

ENVIRONMENTAL COVENANT
(SLIP 4 EARLY ACTION AREA OF LOWER DUMAWISH WATERWAY SUPERFUND
SITE)

RETURN TO: Office of Environmental Cleanup
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

GRANTOR: City of Seattle
Seattle Public Utilities
500 Fifth Avenue, Suite 4900
P.O. Box 34018
Seattle, WA 98124-4018

HOLDER: City of Seattle
Seattle Public Utilities
500 Fifth Avenue, Suite 4900
P.O. Box 34018
Seattle, WA 98124-4018

RELATED DOCUMENTS: N/A

LEGAL DESCRIPTION
OF THE REAL
PROPERTY SUBJECT
TO COVENANT:

PARCEL B, CITY OF SEATTLE LOT BOUNDARY
ADJUSTMENT NO. 3005372, RECORDED UNDER KING
COUNTY RECORDING NO. 20071010900018;

TOGETHER WITH THAT PORTION OF PARCEL E AS
SHOWN AND DELINEATED ON LOT LINE ADJUSTMENT
SURVEY UNDER RECORDING NUMBER 9212019002
DATED NOVEMBER, 1992, THAT PORTION OF THE
SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24
NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN
KING COUNTY, WASHINGTON, specifically described and
depicted in Attachment A.

AN ADDITIONAL ADJACENT PARCEL, NOT OWNED BY
THE CITY OF SEATTLE, IS SUBJECT TO A SEPARATE

COVENANT GRANTED BY THE BOEING COMPANY, AND
IS DESCRIBED AS:

COMMENCING AT THE INTERSECTION WITH THE
EASTERLY LINE OF THE DUWAMISH COMMERCIAL
WATERWAY AND THE MEDIAN LINE OF SLIP No.4
AS DEFINED IN AN AGREEMENT RECORDED UNDER
RECORDING No. 4477307, IN KING COUNTY
RECORDS, specifically described in Attachment B.

TAX PARCEL(S): 292404-911003

ENVIRONMENTAL COVENANT

I. Purpose and Background

This Environmental Covenant (Covenant) made this _____ day of _____, 2013 is executed pursuant to the Washington State Uniform Environmental Covenants Act (“UECA”), RCW Chapter 64.70 *et seq.*, and imposes certain conditions and restrictions on real property located in the City of Seattle, King County, Washington.

In 2001, the U.S. Environmental Protection Agency (“EPA”) placed the Lower Duwamish Waterway Superfund Site (the “Site”) on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.* (“CERCLA”). EPA subsequently established Early Action Areas (“EAAs”) within the Site, including the Slip 4 EAA, consisting of the certain tidelands and bedlands within Slip 4. EPA issued an Action Memorandum for Non-Time Critical Removal Action (“NTCRA”) for the Slip 4 EAA in May 2006, which required excavation and removal of certain sediments, capping of other sediments and soils, placement of institutional controls to limit potential human and/or ecological exposure to remaining contamination, and monitoring to verify the effectiveness of the NTCRA (collectively “Removal Action”). The Action Memorandum and supporting information regarding the Slip 4 EAA are contained in the administrative record that is on file with EPA Region 10 or its successor agency. As of the date of this Covenant, the EPA Region 10 regional office is located at 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

An Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”), CERCLA Docket No. 10-2006-0364, was issued by EPA to the City of Seattle and King County in September 2006 for implementation of the NTCRA selected in the Action Memorandum for the Slip 4 EAA.

Pursuant to the Action Memorandum, this Covenant, as an institutional control, is necessary to protect human health and the environment and to ensure the integrity of the NTCRA.

EPA has consulted pursuant to RCW 64.70.040(5) with local land use planning authorities in the development of the land use or activity restrictions in this Covenant.

