



# King County

1200 King County  
Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Meeting Agenda

### Transportation, Economy and Environment Committee

**Councilmembers:** Rod Dembowski, Chair; Claudia Balducci, Vice Chair;  
Jeanne Kohl-Welles, Kathy Lambert, Joe McDermott, Dave Upthegrove, Pete von Reichbauer

**Staff:** Mary Bourguignon, Lead Staff (206-477-0873)  
Angelica Calderon, Committee Assistant (206-477-0874)

1:30 PM

Wednesday, August 24, 2016

Room 1001

#### SPECIAL MEETING

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. Call to Order

To show a PDF of the written materials for an agenda item, click on the agenda item below.

2. Roll Call

3. Approval of Minutes pp. 3-6

*Minutes of August 16, 2016 meeting.*

4. Public Comment

#### Discussion and Possible Action

5. Proposed Ordinance No. 2016-0155 pp. 7-150

AN ORDINANCE relating to comprehensive planning and permitting; amending Ordinance 8421, Section 3, as amended, and K.C.C. 14.56.020, Ordinance 8421, Section 4, as amended, and K.C.C. 14.56.030, and Ordinance 13147, Section 19, amended, and K.C.C. 20.18.030, Ordinance 10870, Section 330, as amended, and K.C.C. 21A.08.030, Ordinance 10870, Section 332, as amended, and K.C.C. 21A.08.050, Ordinance 10870, Section 333, as amended, and K.C.C. 21A.08.060, Ordinance 10870, Section 334, as amended, and K.C.C. 21A.08.070, Ordinance 10870, Section 335, as amended, and K.C.C. 21A.08.080, Ordinance 10870, Section 336, as amended, and K.C.C. 21A.08.090, Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100, Ordinance 13274, Section 4, as amended, and K.C.C. 21A.37.020, Ordinance 13733, Section 10, as amended, and K.C.C. 21A.37.110, adding new sections to K.C.C. chapter 21A.06, adding new sections to K.C.C.



*Sign language and communication material in alternate formats can be arranged given sufficient notice (206-1000).  
TDD Number 206-1024.*

*ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.*



chapter 21A.42, decodifying K.C.C. 20.54.010 and repealing Ordinance 8421, Section 2, and K.C.C. 14.56.010, Ordinance 3064, Section 2, and K.C.C. 20.54.020, Ordinance 3064, Section 3, as amended, and K.C.C. 20.54.030, Ordinance 3064, Section 4, as amended, and K.C.C. 20.54.040, Ordinance 3064, Section 5, and K.C.C. 20.54.050, Ordinance 3064, Section 6, as amended, and K.C.C. 20.54.060, Ordinance 3064, Section 7, as amended, and K.C.C. 20.54.070, Ordinance 3064, Section 8, as amended, and K.C.C. 20.54.080, Ordinance 3064, Section 9, as amended, and K.C.C. 20.54.090, Ordinance 3064, Section 10, as amended, and K.C.C. 20.54.100, Ordinance 3064, Section 11, as amended, and K.C.C. 20.54.110, Ordinance 3064, Section 12, and K.C.C. 20.54.120, Ordinance 3064, Section 13, and K.C.C. 20.54.130 and Ordinance 7889, Section 4, as amended, and K.C.C. 26.08.010

**Sponsors:** Mr. Dembowski

*Christine Jensen, Council Staff*

6. [Proposed Ordinance No. 2016-0349](#) pp. 151-272

AN ORDINANCE relating to the sale of environmental attributes held by the county; authorizing the transit division to enter into an agreement with Element Markets Renewable Energy, LLC, for the sale of Renewable Identification Numbers and other environmental attributes associated with the transit division's electric trolley and battery bus fleets.

**Sponsors:** Mr. Dembowski

*Greg Doss and Jenny Giambattista, Council Staff*

7. [Proposed Ordinance No. 2016-0339](#) pp. 273-335

AN ORDINANCE relating to the sale of biomethane and related environmental attributes held by the county; authorizing the wastewater treatment division to enter into an agreement for the sale of biomethane and environmental attributes associated with purified biomethane produced at the South wastewater treatment plant to IGI Resources, Inc.

**Sponsors:** Mr. Dembowski

*Mike Reed, Council Staff*

## Adjournment



# King County

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Seattle, WA 98104

## Meeting Minutes Transportation, Economy and Environment Committee

*Councilmembers: Rod Dembowski, Chair; Claudia Balducci, Vice  
Chair;  
Jeanne Kohl-Welles, Kathy Lambert, Joe McDermott, Dave  
Upthegrove, Pete von Reichbauer*

*Staff: Mary Bourguignon, Lead Staff (206-477-0873)  
Angelica Calderon, Committee Assistant (206-477-0874)*

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9:30 AM

Tuesday, August 16, 2016

Room 1001

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Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. **Call to Order**

*Chair Dembowski called the meeting to order at 9:38 a.m.*

2. **Roll Call**

**Present:** 7 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer, Ms. Kohl-Welles and Ms. Balducci

3. **Approval of Minutes**

*Councilmember von Reichbauer moved the approval of the minutes of the July 19, 2016 meeting. Seeing no objections, the minutes were approved as presented.*

4. **Public Comment**

*There was no public comment.*

### **Consent**

5. **Proposed Motion No. 2016-0321**

A MOTION confirming the executive's appointment of David Johnson, who resides in council district six, to the King County transit advisory commission.

**Sponsors:** Ms. Balducci

**A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass Consent. The motion carried by the following vote:**

**Yes:** 7 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer, Ms. Kohl-Welles and Ms. Balducci

## Discussion and Possible Action

### 6. Proposed Ordinance No. 2016-0155

AN ORDINANCE relating to comprehensive planning and permitting; amending Ordinance 8421, Section 3, as amended, and K.C.C. 14.56.020, Ordinance 8421, Section 4, as amended, and K.C.C. 14.56.030, and Ordinance 13147, Section 19, amended, and K.C.C. 20.18.030, Ordinance 10870, Section 330, as amended, and K.C.C. 21A.08.030, Ordinance 10870, Section 332, as amended, and K.C.C. 21A.08.050, Ordinance 10870, Section 333, as amended, and K.C.C. 21A.08.060, Ordinance 10870, Section 334, as amended, and K.C.C. 21A.08.070, Ordinance 10870, Section 335, as amended, and K.C.C. 21A.08.080, Ordinance 10870, Section 336, as amended, and K.C.C. 21A.08.090, Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100, Ordinance 13274, Section 4, as amended, and K.C.C. 21A.37.020, Ordinance 13733, Section 10, as amended, and K.C.C. 21A.37.110, adding new sections to K.C.C. chapter 21A.06, adding new sections to K.C.C. chapter 21A.42, decodifying K.C.C. 20.54.010 and repealing Ordinance 8421, Section 2, and K.C.C. 14.56.010, Ordinance 3064, Section 2, and K.C.C. 20.54.020, Ordinance 3064, Section 3, as amended, and K.C.C. 20.54.030, Ordinance 3064, Section 4, as amended, and K.C.C. 20.54.040, Ordinance 3064, Section 5, and K.C.C. 20.54.050, Ordinance 3064, Section 6, as amended, and K.C.C. 20.54.060, Ordinance 3064, Section 7, as amended, and K.C.C. 20.54.070, Ordinance 3064, Section 8, as amended, and K.C.C. 20.54.080, Ordinance 3064, Section 9, as amended, and K.C.C. 20.54.090, Ordinance 3064, Section 10, as amended, and K.C.C. 20.54.100, Ordinance 3064, Section 11, as amended, and K.C.C. 20.54.110, Ordinance 3064, Section 12, and K.C.C. 20.54.120, Ordinance 3064, Section 13, and K.C.C. 20.54.130 and Ordinance 7889, Section 4, as amended, and K.C.C. 26.08.010

**Sponsors:** Mr. Dembowski

*Christine Jensen, Council Staff, briefed the Committee on the legislation and answered questions from the members. Ivan Miller, KCCP Manager, Strategy and Budget was present to comment and answer questions from the members.*

**This matter was Deferred**

### 7. Proposed Ordinance No. 2016-0159

AN ORDINANCE relating to comprehensive planning; adopting the 2016 King County real property asset management plan in response to the 2015/2016 Biennial Budget Ordinance, Ordinance 17941, Section 121, as amended by Ordinance 18110, Section 55, Proviso P1 and to K.C.C. 20.12.100; and amending Ordinance 10810, Section 1, as amended, and K.C.C. 20.12.100.

**Sponsors:** Mr. Upthegrove

*Christine Jensen, Council Staff, briefed the Committee on the legislation and answered questions from the members. Ivan Miller, KCCP Manager, Strategy and Budget was present to comment and answer questions from the members.*

**This matter was Deferred**

### 8. Proposed Ordinance No. 2016-0339

AN ORDINANCE relating to the sale of biomethane and related environmental attributes held by the county; authorizing the wastewater treatment division to enter into an agreement for the sale of biomethane and environmental attributes associated with purified biomethane produced at the South wastewater treatment plant to IGI Resources, Inc.

**Sponsors:** Mr. Dembowski

*Mike Reed, Council Staff and Kendall Moore, Jenny Giambattista and Greg Doss were present to brief and answer questions from the members. Megan Smith, Director of Climate and Energy Initiatives, Office of the Executive briefed the Committee with a PowerPoint Presentation and answered questions from the members, Garry Prince, Special Project/Economist, Metro Transit was also present to answered questions from the members.*

**This matter was Deferred**

**9. Proposed Ordinance No. 2016-0349**

AN ORDINANCE relating to the sale of environmental attributes held by the county; authorizing the transit division to enter into an agreement with Element Markets Renewable Energy, LLC, for the sale of Renewable Identification Numbers and other environmental attributes associated with the transit division's electric trolley and battery bus fleets.

**Sponsors:** Mr. Dembowski

*Jenny Giambattista and Greg Doss, Council Staff, briefed the Committee on the legislation and answer questions from the members.*

**This matter was Deferred**

**10. Proposed Ordinance No. 2016-0387**

AN ORDINANCE relating to public transportation; requiring a transit restructure impact study for certain transit service changes that require approval by ordinance, and making technical corrections; amending Ordinance 11033, Section 5 and K.C.C. 28.94.020, adding new sections to K.C.C. chapter 28.92, adding a new section to K.C.C. chapter 28.94 and repealing Ordinance 11962, Section 3, and K.C.C. 28.92.050.

**Sponsors:** Mr. Dembowski

*Paul Carlson, Council Staff, briefed the Committee on the legislation and answer questions from the members.*

**This matter was Deferred**

## **Other Business**

*There was no other business to come before the Committee.*

**11. Grant Alerts**

## **Adjournment**

*The meeting was adjourned at 11:53 a.m.*

Approved this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Clerk's Signature



**King County**

**Metropolitan King County Council  
Transportation, Economy and Environment Committee**

**STAFF REPORT**

<b>Agenda Item:</b>	5	<b>Name:</b>	Christine Jensen
<b>Proposed No.:</b>	2016-0155	<b>Date:</b>	August 24, 2016

**SUBJECT**

A briefing on the proposed 2016 update to the King County Comprehensive Plan (KCCP).

**SUMMARY**

This year marks a four-year, “major” update to the KCCP, which allows for consideration of substantive policy changes to the Plan and potential revisions to the Urban Growth Area (UGA). The Executive transmitted the proposed 2016 KCCP to the Council on March 1. The Council is in the process of reviewing and deliberating on the Executive’s proposal. The Council’s review thus far has included nine briefings in the Transportation, Economy and Environment Committee (TrEE). Two additional TrEE briefings are scheduled over the next month, which will lead up to possible action in TrEE on September 20 and possible final adoption at the full Council in late 2016.

Today’s briefing will provide an update on the land use and zoning amendment proposals that are currently before the Council for consideration as part of the 2016 KCCP update.

**BACKGROUND**

The KCCP is the guiding policy document for land use and development regulations in unincorporated King County, as well as for regional services throughout the County, including transit, sewers, parks, trails, and open space. The King County Code dictates the allowed frequency for updates to the KCCP.

**Annual cycle.** On an annual basis, only technical changes and other limited amendments to the KCCP are allowed to be adopted.<sup>1</sup> This is known as the “annual

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<sup>1</sup> K.C.C. 20.18.030

cycle.” While the Code states that the KCCP “may be amended” annually,<sup>2</sup> it is not required to be reviewed or amended on an annual basis.

**Four-year cycle.** Substantive changes to policy language and amendments to the UGA boundary<sup>3</sup> are only allowed to be considered once every four years.<sup>4,5</sup> This is known as the “four-year cycle.” The Code requires the County to complete a “comprehensive review” of the KCCP once every four years in order to “update it as appropriate” and ensure continued compliance with the Growth Management Act (GMA).<sup>6</sup> The Code requires the Executive to transmit to the Council a proposed ordinance amending the KCCP once every four years.<sup>7</sup> However, the Code does not require the Council to adopt a KCCP update during the four-year cycle.<sup>8</sup> This year’s four-year review of the KCCP is the fifth major review since 2000.

**GMA update requirements.** It is worth highlighting how the County’s KCCP cycles fit into the GMA planning cycles. The GMA requires cities and counties to update their comprehensive plans once every eight years.<sup>9</sup> The GMA authorizes, but does not require, cities and counties to amend their comprehensive plans annually.

For King County, the GMA-established plan update deadlines are in 2015 and 2023. For the purposes of the GMA, the 2012 update to the KCCP<sup>10</sup> satisfied the State’s requirement to update the County’s comprehensive plan by 2015. The GMA does not require the County to complete another comprehensive update until 2023. Under the County’s current policies and Code, the County will complete this update in the 2020 four-year cycle.

Under the County’s policies and regulations, the 2016 review of the KCCP constitutes a “four-year amendment.” However, under GMA requirements, the County’s 2016 review is subject to the rules applicable to an “annual amendment,” which is not a required action.

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<sup>2</sup> K.C.C. 20.18.030(B)

<sup>3</sup> Note that Four-to-One UGA proposals may be considered during the annual cycle (see K.C.C. 20.18.030(B)(10), 20.18.040(B)(2), 20.18.170, and 20.18.180).

<sup>4</sup> From year 2000 and forward. Substantive updates to the KCCP can be considered on a two-year cycle, but only if: “the county determines that the purposes of the KCCP are not being achieved as evidenced by official population growth forecasts, benchmarks, trends and other relevant data” (K.C.C. 20.18.030(C)). This determination must be authorized by a motion adopted by the Council. To date, this option has not been used by the County.

<sup>5</sup> The annual Capital Improvement Plan (CIP), Transportation Needs Report (TNR), and school capital facilities plans are elements of the KCCP but are adopted in conjunction with the County budget, and thus follows separate timeline, process, and update requirements (see K.C.C. 20.18.060 and 20.18.070).

<sup>6</sup> K.C.C. 20.18.030(C)

<sup>7</sup> K.C.C. 20.18.060

<sup>8</sup> If the Council decides not to adopt a four-year update, the County may still need to formally announce that it has completed the required review; the mechanism to do that, whether legislatively or not, would need to be discussed with legal counsel.

<sup>9</sup> Revised Code of Washington (RCW) 36.70A.130

<sup>10</sup> Ordinance 17485

**Actions to date for the 2016 KCCP.** In May 2015, the Council adopted the Scoping Motion<sup>11</sup> for the 2016 KCCP update, a link to which is provided at the end of the staff report. The Scoping Motion outlined the key issues the Council and Executive identified for specific consideration in the forthcoming KCCP update. While the scope of work approved through the Scoping Motion was intended to be as thorough as possible, it does not establish the absolute limit on the scope of issues that can be considered. Based on subsequent public testimony, new information, or Council initiatives, other issues may also be considered by the Executive or the Council – except for UGA expansion proposals, which must follow the limitations of KCCP policy RP-107<sup>12</sup> as discussed in the Area Zoning Studies and Land Use Map Amendments section of the March 15 staff report.<sup>13</sup>

King County Code (K.C.C.) 20.18.160 and RCW 36.70A.140 call for “early and continuous” public engagement in the development and amendment of the KCCP and any implementing development regulations. As part of that public engagement process, the Executive published a Public Review Draft (PRD) of the KCCP on November 6, 2015, which was open for public comment through January 2016.<sup>14</sup> During that time, the Executive hosted six PRD community meetings: one each in Fairwood, Skyway, Fall City, Issaquah, and two in Vashon. A summary of the Executive’s outreach efforts can be found in Appendix R “Public Outreach for Development of KCCP.” A detailed listing of all of the public comments received during development of the Plan can be found in the Public Participation Report that is located on the Council’s KCCP website.<sup>15</sup>

On March 1, the Executive transmitted the proposed 2016 update to the KCCP. Council review of the transmitted 2016 KCCP thus far has included nine briefings in the TrEE Committee, as well as numerous opportunities to submit written or verbal public comment. Two more TrEE briefings are scheduled over the next month, leading up to possible action in TrEE on September 20 and possible final adoption at the full Council in late 2016. As noted above, today’s briefing will provide an update on the land use and zoning amendment proposals that are currently before the Council for consideration as part of the 2016 KCCP update.

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<sup>11</sup> Motion 14351, which was required to be transmitted by the Executive by K.C.C. 20.18.060. The Council approved the 2016 KCCP scoping motion after the April 30 deadline for Council action. However, as noted in the adopted Motion, the Executive agreed to treat the scope as timely and would proceed with the work program as established in the Council-approved version of the motion.

<sup>12</sup> This policy is currently RP-203 in the adopted 2012 KCCP, and is proposed to be changed to RP-107 as part of the 2016 KCCP. Does not apply to Four-to-One proposals.

<sup>13</sup> <http://www.kingcounty.gov/council/2016compplan/materials.aspx>

<sup>14</sup> General public comment was open through January 6, 2016. Additional comments on the late addition of the East Cougar Mountain Potential Annexation Area to the Public Review Draft were allowed from January 27 to February 3.

<sup>15</sup> <http://www.kingcounty.gov/council/2016compplan.aspx>

## **ANALYSIS**

There are 22 land use proposals currently before the Council for consideration as part of the 2016 KCCP update:

- The transmitted 2016 KCCP included 20 area zoning studies for proposals to change land use and/or zoning designations in unincorporated King County: sixteen land use proposals identified by the Scoping Motion, and four additional Executive-proposed land use proposals.<sup>16</sup> Eight of the 20 transmitted proposals are recommended for full or partial approval, none of which would expand the UGA, aside from two minor technical corrections. Another four of the 20 transmitted proposals are proposed to be addressed in subarea plans that would be initiated in the coming years.
- Additionally, there are two new land use proposals that have been identified since transmittal, which are now before the Council for consideration.

All 22 of these proposals are summarized in this staff report, along with any new information since transmittal and/or the initial land use proposals briefing in the TrEE Committee meeting on March 15, 2016.

**Process for UGA expansion proposals.** In 2012, the KCCP and the CPPs were amended to clarify the process for considering UGA changes. First, CPP DP-15 and KCCP policy RP-106<sup>17</sup> requires that UGA expansion proposals must be acted on at the GMPC<sup>18</sup> prior to Council action. Second, policy RP-107<sup>19</sup> states that the County may only forward proposals to the GMPC under the following instances:<sup>20</sup>

1. The proposal is included in the Scoping Motion;
2. An area zoning study for the proposal is included in the Public Review Draft of the proposed KCCP update; or
3. The proposal goes through the Hearing Examiner site-specific map amendment process.<sup>21</sup>

This means that the Scoping Motion adopted in 2015 was the formal avenue for the Council to identify possible UGA changes for consideration in the 2016 KCCP update. Any additional proposed UGA changes would need to have been added to the Public Review Draft by the Executive or been applied for by the property owner and to have

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<sup>16</sup> A briefing on these proposals was provided at the March 15, 2016 TrEE Committee meeting.

<sup>17</sup> The policy is currently RP-202 in the adopted 2012 KCCP, and is proposed to be changed to RP-106 as part of the transmitted 2016 KCCP.

<sup>18</sup> The required GMPC "action" could be either in support of or against the proposal, and is a non-binding recommendation for the County Council to consider in its deliberations.

<sup>19</sup> The policy is currently RP-203 in the adopted 2012 KCCP, and is proposed to be changed to RP-107 as part of the transmitted 2016 KCCP.

<sup>20</sup> Except for Four-to-One Proposals.

<sup>21</sup> K.C.C. 20.18.050 and as a Type 4 land use permit in K.C.C. 20.20.

proceeded through the Hearing Examiner process in order to be considered in 2016. As a result, consideration of any new proposals to amend the UGA in the 2016 KCCP that were not included in one of those processes would not be able to be considered by the Council.<sup>22</sup>

Further, UGA expansion proposals are then referred to the GMPC per CPP policy DP-15, which states that the GMPC may consider a UGA expansion proposal if:

1. The proposed expansion is under review by the County as part of an amendment process of the KCCP;
2. King County submits the proposal to the GMPC for the purposes of review and recommendation to the King County Council on the proposed amendment to the UGA;<sup>23</sup>

As noted above, if the Council would like to adopt an amendment at the full Council for a UGA expansion proposal from the Scoping Motion or PRD, GMPC would be required to make a formal recommendation on it first. GMPC action for recommendation on any 2016 UGA expansion proposals is currently scheduled to occur at the September 28, 2016, GMPC meeting.

**New land use proposals.** While UGA expansion proposals were required to be identified either in the Scoping Motion passed by Council last spring or in the Executive's Public Review Draft last fall, other land use proposals that do not expand the UGA and had not previously been publicly identified may still be considered as part of the Council's review of the 2016 KCCP. To date, two new proposals<sup>24</sup> have been identified since transmittal of the Executive's recommended KCCP on March 1. These proposals are analyzed later in this staff report.

**Four-to-One proposals.** The Executive's transmittal includes area zoning studies for four proposals that would expand to the UGA based on applying the criteria of the Four-to-One Program, or an equivalent or better open space dedication than the program would require: Snoqualmie Interchange, Duthie Hill Notch, Carnation UGA, and North Bend UGA. The Council included three of these proposals in the Scoping Motion, and the fourth, Duthie Hill, was considered as a Four-to-One proposal during the Executive's review process and at the GMPC last summer.

In each case, the Executive's transmittal includes:

- Information regarding whether the parcel(s) could meet the requirements of the existing Four-to-One Program, and what the County's interests would be if an application were submitted.

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<sup>22</sup> RP-107 (RP-203 in the 2012 KCCP) would have to be amended in order to consider such a proposal.

<sup>23</sup> In practice, GMPC has considered the UGA expansions that have been included in the recommended ordinance that comes out of Committee or proposals that had been publically indicated for likely amendment.

<sup>24</sup> Vashon #1 and Rainier Ridge

- No recommendation on whether the Executive would support a Four-to-One proposal for the parcel(s).
- A statement that the Four-to-One Program requires an application by the property owner, and that the Executive would evaluate the proposal should an application be submitted.

While the policies and King County Code provisions do not appear to explicitly require such an application, in practical terms a proposal must have significant property owner support and input in order to establish the location, configuration, and method of open space land that would be dedicated as part of a Four-to-One proposal. The Council may desire to further pursue one or more of these UGA expansion proposals through the lens of the Four-to-One Program as part of the 2016 KCCP. To-date, only one of the property owners, Carnation, has submitted a formal Four-to-One proposal for County consideration.

**Public comments.** A summary of the public comments on land use proposals submitted to-date to the Council as part of the 2016 KCCP update can be found in Attachment 4 of the staff report. This summary includes only communications provided to the entire Council or to the TrEE committee, and does not include communications addressed to individual Councilmembers, nor does it include comments regarding policy changes.<sup>25</sup>

**Summary of land use proposals.** Table 1 describes the land use proposals currently before the Council for consideration as part of the 2016 KCCP update, as well as the Executive's transmitted recommendations for each proposal. Items highlighted in grey in the table are those that are recommended for either full or partial approval by the Executive and were included in the transmitted 2016 KCCP.

It is worth noting that the Scoping Motion called for the Executive to identify where policy changes would be necessary to adopt any proposed UGA change. The area zoning studies identify where existing policies would prohibit changing the UGA, but the transmittal does not propose UGA policy changes.

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<sup>25</sup> In this vein, the Executive's proposed changes to policy I-203 as it relates to future consideration of a mining site demonstration project (such as on Reserve Silica site) are not included in this staff report or comments summary. Because only a proposed policy amendment and not a zoning change related to this issue is currently before the Council for consideration, this was addressed in the August 16, 2016 staff report.

**Table 1. Summary of Land Use Proposals**

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
1	West Hill	2	Incorporate the community developed Skyway-West Hill Action Plan (SWAP) as an update to the 1994 community plan.	Adopt the SWAP as an addendum to the existing community plan; no land use/zoning changes recommended. Included in Executive transmittal.	Staff has identified some policy considerations for Council evaluation, including the potential for the SWAP to imply future County approval of funding and staffing for substantial service and infrastructure improvements.
2	Fairwood A	9	Change the zoning for four R-6 zoned parcels in Fairwood to R-18 for a continuing care retirement community.	Approve a portion of the request to change the zoning for one parcel (out of four) from R-6 to R-18. Included in Executive transmittal.	Additional work has been completed with the property owners of these four parcels, to further review the proposed zoning modification . There are two proposals, one from Wesley Homes (parcels 3423059035, 3423059061, and 3423059031) and one from Wayne’s Place (3423059034). <sup>26</sup>
3	Federal Way	7	Change the zoning for one R-4 zoned parcel in unincorporated Federal Way to Neighborhood Business (NB) in order to allow for mixed use development.	Approve. Included in Executive transmittal.	N/A

<sup>26</sup> A supplemental area zoning study on this proposal can be found in Attachment 3 of the staff report.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
4	Allison Docket <sup>27</sup> Request	3	Remove the Special District Overlay (SDO) from one parcel in the Preston area.	Approve removal of SDO. Included in Executive transmittal.	The property has been sold and the new property owner has requested that the RA-5 / RA-10 split zoning on property be revised to RA-5 zoning for the entire parcel, in addition to removing the SDO. <sup>28</sup>
5	Timmerman Docket Request	3	Change the zoning on one R-1-P zoned parcel in the Sammamish area to R-4.	No zoning changes. Docket request was considered withdrawn by the Executive, and was thus not analyzed.	The current property owners have stated that they are not interested in pursuing the docket request from the previous owner.
6	Snoqualmie Interchange	3	Move the RA-5 zoned parcels at the I-90/SR-18 Interchange adjacent to Snoqualmie into the Urban Growth Area (UGA) to allow for commercial development, equivalent to or better than a Four-to-One proposal.	Do not expand the UGA. Not eligible for Four-to-One Program.	N/A
7	Duthie Hill Notch	3	Move the RA-5 zoned parcels within Duthie Hill Notch adjacent to Sammamish into the UGA, possibly as a Four-to-One proposal.	Do not expand the UGA. May consider a Four-to-One proposal if one is submitted.	No Four-to-One proposal has been submitted to-date. And no action has been taken at GMPC to initiate an alternative method for amending the UGA.

<sup>27</sup> The Docket is a formal means for interested parties to submit comments on or to propose consideration of changes to the KCCP and development regulations, as required by RCW 36.70A.470 and K.C.C. 20.18.140.

<sup>28</sup> A supplemental area zoning study on this proposal can be found in Attachment 3 of the staff report.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
8	Fall City	3	Expand the Fall City Business District and SDO to include 3 parcels, and update policies to facilitate a local alternative wastewater system.	Do not change land use or zoning at this time.  Instead, the transmittal proposes to amend policy I-203 (in KCCP Chapter 12 Implementation) and the K.C.C. to allow this request to be considered during a future annual Comp Plan update, once the community wastewater system boundary needs are identified.	N/A
9	Snoqualmie Pass Subarea Plan	3	Initiate a subarea plan in the Snoqualmie Pass Rural Town and ski area.	Initiate subarea plan in 2018 as part of the Exec's proposed Snoqualmie Valley/NE King County Community Service Area (CSA) subarea planning cycle in KCCP Chapter 11.	The Council may wish to consider adding the Executive's recommendation to the CSA subarea planning schedule in Chapter 11.
10	Vashon Subarea Plan	8	Initiate a subarea plan update for the Vashon Town Plan.	Initiate subarea plan in 2016 as part of the Exec's proposed Vashon-Maury Island CSA subarea planning cycle in KCCP Chapter 11. <sup>29</sup>	The Council may wish to consider adding the Executive's recommendation to the CSA subarea planning schedule in Chapter 11.

<sup>29</sup> This planning process has already begun, and the updated Town Plan is expected to be transmitted to the Council in 2017.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
11	Highline Subarea Plan	8	Initiate a subarea plan update for the Highline Community Plan for the North Highline/White Center area.	Initiate subarea plan in 2017 as part of the Executive's proposed West King County CSA subarea planning cycle in KCCP Chapter 11.	The Council may wish to consider adding the Executive's recommendation to the CSA subarea planning schedule in Chapter 11.
12	Carnation UGA Amendment	3	Move a portion of 3 RA-10 zoned parcels in the Carnation area into the UGA as part of a Four-to-One proposal.	Do not expand the UGA. May consider a Four-to-One proposal if one is submitted.	Additional work has been completed with the property owners of these three parcels, and a Four-to-One Docket Request was submitted by the property owner for the Docket period that closed on June 30, 2016. <sup>30</sup>
13	North Bend UGA Amendment	3	Move 14 RA-2.5 zoned parcels currently in the North Bend area into the UGA as part of a Four-to-One proposal.	Do not expand the UGA. May consider a Four-to-One proposal if one is submitted.	No Four-to-One proposal has been submitted to-date.
14	Cedar Hills/Maple Valley Subarea Plan	9	Initiate a subarea plan for the Cedar Hills/Maple Valley area, including review of potential long-term land uses in coordination with the County's future closure of Cedar Hills landfill.	Initiate subarea plan in 2023 as part of the Executive's proposed Four Creeks/Tiger Mountain CSA subarea planning cycle in KCCP Chapter 11, or when there is certainty about the closure of the Cedar Hills landfill.	The Council may wish to consider adding the Executive's recommendation to the CSA subarea planning schedule in Chapter 11.

<sup>30</sup> A supplemental area zoning study on this proposal can be found in Attachment 3 of the staff report, and a summary of the 2016 Docket submittals is included in Attachment 4 of the staff report.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
15	Maple Valley Industrial	9	Change the zoning and remove the p-suffix development condition for 3 Industrial zoned parcels adjacent to Maple Valley.	Do not change land use or zoning at this time. Consider rezoning from UGA to rural in the future.	The property owners have expressed interest in staying in the UGA but changing to a different urban zone designation; however, the owners also stated that they are not interested in pursuing such a zoning change at this time.
16	Fairwood B	9	Change the zoning for 11 O and R-48 zoned parcels in the Fairwood area to allow for/incentivize potential redevelopment, such as mixed use zoning.	No zoning changes recommended.	Analysis of land use designation and zoning options for these parcels is ongoing.
17	Taylor Mountain	9	Request was initiated by the Executive at the request of KC Parks to change 11 KC-owned, RA-10 zoned parcels near Hobart to Forest zoning and add them to the Forest Production District (FPD).	Approve. Included in Executive transmittal.	A technical correction to the map amendment text will be needed to clarify addition of land to the FPD.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
18	Tall Chief	3	Request was initiated by the Executive to change 3 RA-10 and RA-5-SO zoned parcels in the Snoqualmie Valley (former Tall Chief golf course) to A-35 and A-10 and add to the Agricultural Production District (APD).	Approve. Included in Executive transmittal.	A technical correction to the map amendment will be needed to clarify the text regarding addition of land to the APD and to replace one of the maps with a correct version.
19	UGA Technical Corrections	7, 9	Request was initiated by the Executive to make 3 technical corrections to the UGA for the Cities of Covington and Enumclaw.	Approve. Included in Executive transmittal.	A technical correction to the map amendment will be needed to correct the section/township/range information in the text and to replace the maps with a correct version.
20	East Cougar Mountain Potential Annexation Area (PAA)	3	Request was initiated by the City of Issaquah to remove a 776-acre R-1 (one home per 1 acre) and UR-P-SO (1 home per 5 acres) zoned East Cougar Mountain area out of the UGA PAA, and rezone as rural.	Approve a portion of the request and remove 24 UR zoned parcels from the UGA (totally 118 acres) and rezone as RA-5. Included in Executive transmittal.	A technical correction to the map amendment will be needed to clarify the text from a "recommendation" to formal direction to amend the land use and zoning maps.

#	Name of Proposal	Council District	Proposal	Executive Transmitted Recommendation	New Information
21	Vashon #1	8	Remove P-suffix development conditions for one R-4-P zoned parcel within the Vashon Rural Town boundary in order to allow for development of broader affordable housing.	N/A	This proposal was submitted after transmittal. <sup>31</sup>
22	Rainier Ridge	9	Refinement of previously adopted 2014 Four-to-One P-suffix development conditions that required adoption of an Interlocal Agreement (ILA) within a year of adoption of the zoning change.	N/A	This proposal was submitted after transmittal.

**#1 West Hill**

**Existing KCCP Land Use Designation:** Combination of commercial, industrial and residential designations

**Existing Zoning:** Combination of commercial, industrial and residential zoning

**Proposal:** Consistent with Motion 14221, this proposal calls for incorporating an updated subarea plan for the Skyway-West Hill area south of Seattle, which should include zoning and regulations that: address the historic wide gaps in equity of infrastructure investments and services; facilitate the revitalization of its neighborhoods, local economy, and quality of life of its residents; and have included outreach with the local community in their development.

As part of the community process to review the 1994 subarea plan,<sup>32</sup> a Skyway-West Hill Action Plan (SWAP) was developed with the intent of being considered for approval

<sup>31</sup> An area zoning study on this proposal can be found in Attachment 3 of the staff report.

<sup>32</sup> West Hill Community Plan

as an addendum to the existing subarea plan. The Executive received the SWAP in June 2015 and worked with the community to refine the implementation section, including prioritizing the proposed capital projects. The proposed SWAP was also included in the PRD and, as such, was open for additional public comment<sup>33</sup> through January 6, 2016.

**Executive recommendation:** Adopt the final SWAP as an addendum to the existing subarea plan, within the West King County CSA and reflect this in Chapter 11 of the KCCP. No zoning changes are proposed to be adopted at this time.

The proposed SWAP is Attachment J to Proposed Ordinance 2016-0155.

**New information since transmittal:** Additional staff analysis of the transmitted SWAP has occurred since the March 15 TrEE Committee briefing on the land use proposals. The key policy choices for Councilmembers are in Section V. (SWAP Concepts) and Section VI. (Implementation Matrix). Section V includes detailed projects, priorities, and policies that lay a foundation for the actions in the Implementation Matrix. Within this matrix are specific proposed actions - with identified agency or community lead responsibility, potential funding sources and a timeline - to implement the SWAP.

Some actions that are designated as a County responsibility,<sup>34</sup> either in a lead or support role, in the transmitted SWAP include:

- **Roads:** Traffic calming, pedestrian crossings, sidewalks, nonmotorized improvements/connections, shoulder improvements, traffic signals, lane improvements, and landscaping improvements.
- **Metro Transit:** Expanding/enhancing transit facilities and alternative services, and evaluating route 107 stops and route.
- **DNRP:** trail connections, correction of stormwater runoff problems, Skyway Park improvements, community farm and learning lab, neighborhood/pocket park development, and cultural garden development.
- **Sheriff:** Law Enforcement Assisted Diversion (LEAD) implementation, increased patrol presence, safety infrastructure improvements, alternative community policing, and anti-gang activities.
- **DPER:** review density allowances, allow mixed use development, convert industrial land/uses to other zones, abatement activities, add a dedicated code enforcement officer for Skyway-West Hill, and provide expedited permit reviews.
- **DCHS/DPH:** programs for youth/seniors/targeted populations, drug/alcohol/anti-gang programs, healthcare services, programs for youth/families dealing with loss of jobs, anti-obesity and local food programs, early education/preschool programs, college and preparation programs, surplus land for affordable housing below market cost, impact fee exemptions and other incentives, housing needs

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<sup>33</sup> This is in addition to the development of the SWAP, which included a citizen steering committee, collection of 1,500+ surveys, five open houses, and distribution of over 5,000 information flyers.

<sup>34</sup> Some of the actions state they are from the 1994 Community Plan. Council staff has not verified these.

assessment, and review housing policies that are barriers to safe affordable housing.

Executive staff have indicated that development of these projects and actions was community driven, and that individual County departments have not undertaken a comprehensive review of and/or approval for commitments in the implementation matrix. However, by adopting the SWAP, the County would signal support for these projects and actions. While in practice, these projects and actions would still be subject to appropriation and resource assignment, there is the potential that the community would perceive action to adopt the transmitted SWAP as a commitment to fund these actions and to do so on the timeline indicated in the SWAP.

Furthermore, adoption of the SWAP as transmitted could set a precedent for other community plan updates that will be occurring throughout the unincorporated area via the Executive's proposed Community Service Area (CSA) subarea planning initiative in Chapter 11, potentially resulting in communities in the other CSAs expecting a similar level of detailed commitments from the County.

The transmitted SWAP also includes reference to other plans that have not been reviewed or adopted by the Council;<sup>35</sup> by adopting the references to these plans in the SWAP, the County may also be signaling support for these other plans.

The SWAP also proposes to include exact policy language from the 2012 KCCP in the SWAP document. If these policies are amended in future KCCP updates, the SWAP would also need to be amended so that the two documents are consistent – which may need to occur prior to the next anticipated update to the SWAP.

The Council may wish to evaluate these policy considerations when reviewing the transmitted SWAP for possible approval.

## #2 Fairwood A

**Existing KCCP Land Use Designation:** UM (urban residential medium, 4-14 dwelling units per acre), with a small portion of one parcel designated CB (community business) and UH (urban residential high)

**Existing Zoning:** R-6 zoning (six dwelling units per acre)

**Original proposal:** Consistent with Motion 14276, this proposal calls for review of the land use designations and implementing zoning on four parcels in the PAA for the City of Renton and the surrounding area and evaluation for re-designation to a higher density residential land use category, for the purpose of potential development of a continuing care retirement community.

**Executive recommendation:** Change the zoning only on the northern parcel, 3423059035, to R-18 (eighteen dwelling units per acre) and the land use designation to

<sup>35</sup> Such as the 2009 Skyway Vision

UH (urban residential high). This would allow for potential senior citizen assisted housing (including apartments and townhomes), consistent with existing adjacent land uses. Retain the existing R-6 zoning and UM land use designation on the other three parcels, which would continue to allow for apartments, townhomes,<sup>36</sup> and single family detached residences (including cottage housing as a conditional use).

This proposed change is shown as Map Amendment #1 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** Since the transmittal of the Executive's recommended 2016 KCCP, additional work has been completed with Executive and Council staff and the property owners of these four parcels, to further review the requested zoning modification. There are two proposals, one from Wesley Homes (parcels 3423059035, 3423059061, and 3423059031) and one from Wayne's Place (3423059034).

#### *Wesley Homes*

The property owner for the northern three parcels, Wesley Homes, has provided further information on the types of uses and development it is currently considering for this site. The Wesley Homes current project proposal would include a continuum of care for a variety of senior housing needs, from independent living to nursing home beds. The proposal includes 155 independent living units, 48 assisted living units, 20 memory care units, and 35 care center/nursing home beds. These units would be within two buildings, with a total square footage of 417,000 square feet and a building height of up to 65 feet.

#### *Wayne's Place*

The property owner for the southernmost, fourth parcel, Wayne's Place, has provided further information on the types of uses and development it is currently considering for this site. The Wayne's Place current project proposal would include development of a four-story, 68 unit apartment building with a total square footage of 76,624 square feet and a building height of 50 feet. This would be within two wings of one building, with an adjacent parking lot and an underground parking garage. This is proposed to be achieved through rezoning from R-6 to R-18 with an associated land use designation change to "UH" (allowing up to 56 dwelling units under the base zoning) combined with the use of bonus units through the Density Incentive Program (proposed to be achieved through the open space and energy conservation incentives, providing for an additional 12 units).

The Council may wish to revisit the Executive's initial recommendation in light of this new information. Policy analysis of the updated proposals is provided in a supplemental area zoning study in Attachment 3 of the staff report.

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<sup>36</sup> May be subject to a conditional use permit.

### #3 Federal Way

**Existing KCCP Land Use Designation:** UM (urban residential medium)

**Existing Zoning:** R-4 zoning (four dwelling units per acre)

**Proposal:** Consistent with Motion 14376, this proposal calls for review of the land use designations and implementing zoning on one parcel in the Federal Way area and the surrounding area and evaluation for re-designation to a higher density land use category, for potential development of mixed-use development (residential and retail).

**Executive recommendation:** Change the land use designation to NBC (neighborhood business center) and zoning to NB (neighborhood business) for this parcel.

This proposed change is shown as Map Amendment #2 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** N/A

### #4 Allison Docket Request

**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** Split of RA-5 (one dwelling unit per 5 acres) with a Special District Overlay (SDO), and RA-10 (one dwelling unit per 10 acres)

**Original proposal:** This is a 2014 Docket request from Robert Allison that would remove the SDO from one parcel in the North Bend area. The SDO, which is intended to limit density within floodplains, limits the density to one home per 10 acres, and requires development to be clustered outside of the sensitive areas. The 2014 Docket report recommended the County review this issue as part of the 2016 KCCP, and it was added as an item in the Scoping Motion.

**Executive recommendation:** Remove the SDO from the Allison property, and from four other adjacent parcels that also have the SDO. Maintain the RA-5 or RA-10 zoning on these parcels. Maintain the existing RA land use designation.

This proposed change is shown as Map Amendment #3 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** The property has been sold since transmittal of the Executive's recommended 2016 KCCP and the new property owner (B. King) has requested that the zoning on the former-Allison property be revised to remove the split zoning, in addition to removing the SDO. Instead of split RA-5 / RA-10 zoning, the property owner has requested RA-5 zoning for the entire parcel.

The Council may wish to revisit the Executive's initial recommendation in light of this new information. Policy analysis of this updated proposal is provided in a supplemental area zoning study in Attachment 3 of the staff report.

**#5 Timmerman Docket Request**

**Existing KCCP Land Use Designation:** UL (urban residential low)

**Existing Zoning:** R-1-P (one dwelling unit per acre) with a property specific development condition relating to open space and urban separators

**Proposal:** A 2012 and 2014 Docket request from Joel Timmerman would revise the zoning for one parcel in the Sammamish area from R-1-P to R-4. This parcel is located within a PAA for the City of Sammamish, and the City was expected to complete a review of the land use designations and zoning for this property as part of its 2015 KCCP update. The 2014 Docket report recommended the County adopt the City's analysis and potential zoning within its PAA, which could be considered in 2016.<sup>37</sup> The proposal was also added as an item in the Scoping Motion.

**Executive recommendation:** The Timmermans have since sold the property, and the new owners have constructed a home on the property. DPER determined that the 2014 Docket request is now considered withdrawn and the transmitted 2016 KCCP provided no analysis or recommendation on the proposal.

**New information since transmittal:** Council staff has been in communication with the new property owners, and the owners stated that they are not interested in pursuing the docket request from the previous owner.

**#6 Snoqualmie Interchange**

**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** RA-5 (one dwelling unit per five acres)

**Proposal:** The Scoping Motion included this item, which would review the land use designations and zoning for the area north of the I-90/SR-18 interchange adjacent to the City of Snoqualmie, including consideration of including this area within the UGA, and whether the conversion should be done with dedication of open space/farmland equal to or better than the Four-to-One program.

The City of Snoqualmie also submitted a 2015 Docket request regarding this area. The City's Docket request included the same land area as the Scoping Motion, with a slightly more specific scope that did not include a Four-to-One component: Amend zoning map to allow urban business, commercial and retail, as well as making necessary amendments to the CPPs, KCCP, and development regulations.

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<sup>37</sup> Since issuance of the 2014 Docket Report, the City of Sammamish adopted their 2015 KCCP update. No changes to the potential zoning for this parcel were included in the City's plan update.

**Executive Recommendation:** Do not expand the UGA to include this area within the City of Snoqualmie's PAA. The transmitted 2016 KCCP states that this proposal does not meet the existing CPP and KCCP criteria for UGA expansion, that the City of Snoqualmie has capacity for forecasted employment targets through at least 2031, and that there is sufficient countywide capacity for employment and residential targets. Further, the transmitted 2016 KCCP notes that area does not qualify for the Four-to-One program because it is not contiguous with the 1994 UGA, and the Four-to-One program does not currently allow for non-residential development.

**New information since transmittal:** N/A

<b>#7 Duthie Hill Notch</b>
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**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** RA-5 (one dwelling unit per five acres)

**Proposal:** The Scoping Motion included this item, which would review the land use designations and zoning for the "Duthie Hill Notch," an area surrounded on three sides by the City of Sammamish, including consideration of including this area within the UGA.

Two property owners also submitted a 2015 Docket request regarding this same land use and zoning change. The City of Sammamish also submitted a request to the GMPC in 2015 that would amend the CPPs to allow for the expansion of the UGA for this area.

**Executive Recommendation:** Do not expand the UGA to include this area within the City of Sammamish's PAA. The transmitted 2016 KCCP states that this proposal does not meet the existing CPP and KCCP criteria for UGA expansion, and that the City of Sammamish has capacity for forecasted housing targets. The transmitted 2016 KCCP states that a Four-to-One proposal would be evaluated if developed through the GMPC process or an application was submitted by the property owners.

**New information since transmittal:** No Four-to-One proposal for this site has been submitted to the County to-date. Additionally, no action has been taken at GMPC to initiate an alternative method for amending the UGA beyond current policy requirements.

## #8 Fall City

**Existing KCCP Land Use Designation:** RT (Rural Town)

**Existing Zoning:** R-4 (four dwelling units per acre) and I (Industrial)

**Proposal:** The Scoping Motion included this item, which would update the Fall City Subarea Plan to review the land use designations and zoning for three parcels and possibly include these parcels in the Fall City Business District and SDO, and to update policies to facilitate a local alternative wastewater system.

**Executive Recommendation:** Do not make changes to the Fall City Business District or SDO. The transmitted 2016 KCCP states that the King County Wastewater Treatment Division (WTD) will work with the Fall City Community and across County government to facilitate wastewater treatment alternatives analysis starting in late 2015/2016. In Chapter 12, Implementation, Amendments and Evaluation, policy I-203 is proposed to be amended to allow amendments regarding the provision of wastewater services to a Rural Town to be considered as part of an annual KCCP update.<sup>38</sup> This change to the annual cycle is also reflected in the proposed code updates in the underlying 2016 KCCP adopting ordinance.<sup>39</sup>

**New information since transmittal:** N/A

## #9 Snoqualmie Pass Subarea Plan

**Existing KCCP Land Use Designation:** RT (Rural Town)

**Existing Zoning:** R-4 (four dwelling units per acre), R-18 (eighteen dwelling units per acre) and CB (community business)

**Proposal:** The Scoping Motion included this item, which would initiate a subarea plan for the Snoqualmie Pass Rural Town and ski area, in collaboration with Kittitas County, and address housing and economic development needs.

**Executive Recommendation:** As part of the proposed CSA subarea planning schedule, this subarea plan would be initiated in 2018 as part of the Snoqualmie Valley/Northeast King County CSA.

**New information since transmittal:** The Executive's recommendation indicates that this study would be addressed as part of the CSA planning process. However, as transmitted, the 2016 KCCP does not state this in the proposed Plan. The Council may wish to consider adding language in the Plan, such as in Chapter 11 Community Service Area Planning, where the CSA subarea planning schedule is outlined, to memorialize this intent.

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<sup>38</sup> Includes consideration of policy amendments and adjustments to the boundaries of the Rural Town.

<sup>39</sup> Proposed Ordinance 2016-0155, Section 6, K.C.C.20.18.030

## #10 Vashon Subarea Plan

**Existing KCCP Land Use Designation:** RT (Rural Town)

**Existing Zoning:** Combination of commercial, industrial and residential zoning

**Proposal:** The Scoping Motion included this item, which would initiate a subarea plan update for the Vashon Town Plan, to address community and business needs, economic vitality, quality of life, and include outreach to the community.

**Executive Recommendation:** As part of the proposed CSA subarea planning schedule, this subarea plan would be initiated in 2016 as part of the Vashon-Maury Island CSA.<sup>40</sup>

**New information since transmittal:** The Executive's recommendation indicates that this study would be addressed as part of the CSA planning process. However, as transmitted, the 2016 KCCP does not state this in the proposed Plan. The Council may wish to consider adding language in the Plan, such as in Chapter 11 Community Service Area Planning, where the CSA subarea planning schedule is outlined, to memorialize this intent.

## #11 Highline Subarea Plan

**Existing KCCP Land Use Designation:** Combination of commercial, industrial and residential designations

**Existing Zoning:** Combination of commercial, industrial and residential designations

**Proposal:** The Scoping Motion included this item, which would initiate a subarea plan update for the Highline Community Plan for the North Highline/White Center neighborhood, to address gaps in equity of infrastructure investments and services, revitalization of neighborhoods, local economy, quality of life, and include outreach to the community.

**Executive Recommendation:** As part of the proposed CSA subarea planning schedule, this subarea plan would be initiated in 2017 as part of the West King County Community Services Area (North Highline). The transmitted 2016 KCCP also notes that the City of Seattle would be a lead partner in this work.

**New information since transmittal:** The Executive's recommendation indicates that this study would be addressed as part of the CSA planning process. However, as transmitted, the 2016 KCCP does not state this in the proposed Plan. The Council may wish to consider adding language in the Plan, such as in Chapter 11 Community Service Area Planning, where the CSA subarea planning schedule is outlined, to memorialize this intent.

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<sup>40</sup> The Vashon subarea planning process has already begun, and the updated Town Plan is expected to be transmitted to the Council in 2017.

## #12 Carnation UGA Amendment

**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** RA-10 zoning (one dwelling unit per ten acres)

**Original proposal:** The Scoping Motion included this item, which would review the land use designations and zoning for three parcels and the surrounding area outside of the City of Carnation, including consideration of including this area within the UGA in conjunction with dedication of open space or farm lands that is four times the acreage added to the UGA.

**Executive Recommendation:** Do not expand the UGA to include this area within the City of Carnation's PAA. The transmitted 2016 KCCP states that this proposal does not meet the existing CPP and KCCP criteria for UGA expansion, and that the City of Carnation has capacity for forecasted housing targets through 2031. The transmitted 2016 KCCP states that a Four-to-One proposal would be evaluated if an application was submitted by the property owner, and that there is an interest in using a Four-to-One proposal to create a buffer to other agricultural properties recently acquired by the County and the APD.

**New information since transmittal:** Since the transmittal of the Executive's recommended 2016 KCCP, additional work has been completed with Executive and Council staff and the property owners of these three parcels, to further review whether a UGA expansion is appropriate, subject to the criteria of the County's Four-to-One program. King County received a Four-to-One proposal for this site via a Docket Request submitted by the property owner for the Docket period that closed on June 30, 2016.<sup>41</sup> A summary of the 2016 Docket submittals is included as Attachment 4 of the staff report.

The Council may wish to revisit the Executive's initial recommendation in light of this new information. Policy analysis of this updated proposal is provided in a supplemental area zoning study in Attachment 3 of the staff report.

## #13 North Bend UGA Amendment

**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** RA-2.5 zoning (one dwelling unit per 2.5 acres)

**Proposal:** The Scoping Motion included this item, which would review the land use designations and zoning for 14 parcels and the surrounding area outside the City of North Bend, and possibly include this area within the UGA in conjunction with dedication of open space lands that is four times the acreage added to the UGA.

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<sup>41</sup> A summary of the

**Executive Recommendation:** Do not expand the UGA to include this area within the City of North Bend's PAA. The transmitted 2016 KCCP states that a Four-to-One proposal would be evaluated if an application were submitted by the property owners and, if there was an application, there is an interest to: minimize development in the floodplain, protect riparian corridor functions, and not expand the existing commercial development.

**New information since transmittal:** No Four-to-One proposal for this site has been submitted to the County to-date.

**#14 Cedar Hills/Maple Valley Subarea Plan**

**Existing KCCP Land Use Designation:** RA (Rural Area) and M (Mining)

**Existing Zoning:** RA-5 (one dwelling unit per five acres) and M (mineral) zoning

**Proposal:** The Scoping Motion included this item, which would initiate a subarea plan for the Cedar Hills/Maple Valley area, including potential long-term land uses, in coordination with the County's future closure of the Cedar Hills landfill, and including consideration of residential and non-residential uses.

**Executive Recommendation:** As part of the proposed CSA subarea planning schedule, this subarea plan would be initiated in 2023 as part of the Four Creeks/Tiger Mountain CSA, or when there is certainty about the closure of the Cedar Hills landfill.

**New information since transmittal:** The Executive's recommendation indicates that this study would be addressed as part of the CSA planning process. However, as transmitted, the 2016 KCCP does not state this in the proposed Plan. The Council may wish to consider adding language in the Plan, such as in Chapter 11 Community Service Area Planning where the CSA subarea planning schedule is outlined, to memorialize this intent.

**#15 Maple Valley Industrial**

**Existing KCCP Land Use Designation:** I (industrial)

**Existing Zoning:** I (industrial)

**Proposal:** The Scoping Motion included this item, which would include reviewing the land use designations and zoning for three parcels adjacent to Maple Valley and the surrounding area, including consideration of changing the zoning and eliminating the development condition established in 1997. This property specific development condition limits future development to uses that do not require a conditional use permit, and requires a limited scope master drainage plan to address groundwater concerns

**Executive Recommendation:** Do not make any changes to the land use designation, zoning, or development conditions designations for these parcels. The transmitted

2016 KCCP indicates support for future consideration of moving these parcels out of the UGA, after more thorough feasibility and analysis of infrastructure needs for an industrial use is completed.

**New information since transmittal:** Council staff has been in communication with the property owners, and the owners expressed interest in staying in the UGA but changing to a different urban zone designation; however, the owners also stated that they are not interested in pursuing such a zoning change at this time.

### #16 Fairwood B

**Existing KCCP Land Use Designation:** CB (Community Business) and UH (Urban residential high)

**Existing Zoning:** O (office) and R-48 (forty-eight dwelling units per acre)

**Proposal:** The Scoping Motion included this item, which would include reviewing the land use designations and zoning for eleven parcels in the PAA for the City of Renton and the surrounding area, including consideration for potential redevelopment, consistency of the designation and zoning, and incentives for redevelopment.

**Executive Recommendation:** Do not make any changes to the land use designation or zoning for these parcels. The analysis in the transmitted 2016 KCCP notes the existing multi-family housing stock that could potentially be lost if the zoning is changed; and that 2012 KCCP policy U-122 requires an offset for the R-48 zoned property by identifying another property where the 10 units could locate. The Executive did not complete an analysis on whether a mixed-use zoning could continue to accommodate the 10 units of multi-family residential units.

**New information since transmittal:** Analysis of land use designation and zoning options for these parcels is ongoing.

### #17 Taylor Mountain

**Existing KCCP Land Use Designation:** F (Forestry) and RA (Rural Area)

**Existing Zoning:** RA-10 (one dwelling unit per 10 acres)

**Proposal:** This item was initiated by the Executive at the request of the King County Parks Division. It would rezone Parks-owned properties in the Taylor Mountain Forest near Hobart from RA-10 to Forest zoning, and include those parcels in the FPD.

**Executive Recommendation:** Rezone eleven parcels, totaling 1,362 acres, from RA-10 to F, include them in the Forest Production District, and modify the land use designation for three parcels to OS (Open Space system). The transmitted 2016 KCCP states that all parcels are owned by King County, and the Washington State Department of Natural Resources holds a permanent conservation easement on most of the parcels in the Taylor Mountain Forest, which restricts development and requires working forest

conservation and passive recreation uses. The transmitted 2016 KCCP also notes that all but one of the other parcels within the Taylor Mountain Forest have F zoning and are part of the FPD.

This proposed change is shown in Map Amendment #4 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** A technical correction to the transmitted map amendment text will be needed to clarify addition of land to the FPD. This correction will be included in the Chair's proposed striking amendment to the transmitted 2016 KCCP.

### #18 Tall Chief

**Existing KCCP Land Use Designation:** RA (Rural Area)

**Existing Zoning:** RA-10 (one dwelling unit per 10 acres), RA-5-SO (one dwelling unit per 5 acres)

**Proposal:** This item was initiated by the Executive to change the land use designation for the former Tall Chief golf course in the Snoqualmie Valley from rural to agricultural and to add it to the APD.

**Executive Recommendation:** Change the land use designation to AG (agricultural) for three parcels, totaling 191 acres. Change the zoning for one parcel to A-35 (one dwelling unit per 35 acres) and two parcels to A-10 (one dwelling unit per 10 acres). The transmitted 2016 KCCP states that the County has a conservation easement that limits use of the site to agricultural, forestry, and open space uses.<sup>42</sup>

This proposed change is shown in Map Amendment #5 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** A technical correction to the transmitted map amendment will be needed to clarify the text regarding addition of land to the APD and to replace one of the maps with a correct version. This correction will be included in the Chair's proposed striking amendment to the transmitted 2016 KCCP.

### #19 UGA Technical Corrections

**Proposal:** This item was initiated by the Executive to make three technical corrections to the UGA for the cities of Covington and Enumclaw.

**Executive Recommendation:** Adjust the UGA on SE 240<sup>th</sup> Street (City of Covington), and on 248<sup>th</sup> Avenue SE (City of Enumclaw), so that the entire road right-of-way is within the UGA. Adjust the UGA on 228<sup>th</sup> Ave SE (City of Enumclaw) so that the entire

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<sup>42</sup> Ordinance 18194

road right-of-way is outside the UGA. The transmitted 2016 KCCP notes that this will clarify long-term maintenance activities for these roadways, consistent with policy T-211 and allow the cities to incorporate the roadways being moved into the UGA into the city limits.

This proposed change is shown in Map Amendment #7 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** A technical correction to the transmitted map amendment will be needed to correct the section, township, and range information in the text and to replace the maps with a correct version. This correction will be included in the Chair's proposed striking amendment to the transmitted 2016 KCCP.

<b>#20 East Cougar Mountain Potential Annexation Area</b>
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**Existing KCCP Land Use Designation:** UL (Urban Residential Low) and UPD (Urban Planned Development)

**Existing Zoning:** R-1 (one dwelling unit per acre) and UR-P-SO (Urban Reserve, one dwelling unit per 5 acres)

**Proposal:** This item was initiated by the Executive in response to a request from the City of Issaquah submitted during the comment period for the PRD. The City requests that the East Cougar Mountain area be removed from their PAA. The City is no longer interested in annexing this area and requests the 776-acre area be removed from the UGA.

**Executive Recommendation:** Approve a portion of the request from the City of Issaquah. Remove 24 parcels, totaling 188 acres, from the UGA, designate them as RA (Rural Area) and zone them RA-5 (one dwelling unit per 5 acres). This area is currently zoned as Urban Reserve. The transmitted 2016 KCCP based this recommendation on the difficulty of providing an urban level of services and access in this area. In practical terms, this change would have little effect on density because UR and RA-5 zoning both allow one dwelling unit per five acres. The transmitted 2016 KCCP also notes that there will be continued discussion regarding the remainder of the City of Issaquah's request, and there may be additional changes to consider as part of the County's next major update of the KCCP.

This proposed change is shown as Map Amendment #6 in Attachment B to Proposed Ordinance 2016-0155.

**New information since transmittal:** A technical correction to the transmitted map amendment will be needed to clarify the text from a "recommendation" to formal direction to amend the land use and zoning maps. This correction will be included in the Chair's proposed striking amendment to the transmitted 2016 KCCP.

## #21 Vashon #1

**Existing KCCP Land Use Designation:** RT (Rural Town)

**Existing Zoning:** R-4-P (four dwelling units per acre)

**New information since transmittal:** This proposal was received shortly after transmittal of the Executive's proposed 2016 KCCP and was noted in the March 15, 2016 TrEE Committee staff report. This item does not propose to amend the UGA boundary; therefore, it can still be included for consideration for adoption by the Council as part of the 2016 KCCP. Policy analysis of this proposal is provided in an area zoning study in Attachment 3 of the staff report.

**Proposal:** The property owner of a parcel on Vashon Island has requested that the County remove P-suffix development conditions for their R-4-P zoned parcel within the Vashon Rural Town boundary in order to allow for development of affordable housing. One P-suffix condition limits development to "mobile homes, manufactured housing units and accessory support structures." The property owner has requested that this P-suffix be removed or amended in order to allow for a broader range of affordable housing development. A second P-suffix condition also limits development on the parcel to no more than 12 dwelling units per acre; the base zoning currently limits development to a maximum of eight dwelling units per acre with the use of density incentives and is, therefore, already below the limitations of the P-suffix condition. The Council may wish to consider removing this second P-suffix condition as well.

## #22 Rainier Ridge

**Existing KCCP Land Use Designation:** RA (Rural Area) and RX (Rural City Urban Growth Area)

**Existing Zoning:** RA-10-P (one dwelling unit per ten acres) and UR-P (Urban Reserve, one dwelling unit per 5 acres)

**New information since transmittal:** This proposal was received after transmittal of the Executive's proposed 2016 KCCP. This item does not propose to amend the UGA boundary; therefore, it can still be included for consideration for possible adoption by the Council as part of the 2016 KCCP.

**Proposal:** In 2014, the County adopted a Four-to-One proposal on a parcel adjacent to the City of Maple Valley.<sup>43</sup> The map amendment that adopted this change included a P-suffix development condition on the property that required the City and the County to adopt an Interlocal Agreement (ILA) to address annexation of the new urban land created by the Four-to-One and permitting processing procedures prior to annexation. An ILA has not yet been adopted; however, annexation proceedings have been initiated by the City and it is anticipated that annexation will be complete by the end of 2016. Given this, all parties involved agree that adoption of an ILA will no longer be necessary

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<sup>43</sup> Parcel 1531000010, via Ordinance 17842

and the proposal is to refine the P-suffix condition and remove the requirement for adoption of an ILA.

## **ATTACHMENTS**

1. 2016 KCCP Schedule, updated as of August 10, 2016
2. Frequently used acronyms
3. Supplemental Area Zoning Studies
4. Maps of land use proposals
5. Summary of 2016 Docket submittals
6. Summary of land use public comments to date
7. KCCP public comments, updated as of August 19, 2016

## **LINKS**

Proposed Ordinance 2016-0155, the underlying ordinance for the proposed 2016 KCCP, can be found at:

<http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=2594294&GUID=050D99B0-CE2F-4349-BD0D-46D46F673458&Options=ID%7cText%7c&Search=2016-0155>

The Council's Scoping Motion, Motion 14351, can be found at:

<http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=2233471&GUID=8A16CD C8-8A9A-455D-A9E6-00CF10E055A9&Options=ID|Text|&Search=2015-0104>

All components of the proposed 2016 KCCP can be found at:

<http://www.kingcounty.gov/council/2016compplan/transmittal.aspx>

These components include:

- Proposed Ordinance 2016-0155
- 2016 KCCP
- Land Use and Zoning Changes
- Appendix A: Capital Facilities
- Appendix B: Housing
- Appendix C: Transportation
- Appendix C1: Transportation Needs Report
- Appendix C2: Regional Trails Needs Report

- Appendix D: Growth Targets and the Urban Growth Area
- Appendix R: Public Outreach for Development of KCCP
- Attachment: Skyway-West Hill Action Plan
- Attachment: Area Zoning Studies
- Attachment: Development Code Studies
- Attachment: Policy Amendment Analysis Matrix
- Attachment: Public Participation Report

**INVITED**

- Ivan Miller, KCCP Manager, Performance, Strategy and Budget

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**King County Council**  
**Schedule for 2016 King County Comprehensive Plan**  
*(As of 8/10/16, Subject to change)*

<b>March 1</b>	Transmittal of King County Executive's proposed 2016 King County Comprehensive Plan.
<b>March 15</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Committee review process overview</i></li> <li>• <i>Land use proposals/Area Zoning Studies</i></li> <li>• <i>Chapter 11 Community Service Area Planning</i></li> <li>• <i>Chapter 12 Implementation, Appendix D Growth Targets</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<b>April 6</b> 6:30 p.m.	<p><b>Committee of the Whole Town Hall - Special Evening Meeting</b>  <b>Location: Gracie Hansen Community Center at Ravensdale Park (Rock Creek Sports) - 27132 SE Ravensdale Way, Ravensdale WA</b>  <b>Opportunity for public comment on proposed 2016 Comprehensive Plan</b></p>
<b>May 3</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 1 Regional Planning</i></li> <li>• <i>Chapter 3 Rural Area and Natural Resource Lands</i></li> <li>• <i>Chapter 8 Transportation, Appendix C Transportation, C1 Transportation Needs Report</i></li> <li>• <i>Chapter 10 Economic Development</i></li> <li>• <i>Development code updates (Proposed Ordinance 2016-0155)</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<b>May 17</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 2 Urban Communities</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<b>May 31</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 4 Housing and Human Services, Appendix B Housing</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<b>June 7</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 7 Parks, Open Space and Cultural Resources, Appendix C2 – Regional Trail Needs Report</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<b>June 21</b> 9:30 a.m.	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 5 Environment</i></li> <li>• <i>Chapter 6 Shorelines</i></li> </ul> <p><b>Opportunity for public comment</b></p>

<p><b>June 28</b> 9:30 a.m.</p>	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Climate Change (all chapters)</i></li> <li>• <i>Equity and Social Justice (all chapters)</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>July 5</b> 10:30 a.m.</p>	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chapter 9 Services, Facilities and Utilities, Appendix A – Capital Facilities</i></li> <li>• <i>Real Property Asset Management Plan (Proposed Ordinance 2016-0159)</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>August 16</b> 9:30 a.m.</p>	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Follow up on identified issues in:</i> <ul style="list-style-type: none"> <li>○ <i>All Chapters in the 2016 Comprehensive Plan</i></li> <li>○ <i>Development code updates (Proposed Ordinance 2016-0155)</i></li> <li>○ <i>Real Property Asset Management Plan (Proposed Ordinance 2016-0159)</i></li> </ul> </li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>August 24</b> 1:30 p.m.</p>	<p><b>Briefing in Special Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Follow up on land use proposals</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>September 6</b> 9:30 a.m.</p>	<p><b>Briefing in Transportation, Economy and Environment Committee.</b> Anticipated topics (subject to change):</p> <ul style="list-style-type: none"> <li>• <i>Chair’s Striking Amendment</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>September 20</b> 9:30 a.m.</p>	<p><b>Possible vote in Transportation, Economy and Environment Committee</b></p> <ul style="list-style-type: none"> <li>• <i>Includes consideration of possible amendments</i></li> </ul> <p><b>Opportunity for public comment</b></p>
<p><b>November 28</b> Time TBD</p>	<p><b>Anticipated public hearing at full Council</b></p> <p><b>Opportunity for public comment</b></p>
<p><b>December 5</b> Time TBD</p>	<p><b>Possible vote at full Council</b></p> <ul style="list-style-type: none"> <li>• <i>Includes consideration of possible amendments</i></li> </ul>

Unless otherwise noted, all meetings will take place in the Council Chambers on the 10<sup>th</sup> Floor of the King County Courthouse, at 516 3<sup>rd</sup> Ave, Seattle WA.

