

Ordinance No. 123569

Council Bill No. 117126

AN ORDINANCE relating to the Natural Resource Trustees; authorizing an agreement with the Natural Resource Trustees for the assignment of a Restrictive Covenant setting out conditions under which the City of Seattle will guarantee the preservation of habitat to be created on City-owned property by Bluefield Holdings and authorizing the jurisdictional department to sign such a covenant when conceptual approval for the project is issued; and ratifying and confirming certain prior acts.

Related Legislation File: _____

Date Introduced and Referred: <u>3.14.11</u>	To: (committee): <u>Regional Development + Sustainability</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>March 28, 2011</u>	Date Presented to Mayor: <u>March 29, 2011</u>
Date Signed by Mayor: <u>4.4.11</u>	Date Returned to City Clerk: <u>4.4.11</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Richard Conlin

Committee Action:

Date	Recommendation	Vote
<u>3/18/2011</u>	<u>sub version 2 of Exhibit A for version 1</u>	<u>3-0</u>
<u>3/18/2011</u>	<u>approve w/ substituted Exhibit A</u>	<u>3-0</u>

(Conlin, Hodson, O'Brien)

This file is complete and ready for presentation to Full Council. RC 3/18/11

Full Council Action:

Date	Decision	Vote
<u>3/28/11</u>	<u>PASSED</u>	<u>9-0</u>

Law Department

ORDINANCE 123569

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4 AN ORDINANCE relating to the Natural Resource Trustees; authorizing an agreement with the
5 Natural Resource Trustees for the assignment of a Restrictive Covenant setting out
6 conditions under which the City of Seattle will guarantee the preservation of habitat to be
7 created on City-owned property by Bluefield Holdings and authorizing the jurisdictional
8 department to sign such a covenant when conceptual approval for the project is issued;
and ratifying and confirming certain prior acts.

9 WHEREAS, the City of Seattle entered into a Master Lease and Term Permit authorized by
10 Ordinance 122729 with Bluefield Holdings to construct habitat on specifically identified
11 City owned properties along the Duwamish River to allow for the development of credits
related to the settlement of Natural Resource Damages; and

12 WHEREAS the Bluefield Master Lease will allow habitat development on City lands at no
13 expense to the City; and

14 WHEREAS Bluefield Holdings has established a unique program with the Natural Resource
15 Trustees so that these credits can be sold to parties needing to satisfy natural resource
damages liability in conjunction with the Lower Duwamish Superfund site; and

16 WHEREAS the availability of Natural Resource Damages credits through the Bluefield Master
17 Lease will allow Duwamish businesses that have Natural Resource Damages liability to
quickly satisfy that liability; and

18 WHEREAS the Natural Resource Trustees require that a covenant be developed between the
19 City and the Trustees to ensure the preservation of the developed habitat, or an acceptable
20 substitute, in perpetuity; and

21 WHEREAS the City and the Trustees have come to an agreement on the form of such a covenant
22 which meets the needs and protects the rights of both the Trustees and the City; NOW,
THEREFORE

23 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**
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2 Section 1. The Superintendent of the Department of Parks and Recreation, the Director of
3 the Seattle Department of Transportation, and the Superintendent of Seattle City Light are each
4 authorized to execute a restrictive covenant substantially in the form of the covenant attached to
5 this ordinance as Exhibit A, and to record such covenants with the King County Recorder's
6 Office related to properties in their respective jurisdictions.
7

8 Section 2. The execution of such a covenant shall not precede the issuance of conceptual
9 approval of the Bluefield project by the jurisdictional department through the process required by
10 Section 2 of the lease between the City of Seattle and Bluefield Holdings authorized by
11 Ordinance 122729.
12

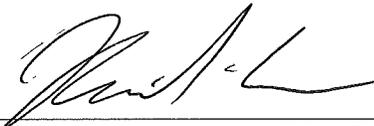
13 Section 3. Any act consistent with the authority of this ordinance taken after its passage
14 and prior to its effective date is hereby ratified and confirmed.
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Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 28th day of March, 2011, and signed by me in open session in authentication of its passage this 28th day of March, 2011.



President _____ of the City Council

Approved by me this 4th day of April, 2011.



Michael McGinn, Mayor

Filed by me this 4th day of April, 2011.



City Clerk

(Seal)

Exhibit A – Environmental Covenant and Access Agreement



ENVIRONMENTAL COVENANT AND ACCESS AGREEMENT

AFTER RECORDING RETURN TO:

Laura Wishik, Esq.
Director, Environmental Protection Section
P. O. Box 94769
Seattle, WA 98124-4769

GRANTOR AND OWNER:

City of Seattle
address

HOLDER:

National Oceanic and Atmospheric Administration, on behalf of
the Department of Commerce

United States Department of the Interior, on behalf of the U.S. Fish
and Wildlife Service

The State of Washington, on behalf of The Washington
Department of Ecology

The Muckleshoot Indian Tribe

The Suquamish Tribe

LEGAL DESCRIPTION
OF THE REAL PROPERTY):

[LAT/LONG DESCRIPTION OF HABITAT
RESTORATION PROJECT SITE PROPERTY
(ATTACHMENT A)]

[AS DESIGNATED ON THE MAP ATTACHED
TO THIS COVENANT (ATTACHMENT B)]



1
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3 **I. Purpose and Background**

4 This Environmental Covenant and Access Agreement (Covenant and Agreement) is made
5 and entered into by the individual natural resource trustees who are members of the Elliott Bay
6 Trustee Council, which is comprised of the Department of Commerce, on behalf of the National
7 Oceanic and Atmospheric Administration ("NOAA"), on behalf of the Department of Commerce;
8 the United States Department of the Interior, on behalf of the U.S. Fish and Wildlife Service; the
9 Washington Department of Ecology, on behalf of the state of Washington; the Muckleshoot
10 Indian Tribe; and the Suquamish Tribe (collectively, "the Elliott Bay Trustees" or "Trustees") and
11 the City of Seattle, Washington ("City," "Grantor" or "Owner") (together "the Parties" and
individually as a "Party").