II. Conveyance and Covenant

Grantor, City of Seattle, hereby binds Grantor, its successors and assigns, and conveys to the Holder the land use restrictions and conditions and such other rights conveyed in this Covenant concerning the area at the Slip 4 EAA owned by the Grantor and legally described above and in Attachment A (hereinafter, the “Property.”) EPA and the Washington Department of Ecology (“Ecology”) shall have full right of enforcement pursuant to UECA of the restrictions, conditions and other rights conveyed in this Covenant.

Grantor covenants to and with the Holder and its successors and assigns that Grantor owns the Property in fee simple and has the exclusive right to convey the Property or any interest therein, and that the Property is free and clear of encumbrances except those that Grantor has identified to EPA. Grantor will use best efforts to secure from all identified prior encumbrance holders either subordination of such interests to, or a binding recorded agreement to be bound by, these covenants. Grantor will warrant and defend the title and quiet possession of the property.

Grantor makes the following covenants as to limitations, restrictions, and uses to which the Property may be put and specifies that such covenants shall run with the land, as provided by law, shall be perpetual, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereinafter “Owner”):

1. Any activity on the Property that may result in the release or exposure to the environment of the contaminated sediment or soil that was contained as part of the Removal Action, or create a new exposure pathway, is prohibited, unless prior written approval from EPA is obtained authorizing the specific activity. Prohibited activities include, but are not limited to: altering, modifying or removing the Capped Areas (as defined below); piling installation; dredging, drilling, digging, excavation, placement of any objects, fill, or use of any equipment in the Capped Areas which deforms or stresses the surface beyond its load bearing capability; piercing the surface with a rod, spike or similar item; bulldozing or earthwork; anchoring, grounding or spudding, PROVIDED THAT, some controlled activities that may temporarily disturb Capped Areas are allowed so long as the proposals for such work that may temporarily disturb the Capped

Areas are accompanied by detailed plans describing (a) the proposed activity, (b) actions to limit contaminant releases during the activity, (c) actions to restore the integrity of the Capped Areas, and (d) plans for monitoring and reporting. Such proposed activities are subject to written approval by EPA. Examples of such activities that may be allowed include, but are not limited to: excavation for repair or replacement of existing outfalls; excavation for installation of new outfalls or other utilities; anchoring of construction equipment; cap maintenance (including placement of additional cap material and/or excavation of existing cap materials or underlying soils or sediments). The term 'Capped Areas' in these covenants includes engineered slope caps, sediment caps and soil covers as those terms are used in the Action Memorandum and Removal Action Completion Report for the Slip 4 EAA.

2. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Removal Action, or create a new exposure pathway, is prohibited without prior written approval from EPA.
3. The Owner shall properly maintain the Capped Areas of the EAA Removal Action.
4. The Owner shall prohibit any uses or activities that are inconsistent with any of the restrictions established in this Covenant, unless such use or activity is approved by EPA in advance in writing.
5. The Owner must notify all Property purchasers, lessees and easement holders of the restrictions set forth in this Covenant, and make compliance with this Covenant a condition of any conveyance of title, easement, lease or other interest in the Property. Any deed, lease, or other conveyance of any interest in the Property shall make adequate provisions for any continued monitoring or maintenance of the Capped Areas on the Property.
6. The Owner shall use best efforts to provide sixty (60) days, but at a minimum shall provide thirty (30) days, advance written notice to EPA of the Owner's intent to convey or transfer any interest in the Property. Such notice shall include the name and address of the proposed transferee.

7. The Owner shall allow authorized representatives of EPA, Ecology and the Holder the right to enter the Property at reasonable times to (1) evaluate compliance with this Covenant and/or the CERCLA response action, (2) inspect, perform oversight of activities, and take samples, (3) inspect any CERCLA or Model Toxics Control Act response actions conducted at the Property, or (4) inspect and perform maintenance on Capped Areas located on the Property. To the extent there is any conflict between the access rights as stated above and those specified in the Settlement Agreement, the terms of the Settlement Agreement shall control.
8. Local permitting requirements augment the existing federal and state permitting requirements that impose conditions on any construction at Slip 4. The Owner must ensure that all required local permits are obtained prior to any construction, filling and grading, or installation/changes to stormwater configuration and discharges, installation of private utilities or other development activities that may disturb the Capped Areas. Any easements granted by the property Owner must require measures to protect the integrity of the Capped Areas. These permits and easements will require appropriate elements such as (but not limited to) proper handling, characterization and disposal of contaminated sediments or soil and restoration of the Capped Areas if impacted.

