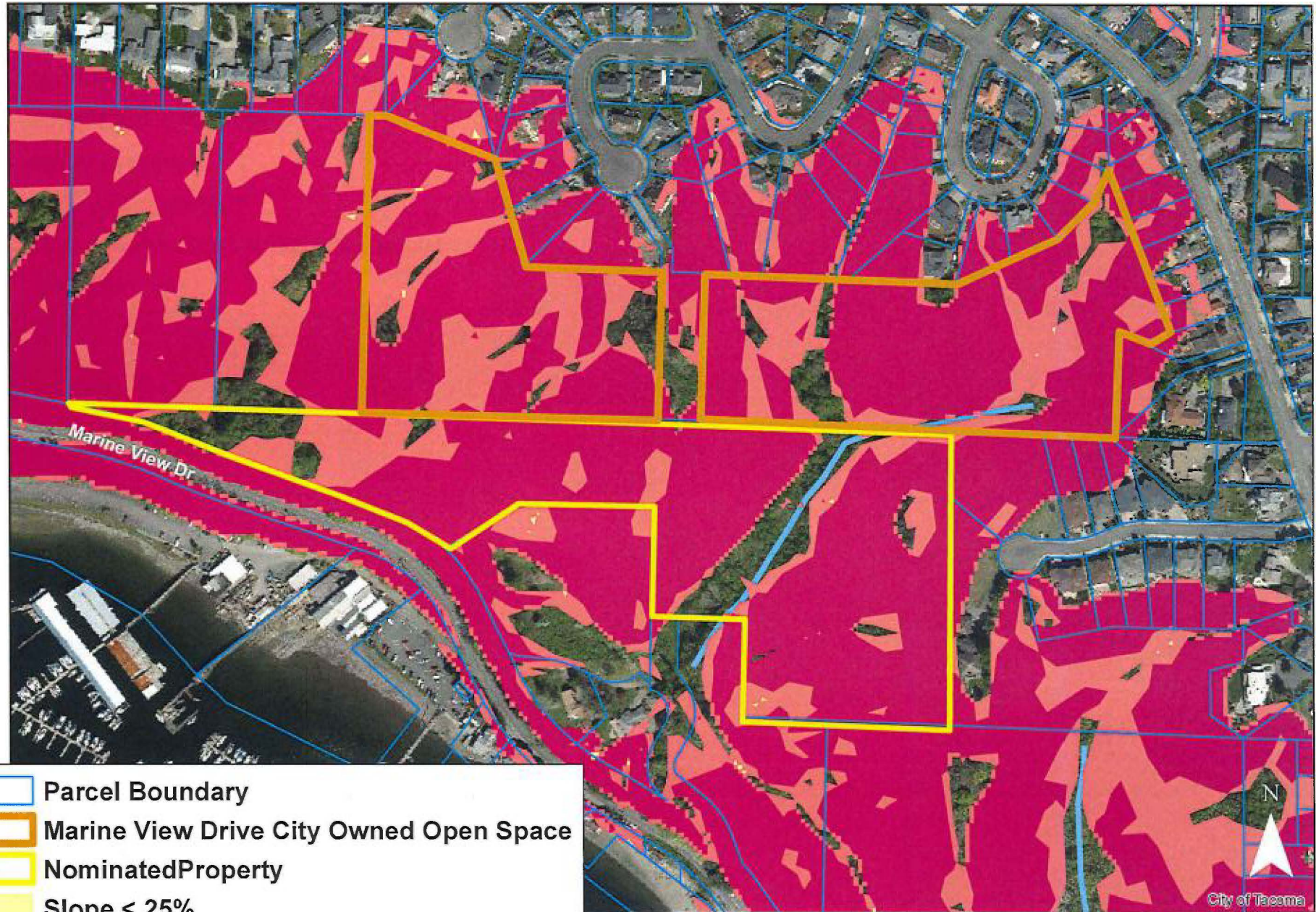


Figure 7. Marine View Drive Open Space Slopes



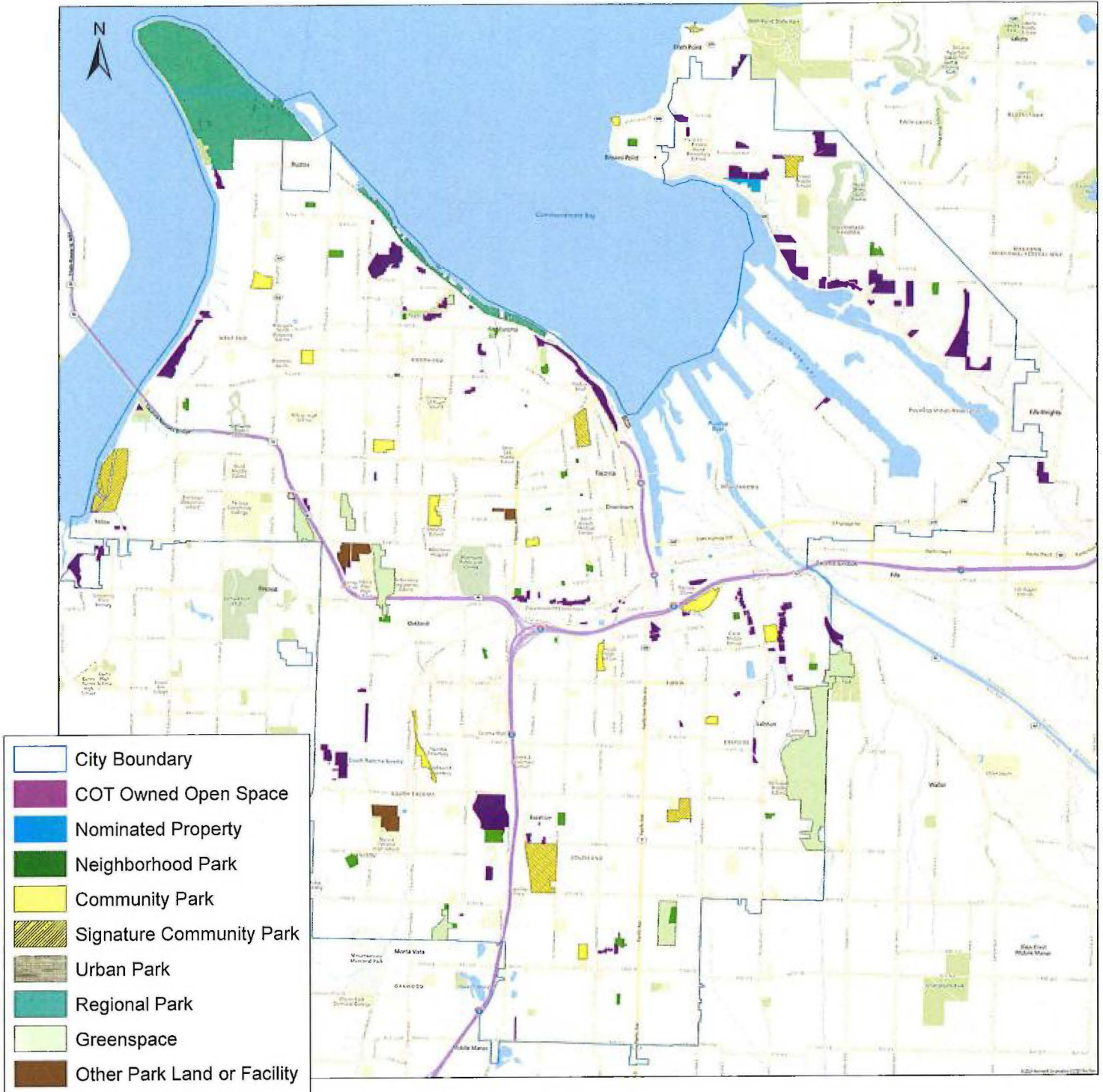
- Parcel Boundary
- Marine View Drive City Owned Open Space
- Nominated Property
- Slope < 25%
- Slope 25% - 40%
- Slope > 40%



Figure 8. Marine View Drive Open Space Structures



Figure 9. Tacoma Parks, Open Space and Greenspace



Appendix A.



City of Tacoma
Environmental Services Department

March 11, 2021

Ms. Naomi Gebo
Pierce County Parks and Recreation
Environmental Services Building
Chambers Creel Regional Park
9850 64th St. W
University Place, WA. 98467-1078

Re: Leverage Statement

Dear Ms. Gebo,

The City of Tacoma submits this letter as a Leverage Statement per the Conservation Future's application checklist requirement. The City guarantees that the required 10% matching funds per the project budget table included in the application (estimated \$35,930) is funded and available should the City's Conservation Futures grant application be awarded. These funds are available from our current 2021-2022 biennium budget. If this transaction occurs after 12/31/2022, Environmental Services will guarantee that funds will be carried over to cover the 10% matching funds identified above.

If I can answer any questions regarding this statement, please call me at 253-502-2161.

Sincerely,

John Burk, P.E.

John Burk, P.E.
Division Manager
Science and Engineering Division

Appendix B. Tacoma Municipal Code (TMC)

Sections relevant to habitat restoration work are highlighted in yellow.

3.11.200 Allowed Activities.

A. Purpose.

The purpose of this section is to allow certain activities that are unlikely to result in critical area impacts. The activities must comply with the protective standards of this chapter and provisions of other local, state, and federal laws. All activities shall use reasonable methods to avoid and minimize impacts. Any incidental damage to, or alteration of, a critical area, geo-setback, management area or buffer, shall be restored or replaced at the responsible party's expense.

B. The following activities may occur without City review or approval in compliance with the purpose stated above.

1. The maintenance and repair of legally existing utilities, roads, structures, or facilities used in the service of the public provided such work does not expand the footprint of the facility or right-of-way or alter any regulated critical area or buffer. Activities must be in compliance with the current City Stormwater Management Manual and Regional Road Maintenance Manual and provide all known and reasonable protection methods for the critical area.
2. The maintenance and repair of legally existing roads, structures, or facilities used in the service of the public to provide stormwater services may occur provided such work is in compliance with the current City Stormwater Management Manual and Regional Road Maintenance Manual and provides all known and reasonable protection methods for the critical area, and does not expand further into the critical area.
3. Holding basins and detention ponds that are part of the municipalities stormwater system are exempt from the permit provisions of this chapter when such holding basin or detention pond is controlled by an engineered outlet.
4. Maintenance of legally existing structures, accessways, trails, promenades, stairways, parking lots, and landscaping provided such work does not expand the foot print of the structure or right-of-way and does not alter any regulated critical area or buffer.
5. Passive recreational activities, educational activities and scientific research including, but not limited to, fishing, bird watching, walking or hiking and non-motorized boating.
6. The following can be removed by hand or hand-held light equipment provided that appropriate methods are used to protect native vegetation. Removal methods may be found in the Green Tacoma Partnership Habitat Steward Field Guide.
 - a. English Ivy may be removed from plants on which is adhered or rolled up off the ground provided ground disturbance is minimal and does not cause erosion.
 - b. Regulated noxious weeds as listed on the Pierce County noxious weed list that are required to be eradicated (Class A and Class B) as specified by the Pierce County Noxious Weed Board.
 - c. Invasive species removal in a critical area or buffer when the total area is 1,000 square feet or less and slopes are less than 25%.
 - d. Refuse and debris.
7. Native vegetation planting in a critical area buffer or Biodiversity Area/Corridor when the total area is 1,000 square feet or less, slopes are less than 25% and a City approved planting plan is utilized.

8. The following voluntary actions can be conducted by hand or with light equipment by Public Agencies with expertise in critical area restoration and enhancement:

a. Native planting and invasive species removal in a critical area or buffer when the total area is 5,000 square feet or less and slopes are less than 15%.

b. Native planting and invasive species removal in a critical area or buffer when the total area is 2,000 square feet or less and slopes are between 15% and 25%.

9. On-site response, removal or remedial action undertaken pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or remedial actions undertaken pursuant to a state Model Toxics Control Act (MTCA) order, agreed order or consent decree, or a Department of Homeland Security order that preempt local regulations in the findings of the order. Any subsequent use or redevelopment of the property may be eligible for modification of requirements in this chapter when they are in conflict with the order, such as re-vegetation that would disturb a protective cap placed to contain contaminated soils.

(Ord. 28518 Ex. 5; passed Jun. 26, 2018; Ord. 28336 Ex. C; passed Dec. 1, 2015; Ord. 28070 Ex. B; passed May 8, 2012; Ord. 27893 Ex. A; passed Jun. 15, 2010; Ord. 27728 Ex. A; passed Jul. 1, 2008; Ord. 27431 § 22; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

13.11.210 Activities Allowed with Staff Review.

A. Purpose.

The purpose of this section is to allow City staff review to determine whether potential impacts to a critical area, buffer, management area, or geo-setback may occur, without requiring a critical area permit. The staff review will ensure the activity meets the specific criteria below.

B. The following activities require review by City staff. Review and authorization may occur over-the-counter or staff may issue a letter of approval with conditions. Additional information and studies may be requested. Activities must comply with the protective standards of this chapter and provisions of other local, state, and federal laws. Any incidental damage to, or alteration of, a critical area shall be restored or replaced at the responsible party's expense.

1. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare or pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for normal processing. Emergency actions that create an impact to a critical area or its buffer shall use best management practices to address the emergency and, in addition, the action must have the least possible impact to the critical area or its buffer.

The person or agency undertaking such action shall notify the City within one (1) working day following the commencement of the emergency activity. The City shall determine if the action taken was within the scope of an emergency action and following that determination, may require the action to be processed in accordance with all provisions of this chapter including the application of appropriate permits within thirty (30) days of the impact. The emergency exemption may be rescinded at any time upon the determination by the City that the action was not, or is no longer necessary.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary mitigative actions including, but not limited to, restoration and rehabilitation or other appropriate mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved mitigation plan. All mitigation activities must take place within one (1) year following the emergency action and impact to the critical area, or within a timeframe approved by the City and reflected within an approved schedule. Monitoring will be required as specified in the General Mitigation Requirements (Section 13.11.270).

2. Maintenance and repair of legally existing utilities, roads, structures, or facilities used in the service of the public may occur following review where alteration of the critical area or buffer is unavoidable. All activities must be in compliance with the current City Stormwater Management Manual and Regional Road Maintenance Manual and provide all known and reasonable protection methods for the critical area and shall not expand further into the critical area.

3. Isolated Category III or Category IV wetlands, which have been classified and identified as having a total cumulative area of less than 1,000 square feet, regardless of property lines are exempt from the provision of this Chapter provided they:

a. Are of low habitat function (less than 20 points in the Washington Wetlands Rating System for Western Washington).

b. Are hydrologically isolated and are not part of a mosaic wetland system.

c. Are not associated with a Shoreline of the state, or a wetland that is part of a riparian habitat area, or designated Biodiversity Area/Corridor, and

d. Are not critical habitat to local populations of priority species.

4. Geotechnical investigation activities may be performed, provided that an access plan, protection measures, best management practices, and restoration are utilized to protect and maintain the critical area where possible. These items must be included with the application.

5. Reconstruction or exterior remodeling, of existing structures and accessory structures provided that disturbance of native vegetation is kept to a minimum and any vegetation that is disturbed shall be replaced. This shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a landslide hazard area or flooding in a flood hazard area.

6. One-time expansion of existing structures and accessory structures, provided that expansion of the developed footprint within the critical area or buffer does not increase by more than 25 percent and that the new construction or related use extends away from the critical area; keeps disturbance of native vegetation to a minimum; and replaces native vegetation that may be disturbed. This expansion may also occur in a direction parallel to the critical area if the expansion takes place upon existing impervious surfaces. A Notice on Title must be recorded to be eligible for staff review and approval.

7. Maintenance and repair of existing retaining walls and bioengineered stabilization measures designed to protect property from erosion.

8. Interrupted wetland, stream, FWHCA, or buffers.

a. Where a legally established, pre-existing use of the critical area or buffer exists, those proposed activities that are within the critical area or buffer but are separated from the remaining critical area by a permanent substantial improvement, or are located in an existing permanent substantial improvement, may be allowed provided that the detrimental impact to the critical area does not increase. The permanent substantial improvement must serve to eliminate or greatly reduce the impact of the proposed activity upon the critical area. However, if the impacts do increase, the City shall determine if additional buffer may be required along the impact area of the interruption. Substantial improvements may include developed public infrastructure (roads, railroads, dikes, and levees) and buildings. Substantial improvements may not include paved trails, sidewalks, parking areas, or bulkheads. Review may require a functional analysis report for the type of critical area buffer that is affected. In determining whether a functional analysis is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the interruption.

b. Where a legally established, pre-existing structure or use is located within a regulated biodiversity area/ corridor or buffer and where the area is fully paved and does not conform to the interrupted provision above, the biodiversity area/corridor or buffer will end at the edge of pavement.

9. Construction of pedestrian trails within the buffer of a Critical Area or within a Biodiversity Area/Corridor is permitted, subject to the following criteria:

a. The trail is constructed of pervious material such as bark chip or equivalent.

b. The trail does not cross or alter any regulated drainage features or waters of the state.

c. The trail shall be located within the outer quarter (1/4) edge of the buffer, where possible, with the exception for limited viewing platforms.

d. The trail system discourages pedestrians from using informal trails that are not part of the designated trail system.

e. The trail is designed to avoid human disturbance to priority species and priority habitat. Trails constructed in Biodiversity Areas/Corridors shall avoid the most sensitive areas and species and must maintain a contiguous and unfragmented corridor for wildlife movement. Expansion of existing trail systems must demonstrate that the expansion will not result in additional disruption of wildlife movement and will avoid the most sensitive areas and species.

f. Low impact trails shall not be later widened or upgraded to impervious trails that encourage activities with greater impacts without additional review and required permitting.

g. Informational signs are required at trail heads, at a minimum, and are subject to City approval.

10. Voluntary enhancement or restoration of a critical area or buffer that exceeds the provisions above in 13.11.200.B.6, 7, or 8 may be allowed if the activity meets the requirements of this section.

a. Individual projects

(1) Enhancement activities shall be limited to planting native vegetation, controlling noxious and invasive species and providing minor habitat structures such as nest boxes.

(2) Activities shall not include grading or water control structures.

(3) A planting plan containing information on vegetation species, quantities, and general location of planting areas including the identification of wetlands, streams, and their buffers, is required for review.

(4) Proper erosion control measures are provided.

