



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 29, 2004

Ordinance 14858

Proposed No. 2003-0513.2

Sponsors Edmonds, von Reichbauer and
Phillips

1 AN ORDINANCE authorizing the King County executive
2 to execute an intergovernmental land transfer agreement for
3 the conveyance of certain open space properties to the city
4 of Federal Way and providing for cooperation with
5 appropriate federal, state and tribal agencies to provide
6 needed support to the process.

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8

9 **PREAMBLE:**

10 King County owns or will own certain stream habitat conservation
11 properties within the city of Federal Way ("the city").

12 King County desires to divest itself of ownership, management and
13 financial responsibility for park and open space lands located within the
14 city boundaries.

15 The city agrees to own, operate and maintain park and open space
16 properties and facilities within its borders. In consideration of the mutual
17 benefits derived, it would be in the best interest of the citizens of King

18 County to convey the properties and facilities described in this ordinance
19 to the city. Also, in support of this effort, it would serve the interests of
20 the citizens of King County to cooperate with appropriate federal, state
21 and tribal agencies to provide needed support to this process.

22 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

23 SECTION 1. The King County executive is hereby authorized to execute an
24 intergovernmental land transfer agreement for the conveyance of certain open space
25 properties and facilities, listed in Attachment A to this ordinance, to the city of Federal
26 Way.

27 SECTION 2. The King County executive is hereby authorized to execute a
28 multiple-party cooperative agreement substantially in the form shown in Attachment B to
29 this ordinance, which is required for the receipt of federal Natural Resource Damage
30 Assessment grant funds by King County to purchase the parcel of land located at First
31 Avenue South and 366th Street that is contained in the interlocal cooperation agreement
32 in Attachment A to this ordinance. The parties to the agreement in Attachment B to this
33 ordinance include King County, the city of Federal Way and the Commencement Bay
34 Trustees, consisting of the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the
35 Washington state Department of Ecology, as lead state natural resource trustee, the
36 Washington state Department of Natural Resources, the Washington state Department of
37 Fish and Wildlife, the National Oceanic and Atmospheric Administration of the United

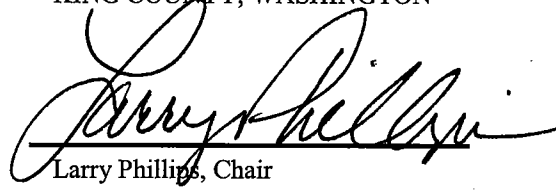
38 States Department of Commerce and the United States Department of the Interior,
39 including the Fish and Wildlife Service and the Bureau of Indian Affairs.

40

Ordinance 14858 was introduced on 11/24/2003 and passed by the Metropolitan King
County Council on 3/29/2004, by the following vote:

Yes: 11 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
McKenna, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons
and Ms. Patterson
No: 0
Excused: 2 - Mr. Pelz and Mr. Constantine

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

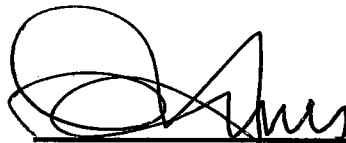
ATTEST:



Anne Noris, Clerk of the Council

RECEIVED
2004 APR -9 AM 9:41
KING COUNTY COUNCIL
CLERK

APPROVED this 8 day of April, 2004.



Ron Sims, County Executive

Attachments

- A. Intergovernmental Land Transfer Agreement Between King County and the City of Federal Way, B. Cooperative Agreement

**Intergovernmental Land Transfer Agreement Between
King County and the City of Federal Way**

Relating to the Ownership, Operation and Maintenance of Parks,
Open Space, Recreation Facilities and Programs

This Agreement is made and entered into this day by and between the City of Federal Way, hereinafter called "City," and King County, hereinafter called "County."

