
SKAGIT RIVER HYDROELECTRIC PROJECT

No. 553

SETTLEMENT AGREEMENT

ON

RECREATION AND AESTHETICS

BETWEEN

THE CITY OF SEATTLE

AND THE

**U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE (NPS);
U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE (USFS);
UPPER SKAGIT TRIBE, SAUK-SUIATTLE TRIBE, AND
SWINOMISH INDIAN TRIBAL COMMUNITY (THE TRIBES); AND
NORTH CASCADES CONSERVATION COUNCIL (NCCC)**

APRIL 1991

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UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

SETTLEMENT AGREEMENT

CONCERNING

RECREATION AND AESTHETICS

1.0 PARTIES

This Recreation and Aesthetics Settlement Agreement (Agreement) is entered into this 24th day of April, 1991, by and between The City of Seattle, City Light Department (the City) and the U.S. Department of the Interior, National Park Service (NPS); U.S. Department of Agriculture, Forest Service (USFS); Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community (the Tribes); and the North Cascades Conservation Council (NCCC) (collectively referred to as the Intervenors). Together the City and the Intervenors are referred to as the "Parties". The Skagit River Hydroelectric Project is referred to as the "Project".

2.0 GENERAL PROVISIONS

This Agreement establishes the City's obligations relating to recreation in the Project area and the visual quality of Project facilities as currently constructed. (In this Agreement the terms visual quality and aesthetics are used interchangeably.) It also establishes the Intervenors' obligations to support this Agreement and to submit it to the Federal Energy Regulatory Commission (FERC) as their recommendations relating to said recreation resources and visual quality under any applicable provisions of the Federal Power Act (including without limitation Section 10(a), 10(j), and 4(e) thereof). The U.S. Forest Service agrees that this Agreement constitutes its preferred recommendation under Section 7(a) of the Wild and Scenic Rivers Act.

This Agreement resolves all issues related to the effects on recreation and visual quality by the Project, as currently constructed, for the period October 28, 1977, through the duration of this Agreement. This includes resolution of the effects of the absence of flows in the Gorge bypass reach. It shall be submitted to the FERC for incorporation

into the new license for the Project, and shall be enforceable as an article thereof. The Parties agree that incorporation and enforcement as a license condition is a material provision of this Agreement.

The Parties stipulate that this Agreement constitutes adequate mitigation and enhancement for Project impacts on recreation and aesthetics, as currently constructed, for the period October 28, 1977, through the duration of this Agreement.

For the period October 28, 1977, through the duration of this Agreement, the Intervenors, their successors and assigns, hereby release, waive and discharge the City, its successors, and assigns, from any and all claims, demands, actions, and causes of action of any kind (claims) arising during that period from the effects of the Project as currently constructed on recreation and aesthetics, so long as the City performs its obligations under this Agreement. This release does not waive claims that may arise from the negligent or intentional misconduct of the City in the operation of the Project.

Nothing in this Agreement precludes the City or the Intervenors from complying with their obligations under the National Environmental Policy Act (NEPA), the Endangered Species Act, the Federal Power Act, the Wild and Scenic Rivers Act, or any other laws applicable to the Project. This Agreement shall not affect the rights of any Party except as expressly covered in this Agreement. Nothing in this Agreement or in the plans, memoranda, procedures or other actions taken to further the purposes of this Agreement shall reduce or otherwise impair access to and exercise of implied or explicit Indian rights, including hunting, fishing and gathering rights; nor shall anything in this Agreement be construed as limiting, waiving or otherwise impairing whatever money damages claims the Tribes may have arising out of the construction and operation of the current Project outside the term of this Agreement.

All previous communications between the Parties, either verbal or written, with reference to the subject matter of this Agreement are superseded by the terms and provisions of this Agreement, and, once executed, this Agreement and its companion documents constitute the entire agreement between the Parties.

This Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

Each Party to this Agreement represents and acknowledges that it has the full legal authority to execute this Agreement and shall be fully bound by its terms.

2.2.1.1 Compliance and Submittal

By entering into this Agreement, the City agrees to comply with all of the terms of this Agreement, including the payment of monies and the funding of activities specified herein. The City further agrees to submit this Agreement to the FERC as its proposed measures relating to recreation resources and visual quality affected by the Project, as currently constructed, as required by applicable provisions of federal and state law, including without limitation the Federal Power Act, the Endangered Species Act, and the Wild and Scenic Rivers Act.

2.2.1.2 Additional Staffing

The City shall assign adequate professional environmental staff to implement this Agreement. This shall include establishment of two new environmental staff positions with expertise in fisheries, wildlife, recreation, visual quality, cultural resources, and erosion control. One staff position shall be dedicated primarily to implementation of the agreement on fisheries. The second staff position shall be dedicated primarily to implementation of the wildlife and cultural resources agreements, erosion control agreement, and this agreement.

2.2.2.1 Support for Project Relicense

The Intervenor agree to support the expeditious issuance of a new license to the City for the Project, as currently constructed, which is consistent with the provisions of this Agreement and which includes the Agreement as an article. This support shall include reasonable effort to expedite the NEPA process. The Parties shall file comments on any draft EA or EIS developed by the FERC in the relicensing for this Project and shall support the measures defined by this Agreement as the preferred action. The Parties shall exchange drafts of their respective comments prior to submittal to the FERC and consult with each other to ensure that the comments are consistent with this Agreement.

2.2.2.2 Recreation and Visual Quality Resources Recommendations

The Intervenor shall submit this Agreement to the FERC as their recommendations related to the recreation resources and visual quality affected by the Project under any applicable provision of the Federal Power Act (including without limitation Sections 10(a), 10(j), and 4(e) thereof). The U.S. Forest Service agrees that this Agreement constitutes its preferred recommendation under Section 7(a) of the Wild and Scenic Rivers Act.

2.2.2.3 Gorge Bypass Reach

The Intervenors agree that this Agreement obviates any need for flow releases in the Gorge bypass reach for recreation or visual quality purposes. The Intervenors shall support all efforts by the City to either retain its existing water quality certificate issued by the State of Washington, Department of Ecology (WDOE) on October 28, 1977, or, in the alternative, to obtain a new water quality certificate consistent with the terms and conditions of this Agreement, including the absence of flows in the Gorge bypass reach. In the event efforts are made to reclassify the Gorge bypass reach from a Class AA water to another Class water under WDOE regulations, the Intervenors shall not oppose this action and shall, at a minimum, provide written comments not opposing this action to the WDOE. Should the City be required to release flows in the Gorge bypass reach at any time before the issuance of a new FERC license and for any reason, this Agreement shall be voidable at the option of the City. Should the City be required to release flows in the Gorge bypass reach at any time after the issuance of a new FERC license and for any reason, this Agreement shall give rise to an immediate right of the City to petition the FERC to reconsider or reopen applicable license provisions to reconsider all recreation and visual quality resource provisions in light of such requirement. Under such circumstances, the City's efforts to initiate a proceeding before the FERC to reconsider or reopen shall not be opposed by the Intervenors; the Parties may, however, differ in their respective positions in such a proceeding.

2.2.3.1 Cooperation Among Parties

The Parties shall cooperate in conducting and participating in studies and other actions provided for in this Agreement and shall provide assistance in obtaining any approvals or permits that may be required for implementation of this Agreement.

2.2.3.2 Support of Agreement

The Parties agree to join in the filing of an Offer of Settlement with the FERC based upon this Agreement and to request that the FERC issue appropriate orders approving this Agreement. All Parties shall refrain from seeking judicial review of the FERC's approval of this Agreement. It is expressly agreed by the Parties that this Agreement shall be submitted to the FERC as a unit and that any material modification of its terms, approval of less than the entire Agreement or addition of material terms by the FERC shall make the Agreement voidable at the option of any Party.

This Agreement shall take effect upon the effective date of a license issued by the FERC consistent with this Agreement. The City obligates itself to implementation of the consultation requirement of Section 4.2.1.9 upon the submittal to the FERC by the Parties of an Offer of Settlement pursuant to Section 2.2.3.2. If the FERC issues a new license inconsistent with this Agreement, and if a Party appeals, the Agreement shall not go into effect. The Parties retain the right to appeal the issuance of a license in whole or in part if unacceptable provisions are added, including stay of any provision.

This Agreement, together with any subsequent modifications, shall remain in effect for the term of the new FERC license period for the Project, which includes the term(s) of any annual license(s) that may be issued after the foregoing new license has expired. This includes ongoing operation and maintenance expenses that shall continue to be funded for the duration of this Agreement.

2.4 COORDINATED IMPLEMENTATION

It is understood and agreed by the Parties that similar settlement agreements are being executed between the City, and these Intervenor as well as other intervenors (not party to this Agreement) in the Project relicensing proceedings concerning other resources affected by continuing Project operations. These other settlement agreements and mitigation and enhancement plans include:

Fisheries—Fisheries Settlement Agreement, incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-Flow Plan

Wildlife—Settlement Agreement Concerning Wildlife, incorporating the Wildlife Habitat Protection and Management Plan

Erosion—Settlement Agreement Concerning Erosion Control, incorporating Erosion Control Plan

Cultural Resources—Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources), incorporating the Cultural Resources Mitigation and Management Plan, which includes the historic and archaeological resources mitigation and management plans

Traditional Cultural Properties—Settlement Agreement Concerning Traditional Cultural Properties.

The City shall host an annual meeting of the intervenors interested in any of these issues to facilitate coordination of implementation of the various settlement agreements. The Intervenor agree to cooperate in across forum coordination as necessary and appropriate to further effective program implementation.

All dollar amounts listed in this Agreement are defined as 1990 dollars and shall be adjusted annually for inflation or deflation by using the revised Consumer Price Index (CPI-U) for All Urban Consumers as published by the United States Department of Labor for the Seattle metropolitan area. The indices used shall be those published for the last half of 1990, and for subsequent years, the last half of the calendar year preceding that in which a payment or expenditure is to be made. Indexing of items in this Agreement shall continue until the year of actual payment unless otherwise provided in this Agreement. The percentage of change from the earlier index to the later index shall be multiplied by the amount specified in this Agreement and the result added to or subtracted from that amount to arrive at the total payment or expenditure. Should the CPI-U index not be available, the Parties agree to negotiate another statistical basis for determining annual changes in the City's monetary commitments.

Payments and obligations by the City for this Agreement will be made and met on a license-year basis. License years are based on the date of the FERC order issuing a new license for the Project; however, unless specifically provided otherwise in the plan, the City's monetary obligations do not become payable until the license becomes effective (see Section 2.3.1). The City will make project specific monies due in license year one available at the time they are needed as soon as possible after the license becomes effective. In subsequent license years, the City will make payments to the Intervenor for the implementation of specific Recreation Plan projects at the time they are needed. Moneys required to be paid to or on behalf of the Intervenor for non-Project specific purposes will be paid on the last day of each license year. If the license is issued and accepted during a season critical for implementation, it may be impossible to implement a particular program element that year. Therefore, the Parties agree that implementation of such elements may not occur until the license year following its stated schedule in the Plan. Agreed upon rescheduling of projects solely as a result of seasonal considerations shall not be considered a license compliance violation.

The City shall not be liable or responsible for failure to perform or for delay in performance due to any cause or event or circumstance of Force Majeure. For purposes of this Agreement, Force Majeure is any cause or event beyond the City's reasonable control. This may include but is not limited to fire, flood, mechanical failure or accidents that could not reasonably have been avoided by the City, strike or other labor disruption, act of God, act of any governmental authority or of the Parties, embargo, fuel or energy unavailability (ancillary to, but not including, basic power generation), wrecks or unavoidable delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities from generally recognized sources in the applicable industry, or

communications systems breakdowns, or for any other reason beyond the City's control. The City shall make all reasonable efforts to resume performance promptly once the Force Majeure is eliminated.

For purposes of implementing this Agreement, the Parties agree that the following individuals shall be designated by each to be primary contact persons. The initial contact person for the City is:

Superintendent
Seattle City Light
1015 Third Avenue
Seattle, WA 98104
(206) 684-3200

and the initial contact persons for each of the Intervenors are:

Superintendent
North Cascades National Park Service Complex
2105 Highway 20
Sedro Woolley, WA 98284
(206) 856-5700

Forest Supervisor
Mount Baker-Snoqualmie National Forest
21905 - 64th Avenue West
Mountlake Terrace, WA 98043
(206) 744-3393

President
North Cascades Conservation Council
P.O. Box 95980
University Station
Seattle, WA 98145-1980
(206) 685-2518

Chair
Upper Skagit Indian Tribe
2284 Community Plaza
Sedro Woolley, WA 98284
(206) 856-5501

Chair
Sauk-Suiattle Indian Tribe
5318 Chief Brown Lane
Darrington, WA 98241
(206) 436-0131

Chair
Swinomish Indian Tribal Community
P.O. Box 817
LaConner, WA 98257
(206) 466-4047

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

All written notices to be given pursuant to this Agreement shall be mailed by first class mail or overnight express service, postage prepaid, to each Party at the addresses listed above or such subsequent address as a Party shall identify by written notice to all Parties. Notices shall be deemed to be given five (5) working days after the date of mailing.

Notwithstanding any other provision of this Agreement, any Party may at any time invoke or rely on any reopener clause(s) in the license for the Project in order to request the imposition by the FERC of different or modified measures for recreation or aesthetics. Any provision of this agreement that might be read to limit or preclude a party from raising any relevant, material issue of fact or law in reopening or to otherwise conflict with reopening (e.g., Sections 2.1.1, 2.1.2, and 2.2) shall be inoperative to the extent of any such limitation, preclusion or conflict.

Before invoking any reopener clause under Section 2.8.1, a Party shall request all other Parties to commence negotiations for a period of up to 90 days to modify the terms and conditions of this Agreement in whole or in part. Any such modification shall be subject to FERC approval, except that the Parties may agree to implement on an interim basis, pending FERC approval, any measure not requiring prior FERC approval.

2.8.3 Burden of Proof

In any action under this Section 2.8, the petitioning Party shall have the burden of proof.

The Parties shall continue to implement this Agreement pending final resolution of any modification sought from the FERC, or until the relief sought becomes effective by operation of law, or unless otherwise agreed. At the time of petitioning the FERC under Section 2.8.1, nothing shall prevent any Party from requesting the imposition of different or modified measures or from bringing any cause of action in any appropriate forum or from taking other actions relating to any issue or matter addressed by this Agreement.

This Agreement applies to the Project excluding High Ross or any modified High Ross construction. It does not address mitigation for the effects of raising Ross Dam. In the event the City decides to consider raising Ross Dam, separate provisions will be made for additional mitigation. The Parties shall initiate discussions regarding recreation and aesthetics mitigation according to the following procedures.

The City shall notify the Intervenor of its decision to consider raising Ross Dam at least thirty months before construction would commence.

At the same time, the City shall commence consultation on necessary recreation and visual quality studies and possible mitigation measures.

2.9.4 Resolution

At least 180 days before construction would commence, the City shall either agree with the Intervenor on modifications to this Agreement, or remaining disputes over recreation and visual quality measures may proceed as described in Section 2.10 at the option of any Party.

Mitigation for the effects on recreation and aesthetics, if any, of raising Ross Dam shall be based on criteria developed through any necessary recreation and visual quality studies that are conducted at the time that the City decides to consider raising Ross Dam.

Nothing in this Agreement shall preclude any Party from challenging the construction of High Ross or modified High Ross, including disputed mitigation, in any proceeding. The mitigation procedures set out in this Section are not exclusive and need not be commenced or exhausted prior to such challenges.

Any dispute among the Parties concerning compliance with this Settlement Agreement shall first be referred to technical representatives of the contact persons identified in Section 2.7. The technical representatives will meet as soon as possible after written notification of a dispute by any Party. A quorum for meetings of the technical representatives to discuss disputes shall consist of the City and the Party(s) having a financial, administrative, or other interest in the subject matter. Decisions of the technical representatives must be unanimous. In the event that the technical representatives cannot resolve the dispute within ninety (90) days after first meeting on said dispute, the City will give notice of such failure to all Parties. For purposes of implementation of the Memorandum of Agreement (MOA) between the City, NPS, and the North Cascades Institute under Section 3.5.2.1 (North Cascades Environmental Learning Center), the technical level review shall be conducted by the Oversight Committee created pursuant to Article III, Section 5 of the MOA, which is Appendix A to this Agreement.

The Parties may, at their option, prior to elevating an issue to the FERC, convene an in-person or telephone conference of the policy-level representatives, identified in Section 2.7, after notice of the failure of the technical level representatives. Any Party through its designated contact (persons identified in Section 2.7 or their designated technical representative) may invoke the optional policy level review by contacting the other Parties' designated contacts and arranging a suitable conference. For purposes of decision making, a quorum shall consist of the physical or telephonic presence of all representatives who desire to participate. Decisions by unanimous consent shall bind all Parties. The policy level representatives may by unanimous consent agree to binding arbitration or mediation subject to rules as they determine appropriate. In the event that the policy representatives cannot resolve the dispute within fifteen (15) days, the matter may be taken to the next level.

In the event that disputes are not resolved at the technical level review or the optional policy level review, any Party may refer the matter to the FERC for resolution pursuant to the FERC's Rules of Practice and Procedure. Should any hearings be held at this stage, they shall be held in Seattle, Portland, or elsewhere in the Pacific Northwest unless another location is agreed upon by the Parties or mandated by FERC order upon a finding of special circumstances.

Notwithstanding any other provision of this Agreement, any Party may seek relief arising solely from non-compliance with this Agreement by any Party.

The City shall fill Ross Lake as early and as full as possible after April 15 each year, subject to adequate runoff, anadromous fisheries protection flows (specified in the Skagit River Anadromous Fish Flow Plan), flood protection, minimized spill, and firm power generation needs. Subject to the above constraints and hydrologic conditions permitting, the City shall achieve full pool by July 31 each year.

The City shall hold Ross Lake as close to full pool as possible through Labor Day weekend, subject to adequate runoff, anadromous fisheries protection flows (specified in the Skagit River Anadromous Fish Flow Plan), flood protection, minimized spill, and firm power generation needs.

In any overdraft year (i.e., in those years in which Ross Lake is drafted below the energy content curve (ECC), the City shall bring the Ross Lake level up to the variable energy content curve (VECC) no later than March 31, subject to adequate runoff, anadromous fisheries protection flows (specified in the Skagit River Anadromous Fish Flow Plan), flood protection, minimized spill, and firm power generation needs.

In the event of conflict between the provisions of this section and the Skagit River Anadromous Fish Flow Plan, the provisions of the Skagit River Anadromous Fish Flow Plan shall prevail.

3.0 SKAGIT PROJECT RECREATION PLAN

Seattle City Light, in full coordination with the Intervenor and other interested parties, has developed a recreation plan for the Skagit Project over the term of the new FERC license. This section is the agreed upon recreation plan for the new license period and may be referred to separately as the Skagit Project Recreation Plan. The City and the Intervenor consider this recreation plan to be a logical outcome of a recreation planning process reflecting the inventory, needs, opportunities, constraints, and objectives relative to recreation use in the Project area. The mix of elements finally included in the plan is a reasonable response to the identified needs within the evaluation area and is consistent with the criteria and the City's financial and managerial resources.

The process used by the City and the Intervenor to develop the plan is briefly summarized in Section 3.1.1 below. The criteria developed by the City and the Intervenor in response to identified needs within the Project's recreation evaluation area are listed in Section 3.1.2. The City and the Intervenor applied these criteria to potential plan elements.

The overall implementation procedures—development schedule, budgets, funding, and implementation responsibilities—for the Skagit Project Recreation Plan are set forth in Section 3.2. The recreation plan elements are divided into three categories: continuing measures, mitigation measures, and enhancement measures; the elements are listed and discussed in that order in Sections 3.3, 3.4, and 3.5. The discussion of each measure includes, where appropriate, detailed descriptions, conceptual site plans, and implementation procedures. Estimates of future use of the proposed facilities are included in Section 3.6.

The Skagit Project Recreation Plan was developed through a standard planning process. Major steps in this process included a comprehensive inventory of existing recreation resources and use (SCL, 1989, Section 2), a detailed assessment of recreation needs in the study area (SCL, 1991a), and identification of opportunities for and constraints on recreation development (*id.*). The City also undertook studies to determine the specific effects of Project operations (Ross Lake levels and downstream flows) on recreation activities. A map of the general area included in these studies is included as Figure 3-1. The information from these studies provided the basis for establishing objectives by the City and the Intervenor, which led to selection of specific action proposals for inclusion in the recreation plan.

The City presented an initial recreation plan proposal to the Intervenor on March 12, 1990, including evaluation criteria. Subsequent review and negotiation resulted in agreement on a conceptual recreation plan that was included in the Preliminary Agreement dated September 19, 1990 addressing all resource areas. Further negotiations refined the specifications for each plan element, including implementation procedures and the City's financial obligations. Following agreement between the City and the Intervenor on the elements in the recreation plan, the City developed supporting documentation in the form of maps, drawings, cost estimates, and description of implementation provisions.

In order to maintain consistency in the development of recreation plan elements, the City prepared evaluation criteria. These evaluation criteria were used in conjunction with the information provided by the the recreation needs assessment, supporting data developed through the recreation studies, and the expressed desires of the Intervenors. The City also recognized that the various Intervenors have different interests and that it would be necessary to deviate from a strict adherence to the study conclusions and the evaluation criteria in order to reach an agreed-upon plan. Nevertheless, the City used the studies and the following criteria to confirm the need for each included item (program, facility or funding element):

- 1) Potential actions were classified as mitigative or enhancement measures, and higher overall priority was assigned to mitigative measures.
- 2) Each measure must be related to specifically identified Project impacts. No mitigative or enhancement measures will be undertaken in locations that are not reasonably calculated to address effects created by the Project or to meet needs created or displaced by the Project. Highest priority was given to measures that address needs that occur at, or immediately adjacent to, Project facilities and lower priority to needs that are indirectly generated by the Project but clearly related to it.
- 3) Each measure must not create more problems than it solves. No measures will be undertaken that decrease the safety of City employees or the public, or that create greater financial cost or environmental harm or risk of harm than the benefits warrant.
- 4) Each measure must be largely consistent with and responsive to relevant land management plans, such as the NPS's General Management Plan for the North Cascades National Park Service Complex and formally stated recreation management policy and development objectives. Key guidance for the Ross Lake National Recreation Area (RLNRA), the most significant jurisdiction with respect to the Project, can be summarized as promoting interpretive and recreation opportunities for the majority of visitors who do not travel beyond the State Route 20 (SR 20) corridor so that they may become participants rather than just passive observers, while preserving the integrity of the natural resources in the area.
- 5) Measures were evaluated for effectiveness and efficiency in meeting the objectives developed in the recreation issue forum (e.g., the expansion of opportunities measured in numbers of affected users where possible, the qualitative degree of improvement, and the cost of the action).
- 6) The relationship of the action to the same or similar opportunities at the site or in the immediate vicinity was assessed with the intent to favor actions where few or no opportunities are currently provided over actions that would represent marginal improvements to opportunities already present.
- 7) The degree to which the proposed action would help to alleviate user group or resource conflicts in a specific area was weighed.

