#20

Cyndy Holtz
SPU Herbrand Property ORD
January 1, 2012
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117591

AN ORDINANCE relating to Seattle Public Utilities; authorizing the sale of approximately 148 acres located in Section 36, Township 23 North, Range 7 East W.M, in King County to the State of Washington Department of Natural Resources and the acceptance of a conservation easement on the same property; and declaring said property to be surplus to the City's needs and not required for continued utility needs.

WHEREAS, the Seattle City Council passed Ordinance 123657 on July 18, 2011, authorizing Seattle Public Utilities to acquire a 148-acre property to prevent development of the property and reduce the associated risks of development to the municipal drinking water supply; and

WHEREAS, the State of Washington Department of Natural Resources desires to acquire the 148-acre property for forest production purposes; and

WHEREAS, Seattle Public Utilities desires to prevent future development of the property in perpetuity to protect Cedar River drinking water supply; and

WHEREAS, the State of Washington Department of Natural Resources has agreed to convey to Seattle Public Utilities a conservation easement over the property to prevent future development in perpetuity; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Pursuant to the provisions of RCW 35.94.040 and after a public hearing, certain real property in King County, Washington, legally described in Exhibit A of Attachment 1, is hereby declared to be no longer required for public utility service and to be surplus to the City's needs.

Section 2. The Director of Seattle Public Utilities, or his designee, is authorized to execute a statutory warranty deed, substantially in the form of Exhibit B of Attachment 1, to accept a conservation easement, substantially in the form of Exhibit C of Attachment 1, and to execute such other documents as the Director shall deem necessary in order to transfer title of the real property described in Exhibit A of Attachment 1, subject to the conservation easement, to the State of Washington Department of Natural Resources, in accordance with the terms and

conditions set forth in the Agreement for Purchase and Sale of Vacant Real Estate, Kerriston Phase 1 – Seattle Public Utilities, attached hereto as Attachment 1.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 -- Agreement for Purchase and Sale of Vacant Real Estate, Kerriston Phase 1 – Seattle Public Utilities

ATTACHMENT 1

Cindy Holtz

SPU Herbrand Property ORD ATT 1

August 7, 2012

Version #1

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AGREEMENT FOR PURCHASE AND SALE OF VACANT REAL ESTATE

Kerriston Phase 1 – Seattle Public Utilities

THIS AGREEMENT is made as of the 25TH day of JULY, 2012, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources (hereinafter referred to as "State") and CITY OF SEATTLE, a WASHINGTON municipal corporation, acting by and through Seattle Public Utilities, (hereinafter referred to as "Seller").

WHEREAS, Seller is the owner of certain real property located in King County, Washington; and

WHEREAS, Seller desires to convey said real property to State, and State desires to acquire said real property;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Seller and State, it is agreed as follows:

SECTION 1 PROPERTY

Seller shall sell and convey to State, and State shall purchase and accept from Seller, all subject to the terms and conditions of this Agreement, that certain real property located in King County, Washington, the legal description of which is set forth on Exhibit A attached hereto and incorporated by this reference herein, together with the following:

(i) All rights, tenements, hereditaments, easements, associated tidelands, and appurtenances, including, but not limited to, any rights, title and interest of Seller in and to all trees, crops, oil, gas, sand, gravel, water rights, or mineral rights;

(ii) All improvements, if any, and other items located upon or within said real property;

(iii) All easements, rights-of-way and other rights used in connection with said real property, including but not limited to rights to adjacent streets, roads, alleys and rights-of-way;

(iv) All permits, plans, licenses, surveys, consultant's reports on all matters, including but not limited to soils, engineering, traffic, environmental matters, and wetlands made by, for or on behalf of Seller with respect to the property, and an assignment of all representations and warranties made therein to Seller.

The parcel of land, together with the improvements, rights and interests described above, are collectively referred to herein as the "Property."

SECTION 2 PURCHASE PRICE

2.1 Amount. The purchase price ("Purchase Price") to be paid for the Property shall be the sum of ONE HUNDRED FORTY TWO THOUSAND FIVE HUNDRED U.S. Dollars ($142,500.00). The Purchase Price represents the fair market value of the Property after adjusting for the Conservation Easement (Exhibit C) the State will convey to Seller at Closing.

2.2 Payment. Purchase Price shall be paid into escrow by a State warrant or wire transfer payable to the Escrow Company on the Closing Date as defined below.

2.3 Compensating Tax. Seller shall pay any and all compensating tax that may come due as a result of this transaction.

SECTION 3 CLOSING

3.1 Closing Date. "Closing," "Closing Date" or "Date of Closing" as those terms are used herein, shall mean the date upon which all documents are recorded and monies paid to complete the purchase contemplated herein. The Date of Closing shall be as soon as practical to facilitate an orderly closing but no later than December 31, 2012 unless otherwise agreed in writing by the parties.

3.2 Escrow. This transaction shall be closed in escrow at First American Title Insurance Company, 818 Stewart St, Ste 800, Seattle, WA, 98101 (Escrow Company), which shall be arranged by State within ten (10) days of execution of this Agreement. The parties shall deposit the necessary documents and funds in escrow sufficiently in advance of the Closing Date to facilitate an orderly closing. State and Seller shall each pay one-half of the Escrow Company's fee.

SECTION 4 CONVEYANCE, TITLE INSURANCE AND POSSESSION

4.1 Possession. State shall be entitled to possession of the Property on the Closing Date, but State shall have a right of entry pursuant to Section 5 below.

4.2 Form of Deed. On the Closing Date, Seller shall convey title to the Property to State by Statutory Warranty Deed, free and clear of all assessments, monetary liens or encumbrances securing the payment of money, and subject only to any other encumbrances or defects accepted by

State in writing. Said deed shall be in the same form and format as Exhibit B, attached hereto and incorporated by this reference herein.

4.3 Preliminary Commitment.

(a) State has obtained a preliminary commitment for an ALTA Owner's Standard Coverage Policy of title insurance (hereafter "Preliminary Commitment") from First American Title Insurance Company, 818 Stewart St, Ste 800, Seattle, WA, 98101(Title Company). Seller further warrants that title shall be good, marketable and insurable subject only to the exceptions set forth in this subsection 4.3(a) and listed below:

Schedule B-Section II. Part 2 of Order No. 4209-1801435, dated December 6, 2011, updated February 17, 2012; Exceptions, Nos. 5 (AFN 4514029), 6 (AFN 5191531), 7 (AFN 4514029 and 5191531), 8 (AFN 780424508), 9 (AFN 8303160819), 10 (AFN 20070305900003), 11 (AFN 20100429001529).

(b) If additional encumbrances affecting the Property arise, State shall have twenty (20) days from receipt thereof to review and approve these additional items. Failure of State to approve in writing any exception to Seller's title shown in the Preliminary Commitment or arising thereafter shall be deemed to be a disapproval of such exception.

4.4 Policy Condition of Closing. Seller shall, prior to or at the Closing Date, at its sole cost and expense, undertake (by the exercise of its reasonable efforts and with due diligence) to remove, eliminate or modify any exceptions not acceptable to State. Closing shall be conditioned upon Title Company issuing its ALTA Owner's Standard Coverage Policy insuring fee title to the Property in the name of State in the amount of the Purchase Price, subject only to (i) the printed form exceptions contained in the ALTA Owner's policy and (ii) such exceptions accepted by State.

4.5 Use of Purchase Price. Purchase Price to be paid by State to Seller at Closing may be used in whole or in part by Seller by and through the Escrow Company to remove any liens, liabilities, or encumbrances which Seller is to have removed.

4.6 Cost of Policy. Seller shall be responsible for the cost of the title insurance policy. State shall be responsible for requesting and for paying the cost of any additional endorsements, co-insurance policies and reinsurance certificates issued by Title Company at State's request.

SECTION 5 STATE'S RIGHT AFTER ACCEPTANCE

5.1 Inspection. After the date of this Agreement, Seller shall permit State and/or its designated agents to enter upon the Property at all reasonable times for the purpose of conducting environmental assessments and investigating the Property and the physical condition thereof, including, without limitation, soil, water, and air conditions, and the condition of improvements, if

any, upon the Property. Inspections by State, if any, shall not be construed as estopping actions upon any warranty made herein.

5.2 Studies.

(a) Seller Studies. Within five days of the date of this Agreement, Seller shall deliver to State true copies of all studies, reports, surveys, soils tests, reviews, correspondence with all governmental entities, environmental checklists and reports, plans and other printed or written material (all of which are collectively referred to as the "Seller's Studies") prepared or received by, or on behalf of, Seller with respect to the Property and any part thereof. Seller authorizes State to speak with any person preparing Seller's Studies with respect to the contents thereof. State shall not be responsible for any cost associated with Seller's Studies.

(b) State Studies. State shall have the right to prepare, or have prepared, appraisals, market and engineering studies, soils tests, feasibility studies, surveys, resurveys or survey updates, environmental investigations and such other tests, studies or investigations (all of which are collectively referred to as the "State's Studies") with respect to the Property. State shall be solely responsible for costs of all State's Studies.

(c) Termination. If the State determines at its sole discretion that the Seller Studies or State's Studies indicate the Property is not suitable for the intended use by State or the Property presents risk of liability unacceptable to State, State may terminate this Agreement without further obligation. In the event the purchase fails to close for any reason other than the Seller's breach, the State shall provide copies of the State's Studies to the Seller which relate to the Property unless such studies would be exempt from disclosure under Title 42.56 RCW or other statute. State makes no warranty as to the accuracy of State's Studies.

5.3 Subsequent Acts. Between the date of this Agreement and the Closing Date, Seller shall maintain the Property and keep the Property in condition at least as good as on the date of this Agreement. Seller shall not remove any timber, harvestable crop, improvements, minerals, sand, gravel, or other item from the Property after the date of this Agreement without prior, written approval by State.

5.4 Board Approval. This Agreement is contingent upon approval by the Board of Natural Resources acting in the best interest of the trusts. If, on or before the 90th day after the Date of this Agreement (defined in section 14.8), the State has not delivered to Seller a written notice of the Board of Natural Resources approval (Approval Notice) to consummate the acquisition of the Property then the State or Seller may terminate this Agreement by giving written notice of termination (Termination Notice) to the other party.

SECTION 6 CONTINGENCIES

6.1 Conditions. State's obligations under this Agreement are subject to and contingent upon the following:

(a) The truth and accuracy as of the Closing Date of all representations and warranties of Seller set forth in this Agreement or in any instrument or document delivered by Seller to State.

(b) The delivery by Seller to State on or prior to the Closing Date of all documents and instruments required by the terms of this Agreement.

(c) The performance on or prior to Closing by Seller of all acts required under this Agreement.

(d) The absence at Closing of any violation of any federal, state or local law, rule, regulation or ordinance affecting the use, occupancy or condition of the Property.

(e) The absence at Closing of any failure to comply with the order of any court, government authority or agency pertaining to the Property or the use, occupancy or condition of the Property.

(f) The absence at Closing of any proceeding or threat of any proceeding to condemn all or any part of the Property by a proceeding in eminent domain.

(g) Conveyance of acceptable title as provided in Section 4.

(h) Approval of Seller's and State's Studies pursuant to subsection 5.2

(i) Approval of the acquisition of the Property by the Board of Natural Resources.

(j) The availability of funding to purchase the Property and complete the Agreement.

(k) State and Seller executing the Conservation Easement as shown in Exhibit C and Notice of Continuing Landowner Obligations similar in form to Exhibit D.

(l) State reaching agreement with the Institute for Community Leadership Training and Organizing to either terminate, replace or amend AFN 20100507001272 with easement terms that are acceptable to the State. Agreement to be in the form of a written document acceptable to the State that would be recorded prior to or upon the Date of Closing. Upon State agreement of the executable language, State to conditionally accept this as an exception under 4.3(a.).

(m) State inspection of 2012 on-site tree planting with the State determining, in State's sole opinion, whether the quality and quantity of trees planted meet the State's needs and specifications. The primary criteria for State is whether 350 trees per acre of well planted, evenly distributed, 2 year old or older tree seedlings were planted that are likely to have a 95% or higher survival rate with good vigor one year after planting.

(n) Seller to execute and have recorded a correction deed relating to AFN 20110728001331 in advance of the Closing Date to correct the City of Seattle ownership name listed in the deed and to correct the legal description. The revised legal description to conform to the legal description found in Schedule B-Section II. Part 2 of Order No. 4209-1801435, dated December 6, 2011, and updated February 17, 2012. Seller to provide a copy of the correction deed to the State in advance of the Closing Date.

(o) Closing to be contingent upon the City of Seattle passing an ordinance in advance of Closing approving this transaction and forwarding a copy of the approval ordinance to the State's representative listed in Section 13 (Notices).

6.2. Waiver. If any condition specified in Section 6.1 is not met at Closing, State may waive such condition in writing, State may complete this transaction and seek appropriate remedies, or State may terminate this Agreement without any further liability. Upon such termination, any monies deposited by State pursuant to this Agreement, together with all interest earned thereon shall be promptly returned to State.

SECTION 7 REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to State. Each of these representations and warranties is material and is relied upon by State. Each of the representations and warranties shall be deemed accurate through Closing and shall survive Closing.

7.1 Title. Title to the Property is vested in Seller.

7.2 No Liabilities. There exists upon the Property no condition which is in violation of any statute, ordinance, regulation or administrative or judicial order or holding, whether or not appearing in the public records pertaining to the Property.

7.3 Correctness. All information furnished by Seller to State with respect to the Property is accurate and true.

7.4 Litigation. To the best of Seller's knowledge, there is no pending or threatened litigation affecting the Property or any portion thereof, including but not limited to alleged violation of federal, state or local environmental laws. Neither Seller nor its predecessors have received any notice relating to a breach or suspected breach of any environmental laws.

7.5 Condition of Property. To the best of Seller's knowledge, Seller represents and warrants the following: there are no apparent or latent defects in the Property; the Property does not contain any underground storage tanks, surface impoundments, asbestos or asbestos-containing material, or polychlorinated biphenyls (PCBs) or PCB-containing materials, past or present refuse dump sites, chemical storage sites, areas of heavily stained soil, or sites of known hazardous material releases other than those indicated and described by exhibit attached hereto; and the Property is free from the presence of hazardous waste or materials and no hazardous waste or materials have been generated, stored, released, disposed of, or transported over, on or within the Property. The term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' 9601, et seq., and the Model Toxics Control Act, RCW 70.105D. Seller has no undisclosed knowledge of any fact or condition that would materially impair the market value of the Property, would materially increase the cost of operating the Property or would be inconsistent with the terms of this Agreement.

7.6 Authorization. Seller has the right and authority to enter into this Agreement and all documents contemplated by this Agreement, to make the representations and warranties set forth herein and to perform this Agreement in accordance with its terms. Neither the execution of this Agreement nor its performance by Seller will conflict with or result in the breach of any mortgage, deed of trust, encumbrance, restriction, covenant, agreement or other undertaking whatever.

7.7 Vacancy. No one is presently occupying the Property, either with or without Seller's permission.

SECTION 8 INDEMNITY AND HOLD HARMLESS

Seller agrees to indemnify, defend with counsel acceptable to State, and hold harmless State, its agencies, employees, officers and agents from (a) all liabilities, losses, claims, demands, damages, assessments, costs and expenses (including reasonable attorneys' and consultants' fees) of every kind (hereafter "Liabilities") resulting from, arising out of or relating to the breach by Seller of any of its warranties, representations or covenants contained in this Agreement and (b) all Liabilities arising under, resulting from or arising out of any activities of Seller, its agents, employees, contractors, subcontractors, permittees, or licensees at the Property prior to or at Closing, including but not limited to the use, disposal, transportation, generation, or sale of hazardous material as defined in subsection 7.5.

