

# Lake Ballinger/McAleer Creek Watershed Forum

City of Edmonds • City of Lake Forest Park • City of Lynnwood • City of Mountlake Terrace • City of Shoreline • Snohomish County

## AGENDA

### LAKE BALLINGER/McALEER CREEK WATERSHED FORUM

Tuesday, January 26, 2010

2:00PM – 3:30PM

Lynnwood City Council Chambers

19100 44<sup>th</sup> Ave W

Lynnwood, WA

- I. Welcome and Introductions
    - a. Approval of Agenda
    - b. Approval of Minutes from October 27, 2009 Meeting
  - II. 2010 Water Resources Development Act (WRDA) Project Request
  - III. Draft Capital Improvement Program (CIP)
  - IV. Request for Letter Supporting Lake Forest Park's Funding Request for Rehab on the McAleer Creek High Flow Bypass
  - V. Future Governance Options
  - VI. Next Steps for the Forum
    - a. Future Meetings
    - b. Draft Capital Improvement Program (CIP)
    - c. Financing Strategy
    - d. Forum Governance Options/ Financing Strategy Options
    - e. Federal and State Legislative Agenda
    - f. Other
  - VII. Public Comment: 3 minutes per speaker
  - VIII. Adjournment
- Next Meeting: To be determined
-

**Lake Ballinger/McAleer Creek Watershed Forum**  
**Edmonds Public Works Facility**  
**Meeting Minutes**  
**October 27, 2009**

**1/26/2010**  
**Agenda Item: I. b**

**Members Present**

Jerry Smith, Chair (Mountlake Terrace Mayor), Don Fiene, Co-Chair (Lake Forest Park City Council), DJ Wilson (Edmonds City Council), Chris Eggen (Shoreline City Council), Jared Bond (Stormwater Program Manager and Alternate Forum Member, City of Lynnwood)

**Staff Present**

Jerry Shuster (Edmonds Stormwater Engineering Program Manager), Aaron Halverson (Lake Forest Park Stormwater Technician), Noel Miller (Edmonds Public Works Director), John Caulfield (Mountlake Terrace City Manager), Curt Brees (Mountlake Terrace Public Works Director), Mike Shaw (Mountlake Terrace Stormwater Program Manager), Brian Goodnight (Legislative Analyst Snohomish County), David Cline (Lake Forest Park City Administrator)

**Others Present**

Hugh Spitzer (Foster Pepper)

**Document Attached**

Organization/Governance Decision Agenda (Foster Pepper)

**I. Welcome and Introductions**

Chair Jerry Smith called the meeting to order at 2 p.m. at the City of Edmonds Public Works Conference Room. He welcomed attendees and introduced members of the forum and staff. The agenda for the meeting and minutes from the August meeting were approved. There were no September meeting minutes due to lack of a quorum.

**II. Items from September Forum Meeting**

**1. Staff Committee Memo update on Administrative need/future actions:** Mountlake Terrace City Manager John Caulfield offered an option for the City of Mountlake Terrace to provide administrative support and overhead to the forum. This would allow the City of Mountlake Terrace City Manager Department to be a liaison between forum members and staff. All administrative functions such as drafting the agenda, minutes, and facility coordination will be done by City of Mountlake Terrace staff through July 2010 when the Interlocal Agreement expires. Don Fiene supported this option and moved for approval. The motion was approved. Mayor Jerry Smith commented that \$5,000 to be allocated for this purpose is no longer needed, as Mountlake Terrace will provide administrative support free of charge.

**2. Discussion of development of a capital improvement plan for the watershed by the Staff Committee:** Mike Shaw recommended that the forum seek authorization to proceed with the action discussed at the August meeting (the Capital Improvement Program (CIP)). Staff has already made some progress on the six-year CIP and needs additional direction from the forum. Shoreline Council Member Chris Eggen would like to know the details of the CIP plan. Mr. Shaw explained that staff will go over the Strategic Action Plan list of recommendations, identify capital projects, place them in order by priority and category and attach dollar amounts so that the group can pursue funding for these projects.

DJ Wilson inquired about commitment to the CIP for the first 3 years of expenditures. Jerry Shuster stated that staff will prioritize projects, balance the funding, and bring a recommendation back to forum for approval. Council Member Wilson asked what the legal status of an approved CIP is. City Manager Caulfield stated that a lead agency needs to be identified under the current structure at both the staff and member's level. The plan, at this time, will not be legally binding. However, once the forum accepts the recommendations and individual agency's projects are identified, it will become legally binding when the individual projects are incorporated into each member's own CIP. The CIP plan will be an advisory

document to individual agencies and is intended to be adopted and incorporated. The draft will be presented at the January meeting.

**A motion to approve the continuation of the CIP project plan was set and approved.**

**3. Presentation on governance options by Foster Pepper**

Hugh Spitzer from Foster Pepper outlined the attached document on Organization and Governance options for the Greater Lake Ballinger/McAleer Creek Watershed Forum. These options are intended to be applied after the Interlocal Agreement expires in July 2010. The document outlines five key issues to be address and decided on.

- Form/structure of organization
- Governance
- Funding for Programs
- Staff
- Long-term Organization Choices

Council Member Wilson asked about the impact of I-1033 on the forum and individual agencies, if it passes. Mr. Spitzer explained that it will not impact the lead agency that incorporates grant or appropriation funds into their accounts because these funds would not be tax or fee revenue and would be an intergovernmental contribution. He recommended that funds should be kept out of the General Fund and be placed into a separate account such as the Stormwater Fund as a precaution.

Mr. Wilson requested that Mr. Spitzer recommend which options are best for the group. Mr. Spitzer recommended creating a non-profit organization because a non-incorporated joint board does not have a legal entity and provides no protection for the members from liability. The joint board cannot own property nor have assets. A non-profit corporation (NPC) provides liability protection for members and allows the forum to borrow money if it designates itself as a Watershed Management Partnership. This non-profit corporation has a legal identity and is subject to audit, but is still the instrumentality of the members and follows the rules decided by the members. Mr. Wilson asked how current and future assets liability would be affected by the different organization structures. Mr. Spitzer stated that the forum can outline what those liabilities are as an NPC, by clarifying ownership of those assets either by the corporation or individual members. A Watershed Management Partnership can only borrow money from its own members, and a non-profit entity can apply for a Public Works Trust Fund with restrictions such as a commitment of members to stay with the organization and pay a penalty if they decide to leave before the duration of the loan ends. Mr. Wilson stated that at this time, no decision can be made on this matter, but the CIP plan in January will help guide the forum on this decision. Mr. Caulfield asked if an NPC can apply for liability insurance from places like WCIA. Mr. Spitzer expects that the insurance authority would allow for an entity like this to join.

