

10800

09/23/1999

Introduced By: Larry Phillips
Rob McKenna

Clerk 09/28/99

Proposed No.: 1999-0564

MOTION NO. **10800**

1
2 A MOTION authorizing the executive to enter into an
3 interlocal cooperation agreement with Snohomish county for
4 the disbursement of funds appropriated and allocated for the
5 conservation futures levy program.

6 WHEREAS, Ordinance 12926, appropriated and allocated \$300,000 of
7 conservation future levy funds to the Bear Creek Basin project, and

8 WHEREAS, the Bear Creek Basin project is a joint project between King
9 County and Snohomish county, whereby King County and Snohomish county would
10 each fund up to \$159,000 for acquisition of critical Bear Creek headwaters in
11 Paradise Valley, and

12 WHEREAS, Snohomish county is negotiating to purchase the property
13 identified in the application;

14 NOW, THEREFORE, BE IT MOVED by the Council of King County:

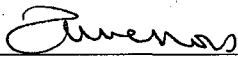
15 The executive is authorized to enter into and execute an interlocal cooperation
16 agreement with Snohomish county for the distribution of funds to Snohomish county
17 in order to complete the purchase of specified property.

18 PASSED by a vote of 11 to 0 this 25th day of October, 1999.

19 KING COUNTY COUNCIL
20 KING COUNTY, WASHINGTON

21 
22 Chair

23 ATTEST:

24 
25 Clerk of the Council

26 Attachments: Interlocal Agreement Between King County, Washington and Snohomish
27 County, Washington for the Bear Creek Basin/Headwaters Project

INTERLOCAL AGREEMENT
BETWEEN
KING COUNTY, WASHINGTON AND
SNOHOMISH COUNTY, WASHINGTON
FOR THE BEAR CREEK BASIN/HEADWATERS PROJECT

THIS INTERLOCAL AGREEMENT is entered into between SNOHOMISH COUNTY (“Snohomish County”) and KING COUNTY (“King County”);

Article I. Recitals

On February 27, 1989, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund, including matching contribution requirements for jurisdictions receiving funds.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund to provide for the receipt and disbursement of conservation future levy proceeds and established conditions for use of the Fund, including conditions covering allowable cost and expenses.

The King County Open Space Citizens Oversight Committee recommended an allocation of 1996-1997 Conservation Futures tax levy collections to specific projects from the Conservation Futures Levy fund pursuant to Ordinance 8867, as amended by Ordinance 10750.

The King County Council, by Ordinance 12926, has approved the Citizens Committee recommendation for the allocation of Conservation Future Levy funds to specific projects.

King County and Snohomish County seek to preserve threatened salmon in the Bear Creek Basin through the permanent protection of critical natural functions of Bear Creek's

headwaters immediately adjacent to King County in Snohomish County. The Bear Creek/Headwaters Project ("Project"), consisting of approximately 1,000 acres in Snohomish County is described in attachment "A" hereto.

King County has invested several million dollars in the Bear Creek Basin for salmon habitat protection, flood and erosion control. Development of Bear Creek's natural headwater lands would likely threaten these investments with irreparable harm and potential loss. Preservation of Bear Creek's critical natural headwaters will protect King County's downstream investments, directly benefiting King County residents.

Pursuant to King County Ordinances 8867, 9128, 11713, Washington Statute Chapter 84.34 RCW and Washington Statute Chapter 39.34, the parties agree as follows:

Article II. Definitions

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 (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply; or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre 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, or (c) any land meeting the definition of farms and agricultural conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space

classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

2. Project: The term "Project" means the specific project, described in Attachment "A" herein, that meets open space criteria as described in King County Ordinance 8867, as amended by Ordinance 10750, Section 1, and RCW 84.34.020 and which is attached to and incorporated by reference in King County Ordinance 12926.

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 converse 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 Snohomish County and King 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 continued 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.

