Ordinance No. 120695

Council Bill No. 113911

AN ORDINANCE relating to Seattle Public Utilities; authorizing acquisition and acceptance of an easement from the City of Carnation for emergency evacuation purposes, on property located adjacent to Carnation in King County, Washington.

CF No

Date Introduced: Wav 26 2007	PAGFIFR	
Date 1st Referred:	To: (compatier Resources, Solid Weste & Public	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Ful! Council Vote:	
Date Presented to Mayor:	Date Approved:	01
Date Returned to City Clerk:	Date Published:	T.O
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department Council Bill/Ordinance sponsored by:

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L	AW DEP	RTME	T		0	

OMP Review

Law Dept. Review

City Clerk Review

J W	The City of Seattle - Legislative Department Council Bill/Ordinance sponsored by: Councilmember
rizing	Committee Action:
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	DO PASS 3-0 (Pageier, Drago, Cartin).
Purces, 2 & Public	12-17-01 Passed 9-0
	This file is complete and ready for presentation to Full Council. Committee:
7.0.4 F.T.	LAW DEPARTMENT 60 Squared loaded
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RP:ekm ORD-authorize Carnation December 11, 2001 (Ver. 2)

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ORDINANCE 120695

AN	ORDINANCE relating to Seattle Public Utilities; authorizing acquisition and acceptance of
23.1	an easement from the City of Carnation for emergency evacuation purposes, on property
	located adjacent to Carnation in King County, Washington.

WHEREAS. The City of Seattle, acting by and through Seattle Public Utilities, owns and operates the Tolt Dam, a two hundred foot high earth dam; and

WHEREAS, the City of Carnation ("Carnation") lies sixteen miles downstream of the Tolt River Dam; and

WHEREAS, Carnation has purchased a 20.3 acre upland parcel to provide a place of refuge in the event of catastrophic failure of the Tolt Dam; and

WHEREAS, The City of Seattle desires to acquire an easement on such property for emergency evacuation use by The City of Seattle employees; and

WHEREAS, the easement will contain a covenant restricting the owner's use of such property to emergency evacuation and such passive recreation as does not interfere with evacuation use; and

WHEREAS, The City of Seattle finds that the acquisition and acceptance of such an easement is in its best interest, Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As recommended by the Seattle City Council and the Mayor of Seattle, the Managing Director of SPU is authorized to acquire an easement granting the right to enter upon and use, for emergency evacuation purposes, certain property in King County, Washington, more particularly described as follows:

Parcel W, as delineated on Boundary Line Adjustment Number L99L0045 recorded under Recording Number 1999628900006 being a portion of Section 15, Township 25 North, Range 7 East, Willamette Meridian, in King County, Washington;

Together with all easements for ingress, egress and utilities as established in that certain declaration of easement and covenants for Tolt River Highlands dated April 18, 1996 recorded April 24, 1996 under Auditor's File No. 9604240876 rerecorded May 14, 1996 under Auditor's File No. 9605140925;



RP:ekm ORD-authorize Carnation December 11, 2001 (Ver. 2)

Together with an easement for ingress, egress and utilities recorded u. 'er Recording Number 20000317001747

(the "Property").

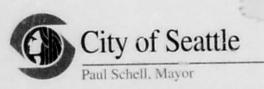
Section 2. As requested by the Seattle City Council and recommended by the Mayor of The City of Seattle, the Managing Director of Seattle Public Utilities is authorized to pay One Hundred Fifty Thousand Dollars and no/100 (\$150,000.00) to the City of Carnation, as consideration for an easement substantially in the form shown in Attachment "A" hereto, and to take all other actions necessary in conjunction with acquisition of said easement. Said Managing Director is further authorized to accept such easement for and on behalf of The City of Seattle. The easement shall be funded through the Carnation Safe Haven Project (#C101073), and shall be placed under the jurisdiction of Seattle Public Utilities.

Section 3. Any act pursuant to and prior to the effective date of this ordinance is hereby ratified and confirmed.



