



King County

**Metropolitan King County Council
Budget and Fiscal Management Committee**

Agenda Item No.: 8
Proposed No.: 2010-0372

Date: July 20, 2010
Prepared By: Amy Tsai

STAFF REPORT

SUBJECT: An ordinance authorizing the King County Executive to convey real property to the Vashon sewer district.

SUMMARY:

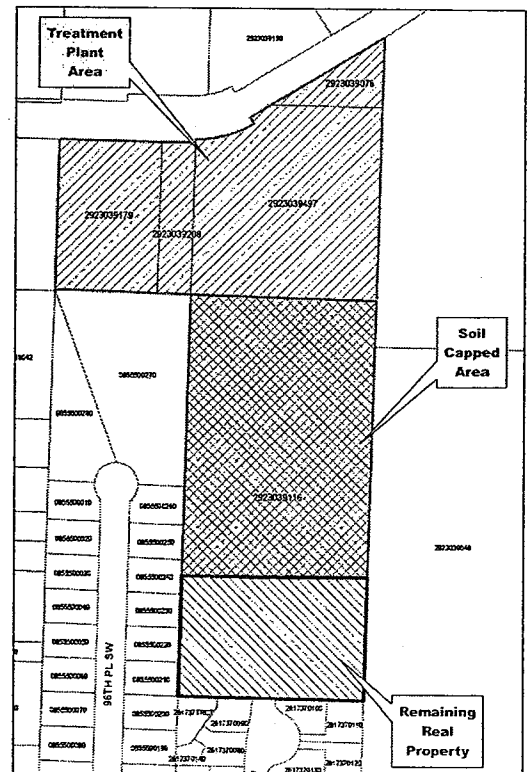
The county has a 1999 agreement with the Vashon Sewer District that states that the District would give to the county the district's wastewater treatment plant and surrounding lands, and the county would return any land not needed for operations, maintenance, repair or improvements. Proposed Ordinance 2010-0372 authorizes the Executive to convey the unneeded land back to the Vashon Sewer District.

BACKGROUND:

In 1999, Vashon Sewer District contracted with King County for wastewater treatment services. The agreement was adopted by the Council on August 30, 1999 (Ordinance 13619). The sewer district gave King County the existing old treatment plant and surrounding lands. The county was to improve the plant and return any unneeded lands back to the sewer district.

The treatment plant upgrade was completed in 2006. Under the terms of the 1999 agreement, the county must convey any lands back to Vashon Sewer District that the parties mutually agree are unnecessary for the operation, maintenance, repair and improvements of the treatment plant.

The properties that were originally conveyed are five parcels that are the shaded area in Attachment A to Proposed Ordinance 2010-0372. The proposed area to be reconveyed to the Vashon Sewer District is the southernmost shaded rectangle.



ANALYSIS:

Council approval of property sales

Under K.C.C. 4.56.080(A), council approval is required for sale of county-titled real property with a value of more than ten thousand dollars, the sale being recommended as a result of real property having been declared as surplus. Although the proposed property does not have a valuation, Wastewater Treatment Division staff estimate the value of the property as being more than \$50,000.

The Prosecuting Attorney's Office has determined that the surplus requirements are superseded by the contract between the county and the sewer district that the property would be returned to the district. Therefore the property does not need to be declared surplus.

No public bid required

Under K.C.C. 4.56.100, sales of real property must be made to the highest responsible bidder at public auction or by sealed bid unless it meets one of the exceptions. The exceptions include county property sold to a government agency. Although the proposed agreement is a conveyance of property and not a sale per se, if K.C.C. 4.56.100 applies, then the proposed sale does not require public bidding because it is being conveyed to a government agency, the Vashon Sewer District.

Public notice and hearing required

K.C.C. 4.56.140 allows the county to dispose of property to another governmental agency by negotiation for such consideration that the county deems to be adequate. For property valued at over \$50,000, there must be a public notice and hearing as required by RCW 39.33.020, which includes advertising at least ten days before the public hearing. As noted above, Wastewater staff estimate that the property value exceeds the \$50,000 threshold. Therefore, if this proposed ordinance proceeds to Council, the timing of the matter before Council must accommodate the required advertising schedule. If approved by the committee today, the item could first be acted upon by the full Council anytime after July 27 (August 16 is the first Monday after Council recess).

Boundary line adjustments

The proposed land has had a boundary line adjustment in order to create the parcel that would go to the sewer district.

The boundary line adjustment has been finalized and has received all of the necessary approvals from DDES and the County Assessor. RCW Chapter 58.17 provides requirements for the subdivision of land. RCW 58.17.040(6) creates an exception from the provisions of that chapter when a division is made by adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division (and the new areas have to be big enough for a building site). In this case, the adjustment does not create any additional parcels; it adjusts lot lines to create the agreed upon area.

Mutual agreement

The terms of the original 1999 contract state that the parties must mutually agree upon the area to be returned to the sewer district. The Executive entered into a 2008 interagency agreement with the Vashon Sewer District that identified an agreed-upon area (Attachment A to Proposed Ordinance 2010-0372). The Executive does not yet have a quit-claim deed drafted to describe the legal boundaries of the property. However, the map attached to the interagency agreement and the boundary line adjustment document appear to have sufficient detail to accurately identify the area of agreement. WTD staff and the Vashon Sewer District have done a walk-through of the area confirming the boundaries of the land that would be conveyed.

Soil-contaminated land

When the county improved the treatment plant, it encountered soil contamination associated with the former Asarco smelter in Tacoma. The contaminated soil was deposited on the south side of the plant and capped in accordance with an engineered design approved by the Department of Ecology.

