



STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE

1111 Washington Street SE
PO Box 40917
Olympia, WA 98504-0917

May 18, 2007

TOPIC #4e: WWRP Farmland Preservation Program Policies

Prepared By: Kammie Bunes
Jim Fox

Approved by the Director: 

Presented By: Jim Fox

Proposed Action: Adopt Resolution 2007-11, approving the Farmland Preservation Program Policy Manual 10f and model conservation easement.

Summary:

IAC Manual 10f contains policies guiding the Farmland Preservation Program (FPP), a category of the Washington Wildlife and Recreation Program. The manual was adopted by the IAC on February 2, 2006, for use in the 2006 FPP grant cycle. Minor revisions in the manual, based on public comments and recommendations from IAC staff and the FPP Advisory Committee, are recommended by staff for Board adoption. In addition, a model agricultural conservation easement, developed with the assistance of outside legal counsel for use by FPP grant recipients, is being recommended for Board adoption.

Staff Recommendation:

Staff recommends adoption of the revised Manual 10f and model conservation easement (Resolution 2007-11). Adoption of Manual 10f is necessary to launch the second-year FPP grant cycle.

Background:

2006 marked the first year IAC accepted applications for the new Farmland Preservation Program, an account within the WWRP. At its November, 2006 meeting, the IAC approved a list of 10 FPP projects totaling \$4.4 M. With a \$100 million in funding for WWRP, the FPP receives \$8.7 million in funds—approximately \$4.3 million over the amount needed for the 2006 list of projects. Capital Budget language authorizes IAC to conduct a second year grant round to make use of these unobligated funds.

After completing the evaluation of the 2006 applications, the FPP Advisory Committee suggested changes to the evaluation criteria. In particular, revisions related to the interconnectedness of zoning, threat of conversion to non-farm uses, and urgency to complete the acquisition. Around the same time, staff began working with a private law firm to design a model agricultural conservation easement.

Analysis:

FPP Policy Manual. Proposed revisions in the FPP Policy Manual 10f include:

- Minor changes to the evaluation criteria;
- Changes to documentation required when a sponsor acquires fee simple title (as opposed to a lease or easement);
- Prohibition on commercial feedlots;
- Guidance regarding building envelopes and impervious surfaces; and,
- Incorporation of a model agricultural conservation easement.

The manual, with proposed changes highlighted, is attached to this memo. It was distributed on May 15 to about 1500 individuals and organizations in IAC's database for comment. Comments received by the date of mailing will be attached to this memo. Later comments will be provided at the IAC meeting.

Model agricultural conservation easement. IAC staff has been working with outside legal counsel to develop a model agricultural conservation easement to be used by FPP grant recipients. The model easement contains some sections that grant recipients will be required to use, and other sections that are optional or will vary on a case-by-case basis.

The draft model easement has been through a series of reviews by staff, our assistant attorney general, a selected group of reviewers with experience in implementing conservation easements, a wider distribution to about 1500 stakeholders, and finally the Farmland Preservation Advisory Committee. At each stage, comments were shared with our attorney and incorporated as appropriate.

A common theme among the comments centered on the specificity and complexity of the document. Some readers commented that the document is too detailed, lengthy and complex and would intimidate grant recipients and landowners. Others indicated that the high level of clarity and specificity about permitted and prohibited activities, as well as processes for ongoing communication between the parties once the easement is in place, would be welcomed. Staff believes that the level of detail should assure long-term protection of the funds invested, and also provide clarity for current and future landowners. The intent is not to tell the landowner how to farm, but rather to ensure the opportunity for ongoing agricultural production is preserved. When considering to what degree we might simplify the easement, upon the advice of counsel, we sided on

providing a greater, rather than lesser, level of specificity (and hopefully, clarity) in the final document.

This final draft agricultural conservation easement is now being sent out to approximately 1,500 interested parties in anticipation of the Board's possible adoption at the June 7 meeting in Spokane. Comments received by the date of mailing will be attached to this memo. Later comments will be provided at the IAC meeting.

There will not be sufficient time at the IAC meeting to discuss the myriad of technical details in the model easement. However, we do want to address at least four major policy issues imbedded in the document:

- The model easement attempts to address all of the issues and situations we anticipate arising, making it long and complex. Would a shorter easement be better, dealing with specific issues on a case-by-case basis?
- Should the model easement be recommended or required? If required should there be a process for granting exceptions?
- Should land trusts be allowed to be co-holders of the easement or have third-party interests relating to enforcement and stewardship?
- What should the remedies be for partial or total conversion?

Our outside legal counsel, Duncan Greene from the Buck and Gordon law firm, will be present at the meeting to respond to questions.

Next Steps (2007 FPP Grant Cycle):

- June 1: Letters of intent due (optional)
- July 2: Applications due
- July 30-31: Project review meeting
- Sept 7: Technical completion deadline
- Oct 5 Evaluation meeting
- Nov 1-2: IAC Board meeting – Preliminary approval
- Nov 1: Ranked list submitted to Governor for inclusion in 2008 supplemental Capital Budget
- 2008 Legislature: Approves list
- Spring or early summer, 2008: IAC Board Funding Meeting

Attachments:

1. Resolution 2007-11
2. Draft Manual 10f
3. Draft Model Agricultural Conservation Easement
4. Public comments

**INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
RESOLUTION #2007-11**

Farmland Preservation Program: Policy Manual 10f

WHEREAS, IAC Manual 10f, *Farmland Preservation Program: Policies and Project Selection*, adopted by the IAC on February 2, 2006, provides guidance for the Washington Wildlife and Recreation Program's Farmland Preservation Account; and

WHEREAS, revisions in Manual 10f have been proposed by IAC staff, the Farmland Preservation Program (FPP) Advisory Committee, and stakeholders; and

WHEREAS, IAC staff, with the assistance of legal counsel, has developed a model agricultural conservation easement, to help ensure long-term protection of WWRP funds, provide accountability, and also provide clarity for current and successor landowners; and

WHEREAS, IAC staff has circulated the proposed Manual 10f revisions and draft agricultural conservation easement for public review and provided comments to the IAC;

NOW, THEREFORE BE IT RESOLVED, that IAC does hereby adopt the revised policy Manual 10f, *Farmland Preservation Program: Policies and Project Selection*, shown in Attachment 1; and

BE IT FURTHER RESOLVED, that IAC hereby adopts the model agricultural conservation easement, shown in Attachment 2.

Resolution moved by: _____

Resolution seconded by: _____

Adopted/Defeated/Deferred (underline one)

Date: June 7, 2007



FARMLAND PRESERVATION PROGRAM

*POLICIES AND
PROJECT SELECTION*

10f

MAY 14, 2007

Interagency Committee for Outdoor Recreation

- Our Mission** Provide leadership and funding to help our partners protect and enhance Washington's natural and recreational resources for current and future generations.
- Our Services** Statewide strategic investments through policy development, grant funding, technical assistance, coordination, and advocacy.
- Our Values** Efficient, fair, and open programs conducted with integrity. The results foster healthy lifestyles and communities, stewardship, and economic prosperity in Washington.

Contents

SECTION 1: GENERAL INFORMATION	1
Introduction	1
About IAC.....	1
Contact Sources.....	1
Manual Authority & Related Publications	1
Standing Advisory Committee	2
Grant Cycle Timeline.....	2
Waiver of Retroactivity	4
SECTION 2: POLICIES	5
1. What the Money Is For	5
2. Eligible Applicants & Match Requirements	5
3. What Counts as Match?	5
4. Funding Formula	6
5. Grant Fund Limits	6
6. Phased Projects	6
7. Eligible Project Types.....	7
8. Eligible Acquisition Projects.....	7
9. Acquisition Policies.....	9
10. Building Envelopes and Impervious Surfaces.....	10
11. Ineligible Acquisition Projects	11
12. Eligible Enhancement and Restoration Activities.....	11
13. Ineligible Enhancement and Restoration Activities	12
14. Farm Stewardship Plans	12
15. Cultural Resources Review	13
16. Preference for Community Priorities	13
17. Partnerships in Applications	13
18. Reimbursement	14
SECTION 3: EVALUATION PROCESS	16
Choosing Proposals to Fund	16

Appendix A: Enabling Legislation	22
Appendix B: Definition of "Farmlands"	25
Appendix C: Allocation of WWRP Funds	27
Appendix D: Outline of Model Agricultural Conservation Easement	28
for Farmland Preservation, RCW 79a.15.130(1)	28

SECTION 1: GENERAL INFORMATION

Introduction

This manual contains basic information, policies, and project selection criteria for the Farmland Preservation Program (FPP), a subprogram within the larger Washington Wildlife and Recreation Program (WWRP). The WWRP was created in 1990 to acquire and develop significant opportunities for outdoor recreation and wildlife conservation. In 2005, the state Legislature expanded WWRP to include preservation of significant farmland through the purchase of development rights. A secondary goal of the FPP is to fund restoration of ecological functions that will enhance the viability of the preserved farmland to provide agricultural production, while conforming to legal requirements for habitat protection.

About IAC

The Interagency Committee for Outdoor Recreation (IAC) administers the program. IAC refers both to a decision-making board and to a state agency. Agency staff provides administrative support to the Board, which ultimately approves funding for Farmland Preservation Account projects.

Contact Sources

IAC encourages anyone interested in its grant programs to contact the office at:

Natural Resources Building	Voice	(360) 902-3000
1111 Washington Street	FAX	(360) 902-3026
Olympia WA 98501		

P.O. Box 40917	TTY	(360) 902-1996
Olympia, WA 98504-0917	E-mail:	info@iac.wa.gov

Internet Web Site	http://www.iac.wa.gov/
-------------------	---

IAC grant managers are available to answer questions about this manual. Please feel free to call.

Manual Authority & Related Publications

Authority for the policies in this publication is in Revised Code of Washington 79A.25, and Washington Administrative Code Title 286. IAC adopted these policies in a public meeting. Additional information is provided in these related manuals:

- › Manual 3 *Acquiring Land: Policies*
- › Manual 4 *Development Projects: Policies*
- › Manual 5 *IAC Application Forms and Procedures*
- › Manual 7 *Funded Projects: Policies & the Project Agreement*
- › Manual 8 *Reimbursements: IAC/SRFB Grant Programs*

Information on other grant programs as well as the publications referenced above can be downloaded from IAC's Web site or you may contact IAC to obtain copies of these free publications. Each can

be made available in an alternative format.

**Standing
Advisory
Committee**

IAC uses a standing advisory committee of farmers, local officials, and people with expertise in ecology, real estate, planning, land management. Advisory committee members have knowledge of and general interest in preservation of farmland through professional or personal experience. This committee recommends policies and procedures for IAC to use in administering farmland preservation grants, and evaluates and scores grant proposals. IAC's director appoints committee members.

**Grant Cycle
Timeline**

IAC offers farmland grants every two years, in conjunction with the state budget process. The grant cycle spans 14 months. The timeline shown below gives a general overview.

Workshops. Agency staff conducts workshops annually to provide information about its grant programs. These sessions typically are held in the winter or early spring around the state. For information about dates and locations, call or visit the Web site.

Application Deadline. Applications are due May 1 of even-numbered years. Applications received after the deadline will be returned unless IAC's director has approved a late submission. Each application is assigned to a grant manager.

Project Review. The grant manager will review the application and send written comments to the applicant acknowledging receipt and seeking additional information, if needed. Within a few weeks, applicants will be invited to a project review meeting, where the advisory committee and IAC staff will review projects to ensure they are eligible, identify any issues of concern, and provide feedback on the strengths and weaknesses of each proposal. Applicants then have an opportunity to consult with staff to determine what, if any, changes they want to make to improve the project. All changes must be completed a few weeks before project evaluation.

Project Evaluation. The advisory committee evaluates each proposal against a set of questions approved by the IAC (see pages 14-18). Applicants are expected to answer each of the questions in an oral presentation, illustrated with maps, graphics, and photos in a PowerPoint® presentation format. Evaluators score all projects. Scores are tabulated, creating a ranked list of projects for funding recommendations to the Board.

Approval by the IAC. In an open public meeting, the IAC considers the recommendations of the evaluation team and public comments. At the fall meeting of even-numbered years, the IAC approves the list of ranked projects and lists of projects in the other WWRP categories for submission to the Governor and Legislature.

Gubernatorial and Legislative Approval. IAC submits the ranked lists of WWRP projects to the Governor on or before November 1 of even numbered years for consideration as part of the budget request for the following biennium. The Legislature then considers the Governor's budget request and the proposed project list when developing the capital budget. Both the Governor and the Legislature can remove projects from the list, but neither can re-rank the list or add new projects.

IAC Approves Funding. After the Legislature and Governor approve the capital budget, the IAC approves the final grant awards, again in an open public meeting. Applicants are encouraged, but not required, to attend.

Successful Applicants' Workshop. After the IAC has approved funding, staff conducts a workshop for successful applicants. The workshop covers basic responsibilities, reimbursement procedures, and the terms of the IAC project agreement or contract. When the applicant has met all grant requirements, staff will write a contract between the state and the applicant. Once the contract is signed, the applicant is now referred to as the "sponsor" and the implementation phase of the project begins.

Project Implementation Timeline. Sponsors must complete funded projects promptly. To help ensure reasonable but timely project completion, accountability, and the proper use of funds, applicants will:

- ▶ Only submit projects that will be completed within four years of the grant award.
- ▶ Provide assurances that the project can be completed within the IAC approved implementation period.
- ▶ At least 30 days before the IAC funding meeting, provide written certification that matching funds are available. If another IAC grant is being used as match, IAC may extend the deadline to 180 days after approval of the farmland preservation grant.
- ▶ Submit the post approval materials within 60 days of funding approval.
- ▶ Develop milestones and a timeline for project implementation that does not exceed four years.
- ▶ Begin project implementation quickly and aggressively to show measurable progress towards meeting project milestones. IAC may terminate projects that do not meet critical milestones

established in the project agreement.

By June 1st of each year, IAC will review the status of all WWRP projects that remain incomplete. The sponsors of these projects will be asked to provide assurances that their projects will be completed and funds expended within the agreement period. Assurances may include:

- ▶ Executed purchase and sale agreements.
- ▶ Proof of permitting approvals (for enhancement/renovation).
- ▶ Awarded construction contracts.
- ▶ Progress on other significant milestones listed in the grant agreement.

If satisfactory assurances are not provided, the agreement period will lapse or the director will terminate the project. Additional information about the progress policy is found in Manual 7, *Funded Projects: Policies & the Project Agreement*.

Waiver of Retroactivity

In most cases, grant funds may be used only to reimburse expenses incurred during the period set out in the project agreement. This is known as the IAC prohibition on retroactivity.

However, based on written justification by an applicant regarding the critical need to purchase property before IAC approves funding, the director may issue a "Waiver of Retroactivity." Such waivers allow the acquisition costs incurred by the applicant to remain eligible for reimbursement through the next two consecutive grant cycles in the program in which the applicant seeks funds.

A waiver is normally sought when an applicant decides that an imminent condition exists that jeopardizes the acquisition and thus decides to pursue the acquisition before funding approval. All such expenditures are made at the applicant's risk. That is, if a grant is not awarded, IAC will not reimburse expenses.

Applicants should apply for a waiver of retroactivity before acquiring the property. Refer to IAC Manual 3, *Acquiring Land: Policies* for procedural guidelines and required forms.

SECTION 2: POLICIES

1. *What the Money Is For*

The 2005 Legislature created the Farmland Preservation Program by expanding the existing Washington Wildlife and Recreation Program (see Appendix A).

The *primary* focus of the farmland program is to acquire development rights on farmlands in Washington and ensure the land remains available for agricultural practices. When creating this grant program, the Legislature directed the word “farmland” be interpreted as “farm and agricultural land” defined in RCW 84.34.0202(2) (see Appendix B).

To meet the grant program goal, grants will purchase development rights on farmland, typically through purchase of an agricultural conservation easement. Purchases of leases and land are allowable. If a sponsor buys land, the sponsor must record an agricultural conservation easement on the property and then sell the land for agricultural uses. To meet the primary goal of ensuring land remains available for agricultural practices, there is a preference for projects that provide this assurance through agricultural conservation easements in perpetuity.

A secondary program goal is to enhance or restore ecological functions on farmland preserved with grant funds. A project does not have to include an enhancement or restoration element to be eligible. Restoration-only projects are not eligible. If included, restoration costs may not exceed 50 percent of the project’s total acquisition cost.

2. *Eligible Applicants & Match Requirements*

Only cities and counties may apply and applicants must provide at least 50 percent of the total project cost. Matching shares of more than 50 percent are encouraged. Applications that include a higher match than the minimum required will receive additional points in the evaluation.

3. *What Counts as Match?*

Match does not mean cash only. It also may mean donations, in-kind contributions, and other grants.

- ▶ Donations usually come from a third party and may include cash, labor, materials, property rights, and professional services such as engineering services for eligible restoration activities.
- ▶ In-kind contributions usually come directly from the sponsor’s resources and may include cash, labor, and use of sponsor-

owned equipment or materials. Those expenditures made by the sponsor also are referred to as out-of-pocket expenses.

- ▶ Other grants, if applied to elements that are eligible for grant funding, are acceptable also.
- ▶ Third party match. A sponsor may not use the value of development rights granted to a party other than the sponsor as a donation. Renovation by a third party can be used as match if the value of the labor, equipment, and materials applied toward the activity is a donation to the sponsor. The value would be determined based on IAC's existing donation policy, not necessarily on the amount the activity originally cost the third party. If the sponsor pays the third party for the value of the renovation, it becomes an expenditure and is eligible as in-kind match.
- ▶ Existing sponsor assets, such as real property and developments, may not be used as match. Nor may a project include costs that are counted twice (costs incurred by the sponsor that have been reimbursed by IAC).
- ▶ IAC will not reimburse more than the sponsor's out-of-pocket costs.

4. Funding Formula

State law specifies the funding formula for WWRP. The first \$40 million in funding is split between the Outdoor Recreation Account and the Habitat Conservation Account. Then 40 percent of all funds between \$40 million and \$50 million go to the Farmland Preservation Account and 10 percent of any funds in excess of \$50 million go to the farmland account. (See Appendix C, distribution scenarios B and C, for a more detailed explanation of the funding formula.)

5. Grant Fund Limits

To more widely distribute funds, grant limits for projects are as follows:

- ▶ There is no minimum grant amount.
- ▶ The maximum farmland preservation grant is \$750,000.
- ▶ The restoration total shall not exceed more than half of the total acquisition costs, including match toward acquisition.

Cost increases are not allowed. This means the grant request cannot be increased once the project has been evaluated. Any project cost overruns become the responsibility of the sponsor.

6. Phased Projects

Applicants with a project that exceeds the maximum grant limit or time frame, are encouraged to discuss phasing with IAC staff. Phased projects are subject to the following conditions:

- ▶ Approval of any single phase is limited to that phase; no

- approval or endorsement is given toward future phases.
- ▶ Each phase must stand on its merits as a viable project.
- ▶ Each phase must be submitted as a separate application.
- ▶ Progress and sponsor performance on previous grants may be considered by IAC when making decisions on project proposals.

7. Eligible Project Types

There are two types of eligible projects:

- ▶ Acquisition
- ▶ Combination (acquisition plus restoration or enhancement).

