

Bill Reams  
Audrey Gruger  
Lois North  
Ruby Chow  
Cynthia Sullivan

4/27/84

INTRODUCED BY

PROPOSED No.

84-258

ORDINANCE NO. 6808

1  
2  
3  
4  
5 AN ORDINANCE providing for the issuance and  
6 sale of unlimited tax levy general obliga-  
7 tion bonds of the county in the principal  
8 amount of \$35,000,000 for the purpose of  
9 providing a part of the funds to pay the  
10 cost of carrying out the acquisition of  
11 voluntarily offered interests in farm and  
12 open space land in King county as provided  
13 in Ordinance 4341, as amended by Ordinances  
14 4373 and 4500, and authorized by the  
15 qualified electors of the county at a  
16 special election held therein on November  
17 6, 1979; providing the date, form, terms,  
18 maturities and covenants of those bonds;  
19 providing for the annual levy of taxes  
20 without limitation as to rate or amount to  
21 pay the principal of and interest on the  
22 bonds; repealing Ordinance 6174; and can-  
23 celling, except for purposes of refunding,  
24 the \$15,000,000 balance of the bonds  
25 authorized at such election pursuant to  
26 Ordinance 4341, as amended.

17 PREAMBLE:

18 At an election held in King County, Washington (the  
19 "county"), on November 6, 1979, the number and  
20 proportion of the qualified electors of the county  
21 required by law for the adoption thereof voted in  
22 favor of a proposition authorizing the issuance of  
23 unlimited tax general obligation bonds of the county  
24 in the total principal amount of \$50,000,000 for the  
25 purpose of providing funds for the acquisition of  
26 voluntarily offered interests in farm and open space  
27 land in the county as set forth in Ordinance 4341,  
28 passed June 18, 1979, as amended by Ordinance 4373,  
29 passed July 9, 1979, and Ordinance 4500, passed  
30 September 21, 1979.

31 The county council heretofore has passed Ordinance  
32 6120 authorizing the issuance and sale of \$15,000,000  
33 par value of limited tax general obligation bonds to  
provide part of the money to carry out the plan for  
acquisition of voluntarily offered interests in farm  
and open space land in the county in lieu of the  
bonds authorized at such election pursuant to  
Ordinance 4341, as amended, and such bonds have been  
issued.

It is now in the best interests of the county that  
\$35,000,000 par value of bonds of the \$50,000,000 of

1 bonds authorized by Ordinance 4341, as amended, be  
2 issued and sold to provide the money necessary to  
3 carry out that plan, and that those bonds be sold at  
4 public sale if the county can obtain one or more bids  
5 to purchase the bonds at a net effective interest  
6 rate of not more than 8%.

7 It is desirable to issue bonds bearing interest at 8%  
8 or less with as long a term as possible so that the  
9 taxpayers of the county will bear a lower annual tax  
10 burden than with bonds of a shorter term, and since  
11 at the time of passage of this ordinance such term  
12 for the bonds cannot be known, bidders on the bonds  
13 should be allowed to select from among several  
14 maturity schedules the one which meets the above  
15 condition.

16 Pursuant to the declaration made by the county  
17 council in Ordinance 6120, the authorization of the  
18 \$15,000,000 par value balance of the unlimited tax  
19 general obligation bonds not sold pursuant to this  
20 Ordinance should be cancelled, except for the  
21 purposes of refunding the limited tax general obliga-  
22 tion bonds issued pursuant to Ordinance 6120.

23 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

24 SECTION 1. For the purpose of providing a portion of the  
25 funds for strictly capital purposes other than the replacement  
26 of equipment, namely, for the acquisition of voluntarily offered  
27 interests in farm and open space land in the county as set forth  
28 in Ordinance 4341, as amended, to reimburse other county funds  
29 for advancing such capital costs, and to pay other costs relat-  
30 ing thereto and to the issuance of the bonds provided for in  
31 this ordinance, the county shall now issue and sell \$35,000,000  
32 of unlimited tax general obligation bonds authorized by  
33 Ordinance 4341, as amended, and duly approved by the qualified  
electors of the county at a special election held therein on  
November 6, 1979.

The bonds shall be designated "Unlimited Tax General  
Obligation Bonds, 1984 (Farm and Open Space)" (hereinafter  
called the "Bonds"); shall be dated as of the first day of the  
month following the month of their sale; shall be in the denomi-  
nation of \$5,000 each or any integral multiple of \$5,000 within  
a single maturity; shall be numbered separately and in the

1 manner and with any additional designation as the Bond Registrar  
2 (the fiscal agencies of the State of Washington in Seattle,  
3 Washington, and New York, New York) deems necessary for purpose  
4 of identification; and shall bear interest at a rate or rates  
5 (not exceeding a net effective rate of 8%) contained in the bid  
6 of the purchaser which is awarded the Bonds pursuant to Section  
7 9 of this ordinance, payable on June 1, 1985, and semiannually  
8 thereafter on the first days of December and June. If any Bond  
9 is not redeemed when duly presented for payment at its maturity  
10 or call date, the county shall be obligated to pay interest at  
11 the same rate for each such Bond from and after the maturity or  
12 call date thereof until such Bond, both principal and interest,  
13 is paid or until sufficient money for such payment in full is on  
14 deposit in the "King County General Obligation Bond Redemption  
15 Fund" (the "Bond Fund") for such payment in full and such Bond  
16 has been duly called for payment by the Bond Registrar's mailing  
17 notice thereof by first class mail, postage prepaid, to the  
18 registered owner of any Bond to be redeemed at the registered  
19 owner's address appearing on the Bond Register (hereinafter  
20 defined) on the date of mailing, not less than 10 nor more than  
21 30 days prior to the date fixed for redemption. The require-  
22 ments of this section shall be deemed to be complied with when  
23 notice is mailed as herein provided, whether or not it is  
24 actually received by the owner of any Bond. The Bonds shall  
25 mature on December 1 in the years and amounts as determined by  
26 the winning bid for the Bonds based on the maturity schedule in  
27 Exhibit A, attached hereto and by this reference made a part  
28 hereof, with the longest maturity at which the Bonds may be sold  
29 with a net effective interest rate of 8% or less resulting in  
30 the lowest debt service for each maturity year of the Bonds.  
31 The life of the capital acquisitions to be acquired from the  
32 proceeds of the Bonds is not less than thirty years.  
33

1           Upon surrender thereof to the Bond Registrar, Bonds are  
2 interchangeable for Bonds in any authorized denomination of an  
3 equal aggregate principal amount and of the same interest rate  
4 and maturity. Bonds may be transferred only if endorsed in the  
5 manner provided thereon and surrendered to the Bond Registrar.  
6 Such exchange or transfer shall be without cost to the owner or  
7 transferee. The Bond Registrar shall not be obligated to  
8 transfer or exchange any Bond during the fifteen days preceding  
9 any principal payment or redemption date.

10           The Bonds shall be issued only in registered form as to  
11 both principal and interest on books or records (the "Bond  
12 Register") maintained by the Bond Registrar. Such Bond Register  
13 shall contain the name and mailing address of the owner of each  
14 Bond and the principal amount and the certificate number of the  
15 Bonds held by each owner or nominee.

16           Both principal of and interest on the Bonds shall be  
17 payable in lawful money of the United States of America.  
18 Interest on the Bonds shall be paid by check or draft mailed to  
19 the registered owners of the Bonds at the addresses for such  
20 owners appearing on the Bond Register on the fifteenth day of  
21 the month preceding the interest payment date. Principal of the  
22 Bonds shall be payable upon presentation and surrender of the  
23 Bonds by the registered owners at either of the principal  
24 offices of the Bond Registrar.

25           The Bonds shall be issued with or without the right or  
26 option of the county to redeem the same prior to their respec-  
27 tive maturity dates pursuant to the call provisions applicable  
28 to the maturity schedule in Exhibit A, which is selected in the  
29 winning bid for the Bonds.

30           Portions of the principal amount of any Bond, in install-  
31 ments of \$5,000 or any integral multiple of \$5,000, may be  
32 redeemed. If less than all of the principal amount of any Bond  
33

1 is redeemed, upon surrender of such Bond at the principal office  
2 of the Bond Registrar, there shall be issued to the registered  
3 owner, without charge therefor, a new Bond or Bonds, at the  
4 option of the registered owner, of like maturity and interest  
5 rate in any of the denominations authorized by this ordinance.

6 Notice of any such intended redemption shall be given not  
7 less than 30 nor more than 60 days prior to the date fixed for  
8 redemption by first class mail, postage prepaid, to the regis-  
9 tered owner of any Bond to be redeemed at the address appearing  
10 on the Bond Register. The requirements of this section shall be  
11 deemed to be complied with when notice is mailed as herein  
12 provided, whether or not it is actually received by the owner of  
13 any Bond. The interest on the Bonds so called for redemption  
14 shall cease on the date fixed for redemption unless such Bonds  
15 so called are not redeemed upon presentation made pursuant to  
16 such call. In addition, such redemption notice shall be mailed  
17 within the same period, postage prepaid, to Moody's Investor's  
18 Service, Inc., and Standard & Poor's Corporation at their  
19 offices in New York, New York, or their successors, but such  
20 mailing shall not be a condition precedent to the redemption of  
21 such Bonds.

22 The county also reserves the right and option to purchase  
23 any of the Bonds on the open market at a price not in excess of  
24 par plus accrued interest to date of purchase.