As a result of the foregoing considerations, the recreation plan for the Skagit Project provides for the continuation and improvement of existing City recreation services and facilities; addresses the area's needs for mitigation, rehabilitation of existing sites, and new development; and provides a flexible framework for addressing needs over a long-term planning horizon. These objectives are met by incorporating a mixture of short-term (first ten years)

development actions, more detailed planning for specific issues areas, and long-term funding (through license term) to cover future needs as they arise.

The City worked closely with the Intervenors to develop a schedule for implementation of all of the recreation plan elements. The scheduling of each item was based on the following considerations.

- How immediate is the need for the action or facility (based on needs assessment)?
- In what timeframe can the City and the Intervenors realistically undertake the specific items in light of: (1) the utility's cash flow (funding) abilities, and (2) all parties' abilities to effectively participate in numerous site developments?
- Equitable allocation of early funding amongst the benefitting Intervenors.

Applying the foregoing criteria, the City and the Intervenors have agreed upon a schedule for implementation of the recreation plan components. Table 3-1 below establishes the recreation plan implementation scheduling. All of the facility rehabilitation and defined new construction actions are scheduled to be completed or initiated during the first ten years of the license term. Future capital implementation of needs assessments will extend over the entire license term.

All parties will use their best efforts to adhere to that schedule. The Parties may reschedule or extend implementation of individual items of the recreation plan as follows. Projects covered by the two stage alternative process of Section 3.2.2 may be postponed twice, one year on each occasion, at the sole discretion of the implementing agency. Projects to be developed by the City may be delayed by the mutual agreement of the City and the affected agency Intervenors after consultation with the non-agency Intervenors.

Table 3-1. Recreation Plan Element Implementation Schedule and Responsibilities

PLAN ELEMENT	Pre-License	Year of new license—commencing with City acceptance											
	1991-1992	1	2	3	4	5	6	7	8	9	10	11-20	21-30
<u>A. Continuing Measures by Seattle City Light</u>													
- Skagit Tours	x	x	x	x	x	x	x	x	x	x	x	x	x
- Diablo Lake Ferry Service	x	x	x	x	x	x	x	x	x	x	x	x	x
- Newhalem Visitor Contact Station	x	x	x	x	x	x	x	x	x	x	x	x	x
- Picnic Facilities	x	x	x	x	x	x	x	x	x	x	x	x	x
- Trail of the Cedars, Ladder Cr. Trail	x	x	x	x	x	x	x	x	x	x	x	x	x
- SEEC Contributions	x	x	x	x	x	x	x	x	x	x	x	x	x
- Colonial Creek Electric Supply Cable	x	x	x	x	x	x	x	x	x	x	x	x	x
<u>B. Mitigative Measures</u>													
- Hozomeen Boat Ramp (Ross Lake)				N			C						
- Ross Lake Campground Boat Docks		x	x	x	x	x	x	x					
- Gorge Lake Boat Ramp						N			C				
- Colonial Creek Boat Ramp						N			C				
<u>C. Enhancement Measures</u>													
<u>1. Rehabilitation of Existing Facilities</u>													
- Newhalem Visitor Contact Station						x	x	x					
- Goodell Creek Boat Access Site				N			C						
- Damnation Creek Boat-in Picnic Site						N			C				
- Marblemount Boat Access Site			F			C							
- Hozomeen Water Distribution System		To be determined by NPS and SEEC project scheduling.											
<u>2. New Facilities</u>													
- North Cascades Env'l Learning Center Preferred Site Purchase	x†												
- Facility Development		x	x	x	x								
- Maintenance					x	x	x	x	x	x	x	x	x
- Program Support and Endowment		x	x	x	x	x	x	x	x	x	x	x	x
- Gorge Overlook			N			C							
- Thunder Lake Fishing Facility					N			C					
- Thunder Knob Trail						N			C				
- Happy Flats—Panther Creek Trail							N			C			
- Desolation—Hozomeen Trail								N			C		
- Black Peak Overlook							F					C	
- Rocky Creek River Access Site								F		C			
- Steelhead Park Trail						F			C				
- Lower Sauk River Boat Access Site				F			C						
- Suiattle River Boat Access Site						F			C				

Table 3-1. (Continued)

PLAN ELEMENT	Pre-	Year of new license—commencing with											
	License	City acceptance											
	1991- 1992	1	2	3	4	5	6	7	8	9	10	11- 20	21- 30
<u>3. Ongoing and Future Funding</u>													
- Interpretation and Signing		x					x					x	x
- Bicycle Planning and Implementation		x	x	x	x								
- Recreation Needs Assessments						x					x	x	x
- Future Capital Facility Funding							x	x				x	x
- Operation and Maintenance Funding		x	x	x	x	x	x	x	x	x	x	x	x
- Intervenor Coordination		x	x	x	x	x	x	x	x	x	x	x	x

- KEY:
- x = year of City obligation to undertake action or expend funds
 - N = first year of National Park Service option to be lead agency on project
 - F = first year of U.S. Forest Service option to be lead agency on project
 - C = year City commences implementation if agency does not

- NOTES:
- x* = Environmental Learning Center maintenance will commence year following facility completion, planned for year 3.
 - x† = Environmental Learning Center preferred site purchase is contingent on a purchase and sale agreement acceptable to both City and current owner.

The agencies may reschedule individual projects within or amongst themselves to accommodate development timing needs, so long as the City's overall obligations regarding timing of expenditures under this plan are not altered. The City's obligation to adjust payments for inflation (Section 2.5.1) shall not be affected by such scheduling adjustments.

The Parties agree that it is in the public interest for the land management agency Intervenor to take the lead in the development of projects within their respective jurisdictions. Lead management responsibilities include planning (beyond what has been done for this plan), site acquisition (if necessary and desired), permitting, design, site preparation, materials, labor, contracting, construction, operation and maintenance, and all other overhead and administrative costs. Further, the agencies have the best expertise to develop recreational facilities in the Project area, including retention of title to lands outside the Project boundary necessary for facility operation and maintenance. Therefore, the public interest will be served by providing for development of non-City owned projects by the appropriate land management agency that will have lead management jurisdiction and ongoing responsibility for operation and maintenance. As a FERC license requirement, the City is responsible for the implementation of each element of the recreation plan. Therefore, each appropriate plan element is subject to a two stage, alternative development process. The first stage is implementation by the agencies; the second stage is implementation by the City in the event that the appropriate agency cannot do so in the specified time period. The elements included in this two stage process are most of the discrete projects that will not be owned by the City after completion and are indicated on Table 3-3, on page 21.

3.2.2.1 Agency Lead

The appropriate agency, either NPS or United States Forest Service (USFS), will take the lead role in the implementation of the individual projects as scheduled. If the agency is not able to proceed with the project as scheduled, it may notify the City of the need to reschedule the project to the next year. The Agency may reschedule a project no more than twice.

The agencies will also take the lead in the implementation of the future capital facility funding (Section 3.2.3.3), including acquisition and retention of title to lands outside the Project boundary necessary for facility operation and maintenance.

3.2.2.2 City Lead

The City will take the lead in project development if the agency is unable to commence implementation in the third year (after the second rescheduling). The City will commence implementation in the following year, using the funds identified in this Agreement.

The budget for the recreation plan is in Table 3-2, on the two following pages. There are four categories of costs in this budget table: City continuing measures, capped capital projects, estimated capital projects, and periodic items.

3.2.3.1 City Internal Cost Estimates

The City will continue to provide the facilities and services described in Section 3.3 of this Agreement, and indicated as part A of Tables 3-1 and 3-2. The estimated costs of providing these services and facilities are listed in Table 3-2; these amounts are estimates of the cost to the City to meet the listed obligation. For example, the cost of the Skagit Tours in the table assumes a gradually increasing amount will be needed to make up for insufficient revenues; the City plans to reduce or eliminate these subsidies through improved tour operations. The City's obligation for these measures is to meet the specified obligation, not to spend a particular amount of money. These amounts are not transferrable and cannot be reprogrammed to other budget categories.

3.2.3.2 Capped Capital Projects

These amounts are definite monetary commitments by the City to fund all or part of specific recreation facilities and include all items in Parts B and C(2) of Table 3-2, except for learning center items. The capped amounts were set by the City and the Intervenor based on estimates of the cost of fully implementing each project, including further planning, site acquisition (if necessary), permitting, design, site preparation, materials, labor, contracting, construction, operation and maintenance, and all other overhead and administrative costs. The amounts listed in Table 3-2 include a premium for full implementation by the agencies under Section 3.5.2; the lower amount which is the City's obligation should the City be the lead implementation agency is indicated separately on Table 3-3. Should the capped amount be insufficient to complete the project as described in this plan, the City will consult with the Intervenor either to reduce the scope of the project, obtain contributory funding from the benefitting agency, or reprogram other funds in this plan (such as operations and maintenance funds) to complete the project. When the agencies implement particular projects, they may in order to facilitate completion of the project as described in this plan with the City's approval reprogram monies between plan elements, so long as the overall effect is no substantial change in the proportions and scheduling set forth in this plan. Such programmatic shifts affecting more than one agency Intervenor must be agreed to by each agency.

3.2.3.3 Estimated Capital Projects

These amounts are estimates only and do not obligate the City to spend that amount; the City's obligation is to construct or rehabilitate a facility as defined in this Agreement or a similar facility should substitution be necessary, not to spend a specific amount of money. This category is indicated by an "f" on Table 3-2.

3.2.3.4 Periodic Items—Operation and Maintenance, Studies, and Future Capital Projects

These amounts are fixed monetary commitments by the City to conduct and implement studies, and to contribute toward recreation facility operation and maintenance in the Project area. The City's financial obligations are limited to the indicated amounts. These items are listed in part C(3) of Table 3-2.

Table 3-3. Cost differentials for agency and city implementation.

Plan Element	Amount if agency takes lead	Amount if City takes lead
National Park Service projects		
Hozomeen Boat Ramp	\$150,000	\$125,000
Gorge Ramp	\$150,000	\$135,000
Colonial Ramp	\$125,000	\$115,000
Goodell Access Site	\$65,000	\$45,000
Damnation Site	\$25,000	\$15,000
Forest Service projects		
Thunder Lake Handicap	\$200,000	\$180,000
Thunder Knob Trail	\$210,000	\$205,000
Ross-Panther Trail	\$155,000	\$120,000
Desolation-Hozomeen Trail	\$275,000	\$265,000
Gorge Creek Overlook	\$175,000	\$150,000
Forest Service projects		
Marblemount Access Site	\$165,000	\$110,000
Rocky Creek Site	\$250,000	\$190,000
Steelhead Park	\$125,000	\$95,000
Lower Sauk Access Site	\$250,000	\$220,000
Suiattle Access Site	\$225,000	\$150,000

3.2.3.5 Adjustments Between Types of Projects

The agencies, after consultation with the City and other interested Intervenors, may adjust the allocation of monies between the various types of plan elements over time in order to ensure the timely, efficient completion of specific projects. Such reallocations may not affect the City's obligations to undertake projects on its own without the City's prior approval.

3.2.3.6 Basis of Cost Estimates

Input for the estimating process was obtained from a variety of sources. Costs for continued operation of existing City recreation measures are based on internal City data and operating experience. Funding levels for the ongoing and future items in the recreation plan have generally been based on negotiation with the Intervenors, rather than direct estimation of specific future requirements. Many of the facility rehabilitation and new construction actions are based on existing agency proposals for which the agencies had developed prior internal cost estimates. The City and its consultants reviewed and refined these agency figures in preparing a set of cost estimates for the proposed recreation plan to ensure that the cost estimates correspond with the specific design program for each recreation plan element and to determine an appropriate amount for those capital projects that are capped. Standard cost estimating manuals, primarily from the NPS (1988c) and R.S. Means (1989), were used for pricing data. Details of the cost estimates for specific facilities are included as Appendix C.

3.2.4.1 Capped Capital Projects

For capped capital projects, subject to the scheduling limitations set forth in Section 3.2.2, the City is obligated to fund the project upon written notification that the project is ready to be started, which notice must include a draft scope of work (or request for proposals if appropriate), detailed cost estimate and implementation schedule, design specifications, environmental permitting and compliance plans, and other material indicating preparation for implementation. The City's payments to the agency will be made based on the schedule submitted by the agency and agreed to by the City, subject to the provisions of Section 2.5.2. For projects where the Forest Service is the lead agency, the City will enter into a collection agreement as provided for in Forest Service laws and regulations, including Forest Service Manual § 1584. Should a specific project cost less than the amount of the City's payment, the agency may spend the excess funds on Project area recreation facilities capital improvement, operation and maintenance, or the North Cascades Environmental Learning Center (NCELC) with the concurrence of the City and in consultation with other interested Parties. The implementing agency shall make annual reports to the City on the progress of project implementation, the details of expenditures, and plans for future implementation.

3.2.4.2 Non-Capped (Estimated) Capital Projects

For non-capped capital projects, the City shall be fully responsible for their implementation. The City may, at its option, contract out all or part of the work for each project.

3.2.4.3 Interpretive Facilities

The NPS and USFS shall each prepare a draft scope of work consistent with the implementing agency's interpretive facility/publication plan for the City's consideration for each year that a fund is available, as indicated in Section 3.5.3.1 and Table 3-2. The agencies' proposals should be submitted to the City pursuant to a written schedule designed to allow time for negotiation of final scopes of work and memoranda of agreement within the City's annual budget cycle. If the agencies submit the necessary documentation immediately upon license issuance, the City may be able to fund the agencies' projects in that year upon acceptance of the license. Failure by either agency to submit a proposal on the schedule required by the City may cause that agency's portion of the funding cycle to be delayed without further indexing (Section 2.5.1) under this Agreement.

If either agency is not able to enter into a memorandum of agreement with the City for all or part of the funding due in any particular year, the agency may request that the City retain outside contractors. The scope of work for such third party contracts shall be agreed upon by the City and the agency prior to the issuance of a Request for Proposals (RFP).

The negotiation of scopes of work for spending of interpretive facility funds shall be subject to the following criteria:

- All amounts indicated shall be spent; if the City and benefitting agency(s) cannot agree on a scope of work covering the amount allocated to any year, the unspent amount(s) shall be carried forward to the next year. In the event of failure to agree on a scope of work or memorandum of agreement for the expenditure of funds a second time, the dispute resolution provisions of this Agreement may be invoked. The City and the benefitting agency may agree to reallocate the funds in question to another function.

3.2.4.4 Recreation Needs Assessments

A scope of work for the bicycle facility needs assessment shall be developed by the City in cooperation with the interested Intervenors. It is expected that the geographical scope of these assessments may be greater than that for the studies conducted during the current relicensing proceedings, leading up to the 1989 report (SCL, 1989), and the RFP will include a call for consideration of the proper geographic scope of the study. The RFP shall be issued no later than the second year of the new Project license. No more than \$50,000 will be spent on the needs assessment.

The City shall implement the periodic recreation needs assessments. The City shall consult with the appropriate Intervenors prior to finalizing scopes of work and issuing a request for proposals for this work. The geographical scope of these assessments shall be similar to that for the studies conducted during the current relicensing proceedings, leading up to the 1989 report (SCL, 1989). The Parties intend that each needs assessment be completed within one year of the commencement of the license year for which funding is provided under this plan.

3.2.4.5 Future Capital Facilities

The City and the USFS shall enter into negotiations to develop a memorandum of agreement to implement the capital facilities portion of the bicycle facilities needs assessment within one year after the publication of the final report of the needs assessment. The USFS may be the implementing party for all or part of the recommendations of the bicycle facility needs assessment. If the USFS is not able to enter into a memorandum of agreement with the City for construction of capital facilities for all of the funds, the City may retain outside contractors.

For the capital facilities implementation of the main needs assessments, the NPS and USFS shall each prepare a draft scope of work for the City's consideration after each periodic needs assessment is completed. The agencies' proposals should be submitted to the City on a schedule designed to allow time for negotiation of a final scope of work and memorandum of agreement within the City's annual budget cycle. Failure by either agency to submit a proposal on the schedule given to it in writing by the City may cause that agency's portion of the funding cycle to be delayed without further indexing under this Agreement.

If the agency is not able to enter into a memorandum of agreement with the City for a particular year's fund or portion of one year's fund, the agency may request that the City retain outside contractors. The scope of work for such third party contracts shall be agreed upon by the City and the agency prior to the issuance of a request for proposals by the City.

The negotiation of scopes of work for spending of these future capital facility funds shall be subject to the following criteria:

- All amounts indicated will be spent; if the City and benefitting agency(s) cannot agree on a scope of work covering the amount allocated to any year, the unspent amount(s) shall be carried forward to the next year. In the event of failure to agree on a scope of work or memorandum of agreement for the expenditure of funds a second time, the dispute resolution provisions of this Agreement may be invoked. The City and the benefitting agency may agree to reallocate the funds in question to another function.
- New project selection shall be based on the assessments.

- Each project shall be fully implemented by the constructing agency.

3.2.4.6 Operation and Maintenance

The City shall implement the operation and maintenance funding provisions of this Agreement—Section 3.5.3.5—by transferring the specified funds to the respective land management agencies upon receiving a request from the agencies specifying the projects on which moneys will be spent. The land management agencies shall fully implement the specific operation and maintenance projects within their respective jurisdictions.

3.2.4.7 Compliance with Law

All projects funded under this recreation plan shall comply with applicable environmental protection laws and regulations.

The Parties to this Agreement adopting this recreation plan recognize that a number of the proposed recreation facility development sites may not be available. In the event that the City or the benefitting agency is unable to proceed with a project for any reason, the City and the agency will make a good faith effort to locate an alternate site for the facility, using the same criteria used to develop this Agreement. Should agreement on a substitute be impossible, the City and the benefitting agency may agree on a reallocation of funds equivalent to the estimated cost of the development or the budgeted amount for capped projects.

The City is currently providing some of the area's existing recreation benefits and opportunities through programs that directly affect recreation activities in the project area. These actions are summarized in the Report on Recreation Resources (SCL, 1991a). The City shall continue to operate these facilities and services, as follows.

The guided tours of the Ross and Diablo hydroelectric facilities shall continue. The existing tour boat may be replaced with a more modern vessel or vessels in order to expand tour capacity, and after consultation with the appropriate Intervenors. The City recognizes the NPS concerns regarding the potential impacts of a significantly larger vessel on Diablo Lake. Interpretive material and programs for the tours will be developed in consultation with the Intervenors.

The City will continue to contribute to this international environmental fund. The City's obligation to make payments to the Skagit Environmental Endowment is governed by an agreement between the City and the Province of British Columbia, ratified by a treaty between the federal governments of the United States and Canada. The U.S.–Canada treaty is not affected by the current Project relicensing proceedings.

The City will continue to operate the tugboat/ferry service on Diablo Lake, providing recreationists access from Diablo dam to Ross dam. Seasonal and daily operating schedules shall remain at current levels, as long as demand warrants.

The City, in consultation with the Intervenors, will continue to operate a visitor contact station in Newhalem. The existing building for this facility will probably not be serviceable through the entire new license period; the City will replace or rehabilitate the current facility as necessary (see Section 3.4.1). Interpretive materials will be developed in consultation with the Intervenors.

The City shall continue to maintain picnic facilities available for public use in Newhalem and Diablo

The City shall continue to maintain the Ladder Creek Falls trail near the Gorge powerhouse. More detail on this action is found in the Historic Resources Management Plan. Signs and support facilities for these trails shall be improved through the landscaping plans for Newhalem, which are presented in the visual quality mitigation plan, Section 4.0.

The City currently owns and operates an underwater electric supply cable for the NPS campground at Colonial Creek on Diablo Lake. The present agreement between the City and the NPS provides for NPS payment into a sinking fund for replacement of the cable in the eventuality of its failure. The City agrees to permit the current agreement to lapse at its expiration and to not request further monetary contributions for eventual replacement of the

cable. Should the new Project license be issued and accepted prior to the expiration of the term of the sinking fund agreement, the City agrees to termination of the agreement as of the date of license acceptance with a final prorated payment to be calculated as of that date. The City shall repair or replace the cable through the new license period. The NPS shall remain responsible for the cost of the electricity supplied through the cable.

Project operations require that water levels of all three reservoirs fluctuate in elevation on daily or annual cycles. The changes in water elevation can be a problem for boaters, who depend on the existing boat ramps to launch and retrieve their boats. Mitigative measures identified through assessment of Project effects involve improving the utility of boat ramps and other boating facilities on the three reservoirs to offset the effects of water level fluctuations.

The schedule, budget, including the City's funding obligations, and other implementation procedures for each measure are described in Section 3.2 and Tables 3-1, 3-2, and 3-3. The NPS or the USFS shall take the initial lead in implementation of the individual measures in this section under the procedures set out in Section 3.2.2.

Specific measures that the City shall fund or undertake are the replacement or modification of the following facilities:

The utility of the boat ramps at Hozomeen is diminished by the annual operating pattern of the Ross Lake reservoir. The water elevation of Ross Lake can be drawn down as much as 125 feet in late winter or early spring, and the target refill date is July 31. At the main camping area, launching boats on the upper Hozomeen ramp becomes impossible at lake elevations between 1,589 feet and 1,585 feet. The lower Hozomeen ramp is usable to about lake elevation 1,581 feet. Figure 3-2 is a map of the Hozomeen area indicating these and other recreation facilities in the area.

