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May 24, 1993
93.383.sub

Introduced by: Greg Nickels

Proposed No.: 93-383

MOTION NO. 9016

A MOTION authorizing the county executive to sign the modified conservation easement agreements as an exceptional opportunity to provide public access to a Puget Sound shoreline.

WHEREAS, opportunities for public access and enjoyment of the shorelines on Puget Sound are extremely limited, and

WHEREAS, the citizens of Redondo Beach offered a proposed conservation easement agreement to King County, and

WHEREAS, mutually acceptable modifications to the conservation easement agreement have been negotiated and reviewed by representatives of the citizens and the county council's legal counsel, the prosecuting attorney's office, and the council and executive staff, and

WHEREAS, Motion 8948 adopted by the county council on March 22, 1993 recommended that after the negotiations and approval by council legal counsel and the prosecuting attorney's office, of mutually acceptable modifications, the revised deeds and agreement must be returned to the council for action before June 1, 1993, and

WHEREAS, such easements do not require King County to close the road, but are effective only so long as the road is closed, and

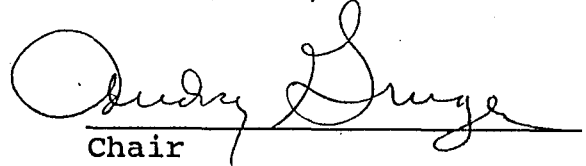
WHEREAS, the King County Council intends to take final action regarding future permanent use of Beach Road South after preparation and transmittal by the executive of a supplemental environmental impact statement;

NOW, THEREFORE BE IT MOVED by the Council of King County: The county executive is authorized to accept and execute the modified conservation easement agreements in substantially the

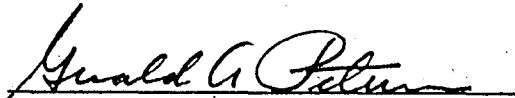
1 form attached hereto, as now agreed to and offered by the
2 citizens owning property adjacent to Redondo Beach. Provided
3 that, residents shall execute and deliver to King County such
4 easements on or before September 1, 1993.

5 PASSED this 24th day of May, 1993.

6 KING COUNTY COUNCIL
7 KING COUNTY, WASHINGTON

8 
9 Chair

10 ATTEST:

11 
12 Clerk of the Council
13

14 Attachments: Redondo Beach Deed of Conservation Easements
15 Agreements

When recorded return to:

King County Real Property Division

Seattle, WA 98104

GRANT DEED OF CONSERVATION EASEMENT, COVENANTS,
OBLIGATIONS AND CONDITIONS

THIS GRANT DEED OF CONSERVATION EASEMENT, COVENANTS,
OBLIGATIONS AND CONDITIONS is made by and between
_____, [husband
and wife], having an address at _____
_____ ("Grantor"), and
King County, Washington, having an address at _____
_____, Seattle,
Washington 98104 ("Grantee").

WITNESS THAT:

WHEREAS, Grantor is the owner in fee of that certain real
property in King County, Washington, more particularly described in
Exhibit A attached hereto and incorporated herein by this reference
(the "Protected Property"); and

WHEREAS, the Protected Property possesses natural, scenic,
open space, educational, and recreational values (collectively,
"Conservation Values") of great importance to Grantor, the people
of King County and the people of the State of Washington; and

WHEREAS, in particular, the Protected Property consists of
undeveloped and natural beach front and aquatic lands that lie
between a right-of-way owned by Grantee ("Grantee's Right-of-Way")
and Poverty Bay in Puget Sound, as shown on the Site Plan attached
hereto as Exhibit B and incorporated herein by this reference (the
"Site Plan"); and

WHEREAS, the Protected Property provides unobstructed views of
the Bay, the Sound and Vashon and Maury Islands; and

WHEREAS, the Protected Property affords opportunities for
public access and passive recreational and educational uses, such
as walking, beach combing and scenic enjoyment; and

WHEREAS, such opportunities for public access and passive
recreational and educational uses are uncommon in the surrounding
unincorporated community of Redondo Beach ("Redondo Beach"); and

WHEREAS, the legislatively declared policies of the State of
Washington, in Chapter 84.34 of the Revised Code of Washington

