

After Recording Return To:  
Clerk of the Council  
County Council M/S 609

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SNOHOMISH COUNTY, WASHINGTON

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY  
AND THE CITY OF MUKILTEO  
REGARDING INTERJURISDICTIONAL REVIEW AND MITIGATION  
FOR DEVELOPMENT IMPACTS ON THEIR RESPECTIVE  
TRANSPORTATION INFRASTRUCTURE**

**I. PARTIES**

This Interlocal Agreement (hereinafter "Agreement") is entered into pursuant to Chapter 36.70A RCW (the Growth Management Act ("GMA")), Chapter 43.21C RCW (the State Environmental Policy Act ("SEPA")), and Chapter 39.34 RCW (the Interlocal Cooperation Act ("ICA")) by the City of Mukilteo, a Washington municipal corporation (hereinafter "City") having its principal place of business at 4480 Chennault Beach Road, Mukilteo, Washington 98275, and Snohomish County, a political subdivision of the State of Washington (hereinafter "County") having its principal place of business at the County Administration Building, 3000 Rockefeller Avenue, Everett, Washington 98201.

**II. PURPOSE AND RECITALS**

2.1 Within their own jurisdictions, the County and the City each have responsibility and authority derived from the Washington State Constitution, state laws, local charters and ordinances to plan for and regulate uses of land and resultant environmental impacts, and by law must consider the impacts of governmental actions on adjacent jurisdictions.

2.2 The City and the County recognize that planning and land use decisions can have extra-jurisdictional impacts and that intergovernmental cooperation is an effective manner prescribed in the ICA and GMA, as amended, to mitigate impacts and facilitate interjurisdictional cooperation to address issues and opportunities that transcend local jurisdictional boundaries.

2.3 The City and County desire to work together to utilize their existing regulations, plans, codes, and mitigation policies, as designated in Sections V

and VI below, to implement the requirements of the ICA, GMA and SEPA for the purpose of

mitigating interjurisdictional impacts on transportation infrastructure in a manner that is consistent with law. For purposes of this Agreement, "impacts on transportation infrastructure" means and includes all impacts caused by or attributable to a development on the transportation infrastructure. "Transportation infrastructure" means and includes all streets, roads, transportation facilities, related parts and systems, and levels of service.

2.4 The regulations, plans, codes, and mitigation policies designated in section V below shall be collectively referred to in this Agreement as the City's mitigation policies. The regulations, plans, codes, and mitigation policies designated in Section VI below shall be collectively referred to in this Agreement as the County's mitigation policies.

2.5 This Agreement is intended to provide for consideration and evaluation of interjurisdictional impacts to transportation infrastructure that result from development and to allow for coordinated governmental actions to mitigate those impacts based upon the parties' designated mitigation policies. The City and County intend this Agreement to supersede the interlocal agreement previously entered into between the City and the County relating to interjurisdictional mitigation of transportation impacts.

2.6 In the spirit of intergovernmental cooperation and as authorized by law, the City agrees to impose conditions on the approval of certain City development proposals at the request of the County to mitigate impacts on transportation infrastructure within the jurisdiction of the County in accordance with the required Chapter 30.66B SCC road impact mitigation provisions.

2.7 In the spirit of intergovernmental cooperation and as authorized by law, the County agrees to impose conditions on the approval of certain County development proposals at the request of the City to mitigate impacts on transportation infrastructure within the City, which conditions include the required payment of City transportation mitigation payments.

2.8 It is in the best interest of both jurisdictions to provide for reciprocal imposition of mitigation requirements and improvements needed to address impacts on the transportation infrastructure of each jurisdiction.

2.9 This Agreement is not intended to prepare or transition any portion of the Snohomish County Airport for annexation to the City. The parties agree that nothing in this Agreement alters or promotes the alteration of the MUGA boundary as adopted in the Snohomish County Comprehensive Plan. Neither the City nor the County shall use this Agreement or any provision of this Agreement as evidence or support for their respective positions on annexation of any portion of the Snohomish County Airport in any proceeding whatsoever.

Both parties agree that in the event a separate agreement pertaining to development at the Airport is approved, the provisions of this agreement shall prevail, to the extent they are not superceded by the separate agreement.