In some years, the lake is below Hozomeen access facilities' operable levels when significant boating activity begins in June. The City shall fund modification of boat access facilities by the NPS at Hozomeen to provide adequate access to Ross Lake by around June 15 of most years, when the lake elevation is expected to be about 1,575 feet. Improved access shall be accomplished by increasing the operating range of the lower Hozomeen ramp. The existing ramp will be lengthened to extend the minimum operable condition to an elevation of 1,570 to 1,575 feet, depending upon economic and engineering feasibility results. Studies shall be undertaken at this site to determine precise ramp and lake bottom modification needs. The location of the proposed action is indicated in Figure 3-2.

Use by the NPS of City facilities and equipment at the Project for construction or other assistance is not included but may be arranged by mutual agreement between the NPS and the City. Construction must be timed around lake levels. The City is not obligated to modify lake levels to accommodate this measure. The City shall fund this element up to a capped amount of \$150,000 subject to the provisions of Section 3.2, with \$10,000 available for advance project planning in license year 1.

Water level fluctuations at Ross Lake limit the use of the boat docks serving the Hozomeen campground and boat-in campgrounds on Ross Lake. Selected docks along Ross Lake shall be modified or replaced by the NPS. When completed, all affected docks shall be modified or built to standards to be agreed upon by the City and NPS in the planning phase. This action shall occur at boat-in camps that currently have wooden docks (McMillan, May Creek, and Devils Junction) and at camps that have metal docks with the greatest need for improved operating range (Big Beaver, Spencer, Cougar Island, and Hozomeen). Locations of these docks are indicated in Figure 3-3.

Use by the NPS of City facilities and equipment at the Project for construction or other assistance is not included but may be arranged by mutual agreement between the NPS and the City. Construction must be timed around lake levels. The City is not obligated to modify lake levels to accommodate this measure. The City will fund this element up to a capped amount of \$308,000, subject to the provisions of Section 3.2.

The Gorge Lake recreation site currently accommodates boat launching, camping, and picnicking. The existing concrete-plank boat ramp is in poor condition and needs to be replaced. The small lake channel and basin that provide water access to the launching area form a bottleneck, collecting sediment from other portions of the lake. When the lake level drops, the channel is often impassable by boat. Concurrently, however, the sandbar forming the opposite edge of the basin and channel serves as a valuable windbreak, which is why boats continue to launch off this ramp. Because dam operations can cause the water level of Gorge Lake to fluctuate by several feet in only a few hours, boaters will sometimes find themselves stranded in the lake, unable to get back to the ramp through the channel.

Use of this site as a boat launch for motor boats is proposed to continue. This site is the only public boat launch on Gorge Lake.

A schematic plan for the Gorge Lake site is included as Figure 3-4 but is subject to revision after a more thorough site investigation. Program elements consist of the following:

- a new concrete ramp;
- near-term dredging of the basin and channel;
- trailer parking; and
- improved maneuvering area at top of ramp.

The City shall fund this element up to a capped amount of \$150,000, subject to the provisions of Section 3.2. The NPS shall build the new ramp to a sufficiently low elevation to ensure usable launch conditions under normal operations at Gorge Dam. Regardless of ramp specifications, dredging and widening the channel to the turning basin at the ramp are necessary to provide access to the ramp under normal power operations. Initial dredging shall be included in the initial site development specifications. Since dredging may have to be repeated every few years to maintain navigability, it may, at NPS option, be funded through the City's funding of future operation and maintenance of recreation facilities described in Section 3.5.3.

Parking and circulation are currently limited at the Gorge Lake boat launch. As indicated in Figure 3-4, additional parking space for vehicles with boat trailers shall be constructed, and the vehicle turning area at the top of the ramp shall be expanded to provide maneuvering area that is at least 80 feet wide. Parking will be for four to five cars with trailers. These changes will require removal of one of the six existing informal campsites at the site.

Portions of the work contemplated in this measure may require a drawdown of the Gorge reservoir. The NPS will coordinate with the City to schedule the least disruptive time for the work. The City retains the right to defer necessary drawdowns until it is required for other Project maintenance activities.

The City has also consulted with the NPS to determine the best mitigative measure to address similar problems at the Colonial Creek boat ramp on Diablo Lake. The City's consultants investigated the hydrologic and geomorphologic conditions at Colonial Creek to assess the sedimentation component of the problem. The report of this investigation is included as Appendix D. As a result of this evaluation, the City and NPS have agreed that dredging of the existing site will be the selected option for the new license period unless and until changed circumstances warrant consideration of a new site.

The NPS shall work with the existing site to improve access to Diablo Lake. A schematic plan for the Colonial Creek site is included as Figure 3-5. The NPS shall develop a more detailed site plan incorporating all or some of the following specific actions:

- periodically dredge the entry channel to the boat ramp;
- periodically excavate sediment with a backhoe during low-water conditions; and
- excavate near the toe of the present ramp and install a prefabricated slab to extend the ramp, allowing operation at lower lake levels.

The initial site improvement actions, as well as ongoing dredging, shall be included in the capital budget for this site. The City shall fund this measure up to a maximum of \$125,000, subject to the provisions of Section 3.2, with \$5,000 of that maximum amount available for advance project planning in license year 1. Future dredging and excavation beyond that amount may, at NPS option, be funded through the City's funding of future operation and maintenance of recreation facilities described in Section 3.5.3.5. Funding of future dredging and excavation pursuant to Section 3.5.3.5 shall not be subject to the two stage development process of Section 3.2.2.

Portions of the work contemplated in this measure may require a drawdown of the Diablo reservoir. The NPS shall coordinate with the City to schedule the least disruptive time for the work. The City retains the right to defer necessary drawdowns until it is required for other Project maintenance activities.

The remaining measures of the proposed recreation plan are intended to meet area needs by enhancing opportunities for public recreation. Enhancement measures include both site-specific development proposals and mechanisms for funding future recreation activities and needs. Site-specific actions are divided between rehabilitation of existing facilities and development of new facilities.

A number of recreation sites along the Skagit River and within the RLNRA have been damaged by use or are in conflict with other resources on-site. Use of some sites has outgrown their capacity and some uses are not adequately accommodated. All sites being proposed for rehabilitative action need improvement or redevelopment to meet demands for recreation while protecting environmental values. Planned actions in this category include improvements at the facilities listed below. With the exception of the first facility, each is under NPS or USFS jurisdiction.

The schedule, budget, including the City's funding obligations, and other implementation procedures for each measure are described in Section 3.2 and Tables 3-1, 3-2, and 3-3. With the exception of the Newhalem visitor contact station, the NPS or the USFS shall take the initial lead in implementation of the individual measures in this section under the procedures set out in Section 3.2.2.

3.5.1.1 Newhalem Visitor Contact Station

The existing visitor contact station in Newhalem is in need of remodeling or replacement. The City shall do this work as a part of the recreation plan and shall develop a specific site plan, subject to the applicable provisions of the Historic Resources Mitigation and Management Plan. The location of the existing facility is indicated in Figure 3-6. Planning actions required for this item include deciding whether to remodel the existing facility or build a new structure at another location in Newhalem, determining the facility design program, preparing a schematic site plan, and estimating facility costs. The NPS shall specify what role it will take in the rehabilitated or replaced station. Historically, the NPS has maintained a presence at the center that is owned and operated by the City. However, with the construction of a new NPS visitor center two miles to the east, the NPS role in the Newhalem station needs to be redefined. It is likely that the NPS presence will be greatly reduced; the NPS role through the new license period will be developed by ongoing consultation.

3.5.1.2 Goodell Creek Raft Access Site

The Goodell Creek recreation site along the Skagit River is currently used as a launch site for hand portable boats. This spot is the put-in site for whitewater boating on the upper Skagit River from Goodell Creek to Copper Creek. The site is located at the western end of the Goodell Creek campground. The terrace used for boat launching was once a campsite. The edge of this terrace, elevated about two feet above the shoreline launching area, is being eroded by seasonal periodic flooding of the Skagit River. The site is indicated in Figure 3-7.

The planned action is to modify this site as a river launch for portable boats such as rafts and kayaks. The primary purpose for modifying this site is to better accommodate existing recreation use while protecting and stabilizing eroding areas. Improved parking and paved access are the primary facility needs at the site.

Program elements consist of the following:

- a paved area for unloading boats;
- information display and register;
- 20 parking spaces for cars;
- four picnic tables;
- planting or other buffer to stabilize slopes; and
- capping of environmentally sensitive areas with sand or soil.

The existing gravel pad presently used for unloading boats shall be paved, and a paved path shall lead from the unloading area down to the launching area. Paving the path, particularly as it descends the terrace slope, will help forestall further erosion of the slope and the terrace. Edges of pavement along the path shall be buried and made thicker, a practice known as "lip bottoming," to strengthen the concrete against erosive action. Parking shall be accommodated easily along the service road that parallels SR 20, as is now the practice; the parking improvements will provide better definition and circulation for the parking area. Small trees and shrubs shall be planted to screen the parking area from the highway.

The City shall fund the initial site redevelopment up to a maximum of \$65,000, subject to the provisions of Section 3.2.2, with \$10,000 available for advance project planning in license year 1.

3.5.1.3 Damnation Creek Boat-in Picnic Site

The area at the mouth of Damnation Creek is currently used as a picnic spot for rafters. It is the only site along the upper Skagit run (Goodell Creek to Copper Creek) that is approved by the NPS as a stopping point. It is estimated that up to 20 rafters may use the site at a time, and the site may be used 10 to 12 times in a weekend. There is a firepit above a sandy beach where boaters launch. An existing toilet is only a few yards away on a shelf just above the high-water mark, but this facility is in need of repair so is seldom used. To ensure that most use will remain boater oriented, there shall be no signs on SR 20 .

The proposed action is to improve this site as a picnic and rest spot for river rafters. Accommodating boaters adequately on this site through provision of upgraded facilities will serve the NPS goal of concentrating human use along the Skagit River shoreline to this approved area. The City shall fund this element up to a capped amount of \$25,000, subject to the provisions of Section 3.2.

A schematic plan for the Damnation Creek site is included as Figure 3-8. Program elements consist of the following:

- four picnic tables, secured to the site; and
- one fiberglass container vault toilet (with four to six vault storage units) to replace the existing toilet.

Because there is no vehicular access to the site, the existing toilet shall be replaced with one holding a container vault that can be carried out on foot. The picnic tables shall be secured with chains so they will not be carried away in high water.

3.5.1.4 Marblemount Boat Access Site

The Marblemount Bridge site is currently used as a launch area for rafts and drift boats, under an easement maintained by the Washington Department of Wildlife (WDW). The primary season of use is in winter for eagle watching. Existing site features include a short gravel access spur, a gravel launch ramp and turnaround, and a portable toilet. Parking occurs on adjacent grassy areas. The existing gravel ramp appears adequate for similar continued usage, but parking, sanitation and circulation are inadequate. Commercial boaters transport passengers to the site by bus, but after unloading, the buses have no way of turning around. The current entrance has a turning radius that is too tight to safely accommodate trailers and buses.

To relieve congestion and prevent parking that occurs at the top of the ramp and to improve this site as a launching area for drift boats and rafts, a one-way loop system and separate parking area are planned. As the adjacent land is already level and clear of trees, accommodating these additions would not be difficult.

To accommodate the planned changes, additional easements or fee title on the surrounding land will have to be acquired. As overall manager for the Skagit Wild and Scenic River, the USFS will be involved in the planning and administration of this site, shall be the initial lead development agency, and will, at its option, be assigned title to interests in real property necessary for site development acquired by the City. In addition, the Forest Service may acquire interests in real property necessary for site development outside of this Agreement, in which case the cost of such interests shall not be counted in the project budget. The City shall fund this element up to a capped amount of \$165,000, subject to the provision of Section 3.2. Should the City become the lead agency under the provisions of Section 3.2.2, the City shall require the development of a memorandum of agreement involving the USFS and the WDW before entering into any contractual obligations for site purchase or construction.

Program elements of this measure consist of the following (See Figure 3-9):

- one-way traffic loop with adequate turning radius for buses and trailers;
- 15 parking spaces for cars;
- 15 parking spaces for cars with trailers;
- two bus pull-out spaces;
- grassy staging area near launch ramp;
- directional traffic signs;
- informational display and register;
- two vault toilets; and
- improved drainage to protect existing ramp.

New traffic signs shall be installed along the county road and on the site to explain the one-way traffic loop. Signs warning of traffic turning onto the road will also be added. A flat, grassy area near the ramp shall be regraded and reseeded to provide a staging area for rafts and other portable boats. The site has an existing information display, which shall be modified to provide new information about site development downstream at Rocky Creek. Surface water run-off has created some erosion of the existing gravel ramp; the area at the top of the ramp will be regraded to channel water run-off away from the ramp. The existing portable toilet shall be replaced with a permanent structure, a double-seated vault toilet that will be located in the same general area as the existing facility.

3.5.1.5 Hozomeen Water Distribution System

The NPS is working to develop a potable water source for the Hozomeen campground to be coordinated with planning and development efforts of the Skagit Environmental Endowment Commission, the NPS, and British Columbia Parks (Canada). The City shall contribute \$50,000 for improvements to the U.S. portion of the system upon request from NPS after project design and funding are finalized. This action would replace the existing surface water supply with a groundwater system and is intended to bring the water supply up to legal standards. The City shall not fund any increase in water system capacity, particularly as that may be used for increased campground size at Hozomeen.

Since this project is in the early planning stages, drawings and specifications have not yet been prepared. The existing situation is indicated in Figure 3-10. The rescheduling provisions of Section 3.2.2 do not apply to this measure; the City's obligation is limited to the funding support indicated. The implementation schedule for this measure shall be adjusted to best accommodate NPS and SEEC funding and scheduling of the project.

The majority of the new recreation facilities being proposed are intended to offset increasing demand and heavy use at existing sites supporting similar uses. In some cases, the new facility would serve as an alternative site, replacing the existing facility to protect sensitive areas or meet other objectives. Other proposed new recreation facilities stemmed from a recognition that some undeveloped areas offer unique opportunities for recreation and interpretation or of other types of activities not being provided for by existing facilities.

The schedule, budget, including the City's funding obligations, and other implementation procedures for each measure are described in Section 3.2, Tables 3-1, 3-2, and 3-3. With the exception of the environmental learning center, the NPS or the USFS will take the initial lead in implementation of the individual measures in this section under the procedures set out in Section 3.2.2.

New facilities in the recreation plan include the following items:

3.5.2.1 North Cascades Environmental Learning Center

Purpose and Intent

An environmental learning center is the centerpiece of the City's proposed recreation plan. The NPS and North Cascades Conservation Council (NCCC) strongly desire such a facility. The City agrees that an environmental learning center can provide vital support to a management philosophy for the North Cascades as an ecosystem. The City also accepts this action as appropriate to increasing the depth and breadth of public appreciation for the North Cascades ecosystem. The City shall therefore fund the initial development of a North Cascades Environmental Learning Center (NCELC) and contribute to its long-term operation and maintenance as indicated in this section and on Table 3-2.

The North Cascades Institute (NCI), an established regional environmental education institution, has agreed to initially operate the learning center and provide its program structure. The City, the NPS, and the NCI have entered into a memorandum of agreement (MOA) regarding the construction, operation and management of the NCELC. The MOA is included as Appendix A to this Agreement and incorporated by reference. In any instance where there is a conflict between the provisions of the MOA and this Agreement, the MOA shall govern. A summary of the basic relationships between the three parties as set forth in the MOA is found in Appendix G of the MOA.

Under the procedures established in the MOA, the City shall acquire rights to and prepare the preferred or alternative site and construct new facilities as specified in this Agreement and the MOA. As federal lands, possession of the preferred or alternative site will be granted to the NCELC operator under the terms of the new FERC license for the Project. The City shall provide the facilities, which will be owned by the City, to the operator in consideration of the operator's obligations under the MOA.

Diablo Lake Site

The preferred learning center site is on the north shore of Diablo Lake. The location is relatively secluded and private, being situated across the lake from SR 20, but it does have road access. The existing road crosses Sourdough Creek, which borders the site to the west. Although steep foothills prevent development of much of the area, the selected site is relatively flat along its shoreline. The site was created over time as part of an alluvial fan by the creek's seasonal turbulence. The site, facing south-southwest, rises gently into a wooded hillside. The Diablo Lake site is indicated in Figure 3-12.

The site, originally developed as a temporary work camp during construction of Ross dam and powerhouse, is currently being used as a resort. Although the land is now owned by NPS, the buildings still standing are owned by the resort operator, Diablo Resort, Inc., which also holds a contractual right to occupy the site until 1998. Most of the buildings are resident cabins, left over from work-camp days, but a newer restaurant in operating condition stands on the eastern portion of the site. Existing facilities on-site include water, sewer, and power utilities. The City uses an existing road through the site to access a boathouse, located on the eastern edge of the site, as well as facilities at Buster Brown cove further east.

The City will use good faith efforts to obtain clear title to the preferred site by purchase of the concession contract and resort assets from the current owner.

Newhalem Campground Site

In the event that the City is not able to obtain rights to the Diablo Lake site, the City will construct environmental learning center facilities comparable to those set forth in Appendix E of the MOA at the alternative site adjacent to the NPS visitor center, near the Newhalem Creek Campground. The Newhalem Creek site is indicated in Figure 3-13.

The Newhalem Creek Campground site is located on a bench about 80 feet in elevation above the Skagit River. It is located on the south shore of the river, about 1,000 feet west of the town of Newhalem. The site is adjacent to the site selected for construction of a new visitor center for the North Cascades National Park Service Complex. Construction of that facility is scheduled to commence in 1991. In conjunction with visitor center construction, access improvements and utilities will be put in place which can be extended to the learning center site. The siting of the learning center at this location was analyzed by the NPS in a 1989 environmental assessment. (NPS, 1989).

Facility Development and Operation

A residential learning facility is proposed that will offer programs on many aspects of the natural environment. The initial capacity of the NCELC will be 40 students plus 12 faculty and staff. The facility will be designed so that it can be expanded to accommodate 60 students and 18 faculty and staff. There are no existing facilities in the North Cascades region that can accommodate this type of learning center. This proposed use will provide a valuable educational resource for the area.

Under the direction of the Oversight Committee created pursuant to Article III, Section 5 of the MOA and in consultation with the Parties, the City will provide the following facilities:

- dormitories capable of housing students, faculty and staff in a variety of gender ratios;

- one main service building with classrooms, library, laboratory, and offices;
- a cafeteria;
- a covered shelter;
- an outdoor amphitheater;
- grassy recreation area;
- outdoor "rooms" for small learning groups;
- adequate parking;
- staff housing;
- a central exhibit area; and
- trails.

A tentative site plan for the NCELC preferred site is provided as Figure 3-14. Preliminary evaluation of the existing facilities on that site indicates that most of the existing buildings will have to be replaced. The restaurant is the newest building and will remain and be used as a cafeteria and meeting rooms, library, or similar uses. The existing utilities will continue to serve the site. The facility will be developed to best take advantage of the site's features and views, including relocation of the existing overhead utility poles and lines to the back (north) edge of the site. The central area of the site will remain open to accommodate views across the water, thus emphasizing the natural, outdoor landscape as the central focus for this development. The surrounding wooded hillsides will provide numerous opportunities for trails and observation areas, and the lake will be easily accessible for purposes of various shoreline and lacustrine life studies.

The alternative site has similar siting benefits (NPS, 1989).

All public facilities and one of the staff residences will be handicapped-accessible. Environmental conservation practices such as on-site recycling facilities will be included in NCELC facilities design and operation at either site. This and similar programs may serve a double purpose: not only would they provide opportunities for education and research, but they would illustrate the possibilities for development that integrate and balance basic everyday human needs with those of the natural environment. Educational seminars, covering a broad variety of topics, generally will last from one day to several weeks. The programs will be directed toward many different age groups, including seniors.

NPS will maintain water and sewer facilities. The USFS, the State Superintendent of Public Instruction's Environmental Education Office, and the Skagit System Cooperative Tribes will be invited to serve in an advisory capacity to the learning center. Details on site and facility management responsibilities are included in the MOA. Further details on the construction of each NCELC site are also included in the MOA.

The City shall provide the following operation and maintenance services:

- electricity service up to an amount to be determined in the design phase by the Oversight Committee, based on the facility as designed, at no cost;
- maintenance of the NCELC physical plant up to \$500,000 over the life of the facility (scheduled in equal annual increments from completion of construction through the new license period, exclusive of routine janitorial and gardening services for which the operator is responsible, and further exclusive of losses due to calamities as described in Article VI, Section 2 of the MOA);
- program startup costs, after the issuance of the new Project license, \$100,000 (scheduled in two equal payments in years 1 and 2), to be allocated by the Oversight Committee;
- ongoing NCELC program and staffing costs up to \$4,150,000 over the course of the license (scheduled to start in year 1, with annual payments of \$25,000 in years one and two, \$100,000 in years three through 9, and a lump sum endowment payment of \$3,400,000 in year 10), to be allocated by the Oversight Committee;
- wildlife education funding at \$600,000 over the term of the license (scheduled in equal annual payments starting in year 1), to be allocated by the Oversight Committee;
- furnishings up to \$200,000, to be allocated by the Oversight Committee;
- vehicles—the City shall provide three fifteen person vans or the equivalent from the first full year of NCELC operations through the term of the license by lease or purchase and will maintain them or pay for their maintenance;
- vehicle operation—the City will support the operation of the vehicles by making capped payments of \$10,000 per year for the first ten years of full NCELC operation (the operator shall be responsible for all other costs of operation, including gas, oil and insurance), and if necessary, the Oversight Committee may request support beyond that period; and
- continuation of utility, vehicle, and maintenance support into the period of annual licenses after the term of the new license, to be allocated by the Oversight Committee, at the levels existing at the end of the regular license period.

The City will begin preparations for construction of the learning center facilities as soon as a new Project license is issued and accepted. The City estimates that it will take three to five years to have the site and facilities completed. The City will use its best efforts to have the facility in an operable condition by the third June of the new license period, with funding availability not to be a limiting factor.

3.5.2.2 Gorge Creek Overlook

The Gorge Creek overlook is an addition to an existing site with paved parking lots on either side of Gorge Creek. Site visitors walk across the bridge on a protected walkway, from which they view Gorge Creek Falls and the ravine below. This site is the only stopping point along the gorge from Newhalem to Diablo, yet there are no restroom facilities or other services. Additional views of Gorge Lake and dam are possible within a short distance of the parking lots, but access to these views has not been developed.