## 2016 King County Comprehensive Plan Frequently Used Acronyms

APD	Agricultural Production District
CIP	Capital Improvement Program
CPP	Countywide Planning Policy
ESA	Endangered Species Act
FCC	Fully Contained Community
FPD	Forest Production District
GMA	Growth Management Act
GMPC	Growth Management Planning Council
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
ITS	Intelligent Transportation Systems
KCCP	King County Comprehensive Plan
KCSP	King County Strategic Plan
LID	Low Impact Development
LOS	Level of Service
LSRA	Locally Significant Resource Area
MPP	Multi-county Planning Policies
MPS	Mitigation Payment System
PAA	Potential Annexation Area
PBRS	Public Benefit Rating System
PSRC	Puget Sound Regional Council
RSRA	Regionally Significant Resource Area
RWSP	Regional Wastewater Services Plan
SCAP	Strategic Climate Action Plan
SPPT	Strategic Plan for Public Transportation
SPRS	Strategic Plan for Road Services
SEPA	State Environmental Policy Act
TAM	Transportation Adequacy Measure
TDR	Transfer of Development Rights
TDM	Transportation Demand Management
TNR	Transportation Needs Report
TOD	Transit Oriented Development
UGA	Urban Growth Area
UGB	Urban Growth Boundary
UPD	Urban Planned Development
UTRC	Utilities Technical Review Committee

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**King County**

**2016 King County Comprehensive Plan Update**

**SUPPLEMENTAL AREA ZONING STUDIES  
TO EXECUTIVE'S TRANSMITTAL**

**August 24, 2016**

## **List of Studies**

Supplemental Area Zoning Study #2 – Fairwood A (Motion 14276)

Supplemental Area Zoning Study #4 – Allison Docket Request

Supplemental Area Zoning Study #12 – Carnation UGA Amendment

Area Zoning Study #21 – Vashon #1



**King County**

**2016 King County Comprehensive Plan Update  
Area Zoning Study #2**

**FAIRWOOD A**

**Supplemental to Executive's Recommendation**

**I. SUMMARY**

This item was initiated as part of Motion 14276, which requested the Executive complete an area zoning study to review the "Comprehensive Plan land use designations and implementing zoning in the Fairwood neighborhood on parcels 3423059035, 3423059061, 3423059031 and 3423059034 and the surrounding area, and [complete an] evaluation of whether to redesignate the parcels to a higher density residential land use designation, with higher density implementing zoning, for the purpose of potential development of a continuing care retirement community". This item was also included in Motion 14351, the scope of work for the 2016 King County Comprehensive Plan (KCCP) update.

The Executive included an area zoning study for these four parcels and included a recommendation in the Executive's transmittal. The Executive's recommendation was to redesignate the land use and reclassify the zoning for the northernmost parcel, 3423059035, to a land use designation of "UH" (Urban High; Urban Residential greater than 12 dwelling units per acre), and a zoning of R-18 (residential, 18 dwelling units per acre). The Executive did not recommend modifying the land use or zoning for the remaining three parcels included in the area zoning study.

Since the transmittal of the Executive's recommended 2016 KCCP, additional work has been completed with Executive and Council staff and the property owners of these four parcels, to further review whether a modification of zoning is appropriate. There are two proposals, one from Wesley Homes (parcels 3423059035, 3423059061, and 3423059031) and one from Wayne's Place (3423059034).

**II. SUPPLEMENTAL INFORMATION****A. King County Code****Wesley Homes**

The area zoning study included in the Executive's recommended 2016 KCCP outlines the permissions for "senior citizen assisted housing", a land use in the Residential Land Use Table in K.C.C. 21A.06. However, the proposal for a "continuing care facility" is broader than the uses allowed under "senior citizen assisted housing". There are three uses under the County's existing zoning code that would be triggered for a continuing care facility as described by Wesley Homes: apartments, senior citizen assisted housing, and nursing and personal care facilities.

<b>SIC #</b>	<b>SPECIFIC LAND USE</b>	<b>R1-8</b>	<b>R12-48</b>
*	Apartment	P5 C5	P
*	Senior Citizen Assisted Housing	P4	P
805	Nursing and Personal Care Facilities		C

## i. Apartment

Apartments are allowed in the R-6 zone. Up to 12 dwelling units per buildable acre are allowed; however, if the density exceeds 6 units per acre, a conditional use permit is required. In the R-18 zone, they are permitted without any development conditions.

## ii. Senior Citizen Assisted Housing

Per K.C.C. 21A.08.030, senior citizen assisted housing is permitted in R-6 ONLY if it is within a historic building registered on the National Register or through King County landmarks. Senior citizen assisted housing is permitted in an R-18 zoning without any development conditions.

## iii. Nursing and Personal Care Facilities

Per K.C.C. 21A.08.050, nursing and personal care facilities are not permitted in the R-6 zone, but are allowed with a conditional use permit in the R-18 zone.

**Wayne's Place**

The code provisions for apartment zoning noted above would apply here as well. Potential density bonuses provided through the Density Incentive Program in K.C.C. Chapter 21A.34 could also apply.

**B. Current proposals from the property owners**Wesley Homes

Parcel	Acres
3423059035	9.99
3423059061	4.80
3423059031	4.80
Total	19.59

The property owner for the northern three parcels, Wesley Homes, has provided further information on the types of uses and development they are currently considering for this site. Their current project proposal would include a continuum of care for a variety of senior housing needs, from independent living to nursing home beds. The proposal includes 155 independent living units, 48 assisted living units, 20 memory care units, and 35 care center/nursing home beds; these units would be within two buildings, with a total square footage of 417,000 square feet and a building height of up to 65 feet.

Wayne's Place

Parcel	Acres
3423059034	3.37

The property owner for the southernmost, fourth parcel, Wayne's Place, has provided further information on the types of uses and development they are currently considering for this site. Their current project proposal would include development of a four-story, 68 unit apartment building with a total square footage of 76,624 square feet and a building height of 50 feet; this would be within two wings of one building, with an adjacent parking lot and an underground parking garage. This is proposed to be achieved through rezoning from R-6 to R-18 with an associated land use designation change to "UH" (allowing up to 56 dwelling units under the base zoning) combined with the use of bonus units through the Density Incentive Program (proposed to be achieved through the open space and energy conservation incentives, providing for an additional 12 units).

**C. Area Land Use and Zoning Information**

The site is within the Fairwood urban unincorporated area, within the City of Renton's Potential Annexation Area. The site is southwest of the intersection of SE Petrovitsky Road and 140<sup>th</sup> Avenue SE; at this intersection is a commercial area, bordered by a mix of residential zoning of varying densities. The intersection mainly has Community Business zoning, with some Office zoning on the northwest corner. As the land uses move away from this commercial center, there is residential zoning of R-48, R-24, R-18

Supplemental Area Zoning Study #2  
Fairwood A

immediately adjacent to the commercial areas, and then moving further away, zoning of predominantly R-6.

These varying zones allow the following residential densities:

<b>Zone</b>	<b>Base Density</b>	<b>Maximum Density</b>
Residential, 6 dwelling units per acre (R-6)	6 dwelling units/acre	9 or 12 dwelling units/acre
Residential, 18 dwelling units per acre (R-18)	18 dwelling units/acre	27 or 36 dwelling units/acre
Residential, 24 dwelling units per acre (R-24)	24 dwelling units/acre	36 or 48 dwelling units/acre
Residential, 48 dwelling units per acre (R-48)	48 dwelling units/acre	72 or 96 dwelling units/acre
Office	48 dwelling units/acre	72 or 96 dwelling units/acre
Community Business	48 dwelling units/acre	72 or 96 dwelling units/acre

The parcels immediately adjacent to this site are zoned a combination of Community Business, R-24 and R-18, except to the south where the zoning is R-6. This area is a transition between the more intense uses associated with the commercial development at the intersection, and the single-family residential neighborhoods to the south.

#### **D. Communication**

##### Wesley Homes

The Department of Permitting and Environmental Review (DPER) reviewed the proposal from Wesley Homes and conducted a conceptual permit feasibility. This review notes that the site has a number of constraints that create challenges to development, including compliance with critical area and transportation concurrency requirements. DPER also notes that “a senior housing project may have the potential to be developed in compliance with King County Codes and regulations. However, it may have a different look and smaller scale that what has been proposed in the limited discussions conducted to date.” DPER’s analysis is included as Attachment 1 to this report.

##### Wayne’s Place

The representative for the owners of Wayne’s Place has been in communication with Council staff. DPER has not completed any permit feasibility analysis of the proposal.

### **III. ANALYSIS**

#### **A. Site Constraints**

Both sites are currently undeveloped. There are issued permits for the southern parcel, to be developed into a condominium project, known as Wayne's Place Condominiums. This project includes construction of a 28-unit condominium project in two buildings, plus five detached garages; the project includes the use of transfer of development rights to obtain a higher density allowed under R-6 zoning. While permits have been issued, the property owner has placed construction on hold until this land use and zoning proposal is decided.

Both sites are also constrained by Molasses Creek and its associated buffers, which flows to the northwest through the properties. There are also slopes of approximately 40 percent associated with the stream. These sensitive areas would reduce the development potential of the properties, to a lesser number of dwelling units physically able to be constructed on the site.

As noted by DPER's permit feasibility analysis for the Wesley Homes proposal, a major constraint on development would be the impacts on transportation concurrency on the 140<sup>th</sup> Avenue SE and SE Petrovitsky Road intersection to the north; while this analysis was originally identified for the Wesley Home's site, this issue would likely also apply to the Wayne's Place site. While the transportation concurrency issue would likely be true even for development under the current zoning density, the Council may wish to take this into consideration when looking at the policy question of whether to modify the zoning to allow additional uses or an increase in zoning on either site.

#### **B. Policy Consistency**

A potential land use and zoning change to increase density on either site, in order to increase the amount of housing available within the urban area, would be consistent with policies U-121 and U-125.

Policy options for the Council to consider include:

1. Approve a change to the land use designation and zoning to UH and R-18 for all four parcels, either:
  - a. without any P-suffix conditions, or
  - b. with P-suffix conditions (such as: with a condition on the Wesley Homes site that restricts the use to a continuing care facility; requiring coordinated transportation planning on all four parcels; and/or specific conditions for the Wayne's Place parcel).
2. Approve a change to the land use designation and zoning to UH and R-18 only for the northern three Wesley Homes parcels, either:
  - a. without any P-suffix conditions, or
  - b. with a P-suffix condition that restricts the use to a continuing care facility.
3. Approve a change to the land use designation and zoning to UH and R-18 only for the southernmost Wayne's Place parcel, either
  - a. without any P-suffix conditions, or
  - b. with P-suffix conditions.
4. Do not approve any change to the land use designation and zoning to any of the parcels.

Attachments:

1. Department of Permitting and Environmental Review, Wesley Homes – Senior Housing Permit Feasibility Conceptual Review, dated May 31, 2016



## King County

### Department of Permitting and Environmental Review

35030 SE Souglas St., Suite 210  
Snoqualmie WA 98065-9266

206-296-6600

www.kingcounty.gov

May 31, 2016

### **Wesley Homes – Senior Housing**

King County Comprehensive Plan Proposal – Fairwood (A) – re-designate to a higher residential land use category

Parcels 342305-9031, -9034, 9035, -9061 (approx. 22.95 acres total)

Wesley Homes is a not-for-profit provider of care and services for older adults in the region. Wesley Homes facilities offer a continuum of care that allow residents to remain in place even as their care needs change.

At the request of the County Council, the Department of Permitting and Environmental Review was asked to conduct a very preliminary conceptual review (since detailed studies and plans are not provided) of Wesley Homes' site plan. Permitting also reviewed earlier proposals (single family detached and multi-family) to develop these parcels that did not move forward.

Wesley Homes shared conceptual drawings and information regarding the type of facility they would like to develop on the site.<sup>1</sup> The scale of the facilities would require an upzone to two additional parcels beyond what was included<sup>2</sup> in the Executive Recommended 2016 Comprehensive Plan, Area Zoning Study #2 – Fairwood A (Motion 14726).

Of note, the site has a number of constraints that creates challenges to development, even were an upzone granted. These include the presence of a stream and wetlands (and the required setback buffers), significant elevation changes (with a potential erosion hazard zone) on the site. Additionally, the site is in a transportation concurrency travelshed that is very close to failing, meaning off-site improvements may be required for transportation access and reduction of impacts to the network.

Based on this preliminary review, it appears that a senior housing project may have the potential to be developed in compliance with King County Codes and regulations. However, it may have a different look and smaller scale than what has been proposed in the limited discussions conducted to date. In discussions with Wesley Homes, they noted that there could be flexibility in how the site is developed, but that the density of units needed to be sufficient for the project to be feasible.

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<sup>1</sup> The Area Zoning Study #2 looked at four parcels. Parcels 3423059031, 3423059035 and 3423059061 are owned by Wesley Homes. Parcel 3423059034 is owned by a different entity. This memorandum addresses only the three parcels owned by Wesley Homes.

<sup>2</sup> Area Zoning Study #2 recommended an upzone to parcel 3423059034 to R-18, and retention of the R-6 zoning on the other parcels to buffer the more intensive use from the R-6 parcels to the south.

Noted below are some of the elements of the preliminary review and challenges associated with the site which may limit or change the scale and design of the proposal.

- Petrovitsky & 140<sup>th</sup> Ave SE intersection - This intersection currently operates at Level of Service E, however, it is extremely close to Level of Service (LOS) F. In the event the level of service falls to an “F” or “fails”, Wesley Homes would be required to provide mitigation/improvements to the intersection to return LOS to “E”. This may or may not be feasible (may involve purchase of additional right-of-way, construction of infrastructure, etc.) and potentially be cost prohibitive. The proposal necessitates need for a traffic study and further evaluation. A traffic study would include, at a minimum, further evaluation of level of service at this intersection and other off-site intersections, traffic distribution, neighborhood circulation, potential cut-through traffic, limited access to 140<sup>th</sup> Ave impacts, mitigation, etc.
- Critical areas – Critical areas exist on the site (Molasses Creek, wetlands & steep slopes) – It’s anticipated that the buffers may increase from previously approved projects (Ridge at Molasses Creek preliminary plat) as a result of updates to King County Code (i.e. Critical Areas ). Updated studies necessary.
- 2016 Surface Water Design Manual revisions that may require larger drainage facilities and associated drainage improvements than previous iterations of the Manual
- Zoning – project required to demonstrate compliance with zoning regulations – density, dimensions, setbacks (note, increase in setbacks when base height exceeded), parking, landscaping, recreation, illumination, storage, etc.
- Building review – updated/new International Building Code – July 1, 2016 effective date



**King County**

**2016 King County Comprehensive Plan Update  
Area Zoning Study #4**

**ALLISON SDO REMOVAL REQUEST**

**Supplemental to Executive's Recommendation**

**I. SUMMARY**

This item was initiated as part of a 2014 docket request, to remove the Special District Overlay (SO-230) from tax parcel 3224079134 (Allison Property). It was also included in Motion 14351, the scope of work for the 2016 King County Comprehensive Plan (KCCP) update.

The Executive completed an area zoning study for this area and included a recommendation in the Executive's transmittal of the KCCP. The Executive's recommendation was to remove this condition from the Allison property and the application of this SDO to the other three RA-5 (SO) zoned properties south of I-90.

The property has been sold since transmittal of the Executive's recommended 2016 KCCP and the new property owner (B. King) has requested that the zoning on Parcel 3224079134 be revised to remove the split zoning, in addition to removing the SDO. Instead of split RA-5 / RA-10 zoning, the property owner has requested RA-5 zoning for the entire parcel.

**II. SUPPLEMENTAL INFORMATION**

**A. Adopted Policies and Code**

The following KCCP policies are relevant to this proposal.

**R-306** A residential density of one home per 10 acres shall be applied in the Rural Area where:

- a. The lands are adjacent to or within one-quarter mile of designated Agricultural Production Districts, the Forest Production District or legally approved long-term mineral resource extraction sites; or

Supplemental Area Zoning Study #4  
Allison SDO Removal Request

- b. The lands contain significant environmentally constrained areas as defined by county ordinance, policy or federal or state law, or regionally significant resource areas or substantial critical habitat as determined by legislatively approved basin plans or Watershed Resource Inventory Area Plans; and
- c. The predominant lot size is greater than or equal to 10 acres in size.

**R-308** A residential density of one home per 5 acres shall be applied in the Rural Area where:

- a. The land is physically suitable for development with minimal environmentally sensitive features or critical habitat as determined by legislatively adopted watershed based plans;
- b. Development can be supported by rural services;
- c. The land does not meet the criteria in this plan for lower density designations; and
- d. The predominant lot size is less than 10 acres.

Similar criteria for these zones is also outlined in King County Code 21A.04.060.

Under the current Zoning Code (Title 21A), if the SDO is removed, the split RA-5 / RA-10 zoning could potentially allow for the property to be subdivided into 3 parcels. If the SDO is removed and the property were rezoned to RA-5, the property could potentially be subdivided into 4 parcels.

**B. Area Land Use and Zoning Information**

Adjacent Parcel	Acres
3224079134	19.96
3224079003	2.31
3224079085	23.71
3224079136	5.0
3224079020	5.0
3224079138	5.0
3224079108	5.64
3224079111	5.49
3224079112	5.04
3224079021	5.32
3224079140	0.15

Supplemental Area Zoning Study #4  
Allison SDO Removal Request

All of the properties that abut the Allison/King property on the west, south and a portion of the eastern sides are five acre tracts that were created in the late 1970's. Even though the properties are zoned one dwelling unit per 10 acres, the effective zoning is one dwelling unit per five acres given their lot size. The large property east of Allison/King property is a twenty-plus acre parcel that is the site of a mobile home park with what appears to be 40 hook-ups or roughly two dwelling units per acre.

Note that there is an adjacent parcel (3224079136, owned by Randy Hart) that has the same RA-5 / RA-10 split zoning, and it is five acres large. The Council may wish to consider outreach to this property owner and consider changing the zoning on this parcel as well. It would have no impact from a development perspective, but would harmonize the zoning with the size of the already-developed parcel.

### **C. Communication**

The property owner first submitted the rezone request to Council staff on June 17, 2016 and then provided public testimony in support of the request at the June 21, 2016 Transportation, Economy and Environment Committee meeting. Council staff has been in communication with the property owner since then regarding the process and timing for Councilmember consideration of the request.

## **III. ANALYSIS**

### **A. Site Constraints**

The site is currently undeveloped. There are no pending or issued permits for the site. A feasibility pre-application meeting request (File No. PREA16-0096) was filed by the property owner in May in order establish what would be required for a four lot short plat, if the zoning change was approved. That meeting request has been rescheduled several times and is presently scheduled for the end of August.

As noted in the Executive's area zoning study, this property does not appear to be in an identified floodplain and there is no County documentation showing it to be of any specific concern for downstream flooding. There are no known traffic or related issues that would be worsened if the zoning were changed. Based on past building permit reviews, there is a Class III stream on parcel 3224079136 that may slightly affect the Allison/King property. There may be a small area of steep slope in the southern portion of the property. These would need to be verified through a critical area designation before applications could be approved for any type of development or short plat.

### **B. Policy Consistency**

Both the Allison/King and Hart properties meet the criteria for RA-5 zoning in KCCP policy R-308 and the Zoning Code, as they are generally environmentally

Supplemental Area Zoning Study #4  
Allison SDO Removal Request

unconstrained, can be supported by rural services, and the predominant lot size in the area is less than 10 acres.

Policy options for the Council to consider include:

1. Concur with the Executive's transmitted KCCP that removes the SDO, but do not change the zoning for the Allison/King property. No land use designation changes would be necessary.
2. Concur with the Executive's transmitted KCCP that removes the SDO, and modify the zoning for Parcel 3224079134 (Allison/King) to RA-5. No land use designation changes would be necessary.
3. Concur with the Executive's transmitted KCCP that removes the SDO, and modify the zoning for Parcel 3224079134 (Allison/King) and 3224079136 (Hart) to RA-5. No land use designation changes would be necessary.
4. Do not concur with the Executive's transmitted KCCP that removes the SDO, and make no zoning changes.



**King County**

## **2016 King County Comprehensive Plan Update**

### **Area Zoning Study #12**

#### **CARNATION UGA AMENDMENT**

##### **Supplemental to Executive's Recommendation**

### **I. SUMMARY**

This item was initiated as part of Motion 14351, the scope of work for the 2016 King County Comprehensive Plan (KCCP) update. This item requested the Executive complete an area zoning study to “review land use designations and implementing zoning on parcels 1525079049, 1525079005, and 1525079010 and the surrounding area, and consider whether to convert the parcels from rural to urban. The proposal should be evaluated in conjunction with dedication of lands as open space and/or farmland preservation that is four times the acreage of the land added to the Urban Growth Area.”

The Executive completed an area zoning study for these three parcels and included a recommendation in the Executive's transmittal of the KCCP. The Executive's recommendation was not to expand the Urban Growth Area (UGA) boundary at this time, but indicated they would consider a Four-to-One proposal, should the property owner apply, consistent with the interests of: protecting the adjacent Agricultural Production District (APD) from development pressure through a permanent buffer, protecting views from the valley floor from incompatible hillside development, preferring that the dedicated open space be in a contiguous parcel, allowing access to the new urban development in a manner that does not compromise the adjacent agricultural district's access on the eastern edge, and ensuring that the new urban development uses the land efficiently.

Since the transmittal of the Executive's recommended 2016 KCCP, additional work has been completed with Executive and Council staff and the property owners of these three parcels, to further review whether a UGA expansion is appropriate, subject to the

criteria of the County's Four-to-One program. King County received a Docket Request from the property owner for the Docket period that closed on June 30, 2016.

## II. SUPPLEMENTAL INFORMATION

### A. Adopted Policies and Code

The Executive's area zoning study included the applicable 2012 Countywide Planning Policies and the KCCP policies related to expansion of the Urban Growth Area Four-to-One Program.<sup>1</sup> King County Code 20.18.170 and 20.18.180 also outline additional requirements of the Four-to-One Program.

#### **20.18.170 The four to one program – process for amending the urban growth area to achieve open space.**

A. The total area added to the urban growth area as a result of this program shall not exceed four thousand acres. The department shall keep a cumulative total for all parcels added under this section. The total shall be updated annually through the plan amendment process.

B. Proposals shall be processed as land use amendments to the Comprehensive Plan and may be considered in either the annual or four-year cycle. Site suitability and development conditions for both the urban and rural portions of the proposal shall be established through the preliminary formal plat approval process.

C. A term conservation easement shall be placed on the open space at the time the four to one proposal is approved by the council. Upon final plat approval, the open space shall be permanently dedicated in fee simple to King County.

D. Proposals adjacent to incorporated area or potential annexation areas shall be referred to the affected city and special purpose districts for recommendations. (Ord. 17485 § 9, 2012; Ord. 16263 § 5, 2008; Ord. 14047 § 9, 2001).

#### **20.18.180 The four to one program – criteria for amending the urban growth area to achieve open space.** Rural area land may be added to the urban growth area in accordance with the following criteria:

A. A proposal to add land to the urban growth area under this program shall meet the following criteria:

1. A permanent dedication to the King County open space system of four acres of open space is required for every one acre of land added to the urban growth area;

2. The land shall not be zoned agriculture (A);

3. The land added to the urban growth area shall:

a. be physically contiguous to urban growth area as adopted in 1994, unless the director determines that the land directly adjacent to the urban growth area contains critical areas that would be substantially

<sup>1</sup> CCPs: DP-16 and DP-17; and KCCP policies: U-186, U-187, U-188, U-189, U-190.

Supplemental Area Zoning Study #12  
Carnation UGA Amendment

harmed by development directly adjacent to the urban growth area and that all other criteria can be met; and

b. not be in an area where a contiguous band of public open space, parks or watersheds already exists along the urban growth area boundary;

4. The land added to the urban growth area shall be able to be served by sewers and other urban services;

5. A road serving the land added to the urban area shall not be counted as part of the required open space;

6. All urban facilities shall be provided directly from the urban area and shall not cross the open space or rural area and be located in the urban area except as permitted in subsection E of this section;

7. Open space areas shall retain a rural designation;

8. The minimum depth of the open space buffer shall be one half of the property width, unless the director determines that a smaller buffer of no less than two hundred feet is warranted due to the topography and critical areas on the site, shall generally parallel the urban growth area boundary and shall be configured in such a way as to connect with open space on adjacent properties;

9. The minimum size of the property to be considered is twenty acres. Smaller parcels may be combined to meet the twenty-acre minimum;

10. Urban development under this section shall be limited to residential development and shall be at a minimum density of four dwelling units per acre; and

11. The land to be retained in open space is not needed for any facilities necessary to support the urban development; and

B. A proposal that adds two hundred acres or more to the urban growth area shall also meet the following criteria:

1. The proposal shall include a mix of housing types including thirty percent below-market-rate units affordable to low, moderate and median income households;

2. In a proposal in which the thirty-percent requirement in subsection B.1 of this section is exceeded, the required open space dedication shall be reduced to three and one-half acres of open space for every one acre added to the urban growth area;

C. A proposal that adds less than two hundred acres to the urban growth area and that meets the affordable housing criteria in subsection B.1. of this section shall be subject to a reduced open space dedication requirement of three and one-half acres of open space for every one acre added to the urban growth area;

D. Requests for redesignation shall be evaluated to determine those that are the highest quality, including, but not limited to, consideration of the following:

1. Preservation of fish and wildlife habitat, including wildlife habitat networks, and habitat for endangered and threatened species;

2. Provision of regional open space connections;

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3. Protection of wetlands, stream corridors, ground water and water bodies;

4. Preservation of unique natural, biological, cultural, historical or archeological resources;

5. The size of open space dedication and connection to other open space dedications along the urban growth area boundary; and

6. The ability to provide extensions of urban services to the redesignated urban areas; and

E. The open space acquired through this program shall be preserved primarily as natural areas, passive recreation sites or resource lands for farming and forestry. The following additional uses may be allowed only if located on a small portion of the open space and provided that these uses are found to be compatible with the site's natural open space values and functions:

1. Trails;

2. Compensatory mitigation of wetland losses on the urban designated portion of the project, consistent with the King County Comprehensive Plan and K.C.C. chapter 21A.24; and

3. Active recreation uses not to exceed five percent of the total open space area. The support services and facilities for the active recreation uses may locate within the active recreation area only, and shall not exceed five percent of the total acreage of the active recreation area. The entire open space area, including any active recreation site, is a regional resource. It shall not be used to satisfy the on-site active recreation space requirements in K.C.C. 21A.14.180 for the urban portion of the four to one property. (Ord. 17485 § 10, 2012; Ord. 16263 § 6, 2008; Ord. 15606 § 1, 2006; Ord. 14047 § 10, 2001).

### **B. Proposal from G. Remlinger**

The property owner of parcels 1525079049, 1525079005 and 1525079010, currently zoned RA-10, has submitted a project proposal that would provide for permanent open space and as well as urban lands for residential development. As part of the 2016 Docket Request that was submitted, a conceptual map was provided with a delineation of the new urban and new open space portions of the parcels. The proponent indicated the map is intended to comply with the interests defined in the Executive's area zoning study and expressed willingness to revise the delineation based on County feedback.

Due to the parcels combined acreage of 25.97, the new urban area through the Four-to-One Program would total 5.2 acres of urban area and the new open space would total 20.77 acres. Given its proximity to the APD, the open space portion might continue with agricultural uses, consistent with the Four-to-One Program allowances.

The property owner did not identify a preferred density for the proposed new urban portion of the properties. However, land added to the UGA under the Four-to-One Program is required to have a minimum density of R-4, which would result in the

Supplemental Area Zoning Study #12  
Carnation UGA Amendment

potential for development of at least 20 dwelling units on the urban portion of the parcels.

### **C. Communication**

Council and Executive staff have been in ongoing communication with the property owner's representative regarding the Four-to-One proposal and the 2016 KCCP process and timeline. In coordination with the property owner and Council staff, Executive staff is in the process of completing a site suitability analysis.

On June 7, the City of Carnation adopted Resolution No. 405 which expressed support for the proposed UGA expansion under the Four-to-One program for these parcels and urged the King County Council to approve the proposal.

On July 14, Council staff and Executive staff discussed with the King County Agriculture Commission the property owner's docket submittal and conceptual map. The Commission has not yet taken a formal position on the proposal, but the Commission indicated that they may do so following completion of the Executive's site suitability analysis.

## **III. ANALYSIS**

### **A. Site Constraints**

As noted in the Executive's area zoning study, currently there are no residential or agricultural structures on the properties. A portion of the site is currently in agricultural use. A western adjacent property lies within the Snoqualmie Valley APD and has a zoning of A-35. King County purchased the development rights on this adjacent property resulting in protection as agricultural land in perpetuity. The subject site shows no access to municipal or community sewer or water service. However, a new adjacent subdivision in the City of Carnation has extended city water, sewer, and a public stub street to the south boundary of the farthest parcel, 1525079049. The eastern half of the three properties contains areas with slopes of approximately 35 percent in the steepest portions. This area is in both the proposed urban and rural portions of the parcel. Each parcel contains an Erosion and Seismic Hazard overlay. A small, Class III stream runs along the west boundary of the farthest north parcel 1525079005, in the rural portion of the properties.

### **B. Policy Consistency**

The Four-to-One proposal meets the requirements in the CPPs, KCCP, and King County Code, including: the properties have a combined lot size over twenty acres and are adjacent to the original 1994 UGA; the proposed open space is at least four times the acreage of the new proposed urban area, would preserve valuable resource land, and would connect to current open space system; and the proposal would permanently prevent future expansion of the UGA along this portion of the City's boundary. It is worth

Supplemental Area Zoning Study #12  
Carnation UGA Amendment

noting that the Four-to-One Program is discretionary. Therefore, even if a proposal meets the Program requirements, it is ultimately a policy decision for the Council on whether or approve the zoning change.

As noted in the Executive's area zoning study, KCCP policy R-306 applies specifically to lands adjacent to agricultural production districts and states RA-10 shall be applied to Rural Areas adjacent to, or within one quarter mile of, designated APDs. The Department of Permitting and Environmental Review notes that this site is within one quarter mile of the Snoqualmie River APD. Also applicable is policy R-652, which commits King County to preserving APD parcels in or near the UGA because of their high production capabilities, proximity to markets, and value as open space. The Executive also noted the public benefit of a Four-to-One, which would result in the permanent conservation of these rural and/or agricultural lands that would serve as a buffer to other agricultural properties recently acquired by King County.

Policy options for the Council to consider include:

1. Approve the Four-to-One proposal in the 2016 KCCP. This could include development conditions, such as requiring annexation (see 2014 Rainier Ridge 4:1 approval in Ordinance 17842).
2. Do not approve the Four-to-One proposal.
3. Continue working with the property owners and stakeholders on rezone, development, and conservation options for either:
  - a. the 2016 KCCP or,
  - b. a future KCCP update.



**King County**

**2016 King County Comprehensive Plan Update  
Area Zoning Study #21**

**VASHON #1**

## **I. SUMMARY**

This item was identified as a potential land use map and zoning map amendment at the March 15, 2016 Transportation, Economy and Environment Committee meeting. The proposal would review the land use designations and implementing zoning on parcel 2923039148 and the surrounding area, to facilitate development of affordable housing, and would consider removal or modification of the site development conditions.

## **II. REGULATORY CONTEXT**

Parcel 2923039148 is 7.26 acres in size, and is located within the Vashon Rural Town boundaries, in the Rural Area. This parcel has a land use designation of Rural Town (RT) and a zoning designation of residential, four dwelling units per acre (R-4). The property has two property specific development conditions, or p-suffix conditions. VS-P01 limits the maximum density to 12 dwelling units per acre and VS-P24 restricts development to mobile homes, manufactured housing units and accessory support structures.<sup>1</sup>

### **A. Comprehensive Plan**

The following King County Comprehensive Plan (KCCP) polices are relevant to this proposal.<sup>2</sup>

**R-506** Rural Towns may contain higher-density housing than permitted in the surrounding Rural Area, and should provide affordable and resource-worker housing if utilities and other

<sup>1</sup> These were both adopted as part of the 1996 KCCP with Ordinance 12824.

<sup>2</sup> These are 2012 KCCP policies. In the transmitted 2016 KCCP, policies U-203, U-303, U-304, U-330 and U-335 are proposed to be moved from Chapter 2, Urban Communities to the new Chapter 4, Housing and Human Services, and to be modified largely to reflect changes made at the regional level with the Countywide Planning Policies, to address housing needs in the region.

services permit. Development density in Rural Towns may approach that achieved in cities in the rural area.

**U-302** Through subarea and regional planning with cities, incentive programs and funding initiatives, King County shall plan for housing to meet the needs of all economic segments of the population throughout the Urban Growth Area and within Rural Towns. King County shall plan for construction, rehabilitation, or preservation of housing units affordable to households as follows:

- a. 13% of housing stock should be affordable to households below 30% of the King County median income, including homeless individuals and families who may face significant barriers to finding permanent housing;
- b. 11% of housing stock should be affordable to households between 30% and 50% of the King County median income;
- c. 16% of housing stock should be affordable to households between 50% and 80% of the King County median income;
- d. 20% of housing stock should be affordable to households between 80% and 120% of the King County median income; and
- e. 40% of housing stock should be affordable to households above 120% of the King County median income.

**U-303** King County should promote the preservation, rehabilitation, and development of affordable rental housing opportunities for households earning up to 80% of the King County median income by providing a range of incentives to private sector developers, as well as incentives and subsidies to non-profit developers.

**U-304** King County should promote the preservation, rehabilitation, and development of affordable ownership housing opportunities for households earning up to 120% of the King County median income by providing a range of incentives to private sector developers, as well as incentives and subsidies to non-profit developers.

**U-330** King County shall encourage new housing models by supporting projects such as owner-built housing, land trusts for rental and ownership housing, and other innovative developments.

**U-335** King County should initiate and actively participate in regional solutions to critical affordable housing needs. Cities, community and housing representatives should be invited to identify and implement solutions.

## **B. Vashon Town Plan**

The Vashon Town Plan was adopted in 1996, by Ordinance 12395. In 2014, Ordinance 17842 adopted amendments to the Plan to address recreational marijuana uses; other than these amendments, no other amendments to the Plan are known.

The P-suffix development condition applied to this property is identified in the Plan, but no policy basis is given for assigning this restriction to this property. Under the discussion of "possible threats," there is a map that identifies the area that includes this site as a potential area for high density residential development.

### **i. Town Plan Policies**

Under Section IV., Policy Recommendations, included in the list of principles from the previously completed Vashon Community Plan is encouragement of affordable housing. In addition, the lead-in text for the Land Use policies L-1 and L-2 include a reference to affordable housing as a goal of the Plan.

**L-1** Development in the Rural Town should maintain the rural nature and service orientation of the commercial areas of Vashon and Center, with compact, pedestrian-friendly commercial development mixed with moderate density residential development.

**L-2** The Rural Town should support diverse commercial activities, employment opportunities, cultural and educational facilities, parks and open space, and varied housing types arranged in neighborhoods.

The only policies that directly address affordable housing are policies L-7 and R-3.

**L-7** Multifamily rezones for housing projects for senior or disabled citizens, or for low income citizens, for up to twelve dwelling units per acre, should be allowed in areas zoned R-8 provided they meet other applicable Town Plan, Community Plan and Comprehensive Plan policies.

**R-3** New development or major redevelopment is encouraged of rural character and to use one of the following development schemes as illustrated and described on Figure 10 a-d:

- small lot subdivisions to provide affordable housing in a traditional grid configuration;
- cluster housing to protect natural features as networks of open space;

- commons housing to encourage a traditional neighborhood in combination with clustering;
- farmstead to preserve existing housing and achieve infill; or
- in commercial zones, mixed use with residential above or attached to the commercial building.

## ii. P-suffix conditions

Two development conditions were placed on this property as part of the Vashon Town Plan adoption. Modifying or removing these conditions would require an amendment to the Town Plan.

### **VS-P01: W29-23-3: R-12-P (Ord. 12824)**

“A P-suffix was added to the zoning in order to limit the maximum density to 12 dwelling units per acre. This density is considered to be more appropriate for rural areas and more consistent with the existing level of development at the Town of Vashon.”

### **VS-P24: Vashon Town Plan - Use Limits (Ord. 12824)**

“Development restricted to mobile homes, manufactured housing units and accessory support structures.”

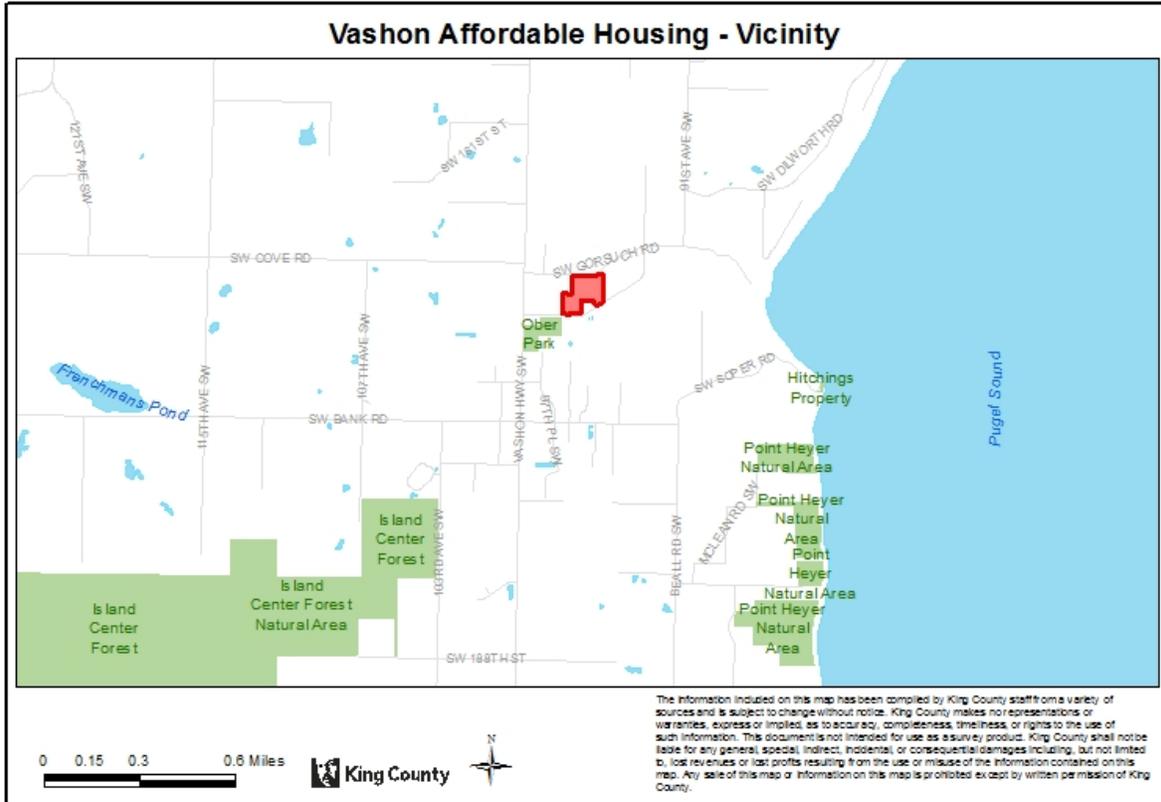
## **C. King County Code**

Under the current Zoning Code (Title 21A), the underlying zoning of R-4 would allow a base density of 4 dwelling units per acre (du/ac), and maximum density of 6 du/ac with the use of general density incentives or of 8 du/acre with the use of density incentives specifically for affordable housing projects or cottage housing projects. Townhouses and Apartments are both allowed in the R-4 zone, either outright or with a conditional use permit (CUP).

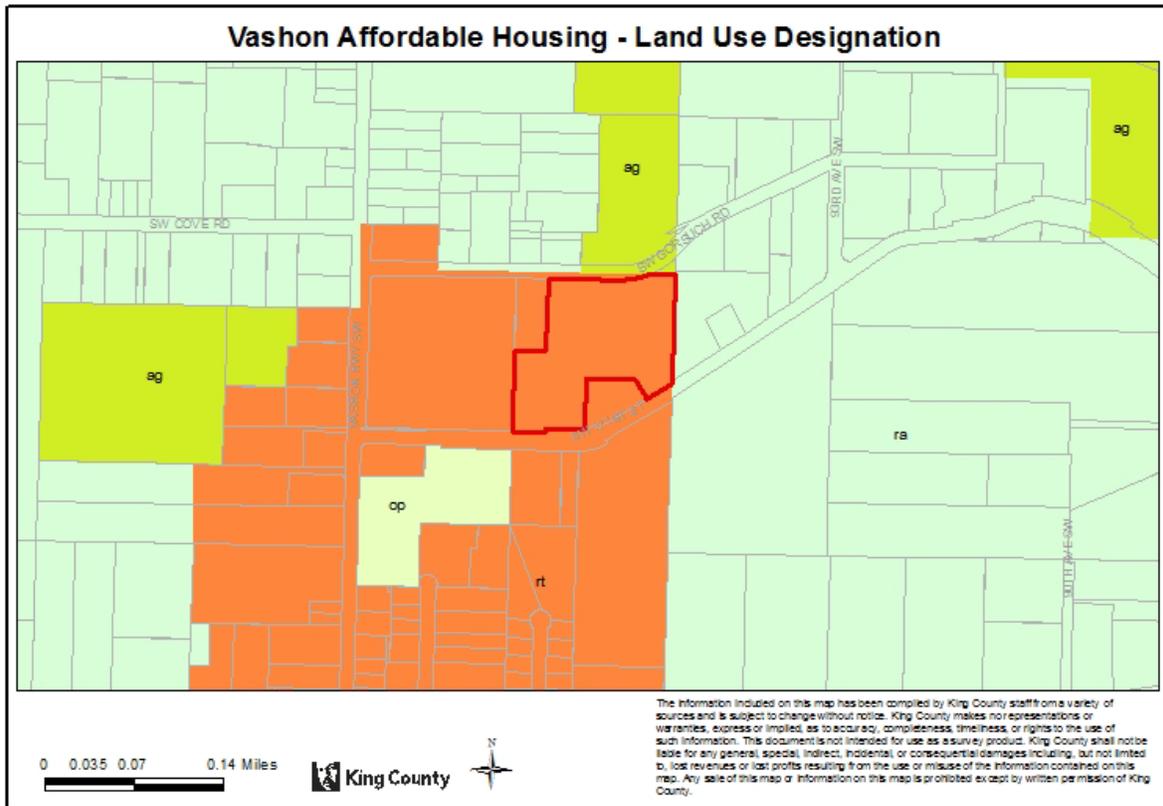
### III. BACKGROUND INFORMATION

#### A. Maps

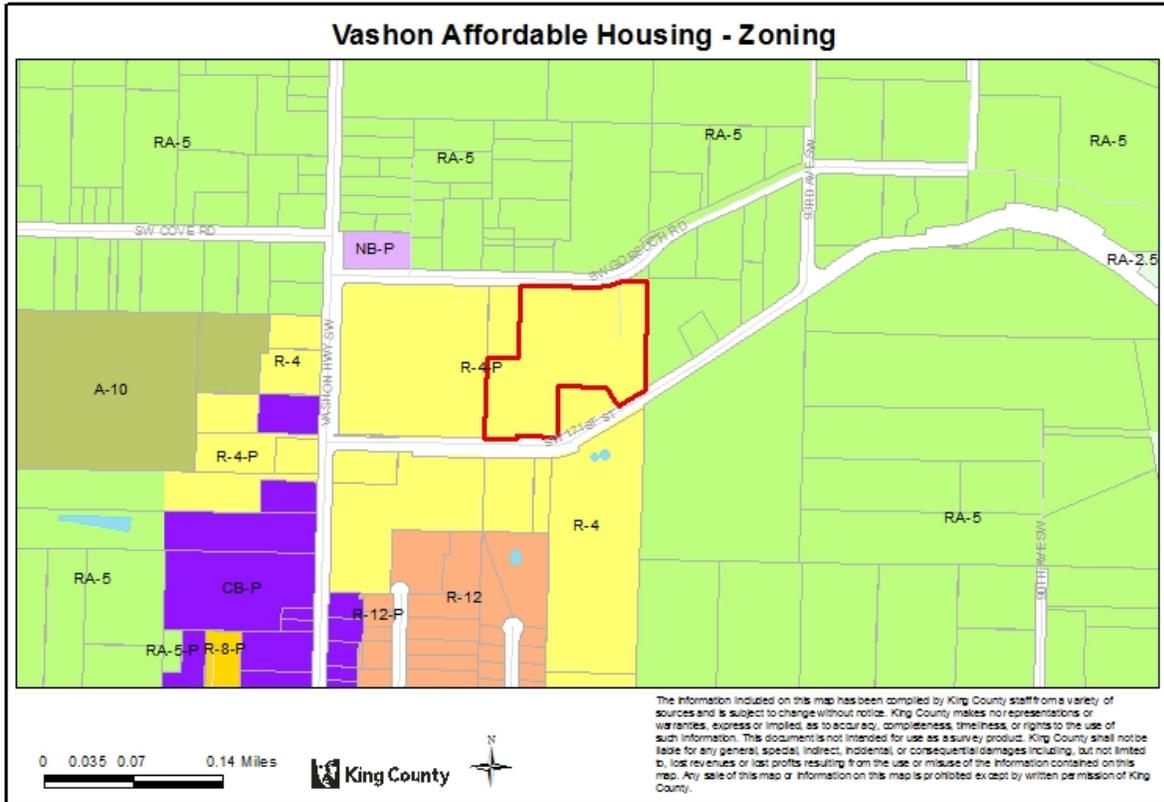
##### i. Vicinity



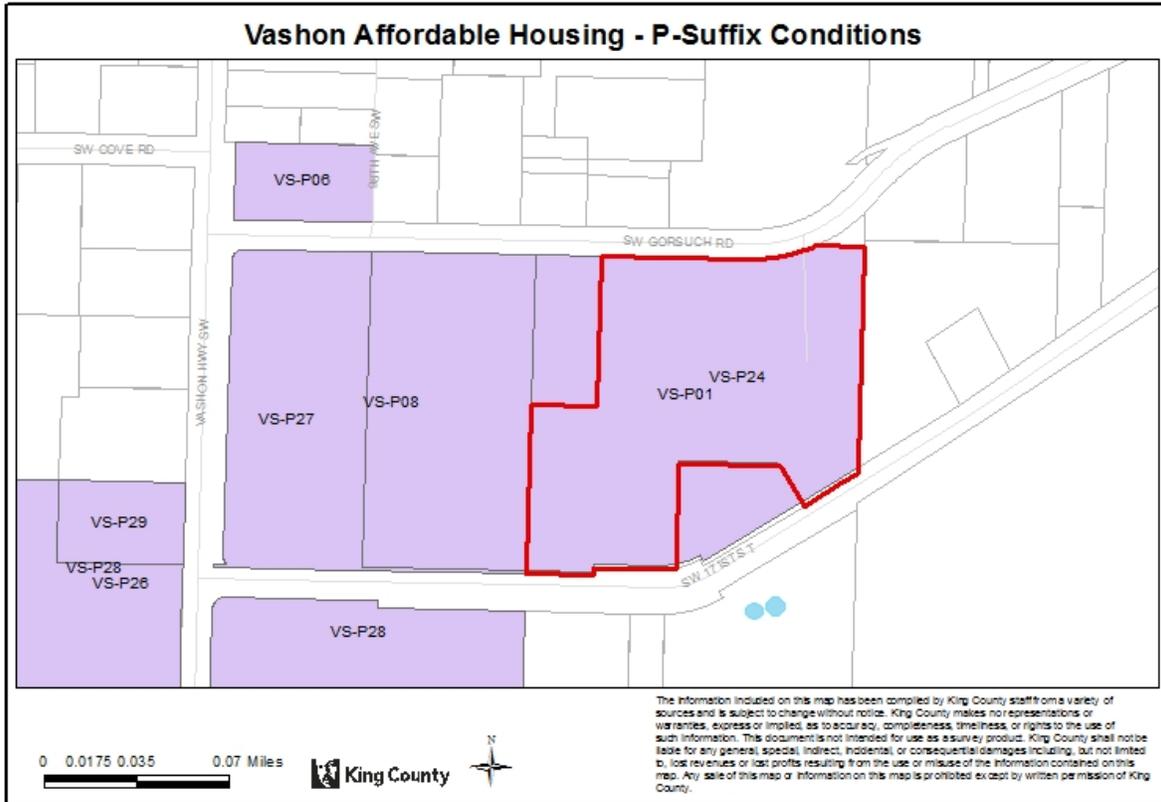
## ii. Comprehensive Plan Land Use Designation



iii. Zoning



**iv. P-suffix Development Conditions**



**VS-P01: W29-23-3: R-12-P (Ord. 12824)**

“A P-suffix was added to the zoning in order to limit the maximum density to 12 dwelling units per acre. This density is considered to be more appropriate for rural areas and more consistent with the existing level of development at the Town of Vashon.”

**VS-P24: Vashon Town Plan - Use Limits (Ord. 12824)**

“Development restricted to mobile homes, manufactured housing units and accessory support structures.”

## v. Environmental Features



## B. PARCEL INFORMATION

Current Comprehensive Plan Designation: Rural Town (RT)  
Current Zoning: Residential, four dwelling units per acre (R-4), with P-suffix development conditions  
Acreage: 316,245 square feet (7.26 acres)  
Council District: District 8, Joe McDermott  
Potential Annexation Area: n/a  
School District: Vashon Island #402  
Drainage Basin: East Vashon  
Watershed: Central Puget Sound  
MPS Zones: 133  
Concurrency: Pass  
Water: King County Water District 19  
Metro Transit: Service available on Vashon Highway SW (less than ¼ mile west)

The site is currently partially developed as a mobile home park. Pre-application meetings and other preliminary feasibility was started in 2006 for a 13 unit apartment project. No permits applications were ever filed for such a project.

**C. AREA LAND USE AND ZONING INFORMATION**

<b>Direction</b>	<b>Current Use</b>	<b>Designation/ Zoning</b>
North	Single-Family Residences	AG, RA / RA-5
East	Single-Family Residences	RA / RA-5
South	Single-Family Residence, Wastewater Facility	RT / R-4
West	Single-Family Residences	RT / R-4-P

The properties to the west have P-suffix development conditions. VS-P08 limits development of the property to not more than 85 dwelling units. VS-P27 requires landscaping on the east side of Vashon Highway.

Gorsuch Creek runs through the southern portion of this property, and the properties to the west, south and east. There are slopes over 30% on the western portion of the site, associated with the stream. Other critical areas (wetlands, geologic hazards) are not known to be onsite.

**D. INFRASTRUCTURE****i. Utilities**

The site is within the service area of King County Water District 19, and outside the boundary of any sewer service district or agency.

**ii. Schools**

The site is within the Vashon Island School District #402. The district has one elementary, one middle, and one high school. All three schools are located between 1.5 and 2 miles to the south of this site.

**iii. Roads**

The site fronts on two local access streets, SW Gorsuch Road, on the north side of the site, and SW 171<sup>st</sup> Street on the south side of the site. Vashon Highway SW, a Primary Street, is less than a ¼ mile west of the site.

There are no known transportation issues in this area, nor are there known issues with a potential rezone. Any development on the site would be required to submit a project specific traffic impact analysis that would identify existing

transportation issues and propose mitigation (such as road widening) for adverse traffic impacts that result from the proposed development.

#### **iv. Transit**

Two bus routes serve Vashon Highway SW. Route 118 provides service between Tahlequah Ferry Terminal at the south end of Vashon and the Vashon Ferry Terminal at the north end of Vashon.

Route 119 provides service between Maury Island and the Vashon Ferry Terminal.

From the Tahlequah Ferry Terminal, there is ferry service to Tacoma. From the Vashon Ferry Terminal, there is service to Seattle and to Southworth on the Kitsap peninsula.

### **E. COMMUNICATION**

DPER is conducting a community planning effort for the Vashon area. This proposal has been discussed with the citizens advisory group associated with that planning effort. The citizen's advisory group has expressed support for additional affordable housing on the Island, and has expressed support for this rezone proposal.

### **IV. ANALYSIS**

#### **A. Site Constraints**

The site is underdeveloped, with five mobile homes located on the far eastern portion of the site. At the base zoning of R-4, up to 29 dwelling units could be constructed on the site. A maximum density of 6 du/ac with the use of general density incentives could allow up to 43 dwelling units to be constructed, or a maximum density of 8 du/acre with the use of density incentives specifically for affordable housing projects or cottage housing projects could allow up to 58 dwelling units to be constructed. This density would be below the density limitations in P-suffix VS-P01 of 12 units per acre, or no more than 87 dwelling units on the site.

The site is constrained by Gorsuch Creek and its associated buffers, which flows west to east along the southern portion of the property, and branches off to the south. There are also slopes of approximately 30 percent associated with the stream. These sensitive areas would likely reduce the development potential of the property, to a lesser number of dwelling units physically able to be constructed on the site, at the current zoning.

#### **B. Policy Consistency**

The 2012 KCCP policies, as well as the proposed changes in the Executive's transmitted 2016 KCCP, support the provision of affordable housing, as well as greater density within Rural Towns. The Vashon Town Plan policies support varied housing types, and descriptive text explicitly encourages affordable housing.

The Vashon Town Plan does not clearly state why VS-P24 was added to this property. This P-suffix condition limits development to mobile homes, manufactured housing units and accessory support structures. VS-P24 is one way to provide for more affordable housing. However, since adoption of the Vashon Town Plan in 1996, additional development to realize the base zoning has not occurred.

The County has an obligation to continually review land use designations, zoning and development regulations, and to make adjustments if they are not implementing the KCCP and other adopted plans, including the Vashon Town Plan. VS-P24 as currently adopted is consistent with the KCCP and Vashon Town Plan policies. A modification to this P-suffix condition that broadens it to allow other types of affordable housing would also be consistent with the County's adopted policies, and could lead to additional affordable housing being developed.

Additionally, VS-P01 does not have any current, on-the-ground effect as the maximum density allowed under either the base zoning or through density incentives would still be below the 12 du/ac limitation in the P-suffix condition. Any development would be subject to the stricter limitation of the two – in this case, the underlying zoning – so, VS-P01 would not be necessary. Removal of this P-suffix condition would not have any practical effect on the development of the property, and the underlying zoning would continue to be consistent with the KCCP and Vashon Town Plan policies.

Policy options for the Council to consider include:

- 1a. Remove the VS-P24 P-suffix condition limiting development to mobile homes, manufactured housing units and accessory support structures. This would modify both the zoning map and the Vashon Town Plan. Without this P-suffix condition, affordable housing would be permitted but not required, as would any other use allowed in the R-4 zone.
- 1b. Modify the VS-P24 P-suffix to require affordable housing on the property. The new P-suffix would need to be clear enough for the Executive to administer.

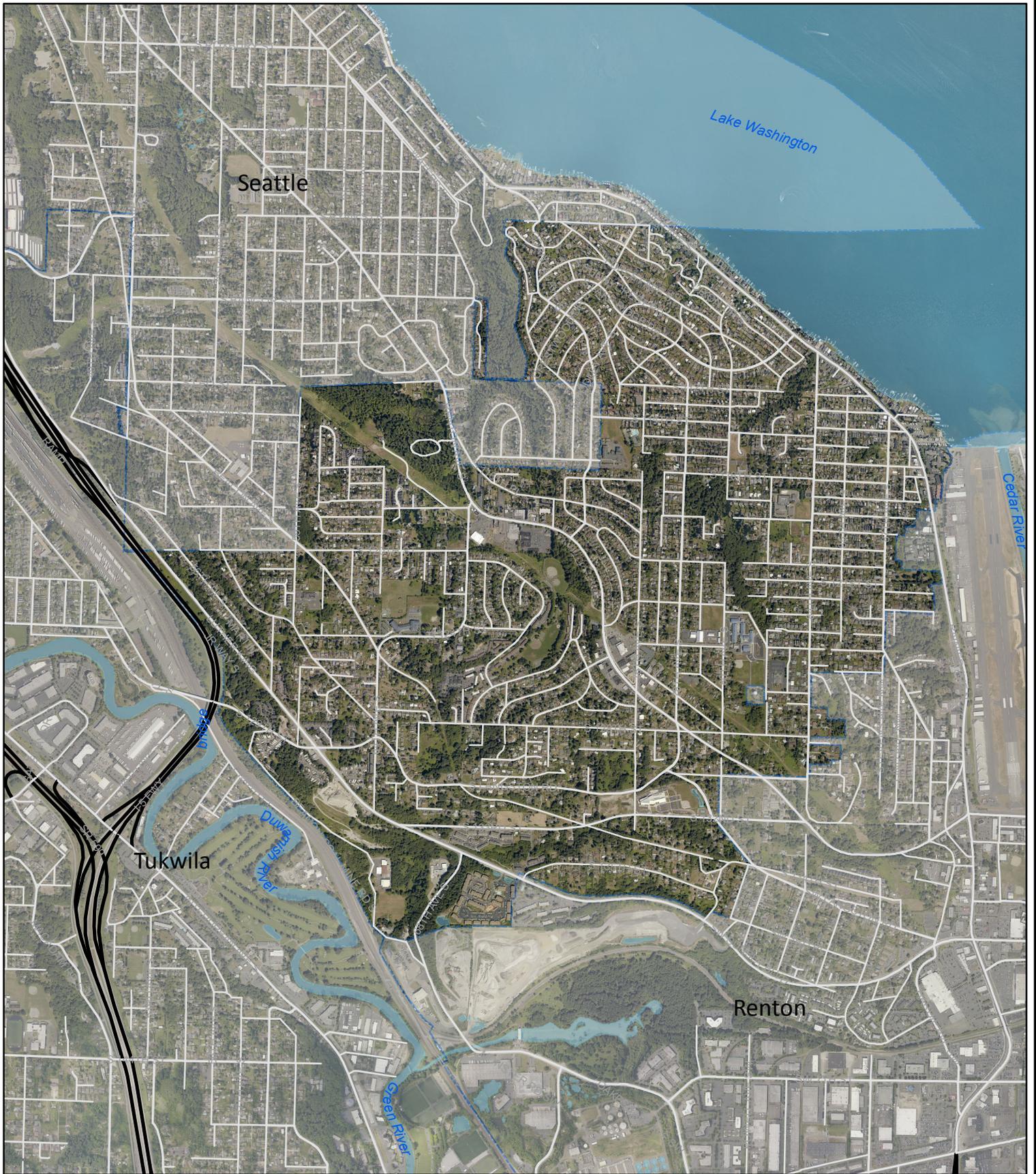
And/or

2. Remove the VS-P01 P-suffix condition limiting development to no more than 12 du/ac. This would modify both the zoning map and the Vashon Town Plan.

