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**MEMORANDUM OF UNDERSTANDING**

The Department of Game of the State of Washington, hereafter referred to as "GAME," and the City of Everett, hereafter referred to as "CITY," agree as follows:

**I. BACKGROUND**

A. CITY is undertaking to construct the Lake Chaplain Water Filtration Facilities in accordance with plans generally outlined in the Final Environmental Impact Statement for City of Everett Water Filtration Facilities and addendum thereto which is hereby incorporated by reference.

B. GAME represents the State of Washington Department of Fisheries, U. S. Fish and Wildlife Service, and National Marine Fisheries Service pertaining to the Snohomish County Shoreline Management Substantial Development Permit proceedings and the Hydraulics permit for the CITY's said water filtration facilities.

**II. PERMIT CONDITIONS**

GAME agrees to issue a Hydraulics permit to the City for construction of the said water filtration facilities in the form as set forth in Exhibit A attached hereto, and agrees that the following conditions constitute a settlement regarding the minimization of wildlife impact and wildlife mitigation satisfying Condition D of the Snohomish County Shoreline Management Substantial Development Permit for the CITY's water filtration facilities:

A. CITY shall relocate the toe of the southerly berm of the washwater pond 130' northerly of its present location as shown on the plans referred to in I.A. above by means of combining the north berm of the washwater pond with the south berm of the clearwell and installing a 72" enclosed pipe under the berm

1 to carry overflow, seepage and leakage from Lake Chaplain and also modification  
2 of the washwater pond outlet structure.

3 B. No herbicides shall be used to control vegetation along project or  
4 pipeline rights-of-way or in drainages tributary to Chaplain Creek Marsh. Mechanical  
5 cleaning or control shall be limited to those areas or times specified in a joint  
6 agreement reached by the City of Everett, Washington Department of Game and  
7 U. S. Fish and Wildlife Service.

8 C. CITY shall release water from Lake Chaplain to Chaplain Creek  
9 in such amounts and at such times as requested by GAME and as agreed to by the  
10 PUD of Snohomish County in its Sultan Basin hydroelectric project mitigation  
11 plan. This is in addition to all other natural or normal inflows. No chlorinated  
12 water shall be released or enter Chaplain Creek.

13 D. The relocated Chaplain Creek channel should be designed with the  
14 objective of retaining at least the habitat area of the original channel. The relocated  
15 channel shall be meandered and provided with pools, riffles, gravel substrate, and  
16 bank structure to approximate a natural streambed. The relocated streambed  
17 shall be revegetated according to specifications provided by Washington Depart-  
18 ment of Game and U. S. Fish and Wildlife Service.

19 E. The toe of the berms surrounding the clearwell and washwater pond  
20 should not encroach within 50 feet of Chaplain Creek where feasible.

21 F. It is not possible to identify a time frame with regard to possible  
22 expansion in Chaplain Creek Marsh. The CITY does not have any plans to expand  
23 into the Marsh. The existing facility is designed to have the capability to treat  
24 water to meet system needs until the year 2000. Furthermore, the design provides  
25 for expansion within the existing site (without intrusion into the Chaplain Creek  
26 Marsh) about the year 2000 to meet system demands to the year 2020. However,  
27 the aforementioned design capabilities are based upon certain assumptions. These  
28 include:

- 29 1) Population projections.
- 30 2) Water quality projections.
- 31 3) State and federal regulations relating to water quality.

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1 If any one of these factors involved in making our design decisions is in  
2 gross error, it is possible that the state of the art in water filtration may necessitate  
3 further modification in the treatment plant. The CITY certainly does not expect  
4 this to happen, but it is possible. Therefore, the CITY believes it must keep its  
5 options open and not be precluded from ever intruding in what is presently known  
6 as Chaplain Creek Marsh.

7 Accordingly, any future expansion of the filtration facilities will be contained  
8 to the grass area immediately downstream and adjacent to Chaplain Lake. Construc-  
9 tion and design of the proposed facilities is such that this area can be easily used  
10 for expansion purposes. No further developments or intrusions into the 50  
11 acre marsh area south of the filtration plant facilities, as presently proposed and  
12 modified by this Agreement, will be permitted; provided that in the event that  
13 those factors cited above cause the CITY to exhaust the use of the grass area  
14 immediately downstream and adjacent to Lake Chaplain for all future plant expan-  
15 sion, CITY shall develop preliminary plans involving minimum necessary use of  
16 the marshlands southerly of said site. CITY and GAME shall evaluate the continued  
17 use of said marshland as a wildlife habitat versus its need for expanded water  
18 filtration facilities as shown on said preliminary plans. Said evaluation shall consider  
19 both ecological and economic benefits related to each land use. The parties shall  
20 consider mitigation measures and the continued viability of the remaining marsh-  
21 land acres as a wildlife habitat. In the event that the parties cannot agree as  
22 to the use of said marshland, either party may initiate arbitration as provided  
23 herein and the panel is authorized to determine the extent to which the marshland  
24 may be used for expanded filtration facilities, if any, and the conditions for such  
25 use.

26 G. A detailed mitigation program will be developed by the CITY and  
27 approved by GAME with the objective of maintaining the viability and continued  
28 value of the 50 acre marshland south of the filtration facilities as a wildlife habitat.  
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1 H. In the event that either party to this Agreement shall feel aggrieved  
2 by the other party's performance or failure to perform any of the provisions hereof,  
3 either party may by writing give notice of intent to arbitrate to the other stating  
4 the reasons such arbitration is sought. The parties shall meet at least once to  
5 discuss said reasons. Thereafter, if agreement if not reached, either party may  
6 submit to the other the name of its appointee as an independent arbitrator and  
7 the other party, upon receipt of notice of appointment of said arbitrator, shall  
8 appoint an independent arbitrator. The two parties' appointees shall appoint a  
9 third independent arbitrator all of whom shall compose an independent arbitration  
10 panel whose decisions on all disputed issues under this Agreement shall be final  
11 and binding. Provided that enforcement of the conditions of the Hydraulics permit  
12 for the project shall be subject to such legal, equitable or criminal procedures  
13 as may be elected by GAME and such defenses as may be available to the CITY  
14 and/or the Contractor.

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16 DATED this 27 day of Aug, 1981.

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19 CITY OF EVERETT

STATE OF WASHINGTON  
DEPARTMENT OF GAME

20   
21 WILLIAM E. MOORE, Mayor

  
FRANK R. LOCKARD, Director

22 ATTEST:

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24 CITY CLERK

25 APPROVED AS TO FORM:

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27   
28 CITY ATTORNEY