

CUSHMAN PROJECT
FERC Project No. 460

**Settlement Agreement
for the
Cushman Project**

January 12, 2009

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- Appendix 2** **Authorized Representatives of the Parties**
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LIST OF ATTACHMENTS

- Attachment A** **Tribe-Tacoma Damages Settlement**
- Attachment B** **Cushman Off-License Supplementation Agreement between the City of Tacoma and Washington Department of Fish and Wildlife**
- Attachment C** **Off-License Agreement between the City of Tacoma and U.S.D.A. Forest Service**
- Attachment D** **Tacoma’s Application for Non-Capacity License Amendment for North Fork Powerhouse**
- Attachment E** **Memorandum of Understanding between the State of Washington Department of Fish and Wildlife, Skokomish Indian Tribe, and City of Tacoma/Tacoma Public Utilities**

**Cushman Project
FERC Project No. 460**

**Settlement Agreement for
the Cushman Project**

This SETTLEMENT AGREEMENT FOR THE CUSHMAN HYDROELECTRIC PROJECT (“Settlement”) is made and entered into pursuant to Federal Energy Regulatory Commission (“FERC”) Rule 602, 18 C.F.R. § 385.602, by and among:

City of Tacoma, Washington (“Tacoma” or “Licensee”);
United States Department of Commerce, National Marine Fisheries Service (“NMFS”);
United States Department of Agriculture, Forest Service (“USFS”);
United States Department of the Interior, Fish and Wildlife Service (“FWS”);
United States Department of the Interior, Bureau of Indian Affairs (“BIA”);
Washington Department of Fish and Wildlife (“WDFW”);
Washington Department of Ecology (“WDOE”); and
Skokomish Indian Tribe (“Tribe”);

each referred to individually as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS,

- A. Tacoma is the FERC licensee for the Cushman Hydroelectric Project, FERC Project No. 460, located on the North Fork of the Skokomish River in Mason County, Washington. The Federal Energy Regulatory Commission (“FERC”) issued a subsequent license for the operation and maintenance of the Project by an order dated July 30, 1998;
- B. The License order was modified by the March 31, 1999 Rehearing Order, the June 21, 2004 Order on Remand, and the February 25, 2005 Order on Rehearing. Portions of the license were stayed pending administrative and judicial review;
- C. Tacoma, the Skokomish Tribe (“Tribe”) and Save the Lakes Coalition appealed the license to the U.S. Court of Appeals for the D.C. Circuit in Case No. 05-1054. The Department of the Interior, the Department of Commerce, and American Rivers intervened in the appeal;
- D. On August 22, 2006, the U.S. Court of Appeals issued its opinion in *City of Tacoma v. FERC*, remanding the license to FERC;
- E. The Court of Appeals order also required Tacoma to release 240 cfs or inflow, whichever is less, into the North Fork riverbed from the Project. Tacoma commenced release of 240 cfs on March 7, 2008;

F. Since January 2007, Tacoma and the Tribe have engaged in settlement negotiations as part of the Ninth Circuit Court of Appeals' mediation program in *Skokomish Indian Tribe v. United States of America and Tacoma Public Utilities*, 9th Circuit Case No. 06-35403;

G. As an outgrowth of these settlement negotiations, Tacoma and the Tribe engaged the USFS, FWS, BIA, NMFS, WDFW, and WDOE in discussions to resolve outstanding issues, including but not limited to those presented by the remand of the License by the Court of Appeals.

TERMS OF AGREEMENT

The Parties hereby agree as follows:

1 General Provisions

1.1 Effective Date of Settlement

This Settlement Agreement shall become effective upon its execution by all Parties.

1.2 Actions by the Parties

1.2.1 Actions by the Licensee. Within 30 days of the Effective Date, the Licensee shall, on behalf of the Parties, file an Offer of Settlement with FERC pursuant to Rule 602 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.602. This filing shall consist of an executed copy of this Settlement Agreement, including the Appendices and a Joint Explanatory Statement. The Joint Explanatory Statement shall request that FERC amend the Project license by: (i) replacing the existing license articles with those identified in Appendix 1, without modification, (ii) deleting existing license articles 401, 404, 408, 422 and 426; and (iii) extending the license term to June 30, 2048. Any license articles not modified or deleted by Appendix 1 would remain unchanged in the Project license. The Licensee shall work expeditiously with WDOE to secure all needed water rights for Project operations and implementation of the Proposed License Articles.

1.2.2 Actions of DOI. Within 60 days of the Effective Date, DOI shall file with FERC FPA section 4(e) conditions for the protection and utilization of the Skokomish Indian Reservation in the form of Appendix 1, Proposed License Articles 403, 406, 407, 410-418, 420, 421, 432 and 434 in lieu of DOI's section 4(e) conditions, filed August 4, 1997.

1.2.3 Actions of NMFS. Within 60 days of the Effective Date, NMFS shall file with FERC FPA section 18 conditions in the form of Appendix 1, Proposed License Articles 414, 415 and 416.

1.2.4 Actions of WDOE. Within 60 days of the Effective Date, WDOE shall notify FERC that it intends to take no further action with respect to the 401 Certification for the Amended Project License. WDOE expressly reserves its authority regarding any potential future Project modifications not included in this Settlement.

1.2.5 Actions of the Tribe. Within 40 days of the Effective Date, the Tribe agrees to notify FERC that it does not contest the validity of the 401 Certification.

1.2.6 Actions of USFS. Within 60 days of the Effective Date, USFS shall file with FERC modified FPA section 4(e) conditions for the protection and utilization of National Forest System lands in the form of Appendix 1, Proposed License Articles 410(2), 425, 427, 428, and 433.

1.3 Term of Settlement

The term of this Settlement Agreement shall commence on the Effective Date and shall continue through the term of the Amended Project License including any subsequent annual license(s): (i) unless terminated as provided in section 6.4; or (ii) until the date of any FERC order approving surrender of the Amended Project License; or (iii) until any irrevocable actions by the Licensee to physically decommission the Project after the expiration date of the Amended Project License.

1.4 Definitions

401 Certification shall mean the water quality certification pursuant to section 401 of the CWA, 33 U.S.C. § 1341 issued by WDOE on April 30, 1985, and revised on December 30, 1987.

ADR shall mean the alternative dispute resolution procedure set forth in section 5 of this Settlement.

Amended Project License shall be any amended license issued by FERC pursuant to section 15 of the FPA for the Project based upon the filing of this Settlement Agreement.

CWA shall mean the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Disputing Party or **Disputing Parties** shall mean any Party providing Notice of an objection or dispute, any Party alleged to have not performed an obligation, and any other Party that provides Notice of its intent to participate in the dispute resolution.

Effective Date shall mean the date set forth in section 1.1 of this Settlement.

ESA shall mean the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

FERC shall mean the Federal Energy Regulatory Commission.

FPA shall mean the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*

Licensee shall mean Tacoma.

Magnuson-Stevens Act shall mean the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*

Mandatory Terms and Conditions shall mean conditions submitted to FERC under section 4(e) or 18 of the FPA, 16 U.S.C. §§ 797(e), 811.

Material Modification shall mean: (i) any modification (including additions to or deletions from) the Proposed License Articles except as otherwise provided in

Attachment C; (ii) FERC's removal of any existing license article not proposed to be modified or superseded by the Proposed License Articles; (iii) failure of FERC to remove any license articles proposed for deletion under this Settlement Agreement; (iv) FERC's expansion of the Project boundary for the purpose of including the Licensee's actions under Proposed License Article 403 or 407 paragraph 5; or (v) failure of FERC to extend the license expiration date as agreed in this Settlement; *provided*, that such modification(s), individually or collectively, substantially affect a Party's bargained-for benefits under this Settlement, including but not limited to costs; power generation; regulatory responsibilities; or resource protection measures.

Material Modification shall not mean: (i) FERC's insertion of its approval or its reservation of authority to require changes to implementation schedules or plans set forth in any Proposed License Article; (ii) FERC's requirement to file a subsequent license amendment to implement any Proposed License Article; (iii) FERC's removal of language in any of the Proposed License Articles that sets forth the rationale for the article, as opposed to the obligation of the article itself; (iv) FERC's retention in the Amended Project License of any license articles not proposed to be modified or superseded by this Settlement Agreement; (v) FERC's inclusion of DOI's (and its component bureaus and agencies) or USFS' reservation of mandatory FPA or ESA authorities; (vi) retention of DOI's, NMFS' and USFS' existing reservations of authority; (vii) terms and conditions in the Incidental Take Statements consisting of Best Management Practices and other minor modifications to the existing biological opinions including the ITS and the New License; (viii) FERC's expansion of the Project boundary for reasons other than those identified in the Material Modification definition subsection (iv); and (ix) FERC's inclusion of a reservation of authority to require the Licensee to undertake additional measures in excess of the agreed-upon monetary payment amounts set forth in Proposed License Articles 403, 407 paragraph 5, and 412.

New License shall mean the Project license issued by FERC on July 30, 1998, as modified in the March 31, 1999 Order on Rehearing, the June 21, 2004 Order on Remand, and the February 25, 2005 Order on Rehearing.

NEPA shall mean the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*

Notice shall mean a written communication that meets the requirements of section 7.12 of this Settlement.

Party or Parties shall mean the signatories to this Settlement.

Project shall mean the Cushman Hydroelectric Project, FERC No. 460.

Proposed License Articles shall mean the terms and conditions set forth in Appendix 1 of this Settlement that the Parties will request that FERC include, without Material Modification, in the Amended Project License, and shall exclude license articles that the parties propose to be deleted from the New License.

Settlement, Settlement Agreement or Agreement shall mean the entirety of this Settlement and Appendices 1 through 4. The Settlement Agreement shall not include Attachments A, B, C and E, which are related agreements attached for informational purposes, or Attachment D, which is the Licensee's Application for a license amendment to add a North Fork Powerhouse at Cushman Dam No. 2.

2 Scope of Settlement Agreement

2.1 Purpose

The Parties have entered into this Settlement Agreement, and Attachment B for the Licensee and WDFW, for the purpose of resolving among them issues that have or could have been raised by the Parties in connection with the D.C. Circuit's remand of the New License to FERC. Pursuant to the Parties' obligations and authorities under sections 4(e), 10(a), 10(j) and 18 of the FPA, this Settlement and Attachment B establish the Licensee's obligations for the protection, mitigation and enhancement of resources affected by the Project. Each Party intends that this Settlement Agreement and WDFW intends that this Settlement Agreement and Attachment B are consistent with and satisfy its currently applicable statutory and regulatory rights and responsibilities under sections 4(e), 10(a), 10(j) and 18 of the FPA. Each Party intends further that, subject to section 3 of this Settlement Agreement, no resource protection measure or other license provision, other than those provided in Appendix 1 is necessary to amend the New License in order to satisfy sections 4(e), 10(a), 10(j) and 18 of the FPA.

2.2 No Precedent for Other Proceedings

This Settlement is made upon the express understanding that it constitutes a negotiated resolution among the Parties. Accordingly, nothing in the Settlement shall be construed as a precedent with regard to any other proceeding. This section shall survive any termination of this Settlement.

3 Compliance with Legal Responsibilities and Reservation of Rights

3.1 No Pre-Decisional Determination

Nothing in this Settlement is intended or shall be construed to be a pre-decisional determination by NMFS, FWS, BIA, USFS, WDFW or WDOE. Further, FWS and NMFS shall consult with FERC and the Licensee under the ESA and Magnuson-Stevens Act, as appropriate, and in the ESA and Magnuson-Stevens Act contexts are not bound by decisions in this Settlement Agreement. Each Party may give due consideration to any material new information arising in the FERC amendment proceeding or ESA consultation, as appropriate under applicable law.

3.2 Reservation of Rights

Nothing in this Settlement is intended to, or shall be construed to, affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or to comply with any applicable judicial decision or order.

4. Settlement Commitments and Implementation

4.1 Filings and Submittals Consistent with Settlement Agreement

Each Party intends that, throughout the term of this Settlement Agreement, Amended Project License, and any annual licenses, any of that Party's filings or other submittals with FERC will not propose Material Modifications or otherwise be inconsistent with this Settlement Agreement, unless necessary based on material new information. Any Party who believes another Party has breached this provision must give the breaching Party Notice and a 30-day opportunity to cure the breach prior to initiating ADR under section 5 of this Agreement. Notwithstanding the foregoing, the Parties reserve their rights under applicable law to fully participate in any future license amendment or reopener proceedings.

4.2 Support Adoption of License Terms and Conditions

All Parties shall support, in all relevant regulatory proceedings in which they participate, incorporation of the Proposed License Articles into the Amended Project License issued by FERC.

4.2.1 Terms, Conditions or Recommendations That Contain Material Modifications of the Settlement

If any of the Mandatory Terms and Conditions contains a Material Modification of this Settlement, the Settlement shall be deemed modified to conform to the Mandatory Terms and Conditions unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Agreement within thirty (30) days after the term or condition is filed with FERC. This section does not limit a Party from asserting any administrative or judicial claims, if necessary to meet a filing deadline, or limit any other Party from timely asserting any defenses to such claims.

4.2.2 Proceedings under the Energy Policy Act of 2005

Regarding any of the Mandatory Terms and Conditions filed with FERC in this license proceeding by FWS, BIA, USFS or NMFS that does not contain a Material Modification of the Settlement, each Party waives any right it may have to request an agency trial-type hearing on issues of material fact under sections 4(e) and 18 of the FPA and to propose alternatives under section 33 of the FPA. The Parties shall not support any trial-type hearing requested by any non-Party

and will support FWS, BIA, USFS, and NMFS, as appropriate, if a trial-type hearing is requested by any non-Party. If a non-Party requests a trial-type hearing, the Parties may intervene to support this Settlement, and FWS, BIA, USFS, and/or NMFS shall use good faith efforts to defend its challenged Mandatory Terms and Conditions.

4.3 Authorities Under the ESA

Nothing in this Settlement is intended to or shall be construed to restrict or affect the authorities of NMFS or USFWS under the ESA.

4.4 ESA and Magnuson-Stevens Act Consultation

4.4.1 Biological Opinion/EFH Conservation Measures

NMFS and FWS previously have issued Biological Opinions under the ESA for the New License. The Parties recognize that FERC will likely need to reinitiate consultation pursuant to section 7 of the ESA, and NMFS and FWS will likely have to prepare supplemental or amended Biological Opinions evaluating the effect of FERC's action in response to the measures in this Settlement and engage in Essential Fish Habitat (EFH) consultation under the Magnuson-Stevens Act. NMFS and FWS are not making a pre-decisional determination of the outcome of any consultation and expressly reserve the right to take such future action or to issue Biological Opinions and Incidental Take Statements as necessary to meet their obligations under the ESA. Further, NMFS is not making any pre-decisional determinations regarding EFH conservation recommendations necessary to meet its obligations under the Magnuson-Stevens Act.

Nothing in this Agreement limits or waives the authority of NMFS and FWS to take whatever action they deem necessary if FERC modifies the Proposed License Articles in a manner causing effects to EFH, listed species or critical habitat not previously analyzed, or fails to adopt as license conditions the terms and conditions in the Incidental Take Statements.

4.4.2 Biological Opinion Inconsistent with Settlement Agreement

4.4.2.1: Consistent with section 4.4.1 of this Settlement, NMFS and FWS anticipate that it is likely that the measures contained in Appendix 1 of this Settlement Agreement will be adequate to avoid a jeopardy finding, for species presently listed as threatened or endangered.

4.4.2.2: If any Biological Opinion or Incidental Take Statement issued pursuant to section 7 of the ESA contains a Material Modification of this Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the provisions of the Biological Opinion, unless a

Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Agreement within thirty (30) days after the Biological Opinion is filed with FERC. Dispute resolution will consider modifications to the Settlement, not the disputed Biological Opinion.

4.4.2.3: A Disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of any Biological Opinion that contains a Material Modification of this Settlement Agreement. The Parties shall follow the ADR process set forth in section 5 of this Agreement to the extent reasonably practicable, in order to consider modification of this Settlement, while such administrative or judicial review is pursued. If the Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent provision, the Disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

4.5 North Fork Powerhouse

The Parties agree not to oppose the Licensee's application for license amendment to add a North Fork powerhouse to Cushman Dam No. 2 (in the form set forth in Attachment D), so long as the application does not materially modify or delay processing or implementation of the Proposed License Articles in Appendix 1 and does not adversely affect relevant resources. The Parties may submit comments on the application and may recommend modifications or condition the application as appropriate. The Parties and Licensee will work collaboratively on design development and post construction evaluation. If the application includes a Material Modification to the Settlement, a Party that disagrees with the application may seek ADR pursuant to section 5 of this Agreement. A Party that disagrees with the application may also seek administrative and/or judicial review, as appropriate.

The Licensee acknowledges that its application for license amendment for a North Fork powerhouse and implementation of the amendment will not delay the timelines in the Proposed License Articles.

The Parties agree to waive any pre-filing consultation otherwise required under FERC's rules. *See* 18 C.F.R. §§ 4.200 and 4.38.

4.6 Amended Project License that Does Not Materially Modify the Settlement

The Parties have entered into this Agreement with the express expectation and condition that FERC shall issue an Amended Project License that incorporates, without Material Modification, the Proposed License Articles as enforceable license articles. The Parties agree that if FERC does so, none of the Parties will seek rehearing of the FERC license order as to the Proposed License Articles, or

support any such request for rehearing by a non-Party to this Settlement Agreement.

4.7 Amended Project License that Materially Modifies the Settlement

Except as provided in section 4.7.2 for omissions based on jurisdiction, if FERC issues an Amended Project License that contains a Material Modification of the Settlement, this Settlement shall be deemed modified to conform to the modification unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Agreement within thirty (30) days of the FERC order.

4.7.1 Disputing Inconsistencies

The Disputing Party(s) may also petition FERC for rehearing or seek judicial review of any Amended Project License article, or omission of any Proposed License Article that results in a Material Modification of the Settlement. The Parties shall follow the ADR process set forth in section 5 of this Settlement while any such rehearing, appeal or request for stay or extension is pursued. Any Disputing Party(s) may ask FERC or the court to defer action on the merits of any rehearing request or appeal while ADR is pursued. If the Parties subsequently agree to modify this Settlement to conform to the inconsistent action, the Disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

4.7.2 Omission Based on Jurisdiction

If the Amended Project License does not contain a Proposed License Article(s) solely because FERC expressly determines that it does not have jurisdiction to adopt or enforce the omitted Proposed License Article(s), this Settlement shall not be deemed modified to conform to such omission. The Parties shall meet to discuss the issue and determine an appropriate response. Any Party may seek rehearing and judicial review of such omission. In any event, the Licensee shall implement any Proposed License Article or portions of Proposed License Articles that FERC excludes from the Amended Project License, based on a lack of jurisdiction, unless this Agreement terminates. Notwithstanding any other provision of this Settlement Agreement, Parties retain any available cause of action for specific performance of obligations addressed in this section 4.7.2.

4.7.3 Requests for Stay or Extension of Implementation

If the Amended Project License is challenged, a Party may at its discretion request from FERC or a court a stay or extension of any obligation in the

Proposed License Articles for the duration of the administrative or judicial review process. Any other Party may oppose the request for stay or extension.

The requesting Party shall contact the other Parties in advance of seeking a stay or extension and make reasonable efforts to discuss the scope of any request. Any Party that opposes a request for stay or extension shall contact the other Parties and make reasonable efforts to discuss the scope and extent of its opposition, prior to making any filing in opposition to FERC or the court.

4.8 Responsibility for Implementation

The Licensee shall implement its obligations under this Settlement Agreement and the Amended Project License, as well as Attachment A. The Licensee shall not be excused from this obligation due to a failure by any other Party, entity or person to provide funding or carry out a duty, obligation, or responsibility it may have with respect to the Licensee's Project pursuant to other laws or agreements. Notwithstanding, the Licensee shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Settlement or the Amended Project License unless expressly agreed to by the Licensee or as required by law. In the event of administrative rehearing or judicial review, Parties shall bear their own costs and attorneys' fees, unless otherwise provided by applicable law.

4.9 Availability of Funds

Implementation of this Settlement by any Party other than the Licensee is subject to the availability of funds. Nothing in this Settlement shall be interpreted as, or constitute a commitment or requirement that the Federal agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and other applicable law. Nothing in this Agreement is intended or shall be construed to commit a federal official to expend federal funds not appropriated by Congress.

4.10 Permits

The Licensee shall apply for and use active and diligent efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals for purposes of implementing the Amended Project License (Permits). Active and diligent efforts include, but are not limited to, seeking appropriate administrative review of permitting decisions and reapplying as necessary. Permit applications shall be consistent with this Settlement. The Licensee shall pay all fees required by law related to such Permits. The Licensee shall not be held in breach of this Settlement Agreement if it cannot legally implement an action because all applicable Permits required for that action are not

yet obtained, or because a necessary Permit has been denied or includes a Material Modification of the Settlement.

If a proceeding challenging any Permit required for the action has been commenced, the Licensee shall be under no obligation under this Settlement to implement the action or any related action until any such proceeding is terminated. If any Permit has been denied or challenged, includes a Material Modification of the Settlement, or is not obtained in a timely manner, the Parties shall confer to evaluate the effect of such event on implementation of this Settlement Agreement and the Amended Project License and to seek to develop actions to respond to that event.

The Parties recognize that a Permit delay or denial in itself does not alleviate the Licensee's responsibility to comply with a license article but may be the basis for requesting FERC to amend the license. If the Parties do not agree on actions to respond to that event, a Party may initiate ADR pursuant to section 5 to address the issue of necessary actions to respond to Permit delays or denials. In the event that the Parties do not agree on actions to respond to a Permit delay or denial, then the Permit delay or denial may constitute material new information or a basis for withdrawal pursuant to section 6.

Nothing in this section shall be construed to limit the Licensee's right to apply for a Permit before issuance of the Amended Project License, provided that any such applications shall not contain a Material Modification of the Settlement.

4.11 Reopener or Amendment of Amended Project License

4.11.1 Reopener by a Party Other Than the Licensee

A Party other than the Licensee, may exercise any authority reserved in the Amended Project License under sections 4(e) or 18 of the FPA or request FERC to reopen the license, based on material new information or if required to fulfill statutory, regulatory, or court-ordered responsibilities. Each Party reserves all rights under applicable law to challenge any exercise of reserved authority at the time the agency exercises that authority, including any rights provided under sections 4(e), 18 and 33 of the FPA, if the action would constitute a Material Modification of the Settlement or Amended Project License.

4.11.2 Amendment of Project License by Licensee

4.11.2.1 Amendments That Do Not Contain a Material Modification of the Settlement

The Licensee may seek amendments of its Amended Project License for operational improvements or efficiencies, routine amendments, or similar Project modifications that do not contain a Material Modification of the

Settlement. Each Party reserves all rights under applicable law to challenge or comment on any application for a license amendment.

4.11.2.2 Amendments That Contain a Material Modification of Settlement

The Licensee may seek a license amendment for the Project that would contain a Material Modification of the Settlement to comply with any FERC directive pertaining to dam safety, flood control, or Project security. The Licensee may seek such license amendment following discussions with the Parties, in an effort to achieve consensus on the amendment proposal, including, if necessary, the Licensee's initiation of ADR under section 5 of this Settlement.

Additionally, the Licensee may seek a license amendment that would contain a Material Modification of the Settlement in response to: (i) material new information; (ii) another Party's proposal to reopen under section 4.11.1; (iii) a non-Party's proposal to reopen the Amended Project License that would contain a Material Modification of the Settlement; or (iv) a Biological Opinion that would result in a Material Modification of the Settlement issued after the time period for appeal of the Amended Project License has passed. Any proposal the Licensee may submit under (ii) or (iii) above would be conditional and withdrawn if FERC declines to adopt the other Party or non-Party's initial proposal; and the Licensee shall notify FERC of the conditional nature of its proposed amendment. Other Parties may oppose the Licensee's proposed amendment and comment and/or propose counter-amendments.

Each Party reserves all rights under applicable law to challenge or comment on any application for a license amendment. The provisions of this Settlement shall remain in effect as unmodified by any amendment until the effective date such amendment is approved by FERC.

4.11.3 Notice and Consultation Requirement for License Amendment

4.11.3.1 Notice

Prior to seeking reopener or license amendment under sections 4.11.1 or 4.11.2, a Party shall provide the proposed license amendment to the other Parties for review and comment at least ninety (90) days before initiating the amendment process with FERC, and shall consult with the Parties starting at least sixty (60) days before initiating the amendment process with FERC regarding the need for and purpose of the reopener or amendment.

A Party shall not be required to comply with this 90-day Notice and comment process if it reasonably believes an emergency situation exists and *provided further*, that the Party shall comply with any statutory or regulatory requirements for notice or consultation. In such an emergency situation, the Party shall provide five (5) days Notice of the need for any temporary amendment or license deviation.

If a Party proposes a reopener or license amendment that another Party believes would contain a Material Modification of the Settlement or would adversely affect resources under its authority, and objects, then the ADR provisions in section 5 of this Settlement shall apply, and the objecting Party must invoke ADR during the 90-day Notice period or waive its objection.

4.12 Amendment of Settlement

In addition to sections 4.2.1, 4.4.2.2, 4.7, and 4.7.1, this Settlement may be amended at any time from the Effective Date through the term of the Amended Project License and any subsequent annual license, by written unanimous agreement of all Parties still in existence, including any successors.

4.13 Project Boundary

The Proposed License Articles are expressly designed so as not to result in an expansion of the Project boundary for the purpose of including the Licensee's actions under Proposed License Articles 403 or 407 paragraph 5. No Party shall expressly request, support or advocate that FERC expand the boundary of the Project to include said actions.

4.14 Monetary Payments

Notwithstanding FERC's authority to require the Licensee to undertake additional measures in excess of the agreed-upon monetary payment amounts set forth in Proposed License Articles 403, 407 paragraph 5, and 412, the Parties agree not to request FERC to require the Licensee to deposit or otherwise contribute additional funds in excess of the amounts agreed to in such Proposed License Articles. However, nothing in this section precludes Parties from seeking relief from FERC to require completion of a required measure or from seeking a reopener or amendment under section 4.11 of this Settlement Agreement to require the Licensee to undertake additional or different measures related to Articles 403, 407 and 412.

5 Dispute Resolution

5.1 General Applicability

The Parties agree to use the following alternative dispute resolution (ADR) process to resolve disputes related to this Settlement and the Proposed License Articles, unless otherwise specifically provided in this Settlement or precluded by statute or agency regulation.

The Party initiating dispute resolution under this section 5 shall notify FERC when ADR proceedings are initiated relevant to an issue before FERC and related to the Proposed License Articles or Amended Project License.

The Parties agree to devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible; and each Party will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Party will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

5.2 ADR Procedures

5.2.1 Dispute Initiation Notice

A Party claiming a dispute shall provide timely Notice to the other Parties, describing the matter(s) in dispute and any proposed relief or resolution. For disputes arising under sections 4.2.1 and 4.7, the specified time for Notice shall apply. Each Party that wishes to participate in dispute resolution shall provide written Notice to the other Parties within twenty (20) days of receiving the dispute initiation Notice.

5.2.2 Informal Meetings

The Disputing Parties shall hold at least two (2) informal meetings to resolve the dispute, unless agreed otherwise, commencing within thirty (30) days after the dispute initiation notice and concluding within sixty (60) days. If the Parties are unable to resolve the dispute, at least one (1) meeting will be held at the management level to seek resolution. The 60-day period may be extended upon mutual agreement of the Disputing Parties. If these meetings fail to resolve the dispute, the Disputing Parties may, by unanimous consent, agree to mediation. The Party claiming the dispute shall be responsible for coordinating all meetings under this section and shall make good faith efforts to coordinate a meeting time and location satisfactory to all Disputing Parties.

5.2.3 Mediation

The Disputing Parties shall choose a mediator within thirty (30) days of the conclusion of the meetings. Mediation shall not occur if the Disputing Parties cannot unanimously agree on the allocation of costs or choice of mediator. The mediation process shall be concluded not later than sixty (60) days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

5.2.4 Dispute Resolution Notice

The Party initially claiming the dispute shall provide Notice to all Parties of the result of the ADR process.

5.2.5 FERC Filings After Dispute Resolution

If the Licensee is required to make a FERC filing relating to an issue that was not successfully resolved through ADR, such filing will include the Licensee's reasons, based on project-specific information, for not adopting a Party's recommendation or for seeking FERC approval without obtaining agency approval. Any other Party may oppose or seek modification of the Licensee's filing.

5.2.6 Effect of ADR on Other Proceedings

The ADR process in this section 5 does not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any FERC order, compliance matter, or other regulatory action related to the Amended Project License; *provided* that any such Party shall initiate ADR pursuant to this section 5 as soon as practicable thereafter or concurrently therewith.

5.3 Remedies

This Settlement Agreement does not create a cause of action in contract for monetary damages for any alleged breach by any Party of the Amended Project License or this Settlement Agreement. The Parties reserve all other existing remedies for material breach of the Amended Project License or this Settlement Agreement, including seeking a license amendment or other appropriate relief from FERC.

6 Withdrawal From Settlement

6.1 Withdrawal of a Party from Settlement

In addition to the withdrawal rights provided by sections 4.10, 5.3.2, and 6.2, the Party whose interests are adversely affected by a Material Modification or a Party's action that is materially inconsistent with the terms of this Settlement Agreement or Amended Project License may withdraw from this Settlement. A Party may withdraw under this section or section 4.10, 5.3.2, and 6.2 only after the Parties comply with the ADR process in section 5 of this Settlement. Following completion of the ADR process, the aggrieved Party may provide Notice to the other Parties of its withdrawal from this Settlement, pursuant to section 7.11.

If the Licensee is required to make a FERC filing addressing an issue(s) not successfully resolved through ADR pursuant to section 5, no Party may withdraw from this Settlement until FERC issues an order on the Licensee's filing. Any Party materially aggrieved by the FERC order as it relates to the disputed matter may then withdraw pursuant to this section 6, seek rehearing before FERC, or exercise any other remedy available under applicable law. For issues that do not require a FERC filing, the Disputing Party or Parties may withdraw from this Settlement following completion of the ADR process set forth in section 5.

6.2 Withdrawal of the Licensee Based on Water Rights

If WDOE or a reviewing administrative body or court denies any Licensee application for water rights necessary to store or divert water for hydroelectric generation at the existing Project facilities, the Licensee may withdraw from this Settlement but only after complying with the ADR procedures set forth in section 5, and after exhaustion of administrative and judicial remedies.

6.3 Effective Date of Withdrawal

If ADR is unsuccessful and the aggrieved Party provides Notice of withdrawal, the withdrawal shall become effective ten (10) calendar days after such Notice.

6.4 Termination of Settlement

Upon expiration of the Amended Project License and any subsequent annual license(s), or upon withdrawal from this Settlement by the Licensee, this Settlement shall terminate as to all Parties and have no force or effect, except that all Parties shall continue to be bound by sections 2.2 and 7.1, which shall survive termination. The withdrawal of any Party other than the Licensee does not automatically terminate this Settlement for the remaining Parties. However, the remaining Parties will meet within ten (10) days to determine the effect of the withdrawal and whether they will continue to operate under the Agreement. A

withdrawing Party shall not be bound by any term contained in this Settlement, except sections 2.2 and 7.1.

7 Miscellaneous

7.1 Settlement Negotiations Privileged and Confidential

Unless the Parties agree otherwise, to the extent permitted by law, all discussions, communications, drafts, work papers, and notes relating to this Settlement are privileged and confidential. This material shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and shall not be used by any entity in any manner, including but not limited to admission into evidence, as an admission, or in an argument in any forum or proceeding for any purpose, to the fullest extent allowed by law, including but not limited to 18 C.F.R. § 385.606. This provision does not apply to any information that was in the public domain prior to the development of this Settlement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. This provision does not apply to: (a) any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law; or (b) any information held by a state or local agency that is not protected from disclosure pursuant to the Washington Public Disclosure Act or other applicable state or federal law. A withdrawing Party shall continue to maintain the confidentiality of all settlement communications to the extent permitted by applicable law. Nothing in this section 7.1 is intended to or shall be construed as prohibiting the filing of appropriate material in support of this Settlement with FERC or other regulatory agency. This section shall survive any termination of this Settlement.

7.2 Relationship to Other Agreements

7.2.1 The Parties recognize that certain Parties to this Settlement are also parties to Attachments A, B, C and E, and that Proposed License Articles included in this Settlement may partially satisfy certain provisions of these other agreements. The Parties' obligations under this Settlement shall be interpreted independent of Attachments A, B and C. Nothing in this Settlement is intended or shall be construed to bind any Party to this Settlement to Attachments A, B, C or E. Attachment of these three agreements to this Settlement is for informational purposes and convenience and does not render them part of this Settlement.

7.3 Severability of Terms of Settlement

This Settlement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement. Notwithstanding, if a court rules that any provision in this Settlement

is invalid, the Parties agree to meet and confer regarding the continued viability of this Settlement.

7.4 No Third Party Beneficiaries

This Settlement shall not create any right or interest in any member of the public as a third-party beneficiary and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Settlement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

7.5 Successors and Assigns

This Settlement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement.

7.5.1 Succession

In the event of succession by any Party, whether by statute, executive order or operation of law or contract, or any other means, the successor shall become a Party to and be bound by the terms of this Settlement, to the extent permitted by law.

7.5.2 Continuation of Certain Obligations

Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Settlement. It shall continue to be bound by sections 2.2, 7.1, 7.4, and 7.5. Except as provided in sections 3 and 4 of this Settlement, the initial Party shall not take any action inconsistent with this Settlement or the portions of the Amended Project License that incorporate this Settlement.

No change in ownership of the Project or transfer of the existing or the Amended Project License by the Licensee shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities or obligations under this Settlement. Unless prohibited by applicable law, the Licensee shall provide in any transaction for a change in ownership of its Project or transfer of its existing or Amended Project License, that such new owner shall be bound by, and shall assume the rights and obligations of the Licensee under this Settlement upon completion of the change of ownership and approval by FERC of the license transfer.

7.5.3 Notice

The Licensee transferring pursuant to section 7.5.2 or an assigning Party shall provide Notice to the other Parties at least thirty (30) days prior to the proposed effective date of such transfer or assignment.

7.6 Extension of Time; Inability to Perform

7.6.1 Obligations under Amended Project License

7.6.1.1 Extension of Time

The Licensee may request an extension of time for good cause, consistent with 18 C.F.R. § 385.2008, to fulfill an obligation under its Amended Project License. The Parties acknowledge that FERC's standard for any such request shall apply. Any Party may oppose the request and may seek ADR pursuant to section 5, as appropriate.

7.6.1.2 Inability of Licensee to Perform

If the Licensee is unable to perform an obligation under its Amended Project License, which is also a Proposed License Article in Appendix 1 of the Settlement, due to an event or circumstances beyond its reasonable control, the Licensee may file with FERC an appropriate request for relief. The Parties acknowledge that FERC's standard for any such request shall apply. Any Party may oppose the request and may seek ADR pursuant to section 5, as appropriate.

7.6.2 Obligations under Section 4.7.2

If the Licensee is unable to perform an obligation under section 4.7.2 of this Settlement Agreement due to an event or circumstances beyond its reasonable control, the Licensee shall not be in breach of this Settlement Agreement.

7.6.3 Notice of Delay or Inability to Perform

In the event of a delay or inability to perform an Amended Project License obligation or an obligation under section 4.7.2, the Licensee shall provide Notice as soon as reasonably practicable. This Notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for implementing the measures or performing the obligation. The Licensee shall make all reasonable efforts to promptly resume performance of the obligation and shall provide Notice when it does so.

7.7 Waiver

The failure of any Party to insist, on any occasion, upon strict performance of any provision of this Settlement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such Party.

7.8 Governing Law

The Amended Project License shall be governed, construed, and enforced in accordance with federal law and regulation. By executing this Settlement, neither any federal agency nor the Skokomish Tribe is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists.

7.9 Elected Officials Not to Benefit

No elected officials shall be entitled to any share or part of this Settlement or to any benefit that may arise from it.

7.10 Relationship of the Parties

Except as otherwise expressly set forth herein, nothing contained in this Settlement is intended or shall be construed to create an association, trust, partnership or joint venture, or impose any trust or partnership duty, obligation or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

7.11 Notice

Any Notice required by this Settlement shall be written. If practicable, Notice shall be provided by e-mail or facsimile to all Parties. Notice shall also be sent to all Parties by first-class mail or comparable method of distribution, and as applicable shall be filed with FERC.

For the purposes of this Settlement, and unless otherwise specified, a Notice, including Notice via e-mail or facsimile, shall be effective upon receipt, but if provided only by U.S. Mail, seven (7) days after the date on which it is mailed. When this Settlement requires Notice in fewer than seven (7) days, Notice shall be provided by facsimile or e-mail and shall be effective when provided.

For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 2. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix 2, and the Licensee shall maintain the current distribution list of such representatives. The Parties acknowledge their responsibility to keep the other Parties informed of their current address, telephone, facsimile and e-mail information. Notice obligations under this section 7.11 are in addition to any notice provisions required by applicable law.

7.12 Section Titles for Convenience Only

Section titles in this Settlement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any Settlement provisions or the Parties' intentions.

7.13 Costs

Unless otherwise provided in this Settlement, each Party shall bear its own costs of implementing this Settlement.

8 Execution of Settlement

8.1 Signatory Authority

Each signatory to this Settlement certifies that he or she is authorized to execute this Settlement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

8.2 Signing in Counterparts

This Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Settlement may be compiled without impairing the legal effect of any signatures thereon.

IN WITNESS THEREOF,

the Parties, through their duly authorized representatives, have caused this Settlement to be executed as of the date set forth in this Settlement.

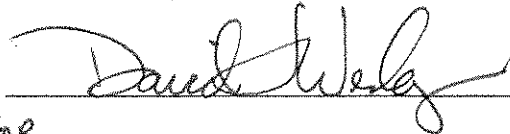
City of Tacoma, Washington

_____

Date: 1/12/09

by: William A. Gaines Director of Utilities/CEO

United States Department of the Interior Fish and Wildlife Service



Date: 1/09/09

For
by:

Robyn Thorson

Regional Director

United States Department of the Interior Bureau of Indian Affairs

for *H Payne*

Date: 01/09/09

by: George T. Skibine

Acting Deputy Assistant Secretary Indian Affairs –
Policy and Economic Development

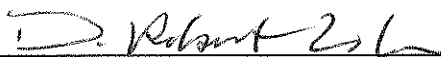
United States Department of Agriculture Forest Service



Date: 1/9/09

by for Mary Wagner Regional Forester

National Marine Fisheries Service



Date: 1/12/09

by: D. Robert Lohn

Regional Administrator, National Marine Fisheries
Service Northwest Region

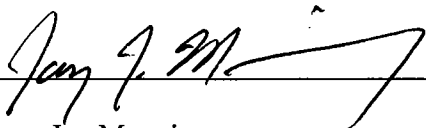
Washington Department of Fish and Wildlife



Date: 1/9/09

by: Philip Anderson Interim Director

Washington Department of Ecology



Date: 1/9/09

by: Jay Manning Director _____

Skokomish Indian Tribe

Joseph Pavel

Date: 1/12/09

by: Joseph Pavel Chairman

APPENDIX 1

PROPOSED NEW AND AMENDED LICENSE ARTICLES FOR THE CUSHMAN PROJECT, FERC No. 460

**Draft Proposed License Articles for the
Cushman Hydroelectric Project, FERC No. 460
(Confidential – Do Not Disclose)**

Article 201(c) (substitute for existing language): The Licensee shall pay the Skokomish Tribe an annual charge of \$20,000 based on 2008 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U), for the use of reservation lands. The first payment will be made within 60 days after issuance of the Amended License and annually for the term of the Amended License and any subsequent annual licenses.

Articles 202-205, 301-303: Unchanged.

Article 401: Article proposed for deletion. See explanation in the Joint Explanatory Statement.

Article 402: Unchanged.

Article 403: Channel Conveyance Capacity

The Licensee shall implement the measures described in this license article as its contribution to regional efforts to enhance the channel conveyance capacity of the mainstem Skokomish River for the reduction of risks to human health and welfare from flooding.

1. **Skokomish River Basin Ecosystem Restoration and Flood Damage Reduction General Investigation:** The Licensee shall annually provide 25% of the funds necessary for the Army Corps of Engineers to conduct the Skokomish River Basin Ecosystem Restoration and Flood Damage Reduction General Investigation (General Investigation). The Licensee's funding obligations shall not exceed \$400,000 in any year, and shall not exceed \$1.2 million in total. The Licensee shall implement this obligation through a cost-sharing agreement with either the Army Corps of Engineers or Skokomish Tribe as appropriate.

2. **Mainstem Channel Restoration (MCR) Plan:** If by year fifteen (15) after issuance of the Amended License, Congress has not appropriated sufficient funds to substantially implement measures that address mainstem Skokomish River channel capacity, the Licensee shall file with the Commission for approval, a Mainstem Channel Restoration (MCR) Plan.

The MCR Plan shall: (1) identify and prioritize appropriate measures that are capable of being implemented by the Licensee to enhance mainstem channel capacity; (2) include individual implementation schedules and cost estimates for each measure; and (3) identify provisions for creating and managing the MCR Account, as described in section 3. Any measures identified in the MCR Plan for implementation in a location that is

both: (a) outside the North Fork Skokomish sub-basin and (b) outside of the then existing Project boundary will be limited to actions that do not result in an expansion of the Project boundary.

The Licensee shall develop the MCR Plan in consultation with the Fisheries and Habitat Committee and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall also seek the comments and recommendations of the Corps of Engineers, the Federal Emergency Management Agency, the U.S. Environmental Protection Agency, and Mason County. The Licensee shall allow a minimum of thirty (30) days for comments and recommendations before submitting the MCR Plan for approval to NMFS, USFWS, and BIA. When filing the plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members, the Corps, the Federal Emergency Management Agency, the U.S. Environmental Protection Agency, and Mason County are accommodated by the Licensee's Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the MCR Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the proposed MCR Plan. The Licensee's funding of the MCR Plan pursuant to section 3 shall commence when the Licensee is notified by the Commission that the filing is approved.

3. MCR Channel Restoration Account: The Licensee shall deposit \$600,000 into an interest-bearing account within thirty (30) days after Commission approval of the MCR Plan.

In addition, so long as Congress has not appropriated funds to substantially implement measures that address Mainstem Skokomish River channel capacity, the Licensee shall deposit \$600,000 every five (5) years for the term of the Amended License and \$120,000 for each subsequent annual license to fund priority measures identified in the MCR Plan. The last five year payment during the license term shall be reduced based upon a pro rata calculation of the number of years remaining in the license. All funds identified in this section shall be based on 2008 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U). The Licensee shall use this account to fund projects identified in the MCR Plan. The Licensee shall not use the funds provided within this section for its administration and oversight of these projects. The Licensee's obligation to fund measures identified in the MCR Plan shall continue until Congress has appropriated funds to substantially implement measures that address Mainstem Skokomish River channel capacity or until the fund is fully expended, whichever comes first.

The Licensee shall develop a proposed budget for each project. The Licensee shall use the funds provided within this section to implement only those projects

specified, budgeted for, and approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Use of any funds in excess of amounts budgeted for such activities must be approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Provided, however, the funds shall not be used to cover any additional costs incurred by the Licensee in completing the projects developed pursuant to this article, due to the negligence or other fault of the Licensee or the Licensee's contractor, unless otherwise approved by the Fisheries and Habitat Committee.

Article 404: Proposed for deletion because provisions are incorporated in Article 407.

Article 405: Impoundment Elevations

Upon approval of the Operational and Flow Monitoring Plan required to monitor surface water elevations required by Article 406, the Licensee shall maintain a minimum impoundment elevation (Tacoma Datum) in Lake Cushman of between 735 feet and 738 feet from Memorial Day weekend through Labor Day weekend. The Licensee shall also maintain a minimum impoundment elevation in Lake Cushman of 690 feet from November 1 through March 31.

The purposes of maintaining these minimum elevation levels are to protect and enhance the land-use, recreation, aesthetic, and socio-economic value of Lake Cushman's shoreline, and to provide for the interests of dam safety and flood mitigation. Moreover, the Licensee shall maintain impoundment elevations in Lake Kokanee between 474 feet Tacoma Datum and 480 feet Tacoma Datum at all times, except for maintenance requirements of the intake or spillway.

These minimum impoundment surface elevations may be temporarily modified if required by operating emergencies beyond the control of the Licensee, or upon approval of the Fisheries and Habitat Committee. If the impoundment water surface elevation is so modified, the Licensee shall notify the members of the Fisheries and Habitat Committee as soon as possible, but no later than two (2) business days after each such incident. The Licensee shall notify the Commission as soon as possible, but no later than ten (10) days after each such incident.

Changes to this article's impoundment surface elevations can be made through the provisions outlined in the Fisheries and Habitat Monitoring Plan and fishery reports required in Article 413. If the information in the fishery reports, prepared pursuant to Article 413, indicates that changes in impoundment levels are needed to protect and enhance the fishery and aquatic habitat in the North Fork of the Skokomish River, the Commission may direct the Licensee to file with the Commission an amendment to the license to change the Project's impoundment surface elevation requirements.

Article 406: Operational and Flow Monitoring Plan

Within 180 days of issuance of the Amended License, the Licensee shall file with the Commission, for approval, a comprehensive Operational and Flow Monitoring Plan (OFM Plan). This OFM Plan will document how the Licensee shall: (1) monitor impoundment water surface elevations, as required by Article 405; (2) monitor stream flows in the Skokomish River downstream from the Project, as required by Article 407; (3) ensure compliance with the minimum instream flow requirements; (4) improve mainstem flow and flood forecasting; and (5) address water use issues, specifically from Lake Cushman, when refill, Project operations, flow releases and Lake Cushman water surface elevations may conflict.

The OFM Plan shall include, but not be limited to: (1) the use of the three existing North Fork Skokomish River U.S. Geological Survey (USGS) streamflow gages (USGS Gage Nos. 12056500, 12058790 and 12059500) and one mainstem gage (12061500); (2) the use of and/or the installation of new staff gages, impoundment water surface level monitoring devices, and flow measurement and recording equipment, as needed, to determine instantaneous water surface elevations, flows in the Skokomish River downstream from Cushman Dam No. 2, and to effectively implement the flow regime in Article 407; (3) a provision that describes the priorities in operating the Project when refill, Project operations, flow releases and Lake Cushman water surface elevations may conflict; (4) the proposed location, design, and calibration (including methods and schedule) of the monitoring equipment; (5) the relative extent of manned versus automatic operation of the monitoring equipment; (6) the methods for recording and maintaining flow data; (7) the methods for recording and maintaining surface impoundment elevation data; (8) the mechanism(s) for providing impoundment elevation data and telemetered real-time flow data to the Fisheries and Habitat Committee, Save the Lakes Coalition, and USGS; and (9) a schedule for: (a) implementation of the OFM Plan, (b) consultation with the appropriate federal and state agencies regarding the monitoring data, and (c) filing the data, agency comments, and the Licensee's response to agency comments with the Commission.

The Licensee shall develop the OFM Plan in consultation with the Fisheries and Habitat Committee and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall involve a representative of Save the Lakes Coalition in development of the OFM Plan provisions that describe the priorities in operating the Project when refill, Project operations, flow releases and Lake Cushman water surface elevations may conflict. The Licensee shall allow a minimum of thirty (30) days for comments and recommendations by Fisheries and Habitat Committee members and Save the Lakes Coalition, before submitting the OFM Plan for approval to USFWS, BIA and NMFS. When filing the Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members and Save the Lakes Coalition are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific

information. If the Licensee files the OFM Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the OFM Plan. Changes to Project operations shall not commence until the Licensee is notified by the Commission that the Plan is approved. Upon Commission approval, the Licensee shall implement the Plan.

Article 407: Minimum Flows

The Licensee shall release flows from the Cushman Project into the Lower North Fork of the Skokomish River (“North Fork”), in accordance with all components of the flow regime required by this Article. The purposes of this Article are: 1) to protect, mitigate, and enhance fish and wildlife resources, riparian vegetation, aesthetic resources, and water quality in the North Fork, 2) to provide safe, timely and effective fish passage in the North Fork; and 3) to improve sediment transport in the North Fork and the Mainstem of the Skokomish River (“Mainstem”). The flow regime required by this Article has three components, described as follows:

1. Component 1: The Licensee shall provide an annual water budget of 160,000 acre-feet for release from the Cushman Project into the Lower North Fork of the Skokomish River. The Licensee shall release 115,835 acre-feet of the annual 160,000 acre-foot water budget as instantaneous minimum flows from the Cushman Project, into the Lower North Fork of the Skokomish River, in accordance with the following schedule:

<u>Month:</u>	<u>Instantaneous Minimum Flow Release Schedule:</u>
January:	150 cfs
February:	150 cfs
March:	180 cfs
April:	180 cfs
May:	180 cfs
June:	170 cfs
July:	100 cfs
August:	100 cfs
September:	170 cfs
October:	180 cfs
November:	180 cfs
December:	180 cfs

In addition to the instantaneous minimum flow releases described above, the Licensee shall release the remaining 44,165 acre-feet of the annual 160,000 acre-foot water budget in accordance with a release schedule developed prior to each water budget year (July 1 – June 30) in consultation with the Fisheries and Habitat Committee. By no

later than ninety (90) days prior to the beginning of each water budget year, the Licensee shall prepare and distribute to the Fisheries and Habitat Committee a preliminary Flow Report containing a recommended release schedule for the 44,165 acre-feet for the upcoming water budget year. Following consultation with the Fisheries and Habitat Committee, the Licensee shall modify the Flow Report to document the final release schedule determined by the Fisheries and Habitat Committee and shall file the finalized Flow Report with the Commission for informational purposes by no later than fifteen (15) days prior to the beginning of each water budget year. The Fisheries and Habitat Committee may change the above schedule to the USGS water year (October 1 – September 30).

If, during the course of a water budget year, but not more than once every ninety (90) days unless exceptional circumstances exist, the Fisheries and Habitat Committee determines that the release schedule described in the Flow Report requires interim modification consistent with the purposes of this Article, the Licensee shall notify the Commission and implement the revised release schedule within seven (7) days of providing such notice, unless otherwise directed by the Commission. Additionally, during the first three water budget years after license amendment, but not more than once every thirty (30) days, if the Fisheries and Habitat Committee determines that additional interim modifications are necessary for the purposes of this Article, the Licensee shall notify the Commission and implement the revised schedule within seven (7) days of providing such notice unless otherwise directed by the Commission.

In the event that the Fisheries and Habitat Committee is unable to reach consensus regarding the release of the 44,165 acre-feet by fifteen (15) days prior to the beginning of the water budget year, the following flow regime will be implemented beginning the first day of the water budget year:

<u>Month:</u>	<u>Default Instantaneous Flow Release Schedule:</u>
January:	230 cfs
February:	215 cfs
March:	215 cfs
April:	220 cfs
May:	240 cfs
June:	230 cfs
July:	220 cfs
August:	200 cfs
September:	200 cfs
October:	210 cfs
November:	225 cfs
December:	235 cfs

The Licensee shall discharge water to the North Fork Skokomish River to meet the scheduled flow releases in this Article. Water releases exceeding the planned flows shall not be charged to the water budget.

For compliance purposes, the Licensee is allowed temporary fluctuations of up to five percent (5%) of the scheduled flow release as measured at USGS Gage No. 12058790 to account for monitoring imprecision and release equipment variability.

2. Component 2: In addition to the flow releases required by Component 1 of this Article 407, the Licensee shall increase flow releases from the Cushman Project, into the Lower North Fork of the Skokomish River to: (a) 500 cfs whenever the daily average flow at the North Fork Skokomish River/Staircase Rapids U.S. Geological Survey (USGS) streamflow Gage No. 12056500 ("Staircase Rapids Gage") exceeds 3000 cfs; (b) 750 cfs whenever the daily average flow at the Staircase Rapids Gage exceeds 4000 cfs; and (c) 1000 cfs whenever the daily average flow at the Staircase Rapids Gage exceeds 5000 cfs. Commencing in the sixth year after the issuance of the Amended License, and every five (5) years thereafter, the Licensee shall increase the initial flow releases of 500, 750, and 1000 cfs described herein by five percent (5%) of the previous flow and implement these flows as stated above.

The Licensee shall maintain the flow releases provided for in this component for the same duration of time that the flow at the Staircase Rapids Gage exceeds the applicable trigger of 3000, 4000, or 5000 cfs. The Licensee may delay the commencement of the flow releases required by this component by up to seven (7) days after the initial exceedance at the Staircase Rapids Gage if necessary to avoid flood impacts or to allow time for necessary water release notifications.

3. Component 3: In addition to the flow releases required by Components 1 and 2 of this Article, the Licensee shall increase flow releases from the Cushman Project, into the Lower North Fork of the Skokomish River, up to 2,200 cfs for forty-eight (48) consecutive hours whenever the daily average flow at the Skokomish River/Potlatch USGS stream flow Gage No. 12061500 exceeds 9800 cfs, or fifteen percent (15%) above flood stage, whichever is greater, between October 1 and February 15 of each year. The purpose of the flows required in this component is to test whether sediment transport is significantly improved in the Mainstem by extending the duration of the high Mainstem flow events at slightly less than bank-full capacity.

If a flood event triggers the flow releases in this Component within 2 days of the Staircase Rapids Gage exceeding the trigger flows described in Component 2, releases described in this Component will eliminate the requirement for Component 2 flows for that flood event.

The Licensee shall release the flows required by this Component as soon as practicable after the Mainstem drops below flood stage. Once the release has commenced, the Licensee shall continue the flow release for forty-eight (48) consecutive hours. The Licensee shall control the flow release to extend the duration of the high flow event in the Mainstem at or near bank-full capacity in a continuous manner, without exceeding flood stage, until reaching the maximum 2,200 cfs release. If a Component 3 release is triggered during the delay of a required Component 2 release, the Component 2 flow release will be initiated immediately following completion of the Component 3

release. The Licensee shall comply with ramping rates provided for in Article 411 of the Amended License when implementing these flows.

