After Recording Return To:
Washington State Department of Natural Resources
Cooperative Conservation Programs
Asset Management and Protection Division
1111 Washington Street SE
P. O. Box 47014
Olympia, WA 98504-7014

CONSERVATION EASEMENT

Grantor:	Seattle City Light
Grantee:	Washington State Department of Natural Resources
Legal:	Section 22, Township 35, Range 11; SW – NE and W ½ – SE; and Section 26, Township 35, Range 11; SW – NE and NW and SW and NW – SE and S ½ - SE; and Section 27, Township 35, Range 11; NE; and Section 35, Township 35, Range 11; N ½
Tax Parcel No(s):	351122-1-002-0006, 351126-1-002-0002, 351127-1-001-0002 and 351135-1-001-0002

This Conservation Easement ("Easement") is made as of the 12TH day of December, 2007, by and between Seattle City Light (SCL) ("Grantor") and the State of Washington, acting by and through the Department of Natural Resources ("State") (collectively "Parties").

NOTICE OF GRANT

Grantor is the owner of certain real property located in Skagit County, Washington, which is legally described in Exhibit A ("Property"). Grantor submitted a grant proposal through State, and State is the recipient of a grant award of financial assistance from the U.S. Fish and Wildlife Service ("USFWS"), funded under the 2005 Cooperative Endangered Species Conservation Fund's Habitat Conservation Plan Land Acquisition grant for the *Boulder Creek Project*, pursuant to Application for Federal Assistance Number E-10-HL-2 and Section 6 of the

Attachment C to Boulder Creek
Deed Acceptance Ordinance

Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq., between State and USFWS (collectively and severally, the "Grant" (Exhibit B)), for the acquisition of the Property.

Grantor and State have executed a Cooperative Agreement No. CA IAA-08-109, dated December 18, 2007 addressing additional terms to be performed by Grantor and State relating to administration of the Grant.

This Easement is granted to implement the purpose and objectives of the Grant, the terms of which are made a part hereof.

The specific conservation values of the Property are documented in the Grant and in an inventory of relevant features of the Property ("Baseline Documentation"), placed on file at the Department of Natural Resources, which includes reports, maps, photographs, and other documentation that the Parties agree provide, collectively, an accurate representation of the Property as of the date of the Baseline Documentation and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of the Easement (collectively "Conservation Values").

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the subaward by State of the USFWS Grant to Grantor, receipt of which is hereby acknowledged, the Grantor does hereby convey and warrant, pursuant to RCW 64.04.130, to State, subject to encumbrances, conditions, restrictions, and limitations of record, a conservation easement on the Property in perpetuity according to the terms set forth herein.

1. **Purpose.** This Easement is intended to achieve the purpose and objectives of the Grant and protect habitat of federal and state listed, proposed, and candidate species covered under the State's Habitat Conservation Plan ("HCP") and the Endangered Species Act (16 U.S.C. §§ 1531 et seq.), and other species identified in the Grant. Grantor shall not use the Property in any manner inconsistent with all management prescriptions provided in the Grant and the below described Stewardship Plan as to the species identified therein. (Collectively, "Purpose of Easement").

2. **Use and Stewardship Plan.** Grantor shall develop and submit a written Stewardship Plan ("Plan") for the management of the Property in perpetuity to protect and enhance its significant natural features, in accordance with the intended conservation purposes of the Grant. The Plan will address management goals, methods and strategies and address key management issues relating to habitat for threatened, endangered, and other listed species.

Grantor must provide a statement outlining the content of the Plan that is approved by State prior to execution of the Easement. The purpose of the Plan is to confirm the uses and activities on the Property are consistent with the terms of this Easement. Grantor agrees to manage the Property in accordance with the Plan. The final Plan must be completed and approved by DNR no later than March 31, 2008. The Plan will be reviewed and updated on a regular basis, at least once every 10 years to keep the Plan current. Any changes to the Plan will be made by written amendment and approved by State, which approval shall not be unreasonably withheld.

Grantor agrees to hold and use the Property for habitat and conservation purposes as specified in the Grant. Grantor reserves the right to use the Property for any uses or activities that are not inconsistent with the restrictions set forth herein, the Grant, or the Plan.

a. Permitted Activities. The Parties agree that activities deemed consistent with the purpose of the Grant and this Easement will include but not be limited to the following:

(1) Activities related to the conservation of habitat for the threatened, endangered and other listed species identified in the Grant including, but not limited to: maintenance, repair, replacement, relocation and removal of existing roads, power lines, culverts, barriers to fish passage or other improvements; construction, maintenance and repair of new roads research; removal of non-native or invasive species; construction, maintenance and replacement of fences and gates to protect the natural features of the Property from damage; habitat restoration; and ecosystem health, such as risk reduction through under-burning, thinning, or harvest to stop the spread of disease or insect infestation.

(2) Interpretive trail construction, maintenance, replacement and removal.

(3) Installation, maintenance, replacement and removal of signs on the Property to limit or direct use or access, for interpretive information, as an entrance sign, and to acknowledge the participation of the Grantor and of any of the Grantor's funding sources in the acquisition and maintenance of the Property.

(4) The undertaking of other activities that are required by and subject to compulsion of any governmental agency with authority to require such activity; provided, that any such activity be conducted so that interference with the Purpose of the Easement is avoided, or, if avoidance is not possible, minimized to the extent possible.

(5) Cutting trees, construction or other disturbance of resources, including the removal of invasive species, to the extent reasonably prudent to remove, mitigate

or warn against an unreasonable risk of harm to persons, property or health of native species on or about the Property. Grantor must take such steps as are reasonable under the circumstances to consult with State prior to taking actions that, but for this provision, would not be permitted or would be permitted only with approval from State.

(6) Non-commercial, low-impact public recreation, including, but not limited to bird watching, hiking, and picnicking in designated areas as outlined in the Plan and consistent with and in furtherance of the Conservation Values and Purpose of Easement.

(7) Scientific research activities consistent with and in furtherance of the Conservation Values and Purpose of Easement.

(8) Educational activities consistent with and in furtherance of the Conservation Values and Purpose of Easement.

(9) Selective and/or single tree harvest of timber where special management objectives consistent with the purpose of the Grant make these harvest methods appropriate in order to develop and maintain a multi-aged, multi-storied stand or to create diversity.

