

Original

CITY OF MERCER ISLAND

ORDINANCE NO. B-93

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON ESTABLISHING THE MERCER ISLAND OPEN SPACE CONSERVANCY TRUST.

WHEREAS, from time to time the City of Mercer Island ("the City") has been requested to cause its open spaces to be developed with improvements which would significantly diminish the value of the property as open space; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City that certain open spaces be set aside and preserved for public use and enjoyment, and for their environmental, aesthetic, scientific, and educational value; and

WHEREAS, the City Council believes that its open spaces are a valuable and irreplaceable resource and urban amenity and will continue to contribute to the general welfare and well-being of the citizens of the City if they are maintained, protected and preserved in a public trust for future generations; and

WHEREAS, the City is recognized for its open spaces and the maintenance, protection and preservation of such open spaces are necessary to protect the character of its island community; and

WHEREAS, the City has acknowledged the importance of maintaining, protecting and preserving open space in its 1990 comprehensive Park, Recreation, Open Space, Arts & Trail Plan and the 1991 City Council's Vision Statement; and

WHEREAS, the City Council determines that an open space conservancy trust should be established for the purpose of receiving and holding interests or rights in real property for preservation of open space; and

WHEREAS, the Trust established by this ordinance is created for the express purpose of receiving and holding such real property, as transferred for open space purposes, in perpetuity, or until such time as the Trust is terminated by the occurrence of one or more of the conditions set forth in this Trust document; now, therefore,

**THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO
ORDAIN AS FOLLOWS:**

SECTION 1. There is hereby established a trust to be known as the **MERCER ISLAND OPEN SPACE CONSERVANCY TRUST** (hereinafter "the Trust") subject to the following terms and conditions:

TRUST TERMS AND CONDITIONS

ARTICLE I

Purposes of the Trust

This Trust is established for the purposes of:

- (a) Receiving and holding all Open Space Properties transferred to the Trust by the City Council, or by other governmental or private land owners with approval of the City Council, in perpetuity, or until such time as this Trust is terminated or any such Open Space Property is removed from this Trust by the occurrence of one or more of the conditions set forth in this Trust;
- (b) Protecting, maintaining and preserving the Open Space Properties; and
- (c) Insuring that the development and use of the Open Space Properties are both consistent and compatible with the intent and purposes of this Trust and the guidelines and policies enacted pursuant to this Trust.

For the purposes of this Trust, "Open Space Property" means any undeveloped parcel of real property, although not necessarily completely natural and undisturbed, whose existing openness, natural conditions or present state of use, if retained, would maintain or enhance the present or potential conservation of natural or scenic resources of Mercer Island and which has been declared to be Open Space Property by the City Council with the intent that any future use of the property be limited to passive and low impact forms of use such as walking, jogging, or picnicking. All improvements to and uses of the Open Space Property shall not change its character or impair any of its ecological, scenic, aesthetic or natural attributes. All improvements shall be limited to those actions which are both consistent and compatible with passive and low impact uses of the property.

ARTICLE II

Duration of the Trust

The period of duration of the Trust shall be perpetual, except as hereinafter provided.

ARTICLE III

The Board of Trustees

The Board of Trustees shall consist of seven (7) members (hereinafter referred to as "the Trustees"). Each of the Trustees shall be appointed by the Mayor and approved by a majority of the City Council. The Park and Community Activities Board, or its successor, ("the PACAB") may recommend potential Trustees to the Mayor.

The Trustees shall consist of one (1) City Council member, three (3) PACAB members and three (3) citizens at large who must be residents of the City to qualify for appointment and must remain residents in order to continue to serve as Trustees. Citizen Trustees may not be members of the City Council or the PACAB. The Trustees shall receive no compensation for their services.

The Trustees shall serve for the following terms: the City Council member shall serve a two-year term; the PACAB members shall serve three-year terms; and the citizens at large shall serve six-year terms; provided, however, for the initial appointed term, one PACAB member shall serve a one-year term, one shall serve a two-year term, and one shall serve a three-year term; and one citizen shall serve a four-year term, one shall serve a five-year term and one shall serve a six-year term. Thereafter the PACAB members shall serve three-year terms and the citizens at large shall serve six-year terms.

In the event of a vacancy on the Board of Trustees for any cause, a new Trustee shall be appointed for the duration of the unexpired term. If a Trustee fails to attend two (2) consecutive meetings of the Board of Trustees, of which he/she has had proper advance notice in writing, without having been excused by the Chairperson of the Board of Trustees, the Trustee will be deemed to have forfeited his/her position and there shall be a vacancy in the position.

