

# I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (MP 0.0 to 11.9)

## Environmental Assessment - Attachments M - Q





I-405, TUKWILA TO I-90 VICINITY EXPRESS TOLL LANES PROJECT (MP 0.0 TO 11.9)  
ENVIRONMENTAL ASSESSMENT

**ATTACHMENT M AGENCY AND TRIBAL CORRESPONDENCE**

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## Section 4(f)



## **Section 4(f) *De Minimis* Impact Determination (per 23 CFR 771)**

**Summary Table**

<b>Date:</b>	May 22, 2018
<b>WSDOT Region:</b>	NW Region
<b>Project Number:</b>	Not Applicable
<b>Project:</b>	I-405, Tukwila to I-90 Vicinity Express Toll Lanes
<b>Project Description:</b>	As part of the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project, WSDOT would construct a portion of the Eastside Rail Corridor (ERC) Regional Trail, that is adjacent to and west of the I-405 right of way.
<b>Section 4(f) Resource:</b>	Northern Pacific Lake Washington Belt Line
<b>Type of 4(f) Resource:</b>	Eligible for the National Register of Historic Properties (NRHP)
<b>Size of the <i>de minimis</i> use of the 4(f) Resource (in acres):</b>	The WSDOT-constructed segment of the ERC trail will include improvements within a 40-foot wide section along 2.5 miles (12.1 acre) of the historic Northern Pacific Lake Washington Belt Line and would begin at the north end of the trail crossing of Ripley Lane N and continue to the north end of the trail crossing over Lake Washington Boulevard SE west of the I-405/Coal Creek Parkway interchange.
<b>Primary Purpose/Function of the 4(f) Resource:</b>	In 2007, the Lake Washington Belt Line was determined by the State Historic Preservation Officer (SHPO) to be eligible for listing in the NRHP. Most of the original route configuration and raised ballast bed remains intact, as well as many crossing features. This was due to the significance of the line as a distribution artery along the east shore of Lake Washington that brought raw materials to the steel mill in Kirkland and to the main Northern Pacific line at Renton. The DAHP concurred and the line was determined eligible.x
<b>Official with Jurisdiction:</b>	SHPO

### **De minimis Documentation**

- 1. Describe the Section 4(f) property and the attributes and features that qualify if to Section 4(f) protection, attach a map showing the boundaries of the resource, the locations of key features (e.g. ball fields, structures) and the area to be used.**

In 2007, the Lake Washington Belt Line was determined by the SHPO to be eligible for listing in the NRHP. Most of the original route configuration and raised ballast bed remains intact, as well as many crossing features. Maps are attached.

- 2. Describe the impacts to the Section 4(f) property, and any avoidance, minimization and mitigation or enhancement measures, and why they are considered *de minimis* as defined in 23 CFR 771.17.**

As part of the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project, WSDOT will construct 2.5 miles of paved trail in the ERC south of I-90 between Ripley Lane and Coal Creek Parkway. The trail segment will be constructed in accordance with the Preferred Alternative in the ERC Regional Trail Final Master Plan and EIS. Anticipated to be in place by the end of 2020, this new segment of ERC trail replaces sections of the Lake Washington Loop trail that need be replaced when the freeway is expanded through the area.

- 3. For parks, recreational facilities, and wildlife and waterfowl sanctuaries:**

- a. Describe the public outreach that has been or is being conducted (leave blank for historic sites).**

Refer to Chapter 2 of the I-405, Tukwila to I-90 Vicinity Express Toll lanes Project Environmental Assessment.

- b. Attach written concurrence of the official with jurisdiction over the 4(f) resource with the *de minimis* determination.**

SHPO concurrence per April 9, 2018 is attached. SHPO concurred with a no adverse effect determination for the Northern Pacific Lake Washington Beltline.

- 4. For historic resource, attach Section 106 documentation (include SHPO concurrence in project-level findings (DOEs and or FOEs) and Programmatic Agreement Memos for archaeological resources).**

SHPO concurrence is attached.

### **Request for Approval**

Based upon this analysis we request FHWA approval that the use of the Section 4(f) resource described above is *de minimis* as defined in 23 CFR 774.17.

Sean Quarrie, P.E. – I-405 Project Engineer

Sean Quarrie

WSDOT [Region]

24 May 2018

Date

**FHWA Approval**

Lindsey Handel P.E., Urban Transportation Engineer

Lindsey Handel

FHWA Washington Division

5/24/2018

Date



**Washington State  
Department of Transportation**

**I-405 Program Office**  
600-108th Avenue NE Ste. 405  
Bellevue, WA 98004  
425-456-8582  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

May 31, 2018

Kelly Beymer  
City of Renton Planning and Natural Resources Director  
1055 South Grady Way  
Renton, WA 98057

Re: Letter to the City of Renton Requesting Section 4(f) Concurrence for the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project

Dear Kelly,

WSDOT has evaluated the effects of the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (Project) on Section 4(f) resources that are within the City's jurisdiction. Our analysis is summarized in Exhibit 1 followed by a more detailed discussion for each Section 4(f) resource. We ask that you review the findings and provide us with written concurrence on the Section 4(f) determinations for the following resources:

- May Creek Greenway – Fawcett Property, WSDOT Parcel 1-24345
- May Creek Greenway– Meadow Property, WSDOT Parcel 1-24496

***Exhibit 1. Summary of Section 4(f) Findings for City of Renton Properties***

<b>Section 4(f) Resource</b>	<b>Section 4(f) Determination</b>
<b>May Creek Greenway – Fawcett Property</b>	1.03-acres of permanent property acquisition, <i>de minimis</i> impact per <u>23 CFR 774.3(b)</u> and <u>23 CFR 774.17</u> , City concurrence required.
<b>May Creek Greenway – Meadow Property</b>	2,878-square-foot temporary construction easement, meets the temporary occupancy exception per <u>23 CFR 774.13(d)</u> , City concurrence required.

## **City Section 4(f) Resources Requiring Concurrence**

### **May Creek Greenway – Fawcett Property Section 4(f) Determination**

WSDOT would acquire approximately 1.03 acres from the Fawcett property located along the eastside of I-405 near the NE 44th Street interchange to make room for the realignment of the northbound off-ramp. Located on the east side of I-405 at the southeast quadrant of the NE 44th Street interchange, the Fawcett property is one of many properties that make up the nearly 60-acre May Creek Greenway. The acquisition and permanent incorporation of land from this property into a transportation facility would result in a Section 4(f) use. This effect is considered generally minor in nature and meets the criteria for a *de minimis* effect under Section 4(f), subject to the mitigation requirements discussed below.

A *de minimis* determination under Section 4(f) may be made when all three of the following criteria are satisfied:

- The transportation use of the Section 4(f) resource, together with any avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f).
- The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.
- The official(s) with jurisdiction over the property are informed of USDOT's intent to make the *de minimis* effect determination based on their written concurrence that the project would not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).

As described in a letter of intent dated November 3, 2017 (the "Letter of Intent") and an interlocal agreement agreed to by WSDOT and approved by the City of Renton's Council on May 21, 2018 (the "Interlocal Agreement"), the City intends to concur with the *de minimis* finding. The City's concurrence is dependent on mitigation measures identified in the Interlocal Agreement. Attachment A to this letter is the Letter of Intent. Attachment B to this letter is the Interlocal Agreement. Public comment on this *de minimis* finding will be provided as part of the 30-day public review and comment period that will occur when the Project Environmental Assessment (EA) is published in mid-June 2018.

### **May Creek Greenway – Meadow Property Section 4(f) Determination**

The Project would also require a 2,878-square-foot temporary construction easement on the Meadow property, located on the west side of I-405 at the May Creek Bridge. A temporary construction easement would be needed to build temporary access to construct the southwest side of the new May Creek Bridge. This temporary construction easement would meet the Section 4(f) temporary occupancy exemption listed in 23 CFR 774.13(d) because the following conditions would be satisfied, as further discussed below:

Kelly Beymer  
City of Renton  
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- The duration is temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land.
- The scope of the work is minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal.
- There are no anticipated permanent adverse physical effects, nor would there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis.
- The land being used would be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the Project.
- There would be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

With mitigation, WSDOT has made the determination that the temporary construction easement needed on the Meadow property meets the conditions listed above for temporary occupancy. In the Interlocal Agreement the City agreed to concur with the temporary occupancy determination, subject to the following: the City's concurrence is dependent on mitigation measures identified in the Interlocal Agreement, local permit approvals (LUA17-000808), and the terms of a temporary construction easement over the Meadow property that the City and WSDOT are discussing.

WSDOT requests that the City of Renton sign below concurring with the findings for the May Creek Greenway, Fawcett and Meadow properties as described above.

If further questions or clarifications are needed please contact Allison Hanson at 425-450-2703.

Sincerely,

*Sean Quarrie*  
Sean Quarrie, P.E.

WSDOT

I-405 Project Engineer

Kelly Beymer  
City of Renton  
Administrator, Community Services Department

*Kelly Beymer* 5/3/18

(Signature/Date)

Kelly Beymer  
City of Renton  
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Attachments:

A: November 3, 2017 Letter of Intent, Mitigation of Two Section 4(f) Properties within City of Renton Jurisdiction

B: Interlocal Agreement Between the Washington State Department of Transportation and the City of Renton for Mitigation of Impacts to Section 4(f) Properties Located Along the WSDOT I-405 Renton to Bellevue Project Corridor (as approved by the Renton City Council on May 21, 2018)

Denis Law Mayor



**Public Works Department Gregg Zimmerman, P.E., Administrator**

November 3, 2017

**Via First Class Mail and E-Mail**

Mr. Kim Henry, P.E.  
WSDOT I-405/SR167 Program Administrator  
600-108<sup>th</sup> Avenue NE Ste. 405  
Bellevue, WA 98004

**RE: Letter of Intent  
Mitigation of Impacts to Two Section 4(f) Properties within City of Renton Jurisdiction**

Dear Mr. Henry:

The City of Renton (the City) appreciates the coordination between the Washington State Department of Transportation (WSDOT) and the City regarding two Section 4(f) properties near the NE 44<sup>th</sup> Street interchange that are impacted by WSDOT's Renton to Bellevue Project (the Project). This letter of intent documents the City's understanding of WSDOT's intent to mitigate impacts to the two Section 4(f) properties and the respective commitments of WSDOT and the City to effectuate such mitigation.<sup>1</sup>

**Interlocal Agreement**

WSDOT and the City will enter into an interlocal agreement (ILA) as soon as feasible, with the intent to have the fully executed ILA in place no later than January 31, 2018. Generally, the purpose of the ILA is to set forth the terms by which WSDOT will pay for the design, permitting, and construction of a segment of the May Creek Trail. Specifically, the ILA will include the following as to the two Section 4(f) properties at issue, identified as "Area 1" and "Area 2":

**Area 1: East side of I-405 at the SE Quadrant of the NE 44<sup>th</sup> Street Interchange (known as the Fawcett Property; shown in enclosed Attachment 1)**

1. WSDOT will reimburse King County for the grant money used by the City to purchase the portion of the property impacted by the Project, contingent upon King County's approval.
2. WSDOT will fully reimburse the City for all costs associated with designing, permitting (including environmental review), constructing, and observing the construction of an eight-foot wide soft

<sup>1</sup> The City provides this letter as a response to and a replacement of WSDOT's letter dated October 31, 2017.

surface trail and accessory components (such as split rail trail fencing, sensitive areas signage, public access signs, benches, and other trail amenities), and associated mitigation connecting from the existing soft surface May Creek Trail on the west side of I-405 and extending underneath I-405 to the east to Jones Avenue NE (the Trail Segment).

- a. WSDOT's reimbursement obligations for the Trail Segment will include reimbursing the hourly cost value of the City's project manager (a City employee) as well as the hourly costs of the City's consultant(s) and contractor(s).
- b. The City's project manager will be provided by the City's Public Works Department or the Community and Economic Development Department.
- c. The City will retain the authority and discretion to engage a consultant to aid the City's project manager in project management and to engage consultants and contractors for any portion of the designing, permitting, constructing, and observing work for the Trail Segment, all at the City's discretion.
3. During the permitting phase of the Trail Segment, the City will afford the public the opportunity to review and comment on the effects of the Project on the Section 4(f) resource.
4. WSDOT will secure a trail lease for the City within WSDOT right-of-way for the Trail Segment before WSDOT's contract ad date (currently September 2018).
5. The City will diligently pursue obtaining the necessary permits for the Trail Segment prior to WSDOT's contract ad date (currently September 2018).
6. WSDOT will incorporate the design of the Trail Segment into the Project, including designing for a longer bridge over May Creek if needed.

Area 2: West side of I-405 at the May Creek Bridge (known as the Meadow Property; shown in enclosed Attachment 2)

1. After the City acquires the property, the City will grant WSDOT a temporary construction easement to build temporary access to the southwest side of the new May Creek Bridge for construction.
2. WSDOT will restore the property to original or better condition prior to completion of the Project, including relocating and restoring any disturbed utilities. WSDOT acknowledges and agrees that mitigation for temporary impacts will be evaluated through the shoreline and critical areas permit(s) and will likely address plant establishment and mitigation for tree impacts. Mitigation will be at WSDOT's cost.
3. With the City's assistance and cooperation WSDOT shall design, permit, relocate and connect the existing underground utilities serving the prior property owner in order to maintain existing or better service, with all work incurred and costs paid for by WSDOT.

Anticipated Concurrence in Section 4(f) Determinations

The City anticipates that entering into the ILA and completing all obligations under the ILA will respond to the impacts to the Section 4(f) properties as follows:

- Area 1: The City is prepared to concur that if the Trail Segment is put in place (as outlined above) the Trail Segment will sufficiently mitigate the impacts to the Section 4(f) property such



that a de minimis impact determination is appropriate. The City will provide its de minimis impact concurrence upon the full execution of the ILA.

- Area 2: The City is prepared to agree that the proposed temporary occupancy of the Section 4(f) property is not a Section 4(f) use. The City will provide such agreement upon the full execution of the ILA.

The City appreciates this opportunity to partner with WSDOT. We will prepare a draft of the ILA and transmit it for WSDOT's review.

Sincerely,



Gregg A. Zimmerman, P.E.  
Public Works Administrator

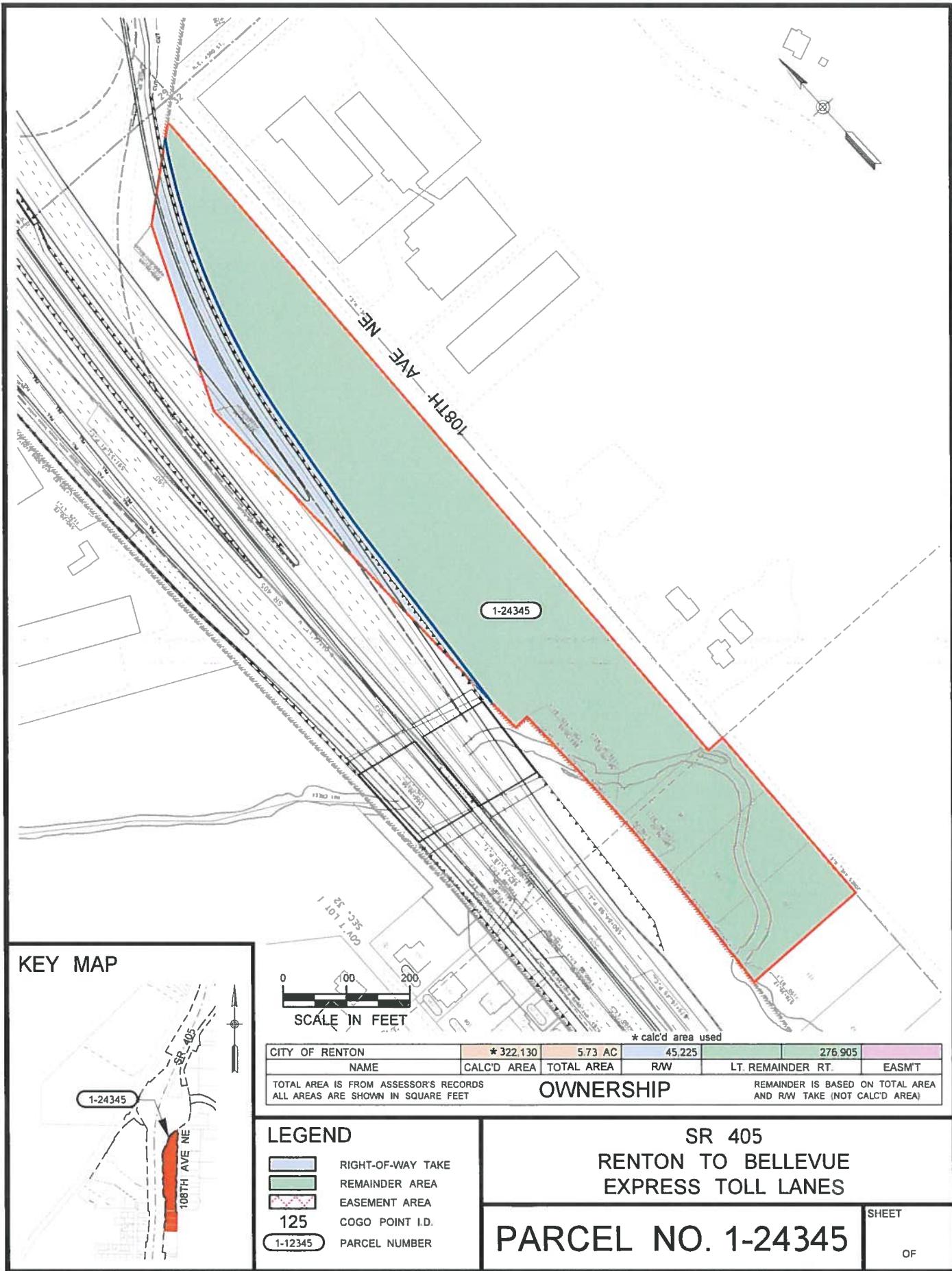
enclosures

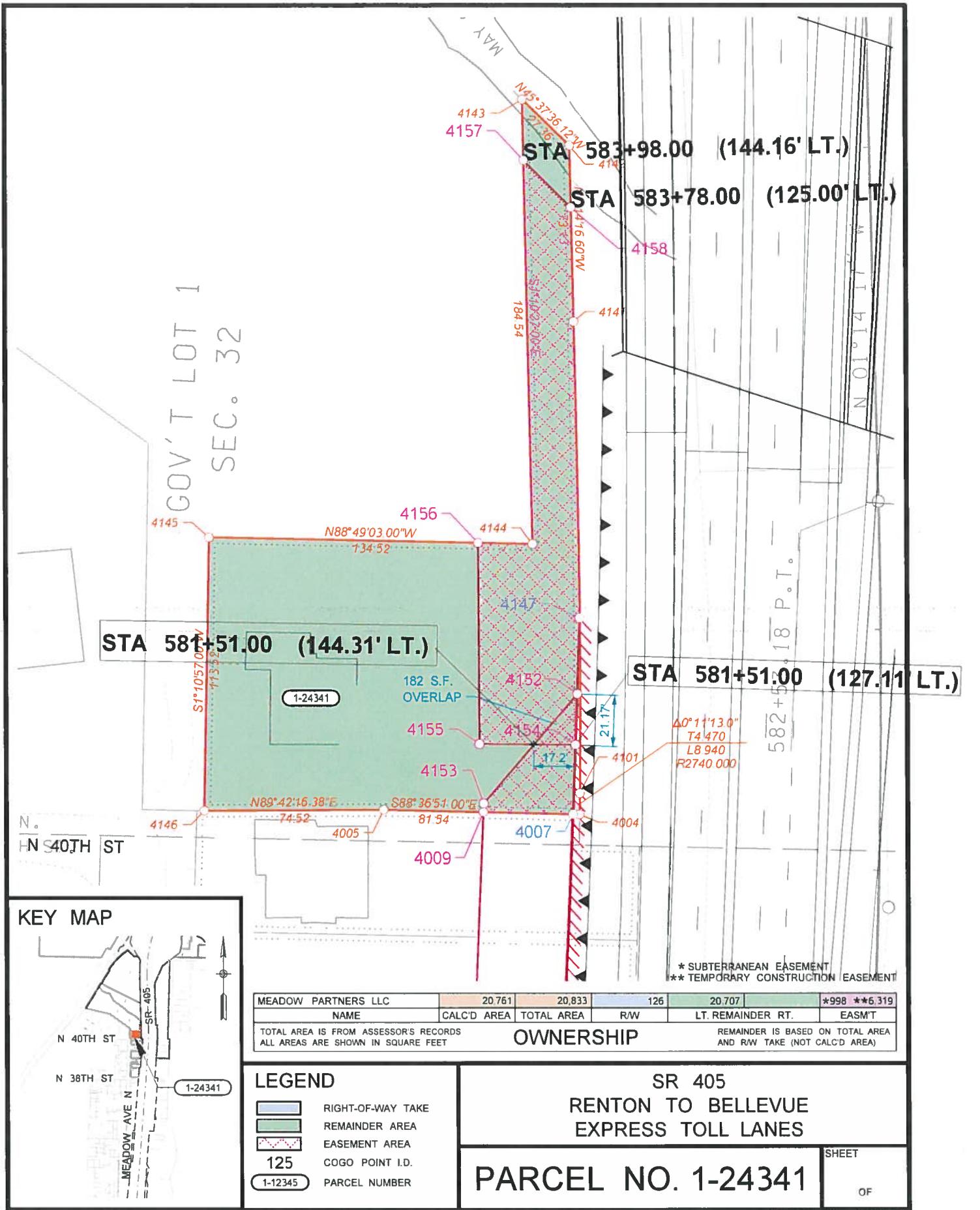
Attachment 1 (Fawcett Property)

Attachment 2 (Meadow Property)

cc: Jay Covington, Chief Administrative Officer  
Kelly Beymer, Community Services Administrator  
Jim Seitz, Transportation Systems Director  
Chip Vincent, Community and Economic Development Administrator  
Vanessa Dolbee, Current Planning Manager, CED  
Leslie Betlach, Parks Planning and Natural Resources Director  
Vicki Grover, Transportation Planning Manager







CITY OF RENTON, WASHINGTON

RESOLUTION NO. 4342

**A RESOLUTION OF THE CITY OF RENTON, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (“WSDOT”) FOR MITIGATION OF IMPACTS TO SECTION 4(f) PROPERTIES LOCATED ALONG THE WSDOT I-405 RENTON TO BELLEVUE PROJECT CORRIDOR.**

**WHEREAS**, the City and WSDOT are authorized, pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act, to enter into an interlocal government cooperative agreement; and

**WHEREAS**, WSDOT is planning improvements to I-405 between SR 169 and I-90, known as the Renton to Bellevue Project (the “Project”); and

**WHEREAS**, a portion of the Project abuts properties within the City’s jurisdiction that are owned by the City; and

**WHEREAS**, the Federal Highway Administration and the State have identified two such properties, specifically described in the interlocal agreement, as qualifying properties under Section 4(f) of the United States Department of Transportation Act of 1966 (49 USC 303); and

**WHEREAS**, a Section 4(f) use of a Section 4(f) property requires mitigation and compliance with processes specified by federal regulatory guidelines codified at 23 C.F.R. § 774; and

**WHEREAS**, it is necessary to document the terms and conditions of said mitigation for the two Section 4(f) properties at issue in an interlocal agreement;

**WHEREAS**, the City and WSDOT have negotiated the terms of a mutually agreeable interlocal agreement;

RESOLUTION NO. 4342

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RENTON, WASHINGTON, DO  
RESOLVE AS FOLLOWS:

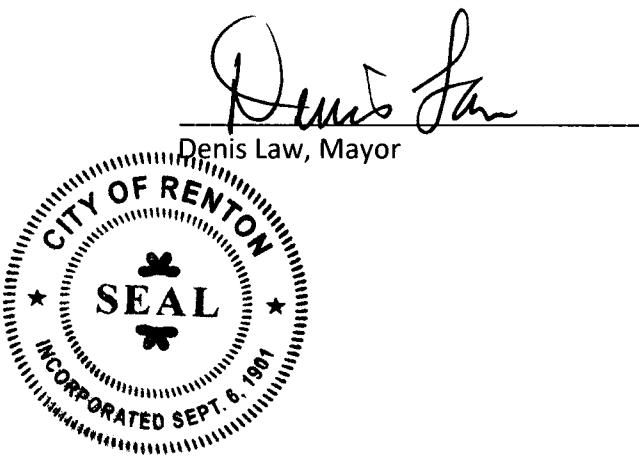
**SECTION I.** The Mayor and City Clerk are hereby authorized to enter into the interlocal agreement with WSDOT entitled "Interlocal Agreement Between the Washington State Department of Transportation and the City of Renton for Mitigation of Impacts to Section 4(f) Properties Located Along the WSDOT I-405 Renton to Bellevue Project Corridor" and designated by WSDOT as contract file number GCB 2890, which is attached hereto as Exhibit A and incorporated by this reference.

PASSED BY THE CITY COUNCIL this 21st day of May, 2018.



for  
Jason A. Seth, City Clerk

APPROVED BY THE MAYOR this this 21st day of May, 2018.



Approved as to form:



Shane Moloney, City Attorney

RES.1754:4/25/18:scr

## **EXHIBIT A**

**INTERLOCAL AGREEMENT BETWEEN THE WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION AND THE CITY OF RENTON FOR  
MITIGATION OF IMPACTS TO SECTION 4(f) PROPERTIES LOCATED  
ALONG THE WSDOT I-405/SR 167 RENTON TO BELLEVUE PROJECT  
CORRIDOR**

## GCB 2890

### INTERLOCAL AGREEMENT BETWEEN THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND THE CITY OF RENTON FOR MITIGATION OF IMPACTS TO SECTION 4(f) PROPERTIES LOCATED ALONG THE WSDOT I-405 RENTON TO BELLEVUE PROJECT CORRIDOR

This Interlocal Agreement (Agreement) is made and entered into by the Washington Department of Transportation, an agency of the State of Washington (WSDOT), and the City of Renton, a Washington municipal corporation (CITY) (collectively, the CITY and WSDOT are the "Parties").

#### Recitals

1. The Parties have the authority to enter into this Agreement pursuant to chapter 39.34 RCW, the Interlocal Cooperation Act, wherein the legislature has authorized governmental units to make the most efficient use of their individual powers by enabling them to cooperate on a basis of mutual advantage for public benefit.

#### Background

2. WSDOT is planning improvements to I-405 between SR 167 in Renton and NE 6th Street in Bellevue, known as the I-405, Renton to Bellevue Widening and Express Toll Lanes Project (the "Project").
3. The Project's Request for Proposals (RFP) is scheduled for issuance in November 2018, and the Project is expected to open to traffic in 2024.
4. A portion of the Project abuts properties within the CITY's jurisdiction that are publicly owned.
5. In December 2017, the CITY acquired a portion of a property to be encumbered by the Project with a temporary construction easement.
6. The Federal Highway Administration and the State of Washington have identified two properties as qualifying for preservation under Section 4(f) of the United States Department of Transportation Act of 1966 (49 USC 303) as publicly owned park and recreation areas, as further described below.
7. The CITY's two publicly owned Section 4(f) properties at issue are identified as follows:
  - a. Area 1. The property referred to in this Agreement as "Area 1" is situated abutting and east of I-405, south of NE 43rd Street (if extended) and north of NE 40th Street (if extended). It is designated by King County as tax parcel 3224059010. WSDOT has designated the property as Parcel No. 1-24345 and has also referred to the property as the Fawcett Property. The property is depicted in Exhibit 1 hereto<sup>1</sup> and described in Exhibit 2 hereto.

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<sup>1</sup> Exhibit 1 was referred to as "Attachment 1" in the Parties' letter of intent discussed below.

- b. Area 2. The property referred to in this Agreement as "Area 2" is situated abutting and west of I-405, north of N 40th Street (if extended). The property is comprised of portions of King County tax parcels 3224059043 and 3224059081 (as of November 27, 2017, but subject to change due to a lot line adjustment, CITY File No. LUA-17-000470, King County Recording No. 20171130900003). WSDOT has designated the property as Parcel No. 1-24496 and has also referred to the property as the Meadow Property. The property is depicted in Exhibit 3 hereto.<sup>2</sup>
- 8. A Section 4(f) temporary occupancy requires compliance with processes specified by federal regulatory guidelines codified at 23 C.F.R. § 774.

Area 1 Mitigation (East of I-405; WSDOT Parcel Number 1-24345; King County APN 3224059010)

- 9. As of the date of this Agreement, WSDOT calculated Area 1 to be 322,130 square feet in area and proposes to take 45,225 square feet of Area 1 for right-of-way for the Project, which is 14% of Area 1.
- 10. The CITY acquired Area 1 using funding from two grants from King County's Conservation Futures Levy Fund. Because WSDOT proposes to take a portion of Area 1 for the Project, a King County-City of Renton interlocal agreement (titled Interlocal Cooperation Agreement Between King County and the City of Renton Suburban City Open Space Acquisition Projects, executed on June, 5, 1990) (hereinafter, the "King County-City of Renton ILA") requires that an appraisal be provided to King County valuing Area 1. WSDOT obtained an appraisal report, which was transmitted to King County. To date, King County has accepted the appraisal report as sufficient for the purposes of the King County-City of Renton ILA.
- 11. The CITY has included Area 1 within the May Creek Greenway plan; protects it for park, recreation, and waterfowl and wildlife refuge uses; considers the area to be a recreation and wildlife area of local significance; and has long-designated it as the location for a connector segment of the regional May Creek Trail, all of which qualify Area 1 as a Section 4(f) public park and recreation area.
- 12. Without mitigation, the Project would adversely affect the features, attributes, or activities qualifying Area 1 for protection under Section 4(f), and is a use of Area 1 under Section 4(f).
- 13. WSDOT and CITY agree that installing the CITY's contemplated May Creek Trail connector segment would mitigate the Project's impacts on Area 1 such that the Project would not adversely affect the features, attributes, or activities qualifying Area 1 for protection under Section 4(f).
- 14. WSDOT is willing to pay for the design, permitting, and construction of the May Creek Trail connector segment to mitigate the Section 4(f) impacts to Area 1; provided that the CITY concurs that such work mitigates the impacts to Area 1 to a 4(f) de minimis impact.

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<sup>2</sup> Exhibit 3 was referred to as "Attachment 2" in the Parties' letter of intent discussed below.

Area 2 Mitigation (West of I-405 and south of May Creek; WSDOT Parcel No. 1-24496; King County APNs 3224059081 (portion) and 3224059043 (portion) (parcel numbers as of January 17, 2018))

15. As of the date of this Agreement, WSDOT calculated Area 2 to be 357,673 square feet in area and proposes to encumber 2,878 square feet of Area 2 for a temporary construction easement, as shown on the Right of Way Plan, Exhibit 4, to facilitate construction of the Project.
16. In December 2017, the CITY acquired Area 2 from a private owner, Meadow Partners, LLC, which retains ownership of the parcel immediately south of Area 2, and the CITY has included Area 2 as part of the May Creek Greenway Plan, qualifying the acquired portion for Section 4(f) protection as a publicly owned park and recreation area.
17. A Section 4(f) temporary occupancy of Area 2 will occur.
18. WSDOT and CITY agree that limiting WSDOT's use of Area 2 to a temporary construction easement and providing for post-construction restoration and the relocation of utilities located within Area 2 serving the parcel to the south, as specified in this Agreement, is not a Section 4(f) use triggering Section 4(f) mitigation and qualifies as a temporary occupancy under Section 4(f) guidelines.

**Letter of Intent**

19. On November 3, 2017, the CITY delivered a letter of intent to WSDOT documenting the CITY's understanding of WSDOT's intent to mitigate the impacts to the two Section 4(f) properties, and the Letter of Intent provided that the Parties would subsequently enter into an interlocal cooperation agreement to formalize the Parties' understandings and obligations.

Now Therefore, in consideration of the mutual promises herein, and the attached Exhibits which are incorporated and made a part hereof, the Parties agree as follows:

**Agreement**

The CITY and WSDOT agree to comply with the terms of this Agreement.

**1.0 Adoption of Recitals**

The foregoing recitals are adopted and incorporated herein as terms of this Agreement.

**2.0 Area 1 Responsibilities**

**2.1 The CITY's responsibilities**

- 2.1.1 The CITY will conceptually design, provide design criteria and specifications, and permit (including environmental review) an eight-foot wide soft surface trail with accessory components (such as split rail trail fencing, sensitive areas signage, public access signs, benches, and other trail amenities) connecting from the existing soft surface May Creek Trail on the west side of I-405 and north of May Creek (on the property designated by King County as parcel number

3224059109) and extending underneath I-405 to the east and through Area 1 to Jones Avenue NE (the "Trail Segment"). The CITY's work to conceptually design, provide design criteria and specifications, and permit (including environmental review) the Trail Segment is hereinafter the "Work." Attached to this Agreement as Exhibit 5 Conceptual Trail Plans (Exhibit 5) are preliminary, conceptual plans gathered by the CITY anticipating the Trail Segment's approximate location and design.

2.1.1.1 The CITY will designate a CITY employee from the CITY's Public Works Department or the Community and Economic Development Department as an internal project manager for the Work.

2.1.1.2 Due to CITY staffing and workloads, the CITY intends to engage a consultant to aid the CITY's project manager in project management. The CITY will retain the authority to engage such a project manager consultant and to engage any other consultants for any portion of the Work, all at the CITY's discretion.

2.1.1.3 The CITY will keep a record of all of its costs incurred to perform the Work, including the hourly cost value of the CITY's project manager and any other CITY staff performing the Work.

2.1.1.4 No later than September 15, 2018, the CITY will deliver to WSDOT three (3) hard copies and an electronic copy of conceptual plans and specifications for the Trail Segment (Conceptual Trail Segment Plans). The Conceptual Trail Segment Plans will include, but not necessarily be limited to, conceptual alignment plans, cross sections, details, and construction requirements, to be incorporated into the Project's RFP. The Conceptual Trail Segment Plans will reflect an approximately 30% design level.

2.1.2 For any local government permit administered by the CITY for the Trail Segment, the CITY will afford the public the opportunity to review and comment on the effects of the Project on the Section 4(f) resource.

2.1.3 The CITY will diligently pursue obtaining the necessary permits for the Trail Segment. It will pursue obtaining such permits as contemporaneously as possible to WSDOT's RFP ad date (currently November 2018), but both the CITY and WSDOT acknowledge that the permit processes may not yet be complete by November 2018. As soon as the Trail Segment is fully permitted, the CITY will deliver to WSDOT three (3) hard copies and an electronic copy of any of the following types of plans and specifications associated with permits obtained by the CITY: alignment plans, cross sections, details, construction requirements, and scope(s) of work (collectively, the "Permitted Trail Segment Plans").

2.1.4 Within ten (10) days after the execution of this Agreement, the CITY will submit to WSDOT written concurrence that installing the Trail Segment sufficiently mitigates the impacts to Area 1 such that a Section 4(f) De Minimis impact determination is appropriate.

## 2.2 WSDOT's responsibilities

- 2.2.1 WSDOT acknowledges that it possesses property data (including environmental studies and assessments) that could aid the CITY in obtaining permits for the Trail Segment. WSDOT agrees that it will transmit all such property data to the CITY within ten (10) days after the execution of this Agreement.
- 2.2.2 WSDOT agrees it will reimburse the City of Renton for the portion of Area 1 acquired by the Project which was earlier acquired from King County by the CITY with grant funds. Upon King County's written acceptance of the value of the take portion of Area 1, the State will reimburse the City of Renton for the change in use or status of Area 1 caused by the State's take in an amount determined pursuant to the terms of the King County-City of Renton ILA.
- 2.2.3 WSDOT will secure a trail lease for the CITY's Trail Segment within WSDOT right-of-way before WSDOT's RFP ad date (currently November 2018).
- 2.2.4 WSDOT will incorporate the Conceptual Trail Segment Plans into the Project's RFP. WSDOT will design (Engineer of Record), construct, and observe the construction of the Trail Segment (Trail Segment Construction) at WSDOT's expense, as conceptually designed and permitted by the CITY as shown in the Permitted Trail Segment Plans. WSDOT will complete Trail Segment Construction no later than the completion date of the Project, which is planned for 2024.
- 2.2.5 When WSDOT determines that Trail Segment Construction is complete, WSDOT will deliver a written Notice of Physical Completion of Trail Segment Construction (Notice) to the CITY.

### **3.0      Area 2 Responsibilities**

#### **3.1      The CITY's Responsibilities**

- 3.1.1 The CITY will grant WSDOT a temporary construction easement over Area 2 to build temporary access to the southwest side of the new May Creek Bridge for construction.
- 3.1.2 Within ten (10) days after the execution of this Agreement, the CITY will provide WSDOT with a written statement that the CITY agrees that WSDOT's proposed temporary occupancy of Area 2 is not a Section 4(f) use.

#### **3.2      WSDOT's Responsibilities**

- 3.2.1 WSDOT will design, permit, relocate, and connect the existing utilities located within Area 2 that serve the parcel immediately to the south which is owned by Meadow Partners, LLC (or its heir, successor, or assign) to maintain existing or better service, with all work incurred and costs paid for by WSDOT.
- 3.2.2 WSDOT will restore Area 2 to original or better condition prior to completion of the Project. WSDOT acknowledges and agrees that mitigation for temporary impacts will be evaluated through the shoreline and critical areas permit(s) and

will likely address plant establishment and mitigation for tree impacts. All mitigation for temporary impacts will be at WSDOT's cost.

#### **4.0 Payment**

- 4.1 WSDOT, in consideration of the faithful performance of the Work to be done by the CITY, agrees to reimburse the CITY for the actual direct and related indirect cost of the Work as shown in Exhibit 6, Estimate of Cost GCB 2890 (Exhibit 6). WSDOT expressly acknowledges that the amounts stated in Exhibit 6 serve as an estimate. The CITY will closely monitor expenditures and will request additional authorization from WSDOT with justification before exceeding the total shown in Exhibit 6.
- 4.2 Partial payments shall be made by WSDOT, upon request of the CITY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.
- 4.3 WSDOT agrees to make payment for the work to be done by the CITY within thirty (30) days from receipt of the billing from the CITY.
- 4.4 The CITY agrees to submit a final bill to WSDOT within forty-five (45) calendar days after the CITY has completed the Work.

#### **5.0 City Acceptance of the Trail Segment**

- 5.1 Prior to acceptance of the Trail Segment Construction, the CITY and WSDOT will perform a joint final inspection. The CITY agrees, upon satisfactory completion of the Trail Segment Construction and receipt of the Notice, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the Trail Segment Construction and WSDOT administration thereof, subject to any contractor claims caused by the negligent acts or omissions of WSDOT in administering the Trail Segment Construction.
- 5.2 If a letter of acceptance is not received by WSDOT within thirty (30) calendar days following delivery of the Notice to the CITY, the Trail Segment Construction and WSDOT administration thereof shall be considered accepted by the CITY, and WSDOT shall be released from all future claims and demands of any nature resulting from the performance of the Trail Segment Construction and WSDOT's administration thereof, subject to any contractor claims caused by the negligent acts or omissions of WSDOT in administering the Trail Segment Construction.
- 5.3 The CITY may reasonably withhold its acceptance of the Trail Segment Construction by submitting written notification to WSDOT within thirty (30) calendar days following delivery of the Notice. The CITY's notification shall include the reason(s) for withholding acceptance.