(5) If equipment, other than hand-held equipment is utilized, list the type of equipment, methods and best management practices to prevent unnecessary impacts.

b. Community Projects

Multi-party projects are encouraged. These projects shall not include new destination facilities or high-intensity recreation facilities as described in 13.06.080.L. The applicants may propose a programmatic approach pertaining to multiple sites and on-going restoration and enhancement activities as well as maintenance. A City approved habitat

management template or equivalent must be provided that has been reviewed and approved by all property owners. In addition, the project is subject to the following:

- (1) The primary focus is preservation and increase in biological functions through the preservation and improvement of habitat, species diversity and natural features.
- (2) Preserves and connects critical areas.
- (3) Includes goals, objectives, and measureable performance standards.
- (4) Includes a monitoring plan and contingency plan.
- (5) Trails shall comply with the provisions in Section 13.11.210.B.9.
- (6) Buildings and paved surfaces shall be located outside of wetlands and streams and their buffers. When located in a Biodiversity Area/Corridor, buildings or paved surfaces must be located in the least sensitive area and must maintain a contiguous and unfragmented corridor for wildlife passage.
- (7) Picnic Tables, benches, and signage are allowed when they are located to avoid and minimize impacts.
- (8) A maintenance plan that describes the proper techniques and methods used for on-going maintenance and preservation. The plan should address maintenance of any buildings and improvements such as picnic areas, as well as restoration and enhancement areas.
- (9) The identification of a trained habitat steward who will be responsible for overseeing volunteers, employees, and/or contractors for all aspects of the project.
11. Hazard trees. The removal of hazard trees from the critical area or buffer/geo-setback that are posing a threat to public safety, or posing an imminent risk of damage to an existing structure, public or private road or sidewalk, or other permanent improvement, may be allowed following City staff review, or provided that a report from a certified arborist, landscape architect or professional forester is submitted to the City for review and approval. The report must include an evaluation for tree stabilization potential and removal techniques for the hazard tree and procedures for protecting the surrounding critical area and replacement of native trees. Where possible, the hazard tree shall be left as a standing snag and the cut portions shall be left within the critical area as habitat unless removal is warranted due to fire hazard, disease, or pest control.
12. Tree Pruning. Tree pruning may be allowed provided a report from a certified arborist, landscape architect or professional forester regarding the health of the tree is submitted, and a functional impact analysis from a qualified professional evaluating the functions of the critical area as a result of the pruning, is also submitted to the City for review and approval. No topping, complete removal or impacts to the health of the tree shall be allowed.
13. Watershed restoration projects that conform to the provisions of RCW 89.08.460 shall be reviewed without fee and approved within 45 days per RCW 89.08.490.
14. Fish habitat enhancement projects that conform to the provision of RCW 77.55.181 shall be reviewed without fee and comments provided as specified in RCW 77.55.181.
15. Demolition of structures.

(Ord. 28725 Ex. A; passed Dec. 8, 2020; Ord. 28518 Ex. 5; passed Jun. 26, 2018; Ord. 28376 Ex. E; passed Aug. 16, 2016; Ord. 28336 Ex. C; passed Dec. 1, 2015; Ord. 28335 Ex. A; passed Dec. 1, 2015; Ord. 28230 Ex. F; passed Jul.

22, 2014: Ord. 28070 Ex. B; passed May 8, 2012: Ord. 27728 Ex. A; passed Jul. 1, 2008: Ord. 27431 § 23; passed Nov. 15, 2005: Ord. 27294 § 2; passed Nov. 16, 2004)

Appendix C. Local and Regional Environmental Goals and Plans

1) https://www.cityoftacoma.org/government/city_departments/environmentalservices/surface_water/open_space_program

2) https://cms.cityoftacoma.org/enviro/OpenSpace/City%20of%20Tacoma_Passive%20Open%20Space_January2017.pdf

20 year Open Space Strategic Plan provides ratings and assessment for all Open Space sites owned by the City in 2017. *This document is 90 pages long therefore it was not printed out in its entirety.*

3) <https://cms.cityoftacoma.org/tacoma-2025/tacoma-2025.pdf>

4) https://cms.cityoftacoma.org/Sustainability/Tacoma_EAP.pdf

5) <https://forterra.org/service/green-city-partnerships> **Building partnerships**

Forterra works in partnership with local municipalities to develop achievable goals, shared visions, long-term plans and community-based stewardship programs to care for the valuable forests and natural areas in our urban environments. The Green City Partnerships share three core goals:

- Improve the quality of life, connections to nature, and enhance forest benefits in cities by restoring our forested parks and natural areas
- Galvanize an informed and active community
- Ensure long-term sustainable funding and community support

These unique public/private partnerships bring together the City, Forterra, thousands of community volunteers, other nonprofits and businesses to create a sustainable network of healthy forested parks and natural areas throughout the region.



City of Tacoma

W A S H I N G T O N

#1



Open Space Program

The City's Open Space Program is intended to conserve, activate, and manage open space and urban forest lands consistent with City policies and regulations. The City has segregated Open Space into two categories: Active and Passive. Active areas are those that are developed for and dedicated to community access and recreation. Passive open space properties comprise approximately 488 acres of City-owned forests, wetlands, streams, and habitat areas. Generally, these areas are undeveloped and covered with vegetation; many are regulated by the City's Critical Areas Preservation Code; and most provide or have the potential to provide benefits to stormwater quantity and quality. The distinction of active vs. passive does not exclude an active function on a passive property or vice versa but more clearly defines internal City roles and funding.

In 2014, the passive open space parcels were transferred from the City Planning and Development Services to Environmental Services. This transfer ensures that these passive open space parcels will be managed and maintained in a manner that, in addition to other benefits, increases the stormwater benefit for public good through increased vegetation diversity, tree canopy cover, and overall absorption. The active management of these areas also results in the reduction of invasive vegetation, increase in tree health, and reduction of trash and pollution. Active open space sites remain managed by the City's Public Works Department, specifically the Real Property Services section.

[View the Open Space Map](#)

The primary goal for passive open space properties is that they have a native species dominated, sustainable, and functioning forest. Management Plans are needed in many areas to achieve this goal and to permit the activities needed for improvement in critical areas (i.e., steep slopes and wetlands/wetland buffers). Management plans with varying degrees of intensity based on ownership, existing conditions and community interest have been created and are being implemented.

Volunteer Opportunities

The City has contracted with EarthCorps to lead volunteer events. Many of the Open Space sites have regular volunteer habitat restoration work parties, including Wapato Hills Park, Julia's Gulch, Fern Hill, Mason Gulch, and q̣ẉiq̣ẉəlut ([click here for pronunciation](#)), formerly know as Rhone-Poulenc. Visit the [EarthCorps web page](#) for more information on volunteering at any one of these sites.

If you are interested in volunteering at any of our other open space locations, please contact Aris Efting at aefting@cityoftacoma.org or (253) 404-6905.

Open Space Plans

First Creek – [View the First Creek Action Plan.](#)

Julia's Gulch – [View the five-year stewardship plan.](#) Other resources include the [Habitat Assessment Report](#), [Trail Proposal](#), and [Trail Plan](#).

Wapato Hills – View the Wapato Hills five-year stewardship plan (pending).

Schuster Slope – View the [Schuster Slope Landscape Management Plan](#) or [visit the Schuster Slope Landscape Management web page](#).

Mason Gulch Landscape Management Plan – [Get additional information on Mason Gulch.](#)

In 2015-2016, Forterra and American Forestry Management (AFM) applied the [Forest Landscape Assessment Tool](#) (FLAT) to over 500 passive open space acres throughout the City of Tacoma. This [Strategic 20-Year Passive Open Space Plan](#) will help City staff focus efforts on prioritized areas.

Resources

- [Open Space Frequently Asked Questions](#)
- Open Space One Page Summaries
 - [Passive Open Space One Page Summary](#)
 - [Mason Gulch One Page Summary](#)

#2

Strategic 20-Year Passive Open Space Plan

Environmental Services Department

City of Tacoma

January 2017



FORT&RRA



6: Built and Natural Environment

Outstanding stewardship of the natural and built environment.

Opportunity

In 2025, Tacoma’s residents and community leaders are committed to a specific and funded program of on-going stewardship of its natural and built systems. Tacoma has a complete and high quality transportation system that is focused on the mobility needs of residents, businesses, and visitors. Residents continue to be proud of their great parks and open spaces. Tacoma’s equity, economic, and environmental sustainability program is a model for other communities, and the foundation for Tacoma’s healthy people and many vibrant neighborhoods.

Community Priorities

- 6A **Increase transportation options.** Tacomans need to be mobile, with transportation choices including transit, bicycling, and walking.
- 6B **Sustain and improve Tacoma’s natural environment.** Tacoma residents treasure their outstanding parks and stunning natural setting; these must be sustained.
- 6C **Grow and enhance the vitality of Tacoma’s neighborhoods.** Transit-oriented and infill development, as well as reuse of historic buildings and districts, provides housing, economic, and environmental benefits.
- 6D **Improve and maintain Tacoma’s streets.** Tacoma’s residents are concerned about the condition of their streets; maintenance is a top priority.

Accountability Measures

- Increase the percentage of population using **alternative modes** (bike, walk, transit) for work trips and Tacoma’s walk score
- Increase percentage of residents **visiting a park** and percentage **satisfaction** with park amenities
- **Decrease number of days exceeding the Puget Sound Clean Air Agency’s fine particle pollution target**
- **Improve stormwater quality**
- Increase number of structures designated as historical, added to **historical** districts, rehabilitated, or reused
- Increase the percentage of **streets** in good or excellent condition

Equity

In 2025, Tacoma’s neighborhoods with the most need will have natural and built environments that are sustainable and healthy for all.

Partnerships

Key Partners

Metro Parks
 Pierce Transit
 Tacoma Housing Authority
 Chamber
 Citizen Committees Boards and Commissions

Focus Area Connections

The objectives for **Natural and Built Environment** have strong linkages with related objectives for **Health and Safety** and **Economic Vibrancy and Employment**.

City Champions

Community & Economic Development
 Office of Environmental Policy & Sustainability
 Environmental Services
 Planning & Development Services
 Public Works

Context

The natural and built environment supports all aspects of a city's livability. Infrastructure enables mobility, housing choices, and broadband access. Preserving the environment ensures that future generations can enjoy natural resources. The physical layout of cities is the foundation upon which a community thrives. Each city must balance its infrastructure needs and its assessment of environmental quality.

Tacoma Today

Transportation infrastructure needs to be improved

- Residents emphasized the need to improve road conditions, and 'potholes' repeatedly came up in their feedback.
- Years of budget cuts have made transportation investments challenging, and over 50% of Tacoma's residential roads and 44% of arterial streets are in poor or failed condition.

Parks, open spaces, and natural systems are essential elements of livability

- Metro Parks maintains nearly 3,000 acres of parks and open space in Tacoma. Tacoma residents like their City parks: 79% rated them positively. One resident exclaimed, "Pt. Defiance is amazing," and another requested, "continued strong commitment to parks." However, another resident online emphasized, "parks should include unprogrammed open space." Residents also wanted greenery more distributed to "integrate/ complement built and natural environments," while community gardens and tree cover could help "get rid of concrete jungle."

Residents need an effective and efficient transportation mobility system

- Tacoma residents are multi-modal. Forty seven percent frequently used public transit rather than driving, higher than the benchmark average, and 62% walked or biked instead of driving. Thirty-six percent believe the City should spend more on transit services and 27% on pedestrian and bike infrastructure.
- Survey respondents approved of the overall ease of travel, with 67% rating it positively. Satisfaction with all travel modes was in line with national averages, but travel by public transit and travel by bicycle had the fewest positive ratings, 42% and 45% respectively.

Residents are passionate about sustainability and sense of place

- Residents expressed a clear desire to not just maintain the status quo, but also rather strive for environmental innovation and improvement. They called for environmental sustainability in a way that reflects Tacoma's sense of place, including buildings, neighborhoods, and built infrastructure.
- One resident expressed enthusiasm at the July 30, 2014 event: "Impressed with the sustainability stuff and looking at the STAR stuff it seems the city I most want Tacoma to be is one that continues to improve on those. Good job so far, much still to do!"

Air quality has improved over the past decade

- Overall, air quality has improved over the past decade, though wood burning in the winter still contributes to several unhealthy air days. Although 62% of residents rated Tacoma's natural environment as good or excellent overall, only 48% gave a comparable rating to air quality.

50% Residential roads are in poor condition

44% Arterial streets are in poor condition

47% Residents who frequently use transit service instead of driving

91% Residents who frequently visit Tacoma parks



#4

Natural Systems

Why it matters

- Natural systems include the plants and animals and integration of air, water and land systems that provide life and ecosystem services for Tacomans and the biotic community.
- Open spaces and urban forests improve water quality by filtering and managing stormwater and cooling urban areas. Green spaces also offer Tacomans access to nature and can positively influence mental and physical health.
- Acquiring and managing natural areas contributes to climate change resilience.
- Polluted stormwater runoff is the number one source of toxic pollution in Puget Sound.
- Trees benefit Tacoma by absorbing water, digesting carbon dioxide, providing habitat, raising property values and creating healthy neighborhoods.

Long-term goals

- Sustain and improve Tacoma's natural environment.
- Ensure that all Tacomans have access to clean air and water, can experience nature in their daily lives and benefit from low-impact development.
- Foster appreciation and stewardship of wildlife and natural resources.
- Restore damaged shorelines and marine ecosystems and protect salmon habitat along the many rivers and streams that flow into Commencement Bay.

TARGETS

By 2020, Tacoma will

Maintain the amount of solids removed from streets, pipes, and filtration systems through stormwater best management practices.



Increase acres of actively managed open space ecosystem habitat by 52%.



Increase blocks of new permeable residential streets.



Increase tree canopies, focusing on low income neighborhoods and communities of color most susceptible to heat island effect.



Increase volunteers engaged in stewardship activities and programs by 20%.



Did you know ...

A “hands-off” lawn isn’t always best. When lawns become compacted, water fails to infiltrate into the soil. Rather, the water can run off into the streets where it can pick up pollutants before emptying into the Puget Sound through storm drains. Keep your grass brown in summer and avoid chemical fertilizers, but make sure the soil is healthy.

SERVING OUR COMMUNITY - Actions

| Action | Lead | Co-benefits |
|---|---|-------------|
| N1 Reduce stormwater quantity and/or increase quality in each of the city's watersheds by developing Management Plans that use best practices appropriate to each watershed's natural and built conditions. | Surface Water | |
| N2 Implement code that discourages development on lands where such development would endanger life, property or infrastructure, or where important ecological functions or environmental quality would be adversely affected. | Planning and Development Services | |
| N3 Develop Urban Forestry Implementation Strategy that identifies and prioritizes strategic and equitable planting locations, incentives, public engagement and education, retention strategies and maintenance. Create adequate and stable funding for Strategy implementation. | Sustainability Office, Public Works, Planning, Development Services and Surface Water | |
| N4 Plan, create incentives for, and support green stormwater retrofit projects such as rain gardens and other low-impact designs. | Surface Water | |
| N5 Develop and manage an open space program based on watershed planning that seeks to own most valuable properties and effectively manages and restores habitat, using volunteers as appropriate. | Surface Water | |
| N6 Improve regulations to encourage tree preservation and protection on private property and in the City right-of-way. | Sustainability Office, Planning and Development Services | |
| N7 Create a public education campaign, targeted outreach effort or incentives to inform residents and/or plant sellers about the benefits of native and pollinator-friendly species and the hazards of invasive species. | Sustainability Office | |

Greenhouse Gas Reduction
 Health
 Local Environment
 Local Economy
 Equity
 Affordability
 Public Support

CITY LEADING BY EXAMPLE - Actions

| Action | Lead | Co-benefits |
|--|--------------------------------------|-------------|
| N8 Adopt and implement Landscaping Manual and Integrated Pest Management Policy and Plan for all city facilities and train staff. | Sustainability Office, Surface Water | |
| N9 Retrofit one city facility with Green Stormwater Infrastructure. | Public Works, Surface Water | |

Greenhouse Gas Reduction
 Health
 Local Environment
 Local Economy
 Equity
 Affordability
 Public Support

Individual choices matter



Call Tacoma's Water Pollution Hotline (253-383-2429) if you see a spill, dirty construction site runoff, suds in the street, leaking dumpsters, or anything besides rainwater going down the drain. Powered by Citizens for a Healthy Bay.



From October to March, pick up a tree coupon for greening up your planting strip or yard.



Mark the storm drains on your business property, helping educate customers that storm drains divert untreated water. These waters — and the pollutants they carry — head into the Puget Sound where they can adversely affect aquatic organisms.

#5

Green City Partnerships

Healthy forested parks and green spaces have the power to strengthen neighborhoods, provide safe access to nature and offer numerous benefits and “green services” to our cities. Without the coordinated regional effort of the Green City Partnerships to restore and care for our urban parks, we are at risk of losing the many benefits these forests and natural areas provide.



RSVP TO GREEN CITIES' DAYS OCTOBER 8 – NOVEMBER 7

The Green City Partnerships

Learn more about each partnership and get involved.

Burien

Des Moines

Everett

Kent

Kirkland

Issaquah

Puyallup

Redmond

Seattle

Seatac

Shoreline

Snohomish County

Snoqualmie

Tacoma

Tukwila

Become the next Green City

Green Cities continues to grow, helping more urban communities in the Puget Sound region effectively steward their natural open spaces. Using best practices developed over the past thirteen years, we work with cities to develop a partnership that meets each city's needs and capacity.

Be the next Green City

Tree Ambassador Program

Forterra works hand in hand with the city's Trees for Seattle initiative to get residents engaged in the urban forests with the Tree Ambassador program. Volunteer Tree Ambassadors are trained to motivate and educate their communities by leading Tree Walks and heading up landscape renewal projects including weeding, mulching and activating neighborhood green spaces.

Get involved with Tree Ambassadors



These unique public/private partnerships bring together the City, Forterra, thousands of community volunteers, other nonprofits and businesses to create a sustainable network of healthy forested parks and natural areas throughout the region.

A growing problem

Many of our region's parks and natural areas are heavily infested with English ivy, Himalayan blackberry and other invasive plants. Additionally, many of the trees in our urban parks are at the end of their lifespan. As these trees die, invasive plants are preventing the next generation of trees from growing, leaving us at risk of losing the many benefits our forests provide in just 20 years!

A community-based solution

Restoring our urban parks requires a partnership and coordinated effort. Green City Partnerships are harnessing the power of our communities and creating a culture of volunteerism and stewardship to save our local forested parks and natural areas. The Green City Partnerships combined log over 115,000 volunteer hours at more than 1000 stewardship events each year.

A regional model

The Green Cities Program began in 2004, when the City of Seattle and Forterra came together to restore and maintain 2,500 acres of Seattle's forested parkland in 20 years. The City of Seattle and Forterra worked together to craft a 20-Year Strategic Plan, and we have been implementing that plan ever since. Building off of the success of the Green Seattle Partnership, Forterra has replicated and modified this model to build similar community-based stewardship programs to restore and care for forested parks and natural areas in cities across the region.