The Trustees shall meet at least semi-annually in January and July of each year, or more often at a special meeting at the request of either the Trust Chairperson, a majority of

the Trustees, the Mayor, or the PACAB Chairperson. Notice of a special meeting shall be provided in writing to each Trustee at least ten (10) calendar days in advance of the meeting. All meetings of the Trustees where a quorum of the Trustees are present shall be public meetings, open to the public, properly noticed, and governed by the Open Public Meeting Act, as amended from time to time.

At their first meeting the Trustees shall elect from their membership a Chairperson, a Vice-Chairperson and a Secretary and elect or re-elect a Chairperson, a Vice-Chairperson and a Secretary annually thereafter at the January Trustee meeting. At least five of the Trustees must be present at any regular or special meeting to comprise a quorum for the transaction of business. The act of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees, except as otherwise provided herein under Article VIII.

ARTICLE IV

Powers and Duties of the Trustees

The Trustees shall have the powers and duties to:

1. Receive and hold title to real property, or interests in real property (such as conservation easements), transferred to the Trust for preservation as Open Space Properties (collectively "Trust properties");
2. Ensure preservation of Trust properties as Open Space Properties;
3. Prepare and recommend written policies to the PACAB that are necessary to preserve Trust properties as open space properties, including, but not limited to, policies regarding public use of, maintenance of, and improvements to such properties. The City Council shall adopt written policies after receipt of recommendations from the PACAB;
4. At least annually, review the status of the Trust and each of the Trust properties and report to the PACAB on the condition of the various properties, with any recommendations concerning how the Trust properties may be managed to preserve them as Open Space Properties and any other recommendations on how the purposes of the Trust could be better accomplished. It is the intent of the City Council that this annual report be aligned with

the City Council's annual review of City policy during the budget process;

5. Exercise such other powers as may be necessary for carrying out the purposes of this Trust.

ARTICLE V

Trust Corpus

The Trust corpus shall consist of real property, or interests in real property (such as conservation easements), which have been acquired by the City of Mercer Island and subsequently transferred by the City to the Trust, or real property, or interests in real property, which are received by the Trustees from other governmental or private land owners after review by the PACAB and approval by the City Council.

The City Council shall be responsible for authorizing all expenditures for the maintenance of, use of, and improvements to Trust properties. The PACAB shall be responsible for overseeing the management of the Trust properties. Such oversight shall be consistent with the purposes of this Trust and any written policies concerning the Trust properties. All maintenance shall be performed by or at the direction of the City and shall at all times be both consistent and compatible with the intent and purposes of this Trust and the guidelines and policies enacted pursuant to this Trust.

Notwithstanding anything to the contrary in this Trust, after consultation with the Trustees (except in emergency situations), the City may do whatever is necessary to protect the public's health, safety and welfare, including, without limitation, maintaining storm water drainage basins; stabilizing steep slopes and other critical or sensitive areas; protecting wetlands; controlling erosion; installing, repairing and replacing utility lines; and removing potentially hazardous conditions.

ARTICLE VI

Insurance-Indemnification

The City shall be responsible for insuring Trust properties, and for naming the Trustees as additional insureds under the City's insurance authority. The City shall indemnify, defend and hold harmless any current or former Trustee and his or her successor, spouse and marital community against costs, expenses, judgments, and liabilities, including attorney's fees, reasonably incurred by or imposed upon him

or her in connection with or resulting from any claim, action or proceeding, civil or criminal, in which he or she is or may be a party by reason of being or having been a Trustee, or by reason of any action taken or omitted by him or her as such Trustee; provided that he or she was acting in good faith on behalf of the Trust and within the scope of the powers and duties imposed or authorized by this Trust or by law.

ARTICLE VII

Amendment of Trust

The provisions of this Trust may be amended by an affirmative vote of at least five (5) members of the City Council; provided, that any such amendment is consistent and compatible with the original intent and purposes of this Trust and does not affect the perpetual duration of the Trust. Prior to actions on the proposed amendment the City Council shall: (1) request recommendations and comments from the Trustees regarding the proposed amendment; and (2) hold a public hearing for the purpose of considering the Trustees' recommendations and comments, if any, as well as to consider any recommendations and comments from the public about the proposed amendment.

ARTICLE VIII

Termination/Dissolution of the Trust

This Trust shall continue in perpetuity, but, if for any reason, the Trust, or any portion of the Trust, becomes illegal, or impossible to enforce, or any of the Trust properties no longer qualify for inclusion in the Trust, this Trust may be terminated in whole, or in part, or any of the Trust properties reconveyed to the City, by a vote in favor of termination or reconveyance by at least five (5) of the Trustees and a vote in favor of termination or reconveyance by at least five (5) members of the City Council. Thereupon the Trust properties affected shall be reconveyed to the City. Upon final distribution of all Trust properties the powers, duties, and authority of the Trustees shall cease.