The disposition of the capped area and whether the sewer district should be entitled to that land in an uncontaminated condition was a matter of some dispute. Pursuant to an interagency agreement, the county will retain ownership and control of the contaminated land. In exchange, the sewer district receives the land south of the contaminated area plus some funding for local sewer projects. In this proposed ordinance, the Council is only being asked to authorize the conveyance of the land. Therefore, the interagency agreement is not attached to the proposed ordinance, but for reference it is included as Attachment 1 to this staff report. It is a complex arrangement, but the net result includes \$217,000 going to the district for collection system projects from the Wastewater Treatment Division conveyance system improvements fund used for some smaller projects as part of the negotiations over the contaminated land.

WTD staff state that the risk of leakage from the contaminated area is low and fencing is not required because it has a thick soil cap and is hydro-seeded; the Prosecuting Attorney's Office agrees that retaining ownership and control of the contaminated land will help to minimize county liability. The county will do periodic maintenance to mow the area and conduct annual walk-through inspections. The maintenance is expected to have minimal cost.

REASONABLENESS:

Under this proposed ordinance, the county would fulfill its contractual obligation to return unused land to the Vashon Sewer District pursuant to a 1999 agreement. Approval of the ordinance would appear to be a reasonable policy and business decision.

AMENDMENTS:

Yes, there is a technical amendment (A1) that clarifies the land description, role of Council, and role of Executive.

INVITED:

- Sharman Herrin, Government Relations Administrator, Wastewater Treatment Division, DNRP (WTD)
- Bill Wilbert, Environmental Programs Managing Supervisor, WTD
- Alton Gaskill, Real Property Agent IV, WTD
- Verna Bromley, Senior Deputy Prosecuting Attorney, PAO

ATTACHMENTS:

1. Amendment 1 to Proposed Ordinance 2010-0372
2. Proposed Ordinance 2010-0372
3. Executive's Transmittal letter and attachments
4. Fiscal note
5. Attachment 1: Interagency Agreement Between King County (Wastewater Treatment Division) and Vashon Sewer District and Release of Claims (not including Appendices)

S1

7-20-10

at Sponsor: Patterson
Proposed No.: 2010-0372

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2010-0372, VERSION**

2 **1**

3 On page 1, beginning on line 3, strike everything through page 2, line 33, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. King County ("the county") and the Vashon sewer district ("the district") are
7 parties to a sewage disposal agreement dated September 13, 1999, and amended
8 September 29, 2004 ("the basic agreement"). The council approved the original
9 agreement on August 30, 1999, via Ordinance 13619. The council approved the
10 amendment to the agreement on September 13, 2004, via Ordinance 15002.

11 B. Under the basic agreement, the county agreed to operate, maintain, repair,
12 improve and upgrade the existing wastewater treatment plant that serves the district.

13 C. Under the basic agreement, the district conveyed certain real property and
14 assigned certain interests in real property to the county in order for the county to upgrade,
15 operate and maintain the new facility.

16 D. The basic agreement requires the county to return to the district any real estate
17 that is mutually determined to be unnecessary ("the remaining real property") for ongoing
18 operation of the upgraded treatment plant.

19 E. The county and the district entered into an Interagency Agreement and Release
20 of Claims ("the interagency agreement") on August 26, 2008, which identified the
21 remaining real property. The remaining real property is depicted in Attachment A to this
22 ordinance.

23 F. The terms of the interagency agreement require the county to convey to the
24 district the remaining real property pursuant to a quit claim deed.

25 G. Under the terms of the interagency agreement and in anticipation of real
26 property conveyance to the district, the county completed a boundary line adjustment on
27 January 13, 2010 for the purpose of establishing the remaining real property as a new
28 legal lot, designated "Lot B."

29 H. Lot B is the southerly 245 feet of Parcel A as described in the boundary line
30 adjustment document attached as Attachment B to this ordinance. It refers to the area
31 labeled as "Remaining Real Property" in Attachment A to this ordinance.

32 I. The King County council finds that the conveyance of Lot B to the Vashon
33 Sewer District is necessary for the fulfillment of the county's legal obligation under the
34 basic agreement and is in the best interests of the county.

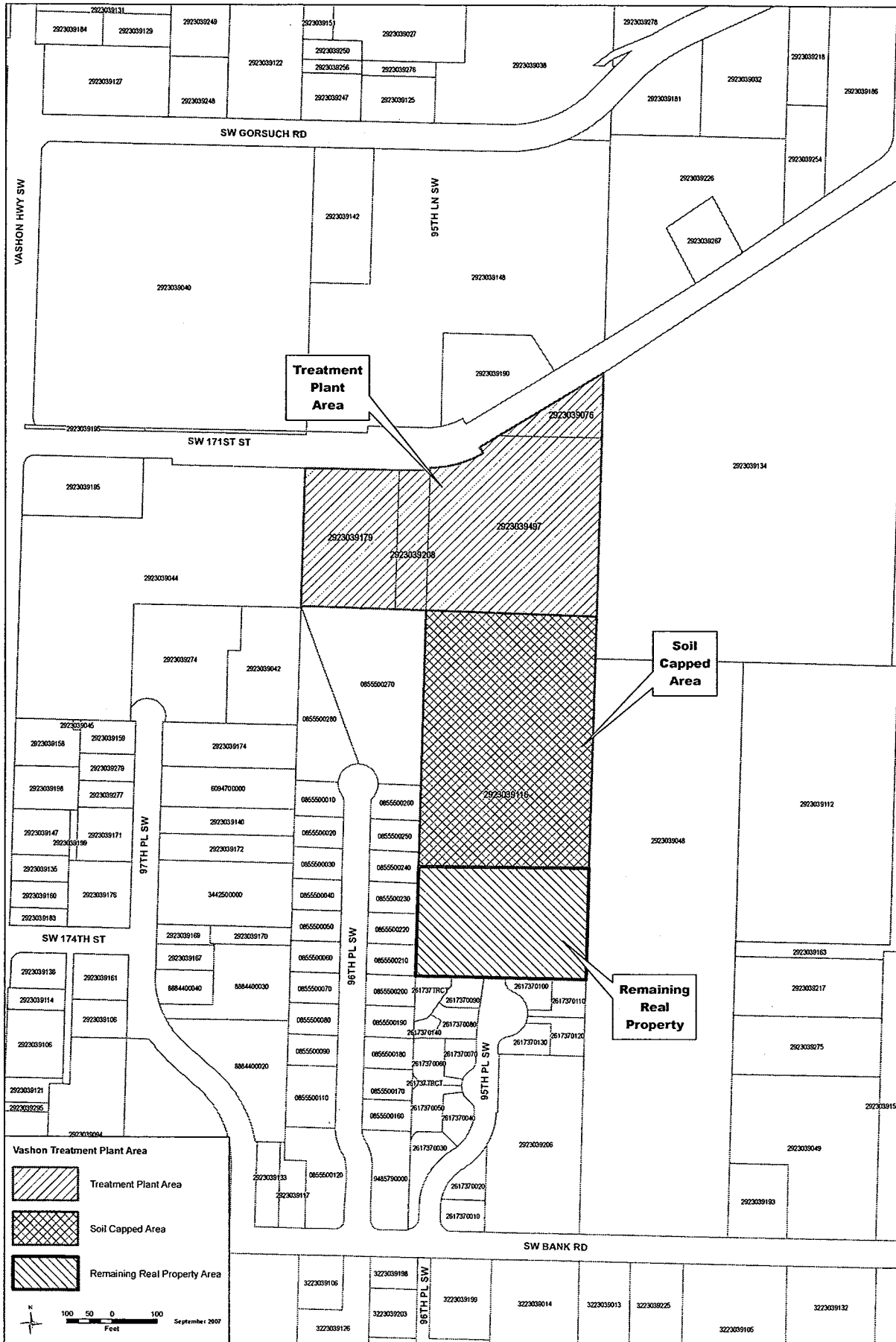
35 SECTION 2. The King County council hereby authorizes the executive to convey
36 Lot B, described in Section 1.H. of this ordinance, to the Vashon sewer district via quit
37 claim deed."