(10) Ecosystem regeneration and/or regeneration after natural disturbances or selective timber harvest activities pursuant to subsection (9) above.

(11) Vehicular use (including motorized vehicular use) in connection with any permitted activity listed in this subsection 2a or otherwise in the case of an emergency with the exception of recreational activities in (6) above.

(12) Any other activities agreed upon in the Plan and consistent with the Grant.

b. Prohibited Uses and Activities. The Parties further agree that the following activities are deemed inconsistent with the purpose of the Grant and this Easement, unless such activities are implemented in conjunction with a condemnation action, and/or are done pursuant to rights in existence prior to the date of Easement. Prohibited activities include, but are not limited to:

(1) Industrial, residential and commercial uses and activities on the Property.

(2) The Property shall not be further subdivided into smaller lots than exist as of the date of Easement. Subdivision is defined as any transfer of an existing lot into separate ownership; any changes in the boundary of the Property or any lot within the Property; and any creation of a unit, lot, tract or parcel of real property for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. Notwithstanding the above, a lot line change is a permitted subdivision when it results in (a) no additional lot; and (b) no material decrease in the acreage of the Property; or, (c) subject to review and approval by State, any change in the boundary or any lot not creating an additional lot.

(3) Road or pipeline construction or granting of easements for rights-of-ways for roads, power lines, pipelines, or electronic sites, not permitted above, unless such activities are implemented in conjunction with a condemnation action.

(4) Removal of Trees and other Vegetation. There shall be no cutting, pruning, or removal of trees and other vegetation, including downed timber, except as may be incidental to permissible uses and activities reserved under subsection 2(a), or with the express advance written approval of State, or as deemed necessary by State to preserve, protect or enhance the Conservation Values of the Property.

(5) Livestock grazing.

(6) Waste Disposal. The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Property. Provided, however, that rubbish, garbage, and debris can be stored in proper containers for subsequent disposal and the piling of brush and other vegetation to the extent reasonably necessary to accommodate a permitted activity.

(7) Herbicides, Pesticides or Insecticides. The use of any herbicides, pesticides or insecticides, except as deemed necessary in the Plan to preserve, protect or, enhance and/or restore the Conservation Values and habitat characteristics of the Property or as may be mandated by local, county, state or federal government.

(8) Introduced Vegetation. The planting or intentional introduction of non-native species or other species identified as prohibited in the Plan.

(9) Alteration of Land. The alteration of the surface of the land, including without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod or any changes in topography is prohibited, except as permitted in the Plan and as may be incidental to permissible activities identified in subsection 2a above.

(10) Structures and Improvements. Except as permitted in the Plan, the construction of any building, structure, or other improvements of any kind, temporary or permanent, on the Property, including but not limited to houses, windmills, wind turbines, sheds, storage tanks, mobile homes, wells, roads, parking areas, dams and impoundments.

(11) Mining. The exploration for, or development and extraction of, minerals, hydrocarbons, sand, gravel, or rock on or below the surface of the Property is prohibited.

(12) Agriculture. The planting, propagation, and growing of any plants or trees for commercial or non-commercial agricultural, nursery, or gardening purposes is prohibited.

(13) Hunting. The hunting, killing, trapping, or taking of wildlife is prohibited on the Property, except as deemed necessary by State to protect the Conservation Values of the Property or otherwise allowed by State or Federal law.

3. Notice and Approval.

a. Notice. With the exception of those uses and activities identified as permitted in subsection 2a above, Grantor shall give State sixty (60) days' prior written notice of other uses or activities consistent with section 19 below ("Notice"). The Notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit State to make an informed judgment as to its consistency with the Purpose of this Easement. State shall not give its written consent and approval unless Grantor demonstrates that the proposed use or activity is consistent with the terms, conditions, and purposes of this Easement and will not diminish or impair the Conservation Values of the Property. Such activities or uses approved by State under this subsection shall be deemed amendments to the Plan.

b. Approval. Where State's approval is required, State shall grant, with conditions, or withhold its approval in writing within sixty (60) days' of receipt of Grantor's written request for approval. Failure to approve Grantor's request within sixty (60) days shall be deemed a denial of such request. No proposed use or activity may proceed without State's written consent and approval as provided herein. Provided however, if Grantor must undertake emergency action to protect health or safety on the Property or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without State's approval, but Grantor shall provide notice to State of the action as soon as practicable.

4. Entry and Inspection. State may enter upon the Property to inspect for compliance with and otherwise enforce the terms of this Easement. State is not required to have Grantor's permission to enter the Property for inspection, enforcement, monitoring, research, or educational purposes; however, State will make reasonable efforts to notify Grantor, prior to

entry onto the Property, and will not unreasonably interfere with Grantor's use and enjoyment of the Property except in emergencies or cases of suspected deliberate violations.

5. **Successors in Interest.** The terms and obligations of the Grantor and State under this Easement run with the land and bind the Grantor's and State's respective heirs, successors, agents, and assigns.

6. **Encumbrances.** Other than encumbrances for taxes and assessments lawfully imposed by a governmental entity, Grantor shall not encumber the Property, in whole or in part, without prior approval by the State, which consent shall not be unreasonably withheld, and the USFWS.

7. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement is warranted, and State, in its sole discretion, determines that the amendment is consistent with and in furtherance of the Purpose of Easement and Conservation Values, Grantor and State may jointly amend this Easement. Any such amendment shall be in writing as mutually agreed to by both State and Grantor. Amendments shall become effective upon recording in the official records of Skagit County and any other jurisdiction in which such recording is required. Nothing in this section shall require Grantor or State to agree to any amendment or to consult or negotiate regarding any amendment.

8. **Transfer of Ownership.** Grantor may convey the Grantor's interest in the Property to a qualifying entity under the Cooperative Endangered Species Conservation Fund restrictions, subject to the provisions herein, and provided the State has approved the transfer, which approval shall not be unreasonably withheld, after sixty (60) days' prior written notice to State of such intent to transfer the Property. Approval shall be based, in part, on the financial resources, history, qualifications, organizational mission, and ability of the prospective transferee to manage the Property consistent with the terms of this Easement. Such notice to State shall include the name, address, and telephone number of the prospective transferee or its representative. Any transfer of ownership that occurs without the express approval of State shall be null and void.

a. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way.

b. In the event Grantor intends to transfer the Property to a non-qualifying entity under the Cooperative Endangered Species Conservation Fund restrictions, 43 CFR 12.932 shall be followed in consultation with the USFWS, which is incorporated herein.

