

**GRANT AGREEMENT BETWEEN KING COUNTY AND THE DENNY CREEK
NEIGHBORHOOD ALLIANCE**

THIS GRANT AGREEMENT (Grant Agreement) is entered into by and between the DENNY CREEK NEIGHBORHOOD ALLIANCE, a Washington nonprofit corporation, and its successors and assigns (DCNA) and KING COUNTY, a political subdivision of the State of Washington, and its successors and assigns (the County) (collectively Parties), effective as of the ____th day of _____, 2004.

1 Recitals

- 1.1 The Juanita Woodlands (Woodlands or the Property) is an approximately thirty-six-acre parcel of open space land located in unincorporated King County, west of the City of Kirkland in the Juanita community. The Woodlands is the last unprotected large natural area within Kirkland's proposed annexation area on Holmes Point. The Woodlands is characterized by a mixed stand of forest. This forested area has a stream and provides habitat to a broad variety of birds and animals. It provides habitat connectivity to parks and other open spaces in the area and plays an important role in the protection of the Lake Washington Watershed. The Washington State Department of Natural Resources (WSDNR) owned and managed the Woodlands as state timberland prior to its sale to the County.
- 1.2 In order to preserve and protect the Woodlands as open space land in its current undeveloped condition, the County acquired the property from WSDNR on January 30, 2004 for a total price of \$7,000,000. A copy of the conveyance deed is attached hereto as Exhibit A and incorporated herein by this reference. The County is permanently funding a portion of the purchase price through the issuance of limited tax general obligation bonds backed by conservation futures tax levy funds under the authority of RCW Chapter 84.34 and King County Code ("KCC") Chapter 26.12. The County also intends to fund up to a \$1,500,000 portion of the purchase price through the sale or development of up to five acres of the Woodlands after five years from the date of the purchase of the property, to the extent that such remaining indebtedness has not been reduced through future non-County donations secured through the efforts of DCNA.
- 1.3 DCNA is a citizen group formed in 1994 with a mission to preserve, protect, and restore the Denny Creek and adjacent watershed for the benefit of wildlife, people and the land. When it learned of WSDNR's plan to sell the Woodlands, it began a grassroots campaign to preserve the area as open space land. First, it convinced WSDNR to delay the sale and, then, it collected \$500,000 in donations and pledges to contribute to the purchase and preservation of the property.
- 1.4 Under the authority of KCC 2.80, the County has accepted a \$100,000 grant from DCNA with the purpose of applying the funds toward the cost of acquisition of the Woodlands. DCNA intends to make two more grants totaling \$400,000 by 2008. DCNA also intends to secure additional non-County contributions of up to \$1,500,000, which will also be granted to the County. If DCNA is instrumental in securing these moneys, the County

has agreed to accept the donations in accordance with KCC 2.80 and to apply such donations toward the cost of acquisition or debt service on the bonds issued to purchase the Woodlands.

- 1.5 The goal of this innovative collaboration between the Parties to this Grant Agreement is the permanent protection of this urban woodland preserve and natural space for the conservation of wildlife habitat and the Lake Washington watershed. Preservation of this woodland will provide present and future generations an opportunity to experience and passively enjoy the original environment in what has become a densely populated urban area.

NOW THEREFORE, intending to be legally bound, in consideration of the above Recitals and for other good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

2 DCNA's Funding Commitment

- 2.1 Pledge Status. DCNA has raised \$500,000 in actual donations and pledges for the acquisition and preservation of the Woodlands.
- 2.2 Funding Commitment. To assist with the County's acquisition of the Woodlands, DCNA granted the County \$100,000 on January 21, 2004.
- 2.3 Intent to Provide Additional Funding. DCNA intends to grant the County an additional \$200,000 on or before January 4, 2006 and another \$200,000 on or before January 4, 2008.
- 2.4 Additional Non-County Funds. DCNA intends by January 4, 2009 to be instrumental in securing the payment of up to an additional \$1,500,000 in non-County funds for acquisition or debt service on the bonds issued to purchase the Woodlands.
- 2.5 Liability if Pledge Amounts Not Received. If DCNA is unsuccessful in collecting all of the pledged donations, the County acknowledges that DCNA is not liable for the balance of the funds. If, however, DCNA does not grant all of the additional \$400,000 called for in Section 2.3 of this Agreement on or before January 4, 2008, then Section 3.2 of this Agreement shall be terminated and shall have no force or effect (other than with respect to the definition of Conservation Laws and open space land as used elsewhere in the Agreement) and Section 3.7 shall apply only to those terms of this Agreement that remain in effect. If, in addition, DCNA does not grant at least \$350,000 of the additional \$400,000 called for in Section 2.3 of this Agreement on or before January 4, 2008, then Section 3.5 of this Agreement shall be terminated and shall have no force or effect and Section 3.7 shall apply only to those terms of this Agreement that remain in effect. Termination of any of DCNA's rights under this Agreement will be without prejudice to any rights DCNA may have under statute or applicable law.