8. Eligible Acquisition Projects

To be eligible, a project must include acquisition of interest in real property. The following projects are eligible:

- A. Acquisition of development rights via an agricultural conservation easement.** In keeping with the goal to preserve farmland and maintain the opportunity for agricultural activity, proposals that include acquisition of development rights in perpetuity will receive preference in the evaluation. Less than perpetual acquisitions (term easements) must be for at least 25 years.
- B. Acquisition of a lease.** Leases are contracts with limited duration between a landowner and a sponsor. Leases provide a way for a city or county to buy a possessory interest in a parcel's development rights. To be eligible, leases must be for at least 25 years and be recorded at the auditor's office in the county where the land is located. Leases may not be revocable at will.
- C. Acquisition of land.** The program allows for acquisition of fee simple title (meaning not just acquiring development rights, but acquiring the land as well). If this occurs, the sponsor must record a perpetual agricultural conservation easement on the property before seeking reimbursement from IAC, and then seek to sell the land. The enabling legislation for this program directs the sponsor to 1) place "a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity" and then 2) "seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production." The legislation specifically requires that property rights be retained in perpetuity; thus, less-than-perpetual term easements may not be used when the sponsor acquires fee simple title.

Additionally, because the enabling legislation requires the

sponsor to place a conservation easement on the property before seeking to sell it, the conservation easement must be granted to “the State of Washington, by and through the Interagency Committee for Outdoor Recreation (“IAC”). The sponsor may not name itself as Grantee to the easement.¹ If, and when, the underlying land is conveyed from the sponsor to another party, the IAC will assume the role of third party to the easement and transfer its role as easement grantee to the sponsor.

The sponsor may seek reimbursement from IAC based either on the value of the easement, or on the value of the fee simple title, as follows: 1) Sponsors will seek reimbursement from IAC based on the appraised value of the easement, not including the underlying land. In this scenario, the sponsor may sell the underlying land in the future without IAC involvement. The sponsor has discretion on what to do with proceeds from the sale, because the reimbursement was not based on the value of the underlying land. While sponsors are encouraged to use these proceeds towards an endowment to manage the easement or to purchase other significant farmlands, they are not obligated to do so.

OR

2) Sponsors will seek reimbursement from IAC based on the appraised value of fee simple title. Because grants are used toward acquisitions of underlying lands, sponsors must seek IAC approval before selling the land. Sponsors must follow IAC procedures for valuing converted land when they sell the property (see Manual 3, *Acquiring Land: Policies*). This means the sale price must be based on the appraised market value of the land at time of sale.

Additionally, and at the discretion of IAC, proceeds from the sale will either be returned to the Farmland Preservation Program, or the sponsor will be allowed to acquire property interests on land that meets farmland preservation grant eligibility criteria. If land is acquired in fee using proceeds from the sale, the sponsor must record a second perpetual conservation easement and seek to resell this land as well. Proceeds from each additional purchase and sale of underlying rights will be guided by IAC policy until the value of the original difference between the easement and fee title

¹ There are legal pitfalls associated with a single party's ownership of the fee title and a conservation easement over the same property. If ownership of easement and fee interests becomes vested in the same party, the easement may “merge” into the fee title, terminating the easement.

has been reinvested in the program.

**9. Acquisition
Policies**

Applicants are strongly encouraged to review IAC Manual 3, *Acquiring Land: Policies* before submitting a grant application. That manual provides details on acquisition procedures and requirements. Eligibility for reimbursement is based on sponsors having followed certain procedures, of which some important highlights are listed below.

Appraisals: Must be performed by licensed appraisers, must value the exact property rights being acquired, and must be reviewed by a second, licensed appraiser. Sponsors should direct their appraisers to follow the requirements in Manual 3 as part of their contract with the appraiser and review appraiser. If the match for the project is coming from a federal source, then appraisers must follow the current Uniform Appraisal Standards for Federal Land Acquisitions.

Procedures: Sponsors must follow the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970.

Conversions: IAC prohibits the conversion of funded projects to ineligible uses. This policy seeks to protect the investment of public funds. Therefore, property rights acquired with farmland preservation grants will be protected via an instrument (recorded by the sponsor) that includes language to specify how property value will be recovered if the property is converted from farmland during the term of the easement or lease. For example, if a 30-year lease of all development rights has been acquired, and the landowner builds houses on the land during the lease, this would be a conversion and the sponsor would be responsible for securing eligible replacement farmland for the period remaining in the lease. IAC grant funds cannot be used to remedy a conversion.

Documents: Because appraisals must reflect the property rights as conveyed, sponsors should provide a copy of the proposed easement or lease to the appraiser as part of the appraisal instructions. Sponsors are expected to use the model agricultural conservation easement prepared specifically for this program, and available through IAC. IAC will consider changes to the document when necessary, such as when more restrictive provisions are needed to meet U.S. Department of the Treasury requirements associated with easement transactions that include a landowner donation value.

Due to the complexity of the agricultural conservation

easement, and the long-term implications for the landowner, IAC advises sponsors to strongly encourage landowners to obtain legal counsel before granting an easement.

Easements and leases must be recorded through the assessor's office in the county where the land lies. The easement or lease will be between the landowner and the sponsor, or if the sponsor acquires the land, between the sponsor and IAC. Partners, such as IAC, the Natural Resources Conservation Service (NRCS), and/or a land trust also may be named as parties to the easement. These parties may enforce the terms of the easement or lease if the sponsor is not meeting its obligations.

**10. Building
Envelopes and
Impervious
Surfaces**

Building envelopes: The concept of a building envelope is common in agricultural conservation easements. Building envelopes identify the footprint within which buildings are located or may be built in the future. Sponsors should work closely with landowners to identify appropriate locations for these envelopes to minimize disruption to the farm's agricultural values. For example, if a building envelope is in the middle of a cultivated field to take greatest advantage of a view, this will not only constrain agricultural practices, but also encourage estate-type development thereby creating a property value reflective of an estate rather than a farm. In general, IAC encourages building envelopes be sited near property edges and roads, where development won't encourage development of an estate or degrade long-term viability of the farm.

In cases where buildings are not currently developed, consideration should be given to whether reserving the right to develop at least one home site, and other buildings, may contribute to the long-term viability of the farm.

Locations of building envelopes must be identified within the recorded agricultural conservation easement. The easement will address allowed improvements within the envelopes. General locations should be identified by the time the property is evaluated so that evaluators can consider their relative impact to the long-term viability of the farm and appraisers can assess the market value.

Impervious Surfaces: For the purpose of the agricultural conservation easement, impervious surfaces mean all hard surface areas that either prevent or retard water runoff and absorption. Impervious surfaces have the net effect of removing soil from cultivation. Because the goal of this program is to preserve the opportunity for agriculture,

impervious surfaces will be limited as follows:

- If the property is 50 acres or smaller, the limit is 8 percent.
- If the property is 51-100 acres, it is 6 percent.
- If the property is 101-200 acres, it is 4 percent.
- If the property is 201 acres or larger it is 2 percent.
- If the NRCS is a funding partner, the limit will range from 2-6 percent and may not exceed 6 percent, regardless of size.

Minor, unenclosed agricultural improvements such as corrals, stock tanks, and culverts do not count against the total impervious surface limit. Impervious surfaces within the building envelopes do.

11. Ineligible Acquisition Projects

The following projects are ineligible:

- ▶ Land already owned by a government agency. Limited exceptions may apply, so check with your grant manager.
- ▶ Transfer of development rights. Development rights acquired under this program may not be transferred to other property.
- ▶ Farms producing cultivated marine or freshwater aquatic products.
- ▶ Land that primarily serves as a commercial feedlot.

12. Eligible Enhancement and Restoration Activities

- A. Enhancement or restoration activities within a project must further the ecological functions of the farmland.** Examples of eligible activities include fencing livestock out of riparian areas, replanting native vegetation on erosion-prone land or along streams, restoring historic water runoff patterns, improving irrigation efficiency, and removing fish passage barriers. Drilled wells are allowed when the purpose is to enhance ecological functions or agricultural values, such as to reduce diversions from streams or to facilitate fencing livestock out of streams. These wells may not be used for additional domestic hook-up or urban use.
- B. Enhancement or restoration activities must be less than 50 percent of the acquisition cost of the project including any in-kind contribution by any party.** For example, if the total acquisition cost is \$200,000, restoration costs may not exceed \$100,000, for a total project cost of \$300,000. Total project cost includes grant amount and sponsor's matching share.
- C. Restoration activities should be based on accepted methods of achieving beneficial enhancement or restoration results.** Proposed activities based on experimental or unproven methods will receive fewer points in the evaluation.

The following items are not eligible:**13 Ineligible
Enhancement
and Restoration
Activities**

- ▶ “Consumable” supplies such as fuel, fertilizers, pesticides, or herbicides, except as a one-time application if a necessary part of an otherwise eligible restoration activity.
- ▶ Elements that cannot be defined as fixtures or capital items.
- ▶ Environmental cleanup of illegal activities (i.e. meth labs).
- ▶ Indoor facilities
- ▶ Organizational operating expenses or overhead. However, the value of staff time to perform or oversee the eligible acquisition and restoration activities is eligible. For example, the monthly fee for telephone service is not an allowable expense, but the long distance charge for a specific telephone call related to the project is.
- ▶ Properties acquired via a condemnation action of any kind. The value of parcels acquired via condemnation may not be used as part of the required local agency matching share.
- ▶ Purchase of maintenance equipment, tools, or supplies.
- ▶ Restoration work done before a project agreement is signed between the applicant and the IAC. This work also cannot be used as part of the match requirement.
- ▶ Routine operation and maintenance costs.
- ▶ Utility payments such as monthly water or electric bills.

A farm stewardship plan is an eligible activity under the project's administrative or architecture and engineering costs. The maximum allowable cost for development of a site stewardship plan is \$10,000.

**14 Farm
Stewardship
Plans**

An outline of the proposed stewardship plan must be submitted with the grant application and at a minimum contain the following elements:

- ▶ Long-term stewardship goals and objectives
- ▶ Monitoring goals and objectives
- ▶ Restoration goals and objectives (if applicable)
- ▶ Short-term land management goals and objectives
- ▶ Description of the site or project area, to include the following:
 - U.S. Geological Survey quad map and county assessor's parcel map
 - Map showing all man-made and natural features
 - Narrative description of the property
 - Photographs taken at permanent photo points
 - A detailed stewardship plan implementation budget that identifies the source of funding.

Further guidance provided in Appendix F of Manual 3, *Acquiring Land: Policies*.

15. Cultural Resources Review

Executive Order 05-05, *Archaeological and Cultural Resources* (<http://www.governor.wa.gov/execorders>), directs state agencies to review all:

- > Capital construction projects.
- > Land acquisition projects carried out for the purpose of future capital construction.

Such projects must be reviewed for potential impacts to cultural resources² to ensure that reasonable action is taken to avoid adverse impacts to these resources.

We anticipate that projects involving acquisition only, will be exempt from Executive Order 05-05. Combination projects (projects involving both acquisition and restoration/enhancement) may be subject to review.

16. Preference for Community Priorities

IAC recognizes that interest and commitment to preserve farmlands will vary from community to community. Communities may exhibit their commitment to farmland preservation through a variety of mechanisms including: agricultural zoning, right-to-farm ordinances, adopted strategies for farmland preservation, and dedicated funds to purchase development rights on land within agricultural zones.

As part of evaluation, consistency with community priorities will be measured. To assist evaluators, applicants may submit any combination of the following:

- ▶ Letters of endorsement or support from local governments, chambers of commerce, and other organizations.
- ▶ A copy of the applicant's current capital facilities plan or capital improvement program in which the project is listed by name or by type.
- ▶ A copy of results of a needs assessment or community survey.
- ▶ A copy of a survey or plan for preserving farmlands with a resulting priority list of acquisitions.
- ▶ Documented results of a series of community meetings that may have resulted in consensus for farmland preservation.

17 Partnerships in Applications

By law, only cities and counties may apply for funds. Partnerships result when two or more organizations work on the same project. It is possible for an eligible applicant to form a partnership with an otherwise ineligible organization. For example, a county could be the official applicant for grant funds, but have partners that include

² Cultural resources means archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to affected tribes.

the landowner, a conservation district, or a land trust. Partners may provide funding, project management, restoration expertise, or other assistance. Some partners, such as land trusts and other entities authorized to hold conservation easements under RCW 64.04.130, may be named as third parties to the conservation easement for purposes of stewardship, monitoring, or enforcement.

Partnerships that add **measurable value** to a project are encouraged.

“Measurable value” may include money, land, labor, materials, services, or other necessary support. Letters of endorsement, by themselves, are not evidence of measurable value unless they include a statement of, or reference to, the value that the endorsing person or organization is bringing to the project.

Applicants shall document partnership arrangements before evaluation in order to claim measurable value. It is important to note that regardless of the agreements between the sponsor and partners, the long-term contractual obligation to IAC lies with the sponsor.

18. Reimbursement The grant is paid to the sponsor as a reimbursement and based on the percentages in the project agreement.

Advance draws on grants are permitted only for the IAC match of the value of the land and only if the applicant provides all the required documentation to IAC in advance of closing: An updated title policy, draft copy of conveyance documents, appraisal reports, hazardous substances certification, and closing statements. If all documents are in order, IAC will deposit the appropriate grant share into the escrow account (see IAC Manual #3, *Acquiring Land: Policies*). Advance payments are not available for restoration work.

No grant reimbursement for restoration elements will occur before IAC receives all required documents related to the acquisition.

IAC will not reimburse more than the sponsor's out-of-pocket costs. When the value of donations exceeds the value of expenditures, grant reimbursement cannot exceed the total out-of-pocket expenses.

In most instances, payment is not made for expenses incurred before the grant applicant and IAC have a signed project agreement. Exceptions are made only for eligible pre-agreement costs, which include appraisals, surveys, and drafting of

documents. In cases of restoration activities, the only eligible pre-agreement costs are design and engineering, if required. Costs associated with preparing this, or any other grant application, cannot be submitted for reimbursement.

Complete reimbursement procedures are found in IAC Manual #8, *Reimbursements: IAC/SRFB Grant Programs*.



SECTION 3: EVALUATION PROCESS

Choosing Proposals to Fund

A formal evaluation of each project is a key step in the funding process. The evaluation questions, or criteria, are adopted by the IAC. The questions are based on statutory and other criteria.

Evaluation questions are found beginning on page 19.

The advisory committee will use the IAC adopted criteria to score each project. Scores are based on each applicant's oral response to evaluation questions, graphic presentation, and summary application material made available in advance of the meeting.

While IAC's evaluation meetings are open to anyone, they are not public hearings. Only the applicant or their invited partners, may address the evaluation team. Scoring is by secret ballot. Following the meeting, all scores are tabulated, resulting in a ranked list of proposals, which serves as the foundation for staff's funding recommendation to the IAC Board.

Farmland Preservation Program Evaluation Criteria Summary Table

Criteria	Points
<p>Agricultural Values</p> <p>Importance: Soil types; suitability for producing agricultural products; size; economic productivity; fit of the project to local priorities</p> <p>Viability: On-site production and support facilities; farm to market access; proximity to roads and utilities; water availability; drainage; presence of other features that could hinder or restrict use for agriculture; zoning; likelihood that the farm will remain in agriculture; likelihood that the region will continue to support agriculture</p>	68
<p>Environmental Values (Acquisition only projects)</p> <p>Recommended as part of a plan or strategy; benefits to salmonids, migratory birds, fish and wildlife habitat; integration with recovery efforts for endangered, threatened, or sensitive species; existing or proposed environmental management and stewardship plans</p>	22
OR	
<p>Environmental Values (Combination acquisition and restoration projects)</p> <p>Enhancement or restoration projects must further ecological functions: Consider the benefits to fish and wildlife species, especially endangered, threatened, or sensitive species; benefits to habitat forming processes</p> <p>Consider the likelihood that the anticipated benefits will be realized: Project is based on accepted methods; project is likely to achieve the anticipated benefits</p> <p>Recommended as part of a plan or strategy</p>	22
<p>Community Values and Priorities</p> <p>Community support for the project; consistency with a local land use or a regional or statewide recreational or resource plan</p> <p>Other community values: Viewshed; aquifer recharge; occasional or periodic collector for storm water runoff; flood prevention; agricultural sector job creation; educational and curriculum potential; historic value; buffer to public lands</p>	8
<p>Other</p> <p>Urgency; term; cost benefit; local match; sponsor's ability to acquire, manage, monitor, and enforce conservation easements; demonstration</p>	27
Total points available	125

Farmland Preservation Program: Evaluation Criteria

A. Agricultural values. Preservation of farmlands in order to maintain the opportunity for agricultural activity.

1. **Importance.** How important is this farmland to the region and state?
 - a. Soil types; percent of property with important soil types. Consider presence of prime and unique soils; soils important or appropriate for the anticipated crops and local climatic conditions; soils important to the region (*maximum 5 points*)
 - b. Suitability for producing the current or anticipated agricultural products (*maximum 5 points*)
 - c. Size. Consider whether the size of the commercially productive portion of the property is adequate for the intended agricultural use. Give preference to larger parcels, especially as compared to other parcels with the same type of agricultural activity in the same area (*maximum 5 points*)
 - d. Economic productivity. Give preference for farms with greater incomes or potential incomes (*maximum 5 points*)
 - e. Fit of the project to local priorities. If the sponsor has a land preservation program that includes farmland or has developed a strategy for farmland preservation, consider the extent that the project addresses priorities in that program or strategy (*maximum 5 points*)
2. **Viability.** The viability of the site for continued agricultural production and the likelihood it will remain in production:
 - a. On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure (*maximum 3 points*)
 - b. Farm-to-market access (*maximum 3 points*)
 - c. Proximity to roads and utilities (*maximum 3 points*)
 - d. Water availability. Does the property have legitimate water rights and adequate water to support intended or likely agriculture activities? (*maximum 4 points*)
 - e. Drainage (*maximum 3 points*)
 - f. Presence of other features that could hinder or restrict use for agriculture (access, presence of frost pockets, chronic flooding, invasive species, nearby land uses or activities that could constrain agricultural activities) (*maximum deduction up to 5 points. No such features would result in zero points*)
 - g. Zoning. Consider whether the property is in an Agricultural Protection District or other type of protected zone (ex. "Agricultural Natural Resource Lands" zoning in Skagit) (*maximum 4 points*)

- h. Likelihood that the farm will remain in agriculture if protected. What is the likelihood that acquiring the development rights on this property will make a difference in keeping the property in agricultural production? Consider whether there is an increased likelihood that the property will be converted to nonagricultural uses if it is not protected. This item applies to factors not already covered in items a – g that could affect long-term viability, such as potential for rezoning, history of farmland conversion in the area, and anticipated development patterns. *(maximum 16 points)*
- i. Likelihood that the region will continue to support agriculture. Consider the condition of local farming infrastructure; proximity to other protected agricultural lands; other farmland protection and conservation efforts; land use designations *(maximum 7 points)*

B. Environmental values (for evaluating acquisition-only projects)

1. A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, a listed species recovery plan, the Washington State Natural Heritage Plan, or a coordinated region-wide prioritization effort *(maximum 4 points)*
2. Benefits to salmonids, migratory bird habitat and forage area, and other fish and wildlife habitat *(maximum 9 points)*
3. Integration with recovery efforts for endangered, threatened, or sensitive species *(maximum 5 points)*
4. Existing or proposed environmental management, stewardship plan, or conservation plan; certified under some sort of sound environmental practices or sustainability program *(maximum 4 points)*