(1) Authorized Conveyance: When the Property is no longer needed for the purposes authorized by this Grant as determined jointly by State and Grantor, Grantor must request and comply with disposition instructions from State. Disposition instructions will be provided, within State discretion, in accordance with 43 CFR § 12.71 or 43 CFR § 12.932 as applicable.

(2) Unauthorized Conveyance/Use: If Grantor, in violation of the terms and conditions of the Grant, sells, transfers, encumbers, hypothecates, or otherwise disposes of any of the Property and the USFWS requires that State reimburse the USFWS a portion or all of the Grant proceeds, the Grantor shall reimburse State that same amount and other damages State incurs in connection with such violation. State reserves its right to pursue any other remedies legally available to include specific performance.

9. Transfer by State. The State may assign its rights and obligations under this easement to a qualifying entity under the Cooperative Endangered Species Conservation Fund restrictions and RCW 64.04.130, after sixty (60) days' written notice to Grantor.

10. Identification of Property Acquired. The Property should be identified with appropriate signs identifying the federal aid program as sub-awarded by the State under which the Property was acquired. The appropriate federal aid program symbol may be used for this purpose. If the areas are open to the public, Grantor must make provisions to inform the public of the location, boundaries, and any restrictions on use.

11. Monitoring Fee. State has insufficient funding to monitor this Easement at present. Grantor acknowledges that such funding is necessary for State to participate in this program.

Grantor agrees to provide State with a **$10,000 (TEN THOUSAND AND NO/U.S. DOLLARS)** endowment payable by the effective date of this Easement to be used for expenses incurred monitoring compliance with this Easement.

12. Easement Monitoring. The State shall have the right to delegate monitoring and enforcement authority under this Easement to any-duly appointed manager, which may include a federal, state, or local government agency or non-profit agency; provided that the delegation shall be subject to the terms and conditions of the Easement in all respects. This appointment may be changed from time to time. Grantor shall be given thirty (30) days' advance written notice of such appointment.

13. **Extinguishment.** This Easement may be extinguished only by express release by the State, its successors or assigns or formal court order, and pursuant to condemnation. It will not be extinguished by abandonment for non-enforcement. Grantor waives any common law right to extinguish or modify this Easement by adverse possession, prescriptive easement or other activity inconsistent with the Grant.

14. **Compliance with Laws.** Grantor shall comply with all federal, state, or local laws while performing any of the activities on the Property. In particular, Grantor will comply with all applicable provisions of 43 Code of Federal Regulations (CFR), Part 12, Subpart A – *Administrative and Audit Requirements and Cost Principles for Assistance Programs*, Subpart F – *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, Office of Management and Budget (OMB) Circulars A-110, A-133 and all other laws, rules, regulations and policies applicable to the USFWS Cooperative Endangered Species Conservation Fund.

15. **Dispute Resolution.** As a condition precedent to a party bringing any suit for breach of this Easement, such as provided for State under section 16 of this Easement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation within thirty (30) days, they may, but are not obligated to, agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The Parties shall each pay fifty percent (50%) of any costs of the services provided by such third party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Easement. Notwithstanding the above, State may seek appropriate remedies under subsection 16d of this Easement without prior notification or dispute resolution procedures.

16. **State's Remedies.**

a. **Notice of Violation, Corrective Action.** If State believes that Grantor is in violation of the terms of this Easement or that a violation is threatened, State shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property, resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its condition existing immediately before such violation, in accordance with a plan approved by State.

b. **Grantor's Failure to Respond.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from State, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, State may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, including trespasses by members of the public, to enjoin the violation, *ex parte* as necessary and as allowed under applicable civil rules, by temporary or permanent injunction, and to require restoration of the Property to the condition that existed immediately before any such injury. Additionally, Grantor may be required to compensate USFWS and or dispose of the Property consistent with applicable federal laws and regulations.

c. **Damages.** State shall recover damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of said Conservation Values. Without limiting Grantor's liability in any way, State, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action or restoration on the Property.

d. **Emergency Enforcement.** If State, in its sole discretion, believes that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, State may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

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

f. **Costs of Enforcement.** Any costs incurred by State in enforcing the terms of this Easement against the Grantor including, without limitation, costs of suit and reasonable attorneys' and consultants' fees, and any costs of restoration necessitated by Grantor's, or Grantor's agents, employees, contractors, invitees or licensees, violation of the terms of this Easement shall be borne by Grantor if State prevails in such enforcement. If Grantor prevails in any action by State to enforce the terms of this Easement, State shall bear its

own costs and any costs incurred by Grantor in defending itself against the State including, without limitation, reasonable attorneys' and consultants' fees.

g. **State's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of State, and any forbearance by State to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by State of such term or of any subsequent breach of the same or any other term of this Easement or of any of State's rights under this Easement. No delay or omission by State in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Notwithstanding the foregoing, nothing in this Easement shall be interpreted to waive or toll any applicable statutes of limitations.

h. **Waiver of Certain Defenses.** With full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against State under or pertaining to this Easement based upon waiver, laches, estoppel or prescription.

i. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle State to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from conditions or matters that predate Grantor's acquisition of the Property, State's acquisition of the Easement or resulting causes beyond Grantor's control, including, without limitation, fire, flood, storm, pest infestation, and earth movement, or for acts or omissions of State, the public or trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate injury to persons or property (including without limitation to the Property) resulting from such causes.

j. **USFWS as Third-Party Beneficiary.** State is the intended beneficiary of this Easement with full power of enforcement. As a funding source to the State for the Grant, USFWS is a third-party beneficiary to the Easement. In that capacity, USFWS may elect to exercise any and all remedies against Grantor subject to prior coordination with State and consistent with the Easement and applicable federal laws and regulations.