### **III. CITY REQUEST FOR MITIGATION OF IMPACTS**

For every development application proposed outside the corporate limits of the City, but within the "Traffic Influence Area" described in Exhibit A, as now existing or hereafter amended, attached and incorporated herein by this reference, the County and City will take the following actions:

3.1 Upon receiving a development application, the County shall determine whether the proposal is within the Traffic Influence Area. If the development application is within the Traffic Influence Area, the County shall promptly give the City written notice and afford the City, per section 3.8, a timely and reasonable opportunity for review, comment, staff consultation, and, where applicable, participation in the County's SEPA process, related to the impacts that the development may have on the City's transportation infrastructure under the City's designated mitigation policies. When determined necessary per the City of Mukilteo Traffic Worksheet and Traffic Study Requirements for Development Worksheet, the applicant will be required to submit a traffic study, a copy of which will be forwarded to the City.

3.2 If the City determines that a County development application will impact the City's transportation infrastructure, the City will notify the County, per section 3.8 in writing of specific measures that should be imposed on the development proposal and are reasonably necessary to mitigate said impacts in accordance with the City's designated mitigation policies. For purposes of this Agreement, the impact mitigation measures shall be limited to construction of improvements, voluntarily negotiated payment in lieu of construction, dedication, voluntarily negotiated payment in lieu of dedication, impact mitigation payments or other payments provided or allowed by State law, City ordinance or regulations, or other payments which are determined, voluntary or otherwise, between the development applicant and the City. For purposes of this Agreement, written notice between the parties shall include notice sent via e-mail or other electronic means if the recipient confirms receipt through means other than a computer-generated automatic message.

3.3 In determining the impacts to the City's transportation infrastructure, the City shall use the City's designated mitigation policies described in Section V below, as now existing or hereafter amended.

3.4 The City shall apply its designated mitigation policies to developments located within the unincorporated County in the same manner that it applies its designated mitigation policies to developments located within the City. Impact mitigation measures proposed by the City for developments within the

unincorporated County will be consistent with impact mitigation measures imposed on City developments that have similar impacts to the City's transportation infrastructure.

3.5 If the County determines that the mitigation measures requested by the City are reasonably related to the impact of the development, the County shall (a) recommend imposing the mitigation measures requested by the City as a condition of the County's development approval; (b) include such condition in the County's

administrative determination for the project, and if necessary (c) authorize the Hearing Examiner or other approving official, as appropriate, to include the measures as a condition of development approval.

3.6 If the County determines that the mitigation measures requested by the City are not reasonably related to the impact of the development, the County shall promptly give written notice of its determination to the City, specifying what mitigation measures the County intends to recommend. After providing such notice to the City, and before the County makes its recommendations to the Hearing Examiner or other approving official, as appropriate, representatives from the County and City shall meet to discuss the City's requested mitigation. If the parties cannot agree upon appropriate Mitigation, the County will proceed with its recommendation, but the City shall be granted an opportunity to formally address the Hearing Examiner at the public hearing or other approving official prior to decision on the project to propose the requested mitigation and to explain its consistency with City mitigation policies and state law.

3.7 City staff will be available at any public hearing as necessary to explain recommended mitigation measures.

3.8 For each mitigating measure requested the City shall identify the specific impacts and reference the relevant City mitigation policy. Notification of the specific mitigating measures shall be provided by the City within twenty-one (21) days of the date of notice of application provided in accordance with Section 3.1, except where notice is for review of an environmental impact statement, in which case the review period shall be as established in accordance with WAC 197-11-502 as now existing or hereafter amended.

3.9 If the County does not receive timely notification of the City's requested mitigating measures consistent with Sections 3. and 3.8 above, the County may assume that the City has no comments or information relating to potential impacts of the development on City facilities and may not require any mitigation from the development for impacts on City facilities, provided that, this section does not apply if the County fails to provide the City with notice of the development consistent with Section 3.1.

#### **IV. COUNTY REQUEST FOR MITIGATION OF IMPACTS**

For every development application proposed within the City, the County and City will take the following actions:

4.1 Upon receiving a development application, the City shall promptly give the County written notice and, per section 4.8, afford the County a timely and reasonable opportunity for review, comment, staff consultation, and, where applicable, participation in the City's SEPA process, related to the impacts that the development may have on the County's transportation infrastructure under the County's designated mitigation policies. For purposes of this Agreement, the County will determine the transportation impact of a development in the City on the County road system in the appropriate County Transportation Service Area (TSA).