4. Sediment Transport Adaptive Management

Based upon the sediment transport studies provided in Article 413, in year five of this Amended License, and every five (5) years thereafter, the Licensee shall file a Component 3 effectiveness report with the Commission for its approval, after consultation with the Fisheries and Habitat Committee and seeking the approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The report shall evaluate the effectiveness of the flows provided in Component 3 for the purpose of improving sediment transport in the Mainstem Skokomish River. The report shall discuss whether modifications to the flow trigger, the timing of the flows, and the duration of the flows are necessary to improve sediment transport; however, any modification to the quantity of the flow release provided for in this component shall be limited to no more than a five percent (5%) increase in the total quantity of each Component 3 flow release in each five-year evaluation period beginning in year eleven. The report shall also analyze the impacts to meeting the Article 405 refill requirements and the potential benefit to improving sediment transport in the Mainstem of extending the Component 3 seasonal period through March 31. If the analysis demonstrates that extending the seasonal period will not adversely impact refill and will improve sediment transport, the Fisheries and Habitat Committee may extend the seasonal period through March 31.

5. Component 3 Flow Alternative

5.1 Flood Damage Reduction and Mitigation Plan

If the Fisheries and Habitat Committee determines based on best available information that the flows required by Component 3 are not effective at improving sediment transport in the Mainstem Skokomish River, it may request that the Licensee develop and implement a Flood Damage Reduction and Mitigation Plan (FDRM Plan). If so requested, the Licensee shall develop this Plan and file it with the Commission within 180 days of receiving notice to do so by the Fisheries and Habitat Committee.

The Licensee shall develop the FDRM Plan in consultation with the Fisheries and Habitat Committee and shall seek approval of NMFS, USFWS, and BIA. The Licensee shall allow a minimum of thirty (30) days for comments and recommendations by Fisheries and Habitat Committee members before submitting the FDRM Plan for approval to the USFWS, BIA and NMFS. When filing the FDRM Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Fisheries and Habitat

Committee members are accommodated by the Licensee's FDRM Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the Flood Damage Reduction and Mitigation Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The FDRM Plan shall: (1) include the rationale for proposing a cessation of Component 3 flows; (2) identify an initial list of projects in order of priority to be implemented by the Licensee over the first five (5) years of plan implementation either to enhance channel conveyance capacity or reduce or mitigate flood damage in the Skokomish River basin; (3) identify provisions for creating a Flood Damage Reduction and Mitigation Fund to cover the costs of plan implementation, consistent with paragraph 5.2; and (4) include provisions for resuming Component 3 flow releases. The Licensee shall update the list of projects every five (5) years on the anniversary of the Commission's approval, following the same procedures discussed above for consultation with the Fisheries and Habitat Committee, seeking approval by NMFS, USFWS, and BIA, and filing with the Commission.

Any measures identified in the FDRM Plan for implementation in a location that is both: (a) outside the North Fork Skokomish sub-basin and (b) outside of the then existing Project boundary, will be limited to actions that do not result in an expansion of the Project boundary.

The Commission reserves the right to require changes to the FDRM Plan and the updated project lists. Component 3 flows shall be provided by the Licensee until the Licensee is notified by the Commission that the FDRM Plan is approved. Upon Commission approval, the Licensee shall discontinue Component 3 flows and implement the FDRM Plan.

5.2 Flood Damage Reduction and Mitigation Fund

The Licensee shall deposit \$150,000 into an interest bearing account within thirty (30) days after Commission approval of the Flood Damage Reduction and Mitigation Plan. In addition, the Licensee shall deposit \$150,000 into an interest bearing account every year thereafter for the term of the Amended License, and \$150,000 for each subsequent annual license, on the anniversary date of the Commission's approval of the Plan. All funds deposited into the Flood Damage Reduction and Mitigation Fund shall be based on 2008 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U). The Licensee shall use this account to fund projects developed pursuant to this

License Article. The Licensee shall not use the funds provided within this paragraph for its administration and oversight of these projects.

The Licensee shall develop a proposed budget for each project. The Licensee shall use the funds provided within this section to implement only those projects specified, budgeted for, and approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Use of any funds in excess of amounts budgeted for such activities must be approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Provided, however, the funds shall not be used to cover any additional costs incurred by the Licensee in completing the projects developed pursuant to this Article, due to the negligence or other fault of the Licensee or the Licensee's contractor, unless otherwise approved by the Committee.

6. **General Provisions:** The Licensee shall notify the Skokomish Indian Tribe no less than twenty-four (24) hours in advance of any increased flow releases provided for in Components 2 and 3 of this Article 407. Article 407 flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee. If flows are so modified, the Licensee shall notify the members of the Fisheries and Habitat Committee as soon as possible, but no later than forty-eight (48) hours after each such incident. The Licensee shall notify the Commission no later than ten (10) days after each such incident.

The Licensee shall include, in any report prepared pursuant to this Article 407, documentation of its consultation with the Fisheries and Habitat Committee, copies of the comments and recommendations on the report after it has been prepared and provided to the Fisheries and Habitat Committee, and specific descriptions of how the comments and/or recommendations of the Fisheries and Habitat Committee are accommodated by and incorporated into the report. The Licensee shall allow a minimum of thirty (30) days for the Fisheries and Habitat Committee members to provide comments and recommendations before filing the report with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information.

Article 408: Minimum Flow Plan. Proposed for deletion because article is related to implementation of minimum flow originally required by Article 407 which has now been superseded.

Article 409. Deleted by 1999 Rehearing Order. *City of Tacoma, Wash.*, 86 FERC ¶ 61,311 (1999).

Article 410. Within 180 days of issuance of the Amended License, the Licensee shall file with the Commission, for approval, a water quality enhancement plan to protect and enhance water quality, recreation, and aesthetics in the North Fork of the Skokomish River.

The plan shall include, but not be limited to the following provisions:

- (1) Installing emergency intake shutoff valves on all penstock intakes: The Licensee shall provide design drawings, and describe the guidelines under which the valves will be operated, as well as a schedule for installing the valves.
- (2) Improving Staircase Road in a manner consistent with U.S.D.A. Forest Service (USFS) stipulations to protect water quality: The Licensee shall include a mechanism and a schedule for contributing an amount not to exceed \$750,000 as matching dollars for Federal or other grants, if the USFS determines that it will facilitate jurisdiction of Staircase Road (USFS Road No. 24) being assumed by a public road management agency. If jurisdiction is not transferred within three (3) years after issuance of the Amended License and upon the request of the USFS, instead of contributing \$750,000 (2008 dollars), adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U), as matching dollars the Licensee shall apply a double thickness bituminous surface treatment (BST - asphalt emulsion and chip rock) and additional aggregate base to accommodate anticipated traffic loading from MP 10.1 to MP 14.08. This initial application shall be supplemented with an additional (third) surface course of asphalt and aggregate to be applied within the first five (5) years of the original placement, the specific timing to be determined by the USFS, to keep the structural integrity of the surface. Subsequent operations, maintenance and treatment activities are to be done pursuant to Article 427.
- (3) Monitoring dissolved gases (*e.g.* nitrogen) at all powerhouse outfalls and spillways during spill events: The Licensee shall describe: (a) all the mechanisms and structures used to monitor dissolved gases; (b) the methods for recording and maintaining data on dissolved gases, and providing relevant data to the Commission and the appropriate agencies for review; and (c) the schedule for implementing the monitoring program. The Licensee shall also describe reasonable enhancement measures, developed in consultation with appropriate agencies, to address nitrogen levels that deviate from Washington's standards due to the operation of the Project.

The Licensee shall prepare the water quality enhancement plan after consultation with U.S. Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Indian Affairs, National Park Service, USFS, Washington Department of Fish and Wildlife, Washington Department of Ecology, and the Skokomish Indian Tribe. The Licensee shall include with the plan documentation of consultation, and copies of comments and recommendations on the Licensee's proposed plan after it has been prepared and provided to the agencies and the Tribe.

Article 411: Ramping Rate Conditions

The Licensee shall operate the Project within the following ramping rate restrictions as measured at North Fork Skokomish River U.S. Geological Survey (USGS) Streamflow Gage No. 12058790.

1. Downramping Rates

Downramping rate refers to the rate of allowable stage decline. The following rates apply to flows less than the critical flow, which is currently estimated to be 500 cfs.

<u>Time of Year</u>	<u>Daylight Rates</u>	<u>Night Rates</u>
February 16 to June 15	No Ramping	2 inches per hour
June 16 to October 31	1 inch per hour	1 inch per hour
November 1 to February 15	2 inches per hour	2 inches per hour

Daylight is defined as one hour before sunrise to one hour after sunset. Night is defined as one hour after sunset to one hour before sunrise.

At flows greater than the critical flow, currently estimated to be 500 cfs, the Licensee shall attempt to limit the downramping rate to no more than 0.5 feet per hour unless flows are exacerbating downstream flood conditions that would warrant a more rapid reduction of flows.

The Licensee shall modify the critical flow and down ramping rate restrictions upon recommendation of the Fisheries and Habitat Committee, and approval by the Commission.

2. Upramping Rates

Upramping rate refers to the rate of allowable stage increase. The Licensee shall limit the upramping rate to no more than 1 foot per hour unless required by an operating emergency.

Article 412: Fish Habitat Enhancement and Restoration Plan

Within twelve (12) months of issuance of the Amended License, the Licensee shall file with the Commission, for approval, a comprehensive Fish Habitat Enhancement and Restoration Plan (FHER Plan) to enhance fish habitat in the North Fork of the Skokomish River basin. The purpose of the FHER Plan is to guide the implementation of projects designed to enhance aquatic habitat in the North Fork of the Skokomish River

and McTaggart Creek and to provide access to spawning habitat in tributaries of Lake Cushman.

The Licensee shall develop the FHER Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall also seek the comments and recommendations of the National Park Service when developing the plan. The Licensee shall allow a minimum of thirty (30) days for comments and recommendations before submitting the plan for approval to the USFWS, BIA and NMFS. When filing the FHER Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members and the National Park Service are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the FHER Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the proposed FHER Plan. Implementation of the FHER Plan shall not commence until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the FHER Plan.

The FHER Plan shall consist of the following actions:

(1) Habitat Restoration Account (HRA): The Licensee shall deposit \$3.5 million into an interest bearing account within thirty (30) days after issuance of the Amended License. In addition, starting five (5) years after issuance of the Amended License and annually for the term of the Amended License and any subsequent annual licenses, the Licensee shall deposit \$300,000 into this account. All funds are based on 2008 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U). The Licensee shall use this account to fund projects developed pursuant to this License Article, other than removing the McTaggart Creek Diversion Structure and implementing the threatened species take minimization measures referenced in Paragraph 3 below. The Licensee shall not use the funds provided within this section for its administration and oversight of these projects.

The Licensee shall develop a proposed budget for each project. The Licensee shall use the funds provided within this section to implement only those projects specified, budgeted for, and approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Use of any funds in excess of amounts budgeted for such activities must be approved by NMFS, BIA, and USFWS after consultation with the Fisheries and Habitat Committee. Provided, however, the funds shall not be used to cover any additional costs incurred by the Licensee in completing the projects developed pursuant to this article, due to the negligence or other fault of the Licensee or the Licensee's contractor, unless otherwise approved by the Committee.

(2) Habitat Enhancement and Restoration Projects. Throughout the term of the Amended License and any subsequent annual licenses, the Licensee shall, in consultation with the Fisheries and Habitat Committee and with the approval of NMFS, USFWS, and BIA develop and implement, specific HRA-funded aquatic habitat enhancement and restoration projects within and adjacent to the North Fork of the Skokomish River. Such projects shall include, but not be limited to (a) instream structure enhancements, (b) side-channel habitat development, and (c) the removal of existing barriers to upstream migration in upper Big Creek and Dow Creek at River Mile 0 (other than any barrier underlying the state highway). If the monitoring provided in Article 413 indicates that augmenting gravel below Cushman Dam No. 2 is necessary to increase anadromous fish spawning habitat, the Licensee in consultation with the Fisheries and Habitat Committee will implement appropriate gravel augmentation projects.

The Licensee, in consultation with the Fisheries and Habitat Committee, shall use funds from the Habitat Restoration Account established in Paragraph (1) to implement the types of projects identified in this section. In addition, throughout the term of the Amended License, if available funds remain within the Account, the Licensee will implement other appropriate aquatic habitat enhancement and restoration projects developed by the Fisheries and Habitat Committee within the Skokomish River Basin; however, any measures identified in the FHER Plan for implementation in a location that is both: (a) outside the North Fork Skokomish sub-basin and (b) outside of the then-existing Project boundary, will be limited to actions that do not result in an expansion of the Project boundary.

(3) Threatened Species Take Minimization Measures: The Licensee shall implement measures to minimize the take of Puget Sound Chinook salmon, Puget Sound Steelhead, Hood Canal summer-run chum, and bull trout associated with in-water work during development of any physical structures and facilities, consistent with the agencies' incidental take statements [attached as Appendices __ and __ to this order]. The Licensee shall not use funds from the Habitat Restoration Account to implement such measures.

(4) FHER Plan Implementation Schedule: The Licensee shall include a schedule for implementing the FHER Plan, evaluating the success of the enhancement and restoration projects, and modifying the plan, if needed.

(5) FHER Report: The Licensee shall file with the Commission by June 30 of each year an annual report fully describing its implementation of the FHER Plan during the previous calendar year and a list of planned projects for the current calendar year. The Fisheries and Habitat Committee shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the Fisheries and Habitat Committee.

(6) McTaggart Creek Diversion Structure: Notwithstanding the FHER Plan, within twelve (12) months of issuance of the Amended License, the Licensee shall remove the McTaggart Creek diversion structure and restore the affected areas. In addition, the

Licensee shall replace the existing USFS culvert underlying the USFS road crossing on McTaggart Creek (River Mile 4.3), in the event that such culvert is not replaced prior to issuance of the Amended License. The Licensee shall not use funds from the Habitat Restoration Account to complete these tasks.

Article 413: Fish Habitat and Monitoring Plan

Within twelve (12) months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a Fisheries and Habitat Monitoring Plan (FHM Plan) for the North Fork of the Skokomish River (North Fork) and the Mainstem of the Skokomish River below the confluence of the North and South Forks (Mainstem). The Licensee shall implement the FHM Plan throughout the term of the Amended License and any subsequent annual licenses, in consultation with Fisheries and Habitat Committee.

The Licensee shall develop the FHM Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall also seek the comments and recommendations of the National Park Service when developing the FHM Plan. The Licensee shall allow a minimum of thirty (30) days for comments and recommendations before submitting the plan for approval to the USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members and the National Park Service are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the FHM Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The purpose of the FHM Plan is to inform the implementation of Articles 407 and 412 and, as appropriate, the adaptive management provisions within Articles 414, 415, and 417. The FHM Plan shall include a schedule for the Licensee's: (1) implementation of the plan consistent with this license article; (2) consultation with the Fisheries and Habitat Committee regarding the results of the monitoring and a schedule for providing preliminary monitoring data; and (3) filing of results, comments, and the Licensee's response to these comments with the Commission.

The Commission reserves the right to require changes to the FHM Plan. Implementation of the plan shall not commence until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

The Licensee shall file with the Commission, by June 30 of each year, an annual report fully describing the monitoring efforts of the previous calendar year and activities

required under the plan for the following year. The Fisheries and Habitat Committee shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the Fisheries and Habitat Committee.

As provided below, the Fisheries and Habitat Committee may modify the monitoring program methods and frequencies of data collection and reporting requirements to more effectively meet the specific purpose of a monitoring activity.

The following guidelines shall be used in developing and implementing the FHM Plan: (a) monitoring and studies shall be relevant to the Amended License, (b) monitoring and studies shall be chosen and conducted so that they provide useful information for project management decisions or establishing compliance with Amended License conditions, and (c) monitoring and studies shall be cost-effective in meeting the specific purpose of the monitoring activity.

For purposes of implementing the FHM Plan, each year is defined on a calendar year basis (i.e., January through December). Except as provided in Articles 416, 417, and 418, this Plan covers monitoring and studies to be conducted by the Licensee during all years through the term of the Amended License and in any subsequent annual licenses. Monitoring of Article 412 habitat projects shall be addressed within the Plan for such projects. Where years are specified, Year 1 is the first year after the Plan is approved.

The FHM Plan shall consist of monitoring the following:

1. Sediment Transport and Channel Morphology in the lower North Fork and Mainstem

The Licensee shall monitor channel morphology and substrate composition in the lower North Fork and mainstem Skokomish River to document the effects of the flow regime prescribed in License Article 407 on channel shape and substrate composition.

1.1 Purpose

The purpose of sediment transport and channel morphology monitoring is to determine: (a) the magnitude of flows that initiate transport of spawning-sized gravel in the North Fork Skokomish River downstream of Cushman Dam No. 2; (b) the extent to which the high flow releases prescribed in Article 407 (Component 2 and Component 3) result in changes in substrate composition and changes in channel cross sections in the North Fork Skokomish River downstream of Cushman Dam No. 2; and (c) the extent to which high flow releases prescribed in Article 407 result in changes in channel cross sections and channel aggradation in the mainstem Skokomish River downstream of the confluence with the North Fork.

1.2 Method

The Licensee shall identify study reaches based on geomorphic channel types.

The Licensee shall monitor the North Fork to determine the flows at which gravel is mobilized.

The Licensee shall establish representative cross sections in each study reach taking advantage of USGS stream gage locations where possible.

The Licensee shall collect channel profile and substrate data at each cross section during low flow periods, including channel characteristics, redd scour, and substrate composition.

In the case of mainstem channel modification, the Licensee shall modify the Plan to provide for additional monitoring.

1.3 Frequency

For Year 1 through Year 5 and every five years thereafter, the Licensee shall monitor the North Fork transects during the summer low flow period to determine channel shape and bedload composition. In the event that gravel augmentation occurs pursuant to Article 412, the Licensee shall resume monitoring on an annual basis for five years after such augmentation.

For Year 1 through Year 10, the Licensee shall monitor the Mainstem channel during the summer low flow period following any year in which Mainstem Capacity Enhancement Flows are released. Thereafter, the Licensee shall resurvey mainstem transects every five (5) years during the summer low flow period.

In the case of Mainstem channel modification, the Licensee shall modify the FHM Plan to provide for additional monitoring frequency.

2. Fish and Fish Habitat in the North Fork and Mainstem Skokomish River

2.1 Riverine Habitat

2.1.1 Purpose

The purpose of the riverine fish habitat monitoring program is to characterize and quantify habitat types in the lower North Fork and mainstem Skokomish Rivers to determine how habitat restoration

efforts and Project operations affect fish habitat conditions over the life of the Amended License.

2.1.2 Method

The Licensee shall assess the quantity and quality of fish habitat by employing standard Timber, Fish and Wildlife (TFW) Agreement or Oregon Department of Fish and Wildlife (ODFW) methods in both the lower North Fork (below Cushman 2) and the Mainstem Skokomish River. The Licensee shall assess habitat units, such as pools, riffles and glides, substrate composition, gradient, channel exposure, woody debris, bank stability, and riparian vegetation content. The Licensee shall use a statistically-valid approach consistent with the TFW or ODFW methods in assessing both the quantity and quality of habitat, and in enabling detection of changes to habitat condition between sampling events. The Licensee shall also make photo documentation at permanent photo points.

The Licensee shall conduct surveys to assess conditions in late summer, but these are to be augmented by additional surveys during mid winter (to be associated with representative flows at that time) to assess seasonal side channel and off-channel habitats.

The river channel of interest is to be divided into distinct reaches based on habitat types consistent with existing baseline habitat information. Analysis and data summarization will be performed consistent with these reach boundaries.

2.1.3 Frequency

During Year 1, the Licensee shall perform an initial habitat survey. During Year 2 through Year 12, if there is a high flow event or other major events causing change, the Licensee shall perform annual habitat surveys. From Year 13 throughout the term of the Amended License and any subsequent annual licenses, the Licensee shall perform habitat surveys once every five (5) years (starting in Year 18) unless the frequency of such surveys is modified by the Fisheries and Habitat Committee.

2.2 Lake Productivity

2.2.1 Purpose

The purpose of assessing productivity of Lake Cushman is to determine the effects of lake productivity on juvenile sockeye

survival, growth, age and size at smolt emigration, and smolt carrying capacity.

2.2.2 Method

The Licensee shall assess lake productivity by measuring zooplankton abundance (density and biomass by species). Unless modified by the Fisheries and Habitat Committee, the upstream third, the middle third, and the downstream third of the reservoir will be routinely sampled.

Vertical sampling of the water column will occur in each third of the reservoir in such a way as to ensure collection of zooplankton across their entire depth profiles. Samples will be analyzed by species for density and biomass—the latter metric requiring determination of zooplankton size by sample. The Licensee shall use standard methods and a statistically valid approach in sampling and sample analysis consistent with Koenings et al (1987).¹

Sampling is to occur at three or more sites in each upstream, middle, and downstream third of the reservoir (as discussed above) during the first year. In subsequent years, at least two sites will be sampled in each third of the reservoir.

2.2.3 Frequency

The Licensee shall assess lake productivity for two years prior to the first planned release of sockeye into Lake Cushman and for 12 years after the initial release of sockeye. The sampling frequency following the fourteenth year of sampling will be determined by the Fisheries and Habitat Committee. The Fisheries and Habitat Committee may reduce the number of years sampled based on progress of the program.

Sampling will occur on a bi-weekly (i.e., two times per month) schedule from the beginning of March through the end of October each year.

During the first year of implementation, the Licensee shall also sample to determine the diurnal cycles and the depth distributions of zooplankton at each location as part of the above sampling. Unless modified by the Fisheries and Habitat Committee, the

¹ Koenings, J. P., J. A. Edmundson, G. B. Kyle, and J. M. Edmundson. 1987. Limnology field and laboratory manual: methods for assessing aquatic production. Alaska Department of Fish and Game, FRED Division Report 71, Juneau.

Licensee shall conduct this more intensive sampling one time per month at each of the three locations between May and September.

2.3 Water Temperature

2.3.1 Purpose

The purpose of water temperature monitoring is to document temperature regimes in the lower North Fork Skokomish River, Lake Cushman and Lake Kokanee, and the upper North Fork. These data are needed to help analyze the biological information collected through separate monitoring efforts (i.e., spawning timing, emergence timing, juvenile size or growth rates, distribution, habitat utilization, and species interactions).

2.3.2 Method

The Licensee shall monitor water temperatures on an hourly basis in the North Fork and Lakes Cushman and Kokanee.

- Lower North Fork

The Licensee shall install, operate and maintain a thermistor at the base of Cushman No. 2 dam.

The Licensee shall install, operate and maintain a thermistor at USGS Gage No. 12059500 (North Fork near Potlatch) located at approximately River Mile 1.1.

- Lake Cushman

The Licensee shall install, operate and maintain a vertical thermistor array near the log boom by the dam.

- Lake Kokanee

The Licensee shall install, operate and maintain a vertical thermistor array near the log boom by the dam.

- Upper North Fork

The Licensee shall install, operate and maintain a thermistor at or near USGS Gage No. 12056500 (North Fork Skokomish River below Staircase Rapids) – subject to the approval of the National Park Service (if the thermistor is to be installed on NPS lands).

2.3.3 Frequency

- Lower North Fork

The Licensee shall deploy, operate and maintain the above-listed thermistors in the Lower North Fork continuously throughout the term of the Amended License and any subsequent annual licenses.

- Lake Cushman

The Licensee shall deploy, operate and maintain thermistors continuously in Lake Cushman for the first three years.

The Licensee shall monitor the location of the thermocline in Lake Cushman throughout the term of the Amended License and any subsequent annual licenses.

- Lake Kokanee

The Licensee shall deploy, operate and maintain thermistors for the first three years, in addition to any water temperature monitoring required pursuant to Article 417.

- Upper North Fork

The Licensee shall deploy, operate and maintain thermistors in the Upper North Fork continuously throughout the term of the Amended License and any subsequent annual licenses.

3. Fish Populations in the North Fork

3.1 Spawner Abundance, Distribution, and Timing

3.1.1 Purpose

The purpose of assessing spawner abundances, distributions, and timing is to evaluate performances of all populations of concern over the term of the Amended License and any subsequent annual licenses.

3.1.2 Method

The Licensee shall conduct surveys using standard methods in the region to assess spawner abundances, spawner distributions, spawning timing, species composition, and sample marked fish for chinook (fall and spring), coho, sockeye, steelhead, and bull trout in both the lower and upper North Fork systems (including tributaries). The Licensee shall collect similar information for pink and chum during the course of the chinook (fall and spring), coho, sockeye, steelhead, and bull trout surveys.

Such surveys shall enumerate redds and/or fish (live and dead) depending on species and location within the river. Such surveys shall be conducted using one or more of the following techniques depending on species and location within the river: foot surveys, raft surveys, and snorkel surveys. It is expected that methods and procedures that work best to achieve the purpose will be evaluated during the first several years of the Amended License. Once the methods have been evaluated and the most appropriate ones selected, they will be applied consistently over the term of the Amended License and any subsequent annual licenses, unless modified by the Fisheries and Habitat Committee.

The Licensee shall use standard methods when conducting carcass sampling and for retrieval and processing of tags.

The Licensee shall collect, compile, and report the following: (1) spawner abundance by species, production origin (hatchery versus wild), and location (upper North Fork and lower North Fork); (2) species distribution (by reach or at a finer scale depending on species and issue, such as to address possible interactions between bull trout and coho or sockeye); and (3) spawning timing.

The Licensee shall include in the FHM Plan provisions for appropriate and reasonable analysis of data from the above surveys. The Licensee shall implement such provisions.

3.1.3 Frequency

The Licensee shall conduct assessments annually during the spawning seasons for each species throughout the term of the Amended License and any subsequent annual licenses.

The Licensee shall conduct surveys once every 7-10 days, weather and river conditions permitting over the entirety of the species-specific periods of spawning, as specified in the plan.

3.2 Juvenile Production, Distribution, and Habitat Utilization in the Lower North Fork

3.2.1 Purpose

The purpose of assessing juvenile production, distribution, and habitat utilization in the lower North Fork is to evaluate performances of populations of concern at the juvenile stage over the term of the Amended License and any subsequent annual licenses.

3.2.2 Method

The Licensee shall install and operate a juvenile trap in the lower North Fork Skokomish River to assess natural salmonid production in the lower North Fork. Methods of operation and data collection shall follow those methods applied by the Washington Department of Fish and Wildlife in juvenile trap assessments made by that agency. These methods include frequency of operation, fish sampling, and estimation of trap efficiency.

The Licensee shall collect, compile, analyze and report the following juvenile trap data by species and life stages: numbers of fish caught, timing, fish population estimates, hatchery and wild composition, size distribution, and trap efficiency.

Under circumstances defined in the monitoring plan, the Licensee shall conduct supplemental assessments using snorkeling and/or backpack electroshocker surveys to evaluate such things as rearing, fish distributions, relative abundance, habitat utilization, size, and life stage survival.

3.2.3 Frequency

The Licensee shall operate the juvenile trap to assess juvenile production annually in the North Fork for the term of the Amended License and any subsequent annual licenses.

The Licensee shall operate the trap during the period that juveniles are expected to emigrate from the North Fork. During years one and two, the Licensee shall operate the trap beginning January 20 through November 10. Based upon the results obtained during years one and two, thresholds to reduce sampling days and periods will be developed by the Fisheries and Habitat Committee for subsequent years. Following two generations of naturally-spawning introduced early-time Chinook, the juvenile trapping period will be increased to assess the timing of the reintroduced stock.

The Licensee shall operate the trap 7 days per week based on the standard procedures employed by WDFW, except that the trap will not be operated during severe flow events. This operation schedule may be adjusted by the Fisheries and Habitat Committee if an alternative sampling schedule produces acceptable data for assessing juvenile production. Also, during periods when few fish are emigrating, such as is expected during late summer, trapping frequency can be reduced to fewer days per week. Exact

scheduling will be determined by the Fisheries and Habitat Committee.

3.3 Fish Distribution and Habitat Utilization in the Upper North Fork Watershed

3.3.1 Purpose

The purpose of assessing the distribution, size or age class, and habitat utilization of salmonids in the upper North Fork and tributaries upstream of Cushman Dam No. 1 is to evaluate performance and species interactions of populations of concern as related to available habitat, species composition, hatchery supplementation, and spawner abundances.

3.3.2 Method

The Licensee shall assess juvenile and sub-adult fish distributions, relative abundance, habitat utilization, and size (when electrofishing) or age class at representative sites within each designated reach (as delineated for habitat surveys noted below) using snorkeling and/or backpack electroshocker. The principal method of assessment would be snorkeling, following the same procedures used in past years by the National Park Service to monitor juvenile fish distribution and habitat utilization.

As part of this work, the Licensee shall assess the quantity and quality of fish habitat by employing standard TFW or ODFW methods in the upper North Fork system (including accessible and significant tributaries) and Big Creek. These methods are designed to assess habitat units, such as pools, riffles and glides, substrate composition, gradient, channel exposure, woody debris, bank stability, and riparian vegetation content. The Licensee shall use a statistically valid approach consistent with the TFW or ODFW methods in assessing both the quantity and quality of habitat, and in enabling detection of changes to habitat condition between sampling events. The Licensee shall also make photo documentation at permanent photo points.

The Licensee shall conduct surveys to assess conditions in late summer, and again at moderate fall or winter flows.

3.3.3 Frequency

The Licensee shall assess juveniles and sub-adult fish distributions, habitat utilization, and size or age class in late spring, late summer,

and mid winter annually beginning two years prior to expected presence of re-introduced species in the upper North Fork system, then continuing annually for 12 years after reintroduction, or as specified by the Fisheries and Habitat Committee based on the times of arrival and abundances of introduced species.

The Licensee shall assess habitat in the first year of the fish distribution assessment, then at an expected interval of every 3-5 years, depending on changes to habitats in the upper river system due to storm events. The Fisheries and Habitat Committee will periodically evaluate the need for re-assessment of habitat.

3.4 Resident Fish in Lake Kokanee

3.4.1 Purpose

The purpose is to evaluate the contribution of the rainbow trout stocking program to the recreational fishery by monitoring harvest of resident fish in Lake Kokanee.

3.4.2 Method

The Licensee shall conduct a creel census at Lake Kokanee to evaluate the contribution of the rainbow trout stocking program to the recreational fishery.

3.4.3 Frequency

The Licensee shall monitor for the first three years and once every five years thereafter.

3.5 Genetic Monitoring of Specific Populations

The Licensee shall include in the FHM Plan and shall implement provisions for appropriate and reasonable genetic monitoring of bull trout, steelhead, and Chinook salmon to inform supplementation and fish passage decisions.

Article 414: Downstream Passage

The Licensee shall provide safe, timely, and effective downstream fish passage at the Cushman Project for the term of this Amended License and any subsequent annual licenses. Such passage facilities shall use attraction flow, guidance, trapping, sorting, handling, holding, and hauling facilities located on Lake Cushman and other operations and facilities as necessary for the Project.

The Licensee shall develop and implement the downstream fish passage program in consultation with the Fisheries and Habitat Committee.

1. Downstream Fish Passage Plan

Within 180 days after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a Downstream Fish Passage Plan (DFP Plan) for the installation, operation, and maintenance of downstream fish passage facilities at the Project for juvenile salmon, steelhead smolts and kelts, and bull trout. The DFP Plan shall include, but is not limited to: (1) functional design drawings of the Licensee's proposed downstream fish passage facilities; (2) quantification of the flows required to operate the proposed facilities; (3) a preliminary operation and maintenance plan; (4) a schedule for installing the facilities; (5) provisions for short and long-term monitoring, and modifying facilities as needed to meet performance standards, design criteria, and general requirements of safe, timely, and effective passage; and (6) dates for completion of each provision of the plan.

The Licensee shall develop the DFP Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the DFP Plan for approval to USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the Licensee's Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the DFP Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the DFP Plan. Upon Commission approval, the Licensee shall implement the DFP Plan.

2. FSC Requirements

The Licensee's DFP Plan and detailed design for downstream fish passage facilities shall utilize a Floating Surface Collector (FSC). The Licensee shall develop the FSC in up to two phases, with the first phase having 250 cfs attraction flow and the second phase having 500 cfs.

3. Floating Surface Collector (FSC) Development

3.1 Phase One: The FSC shall produce a minimum 250 cfs attraction flow. During the Phase One Demonstration Period, the Licensee may operate the Phase One FSC for up to nine demonstration years to satisfy Performance Standards. If, in any

of these nine (9) years, the FSC satisfies either of the Performance Standards, the Licensee will enter a two-year verification period to verify that the Performance Standard is sustained as described in the paragraph below. If performance is not achieved during a demonstration year or not sustained during a verification period, then the Licensee shall make non-attraction-flow improvements in consultation with the Fisheries and Habitat Committee. Phase One includes up to, but no more than, two verification periods. The Licensee has a minimum of nine years to operate the FSC at 250 cfs, and a maximum of thirteen (13) years if the verification periods are triggered. The Licensee may opt to move to Phase Two at any time prior to expiration of the time limit for operation within Phase One.

When the FSC demonstrates for one season that a Performance Standard is satisfied, it will begin a Verification Period. The purpose of the Verification Period is to operate the FSC in the same condition for two consecutive years to determine if the FSC's performance on average, based upon the demonstration year and the two verification years, continues to satisfy that Performance Standard. If, after the first year of verification, it is impossible for the FSC's performance to satisfy this three-year performance average, then the FSC reverts to the Demonstration Period. If the FSC's average performance does not satisfy that Performance Standard after the second year of verification, then FSC reverts to the Demonstration Period. The Licensee shall attempt to improve FSC performance during the Demonstration Period through non-attraction-flow measures that are reviewed and approved by the Fisheries and Habitat Committee.

Verification shall be measured at a 90% confidence level with a standard error of the estimate that shall be not more than plus or minus 5% (i.e., 10% error), unless otherwise agreed to by the Fisheries and Habitat Committee.

If neither of the Performance Standards are demonstrated and verified within the timeframes provided for the Phase One Demonstration and Verification Periods, Phase One will end. If Phase One ends, the Phase Two FSC will be installed and operational prior to the start of the second fish passage season after Phase One ends. If, however, NMFS, USFWS and BIA believe that one or more of the extenuating factors listed below is likely the cause of the FSC not meeting the performance standards, then NMFS, USFWS, and BIA may approve continued operation of the collector at 250 cfs until such factors are addressed. Extenuating factors may include: (1) environmental conditions (such as predation or disease mortality) that prevent the collector from attaining System Survival (SS) or Fish Collection Efficiency (FCE); (2) technical issues related to measurement of SS or FCE; or (3) other similar surface collection systems not meeting performance criteria.

If FCE is demonstrated and verified but SS is not demonstrated and verified, the Licensee shall continue to operate the Phase One FSC and not develop Phase Two so long as FCE is maintained (*see* Performance Standard Monitoring, section 7). As long as FCE is maintained, increases in FSC discharge will not be required. However, within twelve (12) months of verifying FCE, the Licensee shall develop a plan for determining factors which may be limiting its ability to demonstrate and verify SS, in consultation

with the Fisheries and Habitat Committee, and shall implement appropriate measures for improving SS as soon thereafter as possible.

If SS is demonstrated, verified and maintained but FCE is not, the Licensee shall make non-attraction flow modifications to the FSC as determined necessary by the Fisheries and Habitat Committee.

3.2 Phase Two: The FSC shall be redesigned to produce a 500 cfs attraction flow, unless otherwise agreed to by NMFS, USFWS, and BIA, provided the total attraction flow shall not exceed 500 cfs. If the Phase Two FSC does not satisfy Performance Standards, the Licensee shall implement appropriate non-attraction flow measures for improving SS and FCE in consultation with the Fisheries and Habitat Committee and based upon the performance monitoring conducted pursuant to Article 416.

4. Final Design

The Licensee shall file the final FSC design with the Commission within eighteen (18) months of this Amended License. Prior to submitting the design to the Commission, the Licensee shall prepare detailed design drawings at the 30% (functional design), 50% and 90% completion stage and consult with the Fisheries and Habitat Committee at each stage. The Licensee shall seek approval of the final design from NMFS, BIA and USFWS at least thirty (30) days prior to filing with the Commission. Construction of downstream fish passage facilities shall not begin until the design is approved by the Commission, USFWS, BIA and NMFS and the Licensee has obtained all necessary permits. No later than twenty-one (21) months after Commission approval of the design and obtaining all necessary permits, the Licensee shall have completed installation and testing, and shall begin operating the FSC. The Phase One Demonstration Period will begin the following fish passage season. The downstream fish passage facilities shall be shown on the as-built drawings filed pursuant to Article 303 of this license.

The design shall conform to the NMFS 2008 Anadromous Salmonid Passage Facility Design, prepared by the NMFS Northwest Region Hydro Division, dated February 8, 2008 (NMFS Design Manual). There may be cases where site constraints or extenuating biological circumstances dictate that certain design features deviate from the NMFS Design Manual. The Licensee shall provide compelling evidence in support of any proposed design features that deviate from the NMFS Design Manual and obtain NMFS approval for any deviation.

5. FSC Requirements

The Licensee's downstream fishway shall include a system of exclusionary guide nets and five FSC modules, which includes the: 1) Net Transitions Module; 2) Capture Module; 3) Screen Module; 4) Collection Module; and 5) Transport Module. In addition to complying with the NMFS Design Manual, the FSC must meet the following requirements:

5.1. Full exclusionary guide netting and panels (the net) will be installed in the forebay of the Cushman Dam No. 1 reservoir and will extend from shoreline to shoreline and from the water surface to the bottom of the reservoir. The net system will be located within the existing boat barrier on Lake Cushman unless hydraulic modeling or fish migration studies indicate another location is better suited.

The net will be made of a knotless mesh with the mesh size not to exceed $\frac{1}{4}$ inch clear opening and resistant to rot and ultraviolet degradation. To improve the guidance of fish to the FSC, the net in the upper 30 to 50 feet of the water column may incorporate a knotless mesh with the mesh size not to exceed $\frac{3}{32}$ inch or an impermeable membrane.

5.2. Net Transition Module (NTM): The NTM is a modular unit that provides a transitional dimension and velocity gradient from the guide nets to the capture module. Entrance velocity at the face of the NTM would be the greater of 0.2 fps or 1.1 times the adjacent reservoir ambient velocity at full generation. Based on these criteria the likely initial entrance size would be approximately 35 ft x 35 ft based on $250 \text{ cfs} / 0.2 \text{ fps} = 1250 \text{ sq ft}$. Water that enters the NTM will gradually accelerate along the length of the module to a capture velocity of 8 fps. Velocity increase through the NTM would be no more than 0.2 fps/ft, but must be steadily increasing or flat, not decreasing. Centerline velocity at the entrance to the capture module will be 8 ft/sec.

5.3. Capture Module: The Capture Module is a modular unit with an initial wetted cross-sectional area of approximately 32 square feet in the 250 cfs attraction flow phase and will provide 20 linear feet of 8 ft/sec velocity between the NTM and the Screen Module to assure capture.

5.4. Screen Module: The Screen Module will provide dewatering while maintaining near 6 fps velocity. At the downstream end of the Screen Module, approximately 3 cfs will discharge fish into the Collection Module where fish will be held for sorting, sampling, and preparation for transfer to a transport vessel. Fish Screens in the Screen Module will be designed to NMFS screen criteria as described in the NMFS Design Manual, unless otherwise specified below. This will be accomplished using hydraulic modeling to aid the design of the screens, baffles, pump manifold, pump size, and locations.

The Screen Module will be designed to ensure no failure of the screen structure, and will include an alarm that is triggered by a change in head pressure between the downstream and upstream sides of the screen. The Screen Module will also be designed such that any debris accumulations are removed before they affect hydraulic design characteristics and potentially compromise fish safety. Unless NMFS approves otherwise, the Screen Module will be constructed with a high pressure water jet cleaning system located behind the screen face to provide complete automated backwash cleaning of the entire screen flow through area,

with cleaning automatically triggered by timed interval and by head loss through the screen mesh. The Screen Module and cleaning system will be modified to maintain the hydraulic profile described above as attraction flow is increased.

5.5. Collection Module: The collection module will include up to 3 cfs dewatering capability, sorting mechanisms to effectively separate adult and juvenile fish, and holding areas. The fish would then be distributed according to destination and those destined for downstream would be conveyed in a water-to-water transfer system to a transport vessel. Unless otherwise approved by NMFS, a minimum of two holding areas sized for 2,500 smolts each shall be provided. NMFS Design Manual and WDFW hatchery criteria will be used in designing the fish handling components.

5.6. Transport Module: The transport module will have a minimum capacity of 2,500 smolts. The module may be used to transfer fish to a tank truck or trailer for hauling to the release site, or it may be used as a transport tank placed on a truck or trailer for hauling to the release site. If the transport module is used for hauling the fish, it must be equipped with an on-board oxygen supply. If it is used to transfer fish to a tank truck or trailer, it must be equipped with water-to-water transfer fittings. The module shall be sized such that its loading density does not exceed 0.15 ft³ per pound of fish. Fish in the module shall be transported as often as necessary so as not to exceed capacity, but at least one time per day.

5.7. Release Site: The release site for collected fish being transported downstream of the dam shall be immediately downstream of Cushman Dam No. 2, or at an appropriate location to be determined by the Fisheries and Habitat Committee. The Licensee shall maintain the release site in a safe and useable condition as determined by the Fisheries and Habitat Committee.

5.8 Phase Two Modifications: The Licensee shall modify the modules described in Sections 5.2, 5.3 and 5.4 to accommodate increased attraction flow. The Licensee shall modify the NTM, Capture Module, and Screen Module to maintain the original design hydraulic characteristics as attraction flow is increased unless deviations are approved by NMFS, USFWS and BIA. The Licensee shall make modifications to other components of the FSC as determined appropriate by the Fisheries and Habitat Committee and approved by NMFS, USFWS and BIA.

5.9 Operation Period: The downstream passage fishway will be capable of operation over the entire range of forebay elevations expected year round. The expected operation period is March 15 through July 31 each year. The Fisheries and Habitat Committee may revise the operation period based on expected fish species occurrence and actual fish collection data.

5.10 Debris and Trash Management: Floating log booms will be installed in the reservoir upstream of the guide nets in order to provide protection to the fishway.

5.11 Inspection, Operations, and Maintenance Plan: The Licensee shall annually inspect and maintain, and allow NMFS to annually inspect the guide nets, screens, cleaning system, and any other mechanical component subject to wear. The Licensee's plan shall also describe how the guide net system will be protected and maintained during extreme flow events.

6. Performance Standards

The Licensee's operation of the downstream fish passage facilities shall be subject to the following Performance Standards:

- 6.1. System Survival Standard (SS): SS is the percentage of a marked group of smolts released near the upstream end of Lake Cushman that is successfully collected by the FSC and safely passed downstream of the Cushman Project. The SS goal is 95%, and the minimum compliance standard SS is 75%.
- 6.2. Fish Collection Efficiency Standard (FCE): FCE is the percentage of a tagged (radio, acoustic, or PIT) group of smolts detected at the log boom (approximately 360 feet upstream of the dam) or at another location in the forebay to be determined by the Fisheries and Habitat Committee and are successfully collected in the FSC and safely passed downstream of the Cushman Project. The FCE standard is 95% collection and survival.

Success, for the purposes of FSC development, is attained when either of the Performance Standards is demonstrated and verified. Notwithstanding demonstration and verification of FCE being achieved, the Licensee shall continue to implement non-attraction flow measures to improve fish passage until the SS Performance Standard is achieved. In addition, throughout the term of the Amended License and any subsequent annual licenses, Licensee shall use reasonable efforts to achieve the SS goal of 95%, provided those efforts are likely to improve SS.

7. Performance Standard Monitoring

The Licensee shall monitor SS performance annually for the term of the Amended License and any subsequent annual licenses. The Licensee shall monitor FCE annually during Phase One of FSC development. In addition, if the FCE Performance Standard is demonstrated and verified during Phase One of FSC development, the Licensee shall monitor FCE performance every five (5) years beginning in the fifth year after verification, unless the Fisheries and Habitat Committee determines that monitoring during the fifth year after verification is unnecessary. If FCE monitoring indicates that performance has declined to less than the FCE Performance Standard (95%), the

Licensee shall monitor FCE performance in the following fish passage season. If FCE monitoring verifies that performance is below the FCE Performance Standard, the Fisheries and Habitat Committee shall convene to develop appropriate measures which may include increasing attraction flow up to 500 cfs. The Licensee shall then implement these measures. The Licensee shall monitor FCE every five (5) years during Phase Two for the term of the Amended License and any subsequent annual licenses.

Performance Standard Monitoring shall use marked groups of surrogate hatchery Coho smolts that are collected and mark-sampled at the FSC or by methods determined by the Fisheries and Habitat Committee.

Article 415: Upstream Passage

The Licensee shall provide safe, timely, and effective upstream fish passage at the Cushman Project for the term of the Amended License and any subsequent annual licenses. The Licensee shall install, operate, maintain and monitor, at its own expense, facilities to: protect and mitigate damages to anadromous fisheries; provide access to historic spawning and rearing habitat; and enhance the restoration of anadromous fish to the Skokomish River Basin.

The Licensee shall develop and implement the upstream fish passage program in consultation with the Fisheries and Habitat Committee.

1. Upstream Fish Passage Plan

Within six (6) months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a plan to install, operate, and maintain upstream trap and haul fish passage facilities at the Cushman Project that includes, but is not limited to: (1) functional design drawings of the Licensee's proposed upstream fish passage facilities; (2) quantification of the flows required to operate the proposed facilities, including a description of the flows needed for in-migration of adult salmonids; (3) a preliminary operation and maintenance plan; (4) a schedule for installing the facilities; (5) provisions for short and long-term monitoring and for modifying the facility as needed to meet criteria and general requirements of safe, timely, and effective passage; and (6) dates for completion of each provision of the plan. The plan shall be consistent with the NMFS Design Manual.

The Licensee shall develop the Upstream Fish Passage Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of NMFS, USFWS, and BIA. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the plan for approval to USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by

the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the upstream fish passage plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan.

2. Design Review

The Licensee shall file the final design within eighteen (18) months after issuance of the Amended License. Prior to submitting the final design to the Commission, the Licensee shall prepare detailed design drawings at the 30% (functional design), 50% and 90% completion stage and consult with the Fisheries and Habitat Committee at each stage. The Licensee shall seek approval of the design from NMFS, BIA, and USFWS no less than thirty (30) days prior to filing with the Commission. Construction of upstream fish passage facilities shall not begin until the design is approved by the Commission, USFWS, BIA and NMFS and the Licensee has obtained all necessary permits. No later than fifteen (15) months after Commission approval of the design and obtaining all necessary permits, the Licensee shall have completed installation, and shall begin operating the upstream fishway. The upstream fish passage facilities shall be shown on the as-built drawings filed pursuant to Article 304 of the Amended License.

The design shall be consistent with the NMFS Design Manual. There may be cases where site constraints or extenuating biological circumstances dictate that certain design features deviate from the NMFS Design Manual. The Licensee shall provide compelling evidence in support of any proposed design features that deviate from the NMFS Design Manual and obtain NMFS approval for any deviation.

3. Plan Requirements

The Licensee's upstream fish passage plan and design for upstream fish passage facilities, in addition to complying with the NMFS Design Manual, must meet the following requirements:

3.1 Fishway Location

The preferred location for the upstream fishway is near the base of Cushman Dam No. 2. If this location is demonstrated not to be feasible, the Licensee shall in consultation with the Fisheries and Habitat Committee identify an alternate location near the confluence of McTaggart Creek with the North Fork Skokomish River.

3.2 Operational Period

The upstream passage facilities must be operational year-round except for an annual maintenance period as determined in consultation with the Fisheries and Habitat Committee subject to the approval of NMFS, USFWS, and BIA.

3.3 Upstream Passage Facility Design Flow Range

The Licensee must design the trap and haul facilities to provide safe, timely, and effective fish passage over streamflows between 100 and 300 cfs, when upstream migrating fish are normally present at the barrier.

3.4 Barrier Dam

The Licensee must provide a barrier dam to effectively divert upstream migrating fish into the fish trap. Cushman Dam No. 2 may be part of the barrier dam element.

3.5 Trap Holding Pools

The Licensee must provide holding pools of sufficient volume to provide a carrying capacity equal to a projected 1 day peak run of fish (about 1200 fish). Based upon a minimum holding density of .25 ft³ per pound of fish, the holding pools shall contain a minimum volume of 2,400 ft³ of water at the low design water surface elevation. Flow into the holding pools must be a minimum of 2 gallons per minute (gpm) per adult fish, up to the carrying capacity of the pools, or a minimum of 2400 gpm (5.4 cfs). A finger weir or V-trap lead must be provided between the ladder and the lower holding pool, and between holding pools such that once fish enter they are not able to fallback downstream. These conditions assume good water quality. If water temperature is greater than 50 degrees Fahrenheit and dissolved oxygen is less than 6 ppm, the Licensee must transport fish more frequently.

3.6 Fish Crowder and Braille Systems

The Licensee must build the upstream passage facilities to include a crowder and braille system in each holding pool as necessary to move fish from the holding pools to the fish lock. When not in use, the crowder should be stored either against the back wall of the holding pool or out of the water entirely. Likewise, the braille should be stored recessed in the floor of the holding pool when not in service. The braille must be sloped and contoured so that fish are guided toward the entrance to the fish lock. Both the crowder and braille must provide fish tight seals (maximum opening of 1/2 inch) against the walls and floors of the holding pool so that no fish can become trapped behind them. The travel speed of both the crowder and braille should be adjustable up to 3 ft per minute. Maximum clear opening between bars in the crowder or braille must be 1/2 inch. When the crowder is in use, a removable barrier will be installed across the fish ladder exit into the holding pool to prevent fish from entering the holding pool. Fish should not

come into contact with sharp or abrupt edges (including structural supports) anywhere throughout the system.

The maximum clear opening between bars in the crowder or braille may need to be less than 1/2 inch. Tests will need to be completed at the trap vicinity to determine if there are smaller fish in the vicinity of the trap. The head width of these fish will be measured and a decision as to the permanent spacing of the bars should be determined based on the 50% exceedance level.

3.7 Fish Transport and Sorting

The Licensee shall transport fish from the fish lock in a transport hopper. Loading density of the transport hopper will be limited to 0.15 ft³ per pound of fish. The volume of the transport hopper should be equal to or less than the volume of the transport trucks (to reduce the possibility of overloading the transport trucks).

The transport hopper should connect via water to water transfer with the fish sorting facility tanks/ponds or the transport trucks/trailers. Transport trucks/trailers will have provisions to supply oxygen to the transport water. Provisions will be made at the release point for the transported fish to acclimate to the receiving water if the temperature difference exceeds 5 degrees C.

The fish sorting facility will provide a receiving pond/tank that accepts full hopper/truck loads of transported fish and sorting/holding pools/pens sufficient to separate each species. The receiving pond/tank will be equipped with a mechanism capable of forcing fish into the sorting flume and raceways. The Licensee will build the receiving pond/tank water supply such that flow will be introduced through a diffuser or series of diffusers located in the floor of the pond/tank. Overflow from the pond/tank will pass over a control weir at a minimum depth of 6 inches and through a short, descending slope separator (screen), allowing excess flow to be drained off and adult fish to be routed into a wetted chute (transport flume) for sorting and routing to sampling tanks, sorting/holding pools, or re-direct loading to a transport truck.

Provisions for PIT tag interrogation must be located upstream of any diverter gate. Provisions must also be included to divert fish to sampling, anesthetic, disease treatment, and recovery tanks; or routed to an appropriate raceway.

Provisions should be made to guarantee a continuous supply of water to the raceways (such as redundant pumps, backup pumps, emergency generator, etc.) and for the emergency release of fish. The entire adult fishway facility will provide a means to evacuate fish back to the Skokomish River, Lake Kokanee or agency designated alternative in the event of the loss of power or water supply.

The Licensee shall check the adult fishway daily during the adult fish migration periods and shall transport adult fish from the fishway as necessary to prevent overcrowding and harm, as determined by USFWS, NMFS and BIA. At a minimum,

when only a few fish are present, fish will be transported three times per week, on Monday, Wednesday, and Friday.

3.8 Sample/Anesthetic/Recovery Tanks

The Licensee shall design the sampling, anesthetic, and recovery tanks in consultation with the Fisheries and Habitat Committee subject to the approval of NMFS, USFWS, and BIA. The system must include provisions to move fish to the raceways or return fish to the river after they have fully recovered.

3.9 Auxiliary Power

The Licensee shall provide auxiliary power in the event of a power failure. Full operation of the facility must be restored within 48 hours. Auxiliary power must be sufficient to operate the pumped water supply and all associated apparatus until all fish dependent on pumped water have been processed and removed from the facility.

4. Post Construction

4.1 Post Construction Evaluation: Prior to completion of the upstream fish passage facilities, the Licensee shall develop, in consultation with the Fisheries and Habitat Committee, a Post Construction Evaluation Plan for approval by USFWS, NMFS and BIA. The plan must include hydraulic and biological evaluations to ensure the proper performance of the facilities and that the facility provides safe, timely, and effective fish passage. The Licensee shall implement this plan upon completion of upstream passage facility construction. Based upon evaluations conducted pursuant to this plan, the Licensee shall make appropriate modifications to the upstream passage facilities and their operations to ensure safe, timely, and effective passage throughout the license term as may be determined by the Fisheries and Habitat Committee.

4.2 Future Modifications: The Licensee shall update and modify these facilities as necessary based upon long term monitoring results, changing resource management requirements or as improvements in technology for safe, timely, and effective fish passage becomes available.

4.3 Inspections: The Licensee shall provide access to the upstream passage facilities to any fishery agency or the Skokomish Tribe for immediate inspection of fishway operation and maintenance conditions.

5. Fish Passage at Little Falls

If, based upon fish passage monitoring pursuant to Article 416 and other available information, the Fisheries and Habitat Committee determines that modifications to Little Falls are required to achieve safe, timely, and effective fish passage; the Licensee shall implement such modifications, pursuant to a schedule developed by the Fisheries and Habitat Committee and subject to obtaining any necessary regulatory approval. The

Licensee shall not use funds from the Habitat Restoration Account to make modifications to Little Falls.

