

Grantor: Nisqually Indian Tribe  
Grantee: City of Olympia, Washington

Abbreviated Legal Description: Northeast quarter of the Southwest quarter of Section 32, Township 18 North, Range 1 East, Willamette Meridian.

## GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT by and between the Nisqually Indian Tribe, a federally recognized Indian tribe (hereinafter “GRANTOR”), and the City of Olympia, a Washington municipal corporation (hereinafter “GRANTEE”), is made with reference to the following facts:

### I. RECITALS

- A. Grantor is sole owner in fee simple of the Conservation Property that is the subject of the Conservation Easement, more particularly described in “**Exhibit A**” (Legal Description of Property Subject to Easement) and shown on “**Exhibit B**” (Site Map), consisting of the land lying easterly of the easterly shoreline of Lake St. Clair, Thurston County, Washington totaling approximately 23 acres, more or less, within three (3) tax parcels (hereinafter, “**Conservation Property**”).
- B. The Grantor and Grantee have agreed to a \$50,000 USD purchase price for the Conservation Easement covering the Conservation Property.
- C. Grantor and Grantee intend that the wildlife, open space, ecological, and natural values of the Conservation Property (the “Conservation Values”) be preserved and maintained in perpetuity. Grantor and Grantee agree to be bound by the terms and conditions of this Conservation Easement.
- D. This Conservation Easement consists of riparian lands and forested lands on and around Lake St. Clair, Thurston County, Washington. This Conservation Easement will enhance and protect water filtration in a wellhead protection zone; attenuation and absorption of storm water flows; surface and subsurface water quality; habitat of fish and wildlife; prime forestlands; carbon sequestration; and open space.
- E. Preservation of the Conservation Property in its current forested state and undeveloped condition and providing for conveyance of all future development rights, except as reserved in Section V below, to Grantee, in perpetuity, is important to the Grantor and the Grantee.
- F. The Conservation Values will be documented in an inventory of relevant features (“Baseline Documentation”) that will be completed by the Nisqually Land Trust within thirty (30) days of the date the Conservation Easement is first recorded in the public records of Thurston County. The Baseline Documentation will consist of reports, maps, photographs, and other documentation that provide, collectively, a complete and accurate representation of the Protected

Property as of the Effective Date and will be kept on file by the Grantee. Failure to timely compile the Baseline Documentation shall not affect the enforceability of any provision of this Conservation Easement.

G. In furtherance of protecting the Conservation Property, the Grantor may seek to take the land into trust under 25 U.S.C. §1778d.

## **II. CONVEYANCE AND CONSIDERATION**

A. For the reasons stated above and in consideration of the mutual covenants contained herein and the payment to the Grantor of the sum of \$50,000 USD by the Grantee, the Grantor does hereby convey and warrant to the Grantee and its assigns a perpetual Conservation Easement over the Conservation Property, consisting of the rights in the Conservation Property herein enumerated, subject to the restrictions set forth herein.

B. This conveyance is an interest in real property and is made as an absolute, unconditional, unqualified and complete conveyance subject to the mutual covenants and restrictions set forth herein.

C. This Conservation Easement deed shall be recorded in Thurston County, Washington.

## **III. PURPOSE**

A. The purpose of this Conservation Easement is to preserve, protect, and maintain the Conservation Property and the water resources at the McAllister well-field and McAllister Springs.

B. Grantor and Grantee intend and hereby agree that the Conservation Property shall not be converted or directed to any uses other than those provided herein.

C. It is the intent of the Grantor and Grantee that the Conservation Property shall contain:

1. an average of ten (10) trees per acre that are at least thirty (30) inches in diameter at breast height at any one time. If this condition does not exist at the beginning of the term of this Conservation Easement, then the Conservation Property shall be managed for this goal; and

2. a minimum basal area of an average per acre, following any harvest, of at least 50 percent of the basal area considered to represent full timber stocking for the Conservation Property's site class(es), distributed such that no opening of more than 0.25 acres will be devoid of trees at any one time, and no more than 5 acres shall have a basal area of less than 80 square feet per acre at any one time. The foregoing notwithstanding, the minimum basal area shall not be required to exceed the basal area calculated in the Baseline Documentation.