25 SECTION 2. The Bonds shall be in substantially the follow-  
26 ing form:

27 No. \_\_\_\_\_

28 UNITED STATES OF AMERICA

29 STATE OF WASHINGTON

30 KING COUNTY

31 UNLIMITED TAX GENERAL OBLIGATION BOND, 1984  
32 (Farm and Open Space)

1 Interest Rate: Maturity Date: CUSIP No.

2  
3 Registered Owner:

4  
5  
6 Principal Amount: DOLLARS

7  
8 KING COUNTY, WASHINGTON (the "County"), promises  
9 to pay to the Registered Owner identified above, or  
10 registered assigns as hereinafter provided, on the  
11 Maturity Date identified above from the King County  
12 General Obligation Bond Redemption Fund to pay this  
13 bond, the Principal Amount identified above and to pay  
14 interest (computed on the basis of a 360-day year of  
15 twelve 30-day months) thereon from the date of this  
16 bond or from the most recent interest payment date to  
17 which interest has been paid at the Interest Rate per  
18 annum set forth above payable on June 1, 1985 and  
19 semiannually thereafter on each succeeding December 1  
20 and June 1 until the Principal Amount is paid. Both  
21 principal of and interest on this bond are payable in  
22 lawful money of the United States of America at the  
23 fiscal agencies of the State of Washington in Seattle,  
24 Washington and New York, New York, which shall serve  
25 as the Bond Registrar. Payment of each installment of  
26 interest shall be made to the registered owner hereof  
27 who shall appear on the registration books of the  
28 County maintained by the Bond Registrar at the close  
29 of business on the 15th day of the calendar month next  
30 preceding the interest payment date and shall be paid  
31 by check or draft of the Bond Registrar mailed to such  
32 Registered Owner at the Registered Owner's address as  
33 it appears on such registration books.

Reference is made to the additional provisions of  
this bond set forth on the reverse side hereof and in  
Ordinance No. \_\_\_\_\_ (the "Bond Ordinance") of the  
County and such additional provisions shall for all  
purposes have the same effect as if set forth on the  
front side hereof.

The County irrevocably covenants that it will  
levy taxes annually, without limitation as to rate or  
amount, on all of the taxable property within the  
County, in an amount sufficient, together with other  
money legally available and to be used therefor, to  
pay the principal of and interest on the bonds of this  
issue as the same shall become due, and the full  
faith, credit and resources of the County are pledged  
irrevocably for the annual levy and collection of such  
taxes and for the prompt payment of principal of and  
interest on the bonds.

This bond shall not be valid or become obligatory  
for any purpose until the Certificate of Authentica-  
tion hereon shall have been signed by the Bond  
Registrar.

The principal of and interest on this bond shall be paid only to the owner hereof registered as such on the books of the Bond Registrar as of the record date set forth above and to no other person, and this bond may not be assigned except on the books of the Bond Registrar.

It is certified and declared that all acts, conditions and things required to be done precedent to and in the issuance of this bond have been done, have happened and have been performed as required by law, and that the total indebtedness of the County, including this bond issue, does not exceed any constitutional or statutory limitations.

IN WITNESS WHEREOF, the County has caused this bond to be signed in the corporate name of the County by the facsimile signature of its County Executive and attested by the facsimile signature of the Clerk of the County Council, and a facsimile reproduction of the seal of the County Council to be imprinted hereon, this first day of \_\_\_\_\_, 1984.

KING COUNTY, WASHINGTON

By (facsimile signature)  
County Executive

ATTEST:

(facsimile signature)  
Clerk of the Council

Office of Finance Issue No. \_\_\_\_\_

Date of Authentication:

CERTIFICATE OF AUTHENTICATION

This bond is one of the fully registered King County, Washington, Unlimited Tax General Obligation Bonds, 1984 (Farm and Open Space), described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENCY  
Bond Registrar

By  
Authorized Officer

ADDITIONAL BOND PROVISIONS

This bond is one of a total issue of \$35,000,000 par value of bonds, all of like date, tenor and effect, except as to number, denomination, maturities and interest rates, and issued by the County for County capital purposes other than the replacement of equipment, namely, for the acquisition of farm and open space lands, pursuant to an election authorizing a total of \$50,000,000 principal amount of such bonds, and in accordance and in strict compliance with all

1 statutes of the State of Washington applicable  
2 thereto, with the Constitution of the State of  
3 Washington and pursuant to Ordinance No. 4341, passed  
4 June 18, 1979, as amended by Ordinance No. 4373,  
5 passed July 9, 1979, and Ordinance No. 4500, passed  
6 September 21, 1979, the Bond Ordinance and all other  
7 duly adopted ordinances of the County.

8 This bond is transferable by the Registered Owner  
9 hereof or by the Registered Owner's duly authorized  
10 agent at the Bond Registrar, but only in the manner  
11 and subject to the limitations set forth in the Bond  
12 Ordinance, and only upon the due completion of the  
13 assignment form appearing hereon and upon the sur-  
14 render and cancellation of this bond. Upon such  
15 transfer, a new bond (or bonds at the option of the  
16 new Registered Owner) of the same maturity and for the  
17 same aggregate principal amount will be issued to the  
18 new Registered Owner, without charge, in exchange  
19 therefor. This bond and other bonds may be surren-  
20 dered to the Bond Registrar and exchanged, without  
21 charge, for an equal aggregate principal amount of  
22 bonds of the same maturity and interest rate, in any  
23 authorized denomination. The Bond Registrar shall not  
24 be obligated to transfer or exchange any Bond during  
25 the fifteen days preceding any principal payment or  
26 redemption date.

27 [The County reserves the right to redeem any or  
28 all of the bonds maturing December 1, 1997 and  
29 thereafter, inclusive, prior to their stated maturity  
30 dates as a whole, or in part in inverse order of  
31 maturity (and by lot within a maturity in such manner  
32 as the Bond Registrar shall determine), on December 1,  
33 1996, or on any semiannual interest payment date  
thereafter, at par plus accrued interest to date of  
redemption.

Portions of the principal amount of any bond, in  
installments of \$5,000 or any integral multiple of  
\$5,000, may be redeemed. If less than all of the  
principal amount of any bond is redeemed, upon sur-  
render of such bond at the principal office of the  
Bond Registrar, there shall be issued to the Regis-  
tered Owner, without charge therefor, a new bond or  
bonds, at the option of the Registered Owner, of like  
maturity and interest rate in any of the denominations  
authorized by the Bond ordinance.

Notice of any such intended redemption shall be  
given not less than 30 nor more than 60 days prior to  
the date fixed for redemption by first class mail,  
postage prepaid, to the Registered Owner of any bond  
to be redeemed at the address appearing on the Bond  
Register. The requirements of the Bond Ordinance  
shall be deemed to be complied with when notice is  
mailed as herein provided, whether or not it is  
actually received by the owner of any bond. The  
interest on the bonds so called for redemption shall  
cease on the date fixed for redemption unless such  
bonds so called are not redeemed upon presentation  
made pursuant to such call. In addition, such redemp-  
tion notice shall be mailed within the same period,



1 postage prepaid, to Moody's Investor's Service, Inc.,  
 2 and Standard & Poor's Corporation at their offices in  
 3 New York, New York, or their successors, but such  
 mailing shall not be a condition precedent to the  
 redemption of such bonds.]

4 [or]

5 [The bonds of this issue are issued without the  
 6 right or option of the County to redeem the same prior  
 to their respective maturity dates.]

7 The County also reserves the right and option to  
 8 purchase any of the bonds on the open market at a  
 price not in excess of par plus accrued interest to  
 date of purchase.

9 Reference is made to the Bond Ordinance for other  
 10 covenants and declarations of the County and other  
 terms and conditions upon which this bond has been  
 11 issued, which terms and conditions, including, but not  
 limited to, terms pertaining to defeasance, are made a  
 12 part hereof by this reference. The County irrevocably  
 and unconditionally covenants that it will keep and  
 13 perform all the covenants of this bond and of the Bond  
 Ordinance.

14 The County and the Bond Registrar may deem and  
 15 treat the Registered Owner hereof as the absolute  
 owner hereof for the purpose of receiving payment of  
 16 or on account of the principal hereof and interest due  
 hereon and for all other purposes, and neither the  
 17 County nor the Bond Registrar shall be affected by any  
 notice to the contrary. "Registered Owner," as used  
 18 herein, means the person named as the Registered Owner  
 of the bond on the front hereof and on the registra-  
 19 tion books of the Bond Registrar.

20 [Legal Opinion]

21 ASSIGNMENT

22 For value received, the undersigned Registered  
 23 Owner does sell, assign and transfer unto:

24 \_\_\_\_\_  
 25 \_\_\_\_\_  
 26 (name, address and social security or other identify-  
 ing number of assignee)

27 the within mentioned bond and irrevocably constitutes  
 28 and appoints \_\_\_\_\_  
 to transfer the same on the registration books of the  
 29 Bond Registrar with full power of substitution in the  
 premises.

30 DATED: \_\_\_\_\_.

31 \_\_\_\_\_  
 32 Registered Owner

1 (NOTE: The signature above must correspond with  
2 the name of the Registered Owner as it appears on the  
3 front of this bond in every particular, without  
4 alteration or enlargement or any change whatsoever.)

5 The Bonds shall be signed in the corporate name of the  
6 county by the facsimile signature of its county executive,  
7 attested by the facsimile signature of the clerk of the county  
8 council and a facsimile reproduction of the seal of the county  
9 council shall be imprinted thereon.

10 Only such Bonds as shall bear thereon a Certificate of  
11 Authentication in the form hereinbefore recited, manually  
12 executed by the Bond Registrar, shall be valid or obligatory for  
13 any purpose or entitled to the benefits of this ordinance. Such  
14 Certificate of Authentication shall be conclusive evidence that  
15 the Bonds so authenticated have been duly executed, authenti-  
16 cated and delivered hereunder and are entitled to the benefits  
17 of this ordinance.

