

**CLOSING AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

This Closing Agreement and Joint Escrow Instructions (the "Agreement") dated as of the 30th day of November, 1995, is made by and between BAINBRIDGE ISLAND LAND TRUST, a Washington nonprofit corporation ("BILT"), CRYSTAL SPRINGS PROPERTY GENERAL PARTNERSHIP, a Washington general partnership ("Seller") and BAINBRIDGE ISLAND PARK AND RECREATION DISTRICT, a Washington municipal corporation ("Park District").

RECITALS

WHEREAS, BILT and Seller are parties to that certain Real Estate Option Agreement dated as of November 10, 1994, as amended by that certain Extension of Option Agreement dated October 26, 1995, and as further amended by that certain Extension of Option Agreement dated November 21, 1995 (the "Option"), under which Seller granted BILT the option to purchase certain real property located in Kitsap County (the "Property") as legally described on Exhibit A attached hereto for the sum of Four Million Dollars (\$4,000,000) (the "Purchase Price"); and

WHEREAS, under the terms of the Option, BILT is authorized to assign the Option to Park District in exchange for a conservation easement to be granted by Park District to BILT as soon as Park District acquires the Property pursuant to the Option; and

WHEREAS, BILT and Park District have agreed that the conservation easement shall be in the form attached hereto as Exhibit B (the "Easement"); and

WHEREAS, BILT has agreed to assign the Option to Park District on the condition that when Park District exercises the Option it will grant and convey the Easement to BILT as provided in this Agreement; and

WHEREAS, the Option provides that the purchase price for the Property shall be paid partly in cash and partly pursuant to the terms of a deed of trust note in the form attached hereto as Exhibit C (the "Note") to be secured by a deed of trust on the Property in the form attached hereto as Exhibit D (the "Deed of Trust"); and

WHEREAS, title to the Property is to be conveyed by Seller to Park District by means of a statutory warranty deed in the form attached hereto as Exhibit E (the "Deed");

WHEREAS, prior to conveying the Property, Seller desires to record a Declaration and Agreement for Easement in the form attached hereto as Exhibit F (the "Declaration"); and

WHEREAS, the transaction contemplated hereby is intended to close through escrow on December 1, 1995 at Puget Sound Mortgage & Escrow, Inc., 911 Hildebrand, Bainbridge Island, Washington 98110 ("Closing Agent"), under Escrow No. B17935-DC, in accordance with this Agreement and the estimated settlement statement attached hereto as Exhibit G The "Estimated Settlement Statement"); and

WHEREAS, the parties hereto intend this Agreement to constitute their irrevocable joint escrow instructions to Closing Agent and to set forth the obligations of each party on closing the transaction as described herein,

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the parties agree as follows:

1. DELIVERIES INTO ESCROW

The parties shall deliver or cause to be delivered into escrow on or before November 30, 1995, the following items ("Deliverables"), duly executed and acknowledged where required (all documents to be dated as of December 1, 1995):

1.1 BILT. BILT shall deliver or cause to be delivered into escrow the following items:

1.1.1 An Assignment of Option, executed by BILT, in the form of Exhibit H assigning BILT's rights under the Option to Park District (the "Assignment").

1.2 Seller. Seller shall deliver or cause to be delivered into escrow the following items:

1.2.1 The Declaration.

1.2.2 The Deed, executed by Seller, conveying the Property to Park District.

1.2.3 An Excise Tax Affidavit (the "Affidavit") to accompany the Deed.

1.2.4 A FIRPTA Certificate in the form of Exhibit I.

1.3 Park District. Park District shall deliver or cause to be delivered into escrow the following items:

1.3.1 The sum of Four Hundred Thousand Dollars (\$400,000) in cash, or by certified check, Kitsap County warrant or wire transfer, which amount represents a portion of Purchase Price for the Property.

1.3.2 The Note and Deed of Trust, duly executed by Park District.

1.3.3 The Easement, executed by Park District.

1.3.4 Such other moneys as are required from Park District to close this transaction as set forth in the final settlement statement.

2. CONDITIONS PRECEDENT

The obligation of each party to close shall be conditioned upon and subject to satisfaction or waiver of the following conditions precedent:

2.1 BILT. BILT's obligations are conditioned upon the following:

2.1.1 Delivery into escrow of the items described in Sections 1.2 and 1.3.

2.2 Seller. Seller's obligations are conditioned upon the following:

2.2.1 Delivery into escrow of the items described in Sections 1.1 and 1.3;

and

2.2.2 A commitment from Chicago Title Insurance Company to issue a policy of title insurance insuring the Declaration.

2.3 Park District. Park District's obligations are conditioned upon the following:

2.3.1 Delivery into escrow of the items described in Sections 1.1 and 1.2;

and

2.3.2 A commitment from Chicago Title Insurance Company that on recording of the Deed, Chicago Title Insurance Company will be irrevocably committed to issue an ALTA standard owner's title insurance policy in the amount of the purchase price of the Property insuring Park District against defects in title subject only to the

conditions and stipulations, exclusions and printed general exceptions contained in the policy form, the Easement, and the special exceptions shown on Schedule B-1, ¶¶ 1-20 and 22 of the Preliminary Commitment for Title Insurance issued by Land of Company, Third Report, Order No. E-100556-3 and dated November 8, 1995, at 8:00 a.m. as supplemented by Supplemental Reports 1-4, and subject to the Declaration and the instrument recorded under the Recording No. 9511210180 (amendment to water tank easement), with an endorsement to the effect that the subject property constitutes one or more legally divided parcels and an endorsement to the effect that all such parcels are contiguous.

3. CLOSING

Closing shall occur in escrow at the office of Closing Agent, Bainbridge Island, Washington ("Closing Agent") on December 1, 1995. For purposes of this Agreement, "Closing" shall mean the date on which all appropriate documents are recorded and the proceeds of sale are available for disbursement to Seller. When all Deliverables have been deposited into escrow and all conditions precedent have been satisfied, or through Closing pursuant hereto will be satisfied, or waived by the party benefitted, Closing Agent shall proceed to close the transaction as follows:

- 3.1 Date all undated documents as of December 1, 1995.
- 3.2 First, record the Declaration.
- 3.3 Next, record the Assignment.
- 3.4 Next, insert the recording number of the Declaration in the Deed, obtain the approval signature of the grantee on the Deed, and record the Deed and file the Affidavit.
- 3.5 Next, record the Deed of Trust.
- 3.6 Next, record the Easement.
- 3.7 Next, pay Seller's closing costs as set forth in the Estimated Settlement Statement (as the same may have been amended with the consent of all parties) out of the Purchase Price.
- 3.8 Next, disburse the Note and balance of the cash portion of the Purchase Price to Seller.

3.9 Next, pay Park District's closing costs, as set forth in the Estimated Settlement Statement (as the same may have been amended with the consent of all parties).

3.10 Finally, refund the balance of the escrow funds, if any, to Park District or as Park District may direct.

4. POST CLOSING

After closing, Closing Agent shall:

4.1 Deliver the original recorded Deed and Assignment to Park District.

4.2 Deliver the original recorded Easement to BILT.

4.3 Deliver the original owner's title insurance policy to Park District.

4.4 Deliver to Seller the original Declaration, an original title insurance policy insuring the Declaration, and an original lender's title insurance policy insuring the Deed of Trust.

4.5 Deliver take off copies of all recorded documents, a copy of the Affidavit, and copies of the final settlement statement to all parties.

5. ESCROW INSTRUCTIONS

Each party hereby irrevocably instructs Closing Agent to close the transaction as set forth herein on December 1, 1995. Before proceeding, Closing Agent is requested to accept these instructions by signing a copy of this Agreement in the space provided below and fax a copy to each party or its attorney.

Executed in triplicate original as of the date first above written.

BILT:

**BAINBRIDGE ISLAND LAND TRUST, a
Washington nonprofit corporation**

By David W. Thorne
David W. Thorne
Its Secretary

SELLER:

CRYSTAL SPRINGS PROPERTY
PARTNERSHIP GENERAL PARTNERSHIP,
a Washington general partnership

By 

Alan F. Black
Its General Partner

PARK DISTRICT:

BAINBRIDGE ISLAND PARK &
RECREATION DISTRICT, a municipal
corporation

By 

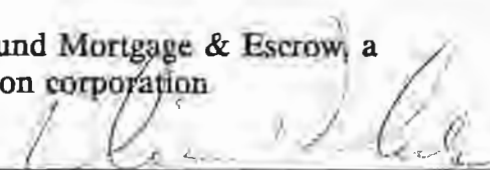
Its DIRECTOR

EXHIBITS

- Exhibit A - Legal Description of Property
- Exhibit B - Form of Conservation Easement
- Exhibit C - Form of Promissory Note
- Exhibit D - Form of Deed of Trust
- Exhibit E - Form of Statutory Warranty Deed and Excise Tax Affidavit
- Exhibit F - Form of Declaration and Agreement of Easement
- Exhibit G - Estimated Settlement Statement
- Exhibit H - Form of Assignment of Option
- Exhibit I - Form of FIRPTA Certificate

ACCEPTED AND AGREED TO:

Puget Sound Mortgage & Escrow, a
Washington corporation


By Diane Culp
Its President

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R E C I T A L S

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WHEREAS, under the terms of the Option, BILT is authorized to assign the Option to Park District in exchange for a conservation easement to be granted by Park District to BILT as soon as Park District acquires the Property pursuant to the Option; and

WHEREAS, BILT and Park District have agreed that the conservation easement shall be in the form attached hereto as Exhibit B (the "Easement"); and