12 The Trustees, under the authority of Section 107(f) of the Comprehensive Environmental
13 Response, Cleanup and Liability Act ("CERCLA"), 42 U.S.C. § 9607(f); Section 1006(b) of the
14 Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. 2706(b); and, 40 C.F.R. Part 300, subpart G, serve
15 as trustees for natural resources for the assessment and recovery of damages for injury to,
16 destruction of, or loss of natural resources under their trusteeship located in or proximate to the
17 Lower Duwamish River, including the Lower Duwamish Waterway, Harbor Island Waterway and
Lockheed West Site (hereinafter all three will be referred to as LDR).

18 The Lower Duwamish Waterway, which is part of LDR, is listed on the National Priorities
19 List as a federal Superfund site, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9601 et seq.
20 and as amended. Harbor Island and Lockheed West and its associated waterways are
21 immediately downstream from the Lower Duwamish Waterway and these are also federal
22 Superfund sites pursuant to CERCLA. The Trustees have carried out and/or are carrying out
23 damage assessments for the LDR and anticipate bringing claims for damage to natural resources
under CERCLA.

24 The Grantor owns the property described in Attachments A and B located in or proximate
25 to the LDR in Seattle, Washington (hereinafter referred to as "the Property").

26 Bluefield Holdings, Inc. ("Bluefield") is a business entity that designs, builds, and
27



1 maintains natural resource restoration and enhancement projects on behalf of persons that are
2 liable for natural resource damages at properties that have been identified as Superfund sites
3 and/or otherwise suffer a loss of natural resources pursuant to CERCLA. Such Projects may be
4 assigned ecological credit to be sold to potentially responsible parties liable for natural resource
damages along the LDR.

5 The City of Seattle is working collaboratively with Bluefield to generate natural resource
6 restoration and enhancement projects on properties owned by the City and located in or proximate
7 to the LDR. Such collaboration is documented through the Master Lease Agreement executed
8 between Bluefield and the City of Seattle on February 23, 2009, and approved by the City
9 Council on June 30, 2008 (hereinafter Lease and attached hereto as Attachment C). Ordinance
10 Number 122729 (Attachment C) authorized the Lease and issued a ten year Street Use Permit,
11 (Use Permit and set forth in Attachment D) to Bluefield to facilitate Bluefield's of design,
12 construction, and maintenance of the natural resource habitat restoration project described in
Attachment E and which is to be constructed on the Grantor's Property.

13 The project term under the Lease between Bluefield and the City for each of the Candidate
14 Parcels is for 24 months or completion of the construction of each Project, whichever is sooner,
15 and continues for an additional ten years after completion of construction of the Project as
16 authorized by the Use Permit. Upon expiration of the Lease, the City will maintain the Project in
17 perpetuity consistent with the rights, obligations and terms set forth below.

18 NOW, THEREFORE, in consideration of the foregoing recitals the Parties mutually agree
19 as follows:

20 **II. Conveyance and Covenant**

21 This instrument grants a valid and enforceable environmental covenant pursuant to the
22 Washington State Uniform Environmental Covenant Act, RCW Chapter 64.70 *et seq.*, (the Act)
23 imposing certain conditions and restrictions on real property located in King County,
24 Washington. The covenants and access rights granted in this instrument are required conditions
25 as a result of the Project being established along the LDR by Bluefield pursuant to the procedures
26 set out in the Natural Resource Restoration and Enhancement Credit Protocol (Protocol) attached
27 as Attachment F.



1 Grantor covenants to the Holder and its assigns that Grantor holds a fee simple or other
2 real property interest in the Property that allows Grantor to enter into and comply with this
3 Covenant and Agreement.

4 With this Covenant and Agreement, Grantor hereby binds Grantor, its successors, and
5 assigns, to the restrictions and conditions set forth herein, and conveys to the Holder full rights
6 provided by RCW Chapter 64.70 to enforce the restrictions, conditions, or other rights set forth
7 herein.

8 Grantor makes the following covenant as to limitations, restrictions, and uses to which the
9 Property may be put and specifies that such covenants shall run with the land, as provided by law,
10 shall be perpetual, and shall be binding on all parties and all persons claiming under them,
11 including the Owner of any portion of or interest in the Property:

12 1. The Property is designated to be used for the Project as set forth in Attachment E, and
13 any authorized uses of the Property cannot be inconsistent with the habitat restoration
14 requirements described therein.

15 2. The Property or portion thereof is identified as the location the Project as set forth in
16 Attachment E and, except as provided in Paragraph II.3 below, any authorized use of the Property
17 cannot be inconsistent with the habitat restoration requirements described therein.

