



**King County**  
**Metropolitan King County Council**  
**Committee of the Whole**

**STAFF REPORT**

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**Agenda Item No.:** 8

**Date:**

**April 29, 2009**

**Proposed No.:** 2009-0283

**Prepared by:**

**Mike Reed, Marilyn Cope, Rebecha Cusack, John Resha, Polly St. John, Amy Tsai, Nick Wagner**

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**SUBJECT RAGING RIVER DEVELOPMENT RIGHTS ACQUISITION PROJECT**

**BACKGROUND**

The King County Executive is proposing a disappropriation/reappropriation ordinance to support the purchase of development rights for a project referred to as the "Raging River" project, which is being conducted in partnership with the Washington State Department of Natural Resources. The proposal would support the acquisition of development rights on approximately 4,000 acres located near the town of Preston, south of Interstate 90 and east of Highway 18. The development rights acquisition is part of a larger 7,000 acre acquisition by the state Department of Natural Resources to be used as "working forest". The county's development rights acquisition will be channeled through the county's Transfer of Development Rights (TDR) program, resulting in the retention by the county of development rights for the 4,000 acre portion of the property, to be protected from development.

**Raging River Headwaters**

This property is characterized as having regional significance by the Citizens Oversight Committee of the Conservation Futures Tax (CFT) program<sup>1</sup>; it has been identified as an important target for protection by regional resource and environment advocates for years. In particular, these lands include the headwaters to the Raging River, which is a tributary to the Snoqualmie River; these headwaters are considered one of the most important Chinook salmon habitat areas in the region. The Raging River headwaters area is also a significant open space connector and wildlife corridor between publicly protected natural lands on Rattlesnake Mountain and Tiger Mountain. It is a significant scenic feature that is visible from the I-90 corridor and contributes significantly to the Mountains to Sound Greenway. Additionally, the acreage serves as important habitat for wildlife such as black bear, cougar, bobcat, and birds such as pileated woodpeckers and bald eagle.

**Protection of Development Rights**

The State Department of Natural Resources has led the negotiations for this project, seeking to acquire in fee simple the title to the larger 7,000 acre area from the current owners, the Fruit Growers Supply Co. King County became party to the process when a project partner to State

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<sup>1</sup> CFT levy funds are collected from property taxes that are levied throughout King County. The funds are dedicated to the acquisition of open space in cities and rural areas. The CFT Citizens Committee makes annual recommendations for funding allocations which are based upon a review of project applications and site visits.

DNR pulled out of negotiations recently, and the opportunity for county participation became available to fill a funding gap. With that opportunity, the county's involvement brought to the transaction the concept of a conservation easement to protect the development rights on 4,000 of the 7,000 acres. The county's funding contribution amounts to \$3,687,446 from a number of sources; in exchange, the county receives protection from residential/commercial development on the 4,000 acre portion of the property in perpetuity. Mechanically, the county will enter into a protection of development rights transaction with Fruit Growers Supply Co., establishing the development protections; State DNR will immediately thereafter purchase the 7,000 acres, with the development rights constraints in place, from Fruit Growers Supply Co. State DNR will operate the property as working forest, including selective timbering and resource management, with attention given to protection of conservation values in timbering operations.

The transmittal package from the Executive notes specifically that negotiations between the Fruit Growers Supply Co. and the state Department of Natural Resources have not been completed. The county has also not completed its negotiations with Fruit Growers Supply Co. for details of the conservation easement. As a result, final agreement elements, including total package costs, have not been announced. Additionally, final transaction documents and the details of the development rights acquired by King County's \$3.69 million share will not be available until after May 4. *See the section below regarding timelines for more detail.*

**Funding Proposal:**

If approved, Proposed Ordinance 2009-0283 would provide a total of \$3,687,446 for this project. Of that amount, \$2,787,446 would come from the Conservation Futures Tax (CFT) Fund. This funding is proposed from the cancellation of six projects and the sale of another parcel. The Executive also proposes to use \$400,000 from a 2005 CFT allocation for the Raging River, as well as \$500,000 from the Transfer of Development Rights (TDR) bank. Table 1 below shows the general contributions to support the proposal.

**Table 1. Raging River Proposed Contributions**

<b>Contributions</b>	<b>Amounts</b>
Reprogramming of 2009 CFT projects	\$ 2,787,446
2005 CFT Project 315173 – Raging River	400,000
TDR Bank – Project 369002	500,000
<b>Total</b>	<b>\$ 3,687,446</b>

Most CFT projects require matching funds by the cities in which they are located. Executive staff state that the cities were notified of the proposed cancellations and that they are abandoning the projects as part of the annual project review conducted by the CFT Citizen's Committee. The jurisdictions did not have other existing CFT projects with funding shortfalls that could use the funding – which is the first criteria for reallocation.

Presented below are descriptions of the CFT projects proposed for cancellation and reappropriation, including the reasons for the cancellations; also summarized is the Raging River project to which cancelled project funds would be directed. The cancellation of these projects and revenue from the sale of the Mullen Slough Natural Area will provide \$2,787,446 of the \$3,687,446 total.

**Projects Proposed for Cancellation:**

Project 315168 – Boise Creek Dairy Farm – (\$201,998)

District 9

*Brief Description:* This is a Farmland Preservation project that would acquire development rights on up to 79.5 acres of Enumclaw Plateau farmland on SE 456<sup>th</sup> Street, south of Enumclaw. This project would create an enhanced habitat buffer between livestock on the farm and Boise Creek to protect Chinook, Coho and other aquatic species in the creek.

*Status:* King County dedicated \$325,000 in Farmland Preservation Program matching funds to the project and last year the Committee recommended extending the project, but King County has been unable to reach an agreement on value with the owner. The County's agriculture program requests that the project be abandoned.

*CFT Oversight Committee Recommendation:* The Committee unanimously recommends abandoning this project. The CFT funds from the project should be transferred to the Raging River (headwaters) project, in order to help ensure the success of that important regional priority.

Project 315122 – Middle Fork Snoqualmie – (\$293,830)

District 3

*Brief Description:* This project consists of the acquisition of a forested, three-parcel, 50-acre inholding in King County's Middle Fork Snoqualmie Natural Area, located east of Southeast Lake Dorothy Road in unincorporated King County. The properties have frontage on the Middle Fork Snoqualmie River.

*Status:* According to the Executive, there have been acquisitions made under this project, which was funded more than once, and now there are two remaining target owners left that have a low likelihood of selling in the foreseeable future. Last year King County expanded the project scope to get an additional property. According to the Executive, the disappropriation already takes that additional property acquisition into consideration.

*CFT Oversight Committee Recommendation:* The Committee unanimously recommends abandoning this project.

Project 315136 – Paramount Park Addition – (\$50,000)

District 1

Project 315763 – Shoreline – Paramount Park Addition – (\$21,500)

District 1

This project is included in two separate CIP appropriations that were reappropriated in the 2008 CIP reconciliation.

*Brief Description:* This project is an approximately .4 acre wooded buffer addition to Paramount Park, located north of 145<sup>th</sup> Street near Northeast 12<sup>th</sup> Avenue Northeast. The property also contains wetland and riparian headwaters of Thornton Creek, which flows down into Lake Washington.

*Status:* The project was reappropriated in last year's CIP rec., but then the lender for the property would not agree to the owner to selling off the portion of the property desired by the city.

*CFT Oversight Committee Recommendation:* The Committee unanimously recommends abandoning this project.

Project 315734 – Wetlands Passive Nature Park – (\$249,118)

District 7

*Brief Description:* This is a joint partnership project sponsored by the cities of Pacific and Algona to acquire up to 32.25 acres of habitat within five eligible parcels. The project would also help link a

proposed trail from the White River Trail to the Interurban Trail along Ellingson Road, the Government Canal and the Union Pacific right-of-way. The priority property is owned by the Washington State Department of Natural Resources ("State DNR"). It is located adjacent to Alpac Elementary School and could provide environmental education for students.

