

CARNEY
BADLEY
SPELLMAN

David W. Bever

LAW OFFICES
A PROFESSIONAL SERVICE CORPORATION

701 FIFTH AVENUE, SUITE 3600
SEATTLE, WA 98104-7010
TEL (206) 622-8020
FAX (206) 467-8215

DIRECT LINE (206) 607-4138

Email: bever@carneylaw.com

April 26, 2010

King County Council
Attention Janice Mansfield,
Environmental and Transportation Committee
516 Third Avenue, 12th Floor
Seattle, WA 98104

Re: King County: Proposed Ordinance 2010-2058.1; Condemnation of
Private Property – Rutherford Slough.

Dear Ms. Mansfield:

The undersigned is the attorney for Rutherford Slough, LLC, the owner of the subject property, which comprises approximately 68 acres of undeveloped land (the "Rutherford Slough Property"). The property owners purchased the real estate from Weyerhaeuser Real Estate Development Co. on or about October 19, 2009. It is important to remember that King County considered purchasing the Rutherford Slough Property from Weyerhaeuser prior to its sale to Rutherford Slough, LLC and declined to do so.

There are a number of inaccuracies and material omissions in the draft ordinance that should be corrected prior to consideration by the Environmental and Transportation Committee of the Metropolitan King County Council, and before the draft ordinance is forwarded to the King County Council for public hearing and possible action.

One or more of the property owners of the Rutherford Slough Property will be present at tomorrow morning's meeting. The property owners intended to present their comments in person at the meeting as allowed by the April 6, 2010 letter sent by Paul Carlson on behalf of King County. Just this morning the property owners were notified that oral comments/testimony will not be received at the meeting, necessitating these written comments, which were compiled on short notice. It is our hope that the Committee will provide the property owners an opportunity to provide additional comments at the meeting. The owners attending the meeting will also be available to answer any questions the Committee may have.

The following comments/exhibits are material to the Committee's consideration of the draft ordinance:

1. Attachment A is the Road Use Permit dated June 1, 2008 between Weyerhaeuser as the property owner and King County Division of Parks and Recreation as the permittee. The Road Use

Permit is the only binding legal agreement regarding what is commonly the subject road referred to in the draft Ordinance as the "SE 39th Place," which in truth is a private road on private property. Nowhere in the draft Ordinance is the Road Use Permit referenced or alluded to.

2. Under the Road Use Permit, King County pays a fee of \$1,500.00 and is granted a non exclusive right to enter the Rutherford Slough Property for motorized ingress and egress from the Snoqualmie Valley trail with a termination date of May 31, 2011. Paragraph A of the Road Access Permit limits the use as follows:

"...for the limited purpose of general maintenance and repair of the trail by King County personnel. Recreational access is not granted to the Permittee under this permit." (Emphasis added)

3. Paragraph F of the Road Access Permit provides:

"Permittee [King County] must not grant access to any 3rd parties nor allow them to put their lock on the lock box."

4. Paragraph 2(c) of the Road Access Agreement – General Terms, provides that the Permittee [King County] shall:

"Take all reasonable precautions to prevent unauthorized persons from using the Permit Road(s) and from entering Weyerhaeuser or other lands by means of the Permit Road(s)"

5. King County is legally bound to honor the terms of its contracts. The County has breached the Road Access Permit by allowing general public access to bicyclists, hikers, and other recreational users. These uses are expressly prohibited by the terms of the Road Access Permit.

6. Because there exists a binding contract restricting the use of the private road to King County personnel for general maintenance and repair, there is no "public access" issue to discuss or negotiate. The issue was already negotiated by King County with King County agreeing in writing not to permit public access through May 31, 2011. Considering the parties' existing contract governing use of the area in question, the recitals in the draft ordinance regarding the King County's attempt to renegotiate the public access issue are inflammatory and argumentative. The majority of the remaining recitals are simply not relevant to the subject matter of the proposed Ordinance.

7. Any owner of private property should be concerned with third persons entering that person's property for any reason. There are substantial liability concerns when the third persons are recreational users and the risk of injury and lawsuits are of great concern. Nowhere in the ordinance are those concerns addressed or stated.

8. King County no longer has a public highway grant to use the subject private road. Any rights granted by the Weyerhaeuser to King County for a public highway terminated years ago. The express language of the 1911 grant reads:

“If said road shall cease to be used and maintained as a public highway by King County, Washington, or shall be abandoned, or the route thereof changed in any manner, that all rights under agreement shall immediately cease and terminated, and the strip of land over which road runs, shall become the private property of and revert to said Weyerhaeuser Timber Company, without further notice.”