## **IV. GRANTEE'S RIGHTS**

A. The rights conveyed to the Grantee by this Conservation Easement are the following:

1. To preserve and protect in its current natural state, in perpetuity, those natural elements that enhance the natural, functional value of the Conservation Property for groundwater protection and as a habitat for fish, birds, waterfowl, and other wildlife;

2. To prevent activities from occurring within the Conservation Property inconsistent with the purposes of this Conservation Easement;

3. Upon forty- eight (48) hours notice to the Grantor, the Grantee or Grantee's representative may perform such activities on the Conservation Property as the Grantee determines are necessary or convenient to carry out the rights granted by this Conservation Easement, including the right to monitor the uses and activities on the Conservation Property to determine whether they are consistent with this Conservation Easement and the right to enter and perform activities that will promote the purposes of this Conservation Easement as stated in Section III, where the Grantee has determined such activity is appropriate pursuant to the purposes set forth in Section III; and

4. To enter upon the Conservation Property in a manner that does not unreasonably disturb the use of the Conservation Property by the Grantor and where appropriate allow other persons to enter the Conservation Property upon prior written approval of the Grantor to (1) perform or enforce the rights herein granted and to determine that the Conservation Property is being used in compliance with the terms of the Conservation Easement, and (2) to observe and study the Conservation Property for educational and scientific purposes or for other purposes consistent with the purposes of this Conservation Easement. The Grantee shall also have the right of immediate entry to the Conservation Property if, in its sole judgment, such entry is necessary to prevent damage to or the destruction of the Conservation Values provided notification is given to Grantor within seventy-two (72) hours after entry.

B. Grantor relinquishes and conveys its rights of development in the Conservation Property to Grantee, except as expressly reserved herein to Grantor.

C. Unless specifically provided, nothing herein shall be construed as affording the general public access to any portion of the Conservation Property subject to this Conservation Easement.

D. The Grantee's enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, Subject to Section VII, below. Any forbearance to exercise its rights hereunder in the event of any breach of this Conservation Easement by the Grantor, its successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

#### **V. RESERVED RIGHTS, USES, AND ACTIVITIES SUBJECT TO THE EASEMENT**

Grantor reserves all rights as beneficial owner of the Conservation Property including the right to engage in or permit or invite others to engage in all uses of the Conservation Property which are not prohibited herein and which are consistent with the purposes of this Conservation Easement. So long as the Grantor's uses are not prohibited and are consistent with the purposes of this

Conservation Easement, and without limiting the foregoing reserved rights, the Grantee agrees that the following uses are included within the Grantor's reserved rights and are permitted and allowed:

- A. To place the Conservation Property into trust under 25 U.S.C. §1778d;
- B. To protect, manage, and regulate the harvesting of minor forest products including but not limited to brush, grasses, firewood, and mushrooms on the Conservation Property according to Tribal and applicable State and Federal law and consistent with Section III (C);
- C. To hand-gather non-timber products (e.g. medicinal and edible plants, berries, grasses, cedar bark, florist greens);
- D. To engage in, and allow others to engage in, recreational or educational activities on the Conservation Property. Recreational activities include but are not limited to picnicking, fishing, hiking and horseback riding. Grantor, upon thirty (30) days notice to Grantee, may cut trees in order to create trails for recreational activities consistent with Section III (C);
- E. To build one (1) picnic shelter and one (1) low impact restroom facility. A low impact restroom may include a composting toilet or a facility that is self-contained and routinely pumped out for management of sewage off-site;
- F. To remove from the Conservation Property wind-thrown, fallen, dangerous or diseased trees posing a threat to public safety or threaten the health of the resources on the properties adjoining the Conservation Property. The removed trees shall remain the property of the Grantor and may be disposed of as Grantor deems appropriate;
- G. To harvest cedar trees for Grantor's cultural and religious purposes;
- H. To maintain existing access roads across the Conservation Property, consistent with the limitations set forth in Section VI (C); and
- I. To retain any and all tax or density credits or benefits from or attributable to the Conservation Property which may be available under state, federal or local law, ordinances, rules or regulations for the development of Grantor's properties.