*Status:* Pacific has worked with the CLC to negotiate with State DNR, but they have been unsuccessful in reaching agreement on the value of the property or a potential partial acquisition. Last year, the CFT Citizens Committee recommended that the remaining funds from the completed "Trail Hub and Spokes" CFT project be made available to help meet up to half of an estimated \$210,000 project shortfall in this project, and King County authorized this action. Pacific is now abandoning this project as it has not been able to gain successful negotiations, and it feels that due to the property's wetland constraints there is no immediate development pressure.

*CFT Oversight Committee Recommendation:* The Committee concurs with Pacific's request to abandon the project and recommends returning the funds for use by uncompleted CFT projects with a funding shortfall.

Project 315758 – Eastside Rail Trail – (\$1,700,000) Districts 1, 3, 6 and 9

The Executive is proposing the cancellation of \$1.7 million from the Eastside Rail Corridor project that is often referred to as the "BNSF" or "Burlington Northern Acquisition". The Executive proposes funding the county commitment to the Eastside Rail project from another revenue source – a federal grant programmed for King County Parks. **Attachment 5** to this staff report shows the grant award to the county. On Monday, April 28<sup>th</sup> Council staff was alerted to challenges to the usage of these funds.

Intergovernmental conversations between Executive, Port and Council staff have confirmed that the Port is aware of the proposed substitution of funding streams. The Port does not object to the substitution, but wants assurance that the funding is available for closing. As of the writing of this report, the viability of substituting the proposed grant funds – rather than the existing funding source – remains cloudy. **Staff is continuing their due diligence to evaluate the suitability of the Executive's proposal to use this revenue stream for this transaction.**

New CFT Funding for the Raging River project:

Project 315173 – Raging River Headwaters – \$2,787,446 Districts 3 and 9

*Brief Description:* This project consists of the acquisition of development rights on over 7,200 acres in the Raging River headwaters, located east of State Route 18 in unincorporated King County in the Forest Production District. This headwater area is important for downstream Chinook spawning and rearing habitat in the Raging River and it is also a significant scenic corridor and wildlife corridor between Rattlesnake Mountain and Tiger Mountain.

*Proposal:* The Raging River project is proposed to be funded in part by CFT. (*Other projects are discussed below.*) The project cancellations listed above total \$2,516,446. An additional \$271,000 in CFT revenues is assumed for the Raging River project that will be supported by the sale of the Mullen Slough Natural Area to the City of Kent. The \$271,000 assumed by the sale is the amount appropriated in the CFT fund by this proposal.

*(Proposed Ordinance 2009-0228 would approve the purchase and sale agreement for Mullen Slough. The legislation is currently under consideration by the Budget and Fiscal Management (BFM) Committee. It is anticipated that the legislation will be approved by BFM on May 5 and*

*expedited for Council consideration and public hearing on May 11.)* It should be noted that the timeline for Council approval of the Mullen Slough proposal is subsequent to the Raging River timeline for approval. If the Mullen Slough proposal is not approved by the Council, the \$271,000 assumed in CFT revenue from that sale could not support the Raging River acquisition. Executive staff has confirmed that additional CFT projects would need to be evaluated for cancellation or reappropriation to support the Raging River proposal.

Additional Revenues for Raging River:

The Council previously approved \$400,000 for Raging River in 2005 that will be used for the current proposal. This previous appropriation, combined with the anticipated Mullen Slough revenue and the amount provided by the cancellation of the other projects results in a total CFT contribution for the Raging River project of \$3,187,446.

Project 369002 – TDR Bank – \$500,000

The Transfer of Development Rights Program is administered in Fund 3691. Two project funds – 369001 and 369002 – hold TDR cash. Staff has confirmed that approximately \$1.1 million is available in the “bank.” The 2009 adopted budget provided \$1 million in expenditure authority for emergent projects in Project 369002. If approved, half of the appropriation, or \$500,000, will be spent for Raging River. This is an appropriate use of the TDR bank funds.

Comparison of purchase to past projects:

It is anticipated that the development rights will be preserved on 4,000 acres of land. Assuming the total proposal of \$3,687,446, the development rights for each acre would “cost” approximately **\$922 per acre**. This does not include the cost per acre of the underlying fee simple property that the State is buying which costs roughly three times more. Council staff has researched three conservation easement purchases by the county for comparative purposes:

1. In September 2004, the county purchased the development rights on 90,000 acres of the Snoqualmie Forest for \$22 million. This amounts to approximately **\$244 per acre**.
2. In June 2001, the county entered into an agreement called the Snoqualmie Preservation Initiative that also included conservation easements that preserved approximately 3,500 acres of land, valued at \$3 million – amounting to **\$875 per acre**.
3. The 2009 budget appropriated \$90,000 in project 315162 – Historic Lower Green ADP to acquire development rights on a 15 acre farmland parcel. This project would “cost” approximately **\$6,000 per acre**.

Additionally, Executive staff provided three other examples of conservation easements acquired by the County:

4. Ames Lake Forest (Carnation) – 444 acres - \$2.8 Million which equates to **\$6,300 per acre**
5. Vashon Island – 45 acres - \$315,000 which equates to **\$7,000 per acre**
6. Shadow Lake (Cedar River basin) – 42 acres - \$565,000 which equates to **\$13,500 per acre**

The amount per acre varies widely in these examples. Usually, appraisal values are associated with possible potential development. Consequently, cost comparisons between projects provide a range of costs due to the variability of factors involved and the case specific nature of each.

A number of factors contribute to such a variance. Cost per acre of development rights can be affected by land values at time of purchase; the broader condition of the economy and the health of the housing market; the location of the land; the proximity of infrastructure; other activity on the land, such as forestry or farming; the size of the acquisition; and other factors. It is also noted that the Transfer of Development Rights concept is an innovative program, maturing over time; early acquisition costs may not reflect sufficient program experience to define a reliable cost pattern.

### **County Due Diligence Process**

The Open Space Acquisitions group in DNRP does work necessary to acquire conservation easements for the Transfer of Development Rights Program. In doing so, Open Space Acquisitions performs due diligence, which includes obtaining an appraisal, reviewing the title of the property, and investigating the physical condition of the property.

The negotiation of the county's transfer of development rights is ongoing. The final agreement, including the specific acreage, is pending completion of the final appraisal. The appraisal amount is based solely on the difference between the forestry value of the land before the conservation easement is placed on it and after the conservation easement is placed on it. The appraiser is selected via RFP or from a list of contractors maintained by DNRP. DNRP also has an in-house appraiser who acts as a safety check in ensuring that the contract appraiser's appraisal looks reasonable.

### **State Department Of Natural Resources: Anticipated Raging River Forest Management Regime**

The Washington State Department of Natural Resources (WDNR) will operate this entire 7,000 acre property, including the approximately 4000 acre portion on which the conservation easement would apply, as "working forest". Communications with WDNR indicate the following with regards to their anticipated management of the acreage, subject to the outcome of negotiations.

- Pursuant to WDNR's mandate to generate revenue for the school trust account, they will conduct timber harvesting operations on the property within applicable constraints.
- WDNR is guided by basic Forest Practices Rules addressed in the Washington Administrative Code, which establish parameters for logging practices, streamside buffers, watershed considerations, harvest rotations, and related matters.
- WDNR anticipates managing this acreage within the constraints of its Habitat Conservation Plan (HCP), which has been adopted by the state Board of Natural Resources to achieve compliance with federal Endangered Species Act requirements. The HCP "provides measures to minimize and mitigate the incidental take of five federally listed fish species", including aggregations of Chinook salmon, chum salmon, sockeye salmon, steelhead trout, and bull trout. The HCP's 'Riparian Strategy' includes wetland and water typing systems, channel migration zones, wetland and riparian management zones and equipment limitation zones. The HCP's 'Upland Conservation Strategy' includes protection measures related to unstable slopes, road construction/maintenance /abandonment, fish passage at road crossings, and hydrology—these measures are intended to limit excess sediment delivery to wetlands and surface waters, and to maintain hydrologic regimes.