---OR---

B. Environmental values (for evaluating acquisition + restoration/enhancement projects)

1. Enhancement or restoration projects must further the ecological functions of the farmlands.
 - a. Consider the benefits to fish and wildlife species, especially endangered, threatened, or sensitive species, including benefits to plant and animal communities and the habitat on which they depend *(maximum 5 points)*
 - b. Benefits to habitat forming processes, for example restoring the ability of a river or stream to transport gravel and fine sediment or restoring native riparian vegetation to provide for a future source of shade, detritus and woody debris *(maximum 4 points)*
2. Consider the likelihood that the anticipated benefits will be realized. This would be based on the use of accepted methods, sound project design and siting, etc.
 - a. The project is based on accepted methods of achieving beneficial enhancement or restoration results *(maximum 3 points)*

- b. The project is likely to achieve the anticipated benefits. Consider siting, project type, management and stewardship plans, proposed monitoring and evaluation (*maximum 6 points*)
3. Does the proposed restoration or enhancement address needs or priorities identified in a limiting factors or critical pathways analysis, a watershed plan, habitat conservation plan, a listed species recovery plan, the Washington State Natural Heritage Plan, or a coordinated region-wide prioritization effort? (*maximum 4 points*)

C. Community values and priorities

1. Community support for the project (*maximum 3 points*)
2. Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process (*maximum 2 points*)
3. Other community values provided by the property when used as agricultural land, including, but not limited to:
 - ▶ Viewshed
 - ▶ Aquifer recharge
 - ▶ Occasional or periodic collector for storm water runoff or providing flood capacity
 - ▶ Agricultural sector job creation
 - ▶ Educational potential
 - ▶ Historic value
 - ▶ Buffer to public lands(*maximum 3 points*)

D. Other

1. **Urgency.** Consider the likelihood of conversion to nonagricultural uses in the next five years if the property is not protected. (*maximum 5 points*)
2. **Term.** The minimum term for a lease or agricultural easement is 25 years. Provide additional points for longer terms, with the greatest number of points for property preserved in perpetuity (*maximum 10 points*)
3. **Cost benefit.** Consider the percentage of total acreage that is in agricultural production or set aside to preserve ecological values (versus the percentage of the property that is taken up by structures, roads, etc.; allow for acreage that is not in agricultural production for the purpose of preserving ecological values, such as protected riparian buffers, CREP leases) Consider cost per acre? Consider contributions by the landowner, for example a bargain sale? (*maximum 5 points*)

4. **Local match.** Consider the amount of local (non-state, non-federal) match to be provided by the grant recipient. Includes contribution of land, labor, and materials (*maximum 2 points*)
5. **Sponsor's ability to acquire, manage, monitor, and enforce conservation easements.** Consider the history of project sponsor in acquiring, managing, and enforcing easements. Consider whether the applicant has an established farmland Purchase of Development Rights (PDR) or conservation easement program and staff devoted to farmland protection. Consider the ability and experience of organizations partnering with the sponsor. For counties and cities without an established farmland PDR or conservation easement program, consider whether the grant will provide the impetus for establishing a continuing program. Consider the presence of an endowment or other dedicated funding sources for management, monitoring, and enforcement (*maximum 4 points*)
6. **Demonstration.** Whether the project will act as a demonstration project in the community (*maximum 1 point*)

Appendix A: Enabling Legislation

Farmland Preservation Program Chapter 303, Laws of 2005 (ESSB5396)

Sec. 1 RCW 79A.15.010 and 1990 1st ex.s. c 14 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

NEW SECTION. Sec. 7 A new section is added to chapter 79A.15 RCW to read as follows:

(1) The farmlands preservation account is established in the state treasury. The committee will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the committee. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities and counties may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of

this section.

(4) The committee may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county or city does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the committee to fund staff positions or other overhead expenses, or by a city or county to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The committee may not approve a local project where the local agency's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's share.

(9) In determining the acquisition priorities, the committee must consider, at a minimum, the following criteria:

- (a) Community support for the project;
- (b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;
- (c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;
- (d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;
- (e) Benefits to salmonids;
- (f) Benefits to other fish and wildlife habitat;
- (g) Integration with recovery efforts for endangered, threatened, or sensitive species;
- (h) The viability of the site for continued agricultural production, including, but not limited to:
 - (i) Soil types;
 - (ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;
 - (iii) Suitability for producing different types or varieties of crops;
 - (iv) Farm-to-market access;

(v) Water availability; and

(i) Other community values provided by the property when used as agricultural land, including, but not limited to:

(i) Viewshed;

(ii) Aquifer recharge;

(iii) Occasional or periodic collector for storm water runoff;

(iv) Agricultural sector job creation;

(v) Migratory bird habitat and forage area; and

(vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the committee will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the committee will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the committee and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Note: The full text of ESSB5396 can be found on the Legislature's web site at:

<http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Senate%20Passed%20Legislature/5396-S.PL.pdf>

Appendix B: Definition of "Farmlands"

RCW 84.34.020

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(i) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

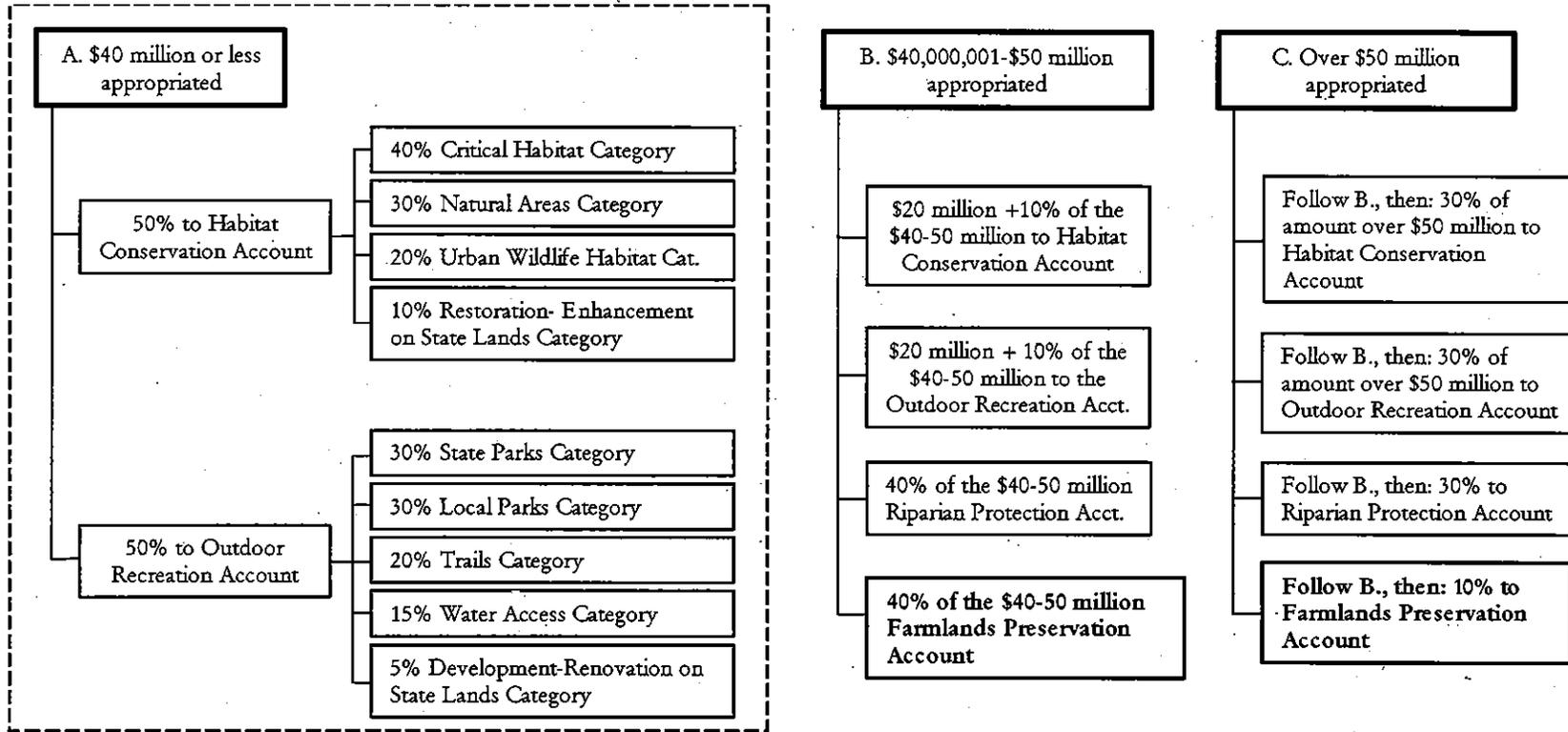
Parcels of land described in (b)(i) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of this subsection;

(d) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the

production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands"; or

(e) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes.

Appendix C. Allocation of WWRP Funds



RCW 79A.15.030:

- (a) Appropriations for a biennium of \$40 million or less must be allocated equally between HCA and ORA.
- (b) If appropriations for a biennium total more than \$40 million, the money must be allocated as follows:
 - (i) \$20 million to HCA and \$20 million to ORA;
 - (ii) Any amount over \$40 million up to \$50 million shall be allocated as follows:
 - (A) 10% to HCA; (B) 10% to ORA; (C) 40% to RPA; (D) 40% to FPA;
 - (iii) Any amounts over \$50 million must be allocated as follows:
 - (A) 30% to HCA; (B) 30% to ORA; (C) 30% to RPA; and (D) 10% to FPA.

50% of the funds allocated to the Local Parks and State Parks categories must be used for acquisition.
 75% of the Water Access category funds must be used for acquisition.

Under distribution scenarios B and C, Habitat Conservation Account and Outdoor Recreation Account funds are distributed as shown in the nine categories under scenario A.

Appendix D: Outline of Model Agricultural Conservation Easement for Farmland Preservation, RCW 79a.15.130(1)

This outline of the model agricultural conservation easement is intended to provide an overview of the required and optional clauses to be included in a conservation easement funded through the Washington Wildlife and Recreation Program, Farmland Preservation Account. Each conservation easement should be tailored to address the objectives of the landowner, funding agency(ies) (e.g., Interagency Committee for Outdoor Recreation, Natural Resources Conservation Service), and grantee (project sponsor or the State of Washington if sponsor is acquiring fee simple title), as well as the specific agricultural values and any habitat values intended for protection on the subject property.

Project sponsors can obtain the complete model agricultural conservation easement template in Word® format by contacting their IAC grants manager or visiting the IAC Web Site: <http://www.iac.wa.gov/iac/docs.htm> An example of a completed easement, based on a hypothetical situation, can also be found at that site.

When preparing the conservation easement for execution and recording, the drafter should also ensure that the final version complies with statutory formatting requirements for recorded documents. Special attention should be paid to margins and to legibility, particularly when recording exhibits that feature graphics or difficult-to-read text. If there is any doubt as to the legibility of any page in a document, the local Auditor/Recorder should be consulted to avoid rejection of the document.

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

Names Grantor (landowner), Grantee(s) (county or city or state), and any third party(ies).

1. RECITALS

Identifies property to be protected; agricultural values; habitat values (if applicable); farmland characteristics; baseline documentation; consistency with grant fund source; status of water rights; easement term; and Grantor's intent to preserve property.

2. CONVEYANCE AND CONSIDERATION

Statement of voluntary conveyance and receipt of consideration; conveyance made under provisions of RCW 64.04.130; and binding nature upon Grantor's and Grantee's successors and assigns.

3. PURPOSE

Purpose statement; stewardship plan; interpretation of the Easement and Grantor's use of the property to be consistent with purpose and terms; and no public access rights assumed through Easement.

4. RIGHTS CONVEYED TO GRANTEE

Grantee has rights to protect agricultural (and habitat, if applicable) values. Right to access property by Grantee requires notifications and consents. Grantee will exercise these rights in compliance with law and in a manner that will not interfere with Grantor's rights. Grantor conveys to Grantee all development rights except as specifically reserved. Grantee may enforce the terms of the Easement, including through injunction and/or restoration of the property

5. PERMITTED USES

Grantor reserves rights not otherwise conveyed to Grantee, and any and all uses that are not inconsistent with the Purpose and terms of this Easement. "Agricultural Activities" and "Accessory Uses" are permitted and defined. Grantor will comply with applicable law and this Easement. If federal funds are involved, will insert language re: Conservation Plan as required by the Food Security Act of 1985, as amended.

Section describes Grantor's rights to undertake activities consistent with stewardship or conservation plan(s); construction and/or maintenance of buildings/structures; exercise water rights; engage in recreational or educational activities; engage in habitat restoration, enhancement and management activities (if applicable); and rights related to forestry activities.

Grantor is given right to undertake any activity necessary to protect health or safety, or prevent significant property damage in the case of emergency.

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

Use or activity inconsistent with the purpose and terms of the Easement is prohibited. Conversion to incompatible uses is not allowed. Limitations on subdivision are explained.

Grantor provides assurance that water rights will be maintained. Commercial feedlots are not permitted. Limitations on improvements, impervious surfaces and building envelopes are described. Limits related to energy production, commercial mining, and alterations of the land are set. Defines when resource extraction is allowed. Limits related to waste disposal and hazardous substances are described.

Defines property transfer, and the notification and consents required. Mitigation for off-site activities is not allowed. Public access without Grantor's consent is not allowed.

7. NOTICE AND CONSENT

Provides criteria and describes procedures for when Grantee, Grantor and Third Parties are required to give notice, and seek or grant consent.

8. DISPUTE RESOLUTION

Describes procedures for preventive discussions between parties, addressing problems, and for mediation and arbitration if required.

9. GRANTEE'S REMEDIES

Describes actions Grantee may take if Grantor is in violation of the terms of this Easement. Also addresses acts beyond Grantor's control.

10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

Describes Grantor's obligations regarding taxes. Liability of each party is defined. Grantor gives representations and warranties related to compliance with laws, pending or threatened litigation, and present and past handling of hazardous and/or toxic waste.

11. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

Extinguishment of this Easement requires mutual consent of all parties, or judicial proceedings. Provides procedure for subsequent transfers or condemnation. Describes the formula to be used in calculating fair market value at the time of termination or extinguishment and how proceeds will be dispersed.

Includes statement to the effect that opportunities for greater economic value may not be used to justify termination or extinguishment of this Easement. Describes how to disperse funds if condemnation affects property in the future.

12. AMENDMENT

Provides procedure for processing subsequent amendments to this Easement.

13. ASSIGNMENT

Describes procedure for Grantee to assign it's rights and obligations, and addresses succession.

14. THIRD PARTY RIGHT OF ENFORCEMENT

Grants IAC third party rights to enforce the Easement; this section is used only if IAC is not the Grantee.

15. LAND TRUST THIRD PARTY RIGHT OF ENFORCEMENT

Grants a land trust third party rights to enforce the Easement (optional).

16. RIGHTS OF THE UNITED STATES OF AMERICA

If federal funds are used, insert this section, which grants the federal government rights to enforce the Easement.

17. JOINT ENFORCEMENT

Insert this section if IAC, the National Resource Conservation Service, and/or a land trust are third parties. This gives these entities the right to jointly enforce the Easement.

18. RECORDATION

Describes how and where Grantee will record Easement.

19. NO MERGER

Describes intent to prohibit merger of this Easement with fee title to the protected property.

20. LIENS

States that liens will be subordinate to this Easement.

21. GENERAL PROVISIONS

Provides direction regarding twelve general provisions to include: Effective Date; Governing Law and Venue; Liberal Construction; Severability; Entire Agreement; No Forfeiture; defines "Grantor" and "Grantee"; Successors; Captions; Counterparts; Authority; and Recitals. Each provision consists of a relatively short clause common to easement documents.

SCHEDULE OF EXHIBITS

The following exhibits will be included in each easement: Legal Description of Property Subject to Easement; Site Map; Description of Water Rights; and Permitted Exceptions (list of existing encumbrances acceptable at the time the Easement is executed).

The following exhibits will be used only when applicable: Stewardship, or Conservation Plan; and Subordination Agreement to be used when a lien is placed on Protected Property.

SIGNATURE PAGES

Document to be signed by Grantor, Grantee(s) and Third Party(ies). Signatures must be notarized.

1 **[FINAL DRAFT]**
2 **ANNOTATED MODEL AGRICULTURAL CONSERVATION EASEMENT**
3 **FOR FARMLAND PRESERVATION PROGRAM, RCW 79A.15.130(1)**
4

5 [NOTE: LINE NUMBERS ADDED FOR EASE OF REFERENCE DURING IAC REVIEW]
6

7 This annotated model agricultural conservation easement is intended as a drafting
8 guide only. Each conservation easement should be tailored to address the objectives of the
9 landowner, funding agencies (e.g., IAC, NRCS), and grantee (project sponsor or the State of
10 Washington), as well as the specific agricultural values and any habitat values intended for
11 protection on the subject property.
12

13 The annotations in this document identify choices of language and include notes,
14 commentary, and instructions to assist with the use of this document in various situations.
15 These annotations will not appear in the final version of the conservation easement. Where
16 choices of language are identified, the drafter should make the appropriate choice and delete
17 other choices. All annotations, including footnotes, should be removed. Additionally, the
18 drafter should update all cross-references to specific sections within this document that may
19 have been renumbered during the drafting and editing process.¹
20

21 When preparing the conservation easement for execution and recording, the drafter
22 should also ensure that the final version complies with statutory formatting requirements for
23 recorded documents. Special attention should be paid to margins² and to legibility,
24 particularly when recording exhibits that feature graphics or difficult-to-read text. If there is
25 any doubt as to the legibility of any page in a document, the local Auditor/Recorder should be
26 consulted to avoid rejection of the document. For details regarding formatting, see "Standard
27 Formatting Requirements for Recording Documents," provided to IAC in a separate
28 document.
29

30 This document has been formatted as follows: Plain text, **bold text**, or *italics* without
31 brackets or braces indicates required text; [**bold text in brackets**] indicates a note,
32 commentary or instruction; [*text in bracketed italics {or italics in braces}*] indicates sample or
33 optional text; and [plain text in brackets] indicates a description of sample or optional text. All
34 text in footnotes is explanatory only and should not be included in the final version of the
35 conservation easement.
36
37

¹ Cross-references can be located by searching this document for the word "Section." Click "Find" in the "Edit" menu or use the Ctrl+F shortcut.

² For example, under current requirements, the document must be formatted either with a cover sheet on the first page and at least 1-inch margins on all edges, or (if no cover sheet) with a 3-inch top margin on the first page and at least 1-inch margins on all other edges. This document has been formatted with a cover sheet on the first page and 1.1-inch margins on all edges.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

AFTER RECORDING RETURN TO:

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein):

Grant Deed of Agricultural Conservation Easement

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page(s) _____ of document.

Grantor(s) (Last name, first name, initials)
1.
2.
 Additional names are on page(s) _____ of document.

Grantee(s) (Last name first, then first name and initials)
1.
2.
 Additional names are on page(s) _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

 Additional legal description is on page(s) _____ of document.