SECTION 9 DESTRUCTION OR CONDEMNATION

Seller shall bear the risk of loss prior to Closing. If, on or before the Closing Date, either the Property is materially damaged, or condemnation proceedings are commenced with respect to the Property, State shall have the right, at its sole election, by giving notice to Seller, either to terminate this Agreement or to purchase the Property in accordance with this Agreement. If State elects to terminate this Agreement, all rights and obligations of Seller and State shall terminate. If State

elects to purchase the Property in accordance with this Agreement, State shall be entitled to all insurance proceeds or condemnation awards payable by reason of such damage or condemnation. In the event there is no insurance or inadequate insurance to cover the damage, State shall be entitled to a reduction in the Purchase Price equal to the market value of the Property destroyed or damaged. Seller shall immediately give notice to State upon the occurrence of any damage to the improvements on the Property or the initiation of any condemnation proceedings affecting the Property. The term "material damage" as used in this section shall mean any damage or destruction that cannot be repaired or replaced within ninety (90) days or that represents more than 5 % of the Purchase Price.

SECTION 10 CLOSING AND CLOSING COSTS

Prior to or on the Closing Date, Seller and State shall deposit the following documents and funds in escrow, and the Escrow Company shall close the escrow in accordance with the instructions of State and Seller consistent with this Agreement:

10.1 Seller Obligations. Seller shall deposit the following:

(a) duly executed and acknowledged Statutory Warranty Deed conveying the Property to State and a Real Estate Excise Tax Affidavit;

(b) escrow instructions, as required of Seller to close this transaction in accordance with this Agreement;

(c) if Seller is a corporation or partnership, a certified resolution authorizing the execution of all documents delivered at the Closing;

(d) pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, a nonforeign affidavit, stating that Seller is not a foreign person and providing Seller's United States taxpayer identification number. If Seller is not able to certify that it is not a "foreign person," State is authorized to withhold a portion of the purchase price at closing for U. S. Income Tax purposes;

(e) Signed Conservation Easement (Exhibit C) and signed Continuing Forestland Obligations (Exhibit D); and

(f) Such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by Seller and State to be necessary to fully consummate the transaction contemplated hereby.

10.2 State Obligations. State shall deposit the following:

(a) The Purchase Price;

(b) signed Conservation Easement (Exhibit C) and signed Continuing Forestland Obligations (Exhibit D); and

(c) Such other funds and documents, including without limitation, escrow instructions as are required of State, to close the purchase in accordance with this Agreement.

10.3 Prorations. All rents and other income, if any, and water, sewer, utility and maintenance charges, and any other expenses with respect to the operation of the Property shall be prorated between Seller and State as of the Closing Date, and to the extent information then available, such proration shall be made as of the Date of Closing. Such proration shall be adjusted and completed after the Closing Date as and when complete information becomes available, and State and Seller agree to cooperate and use their best efforts to complete such prorations not later than sixty (60) days after the Closing Date. No insurance prorations shall be made. Seller shall pay any assessments charged against the Property in full prior to or at Closing. Seller shall pay all real estate taxes and personal property taxes, if any, through the Date of Closing. In the event Seller has prepaid any real estate taxes, Seller may seek a refund from the appropriate county official; State shall have no obligation to refund or pay any such amount to Seller. Seller shall pay any real property excise tax due, and the cost of any revenue stamps, if applicable, required to complete this transaction. State will pay recording fees.

SECTION 11 SURVIVAL

The representations, warranties, indemnification and obligations (to the extent such obligations are not fully performed at closing) contained herein are intended to be operative after delivery of Seller's deed to the Property in order to be fully effective and shall be deemed not to have merged in the deed.

SECTION 12 REAL ESTATE COMMISSION

Seller shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of Seller.

SECTION 13 NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or receipt after deposit in the United States first class mail addressed as follows:

To Seller:

Drinking Water Division, Seattle Public Utilities
Attn: Cyndy Holtz, Major Watersheds Business Area Manager
P.O. Box 34018
Seattle, WA 98124-4018

To State:

Department of Natural Resources
Asset and Property Management Division
Attn: Bob Winslow
P. O. Box 47014
Olympia, WA 98504-7014

The foregoing addresses may be changed by written notice.

SECTION 14 MISCELLANEOUS

14.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties. No other prior and contemporaneous negotiations, understandings and agreements, whether oral or written shall be deemed to exist or bind any of the parties hereto.

14.2 Binding Nature. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto.

14.3 Washington Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the state of Washington. Venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

14.4 Time of the Essence. Time is of the essence of this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

14.5 Captions. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

14.6 Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

14.7 Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed an original.

14.8 Date of Agreement. The date of this Agreement shall be the date on which the last party executes this Agreement. Said date shall be inserted on the first page hereof when such date is determined.

14.9 Good Faith. Both parties shall act reasonably and in good faith in order to consummate this transaction, and Seller shall neither sell nor dispose of any of the Property nor cause or suffer the creation of any matter of record, or defect in the title to the Property for the purpose of avoiding its obligation to close.

14.10 Default. In the event that either party defaults in the performance of any of that party's obligations under this Agreement, the non-defaulting party shall have all remedies available in law or equity, but neither party shall be liable for consequential damages.

14.11 Attorneys' Fees and Costs. If either party is required to retain an attorney to bring suit or seek arbitration to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

14.12 Assignability. This Agreement shall not be assigned without the prior written consent of the other party except as provided hereafter.

14.13 Advice of Counsel. Seller acknowledges that it has had an opportunity to seek independent legal advice regarding the transaction.

14.14 Submission. This Agreement must be executed by Seller, and an original delivered to State, at the address set forth in this Agreement, on or before 4:00 p.m. on May 31, 2012, to be considered by State. This Agreement shall not be binding upon State until signed by an authorized representative of State.

SECTION 15 CONTINUING FORESTLAND OBLIGATIONS

Seller acknowledges that the Property is subject to certain continuing forestland obligations applicable to the property under the forest practices rules adopted pursuant to RCW 76.09.070, including but not limited to the continuing obligations, if any, listed on the notice which is attached hereto as Exhibit D (the "Continuing Obligations"). At or before Closing, Seller agrees to sign and deliver to State the original of the Continuing Obligations notice or such other notice that indicates the Seller's knowledge of the Continuing Obligations as may be required by the Washington Department of Natural Resources ("DNR") at the time of Closing. At Closing, Seller shall send the executed notice to the appropriate DNR region office of jurisdiction, in accordance with the requirements of RCW 76.09.390. As of Closing, State assumes and agrees to perform the Continuing Obligations in a timely fashion at State's sole cost and expense, unless otherwise provided for herein.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year set forth opposite their respective names.

SELLER:

CITY OF SEATTLE
SEATTLE PUBLIC UTILITIES

Dated: July 12, 2012

By: _____

Title: Director, Facilities and Real Property

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: July 25, 2012

By: _____
Peter Goldmark
Commissioner of Public Lands

Affix the Seal of the Commissioner of Public Lands

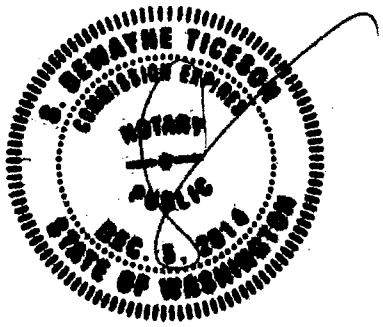
Vacant Land Purchase and Sale Agreement
Approved as to Form this 20th day of June
_____, 2012.
Christa L. Thompson
Assistant Attorney General
State of Washington

CITY COUNCIL CLERK

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this 12 day of July, 2012, personally appeared before me Judith L. Cross known to be the Director, Real Estate of the public agency that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said public agency, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument for said public agency and that the seal affixed is the official seal of the said public agency.

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



Notary Public in and for the State of Washington, residing at Seattle.

My appointment expires 12-5-2014.

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss
COUNTY OF THURSTON)

On this 25th day of July, 2012, personally appeared before me PETER GOLDMARK, to me known to be the Commissioner of Public Lands, and administrator of the Department of Natural Resources of the State of Washington, that he 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.

Notary Public in and for the State of Washington, residing at Spanaway.

My appointment expires 2/28/2016.

BRENDA TREADWELL
NOTARY PUBLIC
COMMISSION EXPIRES
FEB. 28, 2016
STATE OF WASHINGTON

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT A
LEGAL DESCRIPTION

Parcel A:

Lot 2 of King County Short Plat Number 1080021 recorded under recording Number 8303160819, said Short Plat being a portion of the Northwest Quarter of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel B:

Lot 3 of King County Short Plat Number 1080021 recorded under Recording Number 8303160819, said Short Plat being a portion of the Northwest Quarter of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel C:

The North ¾ of the East ½ of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel D:

The Southwest Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington; EXCEPT the Northwest Quarter of the Southwest Quarter of the Northeast Quarter of said Section 36; AND EXCEPT county road.

Parcel E:

The Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington; EXCEPT the Southwest Quarter of the Southwest Quarter of the Southeast Quarter of the Northeast Quarter of said Section 36.

Parcel F:

The Southwest Quarter of the Southwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Dennis J. Gelvin, PLS 21674
Land Description & R/W Specialist
Land Survey Unit
Engineering Division
PO Box 47030
Olympia, WA 98504-7030

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT B

AFTER RECORDING RETURN TO:
Department of Natural Resources
Asset & Property Management Division
Asset Planning and Transactions Section
Attn: Bob Winslow
PO Box 47014
Olympia, WA 98504-7014

STATUTORY WARRANTY DEED

King County

Grantor:
Grantee: STATE OF WASHINGTON, acting by and through the Department of Natural Resources
Legal Description:
Tax Parcel Number:

THE GRANTOR, *(NAME).*, for and in consideration of *(DOLLAR AMOUNT ALL CAPS)* U.S. DOLLARS ($00,000.00) in hand paid, conveys and warrants to the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, GRANTEE, the following described real property situated in County, State of Washington.

(LEGAL DESCRIPTION)

Subject to the following encumbrances:
(Insert acceptable encumbrances)

Dated this _____ day of _____, 20___.

By _____

Title _____

STATE OF WASHINGTON)

COUNCIL CLERK

) ss
COUNTY OF_____)

On this _____ day of _____, 20___, personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

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

_____
Notary Public in and for the State of Washington,
residing at _____.

My appointment expires _____.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT C
CONSERVATION EASEMENT

When Recorded Mail To:

City of Seattle, Seattle Public Utilities
Drinking Water Division
Attn: Cyndy Holtz, Major Watersheds Business Area Manager
P.O. Box 34018
Seattle, WA 98124-4018

DEED OF CONSERVATION EASEMENT

Grantor: State of Washington, acting by and through the Department of Natural Resources
Grantee: City of Seattle, Seattle Public Utilities
Legal Description (abbreviated): Ptn. of Sec. 36, T23N, R7E
Additional legal(s) listed in Exhibit A
Assessor's Tax Parcel ID#: 362307-9003, 362307-9004, 362307-9013, 362307-9041, 362307-9046, 362307-9047

This Deed of Conservation Easement ("Easement") is granted on this _____ day of _____ 2012, by State of Washington, acting by and through the Department of Natural Resources ("Grantor"), to City of Seattle, Seattle Public Utilities, a political subdivision of the State of Washington ("Grantee").

WHEREAS, Grantor and Grantee make the following recitals:

A. **Owner/Grantor.** Grantor is the sole owner in fee simple of the real property ("Protected Property") legally described in Exhibit A, attached to and made a part of this Easement, which consists of approximately one hundred fifty (150) acres of land located in King County, Washington. A map of the property is attached to, and made part of this Easement, as Exhibit B. Grantor received fee title to the Protected Property by statutory warranty deed issued by Grantee. Grantor agreed to convey this Easement as part of the negotiated transaction. Grantor manages this property in trust for the purpose of generating revenue primarily through the harvest of timber.

B. **Protected Property.** The Protected Property is used primarily for the production of forest products. Its current use, relevant features, and state of improvement, and its intended use for sustainable forestry are further described in the Forest Stewardship Plan ("Stewardship Plan") dated

April 16, 2012, attached hereto as Exhibit C and incorporated by this reference, prepared by the Grantor with the cooperation of the Grantee, and kept on file at the offices of Grantee.

C. **Conservation Values.** The Protected Property possesses forest resource values, scenic values, open space values, recreational values, educational values, natural ecosystem values (e.g., values related to timber stands consisting of Douglas Fir, Western Hemlock, Western Red Cedar, and Red Alder), protection for streams and groundwater recharge, fish habitat values, and clean air values that are of great importance to Grantor, Grantee, the people of Seattle and the people of the State of Washington. These values are referred to herein as the "Conservation Values" of the Protected Property. These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described below or as authorized below.

D. **Conservation Policies**. The Conservation Values protected by this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

1. Seattle Public Utilities' 2007 Water System Plan describes SPU's intention to conduct a comprehensive analysis of the risks presented by the public access on the Kerriston Road and options to mitigate that risk.

2. RCW 84.34.010, in which the Washington State Legislature has declared "that it is in the best interests of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens."

3. RCW 64.04.130 and RCW 84.34.210 grant cities the authority to acquire easements to preserve, conserve and maintain open space, agricultural and timber lands.

4. The Protected Property possesses the capacity to produce forest products pursuant to RCW 76.09.010 and RCW 84.34.020, the Countywide Planning Policies, the King County Comprehensive Plan, and the forest resource values identified in the Stewardship Plan.

E. **Grantee**. The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows:

1. *Grant of Easement*

Grantor voluntarily conveys and warrants to Grantee, its successors and assigns, and Grantee accepts, as permitted by RCW 64.04.130 and chapter. 84.34 RCW, a conservation easement (the "Easement") in perpetuity over the Protected Property, subject to the Permitted Exceptions attached as Exhibit D, on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Protected Property.

2. *Purpose*

It is the purpose of this Easement to ensure that the Protected Property be retained forever in substantially its current natural, forested, open space and scenic condition and used for sustainable forestry and to prevent any use of the Protected Property that will impair or interfere with its Conservation Values. Grantor and Grantee intend that this Easement will confine the use of the Protected Property to sustainable forestry management in the manner described in Section 5 below (Reserved Rights).