#### **6.0 Right of Entry**

- 6.1 The CITY acknowledges that WSDOT and its authorized agents, contractors, subcontractors, and employees, will require entry, from time to time, upon Area 1 and

Area 2 for the purpose of fulfilling its obligations under this Agreement. The CITY agrees to give reasonable right of entry upon receipt of WSDOT's notice, which shall be given no less than one week prior to entry.

## **7.0 RELATIONSHIP TO EXISTING LAWS AND STATUTES**

- 7.1 This Agreement in no way modifies or supersedes existing laws and statutes. In meeting the commitments encompassed in this Agreement, the Parties will comply with the requirements of the National Environmental Policy Act, the State Environmental Policy Act, Growth Management Act, Shoreline Management Act, Section 4(f) guidelines, permit requirements and conditions, and other applicable State or local laws.

## **8.0 EFFECTIVE DATE, DURATION, AND AMENDMENT**

- 8.1 This Agreement shall be and continue in full force and effect and binding upon the Parties upon the execution of the Agreement. The Agreement shall endure until sixty (60) calendar days after the Parties have completed all of their respective obligations under Sections 2 and 3 of this Agreement.
- 8.2 This Agreement may only be amended in writing, and any amendment shall become effective only when each Party has duly approved a written amendment or addendum to this Agreement.

## **9.0 LEGAL RELATIONS**

- 9.1 The provisions of this Agreement shall be administered by WSDOT for the State of Washington and by the Public Works Department for the CITY, with the CITY's Community Services Department (as the land manager) supporting the Public Works Department.
- 9.2 Notice

Notice to the CITY shall be sent to:

Gregg Zimmerman, Public Works Administrator  
1055 Grady Avenue South  
Renton, WA 98057  
Telephone: 425.430.7311  
Email: Gzimmerman@rentonwa.gov

With a copy to:

Leslie Betlach, Parks Planning and Natural Resources Director  
1055 Grady Avenue South  
Renton, WA 98057  
Telephone: 425.430.6619  
Email: Lbetlach@rentonwa.gov

Notice to WSDOT shall be sent to:

Sean Quarrie, PE, Project Engineer  
600 108th Ave NE, Ste 405  
Phone: 425-456-8627  
Email: QUARRIS@wsdot.wa.gov

All communications, including notices, regarding this Agreement shall be sent to the Parties' representatives at the addresses listed above. Any written notice shall become effective upon (1) personal service or (2) three business days after the date of mailing by registered or certified mail and first-class mail, and shall be deemed sufficiently given if sent to the address stated in this Agreement, or to such other address as may be specified in writing by a Party. Telephone or e-mail communication, or both, is encouraged as supplemental notice, but shall not replace the preceding notice requirements.

- 9.3 Each Party shall protect and hold harmless the other Party, its officers, officials, employees, and/or agents from and against all claims, suits, or actions arising from an intentional or negligent act or omission of that Party, its officers, officials, employees, and/or agents while performing under the terms of this Agreement. In the event of a claim for damages of any nature whatsoever arising out of the performance of this Agreement caused by the concurrent intentional or negligent acts or omissions of the Parties, their officers, officials, employees, and/or agents, each Party shall provide its own defense and be liable for damages, costs, fees or other amounts only to the extent of its individual acts or omissions that are the basis for the imposition of liability or damages. The provisions of this Section shall survive the termination of this Agreement.
- 9.4 Any lawsuit or legal action brought by either Party to enforce or interpret this Agreement or any of its terms or covenants shall be brought in the King County Superior Court for the State of Washington at the Maleng Regional Justice Center in Kent, King County, Washington, or its replacement or successor.

## **10.0 NO THIRD PARTY BENEFITS**

- 10.1 This Agreement is made for the sole benefit of WSDOT and the CITY and not for any third party's benefit.

## **11.0 SEVERABILITY**

- 11.1 If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

## **12.0 MISCELLANEOUS**

- 12.1 No separate legal or administrative entity is created under this Agreement.
- 12.2 No joint financing structure or budget is hereby created under this Agreement.
- 12.3 No real or personal property will be acquired under this Agreement.
- 12.4 The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.
- 12.5 Both Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

- 12.6 Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of the Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Parties, which shall be attached to the original Agreement.
- 12.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the latest date written below.

CITY OF RENTON

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By (signature):  
Denis Law  
Mayor

By (signature):  
Kim Henry  
I-405/SR 167 Program Director

Date:

Date:

4/23/18

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Deborah L. Cade AAG

By (print):

By (print):

Deborah L. Cade

By (signature):  
City Attorney

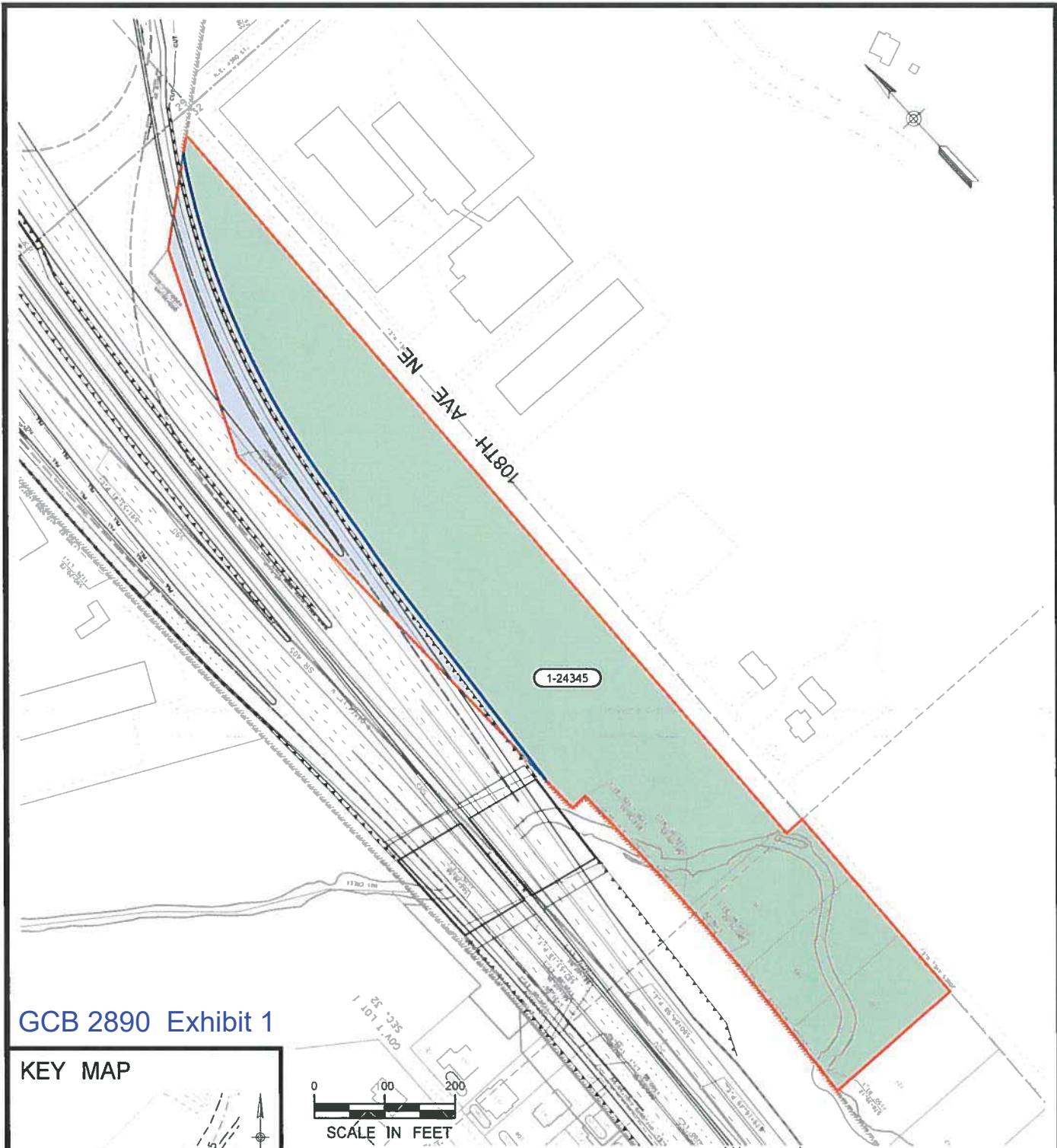
By (signature):  
Assistant Attorney General

Date:                  Date:

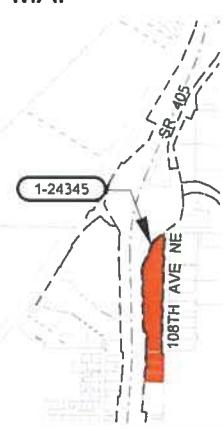
ATTEST:

By (signature):  
Jason Seth, City Clerk

Date:



### KEY MAP



SCALE IN FEET

CITY OF RENTON  
NAME  
TOTAL AREA IS FROM ASSESSOR'S RECORDS  
ALL AREAS ARE SHOWN IN SQUARE FEET

\* calc'd area used

### OWNERSHIP

REMAINDER IS BASED ON TOTAL AREA  
AND R/W TAKE (NOT CALC'D AREA)

RIGHT-OF-WAY TAKE	★ 322,130	5.73 AC	45,225		276,905	
NAME	CALC'D AREA	TOTAL AREA	R/W	LT. REMAINDER RT.	EASM'T	
TOTAL AREA IS FROM ASSESSOR'S RECORDS ALL AREAS ARE SHOWN IN SQUARE FEET						

### OWNERSHIP

SR 405  
RENTON TO BELLEVUE  
EXPRESS TOLL LANES

PARCEL NO. 1-24345

SHEET  
OF

GCB 2890  
EXHIBIT 2

**Parcel 1-24345 Property Description**

**PARCEL A:**

That portion of the following described property lying East and Southeast of State Highway No. 1:

That portion of Government Lot 1 in Section 32, Township 24 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning on the East line of said Government Lot 1, South 01°42'13" West 30 feet from the Northeast corner thereof;

Thence South 01°42'13" West 963.80 feet;

Thence North 88°48'55" West 644.44 feet;

Thence South 01°11'02" West 329.55 feet to a point 11 feet North of the South line of said Government Lot 1;

Thence North 88°48'58" West 20 feet;

Thence North 01°11'02" East 151.58 feet;

Thence North 53°55'45" West 416.57 feet;

Thence North 77°10'30" West 408.2 feet to the Easterly margin of Lake Washington Boulevard;

Thence North 30°56'13" East along said Easterly margin 907.39 feet;

Thence on a curve to the right having a radius of 65.49 feet, distant 68.84 feet to a point 30 feet South of the North line of said Government Lot 1;

Thence South 88°50'10" East 907.54 feet to the Point of Beginning.

Except that portion conveyed to King County for 108th Avenue Southeast by deed recorded under Recording No. 5700801.

**PARCEL B:**

That portion of the following described property lying East of State Highway No. 1 as conveyed to the State of Washington by deed recorded under Recording No. 4673375:

That portion of Government Lot 1 in Section 32, Township 24 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the East line of said lot from which the Northeast corner thereof bears North 01°42'13" East a distance of 993.80 feet;

Thence South 01°42'13" West along the East line of said lot, 340.55 feet to the Southeast corner thereof;

Thence along the South line of said lot North 88°48'58" West 641.35 feet;

Thence North 1°11'02" East 340.55 feet;

Thence South 88°48'58" East 641.35 feet to the Point of Beginning.

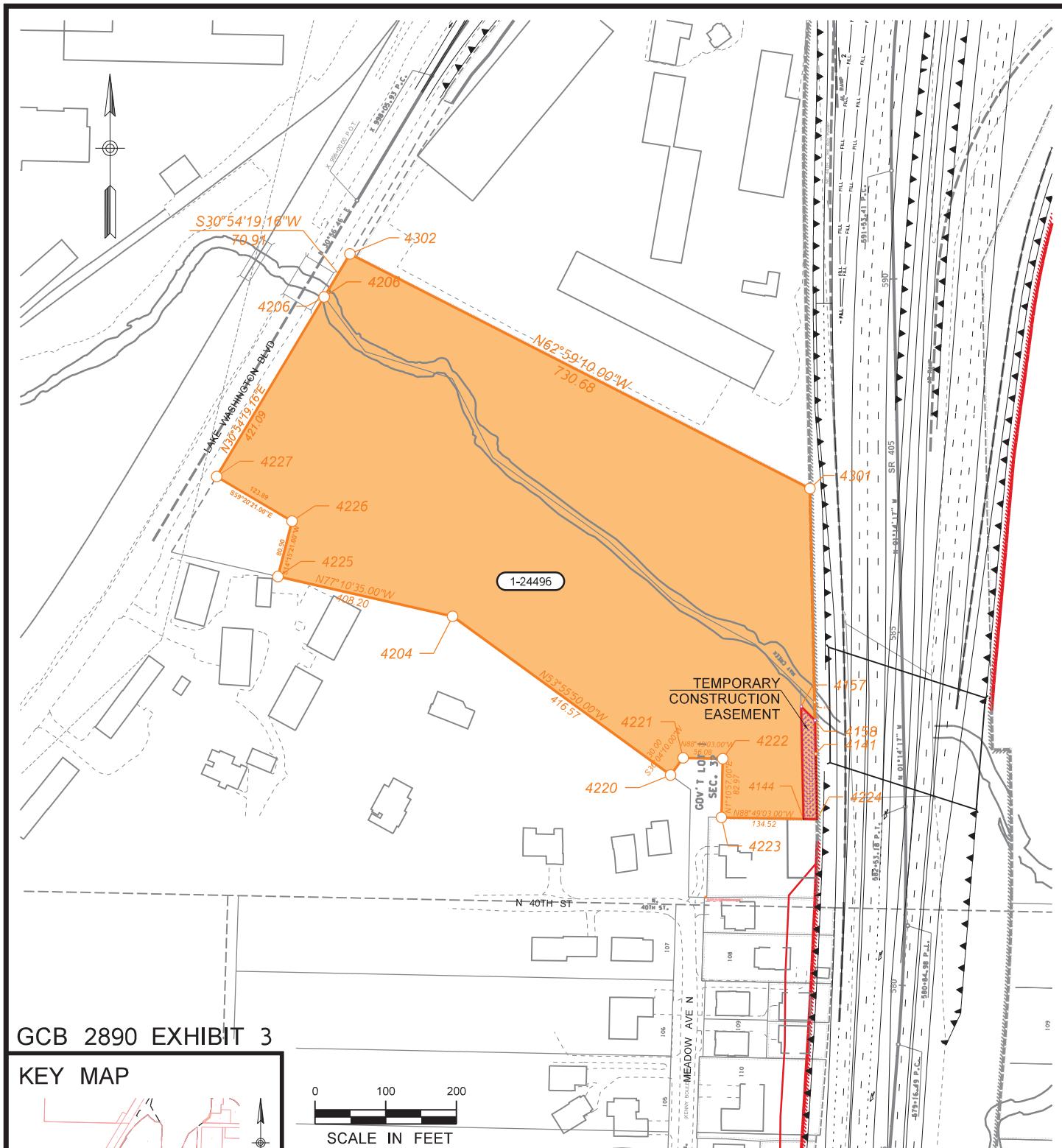
Excepting therefrom that portion of the above described tract lying South of the following described lines:

Beginning at a point 11 feet North of the Southeast corner of the above described tract;  
Thence Westerly 559 feet, more or less, to a point which is 13 feet North of the South line of the  
tract hereinabove described;

Thence continuing Westerly 82 feet, more or less, to a point on the Westerly line of said tract  
distant 11 feet North of the South line of said Government Lot 1.

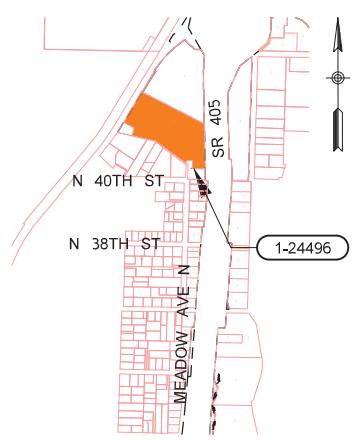
Also except that portion conveyed to King County for 108th Avenue Southeast by deed  
recorded under Recording No. 5700802.

Situate in the County of King, State of Washington.



GCB 2890 EXHIBIT 3

## KEY MAP



A horizontal scale bar with tick marks at 0, 100, and 200. The segment between 0 and 100 is shaded black, representing 100 feet.

TOTAL AREA IS FROM ASSESSOR'S RECORDS  
ALL AREAS ARE SHOWN IN SQUARE FEET

## OWNERSHIP

REMAINDER IS BASED ON TOTAL AREA  
AND R/W TAKE (NOT CALC'D AREA)

## LEGEND

 RIGHT-OF-WAY TAKE  
REMAINDER AREA  
EASEMENT AREA  
**125** COGO POINT I.D.  
1-12345 PARCEL NUMBER

SR 405  
RENTON TO BELLEVUE  
EXPRESS TOLL LANES

**PARCEL NO. 1-24496**

SHEET

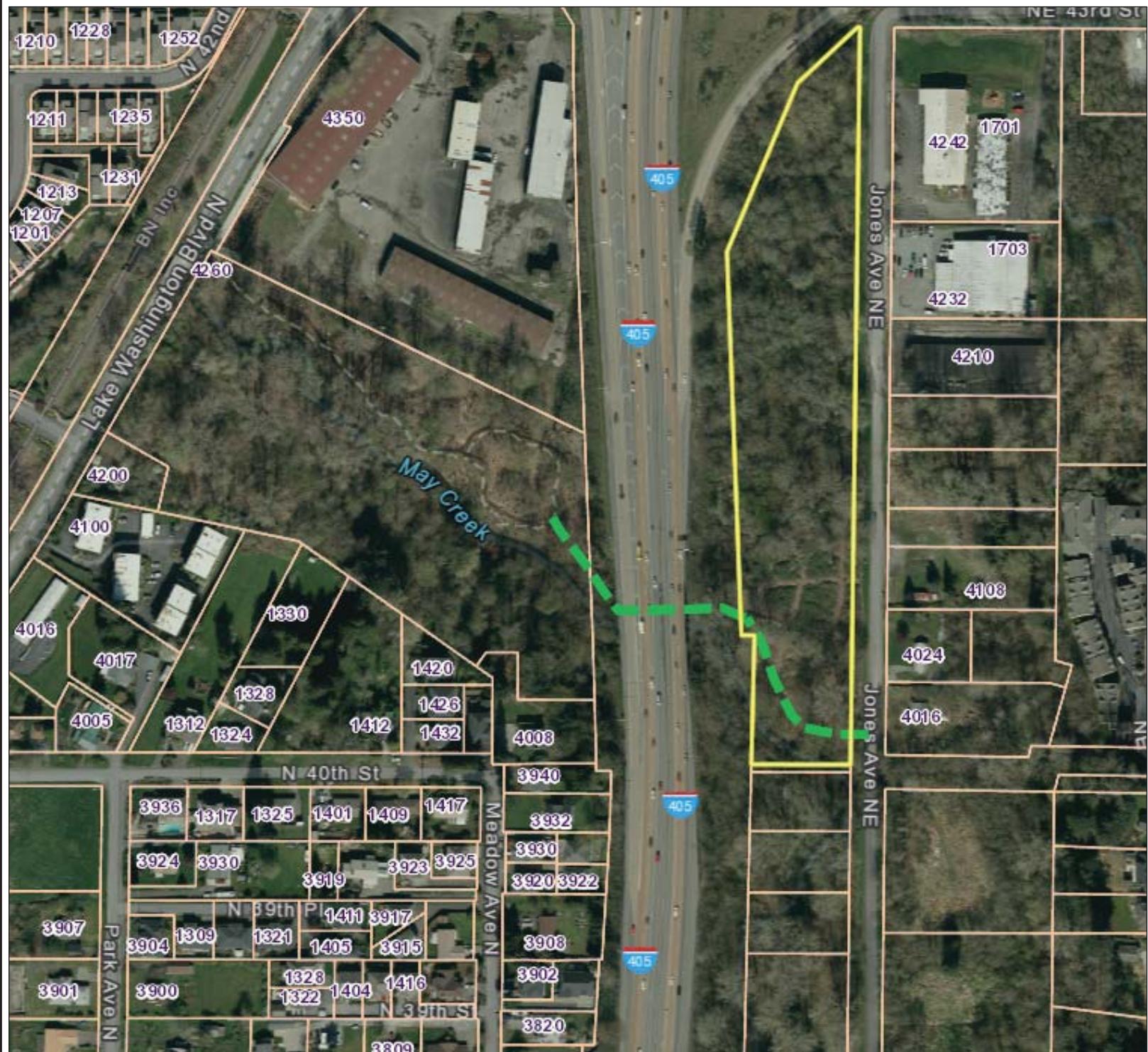








# EXHIBIT 5 - CONCEPTUAL TRAIL PLANS

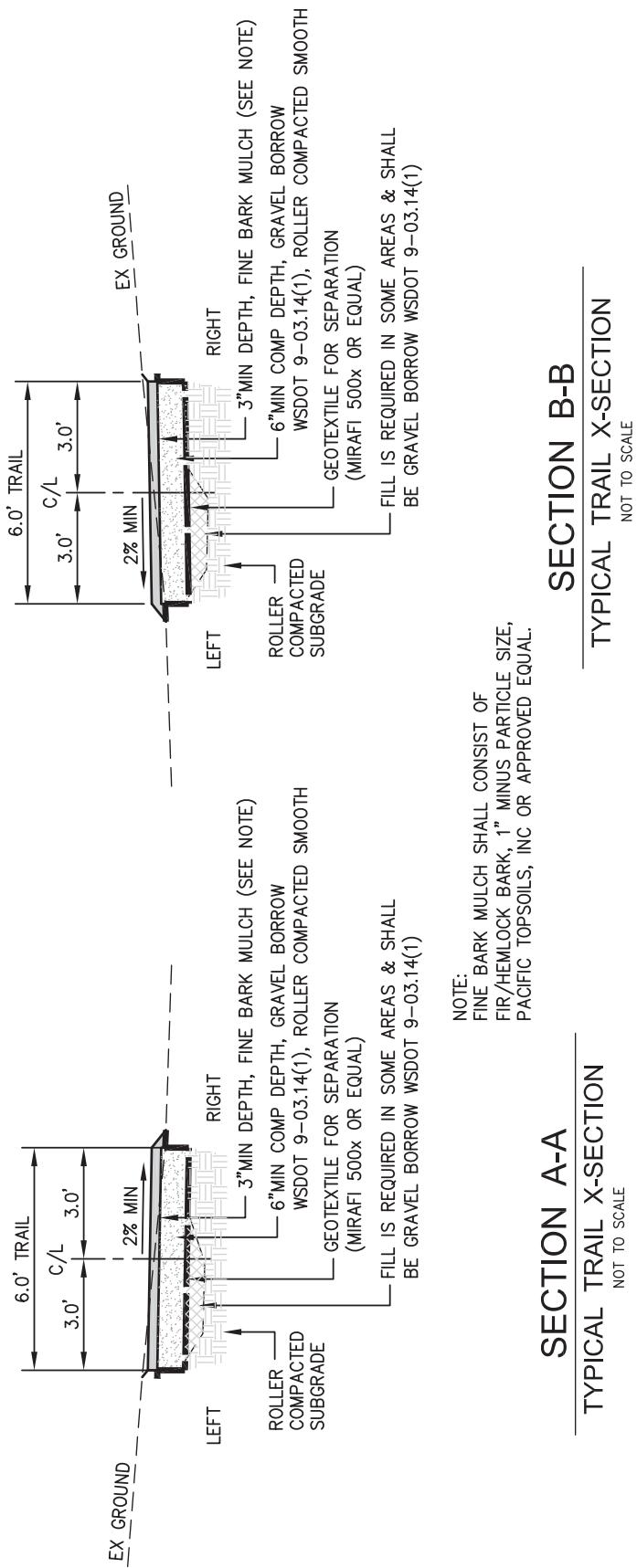


GCB2890  
Exhibit 5

Legend

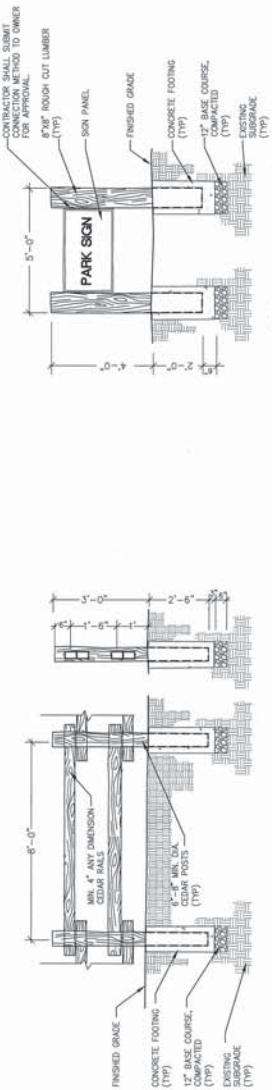
Page 1 of 7

Conceptual Trail Alignment - - - - -



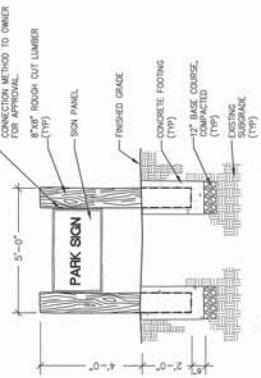
## CONCEPTUAL TYPICAL TRAIL CROSS SECTIONS

PORTION OF GOVT LOT 1, SECTION 32, TWP 24N, RNG. 5E., W.M.



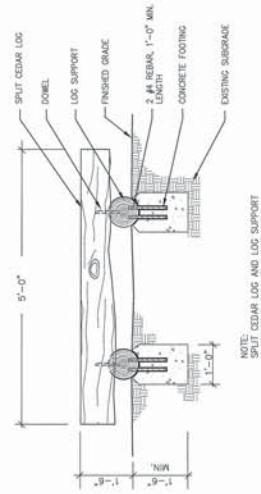
CEDAR SPLIT RAIL FENCE

(NOT TO SCALE)



MAY CREEK TRAIL PARK SIGN

(NOT TO SCALE)



SPLIT CEDAR LOG BENCH

(NOT TO SCALE)

MAY CREEK TRAIL  
SITE FURNISHING DETAILS

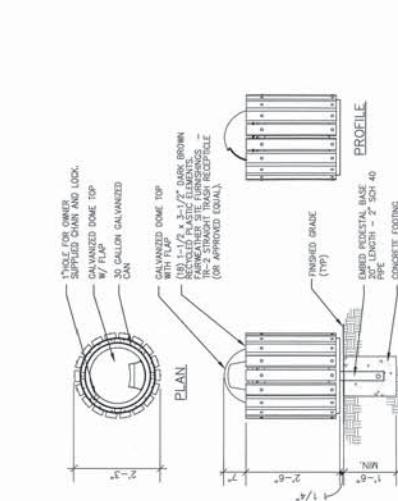


CITY OF RENTON, WASHINGTON  
RENTON PARKS

**GENERAL NOTES:**

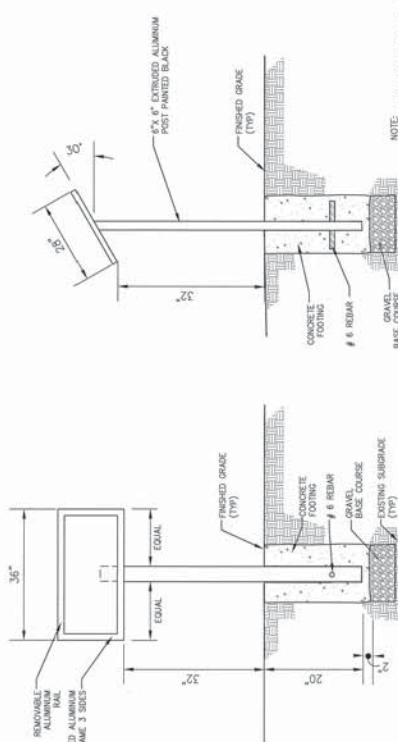
1. FINAL PLACEMENT OF SITE FURNISHINGS SHALL BE APPROVED BY OWNER PRIOR TO INSTALLATION.
2. ADDITIONAL DETAIL HAS BEEN PROVIDED FOR OWNER FURNISHED CONTRACTOR INSTALLED (OFC) ITEMS FOR INFORMATIONAL PURPOSES ONLY. SEE DETAILS FOR CLARIFICATION.
3. TRAIL-HEAD SIGN DETAIL IS NOT SHOWN. INSTALLATION SHALL BE PER THE INTERPRETIVE SIGN BASE DETAIL.

AND ASSOCIATES INC.  
DAVID EVANS  
115 - 18th Avenue SE  
Seattle, Washington 98102-3516  
Phone: 425-519-6600  
Fax: 425-519-6600  
e-mail: [info@andassociatesinc.com](mailto:info@andassociatesinc.com)



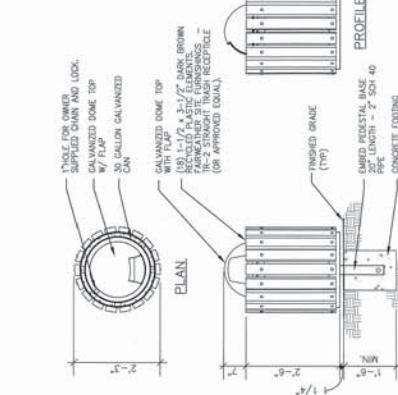
SPLIT CEDAR LOG BENCH

(NOT TO SCALE)



INTERPRETIVE SIGN BASE

(NOT TO SCALE)



TRASH RECEPTACLE

(NOT TO SCALE)

CONCEPTUAL DETAILS OF ACCESSORY COMPONENTS OF THE TRAIL

Note: This plan set was used for a different segment of the may creek trail and is only provided as an example of conceptual details for the subject section of the trail.

PROJECT NUMBER:  
**RENT000-0016**

DRAWING FILE:  
**LAP000RENT15**

SCALE:  
**NOT TO SCALE**

DATE: APRIL 2012  
DESIGN: GCB  
DRAWN: GCB  
CHECKED: JCCA  
REVISION NUMBER:  
**01**

SHEET NO.  
**M-7**  
of 17

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Protection of Utilities.
- B. Temporary Restroom Facility.
- C. Temporary Controls: Barriers, fencing, and protection of the Work.
- D. Construction Facilities: Staging Area and worker parking.

1.02 PROTECTION OF UTILITIES

- A. The Contractor is responsible for location and protection of all existing utilities. The Contractor shall at his own expense carefully protect from injury trees, landscape, power and light poles, water lines, conduit, drains, sidewalks, culverts or any other structures and improvements at no cost to the Owner, and the Contractor shall be liable for any damages or claims arising from these interferences with said structures.

1.03 TEMPORARY RESTROOM FACILITY

- A. Temporary restroom facilities for use during construction operations shall be supplied by the Contractor.

1.04 BARRIERS

Contractor will coordinate work to eliminate potential conflicts with the public's safety.

Contractor shall erect and maintain all construction barriers and warning signs and other traffic control devices necessary to warn and protect the public at all times from active construction site access and injury.

1.05 EROSION AND SEDIMENT CONTROL

- A. Set up temporary erosion control facilities as detailed and required to prevent sediments entering May Creek and the existing storm water system on Lake Washington Boulevard North.

1.06 CONSTRUCTION FACILITIES

- A. Staging area shall be in the temporary construction easement, on the adjacent Hawk's Landing property, just north of the May Creek Trail project. Access will be off of Lake Washington Boulevard North through a dropped curb. Contractor shall provide a temporary chain-link fenced enclosure for security.

- B. Worker's automobiles may be parked in the temporary construction easement. No parking or any use of the adjacent Hawk's Landing (to the north) outside of the temporary construction easement will be allowed.

1.07 POLLUTION CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by any construction operation.

1.08 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary equipment, facilities, and materials prior to Final Acceptance review.
- B. Clean and repair damage caused by installation or use of temporary work.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

## PART 1 - GENERAL

### 1.01 SECTION INCLUDES

#### General Description of the Work:

Maintain environmental controls by the Contractor until the acceptance of the Work. The work also includes compliance with all controls or ordinances with respect to safety, noise, dust, and traffic.

### 1.02 SITE MAINTENANCE

The Contractor shall keep the work site, staging area, and Contractor's facilities clean and free from rubbish and debris. Materials and equipment shall be removed from the site when they are no longer necessary. Upon completion of the work and before final acceptance, the work site shall be cleared of equipment, unused materials and rubbish to present a clean and neat appearance in conformance with the present condition of the site.

#### Clean-up:

Waste material of any kind shall not be permitted to remain on the site of the work or the staging area or adjoining property or on the adjacent roadway. Immediately upon such materials becoming unfit for use in the work, they shall be collected, removed from the site, and recycled or disposed of by the Contractor.

In the event that waste or recyclable material, refuse, debris, and/or rubbish are not removed from the work by the Contractor, the City reserves the right to have the waste, recyclable material, refuse, debris and/or rubbish removed. The expense of the removal and disposal will be charged to the Contractor.

Construction materials shall be handled with care to prevent entry of contaminants into storm drains, air, groundwater, surface waters, or soils. The Contractor shall be responsible for all cleanup costs, fines and/or penalties incurred as a result of improper handling of materials used to perform the work.

#### Street and Staging Area Cleaning:

The Contractor shall be responsible for preventing dirt and dust from escaping from trucks entering or departing the project site by covering dusty loads, washing truck tires before leaving the site, and/or other reasonable methods.

When working dump trucks and/or other equipment are on paved streets and roadways, the Contractor will be required to clean said streets if required by the City at the conclusion of each day's operations.

In the event that the above requirements are violated and no action is taken by the Contractor after notification of infraction by the City, the City reserves the right to have

the streets in question cleaned by others and the expense of the operation will be charged to the Contractor.

#### NOISE CONTROL

Construction involving noisy operations, including starting and warming up of equipment, shall be in compliance with local noise ordinances. Noisy operations shall be scheduled to minimize their duration. The Contractor shall comply with all local controls and noise level rules, regulations and ordinances that apply to any work performed pursuant to the Contract.

#### TREE AND PLANT PROTECTION

The Contractor shall carefully protect trees and vegetation in all areas within the site designated on the plans and all areas outside of the boundaries of the project site from damage by construction activities. If trees or vegetation are damaged or destroyed by construction, the Contractor shall replace them with the same species as required by the Owner, at no cost to the City.

#### PART 2 PRODUCTS

Not used.

#### PART 3 EXECUTION

Not used.

END OF SECTION

**EXHIBIT 6 - Estimate of Cost - GCB 2890**

<b>Otak Fees</b>			
<b>Task</b>			<b>Fee</b>
Project Management		\$	8,800.00
Data Collection		\$	18,000.00
Preliminary Design		\$	47,000.00
Permitting/Support Documentation		\$	43,000.00
Direct Expenses/Subconsultant		\$	3,500.00
Addendum with Boardwalk, Geotech Report, and Variance		\$	40,000.00
	<b>Subtotal:</b>	\$	<b>160,300.00</b>

<b>City of Renton Staff Costs</b>			
<b>Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Total Cost</b>
Associate Planner	\$64.38	40	\$ 2,575.20
Current Planning Manager	\$87.83	16	\$ 1,405.28
	<b>Subtotal:</b>		
	\$ 3,980.48		

<b>Land Use Permitting Fees</b>			
<b>Land Use Permit</b>			<b>Fee</b>
Shoreline Substantial Development		\$	2,500.00
Shoreline Variance (with addendum)		\$	3,000.00
Technology Fee (5%)		\$	275.00
	<b>Subtotal:</b>	\$	<b>5,775.00</b>
	<b>PROJECT TOTAL:</b>		
	\$ 170,055.48		

# **SECTION 106**





Washington State  
Department of Transportation

**Lynn Peterson**  
Secretary of Transportation

February 5, 2016

**Northwest Region**  
15700 Dayton Avenue North  
P.O. Box 330310  
Seattle, WA 98133-9710  
  
(206) 440-4000  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

City of Renton  
Department of Community & Economic Development  
Planning Department  
1055 South Grady Way  
Renton, WA 98057

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and**  
**Archaeological Potential Zone Maps**

To Whom It May Concern:

Pursuant to 36 CFR 800.3(f)(1), the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is initiating consultation with your office in regards to the I-405 – SR 169 to I-90 (Renton to Bellevue) Project. This undertaking was previously subject to Section 106 consultation and a cultural resources study was conducted in 2006. The undertaking was previously determined as No Historic Properties Affected. As ten years have passed since the previous study and determination, and project changes have occurred, WSDOT, on behalf of FHWA, is reinitiating consultation on the project and invites you to comment on the Area of Potential Effects (APE) and the archaeological potential zone maps and documentation attached to this letter.

**Project Description**

This undertaking is located along the I-405 corridor within the city limits of Renton and Bellevue as well as a portion of unincorporated King County, Washington. The project extends from Milepost (MP) 4.0 to MP 11.9 of I-405. The undertaking is within Township 23N, Range 5E, Sections 5, 8, and 17, and Township 24N, Range 5E, Sections 9, 16, 17, 20, 29, and 32.

The project will add one new lane in each direction of I-405 from MP 4.0 to MP 11.9. The additional lanes will be combined with existing HOV lanes to create a new dual lane express toll system in both directions. A new auxiliary lane will also be added southbound between MP 9.3 and MP 10.7. There will be a total of 4 lanes in each direction from MP 4.0 to MP 9.3 and from MP 10.7 to MP 11.5, and 5 lanes in each direction from MP 9.3 to MP 10.7, and 6 lanes in each direction from MP 11.4 to MP 11.9.

The interchanges at NE 44<sup>th</sup> Street (~MP 7.48) and 112<sup>th</sup> Ave (~MP 9.25) will be reconstructed to accommodate the additional lanes and a new direct access interchange will be constructed for HOV/Transit/Express Toll Lanes at North 8<sup>th</sup> Street (MP 4.92).

The project will also widen the southbound overpass over NE Park Drive (MP 5.42), both overpasses over Sunset Blvd NE (~MP 4.53), and replace bridges over May Creek (~MP 7.18) south of the NE 44<sup>th</sup> Street interchange.

In addition to widening and interchange improvements, the project will address fish passage at 5 stream crossings: Johns Creek (MP 5.09); Gypsy Creek (MP 7.5); Gypsy Creek (MP 7.59); Unnamed Creek (MP 7.75); and, Unnamed Creek (MP 7.85). The project will also add new outfalls to Johns Creek, Gypsy Creek, and Lake Washington.

### **Definition of the Project Area of Potential Effects (APE)**

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If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

cc: Project File  
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Matthew Sterner, DAHP, w/o attachments  
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[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

The Honorable Cecile Hansen, Chair  
Duwamish Tribe  
4705 W. Marginal Way SW  
Seattle, WA 98106

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Re-Initiation and Request for Comment on Area of Potential Effects**  
**and Archaeological Potential Zone Maps**

Chairwoman Hansen:

Pursuant to 36 CFR 800.3(f)(1), the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is re-initiating consultation with your office in regards to the I-405 – SR 169 to I-90 (Renton to Bellevue) Project. This undertaking was previously subject to Section 106 consultation and a cultural resources study was conducted in 2006. The undertaking was previously determined as No Historic Properties Affected. As ten years have passed since the previous study and determination, and project changes have occurred, WSDOT, on behalf of FHWA, is reinitiating consultation on the project and invites you to comment on the Area of Potential Effects (APE) and the archaeological potential zone maps and documentation attached to this letter.