17. **Costs, Liabilities, Insurance, Taxes, Environmental Compliance and Indemnification.**

a. **Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate

comprehensive general liability insurance coverage. If Grantor is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Grantor must describe its financial condition and the self-insured funding mechanism. Grantor shall prevent the perfection of any liens against the Property that are not subordinate to this Easement arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

b. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish State with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, State is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days' prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

c. Remediation. If, at any time, there occurs a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all legally required steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by State, in which case State shall be responsible for remediation.

d. Hold Harmless. Grantor hereby agrees to release and hold harmless, indemnify, and defend State and its employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

(1) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to State under this Easement;

(2) Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. § 9601 et seq.) and MTCA (chapter 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;

(3) The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and,

(4) The obligations and covenants specified in this section.

18. No Creation of Public Rights. This Easement does not create any rights in favor of the general public to enforce the terms of this Easement.

19. Notices. Unless otherwise specified herein, any notices required or permitted under this Easement may be delivered personally, sent by facsimile machine or U.S. Mail, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery, confirmation of facsimile, or three days after being mailed, whichever is applicable.

To State:
DEPARTMENT OF NATURAL RESOURCES
1111 Washington Street SE
PO Box 47014
Olympia, WA 98504-7014

To Grantor:
SEATTLE CITY LIGHT
700 5th Ave, STE 3300
PO Box 34023
Seattle, WA 98124-4023
Attn: Environmental Affairs Division

20. **General Provisions.**

a. **Liberal Construction.** This Easement shall be liberally construed to carry out the purposes of the Grant, and to protect the conservation purposes for which this Easement was acquired. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The Parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumed construed against either party.

b. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. **Governing Law and Venue.** This Easement shall be construed and interpreted in accordance with the laws of the state of Washington and applicable federal law with respect to the Grant. In the event of a lawsuit involving this Easement, venue shall be proper only in Thurston County. The Parties acknowledge the jurisdiction of the courts in the state of Washington.

d. **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment as provided for in this Easement.

e. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

f. **Exhibits.** All exhibits referenced herein are incorporated into this Easement as part of this Easement. The Baseline Documentation (whether or not attached to this Easement) is incorporated into this Easement by this reference.

21. **Certification of Authority.** The undersigned Grantor representative certifies that the Grantor is a legally constituted nonprofit organization with full authority and legal capability to perform the terms of this Easement and he/she is authorized to sign this Easement on its behalf.

GRANTOR:

SEATTLE CITY LIGHT

Dated: 12/11/07

By: _____
Jorge Carrasco
Title: Superintendent, Seattle City Light

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 12/18/7

By: _____
Doug Sutherland
Commissioner of Public Lands

SEAL OF THE COMMISSIONER OF PUBLIC LANDS STATE OF WASHINGTON

APPROVED AS TO FORM ONLY:

13 day of Dec 2007

By: _____
Assistant Attorney General

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Jorge Carrasco** signed this instrument, on oath stated that he was authorized to execute this instrument, and acknowledged it as Superintendent of the CITY Light Department of the CITY of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date 12-11-07

Given under my hand and official seal the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing at Pt. Orchard, WA
My commission expires 3-11-08

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this 18 day of December, 2007, personally appeared before me Doug Sutherland, to me known to be the Commissioner of Public Lands, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Bonita R Hill
Notary Public in and for the State of Washington, residing at Olympia.
My appointment expires 5-19-09.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT A

The Southwest Quarter of the Northeast Quarter and the West Half of the Southeast Quarter of Section 22;

Southwest Quarter of the Northeast Quarter; Northwest Quarter; Southwest Quarter; Northwest Quarter of the Southeast Quarter; and the South Half of the Southeast Quarter, all in Section 26;

Northeast Quarter of Section 27; and

The North Half of Section 35;

ALL in Township 35 North, Range 11 East of the Willamette Meridian.

Situated in Skagit County, Washington

APPROVED AS TO FORM ONLY
D.N.R. LAND SURVEY

4-18-06

Dennis J. Gelvin, PLS 21674
Land Description & R/W Specialist
Land Survey Unit
Engineering Division
PO Box 47060
Olympia, WA 98504-7060

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT B

HCP Land Acquisition Grant Proposal
Project Statement for Boulder Creek Acquisition

NEED: This project is being undertaken to permanently protect a 1,080 acre parcel in Boulder Creek watershed, Skagit County, Washington. The land to be acquired by this project is located along the lower Cascade River about 5 miles east of the town of Marblemount. The project is being pursued by Seattle City Light in cooperation with The Nature Conservancy to preserve and improve habitat conditions for a number of species listed under the Endangered Species Act, as well as State Sensitive species. The upper Boulder Creek watershed contains over 200 acres of old-growth forested habitat that provides suitable habitat for marbled murrelets and northern spotted owls. Surveys conducted on adjacent state and federal lands have identified use by both species. Boulder Creek is a major tributary to the lower Cascade River, which provides important foraging and roosting habitat for bald eagles, as well as migration and rearing habitat for bull trout, steelhead trout, and Chinook salmon. These species are covered under the Washington Department of Natural Resources (DNR's) Habitat Conservation Plan (HCP). The proposed acquisition project would complement conservation provided for these species by the DNR HCP.

The purchase of the Boulder Creek parcel would be completed by Seattle City Light (SCL) as part of its ESA Early Action Program (EAP). The property is presently owned by a private landowner: Boulder Creek Associates. SCL has been discussing the purchase of the parcel with Boulder Creek Associates for about two years, and now has matching funds available through the EAP for this purchase. The landowners are willing to sell the property, and have recently decommissioned the logging road that runs through the parcel in preparation of sale.

In addition to supporting DNR's HCP, the proposed project is consistent with the Skagit Watershed Council's (SWC) Strategic Approach for habitat protection and restoration projects. The Cascade River is a priority area for land acquisition and restoration projects in the Skagit River basin under the SWC's strategy document. The Boulder Creek acquisition project is consistent with the key elements of the SWC's strategy which include: 1) protecting the best remaining habitats first; 2) protecting the highest priority species - Chinook salmon, bull trout, and steelhead; 3) providing protection and restoration which are contiguous to high quality habitat areas; and 4) promoting salmon conservation partnerships within the watershed.