18 In case either or both of the officers whose facsimile  
19 signatures appear on the Bonds shall cease to be such officer or  
20 officers of the county before the Bonds so signed shall have  
21 been authenticated or delivered by the Bond Registrar, or issued  
22 by the county, such Bonds nevertheless may be authenticated,  
23 delivered and issued and upon such authentication, delivery and  
24 issue, shall be as binding upon the county as though those whose  
25 facsimile signatures appear on the Bonds had continued to be  
26 such officers of the county. Any Bond also may be signed and  
27 attested on behalf of the county by such persons as at the  
28 actual date of execution of such Bond shall be proper officers  
29 of the county authorized to execute bonds although on the  
30 original date of such Bond such persons were not such officers  
31 of the county.

32 SECTION 3. The Bond Registrar shall keep, or cause to be  
33 kept, at its principal corporate trust office, sufficient books

1 for the registration and transfer of the Bonds which shall at  
2 all times be open to inspection by the county. The Bond  
3 Registrar is authorized, on behalf of the county, to authenti-  
4 cate and deliver Bonds transferred or exchanged in accordance  
5 with the provisions of such Bonds and this ordinance, to serve  
6 as the county's paying agent for the Bonds and to carry out all  
7 of the Bond Registrar's powers and duties under this ordinance  
8 and Ordinance \_\_\_\_\_ establishing a system of registration for  
9 the county's bonds and obligations.

10 The Bond Registrar shall be responsible for its represen-  
11 tations contained in the Registrar's Certificate of Authentica-  
12 tion on the Bonds. The Bond Registrar may become the owner of  
13 Bonds with the same rights it would have if it were not the Bond  
14 Registrar, and to the extent permitted by law, may act as  
15 depository for and permit any of its officers or directors to  
16 act as a member of, or in any other capacity with respect to,  
17 any committee formed to protect the rights of Bond owners.

18 SECTION 4. A special fund of the county has been created  
19 in the office of finance of King County, Washington, to be known  
20 as the "Farmland and Open Space Acquisition Fund" (the "Acquisi-  
21 tion Fund"). The principal proceeds received from the sale of  
22 the Bonds shall be paid into that fund. The money received from  
23 the sale of the Bonds shall be expended solely for the purposes  
24 set forth in Ordinance 4341, as amended, and this ordinance and  
25 none of that money shall be used for the replacement of equip-  
26 ment. Interest or earnings received from the interim investment  
27 of such money pursuant to Ordinance 4341, as amended, shall be  
28 deposited in the Acquisition Fund and used for the purposes of  
29 that fund, and shall not exceed the applicable limits provided  
30 by the federal statutes and regulations respecting arbitrage.

31 SECTION 5. A special fund of the county has been duly  
32 created known as the "King County Unlimited General Obligation  
33

1 Bond Redemption Fund" (the "Bond Fund"), which fund shall be  
2 drawn upon for the purpose of paying the principal of and  
3 interest on the Bonds and other unlimited tax levy general  
4 obligation bonds of the county. The accrued interest and  
5 premium, if any, received from the sale of the Bonds shall be  
6 deposited in such fund. The county irrevocably covenants that  
7 it will make annual levies of taxes without limitation as to  
8 rate or amount upon all the property in the county subject to  
9 taxation in an amount sufficient, together with other money  
10 which may become legally available and used for such purposes,  
11 to pay the principal of and interest on the Bonds and any other  
12 unlimited tax levy general obligation bonds of the county  
13 payable out of the Bond Fund as such principal and interest  
14 shall become due. All of such taxes so collected shall be paid  
15 into the Bond Fund, and none of the money in the Bond Fund shall  
16 be used for any other purpose than the payment of the principal  
17 of and interest on unlimited tax levy general obligation bonds  
18 of the county. The full faith, credit and resources of the  
19 county are irrevocably pledged for the annual levy and collec-  
20 tion of such taxes and the prompt payment of such principal and  
21 interest.

22 An amount equal to the interest to become due on the Bonds  
23 on the first interest payment date of the Bonds may be loaned by  
24 and transferred from the Acquisition Fund to the Bond Fund, and  
25 if so loaned and transferred, shall be used for the sole purpose  
26 of paying the interest due on the Bonds on such date and shall  
27 be repaid with interest out of the first taxes collected that  
28 are levied to pay the principal of and interest on the Bonds.

29 SECTION 6. In the event that money and/or "Government  
30 Obligations," as such obligations are defined in Chapter 39.53  
31 RCW, as now or hereafter amended, maturing at such time or times  
32 and bearing interest to be earned thereon in amounts (together  
33

1 with such money, if necessary) sufficient to redeem and retire  
2 the Bonds in accordance with their terms, are set aside in a  
3 special fund to effect such redemption and retirement and are  
4 pledged irrevocably for such purpose, then no further payments  
5 need be made into the Bond Fund for the payment of the principal  
6 of and interest on the Bonds, and the Bonds shall cease to be  
7 entitled to any lien, benefit or security of this ordinance  
8 except the right to receive the money so set aside and pledged,  
9 and the Bonds shall be deemed not to be outstanding hereunder.  
10 Anything herein to the contrary notwithstanding, the pledge of  
11 the full faith, credit and resources of the county to the pay-  
12 ment of the Bonds shall remain in full force and effect after  
13 the establishing and full funding of such special fund. Subject  
14 to the rights of the owners of the Bonds, the county may then  
15 apply any money in any other fund or account established for the  
16 payment or redemption of the defeased Bonds to any lawful pur-  
17 poses as it shall determine.

18 SECTION 7. The county covenants that it will spend the  
19 proceeds of the Bonds with due diligence to completion of the  
20 purposes specified herein and will make no use of the proceeds  
21 of the Bonds or of its other money at any time during the term  
22 of the Bonds which will cause the Bonds to be arbitrage bonds  
23 within the meaning of Section 103(c) of the United States  
24 Internal Revenue Code of 1954, as amended, and applicable  
25 regulations promulgated thereunder.

26 SECTION 8. The Bonds shall be negotiable instruments to  
27 the extent provided by RCW 62A.8-102 and 62A.8-105.

28 SECTION 9. The Bonds shall be sold for cash at public  
29 sale upon sealed bids to be received at the office of the clerk  
30 of the council, Room 403, King County Courthouse, Seattle,  
31 Washington, until the hour of 10:00 a.m., local time, on a day  
32 to be fixed by the county executive after consultation with the  
33

1 chair of the council finance committee. The clerk is authorized  
2 and directed to advertise the Bonds for sale in the manner  
3 required by law and to give such additional notice as the clerk  
4 shall deem to be in the best interests of the county.

5 The terms of such sale are set forth in the Notice of Bond  
6 Sale contained in Exhibit B and attached hereto, the provisions  
7 thereof and form of which are approved and made a part of this  
8 ordinance by this reference.

9 SECTION 10. Upon the sale of the Bonds, the proper county  
10 officials are authorized and directed to do everything necessary  
11 for the prompt printing, execution and delivery thereof, the  
12 appropriate use and application of the proceeds of such sale,  
13 and the execution of the official statement and certificates  
14 necessary to the delivery thereof.

15 SECTION 11. Upon the sale and delivery of the Bonds to the  
16 purchaser thereof, the \$15,000,000 balance of the bonds author-  
17 ized at the special election of November 6, 1979, pursuant to  
18 Ordinance 4341, as amended, shall be cancelled except that the  
19 county may issue such bonds solely for the purpose of refunding  
20 or providing for the payment and retirement of the Limited Tax  
21 General Obligation Bonds, 1982 (Farm and Open Space), authorized  
22 by Ordinance 6120.

23 SECTION 12. Pending the printing, execution and delivery  
24 to the purchaser of the definitive Bonds, the county may cause  
25 to be executed and delivered to such purchaser a single  
26 temporary Bond in the principal amount of \$35,000,000. Such  
27 temporary Bond shall bear the same date of issuance, interest  
28 rates, principal payment dates and terms and covenants as the  
29 definitive Bonds, and shall be issued as a fully registered bond  
30 in the name of such purchaser, and shall be in such form as  
31 acceptable to such purchaser. Such temporary Bond shall be  
32 exchanged for the definitive Bonds as soon as the same are  
33

1 printed, executed and available for delivery by the director of  
2 the office of finance of the county.

3 SECTION 13. Ordinance 6174 is repealed.

4 SECTION 14. Any act done pursuant to the authority and  
5 prior to the effective date of this ordinance is approved,  
6 ratified and confirmed.

7 INTRODUCED and read for the first time this 30th day of  
8 April, 1984.

9 PASSED this 11th day of June, 1984.

10  
11 KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

12 Gary Grant  
13 Chairman

14 ATTEST:

15 Janet M. Owens  
16 Clerk of the Council

17 APPROVED this 14th day of June, 1984.

18 Randy Wells  
19 King County Executive  
20

21 0810k  
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EXHIBIT ASchedule 1 - Maturities 1986-1990  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$5,965,000
1987	6,445,000
1988	6,960,000
1989	7,515,000
1990	8,115,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.