9. Attachment B is the King County Assessor’s Map for the SW 11-24-07, the quarter section wherein the subject property is located. The easement now claimed by King County does not appear on the map. The property owners and their predecessors have historically paid property taxes on the entire parcel without a reduced fee for the historic public use of the property now alleged by King County in the draft ordinance.

10. Until the recent drafting of the subject Ordinance, King County has taken the position that the subject road is private road, not a public highway. If the private road were a public highway, the subject Commission Minutes from May 5, 2009 would not refer to the road as an “informal trail”. The Commission Minutes read:

The informal trail connection at SE 39th Place between Fall City Park and the Snoqualmie Valley Trail (SVT) was also discussed. This historic trail connection was officially closed in May 2008 because the access route over private Weyerhaeuser property had never officially been secured by the County. Recently Weyerhaeuser has expressed an interest in selling this parcel and KC Parks has met preliminarily to review terms for acquiring the property. (emphasis added)

The Commission Minutes from the October 20, 2009 meeting read:

Public access to the SVT was officially closed May 9, 2008, but maintenance access to the SVT was continued to allow. In June 2009 approximately 20 parcels were put up for sale including the SE 39th Street access to SVT parcel. The County has been notified that it was not the highest bidder for this parcel. The County is maintaining communication with Weyerhaeuser to determine if it can still work out an arrangement with the apparent high bidder to allow public and maintenance access to the SVT.

In summary, if the purpose of the subject ordinance is to authorize condemnation of the private property owned by Rutherford Slough, LLC then King County may proceed, so long as it

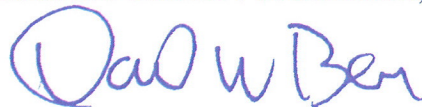
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understands the costs involved in the condemnation. Please be advised that the property owners reserve all rights to contest the condemnation action at the appropriate time before the King County Council, in King County Superior Court, and in any other possible venue. Until such time as King County completes the condemnation process, the property is the private property of Rutherford Slough, LLC, and King County is subject to comply with the existing contract/permit for use of the road/trail. The mischaracterization of the private road as an existing easement or existing road right of way should be stricken from the draft Ordinance.

Finally, please address all future correspondence to my attention at our law firm's business address.

Sincerely,

CARNEY BADLEY SPELLMAN, P.S.



David W. Bever

cc: Rutherford Slough, LLC

ROAD USE PERMIT

This Road Use Permit ("Permit") is between Weyerhaeuser Company, a Washington corporation ("Weyerhaeuser") and King County Division of Parks and Recreation ("Permittee") dated as of June 1, 2008 ("Effective Date").