2.1. *Perpetual Duration*

This Easement shall be a binding servitude running with the land in perpetuity, and no merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Protected Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Protected Property now or hereafter held by Grantee. Unless otherwise specified, every provision of this Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

3. *Rights of Grantee*

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement, subject to the Permitted Exceptions:

(a) To preserve and protect the Conservation Values of the Protected Property;

(b) To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 8; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the Protected Property;

(c) The right to seek Grantor's approval to allow persons or groups, including Grantee, to enter upon the Protected Property for scientific and educational purposes at mutually agreeable dates and times and upon not less than ten (10) days prior notice to Grantor, which approval shall not be unreasonably withheld, provided that Grantor may refuse access for any access that interferes with the Grantor's management of the Protected Property for forestry

purposes, and provided further that Grantee shall indemnify Grantor as set forth in Section 6.1. Grantee shall comply with all provisions of this Easement with respect to third parties entering the Protected Property, including without limitation, any customary permit or license requirements administered by the State, and all management guidelines in effect;

(d) To the extent it will not interfere with Grantor's retained rights, if necessary to protect the Conservation Values of the Protected Property, the right to seek Grantor's approval to conduct, survey(s), site preparation, removal of invasive non-native riparian vegetation, bank stabilization, installation of large woody debris and other activities associated with habitat restoration at mutually agreeable dates and times and upon not less than ten (10) days prior notice to Grantor, which approval shall not be unreasonably withheld, provided that Grantor may refuse access that interferes with the Grantor's management of the Protected Property for forestry management purposes, and provided further that Grantee shall indemnify Grantor as set forth in Section 6.1. Nothing herein shall be deemed to imply any obligation to perform such restoration activities;

(e) The right to pursue the remedies as set forth in Section 8 to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use;

(f) Following reasonable prior notice to Grantor and subject to Grantor's approval, which shall not be unreasonably withheld, the right to install informational signs for educational purposes, to give notice of the existence of recreational trails, if any, on the Protected Property, to inform the public of the sources of funding used to acquire this easement or to establish rules for use of the Protected Property.

4. *Prohibited Uses*

Grantor shall not use the Protected Property for any Inconsistent Purpose, which is defined as any purpose inconsistent with preserving the Conservation Values of the Protected Property. The definition of Inconsistent Purpose shall not include activities related to sustainable forestry as defined in Section 5 of this Agreement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) *Development Rights.* The use of the residential development rights now or hereafter associated with the Protected Property, except those in connection with Grantor's Reserved Rights set forth in Section 5. The parties agree that the development rights are removed from the Protected Property and may not be used on or transferred to any other portion of the Protected Property as it now or hereafter may be bounded or described.

(b) *Subdivision.* Except for use for sustainable forestry, the Protected Property may not be legally or *de facto* divided, subdivided, or partitioned into parcels smaller than 80 acres for any purpose, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots.

(c) *Construction and Improvements.* The placement, construction, expansion, or maintenance of any buildings, structures, or other improvements of any kind, including, without limitation, fences, utilities, septic systems, communication lines, communication towers, storage tanks and pipelines, except (i) those specifically noted in the Stewardship Plan and in existence at the time this Easement was executed (ii) the Reserved Rights described in Section 5, including sustainable forestry, (iii) third party rights under the Permitted Exceptions and (iv) for emergency, safety or monitoring equipment. Impermanent structures including mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers shall not be used or stored by Grantor on the Protected Property or permitted on the Protected Property, except for those associated with sustainable forestry and other Reserved Rights described in Section 5.

(d) *Paving and Road and Trail Construction.* The paving or covering of any portion of the Protected Property not previously paved or covered (and noted in the Stewardship Plan) with concrete, asphalt, crushed rock, wood shavings or any other paving or surfacing material (collectively, "Covered Surfaces") or similar material, except (i) as to the resurfacing of existing Covered Surfaces, or (ii) relating to the Reserved Rights described in Section 5, (iii) to comply with applicable, laws, rules or regulations, or (iv) as allowed under Permitted Exceptions. Further, there shall be no new construction of any trail for any purpose on the Protected Property, except for sustainable forestry and other Reserved Rights described in Section 5 or as allowed under a Permitted Exception. Use of concrete or asphalt for trails is expressly prohibited, except in connection with sustainable forestry and other Reserved Rights described in Section 5.

(e) *Development.* Any commercial or industrial use or activity on the Protected Property, including but not limited to commercial recreational activities involving Intensive Recreation, except as relating to sustainable forestry and other Reserved Rights as provided in Section 5. Intensive Recreation is defined as any recreational use or activity that is authorized by Grantor involving organized athletic games such as golf, baseball, soccer, football, motorized sports of any kind, commercial hunting or trapping, commercial shooting, formal shooting ranges, camping or overnight use without a permit, activities and uses that require land development or clearing or grading in excess of that authorized for Limited Impact Recreation (as defined in section 5(c)), developed athletic fields, spectator viewing areas, or any support facility.

(f) *Surface Alteration and Mineral Resource Extraction.* At the time of execution of this Agreement, the Protected Property includes mineral rights owned by the State of Washington and, as such, the mineral rights existing as of the date of this Easement are Permitted Exceptions. Grantee has not obtained mineral rights in connection with its former ownership or reservation of the development rights. Grantor shall provide Grantee with advance notice of any intent to offer mineral rights for lease on the Protected Property or otherwise engage in the alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, sod, oil, gas, coal, hydrocarbons, lignite, limestone, metals, ores, and minerals of any type. Surface alterations other than the aforementioned are expressly prohibited, except as allowed by Section 5 for the conduct of sustainable forestry practices and as reasonably necessary for Grantee's exercise of other Reserved Rights described in Section 5, or the exercise of third party rights under Permitted Exceptions. Any surface alterations related to mineral rights shall be conducted in accordance with applicable laws, the terms of any Permitted

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Exceptions, and will be conducted in a manner that protects the Conservation Values of the Protected Property to the maximum extent as is economically feasible.

(g) *Soil Degradation and Water Pollution.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, or exercise of third party rights under the Permitted Exceptions, any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of surface or subsurface waters is prohibited.

(h) *Wetlands.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, and subject to applicable laws, no Prohibited Wetland Activity (defined below) is allowed on the Protected Property that degrades the plant and animal habitat, ecological value or scenic qualities of a wetland or wetland buffer, as defined by the King County Code as hereafter amended. Prohibited Wetland Activities shall include without limitation artificially draining water into or out of a wetland; grading, filling or compacting wetland soils; use of biocides, except where necessary to control or eradicate non-native invasive species and only if applied with the narrowest spectrum, least persistent substance available; conducting domestic animal grazing or agricultural activities of any kind; and hunting or trapping.

(i) *Ponds, Watercourses and Wells.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, and subject to applicable laws, the alteration or manipulation of the ponds, water courses, and wells located on the Protected Property, or the creation of new water impoundments, water courses or wells, for any purpose is prohibited.

(j) *Alteration Surface Water, Subsurface Water or Channeling Water.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, and subject to applicable laws, any alteration of the surface water channels on the Protected Property including the removal of fallen trees, gravel or rocks from a water channel or the damming of the water channel, including the lining of the water channel with rocks, wood, trees, sand bags, or other materials, is prohibited.

(k) *Introduced Vegetation.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, and subject to applicable laws, the planting or introduction of nonnative species of plants is prohibited. In addition, Grantor shall endeavor to prevent introduction of nonnative plant species except for the Reserved Rights described in Section 5 relating to sustainable forestry practices.

(l) *Waste Disposal.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, and subject to applicable laws, the disposal, storage, or release of hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Protected Property is prohibited. The term "release" shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this Easement shall mean

any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation as hazardous, toxic, dangerous or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

(m) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Protected Property is prohibited, except: i) in connection with the sale or lease of the Protected Property for uses consistent with the Conservation Values; ii) required by law, ordinance, rule regulation or to facilitate compliance with this Easement or the Permitted Exceptions; iii) to provide trail directions, restrictions, prohibitions on use or access, or information pertaining to health and safety warnings; or iv) notifying the public of liability limitations or forest stewardship and management activities on the Protected Property.

(n) *Intensive Recreation.* Except for Limited Impact Recreational Use defined in Section 5(c) and subject to the Reserved Rights in Section 5, conducting, permitting, or engaging in Intensive Recreation as defined in Section 4(e) is prohibited. Motorized recreation is prohibited unless occurring in conjunction with approved Americans with Disabilities Act uses or trails.

(o) *Vehicles.* Except for those associated with sustainable forestry and as reasonably necessary for Grantor's exercise of other Reserved Rights described in Section 5, the operation of motorcycles, dune buggies, all-terrain vehicles, or other types of off-road motorized vehicles or the operation of other sources of excessive noise pollution or which may degrade the Conservation Values of the Protected Property is prohibited.

(p) *Unlisted Use.* If a question arises about whether a particular use is prohibited because it is not explicitly listed in this Section 4, the parties shall consider it to be prohibited if it is substantially similar in all material respects to a prohibited use included in this Section 4.

(q) *Road Access Restrictions.* Except for temporary administrative access as defined in Section 5(k), Grantor shall be permanently restricted and prohibited from future access to the Protected Property from the county road referred to as SE 208th Street , SE 364th Street, and/or Kerriston Road, (collectively referred to as "Kerriston Road" the locations of which are shown in Exhibit E. This restriction shall not apply to Grantor's access to any property other than the Protected Property.

5. *Reserved Rights*

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the purpose of the Easement and that is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

(a) *Sustainable Forestry.* The Protected Property may be used for sustainable forestry as an aspect of the utilization of its forest resource values. Without limiting the generality of the foregoing, the right to conduct sustainable forestry practices upon the Protected Property

consistent with applicable federal, state and local regulations is a reserved right and expressly authorized by this Easement.

"Sustainable Forestry" includes any activity defined in or allowed by state forestry regulations and any customary forestry-related activity that is conducted on or directly pertaining to forest land and relating to the growing, harvesting or processing of timber, including, but not limited to, the following activities, but only to the extent such activities are not prohibited by State forestry regulations:

(1) road and trail use, construction, maintenance, de-construction, abandonment, reclamation including grading and excavating soil, sand, gravel, asphalt, peat, trees, native vegetation, rock or other materials to allow for the efficient use of existing roads identified in the Stewardship Plan and current and future road rights-of-way, on-site pits or quarries together with storage of rock on or adjacent to same quarries for use on the Protected Property;

(2) use of the following types of machinery to accomplish tasks such as excavators, bull dozers, cranes, graders, skidders, forwarders, timber felling and processing machines, compactors, rock crushers, grid rollers, rock drills, pickups, water trucks, dump trucks, semi-trucks and lowboys, mobile tree seedling and tree bough coolers;

(3) constructing, maintaining, or replacing bridges and culverts or similar types of structures together with needed road cautionary and related use signs;

(4) final and intermediate harvesting, which may include clear cuts and/or thinnings; including sorting and temporary storage and staging of logs, poles, chips, minor forest products, bee hives;

(5) precommercial thinning or pruning;

(6) reforestation, including the introduction of modified native species, potential introduction of non-native species at a future date in response to unforeseen environmental circumstances, which should include an analysis of best available science at the time of the activity, in a manner consistent with Grantor's ability to sustain maximum productivity and economic return;

(7) fertilization and the prevention and suppression of diseases and insects with pesticides and herbicides (including ground and aerial application of chemicals) and pest control including trapping and professional hunting and use of legally approved baits, all to the extent allowed by State forestry regulations, emergency promulgated authorities and pest control including trapping;

(8) salvage of trees, logs or other vegetation;

(9) brush control, slash disposal and prescribed burning, use of livestock animals where warranted for brush control pursuant to applicable water quality laws;

(10) preparatory work such as tree marking, surveying and road flagging;

(11) installation of gates and other measures to close or restrict access to the property;

(12) removal or harvesting of incidental vegetation or honey or public animals subject to hunting or fishing from forest land such as tree boughs, Christmas trees, berries, honey, ferns, greenery, mistletoe, herbs, mushrooms, game animals, and other similar types of minor forest products;

(13) processing forest products with portable or temporary equipment designed for in-woods processing;

(14) repair, replacement and protection of structures such as bridges, ponds and other improvements related to forestry practices; the burning of native forest debris when desired for control or prevention of fires, diseases, or for silviculture reasons;

(15) use and placement of rock, soil, sand, gravel, road fabric, geotextile materials, asphalt, rip-rap, or similar type materials to road subgrade and rights of way to harden roads and trails, enhance efficiencies of transportation network, maintain all-season use of roads and trails, protect or armor culverts, and to improve or protect water quality;

(16) temporary use and placement under the approval of Grantor of non-permanent campers, trailers, tents, or similar type structures for persons working for the Grantor relating to forest research, forest security, forest harvesting, silviculture operations, fisheries research, recreational trail construction and maintenance pursuant to Limited Impact Recreational Use as described in Section 5(c), and wildlife research;

(17) temporary electric fencing around immediate perimeter of bee hives to discourage bear damage and depredation of hives;

(18) use of wells for groundwater or to otherwise legally appropriate surface waters for use with road maintenance, wildfire suppression, or extinguishment of slash burns, subject to applicable laws;

(19) disturbance of surface water in conjunction with road planning, construction, abandonment, re-construction, and maintenance in conformance with applicable laws;

(20) construction of up to one small security shed(s), less than 20' wide by 20' wide by less than 20' height for purposes of storing fire suppression equipment or forest management materials and undertaken in compliance with any permitting and building codes in place at the time of the activity and upon prior notice to Grantee;

(21) wetland activities associated with timber harvest or road construction, in compliance with the State Forestry regulations or where mitigation has been pre-approved by King County and/or WA Dept. of Ecology and/or the Army Corps of Engineers as required by applicable law;

(22) use of explosives for rock blasting for roads and trails or where needed for habitat restoration;

(23) temporary storage of fuel within vehicle fuel tanks or fuel trucks for use by forestry contractors authorized by Grantor, along with temporary storage of lubricants and solvents in amounts reasonable for tasks at hand;

(24) use of helicopters or aircraft, motorcycles, ATV's, or snowmobiles for silvicultural or forestry operations, recreational trail maintenance, fire suppression or slash burning; and

(25) other uses and practices consistent with forest land management policies and procedures used by the State of Washington, Department of Natural Resources but only during any period State of Washington is owner of the underlying fee interest.

(b) *Emergencies.* The right to undertake other activities necessary to protect public health, improvements to property, or human safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.

(c) *Limited Impact Recreational Use.* The right to restrict, allow, and conduct Limited Impact Recreational uses and activities on the Protected Property, and during any period of ownership of the underlying fee interest by the State of Washington, managed by the Department of Natural Resources, flexibility to promote multiple use of public lands consistent with state law and applicable regulations, provided that such recreational use is consistent with the Conservation Values and the Purpose and terms of this Easement. For any period of ownership of the underlying fee interest by the State of Washington, the State may promote multiple uses of public lands in the manner required by RCW 79.10.100 et seq., as amended from time to time. Limited Impact Recreation or Limited Impact Recreational Use is defined as informal play, picnicking, jogging, hiking, cross country skiing, biking, horse riding, nature viewing, bird watching, non-commercial recreational hunting and fishing (in accordance with applicable state laws or regulations). Limited Impact Recreation also includes limited organized recreational events such as mountain biking or hiking when permitted by Grantor.

Trails, trail heads and associated parking may be constructed and maintained, and may include: clearing or grading, construction of soft surface trails for non-motorized uses (portions of which may be hardened with plastic, gravel, concrete block, or other hardening methods to prevent erosion and sediment delivery to streams) and associated bridges and water crossing structures, interpretive trails near trailheads that promote access by persons with disabilities pursuant to the Americans with Disabilities Act (ADA) (portions of which may be hardened to allow meeting ADA access standards), construction of trail heads with accompanying structures for sanitation and parking. Structures associated with Limited Impact Recreational Use also include bathroom and informational boards.

(d) *Other Resource Land Uses.* The right to conduct forest research that consists of the performance of field research on the Protected Property relating to botany, hydrology, silviculture, biology and other branches of science in relation to management of forest lands;

conduct aquaculture studies; conduct educational tours and site visits; conduct fish and wildlife habitat enhancement projects; and other uses defined in RCW 79.10.110, as amended from time to time, during periods of ownership of the underlying fee interest by the State of Washington. During periods of ownership of the underlying fee interest by the State of Washington, managed by the Department of Natural Resources, research related to studies or monitoring associated with the State of Washington, Department of Natural Resources, Habitat Conservation Plan (HCP) and other land management plans adopted by the State of Washington, Department of Natural Resources, is allowed.

