



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

January 17, 2012

Ordinance 17254

Proposed No. 2011-0455.1

Sponsors Phillips

1 AN ORDINANCE authorizing the King County executive
2 to execute an intergovernmental agreement with the
3 Washington state Department of Ecology and the United
4 States Army Corps of Engineers to allow King County to
5 meet mitigation requirements in newly adopted federal
6 rules through an in-lieu fee program, and to ensure
7 consistency of the in-lieu program with the terms of the
8 agreement; and amending Ordinance 11955, Section 9, as
9 amended, and K.C.C. 2.16.045, Ordinance 15051, Section
10 151, and K.C.C. 21A.24.133, Ordinance 15051, Section
11 152, and K.C.C. 21A.24.137, Ordinance 10870, Section
12 486, as amended, and K.C.C. 21A.24.390, Ordinance
13 10870, Section 487, as amended, and K.C.C. 21A24.400,
14 Ordinance 10870, Section 488, as amended, and K.C.C.
15 21A.24.410 and Ordinance 10870, Section 489, as
16 amended, and K.C.C. 21A.24.420.

STATEMENT OF FACTS:

18 1. Permit applicants in King County whose proposed projects involve
19 unavoidable impacts to aquatic resources are required to provide

20 compensatory mitigation for such impacts by King County's Critical Areas
21 Ordinance, in Ordinance 15051 from 2004.

22 2. Onsite compensatory mitigation is not always possible nor ecologically
23 appropriate, and studies have shown that permittee offsite mitigation
24 efforts have a high rate of failure.

25 3. An in-lieu fee mitigation program provides permittees the option of
26 addressing offsite mitigation requirements by paying a fee in lieu of
27 implementing their own mitigation to a program that typically has
28 substantial mitigation experience.

29 4. Sponsors of such in lieu-fee programs use permittee-paid fees to
30 implement appropriate compensatory mitigation in ways and in locations
31 that provide a greater likelihood of continued ecological function and
32 integrity of aquatic ecosystems.

33 5. King County's mitigation reserves program was established by King
34 County's Critical Areas Ordinance, in Ordinance 15051, Sections 151 and
35 152, from 2004, and was implemented as an in-lieu fee mitigation
36 program to provide permittees an alternative to onsite or permittee-
37 responsible mitigation.

38 6. The mitigation reserves program has been in operation since 2005 and
39 has implemented mitigation projects that satisfy the mitigation
40 requirements of multiple governments, including those of the United
41 States Army Corps of Engineers ("USACE"), the state of Washington,
42 King County and other local governments.

43 7. In April 2008, the United States Environmental Protection Agency
44 ("EPA") and the USACE jointly issued new rules authorizing use of, and
45 establishing requirements for, mitigation banks and in-lieu fee programs to
46 provide compensatory mitigation for unavoidable impacts to waters of the
47 United States, 40 CFR Part 230 and 33 CFR Part 320, respectively. These
48 rules allow the USACE to enter into agreements with other governments
49 and non-profits, who seek to offer mitigation credits to permittees for their
50 unavoidable impacts to waters of the United States, and have those credits
51 recognized as meeting mitigation requirements of the USACE.

52 8. Since the issuance of the new federal rules in April 2008, the mitigation
53 reserves program has been working in partnership with representatives of
54 the federal, state and local agencies and a number of tribes, including the
55 USACE, the EPA, the U.S. Fish and Wildlife Service, the National Marine
56 Fisheries Service, the Washington state Department of Ecology
57 ("WADOE"), the Washington state Department of Fish and Wildlife, the
58 Muckleshoot Indian Tribe and the Tulalip Indian Tribe to develop an
59 agreement that would allow the mitigation reserves program to meet the
60 numerous and detailed requirements of the new rules, while also satisfying
61 state and local government mitigation requirements as well. The King
62 County Mitigation Reserves Program In Lieu Fee Program Instrument
63 ("MRP instrument"), Attachment A to this ordinance, represents the
64 outcome of these efforts.

65 9. In the course of working on meeting the requirements of the MRP
66 instrument, the in-lieu fee program recognized the need to develop revised
67 processes and procedures and to follow a formal method of documentation
68 reflecting commitments required by the new federal rules. This resulted in
69 significant changes to the way the mitigation reserves program is to be
70 administered, as reflected in the MRP instrument.

