



CITY COUNCIL SPECIAL MEETING

Wednesday, April 19, 2017

**Planning Conference Room, City Hall, 280 Madison Avenue N., Bainbridge Island, WA,
Bainbridge Island, Washington**

AGENDA

1. CALL TO ORDER/ROLL CALL - 9:30 AM

Mayor: Val Tollefson

Deputy Mayor: Ron Peltier

Sarah Blossom

Kol Medina

Wayne Roth

Michael Scott

Roger Townsend

2. PUBLIC HEARING(S)

- A.** 9:30 AM Nickum and Carlson Applications for Current Use Open
Space Program, AB 17-067 - Planning

3. ADJOURNMENT - 9:45 AM

City of Bainbridge Island

City Council Agenda Bill



PROCESS INFORMATION

Subject: 9:30 AM Nickum and Carlson Applications for Current Use Open Space Program, AB 17-067 - Planning	Date: 4/19/2017
Agenda Item: PUBLIC HEARING(S)	Bill No.: 17-067
Proposed By: Planning	Referrals(s): Planning Commission recommended approval of both applications on March 9, 2017

BUDGET INFORMATION

Department: Planning	Fund:	
Expenditure Req:	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW

:	Recommendation:	
City Manager:	Legal:	Finance:

DESCRIPTION/BACKGROUND

Kitsap County has forwarded to the City for review two applications for the Current Use-Open Space taxation program.

Nickum Application: The proposal is to classify 4.15 acres of a 5.88 acre parcel as “Open Space Land” for current use assessment under chapter 84.34 RCW. The property is located at 8387 Fletcher Bay Road NE; Tax Parcel No. 202502-4-050-2002.

Carlson Application: The proposal is to classify three properties totaling 21.65 acres as “Open Space Land” for current use assessment under chapter 84.34 RCW. The total acreage represents three adjacent properties, located south of Arrowpoint Drive. Two of the properties are currently classified as “Forest Land” under the current use assessment program. This application would transfer those two properties from “Forest Land” to “Open Space Land.” The Tax Parcel Numbers are:

- 172502-1-028-2002 (5.66 Acres)
- 172502-1-029-2001 (5.66 Acres, designated “Forest Land”)
- 172502-1-041-2005 (10.33 Acres, designated “Forest Land,” “Forest to Sky Trail”)

The Planning Commission held public hearings on both applications at their March 9, 2017, meeting and

recommended approval of both applications to the City Council and the County Board of Commissioners. A joint public hearing of the City Council and the Board of Commissioners is scheduled for April 19, 2017. The meeting will be held at the Kitsap County Administration Building. The County Commissioners will attend at that location and a majority of the Council will participate via conference call from City Hall. The meeting will be a Special Meeting of the Council.

RECOMMENDED ACTION/MOTION

I move that the Nickum Current Use-Open Space applications be approved.

I move that the Carlson Current Use-Open Space applications be approved.

ATTACHMENTS:

Description	Type
▢ Nickum and Carlson Current Use Review Packet	Backup Material



Open Space Land

Program Summary

Chapter 84.34 RCW provides property tax relief for properties that meet certain use requirements. *Open space land* is defined as any of the following:

1. Land zoned for open space
2. Any land area, the preservation of which, in its present use, would:
 - a) conserve and enhance natural or scenic resources
 - b) protect streams or water supply
 - c) promote conservation of soils, wetlands, beaches or tidal marshes
 - d) enhance the value to the public of abutting or neighboring parks, forest, wildlife preserves, nature reservations or sanctuaries or other open space
 - e) enhance recreation opportunities
 - f) preserve historic sites
 - g) preserve visual quality along highway, road, and street corridors or scenic vistas
 - h) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification
3. Any land meeting the definition of "farm and agricultural conservation land", which means either:
 - a) Land previously classified as farm and agricultural land that no longer meets the criteria and is reclassified under open space land.
 - b) "Traditional farmland", not classified, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential of returning to commercial agricultural.

Basis of Assessment

Kitsap County has adopted an Open Space Plan (WAC 458-30-330) that results in values based on sensitive characteristics of the land and its benefit to the public. If a parcel of land qualifies with two sensitive characteristics, taxable value would be reduced by 50%. If a parcel qualifies with three sensitive characteristics, and if a permanent conservation easement exists on the property, taxable value would be reduced by 80%. If public access is allowed, in appropriate measure so that the integrity of the land is not compromised, an additional 10% reduction would be granted. Generally, if the land characteristics make it reasonable, public access in some measure is expected as part of the public benefit for the classification. If a residence exists on the parcel, a minimum one-acre residence site is excluded from classification.

Application Requirements

Applications must be filed with the Department of Community Development. An application fee will apply. If the property is located within city limits other city fees may also apply. A farm plan may be required. The application may be for an entire parcel or any portion thereof. Complete applications received on or before December 31 are processed during the next calendar year for the following year's taxes.

Review Process

Applications are reviewed by the Department of Community Development and by the city planning department, if the property is located within a city limits. Following a public hearing, applications are approved or denied by the Board of County Commissioners and, if in a city, by the city council. Denial may be appealed in Superior Court. Upon approval, an Open Space Taxation Agreement will be sent to the applicant, who may accept or reject the agreement. The signed agreement is recorded with the county auditor.

(Continued on the back)

Property Use Restrictions

Land approved for classification as open space will be subject to certain use restrictions, designed to ensure that the natural character of the land will not be disturbed. While specific restrictions may vary from property to property, the following is a list of standard conditions that will apply to most properties:

1. No motorized vehicles
2. No domestic animals or livestock (except on "traditional farm land")
3. No clearing of vegetation
4. No hunting, fishing, or trapping
5. No camping
6. No smoking, campfires, or firearms
7. No mining, storage or excavation of materials
8. No dumping

All conditions of approval become part of the recorded agreement.

Removal of Classification

Classification will be removed, and back taxes imposed, upon the occurrence of any of the following:

- Owner's request: The request for withdrawal must be made in writing and signed by all owners. Forms for withdrawal are available from the assessor. .
- Change of use: Determination is made by Kitsap County that the property is no longer primarily devoted to the use for which it was classified.
- Sale or transfer of the property, and the new owner does not wish to continue classification: Back taxes must be collected before the conveyance is recorded.

Transfer of Ownership

A new owner may request to continue classification by signing a "Notice of Continuance". All new owners must sign, and an updated management plan may be required. The new owners assume all tax liability accrued by the previous owner, including liability related to this classification.

Back Taxes

Back taxes equal the difference between the tax paid under open space classification and the tax at true and fair value for the current year and the last seven years, plus interest at 1% per month. A 20% penalty is also applied if the property was classified less than ten years or a 2 year written notice of removal was not given or if there was a change in use. Back taxes are not collected under the following circumstances:

1. Transfer to a government entity in exchange for other land within the state
2. Land is taken by power of eminent domain or transferred in anticipation of the exercise of such power
3. A natural disaster changes the use of the property
4. Official action by the state, county, or city disallows the present use of such land
5. Transfer of land to a church when such land would qualify for a property tax exemption pursuant to RCW 84.36.020
6. Acquisition of property interests by public agencies for the purpose of preserving open space lands and riparian easements

Back taxes become due 30 days following notification of the owner, and are subject to additional interest of 1% per month after the due date.

Kitsap County Assessor's Office
614 Division Street MS-22
Port Orchard, WA 98366-4677
Telephone: (360) 337-7160
Fax: (360) 337-4874
E-mail: assessor@co.kitsap.wa.us
www.kitsapgov.com/assr/



CITY OF
BAINBRIDGE ISLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
MEMORANDUM

DATE: APRIL 19, 2017
TO: CITY COUNCIL & COUNTY COMMISSIONERS
FROM: JENNIFER SUTTON, AICP
SENIOR PLANNER
SUBJECT: NICKUM OPEN SPACE CLASSIFICATION APPLICATION
FILE NO: PLN50744OS

I. INTRODUCTION

Applicant: William and Cathy Nickum
8387 Fletcher Bay Road NE
Bainbridge Island, WA 98110

Request: The applicant has submitted an application to the Kitsap County Assessor's Office (attached) to classify 4.15 acres of a 5.88 acre parcel as "Open Space Land" for current use assessment under [Revised Code of Washington \(RCW\) Chapter 84.34](#).

Tax account number: 202502-4-050-2002

Zoning & Comprehensive

Plan Designation: R-0.4, One unit per 100,000 square feet zone/ Open Space Residential(OSR)-0.4

II. RECOMMENDATION

Based on the analysis, staff recommends approval of the Nickum application to classify a portion of their property as "Open Space Land" pursuant to RCW 84.34.020(1)(b) and the Kitsap County Open Space Plan (KCC Chapter 18.12).

III. PLANNING COMMISSION REVIEW

The City Planning Commission is responsible for reviewing and making recommendations on all Open Space Classification Applications. The Commission discussed this application at their March 9, 2017 meeting (see DRAFT minutes at the end of this packet). The Commission recommended approval of the Nickum application, and forwarded their recommendation to the County Commissioners and City Council for a decision.

IV. ANALYSIS & FINDINGS

City of Bainbridge Island Comprehensive Plan

The property is designated Open Space Residential (OSR-0.4) in the City's Comprehensive Plan. The Open Space Residential District is designated for areas appropriate for low-density, residential development and a variety of agricultural and forestry uses and the preservation of open space.

Zoning and Land Use

The property is zoned R-0.4, One Unit per 100,000 square feet zone. The property currently one residence and accessory buildings upon it, concentrated in the northern quarter of the property. The residence was constructed in 1985. At 5.88 acres in size, the property theoretically could yield one additional single-family residential lot, if subdivided. However, the southern three quarters of the property qualifies as "critical areas" and associated buffers pursuant to BIMC Chapter 16.20, which would make additional subdivision difficult. Those critical areas are Springbrook Creek, a fish bearing stream, wetlands surrounding the stream and required buffers to the stream and wetland. Those buffers extend north to the residence.

Current Use Tax Reduction

Please see the attached property tax comparison estimate prepared by the Kitsap County Assessor's Office to understand the tax implications of the Carlson Current Use Assessment application.

Findings

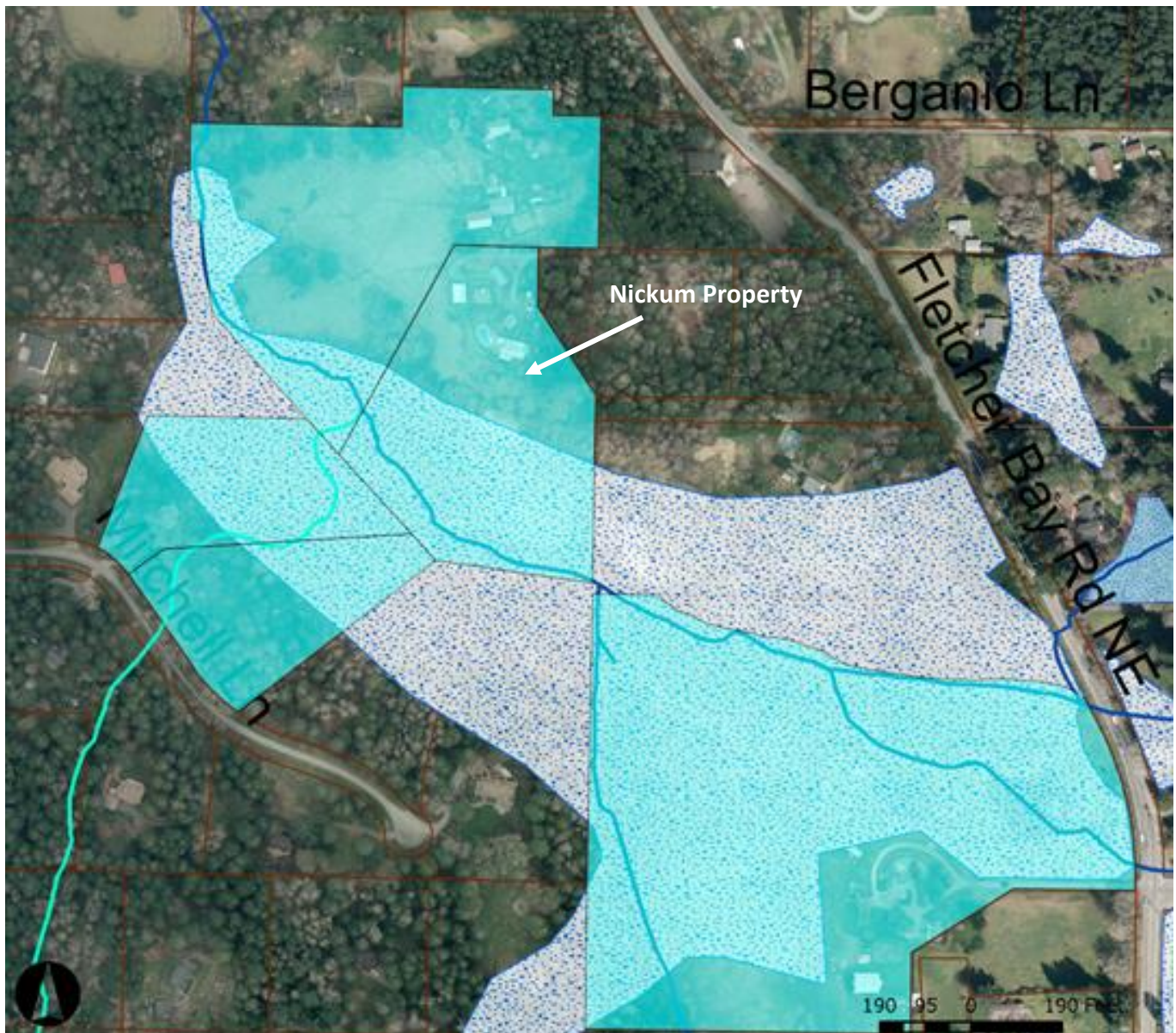
The application has been reviewed for consistency with the Kitsap County Open Space Plan (April, 1987, amended October, 1992) and found to be consistent with the criteria for current use assessment for Open Space Classification- *Open Space Land*. The Nickum property currently has several high priority natural resources- the fish bearing stream, associated wetlands, riparian wildlife habitat, and enhancing the value of the abutting or neighboring properties that are also classified as open space under the current use tax program- see photo. Those adjacent conservation properties also protect Springbrook creek and associated wetlands and are located:

- One property immediately north of the Nickum property; and
- Two properties across Springbrook Creek, adjacent to the south and west of the Nickum property; and
- The large Boundy Farm property, located upstream to the southeast of the Nickum property.

Resource List: Nickum Property
(KCC 18.12.020)

High Priority Resources

1. Fish-Rearing Habitat Ponds and Primary Stream Buffers
2. Wetlands, Ponds and Streams
5. Significant Wildlife Habitats
12. Land or interest acquired for open space or conservation futures



TAX SHIFT ESTIMATE

Owner

Tax Account

Current Use Acres

Total Acreage

Land Market Value

Homesite Acreage

Homesite Market Value

Open Space Land Reduction Factor

Farm Land Value

Desig Forest Land AV

Improvement Value

Taxes based a on levy rate of

Tax Year

NICKUM WILLIAM & CATHY

202502-4-050-2002

DFL	Farm	OpenSpace
0.00	0.00	4.15

5.88

\$254,940

1.73

acre(s)

\$137,470

50%

\$0

\$0

\$0

10.165060

2017

					Tax Year 2017		
Taxable Value					Value		Tax
CURRENT	Land			254,940			
	Improvements			0			
	Total				254,940		
	Taxes					2,591.48	
PROPOSED	Homesite	Ac	Value	137,470			
		1.73	\$137,470				
	Designated Forest Land	Ac	Approx Rate	0			
		0.00	\$0				
	CU Farm & Agricultural	Ac	Value	0			
		0.00	\$560				
	CU Open Space	Ac	Value	58,735			
		4.15	\$117,470				
	Improvements			0			
	Total				196,205		
Taxes					1,994.44		
Difference					58,735	597.04	
Owner's Taxes DECREASE By					\$597		
Total Tax Shift					\$597		

	Acreage	Total Land AV
Total Land:	5.88	= \$254,940
Homesite:	1.73	= \$137,470

Land Value less the homesite:	\$117,470
Reduced value with exemption:	\$58,735

Adjusted Land Value:	\$58,735
At the 2017 Tax Rate of :	10.165060
The Estimated Tax Shift =	\$597

DEC 19 2016

DEC 13 2016



PROJECT APPLICATION
LAND USE, ENVIRONMENTAL
& SITE DEVELOPMENT



For Departmental Use Only
Related Application #s:

Project Name: Nickum property open space reclassification

Please Identify the Permit Types for This Project

A Supplemental Application and Checklist must be submitted with this application.

