

COOPERATION AGREEMENT BETWEEN KING COUNTY
AND THE VASHON-MAURY ISLAND LAND TRUST
FOR USE OF CONSERVATION FUTURE FUNDS

COPY OF
ORIGINAL FILED

DEC 23 1992

King County

THIS COOPERATION AGREEMENT is entered into between the Vashon-Maury Island Land Trust ("Trust") and KING COUNTY ("County").

Article I. Recitals

On February 27, 1987, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund to acquire green spaces, greenbelts, and trail rights-of-way.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund and established conditions for use of the Fund, including conditions covering allowable projects, costs and expenses.

On May 26, 1992, the King County Council passed Ordinance 10392, which authorized expenditure of \$22,000 from the Conservation Futures contingency CIP project for the Vashon Island Rookery.

The Trust is a "nonprofit nature conservancy corporation" as such term is defined in RCW 84.34.258.

Pursuant to King County Ordinance 8867, Chapter 84.34 RCW and Chapter 39.34 RCW and for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Article II. Definitions

Section 2.1 - Open Space. The term "open space" or "open space land" means: a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or, b) any land area, the preservation of which in its present use would: 1) conserve and enhance natural or scenic resources; or, 2) protect streams or water supply; or, 3) promote conservation of soils, wetlands, beaches or tidal marshes; or, 4) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space; or, 5) enhance recreational activities; or, 6)

preserve historic sites, or, 7) retain in its natural state tracts of land of not less than five acres situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification.

Section 2.2 - Project. The term "project" means the Maury Island Rookery which meets open space criteria as described in King County Ordinance 8867, Section 1, and RCW 84.34.020 and which is attached to and incorporated by reference in King County Ordinance 10392.

Section 2.3 - Conservation Futures. The term "conservation futures" means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve restore, limit future use of, or otherwise conserve open space land, all in accordance with the provisions of Washington Statute Chapter 84.34 RCW and King County Ordinance 8867.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the Trust and the County relating to the Project and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be and continue in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The term of the agreement shall be indefinite. The agreement will be terminated if the Trust is unable or unwilling: 1) to expend the funds provided through this agreement; 2) to satisfy the matching requirements contained in this agreement; and, 3) upon reimbursement by the Trust to the County of all unexpended funds provided by the County pursuant to this agreement in the manner and amounts described below.

Article V. Conditions of Agreement

Section 5.1 - Project Description. Funds available pursuant to this agreement may be used only for the project identified in Ordinance 10392 as the Maury Island Heron Rookery. All County funded Projects must meet open space criteria as described in King

County Ordinance 8867, Section 1, and Washington Statute Chapter 84.34.020 RCW.

Section 5.2 - Use of Funds. Funds provided to the Trust pursuant to this agreement as well as funds provided by the Trust as match pursuant to this agreement may be used only for expenses related to property acquisition. Those expenses include appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options, all in accordance with the provisions of Section 3 of Ordinance 9128. Funds utilized pursuant to this agreement may not be used to purchase land obtained thorough the exercise of eminent domain.

Section 5.3 - Abandonment of Project. If the Trust does not proceed with the Project described in Section 5.1 of this agreement, the Trust must reimburse the County all funds provided by the County less approved expenses previously incurred in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance.

Section 5.4 - Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property all funds provided pursuant to this agreement plus accrued interest on such funds shall be repaid to the County.

Article VI. Responsibilities of the Trust

Section 6.1 - Matching Requirements. Any Project funded by Conservation Future Levy proceeds shall be supported by the Trust with a matching contribution which is no less than the amount of Conservation Futures Levy funds allocated to the Project. This contribution may be in the form of cash, land trades with a valuation verified by an appraisal conducted by an MAI certified appraiser, or credits for other qualifying open space acquired on or after January 1, 1989. Any Trust match, other than cash, shall require County approval. County approval and County acceptance of the Trust's cash match will be transmitted in writing to the Trust by the Administrator of the County's Office of Open Space or his successor in function.

Such matching contribution must be available within two years of the Trust's application for County funds to support Project identified herein.

If such commitment is not timely made, the County shall be released from any obligation to fund the Project in question, and the Trust shall reimburse the County all funds provided to the Trust pursuant to this agreement plus accrued interest on such

funds. All such monies will be available to the County to reallocate to other approved Projects. By appropriate legislative action, taken not more than 60 days following the effective date of this agreement, the Trust shall commit to contribute its required match.