3 *County's Commitments*

- 3.1 Use of Funds. The County agrees to apply the funds granted by DCNA solely toward the cost of acquisition or debt service on the bonds issued to purchase the Woodlands for the purpose of preserving the Woodlands as open space land.
- 3.2 Protection of Property as Open Space. The County shall limit the future use of the Woodlands to those consistent with the open space restrictions and restrictions on alienation specified in chapter 84.34 of the Revised Code of Washington ("RCW") and King County Ordinance Nos. 9071, 10750, 11068 and 14265 (together referred to as "Conservation Laws"). Accordingly, the Woodlands must be maintained as required by the Conservation Laws as "Open space land," which is defined as (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting open space classification, or (c) any land meeting the definition of farm and agricultural land under RCW chapter 84.34.

Open space uses include passive recreational use and activities on the Property, such as picnicking, hiking and nature viewing. Passive recreational use does not include active recreation, such as organized athletic activities like soccer, football, and baseball and the playfields that support such activities, and motorized recreation, such as motorcycle riding and the use of other off-road recreational vehicles.

- 3.3 Public Participation. The County agrees to notify DCNA of the development and implementation of any management plans for the Woodlands.
- 3.4 Sale or development of Woodlands in Lieu of Contributions. After January 4, 2009, the County may sell or develop up to five acres of the Woodlands, which shall be referred to as the "Development Parcel", provided:
- 3.4.1. Sale or development will be pursued as a last resort and only to the extent necessary to secure payment of any unpaid portion of the additional \$1,500,000 in funds referenced in Section 2.4 of the Grant Agreement that are due by January 4, 2009;
- 3.4.2. The County shall be released from the obligations of the Grant Agreement with regard to the Development Parcel if it is sold or developed;

3.4.3. The County shall remain subject to the obligations of the Grant Agreement with regard to the portion of the Woodlands outside the Development Parcel; and

3.4.4. Before the County may sell or develop the Development Parcel, the following actions must occur:

3.4.4.1. The County shall establish an oversight committee consisting of two DCNA representatives and three County representatives ("Oversight Committee"). The Oversight Committee shall review options for selling or developing the Development Parcel, which may include determining what portion of the Woodlands should be designated as the Development Parcel and determining what criteria should be used to evaluate potential sales or developments. This review may include the selection of a development consultant to assist in identifying and assessing potential sale and development options. Costs incurred for such a consultant will be the responsibility of the County. The Committee shall make recommendations to the Executive or the Executive's designee.

3.4.4.2. If the Executive elects to pursue a sale or development of the Development Parcel, DCNA shall be given ninety (90) days to enter into a purchase and sale agreement to purchase the Development Parcel for its fair market value. The Parties shall diligently negotiate the terms of any such agreement in good faith.

3.4.4.3. If DCNA does not enter into a purchase and sale agreement for the Development Parcel within ninety (90) days, the Executive may pursue a sale or development of the property.

3.5 Use of Funds Resulting from Any Conversion of the Property.

3.5.1 Other than as set forth in the preceding Section 3.4, the County agrees that to the extent it is required by the Conservation Laws to acquire equivalent lands to replace the land lost through conversion, the County will apply a portion of the value of the converted land toward the acquisition of replacement land located in the City of Kirkland Interim or Final Potential Annexation Area. The portion to be applied shall represent DCNA's financial contribution to acquisition or debt service relative to the money paid by the County to acquire the Woodlands, and shall be an amount equal to the total value of the converted land multiplied by a fraction, the numerator of which shall be the amount that DCNA has directly granted to the County or been instrumental in obtaining for the County for the cost of acquisition or debt service, and the denominator of which shall be seven million dollars (\$7,000,000). The County agrees to involve DCNA in the identification of such equivalent replacement lands. In such case the obligations of the Parties in the Grant Agreement will terminate and have no force or effect for the portion of the Woodlands that is lost through conversion, but will remain in effect as to any portion of the Woodlands that remains unaffected by a conversion that is subject to the terms of this Section 3.5.1.

3.5.2. If, however, the County converts less than one acre of the Woodlands, such as for a road widening project, the County will not be obligated to acquire replacement land located in the City of Kirkland Interim or Final Potential Annexation Area as called for by Section 3.5.1. In such case, the obligations of the Parties in the Grant Agreement will terminate and have no force or effect for the portion of the Woodlands that is lost through conversion, but will remain in effect as to any portion of the Woodlands that remains unaffected by a conversion that is subject to the terms of this Section 3.5.2.

3.6 Notification of Property Transfer. The County agrees to notify DCNA of any planned transfer of the Woodlands.

3.7 Assignment of Grant Agreement to Future Owners. Except with respect to any portion of the Woodlands that may be lost to development as provided in Section 3.4 or to conversion as may be provided in Section 3.5, the County agrees to assign the requirements under this Grant Agreement to any future owners of the Woodlands or a portion of the Woodlands, such as the City of Kirkland, and to require assumption of the requirements under the Grant Agreement by that future owner as part of any such transfer, and DCNA agrees to contemporaneously release the County from its obligations under the Grant Agreement. If such transfer occurs, however, any unpaid grants that are scheduled to be paid under the Grant Agreement shall be paid to the County, and not the transferee. Further, if such transfer occurs, the County may retain the right to sell up to five acres as provided for in Section 3.5.