New development is proposed for the Gorge Creek overlook to make this site an adequate rest area for travelers, as well as to provide new viewing and interpretive opportunities for RLNRA visitors. These opportunities will be created by constructing a short-trail system to additional viewpoints, supplemented by interpretive displays that incorporate regional and natural history information. The City will fund this element up to a capped amount of \$175,000, subject to the provisions of Section 3.2.

The conceptual plan for the Gorge Creek site is displayed in Figure 3-15. Program elements consist of the following:

- two vault toilets;
- a 600-foot paved surface barrier-free trail, six feet wide, with overlooks;
- childproof railing along handicap-accessible trail;
- a foot trail, 1800 feet long, looping back to the west parking lot;
- two viewing platforms overlooking Gorge Lake and dam;
- interpretive displays;
- bench seating;
- two handicapped parking spaces; and
- stabilization of slopes around parking area.

Two old roadbeds, left over from construction of the transmission towers and Gorge dam, begin near the parking area and provide access around the knoll and toward the dam. Remnants such as steel reinforcement and excavated river rock still remain and may be incorporated into interpretive displays. The roadbeds themselves would serve well as trails, providing occasional views of the lake and dam as well as into the Gorge Creek ravine.

The barrier-free trail, which will parallel the Gorge Creek ravine along the edge of its cliff, will provide spectacular views into and across the ravine, gradually bringing the spectator to a high overlook above the mouth of the creek. Railings will be provided along this length to protect viewers from falling. The incline along this trail is very gentle—no more than a 5 percent slope on average—making the path easily manageable even by wheelchair. The foot trail begins where the barrier-free trail ends, quickly climbing the hill in a switchback to reach another, higher roadbed. From this point, the foot trail winds around the southern and western sides of the knoll, taking in sites of the dam and the lake and passing through curious geological formations on its way back down to the parking area. A double-seated vault toilet will be located by the parking lot in a well-ventilated area.

3.5.2.3 Thunder Lake Fishing Facility

The objective for this plan element is to provide a means of access to a fishing opportunity by handicapped persons that does not currently exist, but not to maintain an artificial fishing resource. Therefore, the NPS has determined

that the preferred approach to this objective is to develop a safe, barrier-free walkway along a portion of the shoreline of Thunder Lake (adjacent to Highway 20 just west of Colonial Creek Campground. The lake is currently stocked by the WDW and used by non-handicapped anglers. Developing a boardwalk with railings will allow the handicapped to also use this resource but should not draw undue attention or significantly increase use to the site. The existing parking area needs to be improved and formalized. The City and the NPS will develop more specific planning information for this proposal and will consult with target user groups concerning facility design. As the lead implementation agency, the NPS will also take the lead in the planning process. The City will fund this element up to a capped amount of \$200,000, subject to the provisions of Section 3.2. Figure 3-16 indicates the area under consideration.

3.5.2.4 Thunder Knob Trail

The City will fund the development of a new loop trail system around the top of Thunder Knob, above the south side of Diablo Lake. The City will fund this element up to a capped amount of \$210,000, subject to the provision of Section 3.2. The objective of this trail is to provide access to expansive views across Diablo Lake from atop Thunder Knob. The trail will also provide opportunities to educate visitors about the unique ecosystems of ephemeral lakes, several of which can be found atop Thunder Knob. Developing this trail will expand the opportunities for easily accessible day-use activities within the SR 20 corridor.

There will be two trailhead locations for this loop, as indicated in Figure 3-17. One trailhead will be in the Colonial Creek campground adjacent to the base of Thunder Knob for direct access by campers. The other trailhead location will be along SR 20 at Thunder Lake and will provide parking for highway travelers and day hikers.

The proposed site for the campground trailhead is an existing paved pullout on one of the campground loops on the north side of SR 20. The pullout is near Colonial Creek, which separates the campground from Thunder Knob. Program elements for this trailhead consist of the following:

- 3 parking spaces for cars;
- trailhead informational signs; and
- seasonal bridge.

The parking area is intended to be used by people who are camped on the other side of SR 20 and who might feel uneasy walking across the highway and through both loops of the campground. The seasonal bridge is to span Colonial Creek directly north of the campground. A removable bridge is recommended because the creek is subject to torrential flooding during the winter and spring.

The preferred site for parking along SR 20 is currently an informal pullout used mainly by people fishing in Thunder Lake. The pullout is large enough to hold 10 to 15 cars. Sight distance along SR 20 at this point is good. Program elements for this trailhead consist of the following:

- 10 to 15 parking spaces for cars;
- one vault toilet;
- trailhead informational signs; and
- directional signs on SR 20.

The parking area will remain a gravel surface, with wheelstops provided to indicate parking and to provide greater safety. The toilet will be a permanent structure with a vault and single seat.

From this trailhead the path will wind along the north and east sides of Thunder Lake to connect with the trail from the campground. The trail will ascend Thunder Knob's southern slope, the least steep side of the knob, before forking to form a loop around the top of the Knob.

The trail will be built to accommodate foot traffic, with railings and other safety precautions where necessary according to NPS standards. Interpretive displays will explain some of the unique ecosystems found atop Thunder Knob, and benches and mural displays will be placed at best advantage for views across Diablo Lake.

3.5.2.5 Happy Flats–Panther Creek Trail

This proposed trail follows the alignment of an old trail that used to exist before SR 20 was built along the south end of Ross Lake. Most of the old trail is intact, but sections of it were damaged or obliterated by extensive road construction activities.

The trail will parallel SR 20 and the southern shore of the lake, beginning at the Ross dam trailhead (Happy Flats) and ending where Panther Creek crosses under the highway. The proposed trail route is shown in Figure 3-18. The Panther Creek terminus is a trailhead serving the East Bank and Panther Creek trails. The primary purposes for reestablishing this trail are to provide a day use trail along the shore of Ross Lake accessible to SR 20 and to connect trails on the western side of Ross Lake with trails on the eastern side, completing a continuous east-west trail link through the park complex. At present there is no such link for foot traffic.

Implementation requirements for this action will include brushing out the remaining sections of the old trail, repairing and adding erosion control measures as necessary, and constructing new trail sections across or below SR 20 fill slopes. The City will fund this project to NPS standards for backcountry foot trails up to a maximum of \$155,000, subject to the provisions of Section 3.2.2, with \$15,000 available for advance project planning in license year 2. Existing trailhead facilities at Happy Flats and Panther Creek are sufficient and need not be supplemented or modified.

3.5.2.6 Desolation-Hozomeen Trail

The City will fund the construction of a new foot trail extending from Desolation Peak to Hozomeen Lake, on the eastern side of Ross Lake (See Figure 3-19). The purpose for building this trail is to close a loop with existing trails in the area. The East Bank trail leaves Ross Lake at the mouth of Lightning Creek, traveling east and north up the Lightning Creek drainage toward Willow Lake. A spur trail provides access from Lightning Creek to the summit of Desolation Peak, terminating there. The proposed action will complete this trail north from Desolation Peak, joining the East Bank trail near Hozomeen Lake. This will create loop trail possibilities for hikers entering at Hozomeen or by water at Lightning Creek. The new leg will also provide a more direct approach to Desolation Peak from the north. The trail will be built to appropriate NPS standards. The City will fund this element up to a capped amount of \$275,000, subject to the provisions of Section 3.2.

3.5.2.7 Black Peak Overlook

The USFS (Okanogan National Forest) has included in its recreation management plans (USFS, 1989) a number of actions to improve and expand opportunities for visitors to the North Cascades Scenic Highway, which adjoins the RLNRA to the east. Specific proposals include developing viewpoints and overlooks, visitor contact facilities, and new hiking opportunities. To support their program the City will partially fund development of an overlook along SR 20 in the vicinity of Black Peak; the City's contribution shall be limited to \$250,000. The USFS will fund the cost of this development beyond the capped amount. This site is located about five miles northwest of Rainy Pass in the Granite Creek drainage.

The proposed site is a south-facing slope oriented to views of Black Peak and surrounding mountains across SR 20. The site, used as a borrow pit during highway construction in 1972, was consequently seeded and has been left largely undisturbed since that time. Because of the high altitude and the slope's southern exposure, however, the area remains essentially bare. Trees grow extremely slowly at this elevation, and because soil on a south-facing slope is subjected to more rapid freezing and thawing, the soil has become very thin.

The proposed action is to develop this site as a parking area and overlook with views of Black Peak and surrounding peaks. One purpose for developing this site is to stabilize and revegetate an existing visual scar remaining from the highway's initial construction.

Figure 3-20a is a schematic plan for the Black Peak site. Figures 3-20b and 3-20c are two alternative site configurations. Specific program elements consist of the following:

- off-road parking;
- 25 double-loaded parking spaces, to accommodate both cars and RV's;
- one bus pull-out along the north side of SR 20;
- toilet facilities;
- handicap-accessible viewing platform;
- benches;
- removal of all excess fill along south side of SR 20, to discourage parking on the road shoulder;
- regrading and terracing of slope, to encourage greater vegetation;
- nutrient-rich amendments to the soil; and
- seed plantings.

The site is one of only a few open areas along this stretch of SR 20, meaning that the views seen from this spot are hidden from most other sections of the highway. As there are no existing viewpoints within several miles along this stretch of the highway, a chance to park, get out of the car and view scenery at this point would probably be well-received by travelers. To remove the viewing platform from the noise and traffic along the highway, as well as to get better views, vegetation would be planted between the highway and the site, and the overlook would be placed away from the highway at the top of the slope partially under existing tree cover. A barrier-free trail with slope no greater than 8 percent would access the overlook. The parking area would be separated from the road to discourage motorists from parking on the highway shoulder instead of pulling into the parking area.

To encourage greater vegetative recovery on the site, portions of the slope will be regraded and terraced. The flatter terraces will capture more water run-off and nutrient-rich debris and sediment to sustain plant growth.

3.5.2.8 Rocky Creek River Access Site

The proposed action for this site is to provide a boat-in picnic spot for boaters along the Skagit River and to develop an eagle observation trail and trailhead near the river's edge that is convenient from SR 20. The tentative site plan is indicated in Figure 3-21.

The objectives for the proposed site development are to accommodate an existing informal use of the site, lessen potential human disturbance of eagles, and create a new recreation opportunity for highway travelers. The gravel bar at the mouth of Rocky Creek is already used by boaters, particularly commercial outfitters, as a lunch stop on winter eagle-watching floats. Providing picnic amenities at the mouth of Rocky Creek would help to accommodate this use, where no facilities now exist. It may also encourage boaters to land here rather than on nearby Eagle Island, where human presence is considered a disturbance to wintering bald eagles. Access to a shoreline viewpoint from the state highway would reduce the pressure on other eagle-watching areas further along the highway, and provide a valuable new opportunity for highway travelers to access the river for viewing and appreciation. Development of the trail and viewpoint is contingent on field observations confirming a level of eagle use in the area sufficient to maintain the interest of observers.

Program elements for the shoreline trail consist of the following:

- 10 parking spaces for cars near SR 20;
- two bus/trailer pull-outs;
- a paved, 6-foot wide handicap-accessible trail from the parking area to a shoreline overlook;
- signage, trailhead kiosk;
- an overlook holding up to 20 people;
- benches at the overlook;
- child-proof railings, where necessary;
- two vault toilets; and
- a gate to prevent unauthorized vehicle traffic along the existing dirt road that leads to the river.

Program elements for the boat-in picnic area consist of the following:

- picnic shelter with firepit and four tables; and
- one vault toilet.

To lessen the impact on eagle habitat as much as possible, a minimal amount of tree vegetation should be removed. Much of the site is second-growth cedar; a trail through this area would be desirable for interpretation of a forest ecosystem as well as for eagle watching. Because the area serves as eagle feeding grounds during the winter, considerable use will occur during that season. The parking area and trail therefore will be designed to accommodate snow removal. The dirt road that currently runs through the site to the river will be maintained strictly for service access to the picnic and toilet facilities; a gate will block this road from vehicular access by site users.

As overall manager for the Skagit Wild and Scenic River, the USFS will be involved in the planning and administration of this site, will be the initial lead development agency, and will be assigned title to interests in real property acquired by the City necessary for site development. In addition, the Forest Service may acquire interests in real property necessary for site development prior to the effective date of this Agreement, in which case the cost of such interests shall not be counted in the project budget. The City will fund this element up to a capped amount of \$250,000, subject to the provision of Section 3.2.

3.5.2.9 Steelhead Park

The City will contribute toward the development of recreation facilities at or between the Steelhead County Park and the Rockport State Park. Possible measures include construction of a handicap accessible trail along the Skagit River, development of a trail connection between the two parks, or City assistance in the purchase or development of the railroad right of way downstream from the county park. The City will work with the USFS, the State Department of Parks and Recreation, and the Skagit County Parks Department and other interested parties in the development of specific proposals for this site. A schematic map showing existing recreation facilities is Figure 3-22. The City will fund this element up to a capped amount of \$125,000, subject to the provisions of Section 3.2.

3.5.2.10 Lower Sauk River Boat Access Site

The City will fund the development by the USFS of a boat access site on the lower Sauk River, subject to the provisions of Section 3.5.2. The site is on State Department of Natural Resources land on the east bank of the Sauk River, north of the SR 530 bridge crossing approximately seven miles north of Darrington. This site will serve boaters on both the Sauk and the Suiattle as it would be just below the confluence of the two rivers. As currently proposed, site development will include a ramp for trailered boats in addition to launching space for rafts and other hand-carried boats. A schematic map of the proposal is at Figure 3-23.

As overall manager for the Skagit Wild and Scenic River, the USFS will be involved in the planning and administration of this site, will be the initial lead development agency, and will, at its option, be assigned title to interests in real property acquired by the City necessary for site development. In addition, the Forest Service may acquire interests in real property necessary for site development outside of this Agreement, in which case the cost of such interests shall not be counted in the project budget. The City will fund this element up to a capped amount of \$250,000, subject to the provision of Section 3.2.

Preliminary design program elements include the following:

- paved or concrete-plank, single-lane boat ramp, 12 feet wide;
- raft staging area;
- beach for launching;

- parking for 30 cars and 10 cars with trailers;
- access road from SR 530;
- vault toilets;
- picnic tables; and
- river use information signs.

3.5.2.11 Suiattle River Boat Access Site_

The City will fund the development of a launch site for nonmotorized boats on the Suiattle River, near or above river mile 12. The design program elements will be the same as for the lower Sauk site, excluding the ramp for trailered boats and with less parking capacity. A specific site has not yet been chosen for this facility.

Two potential sites suggested by the USFS have been investigated. One site is at river mile 12, adjacent to a forest road crossing of the river known locally as the Rattrap Bridge (also known as the Boundary Bridge). This site is currently used informally by boaters but has no developed facilities and minimal space for non-trespass access. The second site is approximately 5 miles upstream at the confluence of Buck Creek and the Suiattle River, where an existing low-standard road from USFS Road 26 provides access to the river.

The City has expressed concerns about the viability of both of these sites. The land at the Rattrap Bridge site is not public land administered by the USFS or WDNR and would have to be purchased. The Buck Creek site serves only a portion of the current users. Some of the outfitters who operate trips on the Suiattle River indicated concern over navigability of this reach of the river during late summer low flows. More importantly, they felt that the addition of 5 miles to this run would make the trip too long. While there is an acceptable landing site at the WDNR Dearinger campground at about river mile 4, the outfitters felt that this was not a suitable alternate take-out site due to poor access. Based on this response, there is significant risk that some outfitters and private boaters would not use a Buck Creek access site if it were developed.

Due to the current status of site selection, the City has not developed specific plans for this facility. The City will continue to work with the USFS and river users to identify a suitable site and proceed with site-specific plans. Figure 3-24 shows the current situation and area map of the upper Suiattle. As overall manager for the Skagit Wild and Scenic River, the USFS will be involved in the planning and administration of this site, will be the initial lead development agency, and will, at its option, be assigned title to interests in real property necessary for site development acquired by the City. In addition, the Forest Service may acquire interests in real property necessary for site development outside of this Agreement, in which case the cost of such interests shall not be counted in the project budget. The City will fund this element up to a capped amount of \$225,000, subject to the provisions of Section 3.2.

The City and the Intervenors recognize that all recreation needs over the license term cannot be identified and accounted for in a static recreation plan. Furthermore, there are various types of recreation needs that are very detailed or recurring in nature, such as interpretive programs and facility operation and maintenance needs. These types of needs cannot be efficiently factored into a site-specific recreation plan; they are best treated by supplying resources for future discretionary action by the City and the managing agencies. To accommodate these needs, the

City has agreed to provide funding for five specific categories of future recreation actions, as follows (funding levels are set in 1990 dollars, to be indexed for inflation as provided in Section 1):

3.5.3.1 Interpretive Facilities

The City will spend up to \$340,000 on new interpretive facilities, including signage, in the Project area. Of this amount, \$150,000 will be spent on facilities in the RLNRA as determined by the City and the NPS, in consultation with other parties as appropriate, with the money to be allocated in six \$25,000 amounts every five years, starting with the first year of the license. On the same schedule, \$150,000 of the total will be spent on future projects outside the RLNRA, as determined by the City and the USFS, in consultation with other parties as appropriate. The remaining \$40,000 will be spent on facilities in the Skagit Wild and Scenic River System upstream from Concrete in the first year of the new license. Section 3.2.4.3 establishes the procedure for the expenditure of these funds.

3.5.3.2 Bicycle Facility Needs Assessment and Capital Facility Implementation

The City will spend up to \$175,000 on a bicycle facility needs assessment and for capital facilities to implement the study. The study area will be as large as necessary to accurately indicate bicyclist use and demand in the Project area. Capital facility funding will be restricted to projects within the Skagit Wild and Scenic River System upstream from Concrete and to the North Cascades Scenic Highway west of Washington Pass. Section 3.2.4.4 establishes the procedure for the expenditure of these funds. The money will be spent on a schedule to be determined by the City and the agencies after the conclusion of the studies; the Parties expect the moneys to be spent within five years of the conclusion of the studies.

3.5.3.3 Future Recreation Needs Assessments

The City will administer recreation utilization and needs assessments every five years through the new license period, in the 5th, 10th, 15th, 20th and 25th years of the new license period. The City will spend up to \$25,000 for each of the five studies. Section 3.2.5.4 establishes the procedure for the expenditure of these funds.

3.5.3.4 Needs Assessments Capital Implementation

The City will fund new capital facilities identified by the recreation needs assessments. The monies will be available in the 6th, 11th, 16th, 21st, and 26th years of the new license period; the dates of actual expenditures will depend on the timing of Intervenor compliance with the implementation procedures of Section 3.2.5.5. The City will spend up to \$62,500 after each needs assessment on projects in the RLNRA for a total of \$312,500 over the license term. The City will spend up to \$62,500 after each needs assessment on projects within the Skagit Wild and Scenic River System upstream from the confluence of the Sauk and Skagit Rivers or the North Cascades Scenic Highway west of Washington Pass for a total of \$312,500 over the license term. The City will spend up to an additional \$220,000 after each of the first two needs assessments (years 6 and 11) exclusively to improve identified river access needs in the Skagit Wild and Scenic River System, for a total of \$440,000. The total of all expenditures under this section shall not exceed \$1,065,000.

3.5.3.5 Operation and Maintenance Funding

The City will fund ongoing operation and maintenance costs of recreation facilities within the Skagit Wild and River System, the RLNRA, and the North Cascades Scenic Highway corridor west of Washington Pass, up to \$2,750,000 as follows:

- For the first fifteen years of the license the NPS will be allocated \$60,000 per year for operation and maintenance of recreation facilities within the Ross Lake National Recreation Area, and the USFS will be allocated \$15,000 per year for operation and maintenance of recreation facilities within the Skagit Wild and River System upstream from Concrete and the North Cascades Scenic Highway corridor west of Washington Pass.
- For the purposes noted above, from the sixteenth through the twenty-fifth years of the license, the NPS will be allocated \$80,000 per year, and the USFS will be allocated \$20,000 per year .
- For the purposes noted above, for the last five years of the license the NPS will be allocated \$100,000 per year, and the USFS will be allocated \$25,000 per year.
- For the purposes noted above, in each year in which the Project operates on an annual license beyond the term of the new license, the NPS will be allocated \$80,000 and the USFS \$20,000. These amounts shall be prorated for the final year before the effective date of a new (third) license if the third license for the Project takes effect on other than the annual anniversary of the expiration of the second license.

Section 3.2.5.6 establishes further procedures for the expenditure of these funds.

3.5.3.6 Intervenor Coordination

The City will retain sole responsibility for facilitating Intervenor coordination, including the annual meeting of all Intervenors. The City will provide a forum for Intervenors and other interested agencies to discuss with the City all Project related resource mitigation and enhancement plans. At a minimum, the City and the Intervenors will report on the status of their respective compliance with the various settlement agreements, including the expenditures of funds provided for in the various mitigation and enhancement plans. Problems with implementation and cross-issue conflicts can be discussed and resolved in this forum. The City has budgeted \$3,000 per year for this item.

Consistent with FERC regulations, the City has considered expected initial and future use in planning site capacity for the proposed recreation developments. The proposed facilities have generally been sized to accommodate the existing level of use plus normal growth and are not intended to be a stimulus for above-trend growth in recreation use. In order to determine appropriate site capacities, the City reviewed inventory data on existing use levels for the activities to be served and consulted agency staff and selected user groups concerning typical site loading conditions.

Site capacities, as measured in people at one time (PAOT) and annual visits, are indicated in Table 3-4 for those facilities where such a measure is relevant. Because site capacity is often determined by the amount of parking provided, parking capacity is also identified where relevant. Also included in Table 3-4 are estimates of current use, in PAOT and annual visits, and expected future annual use based on activity-specific projections for the year 2001. Specific capacity and use considerations for the respective facilities are summarized below by type of facility.

Rehabilitation actions in the recreation plan include both mitigative measures and measures to enhance existing facilities. In both types of cases, the proposed actions are generally intended to maintain or restore existing capacity and accommodate existing-use patterns, rather than to provide for increased use or new activities. Existing capacity and use conditions for these facilities are summarized as follows.