Article 416: Fish Passage Monitoring Plan

The Licensee shall implement the following Fish Passage Monitoring Plan, in consultation with the Fisheries and Habitat Committee. The purposes of this plan are to: (1) measure fish survival through the reservoir, fishways and transport mechanisms, (2) assess compliance with survival and performance standards for effective passage, and (3) inform the implementation of Articles 414 and 415. The Licensee shall modify its passage measures based on the information developed pursuant to this plan and on recommendations of the Fisheries and Habitat Committee. The Fish Passage Monitoring Plan shall include a schedule for implementing the plan consistent with this Article and for consulting with the Fisheries and Habitat Committee regarding the monitoring results.

Within twenty-four (24) months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, the Fish Passage Monitoring Plan. The Licensee shall develop the plan in consultation with the Fisheries and Habitat Committee, and seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the plan for approval to USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the Fish Passage Monitoring Plan without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall commence when the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

The Licensee shall file with the Commission, by June 30 of each year, an annual report fully describing the monitoring efforts of the previous calendar year. The Fisheries and Habitat Committee shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the Fisheries and Habitat Committee.

The Fisheries and Habitat Committee may modify methods and frequencies of data collection if the Fisheries and Habitat Committee determines that: (a) there is a more appropriate or preferable method or site to use than that described in the individual

elements of the Fish Passage Monitoring Plan; or (b) monitoring may be reduced or terminated because the relevant ecological resource objective has been met or no change in resource response is expected.

The following guidelines shall be used in developing and implementing the Fish Passage Monitoring Plan: (a) monitoring and studies shall be relevant to the Project License; (b) monitoring and studies shall be chosen and conducted so that they provide useful information for project management decisions or establishing compliance with license conditions; and (c) monitoring and studies shall be cost-effective in meeting the specific purpose of the monitoring activity.

1. Monitoring methods

1.1. Downstream juvenile passage

The Licensee shall measure downstream passage survival through the fishway by releasing marked groups of smolts from a point just upstream of the juvenile fishway (FSC) through the last point of contact, which is either stress relief ponds or a prospective release pond at the base of Cushman Dam No. 2. The Licensee shall measure downstream passage survival through the reservoir by releasing marked groups of smolts near the upstream end of Lake Cushman and enumerating their recapture at the FSC. Marks may include, but not be limited to, freeze brands, pit tags, radio tags, and acoustic tags. The Licensee shall monitor passage success of each species that is collected at the FSC in numbers large enough to yield statistical significance, as determined by the Fisheries and Habitat Committee.

1.2. Upstream adult passage

The Licensee shall measure upstream passage survival by marking groups of adult salmonids collected at the base of Cushman Dam No. 2 (or another suitable location as determined by the Fisheries and Habitat Committee) and tracking their survival from a point downstream of the Little Falls to their point of disposition either to hatchery facilities, holding net pens, or release into Lake Cushman. Marks may include, but not be limited to, pit tags, radio tags, and acoustic tags. The size of the marked groups shall include numbers large enough to yield statistical significance, or as determined by the Fisheries and Habitat Committee.

2. Monitoring frequency

2.1 The Licensee shall monitor downstream passage annually for the term of the Amended License using marked groups of juvenile coho salmon. Other species that are numerically sufficient (described above) shall also be monitored, at least twice during the start-up years of the FSC, and then for two (2) years every ten (10) years thereafter. The Licensee shall monitor FCE every five

(5) years during Phase Two for the duration of the Amended License and any subsequent annual licenses.

2.2. The Licensee shall monitor upstream passage survival of coho, Chinook, sockeye and steelhead at least three (3) times during the start-up years of the upstream passage fishway, and then for two (2) years every ten (10) years thereafter.

Article 417: Fish Supplementation Program

Within nine (9) months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a plan to implement the fish supplementation program. The purposes of the fish supplementation program are to protect, mitigate damages to, and enhance anadromous and resident fisheries. The objectives of the program are: 1) to support the reintroduction, restoration, and long-term maintenance of anadromous fish populations in the North Fork Skokomish watershed; 2) to provide harvest opportunities to treaty Indian and non-treaty fishers; and 3) to provide recreational fishing opportunities.

The Licensee shall develop the Fish Supplementation Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall also seek the comments and recommendations of the National Park Service. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee and the National Park Service to comment and make recommendations before submitting the plan for approval to the USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members and the National Park Service are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the Fish Supplementation Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the fish supplementation program plan. Implementation of the plan shall commence when the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

The plan shall incorporate the guiding principles and program elements of the Cushman Project Fish Supplementation Framework included as Appendix 4 in the Settlement Agreement and consist of the following elements:

1. Species

The fish supplementation program shall include five species: sockeye, spring Chinook, steelhead, coho and rainbow trout.

2. Facilities

2.1 Upstream Fish Passage Facility: The Licensee shall construct, operate and maintain an upstream fish passage facility as described in Article 415. In addition to upstream fish passage, the facility will be used to collect brood stock for the sockeye, spring Chinook, and coho supplementation programs.

2.2 Supplementation Facilities

2.2.1 The Licensee shall construct, operate and maintain an adult holding, spawning, egg incubation, and early rearing facility for the sockeye supplementation program that is capable of producing the number of healthy fry shown in Table 1. The facility shall be located at Tacoma's Saltwater Park property.

Table 1. Sockeye Supplementation Program Production Targets

Species	Type	Number	Fish/Pound	Pounds
Sockeye	Fed fry (May)	200,000	2500	80
	Fed fry (June)	1,000,000	800	1,250
	Fed fry (Sept)	800,000	150	5,333
TOTALS		2,000,000		6,663

2.2.2 The Licensee shall construct, operate and maintain adult holding, spawning, egg incubation, early rearing and net pen rearing facilities for the spring Chinook, steelhead, and coho supplementation programs which are capable of producing the quantity of healthy fish shown in Tables 2, 3 and 4, respectively. These facilities shall be located either at Saltwater Park, in the vicinity of Tacoma's Cushman No. 2 Powerhouse, on the east shore of Lake Kokanee, or some combination of these locations. Prior to and during construction, if these sites are determined to be infeasible, the Licensee will locate facilities at an alternate site. The Licensee shall determine the specific location of the facilities in consultation with the Fisheries and Habitat Committee.

Table 2. Spring Chinook Supplementation Program Production Targets

Species	Type	Number	Fish/Pound	Pounds
Spring	Fingerling	300,000	50	6,000
Chinook	Yearling	75,000	10	7,500
TOTALS		375,000		13,500

Table 3. Winter Steelhead Supplementation Program Production Targets

Species	Type	Number	Fish/Pound	Pounds
Winter	Smolts	15,000	8	1,875
Steelhead	Adults	225	0.125	1,800
TOTALS		15,225		3,675

Table 4. Coho Supplementation Program Production Targets

Species	Type	Number	Fish/Pound	Pounds
Coho	Smolts	10,000 – 35,000	15	666 – 2,333

2

2.3 The Licensee shall construct, operate and maintain net pen rearing facilities in Lake Kokanee adjacent to Cushman Dam No. 2 for spring Chinook, coho, steelhead and rainbow trout. The spring Chinook net pens shall be sized to rear 13,500 pounds of spring Chinook juveniles as described in Table 2. The winter steelhead net pens shall be sized to rear 1,875 pounds of winter steelhead smolts and 1,800 pounds of winter steelhead adults as described in Table 3. The coho net pens shall be sized to rear 2,333 pounds of coho smolts as described in Table 4. The rainbow trout net pens shall be sized to rear 11,667 pounds of catchable rainbow trout.

3. Program Details

3.1 Stock Selection: The Licensee shall, in consultation with the Fisheries and Habitat Committee and the National Park Service, evaluate potential donor stocks for selection and use in developing hatchery production.

3.2 Fish Health and Genetic Fitness: The Licensee shall specify best management practices in the plan and implement these practices to help ensure fish health and maintenance of genetic fitness in all aspects of the supplementation program.

3.3 Sequencing and Phase-In: The Licensee shall develop a schedule in consultation with the Fisheries and Habitat Committee which includes sequencing of steps necessary to implement the supplementation program. The schedule will address when potential donor stocks might be available and when start-up phases for each species can begin. The schedule shall allow for incremental phasing in of the program. Production quantity and schedule changes may be made by the Fisheries and Habitat Committee to accommodate unforeseen circumstances such as donor stock availability.

3.4 Production and Release Strategies: The Licensee's supplementation program shall include production and release strategies in an attempt to achieve the production targets for each species in Tables 1-4.

3.4.1 Sockeye: The Licensee's program shall be targeted to produce and release the sockeye fry quantities as shown in Table 1. The production quantities and release strategies for the facility may be adjusted by the Fisheries and Habitat Committee within the design production capacity of that facility. The initial production will be dependent on the availability of donor stock. The Licensee shall transport and release juvenile sockeye into Lake Cushman or in the North Fork Skokomish River as determined by the Fisheries and Habitat Committee.

3.4.2 Spring Chinook: The Licensee's program shall be targeted to produce and release the spring Chinook fingerling and yearling quantities shown in Table 2. The production quantities and release strategies for those facilities may be adjusted by the Fisheries and Habitat Committee within the design production capacity of those facilities. The Licensee shall rear these fingerling and yearling spring Chinook in Lake Kokanee net pens or, if determined infeasible, in another appropriate location, preferably in the North Fork Skokomish River sub-basin. The Licensee shall release these fish into the pool at the base of Cushman No. 2 Dam as fingerlings/ yearlings.

3.4.3 Steelhead: The Licensee's program shall be targeted to produce and release the Winter Steelhead smolt quantities and adult numbers shown in Table 3. The production quantities and release strategies for those facilities may be adjusted by the Fisheries and Habitat Committee within the design production capacity of those facilities. The Licensee shall rear these winter steelhead smolts and adults in Lake Kokanee net pens or, if determined infeasible, in another appropriate location, preferably in the North Fork Skokomish River sub-basin. The Licensee shall release the winter steelhead smolts into the pool at the base of Cushman No. 2 Dam where they can hold until they are ready to distribute themselves downstream. The Licensee shall release winter steelhead adults into the North Fork Skokomish at locations to be

determined by the Fisheries and Habitat Committee that are reasonably accessible by truck.

3.4.4 Coho: The Licensee's program shall be targeted to produce and release the quantity of coho smolts shown in Table 4. The production quantities and release strategies for those facilities may be adjusted by the Fisheries and Habitat Committee within the design production capacity of those facilities. Because the effects of the new flow regime on North Fork coho production are unknown, the Licensee shall rear between 10,000 and 35,000 coho smolts annually as determined by the Fisheries and Habitat Committee. The Licensee shall collect broodstock at the adult collection facility or at an alternate location in the North Fork Skokomish River if necessary and agreed to by the Fisheries and Habitat Committee, and held in a net pen in Lake Kokanee. Egg incubation and early rearing shall occur at the facility described above. After early rearing, the Licensee shall rear these coho in Lake Kokanee net pens or, if determined infeasible, in another appropriate location, preferably in the North Fork Skokomish River sub-basin. The Licensee shall use a portion of these coho smolts as test fish for evaluating the Lake Cushman downstream migrant collection facility. The Licensee shall release the remaining coho smolts into the pool at the base of Cushman No. 2 Dam.

3.4.5 Rainbow Trout: The Licensee shall annually release between 24,000 and 35,000 rainbow trout (8,000 to 11,667 pounds of rainbow trout) into Lake Kokanee. The Licensee shall rear these rainbow trout in Lake Kokanee net pens and release them directly into Lake Kokanee. The Licensee shall consult with WDFW when determining the size and number of rainbow trout and the timing of the releases.

3.5 Hatchery Monitoring Plan

The Licensee shall implement the following Fish Hatchery Monitoring Plan after issuance of the Amended License and through the term of the Amended License and any subsequent annual licenses, in consultation with Fisheries and Habitat Committee.

Within 18 months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a Hatchery Monitoring Plan. The Licensee shall develop the Hatchery Monitoring Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of NMFS, USFWS, and BIA. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the plan for approval to USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-

specific information. If the Licensee files the Hatchery Monitoring Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The purpose of this plan is to inform implementation of the Hatchery Program. The Licensee shall make any necessary changes to hatchery operations based on the monitoring results. The Hatchery Monitoring Plan shall also include a schedule for the Licensee's implementation of the plan consistent with this Article, consultation with the Fisheries and Habitat Committee regarding monitoring results, and a schedule for providing preliminary monitoring data.

The Hatchery Monitoring Plan shall describe the following parameters: (1) best management practices for the supplementation facilities; (2) size at release, growth rate, and survival in the hatcheries; (3) disease profile; (4) spawn timing and condition; (5) homing/straying; (6) coded-wire tagging program for smolt to adult return rates; (7) stock inventory; (8) number of fish released; (9) water temperature at facilities; and (10) other water quality monitoring parameters required by permits necessary to operate facilities.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall commence when the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

The Licensee shall file with the Commission, by June 30 of each year, an annual report fully describing the monitoring efforts of the previous calendar year, and activities required under the plan for the following year. The Fisheries and Habitat Committee shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the Fisheries and Habitat Committee.

Article 418: Tailrace Monitoring Plan

Within sixty (60) months after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a plan to monitor migration delay, injury, and/or mortality at the tailrace during the operation of Powerhouse No. 2. The purpose of the plan is to determine the need for any additional fish protection measures.

The tailrace monitoring plan shall include, but not be limited to: (1) the methods used to monitor migration delay, injury, and/or mortality at the Powerhouse No. 2 tailrace; and (2) a schedule for (a) implementation of the tailrace monitoring plan, and (b) consultation with the Fisheries and Habitat Committee regarding the results of the study and any additional measures needed to protect the fishery resources (*i.e.*, tailrace barrier or other similar device)

The Licensee shall develop the Tailrace Monitoring Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs. The Licensee shall allow a minimum of thirty (30) days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the plan for approval to USFWS, BIA and NMFS. When filing the plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the Tailrace Monitoring Plan with the Commission without first obtaining the approval of NMFS, USFWS and BIA, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall commence when the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

If tailrace monitoring indicates that changes in project structures or operations are necessary to protect fish resources, including any measures identified by the Licensee or the Fisheries and Habitat Committee as a result of the consultation required by this article, the Commission may direct the Licensee to modify project structures or operations accordingly.

Article 419: Reservation of Authority to Construct Fishways. Unchanged.

Article 420: Terrestrial Plan

The Licensee shall file for Commission approval a Terrestrial Resources Protection Plan (Terrestrial Plan). The Terrestrial Plan shall include two components: (1) a Mitigation Plan that includes measures to minimize adverse impacts on terrestrial resources during project construction, and (2) a Monitoring and Protection Plan that includes monitoring and protective procedures for terrestrial resources during Project operation.

The Licensee shall prepare the Terrestrial Plan in consultation with the Washington Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, the Bureau of Indian Affairs, and the Skokomish Indian Tribe. The Licensee shall allow a minimum of thirty (30) days for comment and recommendation of the agencies and the Tribe before filing the plan with the Commission. The Licensee shall include with the Terrestrial Plan documentation of consultation, copies of comments and recommendations on the plan, and specific descriptions of how the agencies' and the Skokomish Indian Tribe's comments are accommodated by the Licensee's Terrestrial

Plan. If the Licensee does not adopt a recommendation, the Terrestrial Plan shall include the Licensee's reasons, based on Project-specific information.

The Commission reserves the right to require changes to the Terrestrial Plan. Construction shall not begin until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the Plan.

Construction Mitigation Plan

Within 1 year after issuance of the Amended Project License, but no later than ninety (90) days before the start of any land-clearing or land-disturbing activities at the site, the Licensee shall file a Construction Mitigation Plan identifying measures to minimize disturbance during construction activities to protect native vegetation and wildlife. The plan shall include, but not be limited to:

- a. use of measures such as blast mats and construction activity restrictions during the osprey breeding season;
- b. on lands disturbed by removing the McTaggart Creek diversion structure and the Dow Creek fish passage barrier, measures to restrict the development of invasive exotic plants and to enhance native tree and shrub development, to be developed after consultation with the aforementioned agencies and the Simpson Timber Company;
- c. if lower North Fork fish habitat enhancements are undertaken, mitigation of vegetation disturbance by: avoiding wetlands and other sensitive areas; scarifying and revegetating cleared access roads and skid trails with herbaceous elk forage; covering excavation spoils with cached topsoil and litter; revegetating disturbed wetlands with native wetland plants, revegetating disturbed streambanks with native shrubs, and other measures proposed by the Licensee; and in conjunction with the Threatened and Endangered Species Plan, constructing lower North Fork instream fish habitat enhancements between May 15th and December 31st to prevent disturbance of wintering bald eagles;
- d. on recreation facility improvement sites on the Dry and Copper Creek trails, along Staircase Road, a prohibition on cutting overstory trees greater than sixteen (16) inches diameter breast height (dbh), with the exception of trees that pose a public safety threat;
- e. on recreation improvement sites on the Dry and Copper Creek trails, along Staircase Road, at the U.S.D.A. Forest Service Big Creek Campground, and at Lake Cushman State Park, measures such as construction schedule adjustments or other means to prevent disturbance of marbled murrelets and northern spotted owls, in conjunction with the Threatened and Endangered Species Plan; and

- f. on Olympic National Park exchange lands, procedures, developed after consultation with the National Park Service, to eliminate or control reed canary grass.

Operational Monitoring and Protection Plan

Within 1 year after issuance of the Amended License, the Licensee shall file a terrestrial resources monitoring and protection plan for National Park Service exchange lands, enhancement parcels, lands leased by Tacoma to Lake Cushman Development Corporation, and other Project lands to protect plant and wildlife resources during the license period. The plan shall include techniques for monitoring and protecting the plant and wildlife resources on these lands, measures to restrict land use and human use, and procedures to enforce the restrictive use measures. The plan shall include a schedule for implementing and evaluating the monitoring and protection program.

Article 421: Comprehensive Wildlife Habitat Enhancement Plan

Within one year after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a Wildlife Habitat Enhancement Plan (WHE Plan) for the Project. The WHE Plan shall address this Article's provisions pertaining to (1) Land Acquisition and (2) Enhancement of Habitat and Wildlife Populations.

The Licensee shall develop the WHE Plan in consultation with the Skokomish Tribe, Washington Department of Fish and Wildlife, U.S.D.A. Forest Service, the Bureau of Indian Affairs, and the U.S. Fish and Wildlife Service. The Licensee shall allow a minimum of thirty (30) days for the WDFW, USFS, USFWS and Skokomish Tribe to comment and make recommendations before submitting the plan for approval to USFWS, USFS and BIA. The Licensee shall include with the WHE Plan documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations are accommodated by the Licensee's WHE Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the WHE Plan with the Commission without first obtaining the approval of USFWS, USFS and BIA, the Licensee shall include specific reasons for doing so.

The WHE Plan shall also be developed in conjunction with the Threatened and Endangered Species Plan.

The Commission reserves the right to require changes to the WHE Plan. Implementation of the WHE Plan shall commence when the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the WHE Plan.

1. Land Acquisition

The Licensee shall acquire the title to the following parcels for the purpose of enhancing native plants and wildlife populations: (1) the 320-acre Green Diamond-owned site adjacent to Homan Flats (east half of Section 15, Township 22 North, range 5 West, W.M.); and (2) the approximately 430-acre Green Diamond-owned Lake May/Northern Lower North Fork site generally located in the southeast portion of Section 8, western portion of Section 16, eastern portion of Section 17, and northeastern portion of Section 20, Township 22 North, Range 4 West, W.M. and as depicted on the Wildlife Lands map which is attached as Appendix 1 to this Amended License.

The WHE Plan shall contain a description of each parcel and a schedule of dates for acquiring parcels and reporting to the Commission and the agencies on the progress of acquisitions.

The WHE Plan shall also include procedures, including consultation with the Tribe and agencies, to allow the Licensee to acquire appropriate alternative parcels which would provide equivalent or greater habitat benefits as the above described parcels in event that such parcels are identified and available.

2. Enhancement of Habitat and Wildlife Populations

Pursuant to the WHE Plan, the Licensee shall enhance native plants and wildlife populations on the following lands and waters: (1) the Project reservoirs; (2) the Westside, Dow Mountain, Deer Meadow, Brown Creek, Dry Creek, and Homan Flats parcels owned by Tacoma; (3) the approximately 750 acres of Green Diamond acquisition land described above; (4) the Cushman transmission line right of way between Cushman dam No. 1 and Cushman powerhouse No. 2; and (5) the Tacoma-owned approximately 75-acre non-operational land located in sections 27 and 28, Township 22 North, Range 4 West W.M. above the number 2 powerhouse (See Wildlife Lands Map attached as Appendix 1 to the Amended License).

The WHE Plan shall include goals, objectives, and standards for all recommended measures. Enhancement measures shall include, but may not be limited to the following:

- a. constructing three osprey nesting structures on the Project reservoirs;
- b. protecting and preserving all suitable bald eagle and osprey perching, roosting, and nesting trees on the Cushman wildlife lands located along the North and South Forks of the Skokomish River and Project reservoirs;
- c. establishing high density snag areas through creation of 300 snags in conifer-dominated Class 3 forests;

- d. scarifying, seeding, planting and other measures needed to successfully remove and revegetate roads not needed for parcel maintenance. Roads needed for maintenance but not for approved recreational access should be gated;
- e. improving forage production and tree growth within 200 acres of dense Class 1 or 2 conifer forest through thinning and maintaining target tree densities and forage throughout the term of the license using techniques to be specified in the WHE Plan;
- f. installing, maintaining, and monitoring at least 20 wood duck nest boxes at Lake Kokanee, Lake May, and other nearby aquatic areas;
- g. installing, maintaining, and monitoring at least seven (7) bat boxes at Lake Cushman, Lake Kokanee, and Lake May vicinity; and
- h. constructing, maintaining, and monitoring up to 200 acres of elk forage fields.

Article 422: Estuarine Enhancement Plan

Article proposed for deletion. See discussion in Joint Explanatory Statement.

Article 423: Threatened and Endangered Species Plan

Within one year after issuance of the Amended License, the Licensee shall, develop and file for Commission approval a Threatened and Endangered Species Protection Plan (T&E Plan) for the Project. The T&E Plan shall include measures to protect the Puget Sound Chinook salmon, Puget Sound Steelhead, Hood Canal summer-run chum salmon, bull trout, peregrine falcon, bald eagle, marbled murrelet, and spotted owl during project construction and operation.

The T&E Plan shall include, but not be limited to, the following:

- a. measures to protect listed salmon stocks and bull trout, consistent with the requisite provisions of Articles 401 through 407, 410 through 419, and 422 of this license;
- b. protective measures such as establishment of buffer zones for future logging or land development, precluding construction during breeding seasons, the protection of existing and potential bald eagle roosting and perching trees, particularly along stream shorelines, and maintaining and enhancing food sources for the bald eagle;
- c. a schedule for implementing the measures;

- d. a description of the method(s) for monitoring the results of the implemented measures;
- e. a monitoring schedule; and
- f. a schedule for providing the monitoring results to the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, Washington Department of Fish and Wildlife, and the Commission.

If any of the measures prove unsuccessful, the Licensee shall prepare a revised plan to include alternative or modified measures, developed in consultation with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, and the Washington Department of Fish and Wildlife.

The Licensee shall develop the T&E Plan in consultation with the Fisheries and Habitat Committee, and shall seek approval of NMFS and USFWS. The Licensee shall allow the Fisheries and Habitat Committee members a minimum of thirty (30) days for comments and recommendations before submitting the plan for approval to USFWS and NMFS. When filing the T&E Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the Licensee's T&E Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information. If the Licensee files the T&E Plan with the Commission without first obtaining the approval of NMFS and USFWS, the Licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the T&E Plan. No land-disturbing activities shall begin at the Project until the Licensee is notified by the Commission that the T&E Plan is approved. Upon Commission approval, the Licensee shall implement the T&E Plan.

Article 424: Shoreline Management Plan

Within two (2) years after issuance of the Amended License, the Licensee shall file with the Commission, for approval, a detailed management plan for the use of shoreline Project buffer zone lands. The Shoreline Management Plan, at a minimum, shall include: (1) allowable uses for the buffer zone lands; (2) conditions to be specified for such allowable uses (such as, measures to maintain the aesthetic quality of the reservoir); and (3) any proposed permit system (with a sample permit).

The Licensee shall prepare the Shoreline Management Plan in consultation with the Washington Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, and Mason County. The Licensee shall allow a minimum of thirty (30) days for comment and recommendation of the agencies before filing the Plan

with the Commission. The Licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the Plan, and specific descriptions of how the agencies' comments are accommodated by the Licensee's Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon operation and landscape conditions at the site.

The Commission reserves the right to require changes to the Plan. Upon Commission approval the Licensee shall implement the Plan.

Article 425: Recreation Plan

Within 1 year of issuance of the Amended License, the Licensee shall file with the Commission, for approval, a recreational resources plan detailing measures that the Licensee will undertake to protect and enhance area recreational resources. All plan requirements to be implemented outside the current Project boundary are one-time actions that shall not include maintenance, management, monitoring, or oversight by the Licensee. At a minimum, the plan shall include the following provisions:

1. The Licensee shall improve five existing casual shoreline access sites in the Staircase Road Recreation Area by converting existing informal camp sites to day use only sites (as described in FEIS section 4.7.1.2).
2. The Licensee shall improve the Lake Cushman Viewpoint by providing picnic sites, kiosks, and a toilet, and improve accessibility (as described in FEIS section 4.7.1.2).
3. The Licensee shall relocate the Dry Creek Trail to bypass the portion of the current Dry Creek Trail adjacent to the residences situated along Lake Cushman. The Dry Creek Trailhead shall be relocated to join with the Copper Creek Trailhead and provide improvements to that trailhead (as described in the FEIS sections 4.7.1.2 and 4.7.4.2) or, alternatively, the Licensee shall secure legal public access for the U.S.D.A. Forest Service along the existing Dry Creek trail route or portions thereof. The Licensee shall make improvements to the access road to the Mt. Rose Trailhead, and improve and enlarge the Mt. Rose Trailhead parking area (as described in FEIS section 4.7.1.2).
4. The Licensee shall improve the Lake Kokanee boat ramp facilities by installing a boat loading dock, adding new crushed rock to the parking area, delineating parking stalls, and providing picnic tables and kiosks. The Licensee shall assume the maintenance of the boat ramp facilities including repairing or replacing broken slabs in the ramp, grading the parking area annually, maintaining the concrete vault toilets, removing garbage and litter, and other general maintenance as necessary.
5. The Licensee shall improve the undeveloped portion of Olympic National Forest's Big Creek Campground for organized group overnight and day-use (as described

in FEIS sections 4.7.1.2 and 4.7.4.2). All constructed facilities will be owned by the USFS upon completion.

5.1 To the extent feasible given site constraints, the Licensee shall work with the USFS to add up to thirty (30) group camp RV sites including two kitchen shelters, picnic tables, a group fire circle and two barrier free double vault toilets.

5.2 The Licensee shall provide a new entrance sign for the existing campground, a fee station, informational kiosks, a hand pump well, storage building, wastewater disposal sumps, and miscellaneous signage (as described in the FEIS Section 4.7.1.2). The Licensee shall also rehabilitate one double vault toilet and one hand pump well.

5.3 In addition to the requirements of section 5.1, the Licensee shall construct or reconstruct up to thirty (30) individual campsites (both RV and tent) with picnic tables and fire rings. The Licensee shall also construct a camp host site with on-site sewage system and water for filling trailer holding tanks, and install a well, pump, pumphouse, distribution lines, up to twenty (20) faucets, and drains. Until outside power is available at the site, the camp host site, well, pump, and pumphouse shall be powered by a site battery with a recharging system by either hydro, solar, and/or portable generator. The battery system will not be capable of powering the water distribution lines and thus faucets will not be operable until outside power is available pursuant to section 5.4.

5.4 When outside power is available within one-quarter mile of Big Creek Campground, the Licensee shall extend the power into Big Creek Campground, add lighting to existing facilities such as shelters, kiosks, and the host site, and add lighting and fans to the toilets. The Licensee also shall extend power to the water distribution system (well, pump, pumphouse, distribution lines, up to twenty (20) faucets, and drains).

5.5 After the distribution line is installed and functional, the Licensee shall remove and decommission the existing hand pump wells and well sites.

5.6 The Licensee shall provide hard surfacing (using either concrete or Bituminous Surface Treatment) to the entrance area and campground host site, and shall provide 2" of new crushed surfacing on existing roadway and parking spurs within the campground upon completion of all subsurface work. The new roadways and parking spurs shall be constructed using up to 4" of base material topped with 2" of crushed surfacing.

5.7 The Licensee shall construct an interpretive trail, approximately ¼ mile in length, at Big Creek Campground.

5.8 The Licensee shall provide for a trailer dump station within three miles of the campground.

6. The Licensee shall provide for improvements to Bear Gulch Access by providing 5 picnic tables, toilets and parking (up to twenty (20) vehicles) as described in the FEIS (sections 4.7.1.2, and 4.7.4.2). The Licensee shall also repair or replace the existing toilet.

7. The Licensee shall construct recreational facilities to comply with the Americans with Disabilities Act of 1990.

8. The Licensee shall complete an assessment of the site commonly known as “The Big Rock” in consultation with the U.S. Fish and Wildlife Service, Washington Department of Natural Resources, and Mason County Sheriff to address the continuing incidence of person caused wildfire starts and ensuing investigations in the area and other law enforcement actions attributed to gatherings of people in the area. Such assessment shall include discussion of options to manage public activities in this area, which may include but are not limited to methods to limit access, limit parking opportunities in the area, use of traffic revisions or increased signage and fire prevention patrols.

9. The Licensee shall impose campfire and camping restrictions on Licensee lands along Staircase Road at the request of the U.S.D.A. Forest Service.

10. The plan shall include a schedule for completion of items 1, 2, 3, 4, 5, 6, and 8 within three (3) construction seasons of issuance of the Amended License. The schedule may be modified by agreement with the USFS. The designs for the facilities described in items 1, 3, 5, 6, and 8 shall be developed in consultation with and subject to approval of the USFS.

The Licensee shall prepare the plan after consultation with the USFS, National Park Service, the Bureau of Indian Affairs, Skokomish Indian Tribe, Washington Department of Fish and Wildlife, and the Washington Department of Natural Resources. The Licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies’ comments are accommodated by the plan.

The Licensee shall allow a minimum of thirty (30) days for the agencies to comment and make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee’s reasons, based on Project-specific information.

The Commission reserves the right to require changes to the proposed plan. Implementation of the recreational management plan shall not begin until the Licensee is

notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

Article 426: Article proposed for deletion. See discussion in Joint Explanatory Statement.

Article 427: Road Management Plan

Within one year of issuance of the Amended License, the Licensee shall file with the Commission, for approval, a Road Management Plan for USFS Road Nos. 24 and 2451 that addresses Project-related use and protects water quality, recreational, and aesthetic resources as described in the FEIS (sections 4.7.1.2 and 6.4.1).

At a minimum, the Road Management Plan shall include the following components:

1. The License shall include a description of Project induced impacts relevant to the history of the road's development and use.
2. The License shall include a description of projected future use levels.
3. The License shall include a description of public safety.
4. The License shall include a description of year-round access needs.
5. The License shall include a description of winter maintenance.
6. The License shall include a description of objectives for future road standards that may facilitate jurisdiction by public road management agencies.
7. The Licensee shall assume a portion of the responsibility, commensurate with Project related use (including recreational use and water quality protection measures), for operation and maintenance activities of USFS Road No. 24 from Road Mile 10.1 to 14.08 until road jurisdiction is transferred to others or unless otherwise agreed to by the USFS. Operation and maintenance of USFS Road No. 24 consists of: (1) cleaning, removing, reconditioning, installing, or replacing the following: drainage structures (such as culverts, ditches, catch basins), riprap armor, headwalls, water bars, cross ditches, erosion control devices, earth berms, and debris rack; (2) surface maintenance including load, haul and place materials, blading, grading, surface rock, asphalt & BST maintenance and treatment, pothole patching or grading, spot rock surfacing, and road condition surveys; (3) signs and traffic control maintenance; (4) reconditioning, installing or replacement (including graffiti removal) of the following: gates, post, signs, guardrail, jersey barriers, barricades, and pavement markers; and (5) vegetation management such as brushing, danger tree removal, logging out trees, establish vegetation, and seeding and removal of invasive species.

8. The Licensee shall assume a portion of the responsibility, commensurate with Project-related use (including recreational use and water quality protection measures), for operation and maintenance activities of USFS Road No. 2451 from Road Mile 0.00 to Road Mile 1.0 for the duration of the Amended License. Notwithstanding, the Licensee shall not be responsible for any structural damages to USFS Road No. 2451 caused by floods or by Project operations. Operation and maintenance of USFS Road No. 2451 consists of: (1) cleaning, removing, reconditioning, installing, or replacing the following: drainage structures (such as culverts, ditches, and catch basins), water bars, cross ditches, erosion control devices, earth berms, and debris rack; (2) surface maintenance including load, haul and place materials, blading, grading, surface rock, pothole patching or grading, spot rock surfacing, slide or rock onto roadway removal and haul, and road condition surveys; (3) signs and traffic control maintenance; (4) reconditioning, installing or replacement (including graffiti removal) of the following: barricades or gates to close bridge, post, bridge signs, guardrail, jersey barriers, graffiti removal, barricades, and pavement markers; (5) vegetation management such as brushing, danger tree removal, logging out trees, establish vegetation, and seeding and removal of invasive species; and (6) structure maintenance such as bridge guardrail and approach railing maintenance, bridge deck and drain cleaning and maintenance, and patching damaged concrete bridge deck.

The Licensee shall prepare the Plan after consultation with the USFS, National Park Service, Washington State Parks and Recreation Commission, and Washington Department of Natural Resources. The Licensee shall include with the Plan documentation of consultation, copies of comments and recommendations on the completed Plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the Plan.

The Licensee shall allow a minimum of thirty (30) days for the agencies to comment and make recommendations before filing the Plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information.

The Commission reserves the right to require changes to the proposed Plan. The recreational resources program shall not begin until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the Plan.

Article 428: Recreational Use Monitoring Plan

Within one year of completion of improvements required by Article 425, the Licensee, in consultation with the U.S.D.A. Forest Service, National Park Service, Washington State Parks and Recreation Commission, Washington Department of Fish and Wildlife, and Washington Department of Natural Resources, shall implement a study to determine whether existing recreational facilities are meeting Project-related recreational demands. The Licensee shall seek approval by the USFS of the study plan

prior to implementing the study. Reporting of the required information is to be in accordance with 18 C.F.R. § 8.11, which requires the filing of the Commission Form No. 80, and the requirements of this Article. This report shall include the following components:

1. annual use figures;
2. a discussion of the adequacy of the Licensee's recreational facilities in the project area to meet recreational demand including boating access;
3. a description of the methodology used to collect all study data; and
4. if there is a need for additional facilities, the Licensee shall develop and implement a recreation plan to accommodate recreational needs in the Project area.

The Licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan.

The Licensee shall allow a minimum of thirty (30) days for the agencies to comment and make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information.

The Commission reserves the right to require changes to the proposed plan. Implementation of the recreational management plan shall not begin until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

Articles 429: Unchanged

Article 430: Penstock Painting. Proposed for deletion. See explanation in Joint Explanatory Statement.

Article 431: Unchanged

Article 432: Fisheries and Habitat Committee

Within three (3) months after issuance of the Amended License, the Licensee shall establish and convene a Fisheries and Habitat Committee (FHC) for the purpose of consultation with the Licensee as expressly provided in specific license articles and Settlement Agreement Appendix 3.

The Licensee shall arrange, administer, and chair all meetings. Upon request of the other parties, the Licensee shall provide a meeting facilitator. The Licensee, or the facilitator, shall provide no fewer than ten (10) days' prior notice of any meeting, unless otherwise agreed to by the FHC or required in order to meet a license deadline or other emergency circumstance.

The Licensee, or the facilitator, shall provide draft meeting minutes for concurrence by the FHC prior to final distribution. Meeting minutes will include FHC action items, a summary of issues discussed, decisions reached, and member concerns.

The Licensee shall bear all costs associated with conducting meetings.

For purposes of the Amended License, consultation or consult means that the Licensee shall obtain the views of and attempt to reach consensus among the specified parties or specified committee whenever the Amended License requires the Licensee to consult. Consultation shall not mean consultation under section 7 of the Endangered Species Act or other federal laws specifically requiring consultation unless specifically provided.

Article 433: U.S.D.A. Forest Service Reservation of Authority

The U.S.D.A. Forest Service reserves its authority under Section 4(e) of the Federal Power Act as provided in Section 10.5 of the Cushman Off-license Agreement Between Tacoma and the U.S.D.A. Forest Service, dated January 12, 2009, to require the inclusion of conditions in the license for Project No. 460, described in Sections 3 and 7 of the Cushman Off-license Agreement Between Tacoma and the U.S.D.A. Forest Service, even if the Cushman Off-license Agreement between Tacoma and the U.S.D.A. Forest Service terminates.

Article 434: Department of Interior Reservation of Authority

The Licensee shall implement, upon order by the Commission, such additional measures as may be identified by the Secretary of the Interior pursuant to authority provided in Section 4(e) of the Federal Power Act, as necessary to ensure adequate protection and utilization of the Skokomish Indian Reservation.

Unnumbered Appendix B U.S.D.A. Forest Service Recreation Plan

This obligation is proposed for deletion from the license because it has been superseded by Amended Articles 410, 425, 427 and 428.

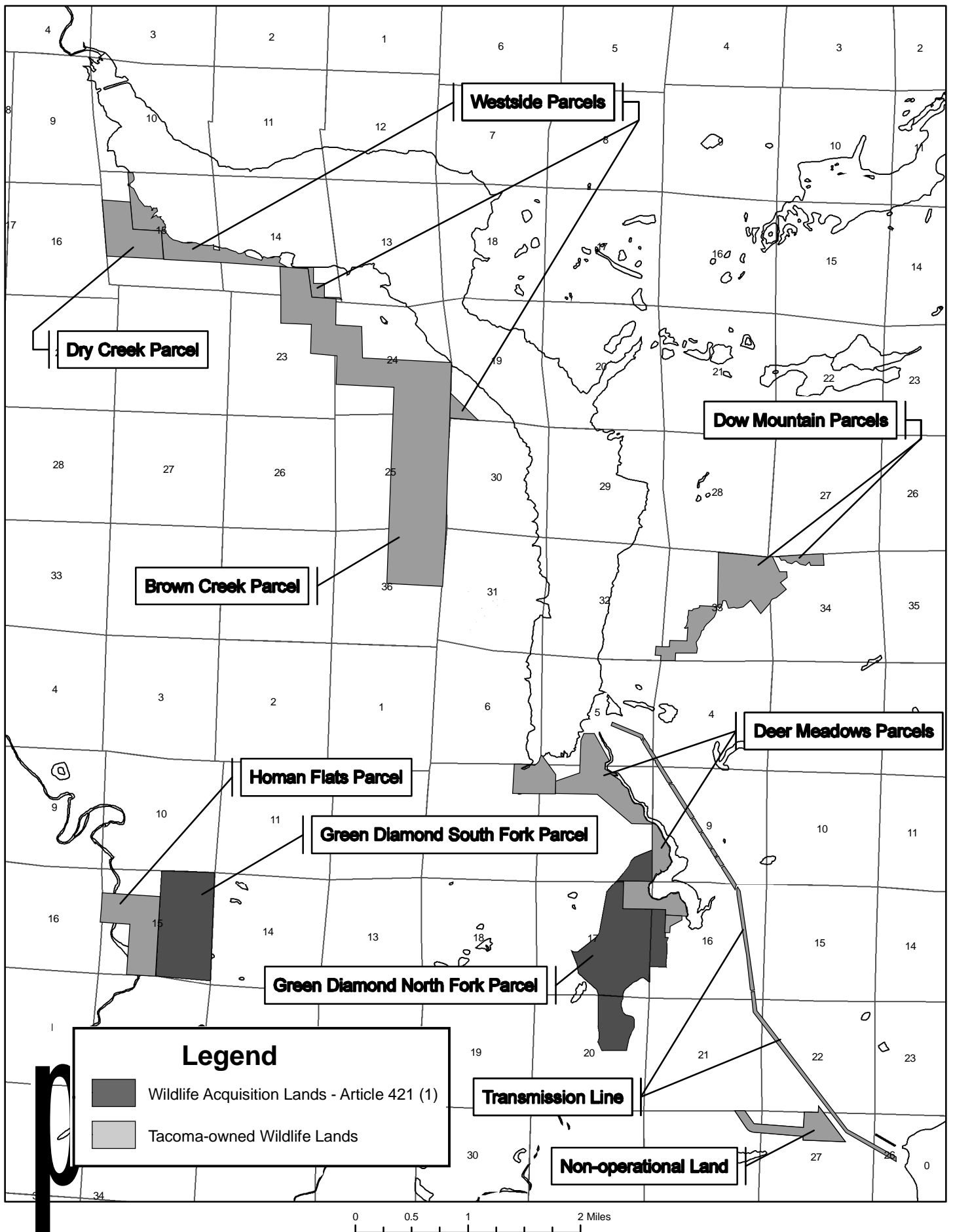
Unnumbered Appendix B U.S.D.A. Forest Service Fire Plan

This obligation is proposed for deletion from the license because it has been superseded by Amended Articles 410, 425, 427 and 428.

Unnumbered Appendix B U.S.D.A. Forest Service Road Management Plan

This obligation is proposed for deletion from the license because it has been superseded by Amended Articles 410, 425, 427 and 428.

Cushman License Article 421 Wildlife Lands



APPENDIX 2

AUTHORIZED REPRESENTATIVES OF THE PARTIES

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APPENDIX 3

FISHERIES AND HABITAT COMMITTEE

1.0 PURPOSE OF THE COMMITTEE

The purpose of the Fisheries and Habitat Committee (FHC) is to advise the Licensee on fisheries and habitat issues as specified in the Amended Project License for the Cushman Hydroelectric Project (Federal Energy Regulatory Commission Project No. 460).

2.0 COMMITTEE MEMBERSHIP AND MEETING PARTICIPATION

2.1 The FHC shall be comprised of the following members: the Licensee, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, and the Skokomish Indian Tribe.

2.2 Each member may designate a primary representative to the FHC within 30 days after the Effective Date, or at any time thereafter with five (5) days' notice. Designation shall be by Notice to the Parties in accordance with section 7.11 of the Settlement Agreement. Each member or category of members may name alternate representatives to the FHC. Failure to designate a representative shall not prevent the FHC from convening or conducting its functions in accordance with the time schedules set forth in specific license articles in the Amended Project License or as otherwise established in the Settlement Agreement.

2.3 Each member should select a representative who has relevant training or experience with natural resource management.

2.4 Committee participation by state or federal agencies does not affect their statutory responsibilities and authorities. Issues involving the exercise of agencies' specific authorities can be discussed, but decisions are not delegated to the FHC. The FHC does not provide consensus advice to any federal agency.

3.0 MEETING PROVISIONS

3.1 The Licensee shall establish the FHC not later than three (3) months after Commission issuance of the Amended Project License.

3.2 The Licensee shall arrange, administer, and chair all meetings. Upon request of the other parties, the Licensee shall provide a meeting facilitator. The Licensee, or the facilitator, shall provide no fewer than ten (10) days' prior notice of any meeting, unless otherwise agreed to by the FHC or required in order to meet a license deadline or other emergency circumstance.

3.3 The Licensee, or the facilitator, shall provide draft meeting minutes for concurrence by the FHC prior to final distribution. Meeting minutes will include FHC action items, a summary of issues discussed, decisions reached, and member concerns.

3.4 The FHC will establish protocols for meetings such as agenda development, timely distribution of materials, location and scheduling. Scheduling of meetings should be informed by milestone events contained within specific license articles. It is anticipated that initially the FHC will meet monthly or as needed to meet the consultation requirements of the license articles. The FHC will meet at least annually for the term of the Amended Project License and any annual licenses.

3.5 Meeting agendas will list specific license articles and all other topics for action or discussion.

3.6 The Licensee shall bear all costs associated with conducting meetings. Each member will bear its own cost of attendance.

3.7 The role and procedures of the FHC will be evaluated five (5) years after issuance of the Amended Project License at which time the FHC will determine if it should remain the same, be modified or discontinued. The FHC will re-evaluate its role and procedures periodically thereafter, throughout the term of the Amended Project License and any annual licenses.

4.0 COMMITTEE DELIBERATIONS

4.1 The FHC shall seek to reach consensus. Consensus is achieved when all FHC members cast a supportive or neutral vote or have abstained from the decision. When any vote is taken at a meeting, the Licensee or facilitator shall provide the results to and seek the vote of non-present members within three (3) working days. FHC members not present must inform the Licensee or facilitator of their vote within ten (10) working days after the meeting or they will be deemed to have abstained from the decision. Alternatively, a vote may be cast by proxy.

Federal agencies with approval authority under the Amended Project License may exercise their authorities through this consensus process. If a specific federal agency approves a plan, measure or action through this consensus process, the Licensee will not have to seek additional approvals from that federal agency regarding that specific plan, measure or action.

4.2 The position of other members does not override an agency's approval, which is an independent authority. The agency with such approval authority will convey its determination to the Licensee, the FHC, and the Commission. Notwithstanding, agencies do not waive or relinquish in any respect any approval

authorities under the Federal Power Act or other applicable law through its participation in the FHC consensus process and any subsequent ADR process. While the goal of the FHC is consensus decision-making where possible, nothing in the Settlement is intended to transfer legal authority or jurisdiction from any party to any other.

4.3 The Licensee shall implement any action where consensus by the FHC has been reached, subject to the requirements of the Amended Project License (such as filing for Commission approval) and any necessary regulatory approval. In the absence of consensus, the Licensee may proceed to file plans or make any required filings necessary to meet a License deadline. Unless otherwise noted, the Licensee shall file with the Commission any plans or other required actions within seven (7) days of FHC approval or of an agency decision in case of dispute resolution. Prior to implementing a plan or other required action, the Licensee shall obtain the Commission's approval and any necessary agency approval. Where a license article in the Amended Project License assigns a decision to an agency for approval, the Licensee shall proceed in a manner consistent with that approval.

4.4 The Licensee shall file with the Commission documentation of all consultations with the FHC or specific agencies as required by a specific license article in the Amended Project License, any member's concerns and responses thereto, and any other written comments provided to the Licensee. Consultation shall not mean consultation under section 7 of the Endangered Species Act or other federal laws requiring consultation unless specifically provided.

Unless otherwise noted in a specific license article in the Amended Project License, the Licensee shall allow a minimum of thirty (30) days for FHC member comments and recommendations before submitting the document to the federal agencies for approval. When filing the document with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from FHC members are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on project-specific information.

4.5 The Licensee may seek review from the federal and state fish and wildlife agencies on matters in which they have expertise prior to seeking consensus of the FHC.

5.0 DISPUTE RESOLUTION

FHC members shall first use the dispute resolution process of Settlement Agreement section 5 to resolve disputes arising from FHC deliberations, prior to seeking remedies in any other forum.

APPENDIX 4

FISH SUPPLEMENTATION FRAMEWORK

Cushman Project Fish Supplementation Framework

A. Background

As part of the relicensing of its Cushman Hydroelectric Project, Tacoma Power (Tacoma) and the Skokomish Indian Tribe are working with federal and state agencies on the development of a fish supplementation program to restore anadromous fish populations to the upper North Fork Skokomish River and implement a resident fishery.

B. Objectives

The objectives of the fish supplementation program are to:

1. Support the reintroduction, restoration, and long-term maintenance of anadromous populations in the North Fork Skokomish watershed;
2. Provide harvest opportunities to treaty Indian and non-treaty fishers;
3. Provide recreational fishing opportunities.

The Cushman Project Fish Supplementation Program will be monitored in accordance with Article 413 of the Cushman Project license.

C. Guiding Principles

The fish supplementation program is to be designed and operated according to the principles outlined below.

1. Hatchery production to be integrated with natural production

Hatchery production methods are to be employed in a manner to achieve integration with restored natural production, primarily based on principles of hatchery reform as defined by the Hatchery Scientific Review Group (HSRG) for Puget Sound. A hatchery program is “integrated” if it is managed to allow the natural environment to primarily drive the adaptation and fitness of a composite population of fish that spawns both in a hatchery and in the wild. An integrated program follows guidelines for affecting the composition (i.e. the mix of hatchery and natural origin spawners) of both the natural and hatchery spawning populations. To the extent possible these guidelines will be followed with consideration given to constraints imposed by amount and distribution of key habitats.

2. Avoidance of creating “weak stocks” for fisheries management

To the extent possible, it is important to avoid creating weak stock conflicts for fisheries management in both the marine environment and in the Skokomish River. A weak stock is a population of relatively low productivity that is commingled with a higher

productivity stock of the same species, and that imposes harvest constraints on the higher productivity stock in order to protect the weaker stock.

Commercial fisheries in Hood Canal and the Skokomish River target either hatchery runs (e.g. George Adams Hatchery Chinook, Hood Canal hatchery fall chum) or productive natural runs (e.g. natural fall-timed coho). Restoration of anadromous fish populations to the upper North Fork Skokomish River should place emphasis on populations that would not create weak stock conflicts with these existing fisheries. Attention will be given in the use of hatchery methods to develop and support runs that avoid the creation of weak stock conflicts.

3. Emphasis on production that uses lake-rearing life histories

The environment of the upper North Fork watershed has changed over time due to the transformation of riverine into lacustrine habitat that resulted with the construction of the two Cushman Project Dams. Consequently, most of the emphasis of the supplementation program in terms of numbers of juveniles produced is given to the species and life histories that rely on the lake environment.

4. Production levels sized to historic run sizes or their adult equivalents

Artificial production levels are based on estimates of historic run sizes with the intent that the supplementation programs produce targeted numbers of adults returning to the North Fork. Since Tacoma has no control over the saltwater life history phase of the species proposed for supplementation, it cannot guarantee a defined number of adults will return to the North Fork Skokomish River in any given year.

Adjustments were made to a species target production level reflecting how habitat types have changed (i.e., due to inundation), or to maintain a desired balance between artificial and natural production as per the guidelines of the HSRG. Where a deviation was made from an estimated historic production level, an adult equivalent for another species was incorporated if consistent with the other planning concepts. For example, the balance of production between sockeye and spring Chinook reflects both existing habitat potential and broodstock management guidelines, with a trade-off of less spring Chinook for greater sockeye production. Also, some amount of historic coho production that would have occurred in spawning habitats now inundated may be converted to a higher target for sockeye, reflecting the greater reliance of sockeye on lake habitat.

Coho production and harvest in the Skokomish system is already significantly enhanced by George Adams Hatchery production. It is noted, however, that a coho production component is included herein to help offset, as might be needed, the effects of a fish passage impact on the productivity of the re-introduced population to the upper river.

5. Need to address potential ecological interactions

Attention is to be given to avoiding adverse ecological interactions with native biota in the upper North Fork. All of the species to be re-introduced to the upper river were indigenous to that area, but the composition of their preferred habitat types has been altered as a result of the Cushman Project. Of particular concern is how Bull trout and other native resident populations of fish in the upper river might be affected by the restoration of the full complement of anadromous species. Monitoring and evaluation, in conjunction with an adaptive program, will therefore be essential to address potential ecological interactions as they might become evident in the future. The Parties will work collaboratively to develop a plan for monitoring and evaluation. Tacoma's responsibilities within that plan are identified in Article 413.

6. Need to consider spatial structure in the viability of wild populations

The spatial structure of salmonid populations is important to their long-term viability. This aspect of population performance is one of the criteria used by NOAA-Fisheries to evaluate likelihood of population viability. Spatial structure is particularly important to restoring naturally produced steelhead to the upper North Fork given the depressed status of that species both in the Skokomish basin and throughout Hood Canal.

Natural salmonid populations are structured hierarchically with respect to their spatial distributions, in that population segments belong to larger population units. The sizes and spatial structure of these units relative to one another are important to the viability of populations. The success of expanding the North Fork steelhead population unit to the area upstream of Lake Cushman will likely depend on the long-term viability of steelhead in the lower North Fork and the rest of the Skokomish River basin.

Collaborative efforts between federal and state agencies, and the Skokomish Tribe are currently underway to restore winter steelhead in the South Fork Skokomish River. Therefore, the use of artificial propagation in the North Fork to restore steelhead will address the entire North Fork population as a single segment, with effort first focused on restoring population viability to the lower North Fork. Steelhead will be re-introduced to the upper North Fork as population size expands, i.e. fish showing a propensity to migrate further upstream into the North Fork would be relocated to the upper system as colonizing spawners.

7. Best management practices for fish health and genetic fitness

Facilities and operations designed and implemented over the term of the license will be guided by best management practices for fish health and maintenance of genetic fitness. Particular care will need to be exercised in the propagation of sockeye, which are especially vulnerable to the viral disease Infectious Hematopoietic Necrosis (IHN).

D. Program Elements

1. Species

The artificial production program will be developed around five species: sockeye, spring Chinook, steelhead, coho and rainbow trout.

2. Facilities

a. George Adams Hatchery

Since 1959, Tacoma Power has annually provided funding to the State of Washington in support of George Adams Hatchery operations. The agreement between the City of Tacoma and the State of Washington currently provides for funding of approximately \$101,000. The amount contributed in any given year is subject to inflation according to a Consumer Price Index.

The agreement was established to mitigate the loss of fish passage following original construction of the Cushman Hydroelectric Project. This funding currently supports a fall Chinook and an early-timed coho program at the George Adams Hatchery.

As part of a licensing settlement, Tacoma will agree to enter into a new agreement with the State that will continue the annual funding at the same level, including the appropriate inflation factor, to support the George Adams Hatchery or other fish propagation activities in the Skokomish River basin.

The George Adams Hatchery funding described above will be in addition to the supplementation facilities and programs identified within this plan.

b. Adult Collection Facility

The adult collection facility will be used to collect brood stock for the sockeye, spring Chinook, and coho supplementation programs. Two locations have been identified as possibilities for the development of the adult collection facility. One is near the base of Cushman Dam No. 2. The other is in the vicinity of the confluence of McTaggart Creek and the North Fork Skokomish River.

