

May 18, 1993  
93-360.sub (ldt)

Introduced by:

Proposed No.:

93-360

**9015**

MOTION NO.

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A MOTION authorizing the executive to enter into a purchase and sale agreement for the acquisition of property known as Section 36 and establishing the Section 36 citizens advisory committee.

WHEREAS, approximately 640-acres of land on the east edge of the Sammamish Plateau, (known as "Section 36"), presently owned by the State of Washington Common Schools Trust and administered by the Department of Natural resources (DNR) will be sold by the state in the immediate future, and

WHEREAS, the East Sammamish Planning Area has experience some of Washington state's most rapid growth in recent years and is expected to continue to grow in the future, and

WHEREAS, King County's draft 1993 Parks Needs Assessment indicates the East Sammamish Planning Area is deficient in park and open space, and

WHEREAS, County acquisition of Section 36 would provide parks and open space for East Sammamish Plateau residents and citizens throughout King County, and

WHEREAS, by resolution of the Board of Natural Resources the sale of this property to King County by direct negotiated sale has been authorized, and

WHEREAS, an updated appraisal of the property by DNR and reviewed by King County has placed the value of the property at \$8 million, and

WHEREAS, Ordinance 10710 passed January 19, 1993 appropriated \$8,000,000 for the acquisition of Section 36, provided that staff continue negotiations with DNR to explore methods for the county to acquire the land with minimal initial capital cost, and

WHEREAS, staff has considered a number of options for acquisition of Section 36 at minimal capital costs including land exchange and purchase through contract, but no suitable

1 lands of equivalent value have been identified to exchange, and  
2 whereas DNR is statutorily required to charge significantly  
3 higher interest rates on a contract purchase than King County  
4 would typically pay when borrowing funds itself, and

5 WHEREAS, county staff and DNR have determined that the  
6 most appropriate transaction is a direct sale to King County at  
7 full price, and

8 WHEREAS, the county will seek grant funds to reimburse the  
9 Real Estate Excise Tax Bond program and will file a letter of  
10 retroactivity stating the county's intent to apply for these  
11 grants with appropriate state and local agencies, and

12 WHEREAS, Section 36 will provide opportunities for a  
13 variety of active parks needs, passive open space, and  
14 preservation of critical habitat corridors, and

15 WHEREAS, a balance between preservation efforts and active  
16 park development shall be encouraged, and

17 WHEREAS, a citizen advisory committee shall assist the  
18 county in determining how Section 36 would best be used to meet  
19 existing and future park and opens space needs, and

20 NOW THEREFORE BE IT MOVED by the Council of King County:

21 A. The King County executive is authorized to sign a  
22 purchase and sale agreement, in substantially the form of  
23 Attachment A, with the Washington State Department of Natural  
24 Resources for the acquisition of Section 36 and to implement  
25 the terms and conditions therein.

26 B. A citizen advisory committee recommended by the  
27 executive is established by the council to assist King County  
28 in determining how best to use and preserve Section 36 for park  
29 and open space purposes, including the ultimate ownership  
30 pattern, custodial agencies, restrictive covenants, and range  
31 of allowable uses. The committee will be responsible for  
32 forwarding to the executive and council a recommendation  
33 regarding the most appropriate uses of Section 36 by December  
34 15, 1993.

1 C. The citizens advisory committee will be comprised of a  
 2 representative from Council district three, appointed by the  
 3 Council, a representative from the King County Parks and Open  
 4 Space Citizens Advisory Forum, a representative from the King  
 5 County Open Space Citizens Oversight Committee, a  
 6 representative from the Active Sports Coalition, a  
 7 representative of general trail interests, a representative  
 8 from the East King County Audubon Society, and a representative  
 9 from the Seattle/King County Land Conservancy. With the  
 10 exception of the District three representative, all members  
 11 are appointed by the Executive, and confirmed by the Council.

12 D. Any grant revenues received for this acquisition  
 13 project, or proceeds from the subsequent sale of any portion of  
 14 this property, shall be deposited in the Real Estate Excise Tax  
 15 Fund for additional park acquisition projects.

16 E. The executive is requested to submit necessary  
 17 legislation to fund a site-evaluation study to identify natural  
 18 features, systems and functions, site use constraints, site  
 19 access and other relevant issues in order to assist the  
 20 citizens committee in their work.

21 F. In order for King County to be eligible to obtain  
 22 grant funds the executive is directed to file a "Letter of  
 23 Retroactivity" with the state Interagency for Outdoor  
 24 Recreation and advising the King County Open Space Citizens  
 25 Oversight Committee of King County's intent to apply for grants  
 26 to reimburse the real estate excise tax bond account.

