

After recording return to:

Inland Empire Action Coalition
8979 Mill Creek Road
Walla Walla, WA 99362

DEED GRANTING CONSERVATION EASEMENT

Grantor: Ford Ranches and their successors or assigns

Grantee: Inland Empire Action Coalition and their successors or assigns

Abbreviated Legal Description:

Additional Legal on Page: Annex A

Assessor's Tax Parcel #:

Ford Ranches, whose address is 1504 Howard Street, Walla Walla, WA 99362 and their successors or assigns, as grantor, the owner of land located in the County of Walla Walla, State of Washington, particularly described in Annex "A", attached hereto and by this reference made a part hereof, in consideration of _____ and other good and valuable consideration grants, conveys and warrants to Inland Empire Action Coalition, whose address is 8979 Mill Creek Road., Walla Walla, WA 99362, a non-profit corporation, as grantee, the following easement:

Purpose and Conservation Values

All the property herein shall be considered to contain riparian habitat and shall be referred to as "Riparian Habitat Conservation Zone."

The purpose of this easement is to assure that the Riparian Habitat Conservation Zone will be retained predominantly in its natural condition as a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of, or activity on, the Riparian Habitat Conservation zone that will significantly impair or interfere with the Conservation values of the Riparian Habitat Conservation Zone.

The Riparian Habitat Conservation Zone provides riparian habitat and other natural values (collectively, the "Conservation Values"). For purposes of this Easement, riparian habitat is the land area adjacent to aquatic systems with flowing water that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other and provide habitat for fish and wildlife species (Riparian Habitat). Riparian Habitat provides vital functions to aquatic and upland ecosystems which include: soil, stream bank stability, wildlife cover, stream temperature control, water purification, water storage and conservation, and supply of food and nutrients to the aquatic system. Riparian Habitat includes rivers, streams, wetlands, lakes and estuaries or nearshore marine habitat.

The specific conservation values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by this reference ("Baseline Documentation"), which consists of maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of conservation easement acquisition, and which is intended to serve an objective information baseline for monitoring compliance with the terms of this grant. This Baseline Documentation shall be used only for monitoring compliance with the easement terms. For example, the documentation may show that no houses existed on the property and therefore the documentation can be used to determine if any new structures have been built. This baseline documentation shall in no way be construed to be baseline documentation for anything other than compliance for the specific terms of this easement. For example the documentation shall not be construed or used to show that a certain number of plants, habitat structures, etc. shall remain in place on the property.

A stewardship plan, on file at the offices of Grantee and incorporated by this reference ("Stewardship Plan"), describes activities to monitor, protect, and maintain the Riparian Habitat Conservation Zone.

This grant includes the following terms:

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, to preserve, protect, and maintain the conservation values of the property described in Annex "A" with right 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.

1. 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
- b. livestock or poultry except household pets
- c. growing crops for commercial or non-commercial purposes except in the

portion specifically identified in Annex A as “18.5 acre farmable associated upland” where farming is allowed

d. timber harvesting (except as mutually agreed by grantor, its successors or assigns, and grantee to preserve forest health)

e. erecting structures or roads of any kind

f. 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 conservation easement set out above

2. 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 or other development located outside of the easement.

3. 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.

4. 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.

5. Maintenance

Maintenance shall be performed in accordance with the site management plan which is described in, and is incorporated into, the stewardship plan.

6. Development rights

Development rights on the property are limited by the terms of this grant as earlier set out. The rights may be termed "conservation futures" for the purposes of RCW Chapter 84.34.

7. Non-profit nature

The grantee is a "non profit nature conservancy corporation" as defined in RCW 64.04.130 and thereby qualified to hold conservation easements under the laws of the State of Washington.

8. Duration

This conservation easement shall exist in perpetuity.

9. 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 must also be in accordance with the Assignment of Rights, described in item 15.

10. Notice of actions possibly inconsistent with easement

If Grantor, its successors or assigns, plans to undertake permitted 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 60 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.

Notice shall be given to the following addresses:

Grantee:

Inland Empire Action Coalition
8979 Mill Creek Road
Walla Walla, WA 99362

Grantor:

Ford Ranches
1504 Howard Street
Walla Walla, WA 99362

11. Hazardous substances and litigation

Grantor represents and warrants 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.

12. Remediation

If, at any time, there occurs a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation.

13. 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.

14. 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, ex parte as necessary, by temporary or permanent injunction; and
- 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.

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.

15. 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.

16. Additional special prohibition on uses within 50 feet of the stream

No uses other than human foot traffic and maintenance activities shall be allowed within the first 50 feet from the stream.

17. 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:

1. 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.
2. 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.
3. 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.

18. 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".

19. 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.

20. 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.

21. Recordation

Grantor shall record the conservation easement instrument with Walla Walla County.

22. Subordination

Consent is required by mortgage holders, owners of easements, lease holders, and other lien holders necessary to "bind" those parties to the terms of the conservation easement.

23. General provisions

Interpretation and performance of the conservation easement shall be governed by the laws of the State of Washington with liberal construction in favor of the grant of the conservation easement to effect the purpose of the conservation easement.

--- THIS SPACE RESERVED FOR TITLE COMPANY TO INSERT SIGNING AND
RECORDATION LANGUAGE NECESSARY TO RECORD AGREEMENT WITH
WALLA WALLA COUNTY---