71 10. The mitigation reserves program, both in its current and in its
72 proposed newly revised form under the MRP instrument, has as its main
73 purpose and goal the achievement of no net loss of functions and values
74 provided by wetlands and other aquatic areas as required by the Clean
75 Water Act, and other applicable laws.

76 11. The mitigation reserves program operates, and will continue to
77 operate under the MRP instrument, in a watershed context to ensure that
78 mitigation addresses the most important recovery needs of ecosystems and
79 watersheds.

80 12. In the MRP instrument, the mitigation fee schedule has been set, as
81 required by the federal rule, to account for full costs of implementing
82 mitigation projects and managing the projects to ensure their continued
83 viability over time, as well as costs associated with administering the
84 program.

85 13. Mitigation fees are required by the federal rule to be held in a separate
86 interest bearing fund, similar to a fund which King County already has
87 established. K.C.C. 21A.24.390.

88 14. The appropriation of sufficient funds from the separate in-lieu fee
89 program fund to pay for mitigation projects is a requirement of the MRP
90 instrument, and prior to certifying the program, the USACE requires that
91 the department of natural resources and parks make a commitment that it
92 will seek appropriations from the council for additional funds in the event
93 available funds from the in-lieu fee fund are insufficient to meet
94 mitigation obligations.

95 15. The MRP Instrument, developed in partnership with representatives of
96 federal, state, and local governments and Indian tribes, provides for an
97 interagency review team, composed of the same or similar such
98 representatives, who will have input on all major decisions regarding the
99 operation and implementation of the mitigation reserves program, as it
100 relates to credits for federal, state and local permittees having impacts on
101 aquatic areas.

102 16. The MRP instrument is proposed as a binding three-party agreement
103 by and among King County, the USACE and the WADOE that
104 memorializes the rights and obligations of the these parties to the MRP
105 instrument.

106 17. The District Engineer of the USACE, Seattle District, and the
107 WADOE have indicated their intent to sign the MRP instrument and,
108 thereby, certify the program upon execution by King County, at which
109 point the program can begin operating in accordance with the 2008 federal
110 rules.

111 18. Upon certification, King County's in-lieu fee program will be the first
112 such program to be certified under the new federal rules in Washington
113 state and may set precedent for other local governments seeking such
114 certification regionally and nationally.

115 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

116 SECTION 1. The executive is hereby authorized to execute on behalf of King
117 County the King County Mitigation Reserves Program In Lieu Fee Program Instrument,
118 in substantially the form of Attachment A to this ordinance, with the Washington state
119 Department of Ecology and the United States Army Corps of Engineers for
120 implementation and use of King County's mitigation reserves program's in-lieu fee
121 program to meet mitigation requirements of federal, state and local government agencies.

122 SECTION 2. The water and land resources division of the department of natural
123 resources and parks is hereby authorized to administer and operate the mitigation reserves
124 program's in-lieu fee program with assistance from the department of development and
125 environmental services.

126 SECTION 3. Ordinance 11955, Section 9, as amended, and K.C.C. 2.16.045 are
127 each hereby amended to read as follows:

128 A. The department of natural resources and parks is responsible to manage and
129 be fiscally accountable for the wastewater treatment division, water and land resources
130 division, solid waste division and parks and recreation division. The department shall
131 administer and implement the requirements of the federal Clean Water Act, federal
132 Endangered Species Act and other federal and state laws and regulations related to those
133 requirements. The department shall perform the metropolitan water pollution abatement

134 function referred to in this section as — the water quality program, as set forth in chapter
135 35.58 RCW, K.C.C. Title 28 and other federal and state laws and regulations applicable
136 to that function, although financial planning for and administration of the water quality
137 program shall be conducted consistent with financial policies approved by the council.
138 The department shall coordinate the county's National Pollutant Discharge Elimination
139 System ("NPDES") municipal stormwater permit program. The department shall provide
140 the support to the county's participation in the regional water supply planning process
141 including the development of reclaimed water and the review of local utility district plans
142 for conformance with county plans and policies and shall participate in the process of
143 preparing coordinated water system plans to ensure conformance with county plans and
144 policies. The department shall provide for the active and passive recreational needs of
145 the region, consistent with the mission of the parks and recreation division described in
146 subsection E.1 of this section. The department shall designate as natural resource lands
147 those county-owned lands that serve important natural resource functions, including, but
148 not limited to, benefiting and protecting natural drainage systems, drainage basins, flood
149 control systems, ecosystems, water quality, ground water, fisheries and wildlife habitat
150 and other natural resource purposes. The department shall act to ensure integration of
151 environmental programs across utility and resource functions and to balance stewardship
152 with economic development issues. To ensure integration and balanced stewardship
153 through the director's office the department shall oversee strategic planning using staff
154 resources budgeted in the department's divisions. Strategic planning may include, but not
155 be limited to: integration of land and water resource protection; coordination of
156 ((groundwater)) ground water, water reuse and water supply plan approval; development

