

# Exhibit 15: Restrictive Covenant Template

*(To be completed and revised by MRP Manager with input from the IRT)*

When Recorded Mail To:

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## DECLARATION OF LAND USE RESTRICTION AND REAL PROPERTY COVENANT

Declarant: [Name].

The Beneficiaries/Beneficiaries: [List]; State of Washington Department of Ecology;  
United States Army Corps of Engineers.

Assessor's Tax Parcel ID#: [List]

This Declaration of Land Use Restriction and Real Property Covenant ("the real property covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_ 2010, by [Name] ("Declarant"), for the benefit of [List other beneficiaries as necessary], the State of Washington Department of Ecology ; and the United States Army Corps of Engineers, referred to herein as "the Beneficiaries".

WHEREAS, the Declarant makes the following recitals:

A. Declarant is the sole owner in fee simple of the real property located in King County, Washington, legally described on Exhibit A (the "Property"). A map of the property is attached to and made part of this Real property covenant, as Exhibit B.

B. Pursuant to a [Lease agreements or other legal agreements related to ownership] lease dated \_\_\_\_\_, the Declarant has leased the Property for [Time, if applicable] for the purpose of creating and maintaining a wetland mitigation area.

C. The Property possesses natural, open space, ecological, and recreational values that are of great importance to Declarant and the Beneficiaries. These values are referred to herein as the "Conservation Values" of the Property.

{Date and File name }

D. The Declarant is creating a real property covenant on this Property for the purpose of mitigation for the filling of certain wetlands located on [impact site]. This real property covenant is a condition of a permit that will be issued to the Port. The current use of, and improvements to, the Property are consistent with the conservation purposes of this real property covenant.

NOW, THEREFORE, in consideration of the above and the covenants, terms, conditions and restrictions contained herein, Declarant, does hereby establish a real property covenant on the Property as follows:

1. *Declaration of Real Property Covenant*

Declarant voluntarily establishes this real property covenant in perpetuity over the Property on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Property.

2. *Purpose*

It is the purpose of this real property covenant to ensure that the Property will be retained forever in a natural, open space and scenic condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Declarant and the Beneficiaries intend that this real property covenant will confine the use of the Property to such activities as are consistent with the purpose of this real property covenant.

3. *Rights of The Beneficiaries*

To accomplish the purpose of this real property covenant the following rights may be exercised by the Beneficiaries:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Declarant's compliance with and otherwise enforce the terms of this real property covenant in accordance with Section 9; provided that, except in cases where the Beneficiaries determine that immediate entry is required to prevent, terminate, or mitigate a violation of this real property covenant, such entry shall be upon prior reasonable notice to Declarant, and the Beneficiaries shall not in any case unreasonably interfere with Declarant's quiet use and enjoyment of the Property;

(c) To conduct, with reasonable prior notice to Declarant, survey, site preparation, removal of invasive non-native riparian vegetation, installation of native plants, and other activities associated with wetland restoration. Nothing herein shall be deemed to imply any obligation to perform such restoration activities; and

(d) To prevent any activity on or use of the Property that is inconsistent with the purpose of this real property covenant and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 9.

#### 4. *Prohibited Uses*

Any activity on or use of the Property inconsistent with the purpose of this real property covenant is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as permitted in Sections 3 and 5:

(a) *Construction and Improvements.* The placement or construction, of any buildings, structures, or other improvements of any kind, including, without limitation, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines.

(b) *Paving and Road and Trail Construction.* The paving or covering of any portion of the Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material or the construction of a road or trail, except that soft-surface trails may be constructed and maintained for passive recreation as permitted by paragraph 5(b).

(c) *Commercial Development.* Any commercial or industrial use or activity on the Property, including but not limited to commercial recreational activities involving active recreation.

(d) *Agricultural Activities.* Any domestic animal grazing or agricultural activities of any kind; and application of biocides except when determined by the Beneficiaries to be necessary for the eradication of invasive non-native plant species and such application is by the narrowest spectrum, least persistent material appropriate for the target species.

(e) *Introduced Vegetation.* The planting or introduction of non-native species of plants.

(f) *Waste Disposal.* The disposal, storage, or release of hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Property. The term “release” shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term “hazardous substances” as used in this real property covenant shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed 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.

(g) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, campgrounds or any other activity involving the public or private clubs or associations engaging in organized active recreation.

(h) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Property, except in connection with the sale or lease of the Property.

(i) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(j) *Vehicles.* The operation of motorized vehicles except as part of any hunting related activity or wetland creation or maintenance activity.

#### 5. *Reserved Rights*

Declarant reserves any use of, or activity on, the Property that is not inconsistent with the purpose of the real property covenant and that is not prohibited herein. Without limiting the generality of the foregoing, Declarant specifically reserves the following uses and activities:

(a) *Emergencies.* The right to undertake other activities necessary to protect public health, property improvements, or human safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.

(b) *Fence.* The right to install and maintain fences around the Property, and the Beneficiaries agrees not to remove or damage said fences.

#### 6. *Responsibilities of Declarant Not Affected.*

Other than as specified herein, this real property covenant is not intended to impose any legal or other responsibility on the Beneficiaries, or in any way to affect any existing obligation of the Declarant as owner of the Property.

#### 7. *The Beneficiaries's Right to Restore the Property*

In the event that any of the Conservation Values of the Property are impaired, the Beneficiaries shall have the right, but not the obligation, to restore all or portions of the Property.

