

## LAND USE AGREEMENT

**SNOHOMISH COUNTY**, a political subdivision of the State of Washington (the "**County**"), for valuable consideration and subject to the terms and conditions set forth below, hereby enters into this Land Use Agreement ("**Agreement**") with **WILDLANDS OF WASHINGTON, LLC**, a Washington limited liability company ("**Wildlands**"), whose address is 3301 Industrial Avenue, Rocklin, California 95765, concerning the following described properties.

### Recitals

A. The Port of Everett, a Washington port district (the "**Port**"), is the owner of certain real property formerly known as "Biringer Farm," with tax parcel numbers 29050400200100, 29050400100600, 29050400300100, 29050400400100, 29050900100100, and 29050300300200, which is shown on the map attached hereto as Exhibit A and incorporated herein by this reference (the "**Port Property**").

B. Wildlands is the owner of certain real property with tax parcel number 29050400200200, consisting of approximately ten (10) acres (the "**Wildlands Property**"), located adjacent to the Port Property. The location of the Wildlands Property is shown on the map attached hereto as Exhibit A.

C. The County is the owner of certain property, located at the southern end of the Port Property behind agricultural dikes, and known as a portion of tax parcel number 29051000200100 (the "**County Property**"). The location of the County Property is shown on the map attached hereto as Exhibit A.

D. The County has an access easement ("**Access Easement**") over a portion of the Port Property for the purpose of accessing the County Property. The Access Easement area is located along the west side of the Port Property, crosses the remnant slough, and then continues along the southern edge of the Port Property north of Union Slough, and is limited to a 20-foot corridor along the top surface of the existing dike. The location of the Access Easement across the remnant slough currently renders the County Property accessible by boat only. The location of the Access Easement is shown on the map attached hereto as Exhibit A.

E. The Port and Wildlands are developing the Blue Heron Slough Restoration Project (the "**Restoration Project**"), which is located on the Port Property and Wildlands Property (the "**Restoration Site**").

F. In connection with the development of the Restoration Project, Wildlands intends to construct four (4) dike breaches to connect the restored estuary on the Restoration Site to Steamboat Slough and Union Slough. The four (4) breach locations are shown on the map attached hereto as Exhibit A and incorporated herein by this reference.

G. The Restoration Site and the County Property were historically part of the Snohomish Estuary.

H. Upon completion of the breaching of the dikes, the County Property and a larger portion of the Access Easement will be inundated and restored to estuarine habitat.

I. The County Property and the Access Easement were originally purchased by the County using Aquatic Land Enhancement Account (“ALEA”) funds from the State Recreation and Conservation Office (“RCO”), Project number AL-31, for the purpose of protecting and restoring wetlands.

J. Given that the purpose of the Restoration Project is estuarine wetland restoration, the Restoration Project and its effect on the County Property and the Access Easement have been determined by RCO, to be consistent with the stated purposes of the original acquisition grant used to purchase the County Property and Access Easement..

K. Wildlands and the County desire to enter into this Agreement for the purpose of setting forth the terms and conditions on which Wildlands will inundate the County Property and Access Easement, and compensate the County for said inundation caused by Wildlands’ breaching of the dikes.

**THIS AGREEMENT IS MADE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

**SECTION 1  
INUNDATION OF COUNTY PROPERTY AND ACCESS EASEMENT**

**1.01 Permitted Use.** County agrees that Wildlands shall have the right to construct four (4) dike breaches to connect the restored estuary on the Restoration Site to Steamboat Slough and Union Slough, which will result in the inundation of the County Property and the Access Easement, PROVIDED, HOWEVER, that such work shall be performed in accordance with the Land Disturbing Activity and Flood Hazard permit issued by the County and in accordance with all construction plans and specifications that have been approved by County for such work and, PROVIDED FURTHER, that Wildlands shall comply with all applicable laws, rules, regulations and permitting requirements of County and all other governmental authorities having jurisdiction over the work. No other use of the County Property is permitted.

**1.02 No Warranty.** Wildlands expressly recognizes that the County Property is located within lands owned and managed by Snohomish County for wetland function. Snohomish County makes no warranty of quiet enjoyment of the County Property or Access Easement. This Agreement is granted without warranty, either express or implied, regarding the condition of the County Property or Access Easement or their suitability for Wildlands’ purposes. Snohomish County shall not be subject to any liability whatsoever on account of any shortage or defect in any part of the County Property or Access Easement. Wildlands

represents that it has investigated the County Property and Access Easement and accepts the same "as is" in the current condition.

**1.03 Limited Rights.** No provision of this Agreement is intended nor may be deemed to transfer any real property rights or interest from County to Wildlands. The County retains jurisdiction over its property in all respects. The County retains the right of access to the County Property at all times, but understands and acknowledges that the Access Easement will be inundated after Wildlands' breaching of the dikes.

**1.04 No Assignment or Sublet.** Neither this Agreement, nor the rights, benefits and obligations set forth herein, may be assigned or sublet by Wildlands in whole or in part.