- ☐ Buffer Reductions
 - ☐ Critical Area Buffer Reduction
 - ☐ Critical Area Variance
 - ☐ Reasonable Use Exception
- ☐ Comp Plan Amendment
 - ☐ Area Wide
 - ☐ Pre-Application Meeting
 - ☐ Site Specific
 - ☐ Textual
- ☐ Conditional Use (CUP) / Administrative CUP
- ☐ CUP/Administrative CUP Revision
- ☐ Conditional Waiver from View Blockage Requirements
- ☐ Critical Areas Ordinance Site Visit
- ☐ Flood Hazard Areas Variance
- ☐ Home Business
- ☐ Pre-Application Meeting
- ☐ Master Plan Scoping
- ☒ Open Space
 - ☒ Open Space Land
 - ☐ Farm and Agriculture Conservation Land
 - ☐ Timber Land
- ☐ Performance Based Development (PBD)
- ☐ Rezone
- ☐ Right of Way - Public Works
- ☐ Road Approach (w/o Building Permit or SDAP)
- ☐ SEPA Review
- ☐ Shoreline Permits - JARPA
 - ☐ Shoreline Conditional Use - JARPA
 - ☐ Shoreline Substantial Development - Commercial - JARPA
 - ☐ Shoreline Substantial Development - Residential - JARPA
 - ☐ Shoreline Variance - JARPA

- ☐ Site Development Activity Permit (SDAP)
 - ☐ Minor ☐ Engineered; ☐ Non-engineered
 - ☐ Grading (<500 cyds)
 - ☐ Grading 2 (≥500 cyds, but <5,000 cyds)
 - ☐ Commercial
 - ☐ Subdivision
 - ☐ Short Subdivision
 - ☐ Large Lot Subdivision
 - ☐ Right of Way Use/Improvement - Minor
 - ☐ Single-family residence
 - ☐ Major Development
 - ☐ Grading 3 (≥5,000 cyds)
 - ☐ Commercial
 - ☐ Subdivision
 - ☐ Short Subdivision
 - ☐ Large Lot Subdivision
 - ☐ Right of Way Use/Improvement - Major
 - ☐ Single-family residence

Land Subdivision

- ☐ Preliminary
 - ☐ Preliminary Subdivision
 - ☐ Preliminary Short Subdivision
 - ☐ Preliminary Large Lot Subdivision
- ☐ Final
 - ☐ Final Plat
 - ☐ Final Short Plat
 - ☐ Final Large Lot Plat
 - ☐ Binding Site Plan
- ☐ Amendment
 - ☐ Preliminary Subdivision Amendment
 - ☐ Preliminary Short Subdivision Amendment
 - ☐ Preliminary Large Lot Subdivision Amendment
- ☐ Alteration
 - ☐ Final Plat Alteration

☐ Shoreline Revision ☐ Shoreline Exemption – JARPA ☐ Shoreline Exemption-Mooring Buoys - JARPA ☐ Sign Permit ☐ Timber Harvest ☐ Major ☐ Minor ☐ Variance - Zoning	☐ Final Short Plat Alteration ☐ Final Large Lot Plat Alteration ☐ Binding Site Plan Alteration
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The authorized agent/representative is the primary contact for all project-related questions and correspondence. The County will email requests and information about the application to the authorized agent/representative and will 'copy' (Cc) the owner noted below. The authorized agent/representative is responsible for communicating information to all parties involved with the application. It is the responsibility of the authorized agent/representative and owner to ensure their mailbox accepts County email (i.e., County email is not blocked or sent to 'junk mail'). There may be instances where regular USPS or courier mail is used.

Applicant/Property Owner Information

Property Owner:

Name: Will & Cathy Nickum
 Address: 8387 Fletcher Bay Road NE, Bainbridge Island, WA 98110
 Phone #: 206-842-4632 Cell Phone #: 206-799-0459
 Email Address: wcnickum@gmail.com

Applicant:

☒ Owner

 ☐ Applicant (other than owner)

 ☐ Authorized Agent/Representative

Name: _____
 Address: _____
 Phone #: _____ Cell Phone #: _____
 Email Address: _____

Note: For projects with multiple owners, attach a separate sheet with each owner(s) information and signatures.

Professional:

☐ Engineer

 ☐ Architect

 ☐ Surveyor

 ☐ Contractor

☐ Check if this is the Authorized Agent/Representative for this project.

Name: _____ Title: _____
 License Number: _____ Liability Certificate: _____
 Address: _____
 Work Phone #: _____ Cell Phone #: _____
 Email Address: _____

Professional:

☐ Engineer

 ☐ Architect

 ☐ Surveyor

 ☐ Contractor

☐ Check if this is the Authorized Agent/Representative for this project.

Name: _____ Title: _____
 License Number: _____ Liability Certificate: _____
 Address: _____
 Work Phone #: _____ Cell Phone #: _____
 Email Address: _____

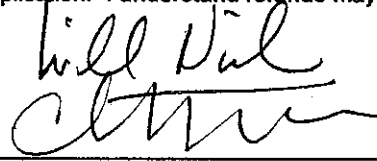
Project Information	
Project Name: <u>Nickum property open space reclassification</u>	
Description of Work (include proposed uses): <u>Property reclassification</u>	
Property Information:	
Site Address: <u>8387 Fletcher Bay Road NE, Bainbridge Island, WA 98110</u>	
Section: <u>20</u>	
Township: <u>25 North</u>	
Range: <u>2 East</u>	
Assessor Tax Parcel Number(s): <u>202502-4-050-2002</u>	
Total Parcel Area: <u>5.87 Acres</u>	
Area of Project Site (in square feet if less than 1 acre; in acres, if greater): <u>4.15 Acres</u>	
Present Zoning: <u>R 0.4</u>	
Present Use of Property: <u>Residential</u>	
Proposed Zoning: _____	
Access (name of street(s) from which access will be gained): <u>Fletcher Bay Road NE</u>	
Environmental Features on or near Site (show areas on site plan):	
☐ Yes ☒ No ☐ Don't Know Marine Shoreline: _____ Shoreline Designation: _____ ☒ Yes ☐ No ☐ Don't Know Creek or stream (name): <u>Springbrook</u> ☐ Yes ☒ No ☐ Don't Know Lake (name): _____ Shoreline Designation: _____ ☒ Yes ☐ No ☐ Don't Know Endangered or threatened species (identify): <u>Salmon/cutthroat trout</u> ☒ Yes ☐ No ☐ Don't Know Wetlands ☐ Yes ☒ No ☐ Don't Know Steep slopes or Geological hazard ☐ Yes ☒ No ☐ Don't Know Flood hazard area ☐ Yes ☐ No ☒ Don't Know Critical Aquifer Recharge Area	
Utilities:	
Water Source:	
Existing: ☒ Yes ☐ No	Sewer:
Proposed: ☐ Yes ☒ No	Existing: ☒ Yes ☐ No
Well: ☒ Yes ☐ No	Proposed: ☐ Yes ☒ No
Public Water: ☐ Yes ☒ No	Septic: ☒ Yes ☐ No
Name of Water Provider: _____	Public Sewer: ☐ Yes ☒ No
Power:	Name of Sewer Provider: _____
Existing: ☒ Yes ☐ No	Other Utilities:
Proposed: ☐ Yes ☒ No	Existing: ☒ Yes ☐ No
Name of Power Provider: <u>PSE</u>	Proposed: ☐ Yes ☒ No
	Name of Utility Provider(s): <u>Century Link</u>
NOTE: If any of the above utilities needs to be installed and disturbance will occur in a public maintained or unmaintained county road and/or Right-of-Way easement then a Right-of-Way Supplemental Application is required.	

I affirm, under penalty of perjury, that all answers, statements, and information submitted with this application are correct and accurate to the best of my knowledge. I also affirm that I am the owner of the subject site. Further, as owner, I grant permission to any and all employees and representatives of the County of Kitsap and other governmental agencies to enter upon and inspect said property as reasonably necessary to process this application. I understand, in accordance with the Department of Community Development fee policies, the base fee is determined by an average processing time. If staff hours required to process the permit exceeds the base fee, additional charges may be incurred, and I agree to pay all fees of the County that apply to this application. I understand refunds may also be issued for those permits that require less processing time.

Will Nickum

Cathy Nickum

Print Name



Owner Signature

12/9/16

12/9/16

Date

Please Remember: Priority service is provided to clients with active projects (fee paying clients). We encourage prospective clients to utilize the Planner of the Day service for general inquiries, staff consultations and/or pre-application meeting for further required expertise.



SUPPLEMENTAL APPLICATION **FOR CLASSIFICATION** **OR RECLASSIFICATION** **OPEN SPACE LAND**

Kitsap County Code is available online at <http://www.codepublishing.com/wa/kitsapcounty/>
Click on Title 18 Environment, Click on Chapter 18.12 Open Space Plan
Washington State Department of Revenue

Chapter 84.34 RCW

NOTE: This permit type requires a Submittal Appointment. When you have assembled all required submittal items, please call (360)337-5777 to schedule your Permit Submittal Appointment.

File With the County Legislative Authority: Kitsap County

Name of Owner(s): Will & Cathy Nickum Phone No: 206-842-4632

Address: 8387 Fletcher Bay Road NE, Bainbridge Island, WA 98110

Parcel Number(s): 202502-4-050-2002

Legal description: See attached sheet

Total acres in application: 4.15

Indicate what category of open space this land will qualify for:

- ☒ Conserve or enhance natural, cultural, or scenic resources
- ☒ Protect streams, stream corridors, wetlands, natural shorelines, or aquifers
- ☒ Protect soil resources, unique or critical wildlife, or native plant habitat
- ☒ Promote conservation principles by example or by offering educational opportunities
- ☒ Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces
- ☐ Enhance recreation opportunities
- ☐ Preserve historic or archaeological sites
- ☒ Preserve visual quality along highway, road, street corridors, or scenic vistas
- ☐ Retain in natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority
- ☐ Farm and agricultural conservation land previously classified under RCW 84.34.020(2), that no longer meets the criteria
- ☐ Farm and agricultural conservation land that is "traditional farmland" not classified under Chapter 84.33
or Chapter 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture

1. Describe the present use of the land.

The land proposed for open space classification represents about 70% of a 5.87 acre rural residential lot. This portion of the lot is open and undeveloped, largely wetlands, with a creek along the southern boundary. It was used many years ago as grazing pasture, as the land & lot were part of a large dairy farm. No domestic animals are kept on the land now. The land is accessed by the owners now on foot and tractor for maintenance and to enjoy the natural setting.

2. Is the land subject to a lease or agreement which permits any other use than its present use?

☐ Yes ☒ No

If yes, attach a copy of the lease agreement.

3. Describe the present improvements (residence, buildings, etc.) located on the land.

The portion of land proposed for open space has no buildings or structures on it. The lot itself is relatively fully developed with two residences, a swimming pool, large barn and several small outbuildings, but these are contained on the raised portion of the lot to the north. There are fences along the east and west lot boundaries. The southern boundary used to be fenced, but it fell into disrepair and has been removed.

4. Is the land subject to any easements?

☐ Yes ☒ No

If yes, describe the type of easement, the easement restrictions, and the length of the easement.

5. If applying for the farm and agricultural conservation land category, provide a detailed description below about the previous use, the current use, and the intended future use of the land.

NOTICE:

The county and/or city legislative authorities may require owners to submit additional information regarding the use of the land.

As the owner of the parcel(s) described in this application, I hereby indicate by my signature below that I am aware of the additional tax, interest, and penalties involved when the land ceases to be classified under the provisions of Chapter 84.34 RCW. I also certify that this application and any accompanying documents are accurate and complete.

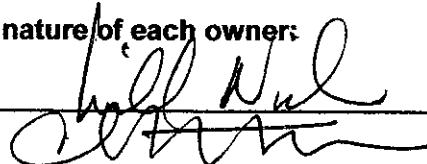
The agreement to tax according to use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070)

Print the name of each owner:

Will Nickum

Cathy Nickum

Signature of each owner:



The granting or denial of an application for classification or reclassification as open space land is a legislative determination and shall be reviewable only for arbitrary and capricious actions. Denials are only appealable to the superior court of the county in which the land is located and the application is made.

Statement of Additional Tax, Interest, and Penalty Due Upon Removal of Classification

1. Upon removal of classification, an additional tax shall be imposed which shall be due and payable to the county treasurer 30 days after removal or upon sale or transfer, unless the new owner has signed the Notice of Continuance. The additional tax shall be the sum of the following:
 - (a) The difference between the property tax paid as "Open Space Land" and the amount of property tax otherwise due and payable for the last seven years had the land not been so classified; plus
 - (b) Interest upon the amounts of the difference (a), paid at the same statutory rate charged on delinquent property taxes; plus
 - (c) A penalty of 20% will be applied to the additional tax and interest if the classified land is applied to some other use except through compliance with the property owner's request for withdrawal as described in RCW 84.34.070(1).
2. The additional tax, interest, and penalty specified in (1) shall not be imposed if removal resulted solely from:
 - (a) Transfer to a governmental entity in exchange for other land located within the State of Washington.
 - (b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power.
 - (c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of such property.
 - (d) Official action by an agency of the State of Washington or by the county or city where the land is located disallows the present use of such land.
 - (e) Transfer of land to a church when such land would qualify for property tax exemption pursuant to RCW 84.36.020.
 - (f) Acquisition of property interests by State agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 (See RCW 84.34.108(6)(f)).
 - (g) Removal of land classified as farm & agricultural land under RCW 84.34.020(2)(e) (farm home site).
 - (h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification.
 - (i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120
 - (j) The creation, sale or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040.
 - (k) The sale or transfer of land within two years after the death of the owner of a least a fifty percent interest in the land if the land has been assessed and valued as designated forest land under chapter 84.33 RCW, or classified under this chapter 84.34 RCW continuously since 1993. The date of death shown on the death certificate is the date used.
 - (l) The discovery that the land was classified in error through no fault of the owner.

FOR LEGISLATIVE AUTHORITY USE ONLY

Date application received: _____ By: _____

Amount of processing fee collected: \$ _____

- Is the land subject to this application designated as open space by a comprehensive land use plan adopted by a city or county and zoned accordingly? ☐ Yes ☐ No

If yes, application must be processed in the same manner in which an amendment to the comprehensive land use plan is processed.

If no, application must be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing.

- Is the land subject to this application located within an incorporated part of the county? ☐ Yes ☐ No

If yes, application must be acted upon by three members of the county legislative authority and three members of the city legislative authority. See RCW 84.34.037(1) for details.

If no, application must be acted upon by three members of the county legislative authority.

☐ Application approved ☐ In whole ☐ In part

☐ Denied ☐ Date owner notified of denial (Form 64 0103):

If approved, date Open Space Taxation Agreement (OSTA) was mailed to owner:

Date signed OSTA received by Legislative Authority:

Date copy of signed OSTA forwarded to Assessor:

To ask about the availability of this publication in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users, please call (360) 705-6718. For tax assistance, call (360) 534-1400.

Legal Description for Proposed Boundary Line Adjustment
Will & Cathy Nickum
8387 Fletcher Bay Road
Bainbridge Island, WA 98110
(206) 842-4632

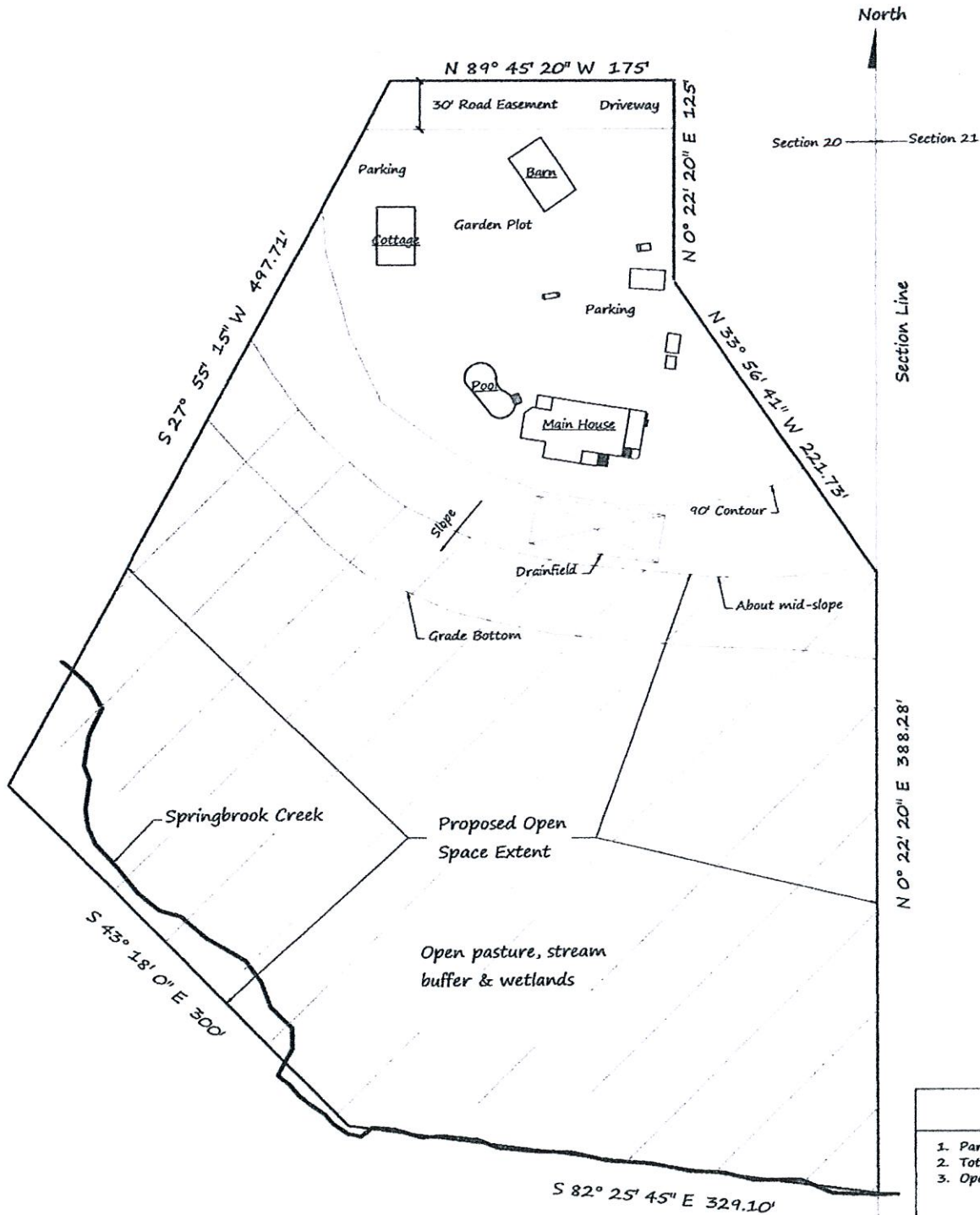
That portion of the southeast quarter of Section 20, Township 25 North, Range 2 East, W.M., described as follows:

Beginning at a point on the easterly line of said section which bears S 0 degrees 03' 48" W from the northeast corner of the southeast quarter of said section, a distance of 1317.46 feet, thence N 89 degrees 45' 20" W a distance of 125 feet to the northeast corner of Parcel "C" of the Rekow 1981 Short Plat No. 2735, as recorded under Kitsap Auditor's file number 8110280106, the true point of beginning; thence along the westerly extension of said northerly limits N 89 degrees 45' 20" W, a distance of 175 feet to the northwest corner of Lot "D" of the 1989 Rekow Short Plat No. 4878 as recorded under Kitsap County Auditor's file number 8902240145; thence S 27 degrees 55' 15" W a distance of 497.71 feet to a point on the northeasterly line of Rekow Valley Farm, Division No. 1 as per plat recorded in Volume 29 of Plats, pages 29, 30 and 31, Records of Kitsap County, Washington; thence along said northeasterly plat limits S 43 degrees 18' 03" E a distance of 300 feet to the easterly-most corner of Lot 5 of said Plat, said point being the southwest corner of said Parcel "C"; thence S 82 degrees 25' 45" E a distance of 329.10 feet to the southeast corner of said Parcel "C"; thence continuing N 0 degrees 22' 20" E a distance of 388.28 feet; thence N 33 degrees 56' 41" W a distance of 221.73 feet; thence N 0 degrees 22' 20" E a distance of 125.0 feet to the northeast corner of said Parcel "C" and the true point of beginning.