18 3. The Property or a portion of the Property subject to this covenant is legally designated
19 as a City Right of Way ("ROW") whose primary use is for transportation purposes [or] a City
20 Park property whose primary use is for park purposes [or] City utilities property whose primary
21 use is for utilities purposes. The habitat project will be complementary to and will coexist with
22 the ROW [or] park [or] utility use. The habitat project will be complementary to and will coexist
23 with the ROW [or] park [or] utility use. Further, by making this covenant, the City does not
24 abrogate its obligation, duty or authority to use the Property for transportation purposes, [or] park
25 purposes [or] utilities purposes, and to that end, nothing in the covenant shall be construed to
26 limit the City's right and authority to add new transportation [or] park [or] utilities improvements
27 or structures, and/or conduct maintenance and repair, reconstruction and/or replacement work on
28 any improvements and/or structures currently existing on or adjacent to the Property so long as
upon completion of the work, the City causes to be restored or replaced the ecological value and



1 function that was impacted by such work.

2 4. Except as provided in Paragraph II.3 above, all of the following activities are strictly
3 prohibited: any activity that interferes, damages or disturbs the integrity or maintenance of the
4 Project; any activity that would degrade or diminish the ecological values of the habitat or its
5 function as a habitat; any activity that causes the release or exposure to the environment of any
6 hazardous substances at the Project; or any activity that would otherwise interfere with the Project
7 such that it would adversely affect the likelihood of success of the Project located on the Property.
8 Some non-exclusive examples of activities that may be prohibited in the habitat restoration
9 projects based on the foregoing criteria include the following: dredging, or excavating, logging,
10 land clearing, residential development, commercial development. Nothing in this section is to be
11 construed to prohibit public access to the habitat restoration projects so long as such public access
12 is accomplished in a manner that does not interfere with, damage or diminish the ecological value
13 or function of the projects.

14 3. The Grantor must restrict leases to uses and activities consistent with this Covenant
15 and Agreement and notify all lessees of the restrictions on the use of the Property.

16 4. No major maintenance or construction project shall be permitted on the Property
17 without prior written notice to each of the Holders.

18 5. The Grantor shall allow authorized representatives of the Holders the right to enter the
19 Property at reasonable times to undertake the following activities:

20 a. Evaluation or inspection of the Project, including but not limited to the
21 monitoring and assessing progress on the construction, operation, maintenance and performance
22 of the Project;

23 b. Verification of any data or information submitted to the Trustees;

24 c. Inspection and duplication of records, operation logs, contracts or other
25 documents maintained or generated by the Grantor or its contractors hereafter retained to perform
26 work undertaken pursuant to the Project; and

27 d. Conducting such tests, investigations or sample collections as deemed necessary
28 to monitor compliance with the Project, investigate or assess contamination at or near the
Property, or to assist in further identifying and quantifying natural resource injuries requiring
restoration actions and in planning and carrying out further restoration actions. Such access



1 includes reasonable access to adjacent properties owned and/or controlled by the Grantor where
2 access may be necessary to effectuate the rights to access the Project and/or Property on which
3 the Project is located, unless access to adjacent properties will create undue risk of physical injury
4 or harm and/or will interfere with essential operations on the adjacent properties.
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1 e. To the extent the Property is not open to public access, the Trustees shall
2 provide 72 hour notice of the Trustees' desire to access the Property. Trustees have authority to
3 enter freely and move about such Property at all reasonable times and for purposes of overseeing
4 requirements of the Project.

5 6. The Grantor covenants that it will not sell the Property or its legal interest in a Property
6 to any person or otherwise utilize the Property for purposes other than as a ROW [or] park [or]
7 for utilities as provided in Paragraph II.2., above, and the Project.

8 **III. Reservation of Rights**

9 Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all
10 rights accruing from ownership of the Property that are not conditioned, restricted or prohibited
11 by Section II.

12 **IV. Enforcement**

13 Compliance with this Covenant and Agreement may be enforced pursuant to the
14 Washington State Uniform Environmental Covenant Act. The Holders shall have full
15 enforcement rights. Failure by any party to enforce compliance with this Covenant and
16 Agreement in a timely manner shall not be deemed a waiver of the party's right to take
17 subsequent enforcement actions.

18 **V. Recordation**

19 Grantor shall record this instrument in the official records of King County, Washington or
20 other such County in which the Property may be located and shall pay the costs associated with
21 recording. The Parties shall take such actions and execute such additional documents, including
22 copies of this Covenant and Agreement or a short form of such document as may be required to
23 record evidence of this Covenant and Agreement for the Property.

24 **VI. Bluefield Leasehold and Permit**

25 The Grantor and the Trustees agree that there is a mutual interest in ensuring that the
26 Project is completed. In the event that Bluefield has sold any Interim Natural Resource Damage
27 Credits, as that term is defined under Paragraphs 1.7.1, 3.1 and 3.2 of the Protocol, but is unable
28 to fulfill its obligation to complete the Project, the Grantor agrees that the Trustees may, in the
Trustees' sole discretion, assume the same rights that Bluefield holds under the Lease and Permit



1 issued for the habitat project on the Property. All rights held by Bluefield under the Lease that
2 are necessary to complete the construction, operation, maintenance and stewardship of the Project
3 on the Property, and only such rights, shall be the rights that the Trustees' may elect to assume.