38 Add Attachment A, Exhibit A - Real Property Description Vashon Wastewater Treatment
39 Plant King County and Vashon Sewer District Interagency Agreement†




40 Add Attachment B, Boundary Line Adjustment No. L09L0053

41

42 **EFFECT: Clarifies the description of the remaining real property, the role of the**
43 **Council, and the role of the Executive. Also adds Attachment B the boundary line**
44 **adjustment description of the remaining real property.**



Vashon Treatment Plant Area

-  Treatment Plant Area
-  Soil Capped Area
-  Remaining Real Property Area



 September 2007


King County
 Department of
 Natural Resources and Parks
 Wastewater Treatment
 Division

The information included on this map has been compiled from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or reuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.
 File Name: Q:\WTPD\Projects\Vashon\Projects\vashon_exhibitA.mxd - Shari Cross

Exhibit A
Real Property Description
Vashon Wastewater Treatment Plant
 King County and Vashon Sewer District
 Interagency Agreement

RECORDING NO. **201001390003**

VOL. / PAGE **288 / 188**

SCALE: NONE

PORTION OF NW1/4 of SW1/4, S.29, T.23N., R.3E., W.M. & SW1/4 of SW1/4, S.29, T.23N., R.3E., W.M.

APPROVAL NOTICE:

THIS REQUEST QUALIFIES FOR EXEMPTION UNDER KCC 19A.28. IT DOES NOT GUARANTEE THAT THE LOTS WILL BE SUITABLE FOR DEVELOPMENT NOW OR IN THE FUTURE. THE LOTS MAY BE SUBJECT TO OTHER LOTS MUST BE DONE BY SEPARATE INSTRUMENT UNLESS ALL LOTS HEREIN ARE UNDER THE SAME OWNERSHIP.

APPROVAL

DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES APPROVED THIS **6TH** DAY OF **January**, 2010.

[Signature] **Paul R. Pas**
 KING COUNTY DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES

[Signature] **David H. Wood**
 KING COUNTY ASSESSOR

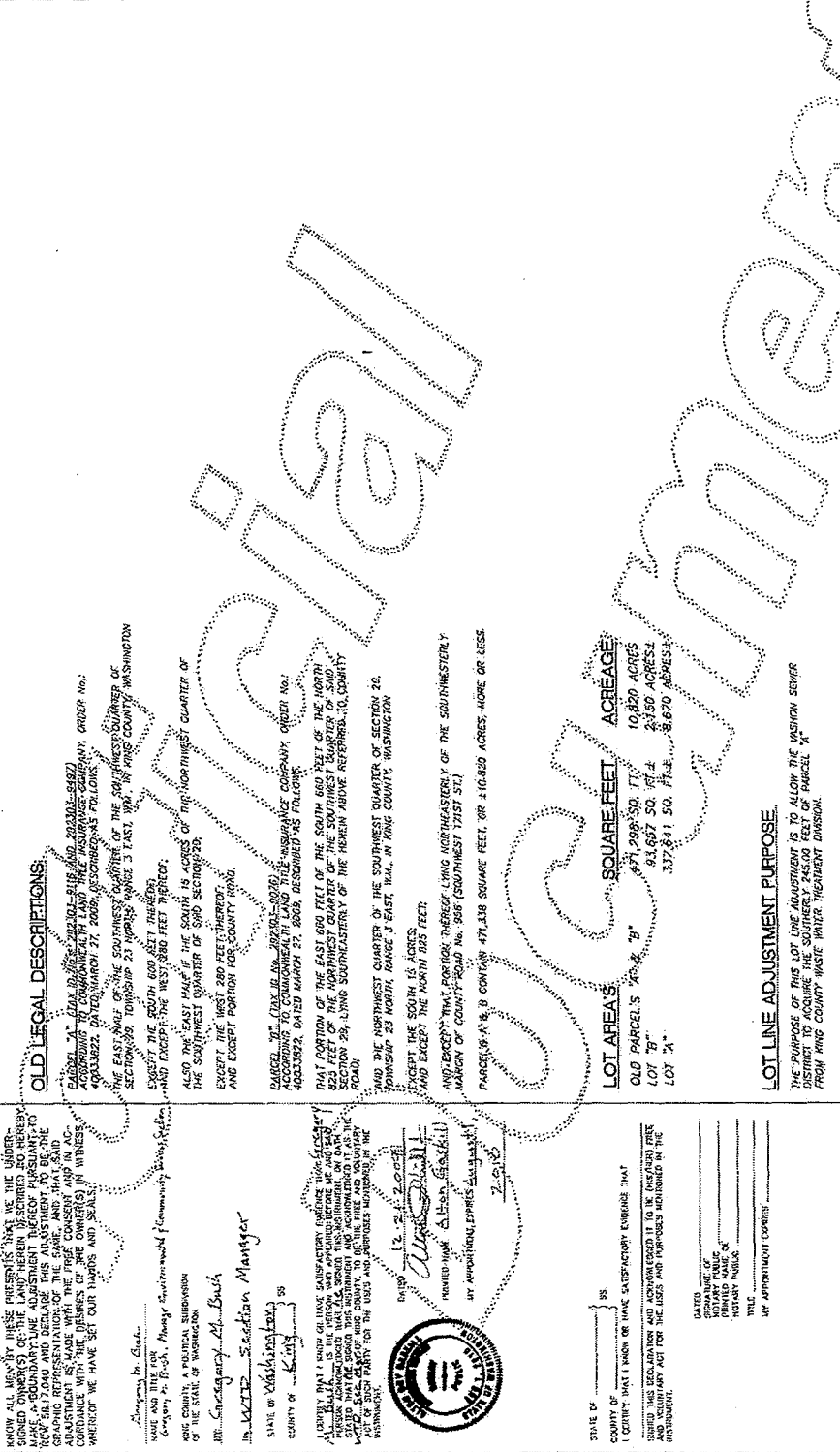
KING COUNTY, WASHINGTON
BOUNDARY LINE ADJUSTMENT
 King County No. 0910053