4.2 If the County determines that a City development application will impact the County's transportation infrastructure, the County will notify the City, per section 4.8, in writing of specific measures that should be imposed on the development proposal and are reasonably necessary to mitigate the impacts in accordance with the County's designated mitigation policies. For purposes of this Agreement, the impact mitigation measures shall be limited to construction of improvements, voluntarily negotiated payment in lieu of construction, dedication, voluntarily negotiated payment in lieu of dedication, impact mitigation payments or other payments provided or allowed by State law, County ordinance or regulations, or other payments which are determined, voluntary or otherwise, between the development applicant and the County. For purposes of this Agreement, written notice between the parties shall include notice sent via e-mail or other electronic means, if the recipient confirms receipt through means other than a computer-generated automatic message.

4.3 In determining the impacts on the County's transportation infrastructure, the County shall use the County's designated mitigation policies described in Section VI below, as now existing or hereafter amended.

4.4 The County shall apply its designated mitigation policies to developments located within the City in the same manner that it applies its designated mitigation policies to developments located within the County. Impact mitigation measures proposed by the County for developments within the City will be consistent with impact mitigation measures imposed on County developments that have similar impacts to the County's roads and transportation infrastructure.

4.5 The City shall (a) recommend imposing the mitigation measures requested by the County as a condition of the City's development approval to the extent that the City determines such requirements are reasonably related to the impact of the development, and shall (b) include such condition in the City's

administrative determination for the project forwarded to the Planning Commission, Hearing Examiner or other approving official.

4.6 In the event that the City does not recommend imposition of the mitigation measures requested by the County, the City shall give timely advance written notice to the County that the requested mitigation measures will not be recommended to the Planning Commission, Hearing Examiner or other approving official. After providing such notice to the County, and before the City makes its recommendations to the Planning Commission, Hearing Examiner or other approving official, representatives from the County and City shall meet to discuss the County's requested mitigation. If the parties cannot agree upon appropriate mitigation, the City will proceed with its recommendation, but the County shall be granted an opportunity to formally address the Planning Commission, Hearing Examiner or other approving official at the public hearing on the project to propose the requested mitigation and to explain its consistency with County mitigation policies and state law.

4.7 County staff will be available at any public hearing as necessary to explain recommended mitigation measures.

4.8 For each mitigating measure requested the County shall identify the specific impacts and reference the relevant County mitigation policy. Notification of the specific mitigating measures shall be provided by the County within twenty-one (21) days of the date of notice of application provided in accordance with Section 4.1 except where notice is for review of an environmental impact statement, in which case the review period shall be as established in accordance with WAC 197-11-502 as now existing or hereafter amended.

4.9 If the City does not receive timely notification of the County's requested mitigating measures consistent with Sections 4.1 and 4.8 above, the City may assume that the County has no comments or information relating to potential impacts of the development on County facilities and may not require any mitigation from the development for impacts on County facilities, provided that, this section does not apply if the City fails to provide the County with notice of the development consistent with Section 4.1.

## **V. COUNTY RECOGNITION OF CITY'S DESIGNATED REGULATIONS, PLANS, CODES AND MITIGATION POLICIES**

This Agreement addresses the procedures for identification, documentation, and mitigation of interjurisdictional impacts on transportation infrastructure. The County recognizes the following designated mitigation policies of the City as a basis for the County's exercise of environmental review and mitigation authority pursuant to SEPA and the Chapter 30.66B SCC road impact mitigation provisions:

1. Chapter 3.107 Mukilteo Municipal Code (MMC), as now existing or hereafter amended;
2. Chapter 10.24 MMC , as now existing or hereafter amended;
3. Chapter 12.04 MMC, as now existing or hereafter amended;
4. Chapter 17.15 MMC, as now existing or hereafter amended;
5. The City of Mukilteo Comprehensive Plan specifically including, but not limited to, the Capital Facilities Element, the Transportation Element, and the Streetscape Element of the City Plan, as now existing or hereafter amended; and
6. All City ordinances, codes, chapters, resolutions, regulations, plans or reports incorporated by reference or applicable to chapters 17.15 and 3.107 MMC, as now existing or hereafter amended.