Mr. Spitzer stated that the current governance composite of the forum is a good model, because it has the advantage of having elected officials deciding and dictating and the staff implementing. This model requires attendance of these officials at meetings for it to be effective in decision-making. Mr. Fiene stated that the CIP plan will drive decisions on how commitment is outlined and provide incentive for participation. The current unanimous vote system is not effective, and Mr. Spitzer recommended a different structure that delineates different levels of majority voting on various subjects in agreement. An Amendment to the Interlocal needs to go back to individual councils for adoption. Different structures are available that can be decided by the group, which can define full and part members of the NPC.

Mr. Spitzer stated that financial involvement can be assessed by the group through various criteria such as percent of watershed as suggested by Jared Bond. Mr. Wilson suggested a hybrid approach through a contract, which allows contribution without participating in the voting for some members. Mr. Wilson asked how the transfer of money contributions will work. Mr. Spitzer suggested that the lead agency should run the books, but the NPC should keep its own books so it can provide an annual statement to be audited. Mr. Wilson asked if this entity falls under a Municipal Corporation or regular NPC laws. Mr. Spitzer stated that it will have to follow Municipal Corporation and be subject to public accounting, and should follow NPC law because it is still a NPC.

Under the NPC, staff can be employed under the entity or its members, but as a joint board, it has to come from the member. Mr. Spitzer stated that it will be easier to have member's own staff or contract support if there is only a small need. The issue should be addressed in the agreement.

Mr. Spitzer stated that these decisions will lead to the creation of a new Interlocal Agreement but can use the current one as a platform. All decisions in the Interlocal Agreement need to be approved by all members' councils. This will need to be done as an ordinance, not a resolution so it can be legally committed.

### **III. Next Steps for the Forum**

The next step in the discussion will be done after the CIP plan is issued in January. No meetings will be scheduled until the January CIP meeting. A special meeting may be held only if needed.

Jared Bond moved and Chair Fiene seconded to authorize Councilmember D.J. Wilson to draft a letter to the state legislature asking for \$60,000 appropriation to keep the Lake Ballinger/McAleer Creek Forum process moving forward in 2010. It was approved unanimously.

Mr. Wilson moved and Jared Bond seconded to authorize Co-chair Fiene to represent the Lake Ballinger/McAleer Creek Forum at the Puget Sound Partnership Central Puget Sound Action Caucus. This Caucus pulls together cities, WRIA's, and other watershed forums to discuss watershed related issues. The motion passed unanimously.

Jared Bond stated that Lynnwood has hired a consultant to develop a watershed basin plan for stormwater development regulations, and a plan for redevelopment of highway 99. The southern part of the highway 99 plan is in the hall lake basin watershed. They are considering alternative stormwater development methods, moving away from onsite detention for water quality treatment. Lynnwood is looking at a regional detention and regional infiltration issue brought up in the Strategic Action Plan. A report will be available in January that may be helpful in meeting the goals in the Strategic Action Plan, if the group is heading toward a Watershed Management Partnership approach.

### **IV. Public Comments**

Alvin Rutledge commented that the group needs to assess the Lake Ballinger Tax District contribution because Mountlake Terrace, which has property on the lake, is exempt. He also requested sandbags from Edmonds and Mountlake Terrace.

### **V. Wrap up and Adjournment**

The meeting adjourned at 3:30 pm

Next meeting is tentatively scheduled for the fourth Tuesday in January or Tuesday January 26, 2010.



December 3, 2009

The Honorable Jay Inslee  
403 Cannon HOB  
Washington D.C. 20515-4701

Re: 2010 Water Resources Development Act (WRDA) Project Request

Dear Congressman Inslee:

The Lake Ballinger/McAleer Creek Forum ("Forum") requests consideration for 2010 WRDA funds to support future improvements in the Lake Ballinger/McAleer Creek Watershed for flood and water quality mitigation efforts. The Forum will come forward with a specific project funding request as soon as the projects are prioritized and approved by the Forum in early 2010.

Future Federal and State support and funding of our collaborative efforts will leverage operational funds of \$200,000 obtained through the State Department of Ecology to develop the Strategic Action Plan that was adopted earlier this year by the cities of Edmonds, Lake Forest Park, Lynnwood, Mountlake Terrace, and Shoreline and Snohomish County. Funding support will also leverage funds committed by local jurisdictions and will provide major support for further integration of the participating jurisdictions as we move forward with implementation of the Plan.

In 2008, the jurisdictions of the City of Edmonds, City of Mountlake Terrace, City of Shoreline, City of Lynnwood, City of Lake Forest Park and Snohomish County signed an interlocal agreement creating the Forum. The Forum has regular monthly meetings that include the member jurisdictions. In addition, the Forum process has also included the Department of Ecology, Department of Fish and Wildlife, the U.S. Army Corps of Engineers, numerous citizen groups and regular participation by your office.

The Lake Ballinger/McAleer Creek Forum completed the development of the Strategic Action Plan in July 2009 that identifies a list of short- and long-term strategies related to flooding, water quality and habitat enhancement to include specific capital improvement projects. The strategies and projects currently are being prioritized for action. These projects will be presented to the Forum at their January 26, 2010 meeting.

In summary, the Forum is ready to move with implementation of the Strategic Action Plan. A regional approach to flooding and water quality with Federal, State and local support will have a substantive impact on the waters of both Lake Ballinger and McAleer Creek. Moreover, by supporting projects that are beyond the scope of any one municipal jurisdiction, Congress can assist through the WRDA process to further the Forum's efforts to mitigate flooding, improve

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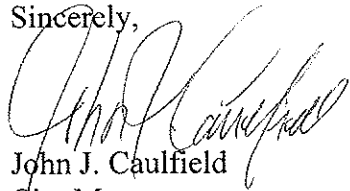
**Community Development**  
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**Recreation & Parks**  
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Mountlake Terrace, WA 98043  
425.776.9173  
fax 425.775.2365

**Public Works**  
6204 215th St SW  
Mountlake Terrace, WA 98043  
425.670.8264  
fax 425.670.8267

water quality and enhance habitat recovery in the watershed. Speaking on behalf of our six member jurisdictions, concerned citizens and all interested and concerned stakeholders engaged in the Forum's work, we urge you to support future projects and activities in the Lake Ballinger/McAleer Creek Watershed.