27 PASSED this 24<sup>th</sup> day of May, 1993

28 KING COUNTY COUNCIL  
 29 KING COUNTY, WASHINGTON

30   
 31 Chair

32 ATTEST:

33   
 34 Clerk of the Council

35 Attachments:

36 A. Purchase and Sale Agreement

# DRAFT

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
JENNIFER BELCHER, COMMISSIONER OF PUBLIC LANDS

AGREEMENT  
FOR  
PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1993, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources (hereinafter referred to as "State") and King County (hereinafter referred to as "Purchaser").

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

1. Agreement and Property. State shall sell and convey to the Purchaser, and the Purchaser shall purchase and accept from the State, all subject to the terms and conditions of this Agreement, that certain real property located in King County, Washington, excluding mineral rights as required under RCW 79.01.234, the legal description of which is set forth on Exhibit "A" attached hereto and incorporated by this reference herein. The parcel of land is referred to herein as the "Property."

2. Purchase Price.

2.1 Amount. The purchase price (the "Purchase Price") to be paid for the property shall be the sum of \_\_\_\_\_ and No/100 U.S. Dollars (\$\_\_\_\_\_).

2.2 Payment. The Purchase Price shall be paid in cash as provided in section 3.3 below.

3. Closing.

3.1 Closing Date. The "Closing Date," "Closing," or "Date of Closing," as those terms are used herein, shall mean the date upon which the documents are recorded and all monies are distributed to complete the purchase contemplated herein. The Date of Closing shall be on a date mutually agreed to by the parties, but in no event later than June 15, 1993.

3.2 Escrow. This transaction shall be closed in escrow at the office of Chicago Title Insurance Co., 701 - 5th Avenue, Suite 1800, Seattle, Washington 98104 (Escrow Agent). The parties shall deposit this Agreement and the necessary

documents and funds in escrow sufficiently in advance of the Closing Date to facilitate an orderly closing.

3.3 Payment of Purchase Price. The Purchase Price shall be tendered into Escrow prior to Closing allowing the Escrow Agent sufficient time to transfer the Purchase Price to the State Treasurer prior to delivery of the Deed as provided in subsection 9.2(a) below.

3.4 Closing Costs and Pro-Rations. All costs related to closing this transaction, including but not limited to escrow fees, recording fees, notary fees, etc., shall be paid by Purchaser in addition to the Purchase Price. Assessments, water and other utility charges, if any, shall be pro-rated as of Closing unless otherwise agreed. The parties shall each pay their own attorney fees.

4. Possession, Conveyance and Title Insurance.

4.1 Possession. Purchaser shall be entitled to possession of the Property on the Closing Date. Purchaser shall have a right-of-entry upon the Property upon the execution of an access permit (exhibit B) for the limited purpose of planning the trail alignment through the Property for the Klahanie to Redmond Watershed Trail. Purchaser shall not conduct invasive testing, modify the Property, nor conduct any actual development of the Property until after Closing.

4.2 Form of Deed. On the Closing Date and upon confirmation that the State Treasurer's Office has received the entire Purchase Price, State shall convey title to the Property to Purchaser by Quit Claim Deed ("Deed") executed by the Governor of the State of Washington reserving mineral rights as required by RCW 79.01.224.

4.3 Title Insurance. State shall not furnish a policy of title insurance. Purchaser shall be responsible for procuring title insurance at its sole expense. To exercise the termination rights hereafter set out, Purchaser must obtain a preliminary commitment of title insurance (Preliminary Commitment) within five (5) days after the date of this Agreement. Within fifteen (15) days of receipt of the Preliminary Commitment, Purchaser must notify State of any objections to exceptions listed on the Preliminary Commitment. Failure to object to an exception shall be deemed an approval of such exception. State shall, without obligation, attempt to remove any exception to which Purchaser has objected no later than ten (10) days prior to closing (Cure Period). If State has not cured such objections within the Cure Period, State shall so notify Purchaser upon expiration of the Cure Period, and Purchaser may elect to terminate this Agreement without further obligation of either party or to waive such

objection(s) and proceed to closing. Purchaser shall notify State of its election to waive objection(s) no later than five (5) days prior to closing. Failure to notify State of Purchaser's intent to waive objections shall be deemed an election to terminate. The right of termination as provided in this section 4 shall be Purchaser's exclusive remedy for title encumbrances.

