

MOTION NO. **9836**

1
2 A MOTION authorizing an interlocal agreement between
3 King County and the Sammamish Plateau Water and
4 Sewer District for the purpose of cooperatively
5 conducting a pilot wetland mitigation banking project in
6 the East Lake Sammamish Basin.

7 WHEREAS, the East Lake Sammamish Basin and Nonpoint Action Plan, adopted
8 by the King County Council, contains recommendations to protect the valuable natural
9 resources in the Basin, including streams and wetlands that provide fish habitat and flood
10 control, and

11 WHEREAS, wetland mitigation banking is a method of off-site mitigation in which
12 relatively large mitigation sites are selected and managed to provide mitigation, in
13 advance, for future construction projects, thus protecting resources while allowing needed
14 development to occur, and

15 WHEREAS, the East Lake Sammamish Basin contains sites suitable for wetland
16 mitigation banking projects, and

17 WHEREAS, the Sammamish Plateau Water and Sewer District has proposed public
18 construction projects in the East Lake Sammamish Basin that require mitigation, and

19 WHEREAS, the parties, through a previous interlocal agreement, have developed
20 wetland mitigation banking policies and guidelines, and

21 WHEREAS, the East Lake Sammamish wetland mitigation banking pilot project
22 will provide a public benefit by facilitating mitigation required of the District and
23 enhancing an existing wetland in the East Lake Sammamish Basin consistent with the
24 King County Comprehensive Plan policies addressing wetland mitigation banking,
25 KCC 21A.24.345, the East Lake Sammamish Basin and Nonpoint Action Plan, and the
26 wetland mitigation banking policies and guidelines previously developed by the parties,
27 and

28 WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the parties
29 are each authorized to enter into an agreement for cooperative action;
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NOW THEREFORE, BE IT MOVED by the Metropolitan Council of King

County:

The county executive is hereby authorized to enter into an interlocal agreement (in substantially the same form as attached hereto as Exhibit A) with the Sammamish Plateau Water and Sewer District for the East Lake Sammamish Wetland Mitigation Banking Pilot Project.

PASSED by a vote of 10 to 0 this 15th day of April, 1996.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Gene Hague
Chair

ATTEST:

Gerald A. Peterson
Clerk of the Council

Attachment:

A. East Lake Sammamish Wetland Mitigation Banking Pilot Project Interlocal Agreement

**EAST LAKE SAMMAMISH WETLAND MITIGATION BANKING
PILOT PROJECT AGREEMENT**

1 This agreement is made and entered into by King County, Washington, hereinafter
2 referred to as the "County," and the Sammamish Plateau Water and Sewer District,
3 hereinafter referred to as the "District," collectively referred to as the "Parties," to
4 conduct a pilot wetland mitigation banking project in the East Lake Sammamish Basin
5 that will provide an efficient means for mitigating the unavoidable impacts of public
6 development and facilitate large-scale, integrated restoration and enhancement of aquatic
7 resources.

8 WHEREAS, King County has prepared and adopted the East Lake Sammamish
9 Basin and Nonpoint Action Plan (Plan), and

10 WHEREAS, the Plan has established that the East Lake Sammamish Basin contains
11 significant and valuable aquatic resources, and

12 WHEREAS, some of the District's public construction projects proposed within the
13 East Lake Sammamish Basin will have impacts on stream and wetland habitats and
14 require mitigation, and

15 WHEREAS, wetland mitigation banking is a method of off-site mitigation in which
16 relatively large mitigation sites are selected and managed to provide mitigation, in
17 advance, for a number of future construction projects, and

18 WHEREAS, the Parties, pursuant to a previous interlocal agreement (Exhibit 1),
19 have developed wetland mitigation banking policies and guidelines (Exhibit 2), and

20 WHEREAS, the Parties desire to use the policies and guidelines to cooperatively
21 establish a wetland mitigation bank in the East Lake Sammamish Basin as a pilot project,
22 and

23 WHEREAS, this wetland mitigation banking pilot project will be consistent with
24 King County Comprehensive Plan policies addressing wetland mitigation banking, and

25 WHEREAS, this wetland mitigation banking pilot project will implement the
26 requirement in KCC 21A.24.345 for establishment of a mitigation banking pilot project,
27 and

28 WHEREAS, the Parties agree to share the costs of establishing the wetland
29 mitigation banking pilot project, and

30 WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties
31 are each authorized to enter into an agreement for cooperative action;

32 NOW THEREFORE, the Parties mutually agree as follows:

1 **I. Purpose of Agreement**

2 This agreement provides a means for joint establishment of a wetland mitigation
3 banking pilot project in the East Lake Sammamish Basin for use by public
4 agencies. The pilot project will be developed and implemented in accordance with
5 the wetland mitigation banking policies and guidelines developed by the Parties
6 (Exhibit 2). Per KCC 21A.24.345, the pilot project will test the efficacy of the
7 wetland mitigation banking policies and guidelines and determine what changes, if
8 any, are needed prior to expanding the wetland mitigation banking program to
9 other areas of King County.