	RP:ekm ORD-authorize Carnation December 11, 2001 (Ver. 2)
	Section 4. This ordinance shall take effect and be in force thirty (30) days from and after
2	its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3	presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
1	
5	Passed by the City Council this 17th day of December, 2001, and signed by me in
6	open session in authentication of its passage this 17th day of December, 2001.
7	President of the City Council
8	President of the City Council
9	Approved by me this 20th day of DECE MBED , 2001.
0	D0000510000
1	Mayor
2	Filed by me this 21st day of December , 2001.
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14	City Clerk Co tippen
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Seattle Public Utilities Diana Gale, Director

November 15, 2001

Margaret Pageler, President City Council City of Seattle

> VIA: Mayor Paul Schell ATTN: Joan Walters, Budget Director

Dear Council President Pageler,

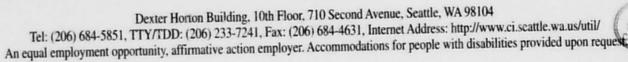
Seattle Public Utilities requests the City Council's approval of legislation to authorize and accept an easement from the City of Carnation for emergency evacuation purposes on property located adjacent to Carnation in King County, Washingtor.

This easement will provide a place of refuge in the event of catastrophic failure of the Tolt Dam and for the emergency evacuation use by The City of Seattle employees.

For more information, p'ease contact Ron Perkerewicz, Manager, in Real Property Services at 206-615-0741.

Sincerely,

Diana Gale **Managing Director**



(CC)

ATTACHMENT "A" EVACUATION EASEMENT AND RESTRICTIVE COVENANT

This Evacuation Easement and Restrictive Covenant ("Evacuation Easement") is granted and conveyed this __ day of ____, 200_ by the City of Carnation, a municipal corporation of the State of Washington ("Grantor" or "Carnation") to the City of Seattle, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities ("Grantee" or "Seattle").

WHEREAS, Seattle owns the Tolt Dam, a two hundred foot high earth dam, and operates the dam in accordance with strict Federal dam safety regulations; and

WHEREAS, Carnation lies sixteen miles downstream of the Tolt Dam, where the Tolt River merges with the Snoqualmie River; and

WHEREAS, Carnation and Seattle acknowledge that a Tolt Dam failure is highly improbable; however, Carnation and Seattle also acknowledge that if there should be a catastrophic dam failure, flood water depths in Carnation could reach four to twenty feet in just over one hour; and

WHEREAS, Carnation is protected by an electronic dam failure warning system with siren that is operated and maintained by Seattle; and

WHEREAS, following siren warning, many residents are likely to seek high ground, and Carnation school children would be led to upland property; and

WHEREAS, there is an annual safety drill in which Carnation school children hike to upland property adjacent to Carnation that was formerly owned by Weyerhaeuser Real Estate Development Company; and

WHEREAS, Carnation recently purchased the Weyerhaeuser property (as legally described in Exhibit A, the "Property") to ensure its continued availability for emergency evacuation of Carnation residents; and

WHEREAS, Seattle desires to ensure that Seattle personnel in the area have access to the Property for evacuation purposes and also to support Carnation's efforts to create and maintain an escape route and emergency shelter in perpetuity.

NOW, THEREFORE, the Grantor and Grantee agree as follows:

Grant of Easement; Imposition of Covenants and Restrictions. For and in consideration of the sum of One Hundred Fifty Thousand Dollars (\$150,000), the receipt and sufficiency of which are hereby acknowledged, (i) Grantor grants, conveys and warrants to Grantee a non-exclusive, perpetual easement on, over, across and through the Property for emergency evacuation purposes, and (ii) Grantor imposes upon the Property the covenants and restrictions set forth below. The easement, covenants, restrictions and



obligations contained herein shall be covenants running with the land and equitable servitudes that touch and concern the land, shall bind and burden the Property and the interests of Grantor in the Property, and shall be enforceable by and inure to the benefit of Grantee.

2. Grantee's Use of Property. Grantee (and its employees, agents, contractors, licensees, permittees and invitees) may enter upon and use the Property for emergency evacuation purposes at any time during an emergency, without prior notice to or consent of Grantor, and shall be entitled to use all emergency evacuation facilities in and on the Property to the same extent as residents of Carnation.