RELATED PERSPECTIVES AND NEWS

at the forefront of the knowledge, tools, and techniques necessary for the stewarding of our lands and communities. Forterra's Green Cities Program partners with researchers, land managers and municipalities to conduct environmental stewardship research throughout the Pacific Northwest.

[Learn about our research](#)

Green Cities toolbox

We are nothing if not thorough. With several cities and many years invested, we've accumulated quite a library of information related to urban forestry and natural area management.

[Open the toolbox](#)

Green Cities blog

Read about urban natural area restoration in the Puget Sound and beyond at the [Green Cities blog](#).

How it all began...

The Green Cities Program began in 2004, when someone at Forterra and someone at the City of Seattle recognized we'd drive some serious change and community good will if together we committed to restore and maintain Seattle's 2,500 acres of forested parkland over the next 20 years. The idea took off, starting with the development of a 20-Year Strategic Plan designed to get the job done. The Green Seattle Partnership has been so successful that Forterra partnered with several more cities in the Puget Sound region, expanding the Green Cities Network to include Kirkland, Tacoma, Redmond, Kent, Everett, Puyallup, Snoqualmie, Tukwila, Burien, Seatac, and Des Moines. And we hope it keeps growing. Along the way, we've been lucky to work with many local non-profits, community groups, city agencies, neighborhood leaders and local businesses, all working to support healthy urban natural areas for the future of our region.

Building partnerships

Forterra works in partnership with local municipalities to develop achievable goals, shared visions, long-term plans and community-based stewardship programs to care for the valuable forests and natural areas in our urban environments. The Green City Partnerships share three core goals:

- Improve the quality of life, connections to nature, and enhance forest benefits in cities by restoring our forested parks and natural areas



GRANT APPROVAL FORM

Please refer to grant guidelines and instructions on page 2 and 3 of this document before completing this form.

PRIOR TO GRANT APPLICATION: COMPLETE THIS SECTION AND SUBMIT TO CITY MANAGER'S OFFICE AND BUDGET OFFICE.

FORMAL TITLE OF GRANT: CONSERVATION FUTURES MARINE VIEW PROPERTY PURCHASE
GRANT ID NUMBER: _____ **FEDERAL CFDA (IF APPLICABLE):** _____

AGENCY APPLYING TO: Pierce County Conservation Futures **PROGRAM BEGIN DATE:** 1/1/2022
APPLICATION DUE DATE: 3/15/21 **PROGRAM END DATE:** 12/31/2023

PROJECT SUMMARY (BRIEF DESCRIPTION): PURCHASE OF ONE, 15 ACRE PARCEL ADJACENT TO TWO OPEN SPACE PARCELS. THIS FORESTED PARCEL, WITH MATURE NATIVE CONIFERS AND A SIGNIFICANT STAND OF MADRONE, HAS A STREAM, AND WHAT APPEAR TO BE RIPARIAN WETLANDS. THE PARCEL WOULD CONNECT 8 ACRE AND 5 ACRE OPEN SPACE PARCELS THAT ARE CURRENTLY NOT CONTINUOUS.

RESTRICTIONS/CONDITIONS OF FUNDING: 10% match by COT, public access and it must fulfill one, and up to three, of the following categories: 1- resource conservation wooded area with at least 50% native tree canopy and native understory; 2-be considered a biodiversity corridor by the USFW; and 3- have a lake, stream, river or wetland. We fulfill all three categories making us competitive for a grant.

PARTNERS ON THIS GRANT (PIERCE COUNTY, STATE, FEDERAL, NON PROFIT, ETC): _____

GRANT AMOUNT APPLYING FOR \$ 359,300.00 **CITY MATCH \$** 35,930 **IS THE CITY MATCH EARMARKED IN THE CURRENT BUDGET?**
FEDERAL \$ _____ YES NO
STATE \$ _____ **WOULD THE CITY MATCH NEED TO BE INCLUDED IN FUTURE BUDGETS?**
OTHER \$ _____ YES NO
GRANT TYPE: CAPITAL OPERATING

LEAD DEPARTMENT: ES **PROGRAM MANAGER NAME:** Desiree Radice **PHONE NUMBER:** 820-0554

FINANCE: **FUND ACCOUNTANT NAME:** Louis Nguyen **PHONE NUMBER:** 502-8150

BUDGET OFFICE: **BUDGET ANALYST NAME:** Nick Anderson **PHONE NUMBER:** 591-5847

Michael P. Stenin III, P.E. 03/10/2021 Todd Wille, Assistant City Manager 03/10/2021
DIRECTOR OR DIVISION MANAGER **DATE** **CITY MANAGER** **DATE**

AWARD DETERMINATION: COMPLETE AND SUBMIT THIS SECTION TO BUDGET OFFICE.

GRANT STATUS: DENIED AWARDED **DATE OF AWARD:** _____
AWARD AMOUNT: \$ _____ **MATCH AMOUNT: \$** _____

GRANT END DATE: _____ **DEADLINE FOR RE-IMBURSABLES :** _____
IS THIS GRANT RENEWABLE? YES NO **MULTI YEAR?**

- PLEASE ANSWER ALL QUESTIONS: (PLEASE REFER TO THE PAGE THREE OF THIS DOCUMENT TO DETERMINE RESOLUTION/ORDINANCE NECESSITY)
- HAVE APPROPRIATIONS, INCLUDING MATCHES, FOR THIS GRANT BEEN INCLUDED IN THE CURRENT BIENNIAL BUDGET? YES NO
 - DOES THE RECEIVING DEPARTMENT NEED AN IMMEDIATE APPROPRIATION? YES NO
 - WILL THE CITY BE MATCHING FUNDS OR SERVICES IN EXCESS OF \$200,000? YES NO
 - DOES THE GRANT REQUIRE SEPARATE COUNCIL ACTION BY GRANTOR? YES NO
 - IF THERE ARE PROJECT FTE'S, HOW MANY ARE ANTICIPATED?



City Guidelines for Grant Financial Management

Please read these guidelines completely before proceeding.

This grant approval form must be filled out whenever an employee is applying for a grant on behalf of the City of Tacoma, or partnering with another agency for a grant request. Grants have important regulations that must be followed especially when we are receiving Federal and/or State funding.

All grant applications must have a completed Grant Approval Form with appropriate signatures.

Instruction for Completing Grant Approval Form

Prior to Grant submission:

1. Complete Section A of the Grant Approval Form and obtain appropriate signatures from your Department Director or Division Manager. Meet with your Fund Accountant and Budget Analyst to discuss the budgeting and financial planning details.
2. Forward a hard copy of this form to the City Manager's Office.
3. City Manager's Office will route approved document back to the Department with a copy to Katie Johnston, Budget Office.
4. Grant will be entered in the Grant Database.

After Grant determination:

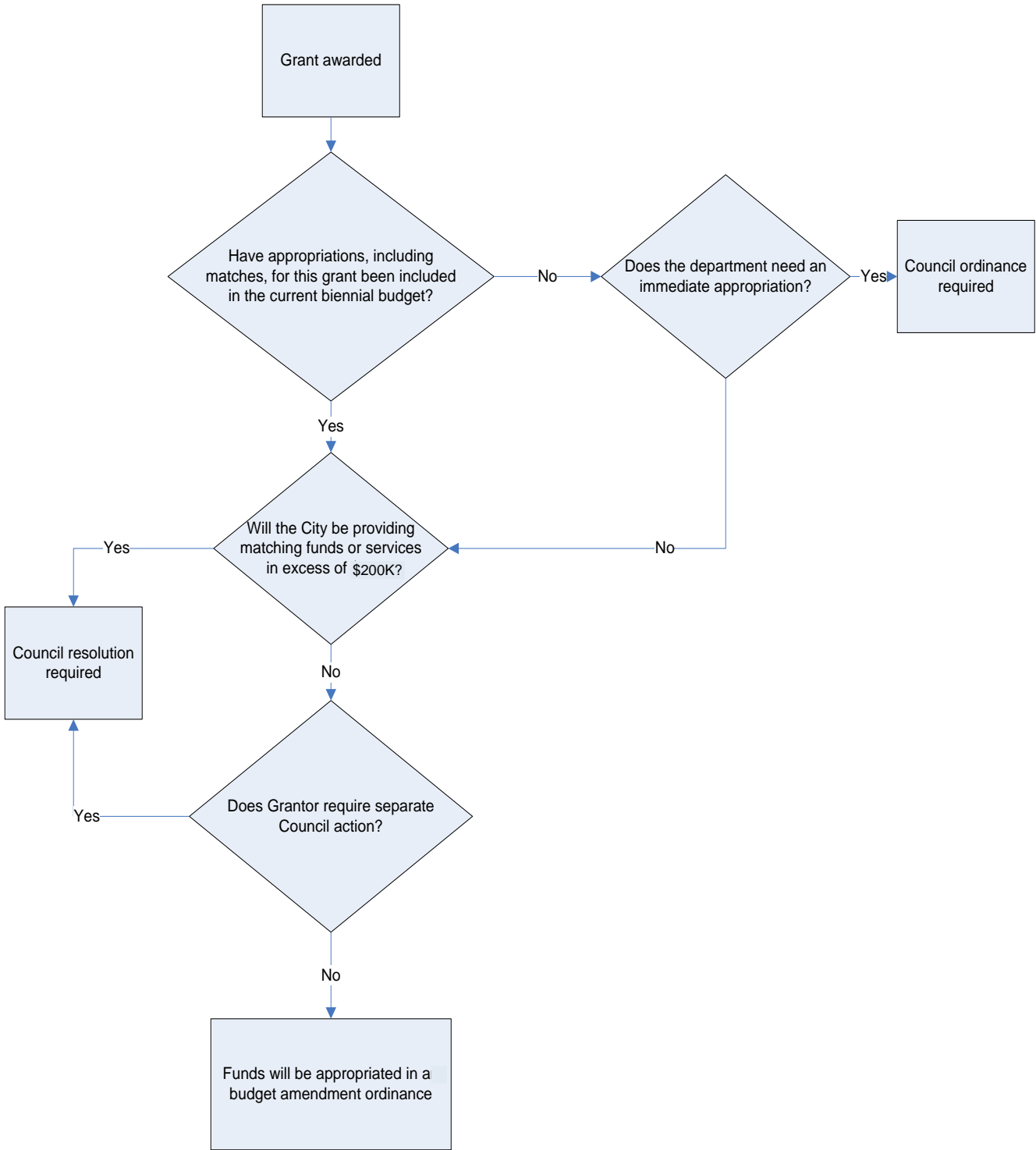
1. Upon receiving Grant award notification or if grant was not successful, complete Section B of this form and forward an electronic copy to Katie Johnston (Budget Office) at kathryn.johnston@cityoftacoma.org and to your Fund accountant.
2. Determine the need to prepare a Resolution or Ordinance request by reviewing the Grant Ordinance/ Resolution Determination flowchart on page three of this document.
3. Budget staff will then update the Grant Database for tracking.

Important: Resolution and/or Ordinance Requirements

When a grant is awarded, you must determine the need to prepare a Resolution or Ordinance. Review the Grant Ordinance / Resolution Determination flowchart on page three on this document.

If you have problems with this form, please contact Katie Johnston at Kathryn.johnston@cityoftacoma.org.

Grant Ordinance/Resolution Determination Flowchart



WHEN RECORDED RETURN TO:
Pierce County Parks & Recreation Services
ATTN: Conservation Futures Coordinator
9850 64th St W
University Place, WA 98467

WASHINGTON STATE COUNTY AUDITOR'S/RECORDERS INDEXING FORM

Document Title: Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant

Grantor: City of Tacoma, a municipal corporation and political subdivision of the state of Washington

Grantee: Pierce County, a municipal corporation and political subdivision of the state of Washington

Abbreviated Legal: Section 22 Township 21 Range 03 Quarter 24 : PARCEL "A" W 10 AC OF N 20 AC OF GOVT LOT 2 EXC S 208.71 FT OF W 208.71 FT THEREOF PARCEL "B" THAT POR GOVT LOT 1 LY NLY & NWLY OF FOLL DESC LI COM NE COR L 1 TH S 200 FT TO POB OF SD DESC LI TH WLY 341 FT M/L TH S 56 DEG 14 MIN 01.9 SEC W 150 FT TO NELY LI MARINE VIEW DR & TERMINUS OF SD LI OUT OF 2-041 SEG U-0705 DL ES (DCDLES3-18-85) ETN 4615038 & 4615039 PROBLEM WITH LEGAL WORKED ON INTENT 11/28/2022MC

Tax Parcel Number(s): 0321222052

**PIERCE COUNTY CONSERVATION FUTURES
STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS**

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into as of the Effective Date (defined in Section 27 below) by and between CITY OF TACOMA, a municipal corporation operating as a first class city under the laws of the state of Washington, by and through its municipal stormwater utility managed and operated by the City of Tacoma Environmental Services Department ("Grantor") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Grantee"). Grantor and Grantee may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

RECITALS

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

WHEREAS the Protected Property includes Pierce County Tax Parcel No. 0321222052, containing approximately 15.5 acres, which is contiguous to 13.1 acres of City of Tacoma-owned open space. The property was previously owned by YEPENG TIAN AND JIASHENG CAO; and

WHEREAS Grantor acquired title to the Protected Property in part with funds from Pierce County's Conservation Futures Fund in exchange for its promise to hold title thereto in perpetuity as open space land for and on behalf of the general public in accordance with the terms of this Declaration; and

WHEREAS the Protected Property contains significant elements, features, attributes and amenities of great importance to the Grantor and its municipal stormwater utility and to Grantor, Pierce County, the people of Pierce County and the state of Washington, described in and designated for protection under chapter 84.34 of the Revised Code of Washington ("RCW") and chapters 2.96 and 2.97 of the Pierce County Code ("PCC") including, without limitation: (a) wooded areas (b) fish and wildlife habitat areas; (c) streams, rivers, and associated wetlands; and (d) open space passive recreation area (collectively "Conservation Values"); and

WHEREAS the Parties desire to establish in this Declaration the terms, covenants, and conditions under which Grantor shall use and manage the Protected Property and to impose upon the Protected Property such restrictive covenants as are necessary to protect, preserve, maintain, improve, restore, limit the future development and use of and otherwise conserve, in perpetuity, the Protected Property and its Conservation Values.

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, Grantor 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.

2. **Restrictive Covenants; Purpose.**

2.1 **Restrictive Covenants.** Grantor hereby declares that the terms, covenants and conditions of this Declaration shall, pursuant to Chapter 84.34 RCW and Chapter 2.97 PCC: (a) constitute restrictive covenants and/or equitable servitudes running with the Protected Property in perpetuity in fulfillment of the legal and contractual obligations of Grantor with respect thereto; and (b) forever bind Grantor and its successor-in-interest.

2.2 **Purpose.** The intention and purpose of the Parties (collectively "the Purpose") in executing, delivering and performing this Declaration is: (a) to ensure the Protected Property is held by Grantor and its successors-in-interest in perpetuity as open space land so as to protect, preserve, maintain, conserve, enhance and improve its Conservation Values; and (b) to prevent any use of the Protected Property that will damage or destroy its Conservation Values or prevent their maintenance, restoration or enhancement.

3. **Interpretation of Declaration.**

3.1 The Parties intend that this Declaration be interpreted in a manner consistent with its purpose

3.2 If any language of this Declaration is deemed unclear or causes inconsistency within its own terms, it shall be interpreted to achieve and protect Conservation Values, achieve consistency with Site Management Plan, and advance the stated intent and purpose stated herein. The Parties intend that this Declaration be interpreted to confine the Grantor's use of the Protected Property to such activities that are consistent with the Purpose and terms of this Declaration. At the same time, the Parties intend, and this Declaration is structured, to give the Grantor flexibility and discretion to undertake activities that are consistent with the Purpose and terms of this Declaration.

4. **Stewardship.** Grantor agrees for itself and its successors-in-interest to use and manage the Protected Property in perpetuity in accordance with the Purpose, this Declaration, and all Applicable Laws.

5. **Obligations to Protect and Provide Public Access - Permitted Uses.**

5.1 **Obligation to Protect.** Grantor shall use the Protected Property in accordance with: (a) all applicable federal, state, county and local laws, rules, regulations and standards (collectively "Applicable Laws"); (b) the Property Management Plan (as defined in and consistent with Section 8 below); and (c) this Declaration; so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Values thereof.

5.2 Obligation to Provide Public Access. Grantor shall have 90 days from Closing the acquisition of the Protected Property to ensure that the Protected Property is opened to public access. Grantor shall identify and submit to Pierce County a map depicting the location of at least one public access opportunity which shall serve as interim access until long-term public access opportunities are developed by Grantor and set forth in the Property Management Plan to be completed by Grantor as set forth in Section 9. Grantor shall permit the public to have regular access to the Protected Property consistent with the requirements of Pierce County Code (“PCC”) 2.96, 2.97, and 4.48.020(L)(2), this Declaration and the Property Management Plan. In the event that the Grantor anticipates submitting a Property Management Plan that will involve limitations on regular public access to protect sensitive natural areas, Grantor shall identify and explain in writing any potential conflicts between providing public access to the Protected Property and restoration activities and other Conservation Futures priorities for the Protected Property and submit Grantor’s request for Pierce County’s approval of limitations on public access within 120 days of the Effective Date of this Declaration. At a minimum, public access to the Protected Property shall include, but not be limited to, passive recreational activities such as: (a) hiking; (b) wildlife viewing; and (c) nature study. Grantor’s obligation to permit public access to the Protected Property does not include an affirmative duty to develop parking for vehicles and/or bicycles, restroom facilities, or any other facilities or infrastructure.

5.3 Acknowledgements, Written Materials, and Signs. Grantor may, at its sole cost and expense, elect to create written materials and/or erect signs describing the Protected Property or any past, present, or future Conservation Futures projects related thereto. If Grantor makes such an election, all written materials and signs shall comply with the Purpose, this Declaration, and all Applicable Laws and shall include an express acknowledgment of the role played by the Pierce County Conservation Futures program in acquiring the Protected Property. The Grantor shall coordinate with Pierce County regarding language to describe the County’s Conservation Futures Program to be included in such express acknowledgments. In addition, all signs placed upon the Protected Property shall be: (a) prominently placed upon Protected Property in full view of the public; and (b) designed to harmonize with the aesthetic features of the Protected Property.

6. Obligation to Remove Structures.

The Appraisal of the Protected Property by Darin A. Shedd, MAI, in a report dated August 3, 2022, indicates no existing improvements exist.