4 *Enforcement*

In the event of breach or default of any obligation under this Grant Agreement, DCNA and the County shall have the right, without limitation of any other rights that they may have under law or under this agreement, to seek judicial remedy, including but not limited to obtaining specific performance of the provisions of this Grant Agreement.

5 *Notices*

All notices required to be given to the Parties pursuant to the terms hereof shall be either delivered personally or deposited with a nationally-recognized overnight delivery service or in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below:

DCNA:

Denny Creek Neighborhood Alliance
P.O. Box 2513
Kirkland, WA 98083

County:

King County, Open Space Acquisitions
201 South Jackson Street
Suite 600
Seattle, WA 98104
Attn: Faith Roland

The foregoing addresses may be changed by written notice to the other party as provided herein.

Mailed notice properly given shall be deemed received two (2) days after deposit in the mail. Facsimile transmission of any signed original document or notice, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original.

6 General Terms

- 6.1 **Partial Invalidity.** If any term or provision of this Grant Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Grant Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Grant Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 6.2 **Waivers.** No waiver of any breach of any covenant or provision in this Grant Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Grant Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.
- 6.3 **Time.** Time is of the essence of every provision of this Grant Agreement.
- 6.4 **Binding Upon Successors.** The terms and conditions of this Grant Agreement shall apply to and bind the Parties' successors and assigns.
- 6.5 **Modification.** This Grant Agreement and its attached exhibit is the entire agreement of the County and DCNA with respect to the Woodlands and supersedes all prior or contemporaneous agreements between them, written or oral. This Grant Agreement may be modified only by mutual agreement in writing.
- 6.6 **Authority.** Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Grant Agreement and to legally execute, and bind such party to, this Grant Agreement.

- 6.7 Legal Fees. The Parties shall each pay their own legal fees incurred in connection with this Grant Agreement.
- 6.8 Captions. The captions of this instrument are solely for the convenience of the Parties and are not a part of this Grant Agreement.
- 6.9 Applicable Law. This Grant Agreement shall be governed by the laws of the State of Washington.
- 6.10 Recitals. Each recital set forth above is fully incorporated into this Grant Agreement.

IN WITNESS WHEREOF, the Parties have executed this Grant Agreement:

KING COUNTY

DENNY CREEK NEIGHBORHOOD ASSOCIATION

By _____

By _____

Dated: _____

Dated: _____

Approved as to Form:

King County
Senior Deputy Prosecuting Attorney

Date

15138

AFTER RECORDING RETURN TO:
Department of Natural Resources & Parks
Water & Land Resources Division
Attn. Neil DeGoojer
201 S Jackson, Suite 600
Seattle, WA 98104



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PAGE001 OF 001

DEED
King County

Grantor	State of Washington, acting by and through the Department of Natural Resources
Grantee	King County, a political subdivision of the State of Washington
Abbrev Legal Desc	SW1/4SE1/4 of Section 25, T26N, R4E
Tax Parcel Number	252604-9003

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the sum of SEVEN MILLION Dollars (\$7,000,000), hereby conveys and quitclaims to King County, a political subdivision of the State of Washington, GRANTEE, all interest in the real property situated in King County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof, together with any after-acquired title thereto which the GRANTOR may acquire

The above-described lands are subject to that certain statutory reserved right as set forth in RCW 79 36 370 and to the following reservation

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores,

minerals, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved herein to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer

This Deed is executed and delivered pursuant to RCW 79.02.270 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington

By accepting this deed on behalf of itself its successors and assigns, the Grantee acknowledges that the property shall be subject to open space use restrictions and restrictions on alienation as specified in RCW §84.34.200, et seq., and King County Ordinance No. 9071, 10750, 11068 and 14265.

WITNESS the Seal of the State of Washington, affixed this 30th day of January, 2004

Gary Locke
GOVERNOR

ATTEST: Ann Rock
SECRETARY OF STATE

Approved as to form this 8 day of January, 2004.
James Schvartz
Assistant Attorney General

Approved and accepted by

King County

By Bob Brun

Its Deputy Director, Natural Resources and Parks

State Deed No. 26641
State Record of Deeds, Volume 13, Page 353.
Transaction File No. 02-074901

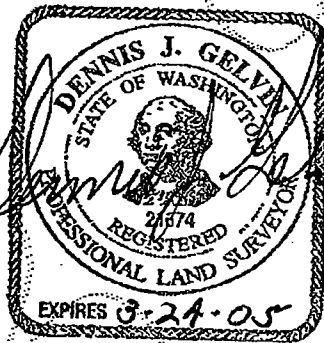
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EXHIBIT A

Legal Descriptions of Finn Hill Property

The following describes the State land to be transferred to King County:

The SW1/4 of the SE1/4 of Section 25, Township 26 North, Range 4 East, Willamette Meridian, King County, Washington, according to U S Government subdivision procedures



Dennis J. Gelvin, PLS 21674
Land Description & R/W Specialist
State Land Survey Unit
Engineering Division
PO Box 47060
Olympia, WA 98504-7060

Dated 1-8-04