Assessor's Property Tax Parcel/Account Number Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

1 **GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT**

2
3 This GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT ("Easement") is
4 made by [insert GRANTOR³], a _____, having an address of _____
5 ("Grantor"), in favor of [insert GRANTEE⁴], a _____, having an address of
6 _____ ("Grantee") (collectively "Parties"). Each of the following third party
7 beneficiaries (collectively the "Beneficiaries" and individually "Beneficiary") has certain
8 rights hereunder, including third party right of enforcement: **[Insert THIRD PARTY**
9 **BENEFICIARIES, as appropriate: *The State of Washington, by and through the***
10 ***Interagency Committee for Outdoor Recreation ("IAC"); and/or the United States, by and***
11 ***through the Natural Resources Conservation Service ("NRCS" or the "United States");***
12 **and/or _____ (insert name of land trust), a Washington nonprofit corporation].**

13 **1. RECITALS**

14
15 1.1. Grantor is the owner in fee simple of the certain real property (hereinafter, "Protected
16 Property") located in _____ County, Washington, more particularly described
17 in Exhibit "A" (Legal Description) and shown on Exhibit "B" (Site Map), which are
18 attached to this instrument and incorporated herein by this reference. The Protected
19 Property consists of approximately _____ acres in _____ parcel(s) [*and is commonly*
20 *known as the "_____ Farm/Ranch"].*

21
22 1.2. The Protected Property possesses significant agricultural values of great importance
23 to Grantor, Grantee, the people of _____ County, and the people of the State of
24 Washington (collectively, "Agricultural Conservation Values"). The Agricultural
25 Conservation Values include **[describe Agricultural Conservation Values, e.g.:**
26 *agricultural productivity, prime, unique and important agricultural soils {of regional*
27 *and/or State-wide importance}, the suitability of the Protected Property for*
28 *producing _____, the size of the commercially productive portion of the*
29 *Protected Property, existing and potential economic productivity, the viability of the*
30 *site for continued agricultural production, including farm-to-market access,*
31 *proximity to roads and utilities, historic structures, water availability, drainage, etc.].*

32
33 1.3. **[Identify Habitat Values, if applicable: *The Protected Property also possesses***
34 *significant fish and wildlife habitat values of great importance to Grantor, Grantee,*
35 *the people of _____ County, and the people of the State of Washington*
36 *(collectively, "Habitat Values"). The Habitat Values include {describe Habitat*
37 **Values, e.g.: *habitat, migratory bird habitat and/or forage areas, and/or other fish***

³ Insert landowner's name or name of project sponsor acquiring fee simple interest.

⁴ Insert name of project sponsor acquiring conservation easement or, if project sponsor is acquiring fee simple interest and IAC is Grantee of conservation easement, *the State of Washington, by and through the Interagency Committee for Outdoor Recreation ("IAC").*

1 and wildlife habitat, including habitat for the _____, a species
2 classified as _____.}]

3
4 1.4. The Protected Property consists primarily of farmland (as defined in RCW
5 79A.15.010(4)) [insert specific description of farmland/soil characteristics, e.g.:
6 whose soils have been classified as {e.g., prime farmland; farmland of statewide
7 importance, etc.} by the Natural Resource Conservation Service, U.S. Department of
8 Agriculture {e.g., because this land has a soil quality, growing season, and moisture
9 supply needed for sustained agricultural production; because of the fertility of its silt
10 loam soils, etc.}].

11
12 1.5. The Protected Property contains [insert other relevant information important for
13 agricultural preservation purposes, e.g.: features that make the Property valuable
14 farmland, such as ditches, canals, lakes and reservoirs, topographic features, historic
15 farm identity, historic structures, etc.].

16
17 1.6. The Agricultural Conservation Values [*and Habitat Values*] are documented in an
18 inventory of relevant features of the Protected Property on file at the offices of
19 _____ and incorporated herein by this reference ("Baseline Documentation"). The
20 Baseline Documentation consists of reports, maps, photographs, and other
21 documentation that provide, collectively, an accurate representation of the Protected
22 Property at the time of this grant and which is intended to serve as an objective
23 information baseline for monitoring compliance with the terms of this grant. The
24 Parties acknowledge that the Baseline Documentation is complete and accurate as of
25 the date of this Easement. [*The Parties further agree that within three (3) months of*
26 *the execution of this Easement, a collection of additional Baseline Documentation*
27 *may be compiled by Grantee, and incorporated into the Easement by this reference.*
28 *Failure to timely compile the additional Baseline Documentation shall not affect the*
29 *enforceability or this Easement or any of its provisions.*] The Baseline Documentation
30 may be used to establish that a change in the use or condition of the Protected
31 Property has occurred, but its existence shall not preclude the use of other evidence to
32 establish the condition of the Protected Property as of the date of this Easement.
33 Grantee may use the Baseline Documentation in enforcing provisions of this
34 Easement, but is not limited to the use of the Baseline Documentation to show a
35 change in the use or condition of the Protected Property.

36
37 1.7. Permanent protection of the Protected Property will further the purposes of the
38 Washington State Farmlands Preservation Account (FPA) established under RCW
39 79A.15.130(1), which provides that moneys appropriated to the FPA "must be
40 distributed for the acquisition and preservation of farmlands in order to maintain the
41 opportunity for agricultural activity upon these lands." The legislatively declared
42 policies of the State of Washington in the Washington State Open Space Tax Act,
43 Chapter 84.34 RCW (OSTA), provide that "it is in the best interest of the state to

1 maintain, preserve, conserve, and otherwise continue in existence adequate open
2 space lands for the production of food, fiber and forest crop, and to assure the use and
3 enjoyment of natural resources and scenic beauty for the economic and social well
4 being of the state and its citizens.” [Insert the following if there is a local open
5 space tax ordinance (and consult the ordinance for site specific qualifications):
6 Under the OSTA, lands eligible for preferential real property tax treatment include
7 lands such as the subject Protected Property where the preservation in its present use
8 would conserve and enhance natural resources and promote conservation of soils.
9 Pursuant to this legislative directive, _____ County has adopted an Open Space
10 Tax Program, Ordinance No. _____, that recognizes the importance of and provides
11 preferential tax treatment for the following resources that occur on the Property:
12 describe resources that receive preferential tax treatment] [Insert the following
13 language if federal funding is used: Permanent protection of the Protected Property
14 will also further the purposes of the federal Farm and Ranch Lands Protection
15 Program, which seeks to protect prime, unique, State-wide or locally important soil
16 from conversion to non-agricultural uses by purchasing interests in land. 16 U.S.C.
17 §§ 3838h and 3838i.]
18

19 1.8. This Easement is acquired in part with a grant from IAC pursuant to that certain grant
20 agreement (# _____) between [insert one of the following: i) {IAC is third party}
21 IAC and Grantee; or ii) {IAC is grantee} IAC and Grantor] dated _____ (“IAC
22 Grant Agreement”). [Insert unless IAC is Grantee: IAC is a third-party beneficiary
23 of certain rights under this Easement.] [Insert only if federal funds are used: This
24 Easement is also acquired in part with funds from the Farm and Ranchland
25 Protection Program, administered on behalf of the United States by the United States
26 Department of Agriculture through the Commodity Credit Corporation and NRCS. By
27 virtue of these funds, NRCS recognizes that purchase of this Easement is in the public
28 interest. NRCS is a third-party beneficiary of certain rights under this Easement.]
29

30 1.9. [Insert if land trust is third party beneficiary: _____, a Washington
31 nonprofit nature conservancy corporation or association authorized to acquire and
32 hold conservation easement interests under RCW 64.04.130 and RCW 84.34.210
33 (“Land Trust”), is a third-party beneficiary of certain rights under this Easement.]
34

35 1.10. [Insert one of the following water rights recitals:
36

37 (i) {Easement includes all water rights} The Parties agree that, in order to maintain
38 the opportunity for agricultural activity upon the Protected Property pursuant to
39 RCW 79A.15.130(1), it is appropriate to include in this Easement any and all
40 adjudicated and unadjudicated water rights, whether appropriative or riparian,
41 including but not limited to ditches and ditch rights, springs and spring rights,
42 reservoir and reservoir rights, wells and groundwater rights, water allotments, units
43 or shares, memberships, shares, or rights to receive water from any water

1 company, ditch company, or irrigation district, permits, certificates, or claims
2 under RCW Chapter 90.14, and any other types of rights related to the ownership
3 of water, appurtenant to or customarily or historically used or associated with or
4 upon the Property, including but not limited to those specifically described in
5 Exhibit "C" (Water Rights), which is attached to this instrument and incorporated
6 herein by this reference (collectively, the "Water Rights"). For purposes of this
7 Easement, the Water Rights shall also include any and all of the rights associated
8 with the historical and beneficial use of any of the embankments, flumes,
9 headgates, measuring devices or any other structures that are appurtenant to those
10 water rights, together with all easements and rights of way therefor.

11 or

12
13 (ii) **{Easement includes only Dedicated Water Rights}** The Parties agree that, in
14 order to maintain the opportunity for agricultural activity upon the Protected
15 Property pursuant to RCW 79A.15.130(1), it is appropriate to include in this
16 Easement certain water rights appurtenant to or customarily or historically used or
17 associated with or upon the Protected Property (collectively, the "Dedicated Water
18 Rights"). The Dedicated Water Rights are described in Exhibit "C" (Dedicated
19 Water Rights), which is attached to this instrument and incorporated herein by this
20 reference.
21

22 1.11. The Parties intend that the Agricultural Conservation Values [*and Habitat*
23 *Values*] be preserved and maintained [**insert one of the following: (a) in perpetuity**
24 **or (b) for a term of _____** {identify term, at least 25 years} *years*] by
25 permitting only those land uses on the Protected Property that do not impair or
26 interfere with the Agricultural Conservation Values [*or Habitat Values*].
27

28 1.12. Grantor, as owner of the Protected Property, has the right to protect and
29 preserve the Agricultural Conservation Values [*and Habitat Values*], and desires and
30 intends to transfer such rights to Grantee [**insert one of the following: (a) in**
31 **perpetuity or (b) for a term of _____** {identify term, at least 25 years}
32 *years, commencing on the Effective Date of this Easement.*]
33
34

35 2. CONVEYANCE AND CONSIDERATION

36
37 2.1. For the reasons stated above, and in consideration of the mutual covenants, terms,
38 conditions and restrictions contained herein, and pursuant to the laws of Washington
39 and in particular RCW 64.04.130 and RCW 84.34.210, Grantor hereby voluntarily
40 grants, conveys and warrants, for valuable consideration, the receipt of which is
41 acknowledged hereby, to Grantee a conservation easement in gross [**insert one of the**
42 **following: (a) in perpetuity or (b) for a term of _____** {identify term, at
43 least 25 years} *years*] over the Protected Property, consisting of the rights in the

1 Protected Property, hereinafter enumerated, subject only to the title matters set forth
2 in Exhibit D (Permitted Exceptions), which is attached to this instrument and
3 incorporated herein by this reference.
4

5 2.2. This conveyance is a conveyance of an interest in real property under the provisions
6 of RCW 64.04.130.
7

8 2.3. Grantor expressly intends that this Easement runs with the land and that this
9 Easement shall be binding upon Grantor's and Grantee's successors and assigns
10 **[insert one of the following: (a) in perpetuity or (b) for a term of _____**
11 **{identify term, at least 25 years} years].**
12

13 3. PURPOSE 14

15 3.1. **Purpose.** The Purpose of this Easement is to protect the Agricultural Conservation
16 Values of the Protected Property **[insert one of the following: (a) forever or (b) for a**
17 **term of _____ {identify term, at least 25 years} years]** and prevent any
18 use of the Protected Property that will impair or interfere with its Agricultural
19 Conservation Values, thereby maintaining the opportunity for agricultural activity
20 upon the Protected Property pursuant to RCW 79A.15.130(1). **[Insert if Habitat**
21 **Values are to be protected: To the extent that the protection of Habitat Values is**
22 **consistent with maintaining the opportunity for agricultural activity upon the**
23 **Protected Property, it is within the Purpose of this Easement to protect such Habitat**
24 **Values by preventing any use of the Protected Property that will impair or interfere**
25 **with its Habitat Values.]**
26

27 3.2. **Stewardship Plan.** To further the Purpose of this Easement, the Parties *[may*
28 *develop] [have developed]* a plan for stewardship of the Protected Property (the
29 "Stewardship Plan") *[dated _____, on file at the offices of Grantee and incorporated*
30 *herein by this reference]. [Insert if federal funds are used: The Stewardship Plan*
31 *must be consistent with, and may be developed in conjunction with, the Conservation*
32 *Plan prepared in consultation with NRCS as provided for in Section 5.2.4.]*
33

34 3.3. Interpretation of the Easement 35

36 3.3.1. The Parties intend that this Easement be interpreted in a manner consistent
37 with its Purpose.
38

39 3.3.2. The Parties intend that this Easement be interpreted to confine the Grantor's
40 use of the Protected Property to such activities that are consistent with the
41 Purpose and terms of this Easement. At the same time, the Parties intend, and this
42 Easement is structured, to give Grantor maximum flexibility and discretion to

1 undertake activities that are consistent with the Purpose and terms of this
2 Easement.
3

4 **3.4. No Public Rights Conveyed Through Easement.** The Parties acknowledge that,
5 except as specifically provided herein, Grantor does not grant, expand or extend any
6 rights to the general public through this Easement, including without limitation, any
7 rights of public access to, on or across, or public use of, the Protected Property.
8

9 **4. RIGHTS CONVEYED TO GRANTEE**

10
11 To accomplish the Purpose of this Easement, the following rights are conveyed to
12 Grantee by this Easement:
13

14 **4.1. Protection.** Grantee shall have the right to identify, protect, preserve, maintain and
15 conserve [**insert one of the following: (a) in perpetuity or (b) for a term of**
16 _____ {identify term, at least 25 years} years] and to enhance, restore, or
17 improve by mutual agreement the Agricultural Conservation Values [*and/or Habitat*
18 *Values*] of the Protected Property.
19

20 **4.2. Access by Grantee.** As provided for and limited herein, Grantor hereby grants to
21 Grantee reasonable and non-exclusive access at reasonable times across the Protected
22 Property solely for the purposes of fulfilling Grantee's obligations under this
23 Easement and exercising its affirmative rights under this Easement. Specifically,
24 Grantee shall have the right:
25

26 **4.2.1.** To enter upon, inspect, observe and study the Protected Property, with such
27 persons as Grantee may require, at mutually agreeable dates and times and
28 upon reasonable prior notice to the Grantor, for the purpose of (a) identifying
29 the current uses and practices on the Protected Property and the condition of
30 the Protected Property, and (b) monitoring the uses and activities on the
31 Protected Property to determine whether they are consistent with this
32 Easement.
33

34 **4.2.2.** To enter upon the Protected Property, at a mutually agreeable date and time
35 and upon prior notice to Grantor, to inspect the Protected Property after major
36 natural events occur, such as fires, windstorms, and floods.
37

38 **4.2.3.** To enter upon the Protected Property at such other times as are necessary if
39 there is reason to believe that a violation of the Easement is occurring, for the
40 purposes of enforcing the provisions of this Easement. Prior to entry, Grantee
41 must provide Grantor notice, and describe the basis of the reasonable belief
42 that a violation is occurring on the Protected Property.
43

1 4.2.4. Grantee shall exercise its access rights in compliance with applicable law and
2 in a manner that will not materially disturb or interfere with Grantor's reserved
3 rights, any other person's lawful use of the Protected Property, or Grantor's
4 quiet enjoyment of the Protected Property.
5

6 4.2.5. Grantor shall not unreasonably withhold or delay its consent to dates and times
7 of access proposed by Grantee.
8

9 **4.3. Development Rights.** Grantor hereby grants to Grantee all development rights except
10 as specifically reserved herein, and the Parties agree that such rights may not be used
11 on or transferred off of the Protected Property as it now or hereafter may be bounded
12 or described, or to any other property adjacent or otherwise, or (except as expressly
13 permitted herein) used for the purpose of calculating permissible lot yield or density
14 of the Protected Property or any other property.
15

16 **4.4. Injunction and Restoration.** Grantee shall have the right to prevent, or cause
17 Grantor to prevent, any use of, or activity on, the Protected Property that is
18 inconsistent with the Purpose and terms of this Easement, including trespasses by
19 members of the public, and shall have the right to undertake or cause to be undertaken
20 the restoration of such areas or features of the Protected Property as may be
21 materially damaged by activities contrary to the provisions hereof, all in accordance
22 with Section 9.
23

24 **4.5. Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in
25 accordance with Sections 8 and 9.
26

27 **4.6. Assignment.** Grantee shall have the right to assign, convey, or otherwise transfer
28 Grantee's interest in the Protected Property in accordance with Section 13.
29

30 **4.7. [Signage.** *Grantee shall have the right to erect and maintain a sign or other*
31 *appropriate marker on the Protected Property, visible from a public road, bearing*
32 *information indicating that the Protected Property is protected by this Easement and*
33 *held by Grantee. The sign shall also name the funding sources for the acquisition of*
34 *the Easement to the extent required by the funding sources. The location and design*
35 *of the sign shall be determined by mutual consent of Grantor and Grantee, which*
36 *consent shall not be unreasonably withheld. The wording of the information shall be*
37 *determined by Grantee, but shall clearly indicate that the Protected Property is*
38 *privately owned and not open to the public. Grantee shall be responsible for the*
39 *costs of erecting and maintaining such sign or marker.]*
40
41
42
43

1 **5. PERMITTED USES**

2
3 5.1. **General.** Grantor reserves for itself and its successors and assigns, any and all rights
4 not otherwise conveyed to Grantee under this Easement and any and all uses of, or
5 activities on, the Protected Property that are not inconsistent with the Purpose and
6 terms of this Easement, and that are not prohibited herein. Without limiting the
7 generality of the foregoing, Grantor specifically reserves for itself and its successors
8 and assigns the following uses and activities, which shall be considered permitted
9 uses and activities under the Easement.

10
11 5.2. **Agricultural Activities.** Grantor may engage in, and allow others to engage in,
12 Agricultural Activities (as defined below) on the Protected Property, as further
13 provided for and limited in this Section and in Section 6.

14
15 5.2.1. As used herein, "Agricultural Activities" shall mean the commercial
16 production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or
17 animal products [*including but not limited to crops commonly found in the*
18 *community surrounding the Protected Property, field crops, fruits, vegetables,*
19 *horticultural specialties, livestock or livestock products,*] or the commercial
20 production of berries, grain, hay, straw, turf, seed, or Christmas trees not subject
21 to the excise tax imposed by RCW 84.33.100 through 84.33.140 [*, and all*
22 *conditions and activities occurring on a farm in connection with such*
23 *commercial production, including, but not limited to, marketed produce at*
24 *roadside stands or farm markets; noise; odors; dust; fumes; operation of*
25 *machinery and irrigation pumps; movement, including, but not limited to, use of*
26 *current county road ditches, streams, rivers, canals, and drains, and use of water*
27 *for agricultural purposes; ground and aerial application of seed, fertilizers,*
28 *conditioners, and plant protection products; employment and use of labor;*
29 *roadway movement of equipment and livestock; protection from damage by*
30 *wildlife; prevention of trespass; and construction and maintenance of buildings,*
31 *fences, roads, bridges, ponds, drains, waterways, and similar features and*
32 *maintenance of streambanks and watercourses*].