Together with an easement for ingress, egress and utilities as recorded under Kitsap County Auditor's File No. 8110280106.

Containing 5.87 acres, more or less.

Situate in Kitsap County, Washington.



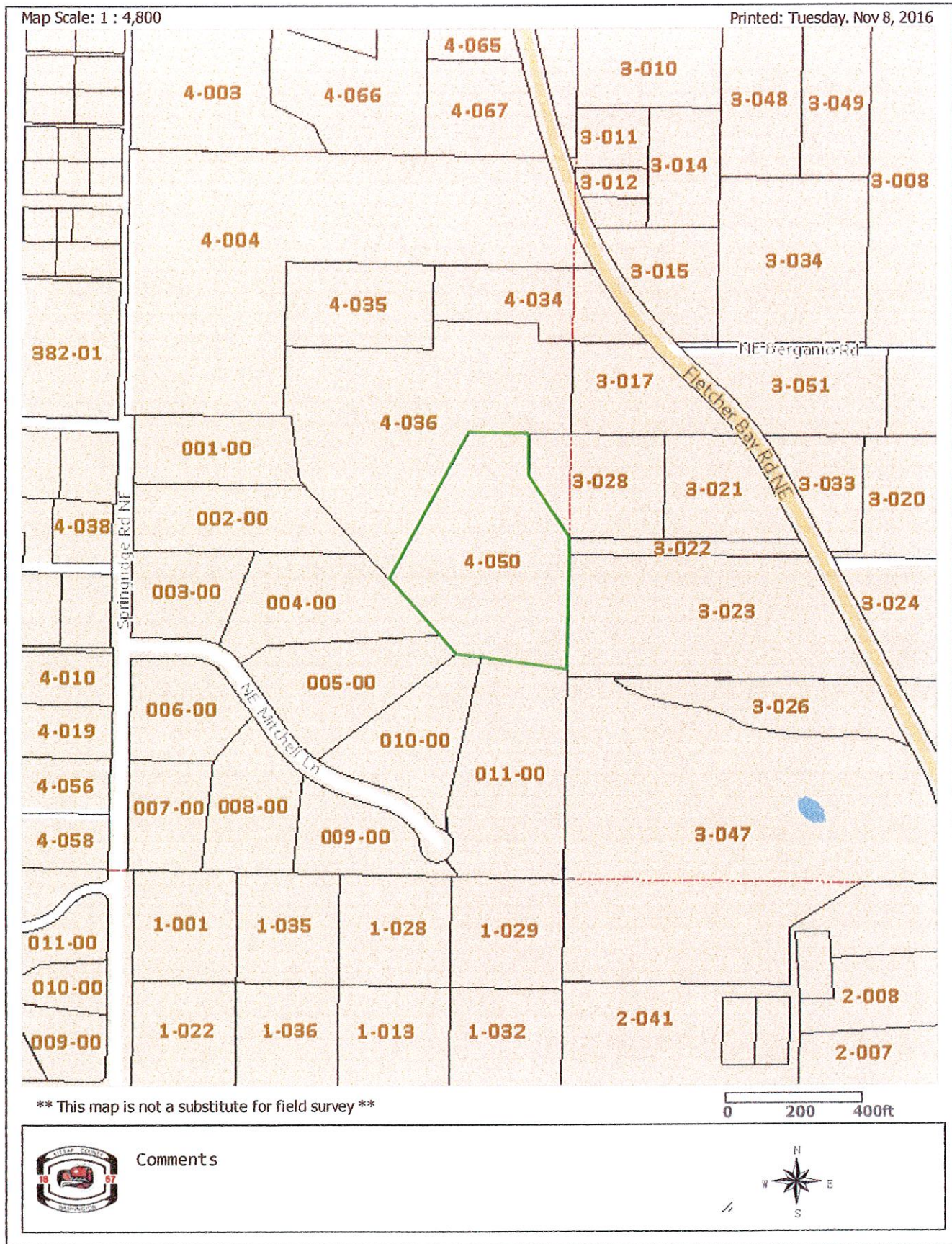
General Notes

1. Parcel Number: 202502-4-050-2002
2. Total Lot Size = 5.87 Acres.
3. Open Space Portion = 4.15 Acres.

Will & Cathy Nickum
8387 Fletcher Bay Road NE
Bainbridge Island, WA 98110
(206) 842-4632

Property Plan

File:	Property 2016	Scale:	1" = 100'
By:	WCN	Date:	November 2016





Looking Southeast



Looking Southwest

Photos taken from the hill in front of the main house.



Looking North



Looking East

Photos taken from the SW corner of the property.

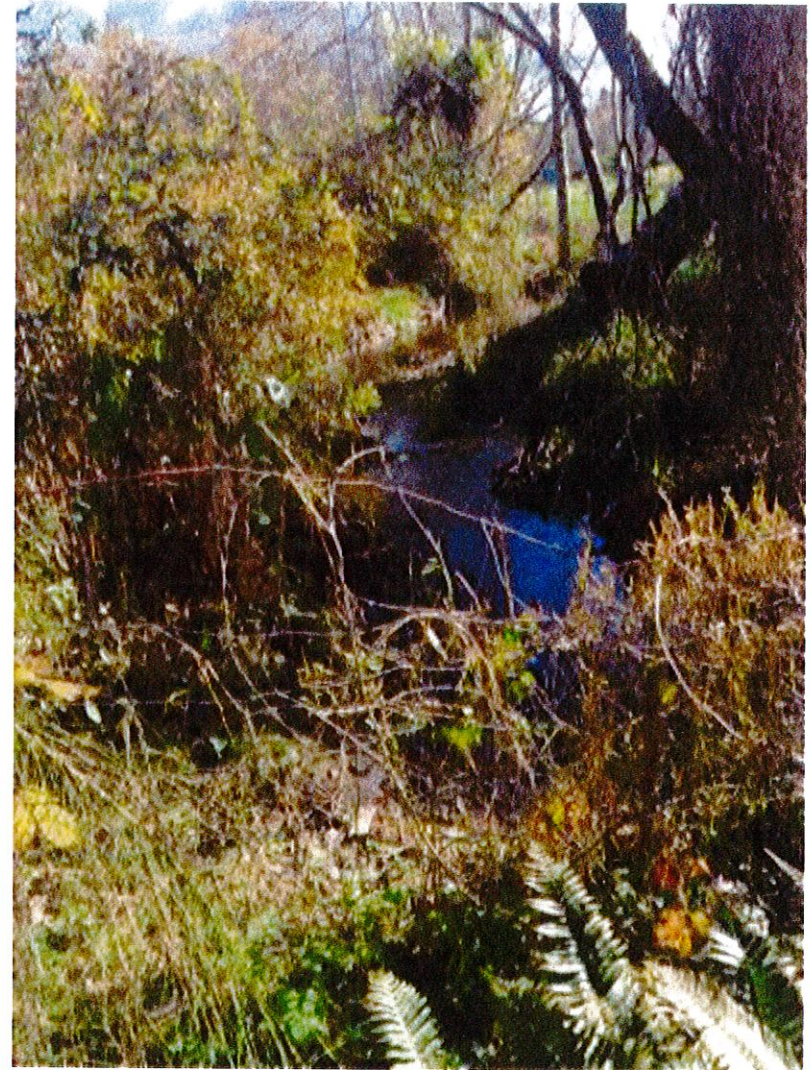
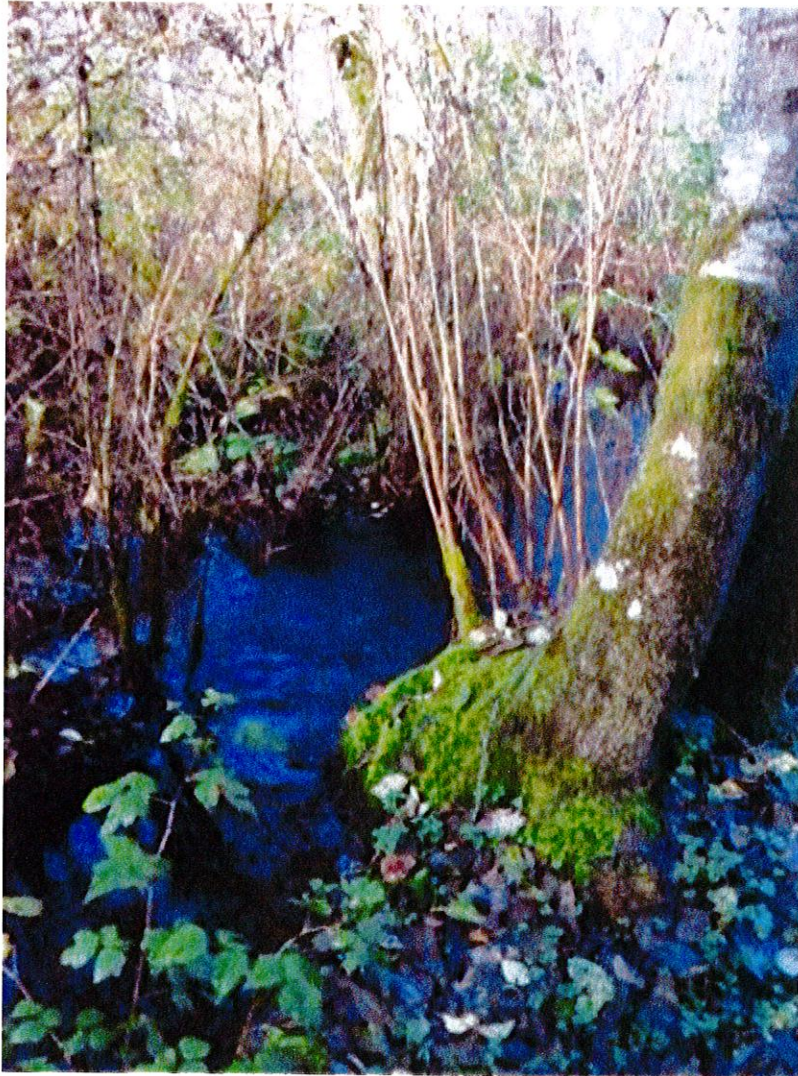


Looking West



Looking East

Photos taken from about the middle of the property (east to west) along the southern edge.



Photos of Springbrook Creek at a few points along its route.



Looking North



Looking West

Photos taken from the SE corner of the property.



CITY OF
BAINBRIDGE ISLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
MEMORANDUM

DATE: APRIL 19, 2017
TO: CITY COUNCIL & COUNTY COMMISSIONERS
FROM: JENNIFER SUTTON, AICP
SENIOR PLANNER
SUBJECT: CARLSON OPEN SPACE CLASSIFICATION APPLICATION
FILE NO: PLN50745OS

I. INTRODUCTION

Applicant: William Carlson
7211 48th Way NW
Olympia, WA 98502

Request: The applicant has submitted an application to the Kitsap County Assessor's Office (attached) to classify a total of 21.65 acres as "Open Space Land" for current use assessment under [Revised Code of Washington \(RCW\) Chapter 84.34](#). The total acreage represents 3 adjacent properties, located south of Arrowpoint Drive. Two of the properties are currently classified as "Forest Land" under the current use assessment program; this application would transfer those two properties from "Forest Land" to "Open Space Land".

Tax account

Numbers: 172502-1-028-2002 (5.66 Acres)
172502-1-029-2001 (5.66 Acres, designated "Forest Land")
172502-1-041-2005 (10.33 Acres, designated "Forest Land", "Forest to Sky Trail")

Zoning & Comprehensive

Plan Designation: R-0.4, One unit per 100,000 square feet zone/ Open Space Residential(OSR)-0.4

II. RECOMMENDATION

Based on the analysis, staff recommends approval of the Carlson application to classify the entirety of the three properties as “Open Space Land” pursuant to RCW 84.34.020(1)(b) and the Kitsap County Open Space Plan (KCC Chapter 18.12).

III. PLANNING COMMISSION REVIEW

The City Planning Commission is responsible for reviewing and making recommendations on all Open Space Classification Applications. The Commission discussed this application at their March 9, 2017 meeting (see DRAFT minutes at the end of this packet). The Commission recommended approval of the Carlson application, and forwarded their recommendation to the County Commissioners and City Council for a decision.

IV. ANALYSIS & FINDINGS

City of Bainbridge Island Comprehensive Plan

The property is designated Open Space Residential (OSR-0.4) in the City’s Comprehensive Plan. The Open Space Residential District is designated for areas appropriate for low-density, residential development and a variety of agricultural and forestry uses and the preservation of open space.

Zoning and Land Use

The property is zoned R-0.4, One Unit per 100,000 square feet zone. The three properties do not have any residences upon them. At 21.62 acres in size, the property theoretically could yield nine single-family residential lots if subdivided.

Conservation Easements

In 2015, Mr. Carlson entered into a conservation easement with the Bainbridge Island Metropolitan Parks & Recreation District (BIMPRD) and the Bainbridge Island Land Trust for all three properties (see attached). The conservation easement on the three properties create a habitat corridor between the Grand Forest and Battle Point Parks by conserving the properties as forest, taking two of them out of the “Forest Land” program, a program intended for ongoing timber harvest. A portion of the BIMPRD “Forest to Sky Trail” that connects the two parks has been constructed on the southernmost property, 172502-1-041-2005. Public access on the trail is a part of the conservation easement. A stream running north/south cuts through the middle of the properties.

Current Use Tax Reduction

Please see the attached property tax comparison estimate prepared by the Kitsap County Assessor’s Office to understand the tax implications of the Carlson Current Use Assessment application. The property taxes for Lot -029 and Lot -041 currently classified as “Forest Land” under the current use program will increase if the property is reclassified as “Open Space”.

Findings

The application has been reviewed for consistency with the Kitsap County Open Space Plan (KCC Chapter 18.12) and found to be consistent with the criteria for current use assessment for Open Space Classification- *Open Space Land*. The Carlson property currently has several high, medium, and even low priority natural resources- see table below.

Resource List: Carlson Property (KCC 18.12.020)	
High Priority Resources	
2.	Wetlands, Ponds and Streams
5.	Significant Wildlife Habitats
7.	Urban Open Space
11.	Conservation easement
12.	Land or interest acquired for open space or conservation futures
Medium Priority Resources	
2.	Secondary Stream Buffers
4.	Public Lands Buffer
Low Priority Resources	
4.	Preservation of visual quality

TAX SHIFT ESTIMATE

Owner

Tax Account

Current Use Acres

Total Acreage

Land Market Value

Homesite Acreage

Homesite Market Value

Open Space Land Reduction Factor

Farm Land Value

Desig Forest Land AV

Improvement Value

Taxes based a on levy rate of

Tax Year

CARLSON WILLIAM C

172502-1-028-2002

DFL	Farm	OpenSpace
0.00	0.00	5.66

5.66

\$31,580

0.00 acre(s)

\$0

80%

\$0

\$0

\$0

10.165060

2017

Tax Year 2017

Taxable Value					Value		Tax
CURRENT	Land			31,580			
	Improvements			0			
	Total				31,580		
	Taxes					321.01	
PROPOSED	Homesite	Ac	Value	0			
		0.00	\$0				
	Designated Forest Land	Ac	Approx Rate	0			
		0.00	\$0				
	CU Farm & Agricultural	Ac	Value	0			
		0.00	\$560				
	CU Open Space	Ac	Value	6,316			
		5.66	\$31,580				
	Improvements			0			
	Total				6,316		
Taxes					64.20		
Difference				25,264		256.81	
Owner's Taxes DECREASE By				\$257			
Total Tax Shift				\$257			

	Acreage	Total Land AV
Total Land:	5.66	= \$31,580
Homesite:	0.00	= \$0

Land Value less the homesite:	\$31,580
Reduced value with exemption:	\$6,316

Adjusted Land Value:	\$25,264
At the 2017 Tax Rate of :	10.165060
The Estimated Tax Shift =	\$257

TAX SHIFT ESTIMATE

(values & rates for 2017)

CARLSON WILLIAM C

172502-1-029-2001

Fully Taxable / If No Exemption on the Parcel:

Acres:	5.66
Market Value:	47,370
Rate:	10.165060
Possible Taxes:	481.52

Currently Classified as Designated Forest Land:

Acres:	5.66
DFL Taxable Value:	300
Rate:	10.165060
Current Taxes:	3.05

If Transfers into Open Space Classification:

Acres:	5.66
Market Value:	47,370
Rate:	10.165060
Open Space Reduction Factor:	80%
Estimated Taxes:	96.30

Transfer into Open Space increases taxes by:	<u><u>93.25</u></u>
--	---------------------

TAX SHIFT ESTIMATE

(values & rates for 2017)

CARLSON WILLIAM C

172502-1-041-2005

Fully Taxable / If No Exemption on the Parcel:

Acres:	10.33
Market Value:	70,000
Rate:	10.165060
Possible Taxes:	711.55

Currently Classified as Designated Forest Land:

Acres:	10.33
DFL Taxable Value:	1,030
Rate:	10.165060
Current Taxes:	10.47

If Transfers into Open Space Classification:

Acres:	10.33
Market Value:	70,000
Rate:	10.165060
Open Space Reduction Factor:	90%
Estimated Taxes:	71.16

Transfer into Open Space increases taxes by: 60.69



SUBMITTAL CHECKLIST **OPEN SPACE APPLICATIONS**



This submittal checklist is intended to assist you in preparing and submitting a complete application.

Part 1 - Submittal Requirements You must complete & submit all items for your application to be accepted.

Part 2 - Fully Complete Details provides you with more detail and code references for certain submittal items. Use Part 2 as a reference to submit the required items correctly. Once your application is determined to be complete, a review for technical completeness is conducted and you may be required to submit additional information in order to proceed with further review of your application.

RECEIVED

DEC 19 2016

Kitsap County

Dept of Community Development

☒ Open Space

☐ Farm and Agriculture
Conservation Land

☐ Timber Land

Applicant Name: William C. Carlson Assessor Tax Parcel #: 172502-1-028-2002,
172502-1-029-2001, 172502-1-041-2005.

Project Name: Reclassification of land in conservation easement to open space from timberland or undeveloped land.