(e) *Easements.* The right to control access and grant easements through the Protected Property subject to the Prohibited Uses and consistent with the Conservation Values and terms of this Agreement, and subject to Permitted Exceptions.

(f) *Improvements.* The right to repair, remove, and maintain existing nonresidential improvements related to the Reserved Rights in this Section 5, provided that such repair, renovation, or maintenance does not expand the size or utility of the existing nonresidential improvements. The right to remove, maintain, renovate, repair, or replace fences and other non-residential improvements including, but not limited to timber platforms, and irrigation structures necessary for land management purposes.

(g) *Utilities.* Construction and maintenance of utilities, in a manner which is consistent with the Conservation Values, within existing roads and rights-of-way, and as otherwise allowed for Permitted Exceptions.

(h) *Public Access.* The right to regulate public use of the Protected Property at all times including the right to restrict or prohibit public use in specific areas and under special circumstances, including the reasonable installation of fences as allowed by law, which are required (i) to protect and restore environmentally sensitive areas, (ii) to fix damage caused by public use or natural disasters, (iii) safely or efficiently prepare for and conduct timber harvest or timber management activities such as reseeding or replanting, (iv) to respond to emergency situations, (v) for periods of ownership of the underlying fee interest by the State of Washington, charge user fees to maintain and/or enhance public recreational assets, (vi) limit public use to the carrying capacity of the public access feature while taking into consideration other Conservation Values; and (vii) for public safety reasons, and in other areas or circumstances where the Conservation Values could be adversely impacted by public use.

(i) *Commercial Wireless Communication Development.* Future siting of wireless communication facilities to public or private entities for the purposes of meeting public communication needs for public transportation corridors, subject to mitigation to protect the Conservation Values, including but not limited to (i) installation of buried utility lines in existing roadways or mapped abandoned roadways or future tie roads (as identified in the Stewardship Plan) to reach communication sites and (ii) facility design features that mitigate environmental impacts in a manner consistent with the Conservation Values and (iii) limited to access and service from existing roads or mapped and abandoned roadways or future tie roads (as identified in the Stewardship Plan). Under no circumstances shall the aggregate number of communication facilities (excluding co-location of antennae) exceed two (2).

(j) *Ecosystem Service Values and Attributes.* Grantor retains the right to realize benefits related to the underlying fee interest of the Protected Property associated with its ecosystem services values and attributes, including but not limited to, carbon sequestration, carbon credits, carbon sinking or offsetting (or other pollutants as hereafter defined by applicable state or federal agencies), conservation banking, mitigation banking, HCP compliance by Grantor, wetland banking, water quality trading, or other regulatory programs, which result in economic value to Grantor. Realizing the benefits of the Protected Property's ecosystem attributes under this Section 5(j) does not authorize any use of the Protected Property that would otherwise be prohibited under this Agreement.

(k) *Road Access Restrictions.* Grantor retains the right to cross the Kerriston Road (including that portion as shown on Exhibit E) to access the Protected Property using passenger vehicles and pickup truck sized vehicles for administrative purposes until December 31, 2040 or until all of the properties in the Kerriston Area (Section 36, T23N, R7E, W.M. and Section 31, T23N, R8E, W.M.) are in public ownership, whichever occurs first, at which time Grantor will relinquish right to use a portion of the Kerriston Road (restricted portion shown in Exhibit E) to access the Protected Property. This retained right specifically does not include the right to haul timber out over the Kerriston Road (as shown on Exhibit E) relating to the Protected Property.

(l) *Unlisted Use.* If a question arises about whether a particular use is a Reserved Right because it is not explicitly listed in this Section 5, the parties shall consider it to be a Reserved Right if it is substantially similar in all material respects to a Reserved Right included in this Section 5. Reserved Rights shall never be deemed an Inconsistent Purpose.

6. Responsibilities of Grantor Not Affected

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Protected Property. This shall apply to:

(a) *Taxes.* The Grantor (as listed in the property tax records for the period in which the tax or assessment is due) shall continue to be solely responsible for payment of all applicable property taxes and assessments levied against the Protected Property. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Protected Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Protected Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the lesser of ten percent or the maximum rate allowed by law. The Grantor shall reimburse the Grantee for these sums plus any reasonable attorneys' fees and court costs incurred to collect such sums.

(b) *Upkeep and Maintenance, Costs, Legal Requirements, and Liabilities.* Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any

construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

(c) *Remediation.* If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any hazardous substances, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused solely by Grantee or Grantee has provided any specific written warranty relating to hazardous substances that is still in effect, in which case Grantee shall be responsible for such remediation. Grantor and Grantee shall make best efforts to notify the other of the occurrence of any release of hazardous substances as soon as possible after such release.

(d) *Control.* Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or the Model Toxics Control Act, as amended ("MTCA").

6.1 *Liability and Indemnification*

(a) Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees, elected officials, invitees, licensees and agents, and their successors and assigns (individually and collectively, the "Indemnified Grantee Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property to the extent caused by any negligent act, omission of Indemnified Grantor Parties while located on the Protected Property, except to the extent caused by the Indemnified Grantee Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by Indemnified Grantor Parties, except to the extent caused by the acts or omissions of the Indemnified Grantee Parties or (3) the presence or release in, on, from, or about the Protected Property, at any time, of any hazardous substances, to the extent caused by the Indemnified Grantor Parties. Grantor waives its immunity under Title 51 RCW to the extent required to indemnify the Grantee.

(b) Notwithstanding the foregoing, Grantee hereby agrees to release, hold harmless, indemnify and defend Grantor, its officers, employees, elected officials, invitees, licensees, and agents, and their successors and assigns (individually and collectively the "Indemnified Grantor Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property to the extent caused by any negligent act, omission of Indemnified Grantee Parties while located on the Protected Property,

except to the extent caused by the Indemnified Grantor Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by Indemnified Grantee Parties, except to the extent caused by the acts or omissions of the Indemnified Grantor Parties or (3) the presence or release in, on, from, or about the Protected Property, at any time, of any hazardous substances, to the extent caused by the Indemnified Grantee Parties. Grantee waives its immunity under Title 51 RCW to the extent required to indemnify the Grantor.

7. *Grantee's Right to Restore the Protected Property*

In the event that any of the Conservation Values of the Protected Property are impaired by an Act of God, the Grantee, at its sole cost and expense and following reasonable notice to Grantor and so long as not interfering with Grantor's Reserved Rights, shall have the right, but not the obligation, to restore all or portions of the Protected Property.

8. *Enforcement*

Grantee shall have the right to prevent and correct violations of the terms of this Easement as set forth below.

(a) *Notice of Failure.* If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee 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 Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) *Grantor's Failure to Respond.* Grantee may bring an action as provided for in Section 8(c) below if Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *Grantee's Action.* Grantee may bring action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.

(d) *Immediate Action Required.* If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant

damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) *Nature of Remedy.* Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 8 both prohibitive and mandatory, in addition to such other relief to which Grantee 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. Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) *Costs of Enforcement.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor if Grantee prevails in such enforcement. If Grantor prevails in any action by Grantee to enforce the terms of this Easement, Grantee shall bear its own costs and any costs incurred by Grantor in defending against Grantee including, without limitation, reasonable attorneys' and consultants' fees.

(g) *Grantee's Discretion.* Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(h) *Acts Beyond Grantor's Control.* Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Any delay in the performance of Grantor's obligations under this Easement shall be excused if the delay results from unforeseeable causes beyond Grantor's control.

(i) *Violations of Easement by Third Parties.* When there are violations of the terms of this Easement by parties other than Grantor, its officers, employees and contractors, Grantor shall take reasonable steps to terminate such violations. If such violations persist even after Grantor has taken reasonable steps to terminate them, Grantor will not be deemed in violation of this Easement and shall have no liability or responsibility to indemnify Grantee for the costs to remediate such conditions.

9. *Alternate Dispute Resolution*

If a dispute arises between the Parties concerning whether any proposed use or activity is consistent with this Easement, the Parties shall attempt to resolve the dispute through informal discussion. The Parties may also agree to refer the dispute to mediation. Upon such agreement, the Parties shall select a single mediator to hear the matter. Each party shall bear its own costs, including attorney's fees, if mediation is pursued under this Section 9. The Parties shall share equally the fees and expenses of the mediator.

10. *Notice and Approval*

(a) *Notice.* Whenever notice is required under this Easement, the party required to give notice ("Notifying Party") shall give reasonable notice prior to the date the Notifying Party intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the other party to make an informed judgment as to its consistency with the purpose and terms of this Easement.

(b) *Evaluation of Proposed Activities.* The purpose of requiring the Notifying Party to notify the other party prior to undertaking certain permitted uses and activities is to afford the other party an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the purpose and terms of this Easement.

11. *Notice of Transfer of Protected Property or Assignment of Easement*

(a). *Notice to Grantee.* Anytime the Protected Property itself, or any interest in it is transferred by the Grantor to a third party, the Grantor, its successors and assigns, shall notify the Grantee in writing, and the document of conveyance shall expressly refer to this Deed of Conservation Easement.

(b). Notice *to Grantor.* This Easement may be assigned or transferred only to another state or county agency. authorized to hold conversation easements under Washington Law. Any future holder of this Easement shall have all the rights conveyed to Grantee by this Easement. As a condition of any assignment or transfer, Grantee shall require any future holder of this Easement to continue to carry out the conservation purposes of this Easement in perpetuity. Grantee will notify Grantor of any assignment within fifteen (15) days of the assignment and will provide Grantor with the name and address of the new holder.

11.1 *Documentation of Baseline*

The current uses of the Protected Property, the state of any existing improvements, and the specific Conservation Values of the Protected Property are briefly described in the Stewardship Plan. Grantor and Grantee acknowledge and agree that to the best of their knowledge the Stewardship Plan includes a complete and accurate description of the Protected Property. Grantor and Grantee have been provided copies of the Stewardship Plan. The Stewardship Plan

is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement but is not intended to govern forest management choices on the Protected Property. Should Grantee or its assigns perform any restoration project on the Protected Property as authorized by Easement Section 3(d) and Section 7, Grantee may update the Stewardship Plan by attaching a description of the restoration project including a map detailing the project, as an attachment to the Stewardship Plan following notice and providing a copy to Grantor.

12. *Termination of Easement*

(a) *Frustration of Purpose.* If a court of competent jurisdiction determines that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill any of the conservation purposes of the Easement, the court may, at the request of either Grantor or Grantee, terminate in whole or in part the Easement created by this Easement.

(b) *Economic Value.* The fact that any use of the Protected Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that any such changes shall not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this section.

(c) *Proceeds.* If the Easement is terminated and the Protected Property is sold or taken for public use, the Grantee shall be entitled to a percentage of the gross sale proceeds of any condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Protected Property, as these values are determined on the date of termination. The Grantee shall use the proceeds consistently with the conservation purposes of this Easement.

13. *Modification*

This Easement may be modified by agreement of the parties, provided that any such amendment shall be consistent with the purpose of the Easement and shall not affect its perpetual duration. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

14. *Interpretation*

This Easement shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum reasonable effect to its conservation purposes.

15. *Inaction*

Inaction or inactivity on the part of Grantee with respect to the Easement shall not constitute abandonment of the Easement.

16. *Notices*

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor: State of Washington, Department of Natural Resources
South Puget Sound Region Office
Attn: Region Manager
905 Farman Ave. N.
Enumclaw, WA 98926-9301

To Grantee: City of Seattle, Seattle Public Utilities
Attn: Deputy Director, Utility Systems Management Branch
P.O. Box 34018
Seattle, WA 98124-4018

17. *Severability*

If any provision of this Easement is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

18. *Entire Agreement*

This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which merge herein.

19. *Counterparts*

This Easement may be executed in two or more counterparts, which shall in the aggregate, be signed by both parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

20. *Recording.*

Grantee will record this Easement in a timely manner in the real property records of King County, the county in which the Protected Property is located. The Grantee may re-record this Easement or any other documents necessary to protect its rights under the Easement to assure the perpetual enforceability of this Easement.

21. *Acceptance*

The Grantee hereby accepts this Grant of Conservation Easement.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

STATE:

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____

By: _____
Peter Goldmark
Commissioner of Public Lands

Affix the Seal of the Commissioner
of Public Lands

GRANTEE:

CITY OF SEATTLE, SEATTLE PUBLIC UTILITIES

Dated: _____

By: _____

Title: _____

Approved as to Form this ___ day of _____, 2012.

_____
Assistant Attorney General
State of Washington

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss
COUNTY OF THURSTON)

On this _____ day of _____, 2012, personally appeared before me PETER GOLDMARK, to me known to be the Commissioner of Public Lands, and administrator of the Department of Natural Resources of the State of Washington, that he 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.

_____
Notary Public in and for the State of Washington, residing at _____.

My appointment expires_____.

STATE OF WASHINGTON }
} SS
COUNTY OF KING }

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn personally appeared _____, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she signed and sealed the said instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing at _____.

My appointment expires_____.

EXHIBIT A

LEGAL DESCRIPTION

Parcel A:

Lot 2 of King County Short Plat Number 1080021 recorded under Recording Number 8303160819, said Short Plat being a portion of the Northwest Quarter of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel B:

Lot 3 of King County Short Plat Number 1080021 recorded under Recording Number 8303160819, said Short Plat being a portion of the Northwest Quarter of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel C:

The North ¾ of the East ½ of the Southeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

Parcel D:

The Southwest Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington;

EXCEPT the Northwest Quarter of the Southwest Quarter of the Northeast Quarter of said Section 36;

AND EXCEPT county road.

Parcel E:

The Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington;

EXCEPT the Southwest Quarter of the Southwest Quarter of the Southeast Quarter of the Northeast Quarter of said Section 36.

Parcel F:

The Southwest Quarter of the Southwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 7 East, W.M., in King County, Washington.

EXHIBIT B

MAP SHOWING THE LOCATION OF THE PROTECTED PROPERTY

KERRISTON PHASE 1 PROPERTY
SEC 36, TWP 23 N, RGE 7 E, W.M.