(hereinafter "RCW"), provide that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence, adequate open-space lands and to assure the use and enjoyment of natural resources, shoreline and scenic beauty for the economic and social well-being of the state and its citizens; and

WHEREAS, the Protected Property constitutes "open space land" as defined in ch. 84.34 RCW; and

~~WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, dated [To be completed and approved prior to closing.], 19__, on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and~~

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property in perpetuity; and

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property so long as Grantee does not intentionally allow use of Grantee's Right-of-Way as a roadway for through-traffic by motorized vehicles other than for emergency vehicles such as fire and police and vehicles for maintenance and repair consistent with section 1 herein; and so long as Grantee does not commence an action of condemnation for park, recreation or motor vehicle transportation purposes of residential property owned by Grantor and abutting Grantee's Right-of-Way on the date of the execution of this Deed and Agreement; and

WHEREAS, Grantee is a home rule chartered County government which has as one of its purposes the preservation of open space and critically important ecological systems in King County, Washington; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein, to ~~assume responsibility for maintaining, monitoring and policing~~ the Protected Property for passive public uses as stated herein, and to preserve and protect the Conservation Values of the Protected Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, obligations and restrictions contained herein the parties agree as follows:

1. Grant of Easement, Covenants, Obligations and Conditions.

Pursuant to the laws of the State of Washington and in particular RCW 64.04.130 and Chapter 84.34 RCW, Grantor hereby voluntarily grants, conveys and quitclaims to Grantee a conservation easement over the Protected Property on the terms, covenants, obligations and conditions set forth herein so long as Grantee does not intentionally allow use of Grantee's Right-of-Way as a roadway for through-traffic by motorized vehicles other than for emergency vehicles such as fire and police and maintenance and repair, and for maintenance and repair and construction vehicles that cannot otherwise access the Protected Property or Grantee's Right-of-Way, and so long as Grantee does not commence an action of condemnation for park, recreation or motor vehicle transportation purposes of residential property owned by Grantor and abutting Grantee's Right-of-Way on the date of the execution of this Deed and Agreement ("Deed and Agreement"). Grantor expressly intends that this Deed and Agreement, including all covenants, obligations and conditions identified herein, runs with the land and that this Deed and Agreement, including all covenants, obligations and conditions identified herein, shall be binding upon Grantor's personal representatives, heirs, successors, and assigns, but in the event that Grantee does intentionally allow use of Grantee's Right-of-Way as a roadway for through-traffic by motorized vehicles other than for emergency vehicles such as fire and police and maintenance and repair, and for maintenance and repair and construction vehicles that cannot otherwise access the Protected Property or Grantee's Right-of-Way, or in the event Grantee commences an action of condemnation for park, recreation or motor vehicle transportation purposes of residential property owned by Grantor and abutting Grantee's Right-of-Way on the date of the execution of this Deed and Agreement, this Deed and Agreement shall become null and void and any interest in the Protected Property granted and conveyed to Grantee through this Deed and Agreement shall revert back to Grantor. PROVIDED HOWEVER, that, before any reversion takes place pursuant to this paragraph, Grantor must give Grantee written notice of the event or events triggering reversion and of Grantor's intent to cause reversion of the interests conveyed herein. If Grantee shall, within thirty (30) days of receipt of such notice, dismiss any such action for condemnation and terminate any such through traffic, no reversion shall occur due to such event or events. Nothing herein shall be construed to limit Grantee's power of eminent domain; if reversion occurs because of Grantee's exercise thereof, the Grantee's interest in the Protected Property shall be returned to Grantor, and Grantee may exercise its power of eminent domain over the Protected Property and/or Grantor's residential property. For the purposes of this Deed and Agreement, the term "through-traffic" specifically does not extend to the use of the Grantee's Right-of-Way for destination traffic to the Protected Property [Include preceding sentence in the Deed and Agreement for those properties which would otherwise be land locked.]

2. Purpose. It is the purpose of this Deed and Agreement to assure that the Protected Property will be retained in its natural

and open space condition for public access and passive recreational and educational uses and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Deed and Agreement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Deed and Agreement. For the purposes of this Deed and Agreement, the term "passive recreational uses" shall mean walking, hiking, jogging, bicycling, roller skating, relaxation and associated low impact activities that do not significantly impair or interfere with the Conservation Values of the Protected Property.

