



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

January 27, 2003

Ordinance 14567

Proposed No. 2003-0006.2

Sponsors Edmonds and Phillips

1 AN ORDINANCE authorizing the executive to grant a
2 conservation easement over Taylor Mountain forest to the
3 state of Washington Department of Natural Resources, in
4 exchange for a \$2,800,000 federal forest legacy grant
5 administered by the state Department of Natural Resources
6 and declaring an emergency.

7
8

9 **STATEMENT OF FACTS:**

- 10 1. King County is the owner of the approximately one-thousand-seven-
11 hundred-acre Taylor Mountain forest, located at 276th Avenue Southeast
12 in the unincorporated King County community of Hobart.
- 13 2. King County purchased the Taylor Mountain forest property in part
14 with an interfund loan that it intended to repay with \$2.8 million in funds
15 anticipated to be received through a federal forest legacy grant.
- 16 3. The federal forest legacy grant program requires that King County
17 exchange a conservation easement with the state of Washington, which

18 administers the federal forest legacy grant program in Washington state, in
19 consideration for the grant.

20 4. King County desires to put into effect the provisions of the federal
21 forest legacy program upon certain property on Taylor Mountain forest,
22 described in Attachment A (Property) to this ordinance, including the
23 removal of development rights from the property for the purpose of:
24 protecting forested lands that are threatened by conversion to nonforest
25 uses; promoting forest land uses including timber production; protecting
26 environmentally important areas; and meeting multiple conservation
27 opportunities, including protecting important scenic, cultural, fish, wildlife
28 and recreational resources, riparian areas and ecological values.

29 5. The state of Washington has the authority to obtain interests in real
30 property for the purpose of conservation, protection and preservation
31 under RCW 64.04.130, and in accordance with the provisions of the forest
32 legacy program authorized by the Cooperative Forestry Assistance Act of
33 1978, as amended by section 1217 of the Food Agriculture, Conservation
34 and Trade Act of 1990 (104 Stat. 3528) and Title XII of the Food,
35 Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. Sec. 2103 c).

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 **SECTION 1. Findings.**

38 A. The federal forest legacy grant, which was intended to repay the interfund
39 loan used to purchase the Taylor Mountain forest, is awaiting the approval of

40 the conservation easement assuring continued use of the land for forestry and
41 recreation purposed.

42 B. The conservation easement must be approved by January 31, 2003, to secure
43 the forest legacy grant funding. As a result, immediate authorization for the
44 granting of the conservation easement is in the best interest of the public, and
45 this ordinance must be adopted on an emergency basis.

46 SECTION 1. The executive is hereby authorized to grant a conservation
47 easement, substantially in the form in Attachment A to this ordinance, over certain
48 property at Taylor Mountain, described in Exhibit A of the easement, to the state of
49 Washington Department of Natural Resources, in consideration for a \$2,800,000 federal
50 forest legacy grant administered by the state Department of Natural Resources.

51 SECTION 2. The county council finds as a fact and declares that an emergency
52 exists and that this ordinance is necessary for the immediate preservation of public peace,

53 health or safety or for the support of county government and its existing public
54 institutions.
55

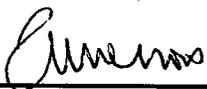
Ordinance 14567 was introduced on 1/13/2003 and passed by the Metropolitan King
County Council on 1/27/2003, by the following vote:

Yes: 13 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett,
Ms. Hague, Mr. Irons and Ms. Patterson
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 5 day of February, 2003.



Ron Sims, County Executive

Attachments A. Conservation Easement Deed

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CLERK
KING COUNTY COUNCIL

2003 006

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ATTACHMENT A
CONSERVATION EASEMENT DEED

11/15/02

THIS EASEMENT is made as of the _____ day of _____, 2002, by Washington State Department of Natural Resources, Grantee and between King County, a political subdivision of the State of Washington, Grantor.

WHEREAS, Grantor is the owner of certain real property located in King County, Washington which is legally described in Exhibit A (hereafter "Property"); and

WHEREAS, Grantee desires to put into effect the provisions of the Forest Legacy Program upon said Property, which purposes include removal of development rights from the Property for the purpose of protecting forested lands that are threatened by conversion to non-forest uses; promoting forest land uses including timber production; protecting environmentally important areas; and meeting multiple conservation opportunities, including protecting important scenic, cultural, fish, wildlife and non-commercial recreational resources, riparian areas and ecological values; and

WHEREAS, the State of Washington has the authority to obtain interests in real property for the purpose of conservation, protection and preservation under RCW 64.04.130, and in accordance with the provisions of the Forest Legacy Program authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food Agriculture, Conservation and Trade Act of 1990 (104 Stat. 3528) and Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. § 2103 c); and