EXHIBIT ASchedule 2 - Maturities 1986-1991  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$4,770,000
1987	5,155,000
1988	5,565,000
1989	6,010,000
1990	6,490,000
1991	7,010,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 3 - Maturities 1986-1992  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$3,925,000
1987	4,235,000
1988	4,575,000
1989	4,940,000
1990	5,335,000
1991	5,765,000
1992	6,225,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 4 - Maturities 1986-1993  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$3,290,000
1987	3,555,000
1988	3,840,000
1989	4,145,000
1990	4,475,000
1991	4,835,000
1992	5,220,000
1993	5,640,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 5 - Maturities 1986-1994  
(Assumed Interest Rate 7.85%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$2,820,000
1987	3,040,000
1988	3,280,000
1989	3,540,000
1990	3,815,000
1991	4,115,000
1992	4,440,000
1993	4,785,000
1994	5,165,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 6 - Maturities 1986-1995  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$2,415,000
1987	2,610,000
1988	2,820,000
1989	3,045,000
1990	3,285,000
1991	3,550,000
1992	3,835,000
1993	4,140,000
1994	4,470,000
1995	4,830,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 7 - Maturities 1986-1996  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$2,105,000
1987	2,270,000
1988	2,450,000
1989	2,650,000
1990	2,860,000
1991	3,090,000
1992	3,335,000
1993	3,605,000
1994	3,890,000
1995	4,205,000
1996	4,540,000

The Bonds shall not be subject to call for redemption prior to their stated maturity dates.

EXHIBIT ASchedule 8 - Maturities 1986-1998  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$1,630,000
1987	1,760,000
1988	1,900,000
1989	2,050,000
1990	2,215,000
1991	2,390,000
1992	2,585,000
1993	2,790,000
1994	3,015,000
1995	3,255,000
1996	3,515,000
1997	3,795,000
1998	4,100,000

The County reserves the right to call Bonds maturing December 1, 1997, and thereafter, on December 1, 1996, or on any semiannual interest payment date thereafter, at par plus accrued interest to the date of such redemption.

EXHIBIT ASchedule 9 - Maturities 1986-2000  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$1,290,000
1987	1,390,000
1988	1,505,000
1989	1,625,000
1990	1,755,000
1991	1,895,000
1992	2,045,000
1993	2,210,000
1994	2,385,000
1995	2,575,000
1996	2,785,000
1997	3,005,000
1998	3,245,000
1999	3,505,000
2000	3,785,000

The County reserves the right to call Bonds maturing December 1, 1997, and thereafter, on December 1, 1996, or on any semiannual interest payment date thereafter, at par plus accrued interest to the date of such redemption.



EXHIBIT ASchedule 10 - Maturities 1986-2002  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$1,035,000
1987	1,120,000
1988	1,210,000
1989	1,305,000
1990	1,410,000
1991	1,525,000
1992	1,645,000
1993	1,775,000
1994	1,920,000
1995	2,075,000
1996	2,240,000
1997	2,420,000
1998	2,610,000
1999	2,820,000
2000	3,045,000
2001	3,290,000
2002	3,555,000

The County reserves the right to call Bonds maturing December 1, 1997, and thereafter, on December 1, 1996, or on any semiannual interest payment date thereafter, at par plus accrued interest to the date of such redemption.

EXHIBIT ASchedule 11 - Maturities 1986-2004  
(Assumed Interest Rate 8%)

<u>Maturity Year</u>	<u>Amount</u>
1986	\$ 845,000
1987	910,000
1988	985,000
1989	1,065,000
1990	1,150,000
1991	1,240,000
1992	1,340,000
1993	1,445,000
1994	1,560,000
1995	1,690,000
1996	1,825,000
1997	1,970,000
1998	2,125,000
1999	2,295,000
2000	2,480,000
2001	2,680,000
2002	2,895,000
2003	3,125,000
2004	3,375,000

The County reserves the right to call Bonds maturing December 1, 1997, and thereafter, on December 1, 1996, or on any semiannual interest payment date thereafter, at par plus accrued interest to the date of such redemption.

EXHIBIT B

6808

NOTICE OF BOND SALE  
KING COUNTY, WASHINGTON  
\$35,000,000

UNLIMITED TAX GENERAL OBLIGATION BONDS, 1984  
(FARM AND OPEN SPACE)

NOTICE IS GIVEN that sealed bids will be received by the County Council of King County, Washington, at the office of the Clerk of the County Council, Room 403, King County Courthouse, Seattle, Washington, until the hour of 10:00 a.m., local time, on

\_\_\_\_\_, 1984,

for the purchase of all or none of \$35,000,000 "Unlimited Tax General Obligation Bonds, 1984 (Farm and Open Space)," of King County, at which time and place such bids will be publicly opened, read and evaluated.

All of the bonds will be dated \_\_\_\_\_, 1984; will be in denominations of \$5,000 each or any integral multiple of \$5,000 within a single maturity; will be numbered separately and in the manner and with any additional designation as the Bond Registrar (the fiscal agencies of the State of Washington in Seattle, Washington, and New York, New York) deems necessary for purpose of identification; will bear interest payable on June 1, 1985, and semiannually thereafter on the first days of December and June of each year. The bonds will mature on December 1 of each year in accordance with the maturity schedule attached hereto on Exhibit A selected by the winning bidder, which selects the maturity schedule that will bear interest at the lowest net effective interest rate at 8% per annum or less for the longest maturity.

The Bonds shall be issued with or without the right or option of the County to redeem the same prior to their respective maturity dates pursuant to the call provisions applicable to the maturity schedule in Exhibit A, which is selected in the winning bid for the Bonds.

The County reserves the right to purchase any of the bonds on the open market at a price not in excess of par plus accrued interest to date of purchase.

The unlimited tax levy general obligation bonds will be secured by an annual levy of taxes without limitation as to rate or amount upon all the property within the County subject to taxation in an amount sufficient, together with other money which may become legally available and used for such purposes, to pay the principal of and interest on the bonds as they become due.

Bidders shall submit bids on blank forms furnished by the County. The bonds will be awarded to the bidder offering to purchase all of the same at the lowest net interest cost on the maturity schedule with the longest maturity at which the bonds may be sold which results in the lowest debt service for each

1 maturity year of the bonds and under the following requirements,  
2 which shall appear on the bid:

- 3 1. The net effective interest rate on the bonds shall not  
4 exceed 8% per annum, and each installment of interest on  
5 each bond shall be evidenced by a single rate.
- 6 2. One or more interest rates may be fixed for the bonds  
7 but such rate or rates must be in multiples of 1/8 or 1/20  
8 of 1%.
- 9 3. A single interest rate must be fixed for all bonds  
10 maturing on the same date.
- 11 4. The spread between the highest and lowest coupon rates  
12 shall not exceed 2%.
- 13 5. Interest rates specified for bonds maturing on  
14 December 1, 1998, and thereafter, shall not be less than  
15 the interest rate specified for the preceding maturity year.
- 16 6. Each bid shall provide for payment of accrued interest  
17 to date of delivery and shall specify either (a) the lowest  
18 rate or rates of interest and premium above par at which  
19 the bidder will purchase the bonds, or (b) the lowest rate  
20 or rates of interest at which the bidder will purchase the  
21 bonds at par.
- 22 7. Each bid shall state the total interest cost, total  
23 premium, the net interest cost to the County and the net  
24 effective interest rate thereunder, but such statements  
25 shall not be considered a part of the bid.
- 26 8. Each bid shall be sealed and shall be accompanied by a  
27 good faith deposit of \$1,750,000, evidenced by a certified  
28 or bank cashier's check made payable to the Office of  
29 Finance of King County, Washington, which check shall be  
30 security for the performance of such bid and shall be held  
31 for liquidated damages in case the successful bidder fails  
32 to take up and pay for the bonds within forty days, if  
33 tendered for delivery, after the acceptance thereof. The  
County may deposit the good faith deposit into the King  
County Farmland and Open Space Acquisition Fund and invest  
the same for its benefit pending the payment for and  
delivery of the bonds. The purchaser shall not be credited  
for such earnings. The good faith checks of all bidders  
except that of the successful bidder will be returned as  
soon as possible after the bids have been opened and  
evaluated. The award of such bonds, if any, by the County  
Council will be made not later than 12:00 noon, local time,  
on the date when bids are opened.

27 The County may reject any and all bids and readvertise the  
28 bonds for sale in the manner provided by law. No bid for less  
29 than the entire issue will be considered. The County Council  
30 reserves the right to waive any irregularities that may appear  
31 in any bid or the bidding process.

32 The bonds will be delivered to the purchaser at New York,  
33 New York, at the County's expense, or at such other place as the  
purchaser and the Office of Finance of King County may mutually  
agree upon at the expense of the purchaser. Settlement in full  
shall be made at the time of delivery and shall be in Federal  
Funds available on the date and at the place of delivery, except

1 that the principal amount of the good faith deposit of the  
2 purchaser shall be applied to the purchase price of the bonds.

3 If, prior to the delivery of the bonds, the income receive-  
4 able by the holders thereof shall be taxable by the terms of any  
5 federal income tax law, the successful bidder may at its option  
6 be relieved of its obligation to purchase the bonds, and in such  
7 case the deposit accompanying its bid will be returned, without  
8 interest.

9 It is anticipated that CUSIP identification numbers will be  
10 printed on the bonds, but neither the failure to print such  
11 number on any bond nor any error with respect thereto shall  
12 constitute cause for a failure or refusal by the purchaser  
13 thereof to accept delivery of and pay for the bonds in accord-  
14 ance with the terms of the purchase contract. Expense related  
15 to the printing of CUSIP numbers on the bonds shall be paid for  
16 by the issuer, except that the CUSIP Service Bureau charge for  
17 the assignment of the numbers shall be the responsibility of and  
18 shall be paid for by the purchaser.