Sincerely,



John J. Caulfield  
City Manager  
City of Mountlake Terrace

cc: Lake Ballinger/McAleer Creek Forum Members  
Jerry Smith, Mayor, City of Mountlake Terrace, Forum Chair  
Don Fiene, Councilmember, City of Lake Forest Park, Forum Co-Chair  
D.J. Wilson, Council President, City of Edmonds  
Lisa Utter, Councilmember, City of Lynnwood  
Janet Way, Councilmember, City of Shoreline  
Chris Eggan, Councilmember, City of Shoreline  
Mike Cooper, Councilmember, Snohomish County

# Memorandum

Date: January 26, 2010  
To: Lake Ballinger/McAleer Creek Watershed Forum  
From: Lake Ballinger/McAleer Creek Watershed Forum Staff Committee  
Subject: CIP Development and Presentation

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At the direction of the Lake Ballinger/McAleer Creek Watershed Forum, the Staff Committee has developed a draft Capital Improvement Project (CIP) List to take action on flooding related issues for Hall Creek, Lake Ballinger and McAleer Creek.

An important issue that was discussed but was not included in the Strategic Action Plan (due to time and budget limitations) was a cost/benefit analysis for each of the selected options. Additional analysis would be needed to include a cost/benefit analysis should the Forum wish to go in this direction. Discussion and options in this CIP targeted projects that would provide the most relief to residents and citizens affected by high water in the watershed. Secondary consideration was given to projects affecting water quality and habitat preservation or acquisition.

The staff committee chose to focus on those projects that are directed at the unique issues within the Lake Ballinger/McAleer Creek Watershed from a high water and flooding standpoint. Although high water and flooding issues may be experienced throughout Puget Sound during storm events, the specific causes of immediate, localized flooding are site specific within the basin.

Water quality and habitat preservation and acquisition issues are not unique to the Lake Ballinger/McAleer Creek Watershed and are being addressed through a number of different regional programs and directives. Water quality and habitat restoration activities are already underway in some of the member jurisdictions through actions related to the Endangered Species Act, the WRIA 8 Salmon Recovery Board and the Puget Sound Partnership. All member jurisdictions are implementing new programs related to water quality in compliance with NPDES Phase II Permit requirements.

The Staff Committee believes that further action related to water quality and habitat preservation and acquisition can be addressed in a second phase of Forum activities once the immediate high water and flooding situations have been dealt with.

The attached Capital Improvement Plan will be discussed in detail during the January 26<sup>th</sup> Forum meeting.

Lake Ballinger/McAleeer Creek Watershed Forum Capital Improvement Plan																
Action or Project	Priority	Description	Lake Ballinger/Hall Creek		McAleeer Creek		Project Information			Service Criteria <sup>1</sup>			Goal	Issues	Projected Outcome	
			Watershed Issue A	Watershed Issue B	Watershed Issue C	Watershed Issue D	Projected Planning Level Cost (2009 dollars)	Potential Funding Options <sup>3</sup>	Project Lead Agency <sup>4</sup>	1	2	other				
<b>Lower McAleeer Creek</b>																
Phase I	Forum Project Model the McAleeer Creek flood plain in Lake Forest Park and Shoreline to update FEMA flood plain mapping information	A1	Accurately model flow and determine flood plain elevations for McAleeer Creek from Lake Ballinger to Lake Washington - develop modeling and flood plain management guidelines to assist the Cities of Shoreline and Lake Forest Park with future development or redevelopment and to leverage FEMA funds for flood proofing program. <b>This portion of the FEMA flood plain mapping project will assume flows from Lyon Creek have been redirected or minimized.</b>			X		\$750,000 to \$1,000,000	Grant	Lake Forest Park, Shoreline		X	Revise existing flood plain maps to accurately reflect existing conditions and to develop modeling and flood plain management guidelines	Joint project in Shoreline and Lake Forest Park	Give accurate guidance to cities with development and redevelopment in the affected flood plain	
	Private Project Develop and implement flood proofing program	A2	Leverage FEMA funds for flood proofing program			X		\$2,000,000 to \$3,000,000	Grant	Lake Forest Park		X	Develop flood proofing program to prevent structure flooding	Privately initiated flood proofing program with possible City assistance	Developing an effective flood proofing program	
	Lyon Creek Bypass/Lyon Creek Channel Modifications	B	Forum to provide encouragement to Lake Forest Park to seek funds to eliminate the Lyon Creek overflow to McAleeer Creek during storm events			X		\$3,100,000	Lake Forest Park	Lake Forest Park	X	X	Minimize the impact of Lyon Creek on McAleeer Creek during storm events	No financial commitment on the part of upstream Forum jurisdictions	Reduce overflow from Lyon Creek during storm events to minimize flooding at Sheridan Beach	
	McAleeer Creek Bypass Intake Retrofit	C	Retrofit McAleeer Creek Bypass Intake to optimize facility function			X		\$213,000	Grant	Lake Forest Park	X	X	Reduce the occurrence and severity of flooding in the Sheridan Beach Neighborhood of Lake Forest Park along McAleeer Creek	Project benefits residents in Lake Forest Park only.	Would remove 30 cfs from McAleeer Creek through the Sheridan Beach Neighborhood during the 100-yr event	
Phase II	Upgrade/Replace Culverts on McAleeer Creek	D	Enhance and replace four culverts on McAleeer Creek in Lake Forest Park			X		\$1,000,000	Grant	Lake Forest Park	X	X	Reduce localized flooding in Lake Forest Park.	Project benefits residents in Lake Forest Park only.	Up to 10 residences in Lake Forest Park would be protected from localized flooding.	
	McAleeer Creek Flood Berms	E	Install berms or other flood proofing along McAleeer Creek in Lake Forest Park			X		\$830,000	Grant	Lake Forest Park	X		Keep structures from flooding during 100 year events	Permitting, work on private property	Minimize flooding during 100 year events	
	Basin Wide LID Retrofits	F	Retrofit existing city parcels and right of way with Low Impact Development BMP's	X	X	X	X	\$5,000,000 to \$10,000,000 over 20 years	Appropriations or grant	Lake Forest Park, Shoreline	X	X	Reduce flooding and improve water quality	Long term - 20 year plan	Eliminate 100 year flooding events, improve on fecal, temperature and chemical issues in McAleeer Creek	
<b>Upper McAleeer Creek/Lake Ballinger/Hall Creek</b>																
Phase I	Forum Project Model the Hall Creek and Lake Ballinger flood plain in Edmonds and Mountlake Terrace to update FEMA flood plain mapping information	A1	Accurately model flow and determine flood plain elevations for Hall Creek and Lake Ballinger - develop modeling and flood plain management guidelines to determine the most advantageous elevation of Lake Ballinger weir	X				\$750,000 to \$1,000,000	Grant	Mountlake Terrace, Edmonds		X	Revise existing flood plain maps to accurately reflect existing conditions and to develop modeling and flood plain management guidelines	Joint project in Mountlake Terrace and Edmonds	Give accurate guidance to cities with development and redevelopment in the affected flood plain while managing the level of Lake Ballinger and developing a flood proofing program	
	Private Project Develop and implement flood proofing program	A2	Leverage FEMA funds for flood proofing program	X				\$1,000,000 to \$2,000,000	Grant	Edmonds		X	Develop flood proofing program to prevent structure flooding	Privately initiated flood proofing program with possible City assistance	Developing an effective flood proofing program	
	McAleeer Creek Weir															
	Action I	B <sup>2</sup>	Install new weir gate	X	X			\$25,000	Mountlake Terrace	Mountlake Terrace	N/A	N/A	N/A	Restore weir to 1995 maintenance status	MLT maintenance issue	Meet existing maintenance requirements
	Action II	B1	Lower weir structure to first Nile culvert - <b>1.5 feet lower</b> - install new weir foundation and dredge creek channel to lake	X				\$500,000	Grant	Mountlake Terrace, Edmonds	X			Keep lake level below 279.3	Would require readjudication of the Superior Court Order regarding lake level	Would reduce by 59% the length of time that the lake would be above 279.3
	Action II	B1	Lower weir structure to first Nile culvert - <b>1.5 feet lower</b> - install new weir foundation and dredge creek channel to lake	X				\$500,000	Grant	Mountlake Terrace, Edmonds		X		Keep lake level below 277.4	Would require readjudication of the Superior Court Order regarding lake level	Would reduce by 74% the length of time the lake would be above 277.4
	Action III	B2	Lower weir structure by <b>3.75 feet</b> - install new weir foundation and dredge creek channel to I-5	X				\$1,000,000	Grant	Mountlake Terrace, Edmonds	X			Keep lake level below 279.3	Would require readjudication of the Superior Court Order regarding lake level	Would reduce by 93% the length of time the lake would be above 279.3
Phase II	Hall Creek Detention	C	Install detention or infiltration system upstream of Lake Ballinger	X				\$12,000,000 not including land acquisition	Grant, appropriations, city CIP funds	Mountlake Terrace	X		Keep lake level below 279.3	Large site footprint of 2.7 acres - cost of land acquisition not included	Would reduce by 64% the length of time the lake would be above 279.3	
	Basin Wide LID Retrofits	D	Retrofit existing city parcels and right of way with Low Impact Development BMP's	X	X	X	X	\$5,000,000 to \$10,000,000 over 20 years	Grant, appropriations, city CIP funds	Each city in upper basin	X	X	Reduce flooding and improve water quality	Long term - 20 year plan	Eliminate 100 year flooding events, meet Lake Ballinger TMDL limits and improve on fecal, temperature and chemical issues in McAleeer Creek	