3. Limitations on Grantor's Use of Property.

- A. Grantor shall use the Property and may make it available to the public only for emergency evacuation purposes and for such passive recreation that does not interfere with use of the Property for emergency evacuation. Grantor shall not improve the Property in any manner whatsoever without the prior written consent of Grantee, which consent may be denied in Grantee's sole discretion, except that Grantor may develop, install, construct or reconstruct on the Property (i) evacuation routes and nature/interpretive trails, (ii) utilities to provide electricity, telephone, water and sewage removal, (iii) emergency trailers or tents, and concrete pads upon which to place such facilities, (iv) facilities to be used only for storage of emergency supplies of food, water, equipment, and fuel, (v) an emergency helicopter landing zone, including necessary clearing and leveling of land, (vi) access roads and driveways, (vii) non-commercial communications and telecommunications facilities, (viii) facilities necessary to maintain or protect or prevent harm to any of the facilities listed in this Subparagraph, and (ix) passive park facilities such as restrooms and other sanitary facilities, and picnic tables, benches and shelters (collectively, the "Facilities").
- B. Grantor shall not use or permit the use of the Property or any portion thereof for any purpose other than as stated in paragraph 3.A or, without Grantee's written consent, develop, install, construct or reconstruct on the Property anything other than the Facilities, except in accordance with the following: Grantor may, upon sixty (60) days prior written notice to Grantee and upon reimbursement of the amount paid by Grantee for acquisition of this Evacuation Easement, require Grantee to release this Evacuation Easement and all of Grantee's rights and interests hereunder. Upon Grantee's receipt of full reimbursement, this Evacuation Easement shall be released and terminated automatically. Upon request, Grantor and Grantee shall execute and deliver a Memorandum of Termination in recordable form.
- 4. <u>Lease, Rental or Permission to Use Property</u>. Grantor shall not lease, rent or otherwise permit any person to use the Property, or any portion thereof, except for the purposes permitted in this Evacuation Easement, and Grantor shall not permit any lessee, rente; or user to develop, install, construct or reconstruct anything in or on any portion of the Property except the Facilities, and Grantor shall not permit any lessee, renter or user to use any portion of the Property except for the purposes described in paragraph 3.A.



No lease, rental or other permission to use any portion of the Property shall release Grantor from any of its obligations under this Evacuation Easement.

- Grantor's Representations and Warranties. Grantor represents and warrants as follows:
- A. Grantor is duly organized and in good standing in accordance with the laws of the State of Washington; Grantor has the right, power and authority to execute, deliver and perform this Evacuation Easement; and Grantor has taken all requisite actions to grant this Evacuation Easement, to perform all of Grantor's obligations hereunder, and to authorize execution by the person signing on behalf of Grantor.
- B. No provision of this Evacuation Easement is in conflict with any provision of any other instrument by which Grantor is bound or to which the Property is subject, nor shall Grantor's execution, delivery or performance of this Evacuation Easement constitute an event of default under any such agreement or instrument.
- C. Grantor is owner of the Property. This Evacuation Easement is subject only to such liens or encumbrances as are set forth in Exhibit B hereto.
- D. This Evacuation Easement is legal, valid, and binding upon Grantor, and is enforceable in accordance with its terms.
- 6. <u>Default</u>. If not cured pursuant to this Section 6 or not curable, each of the following events shall constitute a "Default" of Grantor under this Evacuation Easement:
- A. Grantor shall fail to observe or perform any covenant, agreement or obligation of Grantor contained herein, and such failure shall continue for thirty (30) days after written notice thereof from Grantee.
- B. Any representation or warranty made by Grantor herein is false or misleading when made.
- 7. Remedies Upon Default. In the event of a Default by Grantor, Grantee in its discretion may exercise the following rights and remedies:
- A. In the event of any Default by Grantor, Grantor shall reimburse the amount paid by Grantee for this Evacuation Easement, with interest thereon calculated as follows: interest shall accrue on the reimbursable amount from the date of Default until the date of full reimbursement (the "Reimbursement Period"), at the prime rate (based on a three hundred sixty-five/three hundred sixty-six (365/366) day year) utilized by Grantee's banking facility on the date of such reimbursement, as such prime rate has been re-set on the first business day of each month throughout the Reimbursement Period. Upon Grantee's receipt of such reimbursement, this Evacuation Easement shall be released and terminated automatically. Upon request, Grantor and Grantee shall execute and deliver a Memorandum of Termination in recordable form.



IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

B. In the event of any Default by Grantor, Grantee shall have all remedies available at law and equity, including specific performance, it being agreed that damages may not be an adequate remedy for Grantee.