- The proposed action for the Hozomeen, Gorge Lake, and Colonial Creek boat ramps is to rebuild or extend these ramps in their current configuration. Planned capacity for the three ramps is based on a standard launch capacity of 40 boats per lane per day. While both Hozomeen ramps are used to capacity on selected peak days, the NPS does not desire an expansion of capacity.
- The Goodell and Damnation Creek sites serve the same user group, nonmotorized boaters on the upper Skagit run. Nominal planned capacity for Goodell Creek is based on the amount of car parking provided although use of bus shuttles can greatly increase the effective capacity. The Damnation Creek capacity is based on the number of picnic tables, which is sufficient to accommodate the maximum party size that has been reported. Use estimates for Damnation Creek reflect the assumption that 75 percent of river users will make a lunch or rest stop here.
- Capacity at the Marblemount site will be expanded through the proposed action. The existing parking area is undefined but probably provides convenient parking for 5 to 10 vehicles, depending upon the number with trailers. The plan for this site will increase the number of spaces and significantly improve circulation for buses and vehicles with trailers. Parking capacity for this site is based on advice from USFS staff and river users.
- Gorge Creek overlook capacity will remain unchanged, as the parking area will not be expanded. The proposed enhancement of this site will expand the services opportunities available and increase the average visit duration. No existing NPS use estimates are available for this site.
- Capacity and use figures are either not available or are not relevant to this discussion for the Newhalem visitor contact station, Hozomeen water system, or Colonial Creek electric distribution cable. These items are therefore not included in Table 3-2.

The new facilities proposed in the recreation plan are intended to provide new recreation opportunities in currently unused locations or to provide more formal facilities for current informal uses at some sites. In the former case, there are generally no existing-use data for the site or comparable sites on which to base capacity requirements. Capacity and use figures for new facilities that would serve existing uses are based on the best current-use estimates available. Specific explanatory notes for these facilities are provided below.

- PAOT capacity for the environmental learning center was negotiated with the NPS and the NCI, which will operate the facility. Annual estimated capacity is based on an assumed 9-month operation season. The City has not discussed projected use levels with NCI.

- The four trails proposed in the recreation plan are not included in Table 3-2, primarily because there are no agency data on which to base capacity and use estimates. Adequate parking capacity already exists or will be provided at trailheads.
- Capacity and use estimates for the Black Peak overlook were developed in proportion to corresponding figures for the Washington Pass overlook, which has room for 40 cars and receives 60,000 visits per year. The Black Peak site is assumed to attract 25 percent as many viewers but has over 50 percent as much parking capacity because the Washington Pass lot is often full.
- The Rocky Creek site will serve a portion of the river floaters who put in at Marblemount and SR 20 travelers who stop to use the overlook. The nominal capacity of the boat-in picnic facilities (24) is the same as for Damnation Creek and is based on the number of picnic tables, although larger groups would be able to fit in the picnic shelter. Parking capacity for the trail and overlook should be adequate for an attraction of this scale.
- USFS permittee data indicate that the lower Sauk and Suiattle rivers each currently receive about 400 nonmotorized boating visits per year. These figures have been conservatively increased by 50 percent to account for noncommercial boating use. The lower Sauk and Suiattle access sites will be sized to easily accommodate this use. The lower Sauk site will be larger because it serves boaters using both rivers.

4.0 SKAGIT PROJECT AESTHETICS (VISUAL QUALITY) MITIGATION PLAN

This section of the Settlement Agreement sets forth the actions to be taken by the City to mitigate visual quality impacts of the Project over the new license period. Together, these actions constitute the Skagit Project's Aesthetics (Visual Quality) Mitigation Plan; this part 4 of the Settlement Agreement is generally referred to as the Skagit Project Visual Quality Mitigation Plan.

This plan is based on studies conducted by the City and reported in its submittal to FERC in response to an additional information request (SCL 1989) and the more recent Report on Aesthetics—Visual Quality Mitigation Analysis (SCL 1991b).

Each element of the Visual Quality Mitigation Plan is discussed in Section 4.2. Section 4.2.1 covers Project facilities improvements; Section 4.2.2 describes landscaping measures for the two townsites—Newhalem and Diablo. Measures to improve the visual quality of the transmission line rights-of-ways (ROW's) are covered in Section 4.2.3. Erosion control measures to mitigate Project impacts are summarized in Section 4.2.4; this issue is the subject of a separate settlement agreement between the City and the National Park Service.

Sections 4.3 contains the plan's implementation schedule and the estimated cost of the plan elements.

Many Project-related visual impacts can be mitigated by improvements to existing Project facilities. The plan includes the following environmentally sensible and economically feasible measures to mitigate high and moderate visual impacts. Where appropriate, the City shall use native plants when landscaping the townsites, rights-of-way, erosion, and wildlife plantings or other landscaping.

4.2.1.1 Ross Lake Water Levels

The City shall address the visual impacts of Ross Lake drawdowns by filling the reservoir as early as possible after April 15 and keeping it full through the Labor Day weekend consistent with other resource management constraints. The City's obligation is defined in Section 2.11 of this Settlement Agreement.

4.2.1.2 Transmission Towers

The Project transmission line towers shall be painted a less visually contrasting color selected in consultation with the interested intervenors. This action shall occur in the course of the City's routine maintenance schedule for the Project, as indicated in Table 4-3 (Section 4.3.2). In some locations, safety constraints may override visual quality considerations in the selection of color.

4.2.1.3 Surge Tanks

The two surge tanks above the Diablo and Gorge powerhouses shall be painted a less visually contrasting color in the course of the City's routine maintenance schedule for the Project.

4.2.1.4 Gorge Dam Access Bridge

The structural steel bridge on the Gorge Dam access road bridge shall be painted a less visually contrasting color in the course of the City's routine maintenance schedule for the Project.

4.2.1.5 Ross Dam Broome Gate Shed

The Ross Dam Broome Gate Shed shall be redesigned or modified to decrease its contrast in the course of the City's routine maintenance schedule for the Project.

4.2.1.6 Diablo Person Lift Removal

The Diablo person lift shall be removed within the first ten years of the new license.

4.2.1.7 Exterior Lighting

High angle cut-off shielding shall be provided for all exterior lighting and/or the mercury or low-intensity sodium exterior lamps shall be replaced with high-intensity sodium lamps at the three powerhouses to the extent consistent with safe Project operations.

4.2.1.8 Townsite Building Roofs and Siding

Shiny, high contrast or reflective galvanized or aluminum roofing/siding on buildings in Newhalem and Diablo shall be replaced with more visually compatible material in the course of the City's routine maintenance schedule for the Project.

4.2.1.9 General Maintenance Activities

The City spends substantial effort to maintain safe and clean Project environs. In the course of routine Project maintenance, the City shall not increase the contrast of existing Project facilities. In order to facilitate a prevention of a decline in Project visual quality, the City shall consult with the NPS prior to conducting maintenance activities on existing Project facilities in the RLNRA which may significantly alter their external appearance. Significant alteration may occur, for example, by repainting of a bridge across the Skagit River or by residing of a building that is visible to the general public.

Similarly, the City shall consult with the NPS prior to construction of new Project facilities regarding the color and contrast of the publicly visible surfaces.

The City has agreed to improve the visual quality of Newhalem and Diablo towns. The City's basic obligation is to decrease the contrast and views of Project facilities by means of vegetation screening, primarily from State Route 20 (SR 20). The Parties recognize that a number of people come to the towns specifically to see Project facilities, such as the historic Diablo and Gorge Powerhouses. Therefore, the following landscaping plans also provide for improvements to areas used by visitors to the Project who do not expect to find an unaltered landscape.

Each of the following landscape plans is designed to balance the needs for efficient Project operations with the visual quality objectives. As final engineering plans for the sites are prepared, the City shall consult with the Intervenors to ensure that the visual quality objectives are met while the City's goal of efficient use of Project resources is also met.

All townsite landscaping shall be in compliance with the Historic Resources Mitigation and Management Plan and the Cultural Landscape Inventory and Assessment.

4.2.2.1 Town of Newhalem—Engineering Row

This site is located at the western end of the town of Newhalem, south of and adjacent to SR 20. The bridge to the Newhalem campground is just west of this site, and a local park with picnic facilities and tennis courts is immediately to the east.

Three small storage buildings stand on the present site with a modest gravel drive providing the main access to them. The three buildings will be removed from the site. Those portions of the site development that require the removal of the storage buildings will not occur until the City has in place suitable sites for them or replacement storage space.

Much of the area shall be revegetated with grasses, shrubs, and a mixture of deciduous and coniferous trees. The vegetation growing along the steep riverbank shall not be disturbed although vegetation at the top of the slope may be supplemented with other plantings. All plantings shall be native to the area. Trees and tall shrubs shall be planted no closer than 20 feet to SR 20; this restraint is a practical matter as winter snow plowing of the highway

often necessitates piling snow as far as 10 feet from the road. The state Department of Highways also wishes to keep deciduous trees back from the highway to prevent excessive leaf drop and to minimize patches of shade which cause visibility and surface icing problems.

A pedestrian walk presently leads from the Newhalem campground bridge, paralleling the top of the riverbank for a short distance before moving to the shoulder of SR 20 at the western edge of this site. From this point the walk parallels the highway going into town. To blend the character of this site with that of its surroundings, as well as to enhance its usability, a new paved barrier free path shall be constructed through the middle of the site and along the riverbank's edge before leading into the neighborhood park to the east.

Figure 4-1 is the preliminary Engineering Row site plan.

4.2.2.2 Town of Newhalem—Greenhouse

The site for a new greenhouse for the Project is on the north side of SR 20, directly across from Engineering Row. The site is presently used primarily as a llama farm although some City storage facilities and a large gravel lot also exist on-site. The City will replace the storage facilities at another location prior to commencement of construction of the greenhouse site. Storage replacement will be accomplished outside the scope of this agreement. The NPS has facilities to the west of the site, and the City maintains a sandblasting facility for powerhouse equipment behind the site to the northwest. Access to both of these facilities must be maintained through the greenhouse site. The north end of the site is bordered by steep rocky bluffs, the base of 6,000-foot Mt. Ross. On the east, the toe of the mountain comes closet to the highway, making this end of the site quite narrow. The RV parking area (Section 4.2.2.3) is a few hundred feet further east.

This site is large enough to accommodate the increasing need for propagated native plants in the area, demands that the present greenhouse facility is much too old and outdated to effectively meet. This new facility is an integral part of various other program measures (townsite plantings, rights of way plantings, erosion control, wildlife plantings).

The details of the greenhouse facilities are covered in the Wildlife Plan, adopted by the Settlement Agreement on Wildlife. Allocated to this plan are those portions of the greenhouse site development along the highway—the screening and publicly visible landscaping portions of the site. Figure 4-2 is a preliminary design for the greenhouse site; the visual quality mitigation plan funded portions are indicated on this site plan.

4.2.2.3 Town of Newhalem—RV Parking Area

This site is a gravel lot located on the north side of SR 20, within the town of Newhalem. Directly across the highway from the lot is the City's public information facility and restrooms. The gravel lot is presently used for parking by visitors to the area, particularly by those parking oversize vehicles such as RV's or trailers. A small building, currently housing City offices but scheduled to be the town's county branch library, is directly east of the gravelled area. The site is at the center of visitor activity in Newhalem; it is highly visible from SR 20 and other parts of Newhalem. The northern edge of the site is defined by a steep rocky bluff, the base of 6,000-foot Mt. Ross. As there are no other provisions for large vehicle parking within the town of Newhalem, which has the last store for 60+ miles east along SR 20, this gravelled site will continue to be used for trailer and RV parking. The lot shall be paved and marked to indicate traffic circulation, and as a safety measure, access to SR 20 shall be limited by a one-way loop system within the parking area. To visually enhance the area, the parking lot shall be divided into several planting islands for trees and shrubs, and the border with SR 20 shall be clearly delineated.

Because the site is underneath Project transmission lines, any vegetation proposed for this area must grow no higher than approximately 25 feet. Another limiting factor in the visual design of this site is the need to accommodate heavy snow removal along SR 20. Typically, snow is dumped into piles as much as 20 feet away from the road's fogline. Trees planted any closer to the road will interfere with snow plowing operations, and small plants along the shoulder will likely not survive the heavy snow piles. Throughout the site, planting shall be restricted to shrubs, groundcover, and small trees (20 feet to 25 feet in height). All plantings shall be at least 10 feet away from the fogline of SR 20.

Figure 4-3 is a preliminary site plan.

4.2.2.4 Town of Newhalem—Switchyard and Ladder Creek Falls Trail Parking Area

This area, located at the eastern end of Newhalem and across the river from Gorge powerhouse, is comprised mainly of two gravelled sites visible from SR 20. Both gravel lots are used primarily for parking: one, located by the highway in front of the maintenance yard for the powerhouse, is used by employees at the maintenance facility, and the other is at the top of the Skagit River's bank across from the powerhouse and is often used by visitors touring both the powerhouse and Ladder Creek Falls trail.

The City recognizes the need to provide adequate parking for employees. The high fence that currently surrounds the maintenance facility shall be extended and brought about 30 to 40 feet closer to SR 20 on the north side of the maintenance yard, providing enough additional room within the boundaries of the fence for about 30 cars. Between the state highway and this high fence, plantings of deciduous and coniferous trees and shrubs shall be established, and the ground surface shall be treated to support grasses and other groundcovers. These plantings will not only screen the maintenance facility and warehouses from SR 20; the height of the trees and variety of shrubs will also provide a more natural setting for the state highway traveler.

The gravel lot across the river from the powerhouse shall be paved and marked to provide a parking area that is more organized. The rest of the level area at the top of the bank shall then be re-established and developed as an overlook and information area; vegetation and groundcovers will enhance this viewpoint. The enhancement of this tourist area may in turn encourage further development for visitor activities in the future, including a possible pedestrian connection around the river side of the switchyard to the existing Trail of the Cedars, which is part of the Newhalem Project, FERC No. 2705. Other actions that will be taken in this area of the town include screening a large metal warehouse at the southwest corner of the maintenance facility with trees and shrubs and revegetating the roadside edges of an access road paralleling the river directly south of the maintenance yard.

Figure 4-4 is the preliminary site plan for the main switchyard and trail parking area.

4.2.2.5 Town of Diablo—Diablo Visitor Center

There are two visual concerns about and around the town of Diablo. One is the high visibility of the Diablo powerhouse and surge tank by westbound traffic on SR 20, which looks down onto the town as it descends the opposite hill; the other is the gravel parking area that serves the Diablo Visitor Center and its organized tours of the Project. The surge tank is addressed in Section 4.2.1.3.

Views of Diablo powerhouse shall be softened and partially screened from the highway by planting trees and shrubs on the facility's east side. Trees with low-growing branches will be preferred, as they will provide more effective screening. Growing height of the trees chosen will also be a factor since this area has overhead transmission lines.

The gravel lot that services the tourist facility extends from the building sidewalk to the shoreline of Gorge Lake. The town's small sewage treatment facility is immediately adjacent to this gravel lot, and vehicular access to the powerhouse switchyard is provided through the loosely organized parking area. Some mature trees, mostly maple and sycamore, grow in planting islands at the eastern end of the gravel parking area.

The area used for parking shall be marked to define circulation patterns and better preserve small areas as planting islands. The shoreline area shall be set aside for public use and reclaimed with vegetative growth, both to improve sights of the shoreline from the water and to create a more pleasing viewpoint that looks out over Gorge Lake. Some RV and bus parking slots shall be provided for the tour facility, but the majority of the stalls will be for cars. The planting islands will support trees compatible with surrounding native species and will be further enhanced with indigenous understory growth in the form of small trees, shrubs and groundcover. Existing maintenance facilities, located on the southern edge of the present parking area, shall be screened from public view with trees and shrubs.

The preliminary site plan is Figure 4-5.

4.2.3.1 Introduction

A study conducted for the City by Compliance Services International (CSI) led to a report entitled, "Transmission Rights-of-Way Vegetation Management Plan" (SCL, 1990). With some modifications the City is using the visual quality analysis portion that report as the basis for the maintenance of Project rights-of-way (ROW) for visual quality purposes. This Section 4.2.3 of the Agreement, together with the appurtenant figures, constitutes and may be referred to as the Project Rights of Way Vegetation Management Plan.

The rights of way vegetation management plan outlines two major actions by the City. First, prescriptions for management of the rights of way are described. These prescription include both the physical actions to be taken and the species of plants to be encouraged or allowed to grow. Second, seven visual quality problem areas have been identified in the Ross Lake National Recreation Area for more intensive treatment. The prescriptions shall be applied in to these areas in a more aggressive manner; instead of letting the vegetation grow into the prescribed configuration, efforts shall be undertaken to speed up the recovery of these areas.

The City is not able to apply the prescriptions universally to Project rights of way. Most of the rights of way are not owned by the City in fee but are held as easements. The City is able to prescribe what the landowner may not grow under the transmission lines for safety reasons (as required by state law) but is not able to order what the landowner must grow. The City is able to control vegetation management completely on the few fee owned portions of the rights of way, and through the FERC licensing process, obtain a similar ability for those portions of the rights of way on federal land.

Most federally owned land under Project rights of way is in the Ross Lake National Recreation Area with a small amount in the Mt. Baker-Snoqualmie National Forest. In addition, the ROW crosses the Skagit Wild and Scenic River corridor twice (the Skagit River at RM 74 and the Sauk River at RM 6) and the lower reach of Diobsud Creek, a USFS recommended Recreation River at the crossing site.

4.2.3.2 Prescriptions

A range of vegetation management prescriptions have been developed that shall be used to reduce the visual impacts of Project rights of way. The prescriptions, Types A through F, are described in detail in Figures 4-6 through 4-15. The planting key for the prescriptions is Table 4-1. The mitigation prescriptions shall be applied individually or combined as necessary to address the unique circumstances of each site. The City may change the prescription applicable to specific ROW sites based on experience, changed safety guidelines, or changes in property ownership. The City shall consult with the appropriate intervenors prior to implementation of changes in the applied prescriptions.

4.2.3.3 Application of Prescriptions—Seven Target Areas

The selection of the seven target areas in the RLNRA was based upon the visibility of the transmission line features and its likely adverse impact to viewers traveling SR 20. The target site selection process is explained in detail in SCL 1990. Of primary concern is the visual compatibility of the transmission features with the surrounding natural landscape.

The seven target areas are:

- Bacon Creek (including portions of the ROW on USFS lands visible from Highway 20)
- Pinkie's/Damnation Creek
- Thornton Creek
- Goodell Creek
- Gorge Dam Viewpoint
- Diablo "Y"
- Diablo Overlook

Figure 4-16 is a map showing the seven target areas in relation to the Project area. Figures 4-17 through 23 indicate the prescriptions to be applied to each area. Prescription Modified Type B is the default (Figure 4-8); where no other prescription is specifically applicable, it shall be used. The City shall complete the additional application of the identified prescriptions to these areas in the first five years of the new license period. After license year five, the City shall continue to apply the prescriptions in the normal course of ROW vegetation management.

4.2.3.4 Application of Prescriptions—Remainder of Rights of Way

The City shall apply the prescriptions described in Figures 4-6 through 4-15 to the remainder of the Project rights of way as appropriate and possible. These rights of way are mapped in the City's application for a new Project license in Exhibit K, Sheets T-12A through T-46A (SCL, 1978).

A. SCL Fee Owned Portions of Rights-of-Way

In the minority of areas of the rights of way where the City owns the property in fee, an analysis of the visibility of the transmission line from public places was used to determine the appropriate prescription. The City's fee owned parcels of ROW are listed together with the applicable prescription in Table 4-2. This plan does not affect the City's right to acquire or sell interests in ROW property necessary for Project operations.

B. SCL Non-fee Owned Portions of Rights-of-Way

All other areas between Mile 0 and Mile 71 not owned in fee by SCL and not covered above also have normal maintenance with Modified Type B. However, the landowner(s) may remove more vegetation than the prescription recommends; the City has no control over such actions.

C. Bacon Creek Crossing to Ross Powerhouse

Most of the right-of-way fee title in this section is held by the United States and managed by the National Park Service; the City's rights are governed by its license from the FERC.

All rights of way outside the seven target areas, covered in Section 4.2.3.3 above, between Bacon Creek Crossing at Mile 71 and Ross powerhouse shall receive normal maintenance, which entails managing vegetation to conform to the greatest extent possible with the natural character of the landscape, where vegetation will not pose a hazard to workers or impact transmission lines. Normal maintenance shall be accomplished by the application of the prescription Modified Type B.

Table 4-1 goes here.

Table 4-2 goes here.

4.2.3.5 Distribution Rights-of-Way

The City's Skagit Project contains two distribution lines in addition to the transmission lines from Ross powerhouse to Bothell substation. One supplies power to Ross powerhouse from Diablo powerhouse, and the other supplies power to Gorge Dam from Gorge powerhouse. These two distribution lines present relatively minor visual quality problems.

SCL shall manage the Skagit project distribution rights-of-way with the same degree of visual quality sensitivity as the transmission rights-of-way. Both shall be allowed to regrow native vegetation to the greatest extent possible consistent with safety and access.

The City shall limit use of herbicides on its rights of way consistent with the Settlement Agreement Concerning Wildlife, incorporating the Wildlife Habitat Protection and Management Plan. Prior to pesticide use within the Ross Lake National Recreation Area, the City shall consult with the NPS and obtain permits where required.

Several plan elements contained in the Erosion Control Plan simultaneously mitigate visual quality impacts. These measures are designed to minimize the visual impacts of erosion control by using naturally occurring materials (local earth, rock, timber, and vegetation) that blend with the surrounding site conditions. Erosion control planned at 72 erosion sites includes both passive and active measures. Passive measures include monitoring of erosion rates and processes at sites where the severity of erosion is complicated by several environmental factors, or where disturbance is undesirable. Active measures are limited because of the wilderness setting of much of the Project area, which precludes use of large amounts of concrete, chemically treated lumber, or visually obtrusive structures.

The City's specific obligations with regard to erosion control are in a separate Settlement Agreement on Erosion Control.

The City shall consult with the appropriate intervenors on a regular basis. No less than annually, the City shall notify the affected land management agency Parties of the rights of way activities scheduled for the following year.

Table 4-3 shows the City's planned implementation schedule and estimated costs, in 1990 dollars, for the visual quality mitigation plan elements. Both the timing and costs are estimates and are subject to change by the City as circumstances and project scheduling require.

Table 4-3 goes here.