<sup>1</sup> Service levels are listed in Section 3 of the Strategic Action Plan, page 15 - 20

<sup>2</sup> Weir gate replacement is contingent on decisions made about the ultimate level of the lake

<sup>3</sup> Future governance agreement will incorporate and identify potential funding sources

<sup>4</sup> A member agency representing the interests of the Lake Ballinger/McAleeer Creek Forum

Mayor  
David R. Hutchinson

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Councilmembers  
Don Fiene  
Sandy Koppenol  
Robert E. Lee  
Catherine Stanford  
Ed Sterner  
Dwight A. Thompson  
John A. E. Wright

Date

The Honorable *Name Here*  
*Address Line 1*  
*Address Line 2*

Re: **Draft** Lake Ballinger/McAler Creek Forum support for Lake Forest Park funding request to reduce flooding

Dear *Name Here*,

In 2008, the cities of Edmonds, Lynnwood, Lake Forest Park, Mountlake Terrace, and Shoreline, along with Snohomish County signed an interlocal agreement to create the Lake Ballinger/McAler Creek Forum (Forum). The Forum has regular meetings attended by elected officials and citizen groups from the member jurisdictions along with staff from the Department of Ecology, Department of Fish and Wildlife and the U.S. Army Corp of Engineers. The purpose of the Forum was to prepare a Strategic Action Plan (SAP) that addressed long-term watershed planning and conservation in the Lake Ballinger/McAler Creek basin. The SAP was completed in July 2009 and it identifies a list of short- and long-term strategies that address flooding, water quality and habitat enhancement.

While developing the SAP the Forum was informed that the most severe flooding in the Lake Ballinger/McAler Creek basin occurs in Lake Forest Park near the Towne Centre and Sheridan Beach neighborhood. In fact, the most recent event occurred on December 3, 2007 causing \$3.9 million in damage in Lake Forest Park, displacing residents, temporarily closing local businesses severely damaging the local fire station and threatening a state highway. As a result, the **Forum strongly supports Lake Forest Park's funding request for the Lyon Creek Bypass or Channel Modifications** and has identified this project as **top priority** in the Forum's capital improvement project plan.

Speaking on behalf of the six member jurisdictions, concerned citizens and all interested and concerned stakeholders engaged in the Forum's work, we urge you to support Lake Forest Park's request for funding to alleviate flooding in its jurisdiction.