- 8. <u>Successors and Assigns</u>. The terms "Grantor" and "Grantee" include the successors and assigns of the initial Grantor, the City of Carnation, and the initial Grantee, The City of Seattle.
- Entire Agreement. This Evacuation Easement constitutes the entire agreement between the parities with respect to the subject matter hereof.
- Amendment. This Evacuation Easement shall not be modified except in a writing signed by Grantor and Grantee. All modifications hereto shall be recorded in King County.
- 11. <u>Fair Construction</u>. The provisions of this Evacuation Easement shall be construed as a whole in order to achieve the objectives and purposes hereof, and not strictly for or against Grantor or Grantee. The normal rules of construction to the effect that any ambiguities are to be resolved against the drafter shall not be employed in the interpretation of this Evacuation Easement. Paragraph headings are for convenience only and are not to be employed in interpreting this Evacuation Easement.
- 12. <u>Notice</u>. Any notices required hereunder shall be in writing and shall be given by certified or registered mail, with postage prepaid and return receipt requested, addressed as follows or to such other address as Grantor or Grantee may designate by notice:

Grantor: Cit

City of Carnation P.O. Box 1238 4621 Tolt Avenue Carnation, WA 98014 Attention: City Manager

Grantee:

The City of Seattle Seattle Public Utilities 710 Second Avenue Seattle, WA 98104 Attention: Manager, Real Property Services

13. No Waiver. The failure of Grantee at any time to enforce any easement, covenant, restriction or other provision of this Evacuation Easement shall not be deemed a waiver of its right to later enforce that or any other provision hereof.



IS LESS CLEAR THAN THIS NOTICE DOCUMENT.

OATED the day and year first above written	en.
	GRANTOR:
	City of Carnation
	By: Robert Patterson, Mayor
	APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY:
	By: Robert J. McGill, City Attorney
STATE OF WASHINGTON)) ss. COUNTY OF KING)	
corporation that executed the within an	, 200 before me personally appeared e Mayor of the City of Carnation, the municipal d foregoing instrument, and acknowledged said ct and deed of said municipal corporation for the and on oath stated that he was authorized to
In witness whereof, I have hereu day first above written.	into set my hand and affixed my official seal the
Notary Public in and for the State Washington residing at	
My appointment expires	



Exhibit A

Legal Description of Property

Parcel W, as delineated on Boundary Line Adjustment Number L99L0045 recorded under Recording Number 1990628900006 being a portion of Section 15, Township 25 North, Range 7 East, Willamette Meridian, in King County, Washington;

Toger er with all easements for ingress, egress and utilities as established in that certain declaration of easement and covenants for Tolt River Highlands dated April 18, 1996 recorded April 24, 1996 under Auditor's File No. 9604240876 rerecorded May 14, 1996 under Auditor's File No. 9605140925;

Together with an easement for ingress, egress and utilities recorded under Recording Number 20000317001747.



Exhibit B

Permitted Liens and Encumbrances

- Grant of Easement and Maintenance Agreement recorded under recording number 20000317001747.
- Easement as delineated and/or dedicated on the face of the survey recorded under auditor's file number 9401149006.
- Easement as delineated and/or dedicated on the Boundary Line Adjustment recorded under recording number 19990628900006.
- 4. Exceptions and reservations contained in deed from the State of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, etc., and certain rights of entry for opening, developing and working the same; recorded under recording number 8712110983.
- Reservation of all coal, oil, gas and mineral rights, and rights to explore for the same contained in deed from Weyerhaeuser Timber Co., recorded under recording number 9404070517.
- Notes contained on face of survey recorded under recording number 9411149006.
- Covenants, conditions, restrictions, dedications, agreements and notes, as contained in King County Boundary Line Adjustment number L99L0045, recorded under recording number 19990628900006.
- Covenants, conditions, restrictions, easements and liability for assessments contained in instrument recorded under recording number 9605140925.



Legislation Fiscal Note

Each piece of legislation that is financial in nature will be accompanied by a fiscal note. The fiscal note should be drafted by department staff and will identify operating, capital, revenue, and FTE impacts of the legislation.