4 Upon the expiration of the Lease with Bluefield, the Grantor will be responsible for
5 maintaining vegetation and other habitat attributes, for controlling invasive vegetation and debris
6 removal, and for undertaking corrective actions for any perturbation that affects the ecological
7 integrity of the Project. The Parties' intention is that the Grantor will, as required by this
8 Covenant and Agreement, maintain the ecological function provided by the Project by the
9 Grantor in perpetuity.

10 **VII. Termination and Modification**

11 This Covenant and Agreement may only be amended or terminated in accordance with the
12 procedures and process contained in the amendment and termination provisions of the
13 Washington State Uniform Environmental Covenant Act, RCW 64.70.100 and as set forth herein.
14 Pursuant to Section 64.70.100 of the Act, the Trustees reserve the right to revise the Project as
15 described in Attachment E. In the event that the Project is significantly altered, revised or
16 otherwise changed, the Grantor will record a description of the modified Project along with an
17 amended Covenant and Agreement.

18 **VIII. Miscellaneous**

19 1. Covenant Limitations. This Covenant and Agreement shall not be used as evidence of
20 the Grantor's alleged liability in any action or proceeding other than an action or proceeding to
21 enforce the terms of this Covenant and Agreement.

22 2. Failure by the City to Comply with this Covenant and Agreement. If the Grantor fails
23 to comply with any of the terms and conditions of this Covenant and Agreement, the Holders
24 have the right to enforce the environmental covenants noted herein pursuant to the Washington
25 State Uniform Environmental Covenant Act, RCW 64.70 *et seq* to enforce the environmental
26 covenants noted therein.



1 3. Sale or Conveyance of a Candidate Parcel/Project Site by the City. Pursuant to the
2 terms and conditions of this Covenant and Agreement, the Grantor agrees that it will not sell or
3 otherwise relinquish its interest in the Property, but will hold its interest in the Property and
4 preserve the Property so as to maintain the integrity of the Project in perpetuity.

5 4. Notices. Whenever notice is required to be given or a document is required to be sent
6 by one Party to another under the terms of this Covenant and Agreement, it will be directed to the
7 individuals at the addresses specified below, unless those individuals or their successors give
8 notice of a change to the other Parties in writing. Written notice as specified constitutes complete
9 satisfaction of any written notice requirement of the Covenant and Agreement for the Parties:

10 As to the United States and as to the Trustees:

11 Craig O'Conner
12 Special Counsel
13 General Counsel of Natural Resources
14 National Oceanic and Atmospheric Administration
15 7600 Sand Point Way
16 Seattle, WA

17 As to the City:

18 Judith Noble
19 Strategic Advisor Corporate Policy and Performance
20 Seattle Public Utilities
21 700 5th Ave. Suite 4900
22 PO Box 34018 Seattle WA 98124-4018
23 e-mail: judith.noble@seattle.gov
24 Phone: 206-684-8078

25 and to:

26 Laura Wishik
27 Director, Environmental Protection Section
28 Seattle City Attorney's Office
 P.O. Box 94769
 Seattle, WA 98124-4769
 e-mail: laura.wishik@seattle.gov
 Phone: 206-684-8199



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1 5. Entire Covenant and Agreement. This Covenant and Agreement, inclusive of all
2 Attachments, contains the entire agreement between the Parties as to the subject matter hereof and
3 supersedes all other agreements.

4 6. Obligations. To the extent there are any conflicts between the terms and obligations of
5 the Lease and those of the Covenant and Agreement, the terms and conditions of the Covenant
6 and Agreement control.

7 **IX. Agreement by the City to Add Restrictive Covenants, Conservation**
8 **Easements or Other Limitations on Use or Development Upon Request.**

9 If the Trustees determine that the Property covered by this Agreement require protections
10 in addition to those afforded under this Agreement by the Washington State Uniform
11 Environmental Covenant Act, then the City shall implement such protections requested by the
12 Trustees, so long as the scope of those protections are reasonable and conform to the rights
13 retained by the City in Section II.2. of this Agreement and the City has legal authority to
14 implement such additional protections. The Trustees may request such additional protections
15 based on any legal authority available to the City, including but not limited to common law
16 authorities.

17 **X. Signature and Acknowledgements**

18 Grantor covenants that it is authorized to grant this Covenant and Agreement and shall warrant
19 and defend the same against all claims and demands challenging such authority. The undersigned
20 parties represent and certify that they are authorized to execute this Covenant and Agreement.
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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Judith Noble/4-8078	Karen Grove/4-5805

Legislation Title: An Ordinance relating to the Natural Resource Trustees; authorizing an agreement with the Natural Resource Trustees for the assignment of a Restrictive Covenant setting out conditions under which the City of Seattle will guarantee the preservation of habitat to be created on City-owned property by Bluefield Holdings and authorizing the jurisdictional department to sign such a covenant when conceptual approval for the project is issued; and ratifying and confirming certain prior acts.

Summary of the Legislation: The legislation would provide to three City departments authority to sign a covenant with the Lower Duwamish Natural Resource Trustees to assure preservation of habitat developed on City property under the Bluefield Holdings Masterlease; or, if the City later needs the property for City purposes, to assure the City will replace any habitat compromised by another City project.