III. Reservation of Rights

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

IV. Enforcement

Compliance with this Covenant may be enforced pursuant to the Washington State Uniform Environmental Covenants Act. EPA, Ecology and the Holder shall have full enforcement rights. Failure by EPA or Holder to enforce compliance with this Covenant in a timely manner shall not be deemed a waiver of their right to take subsequent enforcement actions.

V. Recordation

Grantor shall submit this instrument for recording in the official records of King County, Washington within 10 days after the execution of this instrument and shall pay the costs associated with recording.

VI. General Provisions

Agency's Interest. Pursuant to RCW 64.70.030, the rights granted to EPA by this Environmental Covenant are not interests in real property.

Liberal Construction. This Covenant shall be liberally construed in favor of effectuating its purposes. If any portion(s) of it is found to be ambiguous, an interpretation consistent with its purposes that would render such portion(s) valid shall be favored over one that would render it invalid.

VII. Termination and Modification

This Environmental Covenant may only be amended or terminated in accordance with the amendment and termination provisions of the Washington State Uniform Environmental Covenants Act, RCW 64.70.100.

VIII. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties represent and certify that they are authorized to execute this Covenant.

ATTACHMENT A

PARCEL B, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3005372, RECORDED UNDER KING COUNTY RECORDING NO. 20071010900018;

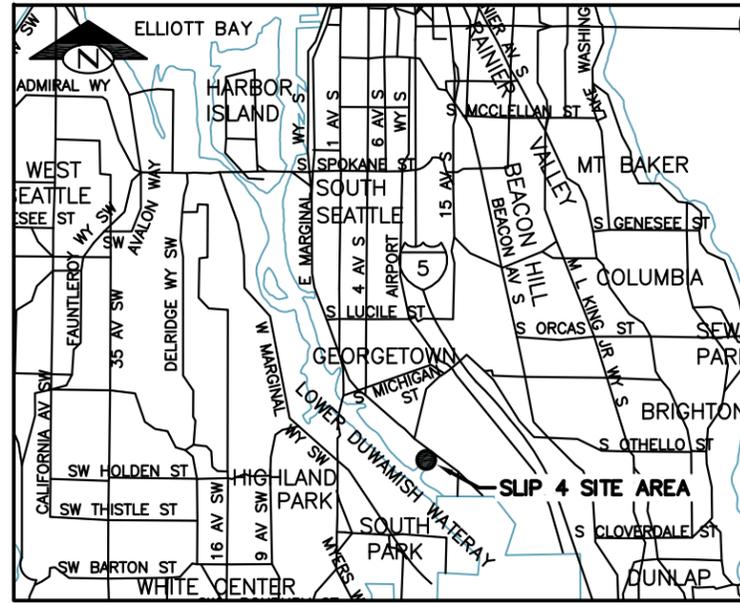
TOGETHER WITH THAT PORTION OF PARCEL E AS SHOWN AND DELINEATED ON LOT LINE ADJUSTMENT SURVEY UNDER RECORDING NUMBER 9212019002 BY DODDS ENGINEERS, INC. DATED NOVEMBER, 1992 LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST NORTHERLY POINT OF SAID PARCEL E; SAID POINT BEING THE INTERSECTION OF THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH AND THE LINE OF THAT CERTAIN DRAINAGE EASEMENT DESCRIBED IN DOCUMENT RECORDED UNDER KING COUNTY RECORDING NUMBER 59780003, AND THE ORIGINAL EASTERLY BOUNDARY OF SLIP 4 OF THE DUWAMISH WATERWAY;