WHEREAS the City desires to own, operate, and maintain parks, open space, recreation facilities and programs and other municipal programs, facilities and property inside its boundaries; and

WHEREAS the County, under the authority of RCW 36.89.050, King County Resolution 34571 and other federal, state and county laws, has acquired a substantial park, recreation and open space system that depends on the continued operation of individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the City boundaries; and

WHEREAS the County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the facility is approximately equal to the value of the property to the County; and

WHEREAS it is in the best interest of the public that the City and the County take those actions necessary to meet those desires and to cooperate in any transition to insure a smooth transition and avoid service disruption;

WHEREAS the County wishes to divest its interests in three open space properties along the Hylebos Creek and the City wishes to obtain these three properties for open space purposes, including the protection and restoration of riparian habitat along the Hylebos Creek;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the County agree as follows:

1. Conveyance of Title

1.1. Within sixty (60) days of execution of this Agreement or within the time otherwise specified in this Agreement, King County shall convey to the City by deed all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the following listed park/recreation site(s), which are described more fully in Exhibit A (the "Property"):

**South 359th Street Parcel
Pacific Highway Parcel
School District # 210 Parcel**

1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"The City, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County shall be conveyed to the county in exchange therefore."

"The City acknowledges that the Property was purchased for open space purposes with funds from the Conservation Futures Program. The City covenants to abide by and enforce all terms, conditions and restrictions in King County Ordinances 9071, 10750 and 13717, including that the City covenants that the Property will continue to be used for the purposes contemplated by these Ordinances, which prohibit both active recreation and motorized recreation such as off-road recreational vehicles but allow passive recreation, and in strict conformance with the uses authorized under RCW 84.34.230, that the Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used for the purposes contemplated by these Ordinances and in strict conformance with the uses authorized under RCW 84.34.230, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or the City shall be received in exchange therefore."

"The City covenants that it will not limit or restrict access to and use of the Property by non-City residents in any way that does not also apply to City residents. The City covenants that any and all user fees charged for the Property, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for non-City residents as for the residents of the City."

“The City covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation.”

“The City covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses.”

- 1.3 The deed for the School District # 210 Parcel shall also contain the following additional, specific covenants pertaining to use, which covenant shall run with the land for the benefit of the Natural Resource Trustees for Commencement Bay and for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and the City agree that the Natural Resource Trustees for Commencement Bay and the County shall have standing to enforce this covenant, which shall be set forth as follows:

“Notice is hereby given that the School District # 210 Parcel is subject to use restrictions and other obligations enforceable by the Natural Resource Trustees for Commencement Bay (enumerated in the Cooperative Agreement described below and attached hereto) and King County. The purpose of these restrictions and obligations is to ensure that the School District # 210 Parcel provides habitat value to the public in perpetuity in the Commencement Bay environment.

These restrictions and obligations are described in Section IV of the Cooperative Agreement for the School District # 210 Parcel Restoration Project (Cooperative Agreement), attached hereto and incorporated herein.

Potential purchasers and lessees are further notified that, pursuant to the Cooperative Agreement, the School District # 210 Parcel may not be disturbed in any manner that would impair or interfere with the integrity of the habitat restoration, except as provided in paragraph IV E.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the School District # 210 Parcel. This restrictive covenant may be removed from the School District # 210 Property only in the manner provided for in the Cooperative Agreement.”

- 1.4 The conveyance of the South 359th Street Parcel is contingent on King County obtaining title to this Parcel by deed pursuant to a King County Local Improvement Assessment Certificate of Purchase dated November 15, 2002. The conveyance of this Parcel as provided for in Section 1.1 of this Agreement shall occur within thirty (30) days after the deed conveying this Parcel to King County is duly executed and recorded.

2. Existing Restrictions, Agreements, Contracts or Permits

- 2.1 The City shall abide by and enforce all terms, conditions, reservations, restrictions, and covenants of title at the time of conveyance and/or in the deed of conveyance.
- 2.2 The City acknowledges and agrees that a billboard is located on the South 359th Street Parcel and that it takes the parcel subject to this encroachment, and the rights, if any, of the owner of the billboard to locate it on this Parcel.

3. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services

- 3.1 The City has inspected and knows the condition of the Property and agrees to accept the Property in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of, and provision of recreational services at, the Property.
- 3.2 King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of King County is authorized otherwise.
- 3.3 The City acknowledges and agrees that except as indicated in paragraph 4.2, the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

4. Environmental Liability

- 4.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 4.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.