Sincerely,

Don Fiene  
Councilmember, City of Lake Forest Park  
Co-Chair of the Lake Ballinger /McAler Creek Forum

Cc: Lake Ballinger/McAler Creek Forum Members  
Jerry Smith, Mayor, City of Mountlake Terrace, Forum Chair  
D.J. Wilson, Council President, City of Edmonds  
Jared Bond, Environmental Programs Manager, City of Lynnwood  
Chris Eggan, Councilmember, City of Shoreline  
Mike Cooper, Councilmember, Snohomish County

Mayor  
David R. Hutchinson

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Councilmembers  
Don Fiene  
Sandy Koppenol  
Robert E. Lee  
Catherine Stanford  
Ed Sterner  
Dwight A. Thompson  
John A. E. Wright

Date

The Honorable *Name Here*  
*Address Line 1*  
*Address Line 2*

Re: **Draft** Lake Ballinger/McAler Creek Forum support for McAler Creek Bypass Retrofit in Lake Forest Park

Dear *Name Here*,

In 2008, the cities of Edmonds, Lake Forest Park, Lynnwood, Mountlake Terrace, and Shoreline, along with Snohomish County signed an interlocal agreement to create the Lake Ballinger/McAler Creek Forum (Forum). The Forum has regular meetings attended by elected officials and citizen groups from the member jurisdictions along with staff from the Department of Ecology, Department of Fish and Wildlife and the U.S. Army Corp of Engineers. The purpose of the Forum was to prepare a Strategic Action Plan (SAP) that addressed long-term watershed planning and conservation in the Lake Ballinger/McAler Creek basin. The SAP was completed in July 2009 and it identifies a list of short- and long-term strategies that address flooding, water quality and habitat enhancement.

While developing the SAP the Forum was informed that the most severe flooding in the Lake Ballinger/McAler Creek basin occurs in Lake Forest Park near the Towne Centre and Sheridan Beach neighborhood. In fact, the most recent event occurred on December 3, 2007 causing an estimated \$3.9 million in damage in Lake Forest Park, displacing residents, temporarily closing local businesses, severely damaging the local fire station and threatening a state highway. Therefore, the **Forum strongly supports Lake Forest Park's funding request for the McAler Creek Bypass Retrofit**, which has been identified as a **top priority** in the Forum's capital improvement project plan.

Speaking on behalf of the six member jurisdictions, concerned citizens and all interested and concerned stakeholders engaged in the Forum's work, we urge you to support future projects and activities in the Lake Ballinger/McAler Creek Watershed and specifically this request for McAler Creek flood reduction funding in Lake Forest Park.

Sincerely,

Don Fiene  
Councilmember, City of Lake Forest Park  
Co-Chair of the Lake Ballinger /McAler Creek Forum

Cc: Lake Ballinger/McAler Creek Forum Members  
Jerry Smith, Mayor, City of Mountlake Terrace, Forum Chair  
D.J. Wilson, Council President, City of Edmonds  
Jared Bond, Environmental Programs Manager, City of Lynnwood  
Chris Eggan, Councilmember, City of Shoreline  
Mike Cooper, Councilmember, Snohomish County

## **Greater Lake Ballinger/McAleer Creek Watershed Forum**

### **Organization/Governance Decision Agenda**

The existing Interlocal Agreement provides a basic framework for intergovernmental cooperation concerning basic planning for watershed protection activities in the Greater Lake Ballinger/McAleer Creek Watershed (the "Watershed"). Several key decisions are involved with moving beyond the Watershed Study phase to a more active phase involving the identification of funds for carrying out elements the Strategic Action Plan (the "Plan"), and moving ahead on those Plan elements.

Key decisions include:

- Form/structure of organization
- Governance
- Funding for programs
- Staff
- Long-term Organization Choices

### **Legal Form of Organization**

Decision: Unincorporated Joint Board or Public Nonprofit Corporation?

For the initial phase of carrying out the Plan, and perhaps for the long term, joint intergovernmental activities can be carried out through an intergovernmental entity formed under the Interlocal Cooperation Act (Chap. 39.34 RCW). As outlined in the Intergovernmental Structure Options outline distributed at the last meeting, an intergovernmental body can be organized in several ways, including a joint board, a nonprofit corporation or a limited liability corporation. The first two are most common.

A joint board is a loose arrangement, and that is essentially what the parties have now. The Forum is the joint board with representatives of each of the Member Jurisdictions. The Forum is basically the instrumentality of the Members, but has no separate legal existence. It is simple, and is unlikely to become an independent actor. But a joint board cannot employ staff, which must instead be employed by one of the members or through a contract. Joint boards also provide little or no protection of the Members from liability.

A public nonprofit corporation is a formal legal actor, while remaining the instrumentality of its members. It has clear authority to enter into contracts, to receive and spend grants, to own property, and has limited powers of borrowing, at least from other governments. Many interlocal agreements today provide for creation of a nonprofit corporation because it protects the member governments from liability.

The Members have a fair amount of flexibility in how governance is structured for either a joint board or a nonprofit corporation.

Decision: If Organized as a Nonprofit Corporation, Should the Entity be Designated as a Watershed Management Partnership under RCW 39.34.190?

A watershed management partnership is a special type of intergovernmental entity that focuses on watershed management, water supply, water quality and protection, and other water-related issues. Watershed management partnerships are formed under RCW 39.34.190-.220 (copy attached). Their main advantage is that they have clearer borrowing powers than other entities formed under the Interlocal Cooperation Act.

### **Governance Issues**

Decision: What Type of Board? Who Serves?

Who should serve on the governing board of the entity? A board composed of elected officials only? A mixed board of elected officials and staff? Should there be a separate staff committee?

The existing Interlocal Agreement provides for the Forum, which is composed of elected officials, and a separate staff committee. This could provide a perfectly good model going forward. The advantage of a governing board of elected officials is that it involves the people who have the ultimate responsibility to the public for the entity's success. The only "disadvantage" is that the designated representatives of the jurisdictions must have a commitment to attending meetings regularly in order for the enterprise to succeed. Some interlocal organizations are set up for the elected board members to meet less frequently than the staff representatives, perhaps four times a year to approve an organization's plan, budget, allocation of funds, and to make other key decisions.

Decision: How is Voting Structured on the Board?

The current Interlocal Agreement requires a unanimous vote on key issues. Sometimes this approach leads to a stalemate if just one member regularly dissents, thus blocking collective action. The Forum may wish to consider a majority vote approach, or perhaps a super-majority vote requiring 5 out of the 6 members voting in the affirmative for important decisions. The Cascade Water Alliance, which is a watershed management partnership, uses "dual voting" where key decisions must be adopted with both a majority (or super-majority in some instances) vote of the members, and by a majority (or super-majority) vote by water usage. The WRIA 8 Forum (which includes jurisdictions in both King and Snohomish Counties) also has dual voting, requiring both a majority of the members and a majority measured by financial contributions. Dual voting may be a bit too complicated for the new Lake Ballinger/McAleer Creek entity, at least at this phase. But the WRIA 8 Forum has declared that its goal is to operate on a consensus basis, and to use formal voting mechanisms only for the most important decisions.