**Project Description**

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Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
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Charlie Sundberg, Preservation Planner  
King County Historic Preservation Program  
King Street Center  
201 S. Jackson St. Room 700  
Seattle, WA 98104-3855

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and**  
**Archaeological Potential Zone Maps**

Dear Mr. Sundberg:

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Sincerely,



Cameron Kukes  
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Enclosures

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Chris Salomone, Director  
Planning & Community Development  
P.O. Box 90012  
Bellevue, WA 98009

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

Dear Mr. Salomone:

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Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

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Heather Trescases, Director  
Eastside Heritage Center  
P.O. Box 40535  
Bellevue, WA 98015

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

Dear Ms. Trescases:

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Cameron Kukes  
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Enclosures

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Renton Historical Society  
c/o Renton History Museum  
235 Mill Avenue South  
Renton, WA 98057

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

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Your response to this letter, acknowledging your interest in participating in this undertaking as a consulting party, is greatly appreciated. We are also inviting comments regarding any other concerns the proposed project may raise. Please provide a response by March 7th so that we may discuss this undertaking and any of those identified areas of interest. Should you

have any questions about this project, you may contact Linda Cooley by phone at (425) 456-8586 or by E-mail at [CooleyL@wsdot.wa.gov](mailto:CooleyL@wsdot.wa.gov).

If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

cc: Project File  
Lindsey Handel, Federal Highway Administration, w/ attachments  
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The Honorable Virginia Cross, Chair  
Muckleshoot Tribe  
39015 172<sup>nd</sup> Ave. SE  
Auburn, WA 98092

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and**  
**Archaeological Potential Zone Maps**

Dear Chairwoman Cross:

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In addition to widening and interchange improvements, the project will address fish passage at 5 stream crossings: Johns Creek (MP 5.09); Gypsy Creek (MP 7.5); Gypsy Creek (MP 7.59); Unnamed Creek (MP 7.75); and, Unnamed Creek (MP 7.85). The project will also add new outfalls to Johns Creek, Gypsy Creek, and Lake Washington.

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Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

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Laura Murphy, Tribal Archaeologist  
Muckleshoot Tribe  
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Auburn, WA 98092

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Enclosures

cc: Project File  
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Enclosures

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Snoqualmie Tribe  
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WSDOT NW Region Environmental Program Manager

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Enclosures

cc: Project File  
Steven Mullen-Moses, Snoqualmie Tribe Dir. Archaeology & Historic Preservation, w/attachments  
Adam Osbekoff, Snoqualmie Tribe Asst. Dir. Archaeology & Historic Preservation, w/attachments  
Cindy Spiry, Snoqualmie Tribe Director of Natural Resources, w/attachments  
Lindsey Handel, Federal Highway Administration, w/ attachments  
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If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

cc: Project File  
The Honorable Carolyn Lubenau, Chair, Snoqualmie Tribe, w/o attachments  
Adam Osbekoff, Snoqualmie Tribe Asst. Dir. Archaeology & Historic Preservation, w/attachments  
Cindy Spiry, Snoqualmie Tribe Director of Natural Resources, w/attachments  
Lindsey Handel, Federal Highway Administration, w/ attachments  
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Adam Osbekoff, Asst. Director, Archaeology & Historic Preservation  
Snoqualmie Tribe  
P.O. Box 969  
Snoqualmie, WA 98065

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and**  
**Archaeological Potential Zone Maps**

Dear Mr. Osbekoff:

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The Honorable Shawn Yanity, Chair  
Stillaguamish Tribe  
P.O. Box 277  
Arlington, WA 98223

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

Dear Chairman Yanity:

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Enclosures

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Kevin Bartoy, WSDOT NW Region Cultural Resource Specialist, w/o attachments  
Linda Cooley, WSDOT NWR Env. Doc. & Permitting Specialist, w/o attachments



Washington State  
Department of Transportation

**Lynn Peterson**  
Secretary of Transportation

February 5, 2016

**Northwest Region**  
15700 Dayton Avenue North  
P.O. Box 330310  
Seattle, WA 98133-9710

(206) 440-4000  
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[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

The Honorable JoDe Goudy, Chair  
Yakama Nation  
P.O. Box 151  
Toppenish, WA 98948

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

Dear Chairman Goudy:

Pursuant to 36 CFR 800.3(f)(2), in accordance with the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR 800), the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is initiating consultation with the Yakama Nation for the I-405 – SR 169 to I-90 (Renton to Bellevue) Project. This undertaking was previously subject to Section 106 consultation and a cultural resources study was conducted in 2006. The undertaking was previously determined as No Historic Properties Affected. As ten years have passed since the previous study and determination, and project changes have occurred, WSDOT, on behalf of FHWA, is reinitiating consultation on the project and invites you to comment on the Area of Potential Effects (APE) and the archaeological potential zone maps and documentation attached to this letter.

**Project Description**

This undertaking is located along the I-405 corridor within the city limits of Renton and Bellevue as well as a portion of unincorporated King County, Washington. The project extends from Milepost (MP) 4.0 to MP 11.9 of I-405. The undertaking is within Township 23N, Range 5E, Sections 5, 8, and 17, and Township 24N, Range 5E, Sections 9, 16, 17, 20, 29, and 32.

The project will add one new lane in each direction of I-405 from MP 4.0 to MP 11.9. The additional lanes will be combined with existing HOV lanes to create a new dual lane express toll system in both directions. A new auxiliary lane will also be added southbound between MP 9.3 and MP 10.7. There will be a total of 4 lanes in each direction from MP 4.0 to MP 9.3 and from MP 10.7 to MP 11.5, and 5 lanes in each direction from MP 9.3 to MP 10.7, and 6 lanes in each direction from MP 11.4 to MP 11.9.

The interchanges at NE 44<sup>th</sup> Street (~MP 7.48) and 112<sup>th</sup> Ave (~MP 9.25) will be reconstructed to accommodate the additional lanes and a new direct access interchange will be constructed for HOV/Transit/Express Toll Lanes at North 8<sup>th</sup> Street (MP 4.92).

The project will also widen the southbound overpass over NE Park Drive (MP 5.42), both overpasses over Sunset Blvd NE (~MP 4.53), and replace bridges over May Creek (~MP 7.18) south of the NE 44<sup>th</sup> Street interchange.

In addition to widening and interchange improvements, the project will address fish passage at 5 stream crossings: Johns Creek (MP 5.09); Gypsy Creek (MP 7.5); Gypsy Creek (MP 7.59); Unnamed Creek (MP 7.75); and, Unnamed Creek (MP 7.85). The project will also add new outfalls to Johns Creek, Gypsy Creek, and Lake Washington.

### **Definition of the Project Area of Potential Effects (APE)**

The project APE includes areas where archaeological resources may be encountered or disturbed and areas where historic structures, landscapes, and viewsheds may be directly or indirectly affected. Potential effects to archaeological sites are primarily anticipated where ground disturbance will occur during project construction. Historic structures may be directly affected by the above described construction activities, and may be indirectly affected by noise, vibration, or changes to the visual environment associated with the construction and implemented use of the proposed project.

The APE for this project is defined by the *PA* as follows:

- 1) All areas where ground disturbance is planned, including but not limited to: clearing and grubbing, grading, bridge foundations, retaining walls, noise walls, detention ponds, conveyances, and ecology embankments, creation or enhancement of wetland mitigation sites, and staging and stockpiling areas; and,
- 2) Historic properties located either one tax lot on each side of the affected rights-of-way or 200 feet from their margins, whichever is less.

Based upon a review of the DAHP WISAARD database and information contained in the previous cultural resources survey for the project, a majority of the APE has been previously surveyed. The level of intensity of the survey varied throughout the corridor and additional survey will be necessary to ensure that the locations of ground disturbance are tested to current standards. Following the protocol outlined in the *PA*, the attached archaeological potential zone maps and documentation will be used to guide the additional survey work.

The only known archaeological sites located within a half mile of the APE are clustered at the southern end of the project in Renton. These archaeological sites are: 45KI538 (Columbia and Puget Sound Railroad); 45KI542 (Historic Debris Scatter); and, 45KI686 (Henry Moses Aquatic Center Site); 45KI767 (Talbot Road Dam and Retaining Walls). None of these archaeological sites are within the APE. No other historic properties are known to exist within one half mile of the APE.

Recognizing the government-to-government relationship that the Federal Highway Administration has with the Yakama Nation, FHWA will continue to play a key role in this project as the responsible federal agency.

Your response to this letter, acknowledging your interest in participating in this undertaking as a consulting party, is greatly appreciated. We are also inviting comments regarding any other concerns, such as fisheries and Treaty Rights, the proposed project may raise. Please provide a response by March 7th so that we may discuss this undertaking and any of those identified areas of interest. Should you have any questions about this project, you may contact Linda Cooley by phone at (425) 456-8586 or by E-mail at [CooleyL@wsdot.wa.gov](mailto:CooleyL@wsdot.wa.gov).

If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

CK:ss  
Enclosures

cc: Project File  
Johnson Meninick, Yakama Nation Cultural Resources, w/ attachments  
Brady Kent, Yakama Nation Environmental Review Coordinator, w/ attachments  
Lindsey Handel, Federal Highway Administration, w/ attachments  
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Johnson Meninick, Cultural Resources  
Yakama Nation  
P.O. Box 151  
Toppenish, WA 98948

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and Archaeological Potential Zone Maps**

Dear Mr. Meninick:

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**Project Description**

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Based upon a review of the DAHP WISAARD database and information contained in the previous cultural resources survey for the project, a majority of the APE has been previously surveyed. The level of intensity of the survey varied throughout the corridor and additional survey will be necessary to ensure that the locations of ground disturbance are tested to current standards. Following the protocol outlined in the *PA*, the attached archaeological potential zone maps and documentation will be used to guide the additional survey work.

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Recognizing the government-to-government relationship that the Federal Highway Administration has with the Yakama Nation, FHWA will continue to play a key role in this project as the responsible federal agency.

Your response to this letter, acknowledging your interest in participating in this undertaking as a consulting party, is greatly appreciated. We are also inviting comments regarding any other concerns, such as fisheries and Treaty Rights, the proposed project may raise. Please provide a response by March 7th so that we may discuss this undertaking and any of those identified areas of interest. Should you have any questions about this project, you may contact Linda Cooley by phone at (425) 456-8586 or by E-mail at [CooleyL@wsdot.wa.gov](mailto:CooleyL@wsdot.wa.gov).

If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

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Enclosures

cc: Project File  
The Honorable JoDe Goudy, Chair, Yakama Nation, w/o attachments  
Brady Kent, Yakama Nation Environmental Review Coordinator, w/ attachments  
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Brady Kent, Environmental Review Coordinator  
Yakama Nation  
P.O. Box 151  
Toppenish, WA 98948

**I-405: SR 169 to I-90 (Renton to Bellevue) Project**  
**Re: Section 106 Initiation and Request for Comment on Area of Potential Effects and**  
**Archaeological Potential Zone Maps**

Dear Mr. Kent:

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Recognizing the government-to-government relationship that the Federal Highway Administration has with the Yakama Nation, FHWA will continue to play a key role in this project as the responsible federal agency.

Your response to this letter, acknowledging your interest in participating in this undertaking as a consulting party, is greatly appreciated. We are also inviting comments regarding any other concerns, such as fisheries and Treaty Rights, the proposed project may raise. Please provide a response by March 7th so that we may discuss this undertaking and any of those identified areas of interest. Should you have any questions about this project, you may contact Linda Cooley by phone at (425) 456-8586 or by E-mail at [CooleyL@wsdot.wa.gov](mailto:CooleyL@wsdot.wa.gov).

If you have any general questions about the Section 106 process, you may contact Steve Shipe by phone at (206) 440-4531 or by E-mail at [shipest@wsdot.wa.gov](mailto:shipest@wsdot.wa.gov).

Sincerely,



Cameron Kukes  
WSDOT NW Region Environmental Program Manager

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Enclosures

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Kevin Bartoy, WSDOT NW Region Cultural Resource Specialist, w/o attachments  
Linda Cooley, WSDOT NWR Env. Doc. & Permitting Specialist, w/o attachments



June 21, 2017

Dr. Allyson Brooks, SHPO  
Department of Archaeology and Historic Preservation  
P.O. Box 48343  
Olympia, WA 98504-8343

**Log:** **2016-02-01086**  
**Property:** **I-405 - SR 169 to I-90 (Renton to Bellevue) Project**  
**Re:** **Request for Comments and Concurrence, Expanded Area of Potential Effects, Archaeological Potential Zone Maps, AHS Technical Report, and I-405 Programmatic Agreement Application**

Dear Dr. Brooks:

Pursuant to the *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA) among the Federal Highway Administration (FHWA), the Washington State Historic Preservation Officer (SHPO), the Washington State Department of Transportation (WSDOT), the Muckleshoot Indian Tribe, and the Snoqualmie Indian Tribe for Improvements to Interstate 405 (I-405) Corridor (PA)* executed on April 4, 2008, the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is continuing consultation with your office in regards to the I-405 - SR 169 to I-90 (Renton to Bellevue) Project. This undertaking was previously subject to Section 106 consultation and a cultural resources study was conducted in 2006. The undertaking was previously determined as No Historic Properties Affected. Recent project re-initiation in 2016, under the framework of the above-referenced PA, provided your office the opportunity to review archaeological potential zone maps of the Renton to Bellevue corridor.

Additionally, AHS at Eastern Washington University just finalized their technical report (AHS Short Report DOT16-06) for this undertaking that incorporates their work on the project in 2016-2017. Historic Property Inventory (HPI) forms for the project were submitted by AHS through the Washington Information System for Architectural and Archaeological Records Data (WISAARD) under Department of Archaeology and Historic Preservation (DAHP) Project No. 2016-03-1714. WSDOT is requesting your review of the report's findings. This letter details Post-NEPA project elements further developed during the preliminary engineering phase that didn't make it into AHS' report and therefore requires coordination with your office. Following your review of the materials, WSDOT, on behalf of FHWA, requests your concurrence with our effect determination for the updated undertaking as detailed below.

## Post-NEPA Project Elements

The Post-NEPA project elements detailed in this letter include the following updates for your review. Additional information on each element is provided below.

- 1) Revised outfall location is located in Section 8 of Township 23 North, Range 5 East. The revised outfall location, as shown on **Exhibit 1**, is located north of Northeast Park Drive and west of I-405 and Lake Washington Boulevard North. The outfall includes two twin pipes under Lake Washington Boulevard at a depth of approximately 10 feet with a single pipe outfall at John's Creek.
- 2) I-405 Northbound (NB) ramp to I-90 Eastbound (EB) is located in Section 9 of Township 24 North, Range 5 East. Proposed ramp work from I-405 NB to I-90 EB is located east of I-405 and south of I-90 in the vicinity of Richards Rd / Factoria Blvd (**Exhibit 2**). The ramp will be re-aligned onto new bridges over the I-90 EB to Factoria Boulevard off-ramp and over Factoria Boulevard.
- 3) Two treated stormwater conveyance corridors (one preferred and one alternative) west of the I-405 corridor and south of I-90 are being evaluated located in Sections 9 and 16 of Township 24 North, Range 5 East. The preferred stormwater conveyance corridor is proposed to go underneath 120th Avenue Southeast by means of a horizontal directional drill (HDD). The HDD corridor is proposed to extend for 4,900 feet and will be at an average depth of 90 feet below the surface. Entry and exit points of the HDD will be located in WSDOT right-of-way that have been investigated during previous cultural resources studies. The alternative stormwater conveyance corridor is an at-surface trench running along 118th Avenue Southeast. The proposed trench is to be excavated approximately 10 to 15 feet deep, approximately 10 feet wide, and extend for 4,900 feet. **Exhibit 3** shows the preferred HDD corridor (Red) along 120th Avenue Southeast and the alternative trench corridor (Green) along 118th Avenue Southeast.
- 4) In addition to these updated project elements, the project will not be utilizing the 29-acre Newcastle Beach Park located in Section 17 of Township 24 North, Range 5 East, which was part of the project's original APE (**Exhibit 4**).

## Consultation with Tribes and Consulting Parties

In June 2017, WSDOT, on behalf of FHWA, re-initiated consultation with King County, the City of Bellevue, the Eastside Heritage Center, and Duwamish Tribal Services as consulting parties, and with the Snoqualmie Tribe, Muckleshoot Indian Tribe, Stillaguamish Tribe of Indians, and Yakama Nation as Indian tribes who may attach religious or cultural significance to historic properties that may be affected by the undertaking. To date, WSDOT has not received any other communications from consulting parties or tribes. Jason Cooper and Steve Shipe have provided monthly project status updates to the Snoqualmie Tribe, the Stillaguamish Tribe of Indians, and Muckleshoot Indian Tribe during regularly scheduled monthly meetings.

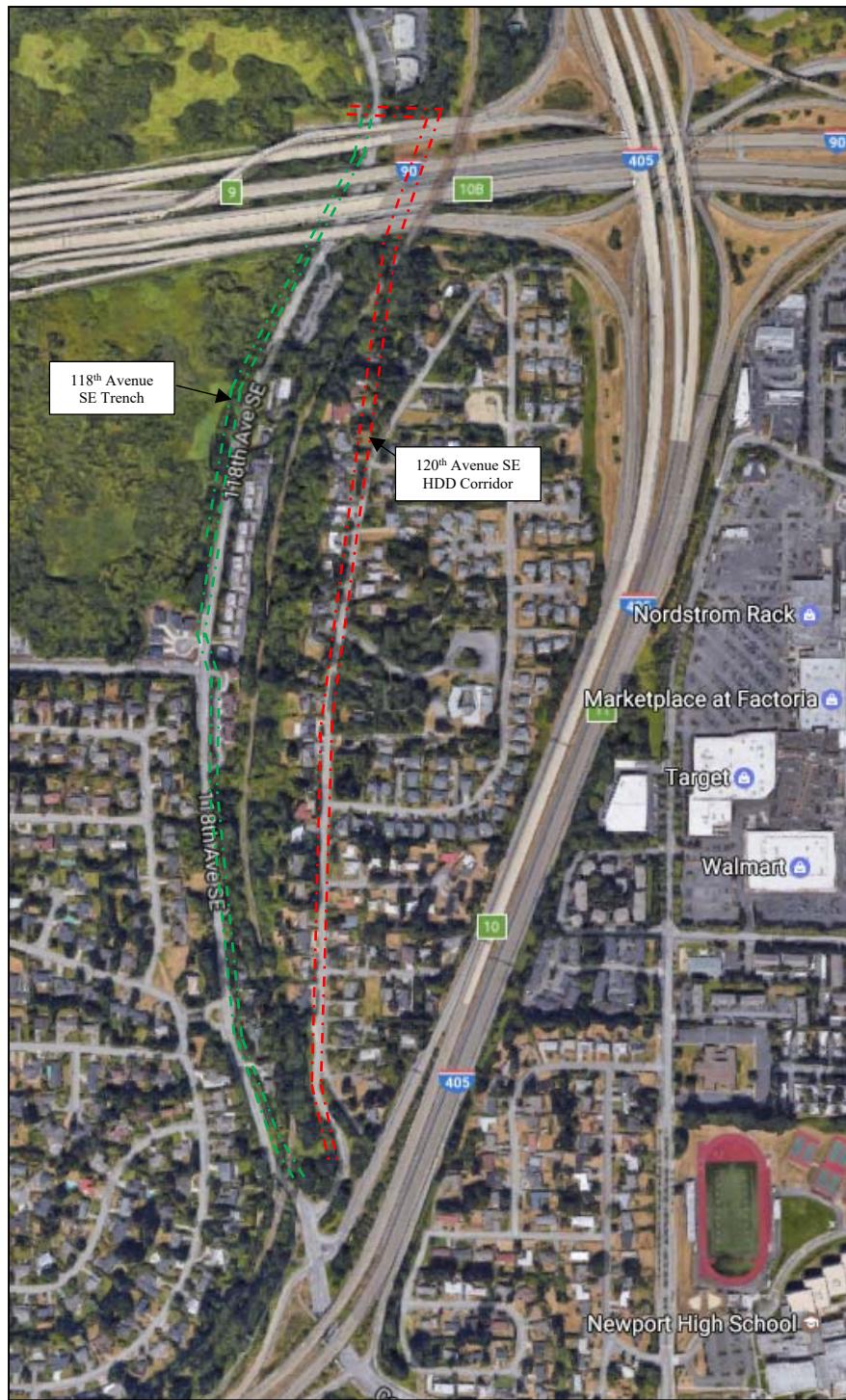
I-405 - SR 169 to I-90 (Renton to Bellevue) Project



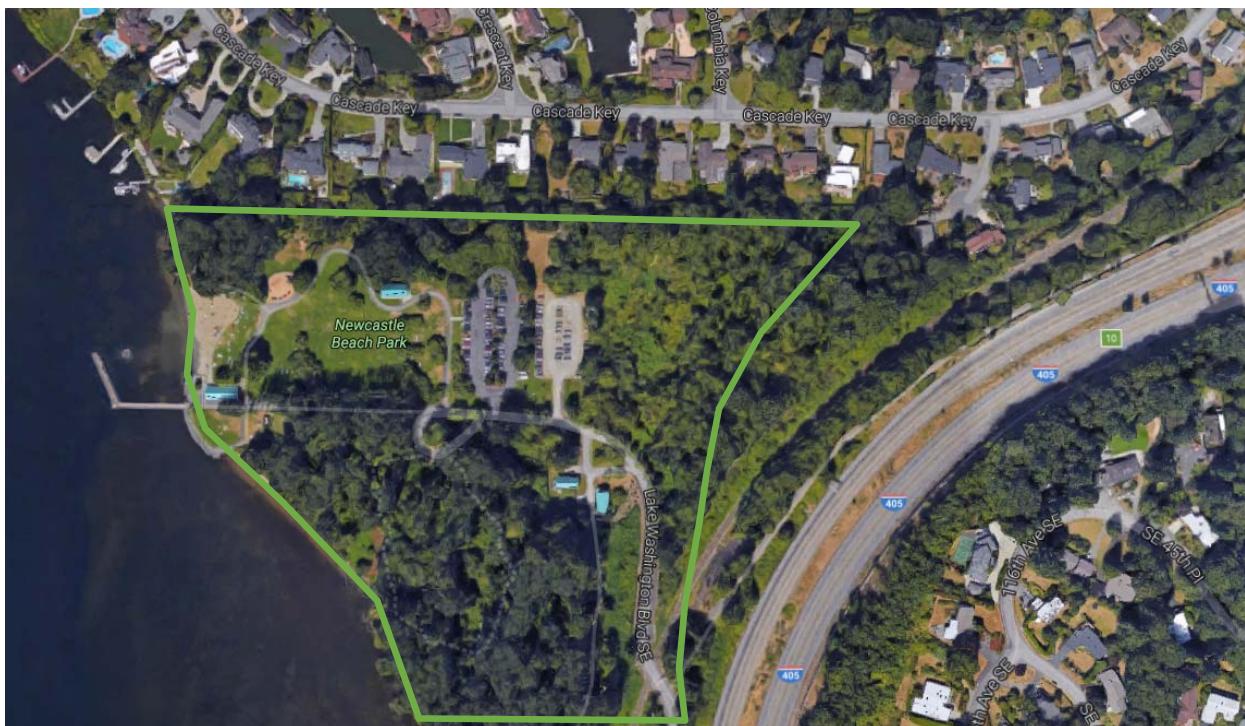
**Exhibit 1. Revised outfall location in Section 8 of T23N, R5E.**



**Exhibit 2. Ramp work between I-405 NB and I-90 EB in Section 9 of T24N, R5E.**



**Exhibit 3. Treated stormwater conveyance corridors, one preferred (red) and one alternative (green), located in Sections 9 and 16 of T24N, R5E.**



**Exhibit 4. Newcastle Beach Park, located in Section 17 of T24N, R5E, is no longer within the project's APE.**

#### **Archaeological Potential for Post-NEPA Project Elements**

Jason Cooper, WSDOT Northwest Region Cultural Resources Specialist, evaluated and verified each Post-NEPA project element described in this letter per Stipulations III.B. and IV.C. in the 2008 PA. The evaluation of each new project element included reviewing the existing archaeological potential zone maps developed by AHS, WSDOT's GIS and DAHP's WISAARD databases, and historic maps/aerial photographs of the proposed areas. Field verification of each area's archaeological potential was conducted by Mr. Cooper on May 10, 2017. The field verification was geared toward confirming whether the new project elements could be categorized as either unrestricted, fill, and/or restricted.

- 1) Revised outfall location, located in Section 8 of Township 23 North, Range 5 East (**Exhibit 1**).

The revised outfall location is situated in an *Unrestricted* archaeological potential zone. *Unrestricted Zones* are locations where Holocene age native surface and post-glacial soils and sediments have been removed entirely. The design-builder may locate any ground-disturbing project element in an Unrestricted Zone without any further cultural resources review (per PA Task IV.C.3).

The revised outfall location supports a small, heavily modified tributary, called John's Creek, that flows through the neighboring Gene Coulon Beach Park into Lake Washington. The NRCS soil survey maps this area as Urban Land. Historic aerial photographs indicate that John's Creek was channelized sometime after 1964 during

improvements that were being made to the adjacent Lake Washington Boulevard and surrounding areas. This area maintains a low probability for unknown and significant archaeological resources. The revised outfall location will not directly or indirectly impact the adjacent railroad corridor (Northern Pacific Lake Washington Belt Line) that has been previously determined eligible for listing in the NRHP.

- 2) I-405 Northbound (NB) ramp to I-90 Eastbound (EB) is located in Section 9 of Township 24 North, Range 5 East (**Exhibit 2**).

Proposed work on the I-405 NB ramp to I-90 EB is situated in a *Fill* archaeological potential zone. *Fill Zones* are locations identified as having deep fill, where native soils and possibly buried surfaces may be present under the fill. The design-builder may locate any ground-disturbing project element in a Fill Zone when design indicates disturbance will not exceed three-quarters of the total depth (to account for over-excavation).

The NRCS soil survey maps this area as Urban Land. Historic aerial photographs of the area indicate that post-1964 construction of the modern-day I-405 and I-90 interchange removed all native sediment and constructed the interstate ramp on fill material. In the process, this interstate modernization removed an old King County road that once connected the Factoria area with the east side of Mercer Slough Nature Park. The proposed ramp work area maintains a low probability for unknown and significant archaeological resources. There are no historic buildings/structures located in the vicinity of the ramp.

- 3) Two treated stormwater conveyance corridors (one preferred and one alternative) west of the I-405 corridor and south of I-90 are being evaluated located in Sections 9 and 16 of Township 24 North, Range 5 East (**Exhibit 3**).

The preferred stormwater conveyance corridor is proposed to go underneath 120th Avenue Southeast by means of a HDD. Both the entry and exit points for the HDD are situated in *Unrestricted* archaeological potential zones. The entry point is located north of I-90 and west of I-405 on an undeveloped parcel behind several office buildings. The NRCS web soil survey maps this area as a mix of Alderwood gravelly sandy loam and Seattle muck. Historic aerial photographs show this area as being altered by mechanical excavation in 1968. All vegetation was removed during these improvements in the late 1960s. The proposed exit point for the HDD is located at the southern end of 120th Avenue Southeast near Coal Creek Parkway SE. The NRCS web soil survey maps this area as a mix of Alderwood gravelly sandy loam and Urban Land. Historic aerial photographs of the exit point show a post-1964 development of the Lake Washington Boulevard (118th Avenue Southeast) and 120th Avenue Southeast intersection east of the former railroad corridor (Northern Pacific Lake Washington Belt Line). The proposed HDD will not directly or indirectly impact the former railroad corridor.

The alternative stormwater conveyance corridor is proposed as an at-surface trench running along 118th Avenue Southeast from just north of I-90 and west of I-405 to near its southern intersection with the former railroad corridor at Coal Creek Parkway, which is a similar location as the preferred corridor described above. The NRCS web soil survey

maps the 118th Avenue Southeast corridor as consisting of primarily Alderwood gravelly sandy loam. Historic aerial photographs of the 118th Avenue Southeast corridor depict a rural landscape with sporadic farmsteads evolving into a post-1970s suburban landscape. The southern stretch of the 118th corridor already maintains a ditch overgrown with vegetation and a subsurface utility (e.g., city sewer/water). The alternative stormwater conveyance corridor along 118th Avenue Southeast is situated in an *Unrestricted* archaeological potential zone. The proposed alternative stormwater conveyance corridor along 118th Avenue Southeast will not directly or indirectly impact the former Northern Pacific Lake Washington Belt Line.

#### **NRHP Eligibility and Project Effect Recommendations**

WSDOT, on behalf of FHWA, is submitting the attached cultural resources survey for your review with the recommendation that this undertaking will have **No Adverse Effect on Historic Properties** given that project activities will not affect the abandoned segment of the Northern Pacific Lake Washington Beltline. WSDOT is sending this recommendation and the attached report to King County, the City of Bellevue, the Eastside Heritage Center, and Duwamish Tribal Services, as well as the Snoqualmie Tribe, Muckleshoot Indian Tribe, Stillaguamish Tribe of Indians, and Yakama Nation. WSDOT will provide you with any comments that the agency receives from the consulting parties and the tribes.

WSDOT, on behalf of FHWA, respectfully requests your concurrence with our determination that the Post-NEPA project elements, which are located in *Unrestricted* and/or *Fill* areas that have limited potential to maintain unknown and significant cultural resources, will have **No Adverse Effect on Historic Properties**.

Please provide your response to this request by July 24, 2017.

Should you require additional information or have any questions please contact me at 206.440.4525, or by email at coopjas@wsdot.wa.gov. Thank you for your continued consultation on this project.

Sincerely,



Jason B. Cooper, M.A., RPA  
Cultural Resources Specialist, WSDOT Northwest Region

Cc: Dennis Wardlaw, DAHP  
Project File

Att: 1) Project Vicinity Map; 2) AHS Technical Report (DOT16-06)



Allyson Brooks Ph.D., Director  
State Historic Preservation Officer

June 26, 2017

Mr. Jason Cooper  
WA State Dept. of Transportation  
15700 Dayton Avenue North  
PO Box 330310  
Seattle, WA. 98133-9710

In future correspondence please refer to:  
Project Tracking Code: 2016-02-01215  
Property: I-405—SR 169 to I-90  
Re: Eligible; NO Adverse Effect

Dear Mr. Cooper:

Thank you for contacting the State Historic Preservation Officer (SHPO) and Department of Archaeology and Historic Preservation (DAHP) regarding the above referenced proposal. This action has been reviewed on behalf of the SHPO under provisions of Section 106 of the National Historic Preservation Act of 1966 (as amended) and 36 CFR Part 800. Our review is based upon documentation contained in your communication.

First, we concur that the property at 11620 SE 45<sup>th</sup> Place (Property #705481) is eligible for inclusion in the National Register of Historic Places under Criteria C. We also concur that the Northern Pacific Railway-Lake Washington Beltline (Property #88798), the property at 11610 SE 45<sup>th</sup> Place (Property #705275), 4240 Lake Washington Boulevard (Property #705288), 4256 Lake Washington Boulevard (Property #705430), 4304 Lake Washington Boulevard (Property #705451), 4436 119<sup>th</sup> Ave SE (Property #705452), 44557 119<sup>th</sup> Ave SE (Property #705476), 6633 Lake Washington Boulevard SE (Property #705489), and 5449 Lake Washington Boulevard (Property #705493) are not eligible for inclusion in the NRHP. Finally, we concur that the current project as proposed will have "NO ADVERSE EFFECT" on the historic property within the APE that are has been determined eligible for listing in the NRHP.

As a result of our concurrence, further contact with DAHP on this proposal is not necessary. However, if new information about affected resources becomes available and/or the project scope of work changes significantly, please resume consultation as our assessment may be revised. Also, if any archaeological resources are uncovered during construction, please halt work immediately in the area of discovery and contact the appropriate Native American Tribes and DAHP for further consultation.

Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Wardlaw".

Dennis Wardlaw  
Transportation Archaeologist  
(360) 586-3085  
[dennis.wardlaw@dahp.wa.gov](mailto:dennis.wardlaw@dahp.wa.gov)





April 3, 2018

(206) 440-4000  
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Dr. Allyson Brooks, SHPO  
Department of Archaeology and Historic Preservation  
P.O. Box 48343  
Olympia, WA 98504-8343

**DAHP Log Numbers: 2016-02-1215; 2016-03-1714; 112206-10-FHWA; 080913-02-FHWA; 060804-08-FHWA**

**Property:** Interstate 405 (I-405) – Formerly Renton to Bellevue Project Stage I, Now Tukwila to Interstate 90 (I-90) Vicinity Express Toll Lanes Project  
**Re:** Request for Comments and Concurrence, Archaeological Potential Zone Maps, and I-405 Programmatic Agreement Application

Dear Dr. Brooks:

Pursuant to the *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA) among the Federal Highway Administration (FHWA), the Washington State Historic Preservation Officer (SHPO), the Washington State Department of Transportation (WSDOT), the Muckleshoot Indian Tribe, and the Snoqualmie Indian Tribe for Improvements to Interstate 405 (I-405) Corridor (PA)* executed on April 4, 2008, the Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is continuing consultation with your office in regards to the I-405 – Tukwila to I-90 Vicinity Express Toll Lanes Project (Project) (formerly known separately as I-405 Renton to Bellevue Project Stage I and the I-405 Tukwila to Renton Improvement Project [TRIP] Stage 3). The newly named Project now includes I-405 from Milepost (MP) 0.0 at the Interstate 5 (I-5) junction to MP 11.9 just north of I-90 in Bellevue (*see attached Map Exhibit*).

The I-405 Renton to Bellevue Project Stage I and the TRIP Stage 3 were originally going to be evaluated in separate National Environmental Policy Act (NEPA) Re-Evaluations, but FHWA recently decided that they needed to be evaluated in a new single Environmental Assessment (EA) because tolling is proposed, which had not been evaluated in the previous EAs. Both the Renton to Bellevue Project and TRIP have previously been through Department of Archaeology and Historic Preservation (DAHP) concurrence/consultations and this letter is providing an update for the new EA which incorporates the first stage of Renton to Bellevue and the third stage of TRIP.

In general, the Project proposes to add one lane to I-405 in each direction for about 8 miles beginning on I-405 near State Route (SR) 167, continuing approximately 1 mile north of I-90. The existing HOV lane on I-405 and an additional lane will be converted to create a dual-lane Express Toll Lane (ETL) system. The 2015 Connecting Washington funding package funded the proposed improvements.

At this time, WSDOT is requesting your review of this letter, in particular the evaluation of several Project Elements included with the Project. Following your review of the materials, WSDOT, on behalf of FHWA, requests your concurrence with our effect determination for the updated undertaking as detailed below.

### Cultural Resources Background Information

Numerous cultural resources investigations have been conducted specifically along this stretch of I-405 (Bowden and Dampf 2005; Bundy 2008; HRA 2006; Ives et al. 2016; Jones 2015a, 2015b; Juell 2001; Landau Associates 2007; Robinson 1992; Robinson and Hillis-Kraft 1984; Smith et al. 2014). These 11 previous cultural resource surveys have thoroughly investigated the 12-mile corridor over a 34-year period. Ives et al. (2016) and Jones (2015a, 2015b) at Archaeological and Historical Services (AHS) implemented the archaeological zone potential mapping strategy for the I-405 corridor, as described in the 2008 PA. Smith et al. (2014) investigated the I-405 Direct Connector Project between I-405 and SR 167, including the Cedar River crossing area. Bowden and Dampf (2005) of Historical Research Associates (HRA) systematically investigated the I-405 corridor excavating shovel test probes in high probability areas, defined in the I-405 Corridor Program NEPA/SEPA EIS as “areas adjacent to water courses or lakes.” HRA archaeologists also investigated moderate probability areas, such as along smaller tributaries, and surveyed areas where ground-disturbing activities will extend beyond current disturbances associated with the construction of the I-405 roadway (HRA 2006:4-3). Landau Associates (2007) looked at the Tukwila to SR 169 segment and documented several historic period archaeological sites that were found to be not eligible for listing in the NRHP.

There are six previously documented archaeological sites located within and/or directly adjacent to this 12-mile stretch of I-405. Information regarding these previously documented archaeological sites is presented in **Table 1**.

*Table 1. Previously Documented Archaeological Sites within Project Area*

Site Number	Site Name	Type	Comments
45KI6	Shell midden	Precontact	Destroyed
45KI211	Renton Coal Mine, Renton Civic Dump	Mine related structures in ruin and surface feature	None
45KI538	Columbia and Puget Sound Railroad	Railroad related structures, objects and artifacts	Related to Northern Pacific Lake Washington Belt Line
45KI768	Puget Sound Shore Railroad Company Grade	Abandoned railroad segments	None

45KI848	Renton Glass Company factory	Structural remains in ruin	None
45KI1274	Northern Pacific Railway Lake Washington Beltline	Historic Railroad Property	Abandoned segment, some rails and ties removed

Hundreds of historic property inventory forms have been recorded for structures and/or buildings adjacent to the 12-mile stretch of I-405. Of these historic properties, four are listed in the national or state historic registers. The Frederick W. Winters House is listed in the National Register of Historic Places (NRHP). The Renton Substation of the Snoqualmie Falls Power Company and the Renton fire station are all listed in the Washington State Historic Register (WHR). None of these three historic properties will be impacted by proposed Project activities.

Records on file at DAHP do not indicate that there are traditional cultural properties (TCPs) reported within or near the Project resource evaluation area. However, Native Americans are likely to have fished, hunted, and gathered plant resources in the general vicinity. At the confluence of the Green River and the (former) Black River at the north edge of present-day Fort Dent Park, three tribal house sites were once located here. Known as *skoh-AHL-koh*, ('confluence'), this area was inhabited by the riverine Duwamish or *doo-AHBSH* (Waterman n.d.)

A previously documented, precontact archaeological site (45KI6) was recorded in the early 1960s east of the modern-day 66th Avenue South overcrossing of I-405 to Tukwila Parkway and along the west bank of the Green River (Holmes and Possehl 1963). At that time, the site was documented as preserving approximately 80 centimeters of shell, charcoal, fire modified rock (FMR), and some amount of preserved wood over a 30-square meter area. Holmes and Possehl (1963) estimated that approximately 4 meters of the site had been destroyed by river erosion by the time they documented it. The Office of Public Archaeology visited the site in 1978 and reported the site had been totally destroyed.

One previously recorded cultural resource, a segment of the Northern Pacific Lake Washington Belt Line (Allen and O'Brien 2007), is partially within the Project resource evaluation area. Abandoned segments of this grade have been recorded along the Cedar River (site 45KI138, the Columbia and Puget Sound Railroad) and running alongside the interstate's right-of-way (site 45KI1274, the Northern Pacific Railway Lake Washington Beltline). In 2007, the Lake Washington Belt Line was determined by SHPO to be eligible for listing in the NRHP. Most of the original route configuration and raised ballast bed remains intact, as well as many crossing features. Past modifications in the northern portion of the route, most notably the removal of rails and rehabilitation of the Wilburton Trestle, have not affected the eligibility of the line. Future modifications necessitated by the conversion of the route to a bicycle trail should not be considered an adverse effect, as long as the purpose of the route remains associated with recreation with the potential to be used for transportation again in the future.