- 4.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Such notice shall in no event be provided more than 30 days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation. The parties acknowledge that if hazardous materials on the Property pose an imminent threat to human health or the environment emergency response may be required before the parties can agree on the responsibility for remediation.
- 4.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

5. Indemnification and Hold Harmless

- 5.1 King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of King County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.
- 5.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- 5.3 The City shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the

effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.

5.4 Each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Property.

5.5 Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

6. Audits and Inspections

6.1 Until December 31, 2009, any of either party's records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

7. Waiver and Amendments

7.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

8. Entire Agreement and Modifications

8.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

Legal Descriptions

1. South 359th Street Parcel [14.23 Acres]:

That portion of the Southwest quarter of the Northeast quarter of Section 29, Township 21 North, Range 4 East, W.M., in King County, Washington, lying Southeasterly of State Highway (Pacific Highway South) and Northeasterly of M.E. Neal County Road (South 359th Street);

EXCEPT that portion thereof described as follows:

Beginning at the point of intersection of the Easterly line of State Highway and the Northerly line of said subdivision, which point is North 21°10'00" East 1,427.00 feet and North 89°43'00" East 53.62 feet from the center of said Section 29;

Thence North 89°43'00" East along said Northerly line of said subdivision a distance of 375.43 feet;

Thence South 21°10'00" West parallel with the Easterly line of said Highway, 470.65 feet;

Thence North 65°20'00" West 350 feet to said Easterly line of State Highway;

Thence North 21°10'00" East along said Easterly line of State Highway, 312 feet to the point of beginning.

2. Pacific Highway Parcel [1/2 Acre]:

The Southwesterly 65 feet of the following described property:

Beginning at the point of intersection of the Easterly line of State Highway and the Northerly line of said subdivision, which point is North 21°10'00" East 1,427.00 feet and North 89°43'00" East 53.62 feet from the center of said Section 29;

Thence North 89°43'00" East along said Northerly line of said subdivision a distance of 375.43 feet;

Thence South 21°10'00" West parallel with the Easterly line of said Highway, 470.65 feet;

Thence North 65°20'00" West 350 feet to said Easterly line of State Highway;

Thence North 21°10'00" East along said Easterly line of State Highway, 312 feet to the point of beginning.

3. School District # 210 Parcel [32.81 Acres]:

That portion of the Southwest quarter of the Northeast quarter of Section 29, Township 21 North, Range 4 East, W.M., in King County, Washington, lying Southeasterly of State Highway (Pacific Highway South) and Northeasterly of M.E. Neal County Road (South 359th Street);

EXHIBIT A

EXCEPT that portion thereof described as follows:

Beginning at the point of intersection of the Easterly line of State Highway and the Northerly line of said subdivision, which point is North 21°10'00" East 1,427.00 feet and North 89°43'00" East 53.62 feet from the center of said Section 29;

Thence North 89°43'00" East along said Northerly line of said subdivision a distance of 375.43 feet;

Thence South 21°10'00" West parallel with the Easterly line of said Highway, 470.65 feet;

Thence North 65°20'00" West 350 feet to said Easterly line of State Highway;

Thence North 21°10'00" East along said Easterly line of State Highway, 312 feet to the point of beginning.

**COOPERATIVE AGREEMENT
AMONG CITY OF FEDERAL WAY, KING COUNTY, PUYALLUP TRIBE OF
INDIANS, MUCKLESHOOT INDIAN TRIBE, WASHINGTON DEPARTMENT OF
ECOLOGY, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE,
WASHINGTON DEPARTMENT OF NATURAL RESOURCES, NATIONAL OCEANIC
AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF THE INTERIOR, U.S.
FISH AND WILDLIFE SERVICE AND BUREAU OF INDIAN AFFAIRS REGARDING
THE WEST HYLEBOS ACQUISITION PROPERTY PROJECT**

I. PARTIES

This Agreement is entered into among King County, the City of Federal Way, and the Commencement Bay Natural Resource Trustees (Trustees) consisting of: The Puyallup Tribe of Indians (Puyallup Tribe); The Muckleshoot Indian Tribe (Muckleshoot Tribe); the Washington Department of Ecology (Ecology) as lead state natural resource trustee; the Washington Department of Natural Resources (WDNR); the Washington Department of Fish and Wildlife (WDFW); the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce; and the U.S. Department of the Interior (DOI) including the U.S. Fish and Wildlife Service (USFWS) and the Bureau of Indian Affairs (BIA). King County, the City of Federal Way and the Trustees collectively shall hereafter be identified as the Parties. This Cooperative Agreement concerns the management and use of property provided to the City of Federal Way. The property has been acquired with funds provided by King County and the Trustees.