The Boulder Creek acquisition project also supports the Draft Recovery Plan for the Coastal Puget Sound Distinct Population Segment of Bull Trout (USFWS 2004). The Cascade River supports one of the healthiest and most abundant bull trout populations in the Skagit River basin, with over 500 adult spawners estimated as present in this drainage (WDFW 1998). The Draft Recovery Plan identifies sediment and other forms of physical disturbance from timber harvest as the major threat to Cascade River population of bull trout. In particular, the Recovery Plan identified the lower Cascade River as one of ten areas in the Puget Sound region where reducing sediment sources generated by forest management is high priority. The acquisition of the Boulder Creek parcel would represent one of the most important recovery actions for bull trout to date in the Skagit River watershed.

OBJECTIVE: The objective of this project is to acquire and place into permanent protection 1,080 acres of privately held lands located in the Boulder Creek watershed (Figure 1). We are presently in negotiation with the property owners for the purchase of this parcel, and will soon initiate an independent appraisal of the property. Upon completion of the acquisition, this property will be owned by SCL, and designated a conservation preserve managed under SCL's ESA lands management program. Purchase of this parcel would result in the elimination of timber harvest and road building within the upper Boulder Creek watershed. We anticipate that the proposed acquisition will require less than six months to complete. Boulder Creek Associates has said that they foresee no major problems for the sale of the land to SCL. Boulder Creek Associates has recently completed a DNR approved decommissioning of roads on this parcel. Staff from SCL's Real Estate and Environmental Affairs divisions would

complete the acquisition of the Boulder Creek Parcel. SCL's EA program would provide the funding for the staff time necessary to complete the acquisition.

EXPECTED RESULTS OR BENEFITS: The conservation purchase of the Boulder Creek parcel from private landowners would benefit ESA-listed and State Sensitive wildlife and fish species by:

1) placing over 200 acres of old-growth forest into permanent protection;
2) minimizing human disturbance and providing isolation to marbled murrelets and northern spotted owls in the old-growth and mature forested areas;
3) protecting and improving the water quality, channel stability, and habitat conditions of Boulder Creek and the lower Cascade River downstream of Boulder Creek;
4) protecting and improving over 3.5 miles of high quality spawning and rearing habitat for bull trout in Boulder Creek, and protecting and improving the lower 1.0 miles of this stream used by anadromous steelhead trout and Chinook salmon;
5) improving habitat quality and water quality conditions for bull trout, Chinook salmon, steelhead trout, and other aquatic species by reducing sediment loads into the lowest 4.0 miles of the Cascade River; and
6) protecting and improving 5.5 miles and approximately 130 acres of riparian habitat for sensitive amphibians residing in Boulder Creek.

The project would benefit DNR's HCP species protection goals by: 1) eliminating a major gap in the conservation protection of the lower Cascade River watershed contiguous to state and federal lands; 2) creating a continuous protected corridor of high quality aquatic and riparian habitat within the Boulder Creek drainage; 3) linking high quality old-growth forested habitats present in the upper Boulder Creek watershed with similar high quality habitats across the landscape on contiguous state (DNR), national forest, and national park lands; and 4) protecting the watershed and aquatic processes that are vital to sustaining the high quality habitat wildlife and fish conditions present in Boulder Creek and old-growth areas in the upper watershed.

Boulder Creek possesses excellent habitat conditions for salmonid fish because of clean and coarse substrates, a diverse streambed morphology dominated by boulders and cobbles, clean and cold water quality conditions, and low levels of human disturbance. Logging disturbance to Boulder Creek has been minimal in areas that have been harvested due to streamside buffers and low road densities in the watershed. The source waters of Boulder Creek, the state's Granite Lakes Natural Resource Conservation Area (NRCA), provide year-round flows of cold water that are capable of supporting aquatic sensitive species including bull trout, spotted frogs, tailed frogs, and Cascade salamanders.

The Boulder Creek watershed provides habitat for seven species on the Federal Endangered Species List: bull trout, Chinook salmon, bald eagle, northern spotted owl, marbled murrelet, grizzly bear, and gray wolf. The parcel is located within a region of the North Cascades known use area for gray wolves, and lies within the North Cascades Grizzly Bear Recovery Zone. All of these species, except the grizzly bear, are covered under DNR's HCP for Washington State (Table 1). Habitat for these species is provided in the Boulder Creek watershed because of the high quality habitat conditions present in the watershed, and because the majority of the watershed is protected from human disturbance. The proposed acquisition will eliminate a major threat to these listed species in this watershed, will create a continuous corridor of permanently protected riverine and riparian habitat, and will link high quality upland habitats present in the lower and upper areas of the watershed with a vast network of surrounding public lands

Bull Trout - The Draft Recovery Plan for bull trout for the northern Puget Sound was completed in July 2004, and the final version should be released in 2005. The Cascade River supports one of the largest bull trout populations in the Skagit River basin, with over 500 adults spawning in the Cascade River subbasin each year. Boulder Creek provides excellent habitat for the spawning, juvenile rearing, and adult life stages of bull trout and steelhead. The project will benefit bull trout by creating a continuous corridor of high quality migratory habitat in Boulder Creek and the lower Cascade River, and by improving habitat for spawning and rearing fish by reducing sediment loads from a large watershed area. The proposed acquisition would also protect and improve water quality conditions in

Boulder Creek and the lower Cascade River, especially the clean and cold water required by bull trout. The lower Cascade River watershed was identified as a high priority area for minimizing timber harvest impacts and reducing sediment loads in the Draft Recovery Plan. If funded, the proposed project will support the Draft Recovery Plan by achieving the following recovery actions:

1) *Removing unstable and problem roads from sediment delivery (p.238).* The proposed project will result in the decommissioning of logging roads in the upper Boulder Creek watershed;
2) *Implementing measures to restore natural thermal regimes (p.240).* The project will result allow for the growth of a natural riparian area along Boulder Creek that will improve a naturally cold thermal regime;
3) *Restoring and protecting groundwater and hyporheic sources of water (p.242).* The project will result in improved infiltration of groundwater, increasing hyporheic inflows to Boulder Creek, by eliminating timber harvest and road building.
4) *Reducing anthropogenic sediment sources generated by forest management (p.243).* The project will eliminate all forest management activities on 1,080 acres of land in the Boulder Creek watershed. The will substantially reduce a major potential source of sediment to Boulder Creek and the lower Cascade River. Elimination of logging and reducing sediment loads will have provide a secondary benefit by reducing a major source of nutrients to the lower Cascade River watershed.
5) *Restoring and protecting riparian areas (p.247).* The project will result in growth of mature forested and riparian areas along Boulder Creek.

