

**CITY OF AUBURN
AGENDA BILL APPROVAL FORM**

Agenda Subject: Ordinance 5128 (Z0A0003-98 – Zoning Ordinance Amendment - Section 18.48.110)		Date: December 30, 1998			
Department: Planning	Attachments: Ordinance 5128, Section 18.48.110, Letter, Agreement	Budget Impact:			
Administrative Recommendation: City Council introduce and adopt Ordinance 5128.					
Background Summary:					
The City has been requested by the Port of Seattle to allow the Port to construct a wetland mitigation project within northeast Auburn in order that the Port may satisfy their obligation to compensate for wetland impacts associated with a construction project which is located outside the City. The City has also received inquiries from other parties seeking to construct other, but similar, projects in the City and therefore the City needs to establish regulations to comprehensively address these situations. The City's Zoning Ordinance currently does not provide for wetland mitigation as a permitted use, administrative use, or conditionally permitted use in any of the City's zoning districts. Since wetland mitigation is not specifically authorized by the Zoning Ordinance, it is prohibited. This is problematic since these wetland mitigation projects typically require a grading or other construction approval from the City. The wetland mitigation projects that have been constructed in the City to date have been associated with a development project, which is also occurring within the City. The City authorizes wetland mitigation as part of the overall development project. A new section is proposed to be added to the Supplemental Development Standards section of the Zoning Ordinance. This new section would establish the criteria under which wetland mitigation construction, which is unrelated to development proposals located in Auburn, would be allowed. The criteria is necessary to ensure that the wetland mitigation construction enhances natural resources within the City, is of general benefit to the public, and does not adversely affect the City's ability to fund infrastructure improvements or meet its responsibilities under the Growth Management Act or Comprehensive Plan. At their meeting on July 7th, the Planning Commission recommended approval of the amendment.					
Committees & Commissions:	Council Committees:	Departments & Divisions:			
☐ Arts Comm. ☐ Hearing Examin. ☐ Human Resources ☐ Library Board ☐ Park Board ☐ Planning Comm. ☐ Other ->	☐ Finance ☐ Municipal Serv. ☐ Planning & CD ☐ Public Works	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> ☐ Airport ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☐ Legal ☐ Library </td> <td style="width: 50%; border: none; vertical-align: top;"> ☐ M&O ☐ Mayor ☐ Parks ☐ Personnel ☐ Planning ☐ Police ☐ Public Works </td> </tr> </table>		☐ Airport ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☐ Legal ☐ Library	☐ M&O ☐ Mayor ☐ Parks ☐ Personnel ☐ Planning ☐ Police ☐ Public Works
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ACTION:					
Committee Approval:	Yes ☐ No ☐				
Council Approval:	Yes ☐ No ☐	Call for Hearing	_/_/_		
Referred to _____	Until _____	_/_/_			
Tabled	Until _____	_/_/_			

Councilmember: Borden	Staff: Krauss
Meeting Date: January 4, 1999	Item Number: VII.A.1 Page: 1

**CITY OF AUBURN
AGENDA BILL APPROVAL FORM**

Agenda Subject: Ordinance 5128
(Z0A0003-98 – Zoning Ordinance Amendment -
Section 18.48.110)

Date: December 30, 1998

Background Summary (CONTINUED):

Prior to taking this item to the City Council for approval, the City became aware of problems that had arisen with the Port's proposal. As the Port took possession of former residential tracts in the expansion area, they discovered the existence of additional wetlands. These wetlands would probably require an expansion of the wetland mitigation area in Auburn. The Agreement with the Port that was previously approved by the Council allows for this possibility. There is a formula that allows the Port to decrease the size of the tract that would be deeded to the City in exchange for a sum of cash. Due to the uncertainty surrounding the matter, staff pulled the item from consideration until the issues could be worked out.

What staff had anticipated has, in fact, come to pass. The Port will need the entire site for wetland mitigation and the City will receive cash rather than land in accordance with the Agreement. Please refer to the attached correspondence from the Port's Attorney. Staff has concluded that there are no implications stemming from the Port's ongoing dealings with the Army Corps of Engineers or legal proceedings that prevent the City from adopting this ordinance. We are therefore recommending that it be approved.

PC\ZOA3-98

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Councilmember: Borden

Staff: Krauss

Meeting Date: January 4, 1999

Item Number: VII.A.1

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APPROVED AS TO FORM:



Michael J. Reynolds,
City Attorney

Published: _____

18.48.110 Wetland mitigation site construction proposed by other public agencies for their projects not located in Auburn.

The following siting criteria shall apply to all wetland mitigation site construction, within the City of Auburn, the purpose of which is to mitigate the impacts of a project, that is not located within the City of Auburn. Off-site wetland mitigation construction, that is associated with a project that is located within the City of Auburn, shall be reviewed concurrently with that proposal and will not be subject to the following.

A. Definitions

1. Wetland mitigation site construction; for the purposes of this section (18.48.110) the term wetland mitigation site construction shall mean the construction of new wetlands on existing nonwetland property and/or the enhancement of existing wetlands.

B. Siting criteria

Wetland mitigation site construction may be allowed within any zoning district within the City of Auburn subject to all of the following criteria. At a minimum the proponent of wetland mitigation site construction shall apply for and receive from the City of Auburn a grading permit before said construction begins.

1. The wetland mitigation site must be linked to and be compatible with a comparable naturally occurring ecosystem, e.g., another wetland, river, stream, etc. The constructed wetland mitigation site cannot be an isolated mitigation site.

2. Only a public agency may propose a wetland mitigation site pursuant to this section. Before starting construction the public agency, proposing the wetland construction, must have an approved budget that has sufficient financial capability to construct the wetland mitigation project. The public agency must also provide the City a written commitment to complete the project, to the City's satisfaction, once construction starts.

3. The project, outside of Auburn, that is creating the need for the wetland mitigation shall be a public project of a regional or statewide significance and shall be a benefit to the general public. The proponent shall demonstrate to the City's satisfaction that it is impractical to mitigate wetland impacts in the jurisdiction and/or drainage basin where the wetland impact occurs.

4. There must not be a loss of buildable upland property such that it would be a financial burden to other properties in the area, or the City, with regard to funding capital improvement projects. This would include, but not be limited to the participation or potential participation in Local Improvement Districts (LID'S) or the financial participation in City of Auburn capital improvement projects. Financial contributions may be used to off set the loss of the financial participation and shall require a separate legal binding contract to be executed between the City and the public agency.

5. There must not be a loss of buildable upland property that would diminish the city's ability to meet its responsibilities with regard to the Growth Management Act or Comprehensive Plan.

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December 16, 1998

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VIA FACSIMILE

Mr. Paul Krauss
Director, Planning/Comm. Development
City of Auburn
25 West Main
Auburn, Washington 98001-4998

Re: Port of Seattle Wetland Mitigation Project

Dear Paul:

The purpose of this letter is to update the City on the status of the Port of Seattle's wetland mitigation project in Auburn. Earlier this year, the Port discovered additional wetlands on the west side of Seattle-Tacoma International Airport (STIA) as the Port acquired properties for the Third Runway project. As a result, the Port escalated its property acquisitions and wetland delineations in that area. It now appears that the total wetland impacts for airport projects will increase from the earlier-assumed 12 acres to about 25 acres. Assuming that the Port continues to propose 2x1 mitigation at the Auburn site and that this mitigation is approved by the regulatory agencies, the total wetland creation at the Auburn site would increase from the earlier-proposed 30 acres to about 50 acres.

As you know, the possibility of increasing the amount of wetland area in the Port's mitigation project was contemplated in the March 1998 Interlocal Agreement between the Port and the City. The Port's property is 69 acres in size, the western 20 acres of which is known as the Excess Area. Initially, the Port proposed no wetland construction in the Excess Area, contemplated transferring ownership of the Excess Area to the City, but reserved the right to use the Excess Area for wetland mitigation if necessary. It now appears likely that the Port will use the Excess Area for wetland mitigation as contemplated in the Interlocal Agreement.

The Section 404 permit process with the U.S. Army Corps of Engineers, for approval of the proposed wetland fill at STIA, is ongoing. We anticipate that the Corps will issue a new public notice and accept additional public comments on the permit application, leading to a permit decision in 1999.

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Mr. Paul Krauss
December 16, 1998
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A few months ago, pursuant to the State Environmental Policy Act (SEPA), the Port issued a Determination of Non-Significance (DNS) and decided not to prepare a supplemental environmental impact statement (EIS) regarding the Auburn wetland mitigation project. Shortly thereafter, a group known as Citizens Against Sea-Tac Expansion (CASE) filed litigation in King County Superior Court challenging the Port's decision to issue a DNS and not prepare a supplemental EIS. This case is now pending before Judge Peter Jarvis (Cause # 98-2-23944-1SEA). The principal allegation in this lawsuit is that the Port should not construct replacement wetlands in Auburn, outside the sub-basin where the wetland impacts will occur. It is the Port's position that this issue is not relevant to the SEPA process for the Auburn mitigation project and there is a more appropriate forum in which this issue may be addressed. Moreover, pursuant to Federal Aviation Administration direction, the Port must provide replacement wildlife habitat more than 10,000 feet from the runways for reasons of air traffic safety. For these and other reasons, the Port has asked the court to dismiss this action.