II. RECITALS

- A. The Trustees, acting under applicable state, federal and tribal law, enter into this Cooperative Agreement in furtherance of their general responsibilities to restore, replace and acquire the equivalent of natural resources of the Commencement Bay environment injured by releases of hazardous substances.
- B. The Trustees are also parties to a Memorandum of Agreement Regarding Natural Resource Damage Assessment in the Commencement Bay, Washington Environment (MOA), including its First Supplement concerning Coordination in the Use of Natural Resource Damage Assessment and Restoration Planning Contributions and Application of Natural Resource Damage Recoveries (MOA Supplement). The MOA Supplement provides that the Trustees may enter into separate agreements or memoranda of understanding to define their respective roles and responsibilities regarding habitat restoration projects undertaken by or on behalf of the Trustees. As between and among the Trustees, the terms of this Cooperative Agreement are intended to apply in addition to those of the MOA and the MOA Supplement, the terms of which are hereby incorporated by reference solely for purposes of defining the rights and relationships among the Trustees.
- C. As a consequence of settlements of natural resource damage claims against several parties, the Trustees have obtained funds, real property and commitments of in-kind services to be used for natural resource restoration purposes. The Trustees have adopted the

Commencement Bay Natural Resource Damage Assessment Restoration Plan (Commencement Bay NRDA Restoration Plan) to guide use of the funds, property and services, and have begun implementing the Commencement Bay NRDA Restoration Plan by identifying potential restoration projects and suitable project sites.

D. Among the proposed restoration project sites identified by the Trustees is a property along Hylebos Creek, a tributary to Commencement Bay, known informally as the West Hylebos Acquisition Property. The property is located at First Avenue South at 366th Street in King County, Washington, and consists of a single tax parcel (King County Assessor's Office Tax Account # 2921049023). Through a resolution of the Trustee Council (Resolution 2003-04, adopted March 11, 2003), the Trustees have agreed to partner with the King County Conservation Futures Program and the City of Federal Way in the acquisition of the West Hylebos Acquisition Property by contributing natural resource damage funds toward the purchase price.

E. Under the authority of RCW 84.34.200-84.34.250, and King County Code Chapter 26.12, King County has established a Conservation Futures Fund Program, through which King County uses earmarked property tax receipts to acquire rights and interests in open space, wetlands, habitat areas, farm, agricultural and timber lands. Per King County Code 26.12.010, property or rights acquired under the Conservation Futures Fund Program are to be subject to covenants and property restrictions to run with the land in perpetuity and in fulfillment of requirements necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve the property for public use or enjoyment. King County is authorized to transfer property or rights acquired under the Conservation Futures Fund Program, subject to such covenants and property restrictions, to a city, state or local governmental agency empowered to hold fee simple or other interests in land on behalf of the public.

F. The City of Federal Way has adopted goals and policies in its Comprehensive Plan, adopted pursuant to the Growth Management Act, that encourage the acquisition and development of parks within the City, and acquiring the West Hylebos Acquisition Property would further the goals and policies of that Plan.

G. The purpose of this Cooperative Agreement is to identify the rights and responsibilities of the Parties regarding the West Hylebos Acquisition Property and the restoration project potentially to be developed on it.