## 2016 KCCP Land Use Proposals

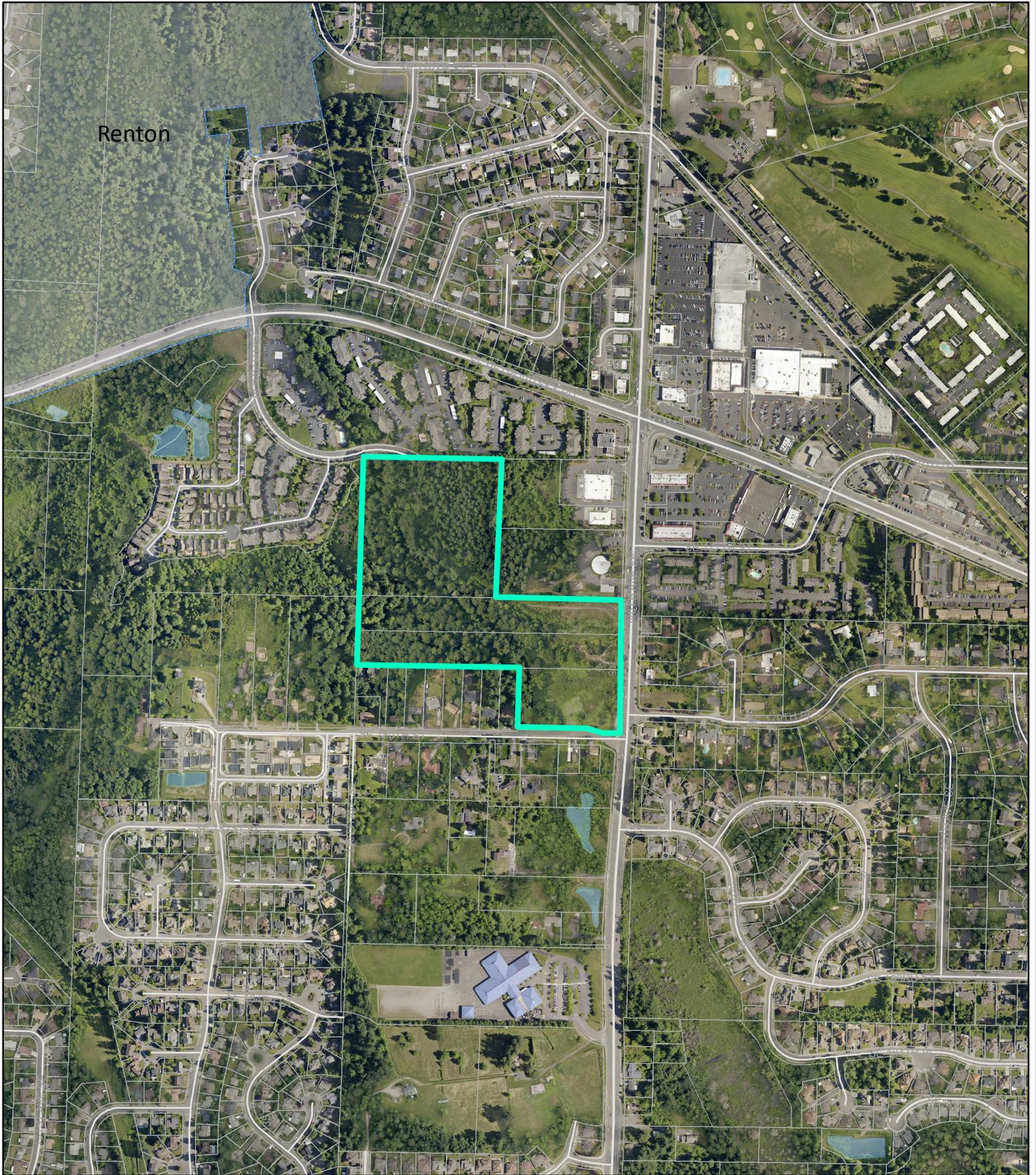
*As of 8/24/16*

<b>Map #</b>	<b>Name of Proposal</b>	<b>Council District</b>
1	West Hill	2
2	Fairwood A	9
3	Federal Way	7
4	Allison Docket Request	3
5	Timmerman Docket Request	3
6	Snoqualmie Interchange	3
7	Duthie Hill Notch	3
8	Fall City	3
9	Snoqualmie Pass Subarea Plan	3
10	Vashon Subarea Plan	8
11	Highline Subarea Plan	8
12	Carnation UGA Amendment	3
13	North Bend UGA Amendment	3
14	Cedar Hills/Maple Valley Subarea Plan	9
15	Maple Valley Industrial	9
16	Fairwood B	9
17	Taylor Mountain	9
18	Tall Chief	3
19	UGA Technical Corrections	7, 9
20	East Cougar Mountain PAA	3
21	Vashon #1	8
22	Rainier Ridge	7



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Renton

 Study Area



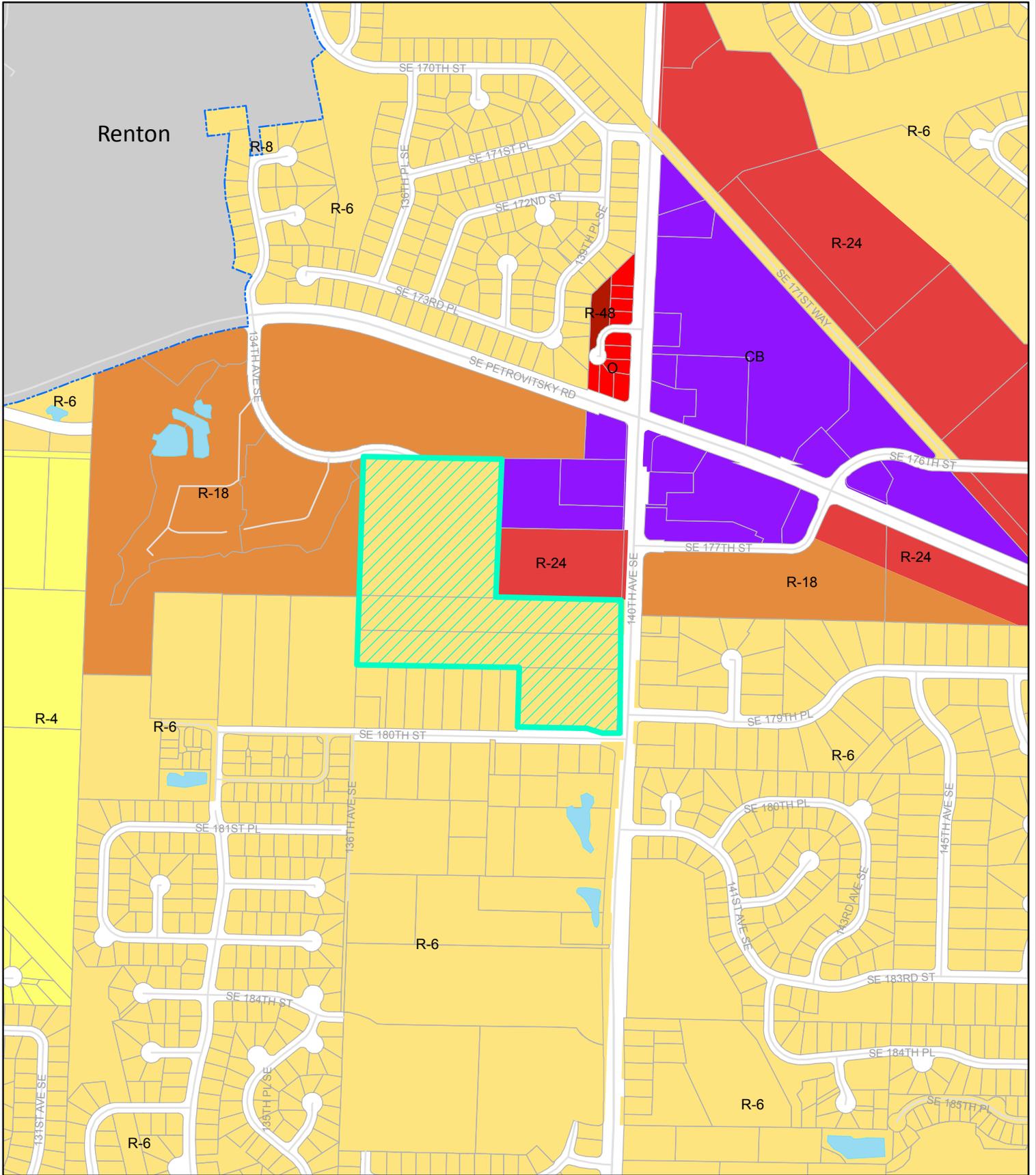
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# Fairwood A



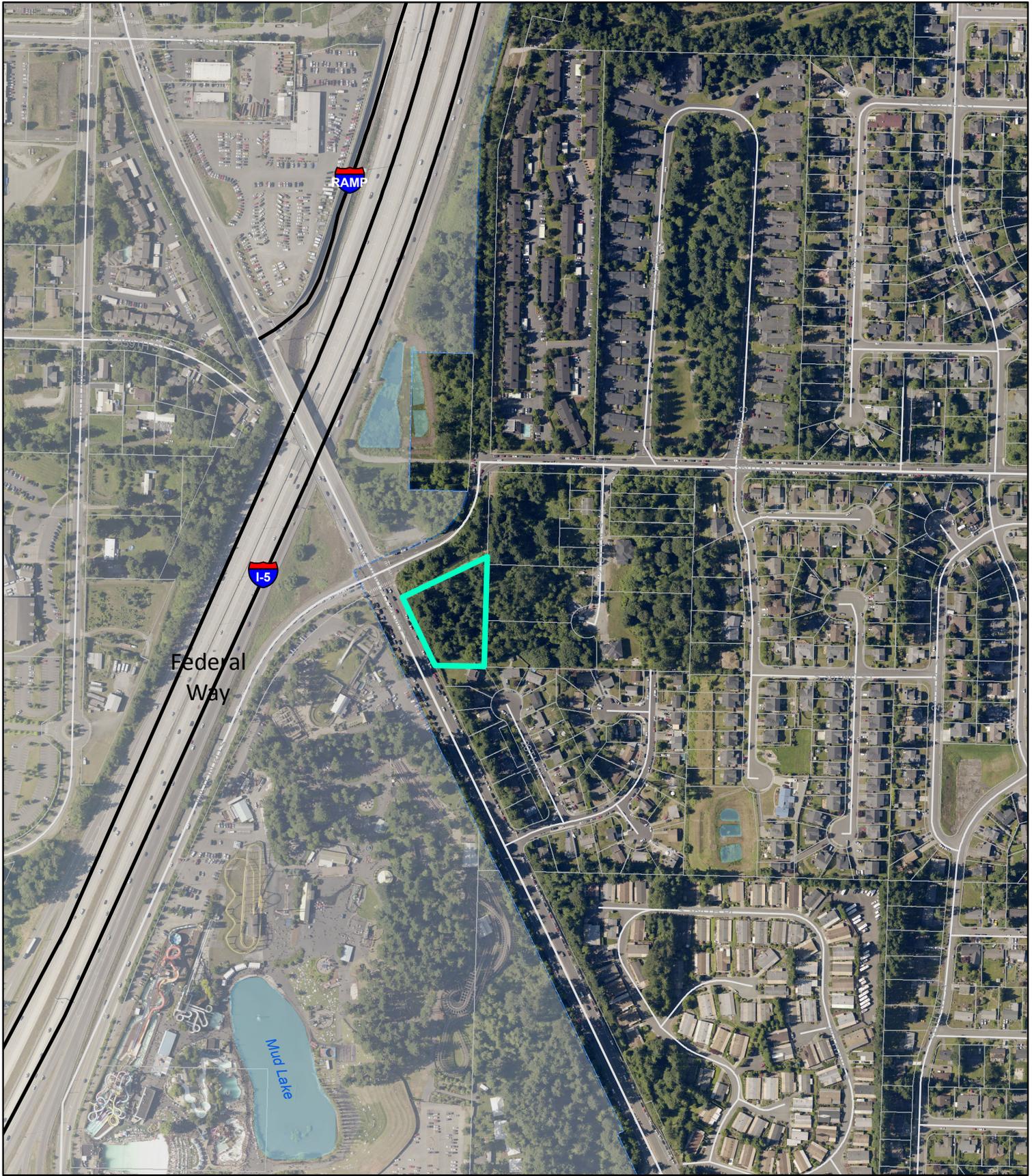
 Study Area



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 Study Area

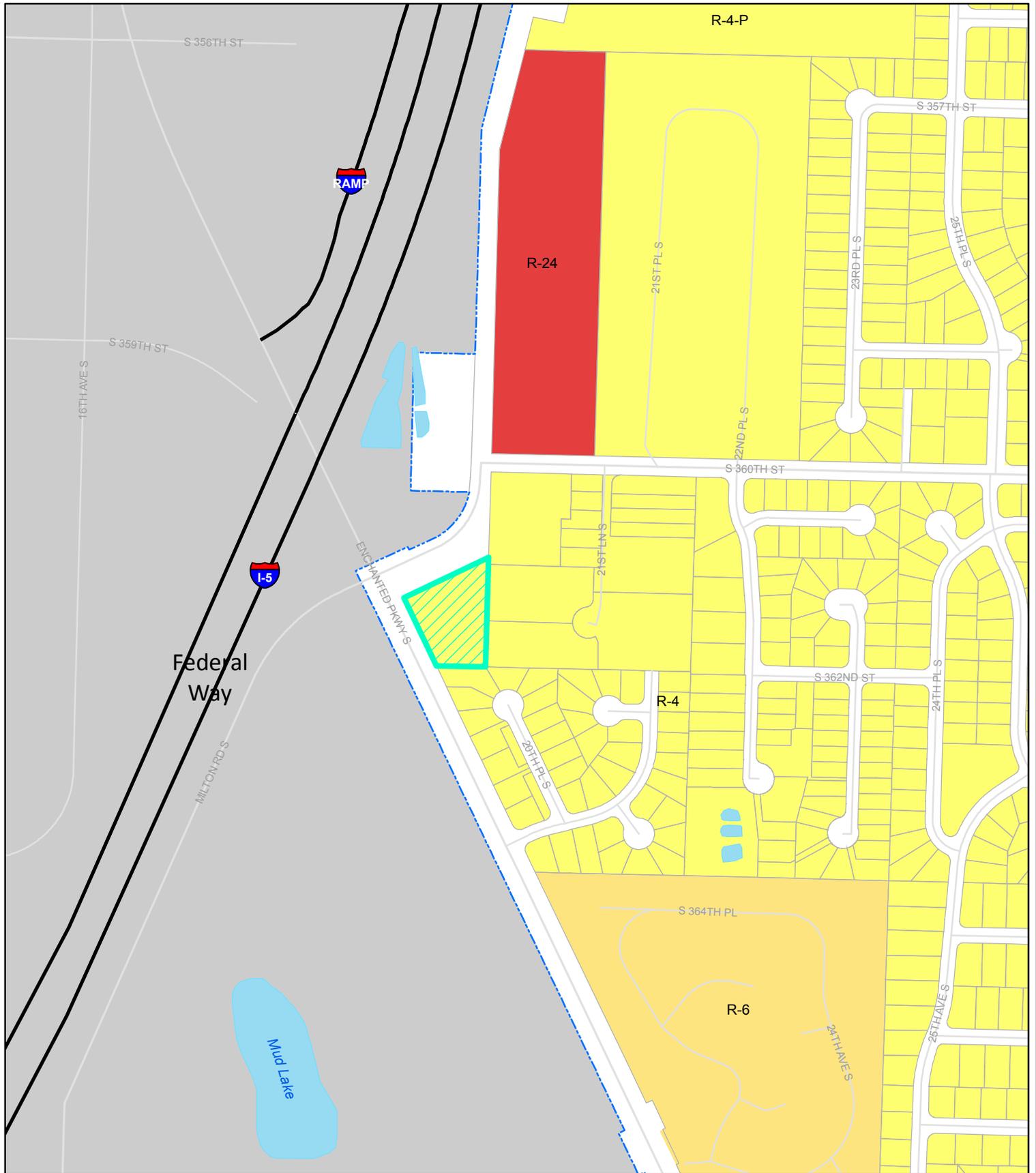


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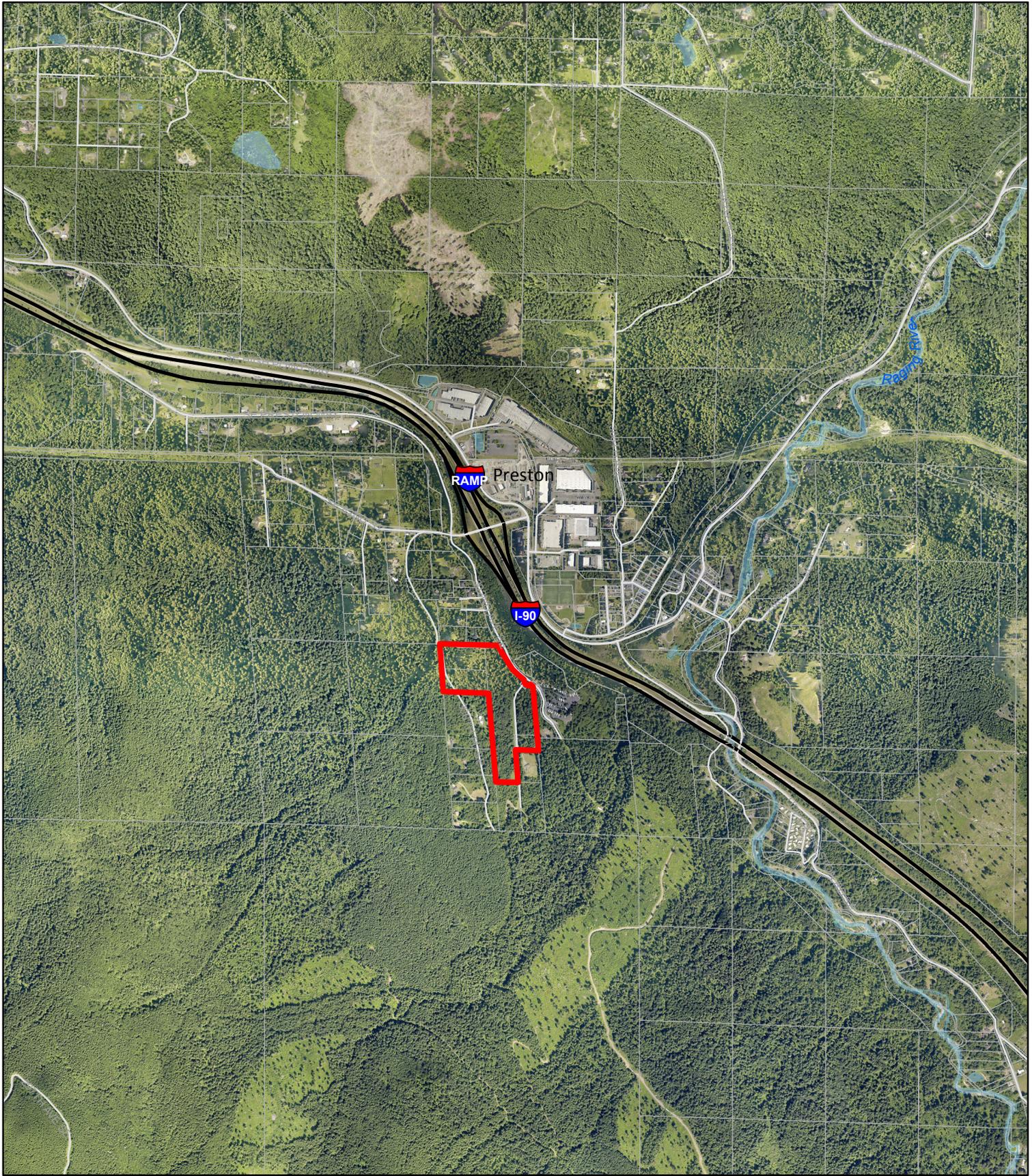
 Study Area



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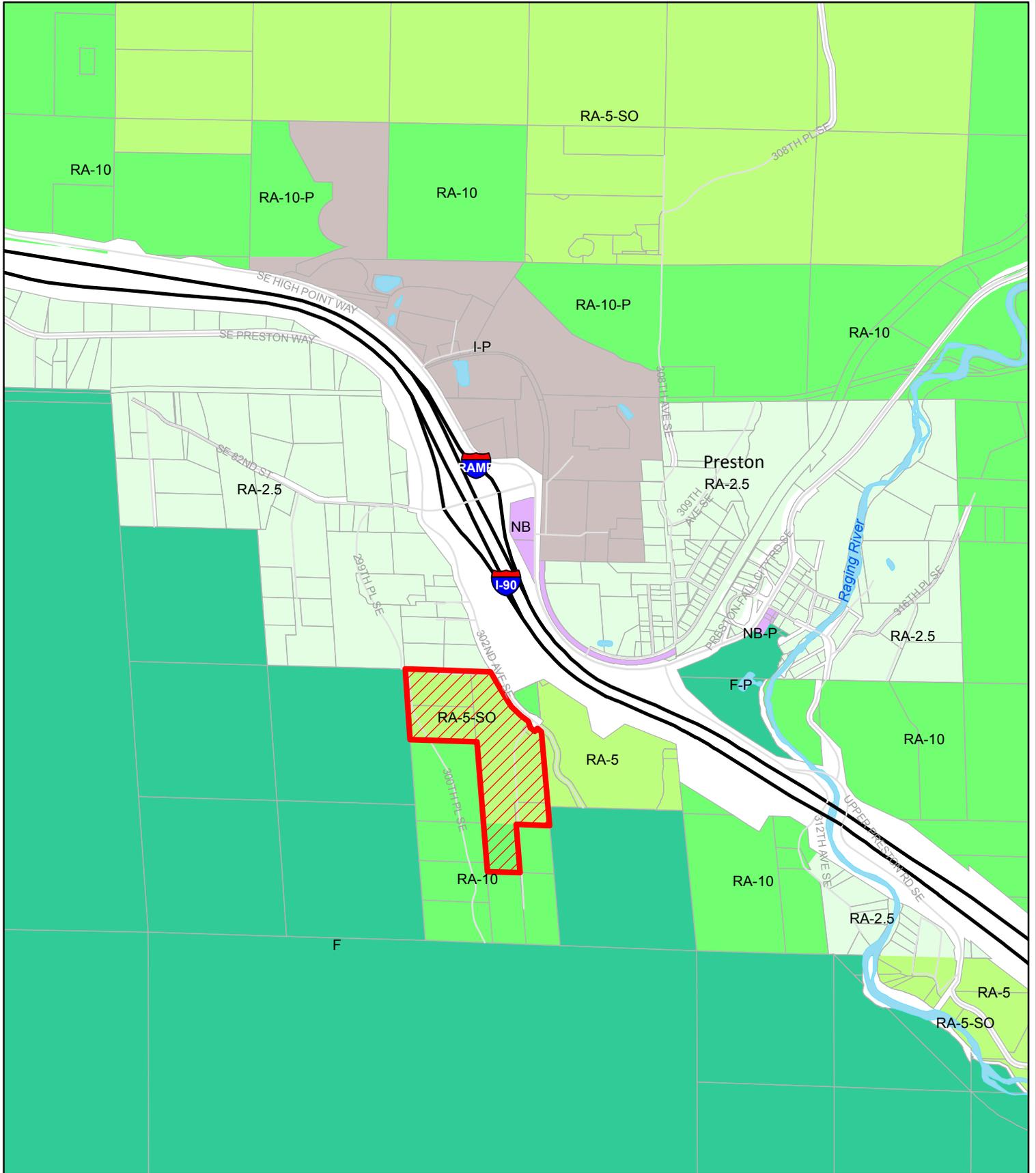


 **King County**

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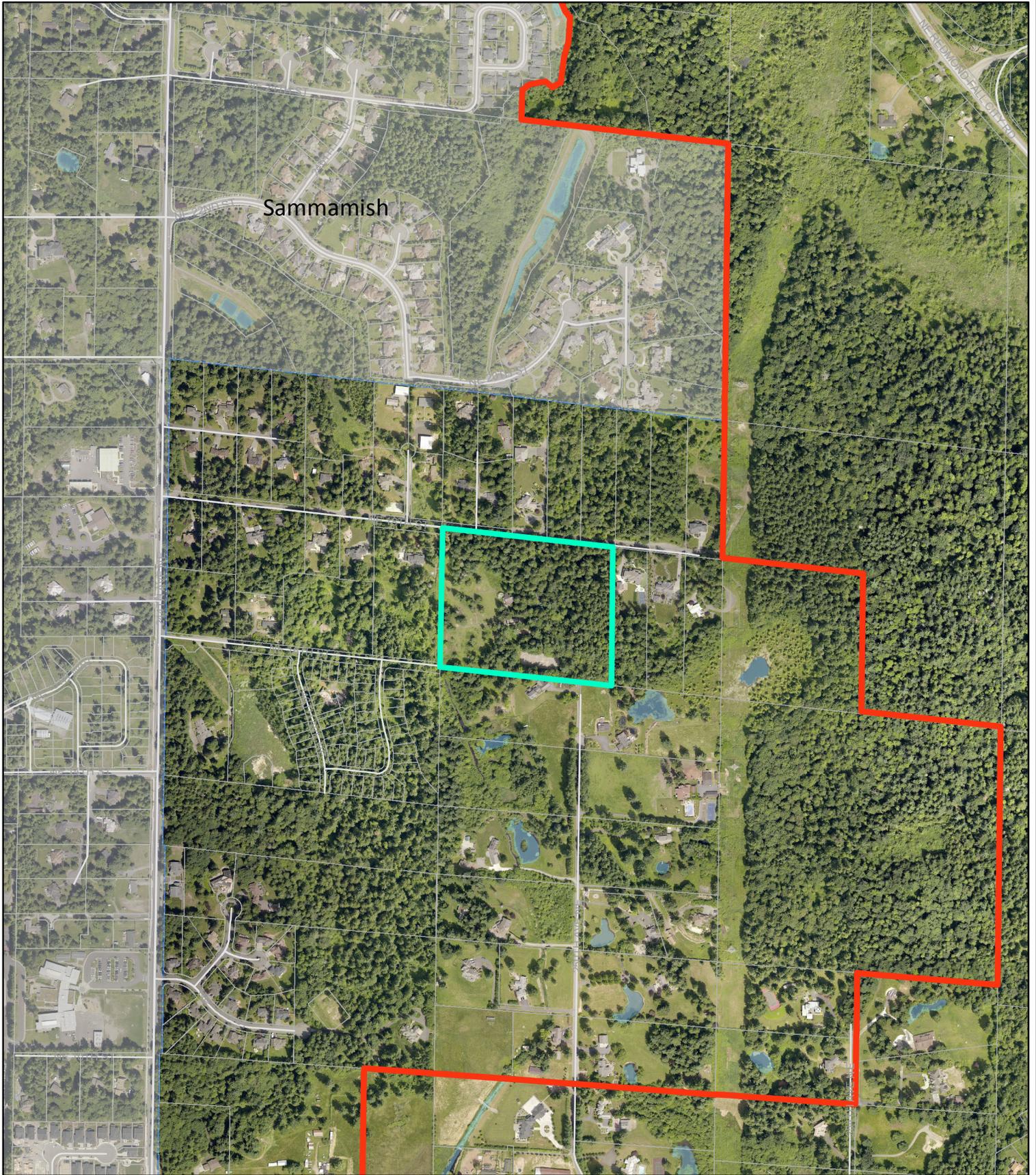


 **King County**

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 Study Area

 Urban Growth Boundary

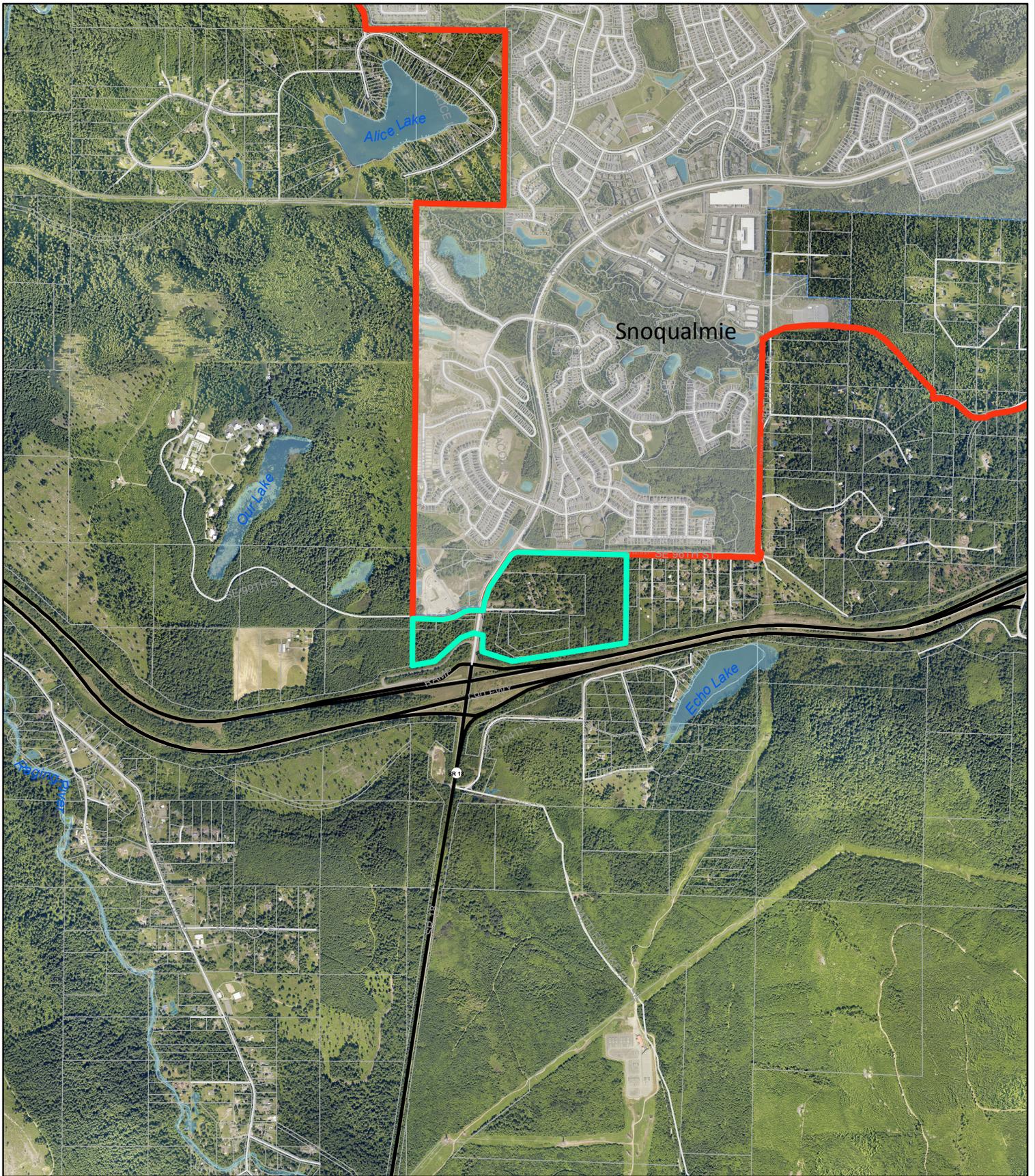


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 Study Area

 Urban Growth Boundary



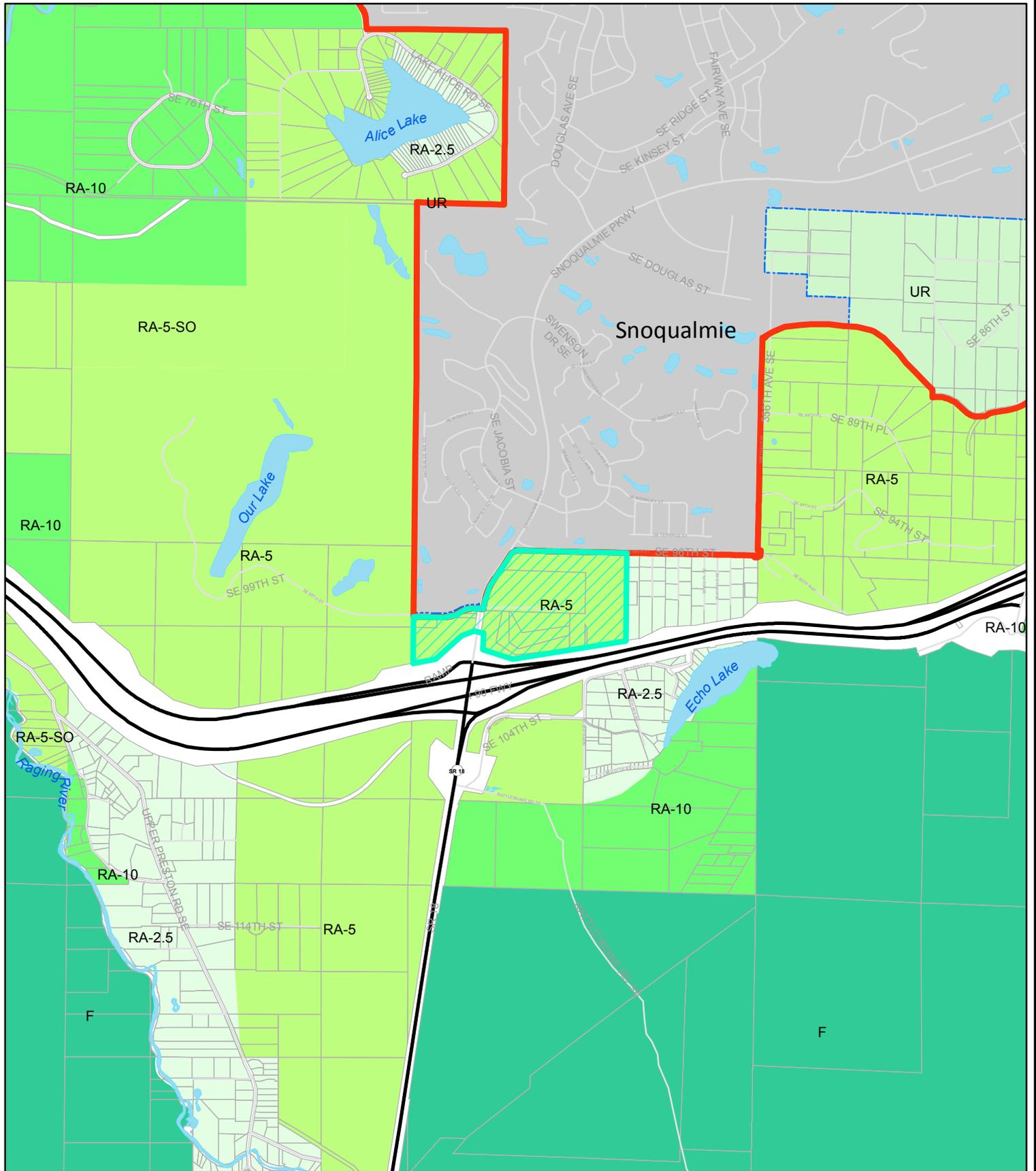
 **King County**

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# Snoqualmie Interchange



 Study Area

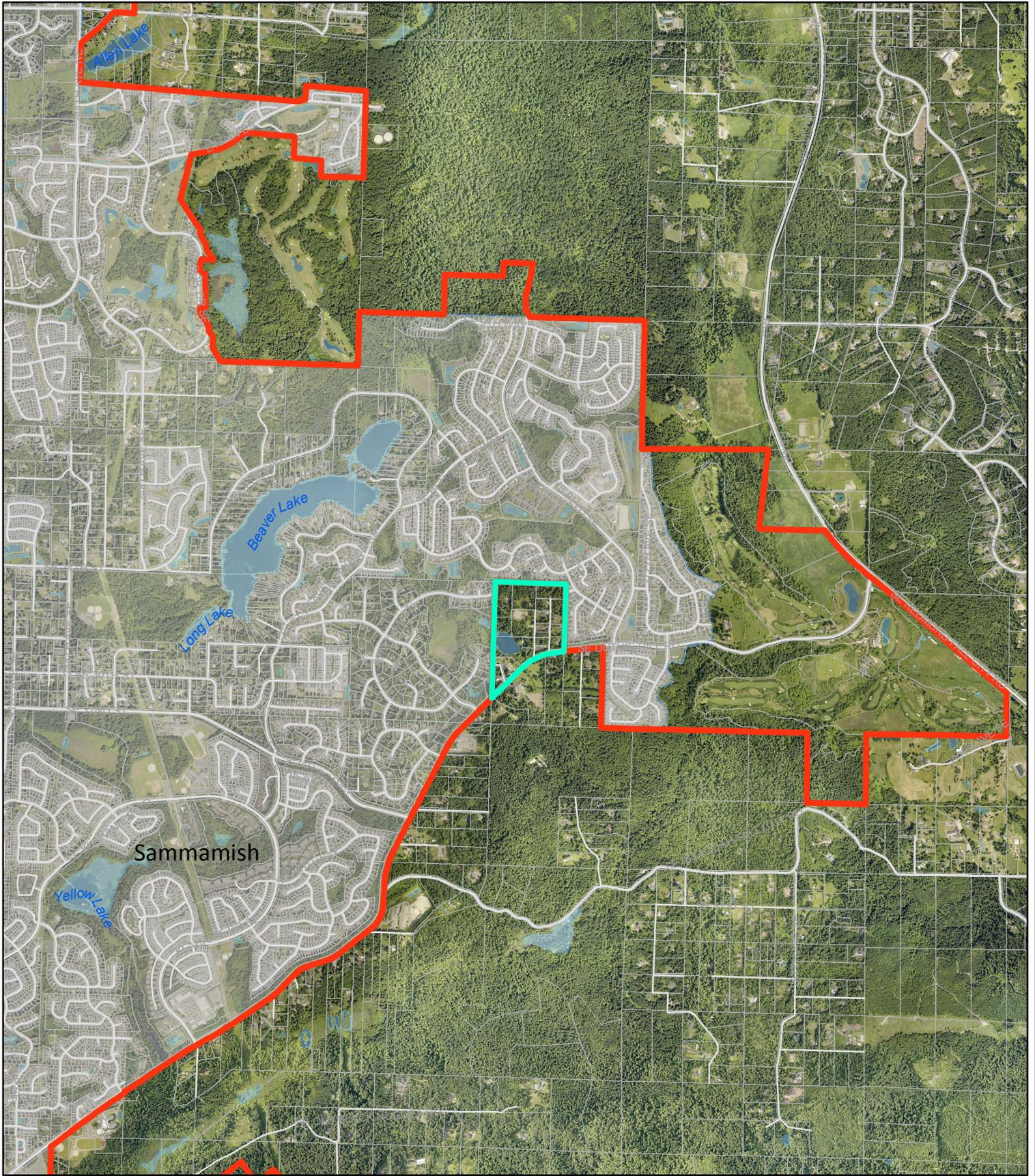
 Urban Growth Boundary



0 0.15 0.3 0.6 Miles



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 Study Area

 Urban Growth Boundary



 **King County**

0 0.175 0.35 0.7 Miles



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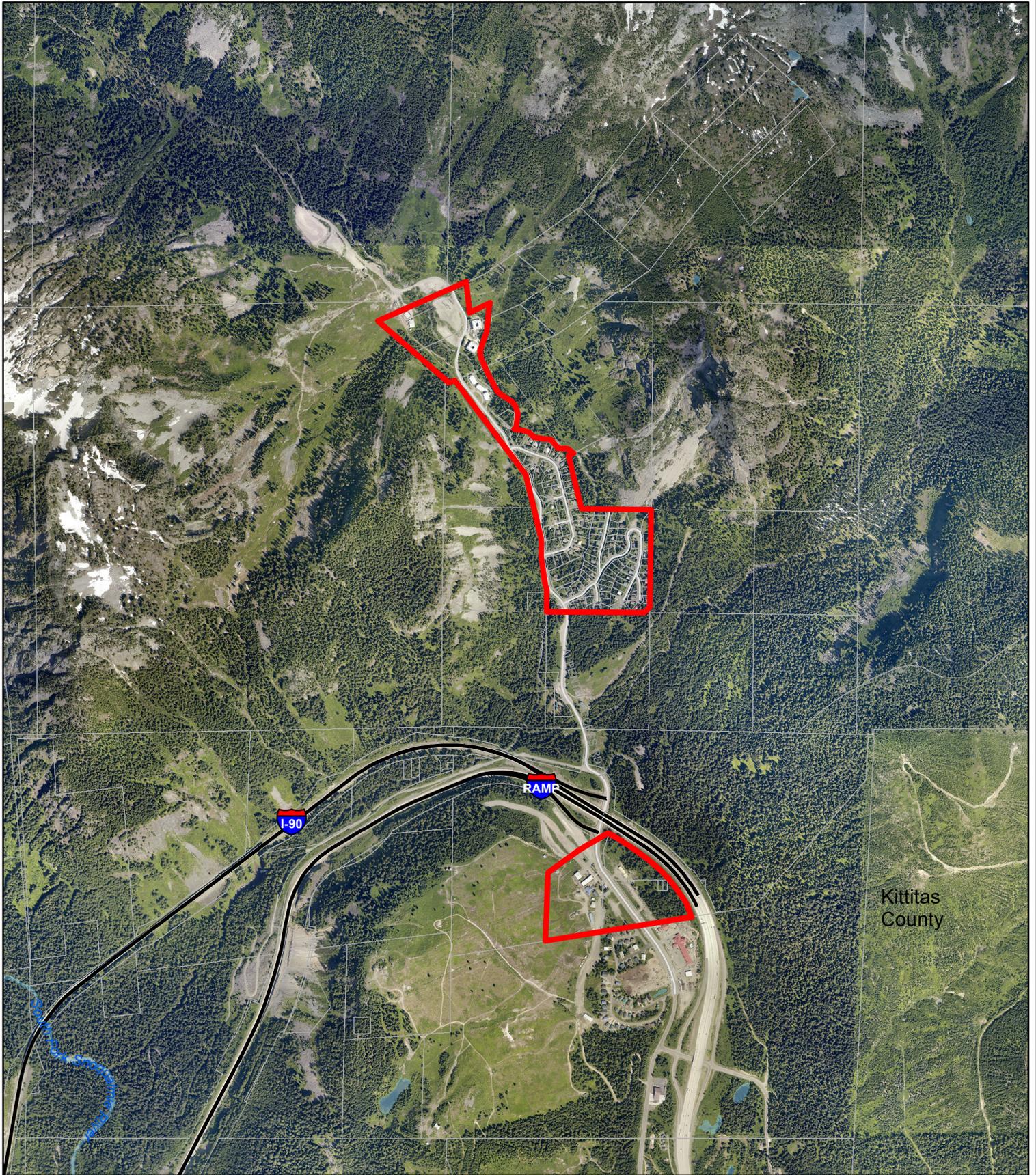
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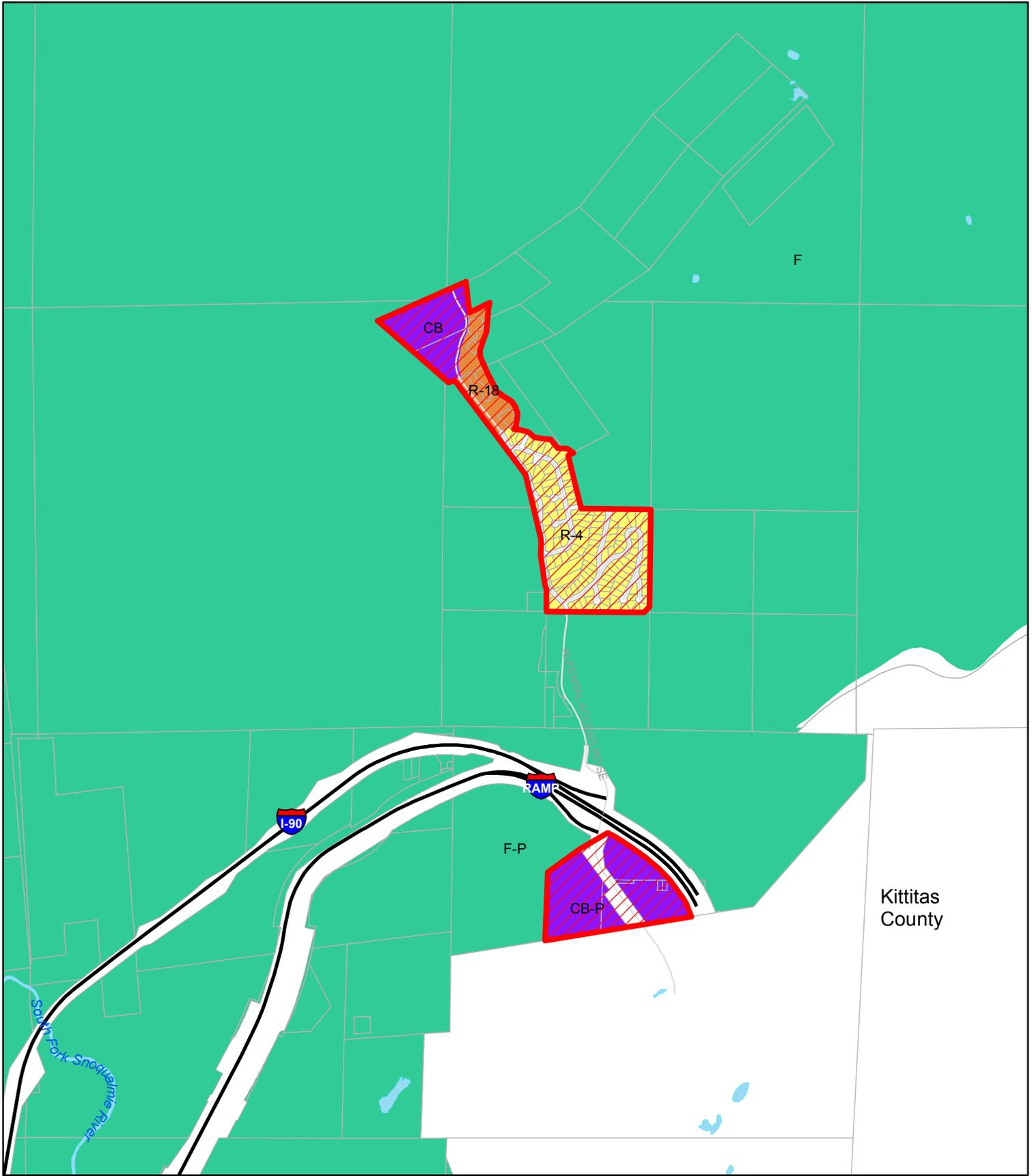


 **King County**

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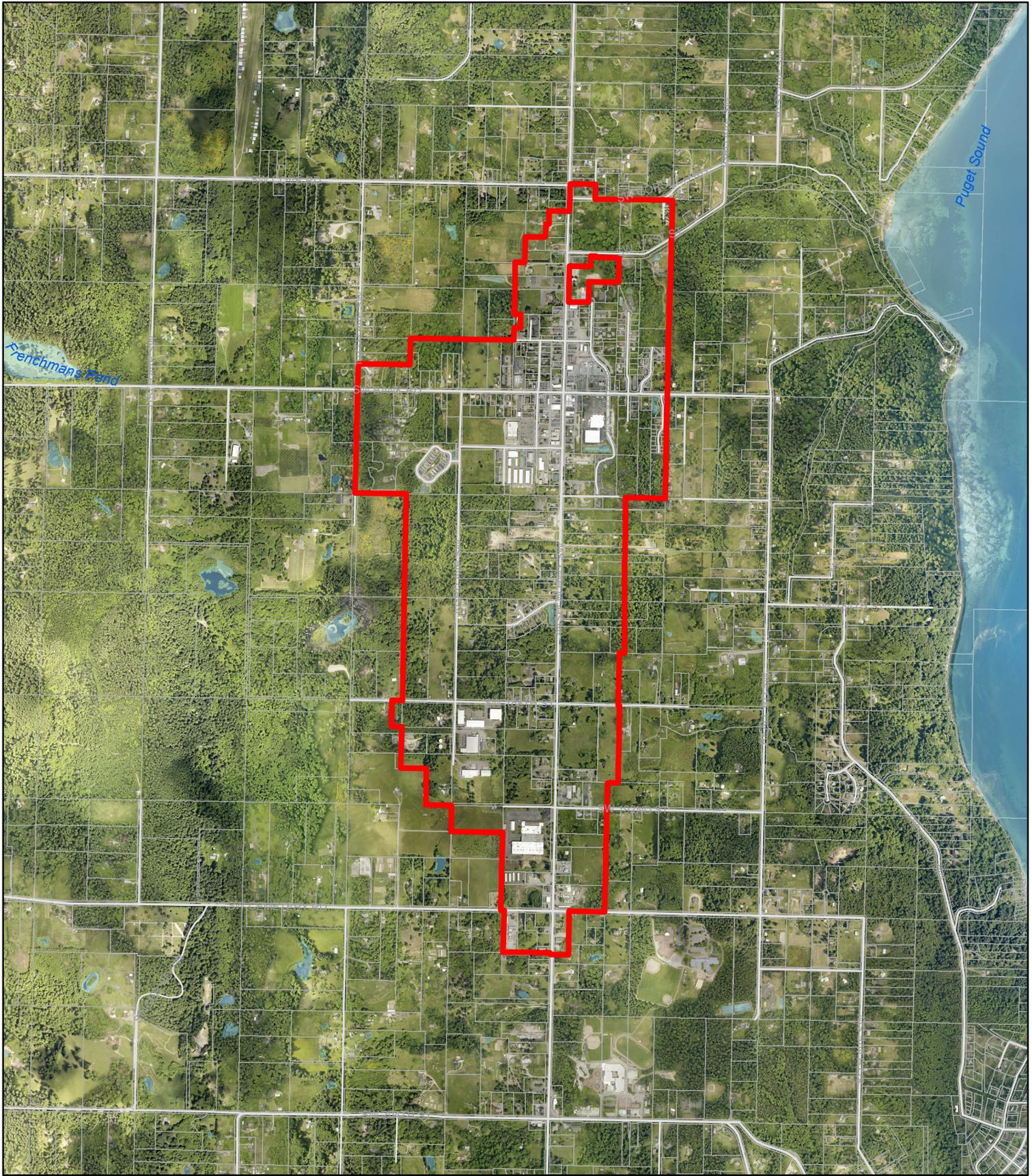


 **King County**

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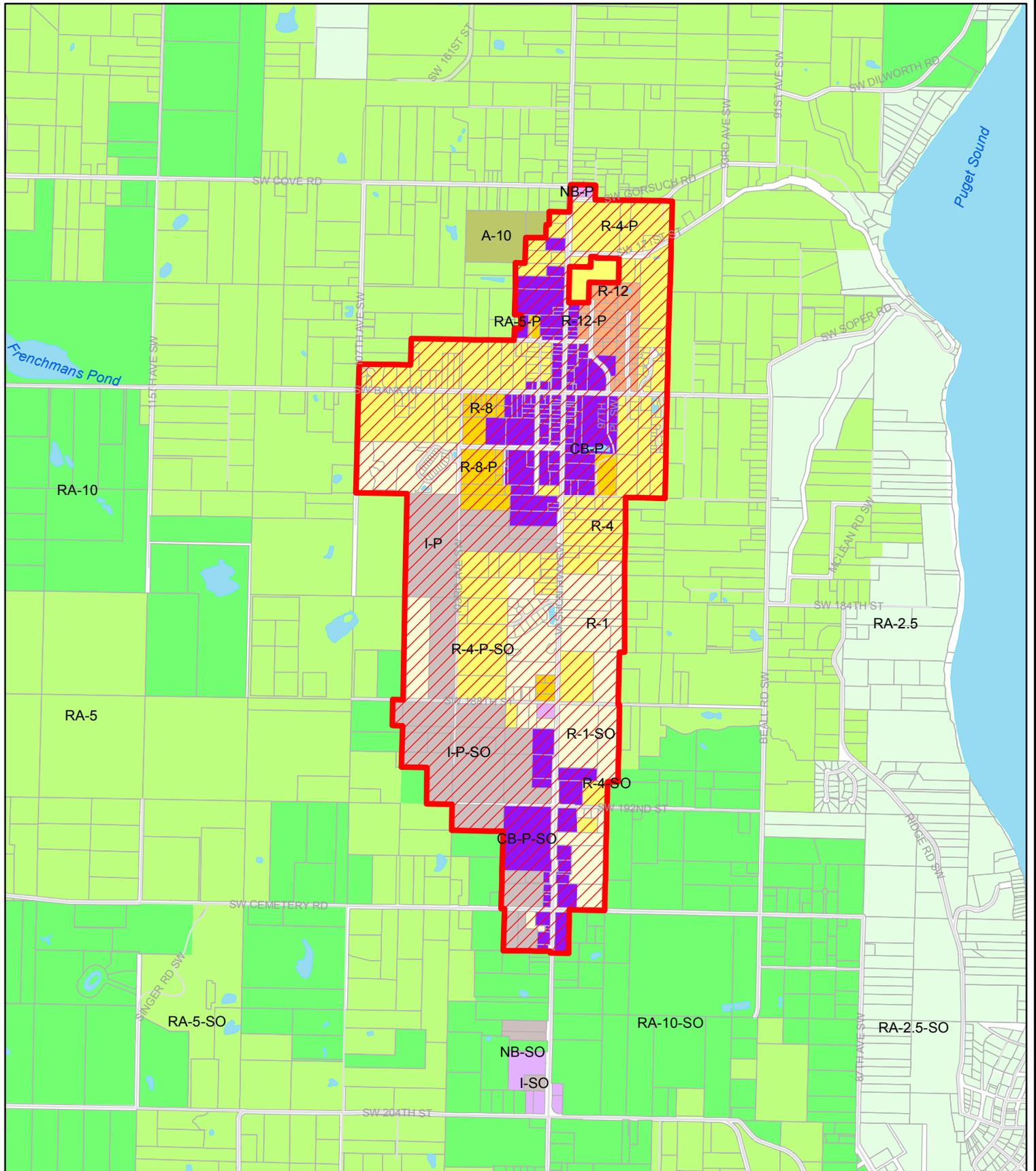


 **King County**

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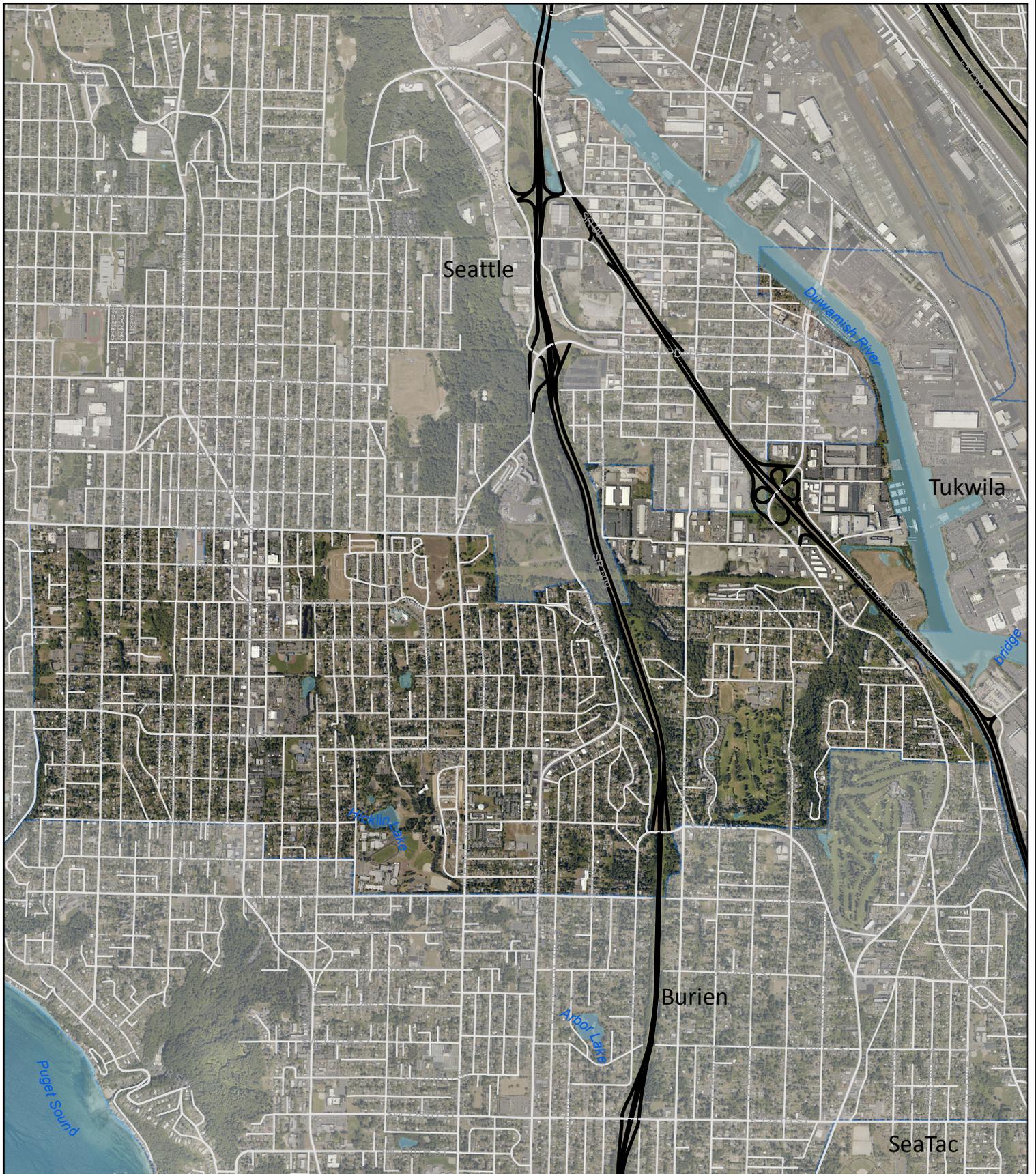


 **King County**

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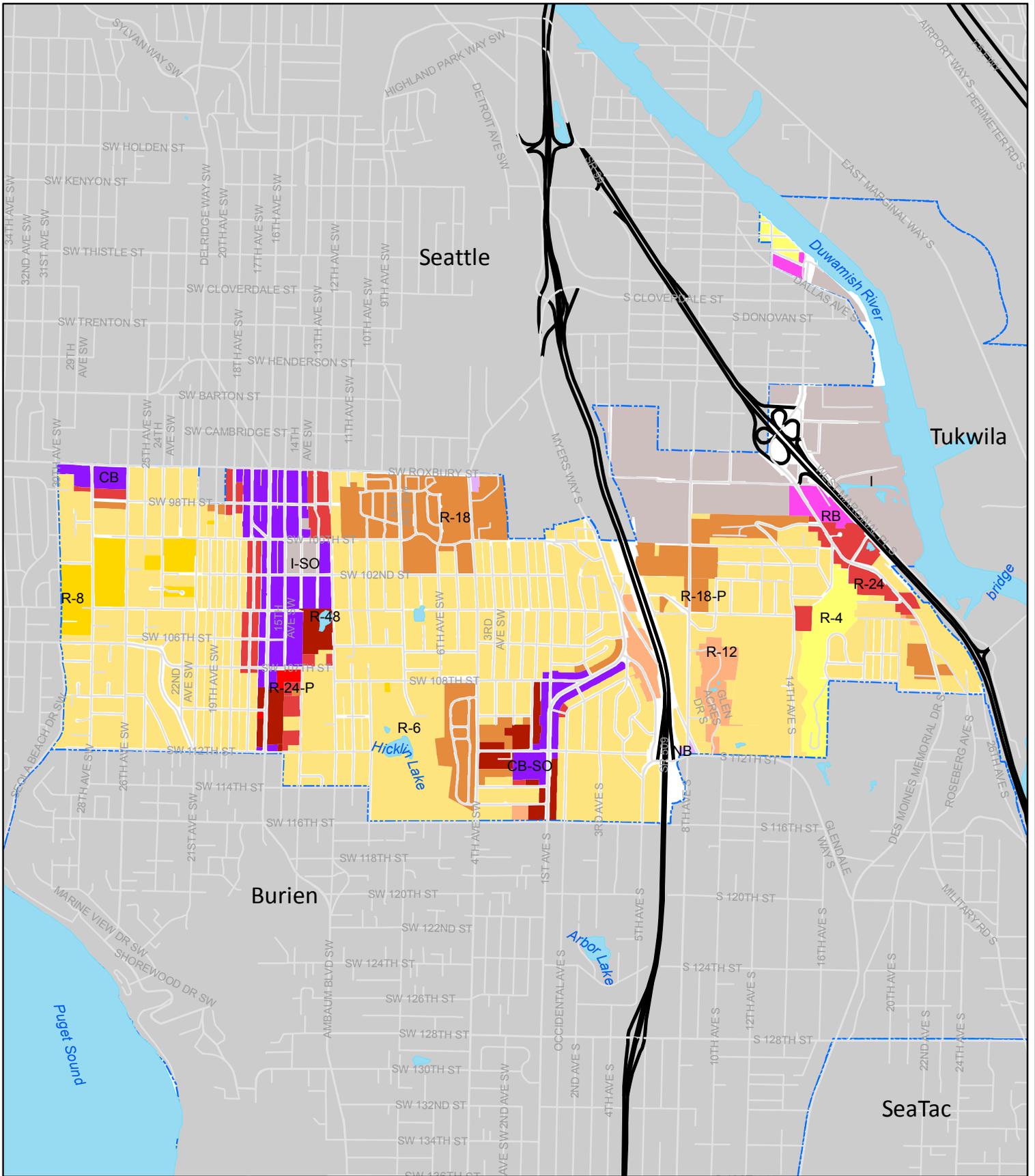
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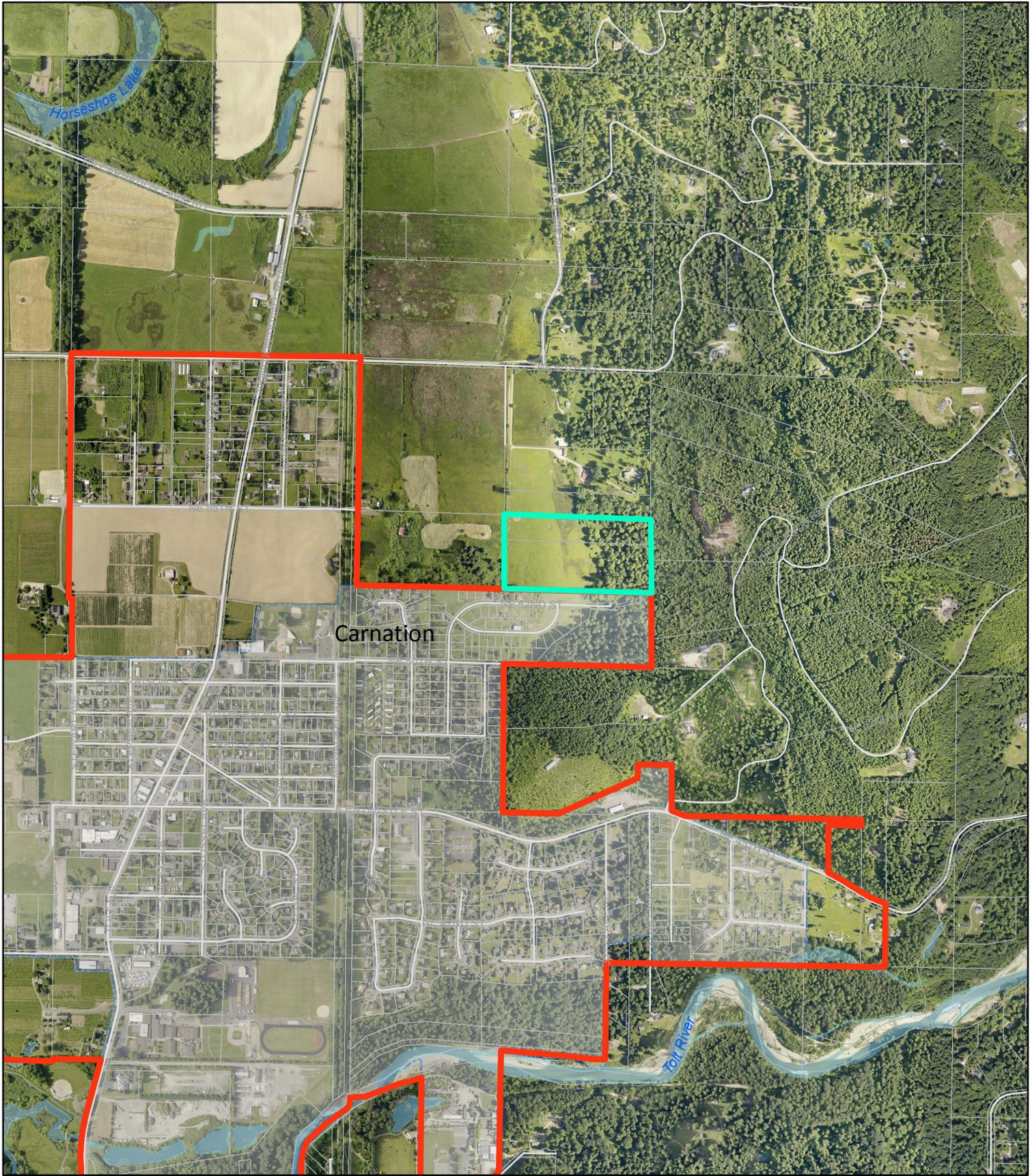
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 Study Area

 Urban Growth Boundary

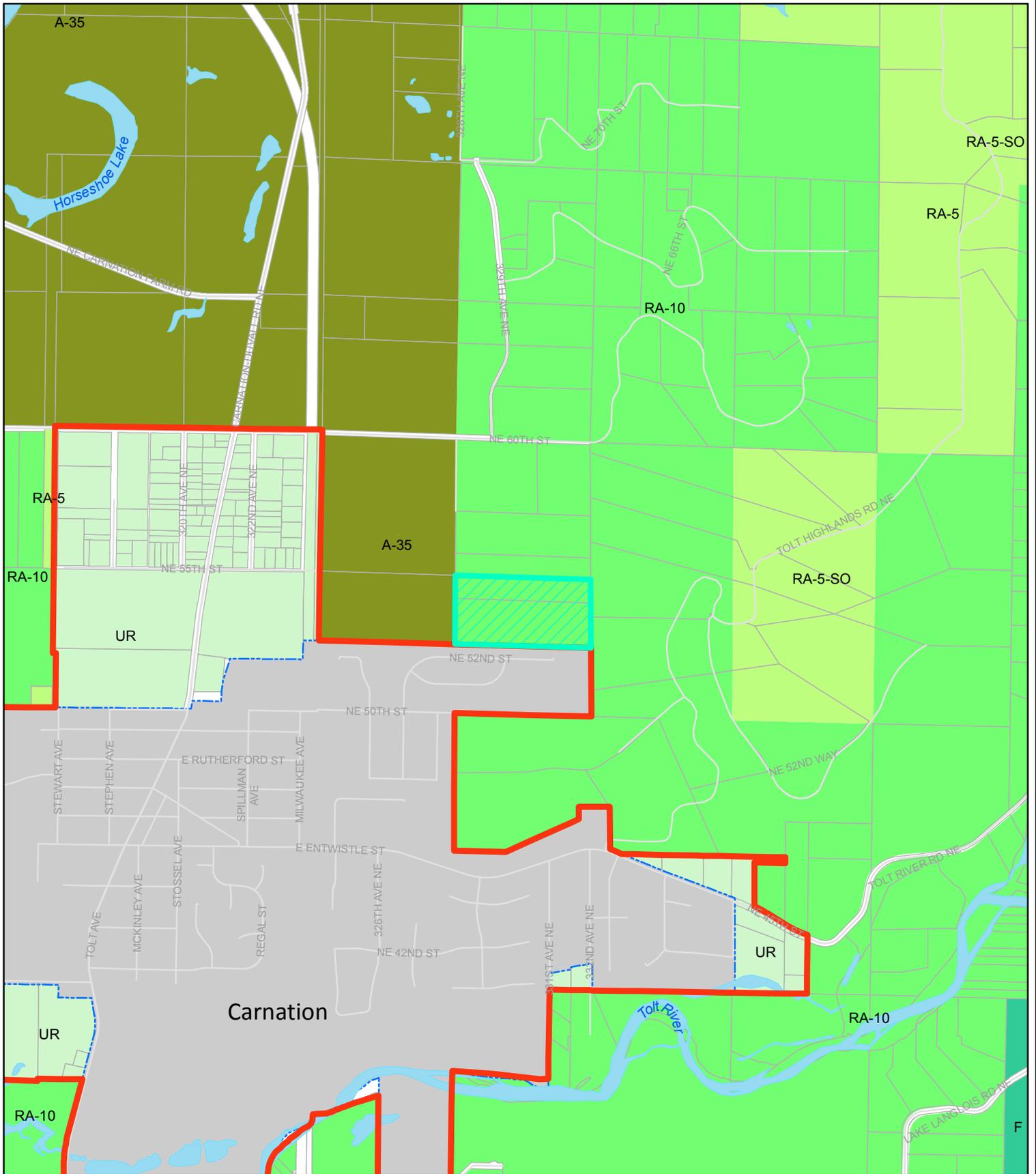


 **King County**

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 Study Area

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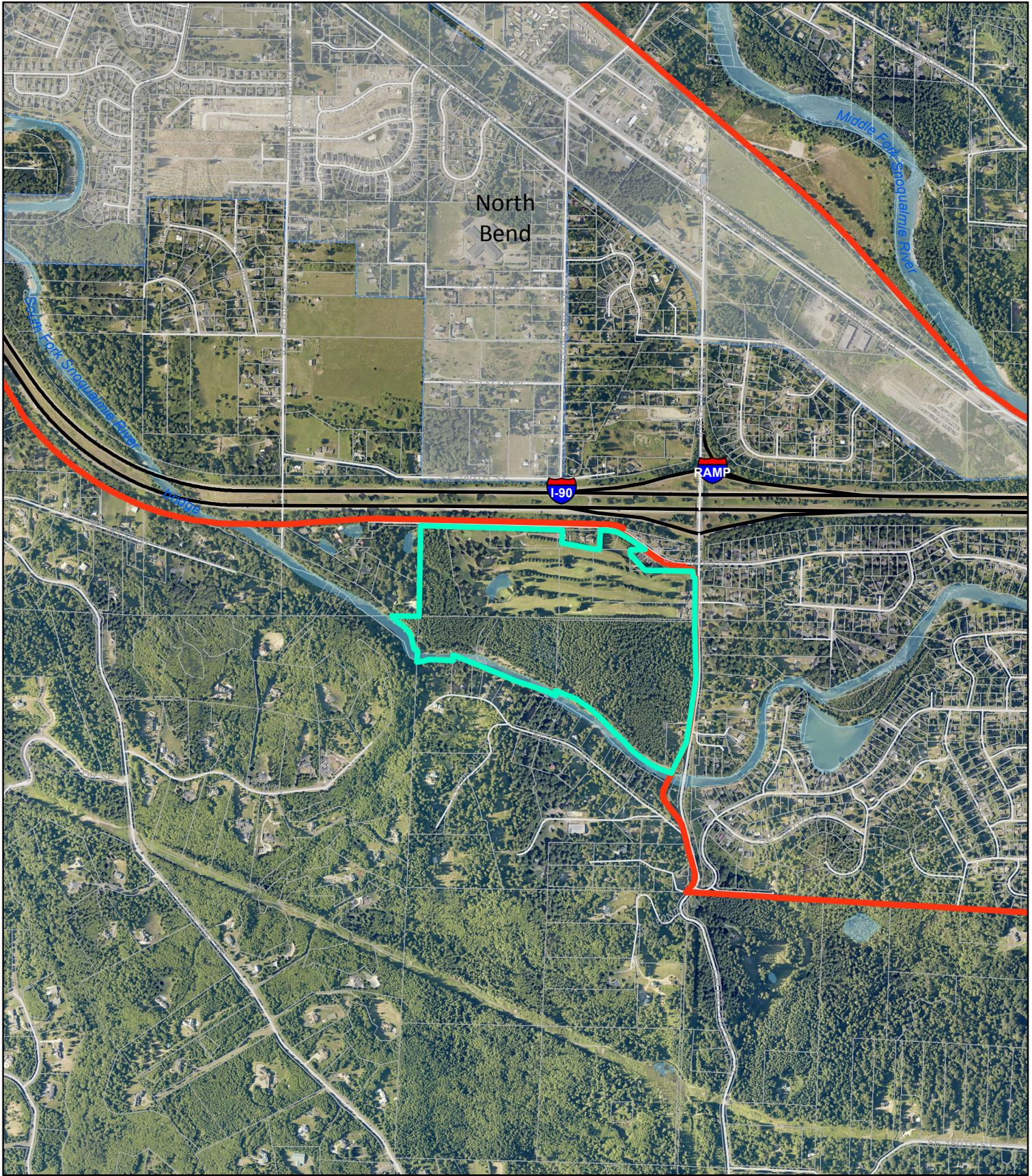