As contemplated in the Interlocal Agreement, an amendment of the Auburn zoning code has been proposed to clarify that wetland mitigation projects are a permitted use in Auburn under certain conditions. The Planning Commission has considered this amendment and recommended in favor of it. It is our understanding that this matter likely will be scheduled for the January 4th City Council meeting. It is important that the City Council proceed with its review and action on the amendment at that time, so that the Port can proceed with planning and implementation of the mitigation project in a timely manner.

Thank you very much for your consideration of this matter. If you have any questions or comments, please feel free to call.

Very truly yours,



Thomas M. Walsh

cc: Barbara Hinkle, Port of Seattle
Jim Kelley, Parametrix

Mr. Paul Krauss
December 16, 1998
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bcc: Traci Goodwin, Port of Seattle

ORDINANCE NO. 5 0 2 9

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE PORT OF SEATTLE RELATING TO WETLANDS CONSTRUCTION, COMMUNITY DEVELOPMENT, AND PROPERTY TRANSFER.

WHEREAS, the Port of Seattle is the owner of certain property approximately 69 acres in size located in the City of Auburn west of the Green River and south of S. 277th Street; and

WHEREAS, the City of Auburn is willing to consider an amendment of its zoning code to clarify that publicly-owned wetlands/open space is a permitted use on said property; and

WHEREAS, the City of Auburn is willing to consider issuing necessary Auburn permits to authorize construction of wetlands on said property; and

WHEREAS, King County is planning to construct a recreational trail along the Green River, and the Port of Seattle intends to donate a portion of said property (approximately 1.9 acres) adjacent to the Green River for the trail to King County; and

WHEREAS, the City of Auburn is pursuing certain community development activities in the vicinity of the said property which may include, among other activities, the formation of a

1 Local Improvement District (LID) or other financing mechanism
2 to provide street and utility improvements in the area for
3 which the Port of Seattle is willing to make financial
4 contributions to Auburn in lieu of assessment of said property
5 pursuant to an LID or other financing mechanism; and
6

7 WHEREAS, the Port of Seattle is willing to pay to Auburn
8 \$642,000 for street and utility improvements, utility system
9 development charges and floodplain mapping costs, including
10 but not limited to, planning, design, right of way, and/or
11 construction of such improvements; and

12 WHEREAS, the Port of Seattle will transfer Auburn an
13 excess portion of said property that will not be necessary for
14 wetlands construction or the public trail, or its equivalent
15 cash value; and

16 WHEREAS, the transfer of portions of the subject property
17 by the Port of Seattle to the City of Auburn and King County
18 is being undertaken in accordance with the provisions of
19 Chapter 39.22 RCW. Pursuant to RCW 39.33.020, the Port of
20 Seattle published a notice of hearing and disseminated a news
21 release with respect to those transfers on December 29, 1997.
22 A public hearing with respect to these transfers were
23 conducted on January 13, 1998, and the Port Commission
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1 authorized the transfer of portions of the subject property to
2 King County and the City of Auburn subject to certain
3 conditions; and

4 WHEREAS, at time of approval of this Agreement, the Port
5 continues to work with the City of Kent to resolve the issue
6 of hydraulic connectivity with the Green River floodplain and
7 To assure the design for conveyance of floodwaters across the
8 South 277th Street project corridor; and

9
10 WHEREAS, it is understood by both parties of the
11 Agreement that resolution of the floodplain connectivity issue
12 by the Port and City of Kent is prerequisite to issuance of a
13 grading permit by the City of Auburn.

14 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
15 WASHINGTON, DO ORDAIN AS FOLLOWS:

16 Section 1. Pursuant to Chapter 35A.33 RCW the City
17 Council hereby approves the expenditure and appropriation of
18 Port of Seattle funds in the amount of \$642,000 for the
19 purpose of wetlands construction, community development and
20 property transfer.

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22 Section 2. The Mayor of the City of Auburn is hereby
23 authorized to enter into an Interlocal Agreement between the
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1 Port of Seattle and the City of Auburn, regarding wetlands
2 construction, community development and property transfer.

3 A copy of said Agreement is attached hereto as Exhibit "A" and
4 incorporated herein by this reference.

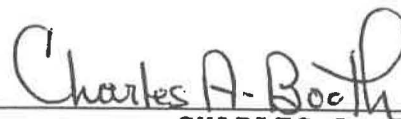
5 Section 3. The Mayor is hereby authorized to implement
6 such administrative procedures as may be necessary to carry
7 out the directions of this legislation.

8 Section 4. This Ordinance shall take effect and be in
9 force five (5) days from and after its passage, approval and
10 publication, as provided by law.
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13 INTRODUCED: January 20, 1998

14 PASSED: January 20, 1998

15 APPROVED: January 20, 1998
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19 CHARLES A. BOOTH
20 MAYOR
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ATTEST:



Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Michael J. Reynolds,
City Attorney

Published: 1-23-98

INTERLOCAL AGREEMENT

Between City of Auburn and Port of Seattle Regarding Wetlands Construction, Infrastructure Improvements, and Property Transfer

THIS INTERLOCAL AGREEMENT is made and entered into as of this 18 day of March, 1998, between the CITY OF AUBURN, a municipal corporation of the State of Washington ("Auburn"), and the PORT OF SEATTLE, a municipal corporation of the State of Washington (the "Port"), relating to wetlands construction, infrastructure improvements, and a transfer of property from the Port to Auburn.

Recitals

A. The Port is the owner of a parcel of property approximately 69 acres in size located in the City of Auburn west of the Green River and south of S. 277th St., legally described in Exhibit A attached hereto and depicted on the aerial photograph attached hereto as Exhibit B (the "Subject Property"). Approximately 4.3 acres of the Subject Property have been delineated as existing wetlands. The Port has proposed to construct additional wetlands on the Subject Property as mitigation for certain wetlands filling proposed by the Port at Seattle-Tacoma International Airport (the "Airport"). The Port intends to construct the wetlands and arrange for their retention as public wetlands/open space in perpetuity.

B. The Subject Property is zoned single-family residential (R-2). Auburn is willing to consider and act on: (1) an amendment of its zoning code to clarify that publicly-owned wetlands/open space is a permitted use on the Subject Property; and (2) all necessary Auburn permits to authorize construction of the wetlands on the Subject Property.

C. King County is planning to construct a recreational trail along the Green River, and the Port intends to donate to King County a portion of the Subject Property adjacent to the Green River for the trail. The portion of the Subject Property to be donated to King County consists of approximately 1.7 acres.

D. Auburn is pursuing certain infrastructure improvements in the vicinity of the Subject Property which may include, among other activities, the formation of a Local Improvement District (LID) or other financing mechanism to provide street and utility improvements in the area. The Port is willing to support Auburn's infrastructure improvements and make financial contributions to Auburn in lieu of assessment of the Subject Property pursuant to an LID or other financing mechanism. The Port is also willing to contribute towards other infrastructure improvements as specified in this Interlocal Agreement. In total, the Port will pay Auburn \$642,000 for street and utility improvements, utility system development charges, and floodplain mapping costs (as set forth in Sections 4 through 6 below), and will transfer to Auburn an excess portion of the Subject Property or its equivalent cash value (as set forth in Sections 4 and 7 below). Auburn, at its sole discretion, may utilize the funds paid under this Agreement for planning, design, right-of-way, and/or construction of any of these improvements. The timing of all cash payments and the property transfer is set forth in Section 7 below.

E. The Port's contribution to Auburn will include a donation of an excess portion of the Subject Property that will not be necessary for wetlands construction or the public trail (or its equivalent cash value). Auburn has expressed interest in this excess portion of the Subject Property for use in conjunction with its infrastructure improvements in the area.

F. Exhibit C to this Interlocal Agreement is a drawing of the Subject Property generally showing the areas of the Subject Property that are currently anticipated to be retained by the Port for wetlands, donated to King County for a trail, and transferred to Auburn.

G. The transfer of portions of the Subject Property by the Port to Auburn and King County is being undertaken in accordance with the provisions of Chapter 39.33 RCW. A public hearing with respect to these transfers was conducted on January 13, 1997, and the Port Commission authorized the transfer of portions of the Subject Property to King County and Auburn subject to certain conditions.

Agreement

1. Construction of Wetlands on Subject Property.

1.1 Auburn will initiate, consider, and act on an amendment of the Auburn zoning code to clarify that wetlands are permitted outright on the Subject Property. The Port will apply to Auburn for a grading permit and other permits and approvals required by Auburn for construction of the wetlands on the Subject Property. Auburn will review and process the zoning amendment, grading permit, and other permits and approvals in a timely, reasonable, and standard manner.

1.2 The Port will construct new wetlands on the Subject Property substantially in the manner depicted on the plan at Exhibit C. The Port may change this plan as it determines necessary to respond to regulatory agency requirements, unexpected site conditions, or other new information or changed circumstances; provided that, after issuance of an Auburn permit, any changes will be subject to Auburn's standard requirements for City approval of permit changes.

2. **Designation of King County Property.** In consultation with King County and Auburn, the Port will designate the portion of the Subject Property adjacent to the Green River to be donated to King County for the recreational trail (the "King County Property"). The Port and/or King County will apply to Auburn for a lot line adjustment or subdivision approval, if required by Auburn, to establish the King County Property as a separate parcel capable of being conveyed to King County. Auburn will review and process the application in a timely, reasonable, and standard manner.