Background: Ordinance 122729 authorizes an agreement with Bluefield Holdings to construct habitat on City-owned properties along the Duwamish River. Bluefield Holdings can sell the resulting natural resource damages credit to entities needing such credit to satisfy liability under the Lower Duwamish Superfund Natural Resources Damages action overseen by the Federal Natural Resource Trustees. Subsequent to City adoption of the authorizing legislation, the trustees required a covenant be attached to each property assuring that habitat created will be preserved or, if preservation is not possible because of the needs of the City for use of the property, that the City will replace the habitat not preserved. The Seattle Department of Transportation, Seattle Parks and Recreation, and Seattle City Light have properties included in the masterlease. This legislation authorizes the Parks Department superintendent, Seattle City Light superintendent and Department of Transportation director, as appropriate, to sign a site-specific covenant at the time conceptual approval of a habitat project is given.

This legislation does not have any financial implications.

This legislation has financial implications.

There may be long-term, unquantifiable fiscal impacts associated with a covenant on City properties affected by this legislation. These are:

1. The economic value of portions of the affected parcels not comprising a habitat project will be permanently decreased by the requirement to maintain habitat projects in perpetuity.
2. Keeping properties in habitat use in perpetuity eliminates other development opportunities, including income producing opportunities.



3. Maintaining properties in a habitat use in perpetuity may incrementally increase the costs of future repair or replacement of public infrastructure which will coexist with the habitat.

The covenant stipulates if the City of Seattle finds it necessary to disturb habitat created on City lands under the Bluefield program (and hence used to back up mitigation credits for natural resource damages) the City will repair or replace the disturbed habitat. While no such disturbance is anticipated, it is possible such disturbance could occur in the future which would result in a financial obligation to the City.

The example covenant attached as Exhibit A to the ordinance was drawn up to apply to SDOT properties because its properties are currently under review. Minor and non-substantive adjustments to the covenants for Parks and City Light properties are expected.

What is the financial cost of not implementing the legislation?

Not implementing the legislation would result in the abandonment of the program authorized in Ordinance 122729 and the loss of revenue anticipated from the 10-year leases laid out in that ordinance.

Does this legislation affect any departments besides the originating department?

Yes. Seattle Public Utilities is the department tasked with overseeing the Bluefield agreement but the departments whose property is involved are Seattle Department of Transportation, Seattle Parks and Recreation, and Seattle City Light.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?

No alternatives to a covenant have been acceptable to the Natural Resource Trustees.

Is the legislation subject to public hearing requirements?

No

Other Issues:

N/A

List attachments to the fiscal note below:

List of Attachments to Environmental Covenant and Access Agreement (Exhibit A to SPU Bluefields Agreement ORD)



Judith Noble
SPU Bluefields Agreement FISC ATT 1
March 3, 2011
Version #1

**List of Attachments to
Environmental Covenant and Access Agreement
(Exhibit A to SPU Bluefields Agreement ORD)**

Attachment A: [Legal Description of Property]

Attachment B: [Assessor's Parcel Number]

Attachment C: City of Seattle Ordinance No. 122729 authorizing the City of Seattle to enter into a Master Lease and Term Permit with Bluefield Holdings, and issuing a ten year Street Use Permit to Bluefield

Attachment D: Ten year Street Use Permit

Attachment E: [Description of Natural Resource Habitat Restoration Project]



ENVIRONMENTAL COVENANT AND ACCESS AGREEMENT

AFTER RECORDING RETURN TO:

Laura Wishik, Esq.
Director, Environmental Protection Section
P. O. Box 94769
Seattle, WA 98124-4769

GRANTOR AND OWNER:

City of Seattle
address

HOLDER:

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9 Washington Department of Ecology, on behalf of the state of Washington; the Muckleshoot
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7 to the LDR. Such collaboration is documented through the Master Lease Agreement executed
8 between Bluefield and the City of Seattle on February 23, 2009, and approved by the City
9 Council on June 30, 2008 (hereinafter Lease and attached hereto as Attachment C). Ordinance
10 Number 122729 (Attachment C) authorized the Lease and issued a ten year Street Use Permit,
11 (Use Permit and set forth in Attachment D) to Bluefield to facilitate Bluefield's of design,
12 construction, and maintenance of the natural resource habitat restoration project described in
Attachment E and which is to be constructed on the Grantor's Property.

13 The project term under the Lease between Bluefield and the City for each of the Candidate
14 Parcels is for 24 months or completion of the construction of each Project, whichever is sooner,
15 and continues for an additional ten years after completion of construction of the Project as
16 authorized by the Use Permit. Upon expiration of the Lease, the City will maintain the Project in
17 perpetuity consistent with the rights, obligations and terms set forth below.

18 NOW, THEREFORE, in consideration of the foregoing recitals the Parties mutually agree
19 as follows:

20 **II. Conveyance and Covenant**

21 This instrument grants a valid and enforceable environmental covenant pursuant to the
22 Washington State Uniform Environmental Covenant Act, RCW Chapter 64.70 *et seq.*, (the Act)
23 imposing certain conditions and restrictions on real property located in King County,
24 Washington. The covenants and access rights granted in this instrument are required conditions
25 as a result of the Project being established along the LDR by Bluefield pursuant to the procedures
26 set out in the Natural Resource Restoration and Enhancement Credit Protocol (Protocol) attached
as Attachment F.



1 Grantor covenants to the Holder and its assigns that Grantor holds a fee simple or other
2 real property interest in the Property that allows Grantor to enter into and comply with this
3 Covenant and Agreement.

4 With this Covenant and Agreement, Grantor hereby binds Grantor, its successors, and
5 assigns, to the restrictions and conditions set forth herein, and conveys to the Holder full rights
6 provided by RCW Chapter 64.70 to enforce the restrictions, conditions, or other rights set forth
7 herein.