- WDNR also anticipates managing the property under two third party ‘certification’ regimes, by which independent review entities certify the management practices undertaken on the identified lands. WDNR’s 2.1 million acres of forested state trust lands have been certified under the “Sustainable Forestry Initiative” (SFI), and Raging River forest lands would be managed under SFI, according to a WDNR spokesperson. Additionally, WDNR has obtained “green” certification from the Forest Stewardship Council for forested state trust lands in the South Puget Sound HCP Planning Unit, including the Tiger Mountain State Forest; the Raging River Forest, according to a WDNR communication, “could be certified under FSC.”
- Together, according to a WDNR spokesman, these various levels of management constraints require a number of management limitations compared to general Forest Practices Rules management:
  - Wider stream buffers
  - More extensive wetlands protections
  - Longer harvest rotations
  - More timber left in place
  - Greater protections for major trees
  - Emphasis on retention of differing age classes of trees

WDNR notes that the current owners, Fruit Growers Supply Co; and the previous owners, Weyerhaeuser Co., managed the land for yield purposes over the short term; WDNR contrasts their management focus as directed towards long term, multi generational concerns, addressing both present and future natural resource, harvest, employment, conservation, and forestry considerations.

**Timeline**

The Executive is requesting that the Council review and act on this package on an expedited timeline because the Fruit Growers Supply Co. has a federal tax consideration that requires funding for the project be available before May 20, 2009. In order to meet that target date, the Executive is requesting that Council action occur to accord with the following timeline:

**Table 2. Raging River Proposed Timeline**

WDNR/Fruit Growers Supply Co.—conclude negotiations	anticipated in short term
Council Action on Disappropriation/Appropriation Ordinance	May 4, 2009
State DNR Board Approval of state purchase; Final county appraisal completed	May 5, 2009 target
Final County/Fruit Growers Supply Co. TDR agreement signed	After final appraisal
WDNR/Fruit Growers Supply Co. fee simple purchase completed	Immediately after TDR agreement signed
Transaction Completed/Funds Available (to meet tax deadlines for Growers)	No later than May 20, 2009

**SUMMARY OF THE PROPOSED LEGISLATION**

The proposed ordinance disappropriates/reappropriates funding within the Conservation Futures subfund to provide \$2,787,446 to the Raging Rivers Headwaters proposal.

**INVITEES**

- Rod Brandon, Director of Environmental Sustainability, Executive Office
- Darren Greve, TDR Program Manager, WLRD
- David Tiemann, Open Space Planner, WLRD
- Sid Bender, Budget Supervisor, OMB
- Becky Petersen, Project Administrator, WLRD
- Tim Barnes, Senior Deputy Prosecuting Attorney
- Pete Ramels, Senior Deputy Prosecuting Attorney
- Steve Saunders, Washington State DNR

**ATTACHMENTS**

1. Proposed Ordinance 2009-0283, with attachment
2. Transmittal Letter, dated April 20, 2009
3. Fiscal Note
4. Vicinity Map: Raging River Headwaters project
5. Federal grant for substitution of \$1.7 million CFT for eastside rail corridor
6. Conservation Easement template





KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

Signature Report

April 21, 2009

Ordinance

Proposed No. 2009-0283.1

Sponsors Dunn, Phillips and Constantine

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AN ORDINANCE making a combination of disappropriations and an appropriation resulting in a net \$271,000 increase of appropriations to the Conservation Futures capital fund and a \$2,787,446 supplemental appropriation for the Raging River acquisition project acquisition; amending the 2009 Adopted Budget Ordinance, Ordinance 16312, Section 125, as amended, and Attachment B, as amended.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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SECTION 1. Ordinance 16312, Section 125, as amended, is hereby amended by

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adding thereto and inserting therein the following:

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From the conservation futures capital improvement project funds a combination

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of project disappropriations and an appropriation involving the specific projects identified

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in Attachment A to this ordinance.

16

<u>Fund</u>	<u>Fund Name</u>	<u>Amount</u>
3151	Conservation Futures Subfund	\$ 271,000

17

**Ordinance**

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18            SECTION 2. Attachment A to this ordinance hereby amends Attachment B to  
19 Ordinance 16312, as amended, by adding thereto and inserting therein the projects listed  
20 in Attachment A to this ordinance.  
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KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

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APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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**Attachments**      A. Adopted Ordinance 16312, Section 125: General Government Capital Improvement Program

Adopted Ordinance 16312, Section 125: General Government Capital Improvement Program

<u>Fund</u>	<u>Project</u>	<u>Description</u>	2009	2010	2011	2012	2013	2014	Total 2009 - 2014
3151		Conservation Futures Subfund							
	315168	Boise Creek Dairy Farm	(201,998)						(201,998)
	315122	Middle Fork Snoqualmie	(293,830)						(293,830)
	315136	Paramount Park Addition	(50,000)						(50,000)
	315763	Shoreline - Paramount Park Addition	(21,500)						(21,500)
	315734	Wetlands Passive Nature Park	(249,118)						(249,118)
	315173	Raging River Headwaters	2,787,446						2,787,446
	315758	Eastside Rail Trail	(1,700,000)						(1,700,000)
		<b>Total Fund 3151</b>	<b>271,000</b>						<b>271,000</b>

2009-283





**King County**

**Ron Sims**  
 King County Executive  
 701 Fifth Avenue, Suite 3210  
 Seattle, WA 98104  
 206-296-4040 Fax 206-296-0194  
 TTY Relay: 711  
 www.kingcounty.gov

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CLERK  
 KING COUNTY COUNCIL

2009-283

April 20, 2009

The Honorable Dow Constantine  
 Chair, King County Council  
 Room 1200  
 COURTHOUSE

Dear Councilmember Constantine:

I am pleased to submit for King County Council review and consideration an ordinance making a supplemental appropriation to the Raging River acquisition and partnership with the Washington State Department of Natural Resources (State DNR) for \$3,687,446. King County is proposing to purchase development rights and permanently preserve working forest land and habitat in the Raging River headwaters. King County's contribution is made possible in part by a Conservation Futures Tax (CFT) Citizens Committee reallocation of existing project budgets and anticipated proceeds from the proposed sale of the Mullen Slough property to the City of Kent. The proposed Mullen Slough property sale ordinance was transmitted to council on March 26, 2009. In combination with \$900,000 in prior CFT and Transfer of Development Rights (TDR) commitments, this proposal significantly increases the total resources available for the Raging River acquisition.

#### **Background**

Permanent public ownership and protection from development of the Raging River headwaters forest has been a high priority for the Executive, the King County Council, and many local and regional environmental organizations for at least a decade. The area is highly productive for timber growth, and it also contains the headwaters of the Raging River, one of King County's most important rivers for endangered Chinook habitat, according to Watershed Resources Inventory Area (WRIA) 9. It is a key piece of land to complete the Mountains to Sound Greenway.

The State DNR announced in fall 2008 that it was pursuing the purchase of over 7,000 acres of working forest land in the primary headwaters of the Raging River, east of State Route 18 and south of Interstate 90 in unincorporated King County near Preston.

When State DNR initiated the acquisition of "the Fruit Growers property" in the fall of 2008, the agency had a private partner interested in buying a portion of the 7,000 acres. This would have lowered overall acquisition cost thereby helping the State meet the sale price. In February 2009 this private party pulled out of the deal.

In order to make the acquisition feasible, the State DNR invited King County to be a 2009 partner in the acquisition. This created the opportunity for King County to step in and assume a partnership role with the State in its acquisition of the Fruit Grower's property, and ensure the land is permanently protected. Thanks to the creativity of King County staff and the leadership of the Citizens Advisory Committee for Conservation Futures, King County is able to reprioritize existing CFT funds to protect forever a major portion of this forestland from development.

King County has been quietly working hard with the State DNR to support their negotiations for this transaction and we believe a deal is near. Because the structure of the deal changed so recently, and the window of purchasing opportunity will close soon, there is urgency associated with this ordinance. King County must have the funds available for purchase of the Raging River property before May 20, 2009, in order to meet a critical tax deadline of the property owner.