The preferred location for the adult collection facility is at the base of Cushman Dam No. 2 unless additional information indicates this location is infeasible. The final location will be selected by Tacoma based on feasibility studies.

c. Supplementation Facilities

Two separate adult holding, egg incubation, and early rearing facilities will be developed. Tacoma's Saltwater Park property has been identified as the location for the sockeye supplementation program. The spring Chinook, steelhead, coho and resident trout

programs will be developed at a site apart from the sockeye facility to minimize the spread of disease between sockeye and the other species. The suitability of the Saltwater Park site, and other sites in the vicinity of Tacoma’s Cushman No. 2 Powerhouse, will also be assessed for spring Chinook adult holding, and possibly egg incubation, to determine if there is an adequate water supply, and if disease isolation protocols can reasonably be expected to protect the populations incubated and reared at those locations.

Several sites in the basin were considered for the development of the spring Chinook, steelhead, and coho facility. The incubation and early rearing facility for these species could be constructed on the east shore of Lake Kokanee using an existing non-chlorinated municipal water supply if water rights can be obtained. If this site proves to be infeasible, Tacoma will locate facilities at an alternate site. (Note: the term “early rearing” defines a very short period of rearing to occur in hatchery troughs prior to the fish being placed in net pens. The length of such rearing is normally between 2-4 days for spring Chinook and coho. Such rearing is only needed to ensure that emergent fry are actively feeding prior to being placed in the pens. For steelhead, the duration needs to be part of the rearing protocols as recast for net pens.

A net pen rearing program will be implemented in Lake Kokanee adjacent to Cushman Dam No. 2 for spring Chinook, coho, steelhead and rainbow trout. It is envisioned that net pen reared spring Chinook, coho and steelhead could be released via crane into the pool below Cushman No. 2 Dam. This pool could serve as a transitional staging area as the released fish prepare to migrate downstream.

3. Stock Selection

Potential donor stocks need to be evaluated for developing hatchery production. An initial candidate list follows.

Table 1. Potential donor stocks for the Cushman Fish Supplementation Program

Species	Potential Donor Stock
Sockeye	Baker Lake Lake Washington
Spring Chinook	White River Cascade River (Skagit) Kendall Creek (NF Nooksack) Dungeness River Sol Duc River
Coho	Lower NF Skokomish River
Winter Steelhead	Lower NF Skokomish River

The wild late-timed coho run and the wild winter steelhead run in the North Fork Skokomish River are proposed to be used for the supplementation program.

4. Sequencing and Phase-In

The sequencing of steps necessary to implement the supplementation program will be included in the Fish Supplementation Plan. The plan will be developed in consultation with Tacoma, Skokomish Indian Tribe, National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, Bureau of Indian Affairs, Washington Department of Ecology, and Washington Department of Fish and Wildlife, collectively called the Fisheries and Habitat Committee (FHC). The plan will be submitted to FERC within 9 months of license issuance. The plan would consider a schedule to include when potential donor stocks might be available and when startup phases for each species can begin. In particular, it is expected that the sockeye component will be phased in to incrementally increase the program to meet the overall fry numbers.

5. Monitoring and Evaluation

Monitoring and evaluation elements will be included in Article 413 of the FERC license.

E. Fish Supplementation Program

1. Sockeye

The sockeye program will be initiated using eggs obtained either from the Baker Lake or Lake Washington programs. Several years of egg incubation will be required using donor stock until adult sockeye begin returning to the North Fork Skokomish River. The rate at which donor stock eggs will be phased out will be determined by the FHC.

Adult holding, egg incubation and early rearing facilities will be constructed at Tacoma Power's Saltwater Park adjacent to the Cushman No. 2 Powerhouse on Hood Canal. Eggs will be incubated on-site using pathogen-free water originating from springs on Tacoma property. The resulting fry will be raised in troughs/raceways at the facility, and transported by truck to Lake Cushman for release. The program will be capable of producing the fry numbers shown in Table 2. This number of fry can be expected to produce an estimated adult return to the North Fork Skokomish River of approximately 22,200 sockeye adults. Tacoma has no control over the sockeye's saltwater life history phase, and because no one can guarantee a defined number of adults will return to the North Fork Skokomish River in any given year, Tacoma will take reasonable steps, as determined by the FHC, to achieve the adult return objective. The sockeye program can be modified by the FHC within the physical constraints of the facilities provided at the sites. The facilities will be designed based on the rearing and release strategy identified in Table 2.

Table 2. Sockeye supplementation program fry rearing and release strategy.

Species	Type	No.	Fish/Pound	lbs	Surv to smolt	Smolts	SAR ¹	Adults
Sockeye	Fed fry (May)	200,000	2500	80	0.025	5,000	0.04	200
	Fed fry (June)	1,000,000	800	1,250	0.150	150,000	0.04	6,000
	Fall fry (Sept)	800,000	150	5,333	0.500	400,000	0.04	16,000
Totals		2,000,000		6,663		555,000		22,200

¹ SAR = estimated Smolt to adult return rates

Other release strategies such as remote site incubators adjacent to tributaries to Lake Cushman may also be utilized if the FHC determines it is feasible to release un-fed fry into the lake. Additionally, fry from the donor egg stock may be reared to smolt size in the Lake Kokanee net pens and placed directly into the lower North Fork during the first few years of the program to increase the likelihood of adult returns.

Effluent from the sockeye facility will be directed to an effluent treatment pond prior to discharge to Hood Canal. The discharge will be monitored for evidence of false attraction of sockeye adults. If substantial false attraction is documented, as determined by the FHC, contingency measures to correct the situation will be developed. Some contingency measures that could be explored include extending the outfall deeper or treating the effluent to alter the scent. It should be noted that sockeye might home to the tailrace, regardless of the influence of the hatchery outfall due to the attraction to reservoir water being discharged at the powerhouse. This potential issue will need to be investigated and addressed if it proves to be a factor affecting the program.

Once adult sockeye begin returning to the North Fork Skokomish River, they will be captured at the North Fork adult trap and transported by truck to the Saltwater Park facility. Adults will be held in spring water, or water from the Cushman No. 2 penstock, or a combination of spring and penstock water until ready to spawn. As the program matures and the number of adults returning to the North Fork increases, some will be transported to and released in the vicinity of Lake Cushman to spawn naturally in tributary streams and the upper North Fork.

Eight years after initiation of the sockeye program, the FHC will evaluate whether to investigate the development and operation of one or more sockeye spawning beaches. The evaluation will take into account disease risk, land, water, and outside funding availability, current adult return rates and whether development and operation of spawning beaches would be cost-effective.

2. Spring Chinook

Lake Cushman currently supports a landlocked fall Chinook population that the National Park Service monitors annually using snorkel surveys during the fall spawning season. Harvest restrictions have been implemented in Lake Cushman by the State to reduce harvest of this stock.

A spring Chinook program will be initiated in the basin using eggs or fry obtained from either the White (Minter Creek Hatchery), Skagit (Cascade River), North Fork Nooksack (Kendall Creek), Dungeness or Sol Duc Rivers. A sufficient number of spring Chinook eggs will be incubated and early-reared (as defined above) at the facility proposed for the east shore of Lake Kokanee to provide approximately 375,000 juveniles. The resulting fry will be reared in the Lake Kokanee net pens which will be sized to rear up to 13,500 pounds of spring Chinook juveniles (Table 3). The fish will be released into the pool at the base of Cushman No. 2 Dam as fingerlings / yearlings where they can hold until ready to distribute themselves downstream.

Once adult spring Chinook begin returning to the North Fork Skokomish adult collection facility, they will be captured and held until ready to spawn at the designated supplementation facility. As the program matures, and the number of adults returning to the collection facility increases, they will be distributed between the watershed upstream of Cushman Dam No. 1, and the designated adult holding facilities to be used as broodstock. Tacoma has no control over the saltwater life history phase of this species, and because no one can guarantee a defined number of adults will return to the North Fork Skokomish River in any given year, Tacoma will take reasonable steps, as determined by the FHC, to achieve the adult return objective. The spring Chinook program can be modified by the FHC within the physical constraints of the facilities provided at the sites. The facilities will be designed based on the rearing and release strategy identified in Table 3.

Table 3. Spring Chinook supplementation program production levels

Species	Type	Number	Fish/Pound	Pounds	SAR ¹	Adults
Spring	Fingerling	300,000	50	6,000	0.0035	1,050
Chinook	Yearling	75,000	10	7,500	0.0045	338
Totals		375,000		13,500		1,388

1 SAR = estimated Smolt to adult return rates

3. Steelhead

The approach to enhancing the native winter steelhead population in the North Fork Skokomish River is designed to have as little genetic impact as possible on the basin's existing populations. National Marine Fisheries Service, WDFW, the Skokomish Tribe and others have developed an innovative steelhead supplementation program designed to increase the size of the native population while minimizing impacts on genetic integrity. This program is currently underway in the South Fork Skokomish River utilizing eyed egg collection from steelhead redds and rearing strategies designed to mimic the growth rates of wild steelhead in the basin.

The steelhead component is formulated to be consistent with the conservation hatchery (supplementation) approach being used in other Hood Canal rivers to restore wild steelhead populations. It incorporates two strategies for propagation: 2-year old smolts and captive-reared adults released into the natural environment to spawn. Collection of embryos for the North Fork Skokomish winter steelhead supplementation program will

be during the spring/early summer when embryos are in the eyed stage from naturally created redds in the North Fork Skokomish River. No steelhead will be artificially spawned at any point during the operation of the hatchery program.

Methods of propagating steelhead would follow the approach and protocols (except as noted below to adapt to pen rearing) that have been established for the Hood Canal Steelhead Supplementation Project (HCSSP) (see Berejikian et al. 2007 and the project's Hatchery and Genetic Management Plan [HGMP]). Tacoma will work with WDFW and other agency staff to collect the eggs for incubation and rearing at a facility anticipated to be located on the east shore of Lake Kokanee on an existing well water source. Embryos will be reared in captivity and released at two life-history stages: smolt and mature adult. Growth rates in the hatchery will be carefully managed to follow natural-like patterns. Once the juveniles are large enough to be transferred to the Lake Kokanee net pens, they will be reared in the pens following the same program objectives, and released as smolts into the North Fork Skokomish River at the base of Cushman Dam No. 2. Although the program goal will be to produce age-2 smolts, some fish may achieve threshold smolt size (approximately 150 mm) during the first year. Those fish will be released as yearlings, while the remaining fish will be reared to age 2.

It is anticipated that an adaptive management approach will need to be taken to recast Hood Canal winter steelhead rearing protocols to the net pen environment. If monitoring reveals the net pen approach precludes achievement of the goal to produce predominantly age-2 smolts, provisions will be made to modify rearing conditions, or utilize a more traditional hatchery environment (e.g., troughs, tanks, and/or raceways).

Tacoma will retain a sufficient number of juveniles to rear and release up to 225 age-4 adults (Table 4). These fish will be reared to age-4 in the Lake Kokanee net pens and released for natural spawning in the North Fork at locations reasonably accessible by truck.

These efforts will continue for three winter steelhead generations (twelve years based on a typical four-year life history) or other time frame as determined by the FHC.

As adult winter steelhead begin returning to the North Fork adult collection facility, they will be trucked to the North Fork watershed upstream of Cushman Dam No.1 to spawn naturally, as determined by the FHC.

Once the winter steelhead restoration component has been applied and completed, if recommended by the FHC, the steelhead restoration effort would then be redirected to restoring summer steelhead to the system. The summer steelhead aspect of the program would be conducted using the same protocols as the winter steelhead program. The summer steelhead program will continue for three steelhead generations (twelve years based on a typical four-year life history) or other time frame as determined by the FHC.

Tacoma has no control over the saltwater life history phase of this species, and because no one can guarantee a defined number of adults will return to the North Fork Skokomish

River in any given year, Tacoma will take reasonable steps, as determined by the FHC, to achieve the adult return objective. The steelhead program can be modified by the FHC within the physical constraints of the facilities provided at the sites. The facilities will be designed based on the rearing and release strategy identified in Table 4.

Table 4. Winter Steelhead supplementation program production levels

Species	Type	Number	Fish/Pound	Pounds	SAR	Adults
Winter	Smolts	15,000	8	1,875	0.03	450
Steelhead	Adults	225	0.125	1,800		225

SAR = estimated Smolt to adult return rates

4. Coho

There are currently two distinct coho populations utilizing the North Fork Skokomish River. An early run component consists of hatchery strays from the George Adams Hatchery that return in September and October, and a late spawning component consists of wild (adipose intact) coho that spawn as late as February. The WDFW conducts spawning surveys of index reaches in the North Fork on an annual basis to estimate escapement and population size.

Current habitat conditions under the existing flow regime in the North Fork Skokomish are highly suited for coho spawning and rearing. This is evidenced by the substantial numbers of returning adults and the resultant numbers of juveniles present in the system. In March 2008, Tacoma altered the flow regime downstream of Cushman Dam No. 2 in terms of both flow volume and distribution. A change in population structure is anticipated with the increase in outflow from Cushman Dam No. 2 likely shifting habitat components to the benefit of other species (e.g. Chinook and steelhead). It is also anticipated that this increase will provide off-channel rearing opportunities for coho not previously available under pre-March 2008 flow conditions. By inundating more of the valley floor, particularly in the lower four miles of river, side channel habitats that would be utilized by over-wintering coho will increase, thereby compensating for the loss of mainstem slow water rearing habitat that currently exists.

Because the effects of the new flow regime on North Fork coho production are unknown, Tacoma will rear between 10,000 and 35,000 yearling coho annually as determined by the FHC (Table 5). Brood stock will be collected at the adult collection facility and held in a net pen in Lake Kokanee. A facility tentatively identified to be located on the east shore of Lake Kokanee will accommodate egg incubation and early rearing for this program. When fry are large enough to be transferred to the Lake Kokanee net pens, they will be raised in the pens to yearling size and released into the pool at the base of Cushman No. 2 Dam. A portion of these coho smolts will be used as test fish for evaluating the Lake Cushman downstream migrant collection facility.

In addition to allocating coho adults to the supplementation program, adult coho returning to the North Fork Skokomish adult collection facility will be transported and released upstream of Cushman Dam No. 1 to spawn naturally. Tacoma has no control

over the saltwater life history phase of this species, and because no one can guarantee a defined number of adults will return to the North Fork Skokomish River in any given year, Tacoma will take reasonable steps, as determined by the FHC, to achieve the adult return objective. The coho program can be modified by the FHC within the physical constraints of the facilities provided at the sites. The facilities will be designed based on the rearing and release strategy identified in Table 5.

Table 5. Coho supplementation program production levels

Species	Type	Number	Fish/Pound	Pounds	SAR	Adults
Coho	Yearling	10,000 – 35,000	15	666 – 2,333	0.05	500 – 1,750

SAR = estimated Smolt to adult return rates

5. Resident Trout

The objective of Tacoma’s resident trout program is to implement a program that minimizes potential impacts on naturally produced fish stocks, is compatible with the anadromous programs proposed for the North Fork Skokomish, and provides viable recreational fishing opportunity.

Tacoma will initiate its resident trout program in Lake Kokanee and water bodies other than Lake Cushman for a number of biological reasons. Successful implementation of the Lake Cushman anadromous fish program is the Skokomish Tribe and Tacoma’s highest priority fish supplementation objective. As such, it is important to focus on maximizing opportunities for successful anadromous program initiation. By attempting to implement a resident fish program in Lake Cushman at the same time the anadromous program is being started, the possibility exists that conflicts between the two could negatively impact the success of the anadromous program and the ESA-listed resident Bull trout.

Tacoma’s anadromous fish program includes the introduction of sockeye, spring Chinook, coho and steelhead into the upper North Fork basin. The WDFW has agreed to revise their original resident fish stocking recommendation in order to simplify monitoring efforts associated with the anadromous program. All parties have agreed to substitute the recommendation for Tacoma to stock cutthroat trout and kokanee in Lake Cushman with a plan to stock 100,000 rainbow trout at three fish per pound (33,333 pounds) in Lake Kokanee and other local lakes. Additionally, the US Fish and Wildlife Service and the Olympic National Park have expressed concerns, which are shared by others, for the viability of the Lake Cushman Bull trout population. All parties have indicated a strong desire to see the depressed native Bull trout population grow.

The concerns for the possibility of adverse species interactions described above do not exist in Lake Kokanee as this reservoir will not be managed for anadromous stocks. Tacoma will therefore annually release 24,000 to 35,000 rainbow trout at 3 fish per pound (8,000 to 11,667 pounds) into Lake Kokanee, and the remainder of the 100,000 rainbow trout at 3 fish per pound (21,666 to 25,333 pounds) into lakes designated by WDFW in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties. The non-Lake

Kokanee releases will be obtained from a pathogen-free water source and meet other technical specifications provided by WDFW.

WDFW will deliver to the Lake Kokanee net pens, at no cost to Tacoma, the number of fry (at 150 fish per pound) adequate for the Lake Kokanee resident trout program. Tacoma will rear these fish in the net pens and release them directly into Lake Kokanee.

As part of the Settlement Agreement, Tacoma will agree to enter into a new side agreement with the State such that Tacoma will make up to 25 deliveries per year to stock the remainder of the 100,000 rainbow trout into the lakes designated by WDFW within sixty (60) road miles (each way) of Hoodspport, in the counties listed above to provide recreational fisheries in those areas. To keep the number of deliveries at a reasonable number, more than one lake may be stocked per delivery and up to two deliveries per year, per lake, can be scheduled by WDFW in order to provide sustained fishing opportunities in those lakes. Tacoma shall consult with WDFW when determining the size and number of rainbow trout and the timing of release.

ATTACHMENT A

TRIBE-TACOMA DAMAGES SETTLEMENT

**TACOMA / SKOKOMISH TRIBE
SETTLEMENT AGREEMENT**

TACOMA / SKOKOMISH TRIBE SETTLEMENT AGREEMENT

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This **SETTLEMENT AGREEMENT** is dated as of January 12, 2009 (this “Agreement”), and is by and among the Skokomish Tribe, a federally recognized Indian tribe (the “Tribe”), and the City of Tacoma (“Tacoma”). The Tribe and Tacoma are each referred to individually herein as a “Party” and collectively as the “Parties.”

RECITALS

1. The Tribe is a federally recognized Indian tribe that exercises Governmental Authority as described by federal law.
2. Tacoma is the Federal Energy Regulatory Commission (“FERC”) licensee for the Cushman Hydroelectric Project, FERC Project No. 460 (“Project”), located on the North Fork of the Skokomish River in Mason County, Washington. FERC issued a subsequent license for the operation and maintenance of the Project by order dated July 30, 1998. The License Order was modified by the March 31, 1999, Rehearing Order; the June 21, 2004, Order on Remand; and the February 25, 2005, Order on Rehearing.
3. In 1999, the Tribe and its members brought suit in District Court against the United States and Tacoma, alleging harms caused by the Project. *Skokomish Indian Tribe v. United States of America and Tacoma Public Utilities*, No. 99-5606 (W.D. Wash.) (“Damages Lawsuit”). The Tribe asserted claims for damages caused by the Project in excess of \$5.8 billion. In 2000, the District Court dismissed the United States as a defendant, granted summary judgment in favor of Tacoma, and dismissed the Tribe’s lawsuit. *See Skokomish Indian Tribe v. United States*, 161 F. Supp. 2d 1178 (W.D. Wash. 2001).
4. The Tribe appealed the District Court’s dismissal of the Damages Lawsuit in Ninth Circuit Case Nos. 01-35028 and 01-35845. A three judge panel of the Ninth Circuit affirmed. *Skokomish Indian Tribe v. United States*, 332 F.3d 551 (9th Cir. 2003). The Ninth Circuit subsequently issued an *en banc* decision affirming the dismissal of the Tribe’s claims against Tacoma and ruling that the Tribe’s claims against the United States should be transferred to the Court of Federal Claims. *Skokomish Indian Tribe v. United States*, 401 F.3d 979 (9th Cir. 2005). The U.S. Supreme Court denied the Tribe’s petition for a Writ of Certiorari.
5. In February 2006, the Tribe and its members filed a Motion for Relief from the Judgment under Fed. R. Civ. P. 60(b), or to alter or amend the Judgment under Fed. R. Civ. P. 59(e), in order to allow the case to proceed on federal common law claims against Tacoma including, if necessary, granting leave to amend the complaint. In April 2006, the District Court denied the Tribe’s motion. In May 2006, the District Court ordered that the claims against the United States be transferred to the Court of Federal Claims. In May 2006, the Tribe appealed to the Ninth Circuit the District Court’s April 2006 ruling relating to the claims against Tacoma (Case No. 06-35403).
6. In 1996, the United States, on behalf of the Tribe and affected allottees, filed a lawsuit against Tacoma alleging that Tacoma illegally condemned interests in, and trespassed on, via its Project transmission lines, five allotments held in trust or restricted fee status by the United States within the reservation. *United States v. City of Tacoma*, No. 96-5499 (W.D. Wash.) (“Trespass Lawsuit”). The District Court ruled that Tacoma’s condemnation of the Allotment

Parcels was invalid. Tacoma appealed in Ninth Circuit Case No. 00-35070. In 2003, the Ninth Circuit affirmed. *United States v. City of Tacoma*, 332 F.3d 574 (9th Cir. 2003). The Tribe subsequently asserted that it was entitled to damages from Tacoma for trespass on the five Allotment Parcels.

7. Since January 2007, Tacoma and the Tribe have engaged in settlement negotiations as part of the Ninth Circuit's mediation program in Ninth Circuit Case No. 06-35403.

8. The Tribe and Tacoma desire to enter into this Agreement in order to settle the Damages Lawsuit and the Trespass Lawsuit, and to release all Claims, as defined in Section 1.6 of this Agreement, arising from the construction, maintenance, operation, and/or existence of the Project.

9. As an outgrowth of these settlement negotiations, Tacoma and the Tribe engaged the U.S. Forest Service ("USFS"), Bureau of Indian Affairs ("BIA"), U.S. Fish and Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS"), Washington Department of Fish and Wildlife ("WDFW"), and Washington Department of Ecology ("WDOE") in discussions, seeking agreement on protection, mitigation and enhancement measures to resolve issues presented by the remand of the license by the D.C. Circuit, including, but not limited to, issues pertaining to the mandatory terms and conditions submitted under sections 4(e) and 18 of the Federal Power Act ("FPA"), and to WDOE's issuance of the 401 Certification. On January 12, 2009, Tacoma, the Tribe, the USFS, USFWS, BIA, NMFS, WDFW, and WDOE executed a comprehensive settlement agreement addressing the relicensing of the Project.

In reliance upon the representations, warranties, covenants and agreements of each of the Parties as set forth herein, the Parties agree that:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article I unless the context clearly requires otherwise:

- 1.1. "Agreement" has the meaning set forth in the introductory paragraph hereof.
- 1.2. "Allotment Parcels" means the following five parcels of land that were the subject of the claims in *United States v. City of Tacoma*, No. 96-5499 (W.D. Wash. Nov. 20, 1998): Allotment 9-B (Jennie Pulsifer); Allotment 31-B (Joseph Pulsifer); Allotment 40 (Old He He); Allotment 42 (Wilson Waterman); and Allotment 11-A (Charles Frank).
- 1.3. "Amended License Settlement Agreement" means the agreement titled the "Settlement Agreement for the Cushman Project" executed on January 12, 2009, and made and entered into pursuant to FERC Rule 602, 18 C.F.R. § 385.602, by and among Tacoma, NMFS, USFS, USFWS, BIA, WDFW, WDOE, and the Tribe.
- 1.4. "Amended Project License" means any amended license issued by FERC pursuant to section 15 of the FPA for the Project based upon the filing of the Amended License Settlement Agreement.

- 1.5. “Applicable Law” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any tribal government, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority, provided however that nothing in this Agreement is intended to extend any state, county, city or other non-federal or non-Tribal law to the Skokomish Indian Reservation or to existing or future Tribal Lands.
- 1.6. “Claims” means any and all rights, demands, actions, causes of action, suits, judgments, liabilities, obligations, losses, damages, penalties, compensation, costs, attorneys’ fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, without any limitation as to amount pertaining to the construction, maintenance, operation and/or existence of the Project, except (a) any claims that arise after the execution of this Agreement that are unrelated to the Damages Lawsuit or the Trespass Lawsuit and (b) any claims that the Tribe has or may assert against the United States. In addition, nothing in this Agreement shall be construed to limit any rights of any kind that the Tribe may have in proceedings that commence upon, in anticipation of, or subsequent to, expiration of the Amended Project License.
- 1.7. “Cushman No. 2 Annual Power Costs” means the sum of (1) debt service for Project capital expenditures and (2) Project operations and maintenance costs as reported in the Tacoma Power Income Statement (FERC Account Nos. 535-545, and 408), using Generally Accepted Accounting Principles, multiplied by the percentage that equals the power generation capacity at Cushman No. 2 powerhouse (81 MW) divided by the total Project generation capacity (131 MW). For the purposes of this Agreement, the existing debt of the Project is assumed to be \$28,393,822 as of December 31, 2007. This debt will be amortized over 20 years at a 5% annual interest rate. Any new capital invested in the Project (excluding the North Fork Powerhouse and including any Amended Project License requirements) will be amortized over 20 years at Tacoma’s long-term bond interest rate (closest to twenty years) at the time Tacoma made the capital investment.
- 1.8. “District Court” means the United States District Court for the Western District of Washington.
- 1.9. “Effective Date” means the date that is sixty (60) days after the date upon which FERC issues an Amended Project License, subject to Section 10.2 and Section 10.5 of this Agreement.
- 1.10. “Federal Power Act” has the meaning set forth in the recitals hereof.
- 1.11. “FERC” means the Federal Energy Regulatory Commission or any successor agency.
- 1.12. “Final Order” means an order of any regulatory body having jurisdiction over a matter and for which there is no further opportunity or right for administrative or judicial review of such order.
- 1.13. “Generally Accepted Accounting Principles” means the conventions, rules, and procedures that (1) comprise the standards of accounting practice for governmental

entities and (2) serve as the norm for the fair presentation of financial statements for governmental entities.

- 1.14. “Governmental Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, federally-recognized Indian Tribe, county, city or other political subdivision or any Native American tribal council or similar governing entity.
- 1.15. “Knowledge”, when used in conjunction with Tacoma, means the actual knowledge of Tacoma Department of Public Utilities’ officers obtained after due and diligent inquiry.
- 1.16. “Parties” or “Party” have the meanings set forth in the introductory paragraph hereto.
- 1.17. “Person” means any natural person, corporation, general partnership, limited partnership, proprietorship, limited liability company, other business organization, trust, union association, or Governmental Authority.
- 1.18. “Project” or “Project No. 460” is defined by FERC License No. 460 as the Cushman Hydroelectric Project.
- 1.19. “Settlement License Articles” means the Proposed License Articles set forth in Appendix 1 of the Amended License Settlement Agreement that the Amended License Settlement Agreement Parties will request that FERC include, without material modification, in the Amended Project License.
- 1.20. “Tacoma” means the City of Tacoma, Washington, including its Department of Public Utilities also known as Tacoma Public Utilities.
- 1.21. “Tribal Council” means the Governmental Authority of the Tribe.
- 1.22. “Tribal Lands” means all lands owned or leased by the Tribe and all lands held in trust for the Tribe by the United States.
- 1.23. “Tribe” means the Skokomish Indian Tribe.

ARTICLE II SETTLEMENT PURPOSE

- 2.1. Agreement Purpose. The purpose of this Agreement is, upon the Effective Date of this Agreement and except as specified herein, to fully, finally and irrevocably settle the Claims by the Tribe against Tacoma.

ARTICLE III RELEASE OF CLAIMS

- 3.1. Release of Claims. Except for those obligations and rights created by and arising out of this Agreement, in consideration of the compensation stated in Article IV, as of the Effective Date, the Tribe hereby releases and discharges Tacoma and its elected and

appointed officials, officers, directors, employees, agents and attorneys from the Claims, as defined in Section 1.6, including but not limited to Claims asserted within the Damages Lawsuit and the Trespass Lawsuit.

- 3.2. Claims By and Against the United States. The Tribe agrees to hold harmless Tacoma and its elected and appointed officials, officers, directors, employees, agents and attorneys from Claims by the United States against Tacoma involving or relating to the Damages Lawsuit or the Trespass Lawsuit or any iteration thereof; however, this hold harmless clause shall not be construed to apply or extend to any exercise of regulatory authority by the United States or any agency or department thereof. The Tribe agrees that Tacoma shall bear no legal responsibility as a result of the treaty/contract-based claims brought by the Tribe against the United States in the Court of Federal Claims. This paragraph shall not be construed to impose any duty or obligation on the Tribe to indemnify or defend Tacoma.

ARTICLE IV COMPENSATION TO THE TRIBE

- 4.1. Settlement of Damages Lawsuit. In consideration of the Tribe's release of all Claims arising from the Damages Lawsuit, Tacoma will provide the following compensation to the Tribe:
- 4.1.1 Compensation for Damages. Within one hundred and twenty (120) days of the Effective Date, Tacoma agrees to pay the Tribe six million dollars (\$6,000,000) in cash as partial compensation for the Tribe's damages, including aggradation-related damages. Unless otherwise agreed, the payment shall be made by electronic fund transfer using mutually agreed upon procedures.
- 4.1.2 Additional Compensation for Damages and Mitigation of Flooding Impacts. Within one hundred and twenty (120) days of the Effective Date, Tacoma agrees to pay the Tribe five million dollars (\$5,000,000) in cash. Unless otherwise agreed, the payment shall be made by electronic fund transfer using mutually agreed upon procedures. This payment shall be used by the Tribe for projects or actions related to the mitigation of flooding impacts on the Skokomish Indian Reservation, the Tribe, or its members.
- 4.1.3 Property Transfer. Subject to Sections 4.1.8 and 4.1.9, within sixty (60) days of the Effective Date, Tacoma will transfer to the Tribe by general warranty deed the properties described in Exhibit A (and graphically depicted in Exhibit B), except that transfer of properties that require environmental review (including, if necessary, the State Environmental Policy Act, Chapter 43.21C RCW) or regulatory approvals may occur outside the sixty-day time period. Properties that require environmental review or regulatory approval will be transferred upon completion of such environmental review and after obtaining such regulatory approval. Upon execution of the Agreement, Tacoma shall promptly commence such environmental review, begin seeking any necessary regulatory approval, and pursue such final approvals with due diligence. The properties described in

Exhibit A will be transferred to the Tribe as partial compensation for the Tribe's damages, including aggradation-related damages.

4.1.3.1 Clearing Title on Allotment Parcels 9-B and 31-B. Within sixty (60) days of the Effective Date, Tacoma will convey to the Tribe by quitclaim deed its interest in the properties described in Exhibit C (and graphically depicted in Exhibit D), and shall, at the Tribe's request, provide reasonable assistance in clearing title to such properties in the name of the United States.

4.1.3.2 Continuing Obligations Related To Property Transfers.

(a) Prior to transfer of the Saltwater Park parcel (Exhibits A-3 and B-3), Tacoma shall construct a third boat ramp (in addition to the two existing boat ramps) on such parcel.

(b) The Tribe shall allow public access to the existing boat ramp and associated parking area and the existing trailer dump station at the Camp Cushman parcel (Exhibits A-2 and B-2) from Memorial Day weekend through Labor Day weekend. The Tribe shall allow year-round public access to the boat ramps and to the associated parking area and restrooms at Saltwater Park. Such public access shall be for the term of the Amended Project License and shall be subject to reasonable conditions and regulations as determined by the Tribe.

(c) Throughout the Amended Project License term, Tacoma shall (1) remove debris from and maintain the three boat ramps (including repairing ramp structures) at Saltwater Park and (2) maintain, service, and provide water and sewer (but not electricity) for the existing restrooms at Saltwater Park. Throughout the Amended Project License term, Tacoma shall maintain the boat ramp (including repairing ramp structures down to elevation 730) at the Camp Cushman parcel and, on an annual basis (before the start of the recreation season), remove debris from the boat ramp.

(d) Throughout the Amended Project License term, Tacoma shall assume full responsibility for maintenance and servicing of the trailer dump station at the Camp Cushman parcel and shall maintain such dump station in compliance with Applicable Law, specifically including applicable public health and water quality laws and regulations.

4.1.4 Property Information

4.1.4.1 Examination of Title. Within sixty (60) days after execution of this Agreement, Tacoma shall order preliminary title reports for the properties described in Exhibit A. Upon receipt, Tacoma shall provide the Tribe with up-to-date preliminary title reports or court proceeding certificates

for all the properties described in Exhibit A. Within sixty (60) days after execution of this Agreement, Tacoma shall also provide the following materials:

- (a) copies of any existing and proposed easements, covenants, restrictions, agreements or other documents that, to Tacoma's Knowledge, affect title to any of the properties described in Exhibit A and that are not disclosed in the title reports;
- (b) all surveys, plats, or plans relating to the properties described in Exhibit A;
- (c) all leases, licenses, or concessions for the properties described in Exhibit A or any portion thereof;
- (d) all warranties and guarantees affecting any of the properties described in Exhibit A or any portion thereof;
- (e) notice of any existing or threatened litigation affecting or relating to any of the properties described in Exhibit A and copies of any pleadings with respect to that litigation;
- (f) all governmental permits and approvals obtained or held by Tacoma with relation to any of the properties described in Exhibit A; and
- (g) all environmental assessment reports with respect to any of the properties described in Exhibit A; any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of hazardous materials or substances on, in, or under any of the properties described in Exhibit A or any portion thereof; and any other information material to the environmental condition of the properties described in Exhibit A.

4.1.4.2 Inspection of Property. Subsequent to the execution of this Agreement, the Tribe shall have the right to enter and inspect the condition of the properties described in Exhibit A, upon reasonable notice to Tacoma.

4.1.4.3 Termination of Licenses. Upon or prior to the transfer of each of the properties described in Exhibit A, Tacoma agrees that it shall provide notice of termination of any leases, licenses, or concessions applicable to the properties described in Exhibit A, unless directed otherwise by the Tribe.

4.1.4.4 Right to Reject Acceptance. The Tribe reserves the right, upon review of the due diligence materials and inspection of the properties described in Exhibit A, to reject acceptance of the deed of any property to be transferred. The Tribe's acceptance of the deed of any property to be transferred is not a condition precedent to the other contractual obligations of the Parties within this Agreement; provided, however, that upon such rejection by the Tribe of the deed of any property to be transferred in accordance with this Agreement, Tacoma shall have no further obligation under this Section 4.1.4 in respect to such property.

4.1.5 Saltwater Park Property Division. Prior to the transfer of Saltwater Park (Exhibits A-3 and B-3), Tacoma shall obtain, at its expense, any necessary survey, boundary line adjustment, and/or short subdivision approval from Mason County. Tacoma shall provide a copy of any necessary application for boundary line adjustment or short subdivision approval to the Tribe and allow the Tribe no less than ten (10) days to provide comments on the application to Tacoma, prior to filing with Mason County. If other boundary line adjustments or subdivision approvals are necessary to facilitate the transfer of other properties identified in Exhibit A, or portions thereof, Tacoma shall bear responsibility for obtaining such approvals at its expense.

4.1.6 Tacoma's Representations, Covenants, and Warranties Related to Property

4.1.6.1 Beginning upon execution of this Agreement and until the earlier of (i) the date that Tacoma conveys the properties described in Exhibit A to the Tribe or (ii) the date that the Tribe provides notice of rejection or acceptance of any property described on Exhibit A, Tacoma shall maintain such properties in good repair in accordance with Tacoma's current practices and shall not cause or allow waste or damage to the properties or any portions thereof, or transfer any interest or right in any of the properties to any third party.

4.1.6.2 Tacoma has full power and authority to convey fee simple title to each of the properties described in Exhibit A to the Tribe.

4.1.6.3 To the Knowledge of Tacoma, there is no litigation pending against Tacoma that arises out of the ownership of, or relates in any way to, the properties described in Exhibit A.

4.1.6.4 All property conveyance documents executed by Tacoma and delivered to the Tribe pursuant to this Agreement will be: (1) duly authorized, executed, and delivered by authorized representatives of Tacoma; (2) legal, valid, and binding obligations of Tacoma; and (3) sufficient to convey fee simple title to the Tribe.

4.1.6.5 Tacoma has received no notice of any failure of Tacoma to comply with any applicable governmental requirements with respect to the use or occupation of the properties described in Exhibit A, including, but not limited to, environmental, health, zoning, subdivision, or other land use requirements that have not been corrected to the satisfaction of the appropriate Governmental Authority, and Tacoma has received no notice, and has no knowledge of, any violations or investigation related to any such governmental requirement.

4.1.6.6 Tacoma has received no notice of any default or breach by Tacoma under any covenants, conditions, restrictions, rights of way or easements that may affect Tacoma in respect to the properties described in Exhibit A or may affect the properties described in Exhibit A (or any portion thereof) and no such default or breach now exists.

4.1.6.7 To the Knowledge of Tacoma, there are no leases, licenses, or concessions affecting any part of the properties described in Exhibit A other than those delivered to the Tribe pursuant to Section 4.1.4, and there are no written or oral promises, understandings, or agreements between Tacoma and any lessee, licensee, or concessionaire that have not been disclosed by Tacoma as part of the materials provided by Tacoma.

4.1.6.8 To the Knowledge of Tacoma, there is no release, presence, or existence of any hazardous material on, in, from, or onto the properties described in Exhibit A or any portions thereof, and Tacoma has not received any notice of any violation of any state, federal, or local environmental laws associated with any of the properties described in Exhibit A.

4.1.6.9 All of the representations, covenants, and warranties contained in this Section 4.1.6 are true as of the date of execution of this Agreement and shall survive until the date of termination of this Agreement; provided, however, that all such representations, covenants, and warranties terminate on the date of termination of this Agreement and no claims based upon such representations, covenants, and warranties can be brought after that date.

[4.1.7 Omitted]

4.1.8 Regulatory Approval Relating to Properties. In the event that Tacoma does not obtain necessary regulatory approvals, including any necessary approval for transfer of any properties identified in Exhibit A upon completion of State Environmental Policy Act review, Tacoma shall identify, in consultation with the Tribe, comparable properties that shall be conveyed to the Tribe in lieu of such properties.

4.1.9 FERC Review Relating to Properties. In the event that FERC includes any portion of the properties identified in Exhibit A within the project boundary and restricts Tacoma from conveying such property, or portion thereof, to the Tribe, Tacoma and the Tribe shall jointly challenge the articles of the Amended Project License relating to the properties and, if necessary, seek federal legislation authorizing the land transfer.

4.1.10 Annual Payment. Upon the Effective Date and for forty (40) years or until this Agreement terminates, whichever is earlier, Tacoma will provide an annual payment to the Tribe, as described below, as partial compensation for the Tribe's

damages, including aggradation-related damages. This payment will be calculated as follows:

4.1.10.1 Annual Payment Calculation. Subject to paragraph 4.1.10.2, the annual payment shall be equal to 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse. “Net Value” of the electric production from Cushman No. 2 powerhouse shall mean the product of Cushman No. 2 powerhouse’s actual annual net power generation (gross generation less station service) as reported to FERC in EIA 906 (or subsequent report) times a three year (current billing year and the previous two years) median of the weighted Dow Jones Mid-Columbia Firm Electricity Price Index minus Cushman No. 2 Annual Power Costs.

The Dow Jones Mid-Columbia Firm Electricity Index will be weighted by averaging the Firm On-peak index at 66.7% and the Firm Off-peak index at 33.3%, except for Sundays and NERC holidays. For Sunday and NERC holidays, the Dow Jones 24-hour firm index will be used. In the event Dow Jones Energy Service changes the format of the Dow Jones Mid-Columbia Electricity Price Index or the Index is no longer available, another mutually agreeable price index will be used.

4.1.10.2 Minimum and Maximum Annual Payment Levels. During years one (1) to twenty (20) after the Effective Date, (a) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is less than \$300,000, the annual payments shall be \$300,000, and (b) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is greater than \$500,000, the annual payments shall be \$500,000. Starting in year twenty (20) after the Effective Date, (a) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is less than \$625,000, the annual payments shall be \$625,000, and (b) in the event that 7.25% of the Net Value of the electric production from Cushman No. 2 powerhouse is greater than \$900,000, the annual payments shall be \$900,000. The maximum payments levels shall be adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, for Seattle-Tacoma-Bremerton (CPI-U). If a Force Majeure occurs that requires unanticipated suspension of Cushman Powerhouse No. 1 or 2 operation for longer than thirty days, Tacoma’s annual payment obligation shall not be subject to the minimum payment requirements of this Section 4.1.10.2 during the year in which the unanticipated suspension of operations occurred; however, this Force Majeure clause expressly does not apply to usual seasonal suspensions of Project or powerhouse operation.

4.1.10.3 Schedule for Annual Payments. The annual payment for a preceding year shall be made by April 1 of the following year. For example,

Tacoma shall provide the annual payment for 2010 operations by April 1, 2011. In the event that information necessary for the annual payment is not available in time to make the April 1 payment, Tacoma shall make its payment based upon a good faith estimate of the payment. Tacoma shall reconcile any over- or under- payment at the time of the next scheduled annual payment. Unless otherwise agreed, the annual payment shall be made by electronic fund transfer using mutually agreed upon procedures.

4.1.10.4 Final Payment upon Termination. The final annual payment shall be based upon a pro rata calculation of the formula provided in paragraph 4.1.10.1 and subject to the maximum payment level (but not subject to the minimum payment level) provided within paragraph 4.1.10.2.

4.1.10.5 Information To Be Made Available To The Tribe. On the date of each annual payment to the Tribe, Tacoma shall provide to the Tribe a written report, with supporting relevant documentation regarding power generation and Cushman No. 2 Annual Power Costs for the preceding year that describes how the amount of the annual payment was determined.

In addition, through the term of this Agreement, Tacoma agrees to make the following information available to the Tribe for inspection, upon the Tribe's request, for the purpose of facilitating the annual revenue sharing payment:

- (a) All agreements, data, and records relating to the financing of the Project.
- (b) All operating and financial records and reports relating to the Project.
- (c) All audits of the Project's accounting or financial records or practices.
- (d) All contracts relating to the operation of the Project.

4.1.10.6 FERC Subsequent Amendments. In the event that, after the Effective Date, FERC subsequently amends the final Amended Project License to include significant additional obligations above and beyond those contained within the Settlement License Articles that will result in additional financial commitments by Tacoma of greater than \$20 million, and such amendment becomes a Final Order, Tacoma's obligation to make the annual payments specified within Section 4.1.10 (Annual Payment) shall terminate.

4.2 Settlement of Trespass Lawsuit

4.2.1 United States Approval of Trespass Settlement. The Tribe shall seek to obtain the following approvals from the United States (acting as trustee for the Tribe and affected allottees) (the "Trespass Settlement Approvals"): (a) a release of claims against Tacoma for trespass of the Project transmission line on, across, and over

the Allotment Parcels; and (b) a grant of access authorizing Tacoma's continued use of the Allotment Parcels for the Project transmission line (in its current configuration, size, location, etc.) during the term of the Amended Project License and subsequent annual licenses. The Tribe shall not affirmatively inhibit or restrict Tacoma's continued use of the Allotment Parcels for the Project transmission line (in its current configuration, size, location, etc.) pending Tacoma receiving the executed Trespass Settlement Approvals.

4.2.2 Compensation. Within sixty (60) days of the Effective Date, or within sixty (60) days of the date that Tacoma receives the executed Trespass Settlement Approvals, whichever is later, Tacoma agrees to pay to the Tribe \$1.6 million in consideration of the United States' and Tribe's release of all claims of trespass arising from the Trespass Lawsuit and the construction, operation, maintenance and/or existence of Project transmission lines on Allotment Parcels.

4.2.3 Allocation and Disbursement. Following payment in accordance with Section 4.2.2, Tacoma shall have no responsibility for any administration, allocation, distribution, or use of the \$1.6 million payment.

4.3 Sole and Exclusive Means of Compensation. The Tribe acknowledges that Tacoma would not enter into this Agreement if this Agreement did not provide and incorporate the sole and exclusive means by which Tacoma shall provide compensation to the Tribe or its members for Claims. For the duration of the Amended Project License and any subsequent annual license, the Tribe shall not, under any circumstance, seek in any forum any additional consideration or compensation, other than the annual charge payment of \$20,000 per year pursuant to License Article 201, in connection with the Project and Tacoma's activities related thereto other than that consideration and compensation to the Tribe which is expressly provided for in this Agreement. Nothing in this Section or Agreement shall prevent the Tribe from petitioning FERC for a reasonable increase to annual charges to account for Tacoma's use of reservation lands to access transmission lines crossing Nalley Ranch (Exhibits A-1 and B-1). Such petition to FERC by the Tribe shall not be a breach of this Agreement.

ARTICLE V CONSENT DECREE

5.1 Consent Decree. Within ten (10) days of the Effective Date, the Tribe and Tacoma shall file a joint motion with the Ninth Circuit Court of Appeals, requesting that the Ninth Circuit remand the appeal to the District Court for further proceedings. Upon remand to the District Court, the Tribe and Tacoma will jointly request that the District Court: (1) enter this Agreement as a consent decree; (2) dismiss the Tribe's Claims which have been brought in the Damages Lawsuit with prejudice; and (3) retain jurisdiction to oversee compliance with the terms of the consent decree.

ARTICLE VI
TRIBE SUPPORT FOR AMENDED PROJECT LICENSE AND WATER RIGHT APPLICATIONS

- 6.1 Amended Project License. Within thirty (30) days of execution of the Agreement, the Tribe agrees to deliver a letter to FERC, executed by the Tribal Council, notifying FERC of the Tribe's full support for: (1) FERC's incorporation, without modification, of the Settlement License Articles as enforceable articles of the Amended Project License; and (2) the term of the license being extended to June 30, 2048. The Tribe will cooperate fully with Tacoma to obtain an Amended Project License which is consistent with the Amended License Settlement Agreement. The Tribe agrees that, so long as this Agreement remains in effect, it will refrain from taking any position publicly or privately that indicates Tacoma's relicensing application should be denied or that the Settlement License Articles are deficient.
- 6.2 Washington Department of Ecology Approval. From and after the Effective Date, the Tribe covenants to withdraw any pending objections to Tacoma's application for water rights (Washington Department of Ecology Water Right Application Numbers S-227419 and S-227420) and to not object to additional water right applications necessary to store or divert water for the Project's existing hydroelectric generation, the North Fork Powerhouse (FERC Settlement Agreement, Appendix 8) or to implement the Settlement License Articles. Within sixty (60) days of the Effective Date, the Tribe agrees to deliver a letter to WDOE, executed by the Tribal Council, notifying WDOE of the Tribe's withdrawal of any objections relating to Tacoma's application for water rights (Washington Department of Ecology Water Right Application Numbers S-227419 and S-227420) and that the Tribe does not object to additional water right applications necessary to store or divert water for the Project's existing hydroelectric generation, the North Fork Powerhouse (FERC Settlement Agreement, Appendix 8) and Amended Project License fish supplementation facilities. Nothing in this Agreement shall have, or be construed to have, any effect on the existence, extent, or quantity of the Tribe's federally reserved water rights. Tacoma expressly acknowledges and agrees that this Agreement has no past, present, or future impact or effect of any kind on the Tribe's federally reserved water rights.

ARTICLE VII
ADDITIONAL COVENANTS BY PARTIES

- 7.1 License Obligations Omitted by FERC. To the extent that FERC declines, or otherwise refuses, to include any of the obligations of the Settlement License Articles 403, 407, 412, 413, 414, 415, 416, 417, 418, 421, and 432 in the Amended Project License and in the event that the Amended Project License does not contain a substantially similar or comparable obligation, or performance of the obligation is not inconsistent with an Amended Project License obligation, Tacoma agrees that it shall perform such omitted obligation as an enforceable term and obligation of this Agreement.
- 7.2 Additional License Obligations by FERC. In the event that FERC issues an Amended Project License that includes significant additional obligations above and beyond those

contained within the Settlement License Articles that will result in additional financial commitments by Tacoma of greater than \$20 million, Tacoma and the Tribe agree to challenge imposition of the additional obligations within the Amended Project License by seeking judicial review of those portions of the FERC Amended Project License order. Nothing in this paragraph prohibits or restricts a party's right to seek judicial review of other portions of the FERC Amended Project License order.

- 7.3 Support for Congressional Legislation. As a material inducement to the Tribe to enter into this Agreement, upon execution of this Agreement, Tacoma agrees to actively support, and actively work with the Tribe to obtain Congressional approval for, federal legislation developed and proposed by the Tribe and Tacoma relating to funding for Skokomish River restoration activities. This covenant does not require Tacoma to expend any set amount of funding for such activities or to commit to any amount of funding that would impose an unreasonable financial burden on Project operations.
- 7.4 Return of Skokomish Tribe Cultural Resources. Subject to compliance with federal and state laws governing the possession and transfer of such items, within ninety (90) days of the Effective Date, Tacoma shall transfer to the Tribe all artifacts, records, and reports from the Project area that are culturally associated with the Skokomish Indian Tribe and currently in the possession or control of Tacoma. Tacoma makes no representation or warranties regarding such items. The Tribe agrees to accept such items as is. Following the Effective Date of this Agreement, Tacoma shall work with the Tribe to locate, develop, and obtain funding for a curation facility for such artifacts that is suitable to the Tribe.
- 7.5 Employment Opportunities. The parties acknowledge that new employment opportunities will be created through Tacoma's implementation of the Settlement License Articles. Tacoma and the Tribe will work together to encourage qualified tribal members to apply for these new employment positions. Tacoma will take reasonable steps to employ, and encourage its contractors to employ, qualified tribal members for such positions.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF TACOMA

As a material inducement to the Tribe to enter into this Agreement, Tacoma hereby represents and warrants to the Tribe as follows:

- 8.1 Authority. Tacoma has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Tacoma of this Agreement, and the performance by Tacoma of its obligations hereunder have been duly and validly authorized by the City Council of Tacoma, and no other corporate action on the part of Tacoma is necessary. This Agreement has been duly and validly executed and delivered by Tacoma and, constitutes legal, valid and binding obligations of Tacoma, enforceable against Tacoma in accordance with the terms.

- 8.2 Legal Proceedings. There are no proceedings, suits, actions or arbitrations pending or, to the knowledge of Tacoma, threatening against, relating to or affecting Tacoma with respect to the ownership, operation or maintenance of the Project which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

ARTICLE IX REPRESENTATIONS AND WARRANTIES OF THE TRIBE

As a material inducement to Tacoma to enter into this Agreement, the Tribe hereby represents and warrants to Tacoma as follows:

- 9.1 Tribal Existence. The Tribe is a federally recognized Indian tribe that possesses Governmental Authority as described by federal law.
- 9.2 Authority and Indemnity. The Tribe has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by the Tribe of this Agreement, and the performance by the Tribe of its obligations hereunder, have been duly and validly authorized by the Tribal Council and no other tribal action on the part of the Tribe is necessary. This Agreement has been duly and validly executed and delivered by the Tribe. Tribal Council approval and authorization of this Agreement shall be conclusively evidenced by a written resolution of the Skokomish Tribal Council that is certified by the Chairperson of the Skokomish Tribal Council. This Agreement constitutes legal, valid and binding obligations of the Tribe, enforceable against the Tribe in accordance with its terms. The Tribe and Tacoma acknowledge that outside legal counsel for the Tribe has provided Tacoma with a legal opinion that this Agreement constitutes legal, valid and binding obligations of the Tribe, enforceable against the Tribe in accordance with its terms and Tacoma has relied upon that legal opinion.
- 9.3 No Necessity and Waiver of Federal Approval
- 9.3.1 The Tribe and Tacoma acknowledge that outside legal counsel for the Tribe has provided Tacoma with a legal opinion stating that this Agreement can be executed and will be fully effective as to the Tribe notwithstanding and in absence of express federal approval for its execution other than the approval required by Section 4.2 and Tacoma has relied upon that legal opinion.
- 9.3.2 The Tribe hereby waives any and all rights it might have possessed to assert that federal approval of this Agreement is prerequisite to its legal effectiveness and enforceability.
- 9.4 No Conflicts. The execution and delivery by the Tribe of this Agreement, the performance by the Tribe of its obligations under this Agreement, the consummation of the transactions contemplated hereby and Tacoma's exercise of the rights granted Tacoma under this Agreement will not:

- 9.4.1 conflict with or result in a violation or breach of the terms, conditions or provisions of the constitution or bylaws of the Tribe; or
- 9.4.2 conflict with or result in a violation or breach of any term or provision of any law or order applicable to the Tribe, including laws or regulations promulgated by the Tribe, or any other tribal environmental, land use planning, zoning or other similar regulation or ordinance.
- 9.5 Allotment Parcels. To the best of the Tribe's knowledge, which is based solely on title status reports provided by the BIA, the Allotment Parcels subject to this Agreement are not the subject of any other: (1) right of way; (2) easement; (3) lease; (4) contract for sale; (5) contract encumbrance; or (6) any other written or oral agreement that is inconsistent with the rights granted Tacoma under this Agreement and rights previously conveyed to Tacoma.
- 9.6 Legal Proceedings
- 9.6.1 To the best of Tribe's knowledge, which is based solely on title status reports provided by the BIA, there are no actions or proceedings pending or threatened relating to or affecting the Tribe or any of the Allotment Parcels subject to this Agreement which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; and
- 9.6.2 To the best of the Tribe's knowledge, which is based solely on title status reports provided by the BIA, the Allotment Parcels subject to this Agreement are not subject to any existing or threatened adverse claims that are inconsistent with the rights granted Tacoma under this Agreement and previous conveyances.
- 9.7 Purposes of the Reservation. The execution and delivery by the Tribe of this Agreement, performance by the Tribe of its obligations under this Agreement, and the consummation of the transactions contemplated hereby will not interfere or be inconsistent with the purposes for which the Skokomish Indian Reservation was created.
- 9.8 Access to Transmission Lines on Tribal Lands. Tacoma shall seek to acquire access easements to transmission lines located on Nalley Ranch (Exhibits A-1 and B-1). The Tribe shall not oppose any Tacoma effort to acquire such access easements. The Tribe shall not affirmatively inhibit or restrict access to transmission lines located on the property described in Exhibits A-1 and B-1 for the purposes of Tacoma's inspection and maintenance of such lines.