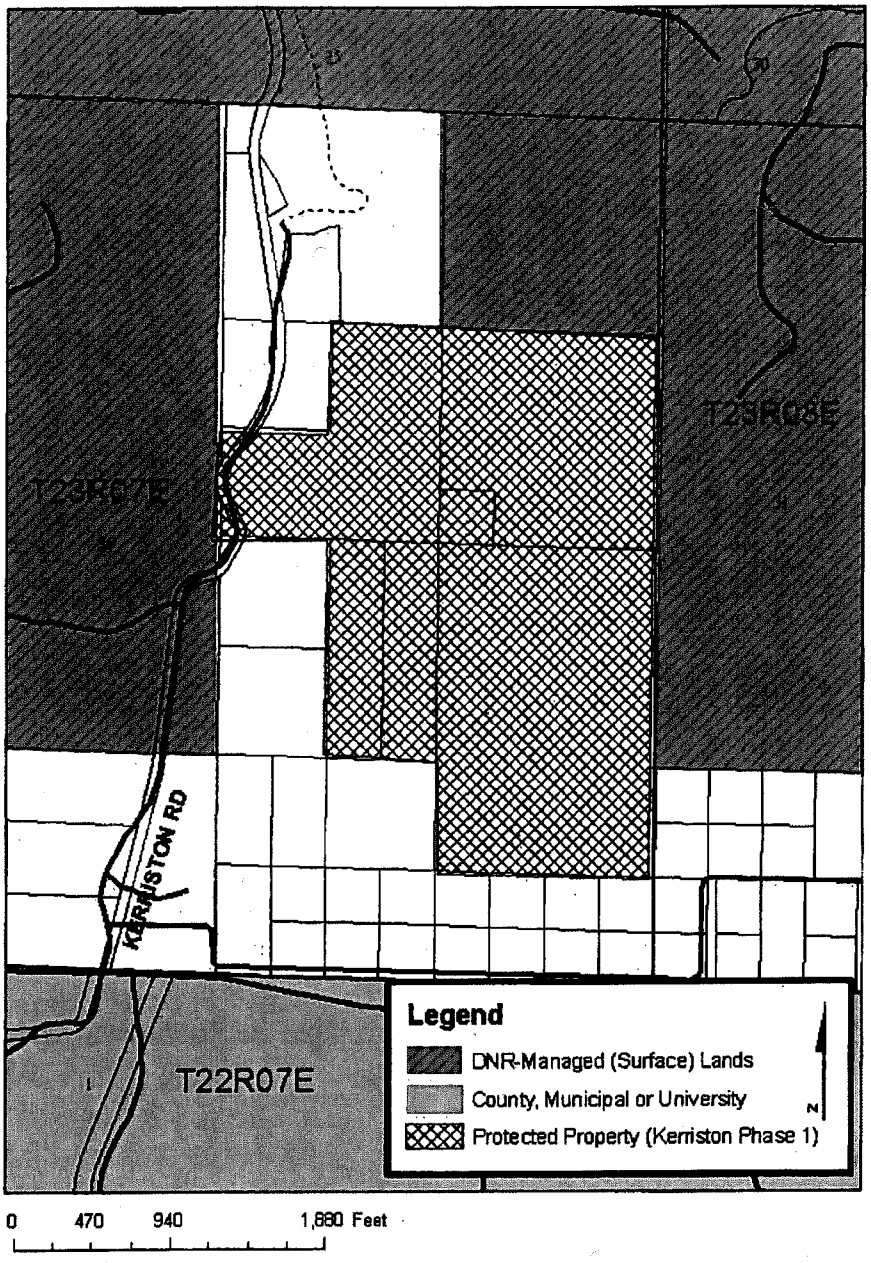

EXHIBIT C

STEWARDSHIP PLAN

Kerriston Phase 1

Property Location

150 Acres located East of State Highway 18
Between DNR Raging River Tree Farm and the City of Seattle Cedar River Watershed
in King County, Washington

Legal Description

Portion of Sec. 36, T23N, R7E, W.M.

Parcel Numbers

362307-9003, 362307-9004, 362307-9013, 362307-9041, 362307-9046, 362307-9047

Prepared By:

Bob Winslow
Washington State Department of Natural Resources
360-902-1622

Acknowledgement that several pieces of information were used from the forest stewardship plan originally prepared by Paul Graves of Cascade Resource Management, LLC for the Fruit Growers Raging River Stewardship Plan completed in 2009.

Landowner:

Washington State Department of Natural Resources
P.O. Box 47014
Olympia, Washington 98506

Date Prepared:

April 16, 2012

Stewardship Vision: The following forest stewardship recommendations will maintain or enhance existing environmental conditions and seek out opportunities for enhancement of water quality, wildlife and biological habitat values, forest management activities, forest revenue, and educational and recreational activities. Forest stewardship planning is a long-term flexible and dynamic process. As conditions of the resource and our understanding change, the plan may be amended.

COUNCIL CLERK

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A. Forest Stewardship Goals

- Provide long term production of timber and wood products.
- Provide continued wildlife use and improved wildlife habitat throughout the property.
- Provide protection to streams and lakes to maintain and improve water quality.
- Provide and maintain an active road maintenance program for long-term access and for the protection of streams, wetlands, and lakes.
- Provide an intensive forest stewardship program to maximize the potential revenues, environmental, and species capability of the property.
- Provide limited recreational opportunities.
- Provide stewardship actions which adhere to or surpass the adopted conservation management goals and objectives for this property.

B. Property Description

The Kerriston Phase 1 property consists of approximately 150 acres located south and east of State Highway 18 near the historic town of Kerriston and approximately 6 miles east of Hobart. This property lies south and west of the main-stem of the Raging River. There is currently one primary access point to the property coming from SE 208th and SE 364th (Kerriston Road). Future timber haul and management access will change due to road use restrictions within the conservation easement being placed onto this property at the time of sale from City of Seattle, Seattle Public Utilities (SPU) to the State of Washington Department of Natural Resources (DNR). Future timber haul and road access will occur through the DNR Raging River state forest road system heading in a westerly and northerly direction from this property and ending at State Highway 18. This property was recently clearcut harvested under a Class 3 Forest Practice Application and all merchantable timber located outside of the Washington State forest practices riparian buffer zones was harvested. This property is scheduled to be planted in the winter of 2011/2012 with 350 Douglas fir seedlings per acre. All of the interior and access roads are comprised of gravel ballast and have been used for logging activities in the past.

This property has been part of the local history and played an important role in the early logging and lumber mills in the region. The first lumber mill was located in the town of Kerriston, which was located four miles west of Cedar Falls and north of this property. In April 1900, the Kerry Mill Company was established and within one year the company had purchased 100 million board feet of standing timber. In 1901 the company built a new sawmill located at the end of a railroad spur on the new Green River & Northern Railway at the site of a small village on the Raging River that had existed since 1891. Once the mill was in place, a town quickly sprang up around it and this town was named Kerriston. The town continued to grow until 1910 when the population started to decline. The mill continued to operate and the area was logged through most of the 1920s. By 1929, the milling and logging activities in Kerriston were over and the railroad had also stopped coming, assuring the demise of the small town. Kerriston Shingle Company operated until 1943 at which time there

were only a few buildings left and even those buildings had disappeared by the 1960s. Most of the property to the north of this property was eventually purchased by the Weyerhaeuser Company and managed for the long-term production of timber and forest products. The management of nearby commercial timberland has generally been a rotation age of 50 years. In the 1950s, intensive reforestation became a vital part of managing these sites. Reforestation in the early years consisted of planting trees on an 8 foot by 8 foot spacing with some areas being left to naturally regenerate. Natural regeneration was accomplished by leaving clumps of trees or single trees in the harvested areas to provide seed sources for propagating the next generation of trees. Eventually, forest science and forest management determined that natural reforestation was slow and did not always produce the species desired by the landowner. Forest landowners began to plant 300+ trees per acre of Douglas fir targeting a high survival rate and this practice is still used by most large timber landowners up to the current time period. The timber along the Raging River and this property were vital to the livelihood of the timber and lumber industry of our region in the 20th Century.

This section of land was originally granted to the State of Washington at statehood and later the subject property was sold to Ellen Beaty in 1954 and William Beaty in 1960. This property consists entirely of forestland and forest management roads and there are no residences or commercial structures present on the subject property. There is a septic field encroachment near this properties southern property line as noted on survey AFN# 2007-0305900003 that may be trespassing onto the subject property. A water pipe and catch basin is located near the western portion of this property on tax parcel #362307-9040 (Roy Wilson). Annual precipitation may average approximately 70 to 90 inches in this area with most of this precipitation coming in the form of rain.

C. Topography

The topography on this site varies considerably. The topography increases in elevation from the western portion near the stream towards the upward sloping benches and hills located near the eastern portion of the property. Incised streams have created steep draws and the streams flow downward from east to west. The portions of the property which have steeper side slopes range from 40 to 75 percent. The higher elevations begin to level and have slopes which are zero to 35 percent. Most of the property has gentle (0% to 30%) slopes with the steeper slopes located in the riparian leave trees areas. The elevations range from approximately 1360' to 1640'.

There are several smaller creeks and tributaries which are tributary to the Raging River and the side slopes associated with these creeks are sometimes in excess of 60 percent, resulting in some unstable micro-sites near the streams. Two of these streams are currently mapped as being fish bearing on the lower gradient portions of the streams with non-fish typed waters in the steeper headwaters.

D. Surrounding Land Use and Adjacent Ownership

The surrounding property is privately and publicly owned forest land and rural residential home sites. The publicly owned forest land to the north, west, and east is owned by the State of Washington and managed by the Department of Natural Resources (DNR) as part of the 9,000+ acre Raging River state forest block. The City of Seattle acting by and through Seattle Public Utilities owns a large watershed tract (Cedar River Watershed) of forest land located to the south of the property. In between the DNR ownership and the City of Seattle watershed are many smaller acreage rural residential and forest parcels and the Kerriston Phase 1 property is the largest acreage tract in this "donut hole" of private landowners.

This property and the adjacent lands are zoned Forest which limits property owners to one residence per 80 acre tract, unless additional residential density was "grandfathered" in the past for the parcel(s).

E. Timber Resource Description

This property is located in the Raging River drainage and has an elevation that ranges from 1360 to 1640 feet above sea level. The area is part of the timber production for this region. In addition to the timber resources, there may be opportunities for the property to be utilized for low-impact dispersed recreational activities such as hiking, hunting, wildlife viewing, and collecting minor forest products such as berries and mushrooms.

The condition of the timber stands is good with a mature conifer and hardwood stand in the riparian leave areas that is approximately 50 to 90 years old. The majority of the property was recently harvested in 2011 and is ready for stand initiation and is scheduled to be planted with 350 trees per acre of conifer seedlings in the winter of 2011/2012. The soil is site class 2 land with a site index according to DNR GIS data varying between DF-119 and DF-130 expressed on a 50 year basis. Some concerns associated with the stands and harvesting are avoidance of soil compaction, seedling survival, brush competition with seedlings, and the use of proper timber harvesting systems.

The timber stand descriptions in this forest stewardship plan will be described by stand age which will be consistent with the stand map provided in the Exhibits.

Stand 1: This stand consists of all of the areas that were recently even-aged harvested and are ready for planting to 350 trees per acre of conifer seedlings totaling approximately 106 acres. The stand composition will become a mixture of planted Douglas-fir and the natural regeneration of trees (western hemlock, western red cedar, red alder and Bigleaf maple).

Recommendation: Consider early vegetation management needs such as a basal spray of Bigleaf maple sprouts, aerial or mechanical control of brush, control of mountain beaver, and any need for additional supplemental stocking or planting

within poor seedling survival areas. Wet low gradient areas may be best suited for wetland forbs or red alder production. Conduct vegetation surveys as needed and consider a pre-commercial thinning (PCT) between the ages of 12 to 19 years to select the future crop trees. The stocking after PCT may approximate 225 to 300 trees per acre. This stand can be commercially thinned prior to any final regeneration harvest or the rotation age can be extended if desired by the landowner for species habitat or other management objectives. DNR will be including this parcel into its proprietary Habitat Conservation Plan (HCP) as permit lands and will follow the applicable HCP rules and procedures.

Stand 2: This stand consists of the riparian timber areas with mature 50 to 90 year old conifer and hardwood trees.

Recommendations: The primary management objectives of this stand is likely to continue to include considerations for water quality, wildlife habitat, and some limited low-volume harvesting as permitted under Washington State Forest Practice rules. DNR will be including this parcel into its proprietary HCP as permit lands and follow the rules as outlined and amended over time relating to riparian zones.

Non-stocked acres: There are some non-stocked areas in the rock pit, roads, and small wetland areas which are present on this property but are too small to map as separate and distinct stands.

F. Soils, Slope Stability, and Roads

Soils: There are 3 separate soil types mapped on this property.

Soil Types for Raging River West:

- 8104 Tokul silt loam and gravelly loam 0-30%
- 8115 Tokul-pastik complex 60-90%
- Water

Tokul silt loam and gravelly loam. See data in the appendix. This soil type covers approximately 92% or more of the property and supports productive forest growth.

Tokul-pastik complex. See data in the appendix. This soil type covers approximately 4% of the property and supports productive forest growth.

Water. Soil permeability is limited in these soil areas covering approximately 4% of the property. Standing water during portions of the year may result in wetland characteristics and features for these soil areas.

Roads: This property has historically been served by S.E. 364th (Kerriston County Road) which is a county road with a gravel surface which is maintained at a primitive road standard level. The property has two road access points that front directly onto the eastern margin of S.E. 364th (Kerriston County Road) that have recently been

water barred and blocked. Under the terms of the conservation easement all future access into this parcel from S.E. 208th and S.E. 364th through the City of Seattle Cedar River Watershed would be prohibited, except for DNR use of that short segment of 364th abutting the western edge of this property linking this parcel with DNR's existing road system starting in the NE4 of the SE4 of Section 36, T23N, R7E, W.M.. Timber haul will occur through the State of Washington Raging River ownership block located to the north of this parcel. The State of Washington Raging River road system is a one lane gravel road maintained for forest management purposes and accesses directly onto State Highway 18 just south of the I-90 and SR-18 road interchange. In order for this property to physically and functionally work for access through the DNR Raging River ownership, the following actions, costs, and activities would need to occur:

A. DNR would need to design and install an expensive bridge replacement along the mainline road between this property and State Highway 18 at the Canyon Creek stream crossing located in Section 13, T23N, R7E, W.M. Current status is that there is no longer a bridge at this location. In DNR's long-range road planning for this area this bridge is anticipated to be replaced.

B. DNR would need to complete new road construction heading into this property from Sec. 31 located to the east and tie into this properties existing road system and/or use the existing stretch of 364th street (Kerriston Road) heading from this parcels spur roads leading in a southerly direction into the existing DNR road system starting in the NE4 of the SE4 of Section 36, T23N, R7E, W.M.

C. DNR would need to design and install new stream crossings in the easterly portion of Section 31 on the overgrown former roads, if economically and environmentally feasible, for crossing these streams. DNR would also need to perform extensive road brushing, water barring, addition of ballast, and other measures to the entire haul route from this property out to the north towards State Highway 18.

G. Water Quality, Riparian, and Wetland Areas

There are three primary streams on this property and all streams are headwater tributary streams for the Raging River watershed. The largest fish bearing stream runs in a north to south direction along the westernmost portion of the property. This stream is parallel with and adjacent to the graveled county road and may be somewhat negatively impacted by culverts and fine sediments from this unpaved road. The two other streams flow in a westerly direction into this stream and these other streams are typed as fish bearing in the lower gradient portions (western portions) and non-fish waters in their steeper gradient areas (eastern portions of this property).

Recommendations: The hydrologic function of the forested hillslopes, headwater streams and forested wetlands are an integral part of contributing to the water quality

and quantity for the Raging River and its tributaries. The soils are permeable with a rich organic layer and the forest vegetation assists with capturing and infiltrating the runoff from the adjacent hillsides as well as capturing the direct precipitation. Maintenance of a good canopy cover in the riparian areas is important to provide shade and for helping to maintain cool water temperatures.

Streams and wetlands will be evaluated and considered at the time of any proposed forest stewardship activity. Appropriate wetland and water typing will be determined according to current Forest Practice Rules and appropriate buffers will be marked and observed, and appropriate operational conditions will be followed.