157 of new funding approaches for resource protection; establishment of new partnerships
158 with businesses, community organizations and citizens; and better coordination of
159 sewerage and flood control facilities to prevent water quality degradation. The director's
160 office shall manage the county's historic preservation program including landmark
161 designation, protection and enhancement to support tourism development, downtown
162 revitalization and environmental and cultural sustainability.

163 B.1. The duties of the (~~waste-water~~) wastewater treatment division shall include
164 the following:

165 a. administering the functions and programs related to the operation,
166 maintenance, construction, repair, replacement and improvement of the metropolitan
167 sewerage system and its financing;

168 b. administering the county's sewage disposal agreements with cities and
169 special districts;

170 c. providing planning for the water quality capital program;

171 d. providing design, engineering and construction management services related
172 to the water quality capital programs including new facilities development and
173 maintenance of the existing infrastructure;

174 e. providing support services such as project management, environmental
175 review, permit and right-of-way acquisitions, scheduling and project control; and

176 f. regulating industrial discharges into the metropolitan sewerage system.

177 2. The council may assign responsibility for services ancillary to and in support
178 of the operation and maintenance of the metropolitan water pollution abatement system
179 under chapter 35.58 RCW, including, but not limited to, human resources, accounting,

180 budgeting, finance, engineering, fleet administration, maintenance, laboratory,
181 monitoring, inspection and planning, as it determines appropriate.

182 C. The duties of the water and land resources division shall include the
183 following:

184 1. Proposing or updating, or both, and implementing adopted policies, plans and
185 programs relating to water and land resources, open space and other natural resources that
186 protect fisheries, natural resources, water quality and ground water and that solve and
187 prevent drainage problems;

188 2. Responding to major river floods and addressing drainage problems in
189 unincorporated portions of the county as provided in K.C.C. Title 9, the Surface Water
190 Management Program, in K.C.C. chapter 20.12, the King County Flood Hazard
191 Reduction Plan Policies and other policies established by the council;

192 3. Within available resources, maintaining major river channels, and surface and
193 storm drainage systems and lands to minimize flood hazards and protect fisheries
194 resources, drainage systems and lands, and water quality;

195 4. Providing coordination and technical assistance within the county and other
196 governments to assist in setting and implementing priorities for water and land resources,
197 including sample collection, laboratory services, monitoring, analysis and other activities
198 to protect, enhance and evaluate the quality of land, habitat and water resources in the
199 county;

200 5. Planning the surface water management capital program, providing design,
201 engineering and construction management services related to the surface water
202 management capital program including new facilities development and maintenance of

203 the existing infrastructure and providing support services such as project management,
204 environmental review, permit and right-of-way acquisitions, scheduling and project
205 control;

206 6. Preparing standards for storm water management facilities that are
207 constructed as part of land development;

208 7. Providing technical assistance and education to businesses and the general
209 public to encourage environmental stewardship;

210 8. Implementing the county park, open space, trails, agriculture, forestry, and
211 other natural resources acquisition programs, including planning, site selection,
212 financing, acquisition, project budget management and purchasing fee and less than fee
213 interests;

214 9. Monitoring and protecting the county's development rights interests related to
215 agricultural lands;

216 10. Consulting in the preparation of management plans for protection and use of
217 the natural resource values of county owned lands, including natural resource lands,
218 dedicated and deeded open space lands and lands acquired by the county as a condition of
219 land development approval, and consulting with the parks and recreation division the
220 appropriate means to execute such management plans;

221 11. The office of rural and resource lands shall be a distinct functional unit of
222 the division reporting directly to the water and land resources division manager. The
223 office shall plan, manage and be responsible for administering the county's rural and
224 resource lands programs including, but not limited to, agriculture, farmlands preservation,

225 current use taxation programs, forestry, noxious weeds, terrestrial wildlife and habitat,
226 rural economic development, and encouraging environmental stewardship; ~~((and))~~

227 12. Planning, prioritizing, seeking funding for, designing and implementing
228 restoration projects on natural resource lands, dedicated and deeded open space lands and
229 lands acquired by the county as a condition of land development approval in coordination
230 with the parks and recreation division; and

231 13. Administering and operating the mitigation reserves program's in-lieu fee
232 program.