3. Rights and Responsibilities of Grantee.

3.1 Grantee Rights. To accomplish the purpose of this Deed and Agreement the following rights are conveyed to Grantee by this Deed and Agreement:

a. To possess and control the Protected Property consistently with the terms of this agreement;

ab. To preserve and protect the Conservation Values of the Protected Property;

c. To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Deed and Agreement;

d. To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Deed and Agreement and to require the restoration by the Grantor, its personal representatives, heirs, successors, or assigns of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use by Grantor or any of Grantor's permittees, licensees, personal representatives, heirs, successors, or assignees, in accordance with paragraph 8 herein.

e. To allow public access to the Protected Property between the hours of 6:00 a.m. and 10:00 p.m. daily for passive public recreational and educational uses. Grantor shall not permit the use of motorized land vehicles on the Protected Property except as provided for in paragraph 5.1.b herein. For the purposes of this Deed and Agreement and its provisions herein, the public using the property in accordance with this paragraph of the Deed and Agreement, paragraph 3.1.d, shall be considered solely the permittee of the Grantee.

3.2 Grantee Responsibilities. To accomplish the purpose of this Deed and Agreement, Grantee hereby accepts the following covenants, obligations and conditions:

a. Grantee shall keep the Protected Property reasonably free of litter or garbage resulting from the public's use of the Protected Property.

b. Grantee shall monitor and police the public's use of the Protected Property as may be reasonably necessary to prevent or abate public nuisances, as it elects.

c. ~~For as long as it officially provides a public park or promenade, Grantee shall construct, maintain and make such capital improvements to the sea wall or barrier shown in the Site Plan (attached hereto as Exhibit B) as may be reasonably necessary to protect the use of Grantee's Right-of-Way as a park or promenade from reasonably expected tides, winds or wave action. Grantee at its discretion may retain or collaborate with any reasonable party or organization to maintain or improve the sea wall or barrier for park purposes. If Grantee negligently fails to exercise ordinary care in the maintenance, repair or construction of the seawall on Grantee's right-of-way and this is the proximate cause of damage to Grantor's residential property, then at Grantee's sole option it shall either: (1) pay the actual property damage suffered by Grantor, whether as a claim or final judgement, or (2) relinquish its interest in the Protected Property under this Deed and Agreement.~~

d. In order to ensure that Grantee's uses of the Protected Property and Grantee's Right-of-Way comply with the terms and conditions of this Deed and Agreement, Grantee shall prepare all plans and any amendments thereto for use of the Protected Property and Grantee's Right-of-Way, other than for the maintenance or reconstruction thereof, with the reasonable consultation and review of a citizen committee which has fifty percent (50) percent or more of its membership composed of residents from the Redondo community who are nominated by the Redondo Community Club or its successor in interest. Should the Redondo Community Club cease to exist without a successor in interest, the fifty (50) percent or more of the membership of the citizen committee will be composed of residents from the area that had been served by the Redondo Community Club according to its by-laws.

4. Grantor Rights.

a- Grantor Improvement And Maintenance Of The Sea Wall. Without any affirmative obligation or responsibility to do so, the Grantor may construct, improve or maintain the sea wall or barrier ~~referenced in paragraph 3.2.C of this Deed and Agreement on the Grantee's Right-of-Way or the Protected Property~~ so long as the proposed designs or activities are first approved by the Grantee.

[b. Grantor has been able to access Grantor's residential property via both Redondo Beach Drive South and Soundview Boulevard. After Grantee closes Redondo Beach Drive South to traffic in front of Grantor's residential property, Grantor may access Grantor's residential property via Redondo Beach

Drive South only so long as said access is first approved by Grantee.]

5. Prohibited And Permitted Activities and Uses By Grantor And Grantee.

5.1 Prohibited Activities and Uses By Grantor And Grantee. Any activity on or use of the Protected Property inconsistent with the purpose of this Deed and Agreement is prohibited, and Grantor and Grantee acknowledge and agree that they will neither conduct, engage in or permit any such activity or use. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. Grantor and Grantee shall not place any signs or billboards on the Protected Property, except that signs, whose placement, number, size and design do not materially diminish the natural and open space character of the Protected Property, may be displayed by Grantee to state the name and address of the Protected Property, to advertise the Protected Property for public use and enjoyment, and to post the Protected Property to control unauthorized entry or use or to warn users of public health emergencies.

b. Grantor and Grantee shall not use motorized land vehicles on the Protected Property other than may reasonably and appropriately be necessary to facilitate access by the disabled or as may reasonably be appropriate or necessary for capital improvements or maintenance activities allowed or required under this Deed and Agreement.