ARTICLE X EFFECTIVE DATE

- 10.1 Effective Date. This Agreement and the contractual obligations of the Parties shall be effective upon the Effective Date. Until the Effective Date, there shall be no liability or obligation on the part of any Party (or any of their respective elected and appointed

officials, officers, directors, employees, agents and attorneys), except as expressly provided in Section 10.5.1.

- 10.2 Effect of Request for Rehearing. If any party to the FERC proceeding files a request for rehearing pursuant to 18 C.F.R. § 385.713 within thirty (30) days of the issuance of the Amended Project License, the Effective Date shall be temporarily stayed and the Effective Date shall be sixty (60) days after the date that FERC issues its order on such request for rehearing.
- 10.3 Effect of Further Appeals or Proceedings Following Rehearing. The Effective Date shall not be stayed, delayed, or affected in any way by any appeal of the order on rehearing by any Party or non-Party. The Effective Date shall not be stayed, delayed, or affected in any way by any judicial or administrative proceedings that occur subsequent to the order on rehearing, except as provided in Section 10.5.
- 10.4 Effect of Any Failure of FERC to Issue an Amended Project License to Tacoma. The Agreement shall have no effect in the event that FERC declines or fails to issue to Tacoma an Amended Project License and such determination becomes a Final Order.
- 10.5 Effect of Application for Surrender or Notice of Intent to Decommission Prior to Effective Date.

10.5.1 If, prior to the Effective Date, Tacoma files an Application for Surrender pursuant to 18 C.F.R. § 6.1 with FERC or files an irrevocable notification with FERC that it declines to accept the Amended Project License and will decommission the Project and cease generation, the Effective Date shall be stayed except for Tacoma's annual payment obligation to the Tribe under Section 4.1.10, which shall become fully effective upon such filing.

10.5.2 If, following Tacoma's timely filing of an Application for Surrender or an irrevocable notification of intent to decommission pursuant to Section 10.5.1 above: (a) Tacoma withdraws the Application for Surrender or notification described in Section 10.5.1 above, or (b) FERC denies or rejects the Application for Surrender or notification described in Section 10.5.1 above, the Effective Date and all obligations under this Agreement shall commence.

10.5.3 If, following Tacoma's timely filing of an Application for Surrender or an irrevocable notification of intent to decommission pursuant to Section 10.5.1 above, Tacoma ceases all generation and permanently decommissions the Project, the Effective Date shall not commence, Tacoma's annual payments to the Tribe under Section 4.1.10 shall cease, and this Agreement shall be null and void.

ARTICLE XI TERMINATION

- 11.1 Mutual Consent. This Agreement may be terminated at any time by mutual written consent of Tacoma and the Tribe.

- 11.2 Water Rights. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, WDOE issues a Final Order denying any Tacoma application for water rights necessary to store or divert water for hydroelectric generation and such Final Order directly or indirectly requires Tacoma to permanently cease hydroelectric generation at Cushman No. 2 powerhouse.
- 11.3 Surrender and Decommissioning. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, Tacoma obtains from FERC a Final Order for Surrender and Decommissioning of the Project.
- 11.4 Force Majeure. This Agreement may be terminated by Tacoma, in its sole discretion, if, subsequent to the Effective Date of this Agreement, a Force Majeure permanently prevents the continued operation of, and requires decommissioning of, either Cushman No. 1 or No. 2 powerhouse.
- 11.5 Parties' Actions upon Termination. Upon termination, this Agreement shall become null and void, and there shall be no liability or obligation on the part of any Party (or any of their respective elected and appointed officials, officers, directors, employees, agents and attorneys). Specifically, Tacoma shall be under no obligation to continue the annual revenue sharing payment specified within Article IV.

ARTICLE XII

LIMITED WAIVER OF IMMUNITY; DISPUTES

- 12.1 Limited Waiver of Immunity
- 12.1.1. Acknowledgements. The Tribe acknowledges and agrees that in entering into this Agreement they may incur obligations to Tacoma, and Tacoma's successors and assigns, and may become liable to these parties for specific performance of the Tribe's obligations under this Agreement. The Tribe further acknowledges that Tacoma would not enter into this Agreement with the Tribe if the Tribe could defeat enforcement against them of the rights granted to Tacoma by claiming sovereign immunity from any action brought against the Tribe by Tacoma arising from this Agreement.
- 12.1.2 Limited Waiver of Immunity. Nothing in this Agreement shall be deemed to be a waiver of the Tribe's sovereign immunity except as expressly provided in this Section. The Tribe hereby expressly waives any claim or assertion of sovereign immunity from suit (including enforcement of any decision in any arbitration) by Tacoma and Tacoma's successors and assigns under this Agreement in actions:
- (a) to interpret or enforce any provision of or rights granted in this Agreement, or
 - (b) to seek the remedy of specific performance of the Tribe's obligations contained in this Agreement.
- 12.2 Limitation on Waiver of Immunity. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State

of Washington (without reference to any principles of conflicts of laws), except to the extent such Washington laws may be preempted by the laws of the United States of America.

12.3 Dispute Resolution between the Tribe and Tacoma

12.3.1 Mandatory Mediation. As a condition precedent to commencing any proceeding, suit, action or arbitration by the Tribe or Tacoma against the other relating to this Agreement, the subject matter hereof, any activities undertaken pursuant to this Agreement or with respect to the operation, maintenance or management of the Project, other than those obligations created by the Amended License Settlement Agreement or Amended Project License, the complaining Party shall first submit the claim or controversy to mandatory mediation for a period of ninety (90) days following appointment of a mediator. The Tribe and Tacoma agree to cooperate and operate in good faith to appoint the mediator and to attempt to resolve all matters in dispute with the assistance of the mediator. The Party requesting the appointment of a mediator shall cover the costs of the mediator unless there is an agreement among the disputing Parties to share costs. If the Tribe and Tacoma are unable to agree unanimously upon the appointment of the mediator, then they shall jointly seek appointment of a magistrate judge by the District Court to serve as a mediator.

12.3.2 Jurisdiction and Venue. The Tribe and Tacoma agree that any disputes concerning, relating to or arising out of this Agreement present a federal question and are subject to the District Court's continuing jurisdiction pursuant to the consent decree adopting this Agreement. With respect to any such disputes, each Party agrees to irrevocably submit to the exclusive jurisdiction of the District Court located in Tacoma, Washington. Each Party irrevocably waives any objection which it may have at any time to the laying of venue of any proceedings brought in the District Court located in Tacoma, Washington, waives any claim that such proceeding has been brought in an inconvenient forum, and further waives the right to object, with respect to such proceeding, that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal other than FERC. In the event such District Court determines that the subject matter of the proceeding does not fall within the statutory jurisdiction of federal district courts or for any reason declines to exercise jurisdiction over the proceeding, then the dispute shall be resolved by judicial proceeding in a court of the State of Washington which has jurisdiction and venue. Both the Tribe and Tacoma irrevocably waive any right it might otherwise have to seek to have any proceeding relating to or arising out of this Agreement determined in any tribal court and agree that assumption of jurisdiction by any federal or state court shall not be delayed or curtailed by any doctrine requiring exhaustion of tribal court remedies. Tacoma's entry into the Agreement shall not be deemed to give rise to a consensual relationship that would establish the Tribe's jurisdiction over Tacoma's activities.

12.3.3 Arbitration if No Federal District Court or Washington State Court Jurisdiction.

In the event both the District Court and the courts of the State of Washington determine that the subject matter of the proceeding relating to any disputes concerning, relating to or arising out of this Agreement does not fall within their statutory jurisdiction or for any reason both decline to exercise jurisdiction over the dispute, then the Tribe and Tacoma shall submit the dispute to arbitration in Tacoma, Washington, under the Commercial Arbitration Rules of the American Arbitration Association in effect on the date such arbitration is commenced, including the optional rules for provisional remedies of such Association; provided, however, that any provision of this Article XIII shall have control over any conflicting rules of the American Arbitration Association. The Tribe and Tacoma agree that any such dispute shall be submitted to three arbitrators selected by the American Arbitration Association from its panel of arbitrators. The arbitrators shall not have authority to award damages prohibited by this Agreement. The Tribe and Tacoma further agree that they will faithfully observe this Agreement and the rules, they will abide by and perform in accordance with the decision rendered by the arbitrators, and that an order of a court having jurisdiction may be entered upon the arbitration decision; provided, however, the arbitration decision may be challenged and modified in whole or in part or denied enforcement in whole or in part, but only on the basis that the arbitration decision exceeded the scope of the arbitrators' authority under this Agreement or the Federal Arbitration Act. Nothing in this Section 12.3 is intended to, or shall be construed to, broaden the limited waiver of sovereign immunity that is expressly provided in Section 12.1 above.

**ARTICLE XIII
MISCELLANEOUS**

- 13.1 Further Assurances. Subject to the terms and conditions of this Agreement, Tacoma and the Tribe shall each use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable under Applicable Law to consummate and make effective this Agreement, including efforts to obtain all required consents and approvals. From time to time after the date hereof, whether prior to or after the execution, and without further consideration, Tacoma and the Tribe shall, each at its own expense, execute and deliver such documents, and provide such information, to the other as such party may reasonably request in order to accomplish, consummate and perform their respective obligations under this Agreement.
- 13.2 Agreement Rights Attached to the Land. It is understood and agreed that this Agreement shall be binding upon the successors and assigns of Tacoma as an owner and licensee of the Project and attach to the land and shall be binding upon the successors in interest of the Tribe. It is understood and agreed that the rights, duties and obligations set forth in this Agreement shall run with the ownership and license of the Project. In the event that the Project is sold, transferred or conveyed by Tacoma, or acquired by process of eminent domain by persons other than Tacoma, then the obligations of Tacoma to the Tribe shall cease and terminate as to such facilities and become an obligation of the successor in interest of Tacoma as to the respective facilities herein described.

13.3 Successors and Assigns

This Agreement shall apply to, and be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement.

13.3.1 Succession. In the event of succession by either Party, whether by statute, executive order or operation of law or contract, or any other means, the successor shall become a Party to and be bound by the terms of this Agreement, to the extent permitted by law.

13.3.2 Continuation of Certain Obligations. In the event of succession by the Tribe, the Tribe shall continue to be bound by this Agreement. In the event of succession by Tacoma, upon completion of a succession or assignment, Tacoma shall no longer be a Party to this Agreement, and shall not be bound by the Agreement so long as its successor is bound. Tacoma shall not take any action adverse to this Agreement.

13.3.3 Notice. The assigning party shall provide notice to the other Party at least thirty (30) days prior to the proposed effective date of such transfer or assignment.

13.4 Notices

13.4.1 Means of Notification. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

To the Tribe:

Skokomish Indian Tribe
Attn: Tribal Council Chairperson
80 North Tribal Center Road
Skokomish Nation, WA 98584

with cc: to

Skokomish Tribal Attorney
80 North Tribal Center Road
Skokomish Nation, WA 98584

To Tacoma:

Patrick McCarty
Tacoma Power
3628 S. 35th Street
Tacoma, WA 98409

Notification of changes in the contact person must be made in writing and delivered to the other contact person.

13.4.2 Effective Time. Notice given pursuant to this Section 13.4 shall be effective upon physical receipt by the receiving party.

13.5 No Consequential, Incidental or Punitive Damages. Consistent with the Recitals to this Agreement, the Tribe and Tacoma desire to minimize to the extent possible the potential for future disagreements between them with respect to the Project from matters arising under this Agreement. The Tribe and Tacoma also recognize the magnitude of the potential consequential, incidental or punitive damages that might arise from this Agreement and desire to eliminate the risks each might face were such categories of damages not excluded. For these reasons, the Tribe and Tacoma agree that the remedies available to them under this Agreement shall be limited as provided below:

13.5.1 The Tribe and Tacoma agree that for any claim arising from a theory based on contract law, in no event shall either the Tribe or Tacoma be liable to each other hereunder for any consequential, punitive, exemplary, incidental or indirect losses or damages under or in respect of this Agreement.

13.5.2 The Tribe and Tacoma agree that for any claim arising from a theory based on tort law, in no event shall either the Tribe or Tacoma be liable to each other hereunder for any consequential, punitive, exemplary, incidental or indirect losses or damages under or in respect of this Agreement.

13.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby: (a) such provision will be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; (c) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

13.7 Waivers. Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

13.8 No Third-Party Beneficiaries. None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any Person or entity not a Party to this

Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

- 13.9 No Reliance. Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation or promise of the other Party or any other Person or entity, except as expressly stated in this Agreement.
- 13.10 Assumption of Risk. In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, none of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof.
- 13.11 Waiver of Defenses. Upon the Effective Date, Tacoma and the Tribe release each other from any and all claims relating to the formation and negotiation of this Agreement, including reformation, rescission, mistake of fact, or mistake of law. Tacoma and the Tribe further agree that they waive and will not raise in any court, administrative body or other tribunal any claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.
- 13.12 Force Majeure. Neither Party shall be liable to the other for, or be considered to be in breach of, or in default under this Agreement to the extent any failure or delay is caused by or results from any cause or condition which is beyond such Party's reasonable control, to the extent which such Party is unable to prevent or overcome such failure or delay by exercise of reasonable diligence (any such cause or condition, a "Force Majeure"), including but not limited to: failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other natural disasters or acts of the elements; court order and act, or failure to act, of civil, military or Governmental Authority; change in governmental law or regulation; strike, lockout and other labor dispute; epidemic, riot, insurrection, sabotage, war and other civil disturbance or disobedience; labor or material shortage; and electric disturbance originating in, transmitted through, or otherwise affecting the Project.
- 13.13 Independent Counsel. The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.
- 13.14 Headings. The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.
- 13.15 Interpretations. In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes

each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof unless specifically stated; (g) relative to the determination of any period of time "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

- 13.16 Entire Agreement. This Agreement (and its exhibits) between Tacoma and the Tribe constitutes the complete and entire expression of agreement between the Parties and supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, and communications, whether written or oral, which may have been made in connection with the subject matter of this Agreement. Any such representations or claims are hereby disclaimed. This Agreement may be signed in counterparts.

IN WITNESS WHEREOF, having read and intending to be bound by the provisions of this Agreement, the Parties have executed this Agreement as of the date first above written.


THE SKOKOMISH TRIBE

By:

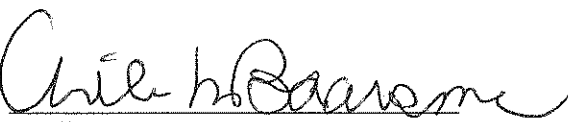

Joseph Pavel, Chairperson
Skokomish Tribal Council

CITY OF TACOMA


By:

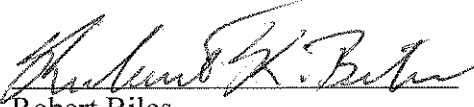

William Gaines
Director/CEO Tacoma Public Utilities

By:


William Baarsma
Mayor

Attest:

 1-12-09
Doris Sorum
City Clerk

By: 
Robert Biles
Finance Director

Approved as to Form and Legality

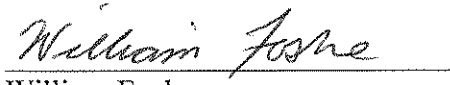
By: 
William Fosbre
Chief Assistant City Attorney

EXHIBIT A-1

PARCEL 1:

INDIAN LOTS 1 AND 2, BEING THAT PORTION OF THE SOUTHWEST QUARTER LYING WESTERLY OF THE SKOKOMISH RIVER IN SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., IN MASON COUNTY, WASHINGTON.

PARCEL 2:

INDIAN LOT 1, BEING THAT PORTION OF THE NORTHWEST QUARTER LYING NORTHWESTERLY OF THE SKOKOMISH RIVER IN SECTION 7, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., IN MASON COUNTY, WASHINGTON.

PARCEL 3:

THOSE PORTIONS OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THE SOUTHEAST QUARTER, EXCEPT THE EAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF THE SOUTHWEST QUARTER; GOVERNMENT LOT 3 AND ALL TIDELANDS OF THE SECOND-CLASS FORMERLY OWNED BY THE STATE OF WASHINGTON SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON SAID GOVERNMENT LOT 3, WITH A FRONTAGE OF 12.50 LINEAL CHAINS, MORE OR LESS, MEASURED ALONG THE GOVERNMENT MEANDER LINE; GOVERNMENT LOT 4 AND ALL TIDELANDS OF THE SECOND-CLASS, FORMERLY OWNED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING UPON SAID GOVERNMENT LOT 4, WITH A FRONTAGE OF 25.74 LINEAL CHAINS, MORE OR LESS, MEASURED ALONG THE GOVERNMENT MEANDER LINE.

PARCEL 4:

THOSE PORTIONS OF SECTION 12, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

INDIAN LOT 1, BEING THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER LYING NORTHERLY OF THE SKOKOMISH RIVER.

TRACT 1 OF INDIAN LOT 2 (BEING THE WEST ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 2) TRACT 2 OF INDIAN LOT 2 (BEING THE EAST ONE-HALF OF THE WEST ONE-HALF OF SAID LOT 2) TRACT 3 OF INDIAN LOT 2 (BEING THE WEST ONE-HALF OF THE EAST ONE-HALF OF SAID LOT 2) INDIAN LOT 2 BEING THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER LYING NORTHERLY OF THE SKOKOMISH RIVER.

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER; THE EAST ONE-HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; BEING ALSO KNOWN AS AND DESCRIBED AS INDIAN LOTS 6, 7, AND 9.

EXHIBIT A-1
(CONTINUED)

ALL THAT PORTION OF A TRACT OF LAND IN GOVERNMENT LOT 5, KNOWN AS INDIAN LOT 11, WHICH LIES WEST OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 5; THENCE SOUTH 1.18 CHAINS; THENCE SOUTH 33° WEST 5.08 CHAINS; THENCE SOUTH 45° EAST 0.50 CHAINS; MORE OR LESS, TO THE MEANDER LINE OF THE SKOKOMISH RIVER.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT TOWIT:

A TRACT OF LAND SITUATE PARTLY IN INDIAN LOT 11 (BEING A PORTION OF GOVERNMENT LOT 5) AND PARTLY IN INDIAN LOT 9 (BEING THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER) PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID INDIAN LOT 11, WITH THE WESTERLY LINE OF THE SKOKOMISH RIVER; RUNNING THENCE WEST, ALONG THE SOUTH LINE OF SAID INDIAN LOT 11, 390 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID INDIAN LOT 11; THENCE NORTH, ALONG THE WEST LINES OF SAID INDIAN LOT 11 AND SAID INDIAN LOT 9, 1320 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID INDIAN LOT 9; THENCE EAST, ALONG THE NORTH LINE OF SAID INDIAN LOT 9, 393.1 FEET; THENCE SOUTH, PARALLEL WITH THE WEST LINE OF SAID INDIAN LOT 9, 660 FEET, MORE OR LESS, TO THE SOUTH LINE OF INDIAN LOT 9; THENCE EAST, ALONG THE SOUTH LINE OF SAID INDIAN LOT 9, A DISTANCE OF 166.9 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID INDIAN LOT 11, 231.87 FEET; THENCE SOUTH 33°, WEST A DISTANCE OF 151.67 FEET; THENCE SOUTH 45° EAST A DISTANCE OF 33 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SKOKOMISH RIVER; THENCE SOUTH 21°45' WEST, ALONG THE WEST LINE OF SAID SKOKOMISH RIVER, A DISTANCE OF 298.9 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 5:

INDIAN LOTS 1 AND 2, BEING A PORTION OF THE NORTHEAST QUARTER IN SECTION 2, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON.

EXCEPTING THEREFROM ANY PORTION THEREOF THAT INCLUDES TIDELANDS.

PARCEL 6:

INDIAN LOT 21, BEING THAT PORTION OF THE SOUTHEAST QUARTER, LYING SOUTHWESTERLY OF HOOD CANAL IN SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON.

EXCEPTING THEREFROM ANY PORTION THEREOF THAT INCLUDES TIDELANDS.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN MASON COUNTY, WASHINGTON.

SAID PARCELS 1 THRU 6 BEING THOSE CERTAIN TRACTS CONVEYED TO THE CITY OF TACOMA, A MUNICIPAL CORPORATION BY STATUTORY WARRANTY DEEDS RECORDED JULY 2,

EXHIBIT A-1
(CONTINUED)

1992 UNDER AUDITOR FILE NOS. 547222 AND 547223, ALL RECORDS OF MASON COUNTY, WASHINGTON.

RESERVING AN EASEMENT FOR THE OPERATION AND MAINTENANCE OF POWER TRANSMISSION LINES AND APPURTENENT STRUCTURES, OVER, UNDER AND ACROSS THOSE PORTIONS OF SKOKOMISH INDIAN RESERVATION LOTS 1 AND 2 OF SECTION 2, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M. AND SKOKOMISH INDIAN RESERVATION LOT 21 OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, ALL IN MASON COUNTY, WASHINGTON LYING WITHIN A 100 FOOT WIDE STRIP OF LAND, 50 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED SOUTHEAST CORNER OF SAID RESERVATION LOT 1 OF SAID SECTION 2 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 01°05'04" EAST 828.21 FEET ALONG THE MONUMENTED EAST LINE OF SAID LOT 1 TO AN ALUMINUM PIPE MONUMENT AS SHOWN ON SAID SURVEY AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 49°02'41" WEST 1451.11 FEET, MORE OR LESS, TO THE MONUMENTED WEST LINE OF SAID RESERVATION LOT 21 OF SAID SECTION 35 AND THE TERMINUS OF THIS DESCRIBED CENTERLINE; THE EASTERLY END OF SAID STRIP BEING THE EAST LINE OF SAID RESERVATION LOT 1 OF SAID SECTION 2 AND THE WESTERLY END OF SAID STRIP BEING THE WEST LINE OF SAID RESERVATION LOT 21 OF SAID SECTION 35. TOGETHER WITH THE RIGHT TO MANAGE VEGETATION WITHIN SAID 100 FOOT WIDE STRIP THAT INTERFERES WITH THE USE AND ENJOYMENT OF THE EASEMENT.

ALSO RESERVING AN EASEMENT FOR THE OPERATION AND MAINTENANCE OF POWER TRANSMISSION LINES AND APPURTENENT STRUCTURES, OVER, UNDER AND ACROSS THOSE PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND GOVERNMENT LOTS 1, 3 AND 4, ALL OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M. AND SKOKOMISH INDIAN RESERVATION LOT 1 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, TOGETHER WITH 2ND CLASS TIDELANDS SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING THEREON, ALL IN MASON COUNTY, WASHINGTON LYING WITHIN A 100 FOOT WIDE STRIP OF LAND, 50 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE SOUTH 00°20'34" WEST 257.38 FEET ALONG THE MONUMENTED WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO AN ALUMINUM PIPE MONUMENT AS SHOWN ON SAID SURVEY AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE SOUTH 49°03'15" EAST 903.22 FEET TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 79°12'14" EAST 2559.88 FEET TO A POINT HEREINAFTER CALLED POINT "A"; THENCE CONTINUING SOUTH 79°12'14" EAST 774.14 FEET TO AN ALUMINUM PIPE MONUMENT ON THE LINE BETWEEN SAID SECTIONS 1 AND 6 AS SHOWN ON SAID SURVEY; THENCE CONTINUING SOUTH 79°12'14" EAST 346.78 FEET TO A POINT

EXHIBIT A-1
(CONTINUED)

HEREINAFTER CALLED POINT "B"; THENCE CONTINUING SOUTH 79°12'14" EAST 500 FEET, MORE OR LESS, TO THE EAST LINE OF SAID GOVERNMENT LOT 1 OF SAID SECTION 6 AND THE TERMINUS OF THIS DESCRIBED CENTERLINE; THE WESTERLY END OF SAID STRIP BEING THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AND THE EASTERLY END OF SAID STRIP BEING THE EAST LINE OF SAID GOVERNMENT LOT 1 OF SAID SECTION 6. TOGETHER WITH THE RIGHT TO MANAGE VEGETATION WITHIN SAID 100 FOOT WIDE STRIP THAT INTERFERES WITH THE USE AND ENJOYMENT OF THE EASEMENT.

ALSO RESERVING AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A TRANSMISSION TOWER ACCESS PAD OVER AND ACROSS THAT PORTION OF GOVERNMENT LOT 4 OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., WITHIN THE SKOKOMISH INDIAN RESERVATION PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, IN MASON WASHINGTON, LYING WITHIN A 150 FOOT WIDE STRIP OF LAND, 75 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE AFOREMENTIONED POINT "A"; THENCE SOUTH 10°47'56" WEST 62.50 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 10°47'56" EAST 160.00 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A TRANSMISSION TOWER ACCESS PAD OVER AND ACROSS THAT PORTION OF SKOKOMISH INDIAN RESERVATION LOT 1 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 3 WEST, W.M., PER APPROVED PLAT OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON TERRITORY, DATED MAY 19, 1885, IN MASON COUNTY, WASHINGTON LYING WITHIN A 150 FOOT WIDE STRIP OF LAND, 75 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE AFOREMENTIONED POINT "B"; THENCE SOUTH 10°47'56" WEST 62.50 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE NORTH 10°47'56" EAST 160.00 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER AND ACROSS THOSE PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, ALL OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON LYING WITHIN A 15 FOOT WIDE STRIP OF LAND, 7.5 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE MONUMENTED SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 32 OF SURVEYS PAGES 50 THRU 58 UNDER AUDITOR'S FILE NO. 1869865, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 89°04'32" WEST 2.34 FEET ALONG THE MONUMENTED SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1 TO THE CENTER OF AN EXISTING ROAD AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE ALONG THE CENTER OF SAID ROAD THE FOLLOWING TEN (10) COURSES: NORTH 00°24'52" EAST 237.90 FEET, NORTH 01°35'07" WEST 144.15 FEET, NORTH 00°07'28" WEST 215.36 FEET, NORTH 02°05'44" WEST 219.64 FEET, NORTH 02°28'32" EAST 117.03 FEET, NORTH 00°54'55" WEST 61.11 FEET, NORTH 02°32'30" EAST

EXHIBIT A-1

(CONTINUED)

127.02 FEET, NORTH 00°31'22" EAST 195.62 FEET, NORTH 03°03'21" EAST 145.58 FEET AND NORTH 01°31'25" EAST 364.89 FEET TO A POINT HEREINAFTER CALLED POINT "C"; THENCE CONTINUING ALONG THE EXISTING CENTER OF SAID ROAD THE FOLLOWING TWO (2) COURSES: NORTH 01°31'25" EAST 496.35 FEET AND NORTH 60°10'49" W 114.83 FEET TO A POINT WHICH BEARS SOUTH 16°13'47" WEST 289.05 FEET FROM THE MONUMENTED NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 1 AS SHOWN ON SAID SURVEY AND THE TERMINUS OF THIS DESCRIBED CENTERLINE.

ALSO RESERVING AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER AND ACROSS THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON LYING WITHIN A 10 FOOT WIDE STRIP OF LAND, 5 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT THE AFOREMENTIONED POINT "C"; THENCE NORTH 88°22'21" EAST 564.80 FEET TO THE TERMINUS OF THIS DESCRIBED CENTERLINE.

SAID EASEMENTS ARE BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID [NAD 83 (1991)] HAVING A COMBINED SCALE FACTOR OF 1.000003915.

HOOD CANAL

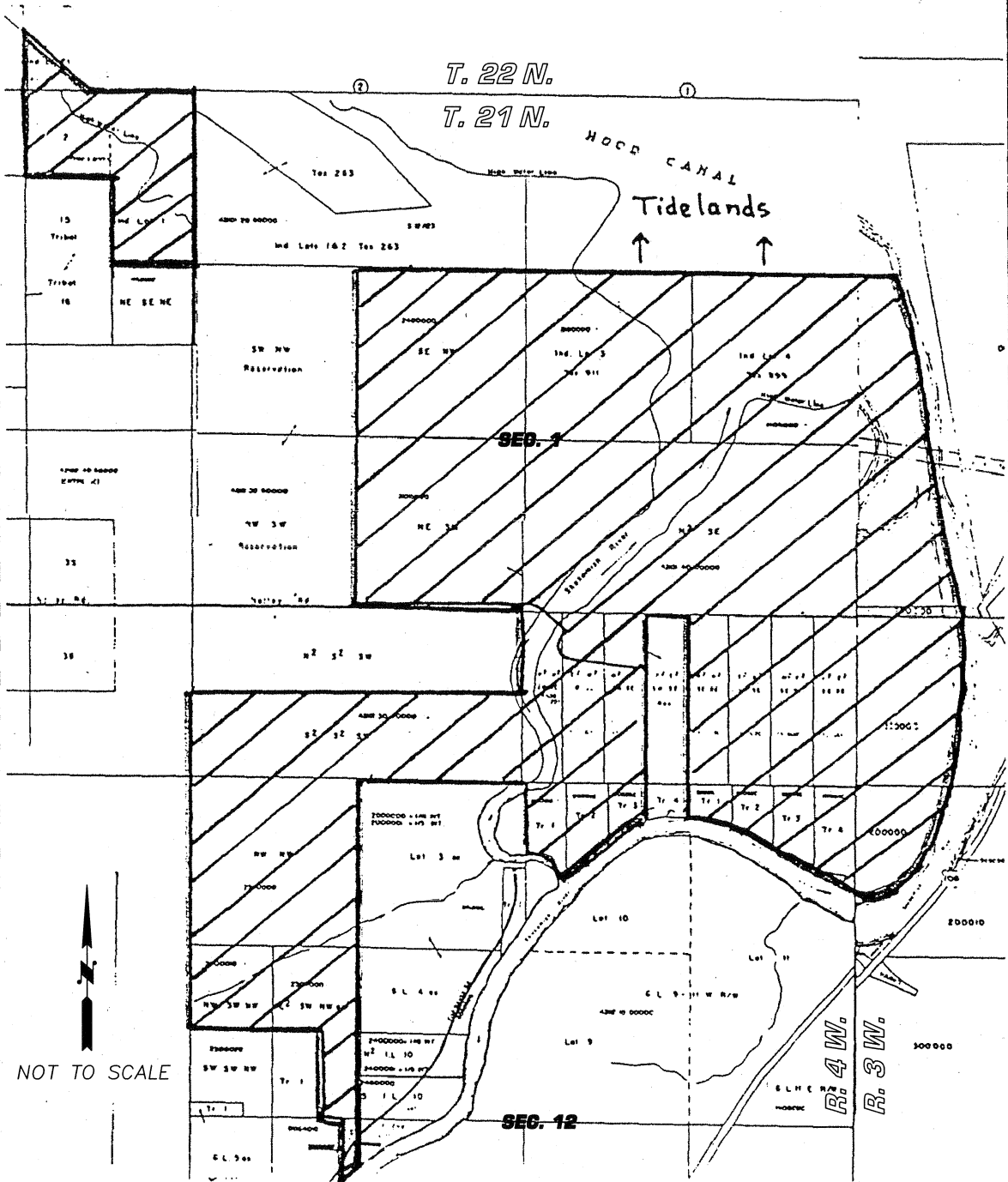


EXHIBIT B-1

EXHIBIT A-2

THOSE PORTIONS OF GOVERNMENT LOT 1 AND THE NORTHEAST QUARTER, ALL OF SECTION 19, THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER, ALL OF SECTION 20, THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, ALL OF SECTION 29, ALL IN TOWNSHIP 23 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, ALL LYING ABOVE THE 742 FOOT CONTOUR LINE (CITY OF TACOMA CUSHMAN PROJECT DATUM). FOR REFERENCE PURPOSES OF THIS DESCRIPTION U.S.G.S. BENCHMARK "J-32 (1929)" IN THE TOP OF CUSHMAN DAM NO. 1 EQUALS ELEVATION 741.50 FEET.

EXCEPTING THEREFROM S.R. 119 (LAKE CUSHMAN ROAD) RIGHT-OF-WAY AS CONVEYED TO THE STATE OF WASHINGTON BY QUIT CLAIM DEED DATED JANUARY 25, 1994 AND RECORDED FEBRUARY 8, 1994 UNDER AUDITOR'S FILE NO. 581811, RECORDS OF MASON COUNTY, WASHINGTON.

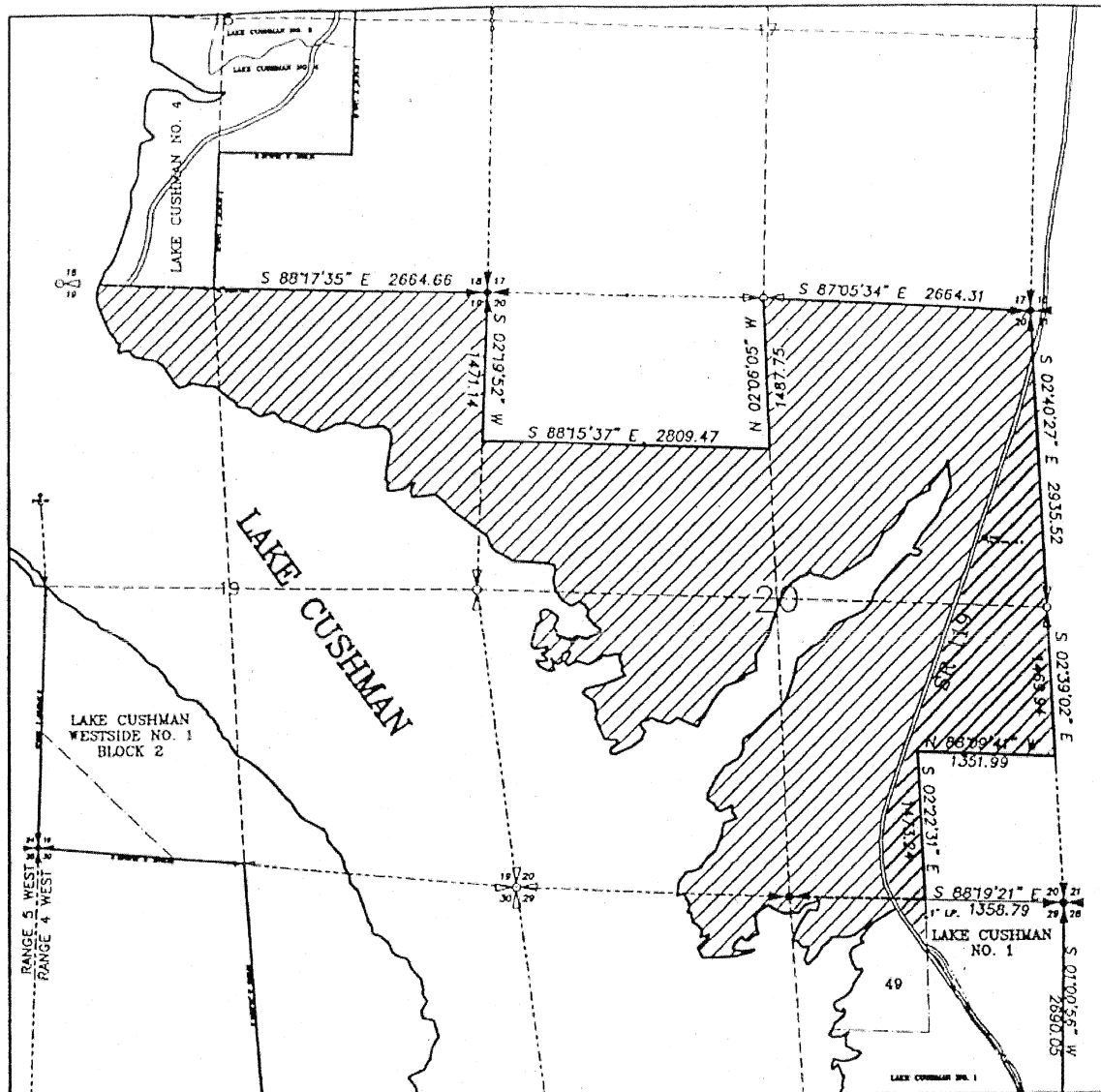
ALSO EXCEPTING THEREFROM THAT PORTION WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 29 LYING WESTERLY OF SAID S.R. 119 RIGHT-OF-WAY AND SOUTHERLY OF THE NORTHERLY LINE OF THE LAKE CUSHMAN COMPANY COMMUNITY PARK TRACT KNOWN AS PARCEL NO. 49 OF EXHIBIT A OF THAT CERTAIN AMMENDMENT TO LEASE BETWEEN LAKE CUSHMAN COMPANY AND THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION DATED DECEMBER 4, 1990 AND RECORDED DECEMBER 28, 1990 UNDER AUDITOR'S FILE NO. 520415, RECORDS OF MASON COUNTY, WASHINGTON, SAID NORTHERLY LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID S.R. 119 (LAKE CUSHMAN ROAD) HAVING WASHINGTON STATE SOUTH ZONE GRID COORDINATES OF $X = 1,328,629.76$ AND $Y = 787,242.34$ (NAD 27); THENCE SOUTHWESTERLY PERPENDICULAR TO SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF S.R. 119 TO THE AFOREMENTIONED 742 FOOT CONTOUR LINE (CITY OF TACOMA CUSHMAN PROJECT DATUM) AND THE TERMINUS OF THIS DESCRIBED LINE. THIS DESCRIPTION IS BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID (NAD 27) PER SURVEY BY R. RUSKIN FISHER FOR THE PLAT OF LAKE CUSHMAN NO. 1 RECORDED IN VOLUME 6 OF PLATS PAGES 60 THRU 63, RECORDS OF MASON COUNTY, WASHINGTON.

ALSO EXCEPTING THEREFROM ANY PORTIONS THEREOF, IF ANY, WHICH SAID LAKE CUSHMAN COMPANY HAS GRANTED A LEASEHOLD ESTATE INTEREST, WHETHER RECORDED WITH THE MASON COUNTY AUDITOR OR NOT, KNOWN AS PARCEL NO. 50 OF EXHIBIT A OF SAID AMMENDED LEASE BETWEEN LAKE CUSHMAN COMPANY AND THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN MASON COUNTY, WASHINGTON.

City of Tacoma - Department of Public Utilities

Portions of Sections 19, 20 and 29,
all in Township 23 North, Range 4 West, W.M.,
in Mason County, Washington.



NOT TO SCALE

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

EXHIBIT B-2

EXHIBIT A-3

THOSE PORTIONS OF SKOKOMISH INDIAN RESERVATION TRACTS 1 AND 2 OF GOVERNMENT LOT 2 OF SECTION 26, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M. PER APPROVED SUPPLEMENTAL DIAGRAM OF SAID RESERVATION IN THE SURVEYOR GENERAL'S OFFICE, OLYMPIA, WASHINGTON, DATED AUGUST 14, 1906, ALL IN MASON COUNTY, WASHINGTON DESCRIBED AS FOLLOWS: COMMENCING AT THE MONUMENTED WEST QUARTER CORNER OF SAID SECTION 26 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED IN VOL. 27 OF SURVEYS PAGES 196 THRU 202 UNDER AUDITOR'S FILE NO. 1759237, RECORDS OF MASON COUNTY, WASHINGTON; THENCE NORTH 01°55'47" EAST 460.30 FEET ALONG THE MONUMENTED WEST LINE OF SAID GOVERNMENT LOT 2 TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 87°46'14" EAST 1058.52 FEET TO AN IRON PIPE MONUMENT AS SHOWN ON SAID SURVEY; THENCE SOUTH 87°55'24" EAST 308.39 FEET TO AN ALUMINUM PIPE MONUMENT ON THE EASTERLY RIGHT-OF-WAY LINE OF S.R. 101 AS SHOWN ON SAID SURVEY; THENCE NORTH 02°09'25" EAST 668.58 FEET ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING OF THIS DESCRIBED TRACT; THENCE SOUTH 02°09'25" WEST 497.56 FEET; THENCE SOUTH 87°55'24" EAST 142.87 FEET; THENCE NORTH 17°44'06" EAST 81.98 FEET; THENCE SOUTH 72°15'54" EAST 100 FEET, MORE OR LESS, TO THE ORDINARY HIGH TIDE LINE OF HOOD CANAL BEING THE EASTERLY LINE OF SAID GOVERNMENT LOT 2; THENCE NORTHERLY ALONG SAID LINE OF ORDINARY HIGH TIDE TO A POINT WHICH BEARS SOUTH 86°15'13" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 86°15'13" WEST 190 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

RESERVING AN EASEMENT FOR INGRESS, EGRESS, PARKING AND BOAT LAUNCH PURPOSES OVER AND ACROSS THE ABOVE DESCRIBED TRACT.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD IN MASON COUNTY, WASHINGTON.

THIS DESCRIPTION IS BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID [NAD 83 (1991)] HAVING A COMBINED SCALE FACTOR OF 1.00000025.

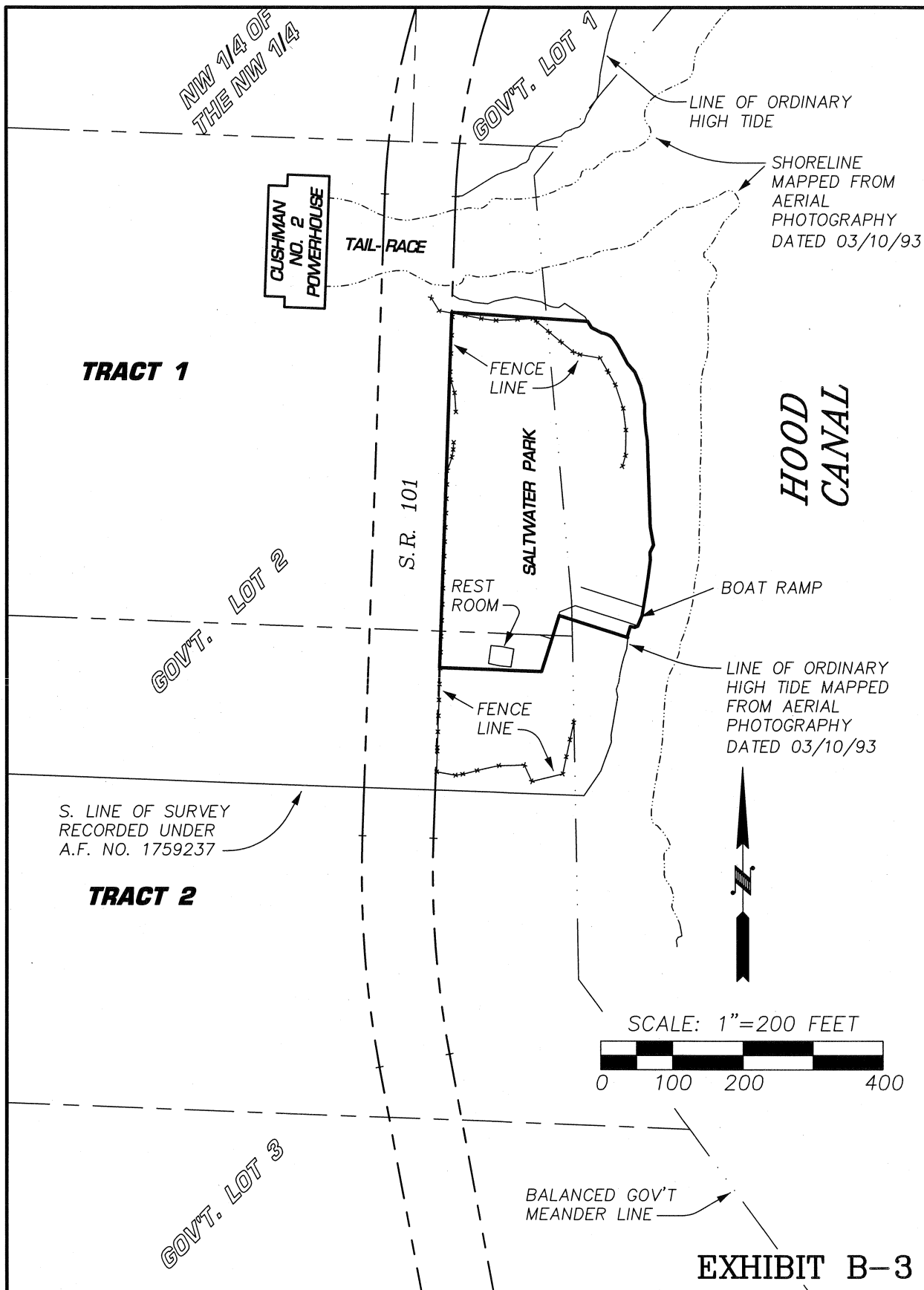


EXHIBIT C-1

PARCEL 1

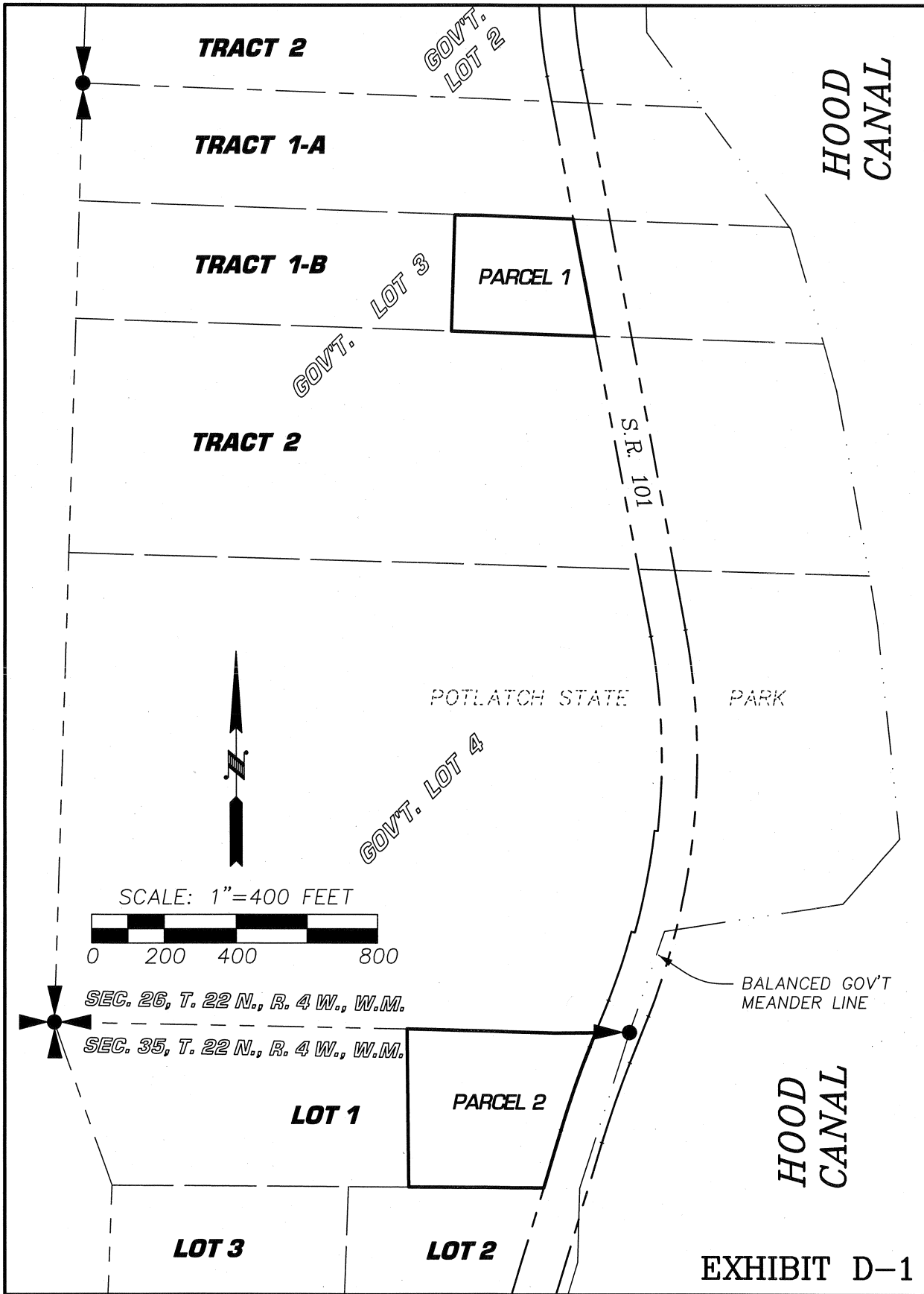
THAT PORTION OF TRACT 1-B OF GOVERNMENT LOT 3, SECTION 26, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 5 CHAINS SOUTH BY GOVERNMENT MEASURE AND 16 CHAINS EAST OF THE QUARTER SECTION CORNER BETWEEN SECTIONS 26 AND 27 OF SAID TOWNSHIP AND RANGE; THENCE EAST 346 FEET, MORE OR LESS, TO THE WEST LINE OF THE OLYMPIC HIGHWAY AS NOW LOCATED; THENCE ALONG SAID WEST LINE, SOUTH 12°09' EAST 337 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID TRACT 1-B; THENCE WEST 414 FEET; THENCE NORTH 5 CHAINS BY GOVERNMENT MEASURE TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF THE WESTERLY RIGHT-OF-WAY LINE OF S.R. 101 AS CONVEYED TO THE STATE OF WASHINGTON BY RIGHT-OF-WAY DEED DATED JULY 16, 1929 AND RECORDED AUGUST 9, 1929 UNDER AUDITOR'S FILE NO. 60309, RECORDS OF MASON COUNTY, WASHINGTON.

PARCEL 2

THAT PORTION OF SECTION 35, TOWNSHIP 22 NORTH, RANGE 4 WEST, W.M., IN MASON COUNTY, WASHINGTON, STYLED TRACT 1 OF ORIGINAL ALLOTMENT NO. 31-B DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID SECTION 35 AT A POINT 15 CHAINS DISTANT EAST OF THE NORTHWEST CORNER OF SAID SECTION; THENCE EAST 634 FEET TO THE MEANDER CORNER OF THE SHORE OF HOOD CANAL BETWEEN FRACTIONAL SECTIONS 26 AND 35 OF SAID TOWNSHIP AND RANGE; THENCE SOUTH 17° WEST 496.5 FEET TO THE MEANDER CORNER SET FOR THE FORMER NORTHEAST CORNER OF THE SKOKOMISH INDIAN RESERVATION; THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT 462 FEET, MORE OR LESS, TO A POINT 12.60 CHAINS EAST OF A CERTAIN POST MARKING A CORNER ON THE ORIGINAL SURVEY OF THE SKOKOMISH INDIAN RESERVATION; THENCE NORTH 7.20 CHAINS BY GOVERNMENT MEASURE TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE RIGHT-OF-WAY LINE OF S.R. 101 AS CONVEYED TO THE STATE OF WASHINGTON BY RIGHT-OF-WAY DEED DATED JULY 16, 1929 AND RECORDED AUGUST 9, 1929 UNDER AUDITOR'S FILE NO. 60309, RECORDS OF MASON COUNTY, WASHINGTON.

SAID PARCELS 1 AND 2 BEING THOSE PORTIONS OF PARCELS "XLI" AND "XLII" ACQUIRED BY THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION BY JUDGMENT NO. 2 OF MASON COUNTY SUPERIOR COURT CAUSE NO. 1651 DATED OCTOBER 8, 1921, RECORDS OF MASON COUNTY, WASHINGTON NOT INCLUDED WITHIN THE RIGHT-OF-WAY FOR S.R. 101.

ALL TOGETHER WITH AND SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND AGREEMENTS OF RECORD, IN MASON COUNTY, WASHINGTON.



ATTACHMENT B

CUSHMAN OFF-LICENSE SUPPLEMENTATION AGREEMENT BETWEEN THE CITY OF TACOMA AND WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

This Cushman Off-License Supplementation Program Agreement (COSPA) is entered into between the City of Tacoma, Washington (Tacoma) and Washington Department of Fish and Wildlife (WDFW) in connection with the relicensing and operations of the Cushman Hydroelectric Project, FERC Project No 460. This COSPA is effective as of the Effective Date defined below.

RECITALS

WHEREAS,

- A. Tacoma is the FERC licensee for the Cushman Hydroelectric Project, FERC Project No. 460, located on the North Fork of the Skokomish River in Mason County, Washington. The Project is operated and maintained pursuant to a license issued by the Federal Energy Regulatory Commission ("FERC") by order dated July 30, 1998.
- B. Tacoma and WDFW are signatories to the Licensing Settlement Agreement for the Cushman Hydroelectric Project ("Settlement Agreement") executed concurrently with this agreement and made and entered into pursuant to FERC Rule 602, 18 C.F.R. § 385.602, by and among Tacoma; the Skokomish Indian Tribe (the Tribe); National Marine Fisheries Service ("NMFS"); United States Department of Agriculture Forest Service ("FS"); United States Department of the Interior Fish and Wildlife Service ("FWS"); United States Department of the Interior Bureau of Indian Affairs ("BIA"); National Park Service (NPS); WDFW; and Washington Department of Ecology ("WDOE"). This COSPA is Attachment B to the Settlement Agreement, and the COSPA will be submitted to FERC for informational purposes only with the Settlement Agreement.
- C. Tacoma and WDFW are entering into this COSPA as part of the overall settlement process leading to issuance by FERC of an Amended Project License and continued operation of the Cushman Hydroelectric Project. Tacoma and WDFW acknowledge that the creation of the COSPA is intended as an element of a comprehensive settlement for the Cushman Project; however, due to its independent nature, the COSPA is intended to operate on its own. Therefore, nothing in the administrative provisions for the Settlement Agreement are intended to, or shall be construed to, modify in any manner provisions in the COSPA. Likewise the parties' obligations under the COSPA shall be interpreted independently of the Settlement Agreement except as may be provided herein.