33
34 5.2.2. Agricultural Activities shall also include such "Accessory Uses," as defined in
35 RCW 36.70A.177(3)(b),⁵ that are related to the permitted Agricultural Activities

⁵ **NOTE:** RCW 36.70A.177(3)(b) provides that "[a]ccessory uses may include" the following: "(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and (ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area

1 on the Protected Property, that maintain the primacy of, and are subordinate to,
2 the farmland character and use of the Protected Property, that are compatible
3 with the Agricultural Conservation Values, and that provide supplemental
4 income. [*Such Accessory Uses may include, as examples, A, B, and C (insert*
5 *examples of appropriate accessory uses). Such Accessory Uses do not include, as*
6 *examples, X, Y, and Z (insert examples of inappropriate accessory uses).*]
7

8 5.2.3. All Agricultural Activities shall be carried out in accordance with applicable
9 law and in compliance with the Purpose and terms of this Easement. Grantor
10 retains discretion over the specific character and content of the management
11 decisions and practices necessary to identify, protect, preserve, maintain and
12 conserve [**insert one of the following: (a) in perpetuity or (b) for a term of**
13 **_____ {identify term, at least 25 years} years]** and to enhance,
14 restore, or improve the Agricultural Conservation Values consistent with the
15 Purpose and terms of this Easement.
16

17 5.2.4. [If federal funds are used, insert the following:
18

19 *As required by section 1238I of the Food Security Act of 1985, as amended, the*
20 *Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on*
21 *the Protected Property in a manner consistent with a conservation plan prepared in*
22 *consultation with NRCS and approved by the _____ County Conservation District*
23 *("Conservation Plan"). This Conservation Plan shall be developed using the*
24 *standards and specifications of the NRCS Field Office Technical Guide and 7 CFR*
25 *part 12 that are in effect on the Effective Date of this Easement. However, the Grantor*
26 *may develop and implement a Conservation Plan that proposes a higher level of*
27 *conservation and is consistent with the NRCS Field Office Technical Guide standards*
28 *and specifications. NRCS shall have the right to enter upon the Property, with*
29 *advance notice to the Grantor, in order to monitor compliance with the Conservation*
30 *Plan.*
31

32 *In the event of noncompliance with the Conservation Plan, NRCS shall work with the*
33 *Grantor to explore methods of compliance and give the Grantor a reasonable amount*
34 *of time, not to exceed twelve months, to take corrective action. If the Grantor does not*
35 *comply with the Conservation Plan, NRCS will inform Grantee of the Grantor's*
36 *noncompliance. The Grantee shall take all reasonable steps (including efforts at*
37 *securing voluntary compliance and, if necessary, appropriate legal action) to secure*
38 *compliance with the Conservation Plan following written notification from NRCS that*
39 *(a) there is a substantial, ongoing event or circumstance of non-compliance with the*
40 *Conservation Plan, (b) NRCS has worked with the Grantor to correct such*

already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses."

1. noncompliance, and (c) Grantor has exhausted its appeal rights under applicable
2 NRCS regulations.
3

4 *If the NRCS standards and specifications for highly erodible land are revised after the*
5 *date of this Grant based on an Act of Congress, NRCS will work cooperatively with*
6 *the Grantor to develop and implement a revised Conservation Plan. The provisions of*
7 *this section apply to the highly erodible land conservation requirements of the Farm*
8 *and Ranch Lands Protection Program and are not intended to affect any other natural*
9 *resources conservation requirements to which the Grantor may be or become subject.]*
10

11 **5.3. Stewardship Activities.** Grantor may engage in, and allow others to engage in, any
12 activity to monitor, protect and maintain the Agricultural Conservation Values [and
13 *Habitat Values, including but not limited to habitat restoration, enhancement and*
14 *management activities ("Habitat Activities"),] [insert one of the following: i) with*
15 *prior written notice to and consent of Grantee; ii) pursuant to any Stewardship Plan*
16 *{or Conservation Plan} covering the Protected Property and agreed to by the parties*
17 *to the Stewardship Plan {or Conservation Plan}; or iii) with prior written notice to*
18 *and consent of Grantee and pursuant to any Stewardship Plan {or Conservation*
19 *Plan} covering the Protected Property and agreed to by the parties to the*
20 *Stewardship Plan {or Conservation Plan}]. [Insert if applicable: All Habitat*
21 *Activities on the Protected Property shall be carried out in compliance with the*
22 *Purpose and terms of this Easement.]*
23

24 **5.4. Maintenance and Construction of Buildings and Other Structures**

25
26 5.4.1. Maintenance of Existing Structures. Grantor may maintain, repair, replace or
27 decommission structures, houses, barns, water-pollution-control facilities,
28 water impoundments, fences, corrals, roads, ditches, sloughs, pumps, levees,
29 and other permanent improvements ("Improvements") existing on the Property
30 as of the Effective Date of this Easement, provided that such activities related
31 to existing Improvements are carried out in compliance with the Purpose and
32 terms of this Easement, including the impervious surface limitations provided
33 for in Section 6.6.1. Such Improvements shall include utility systems that
34 support the Improvements such as electric power lines, septic systems, water
35 storage and delivery systems, telephone and communication cable systems and
36 the like.
37

38 5.4.2. Construction of New Structures and Expansion of Existing Structures. Grantor
39 may construct additional Improvements not existing as of the Effective Date of
40 this Easement and may construct expansions or enlargements of Improvements
41 existing on the Property as of the Effective Date of this Easement in
42 compliance with the Purpose and terms of this Easement, subject to the

1 impervious surface limitations and restrictions on new Improvements provided
2 for in Section 6.6.

3
4 5.4.3. Reservation of Dwelling Unit(s). Grantor reserves the right to the use of _____
5 single-family dwelling units(s) on the Land, subject
6 to the impervious surface limitations and restrictions on new Improvements
7 provided for in Section 6.6, for the sole purpose of accommodating the
8 Grantors and their successors in interest to the Land, the farm operator, or the
9 families of such persons, or for accommodating agricultural employees of the
10 owner or operator and their families. No more than _____ dwelling units(s) in
11 total will be permitted regardless of whether the Land is subdivided by the
12 Grantors or by any successor in interest of the Grantors.
13

14 5.5. **Water Rights.** The Parties agree that the [*insert Water Rights or Dedicated Water*
15 *Rights*] must be maintained on the Property to ensure the protection of the
16 Agricultural Conservation Values[*and Habitat Values*]. Grantor may exercise the
17 [*insert Water Rights or Dedicated Water Rights*] by putting them to any beneficial
18 use that is not inconsistent with the Purpose and terms of this Easement, and that is
19 not prohibited herein. Grantor may maintain, repair, and if destroyed, reconstruct any
20 existing facilities relating to the [*insert Water Rights or Dedicated Water Rights*]
21 (such as ditches, wells and reservoirs) with notice to Grantee as provided for in
22 Section 7, provided that such activities are carried out in compliance with the Purpose
23 and terms of this Easement.
24

25 5.6. **Recreational or Educational Use.** [*Insert one of the following:*

26
27 i) **{Grantor is City/County}:** *Grantor shall not engage in or permit any*
28 *recreational use of the Protected Property. Grantor may engage in or*
29 *permit educational activities on the Protected Property; provided,*
30 *however, that such activities shall be carried out in compliance with the*
31 *Purpose and terms of this Easement, and in a manner that maintains the*
32 *primacy of, and remains subordinate to, the farmland character and use of*
33 *the Protected Property.*
34

35 or

36
37 ii) **Grantor is farmer}:** *Grantor may engage in, and allow others to engage*
38 *in, recreational or educational activities on the Protected Property.*
39 *Recreational uses are limited to uses such as hiking, fishing, horseback*
40 *riding, and other forms of recreation that do not require site modification*
41 *to accommodate motorized, mechanical or electronic accessories. All*
42 *forms of developed recreation or recreation that adversely impacts the*
43 *Agricultural Conservation Values {or Habitat Values} are prohibited.*

1
2 *All recreational and educational activities on the Protected Property shall*
3 *be carried out in compliance with the Purpose and terms of this Easement,*
4 *and in a manner that maintains the primacy of, and remains subordinate*
5 *to, the farmland character and use of the Protected Property.*
6

7 **5.7. Forestry Use:** Grantor may remove trees from the Protected Property when required
8 for safety, fire protection, salvage purposes, pest control, disease control, restoration,
9 domestic use, or as necessary to benefit Agricultural Activities (the "Forestry
10 Activities"). All Forestry Activities on the Protected Property shall be carried out in
11 compliance with the Purpose and terms of this Easement. Grantor shall not engage in
12 or permit any Forestry Activities that would preclude the opportunity for agricultural
13 activity upon the Protected Property. The provisions of this Section 5.7 shall not
14 apply to the commercial production of Christmas trees not subject to the excise tax
15 imposed by RCW 84.33.100 through 84.33.140.
16

17 **5.8. Emergencies:** Grantor may undertake any activities that are necessary to protect
18 health or safety or prevent significant property damage on the Protected Property or
19 are required by and subject to compulsion of any governmental agency; provided,
20 however, that Grantor shall first reasonably attempt to notify Grantee prior to taking
21 such action. If Grantee cannot provide consent, with or without conditions, within
22 such time as is reasonable under the circumstances, Grantor may proceed with such
23 action without consent.
24

25 **6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES**

26

27 **6.1. General.** Any use of, or activity on, the Protected Property inconsistent with the
28 Purpose or other terms of the Easement is prohibited, and Grantor acknowledges and
29 agrees that it will not conduct, engage in, or permit any such use or activity. Without
30 limiting the generality of the foregoing, the following uses of, or activities on, the
31 Protected Property are either (a) inconsistent with the Agricultural Conservation
32 Values [*and/or Habitat Values*] and Purpose of this Easement and prohibited herein
33 or (b) limited as provided herein to make such uses or activities consistent with the
34 Agricultural Conservation Values [, *Habitat Values*] and Purpose of this Easement.
35

36 **6.2. No Conversion to Incompatible Uses.** Grantor shall not convert the Protected
37 Property to industrial or suburban/residential development or to any other use that is
38 incompatible with maintaining the opportunity for agricultural activity on the
39 Protected Property.
40

41 **6.3. Limitations on Subdivision.** Grantor shall not legally or in a "de facto" manner
42 subdivide the Protected Property, which shall include, but not be limited to, any
43 subdivision, short subdivision, platting, binding site plan, testamentary division, or

1 other process by which the Protected Property is divided into lots, without prior
2 written notice to and consent of Grantee as provided for in Section 7. Such consent
3 shall not be granted unless Grantor demonstrates that the proposed subdivision is
4 consistent with the Purpose and terms of this Easement. [No subdivision of the Land
5 that reduces any parcel to less than _____ acres shall be permitted.] Grantor shall
6 incorporate by express reference on the face of any plat, short plat, or other legal
7 instrument by which the Protected Property is divided into lots the following
8 restrictions: i) the terms of this Easement; ii) the number of dwelling units allocated
9 to each subdivided parcel out of the total number of dwelling units specified above;
10 iii) any additional restrictions necessary to meet the impervious surface limit of
11 Section 6.6.1, as determined by Grantee as part of its consent; and iv) any additional
12 restrictions necessary to achieve the Purpose of this Easement, as determined by
13 Grantee as part of its consent. If land possessing water rights is subdivided, a water
14 right of sufficient quantity to support agriculture must be allocated to each parcel
15 created by the subdivision. The failure of Grantor to perform any act required by this
16 subsection shall not impair the validity of this Easement or limit its enforceability in
17 any way.
18

19 **6.4. Water Rights.**

20
21 **6.4.1.** In furtherance of the Purpose of this Easement, Grantor shall cooperate with
22 Grantee to help assure the maintenance of the [insert *Water Rights or Dedicated*
23 *Water Rights*].
24

25 **6.4.2.** Except as expressly provided in this section, Grantor shall not transfer,
26 encumber, sell, lease or otherwise separate the [insert *Water Rights or Dedicated*
27 *Water Rights*] from the Protected Property.
28

29 **6.4.3.** Grantor shall not abandon, relinquish or otherwise lose or forfeit, by action or
30 inaction, any of the [insert *Water Rights or Dedicated Water Rights*].
31

32 **6.4.4.** Grantor shall take affirmative actions to avoid such abandonment,
33 relinquishment, loss or forfeiture, including but not limited to the following: i)
34 exercising the [insert *Water Rights or Dedicated Water Rights*] by putting them
35 to beneficial use in accordance with Chapter 90.14 RCW; ii) seeking to place or
36 enroll the [insert *Water Rights or Dedicated Water Rights*] in the Washington
37 State trust water rights program on a temporary basis, provided that any
38 acquisition of the [insert *Water Rights or Dedicated Water Rights*] by the State
39 shall be expressly conditioned to limit its use to instream purposes and its
40 duration to a term no longer than 10 years; or (iii) seeking to lease the [insert
41 *Water Rights or Dedicated Water Rights*] for use on land other than the Protected
42 Property for a term no longer than 10 years, with prior written notice to and
43 consent of Grantee, after obtaining approval in accordance with RCW 90.03.380,

1 90.03.383, 90.03.390, or 90.44.100 for a temporary transfer or change of the
2 Water Rights; provided, however, that any such lease shall require the lessee to
3 make beneficial use of the [insert *Water Rights or Dedicated Water Rights*] in
4 accordance with Chapter 90.14 RCW and for Agricultural Activities only
5 (collectively "Water Rights Maintenance Actions"). If Grantor is unable to take
6 the Water Rights Maintenance Actions and the [insert *Water Rights or*
7 *Dedicated Water Rights*] are under threat of abandonment, relinquishment, loss
8 or forfeiture, Grantor shall convey ownership of said [insert *Water Rights or*
9 *Dedicated Water Rights*] to Grantee for Grantee's use in order to maintain the
10 opportunity for agricultural activity on the Protected Property [*or elsewhere in*
11 _____ (adjacent) *County/counties*].
12

13 **6.4.5.** Any relinquishment, loss or forfeiture of the [insert *Water Rights or Dedicated*
14 *Water Rights*] shall not be deemed or construed to be a waiver of Grantee's rights
15 under this Easement or to defeat the Purpose of this Easement, and shall not
16 otherwise impair the validity of this Easement or limit its enforceability in any
17 way.
18

19 **6.5. Limitations on Agricultural Use.**
20

21 **6.5.1.** The establishment or maintenance of a commercial feedlot is prohibited. For
22 purposes of this Easement, a commercial feedlot is defined as a permanently
23 constructed confined area or facility within which the land is not grazed or
24 cropped annually, and that is used to receive livestock that are confined solely
25 for the purpose of growing or finishing. However, seasonal confinement of
26 animals raised on the Protected Property and year-round confinement for the
27 commercial production of dairy products on the Protected Property are
28 expressly permitted. Furthermore, nothing in this Section shall prevent Grantor
29 from leasing pasture for the grazing of livestock owned by others.
30

31 **6.5.2.** Grantor shall not engage in, or permit others to engage in, the commercial
32 production of cultivated marine or freshwater aquatic products on the Protected
33 Property.
34

35 **6.6. Limitations on Improvements.** Grantor may build or rebuild Improvements only in
36 a manner consistent with the following absolute limit on Impervious Surfaces (as
37 defined below) and other Improvement-related limitations:
38

39 **6.6.1. Impervious Surfaces Limitation.**
40

41 **6.6.1.1.** As used herein, "Impervious Surfaces" means hard surface areas that either
42 prevent or retard the entry of water into the soil mantle as under natural
43 conditions before development or that cause water to run off the surface in

1 greater quantities or at an increased rate of flow from the flow present under
2 natural conditions before development. Impervious Surfaces include, but
3 are not limited to, roofs, walkways, patios, driveways, parking lots, storage
4 areas, areas that are paved, graveled or made of packed or oiled earthen
5 materials, or other surfaces that similarly impede the natural infiltration of
6 surface and storm water. Impervious Surfaces do not include an open
7 uncovered flow control or storage area or water quality treatment facility,
8 provided that the construction and maintenance of such area or facility is
9 consistent with the Purpose and terms of this Easement.

10
11 6.6.1.2. The total area of the Protected Property covered by Improvements of any
12 kind and Impervious Surfaces shall be limited to no more than **[insert**
13 **percentage, e.g.: two percent (2%)]**⁶ of the area of the Protected Property;
14 provided, however, that minor unenclosed agricultural improvements such
15 as corrals, hayracks, headgates, fences, ditches, culverts, stock tanks, or
16 other minor agricultural structures (“Minor Agricultural Improvements”)
17 may be constructed or placed on the Protected Property and not count
18 against this total impervious surface limit. The total area covered by gravel
19 shall be subject to this [2%] limitation unless Grantor obtains prior consent
20 from Grantee as provided in Section 7 to increase the percentage of total
21 surfaces covered by gravel and other impervious surfaces above the [2%]
22 limitation; provided, however, that the total amount of gravel and other
23 impervious surfaces shall never exceed **[insert percentage, e.g.: six percent**
24 **(6%)]** of the total area of the Protected Property.

25 26 **6.6.2. Limitations on Building Envelope Improvements**

27 6.6.2.1. *Building Envelope Improvements for Agricultural Activities.* For all
28 Agricultural Activities within the _____ **[insert number]** building
29 envelopes described and shown on the site map, in Exhibit “B”, together
30 comprising approximately _____ **[insert number]** acres (“Building
31 Envelopes”), Grantor may expand or enlarge Improvements existing on the
32 Property as of the Effective Date of this Easement and may install, build or
33 construct, expand, enlarge, maintain, repair, replace or decommission
34 Improvements not existing as of the Effective Date of this Easement

35 6.6.2.2. *Building Envelope Improvements for Nonagricultural Activities.* For
36 personal and domestic uses and activities and other nonagricultural
37 activities within the Building Envelopes, Grantor may expand or enlarge
38 Improvements existing on the Property as of the Effective Date of this
39 Easement and may install, build or construct, expand, enlarge, maintain,
40 repair, replace or decommission Improvements not existing as of the
41 Effective Date of this Easement if Grantor provides Grantee advance

⁶ See IAC Manual 10f for guidance regarding impervious surface limitation percentages.

1 written notice of the proposed Improvements and consent is given by
2 Grantee for such Improvements as provided for in Section 7 [*provided,*
3 *however, that the following shall require notice but shall not require*
4 *consent: insert one or both of the following, as appropriate: (i)*
5 *telecommunications installations within the Building Envelopes, which may*
6 *include a suitable support structure, associated antennas, I beams,*
7 *equipment shelters or cabinets and fencing and any other items necessary to*
8 *the successful and secure use of any area of the Protected Property within*
9 *the Building Envelopes for telecommunications purposes, and/or (ii) wind*
10 *energy installations within the Building Envelopes, which may include*
11 *foundations, concrete pads and footings; wind turbine units; guy wires,*
12 *support fixtures, anchors and fences; buildings needed for maintenance of*
13 *wind turbine units and maintenance and storage of related equipment;*
14 *electrical transformers and energy storage facilities; electric transformers,*
15 *electric distribution and transmission towers and lines either above ground*
16 *or underground; substations or switching facilities for the purpose of*
17 *connecting to transmission system; private roads providing access from*
18 *public roads to the wind energy facilities; and any other items necessary to*
19 *the successful and secure use of any area of the Protected Property within*
20 *the Building Envelopes for the production of wind energy.]*
21

22 **6.6.3. Limitations on New Improvements Outside the Building Envelopes**

23 6.6.3.1. Outside the Building Envelopes, Grantor shall not expand or enlarge
24 Improvements existing on the Property as of the Effective Date or install,
25 build, or construct Improvements or not existing as of the Effective Date,
26 unless such Improvements are consented to in writing in advance by
27 Grantee as provided for in Section 7 and such Improvements are either (a)
28 Temporary in nature (present on the Protected Property for less than one
29 year); or (b) Reasonably necessary for Agricultural Activities (excluding
30 Accessory Uses) in compliance with the total impervious surface limit of
31 Section 6.6.1; provided, however, that Grantor may expand or enlarge
32 Minor Agricultural Improvements without providing such notice or
33 receiving such consent.