7. Prohibited Uses and Restrictions on Permitted Uses. Any use of, or activity on, the Protected Property inconsistent with the Purpose or other terms of this Declaration is prohibited, and the Grantor acknowledges and agrees that it will not conduct, engage, or permit any such use or activity, on the Protected Property. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are either (a) inconsistent with the Purpose of this Declaration and prohibited or (b) limited as provided herein to make such uses or activities consistent with the Purpose of this Declaration.

7.1 **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose, this Declaration, or any Applicable Law is prohibited, and Grantor acknowledges and agrees it will not knowingly conduct, engage in, or permit any such use or activity.

7.2 **No Conversion to Incompatible Uses.** Grantor shall not convert the Protected Property to any residential, commercial, or industrial development or use or any other use incompatible with the Purpose, this Declaration, or any Applicable Laws.

7.3 **Subdivision.** Any legal or de facto division, subdivision, or partitioning of the Protected Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act, is prohibited.

7.4 **Limitations on Alteration of Land.** Grantor shall not nor authorize others to alter the surface or subsurface of the land, including, without limitation, grading, trenching, excavating, or removing loam, soil, sand, gravel, rock, stone, aggregate, peat, or sod. This provision is not intended to prohibit lawful and routine agricultural practices (e.g., tilling, soil amendments, laser leveling) and other uses that are associated with site management activities that do not impair the Conservation Values of the Protected Property and are allowed in the Property Management Plan.

7.5 **Aquatic Products.** Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products.

7.6 **Limitations on Mining.** Grantor shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance.

7.7 **Water Bodies or Courses.** Manipulating, impounding, or altering any natural watercourse, body of water, or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, is prohibited.

7.8 **No Significant Erosion or Pollution.** Grantor shall not knowingly engage in any use or activity that causes or is likely to cause significant soil degradation, erosion, contamination, or pollution of any soils or surface or subsurface waters on the Protected Property.

7.8 **Forest Health and Timber Management.** Grantor may not conduct, engage in, or permit commercial forest management on the Protected Property. Forest management, if any, on the Protected Property shall meet the Pierce County Forest Practices requirements set forth in Title 18H PCC and be identified in the Property Management Plan.

7.10 **Mineral Rights, Air Rights.** The following are prohibited: Transferring, encumbering, selling, leasing, or otherwise separating the mineral, oil, gas, and air for the Protected Property.

7.11 **No Agricultural Use; No Horses or Livestock.** Agricultural use of the Protected Property is prohibited. Horses and livestock are prohibited.

7.12 **No Active Recreational Use.** Active recreational use of the Protected Property is prohibited.

7.13 **Limitations on Waste Disposal.** Grantor shall not accumulate and store ashes, garbage, or other waste on the Protected Property. Nor shall Grantor knowingly dispose of or Release (or knowingly permit the disposal or release of) any Hazardous Substance on the Protected Property. The term “Release” shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term “Hazardous Substance” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated 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. The term “Hazardous Substances” shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with all Applicable Laws. No storage of Hazardous Substances shall be allowed on the Protected Property.

7.14 **Development Rights.** Exercising development rights within the Protected Property, except for those specifically reserved for use within Development Envelopes, is prohibited. Grantor hereby relinquishes all other development rights, and the Parties agree that such rights may not be used on or transferred off the Protected Property as it now or hereafter may be bounded or described.

7.15 **No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the Protected Property. Compensatory Mitigation includes but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement, and/or preservation of such natural resources within the Protected Property.

8. **Transfers by Grantor.**

8.1 **Definition.** “Transfer” includes, but is not limited to: (a) any sale, grant, lease, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; (b) any transaction the purpose of which is to effect a sale, grant, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; or (c) any legal proceeding the purpose of which is to effect a taking of the Protected Property, or any portion thereof or interest therein. For purposes of this Declaration, the term “Grantor” includes any future property owner(s).

8.2 **Limitations on Transfers.** Grantor shall not effect a Transfer except to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion.

8.3 **Notice; Binding Effect.** Grantor shall give Grantee written notice as provided in Section 12 of any Transfer. Such notice shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. In addition, any deed or other legal instrument effecting a Transfer shall: (a) expressly provide that the new owner of the Protected Property shall be subject to and strictly bound by all of the terms, covenants and conditions of this Declaration; and (b) incorporate therein the terms, covenants and conditions of this Declaration by express reference. The failure of Grantor to perform any act required by this Section 8.3 shall not impair the validity of this Declaration or limit its enforceability in any way.

9. **Property Management Plan.**

9.1 The Property Management Plan is designated to ensure the Protected Property is managed, monitored, and maintained in perpetuity for the benefit of the Conservation Values and describe in detail (a) how Grantor will maintain or steward the Protected Property over time; and (b) how Grantor will implement and monitor activities associated with the Conservation Futures Priorities described in Grantor's application for Conservation Futures Funding.

9.2 The Grantor shall, within ONE (1) year from the Effective Date, prepare and deliver to Grantee a comprehensive written plan consistent with the requirements of terms of this Declaration, Pierce County Code ("PCC") 2.96, 2.97, and 4.48.020 (L)(2), and all Applicable Laws. The Property Management Plan shall address, without limitations, the following:

9.2.1 Define the long-term management objectives for the Protected Property (desired future conditions), including removal of invasive species, site restoration activities, passive trails, and educational opportunities.

9.2.2 Activities related to meeting the management objectives, including the development of a forest management plan that manages the forest for wildlife, noxious and invasive species, species diversity, and forest health.

9.2.3 Program for quarterly site monitoring and maintenance and regular trash removal of the Protected Property in perpetuity in accordance with the standards and practices of the Land Trust Alliance;

9.2.4 Plan for passive public access opportunities on the Protected Property, including measures to: a) construct trails that are designed and sited in a manner that avoids or minimizes impacts to critical areas and their buffer or minimizes impacts; b) install pet waste cleanup signage, educational signage in habitat areas (i.e., water quality and habitat benefits of wetlands);

9.2.5 Maps including: (a) a U.S. Geological Survey quadrant map, recent aerial photo, and county assessor's parcel map; (b) a map showing all human-made and natural features; and (c) the location of public access and use areas.

9.2.6 Implementation timeline and budget that identifies the funding source for the Plan elements.

10. **Maintenance; Reporting.**

10.1 **Maintenance.** Grantor shall, at its sole cost and expense, keep and maintain the Protected Property, together with any improvements or alterations in, on, under or about the Protected Property, in a good and sound state of repair and in a neat, clean, safe and sanitary condition in accordance with the Purpose, all Applicable Laws and this Declaration.

10.2 **Reporting.** Grantor shall, at least once every THREE (3) years from the Effective Date, issue to Pierce County a comprehensive written report documenting the then physical condition of the Protected Property, any improvements or alterations to the Protected Property, and compliance with Section 4.1 above.

11. **Pierce County's Rights.** To accomplish the Purpose, Pierce County shall have the following rights under this Declaration:

11.1 **Protection.** Pierce County shall have the right to identify, protect, preserve, maintain, improve, restore, and conserve, in perpetuity, the Conservation Values of the Protected Property.

11.2 **Access.** As provided for and limited herein, Grantor hereby grants to Grantee non-exclusive access at reasonable times on the Protected Property solely for the purposes of fulfilling and exercising its affirmative rights and obligations under this Declaration, including but not limited to (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property; (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with the Purpose; and (c) to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods. Enter upon, inspect, observe, and study the Protected Property, with such persons as Pierce County may require. Pierce County will use reasonable efforts to provide a minimum of 48 hours advance notice of entry but may enter without notice upon a reasonable belief that a violation of the Protected Property is occurring. For each such entry, Grantor shall have the right to designate an individual to accompany Pierce County during its inspections, observations, and studies.

11.3 **Injunction and Restoration.** Pierce County shall have the right to prevent, or cause Grantor to prevent any use of, or activity on, the Protected Property that is inconsistent with the Purpose, this Declaration, or any Applicable Laws, and shall have the right to cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof.

11.4 **No Material Interference.** Pierce County shall exercise its rights in compliance with all Applicable Laws and in a manner that will not materially disturb or interfere with Grantor's rights hereunder or its quiet enjoyment of the Protected Property.

11.6 **Assignment or Conveyance.** Pierce County shall have the right in its sole and absolute judgment and discretion to assign, convey or otherwise transfer its right, title and interest in and to the Protected Property under this Declaration to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior consent of Grantor. In the event of any such assignment, conveyance, or transfer, Grantor shall have absolutely no further liability with respect to the Protected Property or to Grantor under this Declaration except as to matters of liability that have accrued and remain unsatisfied. Pierce County's successor-in-interest shall have all rights of Pierce County hereunder.

12. Notice and Consent – In General

12.1 Notice.

12.1.1 **Grantor.** Certain provisions of this Declaration require notice to Grantee prior to undertaking certain activities. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Declaration, such notice shall be in writing not less than thirty (30) days prior to the date any use or activity is intended to be taken. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the terms of this Declaration and the Purpose thereof.

12.1.2 **Grantee.** Certain provisions of this Declaration require the Grantee to give notice to the Grantor prior to undertaking certain activities. The purpose of requiring Grantee to notify Grantor prior to undertaking these permitted uses and activities is to afford Grantor an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Declaration. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Declaration, Grantee shall provide such notice in writing not less than ninety (90) days prior to the date Grantee intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantor to make an informed judgment as to its consistency with the terms of this Declaration and the Purpose thereof.

12.1.3 **Coordination.** Whenever notice is issued under this Declaration, such notice will be provided to all parties herein.

12.2 Consent.

12.2.1 **Consent Not Unreasonably Withheld.** Wherever in this Declaration a Party's consent is required, such consent may be withheld only upon a reasonable

determination by the consenting party that the action as proposed would be inconsistent with the Purpose or terms of this Declaration or the Management Plan.

12.2.2 **Timeline for Consent.** Whenever in this Declaration Grantee or Grantor consent is required, and no other timeline for consent is set forth elsewhere in this Declaration, the Grantee shall grant or withhold consent in writing within the thirty (30) days, and the Grantor shall, to the extent practicable in view of applicable government administration process, grant or withhold their respective consent in writing within ninety (90) days.

12.3 **Address for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other shall be in writing either served personally or sent by registered mail or overnight courier with proof of delivery, addressed as follows (or to such other address as any party from time to time shall designate by written notices to each other party):

| | |
|----------|---|
| Grantee: | Pierce County Parks and Recreation Department 9850 64 th St W University Place, WA 98467 Phone: 253-798-4252 |
| Grantor: | City of Tacoma, Public Works Department Real Property Service 747 Market Street, Rm 737 Tacoma, WA 98402 |

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 Declaration.

13. Dispute Resolution.

13.1 **Preventive Discussions.** Except in circumstances contemplated in Section 11, Grantor and Pierce County shall endeavor to resolve any dispute regarding the interpretation of the terms of this Declaration first through a discussion between the Representatives of the Parties identified in this Section 10, then escalated to each Party's respective Executive if the dispute has not been resolved within ten (10) business days. Grantor and Pierce County shall promptly give the other Party notice of problems or concerns arising in connection with the others' actions under this Declaration or the use of or activities or conditions on the Protected Property, and shall meet as needed, but no later than THIRTY (30) calendar days after receipt of a written request for a meeting.

13.2 **Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose, this Declaration or any Applicable Laws, and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the

dispute, Grantor and Pierce County shall refer the dispute to mediation by request made in writing upon the other. Within TEN (10) business days of the receipt of such a request, the Parties shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

13.2.1 Purpose. The purpose of the mediation is to: (a) promote discussion among the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, covenants or conditions of this Declaration.

13.2.2 Participation. The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.

13.2.3 Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective legal counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be construed as an admission of a party. Provided, however, this provision relating to confidentiality shall not be construed to constrain Pierce County's compliance with the Washington State Public Records Act nor to create any obligation for Pierce County to ensure the nondisclosure of records that may be required to be disclosed pursuant to the Washington State Public Records Act.

13.2.4 Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of SIXTY (60) calendar days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

13.2.5 Costs. The costs of mediation services shall be borne equally by the Parties. The Parties shall bear their own expenses, including attorney's fees, individually.

13.3 Arbitration. The Parties may, but are not required to, submit disputed matters to binding arbitration. In the event that one Party wishes to request that a disputed matter be submitted to binding arbitration, such Party shall provide notice in writing of its request and propose the rules for arbitration to be applied. Arbitration may occur only upon mutual agreement of the Parties regarding the arbitrator, deadline for arbitration, and applicable rules for arbitration.

14. Pierce County's Remedies.

14.1 Notice of Non-Compliance. If Pierce County determines Grantor is in violation of the terms of this Declaration or that a violation is likely to occur, Pierce County 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 Protected Property resulting from any use

or activity inconsistent with this Declaration, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan to which Pierce County has given consent.

14.2 Grantors' Failure to Respond. Pierce County may bring an action as provided in Section 14.3 below if Grantor: (a) fails to cure the violation within NINETY (90) calendar days after receipt of notice thereof from Pierce County; (b) under circumstances where the violation cannot reasonably be cured within the NINETY (90) calendar day period, fails to begin curing such violation within the NINETY (90) calendar day period; or (c) fails to continue diligently to cure such violation until finally cured.

14.3 Pierce County's Action. Pierce County may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, 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 Declaration or injury to any of the Conservation Values protected hereby, including damages for the loss thereof; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Pierce County, acting in its sole and absolute judgment and discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Pierce County being required to post a bond or provide other security.

14.4 Immediate Action Required. Notwithstanding any other provision of this Declaration to the contrary, if Grantee, acting in its sole and absolute judgment and discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 14 without prior notice to Grantor, without participation in dispute resolution as provided in Section 13 above, or without waiting for the period provided for cure to expire.

14.5 Nature of Remedy. Grantee's rights under this Section 14 apply equally in the event of either actual or threatened violations of the terms of this Declaration. Grantor acknowledges and agrees that Grantee's remedies at law for any violation of the terms of this Declaration are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 14, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 14 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

14.6 Damages. Inasmuch as the actual damages to the Conservation Values that could result from a breach of this Declaration by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages to which Pierce County is entitled shall be the higher of: (a) the amount of economic gain realized by Grantor from violating the terms of this Declaration; or (b) the cost of restoring any Conservation Values that have been damaged by such violation. If Pierce County chooses the second of these two measures, Grantor agrees to allow Grantee and its agents or contractors to enter upon the Protected Property and conduct restoration activities.

14.7 **Enforcement Discretion.** Enforcement of the terms of this Declaration shall be at the discretion of Pierce County, and any forbearance by Pierce County to exercise its rights under this Declaration in the event of any breach of any of the terms, covenants, or conditions hereof by Grantor shall not be deemed or construed to be a waiver by Grantee of such term, covenant, or condition or of any of Grantee's rights hereunder. No delay or omission in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

14.8 **Acts Beyond Grantors Control.** Nothing contained in this Declaration shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property resulting from beyond the Grantors control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

15. **Fees and Charges.** If Grantor elects to charge user or other types of fees in connection with the public use of the Protected Property, 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.

16. **Indemnification.** Grantor, for itself, its successors and assigns, shall defend, indemnify and forever 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 Protected Property or to the subject matter of this Declaration except to the extent arising from acts or failure to act by Pierce County, its agents, employees, volunteers or assigns.

17. **Representations and Warranties.**

17.1 **By Grantor.** Grantor represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

17.1.1 **Authority.** Grantor has full power and authority to execute and deliver this Declaration and the individual(s) who execute and deliver this Declaration are duly authorized to do so;

17.1.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Grantor before any court or administrative agency which might result in Grantor being unable to perform its obligations under this Declaration; and

17.1.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 17.1 Grantor makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this

Declaration or the form of this Declaration or its conformance to the requirements of Chapter 64.04 RCW .

17.2 **By Pierce County.** Pierce County represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

17.2.1 **Authority.** Pierce County has full power and authority to execute and perform this Declaration, and the individuals who execute and deliver this Declaration are duly authorized to do so;

17.2.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Pierce County before any court or administrative agency which might result in Pierce County being unable to perform its obligations under his Declaration;

17.2.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 17.2, Pierce County makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

18. **Attorney Fees; Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Declaration 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 Declaration shall be in the Superior Court of Pierce County, Washington.

19. **Negotiation.** This Declaration 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.

20. **Construction and Interpretation.** This Declaration shall be construed and interpreted in accordance with the laws of the state of Washington so as to restrict use of the Protected Property to such activities that are consistent with the Purpose, the terms of this Declaration and all Applicable Laws.

21. **Time.** Time is of the essence of this Declaration and of every term and provision hereof.

22. **Entire Agreement.** Following the Closing contemplated by that certain Pierce County Conservation Futures Agreement to Fund, this Declaration constitutes the entire agreement of the Parties with respect to the subject matter of this Declaration and supersedes all written or oral agreement or understandings, if any. This Declaration may be modified only in writing signed by both Parties.

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

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

25. **Binding Effect.** The terms, covenants, conditions and restrictions of this Declaration shall be binding upon and shall inure to the benefit of Grantor and Pierce County and their respective successors-in-interest in perpetuity.

26. **Invalid Provision.** If any provision of this Declaration is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Declaration shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Declaration; and the remaining provisions of this Declaration 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 Declaration.

27. **Recording.** This Declaration shall be recorded in its entirety with the Auditor of Pierce County, Washington.

28. **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 Declaration as indicated opposite the Executive's name below.