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WHEREAS, the Option provides that the purchase price for the Property shall be paid partly in cash and partly pursuant to the terms of a deed of trust note in the form attached hereto as Exhibit C (the "Note") to be secured by a deed of trust on the Property in the form attached hereto as Exhibit D (the "Deed of Trust"); and

WHEREAS, title to the Property is to be conveyed by Seller to Park District by means of a statutory warranty deed in the form attached hereto as Exhibit E (the "Deed");

1.2.4 A FIRPTA Certificate in the form of Exhibit I.

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BILT:

**BAINBRIDGE ISLAND LAND TRUST, a
Washington nonprofit corporation**

By _____

David W. Thorne
Its Secretary

SELLER:

**CRYSTAL SPRINGS PROPERTY
PARTNERSHIP GENERAL PARTNERSHIP,
a Washington general partnership**

By _____
Alan F. Black
Its General Partner

PARK DISTRICT:

**BAINBRIDGE ISLAND PARK &
RECREATION DISTRICT, a municipal
corporation**

By _____

Its _____

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ACCEPTED AND AGREED TO:

**Puget Sound Mortgage & Escrow, a
Washington corporation**

By Diane Culp
Its President

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL A:

The North 274.47 feet of the Northeast quarter of the Southeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL B:

The Southeast quarter of the Northeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL C:

The Northeast quarter of the Northeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL D:

That portion of Government Lot 1, Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington, lying East of Tracts 10, 11, 12 and 13 of the Plat of Crystal Springs Tracts, according to plat thereof recorded in Volume 2 of Plats, page 90, records of, Kitsap County, Washington.

PARCEL E:

The Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL F:

The East 390 feet of the Southwest quarter of the Southeast quarter of Section 29, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL G:

The Southeast quarter of the Northwest quarter of the Northwest quarter; The West half of the Northwest quarter of the Northwest quarter; and The South half of the Southeast quarter of the Southwest quarter of the Northwest quarter; EXCEPT the South 30 feet thereof; all in Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL H:

The North half of the Northwest quarter of the Southwest quarter of the Northwest quarter, Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL I:

The North half of the Southwest quarter of the Southwest quarter of the Southwest quarter in Section 28, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL J:

South half of the Southwest quarter of the Southwest quarter of the Southwest quarter in Section 28, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL K:

The North 274.47 feet of the Southeast quarter of the Southeast quarter; and the Northeast quarter of the Southeast quarter, LESS the North 274.47 feet, Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL L:

The East half of the Southwest quarter of the Northwest quarter; EXCEPT the South quarter thereof; and the West half of the Southwest quarter of the Northwest quarter; EXCEPT the North quarter thereof, all in Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL N:

The Northeast quarter of the Northwest quarter of the Northwest quarter, Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL O:

That portion of Tract 10, Crystal Springs Tracts, as per plat recorded in Volume 2 of Plats on page 90, records of Kitsap County, Washington, lying East of Crystal Springs Road.

PARCEL P:

That portion of the North 100 feet of Tract 13 and the South 100 feet of Tract 14, all in Crystal Springs Tracts, according to the plat recorded in Volume 2 of Plats, page 90, records of Kitsap County, Washington, which lies Easterly of the following described line:

Commencing at an existing pipe which marks the intersection of the North line of the South 100 feet of said Tract 14 with the Westerly line of the Crystal Springs County Road, said existing pipe having been set by Roats Engineering and shown on survey drawing by Roats Engineering entitled "Survey of Portion of Tracts 13 and 14, Crystal Springs Tracts" dated June 27, 1969, Job No. 69-2655; thence South $88^{\circ}46'06''$ East along said North line 316.57 feet to an intersection with a line of pipes set by Jones, Bassi & Associates, Engineers and Surveyors on November 2, 1972, said intersection being the True Point of Beginning of the line to be herein described; thence South $28^{\circ}14'51''$ East along said line of pipes 28.11 feet to an iron pipe; thence continuing South $28^{\circ}14'51''$ East along said line of pipes 94.75 feet to an iron pipe; thence continuing South $28^{\circ}14'51''$ East along said line of pipes 101.68 feet to an iron pipe; thence continuing S $28^{\circ}14'51''$ East 5.21 feet, more or less, to an intersection with the South line of the North 100 feet of said Tract 13, said intersection being the terminus of the line herein described.

PARCEL Q:

That portion of Tract 7, the North 40 feet of Tract 6, and the South 10 feet of Tract 8, all in Crystal Springs Tracts, according to the plat recorded in Vol. 2 of Plats, page 90, records of Kitsap County, Washington, lying Easterly of the following described line: Commencing at an existing concrete monument at the Southeast corner of the North 40 feet of said Tract 6; thence South $89^{\circ}40'27''$ West along the South line of the North 40 feet of said Tract 6 for a distance of 659.34 feet to an

iron pipe set by Jones, Bassi & Associates, Engineers and Surveyors, on Dec. 15, 1971, said pipe being the Point of Beginning; thence North $25^{\circ}41'59''$ West 69.58 feet to an iron pipe set by said Surveyors; thence continuing North $25^{\circ}41'59''$ West 85.37 feet to an iron pipe set by said Surveyors; thence North $13^{\circ}57'25''$ West 113.23 feet to an iron pipe set by said Surveyors at the intersection with the North line of the South 10 feet of said Tract 8, said pipe being the terminus of the line herein described.

PARCEL R:

The North half of the following described tract lying East of the Baker Hill County Road: Beginning at a point common to fractional Sections 5 and 32, Township 24 and 25 North, Range 2 East, W.M., in Kitsap County, Washington, and indicated by a stone monument marked "MC"; thence South $89^{\circ}15'08''$ East along the line between Sections 5 and 32, a distance of 2539.65 feet to the closing corner of Sections 4 and 5, Township 24 North, Range 2 East, W.M., in Kitsap County, Washington; thence South of $89^{\circ}19'45''$ East between Sections 4 and 32, 419.51 feet to the corner of Sections 32 and 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington; thence North $0^{\circ}34'15''$ East along line between Sections 32 and 33, a distance of 1045 feet to a stone monument marked 'NE corner Furuya L. Co.'; thence North $89^{\circ}15'08''$ West 2856.53 feet to a stone monument set at the Northwest corner of the apple house and marked 'N.W. corner Furuya L. Co.' and being 1045.53 feet North of and 113.85 feet East of the Place of Beginning; thence Southerly along shore of Port Orchard Bay to the Place of Beginning;
TOGETHER WITH Second Class tide lands adjoining to the line of extreme low tide; EXCEPT that portion lying West of the East Margin of Baker Hill Road.

EXHIBIT B

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Easement") is made this ____ day of _____, 1995, by BAINBRIDGE ISLAND PARK AND RECREATION DISTRICT, a municipal corporation, having an address at P.O. Box 10089, Bainbridge Island, Washington 98110 ("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

A. Grantor is a Park and Recreation District under the laws of the State of Washington, and is the sole owner in fee simple of certain real property in Kitsap County, Washington, more particularly described in Exhibit A (the "Property"). Grantor acquired the Property pursuant to an Option Agreement assigned to Grantor by Grantee on the express condition that Grantor would convey this Easement to Grantee.

B. The Property has scenic area, forestland, watershed, wetlands, and wildlife habitat values (collectively, "Conservation Values"), and educational and recreational value, of great importance to Grantor, Grantee and the people of Bainbridge Island, Kitsap County and the State of Washington.

C. The Conservation Values are more particularly described and documented in Exhibit B ("Baseline Documentation"), which consists of narratives, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property and description of the Conservation Values at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

D. Grantor intends that the Conservation Values be preserved and maintained while permitting recreational and educational uses of the Property as a public park that will not significantly impair or interfere with the Conservation Values by commencing and continuing management of the Property in accordance with the terms of this Easement.

E. Grantor further intends to convey to Grantee the right to preserve and protect the Conservation Values in perpetuity.

F. Grantee is a tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is to conserve and preserve

the waters, wetlands, wildlife habitat, timberlands, undeveloped land, scenic areas, open spaces, and recreational and agricultural lands on Bainbridge Island and in Kitsap County.

II. Terms of Easement

1. **Grant of Easement.** For the reasons stated above, Grantor hereby grants and conveys to Grantee a conservation easement over the Property of the nature and character and to the extent set forth in this Easement, and Grantor and Grantee covenant to comply with and be bound by all of the terms and provisions hereof. This Easement is a conveyance of an interest in real property pursuant to the laws of the State of Washington and, in particular, RCW 84.24.200-250 and RCW 64.04.130. This Easement and the rights, restrictions and covenants contained herein shall be perpetual and run with the land.

2. **Purposes and Intent.** The purposes of this Easement are (i) to assure that the Property will remain forever as scenic area, forestland, watershed, wetlands, and wildlife habitat, except as otherwise provided herein, (ii) to preserve the pristine nature of the Gazzam Lake Wetland Zone (defined below), (iii) to foster development of a biologically diverse old-growth forest on the uplands surrounding the Gazzam Lake Wetland Zone, (iv) to provide for active recreational use of the area within the area identified on Exhibit B as the active recreation area and legally described on Exhibit C (the "Active Recreation Area"), and (v) except for the uses and activities specifically permitted herein for recreation and education, to prevent any use of the Property that will substantially impair or interfere with the Conservation Values or the foregoing purposes. Grantor intends that this Easement will restrict the use of the Property to such activities as are consistent with the foregoing purposes of this Easement.

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;

3.2. To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that the Grantee shall provide reasonable notice to Grantor before entering upon the Property, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

3.3. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to

require the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use, pursuant to Section 10; and

3.4. With the consent of Grantor, which consent shall not be unreasonably withheld or delayed, to place a sign no larger than six (6) square feet at each vehicular entrance to the Property, and/or a series of small boundary markers along the boundary of the Property, declaring that the Property is being preserved pursuant to a conservation easement held by the Bainbridge Island Land Trust and stating other information about the Trust and the Easement.