DECLARATION

I, **Manjiv Kumar**, being the undersigned owner(s) of the land herein described do hereby make a boundary line adjustment pursuant to RCW 65A.7040 and declare this adjustment to be in accordance with the desires of the owner(s) in witness whereof we have set our hands and seals.

Manjiv Kumar
 County of King, Washington
 State of Washington

[Signature]
 Section Manager
 County of King, Washington



LOT AREAS:

SQUARE FEET **ACREAGE**

OLD PARCEL'S "A", "B" 871,299.50 FT² 19.820 ACRES

LOT "9" 93,857.50 FT² 2.150 ACRES

LOT "8" 337,841.50 FT² 7.670 ACRES

LOT "7" 337,841.50 FT² 7.670 ACRES

LOT LINE ADJUSTMENT PURPOSE:

THE PURPOSE OF THIS LOT LINE ADJUSTMENT IS TO ALLOW THE WASHONG SEWER DISTRICT TO ACQUIRE THE SURVEYED 246.00 FEET OF PARCEL "A".

LAND SURVEYOR'S CERTIFICATE

THIS BOUNDARY LINE ADJUSTMENT CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH STATE AND COUNTY STATUTES.

[Signature]
 DUANE URTMAN & ASSOCIATES, INC.
 Surveyors
 1009 BROWNIE-REDDING ROAD, P-107
 BOSTON, WASHINGTON 98072

CERTIFICATE NO. **5018**

STATE OF **WA**

COUNTY OF **King**

DATE OF **12-21-2009**

BY APPOINTMENT CORREY

MANAGER

201001390003

AT THE REQUEST OF

SUPPLY OF RECORDS

KING COUNTY

Signature Report

July 19, 2010

Ordinance



Proposed No. 2010-0372.1

Sponsors Drago

1 AN ORDINANCE authorizing the conveyance of real
2 property to the Vashon sewer district.

3 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

4 SECTION 1. Findings:

5 A. King County ("the county") and the Vashon sewer district ("the district") are
6 parties to a sewage disposal agreement dated September 13, 1999, and amended
7 September 29, 2004 ("the basic agreement").

8 B. Under the basic agreement, the county agreed to operate, maintain, repair,
9 improve and upgrade the existing wastewater treatment plant that serves the district.

10 C. Under the basic agreement, the district conveyed certain real property and
11 assigned certain interests in real property to the county in order for the county to upgrade,
12 operate and maintain the new facility.

13 D. The basic agreement requires the county to return to the district any real estate
14 that is mutually determined to be unnecessary ("the remaining Real Property") for
15 ongoing operation of the upgraded treatment plant.

16 E. The county and the district entered into an Interagency Agreement and Release
17 of Claims ("the interagency agreement") on August 26, 2008, which identified the
18 remaining real property, as shown in Attachment A to this ordinance.

19 F. The interagency agreement requires the county to convey to the district the
20 remaining real property.

21 G. Under the terms of the interagency agreement and in anticipation of real
22 property conveyance to the district, the county completed a boundary line adjustment on
23 January 13, 2010, as shown in Attachment B to this ordinance, for the purpose of
24 establishing the remaining real property as a new legal lot, designated Lot B.

25 SECTION 2. The King County council acknowledges that the basic agreement
26 and interagency agreement were made in good faith and were necessary to obtain the
27 required property rights for the upgrade of the Vashon wastewater treatment plant.

28 SECTION 3. The King County council acknowledges that in order for the county
29 to fulfill its obligation under these agreements, the county must convey Lot B to the
30 district.

31 SECTION 4. The King County council hereby authorizes the conveyance of Lot
32 B to the district for the purpose of satisfying the terms of the legal agreements between
33 the county and the district.