29. **List of Exhibits.**

- 29.1 **Exhibit A** – Legal Description of Protected Property
- 29.2 **Exhibit B** – Site Map of Protected Property
- 29.3 **Exhibit C** – Title Report Permitted Exceptions

[SIGNATURES & ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

GRANTOR'S SIGNATURE PAGE

CITY OF TACOMA, a municipal corporation and political subdivision of the state of Washington:

By: _____

Name: Victoria R. Woodards

Title: Mayor

Date: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Victoria R. Woodards** known to me to be the **Mayor** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

ATTEST:

Nicole Emery
City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Nicole Emery**, known to me to be the **City Clerk** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

EXHIBIT A
Legal Description of Protected Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIERCE, STATE OF WA,
AND IS DESCRIBED

AS FOLLOWS:

THE WEST 10 ACRES OF THE NORTH 20 ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP
21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON;

ALSO THAT PART OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST,
W.M., IN PIERCE COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTHEASTERLY LINE OF
EAST SIDE DRIVE (MARINE VIEW DRIVE), AS NOW LOCATED, TACOMA, PIERCE COUNTY,
WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND:

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21
NORTH, RANGE 3 EAST, W.M.;

THENCE SOUTH 1°12'00" EAST, ALONG THE EAST BOUNDARY OF SAID LOT 1, 200.00 FEET TO THE
TRUE POINT OF BEGINNING;

THENCE SOUTH 1°12'00" EAST, ALONG SAID EAST BOUNDARY OF LOT 1, 397.060 FEET TO THE
NORTH BOUNDARY OF A PRIVATE DRIVEWAY;

THENCE NORTH 51°48'06.7" WEST ALONG THE NORTH SIDE OF SAID PRIVATE DRIVEWAY
31.20 FEET; THENCE SOUTH 51°56'57" WEST 7.972 FEET;

THENCE CONTINUING ALONG THE NORTH SIDE OF DRIVEWAY ALONG A CURVE TO THE RIGHT WITH
A RADIUS OF 83.65 FEET AND AN ANGLE OF 61°44'07" A DISTANCE OF 88.672 FEET; THENCE NORTH
66°18'55" WEST 61.104 FEET;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 167.642 FEET AND AN ANGLE OF 20°17'30"
A DISTANCE OF 59.371 FEET;

THENCE NORTH 86°36'25" WEST 57.351 FEET;

THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 107.228 FEET AND AN ANGLE OF
26°38'42.5" A DISTANCE OF 47.995 FEET TO THE INTERSECTION OF THE NORTH SIDE OF SAID
PRIVATE DRIVEWAY AND THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE;

THENCE NORTH 25°55'25.4" WEST , ALONG THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE,
153.288 FEET; THENCE CONTINUING ALONG SAID BOUNDARY ON A CURVE TO THE LEFT WITH A
RADIUS OF 388.31 FEET AN ANGLE OF 17°10'25" A DISTANCE OF 116.391 FEET TO THE CENTER LINE
OF A PIPE LINE, AS PER EASEMENT TO THE CITY OF TACOMA RECORDED UNDER RECORDING NO.
[1570028](#);

THENCE NORTH 56°14'01.9" EAST 150 FEET ALONG THE CENTER LINE OF SAID PIPE LINE
EASEMENT; THENCE EASTERLY 341 FEET, MORE OR LESS, TO THE TRUE POINT OF
BEGINNING;

ALSO EXCEPT THAT PORTION LYING WITHIN SHORT PLAT NO. [8806270287](#), RECORDS OF PIERCE
COUNTY, WASHINGTON;

AND EXCEPT THE FOLLOWING:

THE WEST 208.71 FEET OF THE SOUTH 208.71 FEET OF THE WEST 10 ACRES OF THE NORTH 20
ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN
PIERCE COUNTY, WASHINGTON.

AND ALSO EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE CITY OF TACOMA BY DEEDS RECORDED UNDER RECORDING NOS. [8806080247](#), [8806080248](#) AND [8806080249](#), RECORDS OF PIERCE COUNTY, WASHINGTON.
0321222052

5119 Marine View Dr
Tacoma, Washington 98422
Tax Parcel No. 0321222052

EXHIBIT B
Site Map of Protected Property

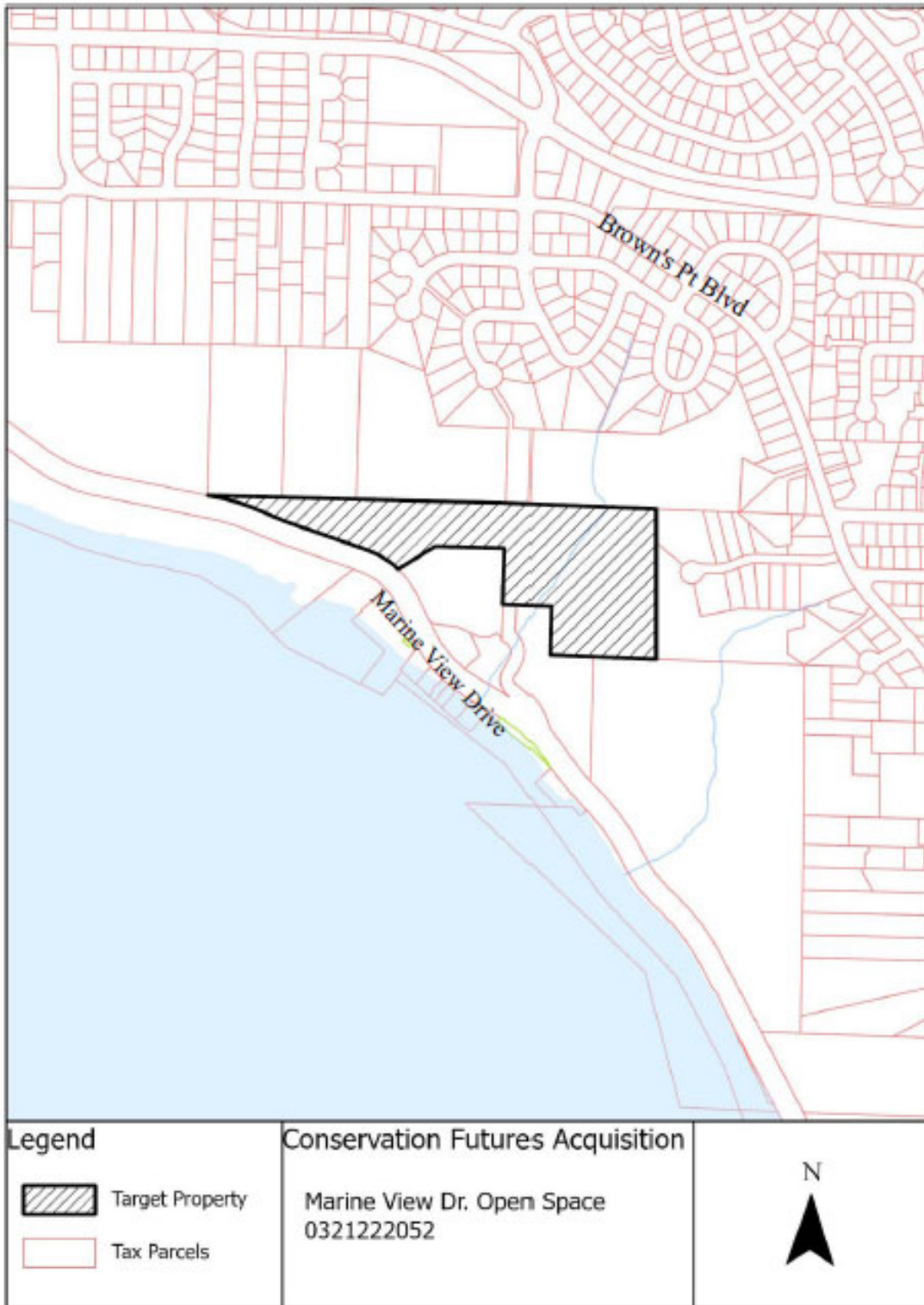


EXHIBIT C
Title Report Permitted Exceptions

The following exceptions will remain on title at closing:

1. Easement, including terms and conditions contained therein:

Granted to: City of Tacoma, a municipal corporation

For: Right and privilege to enter upon the within described premises at any time with all necessary men, materials, appliances, and equipment for the purpose of constructing, inspecting, operating, repairing and maintaining a blowoff and spillway line for use of the Water Division, Dept. of Public Utilities, in connection with its water distribution system

Recorded: September 26, 1950

Recording No: 1570027 and 1570028

2. The terms and provisions contained in the document entitled "Real Estate Contract"

Between: Orin R. Scott & Marie C. Scott and Pat and Carolyn A. Duvall

Recording No.: 2500407

3. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.

Recording No: 2612781

4. Conditions, notes, easements, provisions and/or encroachments contained and/or delineated on the face of Survey No. 505, recorded in volume 6 of surveys, at page(s) 5, in Pierce County, WA.

5. Easement, including terms and conditions contained therein:

Granted to: City of Tacoma, a municipal corporation

For: Construct and maintain utilities

Recorded: June 08, 1988

Recording No: 8806080246

This easement will correct, supersede, and replace that certain easement recorded under Pierce County Auditor's Fee No. 2962167.

6. Agreement and the terms and conditions thereof:

Between: Rita A. Duvall Fowler and Jeff P. Duvall

And: Diana D. Duvall

Recording No: 9504120419

7. Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of Harbor Ridge Line Stream, if it is navigable.
8. Any questions that may arise due to shifting or change of the line of high water of Harbor Ridge Line Stream.
9. Any prohibition or limitation on the use, occupancy or improvements of the land resulting from the right of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

PIERCE COUNTY CONSERVATION FUTURES AGREEMENT TO FUND – MARINE VIEW DRIVE

THIS PIERCE COUNTY CONSERVATION FUTURES AGREEMENT TO FUND (“Agreement”) is made and entered into as of the Effective Date (defined in Section 23 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Pierce County") and CITY OF TACOMA, a municipal corporation operating as a first class charter City under the laws of the state of Washington, by and through its Environmental Services Department (“Grantor”). Pierce County and Grantor may collectively be referred to hereinafter as “the Parties” or individually as a “Party.”

RECITALS

WHEREAS on August 31, 2021, the Pierce County Council adopted Resolution No. R2021-141 ("Resolution") identifying certain parcels of open space, farm and agricultural and timber lands in Pierce County, including Marine View Drive Open Space, eligible for protection from future development through expenditures from the Pierce County Conservation Futures Fund ("Eligible Properties"); and

WHEREAS the Eligible Properties contain elements, features, and characteristics consistent with the purposes and values described in Chapter 84.34 RCW and Chapters 2.96 and 2.97 of the Pierce County Code ("PCC") including, without limitation: (a) fish and wildlife habitat areas; (b) wetlands; and (c) open space passive recreation areas (collectively "Conservation Characteristics"); and

WHEREAS the Resolution authorized the Pierce County Executive to negotiate with owners of Eligible Properties and with nonprofit nature conservancy corporations and receiving agencies to acquire fee simple or lesser interests therein to preserve the Conservation Characteristics of the Eligible Properties in perpetuity; and

WHEREAS Grantor is a municipal corporation operating as a first class charter city under the laws of the state of Washington and, as such, is authorized by Chapter 35.22 RCW, RCW 84.34.200 - .250 and RCW 64.04.130 to purchase and hold fee simple title and lesser interests in open space, farm and agricultural and timber lands; and

WHEREAS Grantor owns and operates a municipal stormwater utility that manages and maintains open space parcels throughout the City of Tacoma for their stormwater management functions by preserving and protecting through conservation practices vegetation diversity, tree canopy cover and overall absorption, and desires to purchase in fee simple the Eligible Property described and identified in Section 2 below ("Protected Property") to preserve its Conservation Characteristics in perpetuity; and

WHEREAS to complete its purchase of the Protected Property and preserve its Conservation Characteristics in perpetuity, it is necessary for Grantor to obtain purchase money grant funding from the Pierce County Conservation Futures Fund; and

WHEREAS subject to the terms, covenants and conditions set forth in this Agreement, Pierce County desires to provide purchase money grant funding from the Pierce County Conservation Futures Fund to assist Grantor in purchasing the Protected Property.

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, Pierce County and Grantor 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.

2. Identification of Protected Property. The Protected Property consists of real property, identified by Parcel Account No. 0321222052, located in the City of Tacoma, Pierce County, containing approximately 15.5 acres, legally described in attached **Exhibit A** and depicted on the Site Map at **Exhibit B**, commonly known as “Marine View Drive Open Space” properties.

3. Definitions.

3.1 "Seller" means the record owners of the Protected Property, YEPENG TIAN AND JIASHENG CAO;

3.2 "Real Estate Purchase and Sale Agreement" or "REPSA" means a written agreement between Seller and Grantor for the purchase and sale of the Protected Property;

3.3 "Stewardship Agreement" means the Pierce County Conservation Futures Stewardship Agreement and Declaration of Restrictive Covenants (the “Declaration”) mutually agreed to by the Parties and recorded at Closing;

3.4 "Closing Agent" means First American Title Company, 712 Shaw Road East, Puyallup, WA 98372, who will be the agent responsible under the REPSA for providing title insurance and escrow services for the transaction contemplated by the Purchase and Sale Agreement, with escrow services to be performed by Terina Abarra, Email teamterina@firstam.com; Phone 253-382-2861;

3.5 "Closing" means the date upon which a Statutory Warranty Deed from Seller to Grantor is recorded by Closing Agent and the proceeds of sale are legally available for disbursement to Seller;

3.6 "Purchase Price" means the sum THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00), the amount to be paid by Grantor to Seller to acquire the Protected Property;

3.7 "MAI Appraisal" means an independent written appraisal of the Protected Property commissioned by Grantor and conducted in accordance with the Uniform Standards for Professional Appraisal Practice ("USPAP") by an appraiser who is licensed and certified by the state of Washington and a member in good standing of the Appraisal Institute;

3.8 "Review Appraisal" means a review for Pierce County as intended user of the MAI Appraisal of the Protected Property conducted in accordance with USPAP by an appraiser who is licensed and certified by the state of Washington and a member in good standing of the Appraisal Institute;

3.9 "Reimbursable Acquisition-Related Costs" means the following types of costs:

- (a) Closing Agent's escrow fee;
- (b) the recording fees;
- (c) documented cost incurred by Grantor for the Appraisal and Appraisal Review and preliminary title reports and policy of title insurance;
- (d) documented internal costs (up to 5% of the Conservation Futures funds contributed toward the purchase price of the project as determined in Section 4.1 including staff time documented on time sheets) incurred by Grantor's staff, and internal or outside counsel to: (i) conduct due diligence review and coordinate with Pierce County; (ii) review, evaluate and resolve title issues; (iii) negotiate all necessary agreements and real estate transaction documents with Seller and other parties (including Pierce County); and (iv) draft and/or review all necessary agreements and required real estate transaction documents.

4. Pierce County Funding Commitment. Pierce County's expenditure from the Conservation Futures Fund ("Pierce County Funding Commitment") shall not exceed the sum total of the following:

4.1 NINETY PERCENT (90%) of the fair market value of the Protected Property as determined by the MAI Appraisal and confirmed by any Review Appraisal commissioned and approved by Pierce County in its sole and absolute judgment and discretion, or TWO HUNDRED SEVENTY-TWO THOUSAND SEVENTY AND NO/100 DOLLARS (\$272,070.00), whichever is less ("Pierce County Purchase Money Grant");

4.2 Reimbursable Acquisition-Related Costs not to exceed EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00);

4.3 Grantor shall ensure that any costs submitted as Reimbursable Acquisition-Related Costs do not include any of the following:

- (a) costs associated with hazardous waste or environmental assessments or cleanups;
- (b) costs associated with structural inspections or repairs;
- (c) costs for real estate excise taxes;
- (d) costs for surveys, boundary line adjustments, or subdivisions;
- (e) costs associated with initial stewardship;
- (f) costs associated with signage, equipment, or obtaining federal, state, and county permits necessary to complete the project;
- (g) any cost billed to another funding source or agency; or
- (h) any cost associated with staff time spent on lobbying elected officials or their staff;

4.4 Grantor represents that the acquisition of the Protected Property has not been undertaken through the exercise of eminent domain.

5. Disbursement of Pierce County Funding Commitment. Pierce County shall disburse the Pierce County Funding Commitment as follows:

5.1 Provided that all conditions precedent set forth in Section 6 below are satisfied or waived by Pierce County, Pierce County shall deposit, by or before the date for Closing, the Pierce County Purchase Money Grant with Closing Agent by cashier's check, certified check or wire transfer of immediately available funds. Closing Agent shall hold the Pierce County Purchase Money Grant pending receipt of written instructions from Pierce County and Grantor to release the same;

5.2 Regardless of whether the transaction contemplated by the Purchase and Sale Agreement closes, Pierce County shall reimburse the Reimbursable Acquisition-Related Costs within FORTY-FIVE (45) calendar days from receipt of written invoices from Grantor. Grantor shall submit invoices for such costs within 45 days of Closing but **no later than December 31, 2023**. To the extent Grantor's staff time is submitted for reimbursement, Grantor shall document staff time on a timesheet that meets the standards set forth in the Administrative Guidelines. Provided, however, if the failure to close is due to Grantor's breach of the Purchase and Sale Agreement or breach of this Agreement, Pierce County's reimbursement obligation for Reimbursable Acquisition-Related Costs shall automatically terminate and neither Party shall have any further rights, remedies, or obligations hereunder except those that expressly survive termination hereof. The Parties acknowledge that Grantor's failure to procure additional funds as set for in Section 6.14 of this Agreement, if that occurs, is not a breach of this Agreement.

6. Conditions Precedent to Disbursement of Funding Commitment. Pierce County's obligation to disburse the Pierce County Funding Commitment as provided in Section 5 above is subject and conditioned upon satisfaction or waiver by Pierce County, acting in its sole and absolute judgment and discretion, of each of the following conditions precedent:

6.1 Real Estate Purchase and Sale Agreement. Delivery to Pierce County of an executed REPSA (or REPSA as amended) under which Property Owner agrees to: (a) sell the Protected Property to Grantor for the Purchase Price at Section 3.6; and (b) deliver the title for recording by Outside Closing Date free of liens and free of any encumbrances inconsistent with restrictive covenants in the Stewardship Agreement at Exhibit D.

6.2 Due Diligence Review. Grantor has conducted and completed a due diligence review and determined that Grantor is satisfied with all aspects of the Protected Property including, without limitation, the physical, health and safety, environmental and land use aspects thereof.

6.3 Preliminary Commitments for Title Insurance. Closing Agent has issued a preliminary commitment for title insurance together with complete and legible copies of any recorded exceptions identified in Schedule B thereof.

6.4 Review and Approval of Title. Grantor has reviewed title to the Protected Property, identified exceptions to title to which it does not object and received written approval from Pierce County to permit such exceptions to remain on title ("Permitted Exceptions"), which Permitted Exceptions will include the Deed of Right. Grantor has timely requested and obtained Pierce County's written consent to the Permitted Exceptions by submitting to Pierce County (a) Grantor's list of proposed exceptions to title to which Grantor does not intend to object; and (b) written explanations for any exceptions on Grantor's list that have the potential to negatively affect restoration activities referenced in the Stewardship Agreement or have the potential to otherwise jeopardize the protection of the Protected Property's Conservation characteristics. Grantor has submitted Pierce County's consent to Closing Agent in advance of Closing. Pierce County and the Grantor intend with respect to Permitted Exceptions No. 1, No. 4 and No. 5 as referenced in Exhibit "C" attached hereto, the terms and conditions of this Agreement and the Stewardship Agreement shall not operate to limit or modify the rights, duties and obligations granted pursuant to such Permitted Exceptions and such Permitted Exceptions shall not merge with title.