**VI. CITY RECOGNITION OF COUNTY'S DESIGNATED REGULATIONS, PLANS, CODES, AND MITIGATION POLICIES**

This Agreement addresses the procedures for identification, documentation, and mitigation of interjurisdictional impacts on transportation infrastructure. Pursuant to chapter 17.84 MMC, as now existing or hereafter amended, the City recognizes the following designated mitigation policies of the County as a basis for the City's exercise of environmental review and mitigation authority pursuant to chapters 3.107 and 17.15 MMC road impact mitigation provisions, and SEPA:

1. Subtitle 30.6 SCC, including but not limited to chapter 30.66B SCC and the adopted SEPA policies identified in 30.61.230 SCC, as now existing or hereafter amended, and the Snohomish County GMA Comprehensive Plan, including but not limited to the General Policy Plan, Capital Facilities Element, and the Transportation Element, as now existing or hereafter amended; and
2. COUNTY codes, chapters, administrative rules, resolutions, plans or reports related to mitigation of traffic impacts, including, but not limited to:
  - a. Snohomish County's Engineering Design and Development Standards (EDDS) adopted under chapter 13.05 SCC, as now existing or hereafter amended;
  - b. The Snohomish County Transportation Needs Report, as now existing or hereafter modified; and
  - c. Snohomish County administrative rules adopted pursuant to chapter 30.82 SCC (Rulemaking).

## **VII. SCOPE OF AGREEMENT**

This Agreement applies to all developments for which applications are filed with the City or County on or after the effective date of this Agreement and that are subject to review under the laws, ordinances and policies identified in Sections V and VI above.

Pursuant to the terms of this Agreement, developments occurring in one jurisdiction may be required to proportionally mitigate impacts upon the other jurisdiction's transportation infrastructure, including but not limited to capacity, safety, access, circulation, and/or level of service. Developments that front on the right-of-way of the other jurisdiction may also be required to provide frontage improvements, dedicate or deed right-of-way, and/or meet access, circulation and/or safety requirements.

The parties intend that the mitigation imposed pursuant to this Agreement will consist of (a) assessment and payment of fees necessary to proportionally mitigate the transportation infrastructure impacts that arise from development subject to this Agreement, and/or (b) other reasonable and proportional mitigation measures (including without limitation dedication of land). This Agreement is not intended to authorize either the City or County to prohibit a specific development in the other party's jurisdiction.

## **VIII. RELATIONSHIP TO EXISTING LAWS AND STATUTES**

This Agreement in no way modifies or supersedes existing laws and statutes. In meeting the commitments encompassed in this Agreement, all parties will comply with the requirements of the Open Public Meetings Act, SEPA, GMA, annexation statutes, and other applicable state or local law. The ultimate authority for land use and development decisions is retained by the County and City within their respective jurisdictions. By executing this Agreement, the County and City do not purport to abrogate the decision making responsibility or police power vested in them by law.

## **IX. RELATIONSHIP TO FUTURE PLANNING AND RECIPROCAL IMPACT MITIGATION AGREEMENTS**

The City and County understand that many multi-jurisdictional planning and growth management issues will need to be addressed as growth continues. Both parties also understand that joint planning agreements will be required to accomplish the planning and plan implementation requirements of the GMA, as amended. Such agreements may focus on particular issues and delineate specific responsibilities that are beyond the scope of this Agreement.

**X. DEVELOPMENT AND REVIEW OF ENVIRONMENTAL STANDARDS**

The parties agree to notify one another in the event of any proposed material change in the laws, mitigation policies or regulations affecting this Agreement, and to notify one another of the outcome of any such proposed changes, and may at that point agree to amend or terminate this Agreement.

**XI. FILING**

A fully executed copy of this Agreement shall be filed with the Snohomish County Auditor's Office.

**XII. EFFECTIVE DATE, DURATION AND TERMINATION**

This Agreement shall be effective 60 days following the approval of the Agreement by the official action of the governing bodies of each of the parties and the signing of the Agreement by the duly authorized representative of each party, and the recording of the Agreement with the County Auditor. Any amendments and/or joint termination shall be in writing and executed in the same manner as provided by law for the execution of this Agreement. The Agreement shall remain in full force and effect until the end of the calendar year 2019.

Prior to December 31, 2019, the Agreement Administrators will each initiate review of the Agreement in order to decide whether to recommend renewal, termination, or modification of the Agreement to their respective governing bodies. If no renewal, termination, or modification is made, the Agreement will expire at the end of that calendar year. If the Agreement is renewed, it will be reviewed again during, and subject to expiration at the conclusion of each of the following ten-year periods thereafter, unless the parties have agreed to differing provisions for periodic review.

**XIII. TERMINATION**

Either party may terminate its obligations under this Agreement upon sixty (60) days advance written notice to the other party. The parties shall participate in professional mediation if requested by the non-terminating party within thirty (30) days of receipt of the written notice from the terminating party. The parties shall share equally in the expense of such mediation. Following any amendment or termination, the parties are mutually responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the amendment or termination. The parties agree to follow the terms of this

Agreement for any development applications submitted and pending prior to the effective date of the amendment or termination.