8 Grantor makes the following covenant as to limitations, restrictions, and uses to which the
9 Property may be put and specifies that such covenants shall run with the land, as provided by law,
10 shall be perpetual, and shall be binding on all parties and all persons claiming under them,
11 including the Owner of any portion of or interest in the Property:

12 1. The Property is designated to be used for the Project as set forth in Attachment E, and
13 any authorized uses of the Property cannot be inconsistent with the habitat restoration
14 requirements described therein.

15 2. The Property or portion thereof is identified as the location the Project as set forth in
16 Attachment E and, except as provided in Paragraph II.3 below, any authorized use of the Property
17 cannot be inconsistent with the habitat restoration requirements described therein.

18 3. The Property or a portion of the Property subject to this covenant is legally designated
19 as [a City Right of Way ("ROW") whose primary use is for transportation purposes [or] a City
20 Park whose primary use is for park purposes [or] City utilities property whose primary use is for
21 utilities purposes]. The habitat project will be complementary to and will coexist with the ROW
22 [or] park [or] utility use. The habitat project will be complementary to and will coexist with the
23 ROW use. Further, by making this covenant, the City does not abrogate its obligation, duty or
24 authority to use the Property for transportation purposes, and to that end, nothing in the covenant
25 shall be construed to limit the City's right and authority to add new transportation improvements
26 or structures, and/or conduct maintenance and repair, reconstruction and/or replacement work on
27 any improvements and/or structures currently existing on or adjacent to the Property so long as
28 upon completion of the work, the City causes to be restored or replaced the ecological value and
function that was impacted by such work.

1 4. Except as provided in Paragraph II.3 above, all of the following activities are strictly
2 prohibited: any activity that interferes, damages or disturbs the integrity or maintenance of the
3 Project; any activity that would degrade or diminish the ecological values of the habitat or its
4 function as a habitat; any activity that causes the release or exposure to the environment of any
5 hazardous substances at the Project; or any activity that would otherwise interfere with the Project
6 such that it would adversely affect the likelihood of success of the Project located on the Property.
7 Some non-exclusive examples of activities that may be prohibited in the habitat restoration
8 projects based on the foregoing criteria include the following: dredging, or excavating, logging,
9 land clearing, residential development, commercial development. Nothing in this section is to be
10 construed to prohibit public access to the habitat restoration projects so long as such public access
11 is accomplished in a manner that does not interfere with, damage or diminish the ecological value
12 or function of the projects.

13 3. The Grantor must restrict leases to uses and activities consistent with this Covenant
14 and Agreement and notify all lessees of the restrictions on the use of the Property.

15 4. No major maintenance or construction project shall be permitted on the Property
16 without prior written notice to each of the Holders.

17 5. The Grantor shall allow authorized representatives of the Holders the right to enter the
18 Property at reasonable times to undertake the following activities:

19 a. Evaluation or inspection of the Project, including but not limited to the
20 monitoring and assessing progress on the construction, operation, maintenance and performance
21 of the Project;

22 b. Verification of any data or information submitted to the Trustees;

23 c. Inspection and duplication of records, operation logs, contracts or other
24 documents maintained or generated by the Grantor or its contractors hereafter retained to perform
25 work undertaken pursuant to the Project; and

26 d. Conducting such tests, investigations or sample collections as deemed necessary
27 to monitor compliance with the Project, investigate or assess contamination at or near the
28 Property, or to assist in further identifying and quantifying natural resource injuries requiring
restoration actions and in planning and carrying out further restoration actions. Such access
includes reasonable access to adjacent properties owned and/or controlled by the Grantor where

1 access may be necessary to effectuate the rights to access the Project and/or Property on which
2 the Project is located, unless access to adjacent properties will create undue risk of physical injury
3 or harm and/or will interfere with essential operations on the adjacent properties.
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THIS VERSION IS UNAPPROVED



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3 e. To the extent the Property is not open to public access, the Trustees shall
4 provide 72 hour notice of the Trustees' desire to access the Property. Trustees have authority to
5 enter freely and move about such Property at all reasonable times and for purposes of overseeing
6 requirements of the Project.

7 6. The Grantor covenants that it will not sell the Property or its legal interest in a Property
8 to any person or otherwise utilize the Property for purposes other than as a ROW as provided in
9 Paragraph II.2., above, and the Project.

10 **III. Reservation of Rights**

11 Grantor hereby reserves unto itself, its representatives, heirs, assigns, and successors all
12 rights accruing from ownership of the Property that are not conditioned, restricted or prohibited
13 by Section II.

14 **IV. Enforcement**

15 Compliance with this Covenant and Agreement may be enforced pursuant to the
16 Washington State Uniform Environmental Covenant Act. The Holders shall have full
17 enforcement rights. Failure by any party to enforce compliance with this Covenant and
18 Agreement in a timely manner shall not be deemed a waiver of the party's right to take
19 subsequent enforcement actions.

20 **V. Recordation**

21 Grantor shall record this instrument in the official records of King County, Washington or
22 other such County in which the Property may be located and shall pay the costs associated with
23 recording. The Parties shall take such actions and execute such additional documents, including
24 copies of this Covenant and Agreement or a short form of such document as may be required to
25 record evidence of this Covenant and Agreement for the Property.