5.2 Permitted Activities and Uses By Grantor And Grantee. Grantor and Grantee shall not place or construct any buildings, structures or improvements of any kind on the Protected Property other than the following:

a. The sea wall or barrier referenced in paragraphs ~~3.2.c~~ and 4.a of this Deed and Agreement; and

b. Stairways or other improvements which provide and enhance public access.

Neither Grantor or Grantee shall place, construct or maintain any buildings, structures or improvements allowed under paragraphs 5.2.a. and 5.2.b., above, in a manner that would materially interfere with the westward views of Puget Sound, Vashon and Maury Islands and the Olympic Mountains from Grantee's Right-of-Way or from residential property owned by Grantor and abutting Grantee's Right-of-Way. There is a rebuttable presumption that stairways placed or constructed on the Protected Property do not constitute a material interference with such westward views.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all

rights and obligations accruing from its ownership of the Protected Property, other than those conveyed to Grantee in this Deed and Agreement.

7. Notice of Intention to Undertake Certain Permitted Activities or Uses. Grantor and Grantee shall each notify the other prior to undertaking certain permitted activities or uses, as provided for in paragraphs 5.2 herein, except that such notice is not required where ~~Grantor or~~ Grantee must make emergency improvements to the sea wall or barrier referenced in such paragraph to prevent, abate, or mitigate significant injury to the Protected Property or abutting properties. The purpose of this notification is to afford Grantor or Grantee, as the case may be, an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the purpose of this Deed and Agreement. Whenever notice is required, the party proposing to undertake the activity or use shall notify the other party in writing not less than sixty (60) days prior to the date the party intends to undertake the activity or use in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit the other party to make an informed judgment as to its consistency with the purpose of this Deed and Agreement.

7.1 Approval. Where ~~Grantee's~~ approval is required, as set forth in paragraph ~~74~~ herein, the ~~party responsible for approving the proposed activity or use~~ Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of the ~~other party~~ Grantor's written request therefor. In the event that the nature of the activity for which approval is sought is such that said sixty (60) day time period is inadequate, the ~~party responsible for the approval~~ Grantee shall be entitled to a reasonable extension of said time for approval upon a showing by ~~such party~~ Grantee of such need and a written notice to the other party of the reasonable amount of time necessary. Approval may be withheld only upon a reasonable determination by ~~the party responsible for the approval~~ Grantee that the action as proposed would be inconsistent with the purpose of this Deed and Agreement. The approval may include reasonable conditions which must be satisfied in undertaking the proposed activity or use. ~~Failure by Grantee to act within such time shall not be deemed approval of the proposed activity.~~

~~7.2 Dispute Resolution and Arbitration. If a dispute arises between Grantor and Grantee concerning the consistency of any proposed or undertaken activity or use with the purpose of this Deed and Agreement, and the party presently undertaking or proposing to undertake the activity or use agrees not to proceed with the activity or use pending resolution of the dispute the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties~~

~~shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of an arbitrator, then the presiding judge of King County Superior Court shall appoint one. The matter shall be settled in accordance with ch. 7.04 RCW or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The substantially prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees pursuant to ch. 7.04 RCW and applicable court rules, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.~~

8. Remedies.—~~If Grantor or Grantee determines that the other party is in violation of the terms of this Deed and Agreement or that a violation is imminent and the other party has not agreed to suspend or delay the purported violating activity under the terms set forth in paragraph 7.2, above, Grantor or Grantee, as the case may be, shall give written notice to the other party (the "Violating Party") of such violation and demand corrective action sufficient to cure the violation and, where the violation involved injury to the Protected Property resulting from any activity or use inconsistent with the purpose of this Deed and Agreement, to restore the portion of the Protected Property so injured. If the Violating Party fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantor or Grantee, as the case may be, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantor or Grantee, as the case may be, may bring an action at law or in equity in a court of competent jurisdiction: (1) to enforce the terms of this Deed and Agreement, to enjoin the violation by temporary or permanent injunction; (2) to recover any damages to which it may be entitled for violation of the terms of this Deed and Agreement or injury to any Conservation Values protected by this Deed and Agreement, including damages for the loss of natural, scenic, open space, education, or recreational values; and (3) to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting the Violating Party's liability therefor, Grantor or Grantee, as the case may be, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. Grantor shall permit Grantee and its employees, agents or~~