5.0 REFERENCES

- NPS (National Park Service). 1989. Environmental Assessment, North Cascades Visitor Center, Environmental Learning Center, and Ross Lake/Happy Flats Overlook. U.S. Department of the Interior, National Park Service, North Cascades National Park Service Complex, Sedro Woolley, Washington. May 5, 1989.
- NPS (National Park Service). 1988c. Construction cost for FY 1991: class "C" estimating only. U.S. Department of the Interior, National Park Service, Denver Service Center, Branch of Estimating. Denver, Colorado. October 1988.
- Means, R.S. 1989. Means site work cost data, 1990. Ninth annual edition. Kingston, Massachusetts.
- SCL (Seattle City Light). 1991a. Report on Recreation Resources: submitted to the FERC in response to a request for supplemental environmental information, FERC no 553. Seattle, Washington. April 1991.
- SCL (Seattle City Light). 1991b. Report on Aesthetics—Visual Quality Mitigation Analysis, submitted to the FERC in response to a request for supplemental environmental information, FERC no 553. Seattle, Washington. April 1991.
- SCL (Seattle City Light). 1990. Transmission Rights of Way Vegetation Management Plan. Prepared for Seattle City Light by Compliance Services International, Seattle, Washington, February, 1990
- SCL (Seattle City Light). 1989. Skagit River Project: submitted to the FERC in response to a request for supplemental environmental information, FERC no 553. Seattle, Washington. October 31, 1989.
- SCL (Seattle City Light). 1978. Application for a new license, Skagit River Project. Project 553-Washington, Volumes I and II. City of Seattle, City Light Department, Revised December 1, 1978.
- USFS (Forest Service). 1989. Land and resource management plan, Okanogan National Forest. U.S. Department of Agriculture, Forest Service, Pacific Northwest Region, Portland, Oregon.

6.0 SIGNATURES

IN WITNESS WHEREOF, the City has caused this Settlement Agreement to be executed by its Superintendent of Light pursuant to Ordinance No. 106741 and the Intervenors have executed same pursuant to applicable legal authority.

Respectfully submitted.

Dated: April _____, 1991

THE CITY OF SEATTLE

By: _____

Randall W. Hardy
Superintendent of City Light

Address for Notice:

Seattle City Light
1015 Third Avenue
Seattle, WA 98104

Dated: April _____, 1991

U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: _____

John Earnst
Superintendent

Address for Notice:

North Cascades Park Service Complex
Pacific Northwest Region, National Park Service
U.S. Department of the Interior
North Cascades National Park Service Complex
2105 Highway 20
Sedro Woolley, WA 98284

Dated: April _____, 1991

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By: _____

John F. Butruille
Regional Forester, Pacific Northwest Region

Address for Notice:

Sam Nagel
U. S. Forest Service
21905 64th Avenue West
Montlake Terrace, WA 98043

Dated: April _____, 1991

NORTH CASCADES CONSERVATION COUNCIL

By: _____

David Fluharty
President

Address for Notice:

NCCC
P.O. Box 45098
University Station
Seattle, WA 98145

APPENDIX A

Memorandum of Agreement North Cascades Environmental Learning Center

MOA cover

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

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MEMORANDUM OF AGREEMENT NORTH CASCADES ENVIRONMENTAL LEARNING CENTER

This Memorandum of Agreement (Memorandum of Agreement) is entered into this 24th day of April, 1991, by and between the City of Seattle, Department of Lighting (City), the United States Department of the Interior, National Park Service, by and through the Superintendent of the North Cascades National Park Service Complex (NPS), North Cascades Institute (NCI), a non-profit corporation organized under the laws of the State of Washington, and the North Cascades Conservation Council (NCCC). Together, these four entities are referred to herein as the "Parties."

ARTICLE I. BACKGROUND AND OBJECTIVES

WHEREAS, the North Cascades National Park Service Complex was established in 1968 "In order to preserve for the benefit, use, and inspiration of present and future generations certain majestic mountain scenery, snowfields, glaciers, alpine meadows and other unique natural features in the North Cascade Mountains" (*North Cascades Act, Oct. 2, 1968, 82 Stat. 926*); and

WHEREAS, The City of Seattle owns and operates the Skagit River Hydroelectric Project No. 553 (Project) that is largely located within the Ross Lake National Recreation Area (RLNRA) of the North Cascades National Park Service Complex; and

WHEREAS, the Federal Power Act (16 U.S.C. § 803(a)) authorizes and requires hydroelectric project licensees to provide for recreational and other public beneficial use of project facilities; and

WHEREAS, the City is required to submit to the Federal Energy Regulatory Commission (FERC) a proposed recreation plan as part of the proceedings for the issuance of a new license for the Project by the FERC; and

WHEREAS, the City and the NPS have entered into a Settlement Agreement including a proposed recreation plan for the Project, which plan provides for them to join with the NCI in a memorandum of agreement to institute an environmental learning center in the Project area; and

WHEREAS, North Cascades Institute was created for the specific purpose of providing programs of public education in conservation, natural science and history and related fields of study, in order to foster and enhance understanding and appreciation of the North Cascades environment; and

WHEREAS, NCI is distinctly qualified, experienced, and willing to coordinate, develop and administer such programs;

NOW THEREFORE, in order to develop and operate a North Cascades Environmental Learning Center (NCELC) for the purposes of educating the public about the North Cascades bioregion and its natural and human history and resources consistent with applicable law, the three parties agree as follows:

ARTICLE II. RELATIONSHIP TO SETTLEMENT AGREEMENT ON RECREATION AND AESTHETICS

Implementation of this Agreement is contingent on the full implementation of the Settlement Agreement on Recreation and Aesthetics between the City and the NPS, the North Cascades Conservation Council (NCCC), the United States Department of Agriculture, Forest Service (USFS), and the three Skagit System Cooperative Tribes dated April 24, 1991 as an article in a renewed license for the Project. This Agreement is referred to and incorporated by reference in that Settlement Agreement. Similarly, for purposes of implementing this Agreement, the relevant provisions of that Settlement Agreement are referred to and adopted by this reference, and included as Appendix A. Particular reference is made to the sections of the Settlement Agreement regarding 1) effective date and duration (Section 2.3), 2) monetary figures (Sections 2.5 and 3.2.3), 3) dispute resolution (Section 2.10), and 4) modification (Sections 2.8, 2.9, and 3.2.5). In the event of conflicts between this Agreement and the Settlement Agreement or recreation plan, the terms of this Memorandum of Agreement shall govern.

Notwithstanding the provisions of the Settlement Agreement, with regard to the involvement of NCI as the operator of the NCELCLC, provision is made for periodic reviews of NCI's compliance with this Memorandum of Agreement. See Article VIII. Such reviews will be in addition to the annual meeting of the NCELCLC Oversight Committee (Article III, Section 4). In consideration of the substantial effort and expenditures to be made by NCI in carrying out this Memorandum of Agreement, NCI's involvement shall not be involuntarily terminated except in good faith and for good cause as provided in Article VIII.

(a) Effective Date

This Memorandum of Agreement shall be effective upon the date of the last signature hereto.

(b) Duration

This Memorandum of Agreement, together with any subsequent modifications, shall remain in effect for the term of the new FERC license period for the Project, which includes the term(s) of any annual license(s) that may be issued after the foregoing new license has expired. This includes ongoing operation and maintenance expenses that shall continue to be funded for the duration of this Memorandum of Agreement.

(c) Termination

This Memorandum of Agreement may not be terminated unless by mutual consent of all Parties, in writing, signed by each Party hereto.

The following documents are attached as appendices to this Memorandum of Agreement and are incorporated herein by this reference:

- Appendix A. Relevant Portions of Settlement Agreement on Recreation and Aesthetics (Sections 2.5.1, 2.5.2, 2.10, and 3.5.2.1, Figures 3-11 and 3-12, and part of Table 3-2)
- Appendix B. NCI By-laws
- Appendix C. Maps of NPS Lands, Preferred and Alternative Sites
- Appendix D. NCELC Preferred Site Plan
- Appendix E. Description of Facilities to be Constructed by City
- Appendix F. Maintenance Responsibilities

ARTICLE III. STATEMENT AND SCOPE OF WORK

SECTION 1. NORTH CASCADES NATIONAL PARK (NPS) INVOLVEMENT

Substantial NPS involvement is anticipated by the Parties during the performance of the activities authorized under this Memorandum of Agreement. The Superintendent of North Cascades National Park Service Complex (Superintendent) will be responsible for the implementation of this Memorandum of Agreement for the NPS. NPS involvement shall include but is not limited to the following:

(a) Liberal Interpretation

NPS shall interpret this Memorandum of Agreement liberally, to further the educational and interpretive purposes for which it is executed. NPS shall take all actions necessary and reasonable consistent with this Memorandum of Agreement, including actions in the course of the relicensing and implementation of a new FERC license for the Project.

(b) Provision of Services

NPS shall provide the following services in support of the NCELC:

- Utilities as provided in Article IV, Section 4.
- Law enforcement.
- Technical assistance as provided in Section 5.

(c) Oversight Committee

NPS shall participate in the NCELC Oversight Committee established under Section 4.

(d) Compliance with Laws

In all circumstances where it has jurisdiction, NPS shall ensure compliance with statutory and regulatory requirements.

(e) Fundraising

NPS encourages the efforts of NCI to raise funds and seek donations in order to support the NCELC and to further the implementation of this Memorandum of Agreement. To the extent consistent with law and policy, NPS may assist the fund-raising efforts of NCI.

(f) Personnel

NPS will provide personnel, subject to availability of staff and funds, to assist with implementation of NCELC programs and to help program participants recognize the joint cooperative efforts of the City, NCI, and NPS.

(g) Public Relations

All printed and promotional material for NCELC programs provided by the NPS shall recognize NCI as the operator and the City as a cooperator in providing funding and other support to the NCELC.

(h) Educational Purposes

It is the intent of the NPS that all land, buildings, and utility systems covered by this Memorandum of Agreement be dedicated to educational purposes for the duration of the new Project license period.

The City is committed herein to substantial involvement during the implementation of this agreement and the FERC license for the Skagit Project. The official responsible for the implementation of this Agreement is the Superintendent of Seattle City Light.

(a) Liberal Interpretation

The City shall interpret this Memorandum of Agreement liberally, to further the educational and interpretive purposes for which it is executed. The City shall take all actions necessary and reasonable consistent with this Memorandum of Agreement, including actions in the course of the relicensing and implementation of its new FERC license for the Project.

(b) Support for NCELC

The City shall provide the following in support of the NCELC:

- Construction of buildings and partial furnishing of them as provided in Article IV, Sections 2 and 3;

- Partial utilities support as provided in Article IV, Section 4;
- Partial maintenance support as provided in Article IV, Section 5; and
- Other support as provided in this section.

(c) Oversight Committee

The City shall participate in the NCELC Oversight Committee established under Section 4.

(d) Funding

The City shall fund NCELC programs by transferring money to North Cascades Institute, through the NCELC Oversight Committee, Section 4. The procedures for payment of these obligations shall be governed by Sections 2.5 and 3.2 of the Settlement Agreement. The City's obligations to support the NCELC monetarily are included in the Settlement Agreement (see Appendix A), and are summarized as follows:

- The sum of \$100,000 shall be paid to NCI for startup costs. This sum shall be payable in two payments of equal value in the first two years of the new license period;
- The sum of \$600,000 shall be paid and dedicated to wildlife education programs at the NCELC. This sum shall be payable in equal annual installments over the thirty-year term of the FERC license;
- The sum of \$10,000 per year shall be paid for the first ten years of full NCELC operation to subsidize the NCELC's vehicle expenses. The Oversight Committee may request support beyond that period; and
- The sum of \$4,150,000 shall be paid for general NCELC program and operations by NCI. This sum shall be payable in annual installments of \$25,000 in the first two years, \$100,000 in the third through ninth years, and the balance, a lump sum payment of \$3,400,000, in the tenth year. The lump sum payment will be used to establish an endowment for the NCELC; the procedural terms and provisions of the NCELC Endowment shall be set out in a supplement to this Memorandum of Agreement to be executed by the City, NPS and NCI (or the operator at the time of execution) prior to the end of the ninth year. Funds will be made available for programs and operations from the the foregoing moneys as determined by the NCELC Oversight Committee.

All payments by the City shall be indexed for inflation pursuant to Section 2.5.1 of the Settlement Agreement and are included in Appendix A.

(e) Fundraising

The City shall assist in fundraising activities on behalf of NCELC facilities, programs, and activities through the City's ongoing activities.

(f) Public Relations

All printed and promotional material for NCELC programs produced by the City shall recognize NCI as the operator and the NPS as a cooperator in providing support to the NCELC.

(g) Educational Purposes

It is the intent of the City that all buildings and utility systems covered by this Memorandum of Agreement be dedicated to educational purposes for the duration of the new Project license period.

(a) The parties to this agreement recognize and agree that, notwithstanding NCI involvement in programs at the NCELC, and in cooperation with NPS and the City, NCI shall retain its identity as an autonomous, nonprofit corporation during the performance of programs and activities authorized by this Memorandum of Agreement.

(b) Activities and operations of NCI conducted apart from the NCELC shall remain under the full control of NCI and are not subject to the terms and conditions of this Memorandum of Agreement.

(c) NCI, under the direction of the NCI Board of Directors and professional staff, shall, during the term of this Memorandum of Agreement, develop, maintain, and administer an environmental education program at the NCELC. The NCI shall operate pursuant to its bylaws, attached as Appendix B. NCI shall notify the City and NPS in writing whenever changes in the bylaws are considered or approved, including a copy of approved changes.

(d) During the term of this Memorandum of Agreement NCI shall have authority and responsibility to undertake and conduct a program of interpretive and educational activities, which may include but are not limited to: residential youth programs, environmental education programs for educational institutions, outreach programs, wilderness trips, seminars and conferences, teacher training and internship programs in environmental education. NCI may, as available, provide NCELC facilities for seminars and conferences relating to environmental studies and conservation, and develop, sponsor, administer, and coordinate other appropriate community service activities and programs. NCI will, as available and when not in conflict with other programs, provide NCELC facilities for City and NPS seminars and conferences on a for cost basis.

(e) NCI shall select and provide all personnel necessary for the operation of the NCELC program and facilities.

(f) NCI shall take all reasonable steps to see that the conduct of its employees is consistent with NCI personnel policies and standards and the enjoyment and protection of visitors to the NCELC.

(g) All printed and promotional material for NCI programs at the NCELC shall recognize NPS and the City as cooperators in providing funding and other support to the NCELC.

(h) NCI shall offer in its programs a wide variety of interpretive and educational activities with both popular and specialized appeal to different ethnic, age, cultural, and educational groups.

(i) The activities and management of the NCELC shall be as prescribed in these Articles and in the Bylaws of NCI.

(j) Beyond the City's basic support, NCI shall coordinate the activities of the Oversight and Advisory Committees (Sections 5 and 6).

SECTION 4. NORTH CASCADES CONSERVATION COUNCIL INVOLVEMENT

(a) NCCC shall participate in the work of the Advisory Committee and shall become a member of the Oversight Committee as provided in Article VIII.

SECTION 5. NCELC GOVERNANCE: OVERSIGHT COMMITTEE

(a) An NCELC Oversight Committee shall be established to implement this Memorandum of Agreement and to ensure that the provisions of this Memorandum of Agreement are being followed. The City shall provide staff support to the operator in support of the annual meetings provided for in subsection (g) below.

(b) The Oversight Committee shall consist of three members. One voting member each shall be appointed by the NPS, NCI and the City, provided that if NCI is removed as the operator of the NCELC pursuant to the Article VIII termination process, the NCCC Advisory Committee member (Section 5) shall take the place of the NCI Oversight Committee member.

(c) The Oversight Committee shall have authority to conduct public relations and fund raising programs at the request of NCI in order to promote educational activities sponsored by NCI at the NCELC or to otherwise further the purposes of this Agreement, provided that the Oversight Committee members representing the NPS and the City are not authorized to commit the NPS or the City beyond the terms of this Memorandum of Agreement unless otherwise agreed by the proper authority.

(d) The Oversight Committee shall, in cooperation with the NCI Board of Directors, review programs and curricula offered at the NCELC.

(e) The Oversight Committee shall, in cooperation with the NCI Board of Directors, review and approve the budget for NCELC operations and capital expenditures, as provided in Article V.

(f) The Oversight Committee shall be responsible for the management of the endowment to be established under Article III. Management of the endowment shall be subject to the fiduciary standards established under Washington state law at RCW Chapter 11.100.

(g) The Oversight Committee shall meet at least annually for the purposes put forth above. If the Oversight Committee meets only once in any year, that meeting should be in the fall in order to facilitate review of the annual budget and report (Article V). The annual fall meeting of the Oversight Committee shall be at the facility.

(h) At all meetings of the Oversight Committee decisions will be made by consensus agreement. The Oversight Committee will establish its procedures. All three voting members must be represented to conduct business. Dispute resolution shall initially be subject to procedures established by the Oversight Committee. Unresolved disputes may be referred by any Party to the process established by Section 2.10 of the Settlement Agreement on

Recreation and Aesthetics, provided that commencement of the time periods specified in Section 2.10.1 must be invoked in writing.

SECTION 6. ADVISORY COMMITTEE

(a) An Advisory Committee consisting of up to twelve members (membership optional) appointed one each by each intervenor in the Skagit River Hydroelectric Project No. 553 relicensing proceedings (excluding the NPS that is on the Oversight Committee), and the Washington State Superintendent of Public Instruction (Environmental Education Office) will be established. Parties choosing to be on the Advisory Committee will give the name and address of their designated contact persons to the Oversight Committee.

(b) Advisory Committee members shall be notified of Oversight Committee meetings and actions taken. The Advisory Committee will make recommendations to the Oversight Committee regarding programs and operations at the NCELC.

SECTION 7. TECHNICAL ASSISTANCE

(a) Upon request by NCI staff, NPS and the City agree, subject to the availability of personnel and funds, to provide technical and other assistance to NCI staff and programs in support of this Memorandum of Agreement.

(b) Upon request by NCI staff, and subject to availability of personnel and equipment, the NPS agrees to provide appropriate staff and equipment to assist NCI in meeting needs arising out of programs conducted or sponsored by NCI under this Memorandum of Agreement.

(c) Upon request by NCI staff, subject to availability of personnel and equipment and at the discretion of the City, the City shall provide staff and equipment to assist NCI in meeting needs arising out of programs conducted or sponsored by NCI under this Memorandum of Agreement.

ARTICLE IV. FACILITIES, UTILITIES AND MAINTENANCE

SECTION 1. UNITED STATES LANDS--FERC LICENSE

Should the preferred site become available pursuant to Section 3.5.2.1 of the Settlement Agreement, the NPS, retaining right of entry, shall assign for use by the NCELC and NCI, during the term of this Memorandum of Agreement, the parcels of land described in Appendix C, Map 1, for the conduct of the operations authorized in this Memorandum of Agreement. Should the learning center be constructed at the alternative site—adjacent to the NPS visitor center near the Newhalem Campground—the NPS, retaining right of entry, shall assign for use by the NCELC and NCI, during the term of this Memorandum of Agreement, the parcels of land generally described in Appendix C, Map 2, for the conduct of the operations authorized in this Memorandum of Agreement. The Superintendent of the NPS reserves the right to withdraw such assignments or parts thereof at any time during the term of this Agreement if, in his reasonable judgement, such withdrawal is necessary for the purpose of protecting visitors or area resources.

SECTION 2. BUILDINGS—CONSTRUCTION AND LEASE

- (a) The NCELC site plan for the preferred site is Appendix D. The facilities shall be constructed to the standards set forth in Appendix E. The building standards, site plan, and schedule shall be developed by the City under the direction of the Oversight Committee and in consultation with the Advisory Committee.
- (b) Nothing herein shall be deemed to create in NCI or any of its cooperators any right or title to the buildings or structures made available for their use by the City or NPS under this Memorandum of Agreement beyond the rights set forth in this Memorandum of Agreement.
- (c) The City shall lease the NCELC facilities to NCI with terms consistent with this Memorandum of Agreement. The consideration shall be one dollar per year rental and the services provided by NCI required by this Memorandum of Agreement, and the term of the lease shall be the length of the new license for the Project with provision for periodic review by the Oversight Committee as set forth in Article VIII, Section 3, and subject to termination under the conditions set forth in Article VIII, Section 1. The lease shall be reviewed and approved by the Oversight Committee.
- (d) NCI shall have an interest in any improvements added to the NCELC site and facilities during the term of this Memorandum of Agreement in accordance with Section 6 of this Article.

SECTION 3. FURNISHINGS

The City shall make available the sum of \$200,000 to NCI to purchase furnishings and equipment for use at the NCELC. This sum shall be payable during the final construction phase of the project. Title to furnishings purchased with these monies shall remain with the City.

SECTION 4. UTILITIES

- (a) NPS shall be responsible for the construction, operation and maintenance of water and sewer systems for the NCELC. The City will pay for the connections of the water and sewer mains to the individual structures as part of the site construction.
- (b) The City shall provide electric power distribution facilities to the NCELC site and individual buildings as designed and will provide electric power to the NCELC at no cost up to a capped amount of electricity based upon reasonable operation of the initially constructed facilities, which amount shall be determined by the Oversight Committee during final design of the project.
- (c) NCI shall be responsible for paying for all telephone service to the site. At the preferred site the City will maintain the telephone lines to the site.
- (d) Garbage disposal shall be the joint responsibility of NCI, NPS, and the City. At the preferred site NCI will be responsible for transporting all garbage to either NPS or City dumpsters at Diablo Dam or Colonial Creek

Campground. NCI shall maintain recycling and composting programs at the site to minimize the amount of disposable garbage produced. NCI shall be responsible for removing all recyclables from the site unless the NPS or the City make other provisions for such removal.

SECTION 5. MAINTENANCE

(a) The City shall maintain and repair all its leased physical facilities used in the operation of the NCELC, including maintenance of assigned lands and structures, with the total cost capped at \$500,000 over the length of the license for the Project. This obligation is independent of the City's independent, self-insured obligation to replace or repair facilities substantially damaged or destroyed by casualty. The City's maintenance obligations are defined in Appendix F. The maintenance work by the City will be made available to the NCELC on an equal annual basis starting in the year following completion of the buildings, provided that unexpended amounts may be carried forward from year to year, and that unexpended funds will be indexed for inflation annually pursuant to Section 2.5 of the Settlement Agreement. Maintenance needs not covered by these funds will be completed by NCI out of the endowment fund established in Section 2(d), under the guidance of the Oversight Committee. In order to maintain a high standard of physical appearance, operations, repair, and maintenance, periodic inspections shall be carried out jointly by NCI, NPS and the City but no less than annually.

