SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: C-4

DATE: August 14, 2008

SUBJECT: Land Lease Agreement for Cascade View Drive with Snohomish County

CONTACT PERSON: Deborah Knight, City Administrator DKnight

ISSUE:

The issue before the Council is to authorize the Mayor to sign a new lease agreement (Attachment A) with Snohomish County commencing October 1, 2008 and ending at midnight on December 31, 2009.

The lease will allow the County to use a portion of the City's property (approximately 1.75 acres) adjacent to the County transfer station on Cascade View Drive to continue operating its wood waste collection service.

STAFF RECOMMENDATION:

1. Review the Land Lease agreement for Cascade View Drive to use the City property adjacent to the Sultan Transfer Station as a collection site for wood waste collection.
2. Authorize the Mayor to sign the Land Lease for Cascade View Drive with Snohomish County.

SUMMARY:

Snohomish County Solid Waste is requesting a new 15-month lease (October 1, 2008-December 31, 2009) of City owned property adjacent to the transfer station to continue temporary collection of residential wood debris.

The Council authorized the first agreement effective October 1, 2007. The original lease was for a three month period with three 3-month extensions. The original lease agreement will expire on September 30, 2008.

The collection site is open to the public on weekends and is staffed by Solid Waste employees.

- Between October 2007 (the beginning of the project) and August 2008, approximately 1200 households used the site.
- Since January 2008, approximately 1080 households utilized the site.
- An average of 37 households use the site each weekend.
- 92% of the households using the site are located east of Monroe. 48% of the participants live in Sultan or eastward.
- Participants have recycled more than 1,985 cubic yards of material (about 750 pickup truck loads).

To encourage use of the recycling service, the Snohomish County Solid Waste Division offered vouchers (one per household in the Sultan area) for free recycling of one load to be used during the three-month pilot. 43% of participants using the site said they knew about the program from the direct mailer. 37% found out about the site through "word of mouth".

The pilot project has been successful and the County would like to negotiate a new land lease through December 31, 2009.

Proposed Lease Agreement

The property under consideration is all of tax parcel number 28083300302700 which is the property just to the south of the existing transfer station, and a 30 foot by 560 foot section of the adjacent parcel to the south, which is basically the existing roadway. The proposed lease does not include the cemetery ball field property.

The County agrees to keep the site and access areas in a neat and clean condition. Upon termination of the lease, the County will leave the site in as good a state and condition as reasonable use and wear and tear permit. In the event the site is damaged by the County, the County will repair the damage at its sole expense. Repair work would begin immediately and continue until complete within 30 days of termination.

The City required a SEPA (State Environmental Policy Act) checklist for the pilot project. The County prepared the application (SEPA checklist and site plan). The City did not receive any comments regarding the proposed project. The City required mitigation. For example, the City restricted operations on holidays to limit impacts to cemetery visitors. The City also required proper signage to direct traffic leaving the site to the east. On-site grinding is not allowed during funerals. The site area is temporarily fenced to ensure public safety.

A long-term project will require a second SEPA checklist.

BACKGROUND:

Throughout the State of Washington, burning wood debris is prohibited within urban growth areas. This includes Sultan. Temporary burn bans (fire safety in the summer, and air-quality typically in the fall and winter) require residents outside the City limits to seek alternatives disposal methods.

Enforcement of this regulation is lax because Sultan area residents have not had reasonable alternatives available, like the proposed recycling facility. Hauling five yards of solid waste to the transfer station costs residents about $40. However, beginning in 2007, the Clear Air Agency increased its enforcement efforts and issues fines for illegal burn activities.

The Fire District has been working with Snohomish County Solid Waste and the Puget Sound Clean Air Agency to implement alternatives to burning. These agencies approached the City of Sultan to assist with recycling options for residents to discourage residents from burning their yard debris.

The Planning and Public Works Council Subcommittee discussed the issue at its May 17, 2007 meeting. Fire Chief Halverson and representatives from the Puget Sound Clean Air Agency and Snohomish County Solid Waste were on hand to answer questions. The Subcommittee directed staff to bring the issue to the City Council for consideration.