26 **VI. Bluefield Leasehold and Permit**

27 The Grantor and the Trustees agree that there is a mutual interest in ensuring that the
28 Project is completed. In the event that Bluefield has sold any Interim Natural Resource Damage
Credits, as that term is defined under Paragraphs 1.7.1, 3.1 and 3.2 of the Protocol, but is unable
to fulfill its obligation to complete the Project, the Grantor agrees that the Trustees may, in the

1 Trustees' sole discretion, assume the same rights that Bluefield holds under the Lease and Permit
2 issued for the habitat project on the Property. All rights held by Bluefield under the Lease that
3 are necessary to complete the construction, operation, maintenance and stewardship of the Project
4 on the Property, and only such rights, shall be the rights that the Trustees' may elect to assume.

5 Upon the expiration of the Lease with Bluefield, the Grantor will be responsible for
6 maintaining vegetation and other habitat attributes, for controlling invasive vegetation and debris
7 removal, and for undertaking corrective actions for any perturbation that affects the ecological
8 integrity of the Project. The Parties' intention is that the Grantor will, as required by this
9 Covenant and Agreement, maintain the ecological function provided by the Project by the
10 Grantor in perpetuity.

11 **VII. Termination and Modification**

12 This Covenant and Agreement may only be amended or terminated in accordance with the
13 procedures and process contained in the amendment and termination provisions of the
14 Washington State Uniform Environmental Covenant Act, RCW 64.70.100 and as set forth herein.
15 Pursuant to Section 64.70.100 of the Act, the Trustees reserve the right to revise the Project as
16 described in Attachment E. In the event that the Project is significantly altered, revised or
17 otherwise changed, the Grantor will record a description of the modified Project along with an
18 amended Covenant and Agreement.

19 **VIII. Miscellaneous**

20 1. Covenant Limitations. This Covenant and Agreement shall not be used as evidence of
21 the Grantor's alleged liability in any action or proceeding other than an action or proceeding to
22 enforce the terms of this Covenant and Agreement.

23 2. Failure by the City to Comply with this Covenant and Agreement. If the Grantor fails
24 to comply with any of the terms and conditions of this Covenant and Agreement, the Holders
25 have the right to enforce the environmental covenants noted herein pursuant to the Washington
26 State Uniform Environmental Covenant Act, RCW 64.70 *et seq* to enforce the environmental
27 covenants noted therein.
28



1 3. Sale or Conveyance of a Candidate Parcel/Project Site by the City. Pursuant to the
2 terms and conditions of this Covenant and Agreement, the Grantor agrees that it will not sell or
3 otherwise relinquish its interest in the Property, but will hold its interest in the Property and
4 preserve the Property so as to maintain the integrity of the Project in perpetuity.

5 4. Notices. Whenever notice is required to be given or a document is required to be sent
6 by one Party to another under the terms of this Covenant and Agreement, it will be directed to the
7 individuals at the addresses specified below, unless those individuals or their successors give
8 notice of a change to the other Parties in writing. Written notice as specified constitutes complete
9 satisfaction of any written notice requirement of the Covenant and Agreement for the Parties:

10 As to the United States and as to the Trustees:

11 Craig O'Conner
12 Special Counsel
13 General Counsel of Natural Resources
14 National Oceanic and Atmospheric Administration
15 7600 Sand Point Way
16 Seattle, WA

17 As to the City:

18 Judith Noble
19 Strategic Advisor Corporate Policy and Performance
20 Seattle Public Utilities
21 700 5th Ave. Suite 4900
22 PO Box 34018 Seattle WA 98124-4018
23 e-mail: judith.noble@seattle.gov
24 Phone: 206-684-8078

25 and to:

26 Laura Wishik
27 Director, Environmental Protection Section
28 Seattle City Attorney's Office
 P.O. Box 94769
 Seattle, WA 98124-4769
 e-mail: laura.wishik@seattle.gov
 Phone: 206-684-8199

1 5. Entire Covenant and Agreement. This Covenant and Agreement, inclusive of all
2 Attachments, contains the entire agreement between the Parties as to the subject matter hereof and
3 supersedes all other agreements.

4 6. Obligations. To the extent there are any conflicts between the terms and obligations of
5 the Lease and those of the Covenant and Agreement, the terms and conditions of the Covenant
6 and Agreement control.

7
8 **IX. Agreement by the City to Add Restrictive Covenants, Conservation
9 Easements or Other Limitations on Use or Development Upon Request.**

10 If the Trustees determine that the Property covered by this Agreement require protections
11 in addition to those afforded under this Agreement by the Washington State Uniform
12 Environmental Covenant Act, then the City shall implement such protections requested by the
13 Trustees, so long as the scope of those protections are reasonable and conform to the rights
14 retained by the City in Section II.2. of this Agreement and the City has legal authority to
15 implement such additional protections. The Trustees may request such additional protections
16 based on any legal authority available to the City, including but not limited to common law
17 authorities.

18 **X. Signature and Acknowledgements**

19 Grantor covenants that it is authorized to grant this Covenant and Agreement and shall warrant
20 and defend the same against all claims and demands challenging such authority. The undersigned
21 parties represent and certify that they are authorized to execute this Covenant and Agreement.
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THIS VERSION IS NOT ADOPTED



1
2 IN WITNESS WHEREOF, the City of Seattle, Grantor has executed this
3 Environmental Covenant and Access Agreement on this _____ day of _____, 2009.