Part 1 – Submittal Requirements

Please be aware that permit application submittals can take 30 – 45 minutes for each application. This is to ensure application materials are complete and accurately prepared for a timely review from county staff. Use the column to the left to check off items included with your application.

✓ Use the Column to the left to check off items included with your Application		Number
☒	1. Submittal Checklist	1 Paper
☒	Fees are due at the time of submittal. <u>See Current Fee Schedule</u> to estimate fee. Accepted forms of payment: 2. Cash 3. Check/Cashier's Check- Checks payable to Kitsap County Department of Community Development 4. Electronic Checks - \$1.00 flat fee per electronic check 5. All Major credit cards- a Third Party convenience fee will apply	-
✓	Required Applications	
☒	6. Project Application	1 original, 1 copy & 1 electronic*
☒	7. Supplemental Application ☒ Classification or Reclassification Open Space Land ☐ Current Use Application Timber Land Classification Parcels with Same Ownership ☐ Current Use Application Timber Land Classification Parcels with Multiple Ownerships	1 original, 1 copy & 1 electronic

✓	Required Submittal Items	
☒ N/A	8. Timber Management Plan, with date prepared and/or revised (for Timber Land applications only)	2 copies & 1 electronic
☒ N/A	9. Farm Management Plan, with date prepared and/or revised (for Farm and Agriculture Conservation Land applications only)	2 copies & 1 electronic
☒	10. A site plan reduced to 8½ x 11, showing: ☐ Map scale and north arrow ☒ Property location ☐ Home location and other buildings ☒ Area in open space ☒ Location of any critical areas (wetlands, streams, shorelines, steep slopes, etc.)	2 copies & 1 electronic
☒	11. Photographs of the subject property	2 copies & 1 electronic

*Electronic means documents are submitted on either USB drive or disc. Electronic documents must be in a searchable PDF format (saved as PDF, not scanned) and no more than 150MB per file.

Part 2 – Fully Complete Details

Detailed application requirements are noted below, but space limitations preclude the listing of complete code requirements. Please note that additional items or information may be required if the review process indicates more information is needed to evaluate the project.

Kitsap County Code is available online at: www.codepublishing.com/wa/kitsapcounty.

Code Requirement	Code Reference
A vicinity map showing the location of the property and surrounding properties (A copy of the assessor's quarter section map may be used to identify the site.)	17.430.050
Location of existing and proposed buildings and structures showing the buffers and setbacks and intended use of each (for shoreline properties, adjacent property building(s) location(s) shall be shown)	17.430.050
Location of any critical areas (wetlands, streams, shorelines, steep slopes, etc.) and their associated buffer and/or setback requirements	17.430.050
Open Space	18.12



**SUPPLEMENTAL APPLICATION
FOR CLASSIFICATION
OR RECLASSIFICATION
OPEN SPACE LAND**

RECEIVED

DEC 19 2016

Kitsap County
Dept of Community Development

Kitsap County Code is available online at <http://www.codepublishing.com/wa/kitsapcounty/>
Click on Title 18 Environment, Click on Chapter 18.12 Open Space Plan
Washington State Department of Revenue

Chapter 84.34 RCW

NOTE: This permit type requires a Submittal Appointment. When you have assembled all required submittal items, please call (360)337-5777 to schedule your Permit Submittal Appointment.

File With the County Legislative Authority: Kitsap County

Name of Owner(s): William C. Carlson Phone No: 360-481-7199

Address: 7211 48th Way NW, Olympia, WA 98502

Parcel Number(s): 172502-1-028-2002, 172502-1-029-2001 and 172-1-041-2005

Legal description: SE/NE 17-25-2E Detailed description attached

Total acres in application: 21.65

Indicate what category of open space this land will qualify for:

- ☒ Conserve or enhance natural, cultural, or scenic resources
- ☒ Protect streams, stream corridors, wetlands, natural shorelines, or aquifers
- ☐ Protect soil resources, unique or critical wildlife, or native plant habitat
- ☐ Promote conservation principles by example or by offering educational opportunities
- ☒ Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces
- ☐ Enhance recreation opportunities
- ☐ Preserve historic or archaeological sites
- ☐ Preserve visual quality along highway, road, street corridors, or scenic vistas
- ☐ Retain in natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority
- ☐ Farm and agricultural conservation land previously classified under RCW 84.34.020(2), that no longer meets the criteria
- ☐ Farm and agricultural conservation land that is "traditional farmland" not classified under Chapter 84.33 or Chapter 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture

Describe the present use of the land. This land, part of my great grandfather, Andrew Miemois

1. Anderson's homestead has mostly remained in timber since the homestead was filed in 1883. A small portion on north edge was in pasture for about 55 years until reforestation in 1966. It was selectively logged in 1899 and 1966 and is now a stand of timber from 50 to 116 years old with Miemois Creek running through it. I put it into a Conservation Easement with Bainbridge Island Land Trust on December 21st 2015. See Auditors file 201512210155.

☐☐

2. Is the land subject to a lease or agreement which permits any other use than its present use? **No it is not.**

Yes

No

If yes, attach a copy of the lease agreement.

3. Describe the present improvements (residence, buildings, etc.) located on the land.

4. Is the land subject to any easements?

☐ X Yes ☐ No

If yes, describe the type of easement, the easement restrictions, and the length of the easement. Conservation Easement – perpetual See Auditors file 201512210155. There is also a 12 ft. wide trail easement through a small portion of the property for the Forest to Sky Trail of the Bainbridge Island Metropolitan Parks District. This is also perpetual. It allows the public to use a 12 ft wide trail which crosses Miemois Creek on a wooden bridge that I own, but which is maintained 90% by BIMPD and 10% by me.

5. If applying for the farm and agricultural conservation land category, provide a detailed description below about the previous use, the current use, and the intended future use of the land.

NOTICE:

The county and/or city legislative authorities may require owners to submit additional information regarding the use of the land.

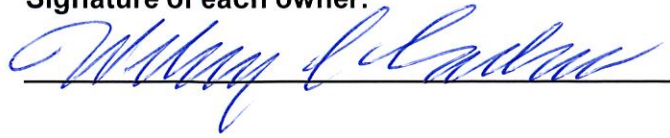
As the owner of the parcel(s) described in this application, I hereby indicate by my signature below that I am aware of the additional tax, interest, and penalties involved when the land ceases to be classified under the provisions of Chapter 84.34 RCW. I also certify that this application and any accompanying documents are accurate and complete.

The agreement to tax according to use of the property is not a contract and can be annulled or canceled at any time by the Legislature (RCW 84.34.070)

Print the name of each owner:

William C. Carlson

Signature of each owner:



The granting or denial of an application for classification or reclassification as open space land is a legislative determination and shall be reviewable only for arbitrary and capricious actions. Denials are only appealable to the superior court of the county in which the land is located and the application is made.

FOR LEGISLATIVE AUTHORITY USE ONLY

Date application received: _____ By: _____

Amount of processing fee collected: \$ _____

- Is the land subject to this application designated as open space by a comprehensive land use plan adopted by a city or county and zoned accordingly? ☐ Yes ☐ No

If yes, application must be processed in the same manner in which an amendment to the comprehensive land use plan is processed.

If no, application must be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing.

- Is the land subject to this application located within an incorporated part of the county? ☐ Yes ☐ No

If yes, application must be acted upon by three members of the county legislative authority and three members of the city legislative authority. See RCW 84.34.037(1) for details.

If no, application must be acted upon by three members of the county legislative authority.

☐ Application approved ☐ In whole ☐ In part

☐ Denied ☐ Date owner notified of denial (Form 64 0103):

If approved, date Open Space Taxation Agreement (OSTA) was mailed to owner:

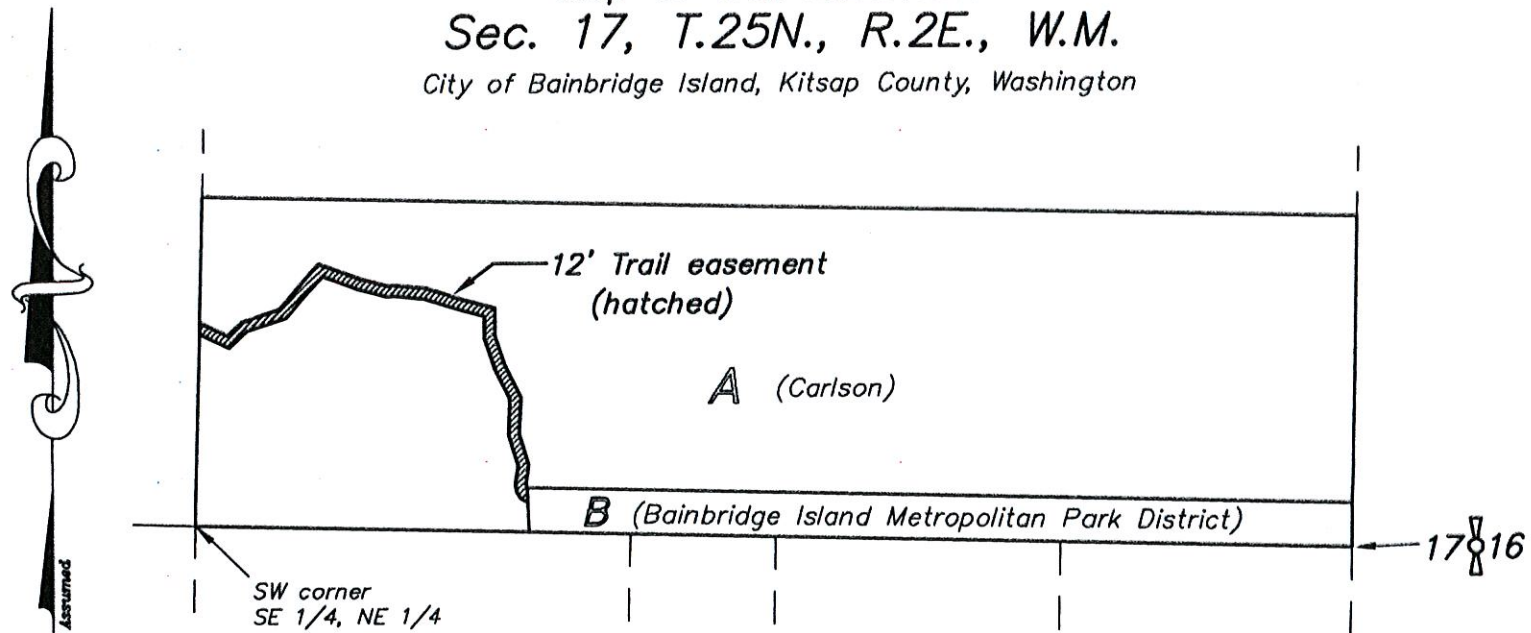
Date signed OSTA received by Legislative Authority:

Date copy of signed OSTA forwarded to Assessor:

To ask about the availability of this publication in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users, please call (360) 705-6718. For tax assistance, call (360) 534-1400.

EXHIBIT B6 BIMPRD Trail Easement Page 1 of 2 Carlson Conservation Easement

Map of Trail Easement
Sec. 17, T.25N., R.2E., W.M.
City of Bainbridge Island, Kitsap County, Washington