3. **Designation of Wetlands and Excess Area.** The Port is seeking permits from appropriate regulatory agencies to authorize its proposed wetlands fill at the Airport, including a Section 404 Permit from the U.S. Army Corps of Engineers. As part of the permit process, a determination will be made as to the precise amount of wetlands area that must be constructed on the Subject Property as mitigation for the wetlands fill at the Airport. At this time, the Port has estimated the amount of wetlands mitigation area that may be required (as depicted in Exhibit C) but a final determination by applicable regulatory agencies has not yet been made. Because it is possible that the

regulatory agencies may require a greater amount of wetlands mitigation area than the Port has estimated, or a different configuration of wetlands area than currently proposed, the Port is not able to make a final determination at this time as to the amount and which portion of the Subject Property will be allocated to wetlands use and the amount and which portion of the Subject Property will be available for other use. The Port will determine the portion of the Subject Property to be designated as wetlands and wetlands buffer area (the "Wetlands Area") and the portion to be available for other use (the "Excess Area") prior to the transfer of the Excess Area to Auburn. However, the Excess Area shall not include a 20-foot-wide buffer adjacent to the existing wetland on the eastern boundary of the Excess Area. At this time, the Port estimates the amount of Excess Area to be approximately 16-20 acres.

4. City Assessments.

4.1 Port Payment in Lieu of Assessment.

Auburn is planning to construct certain infrastructure improvements in the area where the Subject Property is located which will benefit the Subject Property, including the following (the "Street and Utility Improvements"): I Street from S. 277th St. to approximately the westerly extension of the southern boundary of the Subject Property, including water and sewer conveyance systems; regional stormwater detention, water quality, and conveyance facilities to serve the north storm drainage basin as shown in Auburn's Drainage Master Plan; two additional traffic lanes on S. 277th Street from Auburn Way N. to I Street, including related traffic signals, lighting, and non-motorized trail elements; all as shown on Auburn's Comprehensive Plan or as designated in the Special Planning Area established by Ordinance No. 4912. Auburn has estimated the cost of the Street and Utility Improvements and is considering the formation of an LID or other financing mechanism to finance the construction of these improvements. Pursuant to an LID or similar financing mechanism, the costs will be apportioned on a parcel-by-parcel basis consistent with standard assessment methodology. When the Port creates wetlands on the Wetlands Area, and King County creates a recreational trail on the King County Property, these properties will not be available for payment of a fair share of the costs associated with the Street and Utility Improvements, resulting in a greater financial burden on Auburn and other property owners. Therefore, the Port will:

a. pay to Auburn the sum of Four Hundred Twenty Two Thousand Dollars (\$422,000), which Auburn will expend solely for the benefit of the Street and Utility Improvements; and

b. transfer to Auburn either (i) the Excess Area in a size not smaller than twenty acres, or (ii) if the Excess Area is smaller than twenty acres, a combination of Excess Area plus cash value of the difference between the Excess Area acreage transferred and twenty acres. If the Excess Area is smaller than sixteen acres, Auburn may, at its option, require the Port to pay Auburn the cash value of the entire twenty acres and transfer no portion of the Excess Area. If the parties agree that the Port will transfer to Auburn an Excess Area larger than twenty acres, Auburn will pay the Port the cash value of the Excess Area transferred in excess of twenty acres. The cash value of the Excess Area is hereby established as Twenty Six Thousand Nine Hundred Dollars (\$26,900) per acre. Auburn will use, trade, sell, or otherwise manage or dispose of the Excess Area, and will expend any payments of cash value of the Excess Area, solely for the benefit of the Street and Utility Improvements.

4.2 Wetlands Area and King County Property Not Subject to Assessment; Assessment on Excess Area. In consideration for the Port's payment and property transfer to Auburn, the Wetlands Area and the King County Property will not be subject to any City-imposed assessment, after the date of this Interlocal Agreement, relating to any costs of the Street and Utility Improvements including but not limited to assessments under the proposed North Auburn/I Street LID. Also, if the Port transfers the Excess Area to Auburn, Auburn will be responsible for payment of any City assessment imposed on the Excess Area after the date of this Interlocal Agreement, relating to any costs of the Street and Utility Improvements including but not limited to assessments under the proposed North Auburn/I Street LID. If the Port has paid any assessments on the Excess Area after the

date of this Interlocal Agreement and prior to the transfer of the Excess Area to Auburn, Auburn will reimburse the Port for these payments at the time the Excess Area is transferred to Auburn. "Assessment" is defined to include an LID assessment, a charge imposed on property pursuant to a latecomers agreement, or other similar assessment, charge, or fee.

4.3 Credit Against Assessment. If this Interlocal Agreement or an Auburn assessment mechanism (e.g., the North Auburn/I Street LID) is successfully challenged, resulting in an assessment being imposed on the Wetlands Area or the King County Property relating to the Street and Utility Improvements, said assessment obligation shall be reduced by the amounts previously paid by the Port and the value of the Excess Area transferred to Auburn under the terms of this Interlocal Agreement.

4.4 Refund If Funds Not Expended. All cash payments of the Port pursuant to Sections 4.1 and 7.4.2 of this Interlocal Agreement will be deposited in an interest-bearing account or otherwise invested in a manner that earns a reasonable rate of return. If Auburn does not expend the cash payments made pursuant to Sections 4.1 and 7.4.2 on the Street and Utility Improvements within 10 years of the date Auburn receives the cash payments, Auburn shall: (i) refund to the Port the cash payments made by the Port pursuant to Sections 4.1 and 7.4.2 of this Interlocal Agreement, that were not expended within the time limit, including the actual earned interest or other return on the invested funds, less two-tenths of one percent (.2%) interest which will be retained by Auburn for administrative costs; and (ii) convey back to the Port any property transferred by the Port to Auburn pursuant to this Interlocal Agreement or, at Auburn's option, refund to the Port the cash value of the property in the amount established in Section 4.1.b. In the event that all these cash payments made by the Port are refunded to the Port and all the property transferred by the Port (or its cash value) are conveyed back to the Port, the prohibition on assessments in Section 4.2 will be void and no longer in effect.

5. System Development Charges.

5.1 Port Payment in Lieu of System Development Charges. Auburn has incurred and will incur certain costs to develop its sanitary and storm sewer utility systems for certain service areas containing the Subject Property. Auburn seeks to recover portions of these costs from owners of property using these sanitary and storm utility systems (referred to herein as "System Development Charges"). In lieu of paying System Development Charges with regard to the Wetlands Area and King County Property, the Port will pay to Auburn the sum of One Hundred Eighty Thousand Dollars (\$180,000), not subject to refund except under conditions set forth in Section 5.3 of this Interlocal Agreement.

5.2 Wetlands Area and King County Property Not Subject to System Development Charges. In consideration for the Port's payment to Auburn, the Wetlands Area and the King County Property will not be subject to any System Development Charges after the date of this Interlocal Agreement. Also, if the Port transfers the Excess Area to Auburn, Auburn will be responsible for payment of any System Development Charges imposed on the Excess Area after the date of this Interlocal Agreement. If the Port has paid any System Development Charges on the Excess Area after the date of this agreement and prior to the transfer of the Excess Area to Auburn, Auburn will reimburse the Port for these payments at the time the Excess Area is transferred to Auburn.

5.3 Credit Against Charge. If a legal challenge is filed regarding this Interlocal Agreement, a System Development Charge, or otherwise, which results in a System Development Charge being imposed on the Wetlands Area or the King County Property, the Port (and King County, in the case of the King County Property) shall receive a credit against the System Development Charge in an amount equal to the payment made by the Port in lieu of System Development Charge.

6. **Floodplain Change.** As a result of the Port's construction of wetlands, a part of the Wetlands Area will be lowered in elevation and will become an extension of the 100-year floodplain located northwest of the Subject Property. The Port will construct (or, if mutually agreed by Auburn and the Port, pay to Auburn the costs of construction and Auburn will construct) a channel between the Wetlands Area and the south side of S. 277th St. The channel will be constructed approximately in one of the alternate locations depicted in the drawing at Exhibit D (or as otherwise mutually agreed by Auburn and the Port), it will be approximately 1,000 feet in length, it will be of sufficient width and depth to adequately convey floodwaters between the Wetlands Area and the existing floodplain, and it may include an access road in or adjacent to it. If requested by the Port, Auburn will assist the Port in acquiring, at the Port's expense, a permanent easement across the property north of the Subject Property sufficient to permit the Port to (i) construct the channel and (ii) maintain the channel in perpetuity. Following additional work to connect the Port-constructed channel to the floodplain, Auburn will seek from the Federal Emergency Management Agency and other appropriate entities an amendment of official floodplain maps to reflect this change. The Port will pay to Auburn the sum of Forty Thousand Dollars (\$40,000) for the costs of preparing and processing this map amendment.

7. **Timing of Payments and Property Transfer.** This section governs the timing of all cash payments and the property transfer under this Interlocal Agreement including the payment and property transfer for the Street and Utility Improvements under Section 4 above, the system development charges under Section 5 above, and the floodplain mapping costs in Section 6 above.