6.5 Conveyance of Title. Conveyance of title to the Protected Property to Grantor at Closing by a Statutory Warranty Deed free and clear of all encumbrances and defects except the Permitted Exceptions.

6.6 Title Policy. Issuance of an owner's standard coverage policy of title insurance insuring: (a) the Protected Property in the full amount of the Purchase Price, free and clear of all liens, encumbrances and defects except the Permitted Exceptions; and

(b) the Stewardship Agreement, free and clear of all liens, encumbrances and defects except the Permitted Exceptions.

6.7 Timely Performance of REPSA. All obligations in the REPSA must be timely performed to allow performance of the Funding Agreement by or before the Outside Closing Date set forth in Section 6.14. Grantor shall be responsible for providing written communication to Seller as follows:

(a) That this Funding Agreement automatically terminates if (i) any of the conditions precedent set forth in Section 6 are not satisfied or waived on or before Closing by the Party benefited thereby; or (ii) the transaction contemplated by the Purchase and Sale Agreement has not closed by the Outside Closing Date. Any extension of the Outside Closing Date shall be by amendment of this Agreement which amendment must be fully executed on or before Outside Closing Date;

(b) That Seller and Grantor will have no right or remedy against Pierce County in the event of the automatic termination of this Funding Agreement because of failure of conditions precedent in Section 6 or because of failure to close the transaction contemplated by this Funding Agreement by the Outside Closing Date;

6.8 Title Insurance Policy. Closing Agent's written commitment to issue at Closing or as soon as practicable thereafter a standard coverage Owner's Policy of Title Insurance for the Protected Property in the full amount of the Purchase Price, subject only to: (a) the Permitted Exceptions; and (b) the Stewardship Agreement.

6.9 Seller's Closing Deliveries. Delivery to Closing Agent on or before Closing of all instruments, documents and monies required of Seller under Seller's REPSA with Grantor.

6.10 Grantor's Closing Deliveries. Delivery to Closing Agent on or before Closing of all instruments, documents and monies (except the Pierce County Purchase Money Grant and Grantor's Closing Costs) required of Grantor under Seller's REPSA with Grantor and this Agreement.

6.11 Acceptance of Encumbrances. Written acceptance of and consent to record at Closing the Stewardship Agreement free and clear of all liens, encumbrances and defects except the Permitted Exceptions by: (a) Seller; (b) Grantor; and (c) Pierce County.

6.12 Recording of Stewardship Agreement. Closing Agent's written commitment to record the Stewardship Agreement next in sequence after recording the Statutory Warranty Deed.

6.13 Review of Appraisal. Pierce County's review and written approval, in its sole and absolute judgment and discretion, of the MAI Appraisal. Grantor must have provided to Pierce County a copy of the MAI Appraisal. Pierce County must

have been afforded meaningful opportunity and adequate time to review the MAI Appraisal and to consult the appraiser engaged to provide a Review Appraisal. If the MAI Appraisal contains assumptions and hypothetical conditions that Pierce County did not agree to in advance, it may be deemed unacceptable.

6.14 Closing. Closing of the transaction contemplated by the REPSA takes place at the offices of Closing Agent, or at such other place as the Parties to the REPSA may mutually agree in writing (inclusive of email with acknowledgment of receipt) within five (5) business days of Grantor, Seller, and Pierce County each submitting a written notice of intent to proceed with Closing to Closing Agent with copy to Pierce County and each other, but not later than **December 15, 2023**, (“**Outside Closing Date**”).

6.15 Fulfillment of Match Requirement. Grantor acknowledges that Grantor’s Application for Conservation Futures funding (“Application”) identified The City of Tacoma as the source of Matching Funds in the amount of THIRTY-FIVE THOUSAND NINE HUNDRED AND THIRTY DOLLARS AND 00/100 (\$35,930.00), or 11 percent of the then-estimated Purchase Price of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00). Before disbursement of the Pierce County Funding Commitment, Closing Agent shall confirm that Sponsor has delivered funds in an amount equal to the Purchase Price less the amount of the Pierce County Funding Commitment.

6.16 Real Estate Purchase and Sale Agreement. Grantor must have delivered to Pierce County a copy of the **REPSA defined at Section 3.2**, fully executed by Seller and Grantor.

7. Failure of Conditions Precedent or Failure to Close by Outside Closing Date. This Agreement shall automatically terminate if: (a) any of the conditions precedent set forth in Section 6 are not satisfied or waived on or before Closing by the Party benefited thereby; or (b) the transaction contemplated by the REPSA has not closed by the Outside Closing Date. Neither Party shall have any further rights, remedies, or obligations toward or against the other, except those that expressly survive termination hereof. In no event shall Pierce County have any obligation whatsoever to provide funding beyond the date that budget appropriation for acquisition of the Protected Property expires;

8. Representations and Warranties.

8.1 By Grantor. In addition to any other representations and/or warranties contained elsewhere in this Agreement, Grantor represents and warrants to Pierce County as follows:

8.1.1 Authority. Grantor has full right, title, authority and capacity to execute and perform the REPSA and this Agreement and to consummate the transactions contemplated thereby and the individual(s) who on Grantor’s behalf executes and delivers the REPSA and this Agreement and all documents to be delivered under the REPSA and this Agreement are and shall be authorized to do so;

8.1.2 Litigation. To the best of Grantor's knowledge there are no actions, suits, proceedings or litigation pending or threatened against Seller or Grantor in any court or before any administrative agency that might result in Seller or Grantor being unable to consummate the transaction contemplated by the REPSA or this Agreement; and

8.1.3 Change in Circumstances. If, prior to Closing, Grantor becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement, then Grantor shall promptly give written notice thereof to Pierce County. If Grantor gives written notice of any such change, or if Pierce County otherwise has actual notice of any such change, Pierce County shall have the option to terminate this Agreement within TEN (10) business days from the date Pierce County receives written notice of the changed fact or circumstance, whereupon neither Party shall have any rights or remedies against the other except those that expressly survive termination hereof.

8.2 By Pierce County. In addition to any other representations and/or warranties contained elsewhere in this Agreement, Pierce County represents and warrants to Grantor as follows:

8.2.1 Authority. Pierce County has full right, title, authority and capacity to execute and perform this Agreement and to consummate the transactions contemplated hereby, and the individuals who on Pierce County's behalf execute and deliver this Agreement and all instruments and documents to be delivered to Closing Agent hereunder are and shall be authorized to do so;

8.2.2 Litigation. There is no litigation pending or, to Pierce County's knowledge, threatened, against Pierce County before any court or administrative agency which might result in Pierce County becoming unable to deliver the Pierce County Purchase Money Grant contemplated by this Agreement; and

8.2.3 Change in Circumstances. If, prior to Closing, Pierce County becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement, then Pierce County shall promptly give written notice thereof to Grantor. If Pierce County gives written notice of any such change, or if Grantor otherwise has actual notice of any such change, Grantor shall have the option to terminate this Agreement within TEN (10) business days from the date Grantor receives written notice of the changed fact or circumstance, whereupon neither Party shall have any rights or remedies against the other except those that expressly survive termination hereof.

8.3 Condition of Protected Property. Grantor acknowledges and agrees Pierce County has not made any statement, representation, warranty or agreement as to any matter concerning the condition of the Protected Property or the suitability thereof for Grantor's intended uses. Grantor represents and warrants to Pierce County that Grantor has made or will make its own independent examination, inspection and investigation of the Protected Property and is acquiring the same in its present "AS-IS" condition, with all faults and without any warranties whatsoever, express or implied.

9. Release, Defense, Indemnity and Hold Harmless. As of the Effective Date, Grantor shall release, defend, indemnify and forever hold harmless Pierce County, and its elected and appointed officials, employees, agents, attorneys, successors and assigns, of and from all claims, demands, damages, actions or causes of action, costs, attorney fees and expenses of any kind, type or nature whatsoever, whether known or unknown, suspected or unsuspected, arising out of or in any way relating to the transaction contemplated by the REPSA and this Agreement, except those arising from Pierce County's conduct or the form of the conveyance of the restrictive covenants referred to herein. The release, defense, indemnity and hold harmless obligations set forth in this Section 9 shall survive Closing and shall not be deemed extinguished by any legal doctrine including, without limitation, the doctrine of merger by deed.

10. Notices. Notices required or desired to be given under this Agreement shall be in writing to the Notice Representative identified and sent by either: (a) United States mail, return receipt requested; or (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record. The notice shall be deemed delivered on the earlier of: (a) three (3) business days from deposit in the United States mail; or (b) the delivery date as shown in the regular business records of the overnight courier service. Notices shall be addressed as follows:

Address for Delivery of Notice to Notice Representative for Grantor:

City of Tacoma, Public Works Department
Real Property Services
747 Market Street, Rm. 737
Tacoma, WA 98402

Address for Delivery of Notice to Notice Representative for Pierce County:

Pierce County Parks & Recreation Services
Attn: Christina Chaput, Sr. Planner
9850 64th St W
University Place, WA 98467
Telephone: 253-798-4252
Email: christina.chaput@piercecountywa.gov

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: The electronic mail addresses provided above are for convenience only and do not constitute a valid method of giving notice under this Agreement.**

Copy of notices may be sent via email only to the following copy recipients:

City of Tacoma:

City of Tacoma, Legal Department

Attn: Deputy Attorney
747 Market Street, Rm. 1120
Tacoma, WA 98402

Pierce County Prosecuting Attorney/Civil Division

Attn: Jason Whalen, Deputy Prosecuting Attorney
Telephone: 253-798-6754
Email: Jason.Whalen@piercecountywa.gov

Closing Agent: Name: First American Title Company

(title)

Title Officer:

Name: DeNese Montgomery

Address: 712 Shaw Road East

Puyallup, WA 98372

Phone: 253-382-2813

Email: dmontgomery@firstam.com

Closing Agent: Name
(escrow)

Attn: Terina Abarra/Team Terina

Address: 712 Shaw Road East

Puyallup, WA 98372

Telephone: 253-382-2861

Email: teamterina@firstam.com

11. Attorneys' 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 in any way to this Agreement shall be in the Superior Court of Pierce County, Washington.

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

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

14. Entire Agreement. This Agreement and the documents executed and delivered in accordance herewith constitutes the entire agreement of the Parties with

respect to the subject matter hereof and supersedes all written or oral agreements or understandings, if any.

15. Modification. This Agreement may be modified only in writing signed by both Parties.

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

17. 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.

18. Recording. Unless otherwise expressly required by law, neither this Agreement, nor any memorandum hereof, shall be recorded.

19. Survival of Provisions. The covenants, representations, warranties, agreements, terms and provisions contained in this Agreement shall survive Closing and shall not be deemed to have been extinguished by any legal doctrine including, without limitation, the doctrine of merger by deed.

20. 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 hereof; 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.

21. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and/or assigns.

22. Exhibits. The following exhibits are attached hereto and by this reference are incorporated herein as if fully set forth:

- Exhibit A** - Legal Description of Protected Property
- Exhibit B** - Site Map of Protected Property
- Exhibit C** - Permitted Exceptions
- Exhibit D** - Stewardship Agreement & Declaration of Restrictive Covenants

23. Effective Date. The Effective Date of this Agreement shall be the date upon which the Pierce County Executive (who shall be the last person to sign) shall have executed this Agreement as indicated opposite his name below.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

GRANTOR'S SIGNATURE PAGE

CITY OF TACOMA, a municipal corporation and political subdivision of the state of Washington:

By: _____

Printed Name: Elizabeth A. Pauli

Title: City Manager

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Elizabeth A. Pauli**, known to me to be the **City Manager** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

ATTEST:

Nicole Emery
City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Nicole Emery**, known to me to be the **City Clerk** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

PIERCE COUNTY'S SIGNATURE PAGE

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

Approved as to legal form only:

Deputy Prosecuting Attorney Date

Recommended for final action only:

Director, Parks & Recreation Services Date

Director, Finance Date

Final Action:

Pierce County Executive Date

EXHIBIT A
Legal Description of Protected Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIERCE, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

THE WEST 10 ACRES OF THE NORTH 20 ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON;

ALSO THAT PART OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTHEASTERLY LINE OF EAST SIDE DRIVE (MARINE VIEW DRIVE), AS NOW LOCATED, TACOMA, PIERCE COUNTY, WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND:

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M.;

THENCE SOUTH 1°12'00" EAST, ALONG THE EAST BOUNDARY OF SAID LOT 1, 200.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 1°12'00" EAST, ALONG SAID EAST BOUNDARY OF LOT 1, 397.060 FEET TO THE NORTH BOUNDARY OF A PRIVATE DRIVEWAY;

THENCE NORTH 51°48'06.7" WEST ALONG THE NORTH SIDE OF SAID PRIVATE DRIVEWAY 31.20 FEET; THENCE SOUTH 51°56'57" WEST 7.972 FEET;

THENCE CONTINUING ALONG THE NORTH SIDE OF DRIVEWAY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 83.65 FEET AND AN ANGLE OF 61°44'07" A DISTANCE OF 88.672 FEET; THENCE NORTH 66°18'55" WEST 61.104 FEET;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 167.642 FEET AND AN ANGLE OF 20°17'30" A DISTANCE OF 59.371 FEET;

THENCE NORTH 86°36'25" WEST 57.351 FEET;

THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 107.228 FEET AND AN ANGLE OF 26°38'42.5" A DISTANCE OF 47.995 FEET TO THE INTERSECTION OF THE NORTH SIDE OF SAID PRIVATE DRIVEWAY AND THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE;

THENCE NORTH 25°55'25.4" WEST , ALONG THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE, 153.288 FEET; THENCE CONTINUING ALONG SAID BOUNDARY ON A CURVE TO THE LEFT WITH A RADIUS OF 388.31 FEET AN ANGLE OF 17°10'25" A DISTANCE OF 116.391 FEET TO THE CENTER LINE OF A PIPE LINE, AS PER EASEMENT TO THE CITY OF TACOMA RECORDED UNDER RECORDING NO. [1570028](#);

THENCE NORTH 56°14'01.9" EAST 150 FEET ALONG THE CENTER LINE OF SAID PIPE LINE EASEMENT; THENCE EASTERLY 341 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION LYING WITHIN SHORT PLAT NO. [8806270287](#), RECORDS OF PIERCE COUNTY, WASHINGTON;

AND EXCEPT THE FOLLOWING:

THE WEST 208.71 FEET OF THE SOUTH 208.71 FEET OF THE WEST 10 ACRES OF THE NORTH 20 ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON.

AND ALSO EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE CITY OF TACOMA BY DEEDS RECORDED UNDER RECORDING NOS. [8806080247](#), [8806080248](#) AND [8806080249](#), RECORDS OF PIERCE COUNTY, WASHINGTON.
0321222052

5119 Marine View Dr
Tacoma, Washington 98422
Tax Parcel No. 0321222052

EXHIBIT B
Site Map of Protected Property

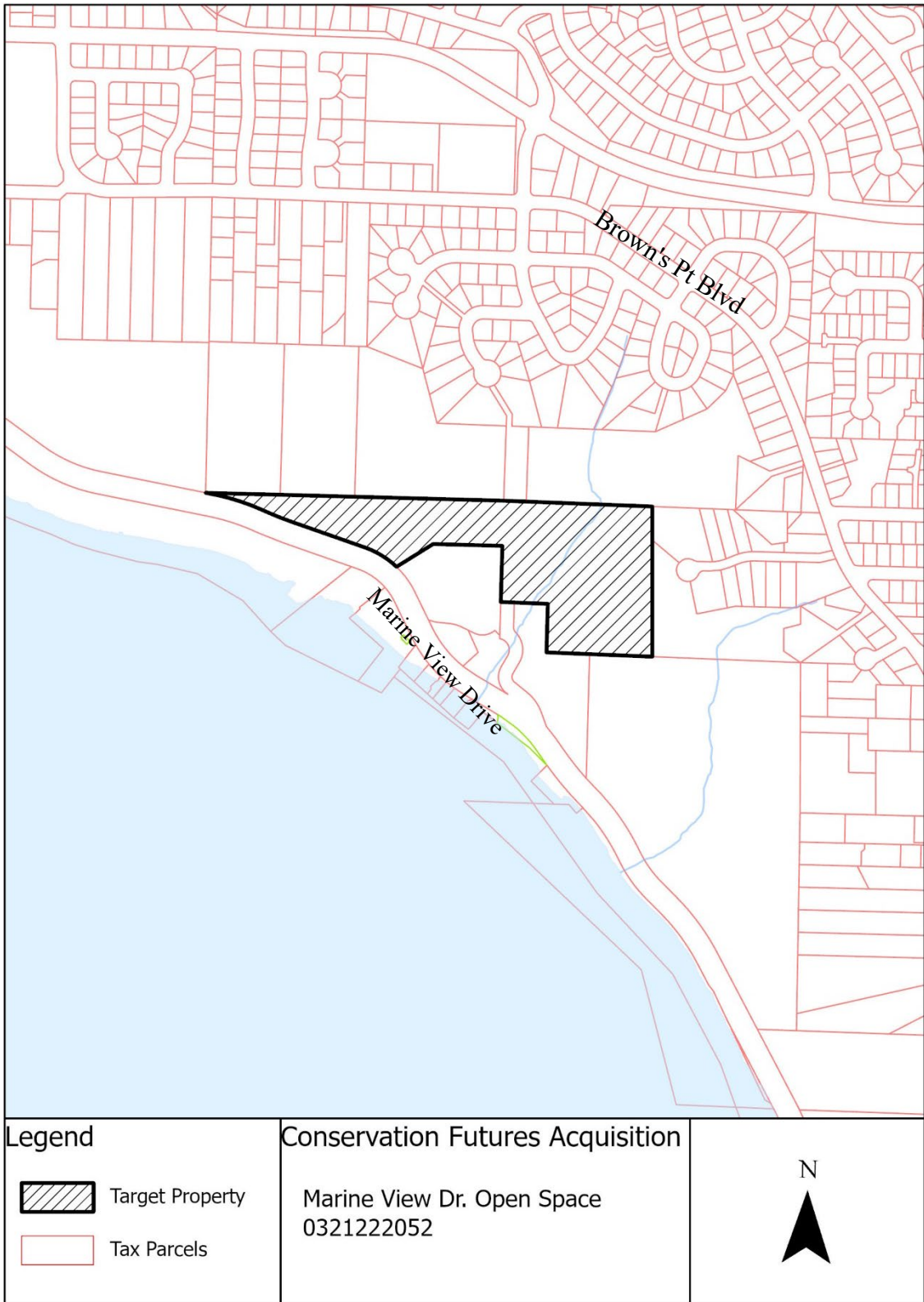


EXHIBIT C
Permitted Title Exceptions

The following exceptions will remain on title at closing:

1. Easement, including terms and conditions contained therein:
Granted to: City of Tacoma, a municipal corporation
For: Right and privilege to enter upon the within described premises at any time with all necessary men, materials, appliances, and equipment for the purpose of constructing, inspecting, operating, repairing and maintaining a blowoff and spillway line for use of the Water Division, Dept. of Public Utilities, in connection with its water distribution system
Recorded: September 26, 1950
Recording No: 1570027 and 1570028
2. The terms and provisions contained in the document entitled "Real Estate Contract"
Between: Orin R. Scott & Marie C. Scott and Pat and Carolyn A. Duvall
Recording No.: 2500407
3. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.
Recording No: 2612781
4. Conditions, notes, easements, provisions and/or encroachments contained and/or delineated on the face of the Survey No. 505, recorded in volume 6 of surveys, at page(s) 5, in Pierce County, WA.
5. Easement, including terms and conditions contained therein:
Granted to: City of Tacoma, a municipal corporation
For: Construct and maintain utilities
Recorded: June 08, 1988
Recording No: 8806080246
This easement will correct, supersede, and replace that certain easement recorded under Pierce County Auditor's Fee No. 2962167.
6. Agreement and the terms and conditions thereof:
Between: Rita A. Duvall Fowler and Jeff P. Duvall
And: Diana D. Duvall
Recording No: 9504120419

7. Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of Harbor Ridge Line Stream, if it is navigable.
8. Any questions that may arise due to shifting or change of the line of high water of Harbor Ridge Line Stream.
9. Any prohibition or limitation on the use, occupancy or improvements of the land resulting from the right of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

EXHIBIT D
Stewardship Agreement & Declaration of Restrictive Covenants
FORM ONLY - DO NOT SIGN

WHEN RECORDED RETURN TO:
Pierce County Parks & Recreation Services
ATTN: Conservation Futures Coordinator
9850 64th St W
University Place, WA 98467

WASHINGTON STATE COUNTY AUDITOR'S/RECORDERS INDEXING
FORM

Document Title: Pierce County Conservation Futures Stewardship Agreement and Restrictive Covenant

Grantor: City of Tacoma, a municipal corporation and political subdivision of the state of Washington

Grantee: Pierce County, a municipal corporation and political subdivision of the state of Washington

Abbreviated Legal: Section 22 Township 21 Range 03 Quarter 24 : PARCEL "A" W 10 AC OF N 20 AC OF GOVT LOT 2 EXC S 208.71 FT OF W 208.71 FT THEREOF PARCEL "B" THAT POR GOVT LOT 1 LY NLY & NWLY OF FOLL DESC LI COM NE COR L 1 TH S 200 FT TO POB OF SD DESC LI TH WLY 341 FT M/L TH S 56 DEG 14 MIN 01.9 SEC W 150 FT TO NELY LI MARINE VIEW DR & TERMINUS OF SD LI OUT OF 2-041 SEG U-0705 DL ES (DCDLES3-18-85) ETN 4615038 & 4615039 PROBLEM WITH LEGAL WORKED ON INTENT 11/28/2022MC

Tax Parcel Number(s): 0321222052

**PIERCE COUNTY CONSERVATION FUTURES
STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS**

THIS PIERCE COUNTY CONSERVATION FUTURES STEWARDSHIP AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made and entered into as of the Effective Date (defined in Section 27 below) by and between CITY OF TACOMA, a municipal corporation operating as a first class city under the laws of the state of Washington, by and through its municipal stormwater utility managed and operated by the City of Tacoma Environmental Services Department ("Grantor") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Grantee"). Grantor and Grantee may hereinafter be referred to collectively as "the Parties" or individually as a "Party."

RECITALS

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

WHEREAS the Protected Property includes Pierce County Tax Parcel No. 0321222052, containing approximately 15.5 acres, which is contiguous to 13.1 acres of City of Tacoma-owned open space. The property was previously owned by YE PENG TAI; and

WHEREAS Grantor acquired title to the Protected Property in part with funds from Pierce County's Conservation Futures Fund in exchange for its promise to hold title thereto in perpetuity as open space land for and on behalf of the general public in accordance with the terms of this Declaration; and

WHEREAS the Protected Property contains significant elements, features, attributes and amenities of great importance to the Grantor and its municipal stormwater utility and to Grantor, Pierce County, the people of Pierce County and the state of Washington, described in and designated for protection under chapter 84.34 of the Revised Code of Washington ("RCW") and chapters 2.96 and 2.97 of the Pierce County Code ("PCC") including, without limitation: (a) wooded areas (b) fish and wildlife habitat areas; (c) streams, rivers, and associated wetlands; and (d) open space passive recreation area (collectively "Conservation Values"); and

WHEREAS the Parties desire to establish in this Declaration the terms, covenants, and conditions under which Grantor shall use and manage the Protected Property and to impose upon the Protected Property such restrictive covenants as are necessary to protect, preserve, maintain, improve, restore, limit the future development and use of and otherwise conserve, in perpetuity, the Protected Property and its Conservation Values.

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, Grantor 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.

2. **Restrictive Covenants; Purpose.**

2.1 **Restrictive Covenants.** Grantor hereby declares that the terms, covenants and conditions of this Declaration shall, pursuant to Chapter 84.34 RCW and Chapter 2.97 PCC: (a) constitute restrictive covenants and/or equitable servitudes running with the Protected Property in perpetuity in fulfillment of the legal and contractual obligations of Grantor with respect thereto; and (b) forever bind Grantor and its successor-in-interest.

2.2 **Purpose.** The intention and purpose of the Parties (collectively "the Purpose") in executing, delivering and performing this Declaration is: (a) to ensure the Protected Property is held by Grantor and its successors-in-interest in perpetuity as open space land so as to protect, preserve, maintain, conserve, enhance and improve its Conservation Values; and (b) to prevent any use of the Protected Property that will damage or destroy its Conservation Values or prevent their maintenance, restoration or enhancement.

3. **Interpretation of Declaration.**

3.1 The Parties intend that this Declaration be interpreted in a manner consistent with its purpose

3.2 If any language of this Declaration is deemed unclear or causes inconsistency within its own terms, it shall be interpreted to achieve and protect Conservation Values, achieve consistency with Site Management Plan, and advance the stated intent and purpose stated herein. The Parties intend that this Declaration be interpreted to confine the Grantor's use of the Protected Property to such activities that are consistent with the Purpose and terms of this Declaration. At the same time, the Parties intend, and this Declaration is structured, to give the Grantor flexibility and discretion to undertake activities that are consistent with the Purpose and terms of this Declaration.

4. **Stewardship.** Grantor agrees for itself and its successors-in-interest to use and manage the Protected Property in perpetuity in accordance with the Purpose, this Declaration, and all Applicable Laws.

5. **Obligations to Protect and Provide Public Access - Permitted Uses.**

5.1 **Obligation to Protect.** Grantor shall use the Protected Property in accordance with: (a) all applicable federal, state, county and local laws, rules, regulations and standards (collectively "Applicable Laws"); (b) the Property Management Plan (as defined in and consistent with Section 8 below); and (c) this Declaration; so as to forever protect, preserve, maintain, conserve, enhance and improve the Conservation Values thereof.

5.2 **Obligation to Provide Public Access.** Grantor shall have 90 days from Closing the acquisition of the Protected Property to ensure that the Protected Property is opened to public access. Grantor shall identify and submit to Pierce County a map depicting the location of at least one public access opportunity which shall serve as interim access until long-term public access opportunities are developed by Grantor and set forth in the Property Management Plan to be completed by Grantor as set forth in Section 9. Grantor shall permit the public to have regular access to the Protected Property consistent with the requirements of Pierce County Code ("PCC") 2.96, 2.97, and 4.48.020(L)(2), this Declaration and the Property Management Plan. In the event that the Grantor anticipates submitting a Property Management Plan that will involve limitations on regular public access to protect sensitive natural areas, Grantor shall identify and explain in writing any potential conflicts between providing public access to the Protected Property and restoration activities and other Conservation Futures priorities for the Protected Property and submit Grantor's request for Pierce County's approval of limitations on public access within 120 days of the Effective Date of this Declaration. At a minimum, public access to the Protected Property shall include, but not be limited to, passive recreational activities such as: (a) hiking; (b) wildlife viewing; and (c) nature study. Grantor's obligation to permit public access to the Protected Property does not include an affirmative duty to develop parking for vehicles and/or bicycles, restroom facilities, or any other facilities or infrastructure.

5.3 **Acknowledgements, Written Materials, and Signs.** Grantor may, at its sole cost and expense, elect to create written materials and/or erect signs describing the Protected Property or any past, present, or future Conservation Futures projects related thereto. If Grantor makes such an election, all written materials and signs shall comply with the Purpose, this Declaration, and all Applicable Laws and shall include an express acknowledgment of the role played by the Pierce County Conservation Futures program in acquiring the Protected Property. The Grantor shall coordinate with Pierce County regarding language to describe the County's Conservation Futures Program to be included in such express acknowledgments. In addition, all signs placed upon the Protected Property shall be: (a) prominently placed upon Protected Property in full view of the public; and (b) designed to harmonize with the aesthetic features of the Protected Property.

6. **Obligation to Remove Structures.**

The Appraisal of the Protected Property by Darin A. Shedd, MAI, in a report dated August 3, 2022, indicates no existing improvements exist.

7. **Prohibited Uses and Restrictions on Permitted Uses.** Any use of, or activity on, the Protected Property inconsistent with the Purpose or other terms of this Declaration is prohibited, and the Grantor acknowledges and agrees that it will not conduct, engage, or permit any such use or activity, on the Protected Property. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are either (a) inconsistent with the Purpose of this Declaration and prohibited or (b) limited as provided herein to make such uses or activities consistent with the Purpose of this Declaration.

7.1 **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose, this Declaration, or any Applicable Law is prohibited, and Grantor acknowledges and agrees it will not knowingly conduct, engage in, or permit any such use or activity.

7.2 **No Conversion to Incompatible Uses.** Grantor shall not convert the Protected Property to any residential, commercial, or industrial development or use or any other use incompatible with the Purpose, this Declaration, or any Applicable Laws.

7.3 **Subdivision.** Any legal or de facto division, subdivision, or partitioning of the Protected Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act, is prohibited.

7.4 **Limitations on Alteration of Land.** Grantor shall not nor authorize others to alter the surface or subsurface of the land, including, without limitation, grading, trenching, excavating, or removing loam, soil, sand, gravel, rock, stone, aggregate, peat, or sod. This provision is not intended to prohibit lawful and routine agricultural practices (e.g., tilling, soil amendments, laser leveling) and other uses that are associated with site management activities that do not impair the Conservation Values of the Protected Property and are allowed in the Property Management Plan.

7.5 **Aquatic Products.** Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products.

7.6 **Limitations on Mining.** Grantor shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance.

7.7 **Water Bodies or Courses.** Manipulating, impounding, or altering any natural watercourse, body of water, or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, is prohibited.

7.8 **No Significant Erosion or Pollution.** Grantor shall not knowingly engage in any use or activity that causes or is likely to cause significant soil degradation, erosion, contamination, or pollution of any soils or surface or subsurface waters on the Protected Property.

7.8 **Forest Health and Timber Management.** Grantor may not conduct, engage in, or permit commercial forest management on the Protected Property. Forest management, if any, on the Protected Property shall meet the Pierce County Forest Practices requirements set forth in Title 18H PCC and be identified in the Property Management Plan.

7.10 **Mineral Rights, Air Rights.** The following are prohibited: Transferring, encumbering, selling, leasing, or otherwise separating the mineral, oil, gas, and air for the Protected Property.

7.11 **No Agricultural Use; No Horses or Livestock.** Agricultural use of the Protected Property is prohibited. Horses and livestock are prohibited.

7.12 **No Active Recreational Use.** Active recreational use of the Protected Property is prohibited.

7.13 **Limitations on Waste Disposal.** Grantor shall not accumulate and store ashes, garbage, or other waste on the Protected Property. Nor shall Grantor knowingly dispose of or Release (or knowingly permit the disposal or release of) any Hazardous Substance on the Protected Property. The term “Release” shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term “Hazardous Substance” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated 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. The term “Hazardous Substances” shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with all Applicable Laws. No storage of Hazardous Substances shall be allowed on the Protected Property.

7.14 **Development Rights.** Exercising development rights within the Protected Property, except for those specifically reserved for use within Development Envelopes, is prohibited. Grantor hereby relinquishes all other development rights, and the Parties agree that such rights may not be used on or transferred off the Protected Property as it now or hereafter may be bounded or described.

7.15 **No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the Protected Property. Compensatory Mitigation includes but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation

credits based on the creation, restoration, enhancement, and/or preservation of such natural resources within the Protected Property.

8. **Transfers by Grantor.**

8.1 **Definition.** “Transfer” includes, but is not limited to: (a) any sale, grant, lease, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; (b) any transaction the purpose of which is to effect a sale, grant, hypothecation, encumbrance, assignment or conveyance of the Protected Property, or any portion thereof or interest therein; or (c) any legal proceeding the purpose of which is to effect a taking of the Protected Property, or any portion thereof or interest therein. For purposes of this Declaration, the term “Grantor” includes any future property owner(s).

8.2 **Limitations on Transfers.** Grantor shall not effect a Transfer except to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior written consent of Pierce County, which consent may be granted, withheld, conditioned or delayed by Pierce County in its sole and absolute judgment and discretion.

8.3 **Notice; Binding Effect.** Grantor shall give Grantee written notice as provided in Section 12 of any Transfer. Such notice shall include the name, address, and telephone number of the prospective transferee or such transferee’s representative. In addition, any deed or other legal instrument effecting a Transfer shall: (a) expressly provide that the new owner of the Protected Property shall be subject to and strictly bound by all of the terms, covenants and conditions of this Declaration; and (b) incorporate therein the terms, covenants and conditions of this Declaration by express reference. The failure of Grantor to perform any act required by this Section 8.3 shall not impair the validity of this Declaration or limit its enforceability in any way.

9. **Property Management Plan.**

9.1 The Property Management Plan is designated to ensure the Protected Property is managed, monitored, and maintained in perpetuity for the benefit of the Conservation Values and describe in detail (a) how Grantor will maintain or steward the Protected Property over time; and (b) how Grantor will implement and monitor activities associated with the Conservation Futures Priorities described in Grantor’s application for Conservation Futures Funding.

9.2 The Grantor shall, within ONE (1) year from the Effective Date, prepare and deliver to Grantee a comprehensive written plan consistent with the requirements of terms of this Declaration, Pierce County Code (“PCC”) 2.96, 2.97, and 4.48.020 (L)(2), and all Applicable Laws. The Property Management Plan shall address, without limitations, the following:

9.2.1 Define the long-term management objectives for the Protected Property (desired future conditions), including removal of invasive species, site restoration activities, passive trails, and educational opportunities.

9.2.2 Activities related to meeting the management objectives, including the development of a forest management plan that manages the forest for wildlife, noxious and invasive species, species diversity, and forest health.

9.2.3 Program for quarterly site monitoring and maintenance and regular trash removal of the Protected Property in perpetuity in accordance with the standards and practices of the Land Trust Alliance;

9.2.4 Plan for passive public access opportunities on the Protected Property, including measures to: a) construct trails that are designed and sited in a manner that avoids or minimizes impacts to critical areas and their buffer or minimizes impacts; b) install pet waste cleanup signage, educational signage in habitat areas (i.e., water quality and habitat benefits of wetlands);

9.2.5 Maps including: (a) a U.S. Geological Survey quadrant map, recent aerial photo, and county assessor's parcel map; (b) a map showing all human-made and natural features; and (c) the location of public access and use areas.

9.2.6 Implementation timeline and budget that identifies the funding source for the Plan elements.

10. **Maintenance; Reporting.**

10.1 **Maintenance.** Grantor shall, at its sole cost and expense, keep and maintain the Protected Property, together with any improvements or alterations in, on, under or about the Protected Property, in a good and sound state of repair and in a neat, clean, safe and sanitary condition in accordance with the Purpose, all Applicable Laws and this Declaration.

10.2 **Reporting.** Grantor shall, at least once every THREE (3) years from the Effective Date, issue to Pierce County a comprehensive written report documenting the then physical condition of the Protected Property, any improvements or alterations to the Protected Property, and compliance with Section 4.1 above.

11. **Pierce County's Rights.** To accomplish the Purpose, Pierce County shall have the following rights under this Declaration:

11.1 **Protection.** Pierce County shall have the right to identify, protect, preserve, maintain, improve, restore, and conserve, in perpetuity, the Conservation Values of the Protected Property.

11.2 **Access.** As provided for and limited herein, Grantor hereby grants to Grantee non-exclusive access at reasonable times on the Protected Property solely for the purposes of fulfilling and exercising its affirmative rights and obligations under this Declaration, including but not limited to (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property; (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with the Purpose; and (c) to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods. Enter upon, inspect, observe, and study the Protected Property, with such persons as Pierce County may require. Pierce County will use reasonable efforts to provide a minimum of 48 hours advance notice of entry but may enter without notice upon a reasonable belief that a violation of the Protected Property is occurring. For each such entry, Grantor shall have the right to designate an individual to accompany Pierce County during its inspections, observations, and studies.

11.3 **Injunction and Restoration.** Pierce County shall have the right to prevent, or cause Grantor to prevent any use of, or activity on, the Protected Property that is inconsistent with the Purpose, this Declaration, or any Applicable Laws, and shall have the right to cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof.

11.4 **No Material Interference.** Pierce County shall exercise its rights in compliance with all Applicable Laws and in a manner that will not materially disturb or interfere with Grantor's rights hereunder or its quiet enjoyment of the Protected Property.

11.6 **Assignment or Conveyance.** Pierce County shall have the right in its sole and absolute judgment and discretion to assign, convey or otherwise transfer its right, title and interest in and to the Protected Property under this Declaration to a city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association as defined in RCW 84.34.250, without the prior consent of Grantor. In the event of any such assignment, conveyance, or transfer, Grantor shall have absolutely no further liability with respect to the Protected Property or to Grantor under this Declaration except as to matters of liability that have accrued and remain unsatisfied. Pierce County's successor-in-interest shall have all rights of Pierce County hereunder.

12. Notice and Consent – In General

12.1 Notice.

12.1.1 **Grantor.** Certain provisions of this Declaration require notice to Grantee prior to undertaking certain activities. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Declaration, such notice shall be in writing not less than thirty (30) days prior to the date any use or activity is intended to be taken. The notice shall describe the nature, scope, design, location, timetable, and any

other material aspect of the proposed use or activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the terms of this Declaration and the Purpose thereof.