H. Fish and Wildlife, Threatened and Endangered Species

This forestland may provide habitat for three Washington Department of Fish and Wildlife priority species: the pileated woodpecker, band tailed pigeon and winter range for the Cedar/Green elk herd. Fish status of this property has not been fully analyzed. Four coho salmon carcasses were observed in the main stem of the stream located on the western edge of this property by Bob Winslow and John Felder of DNR on 12/22/2011. A fish distribution map from King County's website appears to show coho salmon reaching the fish designated portions of the streams located on this property. The King County map appears to indicate that Steelhead do not reach this property and their current closest presence is approximately ¼ mile to the north. The tributary streams flowing through this forestland and downstream are important for providing cool clear water and for providing habitat features vital to supporting healthy fish stocks.

Larger mammals which may occasionally occupy portions of the site include coyotes, bobcats, mountain lions, black bear, blacktail deer and elk. Smaller mammals at the site may include porcupines, mountain beaver, raccoons, striped skunks, Douglas squirrels and many vole species.

Recommendations: Maintain and enhance the water quality features of the property. Maintain the habitat producing riparian buffers while the newly harvested plantations develop and become an important part of the long-term habitat regime for the wildlife species utilizing this site. Consider implementation of variable density thinnings in the appropriate portions of this property which may create and maintain diverse habitat.

The landowner should consider maintaining a diversity of native tree species and age classes to foster varied types of wildlife habitat and wildlife species.

The retention of snags, recruitment of wildlife trees and retention of large woody debris provide significant contributions of specialized wildlife habitat for this area. Future harvest should consider the conservation and recruitment of snags and large woody debris.

I. Historic and Cultural Resources

Prior to European descendants settling in this area, the foothills around the Raging River basin were likely utilized by native people for traveling, hunting, fishing and food gathering. There are no known cultural or historic artifacts within this area, however managing for a sustainable multi-age forest will continue to perpetuate the habitat and understory shrubs and plants that were vital to Native Americans. During timber harvest planning, careful observation and care will assure that cultural resources that might be present are identified.

This property lies south of the old town of Kerriston. The town was an important part of the history of sawmills and logging is this region. Albert Sperry Kerry came to Seattle in 1886 and in April 1900, with the help of E. M. Nettleton and C.J. Smith, established the Kerry Mill Company. The mill purchased 100 million board feet of standing timber along the Green River & Northern Railway southeast of Tiger Mountain in its first year. In 1901 the company built a new sawmill at the site of a small village on the Raging River that had existed since 1891. The mill and community thrived through the early 1920s and by 1929, the logging and milling were done and the railroad had stopped coming to Kerriston. Charlie Simon purchased the site and operated Kerriston Shingle Company until 1943.

Following the early days, Weyerhaeuser Company owned most of the property in the Raging River drainage until 2002. The property was part of the Snoqualmie Tree Farm and the timber production and logging supported the Weyerhaeuser mill located near the town of Snoqualmie. A large portion of the Raging River drainage was logged again after the Kerriston sawmill was closed in 1929 by Weyerhaeuser and other firms and many of the timber stands are now in their "third" rotation.

Recommendation: Continue to manage the property for long term forestry while providing for the sustainability of the environment and the preservation of discovered significant cultural resources. Provide for the maintenance of wildlife and environmental resources and consider opportunities for enhancement of these resources.

J. Aesthetics and Recreation

This property provides a wide variety of dispersed and low impact recreational values for the landowner as well as for the general public. The adjacent State of Washington forest ownership provides miles of maintained roads throughout the Raging River watershed, providing a wonderful opportunity for appropriate forms of low impact dispersed recreation under rules administered by the landowner. There are many miles of horseback riding in a safe environment, streams and lakes to provide endless hours of fishing, hiking and hunting for those who desire getting away from the hassle of the crowds, and a chance to reconnect with the sights and sounds of nature. Currently, many citizens already enjoy the natural features present on the adjacent DNR trust lands and similar features and recreational utility may be applicable on this

parcel in the future. The property will have limited access in the future from the State of Washington gated roads which will maintain strict vehicular access control. Motorized access is anticipated to remain prohibited with the exception of vehicular access for forest management purposes.

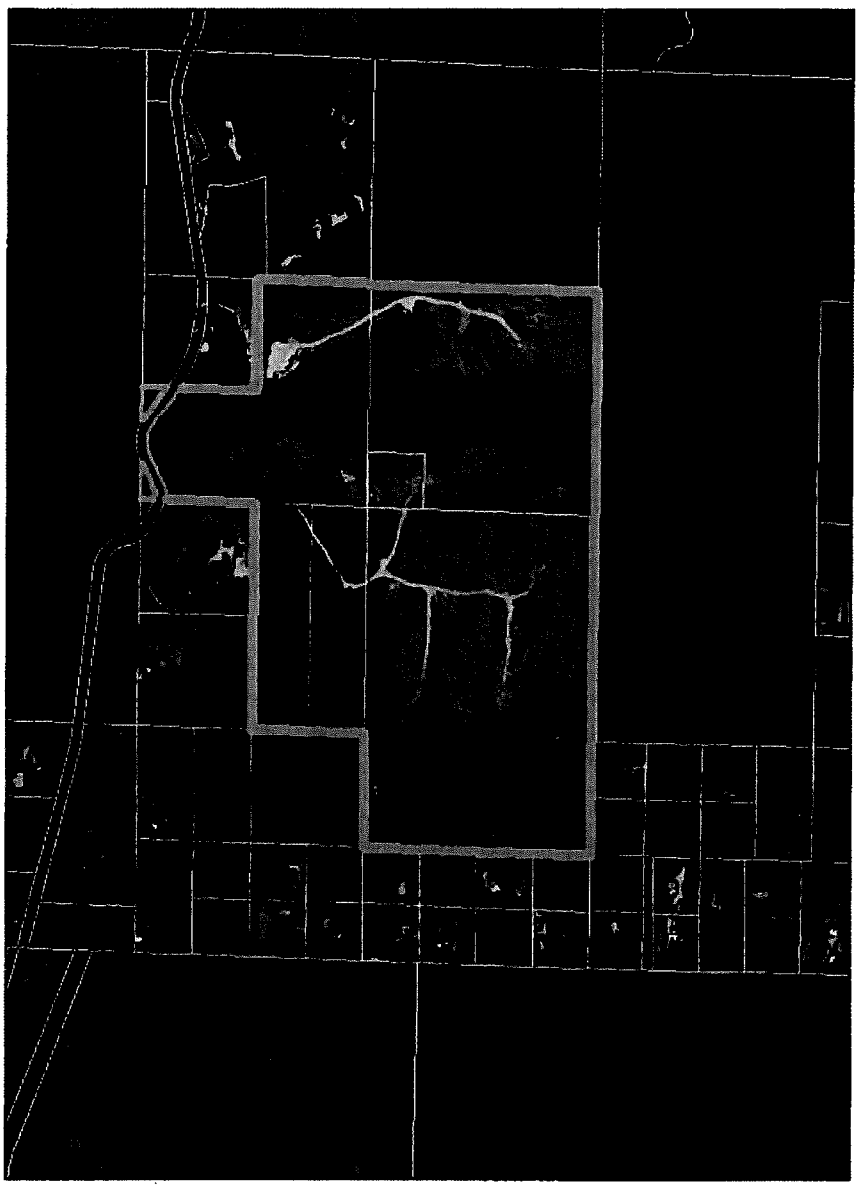
Recommendation: Consider the benefits of signing roads and trails when any harvest activities are ready to start and while operations are underway so casual users are aware of potential traffic, falling of trees, etc.

K. Stewardship Schedule

YEAR	MANAGEMENT PRACTICE	PRIORITY
2012: Sept	Modify DNR road RMAP and maintenance schedules to incorporate newly acquired property and forest roads.	High
2012: Sept	Stand 1 - Complete a full regeneration survey to determine seedling stocking survival and vegetation control needs. Determine if supplemental stocking is desired or needed. Schedule planting or vegetation control measures as needed.	High
2015: July	Stand 1 - Complete a 3 year vegetation survey looking at tree stocking, presence of noxious weeds, and whether brush treatment or Bigleaf maple treatments are necessary. Certify stand as being fully stocked if warranted. Schedule any needed vegetation control actions.	Medium
2025: July	Stand 1 - Complete PCT survey of the stand and schedule PCT or schedule a future survey to assess the stand.	Medium
2040: May	Stand 1 & 2 - Evaluate the stands for a potential commercial thinning. Schedule a commercial thinning if warranted.	Medium
2057: June	Stand 1 - Assess stand for a potential even-age regeneration harvest or a commercial thinning or a VDT harvest. Landowner to analyze what rotation age(s) and harvest methods best meet the landowners objectives.	High

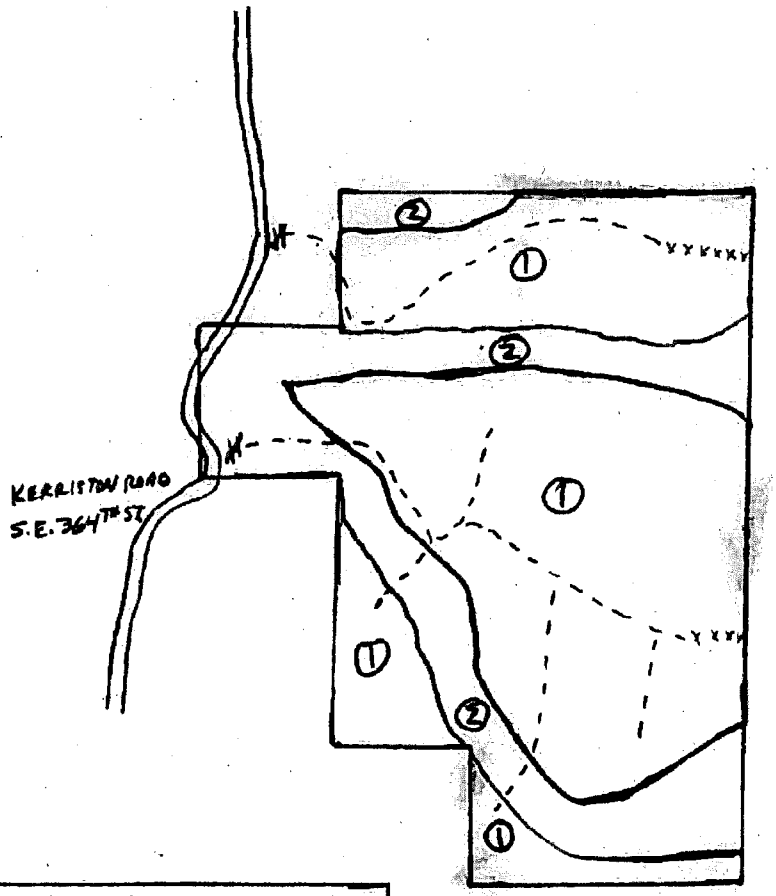
Appendix Documents

Kerriston Phase 1



PTN S36 T23N R7E, W.M.

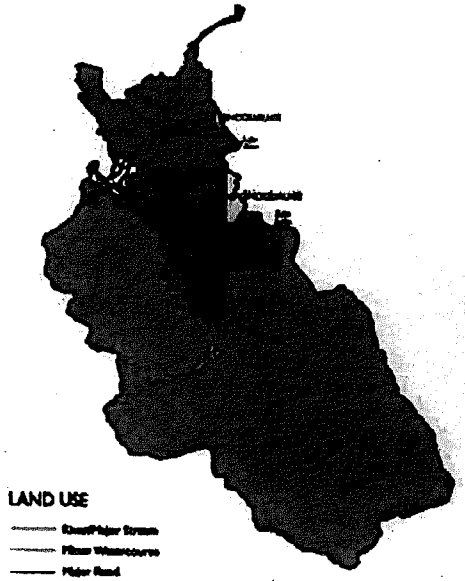
KERRISTON PHASE I
STAND MAP



LEGEND

- ROAD OPEN TO PUBLIC
- ROADS ABANDONED
- (#) STAND NUMBERS
- XXXXX FUTURE TIE ROAD (S)
- ROAD BLOCKED

STEWARDSHIP PLAN
BOB WIWSCOW
12/15/2011



LAND USE

- Road/Major Stream
- Minor Watercourse
- Minor Road
- Basin Boundary
- Lake/Reservoir
- Wetland
- Unincorporated Area

Land Use Categories

- Forestry
- Rural Residential (1 DU/2.5-10 acres)
- Rural Neighborhood (DU-RN)
- Mining

Note: King and Snohomish County land use categories have been aggregated for greater clarity.

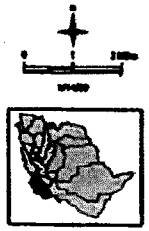
King County
Department of Natural Resources and Parks
Water and Land Resources Division

FISH DISTRIBUTION

- Coho
- Steelhead
- Chinook

WDW and WWPC maintained databases.

Produced by DNRP/WLRD GIS/Land Conservation & Wild Use



Map 18
RAGING RIVER BASIN (23.0 mi²)
Snoqualmie Water Quality Synthesis Report

WATER QUALITY STANDARDS AND DATA POINTS

- ECOLOGY Sites
- Ecology/TMDL Sites

Beneficial Uses (Aquatic life, Recreation)

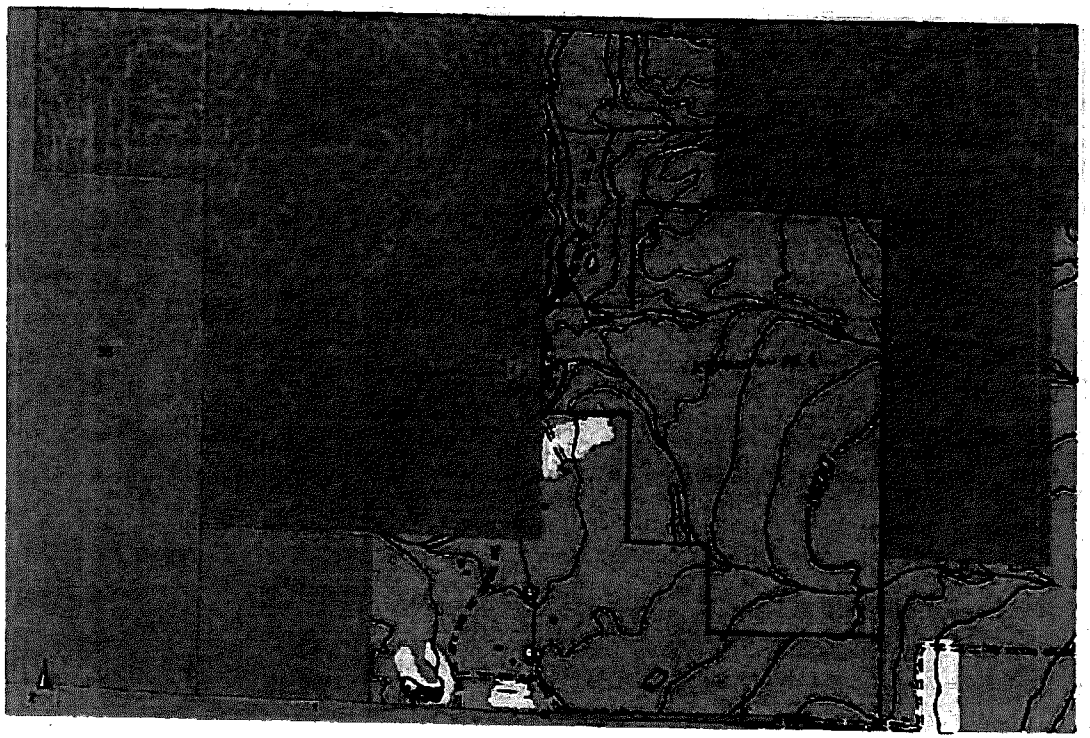
- Core Summer Habitat (16° C), Primary Contact

Seasonal 7-Day (7° C Std.