4. Prohibited Activities and Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, except to the extent such activities or uses are expressly reserved by Grantor in Sections 5 and 6, the following activities on and uses of the Property outside of the Active Recreation Area are inconsistent with the purposes of this Easement and are expressly prohibited:

4.1. **Subdivision.** The legal or *de facto* subdivision of the Property for any purpose;

4.2. **Commercial Development.** Any commercial, agricultural or industrial use or activity;

4.3. **Construction and Improvements.** The placement or construction of any buildings, structures, towers, poles, roads, trails, enclosures, parking lots, outside lighting, signs, billboards, or other improvements of any kind;

4.4. **Surface Alteration.** Any grading or alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod;

4.5. **Soil and Water.** Any use or activity that causes or is likely to cause soil degradation, soil erosion, or pollution of any surface or sub-surface waters;

4.6. **Vegetation.** Any use or activity that causes or is likely to cause harm to or loss of native vegetation;

4.7. **Wetlands and Watercourses.** Without limiting the special restrictions applicable to the Gazzam Lake Wetland Zone, as set forth in Section 7, the draining, filling, or diking of the wetland areas, the alteration of any pond and water course, or the creation of new water impoundments or water courses;

4.8. **Gazzam Lake Wetland Zone.** Any use, activity or action prohibited by or inconsistent with the special restrictions applicable to the Gazzam Lake Wetland Zone as set forth in Section 7;

4.9. **Trees and Other Plants.** The pruning, cutting down, or other destruction or removal of trees or other plants;

4.10. **Waste Disposal.** The dumping or other disposal of any waste, refuse or debris of any description including in particular any dangerous, toxic or hazardous substances as defined in any federal, state or local laws, regulations or ordinances;

4.11. **Utility Systems.** The installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, septic, power, fuel, and communication lines and related facilities;

4.12. **Mineral Development.** The exploration for minerals, including sand and gravel, or hydrocarbons, or development or extraction thereof by any method;

4.13. **Hunting and Fishing.** Hunting, trapping, or otherwise catching or killing animals or fish except for the purpose of controlling feral domestic animals;

4.14. **Motorized Vehicles.** The operation of any motorized vehicles including without limitation automobiles, trucks, motorcycles, all-terrain vehicles, dune buggies, recreational vehicles, motor homes and go-carts;

4.15. **Chemicals.** The application of pesticides, herbicides, fertilizer or other chemical substances; and

4.16. **Wells and Water Collection Systems.** Drilling for or operating water wells or operating surface water collection systems.

5. **Reserved Rights Outside the Active Recreation Area.** Grantor reserves the right to use the Property outside the Active Recreation Area for a public resource conservancy park, in a manner that is consistent with the purpose and intent of this Easement. Notwithstanding the activities and uses expressly prohibited in Section 4, the following uses and activities are consistent with the purpose and intent of this Easement and the right to carry out such activities and uses on the Property outside the Active Recreation Area (after planning and design through a public process and with the advice of a qualified

professional wildlife biologist with a view to minimizing adverse impacts on the habitat areas) is expressly reserved by Grantor:

5.1. Parking Areas; Restroom Facilities; Wells; Landscaping.

5.1.1. Construction, expansion or maintenance of driveways, parking areas, walkways, and restroom facilities, including related storm drainage, sewer (if available) or septic systems, and underground water and power; provided, however, that (a) all such construction shall be located as close as reasonably possible to the perimeter of the Property, with due allowance for any required vegetative buffering or screening; (b) parking areas shall include reasonable screening and buffering from any adjacent streets or roads, (c) all such construction shall be designed to minimize runoff and otherwise shall be in accordance with applicable laws and regulations, and (d) any landscaping shall use only plants native to the Property.

5.1.2. Drilling of wells on the Property; provided, however, that such wells may be used solely to provide water for restroom facilities, drinking fountains and fire hydrants in the parking areas, and for any facilities within the Active Recreation Area, and shall be located as close as possible to the location of the facilities served thereby.

5.2. Trails and Viewpoints. Construction or installation of trails and scenic viewpoints (including structural viewing stands), and benches adjacent to trails and scenic viewpoints, throughout the Property subject to the special restrictions applicable to the Gazzam Lake Wetland Zone as set forth in Section 7, and subject to the following additional limitations and restrictions:

5.2.1. Trails shall be unpaved except (i) in parking and restroom areas and (ii) to the extent mandated by applicable law outside of the parking and restroom areas.

5.2.2. Trail widths shall be no wider than the minimum width necessary for the intended purpose of the trail (e.g., hiking trail, multi-use trail etc.) and in any event shall not exceed eight (8) feet, unless a greater width is mandated by applicable law.

5.2.3. No vegetation shall be removed beyond the allowed width of the trail.

5.2.4. In designing a trail system, enhancement of the wildlife habitat and forestland Conservation Values shall

take precedence over enhancement of the other Conservation Values; thus, placement of trails in a way that leaves intact large undisturbed areas shall be preferred over a design that would result in smaller undisturbed areas.

5.2.5. Clearing around viewpoints shall be limited to the minimum necessary for reasonable use and enjoyment of the viewpoint as a viewpoint.

5.2.6. Electric vehicles may be used on the trails only by physically disabled persons.

5.2.7. Signage or other reasonable means shall be employed to prevent or discourage pedestrians and persons riding bicycles or horses from leaving the trails.

5.3. **Service Vehicles.** Operation of motorized service vehicles and equipment capable of passage or transport within the limits of allowable trails in connection with construction and maintenance of the Property and facilities thereon, and emergencies.

5.4. **Trees and Other Plants.** The pruning, cutting down, or other destruction or removal of trees or other plants in accordance with environmentally sound conservation practices, to control or prevent dangerous or hazardous conditions, disease, fire, or the spread of invasive plants, or to establish or enhance wildlife habitat.

5.5. **Signs.** The placement of signs whose placement, number and design do not significantly diminish the scenic character of the Property and which (i) are necessary and appropriate for the operation of the Property as a public park, such as to provide directions, information, rules and regulations; (ii) state the preserved nature of the Property; and (iii) identify the Bainbridge Island Land Trust.

5.6. **Native Plants and Animals.** The introduction of rare native plants and animals to foster the biodiversity representative of western Washington lowlands, in accordance with environmentally sound conservation practices, and the restoration of plants damaged by fire, disease, or human activity by the introduction of plant species native to the Property.

5.7. **Chemicals.** The use of pesticides, herbicides or other chemicals where necessary to protect the Conservation Values and no other practicable method for doing so exists. When chemicals are applied, the most effective method with the least environmental impact shall be utilized.

6. **Reserved Rights Within the Active Recreation Area.** In addition to the reserved rights set forth in Section 5, Grantor expressly reserves the right to use the Active Recreation Area for a public active recreation park and any and all lawful park and recreation purposes, including without limitation construction, maintenance and repair of playgrounds, ballfields, buildings, structures and other improvements, educational facilities, parking areas, and picnic areas. Notwithstanding the activities and uses expressly prohibited in Section 4, the following uses and activities are consistent with the purpose and intent of this Easement and the right to carry out such activities and uses in the Active Recreation Area (after planning and design through a public process) is expressly reserved by Grantor subject only to the following restrictions:

6.1. **Parking Areas; Landscaping.** Parking areas shall include reasonable screening and buffering from adjacent streets or roads.

6.2. **Wells.** Any wells may be used solely to provide water for facilities on the Property, and shall be located as close as possible to the location of the facilities served thereby.

6.3. **Outside Lighting.** Outside lighting shall be limited to the extent necessary for public safety and practicable use of recreation facilities. All outside lighting shall be designed to limit light intrusion into area of wildlife habitat and minimize environmental impacts.

6.4. **Underground Utilities.** All utilities shall be underground to the extent practicable.

6.5. **Runoff.** All construction and improvements, including parking area, shall be designed to minimize runoff.

6.6. **Firing Ranges.** No firing ranges shall be permitted.

6.7. **Chemicals.** Herbicides, pesticides, and other chemicals shall be used only in accordance with an integrated pest management plan as adopted by Grantor from time to time, and only when there is no practicable alternative to such use.

6.8. **Signs.** The placement of signs whose placement, number and design do not significantly diminish the scenic character of the Property and which (i) are necessary and appropriate for the operation of the Property as a public park, such as to provide directions, information, rules and

regulations; (ii) state the preserved nature of the Property; and (iii) identify the Bainbridge Island Land Trust.

7. **Gazzam Lake Wetland Zone.** As used in this Easement, the term "Gazzam Lake Wetland Zone" or "Zone" means Gazzam Lake and its surrounding wetlands as identified in Exhibit B and that portion of the Property comprising the uplands surrounding and within four hundred (400) feet from the edge of those wetlands. As used in this Easement, "wetlands" means those areas within the Property that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. All of the Conservation Values are present within the Zone to a greater extent than anywhere else on the Property. As a result, the Zone requires enhanced protection. **Accordingly, within the Gazzam Lake Wetlands Zone, the following additional restrictions shall apply:**

7.1. Trails. Except pursuant to Section 7.2, no new trails shall be constructed.

7.2. Viewpoints. The two existing viewpoints identified in Exhibit B including improvement of the approach trails and the addition of structural viewing stands as provided below do not substantially impair the Conservation Values and are consistent with the purpose and intent of this Easement. Further, the relocation of these viewpoints as provided below will not substantially impair the Conservation Values and will be consistent with the purpose and intent of this Easement. Therefore, a maximum of two (2) viewpoints, with or without structural viewing stands, shall be permitted within the Zone, as follows:

7.2.1. The existing viewpoints and their approach trails identified in Exhibit B may be maintained and improved with trail alterations to accommodate handicapped access and the addition of structural viewing stands if the design of the improvements and alterations is determined through a public process and with the advice of a qualified professional wildlife biologist and with a view to minimizing adverse impacts on the habitat areas while allowing reasonable viewing by the public.