The City Council discussed the issue at its June 28, 2007 meeting. Staff was directed to bring back a proposal for the pilot program for the Council's consideration. Council approved the lease agreement and authorized the Mayor to sign the agreement at its August 23, 2007 meeting. The lease was extended through September 30, 2008.

Initially, the City and the County discussed an exchange/sale of property between the City and the County. The initial proposal was to exchange the Kidling Pit property, on 124th Avenue west of Sultan Basin Road, for the leased property on Cascade View Drive. The County has asked to suspend discussions of an exchange/sale of property until the County's budget situation is more stable.

DISCUSSION:

This lease will continue the City's efforts to provide wood debris recycling to Sultan residents.

FISCAL IMPACT:

Project Funding

There are no direct costs to the City of Sultan to provide this service to Sultan residents. The City did not have any immediate plans to use the site. The only indirect cost for the project is staff time to monitor the County's use of the site.

ALTERNATIVES:

1. Review the Land Lease for Cascade View Drive to use the City property adjacent to the Sultan Transfer Station as a collection site for yard waste recycling, and authorize the Mayor to sign the lease agreement with Snohomish County.
2. Review the Land Lease for Cascade View Drive to use the City property adjacent to the Sultan Transfer Station as a collection site for yard waste recycling, and **do not** authorize the Mayor to sign the lease extension agreement with Snohomish County. Direct staff to areas of concern.

RECOMMENDED ACTION:

1. Review the Land Lease for Cascade View Drive to use the City property adjacent to the Sultan Transfer Station as a collection site for yard waste recycling.
2. Authorize the Mayor to sign the Land Lease for Cascade View Drive with Snohomish County.

ATTACHMENTS:

Attachment A – Land Lease for Cascade View Drive
Attachment B – Program statistics

COUNCIL ACTION:

DATE:

Attachment A

After Recording Return To:
Snohomish County Property Management
3000 Rockefeller Avenue M/S 404
Everett, WA 98201

LAND LEASE
Cascade View Drive, Sultan, WA

This Lease is made this _____ day of _____, 2008 between CITY OF SULTAN, a municipal corporation of the State of Washington, hereafter referred to as the "City", and SNOHOMISH COUNTY, a municipal corporation and political subdivision of the State of Washington, hereafter referred to as the "County".

WITNESSETH:

1. PREMISES. The City does hereby lease to the County, and the County does hereby lease from the City those certain premises identified as all of tax parcel number 28083300302700 described as follows:

Section 33, Township 28 North, Range 8 East, W.M. described as follows: The South 135 feet of the following described property: That portion of the Southeast quarter of the Southwest quarter lying Southeasterly of County Road.
Situate in the County of Snohomish, State of Washington.

and a portion of tax parcel number 27080400200100 described as follows:

The Northerly 30 feet of the Westerly 560 feet of the following described property: Section 4, Township 27 North, Range 8 East, W.M., described as follows: Beginning at a point where the West bank of Sprague Slough intersects the North boundary line of said section, thence West to the East boundary line of County Road, thence South on the East boundary line of County Road to the North boundary of state hatchery land, thence East on the North boundary of state hatchery land to the West bank of Sprague Slough, thence Northerly along bank of slough to the point of beginning.
Situate in the County of Snohomish, State of Washington.

Said premises containing approximately 1.75 acres (the "Premises").

2. TERM. The initial term of this lease shall be for a period of fifteen (15) months, commencing October 1, 2008, and ending at midnight December 31, 2009.

If the term of this lease extends beyond the current County fiscal year, the obligations of the County in succeeding fiscal years are contingent upon legislative appropriation for the specific purpose of funding this lease in accordance with law. In the event that funds are not so appropriated, the County may terminate this lease without penalty or further obligation.

3. RENT. In lieu of rent the County will provide the citizens of the City of Sultan in addition to East Snohomish County residents the ability to utilize the Wood Waste Collection Services provided by the County at the Premises.