WHEREAS, the specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated July, 2002, identified in "Baseline Inventory Report, Taylor Mountain Forest" and on file with the Washington State Department of

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parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the Parties intend to allow continuation of existing uses of the Property as specifically identified herein that do not significantly impair or interfere with the conservation objectives of this Easement;

NOW, THEREFORE, in consideration of Two Million Eight Hundred Thousand Dollars(\$2,800,000.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby grant, convey and warrant to Grantee an easement in perpetuity over, in and upon the Property, the scope of the easement being more fully described as follows:

**PART I
AUTHORIZED USES BY GRANTOR**

Grantor reserves the right to use the Property for natural resource production, non-commercial recreation, and environmental educational purposes so long as the use is consistent with the goals of the Forest Legacy Program, as currently defined or subsequently amended, and the limitations set forth hereafter. No other use inconsistent with Forest Legacy is permitted.

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PART II

RESTRICTIONS ON THE USE OF THE PROPERTY BY GRANTOR

A. **Subdivision.** The Property shall not be further subdivided into smaller parcels than exist as of the date of this Easement.

B. **Structures and Improvements.** Except as provided for herein, Grantor shall not construct any building, structure, or other improvements of any kind, temporary or permanent, on the Property, including but not limited to houses, windmills, wind turbines, sheds, tanks, mobile homes, dams, and impoundments.

C. **Forest Management.** Timber management and harvesting is permitted on the Property for commercial purposes in accordance with applicable Federal, State, and local laws and regulations and the following provisions:

1. A Forest Stewardship Plan [the Taylor Mountain Forest Stewardship Plan], on file with the Washington State Department of Natural Resources; prepared by Grantor and approved in writing by Grantee, which approval shall not be unreasonably withheld, which plan shall be consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, as amended, 16 U.S. C. 2103a (f), shall be subject to revision in order to incorporate forest management practices that are prescribed under federal or state law.

In the event of any inconsistency or conflict between the provisions of this Easement and therequired plan, this Easement shall control.

2. Grantor may construct forest management access and logging roads, fences, gates, barriers, and the following structures and improvements for forest management purposes: bridges, culverts, landings, and skid trails.

D. **Mineral Development.** No mining, drilling, excavation or mineral development of any kind shall be permitted in, under or upon the Property, including but not limited to the development of minerals or common varieties of mineral resources such as sand, gravel, stone

and clay, or the mining of organic materials such as peat. The Grantor may designate not more than 2 areas [not to exceed a total of 5 acres each] of un-reclaimed land at any given time from which sand, gravel and stone may be extracted for use as is reasonably necessary for on site construction and maintenance of trails, roads and parking.

E. Recreation/Education. Grantor may construct or reconstruct the following structures and improvements for educational and recreational purposes: trails, primitive camping sites, outhouses, composting toilets, interpretive signs, directional signs, railings, walkways, wildlife observation stands or blinds, septic systems, water and utility services and systems, paved roads, parking areas and similar structures and services for the public.

F. Topography Modification. Changes in the existing general topography of the landscape or land surface of the Property, excluding change as a result of activities permitted by this Easement, are prohibited unless such changes were caused by circumstances beyond the control of the Grantor.

G. Waste Disposal and Hazardous Materials. Grantor shall not use any portion of the Property for dumps, landfills, or the storage or deposit of waste materials of any kind nor transport over or keep on or around the Property for use, disposal, treatment, generation, storage or sale any substance designated as hazardous, dangerous, toxic, or harmful as those terms are used in any federal, state, or local law regulating such substance except to the extent necessary to perform activities authorized by this Easement and applicable law.

H. Industrial, Commercial and Residential Activities. Except as authorized herein, the use of the Property for industrial, commercial or residential activities is prohibited.

I. Signs and Billboards. Grantor shall not place any sign or billboard on the Property, except as allowed in Part II-Paragraph E, and except to state the name and address of the property owner and manager or to control unauthorized entry or use as may be permitted herein. Authorized signs shall be no larger than four feet by eight feet or thirty two square feet in area.

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J. **Utility Rights-of-Way.** No utility easements or rights-of-way shall be located within the Property after the date of this instrument without Grantee's consent. All such utilities must be located underground.

PART III
USE OF THE PROPERTY BY THE GRANTEE

Grantee shall have the following rights, but not the obligation, to use the Property.