34

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Ordinance

Robert W. Ferguson, Chair

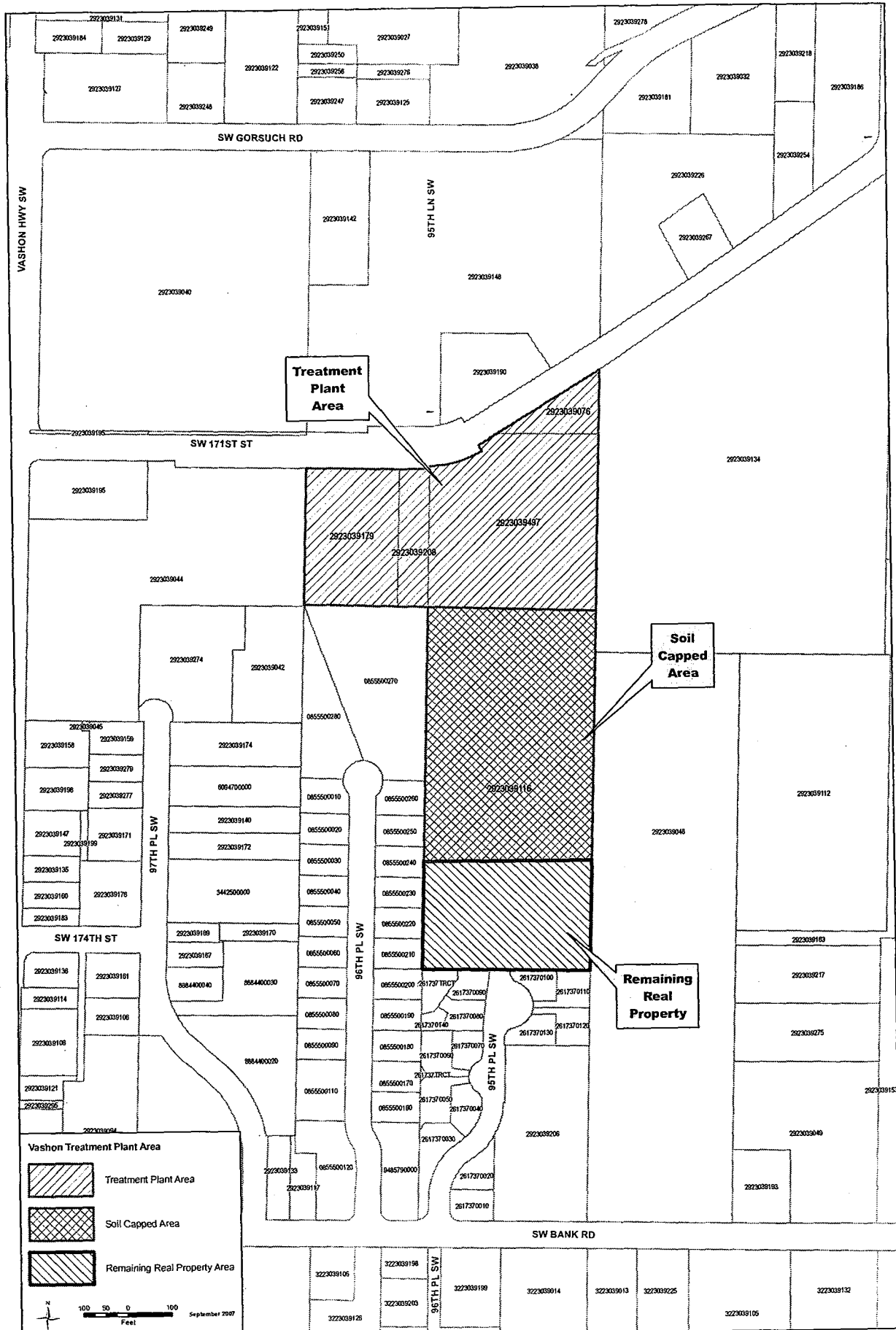
ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Exhibit A - Real Property Description Vashon Wastewater Treatment Plant King County and Vashon Sewer District Interagency Agreement



June 28, 2010

The Honorable Bob Ferguson
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Ferguson:

I am pleased to transmit the enclosed ordinance that will authorize King County to reconvey surplus property to the Vashon Sewer District, in accordance with agreements related to improvements at the district's wastewater treatment plant.

King County operates and maintains the district's wastewater treatment plant. The district transferred property to the county to enable the county to upgrade the district's wastewater treatment plant. The work has been completed, and agreements related to the project require the county to reconvey any property to the district that is not needed for ongoing treatment plant operations.

The enclosed ordinance authorizes the required property transfers, consistent with the agreements between the district and the county. If you have any questions, please feel free to contact Christie True, Division Director of the Wastewater Treatment Division of the Department of Natural Resources and Parks, at 206-684-1236.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Tom Bristow, Chief of Staff
 Anne Noris, Clerk of the Council
Verna Bromley, Deputy Prosecutor, Office of the Prosecuting Attorney
Dwight Dively, Director, Office of Management and Budget & Office of Strategic
 Planning and Performance Management
Bob Burns, Interim Director, Department of Natural Resources and Parks (DNRP)
Christie True, Division Director, Wastewater Treatment Division, DNRP

FISCAL NOTE

Ordinance/Motion No. 2010-XXXX
 Title: Conveyance of real property to the Vashon Sewer District
 Affected Agency and/or Agencies: Capital Improvement Program, Wastewater Treatment Division, DNRP
 Note Prepared By: Kevin Yokoyama
 Note Reviewed By: Chris Dew

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
Wastewater Treatment Capital Fund	000004616	Rate Rev	\$0	\$0	\$0	\$0
TOTAL			\$0	\$0	\$0	\$0

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
Wastewater Treatment Capital Fund	000004616	DNRP	\$0	\$0	\$0	\$0
TOTAL			\$0	\$0	\$0	\$0

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
Salaries and Benefits				
Supplies and Services				
Capital Outlay	\$0	\$0	\$0	\$0
Other				
TOTAL	\$0	\$0	\$0	\$0

Assumptions: This fiscal note accompanies an ordinance authorizing the conveyance of real property to the Vashon Sewer District.