34 6.6.3.2. Nonagricultural Accessory Uses shall not be located outside the Building
35 Envelopes and shall not otherwise convert more than one acre of
36 agricultural land to nonagricultural uses.
37

38 6.6.4. **[Insert if applicable: Alternative Energy Production. Grantor may install,**
39 *build, or construct Improvements for alternative energy production (micro-*
40 *hydro, micro-wind or micro-solar power) exclusively for generating energy for*
41 *the permitted uses on the Protected Property with advance written notice to*
42 *and consent of Grantee for such Improvements as provided for in Section 7.]*
43

1 6.6.5. **[Insert if applicable: Limitations on Improvements Related to Advertising.**
2 *Commercial signs, billboards, or other improvements installed, built or*
3 *constructed for the purpose of advertising nonagricultural activities or*
4 *products are not allowed on the Protected Property, except in connection with*
5 *the sale or lease of the Protected Property or to state the conditions of access*
6 *to the Protected Property. Signage consistent with the character of a working*
7 *farm, and for Agricultural Activities, is allowed on the Protected Property.]*
8

9 6.7. **Limitations on Mining:** Grantor shall not conduct, engage in, or permit the
10 commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas,
11 fuel, or any other mineral substance, using any surface mining method [*except to the*
12 *extent required by applicable law or by the terms of a lease, easement or other*
13 *encumbrance that existed and was recorded in the records of the County auditor*
14 *before the Effective Date of this Easement and not subordinated to this Easement*].
15 Grantor may conduct or engage in mineral extraction if such extraction is not
16 accomplished by any surface mining method and the method of extraction has a
17 limited, localized impact on the land that does not damage, impair or endanger the
18 Agricultural Conservation Values [*or Habitat Values*] of the Protected Property. No
19 extraction permitted pursuant to this Section shall occur without prior written notice
20 to and consent of Grantee as provided for in Section 7. Notice shall include a
21 description of the type of extraction, the areas within which such extraction shall
22 occur, and the anticipated impact thereof.
23

24 6.8. **Limitations on Alteration of Land.** Grantor shall not alter the surface of the land,
25 including, without limitation, grading, excavating or removing soil, sand, gravel,
26 rock, stone, aggregate, peat, or sod, except as provided below.
27

28 6.8.1. Notwithstanding anything in this Section or Section 6.7 to the contrary, soil,
29 sand, gravel, rock, stone, aggregate, peat or sod may be extracted without further
30 consent from Grantee so long as such extraction is solely for use on the Protected
31 Property; is in conjunction with permitted Agricultural Activities, is revegetated
32 promptly after extraction is complete, and is accomplished in a manner that is
33 consistent with the Purpose and terms of this Easement.
34

35 6.8.2. **[Insert if appropriate: Notwithstanding anything in this Section to the**
36 *contrary, prior to extraction activities or developing improvements as referenced*
37 *in Section 6.6 and Section 6.8.1, Grantor shall comply with all applicable state*
38 *and federal laws and shall give notice to and receive consent from Grantee as*
39 *provided for in Section 7 with respect to any alteration of land that would have*
40 *the effect of physically disturbing a known cultural site{, a survey of which is*
41 *included in the Baseline Documentation and incorporated herein by this*
42 *reference}.]*
43

1 **6.9. No Significant Erosion or Pollution:** Grantor shall not engage in any use or activity
2 that causes or is likely to cause significant soil degradation or erosion or significant
3 contamination or pollution of any soils or surface or subsurface waters on the
4 Protected Property.
5

6 **6.10. Limitations on Waste Disposal.**
7

8 6.10.1. Grantor may accumulate and store ashes, garbage or other waste ("Trash") on
9 the Protected Property only if such accumulation occurs in the normal course of
10 domestic or Agricultural Activities on the Protected Property. Long-term
11 accumulation of Trash (i.e., exceeding one calendar year in time) may occur
12 within areas designated by Grantor with prior notice to and written consent of
13 Grantee as long as such waste is either destined for transfer off-site, or for
14 incineration on-site, or, in the case of biodegradable material, composted on-site.
15

16 6.10.2. Grantor shall not otherwise dispose, store, or Release (or permit the disposal,
17 storage or release of) any Hazardous Substance on the Protected Property. The
18 term "Release" shall mean any release, generation, treatment, disposal, storage,
19 dumping, burying, or abandonment. The term "Hazardous Substance" shall mean
20 any substances, materials, or wastes that are hazardous, toxic, dangerous, or
21 harmful or are designated as, or contain components that are, or are designated
22 as, hazardous, toxic, dangerous, or harmful and/or which are subject to regulation
23 as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state,
24 or local law, regulation, statute, or ordinance, including, but not limited to,
25 petroleum or any petroleum product. The term "Hazardous Substances" shall not
26 include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers
27 applied in accordance with federal, state, and local law.
28

29 **6.11. No Compensatory Mitigation.** The creation, enhancement, restoration or
30 preservation of wetlands, fish or wildlife habitat, or other natural resources for the
31 purpose of, directly or indirectly, compensating for or mitigating resource losses or
32 damages in any way associated with actual or potential impacts of development
33 except for impacts caused by Grantor on the Protected Property ("Compensatory
34 Mitigation") is prohibited on the Protected Property. Compensatory Mitigation
35 includes, but is not limited to, mitigation banking, conservation banking, and any
36 other sale or exchange of mitigation credits based on the creation, restoration,
37 enhancement and/or preservation of such natural resources within the Protected
38 Property.
39

40 **6.12. Compliance with Regulatory Requirements.** Grantor shall conduct all reserved
41 and permitted uses and activities under this Easement to meet all requirements of
42 federal, state and local statutes, rules, and regulations as they may be amended from
43 time to time.

1
2 **6.13. Limitation on Transfers.**
3

4 6.13.1. For purposes of this Section, "Transfer" includes but is not limited to any sale,
5 grant, lease, hypothecation, encumbrance, assignment, conveyance, or any
6 transaction the purpose of which is to effect a sale, grant, lease, hypothecation,
7 encumbrance, assignment, or conveyance.
8

9 6.13.2. Except as provided in Section 6.14.3, Grantor shall not undertake or permit any
10 Transfer of any rights in the Protected Property without prior notice to and
11 consent of Grantee as provided for in Section 7; provided, however, that such
12 consent shall not be withheld unless Grantee determines that the proposed
13 Transfer would be inconsistent with the Purpose and terms of this Easement.
14

15 6.13.3. The following shall require notice to but shall not require consent of Grantee:
16 i) Any mortgage, deed of trust, or similar document providing security for an
17 indebtedness of Grantor, provided that such security interest shall be subject and
18 subordinate to this Easement; ii) leases for telecommunications installations or
19 wind energy installations within the Building Envelopes, as provided for in
20 Section 6.6.2.2; iii) temporary transfers or leases of the {insert *Water Rights* or
21 *Dedicated Water Rights*} pursuant to Section 6.4.3; or iv) any gift, bargain, sale
22 or devise of fee simple absolute title to the Protected Property.
23

24 **7. NOTICE AND CONSENT**
25

26 **7.1. Notice.**
27

28 7.1.1. **Grantee.** Certain provisions of this Easement require Grantee to give notice to
29 Grantor prior to undertaking certain activities. Whenever such notice is required,
30 and no other timeline for notice is set forth elsewhere in this Easement, Grantee
31 shall provide such notice in writing not less than thirty (30) days prior to the date
32 Grantee intends to undertake the use or activity in question. **[Insert unless there**
33 **are no third party beneficiaries: Grantee shall provide a copy of any such**
34 **notice to each Beneficiary of this Easement concurrently with notice to Grantor.]**
35

36 7.1.2. **Grantor.** Certain provisions of this Easement require Grantor to give notice to
37 Grantee prior to undertaking certain permitted uses and activities (e.g., Sections
38 ____, ____, and ____). The purpose of requiring Grantor to notify Grantee prior
39 to undertaking these permitted uses and activities is to afford Grantee an
40 adequate opportunity to ensure that the use or activity in question is designed and
41 carried out in a manner consistent with the Purpose of this Easement. Whenever
42 such notice is required, and no other timeline for notice is set forth elsewhere in
43 this Easement, Grantor shall provide such notice in writing not less than ninety

1 (90) days prior to the date Grantor intends to undertake the use or activity in
2 question. The notice shall describe the nature, scope, design, location, timetable,
3 and any other material aspect of the proposed use or activity in sufficient detail to
4 permit Grantee to make an informed judgment as to its consistency with the
5 terms of this Easement and the Purpose thereof. **[Insert unless there are no**
6 **third party beneficiaries:** *Upon receipt of such notice, Grantee shall*
7 *immediately forward a copy to each Beneficiary to this Easement.]*
8

9 **7.2. Consent**

10
11 7.2.1. **[Insert unless there are no third party beneficiaries:** *Consent by*
12 *Beneficiaries Required. Wherever in this Easement Grantee's consent is*
13 *required, such consent is also required of each Beneficiary to this Easement.]*
14

15 7.2.2. **Consent Not Unreasonably Withheld.** Wherever in this Easement a Party's
16 *[or a Beneficiary's]* consent is required, such consent may be withheld only upon
17 a reasonable determination by the consenting party that the action as proposed
18 would be inconsistent with the Purpose or terms of this Easement and cannot be
19 modified to make the proposed action consistent with the Purpose and terms of
20 this Easement. Any consent may include reasonable conditions consistent with
21 the Purpose and terms of this Easement that must be satisfied in undertaking the
22 proposed action, use, or activity.
23

24 7.2.3. **Timeline for Consent.** Whenever in this Easement Grantor's or Grantee's
25 consent is required, and no other timeline for consent is set forth elsewhere in
26 this Easement, the party whose consent is required shall grant or withhold its
27 consent in writing within the following time periods:

28 7.2.3.1. Grantor. Where consent by Grantor is required under this Easement,
29 Grantor shall grant or withhold its consent within sixty (60) days of receipt
30 of a written request for consent.

31 7.2.3.2. Grantee. Where consent by Grantee is required under this Easement,
32 Grantee shall grant or withhold its consent within **[insert sixty (60) days or,**
33 **if IAC is Grantee, insert ninety (90) days]** of receipt of a written request
34 for consent.

35 7.2.3.3. **[Insert unless there are no third party beneficiaries:** *Beneficiaries.*
36 *Where consent by any Beneficiary is required under this Easement, the*
37 *Beneficiary shall grant or withhold its consent within thirty (30) days of*
38 *receipt of Grantee's written decision to grant or withhold consent or within*
39 *ninety (90) days of receipt of Grantor's written request for consent,*
40 *whichever comes later.]*
41

42 7.2.4. **Failure to Grant or Deny Consent Within the Required Time.** When
43 consent is required under this Easement, and when such consent is not granted or

1 denied within the time period and manner set forth in this Section 7, the party
2 requesting consent may conclusively assume the other party's consent of the
3 proposed action, use, or activity in question. The Parties [*and each of the*
4 *Beneficiaries*] agree that failure to grant or withhold consent within the required
5 time on any proposed action, use or activity shall not be deemed or construed to
6 be a waiver of Grantee's [*or any Beneficiary's*] rights under this Easement with
7 respect to any future proposed action, use or activity.
8

9 **7.3. Optional consultation.** If Grantor is unsure whether a proposed use or activity is
10 prohibited by this Easement, Grantor may consult Grantee by providing written notice
11 to Grantee describing the nature, scope, design, location, timetable, and any other
12 material aspect of the proposed use or activity in sufficient detail to permit Grantee to
13 make an informed judgment as to its consistency with the Purpose of this Easement
14 and to provide comments thereon to Grantor. This Section 7.3 does not itself impose a
15 requirement of prior consent of the activity described in any such notice.
16

17 **7.4. Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval,
18 or communication that either party desires or is required to give to the other shall be
19 in writing either served personally or sent by registered mail or overnight courier with
20 proof of delivery, addressed as follows:
21

22 To Grantor: [name]
23 [address1]
24 [address 2]
25 [city, state zip]
26 [phone]
27 [fax]
28

29 To Grantee: [name]
30 [address1]
31 [address 2]
32 [city, state zip]
33 [phone]
34 [fax]
35

36 To IAC: [name]
37 [address1]
38 [address 2]
39 [city, state zip]
40 [phone]
41 [fax]
42

43 To NRCS: State Conservationist

1 U.S. Natural Resources Conservation Service
2 Washington State Office
3 [address1]
4 [address 2]
5 [city, state zip]
6 [phone]
7 [fax]
8

9 or to such other address as either party from time to time shall designate by written
10 notices to the other.
11

12 **8. DISPUTE RESOLUTION**
13

14 **8.1. Preventive Discussions.**
15

16 8.1.1. Grantor and Grantee will promptly give the other notice of problems or
17 concerns arising in connection with the other's actions under this Easement or
18 the use of or activities or conditions on the Protected Property, and will meet as
19 needed, but no later than fifteen (15) business days after receipt of a written
20 request for a meeting, to minimize the same.
21

22 8.1.2. *[Insert if third party invitation is desired: Grantee will invite each*
23 *Beneficiary to this Easement to such preventive discussion meetings provided*
24 *for in this Section 8.]*
25

26 **8.2. Mediation.** If the Parties disagree as to the consistency of any proposed use or
27 activity with the Purpose or terms of this Easement and the Parties are unable to
28 resolve such disagreement through unassisted preventive discussions between
29 themselves and each Beneficiary to this Easement, and if Grantor agrees not to
30 proceed with the use or activity pending resolution of the dispute, either Grantor or
31 Grantee may refer the dispute to mediation by request made in writing upon the other
32 *[and with notice to IAC {and NRCS}]* (who have full discretion to participate or not to
33 participate in the mediation). Within ten (10) business days of the receipt of such a
34 request, the parties to the mediation ("Mediation Parties") shall select a single
35 impartial mediator. Mediation shall then proceed in accordance with the following
36 guidelines:
37

38 8.2.1. **Purpose.** The purpose of the mediation is to: (a) promote discussion among
39 the Mediation Parties; (b) assist the Mediation Parties to develop and exchange
40 pertinent information concerning the issues in dispute; and (c) assist the
41 Mediation Parties to develop proposals which enable them to arrive at a
42 mutually acceptable resolution of the controversy. The mediation is not

1 intended to result in any express or de facto modification or amendment of the
2 terms, conditions or restrictions of this Easement.
3

4 **8.2.2. Participation.** The mediator may meet with the Mediation Parties and their
5 counsel jointly or ex parte. The Mediation Parties agree that they will
6 participate in the mediation process in good faith and expeditiously, attending
7 all sessions scheduled by the mediator. Representatives of all Mediation Parties
8 with settlement authority will attend mediation sessions as requested by the
9 mediator.
10

11 **8.2.3. Confidentiality.** All information presented to the mediator shall be deemed
12 confidential and shall be disclosed by the mediator only with the consent of the
13 Mediation Parties or their respective counsel. The mediator shall not be subject
14 to subpoena by any party. No statements made or documents prepared for
15 mediation sessions shall be disclosed in any subsequent proceeding or
16 construed as an admission of a party. Records of mediation communications
17 shall be exempt from the requirements of Chapter 42.56 RCW (Washington
18 State Public Records Act) to the extent provided for in Chapter 7.07 RCW
19 (Washington State Uniform Mediation Act).
20

21 **8.2.4. Time Period.** Neither party shall be obligated to continue the mediation
22 process beyond a period of sixty (60) days from the date of receipt of the initial
23 request or if the mediator concludes that there is no reasonable likelihood that
24 continuing mediation will result in a mutually agreeable resolution of the
25 dispute.
26

27 **8.2.5. Costs.** The costs of the mediator shall be borne equally by the Parties; the
28 Mediation Parties shall bear their own expenses, including attorney's fees,
29 individually.
30

31 **8.3. Arbitration.** [Insert one of the following: (i) *Grantor, Grantee, and each*
32 *Beneficiary may by mutual agreement submit disputed matters to arbitration upon*
33 *such rules of arbitration as Grantor, Grantee, and each Beneficiary may agree; or*
34 **(ii) {if no third party beneficiaries} Grantor and Grantee may by mutual agreement**
35 *submit disputed matters to arbitration upon such rules of arbitration as Grantor and*
36 *Grantee may agree.]
37*

38 9. GRANTEE'S REMEDIES 39

40 **9.1. Notice of Non-Compliance.** If Grantee determines that the Grantor is in violation of
41 the terms of this Easement or that a violation is likely to occur, Grantee shall give
42 written notice to Grantor of such violation and demand corrective action sufficient to
43 cure the violation and, where the violation involves injury to the Protected Property

1 resulting from any use or activity inconsistent with the Purpose or terms of this
2 Easement, to restore the portion of the Protected Property so injured to its prior or
3 potential condition in accordance with a plan to which Grantee has given consent.
4

5 **9.2. Grantor's Failure to Respond.** Grantee may bring an action as provided in Section
6 9.3 if Grantor:
7

8 9.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof
9 from Grantee;
10

11 9.2.2. Under circumstances where the violation cannot reasonably be cured within
12 the thirty (30) day period, fails to begin curing such violation within the thirty
13 (30) day period; or
14

15 9.2.3. Fails to continue diligently to cure such violation until finally cured.
16

17 **9.3. Grantee's Action.** Grantee may bring an action at law or in equity, or both, in a
18 court of competent jurisdiction to enforce the terms of this Easement, to enjoin the
19 violation, ex parte as necessary and as allowed under the applicable civil rules, by
20 temporary or permanent injunction, to recover any damages to which it may be
21 entitled for violation of the terms of this Easement or injury to any of the Agricultural
22 Conservation Values [*or Habitat Values*] protected by this Easement, including
23 damages for the loss of the Agricultural Conservation Values [*and/or Habitat*
24 *Values*]; and to require the restoration of the Protected Property to the condition that
25 existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee,
26 in its sole and absolute discretion, may apply any damages recovered to the cost of
27 undertaking any corrective action on the Protected Property. All such actions for
28 injunctive relief may be taken without Grantee being required to post bond or provide
29 other security.
30

31 **9.4. Immediate Action Required.** Notwithstanding any other provision of this
32 Easement, if Grantee, in its sole and absolute discretion, determines that
33 circumstances require immediate action to prevent or mitigate significant damage to
34 the Agricultural Conservation Values [*and/or Habitat Values*], Grantee may pursue
35 its remedies under this Section 9 without prior notice to Grantor, without participation
36 in dispute resolution as provided for in Section 8, or without waiting for the period
37 provided for cure to expire.
38

39 **9.5. Nature of Remedy.** Grantee's rights under this Section 9 apply equally in the event
40 of either actual or threatened violations of the terms of this Easement. Grantor agrees
41 that Grantee's remedies at law for any violation of the terms of this Easement are
42 inadequate and that Grantee shall be entitled to the injunctive relief described in this
43 Section 9 both prohibitive and mandatory, in addition to such other relief to which

1 Grantee may be entitled, including specific performance of the terms of this
2 Easement, without the necessity of proving either actual damages or the inadequacy
3 of otherwise available legal remedies. Grantee's remedies described in this Section 9
4 shall be cumulative and shall be in addition to all remedies now or hereafter existing
5 at law or in equity. The provisions of Section 9.6 shall not be interpreted to preclude
6 Grantee from obtaining injunctive relief.
7

8 **9.6. Damages.** Inasmuch as the actual damages to the Agricultural Conservation Values
9 [and/or *Habitat Values*] that could result from a breach of this Easement by Grantor
10 would be impractical or extremely difficult to measure, the Parties agree that the
11 money damages Grantee is entitled to recover from Grantor shall be, at Grantee's
12 election, the higher of [insert one of the following:
13