- D. In 1959, the Washington Department of Fisheries (Fisheries) and Tacoma entered into a settlement agreement (1959 Settlement Agreement) that resolved claims and demands pertaining to the lack of fish passage at the Cushman Project. Pursuant to that 1959 Settlement Agreement, Tacoma has annually provided funding to the State of Washington to reimburse Fisheries (now WDFW) for Tacoma's portion of WDFW's expense incurred in the operation of the George Adams Hatchery. The 1959 Settlement Agreement was amended or otherwise modified in 1962, 1972 and 1996. Based upon the formula agreed to in the 1996 George Adams Hatchery Agreement Modification, Tacoma's 2008 reimbursement for the George Adams Hatchery obligation was approximately \$103,000.
- E. On August 22, 2006, the U.S. Court of Appeals issued its opinion in *City of Tacoma v. FERC*, remanding the license to FERC. Following the remand, Tacoma, NMFS, FS, FWS, BIA, WDFW, WDOE and the Tribe began negotiating an agreement on PM&E measures to resolve all issues presented by the remand of the License by the Court of Appeals.
- F. One of the subjects discussed by the settlement negotiation group was an anadromous fish supplementation program for the upper North Fork Skokomish River and its relation to a resident fishery program required by the existing FERC license. These discussions resulted in agreements regarding the development of a comprehensive fish supplementation program that includes an artificial production program for sockeye, spring Chinook, steelhead, coho, and rainbow trout. WDFW did not discuss impacts to fall Chinook because WDFW intended that Tacoma and WDFW, as an element of the comprehensive negotiations, would agree through this COSPA to continue the commitments established in the 1959 and 1972 George Adams Hatchery agreements.
- G. Assuming FERC approves the Settlement Agreement, the settlement negotiation group determined that successful implementation of the Lake Cushman anadromous fish program will be the highest priority fish supplementation objective. Some in the group were concerned that implementing a resident fish program in Lake Cushman at the same time the anadromous program is being started, could cause a conflict and possibly impact the success of the anadromous program or listed resident Bull trout. Tacoma and WDFW discussed alternative methods by which Tacoma could undertake the resident fish program based on the initial production numbers of the 1998 FERC license, but converted to other species and delivered in waters other than Lake Cushman.
- H. As part of the comprehensive settlement of these issues, Tacoma and WDFW agree that the resident fish program identified in the 1998 FERC license should be replaced with Tacoma's annual commitment to release 100,000 rainbow trout into Lake Kokanee and other lakes as detailed below. The settlement agreement negotiating group approved the alternate plan. Tacoma and WDFW agree that the details of the parties' actions and Tacoma's releases into Lake Kokanee will be

specified in the Settlement Agreement's Proposed Amended License Articles, and the commitments and details regarding the balance of the rainbow trout releases will be contained in this COSPA. Specifically, the Settlement Agreement's Proposed Amended License Articles include provisions that if adopted by the Commission would require Tacoma to annually release between 24,000 and 35,000 rainbow trout at 3 fish per pound into Lake Kokanee.

- I. To address the loss of public benefits that would result from the elimination of the Lake Cushman resident fish stocking program and as described below, WDFW and Tacoma have separately agreed in this COSPA to have Tacoma release additional rainbow trout into lakes designated by WDFW in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties.
- J. Furthermore, consistent with the 1959 Settlement Agreement as subsequently amended, WDFW and Tacoma have agreed subject to the terms of this COSPA to have Tacoma continue its monetary contributions at the current level (with an appropriate inflationary index) to WDFW to reimburse WDFW for Tacoma's portion of the WDFW expenses incurred in the operation of the George Adams Hatchery.

Tacoma and WDFW agree that FERC's full adoption of the Settlement Agreement and the parties performance of the Amended Project License and this COSPA resolves all issues between Tacoma and WDFW pertaining to the relicensing of the Project and satisfies any funding obligation related to the operation of the George Adams Hatchery during the term of the Amended License and any annual license.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GENERAL PROVISIONS

1.1 Effective Date

This COSPA shall become effective only upon the Commission's issuance of an Amended Project License that incorporates the Proposed License Article set forth in Appendix 1 of the Settlement Agreement, unless Tacoma obtains a stay or extension of the Amended Project License.

1.2 Term Of COSPA

Unless terminated as provided herein, the term of the COSPA shall commence on the Effective Date and shall continue through the term of the Amended Project License including any subsequent annual license(s), or until the date of any FERC order

approving surrender of the Amended Project License, whichever is earlier. Prior to the end of this term, the Tacoma and WDFW shall enter into negotiations with the intent of consummating a revised agreement that is consistent with any new FERC license for the Project.

2. PURPOSE OF COSPA

The Parties agree that Tacoma's satisfaction of the obligations in this COSPA will protect and mitigate for certain impacts of the Project on fish resources and recreational opportunities on those resources. WDFW and Tacoma enter into this agreement separately from the FERC settlement because, while the Parties agree these commitments are appropriate, the George Adams Hatchery and certain resident fish plant lakes are at distances from the Cushman Project. As such, to ensure that the commitments agreed to within the agreement are fulfilled and in consideration of WDFW's support for the continued operation of the Cushman Project and the Amended License, WDFW and Tacoma have entered into this binding contract.

3. TACOMA PAYMENTS TO WDFW FOR OPERATION OF GEORGE ADAMS HATCHERY

Starting on December 1 in the year after the Effective Date and annually on December 1 for the term of the license and any subsequent annual license, Tacoma shall reimburse WDFW for Tacoma's portion of WDFW's expense incurred in the operation of the George Adams Hatchery on an annual basis a sum not to exceed \$ 103,000 (2008 dollars), adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U).

4. RESIDENT FISH PROGRAM

4.1 Beginning the first calendar year after the Effective Date for the term of the license and any subsequent annual license, unless otherwise agreed to pursuant to paragraph 4.5, the Parties envision that Tacoma's total commitment under the resident fish stocking program will be to annually release 100,000 rainbow trout at 3 fish per pound (33,333 pounds) into Lake Kokanee and other lakes designated by WDFW in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties, Washington. Of those 100,000 rainbow trout released annually by Tacoma, it is envisioned that as a requirement of the Amended Project License, Tacoma will release between 24,000 and 35,000 rainbow trout at 3 fish per pound (8,000 to 11,667 pounds) into Lake Kokanee. As a commitment of this COSPA, Tacoma shall release the remainder of those 100,000 rainbow trout (between 65,000 and 76,000 rainbow trout) into other lakes designated by WDFW in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties. The rainbow trout reared and released will meet technical specifications provided in advance by WDFW. Tacoma shall consult with WDFW when determining the size and number of rainbow trout and the timing of the releases.

4.2 At its discretion and subject to obtaining any necessary permits and regulatory approval, Tacoma may raise and release between 24,000 and 35,000 rainbow trout in net pens in Lake Kokanee. In the event that Tacoma elects to raise the rainbow trout in net pens, WDFW shall deliver to the Lake Kokanee net pens, at no cost to Tacoma, the number of fry (at 150 fish per pound) adequate for the Lake Kokanee resident trout program of between 24,000 and 35,000 rainbow.

4.3 All of the rainbow trout not reared in net pens in Lake Kokanee shall be obtained from a pathogen-free water source and meet other technical specifications provided in advance by WDFW.

4.4 With respect to the rainbow trout released into other lakes designated by WDFW, WDFW may designate and schedule up to 25 deliveries per year to lakes within Mason, Kitsap, Thurston, Pierce, and Jefferson Counties within 60 road miles (each way) of the Hoodsport. To keep the number of deliveries at a reasonable number, more than one lake may be stocked per delivery and up to two deliveries per year per lake can be scheduled by WDFW in order to provide sustained fishing opportunities in those lakes. Tacoma shall consult with WDFW when determining the size and number of rainbow trout and the timing of the releases. To extend the recreational opportunity provided by these fish, it is anticipated that the fish provided in this COSPA will not be released into area lakes before the first of May, each year.

4.5 To ensure the public recreational fishing opportunities are provided by this agreement, in the event that creel census performed pursuant to the monitoring requirements within the Amended License indicate that the catch rate of fish released into Lake Kokanee is higher or lower than the expected catch rate, WDFW and Tacoma shall confer to determine whether the number of fish released into Lake Kokanee should be reallocated to other lakes in Mason, Kitsap, Thurston, Pierce, and Jefferson Counties.

5. WDFW RELEASE

The Parties agree that this COSPA supersedes and replaces any contractual obligation of Tacoma related to the funding of operations or fish production at WDFW's George Adams Hatchery. The funding obligations which have been superseded by this COSPA are 1) the "Agreement" made on the 23rd day of July, 1959 between City of Tacoma and State of Washington through the Director of Fisheries; 2) a supplemental agreement between the parties dated February 20, 1962; 3) the "Agreement" made on the 5th day of January, 1972 between the State of Washington Department of Fisheries and the City of Tacoma; and 4) the "George Adams Salmon Hatchery Agreement, 1996 Modification Regarding Overhead Charges and Updating Inflation Index Base". This agreement does not affect other obligations or releases contained within or provided by those previous agreements.

Except for claims and demands pertaining to the anadromous fish stocking program specifically provided for in the Amended License, and except as provided in COSPA paragraph 6.2 Parties' Actions upon Termination, this COSPA shall constitute a complete

and final settlement of all claims and demands by WDFW pertaining to any obligation based upon the FERC Licensing of the Project to stock or otherwise release any food or game fish (as defined by Chapter 77 RCW) or to fund or otherwise contribute to the stocking or release of such fish during the term of the Amended License and any annual license. Except for (1) claims and demands pertaining to the anadromous fish stocking program specifically provided for in the Amended License, (2) claims and demands related to performance of the measures contained in this COSPA, or (3) as provided in COSPA paragraph 6.2, Parties' Actions upon Termination, WDFW agrees to waive and release Tacoma and its officers, employees and agents from any and all rights, demands, actions, causes of action, suits, liabilities, damages, costs, attorneys' fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, it may have had, may now have, or may have during the term of the Agreement related to any obligation based upon the FERC Licensing of the Project to stock or otherwise release any food or game fish (as defined by Chapter 77 RCW) or to fund or otherwise contribute to the stocking or release of such fish.

6. TERMINATION OF AGREEMENT

6.1 Termination

6.1.1 This Agreement may be terminated at any time by mutual written consent of Tacoma and the WDFW.

6.1.2 This Agreement may be terminated by Tacoma, in its sole discretion, if subsequent to the effective date of this Agreement FERC or a regulatory agency imposes a new material obligation to the License through a license amendment or a regulatory action, and for that reason, Tacoma then terminates the Licensing Settlement Agreement. A material obligation shall mean individually or collectively, substantially affect Tacoma's obligations relating to Project operations, including but not limited to costs; power generation; regulatory responsibilities; or PM&E measures.

6.1.3 This Agreement may be terminated by Tacoma, in its sole discretion, if subsequent to the effective date of this Agreement, WDOE denies any Tacoma application for water rights necessary to store or divert water for hydroelectric generation, and for that reason, Tacoma then terminates the Licensing Settlement Agreement.

6.1.4 This Agreement may be terminated by either Party, in its sole discretion, if subsequent to the effective date of this Agreement, the Licensing Settlement Agreement terminates.

6.2 Parties' Actions upon Termination

Upon Termination this Agreement shall become null and void and there shall be no liability or obligation on the part of any Party (or any of their respective officers, directors, commissioners, employees, agents or other representatives or Affiliates), except that in event that Tacoma continues to operate the project, Tacoma shall continue to reimburse WDFW for Tacoma's portion of WDFW's expense incurred in the operation of the George Adams Hatchery on an annual basis a sum not to exceed \$ 103,000, adjusted annually based upon 2008 dollars by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U) for the remainder of the Amended License and any subsequent annual licenses. In any subsequent relicensing of the Project, WDFW and Tacoma agree that Tacoma may elect to continue this reimbursement at the same rate (i.e. \$103,000 in 2008 dollars) during the term of such subsequent license. So long as Tacoma continues such reimbursement, the WDFW obligations and releases provided within the 1959 Settlement Agreement and any subsequent amendments and/or modifications to the 1959 Settlement shall continue and remain in affect. To the extent that Tacoma does not elect to continue the reimbursement, WDFW obligations and releases provided within the 1959 Settlement Agreement and any subsequent amendments and/or modifications to the 1959 Settlement shall expire upon the Commission's completion of the subsequent relicensing. Nothing in this agreement is intended to preclude WDFW or Tacoma from proposing or developing other protection, mitigation and enhancement measures as part of the subsequent Project relicensing.

7. **MISCELLANEOUS**

7.1 Entire Agreement

This COSPA contains the complete and exclusive agreement of Tacoma and WDFW with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this COSPA, with respect to its subject matter.

7.2 Non-Severable Terms of COSPA

The terms of this COSPA are not severable one from the other. This COSPA is made in the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire COSPA. If a court of competent jurisdiction rules that any provision in this COSPA is invalid, this COSPA is deemed modified to conform to such ruling, unless Tacoma or WDFW objects. If Tacoma or WDFW objects, the other agrees to meet and confer regarding the continued viability of this COSPA. If agreement cannot be reached, any party may terminate this COSPA.

7.3 Dispute Resolution

In the event of any dispute between the Parties concerning the interpretation or implementation of any aspect of this COSPA, the Parties agree to engage in good faith negotiations for a period of at least thirty (30) days in an effort to resolve the dispute. Notification of the dispute must be in writing to the other Party, and the 30-day negotiating period will begin upon notification as described in paragraph 7.5. During the thirty-day period, any party may request the services of a professional mediator to assist in resolving the dispute, with such mediator to be selected by the disputing Parties. The Party requesting such services shall cover the costs unless there is an agreement among the disputing Parties to share costs. In the event that resolution cannot be reached within the 30-day negotiating period, then either Party may seek remedy for alleged violations as described in paragraph 7.4.

7.4 Remedy for Alleged Violations

No Party shall seek relief in any other forum for noncompliance with this Agreement unless and until the requirements of section 7.3 have been met. If dispute resolution is not successful, any Party may seek judicial enforcement of the terms of this Agreement. Each Party agrees that monetary damages shall not be a remedy for breach of this Agreement and that a Party shall be entitled to seek injunctive or other equitable relief to remedy any breach of this Agreement.

7.5 Notice

Unless otherwise provided herein, all notices given by any Party to the other in connection herewith shall be in writing and shall either be delivered in person or by facsimile to the facsimile number listed below with telephonic confirmation. Notice delivered in person shall be deemed to have been properly given and received on the date delivered, so long as delivered during normal business hours. Notice delivered by facsimile is complete on transmission when made prior to 5:00 p.m. on a business day. Notice delivered by facsimile made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9 a.m. on the first business day thereafter. Notification of changes in the contact person must be made in writing and delivered to all other contact persons.

For Tacoma:

Debbie Young
Natural Resources Manager
Tacoma Power
P.O. Box 11007
Tacoma, WA 98411-0007
Tel: (253) 502-8340

For WDFW:

Curt Leigh
Washington Department of Fish and Wildlife
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504-0100
Tel: (360) 902-2200

7.6 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to applicable law, this COSPA shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any entity other than Tacoma and WDFW to maintain a suit at law or equity pursuant to this COSPA. The duties, obligations and responsibilities of Tacoma and WDFW with respect to third parties shall remain as imposed under applicable law.

7.7 Expenses

Each Party shall use its own resources in asserting its rights and performing its obligations under this COSPA, and no Party shall be required to reimburse the other Party for any expense or cost incurred hereunder.

7.8 Successors and Assigns

This COSPA shall apply to, and be binding on, and inure to the benefit of Tacoma and WDFW and their successors and assigns, unless otherwise specified in this COSPA.

7.9 Change in Ownership of Projects

No change in ownership of the Project or transfer of the Project License by Tacoma shall in any way modify or otherwise affect WDFW's interests, rights, benefits, responsibilities or obligations under this COSPA.

7.10 Notice of Delay or Inability to Perform – Force Majeure

No Party shall be in breach of its obligations or liable to any other Party for breach of this Settlement as a result of a failure to perform if said performance is made impracticable due to an event of Force Majeure. The term "Force Majeure" means any cause reasonably beyond the Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain, after exercise of reasonable

diligence and timely submittal of all applicable application, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the Party seeking excuse from performance. The Party whose performance is affected by Force Majeure shall notify the other Party as soon as reasonably practicable. This notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for the implementation of the measures or performance of the obligation. The affected entity shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal and written Notice when it resumes performance of the obligation.

7.11 Waiver

The failure of Tacoma or WDFW to insist, on any occasion, upon strict performance of any provision of this COSPA shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such entity.

7.12 Governing Law

This COSPA shall be governed by and construed in accordance with the laws of the State of Washington.

7.13 No Changes to Existing Contracts and Agreements

This COSPA supersedes the Tacoma's George Adam Hatchery funding obligation within the 1959 Settlement Agreement and any subsequent amendments and/or modifications to the 1959 Settlement. This agreement does not affect other obligations or releases contained within or provided by those previous agreements except as provided for in paragraph 6.2 provisions addressing future relicensing of the Project. This COSPA is entirely separate from and independent of other contracts and agreements among Tacoma and WDFW. This COSPA does not and will not be deemed to change any rights or obligations under previously executed contracts or agreements between or among Tacoma and WDFW except as may be provided herein.

7.14 Section Titles for Convenience Only

The titles for the Sections of this COSPA are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this COSPA or the intentions of Tacoma and WDFW. This COSPA has been jointly drafted by Tacoma and WDFW and therefore shall be construed according to its plain meaning and not for or against any party.

8. EXECUTION OF COSPA

Each signatory to this COSPA certifies that he or she is authorized to execute this COSPA and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

IN WITNESS THEREOF,

Tacoma and WDFW, through their duly authorized representatives, have caused this COSPA to be executed as of the date set forth in this COSPA.

City of Tacoma, Washington



Date: 1/12/09

by: William A. Gaines Director of Utilities/CEO

Approved As To Form & Legality:



Chief Asst. City Attorney

Washington Department of Fish and Wildlife



Date: 1/9/09

by: Philip Anderson Interim Director

ATTACHMENT C

OFF-LICENSE AGREEMENT BETWEEN THE CITY OF TACOMA AND U.S.D.A. FOREST SERVICE

This Cushman Off-License Agreement (“COA”) is entered into between the City of Tacoma, Washington (“Tacoma”) and the United States Department of Agriculture Forest Service (“USFS”) in connection with the relicensing and operations of the Cushman Hydroelectric Project, Federal Energy Regulatory Commission (“FERC”) Project No 460. This COA is effective as of the Effective Date defined below.

RECITALS

WHEREAS,

- A. Tacoma is the FERC licensee for the Cushman Hydroelectric Project, FERC Project No. 460, located on the North Fork of the Skokomish River in Mason County, Washington (“Project”). The Project is operated and maintained pursuant to a license issued by FERC by order dated July 30, 1998.
- B. On August 22, 2006, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *City of Tacoma v. FERC*, remanding the 1998 license to FERC. Following the remand, Tacoma; the Skokomish Indian Tribe (the Tribe); National Marine Fisheries Service (“NMFS”); USFS; United States Department of the Interior Fish and Wildlife Service (“FWS”); United States Department of the Interior Bureau of Indian Affairs (“BIA”); National Park Service (NPS); Washington Department of Fish and Wildlife (“WDFW”); and Washington Department of Ecology (“WDOE”) began negotiating an agreement on protection, mitigation and enhancement (“PM&E”) measures to resolve all issues presented by the remand of the License by the Court of Appeals. These negotiations resulted in the Settlement Agreement for the Cushman Project (“Licensing Settlement Agreement”) executed concurrently with this agreement and made and entered into pursuant to FERC Rule of Practice and Procedure 602, 18 C.F.R. § 385.602, by and among Tacoma; the Tribe; NMFS; USFS; FWS; BIA; NPS; WDFW; and WDOE.
- C. Tacoma and the USFS are signatories to the Licensing Settlement Agreement. This COA is Attachment C to the Licensing Settlement Agreement, and the COA will be submitted to FERC for informational purposes only.
- D. Tacoma and the USFS are entering into this COA as part of the overall settlement process leading to issuance by FERC of an Amended Project License for continued operation of the Cushman Hydroelectric Project. Tacoma and the USFS acknowledge that the creation of the COA is intended as an element of a comprehensive settlement for the Cushman Project; however, due to its

independent nature, the COA is intended to operate on its own. Therefore, nothing in the administrative provisions for the Settlement Agreement are intended to, or shall be construed to, modify in any manner provisions in the COA. Likewise the parties' obligations under this COA shall be interpreted independently of the Licensing Settlement Agreement except as provided herein.

- E. The subjects discussed by the Licensing Settlement Agreement group include improvements to USFS recreation facilities, law enforcement, and road management within and around the Project. These negotiations led to an agreement to revise existing license Articles 410, 425, 427, and 428.
- F. This COA resolves all issues between Tacoma and USFS regarding Tacoma making a monetary contribution or otherwise providing for (1) operation, maintenance, and administration of recreational facilities owned or operated by the USFS; and (2) law enforcement coverage along Road 24, Causeway Bridge, and Big Creek Campground.
- G. Tacoma and USFS agree that FERC's full adoption of the Licensing Settlement Agreement, together with the USFS and Tacoma's agreement to this COA, resolve all issues between Tacoma and USFS pertaining to the relicensing and continued operation of the Project.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GENERAL PROVISIONS

1.1 Effective Date

This COA shall become effective upon the Commission's issuance of an Amended Project License that incorporates the Proposed License Articles set forth in Appendix 1 of the Licensing Settlement Agreement, unless Tacoma obtains a stay of the Amended Project License.

1.2 Term Of COA

The term of the COA shall commence on the Effective Date and shall continue through the term of the Amended Project License including any subsequent annual license(s): (i) unless terminated as provided herein; (ii) until the date of any FERC order approving surrender of the Amended Project License; or (iii) until any irrevocable action by Tacoma to physically decommission the Project after the expiration date of the Amended Project License, whichever is earlier. Prior to the end of this term, Tacoma and USFS shall enter

into negotiations with the intent of consummating a revised agreement that is consistent with any new FERC license for the Project.

2. PURPOSE OF COA

2.1 Purpose

Tacoma and USFS have entered into this COA to resolve issues regarding making a monetary contribution or otherwise providing for (1) operation, maintenance, and administration of recreational facilities owned or operated by the USFS and on Tacoma lands as described below; and (2) law enforcement coverage along USFS Road No. 24, Causeway Bridge, and Big Creek Campground as described herein. The COA enhances the benefits of USFS and Tacoma recreation facilities for the public and local communities within and around the present Project boundary. Tacoma and the USFS agree that this COA is fair and reasonable, and in the public interest. Tacoma and the USFS agree that Tacoma's performance of its obligations under the COA and the Licensing Settlement Agreement is consistent with and is intended to fulfill Tacoma's statutory and regulatory obligations known to the USFS relating to the relicensing of the Project.

2.2 No Precedent For Other Proceedings

This COA is made upon the express understanding that it constitutes a negotiated resolution of certain issues among Tacoma and USFS relating to the Amended Project License and operation of the Project. Accordingly, this COA shall not be offered against Tacoma and the USFS as argument, admission or precedent in any mediation, arbitration, litigation, or other administrative or legal proceeding that does not involve or relate to the Amended Project License or the operation of the Project.

2.3 Future Relicensing

Nothing in this COA is intended or shall be construed to affect or restrict Tacoma or the USFS's participation in or comments about the provisions of any future relicensing of the Project subsequent to the current relicensing, or any other hydroelectric project licensed to Tacoma under the Federal Power Act (FPA).

3. TACOMA PAYMENTS TO THE USFS FOR PROVIDING: (1) OPERATION AND MAINTENANCE OF DEVELOPED AND DISPERSED RECREATION SITES ON USFS NATIONAL FOREST SYSTEM (NFS) AND TACOMA LANDS WITHIN AND ADJACENT TO THE PRESENT PROJECT BOUNDARY; AND (2) LAW ENFORCEMENT COVERAGE ALONG ROAD 24, CAUSEWAY BRIDGE, AND BIG CREEK CAMPGROUND.

3.1 Tacoma shall pay the USFS for a portion of USFS's expense that will be incurred in (1) the operation and maintenance of developed and dispersed recreation sites on USFS NFS lands and Tacoma lands as described below and (2) providing for law enforcement and enhanced law enforcement coverage along USFS Road No. 24, Causeway Bridge, and Big Creek Campground on Friday, Saturday, Sunday and holidays from Memorial Day to Labor Day. Tacoma will make an initial payment of \$85,000 the first January after license issuance. Thereafter, payment for such USFS expenses will occur on an annual basis within thirty days after Tacoma's receipt of the annual report described in Section 6 at a sum of \$ 85,000 (2008 dollars), adjusted annually by the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban consumers, for Seattle-Tacoma-Bremerton (CPI-U).

4. USFS OBLIGATIONS TO PROVIDE OPERATION AND MAINTENANCE OF DEVELOPED AND DISPERSED RECREATION SITES ON USFS NFS AND TACOMA LANDS

4.1 Developed Recreation Sites

4.1.1 The USFS shall be responsible for operating and maintaining the following developed use areas: (1) Big Creek Campground, (2) Big Creek Loop Trailhead, (3) Mt. Rose Trailhead, (4) Dry Creek Trailhead, (5) Copper Creek Trailhead, (6) 5 Lake Cushman Day Use Sites, (7) Bear Gulch Picnic Area, (8) Big Creek Campground Loop Trail, (9) Big Creek Upper Loop Trail, (10) Mt. Rose Trail, (11) Dry Creek Trail,¹ (12) Copper Creek Trail, (13) Big Creek Bicycle Trail, and (14) Big Creek Campground Interpretive Trail. If Tacoma secures legal public access for the USFS along the existing Dry Creek Trail route that is located on Tacoma land, or portions thereof, instead of relocating the Dry Creek Trail to bypass the portions of the current Dry Creek Trail adjacent to residences situated along Lake Cushman as provided in Proposed License Article 425, section 3, Tacoma shall improve to USFS trail specifications the portion of Dry Creek Trail on Tacoma land up to the NFS land's east boundary (T 23 N, R 5W between Sections 15 and 16) prior to the USFS assuming operation and maintenance of that portion of the trail.

4.1.2 In the event that FERC requires Tacoma, as part of an Amended License Article, to carry out any obligation that the USFS has agreed to perform pursuant to Sections 4 or 5 of this COA, the USFS agrees to perform that Amended License obligation on behalf of Tacoma (at no additional cost to Tacoma) pursuant to this COA.

¹ The USFS's obligation to provide maintenance of the Dry Creek Trail does not extend to maintaining motorized access on any portions of the trail, including right of way access that may be provided by Tacoma to the USFS as described in Article 425, section 3.

4.1.3 The USFS's operation and maintenance of developed use areas shall meet the requirements of and be consistent with applicable USFS's national quality standards and guidelines (provided in Table 1), as amended or superseded over the license term.

4.2 Dispersed Use Sites

4.2.1 The USFS shall be responsible for the operation and maintenance of the following dispersed use areas: (1) Cushman Lake shoreline day use dispersed sites along USFS Road No. 24 from Road Mile (RM) 10.1 to 14.08, (2) the two existing dispersed campsites along SR 119, (3) dispersed recreation use at causeway bridge USFS Road No. 2451, and (4) four existing dispersed campsites along USFS Road No. 2451. As a component of its operation and maintenance responsibilities, the USFS shall take appropriate actions to prevent creation of new dispersed sites. The parties recognize that in the event that new recreation sites are developed pursuant to Amended License Article 428, the operation and maintenance responsibilities for such recreation sites will be defined within the plan that will be developed pursuant to Amended License Article 428.

4.2.2 The USFS's operations and maintenance of dispersed use sites shall meet the requirements of and be consistent with applicable national quality standards and guidelines (provided in Table 1), as amended or superseded over the license term.

4.3 Accessibility

The USFS shall conduct operation and maintenance of developed and dispersed recreation sites consistent with USFS's Outdoor Recreation Accessibility Guidelines for providing universally accessible facilities as amended or superseded over the license term (Table 1).

Table 1. USFS standards and guidelines for recreation facility development and maintenance.

Description of Information	Exhibit or Link
USFS recreation site standards	Exhibit 1
USFS trail standards	Exhibit 2
USFS interpretive service standards	Exhibit 3
USFS outdoor recreation accessibility guidelines ²	http://www.fs.fed.us/recreation/programs/accessibility/FSORAG.pdf

² This document is incorporated by reference, with the first page of the document attached as Exhibit 4.

5. USFS OBLIGATION TO PROVIDE LAW ENFORCEMENT COVERAGE

The USFS shall continue to provide for law enforcement coverage along USFS Road No. 24, Causeway Bridge, and Big Creek Campground. Additionally, USFS shall provide supplemental law enforcement coverage on Friday, Saturday, Sunday and holidays from Memorial Day to Labor Day.

6. USFS ANNUAL REPORT

The USFS shall provide Tacoma, by December 1 of each year, an annual report that documents actions taken pursuant to Sections 4 and 5 during the previous fiscal year.

7. OTHER OBLIGATIONS OF TACOMA

7.1 Tacoma shall agree to campfire and camping restrictions on Licensee lands along Staircase Road at the request of USFS.

7.2 Tacoma, its successors and assigns, shall not oppose any action by the USFS to vacate or abandon USFS Road No. 2451.

7.3 Tacoma shall maintain the site battery and recharging system referenced within Amended Project License Article 425, Section 5.3.

7.4 Tacoma shall construct a bicycle-friendly trail using, to the extent possible, existing trails and primitive roads from the Big Creek Campground to approximately Cushman Falls. This trail requirement shall not require Tacoma to purchase any additional property or property rights. To the extent that such rights can be acquired at no cost (other than nominal consideration which will not exceed one hundred dollars (\$100) or an amount otherwise agreed to by the parties), Tacoma shall acquire access rights on behalf of the USFS and construct a bicycle-friendly trail. Tacoma also shall construct, if feasible without widening the existing road and after the completion of the road improvements specified in Amended Project License Article 410, a bike lane along USFS Road No. 24 from Cushman Falls to the Mt. Rose Trailhead picnic area. After the completion of the road improvements specified in Amended Project License Article 410, Tacoma shall provide a signed pedestrian crossing on USFS Road No. 24 at the Mt. Rose day use site.

7.5 In the event that the following is no longer functional and in need of replacement during the Amended License term, Tacoma shall be responsible – at its own expense - for replacing the following items at the following recreational facilities: (1) The Big Creek Campground: the five double vault toilets, the water system (including the pump house, pump, pressure tanks, wells, and distribution lines) and the existing picnic shelter; (2) Bear Gulch Access: the double vault toilet; (3) Mt. Rose Trailhead: the single vault toilet and two footbridges; and (4) the five day use sites: three single vault toilets and 210 linear feet of wood stairs. In addition, in the event that the following areas need resurfacing during the Amended License term, Tacoma shall be responsible

for resurfacing the Bear Gulch parking area and Mt. Rose Trailhead parking area and access road. Replacement of facilities shall meet the standards identified in Table 1. The USFS shall notify Tacoma in the event that these recreational facilities are in need of replacement. Upon replacement, the USFS shall be responsible for the operation and maintenance of such facilities.

7.6 Tacoma shall periodically collect and dispose of debris that the USFS has freed or otherwise removed from USFS Road No. 2451 (Causeway) bridge piers and abutments. The USFS agrees that Tacoma's responsibility to periodically collect and dispose of debris does not create any duty, responsibility or obligation upon Tacoma to prevent such debris from damaging any portion of USFS Road No. 2451.

7.7 Tacoma and the USFS shall not be responsible for snowplowing USFS Road Nos. 24 and 2451.

8. RELEASE

8.1 The Parties agree that this COA supersedes and replaces any contractual obligation of Tacoma related to the funding of operations and maintenance of recreational facilities or for providing law enforcement coverage related to the Cushman Project. Except for claims and demands pertaining to the implementation of Amended Project License Articles 410, 425, 427, and 428, and except as provided in COA paragraph 9.2 (Parties' Actions upon Termination), this COA shall constitute a complete and final settlement of all claims and demands by the USFS pertaining to any obligation based upon the FERC licensing of the Project to provide for operation and maintenance of recreational facilities or to fund or otherwise contribute to such operation and maintenance of recreational facilities during the term of the Amended Project License and any annual license.

8.2 Except (1) as provided in Section 8.1, (2) for claims and demands pertaining to the Project recreational facilities specifically provided for in the Amended Project License, or (3) for claims and demands related to performance of the measures contained in this COA, the USFS agrees to waive and release Tacoma and its officers, employees and agents from any and all rights, demands, actions, causes of action, suits, liabilities, damages, costs, attorneys' fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, it may have had, may now have, or may have during the term of the Agreement related to any obligation based upon the FERC licensing of the Project to operate or maintain recreational facilities, provide for law enforcement coverage, or to implement a fire plan.

9. TERMINATION OF THE COA

9.1 Termination

9.1.1 This COA may be terminated at any time by mutual written consent of Tacoma and the USFS.

9.1.2 This COA may be terminated by Tacoma, in its sole discretion, if concurrently or subsequent to the effective date of this COA, FERC or another regulatory agency imposes a new material obligation on the License through a license amendment or a regulatory action, and for that reason, Tacoma then terminates the Licensing Settlement Agreement pursuant to the terms of the Licensing Settlement Agreement. A material obligation shall mean individually or collectively, an obligation that substantially affects Tacoma's obligations relating to Project operations, including but not limited to costs; power generation; regulatory responsibilities; or PM&E measures.

9.1.3 This COA may be terminated by Tacoma, in its sole discretion, if subsequent to the effective date of this Agreement, WDOE denies any Tacoma application for water rights necessary to store or divert water for hydroelectric generation, and for that reason, Tacoma then terminates the Licensing Settlement Agreement.

9.2 Parties' Actions upon Termination

Upon Termination, this COA shall become null and void and there shall be no liability or obligation on the part of any party (or any of its respective officers, directors, commissioners, employees, agents or other representatives or affiliates).

10. MISCELLANEOUS

10.1 Entire Agreement

This COA contains the complete and exclusive agreement of Tacoma and USFS with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings made prior to the Effective Date of this COA, with respect to its subject matter.

10.2 Non-Severable Terms of COA

The terms of this COA are not severable one from the other. This COA is made in the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire COA. If a court of competent jurisdiction rules that any provision in this COA is invalid, this COA is deemed modified to conform to such ruling, unless Tacoma or the USFS objects. If Tacoma or the USFS objects, the other agrees to meet and confer regarding the continued viability of this COA. If agreement cannot be reached, any party may terminate this COA.

10.3 Dispute Resolution

In the event of any dispute between the parties concerning the interpretation or implementation of any aspect of this COA, the parties agree to engage in good faith negotiations for a period of at least thirty (30) days in an effort to resolve the dispute. Notification of the dispute must be in writing to the other party, and the thirty-day negotiating period will begin upon notification as described in paragraph 10.7. During the thirty-day period, any party may request the services of a professional mediator to assist. The party requesting such services shall cover the costs unless there is an agreement among the disputing parties to share costs. The thirty-day time period may be extended upon the request of either party. In the event that resolution cannot be reached within the thirty-day negotiating period or a negotiating time period otherwise agreed to by the parties, then either party may seek remedy for alleged violations as described in paragraph 10.4.

10.4 Remedies for Breach

No party shall seek relief in any forum for breach of this COA unless and until the requirements of Section 10.3 have been met. If dispute resolution is not successful, any party may i) seek a license amendment or other appropriate relief from FERC, or ii) seek judicial enforcement of the terms of this COA.

If, based on the annual report provided to Tacoma by the USFS under COA Section 6 or visual inspection, Tacoma believes that the USFS has not substantially complied with certain COA Section 4 or 5 obligations as described below, Tacoma shall provide timely notice to the USFS. This notice shall describe what maintenance or law enforcement activity with which the USFS has failed to substantially comply. Substantial noncompliance means that the USFS has failed to undertake maintenance of one or more of the facilities identified in COA Section 7.5³ to the extent that this failure has shortened the life span of one or more of the COA Section 7.5 facilities by two or more year, failed to perform the operation and maintenance required by Sections 4.1.4 and 4.2.2, or failed to provide supplemental law enforcement coverage for two consecutive weekends (Friday, Saturday, Sunday and holidays) from Memorial Day to Labor Day.

1. If the USFS disputes whether it has substantially complied with such obligations, Tacoma shall make timely payments under Section 3 and initiate the dispute resolution requirements pursuant to Section 10.3.
2. If the USFS agrees with Tacoma that it is not in substantial compliance, Tacoma shall make timely payment upon USFS representations that it is in agreement (1) to address, where possible, past noncompliance with

³ COA Section 7.5 facilities include 1) The Big Creek Campground: the five double vault toilets, the water system (including the pump house, pump, pressure tanks, wells, and distribution lines) and the existing picnic shelter; (2) Bear Gulch Access: the double vault toilet; 3) Mt Rose Trailhead: single vault toilet and two foot bridges; and 4) the five day use sites: three single vault toilets and 210 linear feet of wood stairs.

Sections 4 and 5 of this COA and (2) to achieve future substantial compliance with Sections 4 and 5 of this COA.

3. Where the USFS does not take action under above paragraph a or b, Tacoma may withhold payment under Section 3 if it meets the following conditions:
 - a. provides the USFS a full field season to remedy the nonconformance once it has given notice to the USFS that it believes the USFS is not in substantial compliance with Section 4 or 5;
 - b. does not unreasonably withhold such payments;
 - c. the amount withheld is commensurate with the degree of noncompliance; and
 - d. Tacoma resumes full payment to the USFS under Section 3 at such time as the USFS has substantially complied or takes action under above paragraph 3 a or b.

By withholding payment, Tacoma shall not be deemed in breach of this COA.

Each party agrees that monetary damages shall not be a remedy for breach of this COA and that a party shall be entitled to seek injunctive or other equitable relief to remedy any breach of this COA.

Nothing in this Section is intended to limit a Party's rights to initiate dispute resolution pursuant to Section 10.3 of this COA or limit the type of relief that a Party may seek through the dispute resolution process.

10.5 Reservation of Authority

The USFS agrees to file within 60 days of the effective date of the Licensing Settlement Agreement, a reservation of its Federal Power Act Section 4(e) mandatory conditioning authority in the Amended Project License in the form provided below. The USFS shall not file any other reservation of authority in the Amended Project License. The USFS will only seek to reopen the Amended Project License pursuant to this reservation of authority if a) Tacoma fails to comply with its payment or other obligations under Sections 3 and 7 of this COA, or b) the COA terminates and Tacoma continues to operate under its license. Tacoma agrees not to oppose the Forest Service seeking to reopen the Amended Project License pursuant to this reservation of authority if Tacoma does not comply with those obligations. Tacoma may oppose the USFS seeking to reopen the Amended Project License pursuant to this reservation of authority if the COA terminates.

“The Forest Service reserves its authority under Section 4(e) of the Federal Power Act as provided in Section 10.5 of the Cushman Off-license Agreement Between Tacoma and the USDA Forest Service, dated January 12, 2009, to require the inclusion of conditions in the license for Project No. 460, described in Sections 3 and 7 of the Cushman Off-license Agreement Between Tacoma and the USDA Forest Service, even if the Cushman Off-license Agreement between Tacoma and the USDA Forest Service terminates.”

10.6 Material Modification

The Parties do not intend the measures in the COA be incorporated into the Amended Project License, however, if FERC does include the measures in this COA in the Amended Project License, that inclusion will not be a Material Modification as defined in the Cushman Settlement Agreement.

10.7 Notice

Unless otherwise provided herein, all notices given by any party to the other in connection herewith shall be in writing and shall either be delivered in person or by facsimile to the facsimile number listed below with telephonic confirmation. Notice delivered in person shall be deemed to have been properly given and received on the date delivered, so long as delivered during normal business hours. Notice delivered by facsimile is complete on transmission when made prior to 5:00 p.m. on a business day. Notice delivered by facsimile made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9 a.m. on the first business day thereafter. Notification of changes in the contact person must be made in writing and delivered to all other contact persons.

For Tacoma:

Debbie Young
Natural Resources Manager
Tacoma Power
P.O. Box 11007
Tacoma, WA 98411-0007
Tel: (253) 502-8340

For USFS:

Dean Yoshina
District Ranger
Hood Canal Ranger Station
P.O. Box 280
Quilcene, WA 98376
Tel: (360) 765-2201(desk), (360) 981-9101 (cell)
Fax: (360) 765-2202
dyoshina@fs.fed.us

10.8 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to applicable law, this COA shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any entity other than Tacoma and the USFS to maintain a suit at law or equity pursuant to this COA. The duties, obligations and responsibilities of Tacoma and USFS with respect to third parties shall remain as imposed under applicable law.

10.9 Expenses

Unless otherwise provided by this COA, Amended Project License or Licensing Settlement Agreement, each party shall use its own resources in asserting its rights and performing its obligations under this COA, and no party shall be required to reimburse the other Party for any expense or cost incurred hereunder.

10.10 Successors and Assigns

This COA shall apply to, and be binding on, and inure to the benefit of Tacoma and USFS and their successors and assigns, unless otherwise specified in this COA.

10.11 Change in Ownership of Projects

No change in ownership of the Project or transfer of the Project License by Tacoma shall in any way modify or otherwise affect USFS's interests, rights, benefits, responsibilities or obligations under this COA.

10.12 Notice of Delay or Inability to Perform – *Force Majeure*

No party shall be in breach of its obligations or liable to any other party for breach of this Settlement as a result of a failure to perform if said performance is made impracticable due to an event of *Force Majeure*. The term "*Force Majeure*" means any cause reasonably beyond the party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable application, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the party seeking excuse from performance. The party whose performance is affected by *Force Majeure* shall notify the other party as soon as reasonably practicable. This notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for the implementation of the measures or performance of the obligation. The affected entity

shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal and written Notice when it resumes performance of the obligation.

10.13 Waiver

The failure of Tacoma or the USFS to insist, on any occasion, upon strict performance of any provision of this COA shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such entity.

10.14 Governing Law

The COA shall be governed, construed, and enforced in accordance with federal law and regulation. By executing this COA, the USFS is not consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists.

10.15 Availability of Funds

Implementation of this COA by the USFS is subject to the availability of funds. Nothing in this COA shall be interpreted as, or constitute a commitment or requirement that the USFS obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and other applicable law. Nothing in this COA is intended to, or shall be construed to commit a federal official to expend federal funds not appropriated by Congress.

10.16 Amendment of the COA upon Agreement of the Parties

This COA may be amended at any time from the Effective Date through the term of the Amended Project License and any subsequent annual license, by written unanimous agreement of Tacoma and the USFS, including any successors.

10.17 No Changes to Existing Contracts and Agreements

10.17.1 Except as otherwise stated here, this COA is entirely separate from and independent of other contracts and agreements among Tacoma and the USFS. This COA does not and will not be deemed to change any rights or obligations under previously executed contracts or agreements between or among Tacoma and the USFS except as may be provided herein.

10.17.2 Nothing in the Amended License affects or alters Tacoma's or the USFS's rights and obligations pursuant to and as defined by the Easement granted to the USFS by Tacoma on September 13, 1957 (copy attached as Exhibit 5).

10.18 Existing Agreements Impacted By COA

The following agreement is superseded by this COA: Collection Agreement between USDA Forest Service, Olympic National Forest and City of Tacoma Department of Public Utilities, Light Division dated 7/27/06.

10.19 Section Titles for Convenience Only

The titles for the Sections of this COA are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this COA or the intentions of Tacoma and USFS. This COA has been jointly drafted by Tacoma and USFS and therefore shall be construed according to its plain meaning and not for or against any party.

10.20 Signatory Authority

Each signatory to this COA certifies that he or she is authorized to execute this COA and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

IN WITNESS THEREOF,

Tacoma and the USFS, through their duly authorized representatives, have caused this COA to be executed as of the date set forth in this COA.

City of Tacoma, Washington



Date: 1/12/09

by: William A. Gaines Director of Utilities/CEO


Approved As To Form & Legality:


Chief Asst. City Attorney

United States Department of Agriculture Forest Service



Date: 1/9/09

by:  Mary Wagner Regional Forester

ATTACHMENT C EXHIBITS

Meaningful Measures for Quality Recreation Management

RECREATION SITES

National Quality Standards

(w/Clarifiers & Tasks)

February 5, 2002

National quality standards define the corporate level of quality the Forest Service expects to provide the public at full service (Forest Plan) levels. These standards form the baseline for estimating the total cost of providing the quality opportunities visitors and customer's desire.

Recreation program components with National Quality Standards include: Developed Sites, Trails, General Forest Areas, Interpretive Services and Recreation Special Use Permit Administration. National Quality Standards for these components have been established for the Key Measures: Health and Cleanliness, Safety and Security, Condition of Facilities, Responsiveness, Resource Setting, and Permit Administration & Monitoring, Interpretive Product Development & Revision, Interpretive Product Delivery and Exhibit & Audio-Visual Systems Condition.

Critical National Standards are identified with an asterisk (*). If not met, the resulting conditions pose a high probability of immediate or permanent loss to people or property. If they cannot be met, due to budget or other constraints, immediate action must be taken to correct or mitigate the problem. Immediate action may include closing to public use the site, trail, area, permit, or portions of the affected site, trail or area. If conditions, facilities, or services addressed by "non-critical" standards decline to the point where the health or safety of the visitor is threatened, then mitigating actions must be taken.

Developed Sites Key Measure: HEALTH AND CLEANLINESS

- Healthy environment for users.
- No threat of disease or infection.
- Facilities are odor free.
- Developed Sites are litter free.

STANDARD	CLARIFIER	TASK TYPE	TASKS
1. *Visitors are not exposed to human waste.	<p>Toilet fixtures, buildings and other rest room facilities are scrubbed, scraped, scooped, swept, disinfected, etc. (per <u>FS Cleaning Recreation Sites</u>) at an appropriate frequency to minimize visitor exposure to human waste.</p> <p>Remains of human waste visible in and around the DEVELOPED SITE are removed at an appropriate frequency to minimize visitor exposure.</p> <p>To meet this standard, removal frequency can be as seldom as once a year but typically not more than once daily.</p> <p>Meeting this standard also includes pumping vault toilets and removing waste from compost toilets on an as needed basis.</p>	Operations	<p>For task information see:</p> <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC</p>
2. *Water, wastewater and sewage systems meets federal, state and local water quality regulations.	<p>This standard only applies to Developed Sites that have water, wastewater or sewage systems.</p> <p>Fee payments are current. Fee payment includes both the hours required to make payment and the actual cost of the fee.</p> <p>Systems are inspected and tested by qualified personnel at required frequencies. Required frequencies are established by local, state or federal regulation.</p> <p>Systems are properly permitted and licensed.</p>	Maintenance	<ul style="list-style-type: none"> • Inspect and test systems • Pay fees • Obtain system licenses and permits. • Collect water samples**. (Collection includes extracting the sample and transporting it to a lab for analysis.) <p>**water samples for swim areas is "operations".</p>

3. Garbage does not exceed the capacity of garbage containers.	<p>Garbage receptacles are emptied at frequencies that prevent garbage from overflowing the receptacle.</p> <p>Emptying frequencies can be as seldom as once a month but typically not more than once a day. Receptacle capacity will influence emptying frequency.</p>	Operations	<ul style="list-style-type: none"> Remove garbage from receptacles For additional task information see: <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC</p>
4. Individual units and common areas are free of litter including domestic animal waste.	<p>Remove litter in the Developed Site at an appropriate frequency to minimize accumulation.</p> <p>To meet this standard, cleaning frequency can be as seldom as once a year or as often as daily.</p> <p>(Landfill fees can be included here if tracked by individual site or can be captured as part of Recreation Program Management cost if tracked on a unit basis)</p>	Operations	<ul style="list-style-type: none"> Pick-up, remove and dispose of litter in Developed Sites. For additional task information see: <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC</p>
5. Facilities are free of graffiti.	<p>Graffiti is intentional human-caused markings applied to constructed or natural features. Graffiti typically contains words and/or symbols offensive and intrusive to most visitors. At a minimum, even if the message per se is not offensive, the very existence of graffiti markings on constructed features and/or natural features is offensive and intrusive to area visitors.</p> <p>Graffiti is removed in a timely manner given the relative offensiveness (size, content) of the graffiti message and/or symbols, and the potential for repeat occurrences if not removed immediately.</p> <p>To meet this standard, graffiti removal occurs as soon as workers can be mobilized and dispatched to the area. This response is typically within 48 hours from discovery or notification; remote areas may necessitate a longer response time, usually no longer than one week.</p>	Operations	<ul style="list-style-type: none"> Remove graffiti from constructed features using appropriate, cost-effective and environmentally acceptable techniques. Methods can include sandblasting and the application of cleaning compounds. Remove graffiti from natural features using appropriate, cost-effective and environmentally acceptable techniques. Methods can include sandblasting, the application of cleaning compounds, or the application of masking materials such as paints that blend in with natural colors.
6. Restrooms and garbage locations are free of objectionable odor.	<p>Toilet fixtures, buildings, other rest-room facilities, garbage receptacles and collection areas are deodorized at appropriate frequencies to minimize objectionable odor.</p> <p>To meet this standard, odor removal frequency can be as seldom as once a month but typically not more than once per day.</p>	Operations	<ul style="list-style-type: none"> Deodorize fixtures, buildings and garbage collection area. For additional task information see: <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC</p>

<p>7. Constructed features are clean.</p>	<p>All constructed features used by the visitor are cleaned at an appropriate frequency to ensure they are free of stains, spills, markings, odors, obstacles, debris, etc., and, as a result, they contribute to an aesthetically pleasing recreation experience.</p> <p>Depending on the specific feature and the level of area use, cleaning frequency can be as seldom as once a year but typically not more than once per week.</p>	<p>Operations</p>	<ul style="list-style-type: none"> • Remove ashes/litter, etc. from fire-rings. Clean around fire site. • Wipe off bulletin boards, tables, signs, etc. • Rake/sweep spurs, paths, tent pads, unit pad, etc. • Remove animal droppings associated with Hantavirus risk • For additional task information see: <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC</p>
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Developed Sites Key Measure: RESOURCE SETTING

- Developed Sites are consistent with ROS objectives and FLMP prescription.
- Resources are maintained or enhanced
- Scenery management is consistent with DEVELOPED SITE objectives
- Density of users is appropriate.