- A. ROAD USE PERMIT AREA & PERMITTED USES.** Weyerhaeuser grants Permittee the non-exclusive right to enter and be upon the Weyerhaeuser road located in Section 11, Township 24N, Range 7E, as depicted on the map attached as Exhibit A ("Permit Road(s)") for the limited purpose of motorized ingress to and egress from the Snoqualmie Valley trail located depicted on the map attached as Exhibit A for the limited purpose of general maintenance and repair of the trail by King County personnel. Recreational access is not granted to the Permittee under this permit. This Permit is subject to all existing easements, licenses, exceptions, and other encumbrances. The permission granted to Permittee in this Permit is limited to lands owned by Weyerhaeuser. Weyerhaeuser makes no representation or warranty as to its ownership rights in the Permit Area or the interpretation by any third party of any laws, regulations, or government policies, or the existence or interpretation of any encumbrances or Indian treaties. "Permittee" includes Permittee's employees, agents, and contractors.
- B. TERM - DATE OF EXPIRATION.** The term of this Permit begins upon the Effective Date and ends at 6:00 p.m. on May 31, 2011.
- C. CONSIDERATION.** Permittee shall pay to Weyerhaeuser the sum of \$1,500.
- D. SECURITY DEPOSIT.** Permittee has deposited with Weyerhaeuser the sum of \$ NONE as security for the performance of all of Permittee's obligations under this Permit. If Permittee defaults in the performance of any of these obligations, Weyerhaeuser may apply this sum up to an amount equal to any damage, injury, or loss sustained on account of such default. Weyerhaeuser shall refund to Permittee any amount remaining after any such application. Notwithstanding this provision, Permittee shall be liable for any deficiency and for all amounts that may be due to Weyerhaeuser resulting from any default under this Permit by Permittee.
- E. INSURANCE.** Before commencing any activity under this Permit, Permittee shall obtain and maintain in full force and effect during the term of this Permit, at Permittee's sole expense, the following insurance coverages on Permittee's activities:
- (1) If, under this Permit, Permittee will operate equipment not licensed for use on public highways, the minimum coverages and limits will be: Comprehensive or Commercial General Liability (occurrence form), covering bodily injury and property damage liability, including contractual, products, completed operations, broad form property damage, and independent operator/contractors, with minimum limits of at least \$1,000,000 per occurrence and \$1,000,000 general aggregate. Weyerhaeuser shall be designated as an Additional Insured evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance and the endorsement is to include that the insurance will cover "Any and all operations performed by or for the Named Insured for Weyerhaeuser Company or its subsidiaries." The endorsement may be specific to the project (CG 20 10, 11/85 version, or equivalent) or may be a Blanket Additional Insured Endorsement applicable to all contracts, again equivalent to the CG 20 10, 11/85 version; Permittee's insurance or self-insurance shall be primary and Weyerhaeuser's insurance or self-insurance is excess over other available coverage.
 - (2) If, under this Permit, Permittee will operate equipment which is licensed for use on public highways, the minimum coverages and limits will be: Comprehensive Automobile Liability covering owned, hired, and non-owned vehicles with minimum limits of: (a) For heavy vehicles, equal to or more than 12,000 pounds (gross vehicle weight): combined single limit of \$1,000,000; or (b) For light vehicles, less than 12,000 pounds (gross vehicle weight): combined single limit of \$300,000.

Permittee shall furnish Weyerhaeuser with a Certificate of Insurance evidencing compliance herewith. Permittee shall require Permittee's insurance carrier to give Weyerhaeuser at least thirty (30) days written notice prior to cancellation of said coverage, either in whole or in part, and the failure of Permittee's insurance carrier to give said notice as required shall be considered a default on Permittee's part. Permittee shall ensure that its subcontractors have insurance coverages and endorsements consistent with the above. Insurance companies providing coverage for Permittee and subcontractors shall have a Best's rating of no less than B+ VII.

Permittee's and subcontractor's insurance companies shall waive right of subrogation against Weyerhaeuser and its affiliates. All insurance or self-insurance of Weyerhaeuser and its affiliates shall be excess of any insurance provided by Permittee or subcontractors.

- F. **OTHER.** (1) Permittee must not grant access to any 3rd parties nor allow them to put their lock on the lock box. Permit can be terminated upon 30 days written notice by either party. (2) If Weyerhaeuser terminates the permit for any reason other than non-compliance with the terms and conditions of the permit, then the pro-rata share of the permit fee will be returned to Permittee.

GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAW.** Permittee shall comply with all applicable federal, state, and local laws, regulations, and other requirements.

2. **ROAD USE.** Permittee shall:

- (a) Comply with the following limitations:
- Maximum speed is 25 mile-per-hour on all primary roads. Individual road conditions, weather, and limited visibility will require slower speeds.
 - All vehicle occupants must wear seat belts on Weyerhaeuser roads.
 - Drive with lights "on."
 - Drive on the right.
 - Be prepared to stop in no more than half your sight distance.
 - Do not block roads or otherwise interfere with forestry operations.
- (b) Take all reasonable precaution to prevent unauthorized persons from using the Permit Road(s) and from entering Weyerhaeuser or other lands by means of the Permit Road(s).
- (c) Keep the Permit Road(s) open and not obstruct them, nor land any logs or other forest products alongside them, nor load any trucks on them without Weyerhaeuser's prior written permission.
- (d) Strictly comply with all safety rules and traffic regulations promulgated by Weyerhaeuser or public authority.
- (e) Suspend use of the Permit Road(s) whenever the use, due to weather conditions, will cause excessive damage to the Permit Road(s).
- (f) After passing through, leave all gates in open or closed position as found prior to passing through, unless otherwise instructed to follow a different local gate policy.
- (g) Notify Weyerhaeuser at 360-446-3870 when use begins and upon completion of use.