THENCE SOUTH 09°26'45" WEST, ALONG SAID EASTERLY LINE AND SAID EASTERLY BOUNDARY, 70.36 FEET TO A POINT 125 FEET SOUTHERLY OF, WHEN MEASURED AT RIGHT ANGLES TO, THE NORTHERLY LINE OF BLOCK 6, DUWAMISH INDUSTRIAL ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21 OF PLATS, PAGE 65 RECORDS OF KING COUNTY, WASHINGTON;

THENCE NORTH 89°58'01" WEST, PARALLEL WITH SAID NORTH LINE, 23.97 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 11°34'46" EAST, 71.32 FEET;
THENCE SOUTH 10°54'56" WEST, 45.13 FEET;
THENCE SOUTH 06°26'14" WEST, 16.72 FEET;
THENCE SOUTH 09°58'02" WEST, 80.47 FEET;
THENCE SOUTH 00°25'51" WEST, 37.97 FEET;
THENCE SOUTH 26°27'10" EAST, 12.10 FEET;
THENCE SOUTH 04°33'09" WEST, 8.30 FEET;
THENCE SOUTH 19°00'19" WEST, 8.18 FEET;
THENCE SOUTH 13°11'38" WEST, 9.24 FEET;
THENCE SOUTH 00°12'57" WEST, 28.44 FEET;
THENCE SOUTH 70°28'27" WEST, 29.11 FEET;
THENCE SOUTH 20°09'39" WEST, 14.73 FEET;
THENCE SOUTH 29°57'21" WEST, 45.31 FEET;
THENCE SOUTH 30°24'28" WEST, 120.70 FEET;
THENCE SOUTH 51°37'12" EAST, 13.01 FEET;
THENCE SOUTH 42°02'56" WEST, 62.38 FEET;
THENCE SOUTH 35°17'24" WEST, 41.23 FEET;
THENCE SOUTH 17°49'24" WEST, 12.56 FEET TO INTERSECT THE SOUTHERLY LINE OF SAID PARCEL E AND THE TERMINUS OF THIS DESCRIBED LINE FROM WHICH THE MOST WESTERLY ANGLE POINT CORNER OF SAID PARCEL E BEARS NORTH 52°16'07" WEST, 28.68 FEET DISTANT.



VICINITY MAP

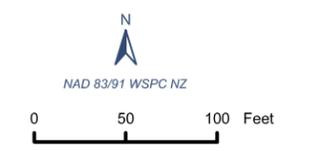
LEGEND

-  PROPERTY LINE
-  ADJOINING PROPERTY LINE
-  PROJECT LIMIT
-  EXISTING RIPRAP
-  SLOPE CAP
-  SEDIMENT CAP
-  ENGINEERED SOIL COVER

AREA SUBJECT TO COVENANT*		
	CITY OF SEATTLE	THE BOEING COMPANY
SEDIMENT CAP	2.67	0.02
SLOPE CAP	0.72	0.02
ENGINEERED SOIL COVER	0.15	0
TOTAL	3.54	0.04

* ONLY THE CITY OF SEATTLE PROPERTY IS INCLUDED WITHIN THIS COVENANT. THE PORTION OF THE CAP WITHIN BOEING PROPERTY WILL BE PROTECTED BY A SEPARATE COVENANT, TO BE RECORDED BY THE BOEING COMPANY.

MERIDIAN: WA STATE PLANE COORDINATE SYSTEM (NORTH ZONE), NAD 1983, 1991 ADJUSTMENT.



Crowley Marine Services, Inc.
Parcel #2136200641

City of Seattle
Parcel #2924049110

King County
Parcel #2924049091

First South Properties
Parcel #2924049043

The Boeing Company
Parcel #0022000005

Crowley Marine Services, Inc.
Parcel #2136200641

SLIP 4
The Boeing Company
Parcel #0022000005