 **King County**

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 Study Area

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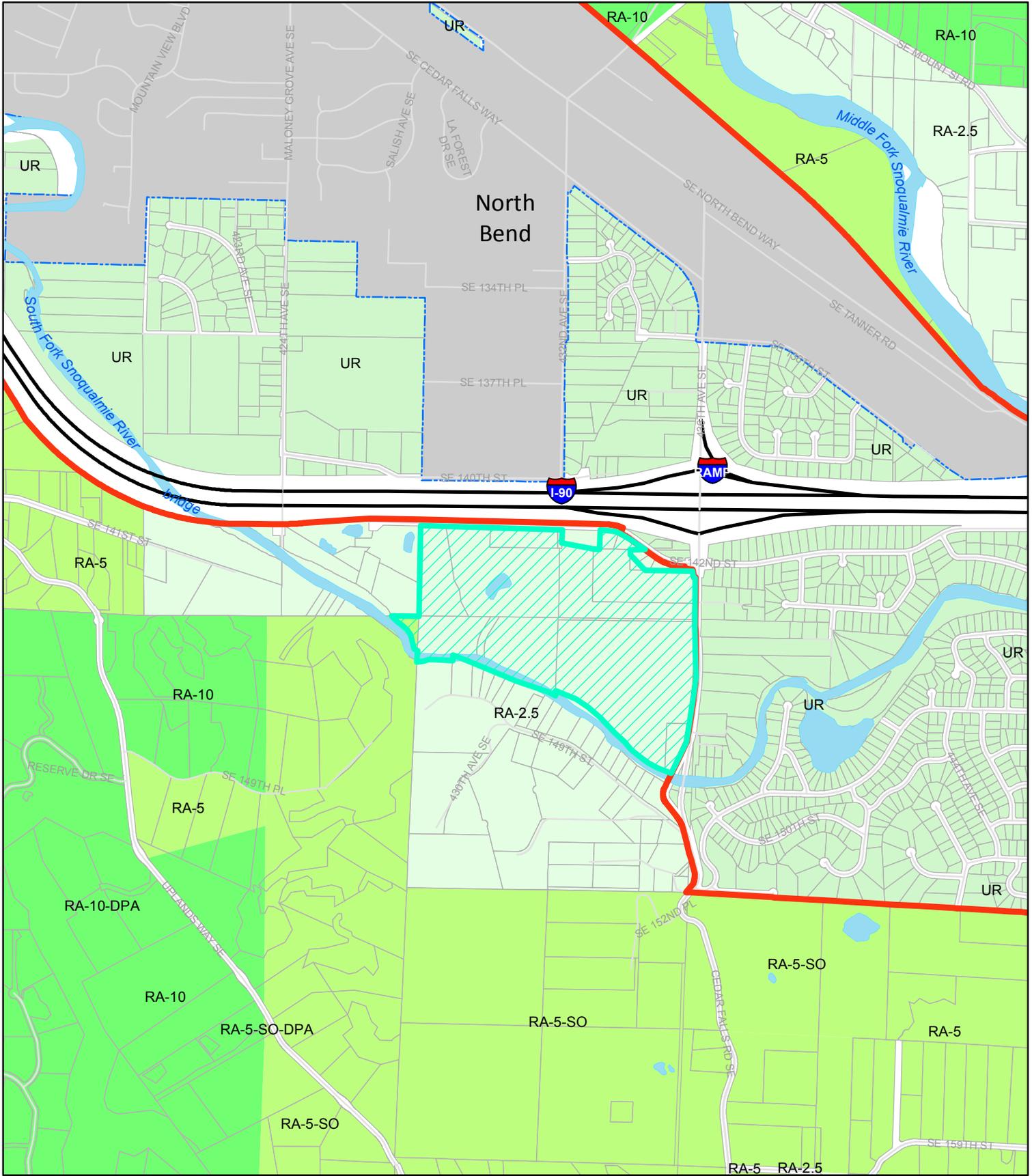


 **King County**

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 Study Area

 Urban Growth Boundary



 **King County**

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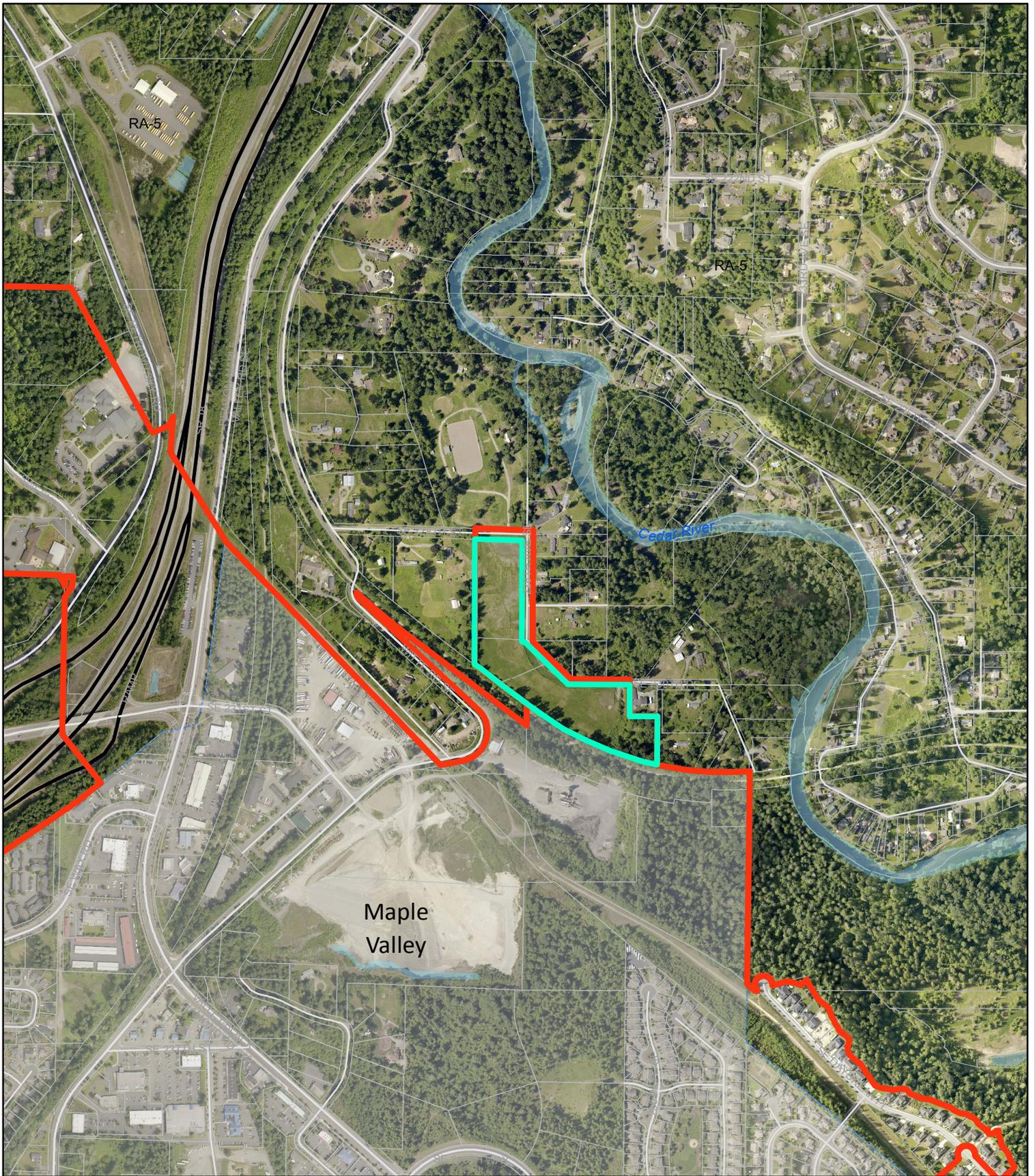
 **King County**

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 Study Area

 Urban Growth Boundary

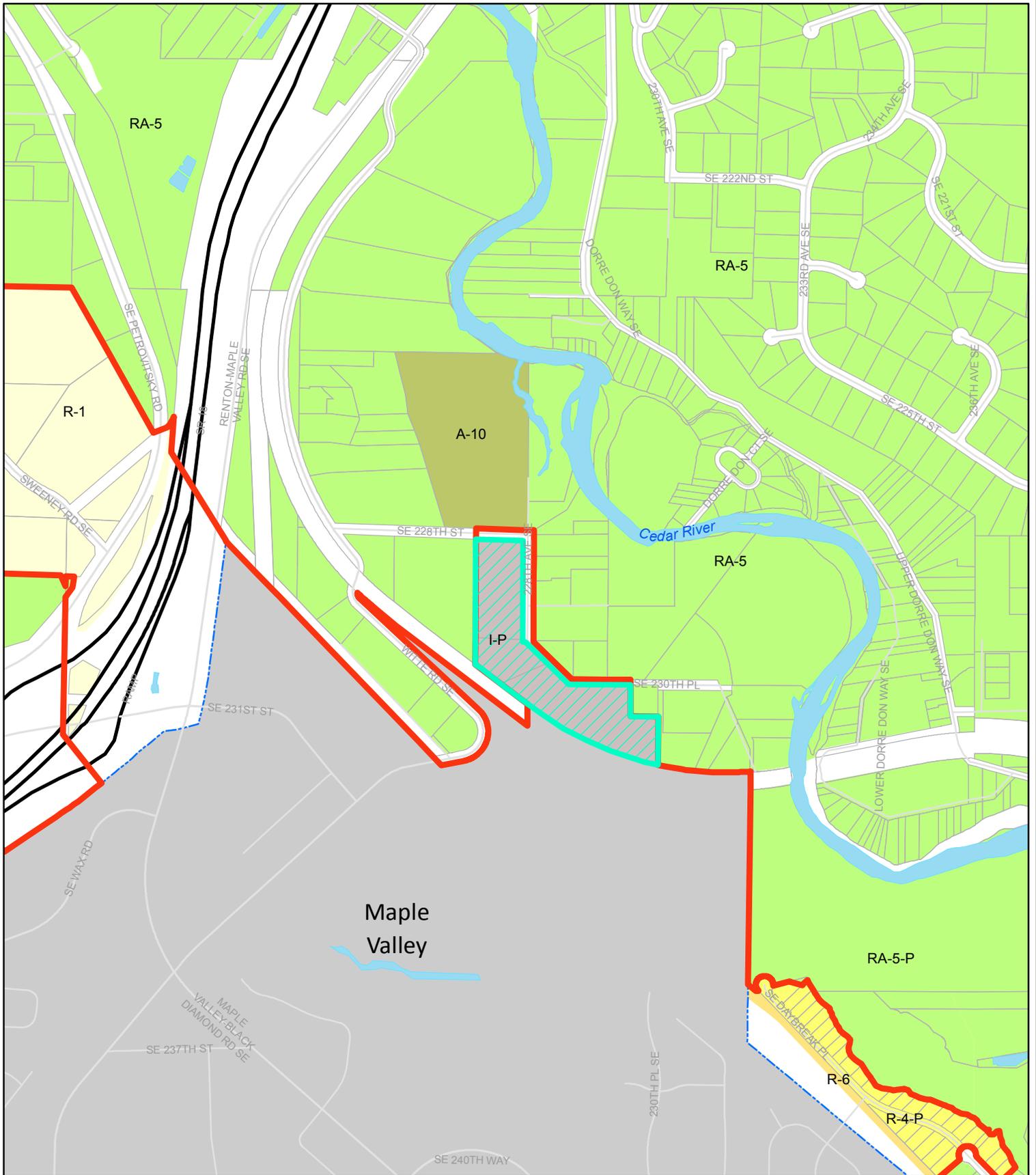


 **King County**

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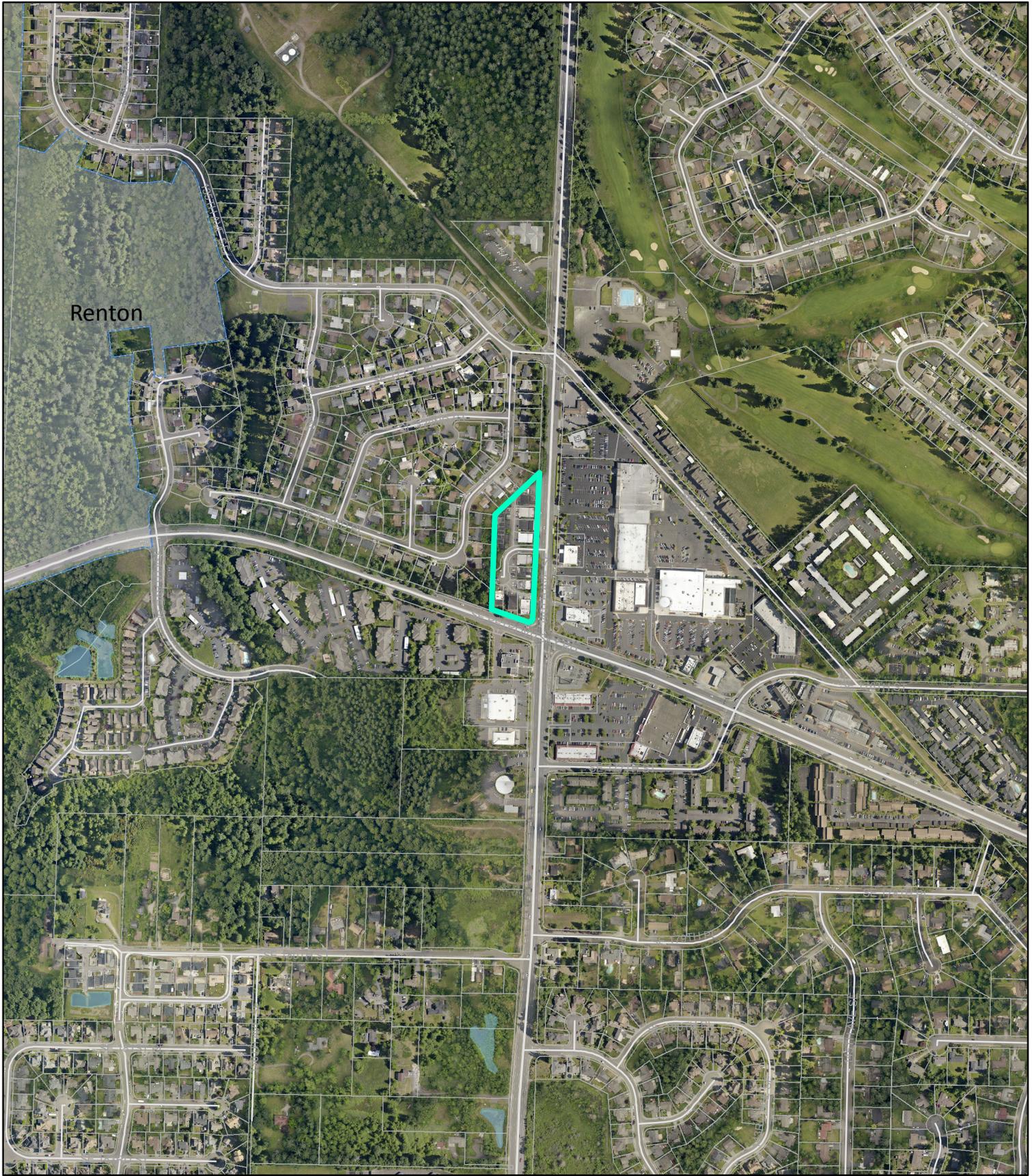
 Urban Growth Boundary



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Renton

 Study Area

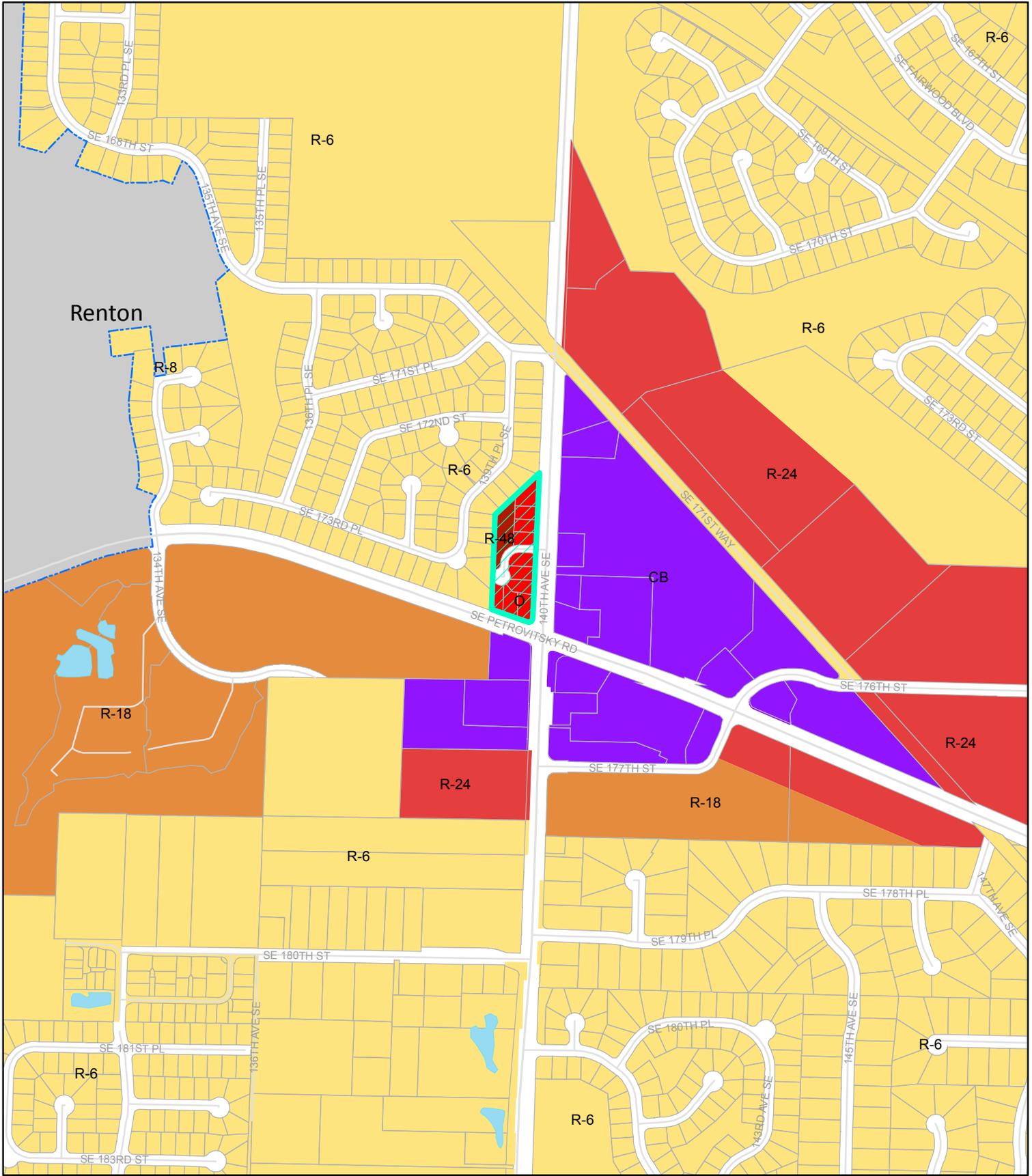


 **King County**

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Renton

 Study Area

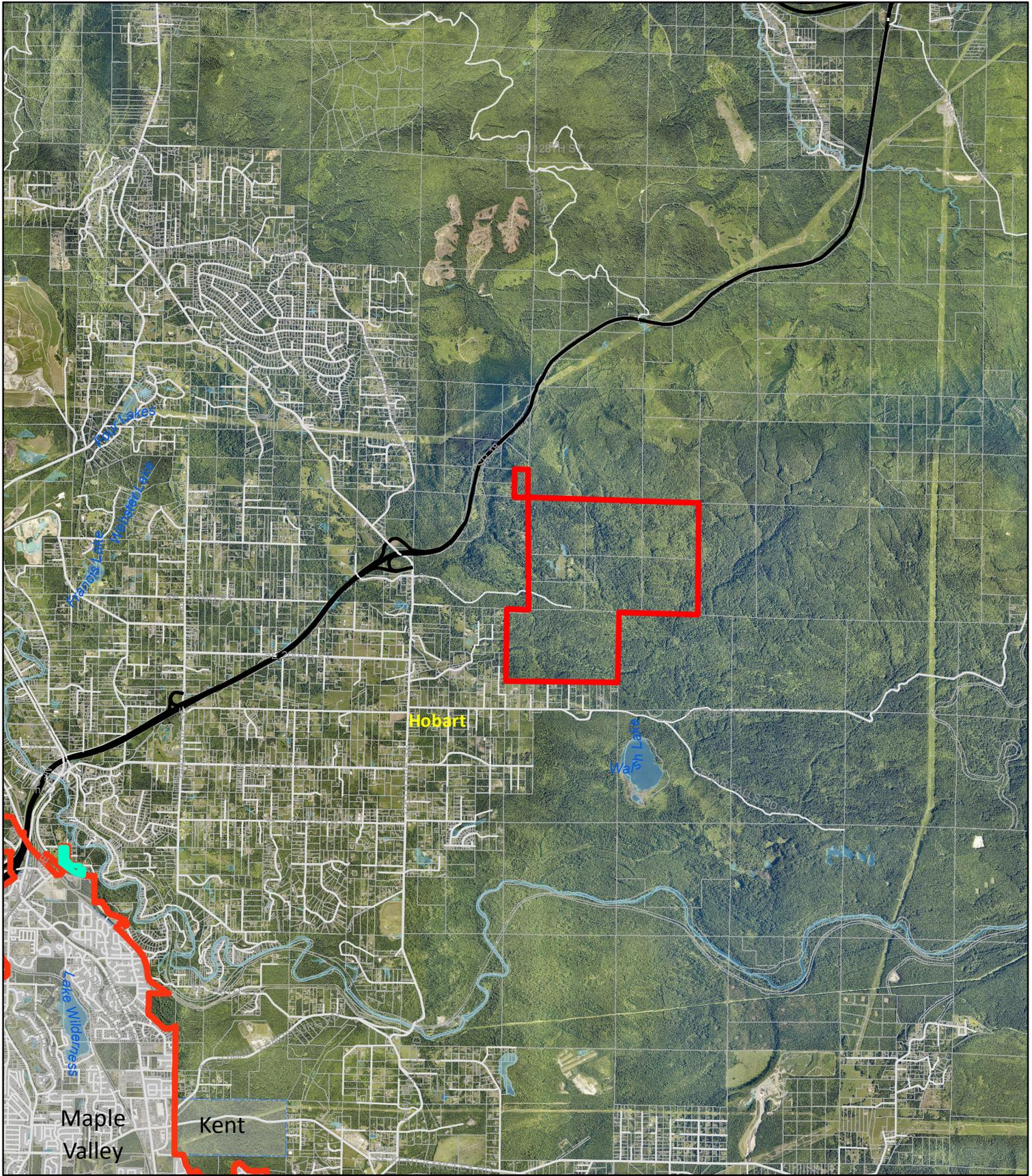


 King County

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 Study Area

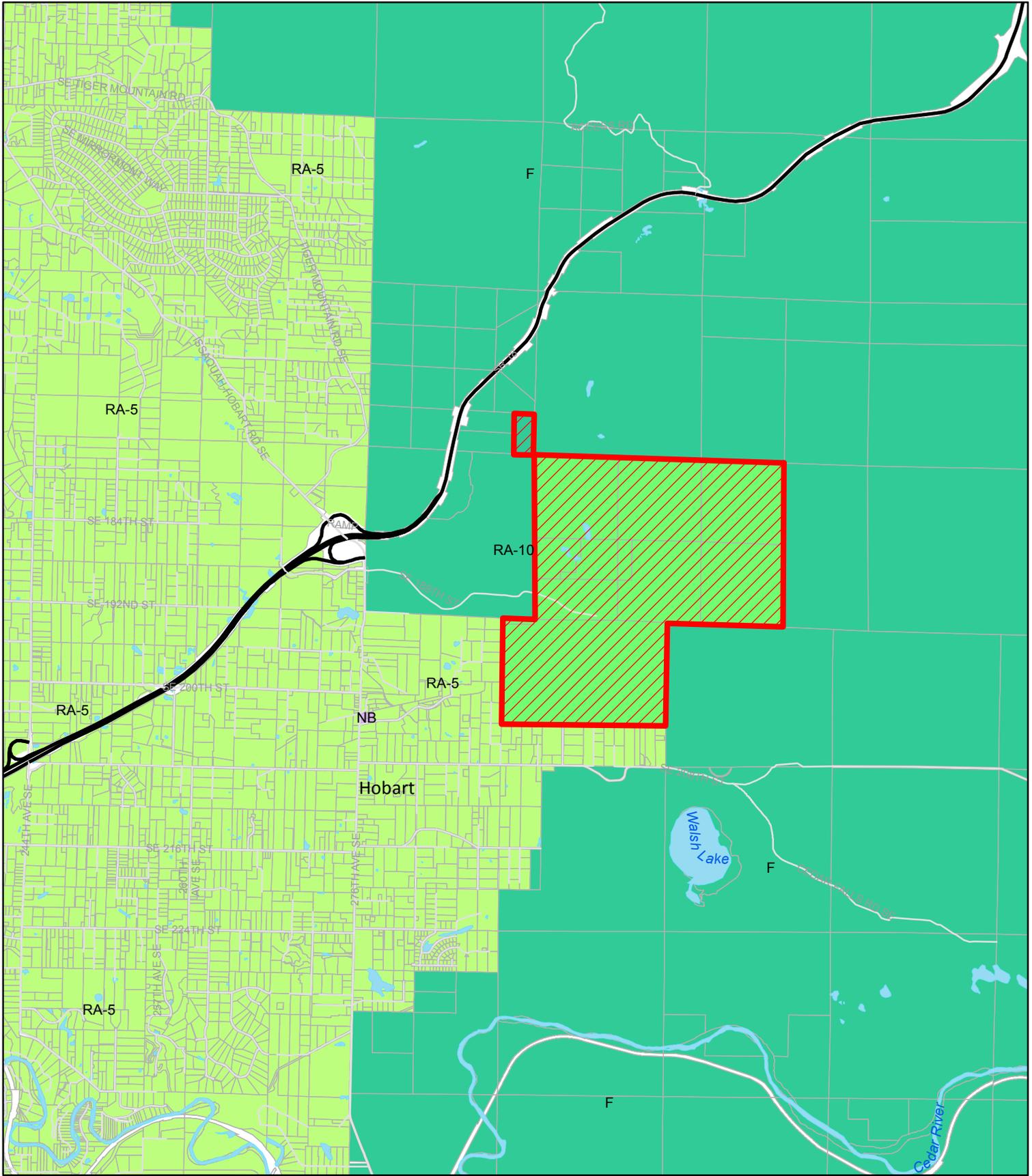


 **King County**

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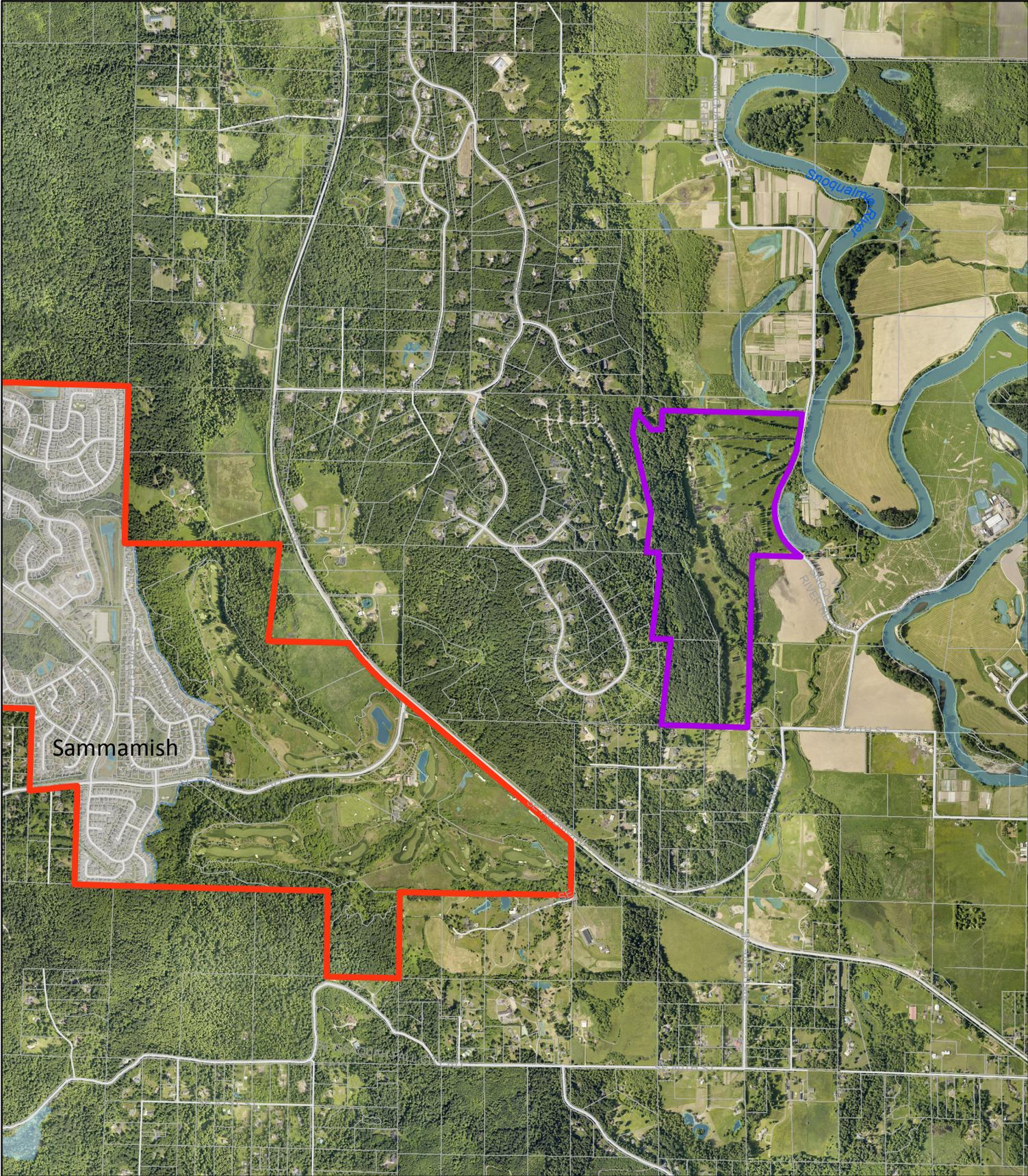
 Study Area



0 0.3 0.6 1.2 Miles



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 Study Area

 Urban Growth Boundary

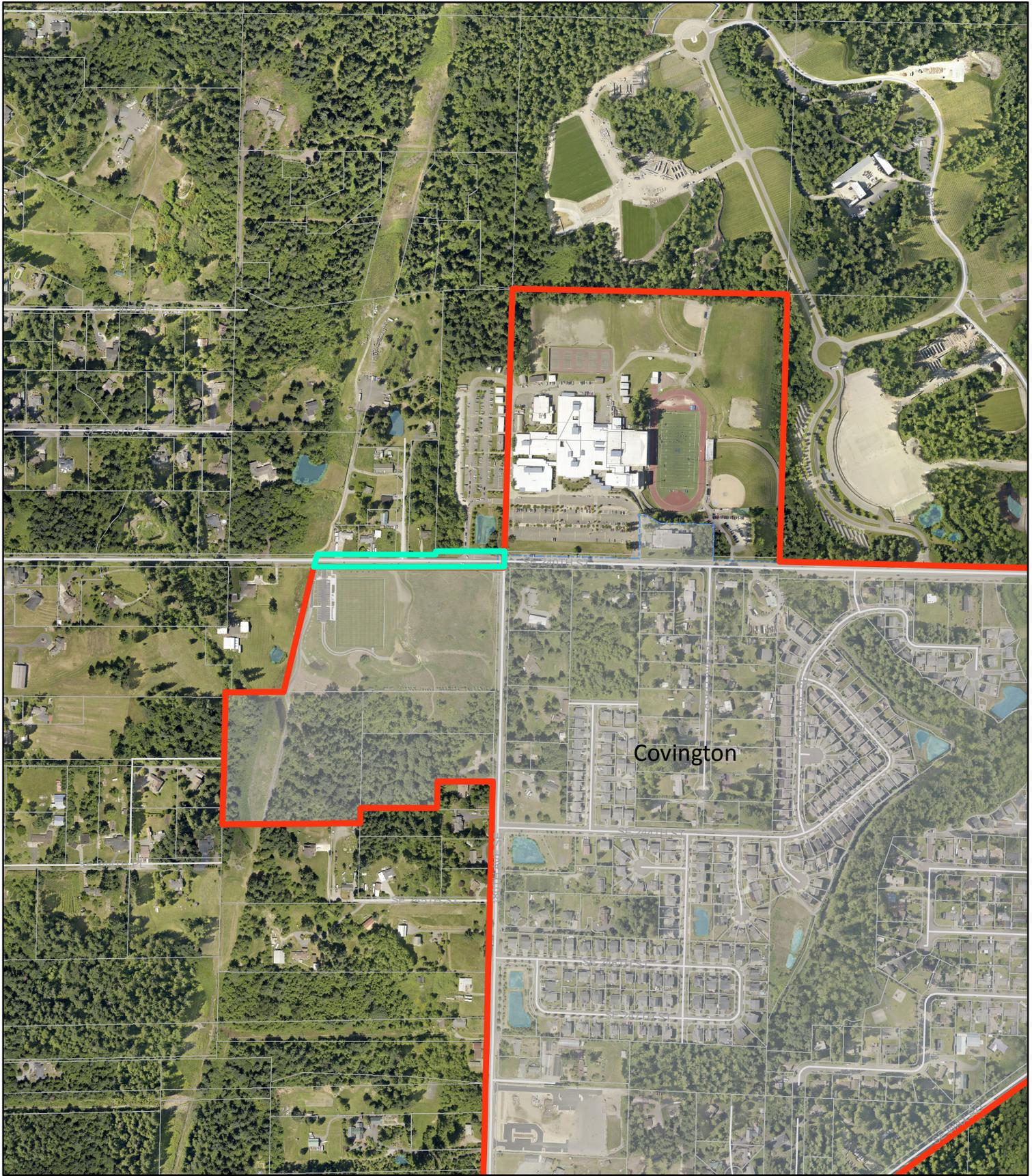


0 0.15 0.3 0.6 Miles



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 Study Area

 Urban Growth Boundary



0 0.045 0.09 0.18 Miles

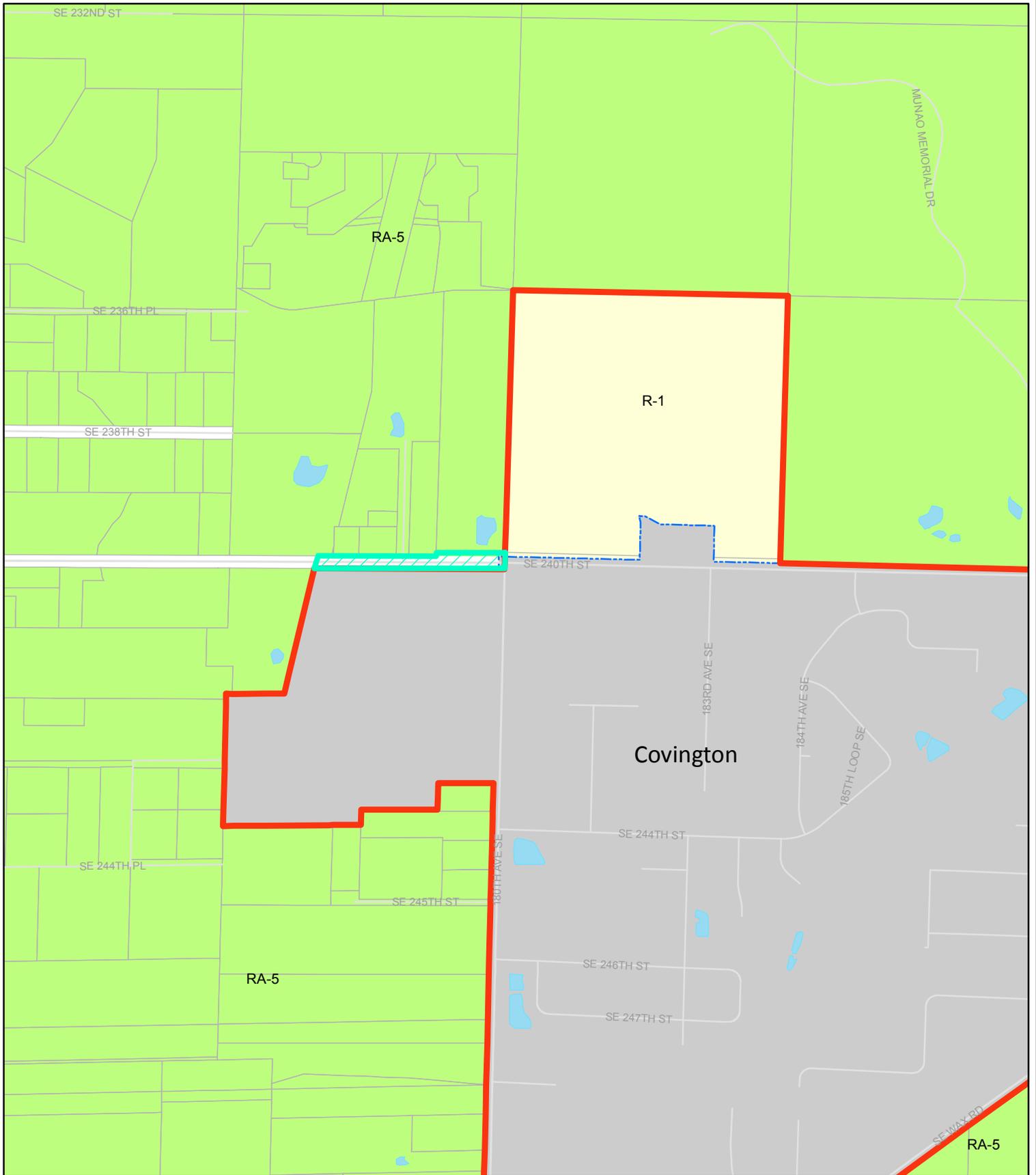


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# UGA Technical Amendments - Covington

ATTACHMENT 4

#19



 Study Area

 Urban Growth Boundary

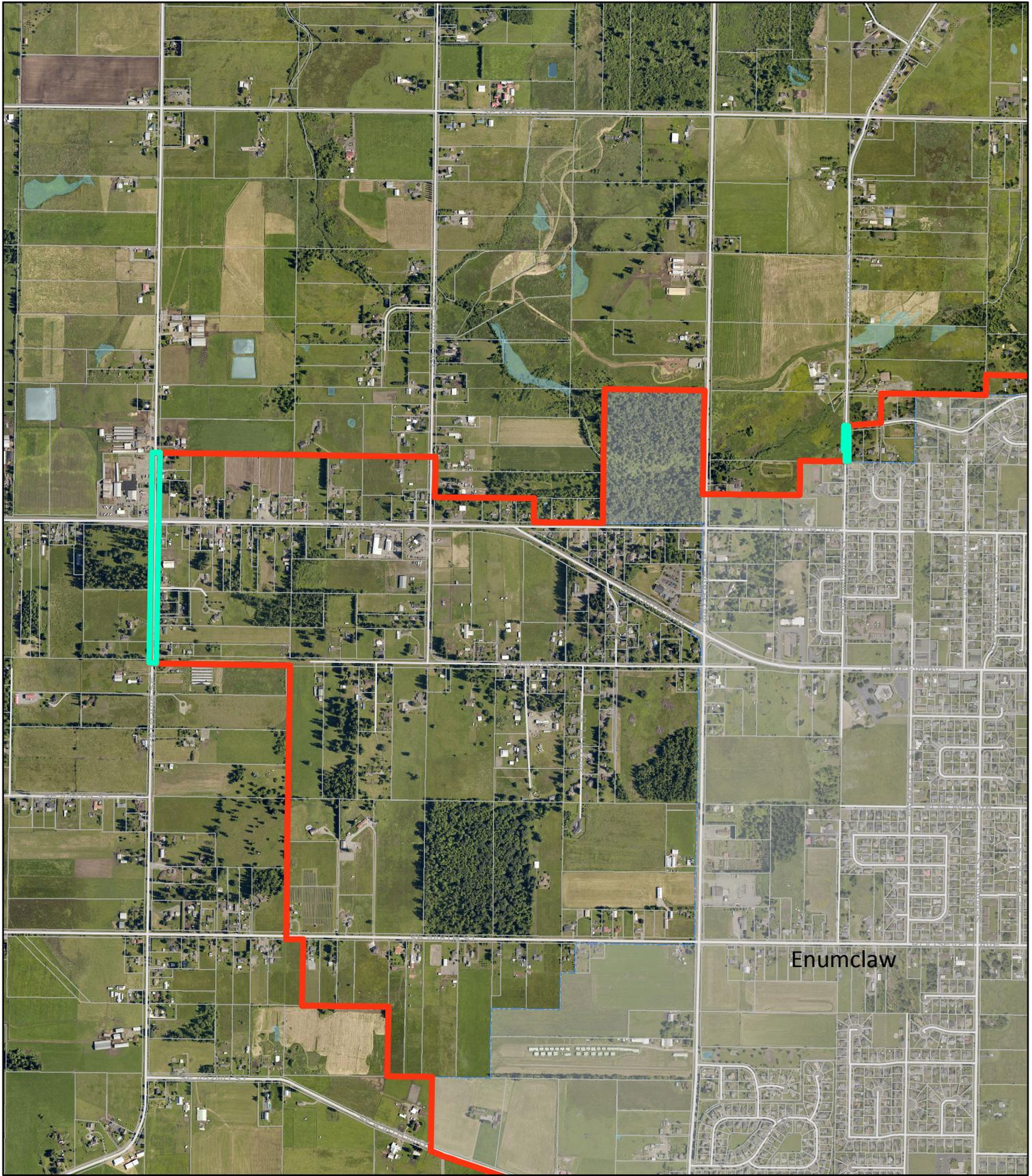


 **King County**

0 0.045 0.09 0.18 Miles



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Enumclaw

 Study Area

 Urban Growth Boundary

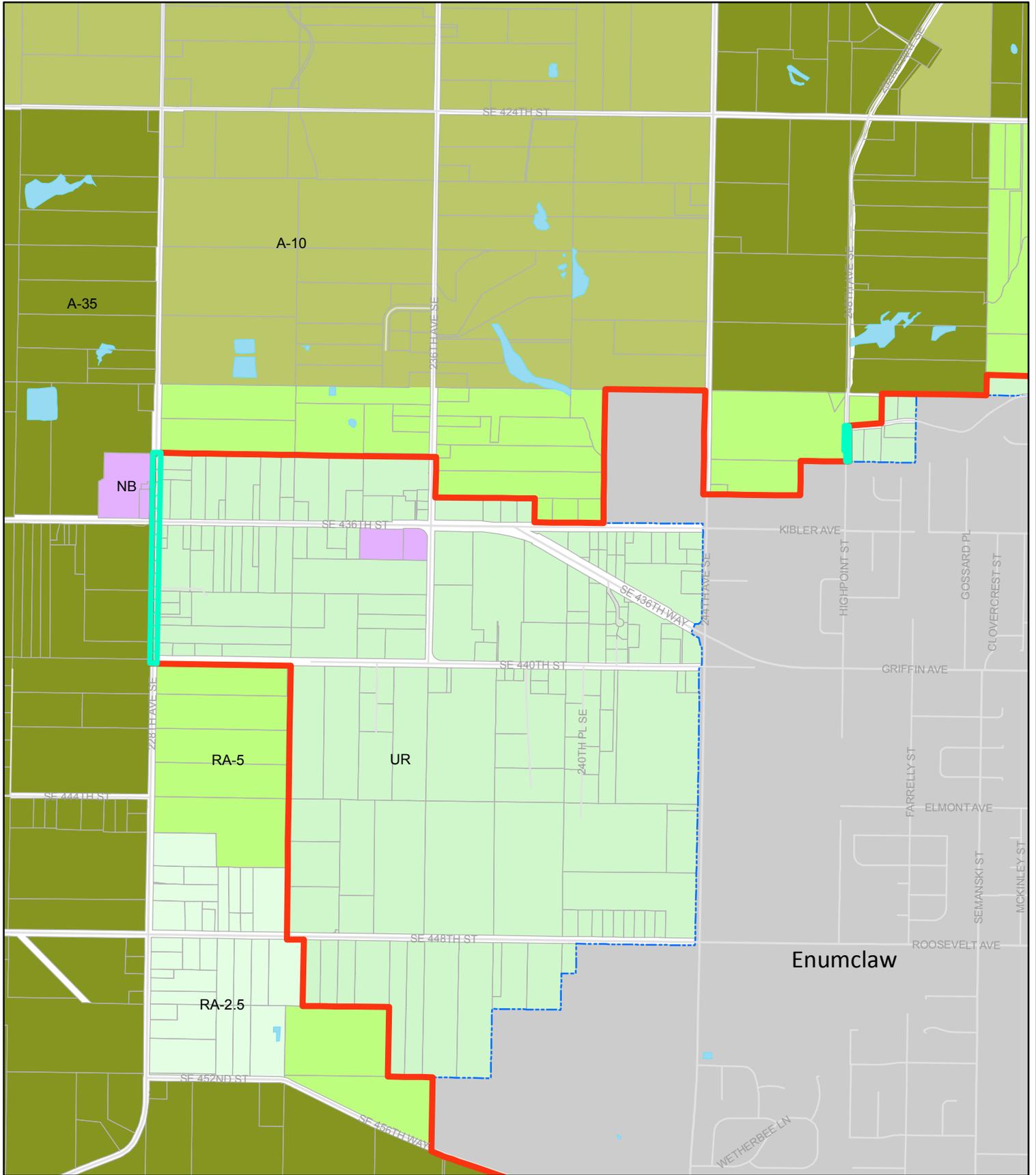


 **King County**

0 0.075 0.15 0.3 Miles



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 Study Area

 Urban Growth Boundary

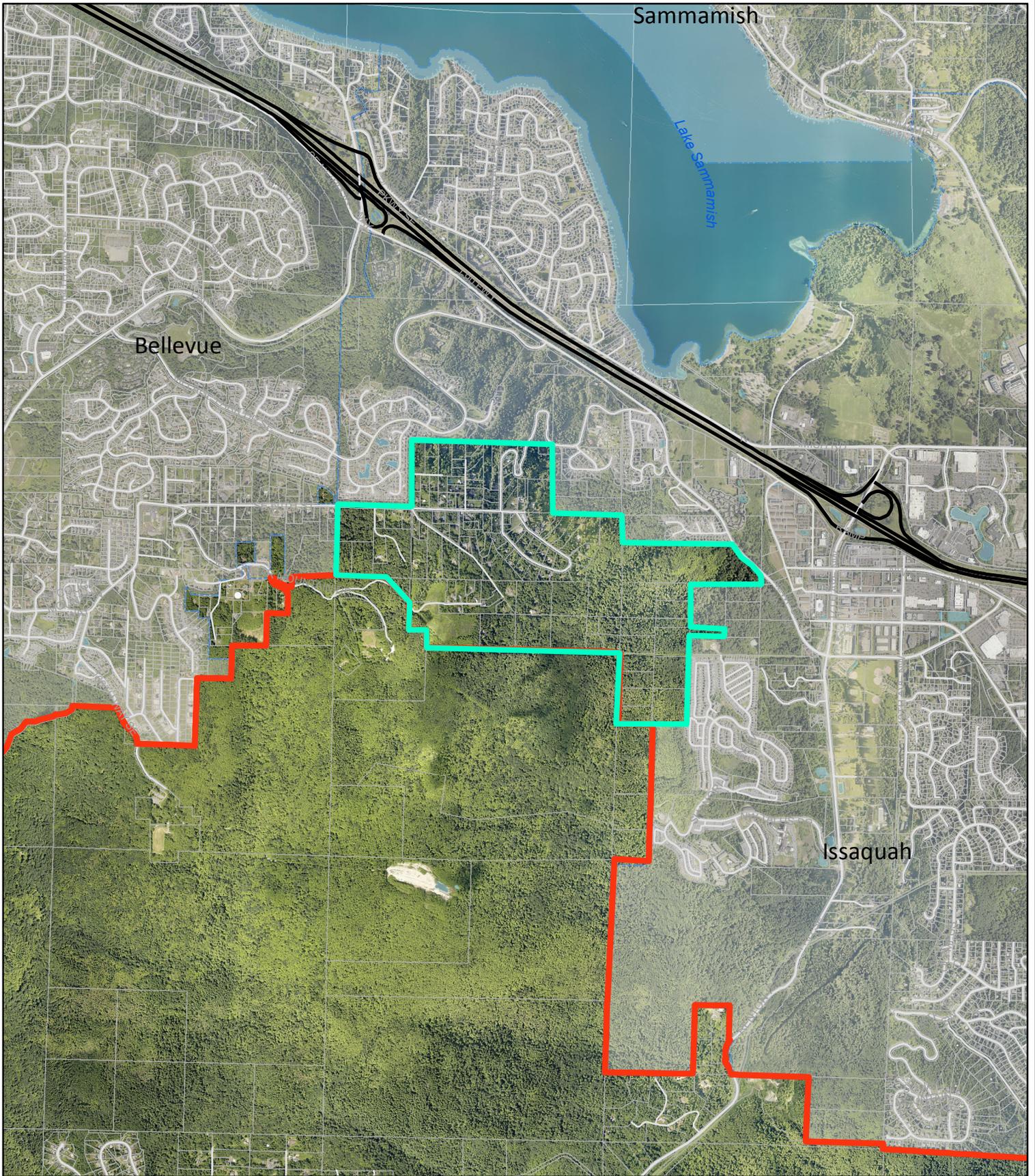


**King County**

0 0.075 0.15 0.3 Miles



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 Study Area

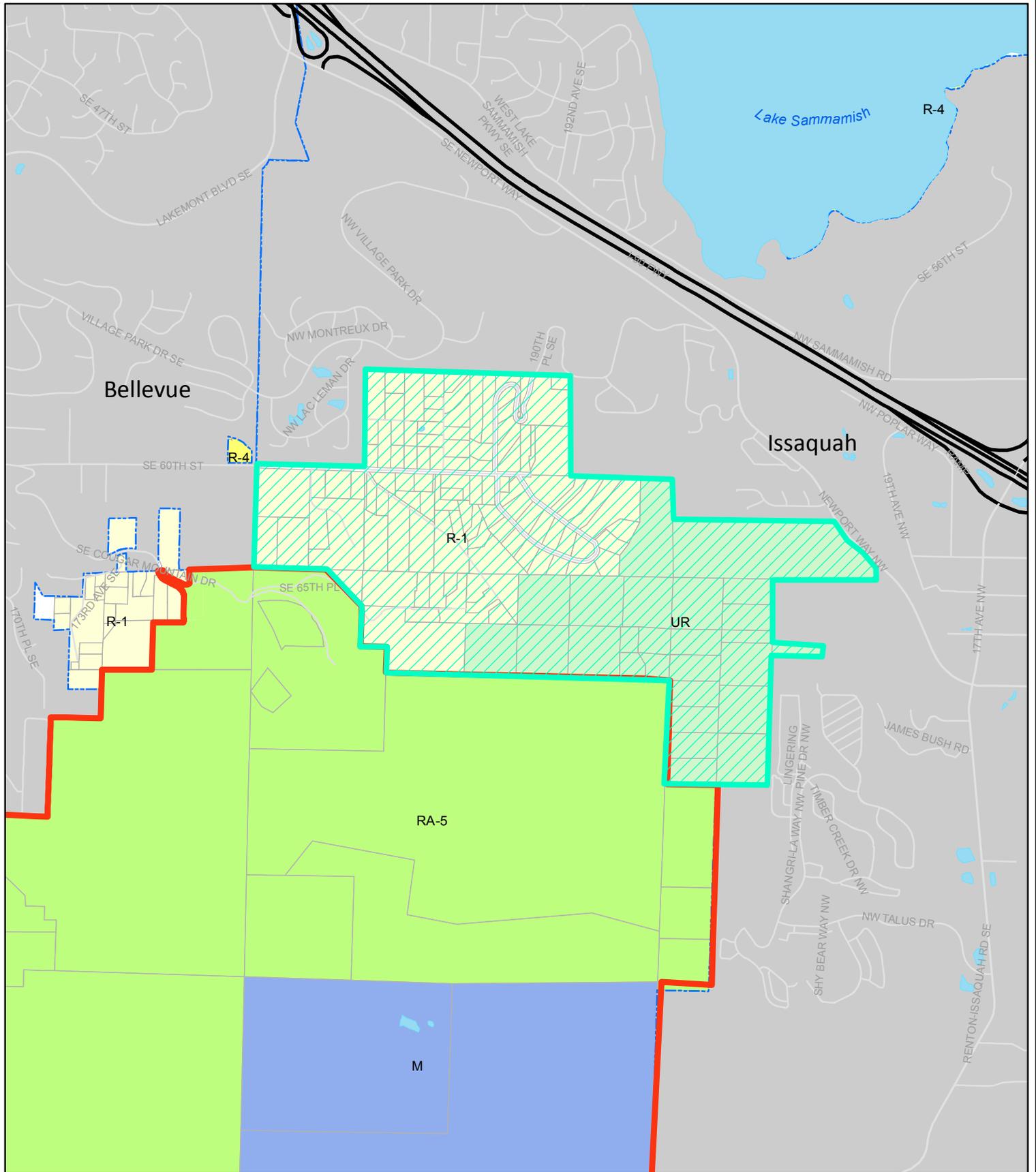
 Urban Growth Boundary



0 0.175 0.35 0.7 Miles



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 Study Area

 Urban Growth Boundary

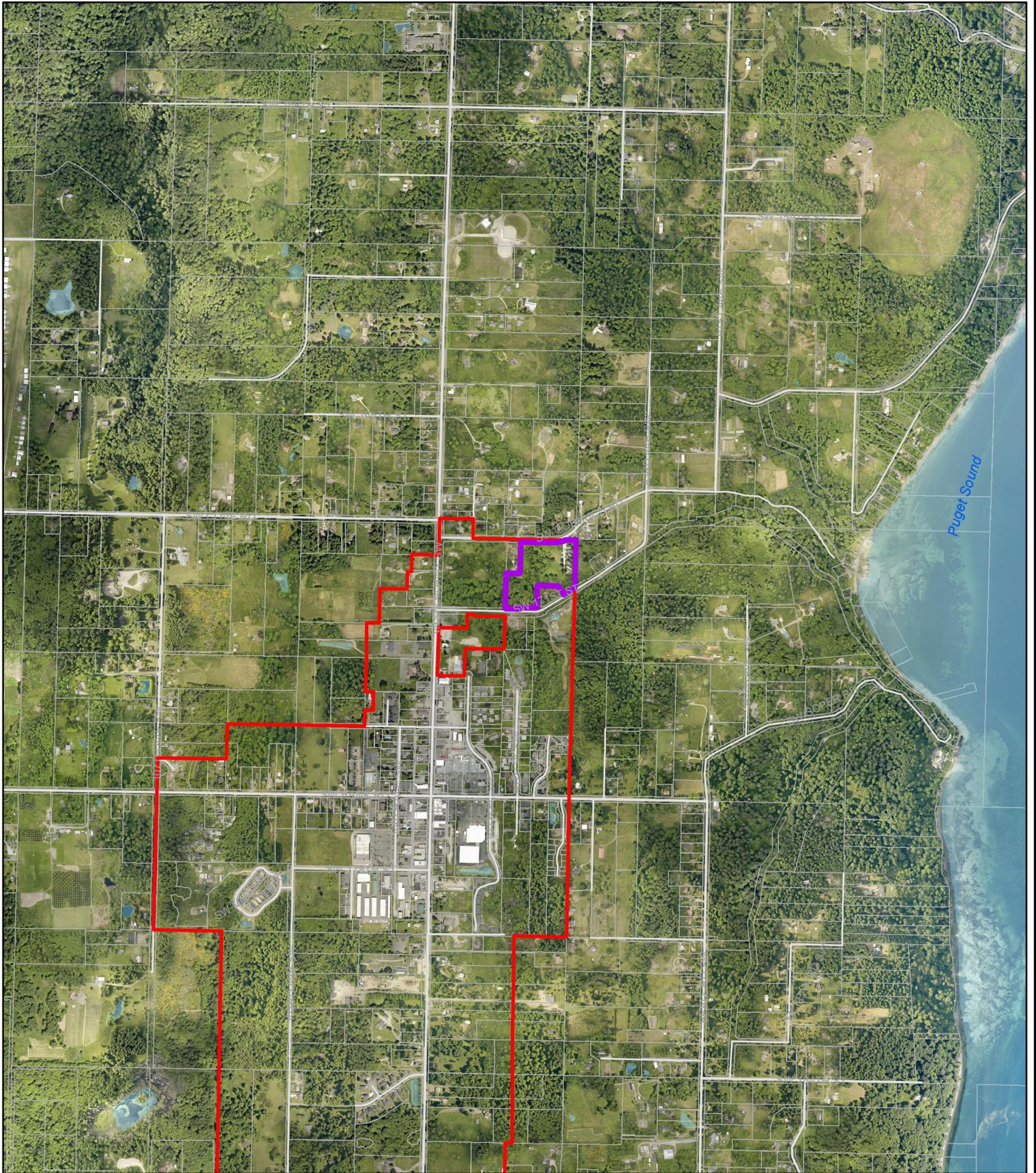


 King County

0 0.125 0.25 0.5 Miles



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 Study Area

 Vashon Town Plan Boundary



0 0.075 0.15 0.3 Miles



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# 2014 Rainier Ridge Four-to-One Redesignation Map

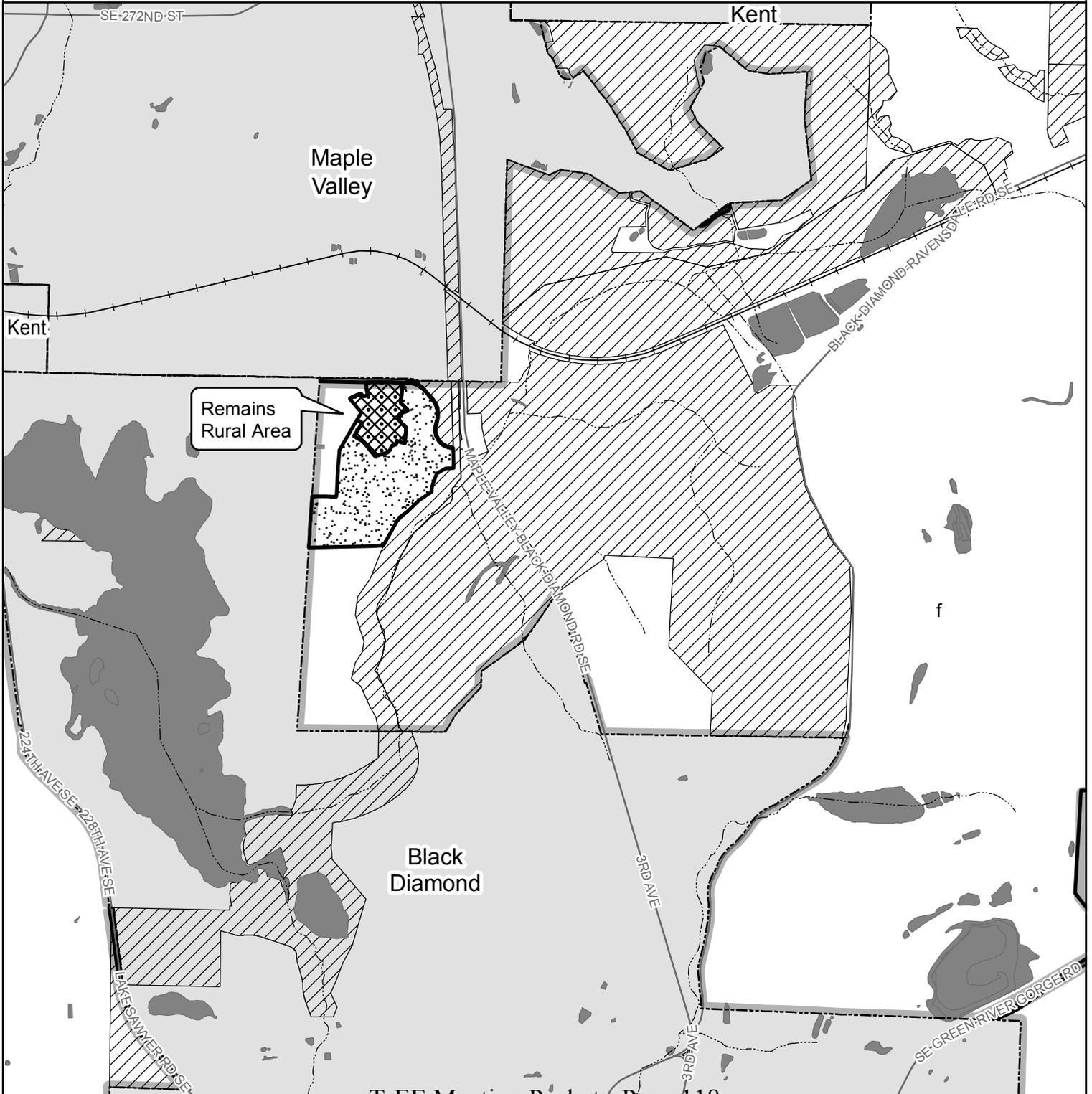


From 2014 KCCP  
(Ordinance 17842)

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Date: May 22, 2014  
 \\gisnas1\Projects\ddes\2014\_CompPlan\projects\RainierRidge\_os\_locator.mxd  
 \\gisnas1\Projects\ddes\2014\_CompPlan\projects\RainierRidge\_os\_locator.pdf  
 MCCOMBSP

-  Recommended PAA
-  Recommended Open Space
-  Existing King County Parks
-  Urban Growth Boundary
-  Incorporated Areas
-  Existing PAA





## Summary of 2016 King County Comprehensive Plan Docket Submittals

July 2016

### I. BACKGROUND

The King County docket was established in 1998 in accordance with K.C.C. 20.18.140 to provide an opportunity for residents of the county to register comments on the *King County Comprehensive Plan* and associated development regulations. The county responds to each item registered on the docket, providing a feedback loop, as required by RCW 36.70A.470. Docket forms are available on the King County Website and at several county departments. The docket is open continuously and, each June 30, the items registered in the previous twelve months are compiled into the docket report for release on December 1 to the King County Council.

### II. SUBMITTAL

King County received **one** item for the Docket period that closed on June 30, 2016.

#### Docket Request # 1

**Name of Requestor(s):** Gary Remlinger

**Council District:** 3

**Summary Category:** Four to One proposal - Land Use Change and Rezone

#### **Submitted Request**

Four to One to provide permanent open space/farmlands and provide urban lands for development. Parcel numbers 1525079049, 1525079005 and 1525079010. These are all zoned Rural Area 10.

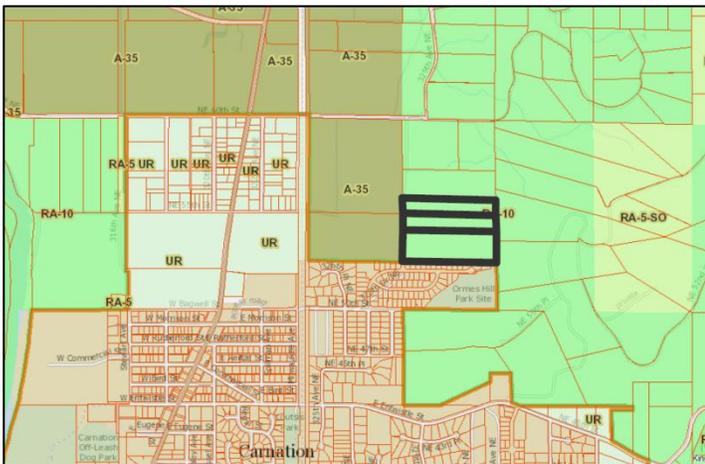
#### **Submitted Background Information**

No additional information was submitted with Docket Request.

Prior to the submittal of the Docket Request, a conceptual map was provided with a potential delineation of the new urban and new open space/farmland portions of the parcels (see Attachment 1). The proponents indicated that the concept map is intended to comply with the "interests" defined in the 2016 Draft Comprehensive Plan's Area Zoning and Land Use Study #12 (discussed below). In recognition that Four to One Proposals are a discretionary action of the County and their review is based on a variety of provisions and criteria in the King County Code and King County Comprehensive Plan, the proponents indicated that the concept map is a draft and expressed willingness to revise it based on County input.

### Maps of Docket Area

Vicinity



Site



### III. NOTES

1. This Docket was included in the 2016 King County Comprehensive Plan Scope of Work Motion 14531 and was the subject of Area Zoning and Land Use Study #12. Study #12 contains an analysis of the policy context, subject-specific mapping and parcel-level information, a brief summary of public comment and an Executive Recommendation. Study #12 can be found on the County's Comprehensive Plan website, within the "Area Zoning Studies" Attachment. The full set of public comments can be found within the "Public Participation Report" Attachment on the same website: [www.kingcounty.gov/compplan/](http://www.kingcounty.gov/compplan/).
2. Per Council Motion 14341, following submittal of a Docket Request and initial review for eligibility and policy considerations by the Office of Performance, Strategy and Budget (PSB), Four to One Proposals are referred to the Department of Permitting and Environmental Review (DPER) for site-specific analysis, review and processing as a potential discretionary land use amendment to the Comprehensive Plan.

### IV. FOR MORE INFORMATION

The purpose of the Summary of Submittals Report is to provide notification regarding the proposals that have submitted. The Summary of Submittals is posted shortly after the Docket deadline of June 30, and is therefore released prior to conducting an analysis of the request(s).

