1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

King County

KING COUNTY

Signature Report

FCD Resolution

Proposed No. FCD2019-09.2 **Sponsors**

A RESOLUTION approving an interlocal agreement with the City of Kent regarding property acquisition, conveyance of easements, design, permitting, construction, operation and maintenance relating to the Lower Russell Road Levee Setback Project.

WHEREAS, the Lower Russell Road Levee Setback Project ("Levee") is a key part of the Green River levee system, and

WHEREAS, the District desires to improve the Levee ("the Project") to provide improved flood protection and scour protection, assist the City of Kent ("City") in obtaining FEMA accreditation of the Levee; enable certification and secure necessary land right,; and

WHEREAS, the District has included the Project in its CIP and budget, in a total amount of $52,887,298, and

WHEREAS, the city of Kent has agreed to acquire the necessary real property and real property interests on behalf of the District to construct the Project, and

WHEREAS, the District and the City ("the Parties") desire to construct the Project as soon as possible, with a goal of construction in 2019, and

WHEREAS, the Parties will negotiate and enter into an agreement regarding

final design and construction of the Project, now, therefore;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE KING COUNTY FLOOD CONTROL ZONE DISTRICT:

SECTION1. The board of supervisors approves the "Interlocal Agreement for Property Acquisition, Conveyance of Easements, Design, Permitting, Construction, Operation, and Maintenance, Lower Russell Road Levee Setback Project, River Mile 17.85 to 19.25, Right Bank" Attachment A to this resolution, and authorizes the chair to sign the agreement.

FCD Resolution was introduced on and passed as amended by the King County Flood Control District on 7/10/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

KING COUNTY FLOOD CONTROL ZONE DISTRICT
KING COUNTY, WASHINGTON

Reagan Dunn, Chair

ATTEST:

Melani Pedroza, Clerk of the District

Attachments: A. Interlocal Agreeement for Acquisition, Conveyance of Easements, Design, Permitting, Construction, Operation, and Maintenance adopted July 10, 2019

INTERLOCAL AGREEMENT FOR ACQUISITION, CONVEYANCE OF EASEMENTS, DESIGN, PERMITTING, CONSTRUCTION, OPERATION, AND MAINTENANCE

Lower Russell Levee Setback Project
River Mile 17.85 to 19.25, Right Bank

THIS INTERLOCAL AGREEMENT is made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, on the 25 day of July, 2019, by and between the CITY OF KENT, a municipal corporation of the State of Washington (City), and KING COUNTY FLOOD CONTROL DISTRICT, a quasi-municipal corporation of the State of Washington (District) (collectively, the "Parties").

RECITALS

A. The District will replace the existing levee and revetment on the right bank of the Green River from River Mile 17.85 to 19.25 (between S. 212th St. and S. 228th St.), commonly referred to as the Lower Russell Road Levee, which is a key part of the Green River levee system. The District formally approved this replacement project through Resolution No. FCD2016-10.1.

B. The replacement project will consist of a levee that is set back from the Green River where feasible, a flood wall and scour deflectors. This project will reduce flood risk to people, property and infrastructure, will improve riparian and aquatic habitat along the Green River, and will integrate road, trail and park amenities.

C. By Interlocal agreement between King County and the District, the Water and Land Resources Division of the Department of Natural Resources and Parks provides services to the District. These services will include designing, bidding, constructing, managing, operating and maintaining the replacement project on behalf of and at the direction of the District.

D. To accomplish the replacement project, the District must acquire real property and real property rights, some of which will be acquired from the Green River Trail (Russell Road), Van Doren's Park, other City park properties, and the Green River Natural Resource Area, all of which the City has acquired or improved with City or grant funds.

E. On May 17, 2018 the Parties entered into an agreement concerning the acquisition of a portion of the KOA Campground and the Suh Properties in support of the replacement project ("Property Acquisition Agreement"). The acquisition of the Suh Properties is complete and the acquisition of the KOA Campground property is anticipated through an exchange of a portion of the City's Green River Natural Resource Area Property.

F. The Parties desire to enter into this Agreement to govern the design, bidding, construction, construction management, approval and acceptance of the replacement project; to provide generally for operation and maintenance of the replacement project after completion on an interim basis while the parties continue to negotiate a long term Site Management Plan; and

finally, to provide for inclusion of certain City projects in the replacement project as consideration for the impacts the replacement project will have on recreational opportunities during construction.

AGREEMENT

1. **Incorporation of Recitals.** The recitals are incorporated and ratified.

2. **King County as Service Provider**. The City acknowledges that King County, operating primarily through the Water and Land Resources Division of the Department of Natural Resources and Parks, provides services to the District pursuant to an Interlocal agreement between the District and King County. Thus, the City acknowledges that the duties and obligations of the District under this Agreement will be carried out or satisfied by either the District or King County.

3. **Term-Effective Date**

   a. This Agreement will be effective when the second party signs.

   b. The term of this Agreement shall run until the end of the maintenance and monitoring period as defined in the US Army Corps of Engineers permit the District obtains for the project, which is estimated to be for ten (10) years after construction is complete.

4. **Project Description and Specifications**

   a. The project is a replacement of the existing levee on the right bank of the Green River Green River in the City from River Mile 17.85 to 19.25 (between S. 212th St. and S. 228th St.), commonly referred to as the Lower Russell Levee Setback Project ("Project"). The Project is described briefly and depicted on **Exhibit A** and includes relocation of the existing Van Doren's Park and the construction of additional recreational amenities as described in Section 9 below.

   b. The height of the existing levee will be increased to achieve the Lower Green River System-Wide Improvement Framework's provisional flood protection goal of 0.2% annual chance (500-year) or 18,800 cfs (as measured at Auburn USGS gate), plus three (3) feet of freeboard.

5. **Project Responsibility and General Requirements**

   a. The District will design, bid, construct, manage, approve, accept, operate and maintain the Project in accordance with all applicable laws, regulations, standards and guidelines, including without limitation the following:

      i. District resolutions and policies;

      ii. Landscape architecture and engineering design standards and guidance;

iii. Terms and conditions of agreements that relate to the real property on which the Project will be constructed;

iv. U.S. Army Corps of Engineers and FEMA design guidance and standards regarding structural design of flood protections system (levees and floodwalls); and

v. Project plans and specifications.

b. The City will assist the District with the Project by acquiring the property under the terms of the Property Acquisition Agreement, by conveying to the District those property interests as provided for by this Agreement, by participating in Project construction meetings with the District and its Contractor(s), and in other matters as the parties may agree.

c. The District will invite the City to all construction meetings between the District and the Contractor.

d. The District will assist the City in obtaining FEMA accreditation for the Project, consistent with Section 18 of this Agreement.

e. The District will provide the City with a Project schedule and construction documents, including but not limited to drawings and specifications.

f. The District shall apply for and obtain all necessary Project permits and approvals, and the City agrees to assist the District as the parties may agree, which may include providing information to permitting agencies, as may be requested, concerning the City's properties and its partnership with the District on the Project.

g. The District will provide all construction administration and construction management services, directly or through its agreement with King County, as may be necessary to attain the parties' goal of construction completion by November 2022.

h. The District shall include in the Project construction contracts language that indemnifies the District and the City from claims arising out of the negligent or willful misconduct of the contractors and their officials, officers, employees, agents and subcontractors and insurance coverage in the types and amounts sufficient to cover the risk associated with the contractors' work that includes an endorsement extending coverage to the City as an additional insured.

i. The District shall provide a copy of the Project construction contract to the City.

j. The District shall protect in place, replace or relocate, as the parties may mutually agree, all existing utilities on City real property if impacted by the Project.

k. Given the joint and cooperative nature of this Project, and to the extent necessary and appropriate to accommodate the project, the City will exercise its relocation rights under City franchise agreements to relocate any privately-owned utilities.

l. The City shall have the right, but not the obligation, to inspect and observe the construction of the Project, so long as the City's inspection and observation do not unreasonably interfere with or delay Project construction.

m. Notwithstanding the additional obligations in Sections 9 and 10 of this Agreement concerning parks and recreation amenities and features, the District will provide the City with an opportunity to review and comment on changes to project schedule and construction documents including but not limited to drawings and specifications. The District shall consider the City's comments prior to making the final decision on changes.

n. The City will document the pavement condition of streets to be used by the District's contractors as haul routes and provide this document to the District prior to the District's contractors using the haul routes. If over the course of the Project's construction the pavement condition worsens, the District shall repair the pavement or other damage caused to City streets by the Project's construction within one year of final acceptance.

o. The District shall require the Project contractor, from the date of final acceptance, to provide a one-year warranty for the Project in general and a two-year warranty for landscaping and plants of the Project. For purposes of this Agreement, "final acceptance" means that all construction has been completed in accordance with the plans and specifications, all punch list items have been corrected, the contractor has submitted an application for final payment, the period for filing construction liens has passed, and all retainage releases have been received.

p. Notwithstanding the specific City approval required by Section 10, the District shall give notice in writing to the City at least thirty (30) days prior to the District's final acceptance of the Project, or any part thereof. The District shall consider any comments by the City, including punch lists, prior to final acceptance of the Project.

q. The District shall provide to the City record drawings of the Project in pdf and if requested in Auto CAD format.