4. USE. The County will use the premises exclusively for the operation of wood waste collection services and for no other purpose without prior consent of the City. The operations for wood waste collection will include compilation of wood waste materials including but not limited to stumps, branches, unpainted lumber, and wood pallets. Some of the equipment and machinery required to provide these services and for use on-site will be backhoes for stacking of debris, tub grinders for grinding wood waste materials, containers to stockpile ground wood waste materials, large trucks, motor vehicles, and similar equipment and materials. Any equipment, machinery, or materials placed or installed on the Premises by the County shall remain the property of the County. The County may construct temporary wall structures on-site to use for the purposes of compacting wood debris. The County will have employees and contractors on-site during the term of the lease to facilitate the operation of wood waste collection services.

The County agrees that in the operation of the services to be conducted on the Premises and in any occupancy thereof, the County will comply with all applicable federal, state and local laws, rules and regulations.

The County shall keep the Premises and access areas in a neat and clean condition. Upon termination of the Lease, the County shall quit and surrender the Premises in as good a state and condition as reasonable use and wear and tear thereof permit, damage by the elements or other actions not caused by the County, its employees, agents, customers or invitees excepted.

5. DAMAGE. In the event that any damage of any kind is caused by County in the course of performing work authorized by this Lease, the County will repair the damage at its sole cost and expense. Repair work shall begin without delay and continue without interruption until completed and within thirty (30) days of termination of this Lease.

6. LIENS. In the event the Premises shall at any time during the term of this Lease become subject to any lawsuit brought to enforce a lien or any statement or claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to the County on the Premises and contracted for or agreed to by the County, the County may contest such lien by legal proceedings but shall, in the event, cause such lien, at its sole cost, to be discharged within thirty (30) days after notice thereof by the substitution therefore of an appropriate lien release bond, by posting of adequate security for payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to the City.

7. HOLD HARMLESS. The County shall assume the risk of, and be liable for all damage, loss, cost and expense of any party arising out of the County's use of the Premises, or actions or omissions of the County's agents, employees, or volunteers, except that solely caused by the negligence or willful misconduct of the City's employees acting within the scope of their employment. The County shall protect, save harmless, indemnify, and defend, 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 performance of this Lease or use of the Premises, including claims by third parties or the County's employees to which it would otherwise be immune under Title 51 RCW or other law, except for those damages solely caused by the negligence or willful misconduct of the City, its elected and appointed officials, officers, employees or agents. The County's duties shall include, but not be limited to, investigating, adjusting and defending all claims alleging loss as described within this paragraph.

8. INSURANCE. Snohomish County self-insures $1,000,000 of its common law and assumed liability for bodily injury and/or property damage to third parties in connection with

accidents arising out of Snohomish County's operations. The limits of coverage meet or exceed limits typically required and the county's excess liability insurance covers all operations and applies in addition to the self-insurance program. The County's self-insurance will respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured.

9. HAZARDOUS WASTE. To the best of the City's knowledge, the Premises is not in violation of any law, ordinance, rule or regulation relating to the environmental conditions thereon. Moreover, to the best of the City's knowledge, there is no hazardous waste or other substance, including but not limited to those that would be a hazardous waste, material or substance, toxic substance, gas or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et. seq., the Washington Model Toxics Control Act, RCW Ch. 70.105D, RCW Ch. 70.95, and the regulations promulgated thereunder or under any applicable local or state environmental ordinance, statute, law, rule or regulation ("Hazardous Substances"), on or about the Premises or on any parcels of land which abut the Premises. Further, to the best of the City's knowledge: (i) there has been no release, spill, leak, discharge, emission, leak or disposal, (ii) there are no substances or conditions, in or on the Premises or any other parcels of land which may affect the Premises or use thereof that may support a claim or cause of action under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements and (iii) there is no asbestos, PCBs or underground storage tanks located on the Premises or which have been removed therefrom.