Marbled Murrelets and Northern Spotted Owls - Over 200 acres of the upper Boulder Creek watershed is vegetated by old-growth Douglas-fir and western hemlock forest. This area of the watershed is adjacent to old-growth forested lands on adjacent DNR property. In combination, the old-growth areas located on the Boulder Creek property and on adjacent DNR lands provide a large extensive patch of undisturbed habitat that is valuable to marbled murrelets, northern spotted owls, and other species depending upon or preferring old-growth forests. Marbled murrelets and northern spotted owls have been documented to use habitats on DNR and U.S.Forest Service lands located in close proximity to the proposed acquisition site (Figure 2). The proposed acquisition area is located within management circles for know spotted owl territories (WDFW PHS database 2005). Surveys for the presence of marbled murrelets and spotted owls have not been conducted on the subject property, although habitat present in the upper Boulder Creek watershed certainly possesses the habitat characteristics preferred by these two species. If funded, the acquisition project will support recovery actions consistent with the final Recovery Plan for the Marbled Murrelet (USFWS 1997) by:

1) maintaining potential and suitable habitat in larger contiguous blocks while maintaining the current north/south and east/west distribution of nesting habitat (*p.139*);
2) increasing the amount and quality of suitable nesting habitat (*p.142*)
3) decreasing fragmentation by increasing the size of suitable stands to provide a larger area of interior forest conditions (*p.142*); and
4) protecting "recruitment" nesting habitat to buffer and enlarge existing stands, reduce fragmentation, and provide replacement habitat for current suitable nesting habitat lost to disturbance events (*p.143).*

These recovery actions will be achieved by protecting the existing 200+ acres of old-growth forest habitat present in the upper Boulder Creek watershed, by creating a habitat buffer around this area by the elimination of vehicles and timber harvest activities, and by allowing approximately 800 acres of surrounding second-growth forested stands to achieve suitable habitat conditions for marbled murrelets and northern spotted owls. The existing old-growth forest stand represents a "core area" for current habitat use by these two species, which will expand over time through the maturation of existing second-growth stands.

Bald Eagles - The Cascade River is extensively used by overwintering bald eagles for daytime foraging habitat and communal night roosts. Bald eagles are attracted to the Cascade River because of its close proximity to the Skagit River, by excellent habitat conditions provided by a mature and diverse riparian hardwood community that is located along the stream, by abundant numbers of spawning salmon, and by low levels of human disturbance. The project will benefit bald eagles reducing sediment impacts to lower Boulder Creek and the Cascade River, and by protecting and improving mature forested habitats preferred by bald eagles for night roost habitat along the lower Cascade

River.

Chinook Salmon - The lower end of Boulder Creek is used by Chinook salmon for spawning and juvenile rearing (WDFW 1975). The lower Cascade River is used as a migration corridor and rearing area for Cascade River Spring Chinook salmon, which are among the most threatened Chinook populations present in the Skagit watershed. The acquisition project would provide permanent protections and improvements to habitat located in Boulder Creek and the Cascade River downstream of this tributary. The proposed acquisition would improve water quality conditions for Chinook salmon spawning and rearing in Boulder Creek and the lower Cascade River by reducing sediment loads and nutrients inputs, and by protecting and improving a high quality riparian corridor that is important for sustaining cold water temperatures.

Unlisted Species - The Boulder Creek watershed provides habitat for at least twelve unlisted species covered by DNR's HCP (Table 1). The high quality habitat present in the project area and adjacent areas of the watershed supports a diverse assemblage of species, including sensitive species that are highly susceptible to human disturbance. These include federal candidate species for ESA listing (spotted frog, Pacific lamprey), federal species of concern (tail frog, Cascades frog), state candidate species (golden eagle, pileated woodpecker, Vaux's swift), and other sensitive species (northern red-legged frog) (Table 1). The proposed project will benefit these species by eliminating the landscape fragmentation currently resulting under the existing primary land use of the watershed, which is commercial timber harvest. These species will also benefit from the preservation of existing mature forest, and the improvement of habitat over time as the acquisition property ages and develops more complex habitat structure. In addition, these species will realize landscape-level benefits because of the connectivity with extensive state and federal habitats.

APPROACH: This project would be sponsored by SCL as part of the City of Seattle's ESA Early Action Program. This voluntary program was implemented in 2000 to support the recovery of ESA-listed fish species within those watersheds where the City has major land holdings, water supply projects, or hydropower projects. The program has resulted in the acquisition of over 740 acres of high quality habitat for bull trout and Chinook salmon in the Skagit Watershed over the past five years. These properties are held in perpetuity by the City for ESA species conservation, and are managed and monitored by ecologists with City Light's Environment Division. In addition to the EA program, SCL's Land Acquisition Grants (LAG) program has preserved and presently manages over 4,000 acres of high quality habitat for wildlife in the Skagit Watershed. The LAG program successfully completed a land transfer from DNR to SCL in the Illabot Creek drainage for improved wildlife species protection and conservation land management.

SCL's ESA Early Action Program would provide the matching funding for this project. SCL's partner on this project is The Nature Conservancy, who originally developed this acquisition project. Purchase of the properties would be completed through a cooperative effort of SCL's Environment and Real Estate divisions. Upon acceptance of a purchase offer by Boulder Creek Associates determined by a fair-market appraisal, a fee simple purchase would be completed by SCL's Real Estate Division. SCL would work closely with the agency sponsor, DNR, to develop a long-term restoration and management plan for the acquired property that would enhance the species protection and conservation value of both SCL and DNR land holdings in the lower Cascade River.

LOCATION: The project is located in the Boulder Creek watershed (Figure 1), which is a major tributary to the Cascade River east of the town of Marblemount, Washington. The acquisition area is 1,080 acres, which encompasses the upper Boulder Creek watershed (Figure 3). The project is located in Skagit County, Township 35 N, Range 11 E, Sections 22, 26, 27 and 35. The property is located entirely on commercial forest lands located along the south side of the Cascade River. Lands to the immediate east and west of this property are DNR School Trust and Forest Board lands (Figure 1). DNR's Granite Lakes Natural Resource Conservation Area is located along the southern boundary of this property. These state lands lie within a larger matrix of publicly owned lands managed by the U.S. Forest Service and National Park Service. The private lands located immediately north of the property towards the Cascade River are owned by the Cascade Timberlands (Olympic Resource Management Company). Some private lands (160 acres) are also located immediately south of the acquisition area, and are owned by Aloha Lumber Corporation.