10 **II. Project Management**

- 11 A. The lead agency for the East Lake Sammamish Wetland Mitigation Banking
12 Pilot Project (Project) shall be the King County Department of Public Works
13 - Surface Water Management Division (DPW-SWM), or its successor agency,
14 which shall designate a Project Manager to lead the Project Management
15 Team (PMT).
- 16 B. The PMT shall consist of representatives from DPW-SWM, the King County
17 Department of Public Works - Roads and Engineering Division (DPW-
18 Roads), the King County Department of Development and Environmental
19 Services (DDES), and the District, or their successor agencies. Replacements
20 of or additions to PMT members are subject to approval of DPW-SWM and
21 the District.
- 22 C. The PMT shall have primary responsibility for completing Project tasks,
23 including monitoring the progress of the Project, tracking expenditures of the
24 Parties, reviewing and approving for payment consultant and contractor
25 invoices, and distributing Project-related information to all parties involved.
- 26 D. Tasks entailed in completion of the Project are described in the Scope of
27 Work (Exhibit 3) and Budget (Exhibit 4), both attached to this Agreement and
28 incorporated herein.
- 29 E. In order to accomplish Project tasks, the PMT will develop a detailed Work
30 Program, including a prioritization of tasks, a timeline for completing tasks,
31 an estimated schedule of PMT meetings, and a description of how Project
32 tasks will be completed.

1 **F. Decision-making**

- 2 1. The PMT will use consensus to reach agreement on issues. In the event
3 that consensus cannot be achieved, the issue will be forwarded to the
4 Managers of DPW-SWM and DPW-Roads and the Director of DDES, or
5 their successor agencies, and the Board of Commissioners of the District.
6 2. The Managers of DPW-SWM and DPW-Roads and the Director of
7 DDES, or their successor agencies, and the Board of Commissioners of
8 the District will oversee the development and administration of the
9 Project, resolve issues that cannot be resolved by the PMT, and approve
10 of changes to the Project Scope of Work and Budget and to this
11 Agreement.

12 **III. Responsibilities of the Parties**

13 **A. King County**

- 14 1. DPW- SWM shall:
- 15 a. Serve as the Lead Agency for the Project and be represented by the
16 Project Manager.
- 17 b. Convene meetings of the PMT and provide staff to support the
18 work of the PMT, including administrative, accounting, and other
19 support.
- 20 c. Manage the Project to ensure that the tasks outlined in the Scope of
21 Work are completed.
- 22 d. Provide technical oversight and review of the Project utilizing the
23 guidance provided in the wetland mitigation banking policies and
24 guidelines (Exhibit 2).
- 25 e. Purchase outright or obtain a permanent easement for a site suitable
26 for construction of the Project.
- 27 f. Design the Project.
- 28 g. Assist the District in obtaining any required permits for construction
29 of the Project.
- 30 h. Provide an ecologist and landscape architect during construction and
31 revegetation to ensure that design features have been accurately
32 incorporated.

- 1 i. Monitor the Project as specified in Exhibit 2 to ensure that it is
- 2 performing as designed.
- 3 j. Perform any necessary maintenance of the Project.
- 4 2. DPW-Roads shall:
 - 5 a. Provide staff to participate on the PMT.
 - 6 b. Provide comments on the Project design if desired.
- 7 3. DDES shall:
 - 8 a. Provide staff to participate on the PMT.
 - 9 b. Review the Project design and issue construction permits.
- 10 B. The District shall:
 - 11 1. Provide staff to participate on the PMT.
 - 12 2. Survey the Project site.
 - 13 3. Hire and manage any consultants or contractors necessary to perform the
 - 14 tasks described in the Scope of Work. The District's hiring practices
 - 15 shall comply with all statutory public bidding rules applicable to the
 - 16 District.
 - 17 4. Work with DPW-SWM to obtain any required permits for construction of
 - 18 the Project.
 - 19 5. Construct or supervise contractor construction of the Project.
 - 20 6. Revegetate or supervise contractor revegetation of the Project with native
 - 21 plants after construction is completed.