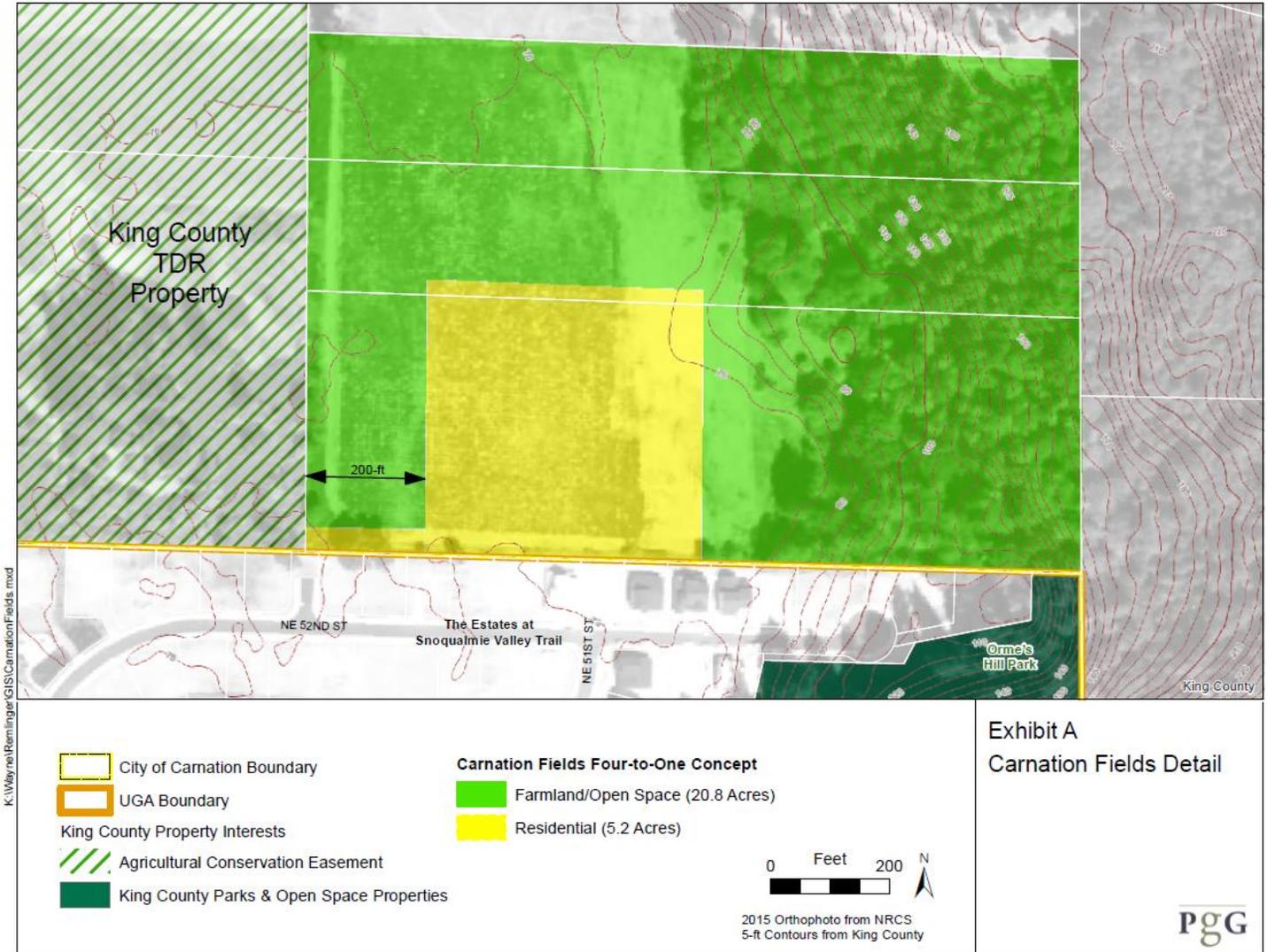
Contact Ivan Miller, Comprehensive Plan Manager, 206-263-8297 or [ivan.miller@kingcounty.gov](mailto:ivan.miller@kingcounty.gov).

### ATTACHMENT

Conceptual Map of Four to One Proposal

ATTACHMENT 1:

Conceptual Map of Four to One Proposal with urban and open space/farmland delineations



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## Comments Received to Date on 2016 Comprehensive Plan Land Use Proposals

Updated August 19, 2016

Name	Date	Type	Comments
<b>#1. West Hill (Skyway-West Hill Action Plan – SWAP)</b>			<b>District 2</b>
<b>#2. Fairwood A (Zoning change for 4 R-6 parcels to R-18)</b>			<b>District 9</b>
Christine Tremain Wesley Homes	March 15, 2016	Testimony at TrEE	Request to support rezone for additional two parcels owned by Wesley Homes and CUP to permit development of continuum of care skilled nursing and rehabilitation plus assisted living complex.
<b>#3. Federal Way (Zoning change for 1 R-4 parcel to NB)</b>			<b>District 7</b>
<b>#4. Allison Docket (Remove SDO from 1 parcel, change RA-5/RA-10 split zoning to all RA-5)</b>			<b>District 3</b>
Robert D. King	June 21, 2016	Testimony at TrEE	Support to remove split zoning and remove SDO and make zoning all RA-5. Demonstrated proposal with maps at committee.
<b>#5. Timmerman Docket (Zoning change for 1 R-1-P parcel to R-4)</b>			<b>District 3</b>
<b>#6. Snoqualmie Interchange (UGA change for RA-5 zoned parcels at I-90/SR-18 interchange)</b>			<b>District 3</b>
Bob Sterbank, City Attorney City of Snoqualmie	March 15, 2016	Testimony at TrEE	Support for City of Snoqualmie request to include UGA expansion in Comp Plan. States that City is working with partners such as Mountains to Sound Greenway and FutureWise to develop an updated proposal.
Mark Hoffman, Community Development Director City of Snoqualmie	March 15, 2016	Testimony at TrEE	Support for City of Snoqualmie request to include UGA expansion in Comp Plan. States that: (1) area is adjacent to highway interchange and is not rural in character; (2) City is facing a jobs/housing imbalance; and (3) City is seeking institutional use (college, jobs training) and also additional retail.
Bob Sterbank, City Attorney City of Snoqualmie	June 7, 2016	Testimony at TrEE	Reiterate support for City of Snoqualmie request to include UGA expansion in Comp Plan. Notes that City recently provided a proposal to GMPC.

Note that this summary includes only communications provided to the entire Council or to the TrEE Committee, and does not include communications addressed to individual Councilmembers.

## Comments Received to Date on 2016 Comprehensive Plan Land Use Proposals

Updated August 19, 2016

Name	Date	Type	Comments
<b>#7. Duthie Hill Notch (UGA change for RA-5 zoned parcels)</b>			<b>District 3</b>
Robert E. Braeutigam	March 15, 2016	Testimony at TrEE	Reject UGA expansion proposal due to: (1) existence of Patterson Creek environmentally sensitive area; and (2) safety and traffic hazards that would result from extension of connector road across Notch.
Alan Kaufer	March 24, 2016	Email	Support UGA expansion proposal due to "incongruous zoning." Notes that 1.5 additional acres have signed on to the request.
Robert E. Braeutigam	April 6, 2016	Testimony at COW Town Hall	Reject UGA expansion proposal.
Peggy McCann	April 6, 2016	Written information provided at COW Town Hall	Support UGA expansion proposal as a short-term solution to traffic problems.
Kim Wiersum	April 6, 2016	Testimony at COW Town Hall	Oppose UGA expansion proposal; does not want area to become less rural.
Elke Lewis	April 6, 2016	Testimony at COW Town Hall	Oppose UGA expansion proposal; does not want area to become less rural.
<b>#8. Fall City (Add 3 parcels to Fall City Business District and SDO for wastewater system)</b>			<b>District 3</b>
Terri Divers	March 1, 2016	Email	Wants wording change to clarify that change would be "for the business district" and would not expand wastewater treatment system to residential area.
Teresa Appleseth	March 2, 2016	Email	Wants wording change to clarify that change would be "for the business district" and would not expand wastewater treatment system to residential area.
<b>#9. Snoqualmie Pass Subarea Plan (Initiate subarea plan in Snoqualmie Pass Rural Town and ski area)</b>			<b>District 3</b>
<b>#10. Vashon Subarea Plan (Initiate subarea plan for Vashon Town Plan)</b>			<b>District 8</b>
<b>#11. Highline Subarea Plan (Initiate subarea plan for North Highline/White Center)</b>			<b>District 8</b>

Note that this summary includes only communications provided to the entire Council or to the TrEE Committee, and does not include communications addressed to individual Councilmembers.

## Comments Received to Date on 2016 Comprehensive Plan Land Use Proposals

*Updated August 19, 2016*

Name	Date	Type	Comments
<b>#12. Carnation UGA (UGA change for 3 RA-10 zoned parcels)</b>			<b>District 3</b>
Bonnie Morrison	March 15, 2016	Email	Opposed to proposal due to loss of agricultural land.
Bonnie Morrison	April 18, 2016	Web Comment	Opposed to proposal due to loss of agricultural land.
City of Carnation	June 2, 2016	City Legislation Resolution 405	Support for the UGA expansion so as to increase development capacity and increase the city's housing stock and population.
<b>#13. North Bend UGA (UGA change for 14 RA-2.5 zoned parcels)</b>			<b>District 3</b>
<b>#14. Cedar Hills/Maple Valley Subarea Plan (Initiate subarea plan for Cedar Hills/Maple Valley)</b>			<b>District 9</b>
Steve Hiester, Chairman Greater Maple Valley Unincorporated Area Council	July 12, 2016	Letter	Concern that broad base of stakeholders must be involved. Request to provide the public with the formal process the County uses to define Subarea Plans.
<b>#15. Maple Valley Industrial (Zoning change for 3 I zoned parcels to remove P-suffix)</b>			<b>District 9</b>
<b>#16. Fairwood B (Zoning change for 11 O and R-48 zoned parcels to mixed use)</b>			<b>District 9</b>
<b>#17. Taylor Mountain (Zoning change of 11 RA-10 zoned parcels and add to FPD)</b>			<b>District 9</b>
<b>#18. Tall Chief (Zoning change of 3 RA-10 and RA-5-SO parcels to A-35 and A-10 and add to APD)</b>			<b>District 3</b>
<b>#19. UGA Technical Corrections (Three technical corrections to UGA for Covington and Enumclaw)</b>			<b>Districts 7, 9</b>
<b>#20. East Cougar Mountain PAA (Remove R-1 and UR-P-SO zoned parcels from UGA and PAA)</b>			<b>District 3</b>
Fred Butler, Mayor City of Issaquah	April 6, 2016	Testimony at COW Town Hall	Support removal of all parcels from UGA and Issaquah PAA as the area is not suitable for urban development.

Note that this summary includes only communications provided to the entire Council or to the TrEE Committee, and does not include communications addressed to individual Councilmembers.

## Comments Received to Date on 2016 Comprehensive Plan Land Use Proposals

*Updated August 19, 2016*

Name	Date	Type	Comments
<b>#21. Vashon #1 (Zoning change to remove P-suffix for 1 R-4-P zoned parcel)</b>			<b>District 8</b>
Land Use/Housing/Community Health Work Group Vashon-Maury Island Community Service Area Plan	August 17, 2016	Email	<ul style="list-style-type: none"> <li>• Support to remove VS-P24 (restriction to mobile homes, manufactured housing, and accessory support structures) from parcel.</li> <li>• Support to retain VS-P01 (maximum density of 12 units per acre) on parcel.</li> <li>• Request to add a P-suffix to restrict development to affordable housing, potentially to 80% AMI or less.</li> </ul>
<b>#22. Rainier Ridge (Refine Four-to-One P-suffix development conditions that required ILA)</b>			<b>District 9</b>

Note that this summary includes only communications provided to the entire Council or to the TrEE Committee, and does not include communications addressed to individual Councilmembers.

**Comp Plan Comment from Council web site  
Received August 8, 2016**

**From:**

Max Beers, Green Valley/Lake Holm Association  
District 9

GREEN VALLEY/LAKE HOLM ASSOCIATION August 6, 2016

To: King County Council

CC: Ivan Miller - Comprehensive Planning Manager John Taylor - Assistant Director  
of DNRP Land and Water Resources Division Alan Painter - Manager of the  
Community Service Area

Subject: 2016 update to King County Comprehensive Plan, Chapter 5, E497

In September 2014 the newly formed Green Valley/Lake Holm Association, an association within the SE King County CSA, prepared a position paper (see attached) regarding protection of rural wells and springs. In this paper we recommended specific actions to ensure our essential rural wells and springs are protected from decreased quality or quantity by any land use change or water resource activity. In 2015 the Green Valley/Lake Holm Association, through volunteer committee work, research, and meetings with John Taylor and Alan Painter prepared recommendations for the 2016 King County Comprehensive Plan update for further protection of rural water systems throughout the county. We were pleased when our recommendations were included in the Executive's proposed KCCP update, Chapter 5, E-497.

We ask the Council to support these recommendations as stated in the proposed E-497 changes. Without adequate quality and quantity of potable water, I'm sure you would agree that properties in the unincorporated areas of the county are of little value to their owners and King County alike. People everywhere depend on clean, safe water.

Thank you for your consideration, Green Valley/Lake Holm Association  
Gwyn Vukich - President E-Mail: GVLHAssn@gmail.com

Attachment:

GREEN VALLEY/LAKE HOLM ASSOCIATION

September 24, 2014

POSITION PAPER REGARDING PROTECTION OF RURAL WELLS AND SPRINGS  
(PRIVATE AND CLASS B WATER SYSTEMS)

**SITUATION:** Our concern is the protection of rural wells and springs. After several years of pleading with Washington State and King County agencies, we feel our water systems are still vulnerable. Since 2011, a number of rural residents downstream of Black Diamond have been involved in the public review of the massive development projects wherein upwards of twenty-thousand new residents will be added to the small rural town of Black Diamond. In addition, the adjacent Reserve at Woodlands King County development project will add seventy-seven homes with individual septic systems and a lake-sized storm water detention pond servicing both developments. Soliciting State and County agencies to protect our rural water systems from these development impacts resulted in little or no help. Their answers included: we don't have budget, or it's not our responsibility. A small Class B system, whose neighbor plumbed into their main water line, received similar answers when requesting assistance. To compound the problem, in the spring of 2014, without thorough studies and without informing rural residents of potential impacts to their drinking water systems, King County pumped flood waters from Horseshoe Lake into a gravel pit instead of an engineered storm water detention pond. Such large scale urbanization with major clear cutting, septic tanks, and urban chemical leaching into soils clearly could have significant impact on ground water flows and put at risk our rural wells and springs. Adding the periodic threats of smaller actions further increases these risks. Despite being comprehensive and well-intended, current state and county laws are inadequate to protect private and Class B water systems. For example, in state law chapter 246-291 WAC, there is no water system plan to protect our rural water systems beyond a small protective radius around the water source. King County Title 13 and other regulations and programs do not provide for specific protections for rural water systems receiving ground water from surrounding lands that may be affected by development. (see attachment #1). Without assurances of protection and full mitigation we feel vulnerable and fear violation.

**PROPOSALS:** To receive assurance our essential rural wells and springs are protected from decreased quality or quantity by any land use change or water resource activity, we propose the following:

**Risk assessment using best science:** In any land use change or water resource activity approval process, there should be a condition included to identify and provide periodic impartial risk assessments, using best science techniques, for the rural water systems which could be affected by the proposed action.

Depending on the level of risks, appropriate quality and quantity monitoring should be conducted plus potential impact mitigation identified, e.g., water purification systems or alternative water sources.

Communication and coordination with rural property owners: Early in the approval process, all rural property owners whose wells or springs could be affected by the proposed action should be notified and involved when addressing potential risks and when considering associated monitoring and mitigations. Ongoing property owner support should be provided by coordinated and funded government agencies with well-defined and communicated responsibilities, so rural property owners know where to go for assistance with water issues.

REQUEST: We request that the Growth Management Act, the County and City Comprehensive Plans, and associated regulating documents be updated per our proposals and adhered to meticulously--the goal being to maintain the distinct character of our rural areas and to protect our chosen rural life style.

Green Valley/Lake Holm Association Mike Morris, President E-Mail:  
GVLHAssn@gmail.com

**From:** [Jensen, Christine](mailto:Jensen.Christine)  
**To:** [CouncilCompPlan](#)  
**Subject:** Fwd: Friends of Rock Valley Statement of Position: Reserve Silica Rural Mining Site Conversion Project  
**Date:** Tuesday, August 16, 2016 9:21:15 AM

---

Christine Jensen  
 Principal Legislative Analyst  
 King County Council

Begin forwarded message:

**From:** FRCV Friends of Rock Creek Valley  
 <[friendsofrokcreekvalley@gmail.com](mailto:friendsofrokcreekvalley@gmail.com)>  
**Date:** August 16, 2016 at 9:16:58 AM PDT  
**To:** Christine Jensen <[christine.jensen@kingcounty.gov](mailto:christine.jensen@kingcounty.gov)>  
**Subject:** Fwd: Friends of Rock Valley Statement of Position: Reserve Silica Rural Mining Site Conversion Project

To: King County Council TrEE Committee  
 c/o: Christine Jensen, Council Staff

Hello Christine,  
 Below is the Friends of Rock Creek Valley position statement in regards to the King County Comp Plan Chapter 12, Policy I-203: Mining site conversion demonstration project. This statement was sent directly to all King County Council Staff Members on June 1, 2016, but we would like to have it also included as a formal comment to the Council to be included under Public Comments received regarding this Policy in the TrEE Meeting Packet notes.

The full statement of the Friends of Rock Creek Valley position is detailed below, but in brief:

*As the only community group to support the I-203 Mining Site Conversion Demonstration Project amendment in 2012, we would like to formally go on record as withdrawing that support. Further, we endorse the County Executive's proposal to drop this provision from the 2016 Comp Plan; and we unequivocally oppose the draft Reserve Rural Mining Site Conversion Project proposal currently being circulated by Reserve Silica Corporation, Frank C. Melfi, President.*

Thank you,  
 Michael A. Brathovde, Acting Chair  
 Friends of Rock Creek Valley

----- Forwarded message -----  
**From:** FRCV Friends of Rock Creek Valley  
 <[friendsofrokcreekvalley@gmail.com](mailto:friendsofrokcreekvalley@gmail.com)>  
**Date:** Wed, Jun 1, 2016 at 8:22 AM

Subject: Friends of Rock Valley Statement of Position: Reserve Silica Rural Mining Site Conversion Project

To: Claudia Balducci <[claudia.balducci@kingcounty.gov](mailto:claudia.balducci@kingcounty.gov)>, Dave Upthegrove <[dave.upthegrove@kingcounty.gov](mailto:dave.upthegrove@kingcounty.gov)>, Jeanne Kohl-Welles <[jeanne.kohl-welles@kingcounty.gov](mailto:jeanne.kohl-welles@kingcounty.gov)>, Joe McDermott <[joe.mcdermott@kingcounty.gov](mailto:joe.mcdermott@kingcounty.gov)>, Kathy Lambert <[kathy.lambert@kingcounty.gov](mailto:kathy.lambert@kingcounty.gov)>, Larry Gossett <[larry.gossett@kingcounty.gov](mailto:larry.gossett@kingcounty.gov)>, Pete von Reichbauer <[Pete.vonReichbauer@kingcounty.gov](mailto:Pete.vonReichbauer@kingcounty.gov)>, Reagan Dunn <[reagan.dunn@kingcounty.gov](mailto:reagan.dunn@kingcounty.gov)>, Rod Dembowski <[rod.dembowski@kingcounty.gov](mailto:rod.dembowski@kingcounty.gov)>

Cc: Dow Constantine <[kexec@kingcounty.gov](mailto:kexec@kingcounty.gov)>, Lauren Smith <[lauren.smith@kingcounty.gov](mailto:lauren.smith@kingcounty.gov)>, Ivan Miller <[ivan.miller@kingcounty.gov](mailto:ivan.miller@kingcounty.gov)>, Linda Vane <[linda.vane@kingcounty.gov](mailto:linda.vane@kingcounty.gov)>, Tom Goff <[tom.goff@kingcounty.gov](mailto:tom.goff@kingcounty.gov)>, Lisa LaBrache <[lisa.labrache@kingcounty.gov](mailto:lisa.labrache@kingcounty.gov)>

**To:** King County Councilmembers

**From:** Friends of Rock Creek Valley

**Re.: Reserve Silica, Reserve Rural Mining Site Conversion Project**

As the only community group to support the I-203 Mining Site Conversion Demonstration Project amendment in 2012, we would like to formally go on record as withdrawing that support. Further, we endorse the County Executive's proposal to drop this provision from the 2016 Comp Plan; and we unequivocally oppose the draft Reserve Rural Mining Site Conversion Project proposal currently being circulated by Reserve Silica Corporation, Frank C. Melfi, President.

The Mining Site Conversion Project not only utterly fails to meet the provisions under which we were willing to support the I-203 Amendment in 2012, but in our opinion, it in no way "demonstrates" either the intent or spirit of this last minute compromise amendment crafted by then Councilmember Larry Phillips in 2012.

Following extensive review, we believe this site to be totally inappropriate for the upzone and siting of a residential housing development. Aside from the numerous County Codes such an upzone and development would violate, the site has significant environmental and health hazards stemming from its use as an industrial mining and hazardous waste dump site. The potential risks to future

residents on this site if the proposed Mining Site Conversion Project is allowed to proceed are real, and we believe that any entity approving or endorsing such development on this site, knowing the risks, could be subjecting themselves to future legal action for exposing residents to those risks.

While we agree the forestry potential of this property is not appealing to a large-scale “industrial” timber company (i.e., a Weyerhaeuser, Plum Creek, Hancock type investor), the reclamation of the site – that is, restoring its ability to sustain a viable forest with all the associated benefits of such a forest, within the Forest Production District – is highly feasible and economically practical. And such reclamation should be the minimum requirement of any reclamation effort, i.e., to return the site to its pre-mining condition to the maximum extent reasonable, and allowable given the hazardous waste mitigations on the site.

For the last 30 years this property has been continuously managed and operated by Reserve Industries, Inc. through their wholly owned subsidiaries, L-Bar Products, Inc. (1986-ca. 1990) and Reserve Silica Corporation (ca. 1990-present). Photo evidence demonstrates that as late as ca. 1985 much of the property supported well-stocked stands of timber. The decision to not manage the forest resources on portions of the property outside the silica sand strip mining areas since 1986 was a business decision made by the current owners of the property, i.e., Reserve Silica. As such, the fact that these portions of the property do not currently have commercially valuable timber stands is solely a consequence of the property owner’s actions or inactions, and in no way should these conditions justify rewarding the owner with an upzone and housing development because they now state it is too time consuming and costly to remedy their actions.

Additional comments addressing specific aspects of the Reserve Silica Rural Mining Site Conversion Project will be forthcoming once the final proposal is formally submitted for Council consideration. However, in the meantime, we would encourage Council Members and the County Executive to research the history, past legal actions and practices of the Reserve Industries organization, including its numerous subsidiaries, before committing to support this proposal.

Lastly, to reiterate: **The Friends of Rock Creek Valley STRONGLY OPPOSES any Mining Site Conversion/Demonstration Project plan to upzone and create a housing development on the Reserve Silica property in Ravensdale.**

Michael A. Brathovde, Acting Chair

Friends of Rock Creek Valley

To: King County July 19, 2016

From: Hollywood Hill Association

Re: Sammamish Valley Wine and Beverage Industry Study

## Overview Statement

The Sammamish Valley (the Valley) is an ongoing success story that brings the benefits of good growth management directly into the lives of our citizens, our industry and our visitors.

Amidst the storm of tremendous development pressures that are buffeting our region, we should hold firm the course of protecting the unique gem that is the Sammamish Valley agricultural district and the Rural neighborhood ambiance that cradles it.

There are certainly changes that could improve our stewardship, but the King County Executive's "**Sammamish Valley Wine and Beverage Industry Study**" (the Valley Study) **has been directed largely toward exploring options for loosening the protections that have that have so successfully nurtured the Valley environs.**

Many communities across our nation have been laid to waste by strip-mall sprawl because they have allowed short-sighted interests to have their way with their community development.

We can and should continue defending, clarifying and strengthening the successful policies that have brought us to this point in Rural Unincorporated King County.

The Hollywood Hill Association will provide a series of public comments, each addressing specific aspects of the issue pertinent to the Valley Study.

Our goals are to:

- 1 - Uphold and strengthen the existing policies that have been successful in nurturing the Rural Sammamish Valley environs.
- 2 - Pursue clarity and simplification to the existing codes for permitted and conditional uses.
- 3 - Be mindful that policy enacted here will extend or set precedent for Rural areas across King County and the State of Washington.

But first, we must address the elephant in the room:

## **Code Enforcement**

Code enforcement is the overarching issue that needs to be addressed, yet the Valley Study agenda has been directed away from discussion of that issue. It has only been due to its insertion by numerous panel members that it has received any attention at all.

We have had close to ZERO code enforcement of our zoning laws in regard to illegal commercial activities in our part of the County for some time now.

Code enforcement should be a primary responsibility of our governmental organizations. It protects our property rights, be they residential or commercial, from illegal actions that compromise the integrity of our law-abiding community and their investments.

King County has been negligent in upholding this primary duty. It is no surprise that this lack of code enforcement has encouraged some people to disregard the law.

While the vast majority of wineries in the Valley have successfully built their business in accordance with the law and zoning restrictions, lawbreakers upend the harmony of the business community.

Indeed, the Valley Study appears to be designed to legalize a handful of businesses located just outside of the City of Woodinville boundaries at the Hollywood Hill Schoolhouse intersection that are flagrantly violating the King County Code. Exactly what kind of message does this send to our citizens?

The following ongoing violations are located on six Rural RA zoned properties clustered on the east side of the Sammamish Valley. King County violation case numbers are included:

1. **Lerone Holdings LLC**. Owner: **Sal Leone**. Multiple illegal businesses, all owned by Mr. Leone, on parcel #1526059051. ENFR15-0287 (Mr. Leone is a long-time businessman in the Woodinville area. He owns property across the Valley, inside Woodinville, where his business operations would be legal. He purchased the referenced Rural parcel with full knowledge that his operations would be illegal there. He did significant new construction and remodeling without permits. He is operating a tavern and several tasting rooms without valid Washington State liquor licenses as they specifically state that they are valid only if the business complies with all local zoning and applicable codes. He is also violating several King County codes concerning signage.)
2. **Patit Creek & Forgeron** – retail tasting rooms and sales outlets for wineries located in Walla Walla, WA. Property owned by **SR 9 Investments** and leased to Patit Creek and Forgeron. P#3404700030. ENFR15-0486
3. **Feliciano** – retail tasting room and sales outlet for their winery located in Milton-Freewater, Oregon. Property owned by **Dale Carlson** (lives in Toppenish, WA) and leased to Feliciano. Parcel#3407700006. ENFR13-0143

4. **Cave B** – retail tasting room and sales outlet for their winery located in Quincy, WA (Columbia Valley). Property owned by **Larry Scrivanich/Camano LLC** and leased to Cave B. P#3404700026. ENFR15-0538
  
5. **Cougar Crest** – retail tasting room and sales outlet for winery located in the Walla Walla Valley. Property owned by **Steve Lee** and leased to Cougar Crest. P#3404700027. ENFR15-0525.
  
6. **Matthews** – retail tasting room and sales outlet for their winery located in Woodinville’s North Warehouse District. Residential house used for nightly rental – non-owner-occupied property, thus illegal “B&B”. Regularly hosts very large events. Property, B&B and tasting room owned by **Rubstello-Otis LLC**. P#1526059092. ENFR12-0239

It is important to keep in mind that the vast majority of the “wine and tourism” businesses around the Valley are operating in compliance with the applicable zoning laws. Legal businesses have lost tenants due to cheaper rents charged by some of the rogue property owners listed above.

King County’s failure to uphold the County Code has allowed these few exceptions to persist, building a false perception of legitimacy. These activities would not exist on these residential zoned parcels if we had a competent Code Enforcement division of King County’s Department of Permitting and Environmental Review (DPER).

It is clear that these transgressions are an effort to sidestep the Urban Growth Boundary and extend “urban” uses into Rural King County.

Concluding comment:

When the consultants hired by King County for the Valley Study attempted to find examples of comparable wine-producing areas, they concluded is that the Sammamish Valley and its environs are unique.

There are no comparables.

If we want to leave our Valley as a legacy for which we can be proud, then we must be clear about what it will take to protect it. Capitulation to speculators and law-breakers will have predictable results: this beautiful Valley will be but a fond memory before we know it.

To: King County 9 August, 2016

From: Hollywood Hill Association

Re: Sammamish Valley Area Wine and Beverage Industry Study

## Home Occupations, Home Industries and Bed & Breakfasts

There is an increasing trend to utilize RA-zoned properties purely for commercial purposes. Many of these claim to be “Home Occupations”, even though the property is not the residence of the business owner(s).

We should put the “home” back in “Home”. The proposed changes to “Home Occupation” and “Home Industry” codes, below, would be a return closer to the spirit of pre-2008 KC codes and would more clearly protect our Rural neighborhoods from incompatible commercial or business development.

Other existing regulations (floor space, visitor parking, hours of operation, # of employees, etc) would likely remain as they are.

We urge the following elements to be incorporated into King County code:

### **Home Occupations** (permitted) def. 21A.06.610, 21A.08.030 and 21A.30.085

1 - Home Occupations defined and permitted only as an auxiliary use on property used as the **business owner’s primary residence**.

Prior to the 2008 CP Update, business owner occupancy was specified in KC codes, but was removed with that update cycle. This has resulted in predicted problems. It should be replaced.

If a Home Occupation business is owned by multiple entities, the business owner(s) with a controlling interest in the business (>50%) must use the property as his/her/their primary residence.

Along with this change, criteria should be established as to what constitutes proof of a “primary residence”.

**2 - Auxiliary structures** – permitted only for **storage** of items in conjunction with a Home Occupation. Use for activities of the Home Occupation NOT permitted without a CUP (see Home Industries).

**3 - Alcoholic beverage sales** – Only products made on-site may be sold at the property. Sales of products produced off-site should not be permitted (other than items such as the materials used for packaging the products and primary agricultural components such as grape juice, fruit, etc).

**Home Industries** (conditional) def. 21A.06.605, 21A.08.030 and 21A.30.090

1 - Home Industries permitted only as an auxiliary use on property used as the **business owner's primary residence**.

Prior to the 2008 CP Update, business owner occupancy was specified in KC codes, but was removed with that update cycle. This has resulted in predicted problems. It should be replaced.

If a Home Industry business is owned by multiple entities, the business owner(s) with a controlling interest in the business (>50%) must use the property as his/her/their primary residence.

Along with this change, criteria should be established as to what constitutes proof of a "primary residence".

**2- Auxiliary structures may be used for activities associated with the Home Industry**, conditional on meeting applicable KC site-specific standards (CUP). Size limits on such auxiliary structures should be specified.

**3 - Alcoholic beverage sales** – Only products made on-site may be sold at the property. Sales of products produced off-site should not be permitted (other than items such as the materials used for packaging the products and primary agricultural components such as grape juice, fruit, etc).

**Bed & Breakfast, Guesthouse** def. 21A.06.090, 21A.08.030.p.9

Clarify code to state that such use is permitted only accessory to use of the property as the primary residence of the business owner.

“Business owner” defined as the owner of at least 51% of the business.

Along with this change, criteria should be established as to what constitutes proof of a “primary residence”.

Despite recent work on marijuana policies, King County has far to go before it can be considered fair and equitable as a local government. There seems to be two standards of fairness for different local communities in unincorporated King County, and even when new policies that provide relief are made, executive performance can easily defeat those intended benefits. The residents of unincorporated King County need a local government that is not only capable of making good policy, but is also committed to follow through with it.

“Zoning regulations can be used to reduce concentrated exposure to alcohol, tobacco and marijuana by regulating the number of outlets that can sell these products and advertising that is in view of the general public.”

Looking at the map I’ve copied from the 2016 Comprehensive Plan, one can only wonder why within the county’s own identified priorities that the county has permitted 14 of 17 retail marijuana stores to be concentrated in the two already most impacted communities identified on this map. The answer, it seems, is that there are two standards of fairness operating in our local government.

We in these communities had hoped that recent marijuana zoning regulation changes would bring a stop to the county’s permitting of these stores where they are already over-concentrated. Despite the good intentions of the council in its recent action however, King County local government is so far failing to fairly follow through.

I found out last week that this hope is premature. On the very day of the council’s vote, the Washington Liquor and Cannabis Board proposed yet another marijuana store in White Center, at the time subject to a moratorium on marijuana businesses. I contacted King County DPER to advocate for the county to respond that King County does not approve of a new marijuana retailer at that location, not only because of the moratorium in effect, but that post-moratorium that location is within a prohibited 1,000 foot buffer zone from three existing marijuana stores which is now prohibited.

I spoke directly with the director of DPER. And he told me that there’s nothing to justify King County disapproving this new retailer in its response to the WSLCB. We discussed this at length, and he told me in no uncertain terms that we as a community are on our own to protest to the WSLCB on this issue, that he has no tools to intervene on our behalf. This is also the same executive staff member who seriously misrepresented the actual number of retail marijuana licenses that had been issued in direct testimony to this council at its July 25 meeting.

The council ought not to be sanguine about its accomplishments on marijuana policy either. If there are not two standards of fairness in operation here in unincorporated King County, then who on this council can explain to its citizens why there is a limit on the number of marijuana stores that can be located in every single council district except two? (And these limits are scheduled to be in effect until at least 2019.)

In light of a clear need, the council needs to do more to regulate the sort of advertising that pervades a community where retail marijuana stores are concentrated.

The communities of White Center and Skyway fully support the following in the comprehensive plan update. There is a very real need right now for action by this council to bring action to these words:

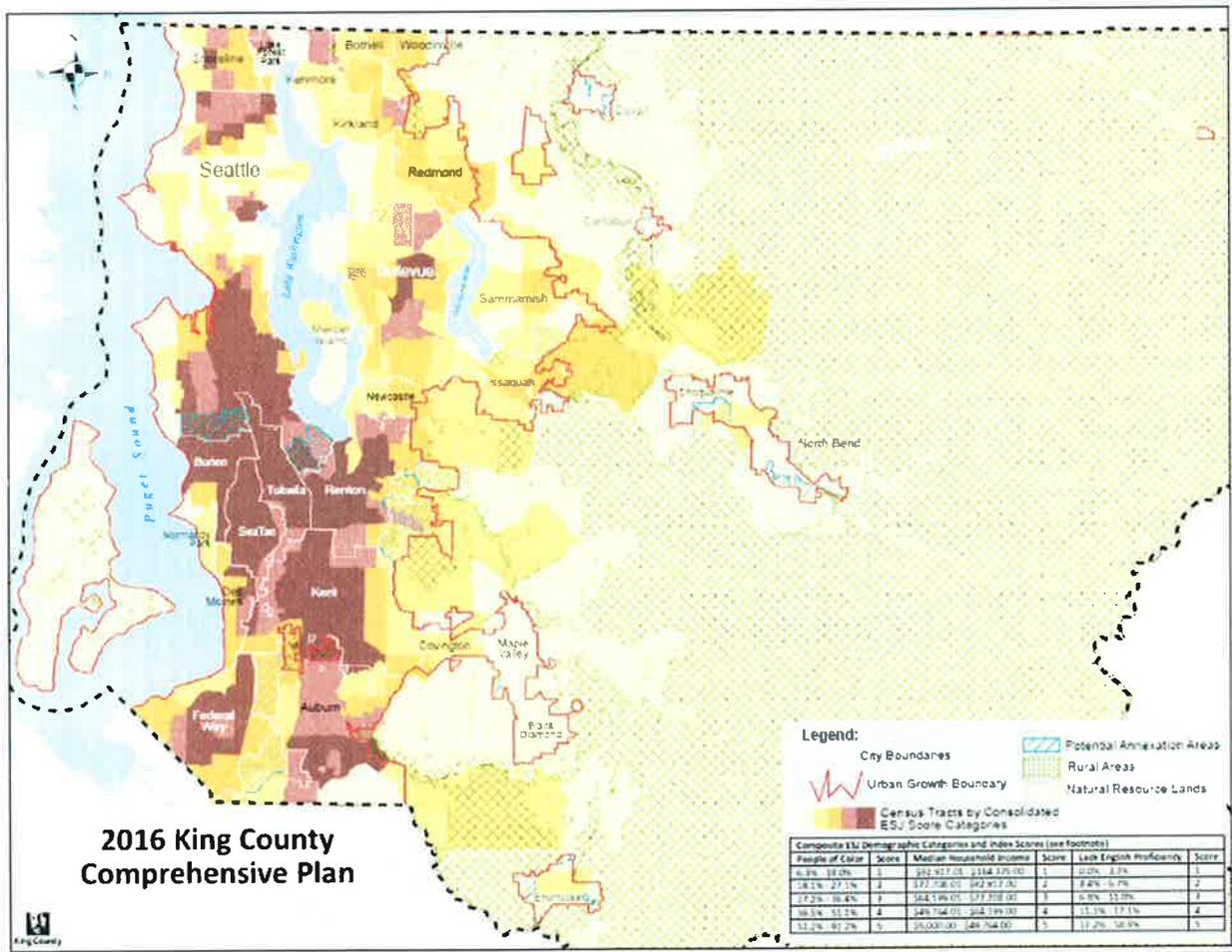
“The environment surrounding a school and the routes a typical student travels to school or nearby

school-related destinations also must be considered, including managing density of retail uses that primarily sell alcohol, tobacco and marijuana”

**U-113 King County ((should)) shall promote children’s health by encouraging and supporting land uses in the environment surrounding a school and on travel routes to schools that complement and strengthen other formal programs, such as Safe Routes to School.**

I’ve testified before this council already that the parking lot outside one of the state-licensed marijuana stores in Skyway is also a school bus stop. It was shameful in the first place for King County to have permitted this store there in the first place. And there is certainly no basis for any claim whatsoever that King County has at all been managing the density of retail uses that primarily sell marijuana, except in those areas of the county where these stores are now prohibited.

**Figure: Equity and Social Justice Priority Communities and Growth Management Act Geographies**



Respectfully submitted August 16, 2016,

--Mark Johnston  
Skyway resident





**This is an elementary school bus stop in Skyway**

# VASHON-MAURY ISLAND COMMUNITY SERVICE AREA PLAN

August 17, 2016

Transportation, Economy & Environment Committee  
King County Council  
516 Third Ave., Room 1200  
Seattle, WA 98104

**Re: Amendment to P-suffix #VS-P24, Masi Enterprises (Parcel #2923039148), Vashon**

Dear Committee Members,

We, the undersigned, are members of the Land Use/Housing/Community Health working group for the Vashon-Maury Island Community Service Area Plan and are all island residents. Since March 2016, we've been working with King County staff to review and update the Vashon Community Plan and Vashon Town Plan. One of our top priorities for this plan is to address housing affordability, particularly within the Vashon rural town.

On August 9<sup>th</sup>, we heard a presentation from Shelter America Group, an affordable housing developer based on Vashon, about a potential 41-unit affordable housing development on the subject parcel on SW Gorsuch Road. They explained this parcel currently has two P-suffix conditions – VS-P01 that sets a maximum density of 12 dwelling units per acre, and VS-P24 restricting development to mobile homes, manufactured housing, and accessory support structures. Shelter America Group is interested in using on-site, stick-built construction and we understand they have a request before the TrEE Committee to remove VS-P24 from the parcel.

Our Land Use/Housing/Community Health working group unanimously supports removing VS-P24 from Parcel #2923039148. We do not see any detriment to removing the limitation to manufactured housing since light wood frame construction would potentially add value to the property and manufactured housing would still be an option. However, given the developer's intention to provide rental housing that is restricted to tenants below area median income and given the pressing need for island housing to meet this population, we do believe the parcel needs to have an affordability condition attached to it. For example, said condition could require all future dwelling units be restricted to those at or under 80% of area median income. We support retaining VS-P01 on the property.

Thank you for taking time to review and accept input on this issue.

Sincerely,

Emma Amiad  
Tom Bardeen  
Kirsten Frandsen  
Kim Goforth

Lee Kopines  
Jiji Saunders  
Christopher Szala

## Response to August 16 KC Council Staff Report, 2016 KCCP Update

After reviewing the August 16, 2016 King County Council Staff Report on the Executive's proposed 2016 KCCP Update, we wish to emphasize some of our previous Comments directly related to several of the concerns expressed in the Staff Report.

### apters

#### CHAPTER 1—REGIONAL PLANNING

**((GP-103)) RP-203** *“King County shall continue to support the reduction of sprawl by focusing growth and future development in the existing urban growth area, consistent with adopted growth targets.”*

***RECOMMENDATION:*** *We support this policy change. It is consistent with State GMA growth-management principles, as well as Countywide Planning Policies. It focusses growth within the UGA, which is the clear intent of the State GMA.*

#### CHAPTER 2—URBAN COMMUNITIES

**U-109** -- *“King County should concentrate facilities and services within the Urban Growth Area to make it a desirable place to live and work, to increase the opportunities for walking and biking within the community, to more efficiently use existing infrastructure capacity and to reduce the long-term costs of infrastructure maintenance. Facilities serving urban areas such as new medical, governmental, educational or institutional development, shall be located in within the Urban Growth Area, except as provided in policies R-326 and R-327.”*

***RECOMMENDATION:*** *We support the addition made to this policy, as it aligns with our overall mission (“Keep the Rural Area rural”) by restricting the siting of urban- or largely urban-serving facilities to the Urban Growth Area.*

#### CHAPTER 3—RURAL AREA AND NATURAL RESOURCE LANDS

**R-201** -- *“Therefore, King County’s land use regulations and development standards shall protect and enhance the following ~~((components of))~~ attributes associated with a rural lifestyle ((the)) and the Rural Area: Rural uses that do not include urban or largely urban-serving facilities.”*

***RECOMMENDATION:*** *We strongly support this addition. The Rural Area is no place for “urban or urban-serving facilities.” (see RECOMMENDATIONS under R-326 below)*

**R-324** *“Nonresidential uses in the Rural Area shall be limited to those that:*  
*a. Provide convenient local products and services for nearby Rural Area residents;*

***RECOMMENDATION:*** *We strongly support this addition.*

#### CHAPTER 5—ENVIRONMENT

We continue to support Policies **E-425**, **F-475**, **E-481**, **E-483**, **E-497**, and **E-499c** related to wetland and groundwater.

We continue to support Policy **E-499i** related to failing septic systems in constrained shoreline environments.

**CHAPTER 10--ECONOMIC DEVELOPMENT**

**ED-404** *“Through local subarea planning and partnerships with other agencies and organizations, King County should use zoning, incentives, or other measures to ~~((ensure that an appropriate proportion of the land adjacent or near to major public infrastructure facilities is used to capitalize on the economic benefit of that infrastructure. The surrounding land uses should be compatible with the economic development uses or a buffer provided as necessary))~~ capitalize on the economic benefit of infrastructure projects, in a manner consistent with existing and forecasted land uses, and other locational criteria.”*

**CONCERN:** *ED-404 should not be used as a pretext to conceiving and approving “Demonstration Projects” in the Rural Area even if those sites are near major arterials, since most already are congested during ever-longer AM and PM traffic commutes. For example, the Cedar Hills Subarea is near SR-169, but the wait at the intersection traffic light is long and once successfully navigated, one sits in an 8-mile-long backup just to reach the I-405 gridlock in both north and south directions, and then the journey begins to major business centers of Seattle, Tacoma, Bellevue, and Everett.*

**CHAPTER 12— IMPLEMENTATION**

## 1. I-203 Item b.

**COMMENT:** *This appears to ameliorate our past and ongoing concerns related to the proposed Reserve Silica Demonstration Project. We strongly support such a change. The Executive has not supported this project, nor have we. Members of the Public in our area also strongly oppose this project. It never has been consistent with other policies in the Comprehensive Plan. The County should follow its standard methods for transitioning mining sites when resource extraction is complete, which we and the Public do support, with the land reverting to the underlying zoning as code and practice has long required. This best protects the County's forest and rural resources. [Please also see our related detailed comments above under Chapter 3, VI. Resource Lands / E. Mineral Resources (listed as Item 9.)]*

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**King County**

**Metropolitan King County Council  
Transportation, Economy and Environment Committee**

**STAFF REPORT**

<b>Agenda Item:</b>	6	<b>Name:</b>	Greg Doss, Jenny Giambattista
<b>Proposed No.:</b>	2016-0349	<b>Date:</b>	August 24, 2016

**SUBJECT**

An ordinance authorizing the Transit Division to enter into an agreement with Element Markets Renewable Energy, LLC, for the sale of Renewable Identification Numbers associated with Transit’s electric trolley and battery bus fleets.

**SUMMARY**

According to Executive staff, Metro Transit has the potential under an Environment Protection Agency (EPA) program to generate a new revenue source based on the consumption of renewably-generated electricity associated with Transit’s trolley buses and future battery buses. Upon Council approval, Transit intends to create this revenue source by selling Renewable Identification Numbers (RINs), which are credits that meet the requirements of the Federal Renewable Fuel Standard. (Please note that Executive staff have prepared a presentation for the Committee to provide more background on RINs and the Federal Renewable Fuel Standard. A copy of this presentation can be found as an Attachment to the staff report for Proposed Ordinance 2016-0339.)

The attached agreement provides for a contractor, Element Markets, LLC (EM) to receive a share of potential revenues in exchange for managing the RIN registration and sale process. According to Transit, the EPA has not yet approved a process or “pathway” to register and sell RINs. Under the terms of the contract, EM will be responsible for all aspects of the EPA approval process.

Transit staff have estimated annual revenues at approximately \$840,000 per year and have indicated that financial risks to the County would be minimal, as discussed in the fiscal section of this report, if the RINs are not sold or if revenues are insufficient to cover EM’s expenses. The contract allows other King County agencies or other jurisdictions to utilize EM to sell RINs under the same terms and provisions, and has a potential of increasing King County’s share of revenues if this happens.

Council’s Legal Counsel has reviewed the contract and worked with the PAO and Transit on potential changes. Attachment A to Amendment S1 reflects these potential changes. All of the changes in Attachment A to Amendment S1 have been agreed to by EM.

## **BACKGROUND**

### ***Federal Renewable Fuel Standards and Renewable Identification Numbers (RINs):***

The Federal Code (Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007) created a Renewable Fuel Standard to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. The United States Environmental Protection Agency (EPA) sets the Federal Renewable Fuel Standard each year, assigning obligated parties (defined as fuel refiners, blenders and importers) a renewable volume obligation.

The EPA uses Renewable Identification Numbers (RINs) to monitor obligated parties' compliance with the Renewable Fuel Standard. A RIN is a 38-character number assigned to each physical gallon of renewable fuel that is produced or imported. Renewable electricity can also be measured in RINs. Renewable fuels are assigned RIN values / numbers and then sold with gasoline products to help producers meet minimum statutory requirements. For example, 77,000 BTU/RIN is the equivalent of the energy content in one gallon of ethanol.

RINs are also bought and sold at daily commodity markets as an option for companies that cannot meet federal obligations through the use of renewable fuels alone. This is similar to the way that private companies or governments purchase carbon offsets as part of carbon neutrality programs.

### ***Metro Transit and Renewable Identification Numbers:***

According to Executive staff, Metro Transit has the potential to generate RINs that can be sold to a third party, based on the consumption of renewably-generated electricity associated with Transit's trolley buses and future battery buses.

Metro Transit staff have negotiated a contract with a third party vendor, EM, to register and sell RINs on appropriate commodities markets. This vendor will then revert to King County a portion of the net proceeds, which Transit staff estimate will reach \$840,000 per year starting in 2017. This contract is discussed further in the Analysis section.

### ***Legislative History:***

Ordinance 17971 required the Executive to report to Council on potential options for structuring a carbon offset program, potential buyers of the offsets, and the costs and revenues of implementing the program. On June 1, 2015, the Executive submitted in response to this requirement a report prepared by a consultant which, according to Metro Transit staff, concluded that pursuing transit carbon offsets at that time may not be financially viable<sup>1</sup>.

In addition to examining carbon offsets, the report also examined a number of other environmental attributes which could be sold. The report identified a potential revenue

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<sup>1</sup> Report 2015-RPT0081

source that could be created by selling RINs. In September 2015, the Council passed Ordinance 18106, which amended Ordinance 17971 to expand the Transit Carbon Offset Program to include environmental attributes—any environmental benefit that can be monetized. This includes the sale of RINs.

Transit provided some general background on the RIN certification and sale process in a report transmitted on December 1, 2015 (please see Attachment 4 of this staff report for a copy of that report). The report shows how the County will maximize financial returns, shows how the RIN sales will provide a stable revenue source and explains how the proposed transaction process ensures both maximum price and transparency. This report was required by Ordinance 18106.

## **ANALYSIS**

### **Contract Summary:**

Proposed Ordinance 2016-0349 authorizes the Transit Division to enter into an agreement with Element Markets Renewable Energy, LLC, (EM) for the sale of Renewable Identification Numbers (RINs) and other potential environmental attributes associated with Transit's electric trolley and battery bus fleets.

The contract requires EM to deliver to Metro specific units of Renewable Energy Rights (RERs), which are environmental attributes / credits resulting from the creation of electricity from the combustion of biogas. The RERs will be procured from a facility chosen by EM. At this time, Metro believes that EM will choose to acquire the RERs from a landfill operating in Oregon.

The RERs are then matched with a comparable measure of electricity (Kilowatt hours) used in the operation of Transit's electric trolley and battery bus fleets. Under the Federal guidelines described above, this transaction creates the RINS that EM will register and sell on appropriate commodity markets.

According to Transit, the proposed transaction process must be approved by the EPA. Transit reports that creating RINS from electric powered busses has not been done before. Under the terms of the contract, EM will be responsible for all aspects of the EPA approval process.

Council legal staff, the PAO, Transit and EM have revised the contract language to allow the County to suspend the contract if revenues are insufficient to cover expenses. In such case, the County may request a suspension if it has three consecutive months of insufficient revenues and if revenues are also insufficient in the preceding six month period in the aggregate.

Finally, the contract allows other governments to use the terms and conditions for their own separate agreements with Element Markets. The provisions relevant to this "piggybacking" option can be found in Schedule 32 attached to the contract. If revenues from Transit's RIN sales or from Transit's RIN sales in combination with RIN sales from other public agencies participating under Section 32, exceed \$400,000, Transit's share of revenues from the sale of Transit RINS increase from 70 percent to 75 percent of net revenues.

## **Analysis of the Contract:**

Contract provisions and changes included in Amendment S1 are summarized below.

**Section 1: Description of contract documents.** This section describes the contract documents.

Amendment S1. Amendment S1 includes technical edits made to the name of documents following review by Council's Legal Counsel.

**Section 2: Definitions.** This section includes definitions for terms used in the contract. Key terms defined include:

- Metro's Revenue Percentage: In each twelve month period of the contract beginning on the commencement date, the Metro Percentage shall be 70 percent of net revenue until the aggregate total of gross revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter, the Metro Percentage shall be 75 percent of Net Revenue for the remainder of the applicable twelve month period.
- Net revenue is the gross revenue less expenses incurred by EM.
- PEV (Plug-in-Vehicle) load is the electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies under the Renewable Fuel Standards Program.

Amendment S1. Amendment S1 includes technical edits following review by Council's Legal Counsel and the PAO.

**Section 3: Description of Transaction.** Element Markets (EM) will match a renewable energy provider's RERs with King County's vehicle electric load and create RINs (Renewable Identification Numbers). EM and King County will share revenues from the sale of RINs.

**Section 4: Contract Term.** The contract shall extend for three years with two one-year extensions at Metro's discretion. Should there be a change in the Federal Renewable Fuel Standard (RFS) which prevents the sale of RINs, the contract can be terminated. EM is determined to be the generator of RINs for purposes of registration with the EPA unless Metro is required to be the generator. Metro will have the option of suspending and ultimately terminating the contract if the quarterly sales of RINs create a financial liability for King County.

Amendment S1. Changes were made in Amendment S1 to clarify that if Metro is required to register its RINs, EM agrees to provide assistance, as requested by Metro. If such assistance is insufficient and no revenues are generated, the County may decide to pull the funding for this contract and terminate for non-appropriation as set forth in the new section 18.2. The County would pay EM only for the work performed to the date of the notice of termination.

**Sections 5-8: Quantity, Exclusivity, Registration and Ongoing Information Requirements.** These sections specify that the quantity is based on Metro's actual

electric vehicle load, that EM has the exclusive right to sell Metro's RINs, that EM is responsible for registering King County's RINs with the EPA and that EM will provide Metro with copies of all documents filed or received from the EPA. Finally, that Metro will provide EM with information necessary to file with EPA and to sell RINs. This includes utility billing information and assurances that EM has sole rights to Metro's RINs.

**Section 9: RIN/Other EV Credit Generation.** This section specifies that EM will seek to classify King County's RINs as D3 RINs (the highest value type of RIN) or such other code if it will result in higher value. The section also requires EM to generate the maximum number of RINs and other environmental attributes, if applicable, as is permitted by EPA.

**Section 10: Contract RIN sales.** The section describes how RINs will be sold by EM. Among the provisions are that King County RINs will be bundled with RINs from other customers in larger sales to receive higher prices. RINs can be sold in the futures market if approved by King County. The minimum price for RINs will be the market price of D5 RINs plus 50 percent of the Cellulosic Waiver Credit<sup>2</sup> (a price set by EPA). King County can elect to receive RINs rather than money should it so desire. EM will engage a firm to perform a Quality Assurance Program once such programs are certified by EPA. Other departments in King County can use this contract to have EM sell their RINs.

**Amendment S1.** Following review by the PAO and Council's Legal Counsel, language has been included in Amendment S1 to clarify the conditions under which a Quality Assurance Program (QAP) contractor would be hired.

**Section 11.** This section intentionally left blank.

**Section 12: Expenses.** Specifies that EM will be responsible for paying any and all expenses incurred with the generation and sale of RINs, except that certain expenses will be subject to reimbursement from gross revenue. Reimbursement for four categories of expenses is capped at \$45,000 annually. These include third party costs for EPA registration, Quality Assurance Program costs, site visits, annual audits, and travel expenses for third parties.

Other expenses are not subject to the cap and should gross revenue be insufficient to cover those expenses, they would be reimbursed to EM by the County. These include utility costs, if any, associated with collection and reporting of data, procurement costs for renewable energy credits, any costs associated with generating other environmental attributes, and tax payments associated with RIN sales but not including EM income tax payments. However, given the anticipated revenues, Transit reports it is unlikely these expenses would exceed revenues.

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<sup>2</sup> EPA requires more Cellulosic RINs to be purchased than are currently generated. The EPA therefore issues a "Cellulosic Waiver Credit" which parties can purchase to help meet their cellulosic RIN requirement. <https://www.epa.gov/renewable-fuel-standard-program/notice-cellulosic-waiver-credit-price-calculation-2016>

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes several modifications to this section. The reimbursable expenses were expanded to include on the list of expected expenses the annual third party review specified in Section 15. To ensure that the County would be receiving its own distinct report and audit, EM requested that the expenses cap be increased from \$40,000 to \$45,000.

An additional change negotiated after this legislation was transmitted, and included in Amendment S1, is a new provision that there is a price limit of three dollars per Renewable Energy Right (RER) on the purchase price EM will pay for any RER, except if otherwise having received prior approval from Transit.

Additionally, following review by the PAO and Council's Legal Counsel, language has been included in Amendment S1 that allows Metro to suspend the contract if insufficient revenue is received in any three consecutive months of the delivery period; and if revenues are insufficient to cover costs in the aggregate over the prior six months.

New provisions were added in Amendment S1 to address the potential of insufficient revenue from the sale of RINs to compensate EM. This can be found in new section 12.2 and 12.2 in the Attachment to Amendment S1.

**Section 13: Delivery of Renewable Electricity Rights (RERs)**. This section specifies how RERs (the renewable energy attributes EM will be purchasing from the Oregon landfill that will be matched with Transit's electric vehicle energy use) will be registered to Transit.

**Section 14: Payment**. This section specifies payment and reporting terms. EM will pay Metro the applicable percentage of net revenues on a monthly basis. EM will report on gross and net revenues on a monthly basis and the number of RINs sold as well as any unsold RINs. EM will provide King County with market data on a monthly basis using both published and unpublished sources. EM will provide annually information on how Metro sales compare with published and unpublished data including a comparison with the D5 plus 50% of the cellulosic waiver credit (minimum price).

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language that the monthly report on revenues include a detailed list of parties to whom the gross revenue is attributable. This information is included to help King County determine when EM has achieved \$400,000 in RIN sales (see Section 2) if other jurisdictions use the contract for their own sales.

**Section 15: Contract RINs and other EV Credit Annual Review**. EM will conduct an annual audit of Metro's RINs transactions. This audit will provide information on the number of RINs delivered, the accounting of contract RINs, and the sales price for RINs.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language to modify the annual review requirement to specify that the review be written and specific to King County, and listed associated expenses in Section 12 (ii) (Quality Assurance costs and annual third party review costs).

**Section 16: Mutual Representations and Warranties.** EM warrants that it has the capacity to deliver renewable energy to King County and perform its obligations.

**Section 17: Representations and Warranties of EM.** EM represents that the renewable credits that it delivers to King County are owned by EM, that the electricity was generated with renewable energy based on reasonable inquiry. EM warrants that the renewable energy it procures meets EPA pathway requirements.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language that the warranties specify that the RERs provided to Metro will meet federal requirements for the creation of RINs.

**Section 18: Termination Default.** This section specifies the terms under which the County may terminate the contract. If the contractor does not perform the work, and has not resolved a notice to cure then the contract can be cancelled.

Amendment S1. Amendment S1 includes a new section for termination for Non-Appropriation that was added following review by the PAO. This is standard language used in County contracts.

**Section 19: Retention of Records.** EM will maintain records for six years. EM will allow access to records for auditing. The contract is considered a public record, but if EM considers any portion confidential, such portion should be labeled as such. If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Public Records Act.

**Section 20: Legal Relations; Indemnity and Insurance.** EM is acting as a corporation and not as an entity of another company. EM is responsible for taxes and other requirements. The County is indemnified from all suits and claims against EM or its agents. EM shall maintain general and automotive liability and workers compensation and employer's liability in amounts specified in the contract.

The PAO has reviewed this language and has advised that this is standard insurance language that is acceptable to Risk Management.

**Section 21: Conflicts of Interest.** The parties shall not take positions which conflict with its position in this contract. No brokerage fees will be paid or gratuities. No County employees are allowed to assist in the preparation of proposals or contracts with a third party, including vendor while in County employment or for one year afterwards.

**Section 22: Intellectual Property.** This section provides the County with rights to use any systems that EM develops as part of this contract.

**Section 23 and Section 24: Nondiscrimination and Payment of a Living Wage, Notices.** These are the standard provisions for County contracts.

**Section 25: Assignment.** The contract is binding on EM. EM is allowed to transfer this contract to another qualified firm with written permission from King County. It is also allowed to assign the contract to a wholly-owned subsidiary without written

permission from the County provided specified documentation regarding the subsidiary's qualifications are provided to the County in advance.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes modified language that provides assurances that EM will not be released from its obligations under the contract if the contract is assigned to another entity other than a wholly-owned subsidiary.

**Sections 26-31: Amendment, Waiver, Severability, Complete Agreement, Mediation or Arbitration, Applicable Law and Forum.** Amendments may be made in writing on mutual agreement by both parties. Waivers shall not be permitted. On severability, if a portion of the contract is unenforceable the remaining portion of the contract shall be valid. This contract governs services by EM. In the cases of disputes, mediation or arbitration shall be used if direct negotiations are unsuccessful. The contract is governed by the laws of the State of Washington.

These sections are standard in similar County contracts.

Amendment S1. Amendment S1 includes technical changes to clarify language in Section 29.

**Sections 32-36: Other public Agency orders, Force Majeure, Recycled Products Policy, Third Party Beneficiaries, Counterparts.** Other public agencies may use this contract if they execute an agreement similar to Schedule 32, which is attached, contractors shall use recycled products when practical, Third Party Beneficiaries are not prohibited, the contract may be executed in counterparts, each of which can be considered an original.

These sections are standard in similar agreements with the County.

Amendment S1. Amendment S1 includes technical changes to clarify language in Section 32 – Other Public Agency Orders.

**Schedule 32: Form of Agreement.** This section allows other public agencies to use the Metro contract to sell RINs on the same terms as Metro Transit.

Exhibit A -1: Sample Form of Metro Attestation: This form certifies, for the EPA, that EM has control of Metro's renewable energy rights necessary to conduct the transaction that establishes RINs.

**Exhibit A-2: Form of RER Delivery Attestation.** This form certifies that EM delivered renewable energy rights from a landfill and that the rights were not used by EM for another purpose other than conveyance to Metro. Furthermore, the title to the renewable rights was transferred to Metro at the same time as consumption of the electricity.

### ***Fiscal Estimates:***

Transit staff have indicated that the sale of RINs will produce approximately \$840,000 per year, or \$1.7 million in the 2017-18 biennium. This calculation was determined by estimating revenues and subtracting expenses. The attached Fiscal Note as transmitted (Attachment 5) shows the original assumptions supporting the estimated revenues. It also predicted that revenues would accrue to Transit in 2016, which upon further analysis seems unlikely. As a result, Executive staff prepared a revised Fiscal Note, which is included as Attachment 6 to this staff report. This note has similar assumptions, but notes that revenues will not accrue until 2017.

Transit staff have indicated that there is some element of uncertainty when estimating the price of RINs. Staff have indicated that the RIN market may be volatile because it is related to the price of oil, which has varied considerably over the last year. Finally, Transit staff acknowledge some uncertainty for revenue estimation related to the number of RINs that Transit can produce if ridership and service assumptions change.

Revenues: The number of RINs sold is based on the amount of energy consumed by the electric trolley fleet in 2015. Executive staff determined the price estimate for the RINs by examining historical prices for similar credits, and then reducing the price by 25 percent in order to ensure the Division was not overestimating the amount of revenue the contract would generate.<sup>3</sup>

Metro Percent of Revenue: In each twelve month period of the contract, the Metro percentage of revenues is 70 percent of the net revenue, until the aggregate total of gross revenue, and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter, the Metro percentage shall be 75 percent of net revenue for the remainder of the applicable twelve month period.

Expenses: The \$840,000 is a final revenue estimate that will become available to Transit after EM deducts its expenses for registering and selling the RINS. The cost for EM to register and sell RINs is estimated between 25 percent and 30 percent of net revenues, depending on whether RIN sales exceed \$400,000. Under the contract, EM is also entitled to deduct from revenues \$45,000 for expenses associated with EPA registration, a quality assurance program review, a review by a third party, and necessary site visits and travel costs. Details for EM's expenses can be found in section 2.14 and 12.0 of the contract.

What if RINS don't sell? If EM does not get EPA approval to sell the RINs, it will not generate expenses that will be billable to Metro. If EM generates and sells RINs that produce revenues, but those revenues are insufficient to cover EM's costs, then Metro may be liable for such costs up to \$45,000. In such case, the County may suspend the contract if it has incurred three consecutive months of insufficient revenues and if revenues are also insufficient in the preceding six month period in the aggregate.

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<sup>3</sup> Transit staff determine the RIN price by using a 5-year average of D5 RINs plus the price of the Cellulosic waiver credit. The product was multiplied by 0.75.

However, Transit staff indicate that it is extremely unlikely that revenues would be insufficient to cover costs.

Charges that Metro may incur regardless of RIN sales: It is possible that Seattle City Light (SCL) would charge the County to create data systems that will allow SCL to report monthly electricity usage associated with the RINS. Transit staff have indicated that such costs would be one-time and minimal.

## **AMENDMENT**

A Striking Amendment (S1) can be found in Attachment 2 to this staff report. (An illustrative track changes version of the Striking Amendment and Attachment can be found in Attachment 3.) This amendment replaces the original contract with the contract that was modified following review by the PAO and Council's Legal Counsel. Executive staff and EM concur with the changes made in Amendment S1.

Amendment S1 makes technical, legal changes to the original ordinance to ensure that other jurisdictions may use the contract and also makes a number of changes to the contract (Attachment A to Amendment S1). Substantive, non-technical changes include (as described in more detail above):

- Section 1: Technical clarifications regarding contract documents
- Section 2: Technical clarifications regarding definition of terms
- Section 4: Clarification to terms of agreement that if Metro is required to register its RINs, EM agrees to provide assistance as requested by Metro
- Section 10: Clarification language added about the conditions under which a Quality Assurance Program (QAP) contractor would be hired.
- Section 12: Added modifications to note that reimbursable expenses would be expanded to include annual third party review and increases the expenses cap from \$40,000 to \$45,000 to ensure the County would be receiving its own distinct report from this review. Also added language to allow Metro to suspend the contract if insufficient revenue is received in any three consecutive months and if revenues are insufficient to cover costs in the aggregate over the prior six months.
- Section 14: Monthly report on revenues will include a detailed list of parties to whom the gross revenue is attributable, which will help County determine when EM has achieved \$400K in RINs sales.
- Section 15: Annual review report must be specific to King County.
- Section 17: Warranties specify that the RERs provided to Metro will meet federal requirements for the creation of RINs.
- Section 18: Includes standard County contract language regarding termination for non-appropriation. Clarifies that the County would pay EM only for the work performed to the date of the notice of termination.
- Section 25: Adds language noting that EM will not be released from its obligations if it assigns the contract to another entity other than a wholly-owned subsidiary.
- Section 29: Technical changes to clarify language.
- Section 32: Technical changes to clarify language.

## **ATTACHMENTS**

1. Proposed Ordinance 2016-0349 and Attachments
2. Amendment S1 and Attachments
3. Illustrative Track Changes version of S1 and Attachments
4. December 2015 Report on Monetizing Transit Environmental Attributes
5. Fiscal Note as Transmitted
6. Revised Fiscal Note
7. Transmittal Letter

## **INVITED**

- Rob Gannon, Interim General Manager, King County Metro Transit
- Gary Prince, Special Projects / Economist, Transportation – Metro Transit Division
- Janine Joly, Prosecuting Attorney's Office

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**KING COUNTY**  
**Signature Report**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**August 22, 2016**

**Ordinance**

**Proposed No.** 2016-0349.1

**Sponsors** Dembowski

1 AN ORDINANCE relating to the sale of environmental  
2 attributes held by the county; authorizing the transit  
3 division to enter into an agreement with Element Markets  
4 Renewable Energy, LLC, for the sale of Renewable  
5 Identification Numbers and other environmental attributes  
6 associated with the transit division's electric trolley and  
7 battery bus fleets.

8 **STATEMENT OF FACTS:**

- 9 1. The transit division operates a fleet of one hundred fifty-nine electric  
10 trolley buses in the city of Seattle. In 2016, it will also operate three  
11 battery buses and may operate significantly more in the future.
- 12 2. The electric trolley buses operated by the transit division have over  
13 twenty million boardings per year and are a major component of the public  
14 transportation system.
- 15 3. Under the United States Environmental Protection Agency's  
16 Renewable Fuel Standards Program, consumption of renewably generated  
17 electricity to power the trolley buses and the battery buses has the  
18 potential to create Renewable Identification Numbers ("RINs"), which can

19 be sold to companies that blend gasoline for the retail market and have  
20 Environmental Protection Agency-mandated Renewable Fuel Obligations.

21 4. The transit division's trolley bus fleet consumes an estimated eighteen  
22 million kilowatt hours of electricity each year, which is equal to  
23 approximately 797,600 RINs.

24 5. On March 19, 2015, the transit division issued a request for proposals  
25 for the sale of RINs and other environmental attributes associated with the  
26 transit division's electric trolley and battery bus fleets.