The lower 800 acres of the Boulder Creek property are mainly second-growth Douglas-fir and western hemlock forest with most of this area harvested in the early 1970s. Some areas within the northern portion of the property were harvested in the early 2000s. The southeast triangle of the property (Figure 1) contains over 200 acres of old-growth Douglas-fir and western hemlock forest. This extensive old-growth stand is situated in steep terrain between 3,000 and 5,300 ft elevation.

ESTIMATED COST: The majority of the cost for this project will be for the fee simple purchase of the 1080-acre parcel. The estimated cost for the acquisition of this parcel $850,000 based upon recent discussions with Boulder Creek Associates. The federal funds requested for the project are $742,300. SCL will provide $150,000 cash funding for this project, and will also provide an in-kind match of SCL Early Action conservation lands (approximately 200 acres) located along the Suiattle River that have an estimated value of $300,000. The project sponsor, Washington Department of Natural Resources, will provide an in-kind property match value of $460,000 for this proposed project. The Granite Lakes Natural Conservation Area, which form the headwaters of the Boulder Creek watershed, will be DNR's in-kind match for this project. The total non-federal match is $910,000, representing 55.1% of the project total cost. See cost breakdown sheet attached for details of project expenses.

Table 1. Species considered in Boulder Creek acquisition project.

Common Name	Scientific Name	Fed/State Status	Covered by HCP?	Within Species Range?	Suitable Habitat Onsite?	Known Use by Species?
Bull Trout	*Salvelinus confluentus*	Federal threatened	Yes	Yes	High quality spawning, holding, and rearing	Yes. Lower Cascade River basin is migration and juvenile rearing area. [1/]
Chinook Salmon	*Oncorhynchus tshawytscha*	Federal threatened	Yes	Yes	High quality spawning	Yes. Present in lower Boulder Creek and Cascade River. [2/]
Bald Eagle	*Haliaeetus leucocephalus*	Federal threatened	Yes	Yes	Yes. High quality riparian habitat and abundant forage base.	Yes. NPS and TNC winter counts along Cascade River. [3/]
Northern Spotted Owl	*Strix occidentalis caurina*	Federal threatened	Yes	Yes	Yes. Old-growth / mature Douglas-fir and western hemlock forest.	Yes. Multiple northern spotted owl centers on adjacent DNR and USFWS lands. [3/]
Marbled Murrelet	*Brachyramphus marmoratus marmoratus*	Federal threatened	Yes	Yes	Yes. Old-growth / mature Douglas-fir and western hemlock forest.	Yes. Multiple observations on adjacent DNR and USFS lands (WDFW PHS database). [3/]
Gray Wolf	*Canis lupus*	Federal threatened	Yes	Yes	Yes.	No. Documented as present in nearby North Cascades National Park [7/]
Grizzly Bear	*Ursus arctos horribilis*	Federal threatened	No	Yes	Yes.	No. Documented as present in nearby North Cascades National Park [7/]
Spotted Frog	*Rana pretiosa*	Federal candidate	Yes	Yes	Yes. High quality stream habitat (pools).	No. Present in amphibian surveys in nearby North Cascades National Park. [4/]
Pacific Lamprey	*Lampetra tridentata*	Federal candidate	Yes	Yes	Yes. High quality riverine habitat.	No. Observed in upper Skagit River fish surveys. [5/]

Common Name	Scientific Name	Fed/State Status	Covered by HCP?	Within Species Range?	Suitable Habitat Onsite?	Known Use by Species?
Tailed Frog	*Ascaphus truei*	Federal species of concern	Yes	Yes	Yes. High quality stream habitats with cold water temperatures.	No. Observed in NPS amphibian surveys in North Cascades National Park. [5/]
Cascades Frog	*Rana cascadae*	Federal species of concern	Yes	Yes	Yes. High quality pool habitats; cold water temperatures.	No. Observed NPS amphibian surveys in North Cascades National Park. [5/]
Northern Goshawk	*Accipiter gentilis*	Federal species of concern	Yes	Yes	Yes. Old-growth /mature forested areas provide high quality nesting sites.	No. Confirmed nesting sites in nearby North Cascades National Park. [7/]
Golden Eagle	*Aquila chrysaetos*	State candidate	Yes	Yes	Yes.	Yes. Occasional fly-over of Cascade River watershed. [7/]
Pileated wood-pecker	*Dryocopus pileatus*	State candidate	Yes	Yes	Yes. High quality upland forest habitat with abundant snags.	No. Observed in nearby watershed during NPS and USFS wildlife surveys. [4/]
Vaux's Swift	*Chaetura vauxi*	State candidate	Yes	Yes	Yes. Mature Douglas-fir and western hemlock forest.	Yes. Observed by Fayette Krause (TNC) during field trip on Sept. 12, 2005.
Northern red-legged frog	*Rana aurora*	Other sensitive species	Yes	Yes	Yes. High quality pool habitats; cold water temperatures.	No. Observed in NPS amphibian surveys in North Cascades National Park. [5/]
Olive-Sided Flycatcher	*Contopus cooperi*	Other sensitive species	Yes	Yes	Yes. Snags in old-growth areas provide high quality habitat.	No. Observed in NPS bird surveys in North Cascades National Park.
Long-eared Myotis	*Myotis evotis*	Other sensitive species	Yes	Yes	Yes. Old-growth forested areas provide high quality roosting habitat.	No. Identified as abundant during bat surveys in nearby North Cascades National Park. [6/]

Common Name	Scientific Name	Fed/State Status	Covered by HCP?	Within Species Range?	Suitable Habitat Onsite?	Known Use by Species?
Long-legged Myotis	*Myotis volans*	Other sensitive species	Yes	Yes	Yes. Old-growth forested areas provide high quality roosting habitat.	No. Identified as present but uncommon during bat species surveys in nearby North Cascades National Park. [6/]

[1/] - WDFW Bull Trout / Dolly Varden Inventory (1998)
National Park Service biologist, 4/6/2005
[2/] - WDFW Salmon & Steelhead Inventory (SASSI) Database (2004)
Tech. Report NPS/NOCA/NRTR-2003/1.
[3/] - WDFW Priority Habitats & Species Database (2000)
Threatened & Endangered Species web page.
[4/] - Pers. Comm., Reed Glesne, National Park Service biologist, 4/6/2005
[5/] - Pers. Comm., Stan Zyskowski,
[6/] - North Cascades National Park
[7/] - North Cascades National Park

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer To:
MBSP/FA

November 30, 2007

Omroa Bhagwandin, Program Manager
Washington Department of Natural Resources
P.O. Box 47014
Olympia, Washington 98504-7014

Subject: Notice of Federal Assistance Award for **E-10-HL-2 Amendment #3**

Dear Omroa:

The enclosed Application for Federal Assistance, **E-10-HL-2 Amendment #3,** Boulder Creek, time extension, is approved effective November 23, 2007. The performance period of this award is November 1, 2005 through June 30, 2008.