19 The County will submit the Official Statement to the  
20 Municipal Bond Insurance Association ("MBIA") and to the  
21 American Municipal Bond Assurance Corporation ("AMBAC") so that  
22 interested bidders may request a commitment for insurance. The  
23 decision to obtain insurance is at the option of the bidder.  
24 Any bidder submitting a bid based on a commitment from MBIA or  
25 AMBAC to insure the bonds shall contract directly with the  
26 respective company. Payment of any premium due MBIA or AMBAC  
27 resulting from such commitment or insurance shall be the  
28 responsibility of the successful bidder who has so contracted.  
29 If a commitment to insure the bonds is issued by MBIA or AMBAC,  
30 the bonds will receive an "AAA" rating by Standard & Poor's  
31 Corporation after the insurance policy is issued. The issuance  
32 of such insurance shall not be a condition to any bidder's  
33 obligation to the County; the risk of failure of issuance of  
such insurance policy shall be wholly on such bidder.

The County will pay the cost of printing the bonds, and  
will furnish without cost to the purchaser thereof the unquali-  
fied approving opinion of Roberts & Shefelman, bond counsel of  
Seattle, Washington, approving the legality of the issuance of  
the bonds, which legal opinion will be printed on each bond.  
The legal opinion shall state that bond counsel expresses no  
opinion on the completeness or accuracy of any official state-  
ment, offering circular or other sales material relating to the  
issuance of the bonds prepared by the County or its financial  
advisor or otherwise used in connection with such bonds.

A no-litigation certificate in the usual form will be  
included in the closing papers.

Further information regarding the details of such bonds and  
the ordinance fixing their purposes, covenants and terms,  
together with financial data with reference to the County, will  
be found in an official statement which may be obtained upon  
request made to the undersigned, Clerk of the County Council,  
King County Courthouse, Seattle, Washington 98104, or made to  
Harper, McLean & Co., 500 Union Street, Suite 730, Seattle,  
Washington 98101, financial consultants.

Clerk of the County Council,  
King County, Washington

0811k

OFFICE OF THE PROSECUTING ATTORNEY  
KING COUNTY, WASHINGTON  
CIVIL DIVISION

ORD 6808

E 550 KING COUNTY COURTHOUSE  
516 THIRD AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 583-4437

NORM MALENG  
PROSECUTING ATTORNEY

March 9, 1984

Honorable Randy Revelle  
King County Executive  
4th Floor  
King County Courthouse  
Seattle, WA 98104

Re: Proposals for Sale of Farmlands Preservation Bonds

Dear Mr. Revelle: ,

This opinion of the King County Prosecuting Attorney addresses a number of legal issues related to proposals by the Farmlands Implementation Task Force and others that King County offer the bonds authorized by Ordinance 4341 by establishing a mutual fund or otherwise modifying the bond proposal in order to attract a net interest rate bid at or below eight percent. Several different systems have been proposed for implementing a mutual fund concept. Other methods of obtaining a lower interest rate include the use of variable rate demand bonds and/or selling the bonds with maturity dates of approximately seven years. In order to adequately evaluate the various proposals for selling the bonds, it is necessary to resolve three ultimate questions:

1. May King County offer bonds for sale using one or more of the proposed mutual fund methods?
2. If the answer to (1) is yes, are there any legal considerations which indicate a preference for one or more such methods?
3. If the answer to (1) is no, are there any alternative methods which could be used?

SUMMARY ANSWER

It is the opinion of the Prosecuting Attorney that there is very little likelihood that a mutual fund system can be developed that would be upheld as legal. However, it is also the opinion of the Prosecutor's Office that the bonds could be sold legally by reducing the term of the bonds so as to obtain a maximum net interest rate of eight percent or less.

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FACTUAL BACKGROUND

In order to understand the issues raised by the mutual fund proposals, it is important to understand the historical background of the farmlands preservation bond program, as well as the details of the proposed financing systems.

HISTORY OF THE FARMLANDS BOND PROGRAM<sup>1</sup>

In 1971, the State Legislature authorized counties to acquire the rights to future development of agricultural, timber, and open space land in order to conserve such areas in their current open space state. RCW 84.34.200-.240. In 1979, the King County Council passed Ordinance 4341, relating to the acquisition of voluntarily offered development rights and other interests in farm and open space land in King County.

Section 15 of Ordinance 4341 called for an election to authorize the issuance of King County general obligation bonds in an amount not to exceed fifty million dollars to provide funds for the acquisition of farm and open space land. On November 6, 1979 the voters approved Proposition 1, authorizing the sale of the bonds.

After passage of Proposition 1, an attempt was made to sell 20 year general obligation bonds. The lowest bid was for purchase at a net interest rate of 8.4436%. King County prepared to complete the sale at the low bid, but the sale was blocked by a lawsuit. In Ekness v. King County, a claim was made that the sale of bonds at a net interest rate higher than 8.0% was barred by RCW 36.67.040. In addition to Ekness, a second lawsuit related to the program itself was filed. In Louthan v. King County, a claim was made that the acquisition of development rights in agricultural and open space lands was a gift of public funds in violation of Article 8, Section 7 of the Washington State Constitution. King County prevailed in both cases at the trial court. Both cases

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<sup>1</sup> This summary is not a comprehensive history of the farmlands program and is intended only to provide the reader with a framework for analysis of the issues raised by the mutual fund proposals.

PROSECUTING ATTORNEY  
KING COUNTY

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were appealed to the State Supreme Court, which consolidated them for review.

In its decision, reported as Louthan v. King County, 94 Wn.2d 422, 617 P.2d 977 (1980), the Supreme Court upheld the premise of the program by ruling that the purchase of development rights was not a gift of public funds but reversed the trial court decision in Ekness, holding that the maximum allowable interest rate at the time of approval of Proposition 1 was eight percent and that no bonds could be sold at a higher rate without voter reapproval.

The market for twenty year municipal bonds was slightly below eight percent interest at the time of the Supreme Court decision in Ekness. However, the market rose above eight percent before the bonds could be readvertised and sold, and the market has remained well above eight percent ever since.

In an effort to explore possible alternative methods of financing the Farmland Program and thereby complete the purchase of development rights authorized by the voters, the King County Executive appointed a Farmlands Implementation Task Force in 1982. The Task Force examined a variety of alternatives designed to accomplish the objectives of the \$50 million bond program.

The Task Force first suggested a relatively small issue of Councilmanic bonds to provide the cash necessary for purchases of prime Priority 1 farmland. This Councilmanic bond action has been undertaken and a legal challenge to the sale of the bonds defeated. Ekness v. King County, King County Superior Court No. 80-2-05233-1, review denied, 100 Wn.2d 1021, \_\_\_\_\_ P.2d \_\_\_\_\_ (1983).

The Task Force report also suggested, among other things, the creation of a tax exempt mutual fund to purchase the general obligation bonds at a public sale at no greater than 8% interest. The task force's proposal regarding use of a mutual fund is described in detail in the Task Force report, at pages 16-20. A copy of this description is attached as Appendix A.

The essence of the Task Force's proposal is that (1) King County establish a mutual fund using the services of a private entity selected by a request-for-proposal process; (2) the private entity



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agree to bid on the bonds at an interest rate not to exceed 8%; (3) the bonds be offered at a public sale; (4) that the bonds be sold to the lowest bidder; and (5) if the mutual fund is the lowest bidder, that process will be used, but if some other entity underbids the mutual fund, the mutual fund mechanism would not be used. In order to obtain further information regarding the implementation of the mutual fund concept, a Request for Proposals was issued in August, 1983, inviting suggestions for the design and administration of the Farmland Fund. Responses were received from Rainier National Bank, John Nuveen & Co., Incorporated, and Peoples Bank. A fourth alternative mutual fund system has been suggested by the administrators of the Farmland Program.

#### THE MUTUAL FUND PROPOSALS

The following summary of the pertinent details of the four basic proposals suggested for implementation of the mutual funds concept is intended only as a basis for analysis in this opinion letter. Modifications to the concepts may alter the legality and/or practicality of each proposal.

##### A. Rainier Bank Proposal

The Rainier Bank proposal would function as follows:

1. King County sells the bonds at not greater than 8% interest.
2. King County enters into contracts with landowners for the purchase of development rights on installment contracts with interest at .4% less than the rate on the bonds.
3. An escrow agent is established. The purchaser of the bonds would be designated as the escrow.
4. King County places the proceeds of the bond sale with the escrow. The landowners place deeds for their development rights with the escrow.
5. The escrow agent is instructed to purchase the bonds using the funds placed in escrow and is further instructed to pay

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principal and interest to the landowners as specified in their contracts. The escrow agent would retain the .4% differential between the interest rate in the landowner-County contracts and the bond interest rate as a management fee.

6. After all payments of principal and interest have been made on the bonds, the escrow will deliver the development right deeds to King County.

B. John Nuveen & Co., Inc. Proposal

The Nuveen proposal would function as follows:

1. King County sells the bonds at not greater than 8% interest.

2. The purchaser of bonds forms a bond fund or unit investment trust.

3. King County enters into contracts with the landowners whereby the proceeds of the bond sale are paid to a trustee for the landowners and the County receives development rights.

4. The landowners exchange the cash received from sale of the development rights for unit investment trust participation certificates. Yield on the trust certificates is paid to the landowners at a rate equal to the interest rate on the bonds less a fee for annual administrative expenses.

5. Nuveen also proposed that the purchaser of the bonds retain a small percentage of the bonds or charge the landowners a fee to cover costs of initial creation of the trust.

6. A secondary market in trust certificates would be created to allow landowners to sell their certificates at current market value and thereby obtain all or a portion of their payment in cash.

C. Peoples Bank Proposal

The Peoples Bank proposal would function as follows:

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1. The landowners form an entity to bid on the bonds;
2. The landowner entity obtains a one day loan from a bank to buy the bonds;
3. King County uses the proceeds of the bond sale to pay the landowners for their development rights and the landowners use the proceeds of the sale to repay the loan. The landowners then own the bonds and ultimately receive interest and principal payments on the bonds.