If the Forum desires to require super-majority votes on some decisions, examples might include adoption of the Strategic Action Plan or Plan amendments, admission of new members, amendments to the Interlocal Agreement, approval of the annual budget, prioritization of use of funds, or prioritization of the organization's support for grant applications by individual members (*i.e.*, whom to support when members are considering applying for the same grant funds).

## **Financial Matters**

### Decision: How is the Entity Financed?

How do members finance the organization? Do they contribute equal annual assessments (which is the simplest approach)? Or do they contribute based on contribution to the watershed problems? Or benefit from programs? Or population? Or impervious surface? These are difficult issues, and it may be advisable to use a simple approach until the group has a much stronger consensus on how programs should be paid for in addition to grant funds.

Financing on-the-ground programs may involve rates and assessments. If the members agree to impose them, should they do so independently, according to a common plan? For example, each member could impose special stormwater charges or surcharges that would go into a Lake Ballinger/McAlier Creek fund. Or one of the members could form a local improvement district that might include adjoining jurisdictions. (This has been permitted, with the agreement of all parties, since legislation was adopted earlier this year.) Direct fees, taxes or charges for major improvements might require formation of a new special purpose district (see below).

### Decision: Who Should Manage the Organization's Funds?

Under the Interlocal Cooperation Act, the members may designate a treasurer for the organization. If it is organized as a watershed management partnership, the treasurer must be the treasurer of a city or county member of the organization (*i.e.*, not a special purpose district treasurer).

## **Staff**

### Decision: Should Staff be Employed Directly by the Organization, or by a Member?

If the entity is an unincorporated joint board, any staff must be either employees of a member, or contractors. If the entity is organized as a public nonprofit corporation, that entity can hire staff. For a small organization, this is very much a matter of simplicity. It may be much easier for a staff of one or two persons to be on the payroll of a member, so long as it is made clear that they answer to the board of the entity rather than to the jurisdiction that formally employs them.

## **Longer Term Governance Issues**

### Decision: Should a Separate Special District Later be Formed?

An intergovernmental entity may serve the member's purposes perfectly well, particularly in the short and medium term. In a later phase, if the organization desires to finance much more robust programs than can be financed through state and federal grants and modest contributions by the members, it may wish to consider the organization of a special district with stronger powers to directly impose fees, taxes and assessments. Special districts that might be considered could include: Lake/Beach Management Districts under Chapter 36.61 RCW, which *can* include areas within two counties. (See RCW 36.61.070.) Diking and Drainage Districts also may be formed within two counties. (See Chapter 85.24 RCW.) Or the members could consider forming a metropolitan municipal corporation under Chapter 35.58 RCW. "Metros" do not have to be large, but they have very robust powers.

### **Next Immediate Steps**

### Decision: Amend the Existing Interlocal Agreement or Draft a New One?

If the Forum wishes to create a new or more developed entity than what now exists, it can (1) amend the existing Interlocal Agreement, just changing some provisions as required, (2) amend and restate the existing Interlocal Agreement, which would be close to writing a new agreement, or (3) adopt a new interlocal agreement to replace the existing one.

Regardless of which approach the Forum chooses to take, the existing Interlocal Agreement provides a good start for the next steps. Some of its provisions can be modified to serve the next entity. Others should be replaced.

**WATERSHED/LAKE MANAGEMENT:  
COMPARISON OF LOCAL GOVERNMENT AUTHORITIES**

<b>Type of Organization</b>	<b>Permitted Activities</b>	<b>Legal Citations (RCW)</b>	<b>Revenue Sources</b>	<b>Constraints</b>
<p>Cities and towns</p>	<p>Operate systems of sewerage (<i>i.e.</i>, a system of “sanitary sewage collection, treatment and/or disposal facilities and services, including...on-site or off-site sanitary sewerage facilities, inspection services and maintenance services for private or public on-site systems....” (RCW 35.67.010)</p> <p>Cities have strong finance powers, and city sewerage utilities may make loans to low-income persons and structure rates and services to assist low-income customers. (RCW 35.92.020, -.017; 74.38.070)</p>	<p>35.67; 35.88 35.92 35A.80 35A.56 35.41 35.21.210-.215 35.22.280(29)3 5.23.440(35) 35.27.370(5)</p>	<p>Rates and Charges General Obligations Bonds Revenue Bonds Fines and Penalties Permit Fees General Taxes State and Federal Grants &amp; Loans</p>	<p>Fees and charges, whether imposed under utility powers or police powers, must be reasonable and must be deposited in a separate account and used solely for the purposes or programs for which they are collected.</p>

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Counties	<p>Operate "systems of sewerage" including sanitary sewage handling and treatment, storm and surface water systems, point and nonpoint water pollution monitoring, septic inspection and maintenance programs, and various other services. (RCW 36.94.010-.020) County systems of sewerage may exercise <i>all</i> powers of aquifer protection areas, lake management districts and shellfish protection districts (RCW 36.94.020).</p> <p>Counties have strong finance powers under Chap. 36.94 RCW, and county sewerage utilities may make loans to low-income persons and waive various fees for low-income customers. (RCW 36.94.140, -.370, -.430; 74.38.070)</p>	36.94 36.89	Rates and Charges General Obligations Bonds Revenue Bonds Fines and Penalties Special Assessments Permit Fees General Taxes State and Federal Grants & Loans	<p>Must be described in county's general sewerage plan after "review committee" process. Special notification must be provided to all residences with on-site systems within area to be served. Under most circumstances, county utility may not "provide inspection, pumping services, or other maintenance or repair services under this [statute] using county employees." (RCW 36.94.020, -.050)</p> <p>Fees and charges, whether imposed under utility powers or police powers, must be reasonable and must be deposited in a separate account and used solely for the purposes or programs for which they are collected.</p>
Metropolitan Municipal Corporations	As part of a water pollution abatement program, may exercise all the powers relating to systems of sewerage authorized to counties under RCW 36.94.010, -020 and -.140. (See above under "Counties")	35.58.200 35.58.210 35.58.215	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants	A metropolitan municipal corporation may engage in water pollution abatement activities <i>only if approved by the voters</i> upon the initial formation of the entity, or if approved at a later vote. (RCW 35.58.050 - .114)