#### **The Transaction and CFT Funds**

*I must emphasize that State DNR has not yet concluded its negotiations for the property. It is our hope that King County's contribution will make it possible for State DNR to purchase the entire property as School Trust Land from Fruit Growers Supply Co. in fee simple ownership. However, land owned by the State as School Trust Land is not permanently protected working forest. In the future the property could be sold by the State for its highest and best use value as development. For this reason King County is interested in seeing the property permanently protected as a working forest and preserved forever from development. King County, through its partnership, is simultaneously able to reduce the overall acquisition costs for State DNR, and obtain a conservation easement that permanently restricts development over a significant portion of the property, by purchasing development rights from the current owner using the TDR Program.*

King County currently has approximately \$900,000 in approved funds for the project: \$400,000 from a previous 2005 CFT allocation to the Raging River Project and \$500,000 from the TDR bank. The \$2,787,446 provided by this ordinance, along with the previous \$900,000, will provide a total of \$3,687,446 towards gaining the funds necessary for the proposed TDR purchase on approximately 4,000 acres.

In addition King County will be working with the CFT committee in the future to determine if any additional funds are needed to secure additional acreage.

The King County CFT Citizens Committee has reviewed this proposal and made it the top priority for 2009. I concur. The CFT Committee recommends the reallocation of remaining funds from the Boise Creek Dairy Farm and Middle Fork Snoqualmie CFT open space acquisition projects to the Raging River CFT acquisition project. If King County Council approves this proposal, the CFT Citizens Committee will also recommend reallocation of remaining funds from the Paramount Park, the Wetlands Passive Nature Park, and \$1.7 million of the Burlington Northern Santa Fe (BNSF) Eastside Rail Trail acquisition and easement projects to the Raging River CFT project.

Reallocating BNSF CFT dollars for King County's trail easement is a difficult decision. However, we believe the BNSF CFT contribution can be replaced by \$1.5 million federal Surface Transportation non-motorized dollars programmed for King County by the Puget Sound Regional Council (PSRC) for the purchase of the BNSF Eastside Rail Corridor in 2006. There are details related to this PSRC programming that will need to be discussed in future conversations regarding the acquisition of the BNSF Corridor in partnership with the Port of Seattle. But the important message today is that reprogramming the CFT BNSF monies should not significantly impact King County's commitment towards the acquisition of the BNSF Corridor.

I am pleased to present this opportunity to help preserve important natural resource land in the Mountains to Sound Greenway.

This potential acquisition by the State is the single largest unprotected block of land remaining in King County's portion of the Mountains to Sound Greenway, which stretches for more than 100 miles along Interstate 90 from Puget Sound to eastern Washington and encompasses protected working forests, farms, rivers, trails, wildlife habitat and many communities.

Protecting the upper Raging River will also connect large blocks of existing public lands, which include the 94,000 acre Cedar River Watershed, 13,000 acre Tiger Mountain State Forest, 1,800 acre Taylor Mountain County Forest, and the 2,000 acre Rattlesnake Mountain Scenic Area.

Today's proposed legislation to support the State's acquisition is the latest in a series of major transactions that have preserved natural resource jobs, along with vital open space and habitat across King County since I became King County Executive.

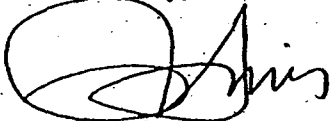
We first preserved 1,800 acres on Taylor Mountain. This was followed by the Black Diamond Agreement which protected 1,600. The Snoqualmie Preservation Initiative saved another 1,000 acres and protected the spectacular and sacred view of the Snoqualmie Falls forever. King County acquired the development rights to more than 90,000 acres of the Snoqualmie Tree Farm in 2004. Finally, in late 2008, the county successfully acquired more than 45,000 acres of Plum Creek forestland and open space in the upper Green River Watershed at no cost to taxpayers by using the county's Transfer of Development Rights Program.

If the proposed Raging River acquisition is approved by the State, King County will have helped permanently preserve more than 155,000 acres of forestland and open space. This is far and away the most successful open space conservation record of any county in the nation.

I would like to thank all the council for their early interest in this property and in particular Councilmember Reagan Dunn for his recent encouragement to make this historic acquisition a priority. In addition, I want to thank the Cascade Land Conservancy, which has engaged in discussions with the owner to preserve this property, as well as the Mountains to Sound Greenway Trust and other local environmental groups that support this important transaction. In the face of our region's continued long-term growth, King County's cooperative partnership with the State DNR is a creative solution which will continue to protect these important headwaters and forest lands. If you have any questions about this ordinance, please feel free to contact Rod Brandon, Director of Environment and Sustainability, at 206-263-9605 or Bob Burns, Deputy Director of the King County Department of Natural Resources and Parks, at 206-263-6296.

Thank you for your swift consideration of this urgent request.

Sincerely,



Ron Sims  
King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Tom Bristow, Interim Chief of Staff

Saroja Reddy, Policy Staff Director

Anne Noris, Clerk of the Council

Frank Abe, Communications Director

Rod Brandon, Director of Environmental Sustainability, King County Executive Office

Bob Cowan, Director, Office of Management and Budget (OMB)

Beth Goldberg, Deputy Director, OMB

Theresa Jennings, Director, Department of Natural Resources and Parks (DNRP)