## Proposed Project Elements

The proposed Project Elements detailed below in **Table 2** include all of the Project improvements. Additional information on each element is provided below and their locations are identified on the attached map exhibit. None of the bridges proposed for reconstruction are eligible for listing in the NRHP or WHR.

**Table 2. Improvements Proposed with the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project**

Project Element	I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project
I-405/I-5 Interchange <i>Exhibit 2-2, Sheet 1</i>	<ul style="list-style-type: none"> <li>- Extend the southbound left lane at the I-5 interchange west for approximately 500 feet to provide additional merge distance.</li> </ul>
I-405 Lanes and Shoulders from SR 167 to north of I-90 <i>Exhibit 2-2, Sheets 2 through 8</i>	<ul style="list-style-type: none"> <li>- Add one lane on I-405 in each direction from MP 2.9 to MP 11.9 and an additional GP (auxiliary) lane on southbound I-405 between MP 6.7 and 7.1 and MP 9.4 to 10.5.</li> <li>- Bring I-405 up to current freeway standard where feasible.</li> </ul>
I-405 Tolling from SR 167 to north of I-90 <i>Exhibit 2-2, Sheets 2 through 8</i>	<ul style="list-style-type: none"> <li>- Construct tolling gantries. Convert the existing HOV lane on I-405 to create an ETL system from MP 2.4 to MP 11.9 in the northbound direction and MP 1.6 to MP 11.9 in the southbound direction. The system would have: <ul style="list-style-type: none"> <li>• Two ETLs from MP 2.9 to MP 11.9 by converting an additional lane on I-405 to an ETL</li> <li>• One ETL from MP 2.4 to MP 2.9 on northbound I-405 and from MP 1.6 to MP 2.9 on southbound I-405.</li> </ul> </li> </ul>
Cedar Avenue <i>Exhibit 2-2, Sheet 4</i>	<ul style="list-style-type: none"> <li>- Reconstruct the bridge over I-405.</li> </ul>
Renton Avenue <i>Exhibit 2-2, Sheet 4</i>	<ul style="list-style-type: none"> <li>- Reconstruct the bridge over I-405.</li> </ul>
Cedar River Bridge <i>Exhibit 2-2, Sheet 4</i>	<ul style="list-style-type: none"> <li>- Widen the southbound I-405 bridge over the Cedar River.</li> </ul>
Sunset Boulevard North Interchange Area <i>Exhibit 2-2, Sheet 4</i>	<ul style="list-style-type: none"> <li>- Widen the I-405 northbound and southbound bridges over Sunset Boulevard North.</li> </ul>
Northeast Park Drive (SR 900) Interchange Area <i>Exhibit 2-2, Sheet 5</i>	<ul style="list-style-type: none"> <li>- Widen the I-405 southbound bridge over Northeast Park Drive.</li> </ul>
North 30th Street Interchange Area <i>Exhibit 2-2, Sheet 5</i>	<ul style="list-style-type: none"> <li>- Replace the local road overpass abutment slopes with retaining walls on both sides of I-405 and lower the southbound I-405 roadway by approximately one foot.</li> </ul>

Project Element	I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project
Northeast 44th Street Interchange Area <i>Exhibit 2-2, Sheet 6</i>	<ul style="list-style-type: none"> <li>- Replace the northbound and southbound I-405 bridges over May Creek with two new bridges with a minimum 95-foot-long span and provide habitat improvements.</li> <li>- Replace the Northeast 44th Street Bridge over I-405 and reconstruct the interchange. Construct new direct access ramps in the I-405 median.</li> <li>- Realign and reconstruct the northbound access to I-405 from a loop ramp to a new on-ramp from Lake Washington Boulevard Northeast.</li> <li>- Build roundabouts along local arterials.</li> <li>- Construct an at-grade park-and-ride lot at Lake Washington Boulevard North and North 43rd Street with a minimum of 200 parking stalls and a roundabout (improvements will be built, but may be built by Sound Transit or others).</li> </ul>
112th Avenue Southeast Interchange Area <i>Exhibit 2-2, Sheet 7</i>	<ul style="list-style-type: none"> <li>- Replace the 112th Avenue Southeast bridge over I-405.</li> <li>- Construct new direct access ramps in the I-405 median and reconfigure the interchange.</li> <li>- Construct a roundabout on 112th Avenue Southeast.</li> <li>- Reconfigure the Newport Hills Park-and-Ride.</li> </ul>
Coal Creek Parkway Interchange Area <i>Exhibit 2-2, Sheet 7</i>	<ul style="list-style-type: none"> <li>- Construct a new southbound I-405 bridge on a new alignment. Convert the existing southbound I-405 bridge to northbound ETLs.</li> <li>- Convert the four local road intersections on Coal Creek Parkway Southeast to roundabouts.</li> </ul>
I-405/I-90 Interchange Area <i>Exhibit 2-2, Sheet 8</i>	<ul style="list-style-type: none"> <li>- Reconfigure the I-405 southbound to I-90 eastbound ramp from one to two lanes.</li> <li>- Realign the I-405 northbound to I-90 eastbound ramp. As part of this work, construct two new bridges over the eastbound I-90 ramp to Factoria Boulevard and over Factoria Boulevard.</li> </ul>
Fish Passage <i>Exhibit 2-2, Sheet 6</i>	<ul style="list-style-type: none"> <li>- Construct three fish passage crossings under Northeast 44<sup>th</sup> Street and the I-405 mainline at an unnamed tributary (UNT) 08.LW.0283 (formerly Gypsy Creek).</li> <li>- Construct a fish passage crossing under I-405 mainline for Stream 7.7A<sup>a</sup>.</li> <li>- Construct a fish passage crossing under I-405 mainline for Stream 7.8<sup>a</sup>.</li> </ul>
Lake Washington Trail <i>Exhibit 2-2, Sheets 6 and 7</i>	<ul style="list-style-type: none"> <li>- Reconstruct the existing trail to reside in the King County's Eastside Rail Corridor property between Ripley Lane in Renton (MP 7.7) and Coal Creek Parkway in Bellevue (MP 10.2). As part of this work, widen portion of the King County's Eastside Rail Corridor Regional Trail.</li> </ul>
Noise Walls <i>Exhibit 2-2, Sheets 4, 6, 7 and 8</i>	<ul style="list-style-type: none"> <li>- Construct four new noise walls.</li> <li>- Relocate two existing noise walls.</li> </ul>
Stormwater Management	<ul style="list-style-type: none"> <li>- Add 46.92 acres of new PGIS and 5.7 acres of non-PGIS.</li> </ul>

Project Element	<b>I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project</b>
<i>Exhibit 2-2, Sheets 1-8</i>	<ul style="list-style-type: none"> <li>- Provide enhanced treatment for 100 percent of new impervious surfaces.</li> <li>- Retrofit 51 percent (111.5 acres) of existing untreated PGIS.</li> <li>- Treat a total of 179.69 acres of PGIS.</li> </ul>
Vegetation Management and Planting  <i>Exhibit 2-2, Sheets 1-8</i>	<ul style="list-style-type: none"> <li>- Cedar River Stream Buffer Mitigation Site</li> </ul>

### Consultation with Tribes and Consulting Parties

In March 2018, WSDOT, on behalf of FHWA, re-initiated consultation with King County, the cities of Tukwila, Renton, and Bellevue, the Eastside Heritage Center, and Duwamish Tribal Services as consulting parties, and with the Snoqualmie Tribe, Muckleshoot Indian Tribe, Stillaguamish Tribe of Indians, and Yakama Nation as Indian tribes who may attach religious or cultural significance to historic properties that may be affected by the undertaking. To date, WSDOT has not received any other communications from consulting parties or tribes. WSDOT also provides monthly project status updates to the Snoqualmie Tribe, the Stillaguamish Tribe of Indians, and Muckleshoot Indian Tribe.

### Archaeological Potential for Proposed Project Elements

Jason B. Cooper, WSDOT Northwest Region Cultural Resources Specialist, evaluated and verified each proposed Project Element described in this letter per Stipulations III.B. and IV.C. in the 2008 PA. The evaluation of each new project element included reviewing the existing archaeological potential zone maps developed by AHS, WSDOT's GIS and DAHP's WISAARD databases, and historic maps/aerial photographs (see below) of the proposed areas. Field verification of specific Project Element's archaeological potential was conducted by Mr. Cooper over multiple days in January/February 2018. The field verification was geared toward confirming whether the new Project Elements could be categorized in areas as either being unrestricted, fill, and/or restricted (**Table 3**). These categories are described below. Please refer to the attached Exhibit 2-2 for mapped locations of each one of the Project Elements.

*Unrestricted Zones* are locations where Holocene age native surface and post-glacial soils and sediments have been removed entirely. The design-builder may locate any ground-disturbing project element in an Unrestricted Zone without any further cultural resources review (per PA Task IV.C.3).

*Fill Zones* are locations identified as having deep fill, where native soils and possibly buried surfaces may be present under the fill. The design-builder may locate any ground-disturbing project element in a Fill Zone when design indicates disturbance will not exceed three-quarters of the total depth (to account for over-excavation).

*Restricted Zones* are locations with little to no previous ground disturbance and native sediments and buried surfaces are likely to be present. The design-builder may not locate any ground-disturbing project element, regardless of depth of the project ground disturbance, in a Restricted Zone until it is reviewed and approved (in email or letter) by the WSDOT in consultation with interested parties and affected tribes and SHPO (per PA task IV.C.5, see WSDOT 2008a, WSDOT 2008b).



*Aerial photograph comparison of I-405/I-5 Interchange, 1965 and 2018. Source: King County Map Vault and Google Map (2018)*

**Table 3. Proposed Project Elements and Location Categories with the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project**

Project Element	Location Category
I-405/I-5 Interchange	Unrestricted Zone
I-405 Lanes and Shoulders from SR 167 to north of I-90	Unrestricted Zone
I-405 Tolling from SR 167 to north of I-90	Unrestricted Zone
Cedar Avenue	Fill Zone
Renton Avenue	Fill Zone
Cedar River Bridge	Restricted Zone

Project Element	Location Category
Sunset Boulevard North Interchange Area	Unrestricted Zone
Northeast Park Drive (SR 900) Interchange Area	Unrestricted and Fill Zones
North 30th Street Interchange Area	Fill Zone
Northeast 44th Street Interchange Area	Unrestricted and Fill Zones
112th Avenue Southeast Interchange Area	Unrestricted and Fill Zones
Coal Creek Parkway Interchange Area	Unrestricted, Fill and Restricted Zones
I-405/I-90 Interchange Area	Unrestricted and Fill Zones
Fish Passages	Unrestricted and Fill Zones
Lake Washington Trail	Unrestricted Zone
Noise Walls	Unrestricted and Fill Zone
Stormwater Management	Unrestricted Zone
Vegetation Management and Planting	Unrestricted and Restricted Zones

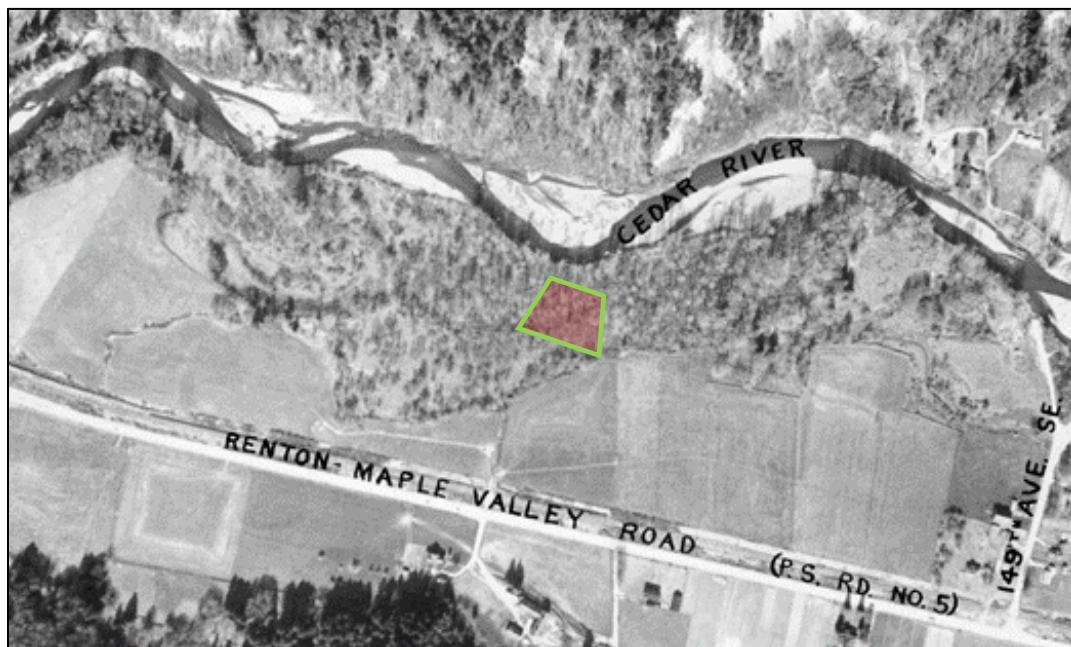
The proposed widening of the I-405 as it crosses the Cedar River Bridge falls into a Restricted Zone based on the fact that buried surfaces are likely present (**Exhibit 2-2, Sheet 4**). Bundy (2008) originally categorized it as a Fill Zone and more recently Smith et al. (2014) excavated shovel test probes along the south (left) bank of the Cedar River underneath the current interstate crossing with negative results for cultural resources. Results from these recent probes confirmed that this shoreline has been greatly impacted by the construction of the I-405 Cedar River crossing. The excavated probes revealed disturbed sands with water-rounded gravels and were terminated on rounded river cobbles (Smith et al. 2014:27). Mr. Cooper conducted a site visit of the Cedar River crossing in January 2018 to further inspect both sides of the crossing. No shovel test probes were excavated at this time, but the exposed bank was inspected where feasible. No cultural resources were identified at this time.

A proposed roundabout near the Coal Creek Parkway Interchange Area may impact a Restricted Zone bound by Coal Creek Parkway Southeast to the north, 119th Avenue Southeast to the east, and the I-405 northbound, Coal Creek Parkway Southeast off-ramp to the south and west (**Exhibit 2-2, Sheet 7**, near MP 10.1). This area was identified as Restricted by Jones (2015b). Shovel test probes in the vicinity of the Coal Creek Parkway Interchange showed fill and/or disturbed/redeposited alluvial silt loam overlying intact or disturbed channel deposits (Jones 2015b). An aerial photograph comparison (see below) shows the Restricted Zone overlaid on images from 1936 and 2018. The black and white image shows an alluvial plain with little tree cover north of the meandering Coal Creek.



*Aerial photograph comparison of Coal Creek Parkway Interchange, 1936 and 2018, showing the Restricted Zone within the polygon. Note: Not to scale. Source: King County iMap (2018)*

A stream buffer mitigation enhancement planting area for the Project is proposed along the Cedar River in Ron Regis Park north of SR 169 in Renton (Section 22 of Township 23 North, Range 5 East [W.M]). This is categorized as a Restricted Zone. The proposed planting area, which is located just off **Exhibit 2-2, Sheet 4**, was surveyed in 2000 by the U.S. Army Corps of Engineers for an overdredge mitigation project (Grant 2000). No cultural resources were identified during Grant's survey. Mr. Cooper visited the proposed site in March 2018 to investigate the preferred/expanded restoration and enhancement areas (see **Sheet 8 of 8**). No shovel test probes were excavated, but exposed soil and minimal winter vegetation cover allowed excellent ground visibility. A 1936 aerial photograph of this area shows an elevated forested floodplain within the larger relic Cedar River channel. The forested floodplain is clearly delineated in this 1954 King County Aerial Survey photograph (see below).



*Historic aerial photograph of modern-day Ron Regis Park in Renton, Washington. Proposed mitigation site is located within circle. Note: Not to scale. Source: King County Map Vault (2018)*

The other new proposed Project Elements, including construction of noise walls and other vegetation management/planting areas, are taking place in zones categorized as Unrestricted and/or Fill. The remaining Project Elements have all been sufficiently addressed in the previous cultural resource surveys/technical memorandums and are all located in either Unrestricted or Fill zones. An Unanticipated Discovery Plan (UDP) will be developed and updated, as needed, for the Project instructing on-site construction personnel on proper discovery/contact protocol if cultural resources are identified during construction ground-disturbance.

**NRHP Eligibility and Project Effect Recommendations**

WSDOT, on behalf of FHWA, is submitting this letter for your review with the recommendation that this undertaking will have **No Adverse Effect on Historic Properties** given that project activities will not affect the abandoned segment of the Northern Pacific Lake Washington Beltline.

WSDOT, on behalf of FHWA, respectfully requests your concurrence with our determination that the proposed Project Elements, which are located in *Unrestricted* and/or *Fill* zones that have limited potential to maintain unknown and significant cultural resources, will have **No Adverse Effect on Historic Properties**.

WSDOT, on behalf of FHWA, also respectfully requests your concurrence with our determination that the proposed Project Elements, which are located in a *Restricted* zone that have limited potential to maintain unknown and significant cultural resources, will have **No Adverse Effect on Historic Properties**.

WSDOT is sending these recommendations to King County, the cities of Tukwila, Renton, and Bellevue, the Eastside Heritage Center, and Duwamish Tribal Services, as well as the Snoqualmie Tribe, Muckleshoot Indian Tribe, Stillaguamish Tribe of Indians, and Yakama Nation for review. WSDOT will provide you with any comments that the agency receives from the consulting parties and the tribes.

Please provide your response to this request by May 3, 2018.

Should you require additional information or have any questions please contact me at 206.440.4525, or by email at [coopjas@wsdot.wa.gov](mailto:coopjas@wsdot.wa.gov). Thank you for your continued consultation on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason B. Cooper".

Jason B. Cooper, M.A., RPA  
Cultural Resources Specialist, WSDOT Northwest Region

Cc: Dennis Wardlaw, DAHP  
Steve Shipe, WSDOT  
Allison Hanson, I-405 Team  
Lindsey Handel, FHWA  
Sharon Love, FHWA  
Project File

Att: 1) Exhibit 2-2, Sheets 1-8; Cedar River Stream Buffer Mitigation Sheet 8 of 8

## References

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Bowden, B. and S. Dampf

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Bundy, B.

- 2008 *Interstate 405 Corridor Study: Phase I Interstate 5 to State Route 169 Improvements Project*. WSDOT Report No. 08-23. Washington State Department of Transportation Cultural Resources Program, Olympia. NADB# 1352447. Report on file with the State of Washington Department of Archaeology and Historic Preservation, Olympia.

Grant, D.

- 2000 *Cultural Resources Reconnaissance of Cedar River Overdredge Mitigation Site*. Prepared by U.S. Army Corps of Engineers. NADB# 1340626. Report on file with the State of Washington Department of Archaeology and Historic Preservation, Olympia.

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Holmes, B.G. and G.L. Possehl

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Jones, J.

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Juell, K.E.

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Robinson, J.

- 1992 *Archaeological Monitoring of SR 405: South Renton Interchange to Sunset Boulevard, S-Curves Project, Renton, King County, Washington*. Short Report DOT92-8. Archaeological and Historical Services, Eastern Washington University, Cheney. NADB# 1333976. Report on file with the State of Washington Department of Archaeology and Historic Preservation, Olympia.

Robinson, J. and K. Hills-Krafft

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Smith, T., S. Emerson, S. Gough, and R. Stevens

- 2014 *Cultural Resources Survey for the Washington State Department of Transportation's I-405/SR 167 Direct Connector Project, King County, Washington*. Short Report DOT2014-04. Archaeological and Historical Services, Eastern Washington University, Cheney. NADB# 1686391. Report on file with the State of Washington Department of Archaeology and Historic Preservation, Olympia.

Washington State Department of Transportation (WSDOT)

- 2008a *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act of 1966 Among the Federal Highway Administration, The Washington State Historic Preservation Officer, the Washington State Department of Transportation, the Muckleshoot Indian Tribe, and the Snoqualmie Indian Tribe for Improvements to Interstate 405 Corridor, King and Snohomish Counties, Washington.* On file, Washington State Department of Transportation, Northwest Region, Seattle.
- 2008b I-405 Corridor Program Cultural Resources Assessment Guidelines for Compliance with Washington State Department of Transportation Policy and Section 106 of the National Historic Preservation Act, July 24, 2007.  
*Appendix A of Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act of 1966 Among the Federal Highway Administration, The Washington State Historic Preservation Officer, the Washington State Department of Transportation, the Muckleshoot Indian Tribe, and the Snoqualmie Indian Tribe for Improvements to Interstate 405 Corridor, King and Snohomish Counties, Washington.* On file, Washington State Department of Transportation, Northwest Region, Seattle.

Waterman, T.T

n.d. “Puget Sound Geography.” National Anthropological Archives, mss.  
Washington D.C.

*Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 1 of 8*

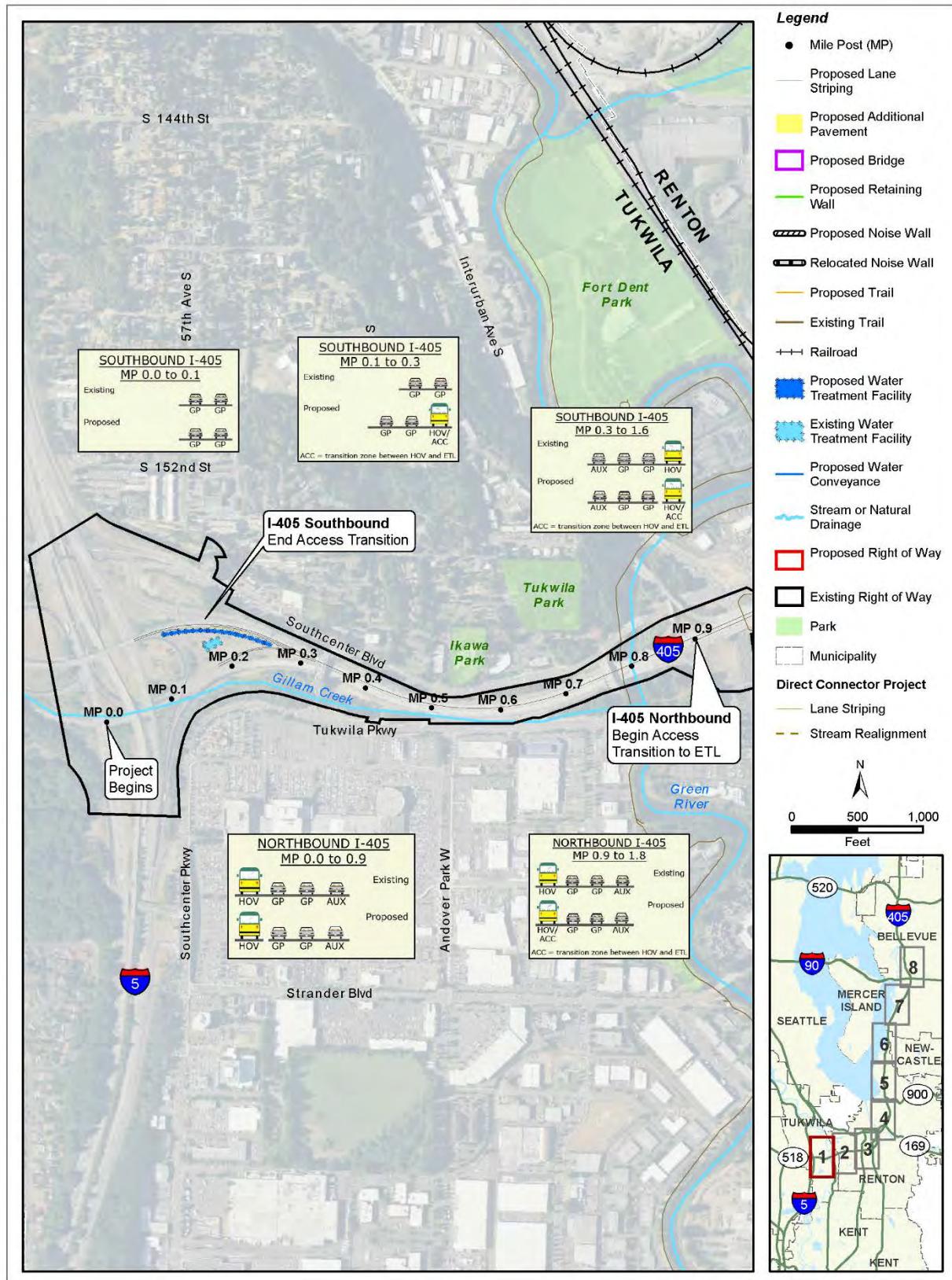


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 2 of 8

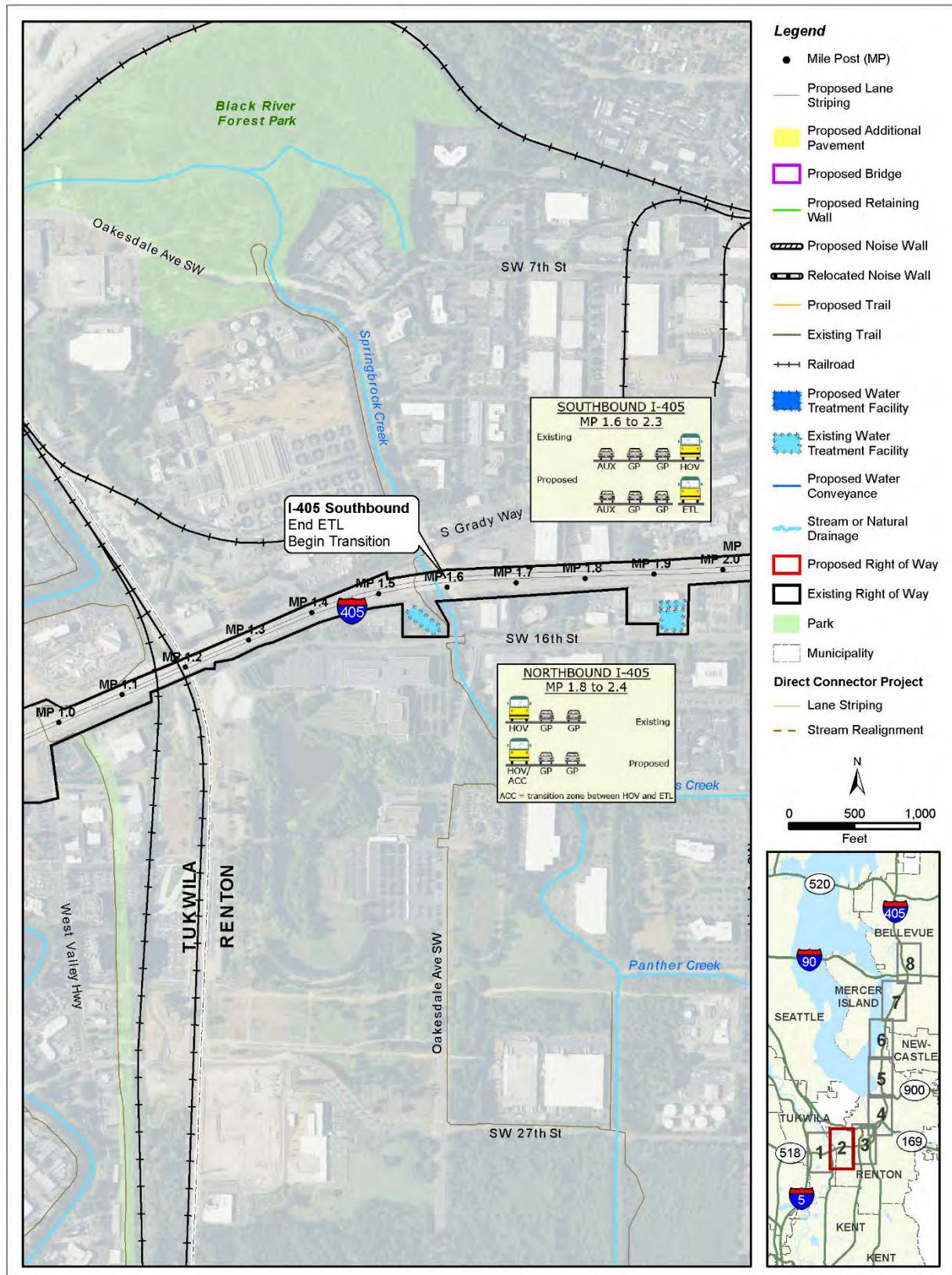


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 3 of 8

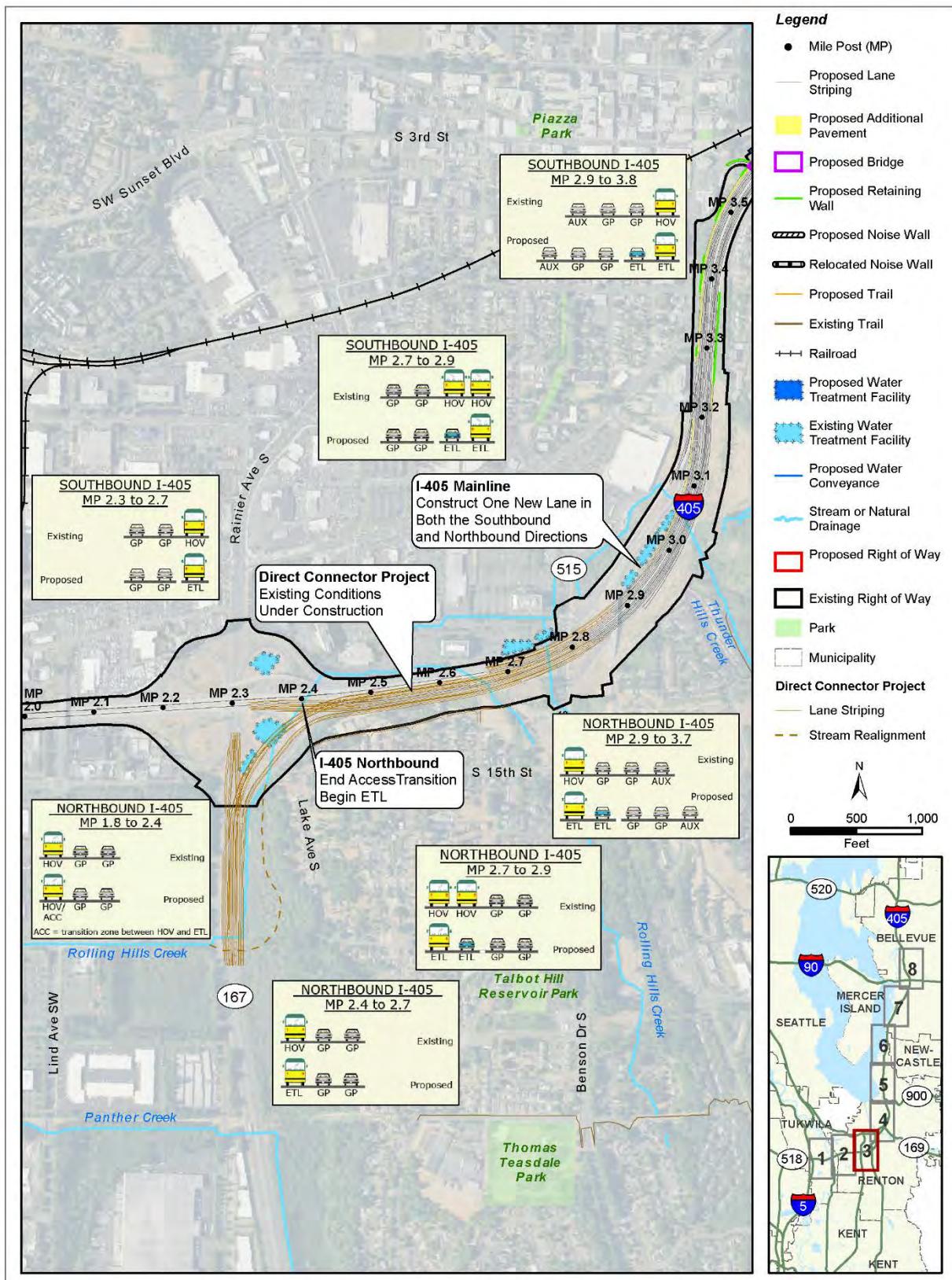


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 4 of 8

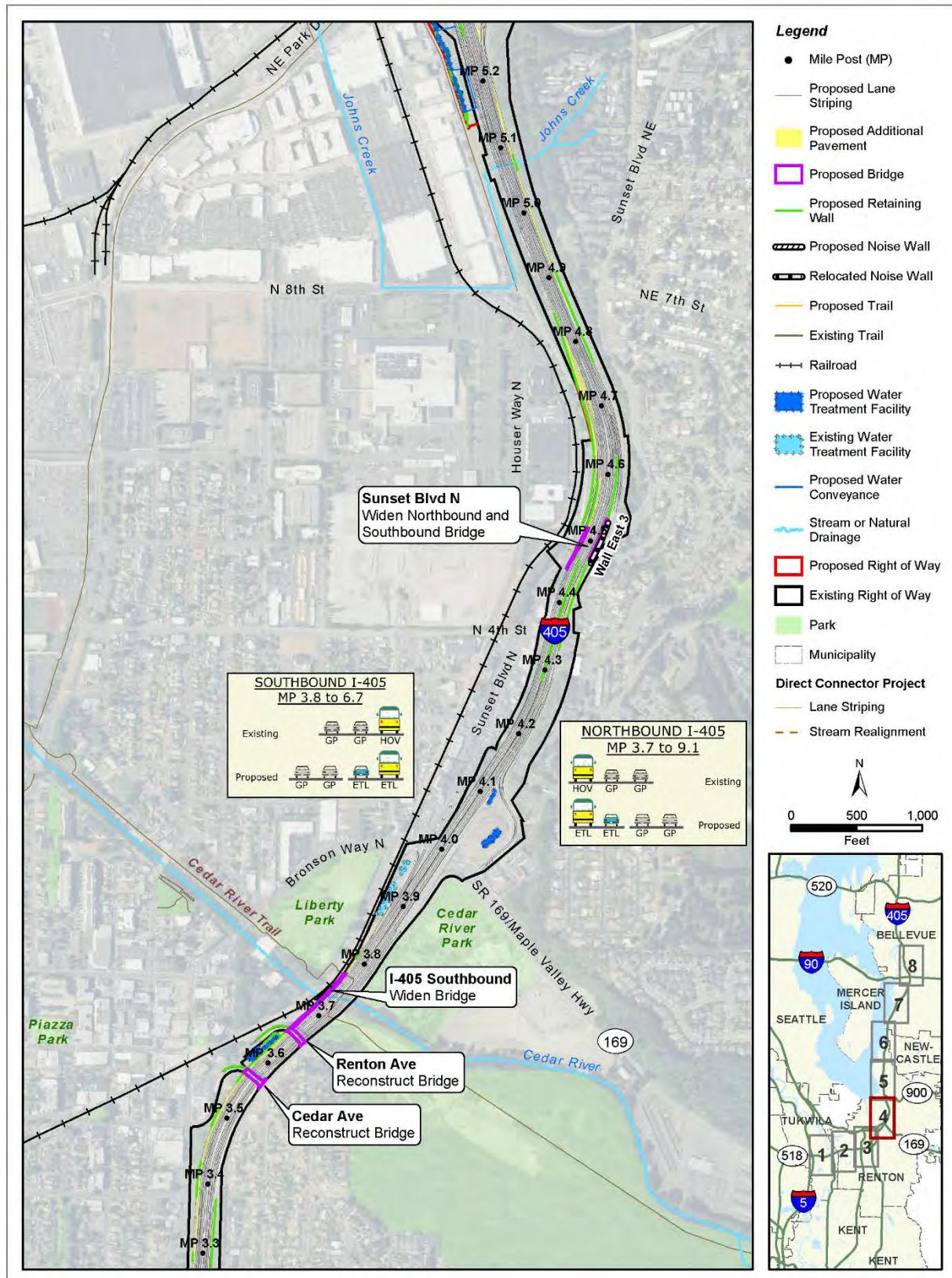


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 5 of 8

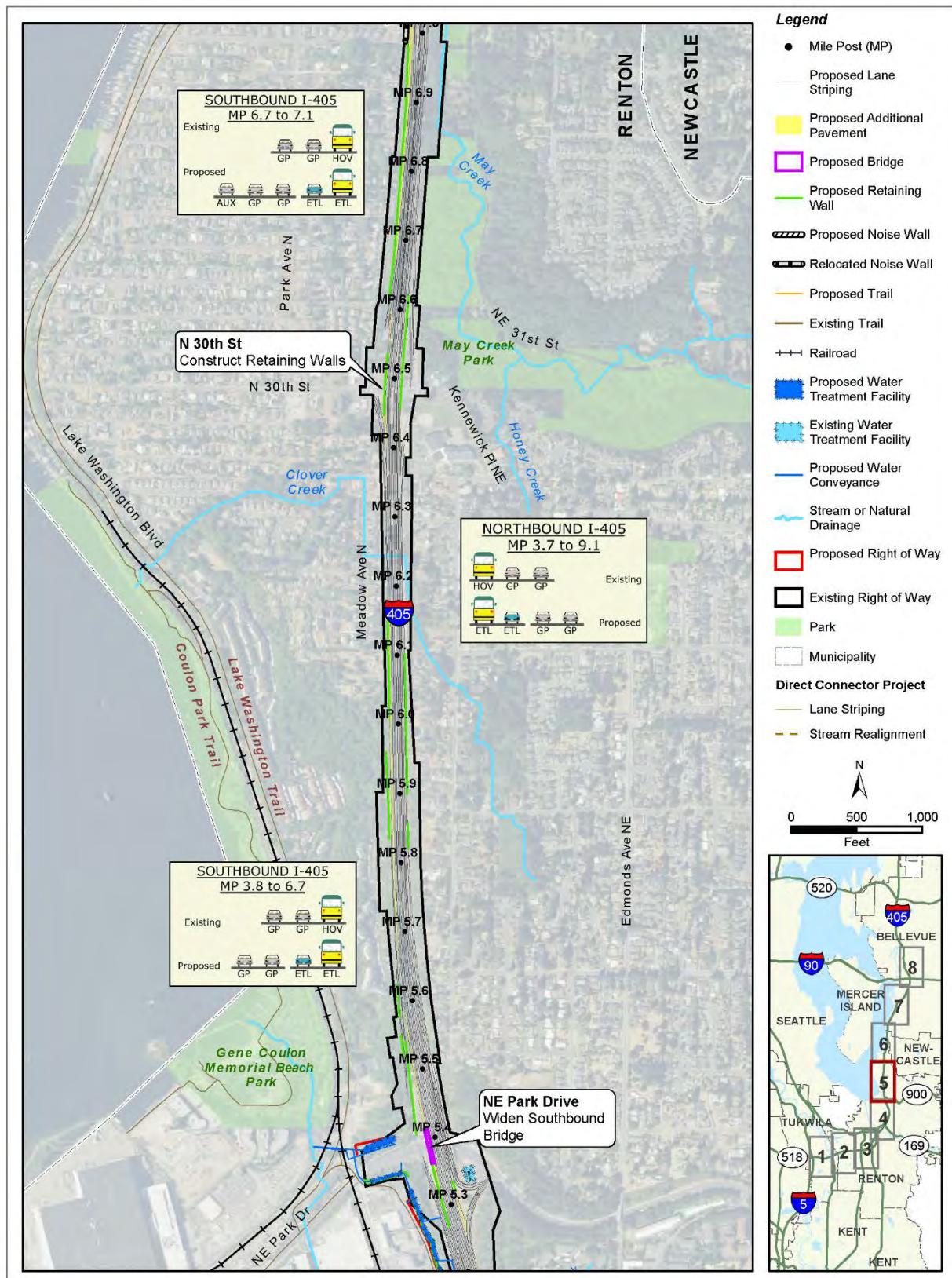


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 6 of 8

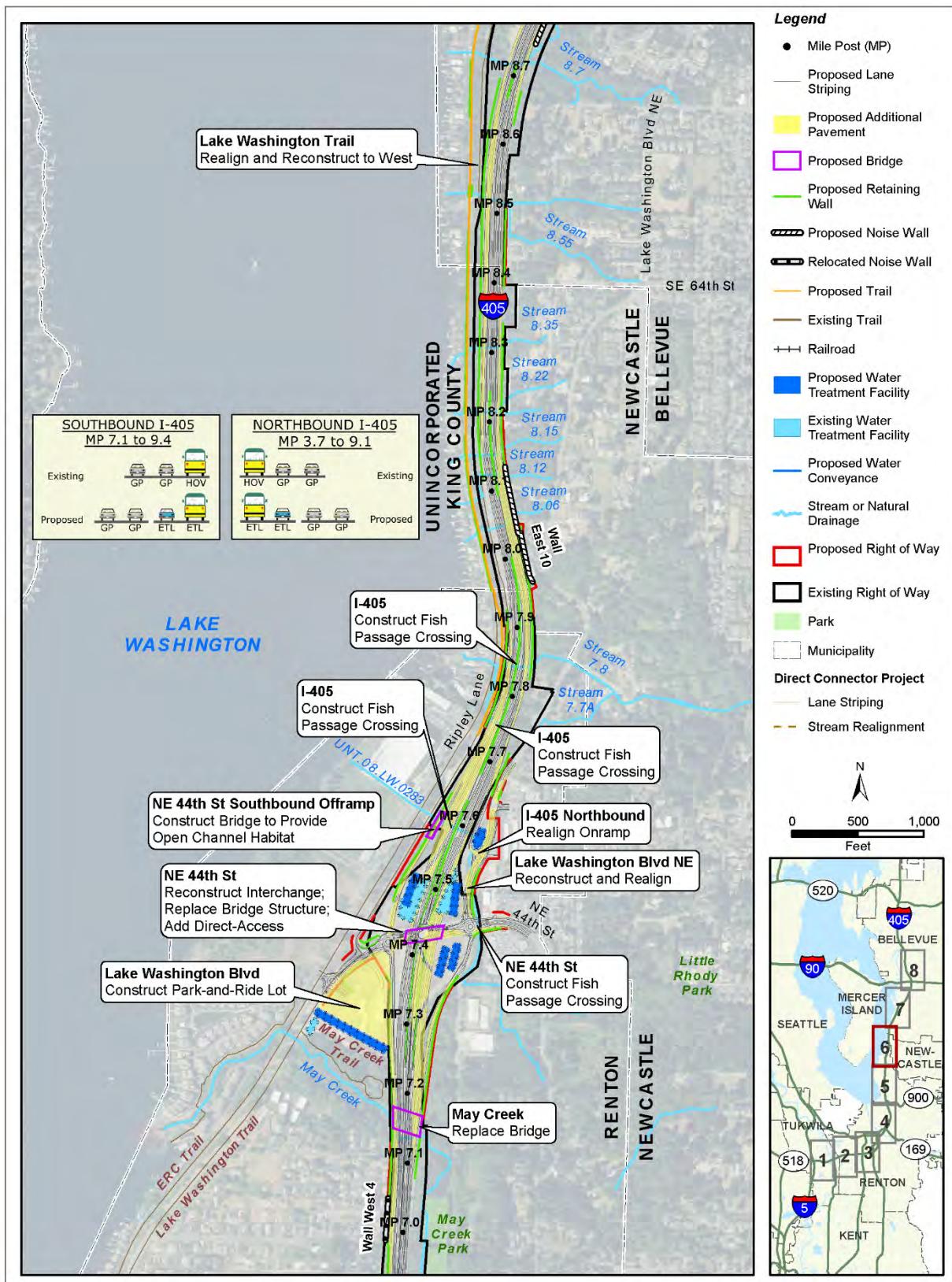


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 7 of 8

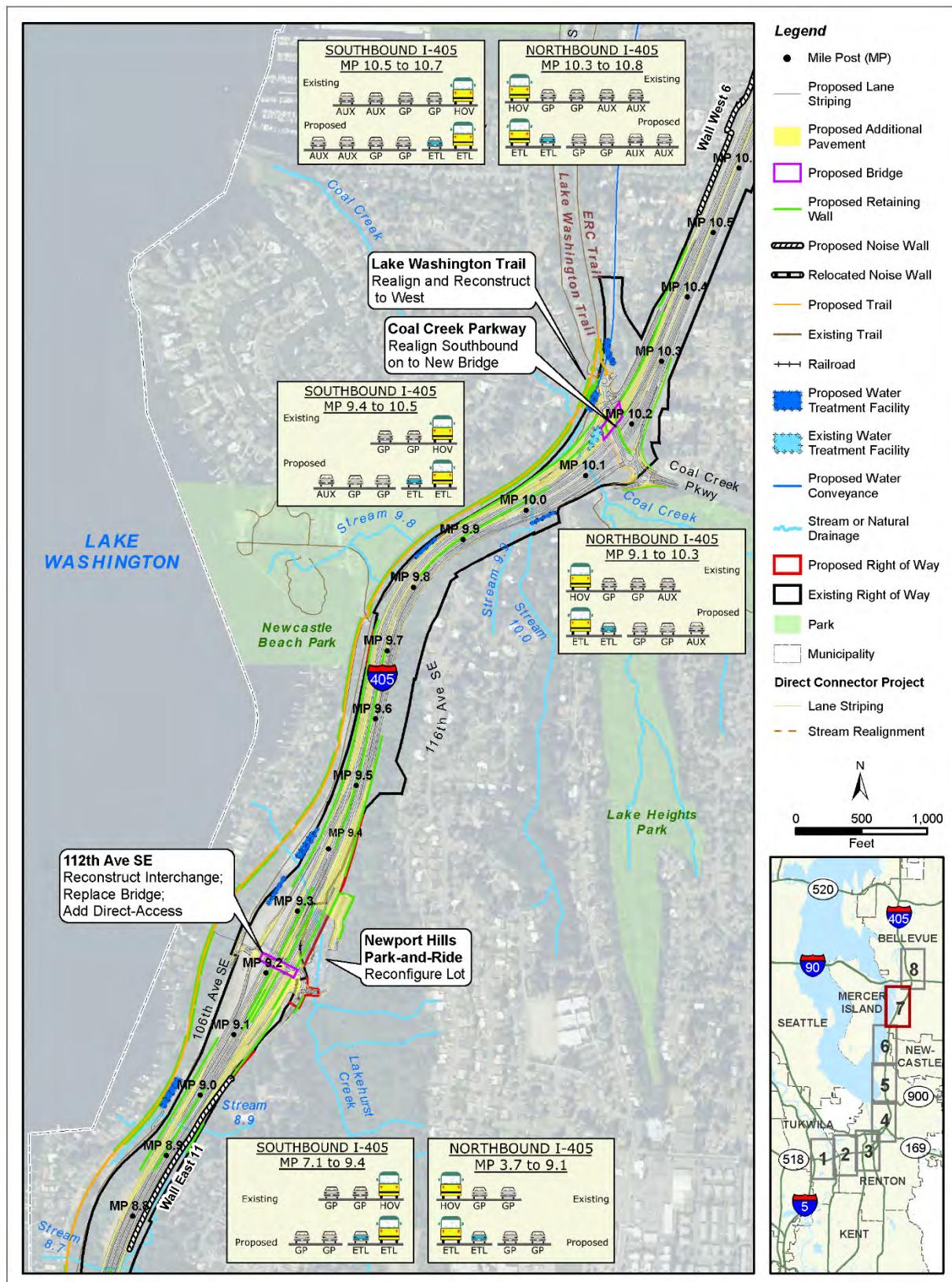
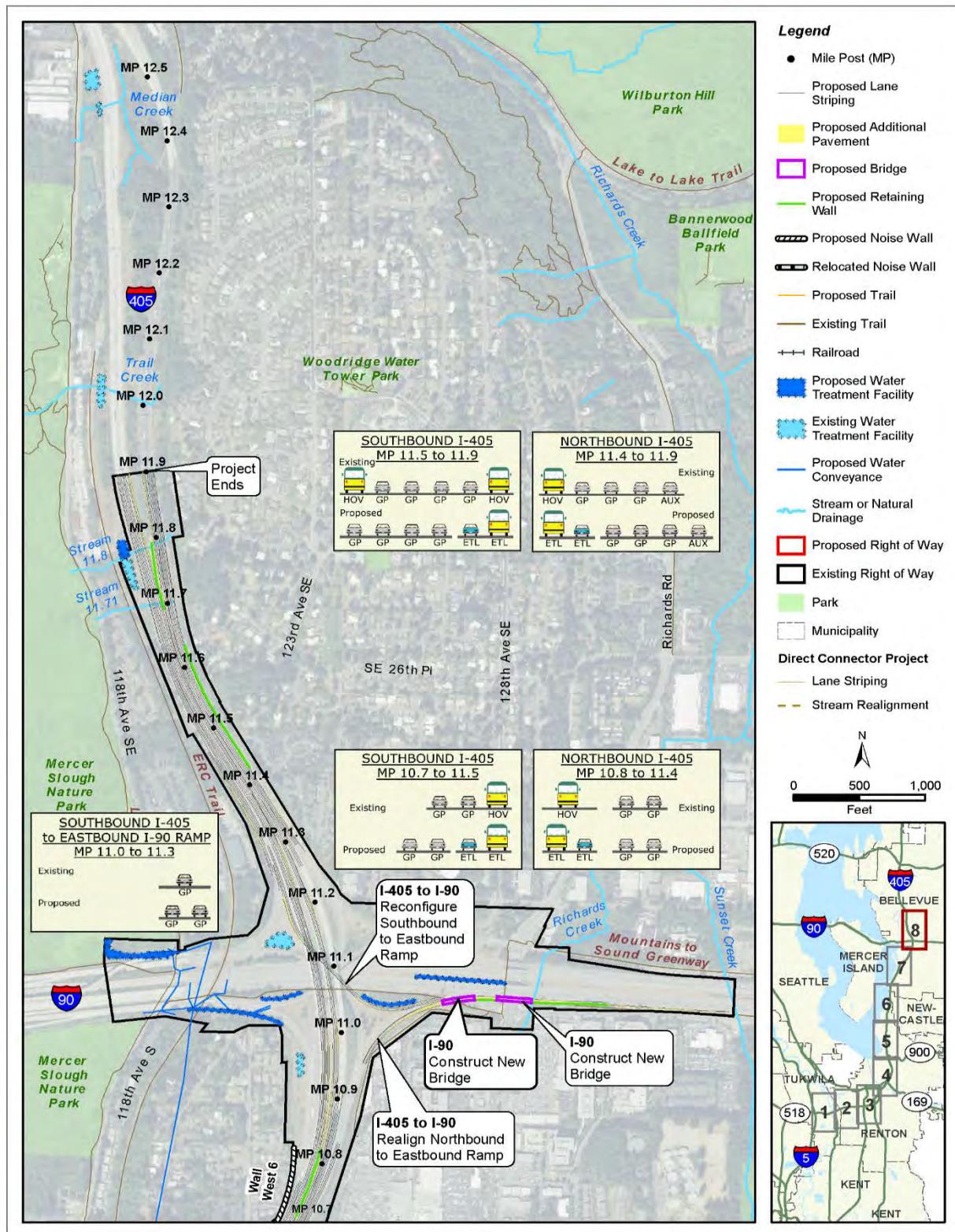


Exhibit 2-2 I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project Improvements | Sheet 8 of 8




**NOTES:**
<sup>1</sup>TO BE INSTALLED IN DRIER CONDITIONS.

<sup>2</sup>TO BE INSTALLED IN WETTER CONDITIONS.

 0 25 50  
SCALE IN FEET

FILE NAME	c:\users\taylorsu\pw_wsdot\d0139111\XL4653_EB_Mitigation_Planting_08_RentonPark.dgn			
TIME	8:14:32 AM			
DATE	3/29/2018			
PLOTTED BY	taylorsu			
DESIGNED BY	L. COOLEY			
ENTERED BY	S. TAYLOR			
CHECKED BY	R. THOMAS			
PROJ. ENGR.	C. BARNETT			
REGIONAL ADM.	L. ENG			
REVISION				
DATE				
BY				

 REGION NO. STATE FED.AID PROJ.NO.  
 10 WASH  
 JOB NUMBER  
 CONTRACT NO. LOCATION NO.  
 XL4653

 P.E. STAMP BOX  
 P.E. STAMP BOX

 I-405  
 RENTON TO BELLEVUE  
 CORRIDOR WIDENING & EXPRESS TOLL LANES  
 STREAM BUFFER MITIGATION  
 CEDAR RIVER

 SHEET  
 8  
 OF  
 8  
 SHEETS



Allyson Brooks Ph.D., Director  
State Historic Preservation Officer

April 9, 2018

Mr. Jason Cooper  
WA State Dept. of Transportation  
15700 Dayton Avenue North  
PO Box 330310  
Seattle, WA. 98133-9710

In future correspondence please refer to:  
Project Tracking Code: 2016-02-01215  
Property: I-405—SR 169 to I-90  
Re: NO Adverse Effect

Dear Mr. Cooper:

Thank you for contacting the State Historic Preservation Officer and Department of Archaeology and Historic Preservation (DAHP) regarding the above referenced project. This action has been reviewed on behalf of the SHPO under provisions of Section 106 of the National Historic Preservation Act of 1966 (as amended) and 36 CFR Part 800. Our review is based upon documentation contained in your communication.

We concur that the current project as proposed will have "NO ADVERSE EFFECT" on the Northern Pacific Lake Washington Beltline (Property #88798), which has been previously been determined eligible for listing in the National Register of Historic Places. We also concur with the recommendations made in your communication and your overall determination of "NO ADVERSE EFFECT".

However, if new information about affected resources becomes available and/or the project scope of work changes significantly, please resume consultation as our assessment may be revised. Also, if any archaeological resources are uncovered during construction, please halt work immediately in the area of discovery and contact the appropriate Native American Tribes and DAHP for further consultation.

Thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Wardlaw".

Dennis Wardlaw  
Transportation Archaeologist  
(360) 586-3085  
[dennis.wardlaw@dahp.wa.gov](mailto:dennis.wardlaw@dahp.wa.gov)



# NATURAL RESOURCES





U.S. Department  
of Transportation

**Federal Highway  
Administration**

Washington Division

Suite 501 Evergreen Plaza  
711 South Capitol Way  
Olympia, Washington 98501-1284  
(360) 753-9480  
(360) 753-9889 (FAX)  
<http://www.fhwa.dot.gov/wadiv>

April 5, 2006

HDA-WA / IM-4053( )

Mr. Steve Landino  
National Marine Fisheries Service  
510 Desmond Drive SE, Suite 103  
Lacey, Washington 98503

**I-405, SR 169 to I-90: Renton to Bellevue,  
Request for Formal Consultation**

Dear Mr. Landino:

The Federal Highway Administration (FHWA), as the lead federal agency for the I-405 SR169 to I-90 Renton to Bellevue Project (Project), is submitting this request for formal consultation with the National Marine Fisheries Service (NMFS) as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment (BA) for your review.

The proposed Project is a Washington State Department of Transportation (WSDOT) project that will result in improvements to the Interstate-405 (I-405) corridor in the cities of Renton, Newcastle, and Bellevue. The Project area begins just south of the I-405/SR169 interchange and extends north past the I-405/I-90 interchange. The project will construct two new general-purpose lanes on I-405 in each direction from SR169 to I-90, realign I-405 to bring it up to current freeway standards where feasible, construct a new in-line bus rapid transit (BRT) station in the vicinity of 112th Avenue SE, construct a high-occupancy vehicle (HOV) direct access ramp at N 8th Street, reconstruct, realign, and reconfigure eight interchanges, make changes to local roadways related to interchange improvements and I-405 widening, construct new bridges over May and Coal Creeks, and widen the southbound 3-lane bridge over I-90 to five lanes. Substantial improvements will also be made to the stormwater drainage system associated with the Project.



The enclosed BA includes descriptions of the discretionary action to be considered, the specific area that may be affected by the action, any listed species that may be affected by the proposed actions, the manner in which the proposed action may affect any listed species, an analysis of cumulative effects, and all other relevant available information.

Conservation and performance measures to minimize potential impacts to all listed species are also included.

FHWA is requesting formal consultation as allowed by 51 CFR §402.12(j). FHWA has determined, based on the best scientific and commercial data available, that the proposed Project: May affect, and is likely to adversely affect Puget Sound Chinook salmon and May affect, but is not likely to adversely affect Chinook Salmon Critical Habitat.

With the submittal of this BA, FHWA has provided NMFS with all of the best scientific and commercial data available concerning the impact of the proposed Project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR §402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you concurring with our determination within 30 days. If no letter is received within this timeframe, we will assume that you are in concurrence with our determination. NMFS will develop a Biological Opinion (BO) within 45 days of completing the formal consultation period. FHWA requests advance copies of the draft BO, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to finalizing the BO.

FHWA personnel are available to answer questions, review the draft BO, and assist you in any possible way. It is of vital importance that this consultation be completed in 138 days (this timeframe includes three days for mailing), or less if at all possible.

Please contact me by phone at 206-220-7538 or by e-mail at [steve.boch@fhwa.dot.gov](mailto:steve.boch@fhwa.dot.gov), if you have any further questions about the Project.

Sincerely,



Stephen P. Boch  
Major Project Oversight Manager

Enclosure

Cc: Michelle Steinmetz, WSDOT, UCO  
Allison Ray, WSDOT, I-405 Project Office





U.S. Department  
of Transportation

**Federal Highway  
Administration**

Washington Division

Suite 501 Evergreen Plaza  
711 South Capitol Way  
Olympia, Washington 98501-1284  
(360) 753-9480  
(360) 753-9889 (FAX)  
<http://www.fhwa.dot.gov/wadiv>

April 5, 2006

HDA-WA / IM-4053( )

Mr. Ken Berg  
U.S. Fish and Wildlife Service  
510 Desmond Drive SE, Suite 102  
Lacey, Washington 98503-1273

**I-405, SR 169 to I-90: Renton to Bellevue,  
Request for Formal Consultation**

Dear Mr. Berg:

The Federal Highway Administration (FHWA), as the lead federal agency for the I-405 SR169 to I-90 Renton to Bellevue Project (Project), is submitting this request for formal consultation with the US Fish and Wildlife Service (USFWS) as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment (BA) for your review.

The proposed Project is a Washington State Department of Transportation (WSDOT) project that will result in improvements to the Interstate-405 (I-405) corridor in the cities of Renton, Newcastle, and Bellevue. The Project area begins just south of the I-405/SR169 interchange and extends north past the I-405/I-90 interchange. The project will construct two new general-purpose lanes on I-405 in each direction from SR169 to I-90, realign I-405 to bring it up to current freeway standards where feasible, construct a new in-line bus rapid transit (BRT) station in the vicinity of 112th Avenue SE, construct a high-occupancy vehicle (HOV) direct access ramp at N 8th Street, reconstruct, realign, and reconfigure eight interchanges, make changes to local roadways related to interchange improvements and I-405 widening, construct new bridges over May and Coal Creeks, and widen the southbound 3-lane bridge over I-90 to five lanes. Substantial improvements will also be made to the stormwater drainage system associated with the Project.



The enclosed BA includes descriptions of the discretionary action to be considered, the specific area that may be affected by the action, any listed species that may be affected by the proposed actions, the manner in which the proposed action may affect any listed species, an analysis of cumulative effects, and all other relevant available information.

Conservation and performance measures to minimize potential impacts to all listed species are also included.

FHWA is requesting formal consultation as allowed by 51 CFR 402.12(j). FHWA has determined, based on the best scientific and commercial data available, that the proposed Project: May affect, and is likely to adversely affect the Coastal Puget Sound Distinct Population Segment (DPS) of bull trout; May affect, but is not likely to adversely affect bull trout Critical Habitat; and May effect, but is not likely to adversely affect bald eagles.

With the submittal of this BA, FHWA has provided USFWS with all of the best scientific and commercial data available concerning the impact of the proposed Project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR 402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you concurring with our determination within 30 days. If no letter is received within this timeframe, we will assume that you are in concurrence with our determination. USFWS will develop a Biological Opinion (BO) within 45 days of completing the formal consultation period. FHWA requests advance copies of the draft BO, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to finalizing the BO.

FHWA personnel are available to answer questions, review the draft BO, and assist you in any possible way. It is of vital importance that this consultation be completed in 138 days (this timeframe includes three days for mailing), or less if at all possible.

Please contact me by phone at 206-220-7536 or by e-mail at steve.boch@fhwa.dot.gov, if you have any further questions about the Project.

Sincerely,



Stephen P. Boch  
Major Project Oversight Manager

Enclosure

Cc: Michelle Steinmetz, WSDOT, UCO  
Allison Ray, WSDOT, I-405 Project Office





**Washington State  
Department of Transportation**  
**Douglas B. MacDonald**  
Secretary of Transportation

Northwest Washington Division  
Urban Corridors Office  
401 Second Avenue South, Suite 560  
Seattle, WA 98104-3850  
206-464-1220 / Fax 206-464-1190  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

October 20<sup>th</sup>, 2006

Michael Lisitza  
Transportation Liaison  
US Fish and Wildlife Service  
Western Washington Office  
510 Desmond Drive SE #102  
Lacey, WA 98503

**Re: Additional information in support of informal consultation for the I-405, SR169 to I-90 (Renton to Bellevue) Project**

Dear Michael,

Based on the field visit on 9/20/06 and subsequent conversations with project personnel, it is our understanding that impacts from the I-405, SR169 to I-90 (Renton to Bellevue) Project warrant changing the project effect determination from "may affect, likely to adversely affect" (as stated in the Biological Assessment submitted April 5<sup>th</sup>, 2006) to "may affect, *not* likely to adversely affect". The change is based on the fact that the project will not construct any additional bridges for the Lake Washington Trail realignment, and that sequencing and timing restrictions for construction in and near Coal Creek will limit impacts to bull trout. This letter provides information to support changing consultation from formal to informal.

Realignment of the Lake Washington Trail

The Lake Washington Trail parallels I-405 on the west side and will be shifted west between approximately mileposts 7.6 and 8.4, and mileposts 9.8 and 10.2. The trail crosses several creeks along that length: Gypsy Creek, 08.LW-7.7, 08.LW-7.8, 08.LW-8.4, 08.LW-9.7, 08.LW-9.8, and Coal Creek. With the exception of Coal Creek, the trail will pass over culverts. At Coal Creek, the trail will use the same bridge as the proposed southbound (SB) on-ramp, as shown in the attached figure. No other bridges will be constructed exclusively for the trail. Therefore, trail construction is essentially incidental to roadway construction and will have no additional impacts to bull trout.

Construction at Coal Creek:

The project proposes to replace the existing undersized Coal Creek culvert with a series of four bridges supporting the northbound (NB) and southbound (SB) lanes of I-405, the northbound off-ramp, and the southbound on-ramp. A new channel will then be

excavated underneath the bridge, and the creek will be re-routed into the channel. It is unlikely that bull trout will be in the project vicinity due to their narrow habitat requirements, their rarity in the Lake Washington basin, and construction timing and sequencing designed to limit impacts to salmonids.

#### *Bull trout habitat requirements*

Bull trout have more specific habitat requirements compared to other salmonids. Habitat components that appear to influence bull trout distribution and abundance include water temperature, cover, channel form and stability, valley form, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley, and Shepard 1989; Goetz 1989). Bull trout are found primarily in colder streams, although individual fish have been found in larger river systems (Fraley and Shepard 1989; Rieman and McIntyre 1993; Buchanan and Gregory 1997). Water temperature above 15 °C (59 °F) is believed to limit bull trout distribution.

#### *Environmental baseline in Coal Creek*

Habitat in Coal Creek is unsuitable for bull trout. Summer water temperatures in August of 1999 ranged from 60° F in the upper watershed to 73° F near the mouth (University of Washington, Center for Urban Water Resources, unpublished data *in* Kerwin 2001). Temperatures in the middle reach of the creek upstream of I-405 measured as high as 63° F between May of 1995 and May 2006 (KCDNR 2006).

The lower reach of the creek has been highly altered from natural conditions. Coal Creek downstream of the project is heavily armored before it passes into Newport Shores where it flows in an incised channel through a residential community. Upstream of the project, the channel is heavily armored and constrained by a combination of riprap and bank logs (WSDOT 2004). The creek has few returning adult salmonids (Kerwin 2001).

#### *Species presence in the action area*

Reports of bull trout or char from Lake Washington are rare. During a two-year creel survey conducted in Lake Washington and its tributaries, only one char was observed (Pfeiffer and Bradbury 1992). Another native char, not specifically identified as bull trout, was captured by an angler in Lake Washington in 1981, and three char ranging in length from 300 to 635 mm were captured in March and April near the Cedar River in Lake Washington by the University of Washington during a multi-year sampling effort between 1984 and 1985 (Beauchamp, unpublished data *in* KCDNR 2000). A single 300 mm char was captured in 60 m along the west slope of the lake bottom in the region between I-90 and SR 520 (D. Beauchamp, pers. comm. 2005). Additionally, the University of Washington conducted sampling activities in 2002 and 2003 throughout Lake Washington. Their surveys collected one char approximately 356 mm long in 30 m of water near the Atlantic Street boat ramp.

With the exception of the population located within the upper Cedar River Municipal Watershed, no self-sustaining native char populations have been identified to date in the Lake Washington basin. Temperatures in most tributaries of the lower Lake Washington system are considered to be too warm to support native char juveniles and spawners (B.

Pfiefer *in* KCDNR 2000), and none have ever been observed in Coal Creek. Water temperatures likely limit natural production of salmonids in the creek and pose a seasonal barrier to bull trout migration.

#### *Project sequencing and timing*

The anticipated construction sequence is as follows:

- 1) Construct the bridges for the NB I-405 off-ramp and NB and SB main lines.
- 2) Construct the new creek channel.
- 3) Divert the creek into the new channel; abandon/demolish the existing culvert.
- 4) Construct the SB I-405 on-ramp bridge.

Re-routing the creek to the new channel will take place during the approved in-water work widow to limit impacts to salmonids. No in-water work will take place during construction of the SB on-ramp bridge, and BMPs will be implemented to minimize stream impacts as stated in the Biological Assessment for this project. Pile driving will be limited to areas outside the OHWM as shown in the attached figure.

#### *Conclusions*

It is unlikely that bull trout will be in the vicinity during construction; therefore, the project **may affect, but is unlikely to adversely affect**, bull trout. Project components that support this determination include:

- Bull trout are extremely rare in the Lake Washington basin;
- Bull trout have never been documented in Coal Creek;
- High summer water temperatures in Coal Creek pose a barrier to bull trout migration; and
- In-water work at Coal Creek will be sequenced and timed to minimize impacts to salmonids.

Please contact George Ritchotte by phone at (206) 464-1210 or by email at [ritchog@wsdot.wa.gov](mailto:ritchog@wsdot.wa.gov) if you require additional information or have any other questions.

Sincerely,



Michelle Steinmetz  
Biology Program Manager for the Urban Corridors Office

Attachments: Proposed trail realignment over Coal Creek  
Pile driving adjacent to Coal Creek

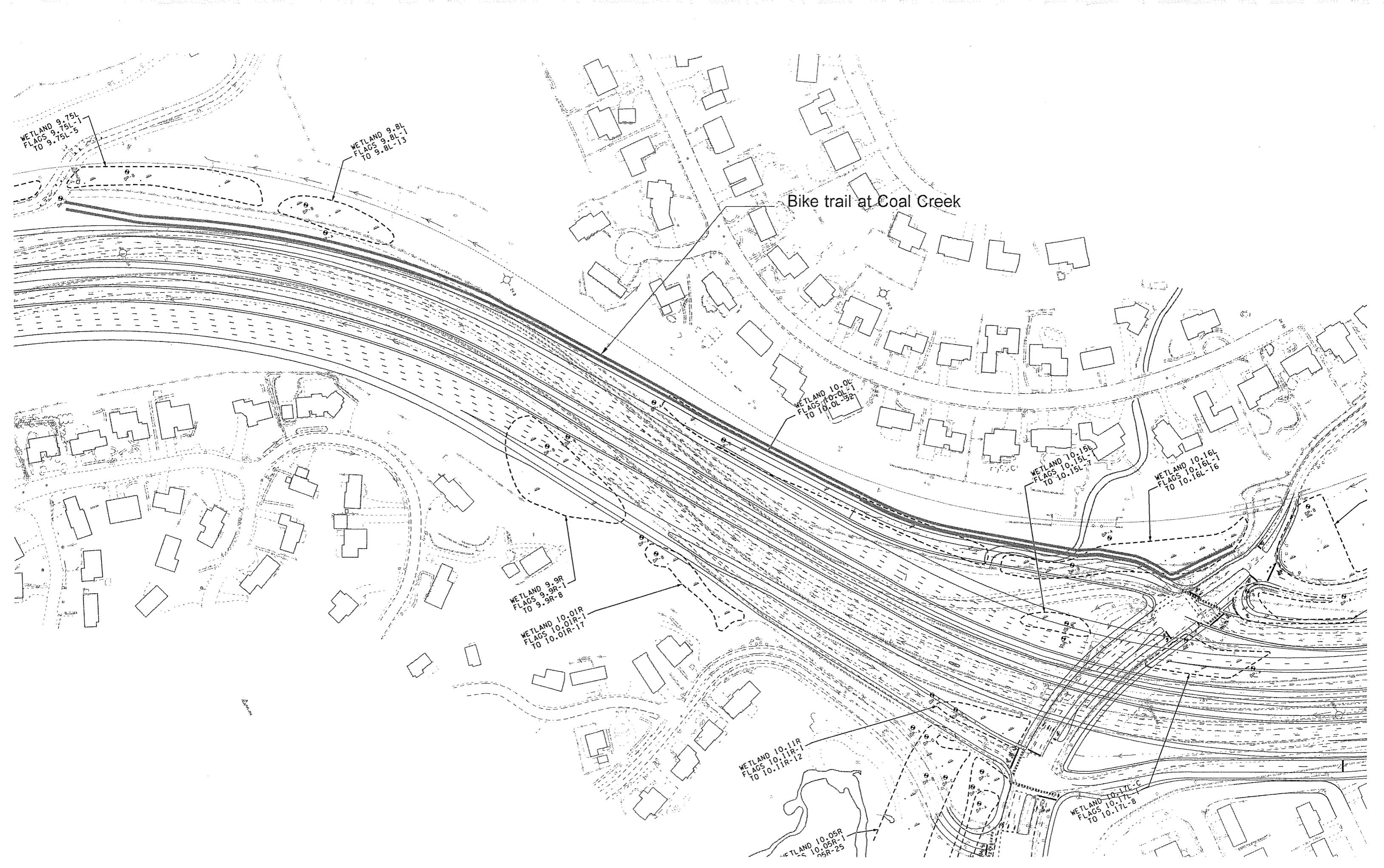
cc: Steve Boch, FHWA  
Allison Ray, I-405 Environmental Manager

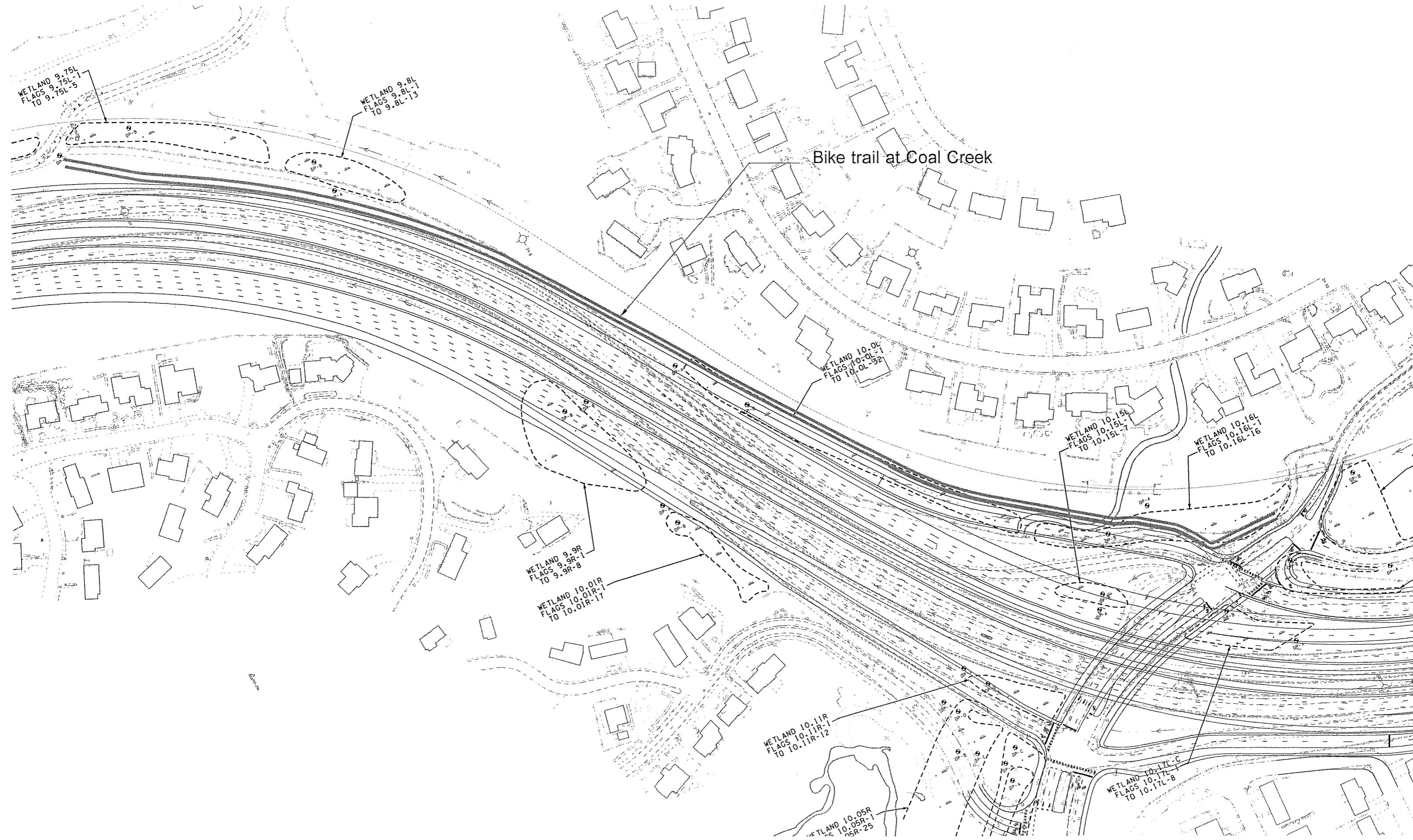
## References

- Beauchamp, D. 2005. Associate Professor University of Washington School of Aquatic and Fisheries Science. Personal Communication with D. Des Voigne, HDR Engineering, Inc. March 4, 2005.
- Buchanan, D. M. and S. V. Gregory. 1997. Development of water temperature standards to protect and restore habitat for bull trout and other cold water species in Oregon. In Mackay, W. C., M. K. Brewin and M. Monita. Friends of the Bull Trout Proceedings pp. 1-8.
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Streams Ambient Monitoring Data  
<http://dnr.metrokc.gov/wlr/waterres/streamsdata/Data.aspx?Locator=0442>
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- Pratt, K. L. 1992. A review of bull trout life history. Pages 5-9 in: Howell, P. J. and D. V. Buchanan, Eds. Proceedings of the Gearhart Mountain bull trout workshop. Oregon Chapter of the American Fisheries Society, Corvallis, OR.

Reiman, B. E. and J. D. McIntyre. 1993. Demographic and habitat requirements for conservation of bull trout. USDA Forest Service Intermountain Research Station. General Technical Report INT-302.

Washington State Department of Transportation. 2004. I-405 Congestion Relief and Bus Rapid Transit Projects; North Renton Project: Draft Fish and Aquatic Resources Discipline Report. April 2004.







# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Western Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

NOV 28 2006

In Reply Refer to:  
1-3-06-I-0253

Ms. Michelle Steinmetz  
Biology Program Manager - WSDOT  
I-405 Corridor Program Office  
600-108<sup>th</sup> Avenue NE, Suite 405  
Bellevue, Washington 98004

RECEIVED

DEC 07 2006

WSDOT

Dear Ms. Steinmetz:

This letter responds to the request for consultation on the Interstate 405 (I-405) Congestion Relief and Bus Rapid Transit Project - Renton to Bellevue, King County, Washington. The Federal Highway Administration (FHWA) sent a letter and enclosed Biological Assessment (BA), dated April 5, 2006, and received in our office on April 7, 2006, requesting formal consultation for the bull trout (*Salvelinus confluentus*). The letter also requested U.S. Fish and Wildlife Service (Service) concurrence with the determination of "may affect, not likely to adversely affect" for designated bull trout critical habitat and the bald eagle (*Haliaeetus leucocephalus*).

After reviewing the BA, the Service requested additional information on July 12, 2006, which was necessary in order for the Service to complete the consultation. The Washington State Department of Transportation, I-405 Project Office (WSDOT), provided this information on August 23, 2006. After several communications (emails, phone calls, meetings, and a field visit on September 20, 2006) between the Service, WSDOT, and FHWA, FHWA withdrew its request for formal consultation. WSDOT sent a letter, dated October 20, 2006, and received in our office on October 24, 2006, requesting Service concurrence with a modified determination of "may affect, not likely to adversely affect" for bull trout. The letter contained additional information supporting this determination. We understand that WSDOT submitted this request on behalf of the FHWA. The Service, FHWA, and WSDOT conducted this consultation in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

The project begins just south of the I-405 State Route (SR) 169 interchange and extends north past the I-90 interchange. The project will construct two new general purpose lanes to I-405, both north and southbound, from SR 169 to I-90, realign I-405, a new bus station, a high



occupancy vehicle ramp, and reconstruct eight interchanges. Auxiliary lanes will be added to the connection of I-405 and SR 167. The project will also improve local roads, replace the May Creek Bridge, replace the Coal Creek culvert with a bridge, widen the bridge over I-90, and construct stormwater treatment facilities throughout the project.