The City agrees to indemnify, hold harmless and defend the County, its appointed officials, officers, employees, agents and representatives, from and against any and all claims, actions, suits, liability, loss, cost, expenses and damages of any nature whatsoever, including costs and attorneys' fees, which are caused by or arise out of (i) the existence of Hazardous Substances on the Premises or the migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land; (ii) the City's failure or insufficient compliance with any federal, state or local laws applicable to Hazardous Substances; or (iii) any claim, in law or equity, brought by any third party or the City's own officials, officers, employees, agents or representatives alleging any cause of action relating to the existence of Hazardous Substances on the Premises or any migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land, and, with respect to (i), (ii) and (iii), that existed, or in the case of migration commenced due to a condition that existed, as of or prior to the commencement of this Lease.

10. SUBLETTING AND ASSIGNMENT. The County shall not sublet the whole or any part of said Premises, nor assign this Lease, or any part thereof, without the written consent of the City, which consent shall not be unreasonably withheld. If consent is once given by the City to the assignment of this lease, or any interest therein, the City shall not be barred from afterward refusing to consent to any further assignment. This Lease shall not be assignable by operation of law.

Any assignment made by the County shall not become effective until the assignee, in writing, shall assume this Lease and agree to perform and be bound by all of the obligations of the County accruing under this Lease from and after the date of such assignment. In the event of such an assignment and assumption, the County shall remain bound by all obligations of the County accruing under this Lease. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

11. NOTICES. All notices to be given by the parties hereto shall be in writing and may either be served personally or may be deposited in the United States mail, postage prepaid, by either registered or certified mail or by facsimile, and if to be given to the City, shall be addressed or faxed to the City at:

City of Sultan
319 Main Street, Suite 200
PO Box 1199
Sultan, WA 98294
Attn: Deborah Knight, City Administrator
Phone: 360-793-7358
Fax: 360-793-3344
Email: Deborah.knight@ci.sultan.wa.us

or if to be given the County, shall be addressed to the County at:

Snohomish County
3000 Rockefeller Avenue M/S 404
Everett, WA 98201
Attn: Cherie Hutchins
Phone: 425-388-3400
Fax: 425-388-7008
Email: cherie.hutchins@co.snohomish.wa.us

All notices shall be effective upon the earlier of personal delivery or two (2) days after being mailed.

12. SIGNS. The County shall have the right to place identifying and instructional signage on and about the Premises with the City's consent, which consent shall not be unreasonably withheld, subject to compliance with all applicable laws.

13. DEFAULT. Upon either party's failure to observe or perform any term or condition of this Lease, that failure having continued for fifteen (15) days after the non-defaulting party gives written notice to cure such failure to the other party, such party shall be deemed in default. In the event of default and upon fifteen (15) days written notice of termination to the party in default, the non-defaulting party may terminate this Lease.

14. GOVERNING LAW AND VENUE. This Lease shall be governed by the laws of the State of Washington and any lawsuit regarding this Lease must be brought in Snohomish County, Washington.

15. NO WAIVER. No waiver shall be implied from an omission by either party to take any action related to breach of any covenant, term, or condition of the Lease. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

16. HOLDING OVER. If the County, with the consent, express or implied, of the City, shall hold over after the expiration of the term of this Lease, the City and the County shall remain bound by all the terms, covenants, and agreements hereof, except that the tenancy shall be month to month.

17. SUCCESSORS AND ASSIGNS. The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto; and the words "City" and "County" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms or corporations which may be or become parties to this Lease.

18. ENTIRE AGREEMENT. This Lease contains all the agreements between the parties with respect to any matter covered or mentioned in the Lease, and no prior agreement, letter of intent, or understanding relating to any such matter will be effective for any purpose. No provision in this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest and using the same formalities as are required by the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY OF SULTAN:

SNOHOMISH COUNTY

PLEA

_____

Mayor, City of Sultan Date

_____

County Executive Date

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath acknowledged that he was authorized to execute the instrument, and acknowledged it as the Mayor of the CITY OF SULTAN to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2008.

_____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

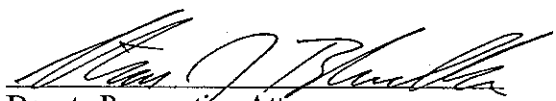
STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of Snohomish County and acknowledged to me the said instrument to be for the uses and purposes therein mentioned, and signed said instrument on behalf of Snohomish County as its free and voluntary act and deed.