#### **VI. PROHIBITED AND INCONSISTENT USES**

The following uses and practices within the Conservation Property are prohibited:

- A. To thin or harvest timber, or to remove any trees, whether standing or on the ground, with the exceptions set forth in Section V above.
- B. To change, disturb, alter or impair the Conservation Property except as provided in Section V above;

C. To exceed a total of two (2) percent of the total surface area of the Conservation Property with impervious surfaces. An impervious surface means any hard surface areas that either prevent or retard the entry of water into the soil mantle as under natural condition before development or that cause water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Including, but not limited to, paved and graveled roads, or other surfaces that similarly impede the natural infiltration of surface and storm water.

D. To store, dump, or otherwise dispose of toxic and/or hazardous materials or refuse, animal carcasses, wildlife-attracting materials, or any other material which could reasonable be considered debris except as authorized in Section V above.

E. To convert native vegetation to exotic species or the introduction of non-native plant species, farming, plowing, or any type of non-silvicultural cultivation;

F. To introduce or release non-native animal species;

G. To graze or pasture livestock;

H. To construct or place any buildings, mobile homes, billboards, utility towers or other structures, except as authorized in Section V, or with the prior written approval of the Grantee;

I. To apply biocides, herbicides, defoliants, chemical fertilizers, sewage sludge, or other chemicals, except with the prior written approval of the Grantee;

J. To change the topography of the Conservation Property by placing on it any soil, dredging spoils, land fill, or other material, or by extraction of minerals or hydrocarbons on or below the surface of the Conservation Property, except with the prior written approval of the Grantee;

K. To change the topography or surface hydrology or divert or cause the diversion of surface or underground water into, within or out of the Conservation Property, without the prior written approval of the Grantee;

L. To cause, encourage or permit fire as a land management method or tool, other than those naturally caused;

M. To grant additional easements, rights-of-way, or other interests in the Conservation Property without the prior written authorization and consent of the Grantee;

N. To legally subdivide, record a subdivision plan, partition, or any other division of the Conservation Property into parcels;

O. Any use inconsistent with the purposes of this Conservation Easement as listed in Section III above.

## VII. APPROVAL/ REMEDIES/ ENFORCEMENT

A. Where Sections V, VI, or this Section require written approval from the Grantee, those requests shall be submitted in writing to the City of Olympia's City Manager. Before determining an activity is inconsistent with the terms of this Conservation Easement, the Grantee will consult with the Grantor. The Grantee's decision on whether to grant or deny such approval shall be final.

B. Where Sections require written approval from the Grantor or notice to the Grantor those requests shall be submitted to the elected Chair and the Director of Planning of the Nisqually Indian Tribe.

C. If the Grantee or Grantor determines that there is a violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation or threatened violation, and where the violation involved injury to the Conservation Property resulting from any use or activity inconsistent with this Conservation Easement, to restore, where possible, the portion of the Conservation Property so injured. In any instance, measures to cure the violation shall be reviewed and approved in advance, in writing, by the Grantee. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the party or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in the Superior Court of Thurston County, Washington to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values, including monetary damages, and where possible, to require restoration of the Conservation Property to the condition that existed prior to any such injury. Grantor and Grantee expressly consent to the jurisdiction of said Court for the purpose of adjudicating actions at law or in equity to enforce the terms of the Conservation Easement and to enjoin violations.

D. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against the Grantor or for the Grantor to bring any action against the Grantee for any injury to, or change in the Conservation Property resulting from force majeure. Force Majeure, for the purposes of this Conservation Easement is defined as any event arising from causes beyond the control of Grantor, or persons or entities acting on behalf of or at the direction of Grantor or the Grantee. Any force majeure event shall be reported to the parties' designated representative, where possible as it is occurring, or within seventy-two (72) hours.

E. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be construed in favor of the Grantee to effect the conservation purposes of this Conservation Easement as stated in Section III above and other applicable state and federal conservation laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement and which would render the provision valid, shall be favored over any interpretation that would render it invalid.

