

AFTER RECORDING RETURN TO:
Town of Hamilton
PO Box 528
Hamilton, WA 98255



200506170034
Skagit County Auditor

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DECLARATION OF COVENANTS AND RESTRICTIONS

Grantor: Town of Hamilton
Grantee: Department of Homeland Security / Federal Emergency Management Agency
Abbreviated Legal: Lots 1-13, Blk 62, Hamilton Townsite 4th Add.
Assessor's Tax Parcel Numbers: 4115-062-013-0009 / P73810

WHEREAS, the Flood Mitigation Assistance Program ("FMA"), as authorized in the National Flood Insurance Reform Act of 1994, Sections 1366 and 1367, (42 USC §§ 4104c, 4104d), identifies the use of FMA funds for planning and carrying out activities designed to reduce the risk of flood damage to structures insurable under the National Flood Insurance Program ("NFIP");

WHEREAS, FMA requires State and community applicants to develop and maintain an approved Flood Mitigation Plan and provides a process for a local government, through the State, to apply for federal funds for flood mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, Washington has applied for and been awarded such funding from the Department of Homeland Security / Federal Emergency Management Agency ("FEMA"), and has entered into an FMA Project Grant Agreement dated August 10, 2004 with FEMA and herein incorporated by reference;

WHEREAS, the Property is located in the Town of Hamilton, and Hamilton participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the Town of Hamilton, acting by and through the Hamilton Town Council, has applied for and been awarded federal funds pursuant to an agreement with Washington dated July, 13, 2004 ("State-Local Agreement"), and herein incorporated by reference;

WHEREAS, the terms of the FMA regulations governed by 44 C.F.R. § 78, consistent with FEMA Hazard Mitigation program guidance involving acquisition for open space, the

FEMA-State Grant Agreement, and the State-Local Agreement require that the Grantor agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

NOW, THEREFORE, the Town of Hamilton, a Washington Municipal Corporation, as Grantor, hereby agrees to the following terms and conditions for benefit of the Department of Homeland Security / Federal Emergency Management Agency ("FEMA"), as Grantee, which are hereby imposed as perpetual covenants and conditions on the real property described below:

1. Terms. Pursuant to the terms of the FMA, and governing regulations (44 C.F.R. § 78), as they read now and may be amended in the future, and any applicable FEMA-State Grant Agreement, and the State-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described as follows:

Lots 1 through 13 inclusive, Block 62, THE HAMILTON TOWNSITE COMPANY'S FOURTH ADDITION TO THE TOWN OF HAMILTON, as per Plat recorded in Volume 3 of Plats, Page 7, Records of Skagit County, Washington.,

Situated in the Town of Hamilton, Skagit County, Washington;

and acquired by Statutory Warranty Deed in which the Grantors are John DE. Tweedy and Rebecca F. Tweedy, husband and wife, the Grantee is the Town of Hamilton, a Washington Municipal Corporation, and said deed is recorded in Skagit County Auditor's File No. 200503300132, by the Grantee pursuant to FMA regulations (44 C.F.R. § 78) providing for acquisition:

- a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved permeable parking lots and other uses consistent with FEMA Flood Mitigation Grant Guidance for open space acquisition.
- b. Structures. No new structures or improvements shall be erected on the Property other than:
 - i. A public facility that is open on all sides and functionally related to the open space use;
 - ii. A public rest room; or
 - iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;



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d. Transfer. The Grantor shall convey any interest in the Property only if the Regional Director of FEMA gives prior approval of the transferee in accordance with this paragraph. The Grantor may only convey an interest in the Property to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantor may convey a lease or an easement to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, with the prior approval of the Regional Director, and so long as the conveyance does not include authority to control and enforce these terms and conditions.

If title to the Property is transferred to a public entity that is not a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

- i. The Grantor shall convey, in accordance with section (d), above, a conservation easement to an entity other than the title holder, or
- ii. At the time of title transfer, the Grantor shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including Washington, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every three years on July 31st, the Grantor, through Washington, shall submit to the FEMA Regional Director a report certifying that the Grantor has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject Property is not maintained according to the terms of the grant, the Grantor, Washington, and FEMA, its representatives, and assigns are responsible for taking measures to bring the Property back into compliance.

- a. The State will notify the Grantor in writing and advise the Grantor that it has 60 days to correct the violation.
- b. If the Grantor fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
- c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:
 - i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantor shall bear the costs of bringing the Property back into compliance.



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UNOFFICIAL DOCUMENT