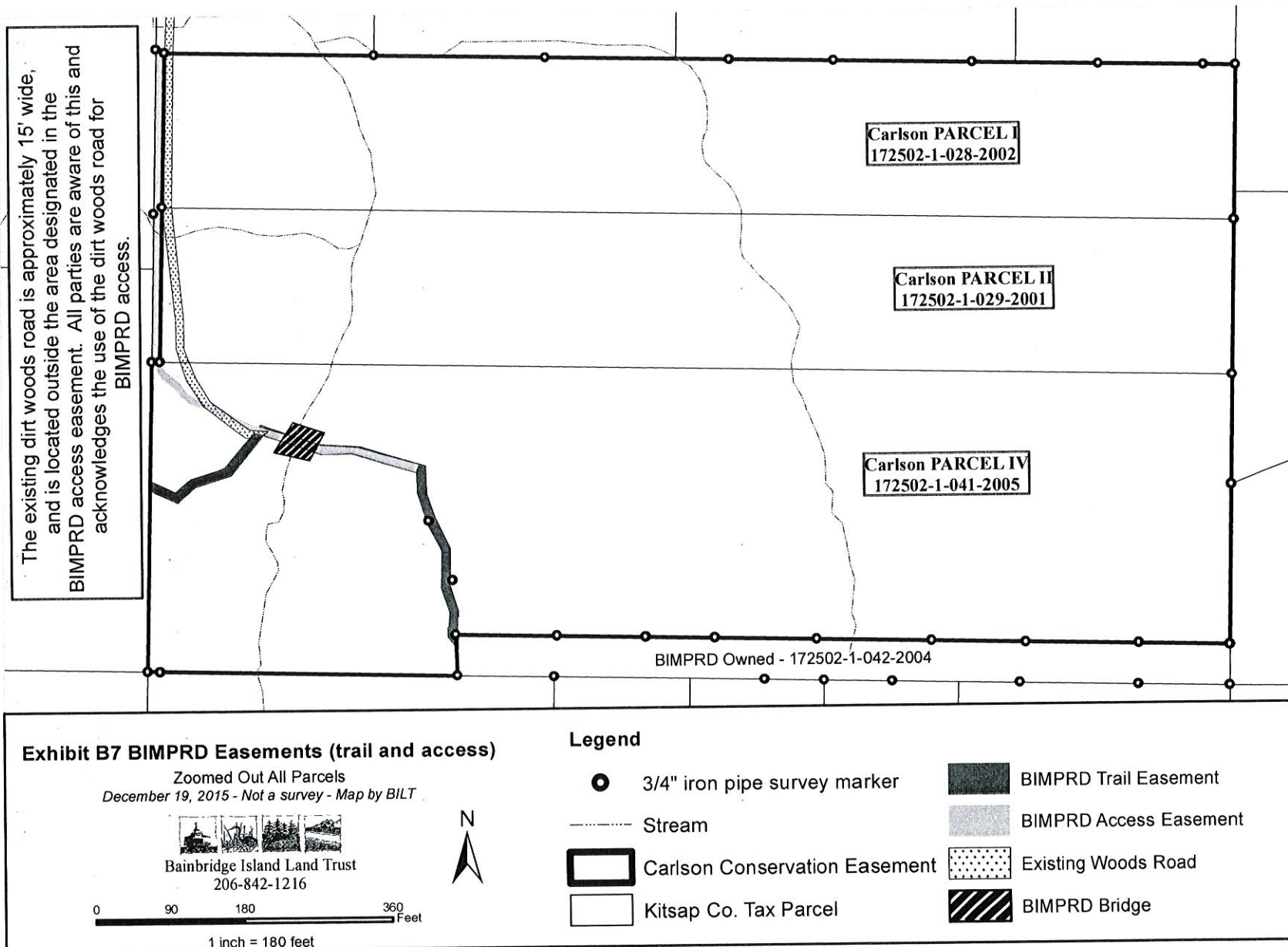


ADAM • GOLDSWORTHY • OAK

A G O LAND SURVEYING, LLC

1015 NE HOSTMARK ST. (360)779-4299
POULSBORO, WA 98370 (206)842-9598

DATE 12/10/15 FIELD BOOK 1320
DRAWING 5718ESM1 SHEET 1/1





**EXHIBIT B 6 page 2 of 2 BIMPRD Trail Easement
Carlson Conservation Easement**

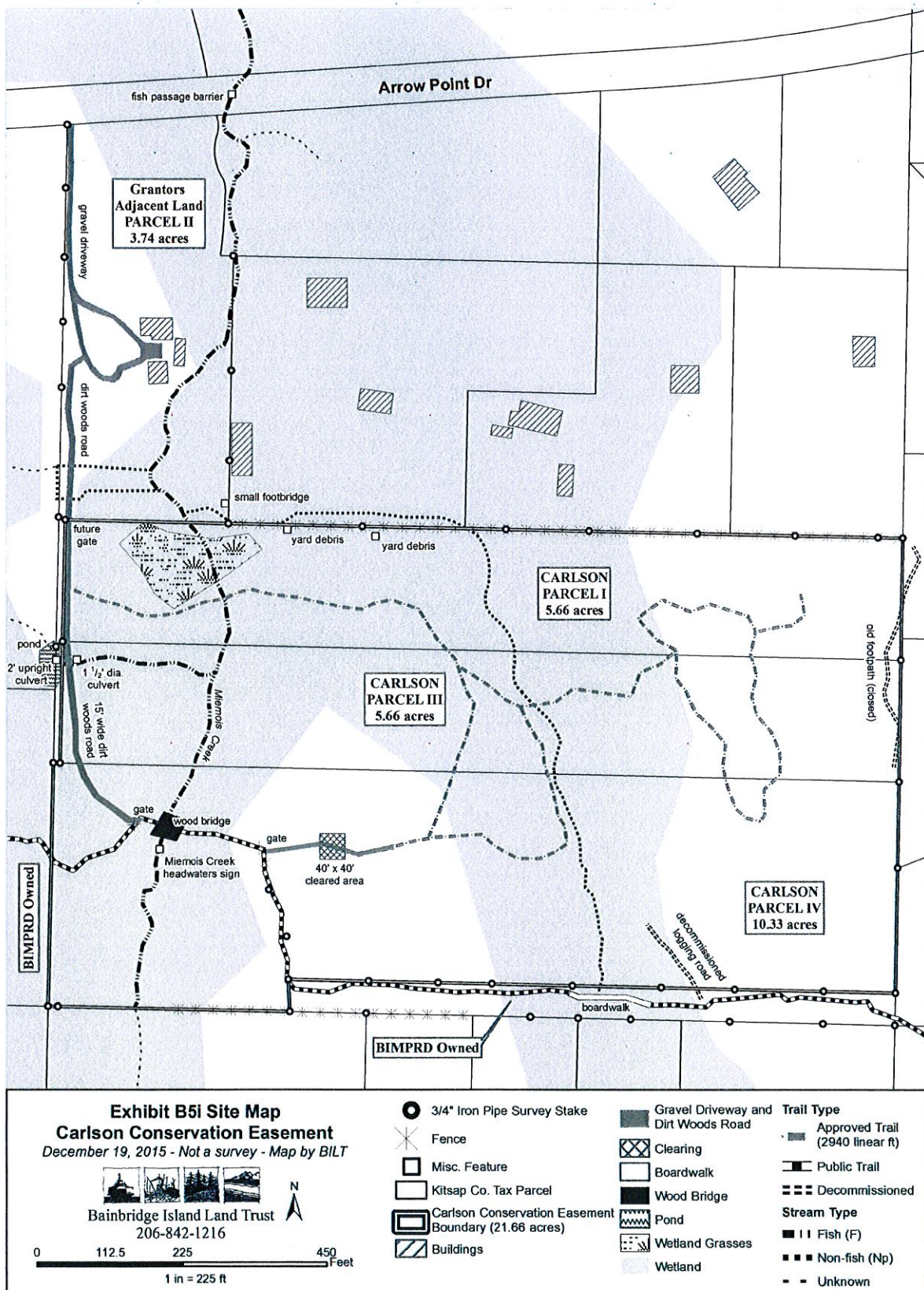
December 7, 2015

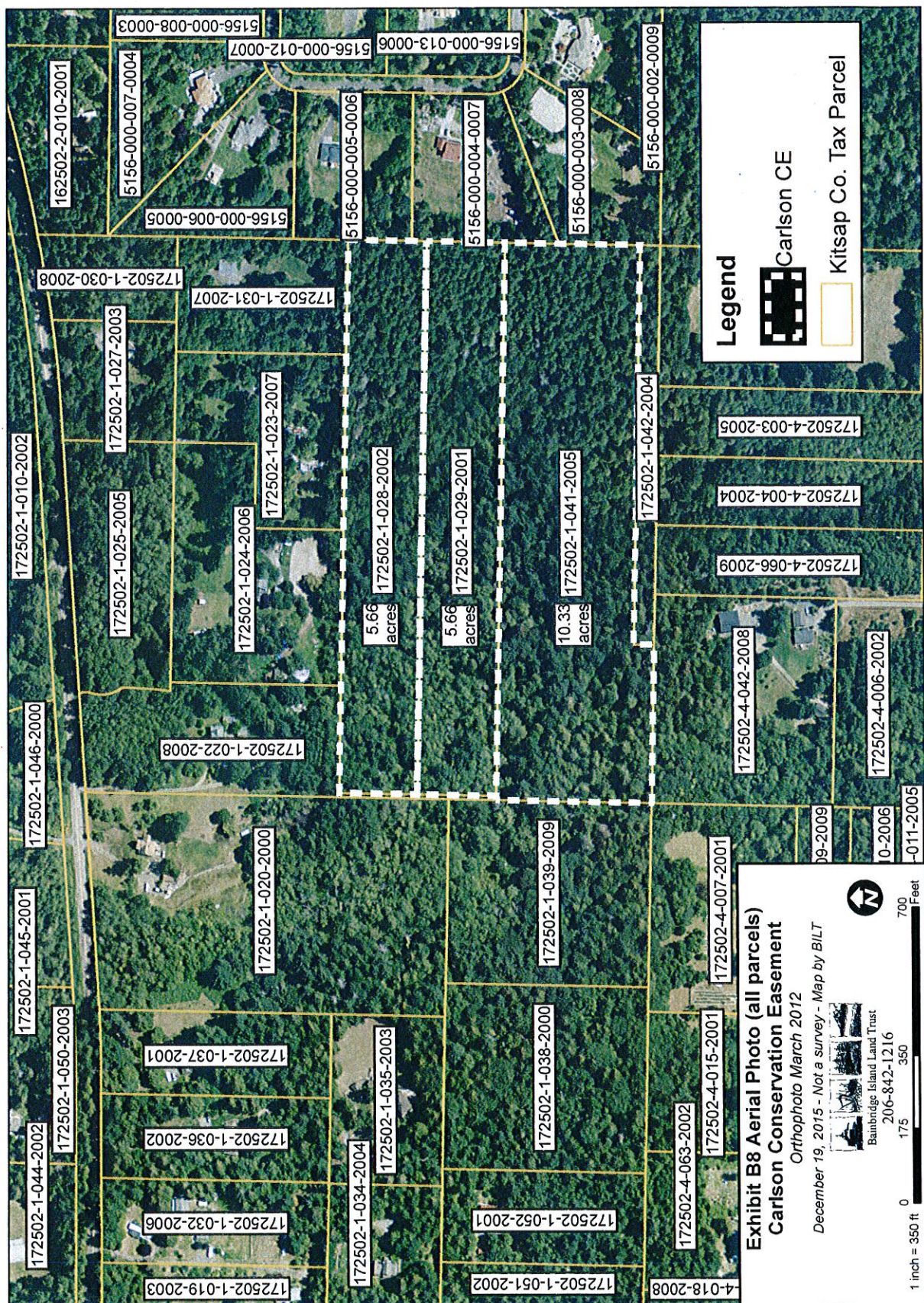
BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
JOB NO. 14-5718

12 FOOT TRAIL EASEMENT DESCRIPTION

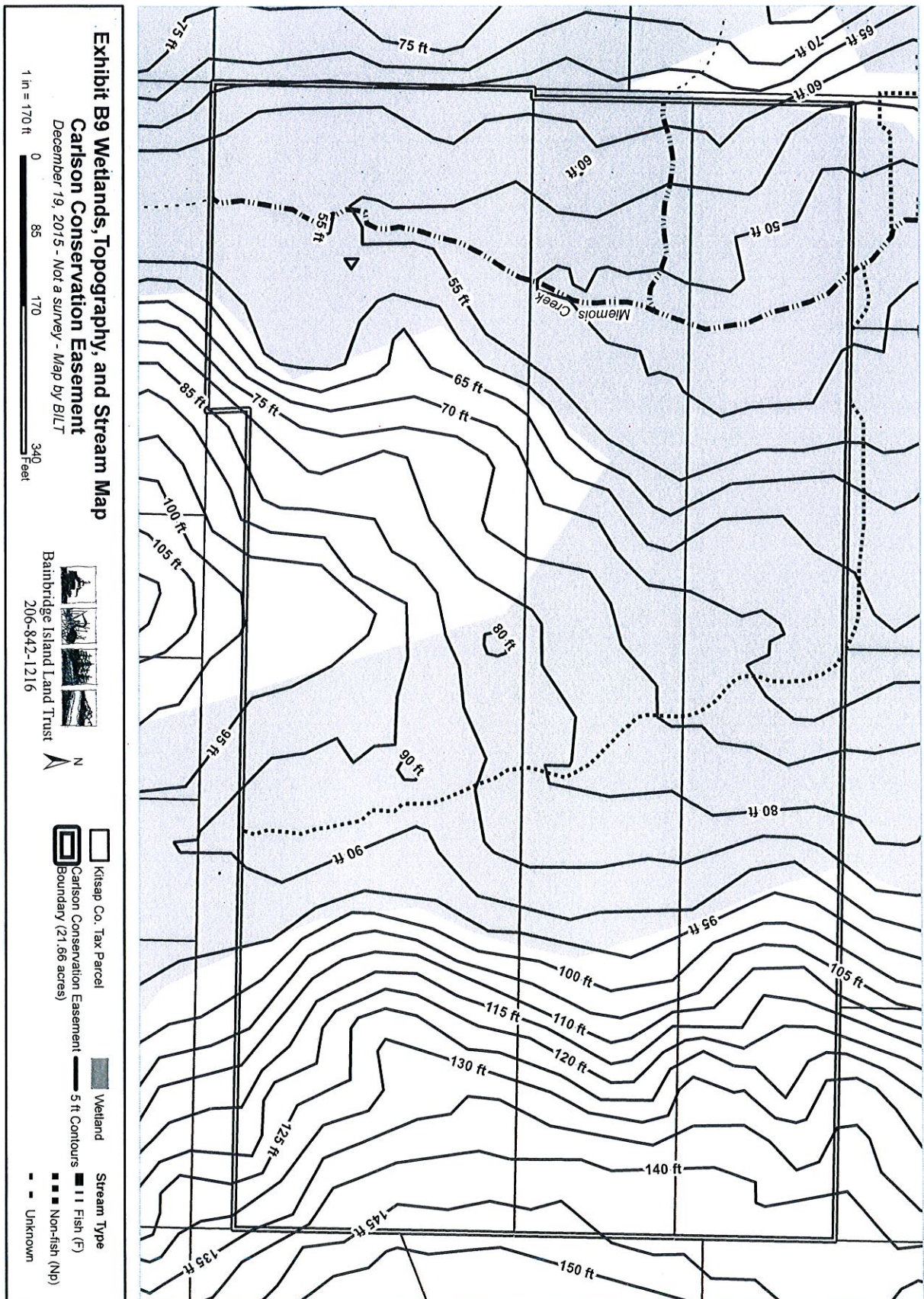
A 12.00 foot wide strip of land being a portion of Resultant Parcel A of the Carlson/Jenkins-Bainbridge Island Metropolitan Park and Recreation District Boundary Line Adjustment recorded under Kitsap County Auditor's File No. 200712120158, situate in the Southeast quarter of the Northeast quarter of Section 17, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington, the centerline of which is described as follows:

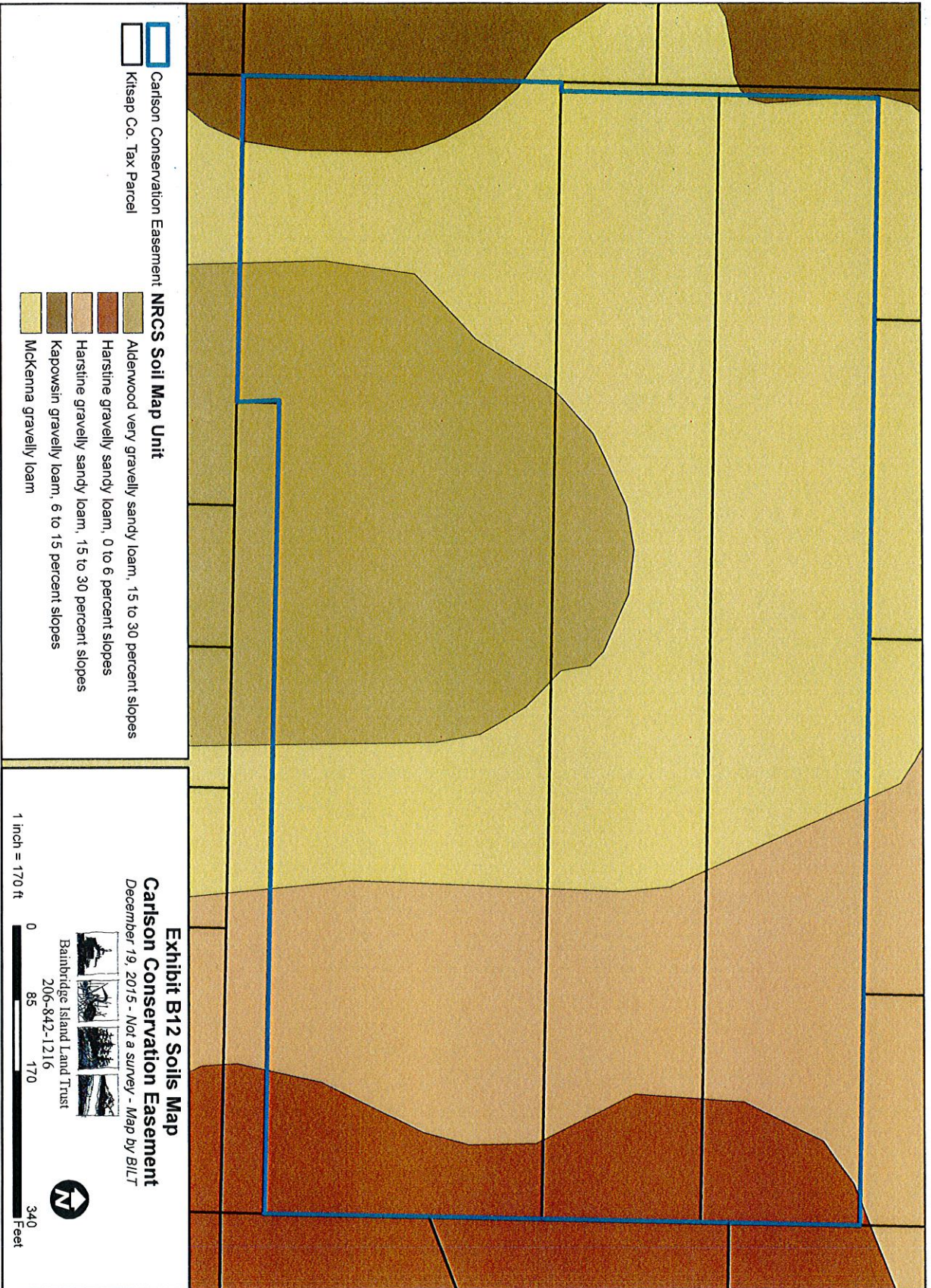
Beginning at the Northwest corner of Resultant Parcel B of said Boundary Line Adjustment;
Thence along the West line thereof, South 02°20'07" East 9.14 feet to the True Point of Beginning;
Thence leaving said West line, North 58°11'18" West 3.74 feet;
Thence North 34°36'04" West 6.00 feet;
Thence North 05°48'09" West 7.00 feet;
Thence North 08°41'03" East 21.00 feet;
Thence North 17°12'16" West 37.00 feet;
Thence North 02°32'45" East 41.00 feet;
Thence North 26°05'49" West 40.96 feet;
Thence North 17°25'54" West 35.56 feet;
Thence North 00°38'34" West 28.26 feet;
Thence North 74°15'31" West 29.25 feet;
Thence North 73°29'23" West 47.90 feet;
Thence North 84°22'05" West 35.12 feet;
Thence South 85°35'20" West 8.25 feet;
Thence North 75°17'28" West 32.88 feet;
Thence North 70°03'33" West 46.34 feet;
Thence South 40°28'09" West 65.12 feet;
Thence South 71°46'49" West 46.58 feet;
Thence South 47°06'21" West 25.46 feet;
Thence North 64°19'09" West 36.47 feet to the West line of said Resultant Parcel A and the terminus of said centerline.

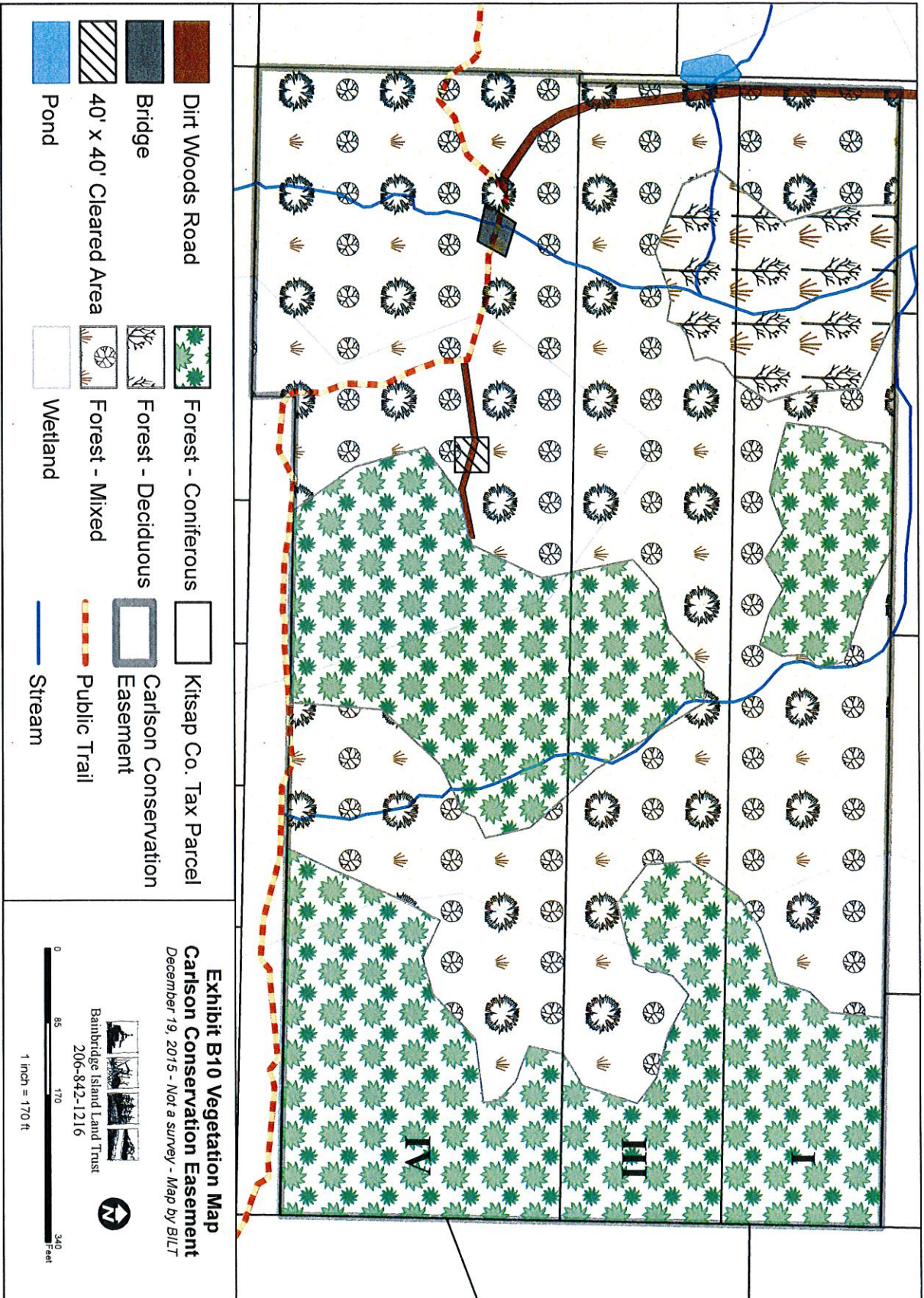












CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
REVIEW AND APPROVAL OF MINUTES - January 12, 2017 and February 9, 2017
PUBLIC COMMENT – Accept public comment on off agenda items
NICKUM OPEN SPACE TAX CLASSIFICATION – Public Hearing
CARLSON OPEN SPACE TAX CLASSIFICATION – Public Hearing
BAINBRIDGE LANDING – Site Plan and Design Review/Subdivision
MADRONA SCHOOL – Site Plan and Design Review/Conditional Use Permit
NEW/OLD BUSINESS
ADJOURN

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure

Chair J. Mack Pearl called the meeting to order at 6:00 PM. Planning Commissioners in attendance were Michael Lewars, Maradel Gale, Jon Quitslund, William Chester and Lisa Macchio. Michael Killion was absent and excused. City Staff present were Planning Director Gary Christensen, Planning Manager Josh Machen, Senior Planners Jennifer Sutton and Heather Wright and Administrative Specialist Lara Lant who monitored recording and prepared minutes.