22 IV. Project Costs and Cost Sharing

- 23 A. Project costs are outlined on the Project budget attached to this Agreement as
- 24 Exhibit 4 and incorporated herein. Project costs are not to exceed \$400,000.
- 25 B. DPW-SWM and DPW-Roads shall pay for all site acquisition costs (either fee
- 26 simple purchase or permanent easement acquisition) and all design costs as
- 27 shown on the Project Budget (Exhibit 4), provided that the amount paid by
- 28 DPW-SWM and DPW-Roads shall not exceed \$100,000 each.
- 29 C. The District shall pay for all construction costs as shown on the Project
- 30 Budget (Exhibit 4) and any site acquisition or design costs not paid for by
- 31 DPW-SWM and DPW-Roads, provided that the amount paid by the District
- 32 shall not exceed \$200,000.

1 D. Each party will receive mitigation banking credits in direct proportion to the
2 percentage of the total project budget borne by the party. For example, by
3 contributing one-quarter of the total Project budget, DPW-SWM would be
4 allocated one-quarter of the total mitigation banking credits made available by
5 the Project; similarly DPW-Roads would be allocated one-quarter of the total
6 available mitigation banking credits through its contribution of one-quarter of
7 the Project budget; and the District would be allocated one-half of the total
8 mitigation banking credits provided by the Project for the purposes of
9 KCC 21A.24. Final Project expenditures and actual cost shares made by the
10 Parties shall be used to determine the distribution of mitigation banking
11 credits.

12 **V. Billing and Payment**

13 **A. DPW-SWM shall:**

- 14 1. Contribute \$100,000 from its CIP fund and \$100,000 contributed by
15 DPW-Roads to pay for site acquisition and design costs.
- 16 2. Invoice the District on itemized invoices for any site acquisition or design
17 costs that exceed the \$200,000 amount to be contributed by DPW-SWM
18 and DPW-Roads, subject to the limits of the District's maximum
19 contribution set forth below.
- 20 3. Review and approve of any consultant or contractor invoices through its
21 participation on the PMT.

22 **B. DPW-Roads shall transfer to DPW-SWM \$100,000 for use in the Project. In**
23 **the event that DPW-Roads' cost share is less than \$100,000, DPW-SWM**
24 **shall return the unused portion of the money to DPW-Roads.**

25 **C. The District shall:**

- 26 1. Pay up to \$200,000 for Project construction costs and any site acquisition
27 and design costs exceeding the amount contributed by DPW-SWM and
28 DPW-Roads.
- 29 2. Pay for any invoices received from DPW-SWM for site acquisition and
30 design costs within 60 days.
- 31 3. Forward to the PMT copies of all invoices received from any consultants
32 or contractors hired by the District to complete Project construction.

1 4. Pay any consultants or contractors hired by the District to complete the
2 Project upon approval for payment by the PMT.

3 D. DPW-SWM expenses for the Project to be reimbursed by the District include
4 all those necessary to complete DPW-SWM's Project responsibilities,
5 including and limited to costs for staff time, benefits, overhead, and goods
6 and services directly related to the Project.

7 E. Nothing herein shall be construed as obligating the District or King County to
8 expend money in excess of appropriations authorized by law and
9 administratively allocated for the Project.

10 **VI. Duration, Termination, and Amendment**

11 The Parties agree to the following:

12 A. This agreement is effective upon signature by the Parties and remains in
13 effect until December 31, 2010, or until monitoring of the Project is
14 complete, whichever is sooner.

15 B. This agreement may be terminated by either Party upon 30 days written
16 notice. In the event of termination, payment will be made for work
17 performed to the date of termination in the proportion agreed to by the
18 Parties, but the Parties shall have no further financial obligation relating to
19 this agreement after the date of termination.

20 C. This agreement may be amended, altered, clarified, or extended only by the
21 written agreement of the Parties hereto. An equitable adjustment in cost
22 and/or period of performance may be made if required by the change.

23 D. This agreement is not assignable by either Party, either in whole or in part.

24 E. This agreement is a complete expression of the terms hereto and any oral or
25 written representations or understandings not incorporated herein are
26 excluded. The parties recognize that time is of the essence in the
27 performance of the provisions of this agreement. Waiver of any default shall
28 not be deemed to be waiver of any subsequent default. Waiver or breach of
29 any provision of this agreement shall not be deemed to be a waiver of any
30 other or subsequent breach and shall not be construed to be a modification of
31 the terms of the agreement unless stated to be such through written approval
32 by the parties which shall be attached to the original agreement.

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VII. Indemnification and Hold Harmless

The Parties agree to the following:

Each Party shall protect, defend, indemnify, and save harmless the other Parties, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, each Party's own negligent acts or omissions. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's negligence.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the

_____ day of _____, 19_____.

King County

**Sammamish Plateau Water
and Sewer District**

King County Executive

President, Board of Commissioners

Approved as to Form

Approved as to Form

Deputy Prosecuting Attorney

Attorney for District