Department: SPU – Real Estate Services	Contact Contact	CBO Analyst/Phone: Cameron Keyes 684-8048
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Legislation Title:

AN ORDINANCE relating to Seattle Public Utilities; authorizing acquisition and acceptance of an easement from the City of Carnation for emergency evacuation purposes, on property located adjacent to Carnation in King County, Washington.

Summary of the Legislation:

This legislation authorizes Seattle Public Utilities (SPU) to acquire an easement from the City of Carnation for the total price of \$150,000 for flood control safety, and authorizes SPU to accept the easement on behalf of the City of Seattle.

Background (Include justification for the legislation and funding history, if applicable): The Carnation Safe Haven Project was initiated with the City of Carnation's acquisition from Weyerhaeuser of a 20.3 acre parcel. The City of Carnation ("Carnation") lies sixteen miles downstream of the Tolt River Dam. Carnation's purchase of this upland parcel will provide a place of refuge in the event of catastrophic failure of the Tolt River Dam. Seattle desires to acquire an easement in such property for emergency evacuation use by Seattle employees. The easement will contain a covenant restricting the owner's use of such property to emergency evacuation and such passive recreation as does not interfere with evacuation use.

Sustainability Issues (related to grant awards): N/A



Estimated	Expenditure	Impacts:

FUND	2000	2001	2002
Water Fund (Project C101073)			\$150,000
(Project C101075)			
TOTAL			\$150,000

The total purchase price is \$150,000.00. The amount of \$150,000.00 is due at closing.

Estimated Revenue Impacts:

FUND	2000	2001	2002
N/A			
TOTAL			

One-time \$_____ On-going \$____

Estimated FTE Impacts:

FUND	2000	2001	2002
N/A			
TOTAL			1

# Full Time	# Part Time	# TES
Do positions sunset in th	e future? If so, when?	
N/A		
Other Issues (including	g long-term implications of	the legislation):

RP:ekm ORD-authorize Carnation November 8, 2001 (Ver. 1)

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ORDINANCE

AN ORDINANCE relating to Seattle Public Utilities; authorizing acquisition and acceptance of an easement from the City of Carnation for emergency evacuation purposes, on property located adjacent to Carnation in King County, Washington.

WHEREAS, The City of Seattle, acting by and through Seattle Public Utilities, owns and operates the Tolt Dam, a two hundred foot high earth dam; and

WHEREAS, the City of Carnation ("Carnation") lies sixteen miles downstream of the Tolt River Dam; and

WHEREAS, Carnation has purchased a 20.3 acre upland parcel to provide a place of refuge in the event of catastrophic failure of the Tolt Dam; and

WHEREAS, The City of Seattle desires to acquire an easement on such property for emergency evacuation use by The City of Seattle employees; and

WHEREAS, the easement will contain a covenant restricting the owner's use of such property to emergency evacuation and such passive recreation as does not interfere with evacuation use; and

WHEREAS, The City of Seattle finds that the acquisition and acceptance of such an easement is in its best interest, Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As recommended by the Seattle City Council and the Mayor of Seattle, the Managing Director of SPU is authorized to acquire an easement granting the right to enter upon and use, for emergency evacuation purposes, certain property in King County, Washington, more particularly described as follows:

Parcel W, as delineated on Boundary Line Adjustment Number L99L0045 recorded under Recording Number 1999628900006 being a portion of Section 15, Township 25 North, Range 7 East, Willamette Meridian, in King County, Washington;

Together with all easements for ingress, egress and utilities as established in that certain declaration of easement and covenants for Tolt River Highlands dated April 18, 1996 recorded April 24, 1996 under Auditor's File No. 9604240876 rerecorded May 14, 1996 under Auditor's File No. 9605140925;



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RP:ekm ORD-authorize Carnation November 8, 2001 (Ver. 1)

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(the "Property").

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Section 3. Any act pursuant to and prior to the effective date of this ordinance is hereby ratified and confirmed.



RP:ekm ORD-authorize Carnation November 8, 2001 (Ver. 1)

ORDINANCE

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NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

STATE OF WASHINGTON - KING COUNTY

--ss.

140082 City of Seattle, Clerk's Office No. TITLES ONLY ORDINANCE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:120695-708

was published on

1/10/2002

Subscribed and sworn to before me on

1/10/2002

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

ORDINANCE NO. 120696

Page 2 of affidavit