Article V. Termination

This agreement will be terminated if 1) Snohomish County is unable or unwilling to expend the funds provided through this agreement or to satisfy the matching requirements

contained in this agreement; and 2) upon reimbursement by Snohomish County to King County of all unexpended funds provided by King County pursuant to this agreement in the manner and amounts described herein.

The obligation of Snohomish County to continue or complete the project described herein beyond the end of fiscal year 1999 is contingent upon appropriation of funds by Snohomish County's governing body for the specific purpose of funding the project which is the subject of this Agreement. Upon the failure of such appropriation, Snohomish County may terminate this Agreement and reimburse all unexpended funds provided by King County pursuant to this Agreement in the manner and amounts described herein.

Article VI. Conditions of Agreement

Section 6.1 -- Project Description. Funds available pursuant to this agreement may be used only for the Project described in Attachment "A". The Project is funded with King County Conservation Futures and must meet open space criteria as described in King County Ordinance 8867, as amended by Ordinance 10750, Section 1, and Washington Statute Chapter 84.34.020 RCW.

Section 6.2 -- Use of Funds. Funds provided to Snohomish County pursuant to this agreement as well as funds provided by Snohomish County 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 through the exercise of eminent domain.

Section 6.3 -- Substitution/Deletion of Projects. If Snohomish County does not proceed with the Project described in Section 5.1 of this agreement, Snohomish County shall reimburse

King County all funds provided in good faith to acquire the property for open space, plus accrued interest earnings on the unexpended balance.

Section 6.4 -- Eminent Domain. If the 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 reprogrammed as provided in this agreement or repaid to King County.

Article VII. Responsibilities of Snohomish County

Section 7.1 -- Matching Requirements. Any Project expenditures funded by King County Conservation Futures levy proceeds shall be supported by Snohomish County with a matching contribution which is no less than the amount of King County Conservation Futures Levy funds allocated to the Project expenditures. This contribution may be in the form of cash, land trades with a valuation verified by an appraisal conducted by a MIA certified appraiser, or credits for other qualifying open space acquired on or after January 1, 1989. Any proposed match other than cash, shall require King County approval. King County's approval and acceptance of Snohomish County's match will be transmitted in writing to Snohomish County by King County's Resource Lands and Open Space Section, or its successor in functions.

If the Project involves two or more jurisdictions, those jurisdictions shall determine the allocation of the contributions to the matching requirements of this agreement, so long as the total match is no less than the amount of Conservation Futures Levy funds provided by King County.

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

If such commitment is not made in a timely manner, King County shall be released from any obligation to fund the Project and Snohomish County shall reimburse King County all funds provided to Snohomish County pursuant to this agreement plus accrued interest on such funds. All such moneys will be available to King County to reallocate to other approved projects. By

appropriate legislature action taken not more than 60 days following the effective date of this agreement, Snohomish County shall commit to contribute its required match.

Section 7.2 -- Reporting. All funds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other Snohomish County funds, accounts and moneys. Until the property described in the Project is acquired and all funds provided pursuant to this agreement expended, Snohomish County shall provide semi-annual written reports to King 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 for support of the Project; b) the status of the Project and any changes to the approved time line; and c) other relevant information requested by King 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, Snohomish County shall provide King County 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 King County for the purpose of verifying compliance with this agreement.

Snohomish County shall also provide King County, within 90 days of the end of each calendar, annual reports that specify any change in the status of the Project during the prior year and any change in the status of the Project that Snohomish County 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 King County's Department of Natural Resources, Resource Lands and Open Space Section, or its successor.

Section 7.3 -- Disposition of Remaining Funds.

If Snohomish County does not expend all funds provided through this agreement and no substitute project is requested or approved as to the excess funds, such funds shall be refunded to King County. For purposes of this section, "funds" shall include all moneys provided by King County plus interest accrued by Snohomish County on such moneys.