#### **XIV. SEVERABILITY**

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

#### **XV. INDEMNIFICATION AND LIABILITY**

The City shall protect, hold harmless, and indemnify, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of the City's performance of this Agreement, including claims by the City's employees or third parties, except for and to the extent of damages solely caused by the acts, omissions, negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents, as judicially determined by a court of competent jurisdiction.

The County shall protect, hold harmless, and indemnify, at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever, arising out of the County's performance of this Agreement, including claims by the County's employees or third parties, except for and to the extent of damages solely caused by the acts, omissions, negligence or willful misconduct of the City, its elected and appointed officials, officers, employees or agents, as judicially determined by a court of competent jurisdiction.

In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the County, including claims by the City's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the County and the City, their officers, officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's acts, omissions, negligence or willful misconduct, as judicially determined by a court of competent jurisdiction.

No liability shall be attached to the City or the County by reason of entering into this Agreement except as expressly provided herein. The City shall hold the County harmless and defend at its expense any legal challenges to the City's requested mitigation and/or any failure by the City to comply with any provision of local, state, and/or federal law. The County shall hold the City harmless and defend at its expense any legal challenges to the County's requested mitigation

and/or any failure by the County to comply with any provision of local, state, and/or federal law.

**XVI. COMPLIANCE WITH THE LAW**

The County and the City shall comply with all applicable federal, state and local laws in performing this Agreement.

**XVII. EXERCISE OF RIGHTS OR REMEDIES**

Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

**XVIII. REVIEW OF RECORDS**

Subject to the restrictions, exceptions, and exemptions on public disclosure, both parties shall have the right to review the other party's records with regard to the subject matter of this Agreement, upon reasonable written notice. Such rights shall continue for a period of three (3) years after the effective date of termination of this Agreement.

**XIX. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with respect to the reciprocal mitigation of transportation infrastructure impacts.

**XX. GOVERNING LAW AND STIPULATION OF VENUE**

This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for Snohomish County.

**XXI. ADMINISTRATORS OF AGREEMENT**

As required by the ICA, the Administrators of this agreement shall be:

- a) For the City of Mukilteo, Larry Waters, or his replacement or equivalent in the position of Public Works Director.
- b) For Snohomish County, Erik Olson, or his replacement or equivalent in the position of County Transportation Specialist, Department of Public Works.

**XXII. NO THIRD PARTY BENEFICIARIES**

This Agreement is for the benefit only of the City and County and is not intended to confer any benefit on any other person or entity, and no person or entity not a party to this Agreement shall be construed to be a third-party beneficiary nor shall said third party have any other rights whatsoever hereunder. This Agreement is not intended to and shall not be construed to benefit a particular class of persons or individuals.

**XXIII. MUTUAL NEGOTIATIONS**

This Agreement has been mutually drafted and negotiated between the parties. No ambiguity shall be construed against either party based upon a claim that the party drafted the ambiguous language. The parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms thereof; that they have been fully advised by their legal counsel; and that the Agreement has been executed with the approval as to form by their legal counsel.

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the date indicated below.

Dated this 29<sup>th</sup> day of April 2009.

CITY OF MUKILTEO

SNOHOMISH COUNTY

By Joe Marine  
Joe Marine  
Mayor  
4.22.09

By MARK SOINE  
Deputy Executive  
for Aaron Reardon  
County Executive  
5/8/09

ATTEST:

Christina J. Boughman  
Christina J. Boughman

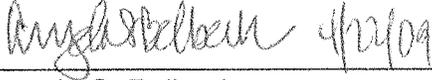
ATTEST:

Kathryn Bratcher  
Kathryn Bratcher  
Clerk of the County Council

COUNCIL USE ONLY  
Approved: 4-29-09  
Docfile: D-9

Approved as to form:  
Office of the City Attorney

Approved as to form:  
Snohomish County Prosecutor



\_\_\_\_\_  
Angela S. Belbeck  
Attorney for the City of  
Mukilteo

\_\_\_\_\_  
Justin W Kestin  
Deputy Prosecuting Attorney for  
Snohomish County

Recorded by County Auditor: \_\_\_\_\_  
Date

Auditor's File No. \_\_\_\_\_

## Exhibit A

The "Traffic Influence Area" for this Agreement is hereby defined as that portion of unincorporated Snohomish County lying north of the Edmonds and Lynnwood city limits and west of Interstate Five (I-5). A sketch map below shows with a heavy black line the area as of July 2007. The City and County have determined that within this influence area at least some of the new trips generated by new development are likely to impact City streets. Outside this area, it is less likely that any new trips will impact City streets. The purpose of establishing this influence area is to facilitate implementation of the Agreement by defining and limiting the area of unincorporated Snohomish County within which new development will be subject to the reciprocal traffic interlocal agreement.