27 6. The transit division has negotiated a contract with an outside party for  
28 the sale of RINs and other environmental attributes associated with the  
29 transit division's electric trolley and battery bus fleets. The contract also  
30 provides an option for the sale of RINS generated by other King County  
31 departments and divisions. Finally, the contract allows other governments  
32 to use the contract's terms and conditions for their own separate contracts  
33 with Element Markets.

34 7. The contract for the sale of RINs and other environmental attributes  
35 associated with the Metro Transit Division's electric trolley and battery  
36 bus fleets with Element Markets Renewable Energy, LLC is in the best  
37 interest of the county.

38 8. Under K.C.C chapter 4.56, sales of rights, title or interests in emissions  
39 credits, offsets or allowances or renewable energy certificates, credits,  
40 benefits, environmental air quality credits and any similar rights, title or  
41 interests held by the county are exempt from the real and personal

42 property requirements of this chapter when unique circumstances are  
43 present. The sales may be made in the best interests of the public to a  
44 person or entity through a direct agreement negotiated by the county  
45 executive and approved by the county council.

46 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

47 SECTION 1. Findings: King County council hereby finds that the sale of  
48 Renewable Identification Numbers and other environmental attributes held by the county  
49 and associated with the transit division's electric trolley and battery bus fleets, or by other  
50 King County departments and divisions is in the best interests of the public.

51 SECTION 2. The executive is hereby authorized to execute a Renewable Energy  
52 Attributes Contract with Element Markets Renewable Energy, LLC, substantially in the  
53 form of Attachment A to this ordinance.

54 SECTION 3. Moneys from the sale of Renewable Identification Numbers shall  
55 be allocated to the originating division and shall be used to further the goals outlined in  
56 the 2015 Strategic Climate Action Plan.

57

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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J. Joseph McDermott, Chair

ATTEST:

\_\_\_\_\_

Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Dow Constantine, County Executive

**Attachments:** A. Renewable Energy Attributes Contract

## RENEWABLE ENERGY ATTRIBUTES CONTRACT (“Contract”)

**THIS CONTRACT # \_\_\_\_\_** is entered into by King County, Washington by and through the Department of Transportation, Metro Transit Division (the “County” or “Metro”), and Element Markets Renewable Energy, LLC (“EM” or “Contractor”). The County is undertaking certain activities related to the sale of environmental attributes and the County desires to engage the Contractor to provide Work in connection with such undertakings of the County.

In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

### 1. Contract Documents

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence: 1) Contract Amendments; 2) Contract, including Exhibits A-1 and A-2 – Attestation Forms, Exhibit B – Consultant Disclosure Form, and Exhibit C – Certificate(s) of Insurance and Policy Endorsement; 3) King County’s Request for Proposals 1082-15 VLN; and 4) Contractor’s Proposal.

### 2. Certain Definitions

- 2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.
- 2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.
- 2.3. Change in Law: Defined in Section 4.0.
- 2.4. Commencement Date: Defined in Section 4.0.
- 2.5. Consulting Agreement: A Services Agreement, which if executed by and between EM and the County, governs certain services to be provided to the County by EM relating to execution of the transactions contemplated in this Contract.
- 2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.
- 2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.
- 2.8. Day: Calendar day.
- 2.9. Delivery Period: Defined in Section 4.0.
- 2.10. Excepted Expenses: Defined in Section 12.0.
- 2.11. Initial Delivery Period: Defined in Section 4.0.
- 2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.
- 2.13. KCC: The King County Code.

- 2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.
- 2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.
- 2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this Agreement is eligible to generate tradable credit(s) in addition to RINs.
- 2.17. Plug-in Electric Vehicle (“PEV”) Load: The electricity consumption of Metro’s electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.
- 2.19. Renewable Electricity Right or “RER”: The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.
- 2.20. Renewable Fuel Standard Pathways II or “Pathways”: The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).
- 2.21. Renewable Identification Numbers or “RINs”: A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.
- 2.22. Renewable Fuel Standards program or “RFS2”: The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.
- 2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
- 2.24. System: Collectively, Metro’s electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

### **3.0 Description of Transaction**

EM will deliver RERs to Metro to be matched with the PEV Load in accordance with the Pathways in order to allow EM to generate the Contract RINs. Except as otherwise provided in Section 10.2, EM will sell the Contract RINs and EM and Metro will share the revenue generated from the sale of such Contract RINs as specified below, subject to satisfaction by Metro of the Ongoing Information Requirements (described in Section 8 below). For Other EV Credit(s), Metro may elect in writing to have EM generate such credits and EM and Metro will share the revenue generated from the sale of such Other EV Credit(s) under the fee structure in Section 14, unless the parties execute a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between the parties. This language also applies where RERs are not involved, such as the sale of carbon offsets or other environmental credits and attributes not contemplated by this Agreement as of the date executed by both parties.

### **4.0 Contract Term**

This Contract shall become effective upon execution by the parties and shall expire at the end of the Initial Delivery Period (defined below), unless extended or terminated as provided herein.

EM shall commence delivery of RERs to Metro beginning on the “Commencement Date”, defined as the first date upon which both (i) the source facility producing the biogas with which the RERs are associated is registered under RFS2 and (ii) a pathway for generation of the Contract RINs is approved by EPA. EM shall continue delivering RERs for three (3) years beginning on the Commencement Date (the “Initial Delivery Period”). Delivery of RERs under this Contract may be extended by Metro for up to two (2) additional one-year periods (each, a “Renewal Delivery Period” and collectively, with the Initial Delivery Period, the “Delivery Period”) as Metro may determine in its sole discretion by providing written notice of renewal to EM at least thirty (30) days prior to the last day of the Initial Delivery Period or Renewal Delivery Period, as applicable.

If at any time during the Delivery Period a change occurs to RFS2 or the enforcement thereof which results in the inability to generate RINs from the PEV Load (a “Change in Law”), deliveries of RERs will cease until such time as RINs may be generated from the PEV Load. If the Change in Law is either permanent by its terms or EPA releases definitive guidance that the Change in Law will remain in effect for a period of at least six (6) months, either Contractor or Metro may terminate this Contract by providing written notice to the other of such termination; provided that the foregoing termination right will not be exercisable if any Other EV Credits are being generated or, if not currently being generated, could be generated under a renewables program from the matching of RERs to the PEV Load as contemplated in Section 3.0 of this Contract.

In the event there is a determination by EPA that Metro must be the generator of the RINs, EM agrees to assist Metro with the establishment of an account in the EPA Moderated Transaction System (EMTS). Metro will appoint EM as its agent to perform the generation of the Contract RINs for Metro, and following generation, will transfer the Contract RINs to an EM account in EMTS from which EM will market and sell the Contract RINs.

EM’s obligation to generate Contract RINs associated with RERs delivered to Metro prior to the last day of the Delivery Period and to remit the Metro Percentage of Net Revenue associated therewith will survive termination until revenue from all RERs delivered to Metro is realized through the sale of the Contract RINs.

### **5.0 Quantity**

The actual quantity of RERs delivered by EM to Metro in each month of the Delivery Period shall be equal to the actual PEV Load for that month.

## **6.0 Exclusivity**

Metro hereby grants EM the exclusive right to (i) deliver RERs to be matched with Metro's PEV Load, (ii) generate RINs with respect to such PEV Load, and (iii) sell Contract RINs for the duration of the Delivery Period, except as provided in Section 10.2.

In the event the matching of the PEV Load with RERs is eligible to generate Other EV Credits or if Metro desires to generate RINs or Other EV Credits from other parts of Metro's transportation fleet other than the PEV Load, Metro may elect in writing to grant EM the exclusive right to (i) deliver RERs to be matched with the PEV Load (for the purpose of generating Other EV Credits) and (ii) generate Other EV Credits with respect to the PEV Load and (iii) sell Other EV Credits for the duration of the Delivery Period subject to a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between Metro and EM and addressing other relevant payment terms.

## **7.0 Registration Information**

EM will be responsible for registering the System with the U.S. Environmental Protection Agency ("EPA") or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a "Registration"). EM will complete registration requirements for Contract RIN sales pursuant to the terms of the Consulting Agreement if one is executed. Any EPA registration requirements not covered by a Consulting Agreement will be completed by EM pursuant to this Contract.

EM shall provide the County with copies of all documents filed with and received from EPA related to the System, Contract RINs, or Other EV Credits.

## **8.0 Ongoing Information Requirements**

At its own expense, Metro will submit the following documentation and data to a data room or similar repository established by EM for each calendar month of the Delivery Period:

- System operation data and metered electricity consumption;
- Utility bills and/or statements evidencing electricity used by the System; and
- An attestation, either in the form attached to this Contract as Exhibit A-1 or via an electronic platform developed by EM or its service providers, in which an authorized representative of Metro attests to certain facts regarding the System, RERs, Contract RINs and/or Other EV Credits, including, without limitation, that Metro has not entered into any similar agreements that would enable or give any other party the right to make any claims with respect to the PEV Load or generation of the Contract RINs.

## **9.0 RIN/Other EV Credit Generation**

The Contract RINs generated from Metro's PEV Load will be equal to the quantity of RINs permitted to be matched with the PEV Load pursuant to the Pathways, as amended from time to time. EM will seek the classification of the Contract RINs as D3 by the EPA or such other code if it will result in a higher RIN value and is permitted by the EPA. In the event that any Other EV Credits may be generated from the PEV Load, the Other EV Credits generated will be equal to the quantity permitted under the applicable statutes, rules or regulations.

## **10.0 Contract RIN Sales**

10.1 The timing and manner of sale of the Contract RINs will be determined in EM's sole discretion provided that EM agrees that (i) EM shall use commercially reasonable efforts to sell any Contract RINs as they become available for sale during the Delivery Period; (ii) Contract RINs will be sold in transactions that include the sale of RINs generated by at least one other party, including but not limited to RINs sold pursuant to Section 10.4 or Section 32.0, if any; (iii) Contract RINs are sold no less frequently than every four months; (iv) no more than 25% of the Contract RINs sold in any four-month period of the Delivery Period may be sold in the forward market without prior written approval of the Project Manager; and (v) no Contract RIN shall be sold at a price that is less than the sum of the market price for a D5 RIN plus 50% of the published value of the Cellulosic Waiver Credit at the time of the Contract RIN sale.

10.2 Notwithstanding any provision to the contrary in this Contract, the County may elect to take a share of the Contract RINs equal to the Metro Percentage in-kind for any one or more months of the Delivery Period (such RINs, the "In Kind RINs") provided that the County provides EM with written notice at least seven (7) business days prior to the start of the applicable month in which the County wishes to receive In-Kind RINs. If the County elects to receive In-Kind RINs, it must take the entire amount equal to the Metro Percentage and shall establish and manage its EMTS account as required for such In-Kind RINs, and Contractor will have no obligation or responsibility with respect to management of the EMTS account for In-Kind RINs under this Agreement or otherwise. The County shall not have the right to present any In-Kind RINs for monetization at will. Any arrangement in which EM monetizes any In-Kind RINs for the County shall be a separate negotiated transaction not included under this Contract. The County may modify or rescind any election to receive In-Kind RINs given pursuant to this Section 10.2 provided that the County provides written notice to EM thereof at least seven (7) business days prior to the start of the applicable month. The effect of the County's rescission of such election to receive In-Kind RINs will be that EM will sell the Contract RINs as provided in Section 10.0 and the County will receive the Metro Percentage for the revenue generated from such sales.

If the County elects to receive In-Kind RINs, EM may also elect to receive the amount of any reimbursement to which EM is entitled pursuant to Section 12 below in the form of RINs by providing written notice of such election to the County. EM may revoke any such election by providing written notice of revocation to the County at any time, and any such election will be automatically revoked upon receipt of notice from the County that it wishes to rescind its election to receive In-Kind RINs as the Metro Percentage.

10.3 If commercially reasonable, Contractor shall engage a firm to perform a review of the Contract RINs under an EPA-approved QAP (the "Quality Assurance Program") during the Initial Delivery Period. Contractor's expenses in connection with the Quality Assurance Program shall be considered Excepted Expenses pursuant to Section 12 and deductible under clause (ii) thereof.

10.4 Any County division or department may utilize this Contract to engage EM to sell its RINs. Such RINs will be sold in transactions in which Contract RINs are also sold, and the sale of any such RINs will be conducted by EM according to the terms and conditions of this Contract applicable to Contract RINs unless agreed upon otherwise in writing by EM and the County. If another County department or division engages EM to sell RINs pursuant to this section, the County shall provide EM with applicable contact and payment information to the extent it is different than that provided herein.

## **11.0 This section intentionally left blank.**

## **12.0 Expenses**

EM will be responsible for any and all expenses incurred and associated with the generation and sale of the Contract RINs and Other EV Credits for which EM is responsible pursuant to this Contract, except as provided herein. The following expenses, subject to the limitation set forth below, will be deducted from Gross Revenue to determine Net Revenue hereunder (the "Excepted Expenses"):

- (i) Third-party costs for initial EPA registration;
- (ii) Quality Assurance Program costs;
- (iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;
- (iv) Travel expenses for third parties;
- (v) Costs or payments associated with Seattle City Light, but not including payments owed by EM for utility service to its facilities;
- (vi) RER procurement costs;
- (vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;
- (viii) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year's Gross Revenue or \$40,000 (the "Expense Cap").

The County shall reimburse EM for any of the above expenses incurred in connection with performance of EM's obligations hereunder; provided that with respect to the expenses listed in clauses (i) through (iv), EM shall be responsible for all such expenses exceeding the Expense Cap in each calendar year.

In no event shall EM be entitled to reimbursement under this Contract for any expense that was or will be reimbursed by the County to EM under the Consulting Agreement.

## **13.0 Delivery of RERs**

RERs will be delivered by EM or a designee thereof previously identified to Metro in writing to Metro's account in a renewable energy credit registry or by delivery of an attestation in the form attached as Exhibit A-2 to this Contract.

## **14.0 Payment**

14.1 In exchange for Metro granting EM the exclusive right to deliver RERs, generate and sell Contract RINs and Other EV Credits from the PEV Load as provided herein, EM will pay Metro the applicable Metro Percentage of Net Revenue on a monthly basis in accordance with this section. Additionally, EM will review payments made during each completed twelve month period and pay the County any additional amounts that may be owed with respect to the completed twelve month period within thirty days of the end of that period.

14.2 For each month of the Delivery Period in which Contract RINs or Other EV Credits are generated and sold, as applicable, EM will prepare and provide Metro with a document showing: (i) Gross Revenue for the Contract RINs or Other EV Credits sold during such month; (ii) the gross revenue attributable to any RINs sold pursuant to Section 32, in the aggregate, to the extent permitted by the applicable third party, with a list of all third parties to whom the gross revenue is

attributable (to the extent permitted by the applicable third party); (iii) the Net Revenue from such Contract RINs or Other EV Credits, as applicable; (iv) an itemized list of all Excepted Expenses deducted from Gross Revenue; (v) the Metro Percentage, (vi) the date of sale and price per unit for all Contract RINs or Other EV Credits sold during such month, (vii) the number of Contract RINs or Other EV Credits generated and remaining unsold, if any and (iix) the number of RERs delivered to Metro with respect to the PEV Load for such month and the number of Contract RINs or Other EV Credits generated or to be generated therefrom.

14.3 At least once per month during the Delivery Period, EM shall provide the County with the market price per unit for RINs that are comparable to Contract RINs, as obtained from publicly available sources such as Argus or OPIS or from independent broker quotes, if no public source is available. While EM will make commercially reasonable efforts to supply the County with the foregoing information, the Parties acknowledge that as of the date of this Contract a market price does not exist, and failure to provide such information to the extent it is not reasonably available will not result in or constitute a default or breach of this Contract by EM.

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

14.5 Submittal of the payment documentation described in Section 14.1 and 14.2 and payment of the Metro Percentage with respect to each month is due before the fifteenth (15<sup>th</sup>) business day after the month in which the funds from the sale of the Contract RINs are actually received by EM. All funds to be paid to Metro hereunder shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer or in such other form as agreed to by the parties. If EM fails to remit any amount payable by it when due, interest on such unpaid portion shall accrue at a rate equal to the prime interest rate in effect at the time as published in *The Wall Street Journal* plus two percent (2%) from the date payment is due to the date of payment.

#### **15.0 Contract RINs and Other EV Credits Annual Review**

EM shall be responsible for the costs of an annual third party review of Contract RINs and Other EV Credits, which are deemed "Excepted Expenses" hereunder. The review may be conducted by one or more third parties who are approved by the County, such approval not to be unreasonably withheld, delayed or conditioned, and at a minimum shall include verification and audit of: (1) RERs delivered compared to Contract RINs and/or Other EV Credits generated; (2) the accounting of Contract RINs and/or Other EV Credits created, sold and retained; and (3) the sales price for the Contract RINs or Other EV Credits, as applicable, sold, compared to the Metro Percentage. The audit shall be completed by March 31 of the year following the year reviewed. A copy of the results of the review shall be provided by EM to the County within fifteen (15) Days after they are received by EM.

#### **16.0 Mutual Representations and Warranties**

Each party represents and warrants to the other party as of the date of this Contract, and as of the date of each delivery of RERs that (i) it has, and at all times during the term of this Contract will have, all necessary power and authority to execute, deliver, and perform its obligations under this Contract; (ii) the execution, delivery, and performance of this Contract has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law or other legal or regulatory determination applicable to it; (iii) there is

no pending or (to its knowledge) threatened litigation, arbitration, or administrative proceeding that materially adversely affects its ability to perform its obligations under this Contract and (iv) there is no provision of governing law that would limit either (a) the enforceability of this Contract against it or (b) the exercise of any rights or remedies of the other party set forth herein.

### **17.0 Representations and Warranties of EM**

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the electrical energy that was generated with the RERs; (v) neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and (vi) . EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **18.0 Termination Default**

Termination for Default. If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a “notice of termination” in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

### **19.0 Retention of Records, Audit Access and Proof of Compliance with Contract**

19.1 Retention of Records. The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

19.2 Audit Access. The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

19.3 Audit Exception. The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract for six (6) years after the date of final remittance of the Metro Percentage to the County under the Contract.

19.4 Public Records Requests.

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to obtain a court order preventing the County from releasing such material. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

**20.0 Legal Relations; Indemnity and Insurance**

20.1 Independent Status of Contractor. In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees except as otherwise provided herein. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

20.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the

provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract. Nothing contained within this Indemnification Section shall affect and/or alter the application of any other section contained within this Contract.

**20.3 Insurance.** Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability/errors and omissions will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

**A. Minimum Scope and Limits of Insurance**

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: \$1,000,000 Per Claim and in the Aggregate
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: \$1,000,000

**B. Other Insurance Provisions and Requirements**

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The County, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

All Policies:

- a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor
- c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.
- d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability/Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

#### C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

### **21.0 Conflicts of Interest and Non-Competitive Practices**

21.1 Conflict of Interest. Except as stated in the second paragraph of this Section, by entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict.

Notwithstanding anything herein to the contrary, the County hereby acknowledges that:

- (i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;

- (ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and
- (iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

21.2 Contingent Fees and Gratuities. By entering into this Contract to perform Work, the Contractor represents (or, in the case of item 3 below, acknowledges,) that:

1. No Brokers. No Persons or companies except as designated by Contractor shall be employed or retained as a broker to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No Gratuities. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

21.3 Disclosure of Current and Former County Employees. To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract. Contractor hereby represents and warrants that there are no current or former County employees involved in the anticipated performance of Work by Contractor.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

## **22.0 INTELLECTUAL PROPERTY**

### **22.1 Patents, Copyrights and Rights in Subject data**

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor ("Contractor Materials"). The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is

specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor; in each case excluding any data pertaining specifically to the County ("Contractor Data").

Subject to the terms and conditions of this Contract, County hereby grants to Contractor a worldwide, revocable, nonexclusive, royalty free, transferable license to use, reproduce and create derivative works of any material or result created under this Contract. The County also grants to Contractor a worldwide, revocable, royalty free license to reproduce, distribute, publicly perform and publicly display the materials or results created under this Contract, and to sublicense to third parties the rights to reproduce, distribute, publicly perform and publicly display the materials and results created under this Contract or any derivative works.

For the rights granted above, Contractor shall disclose and make available to the County any derivative work of such material or result without any additional cost to the County upon thirty (30) days of the County's request.

Should Contractor sublicense to third parties, Contractor shall enter into legally enforceable contracts that:

- (i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and
- (ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of \$100.

To the extent any intellectual property created by Contractor is developed without incorporating or otherwise using the materials or results created under this Contract, Contractor shall retain all right, title, and interest in such intellectual property.

Any Contractor Materials or Contractor Data, and any Subject Data furnished by Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County. **The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.**

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract, by amendment, addendum or otherwise.

22.2 Nondisclosure of Data. Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform Contractor or Subcontractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned.

22.3 Non-Disclosure Obligation. While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish any information marked "Confidential", "Proprietary" or "Business Secret" to any third party with the exception of (i) its Affiliates, advisors and agents who (a) have a need to know such information in connection with Contractor's obligations under this Contract and (b) have agreed in writing to obligations of

confidentiality and non-disclosure with respect to such information and (ii) to the EPA or other governing body, consultants or agents thereof as reasonably necessary or required to generate the Contract RINs or Other EV Credits (including registration, verification and compliance filings). Contractor shall notify the County of any such required disclosure and cooperate with the County to limit such disclosure and/or obtain confidential treatment of such information. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

### **23.0 Nondiscrimination and Payment of a Living Wage**

**23.1 Nondiscrimination in Employment.** During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

**23.2 Equal Employment Opportunity Efforts.** The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination. Ref: KCC 12.16.020.

**23.3 Equal Benefits to Employees with Domestic Partners.** In accordance with King County Ordinance 14823, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance, failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, by signing the Contract the Contractor is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.

**23.4 Nondiscrimination in Subcontracting Practices.** During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious

affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23.5 Compliance with Laws and Regulations. The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

### 23.6 Small Contractors and Suppliers Policy.

#### **Policy**

It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

#### **Inquiries and Information Regarding King County Certified SCS Firms**

Direct inquiries on how to apply for SCS certification, or to obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-263-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

#### **Definitions**

The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. "Certified SCS Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.
3. "Small Contractor or Supplier" or "(SCS)" means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than \$750K dollars.

Required Submittals During Work. The Contractor shall collect, enter, submit and update the submittals listed below for itself, its Subcontractors and any sub tier Subcontractors and suppliers to BDCC using the Contracts and Apprenticeship Report Tracking Services (CARTS) online reporting website located at <http://www.kingcounty.gov/bdcc>. Report forms are available on the website. Assistance may be obtained by contacting BDCC staff at 206-263-9734.

1. Subcontractor List. The Contractor shall create and maintain a master list of all Subcontractors on this Contract, the Contractor shall continually maintain the Subcontractors and Suppliers.
2. Contractor Payments. The Contractor shall enter and submit the amount received from the County for itself and the amounts paid by the Contractor to all Subcontractors, including Certified SCS Firms. Entries shall be entered in CARTS on a monthly basis.
3. Final Affidavits of Amounts Paid. Upon completion of the Work and as a condition precedent to final payment, the Contractor shall upload a Final Affidavit of Amounts Paid electronically using CARTS. Identify amounts paid to each firm that performed Work on this Contract.

23.7 Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

23.8 Requirements of King County Living Wage Ordinance. In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of \$100,000 or more, the Contractor agrees that it shall pay and require all Subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at <http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

23.9 Sanctions for Violations. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

**24.0 Notices**

All notices, demands, and other communications hereunder shall be effective only if given in writing and shall be deemed given (i) when delivered in person; (ii) when delivered by private courier (with

confirmation of delivery); or (iii) five (5) business days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. For purposes hereof, all notices, demands and other communications shall be sent to the contacts and addresses below (or to such other address furnished in writing by one party to the other party).

<p><u>Element Markets Renewable Energy, LLC</u>          Contract Administration          Contract Manager – Randy Lack          3555 Timmons Lane          Suite 900          Houston, TX 77027          Telephone Number: (281) 207-7200          Fax Number: (281) 207-7211          E-mail: ContractAdmin@elementmarkets.com</p>	<p><u>King County</u>          Metro Transit Division          Project Manager – Gary Prince          King Street Center          201 S. Jackson Street          Seattle, WA 98104          Telephone Number: (206) 477-6017          Fax Number: (206) 684-1778          E-mail: gary.prince@kingcounty.gov</p>
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**25.0 Assignment**

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may transfer or assign this Contract, in whole or in part, without the other party’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Metro agrees to provide such consent to an assignment by EM to another wholly-owned subsidiary of Element Markets, LLC, subject to receipt of documentation evidencing, in Metro’s reasonable discretion, that such affiliate (i) has the relevant registrations, qualifications and resources to perform EM’s obligations under this Contract; which will be deemed to be satisfied in the event such affiliate is utilizing the same personnel and obtains the same licenses or registrations held by EM; and (ii) agrees to assume all rights and obligations of EM hereunder. Upon any transfer or assignment permitted by this Contract, the assignor shall be released from its obligations hereunder to the extent such obligations are assumed by the assignee.

**26.0 Amendment**

This Contract may be amended at any time, but only by a written agreement signed by both parties.

**27.0 No Waiver**

No delay or omission by a party in the exercise of any right under this Contract shall be taken, construed, or considered as a waiver or relinquishment thereof. If any of the terms and conditions herein are breached and thereafter waived in writing by a party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

**28.0 Severability**

If any provision or portion of this Contract is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

**29.0 Complete Agreement**

Together with the Consulting Agreement, which if executed, governs services provided by Contractor related to this Contract, this Contract represents the parties’ final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral. Except as may be specifically stated to the contrary in this Contract or the Consulting Agreement, as applicable, to the extent any term is addressed in both the Consulting Agreement and this Contract, the terms of this Contract will govern.

### **30.0 Mediation or Arbitration**

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through direct negotiation between the parties, the parties shall, as a condition precedent to litigation, endeavor to settle the dispute in an amicable manner through mediation or other agreed form of alternative dispute resolution.

### **31.0 Applicable Law and Forum**

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

### **32.0 Other Public Agency Orders**

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to that entity and EM, by executing an agreement in the form attached as Schedule 32.0 to this Contract. Any such agreement is between the federal, state, county or local entity and EM only and the County does not accept any responsibility or involvement in the agreement.

### **33.0 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract except the obligation to pay money to the other party, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

### **34.0 Recycled Products Policy**

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Ref: KCC 10.16 & King County Executive Policy CON 7-1-2.

### **35.0 No Third Party Beneficiary**

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

### **36.0 Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

**By signing below, the parties agree to be bound by the terms and conditions contained in this Contract.**

<b>Element Markets Renewable Energy, LLC</b>	<b>King County Department of Transportation, Metro Transit Division</b>
<i>Signature:</i> _____ <i>Date:</i> _____	<i>Signature:</i> _____ <i>Date:</i> _____
<i>Printed Name:</i> _____ <i>Title:</i> _____	<i>Printed Name:</i> _____ <i>Title:</i> _____

**Schedule 32.0  
FORM OF AGREEMENT**

**AGREEMENT**

This AGREEMENT (“**Agreement**”), dated as of [DATE] is made by and between [NAME OF PUBLIC AGENCY], a [STATE/AGENCY DESCRIPTION] (“**Counterparty**”) and ELEMENT MARKETS RENEWABLE ENERGY, LLC, a Delaware limited liability company (“**Consultant**”). Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in that certain Renewable Energy Attribute Contract, dated as of [DATE], by and between King County, Washington by and through the Department of Transportation, Metro Transit Division (“**Metro**”) and Consultant (the “**Metro Contract**”).

WHEREAS, pursuant to Section 32.0 of the Metro Contract[ and OTHER STATUTE/RULE, IF APPLICABLE], Counterparty is permitted to use the terms and conditions of the Metro Contract to govern its contractual relationship with Consultant;

WHEREAS, each of Counterparty and Consultant desire to enter into an agreement for the purchase and sale of RERs with the same terms and conditions as the Metro Contract, other than as such terms and conditions may be modified below;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, Counterparty and Consultant agree as follows:

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[LIST MODIFICATIONS/ADDITIONS TO CONTRACT]

3. **Nature of Agreement.** Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

4. **Severability.** The provisions of this Agreement are independent of and separable from each other. If any provision hereof is held to be invalid or unenforceable for any reason, the validity and enforceability of any other provision hereof will not be affected and this Agreement will be construed as if such invalid or unenforceable provision was never included herein.

5. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which constitutes an original, but together constitute a single contract. Delivery of an executed counterpart of this Joinder Agreement by facsimile or in electronic format is of equal effect as delivery of a manually executed or original counterpart.

6. **Governing Law.** This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby and thereby are governed by and construed in accordance with the laws of [STATE].

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective authorized signatories.

[COUNTERPARTY]

By: \_\_\_\_\_

Name:

Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE  
ENERGY, LLC

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-1**

**Sample Form of Metro Attestation**

I, \_\_\_\_\_ (name), \_\_\_\_\_ (title) and authorized signatory of the King County Department of Transportation, Metro Transit Division ("Metro") hereby attest to the following on behalf of Metro with respect to the generation of renewable identification numbers ("RINs") associated with electricity used as transportation fuel in the month of [\_\_\_\_], [2016] (the "Attestation Period") pursuant to the applicable rules and regulations promulgated by the U.S. Environmental Protection Agency ("EPA") at 40 C.F.R. Part 80, Subpart M (the "Renewable Fuels Standard" or "RFS2") under the Clean Air Act, 42 U.S.C. § 7401 et seq.

- (1) Metro accepted delivery of [\_\_\_\_] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").
- (2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.
- (3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.
- (4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

The foregoing is attested to as of this \_\_ day of \_\_\_\_\_, [2016].

**KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION**

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-2**

**Form of RER Delivery Attestation**

**RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION**

I, \_\_\_\_\_, authorized signatory of Element Markets Renewable Energy, LLC (“EM”), hereby attest to the following on behalf of EM with respect to the [\_\_\_\_\_] megawatt-hours (MWh) of Renewable Energy Rights delivered to during the month of **[choose a month] [choose a year]** under that certain Renewable Energy Attributes Contract, dated as of [\_\_\_\_\_, 2016], by and between EM and King County, Washington, by and through the Department of Transportation, Metro Transit Division (the “**Agreement**”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

- (i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.
- (ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.
- (iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the Agreement.
- (iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the Agreement.

I further attest, warrant and represent that the information provided herein is true and correct as of the date set forth below.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: [Click here to enter a date.](#)

[Blank Page]

ATTACHMENT 2

August 16, 2016



GD

Sponsor: Dembowski

Proposed No.: 2016-0349

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2016-0349, VERSION**

2 **1.**

3 On page 1, beginning on line 9, strike everything through page 3, line 56, and insert:

4 "1. The transit division operates a fleet of one hundred fifty-nine electric trolley  
5 buses in the city of Seattle. In 2016, it will also operate three battery buses and  
6 may operate significantly more in the future.

7 2. The electric trolley buses operated by the transit division have over twenty  
8 million boardings per year and are a major component of the public transportation  
9 system.

10 3. Under the United States Environmental Protection Agency's Renewable Fuel  
11 Standards Program, consumption of renewably generated electricity to power the  
12 trolley buses and the battery buses has the potential to create Renewable  
13 Identification Numbers ("RINs"), which can be sold to companies that blend  
14 gasoline for the retail market and have Environmental Protection Agency-  
15 mandated Renewable Fuel Obligations.

16 4. The transit division's trolley bus fleet consumes an estimated eighteen million  
17 kilowatt hours of electricity each year, which is equal to approximately 797,600  
18 RINs.

- 19           5. On March 19, 2015, the transit division issued a request for proposals for the  
20           sale of RINs and other environmental attributes associated with the transit  
21           division's electric trolley and battery bus fleets.
- 22           6. The transit division has negotiated a contract with an outside party for the sale  
23           of RINs and other environmental attributes associated with the transit division's  
24           electric trolley and battery bus fleets. The contract also provides an option for the  
25           sale of RINS generated by other King County departments and divisions. Finally,  
26           the contract allows other governments to use the contract's terms and conditions  
27           for their own separate contracts with Element Markets.
- 28           7. The contract for the sale of RINs and other environmental attributes associated  
29           with the Metro Transit Division's electric trolley and battery bus fleets with  
30           Element Markets Renewable Energy, LLC is in the best interest of the county.
- 31           8. Other county departments or divisions may utilize this contract to sell their  
32           RINs and other environmental attributes.
- 33           9. In accordance with the King County charter section 230.10.10, revenues  
34           received by the transit division from the sale of RINs associated with its electric  
35           trolley and battery bus fleets may only be used for specified purposes.
- 36           10. Under K.C.C chapter 4.56, sales of rights, title or interests in emissions  
37           credits, offsets or allowances or renewable energy certificates, credits, benefits,  
38           environmental air quality credits and any similar rights, title or interests held by  
39           the county are exempt from the real and personal property requirements of this  
40           chapter when unique circumstances are present. The sales may be made in the

41 best interests of the public to a person or entity through a direct agreement  
42 negotiated by the county executive and approved by the county council.

43 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

44 SECTION 1. Findings: King County council hereby finds that the sale of  
45 Renewable Identification Numbers and other environmental attributes held by the county  
46 and associated with the transit division's electric trolley and battery bus fleets, or by other  
47 King County departments and divisions is in the best interests of the public.

48 SECTION 2. The executive is hereby authorized to execute a Renewable Energy  
49 Attributes Contract with Element Markets Renewable Energy, LLC, substantially in the  
50 form of Attachment A to this ordinance.

51 SECTION 3. Revenues from the sale of Renewable Identification Numbers shall  
52 be allocated to the originating department or division and shall be used to further the  
53 goals outlined in the 2015 Strategic Climate Action Plan as applicable to the originating  
54 department or division."

55 Delete Attachment A, Renewable Energy Attributes Contract, dated July 11, 2016, and  
56 insert Attachment A, dated Renewable Energy Attributes Contract, dated August 16,  
57 2016.

58 ***EFFECT: Makes technical, legal changes to the original ordinance. Substitutes***  
59 ***revised contract, including changes to:***

- 60 • ***Section 1: Technical clarifications regarding contract documents***
- 61 • ***Section 2. Technical clarifications regarding definition of terms***
- 62 • ***Section 4: Clarification to terms of agreement that if Metro is required to***  
63 ***register its RINs, EM agrees to provide assistance as requested by Metro.***

- 64 • *Section 10: Clarification language added about the conditions under which a*  
65 *Quality Assurance Program (QAP) contractor would be hired.*
- 66 • *Section 12: Added modifications to note that reimbursable expenses would be*  
67 *expanded to include annual third party review and increases the expenses cap*  
68 *from \$40,000 to \$45,000 to ensure the County would be receiving its own*  
69 *distinct report from this review. Also added language to allow Metro to suspend*  
70 *the contract if insufficient revenue is receive in any three consecutive months*  
71 *and if revenues are insufficient to cover costs in the aggregate over the prior six*  
72 *months.*
- 73 • *Section 14: Monthly report on revenues will include a detailed list of parties to*  
74 *whom the gross revenue is attributable, which will help County determine when*  
75 *EM has achieved \$400K in RINs sales.*
- 76 • *Section 15: Annual review report must be specific to King County.*
- 77 • *Section 17: Warranties specify that the RERs provided to Metro will meet*  
78 *federal requirements for the creation of RINs.*
- 79 • *Section 18: Includes standard County contract language regarding termination*  
80 *for non-appropriation. Clarifies that the County would pay EM only for the*  
81 *work performed to the date of the notice of termination.*
- 82 • *Section 25: Adds language noting that EM will not be released from its*  
83 *obligations if it assigns the contract to another entity other than a wholly-owned*  
84 *subsidiary.*
- 85 • *Section 29: Technical changes to clarify language.*
- 86 • *Section 32: Technical changes to clarify language.*

## **RENEWABLE ENERGY ATTRIBUTES CONTRACT (“Contract”)**

**THIS CONTRACT # \_\_\_\_\_** is entered into by King County, Washington by and through the Department of Transportation, Metro Transit Division (the “County” or “Metro”), and Element Markets Renewable Energy, LLC (“EM” or “Contractor”). The County is undertaking certain activities related to the sale of environmental attributes and the County desires to engage the Contractor to provide Work in connection with such undertakings of the County.

In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

### **1. Contract Documents**

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence: 1) Contract Amendments; 2) Contract, including Exhibits A-1 and A-2 – Attestation Forms, Exhibit B – Consultant Disclosure Form, and Exhibit C – Certificate(s) of Insurance and Policy Endorsement; 3) King County’s Request for Proposals 1082-15 VLN; and 4) Contractor’s Proposal.

### **2. Certain Definitions**

- 2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.
- 2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.
- 2.3. Change in Law: Defined in Section 4.0.
- 2.4. Commencement Date: Defined in Section 4.0.
- 2.5. Not used.
- 2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.
- 2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.
- 2.8. Day: Calendar day.
- 2.9. Delivery Period: Defined in Section 4.0.
- 2.10. Excepted Expenses: Defined in Section 12.0.
- 2.11. Initial Delivery Period: Defined in Section 4.0.
- 2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.
- 2.13. KCC: The King County Code.

- 2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.
- 2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.
- 2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this Contract is eligible to generate tradable credit(s) in addition to RINs.
- 2.17. Plug-in Electric Vehicle (“PEV”) Load: The electricity consumption of Metro’s electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.
- 2.19. Renewable Electricity Right or “RER”: The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.
- 2.20. Renewable Fuel Standard Pathways II or “Pathways”: The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).
- 2.21. Renewable Identification Numbers or “RINs”: A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.
- 2.22. Renewable Fuel Standards program or “RFS2”: The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.
- 2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
- 2.24. System: Collectively, Metro’s electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

### **3.0 Description of Transaction**

EM will deliver RERs to Metro to be matched with the PEV Load in accordance with the Pathways in order to allow EM to generate the Contract RINs. Except as otherwise provided in Section 10.2, EM will sell the Contract RINs and EM and Metro will share the revenue generated from the sale of such Contract RINs as specified below, subject to satisfaction by Metro of the Ongoing Information Requirements (described in Section 8 below). For Other EV Credit(s), Metro may elect in writing to have EM generate such credits and EM and Metro will share the revenue generated from the sale of such Other EV Credit(s) under the fee structure in Section 14, unless the parties execute a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between the parties. This language also applies where RERs are not involved, such as the sale of carbon offsets or other environmental credits and attributes not contemplated by this Contract as of the date executed by both parties.

### **4.0 Contract Term**

This Contract shall become effective upon execution by the parties and shall expire at the end of the Initial Delivery Period (defined below), unless extended or terminated as provided herein.

EM shall commence delivery of RERs to Metro beginning on the “Commencement Date”, defined as the first date upon which both (i) the source facility producing the biogas with which the RERs are associated is registered under RFS2 and (ii) a pathway for generation of the Contract RINs is approved by EPA. EM shall continue delivering RERs for three (3) years beginning on the Commencement Date (the “Initial Delivery Period”). Delivery of RERs under this Contract may be extended by Metro for up to two (2) additional one-year periods (each, a “Renewal Delivery Period” and collectively, with the Initial Delivery Period, the “Delivery Period”) as Metro may determine in its sole discretion by providing written notice of renewal to EM at least thirty (30) days prior to the last day of the Initial Delivery Period or Renewal Delivery Period, as applicable.

If at any time during the Delivery Period a change occurs to RFS2 or the enforcement thereof which results in the inability to generate RINs from the PEV Load (a “Change in Law”), deliveries of RERs will cease until such time as RINs may be generated from the PEV Load. If the Change in Law is either permanent by its terms or EPA releases definitive guidance that the Change in Law will remain in effect for a period of at least six (6) months, either Contractor or Metro may terminate this Contract by providing written notice to the other of such termination; provided that the foregoing termination right will not be exercisable if any Other EV Credits are being generated or, if not currently being generated, could be generated under a renewables program from the matching of RERs to the PEV Load as contemplated in Section 3.0 of this Contract.

In the event there is a determination by EPA that Metro must be the generator of the RINs, EM shall provide assistance as requested by Metro to perform all the necessary actions to establish an account in the EPA Moderated Transaction System (EMTS) in Metro’s name. Following generation, the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.

Metro will appoint EM as its agent to perform the generation of the Contract RINs for Metro, and following generation, the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.

EM’s obligation to generate Contract RINs associated with RERs delivered to Metro prior to the last day of the Delivery Period and to remit the Metro Percentage of Net Revenue associated therewith will

survive termination until revenue from all RERs delivered to Metro is realized through the sale of the Contract RINs.

### **5.0 Quantity**

The actual quantity of RERs delivered by EM to Metro in each month of the Delivery Period shall be equal to the actual PEV Load for that month.

### **6.0 Exclusivity**

Metro hereby grants EM the exclusive right to (i) deliver RERs to be matched with Metro's PEV Load, (ii) generate RINs with respect to such PEV Load, and (iii) sell Contract RINs for the duration of the Delivery Period, except as provided in Section 10.2.

In the event the matching of the PEV Load with RERs is eligible to generate Other EV Credits or if Metro desires to generate RINs or Other EV Credits from other parts of Metro's transportation fleet other than the PEV Load, Metro may elect in writing to grant EM the exclusive right to (i) deliver RERs to be matched with the PEV Load (for the purpose of generating Other EV Credits) and (ii) generate Other EV Credits with respect to the PEV Load and (iii) sell Other EV Credits for the duration of the Delivery Period subject to a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between Metro and EM and addressing other relevant payment terms.

### **7.0 Registration Information**

EM will be responsible for registering the System with the U.S. Environmental Protection Agency ("EPA") or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a "Registration"). EM will complete registration requirements for Contract RIN sales pursuant to the terms of this Contract.

EM shall provide the County with copies of all documents filed with and received from EPA related to the System, Contract RINs, or Other EV Credits.

### **8.0 Ongoing Information Requirements**

At its own expense, Metro will submit the following documentation and data to a data room or similar repository established by EM for each calendar month of the Delivery Period:

- System operation data and metered electricity consumption;
- Utility bills and/or statements evidencing electricity used by the System; and
- An attestation, either in the form attached to this Contract as Exhibit A-1 or via an electronic platform developed by EM or its service providers, in which an authorized representative of Metro attests to certain facts regarding the System, RERs, Contract RINs and/or Other EV Credits, including, without limitation, that Metro has not entered into any similar agreements that would enable or give any other party the right to make any claims with respect to the PEV Load or generation of the Contract RINs.

### **9.0 RIN/Other EV Credit Generation**

The Contract RINs generated from Metro's PEV Load will be equal to the quantity of RINs permitted to be matched with the PEV Load pursuant to the Pathways, as amended from time to time. EM will seek the classification of the Contract RINs as D3 by the EPA or such other code if it will result in a higher RIN value and is permitted by the EPA. In the event that any Other EV Credits may be generated from the PEV Load, the Other EV Credits generated will be equal to the quantity permitted under the applicable statutes, rules or regulations.

## **10.0 Contract RIN Sales**

10.1 The timing and manner of sale of the Contract RINs will be determined in EM's sole discretion provided that EM agrees that (i) EM shall use commercially reasonable efforts to sell any Contract RINs as they become available for sale during the Delivery Period; (ii) Contract RINs will be sold in transactions that include the sale of RINs generated by at least one other party, including but not limited to RINs sold pursuant to Section 10.4 or Section 32.0, if any; (iii) Contract RINs are sold no less frequently than every four months; (iv) no more than 25% of the Contract RINs sold in any four-month period of the Delivery Period may be sold in the forward market without prior written approval of the Project Manager; and (v) no Contract RIN shall be sold at a price that is less than the sum of the market price for a D5 RIN plus 50% of the published value of the Cellulosic Waiver Credit at the time of the Contract RIN sale.

10.2 Notwithstanding any provision to the contrary in this Contract, the County may elect to take a share of the Contract RINs equal to the Metro Percentage in-kind for any one or more months of the Delivery Period (such RINs, the "In Kind RINs") provided that the County provides EM with written notice at least seven (7) business days prior to the start of the applicable month in which the County wishes to receive In-Kind RINs. If the County elects to receive In-Kind RINs, it must take the entire amount equal to the Metro Percentage and establish and manage its EMTS account as required for such In-Kind RINs, and Contractor will have no obligation or responsibility with respect to management of the EMTS account for In-Kind RINs under this Contract. The County shall not have the right to present any In-Kind RINs for monetization at will. Any arrangement in which EM monetizes any In-Kind RINs for the County shall be a separate negotiated transaction not included under this Contract. The County may modify or rescind any election to receive In-Kind RINs given pursuant to this Section 10.2 provided that the County provides written notice to EM thereof at least seven (7) business days prior to the start of the applicable month. The effect of the County's rescission of such election to receive In-Kind RINs will be that EM will sell the Contract RINs as provided in Section 10.0 and the County will receive the Metro Percentage for the revenue generated from such sales.

If the County elects to receive In-Kind RINs, EM may also elect to receive the amount of any reimbursement to which EM is entitled pursuant to Section 12 below in the form of RINs by providing written notice of such election to the County. EM may revoke any such election by providing written notice of revocation to the County at any time, and any such election will be automatically revoked upon receipt of notice from the County that it wishes to rescind its election to receive In-Kind RINs as the Metro Percentage.

10.3 To the extent a Quality Assurance Program (QAP) for the Contract RINs is approved by EPA, Contractor shall engage a firm to perform a review of the Contract RINs under the approved QAP during the Initial Delivery Period unless the parties mutually agree that services under such EPA-approved QAP are not commercially reasonable. Contractor's expenses in connection with the Quality Assurance Program shall be considered Excepted Expenses pursuant to Section 12 and deductible under clause (ii) thereof.

10.4 Any County division or department may utilize this Contract to engage EM to sell its RINs. Such RINs will be sold in transactions in which Contract RINs are also sold, and the sale of any such RINs will be conducted by EM according to the terms and conditions of this Contract applicable to Contract RINs unless agreed upon otherwise in writing by EM and the County. If another County department or division engages EM to sell RINs pursuant to this section, the County shall provide

EM with applicable contact and payment information to the extent it is different than that provided herein.

**11.0 This section intentionally left blank.**

**12.0 Expenses**

**12.1 Excepted Expenses.** EM will be responsible for paying any and all expenses incurred and associated with the generation and sale of the Contract RINs and Other EV Credits for which EM is responsible pursuant to this Contract. However, the following expenses, subject to the limitation set forth below, will be deducted from Gross Revenue to determine Net Revenue hereunder (the “Excepted Expenses”):

- (i) Third-party costs for initial EPA registration;
- (ii) Quality Assurance Program costs and annual third party review under Section 15.0;
- (iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;
- (iv) Travel expenses for third parties;
- (v) Charges from utilities for costs to generate RINs and to meet EPA and QAP audit and data requirements, but not including payments owed by EM for utility service to its facilities;
- (vi) RER procurement costs, provided that EM shall not be entitled to deduct or be reimbursed for the purchase price of any RER exceeding three dollars unless EM received prior approval in writing from the County for such purchase;
- (vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;
- (viii) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year’s Gross Revenue or \$45,000 (the “Expense Cap”).

If there is insufficient Gross Revenue from which deductions will reimburse EM, then the County will pay to EM the deficiency for any of the above expenses incurred in connection with performance of EM’s obligations hereunder; provided that with respect to the expenses listed in clauses (i) through (iv), EM shall be responsible for all such expenses exceeding the Expense Cap in each calendar year.

EM shall provide the County with an invoice and supporting documentation as required by the County for such expenses. The County shall pay the invoice within ninety days of receipt of the invoice and the required supporting documentation.

**12.2 Suspension for Insufficient Revenue.** If (A) the aggregate amount of expenses paid by or reimbursed by a Party pursuant to this section (“Expense Amount”) exceeds the aggregate amount of Net Revenue received by such Party (the “Net Revenue Amount”) during any three consecutive months of the Delivery Period in which Gross Revenue is greater than zero (such period, a “Measurement Period”) and (B) as of the date of the suspension notice, the Party’s Expense Amount exceeds the Net Revenue Amount for the preceding six-month period in the aggregate, the applicable party may submit a notice of suspension to the other Party. Any suspension will become effective as of the first day of the month following the date the suspension notice is received. Notwithstanding any suspension under this Section, each Party will remain responsible for any of its obligations under this Contract pertaining to

RINs or Other EV Credits generated from RERs delivered prior to the suspension. If the Contract is suspended pursuant to this Section, the suspending Party may reinstate the Contract by submitting a notice of reinstatement to the non-suspending Party. If suspension under this Section 12.2 remains effective for six months or more, either Party may terminate the Contract by providing written notice of termination to the other Party; provided that the foregoing termination will not be exercisable if any Other EV Credits are being generated or could be generated under a renewables program as contemplated by Section 3.0 of this Contract.

12.3 Procurement Cost Suspension. If the County does not provide EM with the approval contemplated by Section 12.1(vi) within [fifteen days] of EM's request for such approval, this Contract will be deemed suspended as of the date such approval was requested. Suspension pursuant to this Section 12.3 will remain in effect until the month following the month in which approval is granted by the County. If suspension under this Section 12.3 remains effective for six months or more, EM may terminate this Contract by providing written notice of termination to the County.

### **13.0 Delivery of RERs**

RERs will be delivered by EM or a designee thereof previously identified to Metro in writing to Metro's account in a renewable energy credit registry or by delivery of an attestation in the form attached as Exhibit A-2 to this Contract.

### **14.0 Payment**

14.1 In exchange for Metro granting EM the exclusive right to deliver RERs, generate and sell Contract RINs and Other EV Credits from the PEV Load as provided herein, EM will pay Metro the applicable Metro Percentage of Net Revenue on a monthly basis in accordance with this section. Additionally, EM will review payments made during each completed twelve month period and pay the County any additional amounts that may be owed with respect to the completed twelve month period within thirty days of the end of that period.

14.2 For each month of the Delivery Period in which Contract RINs or Other EV Credits are generated and sold, as applicable, EM will prepare and provide Metro with a document showing: (i) Gross Revenue for the Contract RINs or Other EV Credits sold during such month; (ii) the gross revenue attributable to RINs sold pursuant to each Section 32 Agreement as identified by the specific Counterparty; (iii) the Net Revenue from such Contract RINs or Other EV Credits, as applicable; (iv) an itemized list of all Excepted Expenses deducted from Gross Revenue; (v) the Metro Percentage, (vi) the date of sale and price per unit for all Contract RINs or Other EV Credits sold during such month, (vii) the number of Contract RINs or Other EV Credits generated and remaining unsold, if any and (viii) the number of RERs delivered to Metro with respect to the PEV Load for such month and the number of Contract RINs or Other EV Credits generated or to be generated therefrom.

14.3 At least once per month during the Delivery Period, EM shall provide the County with the market price per unit for RINs that are comparable to Contract RINs, as obtained from publicly available sources such as Argus or OPIS or from independent broker quotes, if no public source is available. While EM will make commercially reasonable efforts to supply the County with the foregoing information, the parties acknowledge that as of the date of this Contract a market price does not exist, and failure to provide such information to the extent it is not reasonably available will not result in or constitute a default or breach of this Contract by EM.

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to

the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

14.5 Submittal of the payment documentation described in Section 14.1 and 14.2 and payment of the Metro Percentage with respect to each month is due before the fifteenth (15<sup>th</sup>) business day after the month in which the funds from the sale of the Contract RINs are actually received by EM. All funds to be paid to Metro hereunder shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer or in such other form as agreed to by the parties. If EM fails to remit any amount payable by it when due, interest on such unpaid portion shall accrue at a rate equal to the prime interest rate in effect as of the date the payment is due as published in *The Wall Street Journal* plus two percent (2%) from the date payment is due to the date of payment.

#### **15.0 Contract RINs and Other EV Credits Annual Review**

EM shall be responsible for the costs of an annual third party review of Contract RINs and Other EV Credits. The review may be conducted by one or more third parties which are approved by the County, such approval not to be unreasonably withheld, delayed or conditioned, and at a minimum shall include written verification and audit of: (1) RERs delivered compared to Contract RINs and/or Other EV Credits generated; (2) the accounting of Contract RINs and/or Other EV Credits created, sold and retained; and (3) the sales price for the Contract RINs or Other EV Credits, as applicable, sold, compared to the Metro Percentage. The audit shall be completed by March 31 of the year following the year reviewed. A copy of the written review which shall be specific to the County and shall include the audit, shall be provided by EM to the County within fifteen (15) Days after they are received by EM.

#### **16.0 Mutual Representations and Warranties**

Each party represents and warrants to the other party as of the date of this Contract, and as of the date of each delivery of RERs that (i) it has, and at all times during the term of this Contract will have, all necessary power and authority to execute, deliver, and perform its obligations under this Contract; (ii) the execution, delivery, and performance of this Contract has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law or other legal or regulatory determination applicable to it; (iii) there is no pending or (to its knowledge) threatened litigation, arbitration, or administrative proceeding that materially adversely affects its ability to perform its obligations under this Contract and (iv) there is no provision of governing law that would limit either (a) the enforceability of this Contract against it or (b) the exercise of any rights or remedies of the other party set forth herein.

#### **17.0 Representations and Warranties of EM**

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the electrical energy that was generated with the RERs; (v) RERs that EM transfers to Metro meet the requirements of 42 U.S.C. §7546 for the generation of RINs neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and (vii) EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES,

EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **18.0 Termination Default**

**18.1 Termination for Default.** If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a “notice of termination” in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall neither relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

## **18.2 Termination for Non-Appropriation**

A. If expected or actual funding is withdrawn, reduced or limited in any way prior to Termination of this Contract, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part for lack of appropriation. Such termination shall be in addition to the County’s rights to terminate for default. In the event of termination under this section the following shall apply:

1. Subject to subsection 2., the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination;
2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and
3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.

B. Notwithstanding subsection A., funding of this Contract beyond the current biennium is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Otherwise, the Contract shall terminate on December 31 of the current biennium.

## **19.0 Retention of Records, Audit Access and Proof of Compliance with Contract**

**19.1 Retention of Records.** The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting

principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

19.2 Audit Access. The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

19.3 Audit Exception. The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract for six (6) years after the date of final remittance of the Metro Percentage to the County under the Contract.

19.4 Public Records Requests.

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to obtain a court order preventing the County from releasing such material. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

**20.0 Legal Relations; Indemnity and Insurance**

20.1 Independent Status of Contractor. In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees except as otherwise provided herein. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

20.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act,

disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract. Nothing contained within this Indemnification Section shall affect and/or alter the application of any other section contained within this Contract.

**20.3 Insurance.** Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability/errors and omissions will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: \$1,000,000 Per Claim and in the Aggregate

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
  3. Workers' Compensation: Statutory requirements of the State of residency, and
  4. Employers' Liability or "Stop Gap" coverage: \$1,000,000
- B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The County, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

All Policies:

- a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor
- c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.
- d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability/Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

#### C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

### **21.0 Conflicts of Interest and Non-Competitive Practices**

**21.1 Conflict of Interest.** (1) Except as provided in Section 21.1.(2), by entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to

the County. The County shall require that the Contractor take immediate action to eliminate the conflict.

(2) Notwithstanding anything herein to the contrary, the County hereby acknowledges that:

- (i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;
- (ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and
- (iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

21.2 Contingent Fees and Gratuities. By entering into this Contract to perform Work, the Contractor represents (or, in the case of item 3 below, acknowledges,) that:

1. No Brokers. No Persons or companies except as designated by Contractor shall be employed or retained as a broker to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No Gratuities. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

21.3 Disclosure of Current and Former County Employees. To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract. Contractor hereby represents and warrants that there are no current or former County employees involved in the anticipated performance of Work by Contractor.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

## **22.0 INTELLECTUAL PROPERTY**

### **22.1 Patents, Copyrights and Rights in Subject data**

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor (“Contractor Materials”). The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as “Subject Data”) shall be vested in the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor; in each case excluding any data pertaining specifically to the County (“Contractor Data”).

Subject to the terms and conditions of this Contract, County hereby grants to Contractor a worldwide, revocable, nonexclusive, royalty free, transferable license to use, reproduce and create derivative works of any material or result created under this Contract. The County also grants to Contractor a worldwide, revocable, royalty free license to reproduce, distribute, publicly perform and publicly display the materials or results created under this Contract, and to sublicense to third parties the rights to reproduce, distribute, publicly perform and publicly display the materials and results created under this Contract or any derivative works.

For the rights granted above, Contractor shall disclose and make available to the County any derivative work of such material or result without any additional cost to the County upon thirty (30) days of the County’s request.

Should Contractor sublicense to third parties, Contractor shall enter into legally enforceable contracts that:

- (i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and
- (ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County’s sole liability for damages will be limited to direct damages in the amount of \$100.

To the extent any intellectual property created by Contractor is developed without incorporating or otherwise using the materials or results created under this Contract, Contractor shall retain all right, title, and interest in such intellectual property.

Any Contractor Materials or Contractor Data, and any Subject Data furnished by Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County. **The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.**

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract, by amendment, addendum or otherwise.

**22.2 Nondisclosure of Data.** Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractor shall not utilize nor distribute the County data in any form

without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform Contractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned. Contractor shall include this provision in all its subcontracts and require its subcontractors to strictly comply with its terms.

**22.3 Non-Disclosure Obligation.** While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish any information marked "Confidential", "Proprietary" or "Business Secret" to any third party with the exception of (i) its Affiliates, advisors and agents who (a) have a need to know such information in connection with Contractor's obligations under this Contract and (b) have agreed in writing to obligations of confidentiality and non-disclosure with respect to such information and (ii) to the EPA or other governing body, consultants or agents thereof as reasonably necessary or required to generate the Contract RINs or Other EV Credits (including registration, verification and compliance filings). Contractor shall notify the County of any such required disclosure and cooperate with the County to limit such disclosure and/or obtain confidential treatment of such information. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

### **23.0 Nondiscrimination and Payment of a Living Wage**

**23.1 Nondiscrimination in Employment.** During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

**23.2 Equal Employment Opportunity Efforts.** The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination. Ref: KCC 12.16.020.

23.3 Equal Benefits to Employees with Domestic Partners. In accordance with King County Ordinance 14823, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance, failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, by signing the Contract the Contractor is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.

23.4 Nondiscrimination in Subcontracting Practices. During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23.5 Compliance with Laws and Regulations. The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

#### 23.6 Small Contractors and Suppliers Policy.

##### **Policy**

It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

##### **Inquiries and Information Regarding King County Certified SCS Firms**

Direct inquiries on how to apply for SCS certification, or to obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-263-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

##### **Definitions**

The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. "Certified SCS Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.
3. "Small Contractor or Supplier" or "(SCS)" means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting

Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than \$750,000 dollars.

Required Submittals During Work. The Contractor shall collect, enter, submit and update the submittals listed below for itself, its Subcontractors and any sub tier Subcontractors and suppliers to BDCC using the Contracts and Apprenticeship Report Tracking Services (CARTS) online reporting website located at <http://www.kingcounty.gov/bdcc>. Report forms are available on the website. Assistance may be obtained by contacting BDCC staff at 206-263-9734.

1. Subcontractor List. The Contractor shall create and maintain a master list of all Subcontractors on this Contract, the Contractor shall continually maintain the Subcontractors and Suppliers.
2. Contractor Payments. The Contractor shall enter and submit the amount received from the County for itself and the amounts paid by the Contractor to all Subcontractors, including Certified SCS Firms. Entries shall be entered in CARTS on a monthly basis.
3. Final Affidavits of Amounts Paid. Upon completion of the Work and as a condition precedent to final payment, the Contractor shall upload a Final Affidavit of Amounts Paid electronically using CARTS. Identify amounts paid to each firm that performed Work on this Contract.

23.7 Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

23.8 Requirements of King County Living Wage Ordinance. In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of \$100,000 or more, the Contractor agrees that it shall pay and require all Subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at <http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

**23.9 Sanctions for Violations.** Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

**24.0 Notices**

All notices, demands, and other communications hereunder shall be effective only if given in writing and shall be deemed given (i) when delivered in person; (ii) when delivered by private courier (with confirmation of delivery); or (iii) five (5) business days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. For purposes hereof, all notices, demands and other communications shall be sent to the contacts and addresses below (or to such other address furnished in writing by one party to the other party).

<p><u>Element Markets Renewable Energy, LLC</u>          Contract Administration          Contract Manager – Randy Lack          3555 Timmons Lane          Suite 900          Houston, TX 77027          Telephone Number: (281) 207-7200          Fax Number: (281) 207-7211          E-mail: ContractAdmin@elementmarkets.com</p>	<p><u>King County</u>          Metro Transit Division          Project Manager – Gary Prince          King Street Center          201 S. Jackson Street          Seattle, WA 98104          Telephone Number: (206) 477-6017          Fax Number: (206) 684-1778          E-mail: gary.prince@kingcounty.gov</p>
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**25.0 Assignment**

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may transfer or assign this Contract, in whole or in part, without the other party’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Upon any transfer or assignment permitted pursuant to this paragraph, the assignor shall not be released from its obligations hereunder .

Notwithstanding the foregoing paragraph, Metro agrees to provide such consent to an assignment by EM to another wholly-owned subsidiary of Element Markets, LLC, subject to receipt of documentation evidencing, in Metro’s reasonable discretion, that such affiliate (i) has the relevant registrations, qualifications and resources to perform EM’s obligations under this Contract; which will be deemed to be satisfied in the event such affiliate is utilizing the same personnel and obtains the same licenses or registrations held by EM; and (ii) agrees to assume all rights and obligations of EM hereunder. Upon any transfer or assignment permitted pursuant to this paragraph, the assignor shall be released from its obligations hereunder to the extent such obligations are assumed by the assignee.

**26.0 Amendment**

This Contract may be amended at any time, but only by a written agreement signed by both parties.

**27.0 No Waiver**

No delay or omission by a party in the exercise of any right under this Contract shall be taken, construed, or considered as a waiver or relinquishment thereof. If any of the terms and conditions

herein are breached and thereafter waived in writing by a party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

### **28.0 Severability**

If any provision or portion of this Contract is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

### **29.0 Complete Agreement**

This Contract represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral.

### **30.0 Mediation or Arbitration**

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through direct negotiation between the parties, the parties shall, as a condition precedent to litigation, endeavor to settle the dispute in an amicable manner through mediation or other agreed form of alternative dispute resolution.

### **31.0 Applicable Law and Forum**

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

### **32.0 Other Public Agency Orders**

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to that entity and EM, by executing an agreement in the form attached as Section 32.0 to this Contract. Any such agreement is between the federal, state, county or local entity (referred to as "Counterparty" in the attached Section 32.0 Agreement form) and EM only and the County does not accept any responsibility or involvement in the agreement.

### **33.0 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract except the obligation to pay money to the other party, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

### **34.0 Recycled Products Policy**

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Ref: KCC 10.16 & King County Executive Policy CON 7-1-2.

**35.0 No Third Party Beneficiary**

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

**36.0 Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

**By signing below, the parties agree to be bound by the terms and conditions contained in this Contract.**

<b>Element Markets Renewable Energy, LLC</b>	<b>King County Department of Transportation, Metro Transit Division</b>
<i>Signature:</i> _____ <i>Date:</i> _____	<i>Signature:</i> _____ <i>Date:</i> _____
<i>Printed Name:</i> _____ <i>Title:</i> _____	<i>Printed Name:</i> _____ <i>Title:</i> _____



**Schedule 32.0**  
**FORM OF AGREEMENT**

**AGREEMENT**

This AGREEMENT (“**Agreement**”), dated as of [DATE] is made by and between [NAME OF PUBLIC AGENCY], a [STATE/AGENCY DESCRIPTION] (“**Counterparty**”) and ELEMENT MARKETS RENEWABLE ENERGY, LLC, a Delaware limited liability company (“**Consultant**”). Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in that certain Renewable Energy Attribute Contract, dated as of [DATE], by and between King County, Washington by and through the Department of Transportation, Metro Transit Division (“**Metro**”) and Consultant (the “**Metro Contract**”).

WHEREAS, pursuant to Section 32.0 of the Metro Contract[ and OTHER STATUTE/RULE, IF APPLICABLE], Counterparty is permitted to use the terms and conditions of the Metro Contract to govern its contractual relationship with Consultant;

WHEREAS, each of Counterparty and Consultant desire to enter into an agreement for the purchase and sale of RERs with the same terms and conditions as the Metro Contract, other than as such terms and conditions may be modified below;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, Counterparty and Consultant agree as follows:

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement. In consideration of using this Agreement, the Counterparty does not object to the Consultant providing Metro with data from the sales of RINS or other EV credits made under this Agreement, as contemplated by Section 14 of the Metro Contract.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[LIST MODIFICATIONS/ADDITIONS TO CONTRACT]

3. **Nature of Agreement.** Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to

this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

4. **Severability.** The provisions of this Agreement are independent of and separable from each other. If any provision hereof is held to be invalid or unenforceable for any reason, the validity and enforceability of any other provision hereof will not be affected and this Agreement will be construed as if such invalid or unenforceable provision was never included herein.

5. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which constitutes an original, but together constitute a single contract. Delivery of an executed counterpart of this Joinder Agreement by facsimile or in electronic format is of equal effect as delivery of a manually executed or original counterpart.

6. **Governing Law.** This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby and thereby are governed by and construed in accordance with the laws of [STATE].

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective authorized signatories.

[COUNTERPARTY]

By: \_\_\_\_\_

Name:

Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE  
ENERGY, LLC

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-1**

**Sample Form of Metro Attestation**

I, \_\_\_\_\_ (name), \_\_\_\_\_ (title) and authorized signatory of the King County Department of Transportation, Metro Transit Division ("Metro") hereby attest to the following on behalf of Metro with respect to the generation of renewable identification numbers ("RINs") associated with electricity used as transportation fuel in the month of [\_\_\_\_], [2016] (the "Attestation Period") pursuant to the applicable rules and regulations promulgated by the U.S. Environmental Protection Agency ("EPA") at 40 C.F.R. Part 80, Subpart M (the "Renewable Fuels Standard" or "RFS2") under the Clean Air Act, 42 U.S.C. § 7401 et seq.

- (1) Metro accepted delivery of [\_\_\_\_] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").
- (2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.
- (3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.
- (4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

The foregoing is attested to as of this \_\_ day of \_\_\_\_\_, [2016].

**KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION**

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-2**

**Form of RER Delivery Attestation**

**RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION**

I, \_\_\_\_\_, authorized signatory of Element Markets Renewable Energy, LLC (“EM”), hereby attest to the following on behalf of EM with respect to the [\_\_\_\_\_] megawatt-hours (MWh) of Renewable Energy Rights delivered to during the month of **[choose a month]** **[choose a year]** under that certain Renewable Energy Attributes Contract, dated as of [\_\_\_\_\_, 2016], by and between EM and King County, Washington, by and through the Department of Transportation, Metro Transit Division (the “Contact”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Contract

- (i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.
- (ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.
- (iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the Contract.
- (iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the Contract.

I further attest, warrant and represent that the information provided herein is true and correct as of the date set forth below.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: [Click here to enter a date.](#)

[Blank Page]



**KING COUNTY**  
**Signature Report**

**ATTACHMENT 3**  
1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**August 22, 2016**

**Ordinance**

**Proposed No.** 2016-0349.1

**Sponsors** Dembowski

1 AN ORDINANCE relating to the sale of environmental  
2 attributes held by the county; authorizing the transit  
3 division to enter into an agreement with Element Markets  
4 Renewable Energy, LLC, for the sale of Renewable  
5 Identification Numbers and other environmental attributes  
6 associated with the transit division's electric trolley and  
7 battery bus fleets.

8 **STATEMENT OF FACTS:**

- 9 1. The transit division operates a fleet of one hundred fifty-nine electric  
10 trolley buses in the city of Seattle. In 2016, it will also operate three  
11 battery buses and may operate significantly more in the future.
- 12 2. The electric trolley buses operated by the transit division have over  
13 twenty million boardings per year and are a major component of the public  
14 transportation system.
- 15 3. Under the United States Environmental Protection Agency's  
16 Renewable Fuel Standards Program, consumption of renewably generated  
17 electricity to power the trolley buses and the battery buses has the  
18 potential to create Renewable Identification Numbers ("RINs"), which can

19 be sold to companies that blend gasoline for the retail market and have  
20 Environmental Protection Agency-mandated Renewable Fuel Obligations.

21 4. The transit division's trolley bus fleet consumes an estimated eighteen  
22 million kilowatt hours of electricity each year, which is equal to  
23 approximately 797,600 RINs.

24 5. On March 19, 2015, the transit division issued a request for proposals  
25 for the sale of RINs and other environmental attributes associated with the  
26 transit division's electric trolley and battery bus fleets.

27 6. The transit division has negotiated a contract with an outside party for  
28 the sale of RINs and other environmental attributes associated with the  
29 transit division's electric trolley and battery bus fleets. The contract also  
30 provides an option for the sale of RINS generated by other King County  
31 departments and divisions. Finally, the contract allows other governments  
32 to use the contract's terms and conditions for their own separate contracts  
33 with Element Markets.

34 7. The contract for the sale of RINs and other environmental attributes  
35 associated with the Metro Transit Division's electric trolley and battery  
36 bus fleets with Element Markets Renewable Energy, LLC is in the best  
37 interest of the county.

38 8. Other county departments or divisions may utilize this contract to sell  
39 their RINs and other environmental attributes.

40 9. In accordance with the King County charter section 230.10.10, revenues  
41 received by the transit division from the sale of RINs associated with its

42 electric trolley and battery bus fleets may only be used for specified  
43 purposes.

44 **§10.** Under K.C.C chapter 4.56, sales of rights, title or interests in  
45 emissions credits, offsets or allowances or renewable energy certificates,  
46 credits, benefits, environmental air quality credits and any similar rights,  
47 title or interests held by the county are exempt from the real and personal  
48 property requirements of this chapter when unique circumstances are  
49 present. The sales may be made in the best interests of the public to a  
50 person or entity through a direct agreement negotiated by the county  
51 executive and approved by the county council.

52 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

53 **SECTION 1. Findings:** King County council hereby finds that the sale of  
54 Renewable Identification Numbers and other environmental attributes held by the county  
55 and associated with the transit division's electric trolley and battery bus fleets, or by other  
56 King County departments and divisions is in the best interests of the public.

57 **SECTION 2.** The executive is hereby authorized to execute a Renewable Energy  
58 Attributes Contract with Element Markets Renewable Energy, LLC, substantially in the  
59 form of Attachment A to this ordinance.

60 **SECTION 3. ~~Moneys-Revenues~~** from the sale of Renewable Identification  
61 Numbers shall be allocated to the originating department or division and shall be used to  
62 further the goals outlined in the 2015 Strategic Climate Action Plan as applicable to the  
63 originating department or division.

64



**KING COUNTY**  
**Signature Report**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**August 22, 2016**

**Ordinance**

**Proposed No.** 2016-0349.1

**Sponsors** Dembowski

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

\_\_\_\_\_  
J. Joseph McDermott, Chair

ATTEST:

\_\_\_\_\_  
Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Dow Constantine, County Executive

**Attachments:** A. Renewable Energy Attributes Contract, [Updated August 16, 2016](#)

## RENEWABLE ENERGY ATTRIBUTES CONTRACT (“Contract”)

**THIS CONTRACT # \_\_\_\_\_** is entered into by King County, Washington by and through the Department of Transportation, Metro Transit Division (the “County” or “Metro”), and Element Markets Renewable Energy, LLC (“EM” or “Contractor”). The County is undertaking certain activities related to the sale of environmental attributes and the County desires to engage the Contractor to provide Work in connection with such undertakings of the County.

In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

### 1. Contract Documents

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence: 1) Contract Amendments; 2) Contract, including Exhibits A-1 and A-2 – Attestation Forms, Exhibit B – Consultant Disclosure Form, and Exhibit C – Certificate(s) of Insurance and Policy Endorsement; 3) King County’s Request for Proposals 1082-15 VLN; and 4) Contractor’s Proposal.

### 2. Certain Definitions

- 2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.
- 2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.
- 2.3. Change in Law: Defined in Section 4.0.
- 2.4. Commencement Date: Defined in Section 4.0.
- ~~2.5. Consulting Agreement: A Services Agreement, which if executed by and between EM and the County, governs certain services to be provided to the County by EM relating to execution of the transactions contemplated in this Contract. 2.5. Not used.~~
- 2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.
- 2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.
- 2.8. Day: Calendar day.
- 2.9. Delivery Period: Defined in Section 4.0.
- 2.10. Excepted Expenses: Defined in Section 12.0.
- 2.11. Initial Delivery Period: Defined in Section 4.0.
- 2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.
- 2.13. KCC: The King County Code.

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- 2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.
- 2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.
- 2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this AgreementContract is eligible to generate tradable credit(s) in addition to RINs.
- 2.17. Plug-in Electric Vehicle (“PEV”) Load: The electricity consumption of Metro’s electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.
- 2.19. Renewable Electricity Right or “RER”: The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.
- 2.20. Renewable Fuel Standard Pathways II or “Pathways”: The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).
- 2.21. Renewable Identification Numbers or “RINs”: A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.
- 2.22. Renewable Fuel Standards program or “RFS2”: The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.
- 2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
- 2.24. System: Collectively, Metro’s electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

### **3.0 Description of Transaction**

EM will deliver RERs to Metro to be matched with the PEV Load in accordance with the Pathways in order to allow EM to generate the Contract RINs. Except as otherwise provided in Section 10.2, EM will sell the Contract RINs and EM and Metro will share the revenue generated from the sale of such Contract RINs as specified below, subject to satisfaction by Metro of the Ongoing Information Requirements (described in Section 8 below). For Other EV Credit(s), Metro may elect in writing to have EM generate such credits and EM and Metro will share the revenue generated from the sale of such Other EV Credit(s) under the fee structure in Section 14, unless the parties execute a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between the parties. This language also applies where RERs are not involved, such as the sale of carbon offsets or other environmental credits and attributes not contemplated by this ~~Agreement~~Contract as of the date executed by both parties.

### **4.0 Contract Term**

This Contract shall become effective upon execution by the parties and shall expire at the end of the Initial Delivery Period (defined below), unless extended or terminated as provided herein.

EM shall commence delivery of RERs to Metro beginning on the “Commencement Date”, defined as the first date upon which both (i) the source facility producing the biogas with which the RERs are associated is registered under RFS2 and (ii) a pathway for generation of the Contract RINs is approved by EPA. EM shall continue delivering RERs for three (3) years beginning on the Commencement Date (the “Initial Delivery Period”). Delivery of RERs under this Contract may be extended by Metro for up to two (2) additional one-year periods (each, a “Renewal Delivery Period” and collectively, with the Initial Delivery Period, the “Delivery Period”) as Metro may determine in its sole discretion by providing written notice of renewal to EM at least thirty (30) days prior to the last day of the Initial Delivery Period or Renewal Delivery Period, as applicable.

If at any time during the Delivery Period a change occurs to RFS2 or the enforcement thereof which results in the inability to generate RINs from the PEV Load (a “Change in Law”), deliveries of RERs will cease until such time as RINs may be generated from the PEV Load. If the Change in Law is either permanent by its terms or EPA releases definitive guidance that the Change in Law will remain in effect for a period of at least six (6) months, either Contractor or Metro may terminate this Contract by providing written notice to the other of such termination; provided that the foregoing termination right will not be exercisable if any Other EV Credits are being generated or, if not currently being generated, could be generated under a renewables program from the matching of RERs to the PEV Load as contemplated in Section 3.0 of this Contract.

In the event there is a determination by EPA that Metro must be the generator of the RINs, EM ~~agrees shall provide assistance as requested by Metro to assist Metro with perform all the establishment of necessary actions to establish~~ shall provide assistance as requested by Metro to assist Metro with perform all the establishment of necessary actions to establish an account in the EPA Moderated Transaction System (EMTS) ~~in Metro’s name. Following generation, the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.~~

Metro will appoint EM as its agent to perform the generation of the Contract RINs for Metro, and following generation, ~~will transfer~~ the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.-

EM’s obligation to generate Contract RINs associated with RERs delivered to Metro prior to the last day of the Delivery Period and to remit the Metro Percentage of Net Revenue associated therewith will

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survive termination until revenue from all RERs delivered to Metro is realized through the sale of the Contract RINs.

**5.0 Quantity**

The actual quantity of RERs delivered by EM to Metro in each month of the Delivery Period shall be equal to the actual PEV Load for that month.

**6.0 Exclusivity**

Metro hereby grants EM the exclusive right to (i) deliver RERs to be matched with Metro’s PEV Load, (ii) generate RINs with respect to such PEV Load, and (iii) sell Contract RINs for the duration of the Delivery Period, except as provided in Section 10.2.

In the event the matching of the PEV Load with RERs is eligible to generate Other EV Credits or if Metro desires to generate RINs or Other EV Credits from other parts of Metro’s transportation fleet other than the PEV Load, Metro may elect in writing to grant EM the exclusive right to (i) deliver RERs to be matched with the PEV Load (for the purpose of generating Other EV Credits) and (ii) generate Other EV Credits with respect to the PEV Load and (iii) sell Other EV Credits for the duration of the Delivery Period subject to a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between Metro and EM and addressing other relevant payment terms.

**7.0 Registration Information**

EM will be responsible for registering the System with the U.S. Environmental Protection Agency (“EPA”) or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a “Registration”). EM will complete registration requirements for Contract RIN sales pursuant to the terms of ~~the Consulting Agreement if one is executed. Any EPA registration requirements not covered by a Consulting Agreement will be completed by EM pursuant to this Contract.~~ this Contract.

EM shall provide the County with copies of all documents filed with and received from EPA related to the System, Contract RINs, or Other EV Credits.

**8.0 Ongoing Information Requirements**

At its own expense, Metro will submit the following documentation and data to a data room or similar repository established by EM for each calendar month of the Delivery Period:

- System operation data and metered electricity consumption;
- Utility bills and/or statements evidencing electricity used by the System; and
- An attestation, either in the form attached to this Contract as Exhibit A-1 or via an electronic platform developed by EM or its service providers, in which an authorized representative of Metro attests to certain facts regarding the System, RERs, Contract RINs and/or Other EV Credits, including, without limitation, that Metro has not entered into any similar agreements that would enable or give any other party the right to make any claims with respect to the PEV Load or generation of the Contract RINs.

**9.0 RIN/Other EV Credit Generation**

The Contract RINs generated from Metro’s PEV Load will be equal to the quantity of RINs permitted to be matched with the PEV Load pursuant to the Pathways, as amended from time to time. EM will seek the classification of the Contract RINs as D3 by the EPA or such other code if it will result in a higher RIN value and is permitted by the EPA. In the event that any Other EV Credits may be generated from the

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PEV Load, the Other EV Credits generated will be equal to the quantity permitted under the applicable statutes, rules or regulations.

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**10.0 Contract RIN Sales**

10.1 The timing and manner of sale of the Contract RINs will be determined in EM's sole discretion provided that EM agrees that (i) EM shall use commercially reasonable efforts to sell any Contract RINs as they become available for sale during the Delivery Period; (ii) Contract RINs will be sold in transactions that include the sale of RINs generated by at least one other party, including but not limited to RINs sold pursuant to Section 10.4 or Section 32.0, if any; (iii) Contract RINs are sold no less frequently than every four months; (iv) no more than 25% of the Contract RINs sold in any four-month period of the Delivery Period may be sold in the forward market without prior written approval of the Project Manager; and (v) no Contract RIN shall be sold at a price that is less than the sum of the market price for a D5 RIN plus 50% of the published value of the Cellulosic Waiver Credit at the time of the Contract RIN sale.

10.2 Notwithstanding any provision to the contrary in this Contract, the County may elect to take a share of the Contract RINs equal to the Metro Percentage in-kind for any one or more months of the Delivery Period (such RINs, the "In Kind RINs") provided that the County provides EM with written notice at least seven (7) business days prior to the start of the applicable month in which the County wishes to receive In-Kind RINs. If the County elects to receive In-Kind RINs, it must take the entire amount equal to the Metro Percentage and ~~shall~~ establish and manage its EMTS account as required for such In-Kind RINs, and Contractor will have no obligation or responsibility with respect to management of the EMTS account for In-Kind RINs under this Agreement or otherwise Contract. The County shall not have the right to present any In-Kind RINs for monetization at will. Any arrangement in which EM monetizes any In-Kind RINs for the County shall be a separate negotiated transaction not included under this Contract. The County may modify or rescind any election to receive In-Kind RINs given pursuant to this Section 10.2 provided that the County provides written notice to EM thereof at least seven (7) business days prior to the start of the applicable month. The effect of the County's rescission of such election to receive In-Kind RINs will be that EM will sell the Contract RINs as provided in Section 10.0 and the County will receive the Metro Percentage for the revenue generated from such sales.

If the County elects to receive In-Kind RINs, EM may also elect to receive the amount of any reimbursement to which EM is entitled pursuant to Section 12 below in the form of RINs by providing written notice of such election to the County. EM may revoke any such election by providing written notice of revocation to the County at any time, and any such election will be automatically revoked upon receipt of notice from the County that it wishes to rescind its election to receive In-Kind RINs as the Metro Percentage.

10.3 ~~if commercially reasonable~~To the extent a Quality Assurance Program (QAP) for the Contract RINs is approved by EPA, Contractor shall engage a firm to perform a review of the Contract RINs under ~~an EPA-the~~ approved QAP ~~(the "Quality Assurance Program")~~ during the Initial Delivery Period unless the parties mutually agree that services under such EPA-approved QAP are not commercially reasonable. Contractor's expenses in connection with the Quality Assurance Program shall be considered Excepted Expenses pursuant to Section 12 and deductible under clause (ii) thereof.

10.4 Any County division or department may utilize this Contract to engage EM to sell its RINs. Such RINs will be sold in transactions in which Contract RINs are also sold, and the sale of any such RINs will be conducted by EM according to the terms and conditions of this Contract applicable to Contract RINs unless agreed upon otherwise in writing by EM and the County. If another County department or division engages EM to sell RINs pursuant to this section, the County shall provide

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EM with applicable contact and payment information to the extent it is different than that provided herein.

**11.0 This section intentionally left blank.**

**12.0 Expenses**

12.1 Excepted Expenses. EM will be responsible for paying any and all expenses incurred and associated with the generation and sale of the Contract RINs and Other EV Credits for which EM is responsible pursuant to this Contract, ~~except as provided herein. The.~~ However, the following expenses, subject to the limitation set forth below, will be deducted from Gross Revenue to determine Net Revenue hereunder (the “Excepted Expenses”):

- (i) Third-party costs for initial EPA registration;
- (ii) Quality Assurance Program costs; and annual third party review under Section 15.0;
- (iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;
- (iv) Travel expenses for third parties;
- ~~(v) Costs or payments associated with Seattle City Light~~ (v) Charges from utilities for costs to generate RINs and to meet EPA and QAP audit and data requirements, but not including payments owed by EM for utility service to its facilities;
- (vi) RER procurement costs; provided that EM shall not be entitled to deduct or be reimbursed for the purchase price of any RER exceeding three dollars unless EM received prior approval in writing from the County for such purchase;
- (vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;
- ~~(#xviii)~~ Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year’s Gross Revenue or \$~~40~~45,000 (the “Expense Cap”).

~~The County shall reimburse EM~~ If there is insufficient Gross Revenue from which deductions will reimburse EM, then the County will pay to EM the deficiency for any of the above expenses incurred in connection with performance of EM’s obligations hereunder; provided that with respect to the expenses listed in clauses (i) through (iv), EM shall be responsible for all such expenses exceeding the Expense Cap in each calendar year.

~~In no event~~ EM shall ~~EM be entitled~~ provide the County with an invoice and supporting documentation as required by the County for such expenses. The County shall pay the invoice within ninety days of receipt of the invoice and the required supporting documentation.

12.2 Suspension for Insufficient Revenue. If (A) the aggregate amount of expenses paid by or reimbursed by a Party pursuant to reimbursement ~~this section~~ (“Expense Amount”) exceeds the aggregate amount of Net Revenue received by such Party (the “Net Revenue Amount”) during any three consecutive months of the Delivery Period in which Gross Revenue is greater than zero (such period, a “Measurement Period”) and (B) as of the date of the suspension notice, the Party’s Expense Amount exceeds the Net Revenue Amount for the preceding six-month period in the aggregate, the applicable party may submit a notice of suspension to the other Party. Any suspension will become effective as of

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the first day of the month following the date the suspension notice is received. Notwithstanding any suspension under this Section, each Party will remain responsible for any of its obligations under this Contract for any expense pertaining to RINs or Other EV Credits generated from RERs delivered prior to the suspension. If the Contract is suspended pursuant to this Section, the suspending Party may reinstate the Contract by submitting a notice of reinstatement to the non-suspending Party. If suspension under this Section 12.2 remains effective for six months or more, either Party may terminate the Contract by providing written notice of termination to the other Party; provided that the foregoing termination will not be exercisable if any Other EV Credits are being generated or could be generated under a renewables program as contemplated by Section 3.0 of this Contract.

12.3 Procurement Cost Suspension. If the County does not provide EM with the approval contemplated by Section 12.1(vi) within [fifteen days] of EM's request for such approval, this Contract will be deemed suspended as of the date such approval was or will be reimbursed by the County to EM under the Consulting Agreement requested. Suspension pursuant to this Section 12.3 will remain in effect until the month following the month in which approval is granted by the County. If suspension under this Section 12.3 remains effective for six months or more, EM may terminate this Contract by providing written notice of termination to the County.

### **13.0 Delivery of RERs**

RERs will be delivered by EM or a designee thereof previously identified to Metro in writing to Metro's account in a renewable energy credit registry or by delivery of an attestation in the form attached as Exhibit A-2 to this Contract.

### **14.0 Payment**

14.1 In exchange for Metro granting EM the exclusive right to deliver RERs, generate and sell Contract RINs and Other EV Credits from the PEV Load as provided herein, EM will pay Metro the applicable Metro Percentage of Net Revenue on a monthly basis in accordance with this section. Additionally, EM will review payments made during each completed twelve month period and pay the County any additional amounts that may be owed with respect to the completed twelve month period within thirty days of the end of that period.

14.2 For each month of the Delivery Period in which Contract RINs or Other EV Credits are generated and sold, as applicable, EM will prepare and provide Metro with a document showing: (i) Gross Revenue for the Contract RINs or Other EV Credits sold during such month; (ii) the gross revenue attributable to ~~any~~ RINs sold pursuant to each Section 32, ~~in the aggregate, to the extent permitted Agreement as identified~~ by the applicable third party, with a list of all third parties to whom the gross revenue is attributable (to the extent permitted by the applicable third party); specific Counterparty; (iii) the Net Revenue from such Contract RINs or Other EV Credits, as applicable; (iv) an itemized list of all Excepted Expenses deducted from Gross Revenue; (v) the Metro Percentage, (vi) the date of sale and price per unit for all Contract RINs or Other EV Credits sold during such month, (vii) the number of Contract RINs or Other EV Credits generated and remaining unsold, if any and (ix) the number of RERs delivered to Metro with respect to the PEV Load for such month and the number of Contract RINs or Other EV Credits generated or to be generated therefrom.

14.3 At least once per month during the Delivery Period, EM shall provide the County with the market price per unit for RINs that are comparable to Contract RINs, as obtained from publicly available sources such as Argus or OPIS or from independent broker quotes, if no public source is available. While EM will make commercially reasonable efforts to supply the County with the

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foregoing information, the ~~Parties~~parties acknowledge that as of the date of this Contract a market price does not exist, and failure to provide such information to the extent it is not reasonably available will not result in or constitute a default or breach of this Contract by EM.

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

14.5 Submittal of the payment documentation described in Section 14.1 and 14.2 and payment of the Metro Percentage with respect to each month is due before the fifteenth (15<sup>th</sup>) business day after the month in which the funds from the sale of the Contract RINs are actually received by EM. All funds to be paid to Metro hereunder shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer or in such other form as agreed to by the parties. If EM fails to remit any amount payable by it when due, interest on such unpaid portion shall accrue at a rate equal to the prime interest rate in effect ~~at~~as of the ~~time~~date the payment is due as published in *The Wall Street Journal* plus two percent (2%) from the date payment is due to the date of payment.

**15.0 Contract RINs and Other EV Credits Annual Review**

EM shall be responsible for the costs of an annual third party review of Contract RINs and Other EV Credits, ~~which are deemed "Excepted Expenses" hereunder.~~ The review may be conducted by one or more third parties ~~wh~~which are approved by the County, such approval not to be unreasonably withheld, delayed or conditioned, and at a minimum shall include written verification and audit of: (1) RERs delivered compared to Contract RINs and/or Other EV Credits generated; (2) the accounting of Contract RINs and/or Other EV Credits created, sold and retained; and (3) the sales price for the Contract RINs or Other EV Credits, as applicable, sold, compared to the Metro Percentage. The audit shall be completed by March 31 of the year following the year reviewed. A copy of the ~~results of the review~~written review which shall be specific to the County and shall include the audit, shall be provided by EM to the County within fifteen (15) Days after they are received by EM.

**16.0 Mutual Representations and Warranties**

Each party represents and warrants to the other party as of the date of this Contract, and as of the date of each delivery of RERs that (i) it has, and at all times during the term of this Contract will have, all necessary power and authority to execute, deliver, and perform its obligations under this Contract; (ii) the execution, delivery, and performance of this Contract has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law or other legal or regulatory determination applicable to it; (iii) there is no pending or (to its knowledge) threatened litigation, arbitration, or administrative proceeding that materially adversely affects its ability to perform its obligations under this Contract and (iv) there is no provision of governing law that would limit either (a) the enforceability of this Contract against it or (b) the exercise of any rights or remedies of the other party set forth herein.

**17.0 Representations and Warranties of EM**

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the

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electrical energy that was generated with the RERs; (v) RERs that EM transfers to Metro meet the requirements of 42 U.S.C. §7546 for the generation of RINs neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and ~~(vi)~~-vii) EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**18.0 Termination Default**

18.1 Termination for Default. If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a “notice of termination” in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall ~~in no way~~neither relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

**18.2 Termination for Non-Appropriation**

A. If expected or actual funding is withdrawn, reduced or limited in any way prior to Termination of this Contract, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part for lack of appropriation. Such termination shall be in addition to the County’s rights to terminate for default. In the event of termination under this section the following shall apply:

1. Subject to subsection 2., the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination;
2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and
3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.

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**B. Notwithstanding subsection A., funding of this Contract beyond the current biennium is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Otherwise, the Contract shall terminate on December 31 of the current biennium.**

**19.0 Retention of Records, Audit Access and Proof of Compliance with Contract**

**19.1 Retention of Records.** The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

**19.2 Audit Access.** The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

**19.3 Audit Exception.** The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract for six (6) years after the date of final remittance of the Metro Percentage to the County under the Contract.

**19.4 Public Records Requests.**

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to obtain a court order preventing the County from releasing such material. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

**20.0 Legal Relations; Indemnity and Insurance**

**20.1 Independent Status of Contractor.** In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees except as otherwise provided herein. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

**20.2 Indemnification and Hold Harmless.** To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold

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harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract. Nothing contained within this Indemnification Section shall affect and/or alter the application of any other section contained within this Contract.

**20.3 Insurance.** Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability/errors and omissions will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

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A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: \$1,000,000 Per Claim and in the Aggregate
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: \$1,000,000

B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The County, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

All Policies:

- a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor
- c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.
- d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability/Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

**21.0 Conflicts of Interest and Non-Competitive Practices**

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21.1 Conflict of Interest. ~~(1) Except as stated in the second paragraph of this Section, provided in Section 21.1.(2),~~ by entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict.

(2) Notwithstanding anything herein to the contrary, the County hereby acknowledges that:

- (i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;
- (ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and
- (iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

21.2 Contingent Fees and Gratuities. By entering into this Contract to perform Work, the Contractor represents (or, in the case of item 3 below, acknowledges,) that:

1. No Brokers. No Persons or companies except as designated by Contractor shall be employed or retained as a broker to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No Gratuities. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

21.3 Disclosure of Current and Former County Employees. To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract. Contractor hereby represents and warrants that there are no current or former County employees involved in the anticipated performance of Work by Contractor.

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3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

**22.0 INTELLECTUAL PROPERTY**

**22.1 Patents, Copyrights and Rights in Subject data**

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor ("Contractor Materials"). The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor; in each case excluding any data pertaining specifically to the County ("Contractor Data").

Subject to the terms and conditions of this Contract, County hereby grants to Contractor a worldwide, revocable, nonexclusive, royalty free, transferable license to use, reproduce and create derivative works of any material or result created under this Contract. The County also grants to Contractor a worldwide, revocable, royalty free license to reproduce, distribute, publicly perform and publicly display the materials or results created under this Contract, and to sublicense to third parties the rights to reproduce, distribute, publicly perform and publicly display the materials and results created under this Contract or any derivative works.

For the rights granted above, Contractor shall disclose and make available to the County any derivative work of such material or result without any additional cost to the County upon thirty (30) days of the County's request.

Should Contractor sublicense to third parties, Contractor shall enter into legally enforceable contracts that:

- (i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and
- (ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of \$100.

To the extent any intellectual property created by Contractor is developed without incorporating or otherwise using the materials or results created under this Contract, Contractor shall retain all right, title, and interest in such intellectual property.

Any Contractor Materials or Contractor Data, and any Subject Data furnished by Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County.

**The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.**

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The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract, by amendment, addendum or otherwise.

22.2 Nondisclosure of Data. Data provided by the County either before or after Contract award shall only be used for its intended purpose. ~~Contractors and Subcontractors shall~~ Contractor shall not utilize nor distribute the County data in any form without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform ~~Contractor or Subcontractor's~~ Contractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned. Contractor shall include this provision in all its subcontracts and require its subcontractors to strictly comply with its terms.

22.3 Non-Disclosure Obligation. While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish any information marked "Confidential", "Proprietary" or "Business Secret" to any third party with the exception of (i) its Affiliates, advisors and agents who (a) have a need to know such information in connection with Contractor's obligations under this Contract and (b) have agreed in writing to obligations of confidentiality and non-disclosure with respect to such information and (ii) to the EPA or other governing body, consultants or agents thereof as reasonably necessary or required to generate the Contract RINs or Other EV Credits (including registration, verification and compliance filings). Contractor shall notify the County of any such required disclosure and cooperate with the County to limit such disclosure and/or obtain confidential treatment of such information. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

### 23.0 Nondiscrimination and Payment of a Living Wage

23.1 Nondiscrimination in Employment. During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23.2 Equal Employment Opportunity Efforts. The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination. Ref: KCC 12.16.020.

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**23.3 Equal Benefits to Employees with Domestic Partners.** In accordance with King County Ordinance 14823, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance, failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, by signing the Contract the Contractor is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.

**23.4 Nondiscrimination in Subcontracting Practices.** During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

**23.5 Compliance with Laws and Regulations.** The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

**23.6 Small Contractors and Suppliers Policy.**

**Policy**

It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

**Inquiries and Information Regarding King County Certified SCS Firms**

Direct inquiries on how to apply for SCS certification, or to obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-263-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

**Definitions**

The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. "Certified SCS Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.
3. "Small Contractor or Supplier" or "(SCS)" means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting

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Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than ~~\$750K~~750,000 dollars.

Required Submittals During Work. The Contractor shall collect, enter, submit and update the submittals listed below for itself, its Subcontractors and any sub tier Subcontractors and suppliers to BDCC using the Contracts and Apprenticeship Report Tracking Services (CARTS) online reporting website located at <http://www.kingcounty.gov/bdcc>. Report forms are available on the website. Assistance may be obtained by contacting BDCC staff at 206-263-9734.

1. Subcontractor List. The Contractor shall create and maintain a master list of all Subcontractors on this Contract, the Contractor shall continually maintain the Subcontractors and Suppliers.
2. Contractor Payments. The Contractor shall enter and submit the amount received from the County for itself and the amounts paid by the Contractor to all Subcontractors, including Certified SCS Firms. Entries shall be entered in CARTS on a monthly basis.
3. Final Affidavits of Amounts Paid. Upon completion of the Work and as a condition precedent to final payment, the Contractor shall upload a Final Affidavit of Amounts Paid electronically using CARTS. Identify amounts paid to each firm that performed Work on this Contract.

**23.7 Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).**

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

**23.8 Requirements of King County Living Wage Ordinance.** In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of \$100,000 or more, the Contractor agrees that it shall pay and require all Subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at <http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>.

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Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

**23.9 Sanctions for Violations.** Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

**24.0 Notices**

All notices, demands, and other communications hereunder shall be effective only if given in writing and shall be deemed given (i) when delivered in person; (ii) when delivered by private courier (with confirmation of delivery); or (iii) five (5) business days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. For purposes hereof, all notices, demands and other communications shall be sent to the contacts and addresses below (or to such other address furnished in writing by one party to the other party).

<u>Element Markets Renewable Energy, LLC</u> Contract Administration Contract Manager – Randy Lack 3555 Timmons Lane Suite 900 Houston, TX 77027 Telephone Number: (281) 207-7200 Fax Number: (281) 207-7211 E-mail: ContractAdmin@elementmarkets.com	<u>King County</u> Metro Transit Division Project Manager – Gary Prince King Street Center 201 S. Jackson Street Seattle, WA 98104 Telephone Number: (206) 477-6017 Fax Number: (206) 684-1778 E-mail: gary.prince@kingcounty.gov
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**25.0 Assignment**

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may transfer or assign this Contract, in whole or in part, without the other party’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. [Upon any transfer or assignment permitted pursuant to this paragraph, the assignor shall not be released from its obligations hereunder .](#)

Notwithstanding the foregoing [paragraph](#), Metro agrees to provide such consent to an assignment by EM to another wholly-owned subsidiary of Element Markets, LLC, subject to receipt of documentation evidencing, in Metro’s reasonable discretion, that such affiliate (i) has the relevant registrations, qualifications and resources to perform EM’s obligations under this Contract; which will be deemed to be satisfied in the event such affiliate is utilizing the same personnel and obtains the same licenses or registrations held by EM; and (ii) agrees to assume all rights and obligations of EM hereunder. Upon any transfer or assignment permitted [by pursuant to this Contract paragraph](#), the assignor shall be released from its obligations hereunder to the extent such obligations are assumed by the assignee. -

**26.0 Amendment**

This Contract may be amended at any time, but only by a written agreement signed by both parties.

**27.0 No Waiver**

No delay or omission by a party in the exercise of any right under this Contract shall be taken, construed, or considered as a waiver or relinquishment thereof. If any of the terms and conditions

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herein are breached and thereafter waived in writing by a party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

**28.0 Severability**

If any provision or portion of this Contract is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

**29.0 Complete Agreement**

~~Together with the Consulting Agreement, which if executed, governs services provided by Contractor related to this Contract, this~~ This Contract represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral. ~~Except as may be specifically stated to the contrary in this Contract or the Consulting Agreement, as applicable, to the extent any term is addressed in both the Consulting Agreement and this Contract, the terms of this Contract will govern.~~

**30.0 Mediation or Arbitration**

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through direct negotiation between the parties, the parties shall, as a condition precedent to litigation, endeavor to settle the dispute in an amicable manner through mediation or other agreed form of alternative dispute resolution.

**31.0 Applicable Law and Forum**

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

**32.0 Other Public Agency Orders**

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to that entity and EM, by executing an agreement in the form attached as ScheduleSection 32.0 to this Contract. Any such agreement is between the federal, state, county or local entity (referred to as "Counterparty" in the attached Section 32.0 Agreement form) and EM only and the County does not accept any responsibility or involvement in the agreement.

**33.0 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract except the obligation to pay money to the other party, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

**34.0 Recycled Products Policy**

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

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The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Ref: KCC 10.16 & King County Executive Policy CON 7-1-2.

**35.0 No Third Party Beneficiary**

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

**36.0 Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

**By signing below, the parties agree to be bound by the terms and conditions contained in this Contract.**

<b>Element Markets Renewable Energy, LLC</b>	<b>King County Department of Transportation, Metro Transit Division</b>
<i>Signature:</i> _____ <i>Date:</i> _____	<i>Signature:</i> _____ <i>Date:</i> _____
<i>Printed Name:</i> _____ <i>Title:</i> _____	<i>Printed Name:</i> _____ <i>Title:</i> _____

TRACK CHANGES ILLUSTRATIVE ONLY

**Schedule 32.0  
FORM OF AGREEMENT**

**AGREEMENT**

This AGREEMENT (“**Agreement**”), dated as of [DATE] is made by and between [NAME OF PUBLIC AGENCY], a [STATE/AGENCY DESCRIPTION] (“**Counterparty**”) and ELEMENT MARKETS RENEWABLE ENERGY, LLC, a Delaware limited liability company (“**Consultant**”). Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in that certain Renewable Energy Attribute Contract, dated as of [DATE], by and between King County, Washington by and through the Department of Transportation, Metro Transit Division (“**Metro**”) and Consultant (the “**Metro Contract**”).

WHEREAS, pursuant to Section 32.0 of the Metro Contract [and OTHER STATUTE/RULE, IF APPLICABLE], Counterparty is permitted to use the terms and conditions of the Metro Contract to govern its contractual relationship with Consultant;

WHEREAS, each of Counterparty and Consultant desire to enter into an agreement for the purchase and sale of RERs with the same terms and conditions as the Metro Contract, other than as such terms and conditions may be modified below;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, Counterparty and Consultant agree as follows:

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement. In consideration of using this Agreement, the Counterparty does not object to the Consultant providing Metro with data from the sales of RINS or other EV credits made under this Agreement, as contemplated by Section 14 of the Metro Contract.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[LIST MODIFICATIONS/ADDITIONS TO CONTRACT]

3. **Nature of Agreement.** Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to

this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

4. **Severability.** The provisions of this Agreement are independent of and separable from each other. If any provision hereof is held to be invalid or unenforceable for any reason, the validity and enforceability of any other provision hereof will not be affected and this Agreement will be construed as if such invalid or unenforceable provision was never included herein.

5. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which constitutes an original, but together constitute a single contract. Delivery of an executed counterpart of this Joinder Agreement by facsimile or in electronic format is of equal effect as delivery of a manually executed or original counterpart.

6. **Governing Law.** This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby and thereby are governed by and construed in accordance with the laws of [STATE].

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective authorized signatories.

[COUNTERPARTY]

By: \_\_\_\_\_

Name:

Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE  
ENERGY, LLC

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-1**

**Sample Form of Metro Attestation**

I, \_\_\_\_\_ (name), \_\_\_\_\_ (title) and authorized signatory of the King County Department of Transportation, Metro Transit Division ("Metro") hereby attest to the following on behalf of Metro with respect to the generation of renewable identification numbers ("RINs") associated with electricity used as transportation fuel in the month of [\_\_\_\_], [2016] (the "Attestation Period") pursuant to the applicable rules and regulations promulgated by the U.S. Environmental Protection Agency ("EPA") at 40 C.F.R. Part 80, Subpart M (the "Renewable Fuels Standard" or "RFS2") under the Clean Air Act, 42 U.S.C. § 7401 et seq.

- (1) Metro accepted delivery of [\_\_\_\_] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").
- (2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.
- (3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.
- (4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

The foregoing is attested to as of this \_\_ day of \_\_\_\_\_, [2016].

**KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION**

By: \_\_\_\_\_

Name:

Title:

**Exhibit A-2**

**Form of RER Delivery Attestation**

**RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION**

I, \_\_\_\_\_, authorized signatory of Element Markets Renewable Energy, LLC (“EM”), hereby attest to the following on behalf of EM with respect to the [\_\_\_\_\_] megawatt-hours (MWh) of Renewable Energy Rights delivered to during the month of **[choose a month] [choose a year]** under that certain Renewable Energy Attributes Contract, dated as of [\_\_\_\_\_, 2016], by and between EM and King County, Washington, by and through the Department of Transportation, Metro Transit Division (the “**AgreementContract**”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the **AgreementContract**

- (i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.
- (ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.
- (iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the **AgreementContract**.
- (iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the **AgreementContract**.

I further attest, warrant and represent that the information provided herein is true and correct as of the date set forth below.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: [Click here to enter a date.](#)



# Report on Monetizing Transit Environmental Attributes

December 1, 2015

Metro Transit Division  
King Street Center  
201 S. Jackson Street  
Seattle, WA 98104  
(206) 553-3000



# Report on Monetizing Transit Environmental Attributes Response to Council Ordinance 18106

## Introduction

The King County Council adopted Ordinance 18106 on September 8, 2015. This ordinance directed the Executive to prepare two reports concerning the potential revenues to transit by December 1, 2015.

The first report requires an evaluation of:

*“potential revenues to transit if either a low carbon fuel standard, such as is used in California and British Columbia, or a cap-and-trade system, such as in California, or both, were enacted in Washington.”*

The second report requires Metro to explain its

*“option for monetizing the renewable identification numbers that might come from the operation of the transit division's electric trolley fleet and battery buses operated with renewably-generated electricity. The report shall propose a process that maximizes financial returns, provides a stable revenue source and explains how the proposed transaction process ensures both maximum price and transparency. The report shall also describe options for the marketing of renewable identification numbers<sup>1</sup>”.*

For convenience, the two reports are combined into one, with Section A focused on potential impacts and revenues to transit from a low carbon fuel standard and/or cap-and-trade program, and Section B addressing the potential for revenue from the sale of Renewable Identification Numbers (RINs) associated with the electricity used to operate our all-electric battery and trolley fleets.

## Executive Summary

The report examines three potential funding sources for public transit involving environmental attributes. Two of these funding sources, cap-and-trade and low carbon fuel standards, do not currently exist in the State of Washington or exist in only limited form. Federal law has established a third funding source, RINs, which has the potential to provide ongoing funding to Metro Transit.

Washington Governor Jay Inslee proposed cap-and-trade legislation in 2014, but it was not passed by the Legislature. The Governor has indicated that he will not implement a low carbon fuel standard through the executive rulemaking process. Instead, the Governor has directed the Department of Ecology to develop rules implementing a cap on carbon emissions tied to air quality permits. This report provides revenue estimates for Metro Transit if a cap-and-trade and/or low carbon fuel standard program were implemented in Washington and modeled on the existing California systems. This report also examines the carbon tax structure in British Columbia.

RINs are created through federal legislation and there is an existing market in the sale of RINs. Based on analysis referenced in this report, the best prospect for generating revenue from environmental attributes to Metro Transit comes from the sale of RINs associated with Metro's electric trolley fleet and battery buses. One million dollars is the estimated annual gross revenue at current prices but it should

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<sup>1</sup> Ordinance 18106, section 3

be noted that RINs prices are volatile. The sale of RINs associated with increased use of biodiesel in the transit fleet offers future potential revenue if the price of biodiesel decreases or the cost of RINs rises.

The sale of environmental attributes can have consequences for the County's emissions. An important policy consideration in examining the sale of each type of environmental attribute is how sales impact the County's ability to meet the emissions reduction targets adopted by the Council in the Strategic Climate Action Plan (SCAP).

This report describes how RINs are created and how Metro Transit proposes to transact and receive funding. The Executive plans to transmit an ordinance to authorize the sale of RINs in the first quarter of 2016.

## Section A: Cap-and-Trade System and Low Carbon Fuel Standard

### Cap-and-Trade

A cap-and-trade (C&T) program is designed to set an annual cap on carbon emissions of regulated entities, which declines over time. Regulated entities that exceed the cap must purchase (trade) emissions from those who have made emission reductions. C&T systems are in place in Europe, California, portions of New England, and other locations.

Washington State Governor Inslee's proposed C&T program, the 2015 Carbon Pollution Accountability Act, would have reduced carbon by setting an annual limit on the total amount of carbon pollution that Washington's commercial and industrial emitters may release into the air. The market would have been structured to require major polluters to become regulated entities, and purchase "allowances" for the pollution they emit. Allowed emissions would be gradually reduced each year as the number of available allowances declines. Polluters would be able to either invest in cleaner technology and reduce their operational emissions, or pay for allowances that will increase in cost over time.

As proposed, the Governor's Carbon Pollution Accountability Act was projected to generate one billion dollars annually to support the State of Washington budget. Revenues generated by the proposed Carbon Pollution Accountability Act were to be re-invested by the State to promote further emissions reductions, expand transit, support education, address potential regressive effects on low-income communities, and support Washington companies that may be at a disadvantage against competitors in regions where no such policy exists. The Carbon Pollution Accountability Act did not pass the legislature.

In California, the C&T program has been in place since 2012 ("California Global Warming Solutions Act"). Proceeds from their quarterly auctions of allowances are deposited into a Greenhouse Gas Reduction Fund (GGRF). The State then appropriates those funds to a variety of agencies to implement programs designed to further reduce greenhouse gas emissions and maximize benefits to disadvantaged communities. California's Air Resource Board (ARB) provides the guidelines that funding recipients must follow to qualify for funding from the GGRF. In the 2014-2015 biennium, California appropriated \$241 million to transit programs from the GGRF's total appropriation of \$832 million. This included \$191 million to high-speed rail, \$25 million for capital improvements to integrate state and local rail and other transit systems, and \$25 million for bus and rail operations. We are not aware of any transit agency in California that has sold carbon offsets although these are allowable commodities in California.

British Columbia (BC) has taken a different approach to carbon regulation by imposing a carbon tax. The tax has risen gradually from \$10 per metric ton to \$30 in 2015. The tax is designed to be revenue neutral by reducing other taxes as carbon tax revenues have increased. The tax appears to have lowered overall carbon emissions per capita in British Columbia<sup>2</sup>. The tax has altered the price of fuels, which are a major component of any transit agency's budget, but changes in the international prices have far overshadowed price impacts. BC Transit is subject to both the fuel tax and the carbon tax, but receives a portion of fuel taxes<sup>3</sup>.

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<sup>2</sup> <http://business.financialpost.com/fp-comment/b-c-s-carbon-tax-shift-works>

<http://www.sightline.org/2014/03/11/all-you-need-to-know-about-bcs-carbon-tax-shift-in-five-charts/>

<sup>3</sup> [http://www.sbr.gov.bc.ca/documents\\_library/bulletins/mft-ct\\_005.pdf](http://www.sbr.gov.bc.ca/documents_library/bulletins/mft-ct_005.pdf)

## Markets and Revenues

Metro Transit could receive funding from a C&T program in two ways. First, it could receive a direct allocation of auction proceeds, similar to California. Washington Governor Inslee’s proposal could have provided direct transit funding. In the absence of action by the Legislature, it is not possible to estimate the amount that Metro Transit would have received. Second, Metro Transit could receive funding by selling carbon offsets into carbon markets, either regulated or voluntary. In May 2015, Metro Transit transmitted its study to the Council entitled “Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets.” This study evaluated the potential revenues to Metro Transit from the sale of carbon offsets under both voluntary and regulated C&T markets. The report describes how Metro Transit could create carbon offsets and their relationship to a C&T system. The report evaluated four projects to determine if they produced net revenues to Metro Transit<sup>4</sup>. The results from voluntary markets are provided in Table 1 below.

**Table 1: Carbon Offset Net Revenue Estimates over Ten Year Crediting Period<sup>5</sup>**

Project	10 Year Net Revenue	
	Low	High
Hybrid Bus Replacements	(\$100,596)	\$523,294
Propane Paratransit Vehicle Conversions	(\$331,138)	(\$81,714)
More Efficient Trolley Bus Replacements	(\$297,790)	\$5,800
Madison Corridor BRT Service	(\$359,392)	(\$155,862)

As noted in the report, only the hybrid bus fleet potentially produced net revenues. Other identified projects had smaller carbon savings, and the costs of registration and validation often exceeded the potential market value. Metro and Sound Transit are continuing to investigate the feasibility of selling carbon offsets.

## Low carbon fuel standard

A low carbon fuel standard (LCFS) seeks to lower the carbon emissions for fuel usage by reducing the carbon intensity of fuels used in transportation. It does not seek to reduce overall consumption, but rather the emissions associated with the fuel itself. The LCFS can promote the use of alternative fuels such as propane or biodiesel.

With direction from the California Legislature through adoption of Assembly Bill 32 in 2006, the ARB approved regulations in 2009 to create a statewide low carbon fuel standard to lower the carbon intensity of fuels by ten percent by 2020. Their recent ARB ruling presents the California schedule for each fuel. We have reproduced the compliance schedule for gasoline’s carbon intensity in Table 2 below<sup>6</sup>.

**Table 2: California LCFS Compliance Schedule for 2011 to 2020 for gasoline<sup>7</sup>**

<sup>4</sup> Net revenues reflect the costs associated with registration, marketing, and auditing of environmental attributes.

<sup>5</sup> Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets, Executive Summary, page 2.

<sup>6</sup> <http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf> page 32

<sup>7</sup> Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets, Executive Summary, page 2.

As noted in Table 2, carbon intensity in 2020 is 10 percent below the 2015 level. Each year, the compliance schedule identified a smaller amount of allowed carbon intensity for all fuels in the market, forcing an increase in the share of less-carbon intense renewable fuels.

Carbon intensity is measured on a lifecycle or well-to-wheels basis in units of grams of carbon dioxide equivalent per unit energy of fuel (gCO<sub>2</sub>e/MJ). A LCFS is implemented using a system of credits and deficits, with each credit representing one metric ton of reduction. Credits are generated by transportation fuels that have a carbon intensity lower than the compliance schedule and deficits are generated by gasoline and diesel. At the end of each year, compliance is achieved by offsetting deficits with credits. Credits can be banked and traded and they do not lose value over time.

Year	Average Carbon Intensity (gCO <sub>2</sub> e/MJ)
2010	Reporting Only
2011*	95.61
2012	95.37
2013**	97.96
2014	97.96
2015	97.96
2016***	96.50
2017	95.02
2018	93.55
2019	91.08
2020 and subsequent years	88.62

\* The average carbon intensity requirements for years 2011 and 2012 reflect reductions from base year (2010) CI values for CaRFG (95.85) calculated using the CI for crude oil supplied to California refineries in 2006.  
 \*\* The average carbon intensity requirements for years 2013 to 2015 reflect reductions from revised base year (2010) CI values for CaRFG (98.95) calculated using the CI for crude oil supplied to California refineries in 2010.  
 \*\*\* In 2015 the LCFS was readopted and the CI modeling updated. The average carbon intensity requirements for years 2016 to 2020 reflect reductions from revised base year (2010) CI values for CaRFG (98.47).

California, British Columbia, and the European Union have implemented a LCFS. In the State of Washington, implementation of a LCFS was preempted by a provision in legislation adopting the 2015 Statewide Transportation package. In Washington, Clean Fuel Standard policy would have reduced carbon by setting limits on the amount of carbon pollution resulting from types of transportation fuels used in the State. The proposed Washington market would have been structured to allow fuel producers and importers to purchase credits from other producers and importers who have generated or banked credits and are willing to sell them. Emissions would be reduced, as the amount of carbon pollution a producer or importer emits becomes more restricted over ten years, requiring fuel producers and importers to gradually introduce less-polluting fuels. This is similar to the California standard that seeks to reduce carbon intensity over a ten-year period by ten percent<sup>8</sup>. The Governor has indicated he does not intend to pursue a LCFS in Washington<sup>9</sup>.

Public transit agencies in California are able to generate LCFS credits when they use electricity in the operation of their “fixed guideway”<sup>10</sup> transit systems or when they use alternative fuels.

The calculation of LCFS credits involves a comparison of the carbon intensity of the fuel used, prior to the switch, compared to the carbon intensity of the fuel used after the program. LA Metro has used this with its compressed natural gas bus fleet. The recent ARB rule (footnoted above) describes in detail the calculation methods used. In California, the estimated annual revenues to transit systems operating fixed guideway systems are 40 to 100 million dollars.

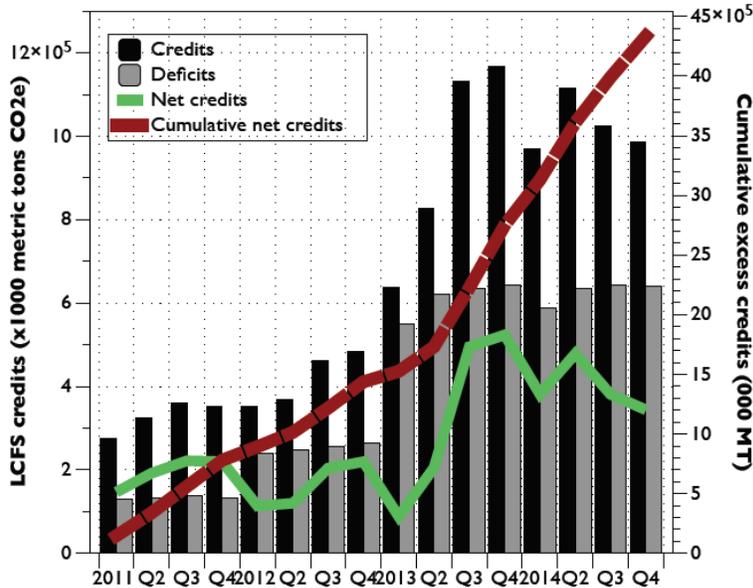
<sup>8</sup> <http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf> Table 1 & 2, page 32-33

<sup>9</sup> <http://www.governor.wa.gov/news-media/inslee-directing-ecology-develop-regulatory-cap-carbon-emissions>

<sup>10</sup> Fixed guideways as used here is a California specific definition.

California estimates that 4.3 million metric tons of greenhouse gas emissions were avoided from 2011 through 2014 (see Figure 1 below).

**Figure 1: California LCFS Credit by year, 2011- 2014**



**Figure 1. California LCFS carbon credits and deficits generated per quarter.** Also shown are net credits per quarter (green line) and cumulative net credits (red line) on the secondary y-axis. Source: ARB (2015b)

British Columbia created a low carbon fuel standard called the Renewable and Low Carbon Fuel Requirements Regulation (RLCFRR)<sup>11</sup> that has two functions: first, to set requirements for five percent renewable content in gasoline and four percent renewable content in diesel fuel; and second, to set requirements for a ten percent reduction in carbon intensity between 2010 and 2020. In order for companies to comply with this requirement, they may need to purchase LCFS credits. The BC trolley fleet, like the King County Metro trolley fleet, could generate LCFS credits due to the comparison of the carbon intensity of electricity versus diesel fuel.

British Columbia indicates that the low carbon fuel standard has dramatically reduced carbon emissions in the province. BC estimates that over 2.4 million metric tons of greenhouse gas emissions were avoided from 2010 through 2014.

**Markets and Revenues**

In California, LCFS credits are sold in traded markets. Prices have fluctuated since the program was implemented but are expected to increase rapidly in coming years. California transit agencies, such as LA

<sup>11</sup> <http://www.empr.gov.bc.ca/RET/RLCFRR/Pages/default.aspx>

Metro, have also sold LCFS credits from the operation of their natural gas fleets. LA Metro earned over 240,000 credits by the end of 2013, and is projected to earn an additional 500,000 credits by 2020<sup>12</sup>. LA Metro recently sold credits for 70 dollars per ton and received four million dollars in revenues. They are anticipating higher prices in 2016 and more sales in the years ahead.

BC Transit agencies have also sold LCFS credits due to their trolley fleet using alternative transportation fuels (electricity). The BC program works much like the California program in that there is comparison of the use of electricity to propel vehicles compared to diesel. However, according to Translink, the Vancouver public transit agency, BC Hydro is receiving the revenues from the sale of LCFS from the trolley fleet.

If Washington adopted a LCFS program, Metro Transit could generate credits from existing activities through the trolley fleet or by using higher quantities of biodiesel or other alternative fuels. These two methods – the ARB fixed guideway formula for electric vehicles presented above or alternative fuels – are the two ways that Metro could receive funding from a LCFS program.

The amount of LCFS credits can be estimated using calculations based on ARB formulas presented in the recent ruling<sup>13</sup>. For “fixed guideway” systems, the formula calculates the amount of emissions displaced by fixed guideway systems, which includes trolley buses, using an energy efficiency value compared to diesel<sup>14</sup>. Based on this calculation, we estimate that the trolley fleet would generate approximately 5,000 LCFS credits. With a price range of 50 to 200 dollars per ton, this could result in revenues between 250,000 and one million dollars from the trolley fleet annually.

Metro could also generate LCFS credits by incorporating biodiesel into its fuel if there was a LCFS requirement in Washington. Incorporating one million gallons of biodiesel into Transit’s annual fuel use, or about 10 percent, an additional 300,000 to one million dollars could be generated from the sale of biodiesel credits, based on a price range of 50 to 200 dollars per ton<sup>15</sup>. The value of credits from adding biodiesel fuel to the fleet would need to be offset against the higher price of biodiesel fuel which is currently estimated at an additional one million dollars, or approximately one dollar per gallon.

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<sup>12</sup> [http://media.metro.net/board/Items/2014/05\\_may/20140522rbmitem48.pdf](http://media.metro.net/board/Items/2014/05_may/20140522rbmitem48.pdf)

<sup>13</sup> <http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf> page 45

<sup>14</sup> Credits =  $(91.4 - 49.4/3.1) * (64.8 \text{ million MJ}) * 10^{-6} = \text{Credits/yr}$  where the diesel “standard” is 91.4 gCO<sub>2</sub>e/MJ (from WA State LCFS Report), the Electricity Carbon Intensity – 49.4 gCO<sub>2</sub>e/MJ (from WA State LCFS Report), King County electricity consumption – 18 million kWh \* 3.6 MJ/kWh = 64.8 million MJ

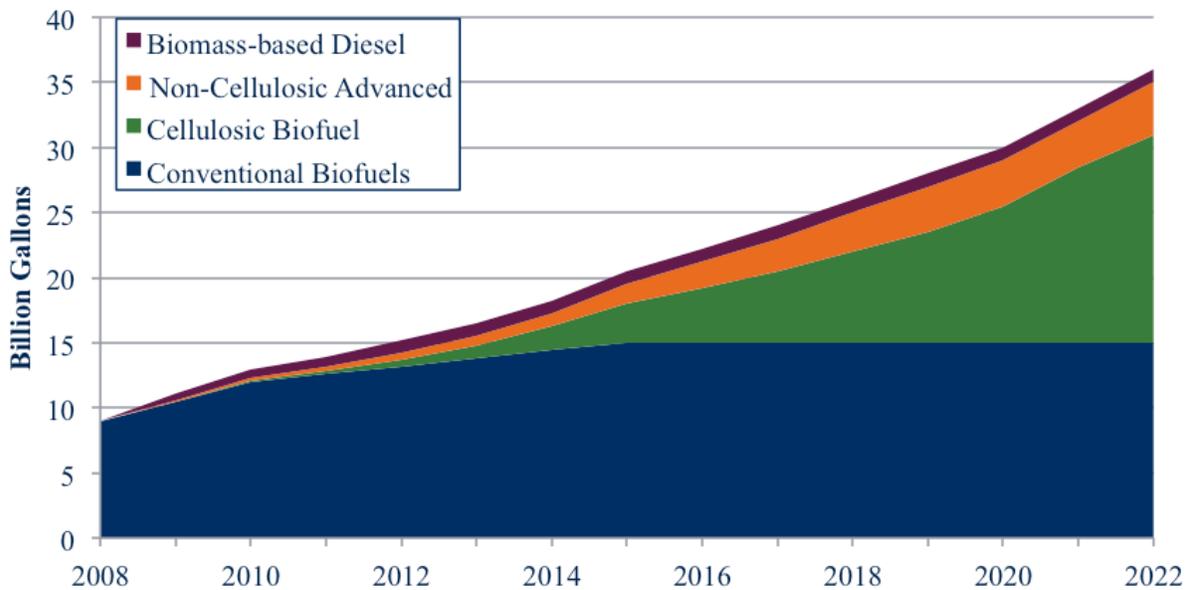
<sup>15</sup> Credits =  $(91.4 - 46) * 126.13 \text{ million MJ} * 10^{-6} = 5,726.3 \text{ credits/yr}$  using the same diesel standard as above, a carbon intensity of biodiesel of 46, and 1 million gallons of biodiesel which contains 126.13 million MJ of energy.

## Section B: Renewable Identification Numbers (RINs)

The Energy Independence and Security Act (2007), and the Energy Policy Act of 2005, require that transportation fuels contain a minimum percentage from renewable sources. The Environmental Protection Agency annually sets a nationwide requirement for each type of renewable fuel that must be used. The renewable requirement increases from 4.7 billion US gallons in 2007 to 36 billion US gallons by 2022.

The requirements apply to four different types of alternative fuels: biomass-based diesel, non-cellulosic advanced, cellulosic biofuel, and conventional biofuels (primarily ethanol). Annual consumption goals were identified when the bills passed and are shown in Figure 2 below<sup>16</sup>.

**Figure 2: Annual Renewable Fuel Goals, 2008- 2022**



<sup>16</sup> <http://www.c2es.org/federal/executive/renewable-fuel-standard>

Table 3 describes the types of renewable fuels under the Renewable Fuel Standard<sup>17</sup>.

**Table 3: RFS2 fuel categories and their D codes<sup>18</sup>**

D Code	Fuel Category	RFS2 mandates fulfilled by this RIN type
D7	Cellulosic Diesel	Biomass-based Diesel, Cellulosic Biofuel, Advanced Biofuel, Renewable Fuel
D6	Renewable Biofuel	Only Renewable Biofuel
D5	Advanced Biofuel	Advanced Biofuel, Renewable Biofuel
D4	Biomass-based Diesel	Biomass-based Diesel, Advanced Biofuel, Renewable Biofuel
D3	Cellulosic Biofuel	Cellulosic Biofuel, Advanced Biofuel, Renewable Biofuel

Companies that refine, import, or blend fossil fuels are obligated to meet certain individual renewable fuel quotas, known as renewable volume obligations (RVO), based on the volume of fuel they introduce into the market. By fulfilling these requirements, the EPA projects that the industry will collectively satisfy the overall national quota. To ensure compliance, obligated parties are periodically required to demonstrate they have met their Renewable Fuel Standard quota by submitting a certain amount of RINs<sup>19</sup> to the EPA. Each gallon of renewable fuels is identified with a unique identifier – a renewable identification number (RIN).

Most consumers are familiar with ethanol being blended into gasoline a result of fuel producers meeting the Renewable Fuel Standard requirements. The requirement for fuels created from plant products, known as cellulosic biofuel, has been particularly difficult to meet as there are few on-road users of this fuel<sup>20</sup>. This requirement can be met by using electricity generated from landfills or wastewater treatment facilities for electric trolley fleets.

Each year the EPA establishes Renewable Fuel Standard targets to meet the statutory requirements. This spring the EPA released requirements for 2015-2017 that indicate support from the EPA for the production of cellulosic biofuel and thus a market for RINs produced by King County.<sup>21</sup>

<sup>17</sup> [http://www.theicct.org/sites/default/files/publications/ICCTbriefing\\_RINs\\_20140508.pdf](http://www.theicct.org/sites/default/files/publications/ICCTbriefing_RINs_20140508.pdf)

<sup>18</sup> [http://www.theicct.org/sites/default/files/publications/ICCTbriefing\\_RINs\\_20140508.pdf](http://www.theicct.org/sites/default/files/publications/ICCTbriefing_RINs_20140508.pdf)

<sup>19</sup> A RIN is a 38-digit code that identifies either a single gallon of fuel (termed a “gallon-RIN” in the regulation), or a batch of multiple gallons (a batch-RIN). RINs are generated when a batch of biofuel has been produced or imported into the United States. A RIN contains information about where the biofuel came from, and about what has happened to it (i.e., whether that gallon has been supplied into the fuel market yet). A single batch RIN can represent up to 99,999,999 gallons of ethanol-equivalent fuel. The detail in a RIN is important to allowing accurate tracking and to reduce the risk of fraud. To compare fuel types, part of the code assigned to each RIN is a “D#” designation, with the “#” identifying the renewable fuel category. For example, cellulosic biofuel is a D3 RIN while advanced biofuel is a D5 RIN. Other RINs have similar transaction paths to the ethanol lifecycle presented in Figure 3

<sup>20</sup> Most ethanol is not considered a cellulosic biofuel. See [https://en.wikipedia.org/wiki/Cellulosic\\_ethanol#Corn-based\\_vs.\\_grass-based](https://en.wikipedia.org/wiki/Cellulosic_ethanol#Corn-based_vs._grass-based) and [http://www.earthisland.org/journal/index.php/elist/eListRead/is\\_cellulosic\\_ethanol\\_the\\_next\\_big\\_thing\\_in\\_renewable\\_fuels/](http://www.earthisland.org/journal/index.php/elist/eListRead/is_cellulosic_ethanol_the_next_big_thing_in_renewable_fuels/)

<sup>21</sup> <http://www2.epa.gov/sites/production/files/2015-08/documents/420f15028.pdf>

Metro's trolley fleet can use the Renewable Fuel Standard by "linking" to electricity produced from cellulosic biofuel (landfill electricity), which has the highest value of the renewable fuels.

The proposed transaction is that a renewable electricity energy supplier, which is generally a landfill or a wastewater treatment facility, will be linked to King County Metro's trolley fleet. This linkage "creates" RINs, which can then be sold to refineries to meet their Federal obligation for renewable fuels. This transaction does not change the physical consumption of electricity by King County and we will continue to receive electricity from Seattle City Light (SCL). King County also considers landfill energy to be carbon neutral, so this change has no impact on electricity consumed in SCL territory, and in Puget Sound Energy (PSE) territory emissions are reduced since landfill electricity is replacing PSE's energy portfolio. The ordinance on RIN sales will provide additional information on the impact to the County's carbon inventory and confirm the interpretation offered above.

### ***Market and Potential Revenues***

Metro's existing fleet of trolleys consumes approximately 18 million KWh of electricity. Using the standard conversion of 77,000 MMBTU per RIN, this is approximately 800,000 annual RINs. Traditionally, RINs sales proceeds are shared between the provider, the broker, and the consumer. Metro's proposed contract will be attached to an upcoming ordinance. Many of the provisions are described in summary below while the contract will provide additional detail.

Prices for Cellulosic (D3) RINs are difficult to determine, as the market is not large. As such, there is some uncertainty about the long-term price received by King County Metro Transit. Currently, the price for a D3 RIN is between 70 cents and one dollar. Using the lower end of the range, the total value of King County's RINs is approximately \$560,000 after splitting revenues with the contract agent. King County's proposed contract provides that D3 RINs produced by King County will be sold at the highest possible price as determined by numerous mechanisms in the contract.

### ***Contract Provisions***

Council authorization for the sale of RINs is required Per K.C.C 4.56 and the Executive expects to transmit an ordinance authorizing the sale of RINs in the first quarter of 2016. In order for King County Metro Transit to accrue and sell RINs, both it and the electricity supplier must be certified with the EPA. The contract will describe the transaction process for King County RINs. In summary, the contract requires the seller, which would be a contractor on behalf of King County Metro, to identify and certify a renewable energy provider, such as a landfill that captures biogas to produce electricity, and ensure that their electricity production is sufficient to meet King County's needs. The proposed supplier, Short Mountain landfill in Goshen Oregon, already is a certified renewable energy provider. King County will need to become certified with the EPA and the proposed RIN transaction approved. This process is estimated to take three months. King County's Cedar Hills Regional Landfill was not selected as the source of electricity since it does not produce electricity for export. The South Wastewater Treatment Plant similarly does not produce electricity for export. Finally, at the West Point Wastewater Treatment Plant, the County entered into a long-term sales agreement with Seattle City Light in 2009 for both the renewably-generated electricity and the associated environmental attributes.

The seller is required to complete all registration and reporting requirements with the EPA and conduct annual quality assurance audits to ensure compliance with applicable requirements. The seller will transact RINs on a schedule and price range specified in the contract. The contractor and King County may agree to also pre-sell some portion of the RINs at a fixed price.

Proceeds would be transferred to King County on a monthly basis. The contract duration is three years with two one-year extensions at the discretion of the parties. The contract cannot be terminated, but there are provisions to discontinue sales by mutual agreement. A discontinuance could occur due to new markets, significant changes in prices, or other disruptive market changes.

The contract also allows other transit agencies throughout the country to sign on through a joinder. This joinder is intended to promote the adoption of electric vehicles in the transit industry and does not require any King County Metro involvement. Other transit agency participants are wholly separate from King County and are just using the agreed upon terms and contract developed by King County.

### Summary of Markets for Environmental Attributes

Council Ordinance 18106 requested information on how Metro Transit could monetize environmental attributes. For most environmental attributes, state legislative action is needed to create a marketplace in Washington. Table 4 below describes the requirements for Metro Transit to receive revenues from different types of environmental attributes. At present, only RINs have significant revenue potential since they are already authorized in federal legislation.