7.1 **Initial Payment.** Within thirty (30) days following execution of this Interlocal Agreement by both parties, the Port will pay to Auburn the sum of One Hundred Thousand Dollars (\$100,000).

7.2 **Lot Line Adjustment or Subdivision for Excess Area.** The Port will apply to Auburn for a lot line adjustment or subdivision approval, if required by Auburn, to establish the Excess Area as a separate parcel capable of being conveyed to Auburn. Auburn will review and process the application in a timely, reasonable, and standard manner.

7.3 **Remaining Cash Payments.** The Port will make the remaining cash payments due under this Agreement as follows:

a. The Port shall pay to Auburn the sum of One Hundred Forty Two Thousand Dollars (\$142,000) within thirty (30) days following the Port's determination that Auburn has amended the zoning code to clarify that wetlands construction is a permitted use on the Subject Property and Auburn has issued all necessary permits for the proposed wetlands construction on the Subject Property.

b. The Port shall pay to Auburn the sum of Four Hundred Thousand Dollars (\$400,000) within thirty (30) days after the earlier of:

(i) the Port's determination that Auburn has amended the zoning code to clarify that wetlands construction is a permitted use on the Subject Property and Auburn has issued all necessary permits for the proposed wetlands construction on the Subject Property, and all applicable time periods for appealing the code amendment and permits have elapsed and either no appeal was filed or, if an appeal was filed, the appeal has been successfully concluded; or

(ii) four years have elapsed since the execution of this Interlocal Agreement and construction contracts for the Street and Utility Improvements have been executed; provided that, if construction contracts for the Street and Utility Improvements are executed within four years of execution of this Interlocal Agreement, the Port shall either (a) pay the \$400,000 to Auburn when the construction contracts are executed or (b) pay to Auburn one-half the reasonable costs of borrowing \$400,000 for the period of time between execution of the construction contracts and the date four years after execution of this Interlocal Agreement. .

7.4

Property Transfer

7.4.1 Timing of Property Transfer. The Port will transfer the Excess Area to Auburn in accordance with the transfer procedure of Section 11 below within 30 days after: (i) the Port's determination that all necessary permits have been issued for the proposed wetlands fill at the Airport and for the wetlands construction on the Subject Property, and all applicable time periods for appealing the permits have elapsed and either no appeal was filed or, if an appeal was filed, the appeal has been successfully concluded; and (ii) any necessary lot line adjustment or subdivision approval has been granted that establishes the Excess Area as a separate parcel capable of being conveyed; and (iii) the U.S. Army Corps of Engineers, Seattle District, has determined that construction of the wetlands on the Wetlands Area is complete (or, if earlier, the Port's determination that the Excess Area is no longer required as a staging area for construction of the wetlands on the Wetlands Area).

7.4.2 City May Require Cash Instead of Property. Due to the timing of infrastructure improvements in the area, Auburn will need to know, by a certain time, the size and configuration of the Excess Area to be transferred to Auburn. If the Port is not able to make a determination of the size and configuration of the Excess Area by that time, Auburn may choose to receive a cash payment instead of the property in order to keep its infrastructure improvements on schedule. Accordingly, if the Port has not transferred the Excess Area to Auburn by October 1, 1998, Auburn may require that the Port pay the cash value of twenty acres of Excess Area instead of transferring the Excess Area to Auburn. If Auburn determines that it is necessary to accept cash instead of property pursuant to this section, it will notify the Port in writing of its determination. The Port will then have thirty (30) days to notify Auburn in writing that it will transfer the Excess Area to Auburn as soon as the transfer procedures of Section 11 of this Interlocal Agreement are completed and that it will proceed to complete the transfer procedures of Section 11 immediately and in an expedited manner. If the Port does not provide such notice to Auburn, the Port shall pay to Auburn the cash value of twenty acres of Excess Area as follows: the Port shall pay 25% of the cash value as soon as the conditions of Section 7.3.a have been satisfied; and the Port shall pay the remaining 75% of the cash value as soon as the conditions of Section 7.3.b have been satisfied. If the

provisions of Section 7.3.b (ii) (b) are invoked, the borrowing costs shall include the costs of borrowing 75% of the cash value of the Excess Area.

8. Costs of Defending Against Appeal or Legal Action.

If an appeal is filed challenging the zoning code amendment or permits relating to construction of the wetlands on the Subject Property, or if a legal action is brought challenging the validity of this Interlocal Agreement, the Port will pay the attorneys fees and costs (including the costs of retaining consultants and expert witnesses) reasonably incurred by Auburn in defending against the appeal or legal action.

9. Easement for Wetlands Construction and Irrigation Water Line. Following transfer of the Excess Area to Auburn, the Port may need temporary access on and across the Excess Area to construct the wetlands on the Wetlands Area and to construct and maintain a temporary water line to the Wetlands Area. At the time of transfer of the Excess Area to Auburn, the Port may retain: (i) a temporary construction easement over the Excess Area for access and utilities for constructing the wetlands in the Wetlands Area; and (ii) a temporary easement on and across the Excess Area for a water line to the Wetlands Area for irrigating the wetlands vegetation during the initial growing seasons following planting.

The easements shall be substantially in the form attached as Exhibit E to this Interlocal Agreement.

10. Water Supply for Wetlands Area. Depending on the amount of rainfall, it may be necessary for the Port to irrigate the Wetlands Area during the initial growing seasons following planting (currently estimated to be three years). Auburn will provide water service to the Wetlands Area at a peak flow rate (e.g. gallons per minute), quantity (e.g. acre-feet per year), and during times that the Port reasonably determines is necessary for irrigating the Wetlands Area, not to exceed 275 gallons per minute and 4,000 cubic feet per year. The Port will pay Auburn's usual and customary fees and charges for the temporary water service.

11. Procedure for Transfer of Property to Auburn. The conveyance of the Excess Area to Auburn shall be accomplished in accordance with the following provisions.

11.1 Deed/Title. The conveyance shall be by Special Warranty Deed, subject to easements, encumbrances and

restrictions of record. The Port will satisfy or cause the removal of any financial liens or encumbrances on the Excess Area, except (i) taxes, which shall be prorated at closing, (ii) surface water management charges, assessments and similar governmental or utility liens, imposed by governmental entities other than Auburn or imposed by Auburn prior to the date of this Interlocal Agreement, which shall be prorated at closing, and (iii) assessments imposed by Auburn after the date of this Interlocal Agreement which will be paid by Auburn as provided above. The conveyance shall be free and clear of tenancies or parties in possession. If Auburn desires title insurance, Auburn shall be responsible for ordering and paying any premiums associated with title insurance coverage.

11.2 Review and Disclaimer. At least 30 days prior to the date of the conveyance, the Port will give to Auburn written notice of the proposed conveyance and the scheduled date of closing. During such 30-day period, Auburn shall have the right to inspect the property to be conveyed, the condition of title, and similar matters to confirm that Auburn desires to accept the conveyance. In the event Auburn elects not to accept the conveyance, Auburn shall so notify the Port within the 30-day period, in which event the obligation of the Port to convey the property offered to Auburn shall terminate. The failure of Auburn to give notice of non-approval within the 30-day period shall constitute Auburn's approval of the conveyance. Auburn's decision not to accept a conveyance shall not terminate this Interlocal Agreement as it applies to the remainder of the Subject Property and shall not impair or reduce the rights of the Port hereunder.

11.3 Closing Costs. Escrow fees, recording fees and similar closing costs (if any) shall be divided equally between Auburn and the Port. The Port shall be responsible for any real estate excise tax on the conveyance. Each party shall bear its own attorneys' and consultants' fees and costs.

11.4 **Other Documents.** Each party agrees to sign such other agreements and documents as may be reasonably required to complete the conveyance as provided herein including, to the extent appropriate, FIRPTA Certificates, excise tax affidavits, easements as required under this Interlocal Agreement, and similar documents.

12. **Waiver of Reimbursement Claim.** The Port acknowledges and agrees that its payments and property transfer to Auburn under this Interlocal Agreement are voluntarily made. The Port hereby waives any right it may have to later seek reimbursement from Auburn for these payments or property transfer.

13. **Assignment/Pledge of Interlocal Agreement.** Auburn may assign its rights under this agreement, or pledge this agreement as security, if necessary to borrow funds for the construction of the Street and Utility Improvements.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement as of the day first above mentioned.