5. Condemnation. Purchaser acknowledges that State has disclosed that a condemnation petition has been filed against a portion of the Property by the Sammamish Plateau Water and Sewer District under King County Superior Court Cause No. 92-2-27111-7. Purchaser acknowledges that State has no obligation to defend or resist such condemnation in any way. Purchaser shall take the Property subject to the condemnation proceedings. There shall be no abatement in the purchase price, and Purchaser shall be entitled to any condemnation award.

6. Condition of the Property. Purchaser acknowledges the State is not making any representations or warranties, express or implied, about the condition of the Property, and accepts the Property strictly "AS IS WHERE IS." State expressly disclaims all implied warranties, including any warranty of merchantability or of fitness for a particular purpose. Nothing herein shall be deemed to modify the rights or obligations of the parties under federal, state, or local laws relating to hazardous wastes.

7. Risk of Loss. Risk of loss of or damage to the Property shall be borne by State until the Date of Closing. In the event of loss of or damage to the Property, prior to the Date of Closing, Purchaser may terminate this Agreement, in which case all monies paid by Purchaser shall be refunded. Notwithstanding Purchaser's right to terminate as provided in this paragraph, in the event of loss of or damage to all or a portion of the Property, Purchaser may elect to purchase the Property in the condition existing on the Date of Closing with an adjustment in the purchase price mutually agreed upon by the parties. Purchaser agrees that the condemnation disclosed above shall not be deemed damage to the Property as that term is used under this section.

8. Contingency. State obligation to convey the Property is expressly contingent upon approval of this transaction by the Board of Natural Resources.

9. Closing Responsibilities. Purchaser, State, and Escrow Agent shall do the following in connection with the closing of this transaction.

9.1 Party Responsibilities. At or prior to Closing, the parties shall deposit the following documents and funds into Escrow with the Escrow Agent:

(a) By State.

i) A duly acknowledged and executed Quit Claim Deed conveying the Property to Purchaser.

ii) A duly executed real estate excise tax affidavit.

iii) Such other documents or funds necessary to close the Sale in accordance with this Agreement.

(b) By the Purchaser.

i) Deposit of the Purchase Price sufficiently in advance of Closing to allow the Escrow Agent to pay Purchase Price to the State Treasurer as provided in subsection 9.2(a).

ii) Such other documents and funds, including the escrow fees, recording costs, revenue stamps or other costs required to close the purchase in accordance with this Agreement.

9.2 Escrow Agent Responsibilities. At or prior to Closing, the Escrow Agent shall take the following actions:

(a) Pay the Purchase Price to the State Treasurer by wire transfer or other means acceptable to State, less prorations as provided in subsection 3.4.

(b) After confirmation from the State Treasurer of payment referred to in 9.2(a) above, deliver and record the Quit Claim Deed.

(c) Pay the escrow fee, any real estate commission, pro-rations and all recording costs.

10. Survival. Obligations, representations, and warranties herein shall not be merged but shall survive Closing.

11. Real Estate Commission. The Purchaser shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of the Purchaser. No broker or agent represents State in this transaction.

12. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon

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personal service or deposit in the United States first class mail, postage prepaid, and addressed as follows:

To Purchaser:

To State:  
Department of Natural Resources  
Real Estate Division  
110 Olive Way, Suite 1450  
Seattle, Washington 98101  
Attn: Richard L. Cooper, Manager  
Facsimile: (206) 464-6528

With Copy to:  
James Schwartz, Esq.  
Assistant Attorney General  
1011 Plum Street, Building 5  
Olympia, Washington 98504-0100  
Facsimile: (206) 586-2756

The foregoing addresses may be changed by written notice.

13. Miscellaneous.

13.1 Entire Agreements. This Agreement constitutes the entire Agreement between the parties. All prior and contemporaneous negotiations, understandings and agreements, whether oral or written, are merged herein, and the rights and obligations of the parties shall be as set forth herein.

13.2 Binding Nature. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto. However, this Agreement shall not be assignable by Purchaser without the prior written consent and acceptance by the State, which consent and acceptance the State can withhold at State's sole and absolute discretion.

13.3 Washington Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington and venue shall be in Thurston County. The terms of this Agreement shall be given their common meaning and shall not be construed in favor of or against either party hereto.

