

DRAFT

6/28/01

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

**DECLARATION OF RESTRICTIVE COVENANTS
(Tyee Valley Golf Course Mitigation Area)**

Grantor: Port of Seattle, a Washington municipal corporation

Grantee: Port of Seattle, a Washington municipal corporation

Legal Description: _____
Official legal description attached on Exhibit A.

Assessor's Tax Parcel ID#: _____

Reference # (If applicable): N/A

This Declaration of Restrictive Covenants (this "Declaration") is made as of this _____ day of _____, _____, by the Port of Seattle, a Washington municipal corporation (the "Port") as required by a Washington State Department of Ecology ("Ecology") Order and a Seattle District Office of the U.S. Army Corps of Engineers ("Corps") Section 404 Permit, each as more particularly described in Recital C, below.

50190397.10
Tyee Valley Golf Course Mitigation Area

Kelley
EXHIBIT NO. *336*
2-14-02
M. Green

. RECITALS

A. The Port is the owner of those certain real properties located in King County, Washington and described as follows: (i) the real property adjacent to or near Miller Creek (the "Miller Creek Mitigation Area"); (ii) the real property adjacent to or near Miller Creek, Lora Lake, and the former Vacca Farm (the "Miller Creek/Lora Lake/Vacca Farm Wetland and Floodplain Mitigation Area"); (iii) the real property adjacent to or near the Tyee Valley Golf Course property (the "Tyee Valley Golf Course Mitigation Area"); (iv) the real property comprising approximately 67-acres located in the City of Auburn (the "Auburn Wetland Mitigation Area"); and (v) the real property adjacent to or near Des Moines Creek (the "Des Moines Creek Mitigation Area") (collectively, the "Miller Creek Mitigation Area," the "Miller Creek/Lora Lake/Vacca Farm Wetland and Floodplain Mitigation Area," the "Tyee Valley Golf Course Mitigation Area," the "Des Moines Creek Mitigation Area," and the "Auburn Wetland Mitigation Area" are referred to herein as the "Mitigation Sites"). This Declaration relates to the Tyee Valley Golf Course Mitigation Area, which is legally described in Exhibit A attached hereto and by this reference incorporated herein.

B. In connection with the construction of a third runway and other improvements at Seattle-Tacoma International Airport, the Port proposed certain mitigation activities for the Mitigation Sites that include: stream riparian/buffer enhancements, floodplain and wetland enhancement, and construction of replacement wetlands.

C. In order to comply with Ecology's Order # _____ ("Ecology's Order"), and the Corps Section 404 Permit # _____ ("Corps Permit"), for the Port's mitigation activities at the Mitigation Sites, the Port has executed this Declaration regarding the Tyee Valley Golf Course Mitigation Area, and has executed similar Declarations for the other Mitigation Sites, to submit the Tyee Valley Golf Course Mitigation Area to the covenants, conditions, and restrictions herein.

NOW, THEREFORE:

1. Declaration. The Port hereby declares that the Tyee Valley Golf Course Mitigation Area (hereinafter, the "Mitigation Area") shall be subject to the covenants, conditions, and restrictions stated herein which shall be binding on all parties having any right, title, or interest in the Mitigation Area or any part thereof and shall inure to the benefit of each subsequent owner thereof.

2. Purpose. The purpose of this Declaration is to meet the requirements of the federal Clean Water Act and state water quality standards as set forth in Ecology's

Order and the Corps Permit, and to restrict development and construction activities within the Mitigation Area.