Section 6.2 - Project Description. As part of the application to receive Conservation Futures Levy funds from the County, the Trust shall submit the following information concerning each project: 1) a narrative description of the project; 2) a description of the specific uses for Conservation Futures Levy in the Project; and, 3) a description of the means by which the Trust will satisfy the matching requirements contained in this agreement.

Section 6.3 - Reporting. All funds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other Trust funds, accounts and monies. Until the property described in the Project is acquired and all funds provided pursuant to this agreement expended, the Trust shall provide semi-annual written reports to the County within 30 days of the end of each relevant time period. The semi-annual report shall contain the following information: a) an accounting of all cash expenditures and encumbrances in support of the Project; b) the status of each Project and any changes to the approved time line; and, c) other relevant information requested by the County for the purpose of determining compliance with this agreement.

Following acquisition of the property and expenditure of all funds provided pursuant to this agreement, the Trust shall provide the country with a final report, within 90 days of the end of the calendar year in which all funds were expended. Said report shall contain a summary of all project expenditures, a description of the project status and accomplishments and other relevant information requested by the County for the purpose of verifying compliance with this agreement.

The Trust shall also provide the County, within 90 days of the end of each calendar year, annual reports which specify any change in the status of the Project during the prior year and any change in the status of the Project which the Trust reasonably anticipates during the ensuing year. Such reports shall be required only if a change has taken place or is anticipated, except as provided above for ongoing and final project reports. All such reports shall be submitted to the County's Department of Parks, Planning and Resources, Parks Division Office of Open Space or its successor in function.

Section 6.4 - Disposition of Remaining Funds. If allocation of Conservation Futures Levy funds to this Project produces an

excess of revenues over the approved costs of the Project, then as to such excess funds, the Trust will: 1) justify to the County's satisfaction that such excess funds are necessary to complete the Project; or, 2) repay such excess funds to the County.

If the Trust does not expend all funds provided through this agreement such funds shall be refunded to the County. For purposes of this section, "funds" shall include all monies provided by the county plus interest accrued by the Trust on such monies.

Section 6.5 - Maintenance in Perpetuity. The Trust, and any successor in interest, agree to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If the Trust changes the status or use of properties acquired with funds provided pursuant to this agreement to any purpose, the Trust shall pay the County an amount in cash to be mutually determined or substitute other property acceptable to the County. In either case, the value of the property shall be established at the time of the change in status or use, based on the changed status or use and not based on its value as open space.

Upon changes in status and/or use of the property acquired herein, at its own cost, the Trust will provide the County an independent MAI appraisal in accordance with this section. The value established by the appraisal will not be binding on the County. The Trust shall provide the County with written notice prior to the change of use and shall reimburse the County within 90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide Conservation Futures Levy funds in the amount of \$22,000. The Trust may request additional funds; however, the County has no obligation to provide funds to the Trust in excess of the specified herein. The County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article VIII. Other Provisions

Section 8.1 - Hold Harmless and Indemnification

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the Trust, its employees, contractors or others by reason of

this agreement. The Trust shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, costs and whatsoever occurring or resulting from: 1) the Trust's failure to pay any compensation, wage, fee, benefits or taxes; and, 2) the supplying to the Trust of work, services, materials or supplies by Trust employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The Trust further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts or failure for any reason to comply with the terms of this agreement by the Trust, its officers, employees, agents or representatives.

C. The Trust shall protect, defend, indemnify, and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Trust, its officers, employees or agents. For purposes of this agreement only, the Trust agrees to waive the immunity granted it for industrial insurance claims pursuant to Washington Statute Chapter 52 to the extent necessary to extend its obligations under this paragraph to any claim, demand or cause of action brought by or on behalf of any employees, including judgments, awards and costs arising therefrom including attorneys' fees.

Section 8.2 - Amendment. The parties reserve the right to amend or modify this agreement. Such amendments or modifications must be by written instrument signed by the parties and approved by the respective Trust and County Councils.

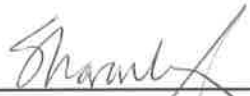
Section 8.3 - Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other terms or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.


Section 8.4 - Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreement between the parties relating to the projects and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties thereto have signed their names in the spaces set forth below:

KING COUNTY

VASHON-MAURY ISLAND LAND TRUST

 FOR
TIM HILL
King County Executive

BY: 
Name:
Title: President

DATE: 12/22/92

DATE: 11-24-92

Acting under authority of
authority of Motion 8663

Approved as to form:


NORM MALENG
King County Prosecuting Attorney