The ordinance authorizes King County to return to the Vashon Sewer District any real estate that is mutually determined to be unnecessary for ongoing operation of the upgraded treatment plant on Vashon Island. The return of real estate is consistent with the terms of agreements between King County and the Vashon Sewer District.

Approval of the ordinance does not fiscally impact the Wastewater Treatment Division Capital Improvement Fund.

INTERAGENCY AGREEMENT BETWEEN KING COUNTY (WASTEWATER TREATMENT DIVISION) AND VASHON SEWER DISTRICT AND RELEASE OF CLAIMS

THIS AGREEMENT is made and entered into by and between KING COUNTY, a political subdivision of the State of Washington, hereinafter referred to as the "County," and VASHON SEWER DISTRICT, a municipal corporation of the State of Washington, hereinafter referred to as the "District." The County and the District may be referred to individually as a Party and collectively as Parties below.

RECITALS

WHEREAS, the County and the District are parties to a sewage disposal agreement dated September 13, 1999 as amended September 29, 2004 (the "Basic Agreement") and by the terms of the Basic Agreement, the County agreed to operate, maintain, repair, improve and replace the existing wastewater treatment plant that serves the main part of the District and to finance certain wastewater conveyance and treatment facilities to serve two noncontinuous areas of the District that had been declared severe public health hazards.

WHEREAS, in 2002, pursuant to the terms of the Basic Agreement the District conveyed by quit claim deed(s) certain real property and assigned certain interests in real property to the County in order for the County to construct, operate, maintain a new wastewater treatment plant and associated facilities.

WHEREAS, in the Fall of 2006 the County completed construction of a new wastewater treatment plant "New Vashon Wastewater Treatment Plant" in the "New Vashon Wastewater Treatment Plant Area and during construction of the New Vashon Wastewater Treatment Plant, contaminated soils with elevated levels of lead, arsenic and cadmium, caused by releases from the long-running Asarco copper smelter in Ruston, Washington were encountered. A portion of the real property conveyed to the County for construction, operations and maintenance was used to deposit and cap these contaminated soils consistent with the recommendations of the Area-Wide Contaminated Soil Task Force and the Department of Ecology (the "Capped Area"). Attached hereto as Exhibit A is a true and correct copy of a map depicting the New Vashon Wastewater Treatment Plant Area, the Capped Area and the remaining real property area.

WHEREAS, pursuant to the terms of the Basic Agreement, the County and the District must mutually determine what real property is unnecessary for the construction, operation and maintenance of the new wastewater treatment plant and associated facilities so that this unnecessary real property may be returned to the District.

WHEREAS a dispute and disagreement has arisen between the County and the District because the County believes that both the Capped Area and the New Vashon Wastewater Treatment Plant Area are necessary for the construction, operation and maintenance of the New Vashon

Wastewater Treatment Plant and associated facilities and should not be returned to the District. The District believes that use of the real property identified herein as the Capped Area may not have been the only possible alternative for disposal of the contaminated soils, that the deposition of the contaminated soils in the Capped Area could possibly have been accomplished in a smaller area, and that the value of the real property area to be returned to the district by the terms of the basic agreement has been negatively impacted because of the reduced size and proximity of the deposited and capped contaminated soils.

WHEREAS the District agreed to the transfer to the County of certain grant funds it received from the Environmental Protection Agency's State and Tribal Grant (STAG) Program to help fund certain County costs for the construction of the new wastewater treatment plant and the county, in turn, has agreed to help fund the design and construction of three (3) District projects.

WHEREAS the parties have determined certain compensation to be paid by the County to the District to address the foregoing considerations.

WHEREAS the District has incurred a liability to the County through underpayment of sewage disposal charges and desires that the amount otherwise payable by the County to the District be reduced by the amount of said liability.

NOW, THEREFORE, in consideration of the covenants, representations and promises contained herein, the Parties agree as follows:

1: Term of Agreement

1.0. This Agreement shall become effective immediately upon execution by the Parties and shall remain in effect until the work described herein is complete, unless terminated sooner, as provided herein.

Section 2: Return of Real Property to District

2.0. The real property depicted as the Capped Area and the New Vashon Wastewater Treatment Plant Area in Exhibit A shall be retained by the County. The property area depicted in Exhibit A as the Remaining Property Area shall be returned to the District pursuant to a quit claim deed after division of the property as described in Section 2.1.

2.1 The County and the District shall cooperate to divide the property depicted in Exhibit A into two or more legal lots. The conveyance of the Remaining Property Area to the District is contingent on the County dividing the Remaining Property Area from the other property depicted in Exhibit A through a municipal subdivision, boundary line adjustment, or other appropriate procedure and completing any survey required to support such division. The activities described in this Section 2.1 shall be undertaken at the county's cost.

2.2 The County and District agree that conveyance of the Remaining Property Area to the District in accordance with this Section 2 fully satisfies the requirements set forth in Section 10 of the Basic Agreement.

Section 3: Design and Construction of District's Priority Utility Projects

3.0 The County shall pay for three or more District Utility Projects as described in this section up to a maximum total amount of \$530,000; said amount to be reduced by \$109,584.12 to a maximum amount of \$420,415.88 to compensate the County for underpayment of sewage disposal charges from July 2004 through December 2007 (the "Reduced Utility Project Payment Amount"). Should underpayment of sewage disposal charges be determined for 2008 the District may elect to further reduce the \$530,000 designated above as a means for compensating the County for said underpayment and the Reduced Utility Project Payment Amount shall be reduced accordingly. Should the parties mutually determine that further adjustment of the Reduced Utility Project Payment Amount is for any reason warranted they shall acknowledge such in writing and the amount shall be adjusted accordingly. The County shall act as the lead agency for the District Utility Project described in subsection 3.01. The District shall act as lead agency for the District Utility Projects described in subsections 3.02, 3.03 and 3.04. The Reduced Utility Payment Amount shall be available to pay for the District Utility Projects in the order set forth in sections 3.01, 3.02, and 3.03.