STANDARD	CLARIFIER	“CREW” TYPE	TASKS
<p>1. * Effects from recreation use do not conflict with environmental laws (such as ESA, NHPA, Clean Water, TES, etc)</p>	<p><u>Initiate Analysis.</u> If recreational use of a developed site conflicts with specific environmental law, the manager identifies the need for appropriate specialist analysis and then participates as needed in the determination of mitigation.</p> <p>An example of appropriate specialist analysis is a wildlife biologist visiting a developed site to determine if bald eagles are nesting and being unacceptably disturbed by the presence of recreationists.</p> <p><u>Mitigate.</u> Mitigation that includes operations tasks, e.g. developed site closure, warning signs, patrols, etc is included under this standard.</p> <p>NOTE: Mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is included in the</p>	<p>Manager</p> <p>Maintenance</p>	<p><u>Initiate Analysis</u></p> <ul style="list-style-type: none"> • Identify need for appropriate specialist analysis. • Participate as needed in the determination of mitigation choices/options. (Identify conflict/problem and tasks to resolve conflict/problem. • If mitigation includes ground-disturbing activities (i.e., maintenance) identify all project costs, including environmental analysis costs, under appropriate COF standard.) <p><u>Mitigate</u></p> <ul style="list-style-type: none"> • Physically close the Developed Site, or a portion of the site, with temporary barriers, fences or signs (non

	<p>appropriate Condition of Facilities standard]</p> <p><u>Maintenance Map</u> Res. Setting #1 = Identify AM, DM or CI work CofF #1 = Annual Maintenance CofF#2 = Deferred Maintenance CofF#3 = Capital Improvement</p>	<p>Operations</p> <p>Operations</p>	<p>constructed features).</p> <ul style="list-style-type: none"> • Post warning or detour signs. • Patrol the Developed Site to ensure users do not use protected areas.
<p>2. Recreation opportunities, site development, and site management are consistent with Recreation management system (ROS, SMS, BBM) objectives, development scale, and the Forest land management plan.</p>	<p><u>Review Site Management</u> Annually the site manager reviews the operation and maintenance plan for each site, and/or reviews reconstruction project proposals and determines the plan is consistent with the Forest Plan prescription direction for that site.</p> <p>If use of a developed site results in unacceptable visual or physical degradation to the grounds and adjacent area (per Forest Plan prescription), the site manager identifies the need for appropriate specialist analysis** and then participates as needed in the determination of mitigation.</p> <p>**Analysis could include determining the need for physical barriers, signs, and traffic control devices, etc. (see next standard).</p>	<p>Manager</p>	<p><u>Review Projects/Plans</u></p> <ul style="list-style-type: none"> • Annually the recreation manager reviews the operation and maintenance plan for each Developed Site determines plans are consistent with the Forest Plan prescription direction for the site. • The recreation manager reviews all project proposals and determines proposals/plans are consistent with the Forest Plan prescription direction for the Developed Site. • The recreation manager identifies the need for appropriate specialist analysis and then participates as needed in the determination of mitigation
<p>3. Landscape character at the developed recreation site is consistent with the Forest scenic integrity objectives.</p>	<p><u>Manage and Protect the Physical Setting</u> The Developed Site vegetation and grounds are managed and protected per the site vegetation management plan. A vegetation management plan is implemented on schedule.</p> <p>(NOTE: Vegetation Management Plan <u>development</u>, along with all other Operations Planning, is a Recreation Program Management task)</p> <p>Vegetation management and mitigation activities include mowing, brushing, limbing, planting, correcting or preventing loss of vegetation and erosion caused by recreation use, and prescribing treatments to achieve vegetation healthy and composition meet vegetation plan direction.</p> <p>Vegetation treatment and management is a function of site Development Scale –</p>	<p>Operations</p>	<p><u>Manage and Protect the Physical Setting</u></p> <ul style="list-style-type: none"> • Brush around constructed features • Mow grounds. • Treat vegetation • Meet shade objectives • Stabilize stream-bank • Plant tree/shrub/grass • Erect temporary/ disposable fencing • Post warning signs

	<p>development scale will determine the intensity of treatment activities, etc.</p> <p>[NOTE: Treatment and mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is included in the appropriate Condition of Facilities standard. To meet this standard, mitigation is limited to operations activities, e.g. stream-bank stabilization, tree/shrub/grass planting, temporary fencing, warning signs, enforcement patrols, etc.]</p> <p>[NOTE: Time spent mitigating other resource projects is a cost attributed to the benefiting program and is not included in the cost to meet Developed Sites standards.]</p>		
4. Visitors and vehicles do not exceed site capacity.	The developed site is managed to ensure visitor use does not exceed design site capacity. Physical barriers, signs, and traffic control devices are monitored and the site patrolled as needed to protect the site from overuse.	Operations	<ul style="list-style-type: none"> • Monitor Physical barriers, signs, and traffic control devices. • Patrol as needed to protect the site from overuse. • Communicate Land use ethics.
<p align="center"><u>Developed Sites Key Measure: SAFETY & SECURITY</u></p> <ul style="list-style-type: none"> • Safe environment for users • Abusive and nonconforming activities are controlled • Risk of crime is reduced 			
STANDARD	CLARIFIER	“CREW” TYPE	TASKS
1. *High-risk conditions do not exist in developed recreation sites.	<p>A site safety inspection is completed annually and high-risk conditions are corrected prior to the site, sub-site, or unit being opened. High-risk site conditions (caused either by humans or natural occurrences) that develop during the managed use season are mitigated or the affected site, sub-site or unit is closed.</p> <p>High-risk site conditions can include conditions brought on by vegetation encroaching on features or obscuring visitors view of hazards. Examples of these situations include:</p>	Operations	<ul style="list-style-type: none"> • Remove identified hazard trees • Fence off and/or sign sloughs • Close/fence off hazardous structures • Remove wasp nests and other potential safety risks. • Remove disease-carrying animals (Hantavirus, bubonic plague, etc)

	<ol style="list-style-type: none"> 1. Sites experiencing extreme fire danger 2. Signs obscured from view causing hazardous travel conditions 3. Obstacles on access routes which could cause harm to intended users 4. Vegetation obscuring presence of poisonous animals. 5. Poisonous vegetation 		<ul style="list-style-type: none"> • Mow or brush vegetation to minimize or abate poisonous animal conflicts or limit exposure to poisonous vegetation. <p>(NOTE: brushing and mowing for vegetation management or aesthetic purposes is a task under RESOURCE SETTING std #3)</p>
2. *Utility inspections meet federal, state, and local requirements.	<p>Qualified personnel inspect utilities at required frequencies. Required frequencies are established by local, state or federal regulation.</p> <p>Fee payments are current.</p>	Operations	<ul style="list-style-type: none"> • Inspect utilities at required frequencies (If for a building or other individualized asset i.e., water system, bridge, etc., task is “maintenance”) • Pay utility bills
3. Laws, regulations and special orders are enforced.	<p>Enforce 36 CFR261 regulations enforceable by Forest Protection Officers (LE Level II) as needed to protect constructed and natural features from damage and to ensure visitors are not exposed to prohibited activities.</p> <p>Mitigate, as appropriate, activities prohibited under the 36 CFR261 sections pertinent to use of general forest areas. As discretion warrants, counsel or advise users engaged in prohibited activities on the effects and impacts of their actions.</p> <p>Patrol frequency can be as seldom as once a year and typically not more than once daily.</p>	Operations	<ul style="list-style-type: none"> • Enforce regulations upon contact with users engaged in prohibited activities. • Respond to complaints from third parties. • As discretion warrants, counsel or advise users engaged in prohibited activities on the effects and impacts of their actions.
4. Visitors are provided a sense of security	<p>Forest Service presence is sufficient to provide visitors a sense of security.</p> <p>Minimally, this presence includes ensuring a <u>standard Forest Service entrance sign is properly posted</u>, and Forest Service employees are available to interact with visitors visiting the developed site at appropriate frequencies.</p> <p>Depending on the intensity and type of use, patrols occur as seldom as once a week and can be as often as several times per day.</p> <p>[NOTE: A portion of the cost to meet this standard is the cost to enable employees to professionally interact with visitors. These tasks are a cost to RECREATION PROGRAM MANAGEMENT (RPM). RPM costs include enabling employees visiting the site to have</p>	Operations	<ul style="list-style-type: none"> • Uniformed employees spend time interacting with visitors above and beyond minimum time required to enforce regulations.

	dependable communications, to be wearing uniforms, and to be operating well-maintained vehicles displaying the agency shield.]		
<p align="center"><u>Developed Sites Key Measure: RESPONSIVENESS</u></p> <ul style="list-style-type: none"> • Experience meets visitor expectations, needs and preferences • Information is available • “Good Host “ approach is implemented and apparent 			
STANDARD	CLARIFIER	“CREW” TYPE	TASKS
1. *When signed as accessible, constructed features meet current accessibility guidelines.	<p>As a part of regular compliance patrols, check constructed features that are signed as accessible, as defined by current agency direction, and ensure the feature is, indeed, accessible.</p> <p>If features signed as accessible do not, in fact, meet accessibility direction, remove accessibility signs.</p> <p>[NOTE: Meeting this standard does not include the repair and/or replacement of improper or inadequate accessibility signs (See Condition of Facilities standards)].</p>	Operations	<ul style="list-style-type: none"> • Check accessible features and accessibility signing at appropriate frequencies to ensure accessibility signing is accurate and meets current agency direction. • Remove signs if features signed as accessible do not meet accessibility direction.
2. Visitors feel welcome.	<p>The developed recreation site entrance is well marked and easily found; Forest Service employees & agency representatives demonstrate good customer service practices.</p> <p>Forest Service employees (and their representatives) interact with visitors above and beyond minimum time required to enforce regulations and to provide a sense of security (all types of personnel engage in task).</p> <p>[NOTE: This standard is an <u>outcome</u> (result of what we do); the other standards measure <u>outputs</u> (what we do).]</p>	Operations	<ul style="list-style-type: none"> • All employees spend time interacting with visitors above and beyond minimum time required to enforce regulations or to provide a sense of security.

3. Information boards are posted in a user-friendly and professional manner.	<p>Allowable site uses, restrictions, and other important information, such as access, are posted.</p> <p>Reference applicable publications for poster layout design and intensity. Posters are easy to read and understandable for the intended customer. Information boards are not cluttered. Posters are kept up so they are not faded, torn, out-of-date, or inaccurate.</p>	Operations	<p>For task information see:</p> <p><u>Cleaning Recreation Sites</u> December 1995 9523 1206-SDTDC page 40.</p> <p>Missoula Technology and Development Center, USDA-Forest Service visitor Information Boards in Recreation Areas. John Nobert Tech Tip #9523-2302, November 1994</p>
4. Visitors are provided opportunities to communicate satisfactions (needs, expectations).	<p>Establish efficient and cost-effective systems to provide visitors a means to communicate needs and expectations at appropriate levels and frequencies.</p> <p><u>Systems can include:</u></p> <ul style="list-style-type: none"> • Field personnel who provide customer comments cards as part of regular patrol. • Comment cards and receptacles that are provided at selected contact points as deemed appropriate by the recreation manager. 	Operations	<ul style="list-style-type: none"> • Distribute visitor comment cards as the opportunity arises. • Provide distribution and collection information to users. • Provide comment card receptacles at contact points. • Communicate recreation opportunities
5. Visitor information facilities are staffed appropriately during seasons of use and current information is available.	<p>Visitor centers, visitor contact stations, and other facilities primarily intended for the dissemination of recreation information are staffed with recreation information providers during hours of operation.</p> <p>Appropriate staff includes personnel who share information about recreation opportunities and issues as requested.</p> <p>[NOTE: Information delivery DOES NOT include interpretation and education activities. Interpretation and education activities include the preparation and delivery of interpretative presentations and displays or the providing of environmental education products and services.</p> <p>Information delivery DOES NOT include “cost pool” information delivery, typically associated with administrative sites.]</p>	Operations	<ul style="list-style-type: none"> • Staff visitor information facilities with recreation information providers during hours of operation.
6. Recreation site information is accurate and available from a variety of sources and	<p>Recreation information describing site amenities, management, and opportunities, etc. is reviewed for accuracy. To meet this standard, accurate site information is made available at least annually as required by site changes.</p>	Operations	<ul style="list-style-type: none"> • Review information • Identify information outlets • Offer outlets the opportunity to disseminate site

outlets.	<p>Site-specific information is made available for public consumption from both Forest Service and other appropriate and user-convenient outlets, including but not limited to resorts, permitted operations, local merchants, other public agency visitor contact points, internet recreation information providers, and recreation and travel publications. Information products can include site-specific brochures, pamphlets, books, etc.)</p> <p>Meeting this standard DOES NOT include:</p> <ul style="list-style-type: none"> • Reviewing for accuracy non-site specific amenities, management, and opportunities, such as district-wide or general area information. <p>Or</p> <ul style="list-style-type: none"> • Producing general recreation information such as recreation site listings for a Forest and/or district <p>(These costs are captured in the RECREATION PROGRAM MANAGEMENT COMPONENT)</p> <p>This standard includes the cost for the production and/or reproduction of site-specific information.</p>		<p>information</p> <ul style="list-style-type: none"> • Establish and follow procedures to allow outlets to obtain and distribute information material.
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Developed Sites Key Measure: CONDITION OF FACILITIES

- Facilities look good
- Facilities are in good repair
- Facilities are appropriate
- Facilities function

1. Constructed features are serviceable and in good repair throughout the designed service life	<p><u>ANNUAL MAINTENANCE.</u> Work performed to maintain serviceability, or repair failures during the year in which they occur. Includes preventive and/or cyclic maintenance performed in the year in which it is scheduled to occur. Includes periodic condition assessment surveys by qualified personnel as required by agency protocol. Unscheduled or catastrophic failures of components or assets may need to be repaired as a part of annual maintenance.</p> <p><u>Repair.</u> Work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. <u>Repairs may be done as annual</u></p>	Maintenance	<ul style="list-style-type: none"> • Inspect structures with high-hazard potential. • Conduct condition survey assessments per agency protocols. • Perform annual or cyclic work to restore damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition • Perform scheduled servicing, repairs, inspections,
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	<p><u>maintenance</u> or deferred maintenance activities.</p> <p><u>Preventive Maintenance.</u> Scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the fixed asset. Inspections are a critical part of preventive maintenance as they provide the information for scheduling maintenance and evaluating its effectiveness.</p> <p><u>Cyclic Maintenance.</u> Preventive maintenance activities that recur on a periodic and scheduled cycle. Typical cyclic maintenance includes refinishing sign, etc.</p>		<p>adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the fixed asset.</p> <ul style="list-style-type: none"> • As appropriate per agency regulations, analyze environmental impacts of ground-disturbing proposals.
<p>2. Constructed features in disrepair due to lack of scheduled maintenance, or in non-compliance with safety codes (e.g. life safety, OSHA, environmental, etc.) or other regulatory requirements (ABA/ADA, etc.), or beyond the designed service life, are <u>repaired</u>, <u>rehabilitated</u>, <u>replaced</u>, or <u>decommissioned</u>.</p>	<p><u>DEFERRED MAINTENANCE.</u> Maintenance that was not performed when it should have been or when it was scheduled and which, therefore, was put off or delayed for a future period. When allowed to accumulate without limits or consideration of useful life, deferred maintenance leads to deterioration of performance, increased costs to repair, and decrease in asset value.</p> <p>Code compliance (e.g. life safety, ABA/ADA, OSHA, environmental, etc.), Forest Plan Direction, Best Management Practices, Biological Evaluations, other regulatory or Executive Order compliance requirements, or applicable standards not met on schedule are considered deferred maintenance.</p> <p><u>Repair.</u> Work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. Repairs may be done as annual maintenance or deferred maintenance activities.</p> <p><u>Rehabilitation.</u> Renovation or restoration of an existing fixed asset or any of its components in order to restore the functionality or life of the asset.</p> <p><u>Replacement.</u> Substitution or exchange of an existing fixed asset or component with one having essentially the same capacity and purpose. Replacement eliminates deferred maintenance needs for the replaced fixed asset or component. The decision to replace a fixed asset or</p>	Maintenance	<ul style="list-style-type: none"> • Perform work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. • Renovate or restore existing fixed asset or any of its components in order to restore the functionality or life of the asset. • Substitute or exchange existing fixed asset or component with one having essentially the same capacity and purpose. • Demolish, dismantle, remove, obliterate and/or dispose deteriorated or otherwise unneeded asset or component, including necessary cleanup work. • As appropriate per agency regulations, analyze environmental impacts of ground-disturbing proposals • Conduct, per agency protocols, condition survey assessments that have been deferred • Survey features to obtain detailed information

	<p>component is usually reached when replacement, rather than repair or rehabilitation, is more cost effective, more environmentally sound, or in the best interest of the government. Replacement of an asset or component usually occurs when it nears has or exceeded its useful life.</p> <p><u>Decommission.</u> Demolition, dismantling, removal, obliteration and/or disposal of a deteriorated or otherwise unneeded asset or component, including necessary cleanup work. This action eliminates the deferred maintenance needs for the fixed asset.</p>		<p>required for design.</p> <ul style="list-style-type: none"> • Design features requiring repair, rehab or replacement. • Prepare, administer and inspect contracts
<p>3. <u>New, altered, or expanded</u> constructed features meet Forest Service design standards and are consistent with an approved site development plan, including an accessibility transition plan.</p>	<p><u>CAPITAL IMPROVEMENT.</u> The construction, installation, or assembly of a new fixed asset, or the significant alteration, expansion, or extension of an existing fixed asset to accommodate a change of purpose.</p> <p><u>New Construction.</u> The erection, construction, installation, or assembly of a new fixed asset.</p> <p><u>Alteration.</u> Work to change the function of an existing fixed asset. The capacity or size of the fixed asset is not significantly changed. Deferred maintenance of the original fixed asset may be reduced or eliminated by an alteration.</p> <p><u>Expansion.</u> Increasing the capacity or size of an existing fixed asset to serve needs different from, or significantly greater than, those originally intended.</p> <p>[NOTE: Environmental analysis, planning, survey & design, and contract costs associated with existing DEVELOPED SITES is included here.</p> <p>If the DEVELOPED SITE does not currently exist, environmental analysis, planning, survey & design, and contract costs are attributed to RECREATION PROGRAM MANAGEMENT.]</p>	Maintenance	<ul style="list-style-type: none"> • Erect, construct, install, or assemble a new fixed asset. • Perform work to change the function of an existing fixed asset. The capacity or size of the fixed asset is not significantly changed. • Increase the capacity or size of an existing fixed asset to serve needs different from, or significantly greater than, those originally intended. • As appropriate per agency regulations, analyze environmental impacts of ground-disturbing proposals in existing Developed Sites • Survey features to obtain detailed information required for design. • Design features to be altered, expanded or constructed in existing Developed Sites. • Prepare, administer and inspect contracts for feature alteration, expansion, or new construction in existing Developed Sites.

TRAILS

National Quality Standards

National quality standards define the corporate level of quality the Forest Service plans to provide the public at full service (Forest Plan) levels. These standards form the baseline for estimating the total cost of providing the quality opportunities visitors and customer's expectations.

Recreation program components with National Quality Standards include: Developed Sites, Trails, General Forest Areas, Interpretive Services and Recreation Special Use Permit Administration. National Quality Standards for these components have been established for the Key Measures: Health and Cleanliness, Safety and Security, Condition of Facilities, Responsiveness, Resource Setting, and Permit Administration & Monitoring.

Critical National Standards are identified with an asterisk (*). If not met, the resulting conditions pose a high probability of immediate or permanent loss to people or property. If they cannot be met, due to budget or other constraints, immediate action must be taken to correct or mitigate the problem. Immediate action may include closing to public use the site, trail, area, permit, or portions of the affected site, trail, or area. If conditions, facilities, or services addressed by "non-critical" standards decline to the point where the health or safety of the visitor is threatened, then mitigating actions must be taken.

The TRAILS Component is made up of National Forest System Trails.

National Quality Trail Standards apply to system trails and associated trail structures. The standards for Trails do not typically include trailhead facilities. Trailheads, constructed with the primary purpose of providing visitor amenities, are typically considered developed sites and are included in the Developed Sites Component. Trailheads constructed with the primary purpose of resource protection, are typically considered Concentrated Use Areas within the General Forest Area Component.

National Quality Trail Standards describe outputs customers can expect to encounter when visiting any System Trail.

The task frequencies described in the clarifiers suggest a typical range and do not preclude the possibility of exceptions.

Trail Key Measure: HEALTH AND CLEANLINESS

- Healthy environment for users and employees.
- No threat of disease or infection.
- Trails free of litter and graffiti.

STANDARD	CLARIFIERS	“CREW” TYPE	TASKS
1. Visitors are not exposed to human waste along trails.	<p>Remove evidence of human waste visible along the trail at an appropriate frequency to minimize visitor exposure.</p> <p>To meet this standard, removal frequency can be as seldom as once a year or as often as weekly.</p>	Trail Operations	<ul style="list-style-type: none"> Pick-up, remove and dispose of human waste visible on or along the trail.
2. The trail and trailside are free of litter.	<p>Remove litter (including dog waste) along the trail at an appropriate frequency to minimize accumulation.</p> <p>To meet this standard, cleaning frequency can be as seldom as once a year or as often as daily.</p>	Trail Operations	<ul style="list-style-type: none"> Pick-up, remove and dispose of litter visible on or along the trail. Pick-up, remove and dispose of dog waste visible on or along the trail corridor.
3. The trail and trailside are free of graffiti.	<p>Graffiti is intentional human-caused markings applied to constructed or natural features. Graffiti typically contains words and/or symbols that are offensive and intrusive to most visitors. At a minimum, the very existence of graffiti markings on constructed features and /or natural features is offensive and intrusive to trail visitors, even if the message per se is not offensive.</p> <p>Remove graffiti visible from the trail in a timely manner given the relative offensiveness (size, content) of the graffiti message or symbols, and the potential for repeat occurrences if not removed promptly.</p> <p>To meet this standard, graffiti removal occurs as soon as workers can be mobilized and dispatched to the trail. This response is typically within 48 hours from discovery or notification; remote trails may necessitate a longer response time.</p>	Trail Operations/ Trail Maintenance	<ul style="list-style-type: none"> Remove graffiti from constructed features using appropriate, cost-effective and environmentally acceptable techniques. Methods can include sandblasting and the application of cleaning compounds. Remove graffiti from natural features using appropriate, cost-effective and environmentally acceptable techniques. Methods can include sandblasting, the application of cleaning compounds, or the application of masking materials such as paints that blend in with natural colors.

Trail Key Measure: RESOURCE SETTING

- Trail development is consistent with ROS objectives and FLMP prescription.
- Adjacent resources are maintained or enhanced
- Scenery management is consistent with trail objectives.
- Density of users is appropriate.

STANDARD	CLARIFIERS	“CREW” TYPE	TASKS
1. *Effects from trail use do not conflict with environmental laws (such as ESA, NHPA, Clean Water, TES, etc.)	<p><u>Initiate Analysis.</u> As often as necessary, based on local situations and the potential for conflict, the trail manager visits the trail and assesses trail use impacts. If recreational use of a trail conflicts with specific environmental law, the trail manager identifies the need for appropriate specialist analysis and then participates as needed in the determination of mitigation.</p> <p>An example of appropriate specialist analysis is a wildlife biologist visiting the trail to determine if bald eagles are nesting and being unacceptably disturbed by the presence of trail users.</p> <p><u>Mitigate.</u> Mitigation that includes operations tasks, e.g. trail closure, warning signs, patrols, etc is costed under this standard.</p> <p>Mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is costed in the appropriate COF standard.</p> <p>Res. Setting #1 = Identify AM, DM or CI work Annual Maintenance = CofF #1 Deferred Maintenance = CofF#2 Capital Improvement = CofF#3</p>	<p>Trail Manager</p> <p>Trail Maintenance</p> <p>Trail Operations</p> <p>Trail Operations</p>	<p><u>Initiate Analysis</u></p> <ul style="list-style-type: none"> • Identify need for appropriate specialist analysis. • Participate as needed in the determination of mitigation choices/options. (Identify conflict/problem and tasks to resolve conflict/problem. • If mitigation includes ground-disturbing activities (i.e., maintenance) identify environmental analysis costs under appropriate COF standard.) <p><u>Mitigate</u></p> <ul style="list-style-type: none"> • Physically close the trail with barrier, fences or signs. • Post warning or detour signs. • Patrol the trail to ensure users do not use protected areas.
2. Resource management adjacent to and along the trail corridor is consistent with Recreation Opportunity Spectrum (ROS) objectives and desired	<p>As often as necessary, based on local situations and the potential for conflict, the trail manager reviews land management proposals and determines if the proposal is consistent with the Forest Plan prescription direction for that trail.</p> <ul style="list-style-type: none"> • For proposals that would result in unacceptable visual or physical degradation to the trail and/or the trail experience, the trail manager identifies the need for appropriate specialist analysis and then participates as needed in the determination of 	Trail Manager	<ul style="list-style-type: none"> • Review land management proposals and determine if the proposal is consistent with the Forest Plan prescription direction for that trail.

conditions of the adjacent management area(s).	recommendations for proposal modification and/or mitigation.		
3. Trail opportunities, trail development, and trail management are consistent with Recreation Management System (ROS, SMS, BBM) objectives and the Forest Land Management Plan.	<p>To meet this standard, the trail manager ensures the trail is managed per the Forest Plan prescription. This includes ensuring that:</p> <ul style="list-style-type: none"> • Trail location, design and management are consistent with ROS and SMS objectives for the area; • The trail is managed per assigned Trail Class; and that • Designed Use and Managed Uses are implemented and managed per prescription; 	Trail Manager	<p>Ensure that the Forest Plan trail prescription is met, including:</p> <ul style="list-style-type: none"> • Ensure the trail is located, designed and managed consistently with ROS and SMS objectives for the area; • Ensure the trail is constructed, maintained and managed per the assigned Trails Class; • Ensure that the Trail's Designed Use and Managed Uses prescriptions are met. • Establish trail capacities, if needed
4. The trail, use of the trail, and trail maintenance methods do not cause unacceptable damage to other resources.	<p><u>Initiate Analysis</u>. As often as necessary, based on local situations and the potential for negative impacts, the trail manager assesses trailside resources for damage as a result of poorly maintained, poorly located or poorly designed trails and trail structures. The trail manager identifies the need for appropriate specialist analysis, if any, and then participates as needed in the determination of mitigation.</p> <p><u>Mitigate</u> Mitigation includes correcting or preventing loss of vegetation and erosion caused by the trail, use of the trail, and maintenance methods on the trail.</p> <p>To meet this standard, mitigation is limited to operations activities, e.g. stream-bank stabilization, tree/shrub/grass planting, temporary/disposable fencing, warning signs, enforcement patrols, etc.</p> <p>Mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is costed in the appropriate COF standard.</p>	Trail Manager	<p><u>Initiate Analysis</u></p> <ul style="list-style-type: none"> • Assess trailside resources for damage as a result of poorly maintained, poorly located or poorly designed trails and trail structures. • Identify the need for any appropriate specialist analysis. • Participate as needed in the determination of mitigation. <p><u>Mitigate</u></p> <ul style="list-style-type: none"> • Stabilize stream banks. • Plant Trees/grass/shrubs. • Install fencing. • Post warning, closure, or detour signs. • Install traffic control

			devices (Non-constructed features)
5. Trail use does not exceed established trail capacity.	<p>This standard only applies to trails with established capacities per unit management decisions.</p> <p><u>Monitor.</u> Monitor use levels.</p> <p><u>Mitigate.</u> Mitigate use impacts when use levels exceed capacities.</p> <p>To meet this standard, mitigation is limited to operations activities such as patrolling the trail as needed to protect the trail features, adjacent resources, and visitor experience, and monitoring the effectiveness of physical barriers, signs, and traffic control devices.</p> <p>Mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is costed in the appropriate COF standard.</p> <p><u>Administer Permits/Passes.</u> For those trails which require a permit/pass system to control and/or manage use to capacity or acceptable use type, meeting this standard includes implementing and managing that system (e.g. selling or issuing permits/passes, keeping records, establishing and managing reservations systems, etc.). Meeting this standard DOES NOT include administration of Special Use Permits – that cost is captured in the RSUP component.</p>	<p>Trail Operations</p> <p>Trail Operations</p> <p>Trail Manager</p>	<p><u>Monitor</u></p> <ul style="list-style-type: none"> • Install traffic counters. • Contact/observe trail users. • Track/record/analyze use counts. <p><u>Mitigate</u></p> <ul style="list-style-type: none"> • Post warning, closure, or detour signs. • Enforce capacity regulations. • Install traffic control devices (non-constructed features). • Monitor effectiveness of traffic control devices <p><u>Administer Permits/Passes</u></p> <ul style="list-style-type: none"> • Sell/issue passes. • Maintain records or accounts. • Develop and manage reservation systems.

Trail Key Measure: SAFETY AND SECURITY

- Safe environment for users and employees.
- Uniformed Forest Service personnel are present.
- Abusive and nonconforming activities are controlled
- Risk of crime is eliminated

STANDARD	CLARIFIERS	“CREW” TYPE	TASKS
1. *Hazards do not exist on or along the trail.	<p>Hazards are conditions not meeting the trail prescription that adversely affect user safety.</p> <p>Hazardous conditions are corrected per the trail prescription. (“Hazardous” varies based on the trail ROS classification and the trail prescription).</p> <p>Hazardous trail conditions (caused either by</p>	<p>Trail Manager</p> <p>Trail Maintenance</p>	<ul style="list-style-type: none"> • Conduct prescribed safety inspections. • Identify mitigation tasks • Fence off sloughs. • Close/fence off hazardous

	<p>humans or natural occurrences) that develop during the managed use season are mitigated or the affected section of trail is closed.</p> <p><u>Mitigate</u> Mitigation includes operations activities such as posing warning signs, increasing patrols or closing the trail is included under this standard.</p> <p>Mitigation that includes maintenance, repair, replacement, decommissioning, alteration, expansion or construction of any constructed feature is costed in the appropriate COF standard.</p>	Trail Operations	<p>structures.</p> <ul style="list-style-type: none"> • Sign/post trail closures.
2. Enforce laws, regulations and special orders.	<p>Enforce 36 CFR 261 regulations enforceable by Forest Protection Officers (LE Level II) as needed to protect government facilities from damage and to ensure visitors are not exposed to prohibited activities.</p> <p>Mitigate, as appropriate, activities prohibited under the 36 CFR261 sections pertinent to use of Forest Development Trails. As discretion warrants, counsel or advise users engaged in prohibited activities on the effects and impacts of their actions.</p> <p>Respond to complaints of non-conforming trail use. Typically this includes follow-up or response by the FPO or trail manager, depending on the scope and urgency of the situation.</p> <p>Patrol frequency can be as seldom as once a year and typically not more than once daily.</p>	Trail Operations	<ul style="list-style-type: none"> • Enforce regulations upon contact with users engaged in prohibited activities. • Respond to complaints from third parties. • As discretion warrants, counsel or advise users engaged in prohibited activities on the effects and impacts of their actions.

Trail Key Measure: RESPONSIVENESS

- Experience meets visitor expectations, needs and preferences.
- Information and interpretive services are available.
- Appropriate amenities are available
- “Good Host “ approach is implemented and apparent

STANDARD	CLARIFIERS	“CREW” TYPE	TASKS
1. *When signed as accessible, trails meet current accessibility guidelines.	<p>If trails signed as accessible do not, in fact, meet accessibility direction or if accessibility conditions are altered, remove or correct accessibility signs or schedule accessibility signs for removal.</p> <p>[Meeting this standard does not include the repair and/or replacement of improper or inadequate accessibility signs (See Condition of Facilities).]</p>	Trail Operations	<ul style="list-style-type: none"> • Check accessible trail features and accessibility signing at appropriate frequencies to ensure accessibility signing is accurate and meets current agency guidelines. • If features signed as accessible do not meet

Exhibit 2

			accessibility guidelines, remove or correct inaccurate signs, or schedule signs for removal, upon discovery.
2. Information is posted in a user-friendly and professional manner.	Allowable trail uses, restrictions and other important information such as access, are posted along the trail or at the trailhead.	Trail Operations	<ul style="list-style-type: none"> Post applicable trail use and trail management information in appropriate locations at the termini or along the trail.
3. Visitors are provided opportunities to communicate expectations and satisfaction.	<p>Establish efficient and cost-effective systems to provide visitors a means to communicate needs and expectations at appropriate levels and frequencies, by trail or trail network.</p> <p>Systems can include:</p> <ul style="list-style-type: none"> Trail rangers provide customer comments cards along the trail as part of regular patrol. Comment cards and receptacles are provided at selected trailheads and other contact points as deemed appropriate by the trail manager. 	Trail Operations	<ul style="list-style-type: none"> Distribute visitor comment cards as the opportunity arises. Provide distribution and collection information to users. Provide comment card receptacles at trailheads and other contact points.
<p><u>Trail Key Measure: CONDITION OF FACILITIES</u></p> <ul style="list-style-type: none"> Trail facilities look good. Trail facilities are in good repair Trail facilities are appropriate Trail facilities function 			
STANDARD	CLARIFIERS	"CREW" TYPE	TASKS
1. The trail and its structures are serviceable and in good repair throughout the designed service life.	<p><u>Annual Maintenance.</u> Work performed to maintain serviceability, or repair failures during the year in which they occur. Includes preventive and/or cyclic maintenance performed in the year in which it is scheduled to occur. Includes periodic condition assessment surveys by qualified personnel as required by agency protocol. Unscheduled or catastrophic failures of components or assets may need to be repaired as a part of annual maintenance.</p>	Trail Maintenance	<ul style="list-style-type: none"> Inspect trail bridges and other trail structures with high-hazard potential. Conduct condition survey assessments per agency protocols. Perform annual or cyclic work to restore damaged, broken, or worn-out fixed

	<p><u>Repair.</u> Work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. <u>Repairs may be done as annual maintenance or deferred maintenance activities.</u></p> <p><u>Preventive Maintenance.</u> Scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the fixed asset. Inspections are a critical part of preventive maintenance as they provide the information for scheduling maintenance and evaluating its effectiveness.</p> <p><u>Cyclic Maintenance.</u> Preventive maintenance activities that recur on a periodic and scheduled cycle. Typical cyclic maintenance includes refinishing sign, etc.</p>		<p>asset, component, or item of equipment to normal operating condition</p> <ul style="list-style-type: none"> • Perform scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the fixed asset. • As appropriate, analyze environmental impacts of ground-disturbing activities.
<p>2. Trails in disrepair due to lack of scheduled maintenance, or in non-compliance with safety codes (e.g. life safety, OSHA, environmental, etc.) or other regulatory requirements (ABA/ADA, etc.), or beyond the designed service life, are <u>repaired</u>, <u>rehabilitated</u>, <u>replaced</u>, or <u>decommissioned</u>.</p>	<p><u>Deferred Maintenance.</u> Maintenance that was not performed when it should have been or when it was scheduled and which, therefore, was put off or delayed for a future period. When allowed to accumulate without limits or consideration of useful life, deferred maintenance leads to deterioration of performance, increased costs to repair, and decrease in asset value.</p> <p>Code compliance (e.g. life safety, ABA/ADA, OSHA, environmental, etc.), Forest Plan Direction, Best Management Practices, Biological Evaluations, other regulatory or Executive Order compliance requirements, or applicable standards not met on schedule are considered deferred maintenance.</p> <p><u>Repair.</u> Work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. Repairs may be done as annual maintenance or deferred maintenance activities.</p> <p><u>Rehabilitation.</u> Renovation or restoration of an existing fixed asset or any of its components in order to restore the functionality or life of the asset.</p> <p><u>Replacement.</u> Substitution or exchange of an existing fixed asset or component with one having essentially the same capacity and purpose. Replacement eliminates deferred maintenance needs for the replaced fixed asset or component. The decision to replace a fixed asset or component is usually reached when</p>	Trail Maintenance	<ul style="list-style-type: none"> • Perform work to restore a damaged, broken, or worn-out fixed asset, component, or item of equipment to normal operating condition. • Renovate or restore existing fixed asset or any of its components in order to restore the functionality or life of the asset. • Substitute or exchange existing fixed asset or component with one having essentially the same capacity and purpose. • Demolish, dismantle, remove, obliterate and/or dispose deteriorated or otherwise unneeded asset or component, including necessary cleanup work. • As appropriate, analyze environmental impacts of ground-disturbing activities • Conduct, per agency protocols, condition survey assessments that have been deferred

	<p>replacement, rather than repair or rehabilitation, is more cost effective, more environmentally sound, or in the best interest of the government. Replacement of an asset or component usually occurs when it nears has or exceeded its useful life.</p> <p><u>Decommission.</u> Demolition, dismantling, removal, obliteration and/or disposal of a deteriorated or otherwise unneeded asset or component, including necessary cleanup work. This action eliminates the deferred maintenance needs for the fixed asset.</p>		<ul style="list-style-type: none"> • Survey features to obtain detailed information required for subsequent design. • Design features requiring repair, rehab or replacement. • Prepare, administer and inspect deferred maintenance contracts
<p>3. <u>New</u>, <u>altered</u>, or <u>expanded</u> trails meet Forest Service design standards and are consistent with Forest Plan prescriptions.</p>	<p><u>Capital Improvement.</u> The construction, installation, or assembly of a new fixed asset, or the significant alteration, expansion, or extension of an existing fixed asset to accommodate a change of purpose.</p> <p><u>New Construction.</u> The erection, construction, installation, or assembly of a new fixed asset.</p> <p><u>Alteration.</u> Work to change the function of an existing fixed asset. The capacity or size of the fixed asset is not significantly changed. Deferred maintenance of the original fixed asset may be reduced or eliminated by an alteration.</p> <p><u>Expansion.</u> Increasing the capacity or size of an existing fixed asset to serve needs different from, or significantly greater than, those originally intended.</p>	Trail Maintenance	<ul style="list-style-type: none"> • Erect, construct, install, or assemble a new fixed asset. • Perform work to change the function of an existing fixed asset. The capacity or size of the fixed asset is not significantly changed. • Increase the capacity or size of an existing fixed asset to serve needs different from, or significantly greater than, those originally intended. • As appropriate, analyze environmental impacts of ground-disturbing activities in existing developed sites or on existing system trails • Survey features to obtain detailed information required for subsequent design. • Design features to be altered, expanded or constructed in existing developed sites or on existing system trails. • Prepare, administer and inspect contracts for feature alteration, expansion, or new construction in existing developed sites or on existing system trails.

Meaningful Measures for Quality Recreation Management

INTERPRETIVE SERVICES

National Quality Standards
(w/Clarifiers & Tasks)

April 22, 2002

National quality standards define the corporate level of quality the Forest Service expects to provide the public at full service (Forest Plan) levels. These standards form the baseline for estimating the total cost of providing the quality opportunities visitors and customers desire.

Recreation program components with National Quality Standards include: Developed Sites, Trails, General Forest Areas, Interpretive Services and Recreation Special Use Permit Administration. National Quality Standards for these components have been established for the Key Measures: Health and Cleanliness, Safety and Security, Condition of Facilities, Responsiveness, Resource Setting, Permit Administration & Monitoring, Interpretive Product Development & Revision, Interpretive Product Delivery, and Exhibit & Audio-Visual Systems Condition.

Interpretive Services (IS) contributes to the agency's mission by forging intellectual and emotional connections between people and their natural and cultural heritage. This component provides National Forest customers with interpretive products (media and presentations) that increase their understanding and appreciation of natural and cultural resource processes and land management issues. This is done to enhance their recreational experience and foster their commitment to wise use, conservation, and informed participation in public land management.

This document clearly defines the scope and work associated with developing, delivering, maintaining, and managing the Interpretive Services Program. Interpretive Services provides the Forest Service the capability and expertise to interpret to recreationists national forest programs, features, and resources. The Interpretive Services component does not address the agency's Natural Resource Conservation Education (NRCE) Program as it is not part of the overall Recreation program. However, many standards identified here could be applicable to NRCE. Also, while interpretive staff may have additional assignments in other areas such as Public Affairs, NRCE, Tourism, etc., that work is not included in the Interpretive Services Component.

The standards under this component are applied to all interpretive media, presentations, activities, and efforts provided at visitor centers, developed sites, and trails, as well as through Heritage, Wilderness, Naturewatch, and other programs. These standards are applicable to both annual operation and maintenance of interpretive program delivery as well as to new project planning.

Providing the public with quality Interpretive Services relies strongly on both program management tasks and field tasks. Recreation Program Management (RPM) tasks include planning, training, and administering contributed labor agreements. Field tasks include the development, delivery, and maintenance of a range of interpretive products.

**Interpretive Services Key Measure:
INTERPRETIVE PRODUCT DEVELOPMENT & REVISION**

STANDARD	CLARIFIER		TASKS
1. Interpretive presentations and media proposals meet unit IS plan direction and FSM guidelines (1600, 2390)			<ul style="list-style-type: none"> • Gather background resources required to define the product • Review IS plan, FSM and project-related documents and confirm product compliance
2. Interpretive presentations and media meet industry and professional guidelines for quality and appropriateness. [Professional guidelines include: US Army Corps of Engineers Interpretive Graphics Standard (for interpretive signs); USDA/FS exhibit design standards; and others]	Review professional guidelines pertinent to the specific product being developed Professional Guidelines establish that products: <ul style="list-style-type: none"> • Convey clear messages • Are organized around explicitly defined themes • Relate to site-specific resources and management issues • Are in character with the Forest environment and recreational setting • Exemplify concern for the ecosystem and energy conservation principles as possible • Convey management goals and support the agencies mission • Are accurate and based on current scholarship and research data 		<ul style="list-style-type: none"> • Review professional guidelines • Research literature • Conduct strategy & consultation meetings with specialists and line officers • Create interpretive presentations and media <ul style="list-style-type: none"> --Develop project outline, schedule, etc. --Conduct site visit --Develop conceptual design, outline, storyboard --Review conceptual design, outline, storyboard --Develop drafts of scripts, texts, thumbnail sketches, layouts, etc. --Review drafts of scripts, texts, thumbnail sketches, layouts, etc. --Complete final storyboards, scripts, designs, and layouts <p>“Development” ends when the product is ready for fabrication/printing/launch [i.e., completed final storyboards, scripts, designs, and layouts] (NOTE: For exhibits, fabrication is included in the CONDITION KM; for all other products, fabrication/printing/launch is included in the DELIVERY KM)</p>

<p>3. Messages are current and relevant</p>	<p>The message/content/relevance is reviewed per agency requirements to determine currency.</p> <p>(NOTE: For Exhibits and AV systems: The category “deferred maintenance” will be employed to update messages that are no longer relevant – the exhibit or AV system may be good, but the message is worn out, needs to be updated, etc; necessitates a “message condition assessment survey” to determine the relevance of the message.)</p> <p>Review professional guidelines pertinent to the specific product being developed Professional Guidelines establish that products:</p> <ul style="list-style-type: none"> • Convey clear messages • Are organized around explicitly defined themes • Relate to site-specific resources and management issues • Are in character with the Forest environment and recreational setting • Exemplify concern for the ecosystem and energy conservation principles • Convey management goals and support the agencies mission • Are accurate and based on current scholarship and research data 	<ul style="list-style-type: none"> • Conduct relevance assessment per agency requirements (need to develop). Assessment involves several considerations: <ul style="list-style-type: none"> --Visitor satisfaction --IS Plan direction, updates, revisions --Changed resource conditions --Changes in management --Changes in technology --Evolving science <p>Is it relevant/current: YES? NO?</p> <p>If YES, then you're fine.</p> <p>If NO, follow development steps in Std #2:</p> <ul style="list-style-type: none"> • Research literature • Conduct strategy & consultation meetings with specialists and line officers • Review recent initiatives, special emphasis programs, etc • Create interpretive presentations and media <ul style="list-style-type: none"> --Develop project outline, schedule, etc. --Conduct site visit --Develop conceptual design, outline, storyboard --Review conceptual design, outline, storyboard --Develop drafts of scripts, texts, thumbnail sketches, layouts, etc. --Review drafts of scripts, texts, thumbnail sketches, layouts, etc. --Complete final storyboards, scripts, designs, and layouts
<p>4. Interpretive presentations, publications, displays, web sites and visual aids are accessible</p>	<p><u>“Accessible”</u></p> <p>Meets the requirements of the Rehabilitation Act Sec 504 & 508, accommodates a variety of learning styles, and/or meets the needs of those from other cultures, (i.e. non-English speaking visitors), or children, as identified in the unit IS plan.</p> <p>Develop at least one alternative format in addition to basic presentation approach.</p>	<ul style="list-style-type: none"> • Construct Web sites that allows text readers (audio), captioning, color formatting, etc. to operate (reference Rehab Act, section 508) • Design/develop large print publications • Design/develop audio tape of displays • Design/develop tactile objects

**Interpretive Services Key Measure:
INTERPRETIVE PRODUCT DELIVERY**

STANDARD	CLARIFIER		TASKS
1. Visitors are provided an opportunity to communicate satisfaction (needs, expectations).	<p>Establish efficient and cost-effective systems to provide visitors a means to communicate needs and expectations at appropriate levels and frequencies.</p> <p>Provide visitors an opportunity for communicating satisfaction before and/or after each presentation</p> <p><u>Systems can include:</u></p> <ul style="list-style-type: none"> • Field personnel who provide customer comments cards as part of regular patrol • Comment cards and receptacles that are provided at selected contact points as deemed appropriate by the recreation manager • Publics providing verbal comments as a part of the Recreation Use Monitoring project (do we want this??) 		<ul style="list-style-type: none"> • Distribute visitor comment cards as the opportunity arises • Provide distribution and collection information to users • Provide comment card receptacles at contact points
2. Interpretive presentations, publications, displays, web sites and visual aids are accessible	<p><u>“Accessible”</u> Meets the requirements of the Rehabilitation Act Sec 504 & 508, accommodates a variety of learning styles, and/or meets the needs of those from other cultures, (i.e. non-English speaking visitors), or children, as identified in the unit IS plan.</p> <p>Deliver at least one alternative format in addition to basic presentation approach.</p>		<ul style="list-style-type: none"> • Provide Audio aids (audio descriptions, signers, assistive listening devices) • Distribute large print publications • Distribute audio tapes of displays • Display tactile objects

<p>3. Present the message per the unit IS plan</p>	<p><u>Presentation</u></p> <ul style="list-style-type: none"> --Interpretive Talks <ul style="list-style-type: none"> Campfire Program Seminars --Guided Walks <ul style="list-style-type: none"> Tours (building, cave, boat) Nature Walk --Demonstrations <ul style="list-style-type: none"> Living History Theatrical Performances Re-enactments Concert Play/skit --Roving contacts <p><u>Media Types</u></p> <ul style="list-style-type: none"> --Publications <ul style="list-style-type: none"> Print (brochures, books, pamphlets, posters) Electronic --Displays (does not entail formal construction) --Visual Aids <ul style="list-style-type: none"> Tactile Objects Program Props "Discovery Kits" Presentation Software (PowerPoint) Slides Videos (purchased from commercial source) --Exhibits <ul style="list-style-type: none"> Dioramas Interpretive Signs Films/Videos (produced by FS) Audio programs 	<p><u>Presentation Preparation and Delivery</u></p> <ul style="list-style-type: none"> • Gather and assemble props, visual aids, costumes, AV equipment, etc. • Conduct presentation • Power up, power-down, set-up/take-down, presentation clean up <p>(NOTE: Litter removal is task attributed to the DEVELOPED SITES Component)</p> <p><u>Publication, Display and Visual Aid Fabrication & Delivery</u></p> <ul style="list-style-type: none"> • Print publications • Inspect print runs • Distribute (sell, hand out, restock) publications • Select program images, slides, artifacts, props, etc. • Create graphics, sew costumes, build props, etc. • Assemble programs and displays • Host web sites <p>(NOTE: some media supports the delivery of presentations; some media is an end product)</p> <p><u>Exhibits & Audio-visual System Operation</u></p> <ul style="list-style-type: none"> • Operate Exhibits [Power up, power-down] • Operate audio-visual systems (i.e., show movies, show slide-shows) • Clean exhibits and audio-visual equipment (Clean = Dust, wipe)
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Interpretive Services Key Measure:
EXHIBIT & AUDIO-VISUAL SYSTEM CONDITION

STANDARD	CLARIFIER	TASKS
<p>1. Exhibits and audio-visual systems are serviceable and in good repair throughout the designed service life</p>	<p><u>ANNUAL MAINTENANCE.</u> Work performed to maintain serviceability, or repair failures during the year in which they occur. Includes preventive and/or cyclic maintenance performed in the year in which it is scheduled to occur. Includes periodic condition assessment surveys by qualified personnel as required by agency</p>	<p><u>Maintain audio-visual Equipment/Hardware and Exhibits</u></p> <ul style="list-style-type: none"> • Conduct condition survey assessments per agency protocols. • Perform annual or cyclic work to restore damaged, broken, or worn-out exhibit and audio-visual systems, component, or item of equipment to normal operating

	<p>protocol. Unscheduled or catastrophic failures of exhibits or Audio-Visual systems may need to be repaired as a part of annual maintenance.</p> <p><u>Repair.</u> Work to restore a damaged, broken, or worn-out exhibit or audio-visual systems, to normal operating condition. <u>Repairs may be done as annual maintenance</u> or deferred maintenance activities.</p> <p><u>Preventive Maintenance.</u> Scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the exhibit or audio-visual system. Inspections are a critical part of preventive maintenance as they provide the information for scheduling maintenance and evaluating its effectiveness.</p> <p><u>Cyclic Maintenance.</u> Preventive maintenance activities that recur on a periodic and scheduled cycle. Typical cyclic maintenance includes refinishing sign, etc.</p>	<p>condition</p> <ul style="list-style-type: none"> • Perform scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements, and help achieve the expected life of the exhibit and audio-visual systems.
<p>2. Exhibits and Audio-visual systems in disrepair due to lack of scheduled maintenance, or in non-compliance with safety codes (e.g. life safety, OSHA, environmental, etc.) or other regulatory requirements (Rehab Act of 1973, etc.), or beyond the designed service life, are <u>repaired</u>, <u>rehabilitated</u>,</p>	<p><u>DEFERRED MAINTENANCE.</u> Maintenance that was not performed when it should have been or when it was scheduled and which, therefore, was put off or delayed for a future period. When allowed to accumulate without limits or consideration of useful life, deferred maintenance leads to deterioration of performance, increased costs to repair, and decrease in value.</p> <p>Code compliance (e.g. life safety, Rehabilitation Act of 1973, as amended in 1978), OSHA, environmental, etc.), Forest Plan Direction, other regulatory or Executive Order compliance requirements, or applicable standards not met on schedule are considered deferred maintenance.</p>	<p><u>Fabricate/Repair Exhibits and Repair/Replace audio-visual Systems</u> (Replacement/Rehabilitation)</p> <p><u>Movie Fabrication</u></p> <ul style="list-style-type: none"> • Shoot footage • Shoot interviews • Rough Cut • Review rough cut • Final cut • Musical score • Sound effects, audio sweetening • Captioning • Final masters <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Installation, Material, Shipping, etc. costs associated with replacing/repairing exhibits and AV equipment is being developed as a part of the current Rates strategy tasking occurring as a part of the migration of cost data to infra for Developed Sites, Trails and GFA Components. IS will use the same rates strategy for IS interpretive “features” (exhibits & AV systems)</p> </div>

<p><u>replaced, or decommissioned.</u></p>	<p><u>Repair.</u> Work to restore a damaged, broken, or worn-out exhibit or audio-visual system to normal operating condition. Repairs may be done as annual maintenance or deferred maintenance activities.</p> <p><u>Rehabilitation.</u> Renovation or restoration of an existing exhibit or audio-visual system in order to restore its functionality or life.</p> <p><u>Replacement.</u> Substitution or exchange of an existing exhibit or audio-visual system with one audio-visualizing essentially the same capacity and purpose. Replacement eliminates deferred maintenance needs for the replaced exhibit and audio-visual systems or component. The decision to replace a exhibit or audio-visual system is usually reached when replacement, rather than repair or rehabilitation, is more cost effective, more environmentally sound, or in the best interest of the government. Replacement of an exhibit or audio-visual system usually occurs when it nears has or exceeded its useful life.</p> <p><u>Decommission.</u> Demolition, dismantling, removal, obliteration and/or disposal of a deteriorated or otherwise unneeded exhibit or audio-visual system, including necessary cleanup work. This action eliminates the deferred maintenance needs for the exhibit or audio-visual system.</p>	<p><u>Exhibit Fabrication</u></p> <ul style="list-style-type: none"> • Construct • Inspect • Modify • Ship • Install <p><u>Audio-visual Systems</u></p> <p>Install (replace) Repair</p> <ul style="list-style-type: none"> • Conduct, per agency protocols, condition survey assessments that have been deferred. • Perform work to restore a damaged, broken, or worn-out exhibit and audio-visual systems, component, or item of equipment to normal operating condition. • Renovate or restore existing exhibits and audio-visual systems in order to restore its functionality or life. • Substitute or exchange existing exhibit and audio-visual systems with exhibits or systems essentially having the same capacity and purpose. • Demolish, dismantle, remove, obliterate and/or dispose deteriorated or otherwise unneeded exhibits or audio-visual systems, including necessary cleanup work.
<p>3. <u>New, altered, or expanded</u> exhibits and audio-visual systems are accessible, meet FSM direction, and are consistent with an approved unit Interpretive Services plan.</p>	<p><u>CAPITAL IMPROVEMENT.</u> The construction, installation, or assembly of a new exhibit or audio-visual system, or the significant alteration, expansion, or extension of an existing exhibit or audio-visual system to accommodate a change of purpose.</p> <p><u>New Construction.</u> The erection, construction, installation, or assembly of a new</p>	<p><u>Fabricate Exhibits and Add new Audio-Visual Equipment</u></p> <p><u>Movie Fabrication</u></p> <ul style="list-style-type: none"> • Shoot footage • Shoot interviews • Rough Cut • Review rough cut • Final cut • Musical score • Sound effects, audio sweetening • Captioning

	<p>exhibit or audio-visual system.</p> <p><u>Alteration.</u> Work to change the function of an exhibit or audio-visual system. The capacity or size of the exhibit or audio-visual system is not significantly changed. Deferred maintenance of the original exhibit or audio-visual system may be reduced or eliminated by an alteration.</p> <p><u>Expansion.</u> Increasing the capacity or size of an exhibit or audio-visual system to serve needs different from, or significantly greater than, those originally intended.</p> <p>[NOTE: Contract prep and admin costs associated with installation of audio-visual systems and fabrication and installation of exhibits at existing Interpretive Sites are included here in the EXHIBIT & AUDIO-VISUAL SYSTEM CONDITION Key Measure.</p> <p>Contract prep and admin for the design and development of exhibits or design and development of audio-visual systems is included in the RECREATION PROGRAM MANAGEMENT Component.</p> <p>If the Interpretive Site where the exhibit or audio-visual system is to be fabricated or installed does not currently exist, contract prep and admin costs are attributed to RECREATION PROGRAM MANAGEMENT.]</p>	<ul style="list-style-type: none"> • Final masters <p><u>Exhibit Fabrication</u></p> <ul style="list-style-type: none"> • Construct • Inspect • Modify • Ship • Install <p><u>Audio-visual Systems</u></p> <p>Install (replace) Repair</p> <div data-bbox="954 552 1513 762" style="border: 1px solid black; padding: 5px;"> <p>Installation, Material, Shipping, etc. costs associated with replacing/repairing exhibits and AV equipment is being developed as a part of the current Rates strategy tasking occurring as a part of the migration of cost data to infra for Developed Sites, Trails and GFA Components. IS will use the same rates strategy for IS interpretive “features” (exhibits & AV systems)</p> </div> <p>Erect, construct, install, or assemble a new exhibit or audio-visual system.</p> <ul style="list-style-type: none"> • Perform work to change the function of an existing exhibit or audio-visual system. The capacity or size of the exhibit or audio-visual system is not significantly changed. • Increase the capacity or size of an existing exhibit or audio-visual system to serve needs different from, or significantly greater than, those originally intended. • Prepare, administer and inspect contracts for exhibit fabrication and audio-visual system alteration, expansion, or new construction at interpretive sites.
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May 22, 2006

Forest Service Outdoor Recreation Accessibility Guidelines FSORAG

Contents

Executive Summary

Preamble:

*Background and development: Why these guidelines and why now?
A Section by Section Analysis detailing each portion of the FSORAG.*

FSORAG - Technical Provisions:

Contains the scoping requirements, definitions and technical specifications.

Appendix:

Forest Service Recreation Site Development Scale Definitions

*Architectural Barriers Act Accessibility Standards Citations Referenced in
FSORAG Provisions*

E A S E M E N T

The Grantor, the City of Tacoma, a municipal corporation, of the State of Washington, for and in consideration of the mutual benefits and conditions hereinafter set forth, hereby grants unto the United States of America, Department of Agriculture, Forest Service, hereinafter called "Grantee", an easement for highways, bridges, causeways, telephone lines, pipelines and utility facilities one hundred feet (100') in width with as much additional width as may be required for adequate cuts and fills over and across the following described land lying and being within the County of Mason, State of Washington:

S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 7, Township 23 North, Range 4 West, W.M.; S $\frac{1}{2}$ Section 12, S $\frac{1}{2}$ S $\frac{1}{2}$, Section 11, S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 10, E $\frac{1}{2}$ NE $\frac{1}{4}$, Section 9, Township 23 North, Range 5 West, W.M.