- A. **Entry and Inspection.** Grantee may enter upon the Property to inspect for compliance with the terms of this Easement, and otherwise administer use of the Property pursuant to the rights acquired hereunder. In exercising this right, the Grantee may utilize motorized vehicles including, but not limited to, cars, trucks, all terrain vehicles, snowmobiles, helicopters and boats. Access by the Grantee for inspection purposes shall be on twenty-four hours advance oral or written notice to the Grantor except in emergencies or cases of suspected deliberate violations.
- B. **Signs and Notices.** Grantee may post signs and notices to survey, mark and monument the boundaries of the Property; to identify and interpret natural environmental features, to promote on-site activities permitted on the Property; to give road or trail directions; or to control unauthorized entry or uses as described herein.
- C. **Monitoring and Research.** Grantee may conduct research activities and monitor such activities in connection with promoting forest land use, protection, and conservation such as protecting important scenic, cultural, fish, wildlife and recreational resources, riparian areas and ecological values, public recreation, and environmental quality consistent with all provisions of this agreement.

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**PART IV
PUBLIC ACCESS**

A. **Recreation.** The public shall have the right to enter, traverse and otherwise use the Property for recreational activities. These activities may include, but are not limited to, camping, fishing, hiking, snowshoeing, skiing, biking and horseback riding. The Grantor may reasonably regulate public use and access of the Property.

B. **Restrictions on Public Use.** Grantor may reasonably regulate or prohibit antisocial behavior, destruction or vandalism to improvements, and removal of any trees, firewood or other forest products by the general public. Grantor may reasonably regulate or prohibit public use and access where public safety may be threatened by the risk of wildfire, floods, landslides, or other hazards. The Grantor may reasonably regulate or prohibit public use and access where necessary to correct resource damage from any recreational use until the damage is mitigated.

**PART V
GENERAL TERMS AND CONDITIONS**

A. **Successors in Interest.** The obligations of the Grantor under this Easement shall bind the Grantor's heirs, successors, agents, and assigns.

B. **Authorized Representatives.** As used in this Easement, the term Grantee shall include its agents, successors or assigns.

C. **Hold Harmless.** Grantor hereby releases and agrees to 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 from and against any and all liabilities, penalties, fines, charges, costs (including reasonable attorney fees), losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative

actions, including injury to or death of any person, or physical damage to any property, arising out of or resulting from any act or omission of Grantor, its employees, agents, contractors, or licensees and guests, including the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Model Toxics Control Act.

D. Notice and Approval. With the exception of the Entry and Inspection notice requirements in Part III, Section A of this Easement, whenever notice is required under this Easement, the party required to give notice ("Notifying Party") shall give reasonable notice prior to the date the Notifying Party intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the other party to make an informed judgement as to its consistency with the purpose and terms of this Easement. The terms "material" and "materially", as used throughout this Easement, shall be based on the purpose and terms of this Easement.

E. Enforcement. Grantee shall give Grantor thirty (30) days written notice (Cure Period) of a violation of this Easement. If the Grantee determines, in its sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue such corrective action without waiting for the Cure Period to expire including but not limited to a lawsuit for injunctive relief. In the event the violation is not cured within the Cure Period, Grantee may take such action as is reasonably necessary to correct the violation and recover the cost of such corrective action as damages including Grantee's administrative costs. If a dispute arises out of a breach of this Easement that does not entitle the Grantee to take immediate action as set forth above, and if such dispute cannot be settled through negotiations within thirty (30) days of Grantee giving Grantor written notice of an alleged breach (Negotiation Period), that matter will be submitted to mediation before resorting to litigation or some other dispute resolution procedure. If the parties can not agree on a mediator within thirty (30) days from conclusion of the Negotiation Period,

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the matter shall be referred to the Seattle Office of the American Arbitration Association for mediation. Grantee shall be entitled to recover damages for injury to any conservation values protected by this Easement, including but not limited to damages for the loss of scenic, aesthetic or environmental values. In the event a party retains an attorney to bring suit or seek alternative dispute resolution to interpret or enforce this Easement, the prevailing party shall be entitled to reasonable attorney's fees whether or not such matter proceeds to judgment.

F. Waiver. Enforcement of the terms of this Easement shall be at the discretion of the Grantee. Any forbearance by Grantee to exercise its rights under this Easement in the event of breach of any term by the Grantor shall not be deemed a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the rights of the Grantee under this Easement. No delay or omission by the Grantee in exercising its rights shall impair such right or remedy or be construed as a waiver.

G. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the control of the Grantor including but not limited to vandalism, fire, flood, storm, and earth movement.

H. Unpaid Obligations. Grantor shall pay before delinquency all obligations secured by the Property and all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property and upon written request, provide Grantee evidence of payment. In the event such obligations become delinquent, Grantee shall have the right, but not the obligation, to cure the delinquency and recover such payments with interest at twelve percent per annum as damages.