III. AUTHORITY

This Cooperative Agreement is entered into pursuant to the Natural Resource Trustee provisions of section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9607(f), Section 311 of the Clean Water Act (CWA), as amended, 33 U.S.C. 1321, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart G, 40 C.F.R. 300.600 > 300.615, Interlocal Cooperation Act, RCW 39.34, RCW 84.34.200-84.34.250, and other applicable federal state and tribal law. The following officials or their designees act on behalf of the public as state, federal and tribal Trustees for natural resources under this Cooperative Agreement:

The Tribal Council, or its designee, for the Puyallup Tribe of Indians;

The Tribal Council, or its designee, for the Muckleshoot Indian Tribe;

The Secretary of the Interior;

The Undersecretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce;

The Director of the Department of Ecology for the State of Washington, as lead state Trustee, the Commissioner of Public Lands of the State of Washington, and the Director of the Washington Department of Fish and Wildlife.

IV. TERMS AND CONDITIONS

A. West Hylebos Acquisition Property Project

The West Hylebos Acquisition Property Project (West Hylebos Project) consists of: (1) acquisition of the West Hylebos Acquisition Property by King County using Conservation Futures Fund monies and natural resource damage funds provided by the Trustees, (2) transfer of the West Hylebos Acquisition Property to the City of Federal Way subject to a restrictive covenant, attached hereto as Exhibit 1, to ensure the property will be preserved and used consistently with the purpose of this Cooperative Agreement, (3) preservation of existing habitat values, and (4) potential alterations and improvements by the Trustees of existing upland and aquatic habitat on the West Hylebos Acquisition Property, as described below in Section IV.C., to benefit fish and wildlife species that utilize the Commencement Bay environment. The overall purpose of the Restoration Project is to restore natural resources injured by releases of hazardous substances. This purpose will be accomplished by taking actions to protect and enhance fish and wildlife habitat at the site and by precluding inconsistent uses of the property, thereby increasing the ecosystem complexity and habitat value of Commencement Bay and its tributaries for birds, wildlife, fish and other aquatic organisms.

B. Property Ownership, Use and Maintenance

1. West Hylebos Acquisition Property Ownership. King County shall acquire ownership of the West Hylebos Acquisition Property, and shall transfer ownership to the City of Federal Way subject to a restrictive covenant on the deed in the form attached hereto as Exhibit 1 (~~Restrictive Covenant~~). King County and the City of Federal Way shall cause the Restrictive Covenant with a copy of this Cooperative Agreement attached to be filed in the real property records for King County. It is the purpose of this Restrictive Covenant to assure that the West Hylebos Acquisition Property will remain available for habitat restoration in perpetuity. The City of Federal Way shall take such action as is necessary to preclude use of the property inconsistent with the purposes of this Cooperative Agreement.

2. West Hylebos Acquisition Property Use. Activities may be conducted on the West Hylebos Acquisition Property that are consistent with the purpose provided in Section IV.A. above. Use of, or activity on, the West Hylebos Acquisition Property inconsistent with this purpose is prohibited and the Parties acknowledge and agree that they will not conduct, engage in, or permit such use or activity.

The Parties agree that activities conducted in accordance with the terms and conditions of applicable laws, regulations and permit requirements and any restoration project plan (Restoration Project Plan) developed by the Trustees in consultation with the City of Federal Way and King County for the site would be consistent with the purposes of providing habitat value in the Commencement Bay environment, including but not limited to:

- § construction, maintenance and adaptive management activities in accordance with the Restoration Project Plan, such as land grading, excavation, and recontouring, vegetation removal, substrate enhancement and planting native vegetation
- § ecological surveys and research
- § low impact recreation (wildlife viewing/observation)
- § construction and maintenance of informational and educational signs or kiosks
- § activities to control non-native, invasive or noxious plants and animals
- § construction of a path or trail with construction, design, location, and of materials intended to minimize disturbance of sensitive habitat areas
- § emergency activities to protect public health and safety
- § designation of a parking area as needed to provide public access to the West Hylebos Acquisition Property and/or contiguous publicly owned property dedicated to similar use, provided that the size, configuration, design and elements of any such parking area shall be subject to the agreement of the Parties.