**1.05 No Abandonment or Termination of Access Easement.** The County acknowledges that the Access Easement will be inundated as a result of the work contemplated in this Agreement and accepts the same in its impaired state. Notwithstanding the foregoing, by entering this Agreement the County in no way intends to abandon or terminate the Access Easement or its rights vested therein.

**1.04 No Liens.** Wildlands may not suffer or permit any lien for work, labor, services, materials, or any other reason arising out of or related to Wildlands' or its agent's actions, to be filed as an interest against the County Property.

## **SECTION 2 COMPENSATION**

**2.01 Fee.** As compensation for the inundation of the County Property and Access Easement caused by Wildlands' breaching of the dikes, upon execution of this Agreement Wildlands shall pay to the County the amount of Four Thousand Four Hundred and No/100ths Dollars (\$4,400.00).

## **SECTION 3 INDEMNITY AND INSURANCE**

**3.01 Indemnity.** To the extent permitted by law, Wildlands shall indemnify, defend, and hold harmless County and its officials, agents and employees from and against any and all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, attorneys' and consultants' fees) for property damage and personal injury arising from the acts or omissions of Wildlands and its contractors, employees and agents in any manner associated with the work. These obligations shall not apply to the sole negligence of the County and, in the event of concurrent negligence, they shall be reduced by the proportion of the County's concurrent negligence.

**3.02 Insurance.** During the performance of the work, Wildlands shall maintain liability insurance that is acceptable to the County and is sufficient to insure Wildlands and the County against liability for bodily injury and property damage arising from the work, including, but not limited to, the use of vehicles and equipment. Minimum amounts of

insurance shall be two million dollars (\$2,000,000.00) for injury to any one person and two million dollars (\$2,000,000.00) property damage for any one occurrence. All policies shall name Wildlands and "Snohomish County" as insureds and shall carry a ten-day notification-of-cancellation clause. At intervals of five years or more, increases in the minimum amounts may be determined by the County, at its option, provided said increases shall not exceed the rate of inflation as established by the U.S. Department of Labor consumer price index.

- 3.03 Hazardous Substances Indemnity.** Wildlands shall not allow in or around the County Property any substance now or hereinafter regulated by any governmental authority as hazardous, toxic, dangerous, or harmful (hereinafter "hazardous substance"), unless said hazardous substance is necessary to carry out the work authorized by this Agreement and is handled in compliance with all applicable legal requirements. Wildlands shall reimburse the County immediately upon demand for any and all cleanup costs and any and all other charges, fees, costs, fines, and penalties (civil and criminal) imposed on the County by any governmental authority for hazardous substances released or discharged by Wildlands or its agents in or around the County Property.

#### **SECTION 4 TERMINATION AND CANCELLATION**

- 4.01 Termination.** The County, at its option, may cancel this Agreement if Wildlands has not complied with any of the terms or conditions of this Agreement or has made unauthorized use of the County Property. County shall notify Wildlands of any of Wildlands' alleged breaches of this Agreement in writing at the address specified in Section 6.06 below and allow Wildlands thirty (30) days to remedy the alleged breach. Unless the alleged breach is remedied to the County's reasonable satisfaction, this Agreement shall be cancelled and all rights conveyed by this Agreement shall automatically revert to the County without necessity of further legal action. Wildlands shall not be entitled to a refund of fees or other amounts paid to the County prior to the date of termination by the County.
- 4.02 Scope of Relief.** The County shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to other relief, including, without limitation, specific performance of the terms and conditions of this Agreement. These remedies are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 4.03 No Waiver.** The County's forbearance to exercise its rights under this Agreement in the event of any default by Wildlands shall not be deemed or construed to be a waiver by County of such term or condition or of any of County's rights under this Agreement. No delay or omission by County in the exercise of any right or remedy shall impair such right or remedy or be construed to be a waiver.

#### **SECTION 5**

## GENERAL PROVISIONS

- 5.01 Governing Law.** This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington.
- 5.02 Venue.** In the event of a lawsuit involving this Agreement, jurisdiction and venue shall be proper only in the State of Washington, Snohomish County Superior Court.
- 5.03 Severability.** If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision, or part thereof.
- 5.04 No Partnership or Employment.** The County is not a partner nor a joint venturer with Wildlands in connection with Wildlands' performance of the work, and the County shall have no obligation with respect to Wildlands' liabilities and debts. Wildlands and its employees are not employees or agents of the County and shall not hold themselves out as such.
- 5.05 Amendments.** Any revision or amendment to this Agreement shall be made by mutual agreement, in writing, and executed by the authorized representatives of the parties hereto.
- 5.06 Notices and Payments.** All requests and notices to the County and Wildlands shall be in writing and sent by registered or certified mail to the address specified below. Notice shall be effective upon delivery. Payments shall be made to the County at the address below:
- To Permittee: Wildlands of Washington, LLC  
3301 Industrial Avenue  
Rocklin, California 95765  
Attention: Sherrie Aland, General Counsel
- To County: Snohomish County Parks  
6705 Puget Park Drive  
Snohomish, WA 98296  
Attention: Real Property Administrator
- 5.07 Entire Agreement.** This document contains the entire agreement between the parties and no statement, promise, representation, inducement, or agreement made by either party, or its respective officers, employees, or agents, that is not contained in this written document shall be valid, binding or enforceable.
- 5.08 Wildlands Signatory.** The person executing this Agreement on behalf of Wildlands represents that he/she is authorized to do so and represents and warrants this Agreement is a legal, valid, and binding obligation on behalf of Wildlands.