The agenda was reviewed. There were not any conflicts disclosed.

REVIEW AND APPROVAL OF MINUTES - January 21, 2016

Motion: I move to approve the minutes as distributed of January 12th and February 9th, 2017.

Gale/Quitslund: Passed Unanimously 6-0.

PUBLIC COMMENT – Accept public comment on off agenda items
None.

NICKUM OPEN SPACE TAX CLASSIFICATION – Public Hearing

Senior Planner Jennifer Sutton began the Open Space Classification Public Hearing with a description of the Nickum's property and a statement about the process. The Nickums own a 5.88 acre parcel and have applied to reclassify 4.15 acres of it to Open Space Land. A good portion of the property is taken up by Springbrook Creek and associated wetlands. Springbrook Creek is a fish bearing stream. This property is a good candidate for Open Space Land classification as it is adjacent to other properties already designated as Open Space Land. It would contribute to a larger, ecosystem protected corridor surrounding Springbrook Creek. The Planning Commission is a recommending body to both the City Council and the County Commissioners who will make a decision on this project at a separate meeting. Commissioner Quitslund asked if the city had an Open Space Plan that mapped these spaces and looked at perspective candidates for future Open Space classification. Planner Sutton said the city doesn't

look at perspective candidates under the tax program and perhaps that could be a feature of the city's outreach in the future. Commissioner Quitslund stated he would like more progress with Land Trust planning. Chair Pearl asked if this was a permanent classification? Planner Sutton said it was permanent unless the property owner removed it from the classification and paid the tax penalty. Commissioner Macchio said the property fit the criteria that was provided in State law and thanked both the Nickums and the Carlsons for putting their properties into Open Space designations.

Mr Nickum said they wished they had done this sooner. They had known about the process for years but only now got around to applying for the Open Space Classification. Commissioner Quitslund said there was a discrepancy in the record which mentioned one house but there were really two - a house and an additional dwelling unit.

Motion: I move we recommend approval of the Open Space Application for the Nickum Open Space property, PLN50744OS.

Gale/Lewars: Passed Unanimously.

CARLSON OPEN SPACE TAX CLASSIFICATION – Public Hearing

Jennifer Sutton introduced the Carlson properties as three properties located south of Arrow Point Drive, adjacent to the Forest to Sky Trail. The northern property was undeveloped, the southern two were classified as Timberland Open Space and all three will be reclassified as Open Space. Mr Carlson entered into an agreement with the Park District and the Land Trust and a public trail had been constructed which connected the Grand Forest to Battle Point Park. Commissioner Quitslund said title to the land was retained by the Carlson but Land Trust easement governs the uses of it. Planner Sutton agreed this was true.

Commissioner Pearl asked for public comment. There was none. Commissioner Pearl asked if city staff recommended this reclassification and Planner Sutton said yes.

Commissioner Lewars asked what the point of the reclassification was, since taxes decreased on one property but increased on the two others. Mr Carlson said he couldn't leave the property classified as Timberland Open Space because he eliminated harvesting with a conservation easement. Though taxes will increase, he's reclassifying the property because Kitsap County indicated they would fine him for having property in the Timberland Open Space classification that wasn't harvestable. Commissioner Quitslund asked Mr Carlson if development rights were transferrable or extinguished and Mr Carlson replied they were extinguished. Mr Carlson said historically there were fish up to Arrow Point until an improper culvert was placed on Arrow Point Drive. Anything the city could do to remedy this situation they would appreciate. Commissioner Gale wanted to know what the city could do to remedy the improper culvert.

Planner Sutton replied she noted it and would contact the Public Works Department about it. Commissioner Macchio thanked Mr Carlson.

**Motion: I move that we recommend approval of application PLN50745OS.
Lewars/Quitslund: Passed Unanimously.**

**BAINBRIDGE LANDING (PLN 50520 SPR/SUB) SITE PLAN AND DESIGN
REVIEW/SUBDIVISION - Recommendation**

Chair J. Mack Pearl stated this had been a difficult project for the Planning Commissioners to get their arms around. It was a large project and this was the first time they had formally seen it. He said it seemed they were expected to approve it without really reviewing it which was not the correct thing to do. Chair Pearl noted they were not going to make a recommendation tonight but listen to the applicant describe the project and listen to public comment. After the Planning Commissioners receive the staff report and conditions they will review it again. They will talk about it in a public hearing, listen to public comment and have a discussion themselves. And if there is a need to make the public hearing open, they will do that.

Planner Heather Wright thanked the Planning Commission Chair for expressing that concern. She said they had a major issues memo they'd like to proceed with. She requested the Planning Commission come back next Thursday, March 16th if possible to make the city's timeline for required application review. Chair Pearl said there was a one-hundred day period before the application goes before the Hearing Examiner and it would be appropriate for the Planning Commission to review the application earlier in the process. He stated it was not fair to the Planning Commissioners to have only one week to review it. They had reservations about the process but would try to review it as requested. Commissioner Lewars said the small amount of project information the Planning Commission was supplied for review, especially in a compressed time, was unlike anything he had seen before.

Planner Wright presented a slide show about Major Issues and Specific Aspects of Bainbridge Landing, as required by the municipal code. These issues and aspects were identified after review by the Planning Director, the project had been reviewed by the Design Review Board and opened to two public comment periods due to modification of the plan. It was scheduled for Hearing. The proposed project was just to the north of Harbor Square on a 4.86 acre site. It would be developed with 140 residential units comprised of 18 townhomes, 7 lofts, and a 115 unit apartment building. Part of the project scope included removal and relocation of the historic house on the property and the applicant has proposed a 1 acre park to be located east of the project site abutting Ferncliff Avenue. This park was being proposed to acquire a floor area ratio bonus. In addition to the site plan review, the applicant was proposing to subdivide the property into 27 lots to include 25 single family homes, 1 multi-family home and a 1 acre park. This was a Tier One project under the HDDP program and will be considered a LEED community. In accordance with Tier One projects, they are required to restrict home size to no greater than 1600

After recording mail to:

Bainbridge Island Land Trust
P.O. Box 10144
Bainbridge Island, WA 98110

Attn: Executive Director

Deed of Conservation Easement and Access License

GRANTOR:	William C. Carlson	
GRANTEE:	BAINBRIDGE ISLAND LAND TRUST, a Washington nonprofit corporation	
LEGAL DESCRIPTION:	SE/NE 17-25-2E	
ASSESSOR'S TAX PARCEL NO.:	Conservation Easement 172502-1-028-2002 172502-1-029-2001 172502-1-041-2005	Access License 172502-1-022-2008
REFERENCE NO:		

RECEIVED

DEC 19 2016

Kitsap County
Dept of Community Development

EXHIBIT A – page 1 of 2

Legal Description

Parcels I (172502-1-028-2002), III (172502-1-029-2001), and IV(172502-1-041-2005)
The Protected Property

Office File No.: E-253771

PARCEL I:

THE NORTH HALF OF THE NORTH HALF OF THE FOLLOWING DESCRIBED
PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17,
TOWNSHIP 25, RANGE 2 EAST, W.M, IN KITSAP COUNTY, WASHINGTON;
EXCEPT THE WEST 10 FEET THEREOF;
AND EXCEPT THE NORTH 577 FEET THEREOF.

PARCEL II:

AN EASEMENT FOR ACCESS AND UTILITIES AS MORE FULLY DESCRIBED
UNDER AUDITOR'S FILE NO. 7812280081, BEING A PORTION OF THE SOUTHEAST
QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 25 NORTH,
RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON.

(PARCEL II BENEFITS PARCEL I)

PARCEL III:

THE SOUTH HALF OF THE NORTH HALF OF THE FOLLOWING DESCRIBED
PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 17,
TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;
EXCEPT THE WEST 10 FEET THEREOF;
AND EXCEPT THE NORTH 577 FEET THEREOF.

PARCEL IV:

RESULTANT PARCEL A OF CITY OF BAINBRIDGE ISLAND BOUNDARY LINE
ADJUSTMENT NO. BLA14622 RECORDED DECEMBER 12, 2007 UNDER AUDITOR'S
FILE NO. 200712120158, BEING A PORTION OF THE SOUTHEAST QUARTER OF
THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 25 NORTH, RANGE 2
EAST, W.M., IN KITSAP COUNTY, WASHINGTON.

Exhibit A – page 2-2
Parcel II (172502-1-022-2008)
Grantor's Adjacent Land

Office File No.: E-253772

PARCEL I:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, DEFINED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION; THENCE SOUTH TO THE SOUTHWEST CORNER THEREOF; THENCE EAST 10 FEET; THENCE NORTH TO A POINT 577 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE EAST TO A POINT 1056 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE NORTH 577 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE WEST TO THE POINT OF BEGINNING;
EXCEPT THAT PORTION OF THE NORTH 165 FEET OF THE ABOVE DESCRIBED TRACT LYING EAST OF CREEK.

PARCEL II:

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING SOUTH OF COUNTY ROAD NO. 72 AND EAST OF THE WEST LINE OF GOVERNMENT LOT 1, SECTION 17, TOWNSHIP 25 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON:
THAT PORTION OF GOVERNMENT LOTS 1 AND 2 DEFINED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 2; THENCE SOUTH ALONG WEST BOUNDARY OF SAID GOVERNMENT LOT TO A POINT OF INTERSECTION WITH A LINE PARALLEL TO AND 760 FEET SOUTHERLY (MEASURED AT RIGHT ANGLES) FROM THE NORTH LINE OF SAID SECTION 17, BEING THE TRUE POINT OF BEGINNING; THENCE EAST ALONG SAID LINE 1500 FEET, MORE OR LESS, TO THE CENTER OF CREEK; THENCE SOUTHERLY ALONG SAID CREEK TO THE SOUTH LINE OF SAID GOVERNMENT LOT 1; THENCE WEST ALONG THE SOUTH LINE OF SAID GOVERNMENT LOTS 1 AND 2, 1570 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 2; THENCE NORTH TO THE TRUE POINT OF BEGINNING;
EXCEPT COUNTY ROAD;
EXCEPT THAT PORTION CONVEYED UNDER AUDITOR'S FILE NO. 200401210464.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the "Easement") is made this 21 day of December, 2015, by William C. Carlson having an address at 7211 48th Way NW Olympia, WA 98502 ("Grantor"), in favor of BAINBRIDGE ISLAND LAND TRUST, a Washington nonprofit corporation, having an address at P.O. Box 10144, Bainbridge Island, Washington 98110 ("Grantee").

I. Background and Intention

1. Grantor is the sole owner in fee simple of that certain real property in Kitsap County, Washington, more particularly described as Parcels I, III, and IV collectively consisting of approximately 21.67 acres ("the Protected Property") in Exhibit A, attached to and incorporated into this Easement. Grantor is also the joint owner of approximately four acres of land adjacent to the Protected Property and developed for residential use, which real property is described as Parcel II in Exhibit A (the "Grantor's Adjacent Land"). The Protected Property and Grantor's Adjacent Land together constitute four assessor's tax parcels.

2. The Protected Property, contains the biologically significant fish bearing stream (Miemois Creek) and its associated riparian habitat, forestland, wetlands, foraging and nesting habitats for bald eagles and other raptors, woodpeckers, and a number of bird species, open space, scenic and watershed values (collectively, referred to herein as the "Conservation Values") of great importance to Grantor, Grantee and the people of Bainbridge Island, Kitsap County and the State of Washington.

3. The specific Conservation Values are more particularly described and documented in a baseline resource report consisting of narratives, maps, photographs of the Protected Property and other documentation prepared by Grantee and kept in the office of Grantee that collectively provide an accurate representation of the Protected Property and description of the Conservation Values at the time of the grant of the Easement ("the Baseline Documentation"). Excerpts from the Baseline Documentation are contained in Exhibits B and C attached to and incorporated into this Easement by this reference. The Baseline Documentation is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

4. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by prohibiting uses of or activities on the Protected Property as expressly set forth in this Easement.

5. Grantor further intends to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property in perpetuity, and to convey to Grantee all rights to future development appurtenant to or inherent in the Protected Property, pursuant to the express terms of Section II. 6. below.

6. Grantee is a “nonprofit nature conservancy corporation” as defined in the Revised Code of Washington (“RCW”) 64.04.130 and RCW 84.34.250. Grantee is tax exempt under Internal Revenue Code Section 501(c)(3) and is a “qualified organization” under Internal Revenue Code Section 170(h). Grantee’s primary purpose is to conserve and preserve the waters, wetlands, shorelines, wildlife habitat, forests, undeveloped land, scenic areas, open spaces, and recreational and agricultural lands on Bainbridge Island, Washington.

II. Terms of Easement

1. Grant of Easement and License for Access.

1.1. Grantor hereby grants and conveys to Grantee a perpetual conservation easement over the Protected Property of the nature and character and to the extent set forth in this Easement. Grantor makes no representations or warranties with respect to the condition of the Protected Property (express or implied), except as expressly set forth herein. Grantor and Grantee covenant and agree to comply with and be bound by all of the terms and provisions of this Easement. This Easement is a conveyance of an interest in real property pursuant to the laws of the State of Washington and, in particular, RCW 84.34.200-250 and RCW 64.04.130. Grantor intends this Easement to be an absolute, unconditional, unqualified and completed gift to Grantee, subject only to the mutual covenants and restrictions set forth in this Easement, and for no other consideration whatsoever. This Easement and the rights, restrictions and covenants contained in it shall be perpetual and run with the land. This Easement (including the License in Section 1.2 below) is subject and subordinate to existing easements, agreements and encumbrances of record, including the Declaration of Trail Easements and Access Easement (Trail Easement, Gravel Driveway, and Dirt Woods Road), dated the 19th day of November, 2007 between William Carlson, Shirley Jenkins, and The Bainbridge Island Metropolitan Park and Recreation District (“BIMPRD”) recorded as Document No. 200712120030 in the records of the Kitsap County Auditor, and as amended dated and recorded contemporaneously herewith (collectively, as so amended, the “BIMPRD Declaration”). Specifically the BIMPRD Trail Easement is depicted in Exhibit B6.

1.2. Grantor hereby grants to Grantee a permanent, non-exclusive license to use the existing Gravel Driveway and portion of the Dirt Woods Road or any future reconfiguration of the Gravel Driveway or Dirt Woods Road on Grantor’s Adjacent Land (Exhibit B3 Parcel II) that collectively runs from Arrow Point Drive to the Protected Property; for ingress to and egress from the Protected Property for the purposes expressly set forth in this Easement (collectively, the “License”), provided the License is subject to all recorded instruments and matters of record as of the date hereof. The existing Gravel Driveway and Dirt Woods Road are shown on Exhibit B5i and B5ii. Grantor makes no representations or warranties with respect to the condition of the Grantor’s Adjacent Land (express or implied), except as expressly set forth herein. Grantor and Grantee covenant and agree to comply with and be bound by

all of the terms and provisions of the License. The License is deemed to be an integral part of this Easement. The License may not be used for public access to the Protected Property.

2. **Purposes and Intent.** Pursuant to and in compliance with the requirements of Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, this Easement will protect the following conservation attributes, as further set forth in Exhibits B and C: (i) headwaters of a biologically significant fish bearing stream (Miemois Creek) and its associated riparian habitat, scenic, forestland, wetlands, foraging and nesting habitats for bald eagles and other raptors, woodpeckers, and a number of bird species, open space and watershed values of the Protected Property; and (ii) the preservation of open space on the Protected Property pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and where such preservation will yield significant public benefits (but subject to Section II.4 below).

Public benefits include but are not limited to:

- a. Preservation of biologically diverse undeveloped Miemois Creek watershed, riparian, forestlands, wetlands, and other lands necessary for protection of water resources and fish, and wildlife habitat;
- b. Protect a fish stream and its associated riparian areas, wetlands, wildlife habitats, or other sensitive areas from surrounding development;
- c. Protection of scenic views from public trails, and adjacent open space; and
- d. Protection of an open space or a resource in a targeted area per federal, state and local plans.

The purposes of this Easement are to assure that the Conservation Values and above-described attributes will be retained forever by (i) preventing any use of the Protected Property that will materially impair or interfere with the Conservation Values of the Protected Property, and (ii) by prohibiting certain specific uses of the Protected Property, as expressly set forth herein. Grantor intends that this Easement will convey to Grantee future development rights to the extent set forth in Section II.6 below.

3. **Rights of Grantee.** To accomplish the purposes of this Easement, the following rights are hereby conveyed to Grantee:

3.1. To preserve and protect the Conservation Values and the future development rights expressly conveyed to Grantee herein in perpetuity.

3.2. To enter upon the Protected Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement. Additionally, Grantee may enter upon the Protected Property to perform other stewardship tasks including the removal of invasive plants. Grantee shall provide reasonable prior notice to Grantor before entering upon the Protected Property which,

except in the case of emergency, shall not be less than two days. This right of entry includes the License granted pursuant to Section II.1.2 above for ingress to and egress from the Protected Property. In exercising this right of entry, Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property (except as such rights of use and quiet enjoyment are otherwise limited by the grant of this Conservation Easement) or Grantor's Adjacent Land.

3.3. To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement, as defined in Section II 2 and to require the restoration of such areas or features of the Protected Property that may be damaged by any such inconsistent activity or use pursuant to Section II.8.

3.4. To place one or more signs or boundary markers no larger than one (1) square foot along the boundary of the Protected Property, providing notice that the Protected Property is being preserved pursuant to a conservation easement held by Grantee and stating other information about Grantee and/or the Easement (appearance and location of sign(s) and/or boundary marker(s) as shall be mutually agreed to by Grantor and Grantee).

3.5. To require that the boundary of the Protected Property (as shown on Exhibit B4 attached hereto) be clearly and permanently marked in a manner acceptable to both parties and consistent with customary surveying practices.

3.6 To enter upon the Protected Property at reasonable times and as necessary to perform and implement restoration actions as identified in Section 4.3 "Restoration Plan" or other activities needed to ensure Conservation Values are maintained and protected. Grantee shall provide reasonable prior notice to Grantor before entering upon the Protected Property which shall not be less than two days. This right of entry includes the License granted pursuant to Section II.1.2 above for ingress to and egress from the Protected Property. In exercising this right of entry, Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property (except as such rights of use and quiet enjoyment are otherwise limited by the grant of this Conservation Easement) or Grantor's Adjacent Land."