3.0.1. Repair of bulkhead at Bunker Trail for the purpose of protecting the District's Bunker Trail Sewer Collection System. The estimated design, environmental review, permitting and construction cost for this project is \$200,000.

3.0.2. Repair, rehabilitation or replacement of a 600 foot segment of concrete sewer pipe between Manhole 23 and Manhole 33 to address leaks, correct failing joints, eliminate root intrusion and restore structural integrity (the "MH 23 to MH 33 Project"). The estimated design, environmental review, permitting and construction cost for this project is \$120,000.

3.0.3. Repair, rehabilitation or replacement of a 900 foot segment of concrete sewer pipe downstream of Manhole 23 to the New Vashon Wastewater Treatment Plant to address leaks, correct failing joints, eliminate root intrusion and ensure continued structural integrity (the "MH 23 to WWTP Project"). The estimated design, environmental review, permitting and construction cost for this project is \$150,000.

3.0.4. The scope of the projects described in subsections 3.02 and 3.03 shall be reduced as necessary to stay within the total amount remaining from the Reduced Utility Payment Amount after paying for the costs of the project in section 3.01. Should the actual costs of the foregoing District Utility Projects combined total less than \$420,415.88 the District may undertake additional repair, rehabilitation or replacement of any portion of its sewage collection system and the County shall reimburse said work up to the maximum of the funds remaining from the Reduced Utility Payment Amount. The District may, with the County's written concurrence, undertake repair, rehabilitation or replacement projects not yet specified as

alternatives to those described in subsections 3.02 and 3.03 up to the maximum of the funds remaining from the Reduced Utility Payment Amount.

An interest bearing account (the "Account") shall be established pursuant to the attached Holdback Agreement attached hereto as Appendix A and incorporated herein by this reference. The County shall place into the Account an amount equal to the Reduced Utility Project Payment Amount as may be further reduced or adjusted pursuant to 3.0 above, minus the costs expended by the County on the project described in subsection 3.01 above ("the Holdback Amount") After the District completes one of the District Utility Projects described in Section 3.02 or 3.03 then the District shall certify the project as complete and shall notify the County. The County may conduct its own inspections to ensure that the District Utility Project has been completed in accordance with this Agreement. The County will then authorize a reimbursement payment be made from the Account up to the lesser of (a) the Holdback Amount or (b) the principle amount remaining in the Account at the time of the request for reimbursement. In no event, shall the County be obligated to pay more than the Holdback Amount. Any funds in the Account not expended by the District within five years from the date of this Agreement shall be returned to the County. All interest in the Account shall accrue to the benefit of the County.

3.1. The County will complete the environmental review, prepare the design plans and specifications, obtain the necessary construction permits and construct the Bunker Trail Bulkhead Repair Work as described in subsection 3.01 above. To accomplish the work the County will bid, award and administer a contract or contracts pursuant to applicable County public works requirements. The County will provide construction engineering and inspection of the work based upon the plans and specifications and sound engineering practice. Inspection of construction activities by the County shall not constitute a guarantee or warranty of the adequacy of performance.

3.2. The District represents and warrants that it has rights of access to the bulkhead at Bunker Trail and will provide the County and its contractor(s) access to these areas for the design, permitting and construction of the Bunker Trail Bulkhead Work.

3.3. The District may, if it desires, furnish an inspector for the Bunker Trail Bulkhead Work. Any costs for such inspection will be borne solely by the District. All contact between said inspector and the County's Contractor shall be through the County on-site representative who shall be identified before the commencement of any construction

3.4. The District will within fourteen (14) calendar days after receipt of notification of completion of the Bunker Trail Bulkhead Work, issue written notification to the County of any deficiencies or of acceptance of the work. The County's contractor shall correct any deficiencies in accordance with the construction contract. If, after the fourteen (14) day period, notification has not been received by the County, the Bunker Trail Bulkhead Work shall be considered complete and accepted by the District.

3.5. Upon completion of the Bunker Trail Bulkhead Work, the County shall transfer title to all improvements and all contractor/vendor warranties to the District and the District shall be solely responsible for the operation, maintenance, repair and replacement of the Bunker Trail facilities and appurtenant structures. The Parties hereby agree that, except as expressly set forth in this Agreement, the performance of services pursuant to this Agreement shall not constitute an assumption by the County of any District obligations or responsibilities.

3.6. The Parties specifically acknowledge that the District Utility Projects require permits, approvals and authorizations by regulatory authorities over which the County and District have no control. The District will fully cooperate with the County to obtain necessary permits, approvals and authorizations for the Bunker Trail Bulkhead Work. The County will use good faith efforts to obtain the necessary permits, approvals and authorizations for the Bunker Trail Bulkhead Work. However, if the County cannot readily obtain a necessary permit, approval or authorization using good faith efforts, then the County is excused from performing that work. Nothing in this Agreement shall be construed as requiring the County to incur administrative, legal or engineering fees or costs to bring any permit appeals or to defend any challenges or appeals of any required permits, approvals or authorizations.

3.7 The County shall authorize disbursement from the Account for the work the District completes in Subsections 3.02, 3.03 and, if applicable, 3.04 within 45 days of receipt of a properly documented invoice. Properly documented means inclusion of copies of invoices from consultants, contractors, and copies of warrants for payment of permits and real property interests. Costs eligible for reimbursement shall include engineering costs, contract construction costs, and costs of permits, easements and right of way acquisition.

Section 4: Release

4.0 For and in consideration of the terms and conditions set forth in this Agreement, each party, with the intention of binding its past and present officers, directors, appointed and elected officials, employees and agents, successors and assigns does hereby fully and forever release and discharge the other party and its past and present officers, directors, appointed and elected officials, employees and agents, successors and assigns from all claims, demands, agreements, contracts, covenants, causes of action, lawsuits, obligations, controversies, costs, expenses, judgments or liabilities of any kind or nature, at law or at equity, that it now has, or may have in the future, whether known or unknown, suspected or unsuspected, or that anyone claiming by, through or under the District or any District Parties may now have or may in the future claim to have, against the County or any County Party either directly or indirectly relating to, arising out of, or in connection with the actions of the County or any County Party in the design, permitting, development, construction, operation or maintenance of the New Vashon Wastewater Treatment Plant or the Capped Area and/or in the County's transfer to the District of the Remaining Property Area pursuant to Section 2 of the Agreement. Nothing in this Agreement shall be construed as a waiver of or release by the County of any known or unknown underpayment of sewage disposal charge by the District.