6. <u>Acquisition of Property and Property Rights</u>

a. The Parties agree to respectively perform their obligations under the Property Acquisition Agreement.

b. The District has acquired the Noble Warehouse Property (Tax parcel 102204-9021) and the Holiday Kennel and Gagliardi Properties (Tax parcels 102204-9016 and 10224-9027) (collectively, "District Properties").

i. The Parties acknowledge that some tenants remain and some structures require demolition.

ii. Once the District legally removes any remaining tenants from the properties, the District shall demolish all structures at the District's cost.

iii. Once the tenants have vacated, the structures have been removed, and the demolition debris removed, the District will transfer title of the District Properties to the City, subject to those restrictions imposed by a Department of Ecology (DOE) covenant the parties negotiated with DOE concerning a grant the District utilized to support purchase of the District Properties. A copy of the DOE covenant is attached and incorporated as **Exhibit F**. Once the District Properties are transferred to the City, this DOE Covenant will be recorded against the District Properties, which will restrict the purposes for which they may be used.

1. The parties desire to transfer title to the District Properties before construction commences on the existing Van Doren's Park property, but such transfer is entirely contingent on whether the tenants have been removed from the District Properties and any existing structures have been demolished and removed.

2. If environmental testing confirms the presence of hazardous substances that require remedial action under Model Toxics Control Act ("MTCA") regulations or the Department of Ecology, the District shall undertake and complete all such remedial action as is required by MTCA or DOE prior to its transfer of title of the District's Properties to the City. In no event will the City accept title to contaminated property, or undertake any clean-up responsibilities or costs, with respect to the District Properties.

c. In exchange for the District providing replacement property and performing as this Agreement provides, the City shall provide to the District easements or other appropriate property rights, such as street use permits, licenses, use agreements and franchises ("Property Rights"), on the City-owned property identified on **Exhibit B**, for the purpose of design, construction, operation, maintenance, repair and replacement of the Project, and access to the Project for such purposes. The Property Rights documents shall be of a type, in a form and with terms and conditions mutually acceptable to the parties. The Property Rights are as follows:

i. Levee—maintenance access over and extending 15-feet out on both sides of levee base.

ii. Floodwall (South of PSE trail corridor) —extending 15-feet on both sides of new floodwall.

iii. Habitat Area A (Riverward of levee, south of S. 212th St ROW, north of Habitat Area B and Green River Trail)— Vegetation management and perpetual maintenance access over rock barbs and revetment scour protection.

iv. Habitat Area B (West and northwest of new Van Doren's Park boundary) - Vegetation and sediment management within basin and river connecting channel. The City and District shall execute a Use Agreement for this area mutually acceptable to the Parties.

v. Riparian Area C (150 feet landward of River's edge (ordinary high water mark, between new Van Doren's Park and S. 228th Street) - Vegetation management during required permitting monitoring period.

d. The District shall require the City to grant Property Rights on the New Van Doren's Park consistent with the Department of Ecology covenant as provided for in Section 6.b.iii.

e. The District's obligations and duties and the City's rights and benefits under this Agreement constitute just and full compensation for the Property Rights granted by the City to the District.

f. The City shall record the Property Rights documents at the City's cost, providing copies to the District.

7. **Access to Properties During Construction**

a. During construction, the District will provide suitable access to the City's nursery (from the existing Russell Road or a new roadway), and maintain emergency fire access to the TIAA-CREF buildings.

b. The District will provide access as the parties mutually agree is suitable for public access to the PSE Corridor Trail and pedestrian bridge that intersects Russell Road during Project construction. The District will maintain trail connections as long as possible, but if the District must close the PSE Corridor Trail and pedestrian bridge, the District will give the City thirty (30) days' advance notice of the need for that closure and the dates for which closure is required. No closure shall occur longer than fourteen (14) days unless the parties agree otherwise. The District will minimize the closure to the greatest extent possible.

c. The District and City agree that it is critical to reduce the downtime of recreational opportunities and they agree to maintain trail connections and park access as long as possible, limiting closure to the least amount of time necessary.

8. **Deed Restrictions or Conversion Obligations** The District will provide property, at the District's cost and expense, to replace those portions of the GRNRA property being exchanged with the KOA Campground and used for active recreation on the relocated Van Doren's Park, which King County has advised is inconsistent with its existing grant requirements and requires conversion and replacement by the City.

9. **City Additional Projects (City Amenities)**

a. The District has developed plans for the construction of City recreational amenities, described on **Exhibit C** ("City Amenities"), in conjunction with the Project. These recreational amenities are: a New Russell Woods trailhead; a new section of Green River Trail; an observation tower; a wider boat launch ramp; and a regional trail between the S. 228th Street bridge and the PSE Trail Corridor.

b. The City Amenities shall be designed and constructed, at the District's cost and expense, in accordance with the design drawings and specifications approved by the City.

c. The City must approve by email any change orders that modify the design, technical specifications, function or operation of a City Amenity, including any change to site grading or materials. If the City fails to respond to a District request to approve a change order for a City Amenity within two (2) business days, or such longer time as the District and City may agree, the City will be deemed to have approved the change order.

10. **Van Doren's Park**

a. As part of the Project, the District shall relocate, at the District's cost and expense, the existing Van Doren's Park by designing and constructing a replacement park as shown on **Exhibit A** ("New Van Doren's Park").

b. The New Van Doren's Park shall be designed and constructed, at the District's cost and expense, in accordance with the design drawings and specifications approved by the City.

c. With the full involvement and cooperation with the City, the District shall plan and design the New Van Doren's Park, to the extent agreed upon by the Parties. The City must approve the final design, specifications and drawings of the components of the New Van Doren's Park, and shall do so within twenty-one (21) days of receipt of such final design, specifications and drawings from the District.

d. The District shall give written notice to the City at least sixty (60) days prior to the District's intended final acceptance of the New Van Doren's Park. If, within this 60 day period, the City identifies any construction that fails to conform to the plans

and specifications, or punch list items requiring correction or completion, the District shall require the contractor to correct the nonconformity or complete the punch list items prior to final acceptance of the New Van Doren's Park. This is not precedent setting.

e. The District shall pay all costs associated with relocating and reconstructing Van Doren's Park.

f. Following final acceptance of the New Van Doren's Park, the City shall operate, maintain and repair the Park in accordance with City rules, regulations and policies, and available funding.

g. The City must approve by email any change orders that modify the design, function or operation of Van Doren's Park, including any change to site grading or materials. If the City fails to respond to a District request to approve a change order for Van Doren's Park within two (2) business days, or such longer time as the District and City may agree, the City will be deemed to have approved the change order.

11. Habitat Area A

a. The Parties agree that the future best use of Habitat Area A will be its primary management as an off-channel backwater embayment for salmon rearing and a high flow refuge habitat. The Parties have selected a preferred alternative for Habitat Area A as shown and described on **Exhibit D**. The Parties agree that design of this alternative is informed by monitoring of sediment deposits and other feasibility factors.

b. The Parties must agree upon the design and construction specifications and drawings for Habitat Area A, consistent with its future best use.

c. The District and City will seek grant funding for construction of Habitat Area A. By seeking grant funding, the District and City do not commit to or guarantee any future level of funding or maintenance of Habitat Area A.

12. Frager Road. If the Project causes channel migration, erosion or toe scour at Frager Road or the Frager Road trail, the District will evaluate the erosion or toe scour consistent with District rules, regulations and policies. If the District determines that repair is necessary, the District will prioritize the repair consistent with District rules, regulations and policies.

13. Roads, Recreational Facilities and Utilities—City Responsibility. Following final acceptance of the Project, the City shall operate, maintain and repair Russell Road, any new roads constructed as part of the Project, and any public utilities.

14. New Agreement. During the term of this Agreement, the Parties shall negotiate and attempt to execute a new agreement that includes the monitoring, operation, maintenance and

repair of the Project, as well as any terms and conditions of this Agreement that will survive expiration of this Agreement ("New Agreement").

15. Site Management Plan (Operation and Maintenance)

a. During the term of this Agreement, the Parties shall negotiate and attempt to agree upon long-term rules, regulations and policies for the monitoring, operation, maintenance and repair of the Project ("Site Management Plan").

b. If agreed upon, the Site Management Plan shall supersede applicable terms and conditions of this Agreement.

c. If the Parties fail to agree upon a Site Management Plan before expiration of this Agreement, the District shall monitor, operate, maintain and repair the Project areas to which the District has property rights consistent with the current version of District rules, regulations and policies, based on available funds.