4. **Reserved Rights.** Grantor (for himself/herself, and for his/her tenants, guests, family members, agents and invitees) expressly reserves the right to use the Protected Property for all activities and uses that are not inconsistent with the purpose and terms of this Easement. Notwithstanding the activities and uses expressly prohibited in Section II. 5, or any other terms herein to the contrary, the following activities and uses are deemed consistent with the purposes of this Easement and the right to carry out such activities and uses on the Protected Property are expressly reserved by Grantor.

4.1. Trails/Footpaths.

4.1.1 Grantor may construct, use, maintain, renovate, or replace Approved Trails (which total up to 3,000 feet in length as depicted on Exhibit B5 (which include B5i, B5ii, and B5iii). Trail locations shown in Exhibit B5 are only approximate, and documentation will be improved as trails are built. Said "Approved Trails" shall consist of foot trails/footpaths existing within the Protected Property or those that have been planned, mapped and approved as of the date hereof by the Grantee as shown in Exhibit B5 and further documented in the Exhibit B (Baseline Documentation) and Exhibit C (Photo Documentation). Upon prior notice to and approval by the Grantee (not to be unreasonably withheld) in accordance with Sections II.7.1, II.7.3, and II.15, existing Approved Trails may be relocated provided that such trails and improvements are limited in scope as to not yield more trail length, are designed to not unreasonably interfere with surrounding stream, wetland, wildlife habitat or native vegetation communities or otherwise diminish the Conservation Values. If an Approved Trail is abandoned in order to be relocated, that portion of the abandoned trail will be restored with native vegetation by the Grantor and will result in replicating the existing native vegetation structure adjacent to the trail. The entry point to Approved Trails shall be designed in a manner to discourage access by the public, motor vehicles, bicycle and equestrian users (e.g., designing access away from public Trail Easement, using fencing, gates, bollards, board walks, signs, or other means). Approved Trails shall be established outside of wetlands, the stream or stream riparian area. In areas where this requirement is not possible to attain, the trails may cross the wetlands or stream in a manner that causes the least damage and disruption to the wetland or stream, and the crossing may not obstruct the water flow and will minimize impact on wetland vegetation. Approved Trails shall be no wider than three (3) feet, shall have a dirt, wood chip or other natural pervious surface. Approved Trails shall be for foot use only, with the exception of non-motorized wheeled vehicles (such as a cart or similar device) used for vegetation management or other land management needs. Approved Trails may cross Miemois Creek, as shown in Exhibit B5 in a manner not to impede water flow, and must comply with applicable local, state and federal regulations, existing easements or legal restrictions pertaining thereto.

4.1.2 Grantee acknowledges that a Trail Easement, as depicted on Exhibit B5 "Public Trail" and Exhibit B6 "Trail Easement" commonly known as the public "Forest to Sky Trail", maintained by BIMPRD, crosses a portion of the Protected Property pursuant to an easement granted by the Grantor in favor of BIMPRD for that purpose (Appendix IV, BIMPRD Declaration), and such trail and the rights granted in the BIMPRD Declaration (including the right to allow bicycle and equestrian use of the Trail Easement and the right to use motorized vehicles to maintain the trail) shall not be affected by this

Easement.

4.2. Road, Bridge, Gates and Cleared Area.

4.2.1 Grantor may use and maintain, repair, and/or replace as applicable the existing 15-foot wide non-public Dirt Woods Road on the Protected Property at the location depicted in Exhibit B5. The Dirt Woods Road will be maintained using the same or similar pervious surface material as documented in the Baseline Photo Documentation (Exhibit C). The Dirt Woods Road, is an extension of the Existing Gravel Driveway included in the License, as depicted on Exhibit B5 and Exhibit B7. For avoidance of doubt, use of, work or maintenance performed on the Dirt Woods Road pursuant to the terms of the BIMPRD Declaration, whether by Grantor, any holder of rights under the BIMPRD Declaration, or their contractors, is allowed. Maintenance may include brushing or clearing using hand tools or mechanical means. The Dirt Woods Road is not a public trail.

4.2.2 Grantor may maintain, repair and replace the existing Bridge at the location depicted on Exhibit B5 Site Map and Exhibit C Photo Documentation. Maintenance, repair, and replacement activities should be undertaken in a manner that minimizes impact to Miemois Creek. For avoidance of doubt, use of, work or maintenance performed on the Bridge at its current location pursuant to the terms of the BIMPRD Declaration, whether by Grantor, any holder of rights under the BIMPRD Declaration, or their contractors, is allowed.

4.2.3. Grantor may construct, install, maintain and repair gates on the Dirt Woods Road to prevent public access at the locations reserved for such gates as depicted on Exhibit B5. Gates should not impede the ability for wildlife to pass through. Gates may be constructed using materials similar to existing gates as depicted and described in Exhibit C Photo Documentation, and should be designed to be characteristic of preserve or forest environment. New gates can be installed with prior notice to and approval of Grantee in accordance with Sections II.7 and II.15,

4.2.4 Grantor may maintain and use a 40 foot by 40 foot Cleared Area (turnaround site) at the east end of the Dirt Woods Road as depicted on Exhibit B5. The Cleared Area is comprised of dirt and mowed vegetation and can be used for short term family gatherings and property maintenance activities. Hand and mechanical means of managing vegetation in the Cleared Area is allowed.

4.3. Trees/Vegetation. This Easement protects a healthy forest and native plant community (Exhibit B10), except in areas noted on Exhibit B11, which are

subject to a restoration plan to control invasive species not native to the region as provided for in Appendix II Restoration Plan of the Baseline Documentation. Grantor's responsibility to avoid taking actions that harm the health of the native vegetation communities in the Protected Property is acknowledged and accepted by Grantor. Accordingly, and notwithstanding the foregoing, where not obstructing an Approved Trail, the Trail Easement, fences, Bridge, or Dirt Woods Road, or creating a hazard, dying and dead trees will be left standing as wildlife trees, and downed trees and other woody debris should be left on the ground within the Protected Property to support healthy forest ecology. The provisions of the previous sentence shall also apply to any portion of a tree that may fall into the Protected Property from the Grantor's Adjacent Land or other adjoining property but do not apply to any portion of a tree which may fall into Grantor's Adjacent Land from the Protected Property. Grantor may clear or remove trees, shrubs or other vegetation on the Protected Property as is necessary for the maintenance of Approved Trails, the Trail Easement, fences, Bridge, or Dirt Woods Road or as is incidental to the cultivation of native vegetation in a way that does not materially and adversely affect the Conservation Values; provided that no trees shall be removed with a diameter greater than six (6) inches at breast height (dbh), unless: (a) the tree is unsafe, as determined by a duly qualified arborist or forestry professional in accordance with Section II.7.1, II.7.3 and II.15, in which case the tree shall be cut to a minimum height of 30 feet, unless this height threatens an adjoining building or structure in which case a minimum height of 10 feet is acceptable, so as to provide habitat for wildlife including, but not limited to, birds and cavity nesting mammals; (b) such tree has fallen across an existing Approved Trail, the Trail Easement, fence, Bridge, or the Dirt Woods Road in which case the section any of these may be removed, or (c) pursuant to Grantor's reserved right to cut firewood as provided in Section II 4.3.5; (d) as a condition of the Trail Easement agreement between BIMPRD and the Grantor. Unsafe trees adjacent to Dirt Woods Road may be cut to a stump height of 2 feet.

4.3.1. Grantor may plant and maintain native vegetation throughout the Protected Property, without the need to notify Grantee or to obtain Grantee's prior approval.

4.3.2. Grantor and Grantee acknowledge there are areas on the Protected Property (Exhibit B11) in which invasive plant species are present. The Grantor and Grantee hereby agree to make a good faith effort to reduce their impact and implement the Restoration Plan, Appendix II to Exhibit B, or approved equivalent activity, , in order to reduce the populations of and the spread of invasive plants to other areas of the Protected Property and to protect the Conservation Values of the Protected Property. The Restoration Plan calls for the control of, but not necessarily the eradication of, invasive plant species. The goal of the Restoration Plan and ongoing maintenance activities is to protect the healthy forest and native plant community of the Protected Property. Grantee acknowledges that Grantor has the discretion to

select cost effective means of implementing the Restoration Plan and subsequent maintenance activities. Expenditures by the Grantor on invasive species control are at the sole discretion of the Grantor. Expenditures on invasive species control by the Grantee are at the sole discretion of the Grantee. Grantor may engage in activities outlined in the Restoration Plan without prior consent of the Grantee and without the need to notify Grantee or to obtain Grantee's prior approval. Grantee may engage in activities outlined in the Restoration Plan per the terms of Section II 3.6. Grantee shall coordinate actions relevant to this section with approval of the Grantor. As used herein, "**invasive plant species**" means plants listed on the current State Noxious Weed List, Chapter 16-750, Washington Administrative Code, as updated from time to time, or a non-native plant of concern as identified by the Kitsap County Noxious Weed Control Board. Both the State list and Kitsap lists are included in the Restoration Plan.

4.3.3 As part of the Restoration Plan as referenced in Section 4.3.2 or an integrated pest management plan to control disease or invasive plants that cannot be controlled cost effectively by any other means, Grantor may utilize herbicides to control nonnative plants as long as they are used according to state and local laws.

4.3.4 To protect the Conservation Values of the Protected Property, Grantor may, in the face of increased fire danger due to climate change, take necessary vegetation management actions, as determined by a qualified forestry professional or fire ecologists and approved in accordance with Section II 7.1, II 7.3 and Section 15, in coordination with the Grantee, to reduce fire danger that threaten the Conservation Values.

4.3.5. Grantor may cut already downed trees for the production of not to exceed four (4) cords of firewood per year for family use. This right extends to Grantor and his nephew Eric J. Jenkins (and people assisting them) and is extinguished if the Protected Property is sold by Grantor. Firewood removal within fifty (50) feet of Miemois Creek is not allowed. Grantor may also make temporary trails as required to remove firewood without prior notice to, or permission of Grantee. Grantor will endeavor to minimize the impact of any such temporary trails on the Conservation Values. GPS or other visual position of firewood cutting areas and temporary trails will be supplied to Grantee by Grantor after the completion of firewood cutting for a given year to facilitate examination during annual visit.

4.4. **Fences.** With prior notice to Grantee in accordance with Sections II.7.1,II 7.3 and II.15, Grantor may build, maintain, repair, construct and/or replace existing or new fences along the outer boundaries or perimeters of the Protected Property, provided the fences are designed so as to not unreasonably interfere with passage of

wildlife or otherwise diminish Conservation Values. Grantor may remove trees or parts thereof which have fallen across a fence. Grantor will obtain the prior approval of Grantee per Sections II.7.1., II. 7.3 and II.15, for any fences not provided for in this Section 4.4.

4.5 Pond and Culvert. Grantor may maintain the Pond located on Grantor's Adjacent Land (Exhibit B5, Parcel II) west of the Dirt Woods Road as shown on Exhibit B5, and Grantee acknowledges that such maintenance may result in increased or decreased surface water runoff onto the Protected Property. With prior notice to and approval of Grantee in accordance with Sections II.7.1, II.7.3, and II.15, Grantor reserves the right to maintain, repair, or replace the existing 1 ½ foot diameter culvert connected to the Pond and located under the Dirt Woods Road as shown Exhibit B5 and Exhibit C Photo Documentation .Water flows from the Pond towards Miemois Creek. Measures will be taken to reduce sediment runoff into Protected Property, and to protect amphibians and fish, during maintenance, repair, or replacement activities.

4.6 Stream. Miemois Creek is a fish bearing stream. It is recognized that downstream and off the Protected Property a culvert exists at Arrow Point Drive that blocks anadromous fish from utilizing the portion of the Creek on the Protected Property. Should fish passage be restored off the Protected Property, enhancement of Miemois Creek within the Protected Property, per a Washington Department of Fish and Wildlife approved restoration plan, is permitted per the approval process of Section II 7.1, II.7.3 and Section II15. Installation of any stream restoration effort will be designed in consultation with a qualified stream restoration ecologist, fish biologist, or equivalent.

4.7 Passive Recreation. The Protected Property may be used for Grantor's and Grantor's invitees' passive recreational activities, such as walking, bird watching, picnicking, photography, berry picking, family gatherings and recreation, and for other temporary low impact activities.

4.8 Public Access. Nothing contained in this Easement should be construed as affording the general public any rights of physical access to or on the Protected Property, or affording Grantee the right to offer, permit or encourage such access by any members of the public to or on the Protected Property without the prior approval of Grantor. However, nothing in this Easement should be construed to preclude the Grantor's right, after obtaining the approval of Grantee in accordance with Section II.7.3, to permit passive recreation use of the Protected Property, or public access for educational or scientific research purposes, or for restoration activities, provided that such use does not conflict with preservation of the Conservation Values of the Protected Property. For the avoidance of doubt, and in accordance with Section II 4.1, Grantee acknowledges that a portion of the Protected Property is subject to the BIMPRD Declaration which contains a public Trail Easement, and this Easement is subject to and shall not affect the rights granted in the BIMPRD Declaration.

4.9 Hazard Mitigation. Grantor may remove or otherwise mitigate potential hazards to people and personal property, such as cutting down live or dead trees that threaten roads or other structures. Any such activity shall be conducted to minimize adverse impacts on the Conservation Values to the extent practicable. Grantor shall provide Grantee prior notice of its intent to so mitigate such hazard to the extent practicable.

4.10 Emergency Action. Grantor may take other actions necessary to protect health or safety, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity ("Emergency Action"), provided that any such activity shall be conducted to minimize adverse impacts on the Conservation Values to the extent practicable. Grantor shall provide Grantee prior notice of its intent to take such actions to the extent practicable.

5. Prohibited Activities and Uses. Any activity on or use of the Protected Property inconsistent with the purpose and terms of the Easement or the License is prohibited. Without limiting the generality of the foregoing, except to the extent such activities are expressly reserved by Grantor the following are prohibited:

5.1. Subdivision. The legal or de facto subdivision of the Protected Property (including by boundary line adjustment), separate conveyance of tax parcels or physical partition of ownership of the Protected Property for any purpose.

5.2. Construction and Improvements. The placement or construction on the Protected Property of any buildings, structures, towers, poles, new roads, parking areas, enclosures, water features, fences or other improvements of any kind (except as expressly allowed for in Section 4). Poles to support bird, bat boxes or scientific monitoring equipment are allowed.

5.3. Utility Systems. The installation on the Protected Property of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, septic, power, fuel, communication lines or towers and related facilities, except to the extent the same are installed pursuant to any utility easement existing prior to the date hereof.

5.4. Commercial Use or Development. Any commercial, agricultural or industrial use of or activity on the Protected Property.

5.5. Surface Alteration. Any material alteration of the surface of the land on the Protected Property, including, without limitation, grading and the excavation or removal of soil, sand, gravel, rock, peat, or sod.

5.6. Soil and Water. Any use or activity on the Protected Property that causes

or is likely to cause excessive soil degradation, excessive soil erosion, or pollution of any surface or sub-surface waters.

5.7. Trees/Vegetation. The cutting down or other destruction or removal of trees or other plants on the Protected Property, and any use or activity that causes or is likely to cause harm to or loss of any native vegetation on the Protected Property, except as provided in Section II 4.3 above.

5.8 Unauthorized Trail Development. The establishment of any trails within the Protected Property other than Approved Trails and the existing BIMPRD Trail Easement which prohibition Grantor shall endeavor to comply with by making a good faith effort to dissuade development of unauthorized trails.

5.9. Wetlands. The disturbance, draining, filling, dredging or diking of any wetland areas on the Protected Area, or the disturbance of any soil within 50 feet of a wetland, except for trail development as provided in Section II 4.1, road improvements identified in Section II 4.2.1, bridge improvements identified in Section II 4.2.2, culvert replacement per Section II 4.5, or stream restoration per Section II 4.6.

5.10. Pond, Stream and Watercourses Courses. The alteration of streams, seeps, pond, or other watercourses, the creation of new water impoundments or water courses, or the disturbance of any soil within fifty (50) feet of the thread of any watercourse except as permitted under Section II 4.1, 4.5, 4.6 as is necessary for the stability of the existing road included in the License. [Note: Pond is located on Grantor's Adjacent Land as noted on Exhibit B5.]

5.11. Waste Disposal. The dumping or other disposal on the Protected Property of any waste, refuse or debris of any description, including, but not limited to, toxic or hazardous substances as defined in any applicable federal, state or local laws, regulations or ordinances.

5.12. Mineral Development. The exploration for minerals, including sand and gravel, or hydrocarbons, or development or extraction thereof by any method on the Protected Property.

5.13. Hunting and Fishing. Hunting, trapping, or otherwise catching or killing fish, birds, or animals on the Protected Property except for the purpose of controlling feral domestic animals or non-native invasive species.

5.14. Motorized Vehicles. The operation of any motorized vehicles on the Protected Property, including without limitation automobiles, trucks, motorcycles, all-terrain vehicles, dune buggies, recreational vehicles, motor homes and go-carts EXCEPT as may be reasonably necessary in the Grantor's judgment for the

maintenance of the Protected Property or Grantor's Adjacent Land; and except to enter and exit the Protected Property and/or Grantor's Adjacent Land on the Gravel Driveway and Dirt Woods Road and Cleared Area for maintenance, family gatherings and to collect firewood as provided in Section II 4.3.5 , and as provided for in Section II 4.1 and 4.2.

5.16. Chemicals. The application of pesticides, herbicides, fertilizer or other chemical substances within the Protected Property, except as provided for in Section II 4.3.3 as may be a best management practice for managing the Protected Property to maintain and enhance the Conservation Values.

6. Development Rights. Grantor hereby grants to Grantee all development rights that are now or later allocated, assigned or reserved to, or inherent in, the Protected Property except as reserved in this Easement or which are subject to the BIMPD Declaration or other easements or encumbrances of record (collectively, the "Extinguished Rights"). The parties agree that the Extinguished Rights are permanently severed and extinguished from the Protected Property, and may not be used on or transferred to any portion of the Protected Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property. Grantor agrees, upon Grantee's request, to promptly take such action, including execution and delivery of such papers or documents, as may be now or later necessary to carry out the purpose and intent of this section in accordance with applicable law.