Bob Burns, Deputy Director, DNRP





Mark Isaacson, Director, Water and Land Resources Division, DNRP

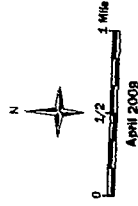




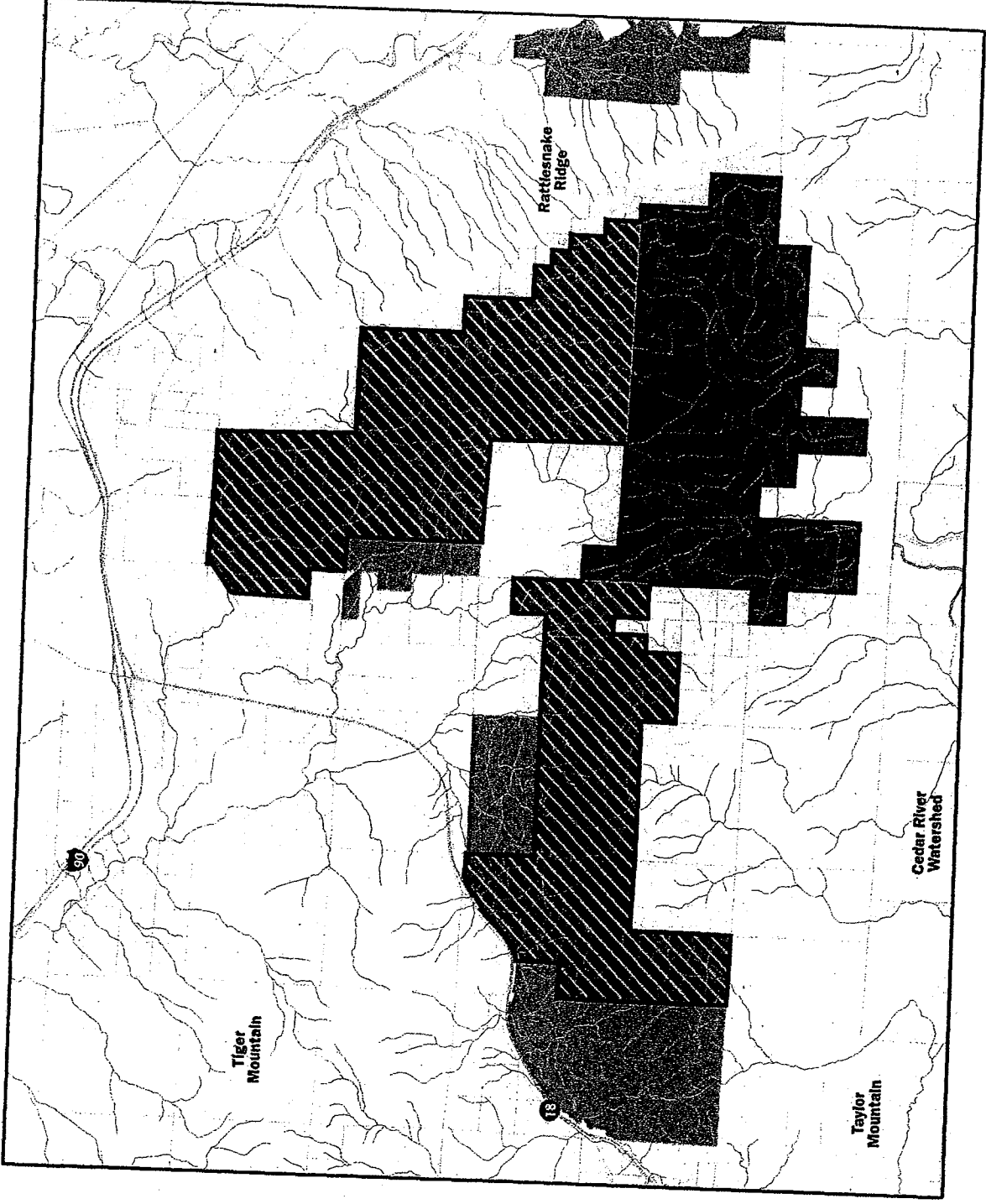


# PROPOSED RAGING RIVER PROJECT AREA PROJECT MAP

-  Proposed WA DNR Acquisition
-  Proposed KC Conservation Easement
-  Permanently Protected TDR Lands/  
Conservation Easement
-  Public Lands

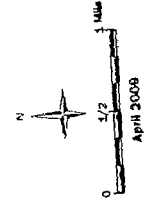


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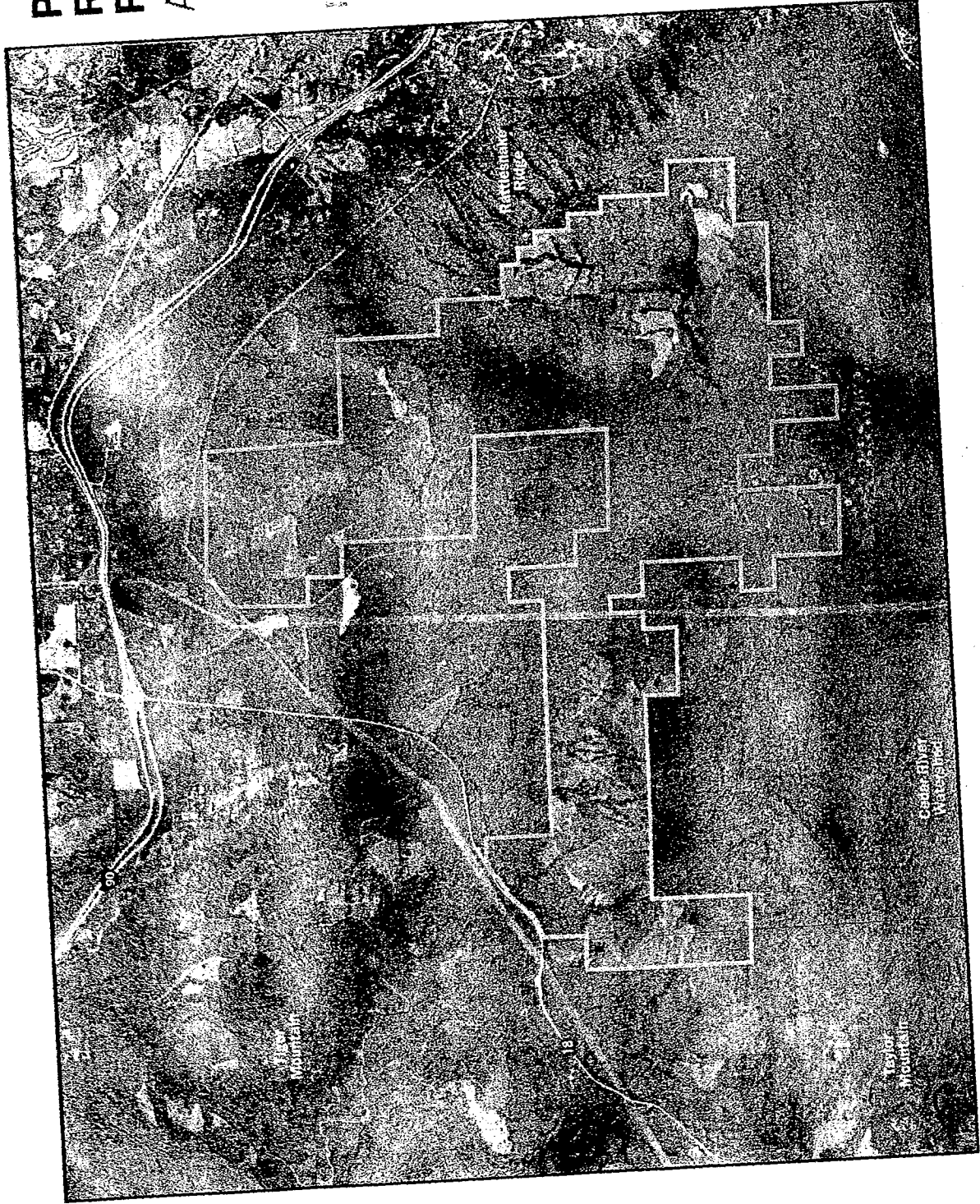
# PROPOSED RAGING RIVER PROJECT AREA AERIAL MAP