D. Installment Bond Proposal

The installment bond proposal is essentially the same as the Peoples proposal except that it would use installment bonds instead of serial bonds.

LEGAL FRAMEWORK

A. Constitutional Provisions

The only significant constitutional issue related to the farmlands acquisition program has already been resolved by the State Supreme Court in Louthan v. King County, 94 Wn.2d 422, 617 P.2d 977 (1980). As noted above, in that case the Court determined that the program did not violate Article 8, Section 7 of the State Constitution, which prohibits gifts of public funds.

B. Statutory Requirements

The sale of general obligation bonds by King County is regulated by RCW chapter 36.67 and RCW chapter 39.44.<sup>2</sup>

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<sup>2</sup> In 1983, the legislature adopted an alternative procedure for the sale of bonds by state and local governments. Laws of 1983, chapter 167. However, since this statute did not exist at the time of voter approval of Proposition 1, it may not be used to sell the bonds authorized by Proposition 1. Louthan v. King County, supra, at 429-430.

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RCW 36.67.060 contains the only significant limitation in that chapter:

Bonds issued under this chapter shall be serial in form and maturity and interest shall be paid and the principal of the bonds retired by an annual tax levy in accordance with the provisions of chapter 39.44 RCW and by any other moneys lawfully available and pledged therefor.

RCW chapter 39.44 also includes several relevant restrictions on the sale of bonds:

1. RCW 39.44.010 (like 36.67.060) requires that the bonds shall be serial in form and maturity.

2. RCW 39.44.030 requires that the bonds be sold at a public sale, following issuance of notice of the proposed sale.

3. RCW 39.44.030 also requires that the bonds be sold to the "bidder offering to purchase . . . at the lowest net interest rate . . . , subject to the right of the governing body to reject any and all bids."

4. RCW 39.44.030 also prohibits payment of any discount or commission to the purchaser of the bonds.

Ordinance 4341 creates several additional requirements and restrictions:

1. Section 13 of the Ordinance requires a public sale of the bonds. (This requirement duplicates the provision in RCW 39.44.030).

2. Section 13 also requires serial bonds. (See RCW 39.44.010).

3. Section 4(2) gives the landowners the option to receive payments for their development rights in a lump-sum single payment or on an installment basis.

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ANALYSIS OF MUTUAL FUND CONCEPT

There are several legal issues presented by the general concept for a mutual fund proposed by the Farmlands Implementation Task Force:

1. Would the selection of a mutual fund operator using a request for proposal process prior to sale of the bonds violate the requirements of RCW 39.44.030 and Ordinance 4341, section 13 that the bonds be offered at a public sale?

2. If the selection of a mutual fund operator cannot be made prior to sale of the bonds, does King County have the authority to require, as a condition of the purchase of the bonds, that the purchaser establish and operate a mutual fund system?

In addition to these two issues, there are several additional legal problems which must be addressed if a mutual fund system is to be used. These are:

a. The mutual fund system must be structured so that no payment of a commission occurs in violation of RCW 39.44.030.

b. Some of the mutual fund proposals would create an inability to comply with Ordinance 4341, Section 4(2) providing landowners with an option between lump-sum and time payments.

c. The authority to sell the bonds expires in November, 1985.

A. The Advance Selection Of A Mutual Fund Operator Who Agrees To Bid On The Bonds Is Impermissible.

Both RCW 39.44.030 and Ordinances 4341, Section 13 require that the farmlands bonds be sold at a "public sale." A public sale is one where the public is invited to participate and is given an opportunity to bid on a competitive basis for the property placed for sale. In re Katleman's Estate, 269 P.2d 257, 263, 70 Nev. 330 (1954); Nagel v. Ham, 88 Wash. 99, 152 Pac. 520 (1915).

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Competitive bidding for bonds is generally governed by the same rules applicable to bidding on other municipal contracts. 15 McQuillan, Municipal Corporations, Section 43.66 (1970).

Public bidding requirements have a dual purpose: to provide both a mechanism whereby municipal entities can obtain services at the most reasonable price possible and to establish a fair and open forum for potential bidders. Gostovich v. West Richland, 75 Wn.2d 583, 587, 452 P.2d 737 (1969). In the Gostovich case, the Supreme Court summarized these two distinct purposes as follows:

We appreciate fully that requiring public bidding on municipal contracts is "to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the municipality receives the best work or supplies at the most reasonable prices practicable." Edwards v. Renton, 67 Wn.2d 598, 602, 409 P.2d 153, 157 (1965); 10 McQuillin, Municipal Corporations, § 29.29 (3d ed. rev. 1966).

We are aware, too, that the requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest. 10 McQuillin, Municipal Corporations, § 29.29 (3d ed. rev. 1966).

Although the primary purpose for the requirement of public bidding is for the protection of the general public, it is also recognized that another purpose is to provide a fair forum for those interested in undertaking public projects.

75 Wn.2d at 587. Accord, Miller v. State, 73 Wn.2d 790, 793, 440 P.2d 840 (1968); Savage v. State, 75 Wn.2d 618, 621, 453 P.2d 613 (1969).

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It is the "fair forum" aspect of the public bidding requirements which raises a problem for the proposal to select a mutual fund operator prior to sale of the farmlands preservation bonds. The essence of the "fair forum" rule is that all bidders must be placed on an equal footing. Platt Electric v. Seattle, 16 Wn. App. 265, 555 P.2d 421 (1976); Interstate Engineering v. Fitchburg, 329 N.E.2d 128 (Mass. 1975).

The fair forum rule applies both before and after bidding. Prior to bidding, all potential bidders must be given the same information regarding the potential sale and the same opportunity to obtain the contract by a successful bid. Matter of Bayonne Park Etc., 401 A.2d 705 (N.J. 1979); L. Pucillo and Sons v. Mayor, 363 N.E.2d 602 (N.J. 1977). A typical summary of this aspect of the rule is enunciated in American Totalisator Co., Inc. v. Seligman, 384 A.2d 242 (Pa. Cmwlth. 1977), at 258:

The requirement in competitive bidding that there be fair and just competition and an absence of favoritism is violated whenever the bidders are treated otherwise than by a common standard. This is so because the representation by the public that a bid will be let to the lowest bidder implies that a common standard will apply throughout the process. Common specifications are obviously required; but so also are common treatment of the bidders in the bidding process.

After bidding, the "fair forum" rule prohibits private negotiations with an individual bidder to alter the terms of their bid or to change the specifications submitted for bidding. Platt Electric, supra.

The courts have invalidated contracts which violate the "fair forum" rule even though the inappropriate bid would have saved municipalities money. Interstate Engineering, supra. This result is the product of the oft-expressed concern that if even minor deviations are allowed from the public bidding requirements "the door to possible fraud, collusion, and favoritism are opened." Platt Electric, supra at 274; Hanson Excavating v. Cowlitz County, 28 Wn. App. 123, 622 P.2d 1285 (1981).

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The Farmlands Implementation Task Force's proposal that a mutual fund operator be pre-selected on a request for proposal basis runs afoul of the pre-bid aspect of the fair forum rule because one bidder, the selected mutual fund operator, has been pre-selected and given an advantage not available to other bidders. It has been suggested that selection of a mutual fund operator through use of a "request for proposal" would avoid the fair forum problem if the request for proposal itself created a fair forum. This idea suffers from several deficiencies: First, the legality of such a concept has not been resolved by the courts. However, it is doubtful that the courts would uphold a request for a proposal designed solely to pre-select one bidder for preferred treatment at a pending bond sale. Second, it would be necessary to set objective criteria to evaluate which mutual fund system would be selected. Platt Electric, supra. Given the diversity of proposals already made, this could be extremely difficult. Third, RCW 39.44.030 requires that bonds be sold to "the bidder offering to purchase . . . at the lowest net interest rate". If more than one mutual fund operator offered a request for a proposal that would be acceptable and one was selected, the losing party could complain that, if their proposal had been selected, a lower net interest rate would have been offered and, consequently, the requirement of RCW 39.44.030 would have been evaded by pre-selection of a preferred bidder. Given these problems, it is unlikely that an attempt to sell the bonds using this system would survive a legal challenge.

It is the recommendation of the Prosecutor's Office that this method of selling the farmlands preservation bonds be rejected.<sup>3</sup>

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<sup>3</sup> One possibility, which is not dealt with in this opinion, is that the landowners themselves would organize an entity, independently of King County, which offered to purchase the bonds at below market interest rates. Such a proposal would not raise the type of problems discussed above because King County would not have assisted one potential bidder to the detriment of others.



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B. The "Fair Forum" Rule Problem May Be Avoided By Requiring All Bidders To Establish And Operate A Mutual Fund System.

One potential solution to the "fair forum" problem inherent in the Task Force proposal would be to prepare specifications for a mutual fund and offer the bonds for sale to all bidders with a condition that the successful bidder operate the specified mutual fund. This would eliminate the pre-bid fair forum rule by allowing all bidders to participate on an equal footing. However, this approach raises a separate issue: Does King County have the authority to impose additional conditions and restrictions on the bond sale beyond those presently authorized by the applicable statutes and Ordinance 4341?

The answer to this question is less clear because no directly analogous situation has arisen in the reported cases. However, some problems with the concept are clear.

1. An Amendment To Ordinance 4341 Would Be Required.

It is almost certain that an additional condition on the bond sale (in the form of a requirement that a mutual fund be operated by the bidder) cannot be imposed without passage of an ordinance amending the terms of Ordinance 4341.