13.4 Time. Time is of the essence hereof.





13.12 Days. Unless otherwise specified, "days" shall refer to calendar days.

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

PURCHASER

KING COUNTY

By: \_\_\_\_\_

Date: \_\_\_\_\_, 1993

Its: \_\_\_\_\_

THE STATE

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

By: \_\_\_\_\_

Date: \_\_\_\_\_, 1993

Its: Real Estate Division Manager

Approved as to form this  
\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

CHRISTINE O. GREGOIRE  
Attorney General

JAMES R. SCHWARTZ  
Assistant Attorney General  
State of Washington

DEPARTMENT OF NATURAL RESOURCES NOTARY BLOCK

ACKNOWLEDGEMENT

STATE OF WASHINGTON)  
County of King ) ss.  
 )

I certify that I know or have satisfactory evidence that Richard L. Cooper is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledge it in his capacity as the Manager of the Real Estate Division of the Washington State Department of Natural Resources, and it is the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the  
State of Washington

My Appointment Expires: \_\_\_\_\_

KING COUNTY NOTARY SIGNATURE BLOCK

ACKNOWLEDGEMENT

STATE OF WASHINGTON)  
County of King ) ss.  
 )

On this \_\_\_\_ day of \_\_\_\_\_, 1993, personally appeared before me \_\_\_\_\_ to me known to be the duly qualified \_\_\_\_\_ of King County, that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of the said King County for the uses and purposes therein mentioned, and on oath stated that (he/she) was authorized to execute said instrument and acknowledged it in his/her capacity as the \_\_\_\_\_ of King County.

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the  
State of Washington

My Appointment Expires: \_\_\_\_\_

STATE OF WASHINGTON  
 DEPARTMENT OF NATURAL RESOURCES  
~~XXXXXXXXXXXX~~, Commissioner of Public Lands  
 JENNIFER BELCHER

THIS PERMIT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between KING COUNTY, herein called the "Grantee" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called the "State," WITNESSETH:

The State for and in consideration of the terms and conditions identified herein, hereby grants and conveys to the Grantee, permission to enter upon State lands located as follows:

All of Section 36, Township 25 North, Range 6 East, located in King County.

This permit granted herein is subject to the following terms and conditions:

1. Purpose. Grantee shall make use of the rights hereunder for the purpose of planning the trail alignment through the above property for the Klahanie to Redmond Watershed Trail.

2. Term and Renewal. The term of this Permit shall be from this date herein subscribed to and including June 15, 1993. Renewal of this Permit is subject to the discretion of the State's Real Estate Division Manager at Seattle, Washington.

3. Consideration. The consideration paid by the Grantee to the State shall be as follows:

This permit is given as part consideration for the purchase of the above property.

4. Reservations. The Permit is subject to all pending and previously conveyed or to be conveyed rights and valid claims.

5. Compliance with Laws and Regulations. The Grantee shall comply with all applicable laws to the extent that it can legally do so, including all Department of Natural Resources regulations, county and municipal laws, ordinances, or regulations in effect and authorized by law or laws of the State of Washington.

6. Suspension. If the Grantee shall fail to observe or abide by any of the terms and conditions of this Permit after notice of such failure has been given, then the State may, by notice in writing to the Grantee, terminate the rights hereby granted. Such termination shall be without prejudice to any claims of the State against the Grantee theretofore accrued or arising after cancellation of the rights hereunder. Upon such termination the Grantee shall immediately discontinue the use of the rights herein granted.

7. Assignment. This Permit shall not be assigned, nor shall any interest of the Grantee herein or hereunder be transferred, assigned or sublet, except that the rights may be used by any employees, contractors or representatives of the Grantee who may be engaged in the Grantee's operations.

8. Regulations and Conditions. Items 1, 5, 10, 14 of those listed on the following pages are by this reference made a part of this Permit.

IN WITNESS WHEREOF, the parties hereto have caused this Permit to be executed as below subscribed.

STATE

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_

Its \_\_\_\_\_

GRANTEE KING COUNTY

By \_\_\_\_\_

Its \_\_\_\_\_

X 1. Protection of Timber, Crops and Improvements. Grantee shall take all reasonable precautions to protect State-owned timber, crops and improvements. Further, the Real Estate Division Manager or his designee at Seattle will be notified two (2) weeks in advance of completion of said operations for the purpose of inspection for compliance with the terms hereof. Damage to timber, crops and improvements not identified and paid for under the terms and conditions of this Permit shall be appraised by the State. The Grantee shall be billed for said damages at the appraised rate.

2. Streamcourse Protection. Yarding equipment shall be set back from the stream bank so that the act of yarding or storing of yarded logs will not damage or encroach on the permitted area in or through such streamcourses, lakes and ponds as designated by the State unless permission to do so is granted in writing by the Area Manager.