7.2.2. Alternatively, one or both of the existing viewpoints and their approach trails may be relocated if and only if (i) the new location and design is determined through a public process and with the advice of a qualified professional wildlife biologist and with a view to maximizing the amount of continuous undisturbed shoreline and minimizing adverse impacts on the

habitat areas while allowing reasonable viewing by the public, (ii) the original site of the relocated viewpoint is eliminated as a viewpoint by all reasonable means including but not limited to the use of barricades or other obstructions of the approach trails and replanting of appropriate vegetation in the trails and on the shoreline, and (iii) the new approach trails do not exceed six (6) feet in width (except where necessary to accommodate handicapped access) and follow the shortest practical route from the perimeter of the Zone to the viewpoint so as to minimize the length of trails constructed within the Zone

7.3. Human Intrusion. No human intrusion shall be permitted into or on the surface of the wetlands or water areas except for scientific, educational, wildlife habitat enhancement, or wetland zone management activities specifically authorized by Grantor.

8. Notices. Grantor shall not without first giving Grantee at least thirty (30) days prior notice thereof (i) adopt any plan for construction of trails or other improvements anywhere on the Property or commence construction thereof, or (ii) apply any herbicides, pesticides (unless public safety concerns require sooner application), fertilizers or other chemicals within the Gazzam Lake Wetland Zone. The purpose of such notice is solely to afford Grantee an opportunity to monitor and determine if, in Grantee's opinion, the uses or activities in question are designed and carried out in a manner consistent with the purpose and intent of this Easement. No right of prior approval by Grantee is intended hereby, nor shall Grantee's failure to object to the proposed activities constitute an approval by Grantee or a waiver of any of Grantee's rights hereunder.

9. Development Rights. In the event Grantor sells any development rights created by statute or ordinance, or inherent in the Property, Grantor agrees that all proceeds thereof shall be maintained in a separate stewardship trust fund to be used exclusively for maintenance and development of the Property and protection of the Conservation Values by Grantor.

10. Enforcement by Grantee against Grantor.

10.1. If Grantee determines in good faith and on a reasonable basis that Grantor is in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any prohibited uses or activity or any use or activity inconsistent with the purpose and intent of this Easement, to restore the portion of the Property so injured. If

Grantor fails to cure the violation within thirty (30) days after receipt of the notice from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary restraining order or temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of any Conservation Values, and to require the restoration of the Property to the condition that existed before the injury; provided, however, in case of an emergency Grantee may proceed immediately for injunctive relief after notice to Grantor. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or later existing hereunder, or at law or in equity.

10.2. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance, delay or omission by Grantee in the exercise of its rights or remedies under this 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.

10.3. Grantor hereby waives any defense of laches, estoppel or prescription.

10.4. 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 Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or persons thereon resulting from such causes.

10.5. In any suit, action, proceeding or appeal therefrom to enforce or interpret this Easement, the substantially prevailing party shall be entitled to recover its costs incurred therein from the other party, including reasonable attorney's fees and reasonable costs of litigation.

10.6. In the event of any breach hereof resulting in injury or damages to the Conservation Values protected hereby, caused by any person or entity not within the control of Grantor, if Grantor does not promptly and diligently pursue any and all rights and remedies available to Grantor to prevent, abate, or mitigate such injury or damages, including restoration of the Conservation Values, then Grantor shall, at Grantee's request, assign all such rights and remedies to Grantee so as to permit Grantee to enforce such rights and remedies in its own name or in the name of Grantor, and cooperate with Grantee in any action undertaken by Grantee to enforce such rights and remedies; provided, however, that Grantee shall be under no obligation to enforce such rights and remedies and Grantor shall be under no obligation to pay any costs or expenses incurred by Grantee in connection with such enforcement by Grantee, nor to reimburse Grantee for or indemnify Grantee against any judgment that may be entered against Grantee in any such enforcement action.

11. **Costs and Liabilities; Indemnity.** Nothing herein shall impose upon Grantee any responsibility for any costs or liability of any kind related to or arising out of the ownership, operation, upkeep or maintenance of the Property. 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 (each an "Indemnified Party") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, suffered or incurred by the Indemnified Party and arising from or in any way connected with any suit or action brought by third parties against Grantee based upon: (1) injury to or the death of any person, or physical damage to any personal property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent such injury, death or damage was caused by the negligence of the Indemnified Party; or (2) subject to Section 10.6, the breach of any covenant herein by Grantor.

12. **Extinguishment.** This Easement constitutes a real property interest immediately vested in Grantee. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction; and in the event of any sale, exchange or condemnation of all or any portion of the Property after such termination or extinguishment, Grantee shall be entitled to receive fourteen percent (14%) of the amount of the net proceeds thereof after the satisfaction of prior

claims. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain by Grantor, Grantee shall be entitled to an award of compensation in the amount of fourteen percent (14%) of the amount by which the then current fair market value of the Property or portion thereof encumbered by the Easement so taken exceeds the value of capital improvements made by Grantor to the Property so taken. If The Property including the Easement thereon is taken, in whole or in part, by the exercise of the power of eminent domain other than by Grantor, Grantee shall be entitled to receive fourteen percent (14%) of the amount by which any award received exceeds the value of capital improvements made by Grantor to the Property so taken.

13. **Assignment; Executory Limitation.** Grantee may assign its rights and obligations under this Easement only to The Nature Conservancy, or its successor, The Trust for Public Lands, or its successor, or any land trust in Kitsap County, Washington, if such assignee is a qualified assignee (as defined below), without Grantor's consent; or to any other qualified assignee approved by Grantor, which approval shall not be unreasonably withheld or delayed. As used herein, a "qualified assignee" is 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 such transfer, Grantee shall require assurances that the transferee will enforce the terms hereof in furtherance of its conservation purposes. Without limiting the foregoing, if Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, as amended, and a prior assignment as provided above has not been made, then Grantee's rights and obligations under this Easement shall be deemed assigned to and become immediately vested in the Trust for Public Lands. If the Trust for Public Lands is no longer in existence at the time, or if the Trust for Public Lands is not a qualified assignee, or if it shall refuse to accept these rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Washington law and with due regard to the requirements for an assignment described above.

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

To Grantor: Bainbridge Island Park and Recreation
District
P.O. Box 10089
Bainbridge Island, Washington 98110

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

or to such other address as either party from time to time shall designate by written notice to the other.

15. **General Provisions.**

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

15.2. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement, the policy and purpose of RCW 84.34.200-250 and RCW 64.04.130, as amended, and the purposes of the Bainbridge Island Land Trust as stated in its Articles of Incorporation. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.3. **Severability.** The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision hereof.

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

15.5. **Joint and Several Obligation.** If Grantor includes more than one person or entity, the obligations imposed

by this Easement upon Grantor and each of them, shall be joint and several.

15.6. **Successors.** This Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

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

15.8. **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.

15.9. **Recordation.** Grantee shall record this instrument in timely fashion 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.

15.10. **Amendment.** This Easement may be amended only in writing signed by all owners of the Property and Grantee or its successors and assigns, provided, however, that no amendment may 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, nor affect the Easement's perpetual duration. Any amendment shall be recorded in the official records of Kitsap County, Washington.

15.11. **Counterparts.** This 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 hereto, shall constitute one and the same instrument.

15.12. Exhibits. Exhibits A through C attached hereto are incorporated herein.

EXECUTED as of the date and year first above written.

GRANTOR: Bainbridge Island Park and Recreation District, a municipal corporation

By: _____

Its: _____

GRANTEE: Bainbridge Island Land Trust, a Washington nonprofit corporation

By: _____
Connie Waddington
Its President

By: David W. Thorne
David W. Thorne
Its Secretary

EXHIBITS:

- Exhibit A - Legal Description of Property
- Exhibit B - Baseline Documentation
- Exhibit C - Legal Description of Active Recreation Area

STATE OF WASHINGTON)
) SS.
COUNTY OF KITSAP)

On this _____ day of _____, 1995, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it

as the _____ of Bainbridge Island Park & Recreation District, a municipal 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 above written.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this _____ day of _____, 1995, before me, a Notary Public in and for the State of Washington, personally appeared Connie Waddington, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the President of Bainbridge Island Land Trust 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 above written.

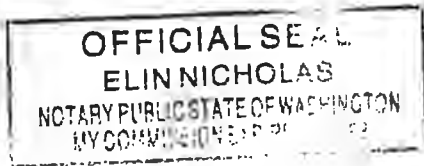
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 27th day of November, 1995, before me, a Notary Public in and for the State of Washington, personally appeared David W. Thorne, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who

executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Secretary of Bainbridge Island Land Trust 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 above written.



Elin Nicholas
NOTARY PUBLIC in and for the State
of Washington, residing at Seattle
My appointment expires 01/01/02

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL A:

The North 274.47 feet of the Northeast quarter of the Southeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL B:

The Southeast quarter of the Northeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL C:

The Northeast quarter of the Northeast quarter of Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL D:

That portion of Government Lot 1, Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington, lying East of Tracts 10, 11, 12 and 13 of the Plat of Crystal Springs Tracts, according to plat thereof recorded in Volume 2 of Plats, page 90, records of, Kitsap County, Washington.