We believe sufficient information has been provided to determine the effects of the proposed project to federally listed species and to conclude whether this project is likely to adversely affect those species. Our concurrence would be based on information in the BA, the Land Use Analysis document dated August 2004, additional information provided by WSDOT, complete and successful implementation of the conservation and performance measures described in the BA, and the following rationale.

#### Bull Trout

The proposed project will affect Lake Washington, the Cedar River, and other tributaries to Lake Washington. Bull trout are known to occur in Lake Washington and the Cedar River. We do not expect bull trout to occur in the associated tributaries because either they do not have access or because the habitat conditions in those tributaries (i.e. high water temperatures, limited prey resources) are not expected to support them. The habitat within the action area supports foraging, migration, and overwintering bull trout. Bull trout using the action area would be adult and subadult anadromous bull trout from bull trout core areas to the south (i.e. Puyallup River) and north (i.e. Stillaguamish, Snohomish and Skagit Rivers). Bull trout would most likely occur in the action area in Lake Washington and in the Cedar River in response to foraging opportunities.

The proposed project will impact 6.13 acres of riparian habitat and 4.68 acres of wetlands. The impacts to wetlands will be mitigated by debiting 4.5 credits from the Springbrook Mitigation Bank. The impacts to riparian habitat will be mitigated on-site and at the Springbrook Mitigation Bank or other off-site locations. WSDOT and FHWA will mitigate for the lost riparian area and function to the level necessary to comply with local, state, and federal regulations.

The proposed project will result in the addition of 121 acres of new impervious surface. Impervious surfaces and their resultant stormwater will alter hydrologic functions of the stream systems within the action area and may expose bull trout in Lake Washington and in the Cedar River to contaminated stormwater runoff. The project proposes to treat stormwater runoff from all new impervious surfaces and 162 acres of existing impervious surface using enhanced stormwater technologies aimed at the removal of heavy metals. An analysis conducted by WSDOT following the September 20, 2006, stormwater guidance showed an overall reduction in the pollutant loads of total suspended solids, total zinc, total copper, dissolved zinc, and dissolved copper.

With the proposed stormwater treatment, the replacement of vegetation, and mitigation at Springbrook, the effects of the new impervious surface on bull trout are expected to be difficult to detect, and therefore, insignificant.

## Bull Trout Critical Habitat

The Service designated Lake Washington as bull trout critical habitat. This is the only portion of the action area that has been designated as bull trout critical habitat.

- 1) *Water temperatures that support bull trout use. Bull trout have been documented in streams with temperatures from 32 to 72 °F (0 to 22 °C) but are found more frequently in temperatures ranging from 36 to 59 °F (2 to 15 °C). These temperature ranges may vary depending on bull trout life-history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence. Stream reaches with temperatures that preclude bull trout use are specifically excluded from designation.*

Increases in impervious surfaces and the corresponding reduction of vegetated areas are known to affect water temperatures. However, because the increase in impervious surface is extremely small relative to the size of the Lake Washington Basin, the Service does not expect a measurable change in the water temperatures in Lake Washington.

- 2) *Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and in-stream structures.*

There are no streams in the action area of this project that have been designated critical habitat for bull trout.

- 3) *Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. This should include a minimal amount of fine substrate less than 0.25 inch (0.63 centimeter) in diameter.*

Lake Washington does not contain habitat to support any of the bull trout life history stages listed in PCE #3.

- 4) *A natural hydrograph, including peak, high, low, and base flows within historic ranges or, if regulated, currently operate under a biological opinion that addresses bull trout, or a hydrograph that demonstrates the ability to support bull trout populations by minimizing daily and day-to-day fluctuations and minimizing departures from the natural cycle of flow levels corresponding with seasonal variation.*

There are no streams in the action area of this project that have been designated as critical habitat for bull trout.

- 5) *Springs, seeps, groundwater sources, and subsurface water to contribute to water quality and quantity as a cold water source.*

Increased impervious surfaces reduce infiltration, reduce groundwater recharge, and can lead to increases in water temperature. However, because the increase in impervious

surface is extremely small relative to the size of the Lake Washington Basin, the Service does not expect a measurable change in the water temperatures in Lake Washington.

- 6) *Migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows.*

High surface water temperatures in Lake Washington during the summer can create a seasonal impediment to bull trout. Bull trout are restricted to the deeper, cooler portions of Lake Washington during the summer. As stated in PCE #1, the Service does not expect a measurable change in the water temperatures in Lake Washington as a result of this project.

- 7) *An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish.*

Adult and subadult bull trout (the only life history stages that occur within the action area of this project) are primarily pescivorous. Increases in impervious surface can reduce the productivity of lakes and streams and lead to a reduction of prey resources. However, given the abundance of forage fish and the small number of bull trout in Lake Washington, the Service considers this reduction to be insignificant.

- 8) *Permanent water of sufficient quantity and quality such that normal reproduction, growth, and survival are not inhibited.*

Water quality is affected as the surface water comes into contact with and transports contaminants to the stream. However, given the level of stormwater treatment and the wetland and riparian mitigation, the Service considers the effects of the project on the water quality of Lake Washington to be insignificant.

#### Bald Eagle

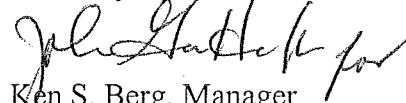
There are three bald eagle nests that are located approximately 1 mile to the west of the project on Mercer Island, and the action area contains suitable foraging habitat for bald eagles. The proposed project will temporarily increase sound (e.g. pile driving) and could disrupt nesting and foraging activities. However, the increased sound should attenuate to background levels within 0.5 mile of the project site and would not be detectable by the bald eagles nesting on Mercer Island. Furthermore, there is abundant foraging habitat both within and surrounding the action area. Therefore, we anticipate that the effects of the increased sound on bald eagles will be insignificant.

To expedite the environmental review process, if the FHWA concurs with the effect determinations for listed species, then you may consider this action to be in compliance with requirements of the Act, 50 CFR 402.13, thereby concluding the consultation process. The project should be reanalyzed if new information reveals effects of the action that may affect listed species or critical habitat in a manner, or to an extent, not considered in this consultation.

The project should also be reanalyzed if the action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation, and/or a new species is listed or critical habitat is designated that may be affected by this project.

If you have further questions about this letter or your responsibilities under the Act, please contact Mike Lisitza at (360) 753-4371 or John Grettenberger at (360) 753-6044, of this office.

Sincerely,



Ken S. Berg, Manager  
Western Washington Fish and Wildlife Office

cc:

FHWA, Olympia (S. Boch)

WDFW, Region 4

WSDOT – ESO, Olympia (M. Carey)



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Reply To:

NMFS Tracking No.:  
2006/01454

January 3, 2007

Daniel M. Mathis  
Division Administrator  
Federal Highway Administration  
Evergreen Plaza Building  
711 S. Capitol Way, Suite 501  
Olympia, Washington 98501

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Interstate 405 State Route 169 to Interstate 90 Congestion Relief – Renton to Bellevue Improvement, King County, Washington. (6<sup>th</sup> Field HUCs, 171100120302, Cedar River and 171100120106, Lower Cedar River)

Dear Mr. Mathis:

The enclosed document contains a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the FHWA's funding of the Interstate (I) 405, State Route (SR) 169 to I-90 project, Renton to Bellevue Improvement, in King County. In this Opinion, NMFS concludes that the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound (PS) Chinook or result in the destruction or adverse modification of designated critical habitat for PS Chinook.

As required by Section 7 of the ESA, NMFS provided an incidental take statement with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and any person who performs the action must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA take prohibition.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. These Conservation Recommendations are a non-identical set of the ESA Terms and Conditions. Section 305(b) (4)



(B) of the MSA requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving these recommendations.

If the response is inconsistent with the EFH conservation recommendations, the FHWA must explain why the recommendations will not be followed, including the justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the EFH portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

If you have any questions, please contact Sean Callahan of my staff at the Washington State Habitat Office at (206) 526-6121, by e-mail at [sean.callahan@noaa.gov](mailto:sean.callahan@noaa.gov), or by mail at the letterhead address.

Sincerely,

*Michael R. Crouse*  
f.o.t.  
D. Robert Lohn  
Regional Administrator

cc Stephen Boch, FHWA  
Phillip Bloch, WSDOT, UCO  
Allison Ray, WSDOT, I-405 Project Office  
Paul Wagner, HQ, WSDOT

FIVE

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AK



U.S. Department  
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Federal Highway  
Administration

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February 15, 2007

HDA-WA I-405

Mr. D. Robert Lohn  
National Marine Fisheries Service  
7600 Sand Point Way NE, Bldg 1  
Seattle, WA 98115

Essential Fish Habitat Consultation and Biological Opinion  
I-405 Renton to Bellevue Improvement Project  
NMFS Tracking No. 2006/01454

Dear Mr. Lohn:

This letter is in response to your January 3<sup>rd</sup>, 2007 correspondence which includes Essential Fish Habitat (EFH) conservation recommendations proposed by the National Marine Fisheries Service (NMFS) for inclusion in the I-405 Renton to Bellevue Improvement Project to minimize the potential impacts and conserve EFH for Pacific salmon. The Magnuson-Stevens Act and 50 CFR 600.929(j) requires that the Federal Highway Administration (FHWA) prepare this written response to the recommendations. This letter also clarifies certain aspects of the Biological Opinion.

Essential Fish Habitat

NMFS proposes seven conservation recommendations, five of which will be accepted by FHWA. The EFH Conservation Recommendations and the measures to be taken by the Washington State Department of Transportation (WSDOT) and the project Contractors are as follows.

- 1      *The FHWA should assist local governments and conservation groups in assessing and removing or replacing culverts that inhibit or block fish passage and bedload movement within the project and action area.*

All culverts in the project area that block fish passage are being replaced or retrofitted if the work requires an HPA. WSDOT will continue to retrofit and replace culverts per agreements with WDFW. Further assessment at this time is unnecessary.

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2. *The FHWA should assist local governments and conservation groups in assessing and removing existing impervious surfaces that are directly connected to the drainage network. These actions would partially ameliorate the increased discharge (and duration) of stormwater flows and water quality degradation from the proposed action.*

FHWA/WSDOT does not accept this recommendation. WSDOT is already providing water quality and flow control treatment for all stormwater runoff associated with the proposed project. Stormwater treatment provided by the project will reduce concentrations of pollutants (TSS, total copper and zinc, and dissolved copper and zinc) in every basin in the action area. Additionally, for stormwater discharges, the project will match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50 percent of the 2-year peak flow up to the full 50-year peak flow using a WSDOT approved continuous simulation model.

3. *The FHWA should ensure that, for the life of the project, adverse effects from pollutants in stormwater runoff are avoided or minimized as follows:*
  - a. *Water Quality. Improve long-term water quality conditions associated with pollutant loading from the road network within the project watershed.*
  - b. *Drains. Eliminate direct discharge of stormwater associated with the project to waters of the U.S.*
  - c. *Groundwater. Protect groundwater from pollutant loading.*
    - i. *Pre-treat that water quality event stormwater runoff from pollution-generating surfaces before infiltration to groundwater or discharge into waters of the U.S., as necessary to minimize any pollutant load likely to be present.*
    - ii. *Pretreatment may include, but is not limited to, biofiltration (filtration, adsorption, and biological decomposition from soils that have sufficient organic content and sorption capacity to remove pollutants), filtration (engineered filtration systems), settling/sediment ponds (engineered stormwater facilities), or any combination treatment train thereof.*
  - d. *Placement. Avoid or minimize damage to sensitive natural resource areas (e.g., riparian and wetland areas), unstable hill slopes, ESA-listed species habitat) during placement of stormwater treatment facilities.*
  - e. *Maintenance. The WSDOT will follow the Biological Opinion issued on August 15<sup>th</sup>, 2003 (NMFS Tracking No. 2003 00313) on WSDOT's Regional Road Maintenance Program.*

FHWA WSDOT accepts this conservation recommendation; however, for item 3(b), WSDOT will continue to discharge treated stormwater to flow-exempt water bodies such as Lake Washington.

4. *The FHWA should ensure that adverse effects resulting from increased stormwater discharges and duration of flows are avoided or minimized through addressing:*
  - a. *Peak flows. Reduce the post-project frequency, magnitude, and duration of the flows into Coal, May, Johns, Clover, and Gypsy creeks from one-half of the 2-year storm event up to the 50-year storm event as measured against the historic frequency, magnitude, and duration of flows from the same range of storm events.*

2. On page 2, paragraph 2, the work is not confined to the Cedar River subwatershed. The sentence should read "Lower Cedar River/Lake Washington subwatershed".
3. On p.2, 1<sup>st</sup> paragraph under *Stormwater Quality Treatment*: This comment applies to each time these numbers are included. The pavement numbers have been updated and should be 123 acres of new impervious (instead of 120.56) and 158 (instead of 162) acres of existing roadway for a total of 281 (instead of 282) acres within the project area.
4. On p.2, 1<sup>st</sup> paragraph under *Stormwater Quality Treatment*, the 3rd sentence should read "modified ecology embankments".
5. On p.2, 1<sup>st</sup> paragraph under *Stormwater Quality Treatment*, the last line should read "Stormwater in the action area..."
6. On p. 2, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs under *Stormwater Quality Treatment*, Clover Creek should be included in the list of water bodies.
7. On p. 2, 2<sup>nd</sup> paragraph under *Stormwater Quality Treatment*. The 2nd sentence should read "WSDOT is incorporating a full retrofit where practicable." This is a more restrictive standard than the "no net increase of pollutant loading" currently in the document.
8. On p. 2, 2<sup>nd</sup> paragraph under *Stormwater Quality Treatment*, please change "will not increase pollutant loading" to "minimize pollutant loading".
9. Page 2, 1st paragraph under *Stormwater Quantity Treatment*: Most of the project qualifies as direct discharge to Lake Washington, so flow control has not been provided. Of the four basins listed, only Coal Creek will have flow control to address local street widening. Flow conditions in John's Creek and the Mercer Slough Wetlands are dominated by backwater from Lake Washington, and the Gypsy Creek discharge to Lake Washington will be designed to convey the higher post-project peak flows.
10. On Page 3, 1<sup>st</sup> sentence: Please identify the interchange referred to here.
11. On Page 3, 1st paragraph: Plans for the Gypsy Creek outfall to Lake Washington have changed. WSDOT will not make the connection all the way to the lake but will tie into a City of Renton developer line for the property that lies between the I-405 corridor and the lake. The portion of the system within WSDOT right of way will still be fish passable, and the City and developer will work with WDFW to meet the appropriate fish passage criteria. There will therefore not be any in-water work at the mouth of Gypsy Creek associated with this project. We suggest the following wording:

The project may enlarge the conveyance capacity between the NE 44<sup>th</sup> Street interchange and Lake Washington. Alternatively, WSDOT will coordinate with the City of Renton and property owner as required to assure that the conveyance system accommodates the proposed Gypsy Creek highway pavement basin outfall of 83.6 acres. The design of the conveyance under I-405 is not yet finalized. We expect that the new system will have slightly slower velocities than the existing undersized culvert (WSDOT 2006a).
12. On page 3, 4<sup>th</sup> paragraph: For streams containing listed species, WSDOT will limit in-water work to the appropriate in-water work window. For all other water bodies, WSDOT will coordinate work windows with WDFW.
13. Page 3, 3<sup>rd</sup> paragraph: The existing box culvert will be abandoned and filled, not removed.
14. On p. 4, 1st bullet: the proposed John's Creek discharge is a 72-inch diameter culvert.
15. On p. 4, 2<sup>nd</sup> bullet: The replacement culvert will be fish passable, but its size is as yet undetermined.

- b. *Infiltration. Provide infiltration opportunities for stormwater runoff derived from the project area whenever possible.*
  - i. *Infiltration opportunities may include, but are not limited to: adequate soils, non-concentrated overland flow, vegetation management, land cover conversions, permeable bedded detention basins, and infiltration swales*
  - ii. *Minimize, disperse, and infiltrate stormwater runoff onsite using sheet flow across permeable vegetated areas to the maximum extent possible without causing flooding, erosion impacts, or long-term adverse impacts to groundwater.*

FHWA/WSDOT accepts this conservation recommendation; however, we should clarify that the proposed project bypasses May and Clover creeks so flow control does not apply. Gypsy Creek will be designed for the new peak flows and John's Creek hydraulics are dominated by Lake Washington, so flow control does not apply to these (see comment #38, below).

- 5. *FHWA should ensure that the project will place the appropriate stream mitigation habitat structures (such as boulder clusters and large woody debris) within May and Coal Creeks at the I-405 crossing location.*

FHWA accepts this conservation recommendation.

- 6. *The FHWA should ensure that adverse effects resulting from impacts of wetland habitat are avoided or minimized by implementing mitigation projects that provide consistent or enhanced function in terms of fish access and habitat quantity and quality during similar flow events.*

FHWA accepts this conservation recommendation.

- 7. *FHWA should ensure that adverse effects resulting from all culvert replacement activities occurring on waterbodies within the action area that contain listed fish species will be avoided or minimized by confining work to the period of July 1<sup>st</sup> to August 31<sup>st</sup>. In addition, the following measures should be implemented:*
  - a. *Substrate used to establish the final grade of the streambed, within the upstream and downstream limits of excavation, shall be representative of an adjacent unaltered stream reach.*
  - b. *Material removed during excavation shall be placed in a location and manner that prevents it from eroding back into the stream channel.*
  - c. *Reduce turbid water discharges by slowly "ramping up" the flow of surface waters after completion of any streambed modifications.*

FHWA accepts this conservation recommendation.

#### Biological Opinion

FHWA/WSDOT would also like to clarify certain aspects of the Biological Opinion as follows:

1. On page 1 of the Biological Opinion, the word "Nickel" should be deleted. This is not a Nickel project.

16. On p. 4, 4th bullet: The text is not clear. We suggest the following: "On two additional tributaries to Lake Washington, immediately north of Gypsy Creek, existing 18-inch culverts will be replaced with fish-passable culverts."
17. On p.4, 1st full paragraph: block nets will only prevent fish from moving into the in-water work area, not all aquatic life.
18. On p. 5, 1st paragraph under *Pile Driving*: WSDOT will limit in-water work to the in-water work window, but work outside the OHWM may take place year-round. Also, pile driving may occur within 15 feet of the OHWM of Coal Creek, not 20 feet as indicated on p. 5.
19. Page 5, all three bullets: please delete the word "continuously". WSDOT monitors the temporary BMPs on a frequency that is dictated on a weekly basis or based on the occurrence of storm events.
20. On p.6, 1st paragraph under *Action Area*: SR169 is north of the Cedar River.
21. On p. 21, 2<sup>nd</sup> paragraph: this should read "Renton to Bellevue project" instead of "Renton Nickel project".
22. On p. 24, 3<sup>rd</sup> paragraph: The acres have been updated and should be 123 acres of new impervious and 158 acres of existing impervious.
23. On p. 26, 1st full paragraph: the updated acreage is 123 acres of new impervious surface.
24. On p. 26, 3rd full paragraph: The acreage numbers should read 123 acres of new impervious surface and 158 acres of existing impervious surface.
25. On p. 27, 1st full paragraph: the numbers have been updated and should be changed as follows: change 12.66 to 13, 12.17 to 12, 5.59 to 6 and 6.58 to 6.
26. On p. 27, 2<sup>nd</sup> sentence of the 2<sup>nd</sup> full paragraph: Delete "Channel" since the new land development will likely accommodate the WSDOT outfall in a pipe (see comment #11).
27. On p. 27, 3rd full paragraph: change 120.6 to 123.
28. On p. 29, last paragraph: change 162 to 158.
29. On p. 30, 2<sup>nd</sup> paragraph: change 162 to 158.
30. On p. 31, Table 6 heading: change "Renton Nickel" to "Renton to Bellevue".
31. On p. 32, Table 7 heading: change "Renton Nickel" to "Renton to Bellevue".
32. On p. 32, 1st full paragraph: change 162 to 158.
33. On p 33, 1st full paragraph: change 162 to 158.
34. Page 38, 2<sup>nd</sup> paragraph under Forage: please refer to comment #11.
35. Page 44, paragraph immediately before Reasonable and Prudent Measures: What exactly are the limits which would trigger reinitiation if WSDOT exceeded them?
36. On p. 45, text in condition 1: FHWA/WSDOT will improve or maintain stormwater from this project, not all stormwater within the project watersheds. Also, FHWA/WSDOT is only responsible for stormwater treatment facilities for this project, not all stormwater treatment facilities in the action area.
37. On p. 45, 1a: This water quality standard falls short of what we have proposed. We suggest the following wording:  
"The FHWA will ensure that stormwater treatment facilities within the action area will achieve full retrofit of runoff from the highway pavements to the full extent possible. The conceptual design has proposed for this project, an area equal to all new impervious area plus 163 acres of the 171 acres of existing impervious area will be treated by water quality facilities prior to discharge."
38. On p. 46, Item 1d: The proposal would bypass May Creek and Clover Creek so flow control does not apply. Gypsy Creek will be designed for the new peak flows and John's

Creek hydraulics are dominated by Lake Washington, so flow control does not apply to these. We suggest the following wording:

"Stormwater discharges to Coal Creek must match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50 percent of the 2-year peak flow up to the full 50-year peak flow using a WSDOT-approved continuous simulation model."

39. On p. 49, Item a under 2nd bullet: Same comment as previous.

Please provide us with a written response to this letter by March 15, 2007. We appreciate your efforts in working with us to clarify these issues.

Sincerely yours,

  
Stephen P. Boch  
Major Project Oversight Manager

Cc: Allison Ray, I-405 Environmental Manager  
Sean Callahan, NMFS  
Michelle Steinmetz, UCC Biology Program Manager



U.S. Department  
of Transportation

**Federal Highway  
Administration**

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June 25, 2007

HDA-WA / I-405

Mr. Steve Landino  
National Marine Fisheries Service  
510 Desmond Drive SE, Suite 103  
Lacey, Washington 98503

I-405, Tukwila to Renton Improvement  
Project (I-5 to SR 169 Phase 2)  
Request for formal consultation

Dear Mr. Landino:

The Federal Highway Administration (FHWA), as the lead federal agency for the I-405 Tukwila to Renton Improvement Project, is submitting this request for formal consultation with the National Marine Fisheries Service (NMFS) as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment (BA) for your review.

The I-405 Tukwila to Renton Improvement Project is a Washington State Department of Transportation (WSDOT) project that results in improvements to the Interstate-405 (I-405) and State Route 167 (SR 167) corridors in and around the cities of Renton and Tukwila, Washington. The project extends approximately 4 miles along I-405, from I-5 to SR 169, and approximately 2 miles along SR 167, from I-405 to SW 43rd Street. Improvements will also be made to local roads, freeway structures, and the stormwater drainage system associated with the project.

The enclosed BA includes descriptions of the discretionary action to be considered, the specific area that may be affected by the action, any listed species that may be affected by the proposed actions, the manner in which the proposed action may affect any listed species, an analysis of cumulative effects, and all other relevant available information. Conservation and performance measures to minimize potential impacts to all listed species are also included.

FHWA is requesting formal consultation as allowed by 51 CFR §402.12(j). FHWA has determined, based on the best scientific and commercial data available, that the proposed project: **may affect, and is likely to adversely affect** Puget Sound Chinook salmon; **may affect, and is likely to adversely affect** Chinook salmon critical habitat; and **may affect, and is likely to adversely affect** Puget Sound steelhead.

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With the submittal of this BA, FHWA has provided NMFS with all of the best scientific and commercial data available concerning the impact of the proposed project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR §402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you concurring with our determination within 30 days. If no letter is received within this timeframe, we will assume that you are in concurrence with our determination. NMFS will develop a Biological Opinion (BO) within 45 days of completing the formal consultation period. FHWA requests advance copies of the draft BO, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to finalizing the BO.

FHWA personnel are available to answer questions, review the draft BO, and assist you in any possible way. It is of vital importance that this consultation be completed in 138 days (this timeframe includes three days for mailing), or less if at all possible.

Please contact me by phone at 206-220-7536 or by e-mail at [Steve.Boch@fhwa.dot.gov](mailto:Steve.Boch@fhwa.dot.gov) if you have any further questions about the project.

Sincerely yours,

Stephen P. Boch  
Major Project Oversight Manager

Enclosure

Cc: Michelle Steinmetz, WSDOT UCO Biology Program Manager  
Bill Jordan, WSDOT I-405 Environmental Manager  
Sharon Love, FHWA, Washington Division



U.S. Department  
of Transportation

**Federal Highway  
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June 25, 2007

HDA-WA / I-405

Mr. Ken Berg  
U.S. Fish and Wildlife Service  
510 Desmond Drive SE, Suite 102  
Lacey, Washington 98503-1273

I-405, Tukwila to Renton Improvement  
Project (I-5 to SR 169 Phase 2)  
Request for formal consultation

Dear Mr. Berg:

The Federal Highway Administration (FHWA), as the lead federal agency for the I-405 Tukwila to Renton Improvement Project, is submitting this request for formal consultation with the US Fish and Wildlife Service (USFWS) as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment (BA) for your review.

The I-405 Tukwila to Renton Improvement Project is a Washington State Department of Transportation (WSDOT) project that results in improvements to the Interstate-405 (I-405) and State Route 167 (SR 167) corridors in and around the cities of Renton and Tukwila, Washington. The project extends approximately 4 miles along I-405, from I-5 to SR 169, and approximately 2 miles along SR 167, from I-405 to SW 43rd Street. Improvements will also be made to local roads, freeway structures, and the stormwater drainage system associated with the project.

The enclosed BA includes descriptions of the discretionary action to be considered, the specific area that may be affected by the action, any listed species that may be affected by the proposed actions, the manner in which the proposed action may affect any listed species, an analysis of cumulative effects, and all other relevant available information. Conservation and performance measures to minimize potential impacts to all listed species are also included.

FHWA is requesting formal consultation as allowed by 51 CFR §402.12(j). FHWA has determined, based on the best scientific and commercial data available, that the proposed project: **may affect, is likely to adversely affect** the Coastal Puget Sound Distinct Population Segment (DPS) of bull trout; **may affect, and is likely to adversely affect** bull trout critical habitat; and will have **no effect** on bald eagles.

With the submittal of this BA, FHWA has provided USFWS with all of the best scientific and commercial data available concerning the impact of the proposed project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR §402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you concurring with our determination within 30 days. If no letter is received within this timeframe, we will assume that you are in concurrence with our determination. USFWS will develop a Biological Opinion (BO) within 45 days of completing the formal consultation period. FHWA requests advance copies of the draft BO, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to finalizing the BO.

FHWA personnel are available to answer questions, review the draft BO, and assist you in any possible way. It is of vital importance that this consultation be completed in 138 days (this timeframe includes three days for mailing), or less if at all possible.

Please contact me by phone at 206-220-7536 or by e-mail at [Steve.Boch@fhwa.dot.gov](mailto:Steve.Boch@fhwa.dot.gov) if you have any further questions about the project.

Sincerely yours,

Stephen P. Boch  
Major Project Oversight Manager

Enclosure

Cc: Michelle Steinmetz, WSDOT UCO Biology Program Manager  
Bill Jordan, WSDOT I-405 Environmental Manager  
Sharon Love, FHWA, Washington Division



United States Department of Commerce  
National Oceanic and Atmospheric Administration  
United States Department of the Interior  
Fish and Wildlife Service

National Marine Fisheries Service  
7600 Sand Point Way N.E.  
Seattle, Washington 98115

**Reply To:**  
**NMFS Tracking No.:**  
**2007/04219**



U.S. Fish and Wildlife Service  
510 Desmond Drive S.E., Suite 102  
Lacey, Washington 98503

March 3, 2008

**USFWS Log No.:**  
**13410-2007-F-0416**

Daniel M. Mathis  
Division Administrator  
Federal Highway Administration  
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711 S. Capitol Way, Suite 501  
Olympia, Washington 98501

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Interstate 405, Interstate 5 to State Route 169 Phase 2 – Tukwila to Renton Improvement Project, King County, Washington. (Sixth Field HUCs, 171100120302, Cedar River and 171100120106, Lower Cedar River)

Dear Mr. Mathis:

The enclosed document contains a biological opinion prepared by the National Marine Fisheries Service and United States Fish and Wildlife Service (hereafter referred to as the Services) pursuant to Section 7(a)(2) of the Endangered Species Act on the effects of the Federal Highways Administration's funding of the I-405, I-5 to SR 169 Phase 2, Tukwila to Renton Improvement Project, in King County. In this biological opinion, the Services conclude that the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound Chinook, Puget Sound steelhead, or Bull Trout or result in the destruction or adverse modification of designated critical habitat for Puget Sound Chinook and Bull Trout.

As required by section 7 of the Endangered Species Act, the Services provided an incidental take statement with the biological opinion. The incidental take statement describes reasonable and prudent measures National Marine Fisheries Service considers necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and any person who performs the action must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the Endangered Species Act take prohibition.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on essential fish habitat. These Conservation Recommendations are a non-identical set of the Endangered Species Act Terms and Conditions. Section 305(b) (4) (B) of the MSA requires Federal agencies to provide a detailed written response to National Marine Fisheries Service within 30 days after receiving these recommendations.

If the response is inconsistent with the essential fish habitat conservation recommendations, the Federal Highways Administration must explain why the recommendations will not be followed, including the justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall essential fish habitat program effectiveness by the Office of Management and Budget, National Marine Fisheries Service established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each essential fish habitat consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the essential fish habitat portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

If you have any questions, please contact Sean Callahan of my staff at the Washington State Habitat Office at (206) 716-1145, by e-mail at sean.callahan@noaa.gov, or by mail at the letterhead address.

Sincerely,

  
for  
D. Robert Lohn

Regional Administrator  
National Marine Fisheries Service



Ken S. Berg, Manager  
Western Washington Fish and Wildlife Office  
U.S. Fish and Wildlife Service

Enclosure

cc: Stephen Boch, FHWA  
John Grettenberger, USFWS  
Michelle Steinmetz, WSDOT, UCO  
Phillip Bloch, WSDOT, UCO  
Paul Wagner, HQ, WSDOT



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, Washington 98115

Refer to NMFS No:

**2007/04403**

March 12, 2008

Daniel M. Mathis  
Division Administrator FHWA  
Evergreen Plaza Building  
711 S. Capitol Way, Suite 501  
Olympia, Washington 98501

Re: Reinitiation of Endangered Species Act Section 7 Formal Consultation for Interstate 405 Congestion Relief and Bus Rapid Transit Projects – Renton to Bellevue, King County, Washington. (HUC, 171100120106, Lower Cedar River and 171100120302, Cedar River).

Dear Mr. Mathis:

Enclosed is a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the proposed Renton to Bellevue Improvement project. In this Opinion, NMFS concludes that the proposed action is not likely to jeopardize the continued existence of Puget Sound (PS) steelhead trout (*Oncorhynchus mykiss*).

As required by Section 7 of the ESA, an incidental take statement prepared by NMFS is provided with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize incidental take associated with this proposed action. It also sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and applicant, if any, must comply with to carry out the reasonable and prudent measures. Incidental take from actions by the action agency and applicant that meet these terms and conditions will be exempt from the ESA take prohibition.

NMFS previously issued an Opinion on this project for Puget Sound Chinook and Puget Sound Chinook critical habitat (2006/01454). This document also included the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and included seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. These seven conservation recommendations remain in effect.



If you have questions regarding this consultation, please contact Sean Callahan, Fishery Biologist, in the Transportation Branch of the Washington State Habitat Office at 206.716.1145.

Sincerely,



D. Robert Lohn  
Regional Administrator

Enclosure

cc      Steven Boch, FHWA  
          Michelle Steinmetz, WSDOT, UCO  
          Allison Hanson, WSDOT, I-405 Project Office  
          Paul Wagner, HQ, WSDOT



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE



Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

AUG 12 2015

In Reply Refer To:  
**01EWFW00-2015-I-0636**  
XRef: 13410-2007-F-0416

April Magrane  
Washington State Department of Transportation  
Northwest Region/Design Build  
I-405/SR 167 and SR 509 Programs  
600- 108<sup>th</sup> Avenue NE, Ste. 400  
Bellevue, Washington 98004

Dear Ms. Magrane:

Subject: Interstate 405/State Route 167 Direct Connector Project

On May 21, 2015, the U.S Fish and Wildlife Service (Service) received your request, on behalf of the Federal Highway Administration, for informal reinitiation of consultation on the Interstate 405/State Route 167 Direct Connector Project. All elements of the project were previously consulted on which concluded with a Biological Opinion issued jointly by the National Marine Fisheries Service and the Service on March 3, 2008 (XRef. 13410-2007-F-0416). Since then additional species have been listed under the Endangered Species Act. The western Distinct Population Segment (DPS) of the yellow-billed cuckoo (*Coccyzus americanus*) (yellow-billed cuckoo) was listed as threatened on October 3, 2014 (50 CFR 59992-60038). As provided in 50 CFR 402.16, reinitiation of consultation is required if a new species is listed or critical habitat designated that may be affected by the action.

We have reviewed the Biological Assessment (BA) update received on May 21, 2015, in support of a “may affect, not likely to adversely affect” determination for the yellow-billed cuckoo. The Federal Highway Administration and Washington State Department of Transportation have concluded the project will have “no effect” on an additional species listed since the issuance of the prior opinion and known to occur within King County in northwestern Washington. There is no requirement for the Service to concur with “no effect” determinations. These determinations rest with the action agency. This consultation has been conducted in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA).

The project will reconstruct sections of northbound Interstate (I)-405 and northbound and southbound State Route (SR) 167 to open up the medians to accommodate new direct connector ramps, construct a new high occupancy vehicle/express toll lane structure between SR 167 and I-405, widen/replace the I-405 bridge over SR 515, construct new retaining walls, and relocate a noise barrier. The project will modify local roadways, including East Valley Road and South 14<sup>th</sup> Street, related to the interchange improvements and I-405/SR 167 widening. Other elements include: sign bridges; intelligent transportation system and tolling equipment; storm water management facilities; realignment of the Rolling Hills Creek channel along the east side of SR 167; and installation of a fish passable water crossing structure for Rolling Hills Creek under SR 167 at the South 19<sup>th</sup> Street alignment.

Sufficient information has been provided to determine the effects of the proposed project to federally listed species and to conclude whether the changes are likely to adversely affect those species. Our concurrence is based on information in the Biological Assessment Supplement and associated documents, successful implementation of the Best Management Practices and Minimization Measures as described in these documents, and the following rationale.

### **Western Yellow-billed Cuckoo**

#### Distribution

In the Pacific Northwest, including Oregon, Washington, and British Columbia, Canada, the yellow-billed cuckoo was formerly fairly common in willow and cottonwood forests along the Willamette and lower Columbia Rivers in Oregon and Washington, and in the Puget Sound lowlands of Washington.

In Washington, the last confirmed breeding records of yellow-billed cuckoos are from the 1930s and it is likely to have been extirpated as a breeder in the State. Incidental sightings of the species occur throughout the State, and the possibility of a vestigial breeding population exists. Recent sightings have occurred in the cottonwood forests along the Columbia River, the most recent being at the Sandy River delta in 2012. The available data suggest that if yellow-billed cuckoos still breed in Washington, the numbers are extremely low, with pairs numbering in the single digits.

#### Occurrence in the Action Area

Yellow-billed cuckoos typically breed in extensive riparian forest consisting of abundant willow and an overstory of mature cottonwoods. Within the project action area, the Panther Creek wetland complex and surrounding forested upland includes approximately 20 acres of mixed conifer, big-leaf maple, cottonwood, and willow forest adjacent to shrubby and herbaceous wetland/stream areas. The portion of the action area associated with the re-alignment of Rolling Hills Creek does not contain suitable nesting habitat due to its small size and location within an urban landscape; however, individual birds may migrate and or forage through the area.

### Effects to Western Yellow-billed Cuckoo

Yellow-billed cuckoos are found in a variety of vegetation types during migration, including coastal scrub, secondary growth woodland, hedgerows, humid lowland forests, and forest edges from sea level to 8,125 feet (Hughes 1999, pp. 6-7 in FR 78, No. 192, p. 61633). They may also use smaller riparian patches than those in which they typically nest (FR 78, No. 192, p. 61632). The Panther Creek/Rolling Hills Creek wetland complex provides potential habitat for migrating yellow-billed cuckoos.

The yellow-billed cuckoo may be sensitive to elevated noise levels generated by pile driving, concrete demolition, paving, and general construction activities. Construction noise generated by the Direct Connector Project will extend approximately one mile in all directions from the immediate work areas. Existing noise sources include Renton Municipal Airport, the I-5 and I-405 interchange, and the Sea-Tac International Airport. The daily high background noise levels in the project vicinity, and the absence of suitable nesting habitat, make it extremely unlikely that project-related noise will have a measurable effect on the yellow-billed cuckoo.

The approximately 0.28 acre of permanent vegetation removal within the construction footprint would not cause a measurable effect to the migration or foraging behavior of individual birds that may be in the project action area. The conversion of open herbaceous wetlands associated with re-alignment of Rolling Hills Creek to stream/riparian habitats will result in the establishment of a woody shrub/forest community with an open stream channel. This may result in an eventual increase in riparian habitat availability for migrating cuckoos. Given the low numbers of yellow-billed cuckoo expected within the Rolling Hills Creek portion of the action area, and the absence of suitable nesting habitat in the project action area, it is extremely unlikely that yellow-billed cuckoo will be exposed to the stressors generated by the proposed action. Effects to the yellow-billed cuckoo are anticipated to be discountable.

### **Concurrence**

Based on the analysis presented in the BA supplement and summarized above, we concur that the subject action is not likely to adversely affect the western DPS of the yellow-billed cuckoo. This concludes informal reinitiation of consultation under Section 7 of the ESA.

You should request reinitiation of consultation with the Service on this action if:

1. new information reveals the action may affect listed species or critical habitats in a manner or to an extent not considered in this consultation;
2. the action is subsequently modified in a manner that causes an effect to listed species or critical habitats that was not considered in this consultation; or
3. a new species or critical habitat is designated that may be affected by this project.

The Service appreciates your efforts to protect listed species and the habitats on which they depend while meeting your agency needs. If you have any questions regarding this letter or our joint responsibilities under the ESA, please contact Leslie Durham at (360) 753-9532; leslie\_durham@fws.gov, or Mark Miller (360) 534-9347: mark\_miller@fws.gov.

Sincerely,

  
*Mark G. Miller*  
for Eric V. Rickerson, State Supervisor  
Washington Fish and Wildlife Office

cc:

FHWA, Olympia, WA (L. Handel)  
FHWA, Olympia, WA (C. Callahan)  
WSDOT, Bellevue, WA (R. Thomas)  
WSDOT, Bellevue, WA (A. Magrane)



**Washington State  
Department of Transportation**

**Northwest Region / Design Build**  
I405/SR167 & SR509 Programs  
600-108th Avenue NE Ste. 400  
Bellevue, WA 98004  
425-456-8582  
TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

April 18<sup>th</sup>, 2016

Eric Rickerson  
United States Department of Fish and Wildlife  
510 Desmond Drive SE, Suite 102  
Lacey, Washington 98503

Subject: Biological Assessment Update for I-405 - Renton to Bellevue Project SR 169 to I-90; Request for Consultation on Yellow-Billed Cuckoo  
WSDOT Project Number: A40502H  
Federal Aid Number: NA

Dear Mr Rickerson:

The Washington State Department of Transportation (WSDOT), proposed to widen I-405 for 8 miles between State Route (SR) 169 and the I-90 interchange. The project requires a US Army Corps of Engineers permit. Therefore, it is subject to requirements under Section 7(c) of the Endangered Species Act.