The center line of said easement traverses the above described premises according to following general courses and distances:

Beginning at a point on the east line of the SW $\frac{1}{4}$ of said Section 7 which is N 1° 18' E, 1389 feet from the S $\frac{1}{2}$ corner thereof, and running thence N 83° 03' W, 879.90 feet, thence on a 12° curve left, 317.10 feet to a point on the N line of S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 7, at which point the road enters the property of the party of the first part, thence continuing on a 12° curve left, 56.09 feet, thence S 52° 10' W, 112.71, thence on a 6° curve right, 1072.22 feet, thence N 63° 30' W, 246.98 feet to a point on the west line of Section 7, which point is S 8° 40' E, 1530 feet from the W $\frac{1}{2}$ Section corner of Section 7, thence N 63° 30' W, 114.56 feet, thence on a 4° curve left, 187.50 feet, thence N 71° 00' W, 179.50 feet, thence on a 8° curve left, 387.50 feet, thence S 78° 00' W, 5.96 feet, thence on a 7° curve right, 257.14 feet, thence N 84° 00' W, 155.97 feet, thence on a 18° curve left, 172.22 feet, thence S 65° 00' W, 147.83 feet, thence on a 15° curve right, 275.22 feet, thence N 73° 43' W, 120.07 feet, thence on a 6° curve left, 266.53 feet, thence N 89° 42 $\frac{1}{2}$ ' W, 446.10 feet, thence on a 6° curve left, 396.53 feet, thence S 66° 30' W, 106.15 feet, thence on a 12° curve right, 300.97 feet, thence N 77° 23' W, 155.55 feet, thence on a 3° curve left, 525.00 feet, thence S 86° 52' W, 134.35 feet, thence on a 10° curve right, 197.00 feet, thence N 73° 26' W, 116.07 feet, thence on a 8° curve left, 196.25 feet, thence N 89° 08' W, 112.21 feet, thence on a 2° curve right, 235.83 feet, thence N 84° 25' W, 116.38 feet, thence on a 10° curve left, 134.78 feet to a point on the W line of Section 12, which point is S 8° 41' E, 1312 feet from the W $\frac{1}{2}$ section corner of Section 12, thence continuing on a 10° curve left,

SW 7-23-04W
SW 12-23-5W
SW 11-23-5W
NW 10-23-5W
NE 9-23-5W
Sub-F
Grantee # 460
Towns etc.

IT-1-10-10
H-1-10-10

209.72 feet, thence S 61° 08' W, 1.52 feet, thence on a 25° curve right, 131.20 feet, thence N 86° 04' W, 1.72 feet, thence on a 18° curve left, 177.69 feet, thence S 61° 57' W, 86.98 feet, thence on a 10° curve right, 161.50 feet, thence S 78° 06' W, 120.39 feet, thence on a 10° curve left, 190.67 feet, thence S 59° 02' W, 495.59 feet, thence on a 28° curve right, 156.96 feet, thence N 77° 01' W, 0.83 feet, thence on a 28° curve left, 95.06 feet, thence S 76° 22' W, 3271.0 feet, thence on a 28° curve left, 92.20 feet, thence S 50° 33' W, 8.47 feet, thence on a 16° curve right, 157.29 feet, thence S 75° 43' W, 7.75 feet, thence on a 12° curve left, 271.11 feet, thence S 43° 11' W, 109.33 feet, thence on a 22° curve right, 256.06 feet, thence N 80° 29' W, 82.25 feet, thence on a 8° curve left, 207.92 feet, thence S 82° 53' W, 964.61 feet, thence on a 12° curve right, 257.36 feet, thence N 66° 14' W, 156.17 feet, thence on a 12° curve left, 192.64 feet, thence N 89° 21' W, 117.73 feet, thence on a 28° curve right, 226.79 feet, thence N 25° 51' W, 60.61 feet, thence on a 24° curve left, 162.36 feet, thence N 64° 49' W, 106.91 feet, to a point on the W line of Section 11, which point is S 8° 42' E, 2052 feet from the NW 1/4 section corner of Section 11, thence N 64° 49' W, 460.64 feet, thence on a 12° curve left, 160.83 feet, thence N 84° 07' W, 25.16 feet, thence on a 28° curve right, 107.56 feet, thence N 54° 00' W, 34.70 feet, thence on a 16° curve left, 143.54 feet, thence N 76° 58' W, 5.19 feet, thence on a 8° curve right, 175.83 feet, thence N 62° 54' W, 542.70 feet, thence on a 12° curve right, 83.47 feet, thence N 52° 53' W, 26.20 feet, thence on a 20° curve left, 134.58 feet, thence N 79° 48' W, 68.67 feet, thence on a 24° curve right, 198.96 feet, thence N 32° 03' W, 57.67 feet, thence on a 16° curve left, 138.75 feet, thence N 54° 15' W, 60.65 feet, thence on a 24° curve right, 215.14 feet, thence N 2° 37' W, 63.74 feet, thence on a 16° curve left, 371.87 feet, thence N 62° 07' W, 65.28 feet, thence on a 28° curve right, 103.63 feet, thence N 33° 06' W, 129.20 feet, thence on a 12° curve left, 115.14 feet, thence N 46° 55' W, 145.66 feet to a point on the north line of the SE 1/4 of Section 10, which point is S 89° 58' W, 2492 feet from the E 1/4 section corner of Section 10.

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Thence commencing at a point on the East line of the NW 1/4 of Section 10, which point is S 8° 42' E, 2475 feet from the N 1/4 section corner of Section 10, thence N 46° 55' W, 9.42 feet, thence on a 16° curve left, 131.88 feet, thence N 68° 01' W, 66.43 feet, thence on a 20° curve right 154.63 feet, thence N 37° 05 1/2' W, 169.15 feet, thence on a 12° curve left, 270.35 feet, thence N 69° 32' W, 80.51 feet, thence on a 28° curve right, 158.69 feet, thence N 25° 06' W, 396.12 feet, thence on a 16° curve left, 220.82 feet, to a point on the N line of the S 1/2 NW 1/4 Section 10, which point is S 8° 43' E, 1320 feet and East, 1686 feet from the N.W. corner of Section 10 at which point the centerline leaves the property of the party of the first part with the left right of way boundary traversing the property of the party of the first part, thence continuing 16° curve left, 300.64 feet, thence S 71° 28' W, 84.36 feet to a point on the N line of the S 1/2 NW 1/4 Section 10 which point is S 8° 43' E, 1320 feet and East 1316 feet from the NW corner of Section 10 at which point the centerline enters the property of the party of the first part, thence S 71° 28' W, 1320 feet to a point on the W line of Section 10, which point is N 8° 43' W, 897 feet from the W 1/4 Section corner of Section 10, thence S 71° 28' W, 40 feet, thence on a 8° curve right,

881.25 feet, thence N 38° W, 1246⁸ feet, to a point on the W line of the E $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, which point is S 8° 43' E, 436.7 feet from the NW corner E $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, Township 23 North, Range 5 West.

Together with reasonable rights of ingress, egress and regress to and from said lands for the purposes designated.

1. The rights, privileges and authorities herein granted are for full use and enjoyment by the Grantee for any and all purposes deemed necessary or desirable in connection with the control, management and administration of the Olympic National Forest or its resources thereof, and, insofar as compatible therewith, use by the general public. However, this agreement is not intended to allow the Grantee to develop or operate any concession or recreation area along or upon the property described herein.

2. The rights, privileges and authorities herein granted shall continue as long as used for the purposes granted, but if for a period of five years the Grantee shall cease to use the rights, privileges and authorities for the purposes granted, or shall abandon the use of the easement herein granted, then, in any such events, the Grantor may terminate this easement and all rights, privileges and authorities granted hereunder by written notice to the Grantee and the same shall revert to the holder of the fee title to the lands described herein.

3. The Grantor shall not be responsible for any damages other than that wilfully done to bridges, causeways or highways constructed by the Grantee upon the property described herein which may be caused by floods or by the operation of the Grantor's Lake Cushman reservoir for hydroelectric power purposes.

4. This easement is granted subject to all the terms and conditions of License No. 460 from the Federal Power Commission covering the Cushman Power Development.

Dated this 12th day of September, 1957.

Attest: [Signature]
City Clerk

Approved: [Signature]
Director of Utilities

Approved as to form & legality:
[Signature]
Chief Asst City Attorney

CITY OF TACOMA

By [Signature]
Mayor

UNITED STATES OF AMERICA
Department of Agriculture
Forest Service
By [Signature]

Acting Regional Forester

L.T.E. 4045

RESOLUTION NO. 15056

BY TOLLEFSON

WHEREAS the United States Forest Service has requested an easement for right of way 100 feet in width for a highway, telephone line, pipeline and utility facilities over and across certain property owned by the City at the upper end of Cushman Reservoir in order to open an area of Olympic National Forest for logging operations, and

WHEREAS the United States Forest Service plans to widen and improve their existing road on the North side of Cushman Reservoir in connection with the construction of a causeway at the upper end of Cushman Reservoir under the new easement, and

WHEREAS the construction of said causeway and bridge will aid the City in the control of debris at the upper end of Cushman Reservoir and open the same to better public access, and

WHEREAS the United States Forest Service is cooperating with the Light Division in connection with the proposed Cushman No. 3 power development and other activities; Now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City of Tacoma be and they are hereby authorized to grant an easement to the United States of America, Department of Agriculture, Forest Service; said easement to be in substantially the same form as the easement attached hereto and incorporated herein.

Adopted on Roll Call 7, 8, 57

Ayes 6 Nays 0 Absent 3

JOHN H. ANDERSON

Mayor

Attest: JOSEPHINE MELTON
City Clerk

Requested by Public Utility Board
by Resolution No. U-763

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EASEMENT

The Grantor, the City of Tacoma, a municipal corporation, of the State of Washington, for and in consideration of the mutual benefits and conditions hereinafter set forth, hereby grants unto the United States of America, Department of Agriculture, Forest Service, hereinafter called "Grantee", an easement for highways, bridges, causeways, telephone lines, pipelines and utility facilities one hundred feet (100') in width with as much additional width as may be required for adequate cuts and fills over and across the following described land lying and being within the County of Mason, State of Washington:

S 1/2 SW 1/4, Section 7, Township 23 North, Range 4 West, W.M.; S 1/2 Section 12, S 1/2 S 1/2, Section 11, S 1/2 SE 1/4, NW 1/4 SE 1/4 and S 1/2 NW 1/4, Section 10, E 1/2 NE 1/4, Section 9, Township 23 North, Range 5 West, W.M.

The center line of said easement traverses the above described premises according to following general courses and distances:

Beginning at a point on the east line of the SW 1/4 of said Section 7 which is N 1° 18' E, 1389 feet from the S 1/4 corner thereof, and running thence N 83° 03' W, 879.90 feet, thence on a 12° curve left, 317.10 feet to a point on the N line of S 1/2 SW 1/4 Section 7, at which point the road enters the property of the party of the first part, thence continuing on a 12° curve left, 56.09 feet, thence S 52° 10' W, 112.71, thence on a 6° curve right, 1072.22 feet, thence N 63° 30' W, 246.98 feet to a point on the west line of Section 7, which point is S 8° 40' E, 1530 feet from the W 1/4 Section corner of Section 7, thence N 63° 30' W, 114.56 feet, thence on a 4° curve left, 187.50 feet, thence N 71° 00' W, 179.50 feet, thence on a 8° curve left, 387.50 feet, thence S 78° 00' W, 5.96 feet, thence on a 7° curve right, 257.14 feet, thence N 84° 00' W, 155.97 feet, thence on a 18° curve left, 172.22 feet, thence S 65° 00' W, 147.83 feet, thence on a 15° curve right, 275.22 feet, thence N 73° 43' W, 120.07 feet, thence on a 6° curve left, 266.53 feet, thence N 89° 42 1/2' W, 446.10 feet, thence on a 6° curve left, 396.53 feet, thence S 66° 30' W,

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106.15 feet, thence on a 12° curve right, 300.97 feet,
 thence N77°23' W, 155.55 feet, thence on a 3° curve left,
 525.00 feet, thence S86°52' W, 134.35 feet, thence on a
 10° curve right, 197.00 feet, thence N73°26' W, 116.07
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 thence S78°06' W, 120.39 feet, thence on a 10° curve left,
 190.67 feet, thence S59°02' W, 495.59 feet, thence on a
 28° curve right, 156.96 feet, thence N77°01' W, 0.83 feet,
 thence on a 28° curve left, 95.06 feet, thence S76°22' W, 327.10
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 226.79 feet, thence N 25°51' W, 60.61 feet, thence on a 24°
 curve left, 162.36 feet, thence N64°49' W, 106.91 feet, to
 a point on the W line of Section 11, which point is S8°42'
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 thence on a 16° curve left, 143.54 feet, thence N76°58' W,
 5.19 feet, thence on a 8° curve right, 175.83 feet, thence
 N62°54' W, 542.70 feet, thence on a 12° curve right, 83.47
 feet, thence N52°53' W, 26.20 feet, thence on a 20° curve
 left, 134.58 feet, thence N79°48' W, 68.67 feet, thence on a
 24° curve right, 198.96 feet, thence N32°03' W, 57.67 feet,
 thence on a 16° curve left, 138.75 feet, thence N54°15' W,
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 N2°37' W, 63.74 feet, thence on a 16° curve left, 371.87 feet,
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 curve left, 115.14 feet, thence N46°55' W, 145.66 feet to a
 point on the north line of the SE 1/4 of Section 10, which point

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Thence commencing at a point on the East line of the NW 1/4 of Section 10, which point is S8°42' E, 2475 feet from the N 1/4 section corner of Section 10, thence N46°55' W, 9.42 feet, thence on a 16° curve left, 131.88 feet, thence N68°01' W, 66.43 feet, thence on a 20° curve right 154.63 feet, thence N37°05 1/2' W, 169.15 feet, thence on a 12° curve left, 270.35 feet, thence N69°32' W, 80.51 feet, thence on a 28° curve right, 158.69 feet, thence N25°06' W, 396.12 feet, thence on a 16° curve left, 220.82 feet, to a point on the N line of the S 1/2 NW 1/4 Section 10, which point is S8°43' E, 1320 feet and East, 1686 feet from the N.W. corner of Section 10 at which point the centerline leaves the property of the party of the first part with the left right of way boundary traversing the property of the party of the first part, thence continuing 16° curve left, 300.64 feet, thence S71°28' W, 84.36 feet to a point on the N line of the S 1/2 NW 1/4 Section 10 which point is S8°43' E, 1320 feet and East, 1316 feet from the NW corner of Section 10 at which point the centerline enters the property of the party of the first part, thence S71°28' W, 1320 feet to a point on the W line of Section 10, which point is N8°43' W, 897 feet from the W 1/4 Section corner of Section 10, thence S71°28' W, 40 feet, thence on a 8° curve right, 881.25 feet, thence N38° W, 1246.8 feet, to a point on the W line of the E 1/2 NE 1/4 Section 9, which point is S8°43' E, 436.7 feet from the NW corner E 1/2 NE 1/4 Section 9, Township 23 North, Range 5 West.

Together with reasonable rights of ingress, egress and regress to and from said lands for the purposes designated.

1. The rights, privileges and authorities herein granted are for full use and enjoyment by the Grantee for any and all purposes deemed necessary or desirable in connection with the control, management and administration of the Olympic National Forest or its resources thereof, and, insofar as compatible therewith, use by the general public. However, this agreement is not intended to allow the Grantee to develop or operate any concession or recreation area along or upon the property described herein.

L-7-40405

2. The rights, privileges and authorities herein granted shall continue as long as used for the purposes granted, but if for a period of five years the Grantee shall cease to use the rights, privileges and authorities for the purposes granted, or shall abandon the use of the easement herein granted, then, in any such events, the Grantor may terminate this easement and all rights, privileges and authorities granted hereunder by written notice to the Grantee and the same shall revert to the holder of the fee title to the lands described herein.

3. The Grantor shall not be responsible for any damages other than that wilfully done to bridges, causeways or highways constructed by the Grantee upon the property described herein which may be caused by floods or by the operation of the Grantor's Lake Cushman reservoir for hydroelectric power purposes.

4. This easement is granted subject to all the terms and conditions of License No. 460 from the Federal Power Commission covering the Cushman Power Development.

Dated this _____ day of _____, 1957.

CITY OF TACOMA

By _____
Mayor

Attest: _____
City Clerk

Approved:

Director of Utilities

UNITED STATES OF AMERICA
Department of Agriculture
Forest Service

Approved as to form and legality:

Assistant City Attorney

By _____

27-E-4040

SHELTON TITLE COMPANY

Exhibit 5

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EASEMENT

The Grantor, the City of Tacoma, a municipal corporation, of the State of Washington, for and in consideration of the mutual benefits and conditions hereinafter set forth, hereby grants unto the United States of America, Department of Agriculture, Forest Service, hereinafter called "Grantee", an easement for highways, bridges, causeways, telephone lines, pipelines and utility facilities one hundred feet (100') in width with as much additional width as may be required for adequate cuts and fills over and across the following described land lying and being within the County of Mason, State of Washington:

S ½ SW ¼, Section 7, Township 23 North, Range 4 West, W.M., S ½ Section 12, S ½ S ½, Section 11, S ½ SE ¼, NW ¼ SE ¼ and S ½ NW ¼, Section 10, E ½ NE ¼, Section 9, Township 23 North, Range 5 West, W.M.

The center line of said easement traverses the above described premises according to following general courses and distances:

Beginning at a point on the east line of the SW ¼ of said Section 7 which is N 1° 18' E, 1389 feet from the S ½ corner thereof, and running thence N 83° 03' W, 879.90 feet, thence on a 12° curve left, 317.10 feet to a point on the N line of S ½ SW ¼ Section 7, at which point the road enters the property of the party of the first part, thence continuing on a 12° curve left, 56.09 feet, thence S 52° 10' W, 112.71 feet, thence on a 6° curve right, 1072.22 feet, thence N 63° 30' W, 246.98 feet to a point on the west line of Section 7, which point is S 8° 40' E, 1530 feet from the W ¼ Section corner of Section 7, thence N 63° 30' W, 114.56 feet, thence on a 4° curve left, 187.50 feet, thence N 71° 00' W, 179.50 feet, thence on a 8° curve left, 387.50 feet, thence S 78° 00' W, 5.96 feet, thence on a 7° curve right, 257.14 feet, thence N 84° 00' W, 155.97 feet, thence on a 18° curve left, 172.22 feet, thence S 65° 00' W, 147.83 feet, thence on a 15° curve right, 275.22 feet, thence N 73° 43' W, 120.07 feet, thence on a 6° curve left, 266.53 feet, thence N 89° 42' W, 846.10 feet, thence on a 6° curve left, 396.53 feet, thence S 66° 30' W, 106.15 feet, thence on a 12° curve right, 300.97 feet, thence N 77° 23' W, 155.55 feet, thence on a 3° curve left, 525.00 feet, thence S 86° 52' W, 134.35 feet, thence on a 10° curve right, 197.00 feet, thence N 73° 26' W, 116.07 feet, thence on a 8° curve left, 195.25 feet, thence N 89° 03' W, 112.21 feet, thence on a 2° curve right, 235.83 feet, thence N 84° 25' W, 116.38 feet, thence on a 10° curve left, 134.78 feet to a point on the W line of Section 12, which point is S 8° 41' E, 1312 feet from the W ¼ section corner of Section 12, thence continuing on a 10° curve left,

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Shelton Title Company

SW 23-4W

SHELTON TITLE COMPANY

Exhibit 5

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209.72 feet, thence S 61° 08' W, 1.52 feet, thence on a 25° curve right, 131.20 feet, thence N 86° 04' W, 1.72 feet, thence on a 18° curve left, 177.69 feet, thence S 61° 57' W, 86.93 feet, thence on a 100° curve right, 161.50 feet, thence S 78° 06' W, 120.39 feet, thence on a 100° curve left, 190.67 feet, thence S 59° 02' W, 495.59 feet, thence on a 25° curve right, 156.96 feet, thence N 77° 01' W, 0.83 feet, thence on a 28° curve left, 95.06 feet, thence S 76° 22' W, 322.0 feet, thence on a 28° curve left, 92.20 feet, thence S 50° 33' W, 8.47 feet, thence on a 16° curve right, 157.29 feet, thence S 75° 43' W, 7.75 feet, thence on a 12° curve left, 271.11 feet, thence S 43° 11' W, 109.33 feet, thence on a 22° curve right, 256.06 feet, thence N 80° 29' W, 82.25 feet, thence on a 8° curve left, 207.92 feet, thence S 82° 53' W, 964.61 feet, thence on a 12° curve right, 257.36 feet, thence N 66° 14' W, 156.17 feet, thence on a 12° curve left, 192.64 feet, thence N 89° 21' W, 117.73 feet, thence on a 28° curve right, 226.79 feet, thence N 25° 51' W, 60.61 feet, thence on a 24° curve left, 162.36 feet, thence N 64° 49' W, 106.91 feet, to a point on the W line of Section 11, which point is S 8° 42' N, 2052 feet from the NW section corner of Section 11, thence N 64° 49' W, 460.64 feet, thence on a 12° curve left, 160.83 feet, thence N 84° 07' W, 29.16 feet, thence on a 28° curve right, 107.56 feet, thence N 54° 00' W, 34.70 feet, thence on a 16° curve left, 143.54 feet, thence N 76° 58' W, 5.19 feet, thence on a 8° curve right, 175.83 feet, thence N 62° 54' W, 542.70 feet, thence on a 12° curve right, 83.47 feet, thence N 52° 53' W, 26.20 feet, thence on a 20° curve left, 134.58 feet, thence N 79° 48' W, 68.67 feet, thence on a 24° curve right, 198.96 feet, thence N 32° 03' W, 57.67 feet, thence on a 16° curve left, 138.75 feet, thence N 54° 15' W, 60.65 feet, thence on a 24° curve right, 215.14 feet, thence N 2° 37' W, 63.74 feet, thence on a 16° curve left, 371.87 feet, thence N 62° 07' W, 65.28 feet, thence on a 28° curve right, 103.63 feet, thence N 33° 06' W, 121.20 feet, thence on a 12° curve left, 115.14 feet, thence N 46° 55' W, 145.66 feet to a point on the north line of the SE 1/4 of Section 10, which point is S 89° 58' W, 2492 feet from the E 1/4 section corner of Section 10.

Thence commencing at a point on the East line of the NW 1/4 of Section 10, which point is S 8° 42' E, 2475 feet from the N 1/4 section corner of Section 10, thence N 46° 55' W, 9.42 feet, thence on a 16° curve left, 131.88 feet, thence N 68° 01' W, 66.43 feet, thence on a 20° curve right 154.63 feet, thence N 37° 05' W, 169.15 feet, thence on a 12° curve left, 270.35 feet, thence N 69° 32' W, 80.51 feet, thence on a 28° curve right, 158.69 feet, thence N 25° 06' W, 396.12 feet, thence on a 16° curve left, 220.82 feet, to a point on the N line of the S 1/4 NW 1/4 Section 10, which point is S 8° 43' E, 1320 feet and East, 1586 feet from the N.W. corner of Section 10 at which point the centerline leaves the property of the party of the first part with the left right of way boundary traversing the property of the party of the first part, thence continuing 16° curve left, 300.64 feet, thence S 71° 28' W, 84.36 feet to a point on the N line of the S 1/4 NW 1/4 Section 10 which point is S 8° 43' E, 1320 feet and East 1316 feet from the NW corner of Section 10 at which point the centerline enters the property of the party of the first part, thence S 71° 28' W, 1320 feet to a point on the W line of Section 10, which point is N 8° 43' W, 897 feet from the W 1/4 Section corner of Section 10, thence S 71° 28' W, 40 feet, thence on a 8° curve right,

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881.25 feet, thence N 38° W, 1246⁸ feet, to a point on the W line of the E 1/4 NE 1/4 Section 9, which point is S 8° 43' E, 436.7 feet from the NW corner E 1/4 NE 1/4 Section 9, Township 23 North, Range 5 West.

Together with reasonable rights of ingress, egress and regress to and from said lands for the purposes designated.

1. The rights, privileges and authorities herein granted are for full use and enjoyment by the Grantee for any and all purposes deemed necessary or desirable in connection with the control, management and administration of the Olympic National Forest or its resources thereof, and, insofar as compatible therewith, use by the general public. However, this agreement is not intended to allow the Grantee to develop or operate any concession or recreation area along or upon the property described herein.

2. The rights, privileges and authorities herein granted shall continue as long as used for the purposes granted, but if for a period of five years the Grantee shall cease to use the rights, privileges and authorities for the purposes granted, or shall abandon the use of the easement herein granted, then, in any such events, the Grantor may terminate this easement and all rights, privileges and authorities granted hereunder by written notice to the Grantee and the same shall revert to the holder of the fee title to the lands described herein.

3. The Grantor shall not be responsible for any damages other than that wilfully done to bridges, causeways or highways constructed by the Grantee upon the property described herein which may be caused by floods or by the operation of the Grantor's Lake Cushman reservoir for hydroelectric power purposes.

4. This easement is granted subject to all the terms and conditions of License No. 460 from the Federal Power Commission covering the Cushman Power Development.

Dated this 9th day of September, 1957.

Attest: [Signature]
City Clerk

CITY OF TACOMA

By [Signature]
Mayor

Approved: [Signature]
Director of Utilities

UNITED STATES OF AMERICA
Department of Agriculture
Forest Service

By [Signature]
Acting Regional Forester

Approved as to form & legality:
[Signature]
Chief Asst. City Attorney

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ATTACHMENT D

TACOMA POWER'S APPLICATION FOR NON-CAPACITY
LICENSE AMENDMENT FOR NORTH FORK POWERHOUSE

Initial Statement

The following information is provided pursuant to 18 C.F.R. § 4.51(a).

- (1) The City of Tacoma, Department of Public Utilities, doing business as Tacoma Power (Applicant or Licensee) applies to the Federal Energy Regulatory Commission (Commission or FERC) for a non-capacity amendment of license for the Cushman Hydroelectric Project (Project), FERC No. 460, as described in the attached exhibits A, B, C, D and E. Because the new powerhouse would not increase the Project's total installed capacity or increase the maximum hydraulic capacity by 15 percent or more, it is considered a non-capacity amendment.

The environmental effects of a release of minimum flows to the lower North Fork Skokomish River were analyzed in the Commission's 1996 Final Environmental Impact Statement. That analysis has continued throughout the ensuing legal and jurisdictional proceedings. This application for a non-capacity amendment proposes to construct a powerhouse at the base of Cushman Dam No. 2 that would dissipate the force of the minimum flow release on the habitat immediately downstream of the dam; provide attraction flow and holding tanks for the upstream fish passage facilities; and recapture some of the generation lost to the minimum flow release.

The existing Project boundary is not affected by this action, therefore no revised Exhibit G maps are included. Exhibit F drawings will be developed in consultation with the Settlement Parties once the Settlement Agreement and its appendices have been approved by the Commission. This application is appended to and submitted as a component of the Settlement Agreement between the Licensee, National Marine Fisheries Service, U.S.D.A. Forest Service, United States Fish and Wildlife Service, Bureau of Indian Affairs, Washington Department of Fish and Wildlife, Washington Department of Ecology, and the Skokomish Indian Tribe, dated January 12, 2009.

- (2) The location of the Project is in:

State or territory:	Washington
County:	Mason
Township or nearby town:	Hoodsport, Washington
Stream or other body of water:	North Fork Skokomish River

- (3) The exact name and business address of the Applicant is:

Patrick McCarty, Generation Manager
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3192

The exact name and business address of each person authorized to act as an agent for the Applicant in this application is:

Matthew Love, Attorney
Van Ness Feldman
Millennium Tower
719 Second Avenue, Suite 1150
Seattle, WA 98104
mal@vnf.com

- (4) The Applicant is a municipal electric utility under the laws of the State of Washington and is claiming preference under Section 7(a) of the Federal Power Act (*see* 16 U.S.C. § 796).
- (5)(i) The statutory or regulatory requirements of the state in which the Project is located that may affect the Project as proposed, with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right to engage in the business of developing, transmitting and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act are:
- Revised Code of Washington (RCW) Chapter 90.03 governs the appropriation, diversion and use of water for hydropower generation.
 - Public Law 92-500, Public Law 95-217, RCW Chapter 90.48 and Washington Administrative Code §§ 173.201 and 173.225 define the requirements under Section 401 of the Federal Water Pollution Control Act (Clean Water Act) and authorize the Washington Department of Ecology (WDOE) to issue the certifications and administer the regulations.
 - RCW §§ 90.16.050, 90.16.060 and 90.16.090 authorize the WDOE to assess a power production license fee.
 - Section 106 of the National Historic Preservation Act (36 C.F.R. Part 800), administered in consultation with the Washington Department of Archaeology and Historic Preservation (DHAP), requires a Historic Properties Management Plan.

- (5)(ii) Steps the applicant has taken or plans to take to comply with each of these laws are described below.

The above referenced laws of the State of Washington have been complied with during the course of obtaining a new license for the continued operation of the Cushman Project. Water rights required to appropriate water for the operation of the Project under RCW Chapter 90.03 are in place. As agreed to in the Amended License Settlement Agreement, Tacoma will be applying for additional water rights for the Project and implementation of Amended License Article provisions, including any water rights necessary for the operation of the North Fork powerhouse.

- (6) The name and address of the owner of the existing facilities is:

Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3192

Verification

This application for a non-capacity amendment to a license for a Major Project – Existing Dam is executed in the City of Tacoma, Washington, in Pierce County.

By: _____

Name: _____

Address: _____

_____, being duly sworn, deposes and says that the contents of this application are true to the best of his knowledge and belief. The undersigned Applicant has signed the application this ____ day of _____, ____.

Applicant Signature

Subscribed and sworn to before me, a Notary Public of the State of Washington, this ____ day of _____, ____.

Notary Name

Notary Signature

Commission Expires: _____

EXHIBIT A – PROJECT DESCRIPTION

The following information is provided pursuant to 18 C.F.R. § 4.51(b).

Existing Project

The Cushman Hydroelectric Project consists of two dams and impoundments on the North Fork of the Skokomish River with associated power tunnels and penstocks, powerhouses, and a 26.8-mile-long primary transmission system.

The Dam No. 1 development consists of a 260-foot-high concrete arch dam that impounds Lake Cushman, a 9.6-mile-long storage reservoir with a 4,058-acre surface area and a 453,350 acre-foot storage capacity at full pool (elevation 738 feet Cushman datum); a spillway with two radial gates; a power intake upstream of the dam; a 17-foot-diameter, 540-foot-long power tunnel; and two 10-foot-diameter, 150-foot-long penstocks. Powerhouse No. 1, located approximately 600 feet downstream from the dam, contains two single runner, vertical shaft Francis turbines with a hydraulic capacity of 2,800 cfs and a total installed generating capacity of about 50 MW. A switchyard abuts the powerhouse and two 115-kilovolt (kV) primary transmission lines extend approximately 5.0 miles to the Dam No. 2 development.

The Dam No. 2 development consists of a 230-foot-high concrete arch dam approximately 2 miles downstream of Dam No. 1, which impounds Lake Kokanee, a 128-acre lake with a gross storage capacity of 7,300 acre-feet at full pool (elevation 480 feet Cushman datum); a gated spillway structure abutting the dam; a power intake; a 2.5-mile-long, 17-foot-diameter pressure tunnel; a steel surge tank; and three 12-foot-diameter, 1,350-foot-long steel penstocks. Powerhouse No. 2 contains three turbine-generator units for a total installed capacity of 81 MW and a maximum hydraulic capacity of approximately 3,000 cfs. From a switchyard adjacent to Powerhouse No. 2, two 115-kv transmission lines extend approximately 20.8 miles from Powerhouse No. 2 to Tacoma Power's Vaughn Tap.

License Article 408 of the new license issued by FERC on July 30, 1998, as modified in a March 31, 1999 Rehearing Order and a June 21, 2004 Order on Remand, called for the installation or provision of a mechanism at Dam No. 2 for the release of a minimum instream flow into the North Fork Skokomish River. To accommodate the new minimum instream flow release requirements, Tacoma Power installed a new 65-inch jet flow gate valve on one of the two existing 78-inch outlets at the base of Dam No. 2. This jet flow gate valve automatically adjusts in response to changes in lake water level fluctuations. The continuous release of 240 cfs, or inflow, to the North Fork Skokomish River below Dam No. 2 began on March 7, 2008.

A switchyard located adjacent to Powerhouse No. 2 is the tie-in point for the Dam No. 1 transmission lines. From the switchyard, two 115-kV transmission lines extend southward along Hood Canal, eastward across the Skokomish Estuary, to and across North Bay, and then tie into Tacoma's integrated transmission system at the Vaughn Tap, just east of the town of Allyn, on the Kitsap Peninsula. The transmission line right-of-way is typically 100 feet wide over its 25.8-mile length.

The Cushman Project is currently operated to provide load-following and meet peak-demand period needs. By storing water in Lake Cushman and diverting it to the powerhouses when needed, the project provides firm capacity, peaking power, and flood attenuation.

Proposed North Fork Skokomish Powerhouse

Tacoma Power proposes to construct a new powerhouse at the base of Cushman No. 2 Dam to utilize any and all water released into the North Fork Skokomish River up to the peak capacity of approximately 320 cfs (Figure A-1). Through Settlement negotiations, the preferred location for an upstream fishway has been identified to be at or near the base of Cushman Dam No. 2. The powerhouse would be designed and constructed as a fish collection facility for upstream migrants to utilize the flow of the turbines through an upwell grate into a 30-foot by 14-foot fish attraction and holding tailwater pool (Figure A-4). Fish would approach the powerhouse and jump over a finger weir into the holding tank. Fish would be crowded into transport tanks and raised up to the top of the dam and new fish sorting facilities. Those features of the powerhouse influencing the function and operation of the upstream fishway would be designed to be consistent with the current draft of NMFS' Anadromous Salmonid Passage Facility Design Manual. Releasing the instream flow through turbine/generator units would also provide the most efficient means of dissipating the force of that release to the river immediately below the dam.

The powerhouse would be a two-story concrete structure approximately 46 feet by 20 feet (Figure A-3). The new powerhouse penstock would tap off one of the 78-inch outlet valves. The bifurcation would consist of a 90 degree tap of the 78-inch penstock between a butterfly guard valve and a butterfly discharge valve. The 48-inch powerhouse penstocks would each have butterfly shut-off valves.

The powerhouse would contain two Francis turbine/generator units, each with a 1.8 megawatt (MW) capacity and rated at 2,700 horsepower (hp) with a .90 plant efficiency. The generators are rated at 4,160 volts. Best gate position of the turbine/generators would be 240 cfs and 3.0 MW, with a peak capacity of 320 cfs and 3.9 MW. These units would produce 23,500 MWh in annual generation.

The generator leads at 4,160 volts would feed in a conduit to a 12.5 kV step-up transformer located near the existing service house at Cushman Dam No. 2; then feed underground along Lower Lake Road to a new 115 kV step-up substation on the transmission line between Cushman Plant No. 1 and Cushman Plant No. 2.

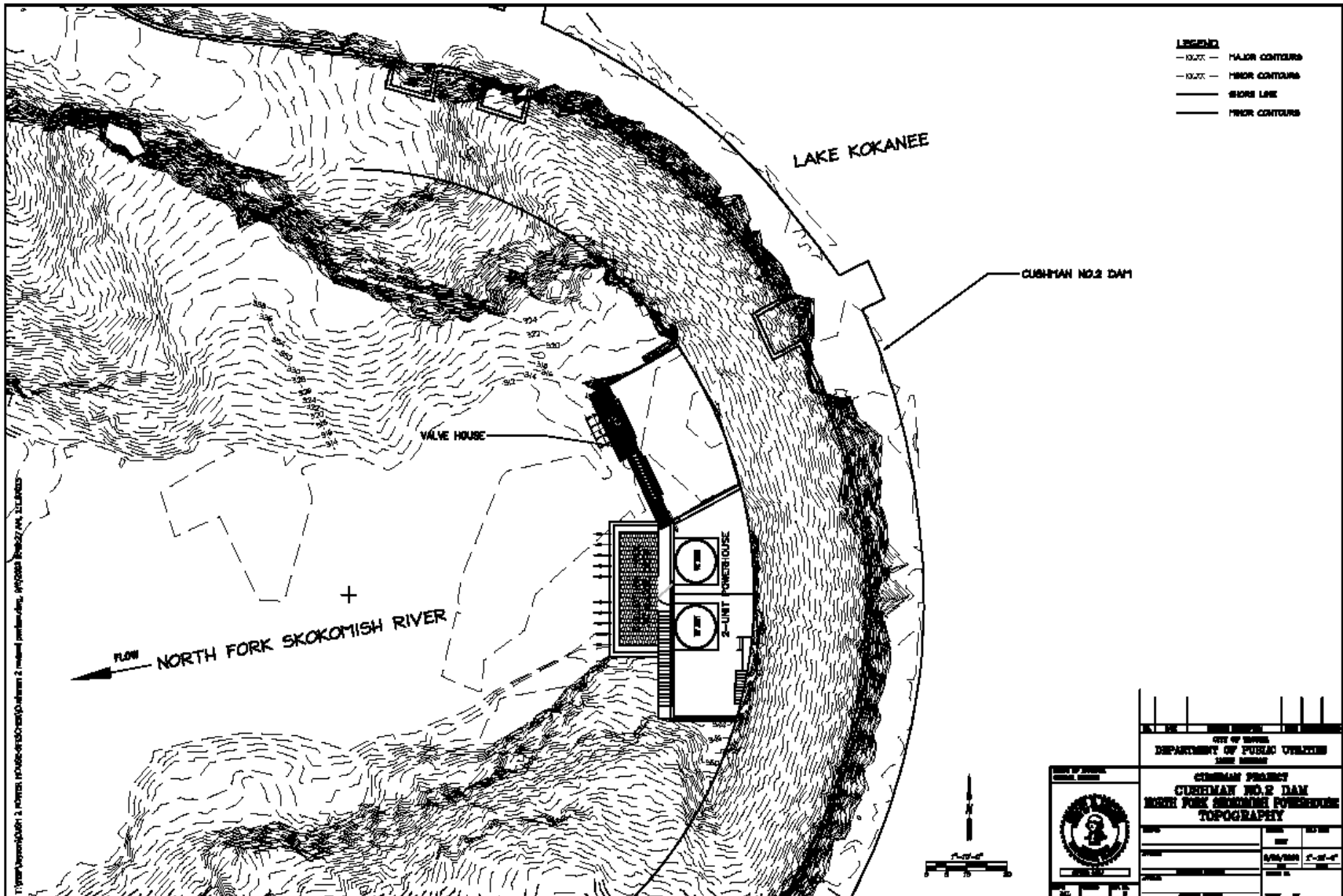


Figure A-1. Cushman Dam No. 2 Downstream Topograph

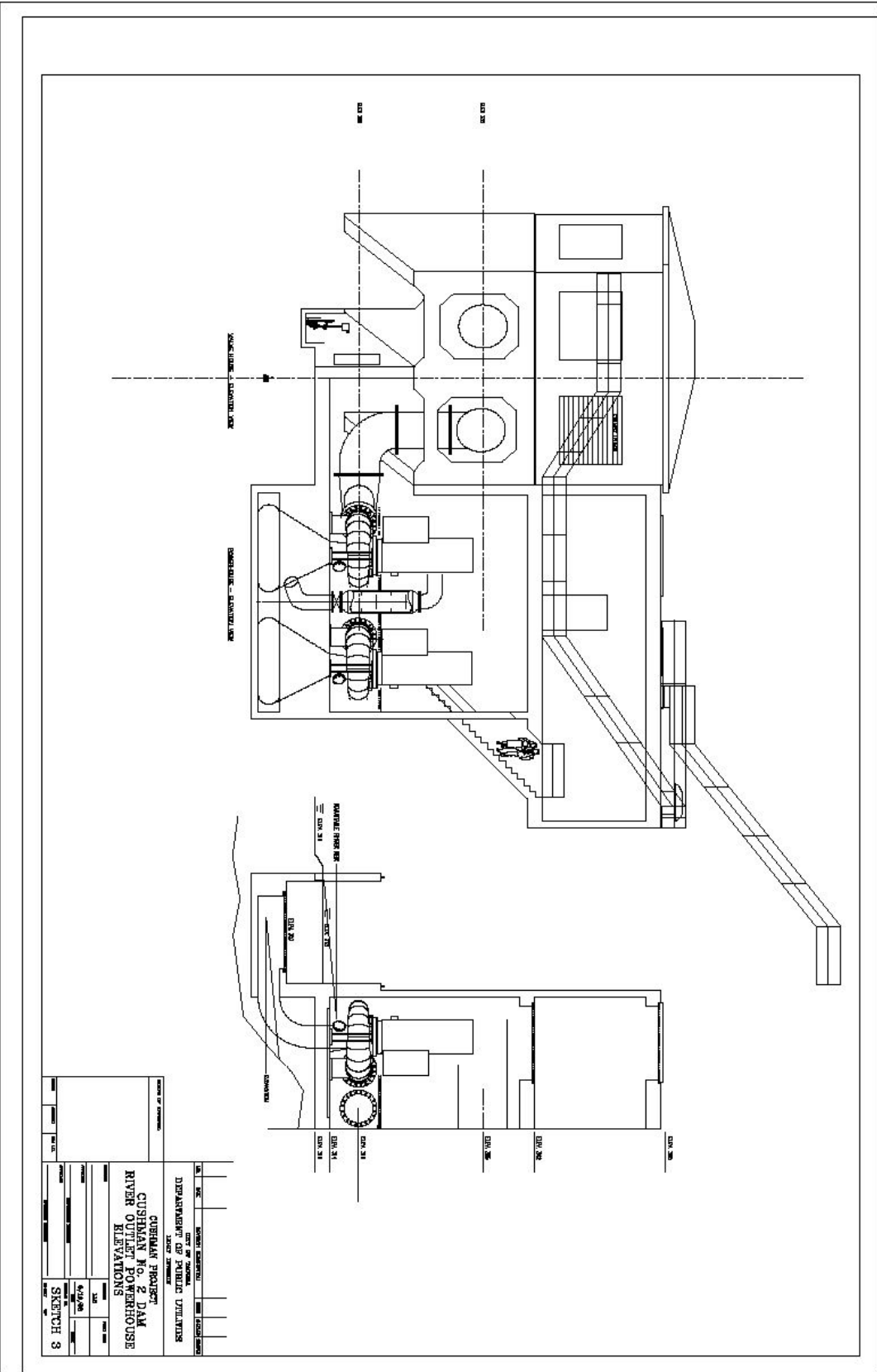


Figure A-2. Proposed North Fork Skokomish Powerhouse Elevations

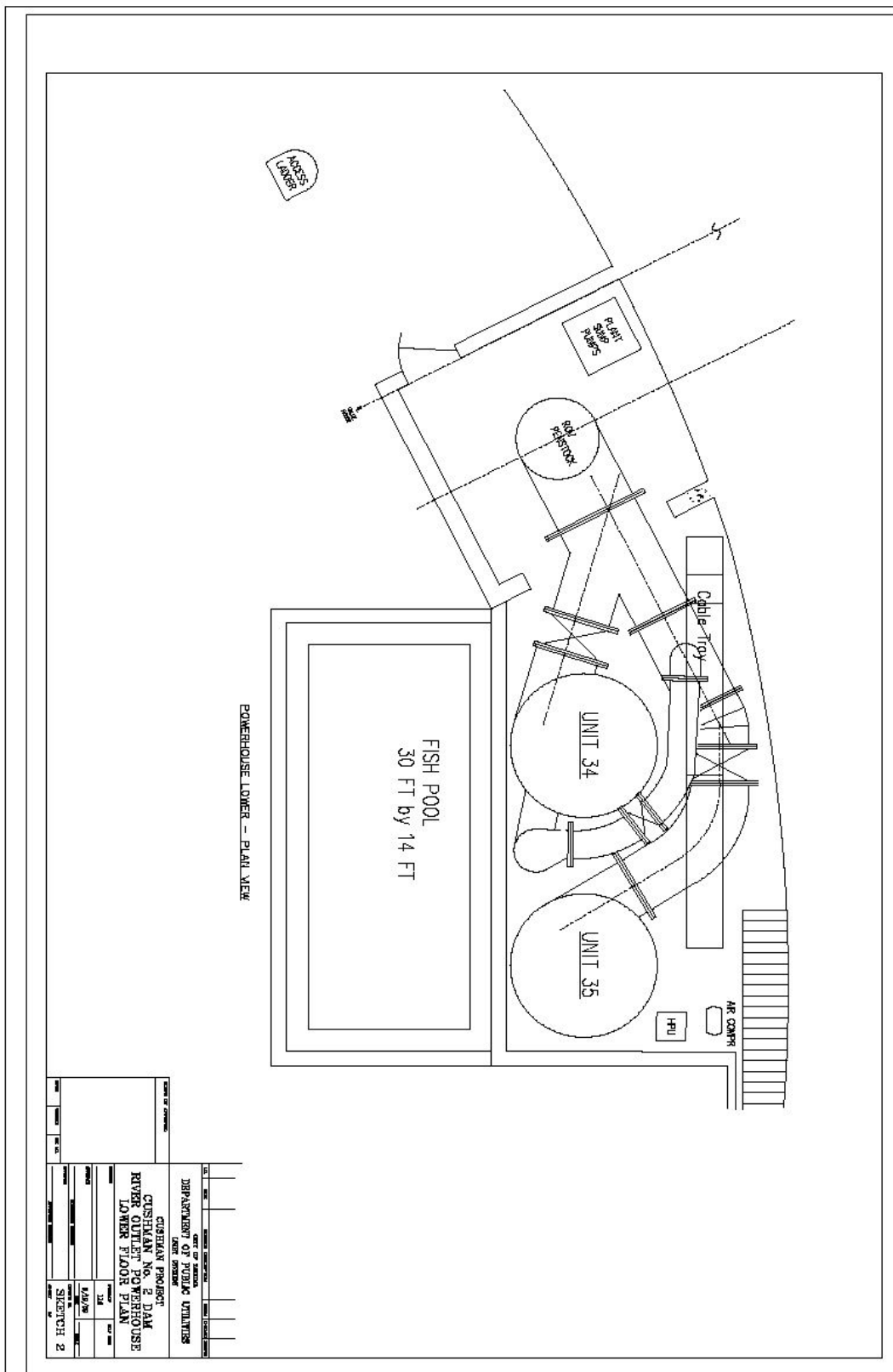


Figure A-4. Proposed North Fork Skokomish Powerhouse Lower Floor Plan

EXHIBIT B – PROJECT OPERATIONS

The following information is provided pursuant to 18 C.F.R. § 4.51(c).

Construction of the North Fork Skokomish Powerhouse would change operation of the Cushman Hydroelectric Project by increasing output by approximately 3 MW.

The two 1.8 MW Francis units would be controlled locally by a system designed by the supplier for both manual and computer control. That system would tie into a new plant control system for the entire Cushman Project that has been budgeted and will be completed before the new powerhouse is ready for operation. Each of Tacoma Power's plant control systems tie through a microwave loop system and are controlled by the power dispatchers located at Tacoma Power's headquarters in the City of Tacoma.

EXHIBIT C – PROPOSED CONSTRUCTION SCHEDULE

The following information is provided pursuant to 18 C.F.R. § 4.51(d).

Upon acceptance of the Settlement Agreement and proposed license amendments, Tacoma Power anticipates initiating design of the North Fork Skokomish Powerhouse during the first quarter of 2009. Adhering to this schedule would allow for the implementation of upstream fish collection with a backup water system in the fall of 2011; with the powerhouse operations beginning in early 2012.

EXHIBIT D – PROJECT COSTS

The following information is provided pursuant to 18 C.F.R. § 4.51(e).

Tacoma Power's preliminary estimate of cost of the proposed North Fork Skokomish Powerhouse facilities and equipment is \$20,000,000.

EXHIBIT E – ENVIRONMENTAL REPORT

The following information is provided pursuant to 18 C.F.R. § 4.51(f).

A description of the locale of the Cushman Project and the analysis of the Cushman Project's impacts on water use and quality, fish, wildlife, and botanical resources, historical and archeological resources, and recreational resources are provided within the documents supporting the Settlement Agreement and the 1996 Final Environmental Impact Statement for the Cushman Project.

As described in the Settlement Agreement and supporting documents, this Settlement Agreement, if adopted by the Commission, establishes the Licensee's obligations for the protection, mitigation and enhancement of resources affected by the Project. Subject to Section 3 of this Settlement Agreement, each Party intends that no resource protection measure or other license provision, other than those provided in Appendix 1 of the Settlement, is necessary to amend the Project license issued by FERC on July 30, 1998 (as modified in the March 31, 1999 Rehearing Order, the June 21, 2004 Order on Remand, and the February 14, 2005 Order Denying Rehearing) in order to satisfy the requirements of the Federal Power Act and its implementing regulations.

On March 7, 2008, pursuant to Project License Article 408, the City began releasing 240 cfs or inflow, whichever is less, to the lower Skokomish River through a flow release valve installed in Cushman No. 2 Dam. This continuous release will remain in effect pending the Commission's approval of the Settlement Agreement. At that time the channel formation flows and the mainstem capacity enhancement flows (*see* License Article 407) will also be initiated. The effects of the release of flows on the resources at the Cushman Project were analyzed in the Commission's Final Environmental Impact Statement issued November 18, 1996. The effects of discharging this flow release through a minimum flow turbine would dissipate the force of the release on the habitat immediately downstream of the dam. The North Fork powerhouse would also provide attraction flow and holding tanks for the upstream fish passage facilities.

Because this Non-Capacity License Amendment Application proposes to add two 1.8 MW turbines, the Commission's three-stage agency consultation process applies. Through the settlement process, the City has consulted extensively with the Skokomish Indian Tribe (Tribe) and the federal and state agencies concerning the proposed License Articles attached as Appendix 1 of the Settlement Agreement. Because of the extensive involvement of the Tribe and federal and state agencies in the development of these Proposed License Articles, the Agencies and Tribe agree to waive any pre-filing consultation otherwise required under the Commission's rules. *See* 18 C.F.R. §§ 4.200 and 4.38.

ATTACHMENT E

MEMORANDUM OF UNDERSTANDING BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF FISH AND WILDLIFE,
SKOKOMISH INDIAN TRIBE, AND CITY OF TACOMA/TACOMA PUBLIC UTILITIES

Memorandum of Understanding
between the
State of Washington Department of Fish and Wildlife,
Skokomish Indian Tribe,
and City of Tacoma/Tacoma Public Utilities

This Memorandum of Understanding (“MOU”) is made between the State of Washington Department of Fish and Wildlife (“WDFW”), the Skokomish Indian Tribe (“Tribe”), and the City of Tacoma/Tacoma Public Utilities (“Tacoma”).

The purpose of this MOU is to memorialize the parties’ understanding related to public access at certain boat ramps located on Lake Cushman and Hood Canal. The City of Tacoma owns land (known as “Saltwater Park”) within the boundaries of the Skokomish Indian Reservation that contains boat ramp access to Hood Canal, and also owns land (known as “Camp Cushman”) that contains boat ramp access to Lake Cushman. As part of a comprehensive settlement relating to the Cushman Hydroelectric Project, Tacoma has agreed in the Tacoma-Skokomish Tribe Settlement Agreement to convey the Camp Cushman property and portions of Saltwater Park to the Tribe.

Tacoma is the Federal Energy Regulatory Commission (“FERC”) licensee for the Cushman Hydroelectric Project, FERC Project No. 460 (“Project”), located on the North Fork of the Skokomish River in Mason County, Washington. Tacoma, the Tribe, WDFW, and other state and federal agencies have negotiated an agreement (“FERC Settlement Agreement”) on proposed license articles to submit to FERC as part of the re-licensing of the Project (the “Settlement License Articles”). Tacoma, the Tribe, WDFW, and the other settlement parties will request FERC to incorporate the Settlement License Articles, in the form negotiated by the parties, in an Amended Project License with a term to June 30, 2048.

In this MOU, Tacoma, the Tribe, and WDFW represent as follows:

City of Tacoma/Tacoma Public Utilities (“Tacoma”):

1. Prior to transfer of the Saltwater Park parcel to the Tribe, as required by the Tacoma-Skokomish Tribe Settlement Agreement, Tacoma shall construct a third boat ramp lane (in addition to the two existing boat ramp lanes) at Saltwater Park.
2. For the term of the Amended Project License, Tacoma shall maintain and remove debris from the three boat ramps at Saltwater Park year-round. This maintenance commitment includes repair of ramp structures as necessary.
3. For the term of the Amended Project License, Tacoma shall maintain and service the restroom facilities at Saltwater Park on a regular basis to keep them in good operational order year-round.

4. For the term of the Amended Project License, Tacoma shall maintain the boat ramp at Camp Cushman and on an annual basis (prior to the start of the Memorial Day weekend through Labor Day recreation season) remove debris from the boat ramp. This maintenance commitment includes repair of ramp structure (down to elevation 730) as necessary.
5. Throughout the Amended Project License term, Tacoma shall assume full responsibility for maintenance and servicing of the trailer dump station at the Camp Cushman parcel, and shall maintain such dump station in compliance with applicable law, specifically including applicable public health and water quality laws and regulations.

Skokomish Indian Tribe:

1. The Tribe shall allow year-round public access to the boat ramps and to the associated parking area and restrooms at Saltwater Park. Such public access shall be for the term of the Amended Project License and shall be subject to reasonable conditions and regulations as determined by the Tribe.
2. The Tribe shall allow public access to the existing boat ramp and associated parking area, and the existing trailer dump station, at Camp Cushman from Memorial Day weekend through Labor Day weekend. Such public access shall be for the term of the Amended Project License and shall be subject to reasonable conditions and regulations as determined by the Tribe.

Washington Department of Fish and Wildlife:

1. WDFW represents that: (a) the recreation-related obligations contained in the Settlement License Articles, in conjunction with the additional off-license commitments in this MOU, are in the public interest and adequately address WDFW's interests in boating access near the Cushman Project; and (b) Tacoma's ownership of Saltwater Park and Camp Cushman is not necessary for Project purposes.

Mutual Commitments:

1. The parties agree to work together in good faith, on a government-to-government basis, to resolve disagreements that arise under this MOU.
2. Nothing in this MOU shall be construed as a waiver of any rights, jurisdictions, or immunities, including sovereign immunity.
3. The parties agree that the closure by the Tribe of public access to the boat ramps or other facilities that are expressly referenced in this MOU shall

constitute material new information under Sections 4.1 and 4.11 of the
FERC Settlement Agreement.

Skokomish Indian Tribe

Joseph Pavel Date: 1/12/09

by: Joseph Pavel Chairman
(Print) (Title)

Washington Department of Fish and Wildlife

Philip Anderson Date: 1/9/09

by: Philip Anderson Interim Director
(Print) (Title)

City of Tacoma, Washington

William A. Gaines Date: 1/12/09

by: William A. Gaines Director of Utilities/CEO
(Print) (Title)

Approved As To Form & Legality:

Nathan Foshie
Chief Asst. City Attorney