PARCEL E:

The Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL F:

The East 390 feet of the Southwest quarter of the Southeast quarter of Section 29, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL G:

The Southeast quarter of the Northwest quarter of the Northwest quarter; The West half of the Northwest quarter of the Northwest quarter; and The South half of the Southeast quarter of the Southwest quarter of the Northwest quarter; EXCEPT the South 30 feet thereof; all in Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL H:

The North half of the Northwest quarter of the Southwest quarter of the Northwest quarter, Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL I:

The North half of the Southwest quarter of the Southwest quarter of the Southwest quarter in Section 28, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL J:

South half of the Southwest quarter of the Southwest quarter of the Southwest quarter in Section 28, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL K:

The North 274.47 feet of the Southeast quarter of the Southeast quarter; and the Northeast quarter of the Southeast quarter, LESS the North 274.47 feet, Section 32, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL L:

The East half of the Southwest quarter of the Northwest quarter; EXCEPT the South quarter thereof; and the West half of the Southwest quarter of the Northwest quarter; EXCEPT the North quarter thereof, all in Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL N:

The Northeast quarter of the Northwest quarter of the Northwest quarter, Section 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington.

PARCEL O:

That portion of Tract 10, Crystal Springs Tracts, as per plat recorded in Volume 2 of Plats on page 90, records of Kitsap County, Washington, lying East of Crystal Springs Road.

PARCEL P:

That portion of the North 100 feet of Tract 13 and the South 100 feet of Tract 14, all in Crystal Springs Tracts, according to the plat recorded in Volume 2 of Plats, page 90, records of Kitsap County, Washington, which lies Easterly of the following described line:

Commencing at an existing pipe which marks the intersection of the North line of the South 100 feet of said Tract 14 with the Westerly line of the Crystal Springs County Road, said existing pipe having been set by Roats Engineering and shown on survey drawing by Roats Engineering entitled "Survey of Portion of Tracts 13 and 14, Crystal Springs Tracts" dated June 27, 1969, Job No. 69-2655; thence South $88^{\circ}46'06''$ East along said North line 316.57 feet to an intersection with a line of pipes set by Jones, Bassi & Associates, Engineers and Surveyors on November 2, 1972, said intersection being the True Point of Beginning of the line to be herein described; thence South $28^{\circ}14'51''$ East along said line of pipes 28.11 feet to an iron pipe; thence continuing South $28^{\circ}14'51''$ East along said line of pipes 94.75 feet to an iron pipe; thence continuing South $28^{\circ}14'51''$ East along said line of pipes 101.68 feet to an iron pipe; thence continuing S $28^{\circ}14'51''$ East 5.21 feet, more or less, to an intersection with the South line of the North 100 feet of said Tract 13, said intersection being the terminus of the line herein described.

PARCEL Q:

That portion of Tract 7, the North 40 feet of Tract 6, and the South 10 feet of Tract 8, all in Crystal Springs Tracts, according to the plat recorded in Vol. 2 of Plats, page 90, records of Kitsap County, Washington, lying Easterly of the following described line: Commencing at an existing concrete monument at the Southeast corner of the North 40 feet of said

Tract 6; thence South $89^{\circ}40'27''$ West along the South line of the North 40 feet of said Tract 6 for a distance of 659.34 feet to an iron pipe set by Jones, Bassi & Associates, Engineers and Surveyors, on Dec. 15, 1971, said pipe being the Point of Beginning; thence North $25^{\circ}41'59''$ West 69.58 feet to an iron pipe set by said Surveyors; thence continuing North $25^{\circ}41'59''$ West 85.37 feet to an iron pipe set by said Surveyors; thence North $13^{\circ}57'25''$ West 113.23 feet to an iron pipe set by said Surveyors at the intersection with the North line of the South 10 feet of said Tract 8, said pipe being the terminus of the line herein described.

PARCEL R:

The North half of the following described tract lying East of the Baker Hill County Road: Beginning at a point common to fractional Sections 5 and 32, Township 24 and 25 North, Range 2 East, W.M., in Kitsap County, Washington, and indicated by a stone monument marked "MC"; thence South $89^{\circ}15'08''$ East along the line between Sections 5 and 32, a distance of 2539.65 feet to the closing corner of Sections 4 and 5, Township 24 North, Range 2 East, W.M., in Kitsap County, Washington; thence South of $89^{\circ}19'45''$ East between Sections 4 and 32, 419.51 feet to the corner of Sections 32 and 33, Township 25 North, Range 2 East, W.M., in Kitsap County, Washington; thence North $0^{\circ}34'15''$ East along line between Sections 32 and 33, a distance of 1045 feet to a stone monument marked 'NE corner Furuya L. Co.'; thence North $89^{\circ}15'08''$ West 2856.53 feet to a stone monument set at the Northwest corner of the apple house and marked 'N.W. corner Furuya L. Co.' and being 1045.53 feet North of and 113.85 feet East of the Place of Beginning; thence Southerly along shore of Port Orchard Bay to the Place of Beginning;
TOGETHER WITH Second Class tide lands adjoining to the line of extreme low tide; EXCEPT that portion lying West of the East Margin of Baker Hill Road.

EXHIBIT B

BASELINE DOCUMENTATION

Exhibit B consists of a total of 13 pages, including the attachments listed below, which together describe the Property and the Conservation Values to be protected. Grantor and Grantee may, by mutual agreement, add to the information set forth in this Exhibit B by amending this Easement within one year after the date of this Easement.

1. **Vicinity Map.** The general location of the Property on Bainbridge Island is indicated on the vicinity map attached as Attachment 1.

2. **Property Site Plan.** A site plan for the Property is attached as Attachment 2. The Property comprises approximately 327 acres.

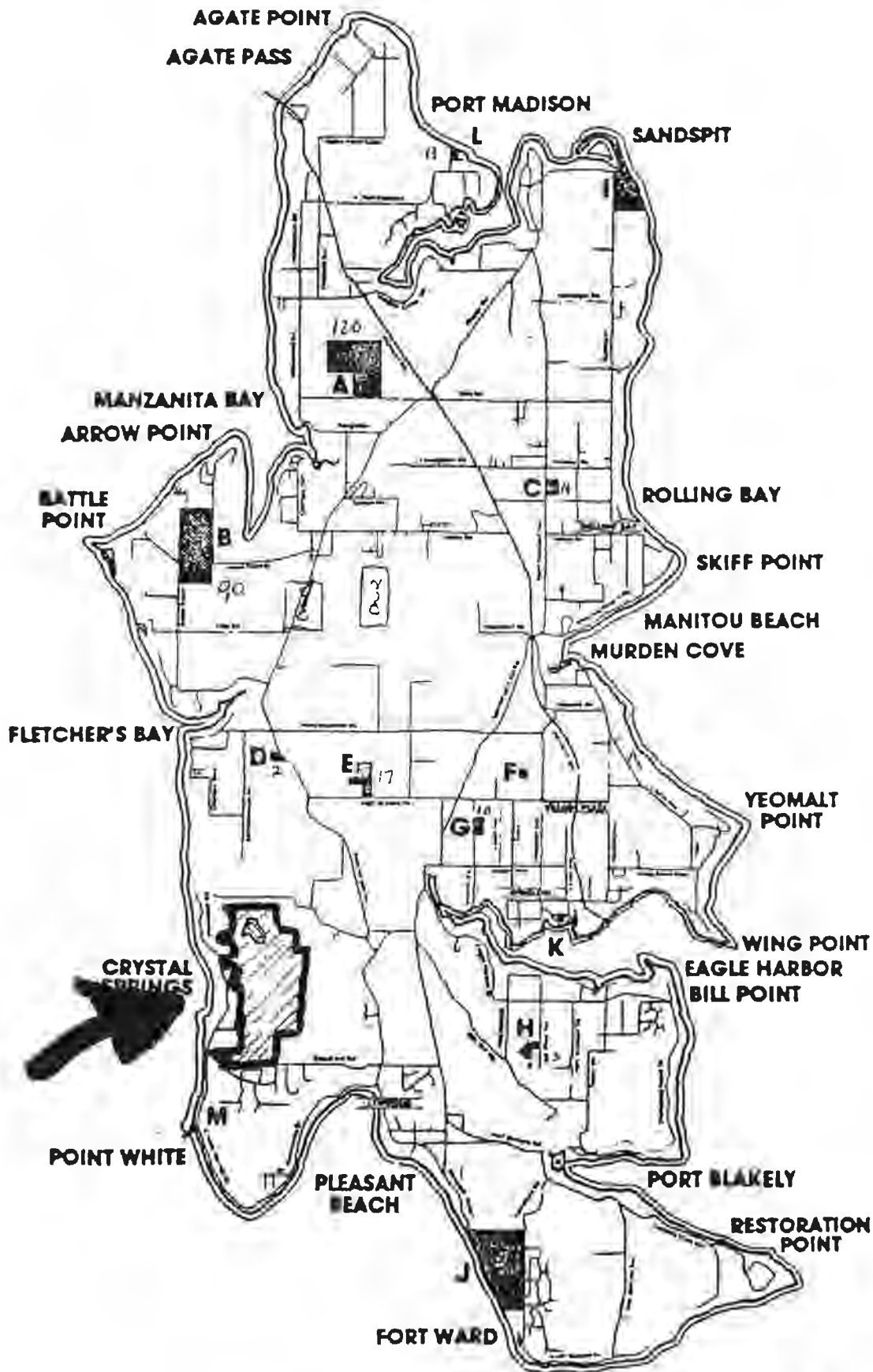
3. **Description of Property and Conservation Values.** A narrative description of the Property and the Conservation Values, is attached as Attachment 3.