16. Operation, Maintenance and Repair of Existing Levees and Project – General

a. Before and after expiration of this Agreement, the District shall monitor, operate, maintain and repair existing levees and the Project consistent with District rules, regulations and policies, based on available funding, except as provided otherwise in this Agreement or in a new Agreement, as applicable.

b. The City acknowledges receipt of the District's rules, regulations and policies on the effective date of this Agreement.

c. Before expiration of this Agreement, either the existing levee or a new levee or floodwall shall be in place and operational throughout the Project area during each flood season of this Agreement.

d. After final acceptance and during the term of this Agreement, the City will maintain regional and secondary trail clear zones and adjacent vegetation in accordance with standards agreed to by the Parties.

e. After expiration of this Agreement, the City shall operate, maintain and repair parts of the GRNRA outside of Habitat Area B and the portion of Area A riverward of the maintenance access corridor, as shown on **Exhibit A**.

f. During the term of this Agreement, the District will monitor scour conditions of the Project, taking into account the long-term stability of the Project and the protection of City recreation, transportation and utility infrastructure that are on the riverward side of the Project.

g. During the term of this Agreement, the District will consider stability problems of and issues with the Project in accordance with District rules, regulations and policies, and the District will take appropriate action based on available funding.

h. The District will restore any parts of the Project that are damaged by the District's maintenance activities.

i. The projected Green River channel migration is shown on **Exhibit E**. The City has volunteered to place certain City facilities on the riverward side of the Project to benefit the regional flood risk reduction aspects of the Project. The District will monitor the channel for scour and implement scour protection to prevent channel migration (river's edge at summer low flow) from reaching the line on **Exhibit E**, attached and incorporated by this reference.

17. <u>Operation, Maintenance and Repair-- Habitat Areas A and B</u>

a. Taking into account the ecological benefit and plant density of Habitat Areas A and B, the District shall monitor, operate, maintain and repair the Habitat Areas consistent with District rules, regulations and policies, based on available funding. On the effective date of this Agreement, these rules, regulations and policies include but are not limited to applicable permit requirements, the Lower Russell Levee Setback Site Management Plan, the King County Flood Hazard Management Plan policies, the Green River System Wide Improvement Framework, and the Lower Green River Flood Hazard Management Plan.

b. Specifically, the District shall control invasive vegetation in accordance with permit requirements and shall support the establishment of shade trees over time meeting permit obligations.

c. The District shall inspect the Habitat Areas at least annually, according to permit requirements or the approved Site Management Plan, upon acceptance. The Parties agree that the District's monitoring, operation, maintenance and repair of the Habitat Areas will be more frequent during the first ten years of the existence of the Habitat Areas.

18. <u>FEMA Accreditation</u>

a. If the City seeks FEMA accreditation of the Project, or any portion of it, the City shall be responsible for preparing and submitting the required documents and information.

b. Upon request, the District will provide existing documents in support of the City's efforts.

19. <u>Immunity</u>. This Agreement shall not be construed to reduce the statutory immunity that the District, County or City enjoys regarding the provision of flood protection.

20. Dispute Resolution. The Parties will seek to resolve any disputes under this Agreement as follows:

a. Participation. In the event that any dispute arises between the parties as to the interpretation or application of any term of this Agreement, or as to the validity of any claim made by either party against the other as a result of this Agreement, and the parties are unable to resolve the dispute through negotiations, the parties agree to participate in a nonbinding, neutral evaluation and mediation of their dispute at a mutually agreeable location prior to commencing legal action. Either party may request that any dispute be submitted to neutral evaluation and mediation at any time upon giving written notice to the other party.

b. Selection of Mediator. Upon giving notice by either party as provided above, the parties shall attempt to select a neutral person to evaluate and mediate the dispute. If, after thirty (30) days, the parties cannot agree on any of the persons named, or if acceptable persons are unable to serve, or if for any reason the appointment of a neutral person cannot be made, either party may terminate the dispute resolution process or the parties may, by agreement, seek other means of resolution.

c. Conflicts of Interest. Each party shall promptly disclose to the other any circumstances known by it that would cause justifiable doubt as to the independence or impartiality of any individual under consideration or appointed as a neutral mediator. Any such individual shall promptly disclose such circumstances to the parties. If any such circumstances are disclosed, the individual shall not serve as neutral mediator unless both parties agree in writing.

d. Compensation of Mediator. The neutral mediator's charges shall be established at the time of appointment. Unless the parties otherwise agree, the fees and expenses of the neutral mediator shall be split equally and each party shall bear its own costs and expenses.

e. Mediation Session. The mediation session is intended to provide each party with an opportunity to present its best cause and position to the other party and the neutral mediator and for the parties to receive opinions and recommendations from the neutral mediator. The neutral mediator shall facilitate communications between the parties, identify issues, and generate options for settlement. The neutral mediator shall also discuss with each party separately the neutral mediator's opinion and evaluation of the strengths and weaknesses of that party's position. The terms of any settlement made by the parties as the result of the mediation shall be set out in writing.

f. Confidentiality. The dispute resolution process identified in this paragraph is a compromise negotiation. The parties agree to maintain in confidence all offers, promises, conduct, and statements, oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts, representatives

or attorneys, or by the neutral mediator and agree that the same shall be deemed negotiations in pursuit of settlement and compromise and not admissible or discoverable in subsequent legal proceedings pursuant to Washington Evidence Rule 408. The neutral mediator shall be disqualified as a trial or deposition witness, consultant, or expert of either party.

g. Reservation of Rights. In the event that the parties are unable to resolve the dispute through the dispute resolution process established in this paragraph, the parties reserve any and all other rights and remedies available to each of them regarding such dispute.

21. Third Parties. This Agreement and any activities authorized hereunder shall not be construed as granting any rights or privileges to any third person or entity, or as a guarantee or warranty of protection from flooding or flood damage to any person, entity or property, and nothing contained herein shall be construed as waiving any immunity to liability to the City, the District or King County, granted under state statute, including Chapters 86.12 and 86.15 RCW, or as otherwise granted or provided for by law.

22. Indemnification. To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of or relating to any negligent acts, errors or omissions of the indemnifying Party and its contractors, agents, employees and representatives in performing these obligations under this Agreement, unless such damages and injuries to persons or property are caused by or result from the sole negligence or willful misconduct of the District or its contractors, employees, agents, or representatives, or the City or its contractor or employees, agents, or representatives. Each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractor or employees, agents, or representatives. This indemnification provision shall not be construed as waiving any immunity granted to the City, the District, or King County, under state statute, including chapters 86.12 and 86.15 RCW, as to any other entity.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

23. Insurance. Each Party recognizes that the other is self-insured and accepts such coverage for liability arising under this Agreement. Should any Party choose not to self-insure, that Party shall maintain and keep in full force and effect a policy of general liability insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence with an additional excess liability policy of not less than Ten Million Dollars ($10,000,000) and will provide the other Party with a certificate of insurance and additional insured endorsement that will name the other Party as an additional insured.

24. Miscellaneous

a. Binding Nature. The rights and duties contained in this Agreement shall inure to the benefit of and are binding upon the Parties and their respective successors in interest and assigns.

b. Notices, Communications and Documents. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by either Party (collectively, "notices") shall be in writing and shall be validly given or made to the other Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by electronic mail. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three business days after the deposit thereof in the United States Mail. If such notice is sent by electronic mail, it shall be deemed given at the time of the sender's transmission of the electronic mail communication, unless the sender receives a response that the electronic mail message was undeliverable. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: Tim LaPorte, Public Works Director
Brian Levenhagen, Parks Deputy Director
220 Fourth Avenue South
Kent, WA 98032
Phone: (253)856-5500 and (253)856-5100
Email: tlaporte@KentWA.gov and bjlevenhagen@kentwa.gov

To District: Michelle Clark, Executive Director
516 Third Avenue, Room 1200
Seattle, WA 98104
Phone: (206) 477-2985
Email: michelle.clark@kingcounty.gov

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party.

c. Mutual Release/Consideration. As part of the consideration for this Agreement, the Parties agree to mutually release any and all claims known or unknown related to prior, submitted reimbursement requests between the City and the District.

d. Severability. If any provisions of this Agreement or its application are held invalid, the remainder shall not be affected.

e. Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement.

f. Entire Agreement. This Agreement, together with Exhibits A through F, represent a full recitation of the rights and responsibilities of the Parties and may be modified only in writing and upon the consent of both Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF KENT

By: Dana Ralph
Dana Ralph
Its: Mayor

DATE: 7/26/19

APPROVED AS TO FORM:

By:
City Attorney, Deputy

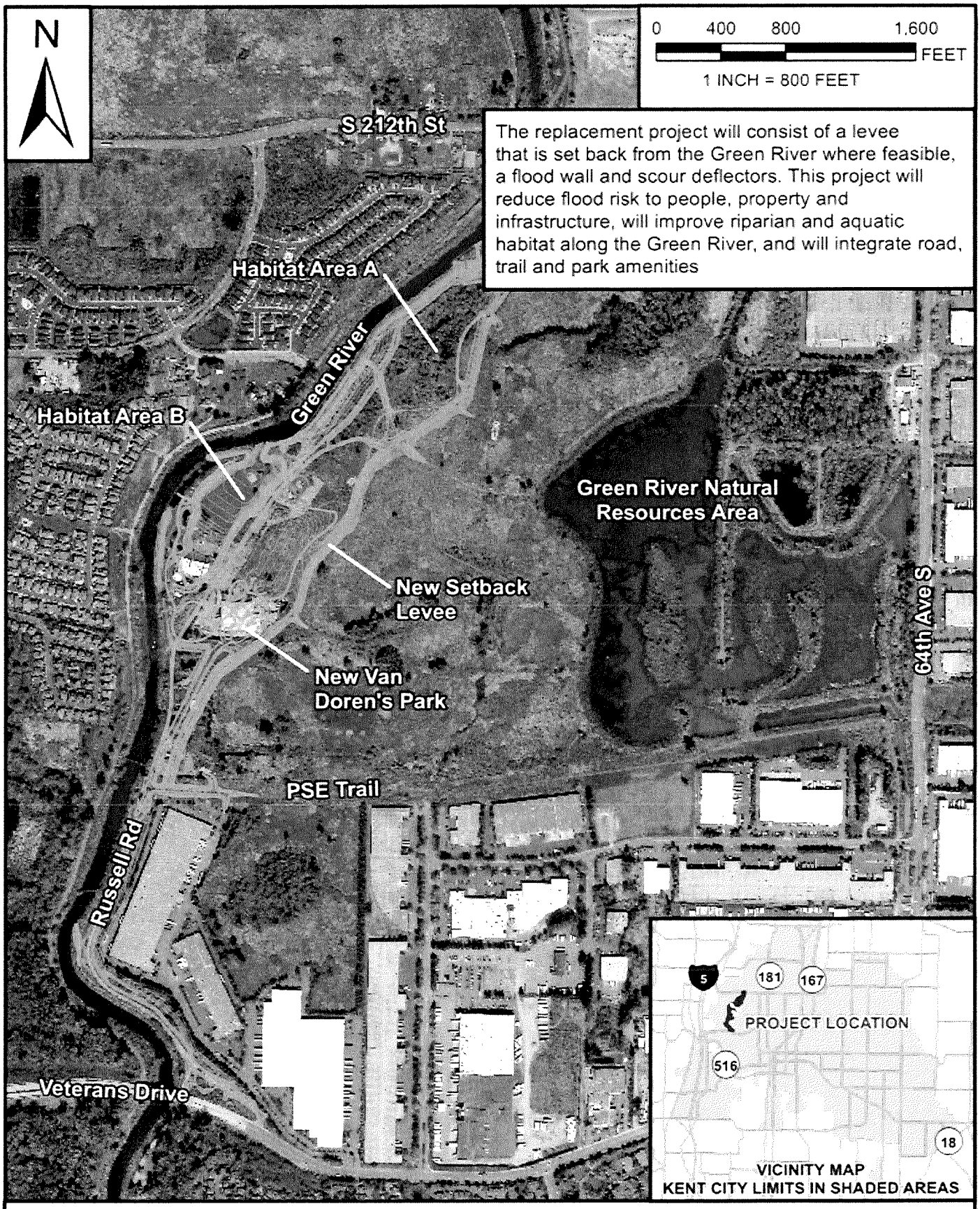
KING COUNTY FLOOD CONTROL ZONE DISTRICT

By:
Reagan Dunn
Its: Board Chair

DATE:

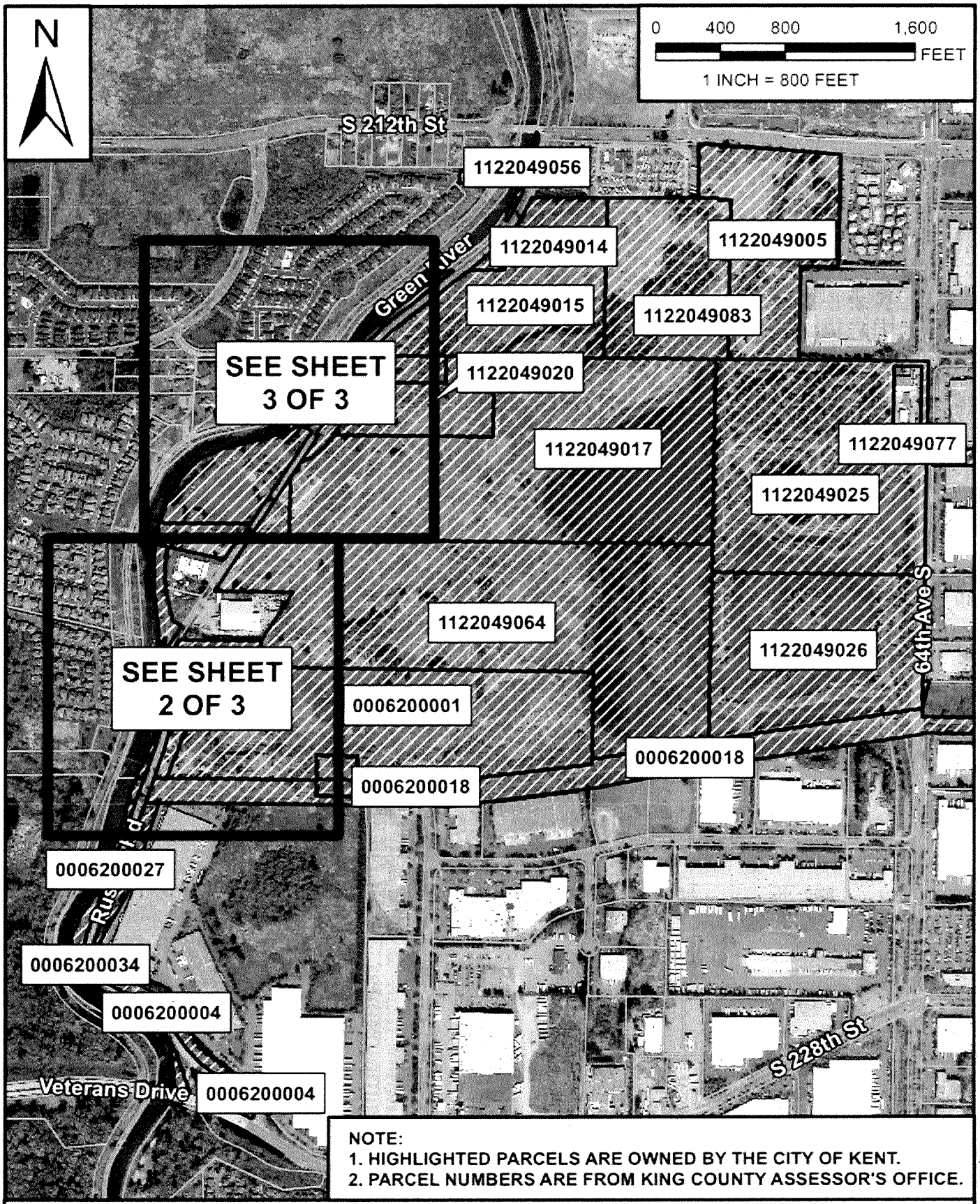
APPROVED AS TO FORM:

By:
District Attorney



KENT

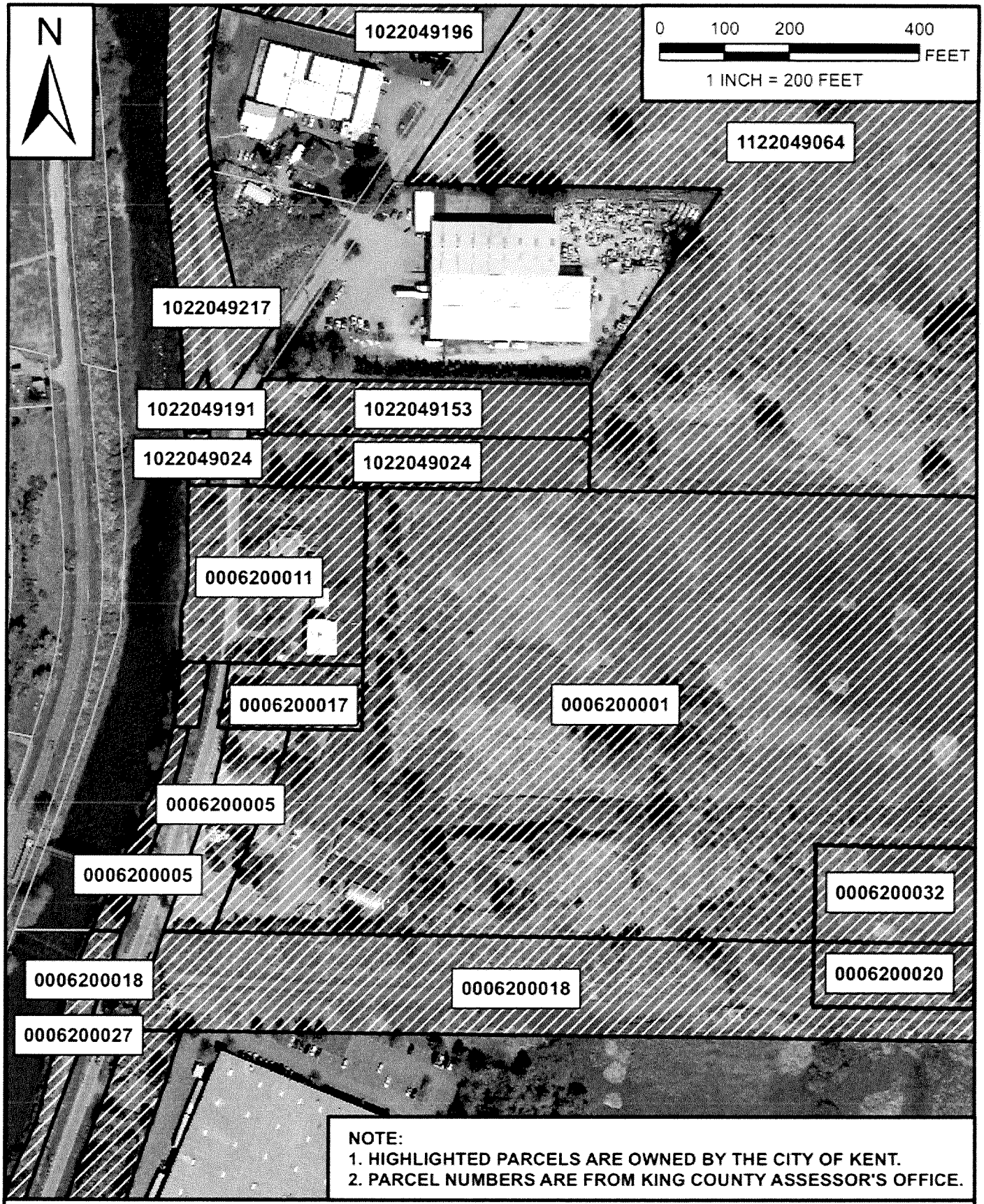
LOWER RUSSELL LEVEE
EXHIBIT A - PROJECT DESCRIPTION AND DEPICTION



NOTE:
1. HIGHLIGHTED PARCELS ARE OWNED BY THE CITY OF KENT.
2. PARCEL NUMBERS ARE FROM KING COUNTY ASSESSOR'S OFFICE.

KENT

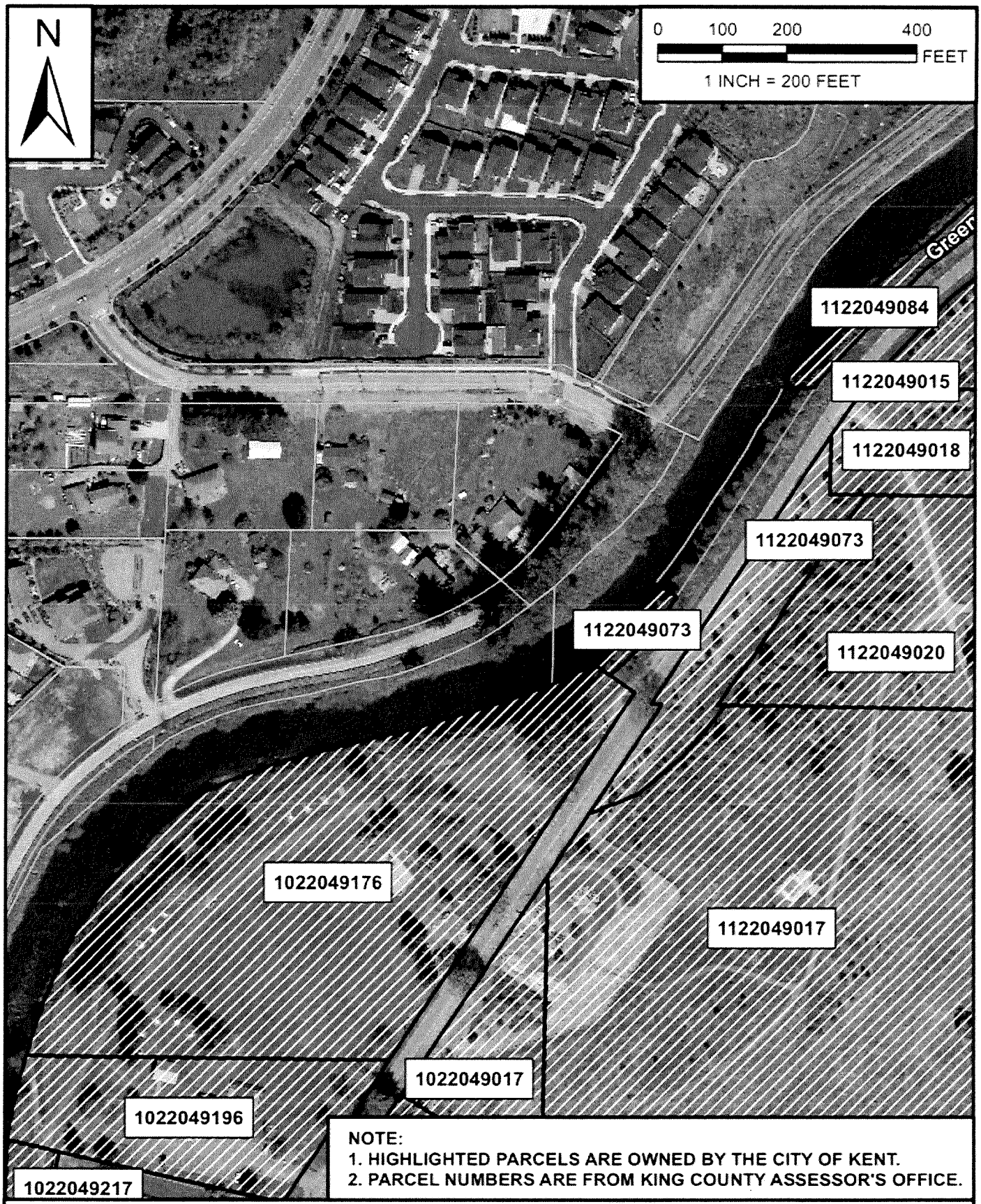
LOWER RUSSELL LEVEE
EXHIBIT B - SHEET 1 OF 3 - CITY OF KENT OWNED PROPERTY



NOTE:
1. HIGHLIGHTED PARCELS ARE OWNED BY THE CITY OF KENT.
2. PARCEL NUMBERS ARE FROM KING COUNTY ASSESSOR'S OFFICE.