233 D. The duties of the solid waste division shall include the following:

234 1. Managing and operating the county's comprehensive solid waste program on
235 a self-supporting basis;

236 2. Administering the county's solid waste interlocal agreements with cities and
237 towns;

238 3. Diverting as much material as possible from disposal in a manner that
239 reduces the overall costs of solid waste management to county residents and businesses,
240 conserves resources, protects the environment and strengthens the county's economy;

241 4. Managing and being accountable for all transfer station operations and
242 landfills, as well as the transportation of waste between county facilities;

243 5. Procuring and maintaining all capital and operating equipment specific to the
244 solid waste function;

245 6. Providing planning, design, engineering and construction management
246 services related to the solid waste capital program including new facilities development
247 and maintenance of existing infrastructure;

248 7. Providing support services such as project management, environmental
249 review, permit acquisitions, scheduling and project control; and

250 8. Actively pursuing all revenue sources in an effort to maintain the lowest
251 possible rate structure for the benefit of county residents.

252 E. The duties of the parks and recreation division shall include the following:

253 1. Carrying out the county's parks and recreation division mission, which is to
254 provide regional trails, regional passive parks, regional resource and ecological lands and
255 regional active recreation facilities, rural parks and local unincorporated area parks within
256 the urban growth boundary until annexed, by employing entrepreneurial strategies that
257 raise revenues to support park operations and facilitating agreements with other
258 jurisdictions and entities to provide for recreational services and other activities;

259 2. Proposing and implementing adopted policies, plans and programs related to
260 the provision of regional and rural parks and recreation facilities and programs and
261 natural resource lands in King County and local parks in the unincorporated portion of
262 King County within the urban growth boundary until those areas are annexed;

263 3. Within available resources, managing, operating and maintaining or
264 facilitating the management, operation and maintenance of the county parks and
265 recreation facilities;

266 4. Within available resources, maintaining, restoring or facilitating the
267 maintenance of regional resource and ecological lands in consultation with the water and
268 land resources division;

269 5. Monitoring and protecting the county's real property and development rights
270 interests acquired through the conservation futures and other open space and natural

271 resource programs, with the exception of development rights on agricultural lands,
272 ensuring to the greatest extent practicable that subsequent county land use policies remain
273 compatible with the acquired interests;

274 6. Preparing and implementing in consultation with the water and land resources
275 division the management plans for protection and use of the natural resource values of
276 county owned lands, including natural resource lands, dedicated and deeded open space
277 lands and lands acquired by the county as a condition of land development approval, and
278 determining appropriate means to execute those management plans;

279 7. Administering, operating and maintaining those lands designated as natural
280 resource lands, using any work forces as appropriate;

281 8. Developing and maintaining an operational master plan and develop and
282 monitoring a capital improvement plan as defined in K.C.C. chapter 4.04;

283 9. Within available resources, developing and facilitating agreements for the
284 development of specific active park and recreation facilities;

285 10. Coordinating with other departments and divisions as appropriate in the
286 preparation of grant applications for park and open space acquisition, development and
287 operations;

288 11. Developing, managing, or facilitating agreements for the provision of
289 recreational programs; and

290 12. Facilitating programs that promote the safe enjoyment of county-owned
291 swimming pools and guarded swim beaches.

292 SECTION 4. Ordinance 15051, Section 151, and K.C.C. 21A.24.133 are each
293 hereby amended to read as follows:

294 A. To the maximum extent practical, an applicant shall mitigate adverse impacts
295 to a wetland, aquatic area, wildlife habitat conservation area or wildlife habitat network
296 on or contiguous to the development site. The department may approve mitigation that is
297 off the development site if an applicant demonstrates that:

298 1. It is not practical to mitigate on or contiguous to the development proposal
299 site; and

300 2. The off-site mitigation will achieve equivalent or greater hydrological, water
301 quality and wetland or aquatic area habitat functions.

302 B. When off-site mitigation is authorized, the department shall give priority to
303 locations within the same drainage subbasin as the development proposal site that meet
304 the following:

305 1. Mitigation banking sites and resource mitigation reserves as authorized by
306 this chapter;

307 2. Private mitigation sites that are established in compliance with the
308 requirements of this chapter and approved by the department; and

309 3. Public mitigation sites that have been ranked in a process that has been
310 supported by ecological assessments, including wetland and aquatic areas established as
311 priorities for mitigation in King County basin plans or other watershed plans.