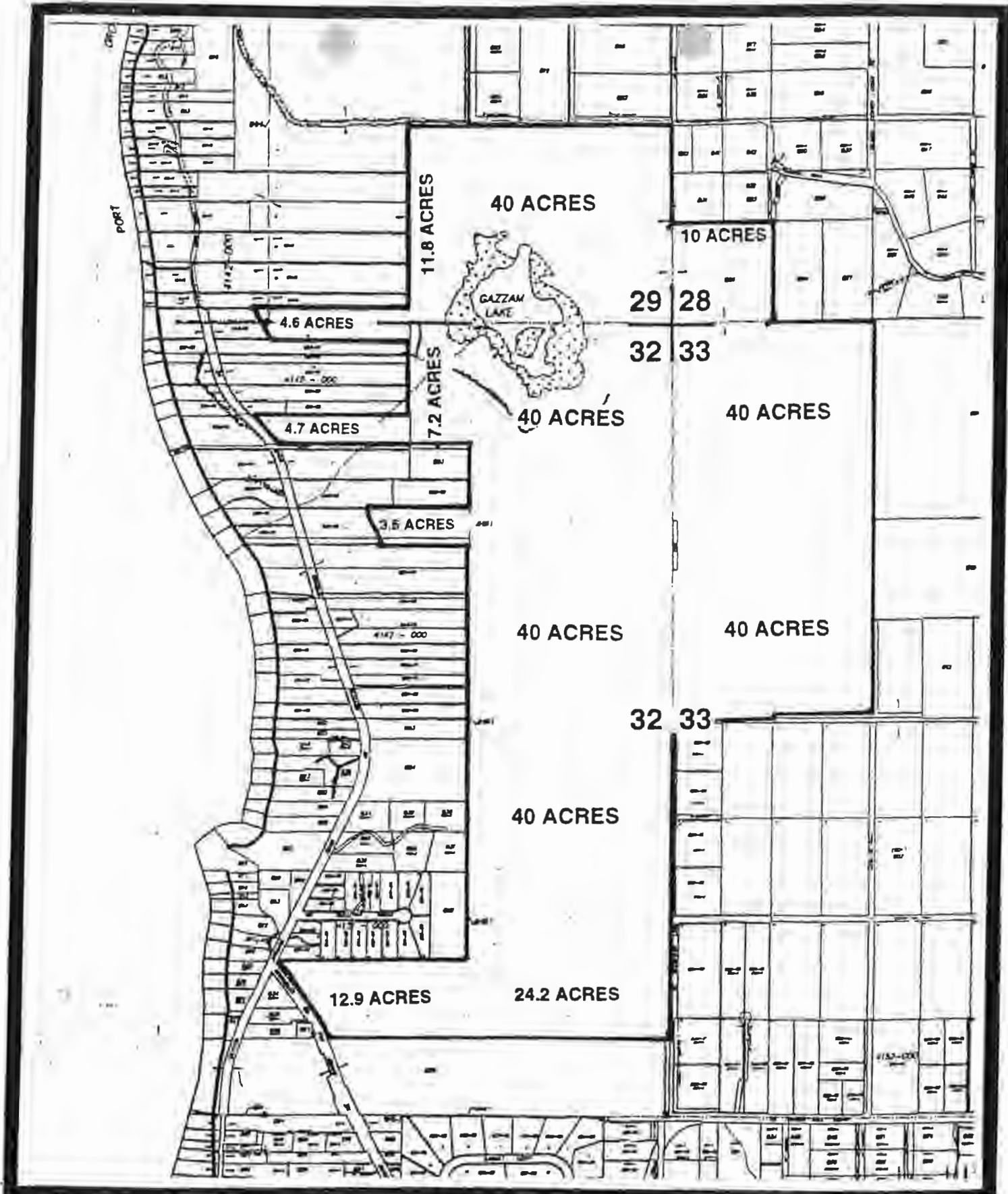
4. **Approximate Edge of Wetlands Surrounding Gazzam Lake.** A map depicting the approximate location of the edge of the wetlands surrounding Gazzam Lake is attached as Attachment 4.

5. **Photographs.** A diagram showing the locations from which the photographs were taken and 3 pages of photographs are attached as Attachment 5.

6. **Approximate Location of Existing Viewpoints.** The approximate location of the existing viewpoints near the shore of Gazzam Lake and their approach trails is attached as Attachment 6.

7. **Aerial Photograph.** An aerial photograph of the Property is attached as Attachment 7.





PLAT MAP

ATTACHMENT 3 TO EXHIBIT B

The following narratives describe the Property and the Conservation Values:

FOREST LAND

The upland portion of the Gazzam Lake property is primarily second growth mixed conifer and deciduous forest. Due to the existing tree variety and the staggered age classes of the interspersed patches of plant types, the potential exists for the evolution of a biologically diverse forest. Some forest stands, notably those closest to the lake, exhibit some of the components of an old growth forest. This forest matrix consists of a multi-layered canopy with complex conifer crowns and large diameter snags combined with a biologically active forest floor with downed woody debris in various age classes and uncompacted soils.

The large unbroken size of the uplands offer the rare opportunity for the creation of interior forest habitat. Large neighboring clearings and open spaces influence forest ecology far away from such a boundary. Portions of the Gazzam property are distant from the forest/clearing edge and offer this specialized interior habitat. Many birds and other valued animal species, who need relief from human intrusion, full sunlight, predators, and other animal species who compete with them in partially cleared or open space habitats, find acceptable niches in the interior forest portion of the property. The existing small openings throughout the property compliment the forest environment.

WILDLIFE HABITAT

Many valued wildlife species require the unique structural components of old growth forest some of which exist on the property and which can be expanded in the forest uplands. These include numerous large diameter live conifers with structurally complex crowns, numerous large diameter standing snags in all decay classes, numerous large diameter down wood in all decay classes, and multi-layered canopy.

Wildlife throughout the property benefits from continual vegetative cover that exists in a variety of heights and stages of maturity. This vegetative cover limits the adverse effects on wildlife caused by humans, horses and domesticated animals, including the effects of night light, noise and physical intrusion upon the habitat area.

ATTACHMENT 3 TO EXHIBIT B

The natural and intact aquatic and emergent wetland and open water areas provide habitat for many lowland species, including amphibians, reptiles, and valued classes of birds such as raptors (e.g., eagle, hawk and owl) and migratory waterfowl.

WETLAND

The relatively pristine quality of Gazzam Lake makes it a rare natural feature within Puget Sound lowlands. This quality results from and is maintained by certain hydrological conditions. The shallow lake is situated on an elevated portion of the island that does not receive substantial amounts of surface water, and has not experienced significant changes in hydrologic conditions, or received large inputs of sediment or nutrients. The lake is also served from a relatively steady source of clean water which is further subject to clarifying by the biofiltration of wetland plants. The forested buffer has contributed significantly to the isolation of the lake from human impacts.

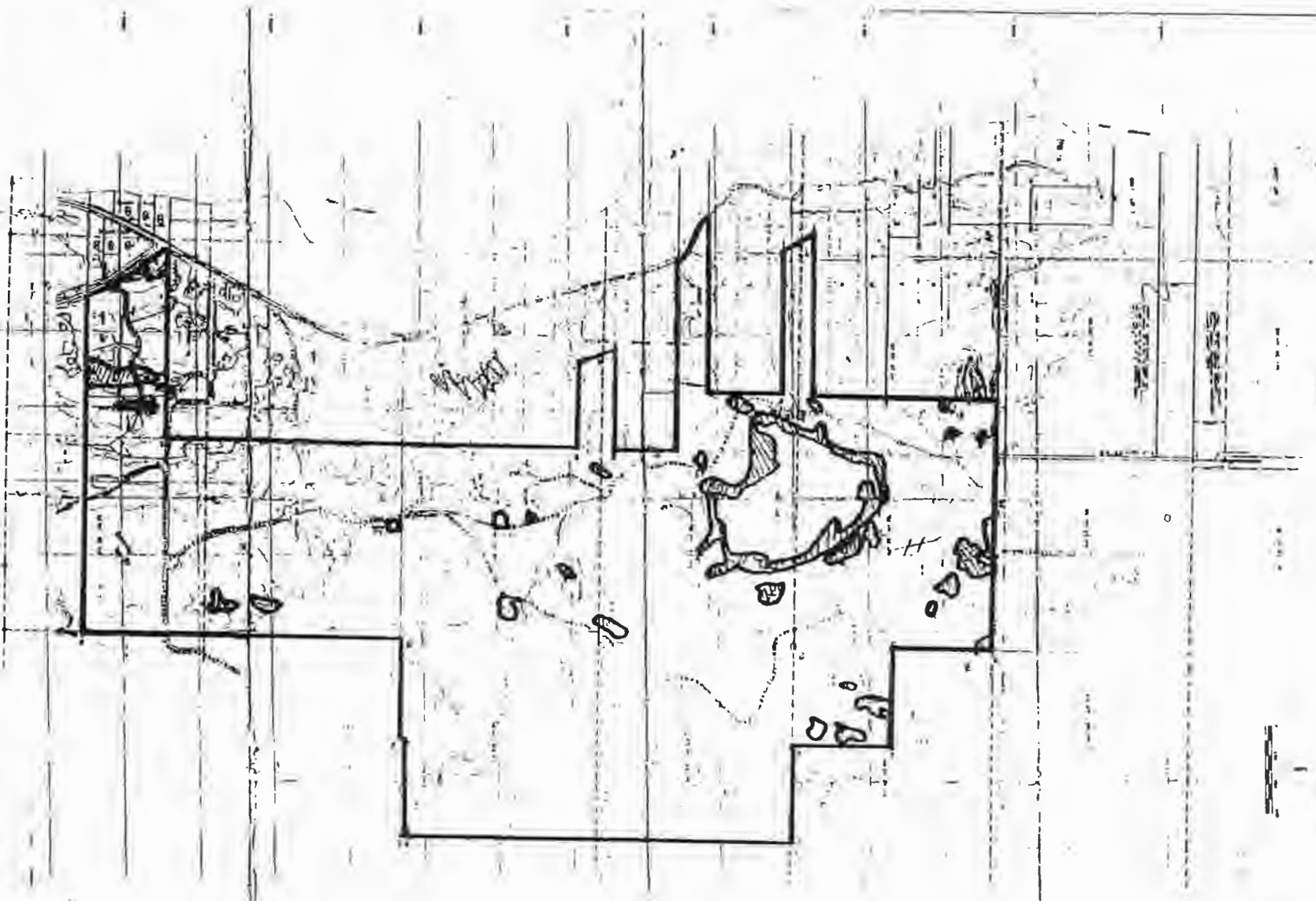
SCENIC VIEWS

The Property provides views across the landscape of the Olympic Mountains and Port Orchard Bay, overviews of forestland, numerous interior forest views within the Property, and views of lake and wetlands areas. Open areas of the Property allow for views of large areas of the sky. Lake and wetlands areas can be seen from occasional corridors near the lake shoreline.


