

05/11/99

CT  
kenthighlandsord  
Clerk 05/12/99

Introduced By: Chris Vance

Proposed No.: 1999-0282

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ORDINANCE NO. **13578**

AN ORDINANCE authorizing the conveyance of certain county-owned property located within the Kent-Highlands landfill, in council district 13, to the city of Seattle.

STATEMENT OF FACTS:

1. King County department of transportation, road services division, purchased approximately four acres located on the Kent-Des Moines road in 1934 for right-of-way purposes. Portions of the property were used for road purposes with the remainder unused by the county.
2. During the 1970s the properties which adjoin the subject property were used by the city of Seattle as part of the Kent-Highlands landfill.
3. In 1996, the city of Seattle filed a lawsuit against King County seeking contribution for clean-up costs incurred, estimated to total twenty-five million dollars, related to the Kent-Highlands landfill. Seattle alleged that the county was liable as an owner of property included within the landfill, under the Model Toxics Control Act, chapter 70.105D RCW.
4. In answer to the lawsuit, King County asserted counterclaims against Seattle seeking damages based on a number of legal grounds. In lieu of further litigation, a settlement was reached in which King County paid the city one hundred thousand dollars as full and final settlement of the county's alleged liability for the past, present and future cleanup costs associated with the landfill. In addition, King County agreed to convey the subject property to the city of Seattle for mutual benefits.
5. The road services division finds the property surplus to its current and foreseeable needs. The conveyance of this property to the city of Seattle for mutual benefits is considered to be in the best interest of the citizens of King County and the city of Seattle.

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6. The county may dispose of county property to another governmental agency by negotiation, upon such terms as may be agreed upon and for such consideration as may be deemed by the county to be adequate, under Ordinance 12045, Section 13.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to execute the necessary documents to convey the following described property located in council district 13 to the city of Seattle for mutual benefits:

That portion of the West 400 feet of the North 1,436 feet of the South 1,944 feet of Enos Cooper Donation Claim No. 38, lying North of the Kent-Des Moines pavement and being more particularly described as follows:

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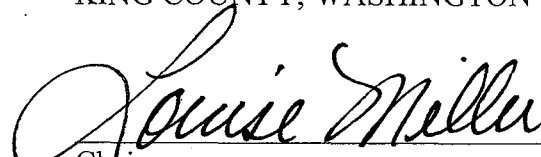
Beginning at the intersection of the West line of said Donation Claim with the North boundary of the Kent-Des Moines pavement right of way; thence running Northerly along the West boundary line of Donation Claim No. 38 a distance of 450 feet; thence running Easterly a distance of 400 feet; thence running Southerly a distance of 220 feet; thence running South 36-00 West, a distance of 440 feet, more or less, to a point on the North right of way boundary of the Kent-Des Moines pavement; thence running Northwesterly along said North right of way boundary to the point of beginning; EXCEPT that portion thereof conveyed to the State of Washington by deed recorded under Recording No. 7106240395.

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INTRODUCED AND READ for the first time this 1st day of June, 1999.  
PASSED by a vote of 10<sup>eb</sup> to 0 this 6th day of July, 1999.

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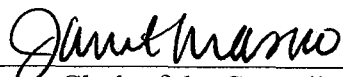
KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Chair

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ATTEST:

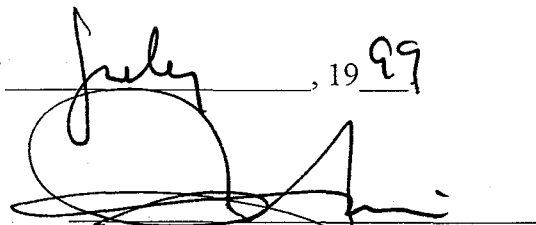
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Deputy Clerk of the Council

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APPROVED this 12 day of July, 1999

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King County Executive

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Attachments: Map  
Settlement, Release and Indemnification Agreement  
Quit-claim Deed



SETTLEMENT, RELEASE AND INDEMNIFICATION AGREEMENT

This settlement, release, and indemnification agreement ("Agreement") is made between the City of Seattle, a municipal corporation ("Seattle"), and King County ("the County").