F. Grantee shall defend, indemnify and hold Grantor, its officers, officials, members, employees or volunteers harmless from any and all claims, injuries, damages, losses or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death or damage to property, caused by or resulting from the negligent acts, errors or omissions of Grantee or its agents, employees, officers or officials in performance of this Conservation Easement, except for injuries and damages caused by the sole negligence of Grantor.

Grantor shall defend, indemnify and hold Grantee, its officers, officials, employees or volunteers harmless from any and all claims, injuries, damages, losses or lawsuits, including attorney's fees, legal expenses and litigation costs, arising from injury or death to persons or property, including claims, injuries, sickness, disease or death or damage to property, caused by or resulting from the negligent acts, errors or omissions of Grantor or its agents, employees, members, officers or officials with respect to the Conservation Property, except for injuries and damages caused by the sole negligence of Grantee.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantor and the Grantee, or their respective officers, officials, members, employees or volunteers, the indemnitor's liability, including the duty and cost to defend hereunder, shall be only to the extent of the indemnitor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantor's and Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Grantor and Grantee.

#### **VIII. SUCCESSION, COVENANTS, AMENDMENTS, AND SUBSEQUENT TRANSFERS**

A. It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Conservation Property in perpetuity and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

B. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which any interest in any or a portion of the Conservation Property is transferred. Any transfer shall be subject to Grantee approval.

C. Grantor and Grantee recognize that rare and extraordinary circumstances that could arise which warrant modification of certain provisions of the Conservation Easement. To this end, Grantor and Grantee have the right to agree to amend this Conservation Easement without prior notice to any other person or entity, subject to the following terms and conditions:

1. Grantee and Grantor must mutually agree the amendment enhances or does not materially detract from the purposes of the Conservation Easement;

2. No amendment shall affect the Conservation Easement's perpetual duration; and

3. Any such amendment shall be in writing, signed by both the Grantor and Grantee, and recorded in Thurston County, Washington.

IN WITNESS WHEREOF, the authorized representative of each Party has duly executed this Conservation Easement as of the date stated below.

**THE CITY OF OLYMPIA**

**THE NISQUALLY TRIBE**

By: \_\_\_\_\_  
Name: Stephen H. Buxbaum  
Title: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Cynthia Iyall  
Title: Chair  
Date: \_\_\_\_\_

**Approved as to form**

**Approved as to form**



By: Mark Barber  
Title: City Attorney

By: Maryanne Mohan  
Title: Tribal Attorney



Acknowledgements

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2015, by \_\_\_\_\_, as the \_\_\_\_\_ of THE CITY  
OF OLYMPIA.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_  
Print Name \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2015, by \_\_\_\_\_, as the \_\_\_\_\_ of  
Nisqually Indian Tribe.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
\_\_\_\_\_, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_  
Print Name \_\_\_\_\_

**Exhibit A**  
**Legal Description of Property Subject to Easement**

(Thurston Assessor's Parcel 21832310100)

The land lying easterly of the easterly shoreline of Lake St. Clair in the South 330 feet of the Northeast quarter of the Southwest quarter of Section 32, Township 18 North, Range 1 East, Willamette Meridian.

AND

(Thurston Assessor's Parcels 21832310000 & 21832310200)

The land lying easterly of the easterly shoreline of Lake St. Clair in the Northeast quarter of the Southwest quarter of Section 32, Township 18 North, Range 1 East, Willamette Meridian.  
EXCEPTING THEREFROM the South 330 feet.

ALSO EXCEPTING THEREFROM that part of the Southeast quarter of the Northwest quarter of said Section 32, Township 18 North, Range 1 East, W.M. described as follows:

Beginning at a point 390 feet North of the Southwest corner of said Southeast quarter of Northwest quarter; running thence North 100 feet, East 50 feet, South 100 feet, and West 50 feet to the point of beginning.

ALSO EXCEPTING THEREFROM: Beginning at the Northwest corner of the Northeast quarter of the Southwest quarter of Section 32, Township 18 North, Range 1 East, W.M.; running thence South 330 feet; thence East 475 feet; thence North 480 feet; thence North 45° West 141.4 feet; thence North 50 feet; thence West 375 feet; thence South 300 feet to point of beginning.

Exhibit B  
Site Map