A Biological Assessment was submitted to the National Marine Fisheries Service and the U.S. Fish and Wildlife in April 2006. NMFS issued a Biological Opinion on January 3, 2007 and USFWS issued a Letter of Concurrence on November 28, 2006. The project's Finding of No Significant Impact was published in 2008. As part of the 2015 Connecting Washington funding package, WSDOT received funding to build a portion of the original project; one new lane in both directions between SR 169 in Renton (milepost 4.0) and the northern on-and-off ramps of I-90 (MP 11.9) as the first stage of construction for this project. This project update was prepared evaluating refinements made during design of the first stage of construction.

Since the 2006 BA, three USFWS species that could occur in the project area were added to the Endangered Species list: yellow-billed cuckoo, streaked horned lark, and Oregon spotted frog as well as their critical habitat. This update evaluates the potential impacts of the completed project (as described in the 2006 Biological Assessment) on these species and their habitat. Impact and avoidance measures; the project action area; environmental setting; and analysis of effects have not changed since the 2006 documentation.

This project was presented at pre-biological assessment meetings with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, National Marine Fisheries on August 20<sup>th</sup>, 2015, and December 15<sup>th</sup>, 2015. This BA Update concludes that the project will have ***no effect*** on Oregon spotted frog or streaked horned lark. The project ***may affect, but is not likely to adversely affect*** yellow-billed cuckoo.

It is our understanding that with federal concurrence this satisfies our responsibilities under Section 7(c) of the Endangered Species Act at this time. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

Please contact Robert Thomas at 425.456.8556 if you require additional information or if you have any questions about this project.

Sincerely,

*[Signature]*

April Magrane  
Biology Lead, WSDOT, NWR

## Enclosure: Biological assessment

cc: w/ enclosure: Allison Hanson, WSDOT NW Region Design Build Program  
Rebecca McAndrew, Senior Scientist, U.S. Army Corps of Engineers



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Washington Fish and Wildlife Office  
510 Desmond Dr. SE, Suite 102  
Lacey, Washington 98503

MAY 26 2016

In Reply Refer To:  
**01EWFW00-2016-I-0717**  
XRef: 1-3-06-I-0253

April Magrane  
Washington State Department of Transportation  
Northwest Region, I-405/SR 167 & SR 509 Programs  
600-108<sup>th</sup> Avenue NE, Ste. 400  
Bellevue, Washington 98004

Dear Ms. Magrane:

This letter is in response to your request for reinitiation of informal consultation on the Interstate 405 (I-405) – Renton to Bellevue Project State Route (SR) 169 to Interstate 90 (I-90). The project is located on I-405 from milepost (MP) 4.0 to MP 11.9 between SR 169 and the I-90 interchange in King County, Washington. The project requires issuance of a Clean Water Act, Section 404 permit from the U.S. Army Corps of Engineers (USACE). Since the initial concurrence was issued on November 28, 2006 (Ref. No. 1-3-06-I-0253), the Washington State Department of Transportation (WSDOT) has not provided any new information on effects of the action or significant design changes that would affect listed species and habitats previously consulted on. This request for reinitiation of consultation will address additional species recently listed in King County by the U.S. Fish and Wildlife Service (Service) under the Endangered Species Act.

Your submittal included an updated Biological Assessment (BA) dated April 2016 that provided information in support of a “may affect, not likely to adversely affect” determination for the western yellow-billed cuckoo (*Coccyzus americanus*; yellow-billed cuckoo). The USACE has concluded that the project will have “no effect” on additional species listed since November 2006 that may occur in King County. There is no requirement for the Service to concur with “no effect” determinations. These determinations rest with the action agency. This informal consultation has been conducted in accordance with sections 7(a)(2) of the Endangered Species Act as amended (16 U.S.C. 1531 *et seq.*) (ESA).

The original project described in the April 2006 BA was not constructed due to lack of funding. That proposal included widening I-405 by two lanes in each direction for approximately eight miles from SR 169 in Renton at MP 4.0 to the northern on-and-off ramps of I-90 at MP 11.9. The project as proposed in the April 2016 BA will now be constructed in phases. The WSDOT has received State funding to build a portion of the original project including widening I-405 by one new lane in each direction for the eight miles mentioned above. The new lanes will be paired with the existing carpool lanes to create a dual express toll lane system in both directions. A new auxiliary lane will be added in the southbound direction between MP 9.3 and MP 10.7. These activities are considered the first stage of construction for this project.

The first stage of construction is scheduled to occur from July 2019 through December 2023, with construction of the remaining phases beginning approximately two years after funding becomes available, which is as yet undetermined. The original duration of construction activities was 1,825 working days; the total number of working days for all phases of the project is now expected to be approximately 3,650 working days. The overall estimate of working days is longer because the work will not occur at the same time, as the phases will be executed under two separate construction contracts. Although project duration has doubled due to phasing construction, this modification is not expected to cause an effect to a listed species or critical habitat that was not considered in the initial consultation.

The action area established in the original consultation documentation has not changed. Additionally, the level of impacts from the initial consultation including construction noise, the amount of pollution generating impervious surface, and riparian and wetland impacts have not changed. Therefore, the determinations of effect to species and habitats previously consulted on have not changed. The April 2016 BA evaluated the potential impacts of all phases of the project as described in the original April 2006 BA to species listed and critical habitats designated or proposed under the ESA since the initial 2006 submittal.

Sufficient information has been provided to determine the effects of all phases of the proposed project (as described in the 2006 BA) to species and habitats federally listed under the ESA since November 2006, and to conclude whether the project is likely to adversely affect those species. Critical habitat for the yellow-billed cuckoo has been proposed but does not occur within Washington State and therefore will not be discussed further in this document. Our concurrence is based on information in your letter, information in the 2006 BA, 2016 BA and supplemental information, successful implementation of the Best Management Practices and Minimization Measures, and the following rationale:

### **Western Yellow-Billed Cuckoo**

The western DPS of the yellow-billed cuckoo was listed as threatened on October 3, 2014 (50 CRF 59992-60038). In the Pacific Northwest, including Oregon, Washington, and British Columbia, Canada, the yellow-billed cuckoo was formerly fairly common in willow and cottonwood forests along the Willamette and lower Columbia Rivers in Oregon and Washington, and in the Puget Sound lowlands of Washington.

In Washington, the last confirmed breeding records of yellow-billed cuckoos are from the 1930s and it is likely to have been extirpated as a breeder in the State. Incidental sightings of the species occur throughout the State, and the possibility of a vestigial breeding population exists. Recent sightings have occurred in the cottonwood forests along the Columbia River, in the Sandy River delta (Oregon) in 2012, and within Washington the Little Pend Oreille National Wildlife Refuge (Stevens County) in 2012, and northwest of Winthrop (Okanagan County) in 2015. The available data suggest that if yellow-billed cuckoos still breed in Washington, the numbers are extremely low, with pairs numbering in the single digits.

Yellow-billed cuckoos typically breed in extensive riparian forest consisting of abundant willow and an overstory of mature cottonwoods. Extensive stands of mature cottonwood riparian forest that is typical of yellow-billed cuckoo nesting habitat is not present within the project action area. In Washington, suitable breeding habitat for the yellow-billed cuckoo is defined as patches of mature willow and cottonwood riparian vegetation that are 50 acres in size or larger.

Vegetation in the project area was reviewed for suitability as nesting habitat for yellow-billed cuckoo, and five areas were evaluated further. In these portions of the project action area, the riparian woodlands are not of suitable size to support breeding yellow-billed cuckoo; however, occasional birds may migrate through the smaller areas within the project action area.

Little is known about the foraging and migrating habitat of yellow-billed cuckoo, however they are found in a variety of vegetation types during migration and may use smaller riparian patches than those in which they typically nest (FR 78, No. 192, p. 61632). One of the areas that received further evaluation, Mercer Slough Nature Park, was identified as containing some small, discontinuous willow and cottonwood patches that could potentially provide foraging and migratory habitat. Although these willow/cottonwood patches will not be removed, the project will permanently remove 2.05 acres and will temporarily impact 0.25 acre of nearby deciduous riparian woodland primarily consisting of red alder and shrubs.

Given the low numbers of yellow-billed cuckoos expected within the action area, and because the project will not impact any potentially suitable habitat in the project action area, project impacts to western yellow-billed cuckoo from disturbance are anticipated to be extremely unlikely and are therefore discountable.

## **Conclusion**

Based upon the analysis presented in the BA and summarized above, we concur that the subject action is not likely to adversely affect western yellow-billed cuckoo. This concludes informal consultation under section 7 of the ESA.

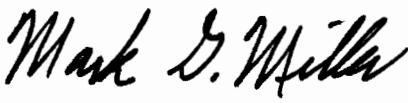
WSDOT should request reinitiation of consultation with the Service on this action if:

1. new information reveals the action may affect listed resources in a manner or to an extent not considered in this consultation;
2. the action is subsequently modified in a manner that causes an effect to listed resources that was not considered in this consultation; or

3. a new species or critical habitat is designated that may be affected by this project.

The Service appreciates your efforts to protect listed species and the habitats on which they depend while meeting your agency needs. If you have any questions about this letter or our joint responsibilities under the ESA, please contact DeeDee Jones at (360) 753-4471 ([deean\\_jones@fws.gov](mailto:deean_jones@fws.gov)) or Mark Miller (360) 534-9347 ([mark\\_miller@fws.gov](mailto:mark_miller@fws.gov)), of this office.

Sincerely,

  
*Mark D. Miller*  
*for* Eric V. Rickerson, State Supervisor  
Washington Fish and Wildlife Office

cc:

WSDOT, Bellevue, WA (R. Thomas)  
USACE, Seattle, WA (R. McAndrew)



U.S. Department  
of Transportation

**Federal Highway  
Administration**

Washington Division

Suite 501 Evergreen Plaza  
711 South Capitol Way  
Olympia, Washington 98501-1284  
(360) 753-9480  
(360) 753-9889(FAX)  
<http://www.fhwa.dot.gov/wadiv>

January 18, 2017

HFO-WA.1/WA521E8295

Kim Kratz  
National Marine Fisheries Service  
510 Desmond Drive SE, Suite 103  
Lacey, WA 98503

**Informal Consultation  
Request/Biological Assessment for I-405,  
Tukwila to Renton Improvement Project  
WIN # 1405504C**

Dear Mr. Kratz:

The Washington State Department of Transportation (WSDOT) is proposing to construct the next stage of the I-405, Tukwila to Renton Improvement (TRIP) Project from I-5 to State Route 169. This stage of construction, referred to as the TRIP Peak Use Shoulder Lane/Express Toll Lane Project (TRIP PUSL/ETL Project) was funded as part of the Connecting Washington package. The Federal Highway Administration (FHWA) is providing necessary project approvals, constituting a Federal action.

The project will extend the southbound I-405 High Occupancy Vehicles (HOV) lanes southward by approximately 300 feet towards I-5 and construct an express toll lane in the southbound direction and construct a peak use shoulder lane in the northbound direction. The new express toll and peak use shoulder lanes will accommodate the creation of a dual-lane express tolling system between SR 167 and SR 169, which will link existing HOV lanes northward and southward. These improvements will be accomplished through selective widening, re-striping, bridge construction (widening of the Cedar River Bridge structure) and reconstruction (lengthening of Cedar Avenue and Renton Avenue bridges over I-405), and installation of new signage.

The project is located on Interstate 405 (I-405) from milepost 0.0 to 4.0 within Township 23 North, Range 4E, sections 23 and 24, as well as Township 23 North, Range 5E, sections 17, 19, and 20. The 6th field Hydraulic Unit Code is 171100120400 – Lake Washington Sammamish which is found in WRIA 9 – Duwamish-Green. Construction is scheduled to begin in 2019.

The original consultation was completed with a biological opinion (BO) in 2008 (NMFS Tracking No: 2007/04219, USFWS Log No: 13410-2007-F-0416). The BO concluded the project was *likely to adversely affect* Puget Sound Chinook Salmon, steelhead trout, bull trout, and critical habitats for chinook and steelhead (although steelhead critical habitat was not designated at the time). WSDOT is not seeking re-initiation of consultation on chinook salmon because the TRIP PUSL/ETL Project does not alter the effect determination from the original BA/BO. This BA and project update focuses on critical habitat for steelhead that was designated since the BO was issued, as well as the project specific effects expected from the TRIP PUSL/ETL Project stage.

The enclosed biological assessment and project update was prepared by WSDOT for species listed after the original project consultation in 2007 as required under Section 7(c) of the Endangered Species Act. The biological assessment and project update concludes that the TRIP PUSL/ETL Project Stage will not result in additional adverse effects to chinook and steelhead, and *may affect, but is not likely to adversely affect* Puget Sound steelhead designated critical habitat. Effects all other species did not change since the original consultation.

Therefore, the FHWA is requesting informal consultation for Puget Sound Steelhead.

It is our understanding that following the completion of consultation and receiving concurrence, our responsibilities under the Magnuson Stevens Conservation and Management Act will be satisfied. Please contact Rob Thomas (WSDOT 425-456-8556, thomasr@wsdot.wa.gov) if you require additional information or have any questions about this project.

Sincerely,

DANIEL M. MATHIS, P.E.  
Division Administrator



*for* By: Lindsey L. Handel, P.E.  
Urban Area Engineer

Enclosure

CC: Michael MacDonald, WSDOT; Rob Thomas, WSDOT; Mark Bakeman, WSDOT



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Blvd, Suite 1100  
Portland OR, 97232

Refer to NMFS Tracking

No.: WCR-2017-6243

(X-Refer to NMFS Tracking No: 2007/04219)

March 8, 2017

Daniel Mathis

U.S. Department of Transportation  
Federal Highway Administration  
711 Capitol Way South, Suite 501  
Olympia, Washington 98501-1284

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and  
Management Act Essential Fish Habitat Response for the Interstate 405,  
Interstate 5 to State Route 169 – Tukwila to Renton Improvement Project in  
King County, Washington (HUCs: 171100120106, Madsen Creek-Cedar  
River and 171100130305, Green River).

Dear Mr. Mathis:

On January 18, 2017, the National Marine Fisheries Service (NMFS) received your biological assessment (BA) update and request for a written concurrence that the Federal Highway Administration (FHWA) approval and funding for the I-405, I-5 to SR 169, Tukwila to Renton Improvement Project (TRIP) is not likely to adversely affect (NLAA) additional species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA) since 2007. This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for the preparation of letters of concurrence.

The NMFS also reviewed the updated action for potential new or revised effects on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determinations that you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920 and agency guidance for use of the ESA consultation process to complete EFH consultation.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through the NMFS Public Consultation Tracking System. A complete record of this consultation is on file at the Oregon and Washington Coasts Area Office in Lacey, Washington.



## **Consultation History**

In 2007, the FHWA submitted a BA to the NMFS requesting formal consultation for the TRIP. On March 3, 2008 the NMFS and U.S. Fish and Wildlife Service (USFWS) issued a joint Biological Opinion (BiOp) (NMFS Tracking No: 2007/04219, USFWS Ref. No. 13410-2007-F-0416) and Incidental Take Statement (ITS) for adverse effects to Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*) and PS steelhead (*O. mykiss*), under NMFS jurisdiction. At that time, the NMFS also determined that the project as proposed was likely to adversely affect designated critical habitat for PS Chinook salmon; and was also likely to adversely affect Pacific salmon EFH. PS steelhead critical habitat had not yet been designated in 2007 and therefore was not evaluated.

The initial BA stated that the project would be constructed in stages as funding became available. Since the original BA was submitted and the BiOp issued in 2008, the Washington State Department of Transportation (WSDOT) constructed previously funded portions of the project included in the initial consultation. As part of the 2016 Connecting Washington legislative package, the WSDOT received the funding necessary to construct the stage of the project referred to as the “Peak Use Shoulder Lane/Express Toll Lane (PUSL/ETL) Project.”

The PUSL/ETL project stage, which widens I-405 southbound from MP 0.09 to 0.27 and from MP 2.34 to 4.0, fits within the overall scope of the original project in terms of roadway widening and storm drainage. However, project refinements were made and new listings under the ESA occurred since the 2008 BiOp was issued. Therefore, a BA update was submitted to NMFS in order to do the following: 1) describe project refinements that have occurred since the 2007 consultation, 2) evaluate if those refinements have additional impacts to species already consulted on, and 3) assess the project impacts on species and critical habitats listed under the ESA since the original consultation.

Since the initial consultation, the FHWA and WSDOT, the non-Federal designee for informal consultation for the FHWA, determined that the project refinements will not change the effect determinations or modify the ITS provided in the original BiOp. Therefore, the FHWA is not requesting reinitiation of formal consultation. However, because PS steelhead critical habitat was designated under the ESA in 2016, the FHWA has requested concurrence on a not likely to adversely affect determination for PS steelhead critical habitat.

The consultation was initiated on January 19, 2017, when the NMFS received the BA and request for a written concurrence from the FHWA.

## **Proposed Action**

This project stage will extend the southbound I-405 High Occupancy Vehicles (HOV) lanes southward by approximately 300 feet towards I-5, construct an express toll lane in the southbound direction, and construct a peak use shoulder lane in the northbound direction. The new express toll and peak use shoulder lanes will accommodate the creation of a dual-lane express tolling system between SR 167 and SR 169, which will link existing HOV lanes northward and southward. These improvements will be accomplished through selective widening, re-striping, bridge construction (widening of the Cedar River Bridge structure) and

reconstruction (lengthening of Cedar Avenue and Renton Avenue bridges over I-405), and the installation of new signage. No in-water work will be required. Design and construction of this project stage is anticipated between 2019 and 2024.

The project is also designing stormwater treatment and flow control facilities to accommodate the increase of Pollution Generating Impervious Surface (PGIS) from highway widening. The initial consultation addressed an increase of 69.60 acres of new PGIS for the entire project in the Green River, Cedar River, and Springbrook Creek drainages. The PUSL/ETL project stage will account for 1.32 acres of the total new PGIS initially consulted on, where 1.08 acres of new PGIS drains to the Cedar River, 0.22 acre of PGIS drains to Springbrook Creek via Thunder Hills Creek, and 0.02 acre of PGIS drains to the Green River via Gilliam Creek. Stormwater from all 1.32 acres of new PGIS will be treated by enhanced runoff treatment, and then routed into an existing storm sewer system with an outfall into the respective receiving body above. An additional 9.57 acres of existing PGIS within the Cedar River drainage will receive enhanced stormwater treatment to help reduce pollutant load by installation of new stormwater facilities in the right-of-way. No new outfalls will be constructed nor will there be a need for any outfall improvements.

The final design will identify the work involved with highway runoff collection and conveyance and the location of the selected best management practices (BMPs) for stormwater treatment to the NMFS' biological thresholds. All flow control facilities will be placed outside of the 100-year floodplain. The final design may result in changes to the proposed stormwater treatment system, but all stages of the TRIP, including the TRIP PUSL/ETL Project, will treat to the same biological thresholds. Additionally, any new stormwater facilities that are needed will be constructed such that the loading and concentration targets will be met within each stage of the project.

The WSDOT will implement all BMPs, avoidance and minimization measures, and performance standards as described in the 2007 BA and the 2008 BiOp.

### Action Area

“Action area” means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The extent of the action area encompasses direct and indirect effects.

The action area established in the original consultation documentation has not changed. Additionally, the overall level of impacts from the initial consultation including construction noise, the amount of PGIS, and riparian and wetland impacts have not changed. Therefore, the determinations of effect to species and habitats previously consulted on have not changed.

The January 2017 BA evaluated only the potential effects of the PUSL/ETL stage of the overall TRIP to species listed and critical habitats designated or proposed under the ESA since the initial 2007 submittal. This project stage will not have in-water work however post-project stormwater pollutants will discharge into the Cedar River through existing pipes outlet adjacent to the southbound side of the bridge, and through existing outfalls to Thunder Hills and Gilliam Creeks. Pollutants are expected to dilute to background levels within one foot of each pipe outfall, therefore the aquatic zone of influence is defined by a one-foot radius at the outfalls to Cedar River, Thunder Hills Creek, and Gilliam Creek.

## **Effects Determination**

The FHWA and the WSDOT request concurrence for a determination of “may affect, not likely to adversely affect” for PS steelhead critical habitat. In addition, the FHWA and the WSDOT determined there will be no additional effects on species and critical habitats addressed in the 2008 BiOp.

## **ENDANGERED SPECIES ACT**

### **Effects of the Action**

Under the ESA, “effects of the action” means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The effects of the proposed action will include the addition of new PGIS and the removal of riparian vegetation. The addition of PGIS can potentially cause permanent changes in water quality associated with stormwater runoff. Additional stormwater from 1.32 acres of new PGIS and 9.7 acres of existing PGIS will be treated through enhanced BMP's and then drain into the Cedar River (10.78 acres), Thunder Hills Creek (0.22 acre), and Gillam Creek (0.02 acre), potentially exposing in-stream fish habitat to stormwater pollutants that were not removed by stormwater BMPs.

Disturbance to up to 6,000 square feet (0.14 acre) of vegetation within the riparian zone of the Cedar River has the potential to affect water quality due to increases in temperatures and erosion.

### **Effects to Species**

Project refinements that have occurred since the 2007 consultation do not have additional impacts to species already consulted on and no additional species under the NMFS' jurisdiction have been listed.

### **Effects to Critical Habitat**

The action area contains and may affect critical habitat for PS steelhead. The final rule to designate critical habitat for Puget Sound steelhead was published in the Federal Register on February 24, 2016 (81 FR 9251), effective March 25, 2016. Within the larger TRIP action area, critical habitat has been designated in the Green River, Cedar River, Springbrook Creek, and Panther Creek. For the PUSL/ETL stage, only the Cedar River contains critical habitat that may be affected.

Physical and biological feature (PBF) 3 (Freshwater migration corridors) of PS steelhead is present in the action area in the Cedar River. Areas free of obstruction, water quality conditions, and natural cover are essential elements of this PBF.

The ongoing permanent effects from stormwater discharges will be occurring episodically in small, localized areas from outfalls on the Cedar River, Thunder Hills Creek, and Gilliam Creek. The HI-RUN model determined the distance at which stormwater diluted to biological threshold concentrations for dissolved copper and dissolved zinc at each location was less than one foot. Critical habitat in reaches downstream of Thunder Hills and Gilliam Creeks will not be affected. Discharges into the Cedar River also create a dilution zone of less than one foot, where concentrations of dissolved copper and dissolved zinc are elevated above the biological threshold. However, there is no discernible change in the dilution distance for the proposed conditions from the existing conditions where the discharge will dilute very quickly due to large water volumes in the Cedar River system.

Direct discharges to the Cedar River (a flow control exempt waterbody) through an existing outfall will not measurably alter hydraulic conditions (i.e. velocities) and will not cause or contribute to increases on bed or bank scour. Disturbance to 0.14 acres of vegetation within the riparian zone, of which a small portion (20%) is adjacent to the stream, is not expected to have a measureable effect on water quality or cover due to substantial riparian tree stands along the banks both upstream and downstream of I-405. Therefore, we conclude that the overall effects to PS steelhead DCH are insignificant.

## **Conclusion**

Based on this analysis, the NMFS concurs with the WSDOT that the proposed action is not likely to adversely affect PS steelhead critical habitat.

## **Reinitiation of Consultation**

The reinitiation of consultation is required and shall be requested by the FHWA, the WSDOT, the non-Federal designee for informal consultation, or by the NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

## **MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

Under the MSA, this consultation is intended to promote the protection, conservation and enhancement of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10), and "adverse effect" means any impact which reduces either the quality or quantity of EFH (50 CFR 600.910(a)). Adverse effects may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The NMFS determined that the initial action proposed in 2007 would adversely affect Pacific salmon EFH. Seven conservation recommendations to avoid, minimize, or

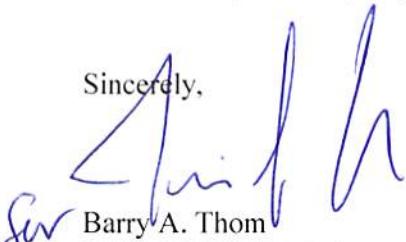
otherwise offset potential adverse effects on essential fish habitat were provided in the initial consultation document, dated March 3, 2008 (NMFS Tracking No. 2007/04219). The FHWA and the WSDOT did not reinitiate EFH consultation with the NMFS as the proposed action was not substantially revised in a way that created additional adverse effects to EFH or affected the basis for the NMFS EFH conservation recommendations already provided. Therefore, NMFS believes that the conservation recommendations 2, 3, and 4 provided in 2008 are still applicable to the PUSL/ETL project and necessary to avoid, mitigate, or offset the adverse effects the proposed action has on EFH.

Within 30 days after receiving this letter, you must provide NMFS with a detailed written response (50 CFR 600.920(k)(1)). The number of conservation recommendations accepted from your initial consultation document should be clearly identified in that response. If your response is inconsistent with the EFH conservation recommendations, you must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

The FHWA or the WSDOT, the non- Federal designee for informal consultation, must reinitiate EFH consultation with the NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for the NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the MSA portion of this consultation.

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of threatened and endangered species. The FHWA also has the same responsibilities, and informal consultation offers action agencies an opportunity to address their conservation responsibilities under section 7(a)(1).

Please direct questions regarding this letter to Jennifer Quan of the Oregon and Washington Coastal Office at (360) 753-6054 or by electronic mail at jennifer.quan@noaa.gov.

Sincerely,  
  
Barry A. Thom  
Regional Administrator

cc: Lindsey Handel, FHWA  
Mark Bakeman, WSDOT  
Rob Thomas, WSDOT



U.S. Department  
of Transportation

**Federal Highway  
Administration**

Washington Division

Suite 501 Evergreen Plaza  
711 South Capitol Way  
Olympia, Washington 98501-1284  
(360) 753-9480  
(360) 753-9889(FAX)  
<http://www.fhwa.dot.gov/wadiv>

November 13, 2017

HFO-WA.1/WA1513E8794

Kim Kratz  
Assistant Regional Administrator  
NOAA Fisheries  
Habitat Program/Olympia Field Office  
510 Desmond Drive SE, Suite 103  
Lacey, Washington 98503-1273

**Biological Assessment. I-405, SR 169 to  
I-90, Renton to Bellevue  
Reinitiation of Consultation for Puget  
Sound Steelhead Critical Habitat  
Replace Previous Consultation  
Document**

Dear Mr. Kratz:

The Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration, is proposing to build Stage 1 of the I-405, SR 169 to I-90, Renton to Bellevue project. A formal biological assessment (BA) was previously submitted to the National Marine Fisheries Service (NMFS) in April 2006. The NMFS issued a biological opinion (BO) on January 3, 2007 (Reference No. 2006/01454). The project reinitiated for Puget Sound steelhead in 2007, and the NMFS issued a BO with formal coverage for steelhead on March 12, 2008 (Reference No: 2007/04403).

FHWA submitted a BA update and reinitiation document to you in October 2017. We now want to replace that document due to errors in the consultation history. This BA update is for Stage 1 of this project, which was funded in the 2015 Connecting Washington funding package. Additional construction stages will be needed to reach full buildout as described in the original 2006 BA. However, the analysis provided in this document considers the full project described in the original 2006 and 2008 consultations.

Stage 1 will cover many of the activities described in the original BA, including the construction of an additional lane northbound and southbound (the full buildout will have two lanes in each direction). Additional work includes widening/replacing bridges, reconfiguring interchanges,

adding retaining walls, realignment of ramps and connector streets, new noise walls, and replacing five fish passage barriers.

New project elements that were not described in the 2006 BA include direct access ramps in the I-405 median, a new park-n-ride lot, conversion of four intersections to roundabouts, widening and paving a pedestrian trail, reconfiguring the I-405 to I-90 ramp from one to two lanes, and habitat improvement work in May Creek.

The project extends on I-405 from milepost (MP) 3.8 to 11.9 in King County. It is within Township 23 N, Range 5 E, sections 5, 8, and 17, and Township 24 N, Range 5 E, sections 9, 16, 17, 20, 29, and 32. The project is in water resource inventory areas (WRIA) Cedar-Sammamish (8) and 6th level HUCs Lake Washington-Sammamish River and Madsen Creek-Cedar River. Stage 1 construction and effects were discussed with WSDOT liaisons from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, in a pre-BA meeting, field visits, and subsequent conference calls.

The 2006 consultation concluded that the project:

- *May affect, and is likely to adversely affect* Puget Sound Chinook salmon;
- *May affect, but is not likely to adversely affect* Puget Sound Chinook critical habitat; and
- *Will have an adverse effect* on Pacific salmon Essential Fish Habitat (EFH).

The 2008 reinitiation concluded that the project:

- *May affect, and is likely to adversely affect* Puget Sound steelhead.

In this reinitiation, we re-evaluated potential effects to Puget Sound Chinook and critical habitat, Puget Sound steelhead, and added Puget Sound steelhead critical habitat to the consultation. We reanalyzed stormwater effects because the analysis method changed in 2009, and we had additional project construction elements that were not described and analyzed in the 2006 BA.

This reinitiation concludes that Stage 1 project refinements will not change the effect determinations provided in the original BA and BO including:

- *May affect, and is likely to adversely affect* Puget Sound Chinook salmon;
- *May affect, but is not likely to adversely affect* Puget Sound Chinook critical habitat;
- *May affect, and is likely to adversely affect* Puget Sound steelhead; and
- *Will have an adverse effect* on Pacific salmon Essential Fish Habitat (EFH).

Based on the analysis in this BA, it is concluded that the project:

- *May affect, but is not likely to adversely affect* Puget Sound steelhead critical habitat.

It is our understanding that with federal concurrence this satisfies our responsibilities under Section 7(c) of the Endangered Species Act at this time. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

Please contact Rob Thomas at 425-456-8556 (THOMASR@wsdot.wa.gov) if you require additional information or if you have any questions about this project.

Sincerely,

DANIEL M. MATHIS, P.E.  
Division Administrator



By: Lindsey L. Handel, P.E.  
Urban Area Engineer

Enclosure

Cc electronically: Cindy Callahan, FHWA  
Allison Hanson, I-405 Project Manager  
Rob Thomas, WSDOT I-405 Project Biologist  
Marion Carey, WSDOT Fish and Wildlife Program Manager  
DeeDee Jones, WSDOT liaison to National Marine Fisheries Service



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
Portland, OR 97232

Refer to NMFS Tracking

No.: WCR-2017-8088

(X-Refer to NMFS Tracking Nos: 2006/01454  
and 2007/04403)

December 11, 2017

Daniel Mathis  
U.S. Department of Transportation  
Federal Highway Administration  
711 Capitol Way South, Suite 501  
Olympia, Washington 98501-1284

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and  
Magnuson-Stevens Fishery Conservation and Management Act Essential  
Fish Habitat Response for the Interstate 405, State Route 169 to Interstate  
90-Renton to Bellevue Project in King County, Washington (HUCs:  
171100120107, Madsen Creek-Cedar River and 171100120400, Lake  
Washington-Sammamish River).

Dear Mr. Mathis:

On November 14, 2017, the National Marine Fisheries Service (NMFS) received your biological assessment (BA) update and request for a written concurrence that the Federal Highway Administration (FHWA) approval and funding for the Interstate (I)-405, State Route (SR) 169, to I-90 Renton to Bellevue Project (RTB) is not likely to adversely affect (NLAA) additional species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA) since the last reinitiation of consultation for this project in 2007 (2007/00-4403). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for the preparation of letters of concurrence.

The NMFS also reviewed the updated action for potential new or revised effects on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determinations that you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920 and agency guidance for use of the ESA consultation process to complete EFH consultation.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through the NMFS Public Consultation Tracking System. A complete record of this consultation is on file electronically at the Oregon and Washington Coasts Area Office.



## **Consultation History**

In 2006, the FHWA submitted a BA to NMFS requesting formal consultation for the fully configured build out of the RTB. On January 3, 2007 the NMFS issued a Biological Opinion (BiOp) (NMFS Tracking No: 2006/01454) and Incidental Take Statement (ITS) for adverse effects to Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*) and designated critical habitat for PS Chinook salmon. At that time, it was also concluded that the project would adversely affect Pacific salmon EFH and issued seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. In 2007, the FHWA requested reinitiation of formal consultation for PS steelhead (*O. mykiss*) when they were listed as threatened under the ESA. On March 12, 2008, the NMFS issued a BiOp (NMFS Tracking No: 2007/04403) and ITS for adverse effects to PS steelhead and determined that the seven EFH conservation recommendations remained in effect. Critical habitat for PS steelhead had not yet been designated in 2007 and therefore was not evaluated.

Due to funding issues since the 2006 and 2007 consultations were concluded and BiOps issued in 2007 and 2008, the Washington State Department of Transportation (WSDOT) has not constructed the RTB project. As part of the 2015 Connecting Washington legislative package, WSDOT has received the funding necessary to construct Stage 1 of the RTB. Funding is not yet available for Stage 2 of the project, required to achieve the full build-out described in the consultations to date, but will be completed when funding becomes available. Construction of Stage 2 is not expected to have adverse effects or effects not considered for Stage 1 to critical habitat for PS steelhead, but will be later in time. Although full build out of the RTB project duration will be longer due to phasing, this is not expected to cause additional effects to listed species or critical habitat that were not considered in the previous consultations.

Stage 1, which widens I-405 by adding one new lane in each direction between SR 169 in Renton and I-90 in Bellevue, fits within the overall scope of the original project in terms of roadway widening and storm drainage. However, project refinements were made and new listings under the ESA occurred since the BiOps were issued. Therefore, a BA update was submitted to NMFS in order to: 1) describe project refinements that have occurred since the 2007 consultation, 2) evaluate if those refinements have additional impacts to species already consulted on, and 3) assess the project impacts on species and critical habitats listed under the ESA since the original consultation.

Since the initial consultation, the FHWA and WSDOT, non-Federal designee for informal consultation for the FHWA, determined that the project refinements will not change the effect determinations or modify the ITSSs provided in the original BiOps; therefore, FHWA is not requesting reinitiation of formal consultation for PS chinook, PS chinook critical habitat, or PS steelhead. However, because PS steelhead critical habitat was designated under the ESA in 2016, the FHWA has requested concurrence on a NLAA determination for PS steelhead critical habitat. Sufficient information has been provided to determine the effects of all phases of the proposed RTB project (as described in the 2006 BA and updated in the 2017 BA) to PS steelhead critical habitat.

The consultation for potential effects to critical habitat for PS steelhead from all phases of

the proposed RTB project was initiated on November 14, 2017, when NMFS received the BA and request for a written concurrence from FHWA.

### **Proposed Action**

For Stage 1 of the project, WSDOT is proposing to widen I-405 from SR 169 at milepost (MP) 3.8 to just north of I-90 at MP 11.9 to accommodate an additional lane in both north and southbound directions. Auxiliary lanes will be added between NE 30<sup>th</sup> Street and NE 44<sup>th</sup> Street, and at Coal Creek Parkway. The additional lane will be coupled with the existing northbound and southbound high occupancy vehicle (HOV) lane to create two express toll lanes (ETLs). Where feasible, the additional lanes will be developed by restriping instead of roadway expansion. Additional improvements needed to accommodate widening I-405 and provide congestion relief include:

- Minor widening of I-405 bridge structures at the Sunset Boulevard N (MP 4.53) and NE Park Drive (MP 5.42) interchanges;
- Constructing retaining walls at the NE 30<sup>th</sup> Street interchange;
- Constructing single span bridge structures with a minimum 95-foot-long clear span over May Creek;
- Replacing the local road bridge structure at the NE 44<sup>th</sup> Street interchange;
- Reconstructing Lake Washington Boulevard NE in a slightly different configuration;
- Constructing direct access ramps for transit and ETL users in the I-405 median;
- Building a Park and Ride lot at the SW corner of the NE 44<sup>th</sup> Street interchange;
- Replacing the local road bridge structure at the 112<sup>th</sup> Avenue SE interchange over I-405;
- Constructing one new southbound bridge at the Coal Creek Parkway interchange;
- Converting the four local road intersections along Coal Creek Parkway to roundabouts;
- Reconfiguring the I-405 to I-90 ramp from one-lane to two-lanes;
- Realigning the I-405 northbound to I-90 eastbound ramp;
- Constructing two new bridges over the eastbound I-90 ramp to Factoria Boulevard and over Factoria Boulevard;
- Relocating a portion of the Lake Washington Trail within the WSDOT right-of-way onto the existing King County Eastside Rail Corridor (ERC);
- Widening and paving a portion of the ERC;
- Constructing three new walls and relocating two existing noise walls within WSDOT right-of way.

The WSDOT is also designing habitat improvements in May Creek and is proposing five culvert replacements for resident fish passage. There are no listed species in the streams where fish barrier culverts will be replaced. Stormwater treatment and flow control facilities to accommodate the increase of Pollution Generating Impervious Surface (PGIS) from highway widening are proposed. Stage 1 project construction is expected between 2019 and 2024.

For Stage 2 of the project, WSDOT is proposing to construct several additional elements within the action area described in the 2006, 2007, and 2017 BAs for the full build out. These elements, similar to Stage 1 in effects to listed species and habitats, include: construction of one additional new lane, realignment of I-405, construction of a transit station, reconfiguration of interchanges, local road improvements and retaining walls, culvert replacements, habitat improvements, and further stormwater treatment for PGIS. Although

all of the construction details and project refinements are unknown at this time, no element from the full build-out is expected to change the effect determinations, modify concurrence or modify the ITSs provided for the RTB project. Stage 2 project activities will be reviewed for effects to listed species at the time that funding becomes available and will be reanalyzed as required at that time.

Final design may result in changes to the proposed stormwater treatment system, but all stages of the RTB project, have a goal of minimizing pollutant concentrations discharged to receiving waterbodies. Additionally, any new stormwater facilities that are needed will be constructed such that the loading and concentration targets will be met within each stage of the project.

The WSDOT will implement all applicable and feasible best management practices (BMPs), avoidance and minimization measures, and performance standards as described in the 2007 BA and 2008 BiOp.

### **Action Area**

“Action area” means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The extent of the action area encompasses direct and indirect effects.

The action area established in the consultation documentation to date has not changed. Additionally, the overall level of effects due to impacts including construction noise, the amount of PGIS, and riparian and wetland impacts have not changed. The project action area is still defined as an area extending 0.5 miles in all directions from the original project footprint.

### **Effects Determination**

The FHWA and WSDOT request concurrence for a determination of “may affect, not likely to adversely affect” for PS steelhead critical habitat. In addition, the FHWA and WSDOT determined there will be no additional effects on species and critical habitats addressed in the 2007 and 2008 BiOps. Therefore, they will not be addressed further in this document.

## **ENDANGERED SPECIES ACT**

### **Effects of the Action**

Under the ESA, “effects of the action” means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The effects of the proposed action will include the addition of new PGIS and the removal of riparian vegetation within the Cedar River drainage. The addition of PGIS can potentially cause permanent changes in water quality associated with stormwater runoff by exposing in-stream fish habitat to stormwater pollutants that were not

removed by stormwater BMPs. Disturbance to vegetation within the riparian zone has the potential to affect water quality due to increase in temperatures and erosion.