12.1.2 Grantee. Certain provisions of this Declaration require the Grantee to give notice to the Grantor prior to undertaking certain activities. The purpose of requiring Grantee to notify Grantor prior to undertaking these permitted uses and activities is to afford Grantor an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Declaration. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Declaration, Grantee shall provide such notice in writing not less than ninety (90) days prior to the date Grantee intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantor to make an informed judgment as to its consistency with the terms of this Declaration and the Purpose thereof.

12.1.3 Coordination. Whenever notice is issued under this Declaration, such notice will be provided to all parties herein.

12.2 Consent.

12.2.1 Consent Not Unreasonably Withheld. Wherever in this Declaration a Party's consent is required, such consent may be withheld only upon a reasonable determination by the consenting party that the action as proposed would be inconsistent with the Purpose or terms of this Declaration or the Management Plan.

12.2.2 Timeline for Consent. Whenever in this Declaration Grantee or Grantor consent is required, and no other timeline for consent is set forth elsewhere in this Declaration, the Grantee shall grant or withhold consent in writing within the thirty (30) days, and the Grantor shall, to the extent practicable in view of applicable government administration process, grant or withhold their respective consent in writing within ninety (90) days.

12.3 Address for Notices. Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other shall be in writing either served personally or sent by registered mail or overnight courier with proof of delivery, addressed as follows (or to such other address as any party from time to time shall designate by written notices to each other party):

| | |
|----------|---|
| Grantee: | Pierce County Parks and Recreation Department 9850 64 th St W University Place, WA 98467 Phone: 253-798-4252 |
| Grantor: | City of Tacoma, Public Works Department Real Property Service |

| | |
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| | 747 Market Street, Rm 737 Tacoma, WA 98402 |
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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 Declaration.

13. Dispute Resolution.

13.1 Preventive Discussions. Except in circumstances contemplated in Section 11, Grantor and Pierce County shall endeavor to resolve any dispute regarding the interpretation of the terms of this Declaration first through a discussion between the Representatives of the Parties identified in this Section 10, then escalated to each Party’s respective Executive if the dispute has not been resolved within ten (10) business days. Grantor and Pierce County shall promptly give the other Party notice of problems or concerns arising in connection with the others’ actions under this Declaration or the use of or activities or conditions on the Protected Property, and shall meet as needed, but no later than THIRTY (30) calendar days after receipt of a written request for a meeting.

13.2 Mediation. If the Parties disagree as to the consistency of any proposed use or activity with the Purpose, this Declaration or any Applicable Laws, and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor and Pierce County shall refer the dispute to mediation by request made in writing upon the other. Within TEN (10) business days of the receipt of such a request, the Parties shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

13.2.1 Purpose. The purpose of the mediation is to: (a) promote discussion among the Parties; (b) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, covenants or conditions of this Declaration.

13.2.2 Participation. The mediator may meet with the Parties and their counsel jointly or ex parte. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.

13.2.3 Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective legal counsel. The mediator shall not be subject to

subpoena by any Party. No statements made or documents prepared for mediation sessions shall be construed as an admission of a party. Provided, however, this provision relating to confidentiality shall not be construed to constrain Pierce County's compliance with the Washington State Public Records Act nor to create any obligation for Pierce County to ensure the nondisclosure of records that may be required to be disclosed pursuant to the Washington State Public Records Act.

13.2.4 Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of SIXTY (60) calendar days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

13.2.5 Costs. The costs of mediation services shall be borne equally by the Parties. The Parties shall bear their own expenses, including attorney's fees, individually.

13.3 Arbitration. The Parties may, but are not required to, submit disputed matters to binding arbitration. In the event that one Party wishes to request that a disputed matter be submitted to binding arbitration, such Party shall provide notice in writing of its request and propose the rules for arbitration to be applied. Arbitration may occur only upon mutual agreement of the Parties regarding the arbitrator, deadline for arbitration, and applicable rules for arbitration.

14. Pierce County's Remedies.

14.1 Notice of Non-Compliance. If Pierce County determines Grantor is in violation of the terms of this Declaration or that a violation is likely to occur, Pierce County 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 Protected Property resulting from any use or activity inconsistent with this Declaration, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan to which Pierce County has given consent.

14.2 Grantors' Failure to Respond. Pierce County may bring an action as provided in Section 14.3 below if Grantor: (a) fails to cure the violation within NINETY (90) calendar days after receipt of notice thereof from Pierce County; (b) under circumstances where the violation cannot reasonably be cured within the NINETY (90) calendar day period, fails to begin curing such violation within the NINETY (90) calendar day period; or (c) fails to continue diligently to cure such violation until finally cured.

14.3 Pierce County's Action. Pierce County may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, 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 Declaration or injury to any of the Conservation Values protected hereby, including damages for the loss thereof; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Pierce County, acting in its sole and absolute judgment and discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Pierce County being required to post a bond or provide other security.

14.4 Immediate Action Required. Notwithstanding any other provision of this Declaration to the contrary, if Grantee, acting in its sole and absolute judgment and discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 14 without prior notice to Grantor, without participation in dispute resolution as provided in Section 13 above, or without waiting for the period provided for cure to expire.

14.5 Nature of Remedy. Grantee's rights under this Section 14 apply equally in the event of either actual or threatened violations of the terms of this Declaration. Grantor acknowledges and agrees that Grantee's remedies at law for any violation of the terms of this Declaration are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 14, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 14 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

14.6 Damages. Inasmuch as the actual damages to the Conservation Values that could result from a breach of this Declaration by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages to which Pierce County is entitled shall be the higher of: (a) the amount of economic gain realized by Grantor from violating the terms of this Declaration; or (b) the cost of restoring any Conservation Values that have been damaged by such violation. If Pierce County chooses the second of these two measures, Grantor agrees to allow Grantee and its agents or contractors to enter upon the Protected Property and conduct restoration activities.

14.7 Enforcement Discretion. Enforcement of the terms of this Declaration shall be at the discretion of Pierce County, and any forbearance by Pierce County to exercise its rights under this Declaration in the event of any breach of any of the terms, covenants, or conditions hereof by Grantor shall not be deemed or construed to be a waiver by Grantee of such term, covenant, or condition or of any of Grantee's rights hereunder. No delay or omission in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

14.8 Acts Beyond Grantors Control. Nothing contained in this Declaration shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property resulting from beyond the

Grantors control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

15. **Fees and Charges.** If Grantor elects to charge user or other types of fees in connection with the public use of the Protected Property, 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.

16. **Indemnification.** Grantor, for itself, its successors and assigns, shall defend, indemnify and forever 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 Protected Property or to the subject matter of this Declaration except to the extent arising from acts or failure to act by Pierce County, its agents, employees, volunteers or assigns.

17. **Representations and Warranties.**

17.1 **By Grantor.** Grantor represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

17.1.1 **Authority.** Grantor has full power and authority to execute and deliver this Declaration and the individual(s) who execute and deliver this Declaration are duly authorized to do so;

17.1.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Grantor before any court or administrative agency which might result in Grantor being unable to perform its obligations under this Declaration; and

17.1.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 17.1 Grantor makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration or the form of this Declaration or its conformance to the requirements of Chapter 64.04 RCW .

17.2 **By Pierce County.** Pierce County represents and warrants to Pierce County that, as of the Effective Date, the following statements are true and correct:

17.2.1 **Authority.** Pierce County has full power and authority to execute and perform this Declaration, and the individuals who execute and deliver this Declaration are duly authorized to do so;

17.2.2 **Litigation.** There are no actions, suits or proceedings pending or threatened against Pierce County before any court or administrative agency which might result in Pierce County being unable to perform its obligations under his Declaration;

17.2.3 **No Other Representations or Warranties.** Other than as expressly set forth in this Section 17.2, Pierce County makes no representations or warranties of any kind, type or nature whatsoever with respect to the Protected Property or the subject matter of this Declaration.

18. **Attorney Fees; Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Declaration 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 Declaration shall be in the Superior Court of Pierce County, Washington.

19. **Negotiation.** This Declaration 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.

20. **Construction and Interpretation.** This Declaration shall be construed and interpreted in accordance with the laws of the state of Washington so as to restrict use of the Protected Property to such activities that are consistent with the Purpose, the terms of this Declaration and all Applicable Laws.

21. **Time.** Time is of the essence of this Declaration and of every term and provision hereof.

22. **Entire Agreement.** Following the Closing contemplated by that certain Pierce County Conservation Futures Agreement to Fund, this Declaration constitutes the entire agreement of the Parties with respect to the subject matter of this Declaration and supersedes all written or oral agreement or understandings, if any. This Declaration may be modified only in writing signed by both Parties.

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

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

25. **Binding Effect.** The terms, covenants, conditions and restrictions of this Declaration shall be binding upon and shall inure to the benefit of Grantor and Pierce County and their respective successors-in-interest in perpetuity.

26. **Invalid Provision.** If any provision of this Declaration is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Declaration shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Declaration; and the remaining provisions of this Declaration 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 Declaration.

27. **Recording.** This Declaration shall be recorded in its entirety with the Auditor of Pierce County, Washington.

28. **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 Declaration as indicated opposite the Executive's name below.

29. **List of Exhibits.**

- 29.1 **Exhibit A** – Legal Description of Protected Property
- 29.2 **Exhibit B** – Site Map of Protected Property
- 29.3 **Exhibit C** – Title Report Permitted Exceptions

[SIGNATURES & ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

GRANTOR'S SIGNATURE PAGE

CITY OF TACOMA, a municipal corporation and political subdivision of the state of Washington:

By: _____

Name: Victoria R. Woodards

Title: Mayor

Date: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Victoria R. Woodards** known to me to be the **Mayor** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE

PRINTED NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

RESIDING AT _____

MY COMMISSION EXPIRES _____

ATTEST:

Nicole Emery
City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared **Nicole Emery**, known to me to be the **City Clerk** of CITY OF TACOMA, 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 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.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____

EXHIBIT A
Legal Description of Protected Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIERCE, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

THE WEST 10 ACRES OF THE NORTH 20 ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON;

ALSO THAT PART OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING NORTHERLY OF THE NORTHEASTERLY LINE OF EAST SIDE DRIVE (MARINE VIEW DRIVE), AS NOW LOCATED, TACOMA, PIERCE COUNTY, WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND:

COMMENCING AT THE NORTHEAST CORNER OF GOVERNMENT LOT 1 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M.;

THENCE SOUTH 1°12'00" EAST, ALONG THE EAST BOUNDARY OF SAID LOT 1, 200.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 1°12'00" EAST, ALONG SAID EAST BOUNDARY OF LOT 1, 397.060 FEET TO THE NORTH BOUNDARY OF A PRIVATE DRIVEWAY;

THENCE NORTH 51°48'06.7" WEST ALONG THE NORTH SIDE OF SAID PRIVATE DRIVEWAY 31.20 FEET; THENCE SOUTH 51°56'57" WEST 7.972 FEET;

THENCE CONTINUING ALONG THE NORTH SIDE OF DRIVEWAY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 83.65 FEET AND AN ANGLE OF 61°44'07" A DISTANCE OF 88.672 FEET; THENCE NORTH 66°18'55" WEST 61.104 FEET;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 167.642 FEET AND AN ANGLE OF 20°17'30" A DISTANCE OF 59.371 FEET;

THENCE NORTH 86°36'25" WEST 57.351 FEET;

THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 107.228 FEET AND AN ANGLE OF 26°38'42.5" A DISTANCE OF 47.995 FEET TO THE INTERSECTION OF THE NORTH SIDE OF SAID PRIVATE DRIVEWAY AND THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE;

THENCE NORTH 25°55'25.4" WEST , ALONG THE NORTHEAST BOUNDARY OF MARINE VIEW DRIVE, 153.288 FEET; THENCE CONTINUING ALONG SAID BOUNDARY ON A CURVE TO THE LEFT WITH A RADIUS OF 388.31 FEET AN ANGLE OF 17°10'25" A DISTANCE OF 116.391 FEET TO THE CENTER LINE OF A PIPE LINE, AS PER EASEMENT TO THE CITY OF TACOMA RECORDED UNDER RECORDING NO. [1570028](#);

THENCE NORTH 56°14'01.9" EAST 150 FEET ALONG THE CENTER LINE OF SAID PIPE LINE EASEMENT; THENCE EASTERLY 341 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

ALSO EXCEPT THAT PORTION LYING WITHIN SHORT PLAT NO. [8806270287](#), RECORDS OF PIERCE COUNTY, WASHINGTON;

AND EXCEPT THE FOLLOWING:

THE WEST 208.71 FEET OF THE SOUTH 208.71 FEET OF THE WEST 10 ACRES OF THE NORTH 20 ACRES OF GOVERNMENT LOT 2 IN SECTION 22, TOWNSHIP 21 NORTH, RANGE 3 EAST, W.M., IN PIERCE COUNTY, WASHINGTON.

AND ALSO EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE CITY OF TACOMA BY DEEDS RECORDED UNDER RECORDING NOS. [8806080247](#), [8806080248](#) AND [8806080249](#), RECORDS OF PIERCE COUNTY, WASHINGTON.
0321222052

5119 Marine View Dr
Tacoma, Washington 98422
Tax Parcel No. 0321222052

EXHIBIT B
Site Map of Protected Property

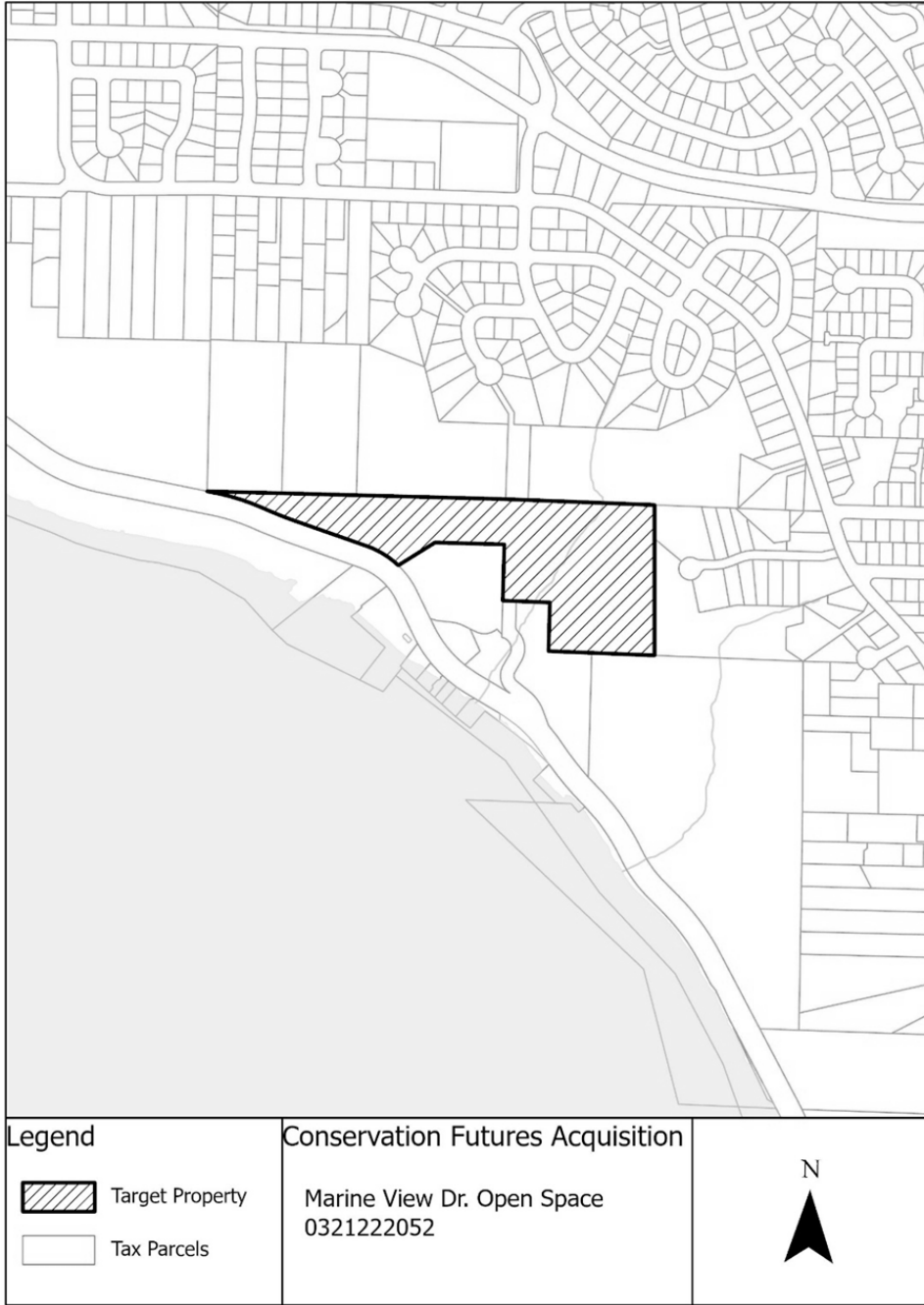


EXHIBIT C
Title Report Permitted Exceptions

The following exceptions will remain on title at closing:

1. Easement, including terms and conditions contained therein:
Granted to: City of Tacoma, a municipal corporation
For: Right and privilege to enter upon the within described premises at any time with all necessary men, materials, appliances, and equipment for the purpose of constructing, inspecting, operating, repairing and maintaining a blowoff and spillway line for use of the Water Division, Dept. of Public Utilities, in connection with its water distribution system
Recorded: September 26, 1950
Recording No: 1570027 and 1570028

2. The terms and provisions contained in the document entitled "Real Estate Contract"
Between: Orin R. Scott & Marie C. Scott and Pat and Carolyn A. Duvall
Recording No.: 2500407

3. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.
Recording No: 2612781

4. Conditions, notes, easements, provisions and/or encroachments contained and/or delineated on the face of Survey No. 505, recorded in volume 6 of surveys, at page(s) 5, in Pierce County, WA.

5. Easement, including terms and conditions contained therein:
Granted to: City of Tacoma, a municipal corporation
For: Construct and maintain utilities
Recorded: June 08, 1988
Recording No: 8806080246

This easement will correct, supersede, and replace that certain easement recorded under Pierce County Auditor's Fee No. 2962167.

6. Agreement and the terms and conditions thereof:
Between: Rita A. Duvall Fowler and Jeff P. Duvall
And: Diana D. Duvall
Recording No: 9504120419

7. Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of Harbor Ridge Line Stream, if it is navigable.
8. Any questions that may arise due to shifting or change of the line of high water of Harbor Ridge Line Stream.
9. Any prohibition or limitation on the use, occupancy or improvements of the land resulting from the right of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.