

Inland Empire Action Coalition

Ford Easement Assessment Project – Project # 09-1583N

List of Restrictions of the Conservation Easement

Grantor: Albert Land LLC and Deloris Ford, and their successors or assigns

Grantee: Inland Empire Action Coalition and their successors or assigns

Legal description on Page: Annex A

Assessor's Tax Parcel #s: 360904210010, 360904110003, 360903220006,
36090322003, 360903210009

The easement property consists of 140 acres of riparian area located on both sides of the Touchet River downstream of the Hart Road Bridge. A survey describes the property and is herein incorporated as Annex "A."

1. Rights conveyed to the Grantee

The use of all the property described in Annex "A" as a conservation easement.

The conservation easement includes the perpetual right of the grantee, its successors or assigns:

- (a) to preserve, protect, and maintain the conservation values of the property described in Annex "A"
- (b) to entry thereto at all times, with prior written consent of the grantor, its successors or assigns, only, for public purposes of inspection, enforcement, preservation, education, restoration, maintenance, monitoring, and scientific research.
- (c) to injunction to prevent any activity on or use of the Riparian Habitat Conservation Zone that is inconsistent with the purpose of the conservation easement and to require restoration of such area or features of the Riparian Habitat Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section 15.
- (d) to enforce the terms of the conservation easement, consistent with Section 15.

2. Prohibited Uses

Grantor, for itself and its successors or assigns, shall be prohibited in the continued uses of Annex "A" for which uses the grantor and grantee agree are inconsistent with the above-described conservation easement as follows:

- a. keeping domesticated animals, livestock or poultry, except household pets. Household pets, such as dogs and cats, shall be allowed.
- b. growing crops for commercial or non-commercial purposes, except in the

18.5 acre area identified on Annex A as "farmed upland" where all typical activities associated with farming the area are allowed.

- c. timber harvesting (except as mutually agreed by grantor, its successors or assigns, and grantee to preserve forest health)
- d. erecting structures or roads of any kind
- e. grantor, its successors or assigns, will neither perform, nor knowingly allow others to perform, any act on or affecting the property that is inconsistent with the purpose of the conservation easement set out above

3. Use of easement property to meet zoning requirements

The grantor, for itself and its successors or assigns, shall not use the area within the conservation easement in acreage calculations to satisfy minimum zoning requirements for a house located outside of the easement.

4. Stewardship activities

Both the grantee, its successors or assigns, and grantor, its successors or assigns, shall have the right at their own expense to undertake stewardship activities in the waterway or on the property to enhance and protect water quality and/or fish and wildlife habitat. Any such project shall require the mutual written permission of both the grantee and grantor, its successors or assigns, before constructing said projects.

5. Signs

The grantee shall have the right to develop signs to promote the project. Any such signs shall be approved by the grantor, its successors or assigns, prior to installation.

6. Maintenance

Maintenance of fences, if any, and control of noxious weeds shall remain the responsibility of the grantor, its successors or assigns.

7. Duration

This conservation easement shall exist in perpetuity.

8. Transferability

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that is acceptable to the grantor, its successors or assigns. Such transfer shall require prior written permission from the grantor. The public agency or private nonprofit organization must be, at the time of transfer, a "qualified organization" under Section 170(h) of the Internal Revenue Code of 1986 and under RCW 84.34.250 or RCW 64.04.130 (or any successor provision then applicable), provided the transferee

expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or is no longer qualified under Section 170(h) of the Internal Revenue Code of 1986 as amended (or any successor provision then applicable), or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement. The transfer to any such organization must be approved by the grantor, its successors or assigns, in writing. The transfer must also be in accordance with the Assignment of Rights, described in Section 16.

9. Notice of actions possibly inconsistent with easement

If Grantor, its successors or assigns, plans to undertake actions that could be inconsistent with the purpose of the conservation easement the Grantor, its successors or assigns, shall notify Grantee in writing at least 30 days before the action is to take place.

Grantee has the right to approve, deny, or condition proposed actions of Grantor to ensure actions are consistent with the conservation easement. Grantee shall notify Grantor in writing within 30 days of receiving Grantor's notice of proposed action.

10. Hazardous substances and litigation

Grantor represents and warrants that there has been no release of hazardous materials as outlined below, except for the release of chemicals normally used in agricultural applications in normal quantities, that after reasonable investigation and to the best of Grantor's knowledge:

- a. Grantor and the Property are in compliance with all federal, state, and local laws, regulations and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations and requirements.
- b. There has been no release, dumping, burying, abandonment or migration from off-site onto the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance.
- c. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values of the Riparian Habitat Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violation of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other

notifications relating to a breach of environmental laws.