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Boards of Health, Health Districts, Health Departments	County and health district boards of health, health departments, and their health officers, are responsible for enforcing the public health statutes and regulations of the state. Because they are carrying out traditional public health and safety functions, inspection and enforcement activities may be carried out by county or health district employees (in contrast with the private-sector inspector requirement for city & county inspection and maintenance utilities). It should be noted that, counties and cities have broad inherent police (regulatory) powers to the extent such powers are not pre-empted by the state.	70.05 70.46  WAC Chap. 246-272A  Wash. Const. art. XI, sec. 11	Permit Fees Regulatory Fees State and Federal Grants & Loans	Health district and health department programs governing on-site inspection and maintenance are significantly affected by state regulations and statutes.  Permit fees and other regulatory fees must be deposited in a separate account and used solely for the purposes or programs for which they are collected.  Health districts have no effective borrowing power.
Aquifer Protection Areas	Provide for the costs of monitoring and inspecting on-site sewage disposal systems, planning, enforcement and education. (RCW 36.36.040)	36.36	Fees for Withdrawal of Groundwater Fees for On-site Sewage Disposal (Must be per household) State and Federal Grants & Loans	Requires voter approval for creation. Must rely on county government and other agencies to carry out programs.

Type of Organization	Permitted Activities	Legal Citations (RCW)	Revenue Sources	Constraints
Lake Management Districts	Provide for costs of water quality programs, focused mainly on "lake improvement and maintenance activities." RCW 36.61.020	36.61	Rates and Charges Special Assessments Revenue Bonds State and Federal Grants & Loans	Creation must be approved by majority of landowners, with votes weighted based on estimated special assessments or rates & charges.
Water-Sewer Districts	Operate an on-site inspection and maintenance utility as part of the district's system of sewerage (RCW 57.08.005). Water-sewer districts may make loans to low-income persons and adjust various fees and charges for low-income persons. (57.08.014, -.160; 74.38.070)	57.08	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants	Must be described in district's comprehensive sewerage plan, which must be approved by county engineer, county health officer and county legislative authority.
Public Utility Districts	Operate systems for the collection, treatment and disposal of wastewater, and for the "control and protection, preservation, and rehabilitation of surface and underground waters" (RCW 54.16.310). PUD's may adjust rates for low-income elderly and other low-income persons, and may make loans to low-income persons. (RCW 54.16.032; 74.38.070)	54.16	Rates, Charges and Fees General Obligation Bonds Revenue Bonds State and Federal Grants & Loans	

## Wastewater/Water Quality Program – Intergovernmental Structure Options

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
<b>Separate Legal Entity?</b>	No	Yes	Yes	Yes	N/A
<b>Statutory Authorization</b>	Ch. 39.34 RCW	Ch. 24.03 RCW or Ch. 24.06 <sup>2</sup> & Ch. 39.34.030(3)(b)	Ch. 25.15 RCW & Ch. 39.34.030(3)(b)	Ch. 35.58 RCW. Must include two or more cities. Requires public vote for creation. RCW 35.58.070-.090	RCW Chapters 36.94, 35.67, 35.92, Title 57 and 54.16
<b>Scope of Powers</b>	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" 39.34.030 Powers can be delegated to a member to exercise on behalf of the joint board (Administering Agency)	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" (39.34.030).  May not engage in business for profit.  General powers: RCW 24.06.030, RCW 24.03.035  "Corporations may be organized under this chapter for any lawful purpose..." RCW 24.06.015	"Any power or powers, privileges or authority exercised or capable of exercise by a public agency" (39.34.030).  "may carry on any lawful business activity unless a more limited purpose is set forth in the certificate of formation" and unless otherwise specified "do all things necessary or convenient to carry out its business affairs." RCW 25.15.030	"All powers which are necessary to carry out the purposes of the metropolitan municipal corporation and to perform authorized metropolitan functions." (35.58.180)  Water pollution abatement powers: RCW 35.58.200  Metropolitan municipal corporations have as broad (or broader) powers as any other category of municipal corporation in Washington State.	Full powers to finance, own and/or operate wastewater facilities (with public vote in case of public util. districts)
<b>Specific Powers Issues</b>					
Enter into contracts?	No (but a member agency may do so for the benefit of the joint board and its members if each	Yes	Yes	Yes	Yes

<sup>1</sup> Lead entity could be Snohomish County, any of the cities, a water-sewer district or Snohomish PUD.

<sup>2</sup> Discussion of nonprofit corporations in this document is focused on Ch. 24.06, as opposed to Ch. 24.03. Ch. 24.06 is somewhat more flexible than Ch. 24.03.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
	member so approves)				
Own property (real or personal)? <sup>3</sup>	No (but a member agency may do so for the benefit of the joint board and its members if each member so approves).	Yes	Yes	Yes	Yes
Receive gifts and grants?	Yes (if members so individually authorized)	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor	Yes. Gifts would be tax deductible by grantor
Sue and Be Sued?	No; but members can sue and be sued	Yes	Yes	Yes	Yes
Issue debt (as in bonds)	No <sup>4</sup>	No <sup>4</sup>	No <sup>4</sup>	Yes	Yes
Establish funds and accounts?	A public agency may hold an operating fund for a joint board	Yes	Yes	Yes	Yes
Hire employees?	No.	Yes	Yes	Yes	Yes
Can employees qualify for PERS, MEBT?	N/A	Yes	Yes	Yes	Yes
Operate with employees whose services are "loaned" from a member?	Yes	Yes	Yes	Yes	Yes

<sup>3</sup> Note that under any scenario member local governments may not do *indirectly* what they cannot do *directly*. That restriction would extend to any of these alternative corporate entities.

<sup>4</sup> May have bonds issued on its behalf by a member or by the Washington Economic Development Finance Authority under Chap. 43.163 RCW.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
<b>Oversight / Governance Board Requirements</b>	<p>ILA must specify governing board members, election process, voting, Administrator responsible for undertaking business on behalf of joint board.</p> <p>No limitations on membership of committees</p>	<p>Board of Directors (not less than 3 persons). Powers: amend bylaws, articles of incorporation, approve sale or purchase of assets, dissolution or mergers. Board maximum term: 3 years. Corporate officers must be appointed: President, one or more VPs, secretary, treasury.</p> <p>Officers can be <i>ex officio</i> members of board (need not be members of Corporation). Can hold more than one position (except that the president cannot also be secretary). Committees can be established; each must have at least 2 board members on it.</p>	<p>By "one or more managers" –all other terms as determined in agreement.</p> <p><i>Unless agreement of formation otherwise provides:</i> a simple majority of members is required to act; unanimous agreement needed to amend agreement; managers are elected by simple majority but not need be LLC members</p> <p>No limitations on membership on committees</p>	<p>Metropolitan municipality "a metropolitan municipal corporation shall be governed by a metropolitan council composed of elected officials of the component counties and component cities, and possibly other persons, as determined by agreement of each of the component counties and the component cities" under rules established in RCW 35.58.120</p>	<p>ILA may specify oversight or involvement by representatives of other entities.</p>
<b>Weighted voting? Can Members have different rights and obligations?</b>	Allowed	Allowed – specify in Articles of in corporation	Allowed, if specified in LLC agreement.	Allowed, if metro council so provides in its rules of procedure. RCW 35.58.130.	May be specified in ILA