- Highest 7- DADMAX 13° C (Feb 15-Jun 15)
- Highest 7- DADMAX 17° C (Sep 15 - Jun 15)

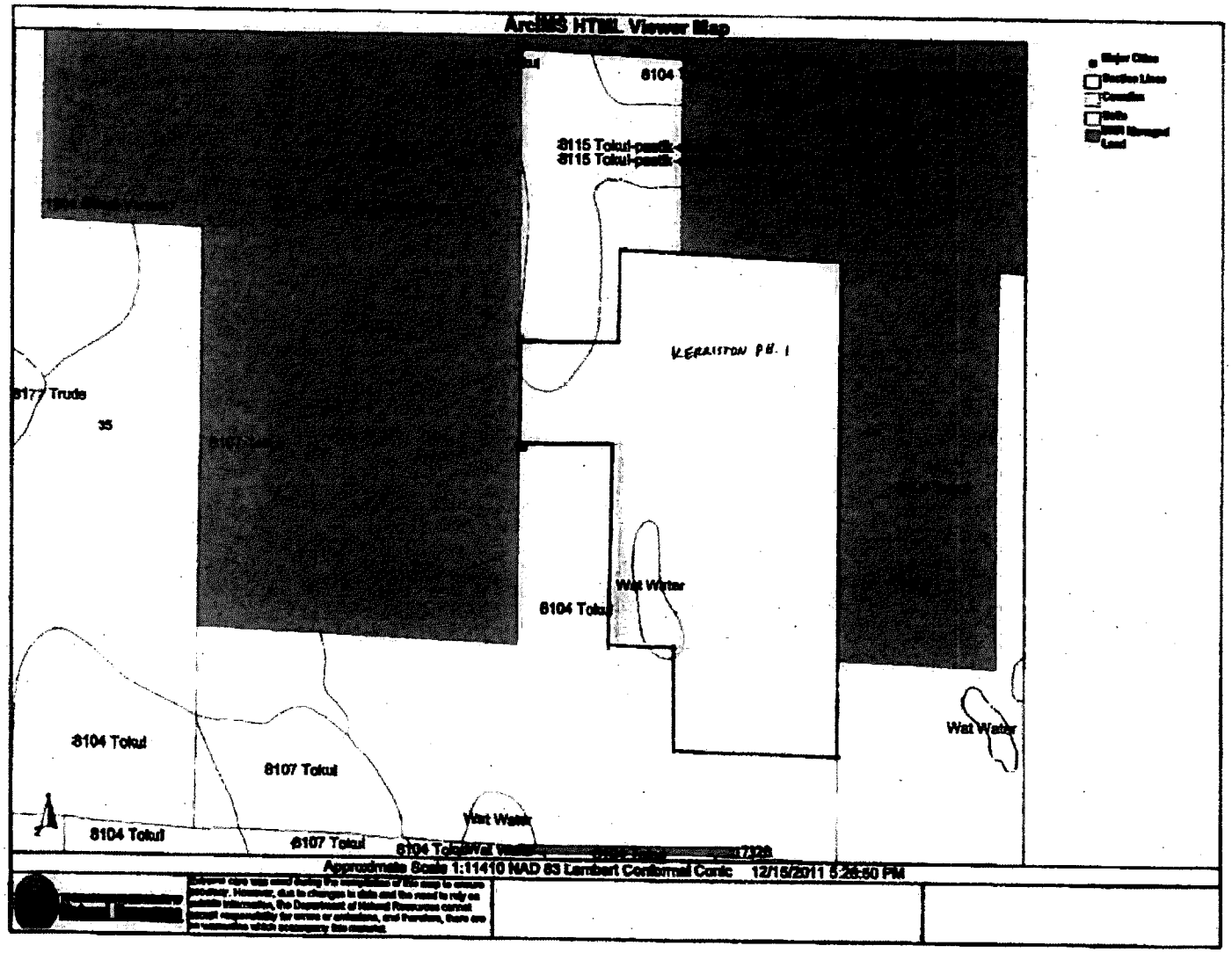
Note: Overlapping sites and flow have been slightly offset for greater readability

ArcIMS HTML Viewer Map



Approximate Scale 1:12067 NAD 83 Lambert Conformal Conic 10/3/2011 10:46:53 AM

Caution: care was used during the compilation of this map to ensure accuracy. However, due to changes in data and the need to rely on outside information, the Department of Natural Resources cannot accept responsibility for errors or omissions, and therefore, there are no warranties which accompany this material.


ArcIMS HTML Viewer Map
8104
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State of Washington
DEPARTMENT OF NATURAL RESOURCES

Forest Soil Summary Sheet

SOIL AND ENVIRONMENTAL CHARACTERISTICS

SOIL NAME	Tokul Silt Loam and Gravelly Loam	
SLOPE PHASE	0-30%	30-65%
STATE SOIL SYMBOLS	8102-8107 8110-8111	8108, 8109
Major Tree Species	Douglas-fir, red alder and western hemlock	
Site Index	DF=130	DF=126
% Stocking (East. Washington)		
Landform	Till plains	Escarpments and hillsides
Slope Shape	Concave-Convex	
Parent Material	Volcanic ash over till	
Elevation Range	200-1600 feet	
Precipitation Range	45-65 inches	
Organic Layer Thickness	1-3 inches	
Top Soil (Typical)	Dark brown silt loam	
Underlying Soil Layers (Average)	Brown gravelly sandy loam	
% Rock Fragments (Average)	20% hard gravels	
Restrictive Layer	Indurated till	
Soil Depth (Average)	20-40 inches	
Drainage	Moderately well drained	
Permeability	Moderate	
Available Water Capacity	Moderate	
Rooting Depth	20-40 inches	
Depth to Water Table	18-36 inches November-May	
Incidence of Flooding	N/A	

FOREST SOIL MANAGEMENT INTERPRETATIONS

SOIL NAME	Tokul Silt Loam and Gravelly Loam	
SLOPE PHASE	0-30%	30-65%
STATE SOIL SYMBOLS	8102-8107 8110-8111	8108, 8109
SLOPE STABILITY		
Natural	Stable	Stable
Disturbed	Stable	Unstable
ROAD CONSTRUCTION		
Cut Slope, Fill & Sidecast Hazard	Moderate	Moderate
Ballast Requirement	Medium	Medium
Ballast Suitability	Poor	Poor
TIMBER HARVEST		
Logging System Limitation	Moderate	Moderate
Compaction Potential (Moist)	High	High
Displacement Potential (Dry/Moist)	Low/Medium	High
Puddling Potential (Wet)	High	High
Erosion Potential	Low	Medium
Rockiness Limitation	N/A	N/A
SITE PREPARATION		
Scarification Damage	Severe	N/A
Prescribed Burning Damage Potential	Medium	Medium
REGENERATION		
Drought Potential	Medium	Medium
Plant Competition	Severe	Severe
Water Table & Flooding Hazard	N/A	N/A
Frost Action Damage Potential	N/A	N/A
Windthrow Potential	Medium	Medium

State of Washington
DEPARTMENT OF NATURAL RESOURCES

Forest Soil Summary Sheet

SOIL AND ENVIRONMENTAL CHARACTERISTICS

SOIL NAME	Tokul-Pastik Complex	
SLOPE PHASE	60-90%	
STATE SOIL SYMBOLS	8114*	8115
Major Tree Species	Douglas-fir, red alder, western hemlock	
Site Index	DF=95	DF=124
% Stocking (East. Washington)		
	Tokul	Pastik
Landform	Till plains and foothills	Terrace side slopes
Slope Shape	Planar	Concave
Parent Material	Volcanic ash over till	Volcanic ash over glacial lake sed.
Elevation Range	500-1000 feet	500-1000 feet
Precipitation Range	50-70 inches	50-70 inches
Organic Layer Thickness	1-3 inches	1-3 inches
Top Soil (Typical)	Dark brown gravelly loam	Dark brown silt loam
Underlying Soil Layers (Average)	Brown gravelly sandy loam	Yellowish brown silt loam
% Rock Fragments (Average)	20% hard gravels	None
Restrictive Layer	Indurated till	Fine textured varves(layers)
Soil Depth (Average)	20-40 inches	60+ inches
Drainage	Moderately well drained	Moderately well drained
Permeability	Moderate over very slow	Slow
Available Water Capacity	Moderate	High
Rooting Depth	20-40 inches	20-40 inches
Depth to Water Table	18-36 inches, November-May	20-40 inches, December-May
Incidence of Flooding	N/A	N/A

FOREST SOIL MANAGEMENT INTERPRETATIONS

SOIL NAME	Tokul-Pastik Complex
SLOPE PHASE	60-90%
STATE SOIL SYMBOLS	8114*, 8115
• SLOPE STABILITY	
Natural	Unstable
Disturbed	Very Unstable
• ROAD CONSTRUCTION	
Cut Slope, Fill & Sidecast Hazard	Severe
Ballast Requirement	Medium
Ballast Suitability	N/A
• TIMBER HARVEST	
Logging System Limitation	Severe
Compaction Potential (Moist)	High
Displacement Potential (Dry/Moist)	High
Puddling Potential (Wet)	High
Erosion Potential	High
Rockiness Limitation	N/A
• SITE PREPARATION	
Scarification Damage	N/A
Prescribed Burning Damage Potential	High
• REGENERATION	
Drought Potential	Low
Plant Competition	Severe
Water Table & Flooding Hazard	N/A
Frost Action Damage Potential	N/A
Windthrow Potential	Medium

*"Exposed" phase

EXHIBIT D

PERMITTED EXCEPTIONS

1. Reservations contained in Deed from the State of Washington recorded under recording Auditor's file number 4514029, reserving all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing and working the same.

   Affects Parcels D, E and F

2. Reservations contained in Deed from the State of Washington recorded under recording Auditor's file number 5191531, reserving all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing and working the same.

   Affects Parcels A, B and C

3. Easement for right of way for county road granted under Application No. 387 and easement for right of way for railroad granted under Application No. 2160 as disclosed by Auditor's file numbers 4514029 and 5191531.

4. Any and all offers of dedication, conditions, restrictions, easements, fence line/boundary discrepancies, notes and/or provisions shown or disclosed by Short Plat recorded under recording Auditor's file number 7804240508.

   Affects Parcels A and B

5. Any and all offers of dedication, conditions, restrictions, easements, fence line/boundary discrepancies, notes and/or provisions shown or disclosed by Short Plat recorded under recording Auditor's file number 8303160819.

   Affects Parcels A and B

6. Conditions, notes, easements, provisions and/or encroachments contained and/or delineated on the face of the Survey Auditor's file number 20070305900003, recorded in volume 220 of surveys, at page(s) 28, in King County, Washington.

   Affects Parcel A

7. Easement, including terms and provisions contained therein:
   Recording Information: Auditor's file number 20100429001529
   In Favor of: The Herbrand Company, Inc., a Washington corporation
   For: Ingress, egress, log hauling, utilities, and for constructing, reconstructing, maintaining, repairing, and using roads and utilities for all lawful purposes.

   Affects Parcels D and E

8. Easement listed below, including terms and provisions contained therein or a replacement document or an amended document which would be recorded at the time of conveyance from SPU to DNR. :
Recording Information: Auditor's file number 20100507001272
In Favor of: Institute for Community Leadership Training and Organizing
For: Recreational Access

Affects A, B, C, D, E, F

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

EXHIBIT D
CONTINUING FORESTLAND OBLIGATIONS

Return to:

South Puget Sound Region
950 Farman Ave N
Enumclaw, WA 98022

Washington State Department of Natural Resources
Notice of Continuing Forest Land Obligation

Sellers and Buyers of land and perpetual timber rights have certain rights and responsibilities when the land or perpetual timber rights are sold or transferred. Where the land is subject to certain continuing forest land obligations including without limitation: Reforestation; Road Maintenance and Abandonment Plans; Harvest Strategies along Type Np Waters in Eastern Washington; Conversion of forest land and required mitigation. **Prior to the sale or transfer of the land or perpetual timber rights the law requires that the following occur:** 1) the seller shall notify the buyer of the existence and nature of the obligations and 2) the buyer shall sign a Notice of Continuing Forest Land Obligation Form indicating the buyer's knowledge of such obligation. At the time of sale or transfer of the land or perpetual timber rights, the seller shall send the signed Form to the Department of Natural Resources (DNR). The Form is available at DNR region offices.

If the seller fails to notify the buyer about the continuing forest land obligation referenced above, the seller shall pay the buyer's costs related to such continuing forest land obligation, (including all legal costs) incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the DNR at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale. See RCW 76.09.070, RCW 76.09.390 and WAC 222-20-055.

There are also other types of obligations subject to certain requirements, including without limitation Small Forest Landowner Forest Riparian Easements and Landowner Landscape Plans. For more information, contact the DNR Region Office.

CONTINUING OBLIGATION/S [Enter in Project Name & App No Here]

Reforestation (RCW 76.09.070)

☒ Obligation exists on the property identified below and relates to the following Forest Practice Application/Notification (FPA/N) Numbers (list all that apply, add attachment if necessary) 2413932

Road Maintenance and Abandonment Plan (WAC 222-24-051) (RCW76.09.390(2))

☐ Obligation exists on property identified below and relates to the following Road Maintenance and Abandonment Plan Numbers (list all that apply, add attachment if necessary) _____

Harvest Strategy along Type Np Waters in Eastern Washington (WAC 222-30-022 (2)(b))

☐ Obligation exists on the property identified below and relates to the following Forest Practices Application / Notification Numbers (list all that apply, add attachment if necessary) _____

Conversion of forest land (RCW 76.060 and 070)

☐ Obligation exists on the property identified below and relates to the following Forest Practices Application / Notification Numbers or enforcement documents. (list all that apply, add attachment if necessary) _____

PROPERTY IDENTIFICATION

Land/Rights Sold/Transferred (circle one): *Land and Timber* (*Land*) *Perpetual Timber Rights*

Date that the Land/Rights was/were Sold/Transferred (month/day/year): _____

County/ies: King

DNR Region/s: South Puget Sound

Legal Description of the Lands/Rights being Sold/Transferred (include county parcel number/s, add attachment if necessary): See Attached

SELLER:

Signature:_____

Date:_____

Print name:_____

Title:_____

Address:_____

Phone:_____

BUYER:

Signature:_____

Date:_____

Print name:_____

Title:_____

Address:_____

Phone:_____

NOTE TO SELLER: At the time of sale or transfer of the property or the perpetual timber rights: The seller is responsible for delivering (by certified mail or in person) the SIGNED ORIGINAL to the DNR Region Office in which the property is located. However, if you choose to also have this form recorded by the county, deliver the original to the county and a copy delivered (by certified mail or in person) to the DNR Region Office.