3. Erosion and Damage to Soil. During operations under this Permit, including the construction of roads and landings, the Grantee shall take such precautions as necessary to minimize insofar as possible soil erosion and damage to the soil. Equipment will not be operated when ground conditions are such that excessive damage will result.

4. Test Pits and Test Holes. The Grantee shall backfill or otherwise replace all soil removed from pits, ditches, or other excavations created by the Grantee and shall plug and cap all drill holes created by the Grantee. Provided, further, the Grantee shall make available to the Department of Natural Resources Geology and Earth Resources Division all samples, cores, and copies of all reports and descriptions upon completion of said exploratory drillings and excavations.

X 5. Preservation of Surveys. All legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, the Grantee shall re-establish them by a registered professional engineer or licensed land surveyor in accordance with U.S. General Land Office standards at his own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in process of construction must be adequately referenced and/or replaced in accordance with all applicable laws of the State of Washington in force at the time of construction, reconstruction, or development of the right of way including but not limited to chapter 58.24 RCW, and all Department of Natural Resources rules and regulations pertaining to preservation of such corners and/or witness objects. Such references must be approved by the State prior to removal of said corners and/or witness objects.

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6. Road Maintenance. During periods when a road, or portion thereof, is being used by the Grantee, that portion of the road so used shall be maintained by said party at its own expense and, at the termination of each period of such use, shall be left in a condition equal to, or better than the condition of the road immediately prior to said use.

7. Water Bars. Upon termination of this Permit or the cessation of use, whichever is sooner, the Grantee shall construct water bars across such truck roads and/or tractor roads and in such locations on said roads as designated by the State.

8. Obstruction. The Grantee shall not obstruct said roads or take any action to restrict the flow of traffic on said roads without the State's written permission.

9. Debris Disposal. Grantee shall dispose of forest debris as defined by law, concurrent with cutting and land clearing, by piling and burning on the right of way (or site). Alternate methods of disposal may be permitted provided that a written supplement to this document shall first be obtained from the Real Estate Division Manager at Seattle, Washington. The supplement shall include but not be limited to the following minimum requirements:

- a. Dates and places of disposal.
- b. Methods and means of disposal.
- c. A map showing the areas affected by the supplement.

X 10. Removal of Equipment. All tools, equipment and other property not permanently affixed upon the land by the Grantee during the term of said Permit shall remain the property of the Grantee but shall be removed within sixty (60) days after the expiration of this Permit.

11. Plan of Operation. The Grantee's operations specified herein shall be conducted in accordance with the provisions of the State approved Plan of Operation in force at the time of construction, reconstruction, or development of the right of way. Provided, however, thirty (30) days prior to commencement of said operations, the Grantee shall submit to the Real Estate Division Manager at Seattle, Washington, for written approval, a complete and detailed Plan of Operation for the development of the right of way. The Grantee shall provide for the examination of the right of way, with the State's Real Estate Division Manager, before any construction, reconstruction, or development is commenced.



12. Cash Bond. As a guarantee of the faithful performance of the provisions of this permit, including not only the payment of all sums due the State hereunder but all damages accrued to the State by reason of the operations under this permit, the Grantee delivers herewith a cash bond in the sum of \$ None.

       13. Surety Bond. As a guarantee of the faithful performance of the provisions of this permit, including not only the payment of all sums due the State hereunder but all damages accrued to the State by reason of the operations under this permit the Grantee delivers herewith a surety bond in the sum of \$ None.

  X   14. Hold Harmless Agreement. Grantee shall sign the attached Hold Harmless Agreement (Exhibit A), which shall be incorporated as part of this Right-of-Entry Agreement.

EXHIBIT A

HOLD HARMLESS AGREEMENT

King County, ~~their~~ <sup>its</sup> successors and assigns, shall insofar as permitted by law, indemnify and hold harmless the State of Washington Department of Natural Resources, its officers, and employees from any and all claims arising from the exercise of rights under the right of entry permit issued to King County, ~~their~~ <sup>its</sup> employees, and/or their contractors or assigns for property more specifically described as follows:

All of Section 36, Township 25 North, Range 6 East, King County.

If any such claim is brought against the Department of Natural Resources, King County, shall defend the same at its sole cost and expense and satisfy any judgment against the Department of Natural Resources, its officers, or employees: PROVIDED, that if the claim is caused by or results from the concurrent negligence of King County, employees or agents, and the Department of Natural Resources employees or agents, and involves those actions covered by R.C.W. 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of King County, its agents or employees.

GRANTEE KING COUNTY

By \_\_\_\_\_

Its \_\_\_\_\_