3. Restrictive Covenants. The Mitigation Area shall be used as a natural wetland area, and no development activity including clearing, grading, filling, or the construction of any building, structure, or other improvement shall occur in the Mitigation Area, except for the following:

- a. Activities authorized in the Corps/Ecology-approved Natural Resource Mitigation Plan to construct and establish the mitigation. Existing uses in the Mitigation Area may continue until the uses are removed or halted during construction of the mitigation.
- b. Wildlife management control actions pursuant to and governed by the current Wildlife Hazard Management Plan or any subsequent version of the Plan adopted by the Port in cooperation with the U.S. Department of Agriculture's Wildlife Services Program and the Federal Aviation Administration pursuant to Title 14 of the Code of Federal Regulations (Section 139.337). Prior to the adoption of any subsequent version of the Plan, the Plan shall be submitted to the Corps and Ecology for review and comment regarding potential impacts on the Mitigation Area. If during review and comment, the Corps or Ecology identifies any impacts to the functions and values of the Mitigation Area, the Port shall within 60 days submit to the Corps and Ecology a conceptual plan that compensates for the identified impacts and, within 90 days following Corps and Ecology approval of the conceptual plan, submit for approval a final compensation plan.
- c. Monitoring, maintenance, and contingency actions pursuant to Ecology's Order and the Corps Permit, including but not limited to removal of exotic, non-native, invasive vegetation to satisfy the mitigation performance standards.
- d. Construction of stormwater drainage channels and outfalls as authorized in writing by the Corps and Ecology and maintenance of those channels and outfalls.
- e. Installation of water and air quality monitoring equipment as authorized in writing by the Corps and Ecology, and maintenance of the equipment.

- f. Vegetation height control to maintain FAA required approach slopes and radar coverage.
- g. ~~Removal~~ Felling of trees that a certified arborist has recommended determined to be removed to prevent a hazard to persons or property. The (e.g., diseased or damaged trees that could fall on adjacent property), as authorized in writing by the Corps and Ecology. Felled trees shall remain in the Mitigation Area as woody debris, and the Port shall replant areas where trees are removed, as necessary felled, as appropriate to maintain consistency with the Corps/Ecology-approved Natural Resources Mitigation Plan. (This exception does not apply to wildlife management control actions, which are governed by a separate exception above.)
- h. Continuation, including maintenance and reconstruction, of the two existing underground sewer lines, one of which is currently owned and operated by the Midway Sewer District, and the other of which is currently owned and operated by the Port (the Industrial Wastewater System line).
- i. Activities to implement the Des Moines Creek Basin Plan as authorized in writing by the Corps and Ecology.
- j. Other activities authorized in writing by the Corps and Ecology.

Any activity in the Mitigation Area, as authorized above, shall use methods that minimize damage to the Mitigation Area. Where the activity will be carried out by a utility or other non-Port entity, the Port shall provide access over adjacent Port-owned property as necessary to shorten the access route within the Mitigation Area. Following any activity in the Mitigation Area, the Port shall restore the Mitigation Area to the condition contemplated in the Corps/Ecology-approved Natural Resource Mitigation Plan (except for any authorized structure or use that will remain in the Mitigation Area).

4. Default Remedies. Any violation of a covenant or condition in this Declaration shall be considered a violation of Ecology's Order and the Corps Permit, and this Declaration may be enforced pursuant to the terms of Ecology's Order and the Corps Permit.

5. Binding Effect. The Declaration shall run with the land and be binding upon the Port and its successors and assigns.

6. Captions. The captions and paragraph headings contained in this Declaration are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Declaration, nor the intent of any provision hereof.

7. Recording. This Declaration shall be recorded in the real property records of King County.

8. No Third Party Rights. Nothing in this Declaration, express or implied, is intended to confer upon any person, other than the Port and its successors and assigns any rights or remedies under or by reason of this Declaration; provided that this Declaration may be enforced by the Corps or Ecology as described herein.

9. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the state of Washington.

EXECUTED AND EFFECTIVE as of the date first written above.

PORT OF SEATTLE, a Washington municipal
corporation

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of the Port of Seattle, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of
Washington, residing at _____
My appointment expires: _____

EXHIBIT A
TO
DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION OF THE TYEE VALLEY GOLF COURSE MITIGATION
AREA