The Parties agree that activities that would not be consistent with the purposes of providing habitat value in the Commencement Bay environment include but are not limited to:

- § alteration of hydrology, including dredging, diking, draining or filling, except pursuant to the Restoration Project Plan
- § constructing buildings or structures not permitted above
- § storage of vehicles, vessels, containers, equipment or other items except temporary storage of equipment or materials in use for restoration project development, monitoring and maintenance and routine site maintenance
- § any activities causing significant water pollution, erosion or sedimentation
- § removal or disturbance of native vegetation, except in connection with transplanting activities for further habitat restoration projects as specifically agreed among the Parties
- § aquaculture of non-native species
- § waste disposal or storage including sewage, manure, garbage, pesticides or hazardous waste
- § application of fertilizers or pesticides, except pursuant to restoration project plans as specifically agreed among the Parties
- § mining
- § intentional disruption of wildlife
- § planting of invasive non-native vegetation
- § erection of commercial billboards and signs

The listing of specific activities herein as being consistent with or not consistent with the purposes of this Cooperative Agreement is not intended to be exhaustive. The conducting by any person of the listed activities considered consistent with the purposes of this Cooperative Agreement shall be subject to the access restrictions of Section IV.B.3. of this Cooperative Agreement.

3. West Hylebos Acquisition Property Access.

a. At all reasonable times the Parties (or other parties specifically designated by any of the Parties) may enter and freely move about the West Hylebos Acquisition Property for the purposes of site inspection and for West Hylebos Project implementation, the process for which is described in Section IV.C. below, performing project monitoring or adaptive management, or carrying out the terms of this Cooperative Agreement.

b. Access by the general public to any part of the West Hylebos Acquisition Property shall be in accordance with applicable laws, regulations or ordinances and such reasonable use restrictions as the Parties determine necessary to further the purposes of the West Hylebos Project.

4. West Hylebos Acquisition Property Maintenance. The City of Federal Way shall perform ordinary upkeep and maintenance of the West Hylebos Acquisition Property. The term "ordinary upkeep and maintenance" means tasks that a prudent land manager would perform in the normal course of managing similar property. Maintenance of the Restoration Project other than ordinary upkeep and maintenance shall be dealt with under Section IV.C.1. of this Cooperative Agreement.

C. Restoration Project Development, Administration and Implementation.

1. The Trustees intend to develop an as-yet undesigned habitat restoration project on the West Hylebos Acquisition Property potentially involving alterations and improvements of existing upland and aquatic habitat features. In designing any such habitat restoration project, the Trustees shall consult with King County and the City of Federal Way, and may consult with non-governmental entities including without limitation the Friends of the Hylebos Wetlands. Prior to the development of any such habitat restoration project, the Parties will enter into a Restoration Project Memorandum of Understanding, which shall include and incorporate an agreed project design and shall address details of project administration and implementation. As between the Parties, the Trustees shall be responsible for designing, developing, implementing and constructing any such habitat restoration project for the West Hylebos Acquisition Property.

2. The Trustees shall also be responsible for any project maintenance and adaptive management activities for any such project. For purposes of this Cooperative Agreement, "adaptive management activities" means additional actions that need to be taken on the West Hylebos Acquisition Property to maintain the constructed habitat or change the habitat in some manner to meet the West Hylebos Project purpose provided in Section IV.A. above. Anticipated changes or developments that may require adaptive management include, among others, the failure of vegetation to establish or spread, substantial erosion or sedimentation that adversely alters habitat characteristics, or adverse impacts from offsite development or access to the property. Provided, however, that adaptive management to address adverse impacts that result mainly from access to and/or use of the property by employees, agents or contractors of King County or the City of Federal Way shall be the responsibility of the party responsible for causing the adverse impacts. Adaptive management to address adverse impacts that result mainly from the public's access to and or use of the property shall be the responsibility of the City of Federal Way.

D. Dispute Resolution.

1. Avoidance of Disputes. The Parties agree to work cooperatively, to consult informally and to use best efforts to avoid disputes concerning the implementation of this Cooperative Agreement.

2. Notice of Dispute. If a dispute arises between the Parties concerning the implementation of this Cooperative Agreement, any party may initiate dispute resolution by giving written notice thereof to the other parties. In the case of an actual or threatened violation of the Cooperative Agreement, the notice shall identify corrective action sufficient to cure the violation and to restore any portion of the West Hylebos Acquisition Property injured as a result of the violation.