~~or without waiting for the period provided for cure to expire, provided that if Grantee seeks legal action in a court, the procedural requirements of the Rules of Court shall control including any requirement of notice. Grantor or Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Deed and Agreement, and Grantor and Grantee respectively agree that the other party's remedies at law for any violation of the terms of this Deed and Agreement are inadequate and that Grantor or Grantee, as the case may be, shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantor or Grantee, as the case may be, may be entitled, including specific performance of the terms of this Deed and Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantor and Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, and in addition to recourse to arbitration under paragraph 7.2 herein.~~

Grantor and Grantee are each entitled, for the other's violation of the terms of this Deed and Agreement or any Conservation Values protected under this Deed and Agreement, including loss of natural, scenic, open space, educational, or recreational values, (1) to recover damages, and (2) to injunctive relief pursuant to rights accorded by Washington law.

~~8.1 Costs of Enforcement. In the event any action is instituted regarding the performance of the terms of this Deed and Agreement, then the reasonable attorney fees of the prevailing party shall be paid by the non-prevailing party, and any reasonable costs of restoration necessitated by the violation of the terms of this Deed and Agreement shall be borne by the non-prevailing party. Should Grantor, its personal representatives, heirs, successors, or assigns, or any person other than Grantee or its successors or assigns, seek to bring any action to modify or terminate this Deed and Agreement, Grantor or its personal representatives, heirs, successors, or assigns shall bear its own costs and attorneys' fees in any such action at law or equity.~~

8.12 Enforcement Discretion. Any particular enforcement of the terms of this Deed and Agreement shall be at the discretion of Grantor and Grantee, and any forbearance by either party hereto to enforce any right or obligation hereunder shall not be deemed to be a waiver of such right or obligation.

8.23 Waiver of Certain Claims and Defenses. Grantor and Grantee acknowledge that they have carefully reviewed this Grant Deed of Conservation Easement, Covenants, Obligations and Conditions and have consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Grant Deed of Conservation Easement, Covenants, Obligations and Conditions, Grantor and Grantee hereby waive any claim or defense Grantor or Grantee may have against the other or the other's successors in interest under or pertaining to this Grant

Deed of Conservation Easement, Covenants, Obligations and Conditions based upon waiver, laches, estoppel, or prescription. Grantor and Grantee further waive any claim or defense Grantor or Grantee may have against the other or the others' successors in interest based upon any reversionary right requiring use as a public road or highway which may have been included in the transfer to the Grantee of the property referred to herein as the Grantee's Right-of-Way.

8.34 Acts Beyond the Control of Grantor and Grantee. Nothing contained in this Deed and Agreement shall be construed to entitle Grantor or Grantee to bring any action against the other to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or changes in the Protected Property resulting from causes beyond the control of Grantor or Grantee, as the case may be, including, without limitation, natural changes, fire, flood, storm, or earth movement, ~~or from any prudent action taken by Grantor or Grantee, as the case may be, under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes, or from acts of trespassers.~~

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to Grantor's ownership and use of the Protected Property. ~~Grantee retains all responsibilities and shall bear all costs and liabilities of any kind related to the its operation, upkeep, and maintenance of the Protected Property under the terms of this Deed and Agreement, including the maintenance of adequate comprehensive general liability insurance or self-insurance coverage.~~ Each party shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by that party.