4 Signatory's printed name _____
5

6 Signature _____
7 City of Seattle

8 STATE OF _____)
9

10 COUNTY OF _____)
11

12 The foregoing instrument was acknowledged and signed in my presence on the ____ day
13 of _____, in the year _____, by the person(s) who appeared before me and who
14 acknowledged it to be his/her/their free and voluntary act.

15 Name (signature) _____

16 Notary Public for the state of _____

17 My Commission expires on _____

18 Printed Name _____
19
20

21 The forgoing Environmental Covenant and Access Agreement is hereby approved and
22 certified.

23 By: _____
24 On behalf of the Elliott Bay Trustees

25 Craig O'Connor, Special Counsel
26 General Counsel for Natural Resources
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THIS VERSION IS NOT ADOP-TED



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THIS VERSION IS NOT APPROVED





City of Seattle
Office of the Mayor

March 8, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill to authorize the director of the Seattle Department of Transportation (SDOT) and the superintendents of Seattle City Light and the Seattle Department of Parks and Recreation to enter into a restrictive covenant in favor of the Natural Resource Trustees when conceptual approval is received for habitat projects to be constructed under the Bluefield Holdings Masterlease.

Bluefield Holdings, Inc. is a private company backed by venture capital that specializes in environmental remediation and the sale of credits for habitat it creates. The Duwamish waterway, with its history of contamination and natural resource loss, presents a potential market for the sale of credits to satisfy the liability of a wide array of businesses which have contributed to the devaluation of natural resources.

Approximately three years ago, the City approved Ordinance 122729 authorizing a masterlease with Bluefield Holdings, under which Bluefield would restore habitat on certain City-owned properties. During the 10-year lease period Bluefield will provide an annual lease payment and maintain the habitat sites. At the end of the 10-year period Bluefield will vacate the lease and establish a fund for continued maintenance. In return, Bluefield Holdings was authorized to sell Natural Resource Damages credits which it will negotiate with the federal Natural Resource Trustees who are overseeing restoration efforts in the Duwamish Superfund area. The Trustees have required the habitat developed for credit also carry a covenant ensuring that the natural resource value which underlies the credits will be maintained. This legislation is necessary to allow the relevant department heads to agree to the required protective covenant once conceptual approval is given.

Bluefield Holdings is close to completing the federal requirements for this innovative program. Soon SDOT will be providing conceptual approval for the first habitat restoration project, with two more to follow later this year. Should you have questions, please contact Judith Noble at 684-8078.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael McGinn'.

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcgin@seattle.gov



STATE OF WASHINGTON – KING COUNTY

--SS.

269823
CITY OF SEATTLE, CLERKS OFFICE

No. 123567-572

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

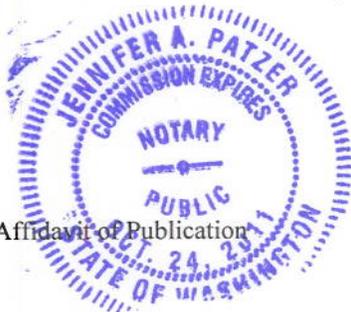
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCES

was published on

04/15/11

The amount of the fee charged for the foregoing publication is the sum of \$ 109.20, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

04/15/11

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on March 28, 2011, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123567

AN ORDINANCE relating to regular property taxes; requesting that a special election be held concurrent with the November 8, 2011 general election for submission to the qualified electors of the City of a proposition to lift the limit on regular property taxes under Chapter 84.55 RCW and authorize the City to levy additional taxes for up to seven years for the purpose of providing Seattle School District No. 1 public school students, Seattle children, and their families education-support services designed to improve academic achievement; authorizing creation of a new subfund; creating an oversight committee; and authorizing implementing agreements for this levy lid lift commonly known as the Families and Education Levy.

ORDINANCE NO. 123568

AN ORDINANCE relating to the Transit Master Plan; removing restrictions in the 2011 Adopted Budget that limit the Seattle Department of Transportation's spending on the Transit Master Plan.

ORDINANCE NO. 123569

AN ORDINANCE relating to the Natural Resource Trustees; authorizing an agreement with the Natural Resource Trustees for the assignment of a Restrictive Covenant setting out conditions under which the City of Seattle will guarantee the preservation of habitat to be created on City-owned property by Bluefield Holdings and authorizing the jurisdictional department to sign such a covenant when conceptual approval for the project is issued; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123570

AN ORDINANCE granting Theta Chi Fraternity, Inc. permission to maintain and operate a pedestrian skybridge over the alley between 17th Avenue Northeast and 16th Avenue Northeast, south of Northeast 47th Street, for an eight-year term; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; ratifying and confirming certain prior acts; and repealing Ordinance 123315.

ORDINANCE NO. 123571

AN ORDINANCE accepting for general street purposes 21 deeds conveyed to the City of Seattle by the Central Puget Sound Regional Transit Authority ("Sound Transit") in connection with the Central Link Light Rail Transit Project as agreed to in a Property Acquisition and Transfer Procedures Agreement between the City of Seattle and Sound Transit, dated August 12, 2003 ("Property Transfer Agreement"); laying off, opening, widening, extending, and establishing portions of the rights-of-way located on Martin Luther King Jr. Way South between South Alaska Street and South Orcas Street; placing the real property conveyed by the 21 deeds under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123572

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Date of publication in the Seattle Daily Journal of Commerce, April 15, 2011.