Terms of Acceptance: Per http://www.doi.gov/pam/TermsandConditions.html, acceptance of a Federal Financial award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of the award. Acceptance is defined as the start of work, drawing down funds, or accepting the award via electronic means. Awards are based on the application submitted to, and as approved by DOI and are subject to the terms and conditions incorporated either directly or by reference to the following:

- Program legislation/regulation.
- Special terms and conditions.
- Code of Federal Regulations/Regulatory Requirements, as applicable

43 CFR 12(A) Administrative and Audit Requirements and Cost Principles for Assistance Programs

43 CFR 12(E) Buy American Requirements for Assistance Programs

43 CFR 12(C) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local

43 CFR 12(F) Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations

43 CFR 43 Governmentwide Requirements for a Drug-Free Workplace

43 CFR 42 Governmentwide Debarment and Suspension (Nonprocurement)

43 CFR 18 New Restrictions on Lobbying

Specials Conditions and Provisions:

Federal funds may not be used to acquire the subject property until documentation of the match property has been approved by the Service. Documentation shall consist of identification and approval of the property, an appraisal to Yellow Book standards and a review appraisal, and title vesting evidence.

The deed of purchased properties shall be encumbered to ensure that the land will be managed in perpetuity to provide habitat for endangered species consistent with the goals and objectives of this grant. Evidence of such shall be included as part of the annual report. In the event that the terms for perpetual conservation are violated the property will be subject to transfer, replacement, or repayment to the United States pursuant to 43 CFR 12.71.

Prior to accessing funds for the purchase of property, the following conditions must be completed:

1. A state-certified general appraiser must conduct an appraisal that meets Federal land acquisition standards. Specifically the appraisal must comply with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) http://www.usdoj.gov/enrd/land-ack/yb2001.pdf. This must occur for the property or properties you plan to purchase.

2. Following the appraisal, a review appraisal is required. The review appraisal can be provided to your agency by contract or through agreement with another state agency. A certified or licensed review appraiser must conduct the review appraisal. If you do not have access to a certified or licensed review appraiser the Division of Federal Assistance can coordinate with the Appraisal Services Directorate (ASD) under the Department of Interior, National Business Center to conduct the review appraisal for you. Please be aware, however, that if ASD is asked to perform the review, they must also write a statement of work up front and provide you with a list of assignment-qualified appraisers from which you

may choose to perform the assignment. Also be aware that workload issues in the ASD may affect the timeliness of the appraisal coordination and review process.

3. The appraisal and review appraisal documents must be submitted to the Division of Federal Assistance for review and approval before Federal funds can be used to purchase the land.

Once these three conditions have been met, we will notify you that the appraisal has been approved. Once approved you may move forward with formal negotiations for acquiring the property evaluated in the review appraisal, according to the terms of the Grant.

Thank you for your interest and efforts in supporting conservation efforts for fish and wildlife and their habitats. If you have any questions regarding the above steps, please contact me at 503-231-6128 or Heather Hollis at 503-231-2372.

Sincerely,

J. Frederick Caslick, Ph.D.
Chief, Division of Federal Assistance

Enclosure

TAKE PRIDE IN AMERICA

GRANTEE

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION:	2. DATE SUBMITTED: 11/16/07	APPLICANT IDENTIFIER
Application: ☐ Construction ☒ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	STATE APPLICATION IDENTIFIER
	4. DATE RECEIVED BY FEDERAL AGENCY	FEDERAL IDENTIFIER: E-10-HL-2 Amd. #~~2~~ 3

5. Applicant Information

Legal Name: State of Washington	Organizational Unit: Department of Natural Resources
Address (give city, county, state, and zip code): Asset Management and Protection Division, P.O. Box 47014, Olympia, Washington 98504-7014	Name and telephone number of the person to be contacted on matters involving this application (give area code): Omroa Bhagwandin, Program Manager, (360) 902-1059

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 91-6012771

7. TYPE OF APPLICANT: (enter appropriate letter in box) A. State

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School District; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____; O. Non-Profit

8. TYPE OF APPLICATION

☐ New ☐ Continuation ☒ Revision

If Revision, select appropriate letter(s) in box(es): C. Increase Duration

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; E. Other (specify here):

9. NAME OF FEDERAL AGENCY: US Department of Interior, Fish and Wildlife Service

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 15-615 Cooperative Endangered Species Conservation Fund

11. DESCRIPTIVE TITLE OF APPLICANT PROJECT: Cooperative Endangered Species Conservation Fund - HCP Land Acquisition: Boulder Creek

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Skagit County, Washington

13. PROPOSED PROJECT

Start Date	Ending Date
11/01/2005	6/30/2008

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
Statewide	Second

15. ESTIMATED FUNDING:

a. Federal	$ ~~742,300~~ 0
b. Applicant	$
c. State	$ ~~460,000~~ 0
d. Local	$
e. Other	$ ~~450,000~~ 0
f. Program Income	$
g. TOTAL	$ ~~1,652,300~~ 0

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE: _____

b. ☐ NO. PROGRAM IS NOT COVERED BY E.O. 12372
☒ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
☐

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes if "Yes" attach an explanation ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
Bonnie Bunning	Executive Director, Policy & Administration	360.902.1034

d. Signature of Authorized Representative	e. Date Signed
[signature] (for)	11/21/07

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

NOV 2 3 2007

FEDERAL ASSISTANCE