#### 8. *Access*

No right of access by the general public to any portion of the Property is created by this real property covenant.

## 9. *Enforcement*

The Beneficiaries shall have the right to prevent and correct violations of the terms of this Real property covenant as set forth below.

(a) *Notice of Failure.* If The Beneficiaries determines that the Declarant is in violation of the terms of this real property covenant or that a violation is threatened, the Beneficiaries shall give written notice to Declarant of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this real property covenant, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the Beneficiaries.

(b) *Declarant's Failure to Respond.* The Beneficiaries may bring an action as provided for in Section 9(c) below if Declarant fails to cure the violation within thirty (30) days after receipt of notice thereof from the Beneficiaries; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *The Beneficiaries's Action.* The Beneficiaries may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Real property covenant, to enjoin the violation, *ex parte* as necessary and 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 real property covenant or injury to any of the Conservation Values protected by this real property covenant, including damages for the loss of the Conservation Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Declarant's liability therefore, the Beneficiaries, in their sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without the Beneficiaries being required to post bond or provide other security.

(d) *Immediate Action Required.* If the Beneficiaries, in their sole and absolute discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, The Beneficiaries may pursue remedies under this Section 9 without prior notice to Declarant or without waiting for the period provided for cure to expire.

(e) *Nature of Remedy.* The rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Real property covenant. Declarant agrees that the remedies at law for any violation of the terms of this real property covenant are inadequate and Beneficiaries shall be entitled to the injunctive

relief described in this Section 9 both prohibitive and mandatory, in addition to such other relief to which Beneficiaries may be entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) *Costs of Enforcement.* Provided the Beneficiaries first provide Declarant with a Notice of Failure and Declarant fails to respond, all reasonable costs incurred by the Beneficiaries in enforcing the terms of this real property covenant against Declarant, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Declarant's violation of the terms of this real property covenant shall be borne by Declarant. The substantially prevailing party in a judicial enforcement action regarding this Real property covenant shall be entitled to reimbursement of all reasonably incurred attorney fees and litigation expenses.

(g) *The Beneficiaries's Discretion.* Any forbearance by the Beneficiaries to exercise rights under this real property covenant in the event of any violation of any terms of this real property covenant shall not be deemed or construed to be a waiver of such term or of any rights under this real property covenant. No delay or omission by the Beneficiaries in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(h) *Acts Beyond Declarant's Control.* Nothing contained in this real property covenant shall be construed to entitle the Beneficiaries to bring any action against Declarant to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Declarant's control, including, without limitation, fire, flood, storm, and earth movement, nor shall Declarant be required to take steps to abate or mitigate injury to the Property resulting from such causes.

#### 10. *Alternate Dispute Resolution*

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with this real property covenant, the Parties shall attempt to resolve the dispute through informal discussion. The Parties may also agree to refer the dispute to mediation and shall select a single mediator to hear the matter. Each party shall bear its own costs, including attorney's fees, if mediation is pursued under this Section 10. The Parties shall share equally the fees and expenses of the mediator.

#### 11. *Notice and Approval*

(a) *Notice.* Whenever notice is required under this real property covenant, the party required to give notice ("Notifying Party") shall give reasonable written notice prior to the date the Notifying Party 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 activity in sufficient detail to permit the other party to make an

informed judgment as to its consistency with the purpose and terms of this real property covenant.

(b) *Evaluation of Proposed Activities.* The purpose of requiring the Notifying Party to notify the other party prior to undertaking certain permitted uses and activities is to afford the other party an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purpose and terms of this real property covenant.

12. *Notice of Transfer of Property by Declarant and Successor and Assigns*

Anytime the Property itself, or any interest in it is transferred by the Declarant to a third party, the Declarant, its successors and assigns, shall notify the Beneficiaries in writing, and the document of conveyance shall expressly refer to this real property covenant.

13. *Termination of Real property Covenant*

(a) *Frustration of Purpose.* This real property covenant may only be terminated with the concurrence of the Beneficiaries .

(b) *Economic Value.* The fact that any use of the Property that is expressly prohibited by this real property covenant, or any other use as determined to be inconsistent with the purpose of this real property covenant, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Declarant in granting this real property covenant. It is the intent of both Declarant and the Beneficiaries that any such changes shall not be assumed to be circumstances justifying the termination or extinguishment of this real property covenant pursuant to this section.

14. *Modification*

This real property covenant may be amended only with the concurrence of the Beneficiaries, provided that any such amendment shall be consistent with the purpose of the real property covenant and shall not affect its perpetual duration. All amendments shall be in writing, approved by the Beneficiaries and recorded in the real property records of Lewis County.

15. *Interpretation*

This real property covenant shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

16. *Perpetual Duration*

This real property covenant shall be a binding servitude running with the land in perpetuity.

17. *Notices*

Any notices required by this real property covenant shall be in writing and shall be personally delivered or sent by first class mail to the Declarant, at the following address, unless the Beneficiaries have been notified of a change of address.

To Declarant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. *Severability*

If any provision of this real property covenant is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

In Witness Whereof, the Declarant has set its hands on the date first written above.

Declarant:

[Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON )

) ss

County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me the undersigned, a Notary Public for the State of Washington, personally appeared \_\_\_\_\_ who stated on oath that (he/she) is the \_\_\_\_\_ of [Name] and authorized to execute the within instrument on behalf of said company and acknowledged said instrument as the free and voluntary act of the company for the uses and purposes mentioned therein.

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

\_\_\_\_\_  
Notary Public for the State of Washington  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_