3. Informal Negotiations. Following receipt of a notice of dispute, the Parties shall attempt to resolve the dispute expeditiously and informally. If the dispute is resolved by informal negotiations, the Parties shall memorialize the resolution of the dispute by an exchange of letters.

4. Formal Negotiations - Preparation of Joint Statement of Position. If the Parties are unable to reach a resolution of a dispute through informal negotiations, after fourteen (14) calendar days following delivery of the notice of dispute described above in subparagraph 2 any party may initiate formal negotiations by providing written notice to the other parties of the notifying party's intent to develop a Joint Statement of Position. The Joint Statement of Position shall consist of a concise written statement of the issues in dispute, including the relevant facts upon which the dispute is based and the data, analysis or opinion supporting each position, and any supporting documentation on which each party relies. The Parties shall complete the Joint Statement of Position within fourteen calendar (14) days following receipt of the formal negotiations notice, or by such later date as the Parties shall agree. Upon completion of the Joint Statement of Position, the dispute shall be referred to authorized officials of each Party for resolution. Each Party shall advise the other Parties in writing of the identity of the authorized official designated to participate in the dispute resolution process. The resolution agreed to by such authorized officials shall be binding upon the Parties. The Joint Statement of Position shall constitute the exclusive factual record of the dispute in the event that the Parties are unable to resolve the dispute and any party seeks judicial resolution.

E. Removal of the Restrictive Covenant and Termination of the Cooperative Agreement.

The Restrictive Covenant may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

1. The Parties jointly agree to extinguish the restriction or release a portion of the West Hylebos Project from the terms of restriction, upon a determination by Trustees in their discretion in consultation with King County and the City of Federal Way that circumstances have rendered the purpose of the West Hylebos Project, as provided in Paragraph IV.A. above, impractical to achieve.

2. Upon petition by one or all of the Parties, a court having jurisdiction over this restriction determines by judicial proceedings that circumstances have rendered the purpose of the West Hylebos Project as provided in Paragraph IV.A. above impossible to achieve.

3. All or any of the West Hylebos Acquisition Property is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. The Parties shall act jointly to recover the full value of the interest in the West Hylebos Acquisition Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting from the taking or in-lieu purchase.

4. The Parties agree that the proceeds to which the City of Federal Way shall be entitled after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the West Hylebos Acquisition Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided, by Washington law. The City of Federal Way shall use such proceeds only to obtain similar substitute property acceptable to all the Parties within Commencement Bay or within the Puyallup-Carbon-White Rivers watershed closest to Commencement Bay if one within Commencement Bay is unavailable. The City of Federal Way shall impose upon such substitute property a restrictive covenant on the deed in the form attached hereto as Exhibit 1.

F. Subsequent Transfer.

The City of Federal Way shall:

1. Not sell, transfer or otherwise divest itself of all or any portion of the West Hylebos Acquisition Property, including, without limitation, a leasehold interest, without prior written approval of the Trustees and King County.
2. Incorporate the terms of the Restrictive Covenant by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the West Hylebos Acquisition Property, including, without limitation, a leasehold interest.
3. Describe the Restrictive Covenant in and append it to any executory contract for the transfer of any interest in the West Hylebos Acquisition Property.
4. Give written notice to Trustees and King County of the transfer of any interest in all or a portion of the West Hylebos Acquisition Property no later than one hundred twenty (120) days prior to the date of such transfer. Such notice to Trustees and King County shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of the City of Federal Way to perform any act required by this Paragraph IV.G. shall not impair the validity of the Restrictive Covenant or limits its enforceability in any way.

G. Notices.

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or receipt after deposit in the United States first class mail addressed as follows:

To Trustees:

National Ocean and Atmospheric Administration
Office of General Counsel - Natural Resources/NW
7600 Sand Point Way NE
Seattle, WA 98115-0070
ATTN: Robert A. Taylor

To City of Federal Way:

Jennifer Schroeder
Director, Parks, Recreation & Cultural Services
City of Federal Way
33530 > 1st Way South
P.O. Box 9718
Federal Way WA 98063-9718
253-661-4040

To King County:

Pam Bissonnette
Director, King County Department of
Natural Resources and Parks
201 South Jackson Street, Suite 700
Seattle, WA 98104
(206) 296-6500