KENT

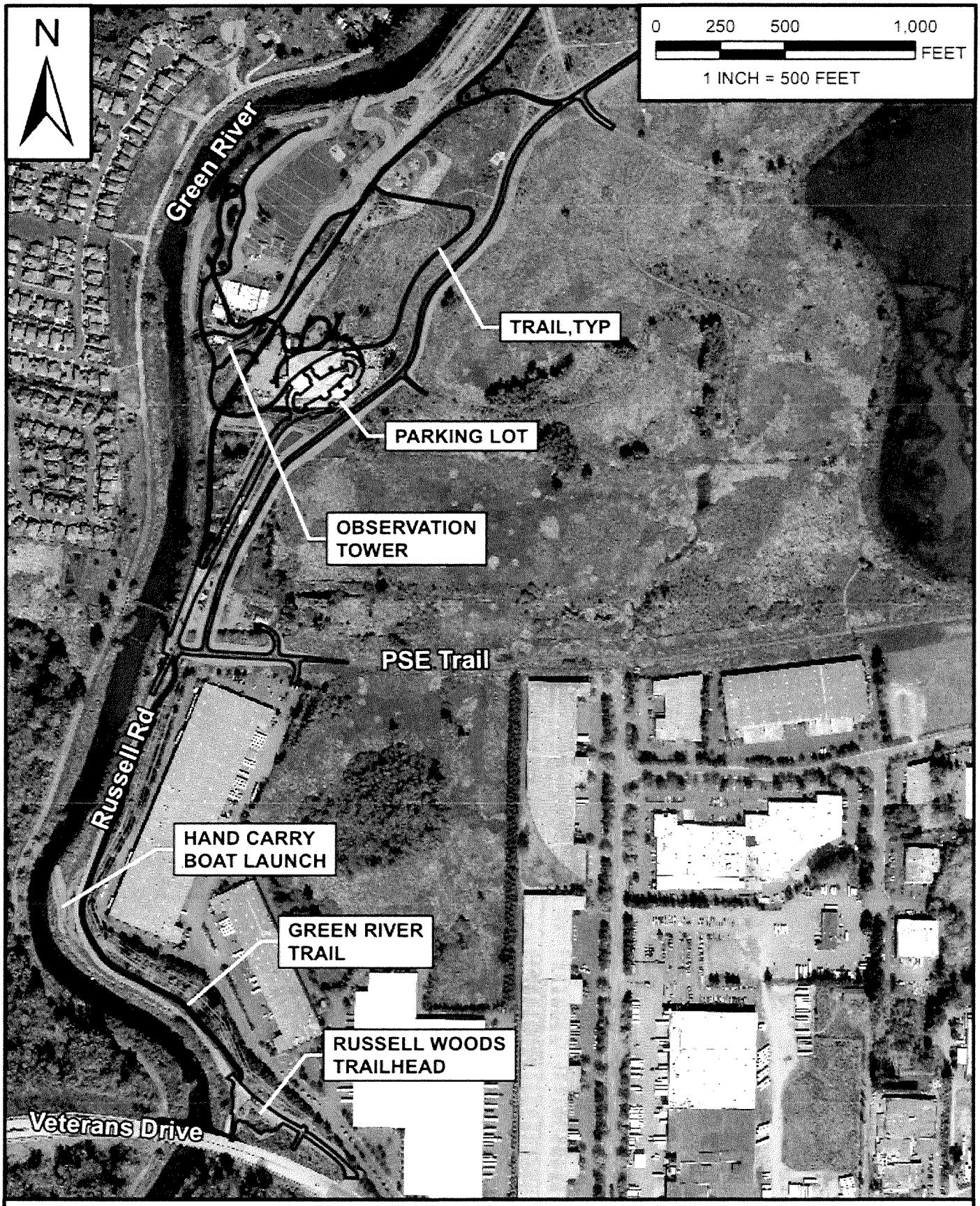
LOWER RUSSELL LEVEE
EXHIBIT B - SHEET 2 OF 3 - CITY OF KENT OWNED PROPERTY



NOTE:
1. HIGHLIGHTED PARCELS ARE OWNED BY THE CITY OF KENT.
2. PARCEL NUMBERS ARE FROM KING COUNTY ASSESSOR'S OFFICE.