WATERSHED

The Property is within a distinct drainage basin and provides a groundwater collection area, with no interruption or contamination of the groundwater, for nearby spring-fed water systems.

ATTACHMENT 4 TO EXHIBIT B
 Approximate Edge of Wetlands surrounding
 Gazzard Lake.



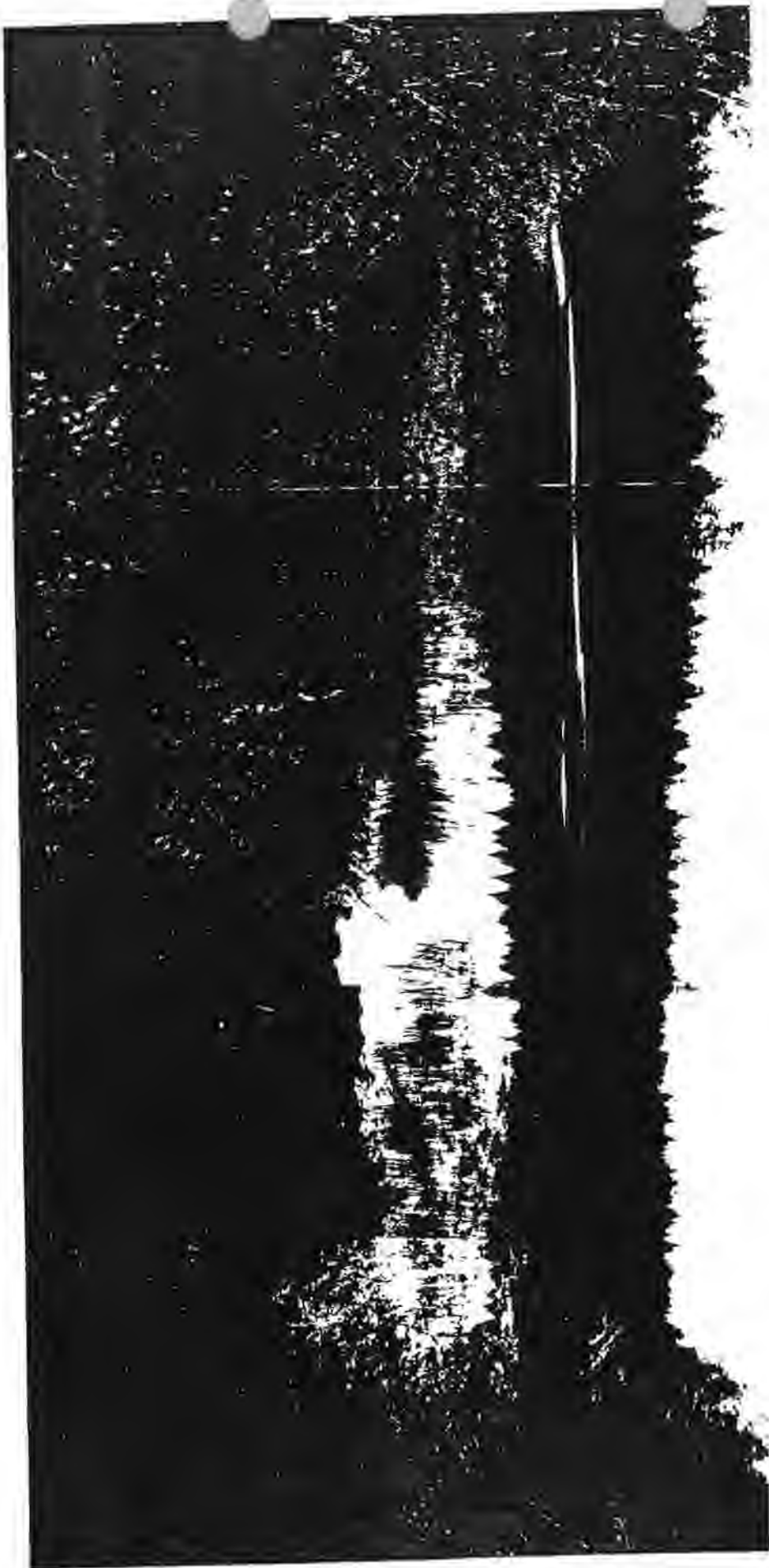
WILTERMOOD WETLANDS SURVEY 7/94

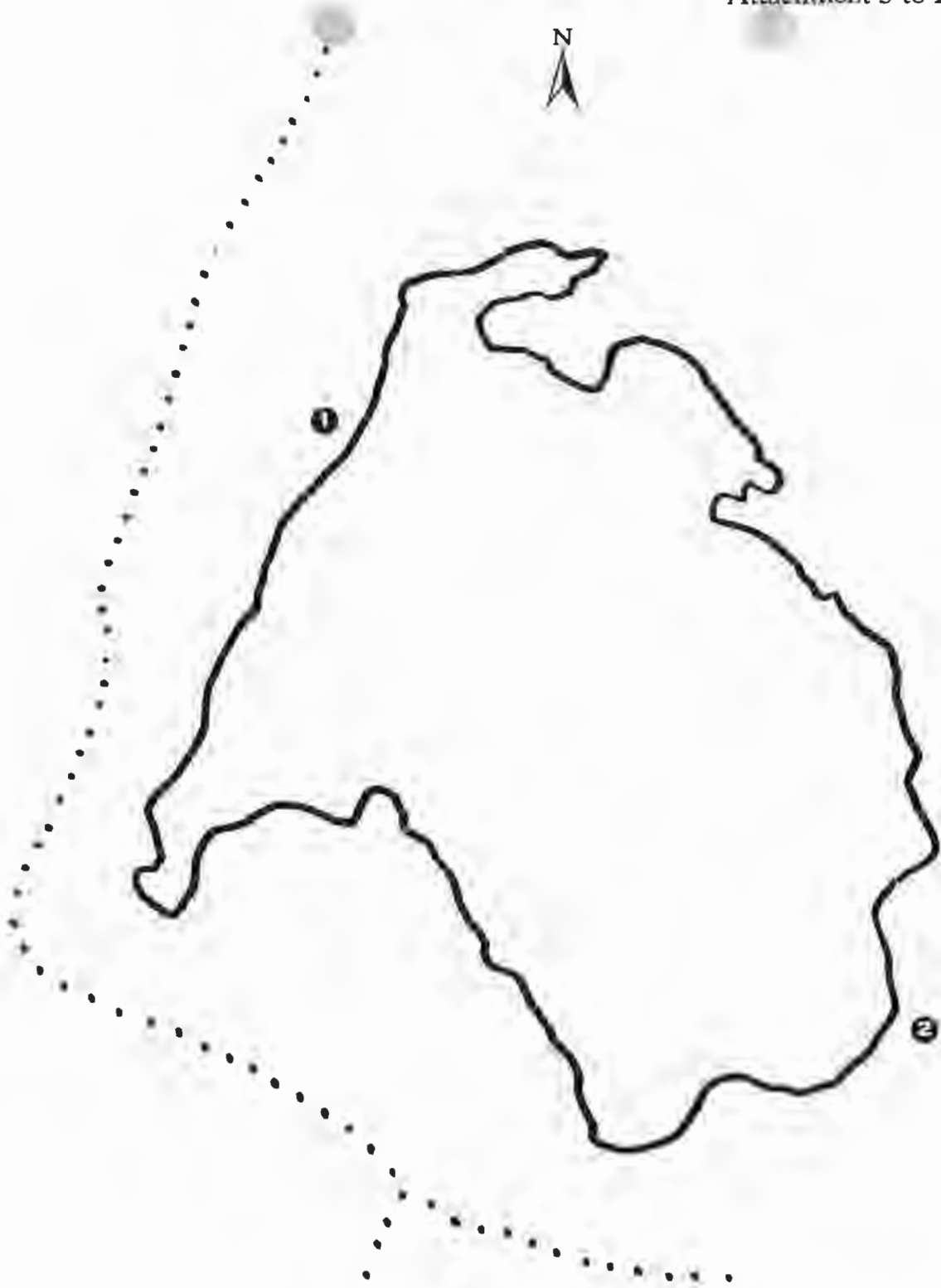
<p>DESIGNED BY  JONES BASS & ASSOCIATES, INC.</p>	<p>DRAWN BY JONES BASS & ASSOCIATES PROFESSIONAL LAND SURVEYORS</p>	<p>TOPOGRAPHIC SURVEY OF A PORTION OF SECTIONS 20, 21, 5, AND 33 ALL IN T. 25N. R. 12E. WM. KENAN COUNTY, WASHINGTON</p> <p>MADE BY: ALAN J. BAKER</p>	<p>VERTICAL CONTROL 1988 1994</p>	<p>JONES BASS & ASSOCIATES 1000 1st Avenue Seattle, WA 98101 (206) 461-1000</p>
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Attachment 5 to Exhibit B

1

- Approximate horizontal range of panoramic view is 120° using a 28 mm lens





- All photographs were taken on November 14, 1995.
- Indication of existing trails & photo reference points is approximate.
- Photo reference point "2" is not to be confused with the second viewpoint referred to in Attachment 4 to Exhibit B. Photo point "2" is intended for photo reference only.