3. **ROAD MAINTENANCE.** Permittee shall maintain and leave the Permit Road(s) at a standard that allows normal use by passenger cars. If any portion of the Permit Roads are maintained by any other party, Permittee shall pay to the maintaining party Permittee's equitable share of the cost of such maintenance, to be agreed upon by the parties concerned. Acceptable road conditions include the following:

- (a) Culverts need to be open, free flowing, and in good working order. If they become damaged, they shall be cut back, repaired, or replaced. Flowing streams need to be cleaned fifty (50) feet above the culvert inlet. Outlets shall be open and free of debris so blockage will not occur. Culverts shall be staked and clearly identified.
- (b) Cutbanks shall be clean and free of logging debris (limbs, tops, etc.) to prevent debris from entering and blocking the ditch.
- (c) Ditches shall be free of logging debris, well defined, and in good working order. They need to be able to accept and transport water to the nearest culvert or outlet and shall be cleaned if not functional.
- (d) Road surfaces shall be smoothed and shaped. Surface repair must be made if necessary.
- (e) Landings that are "perched" must be pulled back and stabilized to minimize possible failure.
- (f) Logging debris shall not be pushed or sidecast onto an area where it could fail, slide, or enter a stream.
- (g) Road maintenance activities shall minimize erosion and sediment delivery that impacts water quality. Such activities may include spreading an approved rock grade on road surfaces, water barring road, or placement of hay bales in ditches.

4. FIRE PROTECTION. Permittee shall comply with all laws and regulations pertaining to fire protection and suppression, and take every possible precaution to prevent fires from igniting on or spreading onto Weyerhaeuser's property. If a fire should occur on or near the Permit Road, Permittee shall immediately notify Weyerhaeuser at 360-446-3870 and appropriate government agencies at 911 and shall make every effort to help suppress or contain the fire. In addition to any liability for negligence, Permittee will reimburse Weyerhaeuser for all damages (including loss or damage of timber, and fire suppression costs) resulting from fires caused by Permittee's activities even if not attributable to negligence by Permittee or its agents.

5. HAZARDOUS MATERIALS. Permittee shall:

- (a) Not dispose or discard any dangerous, hazardous, or regulated products or materials including, but not limited to, petroleum products, anti-freeze, oil filters, grease tubes, etc., on Weyerhaeuser's property.
- (b) Inspect, on a daily basis, all equipment used by Permittee for hydraulic and fuel leaks, and ensure that any such equipment will be repaired and properly maintained before entry upon Weyerhaeuser property.
- (c) Immediately clean up and properly dispose of any and all leaks, spills, and overfills of any material or substance, including any contaminated soil, other than clean water.
- (d) Report all oil sheen on waters and all spills immediately to Weyerhaeuser's designated representative and shall advise such person of the location, type of spill, and the steps being taken to contain and control the spill.
- (e) Report all oil sheen on waters and all spills within two (2) hours to the responsible local agency.

6. FIREARMS AND WEAPONS. Permittee shall not use or display firearms or weapons on Weyerhaeuser property while operating under this Permit.

7. HOUSEKEEPING. Permittee shall maintain satisfactory housekeeping practices during the duration of the Permit, and upon completion of work, shall remove all equipment, materials, tools, rubbish, and other materials of any kind, which may have accumulated on the premises. Leave the premises in a clean and satisfactory condition. On-site disposal of waste, including, but not limited to, packaging material, whether by burning, burying or otherwise, is specifically prohibited.

8. NOTICES. All notices provided for in this Permit, except notices regarding fire suppression or hazardous materials spills, must be written and given by either personal hand-delivery, facsimile, or regular U.S. mail, postage prepaid. All notices regarding fire suppression or hazardous materials must be reported in person or by telephone as soon as possible. All notices must be given to the persons whose signatures appear at the end of this Permit.

9. NON-ASSIGNMENT. Permittee may not assign its rights under this Permit without Weyerhaeuser's prior written consent, which consent may be withheld, and Weyerhaeuser may consider any attempted assignment without this consent to be void and to terminate this Permit.

10. ASSUMPTION OF RISKS. Permittee assumes all risks of personal injury or property damage to itself and its employees, agents, and contractors in connection with Permittee's activities under this Permit. Permittee acknowledges that the Permit Road(s) are used for logging, forestry, and industrial operations and are maintained, if at all, only to standards required for such use. Permittee further acknowledges and understands that Weyerhaeuser has made no representations as to the present or future condition of its property or the Permit Road(s), the character of traffic on its property or Permit Road(s), or any other factor affecting Permittee's risks. Permittee shall pay for all damage to Weyerhaeuser's property resulting directly or indirectly from Permittee's acts or omissions under this Permit, even if not attributable to negligence by Permittee.