 Proposed WA DNR Acquisition

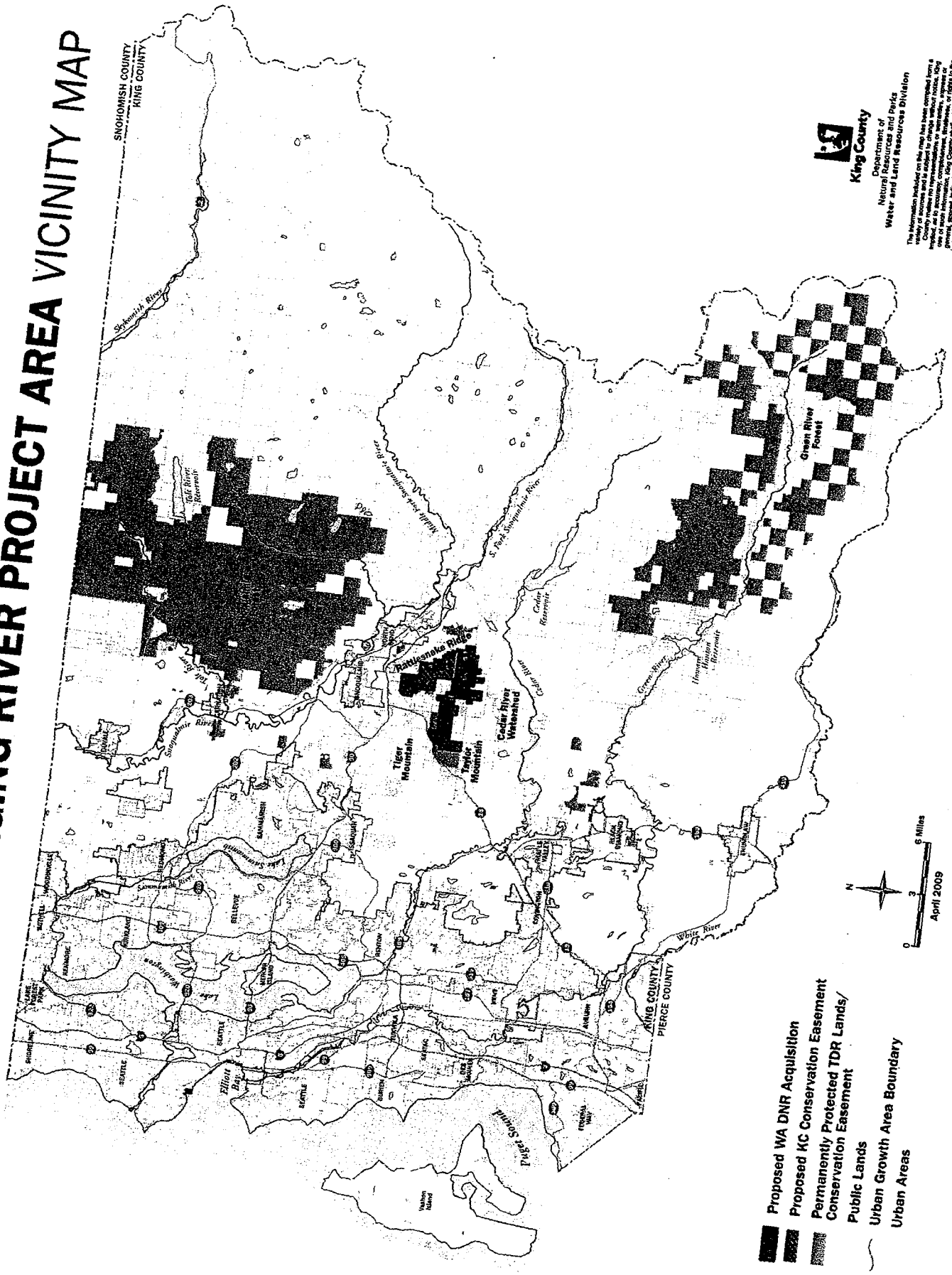


Department of  
Water and Land Resources  
Division

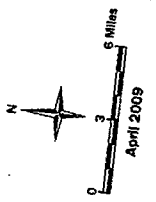
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# PROPOSED RAGING RIVER PROJECT AREA VICINITY MAP



- Proposed WA DNR Acquisition
- Proposed KC Conservation Easement
- Permanently Protected TDR Lands/ Conservation Easement
- Public Lands
- Urban Growth Area Boundary
- Urban Areas



**King County**  
 Department of  
 Natural Resources and Parks  
 Water and Land Resources Division

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Map produced by King County DNR 015  
 and NRS (Natural Resources and Parks)  
 on 04/09/09 10:00 AM

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**County: King**

**Jurisdiction: King County Parks Department**  
**Project Number: KGCO-105**

**Appendix A as of the 09-05 Amendment: Approved 4/17/09**

Phase	Award Ref.	Prog. Year	Oblig. Date	Funding Source	Federal Fund	State/Local Funds	Other Funds	Phase Total
ROW	06-07-KGCO-28	2009	6/30/07	STP(U)	\$1,500,000	\$234,104	\$0	\$1,734,104

**First Year Programmed: 2007**

**WSDOT PIN: N/A**

**Functional Class: Not applicable (transit, enhancements, Etc.)**

**Location: Between milepost 4.0 at Scopa, a point near the Lake Washington B**

**Est. Total Project Cost: \$38,000,000**

**Year of Expenditure for Est. Project Cost: 2007**

**MTP Status: Candidate**

**Description:**

Funding will be used towards the acquisition of the Burlington Northern Santa Fe right of way known as the Woodinville Subdivision.

**Totals:**

Federal Fund \$1,500,000

State/Local Funds \$234,104

Other Funds \$0

Phase Total \$1,734,104

**Improvement Type:**

**From: Gene Coulon Park in Renton**

**Regionally Significant: Yes**

**MTP Reference(s): 4011 4040 4041 4161**

**To: City of Snohomish**

**Environmental Status: Documented CE**





DRAFT DRAFT DRAFT

When Recorded Mail To:

King County  
Department of Natural Resources  
Water and Land Resources Division  
TDR Program  
201 S. Jackson St., Suite 600  
Seattle, WA 98104-3855

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**TRANSFER OF DEVELOPMENT RIGHTS DEED OF CONSERVATION  
EASEMENT**

Grantor:

Grantee: King County, a political subdivision of the State of Washington.

Legal Description (abbreviated):

Additional legal(s) on Pages .

Assessor's Tax Parcel ID#: .

This Deed of Conservation Easement is granted on this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by \_\_\_\_\_ ("Grantor"), to King County, a political subdivision of the State of Washington, ("Grantee").

WHEREAS, Grantor and Grantee make the following recitals:

A. Grantor is the sole owner in fee simple of the real property ("Protected Property") legally described in Exhibit A, attached to and made a part of this Deed, which consists of approximately \_\_\_\_\_ acres of land located in King County, Washington. A map of the property is attached to, and made part of this Deed, as Exhibit B.

B. The Protected Property possesses forest resource values, scenic values, open space values, recreational values, educational values and natural values (e.g. timber stands consisting of ..... and fish and wildlife habitat for....., flood prevention, groundwater recharge, clean air and water supply to the ..... ) that are of great importance to Grantor, Grantee, the people of King County and the people of the State of Washington. These values are referred to herein as the "Conservation Values" of the Protected Property.

C. The specific Conservation Values of the Protected Property, its current use, relevant features, and state of improvement, and its intended use for sustainable forestry are further described in the Forest Stewardship Plan ("Stewardship Plan") dated \_\_\_\_\_ prepared by the Grantor with the cooperation of the Grantee, and kept on

file at the offices of Grantee. The Stewardship Plan is incorporated herein by this reference. Grantor and Grantee acknowledged and agree that to the best of their knowledge the Stewardship Plan includes a complete and accurate description of the Protected Property. Grantor and Grantee have been provided copies of the Stewardship Plan. The Stewardship Plan is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement. Should Grantee or its assigns perform any restoration project on the Protected Property as authorized by section 3(d) and section 7, Grantee may update the Stewardship Plan by attaching a description of the restoration project, including a map detailing the project, as an attachment.

D. The Grantor is conveying the property interest conveyed by this Deed for the purpose of ensuring that, under the Grantee's perpetual monitoring, the Conservation Values of the Protected Property will be conserved and maintained in perpetuity, and that uses of the Protected Property that are inconsistent with these Conservation Values will be prevented or corrected. The parties agree that only those land uses on the Protected Property that do not interfere with the Conservation Values will be allowed, which allowed uses include those land uses relating to sustainable forestry existing at the time of this grant.

E. The Conservation Values protected by this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

1. The 2008 King County Comprehensive Plan Policy R-313 which states "The priority of the Transfer of Development Rights Program is to reduce development potential in the Rural Area and Resource Lands by encouraging the transfer of development rights from private rural lands into the Urban Growth Area."

2. R.C.W. 84.34.010, in which the Washington State Legislature has declared "that it is in the best interests of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens."

3. RCW 64.04.130 and RCW 84.34.210 grant counties the authority to acquire Easements to preserve, conserve and maintain open space, agricultural and timber lands, and RCW 36.70A.090 provides that counties should provide for innovative land use management techniques such as transfer of development rights programs.

4. The property possesses the capacity to produce forest products pursuant to RCW 76.09.010 and RCW 84.34.020, the Countywide Planning Policies, the King County Comprehensive Plan, and through management practices set forth in the Stewardship Plan.

5. Grantor desires to enter into King County's Transfer of Development Right Program, which enables the owners of parcels zoned Forest to transfer development rights from a property to certain receiving areas within urban unincorporated King County, as well as the potential to transfer development rights into incorporated cities within King County pursuant to interlocal agreements, in exchange for the permanent preservation and protection of the land and its conservation values. To that end, Grantor has voluntarily enrolled in the Transfer of Development Rights Program with the intention of transferring development rights to a qualified receiving site or selling development rights to King County.

6. Under King County Code Chapter 21A.37, Grantor and the Protected Property meet the requirements for participation in the Transfer of Development Rights Program for sending sites zoned Forest.

F. The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and issuance of TDR Certificate number XX for XX Rural Transferable Development Rights (the "Certificated Rights") to the Grantor pursuant to King County Code Section 21A.37, Grantor and Grantee agree as follows:

1. *Grant of Easement*

Grantor voluntarily conveys and warrants to Grantee, its successors and assigns, and Grantee accepts, as permitted by R.C.W. 64.04.130 and R.C.W. ch. 84.34, a conservation easement (the "Easement") in perpetuity over the Protected Property, together with all development rights associated with the Protected Property, on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Protected Property.