In Manson Construction v. State, 24 Wn. App. 185, 600 P.2d 643 (1979) the Court invalidated a contract to build a temporary replacement for the Hood Canal Bridge because restrictions on bidding were imposed in excess of those established by statute. In that case, in order to speed the reconstruction of the bridge, the State Department of Transportation limited bidding to construction firms with prior experience with floating bridges. This additional prequalification standard was held to be illegal because the statute establishing standards for bidding on state highway construction projects did not include such a limitation. The Court specifically stated:

It is the function of the legislature, not the judiciary or an administrative agency, to circumscribe competitive bidding. When, as in the case at bench, the legislature has already defined those limits, courts will be wary of

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interpreting the legislatively mandated standards so as to further circumscribe the competitive bidding policy. Accordingly, we are not inclined to view favorably an administrative agency's attempt to extend its authority by asserting prequalification standards in excess of those specifically provided by statute.

24 Wn. App. at 190.

It may be argued that the Manson Construction case is distinguishable on the grounds that it involved pre-qualification standards (i.e., rules which limited who could submit a bid) while the present problem involves additional specifications applicable to all bidders. However, it is difficult to see that the distinction is significant since both procedures restrict opportunities to bid beyond those legislatively authorized. The only safe solution to this problem would be to amend Ordinance 4341 to create legislative authority for the imposition of additional conditions upon bidding at the bond sale. However, as discussed below, this creates a separate problem.

2. Amendment Of Ordinance 4341 Requires Voter Approval.

Amendment of Ordinance 4341 in order to create legislative authority for use of a mutual fund financing system raises the question of whether voter approval would be required in light of the Supreme Court's decision in Louthan v. King County, 94 Wn.2d 422, 617 P.2d 977 (1980). In Louthan, the Court accepted the argument "that the voters of King County, in approving Ordinance No. 4341 were acting as a legislative body", and that changes could not be made in the system authorized without further voter authorization.

It is possible that the Louthan decision is distinguishable because in that case the change in interest rates increased the taxation burden on the taxpayers while in this case the use of a mutual fund system would not affect the total tax burden on the public. This distinction has not always been observed by the Supreme Court. Compare, Uhler v. Olympia, 87 Wash. 1, 151 Pac.

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117 (1915) with Hill v. Seattle, 108 Wash. 572, 185 Pac. 631 (1919), and compare, Yesler v. Seattle, 1 Wash. 308, 25 Pac. 1014 (1890) with Louthan, supra. Again, it is not possible to accurately predict the outcome of this issue in the event of litigation. However, it is clear that there is a substantial risk that, if Ordinance 4341 is amended to authorize use of a mutual fund system, the action could be invalid if not ratified by the voters.<sup>4</sup>

#### RECOMMENDATION REGARDING MUTUAL FUND SYSTEM

Based upon the problems created by the "fair forum" rule, the need for an amendment to Ordinance 4341 to require potential purchasers of the bonds to operate a mutual fund system and the potential need to obtain voter approval of such an amendment pursuant to Louthan v. King County, it is the recommendation of the Prosecutor's Office that no mutual fund system for implementing the sale of the farmlands preservation bonds be used without first filing a declaratory judgment action pursuant to RCW 7.25.010-.040 in order to attempt to establish the legality of such a program.

#### II. IMPLEMENTATION OF MUTUAL FUNDS SYSTEM.

In addition to the general legal problems associated with use of a mutual fund system for sale of the farmlands bonds, several other legal issues bear upon the efficacy of such a program. These are discussed below.

#### A. Any Mutual Fund System Must Be Structured So As Not To Create A Commission In Violation Of RCW 39.44.030.

RCW 39.44.030 provides in part:

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<sup>4</sup> Obviously, an additional option would be to seek voter approval of an increased interest rate if it became necessary to seek voter approval for modification of any aspect of the program.

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None of such bonds shall be sold at less than par and accrued interest, nor shall any discount or commission be allowed or paid to the purchaser or purchasers of such bonds.

Inherent in each of the mutual fund proposals is the receipt by the operator of the mutual fund of a fee for services. If this fee is construed as a commission paid to the purchaser of the bonds, it would violate RCW 39.44.030.

Most courts have allowed municipal corporations to incur necessary expenses and pay reasonable commissions to bona fide agents but have rejected transactions where large commissions or allowances disproportionate to the value of services were paid. See, e.g., Hunt v. Fawcett, 8 Wash. 396, 36 Pac. 318 (1894); Uhler v. Olympia, 87 Wash. 1, 151 Pac. 117 (1915); Spear v. Bremerton, 90 Wash. 507, 156 Pac. 825 (1916).

It is immaterial to its legality whether the allowance to the purchaser is in the form of a contract separate from the contract for the sale of the bonds, Drainage Commissioners v. Arnold, 120 S.E. 310, 156 Ga. 733 (1923) or that the payment is made by a third party. Board of Education v. American National Co., 275 P. 285, 135 Okla. 253 (1928).

In the present situation, the only way to avoid a problem with the no-commission rule is to establish, in the bidding specifications, a fee system for the expenses of the mutual fund operator. The fee must cover only the expenses of administration and must not constitute compensation for purchasing the bonds at a below-market interest rate. This may be difficult, as a practical matter, to accomplish.

B. Some Of The Mutual Fund Proposals Would Cause King County To Be Unable To Comply With Section 4(2) Of Ordinance 4341.

Ordinance 4341, section 4(2) provides:

If the Owner so elects, the Executive is authorized to pay the purchase price in a lump sum single payment at time of closing, or to

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enter into contracts for installment payments against the purchase price consistent with applicable federal arbitrage regulations.

All of the mutual fund proposals except the Nuveen proposal would allow only one method of payment to the landowners. Under the Rainier Bank proposal, only installment payments over the life of the bonds would be available. Under the Peoples Bank proposal and the installment bond proposal, only lump-sum payments would be available. Use of any one of these systems would place the County in a position of being unable to provide the option allowed by Section 4(2) of Ordinance 4341. While this probably would not invalidate the bond sale itself, it would require the County to locate an alternate source of funds in order to offer the option required by Section 4(2).

C. Authority To Sell The Bonds Expires In November, 1985

In addition to the foregoing legal problems, there are significant practical problems created by the necessity to design and bid the use of a mutual fund system. These must be also considered if a decision to utilize a mutual fund system is made.

Discussions with the King County Finance Director confirm that it is extremely unlikely that any bids at or below 8% on the bonds would be obtained unless the potential bidders knew precisely how many landowners wished to utilize such a system for financing purchase of their development rights. Otherwise, potential bidders run the risk of not having enough landowners signed up to operate the entire mutual fund, leaving the bond purchasers holding bonds at below-market interest rates. Consequently, it will be necessary to sign the landowners to contracts with a contingency that the purchase is dependent upon sale of the bonds and successful establishment of the mutual fund process.

A further difficulty arises because it is unlikely that the landowners will commit themselves to sell until the parameters of the mutual fund system are established, including the fees they would be expected to pay in order to participate. It would

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therefore be necessary to determine the specifications of the bid conditions related to the mutual fund prior to seeking landowner commitments to participate.

The significance of these practical difficulties is that the authority of King County to sell the bonds authorized by the voters expires in November, 1985, six years after voter approval of Proposition No. 1. Ordinance 4341, Section 13. It is questionable that all of the steps necessary to implement the mutual fund concept could be accomplished on that time period.

D. Other Possible Methods Of Selling Farmlands Preservation Bonds.

In light of the legal and practical difficulties incident to the use of a mutual fund system for sale of the farmlands preservation bonds, this office and the King County Finance Director have evaluated other possible methods for reducing the interest rate on the bonds so as to comply with the eight percent interest limitation and the Louthan v. King County decision. In particular, two alternatives have been considered: (1) variable interest demand bonds and (2) reducing the term of the bonds.

E. The Variable Interest Demand Bond Alternative Is Not Feasible Under the Constraints of Louthan v. King County

Variable interest demand bonds are long-term securities which have been modified in two respects. First, the interest rate payable on the bond is set to float on the basis of some market rate index. Second, holders of the bonds have the option to sell the securities back to the issuer at par plus accrued interest at specified intervals. This demand feature allows investors to consider the bonds as having a maturity date equal to the interval at which repurchase is possible. Consequently, the yield on these bonds is priced accordingly.

Bonds which are repurchased by the issuer are then resold, generally through a remarketing agent. This creates the obvious possibility that the interest rate may rise above 8 percent in the future, creating a potential violation of the interest limitation of Louthan v. King County.

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This possibility may be reduced by the purchase of an insurance policy insuring King County against the risk that the market would rise to a point where interest rates exceed 8 percent. However, no situation has been identified where such an insurance policy was sold for a period of time exceeding seven (7) years. Moreover, the security of the insurance policy itself is difficult to determine over the life of the bonds. It is the opinion of the Finance Director that it is impossible to guarantee that the interest payable by King County on demand bonds would never exceed eight percent during a twenty or thirty year term in a manner which created county liability. Consequently, it is our opinion that this method of selling the farmlands bonds would not be feasible.<sup>5</sup>

F. Reduced Maturity Date of Bonds.

It is the opinion of the Finance Director that an interest rate of eight percent or less would be obtainable under current market conditions if the term of the bonds was reduced to approximately seven years.

No state statute exists which regulates the minimum term of the bonds.

The Washington courts have not specifically addressed the issue of discretion in establishing maturity dates for municipal bonds. However, in Schooley v. Chehalis, 84 Wash. 667, 147 Pac. 410 (1915), the Court did hold that a scheme where no maturity date was specified in the ordinance but the bonds were sold for a term of 20 years, reducible to 10 years at the option of the city, was completely permissible.

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<sup>5</sup> State statutes regulating bonds have changed drastically since passage of Proposition No. 1, and this opinion does not apply to the use of variable rate demand bonds for future county bond issues.