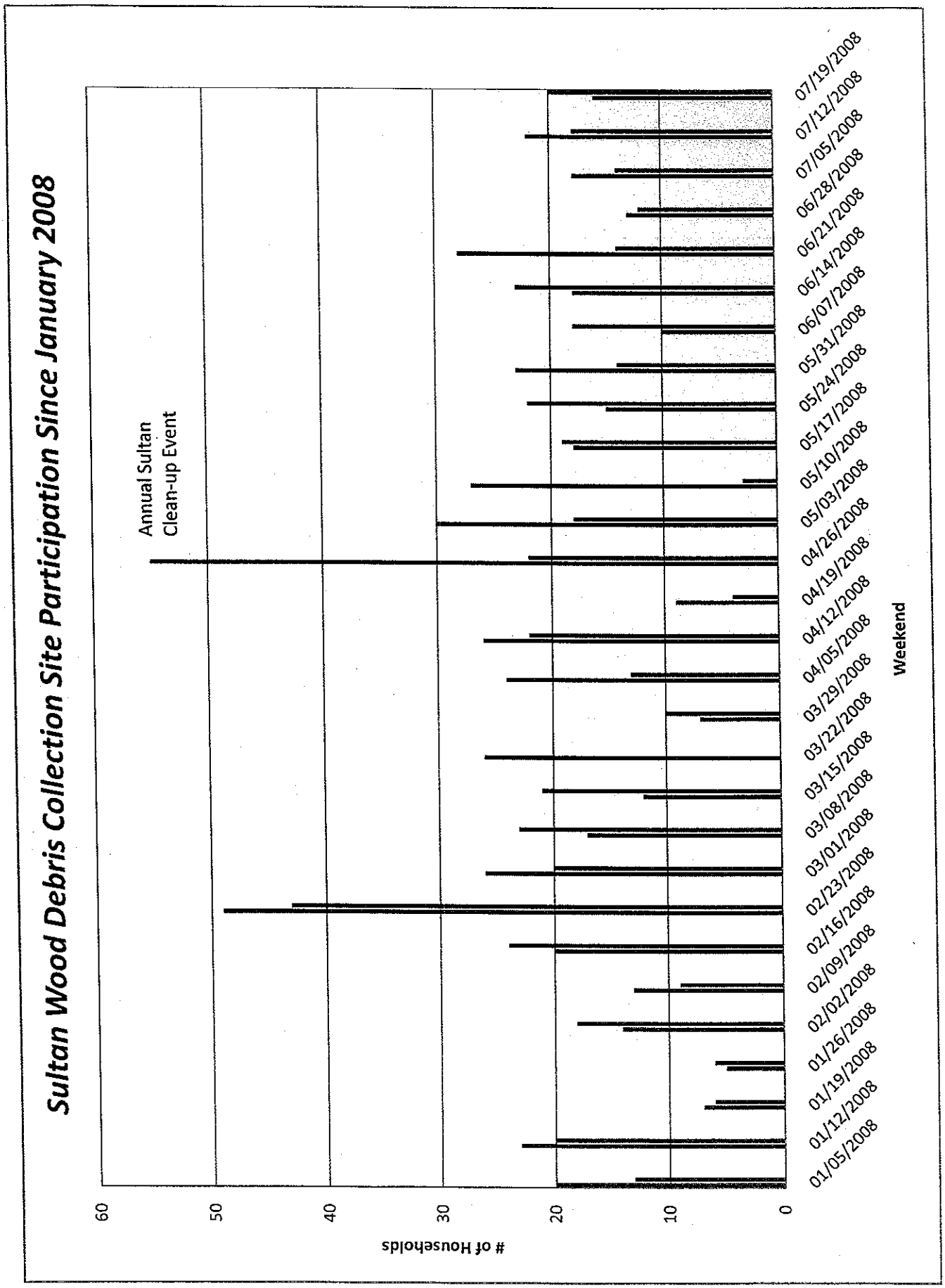
WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
NOTARY PUBLIC in and for the State of
Washington residing at _____.
My commission expires _____.