V. GENERAL PROVISIONS

- A. Funds Availability. The fiscal obligations of the Trustees hereunder shall be fulfilled solely from and are limited by the funds made available for such activities as a result of the resolution of natural resource damage claims for the Commencement Bay environment. Nothing in this Cooperative Agreement shall be construed to require any Party to spend funds in excess of available appropriations.
- B. Severability. The clauses of this Cooperative Agreement are severable, and should any part of this Cooperative Agreement be declared by a court of competent jurisdiction to be invalid, the other parts of this Cooperative Agreement shall remain in full force and effect.
- C. Entire Agreement. This Cooperative Agreement constitutes the entire understanding of the Parties with respect to its subject matter.
- D. Amendment and Termination. This Cooperative Agreement may not be amended except by written agreement of all parties to this agreement. This Cooperative Agreement shall continue in effect until it is terminated by agreement of all of the Parties. Any amendment to this agreement shall be consistent with the original purpose of the Restrictive Covenant and shall be recorded in the real property records for King County.
- E. Execution, Effective Date. This Cooperative Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the

original and shall be retained by the Trustees. The date of execution shall be the date of the final signature of the Parties to this Cooperative Agreement.

F. Default. In the event that any party defaults in the performance of any of that party's obligations under this Agreement, the non-defaulting party or parties shall have all remedies available in law or equity, but no party shall be liable for consequential damage.

G. Parties Bound. The provisions of this Cooperative Agreement shall apply to and be binding upon the Parties to this Cooperative Agreement, their agents, successors and assigns. The undersigned representative of each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into this Cooperative Agreement and to bind that party to it.

IN WITNESS WHEREOF the Parties have executed this Cooperative Agreement on the date and year opposite their signature.

14858

CITY OF FEDERAL WAY

BY: _____
David Moseley, City Manager

Date

ATTEST:

City Clerk, N. Christine Green, CMC

APPROVED AS TO FORM:

Patricia A. Richardson, City Attorney

KING COUNTY

BY: _____
Ron Sims
King County Executive

Date

APPROVED AS TO FORM:

Norm Maleng
King County Prosecuting Attorney

THE PUYALLUP TRIBE OF INDIANS

BY: _____
Chair
Puyallup Tribal Council

Date

THE MUCKLESHOOT INDIAN TRIBE

BY: _____
Chair
Muckleshoot Tribal Council

Date

14858

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____
CRAIG R. O—CONNOR Date _____
Special Counsel for Natural Resources

WASHINGTON DEPARTMENT OF ECOLOGY
Lead State Trustee

BY: _____
Date _____

Approved as to Form for the Washington Department of Ecology.

BY: _____
Date _____

U.S. DEPARTMENT OF THE INTERIOR

BY: _____
Date _____

Exhibit 1

Restrictive Covenant

Notice is hereby given that the property legally described in exhibit A hereto (the West Hylebos Acquisition Property) is subject to use restrictions and other obligations enforceable by the Natural Resource Trustees for Commencement bay (enumerated in the Cooperative Agreement described below and attached hereto) and King County. The purpose of these restrictions and obligations is to ensure that the West Hylebos Acquisition Property provides habitat value to the public in perpetuity in the Commencement Bay environment.

These restrictions and obligations are described in Section IV of the Cooperative Agreement for the West Hylebos Acquisition Property Restoration Project (Cooperative Agreement), attached hereto and incorporated herein.

Potential purchasers and lessees are further notified that, pursuant to the Cooperative Agreement, the West Hylebos Acquisition Property may not be disturbed in any manner that would impair or interfere with the integrity of the habitat restoration, except as provided in paragraph IV B.2.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the West Hylebos Acquisition Property. This restrictive covenant may be removed from the West Hylebos Acquisition Property only in the manner provided for in the Cooperative Agreement.

DATED this ____ day of _____, 2004.
West Hylebos Acquisition Property Owner
By:

Its:

STATE OF WASHINGTON)
)ss
COUNTY OF)

On this ____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be _____ of _____ the [corporation] that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said [corporation], for the uses and purposes therein mentioned, and on oath stated that ____ is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year in this certificate above written.

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