If the Trustees and Council do not effect termination by dissolution as provided above in the event of impossibility or illegality of enforcement in whole or in part, the Trustees shall take appropriate action to maintain the Trust in as similar a form as possible. The Trustees shall make a proper and timely application, petition, or action at equity to a court of competent jurisdiction for the application of the doctrine of Cy Pres. The application, petition, or

action shall seek to appropriately modify the purposes and terms of this Trust so as to continue management of the open space properties then held by the Trust in as similar a manner as stated herein as possible without offending the law. If the court fails to so suitably modify the Trust, the Trust shall terminate and the Trust corpus affected will be distributed to the City of Mercer Island.

ARTICLE IX

Incorporation of Recitals

All recitals are incorporated into this Trust by this reference as if they were more fully stated herein.

SECTION 2. The first parcels of City owned property to be transferred to the MERCER ISLAND OPEN SPACE CONSERVANCY TRUST established by this ordinance are the three parcels of real property located at the intersection of 68th S.E. and Island Crest Way forming what is commonly known as Pioneer Park. The legal descriptions of the parcels are fully set forth in the deed of transfer from the City to the Trust, which transfer is contemporaneous with the passage of this ordinance. A copy of the deed is attached to this ordinance as EXHIBIT 1 and shall serve as the form for all future transfers of City owned property to the Trust.

It is the express intent of the City Council that, for purposes of the above-described parcels of property comprising Pioneer Park, horseback riding will be permitted to continue to occur as long as it is allowed under the City's Comprehensive Park, Recreation, Open Space, Arts, and Trails Plan.

It is also the intent of the City Council that other open spaces should be considered for inclusion into the Trust as "Open Space Properties".

SECTION 3. The provisions of this ordinance are severable, and if any provision of this ordinance, or the application of this ordinance to any circumstance, is held to be invalid, the application of such provision to other circumstances and the remainder of the provisions of this ordinance, shall not be affected thereby.


SECTION 4. This ordinance shall take effect and be in force five (5) days after its passage, approval, and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF THE MERCER ISLAND,
WASHINGTON AT ITS REGULAR MEETING ON THE 10th DAY OF
February, 1992.



Elliot Newman
Mayor

ATTEST:



Debra E. Symmonds, City Clerk
City Clerk

APPROVED AS TO FORM:



Ronald C. Dickinson, City Attorney

DATE OF PUBLICATION: March 11, 1992

Filed for Record at the Request of:

City of Mercer Island
Wayne Stewart
Assistant City Attorney
9611 SE 36th Street
Mercer Island, WA 98040

DOCUMENT TITLE: Statutory Warranty Deed

GRANTOR: City of Mercer Island

GRANTEE: Mercer Island Open Space Conservancy Trust

TAX PARCEL NUMBERS: 302405-9017; 302405-9016; 302405-9019

STATUTORY WARRANTY DEED

THE GRANTOR, THE CITY OF MERCER ISLAND, a municipality, for and in consideration of value received, in hand paid, conveys and warrants to MERCER ISLAND OPEN SPACE CONSERVANCY TRUST, established by the City of Mercer Island Ordinance No. B-93, passed the 10th day of February, 1992, the following described real estate, situated in the County of King, state of Washington:

The three parcels of real property commonly known as "Pioneer Park" and legally described as follows:

Parcel 1:

The northwest quarter of the northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., in King County, Washington, EXCEPT the west 30 feet thereof heretofore conveyed to King County for road by deed recorded under Auditor's File Number 4788608 and EXCEPT roads.

Parcel 2:

The northeast quarter of the northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., in King County, Washington, EXCEPT roads.

Parcel 3:

The southeast quarter of the northwest quarter of Section 30, Township 24 North, Range 5 East, W.M., in King County, Washington, EXCEPT roads.

All as acquired by the City in fee simple under the JUDGMENT AND DECREE OF APPROPRIATION entered in King County Superior Court Cause No. 606877.

DATED 6/26/98

9807020423

Grantor: City of Mercer Island

By: Richard Conrad
Richard Conrad, City Manager

By: Christine L. Eggers
Christine L. Eggers, City Clerk

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this day personally appeared before me RICHARD CONRAD, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26th day of June, 1998.

Tracy A. Dochnahl
NOTARY PUBLIC in and for the
state of Washington
Print Name: Tracy A. Dochnahl
My commission expires: 11-9-00

9807020423

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this day personally appeared before me CHRISTINE L. EGGERS, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26th day of June, 1998.

Tracy A. Dochnahl
NOTARY PUBLIC in and for the
state of Washington
Print Name: Tracy A. Dochnahl
My commission expires: 11-9-00