CITY OF AUBURN

PORT OF SEATTLE

By: Charles A. Booth
Charles A. Booth
Mayor

By: Gary Grant
Pres., Port Commission

Date: Jan 21, 1998

Date: March 18, 1998

ATTEST:
By: Danielle E. Daskam
Danielle E. Daskam
City Clerk

By: [Signature]
Sect., Port Commission

Date: Jan 21, 1998

Date: March 18, 1998

APPROVED AS TO FORM:

[Signature]
MICHAEL J. REYNOLDS
CITY ATTORNEY

Date: 1/17/98

EXHIBITS

- A. Legal Description of Subject Property
- B. Aerial Photograph of Subject Property
- C. Drawing of Subject Property Showing Wetlands Area, King County Property, and Excess Area
- D. Drawing of Channel
- E. Form of Easement for Wetlands Construction and Irrigation Water Line

SHORT PLAT CERTIFICATE SCHEDULE A

(Continued)

LEGAL DESCRIPTION

THAT PORTION OF THE GEORGE E. KING DONATION LAND CLAIM NUMBER 40, IN SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A 6" X 6" SANDSTONE MONUMENT MARKING THE SOUTHWEST CORNER OF THE R. H. BEATTY DONATION LAND CLAIMS NUMBERS 37 AND 44; THENCE SOUTH 89°00'01" EAST ALONG THE SOUTH LINE OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTH LINE OF THE W. A. COX DONATION LAND CLAIM NUMBER 38 A DISTANCE OF 2,643.18 FEET TO A 2" DIAMETER CONCRETE-FILLED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°00'01" EAST, 2,255.93 FEET TO A POINT ON A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT RECORDED UNDER RECORDING NUMBER 8110150749; THENCE SOUTHERLY ALONG SAID BOUNDARY LINE TO A MONUMENT MARKED NO. 2 L.S. 11191, AS DESCRIBED IN BOUNDARY LINE AGREEMENT RECORDED UNDER RECORDING NUMBER 7912170640; THENCE NORTH 88°48'40" WEST ALONG AN EXISTING OLD WOOD AND WIRE FENCE REFERRED TO IN SAID BOUNDARY LINE AGREEMENT A DISTANCE OF 2,676.50 FEET TO A CONCRETE MONUMENT MARKED NO. 1-L.S. 11191 ON THE WEST LINE OF THE G. E. KING DONATION LAND CLAIM NUMBER 40; THENCE NORTH 00°52'46" EAST ALONG SAID WEST LINE, 80.25 FEET TO A 2" DIAMETER PLOGGED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM NUMBER 38; THENCE NORTH 01°48'09" EAST, ALONG SAID EAST LINE OF THE W. A. COX DONATION LAND CLAIM AND SAID WEST LINE OF THE G. E. KING DONATION LAND CLAIM, 2,648.23 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THEREFROM THAT PART LYING WITHIN SOUTH 277TH STREET, IF ANY; ALSO

EXCEPT THAT PORTION OF THE GEORGE E. KING DONATION LAND CLAIM NUMBER 40, IN SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A 6" X 6" SANDSTONE MONUMENT MARKING THE SOUTHWEST CORNER OF THE R. H. BEATTY DONATION LAND CLAIMS NUMBERS 37 AND 44; THENCE SOUTH 89°00'01" EAST ALONG THE SOUTH LINE OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTH LINE OF THE W. A. COX DONATION LAND CLAIM NUMBER 38, A DISTANCE OF 2,643.18 FEET TO A 2" DIAMETER CONCRETE-FILLED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID BEATTY DONATION LAND CLAIM AND THE NORTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°00'01" EAST, A DISTANCE OF 638.43 FEET; THENCE SOUTH 01°48'09" WEST, ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID W. A. COX DONATION LAND CLAIM, A DISTANCE OF 2,730.61 FEET TO A POINT ON THE BOUNDARY LINE ESTABLISHED BY AGREEMENT RECORDED UNDER RECORDING NUMBER 7912170640; THENCE NORTH 88°48'40" WEST A DISTANCE OF 637.11 FEET TO A CONCRETE MONUMENT MARKED NO. 1 - L.S. 11191 ON THE WEST LINE OF SAID G. E. KING DONATION LAND CLAIM; THENCE NORTH 00°52'46" EAST, ALONG SAID WEST LINE, A DISTANCE OF 80.25 FEET TO A 2" DIAMETER PLOGGED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM NUMBER 38; THENCE NORTH 01°48'09" EAST, ALONG SAID EAST LINE OF THE W. A. COX DONATION LAND

SEE NEXT PAGE

CHICAGO TITLE INSURANCE COMPANY

EXHIBIT A

SCHEDULE A

(Continued)

LEGAL DESCRIPTION

CLAIM AND SAID WEST LINE OF THE G. E. KING DONATION LAND CLAIM, A DISTANCE OF 2,648.25 FEET TO THE TRUE POINT OF BEGINNING; ALSO

EXCEPT THAT PORTION OF THE GEORGE E. KING DONATION LAND CLAIM NUMBER 40 IN SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A 6" X 6" SANDSTONE MONUMENT MARKING THE SOUTHWEST CORNER OF THE R. H. BEATTY DONATION LAND CLAIMS NUMBERS 37 AND 44;

THENCE SOUTH 89°00'01" EAST, ALONG THE SOUTH LINE OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTH LINE OF THE W. A. COX DONATION LAND CLAIM NUMBER 38 A DISTANCE OF 2,643.18 FEET TO A 2" DIAMETER CONCRETE-FILLED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM;

THENCE CONTINUING SOUTH 89°00'01" EAST 638.43 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 89°00'01" EAST 1,617.39 FEET TO A POINT ON A LINE ESTABLISHED BY BOUNDARY LINE AGREEMENT RECORDED UNDER RECORDING NUMBER 8110150749;

THENCE ALONG SAID LINE SOUTH 46°26'33" EAST 103.45 FEET;

THENCE SOUTH 34°19'49" EAST 211.01 FEET;

THENCE SOUTH 89°48'39" WEST 412.45 FEET;

THENCE SOUTH 01°43'38" EAST 263.60 FEET;

THENCE SOUTH 06°38'47" WEST 208.18 FEET;

THENCE NORTH 88°49'03" WEST 503.22 FEET;

THENCE NORTH 19°30'00" EAST 110.98 FEET;

THENCE NORTH 88°49'05" WEST 1,283.52 FEET;

THENCE NORTH 01°48'33" EAST ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID COX DONATION LAND CLAIM 1,008.50 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, UNDER AND ACROSS THE SOUTH 60 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

THAT PORTION OF THE GEORGE E. KING DONATION LAND CLAIM NUMBER 40, IN SECTION 31, TOWNSHIP 22 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A 6" X 6" SANDSTONE MONUMENT MARKING THE SOUTHWEST CORNER OF THE R. H. BEATTY DONATION LAND CLAIMS NUMBERS 37 AND 44; THENCE SOUTH 89°00'01" EAST ALONG THE SOUTH LINE OF SAID R. H. BEATTY DONATION LAND CLAIM AND THE NORTH LINE OF THE W. A. COX DONATION LAND CLAIM NUMBER 38, A DISTANCE OF 2,643.18 FEET TO A 2" DIAMETER CONCRETE-FILLED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID BEATTY DONATION LAND CLAIM AND THE NORTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°00'01" EAST, A DISTANCE OF 638.43 FEET; THENCE SOUTH 01°48'09" WEST, ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID W. A. COX DONATION LAND CLAIM, A DISTANCE OF 2,730.61 FEET TO A POINT ON THE BOUNDARY LINE ESTABLISHED BY AGREEMENT RECORDED UNDER RECORDING NUMBER 7912170540; THENCE NORTH 88°48'40" WEST

SCHEDULE A

(Continued)