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Can non-government entities join as members/partners?	No	Yes, if allowed by Articles of Incorporation, and subject to prohibitions on municipalities <sup>5</sup>	Yes, if allowed by agreement, subject to general municipal law. But Interlocal Cooperation Act appears to restrict membership to governments if the LLC is formed under that statute.	No	Yes, as specified in ILA
Can new Members be allowed to join after start-up?	Yes	Yes	Yes	Yes. Requires vote in annexed territory. RCW 35.58.530-.550	Yes, as specified in ILA
Meetings	As specified in ILA.  Subject to Open Public Meetings Act	Must conduct an annual meeting at specified time (per Articles of Incorporation).  Subject to Open Public Meetings Act (if municipalities are members)	As specified in agreement of formation. No requirement for annual meeting.  Subject to Open Public Meetings Act (if municipalities are members)	Subject to Open Public Meetings Act.	Subject to Open Public Meetings Act
Liability issues / Immunity / Indemnification	Individual members are fully liable for actions of the Joint Board. Joint Board cannot indemnify members or directors, agents, employees. Members may indemnify one another for their respective actions	Corporation can indemnify officers, agents and employees, and members.  Immunity of officers and directors provided by law, except for intentional misconduct. (RCW 4.24.264)	Can indemnify managers, agents, employees.  Can limit liability of members for LLC conduct except intentional misconduct of a member. Liability for actions of LLC limited to LLC (but may pierce corporate veil in some cases, as is true with a general corporation or nonprofit corporation).	Corporation can indemnify officers, agents and employees, and members.	May indemnify officers, agents, employees, and other governmental participants.

<sup>5</sup> Note: Membership of non-governmental entities can raise significant federal tax issues and state constitutional issues.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Withdrawal of Members	As defined by ILA	As allowed per articles or bylaws.	As agreement defines	No provision for withdrawal.	May be provided in ILA, subject to bond covenants
Dissolution/Termination	Flexible. ILA must specify	Upon resolution of the board, subject to 2/3 vote of members. Assets distributed first to creditors and then per Articles.	As per agreement.  Assets distributed first to creditors and then per agreement.	Permitted under Chap. 53.48 RCW.	Lead entities won't dissolve, but ILA may dissolve under its terms
Duration	Flexible. ILA must specify.	As per agreement; may be perpetual or for term of years.	As per agreement	Perpetual.	As per agreement
Member "Right of Dissent" to certain corporate actions, rights to share of assets	N/A	Certain major actions (merger, sale of all or substantially all assets, diminution of shares, etc.) require advance notice. Members may object; if the action is nevertheless approved, dissenting members may request payment for their interest in the corporation and withdraw. <i>Articles of Incorporation may provide payment is at less than fair value.</i>	Very similar to nonprofit; certain major actions (merger, sale or all or substantially all assets, etc) require advance notice. Members may object in advance; if action is approved, dissenting members may withdraw and receive fair value for their interest in the LLC.	N/A	N/A
<b>Budget and Finance Issues</b>					
Budget Approval Process	Individual jurisdictions must each approve their share of the Joint Board budget	Individual jurisdictions must each approve their share of the corporation budget.	Individual jurisdictions must each approve their share of the corporation budget.	Determined by rules established by Metro Council.	As specified in ILA
Receive loans or grants?	Yes.	Yes. Gifts would be tax deductible by grantor.	Yes. Gifts would be tax deductible by grantor.	Yes. Gifts would be tax deductible by grantor.	Yes.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Books and Records, Audits	Through administering agency	Entity would need to establish and maintain its own books and records and would be subject to audit as other local governmental entities.	LLC would need to establish and maintain its own books and records and would be subject to audit as other local governmental entities.	Subject to audit by State Auditor.	Subject to audit by State Auditor.
Taxation <sup>6</sup>	Not subject to federal income tax or state property tax	As a governmental instrumentality, not subject to federal income tax or state property tax	As a governmental instrumentality, not subject to federal income tax or state property tax—if for non-profit / governmental purpose	Not subject to federal income tax or state property tax	
<b>Formation Process</b>					
Initial Formation	ILA adopted by each member jurisdiction	ILA adopted by each member jurisdiction.  Articles of Incorporation similarly approved by each member.  Corporation is deemed formed when articles are signed and filed with the secretary of state. Bylaws adopted at initial meeting of Board of Directors.	ILA adopted by each member jurisdiction.  Certificate of formation (name, office, agent, place of business, term, how managed) filed with state together with "initial report" (names of managers, description of business);	Formed after petition by a potential member jurisdiction, public hearing, and public vote. RCW 35.58.070-.090	

<sup>6</sup> There are options in terms of federal tax status – 501(c)(3), 501(c)(4), etc. However, there is no reason to take the steps to file in this capacity under federal tax law, since as an instrumentality of its governmental members, charitable contributions to any of these entities (nonprofit, LLC, partnership) would be deductible pursuant to section 115 of the Internal Revenue Code, which covers governments and their instrumentalities.

	<b>Joint Board</b> (including operating through Administering Agency)	<b>Nonprofit Corporation</b>	<b>Limited Liability Corporation (LLC)</b>	<b>Metropolitan Municipality</b>	<b>Existing Govt. as "Lead" Entity Under ILA<sup>1</sup></b>
Ongoing state registration/lice nsing requirements	None—must file interlocal agreement (ILA) with county auditor or post the ILA online.	Annual report and registration filing, with an associated nominal fee. Must have a registered office and registered agent (for receipt of process service, etc.)  Articles of Incorporation and any amendments must be filed with secretary of state.	Annual report and registration required with associated nominal fee. Must maintain registered office and agent.  Certificate of formation and any amendments to certificate of formation must be filed with secretary of state.	N/A	N/A