9.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Deed and Agreement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, but in no event obligated to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of 2.0% percentage points over {{JIM BREWER WILL GET A BETTER INDEX; ONE THAT IS NOT LIKELY TO BE BOUGHT OUT OF EXISTENCE:}} ~~the prime rate of interest from time to time charged by Seafirst Bank, Inc. or the maximum rate allowed by law.~~

{{I HAVE ADAPTED THE HOLD HARMLESS PROVIDED BY JOEL PAISNER TO THE REDONDO CONTEXT. SINCE THE TAX CLAUSE WAS NOT CONTESTED, I DID NOT

USE IT. FOR THE REST, I HAVE MADE THE OBLIGATIONS EQUAL AND SYMMETRICAL; THIS ASPECT OF THE ORIGINAL VERSIONS WAS UNCONTESTED.))

9.2 Grantor's Indemnity and Hold Harmless. Grantor shall indemnify, defend (with counsel satisfactory to Grantee) and hold harmless Grantee and its officers, employees, contractors and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property due to the negligence of Grantor, its personal representatives, heirs, successors or assigns; (2) any release of hazardous substances or wastes under federal, state or local environmental laws on to or from the Protected Property, except any such release by Grantee or Grantee's permittees; (3) the obligations specified in paragraphs 9 and 9.1 herein; and (4) challenges by the Grantors or the Grantors' successors or assigns to the existence or validity of this Deed and Agreement. Grantor shall protect, defend, indemnify, and hold Grantee, its agents, employees, officials, and officers harmless from, and shall process and defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against Grantee arising out of or incident to the execution of, performance of, or failure to perform this Agreement; PROVIDED, however, that if such claims are caused by or result from the concurrent negligence of Grantee, its agents, employees, and/or officers and Grantee, its agents, employees, and/or officers, this paragraph shall be valid and enforceable only to the extent of the negligence of Grantor or its personal representatives, heirs, successors, or assigns; and PROVIDED FURTHER, that nothing in this paragraph shall require Grantor to indemnify, hold harmless, or defend Grantee, its agents, employees, and/or officers from any claims caused by or resulting from the sole negligence of Grantee, its agents, employees and/or officers. Grantor's obligation under this paragraph shall include indemnification for claims made by Grantor or its personal representatives, heirs, successors, or assigns.

9.3 Grantee's Indemnity and Hold Harmless. Grantee shall indemnify, defend (with counsel satisfactory to Grantor) and hold harmless Grantor and its personal representatives, heirs, successors, and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property due to the negligence of Grantee, its officers, employees, contractors or agents; (2) injury to or the death of any person, or physical damage to any property, resulting from any act, omission,

~~condition, or other matter related to or occurring on or about the Protected Property which is reasonably related to the use of the Protected Property as a park or promenade, unless due to the negligence of Grantor, its personal representatives, heirs, successors, or assigns; and (3) release by the Grantee or Grantee's permittees of hazardous substances or wastes under federal, state or local environmental laws on to or from the Protected Property. Grantee shall protect, defend, indemnify, and hold Grantor, its personal representatives, heirs, successors, or assigns, harmless from, and shall process and defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against Grantor arising out of or incident to the execution of, performance of, or failure to perform this Agreement; PROVIDED, however, that if such claims are caused by or result from the concurrent negligence of Grantee, its agents, employees, and/or officers and Grantor, its personal representatives, heirs, successors, or assigns, this paragraph shall be valid and enforceable only to the extent of the negligence of Grantee, its agents, employees, and/or officers; and PROVIDED FURTHER, that nothing in this paragraph shall require Grantee to indemnify, hold harmless, or defend Grantor, its personal representatives, heirs, successors, or assigns from any claims caused by or resulting from the sole negligence of Grantor, its personal representatives, heirs, successors, or assigns. Grantee's obligation under this paragraph shall include indemnification for claims made by Grantee or its agents, employees, and/or officers.~~

10. Extinguishment. If circumstances arise in the future that render the purpose of this Deed and Agreement impossible or impractical to accomplish, this Deed and Agreement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled from Grantor, its personal representatives, heirs, successors or assigns, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with paragraph 10.1 herein. All such proceeds shall be used in a manner consistent with the conservation purposes of the Grantee.

10.1 Proceeds. This Deed and Agreement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 10 herein, the parties stipulate to have a fair market value based on a mutually agreeable appraisal of the value at the time when the information is required; however, if the Grantor and Grantee cannot agree on an appraisal of the fair market value, the issue of value shall be submitted for binding arbitration following the procedures set forth in paragraph 7.2. The cost of any such appraisals required herein will be shared equally by both parties.