14 **i) {IAC is Grantee}** *(i) the amount of economic gain realized by Grantor from*
15 *violating the terms of the Easement; (ii) the cost of restoring any Agricultural*
16 *Conservation Values {and/or Habitat Values} that have been damaged by such violation;*
17 *(iii) an amount equal to the fair market value of this Easement, which shall be determined*
18 *as provided in Section 11.3 and distributed as provided in Section 11.4; or (iv) an amount*
19 *equal to the Total Project Cost as specified in the IAC Grant Agreement with interest due*
20 *and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be*
21 *amended from time to time. In the event Grantee chooses the second of these four*
22 *measures, Grantor agrees to allow Grantee, its agents or contractors, to enter upon the*
23 *Protected Property and conduct restoration activities. In the event that Grantee chooses*
24 *the third or fourth of these four measures, Grantee agrees that it will follow the dispute*
25 *resolution process and remedies described in Sections 8 or 9 before exercising this right,*
26 *unless legally compelled to do otherwise. Any amounts due and owing Grantee under this*
27 *paragraph shall be due and owing within 120 days of receiving a written demand for*
28 *repayment by Grantee. Upon repayment of such amount to Grantee, the Parties agree to*
29 *prepare and record {, with NRCS's consent (which shall not be unreasonably withheld), }*
30 *a deed amendment to release Grantor from any further obligations to Grantee under this*
31 *Easement.]*
32

33 **or ii) {IAC is third party}** *(i) the amount of economic gain realized by Grantor*
34 *from violating the terms of the Easement or (ii) the cost of restoring any Agricultural*
35 *Conservation Values {and/or Habitat Values} that have been damaged by such violation.*
36 *In the event Grantee chooses the second of these two measures, Grantor agrees to allow*
37 *Grantee, its agents or contractors, to enter upon the Protected Property and conduct*
38 *restoration activities.]*
39

40 **9.7. Costs of Enforcement.** In the event Grantor or Grantee finds it necessary to bring an
41 action at law or other proceeding against the other party to enforce or interpret any of
42 the terms, covenants, or conditions of this Easement, the prevailing party in any such
43 action or proceeding shall be paid all costs and reasonable attorneys' and consultants'

1 fees by the other party and all such costs and attorneys' and consultants' fees shall be
2 included in any judgment secured by such prevailing party.
3

4 **9.8. Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the
5 discretion of the Grantee, and any forbearance by Grantee to exercise its rights under
6 this Easement in the event of any breach of any terms of this Easement by Grantor
7 shall not be deemed or construed to be a waiver by Grantee of such term or of any of
8 Grantee's rights under this Easement. No delay or omission by Grantee in the
9 exercise of any right or remedy upon any breach by Grantors shall impair such right
10 or remedy or be construed as a waiver.
11

12 **9.9. Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed
13 this Easement and has consulted with and been advised by legal counsel of its terms
14 and requirements. In full knowledge of the provisions of this Easement, Grantor
15 hereby waives any claim or defense it may have against Grantee or its successors in
16 interest under or pertaining to this Easement based upon abandonment, adverse
17 possession or prescription relating to the Protected Property or this Easement. Except
18 for the foregoing, Grantor specifically retains any and all rights it has under the law as
19 owner of the Protected Property, including, without limitation, the right to bring
20 claims against Grantee for any breach by Grantee of the terms of this Easement.
21

22 **9.10. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall
23 be construed to entitle Grantee to bring any action against Grantor to abate, correct, or
24 restore any condition on the Protected Property or to recover damages for any injury
25 to or change in the Protected Property resulting from actions by a trespasser upon the
26 Protected Property or causes beyond Grantor's control, including, without limitation,
27 natural disaster, fire, flood, storm, pest infestation, earth movement, and climate
28 change, and from any prudent action taken by Grantor under emergency conditions to
29 prevent, abate, or mitigate significant injury to the Protected Property resulting from
30 such causes. In the event the terms of this Easement are violated by acts of
31 trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's
32 option, to assign its right of action to Grantee or to appoint Grantee its attorney in
33 fact, for purposes of pursuing enforcement action against the responsible parties.
34

35 **9.11. Compliance Certificates.** Upon request by Grantor, Grantee shall, as soon as
36 possible and no later than thirty (30) days after receipt of such request, execute and
37 deliver to Grantor any document, including an estoppel certificate, which certifies, to
38 the best of Grantee's knowledge, Grantor's compliance or lack thereof with any
39 obligation of Grantor contained in this Easement and otherwise evidences the status
40 of this Easement as requested by Grantor. Such certification shall be limited to the
41 condition of the Protected Property as of Grantee's most recent inspection. If Grantor
42 requests more current documentation, Grantee shall conduct an inspection, at
43 Grantor's expense, within forty-five (45) days of receipt of Grantor's written request

1 and payment therefor. **[Insert unless there are no third party beneficiaries: Any**
2 *Beneficiary to this Easement shall not be estopped from claiming or enforcing a*
3 *violation of this Easement unless such Beneficiary has also executed the Compliance*
4 *Certificate.]*

5
6 **10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE**

7
8 10.1. **Liabilities [and Insurance].** Grantor retains all responsibilities and shall bear
9 all costs and liabilities of any kind related to the ownership, operation, upkeep, and
10 maintenance of the Protected Property, *including the maintenance of {adequate*
11 *liability insurance coverage. Such insurance shall include Grantee's interest, name*
12 *Grantee as an additional insured, and provide for at least thirty (30) days notice to*
13 *Grantee before cancellation and that the act or omission of one insured will not*
14 *invalidate the policy as to the other insured party. The Parties release and relieve the*
15 *other, and waive their entire right to recovery for loss or damage to the extent that*
16 *the loss or damage is covered by the injured party's insurance. This waiver applies*
17 *whether or not the loss is due to the negligent acts or omissions of Grantor or*
18 *Grantee.]* Grantor remains solely responsible for obtaining any applicable
19 governmental permits and approval for any construction or other activity or use
20 permitted by this Easement, and all such construction or other activity or use shall be
21 undertaken in accordance with all applicable federal, state, and local laws,
22 regulations, and requirements. Grantor shall keep the Protected Property free of any
23 liens arising out of any work performed for, material furnished to, or obligations
24 incurred by Grantor; provided that the Protected Property shall be deemed to be free
25 of such liens if i) Grantor or Grantee, as the case may be, is diligently challenging the
26 application of such liens to the Protected Property; or ii) such liens are subordinated
27 to this Easement and do not require any action or inaction inconsistent with the
28 Purpose and terms of this Easement.

29
30 10.2. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees,
31 charges of whatever description levied on or assessed against the Protected Property
32 by competent authority (collectively "taxes"), including any taxes imposed upon, or
33 incurred as a result of, this Easement, and shall furnish Grantee with satisfactory
34 evidence of payment upon request.

35
36 10.3. **Liability. [insert one of the following:**

37
38 i) *Grantor shall hold harmless, indemnify, and defend {insert one of the*
39 **following: (a) Grantee and its members, directors, officers, employees, agents, and**
40 *contractors and each Beneficiary and their members, directors, officers, employees,*
41 *agents, and contractors; or b) Grantee and its members, directors, officers, employees,*
42 *agents, and contractors} (collectively "Indemnified Parties") from and against all*
43 *liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands,*

1 *or judgments, including, without limitation, reasonable attorneys' and consultants' fees,*
2 *arising from or in any way connected with injury to or the death of any person, or*
3 *physical damage to any property, resulting from any act, omission, condition, or other*
4 *matter (including the release of hazardous or toxic substances) related to or occurring on*
5 *or about the Protected Property that is not a consequence of any action or omission of*
6 *any of the Indemnified Parties on or about the Protected Property.*

7
8 **or ii)** *Each party to this Easement shall be responsible for its own acts and/or*
9 *omissions and those of its members, directors, officers, employees, agents, and*
10 *contractors. No party to this Easement shall be responsible for the acts and/or omissions*
11 *of entities or individuals not a party to this agreement.]*

12
13 **10.4. Representations and Warranties.** Grantor represents and warrants that, after
14 reasonable investigation and to the best of Grantor's knowledge:

15
16 10.4.1. Grantor and the Protected Property are in compliance with all federal, state,
17 and local laws, regulations, and requirements applicable to the Protected Property
18 and its use;

19
20 10.4.2. There has been no release, dumping, burying, abandonment or migration from
21 off-site on the Protected Property of any substances, materials, or wastes that are
22 or are designated as, hazardous, toxic, dangerous, or harmful or contain
23 components that are, or are designated as, hazardous, toxic, dangerous, or
24 harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or
25 harmful by any federal, state or local law, regulation, statute, or ordinance;

26
27 10.4.3. Neither Grantor nor Grantor's predecessors in interest have disposed of any
28 hazardous substances off-site, nor have they disposed of substances at sites
29 designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601
30 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.)
31 ("MTCA") sites; and

32
33 10.4.4. There is no pending or threatened litigation affecting the Protected Property or
34 any portion of the Protected Property that will materially impair the Agricultural
35 Conservation Values [*or Habitat Values*] of any portion of the Protected
36 Property. No civil or criminal proceedings have been instigated or are pending
37 against Grantor or its predecessors by government agencies or third parties
38 arising out of alleged violations of environmental laws, and neither Grantor nor
39 its predecessors in interest have received any notices of violation, penalties,
40 claims, demand letters, or other notifications relating to a breach of
41 environmental laws.
42

1 10.5. **Remediation.** If, at any time, there occurs, or has occurred, a Release in, on,
2 or about the Protected Property of a Hazardous Substance, Grantor agrees to take or
3 compel responsible third parties to take all steps required under applicable law and
4 necessary to assure its containment and remediation, including any cleanup that may
5 be required (except that the use of institutional controls shall not be allowed without
6 Grantee's consent), unless the Release was caused by Grantee, in which case Grantee
7 shall be responsible for such remediation to the extent the Release was caused by
8 Grantee. At its discretion, Grantee may assist Grantor in compelling third parties to
9 contain and remediate any such Release.

10
11 10.6. **Control.** Nothing in this Easement shall be construed as giving rise, in the
12 absence of a judicial decree, to any right or ability in Grantee [*or any Beneficiary to*
13 *this Easement*] to exercise physical or managerial control over the day-to-day
14 operations of the Protected Property, or any of Grantor's activities on the Protected
15 Property, or otherwise to become an operator with respect to the Protected Property
16 within the meaning of the Comprehensive Environmental Response, Compensation,
17 and Liability Act of 1980, as amended ("CERCLA").
18

19 **11. SUBSEQUENT TRANSFER OR EXTINGUISHMENT**

20
21 **11.1. Extinguishment.**

22
23 11.1.1. If circumstances arise in the future that render the Purpose of this Easement
24 impossible to accomplish, this Easement can only be terminated or extinguished,
25 whether in whole or in part, by judicial proceedings in a court of competent
26 jurisdiction.
27

28 11.1.2. The amount of the proceeds to which Grantee [*and any Beneficiary to this*
29 *Easement*] shall be entitled, after the satisfaction of prior claims, from any sale,
30 exchange, or involuntary conversion of all or any portion of the Protected
31 Property subsequent to such termination or extinguishment, shall be determined,
32 unless otherwise provided by Washington law at the time, in accordance with
33 Section 11.3. **[Insert one of the following: i) {IAC is third party}: Grantee**
34 ***shall use all such proceeds for the acquisition of property interests that are***
35 ***substantially equivalent to those conveyed by this Easement. Grantee shall***
36 ***consult with and receive the approval of IAC {and NRCS} in the selection of any***
37 ***replacement property interests. Upon acquisition of such replacement property***
38 ***interests, Grantee shall convey to IAC {and NRCS} the same or substantially***
39 ***equivalent rights as provided for in this Easement; or ii) {IAC is Grantee}***
40 ***Grantee shall use all such proceeds in a manner consistent with the Purpose of***
41 ***this Easement.***
42

1 11.1.3. In granting this Easement, Grantor has considered the fact that any use of the
2 Property that is prohibited by this Easement, or any other use as determined to be
3 inconsistent with the Purpose of this Easement, may become economically more
4 valuable than permitted uses. It is the intent of both Grantor and Grantee that
5 such circumstances shall not justify the termination or extinguishment of this
6 Easement. Grantor's inability to carry on any or all of the permitted uses, or the
7 unprofitability of doing so, shall not impair the validity of this Easement or be
8 considered grounds for its termination or extinguishment.
9

10 11.2. **Condemnation.** If the Easement is taken, in the whole or in the part, by the
11 exercise of the power of eminent domain, **[insert one of the following: i) Grantee**
12 **and IAC; ii) Grantee and NRCS; or iii) Grantee, IAC and NRCS]** shall be entitled to
13 compensation in accordance with Section 11.3, for the value of the Easement taken;
14 and the Grantor shall be entitled to compensation in accordance with applicable law
15 for the value of the underlying fee title and improvements taken. In the event that
16 Section 11.3. violates applicable law, then the proceeds to Grantor, **[insert one of the**
17 **following: i) Grantee and IAC; ii) Grantee and NRCS; or iii) Grantee, IAC and**
18 **NRCS]** shall be divided in accordance with applicable law. **[Insert unless IAC is**
19 **Grantee: In the event that Grantee is the recipient of the proceeds from any**
20 **condemnation, then Grantee shall disburse to IAC and the United States their**
21 **respective shares of the proceeds pursuant to Section 11.4 as soon as is practicable.]**
22

23 11.3. **Valuation**
24

25 11.3.1. This Easement constitutes a real property interest immediately vested in
26 Grantee. For purposes of this Section, the Parties stipulate that this Easement has
27 a fair market value determined by multiplying (a) the then fair market value of
28 the Protected Property unencumbered by the Easement (minus any increase in
29 value attributable to improvements on the Protected Property), at the time of
30 termination or extinguishment, as determined by an appraisal that meets IAC
31 requirements for appraisals, by (b) the ratio of the value of the Easement at the
32 time of this grant to the value of the Protected Property, unencumbered by the
33 Easement, at the time of this grant.
34

35 11.3.2. For purposes of this Section, the Parties agree that the ratio of the value of the
36 Easement to the value of Grantor's property unencumbered by the Easement
37 **[insert one of the following: i) is _____ and shall remain constant.; or ii) is**
38 **evidenced by that certain real property appraisal prepared by _____, dated**
39 **_____, on file with Grantee. This ratio is _____ (e.g., 0.375) and shall**
40 **remain constant.]**
41

42 11.4. **Distribution of Proceeds.** In the event of extinguishment of this Easement
43 pursuant to Section 11.1, condemnation of this Easement pursuant to Section 11.2, or

1 damages received by Grantor in an amount equal to the fair market value of this
2 Easement pursuant to Section 9.4, any proceeds attributable to the value of the
3 Easement shall be distributed as follows:[e.g., **Project Funding ratio specified in**
4 **Project Agreement**] IAC is entitled to ____%, ____ is entitled to ____%, and ____
5 is entitled to ____% of any such proceeds.
6

7 11.5. **Subsequent Transfers.** Grantor agrees to: (1) incorporate by express
8 reference the terms of this Easement in any deed or other legal instrument by which it
9 divests itself of any interest in all or a portion of the Protected Property; and (2)
10 describe this Easement in and append it to, any executory contract for the transfer of
11 any interest in the Protected Property. Grantor further agrees to give written notice to
12 the Grantee of the transfer of any interest at least thirty (30) days prior to the date of
13 such transfer. Such notice to Grantee shall include the name, address, and telephone
14 number of the prospective transferee or such transferee's representative. The failure
15 of the Grantor to perform any act required by this Section 11 shall not impair the
16 validity of this Easement or limit its enforceability in any way.
17

18 12. AMENDMENT

19

20 12.1. If circumstances arise under which an amendment to or modification of this
21 Easement would be appropriate, the Parties are free to jointly amend this Easement
22 **[insert unless there are no third party beneficiaries: *provided that the Parties first***
23 ***obtain the written consent of each Beneficiary to this Easement*]**. Any such
24 amendment shall be consistent with the Purpose of this Easement, shall not affect the
25 qualification of this Easement or the status of Grantee under any applicable laws,
26 shall not shorten the duration of this Easement and shall be recorded in the official
27 records of _____ County, Washington, and any other jurisdiction in which such
28 recording is required.
29

30 13. ASSIGNMENT

31

32 13.1. **Assignment.** This Easement is transferable **[insert unless IAC is Grantee:**
33 ***with prior written notice to and consent of IAC {and NRCS}*]**, but Grantee may assign
34 its rights and obligations under this Easement only to an organization that is a
35 qualified holder at the time of transfer under RCW 64.04.130, as amended, and a
36 qualified recipient of grant funds from the farmlands preservation account under
37 RCW 79A.15.139. **[Insert unless IAC is Grantee: *Grantee shall not assign this***
38 ***Easement without notice to and consent of {insert one of the following: i) Grantor***
39 ***and IAC; or ii) Grantor, IAC and NRCS}, which consent shall not be unreasonably***
40 ***withheld.*]** As conditions of such transfer, Grantee shall require that assignee (a)
41 continue to carry out the Purpose of this Easement and (b) comply with the terms of
42 the IAC Grant Agreement, as described in Section 14. Grantee shall notify Grantor in
43 writing, at Grantor's last known address, in advance of such assignment. The

1 assignment shall not be valid without such notice; provided, however, that the failure
2 of Grantee to give such notice shall not impair the validity of this Easement or limit
3 its enforceability in any way.
4

5 **13.2. Rights and Obligations Upon Transfer.** A party's rights and obligations
6 under this Easement terminate upon transfer of the party's interest in the Protected
7 Property or this Easement, as the case may be, except that liability for acts or
8 omissions occurring prior to transfer shall survive transfer.
9

10 **13.3. [Insert this Section unless IAC is Grantee:**

11
12 *Succession.* If at any time it becomes impossible for Grantee to ensure compliance with
13 the covenants contained herein and Grantee has not named a successor organization, or
14 the Grantee shall cease to exist, then Grantee's rights and duties hereunder shall become
15 vested and fall upon IAC, who may then assign { , with NRCS's consent (which shall not
16 be unreasonably withheld),} Grantee's rights and duties hereunder to an organization
17 with a similar mission to that of Grantee.]
18

19 **14. [Insert this Section unless IAC is Grantee: IAC THIRD PARTY RIGHT OF**
20 **ENFORCEMENT**

21
22 **14.1.** *IAC is hereby granted third party right of enforcement of this Easement. As*
23 *such, IAC may exercise all of the rights and remedies provided to Grantee herein,*
24 *and is entitled to all of the indemnifications provided to Grantee in this Easement.*
25 *IAC and Grantee each have independent authority to enforce the terms of this*
26 *Easement; provided, however, that IAC expects that Grantee shall have primary*
27 *responsibility for monitoring and enforcement of the Easement. In the event that IAC*
28 *and Grantee do not agree as to whether the Grantor is complying with the terms of*
29 *the easement, IAC or Grantee may proceed with enforcement actions without the*
30 *consent of the other. If IAC elects to enforce the terms of this Easement, it shall first*
31 *follow the dispute resolution process and remedies described in Sections 8 and 9*
32 *above; provided, however, that IAC shall not be obligated to repeat any non-judicial*
33 *dispute resolution steps already taken by Grantee.*
34

35 **14.2.** *This third party right of enforcement does not extend to any other third party*
36 *and will automatically transfer to another State agency charged with maintaining,*
37 *preserving and/or restoring agricultural lands in the event IAC is dissolved or*
38 *reorganized.*
39

40 **14.3.** *In the event that the Easement is transferred or assigned without the consent of*
41 *IAC, which consent shall not be unreasonably withheld, IAC may require that*
42 *Grantee pay to IAC, at IAC's election, the higher of (i) an amount equal to the fair*
43 *market value of this Easement, which shall be determined as provided in Section 11.3*

1 and distributed as provided in Section 11.4; or (ii) an amount equal to the Total
2 Project Cost as specified in the IAC Grant Agreement with interest due and payable
3 from the date of breach at the rate provided for in RCW 43.17.240, as may be
4 amended from time to time.
5