(b) NCI shall be responsible for all housekeeping, groundskeeping and minor maintenance activities. NCI's maintenance responsibilities are defined in Appendix F.

(c) NPS shall maintain the access road to the NCELC from the City facilities (boat house) near the north end of Diablo dam (preferred site).

(d) The City shall keep the access road to the NCELC open through the winter, as personnel and equipment availability allow (preferred site).

SECTION 6. NCI PROPERTY

(a) "NCI improvements" as used herein shall apply to all buildings and structures constructed by NCI for the purposes of this Agreement, as well as improvements to such buildings paid for by NCI. Such buildings, structures and improvements shall not be considered to be a part of the land, but shall be regarded and treated as the personal property of NCI. At the time of this Memorandum of Agreement there are no NCI improvements at either NCELC site or in the RLNRA. To qualify as a NCI improvement, said facility shall be constructed by NCI with funds other than those provided to the NCELC by the City and constructed upon or affixed to lands assigned to NCI with the prior written approval of NPS. NCI shall have legal title in NCI improvements. Ownership of the new improvements shall not be transferred without the approval of the NPS. NCI agrees and hereby grants to the NPS a right of first refusal, and the City a right of second refusal to acquire any or all major NCI improvements whether this agreement is still in effect or not; the intent of this sentence is to preserve the integrity of the facilities. Exercise of the City's second right shall not be subject to further NPS approval. If NPS or the City chooses to exercise its right, the value of the NCI improvements and full and just compensation to be paid for said improvements shall be determined as the fair market value of said NCI improvements. If this right is not exercised, and if the NPS determines that some other use consistent with NCELC objectives can be found for NCI improvements, NPS may

authorize the sale of the NCI improvements to another party for the purpose of fulfilling that use with concurrence by the City.

(b) Any personal property that NCI purchases for use at the NCELC, including furnishing and equipment in excess of the \$200,000 provided by the City, will remain the personal property of NCI. NCI will maintain an inventory of personal property at the NCELC belonging to the City and to the NCI and other parties.

ARTICLE V. REPORTS, MONITORING AND OVERSIGHT

SECTION 1. ACCOUNTING

NCI shall maintain an accounting system whereby its accounts can be readily identified. NCI shall no later than January 31 of each year of the term of this Memorandum of Agreement submit to the Oversight Committee a financial statement for the preceding year. NCI shall submit a proposed budget for the next year to the NCELCO Oversight Committee no less than sixty days before the annual fall meeting. The financial statements may be audited or otherwise verified by an independent individual or agency at the discretion of the NCELCO Oversight Committee. After the creation of the endowment under Article III, Section 2(d), the Oversight Committee shall provide for an independent annual audit of its assets and expenditures. For purposes of this Agreement, an audit by the NPS or the City may be considered an independent audit.

SECTION 2. ANNUAL REPORT

(a) No later than January 31 of each year, NCI shall present an annual report of NCELCO programs and activities for the preceding calendar year to the NCELCO Oversight Committee. The report shall include but need not be limited to the following:

- statement of purpose
- statement of goals and objectives for previous fiscal year, together with an analysis of how well they were met
- statement of goals and objectives for the current fiscal year
- description of programs
- description and condition of facility
- met and unmet maintenance needs of the facility
- schedule of progress and accomplishments
- staffing
- sources of support
- inventory of personal property and equipment.

(b) Upon receipt of the annual report, the members of the Oversight Committee will notify NCI within thirty (30) days of any elements that are perceived as compliance problems under this Memorandum of Agreement. NCI will then schedule meetings with the Oversight Committee to identify and discuss solutions to the perceived problems.

ARTICLE VI. INSURANCE AND INDEMNITY

SECTION 1. LIABILITY INSURANCE

NCI shall purchase and maintain during the period it operates the NCELCO comprehensive general liability insurance against claims occasioned by actions or omissions of NCI in carrying out the programs and operations authorized hereunder. Such insurance shall be in amounts commensurate with the degree of risk and the scope and size of activities authorized herein, but in any event not less than one million dollars (\$1,000,000) per person and three

million dollars(\$3,000,000) per occurrence for bodily injury, and five hundred thousand (\$500,000) per occurrence for property damage. The City shall be named an additional insured under this policy. The level of insurance coverage required to be carried by NCI under this section may be adjusted by the Oversight Committee on an annual basis to maintain the level of risk protection.

SECTION 2. LOSS COVERAGE

(a) It is understood by the Parties that the City and NPS are self-insured for losses to capital facilities owned by the City and NPS. In the event that there is a loss due to fire, flood or other calamity to the facilities leased to NCI for the NCELC, the City shall repair or replace them at its earliest convenience, provided that should the loss have been occasioned by the gross negligence or malfeasance of NCI, or its agents, employees, or representatives, or due to the failure by NCI to properly supervise NCELC program attendees, such loss may be considered a breach of this Memorandum of Agreement by the City and the terms of Article VII may be invoked to remove NCI from its position as operator of the NCELC.

(b) NCI shall insure itself as it sees fit for losses to NCI improvements and personal property.

(c) For vehicles provided by the City and operated by NCI, NCI will obtain: Comprehensive Automobile Liability, Uninsured Motorist coverages, and Statutory “No-Fault” coverages, as required by the State of Washington. The City shall be named as an additional insured under these policies.

(d) NCI will maintain for all employees: Statutory Workers' Compensation as required by the State of Washington; Employer's Liability coverage; and Voluntary Compensation endorsement. NCI will also maintain personal injury insurance for its employees authorized to operate the NCELC's motor vehicles.

ARTICLE VII. HEALTH, SAFETY AND SECURITY

(a) NCI shall provide for the safety of its employees, cooperators, and the general public in their use of any facilities assigned to NCI under this Memorandum of Agreement. NCI shall take such steps as are necessary to provide a safe and healthful work environment for its employees, cooperators, program participants, and the general public.

(b) NCI, NPS and the City shall participate in a regular program of fire and safety inspections covering all facilities and programs authorized under this Memorandum of Agreement. All facilities shall be inspected on an annual basis. Provision and maintenance of fire safety equipment shall comply with National Fire Protection Association Standards and shall be the responsibility of the City.

(c) NCI shall provide and maintain adequate first aid equipment and qualified personnel to serve the basic first aid needs of NCI employees and program participants in NCELC facilities.

(d) NCI, NPS, and the City shall take immediate steps to correct health, safety and sanitation infractions called to their attention by any Federal, State, or local inspection officials when such infractions, in the opinion of the inspecting official, pose an immediate threat to the health and/or safety of persons or property. NCI shall

immediately report all accidents involving personal injury other than minor first aid or property damage and fires occurring within the NCELC to the Oversight Committee.

(e) NCI, NPS and the City shall jointly be responsible for the security of the buildings assigned under this Memorandum of Agreement and property contained therein during the normal operating season. Discovery of any break-in or other criminal act shall be immediately reported to the Oversight Committee. During the winter season when the NCELC is not occupied or otherwise being used for programs, security shall be the responsibility of the City and NPS.

(j) NPS, in cooperation with the Whatcom County Sheriffs Department, shall provide appropriate levels of day-to-day routine law enforcement, investigative services and traffic control and shall undertake to enforce all applicable laws and regulations pertaining to the conduct of persons at activities conducted by NCI. NPS will provide adequate law enforcement, traffic control and other necessary visitor services required by program activities produced within the NCELC.

ARTICLE VIII. TERMINATION, CHANGE IN OPERATING STRUCTURE

SECTION 1. TERMINATION

(a) This article may be invoked by a vote of the Oversight Committee. For all actions under this Article, the NCCC shall replace NCI as the third member of the Oversight Committee.

(b) The Parties expect that any deficiencies by NCI in conforming to this Memorandum of Agreement will be corrected whenever practicable and is aware that NCI will incur substantial expenses in performing its obligations under this Memorandum of Agreement in anticipation that the Memorandum of Agreement will not be terminated prior to the end of the new FERC license term for the Project.

(c) NCI may be terminated as operator of the NCELC for reasonable cause by the Oversight Committee. Reasonable cause for termination is considered to be:

- identified deficiencies in the performance of activities and operations under this Memorandum of Agreement; or
- failure on the part of NCI to carry out the terms of this Memorandum of Agreement in an appropriate manner consistent with the goals and purposes of the Settlement Agreement; and
- failure of NCI to remedy identified deficiencies to the satisfaction of the Oversight Committee when given written notice and a reasonable amount of time to correct the situation.

SECTION 2. CONTINUATION OF SERVICES

(a) To avoid interruption of services to the public upon the expiration or termination of this contract, NCI, upon direction of the Oversight Committee, and as directed by the NCI Board of Directors, shall continue to conduct

operations authorized under this agreement to allow the Oversight Committee a reasonable period of time to select a successor. This obligation may be waived by the Oversight Committee if NCI is terminated for cause under Section 1.

(b) In the event of termination of NCI as the operator of the NCELC, the Oversight Committee (NPS, SCL, and NCCC) will select a new operator. Upon selection the new operator will become NCI's assignee under this Memorandum of Agreement, or a new memorandum of agreement will be negotiated.

(c) Upon termination of the NCI as operator, NCI agrees to vacate the NCELC facilities within ninety (90) days and to remove all NCI improvements and personal property.

(d) Upon termination of this Memorandum of Agreement all NPS property assigned to NCI shall be returned to NPS, less ordinary wear and tear.

(e) Upon termination of this Memorandum of Agreement all City property leased or assigned to NCI shall be returned to the City, less ordinary wear and tear.

SECTION 3. PERIODIC REVIEW

At the end of five years of NCELC occupation of the facilities or in year ten of the license whichever occurs first, the Oversight Committee, with NCCC replacing the NCI as Oversight Committee member, shall conduct a review of NCI's tenure as operator of the NCELC. The Oversight Committee shall review the five years of operation and determine if the NCI should continue as the operator of the NCELC. The decision of the Oversight Committee shall be issued in writing and will be supported by analysis of the NCI's accomplishments and compliance with the terms of this Memorandum of Agreement during the period reviewed. If the Oversight Committee determines that NCI should be terminated as the operator of the NCELC, this article is invoked. Similar reviews shall be conducted five, twelve, and nineteen years after the first review and during the last year of the term of the license for the Project; the last review shall result in a document to be used in helping the Parties determine the future of the NCELC at that time.

ARTICLE IX. MISCELLANEOUS PROVISIONS

SECTION I. USE OF AREA

This Memorandum of Agreement is entered into by NCI with the knowledge that the natural, historic and recreational qualities of the North Cascades National Park Service Complex are to be preserved. NCI shall not use any premises or any of the rights or privileges herein provided for, except to the extent necessary for the purposes of this Memorandum of Agreement.

SECTION 2. NONPROFIT STATUS

During the term of this Memorandum of Agreement NCI must retain its nonprofit status pursuant to the General Nonprofit Corporation Laws of the State of Washington. Intentional or negligent permanent loss of this status shall be cause for termination of this Memorandum of Agreement.

SECTION 3. CONSULTATION

NCI, NPS, and the City through their representatives on the Oversight Committee shall maintain close liaison with each other and shall consult regularly on all matters pertaining to activities authorized or required under this Memorandum of Agreement.

SECTION 4. TAXES

Any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the activities of NCI shall be paid by NCI. Any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the activities or properties owned by the City shall be paid by the City.

SECTION 5. NATURAL AND CULTURAL RESOURCES CLEARANCE

No Party may undertake any ground-disturbing activities, such as gardening, landscaping, utility trenching, without advance written approval for such activity from the Superintendent of the North Cascades National Park Service Complex. NCI shall consult with NPS regarding any NCELC activities that might affect the wildlife, water quality, soils, vegetation, or other natural or cultural resources at the NCELC.

SECTION 6. ACCESSIBILITY

All public structures shall, to the greatest extent possible, comply with the Architectural Barriers Act of 1968, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. If it is intended that the facilities be open for public use and if major construction work is undertaken, then such work must be performed in compliance with accessibility standards. If the location or intended use of a facility or portion of the facility precludes its use by disabled persons, the Superintendent of the North Cascades National Park Service Complex may waive this provision.

SECTION 7. TELEVISION, RADIO, PUBLISHING, AND RECORDING RIGHTS

NCI retains the right to contract for, produce itself, or assign the rights to radio broadcasting, televising, recording, publishing, or any other kinds of reproduction of whatsoever nature relating to both the history and method of NCI's own existence and growth, and to any of the programs produced by it or any of the groups participating in its activities, subject to the consent of those groups and subject to NCI's compliance with all rules and regulations with respect to filming on NPS lands including and obtaining permits therefore whenever applicable. NCI will retain copyright to any and all materials produced by NCI during the course of this Memorandum of Agreement.

SECTION 8. NONDISCRIMINATION

NCI shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Section 503 of the Rehabilitation Act of September 26, 1973, P.L. 93-112, which requires affirmative action to employ and to advance in employment qualified disabled individuals, and with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and in providing facilities and services to the public, and shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

SECTION 9. OFFICIALS NOT TO BENEFIT

No member or delegate to Congress or resident Commissioner shall be admitted to any share or part of this Memorandum of Agreement or to any benefit that may rise therefrom, but this provision shall not be construed to extend to this Memorandum of Agreement if made with a corporation for its general benefit.

SECTION 10. DISPUTE RESOLUTION

Dispute resolution shall be governed by the procedures of Section 2.10 of the Settlement Agreement which is included in Appendix A. Unanimous decisions of the Oversight Committee under Section 2.10.1 or at the policy review level under Section 2.10.2 shall bind all Parties to the dispute resolution process, and in the case of termination proceedings under Article VIII, shall bind NCI as well.

SECTION 11. FUNDING

No legal liability on the part of the NPS shall arise for any performance under this Memorandum of Agreement or any subsequent agreements between the Parties until funds are made available from funds appropriated by Congress for that purpose.

SECTION 12. AMENDMENT OF MEMORANDUM OF AGREEMENT

No waiver, modification, or amendment of this Memorandum of Agreement shall be valid unless in writing duly executed by each Party. Amendment to this Memorandum of Agreement may be proposed by any Party and shall become effective only upon being executed by each Party hereto.

SECTION 13. SEVERABILITY

If any provisions of this Memorandum of Agreement or its application to any person or any circumstances shall be invalid and unenforceable, the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

ARTICLE X. SIGNATURES

IN WITNESS WHEREOF, the City has caused this Settlement Agreement to be executed by its Superintendent of Light pursuant to Ordinance No. 106741 and the Intervenors have executed same pursuant to applicable legal authority.

Respectfully submitted.

Dated: April _____, 1991

THE CITY OF SEATTLE

By: _____

Randall W. Hardy
Superintendent of City Light

Address for Notice:

Seattle City Light
1015 Third Avenue
Seattle, WA 98104

Dated: April _____, 1991

U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: _____

John Earnst
Superintendent

Address for Notice:

North Cascades Park Service Complex
Pacific Northwest Region, National Park Service
U.S. Department of the Interior
North Cascades National Park Service Complex
2105 Highway 20
Sedro Woolley, WA 98284

Dated: April _____, 1991

NORTH CASCADES CONSERVATION COUNCIL

By: _____

David Fluharty
President

Address for Notice:

NCCC
P.O. Box 95980
University Station
Seattle, WA 98145

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX A

**Relevant Portions of Settlement Agreement
on Recreation and Aesthetics**

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX A

**Relevant Portions of Settlement Agreement
on Recreation and Aesthetics
(Sections 2.5.1, 2.5.2, 2.10, and 3.5.2.1,
Figures 3-12, 3-13, 3-14, and part of Table 3-2)**

2.5.1 Adjustments For Inflation/Deflation

All dollar amounts listed in this Agreement are defined as 1990 dollars and shall be adjusted annually for inflation or deflation by using the revised Consumer Price Index ("CPI-U") for All Urban Consumers as published by the United States Department of Labor for the Seattle metropolitan area. The indices used shall be those published for the last half of 1990 and, for subsequent years, the last half of the calendar year preceding that in which a payment or expenditure is to be made. Indexing of items in this Agreement shall continue until the year of actual payment unless otherwise provided in this Agreement. The percentage of change from the earlier index to the later index shall be multiplied by the amount specified in this Agreement and the result added to or subtracted from that amount to arrive at the total payment or expenditure. Should the CPI-U index not be available, the Parties agree to negotiate another statistical basis for determining annual changes in the City's monetary commitments.

2.5.2 Time Basis For Payments and Obligations

Payments and obligations by the City for this Agreement will be made and met on a license-year basis. License years are based on the date of the FERC order issuing a new license for the Project; however, unless specifically provided otherwise in the plan, the City's monetary obligations do not become payable until the license becomes effective (see Section 2.3.1). The City will make project specific moneys due in license year one available at the time they are needed as soon as possible after the license becomes effective. In subsequent license years, the City will make payments to the Intervenor for the implementation of specific Recreation Plan projects at the time they are needed. Moneys required to be paid to or on behalf of the Intervenor for non-project specific purposes will be paid on the last day of each license year. If the license is issued and accepted during a season critical for implementation, it may be impossible to implement a particular program element that year. Therefore, the Parties agree that implementation of such elements may not occur until the license year following its stated schedule in the Plan. Agreed upon rescheduling of projects solely as a result of seasonal considerations shall not be considered a license compliance violation.

2.10 DISPUTE RESOLUTION

2.10.1 Technical Level Review

Any dispute among the Parties concerning compliance with this Settlement Agreement shall first be referred to technical representatives of the contact persons identified in Section 2.7. The technical representatives will meet as soon as possible after written notification of a dispute by any Party. A quorum for meetings of the technical representatives to discuss disputes shall consist of the City and the Party(s) having a financial, administrative or other interest in the subject matter. Decisions of the technical representatives must be unanimous. In the event that the technical representatives cannot resolve the dispute within ninety (90) days after first meeting on said dispute, the City will give notice of such failure to all Parties. For purposes of implementation of the Memorandum of Agreement (MOA) between the City, NPS, and the North Cascades Institute under Section 3.5.2.1 (North Cascades Environmental Learning Center), the technical level review shall be conducted by the Oversight Committee created pursuant to Article III, Section 5 of the MOA, which is Appendix A to this Agreement.

2.10.2 Policy Level Review

The Parties may, at their option prior to elevating an issue to the FERC, convene an in-person or telephone conference of the policy-level representatives, identified in Section 2.7, after notice of the failure of the technical level representatives. Any Party through its designated contact (persons identified in Section 2.7 or their designated technical representative) may invoke the optional policy level review by contacting the other Parties' designated contacts and arranging a suitable conference. For purposes of decisionmaking, a quorum shall consist of the physical or telephonic presence of all representatives who desire to participate. Decisions by unanimous consent shall bind all Parties. The policy level representatives may by unanimous consent agree to binding arbitration or mediation subject to rules as they determine appropriate. In the event that the policy representatives cannot resolve the dispute within fifteen (15) days, the matter may be taken to the next level.

2.10.3 FERC Review

In the event that disputes are not resolved at the technical level review or the optional policy level review, any Party may refer the matter to the FERC for resolution pursuant to the FERC's Rules of Practice and Procedure. Should any hearings be held at this stage, they shall be held in Seattle, Portland, or elsewhere in the Pacific Northwest unless another location is agreed upon by the Parties or mandated by FERC order upon a finding of special circumstances.

2.10.4 Noncompliance

Notwithstanding any other provision of this Agreement, any Party may seek relief arising solely from non-compliance with this Agreement by any Party.

3.5.2.1 North Cascades Environmental Learning Center

Purpose and Intent

An environmental learning center is the centerpiece of the City's proposed recreation plan. The NPS and North Cascades Conservation Council (NCCC) strongly desire such a facility. The City agrees that an environmental learning center can provide vital support to a management philosophy for the North Cascades as an ecosystem. The City also accepts this action as appropriate to increasing the depth and breadth of public appreciation for the North Cascades ecosystem. The City shall therefore fund the initial development of a North Cascades Environmental Learning Center (NCELC) and contribute to its long-term operation and maintenance as indicated in this section and on Table 3-2.

The North Cascades Institute (NCI), an established regional environmental education institution, has agreed to initially operate the learning center and provide its program structure. The City, the NPS and the NCI have entered into a memorandum of agreement (MOA) regarding the construction, operation and management of the NCELC. The MOA is included as Appendix A to this Agreement and incorporated by reference. In any instance where there is a conflict between the provisions of the MOA and this Agreement, the MOA shall govern. A summary of the basic relationships between the three parties as set forth in the MOA is found in Appendix G of the MOA.

Under the procedures established in the MOA, the City shall acquire rights to and prepare the preferred or alternative site and construct new facilities as specified in this Agreement and the MOA. As federal lands, possession of the preferred or alternative site will be granted to the NCELC operator under the terms of the new FERC license for the Project. The City shall lease the facilities, which will be owned by the City, to the operator in consideration of the operator's obligations under the MOA.

Diablo Lake Site

The preferred learning center site is on the north shore of Diablo Lake. The location is relatively secluded and private, being situated across the lake from SR 20, but it does have road access. The existing road crosses Sourdough Creek, which borders the site to the west. Although steep foothills prevent development of much of the area, the selected site is relatively flat along its shoreline. The site was created over time as part of an alluvial fan by the creek's seasonal turbulence. The site, facing south-southwest, rises gently into a wooded hillside. The Diablo Lake site is indicated in Figure 3-12.

The site, originally developed as a temporary work camp during construction of Ross dam and powerhouse, is currently being used as a resort. Although the land is now owned by NPS, the buildings still standing are owned by the resort operator, Diablo Resort, Inc., which also holds a contractual right to occupy the site until 1998. Most of the buildings are resident cabins, left over from work-camp days, but a newer restaurant in operating condition stands on the eastern portion of the site. Existing facilities on-site include water, sewer, and power utilities. The City uses an existing road through the site to access a boathouse, located on the eastern edge of the site, as well as facilities at Buster Brown cove further east.

The City will use good faith efforts to obtain clear title to the preferred site by purchase of the concession contract and resort assets from the current owner.

Newhalem Campground Site

In the event that the City is not able to obtain rights to the Diablo Lake site, the City will construct environmental learning center facilities comparable to those set forth in this Appendix E of this Agreement at the alternative site adjacent to the NPS visitor center, near the Newhalem Creek Campground. The Newhalem Creek site is indicated in Figure 3-13.