7. Notice of Permitted Actions; Request for Approval of Actions; Grantee's Approval; Mediation

7.1. Notice and/or Request for Approval of Permitted Action. If Grantor is expressly required under this Easement to notify Grantee or to obtain Grantee's approval before undertaking certain uses or activities expressly permitted in this Easement in Section II.4 or II.5 or elsewhere, the purpose is to afford Grantee an opportunity to confirm that the uses or activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice or approval is required, Grantor shall notify Grantee in writing not fewer than thirty (30) days before the date on which Grantor intends to begin such use or activity. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement. Where Grantee is required to give approval, such approval must not be unreasonably delayed, conditioned or withheld.

7.2. Precautionary Request for Approval of Action. In addition to any notices explicitly required by the terms of Sections II.4 or II.5 above, if Grantor believes or reasonably should believe that an activity may have a material adverse

impact on the Conservation Values, or if Grantor is unsure whether a proposed use or activity is prohibited by the Easement, Grantor shall request approval by Grantee describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to whether it is inconsistent with the purpose of the Easement or within the meaning of an express prohibition or is consistent with the terms of the Easement or within the meaning of an express permitted use.

7.3. Grantee's Approval. Where Grantee's approval of any use or activity is requested, Grantee shall notify Grantor in writing of its approval or disapproval of such use or activity within thirty (30) days after receipt of Grantor's notice or request. Where Grantee's approval is expressly required hereunder, Grantee may disapprove if the proposed action is expressly prohibited by this Easement or upon Grantee's reasonable determination that the proposed use or activity would be inconsistent with the terms of this Easement. If Grantee reasonably disapproves, Grantor shall not undertake the proposed use or activity. If Grantee does not notify Grantor, in writing, of its disapproval of the proposed use or activity within the thirty (30) day period, Grantee shall be deemed to have approved the request.

7.4. Dispute Resolution/Mediation. If, pursuant to Section II.7.1, 7.2 or 7.3, Grantor is required to or elects to obtain Grantee's approval of a proposed use or activity and Grantee notifies Grantor of its disapproval, then the Parties shall meet together within fourteen (14) days after a request to discuss the dispute and attempt resolution. The Parties agree not to proceed with the use or activity pending resolution of the dispute at the meeting. If the Parties do not resolve the matter at the meeting, then the matter may be referred to mediation by mutual agreement of the Parties. The mediation shall be conducted and completed within thirty (30) days after referral to the mediator. Each party shall bear its own costs, including attorneys' fees, if mediation is pursued under this Section 7.4. The Parties shall share equally the fees and expenses of the mediator. If the Parties agree to submit the dispute to mediation, then the Parties agree not to proceed with the use or activity pending resolution of the dispute for a period of up to sixty (60) days from the date of Grantee's notice of disapproval, unless the Parties mutually agree to a longer period.

8. Grantee's Remedies.

8.1 Notice of Violation; Corrective Action; Remedies.

8.1.1. If Grantee believes that Grantor is in violation of the terms of this Easement or the License or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Protected Property resulting from any prohibited uses or activity, or any use or activity inconsistent with the purpose of this Easement, Grantee shall give

written notice requiring the Grantor to restore the injured portion of the Protected Property.

8.1.2. If Grantor fails to cure the violation within thirty (30) days after receipt of the notice from Grantee, or if 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, Grantee may bring an action in a court of competent jurisdiction to 1) enforce the terms of this Easement and the License, 2) enjoin the violation, ex parte as necessary if Grantor fails to appear and defend after service of process in accordance with court rules (but with prior notice to Grantee consistent with applicable court rules), by temporary or permanent injunction, 3) recover any damages to which it may be entitled for violation of the terms of this Easement or the License or injury to any Conservation Values protected by this Easement, including damages for the loss of any Conservation Values, and/or 4) require the restoration of the Protected Property to the condition that existed before the injury.

8.1.3. Grantee shall apply any damages recovered to the cost of enforcing this Easement and undertaking any corrective action on the Protected Property. If Grantee, in its reasonable discretion, determines that circumstances require immediate corrective action to prevent or mitigate significant impairment of or interference with the Conservation Values, Grantee may take such corrective action as it reasonably deems appropriate and may pursue its remedies under this section without waiting for the period provided for cure to expire but Grantee shall give written notice to Grantor prior to taking such action.

8.1.4. Grantee's rights under this Section II.8. apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that if Grantee's remedies at law for any violation of the terms of this Easement or the License are inadequate Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement and the License, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or later existing at law or in equity.

8.1.5. Grantee agrees not to bring any action against Grantor (or against Grantor's family members, agents, contractors, employees, guests or invitees) for any injury or damage to the Conservation Values unless and only to the extent that such injury or damage arises from the negligence, intentional

or willful act, omission or conduct of Grantor. Dr. William Carlson as the initial Grantor, and his nephew Eric J. Jenkins (if Grantor's successor), shall make good faith efforts to control invasive plants as per Section 4.3 and the Restoration Plan. Grantee agrees to not bring any action against Grantor for the injury or damage to Conservation Values resulting from invasive plants, and Grantee agrees that its sole remedy for any harm to the Conservation Values resulting from inadequate control of invasive plants is to enter the Protected Property and conduct remediation measures at Grantee's expense.

8.1.6 In the event that either Grantor and Grantee discovers injury or damage to the Conservation Values that does not arise from the acts or omissions of Grantor or Grantor's family members, agents, employees, guests or invitees, such party shall exercise reasonable efforts to promptly notify the other in writing of the facts, circumstances and causes of the injury and damage to the extent that such party is aware of such facts, circumstance and causes and either (i) commence diligent prosecution of any and all rights and remedies available to Grantor to prevent, abate, or mitigate such injury or damages, including restoration of the Conservation Values, or (ii) assign all the rights and remedies to Grantee so as to permit Grantee to enforce the rights and remedies in its own name or the name of Grantor, and shall cooperate with Grantee in any action undertaken by Grantee to enforce such rights and remedies.

8.2 Costs of Enforcement. In any action brought pursuant to or to enforce this Easement, each party shall bear its own costs and attorney's fees unless the court enters an express finding that the non-prevailing party was acting in bad faith.

8.3. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee. Any forbearance, delay or omission by Grantee in the exercise of its rights or remedies under the Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement, nor impair or be deemed a waiver of any of Grantee's rights or remedies under this Easement.

8.4. Waiver of Certain Defenses. Each Party hereby waives the right to assert any present or future claims against the other, or defenses to the enforcement of this Easement based upon any theory or doctrine of laches, estoppel, adverse possession or prescription.

8.5. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Values or the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and

earth movement, invasive species, climate change or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Values or the Property resulting from such causes.

8.6. Trespassers. In the event the terms of this Easement are violated by acts of trespassers, Grantor agrees to join in any suit with Grantee at Grantee's cost (unless otherwise agreed) for the purpose of pursuing enforcement action against the responsible parties. Grantor also reserves the right, independent of any action by Grantee under this Section, to pursue actions against trespassers. Grantor shall have no liability for the actions of persons entering the Protected Property without Grantor's permission, and shall be under no obligation to remediate or otherwise address any damage to the Protected Property caused by trespassers. Separately, the Grantor and Grantee acknowledge that certain terms of the Declaration between Grantor and BIMPRD pertain to Trespassers of which Grantor has no obligation to remediate or address damages made to the Protected Property.

8.7. Limitation on Damages and Actions. Notwithstanding any other provision of this Easement, Grantee shall have no right of action for damages, specific performance, or other remedy pertaining to any condition existing prior to the effective date of this Easement.

9. Costs and Liabilities; Taxes.

9.1. Grantor's Responsibilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation and maintenance of the Protected Property, including the cost of adequate comprehensive general liability insurance coverage, other than those responsibilities, costs and liabilities that relate to Grantee's, its agents', employees', contractors' or invitees' use of the Protected Property or Grantor's Adjacent Land pursuant to this Easement and License. Grantee shall maintain adequate insurance covering its use and its agents', employees', contractors' and invitees' use of the Protected Property and License hereunder and its indemnity and defense of Grantor obligations hereunder. Nothing in this Easement shall impose any liability on Grantor for the negligence, acts, omissions, or misconduct of Grantee or Grantee's agents, employees, contractors, or invitees, and Grantee shall be responsible for the same.

9.2. Taxes Defined. Grantor shall pay before delinquency all taxes, assessments, fees and charges of any kind levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, unless non-payment is permitted by law in connection with any legal challenge by Grantor to the validity or amount of such taxes, assessments, fees, and/or charges. Grantor shall furnish Grantee with satisfactory evidence of payment of taxes upon request.

9.3. Payment by Grantee. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, after ten (10) 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; provided that Grantee is not entitled to make or advance any such payment so long as Grantor is diligently proceeding with a legal challenge to the validity or amount of such taxes, unless such payment is necessary to avoid a foreclosure against the Protected Property or some other legal action that threatens the validity or priority of this Easement. If Grantee does make any such payment of taxes, Grantor shall upon demand reimburse Grantee with interest until paid (such interest to be calculated at the rate applicable to judgments entered in the courts of the State of Washington on the date upon which Grantee made payment).

10. Indemnity. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Grantee's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments arising from Grantor's Indemnified Parties' acts or omissions relating to the Protected Property, this Easement or the License; provided however that such obligation shall not extend to the extent of the negligence or other fault of any of Grantee's Indemnified Parties. Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantor's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments arising from Grantee's Indemnified Parties' acts or omissions relating to the Protected Property, this Easement or the License; provided however that such obligation shall not extend to the extent of the negligence or other fault of any of Grantor's Indemnified Parties. The obligations to hold harmless and indemnify contained in this Section 10 shall not include payment of attorney's or consultant fees unless a court determines that the non-prevailing party acted in bad faith. Nothing in this Easement shall be construed to impose any liability upon Grantor for injury to or death of the Grantee's Indemnified Parties accessing or using the Protected Property, or upon Grantee for injury to or death of the Grantor's Indemnified Parties accessing or using the Protected Property, and any such liability shall be determined solely in accordance with applicable Washington law.

11. Extinguishment.

11.1. Termination. This Easement constitutes a real property interest immediately vested in Grantee. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

11.2. Proceeds. In the event of any sale, exchange or involuntary conversion of all or any portion of the Protected Property contemporaneous with or following such termination or extinguishment, unless otherwise provided by Washington law at the time, out of the proceeds remaining after satisfaction of any claims adjudged to have priority over the Easement, Grantee shall be entitled to the then current fair market value of the Easement as defined in Section 11.3 or so much thereof as may be satisfied out of the proceeds.

11.3. Fair Market Value. The fair market value of the Easement at any time shall be determined by multiplying the then current fair market value of the Protected Property unencumbered by the Easement, less any increase in value after the date of this grant attributable to improvements, by the ratio of the value of the Easement as of the date of the Easement to the value of the Protected Property unencumbered by the Easement as of the date of the Easement. For the purposes of this Section 11.3., the ratio shall remain constant.

11.4. Definition of Value. The "value of the Easement as of the date of the Easement" and "the value of the Protected Property unencumbered by the Easement as of the date of the Easement" are those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended.

12. Assignment; Executory Limitation.

12.1. Assignment by Grantee. Grantee or Grantee's successor may assign its rights and obligations under the Easement and License only to a qualified governmental entity or an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended or any successor provision then applicable, and the applicable regulations promulgated under that section, and authorized to acquire and hold conservation easements under RCW 84.34.250, as amended. As a condition of the transfer, Grantee shall require assurances that the transferee will enforce the terms of the Easement in furtherance of its conservation purpose. In the event that this Easement and/or License are to be assigned by Grantee or pursuant to Article 12.2, then priority shall be given to qualified private organizations, and assignment to a qualified government entity shall only be made if no qualified private organization is available in the State of Washington and willing to assume the Easement and/or License from Grantee.

12.2. Reassignment of Easement. If Grantee is dissolved or ceases to be a qualified organization under Section 170(h) of the Internal Revenue Code, as amended, and 1) the dissolution is not reversed and the corporate charter reinstated, or 2) the Section 170(h) qualification is not reinstated, within one (1) year thereafter, and a prior assignment as provided above has not been made, then Grantee's rights and obligations under the Easement and License shall be deemed assigned to and become

immediately vested in a land trust organization or governmental entity qualified under Section 170 (h) of the Internal Revenue Code.

12.2.1. If the chosen governmental entity or organization is no longer in existence at the time, or is not qualified or authorized to hold conservation easements as required for an assignment to it as provided above, or if it shall refuse to accept these rights and obligations, then a court of competent jurisdiction shall direct an organization to hold the Easement, pursuant to the applicable Washington law and with due regard to the requirements for an assignment as described above.

13. **Grantee's Certification.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document that may be reasonably requested by Grantor, including an estoppel certificate or compliance certificate, to certify, as of the date of the Grantee's most recent monitoring visit, and to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise to evidence the status of this Easement.

14. **Notice of Change of Ownership.** Grantor or Successors shall notify Grantee in writing of the intent to change or convey ownership of the Protected Property or any interest in it at least ten (10) days prior to making the property available for new ownership or listing the property for sale or other means. This is to afford the Grantee the opportunity to provide the Grantor or Successors with copies of all conservation easement documents that should be fully disclosed to a potential new owner prior such change or conveyance. Additionally, Grantor or Successors shall notify Grantee in writing at least ten (10) days prior to the actual change or conveyance of ownership with the name and contact information of the new owner. In the case of sudden death of Grantor or Successor, his/her heirs or assigns where notice is not possible, notice of change or conveyance of ownership by Grantor's or Successor's estate or assigns shall be provided to Grantee no less than 30 days following the death of Grantor, Successor, heirs or assigns. Nothing in this Section 14 shall be deemed or construed to require approval from Grantee for any sale, exchange, encumbrance, or other conveyance of the Protected Property.

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

To Grantor: **William C. Carlson**
7211 48th Way NW
Olympia, WA 98502

To Grantee: **Bainbridge Island Land Trust**
P.O. Box 10144
Bainbridge Island, WA 98110

or to such other address as either party from time to time shall designate by written notice to the other. Notices shall be effective upon receipt.

16. General Provisions.

16.1. Controlling Law. The interpretation and construction of the Easement shall be governed by the laws of the State of Washington.

16.2. Construction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

16.3. Severability. The invalidity or unenforceability of any term or provision in the Easement shall not affect the validity or enforceability of any other term or provision in it.

16.4. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and License and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this instrument. Time is of the essence.

16.5. Joint and Several Obligation. If Grantor includes more than one person or entity, the obligations imposed by this Easement and the License upon Grantor and each of them, shall be joint and several.

16.6. Successors. This Easement and the License shall be binding upon, and inure to the benefit of, the parties to it and their respective heirs, personal representatives, successors and assigns. The term "Grantor" as used herein shall include, unless the context clearly indicates otherwise, the above-named Grantor and family members, invitees, employees, contractors and agents, or his personal representatives, heirs and assigns, and any successors in interest to the Protected Property described herein. For the avoidance of doubt, the terms of this Easement shall only be enforceable against a Grantor who is the owner of the Protected Property (or his personal representative acting for the estate of such Grantor), and no other Grantor shall bear any liability under the terms of this Easement.

16.7. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's entire interest in the Easement or Protected Property, except that liability for acts or omissions occurring before transfer shall survive transfer.

16.8. **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.

16.9. **Recordation.** Grantee shall record this instrument in the official records of Kitsap County, Washington and may re-record it at any time as may be required to preserve its rights in this Easement.

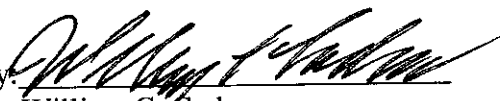
16.10. **Amendment.** This Easement may be amended only in writing signed by all owners of the Protected Property and by Grantee or its successors and assigns. No amendment may 1) adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 84.34.200-250 and RCW 64.04.130, as amended, or Section 170(h) of the Internal Revenue Code, as amended, or 2) affect the Easement's perpetual duration. Any amendment shall be recorded in the official records of Kitsap County, Washington.

16.11. **Counterparts.** The Easement may be executed in any number of counterparts for the convenience of the parties, all of which, when taken together and after execution by all parties to it, shall constitute one and the same instrument.

16.12. **Exhibits.** Exhibits A and Exhibit B page 1 - 19, Exhibit B1 - B11, and portions of Exhibit C attached hereto are incorporated herein.

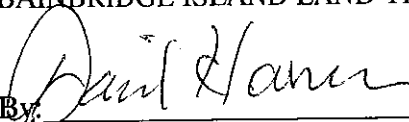
EXECUTED on December 21, 2015.

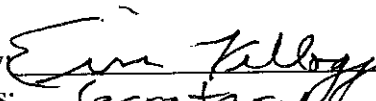
GRANTOR:

By: 
William C. Carlson

GRANTEE:

BAINBRIDGE ISLAND LAND TRUST

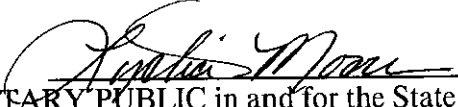
By: 
Its: President

By: 
Its: Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

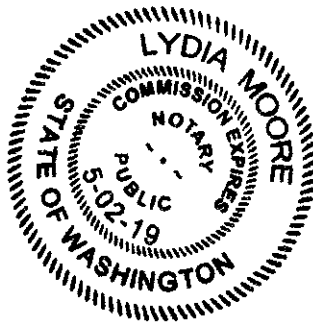
On this 21st day of December, 2015 before me, a Notary Public in and for the State of Washington, personally appeared **William C. Carlson**, personally known to me or proven on the basis of satisfactory evidence to be the persons who executed this instrument, on oath stated it to be their free and voluntary act and deed for the uses and purposes mentioned in the instrument.

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



NOTARY PUBLIC in and for the State of Washington,
Print Name: Lydia Moore
Residing at Bainbridge Island

My appointment expires May 2, 2019



STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this 21st day of December, 2015 before me, a Notary Public in and for the State of Washington, personally appeared _____
David Harrison and Erin Kellogg,
personally known to me (or proven on the basis of satisfactory evidence) to be the persons who executed this instrument, on oath stated they were authorized to execute the instrument, and acknowledged it as the President and the Secretary of the **Bainbridge Island Land Trust**, a Washington nonprofit corporation, to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

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

Lydia Moore
NOTARY PUBLIC in and for the State of Washington,
Print Name: Lydia Moore
Residing at Bainbridge Island
My appointment expires May 2, 2019