2. *Purpose*

It is the purpose of this Easement to ensure that the Protected Property will be retained forever in its current condition as undeveloped, forested land suitable for sustainable forestry and to prevent any use of the Protected Property that will impair or interfere with its Conservation Values. Grantor and Grantee intend that this Easement will confine the use of the Protected Property to such activities, including, without limitation, those involving sustainable forestry, as are consistent with the purpose of this Easement.

3. *Rights of Grantee*

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the Conservation Values of the Protected Property.

(b) To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 9; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the Protected Property;

(c) To allow persons or groups, including Grantee, to enter upon the Protected Property for scientific and educational purposes at mutually agreeable dates and times and upon not less than 10 days prior notice to grantor;

(d) To conduct, with reasonable prior notice to Grantor, survey, site preparation, removal of invasive non-native riparian vegetation, bank stabilization, installation of large woody debris and other activities associated with habitat restoration. Nothing herein shall be deemed to imply any obligation to perform such restoration activities.

(e) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 9.

(f) To install informational signs for educational purposes, to give notice of the existence of recreational trails, if any, on the property, to inform the public of the sources of funding used to acquire this easement or to establish rules for use of the Protected Property.

#### 4. *Prohibited Uses*

Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) *Development Rights.* The use of development rights now or hereafter associated with the Protected Property, except those, if any, specifically reserved under this Easement. The parties agree that such rights are removed from the Protected Property and may not be used on or transferred to any other portion of the Protected Property as it now or hereafter may be bounded or described. The development rights of the Protected Property may, however, be transferred to other property pursuant to the Transfer of Development Rights Program or a successor program authorized by the King County Code as currently adopted or hereafter amended.

(b) *Subdivision.* The legal or *de facto* division, subdivision, or partitioning of the Protected Property for any purpose, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots.

(c) *Construction and Improvements.* The placement, construction, expansion, or maintenance of any buildings, structures, or other improvements of any kind, including, without limitation, fences, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines, except those specifically noted in the Stewardship Plan and in existence at the time this Deed was executed, and except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices. Impermanent structures including mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are prohibited on the Protected Property, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(d) *Paving and Road and Trail Construction.* The paving or covering of any portion of the Protected Property not previously paved or covered (and noted in the Forest Plan) with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material (collectively, "Covered Surfaces") or similar material, except (i) as to the resurfacing of existing Covered Surfaces, (ii) relating to the Reserved Rights described in Section 5, or a Permitted Exception or (iii) to comply with applicable laws, rules or regulations. Further, there shall be no construction of any road or trail for any purpose on the Protected Property, except for the Reserved Rights described in Section 5 or as allowed under a Permitted Exception. Use of concrete or asphalt for passive recreation trails is expressly prohibited.

(e) *Commercial Development.* Any commercial or industrial use or activity on the Protected Property, including but not limited to commercial recreational activities involving active recreation.

(f) *Surface Alteration and Mineral Resource Extraction.* Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, sod, oil, gas, coal, hydrocarbons, lignite, limestone, metals, ores, and minerals of any type ("Mineral Resources") is expressly prohibited, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(g) *Soil Degradation and Water Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of and surface or subsurface waters.

(h) *Wetlands.* Any activity on the Protected Property that changes, disturbs, alters or impairs the plant and animal habitat, ecological value or scenic qualities of a wetland or wetland buffer, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices. These prohibited activities include without limitation artificially draining water into or out of a wetland; grading, filling or compacting wetland

soils; use of biocides, except where necessary to control or eradicate non-native invasive species and only if applied with the narrowest spectrum, least persistent substance available; conducting domestic animal grazing or agricultural activities of any kind; and hunting or trapping.

(i) *Ponds, Watercourses and Wells.* The alteration or manipulation of the ponds, water courses, and wells located on the Property, or the creation of new water impoundments, water courses or wells, for any purpose, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(j) *Alteration Surface Water, Subsurface Water or Channeling Water.* Any alteration of the surface water channels on the Protected Property including the removal of fallen trees, gravel or rocks from a water channel or the damming of the water channel, including the lining of the water channel with rocks, wood, trees, sand bags, or other materials, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(k) *Introduced Vegetation.* The planting or introduction of nonnative species of plants. In addition, Grantor shall endeavor to prevent introduction of nonnative plant species, except as related to sustainable forest practices provided for in Section 5.

(l) *Tree Removal.* The pruning, cutting down, or other destruction or removal of trees located on the Protected Property, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(m) *Waste Disposal.* The disposal, storage, or release of hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Protected Property. The term "release" shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this Easement shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. This section 4(m) shall not be read as prohibiting any activity allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(n) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Protected Property, except in connection with the sale or lease of the Protected Property and except for signs notifying the public of forest stewardship and management activities on the Protected Property.

(o) *Intensive Recreation.* Except as to the Reserved Rights described in Section 5, conducting or knowingly permitting a use or activity engaging in Intensive Recreation. Intensive Recreation is defined as any recreational use or activity involving organized

athletic games such as golf, baseball, soccer, football, motorized sports of any kind, commercial hunting or trapping, commercial shooting or target practice, camping in campgrounds, activities and uses that require land development, clearing or grading, developed athletic fields, spectator viewing areas, or any support facility.

(p) *Vehicles.* The operation of motorcycles, dune buggies, all-terrain vehicles, snow mobiles, or other types of off-road motorized vehicles or the operation of other sources of excessive noise pollution or which may cause resource degradation, except as allowed by Paragraph 5(a) for the conduct of sustainable forestry practices.

(q) *Unlisted Use.* If a question arises about whether a particular use is prohibited because it is not explicitly listed in this Section 4, the parties shall consider it to be prohibited if it is substantially similar in all material respects to a prohibited use included in this Section 4.

## 5. *Reserved Rights*

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the purpose of the Easement and that is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

(a) *Sustainable Forestry.* The right to conduct sustainable forestry practices upon the Protected Property consistent with the Stewardship Plan; federal, state and local regulations; and this Easement.

“Forestry practices” include but are not limited to any activity defined in or allowed by the State Forestry Regulations and any customary forestry-related activity that is conducted on or directly pertaining to forest land and relating to the growing, harvesting or processing of timber, including but not limited to (a) road and trail construction, including grading and excavating rock or other materials from on-site pits or quarries for use on the Protected Property only to the extent allowed in State Forestry Regulations, (b) final and intermediate harvesting, (c) precommercial thinning or pruning, (d) reforestation, (e) fertilization and the prevention and suppression of diseases and insects with pesticides and herbicides (including ground and aerial application of chemicals) and pest control including trapping, all to the extent allowed by State Forestry Regulations, and pest control including trapping, (f) salvage of trees, (g) brush control, slash disposal and prescribed burning, (h) preparatory work such as tree marking, surveying and road flagging, (i) installation of gates and other measures to close access to the property, (j) removal or harvesting of incidental vegetation from forest land such as berries, ferns, greenery, mistletoe, herbs, mushrooms and other products, and (k) protection of structures such as bridges, ponds and other improvements related to forestry practices.

(b) *Emergencies.* The right to undertake other activities necessary to protect public health, improvements to property, or human safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.

(c) *Limited Impact Recreational Use.* The right to allow and conduct Limited Impact Recreational uses and activities on the Protected Property, provided that such recreational use is consistent with the Conservation Values and the Purpose and terms of this Easement. Limited Impact Recreation is defined as informal play, picnicking, jogging, hiking, cross country skiing, biking, horse riding, nature viewing, bird watching, non-commercial recreational hunting and fishing, as well as limited organized recreational events such as mountain biking which do not require clearing or grading. Structures associated with limited impact recreational use are limited to temporary bathroom and informational boards.

(d) *Other Resource Land Uses.* The right to conduct forest research that consists of the performance of field research on the Protected Property relating to botany, hydrology, silviculture, biology and other branches of science in relation to management of forest lands; conduct aquaculture studies; conduct educational tours and site visits; and conduct fish and wildlife habitat enhancement projects.