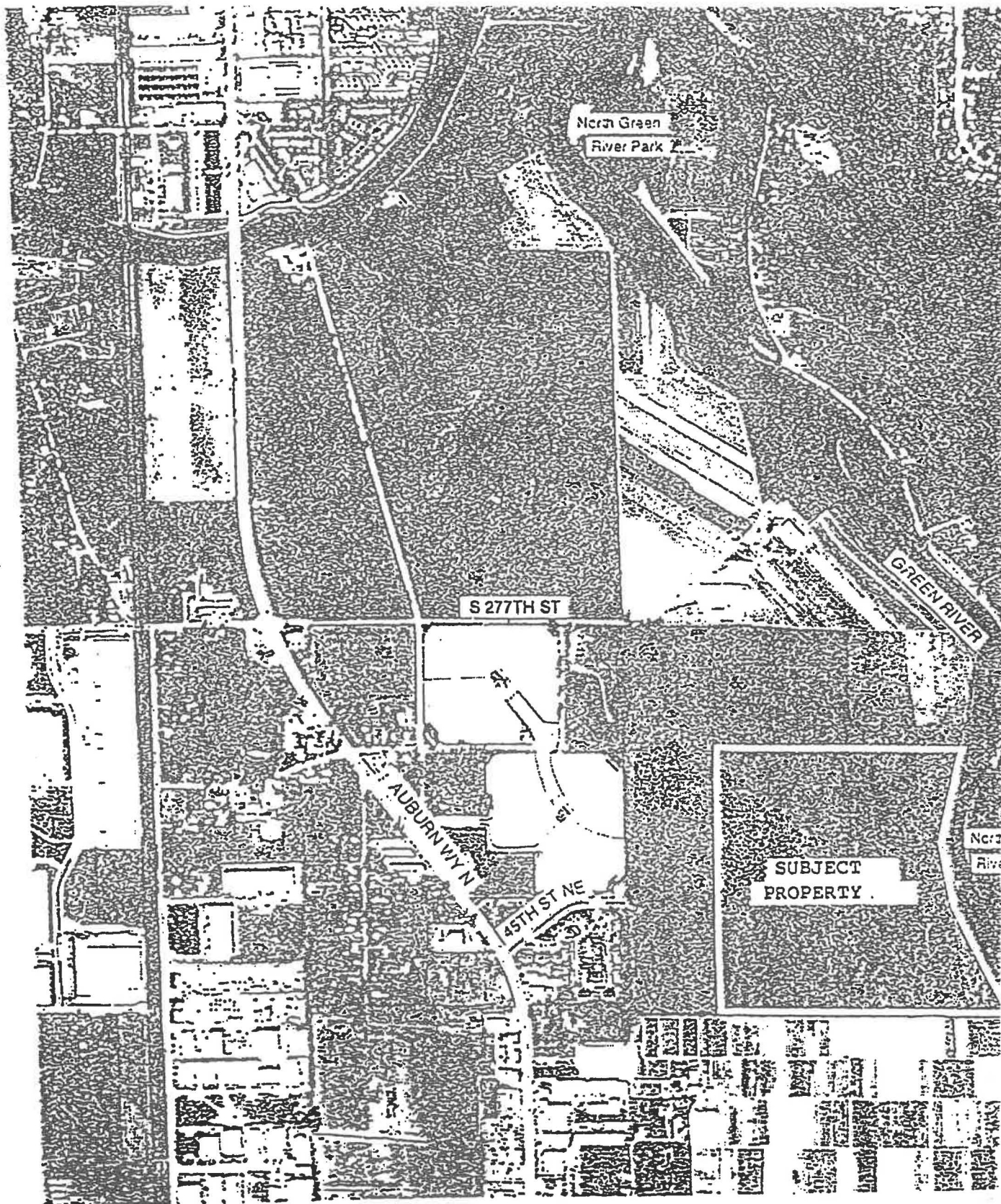
LEGAL DESCRIPTION

A DISTANCE OF 637.11 FEET TO A CONCRETE MONUMENT MARKED NO. 1 - LS 11191 ON THE WEST LINE OF SAID G. E. KING DONATION LAND CLAIM; THENCE NORTH 00°52'46" EAST, ALONG SAID WEST LINE, A DISTANCE OF 80.25 FEET TO A 2" DIAMETER PLUGGED IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID W. A. COX DONATION LAND CLAIM NUMBER 38; THENCE NORTH 01°48'09" EAST, ALONG SAID EAST LINE OF THE W. A. COX DONATION LAND CLAIM AND SAID WEST LINE OF THE G. E. KING DONATION LAND CLAIM, A DISTANCE OF 2,648.25 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION OF SAID EASEMENT, IF ANY, LYING WITHIN SOUTH 277TH STREET, ALSO

EXCEPT THOSE PORTIONS OF SAID EASEMENT LYING WITHIN "I" STREET AS CONVEYED TO THE CITY OF AUBURN BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 8911280990.

CHICAGO TITLE INSURANCE COMPANY.



Source: Parametrix 1995

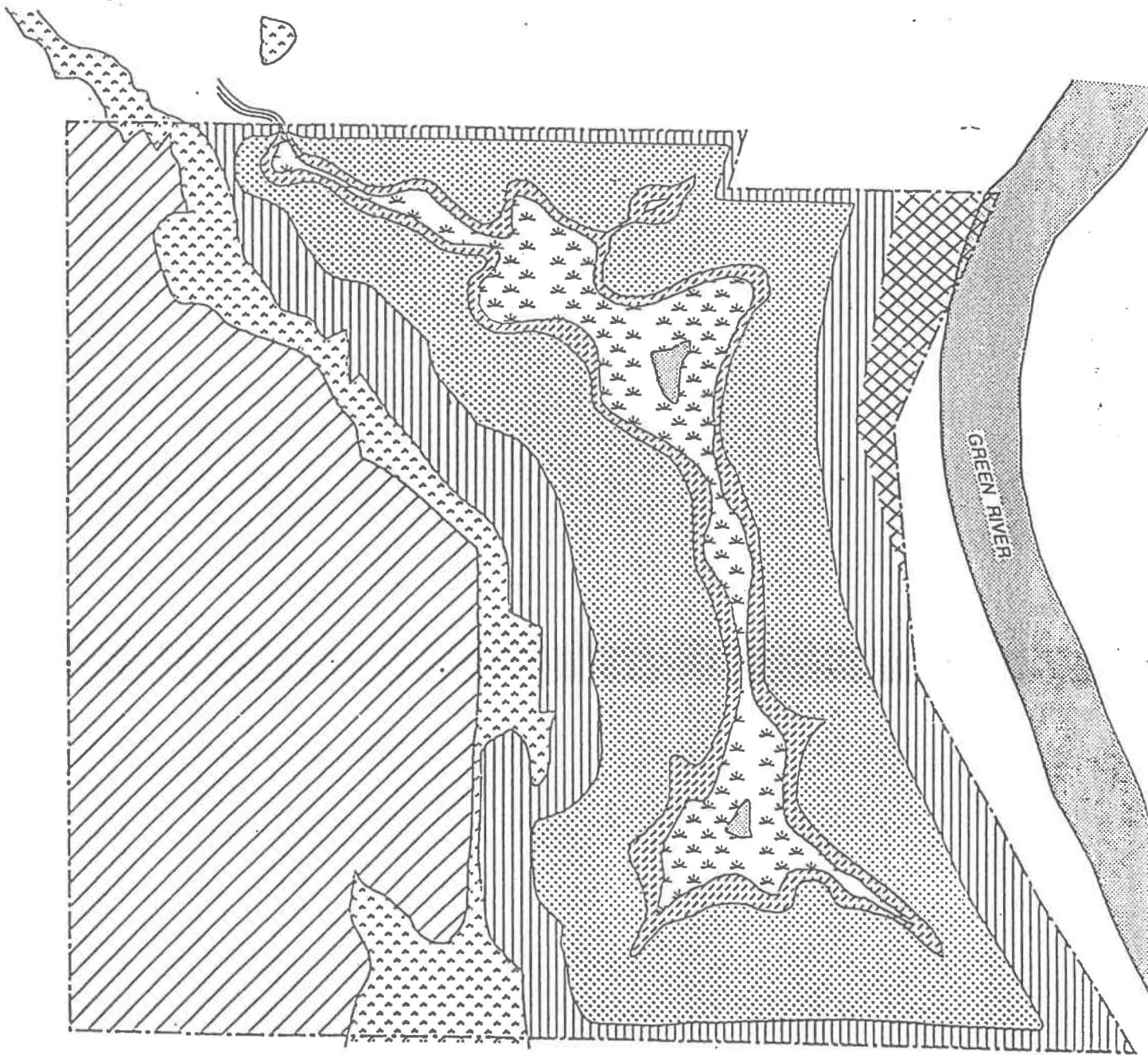
See "Ac A Forest Natural Resource Map" for 10-23-2012 11:34

APPROXIMATE
SCALE IN FEET

0 500 1000

N

EXHIBIT B



Port of Seattle MP#V55-2912-01(03) 8/97

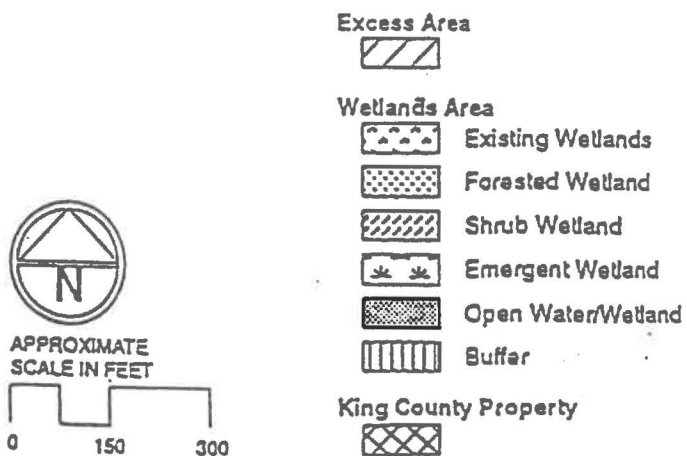
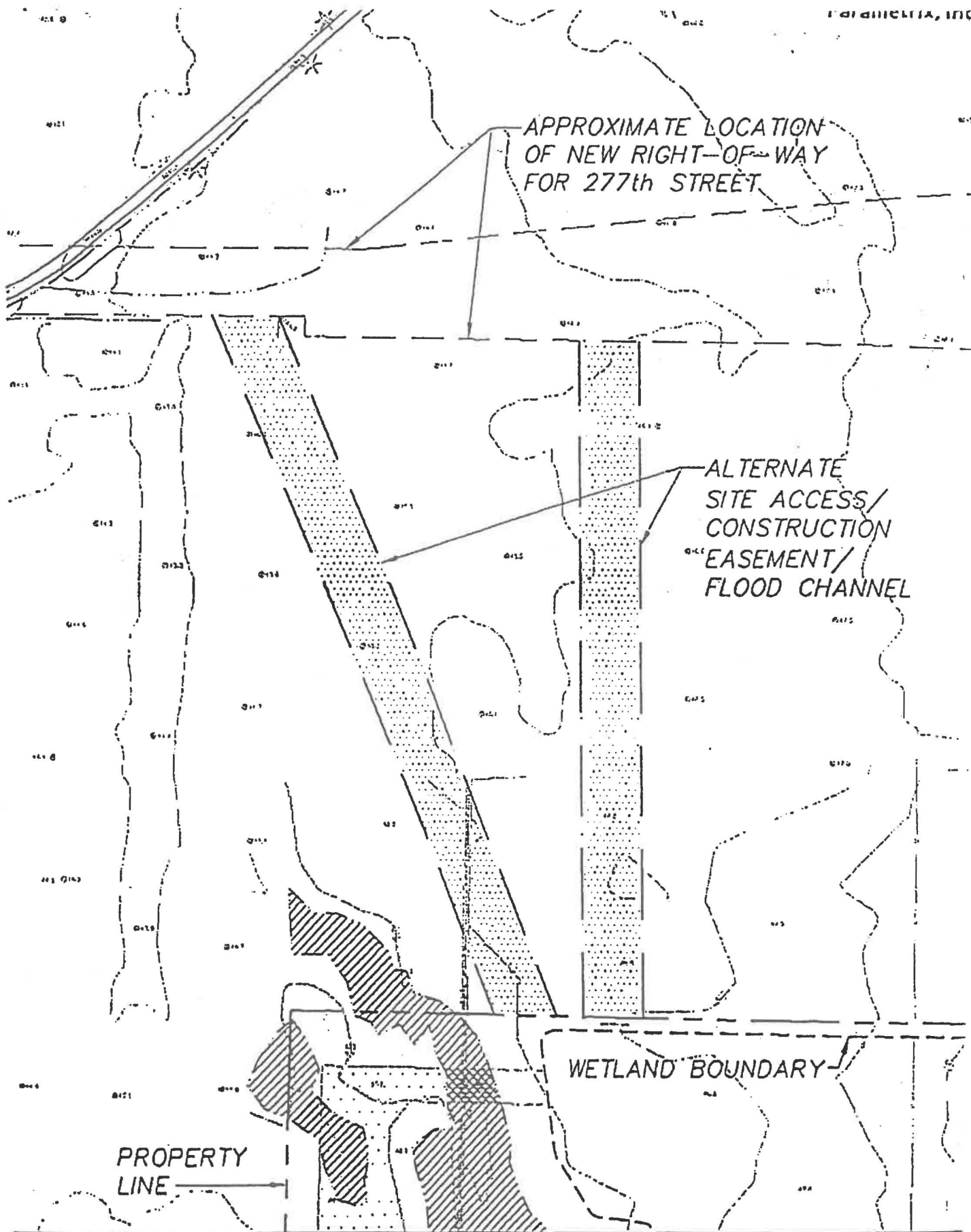