FOR DNR USE ONLY

Notice of Continuing Forest Land Obligation #:_____ Date Received:_____

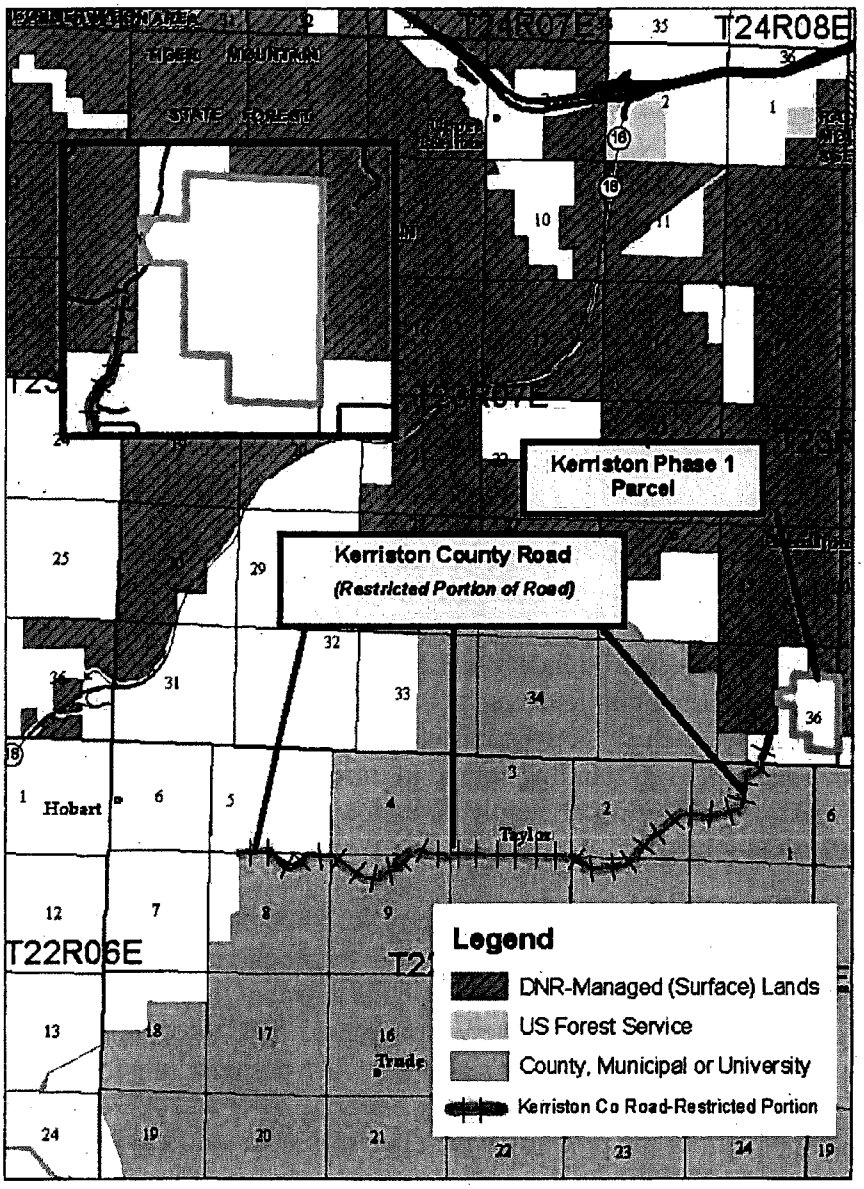
Region: _____ Received by: _____

FORM DNR QQ-42 (Rev October 8, 2007)

EXHIBIT E

KERRISTON ROAD

Kerriston Phase 1



PTN S36 T23N R7E, W.M.

DRAFT 04/16/2012

Cyndy Holtz
SPU Herbrand Property FISC
August 3, 2012
Version #2

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Cyndy Holtz/386-1990	Karl Stickel/684-8085

Legislation Title:
AN ORDINANCE relating to Seattle Public Utilities; authorizing the sale of approximately 148 acres located in Section 36, Township 23 North, Range 7 East W.M, in King County to the State of Washington Department of Natural Resources and the acceptance of a conservation easement on the same property; and declaring said property to be surplus to the City's needs and not required for continued utility needs.

Summary of the Legislation:
This ordinance authorizes Seattle Public Utilities (SPU) to sell a 148.2-acre property in the Kerriston area, known as the Herbrand Property, to the State of Washington Department of Natural Resources (WDNR). As part of the same transaction, SPU would purchase a conservation easement on the property. The net sale price is $142,500.

Background:
The City protects its Cedar River water supply and minimizes water treatment requirements by managing risks to source water quality. Property ownership and controlling public access are cornerstones of Seattle's water quality protection strategy. The City owns almost all of the land within the Cedar River watershed boundary and controls public access on those lands. The only remaining point of unrestricted public access is the 7-mile long Kerriston Road, 4.1 miles of which pass through the watershed. Kerriston Road is the only access to the unincorporated town of Kerriston. The road is a long-standing source of unrestricted traffic through the watershed immediately upstream of SPU's water supply diversion at Landsburg, as well as an avenue of trespass onto watershed lands.

Last year, the City purchased the Herbrand Property for $500,000 to avert sale to a developer and ultimate development of new homes on the property. Subsequent to this purchase, WDNR expressed interest in purchasing the property, which is adjacent to WDNR holdings. WDNR intends to manage the land for forest production purposes. SPU negotiated a conservation easement which will strip the development rights from the property in perpetuity, and restrict WDNR from using the Kerriston Road for timber hauling. SPU and WDNR jointly commissioned an appraisal of the property which determined a value, after removal of development rights, of $142,500.

Please check one of the following:

____ **This legislation does not have any financial implications.**

X This legislation has financial implications.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Water Fund-43000	SPU	Proceeds from Sale of Assets (State of Washington)	$142,500	
TOTAL			**$142,500**	

Revenue/Reimbursement Notes:
As the value of the conservation easement plus the proceeds from the sale are equal to the original asset value, this land sale will have a net zero dollar impact on financial statements (balance sheet and income statement). However, the sale will result in additional cash proceeds for the Water Fund.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes. Sale of the property will transfer maintenance and operations responsibilities from SPU to WDNR, reducing long-term O&M costs.

b) **What is the financial cost of not implementing the legislation?**
Not selling this property to WDNR would result in lost revenue of $142,500 for the sale of the property, and lost opportunity to avoid future O&M costs to manage the property.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** SPU could retain the property and manage it for timber itself. Also, under this scenario, the City would incur ongoing management costs.

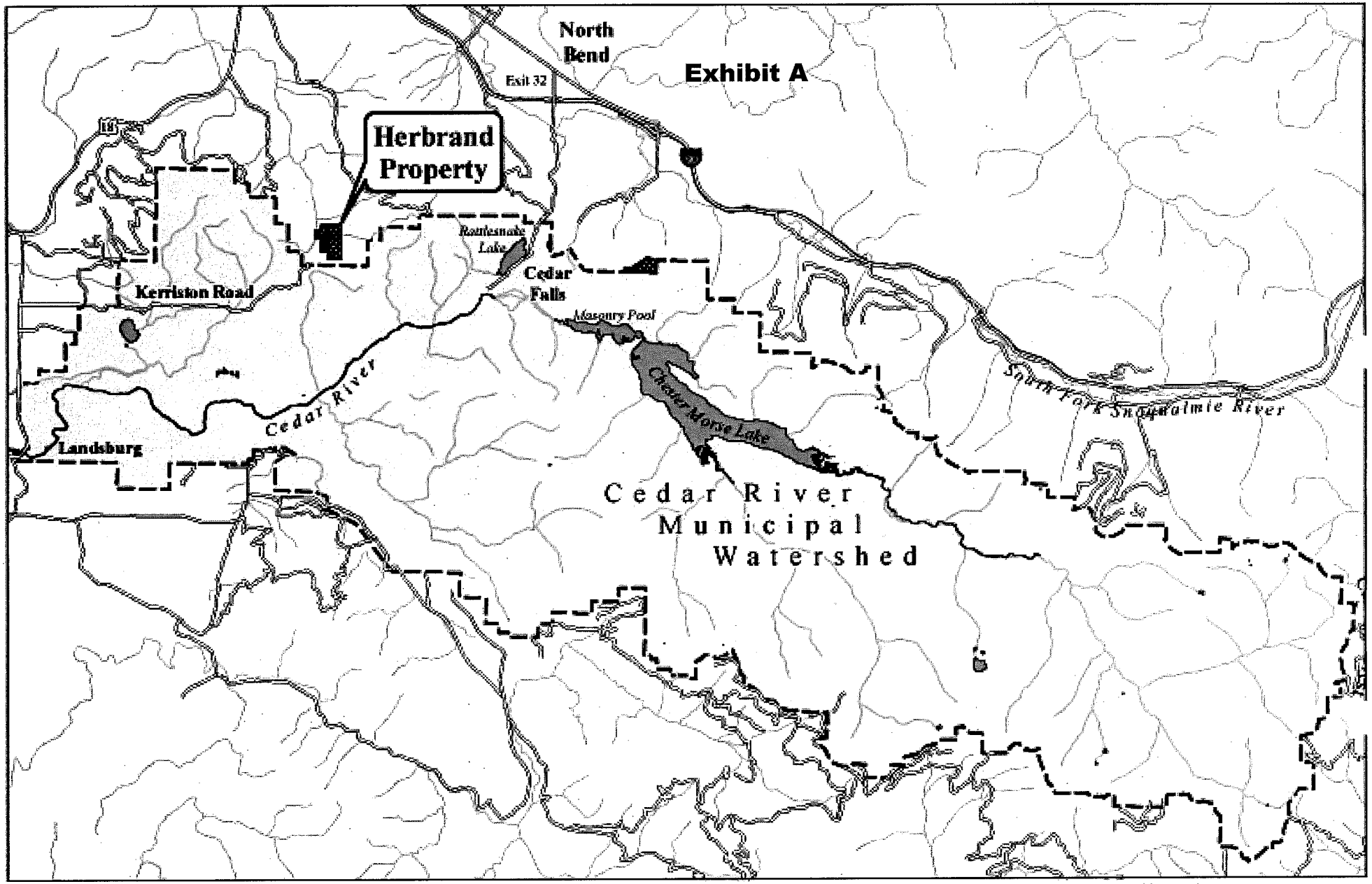
e) **Is a public hearing required for this legislation?**
Yes. A public hearing will be conducted at the City Council Libraries, Utilities and Center Committee meeting when this legislation is introduced.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**

Yes.

List attachments to the fiscal note below:
Exhibit A: Regional Setting
Exhibit B: Parcel Map



Regional Setting
Herbrand Property Sale

This map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.

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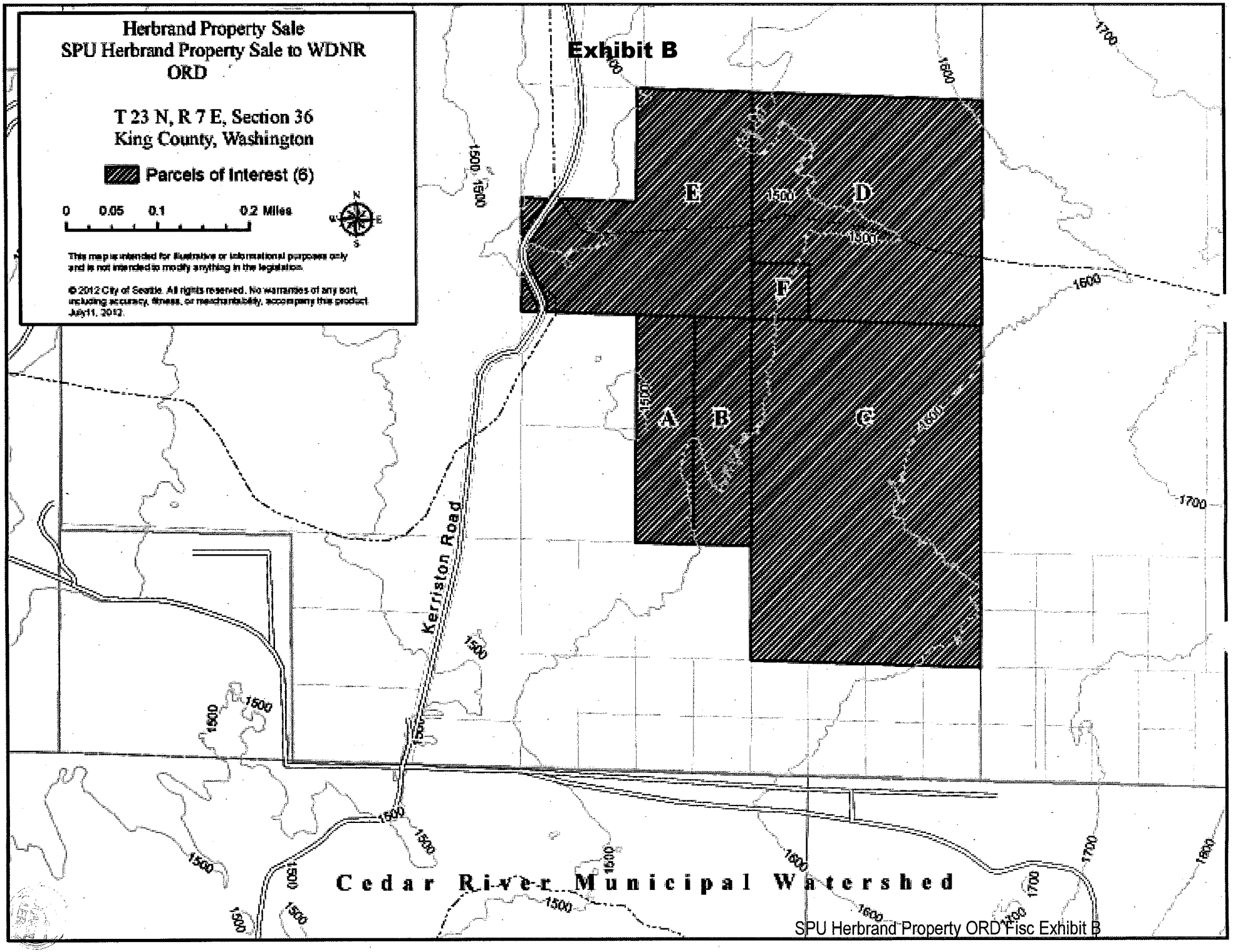
July 11, 2012

SPU Herbrand Property Sale to WDNR ORD

SPU Herbrand Property ORD Fiscal Note Exhibit A


Herbrand Property Sale
SPU Herbrand Property Sale to WDNR
ORD
T 23 N, R 7 E, Section 36
King County, Washington
Parcels of Interest (6)
0 0.05 0.1 0.2 Miles
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July11, 2012
Exhibit B
A
B
C
D
E
F
Kerriston Road
Cedar River Municipal Watershed

City of Seattle
Office of the Mayor

August 21, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that would authorize the Director of Seattle Public Utilities to sell 148 acres near the Cedar River Municipal Watershed to the State of Washington Department of Natural Resources (WDNR), and, as part of the same transaction, purchase a conservation easement on the entire property.

The primary means by which the City protects the quality of its Cedar River water supply is to control access to lands in the watershed. Seattle has purchased virtually all the land within the Cedar River watershed boundary and controls public access on those lands. The last point of unrestricted public access is Kerriston Road, 4.1 miles of which pass through the watershed. The road is the only access to the unincorporated town of Kerriston and provides unrestricted access through the watershed immediately upstream of SPU's water supply diversion at Landsburg.

Last year, the City purchased property adjacent to Kerriston Road, known as the "Herbrand Property," to avert sale to a developer who intended to construct new homes on the property. Subsequent to this purchase, the WDNR expressed interest in buying the property, which is adjacent to land the agency owns. Should this proposed transaction go forward, WDNR would manage the land for forest production purposes.

Selling this property to the State while restricting access on the Kerriston Road allows SPU to recover a large percentage of its acquisition costs while meeting its water supply protection goals. Thank you for your consideration of this legislation. Should you have questions, please contact Cyndy Holtz at 386-1990.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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