I. Extinguishment. If circumstances arise that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by consent of the parties or judicial proceedings in a court of competent jurisdiction. Grantee shall be entitled to the value of the Easement or proportionate part thereof,

which would have remained had the Easement continued, as of the date the Easement is extinguished, as determined by agreement of the parties or a court of competent jurisdiction.

J. Entire Agreement. This document sets forth the entire agreement of the parties. Any prior or contemporaneous discussions, negotiations, or agreements are of no effect.

K. Amendment. All amendments must be in writing and signed by an authorized representative.

L. Subsequent Transfer of Ownership. Grantor may convey the Grantor's interest in the Property, subject to the terms of this Easement after ninety (90) days written notice to Grantee. Grantor shall reference the Easement in its deed of conveyance. The Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 (or any successor provision then applicable).

M. Rule of Construction. This Easement shall be liberally construed to carry out the purposes of the Forest Legacy Program and its guidelines under the Final Version, Forest Legacy Program Implementation Guidelines dated August 15, 1996 to protect forest lands that are threatened by conversion to non-forest uses and other conservation purposes for which this Easement was acquired. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumed construed against the drafter.

N. Easement Management. The Grantee shall have the right to delegate management and enforcement authority under this Easement to any duly appointed easement manager, which may include a federal, state, or local government agency or non-profit agency. This appointment may be changed from time to time.

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O. Invalidity. Invalidity of any of these covenants and restrictions or anything else contained herein or any part thereof by judgments or court orders shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

P. Compliance with Laws. Both parties shall comply with all federal, state, or local laws while performing any of the activities on the Property authorized herein to the extent such laws are not preempted by federal law.

Q. Exhibits. All exhibits referenced herein are incorporated into this Easement as part of this Easement

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EXHIBIT A

Legal Description of the Property:

Acres: 1590.47 acres

Assessor's Parcel Number (s): 3123079003, 0522079001, 3223079021, 3223079011, 3323079009, 3323079005, and 3223079001.

That portion of Section 31, Township 23 North, Range 7 East, W.M., in King County, Washington, lying Southerly and Easterly of Primary State Highway No. 2 (State Route 18) as conveyed by deed recorded under Recording Number 5244167;

EXCEPT that portion of the North quarter of said Section 31 lying Southerly of State Route 18 (Primary State Highway No. 2), Northwesterly of the West bank of Holder Creek and Northerly of a line which is 2,200 feet South of and parallel with the North line of the Northeast quarter of said Section;

AND EXCEPT that portion lying within the West 1,234.70 feet of said Section;

ALSO, the West half of Section 33, Township 23 North, Range 7 East, W.M., in King County, Washington, AND the North half of Section 32, Township 23 North, Range 7 East, W.M., in King County, Washington, AND the Southeast quarter of Section 32, Township 23 North, Range 7 East, W.M., in King County, Washington;

ALSO, the South half of the Southwest quarter of Section 32, Township 23 North, Range 7 East, W.M., in King County, Washington;

ALSO, Government Lots 1, 2, 3 and 4 AND the South half of the North half AND the North half of the South half of Section 5, Township 22 North, Range 7 East, W.M., in King County, Washington;

EXCEPT the South 1,510 feet of the West 2,430 feet thereof.

ALSO, a strip of land 60 feet in width in the Southeast quarter of the Southwest quarter of Section 5, Township 22 North, Range 7 East, W.M., in King County, Washington, being 30 feet on either side of the North-South centerline of said Southeast quarter of the Southwest quarter, extending from the North line to the South line thereof as conveyed by instrument recorded under Recording Number 5381250.

GRANTOR :

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Dated: _____

By: _____

Title: _____

STATE:

STATE OF WASHINGTON (Grantee)

DEPARTMENT OF NATURAL RESOURCES

Dated: _____

By: _____

Title: _____

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STATE OF)
)ss
COUNTY OF)

On this _____ day of _____, _____ 20____, personally appeared before me _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged 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 he/she/was they were authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

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

Notary Public in and for the State of
Washington residing at _____

My appointment expires _____.

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STATE OF WASHINGTON)

) ss

COUNTY OF)

On this day personally appeared before me _____, to me known to be the **individual** described in and who executed the within and foregoing instrument and acknowledged that **he/she/they** signed the same as **his/her/their** free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 20__.

Notary Public in and for the State of
Washington residing at _____

My appointment expires _____.

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STATE OF WASHINGTON)
) ss
COUNTY OF)

On this ____ day of _____, 20 __, personally appeared before me Doug Sutherland, to me known to be the Commissioner of Public Lands, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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

Notary Public in and for the State of
Washington residing at _____

My appointment expires _____.