Seattle sued the County and other parties in the United States District Court for the Western District for Washington, Cause Number C96-0037C (the "Lawsuit"), seeking to recover monies spent and to be spent by Seattle to respond to releases of hazardous substances at the Kent Highlands Landfill in Kent, Washington ("Landfill"). Seattle alleged that the County was liable as an owner of approximately four acres of real property included within the Landfill pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*, and the Model Toxics Control Act ("MTCA"), RCW 70.105D.

In its Answer to the Lawsuit, the County asserted counterclaims against Seattle seeking damages based on a number of legal grounds and other reparation. The County also asserted cross-claims against its co-defendants requesting contribution for the costs the County may incur as a result of the Lawsuit. Subsequently, the County filed several third-party complaints against other potentially responsible parties ("PRPs") based upon CERCLA, MTCA and other legal grounds which included, but were not limited to: trespass and nuisance.

AGREEMENT

In consideration of the mutual promises made herein, and for other good and valuable consideration, Seattle and the County agree as follows:

1. Payment to Seattle.  
The County shall pay to Seattle the sum of One Hundred Thousand Dollars (\$100,000.00) as full and final settlement of the County's alleged liability for the past, present and future investigation, cleanup and all other costs associated with the Landfill. The County shall pay Seattle within 30 days of the time this Agreement is executed by the last party to sign it.

2. Release.

Seattle and its agents, employees, successors and assigns, hereby release and forever discharge the County from any and all past, present or future claims, demands, actions, suits, or proceedings of any kind or nature whatsoever, whether known or unknown, on account of or in anyway arising out of all actions, failures to act, events, occurrences, or circumstances of any kind that are the subject of the Lawsuit and/or related to the Landfill

including but not limited to property damage, transportation of alleged hazardous substances to the Landfill, the presence of hazardous substances at the Landfill, and on- or off-site contamination emanating from the Landfill. This release is intended to dispose of all claims, actions for damages, indemnity or contribution of any kind arising out of the facts and allegations that are the subject matter of the Lawsuit or that are based upon or related in any way to the presence of hazardous substances, petroleum products, environmental pollutants or contaminants or any other environmental conditions at or relating to the Landfill.

The County and its agents, employees, successors and assigns hereby release and forever discharge Seattle from any and all past, present or future claims, demands, actions, suits, or proceedings of any kind or nature whatsoever (except claims tendered to Seattle pursuant to the indemnity provision of Section 6, below, and any actions to enforce that indemnity provision), claims related to the Landfill, the Lawsuit and Seattle's use or occupation of County property at the Landfill, including but not limited to any claim alleging limitations on the County's use of such property, "takings," or damages resulting from the presence on such property of solid waste, hazardous substances, wells, final cover and all other closure elements. Any and all present and/or future claims asserted against the County covered by the indemnity in Section 6 below are specifically excluded from this release.

3. Dismissal of Lawsuit.

The parties will cause to be filed a Stipulated Order of Dismissal with Prejudice (or its functional equivalent) promptly after they execute this Agreement.

4. Assignment of Claims.

In consideration for the terms and conditions presented in this Agreement, the County will assign Seattle its claims against all other parties in the Lawsuit. Such assignment will occur promptly after the parties execute this Agreement.

5. Transfer of the County's Property to Seattle.

The County currently owns approximately four acres of real property at the Landfill. As further consideration for this Agreement, the County desires to transfer ownership of its real property at the Landfill to Seattle. Any such property transfer is specifically subject to and conditioned upon approval by the Metropolitan King County Council. This Agreement, however, is not conditioned upon such property transfer and will remain in full force and effect whether or not the real property transfer occurs. If such transfer occurs, Seattle accepts the County's property as is, knowing it has been utilized as a landfill and with no warranties of any kind.

6. Indemnification.

Seattle agrees to indemnify, defend, and hold the County harmless from and against all claims by third parties (present and future), actions, administrative proceedings, judgments, damages, penalties, fines, costs, expenses, losses or liabilities, consultant fees and expert witness fees of any kind or nature (except attorneys fees incurred by the County) related to the presence of hazardous substances, petroleum products, environmental pollutants or contaminants or any other environmental conditions at or relating to the Landfill, including but not limited to all claims, cross-claims and counterclaims currently pending and that may be later asserted in the above-referenced Lawsuit.