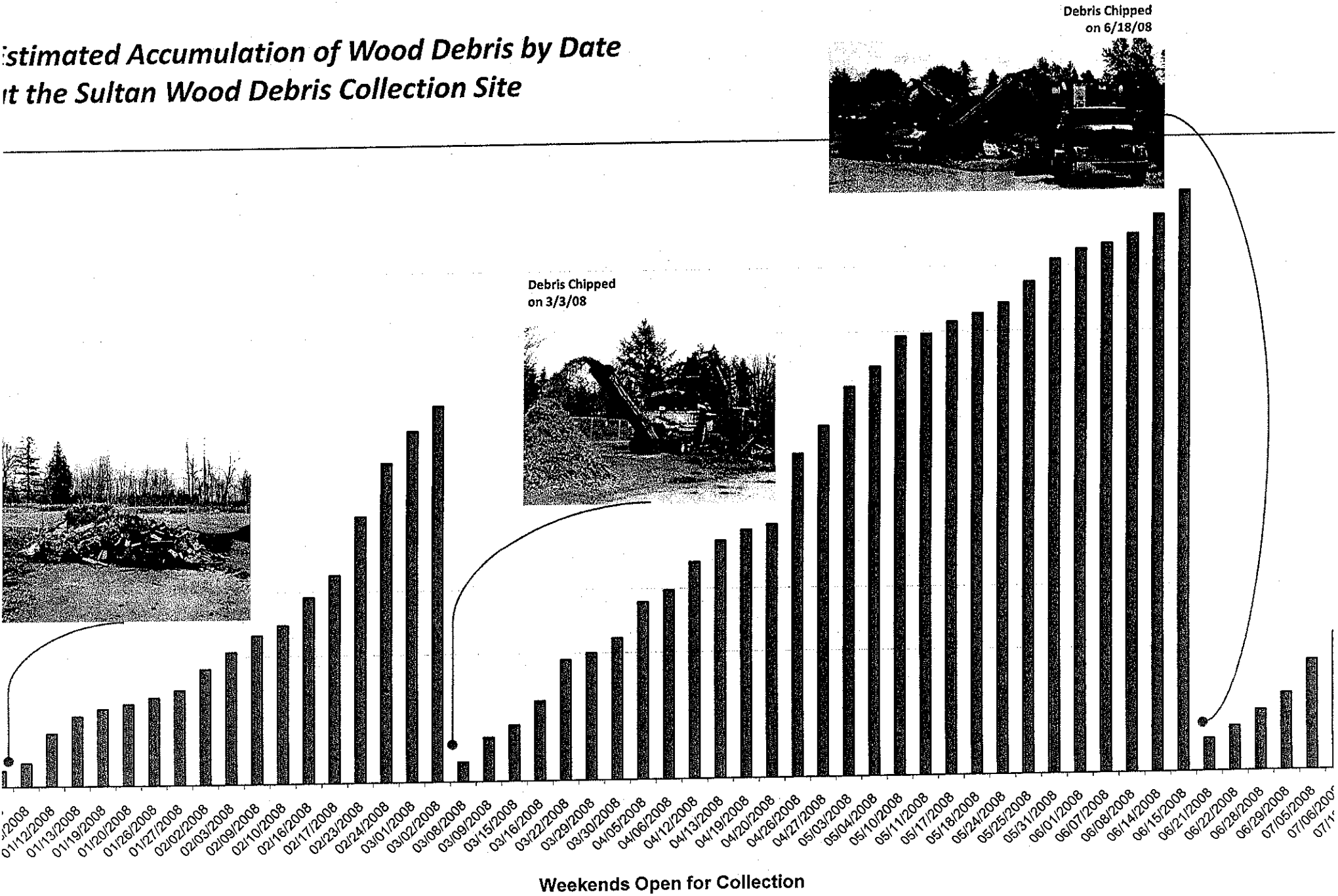
Approved as to form:


Deputy Prosecuting Attorney

Attachment B



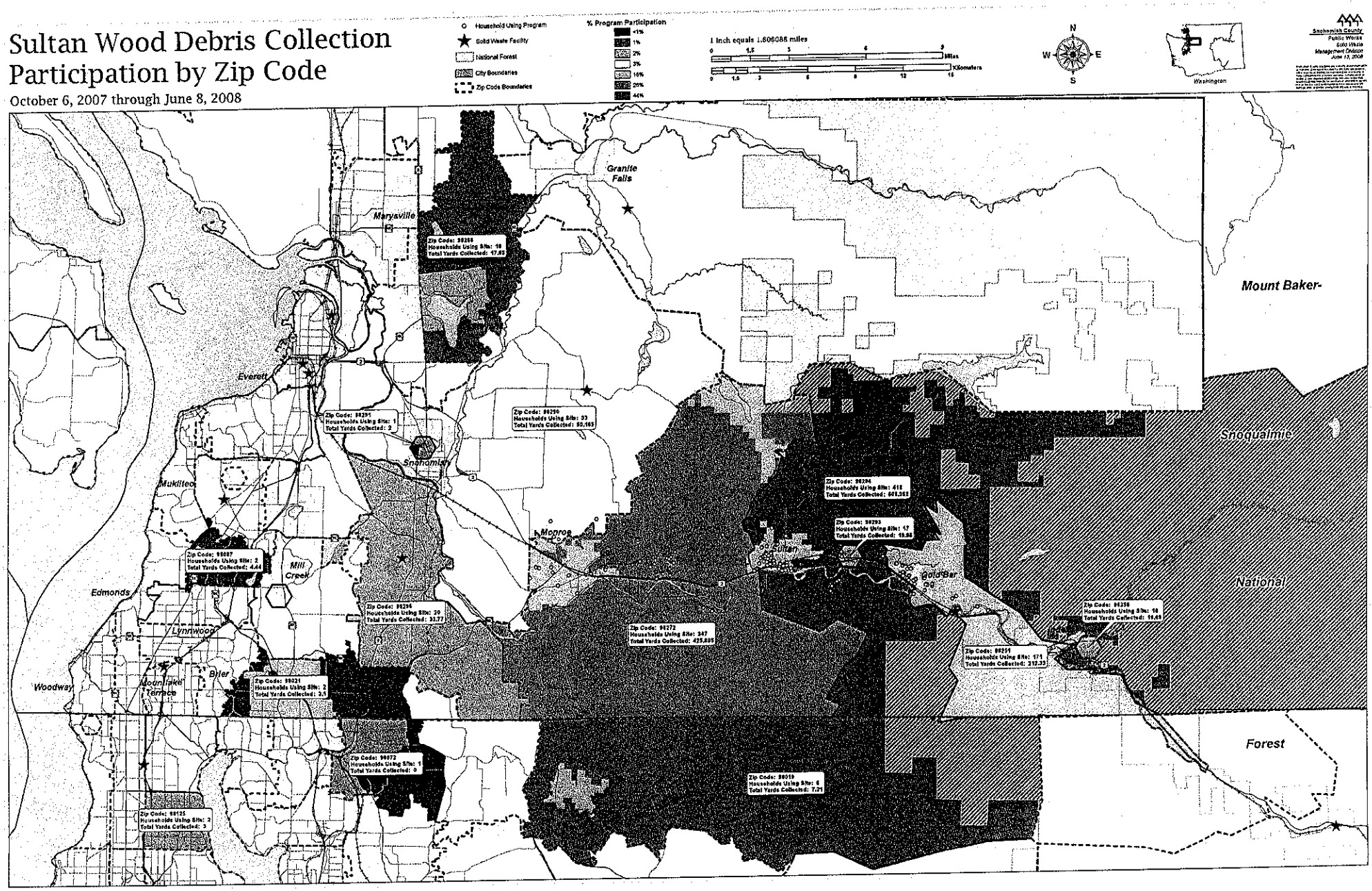
Estimated Accumulation of Wood Debris by Date at the Sultan Wood Debris Collection Site



B.2

Sultan Wood Debris Collection Participation by Zip Code

October 6, 2007 through June 8, 2008



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