EXHIBIT C



FILE: F01
DATE: 12/17/37

0 100 200
SCALE IN FEET



Exhibit D
Flood Channel
Alternatives

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

FOSTER PEPPER & SHEFELMAN PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
Attn: Thomas M. Walsh

DECLARATION OF EASEMENT FOR WATER LINE AND ACCESS
(Port of Seattle)

Grantor: Port of Seattle, a Washington municipal corporation

Grantee: Port of Seattle, a Washington municipal corporation

Legal Description: Official legal description on Exhibit A

Assessor's Tax Parcel ID#: _____

Reference # (If applicable): N/A

This DECLARATION OF EASEMENT FOR WATER LINE AND ACCESS (the "Easement") is made and declared as of this ____ day of _____, 1997, by the Port of Seattle, a Washington municipal (the "Port").

RECITALS:

A. The Port is the owner of that certain real property located in King County, Washington and legally described on Exhibit A attached hereto and by this reference incorporated herein (the "Port Property").

B. Concurrently herewith, the Port is conveying to the City of Auburn, a municipal corporation of King County (the "City"), that certain portion of the Port Property described on Exhibit B attached hereto and by this reference incorporated herein (the "Auburn Property"). The portion of the Port Property retained by the Port is referred to herein as the "Retained Port Property."

C. In connection with the conveyance to the City of the Auburn Property, the Port is reserving unto itself and its successors and assigns an easement to provide access to

and the ability to construct, use, and maintain a water line across the Auburn Property for the benefit of the Retained Port Property.

NOW THEREFORE, the Port declares and establishes as follows:

1. Reservation of Easement. The Port hereby reserves for the benefit of the Retained Port Property, a non-exclusive easement over, under, upon and across that portion of the Auburn Property more specifically described on Exhibit C attached hereto and by this reference made a part hereof (the "Easement Area"), for the construction, replacement, repair, maintenance, use and operation of a water line and any and all necessary improvements for reasonable use and access to said water line.
2. Access. The Port hereby reserves for the benefit of the Retained Port Property, a non-exclusive easement over, upon, and across the Easement Area for access to the Retained Port Property.
3. Construction and Repairs. The Port shall pay all costs and expenses necessary to construct, operate, and maintain the Easement Area to provide access to the Retained Port Property and to install and maintain the water line therein, and shall comply with all applicable governmental laws applicable to the use and operation of the water line.
4. Indemnification. The Port hereby releases, indemnifies and promises to defend and save harmless the City from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorneys' fees incurred by the City in defense thereof, asserted or arising directly or indirectly on account of or out of acts or omissions of the Port in the exercise of the rights reserved herein; provided, however this paragraph does not purport to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the intentional acts or sole negligence of the City, or its agents or employees.
5. Binding Effect. The covenants and obligations contained in this Easement are not personal, but shall run with the land and be binding upon and inure to the benefit of the respective heirs, personal representatives, transferees or successors in interest.
6. Amendment. This Easement may not be modified, amended or terminated without the prior written approval of the then owner of the property who is benefited or burdened by the provisions of any amendment to this Easement.
7. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the state of Washington.

EXECUTED AND EFFECTIVE as of the date first written above.

PORT OF SEATTLE, a Washington municipal
corporation

By: _____
Its: _____

Accepted and Approved By:

CITY OF AUBURN, a Washington
municipal corporation of King County

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of the Port of Seattle, a Washington municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 1997.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON)

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of the City of Auburn, a Washington municipal corporation of King County, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this day of , 1997.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires

**CITY OF AUBURN
AGENDA BILL APPROVAL FORM**

Agenda Subject: Ordinance 5206		Date: December 30, 1998	
Department: Planning	Attachments: Ordinance 5206	Budget Impact:	
Administrative Recommendation:			
City Council introduce and adopt Ordinance 5206.			
Ordinance 5206 would authorize the final plat for West Beverly Hill No. 4.			
HE\ORD-RES\ORD5206 L0104-1 O3.5 PLT0002-94R			
Background Summary: Committees & Commissions: Arts Comm. ☒ Hearing Examin. Human Resources Library Board Park Board Planning Comm. Other ->	Council Committees: Finance Municipal Serv. Planning & CD ☒ Public Works	Departments & Divisions: Airport ☒ Building Cemetery Finance ☒ Fire ☒ Legal Library	☒ M&O Mayor Parks Personnel ☒ Planning ☒ Police ☒ Public Works
ACTION: Committee Approval: Yes ___ No ___ Council Approval: Yes ___ No ___ Referred to _____ Until _____ Tabled Until _____			
Call for Hearing ___/___/___ -1-1-1-		___/___/___	

Councilmember: Borden	Staff: Krauss
Meeting Date: January 4, 1999	Item Number: VII.A.2
	Page: 1

ORDINANCE NO. 5 2 0 6

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, APPROVING THE FINAL PLAT OF WEST BEVERLY HILL DIVISION NO. 4 A 95-LOT SINGLE-FAMILY SUBDIVISION LOCATED EAST OF "W" STREET NW AND WEST OF THE TERMINUS OF 15TH STREET NW, WITHIN THE CITY OF AUBURN, WASHINGTON.

WHEREAS, at the regular meeting of the Auburn City Council held on December 21, 1998, the Auburn City Council approved the Final Plat of West Beverly Division No. 4, Application No. PLT0002-94R, based on the following:

FINDINGS OF FACT

1. The Final Plat as submitted is in compliance with the Preliminary Plat approved by Resolution No. 2774 and amended by Resolution No. 2844 and all applicable conditions have been met. West Beverly Hill No. 4, is a 95-lot single-family subdivision located easterly of "W" Street NW and west of the terminus of 15th Street NW, within the City of Auburn.

Ordinance No. 5206

December 23, 1998

Page 1

2. The Final Plat is in compliance with the Zoning and Land Division Ordinance and is consistent with the City's engineering standards.

CONCLUSIONS OF LAW

1. The Final Plat is in compliance and in conformity with applicable Zoning and Land Division Ordinances and other applicable land use controls.
2. The Plat is consistent with the Comprehensive Plan.
3. The Plat meets the requirements of Chapter 58.17 RCW.

Based on the foregoing Findings of Fact and Conclusions,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The Plat of West Beverly Hill No. 4, a 95-lot single-family subdivision located easterly of "W" Street NW and west of the terminus of 15th Street NW, within the City of Auburn, Washington, which Plat is on file with the City Clerk of the City of Auburn, and which plat is legally described on the face of the Final Plat and attached as Exhibit "A", is hereby approved.

Section 2. Pursuant to RCW 58.17.170, the final plat conforms to all terms of the preliminary plat approval and complies with all requirements of Chapter 58.17 RCW and applicable state and local laws.

Section 3. Upon the passage, approval and publication of this Ordinance as provided by law, the City Clerk of the City of Auburn shall cause this Ordinance to be recorded in the office of the King County Auditor.