7. County's Ongoing Duty to Cooperate.

The County agrees that, in further consideration for Seattle's undertakings in this Agreement, the County and its divisions shall cooperate in good faith with Seattle in its prosecution and/or defense of the litigation. Such cooperation shall include but not be limited to honoring commitments previously made relating to production of documents and witnesses, permitting Seattle and its attorneys to directly contact County employees, and responding in a reasonably prompt fashion to any further document requests that Seattle might have related to this Lawsuit.

8. General Provisions.

Nothing in this Agreement shall constitute or be interpreted, construed, or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, or an estoppel against any other person not a party to this Agreement. This Agreement shall not be used for any purpose except to enforce the terms and conditions of this Agreement.

If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than voided, if possible, to achieve the intent of the parties. If any portion of this Agreement becomes unenforceable or void, the balance of the Agreement shall remain in full force and effect.

If either Seattle or the County commences an action to interpret or enforce any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled to its reasonable attorneys' fees, litigation expenses and costs, and other costs and damages arising from or related to such an action or breach of this Agreement.

Seattle and the County represent and warrant that they have the power and authority to enter into this Agreement.

This Agreement shall be governed by, interpreted, and in all other ways construed in accordance with the laws of the State of Washington.

Counsel for Seattle and the County have reviewed and approved as to form this Agreement, and Seattle and the County have both consulted with their attorneys and have concluded that this is a fair and reasonable settlement.

Seattle and the County have each agreed to be responsible for the payment of their respective attorneys' fees and costs previously incurred in connection with the Lawsuit.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

This Agreement represents the complete expression of the agreement between Seattle and the County as it relates to the Lawsuit referenced above. Any oral or written representations or understandings not incorporated herein are excluded.

CITY OF SEATTLE

By: *Diana Gale*

Print Name: Diana Gale

Title/Position: Director,  
Seattle Public Utilities

Date: \_\_\_\_\_

Approved as to form:

*Michael Kozel*  
Assistant City Attorney

KING COUNTY

By: *Harold S. Taniguchi*

Print Name: HAROLD S. TANIGUCHI

Title/Position: MANAGER  
KING CO. ROAD SERVICES DIVISION

Date: SEPT. 9, 1997

Approved as to form:

*Kathryn A. Killinger*  
Senior Deputy Prosecuting Attorney



13578

# QUIT-CLAIM DEED

The grantor.s herein HAZEL T. ROBBINS and FRED B. ROBBINS, her husband,

for the consideration of Ten (\$10.00)-----No/100-----Dollars

and also of benefits to accrue to them by reason of laying out and establishing a public road through their property, and which is hereinafter described, convey, release, and quit-claim

to the County of King, State of Washington, for use of the public forever, as a public road and highway, all interest in the following described real estate, viz.:

That portion of the West 400 ft., of the North 1436 feet of the South 1944 feet of Enos Cooper D.C. No. 38 lying North of the Kent-Des Moines pavement and being more particularly described as follows:

Beginning at the intersection of the West line of said Donation Claim with the North Boundary of the Kent-Des Moines pavement right-of-way, thence running Northerly along West boundary line of D.C. No. 38, a distance of 450 feet, thence running Easterly a distance of 400 feet, thence running Southerly " " " 220 " " " S.36°00' W. " " " 440 feet more or less to a point on the North right-of-way boundary of the Kent Des Moines pavement, thence running Northwesterly along said North right-of-way boundary to the point of beginning. (Tax Lot 1)

Containing 4.05 acres more or less.

Right-of-way Kent-Des Moines Highway Slides- 1934.

Vol 1591 Pg 612

situated in the County of King, State of Washington.

Dated this 14<sup>th</sup> day of July A. D. 1934

WITNESS

Lucas C. Keller

Hazel T. Robbins  
Fred B. Robbins

June 27, 1999  
L96P0007 KCORD

Introduced By: Jane Hague

Proposed No.: 98-411

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ORDINANCE NO. 13579

AN ORDINANCE concurring with the decision of the Hearing Examiner to approve, subject to conditions (modified), the preliminary plat of Cedar Cove, designated land use services division file no. L96P0007, and denying the appeals of the threshold determination of environmental non-significance (mitigated).

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. This ordinance does hereby adopt and incorporate herein as its findings and conclusions the findings and conclusions contained in the report of the hearing examiner dated May 25, 1999, which was filed with the clerk of the council on June 24, 1999, approving, subject to conditions (modified), the preliminary plat of Cedar Cove, designated land use services division