11. INDEMNIFICATION. Permittee shall defend, indemnify, and hold harmless Weyerhaeuser and its directors, officers, employees, contractors, and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Permittee under this Permit, except to the extent such claims are caused solely by Weyerhaeuser's gross negligence or willful misconduct. This includes, without limitation, any claims for injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; workers' compensation and unemployment taxes; fines and penalties; and environmental damages, cleanups, and corrective actions. If Weyerhaeuser chooses to retain its own counsel for claims covered by Permittee's indemnity, Permittee shall reimburse Weyerhaeuser for all costs reasonably incurred to

defend against such claims through the attorneys of its choice. Permittee shall take all steps needed to keep Weyerhaeuser's property free of liens arising from Permittee's activities, and promptly obtain or bond the release of any such liens that may be filed arising from Permittee's activity. This indemnity shall survive termination and expiration of this Permit.

12. TERMINATION. All rights under this Permit shall terminate upon thirty (30) days notice by either party. If Weyerhaeuser terminates this permit for any reason, except default, the unearned portion of any prepaid consideration shall be returned to Permittee. All of Permittee's obligations to Weyerhaeuser survive termination of Permittee's rights under this Permit, until these obligations have been fulfilled.

13. SUSPENSION AND TERMINATION FOR DEFAULT. Weyerhaeuser may suspend Permittee's activities under this Permit immediately by written notice of any default. Suspension will continue until the default is remedied. Any time after ten (10) days from such a suspension notice, if Permittee is still in default, Weyerhaeuser may terminate Permittee's rights under this Permit. Weyerhaeuser's right to suspend and terminate Permittee's rights under this paragraph are in addition to all other available remedies. The following events shall constitute events of default: (a) Failure to comply with any of the terms or conditions of this Permit; and (b) Commencement of any proceeding or petition under the Bankruptcy Code or any other federal or state bankruptcy, insolvency, receivership, or similar law.

14. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Agreement.

15. RELATIONSHIP OF PARTIES. This Agreement is not intended to create and shall not be construed to create any partnership or association for profit between Permittee and Weyerhaeuser, and any liabilities hereunder shall be several and not joint.

16. CONFIDENTIALITY. The terms of this Permit may not be disclosed by Permittee to persons other than affiliates, parent or subsidiaries, or parties confidentially bound to Permittee without Weyerhaeuser's prior written consent, except in situations required by law or a court of competent jurisdiction.

17. RECORDING. Permittee may not record this Permit in any public records.

18. INTEGRATED AGREEMENT; MODIFICATION. This Permit constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Permit and supersedes all prior negotiations and representations. This Permit may not be modified except in writing signed by the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purposes of this Permit.

19. INTERPRETATION. Each party acknowledges that it and its legal counsel have had the opportunity to review this Permit. The parties agree that the terms and conditions of this Permit shall not be construed against any party on the basis of such party's drafting, in whole or in part, of such terms and conditions.

20. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions of this Permit, or failure to exercise any rights or remedies provided in this Permit or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Permit, nor shall any purported oral modification or rescission of this Permit by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision of this Permit shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

21. SEVERABILITY. If any provision of this Permit is held to be invalid or unenforceable, this provision shall not affect or invalidate the remainder of this Permit, and to this end the provisions of this Permit are declared to be severable. If any such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Permit.

22. GOVERNING LAW & VENUE. The validity, construction, and performance of this Permit shall be governed by and construed in accordance with the laws of the state in which the Permit Road(s) are located, without regard to its conflict of laws rules. The parties agree to submit to the jurisdiction of any state or federal court within such state in any action or dispute resolution process arising out of the terms, enforcement, or breach of this Permit, and the parties agree that the courts of any Indian Tribe, whether federally recognized or otherwise, shall not be utilized to resolve or adjudicate any action or dispute

arising out of the terms, enforcement, or breach of this Lease.

23. ATTORNEYS' FEES. Should any legal action or proceeding be commenced by either party to enforce all or any provision of this Permit, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with this Permit, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.

24. EXHIBITS. All exhibits referred to in this Permit are deemed to be incorporated in this Permit in their entirety.

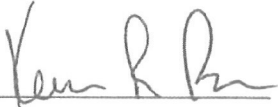
25. HEADINGS. The headings in this Permit are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Permit nor the meaning of any of its provisions.