• Approximate horizontal range of panoramic view is 100° using a 120 mm lens

1 Additional close-up view of opposite shoreline



panorama continues below
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panorama continues below
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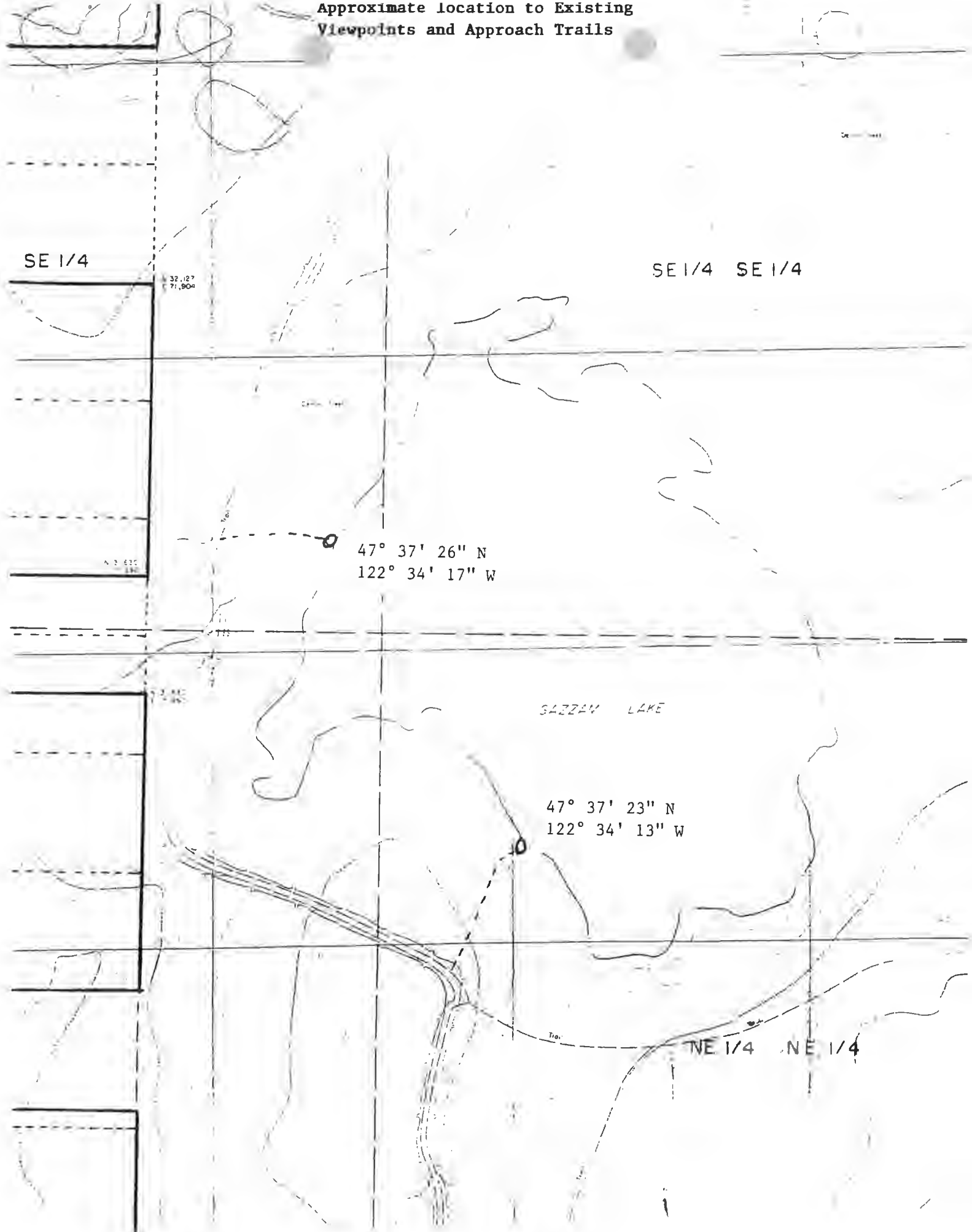
• Approximate horizontal range of panoramic view is 160° using a 28 mm lens



panorama
continues
below



Approximate location to Existing Viewpoints and Approach Trails



SE 1/4

SE 1/4 SE 1/4

32,127
71,904

A 2 630
- 180

47° 37' 26" N
122° 34' 17" W

SAZZAN LAKE

47° 37' 23" N
122° 34' 13" W

NE 1/4 NE 1/4

WINSLOW

FLETCHER BAY ROAD

LYNNWOOD CENTER ROAD

ISLAND CENTER ROAD

MARSHALL ROAD

BUCKINGHAM ROAD



CRYSTAL SPRINGS DRIVE

BUCKINGHAM ROAD



ATTACHMENT 7 TO EXHIBIT B
 Aerial Photograph

EXHIBIT C

ACTIVE RECREATION PORTION OF GAZZAM LAKE PROPERTY

That portion of the Southeast quarter of Section 32, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington, described as follows:

Beginning at the Southeast corner of said Section 32;

Thence along the East line thereof, N 01°15'48" E 522.91 feet to the True Point of Beginning;

Thence continuing N 01°15'48" E 1700.00 feet;

Thence leaving said East line, N 88°32'23" W 225.00 feet;

Thence S 29°31'18" W 1303.19 feet;

Thence S 01°15'48" W 550 Feet;

Thence S 88°32'23" E 842.00 feet to the True Point of Beginning.

Containing 24.72 Acres

DEED OF TRUST NOTE

\$3,600,000.00

Bainbridge Island, Washington
November _____, 1995

FOR VALUE RECEIVED, the undersigned promises to pay to the order of CRYSTAL SPRINGS PROPERTY GENERAL PARTNERSHIP, a Washington general partnership, at its office at 318 First Avenue South, Seattle, Washington 98104, or at such other place as holder may designate in writing, the sum of Three Million Six Hundred Thousand and no/100 Dollars (\$3,600,000.00) in lawful money of the United States with interest from date until paid at the rate of six percent (6%) per annum due on January 3, 1996 and no earlier than January 1, 1996.

Payment shall be applied:

First, to the payment of accrued interest;

Second, to the payment, at the option of the holder, of such advances as the holder may have made for taxes, assessments, or insurance premiums and other charges on any property mortgages, pledged, or deeded in trust to secure this note; and

Third, to the reduction of principal of this note.

This note is secured by a Deed of Trust of even date. If default is made in payment of any installment when due or in the keeping of any covenant of that Deed of Trust, then, at the option of the holder, the entire debt hereby evidenced, including principal and accrued interest, shall become due and thereafter bear interest at the rate of twelve percent (12%) per annum. Failure to exercise this option shall not waive the right to exercise the same in the event of any subsequent default. In the event of any such default, the undersigned promises to pay all collection expenses, including reasonable attorneys fees incurred with or without suit and on appeal.

Every person at any time liable for the payment of the debt hereby evidenced waives presentment for payment, demand and notice of nonpayment of this note, and consents that the holder may extend the time of payment or otherwise modify the terms of payment of this note at any time or times at the request of anyone now or hereafter liable.

This note is made with reference to and is to be construed in accordance with the laws of the State of Washington.



Chicago Title Insurance Company

FILED FOR RECORD AT REQUEST OF

THIS SPACE PROVIDED FOR RECORDER'S USE:

WHEN RECORDED RETURN TO

Name _____

Address _____

City, State, Zip _____

SHORT FORM

Deed of Trust

(For Use in the State of Washington Only)

THIS DEED OF TRUST, made this _____ day of _____, 19____, between _____, GRANTOR,

whose address is _____ CHICAGO TITLE INSURANCE COMPANY, a corporation, TRUSTEE, whose address is 1200 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104, and _____ CRYSTAL SPRINGS PROPERTY GENERAL PARTNERSHIP a Washington general partnership, BENEFICIARY,

whose address is 318 First Avenue South, Seattle, WA 98104 WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the following described real property in _____ Kitsap County, Washington

SEE ATTACHED LEGAL DESCRIPTION

TOGETHER WITH all the accretions, improvements and appurtenances, now or hereafter thereto belonging or in any wise appertaining, and the rents, issues and profits thereof and all other property or rights of any kind or nature whatsoever further set forth in the Master Form Deed of Trust hereinafter referred to, SUBJECT, HOWEVER, in the right, powers and authority hereinafter given or now specified upon Beneficiary to collect and apply such rents, issues and profits.

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor incorporated by reference or contained herein and payment of the sum of THREE MILLION SIX HUNDRED THOUSAND AND NO/100

DOLLARS

(\$ 3,600,000.00

with interest thereon according to the terms of a promissory note of even date here with, payable to Beneficiary or order and made by Grantor, all renewals, modifications or extensions thereof, and also such further amounts as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.