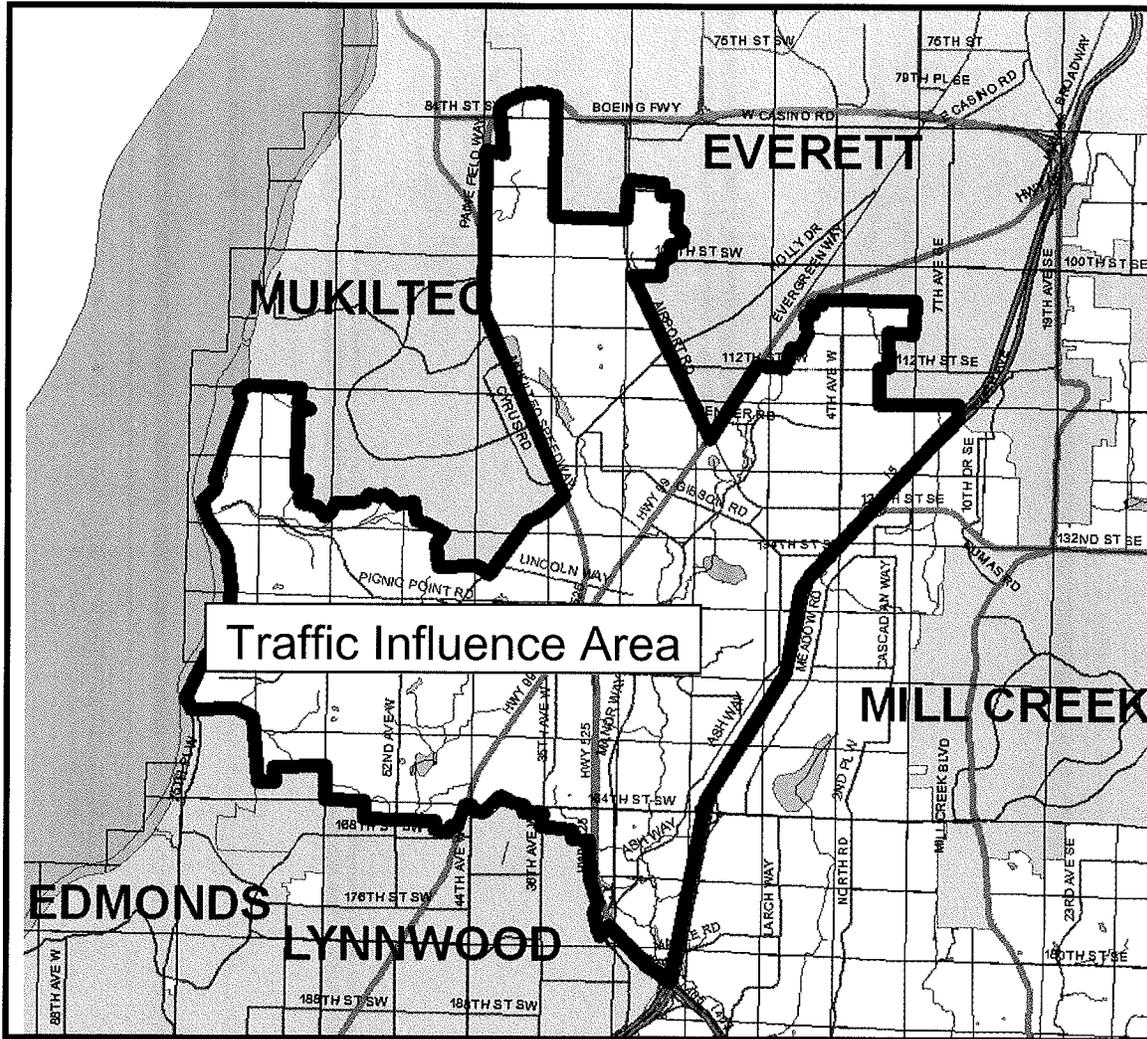


Figure 1: Traffic Influence Area