**Table 4: Status of Environmental Attribute Funding to Transit in Washington State**

Environmental Attribute	Washington Market Status
Cap-and-Trade – Allocation of Revenues	Requires State legislative authorization to establish a WA market; revenue potential unknown
Cap-and-Trade – sale of carbon offsets	Requires State legislative authorization; however, earlier analysis indicates limited revenue potential once transaction costs factored in
Low Carbon Fuel Standard	Requires State legislative authorization or Governor’s executive action to establish a WA market
Carbon Cap	State rules under development; not known if rules will create opportunity to sell credits
Renewable Identification Numbers (RINs)	Existing, federally regulated market with potential revenue from sale of RINs for electricity supplying electric trolleys and increased use of biodiesel (dependent on reduced price for biodiesel in future)

### Policy consideration: Impact of sale of C&T, LCFS, or RINs on Meeting County Greenhouse Gas Reduction Targets

The sale of environmental attributes has potential to affect King County’s inventory of operational greenhouse gas emissions and the County’s ability to meet goals targets for reducing emissions. The 2015 King County Strategic Climate Action Plan (SCAP) includes a target to reduce operational greenhouse gas emissions by 25 percent by 2020, and to grow transit through 2020 with no increase in GHG emissions. With a C&T or LCFS program in place, Metro can sell emissions reductions as ‘credits’ or

‘allowances’ to other emitters who can then claim an emissions reduction. This would eliminate Metro’s ability to claim that reduction as an increment towards meeting our SCAP targets. However, the revenue derived from the sale of environmental attributes could be used for other investments in emissions reduction activities in Metro Transit. Table 5 below illustrates these complex relationships

**Table 5: Carbon and revenue impacts of potential environmental attribute sales by Metro Transit**

<b>Carbon and Revenue Impacts of the sale of Environmental Attributes by Metro Transit</b>		
<b><u>Regulatory Framework</u></b>	<b><u>Impact on Carbon Emissions</u></b>	<b><u>Net Revenues if feasible in WA</u></b>
<b>Cap and Trade offset sales</b>		
<ul style="list-style-type: none"> <li>Hybrids</li> </ul>	Selling offsets means GHG reductions associated with transition from diesel to hybrid buses could not be also claimed by King County	Uncertain to small
<b>LCFS</b>		
<ul style="list-style-type: none"> <li>Trolley Fleet</li> </ul>	Selling LCFS credits means GHG reductions associated with trolley fleet use of renewable electricity could not be claimed by King County (~5,000 metric tons of carbon dioxide equivalent)	\$250,000 to \$ 1 million
<ul style="list-style-type: none"> <li>Biodiesel</li> </ul>	GHG reductions associated with biodiesel usage could not also be claimed by King County	Likely costs exceed revenues given current LCFS and biodiesel prices.
<ul style="list-style-type: none"> <li>Battery Bus</li> </ul>	GHG reductions associated with battery bus usage could not also be claimed by King County	Positive depending on size of fleet
<b>RINS</b>		
<ul style="list-style-type: none"> <li>Trolley Fleet</li> </ul>	Selling the RINs would likely not King County’s operational GHG footprint as SCL is carbon neutral	~\$500,000
<ul style="list-style-type: none"> <li>Battery Bus</li> </ul>	Use of renewable electricity and associated creation and sale of RINs to power the battery buses could reduce King County’s operational GHG footprint by substituting renewable fuel for PSE based electricity	Positive
<ul style="list-style-type: none"> <li>Biodiesel</li> </ul>	Reduces King County emission through the use of renewable fuel; Emissions change is the difference between diesel and biodiesel	Likely costs exceed revenues given current RIN and biodiesel prices.

Of the items described above, only RINs produce net revenues at this time, consistent with the objectives of Ordinance 18106. With a program to sell RINs-based on electricity use by Metro’s trolley and battery bus fleet, Metro can utilize the Renewable Fuel Standard to link a renewable electricity producer with our consumption. This linkage can reduce operational emissions by shifting away from a

provider of carbon intensive electricity production to a source providing renewable carbon neutral electricity. This shift provides revenue to Metro from the sale of RINs, and allows further investment in renewably fueled transit options. Since Seattle City Light is already carbon neutral, there are no carbon impacts for the trolley fleet in this switch, but there would be beneficial carbon impacts for electricity consumed from other utilities that still use carbon intensive electrical production. The sale of RINs from increased use of biodiesel in the fleet could be a source of revenue in the future if the cost of biodiesel drops and/or the value of RINs increases. Even if revenue neutral, increased use of biodiesel would be consistent with emissions reduction targets set in the SCAP from increasing the use of alternative fuels. Metro Transit will continue to monitor biodiesel prices and assess potential for revenue from sale of RINs tied to increased biodiesel use.

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2015/2016 FISCAL NOTE

Ordinance/Motion:	
Title:	<b>Renewable Energy Attributes Contract</b>
Affected Agency and/or Agencies: DOT	
Note Prepared By:	Gary Prince
Date Prepared:	2/4/2016
Note Reviewed By:	Shelley De Wys
Date Reviewed:	2/20/2016

**Description of request:**

Provide for the sale of Renewable Identification Numbers by Metro Transit Division, and other County divisions.

**Revenue to:**

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DOT-Transit	4641	36999	432,100	1,728,400	1,728,400
TOTAL			<b>432,100</b>	<b>1,728,400</b>	<b>1,728,400</b>

**Expenditures from:**

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
DOT-Transit	4641		432,100	1,728,400	1,728,400
TOTAL			<b>432,100</b>	<b>1,728,400</b>	<b>1,728,400</b>

**Expenditures by Categories**

	2015/2016	2017/2018	2019/2020
TOTAL	<b>0</b>	<b>0</b>	<b>0</b>

Does this legislation require a budget supplemental? **No**

Notes and Assumptions:

Expenditures will be made on projects which further the goals of the 2015 Strategic Climate Action Plan

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**2015/2016 FISCAL NOTE**

Ordinance/Motion:	
Title:	<b>Renewable Energy Attributes Contract</b>
Affected Agency and/or Agencies: DOT	
Note Prepared By:	Gary Prince
Date Prepared:	2/4/2016
Note Reviewed By:	Shelley De Wys
Date Reviewed:	2/20/2016

**Description of request:**

Provide for the sale of Renewable Identification Numbers by Metro Transit Division, and other County divisions.

**Revenue to:**

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DOT-Transit	4641	36999	0	1,677,200	1,677,200
TOTAL			0	1,677,200	1,677,200

**Expenditures from:**

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
DOT-Transit	4641		0	1,677,200	1,677,200
TOTAL			0	1,677,200	1,677,200

**Expenditures by Categories**

	2015/2016	2017/2018	2019/2020
TOTAL	0	0	0

**Does this legislation require a budget supplemental?** **No**

**Notes and Assumptions:**

Revenues are estimated based on the 2015 trolley consumption and prices based on 75% of the five year average of D5 RINs plus the EPA cellulosic waiver credit price. Currently this is estimated at 1.49 per RIN.

RIN values fluctuate with market conditions and the price of oil. RIN quantities fluctuate on service levels, ridership, and vehicle operating conditions.

Expenditures will be made on projects which further the goals of the 2015 Strategic Climate Action Plan

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June 28, 2016

The Honorable Joe McDermott  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance authorizing King County to sell environmental attributes generated through the electricity consumed by the Metro Transit Division's (Metro) trolley fleet and other King County electrically fueled vehicles. Per K.C.C 4.56, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the County requires Council authorization. The sale of attributes would be executed through a Renewable Energy Attributes Contract with Element Markets Renewable Energy, LLC, the leading producer and marketer of environmental commodities in the United States.

Metro operates the nation's second largest electric trolley fleet with 159 electric trolleys operating within the City of Seattle. The trolley fleet generates more than 20 million boardings per year and is a critical component of the County's transit fleet. Recently, Metro has also taken delivery of three battery-powered buses for testing and piloting purposes and, if they are successful in operation, may operate more in the future.

The Environmental Protection Agency's (EPA) expanded Renewable Fuel Standard (RFS2) requires oil refiners and importers ("obligated parties") of both gasoline and diesel fuel to ensure that a portion of the nation's transportation fleet is fueled using renewable fuels. Linking Metro's electricity consumption to a renewable energy provider, and subsequent approval by the EPA, will lead to the creation of Renewable Identification Numbers (RINs) which can be sold to obligated parties to meet their RFS2 requirements. RINs are credits used for compliance, and are the "currency" of the RFS program. Metro is estimated to create nearly 800,000 RINs annually.

In 2015, King County issued a Request for Proposals (RFP) for the sale of the RINs associated with the trolley fleet and other applicable King County vehicles. After an evaluation of the proposals received, Element Markets was selected as the preferred seller of RINS. The draft contract between King County and Element Markets details compensation to

King County for the sale of the RINs. The sale of RINS will provide revenue to Metro that will be used to support Metro's initiatives to reduce greenhouse gas emissions and to address the goals set forth by the 2015 Strategic Climate Action Plan (SCAP). Metro will be among the first entities to apply for RIN creation from electric transportation. Based on current market conditions, Metro expects to receive annually over \$580,000 after paying administrative costs. Metro plans to use this revenue to expand its vehicle electrification program and alternative fuels purchases, and other investments to reduce carbon emissions and promote renewable and alternative fuels.

Two reports were recently submitted to the King County Council describing environmental attributes and their monetary value. The next steps in this process are to take the action outlined in this ordinance, which creates the environmental attributes, and to proceed with the sale of RINs. The sale of environmental attributes is consistent with the King County Strategic Plan and the SCAP. The sale of attributes provides additional revenues to Metro which promotes the Strategic Plan goal of environmental sustainability. Furthermore, Metro's participation in these markets provides local and national leadership to encourage additional investments in renewable and carbon reducing activities consistent with the SCAP.

Climate change and social equity are closely linked. According to the 2014 King County Equity and Social Justice Annual Report, promoting "healthy built and natural environments" is one of the 14 determinants of equity. This project addresses this determinant by "moving upstream" to reduce greenhouse gases in order to contribute to and promote a healthy environment.

If you have any questions, please feel free to contact Gary Prince, Metro Transit Division, at 206-477-6017, or [gary.prince@kingcounty.gov](mailto:gary.prince@kingcounty.gov).

Sincerely,

Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers  
ATTN: Carolyn Busch, Interim Chief of Staff  
Anne Noris, Clerk of the Council  
Carrie S. Cihak, Chief of Policy Development, King County Executive Office  
Dwight Dively, Director, Office of Performance, Strategy and Budget  
Harold S. Taniguchi, Director, Department of Transportation (DOT)  
Rob Gannon, Interim General Manager, Metro Transit Division, DOT  
Gary Prince, Economist, Metro Transit Division, DOT



**King County**

**Metropolitan King County Council  
Transportation, Economy and Environment Committee**

**STAFF REPORT**

<b>Agenda Item:</b>	7	<b>Name:</b>	Mike Reed
<b>Proposed No.:</b>	2016-0339	<b>Date:</b>	August 24, 2016

**SUBJECT**

Agreement for the sale of biofuels, and associated environmental attributes, generated at the South Wastewater Treatment Plant in Renton.

**SUMMARY**

The Federal Clean Air Act encourages the incorporation of renewable “biofuels” into the nation’s transportation fuel supply, by the establishment of requirements for processors of petroleum and other transportation fuels to incorporate defined volumes of certain renewable fuels into the transportation fuels that they produce and market. The Act also establishes a market for environmental credits for the generation and utilization of such biofuels, as a means of encouraging and accounting for the required biofuels.

The County’s Wastewater Treatment Division (WTD) has been generating biofuels through its wastewater treatment process. Proposed Ordinance 2016-0339 would authorize the execution of contract with a natural gas processor to sell biofuels generated at the South Treatment Plant in Renton, together with associated environmental attributes, for use as a renewable transportation fuel.

**BACKGROUND**

**Federal Energy Independence and Security Act**

The Federal Clean Air Act was amended in 2005 and 2007<sup>1</sup> to, among other things, support the use of renewable fuels in fuels intended for transportation use. In particular, the 2007 amendments, known as the “Energy Independence and Security Act”, required the EPA Administrator, through regulatory activity, to

“ensure that transportation fuel...contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel”;

<sup>1</sup> 42 USC Chapter 85 II A Sect. 7545 (o) Renewable Fuel Program  
<https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapII-partA-sec7545.htm>

such fuel blend is to “ achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions”.

In sum, the legislation created an obligation on the part of gas importers, producers and others to incorporate renewable fuels (“biofuels”) into their marketed stream of fuels, such as petroleum, natural gas and other fuels used in transportation. The use of these biofuels is intended to reduce the volume of greenhouse gas emissions from the transportation sector. Cellulosic biofuels, derived from cellulose, hemicellulose or lignin, were required to have at least 60 percent less lifecycle greenhouse gas emissions than an established baseline. Specific identified volumes to be incorporated into the nation’s transportation fuel supply each year were specified in the law. For cellulosic biofuel, the target for 2010 was established at 100 million gallons, growing to 16 billion gallons by 2022.

As a means of accounting for, as well as incentivizing the generation and use of renewable fuels, the measure included provision for a system of tradeable environmental credits—units of value that would be associated with gallons of renewable fuel produced, in order to provide incentive to renewable fuel generators to produce and market the fuel.

“The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person.”<sup>2</sup>

Based on this act, the Environmental Protection Agency (EPA) developed a Renewable Fuels Standard (“RFS”) program that, among other things, features “fuel pathways” associated with each of the four categories of biofuels addressed in the Energy Independence and Security Act: biomass-based diesel, advanced biofuel, cellulosic biofuel and renewable (or conventional) fuel. For each fuel source and fuel use seeking to qualify under the Act, EPA must approve a pathway that addresses feedstock, production process and fuel type. EPA has established approximately 20 pathways. In a table addressing approved fuel pathways for the program,<sup>3</sup> EPA identifies “biogas from municipal wastewater treatment facility digesters” as a feedstock for an approved Renewable Compressed Natural Gas/Liquefied Natural Gas/Electricity pathway for cellulosic biofuel.

### **Cellulosic Biofuels**

Of particular interest to managers of wastewater facilities is the evolution of the cellulosic biofuel pathway. Gas derived from wastewater management processes were initially classed by EPA as advanced biofuels for the purposes of the Act. However, in a 2014 rulemaking, the EPA reclassified such gas as being derived from biomass that includes proportions of cellulose, hemicellulose and lignin amounting to more than 75 percent, resulting in a determination that the activated sludge meets the criteria for being classified as cellulosic, and the redesignation of wastewater process gases as

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<sup>2</sup> 42 USC Chapter 85 II A Sect. 7545 (o) 5 (A) Credit Program

<sup>3</sup> <https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel>

“cellulosic.”<sup>4</sup> This change provided an opportunity for wastewater facility operators to pursue registration in the program through a “cellulosic” pathway, for which there is a more limited supply. Also, given the established volume targets that the transportation fuel industry is required to meet, there is a strong demand for cellulosic biofuels—driving a potentially stronger revenue stream.

### **Biofuels from the WTD South Plant in Renton**

King County’s Wastewater Treatment Division (WTD) processes an average dry-weather flow of 90 million gallons of wastewater daily, including 201,000 pounds/day of suspended solids,<sup>5</sup> through its South Treatment Plant in Renton. The process includes operation of an anaerobic digester that produces about 60,000 wet tons of biosolids annually that are destined for land application; additionally, the process generates about 1.8 million therms of methane gas annually.<sup>6</sup> This methane is sold directly to Puget Sound Energy (PSE), and injected into PSE pipelines. The sale of South Plant biogas to PSE has not included any valuation for environmental credits, as addressed in the Energy Independence Security Act described above.

In 2014, WTD issued a Request for Proposals (“RFP”) to partner in generation of renewable fuel for the transportation industry and the generation and monetizing of environmental credits authorized by the Energy Independence Security Act. These credits, known as “Renewable Information Numbers” (“RINs”), are generated through the production of renewable fuel such as wastewater processing biofuel. Responses to the RFP were received from a number of parties, including IGI Resources, a natural gas subsidiary of BP. IGI was selected as the successful responder, based on the criteria of the RFP.

The County and IGI have worked to develop and refine an agreement for the sale of biofuel, and the management of associated RINs, from the South Plant. Operationally, such an agreement would take advantage of the existing delivery of South Plant biofuel to PSE. The biofuel would continue to be delivered to PSE pipelines in the same way it is currently; an equivalent amount of natural gas would be received by IGI at an identified point in the PSE pipeline. This is facilitated through the Transportation Tariff approved through the state’s Utilities and Transportation Commission, providing for pipeline access by third parties.<sup>7</sup> As a result, the proposed transaction does not contemplate any capital or operational changes to accomplish the biofuel/RINs delivery. WTD will need to develop an agreement with PSE to define the terms by which the biofuel is to access the PSE distribution network.

### **Proposed Contract**

On July 11, 2016, the Executive transmitted a proposed agreement, as an attachment to Proposed Ordinance 2016-0339. The agreement consists of three contract documents: Attachment A-- Base Contract for the Sale and Purchase of Natural Gas

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<sup>4</sup> Federal Register Vol. 79 No. 138 July 18 2014 p42137

<sup>5</sup> <http://www.kingcounty.gov/environment/wtd/About/System/Facts.aspx>

<sup>6</sup> [http://www.kingcounty.gov/~media/environment/wtd/About/System/SP/docs/1402\\_SouthPlantTreatmentProcess.ashx?la=en](http://www.kingcounty.gov/~media/environment/wtd/About/System/SP/docs/1402_SouthPlantTreatmentProcess.ashx?la=en)

<sup>7</sup> [https://pse.com/aboutpse/Rates/Documents/gas\\_sch\\_031t.pdf](https://pse.com/aboutpse/Rates/Documents/gas_sch_031t.pdf) This rule addresses “Distribution System Transportation Service Availability” as follows: “This distribution system transportation service is available throughout the territory served by the Company to non-residential customers who have executed the service agreement for transportation service under this schedule.”

Key, and Exhibit A--Transaction Confirmation form; Exhibit B--Special Provisions Attached To the Base Contract, including a Biogas Special Provisions Addendum; and Exhibit C--Transaction Confirmation.

Key elements of the agreement include the following:

- If the parties come to an agreement regarding a gas purchase and sale transaction, that agreement will be recorded on a Transaction Confirmation. King County will sell, and IGI will purchase, the contract quantity of gas for the transaction meeting the pressure, quality and heat contents of PSE, to be transported to an identified delivery point. IGI will remit the amount due by the Payment Date, or within 10 days after receipt of the invoice.
- The contract may be terminated on 30 day's written notice, but will remain in effect until the expiration of the latest delivery period of any transaction.

#### Special Provisions

- IGI will maintain a guaranty in the amount of \$1,000,000 from a guarantor reasonably acceptable to WTD.

#### Biogas Special Provisions:

- WTD warrants that it has the rights to all Green Attributes for such biogas, and will convey them to the Buyer. The biogas is from a project that produces pipeline quality biogas.
- If IGI cannot use the biogas for the production of vehicle fuel, IGI will be entitled to a refund of any Green Premium payment made for the volume of biogas not processed into a vehicle fuel, for which no Green Premium may be claimed under relevant regulation.
- Before delivery of the biogas, WTD or its designee is to submit documentation to certify that the biogas is an Advanced or Cellulosic Biofuel that can generate RINs.

#### Transaction Confirmation

- The price for RIN qualified Biogas will be the posted price (the Gas Daily Midpoint Index for NW Pipeline Canadian Border published by Platts) plus the RIN Premium Allocation, which is 70 percent of the RIN Price Basis.
- RIN valuations are based on Cellulosic Biofuel RIN prices determined by 1) the Argus D3 index; 2) revenue realized by the buyer's RIN marketing affiliate, or 3) the greater of 90 percent of the Argus D3 index or the average of daily posted prices for the Argus D-5 Index.
- Instead of receiving the RIN Premium Allocation, WTD may choose to receive its allocation as RINs in-kind.
- IGI is to pursue biogas contracts with vehicle fuel producers located in King County, and will sell all biogas purchased under this contract to such King County Vehicle Fuel Producers. If conditions necessary to fulfill this provision are not in place, IGI will pursue biogas contracts with vehicle fuel producers located in Washington State, if necessary conditions are in place.

- Provision is made for the process required for the generation and allocation of RINs, pursuant to EPA requirements.

This summary of contract documents is intended to address highlights only. A provision-by-provision description of the contract documents is provided in Attachment 2 to the staff report.

The transmitted legislation is accompanied by a Fiscal Note (Attachment x), which anticipates revenue of \$4,053,663 per biennium, above the amount currently received through current sales to PSE, for the sale of biofuel and RINs as authorized by this measure.

## **ANALYSIS**

WTD has, over a 50-year period, constructed a system for the collection and processing of wastewater, and the production biosolids and biofuels, including biofuels generated at the system's South Plant in Renton. Congressional action to encourage the use of biofuels in the nation's transportation fuel supply, and subsequent action by EPA to designate wastewater biofuel as "cellulosic" biofuel, appears to have created an opportunity to monetize the biofuel element of the South Plant's wastewater digestion process. A number of major benefits appear to accrue from this opportunity. These include:

- Additional revenue generation in the amount of approx. \$4 million/biennium;
- Access to the RINs market of environmental credits, contributing to the national effort to incorporate renewable fuels into the nation's fuel supply, and thus supporting efforts to control greenhouse gas emissions nationally, and climate change targets of the Wastewater Treatment Division and King County; and
- Creating or expanding opportunities for natural gas-powered vehicles to utilize locally-produced biofuels.

There are a number of potential developments in the RFS marketplace that suggest continuing attention to the regulatory and market environment associated with this undertaking. First, EPA has, in the recent past, indicated a preference that the owner of the RINs should be the entity that processes biofuel into transportation fuel. If vehicle fuel is consumed as Liquid Natural Gas or Compressed Natural Gas, this suggests that, while WTD may produce pipeline-quality gas for delivery to IGI, there may be further processing steps to prepare it for use as vehicle fuel. To the extent that this is the case, were EPA to hold to its earlier position that the producer of transportation fuel is to be the generator of RINs, the WTD's ownership status, and right to sell, the RINs associated with biofuel production, would be open to question. However, following a public input process, EPA has apparently taken a step back from its original position, and indicated that it would address the ownership of RINs on a case-by-case basis.

While the "case by case" approach of EPA to RINs ownership does not provide a definitive federal answer to this question, it does suggest that County assertion of ownership in the form of a registration application to EPA supported by necessary contract documents, and the EPA's acceptance/approval of the parties participation in the RINs process, should represent a case-specific determination of County ownership,

and right to sell, the RINs generated through the treatment processes of the South Plant.

Staff has sought the input of counsel on this question; counsel has indicated that the contract is written with sufficient breadth that this question should not be a concern.

Additionally, the parties have chosen to pursue registration through the “cellulosic” pathway. This feedstock category, of the four categories managed by EPA, is the one that has proven least successful in meeting fuel generation targets. For a number of years consecutively, EPA has needed to revise downwards the annual volume target for transportation fuel through the cellulosic pathway, in the absence of a robust market response to the cellulosic fuel requirements of obligated parties. This has made for some lack of predictability/instability in this sector of the RINs market.

While these conditions encourage continuing monitoring of market and regulatory developments associated with this project, the potential climate change benefits, together with revenue benefits, indicate that approval of this measure appears to be a reasonable business decision.

## **AMENDMENT**

Following review by Council’s Legal Counsel and consultation with outside legal counsel retained by WTD, a number of potential changes have been made as part of Amendment S2. These changes insert code references to the Procurement code section addressing real and personal property that authorizes exemption from standard procurement processes under unique circumstances, allowing a negotiated direct sale, as well as to the Procurement code section addressing emissions credits and similar instruments that authorizes exemption from standard procurement processes under unique circumstances, allowing negotiated direct sale emissions credits and similar instruments. The language is further revised to specify a Council finding of unique circumstances supporting a negotiated direct sale, and to identify pertinent elements of the Strategic Climate Action Plan that address carbon emissions offsets, for which revenue realized through this contract may be expended.

Amendment S2 would also replace the Attachment A Base Contract, Special Provisions, Biogas Special Provisions and Transaction. The revised contract documents specify the process for determining early termination damages; provide that early termination damages apply to gas transactions, but not to biogas transactions; provide that any new agreement or changes to this agreement addressing the storage of gas or biogas will require approval of the Council; and provide that the Special Provisions Addendum applies only to biogas and associated green attributes.

Amendment S2 will be distributed at the meeting.

## **ATTACHMENTS**

1. Proposed Ordinance 2016-0339
2. Summary
3. Transmittal Letter

4. Fiscal Note
5. Executive Presentation Materials

**INVITED**

- David Broustis, Energy Manager, Department of Natural Resources and Parks
- Matt Kuharic, Climate Change Program Coordinator, Department of Natural Resources and Parks
- Grover Cleveland, Business Development Manager, Department of Natural Resources and Parks

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**KING COUNTY**  
**Signature Report**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**August 22, 2016**

**Ordinance**

**Proposed No. 2016-0339.1**

**Sponsors Dembowski**

1           AN ORDINANCE relating to the sale of biomethane and  
2           related environmental attributes held by the county;  
3           authorizing the wastewater treatment division to enter into  
4           an agreement for the sale of biomethane and environmental  
5           attributes associated with purified biomethane produced at  
6           the South wastewater treatment plant to IGI Resources, Inc.

7           **STATEMENT OF FACTS:**

- 8           1. The wastewater treatment division of the department of natural  
9           resources and parks operates three regional wastewater treatment facilities,  
10          including the South wastewater treatment plant in Renton, Washington,  
11          which treats approximately thirty billion gallons of wastewater each year.
- 12          2. Anaerobic digesters at the treatment plant generate methane digester  
13          biogas as part of the water and associated solid material treatment and  
14          purification processes.
- 15          3. Since 1988, the wastewater treatment division has been scrubbing  
16          impurities from the digester biogas to create biomethane, using some of  
17          the resulting pipeline quality gas for internal heating purposes, and

18 injecting the surplus pipeline quality gas into the regional natural gas  
19 pipeline.

20 4. Since 1988, the pipeline quality gas commodity not consumed at the  
21 treatment plant has been sold to Puget Sound Energy, per a pipeline  
22 quality gas purchase and sales agreement between King County and Puget  
23 Sound Energy, most recently amended in 2005.

24 5. In addition to the energy content of the pipeline quality gas, the origin  
25 of the pipeline quality gas as a byproduct of the wastewater treatment  
26 process provides significant greenhouse-gas reduction benefits when  
27 compared to the consumption of fossil fuel-derived natural gas.

28 6. These environmental benefits, as an extension of the energy content,  
29 are recognized as environmental attributes. Environmental attributes refer  
30 to renewable energy or other characteristics of a resource that are  
31 distinguished from a commodity, and can have financial value related to  
32 both voluntary and mandatory environmental requirements.

33 7. Renewable Identification Numbers are environmental attributes that  
34 can be produced when a renewable energy source is consumed for an on-  
35 road transportation purpose, and have an economic value beyond the  
36 commodity value of the renewable fuel. Renewable Identification  
37 Numbers are defined under the Federal Renewable Fuel Standard,  
38 authorized by Congress under the Energy Policy Act of 2005 and  
39 expanded under the Energy Independence and Security Act of 2007,  
40 which was created in an effort to reduce greenhouse gas emissions and

41 expand the nation's renewable fuels sector while reducing reliance on  
42 imported oil.

43 8. Under the Federal Renewable Fuel Standard legislation, obligated  
44 parties such as oil producers and importers must meet specific annual  
45 renewable fuel obligations for on-road transportation fuels, through  
46 Renewable Identification Number credits. The legislation has created  
47 demand for transportation fuels sourced from renewable sources,  
48 including biomethane sourced from wastewater treatment plants.

49 9. In 2014, in an attempt to determine if the Federal Renewable Fuel  
50 Standard would result in greater economic value for wastewater  
51 biomethane, the wastewater treatment division issued a request for  
52 proposals for the future sale of the combined pipeline quality gas  
53 commodity and any related environmental attributes of the biomethane.

54 10. Through a selection process, the wastewater treatment division  
55 selected IGI Resources, Inc., for the sale of the biomethane, specifying  
56 that the environmental attributes be monetized as Renewable Identification  
57 Numbers.

58 11. After certification under the Federal Renewable Fuel Standard,  
59 Renewable Identification Numbers will be generated when the biomethane  
60 generated at the South wastewater treatment plant is sold to IGI  
61 Resources, Inc., and consumed by local natural gas powered vehicles,  
62 resulting in renewable fuels being utilized for transportation purposes.

63 12. Under K.C.C. 4.56.250, sales of rights, title or interests in emissions  
64 credits, offsets or allowances or renewable energy certificates, credits,  
65 benefits, environmental air quality credits and any similar rights, title or  
66 interests held by the county are exempt from the real and personal  
67 property requirements of K.C.C chapter 4.56 when unique circumstances  
68 are present. Such sales may be made in the best interests of the public to a  
69 person or entity through a direct agreement negotiated by the King County  
70 executive and approved by the King County council.

71 13. The council finds that unique circumstances are present for this  
72 agreement because the market for the sale of biomethane and the  
73 environmental attributes from biomethane is highly specialized and is  
74 subject to market variability that requires prompt action. The nature of  
75 these rights is unique in that they do not lend themselves to a sale to the  
76 highest responsible bidder at public auction or by sealed bid. Although  
77 K.C.C. 4.56.250 authorizes the county to negotiate directly with a person  
78 or entity in such circumstances, nevertheless, the county conducted a  
79 competitive process to locate a qualified buyer to ensure that this  
80 agreement is in the best interests of the public.

81 14. The sale of the biomethane and related environmental attributes  
82 provide public benefit by increasing the revenue generated through the  
83 sale of the biomethane resource. The revenue from the sale of the  
84 biomethane and related environmental attributes will be used to reduce or  
85 offset greenhouse gas emissions greater than the reduction benefit that

86 would come through direct wastewater treatment division ownership of  
87 the environmental attributes, but only if the use of wastewater revenues is  
88 consistent with: chapter 35.58 RCW; Section 230.10.10 of the King  
89 County Charter; agreements for sewage disposal entered into between  
90 King County and component agencies; and other applicable county  
91 ordinance and state law restrictions. Revenue from the sale will also be  
92 used to expand energy efficiency and renewable energy generation efforts  
93 within the wastewater treatment division.

94 15. The investment of revenue from the sale of the biomethane and  
95 related environmental attributes to expand energy efficiency and  
96 renewable energy production and use within the wastewater treatment  
97 division and the resulting financial savings from these efficiencies has the  
98 effect of stabilizing rates.

99 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

100 SECTION 1. Findings: The King County council hereby finds that a direct  
101 agreement for the sale of biomethane and the related environmental attributes at the  
102 South Wastewater Treatment Plant is in the best interests of the public.

103 SECTION 2. The King County executive is hereby authorized to execute a base  
104 contract for sale and purchase of natural gas and all related documents with IGI  
105 Resources, Inc., substantially in the form of Attachment A to this ordinance.

106 SECTION 3. Moneys from the sale of biomethane and environmental attributes  
107 under section 2 of this ordinance shall be allocated to the originating division. The  
108 revenue from the biomethane and environmental attributes shall be used to further the

109 goals outlined in the 2015 Strategic Climate Action Plan. Each year, the division shall  
110 use the revenue to offset carbon emissions in excess of the reduction benefit that would  
111 come through direct wastewater treatment division ownership of the environmental  
112 attributes. Revenue beyond that needed for the annual carbon emissions offsets may be  
113 spent on rate stabilization.

114

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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J. Joseph McDermott, Chair

ATTEST:

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** A. Base Contract for Sale and Purchase of Natural Gas

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date **Month**     , 2016. The parties to this Base Contract are the following:

<b>PARTY A</b> IGI Resources, Inc.	<i>PARTY NAME</i>	<b>PARTY B</b> King County, through its Department of Natural Resources and Parks -- Wastewater Treatment Division
PO Box 6488 Boise, ID 83707-6488	<i>ADDRESS</i>	Wastewater Treatment Division 201 S. Jackson St., Suite 500 Seattle, WA 98104
<a href="http://www.igires.com">www.igires.com</a>	<i>BUSINESS WEBSITE</i>	<a href="http://www.kingcounty.gov/environment/wtd.aspx">www.kingcounty.gov/environment/wtd.aspx</a>
	<i>CONTRACT NUMBER</i>	
19-429-0953	<i>D-U-N-S® NUMBER</i>	135108934
<input checked="" type="checkbox"/> US FEDERAL: 82-0401137 <input type="checkbox"/> OTHER:	<i>TAX ID NUMBERS</i>	<input checked="" type="checkbox"/> US FEDERAL: 91-6001327 <input type="checkbox"/> OTHER:
<b>Idaho</b>	<i>JURISDICTION OF ORGANIZATION</i>	<b>Washington</b>
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input checked="" type="checkbox"/> Other: <b><u>a home rule charter county and political subdivision of the State of Washington</u></b>
BP Corporation North America, Inc.	<i>GUARANTOR (IF APPLICABLE)</i>	
<b>CONTACT INFORMATION</b>		
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <b>COMMERCIAL</b>	ATTN: <i>David Broustis</i> TEL#: 206-477-4544 FAX#: _____ EMAIL: <i>david.broustis@kingcounty.com</i>
ATTN: <b>Customer Service Department</b> TEL#: <u>208-395-0520</u> FAX#: <u>208-395-0531</u> EMAIL: <u>igioptions@bp.com</u>	▪ <b>SCHEDULING</b>	ATTN: <b>Please Provide</b> TEL#: _____ FAX#: _____ EMAIL: _____
ATTN: <b>Natural Gas Marketing - Contract Services</b> TEL#: <u>713-323-2000</u> FAX#: <u>713-323-0203</u> EMAIL: _____	▪ <b>CONTRACT AND LEGAL NOTICES</b>	ATTN: <i>David Broustis</i> TEL#: 206-477-4544 FAX#: _____ EMAIL: <i>david.broustis@kingcounty.com</i>
ATTN: <b>Natural Gas Marketing - Credit</b> TEL#: <u>208-395-0500</u> FAX#: <u>208-395-0530</u> EMAIL: <u>karl.wagner@bp.com</u>	▪ <b>CREDIT</b>	ATTN: <i>Max Foster</i> TEL#: <u>206-477-5362</u> FAX#: <u>206-681-1741</u> EMAIL: <i>max.foster@kingcounty.gov</i>
ATTN: <b>Natural Gas Marketing - Confirmations</b> TEL#: <u>208-395-0500</u> FAX#: <u>281-227-8470</u> EMAIL: _____	▪ <b>TRANSACTION CONFIRMATIONS</b>	ATTN: <i>David Broustis</i> TEL#: 206-477-4544 FAX#: _____ EMAIL: <i>david.broustis@kingcounty.gov</i>
<b>ACCOUNTING INFORMATION</b>		
ATTN: <b>Natural Gas Marketing - Accounting</b> TEL#: <u>208-395-0500</u> FAX#: <u>208-395-0536</u> EMAIL: _____	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	ATTN: <b>Francesca Ho- Revenue &amp; Accounts Receivable Section</b> TEL#: <u>206-477-5521</u> FAX#: <u>206-684-1741</u> EMAIL: <i>francesca.ho@kingcounty.gov</i>
BANK: <i>JP Morgan Chase Bank, New York, NY</i> ABA: <u>021000021</u> ACCT: <u>323363075</u> OTHER DETAILS: <u>For the Account of IGI Resources, Inc.</u>	<i>WIRE TRANSFER NUMBERS (IF APPLICABLE)</i>	BANK: <u>U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101</u> ABA: <u>123000848</u> ACCT: <u>153910685327</u> OTHER DETAILS: <u>Include details regarding purpose of wire or ACH</u>
BANK: <i>JP Morgan Chase Bank, New York, NY</i> ABA: <u>021000021</u> ACCT: <u>323363075</u> OTHER DETAILS: <u>For the Account of IGI Resources, Inc.</u>	<i>ACH NUMBERS (IF APPLICABLE)</i>	BANK: <u>U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101</u> ABA: <u>123000848</u> ACCT: <u>153910685327</u> OTHER DETAILS: <u>Include details regarding purpose of wire or ACH</u>
ATTN: <b>Bank of America-c/o Remittance Services Lockbox 12124</b> ADDRESS: <u>12124 Collections Center Drive Chicago, IL 60693</u>	<i>CHECKS (IF APPLICABLE)</i>	ATTN: <b>King County Treasury Operations/CCP</b> ADDRESS: <b>Finance and Business Operations Division</b> King County Administration Building 500 4 <sup>th</sup> AVE #600 Seattle, WA 98104-2387

## Base Contract for Sale and Purchase of Natural Gas

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply.

<b>Section 1.2</b> Transaction Procedure <input type="checkbox"/> Oral (default) OR <input checked="" type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u>
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	<b>Section 2.8</b> Confirming Party <input type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> _____ IGI Resources, Inc.
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input type="checkbox"/> Early Termination Damages Apply (default) OR <input checked="" type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	<b>Section 15.5</b> Choice Of Law New York; provided that matters relating to the legal power and authority of Party B under this Contract will be governed by the laws of Washington
<b>Section 7.2</b> Payment Date <input type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input checked="" type="checkbox"/> 20 <sup>th</sup> Day of Month following Month of delivery	<b>Section 15.10</b> Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.2</b> Method of Payment <input type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply
<input checked="" type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: 11 <b>Addendum(s): Biogas Supply Addendum – Vehicle Fuel Segment – Supply side</b>	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<b>IGI RESOURCES, INC.</b>	<i>PARTY NAME</i>	<b>KING COUNTY, THROUGH ITS DEPARTMENT OF NATURAL RESOURCES AND PARKS -- WASTEWATER TREATMENT DIVISION</b>
By: _____	<i>SIGNATURE</i>	By: _____
<b>Randy Schultz</b>	<i>PRINTED NAME</i>	<b>Gunars Sreibers</b>
<b>President</b>	<i>TITLE</i>	<b>Interim Division Director</b>

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

**The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.**

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.
- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance

Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

**The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.**

**Cover Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the

difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

## SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## SECTION 6. TAXES

**The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.**

### **Buyer Pays At and After Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

### **Seller Pays Before and At Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

**Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, ____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
<b>Performance Obligation and Contract Quantity:</b> (Select One) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; padding: 5px;"> <b>Firm (Variable Quantity):</b>                      _____ MMBtus/day Minimum                      _____ MMBtus/day Maximum                      subject to Section 4.2. at election of  <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller                 </td> <td style="width: 33%; padding: 5px;"> <b>Interruptible:</b>                      Up to _____ MMBtus/day                 </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b>   				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			



## Summary of Biogas Sale and Purchase Transaction

### King County Wastewater Treatment Division – IGI Resources, Inc.

#### Contract Objectives

- Monetize biomethane and environmental attributes at market prices
  - Take advantage of the Federal Renewable Fuel Standard (RFS) environmental attribute monetary premium value
- Prioritize sale of biomethane to local natural gas vehicle market, to encourage the use of locally-produced renewable transportation fuels
- Preserve flexibility for variable biomethane output, to reflect historical plant output

#### Overview of Contract Structure. Use of the North American Energy Standards Board (“NAESB”) master agreement

- Commonly used/typical master agreement in the wholesale natural gas market
  - Standard contract for natural gas transactions throughout North America
- Provides ability to customize for specialized transactions, such as this contract

#### Analysis of Contract Documents

*BC = Base Contract (NAESB), plus Special Provisions Attachment to the Base Contract*

*BSP = Biogas Special Provisions Addendum*

*BTC = Biogas Transaction Confirmation*

Contract	Item	Page	Details	Special Provisions Details
BC	Section 1: Purpose and Procedures	3 of 14	<p>Describes the process for the parties to enter into transactions under the NAESB master agreement. Agreements between the parties for the purchase and sale of gas must be in writing; no oral agreements are enforceable. Note that the Biogas Transaction Confirmation will be executed simultaneously with the Base Contract and special provisions.</p> <p>The parties are authorized to record telephone lines of commercial personnel.</p>	Each party indemnifies the other party for claims relating to the recording of its employees' telephone lines with the other party's commercial personnel.
BC	Section 2: Definitions	3 of 14	Defines terms used in this document	Defines terms used in the Special Provisions addendum
BC	Section 3: Performance Obligation	5 of 14	<p>If a party breaches an obligation to sell or purchase gas under the contract, the other party may purchase (or sell, as applicable) such gas in the market and recover damages (if replacement gas is purchased from another supplier at a higher price than the price under this contract or, as applicable, if unpurchased gas is sold to another buyer at a lower price than the price under this contract) from the other party. Note that King County's only liability under this section would be if it sold gas from the biogas project to a</p>	<p>The parties may not agree to a purchase and sale of gas that is done on a fixed price basis (i.e., a payment that is not completely calculated at market prices) without agreeing on a payment mechanism that compensates IGI Resources for losses incurred in force majeure events. Note that this concept does not impact the transaction agreed by the parties under the Biogas Transaction Confirmation.</p> <p>If a Regulatory Event (a change in law that impacts the ability to perform or</p>

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Contract	Item	Page	Details	Special Provisions Details
			buyer other than IGI Resources.	imposes significant new costs on a party's performance) occurs, the parties will attempt to reach agreement to remedy the impacts of such event. Absent an agreement by the parties, the impacted party may terminate the contract on 10 business days' notice.
BC	Section 4: Transportation, nominations and imbalances	6 of 14	<p>King County is responsible for transportation of gas to the Delivery Point. IGI Resources is responsible for transportation of gas from the Delivery Point.</p> <p>The parties agree to (i) coordinate gas nominations with Puget Sound Energy, (ii) promptly inform each other of any deviations from scheduled gas volumes, and (iii) cooperate to avoid any imbalance charges with Puget Sound Energy. If an imbalance charge occurs, the party whose acts or omissions caused the imbalance charge is responsible for paying it.</p>	
BC	Section 5: Quality and Measurement	6 of 14	<p>King County is responsible for compliance of the gas with the quality requirements of Puget Sound Energy. Note that if gas is rejected by PSE due to noncompliance with quality specifications, King County does not incur any liability to IGI Resources</p>	

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Contract	Item	Page	Details	Special Provisions Details
			<p>under the contract for such gas.</p> <p>Gas delivered under the contract is to be measured in accordance with the procedures of PSE.</p>	
BC	Section 6: Taxes	6 of 14	<p>King County is responsible for all taxes on the gas prior to delivery at the Delivery Point. IGI Resources is responsible for all taxes on the gas at and after delivery at the Delivery Point.</p>	<p>King County is responsible for payments to production interest holders and for severance tax applicable to the gas.</p> <p>King County will invoice IGI Resources for any gross receipts, compensating, or sales or use tax applicable to the gas sold under the contract.</p> <p>The parties will cooperate with each other in the protest of taxes and furnish documentation relating to tax exemptions.</p>
BC	Section 7: Billing, payment, and audit	6 of 14	<p>King County will invoice IGI Resources monthly for gas sold and purchased. Payment is due by Automated Clearinghouse Credit by the later of (i) the 20<sup>th</sup> day of the month following delivery of gas or (ii) 10 days after delivery of an invoice. Payment for cover damages (damages for non-performance under Section 3 of the Base Contract) is due 5 business days after receipt of an invoice.</p> <p>A party may withhold disputed amounts pending resolution of an</p>	

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Contract	Item	Page	Details	Special Provisions Details
			<p>invoicing dispute.</p> <p>Interest on late payments accrues at the prime rate plus 2%.</p> <p>Either party can audit the relevant books and records of the other party to verify amounts and calculations. All invoices are presumed to be correct and final after 2 years from the month of gas delivery.</p> <p>The parties will net all undisputed amounts owing under the contract.</p>	<p>The 2 year presumption does not apply to taxes, tariff changes by PSE, and payments for green attributes of biogas. These amounts may be challenged and reviewed until 5 years from the month of gas delivery.</p>
BC	Section 8: Title, Warranty and Indemnity	7 of 14	<p>Title and risk of loss to the gas pass from King County to IGI Resources at the Delivery Point. King County is responsible for delivering gas with clean title (no encumbrances or liens). King County makes no other representations with respect to the gas sold.</p> <p>Each party is responsible for and indemnifies the other party for all claims that arise on the gas when the indemnifying party had title to the gas.</p>	<p>Deletes a representation under the base contract relating to the customs origin of gas sold, as there are no issues of customs or import of gas under this contract.</p>
BC	Section 9: Notices	7 of 14	<p>Specifies the procedures for giving of notices. Notices must be in writing and delivered via mail, courier service, email or fax. Notices are effective upon receipt.</p>	<p>No material edits to the base contract</p>

Contract	Item	Page	Details	Special Provisions Details
BC	Section 10: Financial responsibility	8 of 14	<p>If a party has reasonable grounds for insecurity of the ability of the other party to perform (e.g., due to a credit deterioration), it can require the other party to provide adequate assurance of performance (cash, letter of credit, etc.).</p> <p>Events of default under the contract are: (i) bankruptcy or insolvency, (ii) failure to provide required credit support, (iii) payment failure that is not cured within 2 business days.</p> <p>Upon the occurrence of an event of default, the non-defaulting party can suspend performance under the contract (for up to 20 days) and/or terminate the contract.</p> <p>Upon termination, the parties will make payment for all gas that has been delivered prior to termination. Neither party has liability for any term of the contract after termination.</p> <p>The non-defaulting party can set off amounts owed under any other agreements the parties may have between them.</p>	<p>Adds events of default for (i) a failure to perform any other obligation under the contract that is not cured within 7 business days, (ii) a merger event that results in a deterioration of creditworthiness, and (iii) defaults by IGI Resources’s guarantor.</p> <p>The defaulting party is responsible for payment of costs of the non-defaulting party incurred in terminating or enforcing its rights under the contract.</p> <p>Payment of termination damages is due within 5 business days after delivery of calculation thereof. The non-defaulting party may withhold any termination payment that may be owed to the defaulting party until all other claims between the parties (including bankruptcy claims) have</p>

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Contract	Item	Page	Details	Special Provisions Details
				<p>been satisfied.</p> <p>The parties make standard representations of the status of the contract under the bankruptcy code.</p> <p>IGI Resources must provide and maintain a parent guaranty in the amount of \$1 million to secure its performance obligations to King County. If IGI Resources fails to make a payment to King County, then King County may demand payment from IGI Resources parent company under the guaranty.</p>
BC	Section 11: Force Majeure	10 of 14	<p>A party impacted by force majeure is excused from its obligations under the contract during the force majeure event. Force majeure includes events or circumstances beyond the control of the parties, other than general economic or market events. An impacted party must give notice to the other party of the occurrence of a force majeure event.</p>	<p>A change in law may also form the basis for a force majeure claim.</p> <p>If the force majeure lasts for 180 days, either party may terminate the contract.</p>
BC	Section 12: Term	10 of 14	<p>The base contract may be terminated by either party on 30 days' notice. Termination of the base contract does not impact any transaction confirmations that are existing on the date of termination.</p>	<p>No material edits to the base contract</p>

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Contract	Item	Page	Details	Special Provisions Details
BC	Section 13: Limitations	10 of 14	<p>Where a calculation of damages is specified in the contract for a breach (e.g., failure to perform under Section 3 or events of default under Section 10), the remedies specified in the contract are the exclusive remedies of the non-defaulting party.</p> <p>Neither party is liable for indirect, consequential or punitive damages under the contract.</p>	
BC	Section 14: Market disruption	11 of 14	<p>If an index price that forms the basis for pricing under the contract fails to be published, the parties will agree on a replacement price. Absent an agreement, the parties will seek price quotations from dealers in the market to determine the price.</p>	
BC	Section 15: Miscellaneous	11 of 14	<p>This section contains standard contract boilerplate language.</p> <p>Assignments of the contract other than to affiliates or to lenders require the consent of the other party. The assigning party is not discharged from liability under the contract after the assignment.</p> <p>The contract is governed by New York law (this choice of law is commonly seen under gas purchase and sale contracts), except for the authority and</p>	

Contract	Item	Page	Details	Special Provisions Details
			<p>power of King County under the contract, which is governed by Washington law.</p> <p>The parties must keep information relating to the contract confidential.</p>	<p>King County is allowed to comply with applicable public records laws.</p> <p>The parties waive rights to jury trials.</p> <p>King County waives sovereign immunity defenses it may have.</p> <p>Disputes under the contract will be resolved by negotiation between the parties. Any unresolved disputes may be referred to state or federal courts in King County or Western District of Washington.</p>
BSP	Article I: Definitions and Interpretation	7	Defines terms used in the Biogas Special Provisions	
BSP	Article II: Specific Terms of Purchase & Sale	8	<p>King County represents that it owns all the green attributes of the biogas sold and that the biogas facility is compliant with EPA requirements.</p> <p>King County will give notice of expected gas deliveries by the 20<sup>th</sup> day of the month prior to delivery. King County will give notice of facility outages.</p> <p>If biogas that was previously sold under the contract is subsequently disqualified as biogas or if IGI Resources is unable to utilize the biogas as a vehicle fuel, King County must refund any payment that was made for the green attributes of such gas.</p> <p>King County is responsible for EPA registration of the biogas project and must deliver to IGI Resources documentation of registration and eligibility of the biogas to qualify under the applicable renewable fuel standards.</p>	

Contract	Item	Page	Details	Special Provisions Details
			Each party indemnifies the other party for claims arising while it has title to the biogas.	
BSP	Article III: Disruption Event	9	If IGI Resources's downstream contracts with vehicle fuel producers terminate, then IGI Resources will act to replace such contracts. During the period when IGI Resources is unable to sell biogas to vehicle fuel producers, the King County NAESB contract will continue in effect, but will only be a sale and purchase of natural gas (with no green attributes).	
BSP	Article IV: Miscellaneous	9	Standard contract boilerplate provisions.  If there are any conflicts between the base contract and the Biogas Special Provisions, the provisions of the Biogas Special Provisions will govern. If there are any conflicts between a transaction confirmation and the Biogas Special Provisions, the provisions of the transaction confirmation will govern.	
BTC	Performance Obligation	1 of 9	King County is obligated to deliver the Contract Quantity to the Delivery Point and to certify eligibility of biogas volumes with applicable regulatory programs.  During the disruption of a contract between IGI Resources and a vehicle fuel producer, no payment will be made for green attributes of gas (see article 3 of the Biogas Special Provisions above).	
BTC	Contract Price	1 of 9	<u>Contract Price for Gas.</u> The county will receive the full index price of the gas commodity, based on the Sumas, WA index published in Gas Daily;  <u>RIN Price.</u> The environmental attribute value is based on published market Renewable Identification Number (RIN) pricing. Revenue from IGI's sales are split between King County (70%) and IGI Resources (30%). The relevant RIN market uses two different market indices published by Argus to determine price (D5 and D3). D5 RIN pricing and market is well established, although volatile. D3 RINs transactions are in a nascent stage but have a market premium over D5 RINs. The contract provides King County with the benefit of the higher D5 RIN index, with certain protections if the D5 RIN market is not well functioning: <ul style="list-style-type: none"> <li>• If the D3 RIN market is liquidly trading, the D3 RIN index price is the</li> </ul>	

Contract	Item	Page	Details	Special Provisions Details
			<p>price under the contract.</p> <ul style="list-style-type: none"> <li>• If the D3 RIN market is not trading liquidly, then IGI Resources will attempt to sell the RINs on the market, with the actual proceeds received being split 70/30 between King County and IGI Resources.</li> <li>• If a sale is not possible, then the RINs are priced at the D5 RIN index price, with a floor of 90% of the D3 RIN index price. This gives King County protection against a large difference in the two index prices.</li> <li>• As an alternative to the pricing mechanism above, King County may elect in advance to receive its share of RINs in kind and market the RINs itself. Since the biogas sold under this contract will be part of IGI Resources’s portfolio of vehicle fuel volumes, exact tracking of contracts and value may be difficult. This “self help” provision is a protection to King County in the event that questions arise as to whether IGI Resources is maximizing the value of the RINs in the market.</li> </ul>	
BTC	Delivery Period	3 of 9	Delivery term is 36 months, with two one-year extensions, if mutually agreed-upon by both parties.	
BTC	Contract Quantity	3 of 9	King County is obligated to sell to IGI Resources all gas it injects for gas transportation into the PSE pipeline system. King County has operational flexibility to use gas for internal requirements before it is injected into the pipeline, without liability to IGI Resources.	
BTC	Delivery Point	3 of 9	Interconnection with Puget Sound Energy distribution system, at the current delivery location at the Renton South Plant facility	
BTC	Special Conditions: 1. Definitions	3 of 9	Defines terms used in the Biogas Transaction Confirmation	
BTC	Special Conditions: 2. Payment of RIN and LCFS Credit Premium Allocations	4 of 9	The RIN Premium is paid to King County by the 15 <sup>th</sup> day of the month following the month of gas delivery. If biogas is sold into California, the applicable credit premium is paid quarterly between the 15 <sup>th</sup> and 18 <sup>th</sup> day of the month following the end of a calendar quarter.	
BTC	Special Conditions: 3. Buyer’s Biogas Sales	4 of 9	IGI Resources will sell biogas to vehicle fuel producers in King County. If IGI	

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Contract	Item	Page	Details	Special Provisions Details
	to Vehicle Fuel Producers		Resources replaces its vehicle fuel producer contracts, it will give first priority to producers in King County and second priority to producers in Washington State before selling to an out of state producer.	
BTC	Special Conditions: 4. Monthly Nominations and	4 of 9	On the 20 <sup>th</sup> of each month, King County will communicate to IGI estimated gas delivery volumes for the following month.	
BTC	Special Conditions: 5. Vehicle Fuel Producers	4 of 9	The biomethane will be sold to Clean Energy Fuels at a list of locations to be detailed in the final contract.  IGI Resources will amend the Biogas Transaction Confirmation to reflect any new or replacement vehicle fuel producers to which it will sell the biogas sold under the King County NAESB.	
BTC	Special Conditions: 6. Representations	4 of 9	Each party makes standard representations of authority and solvency.	
BTC	Special Conditions: 7. Right to Extend Term	4 of 9	King County and IGI Resources can mutually agree to two additional one year term extensions.	
BTC	Special Conditions: 8. Transfer of CARB LCFS Regulated Party Status (if applicable)	4 of 9	If biogas is sold into California, King County will provide to IGI Resources standard documentation of the transfer of biogas to satisfy regulatory requirements in California.	
BTC	Special Conditions: 9. EPA and CARB Registration Cost	5 of 9	King County will submit to EPA documentation needed to certify biogas. The parties will share equally the cost of registering production and fuel pathways.	
BTC	Special Conditions: 10. Process for Generation and Allocation of LCFS Credits (if applicable)	5 of 9	If biogas is sold into California, King County will give IGI Resources data and cooperation needed to certify compliance with California credit requirements. IGI Resources will prepare reports needed to qualify for California credits and receive quarterly payments.  If Washington State enacts a regulatory system for environmental attributes, the parties will negotiate modifications to the Biogas Transaction Confirmation.	
BTC	Special Conditions: 11. Process for Generation and Allocation of RINs	6 of 9	King County will on a weekly basis give IGI Resources access to data regarding the quantity of biogas sold and other information needed to generate RINs.	

Contract	Item	Page	Details	Special Provisions Details
			<p>IGI Resources will engage Weaver to validate the RINs and generate weekly reports of RINs.</p> <p>If EPA changes the procedures for generating RINs, the parties will agree on modifications to the Biogas Transaction Confirmation to comply with such new or modified procedures.</p>	
BTC	Special Conditions: 12. Additional Event in Default	6 of 9	<p>The following are added as events of default with respect to deliveries of biogas:</p> <p>(1) a party commits a fraudulent act,</p> <p>(2) a party makes a material misrepresentation relating to biogas qualification or documentation,</p> <p>(3) with respect to King County as the defaulting party, the biogas facility is not registered with EPA within 6 months after the execution of the Biogas Transaction Confirmation.</p>	
BTC	Special Conditions: 13. Biogas Deliveries	6 of 9	<p>Biogas deliveries will not commence until the month after the biogas project is registered with EPA. The parties may reach an agreement for the purchase and sale of gas prior to such registration. Such gas would be held in storage pending EPA registration, at which time, the biogas would be sold to vehicle fuel producers and RINs generated.</p>	
BTC	Special Conditions: 14. Hierarchy	6 of 9	<p>In the event of an inconsistency between the base contract, biogas special provisions and the Biogas Transaction Confirmation, the provisions of the Biogas Transaction Confirmation will govern.</p>	

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June 22, 2016

The Honorable Joe McDermott  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will further King County's efforts to expand the local clean energy economy through the authorization to execute a Biomethane Purchase and Sale Agreement (contract) between IGI Resources, Inc. (IGI) and the Wastewater Treatment Division (WTD) of the Department of Natural Resources and Parks (DNRP).

Biomethane is purified biogas which meets or exceeds all natural gas quality standards and is interchangeable with fossil fuel derived natural gas. For more than twenty-five years, King County has produced renewable biomethane energy at the South Wastewater Treatment Plant, injected the biomethane into a natural gas pipeline, and sold the gas to Puget Sound Energy (PSE).

The legislation will provide for the biomethane produced at the South Wastewater Treatment Plant to be sold to IGI. Doing so will create a public benefit by supporting the use of biofuels for transportation purposes, while increasing the revenue received by the County.

Specifically, the ordinance will accomplish the following:

- Allow King County to tap into the lucrative economic value of environmental attributes for renewable transportation fuels through the Federal Renewable Fuel Standard (RFS), known as Renewable Identification Numbers (RINs)
- Generate an estimated \$736,000 in 2016 above the current revenue for the gas sales to PSE, by selling the biomethane with the associated environmental attributes, with an estimated \$3 million of additional revenue in the 2017-2018 biennium.
- Enable WTD to expand short and long-term greenhouse gas reduction efforts. Specifically, the revenue will be used to enhance biomethane production, reduce overall carbon emissions, invest in energy efficiency, and obtain more renewable energy to power its facilities. This collective work will significantly advance efforts by WTD toward carbon-neutrality.
- Encourage the use of local, renewable transportation fuels by directing the biomethane to be used to fuel natural gas vehicles in the Puget Sound region.
- Serve as a catalyst that encourages the development of biomethane projects by other wastewater treatment facilities, by serving as the first RFS-qualified wastewater biomethane to pipeline transportation fuel project in the State of Washington.

The Honorable Joe McDermott

June 22, 2016

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The legislation also furthers the goals of key County plans and initiatives as follows:

- The legislation furthers Environmental Sustainability Objective 3 of the King County Strategic Plan by using the biomethane for vehicle fueling to reduce climate pollution and prepare for the effects of climate change.
- The legislation also furthers the Strategic Climate Action Plan Transportation and Land Use strategy of collaborating with private industry to build demand and markets for alternative fuels.

In developing the legislation, and in an effort to ensure WTD would obtain the highest and best value for the biomethane produced at the South Wastewater Treatment Plant, DNRP issued a Request For Proposals (RFP) for the sale of the biomethane and related environmental attributes. IGI was selected as the preferred buyer of the biomethane. The proposed contract between WTD and IGI details compensation to King County for the sale of the biomethane and the corresponding Renewable Identification Number (RIN) environmental attributes.

To allow for the execution of this contract, King County has been concurrently working with PSE on an agreement that will enable the County to transport the biomethane to third parties through PSE's pipeline. The agreement is currently under review by the Washington State Utilities and Transportation Commission.

Thank you for your consideration of this ordinance.

If you have any questions about this ordinance, please feel free to contact Sharman Herrin, Government Relations Administrator of the Wastewater Treatment Division in the Department of Natural Resources and Parks, at 206-477-5376, or [sharman.herrin@kingcounty.gov](mailto:sharman.herrin@kingcounty.gov).

Sincerely,

Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Carolyn Busch, Chief of Staff

Anne Noris, Clerk of the Council

Carrie S. Cihak, Chief of Policy Development, King County Executive Office

Dwight Dively, Director, Office of Performance, Strategy and Budget

Christie True, Director, Department of Natural Resources and Parks (DNRP)

Gunars Sreibers, Acting Division Director, Wastewater Treatment Division, DNRP

Sharman Herrin, Government Relations Administrator, WTD, DNRP

2015/2016 FISCAL NOTE

Ordinance/Motion: 2016-XXXX  
 Title: Biomethane and Environmental Attribute Purchase and Sale Agreement  
 Affected Agency and/or Agencies: Wastewater Treatment Division, Department of Natural Resources and Parks  
 Note Prepared By: David Broustis  
 Date Prepared: 4/14/2016  
 Note Reviewed By:  
 Date Reviewed:

**Description of request:**

**Revenue to:**

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DNRP: Wastewater Treatment Division			736,000	4,053,663	4,053,663
<b>TOTAL</b>			<b>736,000</b>	<b>4,053,663</b>	<b>4,053,663</b>

**Expenditures from:**

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
<b>TOTAL</b>			<b>0</b>	<b>0</b>	<b>0</b>

**Expenditures by Categories**

	2015/2016	2017/2018	2019/2020
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Does this legislation require a budget supplemental?**

Notes and Assumptions:

- Biogas generation based on four year (2012-2015) average of gas injected into the pipeline: 1,760,673 therms per year
- Sales price of gas @ \$0.22/therm
- 1.1727 Renewable Identification Numbers (RINs) generated per therm of gas injected into the pipeline
- RIN sales price @ 75% of combined five year average (2011-2015) of D5 RIN price and 2016 Cellulosic Waiver Credit value
- 70% of total RIN value to King County, 30% to IGI Resources, Inc.
- Baseline comparison revenue @ \$0.2897/therm (Puget Sound Energy 2016 gas commodity price)
- 2016 revenue for five months, assuming contracts are complete and gas is moving per the contract by August 1st.
- Revenue beyond 2016 calculated at full year 2016 assumptions. Future market conditions are uncertain

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# Proposed Sale of Environmental Attributes

Leveraging King County's Production and Use of  
Renewable Energy to Meet Climate Goals

**Megan Smith**

*Director of Climate and Energy Initiatives*

*King County Executive Constantine's Office*



# Presentation Overview

- **2 pieces of legislation before TrEE**
- **How did we get here?**
  - Council Direction on renewable energy
  - Long track record of producing and using renewable energy
- **What is a RIN?**
- **Wastewater and Transit Legislation Summaries**
- **Next Steps and Timeline**

# Wastewater: Proposed Ordinance 2016-0339

- Authorizes agreement for the sale of biomethane gas produced at South Plant **and** related *environmental attributes*



# Transit: Proposed Ordinance 2016-0349

- Authorizes agreement for the sale of *environmental attributes* created when King County buses are powered by qualified renewable electricity



# Council-Adopted Goals & Policies

## 2015 Strategic Climate Action Plan (SCAP)

- Overall goal to reduce GHG emissions 80% by 2050
- Transit priority action to consider selling environmental attributes
- Building and Facilities Energy target for renewable energy production

## Ordinance 17971

- Directs Metro Transit to create carbon offset program
- Requires the Wastewater Treatment Division to be carbon neutral by 2025

## Ordinance 18106

- Directs Transit to consider monetizing “Renewable Identification Numbers”

## Comprehensive Plan

- E-202: Maximize the creation of resources from waste products from county operations . . . in a manner that reduces greenhouse gas emissions and produces renewable energy

## Strategic Plan

- Environmental Sustainability and Financial Stewardship



# King County Renewable Energy Leadership

## Producing Renewable Energy

- Wastewater and Landfill Gas
- Solar
- *We now produce energy equivalent to what we use to run county buildings and facilities*

## Consuming Renewable Energy

- Wastewater Treatment Plant operations
- Transportation biofuels
- Green power purchases



# Current King County Monetization of Environmental Attributes

## Cedar Hills Landfill

- Environmental Attribute contract with Puget Sound Energy

## West Point Treatment Plant

- Renewable electricity and related Environmental Attributes are sold to Seattle City Light



# Public Benefits of Proposed Legislation

- Reduces Greenhouse Gas Emissions
- Supports Use of Renewable Transportation Fuels
- Creates Revenue to Invest in climate action
- Builds on county investments in renewable energy production and alternative fuel vehicles



# What is a RIN?

- RIN stands for “Renewable Identification Number”
- Comes from the EPA Renewable Fuel Standard
- Goal is to increase use of renewable fuels in transportation over time
- Each RIN is tied to a specific quantity of qualified renewable energy used in transportation

# What is a RIN? (continued)

- RINs must be purchased by “Obligated Parties” like oil producers, refiners and importers
- Tradable commodity; price fluctuates
- EPA sets renewable fuel volume requirements for each year
- Proposed Wastewater and Transit transactions take advantage of “Cellulosic” RIN category, which is growing

# The RIN Transaction: 3 Parties

1. Biofuel *Producer*
2. Biofuel *Consumer* (Transportation Use)
3. RIN *Purchaser* (Obligated Party)

# Wastewater Ordinance

- **Authorize agreement with IGI Resources for sale of biogas and RINs**
- **Reinvest revenue in actions that further SCAP goals**
  - **Examples: energy efficiency retrofits, solar**

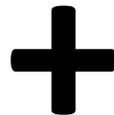


# Wastewater: How it works

- **South Treatment Plant produces renewable biomethane**
- **We sell biomethane and environmental attribute (RINs)**
- **We get gas commodity value, plus 70% of RIN value**
- **Three year agreement with two, one-year optional extensions**
- **Estimated \$4 million of additional biennial revenue**



South Treatment Plant  
biomethane production



Natural gas vehicles consume  
an equal volumes of gas as the  
treatment plant produces



# Transit Ordinance

- **Authorize agreement with Element Markets for the monetization of Environmental Attributes known as RINs**
- **Reinvest revenue in actions that further SCAP Goals**
  - **Example: Purchase biodiesel for Transit Fleet**



# Transit: How it works

- Electric trolley and electric bus fleet consume electricity
- Transaction pairs renewable electricity produced at landfill-gas-to-energy plant with Transit's use to create RINs
- Agreement for 70%+ of RIN value
- Three year agreement with two, optional one-year extensions
- Estimated \$1.6 million of new biennial revenue



Electricity produced  
with landfill gas

+



Electric buses consume an  
equal volume of electricity as  
the landfill produces

=



# Common Approach to Contracting and Legislation

- **For both transactions, pursued contract approach that minimizes risk and optimizes revenue**
  - Issued Request for Proposals for both transactions
  - WTD and Transit used outside Counsel experienced with similar transactions.
  - King County PAO review
  - Further revisions identified by Council Central Staff
- **Both authorizing ordinances focus investments of revenue on actions that further SCAP goals**



# Next Steps

- **Establish RIN relationship (*DONE*)**
- **If authorized by Council, execute contract documents**
- **Submit transaction to EPA for review and approval**
  - Estimated 3-6 month process for approval
  - Wastewater biomethane transaction type has track record with EPA; may go faster than Transit pathway
- **Environmental Attribute revenue begins accruing after EPA approval**
  - If approved, King County stands to gain more than \$200,000 per month in new revenue