The Newhalem Creek Campground site is located on a bench about eighty feet in elevation above the Skagit River. It is located on the south shore of the river, about 1000 feet west of the town of Newhalem. The site is adjacent to the site selected for construction of a new visitor center for the North Cascades National Park Service Complex. Construction of that facility is scheduled to commence in 1991. In conjunction with visitor center construction, access improvements and utilities will be put in place which can be extended to the learning center site. The siting of the learning center at this location was analyzed by the NPS in a 1989 environmental assessment. (NPS, 1989).

Facility Development and Operation

A residential learning facility is proposed that will offer programs on many aspects of the natural environment. The initial capacity of the NCELC will be 40 students plus 12 faculty and staff. The facility will be designed so that it can be expanded to accommodate 60 students and 18 faculty and staff. There are no existing facilities in the North Cascades region that can accommodate this type of learning center. This proposed use will provide a valuable educational resource for the area.

Under the direction of the Oversight Committee created pursuant to Article III, Section 5 of the MOA and in consultation with the Parties, the City will provide the following facilities:

- dormitories capable of housing students, faculty and staff in a variety of gender ratios;
- one main service building with classrooms, library, laboratory, and offices;
- a cafeteria;
- a covered shelter;
- an outdoor amphitheater;
- grassy recreation area;
- outdoor "rooms" for small learning groups;
- adequate parking;
- staff housing;
- a central exhibit area; and
- trails.

A tentative site plan for the NCELC preferred site is provided as Figure 3-14. Preliminary evaluation of the existing facilities on that site indicates that most of the existing buildings will have to be replaced. The restaurant is the newest building and will remain and be used as a cafeteria and meeting rooms, library, or similar uses. The existing utilities will continue to serve the site. The facility will be developed to best take advantage of the site's features and views, including relocation of the existing overhead utility poles and lines to the back (north) edge of the site. The central area of the site will remain open to accommodate views across the water, thus emphasizing the natural, outdoor landscape as the central focus for this development. The surrounding wooded hillsides will provide numerous opportunities for trails and observation areas, and the lake will be easily accessible for purposes of various shoreline and lacustrine life studies.

The alternative site has similar siting benefits (NPS, 1989).

All public facilities and one of the staff residences will be handicapped-accessible. Environmental conservation practices such as on-site recycling facilities will be included in NCELC facilities design and operation at either site. This and similar programs may serve a double purpose: not only would they provide opportunities for education and research, but they would illustrate the possibilities for development that integrate and balance basic everyday human needs with those of the natural environment. Educational seminars, covering a broad variety of topics, generally will last from one day to several weeks. The programs will be directed toward many different age groups, including seniors.

NPS will maintain water and sewer facilities. The USFS, the State Superintendent of Public Instruction's Environmental Education Office, and the Skagit System Cooperative Tribes will be invited to serve in an advisory capacity to the learning center. Details on site and facility management responsibilities are included in the MOA. Further details on the construction of each NCELC site are also included in the MOA.

The City shall provide the following operation and maintenance services:

- electricity service up to an amount to be determined in the design phase by the Oversight Committee, based on the facility as designed, at no cost;
- maintenance of the NCELC physical plant up to \$500,000 over the life of the facility (scheduled in equal annual increments from completion of construction through the new license period, exclusive of routine janitorial and gardening services for which the operator is responsible, and further exclusive of losses due to calamities as described in Article VI, Section 2 of the MOA);
- program startup costs, after the issuance of the new Project license, \$100,000 (scheduled in two equal payments in years 1 and 2), to be allocated by the Oversight Committee;
- ongoing NCELC program and staffing costs up to \$4,150,000 over the course of the license (scheduled to start in year 1, with annual payments of \$25,000 in years one and two, \$100,000 in years three through 9, and a lump sum endowment payment of \$3,400,000 in year 10), to be allocated by the Oversight Committee;
- wildlife education funding at \$600,000 over the term of the license (scheduled in equal annual payments starting in year 1), to be allocated by the Oversight Committee;
- furnishings up to \$200,000, to be allocated by the Oversight Committee;
- vehicles—the City shall provide three fifteen person vans, or the equivalent, from the first full year of NCELC operations through the term of the license by lease or purchase and will maintain them or pay for their maintenance;
- vehicle operation—the City will support the operation of the vehicles by making capped payments of \$10,000 per year for the first ten years of full NCELC operation (the operator shall be responsible for all other costs of operation, including gas, oil and insurance), and, if necessary, the Oversight Committee may request support beyond that period; and

- continuation of utility, vehicle, and maintenance support into the period of annual licenses after the term of the new license, to be allocated by the Oversight Committee, at the levels existing at the end of the regular license period.

The City will begin preparations for construction of the learning center facilities as soon as a new Project license is issued and accepted. The City estimates that it will take three to five years to have the site and facilities completed. The City will use its best efforts to have the facility in an operable condition by the third June of the new license period, with funding availability not to be a limiting factor.

Figures 3-12, 3-13, and 3-14 are in Appendices C and D of this MOA

placeholder for Table 3-2, part.

**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX B

NORTH CASCADES INSTITUTE

BYLAWS

(Revised April 6, 1990)

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX B

NORTH CASCADES INSTITUTE

**BYLAWS
(Revised April 6, 1990)**

ARTICLE I. NAME

The name of the organization shall be NORTH CASCADES INSTITUTE.

ARTICLE II. PURPOSE

Section 1. The corporation has been organized to operate exclusively for educational, scientific, artistic, literary, and charitable purposes, within the meaning of section 501(c)(3) of the Internal Revenue code.

Section 2. The mission of the organization is to increase understanding and appreciation of the rich natural, historical, and cultural legacy of the North Cascades region. Our goal is to provide leadership and excellence in wilderness, outdoor, and environmental education; to help people learn about, appreciate, and ultimately care for the land and all its inhabitants. The Institute believes in an engaged and empowered public, one which speaks responsibly for the land, its creatures, and the people, of this special place.

Section 3. This mission will be met through North Cascades Institute offering a series of educational programs in natural and human history, environmental education, and artistic expression. Courses may include, but are not limited to; seminars and workshops, family nature programs, backpacking field studies, school programs, research, publications, and symposia on selected topics.

ARTICLE III. LOCATION

Section 1. The activities of this organization shall focus on the North Cascades region which for these purposes shall include those areas dominated by the northern Cascade Mountains and stretching from Puget Sound and the San Juan Archipelago east to the Columbia Basin.

Section 2. The principal office of the corporation, at which the general business of the corporation will be transacted and where the records of the corporation will be kept, will be at such place in the state of Washington, as may be fixed from time to time by the Board of Directors. Unless otherwise fixed, it will be at: 2105 Highway 20, Sedro Woolley, WA 98284.

ARTICLE IV. MEMBERSHIP

Members of the corporation will consist only of the members of the Board of Directors.

ARTICLE V. BOARD OF DIRECTORS

Section 1. Directors will share the mission and goals of the corporation.

Section 2. The number of members of the Board of Directors will not be less than 5 or more than 19. Directors will be elected by a 2/3 majority vote of the current directors.

Section 3. Whenever the membership of the Board of Directors is below 19, the Board may nominate and elect director(s) to serve on the Board.

Section 4. Any director may be removed from the Board of Directors by a 2/3 majority vote of the Board at an official meeting of the corporation. The director involved will be given all opportunity to be present and heard at the meeting at which his/her removal is considered.

Section 5. No compensation will be paid to any member of the Board of Directors for services as a member of the Board. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor. By resolution of the Board, reasonable expenses may be allowed for attendance at regular and special meetings of the Board.

ARTICLE VI. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. An annual meeting of the Board of Directors will be held in November of each year for the purpose of electing officers. The Board of Directors will hold regular quarterly meetings at such place and time as may be designated in the notice of the meeting. Notification of such meetings shall occur at least 14 days prior to such meetings.

Section 2. Special meetings of the Board of Directors may be called at any time by agreement of at least three members of the Board. Notification of all such meetings will occur at least three days prior to the day such a meeting is to be held. All reasonable attempts must be made to notify all Board Members of such a meeting.

Section 3. At all meetings of the Board of Directors, each director present will be entitled to cast one vote on any motion coming before the meeting. The presence of a majority of the membership will constitute a quorum at any meeting. At a meeting at which there is a quorum present, a 2/3 majority affirmative vote of the directors present is required to pass a motion before the Board. Proxy voting will not be permitted.

Section 4. Routine business of the Institute may be conducted through mail or telephone polls of the Board, provided that, should any Board member request, the poll will be terminated, and a meeting of the Board will be held.

Section 5. Robert's Rules of Order will be the authority for all questions of procedure at any meetings of the corporation.

ARTICLE VII. OFFICERS

Section 1. The officers of this corporation will be a chair, vice-chair, treasurer, secretary, and such other officers with duties as the Board prescribes.

Section 2. The officers of the corporation will be elected annually by a majority vote of the members of the Board at its annual meeting. Each officer will serve a one year term. Officers may serve more than one consecutive term. Any officer may be removed by the Board of Directors by a 2/3 majority vote of the members of the Board.

Section 3. Duties of officers are as follows: The chair shall preside over meetings of the Board; the vice-chair shall serve in the chair's absence; the treasurer shall chair the finance committee and provide financial oversight; the secretary shall keep the minutes of all meetings. Other duties for all officers may be assigned as needed by the Board.

ARTICLE VIII. EXECUTIVE DIRECTOR

The Board of Directors shall employ an Executive Director to carry out the mission and programs of the Institute. Duties and responsibilities of the Executive Director shall include: development and management of all programs; development and management of the budget; hiring and supervision of staff; and other duties as required by the Board of Directors.

ARTICLE IX. COMMITTEES

Section 1. Standing committees of the Board of Directors will include 1) an Executive Committee, whose members will include all officers and the Executive Director; and 2) a Finance Committee which shall be chaired by the treasurer.

Section 2. The Board of Directors may designate other committees as needed. Committee members may be members of the Board of Directors or other interested individuals. Committees may adopt such rules for the conduct of business as are appropriate, and are not inconsistent with these bylaws, the articles of incorporation, or state law.

ARTICLE X. ADVISORY COUNCIL

There shall be an Advisory Council appointed by the Board of Directors to assist the Board and Staff as needed.

ARTICLE XI. FINANCIAL MATTERS

Section 1. The corporation will keep correct and complete books and records of account and will also keep minutes of the proceedings of the Board of Directors, and committees having any of the authority of the Board of Directors. It will keep at the principal office a record giving the names and addresses of the members entitled to vote. All books and records of the corporation may be inspected by any member for any proper purpose at any reasonable time.

Section 2. The fiscal year of the corporation will be January 1 through December 31. All checks, drafts, and other orders for payment of funds will be signed by such officers or such other persons as the Board of Directors may from time to time designate.

ARTICLE XII. NON-DISCRIMINATION

North Cascades Institute is committed to a policy of non- discrimination. Employees, Board members, and program participants will not be discriminated against on any basis, including but not limited to: sex, age, color, religion, race, national origin, physical handicap, or sexual orientation.

ARTICLE XIII. AMENDMENTS

The Board of Directors may amend these bylaws to include or omit any provision that it could lawfully include or omit at the time the amendment is made. Upon written notice of at least 14 days, any number of amendments or an entire revision of the bylaws may be submitted and voted upon at a single meeting of the Board of Directors and will be adopted at such meeting upon receiving a 2/3 vote of the members of the Board of Directors.

ARTICLE XIV. LIABILITY

The corporation will have the power to indemnify and hold harmless any director, officer, or employee from any suit, damage, claim, judgement, or liability arising out of, or asserted to arise out of, conduct of such person in his or her capacity as a director, officer, or employee (except in cases involving willful misconduct). The corporation will have the power to purchase or procure insurance for such purposes.

ARTICLE XV. DISSOLUTION

Upon the dissolution of the corporation and after the payment or the provision for payment of all the liabilities of the corporation, the Board of Directors will dispose of all of the assets of the corporation exclusively for the purposes of the corporation or to organizations that are then qualified as tax-exempt organizations under section 501(c)(3) of the Internal Revenue code. Any assets not so disposed of will be disposed of by a court of jurisdiction in the country in which the principal office of the corporation is located.

ARTICLE XVI. RATIFICATION

These bylaws were ratified unanimously by a quorum of the Board of Directors present at a meeting held on April 6, 1990.

**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX C

Maps of NPS Lands, Preferred and Alternative Sites

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Figure 3-12. Diablo Lake Site Area Map

Figure 3-13. Newhalem Campground Site Area Map

**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX D

Preferred Site Plan

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Figure 3-14. Diablo Lake Site Plan

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**MEMORANDUM OF AGREEMENT
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APPENDIX E

Description of Facilities to be Provided by City

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX E

Description of Facilities to be Provided by City

The following is a preliminary outline of facilities to be constructed by the City on the learning center site. The governing standards for the facilities is included in Section 3.5.2.1 of the Settlement Agreement (see Appendix A). This description of the facilities is only one possible configuration which meets those standards. The City will provide the following facilities under the direction of the Oversight Committee created pursuant to Article III, Section 5 of this Memorandum of Agreement and in consultation with the Parties.

1. Two dormitories, each housing 22 to 26 people. The capacity and size of each dormitory shall be sufficient to:
 - accommodate unequal gender ratios in class groups up to 40;
 - provide single beds for each resident (no bunk beds);
 - accommodate adults as well as children;
 - provide adequate bathroom facilities for full occupancy;
 - provide sitting areas; and
 - allow for adequate supervision by one adult for each dormitory.

2. One central service building of approximately 4,000-square-foot building with:
 - classroom with seating for at least 40;
 - labs (wet and dry) with capacity for 20 each;
 - main office;
 - staff offices/workrooms;
 - exhibit space
 - bathrooms; and
 - storage.

3. Three staff duplexes, each with two bedrooms, two single beds each bedroom, except one or two units with double beds for families.

4. Laundry facilities, either attached to each dormitory or as a separate facility.

5. Each building should have porch or mudroom.

6. A cafeteria (the existing restaurant) with library in current bar.

7. All buildings with appropriate utilities and connections to service.

8. Ampitheater with seating for 78.
9. A covered outdoor shelter.
10. Bear proof recycling and compost area.
11. Docks (existing).
12. Parking area (upgrade existing).
13. Trails connecting facilities.

**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX F

Maintenance Responsibilities

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**MEMORANDUM OF AGREEMENT
NORTH CASCADES ENVIRONMENTAL LEARNING CENTER**

APPENDIX F

Maintenance Responsibilities

I. INTENT

This appendix defines the relative responsibilities of the City and the NCI regarding maintenance of the NCELC site and facilities. It is the intent of the Parties that the NCI will make its best efforts to undertake its responsibilities without excessive reliance on the City, and will utilize the City's resources in the most efficient manner possible. Disputes regarding interpretation of this appendix shall be brought to the Oversight Committee (Article III, Section 5) for resolution.

II. SCL RESPONSIBILITIES

Within the framework of Article IV, Section 5 of the Memorandum of Agreement, major maintenance, repair and site upkeep shall be the responsibility of the City. The City shall provide labor, materials, and supervision to adequately maintain the facility's structures to commonly accepted standards of structural soundness, safety and appearance. Included within the term structures are foundations, roofs, walls, windows, doors, and all other structural components, major electrical, heating and mechanical systems, and internal water and sewer components with connections to the systems on site (the NPS is responsible for sewer and water supply systems under Article IV, Section 4). The City shall be responsible for major groundskeeping activities involving any use of major machinery to move or repair the grounds and premises excepting the main access road which is the responsibility of the NPS under Article IV, Section 5. The City shall undertake the foregoing responsibilities in compliance with any applicable code, statute, ordinance or regulation.

III. NCI RESPONSIBILITIES

Minor maintenance, housekeeping, and groundskeeping shall be the responsibility of NCI. NCI shall keep the facilities and premises clean and sanitary; properly dispose of all trash and waste; properly use and operate all electrical, gas, heating, plumbing, cooking, dishwashing, clothes washing and drying and other fixtures and appliances. Minor maintenance, housekeeping, and groundskeeping includes the following tasks: cleaning the facilities, premises and outside areas, including scrubbing, sweeping, washing, trash removal, vacuuming, dusting, mopping, mowing and raking, weeding, care of existing plantings, and cleaning of appliances. The City will not be responsible for the cost of repairs to equipment caused by NCI's failure to comply with these obligations. The NCI will also be responsible for repair of small appliances, including, but not limited to, electric lights, leaky plumbing fixtures, and plumbing fixture blockages. In the event that such repair requires expertise beyond that of the NCI staff, the City shall assume responsibility for said repair.

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**MEMORANDUM OF AGREEMENT
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APPENDIX G

NCELC Structure (chart)

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APPENDIX B

FERC Additional Information Request

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ADDITIONAL INFORMATION REQUEST NO. 1 – RECREATION

Because considerable time has elapsed since the preparation of the recreation information included in your application, filed on September 29, 1977, the existing and proposed recreational uses, facilities, and needs may have changed. For the staff to analyze the potential for recreational impacts from construction and operation of the proposed project, you must provide a revised recreation plan that includes updated information and reaches the level of detail described in § 4.51 (f)(5).

- You should provide scaled map(s) (1 inch equals 50 to 100 feet) that clearly show the locations and dimensions of existing and proposed facilities and enhancements of the project site or off-site areas. A map should also show the locations of the existing and proposed facilities and enhancements in relation to the components of the proposed project.
- Describe how the proposed recreational facilities would be constructed of sufficient size to meet existing recreational demand.
- Describe how the size of the recreational facilities planned for future development would be determined based on anticipated demand.
- Indicate any facilities that would be constructed to assist in the access of handicapped individuals to the proposed recreational facilities.
- Provide comments from the National Park Service (NPS), the Forest Service (FS), and the North Cascades Conservation Council on your revised plan.

18 CFR, SECTION 4.51 (F)(5)

(5) Report on recreational resources

The report must discuss existing and proposed recreational facilities and opportunities at the project. The report must be prepared in consultation with local, state, and regional recreation agencies and planning commissions, the National Park Service, and any other state or Federal agency with managerial authority over any part of the project lands. Consultation must be documented by appending to the report a letter from each agency consulted indicating the nature, extent, and results of the consultation. [Note: FERC letter also includes "Provide comments from the National Park Service (NPS), the Forest Service (FS), and the North Cascades Conservation Council on your revised plan.] The report must contain:

- (i) A description of any existing recreational facilities at the project, indicating whether the facilities are available for public use;
- (ii) An estimate of existing and potential recreational use of the project area, in daytime and overnight visits;
- (iii) A description of any measures or facilities recommended by the agencies consulted for the purpose of creating, preserving, or enhancing recreational opportunities at the project and

in its vicinity (including opportunities for the handicapped), and for the purpose of ensuring the safety of the public in its use of project lands and waters;

(iv) A statement of the existing measures or facilities to be continued or maintained and the new measures or facilities proposed by the applicant for the purpose of creating, preserving, or enhancing recreational opportunities at the project and in its vicinity, and for the purpose of ensuring the safety of the public in its use of project lands and waters, including an explanation of why the applicant has rejected any measures or facilities recommended by an agency and described under paragraph (f)(5)(iii) of this section;

(v) The following materials and information regarding the measures and facilities identified under paragraphs (f)(5)(i) and (iv) of this section:

(A) Identification of the entities responsible for implementing, constructing, operating, or maintaining any existing or proposed measures or facilities;

(B) A schedule showing the intervals following issuance of a license at which implementation of the measures or construction of the facilities would be commenced and completed;

(C) An estimate of the costs of construction, operation, and maintenance of any proposed facilities, including a statement of the sources and extent of financing;

(D) A map or drawing that conforms to the size, scale, and legibility requirements of 18 CFR Section 4.39 showing by the use of shading, cross-hatching, or other symbols the identity and location of any facilities, and indicating whether each facility is existing or proposed (the maps or drawings in this exhibit may be consolidated); and

(vi) A description of any areas within or in the vicinity of the proposed project boundary that are included in or have been designated for study for inclusion in, the National Wild and Scenic Rivers Systems, or that have been designated as wilderness area, recommended for such designation, or designated as a wilderness study area under the Wilderness Act.

ADDITIONAL INFORMATION REQUEST NO. 2—LAND MANAGEMENT AND AESTHETICS

The existing project for relicensing occurs in an area of high scenic quality which is frequently used by the public for recreation. Since the original project was completed, public use patterns and recreation experience expectations have changed. Awareness of alterations to natural landscapes has increased. There is a heightened concern for visual quality. Your application for relicensing does not adequately address how the project affects the area's visual quality. In order for the Commission's staff to evaluate the effects of relicensing your project, additional information is needed. Therefore, provide a current report on land management and aesthetics that reaches the level of detail described in § [4.51 (f)(6)], and conduct a study evaluating:

- (a) the level of sensitivity that the viewers of the project area have for visual quality, including the viewer's locations, and including all facilities and the bypassed reach;
- (b) The visual compatibility of your facilities with the surrounding landscape;
- (c) average monthly stream flows in the bypassed reach during the last 10 years;
- (d) alternative ways to enhance the visual quality of your project facilities and stream flows to reduce the visual contrast of your facilities with the surrounding landscape;
- (e) the construction, operation, and maintenance costs for each alternative discussed in (d) above, and the effects of these costs on the economics of the project;
- (f) a 1/2-inch, VHS, color, narrated, videocassette tape recording and color photographs of the exterior of all project facilities and stream flows in the bypassed reach; and
- (g) comments on the study from the NPS, FS, and the North Cascades Conservation Council.

The revised report on land management and aesthetics should also include the following:

- (h) identify and describe other existing uses of project lands, such as residential, farming, forestry, grazing, and commercial use;
- (i) identify, locate, and describe nonpower uses of project waters, such as irrigation, industrial, and municipal; and
- (j) identify by administering agency and respective acreage any public lands or reservations of the United States within the project boundary.

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APPENDIX C

Cost Estimate Details

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APPENDIX D

Diablo Lake Boat Ramp Site Evaluations

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APPENDIX E

Figures and Maps for Settlement Agreement on Recreation and Aesthetics

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APPENDIX E

Figures and Maps for Settlement Agreement on Recreation and Aesthetics

These maps, listed in the table of contents, are being produced the week of April 15. There are no significant changes from the version of the Settlement Agreement distributed to all Parties in early April.

Figure 3-11. Environmental Learning Center—Organizational structure chart (see Appendix G of NCELC MOA).