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Ordinance 4341, section 13 provides, in relevant part:

The Bonds . . . shall mature serially commencing in from two to five years from the date of issue of each series and maturing in a period which may be less than but shall not exceed thirty years from the date of issue of each series, all as hereafter authorized by the Council and as provided by law.

[Emphasis added.]

The ballot title for Proposition 1 provided for bonds "maturing in not to exceed 30 years from the date of issue of each series." Courts have frequently held that the authority of municipal officials to determine maturity dates and related features of municipal bonds is discretionary and that the maturity dates may be established after voter approval of the bond issue. See, e.g. State v. Miami, 41 W.2d 888 (Fla., 1949); Redondo Beach v. Taxpayers, 352 P.2d 170 (Cal. 1970); Oklahoma Util. Co. v. Hominy, 31 P.2d 932 (Okla. 1934); Clark v. Los Angeles, 116 Pac. 722 (Cal. 1911); Solomon v. North Shore Sanitary District, 269 N.E.2d 457, 48 Ill.2d 309 (1971).

In Redondo Beach, supra, the Court stated:

The time of repayment of a bond obligation is not an integral part of the proposition to be submitted to the electorate and need not be stated therein but may be set by the city council at any time either before or after the bond issue gains the requisite electoral approval.

352 P.2d at 176.

In this particular case, Proposition No. 1 and Ordinance 4341, Section 13 clearly indicate that the Council will set a maturity schedule, not to exceed 30 years, at some future date after voter approval. The voters are assumed to have been aware of and to have understood that the Council retained this discretion. Louthan v. King County, 94 Wn.2d 422, 617 P.2d 977 (1980). Other courts have upheld elections where voters approved bond



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propositions containing similar reservations of discretion by the legislative body to set the precise terms of the bonds after the election. Fleeman v. Jacksonville, 191 So. 840 (Fla. 1939); Clark v. Los Angeles, 116 P. 722 (Cal. 1911); Luhrs v. Phoenix, 262 P. 1002 (Ariz. 1928).

Some concern has been expressed that the private organizations which supported Proposition No. 1 in 1979 made statements about the cost of the bond issue to taxpayers based on examples which assumed a 30 year maturity for the bonds. Quite apart from the fact that these statements were only examples and not representations of actual cost, it is clear that the validity of a bond issue is not determined by the campaign statements of private groups supporting the proposition. This point was made most clearly in Sooner State Water Inc. v. Allen, 396 P.2d 654 (Okla. 1964). In that case it was argued that a bond issue was invalid because the voters had been misled by campaign statements by a group of supporters of the measure. The court stated:

We hold that campaign arguments presented in speeches, pamphlets or newspaper advertisements made by committees, organizations or individuals, which arguments have no official status, cannot be used as a basis for voiding an election. Misrepresentations sufficient to void an election must have an official origin, i.e., appear in some phase of the bond proceedings. Neither is it sufficient that such misrepresentations be made by some city official speaking or acting in his individual capacity, and when such misrepresentations constitute no part of the official proceedings. It is beyond the realm of reason that the validity of bond issues, regularly adopted by a vote of the people, should depend upon the character of campaign speech or advertisement initiated by some individual or group acting in an unofficial capacity.

[Emphasis added.]

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396 P.2d at 656. Accord, Reid v. Muskogee, 137 Okla. 44, 278 P. 339 (1929); Balducci v. Strough, 239 N.Y.S. 611 (1979); West Missouri Power Co. v. Washington, 80 F.2d 420 (10th Cir. 1935).

Even if some of the campaign materials produced by private organizations supporting Proposition No. 1 assumed a 30 year maturity for the bonds, King County is not bound by those statements since the clear language of Ordinance 4341, Section 13 gives the County Council the discretion to set the maturity date of the bonds at any term, subject to a maximum limit of 30 years.

It is the conclusion of this office that there is no legal impediment to the sale of the farmlands preservation bonds using a maturity schedule of approximately seven years, assuming that an offer of the bonds on such terms would attract a bid of eight percent interest or less.<sup>6</sup>

#### CONCLUSION

Based upon the foregoing analysis, it is the recommendation of the Prosecuting Attorney that the mutual fund proposal not be used due to the relative unlikelihood that it can be structured in such a way as to survive a legal challenge. If it is determined that a mutual fund system be tried it is our recommendation that a declaratory judgment action pursuant to RCW ch. 7.25 be filed to attempt to establish the system's legality before any contracts or purchases are made.

The Prosecuting Attorney further recommends that the possibility of selling the bonds on a relatively short maturity schedule be

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<sup>6</sup> While this is the opinion of the Prosecuting Attorney, it must be recognized that an approving opinion by independent bond counsel must also be obtained prior to the sale of the bonds.

PROSECUTING ATTORNEY  
KING COUNTY

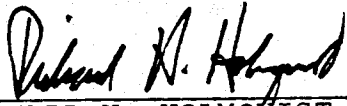
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further evaluated by the County Executive and County Council since no legal impediments to such an approach appear to exist.


If we can be of further assistance in this regard, please feel free to contact the undersigned.

Very truly yours,

For NORM MALENG, King County Prosecuting Attorney:



RICHARD H. HOLMQUIST  
Chief, Civil Division



ROBERT D. JOHNS  
Senior Deputy, Civil Division

cc: Holly Miller  
Gene Duvernoy

## I. MUTUAL FUND

This funding mechanism of the proposed financial program centers around the establishment of a closed-end Mutual Fund to facilitate the acquisition of development rights within the constraints applied by the Washington State Supreme Court. The Mutual Fund will purchase bonds offering 8% interest from King County. The participating landowners would ultimately acquire shares in the Fund after sale of their development rights to King County. Their share will be the equivalent value of their transferred development rights. The interest paid on such shares will be exempt from federal income taxes.

This mechanism has been designed primarily for Selection Round Three, and any succeeding rounds. It is particularly attractive to landowners with Priority Two or Three farmlands and offers the following advantages:

- o No additional voter approval or judicial action will be necessary to implement this mechanism.
- o All requirements for a public sale of bonds are readily satisfied.
- o All participants will be treated equally and acquire negotiable share instruments with identical maturation periods and interest rates.

- o Total cost to the taxpayers is within that contemplated by Ordinance 4341.

The following is a detailed explanation of the steps necessary to implement the Mutual Fund mechanism (Figure 4 summarizes these steps):

Step 1 King County prepares initial description of proposed \$10 million bond issue and solicits proposals from financial institutions or investment bankers wishing to administer the Mutual Fund. A third party is necessary because compliance with the cash requirements for public sale of the bond issue (RCW 39.44.030) is facilitated by selling the issue to one entity rather than to numerous individual landowners. Moreover, since the bonds will mature at different times, it is more equitable to participating landowners if they all receive fund shares which mature at identical rates.

Step 2 The selected financial institution, in conjunction with King County, establishes the Fund and drafts its charter.

Step 3 Negotiations between King County and eligible landowners are completed. In conformance with the procedures set forth in King County Ordinance 4341, King County and each participating landowner sign an agreement designating the sale price. The agreements obli-

gate the participating landowners to purchase Mutual Fund shares with proceeds from the sale of development rights.

Step 4 The trustees of the Fund, with legal assistance from the Fund's administrator independently determine that the purchase commitments between King County and participating landowners have been duly executed and that they "automatically" become effective upon the acquisition by the Mutual Fund of the General Obligation bonds.

Step 5 The Fund obtains a short-term (less than one day) \$10 million loan from a financial institution in order to purchase the bond issue. The source of this loan likely will be the financial institution that agrees to administer the Fund.

Step 6 King County offers the General Obligation bonds, at 8% interest, at public sale. The actual size of the issue will depend on the volume and total value of the development rights and land purchase contracts executed between King County and participating landowners. The Task Force is recommending that the King County Council authorize a maximum initial issue of \$10 million.

Step 7 The fund purchases the bond issue, if no other bids are acceptable. Any other bids at 8% would simply reduce the amount purchased by the Mutual Fund.

Step 8 King County exercises its contracts with the participating landowners. A three-way exchange takes place between King County, the participating landowners and the Mutual Fund. By limiting the number of transfers of the development rights to one, the chain of ownership of the development rights remains clear and taxable transactions between the parties are minimized. The Fund fractional shares will be negotiable instruments valued at and representing ownership in a stated percentage of the principal and interest on the bonds contained in the Fund. A shareholder, through the Fund, will receive periodic allocations from King County's debt service payments to the Fund until the share, with its stated interest, has been redeemed. All the shares shall mature at a uniform rate and earn the same interest. In this manner, all participating landowners will be fully compensated within the same time period for the value of their development rights while remaining free to sell their Fund shares, if a sale proves to be to their individual advantage.

Step 9 The Mutual Fund immediately retires the short-term loan, obtained in Step 5, with cash received from the property owners in Step 8.

Step 10 As the Mutual Fund receives interest and principal payments from the bonds it distributes a pro rata share

of each to the holders of the fractional shares, after deducting administrative costs, in accordance with the terms and conditions of the shares themselves. The administrative costs will be deducted by the Fund from King County's debt service payments before they are distributed to the shareholders. In this manner, the Fund's shareholders will actually receive slightly less than 8% interest. This procedure also avoids any possible argument that the effective interest cost of the bond issue to King County is greater than 8%.

- Step II    The Fund terminates after King County satisfies its debt and the shareholders have realized the full value of their shares, including payment of interest.
- Step 12    It is recommended that this mechanism be limited to \$10 million at the outset. If it proves successful, a succeeding bond issue can be used to support successive executions of this mechanism.