Section 4. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 5. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

INTRODUCED: _____

PASSED: _____

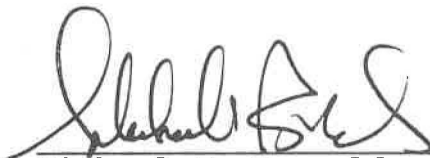
APPROVED: _____

CHARLES A. BOOTH
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Michael J. Reynolds,
City Attorney

Published: _____

LEGAL DESCRIPTION OF PROPERTY

The West half of the Southeast quarter of Section 11, Township 21 North, Range 4 East W.M.;

EXCEPT the plat of West Beverly Hill Division I, as per plat recorded in Volume 140 of Plats, pages 97 through 100, Records of King County;

AND EXCEPT the plat of West Beverly Hill Division II, as per plat recorded in Volume 153 of Plats, pages 1 through 3, Records of King County;

AND EXCEPT that portion of the West half of the Southeast quarter of Section 11, Township 21 North, Range 4 East W.M., more particularly described as follows:

BEGINNING at the Northeast corner of the West half of the Southeast quarter of Section 11; THENCE North $89^{\circ} 56' 54''$ West along the North line of said Southeast quarter, 167.57 feet to an intersection with an arc of a curve to the left, the radius point of said curve bears South $29^{\circ} 32' 25''$ East, 230.00 feet;

THENCE along the arc of said curve, a distance of 237.92 feet to a point of tangency, said curve having a central angle of $59^{\circ} 16' 07''$ and a radius of 230.00 feet;

THENCE South $01^{\circ} 11' 28''$ West, 625.11 feet to a point of curvature, the radius point of said curve bears North $88^{\circ} 48' 32''$ West, a distance of 320.00 feet;

THENCE along a curve to the right, an arc distance of 30.30 feet, said curve having a central angle of $05^{\circ} 25' 30''$ and a radius of 320.00 feet;

THENCE South $83^{\circ} 23' 02''$ East along a radial line of said curve, 60.00 feet to a point;

THENCE South $88^{\circ} 48' 32''$ East 221.70 feet, more or less, to the East line of said West half of the Southeast quarter of Section 11;

THENCE North $01^{\circ} 1' 28''$ East along said East line 862.07 feet, more or less to the POINT OF BEGINNING;

Situate in the City of Auburn, County of King, State of Washington.

Exhibit "A"
Ordinance No. 5206



**CITY OF AUBURN
AGENDA BILL APPROVAL FORM**

Agenda Subject: Resolution No. 3049	Date: 01-04-99
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Department: FIRE	Attachments: RESOLUTION NO. 3049	Budget Impact:
Administrative Recommendation: City Council adopt Resolution No. 3049.		
Background Summary: Resolution 3049 is a Resolution of the City Council of the City of Auburn, Washington, authorizing the Mayor and City Clerk of the City of Auburn to execute a renewal of the Fire Protection Contract between the City and the Washington State Parks and Recreation Commission for a period of two years.		
F0104-1 O2.0		
Reviewed by Council Committees & Commissions: ☐ Arts Commission ☐ Hearing Examin. ☐ Human Resources ☐ Library Board ☐ Park Board ☐ Planning Comm.: ☐ Other ->		Reviewed by Departments & Divisions: ☐ Airport ☐ Building ☐ Cemetery ☐ Finance ☐ Fire ☐ Legal ☐ Library
COUNCIL COMMITTEES: ☐ Finance ☐ Municipal Services ☐ Planning & CD ☐ Public Works		☐ M&O ☐ Mayor ☐ Parks ☐ Personnel ☐ Planning ☐ Police ☐ Public Works
Approved ☐ Call for Hearing ☐ ☐ ☐ ☐ Committee Approval Yes ☐ No ☐		Referred to ☐ Until ☐ ☐ ☐ Tabled ☐ Until ☐ ☐ ☐
ACTION: Committee Approval: Yes ☐ No ☐ Council Approval: Yes ☐ No ☐ Referred to ☐ Until ☐ ☐ ☐ Tabled ☐ Until ☐ ☐ ☐		

Councilmember: Poe	Staff: Johnson
Meeting Date: January 4, 1999	Page: 1

Item Number: VII.B.1

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1 the City to provide fire protection within and in the vicinity
2 of its boundaries. A copy of said Agreement designated
3 Exhibit "A", is attached hereto and incorporated by reference
4 herein.

5 Section 2. The Mayor is hereby authorized to implement
6 such administrative procedures as may be necessary to carry
7 out the directives of this legislation.

8 DATED and SIGNED this 4th day of January, 1999.

9
10 CITY OF AUBURN

11
12
13 _____
14 CHARLES A. BOOTH
MAYOR

15 ATTEST:

16
17
18 _____
19 Danielle E. Daskam,
City Clerk

20
21 APPROVED AS TO FORM:

22
23 
24 _____
25 Michael J. Reynolds,
City Attorney

1 WASHINGTON STATE PARKS AND RECREATION COMMISSION

2 RENEWAL OF FIRE PROTECTION CONTRACT

3 For park facilities within City of Auburn boundaries located
4 at Puget Sound Region H.Q. State Parks(s)

5 THIS CONTRACT entered into on the effective date hereof
6 between the Washington State Parks and Recreation Commission,
7 hereinafter referred to as the "STATE", and the City of
8 Auburn, hereinafter referred to as the "CONTRACTOR",
9 WITNESSETH:

10 WHEREAS, CONTRACTOR is organized and equipped to give
11 fire protection services within and in the vicinity of its
12 boundaries, and the STATE desires that the CONTRACTOR give
13 such protection services to certain facilities owned by the
14 STATE, known as Puget Sound Region H.Q. State Park(s),
15 THEREFORE:

16 Section 1. Beginning on the effective date of approval
17 by the STATE as shown below, the CONTRACTOR shall furnish fire
18 protection to the STATE'S facilities as named above and lying
19 within the City of Auburn, Washington.

20 Section 2. STATE shall pay annually in advance on July
21 1, during each year of this Contract, FIVE HUNDRED SEVENTY-
22 THREE DOLLARS and 89/100 (\$573.89) (an amount based on the
23 estimated square footage of facilities, 17,934 square feet at
24 a rate of 3.2¢ per square foot), for fire protection services
25 necessary for the protection and safety of personnel and
26

1 property pursuant to the provisions of Chapter 39.34 and 35.21
2 RCW as now or hereafter amended. Changes in the actual square
3 footage during the contract period shall not affect the
4 contract amount established herein.

5 Section 3. The STATE and the CONTRACTOR each agree to be
6 responsible and assume liability for their own wrongful and/or
7 negligent acts or omissions or those of their officers,
8 agents, or employees to the fullest extent required by law and
9 further agree to save, indemnify, defend, and hold the other
10 party harmless from any such liability. In the case of
11 negligence of more than one party, any damages allowed shall
12 be levied in proportion to the percentage of negligence
13 attributable to each party.

14 Section 4. This Contract shall be for a period of two
15 (2) years effective September 19, 1998 and continuing to
16 September 19, 2000 and shall be subject to renewal and change
17 in square foot rate upon mutual written agreement of the
18 parties.

19 Section 5. CONTRACTOR hereby acknowledges that the STATE
20 is an equal opportunity employer and that all Washington State
21 Parks are developed and maintained for the enjoyment of all
22 persons regardless of race, creed, color, religion, national
23 origin, sex, marital status, age, disabled and Vietnam era
24

1 veterans or the presence of any disability; and, CONTRACTOR
2 agrees not to discriminate against any client, employee, or
3 applicant for employment because of any of the aforementioned
4 reasons.

5 Section 6. Any dispute arising out of the conduct of
6 this Contract shall first be attempted to be settled through
7 negotiations by appointed representatives of the parties
8 involved. Each party shall appoint a representative to a
9 dispute panel. Those representatives shall mutually agree on
10 a third person to chair the panel. The dispute panel shall
11 thereafter decide the dispute with the majority prevailing.
12 The determination of the dispute panel shall be non-binding.
13 However, neither party shall have recourse to the courts
14 unless an attempt has been made to settle the dispute under
15 the mechanism set forth herein.

16 Section 7. This Contract may not be modified nor amended
17 except upon the mutual written agreement of the parties
18 hereto.

19 Section 8. This Contract may be terminated upon the
20 mutual written consent of the parties. In the event of
21 cancellation or termination of this Contract, for any reason,
22 the Contractor shall reimburse the State a prorated amount for
23

1 the remainder of the fiscal year from the date of said
2 cancellation or termination through June 30 following.

3 DATED this _____ day of _____, 199__.

4
5 CONTRACTOR: CITY OF AUBURN

WASHINGTON STATE PARKS AND
RECREATION COMMISSION

6
7
8 BY: _____
MAYOR

BY: _____
Assistant Director,
Operations

9
10 DATE: _____

DATE: _____

11
12 ATTEST:

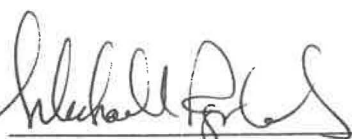
APPROVED AS TO FORM:

13
14
15 _____
Danielle E. Daskam,
City Clerk

Assistant Attorney General

16 DATE: _____

17
18 APPROVED AS TO FORM:

19
20 
21 _____
Michael J. Reynolds,
City Attorney