10.2 Condemnation. If the Protected Property is taken, in whole or in part, by exercise of the power of eminent domain by an agency other than the Grantee, Grantee shall be entitled to compensation in accordance with applicable law for the property interests that it has acquired by this Deed and Agreement, and paragraph 10.1 herein shall not be determinative of the interest condemned or taken.

11. Amendment. If circumstances arise under which an amendment to or modification of this Deed and Agreement would be appropriate, Grantor, or the then owner of the Protected Property, and Grantee are free to jointly amend this Deed and Agreement; provided that no amendment shall be allowed that will affect the qualification of this Deed and Agreement or the status of Grantee under any applicable laws, including RCW 64.04.130 or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose of this Deed and Agreement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of King County, Washington, and any other jurisdiction in which such recording is required.

12. Assignment. This Deed and Agreement, and all rights and obligations contained herein including the right to enforce the Deed and Agreement is transferable, but Grantee may assign its rights and obligations under this Deed and Agreement only to a governmental entity or an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out by the transferee.

13. Subsequent Transfers. Grantor agrees to reference the terms of this Deed and Agreement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest of any duration. Grantor further agrees to give written notice to Grantee of the transfer of any interest no later than twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Deed and Agreement or limit its enforceability in any way.

14. Estoppel Certificates. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Deed and Agreement and otherwise evidences the status of this Deed and Agreement.

15. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

or to such other address as either party from time to time shall designate by written notice to the other. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this paragraph.

16. Recordation. Grantee shall record this instrument in timely fashion in the official records of King County, Washington, and other appropriate jurisdictions and Grantee may re-record it at any time as may be required to preserve its rights in this Deed and Agreement.

17. General Provisions.

17.1 Controlling Law. The interpretation and performance of this Deed and Agreement shall be governed by the laws of the State of Washington.

17.2 Compliance with Law. Grantor and Grantee shall comply with all federal, state or local laws, statutes, ordinances or governmental rules or regulations now in force or which may hereafter be enacted or promulgated relating to or affecting the condition or use of the Protected Property.

17.3 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed and Agreement shall be liberally construed in favor of the grant to effect the purpose of this Deed and Agreement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Deed and Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

17.4 Severability. If any provision of this Deed and Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed and Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

My Commission expires: _____

[REDONDO: DEED5-7.TXT]

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement

B. Site Plan of Property Subject to Easement

[To Be Complete And Approved Prior To Closing]

[C. Identification of Prior Mortgage/Deed of Trust]

Note: Deed includes a right of reverter is adjacent property is used by King County as a road. A right of reverter may threaten the characterization of this transaction as a gift.

Also, paragraph 17.10 is not necessary if there is only one required signatory for the Grantor and paragraph 18 and Exhibit C. may be omitted if there is no outstanding mortgage or debt on the protected property.

[] Single brackets signify paragraphs that are optional or clauses consisting of a choice of language that may apply, depending on the circumstances.

17.5 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Deed and Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Deed and Agreement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 11 herein.

17.6 Successors. The covenants, terms, conditions, and restrictions of this Deed and Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Protected Property.

17.7 Termination of Rights and Obligations. A party's rights and obligations under this Deed and Agreement terminate upon transfer of the party's interest in the Deed and Agreement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

17.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

[17.10 Joint Obligation. The obligations imposed by this Deed and Agreement upon Grantor shall be joint and several.]

[[18. Subordination. At the time of conveyance of this Deed and Agreement, the Protected Property is subject to the [mortgage/deed of trust] identified in Exhibit [C] attached hereto and incorporated herein by this reference. Grantor covenants that he/she will obtain the holder/beneficiary's execution of the subordination agreement attached hereto, the [holder/beneficiary] of which has agreed by separate instrument, which will be recorded concurrently with this Deed and Agreement, to subordinate its rights in the Protected Property to this Deed and Agreement to the extent necessary to permit the Grantee to enforce the purpose of the Deed and Agreement and to prevent any modification or extinguishment of this Deed and Agreement by the exercise of any rights of the [mortgage/deed of trust]. Such subordination agreement shall be delivered to Grantee within six months of the date of execution of this Deed and Agreement. Grantor's failure to provide such subordination shall give Grantee the right but not obligation to terminate this Deed and Agreement.]]