Each party represents and acknowledges that it enters into this Agreement voluntarily and with full knowledge of the significance of its provisions, including, but not limited, to the release and indemnification provisions set forth in this Agreement. Each party further acknowledges and confirms that no compromise or representation of any kind has been made by the other party to it, other than as expressly set forth in this Agreement. This release shall survive any termination of this Agreement by the district.

Section 5: Hold Harmless and Indemnification

5.0. The County shall hold harmless, indemnify and defend the District its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the County's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of the County's participation in the District's Utility Projects; PROVIDED, HOWEVER, that the County's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the District, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the Parties, the County's obligations hereunder shall apply only to the percentage of fault attributable to the County, its officers, officials, employees or agents. The County expressly and specifically agrees that its obligations under this paragraph extend to any claim, action, suit, liability, loss, expense, damage and/or judgment brought by or on behalf of any of its appointed or elected officials, employees or agents. For this purpose, the County, hereby expressly and specifically waives, with respect to the District only, any immunity that would

otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

5.1. The District shall hold harmless, indemnify and defend the County, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the District's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of the District's participation in the District's Utility Projects; PROVIDED, HOWEVER, that the District's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the Parties, the District's obligations hereunder shall apply only to the percentage of fault attributable to the District, its officers, elected and appointed officials, employees or agents. The District expressly and specifically agrees that its obligations under this paragraph extend to any claim, action, suit, liability, loss, expense, damage and/or judgment brought by or on behalf of any of its appointed or elected officials, employees or agents. For this purpose, the District, hereby expressly and specifically waives, with respect to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

5.2. The County will require its consultants, construction contractors, subcontractors and suppliers of any tier to defend, indemnify and hold harmless the County, the District, and their officers, officials, and employees from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of the Bunker Trail Bulkhead Work, or any part thereof except for injuries and damages caused by the sole negligence of the District.

Section 6: Termination

6.0. The District has the right to terminate this agreement by providing 60 days written notice to the County if the District determines that it does not want to undertake the District Utility Projects or wishes to discontinue the District Utility Projects.

6.1 Should this agreement be terminated by the District as described in this Section 6, the release described in Section 4 shall remain in effect provided that the County has 1) completed the Bulkhead Repair Work described in Section 3; and 2) returned certain real property to the District as described in Section 2.

Section 7: Dispute Resolution

7.0. In the event the County and the District disagree over whether the Contractor has fulfilled its obligations under the Bunker Trail Bulkhead Project scope of work, the County reserves the right to make the final decision, subject to a standard of reasonableness as to the

acceptability of the work. If a dispute arises between the County and the District as to the interpretation or implementation of this agreement the Parties agree that they will attempt to resolve the issue through mutual negotiation. In the event that the Parties are not able to reach an agreement through such negotiation, the Parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to the institution of any lawsuit arising under this Agreement. Mediation shall be conducted under the then-current Commercial Mediation Rules of the American Arbitration Association or, if such model procedure no longer exists, some other mutually acceptable procedure. The County shall select a neutral third party mediator, who shall be subject to the reasonable approval of the District. The Parties agree to share the costs of mediation equally.

7.1. This Agreement has been made pursuant to, and shall be construed according to, the laws of the State of Washington. In the event that mediation is unsuccessful and either party finds it necessary to institute legal proceedings to enforce any provision of this Agreement, such proceedings may only be brought in the Superior Court of King County, with venue in Seattle, Washington.

Section 8: Notices

8.0. Unless otherwise directed in writing, notices shall be delivered to each party as follows:

Vashon Sewer District
P.O. Box 930
Vashon, WA 98104

King County
Wastewater Treatment Division
201 S. Jackson Street, KSC-NR-0501
Seattle, WA 98104-3855

Notices mailed by either party shall be deemed effective on the date mailed. Either party may change its address for receipt of notices by giving the other written notice of not less than five (5) days prior to the effective date.

Section 9: Basic Agreement Unchanged

9.0. The Basic Agreement remains unchanged and will continue in full force and effect.

Section 10: General Provisions

10.0. Either party may request changes, amendments, or additions to any portion of this Agreement; however, except as otherwise provided in this Agreement, no such change, amendment, or addition to any portion of this Agreement shall be valid or binding upon either Party unless it is in writing and executed by both Parties.

10.1. These provisions represent the entire and integrated agreement of the Parties relative to the matters addressed herein and may not be modified or amended except as provided herein. Any understanding, whether oral or written, which is not incorporated herein is expressly excluded.

10.2. Section titles or other headings contained in this Agreement are for convenience only and shall not be part of this Agreement, nor be considered in its interpretation.

10.3. This Agreement is and shall be binding upon and inure to the benefit of the County and the District and their respective affiliates, predecessors, successors and assigns.

10.4. This Agreement may be executed in counterpart, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

10.5. By executing this Agreement, none of the Parties shall be deemed to have waived, released or contracted away any powers, obligations or responsibilities granted or imposed by law.

10.6. This Agreement is entered into solely for the mutual benefit of the County and the District. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third party beneficiary of this Agreement.

10.7. Each party shall bear its own attorneys' fees, costs and expenses in connection with the negotiation and preparation of this agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities.

VASHON SEWER DISTRICT

KING COUNTY

Wastewater Treatment Division

By: Ed Myers 8/21/08
Name Date
Title secretary

By: [Signature] 8/26/08
Name Date
Title Assistant Division Director