Section 7.4 -- Maintenance in Perpetuity. Snohomish County, and any successor in interest, agrees to maintain properties acquired with funds provided pursuant to this agreement as open space in perpetuity. If Snohomish County changes the status or use of properties acquired with funds provided pursuant to this agreement to any purpose, Snohomish County shall pay King County an amount in cash to be mutually determined or substitute other property acceptable to King County. In either case, the value of the property shall be established at the time of the change in status or use, based upon 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, Snohomish County will provide King County an independent MIA appraisal in accordance with this section. The value established by the appraisal will not be binding on King County. Snohomish County shall provide King County with written notice prior to such change of use and shall reimburse King County within 90 days of such notification. Reimbursement not received within 90 days will accrue interest at the then legal rate.

Article VIII. Responsibilities of the King County

Subject to the terms of this agreement, King County will provide Conservation Futures tax Levy funds in the amount shown in Attachment A. King County has no obligation to provide funds to Snohomish County in excess of the amount shown in Attachment A. King County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article IX Other Provisions

Section 9.1 -- Hold Harmless and Indemnification.

A. King County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of Snohomish County, its employees, contractors or others by reason of this agreement. Snohomish County shall protect, indemnify and save harmless King County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) Snohomish County's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to Snohomish County works services, materials or supplies by Snohomish County employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. Snohomish County further agrees that it is financially responsible for and will repay King County all indicated amounts following an audit exception, which occurs due to negligent or intentional acts or omissions of Snohomish County, its officers, employees, agents, or representatives.

C. Snohomish County shall protect, indemnify and save harmless King 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 Snohomish County, its officers, employees or agents. For purpose of this agreement only, Snohomish County agrees to waive the immunity granted it for

industrial insurance claims pursuant to Washington Statute Chapter 51 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 employee, including judgments, awards and costs arising therefrom including attorney's fees.

Section 9.2 -- 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 County Councils.

Section 9.3 -- 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 term 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 9.4 -- 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 agreements 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.

Section 9.5 -- Administration. This agreement shall be administered by the Director of the King County Department of Natural Resources or her designee and by the Snohomish County Executive or his designee.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement as of the dates written below:

KING COUNTY

SNOHOMISH COUNTY

Ron Sims
King County Executive

Robert J. Drewel
Snohomish County Executive

Date: _____

Date: _____

Approved as to form:

Approved as to form:

King County Prosecuting Attorney

Snohomish County Prosecuting Attorney

108004

ATTACHMENT A
BEAR CREEK BASIN/HEADWATERS
KING COUNTY CONSERVATION FUTURES PROJECT DESCRIPTION

PROJECT NAME

AMOUNT

Bear Creek Basin/Headwaters

\$159,000

PROJECT DESCRIPTION

The Bear Creek Basin/Headwaters Project will preserve up to approximately 1,000 acres of natural lands located in the Bear Creek Headwaters area of Southern Snohomish County. The project is located in the Bear Creek Basin headwaters adjacent to Paradise Valley Road and within the boundaries shown on the attached map that was included within the application for 1996-1997 Conservation Futures funds. The property contains critical headwaters of Bear Creek and is identified in the King County Bear Creek Basin Plan as a Regionally Significant Resource Area. Protection of these headwaters will directly benefit King County residents and is necessary to protect King County's significant investments salmon habitat preservation, flood control and erosion control in the Bear Creek Basin in King County. Bear Creek is an important river system for threatened salmon spawning and rearing, and it is also an important contributor to water quality in the Lake Washington Watershed.

The specific portion of the Bear Creek Basin/Headwaters Project undertaken by Snohomish County pursuant to this Agreement is the acquisition of approximately 781 acres in the Bear Creek headwaters located within Snohomish County. This will include 531 acres of upland and 250 acres of wetlands. The Conservation Futures Levy funds provided by King County pursuant to this Agreement will comprise a portion of the funding Snohomish County will utilize to complete this acquisition.