**COUNTY:**

**COUNTY OF SNOHOMISH**, a political subdivision of the State of Washington

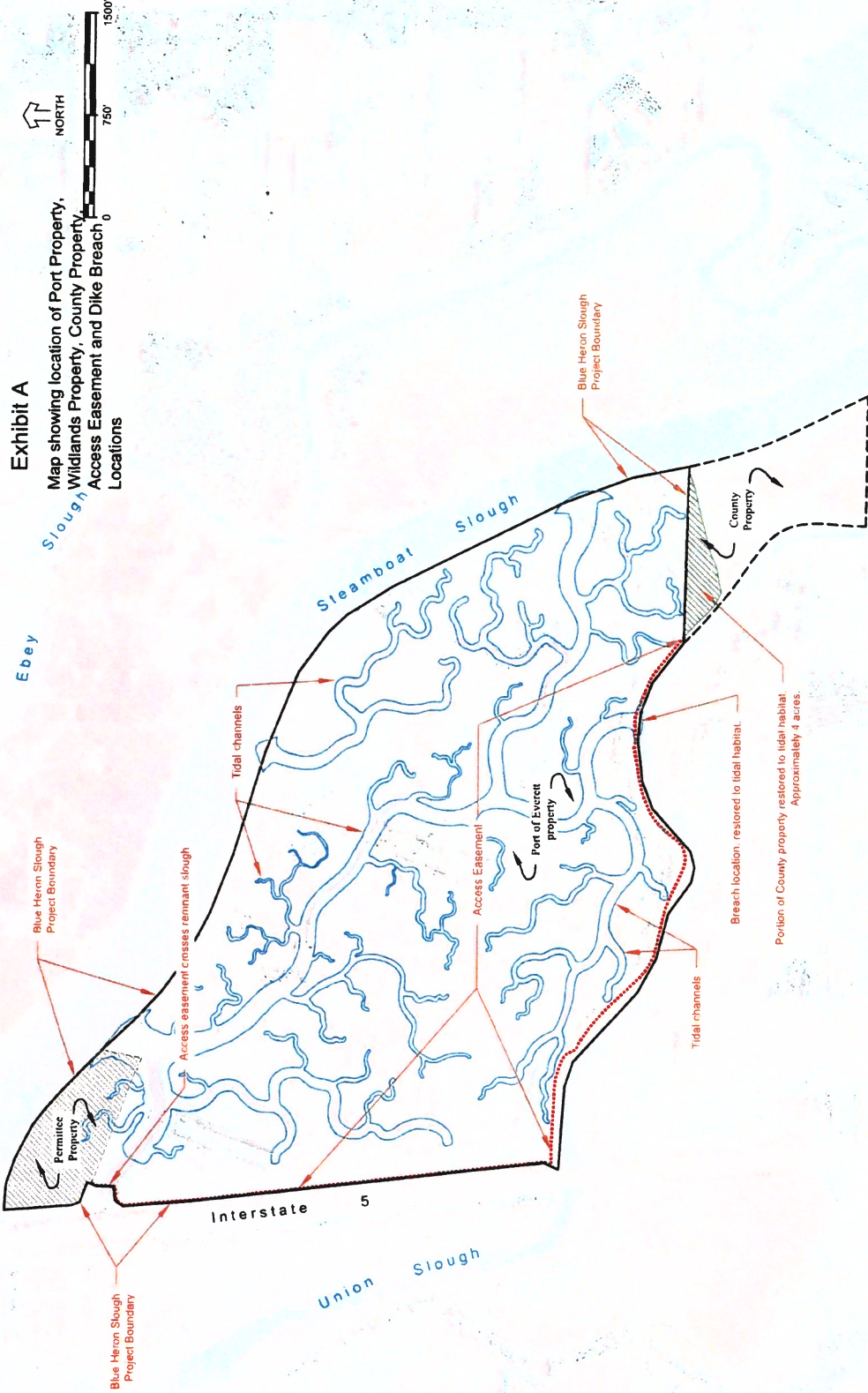
By: [Signature]  
Its: PROPERTY OFFICER  
Date: 8/31/22

**WILDLANDS:**

**WILDLANDS OF WASHINGTON, LLC**, a Washington limited liability company

By: [Signature]  
Its: COO  
Date: 7/26/2022

*Approved AS to Form  
By e-mail 7/29/2022 from Rebecca Guadagnoli  
Kye Alis*



**Exhibit A**  
Map showing location of Port Property,  
Wildlands Property, County Property,  
Access Easement and Dike Breach  
Locations