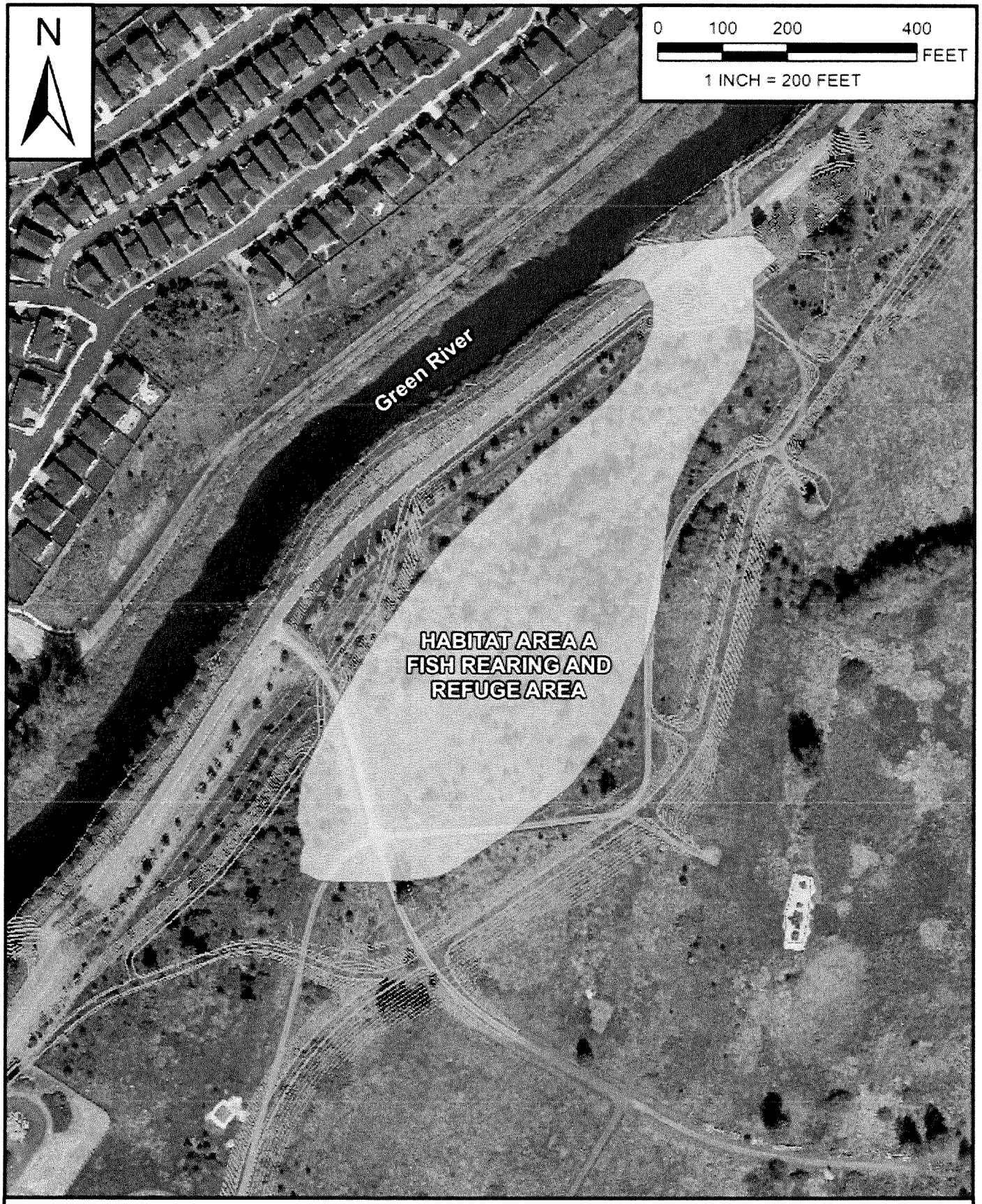
KENT

LOWER RUSSELL LEVEE
EXHIBIT B - SHEET 3 OF 3 - CITY OF KENT OWNED PROPERTY



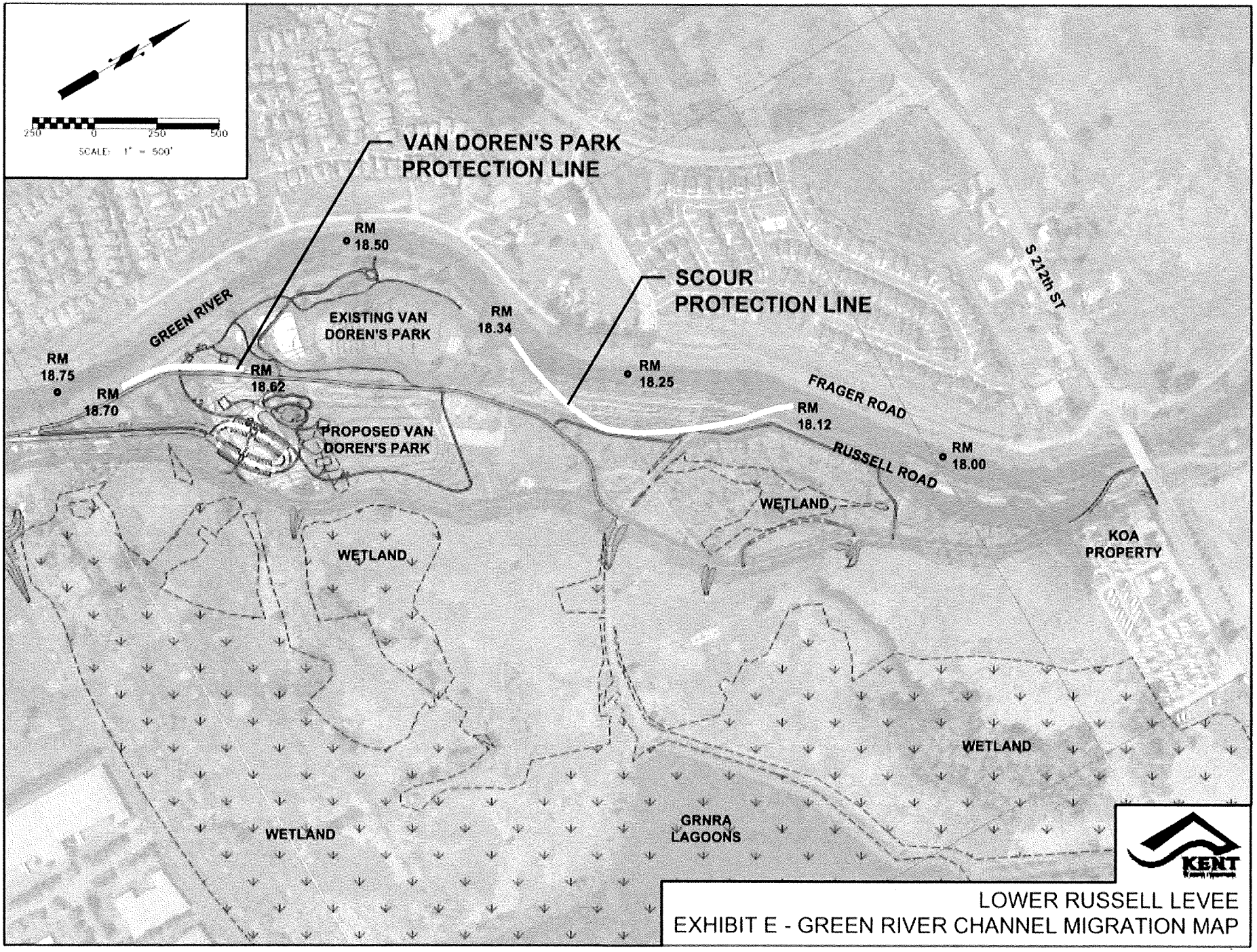
KENT

LOWER RUSSELL LEVEE
EXHIBIT C - CITY AMENITIES MAP



KENT

LOWER RUSSELL LEVEE
EXHIBIT D - PREFERRED ALTERNATIVE FOR HABITAT AREA A



LOWER RUSSELL LEVEE
EXHIBIT E - GREEN RIVER CHANNEL MIGRATION MAP

EXHIBIT F
Department of Ecology Covenant

AFTER RECORDING
RETURN TO:

Mayor of Kent, Dana Ralph
City of Kent
220 Fourth Avenue South
Kent, WA 98032-5895

Flood Protection, Habitat Restoration and Recreation Covenant

Grantor: The City of Kent
Grantee: King County Flood Control District
Brief legal description: See Exhibits A and B
Tax Parcel Nos.: 102204-9016, 102204-9027, and 102204-9021

RECITALS

The property that is the subject of this Covenant is legally described in Exhibits A and B, and illustrated in Exhibit C ("Property") and Exhibit D ("Land Use Map"), all of which are attached and incorporated. The purpose of this Covenant is to ensure that the Property will be used in perpetuity to enable floodplain protection, habitat restoration, and recreational purposes, and to prevent this land from future development for purposes inconsistent with these stated uses. This Covenant is a condition of the grant funding appropriated by the Department of Ecology (Ecology) through the 2015 Washington State legislature under § 3064 of the Capital Budget, and is made in accordance with Chapter 64.04 RCW.

COVENANT

The City of Kent, as Grantor, who is anticipated to become the future fee simple owner of the Property herein under the terms and conditions of an interlocal agreement between Grantor and the King County Flood Control District, covenants and declares on behalf of itself and all heirs, assigns, and successors in interest into whose ownership the below described real property might pass that the Property, once it is owned by the Grantor, will be preserved and maintained in accordance with restrictions and obligations described below in perpetuity. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and shall run with the land and be binding on any and all persons who acquire any portion of, or interest in, the Property.

King County, as the current owner of the Property, through its below signature, consents to Grantor's signing and recording of this Covenant against the property.

RESTRICTIONS

Uses of the Flood Protection and Habitat Property identified in Exhibit D shall be restricted to:

- Providing open space;

- Providing passive outdoor recreation uses, such as nature trails, interpretive opportunities, and wildlife viewing, and access for maintenance of those passive recreational features;
- Providing floodplain protection including allowing for construction of a setback levee, access for levee maintenance, repair, and associated levee elements;
- Enhancement of the river, stream, floodplain, and/or riparian area for fish and wildlife habitat;
- Restoring the land in predetermined areas to floodplain protection, habitat restoration, or recreational uses;
- Planting of riparian areas;
- Providing vegetation management of exotic species (such as reed canary grass, purple loosestrife, etc.);

Uses of the Recreation Property identified in Exhibit D shall be restricted to:

> All forms of outdoor recreation consistent with Grantor's Parks and Open Space Plan and Washington State's Recreation and Conservation Office grant programs, including but not limited to passive and active recreational uses such as trails, wildlife observation areas, picnic areas and shelters, playgrounds, informal play lawns, restrooms, and attendant parking with associated rain garden(s), stormwater treatment basin(s), or swale(s).

The Flood Protection and Habitat Property and the Recreation Property are collectively referred to herein as the Property.

OBLIGATIONS

Upon its ownership of the Property, the Grantor freely and voluntarily grants the King County Flood Control District, the Grantee, and their authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant, and enforce compliance with this Covenant and those actions. The Grantor shall be responsible for all costs associated with implementation of this Covenant.

Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

In the event the Property is used inconsistent with this Covenant, after the Property comes under Grantor's legal ownership, the Grantor will either purchase appropriate replacement Property, or reimburse Ecology for the value at the time of the conversion, of that portion of the Property whose use was converted as compared to the whole.

ENFORCEMENT AND CONSTRUCTION

This Covenant shall be liberally construed to protect the flood protection, habitat restoration and recreation purposes as provided for within this Covenant.

The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

In witness whereof, the City of Kent has executed this document this ___ day of _____2019, at King County, Washington.

CITY OF KENT (GRANTOR)

_____

Dana Ralph, Mayor Date

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this day before me personally appeared _____, to be known the Mayor of Kent, WA, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such party, for the uses and purposes therein mentioned, and on oath stated that the execution of the instrument was duly authorized.

In witness whereof, I have hereunto set my hand and affixed my official seal this _____ day of _____, 20___.

Notary Signature

Notary name printed or typed
NOTARY PUBLIC in and for the State of Washington
Residing at _____

In witness whereof, the King County Flood Control District has executed this document this ___ day of _____2019, at King County, Washington.

King County Department of Natural Resources and Parks (Grantee)

_____

Christie True, Director Date

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this day before me personally appeared _____, to be known the Director of King County's Natural Resources and Parks Department, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such party, for the uses and purposes therein mentioned, and on oath stated that the execution of the instrument was duly authorized.

In witness whereof, I have hereunto set my hand and affixed my official seal this _____ day of _____, 20___.

Notary Signature

Notary name printed or typed
NOTARY PUBLIC in and for the State of Washington
Residing at _____

Exhibit A: Legal Description for Parcel Nos. 102204-9016 and 102204-9027

102204-9016:

That portion of Government Lots 1 and 2, Section 10, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows:

Beginning at a point on the East bank of the White (Green) River, 126 feet Northerly from the Northwest corner of the Neely Donation Land Claim at a highwater mark on the bank of said river, said point being the most Southerly corner of the tract of land described in deed dated April 17, 1870, recorded May 8, 1870, in Volume 3 of deeds, Pages 491 and 492 (hereinafter referred to as the Van Doren Tract);

Thence North 32°22'00" East 363.00 feet to the most Easterly corner of said Van Doren Tract to the True Point of Beginning of the property hereinafter described;

Thence continuing North 32°22'00" East a distance of 270.60 feet to a point on the Northwesterly margin of the Russell County Road, said point being the most Easterly corner of a tract of land described in deed dated March 21, 1875, recorded March 26, 1878 in Volume 14 of deeds, Page 748 (McClellen Tract);

Thence North 77°00'00" West, a distance of 371.30 feet;

Thence Southerly along the following courses and distances;

South 11°48'40" West, a distance of 62.94 feet;

South 03°33'34" West, a distance of 121.82 feet;

South 06°21'58" East, a distance of 76.52 feet to a point which is North 77°00'00" West from the True Point of Beginning;

Thence South 77°00'00" East to the True Point of Beginning.

102204-9027:

That portion of Government Lots 1 and 2, Section 10, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows:

Beginning at a point on the East bank of the White (Green) River, 126 feet Northerly from the Northwest corner of the Neely Donation Land Claim at the highwater mark on the bank of said river, said point being the most Southerly corner of the tract of land described in deed dated April 17, 1870, recorded May 8, 1870, in Volume 3 of deeds, Pages 491 and 492 (hereinafter referred to as the Van Doren Tract) to the True Point of Beginning of the property hereinafter described;
Thence North 32°22'00" East 363.00 feet to the most Easterly corner of said Van Doren Tract
Thence North 77°00'00" West to a point on said East bank of said river;
Thence Southerly along said East bank to the True Point of Beginning;

Except that portion thereof lying within the following described lands:

That portion of Government Lots 1 and 2, Section 10, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows:

Beginning at a point on the East bank of the White (Green) River, 126 feet Northerly from the Northwest corner of the Neely Donation Land Claim at a highwater mark on the bank of said river, said point being the most Southerly corner of the tract of land described in deed dated April 17, 1870, recorded May 8, 1870, in Volume 3 of deeds, Pages 491 and 492 (hereinafter referred to as the Van Doren Tract);
Thence continuing North 32°22'00" East a distance of 363.00 to the most Easterly corner of said Van Doren Tract;

Thence continuing North 32°22'00" East a distance of 270.60 feet to a point on the Northwesterly margin of the Russell County Road, said point being the most Easterly corner of a tract of land described in deed dated March 21, 1875, recorded March 26, 1878 in Volume 14 of deeds, Page 748 (McClellen Tract);
Thence North 77°00'00" West, a distance of 371.30 feet to the True Point of Beginning of property hereinafter described;
Thence Southerly along the following courses and distances;
South 11°48'40" West, a distance of 62.94 feet;
South 03°33'34" West, a distance of 121.82 feet;
South 06°21'58" East, a distance of 130.39 feet;
South 13°14'57" East, a distance of 153.14 feet;
Thence leaving said parallel line South 60°46'16" East 78.58 feet to a point on said Northwesterly margin;
Thence Southwesterly along the Northwesterly margin of said road and its Southwesterly extension thereof to a point on the Easterly bank of the White (Green) River which point lies 126.00 feet North of the Northwest corner of said donation claim;
Thence Northerly along the bank of said river to a point which is North 77°00'00" West from the True Point of Beginning;
Thence South 77°00'00" East to the True Point of Beginning.