### **Effects to Species**

Project refinements that have occurred since the 2006 and 2007 consultations do not have additional impacts to species already consulted on and no additional species under NMFS jurisdiction have been listed.

### **Effects to Critical Habitat**

The action area contains and may affect critical habitat for PS steelhead. The final rule to designate critical habitat for Puget Sound steelhead was published in the Federal Register on February 24, 2016 (81 FR 9251), effective March 25, 2016. Since 2007, the Washington Department of Fish and Wildlife has not been able to estimate the production of steelhead in the Cedar River because the number of steelhead smolts trapped is so low (Kiyohara 2015), but are still expected to contribute to steelhead recovery. Given the developed nature of the Lake Washington watershed and their extremely low abundance and productivity, the Lake Washington steelhead populations are unlikely to meaningfully contribute to their recovery in the near-term.

Within the larger RTB action area, critical habitat has been designated in Cedar River watershed, but excludes Lake Washington. For the RTB project, the Cedar River contains critical habitat that may be affected. Physical and biological feature (PBF) 3 (Freshwater migration corridors) of PS steelhead is present in the action area in the Cedar River. Areas free of obstruction, water quality conditions, and natural cover are essential elements of this PBF.

The ongoing permanent effects from stormwater discharges will be occurring episodically in small, localized areas from an existing outfall on the Cedar River, located on a steep and rocky portion of the shoreline. Approximately 0.31 acre of new PGIS, and an additional 9.19 acres of existing PGIS within the Cedar River drainage will receive enhanced stormwater treatment to help reduce pollutant load by installation of new stormwater facilities in the right-of-way, and is an improvement from the current condition. Flow control will also be added to the outfall. The HI-RUN model determined the distance at which stormwater diluted to biological threshold concentrations for dissolved copper and dissolved zinc. Discharges into the Cedar River create a dilution zone of less than one foot, where concentrations of dissolved copper and dissolved zinc are elevated above the biological threshold. However, there is no discernible change in the dilution distance for the proposed conditions from the existing conditions where the discharge will dilute very quickly due to large water volumes in the Cedar River system.

Direct discharges to the Cedar River through an existing outfall with newly added flow control, will not measurably alter hydraulic conditions (i.e. velocities) and will not cause or contribute to increases on bed or bank scour. Disturbance to 0.12 acre (0.09 permanent and 0.03 temporary) of vegetation within the riparian zone of the Cedar River, is not expected to have a measureable effect on water quality or cover due to substantial riparian tree stands along the banks both upstream and downstream of I-405. Therefore, we conclude that the overall effects to PS steelhead critical habitat are insignificant.

## **Conclusion**

Based on this analysis, the NMFS concurs with the WSDOT that the proposed action is not likely to adversely affect PS steelhead critical habitat.

## **Reinitiation of Consultation**

The reinitiation of consultation is required and shall be requested by the FHWA, WSDOT, non-Federal designee for informal consultation, or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

## **MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

Under the MSA, this consultation is intended to promote the protection, conservation and enhancement of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10), and "adverse effect" means any impact which reduces either the quality or quantity of EFH (50 CFR 600.910(a)). Adverse effects may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

NMFS determined that the initial action proposed in 2006 would adversely affect Pacific salmon EFH. Seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH were provided in the initial consultation document, dated January 3, 2007 (NMFS Tracking No. 2006/01454), and remained in effect for the March 12, 2008 consultation. The FHWA and WSDOT did not reinitiate EFH consultation with NMFS as the proposed action was not substantially revised in a way that created additional adverse effects to EFH or affected the basis for NMFS EFH conservation recommendations already provided. Therefore, NMFS believes that the conservation recommendations provided in 2007 are still applicable to the RTB project and are necessary to avoid, mitigate, or offset the adverse effects the proposed action has on EFH.

Within 30 days after receiving this letter, you must provide NMFS with a detailed written response (50 CFR 600.920(k)(1)). The number of conservation recommendations accepted from your initial consultation document should be clearly identified in that response. If your response is inconsistent with the EFH conservation recommendations, you must explain why the recommendations will not be followed, including the scientific justification for any disagreements over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

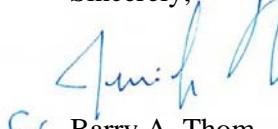
The FHWA or WSDOT, non-Federal designee for informal consultation, must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for

NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the MSA portion of this consultation.

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of threatened and endangered species. The FHWA also has the same responsibilities, and informal consultation offers action agencies an opportunity to address their conservation responsibilities under section 7(a)(1).

Please direct questions regarding this letter to Jennifer Quan of the Oregon and Washington Coastal Office at (360) 753-6054 or by electronic mail at [jennifer.quan@noaa.gov](mailto:jennifer.quan@noaa.gov).

Sincerely,



for Barry A. Thom  
Regional Administrator

cc: Lindsey Handel, FHWA  
Mark Bakeman, WSDOT  
Rob Thomas, WSDOT

**References:**

- Kiyohara, K. 2015. Evaluation of downstream migrant salmon production in 2014 from the Cedar River and Bear Creek. Washington Department of Fish and Wildlife, Annual Report.



## ATTACHMENT N CROSS REFERENCE OF NEPA ELEMENTS

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NEPA Element of the Environment	Location in Environmental Assessment	Attachment
Air Quality	Chapter 4 Project Effects, Air Quality; Air Quality Discipline Report	B
Cumulative Effects	Chapter 5 Cumulative Effects	--
Energy	Chapter 4 Project Effects, Energy and Greenhouse Gases; Air Quality Discipline Report	B
Environmental Justice	Section 4.3 Land Use, Socioeconomics, and Environmental Justice; Environmental Justice Discipline Report	D
Floodplains	Section 4.6 Water Resources; Water Resources Discipline Report	G
Geology and Soils	Chapter 4 Project Effects, Geology and Soils; Geology, Soils, and Groundwater Technical Memorandum	J
Greenhouse Gases	Chapter 4 Project Effects, Energy and Greenhouse Gases; Air Quality Discipline Report	B
Groundwater	Section 4.6 Water Resources; Water Resources Discipline Report and Geology, Soils, and Groundwater Technical Memorandum	G / J
Hazardous Materials	Chapter 4 Project Effects, Hazardous Materials; Hazardous Materials Analysis	H
Historic, Cultural, and Archaeological Resources	Chapter 4 Project Effects Historic, Cultural, and Archaeological; Cultural Resource Survey	E
Land Use	Section 4.3 Land Use, Socioeconomics, and Environmental Justice	--
Noise	Chapter 4.2 Noise, Noise Discipline Report	C

<b>NEPA Element of the Environment</b>	<b>Location in Environmental Assessment</b>	<b>Attachment</b>
Public Services and Utilities	Chapter 4 Project Effects, Public Services and Utilities	--
Section 4(f) and Section 6(f) Resources	Chapter 4.4 Recreational, Section 4(f), and Section 6(f) Resources; Recreational, Section 4(f) and Section 6(f) Resources Technical Memorandum	I
Socioeconomics	Section 4.3 Land Use, Socioeconomics, and Environmental Justice	--
Surface Water	Section 4.6 Water Resources; Water Resources Discipline Report	G
Transportation	Section 4.1 Transportation; Transportation Discipline Report	A
Visual Impact Assessment	Chapter 4.5, Visual Quality; Visual Impact Assessment Discipline Report	F
Water Quality	Section 4.6 Water Resources; Water Resources Discipline Report	G
Wetlands	Section 4.7 Ecosystems	--
Wildlife, Fish, and Vegetation	Section 4.7 Ecosystems	--

## ATTACHMENT O LOGICAL TERMINI

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### *Where is the Project located?*

Located in Tukwila, the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (Project) begins just east of the I-5/I-405 interchange at milepost (MP) 0.0. It continues north on I-405 to MP 11.9, about a mile north of the I-405/I-90 interchange in Bellevue. The table below explains how the project limits meet FHWA's criteria for setting project limits (23 CFR 771.111(f)).

#### *Explanation of the Project's Limits*

FHWA's Criteria	Explanation
Criteria 1 - Connect logical termini and be of sufficient length to address environmental matters on a broad scope	The project limits connect a 12-mile section of I-405 that extends between two major interstate highways, I-5 and I-90. The southern endpoint of I-5 at milepost (MP) 0.0 was selected to provide adequate space to transition the proposed I-405 capacity improvements that begin at MP 2.8 and the proposed toll lanes to non-tolled lanes before they get to I-5 at MP 0.0. Signage and associated tolling infrastructure will be needed on I-405 south of its interchange with SR 167 to facilitate the transition between tolled and non-tolled lanes. On the north end, MP 11.9 was selected as an endpoint because it is near the location where ramps from I-90 complete the tie-in to I-405.
Criteria 2 - Have independent utility or independent significance (i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made)	No additional improvements are needed to make the Project a usable or reasonable expenditure. At its southern limit with I-5, the Project will transition from a highway with two, tolled express lanes and other non-tolled lanes to a completely non-tolled highway. At its northern limit, the Project will connect at MP 11.9 to a separate, independent project called the I-405, Downtown Bellevue Vicinity Express Toll Lanes Project. If the I-405, Downtown Bellevue Vicinity Express Toll Lanes Project were not built, some design modifications would be required to transition I-405 from a tolled to non-tolled facility.
Criteria 3 - Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements	The project limits do not restrict consideration of other alternatives, preclude the addition of other lanes on I-405, or force toll lanes to be operated on I-405 in perpetuity.

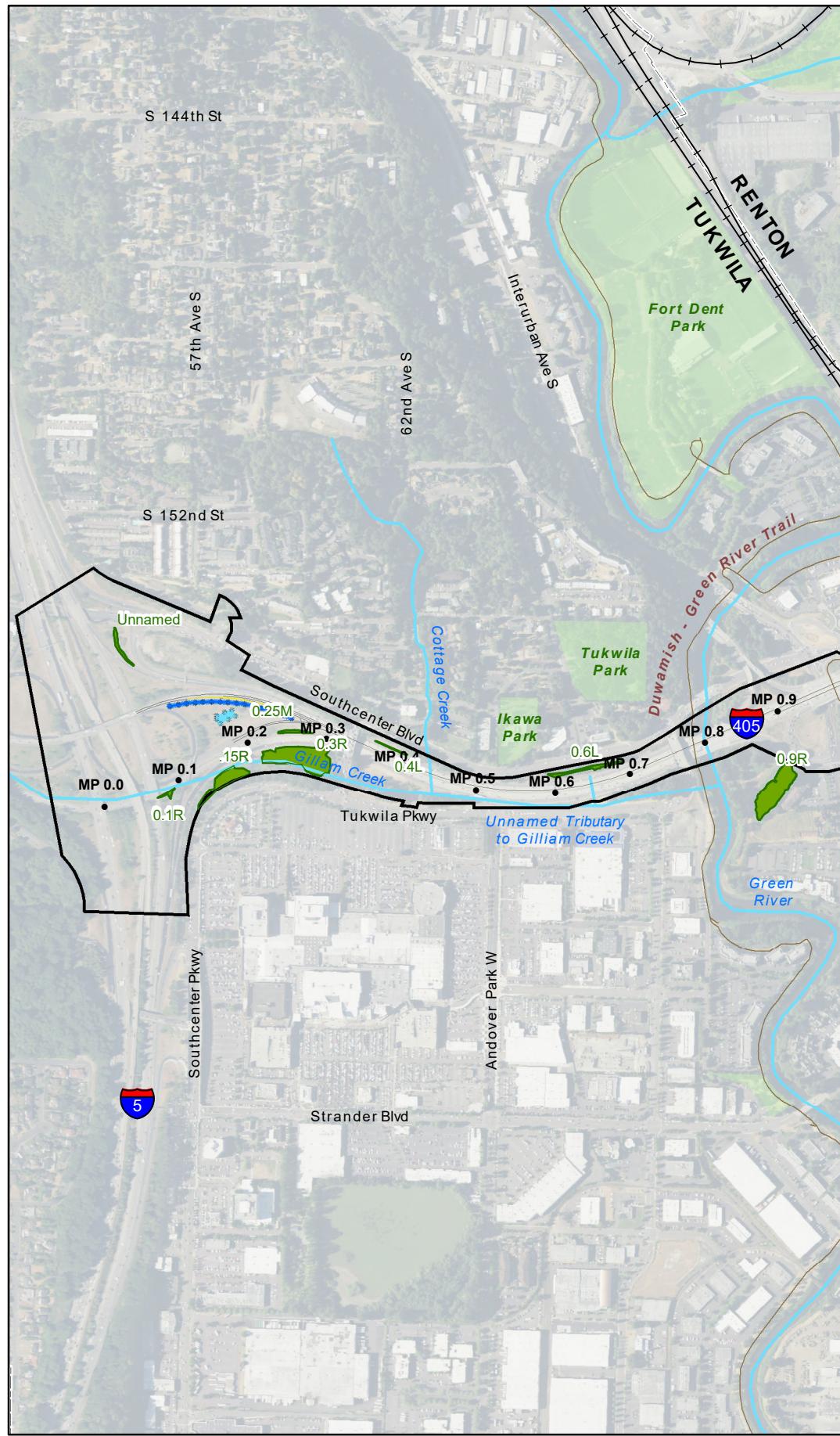


I-405, TUKWILA TO I-90 VICINITY EXPRESS TOLL LANES PROJECT (MP 0.0 TO 11.9)  
ENVIRONMENTAL ASSESSMENT

**ATTACHMENT P WETLAND AND WATER RESOURCES MAPS**

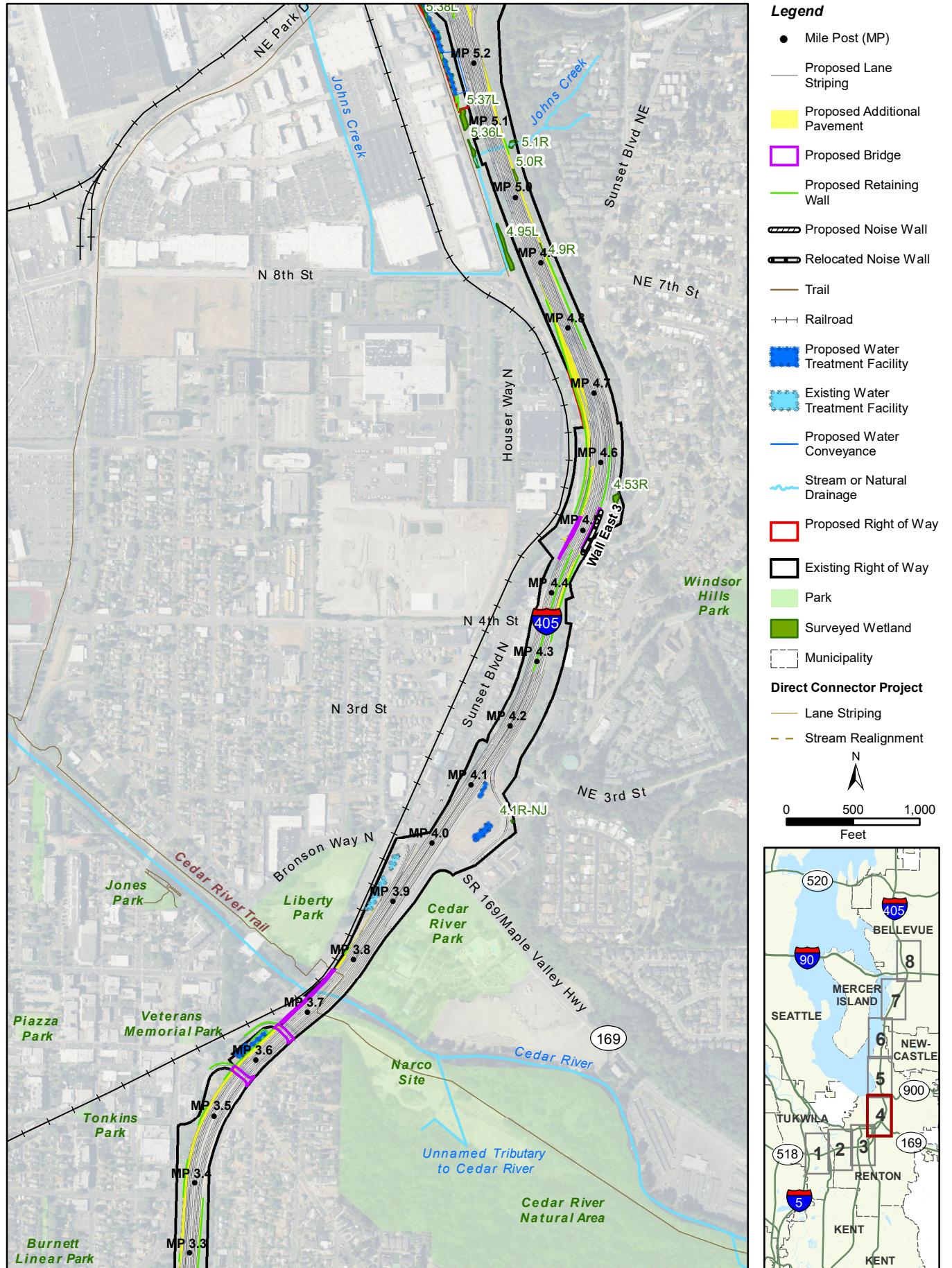
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**Legend**

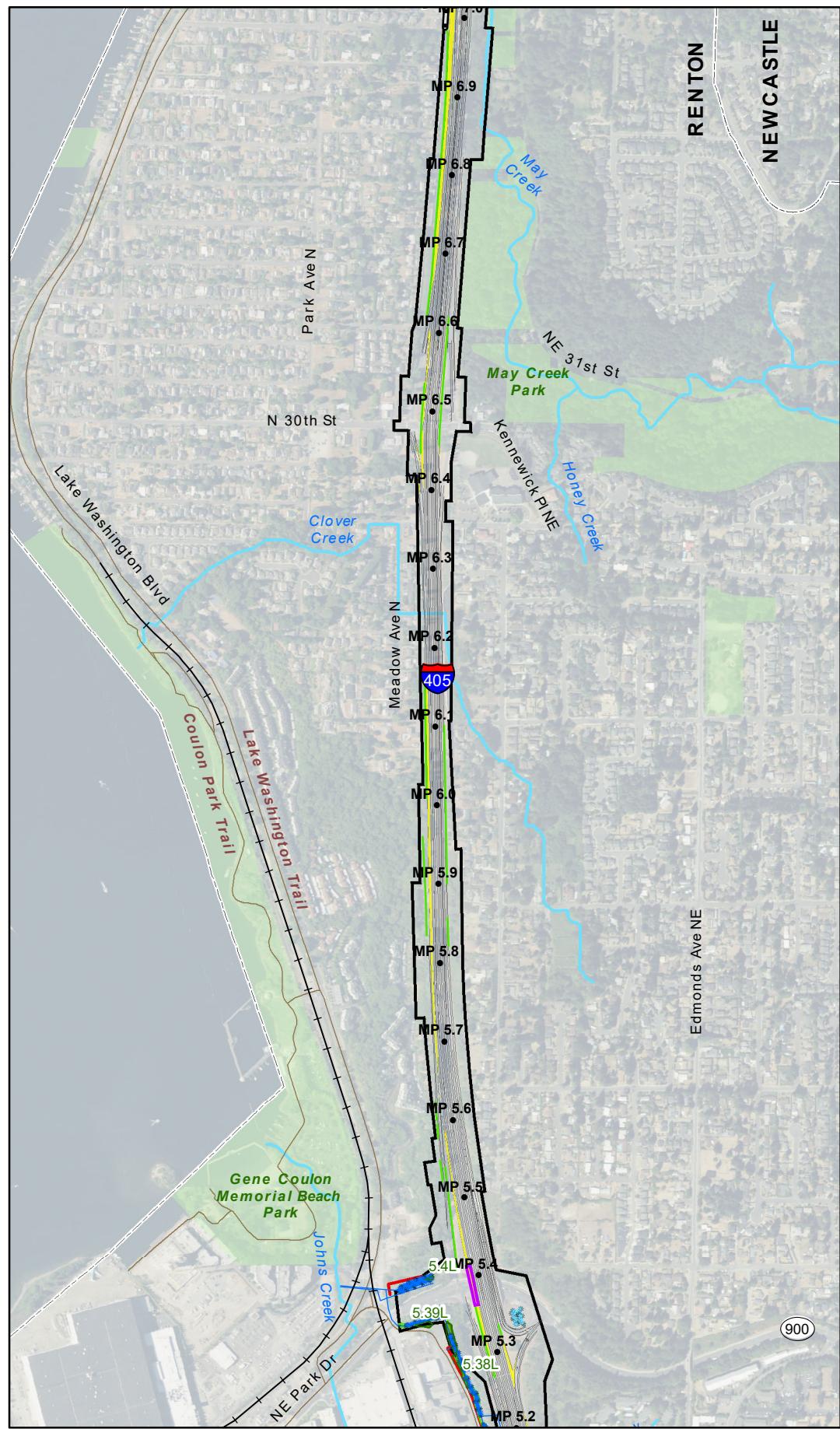
- Mile Post (MP)
- Proposed Lane Stripping
- Proposed Additional Pavement
- Proposed Bridge
- Proposed Retaining Wall
- Proposed Noise Wall
- Relocated Noise Wall
- Trail
- Railroad
- Proposed Water Treatment Facility
- Existing Water Treatment Facility
- Proposed Water Conveyance
- Stream or Natural Drainage
- Proposed Right of Way
- Existing Right of Way
- Park
- Surveyed Wetland
- Municipality

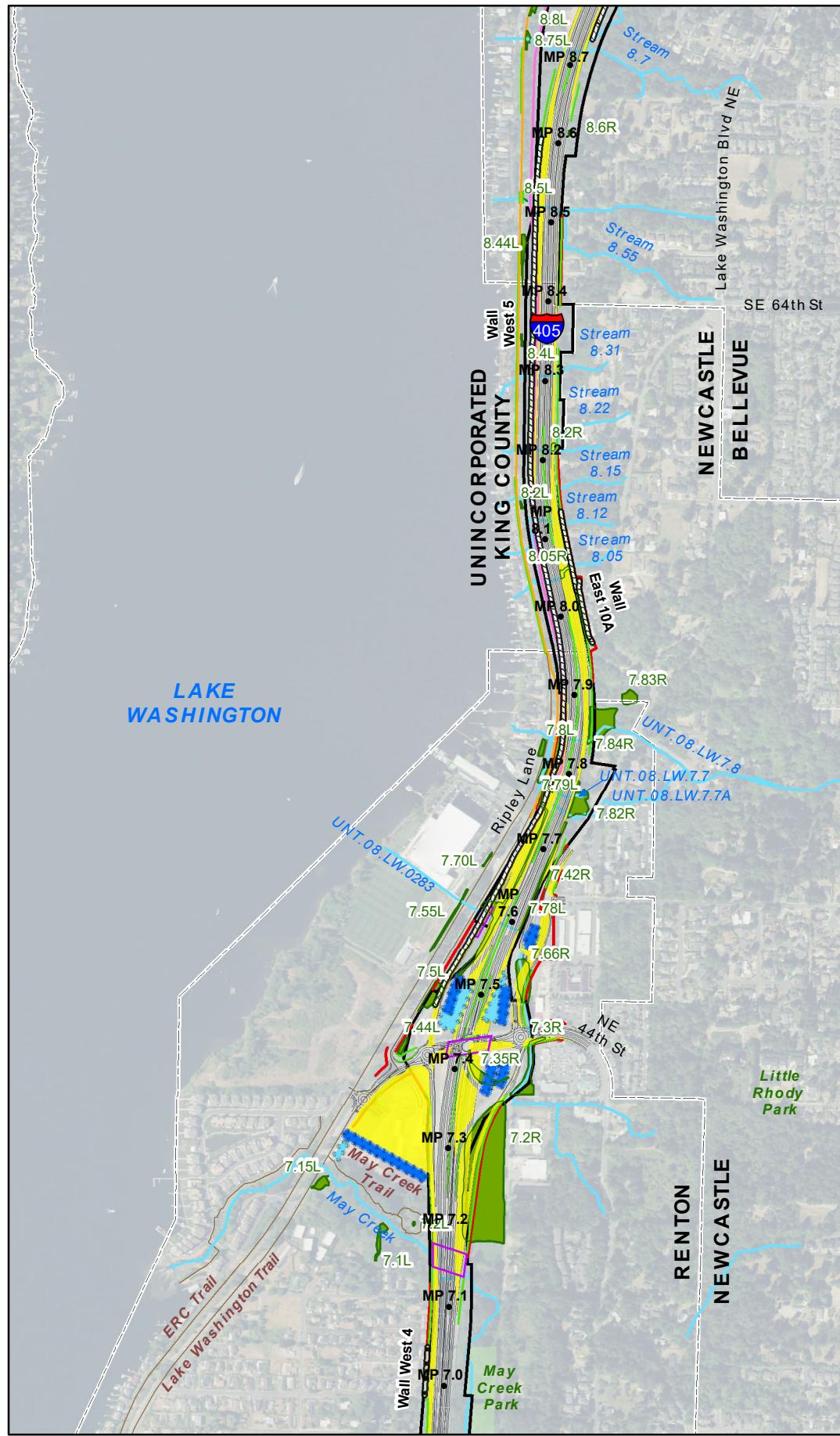
**Direct Connector Project**

- Lane Striping
- Stream Realignment



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Feet



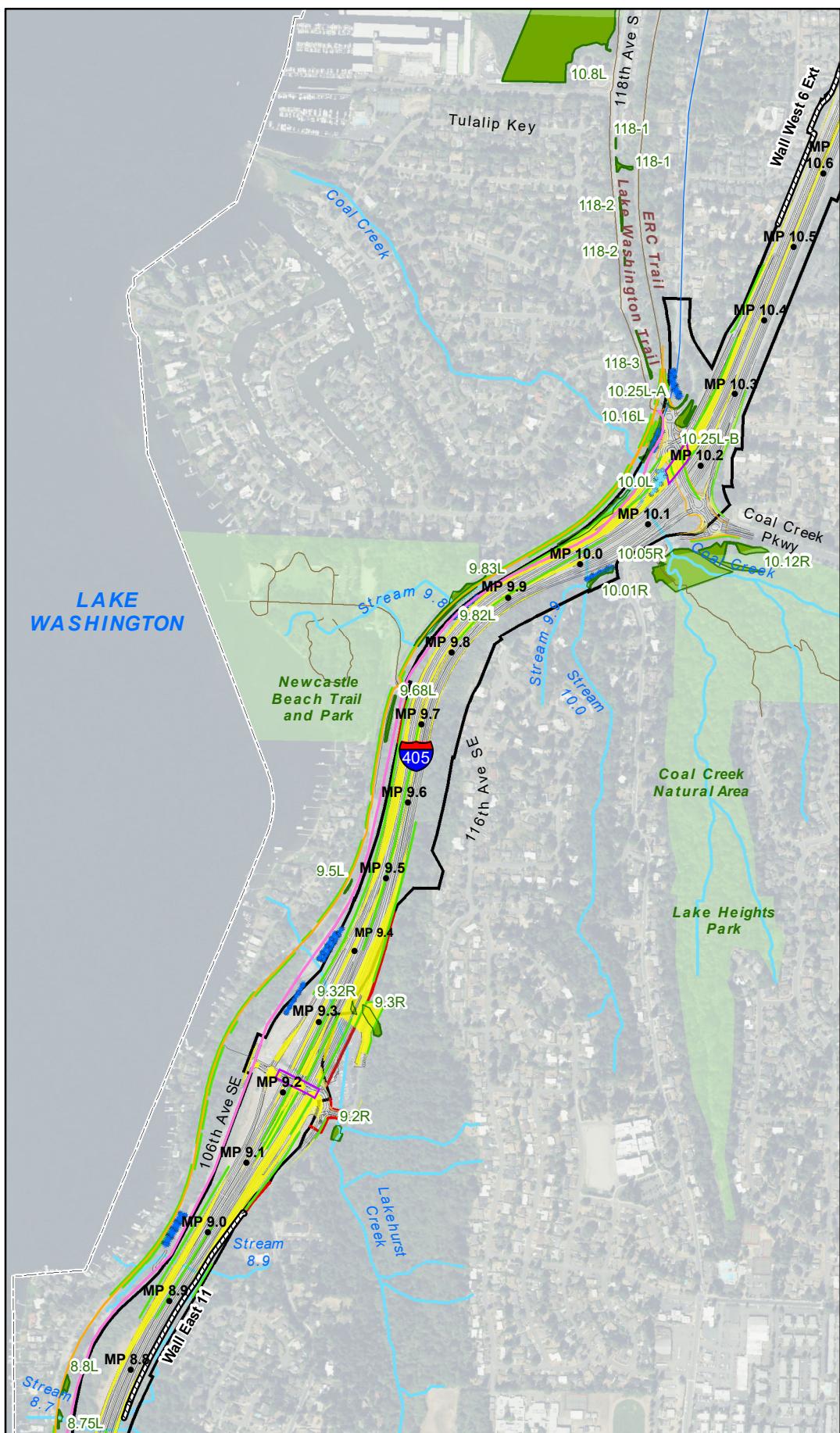


### Legend

- Mile Post (MP)
- Proposed Lane Striping
- Proposed Additional Pavement
- Proposed Bridge
- Proposed Retaining Wall
- Proposed Noise Wall
- Relocated Noise Wall
- Eastside Rail Corridor (portion to be constructed by WSDOT)
- Lake Washington Trail (portion to be relocated onto the Eastside Rail Corridor)
- Trail
- ++ Railroad
- Proposed Water Treatment Facility
- Existing Water Treatment Facility
- Proposed Water Conveyance
- Stream or Natural Drainage
- Proposed Right of Way
- Existing Right of Way
- Park
- Surveyed Wetland
- Municipality
- Direct Connector Project**
- Lane Striping
- Stream Realignment



0 500 1,000  
Feet





I-405, TUKWILA TO I-90 VICINITY EXPRESS TOLL LANES PROJECT (MP 0.0 TO 11.9)  
ENVIRONMENTAL ASSESSMENT

**ATTACHMENT Q ENDANGERED SPECIES ACT SUMMARY**

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April 2, 2018

TO: Allison Hanson  
I-405 Program Environmental Manager

FROM: Rob Thomas  
Project Biologist

SUBJECT: **I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (MP 0.0 to MP 11.9) – ESA Compliance for NEPA**

The 2015 Connecting Washington funding package funded a portion of the remaining improvements for the Tukwila to Renton Improvement Project, I-5 to SR 169 (TRIP)(milepost [MP] 0-4) and the I-405, Renton to Bellevue Project, SR 169 to I-90 (MP 3.8-11.9). Tolling for some of the lanes on I-405 is currently proposed for both of these segments, but was not evaluated in previous environmental analyses completed for National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) compliance for the corridor as a whole. Because tolling was not previously evaluated corridor-wide, the current proposal, which includes tolling, is being evaluated under NEPA in an Environmental Assessment (EA) as a single project, called the I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (the Project).

Under the ESA, a project must reinitiate consultation if (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in previous consultation documents (biological opinions or concurrence letters); or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

I reviewed the project description for the Project to determine if any of the reinitiation triggers identified above apply. The addition of tolling does not introduce effects that may affect listed species or critical habitat in a manner or to an extent not previously considered.

I also reexamined previously completed TRIP and I-405, Renton to Bellevue Project, SR 169 to I-90 consultations to determine if the Project, as currently proposed, warrants reinitiation of consultation. The consultations activities that have occurred to date are summarized below:



- In 2007, the FHWA submitted a Biological Assessment (BA) to the NMFS requesting formal consultation for the southern portion of the Project (milepost 0-4.0) **I-405, Tukwila to Renton Improvement Project (TRIP) I-5 to SR 169**. On March 3, 2008 the NMFS and U.S. Fish and Wildlife Service (USFWS) issued a joint Biological Opinion (BiOp) (**NMFS Tracking No: 2007/04219, USFWS Ref. No. 13410-2007-F-0416**) and Incidental Take Statement (ITS) for adverse effects to Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*) and PS steelhead (*O. mykiss*), under NMFS jurisdiction. At that time, the NMFS also determined that the TRIP was likely to adversely affect designated critical habitat for PS Chinook salmon; and was also likely to adversely affect Pacific salmon EFH. PS steelhead critical habitat had not yet been designated in 2007 and therefore was not evaluated. Since the original BA was submitted and the BiOp issued in 2008, the Washington State Department of Transportation (WSDOT) constructed previously funded portions of the project included in the initial consultation. The I-405, SR 515 Interchange Project, a stage of the TRIP, was constructed between 2008 and 2011, as described in the original BA. An additional stage of the project, the I-405, SR 167 Interchange Direct Connector Project, was included in the consultation, but not funded until 2015. A BA update and re-initiation for that stage was completed with the USFWS and a concurrence letter was issued dated August 12, 2015 (**USFWS Ref. 01EWFW00-2015-I0636**).

As part of the 2015 Connecting Washington legislative package, the WSDOT received the funding necessary to construct the stage of the project referred to as the “Peak Use Shoulder Lane/Express Toll Lane (PUSL/ETL) Project.” Since the initial consultation in 2007, the FHWA and WSDOT, determined that project refinements would not change the effect determinations or modify the Incidental Take Statement (ITS) provided in the original BiOp. However, because PS steelhead critical habitat was designated under the ESA in 2016, the FHWA has requested concurrence on a not likely to adversely affect determination for PS steelhead critical habitat for the **I-405, TRIP I-5 to SR 169 [Construct southbound express toll lane and northbound peak use shoulder lane between SR 167 and SR 169]**. A BA update to address project refinements, and request consultation for PS steelhead critical habitat was submitted in January of 2017 and a concurrence letter (**NMFS Tracking No. WCR-2017-6243**) was issued on March 8, 2017. This consultation considered the potential effects to all newly listed species including yellow-billed cuckoo and Oregon spotted frog. No additional new species or critical habitats have been listed or designated since consultation was concluded in 2017.

- In 2006, the FHWA submitted a BA to NMFS requesting formal consultation for the fully configured build out of the **I-405 - Renton to Bellevue Project SR 169 to I-90**, which is the northern portion of the Project (MP 3.8 to 11.9). On January 3, 2007 the NMFS issued a Biological Opinion (BiOp) (**NMFS Tracking No: 2006/01454**) and ITS for adverse effects to Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*) and designated critical habitat for PS Chinook

salmon. At that time, the BiOp concluded that the project would adversely affect Pacific salmon EFH and issued seven conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. In 2007, the FHWA requested reinitiation of formal consultation for PS steelhead (*O. mykiss*) when they were listed as threatened under the ESA. On March 12, 2008, the NMFS issued a BiOp (**NMFS Tracking No: 2007/04403**) and ITS for adverse effects to PS steelhead and determined that the seven EFH conservation recommendations remained in effect. Critical habitat for PS steelhead had not yet been designated in 2007 and therefore was not evaluated. PS steelhead critical habitat was designated under the ESA in 2016. A request for reinitiation, to address PS steelhead critical habitat, was submitted to NMFS in November of 2017 and a concurrence letter (**NMFS Tracking No. WCR-2017-8088**) was received on December 11, 2017. No new species have been listed or critical habitat has been designated since consultation was concluded in December 2017.

The northern portion of the Project (milepost 3.8-11.9), under the project name **I-405 - Renton to Bellevue Project SR 169 to I-90**, was consulted on separately by USFWS. A Biological Assessment (BA) was submitted to the U.S. Fish and Wildlife (USFWS) in April 2006. USFWS issued a Letter of Concurrence addressing bald eagle, bull trout, and designated critical habitat for bull trout on November 28, 2006 (**USWFS Ref. 1-3-06-I-0253**). A BA Update was submitted to USFWS under in April of 2016, and a concurrence letter confirming prior effect determinations and addressing Western yellow-billed cuckoo (**USWFS Ref. 01EWFW00-2016-I-0717**) was issued on May 26, 2016. No new USFWS species or critical habitats have been listed or designated since consultation was concluded in 2016.

The effects of the Project as currently proposed are consistent with those described in existing ESA documentation. The BAs that evaluated impacts in the southern portion of the Project corridor (TRIP) and the BAs evaluating impacts in the northern portion of the Project corridor (Renton to Bellevue) each identified an action area that extended 0.5 miles in all directions from the immediate footprint of the proposed work. This extent of impacts does not change with the addition of tolling. The two previously consulted upon action areas overlap at the Cedar River. All riparian buffer impacts and stormwater inputs affecting the Cedar River that were addressed in the prior consultations remain unchanged by the proposed tolling, and do not change when the previously defined action areas are combined.

All Project activities for the integrated corridor (including roadway widening, interchange improvements, signal work, utilities, stormwater conveyance and treatment, bridge replacement, and fish passage, etc.) remain the same as those that were documented and consulted upon previously. The noise disturbance, in-water work, and turbidity considerations remain the same as consulted upon previously. The Project does not

introduce additional impacts to listed species, designated critical habitats, or essential fish habitat that were not previously considered, including those at the Cedar River. The Project elements affecting the Cedar River have not changed, and there is no in-water work. There are no additional considerations needed despite the possibility of the bridge widening and drainage improvements occurring in the same season.

Table 1 summarizes the impacts previously consulted upon for the individual project segments.

**Table 1. Project Impact (acres) Crosswalk**

	Southern Portion of Project (MP 0-4.0) Original Consultation (2008)	Southern Portion of Project (MP 0-4.0) Current Project (2017)	Northern Portion of Project (MP 3.8-11.9) Original Consultation (2008)	Northern Portion of Project (MP 3.8-11.9) Current Project (2016, 2017)	Combined Project Impact (Southern and Northern)
<b>Temporary Wetland Impacts</b>	1.04	0.00	0.70	0.35	0.39
<b>Permanent Wetland Impacts</b>	5.42	0.00	6.81	6.00	5.47
<b>Temporary Riparian Impacts</b>	0.91	0.00	5.08	1.39	1.34
<b>Permanent Riparian Impacts</b>	6.74	0.14	3.75	1.91	2.13
<b>Existing PGIS</b>	137.18	132.19	172.2	200.96	218.75
<b>New PGIS</b>	69.60	1.32	120.56	45.6	46.91
<b>Proposed Treated PGIS</b>	63.76	9.57	276.0	168.71	158.42

**Note:** The various impact numbers shown here are consistent with numbers presented in previous ESA documents. The numbers may differ slightly when compared to prior NEPA documents or other supporting documents related to NEPA or permitting. These minor differences can occur over the life of a project due to regular design changes or project refinements. The I-405, Tukwila to I-90 Vicinity Express Toll Lanes Project (MP 0.0 to MP 11.9) will not exceed any of the impact quantities presented here.

In conclusion, all potential direct, indirect, and cumulative effects to listed species, critical habitat resulting from the Project were addressed in the consultation documents previously prepared. The addition of tolling does not generate effects that may affect listed species or critical habitat in a manner or to an extent not previously considered.

The potential direct, indirect, and cumulative effects to essential fish habitat that were addressed in the prior NMFS consultations addressing the southern and northern portions of the Project also remain unchanged as a result of the proposed tolling. For this reason, I conclude that no additional consultation or ESA documentation is required at this time.

RTrt

Attachment: Concurrence Letters

cc: Project File