#### 6. *Responsibilities of Grantor Not Affected.*

Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Protected Property. This shall apply to:

(a) *Taxes.* The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Protected Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Protected Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the lesser of ten percent or the maximum rate allowed by law. The Grantor shall reimburse the Grantee for these sums plus any reasonable attorneys fees and court costs incurred to collect such sums.

(b) *Upkeep and Maintenance, Costs, Legal Requirements, and Liabilities.* Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such



construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

(c) *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any hazardous substances, Grantors agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused solely by Grantee, in which case Grantee shall be responsible for such remediation. Grantor must make best efforts to notify Grantee of the occurrence of any release of hazardous substances as soon as possible after such release.

(d) *Control.* Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or the Model Toxics Control Act, as amended ("MTCA").

(e) *Liability and Indemnification.* Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligent acts or omissions of Grantee, its officers, employees or agents; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by any person other than Grantee, its officers, employees and agents; or (3) the presence or release in, on, from, or about the Protected Property, at any time, of any hazardous substances, unless caused solely by the Grantee.

#### 7. *Grantee's Right to Restore the Protected Property*

In the event that any of the Conservation Values of the Protected Property are impaired by an Act of God, the Grantee shall have the right, but not the obligation, to restore all or portions of the Protected Property.

#### 8. *Enforcement*

Grantee shall have the right to prevent and correct violations of the terms of this Easement as set forth below.

(a) *Notice of Failure.* If Grantee determines that the Grantor is in violation of the

terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) *Grantor's Failure to Respond.* Grantee may bring an action as provided for in Section 8(c) below if Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *Grantee's Action.* Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.

(d) *Immediate Action Required.* If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) *Nature of Remedy.* Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 9 both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) *Costs of Enforcement.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall

be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

(g) *Grantee's Discretion.* Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(h) *Acts Beyond Grantor's Control.* Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

#### 9. *Alternate Dispute Resolution*

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with this Easement, the Parties shall attempt to resolve the dispute through informal discussion. The Parties may also agree to refer the dispute to mediation. Upon such agreement, the Parties shall select a single mediator to hear the matter. Each party shall bear its own costs, including attorney's fees, if mediation is pursued under this Section 9. The Parties shall share equally the fees and expenses of the mediator.

#### 10. *Notice and Approval*

(a) *Notice.* 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 judgment as to its consistency with the purpose and terms of this Easement.

(b) *Evaluation of Proposed Activities.* The purpose of requiring the Notifying Party to notify the other party prior to undertaking certain permitted uses and activities is to afford the other party an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purpose and terms of this Easement.

#### 11. *Notice of Transfer of Protected Property by Grantor and Successor and Assigns*

Anytime the Protected Property itself, or any interest in it is transferred by the Grantor to a third party, the Grantor, its successors and assigns, shall notify the Grantee in writing,

and the document of conveyance shall expressly refer to this Deed of Conservation Easement.

## 12. *Termination of Easement*

(a) *Frustration of Purpose.* If a court of competent jurisdiction determines that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill any of the conservation purposes of the Easement, the court may, at the joint request of both the Grantor and Grantee, terminate in whole or in part the Easement created by this Deed.

(b) *Economic Value.* The fact that any use of the protected Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that any such changes shall not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this section.

(c) *Proceeds.* If the Easement is terminated and the Protected Property is sold or taken for public use, the Grantee shall be entitled to a percentage of the gross sale proceed of condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of termination. The Grantee shall use the proceeds consistently with the conservation purposes of this Easement.

## 13. *Modification*

This Deed may be modified by agreement of the parties, provided that any such amendment shall be consistent with the purpose of the Easement and shall not effect its perpetual duration. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

## 14. *Interpretation*

This Deed shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

## 15. *Perpetual Duration*

This Easement created by this Deed shall be a binding servitude running with the land in perpetuity, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Protected Property, or any portion thereof, to Grantee, it being the express

intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Protected Property now or hereafter held by Grantee. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

16. *Inaction*

Inaction or inactivity on the part of Grantee with respect to the Easement shall not constitute abandonment of the Easement.

17. *Notices*

Any notices required by this Deed shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

To Grantee:                   King County Department of Natural Resources  
Water and Land Resources Division  
201 South Jackson Street, Suite 600  
Seattle, WA 98104

18. *Grantor's Title Warranty*

The Grantor warrants that it has good and sufficient title to the Protected Property, free from all encumbrances except those set forth in Exhibit C attached to and made a part of this Deed, and hereby promise to defend the same against all claims that may be made against it.

20. *Severability*

If any provision of this Deed is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

21. *Entire Agreement*

This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which merge herein.

22. *Waiver of Defenses*

Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the ten-year statute of limitations provided in RCW 4.16.020 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

23. *Subordination*

Grantor certifies that all mortgages and deeds of trust (collectively "Liens"), if any, affecting the Protected Property are subordinate to, or shall become subordinate to, the rights of Grantee under this Easement. Grantor has provided, or shall provide, a copy of this Easement to all mortgagees, and to all beneficiaries and/or trustees of deeds of trust (collectively "Lienholders"), already affecting the Protected Property or which will affect the protected Property prior to the recording of this Easement, and shall also provide notice to Grantee of all such Liens. Each of the Lienholders has subordinated, or shall subordinate prior to recordation, the Liens to this Easement either by signing a subordination agreement contained at the end of this Easement, which shall become a part of this Easement as Exhibit \_\_\_ and recorded with it, or by recording a separate subordination agreement pertaining to any such Lien which must meet the approval of Grantee.

24. *Acceptance*

The Grantee hereby accepts this Grant of Deed of Conservation Easement.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Grantor:

BY: \_\_\_\_\_  
Name  
Title

Grantee King County, a political subdivision of the State of Washington:

BY: \_\_\_\_\_  
Ron Sims  
King County Executive







DEED OF CONSERVATION EASEMENT  
«Parcel\_» PARCEL

EXHIBIT A  
LEGAL DESCRIPTION

**DEED OF CONSERVATION EASEMENT**  
«Parcel\_» PARCEL

**EXHIBIT B**  
**PROPERTY MAP**

**DEED OF CONSERVATION EASEMENT**  
«Parcel\_» PARCEL

Exhibit C

**PERMITTED EXCEPTIONS/TITLE REPORT**

Those special exceptions listed on «Escrow\_Co» Title Insurance Company Title Report #«Title\_order» dated «Title\_date», and any supplements thereto (which Title Report and Supplement are incorporated into this Agreement by this reference) numbered «Permitteds».

EXHIBIT \_\_\_\_\_  
**SUBORDINATION AGREEMENT**

Subordination of Mortgage or Deed of Trust. At the time of the conveyance of this Easement, the Protected Property is subject to a Mortgage/Deed of Trust dated \_\_\_\_\_, recorded in the King County Assessor's Office, recording number \_\_\_\_\_, held by \_\_\_\_\_

\_\_\_\_\_ (hereinafter "Mortgagee/Lender. The Mortgagee/Lender joins in the execution of this Easement to evidence its agreement to subordinate the Mortgage/Deed of Trust to this Easement under the following conditions and stipulations:

(a) The Mortgagee/Lender and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Protected Property and all proceeds of a condemnation proceeding, and shall be entitled to same in preference to Grantee until the Mortgage/Deed of Trust is paid off and discharged, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(b) If the Mortgagee/Lender receives an assignment of leases, rents and profits of the Protected Property as security or additional security for the loan secured by the Mortgage/Deed of Trust, then the Mortgagee/Lender shall have a prior claim to the leases, rents, and profits of the Protected Property and shall be entitled to receive the same in preference to Grantee until the Mortgagee/Lender's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(c) The Mortgagee/Lender or purchaser in foreclosure shall have no obligation, debt, or liability under the Easement until the Mortgagee/Lender or a purchaser in foreclosure under it obtains ownership of the Protected Property. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished.

(d) Nothing contained in this section or in this Easement shall be construed to give any mortgagee/Lender the right to violate the terms of this Easement or to extinguish this Easement by taking title to the Protected Property by foreclosure or otherwise.

[Signature blocks]