Exhibit B: Legal Description for Parcel No. 102204-9021

Beginning at a point 595.26 feet East of and 165 feet North of the Southwest corner of Government Lot 2, in Section 10, Township 22 North, Range 4 East, W.M., in King County, Washington;

Thence North 33°30'00" East 364.58 feet;

Thence West 508.86 feet, more or less, to the East line of the County Road;

Thence Southwesterly and Southerly along said Easterly margin of County Road to a point which is West of the True Point of Beginning.

Thence East to the True Point of Beginning.

Exhibit C: Property Map of Tax Parcel Nos. 102204-9016, 102204-9027 (x-Holiday Property), and 102204-9021 (x-Noble Property)

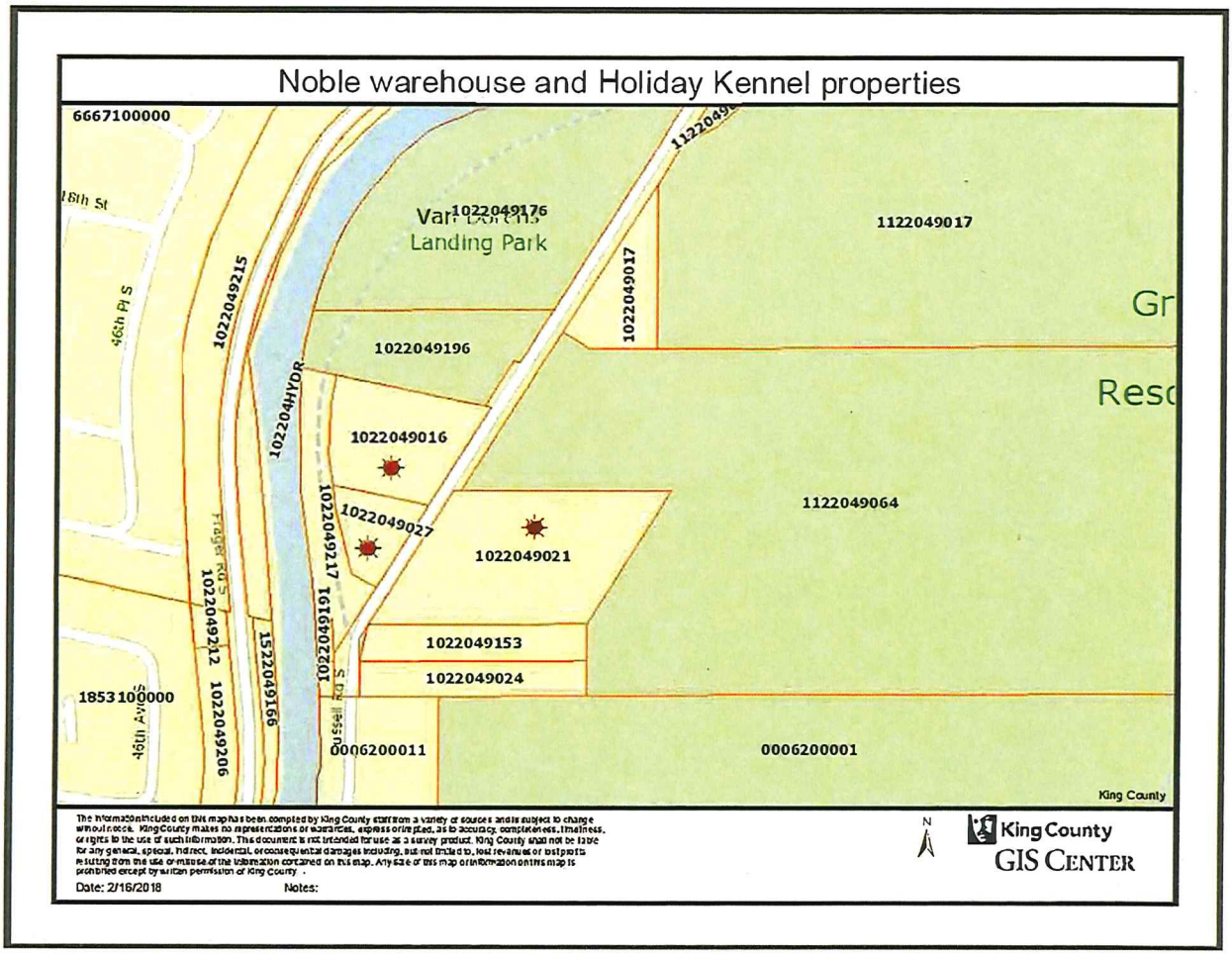
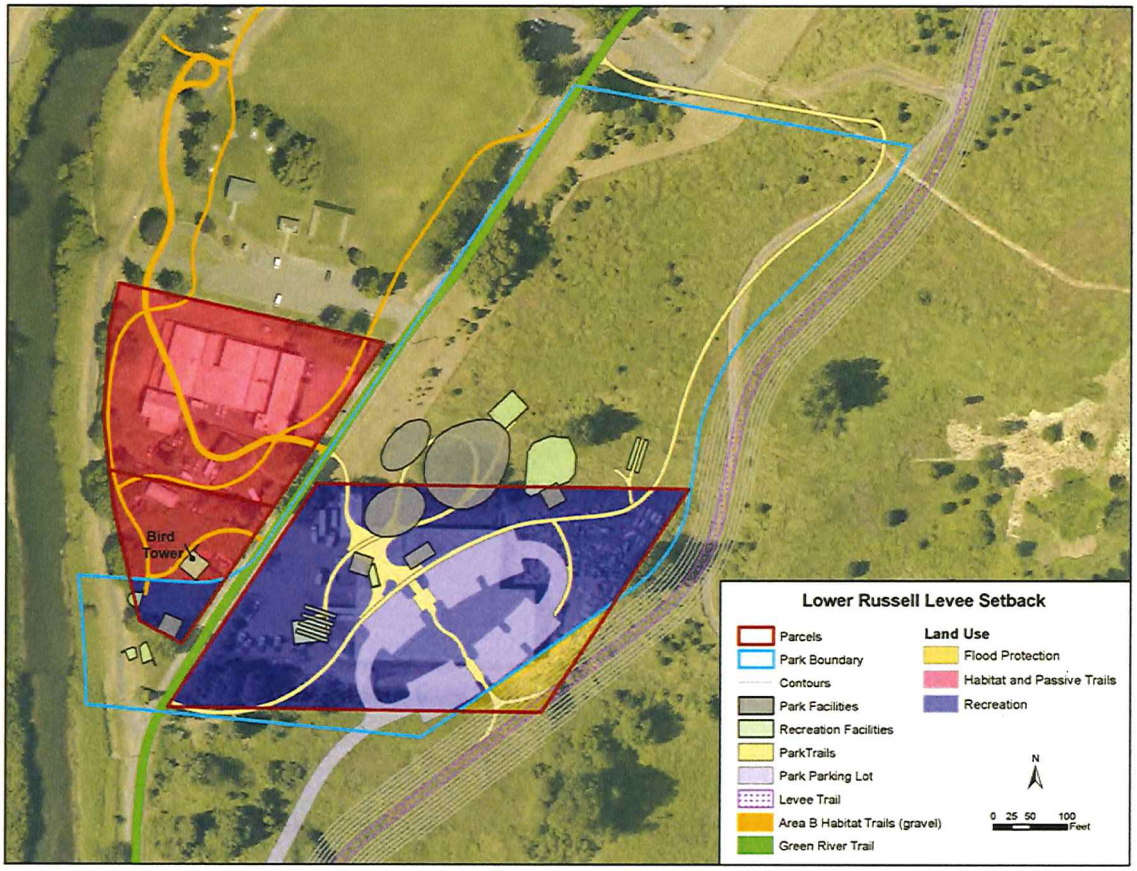



Exhibit D: Land Use Map