312 C. The department may require documentation that the mitigation site has been
313 permanently preserved from future development or alteration that would be inconsistent
314 with the functions of the mitigation. The documentation may include, but is not limited
315 to, a conservation easement or other agreement between the applicant and owner of the
316 mitigation site. King County may enter into agreements or become a party to any

317 easement or other agreement necessary to ensure that the site continues to exist in its
318 mitigated condition.

319 D. The department shall maintain a list of sites available for use for off-site
320 mitigation projects.

321 E. The department (~~may~~) and the department of natural resources and parks
322 have developed a program to allow the payment of a fee in lieu of providing mitigation
323 on a development site. The program (~~should~~) addresses:

324 1. When the payment of a fee is allowed considering the availability of a site in
325 geographic proximity with comparable hydrologic and biological functions and potential
326 for future habitat fragmentation and degradation; and

327 2. The use of the fees for mitigation on public or private sites that have been
328 ranked according to ecological criteria through one or more programs that have included
329 a public process.

330 SECTION 5. Ordinance 15051, Section 152, and K.C.C. 21A.24.137 are each
331 hereby amended to read as follows:

332 The department may approve mitigation to compensate for the adverse impacts of
333 a development proposal to critical areas through the creation and approval of a resource
334 mitigation reserve and through use of an in-lieu fee program. The use of a resource
335 mitigation reserve or in-lieu fee program to compensate for unavoidable impacts to a
336 critical area is not allowed in the agricultural production districts if the purpose is to
337 compensate for development outside of the agricultural production districts.

338 SECTION 6. Ordinance 10870, Section 486, as amended, and K.C.C.
339 21A.24.390 are each hereby amended to read as follows:

340 There is hereby created a critical areas mitigation fund and a separate in-lieu fee
341 program fund. The King County finance and business operations division shall
342 administer ~~((this))~~ the funds.

343 SECTION 7. Ordinance 10870, Section 487, as amended, and K.C.C.
344 21A.24.400 are each hereby amended to read as follows:

345 King County shall deposit all moneys received ~~((as mitigation payments through a~~
346 ~~fee in-lieu mitigation program or))~~ from penalties resulting from the violation of rules
347 and laws regulating development and activities within critical areas into the critical areas
348 mitigation fund. Fees received as a result of participation in the in-lieu fee program shall
349 be placed into the in-lieu fee program fund. With council authorization, the department
350 may contribute funds from the critical areas mitigation fund to the in-lieu fee program
351 fund.

352 SECTION 8. Ordinance 10870, Section 488, as amended, and K.C.C.
353 21A.24.410 are each hereby amended to read as follows:

354 Moneys from the critical areas mitigation fund shall only be used for paying the
355 cost of enforcing and implementing critical area laws and rules and for contributing to
356 programs, activities or projects in the in-lieu fee program. Moneys collected for the in-
357 lieu fee program shall only be used for programmatic activities and projects in the in-lieu
358 fee program.

359 SECTION 9. Ordinance 10870, Section 489, as amended, and K.C.C.
360 21A.24.420 are each hereby amended as follows:

361 King County shall deposit moneys in the critical areas mitigation fund and the in-
362 lieu fee program fund not needed for immediate expenditure ~~((in a))~~ into an investment

363 fund in accordance with RCW 36.29.020. The director is the designated ((investment))
 364 fund ((director)) manager for the critical areas mitigation fund. The director of the
 365 department of natural resources and parks is the designated fund manager for the in-lieu
 366 fee program fund.
 367


Ordinance 17254 was introduced on 11/7/2011 and passed by the Metropolitan King County Council on 1/17/2012, by the following vote:

Yes: 6 - Mr. Phillips, Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. Ferguson and Mr. McDermott
 No: 0
 Excused: 3 - Mr. von Reichbauer, Ms. Hague and Mr. Dunn

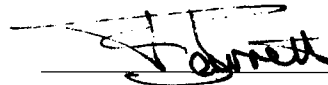
KING COUNTY COUNCIL
 KING COUNTY, WASHINGTON


 Larry Gossett, Chair

ATTEST:


 Anne Noris, Clerk of the Council

APPROVED this 22 day of January, 2012.


 Dow Constantine, County Executive

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 KING COUNTY COUNCIL

Attachments: A. King County Mitigation Reserves Program In Lieu Fee Program Instrument