11. Remediation:

If, at any time, there has occurred or does occur a release in, on, or about the Property of any substance now or hereafter designated or regulated by a federal, state, or local authority as hazardous, toxic, dangerous, or harmful to human health or the environment, Grantor agrees to bear the cost of all legally-required containment and remediation, except in the event that the release was caused by Grantee.

12. Amendment:

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, its successors or assigns, and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including without limitation RCW 64.04.130, ch. 84.34 RCW [or Section 170(h) of the Internal Revenue Code of 1986, as amended] (or any successor provision(s) then applicable). Any such amendment shall be consistent with the original Purpose of this Easement and shall not shorten its duration, shall be in accordance with the provisions of the Assignment of Rights, and shall be recorded in the official records of Walla Walla County, Washington.

13. Enforcement:

To enforce the terms of this easement if Grantee determines that Grantor, its successors or assigns, is in violation of the terms of this Easement, Grantee shall give written notice to Grantor, its successors or assigns, of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Riparian Habitat Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Riparian Habitat Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

Grantee may bring an action if Grantor, its successors or assigns, a) fails to cure the violation within sixty (60) days after receipt of a notice of violation from Grantee; or b) under circumstances where the violation cannot reasonably be cured within a sixty (60) day period and fails to begin curing the violation within 60 days and fails to continue diligently to cure such violation until finally cured.

Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

- a. To enjoin the violation by temporary or permanent injunction. Grantee may proceed on an *ex parte* basis as necessary provided that grantee complies with the Superior Court of Civil Rules (CR) as they apply to preliminary or permanent injunctions. The grantor shall be notified in writing prior to any application by

grantee for injunction relief.

- b. To require the restoration of the Property to the condition that existed prior to any such injury to the extent of restoring it to a predominantly natural condition as a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem. "Predominantly natural condition" shall not be construed as requiring Grantor, its successors or assigns, to meet planting or habitat restoration specifications required by CREP, CRP, or any other program. In addition, as stated previously, Grantor, its successors or assigns, shall not be required to repair damage caused by acts of god or other circumstances beyond the Grantor's control.

Grantee shall be entitled to recover damages for violations of the terms of this Easement or injury to any Conservation Values protected by this Easement including, without limitation, damages for the loss of environmental values. Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action on the Riparian Habitat Conservation Zone.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Riparian Habitat Conservation Zone, Grantee may pursue its remedies under this section without notice to Grantor, its successors or assigns, or without waiting for the period provided for cure to expire.

Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered.

14. Assignment of Rights:

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Recreation and Conservation Office, which rights shall be co-held by Grantee and the State of

Washington through the Recreation and Conservation Office. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit A.

15. Extinguishment:

This Easement may be terminated or extinguished, whether in whole or in part, before expiration of the term of the Easement only under one or more of the following circumstances:

A. The parties jointly agree to extinguish this Easement, or release a portion of the Conservation Zone from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section 15.

B. Upon petition by one or all of the parties, a court having jurisdiction over this Easement determines by judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve.

C. All or any of the Conservation Zone is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. Grantor and Grantee shall act jointly to recover the full value of the interest in the Conservation Zone subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received.

16. Determination of fair market value:

This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section 17 of this Easement, the parties stipulate to have a fair market value determined by an independent appraisal and review, according to published RCO appraisal standards found in RCO Manual 3, "Acquiring Land".

17. Subsequent Transfer:

Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;

2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Property;

3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

18. Indemnity:

Grantee, its agents, contractors, employees, guests, licensees, and permittee, shall defend, indemnify, and hold Grantor their heirs, successors, and assigns harmless from and against any and all damages, loss, liability and claims of liability, for damage to property of whatsoever kind or character, or for injury to persons, or for the death of a person or persons, caused by the activities of Grantee, its agents, contractors, employees, guests, licensees, and permittee on or about the property provided such liability or loss is not due to the negligence or willful misconduct of Grantor. Grantee liability for the acts of guests, licensees and permittees shall be limited to those guests, licensees and permittees expressly permitted to be on the Property and shall not extend to any persons on the property without Grantee's express permission. Grantor, shall defend, indemnify and hold Grantee harmless from and against any and all damages, loss, liability and claims for liability for damage to property of whatsoever kind or character, or for injury to persons caused directly by Grantor, its agents, contracts, employees, guests, licensees and permittees on or about the Property provided such liability or loss is not due to the negligence or willful misconduct of Grantee. Liability for the acts of guests, licensees and permittees shall be limited to those guests, licensees and permittees expressly permitted to be on the Property.