6 14.4. In the event that the Protected Property is used by Grantor in a manner that is
7 not consistent with the Purpose of this Easement or the terms of the IAC Grant
8 Agreement, IAC shall have the right, in addition to any other remedies described in
9 this Easement, to require that Grantor pay to IAC, at IAC's election, the higher of (i)
10 an amount equal to the fair market value of this Easement, which shall be determined
11 as provided in Section 11.3 and distributed as provided in Section 11.4; or (ii) an
12 amount equal to the Total Project Cost as specified in the IAC Grant Agreement with
13 interest due and payable from the date of breach at the rate provided for in RCW
14 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by
15 Grantor for enforcement of this Easement or restoration of the Conservation Values
16 pursuant to Section 9 shall be deducted from this amount. IAC agrees that it will
17 follow the dispute resolution process and remedies described in Sections 8 and 9
18 before exercising this right, unless legally compelled to do otherwise. Any amounts
19 due and owing IAC under this paragraph shall be due and owing within 120 days of
20 receiving a written demand for repayment by IAC. Upon Grantor's repayment of such
21 amount to IAC, Grantee and IAC agree to prepare and record, with NRCS's consent
22 (which shall not be unreasonably withheld), a deed amendment to release Grantor
23 from any further obligations to IAC or Grantee under this Easement.]
24

25 15. [Insert this Section if Land Trust is third party beneficiary: LAND TRUST THIRD
26 PARTY RIGHT OF ENFORCEMENT
27

28 {insert name of land trust in all _____ in this section}
29

30 15.1. _____ is hereby granted third party right of enforcement of this
31 Easement. As such, _____ may exercise all of the rights and remedies provided
32 to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in
33 this Easement. _____ and Grantee each have independent authority to enforce
34 the terms of this Easement; provided, however, that Grantee expects that _____
35 shall have primary responsibility for monitoring and enforcement of the Easement.
36 In the event that _____ and Grantee do not agree as to whether the Grantor is
37 complying with the terms of the easement, _____ or Grantee may proceed with
38 enforcement actions without the consent of the other. If IAC _____ to enforce
39 the terms of this Easement, it shall first follow the dispute resolution process and
40 remedies described in Sections 8 and 9 above; provided, however, that _____
41 shall not be obligated to repeat any non-judicial dispute resolution steps already
42 taken by Grantee.
43

1 15.2. This third party right of enforcement may not be transferred, does not extend
2 to any other third party and will automatically revert to IAC or another State agency
3 charged with maintaining, preserving and/or restoring agricultural lands in the event
4 _____ is dissolved or reorganized.
5

6 16. **[Insert this Section if federal funding is used: RIGHTS OF THE UNITED STATES OF**
7 **AMERICA**
8

9 Under this Conservation Easement, the same rights are granted to the United States that
10 are granted to the Grantee. However, the Secretary of the United States Department of
11 Agriculture (the Secretary), on behalf of the United States, will only exercise these rights
12 under the following circumstances: In the event that **{insert one of the following: i)**
13 **Grantee fails or ii) Grantee or IAC fail}** to enforce any of the terms of this Conservation
14 Easement, as determined in the sole discretion of the Secretary, the Secretary and his or
15 her successors or assigns may exercise the United States' rights to enforce the terms of
16 this Conservation Easement through any and all authorities available under Federal or
17 State law. In the event that **{insert one of the following: i) Grantee attempts or ii)**
18 **Grantee or IAC attempt}** to terminate, transfer or otherwise divest itself of any rights,
19 title, or interests in this Conservation Easement without the prior consent of the Secretary
20 and, if applicable, payment of consideration to the United States, then, at the option of the
21 Secretary, all right, title, and interest in this Conservation Easement shall become vested
22 solely in the United States of America.]
23

24 17. **[Insert this section if IAC, NRCS and/or a Land Trust are third-parties: JOINT**
25 **ENFORCEMENT**
26

27 17.1. Before Grantee or any Beneficiary to this Easement exercises its rights to
28 undertake mediation, arbitration or legal action as provided for in Sections 8 and 9,
29 the party contemplating such action agrees to confer with the other parties holding
30 enforcement rights under this Easement as to whether they will join the mediation,
31 arbitration or legal action and share costs and expenses related to such action;
32 provided, however, that this agreement to confer shall not be construed as a
33 limitation on the ability of Grantee or any Beneficiary to this Easement to exercise its
34 enforcement and other rights under this Easement. If Grantee and/or any Beneficiary
35 to this Easement decide(s) to join in the action and share costs and expenses related
36 to the action, the parties joining in the action and sharing costs and expenses related
37 to the action shall apply any recovery to reimburse such parties for their costs and
38 expenses; provided, however, that any amount received based on loss of value to the
39 easement, or resulting from condemnation and/or extinguishment of the Easement,
40 shall be **{insert one of the following: i) distributed to IAC; or ii) shared equally by**
41 **IAC and NRCS}** only after reimbursing such parties for their costs and expenses.
42

1 17.2. *If Grantee or any Beneficiary to this Easement chooses not to undertake*
2 *mediation, arbitration or legal action as provided for in Sections 8 and 9, and/or*
3 *share costs and expenses related to such action, such party shall not be entitled to*
4 *any recovery for enforcement costs; provided, however, that any amount received*
5 *based on loss of value to the easement, or resulting from condemnation and/or*
6 *extinguishment of the Easement, shall be distributed in accordance with Section 11.4*
7 *only after first reimbursing any party for its costs and expenses that are not otherwise*
8 *separately paid as part of any arbitration award or judgment.*
9

10 **18. RECORDATION**
11

12 Grantee shall record this instrument in a timely fashion in the official records of
13 _____ County, Washington, and in any other appropriate jurisdictions, and may re-
14 record it at any time as may be required to preserve its rights in this Easement.
15

16 **19. NO MERGER**
17

18 In the event that Grantee acquires all or a portion of the fee title to the Protected
19 Property, it is the intent of the Parties that no merger of title shall take place that
20 would merge the restrictions of this Easement with fee title to the Protected Property
21 and thereby eliminate them, and that the restrictions on the use of the Protected
22 Property, as embodied in the Easement, shall, in the event that all or a portion of title
23 become vested in Grantee, become and remain permanent and perpetual restrictions on
24 the use of the Protected Property. Grantee covenants to do what is required to prevent
25 merger of title, including, if necessary, assignment of the Easement to an appropriate
26 third party pursuant to Section 13.1.
27

28 **20. LIENS**
29

30 At the time of conveyance of this Easement, the Protected Property is subject to that
31 certain mortgage or deed of trust dated _____, which was recorded
32 under Auditor's File No. _____ ("Mortgage" or "Deed of Trust"). The
33 beneficiary of the Mortgage or Deed of Trust has agreed by separate instrument
34 [substantially in the form of the instrument attached hereto as Exhibit E], which will
35 be recorded concurrently with this Easement, to subordinate its rights in the Protected
36 Property to this Easement to the extent necessary to permit Grantee to enforce the
37 Purpose of the Easement [insert one of the following: (a) in perpetuity or (b) for a
38 term of _____ {identify term, at least 25 years} years] and to prevent any
39 modification or extinguishment of this Easement by the exercise of any rights of the
40 beneficiary under the Mortgage or Deed of Trust. Notwithstanding anything to the
41 contrary in this Easement, the Parties agree that any and all liens (consensual or non-
42 consensual, judicial or non-judicial) arising from non-performance of the obligations
43 of Grantor under this Easement and charged to Grantor by Grantee or by a third party

1 beneficiary under this Easement, shall be subordinate, junior and subject to the
2 Mortgage or Deed of Trust. This Section shall be binding upon the Parties hereto
3 **[insert one of the following: i) and upon the intended third party beneficiary, IAC; or**
4 **ii) and upon the intended third party beneficiaries, IAC and NRCs].**
5
6

7 **21. GENERAL PROVISIONS**
8

9 **21.1. Effective Date.** The Effective Date of this Easement shall be the date on
10 which the Grantor executed this Easement.
11

12 **21.2. Governing Law and Venue.** The laws of the Washington and applicable
13 federal law shall govern the interpretation and performance of this Easement. By
14 executing this Easement, Grantor acknowledges the jurisdiction of the courts of the
15 State of Washington in this matter. In the event of a lawsuit involving this Easement,
16 venue shall be proper only in Thurston County.
17

18 **21.3. Liberal Construction.** Any general rule of construction to the contrary
19 notwithstanding, this Easement shall be liberally construed in favor of the grant to
20 effect the Purpose of this Easement. If any provision in this instrument is found to be
21 ambiguous, an interpretation consistent with the Purpose of this Easement that would
22 render the provision valid shall be favored over any interpretation that would render it
23 invalid.
24

25 **21.4. Severability.**

26 **21.4.1.** Except as provided in Section 20.4.2 below, if any provision of this Easement,
27 or the application thereof to any person or circumstance, is found to be invalid or
28 unenforceable by any court of competent jurisdiction or is superseded by state or
29 federal legislation, rules, regulations or decision, the remainder of the provisions
30 of this Easement, or the application of such provision to persons or circumstances
31 other than those as to which it is found to be invalid or unenforceable, as the case
32 may be, shall not be affected thereby.

33 **21.4.2.** If any material provision of this Easement, or the application thereof to any
34 person or circumstance, is found to be invalid or unenforceable by any court of
35 competent jurisdiction or is superseded by state or federal legislation, rules,
36 regulations or decision, so that the intent of these provisions is frustrated, the
37 parties agree to immediately negotiate a replacement provision to fulfill the intent
38 of the superseded provisions consistent with the Purpose of this Easement and
39 applicable law.
40

41 **21.5. Entire Agreement.** This instrument sets forth the entire agreement of the
42 Parties with respect to the Easement and supersedes all prior discussions,
43 negotiations, understandings, or agreements relating to the Easement, all of which are

1 merged herein. No alteration or variation of this instrument shall be valid or binding
2 unless contained in an amendment that complies with Section 12.
3

4 21.6. **No Forfeiture.** Nothing contained herein will result in a forfeiture or
5 reversion of Grantor's title in any respect.
6

7 21.7. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used
8 in this instrument, and any pronouns used in the place thereof, shall be held to mean
9 and include, respectively the above-named Grantor and its successors and assigns,
10 and the above-named Grantee and its successors and assigns. The term "Grantor"
11 shall also include any party taking ownership of the Protected Property, or any
12 portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.
13

14 21.8. **Successors.** The covenants, terms, conditions, and restrictions of this
15 Easement shall be binding upon, and inure to the benefit of, the Parties and their
16 respective successors and assigns, and to any party taking ownership of the Protected
17 Property, or any portion thereof, subsequent to the foreclosure of any mortgage or
18 deed of trust, and shall continue as a servitude running [insert one of the following:
19 (a) *in perpetuity* or (b) *for a term of* _____ {identify term, at least 25
20 years} *years*] with the Protected Property.
21

22 21.9. **Captions.** The captions in this instrument have been inserted solely for
23 convenience and ease of reference and are not a part of this instrument and shall have
24 no effect upon construction or interpretation.
25

26 21.10. **Counterparts.** The Parties may execute this instrument in two or more
27 counterparts, which shall, in the aggregate, be signed by both Parties; each
28 counterpart shall be deemed an original instrument as against any party who has
29 signed it. In the event of any disparity between the counterparts produced, the
30 recorded counterpart shall be controlling.
31

32 21.11. **Authority.** The individuals signing below, if signing on behalf of any entity,
33 represent and warrant that they have the requisite authority to bind the entity on
34 whose behalf they are signing.
35

36 21.12. **Recitals.** The Parties agree that the terms and recitals set forth in Section 1
37 (among other terms of this Easement) are material to this Easement, and that each
38 Party has relied on the material nature of such terms and recitals in entering into this
39 Easement. Each term and recital set forth in Section 1 is fully incorporated into this
40 Easement.
41

42 **22. SCHEDULE OF EXHIBITS**
43

- 1 22.1. Exhibit A. Legal Description of Property Subject to Easement.
2
3 22.2. Exhibit B. Site Map.
4
5 22.3. Exhibit C. Water Rights.
6
7 22.4. Exhibit D. Permitted Exceptions.
8
9 22.5. Exhibit E. Subordination Agreement.

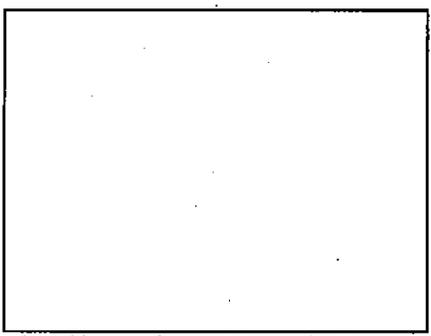
10
11
12 TO HAVE AND TO HOLD unto Grantee, its successors, and assigns **[insert one of the**
13 **following: (a) forever or (b) for a term of _____ {identify term, at least 25 years}**
14 **years]**.

15
16
17
18
19 REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW
20

1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF _____)
4

5 I certify that I know or have satisfactory evidence that _____
6 [name of second Grantor] is the person who appeared before me, and said person acknowledged that he/she
7 signed this instrument, on oath stated that he/she was authorized to execute the instrument and
8 acknowledged it as the _____ of
9 _____ to be the free and voluntary act of such party for the uses and
10 purposes mentioned in the instrument.
11

12 Dated: _____
13



Notary Public
Print Name _____
My commission expires _____

14 (Use this space for notarial stamp/seal)
15
16

17 REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE
18 PAGES FOLLOW

1 [Grantee] does hereby accept the above Grant Deed of Agricultural Conservation
2 Easement.

3
4 Dated: _____

5 Grantee

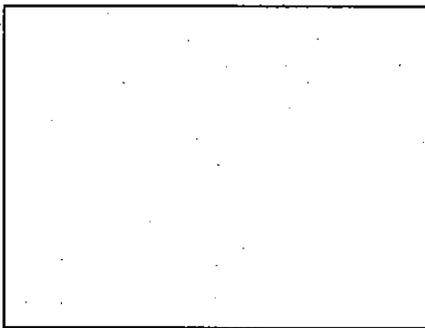
6
7
8 By _____

9
10 Its _____

11
12
13
14 STATE OF WASHINGTON)
15) ss.
16 COUNTY OF KING)

17
18 I certify that I know or have satisfactory evidence that _____ is
19 the person who appeared before me, and said person acknowledged that he/she signed this instrument, on
20 oath stated that he/she was authorized to execute the instrument and acknowledged it as the
21 _____ of _____ to be the free and
22 voluntary act of such party for the uses and purposes mentioned in the instrument.
23

24 Dated: _____



25
26 (Use this space for notarial stamp/seal)

27
28
29
30
31 _____
Notary Public
Print Name _____
My commission expires _____

32 **[insert signature blocks below if there are third party beneficiaries to this Easement]:**

33 REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE
34 PAGES FOLLOW
35
36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE STATE OF WASHINGTON, BY AND THROUGH THE INTERAGENCY
COMMITTEE FOR OUTDOOR RECREATION, Third Party Beneficiary, does hereby
accept the above Deed of Agricultural Conservation Easement.

Dated: _____

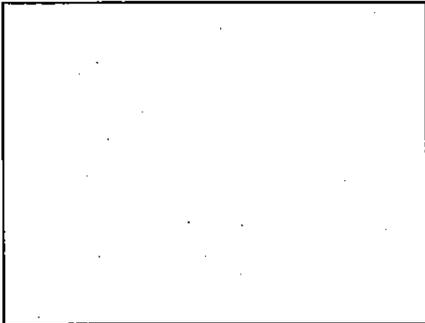
By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE
PAGES FOLLOW

1 The NATURAL RESOURCES CONSERVATION SERVICE, an agency of the United
2 States government, and Third Party Beneficiary, does hereby accept the above Deed of
3 Agricultural Conservation Easement.

4
5 Dated: _____

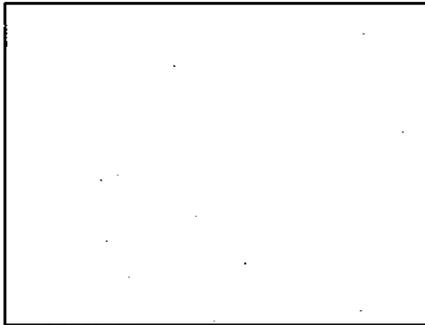
6
7 By _____

8
9 Its _____

10
11
12 STATE OF WASHINGTON)
13) ss.
14 COUNTY OF KING)

15
16 I certify that I know or have satisfactory evidence that _____ is
17 the person who appeared before me, and said person acknowledged that he/she signed this instrument, on
18 oath stated that he/she was authorized to execute the instrument and acknowledged it as the
19 _____ of _____ to be the free and
20 voluntary act of such party for the uses and purposes mentioned in the instrument.

21
22 Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

1
2
3
4
5

EXHIBIT A
Legal Description

1
2
3
4

EXHIBIT B

Site Map(s)

1
2
3

EXHIBIT C
Water Rights

1
2
3

EXHIBIT D

Permitted Exceptions

1 [EXHIBIT E

2
3 Subordination Agreement]

4
5
6
7 When recorded return to:

8
9 _____
10 _____
11 _____
12 _____

13
14
15
16
17 Grantor: _____

18 Grantee: _____

19
20 Legal Description

21 Abbreviated form: _____

22 Additional legal at Exhibit A.

23
24 Assessor's Tax Parcel Number: _____

25
26 Reference number(s) of related/assigned/released documents: _____

27 Reference(s) to document(s) appears on page(s) _____

28
29
30 **SUBORDINATION AGREEMENT**

31
32 NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY
33 INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY
34 THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

35
36 The undersigned subordinator agrees as follows:

37
38 1. _____ ("Subordinator") is the owner and holder of a mortgage dated
39 _____, which was recorded under Auditor's File No. _____, records of
40 _____ County;

41
42 2. _____ ("Easement Holder") is the holder of a conservation easement dated
43 _____, 200_, executed by [("Owner") or ("Owners")] (as hereinafter defined) which
44 will be recorded concurrently with this Subordination Agreement;
45

1 (Use this space for notarial stamp/seal)

2

3 STATE OF WASHINGTON)

4) ss.

5 COUNTY OF _____)

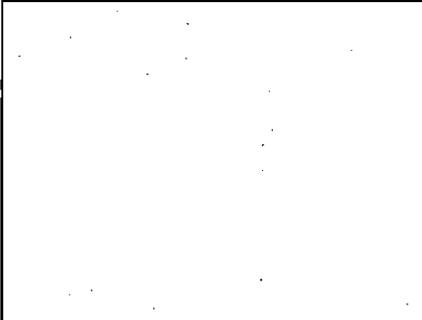
6

7 I certify that I know or have satisfactory evidence that _____ is the
8 person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath
9 stated that he/she was authorized to execute the instrument and acknowledged it as the
10 _____ of _____ to be the free and voluntary
11 act of such party for the uses and purposes mentioned in the instrument.

12

13 Dated: _____

14



Notary Public
Print Name _____
My commission expires _____

15 (Use this space for notarial stamp/seal)

16

17

Interagency Committee for Outdoor Recreation

360/902-3000
360/902-3026 (fax)
email: info@iac.wa.gov



STATE OF WASHINGTON

Salmon Recovery Funding Board

360/902-2636
360/902-3026 (fax)
email: salmon@iac.wa.gov

Attachment 4

OFFICE OF THE INTERAGENCY COMMITTEE

1111 Washington Street SE
PO Box 40917
Olympia, WA 98504-0917

May 22, 2007

TOPIC #4e: WWRP Farmland Preservation Program Policies

As of May 22, 2007, no public comments have been received on the final drafts of either Manual 10f or the Model Agricultural Conservation Easement. If comments are received before the day of the meeting, staff will bring copies to the June 7 & 8, 2007 Board meeting.