26. COUNTERPARTS. This Permit may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Permit at different times and places by the parties shall not affect its validity so long as all the parties execute a counterpart of this Permit.

IN WITNESS WHEREOF, the parties have executed this Road Use Permit as of the Effective Date.

KING COUNTY DIVISION OF PARKS AND RECREATION

WEYERHAEUSER COMPANY

By: 

By: 

Its: Director

Its: Vail Team Leader

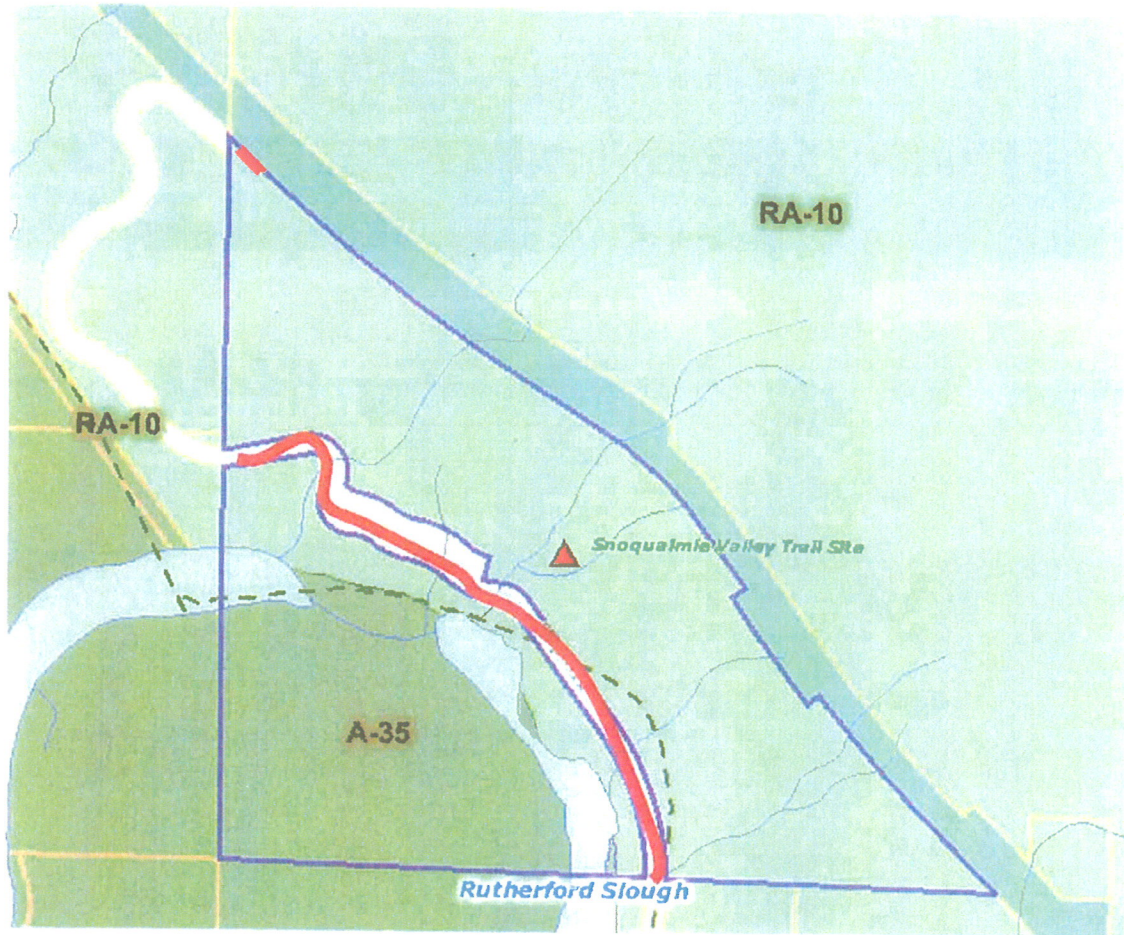
Address: 201 S Jackson St, Ste 700
Seattle WA 98104-3855

Address: PO Box 889
Rainier WA 98576

Tel: 206-263-7005 (Nick Halverson)
Fax: 206-296-8686

Tel: 360-446-3870 (Julie Keough)
Fax: 360-446-2094

11-24N-7E, W.M. King County, Washington



Permitted Roads

ATTACHMENT B

